

In The Matter Of:

*Bramby Tollen vs. Clark County Association
of School Administrators, et al.*

*Hearing - Volume II
February 10, 2016*



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Hearing - Volume II - February 10, 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 II - PAGES 212 through 440
15 Taken on Wednesday, February 10, 2016
16 At 8:00 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 GREGORY ZUNINO, CHIEF DEPUTY ATTORNEY GENERAL
6 BRUCE K. SNYDER, COMMISSIONER
7 SANDY MASTERS, BOARD MEMBER
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Also Present:
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Ronald Hirsch, Paralegal
Stephen Augspurger
Thomas Tollen

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1 I N D E X
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4 Direct Examination by Mr. Hatfield (Volume I) 57
5 Cross-Examination by Mr. Segal (Volume I) 65
6 Redirect Examination by Mr. Hatfield (Volume I) 72
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10 Direct Examination by Mr. Hatfield (Volume I) 82
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15 BRAMBY TOLLEN
16 Direct Examination by Mr. Hatfield (Volume I) 116
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1 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 I/30/30
5 Resignation Form, Bates-stamped
6 CCASA00001 (1 page)
7 Exhibit 2 2/10/15, Affidavit of Bill Garis I/30/30
8 Bates-stamped CCASA00002 through
9 CCASA00004 (3 pages)
10 Exhibit 3 2/18/15, Affidavit of Staci I/30/30
11 Vesneske, Bates-stamped
12 CCASA00005 through CCASA00006
13 (2 pages)
14 Exhibit 4 11/7/14, Federal Labor Relations I/30/30
15 Authority Complaint, CCASA00007
16 through CCASA00008 (2 pages)
17 Exhibit 5 9/22/15, E-mail from Adam Segal, I/30/30
18 Bates-stamped CCASA00009 (1 page)
19 Exhibit 6 2013-2015 Negotiated Agreement I/30/30
20 between Clark County School
21 District and the Clark County
22 Association of School
23 Administrators and Professional-
24 Technical Employees, Bates-stamped
25 CCASA00010 through CCASA00067
(58 pages)
Exhibit 7 9/11/14, Letter from Trevor I/30/30
Hatfield to Stephen Augspurger,
Bates-stamped CCASA00068 through
CCASA00069 (2 pages)
Exhibit 8 10/21/15, Complaint in the matter I/30/30
of Bramby Tollen v. Clark County
School District, Case
No. 2:15-cv-02035-APG-VCF,
Bates-stamped CCASA00070 through
CCASA00073 (4 pages)

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| I N D E X -- EXHIBITS (continued) | | |
|-----------------------------------|---|--------------|
| JOINT EXHIBITS | | |
| 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) | | |
|-----------------------------------|---|--------------|
| JOINT EXHIBITS | | |
| EXHIBIT NO. | DESCRIPTION | VOL/ID/ADMIT |
| 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 |
| 8 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 |
| 16 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 TOLLEN0267 (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 |

17 LINE OF QUESTIONING MARKED

| 19 PAGE | LINE |
|---------|------|
| 322 | 14 |

25

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1 LAS VEGAS, NEVADA; WEDNESDAY, FEBRUARY 10, 2016

2 8:00 A.M.

3 -oOo-

4 Whereupon --

5 **CHAIRMAN LARSON:** Let's reconvene the

6 Employee-Management Relations Board meeting. This being

7 February 10, 2016.

8 Back on the record.

9 Good morning.

10 **MR. HATFIELD:** Good morning.

11 **MR. SEGAL:** Good morning.

12 **CHAIRMAN LARSON:** Let's go back to Item 4, Case

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

14 Association of School Administrators and

15 Professional-Technical Employees, also known as CCASA.

16 Mr. Segal, I believe that -- while we're going

17 to need to get the witness back on the stand, I believe

18 you were going to cross-examine?

19 **MR. SEGAL:** Correct.

20 **CHAIRMAN LARSON:** Okay. Yeah, Ms. Tollen, you

21 may resume the witness chair.

22 **MR. SNYDER:** Just for reference while she's goes

23 to the witness stand, SEIU asked if they could come back

24 and do another round of public comments today, and I

25 just heard that their attorney will be about 15 out. So

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1 maybe at sometime when he shows up, if you want to shift
2 gears for a second and let him say whatever he wants to
3 say and --
4 **CHAIRMAN LARSON:** Okay. Sure. Sure.
5 **MS. MASTERS:** Oh, sure. We can do almost
6 anything.
7 **CHAIRMAN LARSON:** Mr. Segal, we may interrupt
8 you for up to five minutes, in 15 or 20 minutes, but it
9 just will be very brief.
10 **MR. SEGAL:** Okay.
11 **CHAIRMAN LARSON:** SEIU's attorney wanted to make
12 certain remarks when -- he's at the main office -- when
13 he's in attendance.
14 **MR. SEGAL:** Okay.
15 **CHAIRMAN LARSON:** He made them yesterday, but
16 Mr. Davis was in attendance, but today Mr. Davis is no
17 longer part of the agency.
18 **MS. MASTERS:** Okay.
19 **CHAIRMAN LARSON:** Okay, please proceed. The
20 court reporter will swear you in. Oh, you're still
21 under oath.
22 **THE REPORTER:** That's okay. I can do it again.
23
24 **BRAMBY ANN KRAKOVER TOLLEN,**
25 having been first duly sworn to tell the truth, the

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1 whole truth, and nothing but the truth, was examined and
2 testified as follows:
3 **CROSS-EXAMINATION**
4 **BY MR. SEGAL:**
5 Q. Good morning, Ms. Tollen. Did you testify you
6 worked for CCSD for approximately 17 total years? Is
7 that correct?
8 **A. Yes.**
9 Q. And were all those years as a -- in a position
10 represented by CCASA?
11 **A. Yes.**
12 Q. And are you, as a result of that, familiar with
13 the CCASA labor agreement?
14 **A. The Collective Bargaining Agreement?**
15 Q. Yeah, the CBA or Collective Bargaining Agreement
16 or labor agreement.
17 **A. Yes.**
18 Q. And have you read that CBA from time to time
19 over those years?
20 **A. Yes.**
21 Q. Have you read every word of it?
22 **A. No.**
23 Q. Have you read parts of it multiple times?
24 **A. Most likely.**
25 Q. Have you over those years been involved in any

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1 way in investigative interviews or conferences, as we've
2 been calling them? Have you been involved in any over
3 the years?
4 **A. Investigative interviews?**
5 Q. Conferences or interviews.
6 **A. Yes.**
7 Q. And approximately how many of those have you
8 been involved with during your time at CCSD?
9 **A. One.**
10 Q. Was that only -- in 17 years you were only
11 involved in one?
12 **A. You're asking me about the Union agreement and**
13 **how many investigatory interviews I've been involved in?**
14 Q. Right. Over the 17 years.
15 **A. One.**
16 Q. And what year was that conference?
17 **A. 2014.**
18 Q. And were you the employee who was interviewed
19 during that conference?
20 **A. Yes.**
21 Q. And what was the subject matter of that
22 conference?
23 **A. The School District brought me in to question me**
24 **about my son's employment two years prior.**
25 Q. That didn't have anything to do with the issues

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1 of this proceeding? That didn't have anything to do
2 with the issues?
3 **A. I don't know if it did or not. I believe it was**
4 **part of the retaliation after speaking, so I don't know**
5 **if that's part of this or not.**
6 Q. Okay. Over your 17 years, have you been
7 involved in any capacity with actual grievances?
8 **A. Not really, no.**
9 Q. Have you ever been a grievant against any other
10 party during those 17 years?
11 **A. Have I grieved another party?**
12 Q. Correct.
13 **A. Not that I recall.**
14 Q. Have you ever had in those 17 years a grievance
15 filed against you?
16 **A. Me personally, or the department?**
17 Q. You personally.
18 **A. Yes.**
19 Q. And how many times has that occurred?
20 **A. That I recall, once.**
21 Q. And do you remember what year that was?
22 **A. That was 2014, as well. That was --**
23 Q. That's the answer to my question. Thank you.
24 And if you could open the joint exhibit binder
25 to Exhibit 6. I'd like to ask you some questions about

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1 the CBA. And if you could flip to Article 4, which is
2 on Page 15 of the exhibit, Page 15 in the lower right.
3 And do you see where it lists Article 4,
4 Grievance and Arbitration Procedure?
5 **A. Yes.**
6 Q. And you had said that you had read parts of this
7 agreement over the years. Is Article 4 a part of this
8 agreement that you've read over the years?
9 **A. I'm really not familiar with this.**
10 Q. Okay. If you could flip forward one page, which
11 would be exhibit Page 16, that paragraph at the top,
12 second sentence, do you see where it says, "A grievance
13 shall not include any matter or action taken for which
14 relief is granted by the statutes of Nevada"? Do you
15 see that sentence?
16 **A. I see the sentence.**
17 Q. Is today the first time you're reading that
18 sentence?
19 **A. I don't know.**
20 Q. You don't recall ever seeing that before?
21 **A. No. Well, I don't -- I think we've discussed it**
22 **in this proceeding, but I wouldn't say that I'm familiar**
23 **with it.**
24 Q. Okay. And prior to these proceedings, you don't
25 recall ever reading that sentence before?

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1 **A. No, not that I recall.**
2 Q. Okay. That's a perfectly acceptable answer.
3 Looking towards the middle of that page,
4 Article 4-5, do you see where it says, "In the event the
5 grievance is between two members of CCASAPE, the
6 grievant will be represented by CCASAPE during the
7 entire Grievance and Arbitration Procedure"? Do you see
8 that?
9 **A. Yes.**
10 Q. And prior to these proceedings, had you had
11 occasion to read that provision?
12 **A. No.**
13 Q. Is today the first time you've ever read that
14 provision?
15 **A. No.**
16 Q. So in the course at these proceedings, at some
17 point you've looked at that provision?
18 **A. Yes.**
19 Q. That was the only remaining choice.
20 So yesterday when you said regarding the one
21 time somebody grieved against you, that Steve Augspurger
22 represented that individual against you and that was
23 your example of how Steve Augspurger was biased against
24 you. Is it your contention that instead Mr. Augspurger
25 should have violated this Article and represented you

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1 instead?
2 **A. It's my contention that --**
3 Q. No, this is a yes-or-no question. Is that your
4 contention that he should have instead violated this
5 Article?
6 **A. I don't understand this, and I don't understand**
7 **why he wouldn't represent me. So I don't think I can**
8 **make a decision on whether it's a violation or not. I**
9 **paid dues to be represented.**
10 Q. Hang on. Let me ask the questions --
11 **A. Okay.**
12 Q. -- and you answer my questions.
13 **A. Okay.**
14 Q. If you don't answer my questions, I'm going to
15 direct the Board to direct you to answer my questions.
16 **A. I am trying to answer your questions.**
17 Q. Okay. If there's anything that needs further
18 explanation, your counsel will enlist it on Redirect.
19 So you've never seen this provision saying that
20 CCASAPE was required to represent the grievant prior to
21 these proceedings?
22 **A. Correct.**
23 Q. If you'll flip forward one page for me -- no,
24 I'm sorry. Let me see here. Wrong page.
25 Page 25, Exhibit Page 25.

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1 **A. Same section?**
2 Q. Yeah, same exhibit, just going forward in the
3 CBA. It's Exhibit Page 25, CBA Page 16, Article 13
4 regarding sick leave. Do you see that?
5 **A. Yes.**
6 Q. And do you see the first sentence of
7 Article 13-1 that states that, "Sick leave is leave that
8 is granted an administrator under the terms of this
9 Agreement who is unavoidably absent because of personal
10 illness or injury or because of serious illness or
11 injury of his immediate family"? Do you see that
12 provision?
13 **A. Yes.**
14 Q. Is that a provision that prior to these
15 proceedings you were familiar with?
16 **A. Yes.**
17 Q. And had you read it multiple times prior to
18 these proceedings?
19 **A. I don't recall.**
20 Q. Do you remember prior to these proceedings what
21 was the most recent time you had read that provision?
22 **A. No.**
23 Q. Do you recall whether it was in 2014 in relation
24 to the issues we're dealing with in this arbitration?
25 **A. If it was prior to 2014?**

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1 Q. No, if it was during 2014 in relation to the
2 issues of this proceeding that you most recently read
3 that provision?
4 **A. It was -- I most recently read it as part of**
5 **this proceeding.**
6 Q. Okay. If I could direct your attention to the
7 bottom of that same page to Article 13-7, do you see
8 where it states, "Any administrator who misuses sick
9 leave shall be subject to disciplinary action in
10 accordance with NRS 391 of this Agreement"? Do you see
11 that provision?
12 **A. Yes.**
13 Q. And before these proceedings, had you had
14 occasion to review that Article?
15 **A. Before? No.**
16 Q. So the first time you reviewed Article 13-7 was
17 as part of these proceedings?
18 **A. The first time I reviewed it was prior to these**
19 **proceedings? I would say that this is pretty common in**
20 **the other --**
21 Q. I'm sorry, I didn't ask whether this was common
22 or not. I'm asking when you read it --
23 **A. I don't remember when I read it.**
24 Q. You don't remember?
25 **A. I'm sorry, no.**

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1 Q. Is this -- is today the first time you're
2 reading that provision?
3 **A. No.**
4 Q. Did you happen to review it perhaps in 2014 in
5 relation to the issues that we're dealing with in this
6 arbitration?
7 **A. Most likely.**
8 Q. Let's flip forward in that same exhibit to
9 Exhibit Page 42, which is CBA Page 33.
10 **CHAIRMAN LARSON:** Mr. Segal, the next time that
11 you're going to go to another exhibit, the gentleman is
12 here who wants to speak in public comment. There's no
13 hurry, but I would like to pigeonhole him in there.
14 **MR. SEGAL:** If I could suggest you go ahead and
15 do him now. I'm gonna -- I'll be on this exhibit for a
16 bit, and there's no reason to delay it.
17 **CHAIRMAN LARSON:** Okay, very good. I'll wait
18 until the Commissioner returns.
19 **MR. SEGAL:** Are we off the record?
20 **CHAIRMAN LARSON:** Yes. We'll recess this item
21 on the hearing. And if you need to get up, use the rest
22 room, get some coffee, feel free.
23 We're off the record.
24 (Recess taken.)
25 **CHAIRMAN LARSON:** Okay. Let's reconvene the

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1 hearing and let's go to Item 4, Case No. 2015-001.
2 Back on the record.
3 Okay, Mr. Segal.
4 **MR. SEGAL:** Thank you.
5 **BY MR. SEGAL:**
6 Q. Ms. Tollen, could you turn forward in that same
7 exhibit to Exhibit Page 60, which is CBA Page 51. And
8 do you see there that there's a fairly long, multipage
9 Article 27 regarding progressive discipline?
10 **A. Yes.**
11 Q. And have you had occasion to read Article 27
12 prior to today?
13 **A. Yes.**
14 Q. How many times over the years do you think
15 you've read that section?
16 **A. A couple.**
17 Q. So about two?
18 **A. Yes.**
19 Q. And do you remember when the most recent time
20 you read that section was?
21 **A. Probably 2012 or '13.**
22 Q. Okay. And would you agree that this section
23 contains a description of various types of discipline
24 that might be asserted by CCSD against administrators?
25 **A. Yes.**

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1 Q. And would you agree that those forms of
2 discipline are oral warnings, written warnings,
3 admonitions, demotion, suspension, dismissal, and
4 nonrenewal?
5 **A. I believe that is what is written in here.**
6 Q. And would you agree that certainly in relation
7 to the FML and sick leave issues in this case, the
8 District took none of those actions against you;
9 correct?
10 **A. I don't know that I agree to that.**
11 Q. Which one of those actions did the District take
12 against you?
13 **A. I believe when they --**
14 Q. I'm sorry, you're not answering my question.
15 **A. I don't know which one they took against me.**
16 Q. Okay. Do you want me to list them again?
17 **A. I can't answer your question.**
18 Q. So the answer --
19 **A. I think they took disciplinary action --**
20 Q. I'm sorry, you have to answer my question.
21 **A. Okay.**
22 Q. You can explain further on Redirect by your
23 counsel if there's something you or he think needs
24 further explanation?
25 **A. Okay.**

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1 Q. But my question is -- the more important
2 question was, one back: Would you agree that as to the
3 FML and sick leave issues in this case, the District
4 took none of those actions against you?
5 **A. None of these actions against me?**
6 Q. Correct.
7 **A. Let me look.**
8 Q. Is it helpful if I read that list again?
9 **A. No. I think probably the written warning.**
10 Q. You're testifying today that although there's no
11 exhibit, no evidence, and no record of a written
12 warning, that you received one?
13 **A. I believe the letter from Staci Vesneske most**
14 **closely matches a written warning.**
15 Q. You're not aware of what an actual written
16 warning includes or looks like in the 17 years you've
17 worked as an administrator in the District?
18 **A. I have never received one.**
19 Q. Have you ever written one?
20 **A. For a Union employee, no.**
21 Q. For anyone else?
22 **A. No.**
23 Q. So it's your contention today -- what's the date
24 of the letter you're now testifying most closely
25 resembles a written warning? What was the date of that

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1 letter?
2 **A. September 11th, 2014.**
3 Q. And what exhibit is that?
4 **A. That is Exhibit 32.**
5 Q. And your testimony here today is that Exhibit 32
6 is in fact discipline under Article 27 issued to you by
7 the School District in the form of a written warning?
8 **A. My testimony is --**
9 Q. No, you have to answer my question?
10 **A. Ask me the question again.**
11 Q. Is it your testimony today that that exhibit is
12 discipline as defined in Article 27 issued by the
13 District against you in the form of a written warning?
14 **A. I believe that letter matches --**
15 Q. That's not what I'm asking you. That's not what
16 I'm asking you. Can you answer my question?
17 **A. Ask me again.**
18 Q. Is it your testimony here today that this
19 exhibit that you just referenced is discipline as
20 defined in Article 27 in the form of a written warning
21 from the District?
22 **A. I don't know what a written warning looks like,**
23 **but I believe it to be discipline.**
24 Q. That's not what I asked you.
25 **MR. HATFIELD:** I'm going to object. I believe

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1 this is asked and answered. This is getting a little
2 bit argumentative, and she's trying to answer questions
3 of counsel, and I believe she has adequately.
4 **CHAIRMAN LARSON:** I will sustain that objection.
5 However, Ms. Tollen, as Mr. Segal has mentioned, I think
6 he's seeking yes-or-no answers by and large, and if
7 there's anything that you and your counsel wish to get
8 on the record when he re-examines you again following
9 Mr. Segal's cross-examination, you can work that in.
10 **THE WITNESS:** What if I can't say yes or no to a
11 question?
12 **MR. SEGAL:** I'd prefer that you tell me there's
13 no yes or no answer to your question.
14 **THE WITNESS:** Okay.
15 **MR. SEGAL:** That would be my preference, that
16 you alert me.
17 **THE WITNESS:** Okay.
18 **CHAIRMAN LARSON:** I think that's more
19 satisfactory.
20 **THE WITNESS:** Thank you.
21 **BY MR. SEGAL:**
22 Q. Ms. Tollen, you understand that you're under
23 oath today and you've sworn an oath to tell the truth?
24 **A. Yes.**
25 Q. And you understand that when you were deposed by

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1 me on Friday, November 13th, 2015, you were under a
2 similar oath and sworn to tell the truth?
3 **A. Yes.**
4 Q. Could you please turn to Exhibit 40 and Page 176
5 of Exhibit 40.
6 **A. What are we at?**
7 Q. Page 1- -- Exhibit Page 176 of Exhibit 40.
8 **A. Yes.**
9 Q. And do you see during your deposition you and I
10 had this exact same discussion about whether or not you
11 had ever received discipline from the District regarding
12 these matters?
13 **A. No.**
14 Q. Do you see at Line 17 of Page 176, I asked
15 you -- this followed a long conversation in which we
16 discussed whether you knew what discipline was -- and I
17 asked: "Question: When I talk about formal discipline
18 such as admonishment or unsatisfactory evaluations, you
19 know what I'm talking about, correct?"
20 And you said "Yes."
21 Then I asked you, "Those things did not happen,
22 correct?"
23 And your answer was, "I did not get anything
24 written from the School District." Do you see that
25 question and answer?

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1 **A. Yes.**
2 Q. And is it your testimony today, though, contrary
3 to your sworn testimony during your deposition that you
4 did get written discipline from the District?
5 **A. I did receive a written letter; several of them**
6 **from the District.**
7 Q. I'm not asking you about written letters, and
8 I'm not trying to be argumentative -- my question is:
9 In your sworn testimony during your deposition, I asked
10 you whether you've been issued any written discipline --
11 and maybe you can look through the prior pages, and
12 anyone who wants to can see -- we go back and forth
13 about whether you know what discipline is under this
14 agreement, and you ultimately conceded that you knew
15 exactly what I was talking about after 17 years of
16 experience as an administrator, and told me point blank,
17 quote, "I did not get anything written from the School
18 District." Wasn't that your sworn testimony in the
19 deposition that we're looking at right now?
20 **A. Yes.**
21 Q. And today your sworn testimony is to the
22 contrary, that that September letter is written
23 discipline from the School District. Am I -- am I
24 recounting that right, what's just happened?
25 **A. Yes.**

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1 Q. So which time while under oath to tell the truth
2 did you actually tell the truth?
3 **A. Both.**
4 Q. So it's both true that you did not get any
5 written discipline and that you did? Both of those are
6 true?
7 **A. Yes.**
8 Q. Okay. I'll move on.
9 Could you return to the CBA Exhibit 6, and if
10 you could turn to Exhibit Page 64 in that exhibit.
11 And do you see at the bottom of Page 64 the
12 beginning of Article 28 entitled Employee
13 Representation?
14 **A. Yes.**
15 Q. Have you ever in the past had occasion to read
16 Article 28?
17 **A. Only as part of this proceeding.**
18 Q. And this Article refers to investigatory
19 interviews; is that correct?
20 **A. That's right.**
21 Q. And, in fact, I believe the testimony so far in
22 the proceedings has established that you received a
23 notice of an investigatory interview on August 28th of
24 2014; correct?
25 **A. Yes.**

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1 Q. And that ultimately that interview did not
2 occur. That's also been established in the record;
3 correct?
4 **A. Yes.**
5 Q. Okay. You would agree that looking at this
6 first paragraph at the bottom of Page 64, that the first
7 sentence certainly refers to something called an
8 investigatory interview; correct?
9 **A. I'm sorry, could you repeat that?**
10 Q. Would you agree that the first sentence of this
11 Article refers to something called "Investigatory
12 Interview" in that first line there?
13 **A. Yes.**
14 Q. Okay. And then looking at the last full
15 sentence still on this same page, the second-to-last
16 sentence says that such interviews are, quote, with an
17 administrator. Do you see that language as well?
18 **A. No. Where are you?**
19 Q. It's the last full sentence on this page. It
20 reads, "Any and all notices of the supervisor's desire
21 to hold a conference with an administrator shall include
22 the subject of the conference." Do you see that
23 sentence?
24 **A. Yes.**
25 Q. Turning the page and looking at the continuance

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1 of Article 28, do you see Article 28-2?
2 **A. Yes.**
3 Q. Have you ever read that Article before today?
4 **A. Yes.**
5 Q. How recently have you read that Article?
6 **A. Yesterday.**
7 Q. Had you read that Article before yesterday?
8 **A. Most likely.**
9 Q. So under this Article, would you agree that an
10 administrator attending an investigatory interview has
11 an option to have Union representation there? Would you
12 agree with that statement?
13 **A. Yes.**
14 Q. And does this Article in fact make it clear that
15 if that administrator is waiting for Union
16 representation to be available, that the District can
17 demand that they either attend the conference alone or
18 cancel it?
19 **A. No.**
20 Q. Would you agree that this section says, After
21 notice has been given and in the interest of expediting
22 a resolution to a disciplinary problem, the School
23 District may require an administrator to choose between
24 participating in an investigatory interview without
25 representation or not being interviewed"? Would you

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1 agree I read that correctly?
2 **A. Yes.**
3 Q. Despite everything that we've just reviewed in
4 Article 28, do you stand by your testimony yesterday
5 that an investigatory interview could be conducted
6 without the interviewee present?
7 **A. Yes.**
8 Q. I'd like you to turn to Exhibit 40 again, and
9 specifically Page 227. This is, in fact, the
10 March 31st, 2014 notice you received from the School
11 District that you were being transferred from Purchasing
12 to HR; correct?
13 **A. No.**
14 Q. That's not the notice letter that you received?
15 **A. No.**
16 Q. Did you never receive this notice?
17 **A. I don't believe I received it.**
18 Q. Did you ever receive a written notice of that
19 transfer?
20 **A. Not that I recall.**
21 Q. You testified yesterday that there was an
22 in-person meeting informing you of that transfer;
23 correct?
24 **A. Yes.**
25 Q. And did that actually happen on March 31st, or

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1 was that on a different day?
2 **A. I think was a different day.**
3 Q. Prior?
4 **A. March 31st was a Sunday, I think.**
5 Q. And was that conference on the prior Friday?
6 **A. Yes.**
7 Q. And if you could flip forward in this same
8 exhibit to Page 233 for me. And beginning at the bottom
9 of that page there's an e-mail header followed by the
10 contents of the e-mail on the next page, 234. Do you
11 see that?
12 **A. Yes.**
13 Q. And is this, in fact, an e-mail that you sent on
14 Friday, March 28th, 2014?
15 **A. It looks like it.**
16 Q. And this is the e-mail we discussed yesterday
17 that has the statement we discussed in some detail
18 that -- in that center paragraph, second sentence -- it
19 says "I going," and I'm sure that's a typo -- it was
20 meant to say "I'm going to miss you all but I'm excited
21 for a new opportunity too." Is that the e-mail we
22 discussed in some detail yesterday?
23 **A. This is an e-mail. I'm not sure I remember**
24 **discussing it yesterday.**
25 Q. Okay. Do you remember testifying yesterday

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1 about communicating with your coworkers at your
2 Purchasing Department upon learning you were being
3 transferred and that you had sent them an e-mail so that
4 they would hear about it from you first, and that you
5 had put on a brave face, and you said something that was
6 not true in the e-mail about being excited for the
7 opportunity even though you weren't? Does that refresh
8 your recollection of some of the testimony yesterday?
9 **A. I can't say yes or no to that.**
10 Q. You don't remember?
11 **A. I remember, but I can't say yes or no to that.**
12 Q. The question was, does that refresh your
13 recollection about the testimony yesterday?
14 **A. That does refresh my memory.**
15 Q. Okay. And do you also recall talking about a
16 response you received -- I think it's from Mr. Cole at
17 the Affirmative Action Office -- and you said that in
18 response to your concern, he had said nothing more than
19 you had said you were excited for the new opportunity
20 and dismissed your concerns about harassment at the
21 School District? Do you remember testifying multiple
22 times about that yesterday?
23 **A. Yes.**
24 Q. You do. And is this, in fact, the e-mail that
25 you were discussing in the context of those two subject

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1 areas?
2 **A. Yes.**
3 Q. And this statement that I've just read, "I'm
4 going to miss you all but I'm excited for the new
5 opportunity too," that's a statement you previously
6 testified is not a true statement? You were not excited
7 about the new opportunity; correct?
8 **A. No.**
9 Q. From your Purchasing position to the HR position
10 to which you were transferred, your pay level stayed the
11 same; correct?
12 **A. Correct.**
13 Q. You testified yesterday that at some point you
14 contacted Steve Augspurger with concerns about the
15 transfer; is that correct?
16 **A. Correct.**
17 Q. And was the first day you assumed the new HR
18 position April 1st?
19 **A. Yes.**
20 Q. Is that a Monday?
21 **A. No.**
22 Q. Was that a Tuesday? You don't remember? I
23 think we can -- it's not important.
24 When did you contact Steve Augspurger about your
25 concerns? You can go ahead and take a drink.

