

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW MEXICO

3
4 ANTOINETTE GONZALES, CAROLL
5 AUSTIN, SARAH CLOVER, and ANNETTE
6 MORA, JAMES PES CETTI and A CLASS OF
7 SIMILARLY SITUATED CITY EMPLOYEES,
8
9 Plaintiffs,

10 vs. Case No. 1:09-CV-00520-JB-RLP

11 THE CITY OF ALBUQUERQUE; ED
12 ADAMS, Chief Administrative Officer; and
13 ESTHER TENENBAUM, Division Manager, in
14 their individual and official capacities,
15
16 Defendants.

17
18 DEPOSITION OF JAMES PES CETTI, JR.
19 January 14, 2010
20 9:25 P.m.

21 City of Albuquerque Legal Department
22 Fourth Floor, One Civic Plaza, Northwest
23 Albuquerque, New Mexico 87102

24 PURSUANT TO THE FEDERAL RULES OF CIVIL
25 PROCEDURE this deposition was:

TAKEN BY: EDWARD W. BERGMANN, ESQ.
 ATTORNEY FOR DEFENDANTS

REPORTED BY: M. Teresa Torrez, CCR
 New Mexico CCR #159
 RUSSIN WILLIAMS REPORTING
 1608 Fifth Street, Northwest

1 was called Client Logic.
 2 A. It was Client Logic.
 3 Q. When you were hired by the City, did you
 4 undergo some training?
 5 A. Yes.
 6 Q. Where did the training take place?
 7 A. At the Plaza Del Sol Building, within the call
 8 center.
 9 Q. And who conducted the training?
 10 A. Esther.
 11 Q. Did anyone else conduct any part of the
 12 training besides Esther Tenenbaum?
 13 A. I don't recall. Esther did, if not all of it,
 14 most of it.
 15 Q. Do you know whether Michael Padilla did any of
 16 the training?
 17 A. Oh, yes. Michael did do the -- the mission
 18 statement portion of the training. Yes, he did.
 19 Q. Now, you mentioned that you got the
 20 understanding that unclassified meant that you weren't
 21 eligible to be in a union. Did you get some of that
 22 understanding at the training?
 23 A. That's pretty much how I got all of the
 24 understanding.
 25 Q. And who was it that said that about your

1 unclassified status? I mean, who in the training
 2 mentioned unclassified status? If you can recall.
 3 A. I don't recall. I do remember there was a --
 4 a benefit -- somebody from Benefits who went over some
 5 paperwork with us. But I -- I don't recall
 6 specifically.
 7 Q. So you don't recall specifically who said it,
 8 but based upon what was said, you were under the
 9 impression that unclassified meant that you were not
 10 eligible to be in a union.
 11 A. Exactly.
 12 Q. Now, subsequent to your training and up till
 13 the time you were terminated, did you ever hear anything
 14 else about unclassified status?
 15 A. Not specifically to me.
 16 Q. Did you ever ask anyone about unclassified
 17 status?
 18 A. No.
 19 Q. Did you ever hear anything else about unions
 20 and unclassified status?
 21 A. Within the call center?
 22 Q. Yes.
 23 A. No.
 24 Q. Do you remember who your supervisors were at
 25 the call center?

1 A. Well, I've -- I worked for all of them. I
 2 worked for David for a short time.
 3 Q. If you can give us first and last names, that
 4 would be helpful for the --
 5 A. Sure. If I can remember them.
 6 Q. Certainly. Of course.
 7 A. David. I believe David's name is Chavez. I
 8 worked for Carol McCoy. And Antoinette Gonzales. And
 9 also Michael Barnes for a short time. I can't forget
 10 Michael.
 11 Q. Did your supervisors prepare scorecards for
 12 you?
 13 A. Yes.
 14 Q. And for the record, could you tell us what a
 15 scorecard is?
 16 A. It was just basically a point system on your
 17 statistics, on your monitor scores, that type of
 18 information.
 19 Q. Did the super- -- your supervisor at the time
 20 discuss the scorecard with you?
 21 A. Yes, we got feedback on the scorecards.
 22 Q. And were you required to maintain a certain
 23 average on your scorecard?
 24 A. Yes.
 25 Q. And what was that average?

