

BOARD OF ADMINISTRATION  
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM  
STATE OF CALIFORNIA  
HOWARD W. COHEN, ADMINISTRATIVE LAW JUDGE

In the Matter of the Calculation of ) CASE NO. 2012-0671  
Final Compensation of: )  
 ) OAH NO. 2013080917  
BRUCE MALKENHORST, SR., )  
 )  
 Respondent, )  
 )  
 and )  
 )  
CITY OF VERNON, )  
 )  
 Respondent. )  
\_\_\_\_\_ )

TRANSCRIPT OF PROCEEDINGS  
Los Angeles, California  
Thursday, February 19, 2015

Reported by:  
MARIE C. SANCHEZ  
CSR No. 13809  
Job No. :  
43680AH

1 BOARD OF ADMINISTRATION

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3 STATE OF CALIFORNIA

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CITY OF VERNON, )  
12 )  
Respondent. )  
13 \_\_\_\_\_ )  
14

15 TRANSCRIPT OF PROCEEDINGS, taken at

16 320 West Fourth Street, Suite 630, Los Angeles,

17 California, commencing at 9:07 a.m.

18 on Thursday, February 19, 2015, heard before

19 HOWARD W. COHEN, Administrative Law Judge,

20 reported by MARIE C. SANCHEZ, CSR No. 13809,

21 a Certified Shorthand Reporter in and for

22 the State of California.  
23  
24  
25

1 APPEARANCES:

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12 For the RESPONDENT LIEBERT CASSIDY WHITMORE  
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I N D E X

RESPONDENT'S: Witness:	Direct	Cross	Redirect	Recross
Bruce V. Malkenhorst	7	72	170	

E X H I B I T S

COMPLAINANT'S:	Marked for identification	Received in evidence
76 through 78 (Unidentified)	186	
RESPONDENT'S: EEEE through CCCC - Pleadings filed	195	

1 Los Angeles, California, Thursday, February 19, 2015

2 9:07 a.m.

3

4

5 THE COURT: Let's go back on the record.

6 We are here in the Matter of the calculations of final  
7 compensation of Bruce Malkenhorst Senior, Respondent, and  
8 City of Vernon, Respondent, before the Board of  
9 Administration of the Public Employees Retirement System,  
10 case number 2012-0671, OAH number 2013080917.

11 This is the sixth day of hearing. It's  
12 February 19, 2015, just after 9:00 A.M. at the office of  
13 Administrative hearings at the 320 West 4th Street, Suite 630  
14 in Los Angeles.

15 Before you proceed to testimony, Mr. Jensen, there  
16 were just a few issues, some files, that have been made in  
17 the last few days by the parties. There was a -- Respondent  
18 requested official notice of an unpublished decision in the  
19 court of appeal and official notice is taken.

20 MR. JENSEN: Thank you, your Honor.

21 THE COURT: CALPERS requested clarification  
22 regarding the status of the hearing. I don't think that was  
23 necessary, and I'm sure that's been resolved. Respondent  
24 finally has issued -- has filed a renewed request for a  
25 ruling on his collateral estoppel and res judicata claims.

1           Respondent filed numerous motions prior to the  
2 hearing that have been referred to throughout the course of  
3 the hearing and before the hearing collectively as a motion  
4 to dismiss which was made on many grounds, including  
5 collateral estoppel and res judicata. The motion to dismiss  
6 has been the subject of several orders already, including  
7 Administrative Law Judge Rovner Status and trial satisfaction  
8 order dated April, 2011-14, and orders that I issued.

9           In the Court of Appeal decision that I just took  
10 official notice of, the Court of Appeal appears to think that  
11 the record is abundantly clear, so do I. I'm not going to  
12 muddy it by granting the request. The request is denied.

13           Why don't you call your witness.

14           MR. JENSEN: Thank you, your Honor. Call  
15 Bruce Malkenhorst, please

16           THE COURT: Please raise your right hand.

17

18                           BRUCE V. MALKENHORST,  
19 called as a witness, and having been first duly sworn by  
20 the Court was examined and testified as follows:

21           THE WITNESS: Yes, your Honor.

22           THE COURT: Thank you have a seat. State your  
23 name.

24           THE WITNESS: Bruce V. Malkenhorst.

25           THE COURT: Go ahead, Mr. Jensen.

1 DIRECT EXAMINATION

2 BY MR. JENSEN:

3 Q Mr. Malkenhorst, do you have difficulty hearing?

4 A I do.

5 Q I will try to speak clearly and loudly, but if for  
6 some reason you don't understand the words that I say, please  
7 ask me to repeat that.

8 A I will. I also mumble. So if she doesn't  
9 understand what I said, you can ask me too.

10 Q And what is your age?

11 A 79.

12 Q And were you previously convicted of a felony?

13 A I was.

14 Q And what was the nature of the conviction?

15 A Misuse of public funds.

16 Q I want to turn your attention about forty years or  
17 so. Where were you employed before you went to work for the  
18 City of Vernon?

19 A City of Manhattan Beach.

20 Q Approximately what year was that?

21 A Nineteen -- well, went to work for them, or when I  
22 came to work for Vernon?

23 Q When you went to work for Vernon?

24 A 1975.

25 Q And what was the position you held in the City of

1 Vernon -- at the City of Manhattan Beach?

2 A Assistant Finance Director.

3 Q And what position did you apply for at the City of  
4 Vernon in 1975?

5 A Assistant Finance Director City Clerk-Assistant City  
6 Clerk.

7 Q Was this a hyphenated job title?

8 A It was a hyphenated job title.

9 Q And did that hyphenated job title exist prior to  
10 your coming to work there?

11 A Since they advertised it as that, I assume it did.

12 Q Thank you. And did you get the Assistant Finance  
13 Director-Assistant City Clerk position?

14 A I did.

15 Q I'd like to talk a little bit about the character,  
16 what the City of Vernon was like in 1975 when you first  
17 started to work there. Can you describe what the  
18 characteristics of the City of Vernon are; for example, is it  
19 a business city?

20 A Primarily an industrial city with a few residents.

21 Q Approximately how many businesses were there?

22 A I would say around twelve hundred.

23 Q And how many residents live there?

24 A Approximately one hundred.

25 Q What does it mean for the City to be a business

1 oriented city?

2 A To try and enhance the development of businesses in  
3 the city.

4 Q And were you aware what the City did to try to  
5 enhance the development of businesses in the city?

6 A Well, I ran a business in the City of Vernon prior  
7 so I did have some -- some idea of their -- what our rates  
8 were -- heater, water was cheaper. These prices were fairly  
9 nominal.

10 Q What type of businesses were located in Vernon?

11 A Meat houses. Warehouses. Manufacturing. They all  
12 thought they were the main one.

13 Q What do you mean "They all thought they were the  
14 main one"?

15 A The meat guys thought it was a meat city, warehouse  
16 people thought it was a warehouse city, and manufacturing  
17 thought it was a manufacturing.

18 Q And what drew businesses to locate in Vernon?

19 A Pardon me?

20 Q What drew -- what enticed businesses to locate to  
21 Vernon?

22 A Power. Our electricity rate. Provide service for  
23 that they couldn't get in other cities. Prior to 1978 when  
24 power --

25 THE REPORTER: I am sorry. When who?

1 THE WITNESS: See. I told you I mumble.

2 THE COURT: You were saying before 1978.

3 THE WITNESS: Before 1978, when Prop 13 was passed,  
4 most cities didn't want manufacturing in our cities.

5 BY MR. JENSEN:

6 Q And who were the Council, City Council members at  
7 the City of Vernon in 1978?

8 A We had Malburg as Mayor. Thomas Ybarra was Mayor  
9 pro tem, Larry Gonzales, Mike McCormick, and Keith Geysler  
10 were Councilmen.

11 Q They were Council members before you started to work  
12 there?

13 A Yes, they were.

14 Q And did Vernon have an Electric, Light and Power  
15 Department in 1975?

16 A They did.

17 Q Did they have a Water Department in 19 --

18 A They did.

19 Q And over the years that you worked there, did the  
20 industrial character of the city change?

21 A No, not really.

22 Q And you worked there until 2005; is that correct?

23 A Right.

24 Q And who were the Council members when you retired in  
25 2005?

1           A     Malburg was the -- Thomas Ybarra was pro tem.

2           THE COURT:   Tom --

3           THE REPORTER:   I apologize.

4           THE WITNESS:   Thomas Ybarra, pro-tem.

5     Larry Gonzalez was Councilmen.   Mike McCormick was

6     Councilman, and Bill Davis was Councilmen.

7           MR. JENSEN:   And so, your Honor, if I could just  
8     instruct the witness to speak a little more slowly.

9           THE WITNESS:   Okay.

10    BY MR. JENSEN:

11           Q     Okay.   And did Louise -- did Malburg, Ybarra,  
12     Gonzales, and McCormick retain their City Council seats the  
13     whole time from 1975 to 2005?

14           A     Yes, they did.

15           Q     And is the city -- when you left in 2005 was it  
16     still a business city?

17           A     Industrial city.   Yes.

18           Q     Did it still have an Electric, Power, and Light  
19     Department?

20           A     They did.

21           Q     And when you retired, did they have a Water  
22     Department?

23           A     They did.

24           Q     And how many residents were there when you retired  
25     in 2005?

1 A Probably the same number, ninety to a hundred.

2 Q How many businesses were located in Vernon when you  
3 retired?

4 A I think it had gone up to around thirteen hundred.

5 Q So let's go back to 1975. What was the position  
6 that you were hired into?

7 A Assistant City Clerk's Assistant Finance Director.

8 Q And were you a member of CalPERS when you started?

9 A I was.

10 Q And was the position of Assistant Finance Director  
11 Assistant's City Clerk a single position or two positions?

12 A A single position.

13 Q And were you paid a single salary or two salaries?

14 A Single salary.

15 Q And was there a Finance Director City Clerk?

16 A There was.

17 Q And do you know the source of funds used to pay your  
18 payroll check?

19 A General fund.

20 Q And what were your job duties, responsibilities as  
21 Assistant Finance Director-Assistant City Clerk?

22 A Whatever the finance director told me to do.

23 Q And can you give me some examples of what you were  
24 told to do?

25 A Well, basically did very little because he did most

1 of the work. What he gave me to do to start with, I was to  
2 create a self-insurance program for the City.

3 Q What is the self-insurance program?

4 A Get away from van --

5 THE COURT: I am sorry. I couldn't understand  
6 you.

7 THE WITNESS: I'm sorry.

8 THE COURT: That's okay.

9 THE WITNESS: Basically to create an insurance  
10 company policy for the City of Vernon by themselves. Hire an  
11 outside person actually to do the work making them  
12 self-insured.

13 BY MR. JENSEN:

14 Q So would it be fair to say you brought those  
15 insurance responsibilities?

16 A We did. We did that.

17 Q Would it be fair to say that you brought those  
18 self-insurance responsibilities oversight into as a new duty  
19 or responsibility in your position as Assistant Finance  
20 Director-Assistant City Clerk?

21 A That was my responsibility.

22 Q Okay. And were you paid extra for assuming these  
23 additional --

24 A No.

25 Q -- responsibilities or duties?

1 A No.

2 Q And were you assigned other duties such as labor  
3 negotiations?

4 A Yes. I had a protracted labor negotiations  
5 originated in 1975 was still going on when I got there.  
6 About six months after I was there, I was assigned to observe  
7 and participate in what was going on.

8 Q And was this in your position as Assistant Finance  
9 Director-Assistant City Clerk?

10 A Yes.

11 Q And did you receive any increase in salary for these  
12 additional responsibilities?

13 A No.

14 Q And so you continued to receive the one payroll  
15 check for Assistant Finance Director-Assistant City Clerk for  
16 these additional duties; correct?

17 A Yes.

18 Q So let me ask you some questions about the way the  
19 City of Vernon was run. How involved was the City Council  
20 Members in making decisions about city affairs?

21 A They had total responsibility.

22 Q And can you tell us how this worked in practice?

23 A Well, in practice if a department wanted to do  
24 something, they had to take it to the City, City Council, and  
25 then the Council meeting would either accept it or reject it.

1 Q I'm just going to pause here to let the Reporter  
2 catch up. So can you tell us how often the City Council  
3 met?

4 A Twice a month.

5 Q And so what was the -- what was the actual procedure  
6 for bringing matters to the City Council for decision?

7 A Departments would have things that they wanted to do  
8 or talk about, whatever they recommend, to do and put on our  
9 agenda; City Clerk would prepare it for the City Council, and  
10 it would be taken to the council meeting, and City Council  
11 would either accept or reject those recommendations.

12 Q And did they formalize those acceptance or the  
13 rejection, in some manner?

14 A Either approve or disapprove them.

15 Q And did they enact resolutions?

16 A If it required a resolution.

17 Q And did the City Clerk keep minutes?

18 A City Clerk kept minutes, and they would be reviewed  
19 at the following council meeting and either approved or  
20 corrected.

21 Q And did the City Council always approve the  
22 recommendations made to it?

23 A No.

24 Q And what -- did the City Council -- how would you  
25 describe their involvement in the decision making practice;

1 was it actively involved in considering the matters in front  
2 of them?

3 A Well, the agenda brought to them they voted on each  
4 item that was -- that was listed on the agenda.

5 Q Did the City also enact ordinances?

6 A They did.

7 Q When did they enact ordinances?

8 A I go out to them with one major change in policy, I  
9 would say.

10 Q And so would it be fair to say the City Council made  
11 all important decisions?

12 A Yes. Based on recommendations though. They didn't  
13 go into the city and review what was going on and decide and  
14 act -- enact something. It was brought to them by the  
15 department heads.

16 Q And as far as you know, was that the practice in the  
17 city before you arrived at Vernon?

18 A Yes.

19 Q And then did the City Council continue to document  
20 its decisions throughout your employment at the City of  
21 Vernon?

22 A They did.

23 Q So I want to turn to your next job at the City of  
24 Vernon. After you were hired as Assistant Finance  
25 Director Assistant City Clerk, did you later get promoted?

1 A I did.

2 Q Into what position?

3 A City Clerk Finance Director-City Finance Director  
4 who helped me -- previously held that until he retired.

5 Q Can you tell us what the job title was?

6 A What the title was?

7 Q What the title was of the job?

8 A City Finance Director for the city or City Clerk  
9 Finance Director.

10 Q Was there any order in which those were normally  
11 proceeded, or did they swap back and forth?

12 A I think it was City Clerk Finance Director. I think  
13 the City Clerk historically in the history of cities was  
14 responsible for the finances. Then they had to identify with  
15 the finances were involved and they consequently cited the  
16 City Clerk Finance Director of City Clerk.

17 Q So was the City Clerk Finance Director also a single  
18 job with a single salary?

19 A It was.

20 Q And as City Clerk Finance Director, did you  
21 participate in the City's negotiations with the Southern  
22 California Edison about electrical rates?

23 A The contract that the City had held with Edison from  
24 1962 to '77 was a fifteen-year agreement, and -- and we were  
25 negotiating -- the City was negotiating a new contract. I

1 was asked to observe as a City Clerk.

2 Q And was this an additional duty or responsibility  
3 given to you in the Finance Director City Clerk position?

4 A I was -- I was responsible for the City Council, so  
5 whatever they told me to do. I don't know if it was an  
6 additional or just something else I -- they did.

7 Q Were you paid any more for attending those  
8 negotiations?

9 A No.

10 Q And so why were electric rates important to the City  
11 of Vernon?

12 A To enhance businesses. Bring businesses into the  
13 city.

14 Q So can you explain the structure of Vernon's  
15 relationship with providing electricity to the businesses?

16 A Historically 1933 they started their own because  
17 Edison would not give them a descent rate. 1937, Edison took  
18 over; made an agreement they would give Vernon sweetheart  
19 rates if they could run their system; so from 1937 to 1962  
20 they did. And our 1957 -- and in 1957 they notified Vernon  
21 that they take the system over because they had put all the  
22 money into it, and it belonged to them. And Vernon went to  
23 court and Edison lost. They had to pay for the enhancement;  
24 and in 1962 they created a contract for fifteen years for  
25 Edison to run their system.

1 Edison provided all the day-to-day work, and we  
2 had -- the City had hired a contractor basically to oversee  
3 what Edison was doing.

4 Q So let me just step back and sort of try to clarify.  
5 Approximately 1933 the City of Vernon established its own  
6 electrical power utility within the City of Vernon; is that  
7 correct?

8 A Yes, sir.

9 Q And did the City have generating capacity in 1933?

10 A No, they bought diesel from Germany.

11 THE REPORTER: From?

12 THE COURT: Germany.

13 THE WITNESS: Germany.

14 BY MR. JENSEN:

15 Q And did those work?

16 A Yes.

17 Q The City was actually producing electricity --

18 A In 1933.

19 Q -- in 1933? And the structure of the utility that  
20 the city owned the power lines between the generating --  
21 City's generating plant and each business in the City of  
22 Vernon?

23 A Yes.

24 Q And so in effect the City was the sole provider of  
25 electricity to businesses in the City of Vernon?

1 A At that time.

2 Q And the City could determine the rates charged to  
3 the businesses; is that correct?

4 A Yes.

5 Q And were the businesses interested in lower electric  
6 rates?

7 A Absolutely.

8 Q And why was that?

9 A Costs.

10 Q And why is?

11 A We provide cheaper than Southern California Edison  
12 and City of Los Angeles.

13 Q And was it a significant cheaper rate?

14 A I don't recall that.

15 Q And once you mentioned that the Southern California  
16 Edison at some point, for lack of better word -- well, let me  
17 step back. Did the City stop generating the power at a  
18 certain point?

19 A Edison became the runner of the power plant and they  
20 didn't use it. They didn't utilize it. They brought their  
21 own power in from outside.

22 Q But the City -- the City with the electricity  
23 retained its power over -- the control over its lines to the  
24 businesses? Let me rephrase that.

25 A Yeah.

1 Q Withdraw that. Did the City still -- was the City  
2 still the one who contracted with the businesses to provide  
3 the power?