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1 (Discussion held off the record.)
2 **THE WITNESS:** I contacted him over the weekend
3 prior to starting.
4 **BY MR. SEGAL:**
5 Q. So you contacted him in the final days of March,
6 one of those weekend days?
7 **A. I contacted him after I was notified on Friday**
8 **and before I started on Monday or Tuesday.**
9 Q. Okay. So between April 20 -- March 28th and
10 April 1st, 2014, you contacted Steve Augspurger about
11 the transfer?
12 **A. Yes.**
13 Q. Did you call him in the office? Was he in the
14 office over the weekend?
15 **A. I called him on his cell phone.**
16 Q. Okay. Do you recall whether you used the words
17 or something like, I want you to file a grievance about
18 this transfer? Was it that specific using the word
19 "grievance"?
20 **A. I don't recall.**
21 Q. You did make it clear that you thought the
22 transfer was improper and you wanted CCASA's assistance
23 to fight it?
24 **A. Yes.**
25 Q. And he said, No, CCASA will not fight it;

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1 correct?
2 **A. Yes.**
3 Q. Did he use a specific term? Did he tell you it
4 was not grievable? Did he used that word "grievance,"
5 "grievable," if you recall?
6 **A. No.**
7 Q. You don't recall?
8 **A. I don't recall.**
9 Q. Was he in any way equivocal or unsure, or did he
10 state flat-out, Absolutely we're not gonna -- we're not
11 gonna fight this?
12 **A. He was certain he was not going to fight it.**
13 Q. And then the call ended shortly after that? In
14 other words, were other topics discussed, or was that
15 the sole topic and the conversation ended after he said
16 he would not fight it?
17 **A. I think there was more that we discussed.**
18 Q. But not about fighting the transfer?
19 **A. I can't answer yes or no.**
20 Q. Okay. But it was clear to you from
21 Mr. Augspurger's statement that CCASA was not going to
22 help you fight that transfer?
23 **A. Correct.**
24 Q. And that occurred approximately nine months
25 before you filed these proceedings at the EMRB in

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1 January of 2015, if that helps?
2 **A. I have no idea.**
3 Q. But certainly your complaint at the EMRB would
4 show the date it was filed?
5 **A. I'm sure it will.**
6 Q. Did you ever file a grievance on your own
7 against the School District regarding the transfer?
8 **A. No.**
9 Q. If you could turn to -- in the same exhibit,
10 Page 237. Unfortunately, there's an exhibit stamp over
11 that page number, but if you make your way to 236 -- it
12 is the next page.
13 This letter is part of a job application you
14 filed for a job in Washington State; is that correct?
15 **A. Yes.**
16 Q. And this letter is in fact dated April 3rd,
17 2014; correct?
18 **A. Yes.**
19 Q. And that was the third day you were on the job
20 in the new HR position; correct?
21 **A. I think so.**
22 Q. And this was -- strike that. I'll come to that
23 later.
24 And this letter is in fact part of the job
25 application you filed for the job you do have now?

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1 **A. Yes.**
2 Q. And the reason you were seeking this new job is
3 because you didn't like the new HR position; correct?
4 **CHAIRMAN LARSON:** I think that's a simple yes/no
5 question.
6 **THE WITNESS:** I didn't like the -- I wasn't
7 qualified for the new position.
8 **BY MR. SEGAL:**
9 Q. So you're saying that -- here's my question:
10 Isn't it true that the reason you were applying for this
11 new position was because you didn't like the HR position
12 to which you had been transferred? Isn't that why you
13 were seeking another job? Isn't that statement true?
14 **A. I'm having difficulty with the word "like."**
15 Q. Well, is the answer to my question that that's
16 true or that it's not true, that the reason you were
17 seeking a new job is because you didn't like the HR
18 position?
19 **A. Didn't like. I didn't like the HR position.**
20 **I'll say that was true.**
21 Q. So you were on the job two days in the new
22 position, didn't like it, and on April 3rd applied for
23 the new job; is that sequence of events; correct?
24 **A. Again, I'm having difficulty with the word**
25 **"like." I wanted to work in my chosen profession.**

1 Q. So the reason you were seeking this other job
2 was not because you disliked the HR position, it was
3 because you wanted to work in your chosen position?

4 **A. I was unqualified for the HR position.**

5 Q. So the reason wasn't that you didn't like it, it
6 was because you were unqualified for the HR position?

7 **A. I was set up to --**

8 Q. I'm just asking yes-or-no questions.

9 **CHAIRMAN LARSON:** I think the witness is being
10 nonresponsive.

11 **THE WITNESS:** I'm sorry, what's that?

12 **CHAIRMAN LARSON:** I think you're being
13 unresponsive to Mr. Segal's questions.

14 **THE WITNESS:** I just have a problem with the
15 word "like."

16 **BY MR. SEGAL:**

17 Q. Is the word "like" not true? Is the phrase --
18 it's a proposition -- you applied for a different job
19 because you didn't like the HR position? That's the
20 reason you did it? Is that statement true or false?

21 **A. I wouldn't use the word "like."**

22 Q. So the word "like" is not a true word to use in
23 that statement?

24 **A. I wouldn't use the word "like."**

25 Q. What's the answer to my question, though?

1 deposition while you were under oath, I asked you how
2 many other positions you had applied for, and you
3 answered four?

4 **A. Yes.**

5 Q. And I asked you, When did you begin applying for
6 them? You said the week after I was transferred?

7 **A. Yes.**

8 Q. In fact, it was two days after, though?

9 **A. No.**

10 Q. It was in the week following when you had been
11 given notice of the transfer, so I guess week is a fair
12 response. That's fine.

13 And my next question is: "Was that because you
14 disliked the new position?"

15 And your answer, "Yes. I wanted to work in the
16 field that I had experience in."

17 So when you were in sworn deposition, required
18 to tell the truth, and I asked you whether the reason
19 you were seeking the new position was because you didn't
20 like the HR position, you said, yes, and your sworn
21 testimony here today, after much anguish, is, no, that's
22 not the reason. Am I understanding that correctly?

23 **A. No.**

24 Q. Well, what part am I misunderstanding? We just
25 read your sworn testimony that the reason was because

1 **A. Like. True.**

2 Q. Okay. And I'm not trying to be repetitive, but
3 just so we're clear: After two days in the HR position,
4 you applied for this new job because you didn't like the
5 HR position? Is that a true statement?

6 **A. No.**

7 **MS. MASTERS:** How about "comfortable"?

8 **BY MR. SEGAL:**

9 Q. The answer was no?

10 **A. No.**

11 Q. The answer is no, it's not a true statement?

12 **A. No.**

13 Q. Could you turn back in this same exhibit to
14 Exhibit Page 152.

15 And do you see at the top of this page we're
16 discussing your applications for other employment?

17 **A. Yes.**

18 **CHAIRMAN LARSON:** Could you put that in
19 perspective of the date, the time frame, employment for
20 different positions?

21 **MR. SEGAL:** The early April applications for new
22 positions in Washington State.

23 **CHAIRMAN LARSON:** Okay. Thank you.

24 **BY MR. SEGAL:**

25 Q. And do you see in Line 3 of your sworn

1 you disliked the HR position, and you just testified
2 here that the reason was not because you dislike the HR
3 position?

4 **A. That's not what I testified here.**

5 Q. We'll move on.

6 If you could move forward in this same exhibit
7 to Page 239. And this document goes on for several
8 pages, but I understand from your deposition that this
9 is a data form that you filled out in conjunction with
10 your job application to the job in Washington State that
11 we've been discussing; is that correct?

12 **A. Yes.**

13 Q. In looking at 239 a little bit above the center,
14 it states that you're preferred salary is 90,000;
15 correct?

16 **A. Yes.**

17 Q. And the position you would be leaving was
18 104,000; is that correct?

19 **A. I think that's close.**

20 Q. Okay. But you were seeking here only 90,000;
21 correct?

22 **A. Yes.**

23 Q. And ultimately, I believe following some
24 negotiation, you were hired at 98,000; correct?

25 **A. Yes.**

1 Q. And in this April 3rd application, after two
2 days in the HR position, you've stated here in that same
3 section of the application that you're willing to
4 relocate, you would accept a regular position, a
5 full-time position, and that you could work days,
6 evenings, and weekends; is that all correct? That's
7 what this says?

8 **A. I don't know that it was done April 3rd, but I**
9 **think the rest of it is accurate.**

10 Q. During your deposition -- and we can go through
11 this again -- but you did testify that the form we are
12 looking at now was done in conjunction and filed with
13 the April 3rd job application letter we just discussed
14 previously. Do you have any reason to think that these
15 were not done at or about the same time?

16 **A. It took a number of days to get them submitted,**
17 **so I think when you said in the same week, we can agree**
18 **to do that.**

19 Q. Okay, that's fine. There's no doubt that in
20 applying for regular full-time employment in Washington
21 State that you could not have worked both this job and
22 your CCSD job simultaneously; correct?

23 **A. Correct.**

24 Q. This was not a, for example, part-time,
25 after-hours, cocktail-waitressing job that would not

1 objection.

2 So based on relevance, I don't think it has
3 anything --

4 **CHAIRMAN LARSON:** Mr. Segal, if you could please
5 respond.

6 **MR. SEGAL:** Yeah. It's relevant for at least
7 two reasons: Number one, it's a false statement, so it
8 goes to credibility of the key witness, whose
9 credibility is being placed up against Bill Garis'
10 credibility about the key facts in the case, the
11 circumstances of the resignation.

12 **MS. MASTERS:** That's true.

13 **MR. SEGAL:** So it bears on credibility.

14 Second, it also goes a long way to explain why
15 Bramby Tollen would have been anxious to resign once the
16 District started investigating what she had done,
17 because -- well, she claimed in conversations with
18 Mr. Mader, or implied, that she was going to be working
19 some part-time, after-hours position that wouldn't
20 conflict with her duties. The truth was she was seeking
21 full-time employment out of state after being
22 transferred to the new HR position.

23 And in representing to her new employer what her
24 current job was, she left out the transfer, she left out
25 what she had been doing and, in fact, was hiding the

1 interfere with your regular CCSD duties; correct? It
2 was not that type of a part-time job?

3 **A. It was not a part-time job.**

4 Q. And at the time you filled this out, which you
5 said was not necessarily on April 3rd but sometime over
6 the week after that, you were already in your new HR
7 position at CCSD; correct?

8 **CHAIRMAN LARSON:** You said "HR." Did you mean
9 Purchasing?

10 **MR. SEGAL:** No, the new HR position.

11 **CHAIRMAN LARSON:** Oh, the new HR. Okay, I'm
12 sorry.

13 **MR. SEGAL:** Yeah. She was in the new HR
14 position when she was filling out this form.

15 **BY MR. SEGAL:**

16 Q. But nevertheless, under work experience here,
17 you say that you're still in Purchasing. It says that
18 your job to the present day of filling out this form was
19 Director of Purchase and Warehousing. Do you see that?

20 **A. Yes.**

21 **MR. HATFIELD:** I'm going to object as far as
22 relevance. I don't think this has any bearing on the
23 issues regarding the --

24 **MR. SEGAL:** The relevance --

25 **MR. HATFIELD:** Excuse me. Let me finish my

1 real situation. That level of concern and perhaps even
2 guilt over what she had done goes a long way to explain
3 why she was anxious to have that resignation tendered.
4 Key issue in the case.

5 **MR. HATFIELD:** This is testimony from Counsel,
6 and this has nothing to do with the issues here.

7 She had worked for over 12 years as the Director
8 of Purchasing. I don't know why she put down and didn't
9 include the issue that she was working for a few days in
10 HR. That's for her to answer. But, still, I don't
11 think this is a false statement in any way that it's
12 being characterized.

13 **CHAIRMAN LARSON:** Mr. Hatfield, I kind of early
14 this morning in my hotel room put together exhibits and
15 dates and the activity with respect to these exhibits
16 that we're looking at. And it appears to me, anyway,
17 that Ms. Tollen spent very little time working at the
18 new position in HR, and within a matter of weeks was
19 looking for positions in Washington State.

20 **MR. HATFIELD:** I think that's accurate.

21 **CHAIRMAN LARSON:** So I'm uninclined to overrule
22 your objection and allow Mr. Segal to go down that path.

23 **MR. HATFIELD:** Very good.

24 **BY MR. SEGAL:**

25 Q. So I guess the pending question that we didn't

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1 get an answer to is, on this form that you filled out,
2 under Work Experience where it says your present
3 position is your Purchasing position, that was not true
4 as of the time you filled out this form; correct?
5 **A. Correct.**
6 Q. If you'll flip forward in this same exhibit to
7 Exhibit Page 242, please.
8 Could you confirm that in response to
9 Question 20 you indicated you were not disabled on this
10 application?
11 **A. Correct.**
12 Q. And if we could look forward in these
13 documents -- this same -- oh, I'm sorry -- no, it is the
14 same. Exhibit 40, Page 244 is the next page I'd like to
15 look at.
16 This document, I believe you described in your
17 deposition, as being a record of the plane flights that
18 Snohomish County purchased for you to attend your job
19 interview there. Is that what this is?
20 **A. That's what it looks like.**
21 Q. And I realize it's not a great copy, but in the
22 center it certainly confirms you flew to that interview
23 on Sunday, May 4th, 2014, is that correct, and the
24 interview occurred on Monday, the next day?
25 **A. Correct.**

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1 Q. If we could turn forward -- I'm sorry, if we
2 could go backwards in this same exhibit to Page 230.
3 Is this a form that you signed on May 1st, 2014,
4 three days before your Snohomish County job interview,
5 certifying to CCSD that you were accepting employment at
6 CCSD for another year?
7 **A. Yes.**
8 Q. Sorry for the back and forth, but going forward
9 I'd like to look at Page 246, please. This is another
10 one with a bad exhibit stamp, so it's hard to see the
11 number.
12 Now, this is an e-mail that I believe you saw
13 for the first time during your deposition; correct?
14 **A. I don't recall.**
15 Q. Do you recall some of the names of the folks who
16 are listed on this e-mail as being the group of
17 Snohomish County employees who interviewed you for the
18 Snohomish County job?
19 **A. Yes.**
20 Q. And do you recognize that the subject matter of
21 this e-mail is -- and just for the record, the e-mail is
22 dated May 9th, 2014 -- is that, as indicated in the
23 center paragraph, you are the top candidate for that new
24 position?
25 **A. Yes.**

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1 Q. If we could go forward to Page 269, please.
2 Another bad exhibit stamp, but the number is there.
3 And this is, in fact, a form that you signed
4 on -- it's either June 25 or June 23 -- I'm having
5 trouble with the writing -- 2014, in which you are
6 enrolling in the PERS system of Snohomish County;
7 correct?
8 **A. Correct.**
9 Q. And it indicates in the center of that page
10 that, in fact, your first day of employment in the new
11 position up in Washington State was June 13th, 2014; is
12 that correct?
13 **A. Correct.**
14 Q. And I believe your deposition testimony was that
15 day, June 13th, 2014, was also the exact day you
16 actually moved to Washington State; correct?
17 **A. Correct.**
18 Q. And if we could turn forward to Page 271,
19 please. And I believe this is another
20 retirement-system-related form in Snohomish County, but
21 my real question is: In the center there, do we see
22 your new Washington State address?
23 **A. Yes.**
24 Q. North Creek Drive address?
25 **A. Yes.**

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1 Q. And, in fact, at some point before June 13th --
2 you said it might have been up to seven days prior to
3 that -- you signed a one-year lease on that apartment;
4 correct?
5 **A. Yes.**
6 Q. I'd like to shift gears slightly. I don't know,
7 if anybody needs a break, but this is going to be a
8 change in subject matter somewhat, if there's any
9 reason?
10 **CHAIRMAN LARSON:** Any sentiment for a break?
11 **MR. HATFIELD:** I'd like to request one, if we
12 can.
13 **CHAIRMAN LARSON:** Beg your pardon?
14 **MR. HATFIELD:** Yes, please.
15 **CHAIRMAN LARSON:** Okay, sure. Let's go off the
16 record and return at 9:15.
17 (Recess taken.)
18 **CHAIRMAN LARSON:** Let's go back on the record.
19 Same case.
20 Mr. Segal?
21 **MR. SEGAL:** Yes. Thank you.
22 **BY MR. SEGAL:**
23 Q. Ms. Tollen, can you please turn in this same
24 exhibit to Page 250.
25 This is the first page of your FML application

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1 to CCSD; correct?
2 **A. Yes.**
3 Q. And is this is a document you signed on
4 May 29th, 2014?
5 **A. Yes.**
6 Q. So just to give a little bit of context to that
7 date, April 3rd, 2014 was when you applied for the
8 Washington State position; correct?
9 **A. No.**
10 Q. That was the date on the application letter we
11 looked at a few minutes ago?
12 **A. Correct.**
13 Q. And then May 5th of 2014 was a Monday. You were
14 in Washington State interviewing for that position;
15 correct?
16 **A. Yes.**
17 Q. And then approximately early June, first week of
18 June, somewhere around there, you signed a one-year
19 lease for your Washington State apartment; correct?
20 **A. Correct.**
21 Q. And June 13th you start the full-time position
22 in Washington State; correct?
23 **A. Yes.**
24 **MR. ECKERSLEY:** Was there an acceptance letter
25 that you had to deliver to accept the position in

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1 Washington?
2 **THE WITNESS:** Was there an acceptance letter I
3 needed to do?
4 **MR. ECKERSLEY:** Right, to accept the position.
5 **THE WITNESS:** I don't think so.
6 **BY MR. SEGAL:**
7 Q. So let's look at the very next page, Page 251
8 next. And in the bottom section entitled Medical Facts,
9 this is information your doctor Loretta Metzger put on
10 this form; correct?
11 **A. Yes.**
12 Q. And there's a field pretty near the bottom of
13 the page that lists dates she treated you for this --
14 the condition, this disabling condition. Do you see
15 where I'm looking?
16 **A. Yes.**
17 Q. And, in fact, the dates of treatment listed
18 there are April 9th, 2014, May 15th, 2014, and May -- do
19 you know if that's a 20 or a 28, 2014?
20 **A. It's -- I don't know. It looks like it's a 28,**
21 **because she signed the form on the 28th.**
22 Q. Okay. So that would make sense that that's
23 actually the 28th. It's hard to read. We'll put a 28
24 on that.
25 And do you see a few lines above that there's an

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1 entry for approximate date the condition commenced? Do
2 you see that?
3 **A. Yes.**
4 Q. And that's 5/15/2014; correct?
5 **A. Yes.**
6 Q. Okay. So she examines you on April 9th, 2014,
7 but does not determine you're disabled as of that date;
8 correct?
9 **A. Yes.**
10 Q. Do you recall testifying yesterday that one of
11 the reasons you sought another purchasing position was
12 because Dr. Messinger (phonetic) told you she thought
13 that might be helpful for your disability?
14 **MR. HATFIELD:** Well, I'm going to lodge an
15 objection just to clarify. I don't believe it's
16 Messinger; I believe it's Dr. Metzger.
17 **CHAIRMAN LARSON:** Yeah, sustained.
18 **MR. SEGAL:** I apologize. Thank you.
19 **BY MR. SEGAL:**
20 Q. Do you remember that testimony?
21 **A. I remember talking about it. I don't know if we**
22 **talked about which doctor it was.**
23 Q. Is Dr. Metzger the doctor who determined first
24 that you were disabled in support of your FML
25 application?

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1 **A. I'm sorry, what was the question?**
2 Q. Was Dr. Metzger the doctor who determined first
3 that you were disabled in relation to your FML
4 application?
5 **A. Yes.**
6 Q. And do you recall testimony yesterday to the
7 effect that one of the reasons you were seeking another
8 Purchasing position in Washington State is because your
9 doctor had recommended you do that to help with your
10 disability?
11 **A. Yes.**
12 Q. And isn't it true, however, that you had sought
13 that Washington State position more than a month prior
14 to the onset of disability, according to your doctor?
15 **A. I'm sorry, ask me the question again.**
16 Q. Isn't it true that you sought that Washington
17 State position more than a month prior to the onset of
18 your disability, as according to your doctor?
19 **A. Yes.**
20 Q. Does this April 9th, 2014 first visit with
21 Dr. Metzger, you would agree that that is approximately
22 five or six days after you applied for the Washington
23 State position?
24 **A. Yes.**
25 Q. If you could turn forward one page to Page 252,

Page 268

1 please.

2 Do you see as the final entry at the bottom of

3 FML -- I'm sorry, at the bottom of this page of your FML

4 application, Dr. Metzger states, "PT" -- which I

5 understand is a reference to patient -- "is unable to

6 perform any job functions at this time." Do you see

7 that statement?

8 **A. Yes.**

9 Q. I take it from your testimony yesterday that

10 your belief is that that statement is false. Am I

11 right?

12 **A. No.**

13 Q. I believe your testimony yesterday went into

14 great depths to convince this Board of a point that is

15 key to this case that you were not disabled from

16 performing any job functions, you were only disabled to

17 performing job functions at the CCSD HR position. Do

18 you recall making that point several times to this Board

19 yesterday?

20 **A. Yes.**

21 Q. So would you agree that that's not what this

22 form says, the one we're looking at, the one that's in

23 front of us?

24 **A. I'm sorry, the question again is?**

25 Q. Would you agree that we just discussed regarding

Page 269

1 your testimony yesterday and the nature of disability

2 does not match what this form says?

3 **A. I guess.**

4 Q. Is that a yes or a no?

5 **A. I'm going to say I'm having difficulty with a**

6 **yes or a no.**

7 Q. Okay. You would agree that this form says

8 nothing about a disability specific to any position at

9 CCSD; correct?

10 **A. Yes.**

11 Q. And would you agree that, in fact, at some

12 point, a week or two into September, you received other

13 doctors' opinions that made that distinction? In other

14 words, that the disability was limited to working at

15 CCSD in the HR position; correct?

16 **A. No.**

17 Q. We can look at that separately.

18 So this statement that the patient is unable to

19 perform any job functions at this time, you would agree,

20 based on your testimony yesterday, this statement is not

21 true?

22 **A. It's the doctor's statement.**

23 Q. I didn't ask you whose statement it was.

24 **A. I'm sorry. What's the question?**

25 Q. Based on your testimony yesterday where you

Page 270

1 talked at length about the nature of your disability,

2 the statement we're looking at here on Page 252 is not

3 true?

4 **A. I think at the time it was written it was true.**

5 Q. So at that time, you were disabled from

6 performing all job functions of any kind, not just

7 simply disabled from working at CCSD?

8 **A. This is a CCSD form.**

9 Q. I didn't ask you that. I'm asking whether the

10 statement is true. And you're telling me as of this

11 day -- I think we had May 28 as the day -- as of

12 May 28th, this statement is true that you're disabled

13 from performing any job functions at this time? You're

14 telling me that statement was true on May 28th?

15 **A. I believe my doctor made --**

16 Q. Can you answer the question? I don't care who

17 made the statement.

18 **CHAIRMAN LARSON:** Yeah, she's not being

19 responsive.

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

21 **MR. SEGAL:** I don't care who made the statement.

22 **THE WITNESS:** Okay. Ask me again, the question.

23 **BY MR. SEGAL:**

24 Q. You're telling me, it's your testimony now, that

25 as of May 28th the following statement was true: The

Page 271

1 patient -- meaning you -- is unable to perform any job

2 functions at this time? Your testimony is that

3 statement was true on May 28th?

4 **A. I believe so.**

5 Q. And within a week of that being true, you signed

6 a one-year lease on an apartment in Washington State;

7 correct?

8 **A. Correct.**

9 Q. And within two weeks of this statement allegedly

10 being true, you moved to Washington State and commenced

11 full-time employment at Washington State; correct?

12 **A. Correct.**

13 Q. All while being disabled from performing any job

14 functions?

15 **A. No.**

16 Q. Let's look back in this exhibit to Page 249.

17 This is a cover letter from CCSD approving your FML

18 leave; correct?

19 **A. Correct.**

20 Q. In the first sentence it says, "The Human

21 Resources Division was notified on 5/3/2014,"

22 et cetera -- that's a typo; correct? The notice was

23 6/3/2014?

24 **A. I'm sorry, what's the question?**

25 Q. Whether that's a typo, the reference to May.

1 **A. No, that's not a typo.**
2 Q. You're saying there was a notice in May of 2014
3 of FML leave as opposed to June of 2014, the date used
4 on all other documents related to it?
5 **A. I thought it was May 15th.**
6 Q. That is on May 28th, the retroactive date your
7 doctor certified you as disabled. You certainly didn't
8 apply three weeks before your doctor did the form.
9 **A. I don't know. I didn't write the letter.**
10 Q. Well, if I submit to you that that's a typo and
11 the reference should have been to June 3rd, do you have
12 any reason to disagree with me?
13 **A. I -- it might be a typo, but I would think the**
14 **date would be May 15th.**
15 Q. But you would agree that documents that are part
16 of that application that we've just been looking at that
17 were signed on May 28th could not have existed on
18 May 3rd?
19 **A. Correct.**
20 Q. So this must be a typo and the correct date must
21 be June 3rd?
22 **A. I can't answer yes or no.**
23 Q. Looking at this letter, in particular the first
24 sentence of the second paragraph, would you agree that
25 that sentence says, "To use paid leave concurrently with

1 Q. You don't know if you received it at the
2 Henderson address listed at the top?
3 **A. I don't know.**
4 Q. You may have received it that very day by
5 e-mail?
6 **A. Could be.**
7 Q. And was this day or the next, after receiving
8 this letter, in fact, the same day you accepted the
9 Washington County job and took out a one-year lease at
10 your apartment in Washington County -- or Washington
11 State? Excuse me.
12 **A. I think the dates are close, but I don't know**
13 **what they are.**
14 Q. It is a fact, however, that you had this letter
15 before you did either of those two things; correct?
16 **A. I don't know.**
17 Q. Well, your lease, you testified in your
18 deposition, could only be executed one week prior to
19 occupancy on June 13th. So your lease certainly had to
20 be between receiving this letter and June 7th; correct?
21 **A. I don't recall.**
22 Q. But if that's what your deposition says, that's
23 what it says; correct?
24 **A. Yes.**
25 Q. And again, I'm not trying to be repetitive but I

1 your FML, the condition must qualify under the terms of
2 your respective negotiated agreement." Do you see that?
3 **A. Yes.**
4 Q. And do you understand that that reference to
5 negotiated agreement refers to the CCASA CBA?
6 **A. Yes.**
7 Q. And in the third full paragraph, third sentence,
8 do you see where it says, "During your absence, your use
9 of any accrued leave must comply with the requirements
10 of your respective negotiated agreement and district
11 regulations and policies as administered by the
12 administrator who is responsible for the authorization
13 of the payroll at your location"? Do you see that?
14 **A. Yes.**
15 Q. And the reference to the negotiated agreement in
16 that sentence, do you agree that's also a reference to
17 the CCASA CBA?
18 **A. Yes.**
19 Q. Did you receive this letter on or about
20 June 3rd, 2014?
21 **A. I think so.**
22 Q. It's dated June 3rd, 2014. Is there typically a
23 one- or two-day delay between the date on a District
24 letter like this and when you might have received it?
25 **A. I don't know if they sent out e-mail or not.**

1 think it's a very important point and I want to be very
2 clear about this. The sequence of events was the
3 District notified you it had approved your FML from
4 CCSD, and then you accepted the Washington State job and
5 took out the one-year lease in Washington State;
6 correct?
7 **A. I'm sorry, say it again.**
8 Q. I just want to be clear on the sequence of
9 events here.
10 **A. Okay.**
11 Q. The District approved your FML application as
12 we're looking at now, and then within the next few days
13 you both accepted the Washington State job and took out
14 the one-year lease from the Washington State apartment?
15 **A. I can't say yes or no.**
16 **CHAIRMAN LARSON:** Perhaps you'd like to take her
17 through the exhibits that will show the dates and the
18 activities?
19 **MR. SEGAL:** What we don't have, an acceptance of
20 the job for. We have a time frame in which it must have
21 occurred. We can refer to deposition testimony where
22 she told me a week before June 13th was the longest she
23 could hold the apartment. I can do that now or in the
24 closing brief. If I can --
25 **CHAIRMAN LARSON:** Whatever you would like to do.

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1 **MR. HATFIELD:** Mr. Larson, I don't know if the
2 question's been posited of when did you start your job
3 at Washington County.
4 **MR. SEGAL:** June 13th. That's established. We
5 did that at length. Thank you.
6 **BY MR. SEGAL:**
7 Q. So let's look in this same exhibit at Page 169.
8 Actually, if we could start on 168, it would make more
9 sense. And if I could just read this back briefly:
10 "Question: How long were you at this address on
11 Exhibit 14?
12 "Answer: How long did I rent it? 13 months.
13 "Question: 13. And did that begin on
14 June 13th, 2014?
15 "Answer: The rental began earlier, but I
16 arrived on June 13th.
17 "Question: What date did the rental obligation
18 begin?
19 "Answer: Sometime that week. I don't remember.
20 "Question: You were there 13 months. Was that
21 a 12-month lease?
22 "Answer: Yes.
23 "Question: Do you remember when you signed" the
24 lease -- "that lease?" Excuse me.
25 "Answer: No.

