

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

DEPARTMENT 2

HON. PATRICIA LUCAS, JUDGE

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7	SAN JOSE POLICE OFFICERS	)	
	ASSOCIATION,	)	
8	PLAINTIFF,	)	CASE NO.
	VS.	)	1-12-CV-225926
9	CITY OF SAN JOSE, BOARD OF	)	SAN JOSE, CA
	ADMINISTRATION FOR POLICE AND	)	JULY 26, 2013
10	FIRE RETIREMENT PLAN OF CITY OF	)	
	SAN JOSE, AND DOES 1-10	)	
11	INCLUSIVE,	)	
	DEFENDANTS.	)	
12		)	

REPORTER'S TRANSCRIPT

OF

TESTIMONY AND PROCEEDINGS

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ATTORNEYS AT LAW

1 SAN JOSE, CA; JULY 26, 2013

2 DEPARTMENT 2 HON. PATRICIA M. LUCAS, JUDGE

3 ---oooOooo---

4  
5 THE COURT: Good morning. What news do you have  
6 for me this morning?

7 MR. SPELLBERG: Your Honor, the stipulation is  
8 complete. The only thing -- because of the rule of  
9 completeness, there's two more documents that we are going  
10 to add for completeness. I haven't shown everybody yet.  
11 But everything else we've reached agreement on. All the  
12 exhibits from all the parties that are going to be  
13 stipulated into evidence or for authenticity have all been  
14 agreed upon.

15 THE COURT: Okay. So what does that mean in terms  
16 of witnesses sponsoring documents and offering a document  
17 apart from the stipulation?

18 MR. SPELLBERG: As I understand it, your Honor,  
19 after we finish witnesses today, there will be some period  
20 of time when parties will move in the documents that have  
21 been authenticated, and the Court will rule on any  
22 substantive objections that are made to the authenticated  
23 documents, and as far as I know, there will be no  
24 witnesses needed to authenticate documents, although  
25 counsel will correct me if I'm mistaken.

26 MR. ADAM: POA 19, I will have to bring the  
27 document from the City website. I have to bring Sergeant  
28 Robb back.

1 MR. SPELLBERG: Let's look at that. There's one  
2 that's hanging fire, your Honor. We'll take a look at  
3 that.

4 THE COURT: Okay. Anything else before we resume  
5 with Mr. Gurza?

6 MR. ADAM: Your Honor, the Court had asked about  
7 groupings of dates. You want to address that issue now or  
8 afterward? For briefs or for written closing arguments.

9 THE COURT: Yes. That's fine.

10 MR. ADAM: Your Honor, I had suggested to the  
11 parties, in light of the court reporter's belief that she  
12 can have transcripts to us in a couple weeks, that briefs  
13 be due September 9. That would be about a month after  
14 receipt of the transcripts, with the idea that the parties  
15 would offer dates the week of October 7 for a further  
16 court date to use if the Court determines the cause back  
17 for questions. I think the best dates that week for the  
18 parties were October 8, 10, and 11.

19 THE COURT: I'm not available on the 11th. The  
20 10th then.

21 MR. ADAM: October 10 for written arguments?

22 THE COURT: That's the optional day for my  
23 questions on the briefs. You're proposing September 9 as  
24 the date when I will receive your written closing  
25 arguments and proposed statements of decision?

26 MR. HARTINGER: We would prefer the 10th over the  
27 9th.

28 THE COURT: For that date?

1 MR. HARTINGER: Yes.

2 THE COURT: Tuesday the 10th? I'd like to have  
3 the proposed statements of decision in electronic form  
4 E-Mailed to my clerk. And then October 10 at 9 o'clock is  
5 the date we'll reserve for Court's questions.

6 MR. HARTINGER: When you say electronic form, you  
7 mean Word?

8 THE COURT: Yes, please. That's all premised on  
9 the assumption that we're going to get all the evidence in  
10 today.

11 MR. ADAM: Correct.

12 THE COURT: Then without further ado, Mr. Gurza,  
13 we're going to proceed. You're still under oath.

14 Mr. Adam.

15

16 CROSS-EXAMINATION (CONTINUED)

17 BY MR. ADAM:

18 Q. Mr. Gurza, did you have a chance overnight to  
19 refresh your recollection on whether, in order to get the  
20 four percent accrual rate for pension, a police officer  
21 has to work 20 years of service in San Jose?

22 A. That's my understanding, when that was put into  
23 place, that that's the way it's supposed to operate.

24 Q. So if a police officer comes after working 20  
25 years in Oakland and starts working for the San Jose  
26 Police Department, that officer is going to be at a two  
27 and a half percent accrual rate, not four percent?

28 A. You're talking about if the person qualifies for

1 reciprocity. There are certain benefits of reciprocity  
2 where service can be combined for meeting certain  
3 eligibility requirements. So it does get relatively  
4 complex where somebody may be able to combine service for  
5 meeting eligibility requirements.

6 Q. But you had a -- say there's an incentive for San  
7 Jose police officers to stay for 20 years so they get that  
8 higher level of pension accrual; right?

9 A. The design of the benefit has what can be referred  
10 to as a back-loaded formula, particularly for police  
11 officers, where the later years, the latter ten years, are  
12 at a higher accrual rate.

13 Q. I believe when we finished yesterday, I was  
14 directing your attention to Measure B, which I believe is  
15 Exhibit 5000. You've got 5000?

16 A. I do.

17 Q. I was directing your attention to the second tier  
18 retirement, which I believe is 1508. So you're familiar  
19 with this section, Mr. Gurza?

20 A. Yes, I am.

21 Q. What role, if any, did you have in drafting  
22 Measure B?

23 A. I was involved in the drafting of Measure B,  
24 particularly to the extent that we were bargaining  
25 Measure B and making changes to Measure B, the drafts of  
26 it, as a result of those discussions with our bargaining  
27 units. So we made several -- I think it was five, at  
28 least -- various versions that primarily were as a result

1 of feedback we were getting at the bargaining table.

2 Q. Who else was involved in the drafting of  
3 Measure B? If there was an attorney involved, if you'd  
4 just say if it was a City counsel versus an outside  
5 attorney. Who else was involved, to your knowledge, in  
6 drafting Measure B?

7 MR. HARTINGER: Objection. Irrelevant.

8 THE COURT: Can you help me understand where  
9 you're going with this.

10 MR. ADAM: Your Honor, I'm going to be asking  
11 questions in this section and other sections, Measure B --  
12 in terms of what does Measure B mean, what is the City's  
13 understanding of what it means.

14 THE COURT: Overruled.

15 THE WITNESS: I'm sorry. Can you repeat the  
16 question.

17 BY MR. ADAM:

18 Q. Who else was involved in drafting? Again, with  
19 the direction that if it's an attorney involved, you  
20 simply mention if it was a City attorney versus a hired  
21 outside attorney.

22 A. It was both. But I do want to clarify that in the  
23 City attorney's office, most of the attorneys are  
24 represented by a bargaining unit, so none of those  
25 attorneys participated in the drafting of Measure B, but  
26 with that caveat, it was attorneys in the attorney's  
27 office as well as outside counsel.

28 Q. Yourself and anyone else in the City?

1 MR. HARTINGER: Your Honor, I want to renew the  
2 objection because the issue of who helped draft Measure B,  
3 that's not relevant to the issue of the Court determining  
4 legislative intent. That comes from voter intent. That  
5 comes from the materials that are in the legislative file.  
6 It's irrelevant.

7 THE COURT: So, then, when Mr. Adam asks what does  
8 the section mean, will there be a foundation objection?

9 MR. HARTINGER: Yes, your Honor.

10 THE COURT: Well, I think it's relevant to the  
11 extent you're laying a foundation for this witness'  
12 ability to address the City's intent.

13 MR. ADAM: That's what I'm doing, your Honor.

14 THE COURT: Then I suggest you ask him what  
15 portions he was involved in.

16 BY MR. ADAM:

17 Q. Were you involved in drafting 1508-A?

18 A. I don't think there's any section -- any section  
19 of 1508 where I drafted the entirety of it. Was I  
20 involved in parts of 1508? Yes.

21 Q. And this 1508 sets up a new level of lower pension  
22 benefits for new employees; right?

23 A. Yeah. It sets a sort of a maximum for pension  
24 benefits, for retirement benefits for new hires.

25 Q. And there is a older minimum retirement age in  
26 this section for new employees; right?

27 A. When you say older, I'm not quite sure I  
28 understand what you're referring to.

1 Q. Direct you to Section 1508(b). If you're a new  
2 police officer working for the City, you have to reach the  
3 age of 60 in order to retire; correct?

4 A. Under -- yes, under 1508-A(b), that's correct.

5 Q. And under 1508-A, the maximum City contribution  
6 does not exceed nine percent; right?

7 A. To be complete, the nine percent refers to a  
8 defined contribution of the retirement plan. Does not  
9 exceed nine percent.

10 Q. Now, with respect to the defined benefit plan in  
11 the previous sentence, the City's cost shall not exceed 50  
12 percent of the cost of that plan; right?

13 A. That's correct. That has to be read in  
14 conjunction with the remaining portion of that section  
15 about the nine percent.

16 Q. That sentence explicitly says the City's  
17 contribution, the 50 percent cap, includes both normal  
18 costs and unfunded liabilities; right?

19 A. In that sense, that's correct.

20 Q. In that sense, it's structured different than is  
21 the charter Section 1504 that you discussed with  
22 Mr. Hartinger yesterday; right?

23 MR. HARTINGER: Objection. Calls for a legal  
24 conclusion.

25 THE COURT: Overruled.

26 THE WITNESS: I would have to go back and look at  
27 1504 again before answering that question.

28 BY MR. ADAM:

1 Q. Let's take a look at 1504.

2 A. Do we know what exhibit number it is?

3 Q. It's true, is it not, that the Police Officers'  
4 Association agreed with the City to a new second tier  
5 plan; right?

6 A. Yes, we did reach an agreement with the Police  
7 Officer Association on a tier two.

8 Q. That's not yet in effect, but it's in the process  
9 of being implemented, from what I understand; correct?

10 A. Yes. We're simply waiting for the ordinance to  
11 become effective, which is the 31st day after the second  
12 reading by the City Council. That date is -- the  
13 effective date in the ordinance is specified to be August  
14 4 of 2013.

15 Q. Do you recall in the process of the discussions  
16 that led to that agreement that the City had its actuary  
17 send the POA an estimate of what the cost of that plan  
18 would be?

19 A. I do believe we transmitted to the POA our  
20 actuary's estimate of the contribution rate.

21 Q. Am I correct in recalling that the cost estimate  
22 of that plan was somewhere in the mid 20 percent range?

23 A. I don't know without looking at it, Mr. Adam, to  
24 refresh my recollection of the amount.

25 Q. And under Measure B, under the Section 1508, that  
26 would be split 50/50 between the City and the employee?

27 A. Yes. Whatever the contribution that is determined  
28 by the actuary -- by the board's actuary, I should

1 specify -- would be shared 50/50 between the City and  
2 employees.

3 Q. And we, of course, have seen evidence with  
4 Ms. Erickson that the City's current contribution for  
5 active employees, the City measures at about 70, 75  
6 percent of salary. Do you remember that testimony?

7 A. I do remember the testimony, yes.

8 Q. Now, the cost of the City for this new tier plan  
9 would be dramatically less, would it not?

10 A. The overall cost of the benefit, I would say  
11 overall cost is less.

12 Q. Significantly less?

13 A. Yes. Because the benefit is less generous under  
14 tier two than it is under tier one.

15 Q. The cost of the City is like 15 or 20 percent of  
16 the current plan; right?

17 A. Without looking at the contribution side by side,  
18 I don't recall the exact numbers.

19 Q. But putting aside exact numbers, does my estimate  
20 seem in the ballpark?

21 A. Again, I don't want to guess or estimate. What I  
22 can say is that the tier two costs are significantly less  
23 than the tier one costs.

24 Q. I'll direct you to Exhibit 701.

25 A. 701?

26 Q. 701, which I believe is the -- it's a plaintiff  
27 exhibit.

28 MR. HARTINGER: This appears to be a duplicated

1 Defendants' 216, which is in evidence.

2 THE COURT: That appears to be correct.

3 MR. ADAM: Which number did you say?

4 MR. PLATTEN: 5216.

5 BY MR. ADAM:

6 Q. Let's go to 5216. My apologies.

7 A. 5216?

8 Q. 5216. Could you take a look at Section 1504 of  
9 the current charter, pre-Measure B charter.

10 A. Do you have a Bates stamp number?

11 Q. I do, but unfortunately I'm still on the --

12 THE COURT: You want him to look at Section 1504  
13 of Exhibit 5216?

14 MR. ADAM: Yes.

15 THE COURT: I think that starts on Bates number  
16 64.

17 THE WITNESS: Yes. And I have it here as well.

18 THE COURT: Mr. Adam, I'm understanding you're  
19 directing Mr. Gurza to look at 5216, Section 1504, which  
20 begins on Bates page 64.

21 MR. ADAM: Exactly, your Honor.

22 THE COURT: So is that what you're looking at?

23 THE WITNESS: Yes. I have that page.

24 BY MR. ADAM:

25 Q. Do you also still have open Exhibit 5000?

26 A. I do.

27 Q. And do you have open the Section 1508?

28 A. Yes. 1508-A.

1 Q. Comparing those side by side, the language in the  
2 new 1508 referencing both normal cost and unfunded  
3 liabilities, that's new language. That doesn't appear in  
4 the contribution section of Section 1504; right?

5 A. Can you repeat again -- what section does that  
6 appear?

7 Q. We're looking at 1508 in the new charter, and  
8 subsection (a). I directed you to the second sentence in  
9 that section that discusses the City's cost of such plan  
10 not to exceed 50 percent of the total cost.

11 THE COURT: I think I misunderstood your intent  
12 here. You want him to look at 15 -- Section 1508-A in  
13 5216? Yes?

14 MR. ADAM: Maybe both. Maybe this is an updated  
15 version of the charter. It is. Let's try to make this as  
16 clear as possible.

17 BY MR. ADAM:

18 Q. I'm going to ask you to compare 1508-A, which  
19 is -- begins on what's Bates stamped page 72, carries over  
20 to 73. I'm going to ask you to compare that with the  
21 language in 1504-B which is in 64. I'm confirming that  
22 there's no -- whereas 1508-A provided that employee shares  
23 in both the normal cost and the unfunded liability,  
24 there's no such language in 1504-B; right?

25 MR. HARTINGER: Your Honor, the question is  
26 ambiguous.

27 THE COURT: I'm not with you. I'm sorry. Could  
28 you say again.

1 MR. ADAM: I'll move on.

2 THE COURT: I thought we were comparing two  
3 versions of 1508, but now I realize that's not --

4 MR. ADAM: I think the document speaks for itself,  
5 so I'll move it along in the interest of time.

6 THE COURT: Okay.

7 BY MR. ADAM:

8 Q. Under the second tier, every new San Jose police  
9 officer will be in the second tier once it's implemented;  
10 right?

11 A. For any police officer that joins the plan after  
12 August 4 of 2013 will be in the tier two.

13 Q. Now, you discussed in the 2010 negotiations, there  
14 was a lot of testimony about the nature of the concession  
15 that some of the unions gave; right? Do you remember  
16 discussing that on direct?

17 A. I do.

18 Q. And you testified that there was some legal --  
19 what I'll term legal sensitivities about that, and it  
20 sounded as though the City attorney's office looked at it,  
21 union lawyers looked at it, and everybody agreed it was  
22 okay?

23 MR. HARTINGER: Misstates the testimony.

24 BY MR. ADAM:

25 Q. Nobody raised any legal concerns about the  
26 concession made in 2010; right?

27 MR. HARTINGER: Misstates the testimony and  
28 compound, your Honor.

1 MR. ADAM: I'm asking a question.

2 THE COURT: I think it's just the last part now  
3 that's the pending question; right?

4 MR. ADAM: Right.

5 THE COURT: That's not compound, and I'll let  
6 Mr. Gurza decide whether it misstates his testimony.

7 THE WITNESS: I think it's not correct. There  
8 were legal issues and concerns raised specifically, as I  
9 testified yesterday, as to ensuring that the concession  
10 could be done consistent with the eight to three ratio.  
11 The ultimate agreement, not the original proposals, were  
12 able to be done consistent with the charter, but not the  
13 original proposals.

14 BY MR. ADAM:

15 Q. The reason people were concerned and looked to the  
16 charter is because you were dealing with current employees  
17 in that situation; right?

18 A. I don't know if that was the -- the focus was --  
19 we weren't at that point discussing new hires. We were  
20 talking about current employees.

21 Q. As you said, you've been negotiating pensions for  
22 a long time; right?

23 A. Yes. Since 1996, I believe, 1995.

24 Q. And so you've got some understanding of this  
25 concept of vested rights, have you not?

26 A. I heard the term many times, yes.

27 Q. And do you understand that there are far less, if  
28 any, vested right issues when you're addressing what

1 benefits future employees are going to get?

2 MR. HARTINGER: Calling for a legal conclusion.

3 THE COURT: Overruled.

4 THE WITNESS: Again, as a non-attorney, I could  
5 say I haven't heard anybody use that word in reference to  
6 people who aren't employed yet.

7 BY MR. ADAM:

8 Q. Who else has got a second tier at the moment in  
9 the City? Which other bargaining units?

10 A. I think, as I tried to answer your question  
11 yesterday on that -- can I be complete on the answer in  
12 the second tier? I want to clarify that you're asking for  
13 all employees or just police officers?

14 Q. Right. Now I've moved on -- we confirmed that  
15 police officers have a second tier, though it's yet to be  
16 implemented; right?

17 A. It will be effective August 4; correct.

18 Q. And now my question is, other than police  
19 officers, which employee, groups, or bargaining units are  
20 also covered by a second tier retirement plan?

21 A. Sure. I would be happy to answer that question.  
22 I had began that answer yesterday. So the first second  
23 tier for pension was for all members of the Federated  
24 retirement system, which includes all the bargaining units  
25 that represent employees in the Federated system, which  
26 are nine bargaining units, in addition to our  
27 unrepresented employees that are members of the Federated  
28 system. That tier two went into effect for anybody hired

1 into the Federated system as of September 30 of 2012.

2 The only remaining employees in the City that are  
3 not -- that we don't have a tier two for is those  
4 represented by the International Association of Fire  
5 Fighters Local 230.

6 Q. So that means other than new fire fighters, after  
7 August 4 when the POA's second tier goes into effect,  
8 every new City employee who qualifies for retirement  
9 benefits is going to be in one of these second tiers?

10 A. Yes. In one of the second tiers -- second tier.  
11 We have a tier three option. But, yes. The answer to  
12 your question is yes.

13 Q. It's true, is it not, that just like the second  
14 tier for new police officers, the second tier for new  
15 Federated employees costs the City significantly less than  
16 does tier one for Federated employees?

17 A. I'd have to compare the rates again because the  
18 cost for police and fire benefits are significantly higher  
19 than Federated. So the difference between tier two and  
20 tier one -- when you look at Federated tier one to  
21 Federated tier two compared to police tier one and tier  
22 two, the gap is different. So it is less expensive, but  
23 you have to actually look at the numbers to see the actual  
24 difference.

25 Q. To confirm, the cost to the City of a tier two  
26 Federated employee's retirement benefit is less than it is  
27 for a tier one Federated employee; right?

28 A. Yes. The idea of the tier two is that it is less

1 expensive than tier one.

2 Q. So you testified yesterday about a new agreement  
3 with some or all Federated groups concerning what I'll  
4 term as the ramp-up costs for funding retiree health care.  
5 Do you recall that?

6 A. I do.

7 Q. And was I correct in understanding your testimony  
8 that the employees covered by this agreement would have  
9 seen a big leap this year or in a subsequent year in their  
10 contributions in order to fully fund the ARC, had it not  
11 been for this agreement?

12 A. The City and employees would have seen a  
13 significant increase year over year from '12-'13 to  
14 '13-'14.

15 Q. So what were they paying in '12-'13?

16 A. Again, I would have to refresh my recollection. I  
17 don't know the exact number.

18 Q. Approximately, do you know the number?

19 A. Again, I don't want to guess without looking at  
20 the actual contribution rates.

21 Q. Do you have any recollection of the size of the  
22 large jump you testified to? How big in percentage of  
23 salary terms was that jump going to be?

24 A. There are a few numbers I do recollect. And I  
25 recollect that the actuary, the board's actuary -- this is  
26 for Federated only, however; I need to clarify -- had  
27 projected that the annual contribution for retiree health  
28 care was going to be approximately 30 percent of payroll.

1 That's just for the retiree health care benefit only, and  
2 that's total.

3           However, it turned out that the actuary reduced --  
4 it was reduced, in large part, because of the  
5 implementation of the low price plan, which made it  
6 approximately 22 percent of payroll. So if we had ramped  
7 up the paying the full ARC, it would be approximately  
8 split 50/50. So employee in the City would have gone to  
9 approximately -- this is approximate -- 11 percent of  
10 payroll.

11           Q. But you reached an agreement with those groups  
12 that prevented the jump to 11 percent from whatever  
13 percent you were at?

14           A. That's correct. Essentially extended out the  
15 phase-in, as I described yesterday.

16           Q. And that saves employees money, does it not?

17           A. Yes. Well, it saves the employee money in the  
18 short term. It costs the City and employees in the long  
19 term.

20           Q. But it saved the City money in the short term as  
21 well; right?

22           A. Only in the short term. It increases the  
23 liability of the plan.

24           Q. So you told me the Federated plan, the cost of  
25 fully-funded ARC was initially estimated at 30 percent,  
26 then, after the lowest cost plan was implemented, dropped  
27 to 22 percent?

28           A. Yes. Again, I want to emphasize that I don't have

1 these documents in front of me. These are numbers that  
2 are approximate, best of my recollection.

3 Q. Do you have a recollection -- again, I understand  
4 your -- I'm asking you to testify from memory as to what  
5 the comparable numbers were in the police and fire  
6 retirement plan.

7 A. No, I do not know those from memory. The reason I  
8 know the others is we recently completed negotiations with  
9 our bargaining units. But I have not reviewed recently  
10 the police and fire numbers, so I wouldn't want to  
11 speculate on those numbers without reviewing the board's  
12 actuary report.

13 Q. I'll direct you to Section 336575. You testified  
14 to that with Mr. Hartinger, and I will try to find which  
15 exhibit that is. I believe it's going to be binder number  
16 two. That's the same one that 5000 was in. I think we're  
17 looking at 5303. Do you have that section?

18 A. Yes. It's Exhibit 5303, yes.

19 Q. And that section has been around for a while;  
20 right? Appears to be from section eight, was established  
21 in 1995?

22 A. I could not verify how long this municipal code  
23 section has been in effect.

24 Q. But you testified that this has been a  
25 long-standing basis for the one-to-one ratio between the  
26 City and police officers for prefunding retiree health  
27 care; right?

28 A. Maybe I misunderstood your question. Because --

1 the exhibit is the entire municipal code or that section?  
2 Are you only referring to that particular --

3 Q. I'm talking about 336575.

4 A. Let me get to that, please.

5 MR. ADAM: Your Honor, might I take down this  
6 exhibit? It appears to be distracting, this one.

7 THE COURT: If you wish, that's fine.

8 Which exhibit is the --

9 MR. ADAM: It's 5303. It's Bates stamped page 253  
10 of that volume.

11 THE COURT: Which is the section to which you're  
12 referring to?

13 MR. ADAM: It's 3.36.575.

14 Do you have that, your Honor?

15 THE COURT: Yes, I do. Thank you.

16 BY MR. ADAM:

17 Q. Mr. Gurza?

18 A. I do, 3.36.575.

19 Q. Yeah. I'll refer you to subsection (d)(2). I  
20 believe on direct --

21 MR. HARTINGER: Counsel, D, as in delta?

22 MR. ADAM: D, as in delta.

23 BY MR. ADAM:

24 Q. I believe you testified on direct that this  
25 section and the reference in it to the one-to-one ratio  
26 was what police officers and the City had been operating  
27 under for a number of years to prefund retirement health  
28 care; is that right?

1           A.    I would say that my understanding has been that  
2           the ratio of contributions has been under the ratio  
3           specified here.  That doesn't mean that this section may  
4           not have gone under some other revisions over the years.

5           Q.    But you also testified that initially, at least,  
6           this section applied to a ten-year rolling method of  
7           funding; is that right?

8           A.    Yeah.  I think what we were talking about as well  
9           as Mr. Lowman talking about, what has been referred to as  
10          the board's policy method -- quote, unquote, policy method  
11          of funding.  My understanding, that funding methodology is  
12          not in the municipal code but is the funding methodology  
13          that the board used from the inception of retiree health  
14          care, and, again, my understanding is that the ten-year  
15          method was done by the police and fire retirement system,  
16          and it was a different but similar method in Federated.  
17          That board and its actuary used a 15-year basis.

18          Q.    And it's true, is it not, that this method in the  
19          Municipal Code Section 3.36.575 was adopted in the POA MOA  
20          when the parties, in about 2008, decided to significantly  
21          increase the level of prefunding of retirement benefits?  
22          Is that right?  Do you recall that?

23                MR. HARTINGER:  I'm going to object.  Misstates  
24          the testimony.  Methodology is not in the municipal code.

25                THE COURT:  Sustained.

26          BY MR. ADAM:

27          Q.    When the POA -- strike that.

28                You testified, I believe, that in approximately

1 2008, the POA, along with some other bargaining units,  
2 agreed to start significantly enhancing the prefunding of  
3 retiree health care. Is that true?

4 A. The agreements were actually effective in 2009,  
5 and everybody started -- we had agreements -- or they were  
6 effective for all bargaining units in 2009 except for the  
7 San Jose fire fighters.

8 Q. Can I direct your attention to the 2008 MOU --  
9 sorry. The 2011 MOA for POA. That's Exhibit, I believe,  
10 21.

11 A. 21?

12 Q. 21 in the plaintiffs' binder. Do you have 21?

13 A. I do.

14 Q. Could you look at what's been Bates stamped as POA  
15 1113.

16 A. Yes, I have that.

17 Q. That's the section on retiree health care  
18 prefunding that existed in the 2011 POA MOA; right?

19 A. Yes. This was, as we discussed earlier,  
20 negotiated previously, and you'll see that it began June  
21 28, 2009.

22 MR. ADAM: Your Honor, move to strike after the  
23 witness answers yes.

24 THE COURT: Denied.

25 BY MR. ADAM:

26 Q. Now, in Section 50.1 under Article 50, it  
27 references the Municipal Code Section 3.36.575 we just  
28 reviewed, does it not?

1 A. It does.

2 Q. And so do you recall if, when the parties adopted  
3 this agreement, they incorporated that methodology --  
4 strike that.

5 Do you recall if, when the parties adopted this  
6 MOA, they continued to use the same one-to-one methodology  
7 covered in the municipal code, albeit trying to achieve  
8 full prefunding of the ARC?

9 A. I want to make sure I understand your question.

10 Q. You're using the same method; right? The one on  
11 one?

12 A. I think, as I described yesterday, it's an issue  
13 of sharing the costs but just paying more. So it was the  
14 same sharing but simply increasing how much the City and  
15 employees were putting into retiree health care to fund  
16 that benefit, if that answers your question.

17 Q. Can I direct your attention to Article 50.4 on the  
18 next page.

19 A. Yes.

20 Q. Now, there's a cap in the MOU; right?

21 A. There is.

22 Q. And it's ten percent for the POA; right?

23 A. Correct.

24 Q. The POA just went through an interest arbitration,  
25 did it not?

26 A. It did.

27 Q. That revised certain provisions of the MOA, did it  
28 not?

1 A. The interest arbitration, yes, it did.

2 Q. But it did not make any changes to section -- it  
3 did not make any changes to Article 50; isn't that true?

4 A. That's correct. Retiree health care was not an  
5 issue in the interest arbitration.

6 Q. Back to 5000, Exhibit 5000. I'll direct your  
7 attention to 1512. Mr. Gurza, you testified on direct  
8 examination about your understanding of 1512(a) on the  
9 minimum contributions. Do you recall that?

10 A. Yes.

11 Q. You testified about subsection C and the low-cost  
12 plan. Do you recall that?

13 A. Yes.

14 Q. I don't recall you testifying about subsection B,  
15 and I want to ask you a couple questions. Could you  
16 review subsection B.