4 A We billed clients for the power Edison provided.

5 Q And at that point was Edison basically a third-party  
6 contractor?

7 A It was a third-party contractor.

8 Q So you would buy -- the City would buy the power  
9 from Edison and then effectively resell it to the  
10 businesses?

11 A Yes, sir.

12 Q Okay. A little bit of back story but -- and in 1977  
13 did that significantly change? not 1977. In 1977-78 did  
14 those negotiations lead to a significant change in the  
15 structure?

16 A When it was finalized in '79, yes, we did.

17 Q And tell us what that structure was.

18 A Well, they allowed the City, which should not, to  
19 create power on their side of their -- basically on their  
20 side of the mirror. They were also entitled to purchase  
21 power outside of Edison. Edison created a three-tier system;  
22 low rate. Medial rate. High rate. So it behooved the City  
23 of Vernon to bring in power at a high rate -- at a cheaper  
24 rate where they could get it; or run their diesel plants at  
25 that time.

1 Q And is it the case that Vernon could now buy power  
2 at a lower price?

3 A What we did, we created an agreement with Nevada  
4 power in which we would split the cost of Edison rate and  
5 Nevada power rate and bring the power medium rate.

6 Q And --

7 A Plus running our own generation --

8 THE REPORTER: "Running our own generation --"

9 THE WITNESS: -- running our own generator when it  
10 was cheaper, basically.

11 BY MR. JENSEN:

12 Q And did this negotiation allow the City to reduce  
13 its -- the cost of the power to businesses?

14 A Well, the -- you got to go back to '62 agreement in  
15 which Edison had agreed to sell power to Vernon at eighteen  
16 percent below their wholesale rate to their outside customer,  
17 customer outside Vernon; and when they did that, when I got  
18 there, they were charging something like fifteen percent over  
19 that rate. And so that's why they were willing to give us  
20 the opportunity to do our own generating, and when it's  
21 bringing in power from outside sources.

22 Q Would be --

23 A Think --

24 Q Would it be fair to say that Edison had been  
25 overcharging the City of Vernon for years?

1           A     I don't know how far back it went, but about by the  
2     time '77 when the contract was up, it was -- they were doing  
3     it at that time.

4           Q     Okay. And is -- did you receive any additional  
5     salary for taking on these additional responsibilities?

6           A     No.

7           Q     And did this mean that the average number of hours  
8     you worked each week when you took on these additional  
9     responsibilities, did your average number of hours  
10    increase?

11          A     The only time it increased they were higher -- the  
12    firemen went on strike and negotiations were substantial  
13    amount of time over my normal forty, forty-five hour week.

14          Q     So you would normally work forty to forty-five  
15    hours?

16          A     Normally I would, work week.

17          Q     And if you were to average over a whole year, your  
18    average, your weekly number of hours with these additional  
19    duties, how many hours a week did you work?

20          A     I don't know if they were additional duties, just  
21    what I was told to do. I mean, you know, I worked for the  
22    City of Vernon. I was a city -- well, I wasn't City  
23    Administrator at that time. I was City Clerk. Whatever the  
24    Councilmen told me to do I did, and whatever the hours it  
25    took to get it done, I did it.

1 Q But I'm asking you for sort of a number of -- an  
2 average number of hours you worked a week?

3 MR. LEVIN: Objection. Vague as to time.

4 BY MR. JENSEN:

5 Q During this period, let's say from this average, the  
6 two-year period from 1977 to 1979 if, just on average,  
7 approximately how many hours a week did you work?

8 A I would say in the same area, forty to forty-five.  
9 Then I started delegating other part of my job -- other part  
10 of my responsibilities to other people.

11 Q So how did you delegate?

12 A I gave my secretary the responsibility of doing the  
13 minutes. My finance -- I had an accounts payable clerk.  
14 She -- payment responsible for the warrant register.

15 THE COURT: For the what register?

16 THE WITNESS: Warrant register.

17 THE COURT: Thank you.

18 BY MR. JENSEN:

19 Q And what sort of work did you delegate just in  
20 general?

21 A Everything but decision maker.

22 Q So what did you retain; what power and authority did  
23 you retain?

24 A Decision making.

25 Q Let's move on. What was the next position you held

1 at the City of Vernon?

2 A M.E.R.R.

3 Q Now --

4 A That was not -- the City had hired Harry Kenton to  
5 run the negotiations for the City. He had not been very  
6 successful. We hired Rich Moore to replace him. And this  
7 Council did not want to give him the title of M.E.R.R., so  
8 they put it on me.

9 Q Let me just ask a question. I asked you a question  
10 what position you held and --

11 A I was City -- City Clerk Finance Director.

12 Q Can you explain when I asked you -- I asked you a  
13 question that said what position, what was the next position  
14 after City Clerk Finance Director and you answered M.E.R.R.?

15 A Well, excuse me. I misspoke. Just an additional  
16 responsibility given to me. In 1978 around August they  
17 appointed me to be the City Administrator.  
18 City Administrator-City Clerk.

19 Q Let me just address this idea of positions and job  
20 titles. When there was a job title, why did the City create  
21 these job titles such as M.E.R.R.?

22 THE COURT: I'm sorry. Are you saying M.E.R.R.? Is  
23 that mayor?

24 MR. JENSEN: Okay.

25 THE WITNESS: Employees. Municipal --

1 THE REPORTER: Can you repeat that again?

2 THE WITNESS: Municipal Employees Relation,  
3 employees representative.

4 BY MR. JENSEN:

5 Q Okay. So is M.E.R.R. a position?

6 A Responsibility.

7 Q And when I asked you the question what position, you  
8 answered M.E.R.R. And I just --

9 A I misspoke.

10 Q I just sort of want your recollection of what is the  
11 difference between positions and job titles and duties and  
12 responsibilities?

13 A Well, I don't think there was any difference.  
14 Whatever Council told me to do, I did. If they wanted me to  
15 be responsible for employee relations, I did that. I always  
16 was responsible for the Finance Department. I was  
17 responsible for the City Clerk, and negotiations. I was --  
18 basically -- I was not the negotiator. Mr. Whitmore was the  
19 negotiator, but I was a representative to the Council.

20 Q So let's just focus on this issue of a M.E.R.R.  
21 Again, what is a M.E.R.R.?

22 A Municipal Employee Relation Representative.

23 Q What does the M.E.R.R. do?

24 A Represents the City in negotiations.

25 Q And how often do those negotiations occur?

1 A At that time?

2 Q Yes.

3 A Well, in the middle of strike -- in the middle  
4 negotiation with Fire Department, so it was almost probably  
5 at least two or three times a week.

6 Q And was it a full-time duty or responsibility  
7 year-round?

8 A No. Because once you resolved the labor dispute  
9 that was fairly nominal time.

10 Q So did you ever hold a full-time year-round position  
11 as M.E.R.R.?

12 A No.

13 Q Okay. How would you describe what the job title of  
14 M.E.R.R. is within your position?

15 A It was a responsibility I had. I don't -- you know,  
16 I came to the public sector for -- after being in the private  
17 sector for many years, so consequence a private sector  
18 whenever you are told something you did it. Didn't matter  
19 what it was. Your boss told you to go have done, you got it  
20 done.

21 Basically, the way I looked at it from the City  
22 Council, they told me they that wanted me to do something, I  
23 did whatever responsibility of the job, a duty; basically,  
24 looked at it as a responsibility. But -- and I may have  
25 referred to at times as "job", but it was a responsibility.

1 Q Let me ask you, did M.E.R.R. ever appear on a pay  
2 schedule?

3 A Not to my knowledge.

4 Q And were you ever paid?

5 A Not to my recollection, I'll say; but not to my  
6 knowledge. It could have been on there, but I don't -- no, I  
7 can't believe it ever was.

8 Q And were you paid for undertaking the duties and  
9 responsibilities of M.E.R.R. either within your position as  
10 City Clerk Finance Director or otherwise?

11 A No.

12 Q Okay. So we're now Finance Director City Clerk.  
13 What was the next position that you held?

14 A Next position I was appointed to City  
15 Administrator City Clerk.

16 Q Okay. And when did that occur?

17 A Approximately between August and October of '78.

18 Q And did you want to be City Administrator?

19 A No. I wanted to be City Manager.

20 Q And what's the difference between City Administrator  
21 and City Manager?

22 A City manager made decisions. City Administrator had  
23 to go to the Council to get approval. Council wanted to  
24 retain their ability to make the decisions.

25 Q And so can you briefly describe the negotiations

1 that -- did you request to be made city manager?

2 A I did.

3 Q And then what did they tell you your -- what did  
4 they tell you your duties and responsibilities would be as  
5 City Administrator or City Administrator City Clerk?

6 A Basically what I had been doing, aside from the fact  
7 that now we would have -- the department heads would have to  
8 come to me to go to the Council.

9 Q So was there an existing position as City  
10 Administrator?

11 A I -- I understand there was. I don't think I  
12 ever -- I ever saw per se, but I understand the City  
13 Administrator back in '64, John Moore, who died in an  
14 accident, he -- it was not filled after he left.

15 Q Did he retain the position of City Administrator or  
16 City Administrator-City Clerk, City Administrator/City  
17 Clerk?

18 A He had the job -- I think -- I believe City  
19 Administrator Clerk at that time was Frank Zeemer.

20 Q So at least prior to your -- your taking the  
21 position, there was nobody holding that City Administrator?

22 A No, there was not. Frank did not want it.

23 Q I'm sorry?

24 A Frank Zeemer, who was City Clerk -- I don't even know  
25 if it was offered to him, but I assume it was. If they were

1 going to replace or maintain the same structure, but I don't  
2 know that. I'm not -- just guesstimating.

3 Q And is that in the -- Frank worked in the '60s; as  
4 what?

5 A He was my boss until he retired in '77.

6 Q Okay. So explain, please. Was Frank offered the  
7 position of --

8 A I don't know that.

9 Q Okay. So how did the City Council of Vernon operate  
10 prior to establishing the City Administrator-City Clerk  
11 position?

12 A Well, basically all department heads reported to the  
13 City Council.

14 Q And which were the department heads at that point?

15 A Public works. Police chief. Fire chief. Maybe the  
16 director of water and power. Health Department.

17 Q And were you told why the City decided to establish  
18 this City Administrator-City Clerk position?

19 A I -- I want to think it was because of the Meyers  
20 Act.

21 THE COURT: I'm sorry?

22 THE WITNESS: Meyers Brown Act had passed in '68 and  
23 created more labor issues with employees.

24 BY MR. JENSEN:

25 Q And if I use the term "City Administrator," I should

1 more clearly refer to it as City Administrative-City Clerk;  
2 is that the correct title?

3 A The title that was given. Yes.

4 Q Okay. And how did the city re-establish the City  
5 Administrator-City Clerk position?

6 A I think they passed an ordinance on it.

7 Q And then did you fill the position?

8 A I was appointed to the position.

9 Q And did you understand why the City hired you as  
10 City Administrator-City Clerk?

11 A Sure. We were very successful in what we  
12 accomplished so far.

13 Q Describe your success.

14 A We resolved the fire strike. We improved our  
15 situation with the Electrical Department. Those were two  
16 major things in the City. I mean, I don't think they ever  
17 understood. They could say -- know how the labor  
18 negotiations. I negotiated contracts in the private sector.  
19 I knew I could say no. Whether I got it done or not was  
20 another story.

21 Q And so they were --

22 A They were what I took over.

23 Q And largely it was your dealmaking that they  
24 were impressed with; is that fair to say?

25 A They realized they didn't have as many problems.

1 Q Now, the -- I understand the position's called City  
2 Administrator-City Clerk, another hyphenated title. Was it  
3 one position or two positions?

4 A One position.

5 Q And did you sign some documents solely as City  
6 Clerk?

7 A I think I signed the minutes, maybe the budget, or I  
8 attested to signatures as City Clerk. As City Administrator,  
9 I signed most of the documents. I can't say I didn't, but I  
10 wouldn't -- I don't recall.

11 Q And since your title was City Administrator-City  
12 Clerk, why would you sign some of the documents solely and in  
13 capacity in your duties as a City Clerk?

14 A Why would I?

15 Q Why would you?

16 A Well, because they were either documents that had to  
17 be attested to by the City Clerk.

18 Q And so in trying to establish the --

19 A Legal requirements.

20 Q -- legal requirements?

21 A Right.

22 Q And could it have been that the City Clerk  
23 City-Administrator title in your mind wouldn't have been  
24 satisfactory?

25 A I don't know that I gave it that much thought.

1 Q Okay. And did you ever refer to these, you know,  
2 various duties and responsibilities as positions, like you  
3 did earlier or job titles, rather than describing them as  
4 just duties or responsibilities of the City  
5 Administrator-City Clerk position?

6 A I could have. Depends on what it was involved  
7 with.

8 Q I'm sorry. Can you explain also why in certain  
9 circumstances you would just sign documents as -- if you  
10 did -- as City Administrator?

11 A Generally, that was either done with outside people  
12 outside the city, so that they would know who to come to if  
13 they had a problem with the decision that was being  
14 resolved.

15 Q And, I mean, could you have also signed documents as  
16 the Municipal Employees Relation person?

17 A I don't recall ever signing anything other than --  
18 no, I don't even recall. I don't remember labor contracting  
19 being signed. It could have been signed.

20 Q And is there anything inconsistent in your mind  
21 about using these individual duties even though you  
22 understood yourself to hold this position of City  
23 Administrator-City Clerk?

24 A I'm sorry?

25 Q Is there anything inconsistent in your mind if you

1 signed something as -- for example, if you signed something  
2 as M.E.R.R. even though you held the position of City  
3 Administrator-City Clerk?

4 A I didn't at the time.

5 Q Okay. And did you attend council meetings, City  
6 Council meetings?

7 A I was City Clerk at council meetings.

8 Q What was your role prior to the City Council  
9 meetings?

10 A Prior to?

11 Q Yeah.

12 A Preparation of the agenda.

13 Q And at the meetings, what did you do?

14 A Huh?

15 Q At the City Council meetings, what did you do?

16 A Read off the agenda.

17 Q Did you take notes and prepare meetings?

18 A Took the minutes.

19 Q Minutes?

20 A For a while. And then I had the Assistant City  
21 Clerk would take notes, but she wouldn't do the agenda. I  
22 read the agenda, but she would take the notes on the side.

23 Q So some of the tasks that you delegated?

24 A (No audible response)

25 THE COURT: Is that a yes?

1 THE WITNESS: Yes.

2 THE COURT: Thank you.

3 BY MR. JENSEN:

4 Q And are you aware of requirements to make city  
5 business and city documents publicly available?

6 A (Witness nods head)

7 Q Let me rephrase it. Did you post agendas prior to  
8 the City Council meetings?

9 A We didn't have a local newspaper, so consequently we  
10 had to post all public documents at three different --  
11 different spots in the city: Thirty-eight to Santa Fe.  
12 City Hall, and I think it was Fruitland and Pacific with  
13 bulletin boards where you posted the documents.

14 Q And what sort of items -- what sort of documents  
15 would you post?

16 A Basically agendas for the Council meeting. I don't  
17 think we did the budgets. Anything that was -- that had to  
18 be made available to the public.

19 Q And with regards to these other -- to other  
20 documents such as budgets and the pay schedules, did you make  
21 those publicly available?

22 A They were available in the City's Clerk's office.

23 Q Tell us how that process works. Did you make  
24 the pay schedule available to the public?

25 A Anybody that wanted to see them called and made an

1 appointment to come review.

2 Q Once they made the request, they were provided them?  
3 If a member of the public came and made a request, would they  
4 be provided the document?

5 A They would. They were provided to review them. If  
6 they wanted a copy of them, they pay for it.

7 Q Were the salary resolutions made public?

8 A All resolutions were made --

9 THE REPORTER: Can you repeat that? I didn't get  
10 that.

11 THE WITNESS: All resolutions were made public.

12 BY MR. JENSEN:

13 Q Were the pay schedules made public?

14 A Yes.

15 Q And was the practice ever --

16 A Pay schedule. Excuse me. The pay schedule was a  
17 resolution.

18 Q So that would be made --

19 A Yeah.

20 Q -- public?

21 A Yeah. All of it would be made public.

22 Q And so was the practice of the City Clerk's office  
23 throughout the thirty years you were there to make these  
24 documents publicly available?

25 A Provide them, yes.

1 Q Provide them. Okay. So I want to look at this  
2 nature of your City Administrator-City Clerk position. Was  
3 it a full-time job?

4 A Yeah.

5 Q And did you have a fixed work schedule?

6 A The City had a fix schedule. Five day workweek  
7 until '79; and then they went to four day workweek from '79  
8 until now.

9 Q Till now. And did you work a fixed schedule?

10 A I think I was within the structure. If someone  
11 wanted to meet me, they knew they could meet with me at those  
12 times; but if someone wanted to meet on a Friday, even though  
13 City Hall was not open, I made myself available.

14 Q And so these were your normal work hours?

15 A My normal work hours.

16 Q And approximately how many hours a week did you work  
17 in this period --

18 A I'm sorry?

19 Q -- let me -- as City Administrator-City Clerk from  
20 say 1979 to your retirement in 2005?

21 A I think -- arbitrarily I think it was some forty,  
22 forty-five hours.

23 Q Arbitrarily is not what I want you to answer. I  
24 want your best estimate.

25 A Well, that's what I'm saying is my estimate would be

1 forty to forty-five hours.

2 Q Okay. And was that generally your schedule even  
3 though there were City Council meetings every two weeks?

4 A Yes. City Council meetings were held in the  
5 evening, started 5:30; and make sure that the public was  
6 attending them if they wished, but they probably ran about  
7 three hours. So I don't think they were more -- run more  
8 than -- to increase my time more than forty-five hours. I  
9 think forty-five make the meetings fit.

10 Q And were there also Finance and Personnel Committee  
11 meetings?

12 A There was.

13 Q When did those occur?

14 A I believe they occurred -- Personnel meetings  
15 occurred prior to the Council meeting. Financial meeting met  
16 on the odd Tuesday's, but they met at 5:00, 5:30.