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1 "Question: Was it before June of 2014?
2 "Answer: No, I don't believe so.
3 "Question: Was it before June of 2014?
4 "Answer: I think they would only hold it for
5 seven days, which is why it started before I got there."
6 And we can certainly take notice that June 6th
7 would be seven days before June 13th, making the
8 earliest date of entering the lease June 6th, a date
9 three days after the FML approval.
10 Mrs. Tollen, do you disagree with any of the
11 recounting of these facts as I've laid them before you?
12 **A. No.**
13 Q. Thank you. If you could turn in this exhibit to
14 Page 260, please. This is a letter you received from
15 CCSD concerning your FML leave; correct?
16 **A. Yes.**
17 Q. If you could turn to the second page, I'd like
18 to draw your attention to Item 8 listed there. Do you
19 see that?
20 **A. Yes.**
21 Q. And you agree that this says during your leave
22 you will be required to furnish periodic written reports
23 every 30 days of your status and intent to return to
24 work? Do you see that?
25 **A. Yes.**

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1 Q. And would you agree that you did not file those
2 reports?
3 **A. No.**
4 Q. You claim that you did file those reports?
5 **A. Yes.**
6 Q. Were they done in writing?
7 **A. Yes.**
8 Q. How many of them did you do?
9 **A. I don't recall.**
10 Q. More than ten?
11 **A. No.**
12 Q. More than five?
13 **A. Well, it was every 30 days, I would say it's**
14 **probably three or four.**
15 Q. Three or four?
16 **A. Don't know.**
17 Q. So beginning in June, you would have filed one
18 approximately the first week of July? Would that have
19 been your first one?
20 **A. I can't recall.**
21 Q. But that would have been on an approximate
22 30-day schedule; correct?
23 **A. Correct.**
24 Q. And in a notice that you provided to the School
25 District in early July, you certified your intent to

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1 return to work as required by this letter?
2 **A. No. I certified that I was not able to return**
3 **to work certified by my doctor.**
4 Q. Right. But this is a different question. I'm
5 not talking about whether you remained disabled. I'm
6 talking about the FML requirement that while on FML
7 leave you must maintain a bona fide intent to actually
8 return to work some day and certify that every 30 days
9 to the School District.
10 So maybe we'll go back, if you misunderstood
11 what I was asking you. Did you file such reports with
12 the School District during your FML leave?
13 **A. On intent?**
14 Q. On your continuing intent to at some point
15 return to SD -- at CCSD?
16 **A. No.**
17 Q. You didn't ever do any of those reports;
18 correct?
19 **A. No. They weren't required.**
20 Q. Well, you received this letter here that said
21 that that they were required; correct?
22 **A. Yes.**
23 Q. But CCSD did not pursue you for them; correct?
24 **A. I was told by Ron Mader that they weren't**
25 **required.**

1 Q. That they weren't required. He affirmatively
2 told you don't file them?
3 **A. He told me they were not required.**
4 Q. Okay. And it's also true that you testified
5 yesterday that it soon became clear in your mind that
6 you would not be returning to CCSD; correct?
7 **A. After the media, yes.**
8 Q. I'm sorry, but that wasn't your testimony
9 yesterday. Was there a point in time earlier than the
10 first week of September that it became clear to you that
11 you would not be returning to CCSD?
12 **A. No. I wanted to return.**
13 **MR. SEGAL:** Okay. We'll just take that up in
14 closing briefs. I don't want to go through a read-back
15 or anything like that. There's no reason to.
16 **BY MR. SEGAL:**
17 Q. I want to talk to you briefly about this other
18 book. It's the small binder of contested exhibits, and
19 the No. 2 that was submitted into evidence yesterday,
20 the Dr. Simmons letter. I think so, it should be No. 2,
21 the Dr. Simmons letter.
22 **A. Yes.**
23 Q. I've characterized this as a revised doctor's
24 statement, meaning a statement that clarified the
25 assertion that your disability was specific to CCSD. Is

1 **A. It came to me.**
2 Q. And then did you deliver it to Mr. Hatfield?
3 **A. No.**
4 Q. How did it get to Mr. Hatfield?
5 **A. My husband delivered it.**
6 Q. Okay. Do you know when that was?
7 **A. I believe it was September 10th.**
8 Q. Are you looking at something to confirm that for
9 you?
10 **A. No.**
11 Q. Oh, okay. Are you aware of any written record
12 of that -- this letter being delivered to Mr. Hatfield?
13 **A. I wrote an e-mail to Mr. Hatfield, telling him**
14 **that my husband would deliver it.**
15 Q. Do you know whether that e-mail's been produced
16 in this action?
17 **A. I don't know. I don't know.**
18 Q. Okay. What's your understanding of how this
19 letter got to either CCSD or CCASA?
20 **A. Mr. Hatfield wrote letters to CCSD and CCASA,**
21 **and I believe it was attached.**
22 Q. And are those the September 11th letters that --
23 September 11th, 2014, the letters that were discussed
24 yesterday, one being to CCSD and one being to CCASA?
25 **A. I don't remember which letters they were**

1 that a fair summarization of what this represented?
2 **A. I'm sorry?**
3 Q. I've characterized this as a revised doctor's
4 statement -- at least yesterday I did. I referred to it
5 that way. And what I meant by that was this was a
6 letter that clarified the nature of your disability
7 being specific to CCSD. Would you agree with that
8 general characterization of what the purpose of this
9 letter was?
10 **A. Yes.**
11 Q. And I'd represent to you that I've looked
12 through all the documents produced in this case and all
13 the letters from your attorney to CCSD and CCASA, and I
14 can find no reference to these letters, their existence,
15 or that they were enclosed with anything ever sent to
16 CCSD or CCASA. Is it your understanding, nevertheless,
17 that it was sent to CCSD and/or CCASA?
18 **A. Yes.**
19 Q. And who would have sent that to CCSD or CCASA?
20 **A. Hatfield.**
21 Q. Did you say Hatfield, your attorney?
22 **A. Yes.**
23 Q. So your understanding is that you requested this
24 letter from Dr. Simmons. And then did the letter come
25 to you from Dr. Simmons or go directly to Mr. Hatfield?

1 **attached to. I'm sorry.**
2 Q. Can you flip forward in this book? I believe
3 this was admitted yesterday, as well, as Exhibit 8, the
4 September 11th letter to CCSD. Do you see that?
5 **A. Yes.**
6 Q. Is it your understanding that the Simmons
7 doctor's report, along with the one that was not
8 admitted, were enclosures to this letter.
9 **A. It is my understanding they were sent. I don't**
10 **know which letter they were sent with.**
11 Q. You would agree that this letter neither
12 mentions them nor lists them as closures; correct?
13 **A. It doesn't list them as enclosures.**
14 Q. And would you agree that it also doesn't mention
15 them?
16 **A. It's not mentioned in the Staci Vesneske letter.**
17 Q. Okay. That's all in the small binder. If I
18 could have you go back to the joint exhibits and look at
19 Exhibit 7, please.
20 **A. I'm sorry, 7?**
21 Q. Correct.
22 Do you have any understanding that the Simmons
23 doctor's report was an enclosure to this letter to
24 CCASA?
25 **A. No.**

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1 Q. You don't think it was enclosed?
2 **A. I don't know. I don't have any understanding of**
3 **it.**
4 Q. Okay. You would agree that it's not mentioned
5 in the letter or listed as an enclosure; correct?
6 **A. It's not listed as an enclosure. It is not**
7 **mentioned in the letter.**
8 Q. Okay. If you would look next at Exhibit 31,
9 please.
10 I believe we talked about this yesterday as
11 well. This is the September 3rd letter from the School
12 District to you stating that based on preliminary
13 information we have gathered from Snohomish County, we
14 have determined that the use of sick leave on various
15 days is not approved. Do you recall discussing this
16 letter yesterday?
17 **A. Yes.**
18 Q. And this is also the letter that mentions in the
19 following paragraph, "We will consider any information
20 you wish to provide upon this matter." Do you see that?
21 **A. Yes.**
22 Q. And I believe you testified yesterday that, in
23 response to that, it was your understanding that
24 additional doctors' letters were provided as you were
25 invited to do by this September 3rd letter; is that

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1 correct?
2 **A. Yes.**
3 Q. And you had also testified that CCASA was aware
4 the District was looking for additional information
5 because CCASA had been copied on this letter. Do you
6 remember that testimony?
7 **A. No. No.**
8 **CHAIRMAN LARSON:** Did you say CCASA had been
9 copied on this letter, Exhibit 31?
10 **MR. SEGAL:** That was her testimony yesterday
11 that -- she was making a point that CCASA was looking
12 for additional information because they had received a
13 copy of this letter.
14 **BY MR. SEGAL:**
15 Q. And your answer was you don't remember?
16 **A. They received a copy of the other letter, and**
17 **Garis and I talked about the extra documentation I was**
18 **going to provide.**
19 Q. Do you think your testimony yesterday did not
20 say that CCASA was copied on the September 3rd, 2014
21 letter?
22 **A. I don't remember.**
23 Q. Okay. You don't remember?
24 **A. I'm sorry.**
25 Q. You would agree there's no indication on this

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1 letter that CCASA was copied with it?
2 **A. There is no indication on this exhibit that**
3 **CCASA was copied.**
4 Q. Let's flip forward just to Exhibit 32 next. It
5 should be a September 11th, 2014 letter --
6 **A. Okay.**
7 Q. -- from the District to you.
8 **A. Yes.**
9 Q. So this is eight days after the September 3rd
10 letter inviting you to provide additional documentation,
11 and this is the District's, apparently, conclusion that
12 you had misused sick leave. Would you agree that
13 nowhere in this letter does the District acknowledge
14 receiving or considering any additional doctors'
15 letters?
16 **A. They have not, yes. I'm sorry. What was the**
17 **question?**
18 Q. Your answer was fine and correct.
19 **A. Okay.**
20 Q. Isn't what actually happened here is that those
21 letters never were provided to CCSD or CCASA?
22 **A. I believe they were provided.**
23 Q. And do you have any evidentiary or written
24 record of any kind illustrating or confirming that
25 either CCSD or CCASA ever received the additional

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1 doctors' letters?
2 **A. I would think my lawyer would have them.**
3 **MS. MASTERS:** I can't hear you.
4 **THE WITNESS:** I would think my lawyer would have
5 that. I'm sorry.
6 **BY MR. SEGAL:**
7 Q. If I represent to you that no such documents
8 have been produced in this case, do you have any reason
9 to disagree with me?
10 **MR. HATFIELD:** Objection; there is documents in
11 this case. She just testified to that. There were the
12 two letters that were sent to Staci Vesneske, and there
13 was the letter that was sent to Mr. Augspurger. And I
14 believe that there was testimony that Mr. Augspurger was
15 copied on the letter to Staci Vesneske. And she
16 testified that the doctors' letters from Dr. Metzger and
17 the other doctor were enclosed, and that the letter to
18 Dr. Vesneske was copied to Mr. Augspurger.
19 **MR. SEGAL:** No, she testified she didn't know.
20 **MR. HATFIELD:** Perhaps she can clear that up.
21 **CHAIRMAN LARSON:** What's the more direct
22 question?
23 **MR. SEGAL:** Maybe on Redirect you can clear that
24 up, if you'd like.
25 **CHAIRMAN LARSON:** Yeah, let's go ahead and do

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1 that. Let's -- in the interest of time.
2 **MR. SEGAL:** Okay.
3 **CHAIRMAN LARSON:** If they could be produced,
4 we've love to see them.
5 **BY MR. SEGAL:**
6 Q. I'd like to look next at Exhibit 39, please.
7 **A. I'm sorry, 39?**
8 Q. 39, correct.
9 **A. Okay.**
10 Q. Is this the August 28th, 2014 Notice of
11 Investigatory Interview you received from the School
12 District?
13 **A. Yes.**
14 Q. And you certainly received that before
15 Mr. Augspurger was quoted in any newspaper articles;
16 correct?
17 **A. Yes.**
18 Q. So it's pretty clear that the District didn't
19 get the idea that you were misusing sick leave from any
20 newspaper article; correct?
21 **A. No.**
22 Q. The statement's not correct, or you agree that's
23 not where they got the idea?
24 **A. The newspapers were calling that week.**
25 Q. That's not what I asked.

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1 **A. Okay.**
2 Q. You know that the newspaper articles that were
3 published with quotes from Mr. Augspurger were not
4 published until September 3rd and after; correct?
5 **A. I think it started September 2nd.**
6 Q. Okay. Well, we can look at them and verify
7 those dates.
8 But you would you also agree that this
9 August 28ths, 2014 notice predates them?
10 **A. Yes.**
11 Q. And that's already in this August 28th, 2014
12 notice the District is expressing concern regarding
13 possible misuse of sick leave; correct?
14 **A. Yes.**
15 Q. So they certainly did not get that idea from
16 reading those newspaper articles; correct?
17 **A. Correct.**
18 Q. Okay. Let's look next at Exhibit 42, please.
19 And these are, in fact, a group -- I believe
20 there's four articles here -- three, that pertain to the
21 issues in this case; is that correct?
22 **A. There's four articles here, and three that**
23 **pertain --**
24 Q. Three that pertains to the issues in this case.
25 There's a third article, but I don't know that it bears

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1 on the sick leave issue. I've never been sure why that
2 third article is in here. But certainly there are three
3 articles that do bear on the issues in this case. Would
4 you agree with that?
5 **A. There are at least -- yes.**
6 Q. And the first of those is, in fact, dated
7 September 3rd, as I previously suggested?
8 **A. The date of this article is September 3rd.**
9 Q. Okay. And if we look forward onto Page 73, we
10 see a September 4th article; correct?
11 **A. 173?**
12 Q. Correct, Exhibit Page 173. We see an article
13 that's dated September 4th; correct?
14 **A. It says updated September 14th, yes.**
15 Q. Okay. I believe it says "Posted Updated
16 September 4th"; correct?
17 **A. Yes.**
18 Q. And would you agree that this is the first
19 newspaper article that quotes Mr. Augspurger with regard
20 to the possibility that the School District might
21 recapture some of the benefits they'd already paid to
22 you?
23 **A. I don't know if it's the first article or not.**
24 Q. If I represent to you that I've scanned these
25 articles and their dates and their contents and this is

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1 the first article in which that subject comes up, do you
2 have any reason to disagree with me?
3 **A. No.**
4 Q. We previously looked at the District's letter
5 dated September 3rd. I think the number was 31. And do
6 you recall we discussed the contents of that letter
7 raising the issue of determining whether your use of
8 sick leave was appropriate or not?
9 **A. That we looked at the letter?**
10 Q. Yes.
11 **A. Yes.**
12 Q. And that in that Exhibit 31, last sentence in
13 the third paragraph, the District says, "Once we make a
14 determination, we will calculate your final paycheck and
15 issue it to you"; correct?
16 **A. Yes.**
17 Q. And again, that's dated September 3rd?
18 **A. That's dated September 3rd, correct.**
19 Q. So the District clearly did not get the idea of
20 recapturing those funds from any of these newspaper
21 articles; correct?
22 **A. I don't know.**
23 Q. Well, the only newspaper article in which
24 Stephen Augspurger mentioned that concept is dated the
25 day after the District's letter; correct?

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1 **A. As the exhibits you have, correct.**
2 Q. Are you aware of any earlier newspaper articles
3 that --
4 **A. Yes. They have them posted on the website**
5 **usually the night before.**
6 Q. Okay. Do you have any exhibits or other
7 documents confirming that statement?
8 **A. No.**
9 Q. Thank you. Let's go back to Exhibit 36, that
10 notice, please. I'm sorry, I've got the wrong number.
11 39. I inverted the 6 and the 9.
12 So we're back at Exhibit 39, which is the Notice
13 of Investigatory Interview.
14 When you received that, you were up in
15 Washington State working your new job; correct?
16 **A. Yes.**
17 Q. And you were unable to attend the meeting as
18 demanded; correct?
19 **A. Yes.**
20 Q. And even as rescheduled to the 3rd for
21 Mr. Garis' schedule, you were unable to attend that day
22 as well; correct?
23 **A. Yes.**
24 Q. And you certainly never purchased a plane ticket
25 to fly down for that conference?

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1 **A. No.**
2 Q. If we could next look at Exhibit 1, please.
3 This is a resignation and retirement form that
4 you signed on August 29th, 2014; correct?
5 **A. Yes.**
6 Q. And it was by this August 29th document that you
7 applied for your PERS benefits that day; correct?
8 **A. I don't recall.**
9 Q. Can you please turn to Exhibit 40, Page 180,
10 please.
11 **A. 40?**
12 Q. And Page 180. Actually, it will make more sense
13 if we start on Page 179, please.
14 Do you see the following question and answer
15 from your sworn deposition, Line 22, "Question: Did
16 there come a time when you did, in fact, did apply for a
17 Nevada PERS pension?"
18 "Answer: Yes.
19 "Question: When was that?
20 "Answer: I don't know.
21 "Question: Was it August 29th?
22 "Answer: I'm sorry, I don't remember. Unless
23 are you saying they used the same form?
24 "Question: Are you currently receiving a Nevada
25 PERS?

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1 "Answer: Yes.
2 "Question: How long have you been receiving it?
3 "A. Since I resigned I guess -- retired.
4 Excuse me.
5 "Question: Effective as of the 29th,
6 August 29th, 2014?
7 "Answer: I would think so."
8 Is that your testimony that day?
9 **A. Yes.**
10 Q. So it was by signing this August 29th form that
11 you applied for PERS?
12 **A. I had to go in --**
13 Q. I'm sorry, I didn't ask you that. That's okay;
14 your deposition testimony is clear.
15 You provided -- we're back on Exhibit 1, by the
16 way.
17 **A. Okay.**
18 Q. I bounced. Sorry.
19 You provided this form to Bill Garis?
20 **A. I faxed it to Bill Garis.**
21 Q. You testified yesterday it's your understanding
22 that Bill Garis was to go to the investigatory interview
23 and only turn in your resignation with the understanding
24 that it would resolve all issues with the District and
25 there would be no recapture of FML or sick leave

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1 benefits, and that everything would be fine and done and
2 resolved. I forget your exact words. Do you recall
3 that testimony?
4 **A. Yes.**
5 Q. So for him to use that resignation, he was to go
6 into that conference and make sure everything had been
7 worked out, it's finally settled and there would be no
8 negative repercussions; correct?
9 **A. Yes.**
10 Q. And that there would be no recapture of any of
11 those benefits; correct?
12 **A. There would be nothing more with the School**
13 **District.**
14 Q. I know that also you testified yesterday that
15 the issue of recapturing any FML or sick leave never
16 came up in your conversation with Bill Garis. Is that
17 also true?
18 **A. Yes.**
19 Q. So you had an understanding that it would not be
20 recaptured in your mind, but it was not an actual
21 discussion with Bill Garis; correct?
22 **A. Yes.**
23 Q. Isn't it true that the actual purpose of
24 providing that resignation form, even in your version
25 that Bill Garis was supposed to go to this meeting, was

1 to extricate you from any potential discipline or
2 negative consequences? It was to be used if things went
3 wrong and could not be resolved with the District?

4 **A. No.**

5 Q. Could you turn to Exhibit 40, Page 173, please.
6 Well, again, let's go to 172 just to give a little
7 context.

8 Do you recall the following questions and
9 answers from your sworn deposition:

10 "Question," at the bottom of Line 23, "You had
11 some conversations with Bill Garis on August 29th,
12 correct?"

13 "Answer: Correct.

14 "Question: That was by phone, I assume?

15 "Answer: Yes.

16 "Question: What do you remember being said
17 during that conversation?

18 "Answer: I remember that Bill agreed to
19 represent me and to attend the meeting on my behalf and
20 that if I needed additional documentation to prove that
21 the fraud allegations were false, he was going to ask
22 about those and see if additional information was
23 needed. And we also discussed that ongoing interaction
24 with the School District was not good for my health and
25 that perhaps my resigning would be best. And as a last

1 cleared up, he was supposed to tender your resignation,
2 or was he supposed to tender it if things were not going
3 well and they didn't clear up to end the disciplinary
4 proceedings?

5 **A. We didn't talk about the disciplinary
6 proceedings. We talked about my health.**

7 Q. I understand that, but my question is different?
8 **CHAIRMAN LARSON:** You're referring to the call
9 back, if things didn't go well?

10 **MR. SEGAL:** We're talking about the fictional
11 investigatory interview that occurs without her and her
12 theory of the case and her authorization to Bill Garis
13 to tender or not tender that resignation in different
14 scenarios. She said yesterday, and again today, that
15 her instruction was as long as everything's cleared up
16 and we're fine and there's no issues with the District,
17 you have my authorization to tender this resignation.

18 In her deposition with me earlier, she told me
19 specifically that if things were going bad and things
20 were not cleared up in this -- this conference that was
21 supposed to occur, then he was supposed to use it to end
22 those proceedings. And I'm asking her which version of
23 that is the truth. That's all I want to know.

24 Do you understand the question?

25 **A. No.**

1 resort, I could do that, and I sent him paperwork so he
2 could do that on my behalf if things didn't clear up."

3 Do you see that testimony?

4 **A. Yes.**

5 Q. So isn't it, in fact, true that under your
6 theory that Bill was to handle that resignation? He
7 wasn't supposed to turn it over if things had gone well
8 with the District and everything was cleared up, he was
9 to use it to end the disciplinary proceedings if things
10 didn't clear up; correct?

11 **A. No.**

12 Q. Your testimony here in your deposition is not
13 true?

14 **A. The word "discipline" is not in this deposition.**

15 Q. I didn't ask you that.

16 **A. Yes, you did.**

17 Q. No. Let me make it extremely simple. Your
18 testimony five minutes ago was that Mr. Garis was to use
19 and tender your resignation only if everything was
20 cleared up. And in your deposition, also sworn
21 testimony, you said he was to use it if things didn't
22 clear up. So of your two sworn versions of this, which
23 one's the truth and which one is not?

24 **A. I don't understand the difference.**

25 Q. Was he supposed to use it if everything had been

1 Q. Do you understand that you were under oath and
2 required to tell the truth during your deposition?

3 **A. Yes.**

4 Q. And you understand you're under oath and
5 required to tell the truth today?

6 **A. Yes.**

7 Q. And do you agree that what you said today as to
8 when that resignation should have been used by Bill
9 Garis is different than what you said during your
10 deposition?

11 **A. No.**

12 Q. I'll move on. Can you turn forward to Page 179
13 in this exhibit. And I'm going to start on Line 5 here.
14 We're still talking about what's Exhibit 1 here in these
15 proceedings, your resignation form.

16 Do you see where I asked the question, "It's
17 your application for retirement benefits from the State
18 of Nevada, correct?"

19 And your answer, "I -- no, I don't -- this is
20 the form that you turn into the School District when you
21 leave."

22 "Question: Perhaps. But you do see where it
23 says State of Nevada Public Employees Retirement System,
24 correct?

25 "Answer: Yes.

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1 "Question: You do have it signed on the 29th,
2 correct?
3 "Answer: Yes. This is the form that I sent to
4 Bill Garis.
5 "Question: And it was your understanding,
6 despite signing this, you have not resigned?
7 "Answer: It was my understanding that Bill
8 Garis was going to handle this for me at the
9 investigatory interview at the 3rd" -- at the 3rd, I
10 assume that means on the 3rd -- "and that hopefully
11 things would turn around. But if they didn't turn
12 around, that he would submit this."
13 Was that your sworn testimony during your
14 deposition?
15 **A. Yes.**
16 Q. And you agree -- would you agree it directly
17 contradicts your testimony here today?
18 **A. No.**
19 Q. After the September 3rd investigatory interview
20 was held -- supposedly held, as far as you knew -- you
21 never called Mr. Garis to find out what happened at the
22 conference; correct?
23 **A. No. That's correct, I didn't call him.**
24 Q. You did not call him. You never called anyone
25 at CCASA to say your resignation should not have been

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1 submitted?
2 **A. No.**
3 Q. In the weeks after you thought the investigatory
4 conference took place and before you found out it
5 hadn't, you didn't inquire of anybody regarding how it
6 had gone?
7 **A. I inquired of my lawyer.**
8 Q. Of Mr. Hatfield?
9 **A. Yes.**
10 Q. You asked Mr. Hatfield how the September 3rd,
11 2014 investigatory interview had gone?
12 **A. I asked Mr. Hatfield to take over for me.**
13 Q. At some date after September 3rd; correct? He
14 was not your attorney on September 3rd, 2014; correct?
15 **A. Correct.**
16 Q. So you didn't ask him how the investigatory
17 conference had gone; correct?
18 **A. I asked him to take over for me.**
19 Q. That's not what I asked you. You just told this
20 Board, and I made the point that you hadn't called up or
21 asked anybody about the investigatory conference or how
22 it had gone, you testified 30 seconds ago that you asked
23 Mr. Hatfield how it had gone. And that isn't true;
24 correct?
25 **A. I asked him to take over.**

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1 Q. I'm not asking you that.
2 **A. I did not --**
3 **CHAIRMAN LARSON:** The witness is being
4 nonresponsive.
5 **THE WITNESS:** What's that?
6 **CHAIRMAN LARSON:** You're being nonresponsive.
7 I'd appreciate it if you could answer Mr. Segal's
8 question.
9 **THE WITNESS:** What's the question?
10 **BY MR. SEGAL:**
11 Q. You testified that you asked Mr. Hatfield how
12 the investigatory conference had gone. That statement
13 is not a true one; correct? You didn't ask him how
14 it --
15 **A. I did not ask him specifically how the**
16 **investigatory interview had gone.**
17 Q. And he wasn't even your counsel the day it
18 occurred; correct?
19 **A. He was not my counsel on September 3rd.**
20 Q. You had not hired him yet; correct?
21 **A. Correct.**
22 Q. How did you find out the investigatory
23 conference had been cancelled?
24 **A. I don't recall.**
25 Q. You testified in your deposition that you found

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1 out approximately two weeks after September 3rd, which I
2 guess would be September 17th or 18th. Do you recall
3 that testimony?
4 **A. Yes.**
5 Q. But you don't recall how that happened?
6 **A. No.**
7 Q. Can we look briefly at Exhibit 40, please, and
8 the page would be 278.
9 I believe we looked at a different version of
10 this as a separate exhibit. In fact, I've asked the two
11 questions I have listed here on that exhibit, so I'm
12 going to move on.
13 If you could turn, please, to Exhibit 40,
14 Page 288. This is the School District's Policy 4250.
15 Do you agree?
16 **A. Yes.**
17 Q. And this is a policy that, in Section 1,
18 pertains to when CCSD employees can take on additional
19 jobs; correct?
20 **A. Yes.**
21 Q. And long ago, about ten years ago, you were
22 familiar with this policy?
23 **A. Yes.**
24 Q. And you would agree that in Section 1 it states,
25 "Employees shall not assume outside work or activities

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1 that will interfere with the regular duties of an
2 employee's assignment, extracurricular duties, or
3 overtime that may be assigned"? Do you see that
4 statement?
5 **A. Yes.**
6 Q. And do you agree the next sentence of that
7 section states, "The superintendent or designee is
8 authorized to evaluate the impact of the outside
9 employment or activities on the effectiveness of that
10 employee's responsibilities to the district"? Do you
11 see that?
12 **A. Yes.**
13 Q. Do you have an understanding that the
14 superintendent or his designee is required to approve
15 taking on a second job by CCSD employees?
16 **A. No.**
17 Q. You don't think that approval is required?
18 **A. I have not seen it done.**
19 Q. Reading this policy regarding the review by the
20 superintendent or his designee, would you agree that it
21 does call for a review by the superintendent --
22 **A. I believe --**
23 Q. -- or his designee?
24 **A. -- there's a policy, yes.**
25 Q. That there is a policy that it be reviewed. And

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1 there's clearly a policy that CCSD employees are not
2 permitted to take on other activities that interfere
3 with their regular duties; correct?
4 **A. Correct.**
5 Q. And you would agree that we previously
6 established there was no way to work both the Washington
7 State job and your CCSD job at the same time; correct?
8 **A. Correct.**
9 Q. Did you contact Bill Garis at CCASA in
10 approximately May of 2014 regarding harassment at your
11 job with the District?
12 **A. Yes.**
13 Q. And you talked about being bullied and harassed;
14 correct?
15 **A. Yes.**
16 Q. But you continue to maintain that you don't know
17 who is bullying or harassing you; correct?
18 **A. I'm sorry?**
19 Q. You continue to maintain that you don't know who
20 was bullying you or harassing you; is that correct? You
21 don't know who it was?
22 **A. Who was behind it all, no, I don't know.**
23 Q. In addition to who was behind it all, do you
24 know who did any of it?
25 **A. Well, yes.**

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1 Q. You do know who bullied or harassed you?
2 **A. Well, I know different people were treating me**
3 **differently and not well, but I don't know who was**
4 **behind all that.**
5 Q. But you know individuals who were actually doing
6 it?
7 **A. Yeah.**
8 Q. You know their names?
9 **A. Yeah.**
10 Q. Could you turn in Exhibit 40 to Page 163,
11 please. Starting at Line 23 at the bottom, were you
12 asked these questions and did you give these answers
13 during your sworn deposition in this case?
14 **A. Yep.**
15 Q. I'm sorry, let me ask them first.
16 **A. Oh, I'm sorry.**
17 Q. "Question: AS a result of that, one of the
18 things you say happened is that you were bullied?
19 "Answer: Yes.
20 "Question: Who bullied you?
21 "Answer: I don't know exactly.
22 "Question: Do you not remember who it was?
23 "Answer: I don't know that I knew, but I know
24 that people were requesting information and that they
25 were contacting newspapers. And I don't know exactly

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1 who it was, but I know that there was a -- there was
2 someone out there, several people out there trying to
3 slander and humiliate me."
4 And if we could skip next to Page 165 to save a
5 little bit of time, start at Line 3.
6 "Question: I just want to make sure you
7 understand my question. By who? Who harassed you?
8 "Answer: I don't know exactly. I mean, I think
9 there were several people doing it, but it was coming
10 through different -- different ways.
11 "Question: Are you able to name them?
12 "Answer: I don't know for certain, so I'm not
13 wanting to name them."
14 Did you give that sworn testimony during your
15 deposition?
16 **A. Yes.**
17 Q. And today you said the exact opposite. You do
18 know their names?
19 **A. No.**
20 Q. Is that your testimony?
21 **A. No.**
22 Q. You didn't 30 seconds ago tell me that you now
23 know the names of the individuals who bullied or
24 harassed you?
25 **A. I do not.**

1 **MS. MASTERS:** You just said so.
2 **THE WITNESS:** I don't know who's behind it,
3 which is what I testified to here.
4 **BY MR. SEGAL:**
5 Q. No. I asked you the names of the people who did
6 it; you said you didn't know. And today I asked you the
7 names of people who did it, and you said you do know
8 their names.
9 **A. I said there were a few people. Let me -- let**
10 **me clarify. I don't know exactly who was behind it. I**
11 **don't know who called the newspaper. I don't know a lot**
12 **of the slander, but I do know there were some people who**
13 **came to the office that said different things that was**
14 **not helpful. But that wasn't the bigger picture of the**
15 **bullying and harassment, and that I do not know.**
16 Q. I asked you at least on two occasions during
17 your deposition whether you could name names, and you
18 said I don't know. Do you agree at least --
19 **A. Yes.**
20 Q. -- that that's what you said in your deposition?
21 **A. And I cannot name names of the larger**
22 **retaliation.**
23 Q. Okay. But put aside this larger retaliation,
24 put aside who's behind it, I asked you who was bullying
25 you and who was harassing you, and in your deposition

1 **A. -- Kristen --**
2 Q. Who's that?
3 **A. Jhone Evert was the Chief of Technology.**
4 Q. Okay.
5 **A. After I was moved, she made it a point to look**
6 **right through me and ignore me.**
7 Q. I didn't ask what she'd done. We're just naming
8 names. Any other names?
9 **A. Kristen Minnich.**
10 Q. And who's that?
11 **A. She is an employee in -- I don't recall.**
12 Q. Any other names?
13 **A. That's all I have right now.**
14 Q. Okay. And after you discussed bullying and
15 harassment with Bill Garis, he referred you to the
16 District Office of Affirmative Action; correct?
17 **A. Yes.**
18 Q. And you understood that these harassment things
19 and the bullying were illegal under Nevada law?
20 **A. Yes.**
21 Q. And the School District -- what was that
22 gentlemen's name? Cole? Do you remember the
23 individual's name?
24 **A. Cedric Cole?**
25 Q. Cedric Cole. Thank you. Cedric Cole, you

1 you said you did not know; is that correct?
2 **A. I said I believe I know who's behind it, but I'm**
3 **not certain and I can't name names.**
4 Q. Read me your statement to that effect in your
5 deposition, where you said you believe you know.
6 **A. No. 9 on 165. "I don't know for certain, so I'm**
7 **not wanting to name them."**
8 Q. That's not what you just said. You said that
9 you believe you know -- you just testified that during
10 your deposition you told me that you believed you knew
11 who was doing it. And when I asked you, are you able to
12 name them, the actual answer in your deposition was, "I
13 don't know for certain, so I'm not wanting to name
14 them." You didn't name them.
15 **A. I did not.**
16 Q. Putting aside what you said a minute ago and
17 what you said in your deposition, what is the truth?
18 Are you able to name anyone who harassed you or bullied
19 you at the School District? And I'm not talking about
20 who was behind it all. Any harassment, any bullying,
21 any name?
22 **A. Yes.**
23 Q. Name them.
24 **A. Jhone Evert --**
25 Q. Who's that?

