

In The Matter Of:
*Bramby Tollen vs. Clark County Association
of School Administrators, et al.*

*Hearing - Volume I
February 9, 2016*



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Hearing - Volume I - February 9, 2016
Bramby Tollen vs. Clark County Association of School Administrators, et al.

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1 STATE OF NEVADA
2 LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
3 RELATIONS BOARD
4 BRAMBY TOLLEN,)
5 Complainant,)
6 vs.)
7 CLARK COUNTY ASSOCIATION OF) CASE NO.: 2015-001
8 SCHOOL ADMINISTRATORS AND)
9 PROFESSIONAL-TECHNICAL)
10 EMPLOYEES,)
11 Respondent.)

12
13 REPORTER'S TRANSCRIPT OF HEARING PROCEEDINGS
14 VOLUME I - PAGES 1 through 211
15 Taken on Tuesday, February 9, 2016
16 At 9:04 a.m.
17 At 2501 East Sahara Avenue
18 Las Vegas, Nevada
19
20
21
22
23
24
25 REPORTED BY: JEAN DAHLBERG, RPR, CCR NO. 759, CSR 11715

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1 APPEARANCES:
2 FOR THE BOARD
3 PHILIP E. LARSON, CHAIRMAN
4 BRENT C. ECKERSLEY, VICE CHAIRMAN
5 SCOTT DAVIS, SENIOR DEPUTY ATTORNEY GENERAL
6 BRUCE K. SNYDER, COMMISSIONER
7 SANDY MASTERS, BOARD MEMBER
8
9 For the Complainant:
10 HATFIELD & ASSOCIATES, LTD.
11 BY: TREVOR J. HATFIELD, ESQ.
12 703 South Eighth Street
13 Las Vegas, Nevada 89101
14 (702) 388-4469
15 (702) 386-9825 (Facsimile)
16 thatfield@hatfieldlawassociates.com
17
18 For the Respondent:
19 BROWNSTEIN HYATT FARBER SCHRECK
20 BY: ADAM P. SEGAL, ESQ.
21 BY: CHRISTOPHER M. HUMES, ESQ.
22 100 North City Parkway, Suite 1600
23 Las Vegas, Nevada 89106
24 (702) 382-2101
25 (702) 382-8135 (Facsimile)
asegal@bhfs.com
Also Present:
Carlos McDade, Esq.
Scott Greenberg, Esq.
Ronald Hirsch, Paralegal
Stephen Augspurger
William Garis
Thomas Tollen
Javier Pacheco

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I N D E X -- EXHIBITS

2	JOINT EXHIBITS		
3	EXHIBIT NO.	DESCRIPTION	VOL/ID/ADMIT
4	Exhibit 1	8/29/14, Bramby Tollen's Resignation Form, Bates-stamped CCASA00001 (1 page)	I/30/30
5	Exhibit 2	2/10/15, Affidavit of Bill Garis Bates-stamped CCASA00002 through CCASA00004 (3 pages)	I/30/30
6	Exhibit 3	2/18/15, Affidavit of Staci Vesneske, Bates-stamped CCASA00005 through CCASA00006 (2 pages)	I/30/30
7	Exhibit 4	11/7/14, Federal Labor Relations Authority Complaint, CCASA00007 through CCASA00008 (2 pages)	I/30/30
8	Exhibit 5	9/22/15, E-mail from Adam Segal, Bates-stamped CCASA00009 (1 page)	I/30/30
9	Exhibit 6	2013-2015 Negotiated Agreement between Clark County School District and the Clark County Association of School Administrators and Professional-Technical Employees, Bates-stamped CCASA00010 through CCASA00067 (58 pages)	I/30/30
10	Exhibit 7	9/11/14, Letter from Trevor Hatfield to Stephen Augspurger, Bates-stamped CCASA00068 through CCASA00069 (2 pages)	I/30/30
11	Exhibit 8	10/21/15, Complaint in the matter of Bramby Tollen v. Clark County School District, Case No. 2:15-cv-02035-APG-VCF, Bates-stamped CCASA00070 through CCASA00073 (4 pages)	I/30/30

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I N D E X -- EXHIBITS (continued)		
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EXHIBIT NO.	DESCRIPTION	VOL/ID/ADMIT
Exhibit 9	12/9/13, Edward Goldman letter to Stephen Augspurger, Bates-stamped CCASA00074 (1 page)	I/30/30
Exhibit 10	12/20/13, Contract Between Administrator and Trustees, 2013-2014, and Bramby Tollen, Bates-stamped CCASA00075 (1 page)	I/30/30
Exhibit 11	3/31/14, Pat Skorkowsky letter to Bramby Tollen, Bates-stamped CCASA00076 (1 page)	I/30/30
Exhibit 12	5/1/14, Position Control Authorization Form, Bates-stamped CASA00077 (1 page)	I/30/30
Exhibit 13	3/31/14, Position Control Authorization Form, Bates-stamped CCASA00078 (1 page)	I/30/30
Exhibit 14	5/12/14, Notice of Intent to Accept Reemployment, Bates-stamped CASA00078 (1 page)	I/30/30
Exhibit 15	3/28/14, Bramby Tollen e-mail string regarding Change in Leadership, Bate-stamped CCASA00080 through CCASA00082 (3 pages)	I/30/30
Exhibit 16	Administrator on Special Assignment (Director III) Human Resources job description, Bates-stamped CCASA00083 (1 page)	I/30/30
Exhibit 17	4/3/14, Bramby Tollen letter to Snohomish County regarding Purchasing Manager position, Bates-stamped CCASA00084 (1 page)	I/30/30

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I N D E X -- EXHIBITS (continued)		
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Exhibit 18	10/15/14, NEOGOV Insight, Bramby Tollen Application for Purchasing Manager, Bates-stamped CCASA00085 through CCASA00088 (4 pages)	I/30/30
Exhibit 19	4/22/14, Bramby Tollen Expedia roundtrip travel itinerary, Bates-stamped CCASA00089 (1 page)	I/30/30
Exhibit 20	5/9/14, E-mail string from Mark Thunberg regarding Purchasing Manager, Bates-stamped CCASA00090 through CCASA00091 (2 pages)	I/30/30
Exhibit 21	6/3/14, Ron Mader letter to Bramby Tollen regarding FMLA paperwork, Bates-stamped CCASA00092 (1 page)	I/30/30
Exhibit 22	5/29/14, Clark County School District, Human Resources Unit, Family and Medical Leave Request Form, Bates-stamped CCASA00093 (1 page)	I/30/30
Exhibit 23	5/28/14, Certification of Health Care Provider for Employee's Serious Health Condition, Bates-stamped CCASA00094 through CCASA00097 (4 pages)	I/30/30
Exhibit 24	6/3/14, Administrative Printouts Regarding Bramby Tollen, Bates-stamped CCASA00098 through CCASA00100 (3 pages)	I/30/30
Exhibit 25	6/3/14, Confidential Memorandum from Maria Lopez regarding Bramby Tollen, Bates-stamped CCASA00101 (1 page)	I/30/30

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I N D E X -- EXHIBITS (continued)		
JOINT EXHIBITS		
EXHIBIT NO.	DESCRIPTION	VOL/ID/ADMIT
Exhibit 26	6/4/14, Ron Mader letter to Bramby Tollen regarding Request for Family and Medical Leave, Bates-stamped CCASA00102 through CCASA00103 (2 pages)	I/30/30
Exhibit 27	6/9/14, Bramby Tollen e-mail string to Cedric Cole regarding EEOC Complaint, Bates-stamped CCASA00104 through CCASA00105 (2 pages)	I/30/30
Exhibit 28	6/20/14, Cedric Cole letter to Bramby Tollen regarding Complaint dated 6/6/14, Bates-stamped CCASA00106 through CCASA00107 (2 pages)	I/30/30
Exhibit 29	6/25/14, Snohomish County Human Resources, New PERS Member Plan Choice Letter, Retirement Options Letter for New PERS Members, signed by Bramby Tollen, Bates-stamped CCASA00108 (1 page)	I/30/30
Exhibit 30	6/25/14, Snohomish County Human Resources, Member Information Form, signed by Bramby Tollen, Bates-stamped CCASA00109 (1 page)	I/30/30
Exhibit 31	9/3/14, Staci Vesneske letter to Bramby Tollen regarding Resignation Acceptance, Bates-stamped CCASA00110 (1 page)	I/30/30
Exhibit 32	9/11/14, Staci Vesneske letter to Bramby Tollen regarding Sick Leave Usage, Bates-stamped CCASA00111 through CCASA00112 (2 pages)	I/30/30

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I N D E X -- EXHIBITS (continued)		
JOINT EXHIBITS		
EXHIBIT NO.	DESCRIPTION	VOL/ID/ADMIT
Exhibit 33	12/4/14, S. Scott Greenberg Letter to Trevor Hatfield regarding Bramby Tollen, Bates-stamped CCASA00113 (1 page)	I/30/30
Exhibit 34	Clark County School District Regulation, Bates-stamped CCASA00114 through CCASA00115 (2 pages)	I/30/30
Exhibit 35	10/17/14, U.S. EEOC Intake Questionnaire, signed by Bramby Tollen, Bates-stamped CCASA00116 through CCASA00122 (7 pages)	I/30/30
Exhibit 36	3/6/15, Nevada Equal Rights Commission, Charge of Discrimination, Bates-stamped CCASA00123 (1 page)	I/30/30
Exhibit 37	3/11/15, Dismissal and Notice of Rights and Notice of Suit Rights, Bates-stamped CCASA00124 through CCASA00125 (2 pages)	I/30/30
Exhibit 38	Bramby Ann Tollen Resume, Bates-stamped CCASA00126 (1 page)	I/30/30
Exhibit 39	8/28/14, Staci Vesneske Interoffice Memorandum to Bramby Tollen regarding Personnel Notification of Concern and Possible Disciplinary Action, Bates-stamped CCASA000127 (1 page)	I/30/30
Exhibit 40	Transcript of Deposition of Bramby A. Tollen with exhibits, Bates-stamped CCASA00128 through CCASA00301 (174 pages)	I/30/30

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1 I N D E X -- EXHIBITS (continued)

2 JOINT EXHIBITS

3 EXHIBIT NO.	DESCRIPTION	VOL/ID/ADMIT
4 Exhibit 41	CCSD Regulation regarding Employee Family and Medical Leave for All Employees, Bates-stamped TOLLEN00010 through TOLLEN00016 (7 pages)	I/30/30
7 Exhibit 42	Newspaper articles, Bates-stamped TOLLEN00171 through TOLLEN00176 (6 pages)	I/30/30
9 Exhibit 43	CCASAPE Whistleblower Policy, Bates-stamped TOLLEN00178 through TOLLEN00179 (2 pages)	I/30/30
11 Exhibit 44	Plaintiff's chronology of events, Bates-stamped TOLLEN00182 (1 page)	I/30/30
13 Exhibit 45	U.S. EEOC Intake Questionnaire, Charge of Discrimination and Right to Sue Letter, Bates-stamped TOLLEN00268 through TOLLEN00276 (9 pages)	I/30/30

17 RESPONDENT'S CONTESTED EXHIBITS
 OBJECTED TO BY COMPLAINANT

19 EXHIBIT NO.	DESCRIPTION	VOL/ID/ADMIT
20 Exhibit 1	Garis' Notes regarding call from Tollen (1 page)	I/31/104

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1 I N D E X -- EXHIBITS (continued)

2 COMPLAINANT'S CONTESTED EXHIBITS
 OBJECTED TO BY RESPONDENT

4 EXHIBIT NO.	DESCRIPTION	VOL/ID/ADMIT
5 Exhibit 1	Medical opinion by Loretta J. Metzger, M.D. of Diagnostic Center of Medicine, Bates-stamped TOLLEN00008 (1 page)	I/31/na
7 Exhibit 2	Medical Opinion dated 9/9/14, by Laura A. Simmons, MS, LMFT, Bates-stamped TOLLEN00009 (1 page)	I/31/177
10 Exhibit 3	Complaint filed by Plaintiff with the U.S. Department of Labor, Wage and Hour Division, November 2014, Bates-stamped TOLLEN000180 through TOLLEN000181 (2 pages)	I/31/na
13 Exhibit 4	CCASA Regulation regarding Employee Family and Medical Leave, Bates-stamped TOLLEN000188 through TOLLEN00194 (7 pages)	I/31/na
15 Exhibit 5	Correspondence from CCSD explaining Payoff at Termination, Bates-stamped TOLLEN00195 through TOLLEN00198 (4 pages)	I/31/na
18 Exhibit 6	Correspondence between Plaintiff's attorney and the EMRB and CCSD from 1/14/15 through 7/16/15, Bates-stamped TOLLEN00251 through TOLLEN00256 (6 pages)	I/31/na
21 Exhibit 7	Correspondence between Plaintiff's attorney and CCSD regarding Plaintiff's Request for Personnel File, Bates-stamped TOLLEN00257 through TOLLEN00263 (7 pages)	I/31/na

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1 I N D E X -- EXHIBITS (continued)

2 TOLLEN'S CONTESTED EXHIBITS
 OBJECTED TO BY RESPONDENT (continued)

4 EXHIBIT NO.	DESCRIPTION	VOL/ID/ADMIT
5 Exhibit 8	Representation letters from Plaintiff's attorney to CCSD and CCASAPE, Bates-stamped TOLLEN0264 through TOLLEN00267 (4 pages)	I/31/180
8 Exhibit 9	Correspondence dated 12/9/15 to Mr. Stephen Augspurger from Edward Goldman when CCASAPE represented Ms. Tollen's subordinate and did not represent Ms. Tollen, Bates-stamped TOLLEN00286 (1 page)	I/31/na
11 Exhibit 10	Various e-mails regarding FMLA, harassment and bullying, Bates-stamped TOLLEN00287 through TOLLEN00293 (7 pages)	I/31/na

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1 LAS VEGAS, NEVADA; TUESDAY, FEBRUARY 9, 2016

2 9:04 A.M.

3 -oOo-

4 Whereupon --

5 **CHAIRMAN LARSON:** Let's go on the record and

6 reconvene the Employee-Management Relations Board

7 Meeting of Tuesday, February 9th, 2016.

8 **MS. MASTERS:** Don't shut the door. It's an open

9 meeting. Thank you.

10 **CHAIRMAN LARSON:** Let's go to Item 4 in Case

11 No. 2015-001, Bramby Tollen versus Clark County

12 Association of School Administrators and

13 Professional-Technical Employees.

14 Does that have a designation, like, SEIU or --

15 **MR. SEGAL:** Yes, it does. The acronym is CCASA,

16 C-C-A-S-A.

17 **MS. MASTERS:** That's even longer.

18 **CHAIRMAN LARSON:** Very good.

19 I understand you three gentlemen have not

20 practiced before us previously --

21 **MR. HATFIELD:** That's correct.

22 **CHAIRMAN LARSON:** -- so I wanted to mention a

23 couple of things: As you put on your case, you can

24 either sit or stand; most people sit. We're not bound

25 by the rules of evidence. If, in terms of objections by

1 counsel, we'll give you an opportunity to resolve those
2 objections amongst yourselves. If you can't, the Board
3 will rule.

4 Closing arguments, our Board preference is oral,
5 but we will review that as we get further into the
6 hearing.

7 We'll take breaks as necessary. If somebody
8 requires a convenience break to use the rest room, raise
9 your hand and we can recess the proceedings.

10 Lunch will be typically about 60 minutes, maybe
11 more, somewhere between 11:30 and 1:15, 1:30, depending
12 on where you are in your case.

13 And I don't know that I might get some
14 disagreement from the Board, but there are not a lot of
15 places to walk to. There's a Sonic up the street,
16 there's a Subway and a Wendy's at the corner of Eastern
17 and Sahara --

18 **MS. MASTERS:** El Pollo Loco.

19 **CHAIRMAN LARSON:** -- and El Pollo Loco. But
20 every place takes about 10 or 15 minutes each way to
21 walk to, so if you'd just be advised of that.

22 With that, I think let's go ahead and do
23 introductions and then hear from Mr. Greenberg, and you
24 can respond to Mr. Greenberg's remarks.

25 **MS. MASTERS:** Sandy Masters, Board Member.

1 **CHAIRMAN LARSON:** Phil Larson, Chair.

2 **MR. ECKERSLEY:** Brent Eckersley, Vice Chair.

3 **MR. DAVIS:** Scott Davis from the Attorney
4 General's Office for the Board.

5 **MR. SNYDER:** Bruce Snyder, Commissioner.

6 **MR. McDADE:** Carlos McDade, Clark County School
7 District, General Counsel.

8 **MR. GREENBERG:** Scott Greenberg, Clark County
9 School District.

10 **MR. HIRSCH:** Ron Hirsch, paralegal for
11 Hatfield & Associates.

12 **MR. HATFIELD:** Trevor Hatfield, counsel for
13 Bramby Tollen.

14 **MS. TOLLEN:** Bramby Tollen.

15 **CHAIRMAN LARSON:** Complainant.

16 **MR. SEGAL:** Adam Segal, counsel for CCASA.

17 **MR. HUMES:** Christopher Humes, counsel for
18 CCASA.

19 **MR. AUGSPURGER:** Stephen Augspurger, CCASA
20 Executive Director.

21 **MR. GARIS:** Bill Garis, CCASA Deputy Executive
22 Director.

23 **MR. TOLLEN:** Husband of Ms. Bramby Tollen.

24 **CHAIRMAN LARSON:** Very good. Very good.
25 Okay. With that, Mr. Greenberg you wanted to

1 make a motion?

2 **MR. GREENBERG:** Yes. I appreciate the
3 Commission taking our motion and given us a few minutes.
4 We filed it on Friday. I apologize for the lateness.

5 As we set out, obviously the parties have
6 requested the Board issue certain subpoenas in this
7 case. Marisu was nice enough to provide those to me.
8 And so as far as the Clark County School District
9 employees, there were three subpoenas issued for
10 Mr. Hatfield -- that being Ron Mader, Staci Vesneske,
11 and Trustee Erin Cranor.

12 CCASA has also requested a subpoena for
13 Ms. Vesneske, that has indicated to me now that they do
14 not plan on calling her.

15 I would indicate to you also that the only
16 person who has actually been served by Mr. Hatfield so
17 far is, as far as I know right now, is Mr. Mader.

18 So we tried to lay out briefly in our papers
19 what has happened, but if I can just very quickly:
20 Ms. Tollen makes some allegations about speaking to
21 trustees or a certain trustee about insurance. That
22 apparently happened sometime in September of 2013.

23 She then refers to a transfer. I believe that
24 happened in March of 2014. And then in the prehearing
25 statements, which you'll see from the actual parties, is

1 that there was the beginning of an investigation in her
2 sick leave usage. And without outgoing into a lot of
3 it, essentially the District found out that she was
4 working in Washington in a full-time job while she was
5 using sick leave. And Exhibit 1 to the District's
6 motion is what we refer to an Investigatory Conference
7 Notice. We sent it to her saying we're going to
8 investigate this, and it has two things about the sick
9 leave.

10 There were obviously some discussions between
11 Ms. Tollen and her Union about representation. The
12 Union gets ahold of us, we have some discussions about
13 what's going on and, for what we know, we then get a
14 resignation form. That's the end of it.

15 Obviously, Ms. Cranor is a trustee; Staci
16 Vesneske, at the time, was the head of our Human
17 Resources office; and Mr. Mader is head of what's
18 generally known as the Compliance Department. They work
19 with FMLA; and, at the time, Ms. Tollen was on FMLA. I
20 believe that's why she may have been talking to him.

21 So as we set out, Ms. Tollen has obviously this
22 case against CCASA; also has as Federal Court lawsuit
23 against CCASA; has -- I guess it's now three months
24 ago -- filed a federal lawsuit against the District,
25 which I think I provided a copy in October; and she also

1 has a pending EEOC charge against the District, making
2 these allegations of harassment, et cetera, of
3 retaliation. The EEOC has not closed out, so she has
4 not been able to file her lawsuit against the District,
5 which we certainly expect we will see within 90 days
6 after that is filed.

7 So certainly, our position -- without making a
8 case for any other parties -- it's a failure to
9 represent against the Union. What we may have been --
10 when I say "we," being the District -- what the District
11 may have been investigating her about has no relevance
12 to this. The issues are between Ms. Tollen and her
13 Union, what they discussed, what they were supposed to
14 be doing, et cetera.

15 I would point out certainly there could be a
16 case where maybe the actions of the employer would come
17 in, and that would be typically that the Union told the
18 employee, We are not going to represent you. You do
19 have cases where the Union says, We investigated this.
20 Our reasonable determination is, You have no defense,
21 you don't have a valid complaint or whatever. The
22 Union, you know, This is the way we're doing this.
23 We're not going to grieve this or represent you.

24 Certainly, possibly, in a case like that, there
25 may be some evidence about what was actually happening.

1 Did the Union investigate it? What was going on? And I
2 can see some testimony from an employer. Did the Union
3 ask for documents? Did they ask you questions?
4 Whatever, whatever, whatever.

5 As we understand it at the District, that's not
6 what's happening. CCASA was retained and represented
7 her. We gave her resignation, that ended it. There's
8 absolutely no reason for Ms. Tollen's side to be calling
9 people, questioning why they may have investigated,
10 moved her to something, and claiming that that's going
11 to be somehow retaliation, illegal, whatever it may be,
12 when we're not a party to this case, don't have standing
13 to object, ask questions, et cetera.

14 And especially on top of that, as we said,
15 there's one pending lawsuit against us that hasn't been
16 served, there's a second one coming down the pipe. And
17 apparently -- it appears at least to the District
18 somewhat -- that this is just an evidence gathering
19 excursion by Ms. Tollen's side, Hey, let me get the HR
20 person on record under oath, let me get Trustee Cranor
21 under oath; and that really prejudices the District and,
22 really, we would suggest inappropriate when it really
23 has no reference to what the case before you is, which
24 is certainly about what happened between Ms. Tollen and
25 the Union.

1 And therefore we'd ask that -- obviously, as we
2 set out in our papers, there may be something that
3 Ms. Vesneske may say about her discussions with CCASA
4 about the specific investigatory conference. Certainly,
5 we're not suggesting that you quash that, although, at
6 this time, she's not actually under subpoena.

7 **CHAIRMAN LARSON:** Thank you.

8 Mr. Hatfield, do you want to respond?

9 **MR. HATFIELD:** Yes. My understanding is that
10 pursuant to NAC 299.279, the grounds for quashing the
11 subpoena would be if the subpoena was requested -- that
12 was requested was frivolous, irrelevant, burdensome, or
13 privileged material, or as other material that is made
14 confidential by statute.

15 It's imperative that we have a few people who
16 are CCSD employees testify. Strictly for background
17 purposes and purely to provide the facts which has led
18 up to the Union making its decision to act detrimentally
19 to Ms. Tollen and to essentially fail to represent her,
20 fail to have her back, failure to have her side of the
21 story.

22 I'm a little bit disconcerted that there was a
23 confidential settlement letter that was attached to
24 CCSD's motion. I don't know why there would be a
25 confidential settlement attached to that. But it

1 appears to be, in essence -- if I'm hearing -- if I'm
2 hearing correctly -- that CCSD is saying that this is
3 some type of attempt to gather evidence, get witnesses
4 under oath, pin them down and then have a disadvantage
5 over CCSD. It's not the case. We would be fine with
6 very limited instructions, very limited questioning of
7 Mr. Mader, who is expected to testify, that he advised
8 Ms. Tollen that there were many instances where there
9 was a CCSD employee who could not work for CCSD but
10 could work a second job or working another job. And he
11 gave an example of a teacher who was experiencing
12 emotional stress in the classroom and needed to take
13 some time off from teaching, but could work as a
14 cocktail waitress.

15 So the situation is very analogous in that we
16 need to provide the background in that there was this
17 transfer. And we expect Ms. Cranor to testify that she
18 went to Ms. Tollen and asked for information about
19 expenditures and some financial issues that was going
20 on -- and that's just all I'll say right now at this
21 moment -- and that Ms. Tollen did provide this
22 information.

23 And that it's no coincidence that just a few
24 months later, Ms. Tollen, who's worked as the Director
25 of Purchasing for over 12 years for the District gets

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1 transferred over into Human Resources, which she knows
2 nothing about, and she essentially has new duties; and
3 that was not in good faith. And then there was a
4 reason. There was a rationale behind that, and it was
5 retaliation. And that's simply what I would like to ask
6 Ms. Cranor to substantiate.
7 As far as Mr. Mader, I'd like to ask him some
8 questions what he provided as far as advice to
9 Ms. Tollen regarding the scope of what the sick leave
10 would be and whether it would be permissible to work a
11 second job.
12 Now, as far as -- we don't want these witnesses
13 to testify because we want to find something out.
14 That's not the grounds for quashing the subpoena. It's
15 not a frivolous subpoena. There is pertinence to having
16 these witnesses testify.
17 And we would ask that the Board deny the motion
18 to quash. If the Board was inclined and grant the
19 motion to quash and prevent Mr. Mader from testifying,
20 Ms. Cranor can testify, then we would ask to have a
21 short continuance in order to recalibrate, if you will.
22 And that might be helpful to essentially truncate
23 things, as this would move along a little bit faster, we
24 believe.
25 **CHAIRMAN LARSON:** Thank you.

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1 **MR. HATFIELD:** Thank you.
2 **CHAIRMAN LARSON:** Mr. Segal?
3 **MR. SEGAL:** Yes. Thank you.
4 CCASA doesn't take any particular issue on the
5 merits that have been argued, but does point out two
6 procedural issues that have been raised. Our
7 understanding is only Mr. Mader has been successfully
8 served in time for the hearing, so I'm not sure if the
9 issue isn't moot as to the other two.
10 But the more pressing issue is that whatever the
11 ruling is by this Board, whether that would be to quash
12 these subpoenas, we strongly oppose any continuance of
13 this hearing. It was already continued once. It's been
14 going on -- we've been waiting for quite a long time to
15 get this date. We're here. There's been considerable
16 time and effort put in to preparing to be here and be
17 ready to go.
18 So just procedurally, if it's your decision to
19 quash, Mr. Hatfield has asked for a continuance, and we
20 strongly would oppose that.
21 **MR. GREENBERG:** May I make a couple comments?
22 **CHAIRMAN LARSON:** Sure.
23 **MR. GREENBERG:** Do you mind if I say two things?
24 **CHAIRMAN LARSON:** Yeah, you could rebut.
25 **MR. GREENBERG:** Just quickly, as far as the

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1 grounds to quash the subpoena, this Board's power to
2 issue subpoenas is, as the statute says, at its
3 discretion. There is no reason -- I'm assuming there's
4 probably some relevancy provision -- and just as you
5 have it at your discretion, then obviously do not have
6 to give you a basis. But it's usually you call up and
7 say, I'd like subpoenas for these four people.
8 Subpoenas are issued without any basis. You know,
9 obviously the parties think they have basis, but they're
10 not issued based on any specific basis from the Board,
11 other than the parties requested it at this time.
12 **CHAIRMAN LARSON:** Sure.
13 **MR. GREENBERG:** And the second issue would be
14 Mr. Hatfield has said, Look, I only want some short
15 questions just for background purposes. Then he goes
16 into, Well, I want Trustee Cranor up there to testify
17 how she disclosed confidential information, how she was
18 retaliated against, how she was harassed because -- it
19 sounds like he wants to put on a case against the Clark
20 County School District.
21 And he certainly could have filed that a year
22 and two months ago when he filed this action, but he
23 didn't. The District is not a party. It's not been
24 named as a respondent to this case. There is no claim
25 in this case as to how she was treated by the Clark

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1 County School District.
2 The reason we put the lawsuit as a demand letter
3 is to indicate and show to the commissioner that these
4 parties, or at least Ms. Tollen, has one outstanding
5 case that she's going to raise that, and having a second
6 one coming down the pipe that that's exactly what she's
7 going to get into. And that's the place where those
8 facts and allegations and other stuff should come up.
9 To suggest that he should now question Ms. --
10 Trustee Cranor about whether she thinks Ms. Tollen was,
11 again, harassed, discriminated against -- whatever you
12 want to call it -- retaliated against -- we're talking
13 about insurance. He's getting into the merits and only
14 the merits of the case against the District, not against
15 CCASA, which is the whole point of our motion.
16 **CHAIRMAN LARSON:** Mr. Hatfield, a response?
17 **MR. HATFIELD:** Well, that's exactly what we're
18 not asking. We're not asking to put on a case against
19 CCSD. We're asking for this background information, and
20 that there's an impetus. There was a start to this, and
21 it started with Ms. Cranor asking Ms. Tollen for this
22 information.
23 And we're not intending to put on any kind of a
24 case, and that's what the scope of this hearing is
25 about. It's about Ms. Tollen and the detriment that was

1 caused by Tollen by her Union in failing to represent
2 her; not only in not failing to represent her,
3 requesting that CCSD act against her or go against her
4 in seeking to charge back her benefits that she was
5 requesting and was entitled to.

6 So it's not to build a case against CCSD. It
7 wouldn't prejudice you anyway because that's not within
8 the scope of this representation, so we really don't see
9 the import of that argument whatsoever.

10 **CHAIRMAN LARSON:** Mr. Segal?

11 **MR. SEGAL:** Nothing further.

12 **CHAIRMAN LARSON:** Okay, nothing further.