17 Q And did you attend the Committee meetings?

18 A I did.

19 Q And are you a voting member of the Finance  
20 committee?

21 A No.

22 Q Are you a voting member of the Personnel  
23 committee?

24 A No.

25 Q And obviously you're not -- well, are you a voting

1 member of the City Council?

2 A No.

3 Q Do you know what the meaning -- do you know what an  
4 "exempt position" is?

5 A I do.

6 Q What is an exempt position?

7 A Exempt position is a position that was not entitled  
8 to overtime.

9 Q And is it your understand that the City  
10 Administrator-City Clerk was an exempt position?

11 A I did. Also City Clerk -- Finance Clerk was an  
12 exempt position prior to this City Administrator.

13 Q And were you required to keep track of the hours  
14 that you worked each week?

15 A No.

16 Q Did you keep track of your hours that you worked?

17 A No.

18 Q Did you know if anyone else at the City of Vernon  
19 kept track of hours for you?

20 A No.

21 Q Did anyone at the City of Vernon keep track of your  
22 hours?

23 A Anyone in the City of Vernon keep track of my hours?

24 Q Yes.

25 A No --

1 Q Did you have to clock in?

2 A -- to my knowledge.

3 Q Did you have to clock in?

4 A No.

5 Q Did anyone in the administration of the City keep  
6 track of their hours?

7 A If they're exempt position, no.

8 Q And what do you -- can you tell us which positions  
9 were exempt in the City of Administration?

10 A In the City of Administrator?

11 Q City Administrative in the -- I guess,  
12 administration of the City?

13 A Okay. Department heads. Maybe assistant department  
14 heads. I don't believe -- either one. Police Chief.  
15 Captain. Lieutenant. They were all exempt. Fire Chief.  
16 Battalion Chief. Captains. I think Captains were exempt,  
17 Lieutenant Chief, and the Fire Chief were exempt.

18 Q Did you ever work overtime?

19 A Work overtime? No.

20 Q Were you ever paid any money for working overtime?

21 A (No audible response)

22 Q Is that a no?

23 A No, I didn't work any overtime. And I -- it --

24 Q Did some employees in the City of Vernon clock in?

25 A Yes.

1 Q And who clocked in?

2 A Primarily non-exempt employees, so they would chart  
3 their hours.

4 Q Can you give me an example of the non-exempt  
5 employee?

6 A Clerks, but I don't think City Hall ever had anybody  
7 work overtime as clerks. Public works employees that work on  
8 the streets could be called in on off-duty hours. Firemen  
9 that might be called in, but firemen work a twenty-four hour  
10 shift. So normally they wouldn't, but if there was an  
11 emergency, we go call -- needed more people -- then they did.  
12 Policemen. They could be paid overtime.

13 Q So just want to refer back to your testimony. You  
14 worked about forty to forty-five hours, so this remained the  
15 same number of hours for approximately your twenty plus years  
16 of work as City Administrator-City Clerk?

17 A Pretty much.

18 Q And over this time period, did you -- did the City  
19 Council require the City Administrator-City Clerk to perform  
20 additional duties or responsibilities?

21 A What do you mean?

22 Q For example, over the thirty years did the City add  
23 additional responsibilities to be performed by the --

24 A City Administrator job position -- they may have  
25 formalized it, but I was always responsible for what was

1 going on in the City.

2 Q So just to inform us, how you accomplish the work of  
3 these additional duties and responsibilities within the forty  
4 to forty-five hours a week, how did you accomplish that?

5 A With over a period of time. More and more  
6 efficient. Also delegate.

7 Q And let's take an example of delegation. Can you --  
8 you retained the responsibilities and duties of treasurer in  
9 your City of Administrator-City Clerk position; is that  
10 correct?

11 A I did.

12 Q And how did you delegate any of the responsibilities  
13 associated with that position with that -- sorry -- with that  
14 job duty?

15 A Yes.

16 Q And how did you do that?

17 A Made a -- responsibilities doing the investments  
18 going to and from the bank.

19 Q And who did you -- who did you delegate --

20 A Assistant.

21 THE COURT: Allow him to finish his question before  
22 you begin your answer so the Court Reporter can take  
23 everything down. Okay?

24 THE WITNESS: Sorry.

25 ///

1 BY MR. JENSEN:

2 Q And I'll try to slow down too. Who did you delegate  
3 some of the responsibilities of Treasurer to?

4 A Assistant Treasurer.

5 Q And can you give us an example of the duties and  
6 responsibilities that were associated with Treasurer that you  
7 delegated to the Assistant Treasurer?

8 A The -- invest the vital funds.

9 Q And how did you accomplish that delegation?

10 A Told her to do it.

11 Q Did you -- did you retain decision making control  
12 over those decisions that were associated with the duties and  
13 responsibilities of --

14 A Yes. They made to any new investment that they  
15 wanted to make, or they felt was something we should do; and  
16 at that point I made a decision. There was also a stipend  
17 when Joe retired in '78 -- retired I think -- when they first  
18 gave me the additional responsibility. He got one hundred  
19 bucks extra a month as part of this deal that was not --  
20 putting you to sleep?

21 MR. YIM: Sorry.

22 THE COURT: Is that part of your answer?

23 MR. JENSEN: No. This is kind of important. I'm  
24 sorry.

25 ///

1 BY MR. JENSEN:

2 Q So at some point someone received a stipend of a  
3 hundred dollars --

4 A A month.

5 Q -- a month for performing the duties and  
6 responsibilities --

7 A Of Treasurer.

8 Q -- of Treasurer? And that was prior to your  
9 undertaking the duties and responsibilities of Treasurer?

10 A It was. But after I took on the responsibility of  
11 being Treasurer, I was not given the hundred dollars a month.  
12 And when I appointed the Assistant Treasurer, she was given  
13 the hundred dollars a month.

14 Q So did you receive any additional compensation in  
15 your payroll for undertaking the duties and responsibilities  
16 of Treasurer within your job as City Administrator-City  
17 Clerk?

18 A No.

19 Q And why was the Assistant Treasury given the one  
20 hundred dollars stipend?

21 A Well, I think it was because she would have to go to  
22 the bank and -- basically it was kind of a -- something to  
23 pay her, offset her cost of using her personal car.

24 Q So it was -- it was an expense or reimbursement  
25 almost?

1 A Well, I look at it like that.

2 Q So let's talk about salary. We're now looking in  
3 the period when you're City Administrator-City Clerk. Was  
4 that a single job?

5 A Single job.

6 Q Did you receive a single payroll pay check for that  
7 single job?

8 A I did.

9 Q And do you know what funds that payroll check was  
10 drawn off of?

11 A Came from the general fund.

12 Q Were you always paid an amount in your position of  
13 City Administrator-City Clerk that corresponded with the  
14 amount on the applicable pay schedule adopted by Vernon?

15 A Yes.

16 Q Do you know what a -- switch subjects a little bit.  
17 Do you know what an enterprise fund is?

18 A As used by City of Vernon, yes.

19 Q Okay. Can you explain. Did the City of Vernon have  
20 enterprise funds?

21 A They did.

22 Q What were they?

23 A The electrical.

24 THE COURT: Excuse me.

25 THE WITNESS: Bless you. The Electrical Department,

1 and it was enterprise one of -- basically's a system where  
2 they sell services to the public and the Water Department  
3 payroll too.

4 THE REPORTER: I didn't hear that.

5 THE COURT: The Water Department. I'm sorry.

6 BY MR. JENSEN:

7 Q And were these part of the entity of the City of  
8 Vernon?

9 A Were they part of the entity?

10 Q Did the City of Vernon like --

11 A The City of Vernon owned them.

12 Q Owned them. So were -- lack of better word, a  
13 wholly owned subsidiaries of the City of Vernon -- sorry.  
14 Departments of the City of Vernon? Subdivisions or within  
15 the control -- let me withdraw that question.

16 THE COURT: The entire question is withdrawn.

17 MR. JENSEN: I'm sorry.

18 BY MR. JENSEN:

19 Q Who controlled the enterprise funds?

20 A The City.

21 Q The City Council?

22 A City Council.

23 Q Okay. Did the City have a redevelopment agency?

24 A They created a redevelopment agency -- agency  
25 sometime in early 90's.

1 Q And is the redevelopment agency an enterprise  
2 fund?

3 A I don't think so. It was a -- I'm not sure what you  
4 would -- what that was. It was a -- basically retain the  
5 taxable property in the City and to develop property to bring  
6 in more industry.

7 Q Let's go back to the enterprise fund. Did the  
8 enterprise fund transfer money to the City's general fund?

9 A It did.

10 Q How did they do that?

11 A They had a fee of three percent of their gross  
12 sales.

13 Q And how often was that transferred?

14 A Annually.

15 Q Okay. Was your payroll check ever drawn off the  
16 enterprise fund?

17 A No.

18 Q Were all of the funds associated with your salary  
19 only paid from the general fund?

20 A Yes.

21 Q Okay. So I want to talk about these hyphenated job  
22 titles; and again, we're just -- purpose of clarification.  
23 There's a position that has a job title such as City  
24 Administrator-City Clerk. Does the position with the job  
25 title describe all of the duties that are performed by the

1 City Administrator-City Clerk?

2 A Not necessarily. No.

3 Q And would it be unwieldy to have the job title be  
4 City Clerk, City administrator, M.E.R.R., Treasurer, and your  
5 other duties and responsibilities in one job title?

6 A No. Because I think it would create a limitation to  
7 what your responsibilities were.

8 Q And tell me about that.

9 A Well, I think that in -- I think the City  
10 Administrator was responsible for these duties,  
11 responsibilities. I don't know if it would make a lot of  
12 sense to have completely all listings. There would be a  
13 limit to what the responsibility would have, and I don't  
14 think I had any limit in any responsibilities.

15 Q Okay. And so just going back to these job titles to  
16 clarify. The City Administrator-City Clerk, the hyphenated  
17 title did not represent two jobs; is that correct?

18 A No.

19 (Interruption in proceedings)

20 THE COURT: You may continue. One moment.

21 MR. JENSEN: Yeah.

22 THE COURT: Just for the record, the building  
23 maintenance person has just come into the courtroom -- thank  
24 you very much -- because the room was so warm, and I hope  
25 he's able to fix it.

1           Mr. Jensen, you may continue your examination.

2           MR. JENSEN: Thank you, your Honor.

3 BY MR. JENSEN:

4           Q     So in other words, to follow up, all the duties and  
5 responsibilities that were given to you were not reflected in  
6 the job title that --

7           A     No.

8           Q     -- under which you were paid? And were there other  
9 positions with hyphenated job titles at the City of Vernon?

10          A     In Public Works. Water and power. My Secretary and  
11 Secretary Assistant, and City Clerk, Chief Deputy City Clerk.  
12 I know we have others, but I don't recall what they were.

13          Q     To your knowledge, were each of these single  
14 positions?

15          A     They were.

16          Q     Did each of these have multiple duties and  
17 responsibilities?

18          A     Yes.

19          Q     And to your knowledge was the person holding those  
20 positions paid a single payroll check?

21          A     Yes.

22          Q     And if you know, what was the source of funds to pay  
23 the payroll check for those individuals?

24          A     Pardon me?

25          Q     If you know, what was the source of funds to pay the

1 payroll check for those individuals?

2 A General fund.

3 Q And do you know why the City of Vernon used  
4 hyphenated titles for single positions?

5 A This is basically an assumption, but I think so.  
6 People outside the City would know who to go to if they had  
7 a question about something. That's an assumption. I don't  
8 know if that's really what they thought, but that's the way I  
9 looked at it.

10 Q Can you elaborate a little bit on that?

11 A Well, if there was a question about labor  
12 negotiations, they would talk to somebody that was  
13 responsible for it, the City Administrator. If it was the  
14 Treasurer, it was on a question of why we decide to make a  
15 certain decision on how we invested monies, then it could  
16 come to the Treasurer. It was an everyday job. Just an  
17 ability to respond to outside sources --

18 Q And --

19 A -- in every --

20 Q And did the City have a large staff at this time?

21 THE COURT: At which time?

22 MR. JENSEN: I'm sorry.

23 BY MR. JENSEN:

24 Q When you -- actually when you started at the City of  
25 Vernon, how many employees were in the administration in the

1 City of Vernon?

2 A In the administration side, one, two, three, four.  
3 There was a City Clerk. There was the Treasurer. There was  
4 a Payroll Clerk, and a Finance Clerk.

5 Q Four people?

6 A Basically. I was the fifth person that came in.

7 Q And let's say -- what was the largest number of  
8 people in your tenure that worked in the administration of  
9 the City; and maybe I should -- are you referring just to the  
10 people in the City Administrator Department?

11 A No. I'm referring to people that were in the City  
12 Clerk finance, in M.E.R.R.

13 THE COURT: I'm sorry?

14 THE WITNESS: City Clerk Finance Director.

15 THE COURT: Thank you.

16 BY MR. JENSEN:

17 Q Were these -- I mean, I don't want to include the  
18 police, fire, and maintenance workers.

19 A No.

20 Q I just mean the people that helped manage the City.

21 A Well, if we're talking about what was in the City  
22 Clerk finance enterprise funds it was funds of people.

23 Five.

24 Q Okay.

25 A When I left, there was probably twenty, fifteen.

1 Q Okay. And can you tell me for -- I'm trying to use  
2 terms about who were the people that helped manage the  
3 day-to-day operations of the City; what did -- how many  
4 people would that be excluding the fire and police?

5 A The whole City?

6 Q Yeah.

7 A Well, just start at -- I think there may be -- maybe  
8 one, two. Two individuals that worked -- that was on  
9 payroll; is that what you're asking?

10 Q So that would be the total --

11 A On payroll, yeah. When I got there, probably 325.

12 Q So there were more people that worked there when you  
13 started than when you left?

14 A Right.

15 Q How did -- why did that occur?

16 A The Fire Department was probably one hundred  
17 eighteen people; and when I had left, it was probably around  
18 seventy-five. The Police Department maintained the same  
19 number.

20 Q And there was one thing that -- one specific part of  
21 the Fire Department that stands out is: Did it have a very  
22 high safety rating though?

23 A They were number one service in the state of  
24 California.

25 Q Okay. So would it be fair to say the City of Vernon

1 had a small staff running the City?

2 A A smaller staff?

3 Q A small -- just a small number of people that were  
4 running -- that were administering the City's business?

5 A In the administration side?

6 Q Yes.

7 A Yes.

8 Q Okay. And was that one of the reasons that an  
9 individual had to have multiple responsibilities?

10 A Yes, I would think so.

11 Q And let me just ask, within the City structure, did  
12 the job titles help establish a chain of command of who would  
13 report to who?

14 A More or less.

15 Q Okay. So let me turn to this. When you are City  
16 Administrator-City Clerk, the City at one point increased the  
17 duties and responsibilities; and I guess the question is: In  
18 1981 the City appointed you as C.E.O. of Light and Power; is  
19 that correct?

20 A Yes.

21 Q And at that point, did the City Council give you a  
22 pay increase --

23 A No.

24 Q -- for -- just let me -- for undertaking the duties  
25 and responsibilities of the C.E.O.?

1 A No.

2 Q And were these duties to be performed as part of the  
3 single job of City Administrator-City Clerk?

4 A Yes.

5 Q And were you still paid a single paycheck from the  
6 general fund?

7 A Yes.

8 Q Okay. So what led to your appointment as C.E.O. of  
9 Light and Power?

10 A When we finished the negotiation with Edison for the  
11 new contract, it ran from '77 to '87, there were several  
12 problems that we saw, and that was basically that we were not  
13 adhering to the previous contract in which we were supposed  
14 to get a cheaper rate. We're paying a higher rate.

15 We found the gentleman that was running it for us  
16 was not -- was not persuasive to Edison to keep it that way.  
17 So consequently we didn't think that he was -- he could do  
18 the job.

19 Q And did this involve your negotiations as City  
20 Administrator with third parties outside of the City?

21 A It did.

22 Q And were these reduced electrical rates that arose  
23 beneficial overall to the City in --

24 A Sure. Absolutely.

25 Q And did -- and in what ways; just briefly?

1           A     Well, we had cheaper rates. We were bringing in  
2 more industry into the City that were buying our -- because  
3 of our cheap -- rates were cheaper.

4           Q     Okay. So approximately six or seven months after  
5 the City provided these additional duties and  
6 responsibilities and job title C.E.O. Light and Power, the  
7 City provided a pay increase. Was this compensation for your  
8 increase in compensation for your City Clerk position; was  
9 this related to your undertaking additional responsibility of  
10 the Electric Department?

11          A     I don't know if it was directly, but it probably  
12 indirectly it was. It led to --

13                   THE REPORTER: It led to --

14                   THE COURT: It led to an increase.

15                   THE WITNESS: It led to an increase.

16 BY MR. JENSEN:

17          Q     Tell me how.

18          A     Well, I -- at this time we were discussing what our  
19 situation with the Nevada power on -- Nevada power offered me  
20 a position.

21          Q     So --

22          A     Their C.E.O. was retiring --

23          Q     So the relation is -- well, please finish.

24          A     -- so I didn't have a true interest in going there,  
25 but the money was substantially more than what I was making,

1 and I went to the City Council; this is what's available to  
2 me, and they were willing to adjust my salary.

3 Q So let me step back, because sometimes this  
4 language --

5 A That was during a review.

6 THE COURT: That was during --

7 THE WITNESS: I had an annual review with the City  
8 and this is what the -- what was discussed.

9 BY MR. JENSEN:

10 Q Let me just clarify. So when I asked you whether  
11 the additional compensation was related to you assuming  
12 additional duties and responsibilities in Light and Power you  
13 said, "indirectly," and then you started mentioning a  
14 negotiation with the City Council and then you mentioned that  
15 you were offered another job from Light and Power?

16 A From Nevada power.

17 Q From Nevada power?

18 A Yeah.

19 Q So the indirect increase in your compensation is  
20 related to a competing offer from the Nevada power; is that  
21 correct?