1 A. I'm not positive. I want to say it was 18.
 2 Q. Did the -- does the number 85 percent mean
 3 anything to you? Have you ever heard that?
 4 A. No.
 5 Q. Do you recall receiving certain counselings
 6 during your employment at the City of Albuquerque?
 7 A. Yes.
 8 Q. I'm going to show you a series of documents
 9 and see if you recognize those.
 10 (Exhibit 4 was marked for identification.)
 11 Q. I show you a document which has been marked as
 12 Exhibit 4 to your deposition and ask you if you
 13 recognize that document.
 14 MR. LIVINGSTON: Let me make an
 15 objection, Mr. Bergmann. I object to any such document,
 16 questioning about counseling sessions. Mr. Pescetti was
 17 not terminated for any performance deficits. He was
 18 supposedly terminated because his services were no
 19 longer required, and the City refused to give any
 20 information concerning performance deficits. So I agree
 21 to the -- disagree and object to the form of any
 22 questioning about counseling or about alleged
 23 performance deficits.
 24 Q. This will be --
 25 MR. LIVINGSTON: You can answer.

1 Q. Do you recognize this document?
 2 A. I believe so, yes.
 3 Q. Is that your signature on the bottom?
 4 A. It is.
 5 Q. And is that the signature of David Chavez on
 6 the document?
 7 A. I believe so.
 8 Q. Did you speak to anyone about this document?
 9 Did you have a meeting discussing the document? If you
 10 can recall.
 11 A. I can't specifically recall.
 12 (A discussion was held off the record.)
 13 (Exhibit 5 was marked for identification.)
 14 Q. I show you a document which I've marked as
 15 Deposition Exhibit 5 to your deposition and ask you if
 16 you recognize this document.
 17 MR. LIVINGSTON: Object again to the form
 18 of the question.
 19 MR. BERGMANN: If you want to have a
 20 standing objection, that's fine.
 21 MR. LIVINGSTON: Okay.
 22 Q. (By Mr. Bergmann) Do you recognize this
 23 document?
 24 A. Yes, I believe so.
 25 Q. And is that your signature --

1 Q. And was Antoinette Gonzales your supervisor at
 2 that time?
 3 A. I believe she was, yes.
 4 Q. And does that appear to be her signature?
 5 A. It does.
 6 Q. And do you remember, was there any conference
 7 relative to this particular written warning?
 8 A. Not that I recall.
 9 (Exhibit 7 was marked for identification.)
 10 Q. I show you a document which has been marked as
 11 Exhibit 7 to your dep- -- deposition. Do you recognize
 12 this document?
 13 A. Yes.
 14 Q. And is that your signature on the document?
 15 A. Yes.
 16 Q. And, again, was Antoinette Gonzales your
 17 supervisor at that time?
 18 A. I believe she was, yes.
 19 Q. And does that appear to be her signature?
 20 A. It does.
 21 Q. And do you remember whether there was a
 22 discussion relative to this particular warning?
 23 A. That, I don't recall.
 24 Q. Could there have been a discussion and you --
 25 and you just not recall it as you sit here today?

1 A. It is.
 2 Q. -- on it? And is that the signature of -- as
 3 far as you know, Carol McCoy?
 4 A. Yes.
 5 Q. Was she your supervisor at that time?
 6 A. Yes, she sure was.
 7 Q. Do you remember, was there a discussion of
 8 this situation? If you can recall.
 9 A. Oh, yeah, there was a huge discussion on this.
 10 Q. Okay. Tell me a little bit about the
 11 discussion.
 12 A. Well, this was right after my brother had
 13 passed away.
 14 Q. So you discussed the reasons for your absences
 15 with --
 16 A. It was -- Everybody knew the reasons for my
 17 absences and the problems that I was having. I -- I
 18 brought doctors' notes, letters.
 19 (Exhibit 6 was marked for identification.)
 20 Q. I show you a document that's been marked as
 21 Exhibit 6 to your deposition. Do you recognize this
 22 document?
 23 A. Yes.
 24 Q. And is that your signature on the document?
 25 A. Yes.

1 MR. LIVINGSTON: Object to the form of
 2 that question. There's no way he could know if there
 3 could have been something that he doesn't remember.
 4 Q. Go ahead. You can answer.
 5 A. Can you repeat the question, please?
 6 Q. All right. Could there have been a discussion
 7 about this particular written warning and you just not
 8 recall it today?
 9 A. I'm sure --
 10 MR. LIVINGSTON: Objection. Again,
 11 that's what he said. That's a different objection.
 12 MR. BERGMANN: I understand. He asked me
 13 to repeat the question. So --
 14 MR. LIVINGSTON: Okay. It's a different
 15 question. It's a different question, but he's already
 16 answered the question, that he doesn't recall it.
 17 MR. BERGMANN: Well, let's let him go
 18 ahead and answer the question.
 19 Q. (By Mr. Bergmann) Do you understand the
 20 question?
 21 A. I understand the question.
 22 Q. Okay.
 23 A. I have no idea whether there was a conference
 24 on this or not.
 25 (A discussion was held off the record.)