13 Did I understand you to say that you were
14 opposed to the motions to quash?

15 **MR. SEGAL:** No. We took no position on the
16 merits --

17 **CHAIRMAN LARSON:** You took no position, okay.

18 **MR. SEGAL:** -- but we're certainly opposed to
19 the suggestion that if you do quash that these
20 proceedings be continued. We would oppose that.

21 **MR. HATFIELD:** If I may interject -- I'm
22 sorry -- I'd like to add that we do apparently have --
23 have served Mr. Mader, and he's here today. It appears
24 that the Union, CCASAPE, has served Ms. Staci Vesneske,
25 who was the person at CCSD who charged back or

1 recaptured the benefits regarding Ms. Tollen.

2 If we were to continue, we were asking for a
3 continuance of maybe one day and start tomorrow and
4 just -- well, now we know where we're standing, we can
5 now plan the order of witnesses --

6 **CHAIRMAN LARSON:** Uh-huh.

7 **MR. HATFIELD:** -- and then proceed with the
8 Board's holding regarding this motion, so we're not up
9 in the air regarding what witnesses would be testifying.

10 **CHAIRMAN LARSON:** I'm glad you mentioned that,
11 what kind of continuance you want.

12 **MR. HATFIELD:** Yes. I'm not asking for months
13 or whatnot.

14 **CHAIRMAN LARSON:** I think -- go ahead.

15 **MR. SEGAL:** Just one point of clarification. We
16 released our subpoena of Ms. Vesneske and determined not
17 to call her, so she's not under subpoena by us.

18 **CHAIRMAN LARSON:** Okay. I think with that, the
19 Board will caucus. We'll go into closed session, and
20 you are free to get up and go about wherever you want.
21 We're off the record.

22 (Recess taken.)

23 **CHAIRMAN LARSON:** Well reconvene the meeting and
24 go back on the record.

25 Okay. In the Bramby Tollen versus CCASA

1 hearing, here's what we are going to do: We're going to
2 quash the subpoena for Trustee Cranor, as we don't
3 believe that to be relevant. We're going to allow
4 testimony from the complainant with regards to any
5 conversations that she had with Vesneske or with Mader
6 or, as well, the conversations by the Union with
7 Vesneske and Cranor.

8 But in term of the issues that are -- in our
9 opinion, they are very limited and they're going to
10 consist of either the representation by Ms. Tollen, by
11 CCASA, or the lack of representation with respect to
12 Ms. Tollen by CCASA.

13 **MR. ECKERSLEY:** No.

14 **CHAIRMAN LARSON:** Is that --

15 **MR. ECKERSLEY:** The subpoenas with regard to
16 Vesneske and Mader are still standing?

17 **CHAIRMAN LARSON:** Yes, correct.

18 **MR. ECKERSLEY:** But the testimony is limited?

19 **CHAIRMAN LARSON:** Right. The testimony is going
20 to be limited to issues relevant to the representation
21 or lack thereof by CCASA. And we don't know if
22 Ms. Tollen had any direct conversations with Vesneske or
23 Mader or if those were done by CCASA. But if she in
24 fact did, we're going to have some limited testimony as
25 regards to that.

1 **MR. HATFIELD:** So in essence, keep it limited to
2 scope of the issues before us and the representation
3 issues and failure to regarding the Union and keep it
4 limited to that, and --

5 **CHAIRMAN LARSON:** Yeah.

6 **MR. HATFIELD:** -- and Ms. Tollen can testify as
7 to what conversations she might have had with Ms. Cranor
8 and herself, correct?

9 **CHAIRMAN LARSON:** Yeah.

10 **MR. HATFIELD:** In limited context just for
11 background purposes and whatnot, Ms. Vesneske has been
12 released from her subpoena. So we think we can get her
13 served. She hasn't been served, so we can't call her
14 today under our Case-in-Chief if we were to go forward.

15 **CHAIRMAN LARSON:** Well, you have, as we pointed
16 out in our caucus, you have up to three days, you know,
17 reserved here.

18 **MR. HATFIELD:** Right. Very good.

19 **CHAIRMAN LARSON:** So hopefully you can get her
20 and the gentleman.

21 **MR. HATFIELD:** Right. Well, Mr. Mader has been
22 served. I believe he's present at this point in time,
23 so he's here.

24 **CHAIRMAN LARSON:** And again, as Scott pointed
25 out, the District is not a party to, you know, to this

1 hearing, so we want -- we don't want a fishing
2 expedition, you know, with respect to the conversations,
3 you know, of correspondence with the District.
4 **MR. HATFIELD:** We don't intend to be asking any
5 questions that would be beyond the scope of background
6 that would lead up to the issues in which we're here
7 today.
8 **CHAIRMAN LARSON:** Mr. Segal --
9 **MR. SEGAL:** Yes.
10 **CHAIRMAN LARSON:** -- do you have any remark you
11 want to --
12 **MR. SEGAL:** No.
13 **CHAIRMAN LARSON:** Mr. Greenberg?
14 **MR. GREENBERG:** No. Just once again, I
15 appreciate you taking the time.
16 **CHAIRMAN LARSON:** Okay. Are you going to sit in
17 on this or --
18 **MR. GREENBERG:** I may sit in on parts of it.
19 **CHAIRMAN LARSON:** Okay. Are you -- let's see.
20 I guess we need to look at exhibits, what are joint,
21 what are complainant, what are respondent.
22 **MR. HATFIELD:** Certainly we can do that.
23 **CHAIRMAN LARSON:** We need to do that --
24 **MR. HATFIELD:** Yes, sir.
25 **CHAIRMAN LARSON:** -- before you begin your

1 opening arguments.
2 **MR. HUMES:** I'm not sure where the other four
3 binders --
4 **MR. SNYDER:** Two -- each Board member gets one,
5 Mr. Davis gets one, I get one, and one for the witness.
6 I keep the official copy. Each Board member gets one.
7 **CHAIRMAN LARSON:** Do we got enough?
8 **MR. HUMES:** Would you like this?
9 **MR. ECKERSLEY:** Sure. You can set it aside.
10 **MR. HUMES:** These are exhibits that have been
11 contested by the other side.
12 **MR. SNYDER:** So there was 45 joint exhibits.
13 **MR. HUMES:** Yes.
14 **MR. HATFIELD:** We have contested or objected --
15 objected, yes.
16 **CHAIRMAN LARSON:** Okay. So let the record
17 reflect that there are 45 joint exhibits admitted into
18 the record, and there are one CCASA contested and 15
19 complainant contested that will be reviewed as their
20 introductions call for.
21 (Exhibits 1 through 45 were were marked for
22 identification and admitted into evidence.)
23 **MR. SNYDER:** I think there's only 10.
24 **CHAIRMAN LARSON:** 10?
25 **MR. SNYDER:** I think they have a few --

1 **CHAIRMAN LARSON:** Okay, sorry. Those will be
2 admitted when you come to them in your case.
3 **MR. HATFIELD:** A point of housekeeping.
4 Ms. Tollen will not be seeking to offer proof on items
5 4, 6, 9, and 10 of the items being objected to by the
6 respondent.
7 (Exhibits 1 through 10 of Complainant's
8 Contested Exhibits were marked for identification.)
9 (Exhibit 1 of Respondent's Contested Exhibits
10 was marked for identification.)
11 **CHAIRMAN LARSON:** Are you ready?
12 **MR. HATFIELD:** Can we just -- the Board's
13 indulgence for a moment.
14 **CHAIRMAN LARSON:** Is there anyone in here that
15 needs to be excluded?
16 **MR. HATFIELD:** Yes. Mr. Garis. I believe is
17 the witness for the Union.
18 Do you want me to get the door, sir?
19 **CHAIRMAN LARSON:** No. We can't.
20 **MR. HATFIELD:** Very good.
21 Members of the Board, if we're ready, I'll go
22 ahead and proceed with Ms. Tollen's opening statement.
23 I'll try to keep it brief.
24
25 **OPENING STATEMENT BY THE COMPLAINANT**

1 **MR. HATFIELD:** I know you've just read our
2 opposition to the motion to quash, so you have a good
3 familiarity with the case and why we're here today, and
4 it is because of Ms. Tollen's Union's failure to
5 represent her. Not only did they fail to represent her
6 in an adverse issue that she had with CCSD when CCSD
7 decided to unilaterally recapture benefits, it appears
8 that the Union was instrumental in that decision, or may
9 have influenced the decision of CCSD to go ahead and
10 take that adverse action against Ms. Tollen.
11 You've read Exhibit No. 2 to our opposition to
12 the motion to quash. Those are press releases that were
13 made by Mr. Stephen Augspurger, who's the executive
14 director from Ms. Tollen's union. Not only did he say
15 detrimental critical things of Ms. Tollen and said that
16 without any basis or even asking what her side of the
17 story was, it appears that this prejudice came from
18 perhaps a perception that was in fact entirely
19 erroneous.
20 And what's very disturbing in Ms. Tollen's mind
21 is the statements made by Mr. Augspurger that, What is
22 CCSD going to do about this? He opined to one
23 correspondent who asked him, We need to, quote, remedy
24 this and/or to recapture these funds. And that's what
25 CCSD did.

1 After Mr. Augspurger made these statements, I
2 wrote to him and I copied him a letter that I had
3 written to Staci Vesneske saying, Listen, you've got it
4 wrong, there is much more on this, there is much more
5 nuance than you think. We'd like to get her
6 unemployment file, figure out fundamentally where we're
7 standing on this, and we would like to disabuse you that
8 you have -- of this notion that you have that Ms. Tollen
9 was dishonest and that she tried to cheat CCSD and the
10 taxpayers.

11 I also wrote to Mr. Augspurger. I said, among
12 other things, There is no policy that we are aware of
13 whereby a CCSD employee who's on a sick leave cannot
14 work another job. There is an opinion, a decided
15 opinion, that supported that. I asked him to open this
16 and to give consideration to the background of why
17 Ms. Tollen went on sick leave in the first place, which
18 is because she was a victim of workplace violence when
19 she was at CCSD. I don't believe that's disputed. She
20 was a victim of stalking and harassment. I don't want
21 to put too much into that. It just tends to open up new
22 wounds here, and we talked about that before in
23 prepping. But suffice to say, Ms. Tollen was the victim
24 of death threats and some very severe workplace violence
25 issues several years earlier.

1 posttraumatic stress disorder issue that she was
2 experiencing.

3 Prior to going on sick leave, Ms. Tollen was
4 exploring her options, and she will testify that she
5 wanted to work back as a Director of Purchasing, or in
6 Purchasing that she had done for 12 years or so, and she
7 had put out her resume. Nothing wrong with that. This
8 is the United States of America. You can look for
9 another job whatever you feel like you need to move on
10 with life.

11 Ms. Tollen eventually was approved for sick
12 leave. She was not dishonest or evasive about the
13 reasons for her sick leave. Her doctor opined that she
14 couldn't work because of the emotional distress. That
15 was before she had the position that she had ultimately
16 came to be offered and she took for Snohomish County in
17 Washington State, which was the position of purchasing.

18 Ms. Tollen will testify that she spoke with
19 Mr. Garis after she had been notified that there was
20 going to be an investigatory hearing into her use of
21 sick leave. I don't know how or I don't know why the
22 CCSD became aware that she was working while she was on
23 sick leave and transitioning to this new job, but they
24 didn't like it and they wanted to question her about
25 that.

1 She will testify that she was approached by
2 Ms. Cranor -- and I'll keep testimony limited to what
3 Ms. Cranor asked her to do and what Ms. Tollen did
4 provide to Ms. Cranor pursuant to her request regarding
5 financial information that she was privy to as Director
6 of Purchasing.

7 And it appears that suddenly there was this
8 transfer out of nowhere. And Ms. Tollen is unaware of
9 any legitimate business purpose the District had to take
10 someone out of the Director of Purchasing position,
11 which she had held for 12 years out of her 17 years at
12 the Union -- I'm sorry, at CCSD -- and then suddenly
13 transferred her to a ghost position, if you will, a
14 non-functioning, non-essential ghost position in the
15 Human Resource department, which is not her background
16 and she doesn't have any experience in that whatsoever.

17 She tried put up with that for a little while;
18 it didn't work for her. She was experiencing an
19 exacerbation, if you will, or a recurrence of emotional
20 distress. She went to her physician. She talked to her
21 therapist about what was going on, and her therapist
22 said it's her therapist position, or her professional
23 opinion that she was experiencing problems on the job
24 there and in this new position. So the transfer is
25 directly a result of the exacerbation of the

1 At that point in time she was prepared to
2 resign, and she will testify that she would be
3 submitting her resignation. There appears to be a
4 miscommunication or a misunderstanding as to the scope
5 of what that would entail or what that would mean, but
6 it appears that the investigatory hearing would have
7 been cancelled. There appears to be some inconvenience
8 to Mr. Garis, who couldn't appear at a Tuesday hearing,
9 but he could appear at a Wednesday hearing.

10 Ms. Tollen was up in Washington at that point in
11 time. She never agreed to have the investigatory
12 hearing taken off calendar or concluded and put to rest
13 simply by resigning. The resignation was what was going
14 to be a natural occurrence, if you will, of her taking
15 that job in Washington. And --

16 **CHAIRMAN LARSON:** You keep alluding to her
17 resignation, but ultimately she retired, did she not?

18 **MR. HATFIELD:** Yes. A resignation, I think it
19 has the same semantic effect, that she had her time in
20 and she opted -- and she would be leaving the employment
21 of CCSD.

22 I believe that Ms. Tollen will testify that she
23 told Mr. Garis that she had spoken with a gentleman by
24 the name of Ron Mader of CCSD who's in charge of the
25 sick leave policy for CCSD. And Mr. Mader told her it's

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1 not uncommon for CCSD to grant sick leave to employees
2 that are unable to work at CCSD but are able to work
3 elsewhere.
4 She did discuss her resignation as a way to stop
5 the harassment and retaliation, and she would go her way
6 and CCSD would go theirs, or whatnot, as far as this
7 evidentiary hearing, but she never agreed to vacate it
8 with the consideration that there would be benefits that
9 may be recaptured or she would be in further hot water,
10 if you will, and she would not have an opportunity to
11 present her side of the case.
12 Ms. Tollen's conversation with Mr. Garis was
13 regarding ensuring that her benefits that were owed to
14 her that she had built up or had banked, if you will,
15 would be paid. And she also was quite clear that the
16 issues with the background of that job that she was
17 dishonest were not true. And there was much, much more
18 than this that simply she's just trying to double-dip,
19 if you will, by working at the county office up in
20 Washington State, as well as for CCSD but on sick leave.
21 **CHAIRMAN LARSON:** Can you kind of bring this --
22 we're hearing a lot about CCSD, and we obviously need a
23 little bit of background. But can you kind of, you
24 know, make this more relevant to what the Union did or
25 did not do?

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1 **MR. HATFIELD:** Right. Right. The Union -- it
2 appears that, yes, the Union has an understanding -- or
3 that Ms. Tollen's resignation was included in the scope
4 of their representation for her. We disagree.
5 Ms. Tollen, in her discussions with Mr. Garis,
6 never included vacating the investigatory hearing. The
7 earlier prophecies, again as I say, was regarding
8 ensuring that the benefits that were owed to her would
9 be paid and soon stop the issues regarding CCSD. So she
10 was invoking the help from her Union. Mr. Garis is
11 saying, We will help you. If you resign, the
12 evidentiary -- the investigatory hearing will be
13 cancelled.
14 There was no discussion whatsoever about further
15 issues regarding recapturing of benefits or that we
16 would not help you in the future or that there -- and
17 there was certainly no conversations that said that in a
18 position of -- in our position, in our opinion, you're
19 in the wrong. Nothing like that was said whatsoever.
20 On September 2, 2014, Karen Gray from the Nevada
21 Journal and then a gentleman by the name of Trevon
22 Milliard from the Review-Journal and other media outlets
23 printed some negative and demeaning articles about
24 Ms. Tollen.
25 CCSD's employees refused to comment. They said,

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1 We said we can't comment about this. This is a
2 personnel issue, and this involves a person's FMLA
3 issues and we're not going to do it. But who did?
4 Mr. Augspurger, who should have never commented about
5 Ms. Tollen. He didn't know anything about Ms. Tollen's
6 sick leave issues. He didn't know any of the background
7 that was going on, and he was quote, unquote, by the
8 press criticizing her.
9 He, as a Union's representative, should never
10 had made any statements about the press to her and, if
11 he did, he should have just said this is a contract
12 issue or it's very benign. We think that it's clear
13 that what our contract says, if at all. But he didn't
14 just say something general like that or just give a no
15 comment. He actually stated verbiage that was to her
16 detriment.
17 Like I was saying before, he said, What is CCSD
18 going to do about this. We need to remedy this. We
19 need to recapture these benefits. He's taking an
20 adverse position to her detriment, and that's what
21 happened.
22 Ms. Vesneske eventually wrote to Ms. Tollen,
23 advised her that she was having her benefits recaptured
24 and deducted. Her counsel writes to Ms. Vesneske and
25 with a copy to Mr. Augspurger, and then Mr. Augspurger

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1 directly asking for help, and there is no help. There's
2 no response whatsoever from her Union.
3 Mr. Augspurger testified in the deposition that
4 his attorney advised him not to respond. It appears not
5 to be the case. There is a joint exhibit where there is
6 an e-mail from his counsel to Mr. Augspurger advising a
7 response, but there was no response coming.
8 Ms. Tollen was obligated to get a response from
9 her Union and to have her Union investigate and to
10 listen to her, and then give her at least equal
11 opportunity to present her side of the story. They
12 didn't do that. What they did was actually to her
13 detriment. Ms. Tollen is going to testify that why
14 she's here is because the Union stabbed her in the back,
15 basically, and the Union acted to her detriment. Her
16 Union never sought to have her full side of the story.
17 They knew about it -- or they should have known about it
18 because Ms. Tollen had talked to Mr. Garis and said
19 these issues about me being dishonest with CCSD are
20 false. Period.
21 Mr. Augspurger evidently did not have that
22 opinion. He had already prejudged the situation and the
23 issue. He made these comments to the press. He never
24 should have, and even generally. But there should have
25 been some communication. I don't know what happened.

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1 Even if you give the benefit of the doubt to the
2 Union regarding the commentaries that were made, to say,
3 Well, you know, this is an issue of public interest, the
4 Union represents public employees, we should be
5 responding to press inquiries about allegations that
6 there was double dipping, if you will.
7 Mr. Augspurger and the Union -- and
8 Mr. Augspurger is the Union, essentially. He's the
9 Executive Director, so when I used "Union,"
10 Mr. Augspurger's actions, they're one and the same and
11 they're part and parcel of each other. These
12 disparaging comments should never have been made. You
13 know, she was owed a duty to wealthy fidelity that was
14 clearly breached.
15 To this date, we do not have the unequivocal
16 notice of adverse decision by the Union. The Union's
17 position has always been, Never apologize, never
18 explain. We prejudged her. We made these statements.
19 We're not apologetic about it. I asked Mr. Augspurger,
20 in that position, if he has any regrets about making the
21 statements. He said he didn't have any at all. He said
22 his contract was crystal clear, quote, that Ms. Tollen
23 essentially violated the sick leave policy. We
24 disagree.
25 Ms. Tollen spoke with Mr. Mader about the sick

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1 leave policy and what would that detail, and there was
2 no prohibition against working as a second job and she
3 was entitled to take sick leave from CCSD. It does not
4 spill over, if you will. Actually, there's evidence
5 that there's opinions to the contrary. And that's why
6 we're here, and we're here before yourselves.
7 What do you do when the Union won't represent
8 you? What do you do when the Union makes statements
9 that are detrimental to you when they should be having
10 her back. You have to go to the EMRB, if you're a
11 public employee, and that's why Ms. Tollen is here. She
12 wants to be vindicated, and she's looking for a
13 declaration from the Board that Mr. Augspurger, the
14 Union, made these statements to detriment, and she needs
15 permanent revocation for that. Thank you.
16 **CHAIRMAN LARSON:** Thank you.
17 Mr. Segal?
18 **MR. SEGAL:** Thank you.
19 **OPENING STATEMENT BY THE RESPONDENT**
20 **MR. SEGAL:** What happened in this case is Bramby
21 Tollen got herself into some trouble with the School
22 District regarding this use of the leave, and CCASA got
23 her out of it. But as the saying goes, No good deed
24 goes unpunished.
25 She was in the Purchasing Department at CCSD for

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1 many years and was transferred involuntarily effective
2 April 21st, 2014 to a job in HR. No reduction in pay,
3 but a very different job, different skill-set, something
4 she did not feel comfortable with and did not like.
5 Now, she sent an e-mail to her coworkers about
6 how excited she was for this new opportunity. The
7 e-mail was false. She hated the new job. By the end of
8 the week, a few days later after her first day on that
9 job, by the end of the week she had applied for
10 different jobs, full-time jobs, including the one she
11 ultimately took out of state in Washington State. On
12 May 4th she had already interviewed for the Washington
13 State job that she ultimately took. Early June, she
14 signed a one-year lease on an apartment in Washington
15 State and started her full-time job in Washington State
16 on June 13th, 2014.
17 Now, the problem with this is, simultaneously
18 with doing that, because she didn't like her new job, on
19 May 1st she signed an acceptance letter with CCSD saying
20 she accepted another year of employment going forward.
21 On May 29th, she filed for FMLA leave from CCSD
22 stating -- her and her doctor stating and certifying --
23 that as of May 13th, she was unable to perform any job
24 function, quote, unquote, due to disability. She
25 received FMLA and then sick leave effective May 15th,

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1 2014, and continued receiving it while working full time
2 in Washington.
3 Now, you don't have to rule at this Board
4 whether the District was right in granting FMLA leave
5 the first time -- or you'll hear later they rescinded
6 it -- but that is the predicament she found herself in
7 when the District sent her a notice for an investigatory
8 conference.
9 Now, that happened August 29th, and the District
10 said they wanted to discuss with her her use of sick
11 leave while working full time out of state. She will
12 tell you that she was aware of the District policy on
13 working multiple jobs, that you had to have
14 superintendent authorization to do that, that it had to
15 be something that did not interfere with your
16 obligations to work full time with the School District.
17 And she was also aware that under her labor
18 agreement that governed her use of FMLA leave and sick
19 leave generally, she was not to use it unless her
20 absence from CCSD was unavoidable. Nevertheless, she
21 began taking FMLA and ultimately sick leave while
22 working full time in Washington State.
23 So she is in Washington State that day,
24 August 29th, when the notice comes in. And it's true
25 it's initially noticed for September 2nd. Mr. Garis has

1 a scheduling conflict and has it moved to September 3rd.
2 Mr. Garis and Bramby Tollen got on a call and discussed
3 the notice and there's a disagreement. The key
4 disagreement in this case occurs at that point in time,
5 that day on August 29th.

6 Ms. Tollen's version is that Mr. Garis said one
7 way to get out of the investigatory conference and
8 resolve this would be to resign, and Ms. Tollen says on
9 that basis she signs a resignation letter with the
10 intent that Bill Garis will go to the investigatory
11 conference without her -- something that happen. You
12 can't investigate or interview an employee without the
13 employee -- and he would go without her with her
14 resignation signed but hidden, perhaps in his back
15 pocket, and if he felt things were going bad in his
16 discretion, he was to whip it out and submit her
17 resignation.

18 Bill Garis will testify that was never the
19 agreement of what he would do. He would never, number
20 one, go to an investigatory conference without the
21 person to be investigated -- which wouldn't make any
22 sense -- and, number two, he would never agree to hold
23 in secret a signed resignation, which also serves as an
24 application for PERS retirement benefits, and then make
25 a judgment call on how the conference was going, without

1 the employee there, and make a judgment call to surprise
2 the District with a sudden resignation on the spot
3 during an investigatory conference. He's going to tell
4 you that he never agreed to do that.

5 He has notes from the phone call that he made
6 while it was going on that match exactly his version of
7 events. When -- and his version is clear that Bramby
8 Tollen asked him, If I resign, will this avoid the
9 investigatory conference. He will testify that he said,
10 I don't know. I will call Ms. Vesneske and ask that
11 question for you.

12 You'll see in the stipulated joint exhibits
13 Ms. Vesneske's own affidavit saying she got that call
14 and that she responded to Mr. Garis that if Bramby
15 Tollen resigned, the District would vacate the
16 investigatory conference and not seek discipline for
17 this use of sick leave.

18 She was facing possible discipline from
19 admonishment to termination. This type of dishonesty
20 charge from the District is one of the grounds that may
21 warrant discharge. So she was in quite a spot, so it's
22 easy to understand why she would want to avoid that
23 investigatory conference.

24 Bill Garis called her back -- this is also
25 memorialized in his notes that he made concurrent with

1 calling her back -- and said, I've confirmed that if you
2 resign, the investigatory conference will be vacated.
3 And at that point, Bramby Tollen signed a resignation
4 form/application for PERS -- this is still August 29 --
5 provided it to Bill Garis, he forwarded it to the
6 District, they vacated the conference, and they took no
7 disciplinary action against Bramby Tollen.

8 Her PERS pension commenced effective September.
9 She started drawing PERS. She was working full time in
10 Washington State for \$98,000 a year. The job she had
11 left was 104-. When she applied to Washington State,
12 she said my desired salary is 90-, and she got 98-.

13 When applying to Washington State, she said she
14 was not disabled. This is April 4th. She said she was
15 still working in Purchasing -- a lie. She had already
16 been moved to HR -- and she told them, Don't contact my
17 current employer.

18 There can be little doubt that she had concerns
19 about what she was doing here with these two employers,
20 and there can be little doubt that she had strong
21 motivation to resign instead of going to that
22 disciplinary hearing. And when you weigh their
23 testimony, those written notes, and this scenario, I
24 think you're going to believe Mr. Garis that he was
25 instructed by Bramby Tollen to submit that resignation

1 instead of going to the disciplinary conference.

2 But what if Bramby's right? What if instead he
3 was to keep the signed resignation in his back pocket
4 and he had discretion of whether to turn it in or not
5 turn it in. That still, upon turning it in, is not a
6 violation of the duty of fair representation. That is
7 still within proper representation, because it's a
8 discretionary decision she gave to him on her behalf.
9 This is not a failure to represent.

10 You may disagree with this strategy. You may
11 think he should have got in there and defended her and
12 said, She is only disabled here where they're mean to
13 her and she's not disabled up there where they're nicer,
14 or whatever the doctors want to say that is from one job
15 but not another job -- notwithstanding what they said
16 when they filed FMLA -- but that's not a violation of
17 the duty of fair representation. That's still within
18 the realm of reasonable, non-arbitrary strategies that
19 one might take in that situation. Either way, there's
20 still no violation.

21 When you break this case down, and what this --
22 what the facts will show, is that there were two
23 requests for representation, and one -- two that CCASA
24 concedes happened -- and one that Bramby Tollen says
25 happened, that CCASA does not believe was a request for

1 representation.

2 And here are those three requests: First, when
3 the transfer happened, Bramby Tollen called Steve
4 Augspurger and said, I disagree with this transfer -- I
5 don't know if she used the words, I want to grieve it --
6 but she certainly took issue with it and asked CCASA to
7 help her fight the transfer. And Bramby Tollen and
8 Steve Augspurger will testify about that conversation,
9 and he said a transfer with no reduction in pay is not
10 grievable because it doesn't violate the CBA. And you
11 can read the CBA and you can see that that's true.

12 Bramby Tollen believes her -- she had the ability to
13 resist transfer under a provision separate in the
14 contract, that applies only to school principals.

15 So the Union clearly at that point declined a
16 non-meritorious representation. Bramby Tollen didn't
17 appeal that decision to CCASA, she didn't file a
18 grievance herself.

19 The second response for representation is the
20 investigatory conference, and I've just provided detail
21 on that. We do have two different inconsistent versions
22 of the conversation between Mr. Garis and Mrs. Tollen,
23 but as I pointed out, Mr. Garis, I am convinced, will be
24 very credible and be believed by you; and, number two,
25 it probably doesn't matter because even under Bramby

1 Tollen's version of what she asked him to do within the
2 realm of what she wanted done was tendering of her
3 resignation. So the end result is the same.

4 Now, the third request for representation that
5 CCASA believes is not a request for representation
6 happened on September 11th, and this is something that
7 Mr. Hatfield talked about a lot in his opening -- and
8 when you take a look at this document, I think you'll
9 have the same reaction to it as us -- number one, this
10 is September 11th. Bramby Tollen hasn't been a member
11 of the CCASA bargaining unit or the CCASA Union since
12 effective September 1st, because her resignation was
13 accepted August 29th, her PERS pension started in
14 September. She's out of the bargaining unit, she's no
15 longer a member of the Union.

16 Nevertheless, Mr. Augspurger receives this
17 letter and reviews it -- reviews it with counsel. The
18 comment in opening that counsel told him not to respond
19 are false. He was asked whether counsel told him not to
20 respond, and he said, No, counsel did not tell me to
21 respond. It doesn't matter.

22 You'll see this letter. It says two or three
23 times in this, very clearly, Bramby Tollen hereby
24 requests whistleblower statute under the CCASA
25 whistleblower policy. And it says under that

1 whistleblower statute, we demand that CCASA defend
2 Bramby Tollen against the School District. It doesn't
3 ask for representation, it doesn't ask for anything to
4 be grieved, it didn't pertain to any issue arising under
5 the Collective Bargaining Agreement, it doesn't pertain
6 as -- all whistleblower issues do not arise under 288.