1 actually met with him in person; correct?
2 **A. No.**
3 Q. You didn't? You talked with him on the phone?
4 **A. No.**
5 Q. Did you send him e-mails?
6 **A. I did.**
7 Q. Okay. And Mr. Cole sent you a written response
8 to your concerns regarding that; correct?
9 **A. Yes.**
10 Q. So let's look in Exhibit 40 at Page 266, please.
11 Do you recall your testimony yesterday regarding
12 your exchange with Cedric Cole? And to summarize, you
13 said that you contacted him about these concerns and he
14 said in response simply that, Because of that e-mail you
15 sent saying that you were excited about the new
16 position, we don't think there's any harassment. Do you
17 remember that testimony yesterday?
18 **A. Yes.**
19 Q. And would you agree, looking at the actual
20 letter that Mr. Cole sent you, that he actually said
21 quite a lot more than it's all because of what you said
22 in that e-mail?
23 **A. Yes.**
24 Q. In fact, he goes into depth regarding various
25 issues that led him to believe that there wasn't a

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1 substantial basis for your bullying and harassment
2 claims; correct?
3 **A. Yes.**
4 Q. And, in fact, in the second full paragraph, his
5 primary concern is that you can't name anybody who's
6 been bullying or harassing you; correct?
7 **A. Correct.**
8 Q. Now, he does mention at the end of the third
9 paragraph, your e-mail -- and just to read this into
10 your record, that sentence is, "Ms. Tollen, I must say
11 that I am also somewhat confused about your allegations
12 in this area as it was my understanding that you sent an
13 email to the staff in purchasing, expressing your
14 excitement about the 'new opportunity' presented in the
15 Human Resource department." Do you see that?
16 **A. Yes.**
17 Q. But that's certainly not the only thing he said
18 in his letter; correct?
19 **A. Yes.**
20 Q. And your testimony yesterday that it was the
21 only thing in his letter is not true; correct?
22 **A. He said more in his letter.**
23 Q. Are you aware that the CCASA CBA does not permit
24 a grievance to be filed over a matter that's a violation
25 of Nevada state law?

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1 **A. I think you showed it to me earlier.**
2 Q. Following this exchange regarding your
3 harassment charges, one of the things -- it might even
4 be in this exhibit -- no, I guess it's not -- but one of
5 the things that you did was file some EEOC charges
6 against the District regarding the harassment; correct?
7 **A. Yes.**
8 Q. And you also have currently a federal lawsuit
9 against the District that brings up these harassment
10 issues as well?
11 **A. Yes.**
12 Q. And in Exhibit 40, Page 219, if we could look at
13 that briefly, that is, in fact, your current pending
14 federal lawsuit against the School District; correct?
15 **A. No.**
16 Q. It's not?
17 **A. No.**
18 Q. This is not a lawsuit that you filed against the
19 School District?
20 **A. It is, but it is not the current one. It's been**
21 **amended.**
22 Q. Oh, there's an Amended Complaint in this case?
23 **A. Yes.**
24 Q. The case number referred to here is correct,
25 though; right?

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1 **A. Yes.**
2 **MR. SEGAL:** Can I have five minutes with my
3 client to see if we have additional Cross?
4 **CHAIRMAN LARSON:** Sure. How much longer do you
5 think --
6 **MR. SEGAL:** Possibly zero. That's the purpose
7 of double-checking. It's the "Did I forget anything"
8 conversation.
9 **CHAIRMAN LARSON:** Why don't we go off the record
10 and reconvene at 20 of -- let's say quarter of.
11 (Recess taken.)
12 **CHAIRMAN LARSON:** Let's go back on the record
13 and reconvene the hearing.
14 We will remind you, you're still under oath --
15 **THE WITNESS:** Thank you.
16 **CHAIRMAN LARSON:** -- until you're released.
17 **MR. HATFIELD:** And, Mr. Hatfield, if you would
18 like to proceed?
19 **CHAIRMAN LARSON:** Oh, Mr. Segal. I'm sorry.
20 **MS. MASTERS:** No, Mr. Segal is --
21 **MR. SEGAL:** You're actually correct. I tender
22 the witness.
23 **REDIRECT EXAMINATION**
24 **BY MR. HATFIELD:**
25 Q. Ms. Tollen, could you turn to, in the joint

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1 exhibit binder, Tab No. 2. I'll ask you to take a look
2 at that the document there when you have a chance, and
3 just indicate to me when you have arrived there.
4 **A. Yes, I have it.**
5 Q. You have it?
6 **A. Yes.**
7 Q. Okay. Could I draw your attention to
8 Paragraph 4 and ask you to read that silently to
9 yourself.
10 **A. Thank you. I've read it.**
11 Q. Can you tell me, within Paragraph No. 4, the
12 second sentence there, can you tell me -- can you
13 explain to me, what is your understanding regarding the
14 investigatory hearing according to Ms. Vesneske's --
15 **A. I have no knowledge of this, of our conversation**
16 **between Bill Garis and Staci Vesneske until I saw this**
17 **paperwork last week. I do not believe Mr. Garis called**
18 **me to tell me this. It says he immediately informed me.**
19 **I do not believe that's accurate.**
20 Q. Assuming this is a true statement, what do you
21 understand the statement, the verbiage, to mean in the
22 second clause of the second sentence within Paragraph 4?
23 **A. The investigatory meeting --**
24 Q. Hang on. Hang on.
25 ///

1 **BY MR. HATFIELD:**
2 Q. Can you explain --
3 **A. I'm sorry.**
4 **CHAIRMAN LARSON:** Hold on. Let your attorney
5 ask his question.
6 **BY MR. HATFIELD:**
7 Q. Can you please explain what you understand "the
8 investigatory meeting would not be necessary and no
9 disciplinary action against Tollen would be pursued"?
10 **A. Correct.**
11 Q. Can you explain what that means in your
12 understanding?
13 **A. Well, it sounds like he talked to her and that**
14 **if it was vacated and my resignation came in, nothing**
15 **else would take place.**
16 Q. And could you turn to Tab No. 3. And I'll
17 represent to you that this is an affidavit of Staci
18 Vesneske that's been entered into evidence in this
19 arbitration. And I'd like to direct your attention to
20 Paragraph No. 4, and I'd like you to please read that
21 paragraph and indicate to me when you're finished with
22 it, and I'll ask you a question about that paragraph,
23 please.
24 **A. I'm ready.**
25 Q. What is your understanding of the verbiage that

1 **MR. HATFIELD:** Oh, I'm sorry.
2 **THE WITNESS:** Well, as we were earlier looking
3 at the CBA and I was asked to read it, it says under
4 Written Warning that if they're -- let me look at it
5 again -- but if they're admonishing you or telling you
6 you did something wrong or warning you -- I don't
7 remember exactly what it says -- but as I was reading
8 it, it sounded exactly like what took place in these two
9 letters where they're basically putting me on notice
10 that I did something wrong and they're correcting --
11 they're attempting to correct that.
12 And so as I was reading that, I felt that these
13 two letters meet some of the meaning in that written
14 warning statement. And so I do believe that they took
15 additional negative action or disciplinary action or
16 whatever after they said they wouldn't.
17 **BY MR. HATFIELD:**
18 Q. Can you turn your attention to -- I'm sorry --
19 to Tab No. 6 --
20 **A. Tab No. 6.**
21 Q. -- and that's the C-A-S-A (sic) -- I believe
22 that's the contract; right?
23 **A. So do you want the written warning?**
24 Q. What I'd like you to do is turn to Article
25 No. 27.

1 was stated by Staci Vesneske -- assuming it's true --
2 that "I informed Mr. Garis that if Tollen resigned, the
3 scheduled investigatory conference would not be
4 necessary and no disciplinary action would be issued"?
5 **A. I assume that means that if I resign, there**
6 **would be no further -- there would be no further action.**
7 Q. And --
8 **A. No discipline. Nothing.**
9 Q. Okay. And in Exhibit 32 of the joint binder,
10 there was a letter that you were asked questions about
11 by Mr. Segal?
12 **A. Yes.**
13 Q. That's a letter from whom?
14 **A. The letter is from Staci Vesneske.**
15 Q. Can you explain why the letter from Staci
16 Vesneske would or would not be a disciplinary action?
17 **MR. SEGAL:** Objection; calls for a legal
18 conclusion.
19 **BY MR. HATFIELD:**
20 Q. In your lay opinion as a member of --
21 **CHAIRMAN LARSON:** I'll allow the question.
22 **BY MR. HATFIELD:**
23 Q. -- the Union?
24 **CHAIRMAN LARSON:** Actually, I will allow the
25 question.

1 **A. Okay.**
2 Q. Can you explain whether or not this action taken
3 by Staci Vesneske, which we just talked about in our
4 Exhibit 32, applies to progressive disciplinary verbiage
5 within the CBA?
6 **A. As I --**
7 **MR. SEGAL:** Object.
8 **THE WITNESS:** I'm sorry.
9 **MR. SEGAL:** I'm going to object on two bases.
10 One, it calls for a legal conclusion, and one it's not
11 relevant because at the time in question,
12 September 11th, she's not an employee.
13 **MR. HATFIELD:** Well, we believe it to be quite
14 pertinent, in that Ms. Tollen has testified that the
15 actions taken by Ms. Vesneske, in her opinion, is
16 disciplinary. It appears to be recapturing of funds.
17 It appears to be detrimental to her position. And it
18 has not been established whatsoever that once she has
19 resigned or retired that the employer, CCSO, can no
20 longer take any kind of detrimental action against her.
21 So we believe it to be quite pertinent to
22 whether she believes that this discipline would fall
23 under Article 27, and I'm asking her to reply about
24 that.
25 **CHAIRMAN LARSON:** So your point is that

1 following the mailing and the receipt of Exhibit 2 and
2 Exhibit 3, where she was advised there would be no
3 disciplinary action, that you feel she's been
4 sandbagged?

5 **MR. HATFIELD:** Yes, she feels that she was
6 sandbagged. And then here we have an agreement, as set
7 forth, and what the terms of the agreement would be, in
8 Exhibits 2 and 3, that as long as there was quid pro quo
9 and that there would be a resignation and a retirement
10 that there would be no further discipline.

11 That -- that, in fact, did not happen. There
12 was discipline, and it's exhibited in Exhibit -- in
13 Section 32, and that applies to -- and that is defined
14 within the progressive discipline section of Article 27
15 of the CBA.

16 **CHAIRMAN LARSON:** I'm inclined to overrule the
17 objection, but I'd like to hear from our fellow Board
18 members.

19 **MS. MASTERS:** That's okay. We can evaluate it.

20 **MR. ECKERSLEY:** That's fine.

21 **CHAIRMAN LARSON:** Okay. That's what we'll do,
22 then.

23 **BY MR. HATFIELD:**

24 Q. So did you understand the question posited to
25 you?

1 in your deposition that you did not get any written
2 discipline from CCSD?

3 **A. Well, at the time I was thinking of discipline**
4 **as a formal documentation and write-ups, and I had not**
5 **gone through and read this closely. And when Mr. Segal**
6 **asked me to read it closely, I read it closely. And we**
7 **just went through those other two documents, and I think**
8 **they match.**

9 **MR. HATFIELD:** Board's indulgence, please.

10 **CHAIRMAN LARSON:** Sure.

11 **MR. HATFIELD:** I have to jump around a little
12 bit, so I'd like to have this line of questioning marked
13 by the reporter, if we could, please.

14 (Line of questioning marked.)

15 **BY MR. HATFIELD:**

16 Q. Ms. Tollen, why does your testimony today -- or
17 what is your testimony today, whether there was any --

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

19 **MR. HATFIELD:** I'm going to rephrase.

20 **BY MR. HATFIELD:**

21 Q. Can you clarify for us if there was, if any,
22 follow-up with Bill Garis after you had submitted the
23 CCF-160 (sic) form?

24 **A. Mr. Garis and I had a long conversation the**
25 **morning of August 29th to talk about --**

1 **A. Can you repeat that? I'm sorry.**

2 **BY MR. HATFIELD:**

3 Q. We talked about the letter that Staci Vesneske
4 wrote to you, and it's dated September 11th, 2014.

5 **A. Yes.**

6 Q. You understand that. I'm asking you to turn
7 your attention to Article 27, the progressive
8 discipline, and you stated that you believe that the
9 actions that were taken by CCSD in the aftermath of your
10 retirement wasn't discipline.

11 I'm asking you if you would please tell me if
12 you believe that the actions taken by CCSD in the
13 aftermath of your resignation applied and is pertinent
14 to Article 27?

15 **A. Yes. As I read earlier -- I'm sorry -- as I**
16 **read earlier, 27-4-2, a written warning, it says, must**
17 **be in writing. And it just seems to match what was said**
18 **in those two letters by Staci Vesneske. So that's why I**
19 **think it matches the written discipline on Page 52,**
20 **27-4-2. It is deficiencies in administrator's**
21 **performance or behavior, which must be changed. It**
22 **describes deficiencies and improvements. Supervisor**
23 **must in writing -- and that's exactly what that was.**

24 Q. Let me ask you a retaliatory question and ask
25 you to clarify, please. Can you explain why you stated

1 **MR. SEGAL:** Objection; nonresponsive. She was
2 asked about any follow-up after the resignation.

3 **CHAIRMAN LARSON:** I'll sustained that objection.

4 **THE WITNESS:** I'm sorry. The question? I'm
5 sorry.

6 **BY MR. HATFIELD:**

7 Q. After you were apprised by Mr. Garis that the
8 resignation had been submitted, were there any follow-up
9 conversations, if any?

10 **MR. SEGAL:** Objection; lacks foundation and it
11 misstates the prior testimony.

12 **CHAIRMAN LARSON:** Hold on just a minute. What
13 is your specific objection?

14 **MR. SEGAL:** She's never testified she was so
15 advised by Mr. Garis. She cannot talk about what
16 happened after she was so advised. I asked her at
17 length about the possibility there was such a
18 conversation. She said it never happened.

19 **CHAIRMAN LARSON:** Board? Do you folks remember?

20 **MR. ECKERSLEY:** I actually don't recall.

21 **CHAIRMAN LARSON:** I don't recall neither.

22 **MR. HATFIELD:** I'm asking for a clarifying
23 answer to whether there was any communications of any
24 type in follow-up after the investigatory hearing had
25 been cancelled with Mr. Garis.

1 **CHAIRMAN LARSON:** Yeah, I'm going to allow that
2 question. You can -- what don't you re- -- why don't
3 you go ahead and repeat it one more time.

4 **BY MR. HATFIELD:**

5 Q. Was there any -- strike that.

6 In the time after the investigatory hearing had
7 been cancelled, can you explain if there was any
8 communications with Mr. Garis?

9 **A. No. He -- we spoke on -- on August 29th.**

10 **MR. SEGAL:** Objection; nonresponsive. She's
11 just giving a story now that -- she answered the
12 question, and now she's just talking.

13 **CHAIRMAN LARSON:** He's asking for a yes-or-no
14 answer.

15 **MS. MASTERS:** And we got one.

16 **CHAIRMAN LARSON:** And I believe your response
17 was "No."

18 **THE WITNESS:** Okay. Thank you.

19 **BY MR. HATFIELD:**

20 Q. You were asked questions during
21 cross-examination about bullying in the workplace and
22 whether you knew who may have done it. What do you mean
23 about not knowing for certain about bullying in the
24 workplace once you had transferred to the Human Resource
25 position?

1 **CHAIRMAN LARSON:** Are you referring to actions
2 by fellow employees in that six-week period, or are you
3 referring to the information that the news media
4 obtained and ultimately published?

5 **THE WITNESS:** Well, both.

6 **CHAIRMAN LARSON:** Okay.

7 **THE WITNESS:** Except I would say the news media
8 was very clear Mr. Augspurger spoke to them. The
9 transfer itself and some of the other things that
10 happened, I perhaps know who's behind it, but I can't
11 tell you concrete evidence. People would call me and
12 say things.

13 **CHAIRMAN LARSON:** So you suspect certain people,
14 but you have no proof?

15 **THE WITNESS:** I couldn't prove it to you here.
16 I could tell you different people said things, but I
17 wouldn't be comfortable doing that because nobody's
18 going to come swear to them.

19 **CHAIRMAN LARSON:** Mr. Hatfield, if you're going
20 to be asking -- it would be nice if you could
21 distinguish between the six-week period following her
22 reassignment to HR and then the newspaper articles.

23 **MR. HATFIELD:** Very good.

24 **THE WITNESS:** Thank you.

25 ///

1 **A. There were many people who told me that**
2 **various -- that there were a couple people responsible**
3 **for retaliation. But I don't know for sure that's who**
4 **they were. And then there were people who definitely**
5 **treated me differently after the transfer.**

6 And as I spend more and more time thinking about
7 this in preparation for this hearing, I remembered a
8 number of people who very much treated me differently,
9 and I named some of those today. But I can say that I'm
10 not certain who's behind it. People have told me who
11 they think is behind it, but I don't have proof.

12 **CHAIRMAN LARSON:** Ms. Tollen --

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

14 **CHAIRMAN LARSON:** -- this is a period between
15 March 31st, when you were transferred -- of '14 -- when
16 you were transferred to May 15th, 2014, when you go on
17 FML, if I'm understanding the question correct. Because
18 that's the only time that you were in the workplace
19 following the promotion. That's a six-week period.

20 Are you referring to bullying -- you talked
21 earlier about somebody that looked right through you --

22 **THE WITNESS:** Yes.

23 **CHAIRMAN LARSON:** -- didn't acknowledge you or
24 say hello.

25 **THE WITNESS:** Yes.

1 **BY MR. HATFIELD:**

2 Q. And, Ms. Tollen, on Exhibit -- I'm sorry, Tab
3 No. 40 on Page 234, in that e-mail that Mr. Segal asked
4 you about, can you explain why you said that you were
5 excited for a new opportunity in the HR position that
6 you were transferred to?

7 **A. I managed over 100 people, and I believe it was**
8 **very important to put on a good face for them.**

9 Q. Can you give us a time frame of when this e-mail
10 was generated?

11 **A. This e-mail was generated after Staci Vesneske**
12 **and Jim McIntosh informed me that I would be**
13 **transferred. And I had asked to go back to my**
14 **department to inform my staff and --**

15 **MR. SEGAL:** Objection; nonresponsive as to when
16 it was generated. That's the only question pending.

17 **CHAIRMAN LARSON:** I'll sustain that objection.
18 The first paragraph, it says -- second line --

19 effective March 31st. It would seem that it was either
20 that day or sometime very close, but prior to.

21 **BY MR. HATFIELD:**

22 Q. If you'll look at Page 233 --

23 **A. I'm sorry.**

24 Q. Ms. Tollen, can you tell us a time frame on when
25 this --

1 **A. March 28th, 2:53 p.m.**

2 Q. How long had you been transferred, if you could
3 tell us?

4 **A. The meeting started at 2:00, so I hadn't**
5 **officially been transferred, I don't think, till the**
6 **next week, but I was informed of the transfer at**
7 **2 o'clock in the meeting.**

8 Q. So could you explain -- was that within the same
9 day that you were notified?

10 **A. Yes. I wanted -- yes.**

11 **MR. ECKERSLEY:** The e-mail suggests it was
12 within the same hour.

13 **BY MR. HATFIELD:**

14 Q. Is that correct?

15 **A. Yes.**

16 Q. If you could turn to -- I believe it's -- I
17 apologize for jumping around a little bit here, but it's
18 in Tab No. 6 -- and I'll direct your attention to
19 Article 20.

20 Within -- within that tab, can you please turn
21 to Page 33, and that's Bates No. 42.

22 **A. Okay.**

23 Q. And I'll represent to you that Article 20 is
24 entitled Professional Compensation.

25 Ms. Tollen, can you explain if you have any

1 position. It has no bearing on somebody who's changed
2 positions. It simply invites confusion about a scenario
3 for which there's no foundation in the case. There's
4 never been a claim of reclassification in any fact
5 scenario presented by anybody, and there's not going to
6 be in this case because it didn't happen.

7 **CHAIRMAN LARSON:** Mr. Hatfield, we can see by
8 the testimony and the exhibits that she was a
9 Director III, and when they went to replace her, one of
10 the ostensible reasons for moving her was they wanted to
11 downgrade the Purchasing Manager to a Director II. And
12 I don't know whether they did that, and not relevant.
13 But as a Director III, she went over and she was going
14 to be a special assistant to Staci Vesneske, as per your
15 exhibits.

16 So I'm inclined to sustain that objection. They
17 didn't create a new position, and she retained the
18 existing position that she had as a Purchasing Manager,
19 but they changed her duties to allow her to do other
20 things.

21 **MR. HATFIELD:** Understood.

22 **BY MR. HATFIELD:**

23 Q. Explain, Ms. Tollen, what criticisms you had
24 regarding your transfer and that you apprised the Union
25 and Mr. Augspurger of, if any?

1 understanding whether Article 20 and its subparts would
2 apply to the procedure whereby you were transferred from
3 your position as Director of Purchasing to your position
4 as -- in HR?

5 **MR. SEGAL:** Objection; lacks foundation, calls
6 for a legal conclusion, and it's not relevant.

7 **CHAIRMAN LARSON:** Hold on here for just a
8 moment. Restate your objection.

9 **MR. SEGAL:** It lacks foundation, it calls for a
10 legal conclusion, and it's irrelevant.

11 **MR. HATFIELD:** I can actually back up and ask
12 some foundation questions regarding Article 20, if we
13 need to go there.

14 **CHAIRMAN LARSON:** Okay. She didn't change --
15 she changed duties, but the job class tile appears to
16 have been the same. The pay appears to have been the
17 same.

18 **MR. SEGAL:** And that's my relevance concern here
19 is that we're looking at an article dealing solely with
20 reclassification of the wages. That's not part of the
21 fact pattern of the case. There was a transfer and
22 reassignment at her class level. There is some
23 grandfathering language for folks who stay in that same
24 position that has experienced a reclassification that
25 they can keep the old higher wage until they vacate that

1 **A. Well, I believe that they did mean to reclassify**
2 **my position from Director III to District II --**

3 **MR. SEGAL:** I'm just going to object that that's
4 nonresponsive.

5 **THE WITNESS:** -- and --

6 **CHAIRMAN LARSON:** Wait a second. Hold on just a
7 moment.

8 **MR. SEGAL:** And in addition, given the prior
9 testimony, it's become irrelevant because we've
10 confirmed the conversation and concern regarding the
11 reassignment, and the conversation with Stephen
12 Augspurger was nine months before this action was filed,
13 and that should be the final adverse statement from him
14 that he would not pursue it on that day. Therefore,
15 that established the entire concern over the transfer,
16 and that conversation that occurred was untimely
17 rendering all further discussion of that transfer
18 irrelevant.

19 **CHAIRMAN LARSON:** I'm going to allow you to
20 respond.

21 **MR. HATFIELD:** Yes. It's properly a good
22 question. I'm asking her to provide us information and
23 testimony regarding any background information that she
24 had regarding the Union, any criticisms that she had
25 with the Union regarding her transfer. It's been

1 testified that the Union said that we can do nothing for
2 you, we will not be doing anything for you regarding the
3 transfer.

4 She was then directed -- and it's Mr. Garis'
5 testimony -- that she go to perhaps Mr. Cedric Cole and
6 provide her complaints to him. He said zero. I can't
7 do anything for you. In the event that -- you know, I'm
8 not going to do anything for you.

9 So then what she was advised to do, or she was
10 also advised to do, was to got to perhaps the EEOC. So
11 I'm setting the timeline here that there was -- she
12 expended all efforts to try to make the complaints known
13 about her unhappiness with this new position to several
14 sources, and received -- she gave it the old college
15 try, if you will. Is tried to expend all efforts to
16 have some help regarding her unhappiness and dislike
17 with the transfer to the HR position.

18 **CHAIRMAN LARSON:** What's the Board's preference?
19 Do you want to hear it?

20 **MR. ECKERSLEY:** I'm concerned on relevance,
21 that's up to you.

22 **CHAIRMAN LARSON:** Okay, how about you?

23 **MS. MASTERS:** Whatever.

24 **CHAIRMAN LARSON:** Okay. I'm inclined to think
25 that we will sustain that objection because we're not --

1 too far afield and she wasn't being nonresponsive to the
2 question. She was answering the question honestly
3 and -- she was clarifying, and that's what Redirect is,
4 you can clarify questions brought up on
5 cross-examination.

6 **CHAIRMAN LARSON:** I will overrule that objection
7 and give you leeway to go down there. But let's -- you
8 know, let's not make it a fishing expedition, if we can.
9 Let's get in there and establish what we want from that
10 witness.

11 **BY MR. HATFIELD:**

12 Q. Ms. Tollen, can you please describe for us what
13 efforts you made to work it out in your new position
14 with HR?

15 **A. Work it out? I worked very closely with Ron
16 Mader trying to learn the different jobs that I had been
17 assigned. I went in early and I stayed late, and I -- I
18 tried to make it work.**

19 **MS. MASTERS:** You tried for how many days?

20 **THE WITNESS:** I tried while I was there. I was
21 not doing well with the transfer, and so I did try. I
22 was not comfortable being there.

23 **MS. MASTERS:** How many days did you try?

24 **THE WITNESS:** When I was there.

25 **MS. MASTERS:** How many days?

1 there appears a concern about relevance.

2 **BY MR. HATFIELD:**

3 Q. Ms. Tollen, can you explain what your difficulty
4 was with the word "like" in regard to your new job in
5 Human Resource? Why do you have issues with that word?