22 A Yes.

23 MR. LEVIN: Objection. Leading.

24 THE WITNESS: Excuse me?

25 THE COURT: Clarify the testimony. I'll allow it.

1 MR. JENSEN: And that --

2 THE COURT: That's fine. Go ahead.

3 BY MR. JENSEN:

4 Q So tell us what happened. Well, did the Nevada  
5 power offer you a position?

6 A They did.

7 Q Tell us that story.

8 A Well, they offered me -- the gentleman that was  
9 there in charge we negotiated with, we brought power in from  
10 Nevada power, he reached the age 70 and he had to retire. He  
11 had to leave. He wanted somebody to come in to do the job.  
12 He thought I could do that for him.

13 Q Did they offer you a significant increase?

14 A Yeah.

15 Q What was the amount?

16 A I think at that time it was one hundred 125,000 a  
17 year. Plus a house. Plus two cars.

18 Q What did you do when you received that offer?

19 A Told my wife. She said, "No." I went to the City  
20 Council and discussed it with them.

21 Q What did you discuss?

22 A They gave me a raise. Not the same. In the same  
23 ball park, but they did give me an increase.

24 Q And so was the increase to keep you employed  
25 otherwise you would leave to Nevada power?

1 A I would have the option of leaving.

2 Q When you said that the increase in your salary at  
3 the City of Vernon was indirectly related to your work as  
4 Light and Power, you're really --

5 A No, I really wasn't. It really wasn't. My  
6 additional duty --

7 THE REPORTER: I apologize. I didn't get that.

8 THE WITNESS: I'm sorry. It really wasn't. My  
9 additional duties there was the fact that I may leave or had  
10 the opportunity of leaving. I can tell -- my wife said,  
11 "No" so --

12 BY MR. JENSEN:

13 Q And were you aware of why the -- well, doesn't  
14 matter. So you mentioned this process of annual review.  
15 Let's get to that in a minute. So did your salary  
16 increase?

17 A Over thirty years?

18 Q Over thirty years?

19 A Yes.

20 Q How did it increase?

21 A How? The City Council approved it.

22 Q What was the mechanism that your salary increased?

23 A We had -- basically in the budget was adopted in  
24 July 1st of each year. There was normally a cost of living  
25 raise. So and the fact it had an effect there which

1 everybody got the same amount. I had an annual review which  
2 occurred in October, I believe; and we negotiated an  
3 agreement there.

4 Q And so just to clarify, did every employee in the  
5 City of Vernon receive the same percent and cost of living  
6 increase?

7 A They did.

8 Q And the annual review increases were in addition to  
9 the cost of living increases?

10 A Yes.

11 Q And at different times?

12 A At different times.

13 Q And who conducted the annual reviews?

14 A The Finance Department. The Finance Committee.

15 Q And did you make recommendations to the Finance  
16 Committee?

17 A I did.

18 Q Did you attend the Finance Committee meetings?

19 A I did. I was the clerk with the finance.

20 Q Are you a voting member of the Finance Committee?

21 A No.

22 Q Did you ever vote on any recommendation for your  
23 salary?

24 A No.

25 Q And did you -- in your annual review process, did

1 you request pay increases?

2 A Yes.

3 Q And did you request the pay increases associated  
4 with being required to perform a new duty or responsibility  
5 within that last year?

6 A I may have, but basically what we -- what I tried to  
7 convey was how the City had improved over the period I have  
8 been there and the improvement that we accomplished.

9 Q So did your pay increase ever coincide in time with  
10 Vernon Council requiring you to perform additional duties?

11 A I don't recall that ever happening.

12 Q What is -- do you recall what is your best  
13 recollection of whether the City Council paid you for  
14 performing additional duties and responsibilities at the same  
15 time?

16 A I cannot recall that ever happening.

17 Q Okay.

18 A Not saying that it didn't, but I don't recall it  
19 ever happening.

20 Q So did the City ever pay you directly additional  
21 monies for taking on a new duty?

22 A No.

23 Q So how did you explain to the Finance Committee in  
24 your annual review that you were entitled to an increase?

25 A Different -- different avenues. I think basically

1 it improved the value of the City; I think, when I got there,  
2 there were thirty men, they were about worth two thousand  
3 fifty million. I think that process over the years has  
4 grown, and I brought that to their attention.

5 The fact that they had no more labor problems that  
6 was -- that was a big -- the fact they ran our own Power  
7 Department was beneficial. I think in 1887 Edison gave us  
8 two years notice they were not going to run our system  
9 anymore.

10 And I believe I met with a Committee from the  
11 businesses of the City, told them I didn't have a choice not  
12 to bring in somebody else because they had always wanted  
13 Edison to run the system, and Edison wanted a gold system but  
14 was able to find someone to run our system, and it saved the  
15 City approximately \$100,000 a month.

16 So there were things that just happened when the  
17 opportunity came. We were able to do things that were  
18 beneficial to the City, and I told them. I tell the Council  
19 too what we've done. This is how it was done.

20 1989 a group of businesses came to me and said, "You  
21 know, you're doing fine with the Light and Power, what are  
22 you going to do about the gas?" What do you want to do? Why  
23 can't we have our own gas system?

24 So I went to Southern California gas and asked them  
25 to sell our system to us. They were unwilling to.

1 Q Let's -- don't need to get into all that.

2 A These are things that happened that caused the  
3 Council to recognize that I was beneficial to the City.

4 Q And did you ever describe your different -- in  
5 these -- in your work are you requesting raises, did you ever  
6 describe the different duties and responsibilities of City  
7 Administrator; you know, did you ever use the position, the  
8 word "position" or "titles" or "jobs" even though you were  
9 seeking a raise in the City Administrator-City Clerk  
10 position?

11 A I can't say I never did, but I was not -- was not  
12 the way I normally did it.

13 Q And if you did use such words, you know, can you --  
14 did you ever look at those as separate positions, as separate  
15 responsibilities and separate pay?

16 A You know, I don't recall ever doing that. I can't  
17 say I never did, but I don't recall ever doing it.

18 Q Okay. Let me move to this issue of cost accounting.  
19 Are you familiar with the City's practice regarding cost  
20 accounting across the departments?

21 A What my understanding of it is?

22 Q Yes.

23 A Yeah.

24 Q Can you explain that?

25 A Basically the cost of accounting was attributed to

1 the -- attributed to the different departments based on the  
2 value of that department. The amount of time spent in that  
3 department. The matter of what the value of the costs of  
4 running that department was --

5 Q And --

6 A -- allocated the cost.

7 Q Did Vernon utilize costs accounting since you  
8 started there?

9 A Pardon me?

10 Q Did Vernon utilize cost accounting when you -- since  
11 you started there?

12 A I think so. Yeah, on the budget.

13 Q And did Vernon allocate some of the costs of  
14 overhead across different departments even within the general  
15 fund?

16 A Yes.

17 Q And did Vernon allocate some of your salary across  
18 different departments?

19 A They did.

20 Q And how did they allocate your salary across  
21 different departments?

22 A I think basically a percentage of all the value of  
23 the department.

24 Q And why did the City -- why did the City use cost  
25 accounting?

1           A     I think to create a budget. They were responsible  
2 for creating a budget, and so they wanted to allocate the  
3 cost, distribute the cost basically.

4           Q     And so when was cost accounting done?

5           A     Primarily at budget time unless there was an  
6 adjustment during the year for some reason.

7           Q     So when was budget time? It was done during budget  
8 time. When was that?

9           A     Budget was created each June and adopted each  
10 July 1st.

11          Q     And were these costs allocations across the  
12 department prospected for the next year?

13          A     Yes.

14          Q     And were these cost allocations based on past  
15 experience or anticipation of future value of the  
16 departments?

17          A     They could be projected projects that would be  
18 involved that would create the previous or the -- on the  
19 ensuing year, but primarily I think it was the history of the  
20 previous year.

21          Q     And was it -- just to clarify, you said it was not  
22 based on time. So if you're -- if your salary was allocated  
23 across different departments, was it based on how much time  
24 you worked in those various departments?

25          A     No, I never worked in --

1 THE COURT: I beg your pardon?

2 THE WITNESS: I never worked in other departments.

3 I was the City Administrator.

4 BY MR. JENSEN:

5 Q And so just to clarify, so the cost accounting was  
6 not related to your work or the time spent for tasks in any  
7 particular department?

8 A No.

9 Q Okay.

10 THE COURT: We're going to take a fifteen minute  
11 break.

12 MR. JENSEN: Thank you, your Honor.

13 THE COURT: Off the record.

14 (Recess)

15 THE COURT: Back on the record. Go ahead,  
16 Mr. Jensen

17 MR. JENSEN: Thank you, your Honor.

18 BY MR. JENSEN:

19 Q So I just want to refresh. Directly -- I'm not  
20 exactly sure where we left off. Talking about cost  
21 accounting and the method of cost accounting, so if you can  
22 describe for us just briefly again how overhead costs were  
23 allocated across different departments.

24 A They were distributed by the percentage of the value  
25 of the department to the total.

1 Q And between some years were there significant  
2 increases in the value of certain departments?

3 A There could be if there was a project going on.

4 Q I want to call your attention in the last years of  
5 your employment, and I'm not exactly sure what year it was;  
6 but I think it was 2003, 2004; was there a significant  
7 increase in the value of the Light and Power Department?

8 A There was. They're a generator -- new generation  
9 for within. They were developing what you -- new generation  
10 for the City.

11 THE REPORTER: Can you repeat what you said,  
12 please?

13 THE WITNESS: I'm sorry. We were developing new  
14 generation for the City.

15 BY MR. JENSEN:

16 Q And so did that increase the value of the department  
17 of budget?

18 A It did.

19 Q And would that change the allocation of costs across  
20 the different departments?

21 A It would.

22 Q How would it do so?

23 A Well, the increase value of that department and the  
24 costs for the allocation of basically the City Administrator  
25 costs it would get more -- go into that department.

1 Q Just to clarify, so there would be a higher  
2 allocation of costs toward the Light and Power Department as  
3 a result of there being a larger dollar value of that  
4 department?

5 A Yes.

6 Q Did it -- was the allocation associated with the  
7 time that you expected to spend on -- let me withdraw that.

8 Was the allocation directly associated with the  
9 amount of time that you would spend in that department?

10 A Not necessarily.

11 Q Okay. And was -- when there was a change in budget  
12 or a large project, was the allocation changed prospective  
13 for the coming year based on anticipation of what the value  
14 of that department would be?

15 A Potentially it could be. I would think it would.  
16 Yeah.

17 Q So let me ask you --

18 A I'm not an accountant so --

19 Q So if, for example, there was a large project in the  
20 Electric Department that had yet to occur but there was an  
21 anticipation of a larger budget --

22 A Yes.

23 Q -- how would the costs be allocated in that  
24 scenario?

25 A Well, I think when they allocate the cost for that

1 department, then they take the administrative cost and  
2 distribute it. That would go to the -- whichever department  
3 it was, the higher percentage would be. You would allocate  
4 that cost to them.

5 Q But that would be prospective future looking  
6 allocation?

7 A It would have been in that case.

8 Q Thank you. So I want to just touch up on something  
9 that I thought about that I want to clarify. Were you ever a  
10 voting member of the Finance Committee?

11 A No.

12 Q Were you ever a voting member of the Personnel  
13 Committee?

14 A No.

15 Q Were you ever a voting member of the City Council?

16 A No.

17 Q So in about 2005 were you anticipating retiring?

18 A I was.

19 Q Prior to -- when were you anticipating retiring?

20 A First was '95 when I turned 60, and I decided it  
21 wasn't time yet. So I wanted to work ten more years, and I  
22 did, and then I retired.

23 Q In the process of retiring, was there any succession  
24 planning where you helped another individual to your multiple  
25 duties and responsibilities in a position of the City

1 Administrator-City Clerk?

2 A I did not.

3 Q Was there any planning with regard to how the duties  
4 and responsibilities in your position would be accomplished  
5 after you retired?

6 A Not with me.

7 Q And would it be fair to say at this point you would  
8 be quite adept at managing multiple duties?

9 A Excuse me?

10 Q Would it be fair to say you were at this point  
11 fairly adept at managing the various duties and  
12 responsibilities?

13 A Yes.

14 Q And did the City Council ask you to groom or train  
15 someone --

16 A No.

17 Q -- to take on --

18 A They did not.

19 Q Let me finish the question. Did the City Council  
20 ask you to groom or train somebody to take on the existing  
21 job of City Administrator-City Clerk?

22 A No, they did not.

23 Q And did you think that the individuals that you had  
24 delegated certain tasks could perform the executive tasks  
25 that you had retained in your position as City Administrator-

1 City Clerk?

2 A I assumed that, but depending on who they decided to  
3 bring in to make their -- basically put their stamp on how  
4 they wanted things done. That's why I didn't offer to groom  
5 somebody, so to speak.

6 Q And after you retired was there -- did CalPERS  
7 dispute the amount of your pension?

8 A They did.

9 Q And tell us about what you know of that.

10 A They notified me that I was not entitled to pension  
11 that I had been provided. And consequently they cut it. I  
12 took it to the City and the City took it upon themselves to  
13 hire legal representation to challenge CalPERS decision  
14 and --

15 Q Were you under the understanding that these  
16 attorneys were representing your personal interest in your  
17 pension -- or let me clarify.

18 Were you under the understanding that these  
19 attorneys were hired in order to restore the amount of your  
20 pension?

21 A I think the City had a guarantee -- in my mind  
22 guaranteed me a pension, and CalPERS had changed it; and it  
23 was their responsibility to correct it.

24 Q And you're aware that the attorneys were hired to  
25 dispute the matter?

1 A They were.

2 Q And were you aware -- what was the result of this  
3 action by the attorneys?

4 A I think some fifteen months later CalPERS notified  
5 me that my pension was correct and reimbursed me the money  
6 they cut out of my pension when they first cut it.

7 Q And so did they pay you a lump sum?

8 A They did pay me a lump sum.

9 Q What was that lump sum amount? Not the amount.  
10 What did that lump sum represent?

11 A It represented the amount they cut out of my pension  
12 when they had notified me in 2005 that I was not entitled to  
13 that level of pension.

14 Q And did they restore the full amount of pension that  
15 you believe you were entitled to?

16 A They did.

17 Q And after they restored it, what did you think --  
18 what did you think the status of the matter was?

19 A I thought it was -- it was my -- it was done. They  
20 come to a decision, and it was over.

21 Q Did you agree that CalPERS could reopen the  
22 matter?

23 A No.

24 Q Did you sign any agreement allowing them to reopen  
25 it?

1 A No.

2 Q Did CalPERS -- what happened after that, after  
3 CalPERS -- let me withdraw that question.

4 Did CalPERS then pay you the correct pension  
5 amount?

6 A They did.

7 Q For how many years?

8 A Approximately -- well, approximately seven years.  
9 They notified me after about five years that it was being  
10 reviewed, and I didn't understand that because I thought they  
11 were only entitled to one hearing and that hearing had been  
12 done, and there was no consideration it had to be reopened in  
13 the future.

14 Q So at the end of that first process, did you think  
15 the matter had been finally resolved?

16 A I thought it was resolved at that time. Yes.

17 MR. JENSEN: Just reserve for direct, your Honor.

18 THE COURT: All right. Cross-examination.

19 MR. LEVIN: May I proceed, your Honor?

20 THE COURT: You may.

21 MR. LEVIN: Thank you.

22

23 CROSS-EXAMINATION

24 BY MR. LEVIN:

25 Q Good morning, Mr. Malkenhorst. Jason Levin for

1 CalPERS.

2 A Yes

3 Q This morning you had mentioned your conviction of a  
4 felony. That conviction was for misappropriating funds from  
5 the City of Vernon; correct?

6 A That's true.

7 Q What was the dollar value of the funds you  
8 misappropriated from the City of Vernon?

9 MR. JENSEN: Objection, your Honor. It goes into  
10 the details of the Matter, and it's not allowed under the --  
11 it's improper impeachment.

12 THE COURT: Where are you going with this?

13 MR. LEVIN: Laying -- I'm eliciting evidence as to  
14 the nature of the felony such that it is clear to the Court  
15 to the moral turpitude involved which bears on the  
16 credibility of all the witnesses' testimony.

17 THE COURT: Is it a documentation of the conviction  
18 in the exhibits offered by CalPERS?

19 MR. LEVIN: Well, there was. There was an objection  
20 to a report.

21 THE COURT: Which number was that?

22 MR. LEVIN: Let me find it. Your Honor, I don't  
23 believe it was marked. There was a discussion on the record  
24 during motions in limine as to whether that document could be  
25 used as impeachment. I believe the Court reserved the

1 judgment on whether that could be used as impeachment based  
2 on objections of lack of foundation and hearsay.

3 So rather than jump into that document, I felt it  
4 was best to get firsthand information from the witness as to  
5 the nature so we wouldn't get to an issue as to whether or  
6 not that report commissioned by the City of Vernon was or was  
7 not accurate.

8 MR. JENSEN: Your Honor, he's going -- this is  
9 totally inappropriate impeachment. He's trying to basically  
10 bootstrap information that's irrelevant to this, to tag his  
11 credibility. The fact that he was convicted is in evidence.  
12 The nature of the conviction is misappropriation of public  
13 funds is all that matters, and that's all that's relevant.  
14 Everything else in addition to that is inappropriate  
15 impeachment. There's direct case law in point.

16 THE COURT: What's the case law?

17 MR. JENSEN: Let me find that. It is "People vs."  
18 -- and I'm going to spell this because it's very hard to  
19 pronounce -- "S-z-a-d-z-i-e-w-i-c --

20 THE COURT: I'm sorry. Slow down. Start again.  
21 S-z-a-d --

22 MR. JENSEN: "S-z-a-d-z-i-e-w-i-c-z." And it's a  
23 2008 case, 161 Cal Ap 4th, 823; and it cites an earlier  
24 case.

25 THE COURT: 823 you said?

1           MR. JENSEN: Yeah. 823. And then it cites  
2 "People Vs. McCullen." And the finding was the scope of  
3 inquiry concerning a prior conviction introduced for  
4 impeachment purposes does not extend to the details and  
5 circumstances surrounding the circumstances of the offense.