7 This Board doesn't even have jurisdiction to
8 hear a fight about whistleblower issues. And that
9 letter says nothing other than she's being discriminated
10 against and unfairly treated by the District, she wants
11 whistleblower status, and that's it. It's a
12 non sequitur. It made no sense to Mr. Augspurger. It
13 simply didn't connect to any obligation on the Union one
14 way or the other to doing anything. And so that is not
15 a request for representation to the Union at all.

16 After -- and why did that suddenly happen?
17 Because one thing you'll find out about here is that
18 after the September 3rd date, when the investigatory
19 conference was, in Bramby Tollen's view, supposedly had
20 taken place, she doesn't call Mr. Garis to find out how
21 it went, and she doesn't check or find out that there
22 was no investigatory conference for two more weeks.

23 She's just not interested in that. She's not
24 following up. She doesn't know whether he tendered the
25 resignation or not during an investigatory conference.

1 She doesn't know what was said by some representative of
2 the District. She doesn't know what Mr. Garis
3 responded. She takes no interest in whether that
4 investigatory conference happened at all. She knew it
5 wasn't going to happen. She knew that by resigning it
6 was not going to happen.

7 Now, she'll testify that she didn't do that
8 because she found out it didn't happen by reading
9 newspaper articles starting September 3rd. You can read
10 those newspaper articles until you're blue in the face;
11 they don't talk about any investigative conference and
12 they don't say whether it happened or it didn't happen.
13 All you can learn from that is that she resigned.

14 Well, even under her scenario where he goes into
15 the investigatory conference and whips out the secret
16 resignation, she has resigned. So she has taken no
17 interest into whether that investigatory conference
18 actually occurred or not. The reason is, she knew it
19 wasn't going to occur.

20 Lastly, on those newspaper articles, you can
21 read them. Mr. Augspurger received calls -- he didn't
22 release press releases; that's a distinction -- he
23 received calls from reporters, as often happens when you
24 represent public employees who are receiving public
25 funds that taxpayers pay for. There's often interest in

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1 issues regarding their use of those funds and he's often
2 called upon to interpret provisions of the labor
3 agreement.
4 He said things like, I hope Ms. Tollen is not
5 doing what you think she's doing, and CCASA wouldn't
6 condone that, and the CCASA agreement is clear to take
7 sick leave under this agreement, you must be unavailable
8 to work, not working full time at another purchasing
9 job, very similar duties and tasks somewhere else out of
10 state. And he answered the reporters' questions, as it
11 was proper for him to do as a representative of folks
12 who are public employees, and proper for him to do under
13 the First Amendment of the United States Constitution,
14 as it proper to do if he chooses to do that.
15 He doesn't raise or talk about Bramby Tollen
16 affirmatively. He's being asked about her, and he's
17 saying, Well, I can just tell you generally under the
18 contract this would not be permissible, and he says, I
19 hope it didn't happen, and so on and so forth. Nothing
20 improper about that at all, especially at this time
21 where she's already resigned, she's already moved, she's
22 gone, and this has no bearing on any representative
23 issue going forward at that point in time.
24 And one thing to think about here is that Bramby
25 Tollen was working full time for \$98,000 a year in

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1 Washington State. She was receiving wage replacement as
2 well under the sick leave policies from Clark County.
3 And what she's saying now about, I never intended that
4 resignation to be submitted, is that on top of those two
5 payment streams, I was entitled to take PERS as well.
6 You talk about accusations of being
7 double-dipping? I mean, this is triple-dipping under
8 her theory that her ongoing sick leave should never have
9 been cut off by that resignation. It's easy to
10 understand the predicament she was in. It's easy to
11 understand why submitting that resignation, whether Bill
12 Garis made the decision after being given discretion to
13 do so, or if Bramby Tollen directed him to do it, was a
14 very good thing for Bramby Tollen to do.
15 She didn't have a force-filed termination, she
16 never had to report adverse employment history on her
17 application to her new employer, she had no admonition
18 in her file, she has no unsatisfactory evaluation in her
19 file based upon that, and she has moved on to a job that
20 she likes better than the one she hated, and that is
21 about the best outcome you could have ever imagined,
22 given the history of this case.
23 Beyond fair representation, if that was Bill
24 Garis' idea, she ought to be giving him an award,
25 because he saved her a lot of heartache and turmoil;

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1 this wasn't going anywhere but downhill.
2 So I believe that when all of this comes to
3 light through the witnesses you'll hear today and
4 possibly tomorrow, if we go that far, that that's
5 exactly what happened. There was no failure of the duty
6 of fair representation.
7 In closing, I'll talk about that -- well, a
8 little bit -- I know you all know it, but I think it's
9 worth revisiting at the end. And, in fact, what
10 happened here was the best possible out come that could
11 have happened given what Bramby Tollen herself -- the
12 situation she herself had created. Thank you.
13 **CHAIRMAN LARSON:** Thank you.
14 Mr. Hatfield, I think the Board needs a
15 convenience break.
16 **MR. HATFIELD:** Very good.
17 **CHAIRMAN LARSON:** But I want to ask you first --
18 who is your first witness -- it's about 10:25 now. Who
19 is your first witness, and how long do you expect them
20 to be?
21 **MR. HATFIELD:** I think out of courtesy to
22 Mr. Mader, we would be calling him first. He is CCSD's
23 employee. And considering the Board's holding, I would
24 like to ask him some questions about what he may have
25 said to Ms. Tollen about sick leave details and how to

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1 go about it.
2 I think maybe 15 minutes to a half an hour --
3 **CHAIRMAN LARSON:** Okay.
4 **MR. HATFIELD:** -- depending on
5 cross-examination --
6 **MS. MASTERS:** How many witnesses do you have
7 today?
8 **MR. HATFIELD:** I have one, two, three possibly,
9 and maybe, depending on how fast we go, four witnesses.
10 **CHAIRMAN LARSON:** Okay. Let's go off the record
11 and recess until 10:30. It's 10:25 now.
12 (Recess taken.)
13 **CHAIRMAN LARSON:** Okay. Let's go back on the
14 record and reconvene the EMRB meeting.
15 Before you call your first witness, is there
16 anybody else that you would like to be excluded?
17 **MR. HATFIELD:** At this time, I don't believe so.
18 **CHAIRMAN LARSON:** Okay. Thank you.
19 **MR. HATFIELD:** At this time, I would like to
20 request testimony from Mr. Ron Mader. If we can call --
21 (Pause in proceedings.)
22 **CHAIRMAN LARSON:** The court reporter will swear
23 you in.
24 ///
25 ///

1 RONALD MADER,
2 having been first duly sworn to testify to the truth,
3 the whole truth, and nothing but the truth, was examined
4 and testified as follows:

5 **DIRECT EXAMINATION**

6 **BY MR. HATFIELD:**

7 Q. Good morning, sir.

8 **A. Good morning.**

9 Q. My name is Trevor Hatfield. I'm counsel for the
10 complainant today. Her name is Bramby Tollen.

11 And I understand that your name is Ron Mader; is
12 that correct?

13 **A. Correct.**

14 Q. And that's spelled M-a-d-e-r?

15 **A. Correct.**

16 Q. And I understand that you are an employee of the
17 Clark County School District; is that correct?

18 **A. Correct.**

19 Q. And what is your current position, sir?

20 **A. Director of the Compliance Office.**

21 Q. Director of the Compliance Office. Is there a
22 specific compliance that you direct?

23 **A. A whole hodgepodge of different things. The FML
24 is one of the things that I oversee.**

25 Q. And are you the person from the Clark County

1 **A. I don't know whether she applied for sick leave
2 or not. I do know she applied for FML.**

3 Q. And was she approved?

4 **A. She was approved for FML, yes.**

5 Q. And a reason is in issue here. Can you tell us
6 why your -- what your knowledge is why she requested
7 FML?

8 **A. The specific medical facts, my staff would have
9 handled, so I didn't look at the doctors' information.
10 So her specific reason for requesting FML, I'm not aware
11 of.**

12 Q. And as you sit here today, are you aware of --
13 why she asked for FML?

14 **A. After going back and reviewing all of this, yes.**

15 Q. Okay. Did you review some documents in
16 preparation for your testimony today?

17 **A. No. Not really, no.**

18 Q. Did you have any conversations with Ms. Tollen
19 during -- conditions regarding FML, and particularly to
20 her, specific to her at that time?

21 **A. Ms. Tollen was in my office quite a few times
22 periodically asking questions about FML. I don't recall
23 specifically a conversation with her specific medical
24 information, but I can't say if it didn't happen or not.**

25 Q. Can you tell the Board, if you recall, if

1 School District who is dedicated to answer questions
2 about FML sick leave; is that correct?

3 **A. FML, correct, yes.**

4 Q. FML and sick leave, is that interchangeable?

5 **A. To a certain point. Most of the time while you
6 utilize FML, you're utilizing your sick leave. But if
7 you have a specific sick leave question, then that would
8 refer back to either the Collective Bargaining Agreement
9 or your supervisor.**

10 Q. Does FML pertain to taking time off of an
11 extended nature?

12 **A. Yes.**

13 Q. So is -- what is the policy whereby one is
14 approved for a short-term sick leave at the Clark County
15 School District?

16 **A. Well, that again would revert back to the
17 employee's site administrator and get covered under the
18 Collective Bargaining Agreement for short-term sick
19 leave usage.**

20 Q. And do you have an understanding -- or do you
21 have any knowledge of Ms. Tollen's request for sick
22 leave in 2014?

23 **A. Yeah, as far as it relates to FML, I do, yes.**

24 Q. Do you have an understanding that Ms. Tollen
25 applied for sick leave?

1 Ms. Tollen had asked you about a CCSD employee being
2 granted FML due to an available issue or impossibility
3 to work for CCSD but working a second job?

4 **A. She may have asked that general question, and
5 it's a pretty common question. And I think my typical
6 response would be that, you know, as long as the job
7 doesn't interfere with your regular job -- you know,
8 it's specifically not up to my office to approve that or
9 deny that. There is a District policy. But as far
10 as -- the example I typically give is, is if the school
11 teacher is working a second job at night as a cocktail
12 waitress or something and you can't come to work during
13 the school day as a teacher, but can you continue that
14 second job? And sometimes, you know, depending on the
15 situation, it has been allowed.**

16 **MR. ECKERSLEY:** Is that under sick leave or FML?

17 **THE WITNESS:** Under FML, not under sick leave.

18 **BY MR. HATFIELD:**

19 Q. Do you recall providing some opinion or
20 enlightenment regarding Ms. Tollen's questions and
21 providing that example of a teacher who might be on FML
22 and cannot work for CCSD while working a second job as a
23 waitress or a cocktail waitress?

24 **A. If she asked that question, I probably used that
25 example.**

1 Q. So it's fair to say that might -- more likely
2 than not, it did transpire?
3 **A. If she asked that question.**
4 Q. If she asked the question, correct.
5 **CHAIRMAN LARSON:** The underlining assumption
6 being, though, that she would continue her full-time job
7 with CCSD, and the second job would be perhaps a
8 part-time job during some other hours of the day?
9 **THE WITNESS:** Correct. But under FML, she most
10 likely wouldn't be working her full-time job. She would
11 be continuing to work the second job.
12 **CHAIRMAN LARSON:** Okay. Okay.
13 **BY MR. HATFIELD:**
14 Q. So just a few more questions for you, Mr. Mader.
15 Did you provide any input to the Clark County
16 School District with regards to Ms. Tollen's alleged
17 improper use of FML?
18 **A. We provided the documents that were requested by**
19 **legal. As far as input, typically legal doesn't listen**
20 **to my input, so -- but, no, we provided the documents**
21 **for legal to review.**
22 Q. Do you recall what documents were provided, sir?
23 **A. It would have been the medical certification and**
24 **all of our correspondence to Ms. Tollen.**
25 Q. I'm not aware of correspondence. Can you give

1 us an idea of what correspondence was provided to
2 Ms. Tollen by your office?
3 **A. There would have been an approval -- or,**
4 **actually, at first there would have been a request**
5 **letter that would have been sent out saying that she's**
6 **requested FML, and then that would have followed up with**
7 **an approval letter with the specific information as far**
8 **as dates.**
9 Q. And you provided that to counsel once this issue
10 came up about Ms. Tollen's alleged improper use of FML?
11 **A. Correct.**
12 Q. Did you provide any input to CCASAPE Union in
13 regards to Ms. Tollen's alleged improper use of sick
14 leave or FML?
15 **A. No, sir.**
16 Q. Is it your opinion that she violated the sick
17 leave policy by taking another job in her old position,
18 per se? A per se, violation.
19 **A. I don't know.**
20 **MR. SEGAL:** I'm just going to object that that
21 calls for a legal conclusion.
22 **CHAIRMAN LARSON:** Okay.
23 **MR. SEGAL:** Do you want to pull out the "per se"
24 perhaps? Because "per se is a legal concept."
25 **CHAIRMAN LARSON:** Do you want to rephrase that?

1 **MR. HATFIELD:** I certainly can.
2 **BY MR. HATFIELD:**
3 Q. On its face, is there a policy that you know of
4 that precludes someone from taking sick leave, FML, from
5 CCSD from working a second job or another job?
6 **A. The FML -- as far as the FML policy, it's pretty**
7 **broad. It indicates that the second job should not**
8 **violate what the person is originally on FML for. In**
9 **other words, if Ms. Tollen has a broken leg, she**
10 **shouldn't be out, you know, working on a golf course,**
11 **kind of thing. But then for the majority of -- of all**
12 **of the other situation, that differs to CCSD.**
13 Q. So it's kind of a case-by-case basis?
14 **A. Case-by-case basis.**
15 Q. Fair enough. Do you have any understanding that
16 CCSD is saying now that Ms. Tollen should not have been
17 granted FML in hindsight?
18 **A. I have -- have not heard that, no.**
19 Q. Okay. In general, Mr. Mader, what is the
20 procedure when the Clark County School District has
21 suspicions of improper use of sick leave?
22 **A. Of sick leave?**
23 Q. Or FML. I'm using that a little bit
24 interchangeably. But, in general, just generally
25 speaking -- maybe I can rephrase. I'll strike the last

1 question and I'm rephrasing.
2 If there is an issue that's brought up that
3 someone is taking time off for an alleged illness or
4 issue, and they're not really unable to work, what's the
5 procedure?
6 **A. So what you're speaking of is abuse of sick**
7 **leave, and so that would be referred to**
8 **Employee-Management Relations or possibly legal. Again,**
9 **sick leave usage does not have anything to do with my**
10 **office.**
11 Q. So your office doesn't have anything to do with
12 that as far as, like, generating an inquiry into
13 someone's alleged improper use of sick leave or FML?
14 **A. Correct. Typically, it would be an**
15 **administrator calling my office and asking those types**
16 **of questions. We would defer that administrator to the**
17 **Employee-Management Relations office.**
18 **MR. HATFIELD:** The Board's indulgence for just a
19 moment. I just want to confer with my client for a
20 moment.
21 Thank you. Nothing further from us.
22 **MS. MASTERS:** I need to ask at this juncture:
23 About how long does the FML continue while you're
24 waiting for the situation to be resolved?
25 **THE WITNESS:** All depending on what the doctor

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1 puts in the medical information. You're allowed up to
2 60 days in one calendar -- rolling calendar year. And I
3 believe in Ms. Tollen's situation, that the doctor put
4 her out for 60 days. So it could be anywhere from five
5 days to 15 days. And then there's also intermittent FML
6 where the employee is allowed to come to work, take a
7 day off, come back to work, those types of situations.
8 **MS. MASTERS:** So the extent of it is totally
9 60 days?
10 **THE WITNESS:** 60 days, correct.
11 **MS. MASTERS:** Okay. Thank you.
12 **CHAIRMAN LARSON:** Mr. Segal?
13 **MR. SEGAL:** Yes. Thank you.
14 **CROSS-EXAMINATION**
15 **BY MR. SEGAL:**
16 Q. Do you recall what dates or even what month your
17 meetings with Bramby Tollen occurred?
18 **A. Specific dates, I do not. It would have been**
19 **probably real close to when Ms. Tollen was reassigned to**
20 **HR.**
21 Q. So if I represent to you that that happened
22 effective April 1st, 2014, do you have any reason to
23 disagree with that time frame?
24 **A. No.**
25 Q. And do you recall when the last time you met

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1 with her was before her FML was granted June 4th, 2014?
2 **A. I do not.**
3 Q. Do you know if you hadn't seen her for months
4 before that date, or had it been a few days before that
5 date?
6 **A. It would have been fairly close to that date.**
7 **GMs. Tollen came into my office quite a bit with**
8 **questions regarding FML and then questions regarding**
9 **applicants' criminal background histories.**
10 Q. Okay. And so the time frame we're looking at
11 for these conversations is between the April 1st, 2014
12 reassignment to HR and the June 4th, 2014 granting of
13 FML?
14 **A. Correct.**
15 Q. Do you remember the conversation where you may
16 have responded with the example about the cocktail
17 waitress being early in that sequence of meetings with
18 her, or was it one of the last meetings?
19 **A. If I -- and I'm guessing here -- I would say it**
20 **was probably towards the middle of those conversations.**
21 Q. Okay. During those conversations, did Bramby
22 Tollen tell you that on April 3rd, 2014 she applied for
23 a full-time position in Washington State in the
24 Purchasing Department?
25 **A. No, sir.**

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1 Q. Any time during that time frame did she tell you
2 she flew to Washington State to interview for a
3 full-time position in a Purchasing Department?
4 **A. No.**
5 Q. Did she ever indicate to you that she had signed
6 a one-year lease on an apartment in Washington State in
7 order to take a job there?
8 **A. No, sir.**
9 Q. I see you have a binder of the exhibits in this
10 case in front of you. Could you flip to Tab 34 for me?
11 **A. Before or after the tab?**
12 Q. After. You're in the right spot. Thank you.
13 Can you tell me if you know what that document
14 is?
15 **A. I believe it's a Clark County School District**
16 **Regulation 4250.**
17 Q. Have you seen it before today?
18 **A. I have.**
19 Q. And just looking at Section 1 there, do you have
20 an understanding of what that Section 1 pertains to?
21 **A. And this is my interpretation of this --**
22 **Q. Sure.**
23 **A. -- that it refers to employees working a second**
24 **job that may conflict with the District.**
25 Q. And do you see that there's generally a

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1 prohibition on working second jobs that conflict with
2 your District duties?
3 **A. Correct.**
4 Q. In the second sentence there's a reference there
5 that says the superintendent or designee can evaluate
6 that issue, and I assume potentially approve or
7 disapprove the taking of a second job. Is that your
8 understanding as well?
9 **A. Correct.**
10 Q. We know you're not the superintendent. Are you
11 a superintendent designee for purposes of approving
12 second jobs under this provision?
13 **A. No, sir.**
14 Q. Did you ever indicate to Bramby Tollen that she
15 could take FML benefits while working full time out of
16 state in a position also in purchasing, like the one she
17 had previously?
18 **A. No, sir.**
19 Q. Would you have ever told her that was okay?
20 **A. No, sir.**
21 Q. Just sitting here today, do you think that's
22 okay?
23 **A. No, sir.**
24 Q. Can I have you flip forward to Tab 40 in the
25 exhibit binder?

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1 And then in the lower right page you're going to
2 see a page numbering system that starts with the word
3 CCASA. Do you see those page numbers?
4 **A. Yes, sir.**
5 Q. Can you flip forward in -- flip forward in that
6 numbering system to Page 26 -- 260, 2-6-0 will be the
7 last three numbers. So it's kind of a good inch in
8 there. It's a ways back.
9 Are you at Page 260?
10 **A. Yes, sir.**
11 Q. Is that a letter, a two-page letter, that you
12 authored and signed?
13 **A. Yes and no. It's a letter generated from my**
14 **office. The actual signature is a stamp, though, so I**
15 **didn't personally sign it.**
16 Q. Did you authorize the stamp being used on this
17 letter?
18 **A. Yes, sir.**
19 Q. Is this the type of letter that you routinely
20 generate in your work regarding FML?
21 **A. Correct. It's one of the letters that I've**
22 **mentioned earlier.**
23 Q. And what's the purpose of sending this letter?
24 And I'll just note for the record it's addressed to
25 Mr. Bramby Tollen. What's the purpose of this letter?

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1 **A. It notifies Bramby Tollen that she is approved**
2 **for FML. You'll notice the dates for her approved time**
3 **out are also mentioned in the letter.**
4 Q. And can you turn to the second page of that
5 letter? And do you see Item 8 listed on that letter?
6 **A. Yes, sir.**
7 Q. And is this an admonition to Bramby Tollen that
8 during FML leave she needs to continue to have an intent
9 to return to work?
10 **MR. HATFIELD:** I'm going to object to the form
11 of the question as to the term "admonish." The document
12 speaks for itself.
13 **CHAIRMAN LARSON:** Mr. Segal, do you want to --
14 **MR. SEGAL:** I think it's a clear list of
15 admonishments on people about the FML requirements. I
16 think it's a very good word to use.
17 **CHAIRMAN LARSON:** I'm going to overrule the
18 objection and allow testimony.
19 **MS. MASTERS:** I agree. I agree.
20 **CHAIRMAN LARSON:** Thank you.
21 **BY MR. SEGAL:**
22 Q. Do you remember the question?
23 **A. Can; you please restate it or --**
24 Q. Yeah. Looking at Item 8, is this an
25 admonishment to Bramby Tollen that while taking FML, she

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1 needs to maintain an intent to return to work?
2 **A. Yeah, I believe so. Also a little bit of she**
3 **needs to maintain a communication with our office, as**
4 **far as turning in 101s, the absence form and so on. If**
5 **anything else would change in her status, she needs to**
6 **notify us.**
7 Q. And, in fact, was she supposed to submit every
8 30 days an affirmation that she continued to have an
9 intent to return to work at CCSD?
10 **A. Per this document, I would say yes; but that's**
11 **something that we don't typically require. Occasionally**
12 **we would, in certain circumstances, require a new**
13 **medical certification for certain folks. In**
14 **Ms. Tollen's circumstance, I don't believe this was**
15 **implemented.**
16 Q. Okay. You didn't require them and she didn't do
17 them?
18 **A. We didn't require them.**
19 Q. Okay. And is it a correct statement, however,
20 that the FML department, if you will -- or at least in
21 your view -- would not condone an employee using FML who
22 had no intention of returning to work at CCSD?
23 **A. I -- "condone" is a strong word. You know,**
24 **occasionally we'll have folks that will utilize their**
25 **full 60 days of FML knowing that they're not going to**

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1 come back to work because they're injured themselves so
2 severely that they're unable to return back to work. So
3 in some circumstances, they may utilize FML, they may
4 utilized what remains of their sick leave, they may even
5 go out on a leave of absence knowing full well that they
6 may be able to return to work. So I hope that answers
7 your question.
8 Q. Yes, it does. And it leads to another question,
9 though: Would you, on behalf of the FML department or
10 program, condone an employee using FML leave while
11 having no intent to return to CCSD because she had
12 moved, signed a one-year lease, and taken another
13 full-time position in a similar purchasing job?
14 **A. That I would certainly look into and contact our**
15 **folks either in EMR or legal to present that problem to**
16 **them.**
17 Q. That would be a problem to you?
18 **A. That would be a problem in our mind, yes.**
19 **MR. SEGAL:** No further questions.
20 **CHAIRMAN LARSON:** Mr. Hatfield?
21 **MR. HATFIELD:** Just a couple questions on
22 Redirect.
23 **REDIRECT EXAMINATION**
24 **BY MR. HATFIELD:**
25 Q. Mr. Mader, did Ms. Tollen ever have any specific

1 conversations with you about working up in Washington
2 State while working -- while being on FML?
3 **A. No, sir.**
4 Q. Okay. And do you know what the circumstances
5 were regarding her requesting FML in that -- do you know
6 why she was requesting FML?
7 **MR. SEGAL:** Objection; asked and answered.
8 **CHAIRMAN LARSON:** Hold on just a moment. Could
9 you repeat the question?
10 **MR. HATFIELD:** Yes.
11 **BY MR. HATFIELD:**
12 Q. Do you know why Ms. Tollen was requesting FML?
13 **CHAIRMAN LARSON:** Okay. Don't answer that.
14 Preference of the Board.
15 **MR. ECKERSLEY:** He's already told us.
16 **CHAIRMAN LARSON:** Yeah, okay. We'll let it in.
17 We'll overrule the objection.
18 You may answer now.
19 **BY MR. HATFIELD:**
20 Q. You can answer.
21 **A. At that certain point I did not; but later on I**
22 **was aware after looking through the paperwork.**
23 Q. Is it required that a CCSD employee who was on
24 FML inform your office that they have taken a second job
25 while they have been approved for FML?

1 **A. It's not a requirement, no.**
2 Q. If Ms. Tollen has taken a job -- which I'll
3 represent is true -- in Washington State, was she
4 required to inform your group that she had taken this
5 second job while she was on FML?
6 **A. We don't require a specific notification.**
7 Q. If a specific notification is not required, why
8 make the judgment opinion right now that Ms. Tollen may
9 have possibly abused the FML that was granted to her?
10 **A. Because under the Department of Labor FLA, the**
11 **documents, if you look at those, it indicates that if**
12 **she's out working a similar type job, there should be**
13 **some concern.**
14 Q. And do you think that would apply if she was
15 experiencing exacerbation of emotional distress due to
16 issues she was having while working for CCSD --
17 **MR. SEGAL:** I'm just --
18 **BY MR. HATFIELD:**
19 Q. -- but not in a second job?
20 **MR. SEGAL:** I'm just going to object; that calls
21 for a medical opinion.
22 **MS. MASTERS:** That's correct.
23 **BY MR. HATFIELD:**
24 Q. As a layperson?
25 **CHAIRMAN LARSON:** I'll sustain that objection.

1 **BY MR. HATFIELD:**
2 Q. Can a Union -- can a Union see documentation
3 regarding a person's FML applications? Is that for
4 public consumption, if you will?
5 **A. No.**
6 Q. How would a Union understand why a person would
7 be approved for FML? How would they come to that
8 knowledge? Would they come through inadvertence or
9 disclosure?
10 **A. I'm not sure how the Union became aware that she**
11 **was on FML. They're not part of our notification.**
12 Q. Are you familiar with the term "HIPAA"?
13 **A. Yes.**
14 Q. Okay. What is your understanding what HIPAA
15 stands for?
16 **A. HIPAA is basically a protection of an employee's**
17 **medical information.**
18 Q. And does your department, do they apply -- do
19 you apply HIPAA to FML requests?
20 **A. Yes.**
21 **MR. SEGAL:** Objection; calls for a legal
22 conclusion. And, in fact, the School District is not a
23 covered entity under HIPAA.
24 **MS. MASTERS:** That's true.
25 **CHAIRMAN LARSON:** Okay, hold on just a minute.

1 Do you want to respond or rephrase?
2 **MR. HATFIELD:** It's not asking for a legal
3 conclusion. It's simply asking if he complies with
4 HIPAA because of the medical information and sensitivity
5 of the applications for FML. I'm just asking if his
6 department knows about HIPAA and if they comply with
7 HIPAA.
8 **MR. SEGAL:** And then my objection is relevant
9 because it's not within the purview of this Board to
10 rule on HIPAA violations, and the School District is not
11 a covered entity under HIPAA.
12 **CHAIRMAN LARSON:** I would be inclined to agree
13 and sustain that objection.
14 **BY MR. HATFIELD:**
15 Q. Are FML applications kept confidential by your
16 department?
17 **A. Yes, sir. And I think, you know, part of what I**
18 **said previously that I didn't even know what her**
19 **situation was until it turned into this point, not**
20 **having looked at the medical paperwork either. Just my**
21 **staff that processed the paperwork.**
22 Q. And there was no disclosure of Ms. Tollen's FML
23 applications until after there was an issue that was
24 raised --
25 **A. That's correct.**

1 Q. -- is that correct? Okay. And can you tell us,
2 if you know, who requested Ms. Tollen's FML applications
3 from your office?
4 **A. Initially, I believe it was either Dr. Staci**
5 **Vesneske, or may have been the legal department. I**
6 **don't know which one asked first.**
7 Q. Is it was purely CCSD and not CCASA, the Union?
8 **A. Correct. I would not release documents to an**
9 **outside entity without a request for information coming**
10 **from our attorneys.**
11 Q. So do you have any knowledge of how this
12 document -- this issue came out and was apprised to the
13 Union?
14 **A. I don't know how the Union became aware of the**
15 **situation.**
16 **MR. HATFIELD:** All right. Nothing further.
17 **MR. SEGAL:** I don't have anything.
18 **CHAIRMAN LARSON:** Mr. Segal?
19 **MR. SEGAL:** I don't have anything further of
20 this witness.
21 **CHAIRMAN LARSON:** The Board can now ask
22 questions. And typically you can't object to the
23 Board's questions. However, there are -- there are
24 areas if we infringed on attorney-client privilege, then
25 obviously you can. I don't know if there's any

1 **A. That's all per contract, the administrative**
2 **contract. I don't believe it requires a doctor's note**
3 **after three absences, but --**
4 Q. Okay. But some organizations do, and I'm sure
5 the School District has a limit.
6 **A. Correct.**
7 Q. Let's assume she's going to have surgery and
8 she's going to be out for 60 calendar days, does that
9 come under sick leave usage or does that come under FML?
10 **A. It all depends on how the employee and the**
11 **supervisor want to handle it. It could be handled**
12 **completely out of my office -- in other words, the**
13 **employee just notifies the supervisor and says, I'm**
14 **going to have surgery, I'm going to be gone for 16 days,**
15 **here's my 101s, here's my time, I have enough to be**
16 **out --**
17 Q. So with respect to her sick leave -- and I used
18 the example of 60 days of, let's say, calendar leave,
19 and maybe that's 48 days of regular leave excluding
20 weekends -- is that coming out of her sick leave balance
21 if she works it out with her supervisor?
22 **A. Yes, it is out of the sick leave.**
23 Q. Okay. Describe that scenario and how it works
24 under FML.
25 **A. Under FML, the employee would go in, talk to**

1 circumstance that Mr. Davis prefers.
2 **MR. DAVIS:** I'm sure there's something out there
3 that --
4 **CHAIRMAN LARSON:** Okay. Questions from the
5 Board?
6 **MS. MASTERS:** No, thank you.
7 **MR. ECKERSLEY:** No.
8 **EXAMINATION**
9 **BY CHAIRMAN LARSON:**
10 Q. I'd like to understand that -- I understand you
11 said you weren't responsible for sick leave; you're
12 responsible for FML. Or is that also known as FMLA?
13 **A. Yeah, FMLA. I apologize.**
14 Q. Let's assume that Ms. Tollen has been with the
15 School District for 15 years, and let's assume that
16 she's got 600 hours of sick leave on the books. Okay?
17 When the day comes and she feels sick and she calls in
18 to her supervisor and says, I'm not going to be in
19 today, obviously she's going to lose eight or nine or
20 ten hours of that sick leave, depending on her schedule,
21 her weekly schedule.
22 If -- and I don't know -- and if she misses more
23 than, let's say, three days, she may be required to get
24 a doctor's excuse and present it to her employer upon
25 commencement of her return?