6 **A. I don't think it was a matter of like or not
7 like. I think it was a matter of being asked to do more
8 that I could do, being asked to do a lot that probably
9 couldn't be done by one person. And also, I wasn't the
10 least bit qualified.**

11 **If you -- there's a letter in here from Staci
12 where she even writes that they made the job description
13 bigger than it possibly needed to be and I'd be very
14 busy. And then people kept notifying the paper, things
15 were being published.**

16 **MR. SEGAL:** Objection; nonresponsive. This
17 notifying of the paper has nothing to do with her
18 concern about my characterization that she once told me
19 she sought other employment because she didn't like her
20 job, and today she said it wasn't -- that wasn't the
21 reason. It has nothing to do with newspaper articles.

22 **MR. HATFIELD:** I have to counter-object to this.
23 But, you know, he keeps cutting her off and he wants to
24 try to manipulate what she's trying to say.

25 Let her answer the question. She wasn't going

1 **THE WITNESS:** That was -- I was there six weeks,
2 but I was sick quite a bit, so maybe three and a half
3 days a week.

4 **MS. MASTERS:** Three and a half days?

5 **THE WITNESS:** Three and a half days a week times
6 six, so maybe 18, 20 days.

7 **MS. MASTERS:** You were only there three and a
8 half days at a time?

9 **THE WITNESS:** During the week, I was sick quite
10 a bit or I was out, yes. I went through a lot of doctor
11 appointments, and there were a lot of changes that I was
12 trying to do. But when I was there, I came early, I
13 stayed late, and I really tried to make a difference.
14 But it wasn't a good fit and I wasn't qualified, and
15 people, with some exceptions, were not being helpful to
16 my success.

17 **CHAIRMAN LARSON:** Okay. Mr. Hatfield?

18 **BY MR. HATFIELD:**

19 Q. Can you explain for us how long you actually
20 worked in that new position once you were transferred to
21 the HR position?

22 **A. Six weeks.**

23 Q. Six weeks?

24 **CHAIRMAN LARSON:** Now, she just previously
25 testified that she was there 18 to 20 days out of the

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1 six-week period. I mean, she's on the payroll and
2 obviously being paid, but was using a fair amount of
3 sick leave.
4 **MR. HATFIELD:** Yeah. I think that explains
5 pretty well precisely how long she was on that job in
6 HR.
7 **BY MR. HATFIELD:**
8 Q. Can you explain -- sorry, strike that.
9 Let me direct your attention to Exhibit 40, and
10 it's Page 230.
11 Are you there?
12 **A. Yep.**
13 Q. Can you explain for us, what is your
14 understanding of what this document is?
15 **A. They're issued by the Board of Trustees and**
16 **they're -- the contracts take a long time to come out,**
17 **and so they issue a Notice of Intent. That's routine.**
18 **It comes out every year, and then the contract usually**
19 **comes out later in the year.**
20 Q. What is your understanding, if you have one, of
21 what this document entails?
22 **A. It's -- I think helps with their budgeting, so**
23 **it's an offer -- or a Notice of Intent to accept**
24 **employment. I believe it really -- they're more**
25 **meaningful with teachers and things like that that are**

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1 **contracted based on the number of students and things**
2 **like that. So I think for a unified employee, it's just**
3 **perfunctory.**
4 Q. Can you explain for us if this is a document
5 that binds you to any kind of school --
6 **MR. SEGAL:** Objection; leading.
7 **CHAIRMAN LARSON:** Hold on. Hold on.
8 **MR. SEGAL:** That's a leading question.
9 **MR. HATFIELD:** No, it's not. I'm asking her to
10 explain whether it's her understanding that this binds
11 her to an exclusive employment relationship with the
12 Clark County School District.
13 **MR. ZUNINO:** Let me just suggest to you that the
14 question is not leading unless it suggests an answer.
15 So if it suggests an answer, then I would sustain the
16 objection as leading. If it doesn't suggest an answer,
17 then it's not leading. And to me, it didn't suggest an
18 answer, so --
19 **CHAIRMAN LARSON:** So we want to sustain the
20 objection.
21 **MR. ZUNINO:** Overrule.
22 **CHAIRMAN LARSON:** Overrule, okay.
23 **THE WITNESS:** I'm sorry, what was the question?
24 **BY MR. HATFIELD:**
25 Q. Ms. Tollen, can you explain whether it's your

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1 understanding whether this document here, Exhibit 40,
2 Page 230, binds you to an exclusive employment
3 relationship with Clark County School District?
4 **A. No, I don't believe it does.**
5 Q. Can you explain for us if there is any other
6 document that contractually obligates you to work
7 exclusively for Clark County School District?
8 **A. No.**
9 Q. Can you explain for us if there's any
10 prohibition in any way from looking for outside work --
11 for example, your work that you eventually took in
12 Snohomish County, Washington -- any prohibition against
13 doing that while you were employed with CCSD?
14 **A. No. I think it's very common that people look**
15 **for other jobs and work temporary --**
16 **MR. SEGAL:** Objection; nonresponsive.
17 **MR. HATFIELD:** I'm going to object. I believe
18 that these objections are designed to be disruptive, and
19 I believe that they were perfectly voiced and that she
20 was answering the question before the objection was
21 lodged, which is rattling the witness. And it appears
22 to be argumentative, Mr. Larson.
23 **MR. SEGAL:** She wasn't asked whether it was
24 common for people to seek jobs outside the District.
25 She was asked whether she was aware of any prohibition

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1 under this. She was answering something that was
2 totally unresponsive.
3 **MS. MASTERS:** That's true.
4 **CHAIRMAN LARSON:** Do you want to rephrase the
5 question? Maybe we can get the summary version as
6 opposed to the detailed version, please.
7 **BY MR. HATFIELD:**
8 Q. Ms. Tollen, do you need a second?
9 **A. I'm good. I'm sorry.**
10 Q. Ms. Tollen, are you aware, or can you explain
11 for us, if there's any prohibition against seeking a
12 next employment outside of the Clark County School
13 District?
14 **A. No.**
15 Q. Can you explain for us why you stated your
16 position was in Purchasing when you made the application
17 to Snohomish County for the position in Purchasing up
18 there in Washington State?
19 **A. Yes. It was a Purchasing position, and HR was**
20 **not relevant. I also talked to a friend who is a**
21 **recruiter to ask how to handle the situation, and the**
22 **advice I received was not to put it on the application**
23 **because it muddied the waters, but to disclose it in the**
24 **interview, which I did.**
25 Q. Very good. There was a document that was filled

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1 out by your doctor that was submitted in order for you
2 to obtain FML; correct?
3 **A. Yes.**
4 **Q.** And it escapes me where it is in the joint
5 binder, but let me ask you: If you can explain why your
6 doctor stated you were unable to perform job functions
7 at Clark County School District?
8 **MR. SEGAL:** Objection; misstates the exhibit and
9 the prior testimony.
10 **CHAIRMAN LARSON:** Hold on. Do you want to
11 rephrase the question?
12 **MR. SEGAL:** If it's helpful, the problem with
13 the question is that's the exact opposite of what that
14 document says, and that's the very point that we spend
15 on it is that it didn't state that.
16 **CHAIRMAN LARSON:** I think the document is 23.
17 **MR. HATFIELD:** Thank you. That's helpful.
18 **CHAIRMAN LARSON:** Maybe you want to take some
19 time to study that, 22 and 23.
20 **BY MR. HATFIELD:**
21 **Q.** Yes. Ms. Tollen, can you turn to Tab No. 23,
22 please.
23 On Page 95, can you explain why your doctor
24 wrote -- and I believe you stated PT stands for
25 patient -- or explained PT stands for patient. Can you

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1 explain why your doctor wrote, "PT is unable to perform
2 any job functions at this time"?
3 **MR. SEGAL:** Objection; calls for speculation and
4 lacks foundation. In fact, the witness already
5 testified her doctor filled this out and she didn't see
6 it until after it was submitted. She can't possibly
7 know why her doctor said what she said.
8 **CHAIRMAN LARSON:** I'll sustain that objection.
9 She's not a medical professional.
10 **BY MR. HATFIELD:**
11 **Q.** Can you explain what job functions this
12 documents refers to?
13 **A. Functions at CCSD.**
14 **Q.** Explain --
15 **CHAIRMAN LARSON:** HR? CCSD, HR?
16 **THE WITNESS:** At the time I was in HR, yes.
17 **CHAIRMAN LARSON:** Okay. So it doesn't refer to
18 your duties as a purchasing agent; it refers to your
19 duties following your transfer?
20 **THE WITNESS:** It referred to the duties at that
21 time, which were HR duties, and with CCSD --
22 **CHAIRMAN LARSON:** All three to six weeks' worth,
23 okay.
24 **THE WITNESS:** (Witness nods head.)
25 **MS. MASTERS:** We appear to be plowing through

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1 the same information, Mr. Hatfield.
2 **MR. HATFIELD:** Yeah. I'm about finished with
3 this document.
4 **MS. MASTERS:** Revelations we can come up with.
5 **CHAIRMAN LARSON:** You'll have an opportunity,
6 Ms. Masters, to question the witness.
7 **BY MR. HATFIELD:**
8 **Q.** Document 261 of Exhibit 40, do you see Page 261?
9 **A. Yes.**
10 **Q.** You were asked questions regarding Section 8 of
11 this document by Mr. Segal. Can you explain whether --
12 or why you believe you were not required to do reports
13 pursuant to this correspondence from Mr. Mader?
14 **A. I spoke with Ron Mader and he said they weren't**
15 **necessary. Additionally, in the early days, it was my**
16 **intent to return. But these reports were not necessary.**
17 **I had called him and asked him what kind of form he**
18 **wanted to see for this, and he told me they weren't**
19 **necessary to submit, so I did not.**
20 **MR. HATFIELD:** Thank you. I don't think I have
21 anything further. I'll pass the witness.
22 **CHAIRMAN LARSON:** Let's just stop for just a
23 minute before we give Mr. Segal the opportunity to
24 question the witness.
25 It's 11:27 now. Is it safe to say, from your

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1 standpoint, Mr. Segal and Mr. Hatfield, that following
2 your questions of her, and then you may have a little
3 back and forth, the Board will have their questions,
4 that we'll be done in the next 15 minutes, roughly,
5 20 minutes?
6 **MR. SEGAL:** Done with this witness?
7 **CHAIRMAN LARSON:** Yes.
8 **MR. SEGAL:** Yes.
9 **MR. HATFIELD:** I would tend to agree.
10 **MS. MASTERS:** Are there any other witnesses?
11 **MR. HATFIELD:** Not in the plaintiff's
12 case-in-chief.
13 **MR. SEGAL:** We have Mr. Augspurgen.
14 **CHAIRMAN LARSON:** So he's the loan remaining
15 witness?
16 **MR. SEGAL:** Yes.
17 **CHAIRMAN LARSON:** Okay. Well, we can put him on
18 right away after lunch.
19 Okay, well, with that, please proceed,
20 Mr. Segal. I just wanted to get kind of a logistical
21 understanding of where we were.
22 **MR. SEGAL:** Sure.
23 **RE-CROSS-EXAMINATION**
24 **BY MR. SEGAL:**
25 **Q.** Ms. Tollen, could you turn to Exhibit 6, the

1 CBA, and Bates Number 61.
2 **A. 61?**
3 Q. Right. Do you recall testifying on Redirect
4 that you believe one or more letters from the School
5 District regarding the recapture of improperly used sick
6 leave, FML, was in your mind, discipline, as that term
7 is used under this CBA? Do you recall that testimony?
8 **A. Yes.**
9 Q. And you recall telling this Board that the
10 reason you formed that opinion was because those
11 documents matched -- I believe was your word -- the
12 description of a written warning that we see here in
13 Article 27-4-2?
14 **A. Yes.**
15 Q. Reading Section 8 of this article, do you see
16 where it says that "The supervisor must, in writing,
17 communicate the deficiencies to the administrator
18 regarding his/her performance or behavior which must be
19 changed or improved"? Do you see that?
20 **A. Yes.**
21 Q. You would agree that none of those letters from
22 the District discuss anything in the way of your job
23 performance; correct? In fact, you'd already resigned?
24 **A. In fact, what?**
25 Q. You'd already resigned?

1 directions designed to lead to the required
2 change/improvement"? You would agree that none of those
3 District letters contain any required change or
4 improvement directions regarding your conduct as an
5 employee?
6 **A. Can I look at the letter?**
7 Q. You sure can.
8 **A. Where are they?**
9 Q. I have no idea what letters you think satisfy
10 this requirement, because I haven't seen a single letter
11 that is a written warning.
12 **MR. HATFIELD:** Well, I believe her testimony was
13 that Document 31, in her opinion, was a disciplinary
14 notice. And there's verbiage in there that says --
15 **MR. SEGAL:** I'm sorry. You're testifying. I
16 appreciate the reference to 31, but you don't need
17 testify on the exhibit.
18 **MR. HATFIELD:** I'm not testifying.
19 (Discussion held off the record.)
20 **BY MR. SEGAL:**
21 Q. Is, in fact, Exhibit 31 the document you contend
22 is a written warning under the disciplinary procedures
23 in this contract?
24 **A. They -- it appears to me that in these letters**
25 **they are going back to a time before I resigned, and**

1 **A. Job performance?**
2 Q. Those letters don't discuss job performance;
3 correct?
4 **A. Correct.**
5 Q. And those letters don't discuss behavior which
6 must be changed or improved; correct?
7 **A. I think they're discussing behavior that they**
8 **want changed.**
9 Q. Behavior as an employee? You think, after
10 you've been terminated, those letters pertain to your
11 behavior as an employee?
12 **A. Yes.**
13 Q. That has to be changed or improved?
14 **A. When they're asking for more documentation, yes.**
15 Q. Are you saying a request for documents about
16 your medical condition is the equivalent to behavior as
17 an employee? Is that your line of thinking?
18 **A. I believe it's asking me to validate actions**
19 **taken, and that would be behavior.**
20 Q. That is a request for you to change your
21 behavior or improve your behavior, provide documents?
22 **A. Or to confirm your behavior.**
23 Q. Do you see the second section, B, "The
24 supervisor must, in writing, describe the deficiencies
25 in which change or improvement is required and establish

1 **they are questioning my use of sick leave, and that they**
2 **are saying that there was behavior they didn't like and**
3 **they were either saying they were going to change their**
4 **position or I have to provide additional documentation**
5 **and they want more information.**
6 Q. Looking back at Exhibit 6, do you see Item C
7 under this section that says, "The supervisor must, in
8 writing, inform the administrator that failure to
9 improve may result in an admonishment or a suspension,
10 demotion or dismissal"?
11 **A. Yes.**
12 Q. Did you see that language?
13 **A. Yes.**
14 Q. None of that makes any bit of sense for somebody
15 who's no longer working at the School District; correct?
16 **A. I haven't -- no, it doesn't make sense after**
17 **that.**
18 Q. Item D, "A written acknowledgment of receipt of
19 the written warning must be obtained." There's no such
20 document in the record; correct?
21 **A. I thought these were sent certified. They were**
22 **sent certified.**
23 Q. That's not what I asked you. A written
24 acknowledgment of receipt of a written warning must be
25 obtained. There is no such document; correct?

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1 **A. I believe the certified letter is the written**
2 **receipt.**
3 Q. I didn't ask you about a written receipt. I'm
4 talking about a written acknowledgment.
5 **A. A written acknowledgment --**
6 **MR. HATFIELD:** Objection. I believe she
7 testified --
8 (Discussion held off the record.)
9 **BY MR. SEGAL:**
10 Q. Where's the document? Where is that document,
11 the acknowledgment?
12 **A. The District would have it.**
13 Q. The administrator is required to sign the
14 written warning as an acknowledgment of receipt. Is
15 your signature on Exhibit 31?
16 **A. It is not on the exhibit.**
17 Q. And that's because it's not a written warning of
18 this agreement, is it?
19 That's okay. I'll withdraw the question.
20 No further Recross.
21 **CHAIRMAN LARSON:** Mr. Hatfield?
22 **MR. HATFIELD:** Nothing further.
23 **CHAIRMAN LARSON:** Okay. So is Mr. Ausfield
24 (phonetic), is he your witness? Who's calling --
25 **MR. SEGAL:** Mr. Augspurger?

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1 **CHAIRMAN LARSON:** Augspurger. I'm sorry.
2 **MR. SEGAL:** You said yesterday you were calling
3 him, but we're going to call him.
4 **MR. HATFIELD:** No, we're going to close, sir.
5 **CHAIRMAN LARSON:** Okay. So you rest?
6 **MR. HATFIELD:** We're resting. Unless you have
7 questions, members of the Board.
8 **CHAIRMAN LARSON:** Well, yeah. I think -- do you
9 guys have questions?
10 **MR. ECKERSLEY:** I don't want to belabor it too
11 much, but are you still in contact with people in the
12 Purchasing Department?
13 **THE WITNESS:** A few, yes.
14 **MR. ECKERSLEY:** A few? Do you know who
15 succeeded you in the position of Director of Purchasing?
16 **THE WITNESS:** Nobody has. There's an interim
17 position.
18 **MR. ECKERSLEY:** It's an interim? And is it a
19 Director II or a Director III?
20 **THE WITNESS:** No, I was told it was a III.
21 They're being paid as a III, even though the letter in
22 here states it was a II, I'm being told it was III.
23 **MR. ECKERSLEY:** But you haven't been told who's
24 the manager --
25 **THE WITNESS:** Oh, yeah, I know who's in there.

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1 **MR. ECKERSLEY:** That's what I asked.
2 **THE WITNESS:** Steve Staggs. I'm sorry.
3 **MR. ECKERSLEY:** Steve Staggs?
4 **THE WITNESS:** Carl Steve Staggs.
5 **MR. ECKERSLEY:** And was he someone you had
6 worked with?
7 **THE WITNESS:** He was my Director I when I was
8 there.
9 **MR. ECKERSLEY:** But you don't know if he's a
10 Director II or a Director III?
11 **THE WITNESS:** I have no clue to whether he's a
12 II or III. He's a I acting in the interim as either a
13 II or a III. My understanding is he's receiving
14 responsibility pay as a III, but I have no proof of it.
15 **MR. ECKERSLEY:** All right. Thank you.
16 **MS. MASTERS:** I have a question.
17 As part of your depression -- and I've worked
18 with a lot of people that have had depression over the
19 years -- was paranoia perhaps involved in the depression
20 that you experienced?
21 **THE WITNESS:** Sometimes, yes.
22 **MS. MASTERS:** And also, I wanted to know --
23 there was a question about some -- I think Mr. Segal
24 asked you something about, could an investigative
25 interview be held without the interviewee being there,

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1 and you said yes?
2 **THE WITNESS:** My understanding was yes.
3 **MS. MASTERS:** I don't understand how that
4 happens. Can you explain that to me?
5 **THE WITNESS:** Well, I spoke to Mr. Garis and
6 made it clear to him that emotionally, physically I
7 could not attend. And I believe he told me he could
8 attend on my behalf. Now, maybe he was very new at the
9 time and didn't understand, but that was my
10 understanding.
11 And the District was saying I misused sick
12 leave, which I did not believe I did. I did not believe
13 there would be discipline because I believed I could
14 provide documentation to show that I hadn't misused the
15 sick leave. And so my understanding, he was going to
16 represent me, express that, and ask for additional
17 documentation.
18 **MS. MASTERS:** Okay. Well, that never happened,
19 in any case, so I just wondered what your interpretation
20 was about not having to be there.
21 **THE WITNESS:** Yeah.
22 **MS. MASTERS:** Thank you.
23 **MR. ECKERSLEY:** Are you aware of anyone else at
24 CCSD that has maintained a full-time job while on FML?
25 **THE WITNESS:** I have heard that it happens.

1 **MR. ECKERSLEY:** Are you aware of anyone?
2 **THE WITNESS:** Well, Ron Mader and I spoke about
3 it a little bit. He told me that there would be --
4 **MR. ECKERSLEY:** He presented the cocktail
5 incident.
6 **THE WITNESS:** Well, I know. Or that, if
7 somebody like a bus driver broke a leg, that they could
8 do other things. And we did a lot of -- maybe it wasn't
9 FML. It might be temporary modified duty or Workers'
10 Comp, but we did a lot where people couldn't perform
11 some functions but could perform other functions.
12 **MR. ECKERSLEY:** Temporary modified duty?
13 **THE WITNESS:** Temporary modified duty or
14 Workers' Comp.
15 **MR. ECKERSLEY:** And those would still be within
16 CCSD, though, for modified duty?
17 **THE WITNESS:** Could be. Could be. Those are,
18 yeah. There could be other jobs. Like I said, if
19 people broke a leg and couldn't drive a bus, you could
20 do other things, perhaps.
21 **MR. ECKERSLEY:** With CCSD?
22 **THE WITNESS:** Most likely with CCSD. But the
23 examples he gave were outside CCSD when we were talking
24 about it.
25 **MR. ECKERSLEY:** And they were part-time jobs,

1 **there's some that happened that April 1st.**
2 Q. That's okay. It's within the realm.
3 And on August 29th you resigned and immediately
4 applied for PERS benefits?
5 **A. I signed a form to resign from CCSD, and I**
6 **believe you then have to take that form to PERS, which I**
7 **did at some time later. And I do believe they do use**
8 **that day on that form, but you have to physically go to**
9 **PERS and bring it in.**
10 Q. Okay. And after six weeks, by your own
11 admission, working half time or 60 percent time as the
12 HR analyst or the Director III in Human Resource, you
13 wound up going on FML. I'm trying to establish that
14 date.
15 **A. May 15th.**
16 Q. May 15th?
17 **A. May 15th is when my doctor pulled me out, yes.**
18 Q. Okay. I have Exhibit 22 as -- let me take a
19 look at Exhibit 22. Yeah, May 15th. Your employer's
20 signature is on there. You dated it the 29th.
21 **A. The paperwork took some time.**
22 Q. Four weeks prior -- Exhibit 40, which is dated
23 April 3rd, 2014 -- four weeks or more prior to you going
24 on FML, you send a resume to Snohomish County,
25 Washington. On May 5th, which Mr. Segal has taken you

1 cocktail waitress.
2 **THE WITNESS:** Not just part time. Other
3 employment.
4 **MR. ECKERSLEY:** Other examples? We haven't
5 heard any. That's why I'm asking.
6 **THE WITNESS:** I heard a lot. I think we talked
7 a lot about people working in family businesses. Yeah,
8 I -- I believed that if I couldn't work at CCSD, I could
9 work other places. I do believe that. And I believe
10 that it didn't interfere with the duties because I
11 couldn't do the duties.
12 **MR. ECKERSLEY:** Okay.
13 **CHAIRMAN LARSON:** Well, it be hard to do, you
14 know, two full-time jobs, one being in Washington and
15 one in Las Vegas --
16 **THE WITNESS:** Absolutely.
17 **CHAIRMAN LARSON:** -- unless you have some kind
18 of technology that could teleport you back and forth.
19 **THE WITNESS:** Even then.
20 **EXAMINATION**
21 **BY CHAIRMAN LARSON:**
22 Q. I want to confirm some dates. March 31st, 2014,
23 you were transferred to HR?
24 **A. I think March 31st is a Sunday. I think there's**
25 **some documents say that it happened on Friday and**

1 through, you traveled to Seattle for a job interview.
2 On May 9th, there's a letter from Snohomish County where
3 they recommended you to be hired. And on June 25th,
4 2014, they make you a job offer -- I'm sorry, hire you,
5 and then you subsequently relocate.
6 What was -- and you also filled out a form that
7 was pointed out by Mr. Hatfield, that you wanted to work
8 the next year or fiscal year for CCSD. What was going
9 through your mind? I mean, did you want to be in
10 Las Vegas? Did you want to be in Seattle? Where the
11 hell did you want to be?
12 **A. I wanted to be here in Purchasing. I built that**
13 **department, I hired or promoted everybody there. That**
14 **was my life. I wanted to be there.**
15 Q. Could you -- okay, with that as the background,
16 did you ever consider once you relocated, once you
17 accepted the job, to advise the District and get your
18 sick leave payoff and fill out the PERS form?
19 **A. There's -- there's a policy in the CBA that I**
20 **thought entitled me to take my sick leave. And so I**
21 **thought I was entitled to take my sick leave and**
22 **vacation, and my hope was that the folks that were**
23 **harassing me at the District would go away and I could**
24 **return. And that's what my hope was until the media**
25 **stuff blew up, and then the retal- -- I don't want to**

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1 **say retaliation, but the wave of ugliness after that**
2 **just made me think that I don't even feel safe in**
3 **Las Vegas sometimes, to speak to the paranoia, as you**
4 **were talking about.**
5 Q. And we know that sometimes when things go into
6 the media, they become viral and they get a life of
7 their own. There's a police captain case that we have
8 that --
9 **MS. MASTERS:** Irrelevant.
10 **BY CHAIRMAN LARSON:**
11 Q. -- I won't go into.
12 But could you appreciate that the District, the
13 **Union** -- not the District, Scott -- the Union might have
14 a difficult time explaining to the media the fact that
15 they were paying you your sick leave and you were
16 drawing your hourly rate of, you know, 80 hours per pay
17 period and getting a check, and meanwhile you were
18 getting relocated and working in Seattle?
19 **A. I think it probably was very difficult. But I**
20 **also think that had Augspurger not made those**
21 **statements, there wouldn't have been articles. I mean,**
22 **they seem to be based on his statements and information**
23 **that either came from him or came from his office or**
24 **came from CCSD legal. I mean, the resignation and the**
25 **sick leave usage was nobody's business.**

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1 **CHAIRMAN LARSON:** Okay. I have no further
2 questions.
3 Any additional questions from the Board?
4 **MR. ECKERSLEY:** Yeah. Was your retirement an
5 early medical retirement?
6 **THE WITNESS:** No.
7 **CHAIRMAN LARSON:** Any questions from either of
8 you?
9 **MR. HATFIELD:** No. But I think you brought up a
10 good point, Mr. Larson, and I'd like to make a motion
11 here. Perhaps we can get back a little on track here
12 regarding the scope of what this hearing is about and
13 this arbitration.
14 We were instructed at the beginning of it, it
15 was pertaining specifically to the issue of whether the
16 Union failed to represent Ms. Tollen. It was not to go
17 into what CCSD did or did not do, what Ms. Tollen's
18 meritorious defense is, or lack thereof, or -- there's
19 been a tremendous amount of clutter in this case. I'd
20 like this arbitration to please focus on that issue and
21 we'd like to eliminate the admonition or re-admonition,
22 as far as that, sir. And that's what we'd like to move
23 for.
24 Perhaps there's a response, but we'd like to
25 have it pretty limited to comply with what your original

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1 holding was regarding the scope of this arbitration,
2 sir.
3 **CHAIRMAN LARSON:** When we deliberate, we will,
4 in fact, do that.
5 **MR. HATFIELD:** Exactly. Thank you very much,
6 sir.
7 **MS. MASTERS:** And your briefs will carry that
8 information.
9 **MR. HATFIELD:** Very, very strategic and very
10 specific, yes, ma'am.
11 **CHAIRMAN LARSON:** Mr. Segal?
12 **MR. SEGAL:** I would have loved that to have been
13 how these proceedings went, but they didn't.
14 Nothing further.
15 **CHAIRMAN LARSON:** Okay. Then, with that,
16 Ms. Tollen, you may be excused.
17 **MR. ECKERSLEY:** Hold on. Do they have any other
18 questions? Do they have follow-up?
19 **CHAIRMAN LARSON:** No. They've indicated that
20 they don't.
21 Okay. You may be excused as a witness.
22 **THE WITNESS:** Thank you.
23 **CHAIRMAN LARSON:** And why don't we break for
24 lunch. Is 75 minutes adequate? Can you be back here at
25 1 o'clock?

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1 **MR. HATFIELD:** That's very generous, sir. Thank
2 you. We'll be back at 1 o'clock.
3 **CHAIRMAN LARSON:** We're off the record.
4 (Lunch recess taken.)
5 **CHAIRMAN LARSON:** All right. Let's reconvene
6 the EMRB of February 10th and go back on the record.
7 We're on Item No. 4, Case 2015-001.
8 Mr. Segal, your witness.
9 **MR. SEGAL:** Thank you. CCASA calls Stephen
10 Augspurger.
11 **CHAIRMAN LARSON:** The court reporter will swear
12 you in, Mr. Augspurger.
13
14 **STEPHEN AUGSPURGER,**
15 **having been first duly sworn to testify to the truth,**
16 **the whole truth, and nothing but the truth, was examined**
17 **and testified as follows:**
18 **DIRECT EXAMINATION**
19 **BY MR. SEGAL:**
20 Q. Would you please state your full name and spell
21 the last name for the record.
22 **A. Stephen Augspurger. Last name is spelled**
23 **A-u-g-s-p-u-r-g-e-r.**
24 Q. And could you please tell us what your current
25 employment position is?