6           Jason, you want to see this?

7           MR. LEVIN: If you have a copy of the case, Counsel,  
8 I would like --

9           THE COURT: Let's go off the record for a moment.

10          (Discussion off the record)

11          THE COURT: Back on the record. I will collect this  
12 under submission, look into it at the next break. Let's move  
13 on to a different area.

14          MR. LEVIN: Yes, your Honor.

15 BY MR. LEVIN:

16          Q     Mr. Malkenhorst, now when you were misappropriating  
17 funds from the City of Vernon, did you understand that what  
18 you were doing was wrong?

19          MR. JENSEN: Objection, your Honor.

20          THE COURT: Sustained. Let's move to a different  
21 area of inquiry.

22 BY MR. LEVIN:

23          Q     Mr. Malkenhorst, you became the City  
24 Administrator-City Clerk in 1978; correct?

25          A     Yes, sir.

1 Q At that time in 1978, was there a written statement  
2 of the duties of City Clerk?

3 A I have no recollection of there being -- there may  
4 have been, but I have no recollection of it.

5 Q Are you aware of any laws, statutes or regulations  
6 that describe the obligations of a City Clerk?

7 A I do not. There may be, but I don't -- I don't  
8 recall.

9 Q Are you familiar with the City of Vernon's city  
10 code?

11 A I know it has one.

12 Q Have you ever read it?

13 A Probably.

14 Q Mr. Malkenhorst, I would like you to review some  
15 exhibits that have been admitted into evidence.

16 Your Honor, may I get the binders for the witness?

17 THE COURT: You may.

18 MR. LEVIN: Start first with Exhibit 10.

19 THE COURT: Which binder is that in?

20 MR. LEVIN: The first binder, your Honor. Volume  
21 one.

22 THE COURT: Let me catch up.

23 BY MR. LEVIN:

24 Q Mr. Malkenhorst, if you could please turn to Exhibit  
25 10-2. That's the second page of Exhibit 10.

1           Mr. Malkenhorst, do you recognize this as a page  
2 from Vernon's City code?

3           A     It's been a long time since I saw it. Yes, I guess  
4 I could.

5           Q     Do you see in the middle of the page there is a  
6 paragraph on the City Clerk?

7           A     I do.

8           Q     Do you see that paragraph refers to the powers and  
9 duties of the City Clerk?

10          A     Provide -- to the Government of State of California.  
11 Yes.

12          Q     Do you ever reviewing the section of the Government  
13 code of the State of California that pertains to the powers  
14 and duties of the City Clerk?

15          A     I don't recall that. No.

16          Q     Were the powers and duties of the City Clerk as  
17 specified by the Government code ever explained to you or  
18 discussed with you during the entirety of your employment at  
19 the City of Vernon?

20          A     Not to my recollection.

21          Q     When you first became City Administrator-City Clerk,  
22 did you perform duties that in your mind you understood as  
23 functions or obligations of a City Clerk?

24          A     Yes.

25          Q     Those duties included going to City Council

1 meetings?

2 A Yes.

3 Q And the City Clerk had some formal function at City  
4 Council meetings; correct?

5 A Yes.

6 Q What particular functions were those?

7 A Primarily the minutes. Created minutes for the  
8 Council meeting.

9 Q Back in 1978 what other functions did you perform  
10 that you associated with the obligations of a City Clerk?

11 MR. JENSEN: Objection, your Honor. Misstates his  
12 testimony because he testified that he does not recall having  
13 looked at the Government code to determine whether those  
14 functions and obligation of the City Clerk were explained to  
15 him.

16 THE COURT: Overruled. What other functions did you  
17 perform as City Clerk in 1978?

18 THE WITNESS: In '78, I believe there was an  
19 election.

20 BY MR. LEVIN:

21 Q What was the role of -- what role did you take as  
22 City Clerk in connection with the elections?

23 A As my best recollection, it was counting the  
24 votes.

25 Q Any other functions that you undertook as City Clerk

1 back in 1978?

2 A Actually, that's all that comes to mind.

3 Q At some point in time did you delegate to another  
4 individual at the City of Vernon the function of generating  
5 Council minutes?

6 A Generate?

7 Q Generating City Council minutes. At some point in  
8 time, did you delegate to another City Vernon employee that  
9 function?

10 A Generating?

11 Q City Council minutes?

12 A Oh, City Council minutes. Yes. I don't think it  
13 was at that time, but later on. Yes.

14 Q Approximately when did you delegate that function?

15 A I would think it was in '81, '82.

16 Q At some point in time did you delegate to another  
17 City of Vernon employee the function of counting votes in an  
18 election?

19 A No.

20 Q That's a function that you continue to do through  
21 the entirety of your employment at City of Vernon as City  
22 Clerk?

23 A Yes.

24 Q Between 1978 and 2005 at your retirement?

25 A Yes.

1 Q Back in the 1978, 1979 time frame, approximately how  
2 many hours per week would you spend on functions specific to  
3 those of City Clerk?

4 A I have no idea.

5 Q A change of topic now about City Administrator.  
6 When you became City Administrator in 1978, do you recall  
7 seeing any writing that described the duties of a City  
8 Administrator?

9 A I think when they adopted the ordinance or the  
10 resolution, whatever it was, I probably read it. Yes.

11 Q Could you please turn to Exhibit 10-4. That's page  
12 4 of Exhibit 10. Do you see that there is a section 2.8 of  
13 the Vernon's City code here that pertains to the powers and  
14 duties of the City Administrator?

15 A Yes.

16 Q Have you seen this before?

17 A I probably have.

18 Q In subparagraph "A" there is a description of one of  
19 the powers and duties of City Administrator called "general  
20 supervision." Do you see that?

21 A I do.

22 Q Could you spend a moment to read what the Vernon's  
23 City code describes as the general supervision power or  
24 duties of City Administrator. Have you completed that  
25 paragraph?

1           A     I did.

2           Q     Did you maintain all of the general supervision  
3 powers and duties of the City Administrator from 1978 through  
4 your retirement?

5           A     I believe so.

6           Q     Please turn to the next page, Exhibit 10-5. See  
7 there's a subparagraph on enforcement. Do you see the  
8 enforcement paragraph at the top of the page,  
9 Mr. Malkenhorst?

10          A     I don't.

11                THE COURT: That's 10.4 is the page.

12                THE WITNESS: 10.4.

13                MR. LEVIN: The bottom right-hand corner of my copy.

14                THE COURT: I see.

15                MR. LEVIN: It says, "10-5."

16                THE COURT: That's correct. So it is page 5 of  
17 Exhibit 10.

18                THE WITNESS: I found it, your Honor.

19                THE COURT: Thank you. You may continue.

20                MR. LEVIN: Thank you, your Honor.

21 BY MR. LEVIN:

22           Q     For the entirety of the period from 1978 through  
23 your retirement in 2005 when you were working as the City  
24 Administrator, did you take on the enforcement function?

25           A     I did.

1 Q Was there ever a time that you delegated that  
2 enforcement function to another City of Vernon employee?

3 A Maybe only to the Police Chief.

4 Q I'm sorry?

5 A Maybe only to the Police Chief.

6 Q When do you believe that delegation occurred?

7 A Well, I assumed that he always had that  
8 responsibility.

9 Q A responsibility that you shared with him?

10 A Yes.

11 Q Also on Exhibit 10-5 there's a description of  
12 personnel and organization as a power and duty of the City  
13 Administrator. Do you see that?

14 A I see that.

15 Q Is that a power and duty that you undertook for the  
16 City of Vernon during the entirety of the time that you  
17 worked as City Administrator?

18 A Yes, sir.

19 Q Was there ever a time that you delegated that power  
20 in whole or part to another City of Vernon employee?

21 A Not to my recollection.

22 Q Turn to the next page, please. Exhibit 10-6. We're  
23 at subparagraph "D." Do you see there is a reference to City  
24 Administrator's powers and duties with respect to rules and  
25 regulations?

1           A     I don't.

2           THE COURT:   Mr. Levin, you may approach the witness  
3     and show him which page.

4           MR. LEVIN:   Thank you, your Honor.   Okay.   So this  
5     is.

6           THE WITNESS:   Okay.

7     BY MR. LEVIN:

8           Q     And just for clarification, Mr. Malkenhorst, when I  
9     cite the page or number of the exhibit, I'm referring to  
10    what's marked at the bottom right-hand corner of the pages.  
11    I know there's some confusion in terms of the numbering of  
12    these pages.

13          A     Thank you.

14          Q     So do you see there the subparagraph on rules and  
15    regulations?

16          A     I do.

17          Q     Did you exercise --

18          A     I haven't read it yet.   Okay

19          Q     For the entirety of the time that you worked as City  
20    Administrator for the City of Vernon, did you -- were you  
21    responsible, in your mind, for exercising the powers and  
22    duties of rules and regulations as described on Exhibit 10-6?

23          A     Yes.

24          Q     Was there ever a period of time that you delegated  
25    those powers and duties in whole or in part to another City

1 Vernon employee?

2 A Not to my recollection.

3 Q Do you recall specific rules, regulations, and  
4 policies that you had the obligation of preparing for the  
5 City Council when you were the City Administrator?

6 A I'm sorry?

7 Q The section on rules and regulations refers to the  
8 obligation of the City Administrator to prescribe rules,  
9 regulations, and policies at the request of City Council; do  
10 you agree?

11 A Is that under rules and regulations?

12 Q Correct. That says if the City Council tells the  
13 City Administrator to prescribe rules, regulations, and  
14 policies of the City, the City Administrator is supposed to  
15 take on that function; correct?

16 A Yes.

17 Q Did that ever occur while you were the City  
18 Administrator?

19 A Not to my recollection.

20 Q Turning now to subparagraph "E" on Exhibit 10-6,  
21 there's a section on compensation plan. Do you see that?

22 A Yes, sir.

23 Q It was the obligation of the City Administrator to  
24 prepare and recommend to the Council revisions in connection  
25 with the City's compensation plan; correct?

1 A Yes.

2 Q Is that something that you personally did while you  
3 were the City Administrator?

4 A No. It was done on Finance Department.

5 THE COURT: Done by the Finance Department?

6 THE WITNESS: It was done by the Finance  
7 Department.

8 THE COURT: Thank you.

9 THE WITNESS: I may review it, but I didn't do it.

10 BY MR. LEVIN:

11 Q Was there a time that you asked someone in the  
12 Finance Department to prepare or create revisions to the  
13 compensation plan?

14 A This is salary resolution, yes. Payroll Department  
15 would do it.

16 Q To whom did you delegate that responsibility?

17 A Whoever is responsible for payroll at that time.

18 Q Were there different people?

19 A During the years, yeah.

20 Q Would it be fair to say that during the entire  
21 period of time that you were the City Administrator that you  
22 delegated to other individuals the duties and powers of  
23 creating and revising and preparing compensation plan  
24 information?

25 A I may be creating but not revising it. If any

1 revisions came from the Council and it came down either  
2 through me to the individual just direct parts of  
3 investigation.

4 Q The next subparagraph on Exhibit 10-6 is entitled  
5 "Assist the Council." It was the duty of City Administrator  
6 to assist the Council as described in that paragraph;  
7 correct?

8 A Yes, sir.

9 Q Did you at anytime as the City Administrator  
10 delegate in whole or in part to another City of Vernon  
11 employee the duties described in subparagraph "F"?

12 A Not to my recollection. No, not to my  
13 recollection.

14 Q Subparagraph "G" refers to the duties of the City  
15 Administrator to carry out Council decisions; correct?

16 A Yes, sir.

17 Q Is that something you did as the City Administrator?

18 A Yes.

19 Q Did you ever delegate that power to other  
20 individuals at the City of Vernon?

21 A Well, it was a different department. Yes. I  
22 delegate to the department head.

23 Q The next paragraph "H" refers to budget. Was it the  
24 duty of the City Administrator to supervise the preparation  
25 of a detailed budget for the City of Council?

1 A Yes.

2 Q And is that something that you did for the entire  
3 period of time that you were the City Administrator?

4 A I didn't create it, no; but I supervised people that  
5 did do it.

6 Q Was there a particular department or position to  
7 whom you delegated the obligation to prepare a city budget?

8 A The Treasurer did it.

9 Q Would you then --

10 A Excuse me. Let me clarify that. Maybe not -- I  
11 said maybe partly it was a Financial Department too. But it  
12 was the Treasurer who was responsible, accumulated. So it  
13 was one document to bring to me.

14 Q You were the Treasurer of the City of Vernon  
15 beginning in 1978 as well, weren't you?

16 A I was the Treasurer. Yes.

17 Q So were you a City Administrator delegating to  
18 yourself the obligation of the budget preparation?

19 A No. No. That's getting to the Assistant  
20 Treasurer.

21 Q The Assistant Treasurer? Because you were the  
22 Treasurer, the Assistant Treasurer then would show you the  
23 budgets and you could review them?

24 A Yes.

25 Q As far back as 1978, did the budgets prepared for

1 the City of Vernon allocate a salary expense across various  
2 departments?

3 A Yes.

4 Q So when there was allocation of your salary across  
5 departments, you were aware of those allocations?

6 A I would think I was. I don't recall that.

7 Q Turn to the next page, please, Exhibit 10-7.

8 There's a subparagraph entitled "Purchasing." The City  
9 Administrator was in charge of purchasing; correct?

10 A That's right.

11 Q Did you ever delegate in whole or in part the  
12 purchasing duties to another employee of the City of Vernon?

13 A My Assistant Purchasing Agent, yes.

14 Q What powers or obligations did you delegate to the  
15 Assistant Purchasing Agent?

16 A To fulfill the request by the different departments  
17 to purchasing.

18 Q Was the Assistant Purchasing Agent a full-time  
19 position at the City of Vernon for the entire period of time  
20 you were the City Administrator?

21 A Yes.

22 Q The Assistant Purchasing Agent would report to you,  
23 the City Administrator?

24 A Yes.

25 Q Continuing down on Exhibit 10-7, see there's a

1 paragraph J, "Recommendations to the Council." You would  
2 agree that it was a duty of the City Administrator to make  
3 recommendations to the City Council as described in that  
4 paragraph?

5 A I did.

6 Q Is that something that you did throughout your  
7 tenure as City Administrator?

8 A Yes.

9 Q The next subparagraph "K" is entitled "Studies and  
10 reports." Please read that paragraph and confirm that that  
11 was an obligation of the City Administrator for the entire  
12 period of time that you held that position.

13 A It was.

14 Q Did you ever --

15 A Well, excuse me. Let me correct that. Either to do  
16 it or have somebody do it or assign it to somebody else to do  
17 it, maybe knowledgeable about what we're looking for at that  
18 time.

19 Q Did you ever delegate to other individuals, other  
20 employees of the City of Vernon the function of making  
21 surveys, studies, and reports and recommendations?

22 A I could, yes.

23 Q Is that something that you recall doing?

24 A Not directly.

25 Q Do you ever recall doing, yourself, any surveys,

1 studies, reports, and recommendations as described in  
2 subparagraph "K"?

3 A Well, I made a lot of recommendations. I don't know  
4 that it fell in this -- well, I did, yes. But I also had  
5 other people, you know, prepare what I needed to know about  
6 it to make the recommendation to the Council. Yes.

7 Q So you would delegate to individuals under your  
8 authority to gather information?

9 A Prepare it, yes.

10 Q And sometimes prepare the actual physical document  
11 for you to review?

12 A Yes.

13 Q The next subparagraph is entitled "Council agenda."  
14 Was it the obligation of the City Administrator to prepare  
15 the agenda for Council meetings?

16 A This is an area where the City Administrator did it,  
17 but it was actually the City Clerk's responsibility at that  
18 time.

19 Q Back in 1978 you were both the City Administrator  
20 and the City Clerk; correct?

21 A Yes.

22 Q Did you, yourself, prepare the agenda for Council  
23 meetings?

24 A No.

25 Q For the entire period of time that you were the City

1 Administrator and the City Clerk, you delegated that function  
2 to somebody else; correct?

3 A I did.

4 Q And to whom did you delegate that power?

5 A My Secretary generally; the Assistant City Clerk,  
6 whoever it was at that time.

7 Q The next subparagraph "M" is mail. It was the  
8 obligation of the City Administrator to receive and open mail  
9 and then to take action upon that mail?

10 A I don't know that I opened it per se, but all mail  
11 addressed in whole or part to the Council to Mayor -- to the  
12 Mayor pro tem did come through me. Yes.

13 Q Generally speaking though, it was your practice for  
14 the entire period of time you were the City Administrator to  
15 delegate the function of --

16 A Opening.

17 Q -- opening and reviewing mail to another City of  
18 Vernon employee; correct?

19 A Yes. Assistant City Clerk.

20 Q The next paragraph is entitled "Financial  
21 conditions." It was the City Administrator's function to  
22 keep the Council apprised of the City's financial condition;  
23 correct?

24 A Yes.

25 Q That's something that you did personally?

1           A     As far as advising the Council, yes.  Preparing it,  
2     no.

3           Q     So there would be materials that would need to be  
4     prepared to help you fulfill your function?

5           A     Right.

6           Q     And these would be functions that you delegated to  
7     others?

8           A     To Assistant Financial Director.

9           Q     The next paragraph is entitled "Investigations."  
10    When you were City Administrator, did you ever make any  
11    investigations as described here?

12          A     I don't recall that, no.

13          Q     Do you recall whether as City Administrator you ever  
14    delegated to another employee the task of making an  
15    investigation?

16          A     Not to my recollection.

17          Q     The next paragraph is called "Full Time Duties."  Do  
18    you see that?

19          A     Yes.

20          Q     Does this indicate to you that it was the City  
21    Administrator's obligation to devote his time working solely  
22    to the City of Vernon and not to work for other entities;  
23    correct?

24          A     Yes, sir.

25          Q     So you couldn't decide on the weekend to take a job

1 for another city or --

2 A No.

3 Q -- or a business; correct?

4 A Yes.

5 Q And that was the purpose of subparagraph "P"?

6 A Truthfully I never think I ever saw that; but, yes.

7 My full time was devoted to the City of Vernon.

8 Q The next subparagraph describes duty of other  
9 offices. Do you see that?

10 A I do.

11 Q And that subparagraph refers to the City  
12 Administrator's interaction with City Clerk, the City  
13 Treasurer and the City Attorney; correct?