17 MR. HARTINGER: Beyond the scope, your Honor.

18 THE COURT: It is. Where are we going with this?

19 MR. ADAM: Your Honor, 1512(b) is being  
20 challenged. I can wait and bring him back.

21 THE COURT: Okay. Very good. Go ahead.

22 BY MR. ADAM:

23 Q. What's your understanding of what 1512(b) means?

24 A. That's really not a section that I really worked  
25 on a lot, so I really wouldn't be the person to ask about  
26 the meaning of that particular section.

27 Q. Do you know whether it means there can be no  
28 vested rights to any medical retirement benefits under the

1 charter?

2 MR. HARTINGER: Lacks foundation; calls for a  
3 legal conclusion, your Honor.

4 THE COURT: Sustained.

5 BY MR. ADAM:

6 Q. Do you know who's most familiar with this section  
7 amongst those who drafted Measure B?

8 A. No, I do not.

9 Q. You talked about the low-cost plan under  
10 subsection C. Do you recall that?

11 A. I do.

12 Q. Now, it's true, is it not, that separate and apart  
13 from this lawsuit, the POA has filed a grievance about  
14 this change and its effects on bargaining unit members?  
15 That's true; right?

16 A. I'm trying to recollect exactly the status. I  
17 believe so.

18 MR. HARTINGER: Your Honor, we object. Relevance  
19 objection. Irrelevant.

20 THE COURT: Where are we going with this?

21 MR. ADAM: Your Honor, two short questions.  
22 Clarifying there's a separate challenge that's not part of  
23 this proceeding. I'm just having the witness confirm  
24 that.

25 MR. HARTINGER: It's covered by the in limine  
26 ruling as well.

27 THE COURT: If it's not a part of this case, why  
28 do we need to --

1 MR. ADAM: I want to make sure the City is not  
2 going to argue there's some type of estoppel res judicata  
3 effect. I'm trying to have the witness confirm that such  
4 a grievance exists and the City has, in fact, denied the  
5 grievance. Then I'll move on.

6 THE COURT: It's not an issue, is it,  
7 Mr. Hartinger?

8 MR. HARTINGER: We're not responsible for the  
9 grievance, so I don't have an opinion as the effect --

10 THE COURT: You would not be making such an  
11 argument?

12 MR. HARTINGER: I don't believe so.

13 THE COURT: Okay. I think we can go on to  
14 something else.

15 BY MR. ADAM:

16 Q. So do I understand your testimony that the  
17 lowest -- strike that.

18 You testified that you're the head of employee  
19 relations, amongst other jobs you're doing for the City;  
20 right?

21 A. Yes.

22 Q. And so you testified to having a fairly broad  
23 understanding of what collective bargaining agreements  
24 exist within the City; right?

25 A. Yes.

26 Q. And you have some familiarity with the level of  
27 medical benefits the City provided to its employees;  
28 right?

1 A. Yes.

2 Q. And its retirees; right?

3 A. Yes.

4 Q. So am I correct in understanding that the current  
5 low-cost plan is what I'll term the Kaiser 1500 deductible  
6 plan?

7 A. That's correct. This year, in 2013.

8 MR. ADAM: I'd like to mark as POA -- what's our  
9 next? 53?

10 THE CLERK: This would be 55.

11 THE COURT: What's 55?

12 MR. ADAM: 55 is a copy of what I believe the  
13 witness will confirm is the deductible health plans  
14 available for 2013, which includes a summary of what I  
15 believe is commonly referred to as the Kaiser 1500  
16 deductible plan.

17 MR. SPELLBERG: Is this 55 or 53?

18 THE COURT: Identification is just what the  
19 document is, not what the witness might say it's going to  
20 be. 55 is two pages. It's entitled New Deductible Health  
21 Plans For 2013. If you want to show it to the witness,  
22 please use the one the clerk has marked.

23 (Plaintiffs' Exhibit 55 was marked  
24 for identification.)

25 MR. HARTINGER: This has no Bates number, so I  
26 would inquire whether it's been produced in discovery.

27 THE COURT: Is this something that's previously  
28 been made available to defendants?

1 MR. ADAM: This is an official City document, your  
2 Honor. This came off the City website.

3 THE COURT: Okay.

4 BY MR. ADAM:

5 Q. Mr. Gurza, are you familiar with this document?

6 A. Not this particular document, no.

7 Q. Are you familiar with the Kaiser 1500 plan?

8 A. Generally, but not in all of its detail. But  
9 generally, yes.

10 Q. Looking at the table in the middle of page 1, does  
11 that appear to be the Kaiser 1500 plan, the main details  
12 of it?

13 A. Again, I believe it is, but I don't know, again,  
14 because normally our documents have some reference to the  
15 City on it, so I can't really confirm all the elements  
16 that are listed in this chart.

17 Q. To your knowledge, is the Kaiser -- does the new  
18 lowest cost plan have an annual deductible amount for an  
19 employee of \$1500?

20 A. Yeah. For single coverage, there is a deductible,  
21 but, again, the details of the plan -- the deductible may  
22 apply to certain things and not apply to others. But  
23 generally, yes, there's a \$1500 deductible plan.

24 Q. For families, it's twice that. It's a \$3,000  
25 deductible; right?

26 A. Yes. But with certain caveats of what falls under  
27 that deductible and what doesn't.

28 Q. That's part of the features of the new low-cost

1 plan, the 1500 and \$3,000 deductible; right?

2 A. Yes. It is a deductible plan, yes.

3 Q. Prior to this year when the Kaiser 1500 deductible  
4 plan went into effect, what was the lowest cost plan  
5 available Citywide?

6 A. So you mean in 2012?

7 Q. 2012, yeah.

8 A. In 2012, it would have been still Kaiser. There  
9 are times some years where the low price plan may not be  
10 the same between single and family. That may have  
11 happened once or twice. In 2012, it was the Kaiser \$25  
12 co-pay plan, to the best of my recollection, would have  
13 been the low price plan last year.

14 Q. You were here for Mr. Salvi's testimony, were you  
15 not?

16 A. I was.

17 Q. Do you recall Mr. Salvi testifying that that's the  
18 plan he had last year?

19 A. I do believe -- I think that's what he mentioned.  
20 I also remember him talking about historically he had a  
21 different plan. I think I remember him saying last year  
22 he had the Kaiser \$25 plan.

23 Q. Do you recall him testifying that he had -- he  
24 made no payments for having that plan last year?

25 THE COURT: I'm not following this. Are the  
26 plaintiffs arguing that the choice of the plan is somehow  
27 tied to Measure B and is being challenged?

28 MR. ADAM: Yeah. I think, your Honor, the

1 plaintiffs heard a new description of the history of the  
2 low-cost plan in Mr. Gurza's testimony yesterday. The  
3 plaintiffs' challenge to the low-cost plan is basically  
4 that it violates the vested rights of employees.

5 THE COURT: The choice of what is the low-cost  
6 plan?

7 MR. ADAM: It's not necessarily the choice, your  
8 Honor, but it's -- additional testimony, you'll see that  
9 the City has reduced the level of the plan, i.e., the  
10 \$1500 deductible plan.

11 THE COURT: Right. The City has made a different  
12 choice as to what's the lowest cost plan.

13 MR. ADAM: That's right.

14 THE COURT: So my question is, are the plaintiffs  
15 arguing that the choice of the plan is tied to Measure B  
16 and is, therefore, being challenged in this case?

17 MR. ADAM: Yes.

18 THE COURT: Go ahead.

19 BY MR. ADAM:

20 Q. So your testimony was that the \$25 Kaiser co-pay  
21 plan was the lowest cost plan last year?

22 A. In 2012?

23 Q. 2012.

24 A. Correct.

25 Q. So if a retiree had that plan last year, he/she  
26 would have paid no premium for it. The City would have  
27 paid the entire amount; correct?

28 A. Consistent with that chart that we showed, if

1 somebody selects the lowest price plan, then the plan pays  
2 100 percent of that premium. So it really ties to the  
3 choice the particular retiree makes. If they stick with  
4 the lowest price plan, then the premium cost is zero.

5 Q. And Mr. Salvi testified that -- do you recall  
6 this -- he had a zero cost last year for that plan?

7 MR. HARTINGER: Asked and answered, your Honor.

8 THE COURT: I believe it has been.

9 BY MR. ADAM:

10 Q. He also testified this year he stayed in the same  
11 plan and now he had to pay a monthly premium. Do you  
12 recall that?

13 A. Yes. Because it was no longer the low price plan.

14 Q. That was going to be the next question, but okay.

15 Is this low-cost plan currently available to  
16 police officers and fire fighters, active police officers  
17 and fire fighters?

18 A. Not this year.

19 Q. Has the current low cost Kaiser 1500 plan ever  
20 been implemented as to active police officers and fire  
21 fighters?

22 A. This is the first year we've had it, so, no.

23 Q. It's true, is it not, that the City made a  
24 proposal to the POA and the Fire Fighters' Association in  
25 2011 for them to agree to have the Kaiser 1500 deductible  
26 plan applicable to current employees? Correct?

27 A. I believe that's true. I'm not sure of the date  
28 that you're referring to, but I do believe that was

1 something we had proposed for active police officers and  
2 fire fighters at one point. I don't recollect the date.

3 MR. ADAM: I want to mark as -- I guess we're on  
4 56. This is a two-page document entitled City Proposal  
5 Health Cost Sharing. Actually, I'm sorry. It's a  
6 three-page document.

7 (Plaintiffs' Exhibit 56 was marked  
8 for identification.)

9 BY MR. ADAM:

10 Q. Mr. Gurza, can you review the three-page document.

11 A. Yes.

12 THE COURT: My 56 that you handed me is three  
13 pages. Okay. Very good. I really want to understand the  
14 evidence as it comes in, and I'm not tracking how this  
15 whole issue, the choice of plan, is showing up in  
16 1512-A(c).

17 MR. ADAM: Your Honor, you heard testimony from  
18 the two plaintiffs' witnesses about the lowest cost plan  
19 available to active police officers. That was Mr. Salvi  
20 and Mr. Fehr.

21 THE COURT: Right.

22 MR. ADAM: And I'm trying to establish with the  
23 witness both the current level of medical benefits  
24 available to active police officers and the fact the City  
25 offered this new low-cost plan to active police officers  
26 and whether, in fact, active police officers accepted this  
27 new low-cost plan.

28 THE COURT: How does that relate to Measure B?

1 MR. ADAM: Because, again, these retired police  
2 officers, consistent with active police officers, believe  
3 they had an entitlement, a vested right, under the 1984  
4 municipal code section, the Bonnie Bogue award, and the  
5 1997, all of which has been testified about, to the 100  
6 percent of the lowest cost plan available to active police  
7 officers.

8 I'm simply confirming with this witness what the  
9 lowest cost plan available to active police officers was  
10 and the fact that the City tried to apply the lower cost  
11 plan to active police officers, which subsequently became  
12 the low-cost plan that was implemented on all retirees in  
13 2013, the date after Measure B became applicable.

14 THE COURT: Thank you. Go ahead.

15 MR. ADAM: As I said in opening, your Honor, this  
16 was probably the more complicated part of plaintiffs'  
17 case.

18 THE COURT: Go ahead, please.

19 BY MR. ADAM:

20 Q. Mr. Gurza, this document, does this refresh your  
21 recollection about whether the City, in fact, proposed the  
22 Kaiser 1500 deductible plan to the POA in 2011?

23 A. Yes. It refreshes my recollection as to the  
24 proposal date, yes.

25 Q. And did the POA agree to this proposal?

26 A. No, they did not.

27 Q. Did the fire fighters?

28 A. No, they did not.

1 Q. This has not gone into effect for active police  
2 officers or fire fighters; correct?

3 A. For actives, it has not.

4 MR. ADAM: I want to mark as Plaintiffs' 57 a  
5 one-page City of San Jose document describing health plan  
6 semimonthly rates.

7 (Plaintiffs' Exhibit 57 was marked  
8 for identification.)

9 BY MR. ADAM:

10 Q. Mr. Gurza, are you familiar with this document?

11 A. If I could review it briefly.

12 Yes, I am.

13 Q. Does this document accurately reflect the health  
14 plans that are available to -- and I'm quoting from the  
15 document -- all other employees?

16 A. Yes. That's correct. There are times that the  
17 health plan options for active employees aren't all the  
18 same, and that's a product of the labor negotiations. So  
19 we sometimes have to specify which health plan options are  
20 available for employees in some bargaining units. This  
21 one simply says all other employees.

22 MR. ADAM: I will mark -- I'd like to mark as 58  
23 another one-page document, also called 2013 Health Plan  
24 Semimonthly Rates.

25 (Plaintiffs' Exhibit 58 was marked  
26 for identification.)

27 BY MR. ADAM:

28 Q. Would you review that document, Mr. Gurza.

1           It's true, is it not, that this is the health care  
2 plan available to employees represented by police officers  
3 and the Fire Fighters' Association; right?

4           A.    In 2013, yes.

5           Q.    In 2013.  It's different to the health care plans  
6 available to employees and other bargaining units;  
7 correct?

8           A.    It's different in two respects.  One, the choices  
9 are different, and the cost sharing is also different as  
10 it relates to the other choices.

11          Q.    You have been bargaining with the POA for a while,  
12 have you not?

13          A.    Many years.

14          Q.    And at any time within that period, did the POA  
15 have 100 percent -- strike that.

16                At any time within that period, did POA  
17 represented employees have a contractual right to have 100  
18 percent of the lowest cost plan paid for by the City?

19                MR. HARTINGER:  Calls for a legal conclusion, your  
20 Honor.  A contractual right.

21                THE COURT:  Sustained.

22                BY MR. ADAM:

23                Q.    Was it in the MOU that the employees got 100  
24 percent of lowest cost plan?

25                A.    For actives?

26                Q.    For actives.

27                A.    I don't remember.

28                Q.    It's 85 percent just now; right?

1 A. It's 85 now, yeah. More recently we've negotiated  
2 reductions in that or greater employee cost sharing, but I  
3 don't remember if it was ever 100. Currently, you're  
4 correct, it's 85 percent of low price plan. 85 percent.

5 Q. The actives paying 85 percent, but until at least  
6 last year, the employees -- strike that. Until at least  
7 last year, the retirees were receiving a 100 percent  
8 low-cost plan?

9 A. They're still receiving a 100 percent of low-cost  
10 plan. That had not changed.

11 Q. Let me ask you this. The Kaiser -- let's go back  
12 to 2012, Mr. Salvi with his Kaiser \$25 co-pay plan.

13 A. Yes.

14 Q. He paid nothing for 100 percent. The premium was  
15 paid for by the City, he testified; right?

16 A. It's not by the City. It's by the health care  
17 plan that the City and employees pay into.

18 Q. But an active POA member who also had that plan,  
19 that was the lowest cost plan for active police, wasn't  
20 it? Kaiser co-pay 25?

21 A. Last year?

22 Q. 2012.

23 A. Yes, that would have been the low price plan. I'm  
24 trying to make sure I'm accurate. Yes, that would have  
25 been the low price plan in 2012.

26 Q. The employee would have had 85 percent premium  
27 paid for by the City?

28 A. Yes. The reason I'm hesitating is because the

1 active cost sharing and the retiree cost sharing is  
2 different, so that's why I'm trying to remember exactly  
3 what year which cost sharing was in place, how it affected  
4 the plan choices.

5 Q. The retiree gets paid 100 percent; the active gets  
6 85 percent?

7 A. Yes. That's very unusual.

8 Q. That's how it was in 2012, at least for the Kaiser  
9 \$25 co-pay plan; right?

10 A. That has not changed. It's still 100 percent.  
11 What changes is what is the low price plan.

12 MR. ADAM: Objection. Sorry, your Honor. Move to  
13 strike as nonresponsive.

14 THE COURT: Granted.

15 BY MR. ADAM:

16 Q. Mr. Gurza, let me try and ask you the question  
17 again. In 2012, the retirees received 100 percent if they  
18 chose the Kaiser \$25 co-pay, whereas the active employee  
19 who chose that same plan received 85 percent of the  
20 premium paid; right?

21 A. I believe that's correct.

22 Q. So you testified that the City implemented a new  
23 low-cost plan which was cheaper than the Kaiser \$25  
24 co-pay, and that's had a lot of savings for the City, it  
25 sounds like?

26 MR. HARTINGER: Asked and answered, your Honor.

27 THE COURT: I think we did establish this.

28 Mr. Gurza?

1 THE WITNESS: Yes, we did. The correction is that  
2 it saves the City and employees, not just the City.

3 BY MR. ADAM:

4 Q. Understood.

5 Is there anything in Measure B that prevents the  
6 City from implementing a new low-cost plan next year? Let  
7 me give you an example. Let's say instead of a Kaiser  
8 \$1500 deductible, there's a Kaiser \$2500 deductible. The  
9 City could implement that next year, could it not, as the  
10 lowest cost plan?

11 MR. HARTINGER: Calls for a legal conclusion.

12 THE COURT: I'll let Mr. Gurza answer as to his  
13 understanding.

14 THE WITNESS: I can answer that because we are in  
15 the process of rate renewals for 2014, and there is no  
16 plan -- there are no plans for any different choices in  
17 2014.

18 BY MR. ADAM:

19 Q. But the City could find a different plan in the  
20 future. It could find a new plan that has a -- that's a  
21 lower cost to the City, and it could offer that to the  
22 City employees; right?

23 A. We regularly go out to the market to look at  
24 health care plans that -- and we continually look at what  
25 may be more cost effective not only for the City but for  
26 the City and our employees.

27 Q. Now, in your knowledge of the market, the health  
28 care market, there are lower cost plans out there than the

1 Kaiser \$1500 deductible plan, are there not?

2 A. I believe that there are, yes.

3 Q. And the City could select one of those plans and  
4 offer it to City employees, could it not?

5 A. Theoretically.

6 Q. And they might have to bargain before it  
7 implemented such a plan; right?

8 A. We would bargain, and we would also talk about the  
9 cost sharing of that plan.

10 Q. Now, there's some City employees that don't  
11 bargain with the City; right? They're subject to whatever  
12 the City determines is an appropriate compensation and  
13 benefits; right?

14 A. Yes. Myself, for example.

15 Q. And are you familiar with a recent agreement with  
16 a labor group that basically allows the City to implement  
17 any medical plan at its discretion?

18 A. Not recollecting it.

19 Q. Are you familiar with a tentative agreement with  
20 ALP, the Association of Legal Professionals?

21 A. I did not participate in those negotiations, so  
22 I'm aware of it but not familiar with all of its elements.

23 Q. Mr. Mercado negotiated that agreement for the  
24 City; right?

25 A. Along with -- for the Association of Legal  
26 Professionals, since their attorney is represented by the  
27 City attorney's office, we also used outside assistance in  
28 those negotiations.

1 Q. You reviewed the tentative agreement between the  
2 City and ALP?

3 A. I looked at it, but I didn't read the entire  
4 document. There's some background history. I was not  
5 involved in those negotiations. I can clarify further, if  
6 necessary.

7 MR. ADAM: I'd like to mark as 59 a five-page  
8 document that is excerpts of a tentative agreement between  
9 the City and one of its bargaining associations.

10 Counsel, for the record, consistent with how we  
11 treated other collective bargaining agreements, I've  
12 offered only the first two pages, the relevant parts of  
13 the tentative agreement I'm going to discuss. I would  
14 offer that that's subject to the agreement on completeness  
15 we have with respect to other collective bargaining  
16 agreement exhibits.

17 (Plaintiffs' Exhibit 59 was marked  
18 for identification.)

19 BY MR. ADAM:

20 Q. Mr. Gurza, does this look like the cover page of  
21 the tentative agreement with ALP?

22 A. It appears to be so.

23 Q. Do you know if it's been ratified by the City?

24 A. You mean approved by the City Council?

25 Q. Yeah.

26 A. Let me review this. It appears to be a partial  
27 document. As you see, there's --

28 Q. As I described, it's only the pages I'm going to

1 ask you about.

2 A. The City was negotiating with the -- negotiating  
3 with the City -- the City was negotiating with the  
4 Association of Legal Professionals on a new contract, and  
5 so --

6 MR. ADAM: Your Honor, I don't believe there's a  
7 question pending. I think the question was, was he  
8 familiar with the document.

9 MR. HARTINGER: The witness should not be cut off,  
10 your Honor.

11 THE COURT: He's beyond the question. Time for  
12 another question.

13 BY MR. ADAM:

14 Q. I believe the question was, has this been ratified  
15 by the City Council? I'm not sure I heard the answer to  
16 that. If you know.

17 A. I do know that the City Council approved a new  
18 contract with the Association of Legal Professionals. I  
19 cannot verify with certainty that this represents that  
20 document.

21 Q. Do you know when that approval happened? Was it  
22 recently?

23 A. It was recently. I believe it was at a council  
24 meeting in -- I believe it was June where the council  
25 approved a new contract with that bargaining unit.

26 Q. Do you know, has it been ratified by the  
27 association?

28 A. Yes. We generally do not bring an item to the

1 City Council for approval until we receive notice of  
2 whether it's been ratified.

3 Q. You want to make sure the union is going to ratify  
4 it?

5 A. We want to make sure the members have approved the  
6 tentative agreements.

7 Q. Can I direct your attention to the fourth page of  
8 this document, which is actually page 29 of 54. I'd like  
9 to direct your attention to what's noted as  
10 paragraph 17.2. It's the second paragraph of 17.2. Do  
11 you see that language?

12 A. I do.

13 Q. That was new language in this contract, was it  
14 not?

15 A. There was no contract with the Association of  
16 Legal Professionals previously.

17 Q. The City had imposed terms on ALP previously?

18 A. No, I don't believe that's the case.

19 Q. When was the last contract --

20 MR. HARTINGER: Your Honor, this is becoming  
21 irrelevant.

22 THE COURT: Overruled.

23 THE WITNESS: They are a relatively new bargaining  
24 unit. Several years. I don't know the exact date, and  
25 they did not have a full contract. So this was the  
26 negotiations over their full first contract.

27 BY MR. ADAM:

28 Q. Do you recall what the duration is of this

1 contract?

2 A. I do recall that because it actually has already  
3 expired.

4 Q. Okay.

5 A. Even though it was approved by the City Council in  
6 June, it expired on June 30.

7 Q. Let me ask you. You testified at the start of  
8 your direct to having a general knowledge of the  
9 bargaining scheme under the Myers-Milias-Brown Act and the  
10 City Charter; right?

11 A. Yes.

12 Q. So even though the contract has expired, its terms  
13 will still be in effect; right?

14 MR. HARTINGER: Calls for a legal conclusion.

15 THE COURT: Overruled. As to his understanding.

16 THE WITNESS: My understanding is, generally, the  
17 things that are status quo, there may be elements of a  
18 contract that expire, don't live long past the expiration.  
19 Most terms and conditions do, but not all.

20 BY MR. ADAM:

21 Q. Let's get back to the second paragraph of 17.02.  
22 That says, "The City may offer any other additional health  
23 coverage plans at its discretion, including, but not  
24 limited to, the Kaiser 1500 deductible plan." Do you see  
25 that language?

26 A. I do.

27 Q. That's kind of a waiver of the right to bargain by  
28 ALP; right? They're basically saying, City, you can offer

1 whatever plans at your discretion you want to do?

2 MR. HARTINGER: Argumentative and calls for legal  
3 conclusion.

4 THE COURT: Overruled.

5 THE WITNESS: I cannot comment on this particular  
6 contract because I was not involved in any way in these  
7 particular negotiations, and I can explain why that was if  
8 necessary.

9 BY MR. ADAM:

10 Q. Mr. Mercado never discussed with you what the  
11 contract meant?

12 A. We discussed as they were negotiating, but I was  
13 not at the bargaining table and was not involved in  
14 decision making as to these particular negotiations.

15 Q. Let me ask you in terms of how this low-cost plan  
16 concept works in practice. The language contemplates,  
17 does it not, what low-cost plan is available to employees;  
18 right? That's generally how it works?

19 MR. HARTINGER: Vague as to what language, your  
20 Honor.

21 THE COURT: Sustained.

22 BY MR. ADAM:

23 Q. What's your understanding of how, when Measure B  
24 refers to -- let me go back to 1512. You testified on  
25 direct about section C, subsection C; right? Low-cost  
26 plan?

27 A. Yes.

28 Q. Subsection C talks about defining low-cost plan as

1 the medical plan which has the lowest monthly premium  
2 available to any active employee. Do you see that  
3 language?

4 A. I do.

5 Q. The word "available," that doesn't require that an  
6 active employee actually elect to take that medical plan.  
7 It just has to be available to them; right?

8 A. We don't have any plans where there's no employees  
9 in it, but employees choose the various plans. But, yes,  
10 when we make plans available, it means that employees can  
11 select it.

12 Q. But this language doesn't require whether or not  
13 there's any employees actually elected the Kaiser 1500  
14 plan. The mere fact that that plan is being offered would  
15 make that the low-cost plan for purposes of retirees under  
16 1512-C, would it not?

17 MR. HARTINGER: Calls for a legal conclusion.

18 THE COURT: Sustained.

19 MR. ADAM: Your Honor, I'd ask to move Exhibits 55  
20 through 59 into evidence.

21 MR. HARTINGER: Your Honor, no objection to 56,  
22 57, and 58. We object to 55. There's no foundation.  
23 Object to 59, lack of foundation.

24 MR. ADAM: I'll withdraw 55. I'll stay with 59.

25 THE COURT: You're offering 56 to 59 in?

26 MR. ADAM: Yes.

27 THE COURT: Those are received.

28 (Plaintiffs' Exhibits 56-59, previously marked for

1 identification, were received in evidence.)

2 MR. HARTINGER: Your Honor, since we made a  
3 grouping of objections, we objected to Exhibit 59 based on  
4 lack of foundation.

5 THE COURT: I think this witness has enough  
6 information about that subject to allow 59 to be received.

7 BY MR. ADAM:

8 Q. Mr. Gurza, I want to bring you back to your  
9 testimony about the 2010 negotiations. Do you recall  
10 that?

11 A. I do.

12 Q. You filed a declaration in support of the City's  
13 motion for summary adjudication; right?

14 A. I did.

15 Q. And in that, you described the -- in part, you  
16 described the negotiations in 2010 with various unions;  
17 right?

18 A. There was a summary of negotiations, but I would  
19 have to look at it to refresh my recollection.

20 MR. ADAM: Let me accommodate you. This would be  
21 number 60.

22 (Plaintiffs' Exhibit 60 was marked  
23 for identification.)

24 BY MR. ADAM:

25 Q. I'll direct your attention to a specific paragraph  
26 in a moment, but does this 20-page document appear to be  
27 your declaration you filed in support of the motion for  
28 summary adjudication, albeit without the exhibits?

1 A. Yes.

2 Q. Can I direct your attention to paragraph 31. Are  
3 you finished?

4 A. Yes.

5 Q. I actually want to ask you about the introductory  
6 clause, the first four words. You say, "during  
7 negotiations over compensation." What time frame were you  
8 covering with paragraph 31? Are you talking about 2010 or  
9 are you talking about a broader time frame?

10 A. Well, the reference to the total compensation is a  
11 broader time frame. However, this paragraph is  
12 specifically discussing wage decreases, which,  
13 fortunately, is only recent. Normally, not negotiating  
14 wage decreases, so it's really in the last several years.

15 Q. Do you recall any other times -- putting aside the  
16 last couple years in the great recession, in your tenure  
17 in employee relations, do you recall previously  
18 negotiating wage decreases?

19 A. Negotiating wage decreases, no. Most of my time  
20 was in -- at the City was in the '90s and a much different  
21 economic climate, and so it's really in the recent fiscal  
22 crises the City has faced that we've had to ask our  
23 employees for wage decreases.

24 Q. Better times?

25 A. Yes. They were better times earlier.

26 Q. Little bit easier to bargain in those days?

27 A. Still difficult, but at least we weren't needing  
28 to ask our employees for concessions.

1 Q. Do you recall personally being involved in any  
2 negotiations with any group of employees where the  
3 employees, through their association, proposed a reduction  
4 in pension benefits?