1 **A. Current employment is Executive Director of the**
2 **Clark County Association of School Administrators and**
3 **Professional-Technical Employees.**

4 Q. And can you provide the Board with a history of
5 all your positions with CCASA that you've held?

6 **A. I was first employed there in 2000 as the Deputy**
7 **Executive Director. I served in that position for two**
8 **years, so since 2004 I've been Executive Director.**

9 Q. Where were you employed before CCASA?

10 **A. Before that I was an employee of the Clark**
11 **County School District for 30 years.**

12 Q. And could you explain to the Board what
13 positions you held during that time?

14 **A. I was a teacher for five years, and then had a**
15 **number of school-based administrative positions; Dean,**
16 **Assistant Principal, and Principal -- I was actually a**
17 **Principal for 15 years. And the last four years that I**
18 **worked for the School District, I was an Area**
19 **Superintendent.**

20 Q. In your current position are you familiar with
21 the CCASA CBA we've been discussing throughout this
22 hearing?

23 **A. I am.**

24 Q. And I assume you've had occasion to read it?

25 **A. Many times.**

1 **would attend that meeting with them and offer assistance**
2 **and advice during that meeting. Our goal is not to keep**
3 **them from being in trouble. If they've done something**
4 **that's been wrong, our goal is to make they're treated**
5 **fairly under our contract.**

6 Q. Now, have there been occasions over the years
7 where those conferences have occurred without the Union
8 representatives?

9 **A. Never.**

10 Q. I'm sorry, without a Union representative?

11 **A. We've never had a con- -- well, let me take that**
12 **back. CCASA only becomes involved if the Union -- or if**
13 **the member seeks our assistance. So it's highly**
14 **possible a member could go to a conference without Union**
15 **representation.**

16 Q. And here's the question I think you heard when I
17 said the last one: Would such an interview ever occur
18 without the employee there?

19 **A. Never.**

20 Q. And why would that not occur?

21 **A. I think the contract's clear. The investigatory**
22 **interview is conducted by the supervisor. It is not a**
23 **discussion. It's an interrogation, it's questions. The**
24 **employee has to be there. The District wouldn't hold it**
25 **if the employee was not.**

1 Q. What would you estimate the times are that
2 you've read through that agreement?

3 **A. How many times, did you say?**

4 Q. Yes.

5 **A. Gosh, I don't even know. I would think -- I**
6 **mean, if I -- as a employee and then as a -- an employee**
7 **of the School District and an employee of CCASA, we live**
8 **by the contract, so 50, 60 times, maybe.**

9 Q. Okay. Are you familiar with its provisions
10 regarding investigatory interviews?

11 **A. I am.**

12 Q. And are you familiar with CCASA's procedures on
13 dealing with investigatory interviews?

14 **A. Yes.**

15 Q. Could you explain both what the investigatory
16 interview is and what CCASA's process is for handling
17 them?

18 **A. The investigatory interview is outlined in**
19 **Article 28. It's the provision that if a supervisor**
20 **believes that there's been wrongdoing on the part of an**
21 **employee that could lead to discipline, they are**
22 **required under our contract to issue the day before**
23 **notice.**

24 **The protocols for that would be typically that**
25 **person would come to us for assistance and advice. We**

1 Q. Are you aware that there came a point in time
2 when Bramby Tollen received a notice of investigatory
3 interview pertinent to this case?

4 **A. I was aware of that.**

5 Q. And what role, if any, did you play in handling
6 that investigatory interview?

7 **A. The only role I played was my assistant, Bill**
8 **Garis, came to me and said Ms. Tollen had been noticed**
9 **for an investigatory conference. He had had a**
10 **conversation with her. She requested of him to have a**
11 **conversation with the District, Staci Vesneske, to see**
12 **if the conference could be vacated if she turned in a**
13 **retirement resignation form.**

14 Q. And did you learn that information in a
15 conversation with Bill Garis?

16 **A. I did.**

17 Q. And after that, did you have any further
18 involvement with that investigatory interview?

19 **A. I did not.**

20 Q. Did you have any involvement with any events
21 that ultimately led to Bramby Tollen's resignation?

22 **A. I did not.**

23 Q. Among the provisions of the labor agreement you
24 discussed, are there ones concerning discipline of
25 administrators?

1 A. There are.

2 Q. And to what extent are you familiar with those
3 provisions?

4 A. I am familiar with an Article 27.

5 Q. And what are the different types of discipline
6 that are provided in that agreement?

7 A. There are multiple steps. The first step would
8 be an oral warning, the second step would be an oral
9 warning conference summary, the third step would be a
10 written warning, and then an admonition, admonition
11 suspension, the motion, dismissal, or not renewal.

12 Q. And as to a written warning, are there specific
13 contents and procedures that are required for the
14 District to issue such a warning?

15 A. There are.

16 Q. Could you open the large binder of joint
17 exhibits and first look at Exhibit 31 for me?

18 A. Exhibit 31?

19 Q. Yes. It should be a September 3rd letter, 2014.

20 A. Yes.

21 Q. Please take a look at that document. And when
22 you're done, my question is: Is it your opinion that
23 this constitute a written warning under the CCASA CBA?

24 A. It does not constitute a written warning, nor
25 could it be put in a personnel file substituting for a

1 information, you'd have a stamp that would put
2 "confidential" on it. Would a piece of paper like
3 you're talking about have some kind of a heading on it
4 that said what it was?

5 THE WITNESS: Yeah. It would be on a District
6 form. They specify the form by name. It's a personnel
7 notification, and you must identify the disciplinary
8 document that you're writing, or a warning conference
9 summary, written warning, admonition.

10 MS. MASTERS: That's what I wanted to know.
11 Thank you.

12 BY MR. SEGAL:

13 Q. Would you also please turn to Exhibit 32, and I
14 have essentially the same questions on this document.
15 Is this a written warning under the CCASA CBA and, if
16 not, why do you say that?

17 A. It is not, because it doesn't meet the terms in
18 our contract to be determined or characterized as a
19 disciplinary document.

20 Q. Did there come a time when Bramby Tollen called
21 you with concerns about a job transfer she had
22 experienced?

23 A. Yes.

24 Q. Do I remember when that call took place?

25 A. I think it was a few days from when I became

1 disciplinary document.

2 Q. And why are you so sure?

3 MS. MASTERS: Excuse me. While you're answering
4 the questions, would you look this way --

5 THE WITNESS: Sure.

6 MS. MASTERS: -- not that way?

7 THE WITNESS: I'm happy to.

8 MS. MASTERS: Thank you.

9 BY MR. SEGAL:

10 Q. And why do you have the opinion that this could
11 not be a written request warning under the CCASA CBA?

12 A. Under the CCASA agreement, there are certain
13 documents that can go in a personnel file. We spell
14 those out in our contract; any disciplinary document or
15 employment documents can be placed in the personnel
16 file. For a document to go in the file, it must be
17 signed by the recipient. It doesn't mean they agree
18 with it; it just means that they received it.

19 And we have very specific procedures in some of
20 those disciplinary documents that have to be met for it
21 to constitute, let's say, a written warning.

22 MS. MASTERS: I'm going to ask you a question at
23 this point. If you are to generate a piece of paper
24 like that, is there, like, a highlight that -- like if
25 you were going to have a piece of confidential

1 aware that she'd actually been transferred.

2 Q. And to your best ability and your memory,
3 describe to the Board the contents of that call, what
4 she said to you and what you said to her.

5 A. As I recall that conversation, Ms. Tollen
6 indicated to me that she'd been transferred. She said
7 that she was transferred as a part of a reorganization.
8 I explained to her that the District had not informed me
9 that there had been any --

10 Q. You might want to slow down a little bit.

11 A. Yeah.

12 Q. I know you know this, but --

13 A. The District had not informed me that there had
14 been any effort to reorganize. I explained to
15 Ms. Tollen -- she did ask me if we would grieve it. I
16 explained to her that transfer was not a topic of
17 mandatory bargaining under our administrative contract.
18 If you go to 288.150 where the mandatory topics are
19 listed, a transfer is clearly identified as a mandatory
20 topic for only teachers, not administrators.

21 So it's not actionable under our contract. She
22 simply said she didn't like the transfer. But we have
23 1,332 administrators in the Clark County School
24 District, I would say there's not a week that goes by
25 that somebody isn't transferred from Job A to Job B.

1 Q. And did you tell her one way or the other as to
2 whether CCASA would file a grievance on her behalf?

3 **A. I was very clear to Ms. Tollen, indicating that**
4 **we would not file a grievance on her behalf because**
5 **of -- on her behalf because it was not actionable under**
6 **the contract.**

7 Q. I'd like you to look next at Exhibit 7 in the
8 large binder. Is Exhibit 7 a letter that you received?

9 **A. It is.**

10 Q. And did you receive it before or after Bramby
11 Tollen resigned?

12 **A. Bramby Tollen resigned on August 29th. I**
13 **received this letter on September 11th, 2014.**

14 Q. Okay. And do you have an opinion as to whether
15 on September 11th, 2014, Bramby Tollen was still part of
16 the CCASA bargaining unit?

17 **A. She was no longer a part of our bargaining unit**
18 **effective the date of her resignation.**

19 Q. Did you nevertheless take a look at this letter
20 and review its contents?

21 **A. I did. I read this letter carefully, reviewed**
22 **its contents, reviewed its request, and measured it**
23 **against our contract, our policy for legal assistance to**
24 **non-members, measured it against our own whistleblower**
25 **policy. I was completely confused about why we received**

1 the question.

2 **CHAIRMAN LARSON:** Do you want to try that again?

3 **MR. SEGAL:** Let me rephrase.

4 **BY MR. SEGAL:**

5 Q. After your discussion with me as counsel, did --
6 what did you do or not do with regard to this letter?

7 **A. Reached a determination that there was no**
8 **additional action necessary --**

9 **MR. HATFIELD:** Objection; nonresponsive.

10 **THE WITNESS:** -- no response was necessary.

11 **CHAIRMAN LARSON:** What was your objection?

12 **MR. HATFIELD:** I believe it was nonresponsive.

13 What did you do or not do, and he started talking about,

14 Well, this is my strategy, my training --

15 **MR. SEGAL:** No. No. He said I reached --

16 **MR. HATFIELD:** -- that I really wanted to go

17 into --

18 **MR. SEGAL:** -- a conclusion on --

19 **THE REPORTER:** One at a time.

20 **CHAIRMAN LARSON:** Wait. Wait. Hold on.

21 **MR. HATFIELD:** He's talking over me.

22 **MR. SEGAL:** Sorry.

23 **CHAIRMAN LARSON:** Yeah, let's -- let's start out

24 with the question or perhaps a rephrasing of the

25 question once again.

1 **this letter. It made no sense. I contacted Mr. Segal,**
2 **the CCASA attorney --**

3 Q. Let me just admonish you not to discuss any
4 direction or advice I actually gave you, but --

5 **A. Correct.**

6 Q. -- you can continue other than that.

7 **A. I just had a discussion with Mr. Segal regarding**
8 **the nature of the letter.**

9 Q. And is there any doubt in your mind that this
10 letter is a request for whistleblower status?

11 **A. It is a request for whistleblower status.**

12 Q. And I think you alluded to the fact that you
13 conferred with counsel, meaning me, is that right?

14 **A. That is correct.**

15 Q. Following conferring with counsel, did you make
16 a determination that you were not obligated to send a
17 response to this whistleblower request?

18 **A. I did --**

19 **MR. HATFIELD:** I object to the form of the
20 question. I think it's leading.

21 **THE WITNESS:** I spent a lot of time --

22 **MR. SEGAL:** Hang on a second.

23 **CHAIRMAN LARSON:** Hold on. Do you want to
24 respond?

25 **MR. SEGAL:** I'm trying to remember how I phrased

1 **BY MR. SEGAL:**

2 Q. Okay. After you consulted with me as CCASA
3 counsel, did you make a determination -- what did you
4 determine to do in response to this letter?

5 **A. I made a determination that there was no**
6 **additional action required.**

7 Q. And to this date, has Bramby Tollen filed any
8 State Court whistleblower actions against CCASA?

9 **A. She has not.**

10 Q. You're aware, are you not, that whistleblower
11 issues don't arise under Chapter 288 of NRS?

12 **A. I am aware of that.**

13 Q. Did CCASA ever -- does CCASA ever issue press
14 releases on any topic?

15 **A. In the 15 years I've worked at CCASA, we've**
16 **never released a press release.**

17 Q. Did CCASA ever release a press release regarding
18 Bramby Tollen?

19 **A. CCASA did not.**

20 Q. Did CCASA ever initiate any contact with any
21 members of the press regarding Bramby Tollen?

22 **A. No.**

23 Q. Did there come a time, however, that CCASA
24 received press inquires about Bramby Tollen?

25 **A. Yes.**

1 Q. And just so you know, we're going to talk about
2 some newspaper articles at Tab 42. If you want to get
3 to that point.

4 **A. Same book?**

5 Q. Yeah, in the large book.

6 **CHAIRMAN LARSON:** Was CCASA aware of any third
7 party issuing press releases in advance about Bramby
8 Tollen?

9 **THE WITNESS:** No.

10 **CHAIRMAN LARSON:** Okay. It never came to your
11 attention?

12 **THE WITNESS:** No.

13 **BY MR. SEGAL:**

14 Q. Does CCASA ever issue a press release on any
15 matter?

16 **A. We never have issued a press release.**

17 Q. Did there come a time when you received some
18 press inquiries about Bramby Tollen?

19 **A. Yes.**

20 Q. Do you remember when that was?

21 **A. It was September 3rd, maybe September 4th. I**
22 **received two inquiries, one on -- different days.**

23 Q. Okay. Tell the Board about the first one, what
24 was asked of you and what you responded?

25 **A. I believe the first one was from Karen Gray, who**

1 Q. And in general, was the manner in which you were
2 quoted accurate to what you said?

3 **A. It was.**

4 Q. Over the years, how many times have you been
5 contacted by members of the media regarding CCASA
6 business?

7 **A. Frequently. I wouldn't know how to quantify it,**
8 **but a lot. We're in a profession that's highly visible,**
9 **many of our members are public figures.**

10 Q. Would you say it's been more than 20 times over
11 your years at CCASA?

12 **A. I would say probably more than 50 times.**

13 Q. And do you have any policy or standard procedure
14 that you follow for dealing with media inquiries?

15 **A. Well, first of all, I don't like to have them.**

16 **Who does? But I think the standard policy would be we**
17 **never take an approach where we have no comment. We are**
18 **very public. Of our 1,300 members, 922 of them work in**
19 **schools with children and parents. Everyone receives**
20 **their paycheck from the taxpayer, and so we're mindful**
21 **of making sure that we're completely transparent with**
22 **the public.**

23 **Now, we're cautious with what we say, but we**
24 **don't shy away from a problem, because we have to**
25 **interpret our contract.**

1 **was a reporter for NPI -- NPRI. She told me that she**
2 **was aware that Bramby Tollen was working full time in**
3 **Snohomish County while she was on the payroll for the**
4 **Clark County School District, and that there was a**
5 **question about her use of leave, specifically Family**
6 **Medical Leave. She asked me questions about our**
7 **contract, and I interpreted the contract for her.**

8 Q. Did you ultimately see an article that she wrote
9 as a result, or at least after that conversation?

10 **A. I did.**

11 Q. And perhaps not verbatim, but in general, was
12 the manner in which you were quoted in that article
13 accurate to the statements you made?

14 **A. It was.**

15 Q. And what was the second instance where you were
16 approached by somebody in the media?

17 **A. The second instance was Trevon Milliard from the**
18 **Review-Journal, and his questions were pretty much**
19 **identical to Karen Gray's. He was aware of the -- what**
20 **he characterized it as double-dipping, working in two**
21 **places while she was on paid leave from the Clark County**
22 **School District and, again, asking questions about that.**

23 Q. And did you also review the article that
24 followed from that conversation?

25 **A. I did review that article.**

1 Q. Did you feel that that's important to respond to
2 those requests as opposed to, for example, saying "No
3 comment"?

4 **A. I do think it's important to respond to those**
5 **requests, to take them head-on.**

6 Q. And why is that important from the perspective
7 of CCASA to respond to media requests?

8 **A. I think when you think about public employees in**
9 **general, people tend to not like public employees. They**
10 **think they're overpaid, they don't work hard, they have**
11 **great benefits. And I think sometimes when you get to**
12 **administration, it's even there are too many of them,**
13 **nobody has enough work to do. So I'm always mindful**
14 **with the negative public perception, so I don't shy away**
15 **from those questions.**

16 **We have made it as clear as we can to our**
17 **membership, and we've done this for decades, that our**
18 **role is not to keep you from being in trouble. If you**
19 **do something that is in violation of the law, in**
20 **violation of our contract, we would expect that you be**
21 **treated accordingly. We're going to make sure that**
22 **you're treated fairly, but we're not here to keep you**
23 **from being disciplined.**

24 **So I think any time you're looking at issues**
25 **that involve the taxpayer dollar, you have to be**

1 transparent with that.

2 Q. Shifting gears somewhat, there's been
3 conversation throughout these proceedings about some --
4 what I refer to as revised medical opinions -- regarding
5 Bramby Tollen, some letters that some doctors generated,
6 and there's been an implication put on the record that
7 they were at some point sent to you. Did you, in fact,
8 ever receive any of those medical opinion letters or see
9 them prior to these proceedings?

10 A. We received none of those letters. And, in
11 fact, yesterday when the comment was made that they had
12 received them, that was the first time there was any
13 indication made to me that they had been sent to us.

14 Q. As you sit here today, with regards to Bramby
15 Tollen, is there anything that you believe CCASA was
16 required to do to provide by way of representation to
17 her that has not been provided?

18 A. I think we've done exactly what Bramby Tollen
19 asked us to do.

20 MR. SEGAL: Thank you. No further questions.

21 CHAIRMAN LARSON: Mr. Hatfield?

22 MR. HATFIELD: Yes.

23 CROSS-EXAMINATION

24 BY MR. HATFIELD:

25 Q. Mr. Augspurger, you testified that you're an

1 BY MR. HATFIELD:

2 Q. I'm asking this as a direction of the
3 reporter --

4 A. Yeah.

5 Q. -- when you were testifying, so she can pick up
6 what you were saying, sir.

7 A. What was your question?

8 Q. You were answering what is not mandatory by the
9 CBA, and you were going into an explanation and you were
10 referring to a section in the CBA.

11 A. You can, in bargaining, discuss topics that are
12 non-mandatory. In fact, the employer must have that
13 discussion with you. But they don't have to negotiate
14 those non-mandatory topics.

15 Q. Is the topic of whistleblowers and the procedure
16 whereby you might respond to a whistleblower's
17 complaint, is that separate and apart from the CBA?

18 A. We have no provision for whistleblower
19 protection in our CBA.

20 Q. Was there any whistleblower section afforded to
21 Bramby Tollen as a member or former member of the Union?

22 MR. SEGAL: I'm just going to object as to
23 relevance here. And really the reason it's not relevant
24 has to do with this Board's jurisdiction, which is
25 described as dealing with disputes on matters arising

1 expert on the CBA, the contract that applies with the
2 administrators and the Union; is that correct?

3 A. I've testified I've read it many times.

4 Q. Over 50, 60 times; is that correct?

5 A. Yes.

6 Q. Okay. A mandatory subject of the CBA includes
7 bargaining out of wages; is that correct?

8 A. That's a mandatory topic.

9 Q. Mandatory topic. How about benefits? Is that
10 also a mandatory topic?

11 A. I'm sure benefits are a mandatory topic, as
12 well.

13 Q. Working conditions?

14 A. Working conditions.

15 Q. Okay. Everything is not mandatory; is that
16 correct?

17 A. Well, we'd have to go to 288.150 to look at it.
18 It's a long list of --

19 THE REPORTER: I'm sorry, you have to go to
20 where?

21 (Discussion held off the record.)

22 BY MR. HATFIELD:

23 Q. Let the court reporter catch up, sir. I'll ask
24 you to stop.

25 (Discussion held off the record.)

1 out of 288 of the NRS. The whistleblower statute both
2 for public employees and private employees are
3 maintained elsewhere in the NRS. I don't think there's
4 any way this Board can weigh in on the argument --

5 MR. HATFIELD: It appears --

6 MR. SEGAL: Can I finish? Can I finish? I
7 don't think there's any way this Board can weigh in on
8 whether whistleblower matters were handled correctly or
9 incorrectly by any entity, including CCASA. So for that
10 reason, this line of questioning is irrelevant.

11 CHAIRMAN LARSON: We don't have any jurisdiction
12 over whistleblowing.

13 (Discussion held off the record.)

14 MR. HATFIELD: That says to the argument that
15 there is no jurisdiction here. Our argument would be
16 that, yes, there is a provision for whistleblower
17 protection, and that Mr. Augspurger is the Executive
18 Director regarding those issues, that he needs to be
19 apprised, he needs to be, as Director of that.

20 And my actual question was to try to follow up
21 with what his role would be and if Ms. Tollen would be
22 afforded protection by the Union for whistleblower
23 activities and issues.

24 MR. SNYDER: Can you give a reference in the
25 NRS as to where the whistleblower statute is?

1 **MR. HATFIELD:** My reference would be Exhibit
2 Tab 43. There appears to be provisions regarding
3 whistleblower protections, procedures, how one goes
4 about it. There's a policy there.
5 **MR. SNYDER:** Hang on.
6 **MR. SEGAL:** NRS 613.340 is the whistleblower
7 statute in Nevada that applies to labor unions.
8 Exhibit 43 is an internal document of CCASA.
9 **MR. ECKERSLEY:** It's not part of the CBA?
10 **MR. SEGAL:** It is not.
11 **MR. HATFIELD:** It may be separate and apart, but
12 that's a question we need to have answered. And we
13 believe that to be pertinent. And if the answer is, no,
14 it's separate and apart, Bramby Tollen doesn't apply,
15 then we're seeking to have that answer today.
16 **MR. SNYDER:** All I can advise the Board is that
17 your authority is only under NRS 288. You can't --
18 we've had issues in the past, for example, where people
19 have wanted this Board to interpret the --
20 **CHAIRMAN LARSON:** NRS 289, 391.
21 **MR. SNYDER:** Yeah, 289 for peace officers, and
22 you can't do that.
23 **MS. MASTERS:** Right.
24 **MR. SNYDER:** You can only provide cases under
25 288, because there's obviously other forums where other

1 apprising her that there's nothing that the Union could
2 do for her regarding the transfer?
3 **A. Yes.**
4 **Q.** Did she relate any displeasure with her transfer
5 to you in the course of that conversation about her
6 transfer?
7 **A. She told me she didn't like the transfer. When**
8 **she told me that, I then raised the issue of an e-mail**
9 **that I had been provided that actually characterized the**
10 **transfer as a new opportunity, looking forward to it, it**
11 **will be a strategic partner with Staci Vesneske. I'm**
12 **paraphrasing, but that's pretty much what it said.**
13 **Q.** Did that e-mail have any bearing upon your
14 decision to inform her that there was not much that you
15 could do for her -- really, there was nothing that you
16 could do for her regarding her transfer?
17 **A. The facts which had bearing on my decision were,**
18 **number one, transfer is not a topic of mandatory**
19 **bargaining. We had no provision in our contract to deal**
20 **with someone who is concerned about a transfer that**
21 **occurs. And as I said a few minutes ago, we have scores**
22 **of people every year that are transferred from**
23 **Position A to Position B.**
24 **Further, she said to me in that telephone call**
25 **that she wanted to invoke that portion of our contract**

1 claims can be made. So if you believe that this is not
2 a 288 item, then it would not be relevant.
3 **CHAIRMAN LARSON:** Mr. Hatfield, with all due
4 respect, this is -- you know, this is between CCASA and
5 the employees, and we're -- we don't have jurisdiction
6 over whistleblowing status.
7 **MR. HATFIELD:** Understood, sir, yes.
8 **CHAIRMAN LARSON:** Just as we don't have
9 whistleblower -- I mean, we don't have jurisdiction over
10 289 -- police, sheriff -- nor 391, 392, post
11 probationary and probationary teachers.
12 **BY MR. HATFIELD:**
13 **Q.** I understand, Mr. Augspurger, is that your first
14 conversation with Ms. Tollen after she had been
15 transferred to the Human Resources position was right
16 around April 1 or so, 2014? Would you disagree with
17 that?
18 **A. I wouldn't disagree.**
19 **Q.** Do you recall if she had called you on your cell
20 phone during a weekend to bring up the issue with regard
21 to the transfer?
22 **A. I do not recall her calling me on my cell phone**
23 **on a weekend.**
24 **Q.** Do you recall having a telephone conversation
25 with her on or about the 2nd or 3rd of April and then

1 **that gave her the three-year protection to stay in her**
2 **position. And I explained to Bramby that that portion**
3 **of our contract applies only to school-based principals.**
4 **And the reason that's in the contract is to create**
5 **stability in a school so that we don't have people being**
6 **moved because of a salary issue and ping-ponging back**
7 **and forth between schools. So it had no relevance at**
8 **all to a central office administrator.**
9 **So those were the two things that I focused on.**
10 **It was confusing to hear her say that she can't like the**
11 **transfer but yet still wrote an e-mail that was**
12 **published saying that she did.**
13 **Q.** Well, did you ask her to explain what her e-mail
14 meant, or did you even get that far in the
15 conversations?
16 **A. She didn't offer; I didn't ask.**
17 **Q.** Fair enough. Ms. Tollen had a conversation with
18 Mr. Garis in May of 2014 about general things, including
19 issues of harassment in the workplace and displeasure
20 when working in Human Resource and some other issues.
21 Are you aware of that?
22 **A. I am aware of that.**
23 **Q.** Are you aware that Mr. Garis advised her to
24 bring any issues that she might have to Mr. Cedric Cole
25 at the Office of Diversity? And I use that term

1 loosely. You understand who I'm talking about; correct?
2 **A. That would be a standard protocol for CCASA**
3 **because harassment, bullying, and the like, are not**
4 **actionable under our contract. Those would always be**
5 **referred to the Affirmative Action Office. And if**
6 **that's what Mr. Garis gave direction to do, he did**
7 **exactly what he should have done.**
8 Q. Mr. Garis also referred Bramby to potentially
9 filing a charge of discrimination with the EEOC. Do you
10 understand that?
11 **A. Yes.**
12 **MR. SEGAL:** I'm just going to object that that
13 lacks foundation. I don't think the evidence shows that
14 it came from Bill Garis.
15 But you can answer, if you can.
16 **CHAIRMAN LARSON:** Well, okay, hold on. We have
17 an objection.
18 You're saying you don't object to your witness
19 answering the question?
20 **MR. SEGAL:** Well, I'll -- I don't think it
21 matters. I'll withdraw it. I don't think it makes any
22 difference.
23 **CHAIRMAN LARSON:** Okay.
24 **BY MR. HATFIELD:**
25 Q. I'll represent to you that Mr. Garis in his

1 conversation that he had with her in May of 2014; yes?
2 **A. Mr. Garis talked to me.**
3 Q. Yes. Now, my representations to you would be
4 that Ms. Tollen began working for Snohomish County in
5 Washington in Purchasing on June 13th, 2014. Is that
6 your understanding?
7 **A. I mean, that's --**
8 **MR. SEGAL:** I'm just going to object that that
9 calls for speculation.
10 **CHAIRMAN LARSON:** Well, take him -- do you want
11 to take him to the exhibit?
12 **MR. HATFIELD:** No.
13 **BY MR. HATFIELD:**
14 Q. Are you going to disagree with me when I
15 represent to you that Ms. Tollen began working in
16 Snohomish County in Washington in Purchasing on
17 June 13th of 2014?
18 **A. Let me respond to that question this way --**
19 Q. Sure.
20 **A. -- I'm only aware that that occurred as a result**
21 **of all of the transactions and discussions that have**
22 **occurred through this lengthy process; not just here,**
23 **but other hearings as well. I had no knowledge that**
24 **that's where she went on June 13th.**
25 Q. Did you have any knowledge prior to her

1 notes say that he referred Bramby to the EEOC, the Equal
2 Employment Opportunity Commission, for perhaps further
3 inquiry into issues of bullying and harassment, at that
4 point in time in May of 2014. You don't have any reason
5 to dispute Mr. Garis' notes and his testimony that he
6 provided?
7 **A. I don't know whether he did or did not, but that**
8 **would be a discussion that we have had from time to time**
9 **equal to people who wanted an additional option to**
10 **express their concern about bullying and harassment.**
11 Q. Now, did Mr. Garis at that point in time, from
12 May of 2014, apprise you that Ms. Tollen had come back
13 to him and had raised issues of problems in the
14 workplace, bullying, harassment, these kinds of issues,
15 and that he had referred her to perhaps going to
16 either the Office of Diversity or to the EEOC?
17 **A. Mr. Garis told me that he had referred her to**
18 **the Affirmative Action Office.**
19 Q. And that was because of the May 2014
20 conversation that Bramby had with Mr. Garis; correct?
21 **A. It was because she expressed to him concerns**
22 **about harassment and bullying, which are not actionable**
23 **under our contract.**
24 Q. Right. He talked to her -- or she talked to
25 him, rather, and then Mr. Garis talked to you about that

1 receiving notice to appear at an investigatory hearing
2 regarding her working in Snohomish County while on FML?
3 **A. No.**
4 Q. And my understanding is that the notice was sent
5 on or about August 28th, 2014?
6 **A. Right.**
7 Q. My understanding is that the investigatory
8 hearing was set to be heard right about September 2,
9 2014 originally?
10 **A. Yes.**
11 Q. If you know or not?
12 **A. Yes.**
13 Q. Would you disagree with me?
14 **A. No. There was a notice given that stipulated an**
15 **investigatory conference was going to be held.**
16 Q. Is it your understanding that Mr. Garis could
17 not attend the hearing as was originally noticed?
18 **A. We're a busy office. Many times we can't attend**
19 **the conference as it's originally noticed and we request**
20 **a new date for that conference.**
21 Q. I'm not critical of that.
22 **A. That was my understanding.**
23 Q. People are very busy. I understand. Originally
24 when it was noticed, Mr. Garis could not attend that
25 investigatory hearing; is that your understanding?