14 A Yes.

15 Q For the entirety of the time that you were the City  
16 Administrator, were you also the City Clerk and the City  
17 Treasurer?

18 A I was.

19 Q Were you personally responsible -- withdraw that  
20 question.

21 Did you personally take on the function of  
22 interacting with the City Attorney during the course of your  
23 tenure as City Administrator?

24 A As it pertained to my responsibility, yeah.

25 Q Did you ever delegate that obligation to cooperate

1 and interact with the City Attorney to others under your  
2 control?

3 A If other departments have legal problem and they  
4 would talk to him. Yes.

5 Q When you first began working as the City  
6 Administrator and City Clerk in 1978, did you have job  
7 functions in the capacity of City Administrator apart from  
8 those described in the Vernon City code?

9 A I don't know what those were.

10 Q Well, we just went through them in the City of  
11 Vernon code; correct?

12 MR. JENSEN: Objection, your Honor. Misstates  
13 testimony and it fails to look at the subsection "R" in that  
14 that is the Vernon City code.

15 THE COURT: Were you including subsection "R,"  
16 subparagraph "R-11" in that?

17 MR. LEVIN: That's fine, your Honor. I recognize  
18 though that "R" says, "Any other duties." So we can -- it's  
19 hard to because there's an embedded -- I'll just withdraw.  
20 I'll rephrase the entire question.

21 THE COURT: Go ahead.

22 MR. LEVIN: All right.

23 BY MR. LEVIN:

24 Q Mr. Malkenhorst, when you first began working as the  
25 City Administrator in 1978, did you carry on any other

1 functions or duties as City Administrator other than those  
2 specified in the Vernon City code, including subsection "R"  
3 which -- which allows or authorizes you to perform other  
4 duties as are necessary or incident to the enumerated  
5 powers?

6 MR. JENSEN: Objection. Vague and incomprehensive  
7 question.

8 THE COURT: Sustained.

9 BY MR. LEVIN:

10 Q All right. Then I'm going to go back to my original  
11 question. And, Mr. Malkenhorst, if you don't understand it,  
12 please let me know. All right. When you first began working  
13 as a City Administrator --

14 A Yes, sir.

15 Q -- did you carry out any functions apart from those  
16 listed in the Vernon City code?

17 MR. JENSEN: Objection, your Honor. It's the same  
18 question.

19 THE COURT: Sustained.

20 MR. LEVIN: Your Honor, may I understand what the  
21 ground is?

22 THE COURT: Well, since "R" is so broad, you want to  
23 restrict your answer to subparagraph "A" through "Q" and then  
24 you can ask about "R."

25 MR. LEVIN: Okay. I'll do that.

1 BY MR. LEVIN:

2 Q Mr. Malkenhorst, when you were the City  
3 Administrator, did you carry out any functions apart from  
4 those listed in the City of Vernon, the Vernon City code  
5 section, 2.8, subsections "A" through "Q"?

6 A If I was assigned by the City Council. Yes.

7 Q All right. Apart from duties that were directly  
8 assigned to you by the City Council, were there other duties  
9 that you undertook as the City Administrator that we haven't  
10 already discussed in subparagraph "A" through "Q"?

11 A That's -- to me that's so far reaching. I mean, if  
12 there was a problem and I thought it was under the City  
13 Administrator's verbal, then I would handle it. Whether I  
14 went to Council afterward and said, Hey this happened. I had  
15 to take care of, and we took care of it; yes, we did that.

16 Q How frequently did it happen in the 1978, 1979, time  
17 frame that the City Council would directly ask you to take on  
18 a particular function or obligation or duty that you normally  
19 did not undertake?

20 A Well, during the firemen strike the Board of  
21 Supervisors required the City to send the City Administrator  
22 to their offices and stay there all day until they were --  
23 they were done. So that was an unusual situation; but it  
24 happened. It doesn't fall under this, but it was just a  
25 matter of what you had to do. So if the Council told me to

1 do something, I did it.

2 Q Right.

3 A They needed it done then it was my responsibility to  
4 get it done.

5 Q How frequently did it happen that the Council would  
6 assign to you particularly task or obligation that you didn't  
7 already think was part of your purview as City  
8 Administrator-City Clerk?

9 A I don't know. I -- I don't know that.

10 Q Again to the 1978, 1979 time frame, what percentage  
11 of your time was taken up on the functions of City  
12 Administrator-City Clerk apart from those functions that the  
13 City Council directly asked you to undertake?

14 A Such as -- such as I don't -- my job as City  
15 Administrator was to administer the City. So whatever had to  
16 be done I did. Whether there was an isolated incident  
17 here -- you know, if I was to go out and try to find at the  
18 times we terminated our agreement with the labor  
19 representative, I went out and found somebody. I mean,  
20 that's just what I did.

21 Q Let me try it like this: When you were first the  
22 City Administrator and City Clerk, you had routine functions;  
23 correct? You come in on a day-to-day basis. You had certain  
24 things that you would do every week, every month; and they  
25 were fairly routine; right?

1 A When I first started?

2 Q Yes.

3 A Well, those -- that's when we had the firemen  
4 strike.

5 Q I'm sorry?

6 A That's when we had the Fireman strike. We were  
7 there all the time.

8 Q Okay.

9 A So it was a completely different situation.

10 Q When did the Firemen strike end?

11 A It ended in -- I want to say the end of October.

12 Q Of what year?

13 A Of 1978.

14 Q So after the Firemen's strike was over, did your job  
15 day become more routine?

16 A No. We were going to court for the trial.

17 Q What was that trial about?

18 A The Firemen filed a lawsuit against the City saying  
19 that they had been terminated illegally.

20 Q And so you participated in that --

21 A I was required to go to court. Yes.

22 Q -- in those trial activities? When did all  
23 activities relevant to the firefighter strike end?

24 A Probably mid '79. That's a guess.

25 Q When those activities did end, approximately in mid

1 1979, did you have any additional assignments from the City  
2 Council that you recall took up a substantial part of your  
3 workweek?

4 A At that time we were finalizing our agreement with  
5 Southern California Edison until we decided how we were going  
6 to reestablish our generating plant.

7 Q Would it be your estimate that for a period of time,  
8 a period of years after you first began as the City  
9 Administrator, there was a stream of none routine --

10 A Absolutely.

11 Q -- assignments that you undertook that keep you busy  
12 on a full-time basis?

13 A Yes.

14 Q That would be from forty to forty-five hours?

15 A Yes.

16 Q Did there ever come a period of time when that  
17 stream of non-routine matters ended and you had time on your  
18 hands to perform other functions?

19 A Well, no. Because we got involved with the  
20 Pala Verda generating plant --

21 Q I'm sorry?

22 A -- Pala Verda generating plant being built in  
23 Arizona, a cheaper power into the City of Vernon; so we were  
24 involved in that. Had to attend F.U.R.K. meetings.

25 THE COURT: Which meetings?

1 THE WITNESS: F.U.R.K.

2 THE COURT: Thank you.

3 BY MR. LEVIN:

4 Q Have you finished the question; because I have  
5 another question if you haven't?

6 A I think so.

7 Q All right. Could you please turn to Exhibit 10-2.

8 A 10-2. Ten --

9 Q Do you see at the bottom of the page there is a  
10 section entitled "Municipal Employee Relations  
11 Representative"?

12 A M.E.R.R. Yes, sir.

13 Q So you were the M.E.R.R. from 1978 all the way until  
14 you retired; correct?

15 A Yes, sir.

16 Q The position or the job or the title of M.E.R.R.  
17 carried with it certain duties and obligations; correct?

18 A Yes.

19 Q Those were specified in another resolution;  
20 resolution 4027?

21 A Yes, I assume that.

22 Q Is that -- here's my question now. In 1978  
23 approximately how many hours a week were you carrying on the  
24 specific duties and obligations of the M.E.R.R.?

25 A I have no idea.

1 Q What about in 1979?

2 A '79 probably not much. We were still negotiating  
3 with the Police Department, so we have some time we spent  
4 with them. Fire Department was pretty much well wrapped  
5 up.

6 Q So interacting with the firefighters that was an  
7 extension of your duties and obligations as the M.E.R.R.;  
8 Correct?

9 A Yes.

10 Q You previously described how sometimes the City  
11 Council would come to you with additional assignments or work  
12 or duties to do; correct?

13 A Come to me or I went to them. Council meeting they  
14 would either hear something or seen something and I thought  
15 would be interesting, or something the City should be  
16 interested in, and I would be told.

17 Q Now, whenever the City Council had a new assignment  
18 or duties for you to do, would they enact a new section of  
19 the Vernon City code?

20 A Not in every incident, I don't believe.

21 Q Are you aware of the instances under which your  
22 duties assigned by the City Council would become part of the  
23 City code versus when they wouldn't be?

24 A Not necessarily.

25 Q Were there times the City Council would come to you

1 with new duties or tasks to perform that wouldn't even be  
2 specified in a resolution, it was just, Bruce, take care of  
3 this and you do it?

4 A Not normally.

5 Q Normally if they wanted you to carry on an activity  
6 outside what's specified in the code for the City  
7 Administrator and City Clerk, they put that in a resolution;  
8 is that right?

9 A In most cases.

10 Q In what -- withdraw that. Was the most time that  
11 you spent as M.E.R.R. in the 1978, 1979 period?

12 A Probably through 1981; but yeah, the most time was  
13 actually 1978, 1979, since that was the Firemen prop.  
14 Another was just negotiation of the Police Department.

15 Q As the -- withdraw that. Did anybody on the City  
16 Council ever tell you that they thought that as the City  
17 Administrator-City Clerk that you were essentially on call  
18 for 24 hours a day?

19 A I don't think they had to.

20 Q That's what your expectation was?

21 A I expected it. Yes.

22 Q So --

23 THE COURT: I beg your pardon?

24 THE WITNESS: That's what I expected it to be.

25 ///

1 BY MR. LEVIN:

2 Q So if you got a call from somebody on the City  
3 Council that work needed to be done on the weekend or on  
4 Friday when you were on a four-day workweek or after hours,  
5 you were there; you get it done; right?

6 A Yes.

7 Q You became the Treasurer in 1978 as well?

8 A I did.

9 Q Did you ever see a written statement of the duties  
10 of the Treasurer?

11 A Probably. I don't recall that.

12 Q How much of your time in 1978, 1979 was taken up  
13 with the specific duties of Treasurer?

14 A I think minimal. Very little. Maybe I spoke to the  
15 bank about -- I was concerned that they were -- they were not  
16 paying interest on the idle funds. So I maybe talked to them  
17 about why that -- why they should be.

18 Q Were there duties of Treasurer that you delegated to  
19 other City Vernon employees?

20 A I did.

21 Q What were those duties?

22 A Duty to take them to the bank. Make investments on  
23 daily basis on all --

24 Q That delegation occurred from 1978 all way to --  
25 through your retirement --

1 A Yes.

2 Q -- date of your retirement?

3 A (No audible response)

4 Q When you were appointed Treasurer, you were given an  
5 additional sum of money, weren't you?

6 A No.

7 THE COURT: I'm sorry?

8 THE WITNESS: No.

9 BY MR. LEVIN:

10 Q Could you please turn to Exhibit 8.

11 A Eight?

12 Q The second page, please. 8-2.

13 A 8-2.

14 Q The third paragraph. Please take a second to read  
15 that.

16 Mr. Malkenhorst, does this refresh your recollection  
17 of having been provided an additional salary when you were  
18 appointed Treasurer in 1978?

19 A Does not. It says, "The Assistant, and also  
20 Barbara Samton, in addition to the regular duties be name of  
21 Assistant Treasurer with additional salary of \$25 per month."

22 Q Each?

23 A Doesn't say anything about me in here.

24 Q It says, "\$25 per month each"; correct?

25 A For those two, yes.

1 Q But that didn't include you?

2 A That did not include me.

3 MR. JENSEN: And just object on the document speaks  
4 for itself as well.

5 THE COURT: I'll allow the questioning.

6 BY MR. LEVIN:

7 Q Was there ever a period of time when your duties as  
8 Treasurer ever took up more than just an incidental amount of  
9 time during your workweek?

10 A I -- not to my recollection.

11 Q In 1981 you were appointed a Chief Executive Officer  
12 in the City of Vernon's Light and Power Department;  
13 correct?

14 A Yes.

15 Q Was the Light and Power Department the same thing as  
16 the Electrical Department?

17 A Yes.

18 Q Could you please turn to Exhibit 14-4.

19 THE COURT: That's Exhibit 14 page 4?

20 MR. LEVIN: Yes, your Honor.

21 THE WITNESS: 14-4. Right-hand side?

22 BY MR. LEVIN:

23 Q Yes. The lower right-hand corner.

24 A Yes.

25 Q Mr. Malkenhorst, does this page look familiar to

1 you; have you seen it before?

2 A Some thirty years ago. I don't really remember  
3 reading it, but I probably did.

4 Q Is what's written on Exhibit 14-4 -- it states at  
5 the very top "Duties of Chief Executive Officer of the Vernon  
6 Electrical Department"; correct?

7 A Yes.

8 Q And then it lists three items there; yes?  
9 Mr. Malkenhorst, there are three items listed --

10 A Yes.

11 Q Yes?

12 A Yes.

13 Q Do those three items accurately describe what your  
14 obligations, duties, were as C.E.O. of the Light and Power  
15 Department?

16 A Yes, pretty much.

17 Q As the C.E.O. of the Light and Power Department, did  
18 you have obligations or duties apart from those listed on  
19 Exhibit 14-4?

20 A I would think that whatever I did was inclusive of  
21 these three items.

22 Q And prior to your appointment as C.E.O. of the Light  
23 and Power Department, were you working forty to forty-five  
24 hours a week on average doing other duties for the City?

25 A Yes, I would say so.

1 Q When you became the Chief Executive Officer of the  
2 Vernon Light and Power Department, approximately how many  
3 additional hours per week were you spending on the duties and  
4 activities specified on Exhibit 14-4?

5 A Nominal.

6 THE COURT: I beg your pardon?

7 THE WITNESS: A nominal amount.

8 THE COURT: Thank you.

9 THE WITNESS: Not excessive. Nominal.

10 BY MR. LEVIN:

11 Q Do you have an opinion as to why the City Council  
12 would appoint you to the position of Chief Executive Officer  
13 when only a nominal amount of time was needed to carry on  
14 that function?

15 A Sure.

16 Q Please share that.

17 A I would be aware of what was going on with Southern  
18 California Edison. I think at this point I was appointed to  
19 the director of the Board of Skappa which was a group that we  
20 had set up. Skappa was an organization that was set up to be  
21 involved and develop in Pala Verda generation station in  
22 Arizona. They were primarily concerned with the policy.  
23 They thought I was the person that was to protect their  
24 interest in policies.

25 Q And which policies were those?

1           A     The policies of the power -- Light and Power  
2     Department.

3           Q     What exactly did you understand you needed to do to  
4     protect the policy of the Light and Power Department?

5           A     One, go to F.U.R.K. meetings in Washington D.C. and  
6     participate in how to control -- how to control Edison's  
7     involvement in the City Vernon running systems. They had --  
8     department of -- Light and Power Department was responsible  
9     to me, and consequently I would report whatever problems back  
10    to the Council.

11          Q     Apart from going to F.U.R.K. meetings, were there  
12    other obligations of the C.E.O. of the Light and Power  
13    Department that when you performed them would require a  
14    number of hours?

15          A     There may have been. I don't recall that.

16          Q     From 1981 until your retirement, how frequently did  
17    you go to F.U.R.K. meetings?

18          A     Probably every January. They had hearings of -- the  
19    cities were required to attend.

20          Q     These meetings were held in what city?

21          A     In Washington D.C.

22          Q     For how long would these meetings take place?

23          A     At the beginning?

24          Q     Yes.

25          A     When I first starting going, on Sunday, come back on

1 Tuesday. At the end I would go on Sunday night on a red eye  
2 and have a meeting Monday morning and fly back Monday  
3 afternoon.

4 Q Well, while you were working for the City of Vernon,  
5 did there ever come a time when you were working more than a  
6 nominal amount of time carrying out the function of Chief  
7 Executive Officer of the Light and Power Department?

8 A For what specified time?

9 Q At any point in time?

10 A Well, I mean I could work hard two days in a row.  
11 Over the average over the year it would have been -- balanced  
12 out.

13 THE REPORTER: It would have been what?

14 THE COURT: It would balance out.

15 BY MR. LEVIN:

16 Q Do you recall whether there was any particular year  
17 in which you would say over the course of the year you spent  
18 more than a nominal amount of your time working on matters in  
19 the capacity of Chief Executive Officer of the Light and  
20 Power Department?

21 A There may have been during the period of 2003, '04,  
22 '05 when we were building additional generator plants.

23 Q And in that time frame -- well, let's start with  
24 2005.

25 A That's when I retired.

1 Q Right. Let's talk about the budget year that ended  
2 July 1st, 2005. So that would have been between  
3 July 1st, 2004, and July 1st 2005; correct?

4 A Correct.

5 Q And for that entire year you worked as the Chief  
6 Executive Officer of the Light and Power Department;  
7 correct?

8 A Yes. Yes.

9 Q Approximately how many hours a week were you  
10 performing functions of the Chief Executive Officer of the  
11 Light and Power Department?

12 A I don't recollect.

13 Q Can you give me an estimate or a range?

14 A Well, your difficulty is some weeks you may have to  
15 go over there because they were either laying pipes, doing  
16 something different; and I don't know that I had to be there,  
17 but I wanted to see what was going on. Other weeks once it  
18 was running --

19 THE REPORTER: I apologize. I am having a hard  
20 time --

21 THE WITNESS: -- once it was running there was  
22 nothing really to do, and I don't know I spent anytime there.  
23 Just averaged out.

24 THE REPORTER: You Honor, may I take a break?

25 THE COURT: Yes. You may take a lunch break. We

1 will be back at 1:30.