1 **their administrator, say I've got to go have surgery.**
2 **Typically, the administrator or the employee may have**
3 **already contacted my office, but someplace in that**
4 **process someone should notify us that, Hey, I'm going to**
5 **have surgery. A doctor would fill in some paperwork,**
6 **the doctor would say the surgery is going to be X day,**
7 **the employee would be required to be out on Z day. And**
8 **so we would verify that information with the doctor,**
9 **fill in the paperwork -- one of the examples is in your**
10 **binder here -- notifying the administrator and notifying**
11 **the employee that they are approved for FML.**
12 **While they're out on FML, if they do have enough**
13 **sick leave to cover, then we would utilize that sick**
14 **leave to make sure that the employee is paid. If the**
15 **employee runs out of sick leave while they're still**
16 **burning their 60 days of FML, then we'd either use**
17 **vacation or comp time or any other accrued time and, if**
18 **not, they would be on non-paid status.**
19 Q. Leave without pay?
20 **A. Yes.**
21 Q. But it's not as if they reach into a -- once
22 they exhaust their sick leave and their vacation time
23 and comp and personal or comp time, it's not as if they
24 they're drawing from some kind of bank where others
25 contribute?

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1 **A. There is a sick leave pool bank --**
2 Q. Okay. I don't know if this is applicable.
3 **A. -- but I don't know if -- in this situation, it**
4 **is not.**
5 Q. Okay, that's fine. I just wanted to understand
6 that.
7 Additional questions by --
8 **MR. HATFIELD:** No. I don't think there's any
9 from us.
10 **MR. SEGAL:** No.
11 **CHAIRMAN LARSON:** Okay. Thank you Mr. -- your
12 last name is?
13 **MS. MASTERS:** Mader.
14 **THE WITNESS:** Mader.
15 **CHAIRMAN LARSON:** Thank you. You may be
16 excused.
17 Mr. Hatfield?
18 **MS. MASTERS:** Okay, Mr. Hatfield, who's next?
19 **MR. HATFIELD:** Who's up next is Mr. Bill Garis.
20 **CHAIRMAN LARSON:** Where might Mr. Garis be?
21 **MR. HATFIELD:** Oh, he should be outside.
22 Do you want to grab him, as well?
23 (Pause in proceedings.)
24 **CHAIRMAN LARSON:** Mr. Garis, the court reporter
25 will swear you in here.

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1 WILLIAM GARIS,
2 having been first duly sworn to testify to the truth,
3 the whole truth, and nothing but the truth, was examined
4 and testified as follows:
5 **DIRECT EXAMINATION**
6 **BY MR. HATFIELD:**
7 Q. Good morning, Mr. Garis. My name is Trevor
8 Hatfield. I'm representing the complainant in this
9 case, Bramby Tollen. I don't believe you and I have
10 met, have we, before?
11 **A. I think we've seen each other.**
12 Q. Just seen each other? Okay.
13 **A. I don't know if we've met.**
14 Q. I do know a little bit about your position, so
15 I'm going to be asking you some direct questions about
16 what you might know, what might be pertinent to this,
17 considering that the Board has, you know, holding
18 regarding the scope of what might be asked.
19 You are an employee of -- of what? Who is your
20 employer, sir?
21 **A. The Clark County Association of School**
22 **Administrator and Professional Technical Employees.**
23 Q. And how long have you been employed with that
24 entity that we just -- we've been generally referring to
25 that as the Union; you understand that, correct?

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1 **A. Yes, sir.**
2 Q. And how long --
3 **A. Almost two years.**
4 Q. Two years?
5 **CHAIRMAN LARSON:** Could I ask a question? I'm
6 trying to understand if you are employed by CCASA.
7 You're not a CCSD employee who was given over to CCASA?
8 **THE WITNESS:** That's correct, I am not.
9 **CHAIRMAN LARSON:** You are not?
10 **THE WITNESS:** I am not.
11 **CHAIRMAN LARSON:** CCASA pays --
12 **BY MR. HATFIELD:**
13 Q. Great question, though, yeah. And so you just
14 work for the Union itself; correct?
15 **A. Yes.**
16 Q. And what is your position at the Union?
17 **A. I am the Deputy Executive Director.**
18 Q. And you've been employed for two years with the
19 Union?
20 **A. Yes. It will be two years in March.**
21 Q. And have you always been employed as the Deputy
22 Executive Director?
23 **A. Yes, sir.**
24 Q. And in a previous capacity, have you ever been
25 employed with CCSD?

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1 **A. Yes, sir.**
2 Q. And what was your position with CCSD?
3 **A. I held several positions; most recently, the**
4 **Deputy Human Resource Officer.**
5 Q. You're not a teacher, I take it?
6 **A. Not currently, no.**
7 Q. All right. You're an administrator, is that
8 correct, in your past life in working with CCSD?
9 **A. Yes.**
10 Q. Okay.
11 **CHAIRMAN LARSON:** But your questions are
12 directed to the employ of CCASA?
13 **MR. HATFIELD:** I'm sorry, sir?
14 **CHAIRMAN LARSON:** Your questions are going to be
15 directed to him as an employee of CCASA?
16 **MR. HATFIELD:** Yes, sir. Yes.
17 **CHAIRMAN LARSON:** Okay.
18 **BY MR. HATFIELD:**
19 Q. As an employee of CCASA, did you agree to
20 represent Ms. Tollen at an investigatory hearing into
21 her use of FML? Is that correct?
22 **A. Yes.**
23 Q. How did you become apprised that there was an
24 issue into Ms. Tollen's use of FML, sir?
25 **A. She contacted me about being given notice by the**

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1 **Chief HR Officer regarding, I believe, dishonesty**
2 **regarding her use of sick leave.**
3 Q. Do you know if Ms. Tollen provided you with that
4 notice?
5 **A. Yes, she did. I believe she sent -- I believe**
6 **sent the office the notice that day that we talked.**
7 Q. And have you reviewed any documentation in
8 preparation for your testimony today?
9 **A. Just my notes.**
10 Q. Did you review that documentation that you
11 received from Ms. Tollen apprising her that there was
12 going to be an investigatory hearing into the her use of
13 FML?
14 **A. That -- well, yes. But that -- I had received**
15 **that back in -- when she first received the notice.**
16 **But, yes, I reviewed that.**
17 Q. And you said you reviewed some notes; is that
18 correct?
19 **A. Yes, sir.**
20 Q. What notes did you review?
21 **A. Just notes of conversations that Ms. Tollen and**
22 **I have had.**
23 Q. Were these handwritten notes?
24 **A. Yes.**
25 Q. And did you bring a copy of your handwritten

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1 notes?
2 **A. No.**
3 Q. When were these notes made, sir?
4 **A. I made notes, I believe, on the day that she**
5 **contacted me, approximately August 29th of 2015 -- 2014.**
6 **Also made notes of a conversation that we had on**
7 **May 29th of 2014. I believe it was May 29th.**
8 Q. Could we get a copy of those notes to review?
9 **MR. SEGAL:** Just for the record, you have a copy
10 there, your Contested Exhibit 1. And each Board member
11 has it in the small binder already.
12 **MR. HATFIELD:** Well, point of fact, the
13 Exhibit 1, Respondent's Proposed Exhibits, that is been
14 objected to by the complainant, those are typewritten
15 notes. So I'm referring --
16 **BY MR. HATFIELD:**
17 Q. I'm asking you about handwritten notes that you
18 may have made and that you say you had reviewed in
19 preparation for your testimony today.
20 **A. Oh, I reviewed the notes that you have before**
21 **you.**
22 Q. You reviewed the objected notes; correct?
23 And I'll just ask you to take a look at that
24 document.
25 **A. Yes.**

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1 Q. So are you saying that you had reduced your
2 handwritten notes to a typewritten document?
3 **A. Yes.**
4 Q. And that's the document that was produced;
5 correct?
6 **A. Yes.**
7 Q. Okay. That was not the first time that
8 Ms. Tollen and you had spoken regarding problems at
9 work, was it?
10 **A. Which time? I'm sorry.**
11 Q. I'm sorry. The question, I think, was poorly
12 asked.
13 Ms. Tollen had contacted you regarding help at
14 an investigatory hearing that had been noticed to her
15 regarding her own usage of sick leave on or about
16 August -- end of August in 2014; correct?
17 **MR. SEGAL:** I'm just -- hang on -- I'm just
18 going to object. I didn't -- it wasn't that concerning
19 when it was just basic background, but I'm going to
20 object to the leading nature of these questions. It's
21 not proper to lead on direct examination.
22 **CHAIRMAN LARSON:** Do you want to respond?
23 **MR. HATFIELD:** Yeah. I'll rephrase the
24 question. I'd be happy to.
25 ///

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1 **BY MR. HATFIELD:**
2 Q. When was this investigatory hearing noticed on
3 or about, Mr. Garis?
4 **A. Are you asking me when did she receive the**
5 **notice?**
6 Q. Yes. When was this time frame regarding this
7 notice of an investigatory hearing that you testified
8 about?
9 **A. I believe she received the notice on or about**
10 **August 27th or so.**
11 Q. In 2014?
12 **A. 2014.**
13 Q. Was that the first time that you had spoken with
14 Ms. Tollen regarding the problems she was having in the
15 workplace?
16 **A. No.**
17 Q. Okay. Did you have any conversations with her
18 regarding problems she was having regarding the
19 background of her transfer to her new position?
20 **A. Yes.**
21 Q. Do you recall what that time frame was?
22 **A. Yeah. That was approximately May 29th of 2014.**
23 Q. And when did you advise Ms. Tollen regarding her
24 problems that she had raised with her issues pertaining
25 to the transfer?

1 **MR. SEGAL:** I'm just going to object that that
2 lacks foundation, because we don't have the issues in
3 the record yet. We're jumping to a response to issues
4 that have not been put in the record.

5 **MR. HATFIELD:** That would be an improper
6 objection. He's laid the foundation. He said --
7 testified that it's not the first time that he had been
8 approached by Ms. Tollen, that he had been approached in
9 May of 2014, and was just about to testify as to that.
10 I was just about to ask him questions pertaining to that
11 conversation. So we think that this is going into the
12 foundation and it is pertinent.

13 **CHAIRMAN LARSON:** Board's preference? Do you
14 want to hear it?

15 **MR. ECKERSLEY:** No.

16 **CHAIRMAN LARSON:** Okay. I'll overrule the
17 objection, and why don't you restate the question.

18 **BY MR. HATFIELD:**

19 Q. Mr. Garis, what did that conversation entail
20 regarding Ms. Tollen's problem that she raised with you
21 in May of 2014?

22 **A. She stated that she felt like she had -- that**
23 **her work was not a match, that she was uncomfortable**
24 **working in HR. She felt like she was not a part of the**
25 **organization, or something along those lines. Felt like**

1 I believe she discussed lodging a complaint with the
2 EEOC.

3 **BY MR. HATFIELD:**

4 Q. There was a delay in regards to the
5 investigatory hearing; correct?

6 **MR. SEGAL:** Objection; leading.

7 **BY MR. HATFIELD:**

8 Q. When did the hearing take place?

9 **MR. SEGAL:** Objection; lacks foundation.

10 **CHAIRMAN LARSON:** Hold on. What is your
11 specific objection?

12 **MR. SEGAL:** He asked him when the hearing took
13 place, a hearing he knows didn't take place. It lacks
14 foundation.

15 **MR. HATFIELD:** It doesn't lack foundation.

16 We're talking about the August 29th --

17 **BY MR. HATFIELD:**

18 Q. I just want to be clear, Mr. Garis. Ms. Tollen
19 apprised you that there was notice to appear at an
20 investigatory hearing on or about August 27th or so,
21 2014; is that correct?

22 **A. She advised me of an investigatory meeting that**
23 **was scheduled for the following week. I believe that**
24 **was on August the 29th, as best as I can remember.**

25 **CHAIRMAN LARSON:** Could you speak up?

1 **that her treatment was bordering on being a hostile**
2 **working environment.**

3 **At that point, I advised her that she needed to**
4 **address those concerns to the Affirmative Action Office**
5 **in the Clark County School District.**

6 Q. Did Ms. Tollen state to you at that point in
7 time that, in her opinion, the transfer was retaliatory?

8 **MR. SEGAL:** Objection; leading again.

9 **CHAIRMAN LARSON:** I'll sustain that objection.

10 **BY MR. HATFIELD:**

11 Q. Did she speak with you about retaliation?

12 **MR. SEGAL:** Objection; leading.

13 **CHAIRMAN LARSON:** Yeah. I'm not sure how you're
14 going to get there, but I'm going to sustain that as
15 well.

16 **MR. HATFIELD:** I'll rephrase it, and I'll move
17 on.

18 **BY MR. HATFIELD:**

19 Q. Your advice to her was to apprise the Office of
20 Diversity; is that correct?

21 **A. Yes, Diversity or Affirmative Action with the**
22 **Clark County School District.**

23 Q. And did that also entail going to the EEOC?

24 **MR. SEGAL:** Go ahead.

25 **THE WITNESS:** I'm sorry. She did discuss that.

1 **THE WITNESS:** I'm sorry.

2 **CHAIRMAN LARSON:** Thank you.

3 **MR. ECKERSLEY:** Was that merely orally, or did
4 she deliver a notice to you?

5 **THE WITNESS:** It was orally by phone, and then
6 she delivered a notice by e-mail, I believe.

7 **BY MR. HATFIELD:**

8 Q. And what was your response, if any, to
9 Ms. Tollen's appraisal of the investigatory hearing
10 notice?

11 **A. Yeah, well, the first response was that the**
12 **meeting needed to be rescheduled a day later because I**
13 **was out of town. I believe the meeting was originally**
14 **scheduled Tuesday, September 2nd. I was out of town,**
15 **returning from out of town that day. We had moved the**
16 **meeting to September the 3rd, that I would be there to**
17 **represent her at the meeting.**

18 Q. And did you represent her at the hearing?

19 **A. No.**

20 Q. Did the hearing take place?

21 **A. No.**

22 Q. Did -- I'm sorry, strike that.

23 Do you have an understanding of Ms. Tollen
24 apprising you that the allegations --

25 **MR. SEGAL:** Objection; leading.

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1 **MR. HATFIELD:** I'll strike the question and
2 rephrase.
3 **CHAIRMAN LARSON:** Okay.
4 **BY MR. HATFIELD:**
5 Q. What advice did Ms. Tollen give you in regards
6 to the allegations that she had abused sick leave?
7 **A. I don't recall the specific adv- -- that she**
8 **advised me about the sick leave. She denied that she**
9 **had misused sick leave. We discussed that -- or she**
10 **discussed with me that she had obtained a job in another**
11 **state, that she was a consultant working on a part-time**
12 **basis, and that was her advice to me.**
13 Q. Do you have any understanding of Ms. Tollen
14 providing you the reasons why she had taken FML to begin
15 with?
16 **A. Not that I recall.**
17 Q. Did Ms. Tollen ever state to you, to your
18 understanding, that she would be --
19 **MR. SEGAL:** Objection; leading.
20 **MR. HATFIELD:** I'll rephrase.
21 **BY MR. HATFIELD:**
22 Q. Do you have any knowledge of Ms. Vesneske from
23 CCSD informing --
24 **MR. SEGAL:** Objection; leading.
25 **MR. HATFIELD:** It's not leading.

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1 **MR. SEGAL:** You're about to give the answer to
2 the question in the question.
3 **CHAIRMAN LARSON:** Do you want to rephrase it to
4 elicit the response you're seeking?
5 **MR. HATFIELD:** Yes, I will.
6 **CHAIRMAN LARSON:** Because this meeting is going
7 to go very slow if there's an objection with every other
8 question.
9 **MR. SEGAL:** I'm trying do it only when it
10 matters.
11 **MS. MASTERS:** Yeah, just want the facts.
12 **BY MR. HATFIELD:**
13 Q. Was the investigatory hearing cancelled by
14 Ms. Tollen?
15 **A. The investigatory hearing by Ms. Vesneske upon**
16 **the receipt of Ms. Tollen's resignation from the**
17 **District.**
18 Q. Was there any writing that was brought by your
19 office or created by your office and submitted to
20 Ms. Tollen regarding conditions for cancelling the
21 investigatory hearing?
22 **A. I'm sorry, can you --**
23 **CHAIRMAN LARSON:** That was kind of a longwinded
24 question. Take a little time.
25 **MR. HATFIELD:** Let me rephrase.

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1 **CHAIRMAN LARSON:** Maybe summarize it or ask it
2 incrementally.
3 **BY MR. HATFIELD:**
4 Q. Was there ever any kind of a writing, if you
5 will, a document or an e-mail that was a confirmation
6 regarding the outcome of the investigatory hearing that
7 came from the Union?
8 **A. No.**
9 Q. To your knowledge, was ever Ms. Tollen informed
10 that the investigatory hearing would be agreed to be
11 vacated upon her resignation?
12 **A. Yes.**
13 Q. Was the issue ever brought up in regards to the
14 Union's representation of Ms. Tollen during the course
15 of this investigatory hearing that there may be --
16 **MR. SEGAL:** Objection; leading.
17 **BY MR. HATFIELD:**
18 Q. -- further ramifications --
19 **MR. SEGAL:** Objection; leading.
20 **CHAIRMAN LARSON:** Hold on.
21 **MS. MASTERS:** I thought the investigatory
22 meeting was cancelled?
23 **MR. HATFIELD:** That's my understanding.
24 **MS. MASTERS:** But you're just asking what
25 happened as a result of the investigatory meeting. I'm

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1 confused.
2 **BY MR. HATFIELD:**
3 Q. What I'm trying to get at is there was no
4 discussion regarding the recapture of benefits in the
5 course and dealings and representation of Ms. Tollen
6 during the course of the investigatory hearing issues;
7 correct?
8 **A. No.**
9 Q. Was Ms. Tollen ever apprised by the Union
10 that --
11 **MR. SEGAL:** Objection; leading.
12 **BY MR. HATFIELD:**
13 Q. -- the --
14 **CHAIRMAN LARSON:** Wait. Hold on. Do you want
15 to ask that -- rephrase that?
16 **MR. HATFIELD:** I will.
17 **BY MR. HATFIELD:**
18 Q. As -- strike that.
19 Did you advise Ms. Tollen regarding any
20 improprieties pursuant to the allegations that she had
21 abused sick leave?
22 **A. No.**
23 Q. So you never said anything to her like --
24 **MR. SEGAL:** Objection; leading.
25 **MR. HATFIELD:** -- we have a position --

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1 **MR. SEGAL:** Objection; leading. You can't tell
2 him what the answer is.
3 **MR. HATFIELD:** We don't think it's a -- well,
4 I'll strike the question and rephrase it.
5 **BY MR. HATFIELD:**
6 Q. What advice did you give Ms. Tollen, if any,
7 regarding the propriety of her use of sick leave?
8 **A. In that conversation, I don't recall any advice**
9 **that the subject was even discussed. We just discussed**
10 **the notice itself, is all I remember.**
11 Q. So just to summarize it, there was an
12 investigatory hearing that was noticed, and Ms. Tollen
13 and you testified about, and that was cancelled upon her
14 providing a resignation to you that you provided to
15 Ms. Vesneske; is that correct?
16 **A. Yeah, our office provided the document to Human**
17 **Resource.**
18 Q. All right. My understanding is, is that --
19 would the Union have provided Ms. Tollen --
20 **MR. SEGAL:** Objection; leading.
21 **MR. HATFIELD:** I'll strike that last --
22 **CHAIRMAN LARSON:** Okay.
23 **MR. HATFIELD:** I don't think I have anything
24 further for you.
25 Pass the witness.

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1 **CHAIRMAN LARSON:** Mr. Segal.
2 **MR. SEGAL:** Thank you.
3 **CROSS-EXAMINATION**
4 **BY MR. SEGAL:**
5 Q. How many years were you in HR at CCSD before
6 being employed at CCASA?
7 **A. Approximately five.**
8 Q. And what was your employment before the HR
9 position?
10 **A. I was approximately five years in the curriculum**
11 **and professional development division as the director --**
12 **executive director of student activities and athletics.**
13 Q. And what was your total years employed by CCSD
14 in all positions?
15 **A. 29.41.**
16 Q. Okay. And I assume during that time you -- did
17 you have occasion to attend many investigatory
18 conferences?
19 **A. Yes.**
20 Q. And the purpose of an investigatory conference
21 is to interview an employee; correct?
22 **A. Correct.**
23 **MR. HATFIELD:** Objection; leading.
24 **MR. SEGAL:** I can lead. It's cross-exam.
25 ///

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1 **BY MR. SEGAL:**
2 Q. Go ahead and answer.
3 **CHAIRMAN LARSON:** I'll sustain that. I'm sorry,
4 I'll overrule that objection.
5 **BY MR. SEGAL:**
6 Q. And over the years, 29 point -- I forget the
7 fraction years -- did you attend dozens of investigatory
8 conferences?
9 **A. Yes.**
10 Q. And in every case was the employee being
11 investigated present at the investigatory conference?
12 **A. Yes.**
13 Q. And wasn't the very purpose of investigatory
14 conferences to ask questions of a District employee?
15 **A. Yes.**
16 Q. Now, a representative of the Union was not
17 always present at investigatory conferences; correct?
18 **A. Correct.**
19 Q. That was up to the employee?
20 **A. Yes.**
21 Q. Based on your understanding of what an
22 investigatory conference is for, would you agree it's
23 impossible to conduct one without the employee present?
24 **A. Yes.**
25 Q. Would you, or to your knowledge, any one else

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1 from CCASA ever attend an investigatory conference
2 without the employee present?
3 **A. No.**
4 Q. You've already testified that prior to this
5 issue on the investigatory notice, you had some calls
6 from Bramby Tollen regarding complaints that she was a
7 bad match for her new position and she thought she was
8 in a hostile work environment; correct?
9 **A. Correct.**
10 Q. And one of those calls -- and if you look at
11 Contested Exhibit 1 --
12 **MR. SEGAL:** And given that Mr. Hatfield
13 introduced it, I'm going to assume it's no longer
14 contested and it can be admitted as an exhibit?
15 **MR. HATFIELD:** Well, I'll object. We didn't
16 make an offer of proof regarding that document.
17 **CHAIRMAN LARSON:** Yeah, correct.
18 **MR. SEGAL:** That he didn't make an offer of
19 proof?
20 **CHAIRMAN LARSON:** I believe he did not.
21 **MR. ECKERSLEY:** He didn't reference it in.
22 **BY MR. SEGAL:**
23 Q. Did you take handwritten notes during the calls
24 reflected in Contested Exhibit 1?
25 **A. Yes.**

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1 Q. And were those notes taken during the time of
2 those calls?
3 A. Yes.
4 Q. And is that a routine normal business practice
5 for you in your current position?
6 A. Yes.
7 Q. And is Contested Exhibit 1 a transcription of
8 your handwritten notes?
9 A. Yes.
10 Q. And is it, to the best of your knowledge, an
11 accurate transcription of your notes?
12 A. Yes.
13 MR. SEGAL: I move to admit Contested Exhibit 1
14 into evidence as -- it's not a joint exhibit, but as an
15 actual exhibit, no longer objected to, or over the
16 objection, I should say?
17 MR. HATFIELD: Well, no. I mean, objection --
18 we have a witness here to testify as to what his
19 perception was at the time. He testified that he made
20 handwritten notes. He didn't produce them. I don't
21 know when this was disclosed, but my understanding is
22 that, to the best of my recollection, it was just two
23 days ago, last week, so maybe approximately on Thursday
24 or so.
25 So it's a bit of a surprise. I don't have any

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1 question or any problem with the witness testifying as
2 to what his recollection was, but the document should
3 not be entered as a piece of evidence. The testimony of
4 the witness is the proper device, if you will, for
5 getting this information in before the Board.
6 MR. SEGAL: That's not an evidentiary objection.
7 There's going to be Bramby Tollen's written documents
8 submitted into evidence in this case while she's sitting
9 here testifying. She's going to testify about them,
10 you're going to be seeing them.
11 It's just not an evidentiary objection. I don't
12 know what the objection is. The fact that the witness
13 is here, there's no bearing on --
14 MR. HATFIELD: The objection is hearing without
15 any exception.
16 MR. SEGAL: Well, there's -- it's a business
17 record, as I've just established, and his concurrent
18 recollection, two exceptions to the hearsay rule, which
19 doesn't strictly apply in this proceeding anyway.
20 MR. HATFIELD: Well, I don't want to belabor
21 this. I don't think it's that -- this is not something
22 to live and die on or fight for, but we don't see any
23 foundation as a business record. It's not really --
24 CHAIRMAN LARSON: When did you assert that you
25 first saw this exhibit?

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1 MR. HATFIELD: I assert that I saw this on or
2 about Thursday of last week, which would probably make
3 it around the 3rd or so, at the earliest, of February.
4 MS. MASTERS: Do you with disagree with what's
5 there? Do you disagree with what is on the page for
6 those two paragraphs?
7 MR. HATFIELD: No. I can say that it's --
8 MS. MASTERS: What's the problem?
9 MR. HATFIELD: The problem is it's late
10 disclosed, it's not a business record, and his testimony
11 is what it is. If he wants to testify as to what his
12 thoughts are and use it to refresh his recollection,
13 that's fine. But to take it from the course --
14 CHAIRMAN LARSON: What's the preference of the
15 Board?
16 MS. MASTERS: We should accept it. I don't
17 understand the problem.
18 MR. ECKERSLEY: I don't either.
19 CHAIRMAN LARSON: Okay. We're going to overall
20 the objection and admit -- which one is it?
21 MS. MASTERS: It's this one page.
22 CHAIRMAN LARSON: Exhibit 1, okay. CCASA's
23 Contested Exhibit 1.
24 Can you give us just a few seconds to allow us
25 to digest it, because we haven't looked at it yet.

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1 MR. SEGAL: Yes.
2 MS. MASTERS: It's non sequitur. Now we're all
3 on the same page.
4 CHAIRMAN LARSON: Let the record reflect that
5 CCASA's exhibit -- their lone exhibit is admitted into
6 the record -- their lone Contested Exhibit.
7 (Exhibit 1 of Respondent's Contested Exhibits
8 was admitted into evidence.)
9 CHAIRMAN LARSON: Mr. Hatfield, I think you were
10 still --
11 MR. SEGAL: No. I'm up.
12 CHAIRMAN LARSON: You're done?
13 MR. HATFIELD: Mr. Segal is -- I'm looking for
14 Mr. McCoy.
15 BY MR. SEGAL:
16 Q. Mr. Garis, if you could refer back to Contested
17 Exhibit 1. I believe you had just testified that this
18 is an accurate transcription of your handwritten notes
19 of these phone calls; correct?
20 A. Yes.
21 Q. Dealing first with the May 12th call on the
22 subject of hostile work environment, isn't it true that
23 Bramby Tollen called you multiple times regarding those
24 concerns?
25 A. That she called me multiple times?