1 A. That is.
2 Q. The topic of the investigatory hearing was
3 Ms. Tollen's alleged abuse of FML; correct?
4 A. I'd have look at the notice to have the specific
5 content. If you want me to look at it, I'd be happy to
6 do that.
7 Q. We can certainly do that, if you'd like to look
8 at the notice.
9 A. I don't need to. It dealt with her use of sick
10 leave and FML, I believe.
11 Q. The topic was alleged use or abuse, I believe,
12 of FML; correct?
13 A. Correct.
14 Q. My understanding is that there was a question
15 that CCSD had whether her absence from work at CCSD was
16 truly unavoidable. And that was maybe a little bit
17 specific -- not to put too fine of a point on it -- but
18 that was more of a specific issue regarding Ms. Tollen
19 and the notice for the investigative hearing; correct?
20 A. I only know what was on the investigatory notice
21 at the time. I didn't talk with anybody from CCSD, I
22 didn't get any additional information from CCSD.
23 Q. So you really didn't know any of the background
24 regarding the investigatory hearing; is that correct?
25 A. When we first got the notice, no.

1 the investigatory conference?
2 Mr. Garis, according to what he told me, said to
3 Ms. Tollen, I will check with Staci Vesneske. If she's
4 in agreement, I'll give you a call back. That's exactly
5 what happened. Vesneske was in agreement. Mr. Garis
6 called Ms. Tollen back, explained that to her, and said,
7 If you download and sign the CCF 164, which is the
8 retirement resignation form, and fax it to me today,
9 that will bring closer to this issue.
10 Q. So there was an agreement, was there not, that
11 if Ms. Tollen provided the CCF 160 (sic) form, the
12 investigatory hearing would be cancelled and there
13 wouldn't be any further hearing; correct?
14 A. That is correct.
15 Q. Now, Ms. Vesneske was Human Resources Chief at
16 CCSD at the time Ms. Tollen was noticed to appear at the
17 investigatory hearing; is that right?
18 A. That is correct.
19 Q. And it was Ms. Vesneske who noticed the
20 investigatory hearing and was the representative of CCSD
21 who would be conducting the investigatory hearing if it
22 would be going forward; is that correct?
23 A. That is correct.
24 Q. And the reason why the investigatory hearing did
25 not go forward is because Ms. Tollen signed the CCF 164

1 Q. Did the notice come into your office?
2 A. The notice went to Bramby.
3 Q. The notice went to Bramby. Bramby notified
4 Mr. Garis; correct?
5 A. Correct.
6 Q. Did Bramby notify you and then the notice was
7 passed down to Mr. Garis, or how did that come about
8 whereby Mr. Garis came to be assigned, if you will, for
9 lack of a better word, to represent Ms. Tollen?
10 A. Mr. Garis wasn't assigned. Bramby called him
11 directly.
12 Q. Did Mr. Garis then inform you about the nature
13 of Bramby's call?
14 A. He did.
15 Q. Did Mr. Garis -- sorry. What did Mr. Garis tell
16 you was the subject of Ms. Tollen's call?
17 A. Mr. Garis told me that Bramby Tollen had
18 contacted him regarding the notice. She expressed
19 concern about the notice, stated over and over again
20 that nothing in the notice was true, that she had not
21 misused sick leave, that she had not used Family Medical
22 Leave; but she was concerned about the investigatory
23 conference and asked Mr. Garis would there be any way
24 that we could not have the investigatory conference. If
25 I resign or retire, would the District agree to not hold

1 form which effectively was a resignation and retirement
2 from CCSD; is that right?
3 A. That is right.
4 Q. Now, do you, as Executive Director, supervise
5 Mr. Garis' representation of Union members that he might
6 be representing?
7 A. Do I supervise? I supervise Mr. Garis, but I
8 don't -- you're going to have to be more specific. I
9 don't know what you mean by that.
10 Q. I can certainly be more specific.
11 Specific as to the issues of Mr. Garis'
12 representation of Ms. Tollen before the investigatory
13 hearing issue and that notice to appear, did you have a
14 hands-on role as to what Mr. Garis would be doing for
15 her as a representative?
16 A. I did not. But we have established clear
17 protocols in our office. Our goal is to serve our
18 members. If we have a member who wants to resign or
19 retire, if they want to do that to avoid what they could
20 perceive could happen in a disciplinary conference, we
21 attempt to make that happen. And that's exactly what
22 Mr. Garis did.
23 That conversation was held with Staci Vesneske.
24 As a result of that, Bramby Tollen faxed a resignation
25 form, and Mr. Garis did what he said he would do; he

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1 **made sure that that form got to the District so that she**
2 **was done with the Clark County school.**
3 Q. Did you have any conversation with Mr. Garis
4 regarding the merits of Ms. Tollen's defenses or any of
5 those issues?
6 **A. Only to the extent that he told me that she said**
7 **none of this was true.**
8 Q. So not to belabor this, but in consideration for
9 submitting the form, the investigation was concluded; is
10 that correct?
11 **A. That's correct.**
12 Q. I believe you testified in your deposition that
13 Mr. Garis' representation was a mischaracterization that
14 you provided a service to Ms. Tollen regarding the
15 notice to appear at the investigatory hearing; correct?
16 **A. We believe it was a service.**
17 Q. And do you believe that he adequately
18 represented Ms. Tollen in regard to that notice for the
19 investigatory hearing?
20 **A. The request was, Is there any way --**
21 Q. No, Mr. Augspurger, I don't believe you're being
22 responsive to my question. Do you believe he was -- did
23 he adequately represent her?
24 **A. He was very adequate. The parameter was set as**
25 **a single goal, can we stop this investigation?**

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1 **Mr. Garis outlined a plan of attack, and to do that he**
2 **implemented it and notified Ms. Tollen that it was done.**
3 Q. Very good. Can you turn to Tab No. 2 in the
4 joint exhibits. Just let me know when you've reached
5 that and you've had a change to get familiar with that
6 document there.
7 **A. I have it.**
8 Q. Do you see that document as titled "The
9 Affidavit of Bill Garis"?
10 **A. Exhibit 2. I don't --**
11 Q. Exhibit No. 2, sir. Mr. Garis' affidavit;
12 correct?
13 **A. Right.**
14 Q. In Paragraph 4, the second -- the second
15 sentence states "Vesneske informed me that if Tollen
16 resigned, the investigatory meeting would not be
17 necessary and no disciplinary action against Tollen
18 would be pursued."
19 Is that an accurate understanding of what you
20 understand the resolution was regarding Ms. Tollen's
21 investigatory hearing?
22 **A. Very accurate.**
23 Q. So by virtue of the investigatory hearing being
24 cancelled, there was no hearing on the merits of the
25 allegations of Ms. Tollen's misuse of FML; correct?

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1 **MR. SEGAL:** I'm just going to object to the form
2 of the question in reference to a hearing. There's no
3 foundation for the concept that an investigatory
4 interview is a hearing. And that's just been worked
5 into the language here. It sounds innocuous, but there
6 may be some baggage attached to this that this is
7 somehow a hearing. Maybe we can ask or rephrase or get
8 a foundation on why this is --
9 **CHAIRMAN LARSON:** Well, we know she never
10 attended the hearing because -- the investigatory
11 hearing -- because it was cancelled because she took the
12 opportunity to resign and retire.
13 **MR. HATFIELD:** Yes. And we think that this is a
14 semantic argument here, which doesn't have any bearing
15 on this.
16 **BY MR. HATFIELD:**
17 Q. The question was, there was no hearing that went
18 forward because she had resigned and retired from CCSD;
19 correct?
20 **A. Correct.**
21 Q. So there was no hearing, therefore, on the
22 merits of the allegations of whether she had misused
23 FML; correct?
24 **A. At her request, the hearing was cancelled.**
25 Q. Yeah. There was no hearing. It was cancelled;

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1 correct?
2 **A. Yes.**
3 Q. Right. You stated in your deposition there was
4 a quid pro quo, if you will, regarding submitting the
5 CCF 164 form; correct?
6 **A. Do you have the deposition here so I could**
7 **look --**
8 Q. I'm just asking if you recall using the
9 phrase --
10 **A. I remember the phrase. I don't remember the**
11 **context it was used in. Can you be more specific for**
12 **me?**
13 Q. I'm just asking if you recall my using the
14 phrase quid pro quo here regarding --
15 **A. I remember the use of the phrase.**
16 Q. You don't remember the use of the phrase?
17 **A. I do remember the use of the phrase.**
18 Q. You do, okay. Can you tell me what the -- what
19 did you mean but the use of the phrase "quid pro quo"?
20 **A. If you could show me the deposition, that would**
21 **help with the context for me.**
22 **(Discussion held off the record.)**
23 **CHAIRMAN LARSON:** Can you take him through the
24 deposition?
25 **MR. SEGAL:** We object --

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1 **MR. HATFIELD:** We don't think that we have --
2 **MR. SEGAL:** May I be heard?
3 **CHAIRMAN LARSON:** Sure.
4 **MR. SEGAL:** We object to any use or introduction
5 or reference to the deposition that's not included on
6 the exhibit list, either contested or uncontested. This
7 is the first moment in the course of these proceedings
8 that we've ever learned that there would be any
9 discussion or reference to this document. It had to be
10 disclosed before today. This proceeding is almost over.
11 **MR. HATFIELD:** Let me just --
12 **CHAIRMAN LARSON:** Is the deposition the one
13 that's an exhibit here, or are you talking about
14 something else?
15 **MR. SEGAL:** He's talking about a different
16 exhibit --
17 **CHAIRMAN LARSON:** Okay.
18 **MR. SEGAL:** -- a different deposition that is
19 not an exhibit and has never been on an exhibit list.
20 **MR. HATFIELD:** I'll represent that his
21 deposition was taken. I don't believe we had a
22 deposition transcript at that time. But the point
23 here -- and I think he's being over labored -- we're not
24 asking for Mr. Augspurger to respond to a request under
25 duress seeking to impeach him. I'm simply asking if he

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1 recalled his testimony in the deposition format that he
2 said that there was a quid pro quo and that there was an
3 investigative hearing that was cancelled in
4 consideration for Ms. Tollen submitting this CCF 164
5 form.
6 I'm happy to withdraw the question. He already
7 testified in consideration for submitting the form the
8 investigation was cancelled.
9 **CHAIRMAN LARSON:** Okay, that's fine.
10 **BY MR. HATFIELD:**
11 Q. The time frame for this form being submitted
12 and, in response, the investigatory hearing being
13 cancelled was approximately late August of 2014; is that
14 correct?
15 **A. That's correct.**
16 Q. In early September, a few days later, you
17 provided commentary to the press regarding Ms. Tollen's
18 questions of using or abusing FML; correct?
19 **A. I provided comments to the press that were asked**
20 **to me to interpret our contract. How does your contract**
21 **work with respect to sick leave? How much sick leave do**
22 **administrators --**
23 Q. I have to cut you off, Mr. Augspurger; not
24 responsive to the question.
25 Is this strictly -- in early September is when

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1 you provided the commentary to the press; correct?
2 **A. That's correct.**
3 Q. I see the stories that were printed -- and
4 that's in Exhibit No. 42, if you'd like to refresh your
5 recollection or take a look at them. Those stories were
6 printed on September 3 and September 4, 2014; is that
7 right?
8 **A. That's right.**
9 Q. And then there appears to be a follow-up story
10 from --
11 **CHAIRMAN LARSON:** I thought you referenced
12 Exhibit 32?
13 **MR. HATFIELD:** No. 42, sir.
14 **MS. MASTERS:** He said 42. That's where the
15 stories are.
16 **MR. HATFIELD:** Just for the Board's
17 recollection, these are the stories by the press.
18 **CHAIRMAN LARSON:** Yes, right.
19 **BY MR. HATFIELD:**
20 Q. And, Mr. Augspurger, there was a follow-up story
21 that's printed in approximately September 6, 2014 from
22 some press in Washington State; correct?
23 **A. I believe that's correct.**
24 Q. Well, there is Page 175 within Exhibit No. 42,
25 if you'd like to take a look. At the top there appears

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1 that there is a date of September 6, 2014.
2 **A. Okay.**
3 Q. Does that refresh your recollection of the time
4 frame that the last press article that we have in
5 Section 42 was printed on September 6th of 2014?
6 **A. I see that here.**
7 Q. Was there any other -- to your knowledge, was
8 there any other press releases that you provided
9 quotation for or commentary about regarding Bramby
10 Tollen?
11 **MR. SEGAL:** Object to the form of the question,
12 lacks foundation. There are no press releases in
13 evidence, or there's no foundation in the context of a
14 press release, other than testimony. There was no press
15 release.
16 **CHAIRMAN LARSON:** Do you want to respond?
17 **MR. HATFIELD:** Yes. The question seeks to
18 establish whether there is foundation or not. I'm
19 simply asking him, are there any other press releases
20 other than the releases of which you were quoted about
21 Bramby Tollen in Section 42 or Exhibit 42.
22 **MR. SEGAL:** Objection -- well, I thought he was
23 rephrasing the question to take another shot at it.
24 **CHAIRMAN LARSON:** So you're asking the witness
25 if there were any other press releases from either

1 Seattle or Las Vegas, Nevada, that exist or were issued,
2 that he is aware of, other than those in Exhibit 42?
3 **MR. HATFIELD:** Precisely, Mr. Larson.
4 **MR. SEGAL:** Can I clarify my objection?
5 **MR. HATFIELD:** Anywhere.
6 **MR. SEGAL:** Can I clarify the objection?
7 **CHAIRMAN LARSON:** Sure.
8 **MR. SEGAL:** The phrase "other press releases"
9 implies there were -- there was a press release. The
10 testimony so far has been there's no press releases.
11 The following question, if it's not -- he's not asking
12 about news articles, which are contained in this
13 exhibit, which did occur, he shifted to the word "press
14 releases," which he used in his opening statement. And
15 there's no evidence of a press release. The testimony
16 is there was no press release.
17 And it's a key point in this case, it's an
18 accusation against CCASA that they did a press release,
19 and it's very important that we not let him slip this
20 phrase into the question under the guise of a reference
21 to newspaper articles, which are very different than
22 press releases.
23 **MR. HATFIELD:** And to the Board, just let me
24 mock anything you want to know about this. I simply
25 asked about press stories. I'm sorry if I used the word

1 sick leave, the FML approval form says that your use of
2 that sick leave, if it's going to be paid -- because you
3 can take FML and have it non-paid -- if it's going to be
4 paid, it has to be consistent with the CBA, which says
5 if you're going to take paid leave under this provision,
6 your absence has to be unavoidable.
7 Q. And that's Article 13 of the CBA; correct?
8 **A. Correct.**
9 **MR. HATFIELD:** The Board's indulgence for just a
10 few minutes.
11 **CHAIRMAN LARSON:** Sure.
12 **MR. HATFIELD:** Thank you.
13 **BY MR. HATFIELD:**
14 Q. Your testimony was, is that you did not respond
15 to my correspondence to you and the correspondence
16 copied to you that was addressed to Ms. Staci Vesneske
17 that was dated or about September 11th, 2014?
18 **MR. SEGAL:** I'm just going to object; compound.
19 He's only spoken to the first of those two documents.
20 Maybe you could separate those questions.
21 **MR. HATFIELD:** I don't think it's compound. I
22 think it's just clarifying whether the -- I'll rephrase
23 the question.
24 **CHAIRMAN LARSON:** Thank you.
25 ///

1 "release." I meant to ask Mr. Augspurgen if there was
2 any other press stories that quoted you in regard to
3 commentary about Bramby Tollen --
4 **MR. SEGAL:** No objection.
5 **MR. HATFIELD:** -- that you have any knowledge
6 of, sir?
7 **MR. SEGAL:** No objection.
8 **CHAIRMAN LARSON:** Okay. The witness can answer
9 with the question.
10 **THE WITNESS:** I talked to two reporters: Karen
11 Gray and Trevon Milliard. If those conversations that
12 were printed got picked up by other newspapers, I don't
13 have any knowledge of that.
14 **BY MR. HATFIELD:**
15 Q. And you testified that you were accurately
16 quoted by these journalists in these stories in Exhibit
17 No. 42; right?
18 **A. Yes.**
19 Q. Now, you testified that you provided insight
20 into the contract that governed Ms. Tollen's employment
21 relationship, and that it was your position that the
22 contract precluded Ms. Tollen from working at Snohomish
23 County while on FML; is that correct?
24 **A. Actually, that's not what I said. What I said**
25 **was, under our contract, if you're going to use paid**

1 **BY MR. HATFIELD:**
2 Q. Did you have -- by "you," I mean on behalf of
3 the Union or as the Union Executive Director -- did you
4 have any correspondence or communications at all at any
5 time with Bramby Tollen after her resignation and
6 retirement from CCSD on or about August 28th, 2014?
7 **A. No.**
8 Q. Can you please turn to Exhibit No. 5, and just
9 let me know when you're there, Mr. Augspurgen.
10 **A. I'm there.**
11 Q. Can you tell me what this document is, sir?
12 **A. It's an e-mail from Adam Segal.**
13 Q. Have you had an opportunity to review the
14 e-mail?
15 **A. I have.**
16 Q. Can you tell me when the e-mail appears to be
17 dated?
18 **A. It's dated September 22nd.**
19 Q. What year?
20 **A. 2014.**
21 Q. This e-mail appears to come from Mr. Segal and
22 is addressed to whom? Who is this e-mail addressed to?
23 **A. Addressed to Sadie Taneka and Ebony Davis with a**
24 **CC to me.**
25 Q. Who is Ms. Taneka? Is that who it is?

1 **A. Sadie Taneka was a clerical staff member of**
2 **CCASA at the time.**

3 Q. So why would Mr. Segal be e-mailing Ms. Taneka,
4 in your opinion?

5 **MR. SEGAL:** I'm just going to object as to
6 relevance. The topic clearly is whistleblower issues.
7 We've discussed the whistleblower status, the topic this
8 Board has already ruled is outside of its jurisdiction
9 and therefore irrelevant; therefore, this discussion and
10 line of questioning is also irrelevant.

11 **MR. HATFIELD:** Well, what is relevant is the
12 question of whether there was the duty of fair
13 representation. The argument is how the Union truly,
14 fairly, with the duty of loyalty and fidelity, treated
15 Ms. Tollen, and this speaks to this. And
16 Mr. Augspurgen's testimony that there was no
17 communication with Ms. Tollen at any time after her
18 resignation and retirement from CCSD.

19 **CHAIRMAN LARSON:** What's the Board's preference?
20 We've already ruled once that we have no control over
21 whistleblower stuff. It's not defined in NRS 288. This
22 clearly talks about whistleblower-related items, so I'm
23 inclined to --

24 **MS. MASTERS:** Yep, deny it.

25 **CHAIRMAN LARSON:** Yeah, I'm inclined to agree

1 record.

2 After caucusing off-line, we would note that
3 there are e-mails here, and they're submitted on the
4 22nd and the 18th, which is three-plus weeks after
5 Ms. Tollen's resignation/retirement.

6 However, we indicated previously that we were
7 going to allow you to brief the duty of fair
8 representation, you know, beyond the -- you know, you
9 stating your feelings as to why in your briefs why that
10 duty exists beyond the resignation/retirement date.

11 **MR. HATFIELD:** That's my understanding, yes.

12 **CHAIRMAN LARSON:** The second paragraph deals
13 with letters and I don't know what the hell is meant by
14 "letters." They don't -- you know, I don't know if
15 these letters have been introduced as exhibits or if
16 they're sitting somewhere in these books.

17 **MR. HATFIELD:** Your guess is as good as mine.
18 That's why I'm asking him questions about that.

19 **CHAIRMAN LARSON:** We've already talked about the
20 whistleblower status.

21 **MR. ECKERSLEY:** We have no jurisdiction over
22 that.

23 **CHAIRMAN LARSON:** Yeah. You know, we have no
24 jurisdiction over that.

25 **MR. HATFIELD:** Right. But this e-mail tends to

1 with Mr. Segal.

2 **MR. HATFIELD:** All right.

3 **BY MR. HATFIELD:**

4 Q. Halfway down through the page --

5 **MR. SEGAL:** Objection; the ruling has just been
6 that this document is irrelevant.

7 **MR. HATFIELD:** Yeah. We're moving on to a
8 different subject.

9 **CHAIRMAN LARSON:** On the same page?

10 **MR. HATFIELD:** Yeah, on the same page. In the
11 middle of the page it states, "Please find attached
12 letters regarding Bramby Tollen." That issue has been
13 brought up, and it's been raised whether letters have
14 been addressed and received, and it appears to be an
15 e-mail which apprises the Union of letters regarding
16 Bramby Tollen.

17 My question would be, what are these letters and
18 what did you know and when did you know it? I think
19 it's highly pertinent to the issue of whether the Union
20 afforded a duty of fair representation to Ms. Tollen.

21 **MR. ECKERSLEY:** Do you want to caucus?

22 **CHAIRMAN LARSON:** Yes. We'll be off the record
23 while the Board caucuses.

24 (Recess taken.)

25 **CHAIRMAN LARSON:** And let's go back on the

1 provide advice to Mr. Augspurgen regarding responding to
2 Ms. Tollen's letters or inquiries.

3 **MR. ECKERSLEY:** But he's not a deliverer of one
4 or receiver of the second e-mail you're referring to.

5 **CHAIRMAN LARSON:** He's on the first.

6 **MR. HATFIELD:** He's on the first, yeah.

7 **MR. ECKERSLEY:** Which is subsequent to that
8 second one.

9 **MR. HATFIELD:** And then there is the subsequent
10 e-mail where Mr. Segal says, "I would respond along
11 these lines if you agree with what I'm saying here,"
12 et cetera, et cetera.

13 **MR. ECKERSLEY:** But there's no indication in
14 that e-mail on which he's copied the second time that
15 those letters are attached.

16 **MR. HATFIELD:** That's two separate issues.
17 There's an e-mail that says --

18 **MR. ECKERSLEY:** We've moved on to the second
19 e-mail already.

20 **MR. HATFIELD:** Right. Because you made a --
21 it's my understanding is that there was an objection to
22 the question that was posited to Mr. Augspurgen about
23 that e-mail in which he copied; correct?

24 **MR. ECKERSLEY:** The 22nd?

25 **MR. HATFIELD:** On the 22nd, yes.

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1 **MR. ECKERSLEY:** Which has to do with the
2 whistleblower policy. Communications between counsel
3 has already stipulated that the whistleblower --
4 **MR. HATFIELD:** But you have jurisdiction over
5 the issues of fair representation between the Union and
6 its member.
7 **MR. ECKERSLEY:** Correct.
8 **MR. HATFIELD:** We're saying that the failure to
9 respond and to give zero response is part and parcel of
10 that failure to represent the Union member. And here is
11 lawyer to Executive Director, the person most
12 knowledgeable of the Union, says "I would respond along
13 these lines." The lawyer's recommending a response.
14 There was none.
15 We have it in the record that there was no
16 response since August 28th. Now, we have this e-mail
17 that says that from a counsel to the Union member, which
18 is "I would respond on these lines," et cetera,
19 et cetera, but we have -- this speaks for itself.
20 **MR. ECKERSLEY:** Okay.
21 **MR. HATFIELD:** It's in evidence, and it --
22 **MR. ECKERSLEY:** But with regard to the
23 September 22nd e-mail --
24 **MR. HATFIELD:** Right.
25 **MR. ECKERSLEY:** -- You had gone subsequently to

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1 the September 18th e-mail --
2 **MR. HATFIELD:** We did.
3 **MR. ECKERSLEY:** -- to which Mr. Augspurger was
4 not a deliverer or a receiver.
5 **CHAIRMAN LARSON:** Not a party to that e-mail.
6 **MR. ECKERSLEY:** So he wouldn't be able to
7 testify as to anything with regard to the
8 September 18th.
9 **MR. HATFIELD:** How do you know, Mr. Eckersley,
10 with all due respect, that he didn't speak to
11 Ms. Taneka, who is the clerk or the assistant or
12 secretary, to use an adjective term --
13 **MR. ECKERSLEY:** Because you presented an
14 evidentiary document that is missing two letters, and
15 that's what you were going to ask him to testify to.
16 **MR. HATFIELD:** I was going to ask him questions
17 about that, yes. If you're not going to allow me to ask
18 the question, just -- okay. Okay.
19 **MR. ECKERSLEY:** Go ahead and ask the question,
20 but I expect an objection by counsel.
21 **MR. HATFIELD:** So is the question proper?
22 **MR. ECKERSLEY:** What's the question?
23 **CHAIRMAN LARSON:** Yeah, go ahead.
24 **BY MR. HATFIELD:**
25 Q. What do you know about these attached letters

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1 regarding Bramby Tollen that's referred to in
2 Exhibit No. 5, Mr. Augspurger, if anything?
3 **MR. SEGAL:** I'm just going to object that it
4 lacks foundation. Without the attached letters, he
5 can't say what he knows about letters that are not here
6 or not presented, and not in front of him.
7 **MR. HATFIELD:** Well, I think he's suggesting the
8 answer for the witness. I asked specifically if he
9 knows about the letters from Bramby Tollen. If he knows
10 independently about letters that came from Bramby
11 Tollen, I would expect to have an honest answer, not an
12 objection that it lacks foundation.
13 **CHAIRMAN LARSON:** Hold on. Hold on.
14 **MR. SEGAL:** I wouldn't object to that question.
15 **CHAIRMAN LARSON:** Okay.
16 **MR. ECKERSLEY:** To me, that's a different
17 question.
18 **MR. SEGAL:** That a different question. That one
19 is not objectionable, actually.
20 **CHAIRMAN LARSON:** Mr. Augspurger, you can
21 answer. You can respond to that.
22 **THE WITNESS:** I think it's important to realize
23 that these letters weren't from Bramby Tollen; they are
24 letters regarding Bramby Tollen.
25 ///

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1 **BY MR. HATFIELD:**
2 Q. Who were they from?
3 A. They were from you.
4 Q. Mr. Augspurger --
5 A. And what we received here were two letters, a
6 September 11th letter to me, a copy of the letter that
7 you sent on September 11th to Staci Vesneske.
8 Q. Thank you, sir. Ms. Tollen, after she had
9 resigned and retired from CCSD, had benefits recaptured.
10 Is that your understanding?
11 A. Yes.
12 Q. And CCSD, they do that?
13 A. Yes.
14 Q. What provision in the contract allows for CCSD
15 to recapture benefits?
16 A. It's not a contractual issue.
17 Q. It's not a contractual issue at all?
18 A. It's not.
19 Q. So if Ms. Tollen asked for help from you, the
20 Union, with regards to the recaptured benefits, your
21 answer would be, I can't help you with that. It's not
22 contractual?
23 A. She didn't ask for help.
24 Q. No, I'm not asking you -- I want you to answer
25 the question that I asked you, sir.