2 THE REPORTER: Thank you.

3 (Lunch recess)

4 THE COURT: Back on the record. You may continue,  
5 Mr. Levin.

6 BY MR. LEVIN:

7 Q Mr. Malkenhorst, the issue is you were working for  
8 the City of Vernon as the Chief Executive Officer in its  
9 Light and Power Department. Was there --

10 THE COURT: Go ahead.

11 BY MR. LEVIN:

12 Q -- was there ever a period of time when you served  
13 in that capacity where over the course of a year you worked  
14 more than a nominal number of hours?

15 MR. JENSEN: Objection, your Honor. Assumes work as  
16 to -- assume facts not in evidence and contrary to the  
17 witness' testimony that he served as Chief Executive Officer  
18 independently from his position as City Administrator-City  
19 Clerk.

20 THE COURT: I don't think that was part of the  
21 question. Do you believe that he asked independent of his  
22 position of the City Administrator?

23 MR. JENSEN: He asked solely of in the position of  
24 Chief Executive Officer.

25 THE COURT: Right. And I believe he was asking

1 whether he worked for a nominal amount of hours in a given  
2 year.

3 Was that the question, Mr. Levin?

4 MR. LEVIN: Yes, your Honor; but I'll rephrase to  
5 address what I think Mr. Jensen's objection was.

6 THE COURT: Go ahead.

7 MR. LEVIN: All right. Thank you.

8 THE COURT: I was going to overrule, but if you want  
9 to rephrase.

10 MR. LEVIN: I appreciate it. I want to make sure  
11 there's no ambiguity here.

12 BY MR. LEVIN:

13 Q Mr. Malkenhorst, I'm going to ask you about the  
14 duties of the C.E.O. Light and Power Department; and when I  
15 refer to that, I'm referring to those set of obligations and  
16 functions that you undertook specifically for the Light and  
17 Power Department that the Light and Power Department  
18 benefited from; do you understand that?

19 A I think so.

20 Q All right. When you first were appointed the C.E.O.  
21 of the Light and Power Department, your recollection was the  
22 1981, 1982 period that the additional function of being the  
23 C.E.O. of Light and Power Department only required a  
24 number -- a nominal number of additional hours to your  
25 workweek; is that correct?

1 A That's required.

2 Q Was it correct it was only a nominal number of hours  
3 on average that was added to your workload when you became  
4 C.E.O.?

5 A I'm not sure I -- rephrase the question that I can  
6 answer; because I work whatever hours were necessary to get  
7 the job done. Whether it was a negotiation where it could  
8 take a number of hours or just a regular workweek when I ran  
9 the department.

10 Q All right. Well, let me see if I can't clarify the  
11 question.

12 A All right.

13 Q When you talk about getting the job done, the job  
14 I'm referring to specifically is the job of the C.E.O. of the  
15 Light and Power Department. Has that job directly benefited  
16 the Light and Power Department; do you understand that?

17 A Of what? I'm sorry. My hearing is not the best.

18 Q That's quite all right. I'll rephrase. You  
19 testified that you did whatever it took to get the job done.

20 A That's correct.

21 Q So I want to know, make sure that you understand the  
22 narrow question I have about the job. The job I'm referring  
23 to in my questioning is the job of the C.E.O. in the Light  
24 and Power Department. Distinct from whatever obligations and  
25 duties and tasks that you might have had as City

1 Administrator or City Clerk or any other classification  
2 assigned to you by the City; you understand that?

3 MR. JENSEN: Objection. Vague and ambiguous.

4 THE WITNESS: I'm not sure --

5 THE COURT: You've lost me.

6 MR. LEVIN: Okay. So I'll try again.

7 BY MR. LEVIN:

8 Q When you became the C.E.O. of the Light and Power  
9 Department, did the City Council identify for you the  
10 function of that position?

11 A No.

12 Q Did you have in your mind in 1981 the particular  
13 tasks and duties you would need to undertake in capacity as  
14 C.E.O. of the Light and Power Department?

15 A No.

16 Q Okay. At anytime when you worked at the City of  
17 Vernon, did you come to think of particular functions that  
18 you were undertaking as being specific to your position as  
19 C.E.O. of the Light and Power Department?

20 A You know, that's difficult for me to answer because  
21 not all problems were the same. There were different  
22 problems that I resolved -- they resolved. I didn't have a  
23 set of duties that I had to do as a C.E.O. I was to make  
24 sure that the Electrical Department ran smoothly.

25 Q What types of tasks did you perform weekly, monthly,

1 or yearly to make sure that the Light and Power Department  
2 ran smoothly?

3 A In I say '82, '83 we started being involved in the  
4 power plant in Arizona. That was a duty that I undertook.  
5 Maybe at that -- in that particular time frame we were  
6 bringing power down from Oregon on the -- or the California  
7 transportation line, so we were as a City involved with the  
8 group of cities to do this. And we just met, I would say, at  
9 best infrequently. It wasn't a daily -- I can't think of  
10 that word that goes with that anyway -- a daily routine that  
11 was necessary.

12 I mean if they were going to -- to do something that  
13 had to do something physically, then I send the Executive --  
14 the Director of Light and Power up and he would do that part  
15 of it. But to policy making then I was -- that was involved  
16 I partook in.

17 Q So to run -- to make sure that the Light and Power  
18 Department ran smoothly you would attend infrequent meetings;  
19 is that correct?

20 A As necessary. Yes.

21 Q And these infrequent meetings would be with what  
22 person or persons?

23 A Whoever else was involved in them. Whether it was  
24 the five cities of Azusa, Golden Pasadena, Colton. I think  
25 it was five cities altogether. And we formed a group called

1 Skappa, and I would attend those meetings; but as far as  
2 going to watch to see what's going to happen, that wasn't  
3 me -- that the policy of what the cities were going to  
4 follow, and I participated in that.

5 Q Between 1981 and 2000 --

6 A Nineteen years.

7 Q Understood. In that nineteen-year period, can you  
8 approximate how frequently you would have meetings with  
9 anybody towards your effort of making sure that the Light and  
10 Power Department ran smoothly?

11 A That's very difficult thing for me to answer.

12 Q Can you say whether it was weekly? Monthly?  
13 Yearly?

14 A I could say any of it. I'm -- you know, I just -- I  
15 have no direct recollection of how often we met. We met when  
16 there was a decision had to be made, and I was going to be  
17 part of that Board of Directors. So I had to be there.

18 Q You mentioned that you also engaged in policy making  
19 as part of your effort to make sure that the Light and Power  
20 Department ran smoothly. What type of function or activities  
21 did you do as part of this policy making? What did that  
22 include?

23 A Only Council made policy. I just enforced policy.

24 Q I'm sorry? You would report policy?

25 A I would enforce policy. I'm sorry.

1 Q Did you enforce policy with respect to making the  
2 Light and Power Department run smoothly?

3 A Yes.

4 Q And how did you do that?

5 A If there was some conflict with other agencies, I  
6 would get involved in it.

7 Q Is it your testimony that the effort you undertook,  
8 the hours spent by you to make sure that the Light and Power  
9 Department ran smoothly was nominal?

10 MR. JENSEN: Objection. Argumentative.

11 THE COURT: Overruled. You may answer.

12 THE WITNESS: Could I have the question again?

13 BY MR. LEVIN:

14 Q Sure. Is it your testimony that the number of hours  
15 you spent as C.E.O. of the Light and Power Department acting  
16 to make sure that department ran smoothly was nominal?

17 A I would say, yes.

18 Q In the period that -- the year period before you  
19 left the City of Vernon when the Light and Power Department  
20 was working on a generator, was your time commitment to  
21 making the Light and Power Department run smoothly also  
22 nominal?

23 A I may have done a little more time then because  
24 there were contracts and things I had to review.

25 Q Can you estimate for me on a weekly or a monthly

1 basis the level of your time commitment in making the Light  
2 and Power Department run smoothly in the last year of your  
3 employment?

4 A It was either meet with the attorneys or the  
5 Director of Light and Power and have them explain what they  
6 were doing, what they want to get done. And we -- whatever  
7 hours it took. It wasn't a horrendous -- it was my full  
8 day's work.

9 Q Can you estimate for me the number of hours that you  
10 spent in the last year of your employment in making the Light  
11 and Power Department run smoothly?

12 A No. I can't give you an estimate.

13 Q Apart from the last year of your employment was  
14 there any other period of time of at least a year where you  
15 believe that your efforts and the amount of time you spent in  
16 making the Light and Power Department run smoothly was more  
17 than nominal?

18 A That I believe, no. I would say I didn't believe  
19 that.

20 Q So the only period of time in which you worked more  
21 than a nominal number of hours in making the Light and Power  
22 Department run smoothly was the last year of your  
23 employment?

24 A Pretty much, because the construction of the power  
25 plant in the city.

1 Q When did you first become the Purchasing Agent for  
2 the City of Vernon?

3 A I don't recall.

4 Q What were your duties as Purchasing Agent?

5 A My duty was to oversee what the assistant before  
6 did.

7 Q Approximately how many hours in any given week would  
8 you spend on that oversight?

9 A Signing checks or what?

10 Q Whatever that oversight process was for you acting  
11 as the Purchasing Agent; approximately how many hours a week  
12 would you spend on those activities?

13 A Not a lot. I didn't even guesstimate.

14 Q A nominal?

15 A I had a person that did it.

16 THE COURT: I beg your pardon?

17 THE WITNESS: I had an assistant that did it. So  
18 when I just signed the checks or approve the first order that  
19 went out. I mean, it was not anything that took a lot of  
20 time.

21 BY MR. LEVIN:

22 Q Less than an hour a week?

23 A I couldn't say.

24 Q In 1988 did you become the Executive Director and  
25 Secretary of the Redevelopment Agency for the City of Vernon?

1 A I did.

2 Q What were the duties of that position?

3 A To find the stress properties of Vernon so they  
4 could go into redevelopment.

5 Q And were there any routine activities that you  
6 undertook as the Executive Director and Secretary of  
7 Redevelopment Agency?

8 A I'd say none.

9 Q Approximately how many hours a week would you spend  
10 on the activities of an Executive Director and secretary of  
11 the Redevelopment Agency from 1988 until your retirement?

12 A How many hours a week would I spend?

13 Q Yes.

14 A I have no idea.

15 Q Can you estimate; give a range?

16 A Not realistically.

17 Q In 1991 you became the Chief Executive Officer of  
18 the City's Gas Municipal Utility Department; correct?

19 A Yeah. Somewhere in there.

20 Q What were the job duties of that Chief Executive  
21 Officer?

22 A Originally it was negotiating with Southern  
23 California Gas Company to see if they would sell the  
24 assistant to us.

25 Q Did these negotiations take place?

1 A They did take place.

2 Q Did you engage in those negotiations?

3 A I did.

4 Q For what period of time did you engage in those  
5 negotiations?

6 A That was very minimal. They didn't want to sell.

7 Q After those negotiations ended, did you carry on any  
8 other duties or functions of C.E.O. in the City's Gas  
9 Municipal Utility Department?

10 A We started the construction of our gas lines.

11 Q When was that?

12 A I mean I didn't dig the gas lines. I -- that was  
13 done through Public Works Department. That was  
14 approximately '92, '93. Gas company came in and gave  
15 sweetheart rates to our major users so that didn't really  
16 take off. So --

17 Q As part of the process of getting those gas lines  
18 constructed, you had some oversight responsibilities as  
19 C.E.O.?

20 A I don't know whether it was the C.E.O. or City  
21 Administrator. One or the other.

22 Q Regardless of whether you were working as the C.E.O.  
23 or the City Administrator, you had some oversight  
24 responsibility with respect to the construction of the gas  
25 lines?

1           A     Oversight?  What do you mean by "oversight"?  Did I  
2 go out and watch them do it?  No.  Did I say which pipes to  
3 buy?  No.  That was the responsibility of the Public Works  
4 Director.

5           Q     What was your responsibility?

6           A     My responsibility was to take the Council -- let the  
7 Council know; and at that time I was meeting with several  
8 groups of the City businessmen in the City who weren't big  
9 users but small users looking to reduce their gas price.  So  
10 I met with them on an infrequent basis to let them know.

11          Q     Can you approximate the number of hours you would  
12 spend on a weekly basis in connection with the ongoing  
13 construction of the gas line?

14          A     No.

15          Q     Was there any other period of time in which you  
16 exercised some duties or took on some obligations that were  
17 directly relevant to the operations of the City's Gas  
18 Municipal Utility Department?

19          A     No.

20          Q     Was there any other time other than the negotiations  
21 with the Gas Company and then the construction of the gas  
22 line where you carried out functions for the City of Vernon  
23 that would benefit the Gas Municipal Utility Department?

24                   MR. JENSEN:  Objection.  Vague.  Ambiguous.

25                   THE COURT:  Rephrase, Counsel.

1 THE WITNESS: Can I answer?

2 THE COURT: I'm asking Mr. Levin to rephrase.

3 Objection sustained.

4 MR. LEVIN: Sure.

5 BY MR. LEVIN:

6 Q You did work to benefit the Gas Municipal Utility  
7 Department when you were negotiating with the Gas Company;  
8 yes?

9 A Yes.

10 Q You also were attempting to benefit the Gas  
11 Municipal Utility Department when there was an effort to  
12 construct a gas line for the City; correct?

13 A Yes.

14 Q Were there any other activities of City of Vernon in  
15 which you participated that were for the benefit of the  
16 City's Gas Municipal Utility Department?

17 A I'm not understanding what you're saying --  
18 asking.

19 MR. JENSEN: Objection. Vague and ambiguous.

20 THE COURT: Overruled, but the witness doesn't  
21 understand the question. Counsel, can you rephrase it?

22 MR. LEVIN: Sure will, your Honor.

23 BY MR. LEVIN:

24 Q Apart from the hours that you spent negotiating with  
25 the Gas Company and in connection with the construction of

1 the gas line, did you spend any other hours during your work  
2 with the City of Vernon that was geared towards improving or  
3 affecting the Gas Municipal Utility Department?

4 A I may have met with users within the City and  
5 explain what we're trying to accomplish and what we're going  
6 to do.

7 Q Anything else?

8 A I had a hard time coming up with that one.

9 THE REPORTER: What was that?

10 THE WITNESS: I had a hard time coming up with that  
11 one.

12 BY MR. LEVIN:

13 Q So nothing else comes to mind?

14 A Nothing comes to mind.

15 Q All told, would you say that the number of hours  
16 that you spend trying to make the Gas Municipal Utility  
17 Department run smoothly was nominal?

18 A After it was set up I would say, yeah.

19 Q And that department was done being set up when?

20 A '92, '93, I think. I'm not sure on that.

21 Q In 1993 you were appointed Executive Director,  
22 Secretary, and Treasurer of the City's Industrial Development  
23 Authority; correct?

24 A Industrial Redevelopment.

25 Q Industrial Development Authority. Does that sound

1 familiar?

2 A Industry development to bring business in to fill  
3 the positions in the Redevelopment Agency. It could have  
4 been. I don't -- I don't recall that.

5 Q Well, let's see if we can refresh your recollection.

6 A Sure.

7 Q Could you please --

8 your Honor, may I get the next volume for the  
9 witness?

10 THE COURT: You may.

11 BY MR. LEVIN:

12 Q Turning to volume 2 of the exhibits, Exhibit 32.  
13 Mr. Malkenhorst, if you could please take a moment to look at  
14 this document and let me know when you are done.

15 THE COURT: Have you finished?

16 THE WITNESS: I have. Yes.

17 THE COURT: Go ahead.

18 MR. LEVIN: Thank you, your Honor.

19 BY MR. LEVIN:

20 Q Mr. Malkenhorst, does Exhibit 32 refresh your memory  
21 of the creation of an Industrial Development Authority of the  
22 City of Vernon?

23 A Truthfully, no.

24 MR. JENSEN: What is the answer?

25 THE COURT: "Truthfully, no."

1 THE WITNESS: No.

2 BY MR. LEVIN:

3 Q In 2003 were you appointed the Executive Director of  
4 the Vernon Historic Preservation Society?

5 A I think I was, yes.

6 Q When you were appointed to that position, were you  
7 given a statement or description of your job duties?

8 A I don't recall that.

9 Q Do you -- when you were appointed to that position,  
10 did you have in mind the job duties of that Executive  
11 Director position?

12 A Those were retained services for things within the  
13 City.

14 Q Were there any routine functions that you had to  
15 undertake to carry out the tasks of the Executive Director?

16 MR. JENSEN: Objection. Vague and ambiguous as to  
17 "Executive Director" of what?

18 THE COURT: I believe we're still talking about the  
19 Historic Preservation Society, are we not?

20 MR. LEVIN: Correct, your Honor.

21 THE COURT: Overruled. Did you undertake any  
22 routine activities as Executive Director of the Historic  
23 Preservation Society?

24 THE WITNESS: No, I don't. Only time we had a  
25 problem when the Catholic Church wanted to close down a

1 Catholic Church in the city and that's why this thing was  
2 established.

3 BY MR. LEVIN:

4 Q What did you do with respect to the issue with the  
5 Catholic Church that you just described?

6 A When they did it -- well, apparently they owned the  
7 property the Church sat on, and they had a Church in  
8 Huntington Park that they didn't own but reverted to  
9 something other than a Church; and I had to go back to the  
10 original owners; whereas the Church in Vernon may own the  
11 property and they could shut it down. And we designated it  
12 as an historical monument.

13 Q Approximately how many hours did you spend in  
14 connection with the effort to make that property and that  
15 monument?

16 A Well, it was a legal situation; so not a lot.

17 Q Apart from the situation with the Church property  
18 that you just described, can you recall any other tasks  
19 undertaken by you in connection with your position as  
20 Executive Director of the Vernon Historic Preservation  
21 Society?

22 A No.

23 Q When you retired in 2005 --

24 A Yes.

25 Q -- you still were carrying out the functions of the

1 City Administrator; correct?

2 MR. JENSEN: Objection. The question asks when you  
3 retired you were still carrying out the functions.

4 BY MR. LEVIN:

5 Q Okay. The day before your retirement -- the day  
6 before your retirement, Mr. Malkenhorst, you were still  
7 carrying out the functions of City Administrator?