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1 Q. That there was at least one other call on that
2 topic?
3 **A. There was, yes, one other call on that topic.**
4 Q. And each time did you give her the same advice
5 to contact the Affirmative Action Office at CCSD?
6 **A. Yes.**
7 Q. And is the reason for doing that because those
8 concerns, hostile work environment, don't arise under
9 the CCASA labor agreement?
10 **A. Yes.**
11 Q. And, in fact, that the proper way to resolve
12 them is by approaching the Affirmative Action Office?
13 **A. Yes.**
14 Q. And sitting here today, would you give that
15 exact same advice to take those concerns to the
16 Affirmative Action Office?
17 **A. Yes.**
18 **MS. MASTERS:** Is that in the Collective
19 Bargaining Agreement somewhere?
20 **MR. SEGAL:** Yeah. There's a provision article
21 4-1 -- I'll get corrected by Steve if I'm wrong -- that
22 says any matter addressable under Nevada Statutes cannot
23 be grieved.
24 **MS. MASTERS:** Okay.
25 ///

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1 **BY MR. SEGAL:**
2 Q. Looking at the second set of notes on this
3 exhibit regarding the August 29th call, you've already
4 testified that Bramby Tollen called you about the notice
5 of investigatory conference, and this is a transcription
6 of your notes of that call; correct?
7 **A. Yes.**
8 Q. And during that call, did she ask you if the
9 conference would be cancelled if she resigned?
10 **A. Yes.**
11 Q. And is it true that you didn't raise that issue
12 and urge her to resign?
13 **A. That's true, yes.**
14 Q. That's true. It came from her and not you?
15 **A. Yes.**
16 Q. Do you have any doubt in your mind about that?
17 **A. No.**
18 Q. And did she in fact ask you to find out from the
19 District if she resigned would the conference be
20 cancelled?
21 **A. She asked me that question. I told her I would**
22 **find out from the District.**
23 Q. And did you in fact call Staci Vesneske and ask
24 that question?
25 **A. Yes.**

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1 Q. Can you look in the large binder under Tab 3 for
2 me.
3 (Discussion held off the record.)
4 **BY MR. SEGAL:**
5 Q. And do you see that Exhibit 3 is in fact
6 Ms. Vesneske's affidavit about your call that day?
7 **A. Yes.**
8 Q. And do you see that she confirmed in this
9 affidavit that you called her and asked her whether --
10 what the effect would be on the investigatory conference
11 if Tollen resigned?
12 **A. Yes.**
13 Q. And do you see that she claims in her affidavit
14 that she told you, If Tollen resigned, the scheduled
15 investigatory conference would not be necessary and no
16 disciplinary action would be issued; is that correct?
17 **A. Yes.**
18 Q. And does that match your recollection of that
19 call?
20 **A. Yes.**
21 Q. Turning back to CCASA Contested Exhibit 1, do
22 you see the final paragraph on that exhibit?
23 **A. Yes.**
24 Q. And does it in fact indicate you called back
25 Bramby Tollen and gave her the District's response?

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1 **A. Yes.**
2 Q. And that response was that if she signed the
3 CCF-164 Resignation/Retirement today, her investigatory
4 meeting would be cancelled; is that correct?
5 **A. Yes.**
6 Q. And you were speaking to Bramby Tollen on that
7 call and you gave her that information?
8 **A. Yes.**
9 Q. And then did she then send you a signed
10 resignation/retirement form?
11 **A. Yes.**
12 Q. And did she give you direction to turn that over
13 to the District?
14 **A. Yes.**
15 Q. And you did so?
16 **A. Yes.**
17 Q. And then the investigatory conference was
18 cancelled?
19 **A. Yes.**
20 **MS. MASTERS:** What negative impact would the
21 investigation have been if she had not resigned?
22 **MR. SEGAL:** Well, the range -- and when
23 Mr. Augspurgen testifies, he's more of an authority on
24 this -- there are admonishes that could issue.
25 **CHAIRMAN LARSON:** I'm not sure that -- we

1 probably better wait until we have the HR Director on
2 the stand.
3 **MR. ECKERSLEY:** Counsel's testifying.
4 **MS. MASTERS:** Yeah, he's -- just the truth, what
5 would have happened if he didn't just give information?
6 **MR. ECKERSLEY:** He's testifying.
7 **MR. SEGAL:** Oh, I'm sorry. I thought you
8 pointed and looked at me.
9 **MS. MASTERS:** Oh, no, I was asking him.
10 **MR. SEGAL:** Okay. I'll be quiet then.
11 **CHAIRMAN LARSON:** Do you want to wait until
12 we --
13 **MS. MASTERS:** No. I want to know what, in your
14 mind, would have been detrimental about having the
15 investigation committee be formed and go forward in
16 relation to this resignation? Why would it have been --
17 **THE WITNESS:** Well, the potential would have
18 been that she would have -- she would have received
19 discipline from the District.
20 **MS. MASTERS:** I see. Thank you.
21 **BY MR. SEGAL:**
22 Q. I'll represent to you that during her deposition
23 and in other conversations, Bramby Tollen has stated
24 that contrary to your version of events, she signed that
25 resignation form and gave it to you and you were

1 day, so the office staff faxed it over to HR.
2 **MR. ECKERSLEY:** Under whose direction was it
3 faxed?
4 **THE WITNESS:** It was under my direction.
5 **BY MR. SEGAL:**
6 Q. Are you -- after September 2nd there was never a
7 time that Bramby called you and asked you how things
8 went at the investigatory conference, was there?
9 **A. No.**
10 Q. In fact, has she ever in history contacted you
11 and asked you about how the investigatory conference
12 went?
13 **A. No.**
14 Q. Did she ever call you and say why -- or question
15 why you turned in her resignation against her wishes?
16 **A. No.**
17 Q. To your knowledge, has she ever requested that
18 the investigatory conference be put back on calendar?
19 **A. No.**
20 Q. As you sit here today, is there anything with
21 regards to Bramby Tollen that you believe CCASA was
22 required to provide by way of representation that has
23 not been provided?
24 **A. No.**
25 **MS. MASTERS:** I don't understand how you can fax

1 expected to hold that and go to the investigatory
2 conference without her, make a judgment call as to
3 whether it was going well or not going well, and if you
4 decided it would be smarter to resign than to tender the
5 resignation letter to the District. Is anything I just
6 said true?
7 **A. No.**
8 Q. Would you have ever done that?
9 **A. No.**
10 **MR. ECKERSLEY:** Who tendered the resignation?
11 **THE WITNESS:** It was tendered by the CCASA
12 office on the morning of September 2nd.
13 **MR. ECKERSLEY:** By whom?
14 **THE WITNESS:** By a member of our office staff.
15 I'm not sure. I believe it was one of our secretarial
16 staff that actually faxed the form over to HR.
17 **CHAIRMAN LARSON:** Was there any kind of
18 accompanied e-mail that --
19 **MR. ECKERSLEY:** It was faxed.
20 **CHAIRMAN LARSON:** It was faxed, okay. But, no,
21 was there any kind of accompanying e-mail between your
22 office, CCASA, and Ms. Tollen --
23 **THE WITNESS:** I'm not sure.
24 **CHAIRMAN LARSON:** -- regarding that.
25 **THE WITNESS:** I'm not sure. I wasn't there that

1 over a resignation and then say it's not my wish to
2 resign. Is that possible?
3 **THE WITNESS:** No. Not in my mind.
4 **MS. MASTERS:** Okay.
5 **MR. SEGAL:** That's all I have.
6 **CHAIRMAN LARSON:** Mr. Hatfield?
7 **MR. HATFIELD:** The Board's indulgence for just a
8 minute.
9 **CHAIRMAN LARSON:** Sure. Do you need a little
10 time?
11 **MR. HATFIELD:** Just a moment or two.
12 **REDIRECT EXAMINATION**
13 **BY MR. HATFIELD:**
14 Q. Was there any report made regarding Ms. Tollen's
15 investigatory hearing that was kept as a record by the
16 Union?
17 **A. I'm -- could you -- I'm sorry, there was no**
18 **investigatory hearing, so there was not a report of the**
19 **investigatory hearing because it didn't occur, if that's**
20 **what you're asking.**
21 **CHAIRMAN LARSON:** Are you referring to voice
22 mails?
23 **BY MR. HATFIELD:**
24 Q. I'm referring to any type of internal memorandum
25 or report or a letter to Ms. Tollen or anyone that

1 memorialized the outcome of the investigatory hearing
2 issue that was raised?
3 **A. No.**
4 **MR. ECKERSLEY:** Was there any document
5 confirming that the investigatory hearing was not going
6 to be conducted, it was taken off calendar?
7 **THE WITNESS:** There may have been communications
8 from Dr. Vesneske, but I don't -- I don't -- I don't
9 know for sure.
10 **BY MR. HATFIELD:**
11 Q. Was there any communication by you to anyone
12 else at the Union regarding the outcome of the
13 investigatory hearing?
14 **A. No.**
15 **MR. HATFIELD:** Nothing further.
16 **CHAIRMAN LARSON:** Mr. Segal?
17 **MR. SEGAL:** No recross.
18 **CHAIRMAN LARSON:** Questions from the Board?
19 **MS. MASTERS:** No.
20 **MR. ECKERSLEY:** No.
21 **EXAMINATION**
22 **BY CHAIRMAN LARSON:**
23 Q. Final question -- and I'm going to ask you this
24 question from your experience as the Executive Director
25 of CCASA, but also as a former Deputy Director of HR:

1 **CHAIRMAN LARSON:** Oh, yeah. I'm sorry. You can
2 be released. We thank you for your testimony.
3 It's 11:45. How about if we return at
4 1 o'clock. We'll recess for lunch. We're off the
5 record.
6 (Lunch recess.)
7 **CHAIRMAN LARSON:** For Case No. 2015-001, Bramby
8 Tollen versus CCASA. Okay, now we're back on the
9 record.
10 **MR. HATFIELD:** If it please the Board, I'd like
11 to call Bramby Tollen to take the stand, please.
12 **CHAIRMAN LARSON:** Ms. Tollen, the court reporter
13 will swear you in.
14 **CHAIRMAN LARSON:** Now, Mr. Hatfield, we would
15 still like, you know, as much as possible, to look at
16 the relationship. We understand there are some
17 activities on behalf of the School Board that may have
18 lent themselves to the issues at hand. But her case is
19 not against the District, as we've discussed. It's
20 solely with the Union.
21 **MR. HATFIELD:** Yes. With that understanding and
22 that instruction, I'll try to keep it limited to just
23 background information and not go into any questions
24 regarding -- go too terribly abroad. And I'm sure that
25 the Board will let me know if I get too far off the

1 Do you recall the approximate balance of sick leave
2 hours on the book when she went on the FML?
3 **A. No, I do not.**
4 Q. Do you know how many hours of sick leave
5 approximately she used while on FML?
6 **A. No.**
7 Q. Okay. Do you know if it's the policy of -- or
8 can you tell me what the policy of Clark County School
9 District is or was when you were Deputy Director in
10 terms of the disposition or pay -- or payoff or partial
11 payoff of your sick leave balance commensurate with
12 retiring?
13 **A. Well, there's no payoff from the School District
14 for sick leave balances.**
15 Q. So in other words, if somebody who likes to
16 retire and they have 1,000 hours of sick leave on the
17 books, they don't get some proportional -- portion of it
18 back?
19 **A. No. There's a slight benefit they get that's
20 payable from the Union from the Welfare Trust at \$10 a
21 day for accumulated sick leave up to 250 days.**
22 **CHAIRMAN LARSON:** Okay. I have no further
23 questions.
24 Okay. It's 11:45.
25 **MS. MASTERS:** Is he excused?

1 reservation.
2 **MS. MASTERS:** You can count on it.
3 **MR. HATFIELD:** Yes, ma'am.
4 **BRAMBY ANN KRAKOVER-TOLLEN,**
5 having been first duly sworn to testify to the truth,
6 the whole truth, and nothing but the truth, was examined
7 and testified as follows:
8 **DIRECT EXAMINATION**
9 **BY MR. HATFIELD:**
10 Q. Ma'am, could you please tell the Board what your
11 name is?
12 **A. Bramby Tollen. Bramby Ann Krakover-Tollen. I
13 go by Bramby Tollen.**
14 Q. And can you describe for the Board what your
15 educational background is for?
16 **A. I have a bachelor's degree in psychology; I have
17 a master's in executive management; I've worked in the
18 purchasing procurement warehouse and supply chain field
19 for 30 years.**
20 Q. What experience do you have, if any, in Human
21 Resource?
22 **A. About six weeks, when I was transferred to HR.**
23 Q. Can you please describe what your employment
24 history was since college, please?
25 **A. So after I graduated, I worked in accounts**

1 payable and purchasing at Lewis & Clark College in
2 Portland, Oregon. And then I was a buyer and warehouse
3 manager for Reynolds Metals Company in Oregon. And then
4 I went down -- came here to Las Vegas and took a
5 position as Purchasing Manager in 1997. I was promoted
6 to Assistant Director a year or two later. I was
7 promoted to Director of Purchasing a year or two after
8 that, and I stayed in the position of Director of
9 Purchasing and Warehousing at Clark County School
10 District for probably the next 12 years. And then in
11 March and April, I was transferred -- of 2014 -- I was
12 transferred to Human Resource as the Director on Special
13 Assignment. And I left there and went to Snohomish
14 County in Washington, and I'm currently serving as the
15 Purchasing Manager there.

16 Q. And can you explain for the Board, what do you
17 mean by the term "special assignment" on that transfer
18 that you spoke about?

19 A. It's a term that the School District uses. I
20 don't know; I guess when they have a special assignment
21 for someone. My understanding is they -- from my case,
22 they just made up a job description and put a whole
23 bunch of different duties together. Some of those
24 duties, as Ron Mader told you earlier, I was working
25 with him and I was going to take over -- he was in

1 assignment, this job special assignment that you
2 testified --

3 A. I had a meeting with my supervisor at the time,
4 who was the Chief Financial Officer, Jim McIntosh, on a
5 Friday late in March. And we were going to meet before
6 lunch, and they called and said, No, let's meet at 2:00.
7 And when I got there, the door was closed and I was
8 ushered in. And Staci Vesneske and Jim McIntosh were
9 there, and Staci said that they had done a
10 reorganization of Purchasing and decided that my
11 position could be downgraded. And in order to save my
12 job range, they were going to transfer me to HR, and she
13 had a job description to go through with me and said it
14 would be effective that day or the following Monday,
15 which was April 1st.

16 Q. What was your feeling about this new assignment?

17 A. I wasn't happy to be working in HR because I
18 really know anything about HR. I had in previous years
19 been asked to help in other areas. The past summer I
20 had spent some time in Maintenance, but I still
21 retained the Purchasing job. I'd also been asked to
22 help Transportation one year.

23 So it wasn't unheard of for a Director to help
24 out in other areas, and so initially I kind of thought
25 that was it. But then I wanted to go back to the office

1 charge of reviewing applications when there was criminal
2 history, and he would call people in and interview them,
3 and I was to take over that.

4 I was to take over the screening and
5 applications for teachers. I was to take over when an
6 application comes in and there's felonies or crime or --
7 I was to take over that. So I was doing background
8 checks and I was working with the police department to
9 do criminal investigations.

10 I was also supposed to be in charge of their
11 software and its training, as well as teacher marketing,
12 which included getting school buses and registering
13 people that become school bus drivers and teachers at
14 various locations.

15 And so it was just kind of a bunch of stuff
16 thrown together that -- oh, I was also in charge of --
17 or supposed to be in charge of a virtual recruiting fair
18 where you would set it up and interested parties would
19 come in and you'd have virtual booths and you would talk
20 to them online. I didn't know a lot about it, but I
21 tried.

22 Q. Describe for the Board what -- let me strike
23 that.

24 Describe for the Board how you became apprised
25 that you were going to be transferred to this new job

1 and tell my staff, and they refused to let me go back,
2 which was very strange. And they said, Well, we've had
3 a lot of layoffs and staff is really kind of edgy. It's
4 really important that they hear -- and I was told I
5 could not return to Purchasing.

6 We finally agreed that I would be able to write
7 an e-mail to staff, and that one of the other directors
8 and Jim McIntosh, my supervisor, would go back and have
9 a meeting with the staff. So I wrote an e-mail that I
10 wanted staff to understand that this was just a change
11 for me. It wasn't a change for them and they shouldn't
12 look at it as, you know, a possible reduction in force
13 coming for the department.

14 Q. What did you say in the e-mail, if any, about
15 new opportunities --

16 A. I said I'm excited --

17 Q. -- pertaining to the transfer?

18 A. -- I'm excited for a new opportunity. I can
19 read it better. I was not happy about the transfer.
20 Nobody thought I would be happy about the transfer.
21 Staci Vesneske herself told me that the reason they
22 didn't want me to go back was they knew I'd be very
23 upset and it would be very negative and they didn't want
24 me -- want me to go back.

25 And so I wanted to be very positive and I wanted

1 to put on a good face for my staff, and so I tried to do
2 that, you know. But this was not a good thing for me
3 and I didn't feel good about it, and I don't -- I don't
4 think anyone thought I was happy about it.

5 Q. Can you, in light of the Board, explain to us,
6 was this a position that was --

7 MR. SEGAL: Objection; leading.

8 MR. HATFIELD: Well, I'll restate.

9 BY MR. HATFIELD:

10 Q. Explain to us if this was a permanent transfer?

11 A. I don't know what it was. I didn't really
12 understand at all what it was. I came to learn more and
13 more that it would be -- for a while there, I really
14 never got a grasp of it, although later in the
15 conversation they did ask me who would take my place.
16 And then I thought -- I thought I might get back to
17 purchasing, but I learned later that that wasn't the
18 intention.

19 I think about a week later I had a meeting with
20 Staci, and she told me I could take my time moving out
21 of my office, but I was not to do any more purchasing
22 related work anymore. And I actually had a conference
23 and was signed up to be a speaker, and I had to cancel
24 those, since I was not to be part of purchasing anymore.

25 Q. Can you tell me when you made this statement or

1 the questions had been forwarded to me -- part of
2 them -- to complete answers.

3 And so I had completed the answers and forwarded
4 them to my supervisor at that time, who was actually
5 Jeff Weiler. In September, Jeff Weiler left and they
6 continued to have conversations about the District plan.
7 And so Trustee Cranor wrote me an e-mail and said she
8 wanted to come over and speak with me about the
9 contracts, the insurance contracts. So these were for
10 support staff and police services.

11 And so as I always do when a trustee writes me,
12 I wrote my supervisor and said, Trustee Cranor wants to
13 come over, and he said, No problem, meet with her. And
14 so Cranor came over and wanted to meet -- look at the
15 contracts and understand them, and so I pulled the
16 various contracts out, and the questions and answers
17 that I had understood had been requested by the Board
18 and provided to the Board and we went through some of
19 the contracts.

20 CHAIRMAN LARSON: Was this pursuant to the
21 individual just had specific questions about the
22 contracts, or were you in the preparation of going out
23 for bid, for coverage for -- I'm a little confused.

24 THE WITNESS: I think the District was trying to
25 figure out whether it should go from -- the teachers

1 sent this e-mail stating about new opportunities in
2 relation to when you realized that this would be a
3 permanent change?

4 A. I guess -- I sent the statement out immediately
5 because I wanted to go back and tell staff. And they
6 were going to have a meeting, and I wanted staff to hear
7 from me first.

8 I guess I thought, you know, I could call the
9 Union and they'd help me or that maybe there was a
10 mistake or maybe it was -- I was going to help for a
11 short amount of time. I don't -- I don't know why
12 that -- I would say a few weeks later maybe, when I
13 understood when I was supposed to clean out my office.
14 Although, I was told I could take my time doing that, so
15 I don't know.

16 Q. What, in your opinion, was the basis for your
17 transfer?

18 A. I think it was retaliation for telling the truth
19 to a Board member about some questions she asked me
20 about.

21 Q. Can you explain to the Board what do you mean
22 by, quote, telling the truth to a Board member, unquote?

23 A. The District had been working on a District
24 insurance plan, and the Board members had had a lot of
25 questions, and so they were having meetings and had --

1 have their own health trust, the administrators have
2 their own health trust, the support -- and those two are
3 managed by the unions. The support staff and the police
4 health trust are managed by the School District. And so
5 there was a perception that the health trust managed by
6 the District was in much better shape than the other
7 two, and so there was this idea that maybe consolidating
8 the teachers and the support staff would bring some
9 economies to scale and so they were --

10 CHAIRMAN LARSON: Sure.

11 THE WITNESS: -- having a lot of discussions
12 about that. And the Administrators Union was kind of
13 off to the side, I think, maybe --

14 CHAIRMAN LARSON: I think that answers the
15 question.

16 THE WITNESS: Okay, thank you.

17 So she came over because she wanted background
18 information on the support staff and police unions
19 insurance contracts.

20 BY MR. HATFIELD:

21 Q. I would like to ask a follow-up question in
22 regards to the Board's question to you, and that is:
23 Explain to us or describe for us why you have the
24 opinion that this knowledge that you provided to
25 Ms. Cranor resulted in a retaliatory action regarding

1 the transfer, please.
2 **MR. SEGAL:** I just want to lodge an objection
3 that we're not sticking to the DFR claims in this case
4 in any way, shape, or form, as the Board had directed
5 earlier. And I can appreciate the need to put in some
6 background on things, but it feels like we're going down
7 the rabbit hole on the District's case over in Federal
8 Court.
9 **MS. MASTERS:** I don't get that. I don't think
10 so. I think it's fine.
11 **CHAIRMAN LARSON:** Do you --
12 **MR. ECKERSLEY:** I tend to agree, but I'd like to
13 hear it.
14 **MR. HATFIELD:** You tend to agree, Mr. Eckersley,
15 with --
16 **MR. ECKERSLEY:** Respondent's counsel.
17 **MR. HATFIELD:** -- Respondent's counsel? I'll be
18 happy to rephrase the question.
19 **BY MR. HATFIELD:**
20 Q. Very simply, Ms. Tollen, what is it about the
21 information that you provided Ms. Cranor that you
22 believe was the impetus for the need for the transfer?
23 A. **The -- there were several contracts. There was**
24 **a contract for hearing -- I'm sorry, no. I'm sorry. A**
25 **contract for vision, a contract for dental, and a**

1 informed that the transfer had to do with information --
2 **MR. SEGAL:** Objection; leading.
3 **BY MR. HATFIELD:**
4 Q. -- that you had provided to Ms. Cranor?
5 **CHAIRMAN LARSON:** Hold on. Hold on. There has
6 been an objection.
7 What is the relevance?
8 **MR. HATFIELD:** I'm fine with withdrawing the
9 question.
10 **CHAIRMAN LARSON:** Ms. Cranor, you know, is not
11 a -- nor is the District -- a party to this.
12 **MR. HATFIELD:** Understood.
13 **CHAIRMAN LARSON:** I mean, we'd kind of like to
14 see how she wound up, you know, with respect to her
15 dispute with the Union and her taking off work and going
16 on sick leave, on FML.
17 **MR. HATFIELD:** Understood. I promised I
18 wouldn't go too far afield, and that's okay if you brush
19 me back. And, again, I'm happy to withdraw the
20 question, Mr. Larson, and move on to a different line of
21 questioning here.
22 **BY MR. HATFIELD:**
23 Q. Describe, Ms. Tollen, any instances, if any, of
24 workplace violence -- stalking, et cetera -- that you
25 may have incurred while being a CCSD employee.

1 **contract for health, in general. And it had been --**
2 **parties had led the Board to believe that there was cost**
3 **savings. And that was true of the vision; the vision**
4 **costs a million dollars less than it had before. But it**
5 **wasn't true of the health. The health actually costs**
6 **\$7 million more or 8-. And there was a net loss or a**
7 **net overpayment, if you will of 6- to \$7 million.**
8 **And so when the contracts were spoken of**
9 **sometimes, the vision would be pulled out and it would**
10 **make it sound like there was cost savings, but that was**
11 **only one contract and it wasn't the net effect.**
12 **And so we -- when Trustee Cranor came to visit**
13 **me, we looked through that and she was extremely**
14 **surprised and very upset because those dollar figures**
15 **are supposed to be disclosed and approved by the Board,**
16 **and she didn't believe they had been.**
17 **She left very upset. And she came back either**
18 **that day -- I think it was the next day -- and said to**
19 **me that there were a lot of upset people now and that**
20 **she had gone to her attorney, who is the -- Mary Ann**
21 **Peterson at the DA's office, I think, and asked for**
22 **protection for me, because she was afraid that I was in**
23 **harm's way and that the DA had suggested I become**
24 **familiar with the whistleblowers protection.**
25 Q. Describe for us, if you could, whether you were

1 **CHAIRMAN LARSON:** Are you referring to at the
2 same time, or something earlier in her career?
3 **MR. HATFIELD:** I'm referring to something
4 earlier in her career.
5 **CHAIRMAN LARSON:** What is the relevance?
6 **MR. HATFIELD:** In that there was a history of
7 emotional distress, and this emotional distress was a
8 product of issues of violence in the workplace. And so
9 there was a nexus there, and then there was a cause and
10 effect issue in that this was some very, very disturbing
11 instances that happened while Ms. Tollen was previously
12 working for CCSD in the past and whatnot.
13 And that this will lead up and provide some
14 foundation for her opinions from her physicians that
15 there was an exacerbation of emotional distress; and,
16 actually, posttraumatic stress disorder, which led to
17 her problems in which she requested some help from the
18 Union and which the Union therefore didn't provide,
19 so --
20 **MS. MASTERS:** How much earlier are you talking
21 about?
22 **MR. HATFIELD:** I believe Ms. Tollen will testify
23 it was three to four years earlier.
24 **MS. MASTERS:** Three to four years?
25 **MR. HATFIELD:** Right now, maybe just one or two

1 questions about these instances to give the Board some
2 background on that, when she was coming from regarding
3 that -- the transfer, in and of itself, likely, for most
4 people, would not have had emotional distress, but she
5 has this very clear documented background, and --
6 **MS. MASTERS:** You are talking about a continuum
7 for three years, or are you talking about an instance --
8 **MR. HATFIELD:** No. I believe it happened three
9 or four years in the past.
10 **MS. MASTERS:** Well, are you are talking about it
11 in a continuum past, or just an instance?
12 **MR. HATFIELD:** That's a great question,
13 Ms. Masters. I think there wasn't an ongoing -- I'm not
14 certain. And there may have been some treatment that
15 was ongoing. That's for Ms. Tollen to answer.
16 **CHAIRMAN LARSON:** I think we'd like to go off
17 the record and caucus briefly --
18 **MR. HATFIELD:** Very good.
19 **CHAIRMAN LARSON:** -- to discuss this.
20 (Recess taken.)
21 **CHAIRMAN LARSON:** Okay, let's reconvene the
22 meeting and go back on the record.
23 Ms. Tollen, this Board has a question for you.
24 You've described -- you and your attorney have described
25 a situation that occurred several years ago where you

1 told him that -- what the doctors had said, and that
2 they had an opinion that it was PTSD and that it has
3 resurfaced from the earlier event, and that I clearly
4 had doctors' notes that would -- that would back up my
5 use of sick leave, and we talk about sick leave quite a
6 bit.
7 And we also talked about sick leave when we
8 spoke in May. At that time we talked about me being
9 uneasy, but I didn't have the doctors' opinions yet. We
10 knew something was wrong.
11 **CHAIRMAN LARSON:** Was this nine months later?
12 **THE WITNESS:** No. Three, four months earlier.
13 I'm sorry.
14 **MS. MASTERS:** We need you to go back to the
15 three years before that he's talking about --
16 **THE WITNESS:** Okay.
17 **MS. MASTERS:** -- and tie that with it.
18 **THE WITNESS:** Okay. So I think it was 2011. It
19 could have been -- I think it was 2011, we had been
20 through a number of reduction in forces, and we were
21 going through another one. My department at one time
22 had over 175 people, and it probably has about 110 now.
23 And as of 2007, the bond expired and we had to reduce in
24 force, and every year for a while, we were losing
25 people.

1 felt threatened in the workplace. As well, you and your
2 attorney have described a situation where you feel that
3 there was a situation that was kind of a repetition of
4 that, that followed your transfer from Purchasing to
5 Human Resource.
6 Do you have any proof or can you advise this
7 Board if you disclosed either of these events to any
8 Union representative following their occurrence? And
9 we're asking any correspondence or any meetings with
10 your Union, CCASA, and not the District.
11 **THE WITNESS:** Bill Garis. I spoke with Bill
12 Garis about the second one.
13 **MS. MASTERS:** We need a time frame.
14 **THE WITNESS:** He --
15 **MR. ECKERSLEY:** Speak up, please.
16 **CHAIRMAN LARSON:** Can you speak a little louder,
17 please?
18 **THE WITNESS:** I'm sorry.
19 **CHAIRMAN LARSON:** That's okay. Relax.
20 **THE WITNESS:** I definitely spoke with Bill Garis
21 about it, August 29th, when I asked him to represent
22 me --
23 **CHAIRMAN LARSON:** 2014?
24 **MS. MASTERS:** 2014?
25 **THE WITNESS:** Thank you. August 29th, 2014, I

1 **MS. MASTERS:** We need to know, did you contact a
2 Union representative?
3 **THE WITNESS:** Oh. I was working with Mark
4 Coleman at the time on a different --
5 **CHAIRMAN LARSON:** Can you identify who Mark
6 Coleman is?
7 **THE WITNESS:** Mark Coleman was a Union -- I
8 think he had Bill Garis' position at the time. I'm not
9 sure.
10 So I was working with Mark Coleman on a -- on an
11 issue with another administrator within my department at
12 the time, and so Mark and I spoke a lot. And I believe
13 Mark Coleman was aware of what was going on, but the
14 police were handling it and the District was handling
15 it, so at the time I did not speak to the Union
16 specifically about the --
17 **CHAIRMAN LARSON:** Okay.
18 **MS. MASTERS:** So you have no documentation on
19 your own physical involvements at that time with those
20 issues; is that correct?
21 **THE WITNESS:** With the Union? No, I do have
22 physical documentation. It was reported to my
23 supervisor and to the lawyer who represented me. I
24 thought the question was, did I turn it over to the
25 Union at that time, and I did not turn it over to the

1 Union at that time.

2 **CHAIRMAN LARSON:** Okay. So the earlier episode
3 that gave rise to the violence in the workplace or the
4 potential threat of violence in the workplace occurred
5 in 2011, but you did not discuss it with anybody in the
6 Union at that time?