5 A. Are you talking at any period of time? The  
6 exception of the recent past?

7 Q. With the exception of 2010, other than 2010 to  
8 2011, was there any other period in your tenure with the  
9 City employer relations that associations negotiated  
10 pension reductions on behalf of represented employees?

11 A. Negotiated? You mean -- the clarity I would like  
12 to seek is whether you're talking about anyone who's ever  
13 made a proposal or actually resulted in --

14 Q. Resulted in an agreement.

15 A. No. Again, most of the time in my career, the  
16 proposals by the bargaining units, particularly police and  
17 fire, increased enhancements, not decreased.

18 THE COURT: Your question is other than 2010-2011,  
19 was there ever actually an agreement for reduction of  
20 pension benefits?

21 MR. ADAM: Yeah.

22 THE WITNESS: I think the answer is I don't recall  
23 that type of agreement.

24 BY MR. ADAM:

25 Q. Any proposal by a labor union to reduce pension  
26 benefits?

27 A. I don't recall.

28 Q. Now, just to clarify, my last question was with

1 respect to active employees. Any proposal to reduce the  
2 pension benefits of active employees?

3 A. The same time frame that you're referring to?

4 Q. Your experience when you've been there in the  
5 labor relations.

6 A. Not that I can recall.

7 Q. I want to direct your attention to the City  
8 resolution through which the City approved the 2010 POA  
9 MOA, and Ms. West is trying to find which exhibit. You  
10 referenced it yesterday in direct. 5411.

11 MR. PATERSON: 5470?

12 MR. ADAM: It's the actual resolution adopting the  
13 POA's 2010 MOA.

14 MR. PATERSON: 5470.

15 BY MR. ADAM:

16 Q. Mr. Gurza, that would be binder Volume 3.

17 A. 5411?

18 Q. I'm sorry. Volume 4.

19 MR. HARTINGER: 5470, Counsel?

20 MR. ADAM: 5470, yes.

21 BY MR. ADAM:

22 Q. Do you have that document?

23 A. I do.

24 Q. Of course, you described the POA's -- we'll call  
25 it a concession; right?

26 A. Yes.

27 Q. You described that on direct?

28 A. I did.

1 Q. I want to -- I want you to look at the second  
2 page, which is the cover sheet of a memorandum. That  
3 memorandum is from you to the mayor and the City Council;  
4 right?

5 A. Along with the budget director, Jennifer McGuire.

6 Q. And was it you and your staff that prepared this  
7 memorandum?

8 A. Yes. My staff and in coordination with the budget  
9 director staff.

10 Q. I want you to turn two more pages further on,  
11 Bates stamp 531. Under the -- the bottom half of the  
12 document of the page there's a heading Analysis. Then  
13 there's a subtitle on the left-hand side, subheading,  
14 Temporary Additional Retirement Contributions. Do you see  
15 that?

16 A. I do.

17 Q. And in this document, you describe this amount,  
18 and I believe you're referring to the 5.25 concession will  
19 be applied to reduce the contributions the City would  
20 otherwise be required to make during the time period for  
21 the pension unfunded liability.

22 That's your language in the document; right?

23 A. Yes.

24 Q. And were you familiar with the municipal code  
25 sections that talked about the City's requirement of being  
26 the unfunded liability?

27 A. During what time period?

28 Q. When you wrote this memo.

1           A.    The focus back then, as I testified about, was to  
2 ensure that we were being consistent with the City Charter  
3 for normal cost, so I don't have a specific recollection  
4 at that time of reviewing the municipal code sections.

5           Q.    Let's go to the muni code section 3.36. We had  
6 that out a moment ago.

7           A.    If you can let me know what exhibit number.

8           Q.    I believe it's 5303. I'll direct you to Bates  
9 stamp 332 in that document.

10           MR. HARTINGER: Your Honor, may I have a moment?  
11 Plaintiffs' counsel has taken our book.

12           MR. SPELLBERG: We've loaned our binders.

13           MR. HARTINGER: I didn't use the word "abscond."  
14 We're all squared away, your Honor.

15           THE COURT: Good.

16 BY MR. ADAM:

17           Q.    Can I ask you to review 3.36.1520.

18           A.    How much of 1520? A, B, C, D?

19           Q.    It is long, isn't it? I guess if you can review  
20 it all.

21           A.    Okay. I've quickly reviewed.

22           Q.    Were you familiar with this municipal code  
23 section?

24           A.    I review the municipal code section from time to  
25 time, but I don't have a very specific recollection of  
26 this particular section.

27           Q.    Were you familiar with the fact that this is  
28 generally -- this is one of two municipal code sections

1 that are -- have been the basis for the City paying the  
2 unfunded liability on behalf of police officers?

3 A. I really --

4 MR. HARTINGER: Objection. Calls for legal  
5 conclusion.

6 MR. ADAM: Has he been aware.

7 THE COURT: You want to ask him if he's aware of  
8 this municipal code section?

9 MR. ADAM: I think he answered he was aware and  
10 looked at it from time to time.

11 THE COURT: So the objection is sustained.

12 BY MR. ADAM:

13 Q. So I asked you yesterday about the fact that  
14 sometimes when an MOU, MOA is agreed upon, the City  
15 determines it needs to create an ordinance to amend the  
16 municipal code in certain respects. Do you recall that  
17 testimony?

18 A. I recall we discussed that, yes.

19 Q. Do you recall the fact that the City created an  
20 ordinance to amend the municipal code with respect to  
21 implementing this, what's called temporary additional  
22 retirement contribution, in the POA MOA in 2010?

23 A. I do recall that there were some amendments needed  
24 to effectuate the agreements we reached, not just with the  
25 POA, but with others.

26 Q. If you flip over to 3.36.1525 -- significantly  
27 shorter section -- are you familiar with that section of  
28 the muni code?

1 A. I have seen it before, yes.

2 Q. This is the section that implemented the MOA;  
3 right? That part of the MOA, on the concession?

4 A. I believe so, but I can't be -- I can't testify  
5 for certainty that there weren't other amendments in the  
6 municipal code necessary, only because at this point we  
7 turned it over to the City attorney's office, who  
8 determines what various changes are needed. I've done  
9 this long enough to know that sometimes you need to change  
10 certain sections. So I couldn't testify with certainty  
11 this is the only changes that went into effect.

12 Q. Is there anything in the POA agreement in 2010  
13 that says the POA will agree to assume the City's  
14 obligations under Section 1520 under 3.36 of the municipal  
15 code?

16 A. I'd have to go back and review. You want me to  
17 review the agreement with the POA?

18 Q. Please.

19 THE COURT: You're asking him if there's -- if  
20 that language --

21 MR. ADAM: Let me try to narrow it, your Honor.  
22 Sorry.

23 THE COURT: You're withdrawing that question?

24 MR. ADAM: Withdraw that question.

25 BY MR. ADAM:

26 Q. Let me ask you to take a look at -- we're still  
27 within 5470.

28 A. 5470?

1 Q. 70, that document. Bates stamp 551 through 553.  
2 That is the section that covered this one-time additional  
3 retirement contribution; right?

4 A. Yes, it is.

5 Q. Is there anything in that section of the agreement  
6 that says the POA is agreeing to assume the City's  
7 obligations under the municipal code to pay unfunded  
8 liability?

9 A. There's specific references that very specifically  
10 says that the employees are making payment that the City  
11 would otherwise be required to make for the pension  
12 unfunded liability. That's on Gurza 000551.

13 Q. Does it reference the San Jose Municipal Code in  
14 any part of this agreement?

15 A. It does.

16 Q. Which part?

17 A. It does in -- if you refer --

18 Q. In section 5.1?

19 A. Yes. If you go to Gurza 000552, the last  
20 paragraph says, "The parties understand that in order to  
21 implement this provision, an amendment must be made to the  
22 police and fire fighters' retirement plan that requires an  
23 ordinance."

24 Though we didn't specifically put in what sections  
25 needed to be made, it was an agreement that we would make  
26 whatever amendments to the municipal code were necessary  
27 to effectuate the agreement.

28 Q. That's the only reference; right?



1 direct a number of tentative agreements that had been  
2 reached with various labor organizations concerning  
3 elimination of the Supplemental Reserve Benefit Retirement  
4 benefit.

5 A. Yes.

6 Q. And you pointed out several other labor  
7 organizations had proposed elimination of those benefits?

8 A. That's correct.

9 Q. But it's true, is it not, that there is no  
10 ratified contract approved by any labor organization or  
11 approved by the City Council that adopted a clause  
12 eliminating any SRBR benefit under either plan?

13 A. Yes. We were unable to reach an overall  
14 agreement.

15 Q. That's consistent, as you explained yesterday,  
16 that sometimes parties may reach what you term a tentative  
17 agreement, which is not effective because of subsequent  
18 conditions, either withdrawal, a change, or it's not  
19 contained in a final MOU that's subsequently ratified by  
20 both the labor organization and council?

21 A. We consider the tentative agreement resolving that  
22 matter subject to the overall agreement.

23 Q. Precisely. That's right. You will agree, as I  
24 understand your testimony, will you not, that the  
25 contract, when ratified, when effective by the union and  
26 by the council, creates obligations on the parties; true?

27 MR. HARTINGER: Calls for legal conclusion, your  
28 Honor.

1 THE COURT: Right. You're asking his  
2 understanding?

3 MR. PLATTEN: Of course, your Honor.

4 THE COURT: Go ahead.

5 BY MR. PLATTEN:

6 Q. Do you have the question in mind?

7 A. Whether it creates -- whether a contract creates  
8 obligations -- again, without being an attorney, I would  
9 say yes, the agreement does create some obligation on both  
10 the City and employees and the bargaining units, depending  
11 on the provisions.

12 Q. Exactly. If there are disputes over what those  
13 obligations are, the parties resolve those disputes either  
14 through binding grievance arbitration or through some  
15 other legal forum?

16 A. It depends on the dispute resolution procedure in  
17 any particular contract. It varies what resolution  
18 process may exist.

19 Q. I take it in your experience when the City enters  
20 into a collective bargaining agreement, call it an MOU,  
21 MOA, the City intends to perform its obligation? It  
22 expects to perform its obligations?

23 A. Again, when we enter an agreement, we expect to  
24 honor the particular terms.

25 Q. Similarly, there's an expectation on the City's  
26 part that the employees will perform their obligations  
27 under the contracts?

28 A. As a general statement, I would agree with the

1 general statement.

2 Q. These contracts, these labor contracts, MOAs,  
3 MOUs, whatever you want to call it, allocates compensation  
4 and cost; correct?

5 A. I'm not sure I understand what you mean by  
6 allocate costs.

7 Q. You testified yesterday about total compensation.  
8 Those are the costs to the City of employees?

9 A. Yes.

10 Q. Those costs get allocated between salary or fringe  
11 benefits or other areas?

12 A. You mean allocated as to who pays it?

13 Q. Allocated in terms of percentages. You had a nice  
14 chart yesterday that showed salary dollar figures, pension  
15 contribution figures, fringe benefit contribution figures,  
16 and other.

17 A. Yes.

18 Q. So the contracts allocate compensation and cost?

19 A. That's the part that -- I'm not drawing the  
20 connection between the charter total compensation and what  
21 a particular labor contract may say about that.

22 Q. I'm just asking as a general matter. I'm not  
23 asking for a particular contract. You do agree, do you  
24 not, that these agreements -- or the purposes of the  
25 agreements is to determine -- as I think you put it,  
26 determine what the wages, hours, and your working  
27 conditions will be for each unit that's covered by a  
28 particular contract?

1 A. I did say that, yes.

2 Q. So for purposes, for example, of these contracts  
3 and pensions, these contracts allocate the cost to the  
4 City, the compensation to the employees, in the form of  
5 contributions to the pension plan?

6 A. No. That's not correct.

7 Q. It's not a cost that's allocated?

8 A. It is. But I think your question is asking me, is  
9 it all specified in the labor contracts, and the answer to  
10 that is no.

11 Q. Didn't say that. Simply said that the contracts  
12 allocate the compensation in the form of contributions to  
13 the pension plan.

14 A. My answer is still no.

15 Q. So that allocation is made by the municipal code.  
16 Is that your testimony?

17 A. No. It varies.

18 Q. So could be the code and the contract?

19 A. Depending.

20 Q. And so cost could be allocated by the contract for  
21 pension of the contributions?

22 A. It could be. But we also have to look at the  
23 charter, so the various sources of the allocation, so a  
24 particular cost of benefits.

25 Q. At any rate, these contributions constitute a form  
26 of cost or compensation to the employees that go in the  
27 form of contribution to the plan?

28 A. I'm sorry. Can you repeat the question.

1 Q. I'll rephrase, Mr. Gurza. Regardless of whether  
2 or not it's the contract, the municipal code, or other  
3 document, the cost in the form of contributions -- the  
4 cost and the compensation allocation in the form of  
5 contributions go to the pension plan? These contributions  
6 go to the pension plans?

7 A. If you're referring to pension contributions, yes.  
8 Pension contributions made by the City and employees are  
9 transmitted to the retirement funds.

10 Q. Very good. We have an agreement on that. These  
11 contributions in turn are invested, and they create the  
12 plan benefits?

13 A. They create the plan benefits.

14 Q. They fund the plan benefits?

15 A. Yes. The contributions along with investment  
16 returns are intended to fund the benefits.

17 Q. These benefits are a form of deferred  
18 compensation?

19 MR. HARTINGER: Objection. Calls for a legal  
20 conclusion.

21 THE COURT: Sustained.

22 BY MR. PLATTEN:

23 Q. You understand these benefits that are received  
24 are a form of deferred compensation based on contributions  
25 and investments?

26 MR. HARTINGER: Same objection.

27 THE COURT: Overruled.

28 THE WITNESS: I've never heard a pension plan

1 referred to as deferred compensation.

2 BY MR. PLATTEN:

3 Q. You've never heard the concept of retirement  
4 benefits being a form of deferred compensation?

5 A. No. Generally when we talk about deferred  
6 compensation, we're generally talking about our 401K  
7 benefit, 457.

8 Q. For pensions, you have made the point under oath  
9 in other proceedings, have you not, that if the assets in  
10 the pension plans are insufficient to cover the pension  
11 benefits, the City is the guarantor of those benefits?

12 A. You'd have to refresh my recollection of what  
13 context that statement was made.

14 Q. Do you recall the binding interest arbitration  
15 proceeding in 2007 before Arbitrator Gerilou, spelled  
16 G-E-R-I-L-O-U, Cossack, C-O-S-S-A-C-K, involving the fire  
17 fighters' union and the City?

18 A. I do remember that arbitration.

19 Q. You were the lead negotiator leading up to that  
20 interest arbitration on behalf of the City?

21 A. I'm hesitating a little bit because I have to  
22 recall whether I was lead or whether we had outside  
23 counsel, but I was very involved in it, yes.

24 Q. You did testify in that arbitration proceeding  
25 under oath?

26 A. I'm trying to remember. Yes, I believe I did  
27 testify, yes.

28 Q. Did you not testify under oath that the City would

1 be the final guarantor of any benefits under the pension  
2 plan if assets were insufficient to cover benefit  
3 obligations of the plan?

4 A. I don't really recall the nature -- it's been  
5 several years -- the nature of my testimony during that  
6 proceeding.

7 MR. PLATTEN: I would ask that we mark next in  
8 order for the Sapien plaintiffs a multi-page document  
9 which is an excerpt of the transcript by the reporter in  
10 the binding interest arbitration proceeding in 2007,  
11 specifically the date of January 5, 2007.

12 THE COURT: Are you going to suggest a number?

13 MR. PLATTEN: I'm asking -- frankly, Madam Clerk  
14 can inform me what the next in order is.

15 THE CLERK: 231 on the Sapien exhibit.

16 MR. PLATTEN: Thank you. 231, your Honor.

17 (Plaintiffs' Exhibit 231 was marked  
18 for identification.)

19 MR. PLATTEN: May I provide a copy to the witness,  
20 your Honor?

21 THE COURT: Absolutely. You should provide the  
22 witness with the one with the tag on it.

23 BY MR. PLATTEN:

24 Q. I'd like to ask you to draw your attention,  
25 Mr. Gurza, to one particular page, which I believe is the  
26 last page of the exhibit. It is page number 1283. I'd  
27 ask you to review lines 5 through 22. Let me know when  
28 you've finished.

1 MR. HARTINGER: Can I ask, in 5470, counsel has an  
2 entire copy of the transcript?

3 MR. PLATTEN: I do.

4 THE COURT: Do you want to take a look at that?

5 MR. HARTINGER: Please.

6 MR. PLATTEN: I'm providing it to Mr. Hartinger.

7 THE COURT: This doesn't have the question that  
8 he's answering.

9 MR. PLATTEN: The preceding page, 1282, the last  
10 question is laid forth, your Honor.

11 MR. HARTINGER: Your Honor, this 1282 -- I'm  
12 sorry. Withdraw.

13 THE COURT: Are you directing Mr. Gurza, then, to  
14 read 1282 at 12 through the completion of the answer at  
15 1283, 22?

16 MR. PLATTEN: If he would so do, I'd appreciate  
17 it, your Honor.

18 THE COURT: Mr. Gurza, let us know when you've  
19 reviewed that excerpt.

20 THE WITNESS: I will. Thank you, your Honor.

21 Okay. I've reviewed it.

22 BY MR. PLATTEN:

23 Q. Setting that aside now, Mr. Gurza, having reviewed  
24 it, does that refresh your recollection that you testified  
25 in that binding interest arbitration on or about January  
26 5, 2007, that the San Jose pension plan provided a  
27 guaranteed benefit and that the City has to serve as the  
28 guarantor to pay that benefit regardless of fund

1 performance?

2 A. That's not exactly what the transcript says.

3 Q. Well, why don't we read out loud, if you would,  
4 please, on page 1283, lines 19 through 22.

5 MR. HARTINGER: Your Honor, he should include the  
6 question and the entire answer for the purposes of  
7 completeness.

8 THE COURT: Right. You should have the question  
9 and the whole answer if you're going to read it.

10 MR. PLATTEN: There's actually a question and two  
11 comments by the arbitrator, your Honor, so what would you  
12 prefer to be read?

13 THE COURT: I'm not sure what you're asking. It  
14 appears to me -- and others can correct me -- actually,  
15 probably better start at 1282, 3. That appears to be the  
16 beginning of a whole question.

17 BY MR. PLATTEN:

18 Q. Mr. Gurza, if would you please read out loud  
19 beginning on 1282.

20 MR. PLATTEN: Your Honor, line 3.

21 THE COURT: Okay. So we can either slow down,  
22 since people tend to read faster than they speak, or we  
23 can have a stipulation, given that 231 has been marked,  
24 the court reporter need not transcribe this reading.

25 MR. PLATTEN: I'm prepared to so stipulate.

26 MR. HARTINGER: We would stipulate. We also don't  
27 think it's necessary to have it read out loud.

28 THE COURT: So there's a stipulation that the

1 court reporter doesn't have to transcribe the reading.

2 Go ahead, Mr. Gurza.

3 MR. PLATTEN: Let me see if I can cut it shorter.  
4 We'd move 231 into evidence.

5 MR. HARTINGER: Your Honor, objection. It's  
6 incomplete, hearsay.

7 THE COURT: Sustained.

8 BY MR. PLATTEN:

9 Q. Mr. Gurza, let's go back to 1282, beginning at  
10 line 3. Would you read out loud line 3 on 1282 through  
11 line 22 on page 1283.

12 A. So starting at 1282, line 3?

13 Q. Yes, please.

14 A. Then going until 1283, line --

15 Q. 22. Through 22.

16 A. It starts with a Q.

17 (Transcript read and not transcribed.)

18 BY MR. PLATTEN:

19 Q. Having read those provisions, Mr. Gurza, do you  
20 now recall that in the arbitration on January 5, 2007, you  
21 stated under oath that the City of San Jose was the  
22 guarantor for fund benefits out of the San Jose pension  
23 plan?

24 A. Of last resort, as I stated, which was a very  
25 important statement.

26 Q. Do you now also remember that you said that  
27 benefits of those plans are guaranteed?

28 A. Yes. In the context of that particular

1 arbitration, which is not reflected in this extremely  
2 short excerpt.

3 Q. That those benefits are guaranteed regardless of  
4 fund performance?

5 A. Again, under the context of this short excerpt of  
6 an arbitration.

7 Q. And that those benefits were -- that the fact that  
8 those benefits were guaranteed by the City was an  
9 important point to remember?

10 A. It was an important point to make to that  
11 arbitrator.

12 Q. And that if something went wrong to the pension  
13 plan, something happened to the pension plan, that the  
14 City would have to guarantee the benefits?

15 A. It was a point we were trying to stress to the  
16 arbitrator.

17 Q. So you did make that statement under oath?

18 A. In the context to that arbitrator for a particular  
19 purpose.

20 MR. PLATTEN: Move to strike the answer as  
21 nonresponsive.

22 THE COURT: Denied.

23 BY MR. PLATTEN:

24 Q. Mr. Gurza, with the City being the guarantor of  
25 the pension plans, the City also then bears the risk that  
26 the liabilities -- if the liabilities exceed the assets,  
27 the City will have to make up that difference; correct?

28 MR. HARTINGER: Objection. Calls for legal

1 conclusion.

2 MR. PLATTEN: I'm asking for his understanding.

3 THE COURT: Rephrase the question, please.

4 BY MR. PLATTEN:

5 Q. It is your understanding, is it not, Mr. Gurza,  
6 that the City bears the risk of providing the paying for  
7 benefits if assets are not sufficient to meet those  
8 benefits?

9 A. I would say that the answer is incorrect.

10 Q. It's your testimony that the City does not act as  
11 the guarantor of the benefits if assets in the plan do not  
12 suffice to meet the liabilities of the plan?

13 MR. HARTINGER: Objection. Calls for a legal  
14 conclusion.

15 THE COURT: Overruled.

16 THE WITNESS: One is, I said last resort in my  
17 testimony. Secondly, we'd have to get more clear on what  
18 you're asking me because we have tier twos where the  
19 employees are sharing. We have to get in much more detail  
20 to answer a broad-brush statement like you're making.

21 BY MR. PLATTEN:

22 Q. I'll help you out by breaking it down. With  
23 respect to employees of the Federated plan hired prior to  
24 promulgation of any tier two benefits, you agree, do you  
25 not, that the City is the guarantor of any plan benefits  
26 for those employees should plan assets not be capable of  
27 meeting plan liabilities?

28 MR. HARTINGER: Objection. Calls for legal

1 conclusion.

2 THE COURT: Sustained.

3 BY MR. PLATTEN:

4 Q. Asking for your understanding on that point,  
5 Mr. Gurza.

6 A. I can't answer that question about what it means  
7 when you say guarantor.

8 Q. I'm sorry?

9 A. I don't know what you mean when you're asking me  
10 the word "guarantor."

11 Q. The City would have to pay the benefits if plan  
12 assets did not suffice to meet plan liabilities?

13 MR. HARTINGER: Same objection. Relevance.

14 THE COURT: Where is this taking us?

15 MR. PLATTEN: Question in this case goes to who is  
16 liable as a matter of contract to pay for any difference  
17 between assets and liabilities, which we have referred to  
18 as unfunded actuarial liability and prior service costs.  
19 This goes to Mr. Gurza's understanding as to whether or  
20 not the City is the party liable for those payments should  
21 assets not meet liabilities.

22 MR. HARTINGER: I think that's a legal decision  
23 that the Court should make.

24 THE COURT: It does appear to me to be something  
25 that the Court is deciding. We've been at this now for a  
26 while. I think further inquiry of this witness on this  
27 subject is not helpful to me.

28 BY MR. PLATTEN:

1 Q. With respect to retiree health benefits, the  
2 allocation of risk for unfunded actuarial liabilities is  
3 different than the pension plans; correct, Mr. Gurza?

4 MR. HARTINGER: Calls for a legal conclusion.

5 BY MR. PLATTEN:

6 Q. Do you understand that the allocation of risk for  
7 unfunded actuarially accrued liabilities in the retiree  
8 health benefit area is different than that of the pension  
9 plans?

10 A. Which pension plan?

11 Q. Either the Federated pension plan or the San Jose  
12 police and fire pension plan.

13 A. I would say the allocation of risk in retiree  
14 health care is the same as tier two, 50/50, one to one.

15 Q. Tier two in what plan, Mr. Gurza?

16 A. The tier two in that recently enacted for police  
17 officers -- or soon to be enacted. The tier two plan  
18 Federated all shares 50/50 similar to retiree health care.

19 Q. So you do agree, then, do you not, that with  
20 respect to the pension benefits in the Federated plan and  
21 police and fire plan for non-tier two employees, the  
22 employees do not bear 50 percent of the risk of unfunded  
23 actuarially approved liabilities?

24 MR. HARTINGER: Calls for legal conclusion, your  
25 Honor.

26 THE COURT: It does. Sustained.

27 BY MR. PLATTEN:

28 Q. Ask for your understanding of that, Mr. Gurza.

1 MR. HARTINGER: Same objection. Relevance.

2 THE COURT: Overruled.

3 THE WITNESS: It depends what time frame you're  
4 referring to.

5 BY MR. PLATTEN:

6 Q. Right now.

7 A. We had a period of time where employees were  
8 paying the unfunded liability. Are you talking about  
9 right now?

10 Q. Right now.

11 A. Again, the provisions of Measure B in sharing in  
12 the unfunded liability have not yet taken effect.

13 Q. I'm asking for tier one employees, not tier two.

14 A. Under Measure B, tier one employees, when it's put  
15 into effect, will start having additional contribution.

16 Q. So Measure B is not in effect now. So right now,  
17 what's the allocation of liability for unfunded  
18 actuarially approved liabilities in the pension plan for  
19 tier one employees?

20 MR. HARTINGER: Calls for a legal conclusion and  
21 an opinion.

22 BY MR. PLATTEN:

23 Q. Your understanding, Mr. Gurza.

24 MR. HARTINGER: Same objection.

25 THE COURT: Overruled.

26 THE WITNESS: So without using your word  
27 "liability," which has a legal connotation, I can answer  
28 the question in terms of contributions. As we talk about

1 right now in pension, normal cost is split on the  
2 3/11th-8/11th, and the City is paying the amortizing  
3 portion of unfunded liability for pension.

4 BY MR. PLATTEN:

5 Q. Let's go to workers' compensation benefits. Under  
6 Measure B, you testified, I believe, yesterday, that  
7 Measure B, for retiree disability benefits for all  
8 employees, regardless of tier, any disability retirement  
9 benefit amount would be offset by any workers'  
10 compensation board; is that correct?

11 MR. HARTINGER: Beyond the scope, your Honor.

12 THE COURT: Overruled.

13 THE WITNESS: I don't remember. Are you referring  
14 to that I said that yesterday?

15 BY MR. PLATTEN:

16 Q. If you'd answer the question, please.

17 A. I'm not sure I understand the question.

18 Q. I'll rephrase that. Do you understand Measure B  
19 to provide, respectively, regardless of tier, that any  
20 employee who applies and receives a disability retirement  
21 benefit will have that benefit reduced or offset by any  
22 award for disability under the workers' compensation  
23 system?

24 MR. HARTINGER: Beyond the scope, your Honor.

25 THE COURT: Overruled.

26 THE WITNESS: There is a provision in Measure B on  
27 a workers' comp offset, but I have to refresh my  
28 recollection about its application. But there is one in

1 Measure B.

2 BY MR. PLATTEN:

3 Q. Let's take a look at Measure B. I believe that's  
4 Exhibit 5000.

5 THE COURT: You want to direct the witness to a  
6 portion of 5000?

7 MR. PLATTEN: I don't have the section at my  
8 fingertips. I'm sure the witness can locate it. I'm only  
9 going to ask the witness to refresh his recollection.

10 BY MR. PLATTEN:

11 Q. 1509-A, I believe. I believe that's found on page  
12 11 of the document, Bates stamp number 105. I direct your  
13 attention to the next page, Mr. Gurza, subsection E, as in  
14 Edward.

15 A. Yes, I have that.

16 Q. Are you familiar with that?

17 A. Yes.

18 Q. Does that refresh your recollection that under  
19 Measure B, regardless of tier, any employee who applies or  
20 receives a disability retirement benefit will have that  
21 benefit monetarily reduced by any disability award under  
22 the workers' compensation system?