1 (Exhibit 8 was marked for identification.)
 2 Q. I show you a document which has been marked as
 3 Exhibit 8 to your deposition and ask you if you
 4 recognize that document.
 5 A. I vaguely do.
 6 Q. Is that your signature on the document?
 7 A. It is.
 8 (A discussion was held off the record.)
 9 Q. Is -- Under "Supervisor's Signature," is that
 10 the signature of J. Michael Barnes? If you --
 11 A. I couldn't tell you that for sure.
 12 Q. Oh. Do you know at this -- on this date or in
 13 this occasion, was your supervisor J. Michael Barnes?
 14 A. He may have been.
 15 Q. Look at the top of the document where it says
 16 "Employee Information," and see underneath the word
 17 "Supervisor"?
 18 A. Uh-huh.
 19 Q. So do you think J. Michael Barnes was your
 20 supervisor at that time?
 21 A. More than likely, yes.
 22 Q. Do you recall whether there was any kind of a
 23 discussion concerning this particular document?
 24 A. No, I don't recall.
 25 (Exhibit 9 was marked for identification.)

1 Q. I show you a document which has been marked as
 2 Exhibit 9 to your deposition and ask you if you
 3 recognize that document.
 4 A. Vaguely.
 5 Q. Okay. Tell me what about it you do recognize,
 6 even though it's vaguely.
 7 A. Well, I have a -- I signed it. That is my
 8 signature, so --
 9 Q. Okay. Do you remember there was a -- any kind
 10 of a discussion relative to this particular document?
 11 A. A discussion?
 12 Q. Any kind of a -- a -- a meeting or discussion
 13 relative to the document itself, what's contained in it.
 14 A. No. No. Not that I recall.
 15 Q. And your supervisor at that time was J.
 16 Michael Barnes?
 17 A. I believe so.
 18 Q. I take it you were shown these documents. You
 19 signed. You did see the document.
 20 A. Right.
 21 MR. LIVINGSTON: I'm not sure how you
 22 sign something that you don't see.
 23 MR. BERGMANN: You'd be surprised.
 24 MR. LIVINGSTON: Do they cover it all up
 25 and --

1 MR. BERGMANN: It would be hard, but --
 2 MR. LIVINGSTON: -- say "Sign here."
 3 Q. (By Mr. Bergmann) Directing your attention to
 4 May of 2008, was there an incident that led to your
 5 termination?
 6 A. No, not that I was made aware of.
 7 Q. Were you made aware of -- of any call with a
 8 citizen that the citizen complained about, a call
 9 involving you?
 10 A. No.
 11 Q. And you aren't aware that there was any kind
 12 of a citizen complaint about you relative to a call in
 13 May of 2008?
 14 A. No.
 15 MR. LIVINGSTON: Actually, I think he
 16 meant to answer yes, he was not aware.
 17 Q. You were not aware.
 18 A. I'm not aware.
 19 Q. You're not aware.
 20 A. I was not aware.
 21 THE WITNESS: Thank you.
 22 Q. When you were terminated, who was it that
 23 terminated you?
 24 A. Esther.
 25 Q. And tell me the circumstances of that.

1 A. The circu- -- It was about five o'clock on a
 2 Friday, and Antoinette Gonzales told me that Esther
 3 wanted to see me. And we went into her office, and she
 4 told me that my services were no longer needed.
 5 Q. Did -- And Antoinette Gonzales, was she your
 6 supervisor at that time?
 7 A. I believe so.
 8 Q. Did -- did she talk to you at all about a
 9 citizen complaint?
 10 A. I'm sorry, she was not.
 11 Q. She was not?
 12 A. She was not. It was Carol. I honestly don't
 13 remember. I honestly don't remember. It was either
 14 Carol or --
 15 Q. Carol McCoy or --
 16 A. Or Antoinette.
 17 Q. Or Antoinette Gonzales.
 18 A. Right.
 19 Q. Did Antoinette Gonzales at any time tell you
 20 that she had reported a citizen complaint about you to
 21 Esther Tenenbaum?
 22 A. No.
 23 Q. Were you aware that that had occurred, that
 24 Antoinette Gonzales had reported about a citizen
 25 complaint concerning you to Antoinette Gonzales?