7 **THE WITNESS:** I wouldn't be surprised if Mark
8 Coleman and I didn't discuss it, because he was there
9 working with me. But I didn't specifically call the
10 Union for help with it because the District was handling
11 it and we were firing that person. And they assigned a
12 lawyer to me and we -- my supervisor was getting
13 security and the Chief of Police was coming, and so --
14 and my doctor. But, no, I did not call the Union and
15 ask for representation.

16 **MS. MASTERS:** But you have doctors' paperwork
17 that says you did go to a doctor to see about various
18 things psychologically that you were confronted with?

19 **THE WITNESS:** Yes. Yes. They put me on
20 medication for it. I was --

21 **MS. MASTERS:** So you do have documentation from
22 doctors --

23 **THE WITNESS:** Yes. I don't know that I have it
24 today; but I have it, yes.

25 **CHAIRMAN LARSON:** Now, fast-forward between the

1 more doctor notices, or whatever they needed. And my
2 understanding was he was going to that meeting with my
3 resignation and was going to ask specifically what
4 documentation they wanted --

5 **MS. MASTERS:** Right.

6 **THE WITNESS:** -- from my doctor. And I did ask
7 my doctors actually that day for more documentation, and
8 that was provided. And I had been providing
9 documentation all along, but when I got this
10 investigatory notice, I figured that it wasn't
11 sufficient and they wanted something else, and so I was
12 trying to figure out exactly what kind of documentation
13 they wanted.

14 **MS. MASTERS:** But you, in between time, offered
15 your resignation --

16 **THE WITNESS:** Bill and I --

17 **MS. MASTERS:** -- so that investigative committee
18 never took place?

19 **THE WITNESS:** I didn't know that would happen.
20 I thought it would happen.

21 **MS. MASTERS:** Somewhere in this paperwork you
22 probably have a very good letter that says, If you
23 didn't do this, that's going to happen. And I believe
24 it was sent to you. So I don't know what the exhibit
25 is, but I have seen it somewhere. So if someone can

1 time that -- to the time of your transfer from
2 Purchasing Director to Human Resource. Do you --
3 between that time and the time that you ultimately filed
4 for PERS retirement, resigned and filed for PERS
5 retirement as perhaps a single action, do you have any
6 proof of your discussion with the Union representative
7 about your fears in the workplace or --

8 **THE WITNESS:** Well, I spoke with Bill Garis
9 several times, and he told me to contact EEOC. And I
10 wrote a letter to EEOC, but EEOC wrote a letter back
11 basically referencing back to that e-mail that they said
12 I was happy to transfer. But I did speak with Bill
13 Garis on several occasions about it.

14 **CHAIRMAN LARSON:** Okay. Any additional
15 questions from the Board?

16 **MR. ECKERSLEY:** No.

17 **MS. MASTERS:** Yes. Another question:
18 Therefore, that sequence of events that you just
19 described essentially took away the necessity to have
20 the investigative committee meeting; correct? Because
21 you resigned. You resigned, so the investigative
22 committee didn't take place?

23 **THE WITNESS:** That's my understanding now. At
24 the time, I understood it was going to take place. I
25 had spoken to Bill Garis about providing more teach --

1 find that.

2 **MR. HATFIELD:** I think what you might be
3 referring to -- and it might be an appropriate time to
4 make an offer of proof -- regarding the Plaintiff's
5 Exhibit No. 1 and also No. 2. I think that's what
6 you're referring to.

7 **MS. MASTERS:** Yes. There was a piece of paper
8 in here someplace.

9 **MR. HATFIELD:** And I'd offer to represent that
10 these were letters that were drafted by treating medical
11 professionals for Ms. Tollen.

12 **MR. SEGAL:** Objection --

13 **MR. HATFIELD:** Ms. Tollen, if you would --
14 I'm making an offer of proof. I'm not finished
15 yet.

16 **BY MR. HATFIELD:**

17 Q. If you would please direct your attention to the
18 binder of the objected exhibits, Respondent's objected
19 exhibits?

20 **CHAIRMAN LARSON:** We can't look at them.

21 **MS. MASTERS:** Well, if we can't look at them,
22 why --

23 **CHAIRMAN LARSON:** Because she's a witness. We
24 can't look at those until they're --

25 **MR. ECKERSLEY:** Until they're admitted.

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1 **CHAIRMAN LARSON:** Yeah, until they're admitted.
2 **MR. HATFIELD:** Well, yeah. I'm making a motion
3 now that they be offered.
4 **MR. SEGAL:** Can I just make a comment?
5 **MR. HATFIELD:** Not until I finish making my
6 foundation for the offer.
7 **MR. SEGAL:** I'm not going to make a comment
8 about the exhibits. It's not about the exhibit.
9 **MR. CHAIRMAN LARSON:** Okay.
10 **MR. SEGAL:** It's really a point of order.
11 Ms. Masters had asked where she had seen that. I
12 believe it's the Vesneske affidavit regarding the call
13 with Bill Garis explaining that if the resignation was
14 received then the meeting would not go forward.
15 **CHAIRMAN LARSON:** And you've got a -- do you
16 have a suit with the EEOC?
17 **MR. HATFIELD:** Do I have a suit with the --
18 **CHAIRMAN LARSON:** Did you or do you have one?
19 **MR. HATFIELD:** I can't go into that, because it
20 would be violating our own rules we set up.
21 **CHAIRMAN LARSON:** Okay. All right.
22 **MR. HATFIELD:** I'm sorry, sir. Is the question
23 retracted or --
24 **CHAIRMAN LARSON:** She testified that she had a
25 meeting with --

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1 Do you want to caucus?
2 **MR. DAVIS:** Well, he was in the middle of
3 offering documents into evidence, so that's still
4 outstanding.
5 **CHAIRMAN LARSON:** Okay.
6 **MR. DAVIS:** And then the relevance issue that
7 you want to discuss is still outstanding, so those would
8 need to be discussed.
9 **CHAIRMAN LARSON:** Yes.
10 Based on her testimony, what is the relevance?
11 She said she didn't talk to a Union representative
12 three years ago.
13 **MR. DAVIS:** She did.
14 **MR. HATFIELD:** Yes, she didn't talk to a Union
15 representative three years ago. But her physicians have
16 opined that she's having an exacerbation of those
17 workplace issues and the PTSD that took place several
18 years ago. We will be providing foundation and making
19 an offer of proof that we apprised the Union that there
20 was an exacerbation of PTSD and make reference to the
21 these letters that have been objected to, for whatever
22 reason, that it's based on hearsay.
23 **MR. SEGAL:** We can make our own objections.
24 Thank you.
25 **MR. HATFIELD:** I'm just relating what the stated

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1 objection was when we discussed the admissibility of the
2 evidence and what we agreed on. I'm not trying to make
3 your objection for you, Mr. Segal. I apologize if I
4 misspoke out of turn.
5 There's also an issue -- although correspondence
6 from my is office to Mr. Augspurger is not contested --
7 it's within our joint exhibits -- there is a contested
8 issue regarding a letter that was written to Staci
9 Vesneske and a copy -- I'm sorry, enclosed those
10 correspondence, those letters, from those professionals,
11 and that was copied to Mr. Augspurger.
12 So right around September 11th, I gave him a lot
13 of information, including the issues of exacerbation and
14 PTSD, and that's where she was coming from, in asking
15 for the help.
16 I think at this point in time, I'd like to turn
17 over, I guess, our offer of proof for Exhibits 1 and 2.
18 **MR. SEGAL:** Can we be heard on the pending
19 question upon why this is relevant or not relevant?
20 **CHAIRMAN LARSON:** Sure.
21 **MR. SEGAL:** Because counsel just alluded to the
22 fact that he's talking about a batch of information
23 provided to the District, copied to Mr. Augspurger,
24 these doctors' letters. And it is conceded they're all
25 from September 11th, two weeks after Ms. Tollen

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1 resigned, and all issues in this case were in the past.
2 So these new doctors' reports -- and we can
3 see -- and you may or may not decide to admit them and
4 look at them yourselves -- her doctor changed her story
5 and altered what she put on the FMLA application, and
6 two weeks after Bramby Tollen resigned, came up with a
7 different theory -- that did happen. By definition,
8 that's irrelevant. She had already resigned.
9 So again, this ties into my prior concern that
10 we've really going down the rabbit hole on something
11 that has nothing to do with the DFR questions that are
12 before us.
13 **CHAIRMAN LARSON:** What's the Board's preference?
14 (Discussion held off the record.)
15 **CHAIRMAN LARSON:** Okay. If we allow you to go
16 down this -- I'm not going to call it a rabbit hole --
17 down this path, how long do you anticipate that it is
18 going to be taking?
19 **MR. HATFIELD:** It's a path of asking her
20 questions about her physical and mental state at the
21 time of her transfer, and whether this was an
22 exacerbation.
23 **CHAIRMAN LARSON:** And subsequent, yeah, and
24 following the transfer.
25 **MR. HATFIELD:** All we're trying to establish is

1 something very, very simple. That at the time she was
2 experiencing an exacerbation of emotional distress.
3 That's why she went on FML. And the reasons why she
4 went on FML and the reasons why she couldn't work at
5 CCSD was because she was experiencing emotional distress
6 from working at CCSD. And that was apprised to the
7 Union, and the Union failed to respond or failed to
8 address or failed to acknowledge Ms. Tollen's mental
9 state.

10 **CHAIRMAN LARSON:** We'll give you some leeway to
11 explore that. Fairly minimal, but I don't think we're
12 going to be a bunch of happy campers if Mr. Segal takes
13 us through some exhibits that show that the subject
14 didn't come up until post retirement resignation and,
15 you know, things were modified after she in fact
16 resigned and retired.

17 **MR. HATFIELD:** May I just address further?

18 **CHAIRMAN LARSON:** Because he said that
19 information exists.

20 **MR. HATFIELD:** Let me represent to you that
21 Ms. Tollen primarily does not have criticisms regarding
22 the Union's representation of her at the investigatory
23 hearing. She didn't have an issue too much or
24 necessarily, because -- despite this agreement regarding
25 what the effect would be of her resignation. But she

1 violation in the workplace or workplace stress. And I
2 could lay a foundation as to that, if that's
3 permissible. I'm think at this point in time, I'm still
4 not clear whether that's going to be permitted, sir.

5 **CHAIRMAN LARSON:** Well, we've already heard
6 testimony that, from the one that occurred several years
7 ago, she did not discuss with the Union.

8 **MR. ECKERSLEY:** Mr. Coleman, was he a CCSD
9 employee?

10 **THE WITNESS:** He was the Union.

11 **MR. ECKERSLEY:** Exclusively?

12 **THE WITNESS:** At the time. He was a principal.

13 **MR. ECKERSLEY:** Do you know what his position
14 was with the Union?

15 **THE WITNESS:** I think it's -- I think it was the
16 same as Bill Garis', Deputy Executive Director.

17 Am I allowed to comment?

18 **CHAIRMAN LARSON:** Your attorney can elicit
19 responses by you by posing questions.

20 We're going to give you a little bit of leeway.

21 **MR. HATFIELD:** And although there's a question
22 pending, but I'd like the question to read:

23 **BY MR. HATFIELD:**

24 Q. Can you explain what the effect was on your
25 mental state regarding issues of stalking and violence

1 doesn't have a criticism of the Union's representation
2 at that time. She resigned.

3 She resigned under the consideration that the
4 Union would protect her and continue to protect her, and
5 there wouldn't be further discipline, there wouldn't be
6 any further raising of these issues, again it would be
7 just put to bed.

8 It's afterwards, after her resignation where the
9 Union here, on the one hand is saying, Look what I've
10 done for you lately. We've got this issue during the
11 investigatory hearing resolved, you're resigning,
12 everyone's happy.

13 And then, we have the aftermath of that. And I
14 don't want to go too much into it, because I think it's
15 a lot of argument, but we do have a great deal -- that's
16 where the crux of this case is going, is the aftermath
17 of that. And I don't think that she's got terribly a
18 lot of criticism. You know, we can ask her, of course,
19 about that, but that's not the relevant crux of this
20 case. The grievance of this case is what happened
21 afterwards.

22 So I think where we're at now would be, you
23 know, there's a question, and the panel deliberated
24 regarding whether they would allow a question or two in
25 an answer regarding her history or experiences of

1 in the workplace, Ms. Tollen?

2 **A. My life was threatened. One of my employees**
3 **took exception to reduction in force, even though he**
4 **wasn't involved. And he took a doll and made it look**
5 **like me, apparently, and he hung it from the rafters in**
6 **the warehouse, in the workplace.**

7 **And he also brought pictures of guns. The**
8 **police were called when he did that. And when he found**
9 **that on District time, he had spent two weeks**
10 **researching the type of rope and the type of knot that**
11 **would be necessary to hang somebody my size, and the**
12 **doll that he purchased to look like me was using that**
13 **type of rope and that type of knot.**

14 **The police stayed with me. I developed -- I was**
15 **very jumpy. I was afraid. I was not to be alone. He**
16 **was immediately expelled from the workplace, pending**
17 **termination. He grieved it. A mediator came in and he**
18 **agreed that he had -- or an arbitrator -- had created a**
19 **hostile work environment, and the termination was**
20 **upheld.**

21 **But I did see a doctor. Security cameras were**
22 **ordered, and they took a long time to be installed. In**
23 **fact, the installation was completed the week I was**
24 **transferred. I was told by two doctors that the stress**
25 **from the transfer re-triggered the PTSD.**

1 Q. I just want to ask a point of clarification.
2 Can you explain for us, did you have any issues with
3 your Union regarding following up with the problems you
4 were experiencing in the workplace at that time, three
5 or four years ago?

6 **A. Did I have any problems with the Union?**

7 Q. Yes.

8 **A. No, not that -- nothing, no.**

9 Q. Jumping forward to after your transfer to
10 special assignment you testified about earlier, explain
11 what your mental state at that time was?

12 **A. I wasn't doing well. I was having a lot of**
13 **medical issues, as well as emotional issues. My doctor**
14 **referred me to a number of other doctors to try to**
15 **figure out what was going on, including a neurologist**
16 **and a rheumatologist and a therapist. And I went**
17 **through a lot of testing and a lot of drugs to try to**
18 **figure things out. My health deteriorated**
19 **significantly, and it did get better when I was pulled**
20 **out of CCSD. I continued with therapy and was told**
21 **there was a depression --**

22 **CHAIRMAN LARSON:** When you say when you "pulled
23 out of CCSD," are you saying when you went on FML?

24 **THE WITNESS:** Right. The doctor pulled me out
25 of that.

1 lot of difficulty. I couldn't eat, I couldn't sleep, I
2 was shaky. My ears ring quite a bit and I can't hear
3 very well.

4 There's a lot of different medical issues going
5 on as well as emotional issues, and I was seeing a lot
6 of doctors and trying it figure it out, and missing a
7 lot of time. It wasn't getting better; it was getting
8 worse. And her advice in May --

9 **CHAIRMAN LARSON:** You say "her"?

10 **THE WITNESS:** My doctor, Loretta Metzger. My
11 doctor, Loretta Metzger's advice in May, I was to see a
12 number of doctors and was not to return to CCSD.

13 I did apply for FML. I requested the paperwork.
14 There is time that it takes to do that, but I did stop
15 working at CCSD in the middle of May. And some of the
16 problems got better; some did not. And so I continued
17 to see doctors. I did stop driving. I wasn't sleeping.
18 I wasn't getting up. And I started seeing a
19 psychologist and a therapist.

20 And it was felt that after I left, that it would
21 be better for me to work, but not at CCSD. But we
22 didn't know that at the time the FML paperwork was
23 completed. So to say things changed later is somewhat
24 true in that we figured out my ongoing medical issues.
25 But to say they changed their tune later to

1 And so it got better, but I was still having a
2 lot of anxiety and depression, and worked with the
3 doctors to determine that it would be good for me to
4 take a job and to be busy, but not to be anywhere near
5 CCSD.

6 **BY MR. HATFIELD:**

7 Q. Could you describe what your physician's opinion
8 was about -- strike that. I want to rephrase.

9 What was your doctor's opinion at that time?

10 **MR. SEGAL:** Objection; vague as to time.

11 **MR. HATFIELD:** I'm sorry --

12 **CHAIRMAN LARSON:** Sustained.

13 **BY MR. HATFIELD:**

14 Q. Yes. What was your doctor's opinion at the time
15 that you applied for FML?

16 **A. I was --**

17 **MR. SEGAL:** Can we get that date on the record?
18 Are we talking about June 4th, 2014?

19 **THE WITNESS:** No. We're talking about May.

20 **MR. SEGAL:** That is my concern.

21 **THE WITNESS:** In May I was difficulty -- I was
22 having difficulty in HR the entire time. I missed a lot
23 of time there, which was unusual for me. I had accrued
24 over 150 hours of sick time because I just didn't miss
25 time. But once I was transferred to HR, I was having a

1 satisfy documentation, I think is -- is insulting.

2 **MR. SEGAL:** I'm just going to object that
3 there's no longer a pending question that's being
4 responded to.

5 **CHAIRMAN LARSON:** Yes. I'll sustain that
6 objection.

7 **THE WITNESS:** I'm sorry.

8 **BY MR. HATFIELD:**

9 Q. Ms. Tollen --

10 **MR. HATFIELD:** Do you have a --

11 **MR. ECKERSLEY:** So between the end of May and
12 the end of August, did you talk with a Union rep?
13 Mr. Garis just testified that you spoke in May and then
14 again at the end of August.

15 **THE WITNESS:** Yes.

16 **MR. ECKERSLEY:** Any time in between?

17 **THE WITNESS:** I don't recall.

18 **MS. MASTERS:** Would you like some water, by the
19 way, or do you have some?

20 **THE WITNESS:** That would be great. Thank you
21 very much.

22 **MS. MASTERS:** You're welcome.

23 **CHAIRMAN LARSON:** Could I ask you another
24 question?

25 **THE WITNESS:** Yes, please.

1 **CHAIRMAN LARSON:** At the time that you went on
2 FMLA, which was approximately May of -- what is it?
3 **MR. SEGAL:** June 4th.
4 **CHAIRMAN LARSON:** June 4th, 2014 --
5 **MR. SEGAL:** Retro to May 15th.
6 **CHAIRMAN LARSON:** -- do you -- how many hours of
7 sick leave did you have on the books? You mentioned
8 something about 150 hours or --
9 **THE WITNESS:** It's days. For administrators
10 it's days.
11 **CHAIRMAN LARSON:** 150 days, okay. So you had
12 1200 hours of sick leave accrued, roughly, 150 times 8?
13 **THE WITNESS:** Probably more than that.
14 **CHAIRMAN LARSON:** Okay. Your witness, Counsel.
15 **MR. HATFIELD:** May I make a motion for a slight
16 continuance? We've been going about an hour or so.
17 Just five minutes, if it pleases the Board.
18 **MR. ECKERSLEY:** Five minutes, that's fine.
19 **CHAIRMAN LARSON:** Sure. We'll be off the
20 record.
21 (Recess taken.)
22 **CHAIRMAN LARSON:** Okay. Let's reconvene the
23 meeting and go back on the record.
24 Mr. Hatfield?
25 **MR. HATFIELD:** Yes. A point of housekeeping.

1 Q. Okay. So I guess my question is -- so if you
2 can explain for us that this document was created after
3 the initial FML paperwork had been submitted?
4 **A. Yes.**
5 Q. Yes?
6 **CHAIRMAN LARSON:** Could you speak a little more
7 audibly for the Board?
8 **THE WITNESS:** Yes. Yes. I'm sorry.
9 **BY MR. HATFIELD:**
10 Q. And I believe you testified that you were being
11 treated by Ms. Metzger?
12 **A. Dr. Metzger.**
13 Q. Is that correct?
14 **A. Yes.**
15 **MR. ECKERSLEY:** Is she an MD?
16 **THE WITNESS:** Yes.
17 **BY MR. HATFIELD:**
18 Q. Dr. Metzger's an MD? I'm sorry.
19 **A. Yes.**
20 Q. And how did you come to become familiar with
21 this document? How did you --
22 **A. I asked her for additional documentation because**
23 **I believed the School District, what I was submitting**
24 **all along apparently wasn't sufficient and they wanted**
25 **more, so I asked her for more.**

1 We started with an offer of proof regarding contested
2 exhibits, but I don't think we got too terribly far.
3 **BY MR. HATFIELD:**
4 Q. I'd like to continue with that by asking
5 Ms. Tollen to please take a look at the binder in front
6 of you that says -- the binder of exhibits objected to
7 by Respondent, and turn your attention to Tab No. 1,
8 please.
9 And Ms. Tollen, can you tell me -- can you
10 explain what this document is?
11 **A. I asked -- I asked my doctors to provide more**
12 **information on my sick leave or my -- I guess I would**
13 **say my status, and to make it very clear that I could**
14 **work but I couldn't work at CCSD, because that's what I**
15 **believed CCSD wanted in terms of more documentation on**
16 **my sick leave.**
17 Q. Can you explain for us -- and the reason for the
18 question is, I don't see a date on here -- can you
19 explain for us when do you believe this document was
20 created?
21 **A. I asked for it when I spoke with Bill Garis on**
22 **August 29th, 2014, because I believed he was going to**
23 **take these documents, or he was going to ask the School**
24 **District what additional documentation was needed at the**
25 **investigatory interview.**

1 Q. Do you have any knowledge of it being
2 manipulated or altered in any way?
3 **A. No.**
4 **MR. HATFIELD:** I'd submit this to be admitted
5 as -- make the offer of proof for this to be admitted.
6 **MR. SEGAL:** We have multiple objections to this
7 exhibit. We -- obviously, it's hearsay. That's not
8 something the Board's particularly concerned with. The
9 primary problem with this is a lack of foundation. It's
10 undated.
11 The next exhibit that's about to be offered is
12 dated September 9th.
13 **MS. MASTERS:** Are we going through every single
14 one of them?
15 **MR. SEGAL:** No, just these two that are coming
16 in sort of as a pair as offered by Counsel, that these
17 are the revised doctors' opinions.
18 **MS. MASTERS:** Revised?
19 **MR. SEGAL:** And they happened weeks after she
20 resigned, at or about the time the School District told
21 her she had been caught and had to refund her FMLA
22 leave.
23 The same day, after weeks of silence,
24 Mr. Hatfield writes demand letters to the District and
25 demands whistleblower protection from CCASA. Without

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1 any date or context of when this occurred, we can only
2 assume it occurred in the time frame of all these
3 events, weeks after she resigned, and cannot possibly
4 bear on the DFR question as to representation requests
5 weeks earlier, which we now know from Counsel are not
6 really at issue in this case; the reason we're here
7 today. Apparently, there's not much dispute.
8 The whole purpose of today -- that was news to
9 us, because that's why we're here. But this really
10 exacerbates the problem if we're going to talk about
11 things that were first generated and existed weeks
12 later.
13 CCASA takes no position on Bramby Tollen's
14 health or condition one way or the other. She filled
15 out an FMLA application saying one thing, the District
16 took issue with it, they notice up an investigatory
17 conference, she resigned. CCASA doesn't have any
18 opinion whether these doctors are right or wrong, and it
19 makes no difference to how it operates representation.
20 So for those reasons, it's irrelevant and lacks
21 foundation.
22 **MS. MASTERS:** Does it have any bearing on Union
23 representation?
24 **MR. SEGAL:** Is that a question to me or the
25 witness?

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1 **MS. MASTERS:** The witness.
2 **THE WITNESS:** I think so. Because when he spoke
3 to -- when Mr. Augspurger spoke to the news, he assumed
4 that I was not sick and he made disparaging comments.
5 And I also think that his comment that I had to repay
6 the District clearly -- because he believes I wasn't
7 sick -- so I get these specifically because I believe
8 they needed more documentation. And he was copied on
9 the letter from Vesneske asking for more documentation.
10 And when they took the money back from me, he was copied
11 on that as well. And these letters clearly document
12 that I wasn't misusing sick leave.
13 **MS. MASTERS:** Did you give those copies also to
14 the Union people, those copies that you're talking
15 about?
16 **THE WITNESS:** I did not. I gave them to my
17 lawyer, and he communicated with the Union and the --
18 **MS. MASTERS:** Did he give them to them?
19 **MR. ECKERSLEY:** When did you hire Mr. Hatfield?
20 **THE WITNESS:** Right after the article showed up
21 in the paper.
22 **MS. MASTERS:** When is that?
23 **THE WITNESS:** September 3rd or 4th.
24 **CHAIRMAN LARSON:** 2014?
25 **MR. ECKERSLEY:** So after your resignation?

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1 **THE WITNESS:** Yes, after the resignation.
2 **MR. ECKERSLEY:** So they made it for -- the Union
3 couldn't have received any letters, then, if you hadn't
4 given them to Counsel until after your resignation?
5 **MR. SEGAL:** They didn't exist until
6 September 9th.
7 **MR. ECKERSLEY:** Well, the first one we don't
8 have a date on, so -- but we can now establish that they
9 weren't given to Counsel until after -- after your
10 resignation on September 4th.
11 **THE WITNESS:** I maintain that I was using it
12 correctly. I said I would provide additional
13 documentation, which I did. I never had the opportunity
14 to even defend myself before he starts talking to the
15 press and I get slammed. I mean, clearly stating in
16 there that I have to pay back, and then the District
17 takes the money back and they don't defend me. I never
18 had an opportunity to defend myself. I was guilty,
19 period. I mean, no investigatory interview, no
20 document -- I maintain my innocence and my appropriate
21 use of this, and my ability -- my -- not ability, but I
22 believe I was following the rules, and I still believe I
23 was following the rules.
24 And I got additional documentation to prove it,
25 and I -- people are judging me without listening to me,

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1 without my ability to --
2 **MR. ECKERSLEY:** I don't think anybody's
3 disputing your condition of whether the incidents
4 occurred. I don't think that's the question.
5 **THE WITNESS:** Then why would he say in the
6 newspaper I need to pay it back?
7 **MR. ECKERSLEY:** In this room.
8 (Discussion held off the record.)
9 **CHAIRMAN LARSON:** Okay. Let's take a look at
10 the two exhibits. 1 and 2, you say?
11 **MS. MASTERS:** He hasn't gotten to 2 yet. So we
12 can look at 2.
13 **CHAIRMAN LARSON:** Well, you haven't discussed 2
14 yet; right?
15 **MR. HATFIELD:** No, we haven't discussed 2.
16 **CHAIRMAN LARSON:** Well, the thing that stands
17 out here is that there was no -- you know, it says, "As
18 the attending physician, I certify she was unable to
19 perform her job duties at CCSD due to recent medical
20 illnesses. Some of these conditions were specifically
21 exacerbated by her position with CCSD. Therefore, her
22 disability, as per my certification, was pertaining only
23 to her position with the Clark County School District.
24 Respectfully, Loretta Metzger, M.D." But there's no
25 date.

1 **MR. HATFIELD:** That doesn't mean it's not
2 authentic.

3 **CHAIRMAN LARSON:** Well, I'm not saying it isn't,
4 but it's not dated, as Mr. Segal pointed out.

5 **MR. HATFIELD:** Well, I think Mr. Segal's
6 argument hardly goes to the weight of this rather than
7 to the admissibility or the foundation that it seeks
8 to --

9 The import of this is that it's reasonably
10 reliable. Yes, it is hearsay, but we're not bound by
11 the swift rules. We would have had Dr. Metzger come in
12 to testify when she would have had this documentation
13 drafted or whatnot. This is being offered to prove that
14 the Union was apprised of the basis for Ms. Tollen's
15 emotional distress and the reasons why she went on FML.

16 And that the question of, Well, if you can work
17 at the County up in -- the Snohomish County of
18 Washington, you can work with CCSD. This letter
19 disabuses the Union of that opinion and it sets or
20 should have set the Union straight. So we think it's
21 highly relevant and it's highly probative as to what the
22 Union knew but did not care about, did not do, and did
23 not follow up with after these statements were made to
24 the press, and after the Union was apprised of the big
25 picture -- the nuances, the background of what was going

1 paperwork?

2 **MR. HATFIELD:** Yes. Yes. These two letters
3 were attached to a letter that I had sent to both --
4 Staci Vesneske. And I'll represent, as counsel, I
5 didn't know who was making decisions over there, so I
6 apprised both Ms. Vesneske of events of Section 8 in
7 these documents of the problem and copied that letter to
8 Mr. Augspurger, and then I specifically wrote a letter
9 which is in our joint exhibits to Mr. Augspurger
10 addressing and disabusing him of the reasons that
11 Ms. Tollen was not double-dipping.

12 **MR. ECKERSLEY:** And these notifications were
13 subsequent to her resignation?

14 **MR. HATFIELD:** These obviously -- yes, the
15 aftermath of that is what we have a problem with, yes.

16 **MR. SEGAL:** May I be heard?

17 **CHAIRMAN LARSON:** Sure.

18 **MR. SEGAL:** Here's the problem that -- in fact,
19 Counsel has made my case for the lack of foundation on
20 this letter. September 3rd is the date of the CCSD
21 letter to Bramby Tollen -- and it's Joint Exhibit 31 --
22 and it says, If you have more information, send that in.
23 Ms. Tollen's just testified that it was copied to CCASA;
24 it was not.