23 A. Yes. As the provision references, it says,  
24 "Consistent with the current provisions in the Federated  
25 City employees' retirement system." It does not  
26 differentiate between tiers.

27 Q. Currently, in the Federated system, there is an  
28 offset of workers' compensation benefits against retiree

1 disability amounts?

2 A. Tier one and tier two.

3 Q. Not so under the police and fire plan?

4 A. That's correct.

5 Q. Now, it's true, is it not, that the City has  
6 sought, in binding arbitration in 1996 before Arbitrator  
7 Bogue, and again in 2007 before Arbitrator Cossack, to  
8 have both arbitrators award an offset of worker  
9 compensation benefits to disability retirement benefits?

10 A. I do recall there's an issue that we've had on the  
11 table with the POA and the Fire Fighters' Union in the  
12 past, yes.

13 Q. It's true, is it not, that in both of those  
14 occasions, both of those arbitrations, 1996 with Ms. Bogue  
15 and 2007 with Ms. Cossack, the City's proposal to offset  
16 disability retirement benefits by a workers' compensation  
17 award were denied?

18 A. I don't have specific recollection that it was in  
19 both of these awards, but I do know whichever one it was  
20 in, that the City's proposal, last offer, was not awarded.

21 MR. PLATTEN: Ask we mark next in order, I  
22 believe, Sapien's Exhibit 232. 232, your Honor, is  
23 excerpts from the opinion of the chair and the opinion  
24 award of the interest arbitration proceedings in 2007  
25 between the City of San Jose and Fire Fighters' Local 230.

26 (Plaintiffs' Exhibit 232 was marked  
27 for identification.)

28 BY MR. PLATTEN:

1 Q. If you could, Mr. Gurza -- once we've marked it, I  
2 can deliver it to you for your review.

3 MR. PLATTEN: If I may, your Honor.

4 THE COURT: Yes.

5 BY MR. PLATTEN:

6 Q. Just review to yourself the excerpt beginning on  
7 what's marked as page 67 through page 70. Let me know  
8 when you're done.

9 A. 67 through 70?

10 Q. Yes, sir.

11 A. I reviewed it quickly, but it does refresh my  
12 recollection.

13 Q. How so?

14 A. The City did propose the workers' comp offset.  
15 The union opposed it, and the arbitrator went with the  
16 union's proposal, which was status quo.

17 Q. Both in 1996 and 2007?

18 A. This one was the 2007. Again, I don't recall  
19 specifically in the 19 -- in the Bogue award, but you may  
20 be correct. I just don't remember specifically.

21 Q. It's true, is it also not, that the City, in this  
22 2007 binding interest arbitration proceeding, did not  
23 claim that it was unable to pay for any of the wage and  
24 benefit increases sought by the union?

25 A. I don't recall all the arguments that we made to  
26 the arbitrator in opposition to the proposals that were  
27 being made.

28 Q. Let me direct your attention, Mr. Gurza, again to

1 what we've marked for identification as Plaintiffs'  
2 Exhibit 232, the excerpt from Ms. Cossack's decision, to  
3 page 5, the second paragraph of that page, beginning with  
4 the words, "Well, the City has not claimed." Just ask you  
5 to read that first full sentence.

6 A. I've read it.

7 Q. Does having read this particular sentence, the  
8 first full sentence on page 5 of the opinion award,  
9 refresh your recollection that the City did not claim in  
10 this interest arbitration that it was unable to pay for  
11 the wage and benefit increases -- the wage and benefit  
12 increases sought by the union?

13 A. That's what the arbitrator's statement is. The  
14 arbitrator is stating the City has not made that claim.

15 Q. Is that consistent with your recollection?

16 A. Again, I don't remember all of the evidence that  
17 the City put on, but clearly the arbitrator here says that  
18 the City did not claim that it was unable to pay for the  
19 wage and benefit increases sought by the union, but it  
20 does contend -- the City does contend that it would  
21 necessarily curtail the City's ability to fund other  
22 programs.

23 Q. Yes, it does say that. But you have no  
24 independent recollection of the City claiming otherwise?

25 A. Again, not that I recall. There's a lot of  
26 evidence put on, as you know, in a binding interest  
27 arbitration.

28 MR. PLATTEN: Thank you very much. Nothing

1 further, your Honor.

2 THE COURT: AFSCME?

3 MR. PATERSON: Thank you, your Honor.

4  
5 CROSS-EXAMINATION

6 BY MR. PATERSON:

7 Q. Good morning, Mr. Gurza.

8 A. Good morning.

9 Q. Very quickly, if you're able, have you refer to  
10 what's been marked as Exhibit 6023. It's a City exhibit.

11 A. Yes.

12 Q. You have that in front of you?

13 A. I do.

14 Q. It refers to concessions, does it not?

15 A. It does.

16 Q. And it indicates a percentage reduction for MEF  
17 and CEO, which are chapters of AFSCME, does it not?

18 A. Yes.

19 Q. But, in fact, that wasn't a concession, was it?

20 A. It was. It depends. I'm not quite sure what  
21 you're asking.

22 Q. Did MEF or CEO agree to that?

23 A. No.

24 Q. They didn't concede anything?

25 A. I need to understand your question about what they  
26 may or may not have conceded.

27 Q. You just agreed they didn't agree to that; right?

28 A. I think what you're getting at is we did not reach

1 an agreement and terms and conditions were imposed.

2 Q. So it was imposed, not conceded; correct?

3 MR. HARTINGER: Objection. Argumentative.

4 THE COURT: Overruled.

5 THE WITNESS: Yes. For some of the bargaining  
6 units that are here, the terms and conditions were  
7 imposed.

8 BY MR. PATERSON:

9 Q. So that reference to concession is a misstatement  
10 with respect to MEF and CEO; is that not correct?

11 A. I disagree. It depends on how you define the word  
12 "concession."

13 Q. Moving on. Can you please look at Exhibit 6004,  
14 please.

15 A. Yes.

16 Q. Do you have that in front of you?

17 A. I do.

18 Q. We've corrected the first page with respect to  
19 eligibility at age 50. Really it's 55?

20 A. That's correct. It is a typographical error.

21 Q. The next page there's a calculation; correct?

22 A. Yes.

23 Q. There's a reference to a calculation of COLA at  
24 three percent. Yes?

25 A. Yes.

26 Q. How was that calculation made?

27 A. This actually is taken from information from the  
28 retirement system about what cost the employee is actually

1 receiving.

2 Q. So when it says plus three percent annual COLA,  
3 does that mean that in the first year, the benefit is  
4 \$70,000 -- let me rephrase that. Does it mean that the  
5 benefit is \$70,032.96?

6 A. As of the run date of this information, that's  
7 what the -- this retiree was actually receiving when -- in  
8 combination of the base allowance plus the COLA.

9 Q. I see. And was that calculated with respect to 50  
10 or 55 years of service, if you know? The retirement age  
11 of 50 or 55?

12 A. Well, in Federated, as we just discussed, you  
13 can't retire before 55 unless you had 30 years of service.  
14 So this employee had 29 years of service. I don't know  
15 exactly when -- how old he was when he retired, but under  
16 the system on service retirement, he would have had to  
17 have been at least 55 on the age of his retirement.

18 Q. Just so I understand, that COLA calculation could  
19 be one or more years of COLA accrual; is that right?

20 A. Yes. Depending on how long ago the person  
21 retired.

22 Q. That's all I was trying to understand.

23 If you are able to, can you please refer to  
24 Exhibit 5713. Do you have that in front of you?

25 A. I do.

26 Q. You indicate this was a union proposal?

27 A. I don't believe I said -- I think we talked about  
28 it as being a tentative agreement.

1 Q. Do you know who proposed this?

2 A. Again, I don't recall. I wasn't the lead  
3 negotiator here as to how this tentative agreement was  
4 reached. But I do recall the City was proposing to  
5 eliminate the SRBR.

6 Q. When you say you weren't the lead negotiator, that  
7 means you weren't at the table, were you?

8 A. Yeah. That means that my staff led certain  
9 negotiations, and so I'm not physically at the bargaining  
10 table. So this particular one, you'll see on the left,  
11 signed by Gina Donnelly. She was the lead negotiator.

12 Q. I think when we had your deposition, you indicated  
13 you didn't attend these bargaining sessions; is that  
14 right?

15 A. These particular ones, yeah. Yes, I did not.

16 Q. You have no idea what was actually discussed at  
17 the table, do you?

18 A. My staff does provide me with summaries of  
19 discussion at the bargaining table as they progress. I'm  
20 ultimately responsible, so they do brief me, but not of  
21 every word stated.

22 Q. So you don't have any personal knowledge as to the  
23 discussion at that bargaining table?

24 A. Not specifically any particular issue, no.

25 THE COURT: So we have seats available. I'm  
26 wondering if there's a medical issue for the people who  
27 are standing.

28 MR. PATERSON: Not for me, your Honor.

1 THE COURT: Not for you.

2 It would be helpful if spectators could be seated  
3 unless there's a medical issue. Thank you.

4 Go ahead, Mr. Paterson.

5 BY MR. PATERSON:

6 Q. Turning to Exhibit 525. That's not in the binder.  
7 It's one we've marked in these proceedings. So it looks  
8 like it's this description of various health plans. I  
9 think it would be on that -- I'm incorrect.

10 MR. PATERSON: If I may, your Honor, can I  
11 approach the witness?

12 THE COURT: Yes.

13 BY MR. PATERSON:

14 Q. Do you recognize that document?

15 A. It does look familiar.

16 MR. HARTINGER: One moment, your Honor, while  
17 we're locating the exhibit.

18 MR. PATERSON: I do have extra copies if you'd  
19 like.

20 THE COURT: This is the 2013 health plan  
21 comparison, Mr. Paterson? The 2013 health plan  
22 comparison?

23 MR. PATERSON: Yes.

24 THE COURT: Mr. Hartinger, let us know when you're  
25 ready.

26 MR. HARTINGER: All set, your Honor.

27 BY MR. PATERSON:

28 Q. Is this -- do you recognize this document?

1           A.    I do.  It looks like a document that my HR staff  
2 produces for open enrollment.

3           MR. PATERSON:  Thank you.

4           Your Honor, I would offer this for admission into  
5 evidence.

6           THE COURT:  525 is received.

7           (Plaintiffs' Exhibit 525, previously marked for  
8 identification, was received in evidence.)

9 BY MR. PATERSON:

10          Q.    Can you please turn to Exhibit 472.  It's in  
11 Volume 6 of the AFSCME exhibit, which you will find -- let  
12 me assist you, if I may.  472.

13          A.    I have that.

14          Q.    Do you recognize that?

15          A.    I do.

16          Q.    It's a letter you authored?

17          A.    With the assistance of my staff, but I signed it.

18          MR. PATERSON:  I would move it into evidence, your  
19 Honor.

20          MR. HARTINGER:  No objection.

21          THE COURT:  472 is received.

22          (Plaintiffs' Exhibit 472, previously marked for  
23 identification, was received in evidence.)

24 BY MR. PATERSON:

25          Q.    The retiree health benefits -- withdrawn.

26                The pension plan maintains a trust fund pursuant  
27 to Internal Revenue Code Section 401H, out of which  
28 retirement benefits are funded.  Is that a correct

1 statement?

2 MR. HARTINGER: Calls for legal conclusion; lacks  
3 foundation.

4 THE COURT: Yes. Sustained.

5 If you want to rephrase that. Is your question  
6 about the maintenance of the trust fund?

7 MR. PATERSON: Yes, your Honor.

8 THE COURT: Please rephrase the question.

9 BY MR. PATERSON:

10 Q. There is a trust fund in which contributions are  
11 placed for the purpose of funding retiree health; is that  
12 not correct?

13 A. There are two trust funds relevant to retiree  
14 health care.

15 Q. And is one trust fund referred to the Section 115  
16 trust fund?

17 A. Yes.

18 Q. And is it your understanding that Section 115  
19 refers to a provision of the Internal Revenue Code?

20 A. That's my understanding.

21 Q. It's your understanding that contributions made by  
22 the City to that fund can be made on a pre-tax basis? Is  
23 that your understanding? I'll withdraw.

24 The contributions made by the City, once placed in  
25 that trust fund, can grow through investment experience,  
26 and that growth is not taxable income. Is that your  
27 understanding?

28 A. I don't believe the City pays taxes.

1 Q. What's your understanding of the Section 115 trust  
2 fund, its advantage to the City?

3 A. The 115 trust was developed as an alternative to  
4 the other trust fund to put money in for -- to fund the  
5 retiree health care benefit. That's the purpose of it.

6 Q. That fund is administered by the retirement  
7 system?

8 A. By the board. The board, or also the trustees for  
9 the 115 trust.

10 Q. And there's another trust referred to as a Section  
11 41H trust; is that correct?

12 A. Again, I'm not an expert by any stretch on the  
13 Internal Revenue Code or trust funds, but I don't believe  
14 it's a separate trust fund. It's my nontechnical term,  
15 it's part of the overall pension plan. It's a separate  
16 account that's, I think, referred to in the municipal code  
17 as the medical benefits account, I believe, or something  
18 similar.

19 Q. So the contributions for retiree health going to  
20 the pension system's trust fund. Is that your testimony?

21 A. Again, I'm not an expert, so all I know is it goes  
22 into the pension plan; and, however, retiree health care  
23 contributions are accounted for separately, valued  
24 separately by the actuaries, but it's part of the overall  
25 pension trust. That's my layperson's understanding.

26 Q. The retirement board administers that trust fund?

27 A. Yes. As they do the 115 trust.

28 Q. And their fiduciary duties apply to it; is that

1 correct?

2 MR. HARTINGER: Objection. Calls for a legal  
3 conclusion.

4 THE COURT: Sustained.

5 BY MR. PATERSON:

6 Q. You understand that the board, the retirement  
7 board, have a fiduciary responsibility over those funds?

8 A. I understand that the trustees are considered  
9 fiduciaries.

10 Q. My understanding of your prior testimony was that  
11 prior to Measure B, with respect to retiree health care  
12 contributions to these trust funds, the requirement was a  
13 one-to-one ratio; is that correct?

14 A. Consistent with the municipal code section that we  
15 reviewed.

16 Q. So one to one means employees pay 1,000, City pays  
17 1,000?

18 A. Yes. 50/50. Otherwise known as 50/50.

19 Q. They marry each other?

20 A. Yes.

21 Q. Can you turn to section -- can you refer to  
22 Exhibit 5000, which is -- and turn to the page that has  
23 Section 1512-A, related to retiree health care.

24 A. What page number again, or what section?

25 Q. I don't know the Bates, but it is page 14 of the  
26 document.

27 A. Okay. I'm there.

28 Q. This is the provision of Measure B that governs

1 the obligation to make contributions towards retiree  
2 health care; is that correct?

3 A. That's correct.

4 Q. And it states that employees must make a minimum  
5 of 50 percent of the cost of retiree health care; is that  
6 correct?

7 A. That's what it states.

8 Q. And there's no obligation for the City to make any  
9 contributions; is that correct?

10 MR. HARTINGER: Calls for legal conclusion, your  
11 Honor.

12 THE COURT: Sustained.

13 BY MR. PATERSON:

14 Q. Your understanding of minimum of 50 percent is  
15 that employees can be required to pay more than 50  
16 percent. Is that a valid interpretation?

17 MR. HARTINGER: Same objection.

18 THE COURT: Sustained.

19 BY MR. PATERSON:

20 Q. If employees were to pay 60 percent of the cost of  
21 retired health care, what percentage would the City be  
22 required to pay?

23 MR. HARTINGER: Calls for speculation.

24 THE COURT: I don't think that is really helpful  
25 to the Court.

26 MR. PATERSON: I'll move on, your Honor.

27 BY MR. PATERSON:

28 Q. In addition, 1512-A indicates -- part B indicates

1 that no retiree health care plan or benefit shall grant  
2 any vested right. Do you see that there?

3 A. I see it, yes.

4 Q. What is your understanding of the significance of  
5 that provision?

6 MR. HARTINGER: We went over this yesterday, your  
7 Honor. This is a legal issue. So we object on the  
8 grounds of relevance.

9 MR. PATERSON: There's been a contention that  
10 benefits are not vested. We're trying to ascertain the  
11 extent of the City's employees' understanding, management  
12 understanding of the obligation or lack of obligation to  
13 preserve the benefits under this provision.

14 MR. HARTINGER: Also lacks foundation.

15 THE COURT: Okay. So if you want to pursue this,  
16 I would request that you lay a foundation and not repeat  
17 what has been in before.

18 MR. PATERSON: I'll move on, your Honor.

19 BY MR. PATERSON:

20 Q. You indicated earlier that you had worked for a  
21 time for retirement services. Do you recall that?

22 A. Actually, what I said was when I first began  
23 employment with the City, I worked for the Department of  
24 Human Resources. At that time, retirement was a division  
25 of HR. It was not a separate City department.

26 Q. Thank you for that. I remember that.

27 And as part of your duties, you would draft  
28 newsletters, newsletter articles related to retirement

1 benefits; is that correct?

2 A. I'm trying to recall. I only worked there for 14  
3 months, so I don't recall specifically whether I  
4 participated in the drafting of any newsletters.

5 Q. Would you turn to Exhibit 347 in Volume 3.

6 A. In volume which?

7 Q. Three of the AFSCME exhibits.

8 A. 347?

9 Q. Yes, please.

10 THE COURT: 347 is two pages. Appears to be a  
11 retirement system newsletter dated April 26, 1995.

12 BY MR. PATERSON:

13 Q. Does this refresh your recollection as to whether  
14 you participated in the drafting of the retirement  
15 newsletter?

16 A. It does. It looks like I did write an article.

17 Q. Blast from the past?

18 A. Yes.

19 Q. What happened to those newsletters after they were  
20 produced by retirement services? Were they distributed to  
21 employees?

22 A. That's a good question. I don't recall. Back  
23 then in 1995, I have to tell you that was the dark ages in  
24 terms of electronics, so we did not have Citywide E-Mail  
25 then, believe it or not. We used to get hard copies. So  
26 I don't remember how this got to people.

27 Q. It was drafted with the intent of providing it to  
28 employees. Yes?

1 MR. HARTINGER: Objection. Lacks foundation.

2 MR. PATERSON: He participated --

3 MR. HARTINGER: Calls for speculation.

4 THE COURT: Overruled.

5 THE WITNESS: Actually, it's intended -- it was  
6 intended, my recollection, not just for employees but  
7 retirees. But, again, I don't remember the method of  
8 distribution, whether it went to all employees or was  
9 mailed to retirees. I simply don't recall. It's been a  
10 long time.

11 BY MR. PATERSON:

12 Q. Can you turn to -- you may not have to turn -- one  
13 of the pages Bates stamped 2683, AFSCME 0002683. Do you  
14 see that?

15 A. Yes.

16 Q. Do you see that it states on the bottom right,  
17 "Any retirees with questions should contact a certain  
18 person in the retirement office"? Do you see that?

19 A. Yes.

20 Q. They wouldn't know how to contact them unless they  
21 received this newsletter; correct?

22 MR. HARTINGER: Objection. Calls for speculation;  
23 beyond the scope also.

24 THE COURT: Sustained.

25 MR. PATERSON: Your Honor, to beyond the scope --

26 THE COURT: I'm sustaining as to speculation.

27 BY MR. PATERSON:

28 Q. Do you also see there's a reference to active

1 employees, who they should call if they have questions  
2 relating to the information in the newsletter?

3 A. I see that, yes.

4 Q. Does that refresh your memory as to whether these  
5 were distributed to retirees or employees or both?

6 A. No. Clearly when you write a newsletter, there's  
7 an intent for people to get it. I guess what I'm trying  
8 to tell you is I don't remember the method of  
9 distribution, how broad it was, whether we left them in  
10 the lobby. Back then we used to have paper fliers during  
11 payroll periods. I simply don't recall how it was  
12 distributed. For retirees, I think it would have had to  
13 have been hard copy mail, and I don't know if we sent  
14 thousands. I simply don't remember the method of  
15 distribution back almost 20 years ago.

16 Q. But you're saying it was distributed. You just  
17 don't know how?

18 A. And, again, how broadly it was distributed. I  
19 don't remember.

20 MR. PATERSON: I would offer Exhibit 347 into  
21 evidence, your Honor.

22 THE COURT: 347 is received.

23 (Plaintiffs' Exhibit 347, previously marked for  
24 identification, was received in evidence.)

25 BY MR. PATERSON:

26 Q. In your direct examination, do you recall  
27 discussing or answering questions with respect to certain  
28 negotiations in 2010 related to an additional contribution

1 by unions to the pension system?

2 A. Yes. The additional retirement contribution, yes.

3 Q. AFSCME was not a part of any of those  
4 negotiations; correct?

5 A. They were part of retirement reform negotiations,  
6 so we were negotiating with everyone on the topic of  
7 retirement reform.

8 Q. In 2010?

9 A. Again, I don't recall when we began discussing the  
10 retirement issue with AFSCME.

11 Q. Can you turn to the Exhibit 5410.

12 THE COURT: I think we're ready.

13 BY MR. PATERSON:

14 Q. That's the negotiations I'm talking about related  
15 to the additional contribution. Does that refresh your  
16 recollection as to the time frame of those negotiations?

17 A. Yeah. I think it does. I think that was what we  
18 had talked about yesterday, that AFSCME had a closed  
19 contract during that period of time, I believe.

20 Q. Do you now recall that, in fact, AFSCME didn't  
21 participate in those negotiations?

22 A. They chose not to reopen. They had reopened the  
23 previous year, but they did not reopen that year.

24 Q. The City asked AFSCME to reopen for the purpose of  
25 addressing these or joining in these negotiations. Yes?

26 A. Yeah. Because they had a scheduled wage increase  
27 that particular year, so we asked them to reopen their  
28 contract, and they declined.

1 Q. And, ultimately, they were not part of any  
2 agreement related to additional contributions?

3 A. Yes. That's correct. AFSCME did not participate  
4 in the additional retirement contributions.

5 Q. I want to ask you -- if you need to refer to the  
6 exhibit, that's fine. I want to ask you about the  
7 Exhibit 6020, but I only want to discuss the portions  
8 related to Jeff Rhoads because the other items of that are  
9 not part of the record.

10 THE COURT: I think we're ready.

11 BY MR. PATERSON:

12 Q. There's a reference there to other benefits with  
13 respect to Mr. Rhoads, and there's a 40,000 -- \$4768  
14 figure. Do you see that?

15 A. Under the column employer-paid benefits, yes.

16 Q. Thank you. Yes. And does that include any  
17 portion of contributions -- withdrawn.

18 Does that include any contributions the City makes  
19 with respect to unfunded accrued liabilities -- unfunded  
20 actuarial liabilities of the pension fund?

21 A. It includes the City contributions rate to the  
22 retirement system for pension, retiree health care, and a  
23 portion of that contribution rate is for the amortization  
24 of the unfunded liability as well as City share of normal  
25 cost.

26 Q. I think you indicated that the provisions of  
27 Measure B related to retiree health cost sharing have not  
28 been implemented. Did I hear that correctly?

1           A.    I'm trying to remember.  I don't recall  
2 specifically --

3           Q.    Let me withdraw the question.  Have they been  
4 implemented?

5           A.    Which specific sections are you referring to?

6           Q.    1512-A(a)?

7           THE COURT:  So, Mr. Gurza, you may want to look at  
8 Exhibit 5000, Bates page 108.

9           THE WITNESS:  Thank you, your Honor.

10          BY MR. PATERSON:

11          Q.    Has that provision been implemented?

12          A.    We are already paying retiree health care, City  
13 and employees, 50 percent.  But there are certain  
14 provisions that there's a stipulation among the parties  
15 not to implement.  I don't recall exactly whether this is  
16 one of those provisions or not.  There's a stipulation  
17 where certain items of Measure B are not implemented until  
18 January 2014, as I recall, but I don't have that  
19 stipulation in front of me.

20          THE COURT:  Is this question about all of 1512-A?

21          MR. PATERSON:  Sub-part A.

22          THE COURT:  So 1512-A(a)?

23          MR. PATERSON:  Yes.

24          BY MR. PATERSON:

25          Q.    I understand your answer to be, essentially, I  
26 don't know.

27          A.    It's not that.  1512-A, as I testified earlier, is  
28 no different than it currently exists.  The City and

1 employees are paying 50 percent now. There's -- no change  
2 has happened.

3 Q. Currently they're paying 50 percent of unfunded  
4 liabilities?

5 A. We're paying 50 percent of the contribution rate.  
6 So you notice here the portion of the employees are  
7 currently paying do include part of the unfunded  
8 liability. The answer is yes.

9 Q. Currently, employees are paying 50 percent of  
10 unfunded liabilities related to retiree health care?

11 A. Let me explain. As I testified yesterday, we are  
12 not yet paying the annual required contribution. We're  
13 getting there. So we are -- the amount we're paying now  
14 includes a portion for the unfunded liability. That's  
15 correct.

16 Q. What body determines the contribution rate for  
17 retiree health care?

18 A. The retirement board seeks an actuarial valuation  
19 that determines the ARC. However, the actual  
20 contributions that we're making to retiree health care are  
21 by the agreements that we made with our bargaining units,  
22 some of what I testified to yesterday.

23 Q. So the retirement board actuaries have indicated  
24 what the amortized -- withdrawn.

25 The retirement board has -- the retirement board's  
26 actuaries have indicated what the ARC is, and the  
27 retirement board has adopted that, and the employees are  
28 not paying 50 percent of that; is that correct?

1           A.    When you say "adopted," I have to understand what  
2 you mean when the board adopts.

3           Q.    My understanding was that you indicated the  
4 actuaries determined what the ARC is in the contribution  
5 rate with respect to that are determined by the board; is  
6 that correct?

7           A.    The board contracts with an actuary.  The actuary  
8 conducts an evaluation, specifically do a separate one on  
9 retirement health care that calculates the ARC.  They  
10 accept the report; however, under our agreements with our  
11 bargaining units, including the ones you represent,  
12 Mr. Paterson, AFSCME, we have a specific agreement about  
13 how we're making contributions.  So you have to read them  
14 in concert.

15          Q.    So 1512-A(a) is also subject to bargaining?

16           MR. HARTINGER:  Objection.  Calls for a legal  
17 conclusion.

18           THE COURT:  Sustained.

19           BY MR. PATERSON:

20          Q.    Currently, the amount of contributions made into  
21 the retirement health trust by employees is a matter of  
22 bargaining; is that correct?

23          A.    Yes.

24          Q.    So your understanding is that should 1512-A(a) be  
25 implemented, it will continue to be a subject of  
26 bargaining?

27           MR. HARTINGER:  Objection.  Misstates the  
28 testimony; calls for legal conclusion.

1 THE COURT: Overruled.

2 MR. HARTINGER: Also ambiguous.

3 THE COURT: Do you have the question in mind,  
4 Mr. Gurza?

5 THE WITNESS: No. I actually would need some  
6 assistance.

7 THE COURT: Your understanding is that should  
8 1512-A(a) be implemented, it will continue to be a subject  
9 of bargaining?

10 The objection is overruled.

11 THE WITNESS: My understanding is that 1512-A  
12 reflects what's been in the municipal code. We were  
13 paying 50/50 before 2009. 50/50 of a smaller number. We  
14 have now negotiated paying 50/50 of a higher number.

15 BY MR. PATERSON:

16 Q. Thank you.

17 Are new employees required -- withdrawn.

18 Is it your understanding that should 1512-A(a) go  
19 into effect, that new employees will also be contributing  
20 50 percent of the cost of retiree health care into retiree  
21 health trust fund?

22 A. If those new employees are in the retiree health  
23 care plan.

24 Q. If they are in the plan, it means they'll be  
25 entitled to retiree health benefits when they eventually  
26 retire; correct?

27 MR. HARTINGER: Objection. Calls for a legal  
28 conclusion.

1 THE COURT: Sustained.

2 BY MR. PATTEN:

3 Q. Is it your understanding that if they are in the  
4 plan, they will be entitled to retiree health benefits  
5 upon retiring?

6 A. I can't answer that question because we're in the  
7 midst of bargaining retiree health care with all of our  
8 Federated bargaining units, so I can't speculate as to  
9 what will happen in the future.