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1 **A. If the benefits were inappropriately taken away**
2 **by the Clark County School District, we would certainly**
3 **have provided that assistance.**
4 Q. You would have, even though it's not
5 contractual, as you just testified?
6 **A. If it was appropriate, I said, we would provide**
7 **assistance. But she made no request for assistance**
8 **here.**
9 Q. She made no request for assistance from the
10 Union --
11 **A. Not --**
12 Q. -- after her resignation and retirement from
13 CCSD?
14 **A. What was the --**
15 Q. Is that your testimony?
16 **A. I'm saying she made no --**
17 Q. It's a yes-or-no --
18 **CHAIRMAN LARSON:** Wait.
19 **BY MR. HATFIELD:**
20 Q. It's a yes-or-no question.
21 **A. What's your question, again?**
22 Q. I'd like to have it read back.
23 **MR. HATFIELD:** Jean, if you could?
24 (Discussion held off the record.)
25 **CHAIRMAN LARSON:** Go back to what you were doing

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1 before we interrupted you, and we'll let Mr. Hatfield
2 either reword or rephrase that question.
3 **BY MR. HATFIELD:**
4 Q. Yes or no, Mr. Augspurger: Your testimony is
5 that Ms. Tollen did not request any assistance from the
6 Union after she resigned and retired from the CCSD; is
7 that correct?
8 **A. She made the request.**
9 **CHAIRMAN LARSON:** Wait. Wait. Wait. Wait.
10 Mr. Augspurger, we had this same situation with
11 Ms. Tollen where there were objections because she was
12 not answering. He was seeking a yes-or-no answer, and
13 she was adding additional stuff. I think what's good
14 for the goose is good for the gander. If you could
15 answer his question, your counsel can put you back on on
16 Redirect and ferret out whatever it is you feel you want
17 to explain.
18 **MS. MASTERS:** So yes or no, is what he's looking
19 for.
20 **THE WITNESS:** The answer's no.
21 **BY MR. HATFIELD:**
22 Q. Mr. Augspurger, you worked in various capacities
23 as an administrator for CCSD for over 30 years; is that
24 correct?
25 **A. Uh-huh.**

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1 Q. Yes?
2 **A. I worked for 30 years in total, not always as an**
3 **administrator.**
4 Q. Oh, okay. But 30 years, you retired from CCSD;
5 correct?
6 **A. Correct.**
7 Q. As the Executive Director of the Union, it is
8 not your duty to look out for CCSD, is it?
9 **A. It's not my duty to look after CCSD.**
10 Q. It's your duty to look out for the members of
11 the Union; correct?
12 **A. It's my duty to make sure members are treated**
13 **fairly and receive the treatment that they deserve.**
14 Q. Let me direct your attention to Article -- I'm
15 sorry, Exhibit 42, and it's Page 173. Just let me know
16 when you're there, Mr. Augspurger, please.
17 **A. Page 173?**
18 Q. Yes, sir.
19 **A. Okay.**
20 Q. If you look about halfway down the page, there
21 appears to be a quote from you which states, "The big
22 question is, What are they -- and then in parentheses --
23 Clark County School District going to do to remedy this,
24 Augspurger said.
25 That's an accurate quote; correct?"

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1 **A. I believe that's an accurate quote.**
2 Q. And further, you're contributed saying, quote,
3 They need to be recapturing that money one way or the
4 other.
5 That's an accurate quote; correct?
6 **A. Yes.**
7 Q. And by "they," you mean Clark County School
8 District?
9 **A. Correct.**
10 Q. And by recapturing the money, you're referring
11 to benefits that you believe were undeserved by
12 Ms. Tollen?
13 **A. No.**
14 Q. What did you mean?
15 **A. This was a question that Trevon Milliard asked**
16 **me. One of the questions he was asked was, What is the**
17 **Union's stance on an individual who misuses their sick**
18 **leave, and I responded, the District needs to recapture**
19 **that money.**
20 Q. So this was a general statement, and it
21 didn't --
22 **A. All of these were general statements that were**
23 **made, and they were general statements about an**
24 **interpretation of our contract.**
25 Q. Where does it say here, We asked you a question

1 about interpreting your contract?
2 **MR. SEGAL:** Objection; relevance.
3 **MR. HATFIELD:** He testified that he was quoted
4 in --
5 **CHAIRMAN LARSON:** Wait. Wait. Okay, would you
6 repeat the question?
7 **BY MR. HATFIELD:**
8 Q. Yes. My question is, Where are you asked to
9 interpret the contract in these press stories, sir?
10 **A. So when a reporter says to me, Mr. Augspurger,**
11 **can you explain to me how Article 13 in your contract**
12 **works, that requires interpretation on my part. When a**
13 **reporter says to me, Can you give me your opinion if an**
14 **employee receives money that they haven't earned, what**
15 **should happen in that regard --**
16 Q. Mr. Augspurger, I don't think that you were
17 responsive to my question. I asked you where in these
18 press release stories are you stating, I'm interpreting
19 the contract this way in a general manner? Can you
20 point to some verbiage in these stories when you're
21 speaking in generality and you're interpreting a
22 contract?
23 **MR. SEGAL:** I'm just going to object as to
24 relevance, again.
25 **MR. HATFIELD:** I'll strike the last one.

1 that were printed about her?
2 **A. That's correct.**
3 Q. Anywhere in these press stories in
4 Exhibit No. 42, is there any quotation whatsoever about
5 you interpreting a contract in regards to the press
6 inquiries about Bramby Tollen?
7 **MR. SEGAL:** Objection; the document speaks for
8 themselves.
9 **MR. HATFIELD:** "The document speaks for
10 themselves" is not a proper objection. It's a
11 nonsensical obfuscation of the question that's being
12 asked of him. I'd add that --
13 **CHAIRMAN LARSON:** Hold on.
14 **MR. HATFIELD:** -- "interpretation of the
15 contract" is nowhere in the stories, and that's being
16 pointed out in the --
17 **CHAIRMAN LARSON:** Let's take a ten-minute recess
18 and come back to this, because I'm not sure how far
19 we're getting at this point.
20 So let's go off the record and be back here at
21 20 of. It's 2:32 now.
22 (Recess taken.)
23 **CHAIRMAN LARSON:** Same case, obviously.
24 Okay. Mr. Hatfield, where do you want to go
25 with this?

1 **BY MR. HATFIELD:**
2 Q. Is the verbiage, It's in the contract, or I am
3 interpreting the contract, in anyplace in these press
4 stories in which you were quoted questions about Bramby
5 Tollen's alleged misuse or abuse of FML?
6 **MR. SEGAL:** I'm just going to object, as these
7 are press stories that speak for themselves. They are
8 written how the writer wrote them.
9 **CHAIRMAN LARSON:** I'll sustain that objection.
10 **MR. HATFIELD:** You're sustaining the objection
11 regarding what he's testified about regarding his
12 motivations and what he was speaking about? Is that
13 correct, sir?
14 **MR. SEGAL:** That wasn't the question.
15 **CHAIRMAN LARSON:** Yeah, I don't know if that was
16 the question.
17 **MR. HATFIELD:** Let me ask it again.
18 **BY MR. HATFIELD:**
19 Q. You said that you had implied the contract in
20 response to press inquiries regarding Bramby Tollen; is
21 that a fair recollection of what you stated?
22 **A. Repeat that again.**
23 Q. You testified -- you testified that your
24 response was interpreting a contract in response to the
25 press inquiries about Bramby Tollen and these stories

1 **MR. HATFIELD:** I don't know if there was a
2 question pending. I think that there wasn't.
3 **CHAIRMAN LARSON:** I don't think there was.
4 **MR. HATFIELD:** I don't think there was. I'm
5 ready to just ask a few more questions of
6 Mr. Augspurger, and I would ask him to direct his
7 attention to Exhibit No. 31 that's in the joint exhibit
8 binder.
9 **BY MR. HATFIELD:**
10 Q. Just let me know when you're there,
11 Mr. Augspurger.
12 **A. I'm there.**
13 Q. Okay. Article 31 is the letter from Staci
14 Vesneske to Bramby Tollen dated on or about September 3,
15 2014; correct?
16 **A. Yes.**
17 Q. All right. Would you agree with me that this
18 letter concerns questions of Bramby Tollen's use or
19 abuse of FML and issues into the propriety of her
20 working in Snohomish County while she was on FML from
21 CCSD?
22 **A. You know, I've just scanned it, but I don't see**
23 **anything dealing with FML. What I see is sick leave.**
24 Q. Okay. This concerns issues that CCSD has with
25 Bramby Tollen's use of sick leave; correct?

1 A. Correct.

2 Q. That was the topic of the investigatory hearing,
3 was it not?

4 A. Yes.

5 Q. Now, the investigatory hearing had been
6 cancelled due to Mr. Garis' representation of Ms. Tollen
7 and Mr. Garis providing this CCF 160 (sic) form to
8 Ms. Vesneske; correct?

9 A. It was based on the 164 form be provided to
10 Mr. Garis.

11 Q. I'm sorry, did I misspeak? The CCF 164 form?

12 A. Yes.

13 Q. Okay. Now, that form had just been submitted on
14 August 28th; correct?

15 A. 29th.

16 Q. August 29th. Here, this letter is dated
17 September 3, in which the issue of Ms. Tollen's sick
18 leave is raised all over again with Ms. Tollen; am I
19 correct?

20 A. It appears to me they've notified her they're
21 investigating her sick leave utilization.

22 Q. Would you consider this document a notice of
23 discipline or potential discipline?

24 A. No.

25 Q. Why would this not be a notice of potential

1 resolved by the resignation.

2 This witness has testified repeatedly that all
3 that was resolved by the resignation was the
4 investigation conference and any further discipline
5 under the CBA. The witness could be asked if, in
6 addition, the resignation would resolve future claims
7 for recapture to lay foundation, and then follow it from
8 there. But the question -- the witness has never been
9 asked that, so it can't be an assumption of the
10 underlying question.

11 CHAIRMAN LARSON: I'd be inclined to agree with
12 that.

13 MR. HATFIELD: That --

14 CHAIRMAN LARSON: Meaning, if you want to go
15 back and look at Exhibit 31 and try to compare it to
16 this and, you know, say, Did Exhibit 31 absolve you of
17 everything that ever happened? It's obvious the
18 District is coming back seeking to -- I used the term
19 "clawback" earlier, is seeking to recoup some funds that
20 they felt were acquired inappropriately.

21 MR. HATFIELD: I think that is a separate
22 letter. This is a notice here that, no, there is no
23 conclusion of the discipline that Mr. Garis --
24 Mr. Augspurger testified that the Union obtained from
25 Ms. Tollen.

1 discipline if they're looking into the issues which
2 purportedly have been resolved with Ms. Tollen
3 submitting the CCF 164 form?

4 MR. SEGAL: Objection; lacks foundation.

5 CHAIRMAN LARSON: Hold on. Don't answer that,
6 Mr. Augspurger.

7 What are you trying to establish? Go ahead.

8 MR. HATFIELD: I'm trying to establish that what
9 Mr. Augspurger's opinion is regarding this letter,
10 considering that there was an investigatory hearing that
11 should have been cancelled and was cancelled pursuant to
12 Ms. Tollen's resignation and submission of the
13 retirement form, CCF 164; that if that's the case, then
14 why CCSD -- why did CCSD, I should say, seemingly raise
15 the entire issue up all over again? Does he have any
16 opinions? Does he have knowledge of this?

17 MR. SEGAL: The problem with this --

18 MR. HATFIELD: Does he have --

19 MR. SEGAL: I'm sorry, was the argument tendered
20 to me?

21 CHAIRMAN LARSON: Go ahead.

22 MR. SEGAL: The problem with the question and
23 lack of foundation is that the question includes in it a
24 factual assumption that's not been established, and that
25 is, the issues regarding recapture of sick leave were

1 MR. SEGAL: And that's just my problem, is that
2 Mr. Augspurger didn't testify that this issue had been
3 resolved by the resignation. You can ask him if it did,
4 but that has not been asked yet.

5 MR. HATFIELD: Okay, let's go back over it
6 again.

7 BY MR. HATFIELD:

8 Q. Turn to Exhibit No. 2, sir. It's Page 2. I
9 asked you about Article -- I'm sorry, 4, Subsection 4 of
10 Paragraph 4.

11 In the second sentence there it says that "The
12 investigatory meeting would not be necessary and no
13 disciplinary action against Tollen would be pursued,"
14 according to the affidavit of Mr. Garis. What does it
15 mean when it says here, "No disciplinary action against
16 Ms. Tollen would be pursued"?

17 A. That's a reference to a contract in Article 27
18 where we identified the various disciplinary documents
19 that can be written: Oral warning, written-oral
20 warning, admonition. Those are disciplinary documents.
21 That's what that refers to.

22 Q. And it doesn't refer to any recapture of
23 benefits issues?

24 A. Absolutely not.

25 Q. So if it doesn't refer to any recapturing of

1 benefit issues, would not the Union have a further duty
2 to represent Ms. Tollen if CCSD was seeking to recapture
3 these benefits in the future, at some point in time? As
4 you're testifying, the investigatory hearing did not
5 resolve all the issues regarding disciplinary action
6 against Ms. Tollen.
7 **MR. SEGAL:** Objection; misstates his testimony.
8 **MR. HATFIELD:** I'm asking for his impression and
9 his opinion on this issue.
10 **BY MR. HATFIELD:**
11 Q. What does it mean when it says, "Disciplinary
12 action will not be taken pursuant to the investigatory
13 hearing"? He's saying that --
14 **MR. SEGAL:** Well, he answered that question. Or
15 you can ask him. You shouldn't give the answer.
16 **CHAIRMAN LARSON:** Yeah, okay. Why don't you ask
17 that question.
18 **MR. HATFIELD:** The question of --
19 **CHAIRMAN LARSON:** The one that Mr. -- Mr. Segal,
20 do you want to repeat that?
21 **MR. SEGAL:** What does it mean in that affidavit
22 to say that the disciplinary actions had been resolved?
23 **MR. HATFIELD:** That's not the question I posited
24 to the witness. I asked him if it resolved all the
25 disciplinary issues when it says, The investigatory

1 **A. Yes.**
2 Q. Even though Ms. Tollen has resigned and retired
3 from CCSD, avail the Union for help in regards to CCSD
4 seeking to recapture benefits?
5 **A. She could certainly ask for help. She did not.**
6 Q. And it's your testimony that she did not ask for
7 help?
8 **A. She did not. After she resigned, she did not**
9 **ask for help.**
10 Q. I understand, and we'll brief that as an
11 argument for the case as an issue of fact.
12 But if the issue was not resolved, in fact, by
13 her submitting her resignation and retirement forms, the
14 Union would owe her a duty if she did ask for it; is
15 that your testimony?
16 **MR. SEGAL:** I'm just going to object, as
17 asked --
18 **MR. HATFIELD:** I think it's a complete
19 hypothetical, and I think he can answer the question.
20 **MS. MASTERS:** Sustained.
21 **MR. SEGAL:** Okay. I'm just going to object as
22 an improper hypothetical because it's compound, it's
23 vague, and it's incomprehensible.
24 **CHAIRMAN LARSON:** I'm going to sustain that
25 objection, in the interest of trying to move this along.

1 hearing will be off and no discipline will result as a
2 product of this quid pro quo, this deal, if you will.
3 **MR. SEGAL:** No objection to that question.
4 **THE WITNESS:** I think I provided that response,
5 but I'll give it again.
6 That refers to, under our contract in
7 Article 27, that no disciplinary document will be
8 issued. And those documents are identified in our
9 contract very clearly. I can go over them again here,
10 if you'd like. But that's all it refers to.
11 **MR. HATFIELD:** The Board's indulgence. Sorry.
12 **BY MR. HATFIELD:**
13 Q. If further issues could result from Ms. Tollen's
14 accusations, or the allegations that Ms. Tollen used or
15 misused sick leave or FML, would it matter or not if
16 Ms. Tollen had resigned from CCSD pursuant to what the
17 Union might be doing for her?
18 **A. Is that a hypothetical question?**
19 Q. No. I'm asking.
20 **A. Then you're going to have to repeat it again so**
21 **I -- you said -- you used the word "if."**
22 Q. Okay. I'm asking -- let me strike the last
23 question. Let me ask it a different way.
24 Can CCSD seek to recapture Ms. Tollen's funds
25 after she had resigned and retired from CCSD?

1 **BY MR. HATFIELD:**
2 Q. Well, I'm going to rephrase the question, and
3 I'm going to ask it to you again.
4 The issue of recapturing benefits for any Union
5 member would be part of the Union's duty to represent
6 whether that member had resigned or not, if the member
7 had availed or requested the help from the Union?
8 **MR. SEGAL:** Same objection; vague, compound, and
9 incomprehensible.
10 **CHAIRMAN LARSON:** I'm going to sustain that
11 objection.
12 **BY MR. HATFIELD:**
13 Q. What effect does Bramby Tollen's resignation
14 have on the recapture of benefits issues?
15 **A. I will answer that question.**
16 **MR. SEGAL:** No objection.
17 **THE WITNESS:** Bramby Tollen came to us for
18 assistance. She didn't want to go to the investigatory
19 conference, but she said she had done nothing wrong.
20 She asked Mr. Garis to turn in a CCF 164 so that the
21 investigatory conference would be vacated. There was no
22 discussion about recapturing her benefits. And,
23 frankly, we didn't think that was even an issue because
24 she said that she had done nothing wrong.
25 The District has determined that she

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1 inappropriately used sick leave, and her salary is paid
2 with public tax dollars; they're going to recapture that
3 money.
4 We did what we were asked to do, vacate the
5 investigatory conference, ensure that there's no
6 additional discipline. Those two things were done.
7 **BY MR. HATFIELD:**
8 Q. So is it your testimony that there was no deal
9 that the District could, despite her submitting her
10 resignation and retirement form, seek to recapture her
11 benefits?
12 **A. We never had discussion regarding that from**
13 **Bramby or with the District.**
14 **MR. ECKERSLEY:** Is the recapture of benefits a
15 disciplinary act under the CBA?
16 **THE WITNESS:** No.
17 **BY MR. HATFIELD:**
18 Q. Why is it not a --
19 **A. If -- if -- let me give you a hypothetical. If**
20 **an employee --**
21 **MR. SEGAL:** Hang on. I have to advise my client
22 not to give hypotheticals; if he can wait for a question
23 and then answer.
24 **THE WITNESS:** Very good.
25 ///

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1 **BY MR. HATFIELD:**
2 Q. Please answer if in a specific format as to
3 Bramby Tollen.
4 **A. Give me a question.**
5 Q. Well, why was the recapture regarding Bramby
6 Tollen not a disciplinary action?
7 **A. Did she receive a disciplinary document?**
8 **MR. SEGAL:** Just answer the question. Don't
9 answer with a question. Just answer --
10 **THE WITNESS:** She received no disciplinary
11 document, thus there was no disciplinary action taken
12 under our Collective Bargaining Agreement.
13 **BY MR. HATFIELD:**
14 Q. So if your statement says that the notice -- the
15 September 3, 2014 notice from Staci Vesneske -- that
16 Ms. Tollen may be subject to issues related to
17 allegations of misuse of sick leave, is not a
18 discipline?
19 **MR. SEGAL:** Objection; asked and answered four
20 times in the last 45 minutes. This is becoming
21 harassment of my client. He has said no --
22 **CHAIRMAN LARSON:** I will sustain that objection.
23 **MR. SEGAL:** -- no, and no again. It is not a
24 disciplinary document.
25 **MR. HATFIELD:** May I answer?

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1 **CHAIRMAN LARSON:** I've sustained his objection.
2 **MR. HATFIELD:** So you're just -- okay.
3 **BY MR. HATFIELD:**
4 Q. Can you tell us why it's not a disciplinary
5 action?
6 **MR. SEGAL:** Objection; asked and answered three
7 time in the 25 minutes.
8 **MR. HATFIELD:** We never had a specific answer.
9 **MR. SEGAL:** He's answered it three times,
10 because the documents are listed in the contract and
11 this isn't one of them.
12 **CHAIRMAN LARSON:** I'll sustain that objection.
13 **BY MR. HATFIELD:**
14 Q. Mr. Augspurger, you stated that in responding to
15 the press, you are cautious of what you say; is that
16 correct?
17 **A. I am cautious, yes.**
18 Q. All right. Did your statement to the press,
19 specifically Mr. Trevon Milliard, in your opinion,
20 proceed cautiously when you asked that -- or you didn't
21 ask, but you stated -- that they, meaning CCSD, needed
22 to be recapturing that money one way or another? Is
23 that a cautious statement?
24 **A. That was in response to a question from the**
25 **reporter, What happens when an employee misuses sick**

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1 **leave?**
2 Q. And that was in reference to allegations
3 specifically to Bramby Tollen?
4 **A. Well, I don't remember whether it was --**
5 Q. You don't remember if the story was about Bramby
6 Tollen?
7 **A. He called me about Bramby Tollen. We talked**
8 **about the contract in general terms.**
9 **But if days have been misused -- and they**
10 **obviously have been at this point, the District has**
11 **recaptured that money -- if those days had been misused,**
12 **CCASA would not take up that cause for any employee if**
13 **they misuse -- if their sick leave was not used in a**
14 **manner consistent with Article 13 in the Collective**
15 **Bargaining Agreement, CCASA wouldn't fight that battle**
16 **for them. We're not here to support an employee in**
17 **wrongdoing.**
18 **MR. HATFIELD:** Well, I'm going to move to strike
19 because part of the testimony that Mr. Augspurger just
20 gave, he's arguing after the fact that, in effect --
21 **MR. SEGAL:** I don't object to striking his
22 entire answer.
23 **MR. HATFIELD:** I'm sorry. Let me finish my --
24 **MR. SEGAL:** I'm conceding the objection for you
25 to strike the answer.

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1 **CHAIRMAN LARSON:** Let's go -- oh, my God.
2 Strike the answer.
3 (Discussion held off the record.)
4 **CHAIRMAN LARSON:** Mr. Hatfield, it's close to
5 3 o'clock --
6 **MR. HATFIELD:** Yeah. I don't think I have any
7 anything further.
8 **CHAIRMAN LARSON:** Okay. Okay.
9 **MR. SEGAL:** No Redirect.
10 **CHAIRMAN LARSON:** Questions from the Board?
11 **MS. MASTERS:** No.
12 **MR. ECKERSLEY:** I'm showing certain -- if
13 noticed in writing, can a recapture of benefits be a
14 disciplinary act?
15 **THE WITNESS:** It could be if in addition to
16 recapturing those benefits a disciplinary document was
17 written that memorialized that act, which did not
18 happen. That was the agreement we had with the
19 District.
20 **MR. ECKERSLEY:** So the progressive discipline
21 procedures under Article 27 would all have to be
22 followed --
23 **THE WITNESS:** That is correct.
24 **MR. ECKERSLEY:** -- in order for it to be a
25 disciplinary action?

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1 **THE WITNESS:** That is correct.
2 **CHAIRMAN LARSON:** And at the time of Mr. Garis
3 representing to her in the proposed disciplinary
4 investigatory hearing, nobody had any knowledge of the
5 alleged misuse of sick leave?
6 **THE WITNESS:** No.
7 **CHAIRMAN LARSON:** Okay. So --
8 **THE WITNESS:** Well, I think there was -- I mean,
9 the notice said they were investigating an alleged
10 misuse of sick leave. Ms. Tollen was adamant that she
11 had not misused sick leave. The only discussion we had
12 was, What can I do to not have to come to this
13 investigatory conference?
14 **CHAIRMAN LARSON:** Tender your resignation and
15 retire.
16 **MR. ECKERSLEY:** Have you ever personally been
17 involved -- in an investigatory interview, been involved
18 to the recapture of benefits.
19 **THE WITNESS:** I can't think of one. I know we
20 have had administrators who have had to repay money to
21 the Clark County School District. I don't know that
22 that occurred through the investigatory conference.
23 **CHAIRMAN LARSON:** Any additional questions?
24 **MS. MASTERS:** No.
25 **CHAIRMAN LARSON:** Questions from the counsel?

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1 **MR. HATFIELD:** Yes, just a few questions
2 regarding what you want briefed for the closing
3 arguments, and what the format might be.
4 **MR. ECKERSLEY:** Let's see if counsel rest.
5 **MR. SEGAL:** I do. I rested earlier.
6 **MR. HATFIELD:** Sorry, I did not mean to cut you
7 off.
8 **CHAIRMAN LARSON:** Mr. Augspurger, you may be
9 excused. Thank you.
10 **MR. SNYDER:** What our normal protocol is, is
11 that we first wait for the transcript. And then we
12 usually give the attorneys 30 days from the day that
13 they receive the transcript to write their post-hearing
14 brief.
15 We normally allow you to put whatever you want
16 in the brief, except in this particular occasion, the
17 Board has specifically requested that you include one
18 thing in your brief in addition to anything else that
19 you want discuss, and that is a legal analysis based on
20 the facts of this case, as to when does the -- when did
21 the duty of fair representation cease, if at all, with
22 respect to the representation of Bramby Tollen.
23 **MR. HATFIELD:** I assume these will be blind
24 briefs?
25 **MR. SNYDER:** Yeah. If you send them to us --

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1 what we'll do is what we did in the last case -- once we
2 received the second one, we will then send -- we will
3 then send the brief to the opposing counsel. That way
4 they don't accidentally get a preview of the other
5 person's brief.
6 So you send us the brief. Don't serve the other
7 party the brief. We'll take care of it. When we get
8 the second one in, we'll then cross-file and we'll send
9 out by e-mail a copy of the brief.
10 And like any other document, you can just file
11 those briefs electronically. You don't need to walk
12 them in.
13 **MR. HATFIELD:** And one brief with no reply;
14 correct?
15 **CHAIRMAN LARSON:** Number of pages each?
16 **MR. SNYDER:** I think we've set a limit of 30 in
17 the past, but I don't think anybody's ever come near
18 that anyways, so --
19 **CHAIRMAN LARSON:** And, Mr. Hatfield, you were
20 done with Mr. Augspurger?
21 **MR. HATFIELD:** Yes.
22 **CHAIRMAN LARSON:** You didn't have any rebuttal?
23 **MR. SNYDER:** Do you know how long it might take
24 to do the transcript?
25 **THE REPORTER:** I should have it to you by next

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1 week, so --

2 **MR. SNYDER:** Oh, that's fast. Okay. Most of

3 them say three weeks.

4 So let's say the end of next week, that would be

5 the 19th, so roughly March 19th, March 18th.

6 **MR. HIRSCH:** Is that available here, sir, for

7 pickup, or is that mailed to the offices or --

8 **MR. SNYDER:** Normally, the transcripts are sent

9 to the office; they're the ones paying for it.

10 And then I think you send us a courtesy copy.

11 **THE REPORTER:** That's the -- from what I

12 understand, the parties have stipulated that they're

13 going to split the cost of the court reporter; they each

14 get a copy, and the original goes to the Board.

15 However -- is it Sue in the front --

16 **MR. SNYDER:** Marisu --

17 **THE REPORTER:** -- she doesn't want the hard

18 copy. It's up to you. She said either on a disc or

19 e-mail.

20 **MR. SNYDER:** Yeah, we would prefer electronic.

21 Because if you gave us a hard copy, the first thing we

22 would do is scan it. Because when we ever need that

23 document in the future, like to give it to the AG's

24 office, we just send it electrically to them, in case

25 they need that document.

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1 **THE REPORTER:** So no hard copy at all?

2 **MR. SNYDER:** We don't need it.

3 **MR. HATFIELD:** Just a couple housekeeping

4 questions. So are we saying that approximately the 19th

5 of March would be the date that you're expecting to have

6 the transcript, and then that would trigger 30 days

7 after that?

8 **MR. SNYDER:** Yeah, whenever you get the

9 transcript, count out 30 calendar days; don't skip any

10 weekends or anything, just 30 calendar days from the day

11 you get it. So March, for example, has 31 days. So if

12 it is received, let's say March 19 -- February 19th,

13 they'll be due March 18th.

14 And I have no idea if that's a weekend or not.

15 Of course, it would be due the next business day. If

16 there's any doubt when you get the transcript, let us

17 know. I will be sending an e-mail to both attorneys and

18 telling you the official date for the briefs.

19 **MR. HATFIELD:** A reminder would be great. Thank

20 you, Mr. Snyder.

21 **CHAIRMAN LARSON:** Mr. Hatfield, do you have any

22 rebuttal witnesses?

23 **MR. HATFIELD:** No, sir.

24 **CHAIRMAN LARSON:** Although there have been

25 twists and turns in this hearing, I would pose the

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1 question to each of you, beginning with yourself,

2 Mr. Hatfield: Have you had ample opportunity to -- time

3 and opportunity to put on your case?

4 **MR. HATFIELD:** I think so, yes.

5 **CHAIRMAN LARSON:** And, Mr. Segal?

6 **MR. SEGAL:** Yes, as well.

7 **CHAIRMAN LARSON:** Okay.

8 **MR. SNYDER:** Phil, we should talk about exhibits

9 again before we close the hearing. I can recap which

10 exhibits have been admitted and not admitted.

11 **CHAIRMAN LARSON:** Okay, sure. Please.

12 **MR. SNYDER:** So all 45 exhibits in the joint

13 exhibit book have been admitted.

14 And in terms of the one small book, CCASA

15 Contested Exhibit -- there was one exhibit in that

16 book -- and my records show that that has been admitted.

17 And in the other exhibit book that had --

18 **CHAIRMAN LARSON:** We pulled about four out.

19 **MR. SNYDER:** -- 10 exhibits. There were -- 4,

20 6, 9, and 10 would not be offered. 1 was not admitted.

21 2 was admitted. 5 was not admitted. 8 was admitted.

22 And there's two of them that were not talked about at

23 all, and that must have been Nos. 3 and 7. Those were

24 not brought up at all.

25 **MR. HUMES:** So just 2 and 8 out of the --

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1 **MR. SNYDER:** Out of the other book, yeah, just 2

2 and 8.

3 Does anybody disagree with that?

4 **MR. ECKERSLEY:** No.

5 **CHAIRMAN LARSON:** Let the record reflect that.

6 Okay. That concludes the testimony phase of

7 this hearing.

8 (Proceeding concluded at 3:07 p.m.)

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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.

16

17

18

19 JEAN M. DAHLBERG, RPR
20 CCR 759, CSR 11715

21

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23

24

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