25 September 9th is the referred doctor's letter.

1 on with Ms. Tollen, and what was going on -- what was
2 the reasons why she was asking for help from the Union
3 regarding these issues that pertained after she was
4 apprised at, No, in fact there would not be these
5 problems going away. In fact, she was going to have her
6 benefits recaptured.

7 I think she'll testify that she was okay with
8 the representation and resignation, but she was not okay
9 with the Union providing detrimental statements to the
10 press and encouraging CCSD to remedy her working up in
11 Snohomish County Washington by recapturing these
12 benefits. So this all comes after that resignation.

13 So she was -- I think she'll testify pretty
14 clearly that she was fine, she didn't have a lot of
15 criticisms -- maybe one or two of some partial
16 criticisms -- and then she didn't think that there
17 should necessarily have been a cancellation of the
18 investigatory hearing, but she was okay with Mr. Garis'
19 representation.

20 It was after Mr. Augspurger's statements and the
21 Union going on this campaign against her and the press
22 and then abandoning her regarding her request for
23 assistance.

24 **MS. MASTERS:** Did you give them copies -- the
25 Union, did you give the Union people copies of the

1 And the letter Mr. Hatfield's referring to as enclosing
2 those doctors' reports copied to CCASA, the version he's
3 about to offer you has no enclosures, but it doesn't
4 matter -- it's September 11th.

5 So now you'll see when he offers -- well, we
6 actually have it in exhibits; the newspaper articles.
7 He gets a call from the press, I think, on the 3rd. He
8 answers their questions. I disagree with the
9 characterization of what he said; but timewise, this
10 document's not relevant. Unless it can be dated within
11 a time that could possibly impact the Union's
12 representation, it can't help you resolve any question
13 in this case. All it can do is serve to mislead you
14 into thinking, in blank, maybe it was dated prior to the
15 resignation at a time when the Union had -- was in a
16 position to form some opinions about whether she truly
17 was or was not disabled, which CCASA has never formed
18 and just doesn't care. They never took issue with that.

19 All we know is we have District concern over an
20 FMLA application, that you will soon see that
21 Dr. Metzger writes, She's disabled from performing any
22 job functions, period -- it's not limited to Clark
23 County -- and that gives Bill Garis some concerns
24 certainly with the investigatory conference and
25 certainly explains why Tollen doesn't want to go to it.

1 What happens in the weeks after that cannot bear
2 on the representation issues in this case timewise.
3 It's impossible.
4 **CHAIRMAN LARSON:** What's the Board's preference?
5 **MR. ECKERSLEY:** Regarding what?
6 **CHAIRMAN LARSON:** The issue of Exhibit 1 with no
7 date.
8 **MR. ECKERSLEY:** I haven't seen it.
9 **CHAIRMAN LARSON:** Do you want to see it?
10 **MR. ECKERSLEY:** Well, Complainant has testified
11 it wasn't given to her counsel until after her
12 resignation, so the Union couldn't have received it
13 either.
14 **MS. MASTERS:** Yeah.
15 (Discussion held off the record.)
16 **CHAIRMAN LARSON:** I'm going to deny the
17 admission of Exhibit 1 because it's lacking a date.
18 We've heard testimony that it occurred after she in fact
19 resigned/retired.
20 **MR. HATFIELD:** So you're making a hold that it's
21 irrelevant or I can just --
22 **CHAIRMAN LARSON:** No, I'm just talking about
23 Exhibit 1.
24 **MS. MASTERS:** Well, but it's all about the same
25 date.

1 attachment to. Our copy has no attachments to it. But
2 putting that aside, it doesn't help.
3 **CHAIRMAN LARSON:** Well, let's move on to -- if
4 you're going to contest Exhibit 2, because we've got
5 about two and a half hours -- you know, of useful hours
6 left of today.
7 **MR. HATFIELD:** Very good.
8 **CHAIRMAN LARSON:** If each of these exhibits is
9 going to take half as much time as the first one did,
10 then we're not going to get too terribly far this
11 afternoon.
12 **MR. HATFIELD:** Well, I understand. But we
13 weren't expecting to have such an objection to this
14 document just based on not having a date on it.
15 So on the second document here, Exhibit No. 2 is
16 dated, and it is reliable. The lodged objection that we
17 were informed of was it's admissible hearsay. It
18 appears to be within a scope of reliable evidence so we
19 would move for its admission.
20 **MR. SEGAL:** We'd object on relevance basis.
21 It's dated September 9th. It's after the resignation,
22 it's after the conversation between Mr. Augspurger and
23 the newspaper reporters. Based on that date, it cannot
24 bear on any representation issues. I don't know how it
25 could serve to help you decide anything. It's just

1 **MR. DAVIS:** Because he's asking the basis for
2 denying the admission into evidence.
3 **CHAIRMAN LARSON:** Well, it lacks the date. And,
4 you know, we're just not sure when it may have been
5 issued.
6 **MR. HATFIELD:** Well, the representation I
7 understand is that it was issued after the FML
8 application. She's testified as to that. It wouldn't
9 have happened that way. It wouldn't have occurred -- it
10 wouldn't have been drafted until after the FML initial
11 application, because this expounds on what the FML
12 application pertains to. So I don't see where having a
13 specific day or not having a date on it -- does that
14 make it not authentic? I guess I'm not certain of the
15 basis for the objection.
16 **MR. SEGAL:** The problem is, is if it's not dated
17 before the resignation, it couldn't have performed on
18 CCASA's representation. That's the problem.
19 **CHAIRMAN LARSON:** Yeah.
20 **MR. HATFIELD:** I think I'd like to reserve, you
21 know, a ruling on this and then on cross --
22 Mr. Augspurger received it when we noticed that. It
23 was -- and it wasn't a surprise to him, so --
24 **MR. SEGAL:** But that, at earliest, is
25 September 11th, because that's when you say it has an

1 irrelevant.
2 And I reiterate, CCASA makes no -- takes no
3 position on her health condition.
4 **MR. HATFIELD:** Again, we keep going back and
5 forth on this. It's not the representation of Mr. Garis
6 that was at issue here. It's the failure to represent
7 and the breach of the duty and fidelity and loyalty that
8 the Union had towards Ms. Tollen after the resignation.
9 The statements that were made to the press, the
10 statements that --
11 (Discussion held off the record.)
12 **CHAIRMAN LARSON:** Let's go off the record.
13 (Recess taken.)
14 **CHAIRMAN LARSON:** Let's go ahead and reconvene
15 the EMRB meeting and go back on the record.
16 Mr. Hatfield, what is the effective date of the
17 resignation of your client?
18 **MR. HATFIELD:** I believe that is August 29th,
19 2014. If there -- if the Board would like to take a
20 look at Exhibit No. 1 in the joint binder, I'm seeing
21 that as September -- I'm sorry, August 20th -- it is
22 dated August 29. And this appears to be have been faxed
23 September 3, and the date's signed by someone down here
24 in the left-hand corner. But I don't know if it's
25 relevant. It appears to be dated September 2, 2014.

1 **MR. SEGAL:** Exhibit 31 sets forth the District's
2 confirmation of the August 29th effective date.

3 **MR. ECKERSLEY:** And that correspondence is dated
4 September 3rd?

5 **MR. SEGAL:** Correct. And in other evidence, you
6 would see that she received PERS effective September,
7 which would be the first month following her August
8 resignation, would be the first of the following month.

9 **CHAIRMAN LARSON:** Okay. We're advised by the
10 Deputy Attorney General that the duty of fair
11 representation does not extend beyond the date of
12 resignation.

13 **MR. HATFIELD:** So the duty of the loyalty and
14 the fidelity and fair representation would not extend
15 and the Union would be -- let me strike that.

16 I think that if the effective date is August 29,
17 then the Union does have a duty to inform a member that
18 there is no further duty. I think -- I believe that the
19 duty of fidelity and loyalty and fair representation
20 extends past the date of resignation to basically do no
21 harm, to not take adverse action against a member.

22 In any event, that was never apprised. So if
23 there was never any attempt even by the Union to inform
24 Ms. Tollen that her date of resignation would
25 effectively cut off any further representation or any

1 benefits recaptured, that duty to defend and that duty
2 to represent rears back and it revises itself.

3 I'm unaware of any case law or holdings or
4 opinions whatsoever that say that if there is an issue
5 after resignation -- and there are issues that come up
6 after resignations all of the time -- that that duty to
7 represent in the fairly -- gives credence and loyalty
8 and fidelity to a Union member just reciprocates based
9 upon the resignation.

10 **MR. SEGAL:** May I be heard?

11 **MR. HATFIELD:** I'm not finished.

12 **MR. SEGAL:** I thought that was a pause. I'm
13 sorry.

14 **CHAIRMAN LARSON:** You may be heard when he's
15 concluded his remarks.

16 **MR. HATFIELD:** In short, there may have been a
17 copacetic setting here after the investigatory hearing,
18 but when there was the recapture and statements -- well,
19 first there were some statements that were made to the
20 press which were tenable and unexplainable and seem to
21 just come from a prejudged perception that Ms. Tollen
22 was dishonest with her use of sick leave.

23 The Union was apprised that that's not the case.
24 And then -- you know, and then you have CCSD essentially
25 following through with the recommendations of the Union

1 remediation of the statements that were already said, if
2 she had been apprised of that, she likely would have --
3 she'll testify she likely would have retracted her
4 resignation.

5 So there is an issue here, we believe, in play,
6 in that if the Union is saying we represented you fairly
7 at this issue regarding the investigatory hearing, and
8 we had a good result review based upon your resignation,
9 what is it doing essentially reversing itself
10 360 degrees and telling the press, though, our member is
11 violating the contract or is abusing sick leave,
12 basically it's dishonest and it needs to have its
13 benefits recaptured? There was never any discussion at
14 the time of this investigatory hearing that she may be
15 subject to further adverse action, including the
16 recapture of benefits, which we appear to have been --
17 she was apprised, say, on September that --

18 **MR. SEGAL:** September 11th.

19 **MR. HATFIELD:** -- actually, no, it's not over.
20 It's a still an ongoing issue and you're being basically
21 held back, brought back to tax.

22 So what is the affect of the resignation if it
23 cuts off any further issues regarding allegations of
24 sick leave, then there should never have been any
25 benefits recaptured. And if there were going to be

1 as set forth by its executive director, go back after
2 her, recapture that money and get it back again because
3 we have prejudged her as being dishonest.

4 So that raises again an issue, an issue of fact,
5 of whether there was that duty for the Union to then
6 respond to Ms. Tollen and say, Listen, at the
7 consideration of everything it's our opinion that, no,
8 we're not going to help you, that we're giving you
9 unequivocal notice. Listen, I understand it went back
10 and forth, and then there was this thing that came up
11 again with the benefits being recaptured, but, listen,
12 we are give you unequivocal notice that we're not going
13 to help you.

14 That's what would trigger the time frame for her
15 to have to respond and bring forth a claim of false --
16 breach of the duty of fidelity and loyalty and the duty
17 of fair representation, and that's where our position
18 is.

19 **CHAIRMAN LARSON:** Mr. Segal?

20 **MR. SEGAL:** There are numerous problems with
21 that argument. Number one, there's no duty of fidelity
22 and loyalty; it's a duty of fairness. The Union is not
23 duty-bound to endorse any improper conduct that
24 occurred.

25 The resignation was effective August 29th. That

1 does the duty of fair representation except for rare
2 exceptions where there's some sort of forceful discharge
3 forcing down the ejection from the bargaining unit, and
4 that is the issue raised, but that's not what happened
5 here.

6 When you look at what happened here, there's
7 complete silence and no concern by Bramby Tollen until
8 September 11th when the District informs her that
9 they're going to offset from her final paycheck the
10 money they think was improperly taken from FMLA wages.
11 At that point, there's no question she's not in the
12 bargaining unit.

13 And between her resignation and that day,
14 there's silence as to the -- there's no concern. This
15 isn't about newspaper articles. There was no demand
16 letter to Steve to stop talking to the newspapers on
17 September 8th our 9th when these doctors' letters were
18 supposed to have been made, or the 5th or the 4th after
19 the newspaper article came out.

20 The letter is on the 11th when the District says
21 we're taking back that money. This is all about money.
22 This is what this is about. At that point in time that
23 this new issue -- this is weeks after she's out of the
24 bargaining unit -- none of these items dated after
25 resignation can bear on representation.

1 the investigatory conference being cancelled in the face
2 of the resignation. And now today I've heard multiple
3 times, Oh, that's not one of the issues. She doesn't
4 really have a problem with that.

5 Well, in any event, these items that occurred
6 purely after that date are not relevant because there
7 was no duty at that time.

8 **MR. HATFIELD:** We disagree. This has already
9 been briefed, this has already been heard. This is
10 essentially a reconsideration, it seems, of the motion
11 to dismiss. We briefed that and the Board made a
12 decision that there are issues of fact here of when the
13 duty of fair representation rolls back again whether she
14 was given fair considerations regarding these issues,
15 whether the Union breached that duty by making these
16 statements to the press, that essentially encouraged
17 CCSD to go and recapture and take an adverse detrimental
18 action against Ms. Tollen.

19 And the Union unequivocally had a duty to
20 unequivocally give her notice that it would not be
21 helping her. And we would have been able to react that
22 she's entitled to that. She is obligated to have fair
23 notice and representation and have notice of what the
24 Union will not be and what the basis will be for her
25 help, which she received zero, nothing here.

1 And, in addition, we've now had multiple
2 representations of counsel that the actual
3 representation issue we thought we were here for three
4 days of arbitration regarding this improper submission
5 of the resignations is not actually an issue at all.
6 We've heard this today.

7 So the question is, why are we here? We're here
8 because after she resigned on September 11th, the
9 District said, By the way, you didn't bother to come to
10 the investigatory conference or defend yourself in any
11 manner, we're going to offset these funds from your
12 final pay. Well, at that point in time, she needs to
13 take that up with the District. She needs to file a
14 case against the District. She needs to make demands
15 against the District. At that point she's out of the
16 bargaining unit. It's not before us at CCASA, and it's
17 not before you at the EMRB.

18 That's the problem we have in this case, is that
19 this is all after the fact. And the one thing that was
20 timely -- well, it wasn't too late, it wasn't this 2013
21 stuff or these other things that were untimely on the
22 back end and it wasn't premature or too late in the
23 sense that it was being raised after she was no longer
24 part of the bargaining unit -- then only thing that was
25 timely that we were coming in here to do battle about is

1 We have deposition testimony from
2 Mr. Augspurger, We didn't have to write back to you. We
3 already had a discussion made that we reviewed sick
4 leave. We didn't want to hear it. I'll make that
5 representation, and I can provide you proof on that.

6 **MR. SEGAL:** Just a point of order on that --
7 **CHAIRMAN LARSON:** Let's not talk at the same
8 time.

9 **MR. HATFIELD:** So --
10 **CHAIRMAN LARSON:** Do you want to say anything
11 else?

12 **MR. SEGAL:** Yes. You just heard -- and I'm
13 sorry if this sounds unprofessional -- but that was a
14 pack of lies. Your decision does not talk about revival
15 of the duty. Mr. Augspurger never gave that testimony
16 at his deposition. That's a fiction. None of this
17 stuff is true.

18 And it doesn't matter for the evidentiary issue.
19 All that matters are these dates. These things are not
20 relevant because they occur after the resignation. And
21 it's really not as dramatic as it appears at the moment.
22 It's really kind of simple.

23 **MR. ECKERSLEY:** We still have discretion on it.
24 **CHAIRMAN LARSON:** Let's go caucus once again.
25 We're off the record.

1 (Recess taken.)
2 **CHAIRMAN LARSON:** Okay. We'll remind the
3 witness she's still under oath.
4 Are you ready to resume?
5 All right. Let's reconvene the meeting. Back
6 on the record.
7 Okay. We've had our third caucus of the day.
8 One thing I should have pointed out this morning that I
9 didn't, is when were in doubt about exhibits, we are
10 inclined to admit more in than we exclude. And I'll
11 just say that because you haven't really practiced
12 before us.
13 After considering this issue, what we're going
14 to do is ask you, with respect to the issue of the duty
15 of fair representation, to brief it --
16 **MR. HATFIELD:** Okay.
17 **CHAIRMAN LARSON:** -- in your written closing
18 arguments. On your written closing arguments, if you'll
19 brief that issue specifically. So you won't have to do
20 oral closing arguments. You can --
21 **MR. HATFIELD:** Just for a point of
22 clarification -- excuse me, Board -- you want advice as
23 far as the law on when the duty of fair representation
24 triggers, when it expires, as far as the scope? I mean,
25 maybe I could ask for direction from Counsel.

1 **A. I have.**
2 Q. What is your understanding of what this document
3 is?
4 **A. This is a letter that I requested from my**
5 **therapist when I believed that the School District**
6 **wanted more documentation for the investigatory**
7 **interview. So I requested it to provide additional**
8 **documentation on the sick leave.**
9 Q. And can you explain why you asked for the
10 additional -- this documentation?
11 **A. Because the reason they said they wanted an**
12 **investigatory interview was because they said I was**
13 **misusing my sick leave, and I don't believe I was. So**
14 **in conversations with Bill Garis, I told him that I**
15 **would be happy to provide additional documentation, and**
16 **I requested it so that we could send it to the District**
17 **as further proof of my sick leave.**
18 Q. Can you explain whether this document was
19 provided to Mr. Garis at the time that he was providing
20 representation during the investigatory hearing period
21 of time?
22 **A. I requested this document from the doctor the**
23 **day that I spoke with Bill Garis. The doctor did not**
24 **write it until a week later. It was then provided to**
25 **CCSD, by you, I believe.**

1 **CHAIRMAN LARSON:** Sure.
2 **MR. DAVIS:** I think what the Board would be
3 looking for would be briefing on the duty of fair
4 representation, the scope and extent in relation to the
5 facts that are established in this case.
6 **MR. HATFIELD:** Okay. Straightforward enough. I
7 can do that.
8 **CHAIRMAN LARSON:** That was all that was
9 outstanding?
10 **MR. DAVIS:** No. The offer of Exhibit 2 was --
11 **CHAIRMAN LARSON:** Okay, yeah. Do you want to do
12 Exhibit 2?
13 **MR. HATFIELD:** Yes, we're on Exhibit 2,
14 Your Honor. So an offer of proof is made regarding the
15 opinion of Ms. Laura A. Simmons. I believe Ms. Tollen
16 can provide some further testimony as to what this
17 document represents, if the Board would like testimony
18 what this document is, as far as foundation.
19 **CHAIRMAN LARSON:** Yes.
20 **BY MR. HATFIELD:**
21 Q. Ms. Tollen, please turn your attention to
22 Document No. 2 in the small binders, ma'am. It's the
23 medium one; that's the binder of exhibits objected to by
24 Respondent.
25 Have you seen this document before, ma'am?

1 Q. Can you explain why the document wasn't provided
2 at the time of the investigatory hearing?
3 **A. Because they gave me, like, a day's notice, and**
4 **getting ahold of the doctor and requesting it doesn't**
5 **happen quickly.**
6 Q. Is it your opinion -- correct me if I'm wrong,
7 or explain it, if you would, please -- describe what
8 your opinion is regarding the need for the documentation
9 in regard to your resignation.
10 **MS. MASTERS:** I think it's been asked and
11 answered.
12 **THE WITNESS:** The District was questioning my
13 sick leave usage and saying that they thought I misused
14 it. I thought that if I provided more documentation, it
15 would be helpful.
16 And so prior to my resignation, I requested
17 this. I told Bill Garis I was requesting it. He and I
18 had conversations about the documents. He and I had
19 conversations that he would ask CCSD what kind of
20 documents they wanted and that he would take documents
21 when I got ahold of them, but I got ahold of them a week
22 after the newspaper articles. But we still sent them to
23 CCSD.
24 **MR. HATFIELD:** I'll submit this as an offer of
25 proof.

1 **MR. SEGAL:** We reiterate our objection on
2 relevance that it, by definition, didn't exist at the
3 time of the investigatory conference. It didn't exist
4 until after the resignation took effect. And the
5 testimony is it was sent over to CCSD. It could not
6 have impacted any DFR issues with respect to CCASA,
7 because it's simply not possible at that date and time
8 to impact any of those issues which had already occurred
9 or not occurred on August 29th.

10 **CHAIRMAN LARSON:** We're going to overrule that
11 objection and admit it in, and the Board will give it
12 its due weight.

13 (Exhibit 2 of Complainant's Contested Exhibits
14 was admitted into evidence.)

15 **BY MR. HATFIELD:**

16 Q. Ms. Tollen, could you turn your attention to
17 Tab No. 8.

18 Do you recognize this document?

19 A. Yes.

20 Q. Could you describe what that document is for the
21 Board?

22 A. **I hired an attorney after the media, and I asked
23 the attorney to please represent me on my sick leave and
24 also on the media mischaracterizations. I don't know
25 what you want to call them. The negative media that was**

1 binder, the large binder.

2 I'm just going to make an offer right now. It
3 appears to have -- Tab No. 7 is the same correspondence
4 that was included with the other correspondence in
5 Tab 8. That's not objected to as a joint exhibit.

6 **CHAIRMAN LARSON:** Are you talking about
7 Exhibit 7 in the contested, or here?

8 **MR. HATFIELD:** Exhibit 7 in the joint, is the
9 same letter that's part of the second letter that's
10 within Exhibit No. 8. So I think there was some
11 confusion on our part when we asked to create an
12 additional binder and --

13 **MS. MASTERS:** All right.

14 **MR. HATFIELD:** -- our apologies.

15 But at this time, we would move for the
16 admission of the correspondence that's within Tab No. 8
17 of the contested exhibits.

18 **MR. SEGAL:** We object based on relevance. It's
19 a September 11th letter to another party. It does not
20 include any doctors' reports, copied to Steve Augspurger
21 or not. It's after her resignation. It doesn't request
22 anything of the Union in the way of representation. It
23 doesn't mention the Union other than on the CC line. It
24 doesn't have any impact or bearing on any issue in this
25 case. It should be excluded as irrelevant.

1 **focused on me.**

2 **MR. SEGAL:** This is not really an objection, but
3 we have two documents under this tab. Can we clarify if
4 we're dealing with them one at a time, or if they're
5 meant to be one document?

6 **BY MR. HATFIELD:**

7 Q. Yes. I will be referring to the first document
8 within Tab No. 8.

9 A. **This was correspondence, and he wrote to Staci
10 on my behalf. She had written to say that they would
11 take additional documentation and wanted extra
12 information, and so we were writing, I believe, to her
13 to provide the doctors' notes and say, Here's extra
14 documentation and, you know, that you represent me.**

15 Q. You understand -- or can you -- well, can you
16 describe who was addressed in this correspondence?

17 A. **This was Staci Vesneske. At the time, she was
18 the Chief Human Resources Officer.**

19 Q. And who, if any, was copied this correspondence?

20 A. **According to this letter, the Union was copied,
21 Steve Augspurger.**

22 Q. Now, are you familiar with the second letter
23 within that Tab No. 8?

24 A. Yes.

25 Q. Now, can you turn to Tab No. 7 in the joint

1 **CHAIRMAN LARSON:** Are you asking for both of
2 them in?

3 **MR. HATFIELD:** Right, yes. The letter to
4 Mr. Augspurger is not objected to, just the letter to
5 Ms. Vesneske.

6 **MR. SEGAL:** But technically, we object to it as
7 being redundant, but that's a moot point because it's
8 in.

9 **CHAIRMAN LARSON:** Well, once again, we're going
10 to overrule your objection and let this in, and the
11 Board will give it its due weight, recognizing that, you
12 know, it is beyond August 29th.

13 (Exhibit 8 of Complainant's Contested Exhibits
14 was admitted into evidence.)

15 **BY MR. HATFIELD:**

16 Q. Ms. Tollen, if you'll turn your attention to
17 Exhibit No. 5 in the contested documents.

18 Have you seen that document before?

19 A. Yes.

20 Q. My understanding is that maybe a copy of Exhibit
21 No. 32 is a duplication. Could you turn to the joint
22 binder.

23 And have you had a chance to juxtapose those two
24 documents there --

25 A. **Uh-huh.**

1 Q. -- Exhibit 5 and Exhibit 32?
2 A. It looks like it.
3 Q. Do you have an opinion regarding what those
4 documents are?
5 A. This is a letter from Staci Vesneske, the Chief
6 Human Resources Officer at the time, letting me know
7 that without an investigatory interview or any of the
8 documentation that I provided that they -- the District
9 has decided to take my vacation and reimburse all the
10 sick leave that I had used under FML.
11 Q. Well, let me be so rude to interrupt you,
12 Ms. Tollen. My question is, do you have an opinion
13 whether these documents are the same document?
14 A. Yes, it appears to be the same document.
15 CHAIRMAN LARSON: Now, just a moment, Counsel.
16 Exhibit 32 has the first two documents that are in the
17 contested --
18 THE WITNESS: Sorry.
19 CHAIRMAN LARSON: -- Exhibit 5. However, when
20 you put in the third page, there's the document that we
21 excluded earlier. And the fourth page on Exhibit 5 is
22 not a part of Joint Exhibit 32, as far as I could tell.
23 MR. SEGAL: And our assumption was those pages
24 were just incorrectly grouped with Exhibit 5. And our
25 only objection to Exhibit 5, as it should be, is that's

1 CHAIRMAN LARSON: Let me show you what I have.
2 MR. HATFIELD: If I may approach?
3 CHAIRMAN LARSON: Yes.
4 MR. HATFIELD: These -- this appears to be a
5 mistake.
6 CHAIRMAN LARSON: So can you show --
7 MR. HATFIELD: If I could just show the Board, I
8 just have two pages within my Exhibit No. 5. We have no
9 objection. The Court's already ruled on the
10 admissibility of that second document, and that would be
11 coming in. And the second document that's included
12 there would be coming in. That's a duplication of
13 Exhibit No. 2.
14 MR. ECKERSLEY: That other one, which we
15 excluded --
16 CHAIRMAN LARSON: Yeah, we excluded -- so if you
17 can -- so if the first two pages of Contested Exhibit 5
18 is going to be Exhibit 32, are identical, we can either
19 introduce the first two pages of Contested Exhibit 5, or
20 we could refer to Joint Exhibit 32.
21 MR. HATFIELD: Yes, I think they're
22 interchangeable. It appears to be a little clearer copy
23 in Exhibit No. 5 of the contested documents.
24 MR. SEGAL: We not admitting 5 in? We don't
25 need to admit 5?

1 it's entirely redundant of Joint Exhibit 32.
2 MR. HATFIELD: I'm not understanding. It
3 appears to be that --
4 CHAIRMAN LARSON: Okay.
5 MR. HATFIELD: -- I'm sorry -- the document
6 that's included in Tab 32, which was part of our joint
7 exhibit, and there was no lodged objection, is just a
8 poor copy of Exhibit No. 5 in respondent's. So it
9 appears to also have been a duplication of efforts, if
10 you will. And I don't understand why it was objected to
11 by respondent, but --
12 MR. SEGAL: We objected because you don't need a
13 second copy of it, and it's already in the joint
14 exhibits that --
15 MR. HATFIELD: Well, I think it's established
16 that Exhibit No. 5 --
17 CHAIRMAN LARSON: Exhibit No. 5 in the contested
18 exhibits has four pages; Joint Exhibit 32 has two.
19 MR. HATFIELD: We -- we see -- there should only
20 be two pages.
21 CHAIRMAN LARSON: Of Exhibit 32.
22 MR. HATFIELD: Of Exhibit No. 5.
23 MR. SEGAL: That's what I said when I saw the
24 four pages, I thought they had just been mistakenly
25 sorted under that tab. That was my assumption.

1 MR. HATFIELD: We'd like to substitute 5 for 32,
2 as to the first two pages.
3 MR. SEGAL: I'd just suggest that's very
4 inefficient having already admitted Exhibit 32.
5 MR. HATFIELD: We're not asking for that. We're
6 just asking for the first two pages.
7 CHAIRMAN LARSON: There's actually three now.
8 Do you have objections to the -- well, you're probably
9 going to object to the whole thing, so we'll give you
10 that opportunity.
11 MR. SEGAL: My only point is that Exhibit 32 is
12 what everybody agrees this exhibit should be, and that
13 Exhibit 5, as contested, has multiple formatting
14 problems.
15 CHAIRMAN LARSON: Mr. Hatfield, I would -- I
16 think the Board would have to agree with Mr. Segal. It
17 would just be easier if we reference one exhibit, 32.
18 MR. HATFIELD: Just to keep it straight, then.
19 I apologize.
20 MS. MASTERS: Well, we do need to move along.
21 It's quarter past 3:00.
22 (Discussion held off the record.)
23 BY MR. HATFIELD:
24 Q. Ms. Tollen, after you had been transferred, what
25 advice did the Board give you regarding complaints that

1 you had about your transfer, if any?
2 **A. I'm sorry, what was that question?**
3 **Q.** Ms. Tollen, after you had this transfer -- and
4 you testified you were not happy in the transfer -- what
5 advice did the Board -- did the Union give you regarding
6 your issues you were having pursuant to the transfer, if
7 any?