10 Q. Whether they are entitled to the benefits upon  
11 retirement is a matter of collective bargaining. Is that  
12 your response?

13 A. I would say, and among other factors. The topic  
14 of retiree health care is a very significant issue we're  
15 continuing to discuss with your bargaining units. That's  
16 why I can't speculate as to what may or may not happen  
17 decades from now when a new employee finally retires.

18 Q. Sub-part B indicates that no retiree health care  
19 plan or benefit shall grant any vested right.

20 My understanding of your response is that should  
21 employees -- new employees participate in the retiree  
22 health care plan subject to their union's bargaining with  
23 the City, they will have a right to those benefits upon  
24 retirement; is that correct? Notwithstanding Sub-part B?

25 MR. HARTINGER: Calls for a legal conclusion;  
26 calls for speculation.

27 THE COURT: Sustained.

28 MR. PATERSON: I believe I'm finished, your Honor.

1 I just want to review my notes.

2 No more questions, your Honor.

3 THE COURT: Retired Employees' Association?

4 MR. SILVER: Yes, your Honor.

5

6

CROSS-EXAMINATION

7

BY MR. SILVER:

8

Q. Good morning, Mr. Gurza.

9

A. Good morning, Mr. Silver.

10

Q. First of all, I'd like to try to clarify some of  
11 your terminology you used. Do you recall that throughout  
12 your testimony, you've described certain conduct or  
13 attributed certain conduct to bargaining units?

14

A. Yes.

15

Q. A bargaining unit is not an entity or  
16 organization. AFSCME, for example, is not a bargaining  
17 unit, is it?

18

A. Our bargaining units are affiliated with AFSCME.  
19 Perhaps MEF and CEO are bargaining units affiliated with  
20 AFSCME, so I'm not certain the distinction.

21

Q. Isn't it true or correct that a bargaining unit is  
22 a grouping of job classifications with common or similar  
23 attributes, and the entity that represents that bargaining  
24 unit is a recognized employee organization?

25

A. That's generally correct, yes.

26

Q. And, for example, if you take the San Jose Police  
27 Officers' Association, that's a recognized employee  
28 organization; correct?

1 A. Yes. They're a bargaining unit.

2 Q. How many bargaining units do they represent,  
3 employees?

4 A. That's a good question. We consider them one  
5 bargaining unit, but they have subunits within it that  
6 hardly anybody ever references. They have representation  
7 units within the overall bargaining unit. But generally  
8 we consider the POA one bargaining unit.

9 Q. For example, would a bargaining unit be a grouping  
10 of classifications? Let's say police officers and police  
11 sergeant, would that be an example of a bargaining unit?

12 A. Yes, that's an example.

13 Q. So, basically, would it be fair to say that a  
14 recognized employee organization is only empowered to  
15 represent or bargain for individuals within the bargaining  
16 unit with respect to which it is recognized?

17 A. They are considered the exclusive representative  
18 of the employees that are covered, yes.

19 Q. They don't represent any employees or individuals  
20 who are not in that bargaining unit; is that correct?

21 A. That's my understanding.

22 Q. So, for example, they wouldn't represent retired  
23 employees who used to be in job classifications that were  
24 included in that bargaining unit; is that correct?

25 A. Yes, that's my understanding.

26 Q. So these tentative agreements that you referenced  
27 before between certain recognized employee organizations  
28 and the county with regard to the SRBR and ending or

1 discontinuing the SRBR, those could not apply to retired  
2 individuals; is that correct?

3 Let me rephrase the question. Those unions that  
4 entered into those tentative agreements were not empowered  
5 or recognized to represent any retired individuals; is  
6 that correct?

7 A. Those bargaining units do not represent retirees,  
8 that's correct.

9 Q. Now, you testified yesterday about this  
10 recommendation by City management starting in 2010 to  
11 discontinue distributions from the SRBR. Do you recall  
12 that testimony?

13 A. I do.

14 Q. And did you participate personally in the decision  
15 by City management to make that recommendation?

16 A. I was involved, yes.

17 Q. And what was the goal that the City management was  
18 trying to achieve when it made that recommendation to  
19 discontinue SRBR distributions at least for that year?

20 A. The goal was not to have money being paid out of  
21 our pension system for these payments while we grappled  
22 with the extraordinary increases in our unfunded  
23 liabilities and contribution rates.

24 Q. Would that goal have been the same in 2011 and  
25 2012, when similar recommendations were made?

26 A. Yes. Because the issue has continued.

27 Q. Based upon your extensive experience with the  
28 Federated plan, were you aware, during those time

1 periods -- this is all before Measure B -- that SRBR  
2 monies were not taken into account by either the actuary  
3 or the retirement board in determining the amount of  
4 required funding for the future?

5 A. Can you repeat that question again, Mr. Silver.

6 Q. When you were -- were you aware at the time these  
7 recommendations were made that the amount of funds in the  
8 SRBR account were not considered or taken into account by  
9 either the actuary or the retirement board when  
10 determining what future funding would be required?

11 A. It's difficult to answer that question because at  
12 certain points in their Cheiron report, the actuary was  
13 looking at that issue of the SRBR and its funding, and I  
14 don't recall exactly the year, but I believe it's in that  
15 time frame.

16 Q. I'm talking about the Federated plan. Was your  
17 answer related to the Federated plan?

18 A. It related to both, I believe.

19 Q. Let me try to be more specific. Do you know what  
20 the term "net valuation assets" means?

21 A. I wouldn't be the right person to define it.

22 Q. I guess what I'm trying to ask you -- and I'll try  
23 to make it as simple as possible. In determining what the  
24 required funding, let's say, for the next applicable year  
25 will be, is it true that the actuary and the retirement  
26 board look at the assets and the liabilities, and based  
27 upon that, figure how much funding, based upon all the  
28 assumptions holding true, will be necessary to pay future

1 benefits?

2 A. Yes, I do know that they look at assets.

3 MR. HARTINGER: Objection. Foundation.

4 THE COURT: Overruled.

5 THE WITNESS: I do know generally that the actuary  
6 does look at assets and liabilities.

7 BY MR. SILVER:

8 Q. Do you know whether, in looking at the assets --  
9 isn't it true that, based upon your knowledge, that when  
10 the actuary looks at assets, it does not look at the  
11 assets that have been earmarked for distribution that are  
12 placed in the SRBR?

13 MR. HARTINGER: Lack of foundation.

14 THE COURT: Overruled.

15 THE WITNESS: I'm not really the right person to  
16 ask that question. I don't know specifically one way or  
17 the other.

18 BY MR. SILVER:

19 Q. When the recommendation was made to not distribute  
20 SRBR funds, was that recommendation adopted?

21 A. Yes.

22 Q. And as a result of it being adopted, are you aware  
23 of that action having any impact whatsoever on the  
24 determination of contribution rates for the ensuing year?

25 A. My understanding is that the freezing of the  
26 distributions did not have an impact, it's my  
27 understanding, one way or the other. But, again, I'm not  
28 an actuary, so I can't say that for certain.

1 Q. Isn't that really what Measure B was intended to  
2 accomplish, which was to effectively eliminate those funds  
3 in the SRBR, transfer them to the general retirement  
4 account so that they could be considered in determining  
5 future funding?

6 MR. HARTINGER: Objection. Lack of foundation;  
7 calls for a legal conclusion.

8 THE COURT: Overruled.

9 THE WITNESS: I'm not an actuary, so it's beyond  
10 my expertise, but the general idea would be to put the  
11 SRBR funds, as opposed to having it in the reserve, in the  
12 main trust fund.

13 BY MR. SILVER:

14 Q. To move them from the reserve to the main trust  
15 fund so that they could be taken into account and,  
16 therefore, less money would be needed in future  
17 contributions because that money would have been now  
18 available. Is that your understanding?

19 A. Again, it's my general understanding. But, again,  
20 an actuary would be much better able to answer those  
21 questions.

22 Q. Were you present yesterday when Ms. Figone  
23 testified that shortly after Measure B, the City, in fact,  
24 took action and transferred the SRBR funds into the  
25 general retirement account?

26 A. Yes. I am aware that both boards have eliminated  
27 the SRBR. Yes, I am aware of that.

28 Q. With respect at least to the Federated plan, isn't

1 that action -- by putting the restricted funds into the  
2 general account, isn't that what enabled the City to save  
3 the \$13 million that Ms. Figone testified to?

4 MR. HARTINGER: I'm going to object to the  
5 question that it's restricted funds. That calls for a  
6 legal conclusion and lacks foundation.

7 THE COURT: Overruled.

8 THE WITNESS: My understanding is the boards took  
9 action to eliminate the SRBR as a separate reserve. Our  
10 accounting the money as part of the overall trust fund,  
11 and that did end up leading to reduce costs.

12 BY MR. SILVER:

13 Q. Of about \$13 million; is that correct?

14 A. I believe that's correct.

15 Q. The reduced costs were effectively realized by the  
16 City paying \$13 million less in contributions that year  
17 than it otherwise would have had to pay but for Measure B;  
18 is that correct?

19 A. My understanding is the contribution that the  
20 City -- yes, was less than the City would have otherwise  
21 had to pay.

22 Q. Now, did that savings -- did any of that savings,  
23 the \$13 million, inure to the benefit of members?

24 A. Of -- I'm sorry -- what?

25 Q. Of individuals, employees, retirees, members of  
26 the plan.

27 A. Yes.

28 Q. Could you explain how that savings inured to the

1 benefit of the members?

2 A. One is that -- again, my non-actuary  
3 understanding, it assists the funding status of the plan,  
4 number one. Number two -- which I think, by the way,  
5 helps everyone, retirees and current employees. Secondly,  
6 the \$13 million that the City did not have to pay was a  
7 critical amount in our budget, as the City Manager  
8 testified, for this fiscal year, which allowed for a  
9 budget that includes no restoration -- some modest  
10 restoration of services. So, yes, I believe there  
11 absolutely was a benefit to that action.

12 MR. HARTINGER: Objection. Cutting off the  
13 witness.

14 MR. SILVER: I didn't mean to.

15 BY MR. SILVER:

16 Q. Let me be more specific. Did that transfer of  
17 funds into the general account impact the retirement  
18 contribution rate of individual employees, to your  
19 knowledge?

20 A. I don't believe it affected the employee  
21 contribution rate, to my knowledge.

22 Q. At the time of the recommendation -- let's go back  
23 to 2010 or 2011. The --

24 THE COURT: I think we'll take a break.

25 MR. SILVER: I only have two more questions, your  
26 Honor.

27 THE COURT: Two more questions?

28 MR. SILVER: Two, maybe three. Promise no more

1 than three.

2 BY MR. SILVER:

3 Q. At the time these recommendations to not  
4 distribute the SRBR funds were made, I think you've  
5 testified the country, and certainly this area, was in the  
6 midst of a serious economic downturn; is that correct?

7 A. That's correct.

8 Q. Would it be fair to say that that economic  
9 downturn affected not only the City but its residents and  
10 employees and retirees as well?

11 A. Yes.

12 MR. SILVER: I have no further questions.

13 THE COURT: Will there be redirect?

14 MR. HARTINGER: Yes, your Honor.

15 THE COURT: I have a few comments before we take  
16 our noon break just to clarify our schedule concerning the  
17 September and October dates we discussed at the outset.

18 I'll just make it explicit that the Court will  
19 advise you ahead of time whether it will convene on  
20 October 10. I had that in mind. I thought I should make  
21 that explicit. The matter will be submitted on October  
22 10.

23 The motion to strike by the Retired Employees  
24 Association -- I think Sapien joined in that; is that  
25 correct, Mr. Platten?

26 MR. PLATTEN: I believe so.

27 THE COURT: In connection with the Figone  
28 testimony?

1 MR. PLATTEN: Yes.

2 THE COURT: That motion is denied.

3 MR. PLATTEN: Thank you, your Honor.

4 THE COURT: I understand that the POA will not be  
5 asking for a ruling on your request for judicial notice.

6 MR. ADAM: Correct.

7 THE COURT: And AFSCME will be asking for a ruling  
8 only as to the July 16 request.

9 MR. PATERSON: That's correct, your Honor.

10 MR. SILVER: Excuse me, your Honor. We also made  
11 a motion to strike the direct testimony of Ms. Erickson as  
12 well.

13 THE COURT: I believe that was ruled on at the  
14 time. I reserved on the motion concerning Ms. Figone's  
15 testimony.

16 MR. SILVER: I apologize.

17 THE COURT: We're in recess until 1:30.

18 (At 12:00 p.m., a recess was taken  
19 until 1:30 p.m. of the same day.)

20 THE COURT: Mr. Gurza, you're still under oath.  
21 Mr. Hartinger.

22 MR. HARTINGER: Thank you, your Honor.

23

24

REDIRECT EXAMINATION

25 BY MR. HARTINGER:

26 Q. Mr. Gurza, if you can turn to Section 1508-A of  
27 Measure B, which has been entered into evidence as Exhibit  
28 5000.

1 A. Yes.

2 Q. This section we've had some testimony about  
3 concerns what's been referred to as tier two.

4 A. Yes.

5 Q. You testified about the implementation of tier two  
6 with the work force, but I think it's not clear with  
7 respect to the fire union whether a tier two has been  
8 implemented. Can you tell us whether it's been  
9 implemented for the fire union?

10 A. It has not.

11 Q. Why not?

12 A. Because we have been unable to reach agreement  
13 with San Jose Fire Fighters' Union, and they are the only  
14 bargaining unit in the City that does not have a tier two.

15 Q. So the fire union -- the fire union is the only  
16 union in the City that remains with respect to  
17 implementation of tier two?

18 A. That's correct.

19 MR. ADAM: Objection, your Honor. Asked and  
20 answered.

21 THE COURT: Overruled.

22 BY MR. HARTINGER:

23 Q. If I could have you move to Exhibit 231. Exhibit  
24 231 is a partial transcript from a fire fighter  
25 negotiation involving Arbitrator Gerilou Cossack. Do you  
26 have it before you?

27 A. I do.

28 Q. You will recall on your cross-examination that you

1 were asked about the statement that you made and you  
2 wanted to place it in context. Let me ask you to explain  
3 the context of the statements made at the arbitration by  
4 you as elicited on your cross-examination.

5 A. I do believe the context is important. This was  
6 an interest arbitration involving the San Jose Fire  
7 Fighters' Union. One of the key proposals by the union  
8 was a retirement benefit enhancement retroactive one.  
9 When I say retroactive, I mean covering employees' prior  
10 years of service. And in this excerpt, I was trying to  
11 convey to the arbitrator the importance and the  
12 significance of awarding retirement benefits because the  
13 City was opposing the granting of that retirement benefit.  
14 That's the context in which I was talking. Referenced San  
15 Diego, for example, and the challenges they had with their  
16 funding status of the plan.

17 And we had always been concerned about arbitrators  
18 making decisions on something as classic as a retirement  
19 benefit. That's the context of my comments.  
20 Unfortunately, the arbitrator imposed the retired benefit  
21 enhancement.

22 MR. HARTINGER: Your Honor, I would like to mark  
23 for identification as next in order -- hopefully my  
24 colleague can help me with that number -- 6070, letter to  
25 Debra Figone dated October 28, 2011, from the San Jose  
26 Retired Employees' Association.

27 (Defendants' Exhibit 6070 was marked  
28 for identification.)

1 MR. HARTINGER: We've run out of copies, your  
2 Honor.

3 MR. PLATTEN: I'll donate mine, your Honor.

4 MR. HARTINGER: How gracious of you.

5 MR. PLATTEN: It is. Thank you.

6 MR. HARTINGER: May I approach the witness, your  
7 Honor?

8 THE COURT: Yes.

9 BY MR. HARTINGER:

10 Q. Mr. Gurza, do you recognize this document?

11 A. I do.

12 Q. Can you explain what it is, briefly.

13 A. Yes. It is a letter from the San Jose Retired  
14 Employees' Association to the City Manager dated October  
15 28, 2011. You'll see the subject line is Retired Reform  
16 Negotiations. And so it was related to the topic that was  
17 being discussed in San Jose about retirement.

18 Q. Is this a true and correct copy of the document  
19 kept by the City in the ordinary course of business?

20 A. It is.

21 MR. HARTINGER: Your Honor, we would move this  
22 exhibit into evidence.

23 MR. SILVER: First of all, it's beyond the scope  
24 of examination. Second of all, it's completely  
25 irrelevant. It's really an offer and compromise, and it's  
26 certainly irrelevant to any of the issues in this case.

27 THE COURT: What is this offered to prove?

28 MR. HARTINGER: Well, we've had proposals from

1 labor organizations reflecting the mutual understanding of  
2 the parties that various aspects of Measure B are  
3 negotiable, and as you know, one of our arguments on  
4 behalf of the City is that when you're negotiating over a  
5 benefit, that means that the benefit is not vested and  
6 irrevocable.

7 Here we have a letter sent on behalf of the  
8 retirees' association indicating that they are willing to  
9 compromise and reduce the COLA and reduce SRBR benefits.  
10 At the same time, they're contending here those are vested  
11 rights and they cannot change.

12 MR. SILVER: This is not a recognized employee  
13 organization. This is an organization that has no  
14 standing with the City. Second of all, the letter says  
15 they are not speaking on behalf of all retirees. I think  
16 individual retirees can waive some rights, but, again,  
17 this is an offer by an organization to try to solve a  
18 problem and to avoid what we have today, to avoid this  
19 ballot measure.

20 THE COURT: Submitted?

21 MR. SILVER: Submitted.

22 THE COURT: I'm going to receive 6770. I hear  
23 what you're saying. I think those matters go to weight.

24 (Defendants' Exhibit 6770, previously marked for  
25 identification, was received in evidence.)

26 BY MR. HARTINGER:

27 Q. Mr. Gurza, can you very briefly explain how you  
28 understood the proposal with respect to COLA.

1           A.    Yes.  As indicated under number one in the letter,  
2    it was saying that certain individuals that were receiving  
3    pensions -- and what they describe as the top, the 33 and  
4    a third percentile, the cost of living adjustments would  
5    be benchmarked to the CPI with a two percent cap, and  
6    that's contrasted with the current three percent that all  
7    retirees --

8           MR. SILVER:  I'm going to object.  The document  
9    speaks for itself.  We don't need Mr. Gurza to read it.

10          MR. HARTINGER:  I'll move on to the next question.

11          THE COURT:  Very good.

12    BY MR. HARTINGER:

13          Q.    With respect to SRBR, without reading the  
14    document, can you briefly summarize your understanding of  
15    what the retirees' association was proposing to the City?

16          MR. SILVER:  Same objection.  The document speaks  
17    for itself.

18          THE COURT:  Overruled.

19          THE WITNESS:  In brief, it was suggesting that 40  
20    percent of the current ballots in SRBR be allocated to  
21    reduce the unfunded liability of retiree health care.  It  
22    has other provisions, but without reading the document,  
23    that was a significant one.

24    BY MR. HARTINGER:

25          Q.    And the proposal, I take it, was not accepted?

26          A.    No.  We did meet with the San Jose Retired  
27    Employees' Association, considered it as we were looking  
28    at the ballot measure, but the changes we made were not

1 the ones they suggested here.

2 Q. Next topic. You testified under cross-examination  
3 about the City picking up unfunded liabilities in the  
4 past, and I just want to make sure the record is clear.  
5 Was there ever a period of time -- again, prior to  
6 2010-2011 when we know that there have been increased  
7 employee contributions to unfunded liabilities -- prior to  
8 that time, was there ever a period where there were  
9 increased contributions by employees to unfunded  
10 liabilities?

11 A. Yes.

12 Q. Can you explain.

13 A. The police and fire employees are paying and  
14 continue to pay a small portion of unfunded liability that  
15 relates to an enhanced benefit that was awarded in  
16 arbitration in the 1997 time frame by Arbitrator Bogue,  
17 and that proceeding resulted in employees being required,  
18 through a subsequent arbitration award, to pick up a small  
19 portion of unfunded liability that I believe is still  
20 being paid, has not been paid off yet.

21 Q. Next topic. If you could go back to Exhibit 5000.  
22 And I want to take you to charter Section 1512-A. You  
23 were asked on cross-examination about, quote, unquote, the  
24 implementation of Section 1512-A, and I want to ask you  
25 about that.

26 Have you -- has the City, quote, unquote,  
27 implemented Section 1512-A with respect to minimum  
28 contributions?

1           A.    There is no need to implement, from our  
2 perspective, 1512-A because we are already doing that.  
3 We're already paying 50/50, 50 percent ratio of the cost  
4 of retiree health care.

5           Q.    Same question with respect to the low-cost plan,  
6 Section 1512-A(c), low-cost plan. You were asked on  
7 cross-examination about when you were going to implement  
8 this. Can you explain whether you're implementing  
9 1512-A(c)?

10          A.    Yes. That 1512-A(c) is currently in effect even  
11 before Measure B. So the high deductible plan that we  
12 have been discussing at length would have gone into effect  
13 as low-cost plan irrespective of 1512-A(c).

14          Q.    And I want to make sure the record is clear. Let  
15 me ask you. Prior years where there were other low cost  
16 plans, can you briefly give us the chronology of prior  
17 years where there were other low cost plans in place.

18          A.    There always is a low price plan. Every year  
19 there's a plan that has the lowest premium. That,  
20 thereby, defines the low price plan. What has been  
21 different, I would say, in the last five years or so as we  
22 have negotiated health care cost savings, that has  
23 resulted in plan design changes that have not always been  
24 in effect for alternative employees all at the same time.  
25 But despite that, whatever premium is the lowest has  
26 become the low price plan.

27          Q.    Can you explain some of the prior -- strike that.

28                Can you explain the chronology of some plan design

1 changes that have occurred in the last, say, five, six  
2 years?

3 A. For many years, the lowest price plan was the  
4 Kaiser plan that had a zero co-pay that I had testified  
5 to, I believe, yesterday. Beginning in 2008, we began to  
6 look at ways to reduce the increases in health care.  
7 Again, I wouldn't say reduce the cost of health care  
8 because it continues to go up, but to mitigate the  
9 increases, so we made plan design changes. So, for  
10 example, we went in 2008, I believe, from a zero co-pay to  
11 a \$10 co-pay for Kaiser. However, that was not in effect  
12 for alternative employees all at the same time, but it was  
13 the low price plan.

14 The next change we made, I believe, was in 2011,  
15 approximately, where we then moved from a Kaiser plan with  
16 a \$10 co-pay to a Kaiser plan that had a \$25 co-pay. That  
17 became the low price plan. Again, that was not in effect  
18 all at the same time with all bargaining units, but it  
19 nonetheless was the lowest price plan available to active  
20 employees.

21 After that, in 2013 was when we moved to the  
22 Kaiser deductible plan.

23 Q. And in those instances when there were other,  
24 again, low cost plans, did those set the benchmark for the  
25 subsidy for retirees?

26 A. Yes. It is, under the municipal code, the lowest  
27 price plan. Again, very simply, it's which plan available  
28 to active employees has the lowest premium. That is how

1 that has been interpreted in those years.

2 Q. I want to --

3 THE COURT: Is that the end of that topic?

4 MR. HARTINGER: Yes.

5 THE COURT: Mr. Gurza, tell me what you mean when  
6 you say a plan is not in effect for alternative employees  
7 at the same time.

8 THE WITNESS: Yes, your Honor, I would be happy to  
9 help clarify. This is a little bit from memory. For  
10 example, the \$10 co-pay plan, that was one thing that was  
11 awarded by an arbitrator. I think it was Arbitrator  
12 Cossack in the arbitration with the San Jose fire  
13 fighters. However, that wasn't in effect at the same time  
14 for police officers. That's just an example. So even  
15 though that was granted to the City for fire fighters, not  
16 for police officers, it is a lowest price plan. That's  
17 what I mean.

18 We have 11 bargaining units. We may make a change  
19 to actives where in one particular year maybe we made the  
20 move with five bargaining units one year and then maybe  
21 the balance of a move the next year. But nonetheless,  
22 it's still the low price plan, if that helps.

23 THE COURT: Yes. That does help.

24 So let me be sure I understand this. Let me ask  
25 you, with respect to Exhibits 57 and 58, why are there two  
26 charts instead of one?

27 THE WITNESS: That's exactly a great example  
28 because not all the plans are available to alternative

1 employees at the same time. We've had other years like  
2 this where, for active employees, there will be a chart  
3 that shows here are the plans available to these group of  
4 active employees, and another chart, like in this year,  
5 where here are the options for another group of employees.  
6 There have been other years like this. Despite that, we  
7 look at all the premiums to see which is the lowest to any  
8 active employee, and that sets what I refer to as the  
9 subsidy for retiree health care.

10 THE COURT: Thank you. Go ahead.

11 BY MR. HARTINGER:

12 Q. If I could have you move to Exhibit 5107.

13 MR. HARTINGER: Your Honor, 5107 is a stipulation  
14 and order re implementation of Measure B in connection  
15 with trial, and I'm not sure whether this is even -- I'll  
16 move it into evidence at this time.

17 MR. ADAM: No objection. We stipulated to it.

18 MR. PATERSON: I don't have an objection. I'm  
19 wondering if it was already filed with the Court.

20 MR. HARTINGER: It has been filed.

21 THE COURT: 5107?

22 MR. HARTINGER: Correct, your Honor.

23 THE COURT: I'm receiving 5107.

24 (Defendants' Exhibit 5107, previously marked for  
25 identification, was received in evidence.)

26 BY MR. HARTINGER:

27 Q. So Mr. Gurza, sticking with 1512-A, this exhibit  
28 references existing -- the implementation subject to any

1 existing or future union agreements. Can you explain  
2 that.

3 A. Yes. The intent of this section is to make clear  
4 that the City intends to abide by agreements that we've  
5 reached on the funding of retiree health care, as I  
6 described earlier today, for example, and yesterday, the  
7 recent agreements we reached with nine bargaining units.  
8 We fully intend to honor those agreements. That's what  
9 this section also -- this section states.

10 Q. There was reference to another agreement that had  
11 a cap attached to it.

12 A. Yes.

13 Q. Can you explain that.

14 A. Those are with police and fire. We are also  
15 ramping up for the full annual retired contribution, but  
16 there is a cap of ten percent that has not yet been  
17 reached. Again, we intend to and have honored those  
18 agreements as was elicited through my testimony. We had a  
19 recent arbitration with the POA, and neither the City nor  
20 the POA sought to make changes to that funding schedule.

21 Q. Notwithstanding Measure B, now this is a court  
22 order that the City will honor any existing or future  
23 union agreements relative to this section?

24 A. That's correct.

25 MR. HARTINGER: That's all I have, your Honor.

26 THE COURT: Anything else for Mr. Gurza?

27 MR. ADAM: Yeah.

28

## REXCROSS EXAMINATION

1  
2 BY MR. ADAM:

3 Q. Mr. Gurza, Mr. Hartinger asked you about the  
4 association -- the police officers and fire fighters  
5 paying certain UAL in relation to the supplemental Bogue  
6 award. Do you recall that?

7 A. I do.

8 Q. And you recall Mr. Lowman testifying?

9 A. Yes, I do.

10 Q. Do you recall -- I think it was the only instance  
11 where he made his own chart, his own visual chart with a  
12 black marker and various dotted lines?

13 A. I do recall that he drew a chart, yes.

14 Q. Do you recall him drawing a little subsection of  
15 that chart that he stated reflected the unfunded  
16 liability, the prior contributions resulting from the  
17 Bogue award? Do you recall that?

18 A. I recall his discussion and his chart, yes.

19 Q. And the unfunded liability that you're talking  
20 about from the Bogue award is because the Bogue award was  
21 implemented retroactively, if you like; right?

22 A. It was implemented retroactively in several  
23 respects.

24 Q. One of the respects was it increased pensions for  
25 police and fire fighters from 75 to 80 percent; right?

26 A. That's correct.

27 Q. And the decision came out in, I believe, 1997;  
28 right?

1           A.    I have to refresh my recollection.  I think the  
2 original award came out in '96 and the supplemental in  
3 '97, but I would have to look at the dates again to be  
4 sure.

5           Q.    I believe it was '97 and '98.  But whatever year  
6 it was, the award actually said the benefit should be  
7 implemented on a date prior to the issuance of the award;  
8 right?

9           A.    That's correct.

10          Q.    So the unfunded liability that's being paid by the  
11 employees is the normal cost they would have been paying  
12 had they been actually funding the benefit from when it  
13 first went into effect; isn't that right?

14          A.    My understanding is that because the employees  
15 weren't paying their normal cost, it created an unfunded  
16 liability, so, therefore, the supplemental award directed  
17 or ordered that they pay that portion of the unfunded  
18 liability.

19          Q.    Which was equivalent to the normal cost they would  
20 have paid had they been paying the benefit from day one;  
21 right?

22          A.    From an actual calculation method, I'm not sure  
23 how they ended up calculating it.  Again, it wasn't paid  
24 all at once.  It was amortized as other unfunded  
25 liabilities are over time.

26          Q.    This is reflected in the arbitrator's award, as  
27 you said; right?

28          A.    I believe it was covered under the supplemental

1 award.

2 Q. Mr. Hartinger showed you 1512-A of Measure B,  
3 which is the section dealing with the implementation of  
4 the full funding of the return of benefit. Do you recall  
5 that?

6 A. I do.

7 Q. You testified when I was cross-examining you about  
8 the deal the City recently cut with some Federated  
9 associations. Do you recall that?

10 A. I do.

11 Q. And whereas under a strict 50/50 full funding, the  
12 employees and the City would each have had to pay 11, the  
13 City and the employees negotiated whereby they'd pay  
14 something less than that at the moment; right?

15 A. Well, to clarify, we're paying less than the ARC,  
16 the Annual Required Contribution. We're still abiding by  
17 the cost sharing, the 50/50. As I tried to describe, it's  
18 50/50 of different numbers.

19 Q. But doesn't Measure B require the employees at  
20 least to be fully paying the ARC?

21 MR. HARTINGER: Objection. Calls for legal  
22 conclusion.

23 THE COURT: Sustained.

24 BY MR. ADAM:

25 Q. You testified with respect to the low-cost plan  
26 that the City -- the changes the City has made to the  
27 low-cost plan have all been pursuant to authority it had  
28 in the municipal code and the changes are not as a result

1 of Measure B. Is that your testimony?

2 A. That is.

3 Q. So if you know, why did the City feel the need to  
4 put the low-cost plan language in Measure B?

5 MR. HARTINGER: Objection. Lack of foundation.

6 THE COURT: Overruled.

7 THE WITNESS: I really can't speak to all the  
8 reasons that every particular provision was put into  
9 Measure B. I can say, however, that the cost sharing --  
10 it was decided that the cost sharing would move from the  
11 municipal code and be inserted into the City Charter  
12 itself, however, without changing the cost-sharing method  
13 that was in the municipal code.

14 MR. ADAM: Move to strike the "however, without  
15 changing" thereafter, your Honor, on the basis no question  
16 pending.

17 THE COURT: Denied. It's part of the answer.

18 BY MR. ADAM:

19 Q. Mr. Gurza, you testified to the recent chronology  
20 in the last five years of the lowest cost plan a few  
21 moments ago. Do you remember that?

22 A. I do.

23 Q. And so it sounds like the City went generally --  
24 and again, as you explained it, this is not everybody  
25 moving at once. This is some people moving this year,  
26 some people moving a different year. We went from a  
27 Kaiser zero co-pay to a Kaiser \$10 co-pay in 2008; right?

28 A. Yeah. That's my recollection. It was

1 approximately 2008.

2 Q. Now, was that change more or less costly to the  
3 employees? It added cost to the employees, didn't it?

4 A. It depends on what you mean by cost.

5 Q. They had to pay for -- in terms of a percentage  
6 for a premium?

7 A. For active employees, the cost sharing of the  
8 premium for low price plan, I can't recall whether we made  
9 a change at the same time.

10 Q. Let me ask it this way. Does any active employee  
11 receive 100 percent City payment of the lowest cost  
12 plan --

13 A. No.

14 Q. -- as part of their working conditions?

15 A. No.

16 Q. They all receive some percentage paid by the City;  
17 right?

18 A. Yes.

19 Q. Maybe 85 percent, maybe 90; somewhere in that  
20 ballpark?

21 A. Currently --

22 Q. Active employees.

23 A. I'm sorry. I wasn't sure if you asked me back in  
24 2008 or 2013.

25 Q. 2008.

26 THE COURT: One at a time.

27 MR. ADAM: Sorry.

28 THE COURT: Your turn, Mr. Adam. Question.

1 BY MR. ADAM:

2 Q. We're still on the move from the Kaiser zero plan  
3 to the Kaiser \$10 plan in 2008. In 2008, employees --  
4 active employees were having to pay some portion of the  
5 premium for the lowest cost plan; right?

6 A. Yes.

7 Q. So my question was -- let me give you a different  
8 question. Was the Kaiser \$10 co-pay plan a less expensive  
9 or a more expensive plan than the Kaiser zero co-pay plan?

10 A. From a premium perspective?

11 Q. Yeah.

12 A. The \$10 co-pay was less expensive than the zero  
13 co-pay.

14 Q. Is the same true when the City, in 2011, moved to  
15 the \$25 co-pay plan, less expensive?

16 A. Less expensive than the \$10 co-pay, yes. As a  
17 premium, yes.

18 Q. Same with the Kaiser 1500 deductible as opposed to  
19 the \$25 co-payment. Less expensive plan; right?

20 A. Yes. The premium is less than the other, yes.

21 Q. Judge Lucas asked you about Exhibits 57 and 58.  
22 That's the 2013 premium rates for active employees; right?

23 A. Yes.

24 Q. So the active police officers and fire fighters  
25 have a different array of plans that are available to them  
26 than do other employees; right?

27 A. That's correct.

28 Q. And, in fact, there's a band across the top of the

1 chart that shows which of the two exhibits is related to  
2 police and fire and which is non-police and fire?

3 A. Yes. Correct.

4 Q. And the police and fire lowest cost plan is a more  
5 expensive lower cost plan than is the one available to  
6 non-police and fire employees; is that correct?

7 A. Yes. And the cost sharing is also different.

8 Q. Isn't it true that the police and fire retirees  
9 have received the plan that the non-police and fire  
10 actives are receiving as their lower cost plan?

11 A. Yes. As I believe I testified, whichever plan is  
12 the lowest premium available to active employees becomes  
13 the low price plan for retiree health care purposes.

14 MR. HARTINGER: Thank you, Mr. Gurza.

15 THE COURT: Yes.

16  
17 RE CROSS EXAMINATION

18 BY MR. PLATTEN:

19 Q. Mr. Gurza, I just want to have you focus on one  
20 thing, that is, the decision by Arbitrator Cossack in  
21 2007. You discussed the benefit enhancement that was  
22 awarded by Arbitrator Cossack. You said the enhancement  
23 was retroactive?

24 A. Yes.

25 Q. You're referring, of course, to the fact that the  
26 enhancement required all prior service to pick up on the  
27 City's allocated side of the obligation of contributions;  
28 correct?

1 A. That's not what I was referring to.

2 Q. The award came out in August 2007; correct?

3 Thereabouts?

4 A. Yes.

5 Q. The benefit enhancement became effective July of  
6 2008; correct?

7 A. I'd have to look at it again, but that sounds  
8 approximately correct.

9 Q. There had been, prior to July 1, 2008, no normal  
10 cost contributions by either the City or the employees for  
11 that benefit enhancement?

12 A. That's correct.

13 Q. So any obligation, if there was not sufficient  
14 assets in the plan to cover the cost impact of the benefit  
15 enhancement effective July 1, 2008, would have been prior  
16 service costs which were allocated solely to the City?

17 A. I have to look at it. I don't think that was a  
18 specific proposal in that arbitration.

19 Q. But you understand that was the effect?

20 A. The effect of the contribution rates that were  
21 established to pay for that benefit at that time would  
22 allocate only the normal cost portion to employees.

23 MR. PLATTEN: Thank you. Nothing further.

24 THE COURT: AFSCME?

25 MR. PATERSON: No questions, your Honor.

26 THE COURT: Retired employees?

27 MR. SILVER: No questions, your Honor.

28 THE COURT: Anything else for Mr. Gurza?

1 MR. HARTINGER: Nothing further, your Honor.

2 THE COURT: Thank you, Mr. Gurza. You may step  
3 down.

4 MR. ADAM: Your Honor, I at least have a signed  
5 stipulation on exhibits. I only have one copy, however.  
6 It's signed by all counsel. I guess we have a typo that  
7 needs to be addressed.

8 THE COURT: Okay. If there's a typo, perhaps we  
9 can agree it's a typo.

10 MR. PATERSON: Your Honor, I don't think we should  
11 let the perfect be the enemy of the good here so we would  
12 be willing to do that.

13 MR. SILVER: We will so stipulate.

14 THE COURT: Why don't we identify the typo,  
15 identify the correction, and have everybody say they're  
16 just fine with that.

17 MS. WEST: Amber West for POA. We've made some  
18 handwritten corrections to other items, and we can quickly  
19 do another handwritten correction and initial as we have,  
20 if that's going to move things along quicker. Whatever is  
21 going to be easier for the Court.

22 THE COURT: Since it's now Friday afternoon, I  
23 suggest we do what needs to be done to finalize this right  
24 here and now.

25 MR. SPELLBERG: Your Honor, this is news to me  
26 that we have a typo. Can we finish with our witness? We  
27 have Mr. Bartel in the hall. We can do that after.

28 THE COURT: Okay.

1 THE CLERK: You do solemnly state, under penalty  
2 of perjury, that the evidence you shall give in this issue  
3 or matter shall be the truth, the whole truth, and nothing  
4 but the truth?

5 THE WITNESS: Yes, I do.

6 THE CLERK: Please state and spell your name for  
7 the record.

8 THE WITNESS: John, middle initial E, Bartel.  
9 Last name is B-A-R-T-E-L.

10  
11 JOHN E. BARTEL

12 called as a witness by counsel for the Defendant, being  
13 first duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MS. ROSS:

16 Q. Good afternoon, Mr. Bartel. Could you please tell  
17 us your occupation.

18 A. I am an actuary. I'm president of Bartel  
19 Associates.

20 Q. And as an actuary, do you have a particular area  
21 of expertise?

22 A. Yes. We work almost exclusively with public  
23 sector pension and retiree medical plans; sometimes for  
24 the plan sponsor, sometimes for the plan.

25 Q. And can you give us some idea of your educational  
26 background.

27 A. Yes. I have a bachelor degree from California  
28 State University at Chico. I also have passed a series of

1 exams with the Society of Actuaries.

2 Q. As a result of those examinations, do you have  
3 certifications?

4 A. Yes. I have professional designations of an  
5 associate in the Society of Actuaries, a fellow in the  
6 Conference of Consulting Actuaries. I'm a member of the  
7 American Academy of Actuaries.

8 MR. ADAM: Your Honor, sorry to interrupt counsel.  
9 Plaintiffs are prepared to stipulate the expert is a  
10 witness in this field.

11 MS. ROSS: You mean the witness is an expert in  
12 this field?

13 MR. ADAM: What did I say?

14 MR. SILVER: I think both, your Honor.

15 MR. ADAM: What they said, your Honor.

16 MR. PATERSON: AFSCME joins.

17 MR. SILVER: We join too, your Honor.

18 THE COURT: There's a special exception for Friday  
19 afternoons, I suppose.

20 I understand this to be a stipulation on the part  
21 of all plaintiffs that Mr. Bartel is an expert, and does  
22 the City accept this?

23 MS. ROSS: Yes, your Honor, we accept.

24 THE COURT: The Court accepts the stipulation. We  
25 can go on.

26 BY MS. ROSS:

27 Q. Mr. Bartel, are you familiar with the City of San  
28 Jose's retirement plans?

1 A. Yes, I am.

2 Q. Have you done prior work for the City of San Jose  
3 in connection with those plans?

4 A. Yes.

5 Q. Generally, what have you done?

6 A. We have reviewed the actuarial reports for the  
7 City, helping the City understand what other actuaries  
8 have said, and generally speaking, we also prepared the  
9 City's first GASB 45 actuarial valuation.

10 Q. Have you also testified in various interest  
11 arbitrations involving retirement benefits on behalf of  
12 the City?

13 A. Yes.

14 Q. Are you being paid for your work today?

15 A. Yes.

16 Q. What is your pay for this work?

17 A. My hourly rate is \$300 an hour.

18 Q. Are you familiar with what's called the SRBR, or  
19 the Supplemental Retirement Benefit Reserve, that is part  
20 of the San Jose retirement plan?

21 A. Yes, I am.

22 Q. And have you done anything in connection with this  
23 case to review records related to the SRBR?

24 A. Yes, I have.

25 Q. What have you done?

26 A. I have reviewed for the Federated plan the  
27 actuarial reports going back to implementation of the SRBR  
28 as well as looked at other documents prepared by both the

1 actuarial firm, and that was doing the valuation at the  
2 time as well as resolutions of the retirement system  
3 board.

4 Q. We've had some testimony about SRBR by -- I don't  
5 want us to repeat here. But could you just briefly  
6 describe the way that SRBR operates.

7 A. Yes. On the one hand, it's a complicated system,  
8 but on the other hand, relatively straightforward.

9 The way it works is investment return is  
10 calculated, and a portion of earnings in excess of the  
11 assumed rate of return are moved into the SRBR, the  
12 reserve, if you will. And that reserve, then, is used to  
13 provide benefits for retirees.

14 Q. And after having reviewed the City's SRBR, do you  
15 have any opinions as to actuarial issues posed by the  
16 operation of the SRBR?

17 A. Yes.

18 Q. What are they?

19 A. Well, first, the nature of an SRBR is -- unless it  
20 is appropriately funded, it is what I would refer to as a  
21 flawed system in that you pull excess assets out and there  
22 is no offsetting amount to go ahead and provide for those.  
23 So there is, as I would describe it -- and I think other  
24 actuaries would describe it as an asymmetric system.

25 Q. And what results when you have this asymmetry?

26 A. Two things really. Thing number one is, you're  
27 pulling assets out of the plan that are being used to  
28 provide for the benefits; and number two is the benefits

1 that are being provided are not included, typically --  
2 historically, this has certainly been the case for the  
3 City -- included in the actuarial valuation report, the  
4 contribution rate, if you will.

5 Q. And what happens, for example, in a time of  
6 unfunded liability when the SRBR amounts are being removed  
7 from the general retirement fund?

8 A. What happens if you have an investment return in  
9 excess of the assumed return, whether you have an unfunded  
10 liability or you don't, that excess is pulled off and  
11 creates a larger unfunded liability.

12 Q. You know Mr. Lowman, do you not?

13 A. Yes, that's correct.

14 Q. And he's an actuary you've worked with before?

15 A. Yes, that's correct.

16 Q. You and Mr. Lowman have even done work together on  
17 various papers and presentations?

18 A. We have presented at the same conference before,  
19 that is correct.

20 Q. And you've heard Mr. Lowman use the term  
21 "skimming" to describe SRBR?

22 MR. PATERSON: Objection. Hearsay.

23 THE COURT: Overruled.

24 THE WITNESS: Yes. He uses that term. He and his  
25 firm prepared a paper for the Society of Actuaries, and he  
26 uses that term in the paper, yes.

27 BY MS. ROSS:

28 Q. What is your view of the use of the term

1 "skimming" to describe SRBR?

2 A. I think it's quite accurate.

3 Q. Because?

4 A. Because you're taking investment return that would  
5 otherwise be used to mitigate the unfunded liability or to  
6 reduce contribution rates, skimming it off the top and  
7 providing supplemental or additional non-value benefits.

8 Q. Have you also heard Mr. Lowman make the statement  
9 or read the statement that the term "excess earnings" is a  
10 misleading term?

11 A. Yes.

12 Q. And what's your view about that statement?

13 A. I agree with that statement.

14 Q. Why do you agree?

15 A. Excess earnings sounds like there is -- sounds  
16 like it's not needed. It sounds like it is unnecessary to  
17 value the plan.

18 Q. And in what way is that misleading?

19 A. Well, the nature of an actuarial valuation, in  
20 particular when an actuary is setting what's referred to  
21 as the discount rate or the investment return assumption,  
22 knows that they will not get that investment return  
23 precisely in any particular year. Some years it will be  
24 higher and some years it will be lower.

25 So if in years when it is higher than the assumed,  
26 you skim off excess earnings, then those excess earnings  
27 can't be used to offset poor investment return. It makes  
28 it very difficult for the actuary to set the appropriate

1 discount rate or to even price the nature of this benefit.

2 Q. So earlier you said that you did a review of prior  
3 Federated and police and fire valuations and reports. And  
4 just give us a little more detail on that. Over what time  
5 period did you review these reports?

6 A. For Federated, we went back to the 1985 valuation  
7 as the SRBR was being established. For Federated -- and  
8 reviewed valuation reports from there, up through the most  
9 recent. And for police and fire, we reviewed the 2001 and  
10 subsequent valuation reports.

11 MR. PATERSON: Your Honor, I object to this  
12 testimony. I took Mr. Bartel's deposition, and I asked  
13 him the reports he had reviewed, and he had only gone  
14 back -- with respect to the Federated plan, he had only  
15 gone back to 2005, so I asked him, "For the Federated  
16 plan, the extent of your knowledge is just back to 2005?"  
17 And he said, "That's correct."

18 THE COURT: What are you asking me to do?

19 MR. PATERSON: Exclude testimony related to  
20 anything prior to 2005 because I had no opportunity to  
21 depose him with respect to his knowledge or understanding  
22 prior to 2005.

23 THE COURT: All right. I understand that you  
24 might object to a question in the future on that basis.

25 Go ahead, Ms. Ross.

26 BY MS. ROSS:

27 Q. In your review of the Federated and the police and  
28 fire valuations, did you come to any conclusions about the

1 costing of the SRBR?

2 A. Yes.

3 MR. PATERSON: Objection. Vague as to time frame,  
4 your Honor.

5 THE COURT: Overruled.

6 THE WITNESS: Yes, I did. Specifically, for the  
7 Federated plan in the initial analysis prepared by the  
8 actuary at that time, there was little rigor in the  
9 calculation of what the impact on the contribution rates  
10 would be. So there was a modest contribution calculation.  
11 In no way did it represent the ultimate cost or any  
12 prefunding associated with the plan change.

13 MR. PATERSON: Your Honor, may I request a  
14 standing objection with respect to testimony that predates  
15 2005?

16 THE COURT: I don't understand what that means.  
17 So as I mentioned before, my concern about a standing  
18 objection is clarity of the record, so I think it's better  
19 that you make your objection.

20 MR. PATERSON: In that case, your Honor, I move to  
21 strike that response.

22 THE COURT: Denied.

23 BY MS. ROSS:

24 Q. With respect to the Federated plan, did you see in  
25 the actuarial reports that at some point, the actuaries  
26 did begin to apply a cost to the SRBR?

27 A. Yes.

28 MR. PLATTEN: Objection. Question is vague as to

1 time. What report? What plan?

2 THE COURT: Please rephrase the question.

3 BY MS. ROSS:

4 Q. In respect to the Federated plan, did you see at  
5 some time that the actuaries did begin to apply a cost to  
6 the SRBR?

7 A. Yes. Beginning in the 2011 -- the June 30, 2011,  
8 valuation, the current actuaries were -- the actuaries in  
9 that valuation began to include a cost associated with  
10 SRBR.

11 Q. And did you see that in any prior valuation that  
12 you reviewed?

13 A. We did not.

14 Q. Same question as to police and -- police and fire  
15 plan. Was there a point when you saw that the actuaries  
16 did begin to apply a cost to the SRBR?

17 A. Yes. Beginning in the 2000 valuation, again, for  
18 police and fire, June 30, 2011, the actuaries begin to  
19 include a cost for SRBR. The cost that they included for  
20 both police and fire and Federated was, in my opinion, not  
21 the full cost of the benefit, but it was valued on what I  
22 would refer to as a term cost basis, short term nature of  
23 the anticipated cost rather than a present value of  
24 anticipated future cost.

25 Q. In your view, what is the effect of not properly  
26 costing the SRBR benefit?

27 A. You drive future contribution rates higher. You  
28 either anticipate a cost now or you see it as it comes in.

1 It is the very nature of a retirement system that you  
2 prefund the benefits that are provided by the system to  
3 allow for the best way for money to be set aside for  
4 participants.

5 Q. I want to ask you a couple question about police  
6 and fire. And there's an aspect to police and fire SRB  
7 called the claw back. Could you describe that.

8 MR. SILVER: Just for the record, I'd like to move  
9 to strike all of Mr. Bartel's testimony regarding the  
10 funding of the SRBR, as it's completely irrelevant to any  
11 issue in any case. Whether it was properly funded or not,  
12 it doesn't matter. If it was a vested right that was  
13 improperly funded, it's still a vested right.

14 MR. PLATTEN: Plaintiffs Sapien join in that  
15 objection, your Honor. Whether or not the actuaries do  
16 their job in the way that Mr. Bartel agrees with or not,  
17 that's not relevant.

18 MR. ADAM: POA joins.

19 MR. PATERSON: AFSCME joins. The decision to pay  
20 for a cost of benefit is outside the realm of actuary  
21 decision. It's a matter of policy.

22 THE COURT: Denied. I think the objections take a  
23 view of relevance that may be more meaningful to you who  
24 know a whole lot more about all the factual issues in this  
25 case than I do. I don't think it is appropriate to strike  
26 this material from the record.

27 Go ahead, Ms. Ross.

28 BY MS. ROSS:

1 Q. Mr. Bartel, again, could you please describe the  
2 aspects of the police and fire plan SRBR that's called the  
3 claw back.

4 A. Yes. The claw back -- referred to as a claw back  
5 allows for when the City has a contribution due to poor  
6 investment earnings, allows for a portion of that  
7 contribution to be paid through the SRBR, through the  
8 reserve.

9 Q. What's your view of the effectiveness of the claw  
10 back in assisting with the funding of the SRBR?

11 MR. PLATTEN: Objection, your Honor. That is not  
12 relevant.

13 MR. PATERSON: AFSCME joins.

14 MR. ADAM: POA joins.

15 MR. SILVER: Retirees join.

16 THE COURT: Overruled.

17 BY MS. ROSS:

18 Q. You can answer.

19 A. It is at very best a very, very modest impact.  
20 Some people would refer to the order of magnitude as de  
21 minimis relative to the total amount going into the SRBR.

22 Q. Is there, within the actuarial community, a  
23 particular focus on SRBR funds at this time?

24 A. Yes, there is.

25 Q. What is the nature of that focus?

26 MR. SILVER: Objection. Irrelevant, your Honor.

27 THE COURT: Overruled.

28 THE WITNESS: The nature is very simple. It's a

1 recognition that all benefits should be valued and  
2 included in the valuation. So the focus is to include a  
3 calculation of the contribution rate associated with the  
4 SRBR as part of contributions.

5 MS. ROSS: Thank you.

6 THE COURT: POA?

7 MR. ADAM: No questions, your Honor.

8 THE COURT: Sapien?

9 MR. PLATTEN: Briefly, your Honor.

10  
11 CROSS-EXAMINATION

12  
13 BY MR. PLATTEN:

14 Q. Mr. Bartel, you said there is a focus now on  
15 SRBR-type benefits. That's a focus of recent origin?

16 A. I think it's been a focus over the last decade or  
17 so, gradually building.

18 Q. You testified that within the last decade when the  
19 SRBR went into effect, the police and fire plan -- that  
20 the actuary for the plan at the time did value the cost of  
21 that benefit for the employer's rate?

22 A. What they did was prepared a analysis, but the  
23 analysis did not fully price SRBR. What it priced was the  
24 impact of pulling out the initial reserve out of the  
25 general reserve into the SRBR.

26 Q. In your view, that simply was not sufficient?

27 A. Yes, that's correct.

28 Q. But it's true that through the course of the

1 years, the plan's actuary did assign the value of that  
2 benefit as a portion of the City's contribution?

3 A. Beginning in 2011, yes.

4 Q. One of the upshots of your testimony is that if  
5 you don't adequately fund, through normal contributions,  
6 the cost of benefits, then that becomes an unfunded  
7 actuarial liability which under either plan is an  
8 allocated obligation of the City's?

9 A. Certainly is an -- it certainly is a obligation.  
10 I would leave it up to the attorneys as to whether or not  
11 it's an obligation of the City or of employees.

12 Q. Do you understand currently that prior service  
13 obligations under the police and fire plan currently are  
14 an obligation allocated to the City?

15 A. I do.

16 MS. ROSS: Objection.

17 BY MR. PLATTEN:

18 Q. Do you understand that to be also the effect with  
19 the Federated plan?

20 MS. ROSS: Objection. Calls for legal conclusion.

21 THE COURT: Sustained.

22 BY MR. PLATTEN:

23 Q. Do you understand actuarially that that is  
24 actuarially valid as an obligation of the City's prior  
25 service cost for the Federated plan?

26 A. Yes.

27 MR. PLATTEN: Thank you. No further questions.

28 THE COURT: AFSCME?

1 MR. PATERSON: Thank you, your Honor.

2 THE COURT: So there's an objection that showed up  
3 on the record with respect to the first question about the  
4 police and fire plan. It shows up on the record after the  
5 answer.

6 Okay. Mr. Paterson.

7

8 CROSS-EXAMINATION

9 BY MR. PATERSON:

10 Q. In your opinion, the SRBR benefit is flawed  
11 because it's not prefunded. Is that, in essence, your  
12 view?

13 A. No. It's flawed because the nature of it is that  
14 it is asymmetrical. It sort of pulls off benefits, in  
15 conjunction with the fact that it is not prefunded.

16 Q. There are other plans that contain SRBR benefits.  
17 Yes?

18 A. Yes, that's correct.

19 Q. There's even a discussion about them within your  
20 field. Yes?

21 A. Yes, that's correct.

22 Q. So they are not uncommon, are they?

23 A. I would probably characterize them as in the  
24 significant minority of plans in the state, probably  
25 around the country. So depends upon your definition of  
26 the term "uncommon."

27 Q. But certainly San Jose plans are not alone in  
28 having an SRBR?

1 A. That's absolutely correct.

2 Q. And they're certainly not alone in not costing the  
3 benefit within the normal cost contributions associated  
4 with those plans?

5 A. They are not alone in costing the benefit at all,  
6 that's correct.

7 Q. And your opinion does not relate to whether the  
8 benefit provided under SRBR program is flawed, just that  
9 the cost of the benefit is not properly considered by the  
10 actuaries who advise the retirement board; is that  
11 correct?

12 A. That's correct.

13 MR. PATERSON: Thank you. No further questions,  
14 your Honor.

15 THE COURT: Retired employees?

16 MR. SILVER: Yes.

17

18 CROSS-EXAMINATION

19 BY MR. SILVER:

20 Q. Mr. Bartel, did I hear you correctly that you  
21 testified that the Federated SRBR was initially funded but  
22 it was your opinion that it was not funded adequately?  
23 Was that your testimony?

24 A. The initial prefunding was -- first I was unable  
25 to see in any of the actuarial reports how the funding  
26 numbers were determined. The only place I could see them  
27 were in board resolutions. The level of contribution was  
28 so small as to be surprising that anyone would think of it

1 as even remotely an adequate level of funding.

2 Q. Again, there was an effort to specifically fund  
3 the SRBR. It's just your testimony that that effort was  
4 very sparse?

5 A. Yes. I think that's right.

6 MR. SILVER: I have no further questions.

7 THE COURT: Anything else?

8 MS. ROSS: No, your Honor.

9 THE COURT: Mr. Bartel, you may be excused.

10 What else?

11 MR. SPELLBERG: The City has withdrawn its other  
12 witness, so we are done with witnesses other than moving  
13 documents into evidence, which I think we all need to do,  
14 and the City will be resting.

15 THE COURT: How about that stipulation?

16 MR. SPELLBERG: Your Honor, my suggestion is  
17 perhaps we break for five or ten minutes. I was unaware  
18 that there was yet another typo. Let us clean that up.  
19 Perhaps five or ten minutes, we can go forward.

20 THE COURT: So after that, will there be parties  
21 who are going to be offering documents?

22 MR. PATERSON: Yes, your Honor.

23 MR. ADAM: Yes.

24 THE COURT: So --

25 MR. PLATTEN: If I may, your Honor. Mr. Paterson  
26 had indicated earlier he might recall one witness for  
27 authentication. I don't know if that's going to be  
28 necessary or not. We ought to get that clear now.