8 **A. I called Steve Augspurger the day after I was**
9 **transferred and asked him to please have me reinstated**
10 **back into Purchasing, because I believe the Union**
11 **contract covered classifications and grandfathers and I**
12 **did not -- a grandfather clause -- and I did not believe**
13 **that my position being reclassified lower that --**
14 **according to the Union contract, I would be**
15 **grandfathered in to the existing -- my existing**
16 **position. That's, I think in Chapter 20 of the Union**
17 **contract, which is -- I know it's in here somewhere -- 6**
18 **of the joint, Chapter 20.**

19 **And so as I understood Chapter 20, it says that**
20 **there's reclassifications done every year, and that --**
21 **I'm looking at 2011 -- 20-11-4, which is Page 35 of 6**
22 **(sic) or -- is everybody okay? Am I going too fast?**

23 **I understood that if the salary range was lower,**
24 **then you get grandfathered into the position, so you**
25 **could stay there. So I asked that I please be placed**

1 **I felt very harassed.**

2 **And so I spoke to Bill Garis about it, and Bill**
3 **Garis said to write -- contact the EEOC. And there was**
4 **a new person at that time named Cedric Cole, and I wrote**
5 **him a letter asking for some help.**

6 **Q.** In your opinion, what did Mr. Cole do for you?

7 **A. Mr. Cole looked at the letter that I had written**
8 **that said I was excited about transferring and then said**
9 **you're excited about transferring and did nothing. He**
10 **didn't talk to me, he didn't interview me. He stated**
11 **that letter and was not helpful. And I believe he**
12 **suggested that I get help from the Union.**

13 **Q.** He suggested that you get --

14 **A. Get help from the Union.**

15 **Q.** At that point in time, is that when you applied
16 for FML?

17 **A. I applied for FML when I was having daily**
18 **problems with being able to calm down enough to breathe**
19 **and to stop shaking. On a daily basis, I felt like**
20 **people were coming in -- Staci Vesneske had come in a**
21 **day earlier and said that -- that the Review-Journal or**
22 **the Nevada Journal were asking all sorts of questions**
23 **about my transfer and wanted all sorts of information,**
24 **and she would let them know whether they were going to**
25 **do an article on me or not. And then the Chief of Staff**

1 **back, and he told me that I wasn't transferred because I**
2 **was reclassified, and wanted to know who told me that,**
3 **and I said Staci Vesneske had told me that. She's Human**
4 **Resource. And he told me he wouldn't grieve it because**
5 **it wasn't part of the CBA.**

6 **MR. HATFIELD:** Sorry, the Board's indulgence for
7 a moment.

8 **BY MR. HATFIELD:**

9 **Q.** Do you have an opinion if the Union accurately
10 represented you at that point in time regarding your
11 conversation with Mr. Augspurger?

12 **A. Well, if I was placed back in my position in**
13 **Purchasing, we wouldn't be here.**

14 **Q.** Can you explain whether there was a grievance
15 lodged regarding your transfer at that time?

16 **A. He told me he wouldn't do it because it wasn't**
17 **part of the CBA.**

18 **Q.** Did you have an occasion to bring this issue
19 before any other Ombudsman or civil rights or
20 investigatory group within CCSD or affiliated with the
21 CCSD's investigations?

22 **A. People were ignoring me. People were coming by**
23 **and asking me to make coffee. I was being informed by**
24 **my supervisor and the superintendent's office that the**
25 **paper was calling and going to write articles on me, and**

1 **said the same thing.**

2 **And then one of the duties I had with -- that I**
3 **was supposed to do with Ron Mader was I was supposed to**
4 **take over investigating when -- when they discovered**
5 **that a teacher might have a conviction coming. And so**
6 **there's a substitute teacher that had failed to notify**
7 **the District that he had been arrested for holding a gun**
8 **to somebody's head, and so they were terminating him.**
9 **And so Ron Mader asked me to sit in because I was taking**
10 **over those duties, to inform that teacher that he was**
11 **being fired because he held a gun to someone's head.**

12 **And I asked Ron Mader, What do you do? Is there**
13 **a metal detector? How do you know he doesn't bring the**
14 **gun in here? And Ron Mader laughed and said, Well, if**
15 **he goes and reaches in his pockets, then we duck. And**
16 **he did reach in his pockets, and he scared me quite a**
17 **bit. But he reached in for a cell phone, and Ron fired**
18 **him.**

19 **And that was to become my job, and I wasn't**
20 **prepared for that. I wasn't prepared for the daily**
21 **information from the supervisors saying that I was going**
22 **to be in the paper, and I wasn't -- I wasn't doing well.**
23 **And so I saw the doctor again, and she felt that I was**
24 **doing poorly enough that she pulled me out.**

25 **CHAIRMAN LARSON:** And that began the FML leave?

1 **THE WITNESS:** Yes, although I submitted the
2 paperwork and it took several weeks to get it approved
3 and went back, but yes.

4 **CHAIRMAN LARSON:** Thank you.

5 **BY MR. HATFIELD:**

6 Q. When you submitted the paperwork for the FML,
7 were you working this job up in Washington State?

8 A. No.

9 Q. Now, how you come about -- if you would, please
10 tell us, how did you come about to become hired by
11 this --

12 A. **When I first got transferred, I applied for**
13 **several jobs that first weekend, and they had called**
14 **back and wanted me to interview. I set up an interview,**
15 **and I went to the interview; took a vacation day and**
16 **flew up there to interview. And they called me, they**
17 **were interested, they offered me a low salary.**

18 **And I really wasn't looking to leave. I**
19 **wasn't -- it was low salary, it was a small position, I**
20 **wasn't really interested. And we kind of talked about**
21 **it for several weeks.**

22 **As my health became worse and then I was pulled**
23 **out of the District, I talked about it with my doctors,**
24 **and they felt getting out of the heat and getting away**
25 **from Las Vegas and being able to work in my experienced**

1 Q. In your opinion, did you act dishonestly --

2 A. No.

3 Q. -- towards CCSD by taking this job in Washington
4 State while you were on FML?

5 A. **Not to my understanding. My understanding is a**
6 **lot of people use their vacation and their sick leave**
7 **when they're going out. And I actually had several**
8 **conversations with different folks about it, and part of**
9 **the -- part of the thing was, I was hopeful that maybe**
10 **some of the people that -- there were some ongoing**
11 **investigations at CCSD, and I was hopeful that maybe**
12 **those people would go away and I could return. I really**
13 **liked that job.**

14 **The other thing was that CCSD, the problems I**
15 **was having were as a result of CCSD, and I don't -- I**
16 **don't know if it was fair that the new insurance pay for**
17 **it or the old insurance. I don't know. But there were**
18 **times I really wanted to go back.**

19 Q. Do you have an opinion whether there's some
20 policy or contract or rule or regulation that explicitly
21 bars you from working up in Washington State while you
22 were on sick leave?

23 A. **Not if it's a different job that isn't excluded**
24 **from the sick leave policy.**

25 Q. Do you have any opinion whether Article 13 of

1 **job field might be very good for me, so I ended up**
2 **taking it to get away for a little while.**

3 Q. Now, prior to you taking that job, did you have
4 any conversations with Ron Mader regarding the propriety
5 of rules of sick leave and FML?

6 A. **We talked. We talked. Mostly, it was e-mails.**
7 **He had told me that sick leave was with Staci Vesneske.**
8 **And I wrote to Staci Vesneske, and Staci directed me**
9 **back to work with him. And I think he e-mailed me and**
10 **said she doesn't understand. And so I was to provide**
11 **weekly updates and I think a monthly -- I don't**
12 **remember. But I did that. Every Sunday I would text**
13 **Staci and --**

14 Q. Can you describe what you texted Staci about?

15 A. **The paperwork requires that you get a fitness of**
16 **duty from your doctor if you can return to work, and the**
17 **doctor would not give me a fitness of duty to return to**
18 **CCSD because CCSD was not good for me. And so I did not**
19 **have a return to work certification, so I would text her**
20 **and say, I have not been able to obtain, or I do not**
21 **have, or I'm not fit to return to CCSD, or something in**
22 **that.**

23 Q. In your opinion, did you act dishonestly towards
24 CCSD by taking this job in Washington State?

25 A. I'm sorry, what's that?

1 the CBA contract does prohibit your work from -- I don't
2 know about "from," but in Washington State?

3 A. **Where is Article 15 (sic)?**

4 **CHAIRMAN LARSON:** 15 or 13?

5 **MR. HATFIELD:** It's --

6 **CHAIRMAN LARSON:** 13 is sick leave.

7 **BY MR. HATFIELD:**

8 Q. Yes. If you'll turn your attention to the
9 document within Joint Exhibit No. 6, which is titled
10 Negotiated Agreement between the Clark County School
11 District and the Clark County Association of School
12 Administrators and Professional and Technical Employees,
13 there is, on Page 16, it appears to me to be Article 13
14 pertains to sick leave. Do you see that document?

15 A. Yes.

16 Q. My question to you, Ms. Tollen, was whether you
17 had an opinion whether Article 13 prohibits --

18 A. **I could not work at the District. I could not**
19 **work there.**

20 Q. Do you have any opinion whether Article 13
21 prohibits you from working in Snohomish County in
22 Purchasing when you had taken FML from CCSD pursuant to
23 the reasons why you applied for FML?

24 A. **I had understood from conversations with Ron**
25 **Mader and Bill Garis that folks did this and it was not**

1 **uncommon to run your sick leave and vacation out, and**
2 **that folks did work second jobs or other jobs to use**
3 **their vacation and sick leave.**

4 Q. So that was not the opinion of CCSD, was it?

5 A. I'm sorry, what?

6 Q. That was not the opinion of CCSD? My question,
7 your sick leave or FML --

8 A. They believed that I wasn't sick perhaps because
9 there was an article in the newspaper that said if she's
10 to -- if she's well enough to work somewhere else, she's
11 well enough to work here, which wasn't the case. But I
12 was not well enough to work there.

13 Q. Prior to those articles in the press,
14 Ms. Tollen, you received notice from Ms. Vesneske that
15 there was questions regarding sick leave usage?

16 A. Yes.

17 Q. And you've heard testimony from Mr. Garis. He
18 testified regarding the investigatory hearing. Can you
19 provide the Board with an opinion regarding whether you
20 were adequately represented during the investigatory
21 hearing?

22 A. Well, there wasn't an investigatory hearing. I
23 didn't realize there wouldn't be one. Garis and I spoke
24 about it. I told him that I was unable to attend
25 because my doctors did not believe I should be anywhere

1 Q. Did you -- strike that.

2 Why did you submit your resignation?

3 A. We talked about it quite a bit. And I didn't
4 like having to text Staci every week. Having contact
5 with her didn't make me feel better. I was feeling
6 better in Washington, but any -- any CCSD stuff just was
7 causing things to flare up.

8 And so we actually talked about it, and he said
9 he had -- he had worked with Ms. Vesneske earlier and
10 didn't feel that things were going to go better for me.
11 And he said, If you turn this in, it all stops here,
12 it's all over, it's all done with. And I liked the idea
13 of perhaps it all being over with and done with, and so
14 I told him I would send him a resignation and that he
15 could turn it in later for me.

16 Q. And what was your understanding of the effect of
17 sending in a resignation?

18 A. My understanding was that I wouldn't hear from
19 CCSD, there would be no more problems with them, and
20 that perhaps Bill would call me and say, This is what
21 they need medically. Or if -- perhaps it would just
22 blow over.

23 We didn't really talk about -- we did not talk
24 about vacating the investigatory unless everything's
25 over and it's all done, is what it meant. But I

1 near the campus. I understood that he would attend for
2 me. I told him that I would be happy to get additional
3 documentation, and if he would please ask what kind of
4 documentation.

5 He did say that he couldn't attend on Tuesday,
6 the 2nd, and needed to reschedule to Wednesday, the 3rd.
7 He did that, and I got an e-mail.

8 We did talk about if I resigned that it would
9 all go away and maybe it would be easier for me because
10 I wouldn't have to keep dealing with the District, and
11 so we talked about that quite a bit. And then he said
12 that he would take my resignation, if I sent it to him,
13 to the investigatory meeting on Wednesday, because he
14 was out on Tuesday.

15 Q. Can you describe for the Board what the
16 substance was of your conversations with Mr. Garis in
17 regard to your perspective regarding the propriety of
18 taking FML?

19 A. He wasn't sure if it was okay while you worked
20 or not, and he was going to check with Ron Mader. And I
21 told him that I felt that it was okay and had
22 discussions with Ron Mader, and that's really all we
23 said; other than I told him, for some reason the
24 documentation that I've given the District must not be
25 enough and I would be happy to provide more.

1 understood he was going into the investigatory interview
2 with my resignation and to get more information on the
3 medical, but that -- there wouldn't be newspaper
4 articles, there wouldn't be taking pay, there wouldn't
5 be negative statements. It would get better. That's
6 not what happened. It didn't get better; it got
7 significantly worse.

8 Q. And explain how it got significantly worse for
9 you?

10 A. Well, I kept getting calls from Karen Gray, and
11 she quoted information that I'm assuming came from the
12 Union, that I would consider confidential, but she said
13 I was on sick leave and FML, and she said I was
14 resigning. And that wasn't information I had shared
15 with anybody.

16 And I got questioned then by staff that I was
17 working with, and that died down after a day or two.
18 And then it flared up again when somebody from Vegas
19 sent copies of the articles up to all the newspapers and
20 televisions in Seattle. And then one of the local
21 reporters came to my workplace up there, and I had to be
22 interviewed by the Human Resources Director and we had
23 to go through that again.

24 Q. Can you explain how the press became notified or
25 became aware of you working up in Washington State?

1 A. I don't know. The press? I -- all I know is
2 there was information that Garis had that I don't
3 believe was public knowledge, that somehow ended up with
4 Karen Gray and in the paper. So I don't know if Garis
5 told somebody or he told Steve and Steve told Karen
6 Gray, but there was information that was not public
7 knowledge that I gave to Bill Garis and it ended up in
8 the paper.

9 Q. So do you have an opinion whether the press was
10 notified by CCSD or some other person?

11 MR. SEGAL: Objection; calls for speculation.

12 CHAIRMAN LARSON: Do you want to respond or
13 rephrase?

14 MR. HATFIELD: Yeah, I could rephrase.

15 BY MR. HATFIELD:

16 Q. Did the people in the press that were contacting
17 you tell you why they were contacting you in regard to
18 issues or allegations that there was a violation of sick
19 leave, FML?

20 A. They contacted me because they were doing a
21 story. They knew that my resignation paper had been
22 submitted, they knew that I was on sick leave and FML.
23 And they either got that information from CCSD or CCASA.
24 I'm assuming it came from the Union, because the Union
25 had it two or three days, I'm assuming, before the

1 intentions were to return, but I think you also could
2 say that -- that I was -- experienced enough distress
3 that I really couldn't plan much out, that I was just
4 kind of living day by day.

5 So I don't know that there was a huge master
6 plan, but I can tell you that when I woke up in the
7 morning and I felt -- if I slept that night, I felt
8 good, and then I suddenly realized that my entire life
9 had been disrupted and I was no longer where I thought I
10 could be or who I thought I was, and it was very
11 disconcerting not to know what the day was going to
12 bring and what was going to happen.

13 And so I would have liked to return to
14 Purchasing in CCSD, but the longer I was away and the
15 more media and everyone started getting very negative
16 about everything, the less that became a possibility.

17 Q. In your opinion, was the investigatory
18 hearing --

19 MR. SEGAL: Objection; leading.

20 MR. HATFIELD: I'll rephrase.

21 BY MR. HATFIELD:

22 Q. Explain to the Board if there was any discussion
23 regarding a recapture of benefits at the time of the
24 investigatory hearing and when you were having
25 discussions with Mr. Garis?

1 School District did, based on Bill Garis' testimony
2 today.

3 CHAIRMAN LARSON: What was the date, the month,
4 the year, the approximate date when the media came to
5 visit you in Seattle or visit the County Manager, HR
6 Director?

7 THE WITNESS: It was that first week in
8 September.

9 CHAIRMAN LARSON: Okay, so it was -- okay, so
10 after the 29th of August?

11 THE WITNESS: Yes.

12 CHAIRMAN LARSON: Okay.

13 BY MR. HATFIELD:

14 Q. I'm just going to jump back a little bit and ask
15 you a question. In a previous time frame --

16 A. I'm sorry. But the media contacted me prior to
17 that. I'm sorry.

18 CHAIRMAN LARSON: Okay.

19 THE WITNESS: Yeah. The visit was later, but I
20 was receiving some ugly phone calls prior. I'm sorry.

21 BY MR. HATFIELD:

22 Q. Ms. Tollen, what was your intentions when you
23 first went on FML regarding returning to work for CCSD?

24 A. I don't -- it was -- I've been there 17 years.
25 It was my home. I think you could say that my

1 A. No, the discussions were, It will all be over
2 and we'll just all walk away. And, I mean, I have not
3 seen before these Steve -- I'm sorry, Garis and
4 Vesneske's signed affidavits -- I might have seen them
5 actually Friday with the quash thing -- but I haven't
6 seen those before. But in both of them, they're very
7 clear that if I resign, there will be no discipline,
8 there will be no -- and I don't see how you can say,
9 speaking to the media negatively and taking back
10 money --

11 MR. SEGAL: I'm just going to object that this
12 is nonresponsive. It wasn't the question asked. It's
13 just off somewhere. I don't know where.

14 CHAIRMAN LARSON: I'll sustain the objection.

15 THE WITNESS: I'm sorry, what was the question?

16 MR. HATFIELD: The entire answer? Are we
17 striking the answer or --

18 CHAIRMAN LARSON: Why don't you start the
19 questioning again.

20 THE WITNESS: I'm sorry.

21 CHAIRMAN LARSON: If you want, let's get kind of
22 a succinct response. I think we'll have it in the next
23 question.

24 BY MR. HATFIELD:

25 Q. Ms. Tollen, can you explain what the scope of

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1 the evidentiary -- not evidentiary -- investigatory
2 hearing entailed and whether you have an opinion whether
3 it involved recapturing of benefits?
4 **MR. SEGAL:** Objection; lacks foundation. There
5 was no hearing. The scope of the hearing can't be asked
6 about.
7 **MR. HATFIELD:** I'm sorry, the scope of the
8 hearing can't be asked about?
9 **MR. SEGAL:** There was no hearing.
10 **CHAIRMAN LARSON:** He's saying technically there
11 was no hearing.
12 **BY MR. HATFIELD:**
13 Q. All right. In your opinion, was the hearing
14 cancelled by CCSD --
15 **MR. SEGAL:** Objection; leading.
16 **BY MR. HATFIELD:**
17 Q. -- because --
18 **MR. SEGAL:** You're giving her the answer.
19 **MR. HATFIELD:** I'll rephrase.
20 **CHAIRMAN LARSON:** Okay.
21 **BY MR. HATFIELD:**
22 Q. Explain for the Board whether you had any
23 conversations with Mr. Garis regarding possible
24 additional discipline, including a recapture of
25 benefits --

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1 **MR. SEGAL:** Objection; leading.
2 **MR. HATFIELD:** I don't believe it's leading. I
3 believe it's just establishing the foundation.
4 **MR. SEGAL:** If she can answer it by saying yes
5 or no, it's a leading question.
6 **MR. HATFIELD:** No. I asked her to explain her
7 opinion, explain whether she has any knowledge or basis
8 regarding the discussion of recapture or further
9 discipline. I'm asking her to explain if there was any
10 conversation with Mr. Garis regarding what the deal, if
11 you will, was when she submitted her resignation. It's
12 just very simply, straightforward.
13 **CHAIRMAN LARSON:** So you're asking her if there
14 were any terms or conditions associated with her FML and
15 rolling over into retirement?
16 **MR. HATFIELD:** Yes. Yes, Mr. Larson, that is
17 another way of putting it.
18 **CHAIRMAN LARSON:** I don't want to make questions
19 for you, but I think that's a fair question. She can
20 answer.
21 **THE WITNESS:** The terms and conditions were that
22 everything would be over, that there would be no more
23 harassment by CCSD.
24 **CHAIRMAN LARSON:** There was some discussion of
25 money that was rescinded back. Was that a topic?

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1 **THE WITNESS:** That was not a topic.
2 **CHAIRMAN LARSON:** Okay. What did you --
3 **THE WITNESS:** The topic was that I felt that I
4 had not misused sick leave and that my reputation was
5 being tarnished, and I very much wanted the opportunity
6 to present additional documentation to clear that. That
7 was the topic.
8 **MR. ECKERSLEY:** When did the issue of a
9 recapture of benefits first arise?
10 **THE WITNESS:** When Staci Vesneske wrote to me
11 after the --
12 **MR. ECKERSLEY:** Approximately.
13 **THE WITNESS:** No, I'm sorry. In the articles by
14 Steve Augspurger that said CCSD should go back and get
15 the money.
16 **MR. ECKERSLEY:** When did they first arise with
17 CCSD?
18 **THE WITNESS:** When Staci Vesneske wrote
19 afterwards.
20 **MR. ECKERSLEY:** Any date, approximately?
21 **THE WITNESS:** I think it was the 11th.
22 **MR. ECKERSLEY:** Okay.
23 **THE WITNESS:** I think we -- no, it's in here.
24 We looked at it.
25 **CHAIRMAN LARSON:** Well, maybe I think it would

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1 be good if we could establish that date for the Board.
2 **MR. SEGAL:** Exhibit 32 in the joint exhibits,
3 and 31 and 32 refer to that issue. 31 predating the
4 newspaper article; 32 postdating.
5 **BY MR. HATFIELD:**
6 Q. What's the date of that document, Tab 32,
7 Ms. Tollen?
8 **A. I'm sorry.**
9 Q. Can you tell us what the date of that document
10 was?
11 **A. The original document was dated September 3rd,**
12 **and then there was the second document on**
13 **September 11th.**
14 Q. Ms. Tollen, could you turn to Tab No. 42?
15 **A. 42?**
16 Q. 42, please, in the joint binder.
17 **A. Okay.**
18 Q. Have you seen these documents before?
19 **A. Yes. Yes.**
20 Q. You testified, I believe, that you had a
21 conversation with Mr. Augspurger several months earlier
22 to September 3, 2014. Can you describe any other
23 conversations with Mr. Augspurger between or after the
24 last time you had spoke until September 3, 2014?
25 **A. After I spoke with Trustee Cranor, there were**

1 several other actions of what I believe are retaliation.
2 **One of them was the CCSD noticed me up --**

3 **MR. SEGAL:** I'm just going to object. This is
4 not responsive. She was asked about conversations with
5 Steve Augspurger, and she plunged into a speech about
6 other issues entirely.

7 **CHAIRMAN LARSON:** I'll sustain that objection.

8 **BY MR. HATFIELD:**

9 Q. Ms. Tollen, what conversations did you have with
10 Mr. Augspurger, if any, regarding issues of
11 inappropriate use of FML or sick leave?

12 **A. None.**

13 Q. Ms. Tollen, what conversation did you have with
14 Mr. Augspurger, if any, regarding conversations about
15 improper use of sick leave after September 11th, 2014?

16 **A. None.**

17 Q. What writings or other communications did you
18 receive from the Union, if any, did you receive after,
19 on or about August 29th, 2014?

20 **A. About two weeks later, Bill Garis sent me some
21 information on COBRA benefits.**

22 Q. After you received that information about COBRA
23 benefits, what information did you receive, or what
24 communications did you receive, from the Union, if any,
25 regarding improper use of sick leave or any other

1 **A. I'm sorry, what is --**

2 Q. Explain why you say the Union should have been
3 in your court, as you just testified.

4 **A. Be in court?**

5 Q. Explain why you state the Union should have been
6 in your court --

7 **A. Oh, in my court.**

8 Q. -- as you just testified?

9 **A. I'm sorry.**

10 **CHAIRMAN LARSON:** It's been a long day.

11 **MS. MASTERS:** It's getting longer.

12 **THE WITNESS:** Because I think they have a duty
13 to represent me. I'm one of their members, I paid dues.
14 I think that's what a Union does; they represent you
15 when the District acts in areas that aren't correct with
16 the Union agreement. And in several cases that was, I
17 believe, the case and I would have expected the Union to
18 have my back and to represent me, and to make me whole,
19 put me back in my position, not let the retaliation
20 affect me, not participate in the retaliation. And
21 surely not speak to the newspaper against me and make,
22 what I believe, were negative comments because they
23 believed in that I had misused sick leave, and I never
24 had an opportunity to clear my name.

25 ///

1 topics?

2 **A. After September -- after August 29th? I turned
3 it all over to you. I didn't receive anything.**

4 Q. Explain, Ms. Tollen, for the Board, why are you
5 here today?

6 **A. Because I don't believe the Union has
7 represented me. I believe that I was transferred and
8 shouldn't have been, and that they should have
9 represented me so I wouldn't have been transferred. I
10 believe that I fairly used sick leave and the Union was
11 biased against me and didn't represent there. And I
12 also believe that the Union knew that the money was
13 being taken away and didn't represent me there.**

14 **I believe that it started because they were
15 representing a grievant within my department. They
16 represented him. He was another administrator against
17 me, and they the didn't fairly represent me.**

18 **I also believe that the Union may have stood the
19 benefit from a Health District, District health plan,
20 and that -- that the comments made in the paper clearly
21 show that they weren't open and unbiased against me and
22 they weren't in my court, like I would have thought they
23 would be. I paid Union membership dues for 17 years.**

24 Q. Explain why you think that the Union would have
25 been in your court, as you just stated?

1 **BY MR. HATFIELD:**

2 Q. What opinions do you have regarding the Union,
3 if any, in regard to the subsequent recapture of
4 benefits?

5 **A. They had promised if I resign that there would
6 be no discipline, there would be no action. There was
7 discipline and action. I think they should have stood
8 up for that and said that wasn't okay. However, given
9 that Augspurger already said, Do it, in the media, I
10 think that's what led the District to do it. They
11 didn't have my back.**

12 **MR. HATFIELD:** The Board's indulgence for a
13 moment here.

14 We're ready to pass the witness. That is, of
15 course, if the Board has any questions.

16 **CHAIRMAN LARSON:** Why don't we take a -- well,
17 let me ask you, Mr. Segal. You're undoubtedly going to
18 have more questions for this witness, I believe, than
19 the Board will. But it's 10 minutes of 4:00 now. How
20 long do you expect you will be with this witness?

21 **MR. SEGAL:** Two hours.

22 **CHAIRMAN LARSON:** Okay. Then I think that makes
23 our decision for us. I think we ought to -- and I'm
24 just throwing this out for Board -- I think we ought to
25 recess this hearing until -- can we start at 8:00?

1 MS. MASTERS: She needs to rest.
2 CHAIRMAN LARSON: Would tomorrow morning be
3 satisfactory for you folks?
4 MR. SEGAL: Yes.
5 CHAIRMAN LARSON: We'll start with you,
6 Mr. Hatfield.
7 MR. HATFIELD: Let's see tomorrow is Wednesday.
8 No, I don't think so. That would be fine. We'll start
9 at 8:00.
10 CHAIRMAN LARSON: Okay, at 8:00.
11 And Mr. Segal and Mr. Humes?
12 MR. SEGAL: Yes, that's fine.
13 CHAIRMAN LARSON: How about Ms. Tollen?
14 THE WITNESS: Yes, sir.
15 CHAIRMAN LARSON: Okay. Let's go ahead and do
16 that. It's already -- I think it's been a long day.
17 MR. SNYDER: Just for my own benefit, you said
18 you have four witnesses all together? I'm just trying
19 for gauge out how tomorrow might go. I know we've got
20 cross-examination, but --
21 MR. HATFIELD: Yes. Garis, Tollen, and
22 Mr. Augspurgen.
23 MR. SNYDER: You're calling Mr. Augspurgen?
24 MR. HATFIELD: Yes.
25 MR. SNYDER: And then that, you think, will be

1 it?
2 MR. HATFIELD: I think so, yeah.
3 MR. SNYDER: We're not forcing you on it.
4 MR. HATFIELD: At this point, I don't have any
5 word on whether Ms. Vesneske has been served. I reserve
6 the right to call her as the Board was advising, if she
7 does become served she.
8 MR. SNYDER: Mr. Segal, how many witnesses do
9 you think you'll have tomorrow?
10 MR. SEGAL: It will just be Mr. Augspurgen.
11 MR. SNYDER: And you think you would finish
12 tomorrow, is your gut feeling or --
13 MR. SEGAL: I would think so.
14 CHAIRMAN LARSON: And you don't have oral
15 closing arguments.
16 MR. HATFIELD: And we don't have closing, so --
17 CHAIRMAN LARSON: Okay. Well, staff, this
18 hearing is recessed until 8 o'clock tomorrow.
19 You're temporarily excused.
20 (Proceeding adjourned at 3:55 p.m.)
21 -oOo-
22
23
24
25

1 CERTIFICATE OF REPORTER
2 STATE OF NEVADA)
3 COUNTY OF CLARK)SS:
4 I, Jean M. Dahlberg, Certified Court Reporter, do
5 hereby certify:
6 That I reported in shorthand the proceedings had
7 in the above-entitled matter at the place and date
8 indicated.
9 That I thereafter transcribed said shorthand
10 notes into typewriting at and under my direction and
11 supervision, and the foregoing transcript constitutes a
12 full, true and accurate record of the proceedings had.
13 IN WITNESS WHEREOF, I have set in my hand in my
14 office in the County of Clark, State of Nevada this 19th
15 day of February, 2016.
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JEAN M. DAHLBERG, RPR
CCR 759, CSR 11715

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