1 MR. PATERSON: No, I will not recall witnesses for  
2 authentication in our case in chief. I think I indicated  
3 I would have a rebuttal witness. Not called for that  
4 exclusive purpose.

5 MR. SPELLBERG: Wait a minute. You told us there  
6 were no rebuttal witnesses yesterday.

7 MR. PATERSON: I never said that.

8 MR. SPELLBERG: Certainly how I understand it.

9 MR. PATERSON: Those words never left my mouth.

10 THE COURT: Who's going to call rebuttal  
11 witnesses?

12 MR. SILVER: Not us, your Honor.

13 MR. ADAM: Not the POA.

14 MR. PLATTEN: Not Sapien.

15 MR. PATERSON: AFSCME will call one rebuttal  
16 witness, your Honor.

17 THE COURT: Who will that be?

18 MR. PATERSON: Dr. Charles Allen.

19 THE COURT: May I know before the break so that I  
20 can be as prepared as possible to know what you're going  
21 to request of me? Would it make sense for you to tell me  
22 which documents you're going to offer?

23 MR. ADAM: POA has approximately --

24 MR. SPELLBERG: Your Honor, I can explain how I  
25 think it's going to work. Much as we did with the  
26 retirees' documents, there's a number of documents on each  
27 side that have been stipulated as to authenticity but not  
28 admissibility. And so what I was anticipating was each

1 side would move each document that's only authenticated,  
2 and then there would be a determination from you whether  
3 there's a substantive objection that would be sustained or  
4 overruled. I would only be guessing the total number of  
5 documents, but I would say maybe 70 or 80 between  
6 everybody.

7 MR. ADAM: As you said before, I think there's  
8 categories of documents.

9 MR. SPELLBERG: That's probably true.

10 THE COURT: So basically what I'm being asked to  
11 do is to do all that except the ruling now?

12 MR. ADAM: Go through the documents?

13 THE COURT: Right. I'm hopeful that your  
14 reference to categories means you're going to tell me  
15 there are five categories and here are the issues.

16 MR. ADAM: For all 70? I can give my categories  
17 for POA. I have a retirement system newsletter. I have a  
18 City of San Jose frequently asked questions.

19 THE COURT: Will you be telling me the exhibit  
20 designation?

21 MR. ADAM: 13. POA 13. POA 19 is a City  
22 frequently asked questions. I believe the POA 22 was  
23 admitted into evidence. I have a printout from the  
24 Mayor's website. That's POA 24. I have POA 30, which is,  
25 I believe, three recruitment fliers for the San Jose  
26 Police Department. That's it, your Honor, from the POA.

27 THE COURT: Will the Sapien plaintiffs be offering  
28 any additional documents?

1 MR. PLATTEN: No, your Honor.

2 THE COURT: Will AFSCME be offering any additional  
3 documents?

4 MR. PATERSON: So I understand, your Honor, I  
5 apologize. When you say "additional documents," do you  
6 mean documents outside of the stipulation, or do you  
7 mean -- there are documents that have been stipulated to  
8 for authenticity that I understand I need to move into  
9 evidence. Is that the nature of your request?

10 THE COURT: If there's a document you want in  
11 evidence that the stipulation doesn't put into evidence,  
12 then you should tell me about that now.

13 MR. PATERSON: Thank you, your Honor. I  
14 understand.

15 The answer is yes. AFSCME Exhibits 328 to 330,  
16 which are retirement system handbooks -- I don't know if  
17 you want more specificity -- 331 through 342, which are  
18 fact sheets.

19 By the way, all of these documents are contained  
20 in the stipulation as to authenticity but not  
21 admissibility.

22 343 to 345 are Federated system pamphlets. 326 --

23 THE COURT: Pamphlets.

24 MR. PATERSON: And brochures. They tell you about  
25 your retirement benefits. 346 through 357 are  
26 newsletters. One of those has already been admitted into  
27 evidence through Mr. Gurza's testimony. I cannot recall  
28 which one, but maybe we can clarify that in a moment.

1 THE CLERK: 347.

2 MR. PATERSON: 358 is a memorandum to all members  
3 of the Federated retirement plan from Edward Overton.

4 THE COURT: From?

5 MR. PATERSON: From Edward Overton, your Honor.

6 Going by categories again. 361 is another  
7 memorandum to retirees and beneficiaries. 362 is a letter  
8 to Federated retirement system members, also from Edward  
9 Overton. 365 and 366 are documents informing members of  
10 their status as not covered by Social Security when  
11 working under the Federated system. 371 is a invitation  
12 to seminars that indicate benefits in the Federated  
13 retirement system. Skipping, your Honor, to 410 through  
14 four -- 410, 411, 413, and 414 are annual reports of the  
15 Federated system. 441 is a memorandum to the mayor and  
16 City Council from Mark Danaj re retired health care dated  
17 5/27/2008. That's 441.

18 THE COURT: Memorandum to the mayor and the City  
19 Council from --

20 MR. PATERSON: Mark Danaj, D-A-N-A-J.

21 THE COURT: Who is that person?

22 MR. PATERSON: I understand that person is -- I  
23 don't have that information at my fingertips -- the human  
24 resources director.

25 451 is a memorandum to the City Council dated  
26 April 30, 1975, regarding summary of a proposed 1975 SRBR  
27 from Ferdinand Palla, P-A-L-L-A. Ferdinand.

28 Then, your Honor, 511 through 521 are retirement

1 system newsletters.

2 That is all, your Honor. There's a pending  
3 request for judicial notice as well, your Honor.

4 THE COURT: There's no overlap at all between the  
5 list you've just given me and the request for judicial  
6 notice?

7 MR. PATERSON: That's correct.

8 THE COURT: Retired board?

9 MR. SILVER: We have no documents we're offering.  
10 No more.

11 THE COURT: What are the People's objections?

12 MR. PATERSON: City's objections.

13 THE COURT: City's objections.

14 MR. HARTINGER: We'll take the People.

15 MR. SPELLBERG: Many of them are --

16 THE COURT: It's the Friday afternoon session.

17 MR. SPELLBERG: Many of the objections to those,  
18 your Honor, are going to be relevance that nobody came in  
19 and testified that they looked at these things, they saw  
20 these things, they relied on any of this. Some of the  
21 documents quickly cited by AFSCME are unsigned, or we  
22 don't know who the person is who signed it. That's the  
23 minority of them, obviously. The vast bulk of our  
24 objections are going to be relevance, based on what I just  
25 said.

26 MR. PATERSON: Your Honor, a large number of these  
27 documents isn't to say all, but I can tell you the  
28 exceptions if you like, your Honor. The retirement system

1 has -- Retirement Board has stipulated that they're  
2 business records, and that's contained in the stipulation  
3 that we filed with the Court and that your Honor  
4 entered --

5 THE COURT: That would address any hearsay  
6 objection but wouldn't address the relevance objection.

7 Is it the position of POA or AFSCME that there is  
8 evidence of reliance for these documents?

9 MR. ADAM: Your Honor, here would be my  
10 suggestion: The Court allow it in as to -- give it  
11 appropriate weight subject to the POA or whoever making  
12 the argument in briefing that the case law contemplates  
13 that all of these factors, such as representations of  
14 compensation, are relevant to determining whether or not  
15 there's vested right.

16 I don't believe the cases require you to rule on  
17 every witness to show that each and every document was  
18 relied on. When you have a flier by a police department  
19 saying, hey, you're guaranteed a three percent COLA, for  
20 example, I think the case law allows us to rely on that  
21 fact.

22 THE COURT: I hear what you're saying, so let me  
23 refine the question. Reliance, I suppose you could argue,  
24 would be inferred from circulation. And so is there  
25 record evidence that all these documents were distributed?

26 MR. PATERSON: Well, your Honor, certainly  
27 Ms. Figone testified that as a member she had received  
28 them, and certainly Mr. Gurza testified that they were

1 distributed. He didn't know exactly how, but they were --  
2 he understood they were distributed.

3 THE COURT: What's they?

4 MR. PATERSON: Sorry. The newsletter  
5 specifically, your Honor.

6 May I address another legal argument?

7 THE COURT: No. Let's proceed in an orderly  
8 fashion.

9 MR. SPELLBERG: Your Honor, that was not the  
10 testimony of either Mr. Gurza or Ms. Figone. Certainly  
11 Ms. Figone never talked about receipt or sending out  
12 retirement fliers or newsletters. What she talked about  
13 was that she had prepared memos that sometimes she sent  
14 throughout the City, and some of those memos have gone  
15 into evidence, but that is absolutely not the same thing  
16 we're talking about here.

17 Where to Mr. Gurza, his testimony was that he had  
18 been in that office for a short period of time; he had  
19 written an article in the newsletter which was showed to  
20 him. This is before electronic dissemination, and I don't  
21 remember whether we put them in the office as fliers for  
22 people to pick up or whether we sent them out. So he  
23 didn't recall.

24 THE COURT: He didn't recall the mode of  
25 distribution.

26 MR. SPELLBERG: Right. One of the suggestions he  
27 made was, we may have had them as fliers in the office and  
28 people would pick them up if they wanted them. I submit

1 that's not enough. That can't meet a reliance standard  
2 that it's been sent out to all the employees. Who knows  
3 if every single person picked them up? It's different if  
4 you sent out. You have at least an understanding that  
5 people at least did receive them.

6 MR. ADAM: Your Honor, if we need to put on a  
7 witness to establish that, in fact, members of the  
8 retirement system received the retirement system's  
9 newsletter, that police officers reviewed the City of San  
10 Jose retirement benefits frequently asked questions web  
11 page, if anybody read the mayor's web page, and if anybody  
12 looked at recruitment fliers prior to applying to the  
13 police department, we can do all that stuff.

14 MR. PATERSON: It's not legally necessary under an  
15 implied contract. Promises may be made by authorized  
16 representatives through handbooks and manuals and create  
17 implied contractual rights. That's Reque V Regents, 213  
18 Cal.App.4th 213. I know we talked about this case  
19 already. And also in Kashmiri versus the Regents of  
20 University of California, 2007 case, 156 Cal.App.4th 809.

21 Your Honor, we would submit that a large number of  
22 these handbooks and newsletters have already been admitted  
23 through the retirees' association case. We would submit  
24 these also should be admitted on the same basis.

25 THE COURT: Just a second. What are you saying is  
26 the holding of these cases relative to that discussion  
27 we're having now?

28 MR. PATERSON: I understood we were talking about

1 whether these documents supported or were relevant to the  
2 legal bases that plaintiffs are asserting here in terms of  
3 vested rights.

4 THE COURT: What is the holding of these cases  
5 that you believe eliminate the discussion we're having  
6 right now?

7 MR. SOROUSHIAN: Your Honor, Reque and Kashmiri,  
8 the courts found that an implied contractual right could  
9 be established through agency handbooks, pamphlets, and  
10 other communication of the sort.

11 THE COURT: Without record evidence that they were  
12 published? Is that what the case holds?

13 MS. ROSS: Your Honor, that case was decided on  
14 demurrer.

15 MR. SPELLBERG: It was an actual reliance case.

16 MS. ROSS: That was the demurrer. Then it was no  
17 factual record involved.

18 THE COURT: Right. It was a demurrer case, so  
19 that won't help me with this evidence issue.

20 MR. SPELLBERG: The issue there was actual  
21 reliance.

22 THE COURT: I know everybody has something to say,  
23 but if we don't get it in an orderly fashion, we won't get  
24 anything done.

25 So is there authority that says that there doesn't  
26 need to be record evidence of circulation or distribution  
27 in order for a document to be relevant for purposes of  
28 giving rise to an implied contract?

1 MR. ADAM: Your Honor, I'm not going to answer  
2 your question, but I'm going to point out that we have got  
3 a number of handbooks and similar materials that are  
4 already in evidence, and presumably the same arguments  
5 would have applied to those, but we didn't rule on  
6 individuals to say, yes, I reviewed this.

7 But, again, if the City's objection is that we  
8 haven't showed that anybody actually received the April  
9 2005 City of San Jose retirement system newsletter, we can  
10 address that with rebuttal witnesses.

11 MR. PATERSON: Your Honor --

12 MR. ADAM: I didn't think it would be a contested  
13 point.

14 THE COURT: I think that we do need to address  
15 some categories. It seems to me that if there is a  
16 stipulation that 19 and 24, for example, the FAQs and the  
17 website, there's a stipulation that they're authentic,  
18 then does that stipulation mean that they are what they  
19 purport to be, which is, they are part of the City's  
20 website?

21 MR. SPELLBERG: Yes, your Honor. 19 and 24 are  
22 pages taken from the City's website. We agree with that.

23 THE COURT: I don't think it's necessary to prove  
24 that somebody looked at the website. I think that that  
25 stipulation is sufficient to make 19 and 24 relevant, so  
26 I'm receiving 19 and 24.

27 (Plaintiffs' Exhibits 19 and 24, previously marked  
28 for identification, were received in evidence.)

1 THE COURT: The newsletters, fliers, handbooks,  
2 fact sheet, pamphlets, brochures.

3 MR. PATERSON: Your Honor, can I make an  
4 additional argument with respect to those?

5 THE COURT: Well, I think -- unless there's some  
6 case that says that they're relevant just because they're  
7 authenticated, I have a concern.

8 MR. PATERSON: I think there is, your Honor. I  
9 think that the case law is such that an implied contract  
10 can be demonstrated by parties' understanding or rights,  
11 and these newsletters and --

12 THE COURT: As a matter of evidence, there's no  
13 record evidence that anybody ever saw them.

14 MR. PATERSON: I'm not talking about reliance,  
15 your Honor. I'm talking about the contours of the  
16 contract.

17 Here's the problem, your Honor. We are making a  
18 vested rights argument. It sounds as under the contracts  
19 clause and under state law, incorporates various means of  
20 creating contracts. If this were in the private sector  
21 where you have a defined plan document, it would be very  
22 easy. You'd look at the plan document. That's not what  
23 we're dealing with here. There's no single document that  
24 defines the terms of the pension plan. You have the  
25 charter --

26 THE COURT: I understand that. So is the City's  
27 position that these newsletters, fliers, pamphlets,  
28 handbooks, that they are not created by the City intending

1 to communicate to employees?

2 MR. HARTINGER: Your Honor, you have -- some of  
3 these things were created by departments who may not have  
4 been authorized to put them out on behalf of the City.  
5 They're clearly intended -- obviously, they're  
6 communications in the sense that somebody is communicating  
7 something. One of the key issues is whether that person  
8 is authorized to make a representation upon which someone  
9 can rely. There's been no testimony from which the Court  
10 can draw that inference.

11 We've authenticated them in the sense that, yes,  
12 somebody created these documents. We don't know where  
13 they went; we don't know who created them; we don't know  
14 how they were put out or who relied on them. It's a very  
15 large city with a lot of moving parts, and people are  
16 creating documents every time. That doesn't mean that the  
17 manager or council approved them.

18 MS. ROSS: Your Honor, for example, I'm looking at  
19 one newsletter, Tommy's Tidbit by Tom Webster. Looks like  
20 it's written by an employee or retiree and just included  
21 in the newsletter.

22 MR. PATERSON: These are --

23 MS. ROSS: These are very informal documents, some  
24 of them.

25 MR. PATERSON: That goes to weight. There is  
26 testimony to address Mr. Hartinger's point. There's  
27 testimony that retirement services -- and as Mr. Gurza  
28 said, its predecessor would be the administrative arm of

1 the retirement system.

2 THE COURT: How can that go to weight if we don't  
3 have any record evidence --

4 MR. PATERSON: The retirement --

5 THE COURT: Excuse me. The rest of my sentence  
6 was, who made these, what their authority was, whether  
7 they were ever circulated, or whether they were put in a  
8 drawer.

9 MR. ADAM: Your Honor, can I speak to my  
10 newsletter, April 2005, San Jose Retirement System  
11 newsletter? This would appear to be -- it's been  
12 authenticated as a newsletter.

13 MR. SPELLBERG: What number is that?

14 THE COURT: 13.

15 MR. ADAM: 13.

16 Is the City seriously contending that it doesn't  
17 know who created this and it doesn't know where it went?  
18 It was clearly created by the retirement system, and it  
19 was published as part of, presumably, a series of -- this  
20 is issue number 36.

21 MR. HARTINGER: We don't know whether the document  
22 was approved by anybody.

23 MR. PATERSON: Your Honor, Ms. Figone said that  
24 for documents to be sent to all employees and retirees,  
25 that they did require approval.

26 MS. ROSS: That's misrepresentation. She was  
27 talking about official things that came through her own  
28 office. She's not talking about everything that was

1 published through the entire City. Some of these are --  
2 these are, again, Tommy's Tidbits, staff news. These  
3 are -- a lot of these are very informal documents that  
4 seem to be kind of -- they're newsletters, informal  
5 documents; a lot of participation by staff, by employees,  
6 by retirees, chitchat.

7 THE COURT: I don't suppose anybody is going to  
8 argue about the chitchat in your written closing  
9 arguments. The issue is whether there are statements that  
10 were authorized and read by anybody.

11 MR. SPELLBERG: Your Honor, certainly the  
12 plaintiffs had the opportunity to put on witnesses if that  
13 was part of their case, this was part of my reliance.

14 THE COURT: So we do have certain documents as to  
15 which witnesses were brought in, said, I got this. I read  
16 it, thought about it. It was part of my mind set, so I  
17 think I understand what the issues are.

18 Anyone else want to add anything?

19 MR. SPELLBERG: Perhaps the witness you're  
20 thinking of, Mr. Rhoads, who said, I came in and I relied  
21 on what I was told; that's the reason I took the job,  
22 that's the reason I stayed, whatever way the Court will,  
23 but he did come in and say, this is what I relied on. I  
24 suppose I'm reiterating. That could have been done by any  
25 plaintiff with regard to any of these documents. It was  
26 never done. They did bring the issue up, but it came in  
27 in a different context.

28 MR. PATERSON: Your Honor, I understand your

1 concern about reliance, but I want to make it clear that  
2 we aren't offering these purely on a reliance theory or in  
3 order to establish equitable estoppel or some theory like  
4 that.

5 THE COURT: But they're not relevant if nobody  
6 ever saw them.

7 MR. PATERSON: I disagree, your Honor.

8 THE COURT: How could they be relevant if nobody  
9 ever saw them?

10 MR. PATERSON: They're an indication the terms of  
11 what the plans are. It's a central issue as to what's the  
12 vested rights.

13 THE COURT: So an implied contract could be formed  
14 based on a document that nobody -- no employee ever saw?

15 MR. PATERSON: That was the understanding of the  
16 parties. The City retirement board is a party.

17 THE COURT: Your understanding of the City, it  
18 would be the understanding of anybody else.

19 MR. PATERSON: In that case, it would be an  
20 admission. I don't agree that no one ever saw these.  
21 People did see them, and they were certainly intended for  
22 people to see them.

23 THE COURT: We're not talking about whether it's  
24 an admission. There's a stipulation of authentication.  
25 We're talking about relevance.

26 Anyone else want to add anything?

27 What we'll do is we'll take a break. You'll  
28 finalize the stipulation. I'm ready to give you my ruling

1 on the request for judicial notice. Is that submitted?

2 MR. PATERSON: May I make one point regarding  
3 that, your Honor? This is in relation to evidence that  
4 came up subsequent to our briefing, which is that the City  
5 auditor testified that she relied on these various  
6 comptroller reports in drafting that audit, and I would  
7 submit that those -- all those reports that are part of  
8 our request for judicial notice are also offered for  
9 completeness with respect to her testimony.

10 THE COURT: Which various reports?

11 MR. PATERSON: Yes, your Honor. I am referring to  
12 AFSCME Exhibit 424 through --

13 THE COURT: Let me ask a different question.  
14 You're offering this comment with reference to what  
15 portion of your request for judicial notice?

16 MR. SOROUSHIAN: Exhibit E, your Honor.

17 MR. PATERSON: Exhibit E, your Honor.

18 THE COURT: Anything else?

19 MR. PATERSON: Submitted, your Honor.

20 THE COURT: Submitted for the City?

21 MR. SPELLBERG: Yes, on that issue. Before we  
22 take a break, can we also have some exhibit --

23 THE COURT: Let's do one thing at a time.

24 MR. SPELLBERG: Yes. Submitted.

25 THE COURT: Submitted as to AFSCME's request for  
26 judicial notice?

27 MR. SPELLBERG: Yes, your Honor.

28 THE COURT: The request is granted as to A, D, E,

1 and H, and denied as to B, C, F, G, I, J, and K.

2 Mr. Spellberg, what did you want to add?

3 MR. SPELLBERG: Before we break, I wanted to make  
4 sure you were aware that we have some documents on the  
5 stipulated list that have only been stipulated as to  
6 authenticity. We would be moving those in as well. We  
7 didn't know if you wanted to do categories of those first  
8 as well or you wanted to wait on that.

9 THE COURT: Yes, please. The City is going to  
10 offer documents?

11 MR. SPELLBERG: Yes, your Honor, that have been  
12 stipulated as to authenticity. 5106, which is just a  
13 memorandum from Ms. Figone to the mayor and City Council,  
14 background on compensation reductions. Our Exhibit 5112  
15 through 5119, which are either memorandums from the City  
16 Manager to the council or work papers from budget  
17 balancing sessions dealing with the City's fiscal issues.  
18 Also, the next would be 5207. It's a letter from City  
19 Manager to the charter revision committee. 5207. 5210 is  
20 the same type of document. So there's four that are in  
21 the same category. 5207, 5210, 5212, 5213. They're part  
22 of the legislature record as far as the charter revisions.  
23 They're just letters from City government or City  
24 employees that were incorporated in the legislature  
25 record. Those are those four.

26 Next one is Exhibit 5400, which is a memorandum  
27 from prior City Manager to the City Council, same type of  
28 category. 5402 and 5403 are the same category. They're

1 actuarial letters valuing the City's obligation and  
2 liabilities. Same sort of thing. Then the next category,  
3 your Honor, is 5407 and 5417, and these are all letters  
4 and proposals from the various unions, including a number  
5 authored by plaintiffs in this case, Mr. Sekany, from the  
6 POA, OE 3. They're all letters from the bargaining units.

7 Then the next category, your Honor, is 5419 to  
8 5435. They're all basically City Council documents.  
9 There's offers from unions. More letters from Mr. Sekany.  
10 For example, fire fighter settlement proposals. It's all  
11 sort of labor negotiations and back and forth that there's  
12 been quite a bit of testimony about that. Those are  
13 all -- as I say, they're proposals back and forth with the  
14 unions.

15 Then the next category, 5452 and 5453, are  
16 resolutions from two of the bargaining units approving  
17 MOAs, same sort of --

18 THE COURT: Could you say those numbers again.

19 MR. SPELLBERG: 5452, 5453. They're resolutions  
20 from the AEA, Association of Engineers and Architects,  
21 just approving bargaining terms.

22 Next category, 5462, 5463, 5466, and 5467, same  
23 thing, resolutions approving MOAs from the bargaining  
24 units. Same things as before.

25 Then the next category is retiree health care  
26 category, your Honor, 5501, 5503, 5505, and they're all  
27 letters either to or from the City. There's two from  
28 Mr. Gurza. One is a letter from two individuals to the

1 City Manager, and it's all discussing union proposals,  
2 memorandums. We can put Mr. Gurza on to do all of that.

3 Next category, low-cost plan, 5602, just one  
4 document. Just City Council minutes. City of San Jose  
5 City Council minutes.

6 Next category is to SRBR, 5700, 5702. There's --  
7 I believe they're actuarial letters discussing SRBR  
8 actuarial liabilities.

9 Then next category, 5712, 5713, 5714, 5716, 5719.  
10 These are sort of documents that have already been  
11 entered, tentative agreements with some of the various  
12 unions about the SRBR and other components. There's a  
13 letter to the head of the retirement services about SRBR,  
14 and then finally a memorandum from the City management  
15 members of Federated regarding SRBR.

16 Next category is disability retirement documents.  
17 They're just policy documents from the City, 5800, 5801,  
18 and 5802. There's the insurance plan, the City return to  
19 work policy, and a long term disability proposal from one  
20 of the unions or from the City. I'm not clear which.

21 So all of these, your Honor, request for judicial  
22 notice has been granted on all of them, and they're all  
23 just City documents or bargaining unit documents all  
24 related to the topics that are at issue here. And since  
25 there's a stipulation of authenticity, I don't know if  
26 there's a hearsay objection or relevance objection.  
27 Clearly, they're all relevant. I don't know what the  
28 objections could be.

1 THE COURT: Who objects to these documents?

2 MR. PLATTEN: Sapien plaintiffs object as to any  
3 documents, your Honor, which constitute bargaining  
4 proposals or tentative agreements where it's not shown  
5 that that tentative agreement was later included within a  
6 ratified and approved collective bargaining agreement.

7 THE COURT: What documents are you referring to?  
8 You're not going to leave it to me to figure out which  
9 exhibits you're objecting to.

10 MR. PLATTEN: Beginning with marked for  
11 identification Defendant Exhibit 5407, 5408, 5409, 5410,  
12 5412, 5413, 5414, 5415, 5416, 5420, 5421, 5422, 5423,  
13 5424, 5425, 5426, 5428, 5429, 5430, 5433, 5710, 5711,  
14 5712. And note for the record 5710, 5711 has already been  
15 admitted, so we only go to 5712, your Honor.

16 THE COURT: Is this a relevance objection?

17 MR. PLATTEN: Yes.

18 THE COURT: I need to give my staff a break. Let  
19 me make some observations. You can finalize your  
20 stipulation, and we'll hear from Mr. Allen and the  
21 defendants. Absent a stipulation, and if there are  
22 objections, I don't think the law allows me to just  
23 concede relevance because it's offered.

24 If there are objections, I need to consider the  
25 objections and rule on them. It seems to me that many of  
26 these objections on both sides could be readily addressed  
27 by certain humans coming in and taking an oath and  
28 testifying, and if that is necessary, we'll set a date for

1 both sides to do that. I think you should consider  
2 whether you want to do that if that's what needs to be  
3 done to resolve these objections. Then the Court will  
4 make itself available for a further hearing to do that.  
5 But I don't think that I can abrogate the rules of  
6 evidence just because it's Friday afternoon.

7 So we'll be in recess for ten minutes. We'll hear  
8 from Mr. Allen. Then let me know how we're going to  
9 proceed.

10 (Recess.)

11 THE COURT: Will we be hearing from Mr. Allen now?

12 MR. PATERSON: Yes, your Honor.

13 THE COURT: Mr. Allen, you're still under oath.

14 THE WITNESS: Yes, your Honor.

15  
16 FURTHER REDIRECT EXAMINATION

17 BY MR. PATERSON:

18 Q. Dr. Allen, do you recall bargaining with the City  
19 over retirement benefits in 2011?

20 A. Yes. In 2011, AFSCME was part of a coalition of  
21 Federated unions, and retirement issues were bargained.

22 Q. Did you attend the bargaining on behalf of AFSCME?

23 A. Yes. I was at the bargaining sessions.

24 Q. Can you turn to what has been marked as City of  
25 San Jose Exhibits 5713 and 5714.

26 A. Yes, I have those in front of me.

27 Q. Do you recognize those documents?

28 A. Yes. These are the City of San Jose proposals

1 with respect to elimination of the Supplemental Retirement  
2 Benefit Reserve, SRBR. These are the signed tentative  
3 agreements.

4 Q. And how early on in the bargaining were those  
5 proposals presented to you?

6 A. Well, we had some indication --

7 MR. HARTINGER: Your Honor, I'm not hearing any  
8 rebuttal testimony.

9 THE COURT: Not yet. Could you tell us where  
10 we're headed.

11 MR. PATERSON: Yes, your Honor. There was  
12 testimony from Mr. Gurza about these agreements, and I  
13 intend to provide the union's understanding as to these  
14 agreements.

15 THE COURT: Go ahead.

16 THE WITNESS: Could you repeat the question.

17 BY MR. PATERSON:

18 Q. I won't because I can't remember it, but I'll ask  
19 a different question, which is --

20 THE COURT: How early on in bargaining were those  
21 proposals presented?

22 THE WITNESS: Thank you, your Honor.

23 We had an indication earlier on in summer of 2011,  
24 I believe, that the City wanted to eliminate SRBR. I  
25 think we received its proposals at the end of July in  
26 2011, and this tentative agreement was made at the end of  
27 August 2011.

28 BY MR. PATERSON:

1 Q. And were there discussions within your team about  
2 these proposals?

3 A. Yes. There had been discussions --

4 MR. HARTINGER: Object to the question -- the  
5 answer coming on the question, your Honor.

6 THE COURT: It's time for another question.

7 BY MR. PATERSON:

8 Q. Why were -- why did the union sign these tentative  
9 agreements?

10 A. These tentative agreements were signed --

11 MR. HARTINGER: Objection, your Honor. Lack of  
12 foundation here in the sense that these were signed by  
13 somebody other than Mr. Allen.

14 THE COURT: Could you provide that foundation  
15 first.

16 BY MR. PATERSON:

17 Q. Tell me, if you can, what a bargaining team is.

18 A. Yes. The bargaining team that comprised this  
19 coalition bargaining was made by representatives of each  
20 of the bargaining units who were part of that coalition.  
21 For example, Bill Pope signed on OE 3. He was a  
22 representative of OE 3, a business representative. And  
23 the other one, Exhibit 5714, Laverne Washington, signed on  
24 behalf of CEO. Since I'm the business agent for AFSCME,  
25 CEO, and MEF, Laverne has full authority to sign on behalf  
26 of CEO, and Yolanda Cruz, who's the president, has  
27 authority to sign on behalf of MEF, but I do confer with  
28 them prior to them signing these agreements.

1 Q. Are you part of the AFSCME -- or were you part of  
2 the AFSCME bargaining team?

3 A. Yes, I was.

4 Q. Other than you, Ms. Cruz, and Ms. Washington, were  
5 there other members of the AFSCME team?

6 A. I believe there were, yes. I don't recall off the  
7 top of my head who they were.

8 Q. And prior to signing off on a TA, the team would  
9 discuss and determine whether it's within the  
10 institution's interest to sign it; is that correct?

11 MR. HARTINGER: Objection. Leading.

12 THE COURT: Could you rephrase the question.

13 BY MR. PATERSON:

14 Q. What is the process among the bargaining team  
15 members before the authorized representative signs off on  
16 it?

17 A. Generally, the team's corpus -- prior to signing a  
18 tentative agreement, we certainly would have focused on  
19 this since we signed this tentative agreement with a view  
20 to a good-faith effort to move negotiations forward and in  
21 anticipation of the receipt of something of comparable  
22 worth.

23 Q. Was that the consensus reached on the AFSCME  
24 bargaining team prior to authorizing the representative to  
25 sign it?

26 A. Yes, it was.

27 Q. I believe you were here for Mr. Gurza's testimony  
28 regarding a recent agreement relating to retiree health

1 funding; is that right?

2 A. Yes, I was.

3 Q. Can you tell me how that agreement came about.

4 A. Yes. The City asked if we -- if the respective  
5 unions the previous agreement covered wanted to meet to  
6 negotiate a new agreement.

7 Q. What was the previous agreement you referred to?

8 A. The previous agreement was the -- and it's been  
9 mentioned in this courtroom -- the 2008-09 retiree health  
10 care agreement.

11 Q. Would you mind turning to what's been marked, I  
12 believe, as Exhibit 450, AFSCME exhibit.

13 MR. PATERSON: May I assist the witness, your  
14 Honor?

15 THE COURT: Yes.

16 THE WITNESS: I have 450 in front of me.

17 BY MR. PATTEN:

18 Q. Is that the 2008 agreement you're referring to?

19 A. Yes, it is.

20 Q. Why did AFSCME agree to bargain a agreement in  
21 2013 related to retiree health care?

22 A. This agreement that was signed before was coming  
23 to expiration, and as this agreement was dealing with a  
24 ramp-up of contributions, given the state of  
25 contributions, it was apparent that AFSCME members would  
26 be taking a significant jump in the amount of  
27 contributions with the City prior to the expo of when this  
28 agreement expired. There was a need -- if we wanted to

1 address that, there was a need to negotiate a new  
2 agreement.

3 MR. HARTINGER: Your Honor, this is improper  
4 rebuttal. Move to strike. It's not rebuttal testimony.

5 THE COURT: Denied.

6 BY MR. PATERSON:

7 Q. The reference to a substantial increase, how  
8 substantial?

9 A. Well, earlier it looked like it might be almost  
10 double what the contribution on both parties, AFSCME and  
11 the City. I think to the extent of -- I think it was -- I  
12 can't remember the exact numbers. It did level in the  
13 course of time, but it still would have meant a  
14 potentially four percent increase on the part of AFSCME  
15 members' contributions.

16 Q. Are you able to quantify that in terms of  
17 percentages of pay?

18 MR. HARTINGER: Objection. Improper rebuttal.  
19 Move to strike. Improper rebuttal.

20 THE COURT: Overruled.

21 THE WITNESS: No.

22 BY MR. PATERSON:

23 Q. Are you aware of what the percentage would have  
24 been had the 2008 agreement not been renegotiated?

25 A. As I said, the amount decreased, but it could have  
26 been in the --

27 MR. HARTINGER: Objection. This is becoming  
28 speculative. Beyond the scope. Nonresponsive.

1 THE COURT: I think you need another question.

2 BY MR. PATERSON:

3 Q. What were the terms of the 2013 agreement?

4 A. The terms of the 2013 agreement is an agreement  
5 that's currently in place. It's an 18-month agreement  
6 with an increase in contribution from both parties of .75  
7 percent each year for this year and the next six months.

8 Q. And did the City indicate -- do you have an  
9 understanding that if you did not reach an agreement, that  
10 amended 2008 agreement?

11 MR. HARTINGER: That sounds leading, your Honor.

12 THE COURT: It does. Let's get the whole question  
13 before we get an objection.

14 MR. PATERSON: I'll withdraw the question, your  
15 Honor.

16 BY MR. PATERSON:

17 Q. What would have happened had you not reached an  
18 amendment to the 2008 agreement?

19 MR. HARTINGER: Calls for speculation.

20 THE COURT: Sustained.

21 BY MR. PATTEN:

22 Q. Do you have an understanding -- withdrawn.

23 Did the City indicate to you what would happen if  
24 you did not reach an agreement?

25 MR. HARTINGER: Objection. Hearsay. Calls for  
26 hearsay.

27 THE COURT: Can we get a clarification as to from  
28 whom Mr. Allen heard this.

1 BY MR. PATERSON:

2 Q. Did anyone indicate to you what might happen  
3 should you not renegotiate the 2008 agreement?

4 A. We were informed that we would go to --

5 MR. HARTINGER: Objection. That sounds like it's  
6 hearsay.

7 THE COURT: Sustained.

8 BY MR. PATERSON:

9 Q. Anyone specific?

10 A. Alex Gurza informed us that it would go to --

11 MR. HARTINGER: Objection. Nonresponsive.

12 THE COURT: We now know that it was Alex Gurza.  
13 What's your question?

14 BY MR. PATERSON:

15 Q. What did he indicate to you would happen should  
16 you not renegotiate the 2008 agreement?

17 MR. HARTINGER: Objection. Hearsay.

18 THE COURT: Overruled.

19 THE WITNESS: We would be full ramp-up of the ARC.

20 BY MR. PATERSON:

21 Q. What is your understanding as to what that means?

22 A. That means that given that we had been increasing  
23 our contributions, the City and the unions would be  
24 splitting the cost of the contributions one to one, and to  
25 the pitch 11 percent each contributions.

26 Q. You used the term "full ramp-up to the ARC." What  
27 is that?

28 A. In this --

1 MR. HARTINGER: Objection. It's improper  
2 rebuttal.

3 THE COURT: Overruled.

4 THE WITNESS: In this agreement from 2008-2009,  
5 there had been an increase over each of five years of a  
6 percentage contribution with a view to the final year  
7 being full funding.

8 BY MR. PATERSON:

9 Q. Full funding of the ARC?

10 A. That's correct.

11 MR. PATERSON: Thank you. No further questions,  
12 your Honor.

13 THE COURT: Any cross-examination?

14 MR. HARTINGER: Yes, your Honor. Briefly.

15

16 CROSS-EXAMINATION

17 BY MR. HARTINGER:

18 Q. Good afternoon, Mr. Allen.

19 A. Good afternoon.

20 Q. You're paid to represent AFSCME members?

21 MR. PATERSON: I didn't hear the question.

22 BY MR. HARTINGER:

23 Q. You're paid to represent AFSCME members?

24 A. That's correct, yes.

25 Q. You're on payroll today?

26 MR. PATERSON: I didn't hear the question.

27 THE WITNESS: Yes.

28 THE COURT: Everybody should try and keep their

1 voice up.

2 BY MR. HARTINGER:

3 Q. So you testified with respect to something you  
4 refer to as comparable work related to the tentative  
5 agreement to eliminate SRBR?

6 A. That's correct, yes.

7 Q. Do you have a document that reflects that?

8 A. Could you elaborate on that question.

9 Q. You've testified that there was some understanding  
10 or some exchange related to comparable work in exchange  
11 for eliminating SRBR. Did I understand you correctly?

12 A. There was no exchange. There was an anticipation  
13 in the context of good-faith bargaining.

14 Q. So that was -- that was your unilateral  
15 anticipation; correct?

16 A. We entered those negotiations with the  
17 anticipation we would engage in good-faith negotiations.

18 Q. But nobody in the City ever said that; correct?

19 A. I don't recall.

20 MR. PATERSON: Objection. Calls for speculation.

21 THE COURT: Overruled.

22 BY MR. HARTINGER:

23 Q. You don't have anything in writing that confirms  
24 that there was any discussion about comparable work in  
25 connection with that tentative agreement; correct?

26 A. If you mean a document, then no, I don't.

27 Q. You understood that the contributions related to  
28 retiree medical were aimed at dealing with the unfunded

1 liability?

2 A. That was what was expressed, yes.

3 Q. You understand -- so there were two agreements,  
4 right, that were in place? The first one, which was the  
5 initial agreement to contribute one to one?

6 A. There was an agreement made in 2009 with respect  
7 to retiree health, and there's been a recent agreement in  
8 2013 with respect to retiree health.

9 Q. The first agreement was an agreement that was made  
10 to move to a full contribution towards the ARC; is that  
11 correct?

12 A. That's my understanding, yes.

13 Q. That was made between AFSCME and the City;  
14 correct?

15 A. I believe it was made more than just AFSCME and  
16 the City, but, yes. In my case, yes.

17 MR. HARTINGER: That's all I have, your Honor.

18 THE COURT: Anything else for Mr. Allen?

19 Thank you, Mr. Allen. You can step down.

20 Any other witnesses?

21 MR. ADAM: No, your Honor. I have one who can  
22 confirm the receipt of the retirement newsletter if  
23 necessary.

24 THE COURT: Is that someone you'd like to call  
25 now?

26 MR. ADAM: If necessary.

27 MR. SPELLBERG: We would object. That's not  
28 proper rebuttal. We did not put on any evidence on the

1 topic. It was rather failure of evidence by plaintiff.

2 THE COURT: The plaintiffs' case was explicitly  
3 left open concerning documents, and that's what I  
4 understand is the subject of this.

5 MR. ADAM: Sole scope of it, your Honor.

6 THE COURT: Who will you be calling?

7 MR. ADAM: Bob Leininger.

8 THE CLERK: You do solemnly state, under penalty  
9 of perjury, that the evidence you shall give in this issue  
10 or matter shall be the truth, the whole truth, and nothing  
11 but the truth?

12 THE WITNESS: Yes.

13 THE CLERK: Have a seat, please.

14 MR. ADAM: Your Honor, I'm going to direct the  
15 witness to POA 13.

16 THE COURT: Since the plaintiffs did rest except  
17 for the issue of documents, which was left open so that  
18 counsel could continue discussion about stipulations, this  
19 testimony will be limited to testimony to support an offer  
20 of a document. Am I understanding correctly, Mr. Adam,  
21 this is just about Exhibit 15?

22 MR. ADAM: Yes.

23 MR. SPELLBERG: Your Honor, this witness was in  
24 the courtroom, I believe, most of the trial.

25 THE COURT: Yes. I'm aware of that, Counsel.  
26 Under the circumstances, I'll allow this testimony.

27 THE CLERK: Please state and spell your name for  
28 the record.

1 THE WITNESS: Bob Leininger, L-E-I-N-I-N-G-E-R.

2 THE COURT: By that I mean at the request of  
3 counsel, we kept open the plaintiffs' case as to  
4 documents, and as far as I can tell, nobody knew,  
5 certainly I did not know, I think it's fair that the POA  
6 did not know whether anybody would be required to testify  
7 only as to the documents. So that's the reason why I am  
8 overruling the objection that the witness was not  
9 excluded.

10 Go ahead.

11

12 BOB LEININGER,  
13 called as a witness by counsel for the Plaintiffs, being  
14 first duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. ADAM:

17 Q. Mr. Leininger, could I ask you to review POA  
18 Exhibit 13.

19 A. Okay.

20 Q. Do you have that document?

21 A. I don't have that one in front of me.

22 MR. ADAM: May I approach the witness, your Honor?

23 THE COURT: Yes, you may.

24 MR. HARTINGER: Your Honor, if you can give us a  
25 moment too.

26 THE COURT: Certainly. Let us know when you're  
27 ready.

28 THE WITNESS: I have that in front of me.

1 BY MR. ADAM:

2 Q. If you'd just review the document while the  
3 counsel is retrieving the document.

4 MR. ADAM: Counsel, do you have the document?

5 MR. SPELLBERG: I do.

6 BY MR. ADAM:

7 Q. Mr. Leininger, are you a member of the City of San  
8 Jose Federated Retirement System?

9 A. Yes, I am.

10 Q. In what capacity? Are you employee or retiree?

11 A. I'm a retiree.

12 Q. You worked for the City of San Jose?

13 A. Yes, I did.

14 Q. What year did you retire?

15 A. I retired in the summer of 2001.

16 Q. And do you typically receive newsletters from the  
17 City of San Jose retirement system?

18 A. Yes, I did. Those are sent to you through parcel  
19 post.

20 Q. How long have you been receiving such newsletters?

21 A. Best of my knowledge, I receive them on a regular  
22 basis since I retired.

23 Q. Have you reviewed POA Exhibit 13?

24 A. Yes, I have.

25 Q. Does that appear to be a true and correct copy of  
26 a City of San Jose retirement system newsletter from April  
27 2005?

28 A. Yes, it does.

1 Q. When you get these newsletters, do you typically  
2 read them?

3 A. Yes, I do.

4 MR. ADAM: Your Honor, I'd ask that POA Exhibit 13  
5 be moved into evidence.

6 MR. SPELLBERG: Lack of foundation, your Honor.  
7 Hasn't identified he's received this document.

8 THE COURT: Overruled. 13 is received.

9 (Plaintiffs' Exhibit 13, previously marked for  
10 identification, was received in evidence.)

11 MR. ADAM: No further questions.

12 THE COURT: Cross-examination?

13  
14 CROSS-EXAMINATION

15 BY MR. SPELLBERG:

16 Q. Mr. Leininger, do you have any understanding about  
17 how this document was created?

18 A. My only understanding is I received it directly  
19 from the retirement services department.

20 Q. Sure. You have no idea how or why it's put  
21 together. Is that a fair statement?

22 A. Only from going to board meetings and talking with  
23 retirement officials about their intent to communicate  
24 with retirees is one of their department objectives.

25 THE COURT: May I clarify? I thought -- and I  
26 could be wrong -- that this was one of the documents as to  
27 which the City stipulated to authentication.

28 MR. ADAM: It was, your Honor.

1 THE COURT: Go ahead.

2 BY MR. SPELLBERG:

3 Q. Mr. Leininger, you don't know whether you've  
4 actually received this newsletter that's in front of you;  
5 correct?

6 A. I am very certain that I've received every  
7 newsletter that they have addressed to the retirees that I  
8 received in the mail at my home.

9 Q. Do you remember this one?

10 A. It's very familiar in the format and the way  
11 they've presented things. I'm sure I received it.

12 MR. SPELLBERG: Nothing further. Thank you, your  
13 Honor.

14 MR. ADAM: Nothing, your Honor.

15 THE COURT: May Mr. Leininger be excused?

16 MR. ADAM: Yes.

17 THE COURT: Thank you, Mr. Leininger. You can  
18 step down.

19 Any other witnesses?

20 I have a suggestion. I will make my suggestion,  
21 and I would like to hear from counsel as to whether they  
22 have suggestions. I suggest that we set a date for  
23 further trial; that I receive a written list from the  
24 parties seeking to admit additional exhibits. I think  
25 those are POA, AFSCME, and the City. Anybody should be on  
26 that list; that I get written statements identifying  
27 exhibits that you want to offer; that some day after that,  
28 I get written statements setting forth the legal basis for

1 objections by any party who has any objections to any of  
2 the documents offered; and that absent a stipulation, we  
3 reconvene for further evidence as may be necessary.

4 MR. PLATTEN: Sapien plaintiffs agree with the  
5 Court's suggestion.

6 MR. SILVER: Is the evidence that you are going to  
7 receive solely limited to the issue of authenticating  
8 these documents?

9 THE COURT: Thank you for giving me an opportunity  
10 to clarify. I'm assuming that at this point, everybody  
11 has rested except for the issues relating to the documents  
12 that have been listed on the record before we took our  
13 break.

14 MR. SILVER: The reason I asked, your Honor -- I  
15 would say this for the last time, I hope. None of these  
16 documents are relevant to our case.

17 THE COURT: I thought you would say that.

18 MR. SILVER: I want to be consistent. The reason  
19 I'm saying this, I think I'd like not to have to cause my  
20 clients to pay me to have to come to that hearing.

21 THE COURT: I hear that. And that's another  
22 reason why I'll get the clarification now on the record  
23 that as to all parties, the evidence is closed, except the  
24 possible admission of the exhibits that were identified on  
25 the record before we took a break. Anybody disagree with  
26 that?

27 MR. SPELLBERG: Your Honor, there's two for the  
28 City that weren't identified that should be. It's

1 Exhibit 6068, 6069. Those were marked as part of the  
2 discussions on the stipulation. Those should be included.  
3 Those were not referenced before. That's my number one  
4 point, your Honor.

5 Number two, I guess if we're coming back for more  
6 trial, I'd like to have some direction from the Court  
7 whether we would be limited to the witnesses that have  
8 been identified in the witness list, this wouldn't open it  
9 up to new witnesses to come testify.

10 MS. WEST: Geoff, can you enter the stip into the  
11 record too?

12 THE COURT: Now I hear that the City has added two  
13 exhibits to the list. Does anybody else want to add any  
14 exhibits to the list that was recited on the record before  
15 the break?

16 MR. HARTINGER: Your Honor, can I confirm one more  
17 thing for the City? Sorry. There was discussion during  
18 the trial about the City's intention to assert a defense  
19 based on fiscal emergency. There's a letter that I sent  
20 to Mr. Adam confirming the understanding. I just want to  
21 make sure that's clear for the record, so I'd ask that  
22 this letter, which is a letter dated June 25, 2013,  
23 Mr. Adam confirms that issue which was raised during trial  
24 is made part of the record. So we'd ask it be identified  
25 as 6071.

26 MR. ADAM: No objection, your Honor.

27 THE COURT: You want to mark and offer 6071?

28 MR. HARTINGER: Yes, your Honor.

1 THE COURT: 6071 is a letter from you to Mr. Adam?

2 MR. HARTINGER: Dated June 25, 2013.

3 THE COURT: 6071 is marked and received.

4 (Defendants' Exhibit 6071, marked for  
5 identification, was received in evidence.)

6 THE COURT: I'm understanding we now have a  
7 complete list on the record of documents that anybody is  
8 going to offer at the future hearing that is relating only  
9 to documents.

10 MR. PATERSON: Not yet, your Honor. I believe the  
11 signed stipulation hasn't been entered into the record yet  
12 because that includes, obviously, a lot of documents.

13 MR. SPELLBERG: That's not signed, your Honor.  
14 There was some edits that were made at the end. That can  
15 be taken up with the parties later.

16 MR. PATERSON: Where is that?

17 MS. WEST: Geoff, you signed it.

18 THE COURT: Are you saying that there are  
19 additional exhibits?

20 MR. SPELLBERG: Not me, your Honor.

21 THE COURT: I'm trying to get the full universe.  
22 Does anybody want to add anything to the list of exhibits?

23 MR. PATERSON: I think, your Honor, if the  
24 stipulation -- if the full stipulation is not in the  
25 record, then the exhibits that I discussed on the record  
26 were only those that the City objected to with respect  
27 to -- I'm a little distracted. The stipulation --

28 THE COURT: Could we keep the secondary

1 conversations to a minimum, please.

2 MR. PATERSON: The stipulation included two  
3 categories of documents. One was stipulated as to  
4 admission and one was stipulated as to authenticity.  
5 Documents I read on the record, your Honor, were those  
6 stipulated as to authenticity for completeness on the  
7 record. Maybe I should --

8 THE COURT: Now I understand. Thank you for that.  
9 So what is the faith of this stipulation?

10 MR. PATERSON: I understand all parties have  
11 signed it, but it hasn't been provided to us for some  
12 reason.

13 MS. WEST: When I asked the City for it, they held  
14 up a different document. The table that we intended to  
15 hand them, we're waiting for their signature on that.

16 MR. SPELLBERG: I have been given a document that,  
17 as I understand it --

18 MS. WEST: Has nothing to do with this  
19 conversation. You also were given the stipulation that  
20 you already signed.

21 THE COURT: Am I going to get a stipulation signed  
22 by everybody so that Mr. Paterson's concern will be  
23 addressed?

24 MR. SPELLBERG: Yes, your Honor. As I understood  
25 it, there was a change in the stipulation. I haven't seen  
26 the new stipulation come back. That's what I thought this  
27 was when it was handed to me during the other discussion.

28 THE COURT: Let me ask a more specific question.

1 Is there any issue that the items on the stipulation for  
2 AFSCME as to which there was a stipulation as to  
3 admissibility -- is there any question about those  
4 documents being received pursuant to stipulation?

5 MS. WEST: Judge, in fact, the problem is that  
6 there are handwritten corrections, and I believe that my  
7 colleague can verify that the version of the handwritten  
8 corrections and all signatures was handed to the City.

9 MR. SOROUSHIAN: This morning.

10 THE COURT: Actually, I should hear from the City  
11 on this, please. It's a question that doesn't relate to  
12 the stipulation. So may I just hear from the City whether  
13 the City, in fact, is stipulating to admission of the  
14 documents that are on the stipulation listed, sponsored by  
15 AFSCME, and subject to admission pursuant to stipulation?

16 MR. SPELLBERG: Right. All the documents that  
17 have been tentatively stipulated to, we understand are  
18 going to be stipulated into evidence, including the AFSCME  
19 documents that Mr. Paterson is concerned about.

20 THE COURT: Does that address your concern?

21 MR. PATERSON: Does not, your Honor. Because the  
22 phrase "tentatively stipulated" does not mean that they're  
23 stipulated to and they're not on the record.

24 THE COURT: Who's got the document?

25 MR. SPELLBERG: I don't have it, your Honor. I  
26 asked for it about three or four times. I had it this  
27 morning.

28 THE COURT: Who's got the document? You're

1 telling me you don't?

2 MR. SPELLBERG: Correct.

3 THE COURT: Who's got the document?

4 MS. WEST: The signed document was handed to the  
5 City after -- they put the signatures on first; then we  
6 handed it to them.

7 THE COURT: Who's got the document?

8 So the next thing I'm going to do is ask  
9 Mr. Paterson to give me the full list so there is a record  
10 of all the documents that anybody is going to offer at the  
11 further proceeding. Unless the City tells me that's not  
12 necessary, that's the next thing that's going to happen.

13 MR. SPELLBERG: Your Honor, I don't have the list.  
14 I had it this morning. I handed it back, then they told  
15 me --

16 MR. PATERSON: We found it, your Honor.

17 THE COURT: Is the City going to tell me it's not  
18 necessary for Mr. Paterson to recite the list of exhibits  
19 set forth in the stipulation to be admitted by  
20 stipulation?

21 MR. SPELLBERG: Right, your Honor. I think I just  
22 said that.

23 THE COURT: I'll take that as a yes.

24 MR. PATERSON: I apologize, your Honor.

25 THE COURT: Now everyone has told me on the record  
26 before the break all the exhibits that are the subject of  
27 this further proceeding limited to the admission of  
28 exhibits; is that correct? Tell me now if anybody thinks

1 otherwise.

2 MR. ADAM: Your Honor, I'm going to withdraw one  
3 from the POA. The POA only has one additional document,  
4 POA Exhibit 30. It was four police fliers. I find the  
5 POA 11 is actually one of the four and has already been  
6 admitted by stipulation by the City, so we've got one in.  
7 We'll withdraw Exhibit 30. Then the POA has all of its  
8 documents taken care of.

9 THE COURT: Very good. So the further proceeding  
10 will relate only to the documents listed by AFSCME and the  
11 City on the record before the break; is that right?

12 MR. SPELLBERG: As I understand it, your Honor,  
13 yes.

14 MR. PATERSON: Your Honor, yes. Should I present  
15 the stipulation to Madam Clerk?

16 THE COURT: That's fine.

17 MR. SPELLBERG: Could I see it?

18 THE COURT: We need to get three more dates, and  
19 those are the date of the continued trial, the date when I  
20 will receive, so there's no doubt about it, the list of  
21 documents proposed to be admitted, and the date when I'll  
22 receive the written statement of the legal basis for any  
23 objections.

24 So I'm going to suggest that we go off the record  
25 and that you tell me in about two minutes what those dates  
26 are.

27 (Discussion off the record.)

28 THE COURT: We'll go on the record for this.

1           So counsel conferred off the record, and we've  
2           agreed that the list of documents specified on the record  
3           today by the City and AFSCME which those parties want to  
4           support to receive into evidence, that will be circulated  
5           so everyone has the same basis of information, served by  
6           E-Mail and filed on Friday, August 2. And then by Friday,  
7           August 9, any party who wants to state an objection to any  
8           of those documents will provide that to the Court in  
9           writing and serve everybody by E-Mail. That's Friday,  
10          August 9. Then unless the parties advise the Court it's  
11          not necessary, we'll reconvene the trial Monday, August  
12          26, at 8:45 to address only the admission of the documents  
13          identified by AFSCME and the City.

14                 And so now we'll return to Mr. Silver's excellent  
15          question, which is, does anybody believe that this  
16          schedule requires the adjustment in any way of the dates  
17          previously set for written closing argument and proposed  
18          statements of decisions?

19                 MR. ADAM: Not on behalf of the POA.

20                 MR. PLATTEN: Not on behalf of Sapien.

21                 MR. SILVER: Not on behalf of retirees.

22                 MR. SPELLBERG: Not for the City, your Honor.

23                 MR. PATERSON: I'm sorry, your Honor. I don't  
24          have those dates in my mind.

25                 MR. SILVER: September 10.

26                 MR. ADAM: September 10 for the brief and October  
27          10.

28                 MR. PATERSON: That should be fine, your Honor.

1 THE COURT: Very good. Anything else we should  
2 put on the record today? Thank you.

3 (Whereupon, the proceedings were adjourned.)  
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1 STATE OF CALIFORNIA )

2 ) ss:

3 COUNTY OF SANTA CLARA )

4  
 5 I, Rose M. Ruemmler, hereby certify that I, as Official  
 6 Reporter, Santa Clara County Superior Court, was present  
 7 and took down correctly in stenotype, to the best of my  
 8 ability, all the testimony and proceedings in the  
 9 foregoing-entitled matter on July 26, 2013; and I further  
 10 certify that the annexed and foregoing is a full, true and  
 11 correct statement of such testimony.

12 I further certify that I have complied with CCP  
 13 237(a)(2) in that all personal juror identifying  
 14 information has been redacted if applicable.

15 Dated at San Jose, California, on August 13, 2013.

16  
 17  
 18 { \_\_\_\_\_ }

19 ROSE M. RUEMMLER

20 Official Reporter, CSR No. 9053