8 A I was still the City Administrator.

9 Q You were still performing as City Administrator?

10 A Whatever was required on a day.

11 Q You were still --

12 A City Administrator

13 Q -- acting the City Clerk?

14 A Still the City Clerk.

15 Q You were still the City Treasurer?

16 A Still the City Treasurer.

17 Q You were still the C.E.O. in the Light and Power  
18 Department?

19 A I was.

20 Q You were still the Purchasing Agent?

21 A I was.

22 Q Were you still the M.E.R.R.?

23 A I was.

24 Q Were you still the Executive Director and Secretary  
25 of the Redevelopment Agency?

1 A I was.

2 Q Were you still the C.E.O. of the Gas Municipal  
3 Utility Department?

4 A I was.

5 Q Were you still the executive -- well, we'll put that  
6 one aside. Were you still the Executive Director of the  
7 Vernon Historic Preservation Society?

8 A I was.

9 Q Apart from your work as City Administrator for --  
10 well, with withdraw that.

11 We've gone through your various appointments to jobs  
12 or titles or positions, whatever you want to call them, after  
13 you were the City Administrator-City Clerk. My question for  
14 you is this: In the last year of your employment with the  
15 City of Vernon can you approximate the number of hours spent  
16 in all those other capacities that were independent of your  
17 duties, obligations, and functions as City Administrator-  
18 City Clerk?

19 MR. JENSEN: Objection. Misstates his testimony  
20 that all his duties were performed as the City Clerk's  
21 position.

22 THE COURT: Sustained.

23 BY MR. LEVIN:

24 Q When you performed work as a C.E.O. in the Light and  
25 Power Department, in your mind were you acting as -- were you

1 doing that work as City Administrator?

2 A Yes.

3 Q Were you -- did you ever do any work as the C.E.O.  
4 of Light and Power Department?

5 MR. JENSEN: Objection, your Honor. Asked and  
6 answered.

7 THE COURT: Sustained.

8 BY MR. LEVIN:

9 Q Did you consider being C.E.O. of the Light and Power  
10 Department to be a position different from the City  
11 Administrator?

12 A No.

13 Q When you were at the City of Vernon, there were  
14 other employees that held positions different than your own;  
15 correct?

16 MR. JENSEN: Vague and ambiguous as to time and --  
17 to time.

18 THE COURT: Sustained.

19 BY MR. LEVIN:

20 Q What positions were there at the City of Vernon?

21 MR. JENSEN: Vague and ambiguous.

22 MR. LEVIN: I'm trying to find out what a position  
23 is, your Honor, and I keep getting an objection. I guess I  
24 can --

25 THE COURT: Pick a year, Mr. Levin.

1 MR. LEVIN: All right.

2 BY MR. LEVIN:

3 Q In 2004, Mr. Malkenhorst, what positions were there  
4 at the City of Vernon?

5 A You mean like Police Officers. Firemen. Fire  
6 Chief. Battalion Chief. Captain. Police Chief. Public  
7 Works Director. Assistant Public Works Director. Light and  
8 Power Director. City Clerk. Assistant City Clerk. Chief  
9 Deputy City Clerk. Secretary.

10 Q So there was a position for the Light and Power  
11 Director; correct?

12 A Excuse me?

13 Q There was a position called Light and Power  
14 Director?

15 A Yes.

16 Q And why was that a position?

17 A Because they ran the day-to-day operation of the  
18 Light and Power Department.

19 Q Is there a reason why you believe that being C.E.O.  
20 of the Light and Power Department was not a position?

21 A The reason I believe that?

22 Q Yeah.

23 A I was responsible to the Council. Council wanted to  
24 give me -- appointed me to that position. I didn't say, you  
25 know, I want to be a C.E.O. of Light and Power. They said,

1 "Bruce, we want you to do this." It was my job. I did  
2 whatever they told me to do.

3 Q And because you were appointed by the City of  
4 Council, you believe that was not a position?

5 A It was not a position? What do you mean?

6 Q Well, my question goes to your use of the word  
7 "position." In your testimony today when you've used the  
8 word "position," how have you been using that word, with what  
9 meaning?

10 A Actually, position I mean responsibility. That was  
11 the area of my responsibility. That's what the Council  
12 expected from me, and that's what I was trying to do. The  
13 position you -- it showed in some of the documents is why I'm  
14 using the word "position." But it was my area of  
15 responsibility.

16 Q So the Light and Power Department was an area of  
17 your responsibility?

18 A Yes.

19 Q Was the Light and Power Department also the area of  
20 responsibility of the Director of Light and Power?

21 A Subversive to me, yeah.

22 Q Do you distinguish between the descriptor area of  
23 responsibility and the descriptor position, or are they one  
24 in the same?

25 A What -- what's the question again?

1 Q Is there a definitional distinction in your mind  
2 between having a position at the City of Vernon and having an  
3 area of responsibility at the City of Vernon?

4 A As far as I was concern there was none.

5 Q Were you involved in creating the salary schedule  
6 for the City of Vernon?

7 A The salary schedule was basically a document that  
8 was from the previous year. If it was a cost of living that  
9 was going to be approved by the Council and was added to the  
10 previous year's salary resolution.

11 Q Were you involved in --

12 A Cost of living -- cost of living was. Cost of  
13 living was.

14 Q Were you involved at all in the -- well, let me  
15 withdraw the question.

16 Is it your recollection from time to time there  
17 would be a salary schedule created for an area of  
18 responsibility or a position that had not been on the prior  
19 year's salary schedule?

20 MR. JENSEN: Objection. Vague and -- vague and  
21 ambiguous in terms, and vague and ambiguous as to time.

22 THE COURT: Overruled. You may answer.

23 THE WITNESS: No. If there was a department head  
24 that wanted to create a new position, then he would tell me  
25 what he thought he should be paid; and we -- if I agreed with

1 it, take it to the City Council and make a recommendation.  
2 The Council would either approve or disapprove it, and then  
3 it would become part of salary resolution. I don't recall it  
4 happened very often.

5 I can't ever remember it happening. That doesn't  
6 mean it didn't. I just don't recall.

7 BY MR. LEVIN:

8 Q Was it your understanding that if the City Council  
9 approved a position that then there would be the addition of  
10 that position to the salary schedule?

11 A Yes.

12 Q Were there times when an employee at the City of  
13 Vernon would take on new responsibilities but for which a new  
14 salary schedule would not be created?

15 A The only one that would come to mind right away  
16 would be the gas. That was just assigned to the Public Works  
17 Director, Water Director. That's my recollection. I wasn't  
18 sure of that. I think that's actually because we used the  
19 employees from the Public Works Department to do the  
20 functions of the -- had to be done on the gas lines.

21 Q Was being the Director of Light and Power a position  
22 that you think should have or would have been on a salary  
23 schedule?

24 THE COURT: You talking the Director or C.E.O.?

25 ///

1 BY MR. LEVIN:

2 Q The Director?

3 A I think it was.

4 Q Do you think that being C.E.O. of the Light and  
5 Power Department was a position that could have or should  
6 have been on a salary schedule?

7 A No. It was done by the City Administrator.

8 Q Over the course of your many years working at the  
9 City of Vernon, how frequently did you have to work  
10 weekends?

11 A How many times?

12 Q How frequently?

13 A Recall.

14 Q Any estimate you can give.

15 THE COURT: Just for the clarity of the record and  
16 for my benefit, are you including Fridays in that?

17 MR. LEVIN: No, your Honor.

18 THE WITNESS: Fridays was a weekend -- was part of  
19 the weekend because Friday --

20 THE REPORTER: I apologize. I didn't get that.

21 THE WITNESS: Fridays was part of the weekend.  
22 Friday, Saturday and Sunday they had off.

23 BY MR. LEVIN:

24 Q But that only happened at a certain point in time.

25 A Happened in '79.

1 Q Okay. That's why I hadn't included it. I wanted --

2 THE COURT: Why don't you break it down.

3 MR. LEVIN: Okay.

4 BY MR. LEVIN:

5 Q For the period of time -- well, withdraw that.

6 At any point in time when you were working at the  
7 City of Vernon, did you have to work on a Saturday or Sunday?

8 A Yeah.

9 Q How frequently did that occur?

10 A Infrequently.

11 Q Can you give me an estimate as to how frequently?

12 A Over the entire thirty years I was there. No, I  
13 can't.

14 Q Was there any period of time when you were at the  
15 City of Vernon when you were working on a Saturday or a  
16 Sunday at least twice a month?

17 A During negotiations, during the Firemen strike,  
18 yeah.

19 Q During the period of time when the City of Vernon  
20 was operating a typical four-day workweek, Fridays were  
21 considered part of weekend then?

22 A The Friday started in July of 1979.

23 Q And after July of 1979, there were times you would  
24 need to work on Friday when other workers were not;  
25 correct?

1 A If an incident occurred, yeah.

2 Q And how frequently did it occur after 1979 that you  
3 would need to work on a Friday?

4 A Fridays I probably worked more than maybe once a  
5 month. Saturdays and Sundays probably once or every six or  
6 so. It's just very difficult.

7 Q My next series of questions pertain to a period of  
8 time when City of Vernon had a Monday through Thursday  
9 workweek.

10 A I thought we are talking about that now.

11 Q We are talking become that now. So from July, 1979  
12 forward. All right.

13 A Okay.

14 Q During that period of time, were there a set of  
15 hours that nonexempt workers were expected to work, for  
16 example, between 7:00 A.M. and 5:30 P.M.?

17 A Was there a what?

18 Q A set of hours that nonexempt workers were expected  
19 to work?

20 MR. JENSEN: And, your Honor, just vague as to which  
21 nonexempt workers as well. The prior testimony is that there  
22 were different types of employees in the city.

23 THE COURT: Overruled. You may answer.

24 THE WITNESS: I was not always aware when a  
25 nonexempt employee worked because there would be Saturday gas

1 line or water line might -- or somebody have a problem in  
2 their plant and somebody be called in. So I couldn't give  
3 you a fair response.

4 BY MR. LEVIN:

5 Q Did the City have standard hours for their nonexempt  
6 workers?

7 A They did.

8 Q What were those standard hours?

9 A Standard hours were Monday through Friday. Monday  
10 through Thursday. This is after '79; right?

11 Q Yes.

12 A Okay. From 7:00 to 5:30.

13 Q Did you also work Monday through Thursday from 7:00  
14 A.M. to 5:30?

15 A Pretty much. Yes.

16 Q Did you often times get in before 7:00 A.M. to begin  
17 your workday?

18 MR. JENSEN: Objection. Asked and answered.

19 THE COURT: I'll allow it. You may answer.

20 THE WITNESS: Sure. It would depend on what is  
21 going to transpire. If I didn't have a meeting with somebody  
22 and needed, then I had to come in early.

23 Q And would you give the same answer to your work  
24 after 5:30 P.M.?

25 MR. JENSEN: Asked and answered.

1 THE COURT: I'll allow it.

2 THE WITNESS: Council meeting after 5:30, so there  
3 was maybe once every two -- every two weeks I work after  
4 5:30.

5 BY MR. LEVIN:

6 Q Did you also do work for the City of Vernon that was  
7 not at the main administrative building where you had your  
8 office?

9 A Not what?

10 Q You had an office, right, at --

11 A I did.

12 Q -- a main administrative building?

13 A I did.

14 Q Sometimes you work there and other times you work  
15 elsewhere; correct?

16 A Off-site.

17 Q Yes. Off-site?

18 A Yes.

19 Q Right. How frequently did you work off-site?

20 A It would depend on what was going on. I was  
21 negotiating with Southern California Edison with office doing  
22 labor negotiations, interchange between their law office and  
23 the City.

24 Q You testified earlier this morning about having  
25 performance review with the City Council; is that fair?

1 A That's correct.

2 Q That was yearly?

3 A Annual. Yes.

4 Q Was there ever a time during those performance  
5 reviews that you would discuss with the Council your salary  
6 expectations?

7 MR. JENSEN: Objection, your Honor. Misstates his  
8 testimony. It was not discussed with Counsel.

9 THE COURT: The witness may answer.

10 THE WITNESS: Sorry. Hear the question again.

11 MR. LEVIN: Sure. Maybe the Court Reporter can read  
12 back, your Honor.

13 THE COURT: Please.

14 (Record read)

15 THE WITNESS: Yes.

16 BY MR. LEVIN:

17 Q And would you tell members of the City Council that  
18 you had an expectation of a higher salary come the next  
19 budget because of your performance?

20 A Yes.

21 Q Did you have any expectation of obtaining a higher  
22 salary come the next budget at anytime because of additional  
23 responsibilities given to you by the City Council?

24 A I don't recall ever stating that, but I probably  
25 did. I probably did have some expectation of it.

1 Q After you were given the obligation of making sure  
2 that the Light and Power Department ran smoothly, did you  
3 think that those obligations merited an increase for you at  
4 the time the new budget was being created?

5 A I don't know that I ever approached it that way, but  
6 I probably did.

7 Q Is it fair to say that when the City Council would  
8 give you new obligations that you would think that come the  
9 next budget cycle that you would be compensated for taking on  
10 those new obligations?

11 A First I thought about how I was going to get done  
12 what they asked to get done, but what was -- would be that  
13 area of responsibility; and over the period of time that we  
14 accomplished what they were expecting, yes, I probably did.

15 I never said, "Okay. You give me the Executive  
16 power or Executive Director Light and Power." I never did  
17 that.

18 Q So there was never a direct qui pro-quo  
19 discussion?

20 A No, there was not.

21 Q But you had an expectation that you would be taken  
22 care of?

23 A Of course.

24 Q And you were taken care of?

25 A Well.

1 Q Was it the normal operation of the City to give  
2 employees a single raise once a year?

3 MR. JENSEN: Objection. It misstates testimony.

4 THE COURT: Sustained.

5 BY MR. LEVIN:

6 Q Well, what was the City's practice with respect to  
7 the number of raises that was typically given an employee a  
8 year?

9 A Well, when you're hired, you're on a step salary  
10 scale; and each year you're reviewed to see if you merited  
11 the next step increase. So -- and in addition you got a cost  
12 of living. That was done the 1st of July and that was given.

13 Q If one employee at the City of Vernon earned a step  
14 increase, was there a period of time in which that step  
15 increase was typically implemented?

16 A It was five years. Generally if they've been there  
17 that long they move to a senior position, or they stayed at  
18 that position and stayed at that point.

19 Q I asked a bad question. Here's what I want to know.  
20 If someone at the City of Vernon received a merit increase in  
21 their salary, when would they receive that increase?

22 A On their anniversary date.

23 Q So an employee might receive a merit increase on  
24 their anniversary and a separate cost of living increase on  
25 July 1st?

1 A Yes.

2 Q And did the City have a practice of awarding merit  
3 salary increases to individuals who are already at the top  
4 step of their position?

5 A Not normally. Normally it would be a raise to  
6 another level. Say Water, a Water Clerk I then becomes Water  
7 Clerk II. Start a whole new five steps again. I think same  
8 with Patrolman. Patrolman I, Patrolman II, and they would  
9 get increases.

10 Q When a Patrolman maxed out at their level --

11 A They would max out because they were also accepted  
12 by the Union.

13 Q Then they couldn't get another merit increase; is  
14 that fair?

15 A That's not true because they negotiate a new  
16 agreement that got them another -- they get the cost of  
17 living on the 1st of July, but if their negotiations were  
18 fruitful, then they get an increase.

19 Q Put aside Police Officers. It was normally the  
20 practice that an employee of the City of Vernon would no  
21 longer get merit increases once they were at maximum step of  
22 their position; is that fair?

23 A If that was the spot they leveled off, yes.

24 Q Now, let me ask you specifically about your own  
25 experience. When you became the City Administrator-City

1 Clerk, you were at the top step?

2 A I was at the step they prescribed. Yes.

3 Q Did you nonetheless ever receive merit increases at  
4 the anniversary date of your employment?

5 A My negotiations on my anniversary. Yes, I got  
6 additional money.

7 Q So if there were years during your employment with  
8 the City of Vernon where you would receive increases twice  
9 during a year --

10 A Cost.

11 Q -- one would be cost of living and the other one  
12 would be merit?

13 A Yes.

14 Q Did you ever have any discussions with the City  
15 Council about whether there was a policy about giving merit  
16 increases to individuals who are already at the top step of  
17 their employment position?

18 A No.

19 Q Did you consider it unusual that you were getting  
20 merit increases to your salary on your anniversary when  
21 others were in the top step of their employment could not?

22 A No.

23 THE COURT: I'm sorry?

24 THE WITNESS: No.

25 THE COURT: Thank you.

1 BY MR. LEVIN:

2 Q You testified earlier about the City of Vernon  
3 budgets and the allocation of your salary across departments;  
4 do you recall that?

5 A (No audible response)

6 Q And your testimony was that that allocation was  
7 based upon value. You remember that?

8 A Of the department, yes.

9 Q How did the City of Vernon determine the value of  
10 the department?

11 A Number of employees. The cost to run the  
12 department.

13 Q What would a person or persons determine the value  
14 of the department?

15 A Pardon me?

16 Q What person or persons were responsible for  
17 determining the value of a department?

18 A Allocated cost to run the department?

19 Q Yeah. What person or persons were responsible for  
20 determining that value?

21 A If you had "X" number of employees in a department  
22 that would increase the cost of that department, so that that  
23 entered into the cost of running the department. Whatever  
24 you had to buy to run that department we entered into the  
25 cost of the department.

1 Q In the last year of your employment with the City of  
2 Vernon, a portion of your salary was allocated to the Light  
3 and Power Department; correct?

4 A That's correct.

5 Q As the C.E.O. of Light and Power Department, were  
6 you responsible for coming up with that allocation?

7 A I don't think I was. I don't recall that. This was  
8 accounting.

9 Q Were you ever responsible for allocating your salary  
10 across the departments at the City of Vernon?

11 A No.

12 Q Are you aware of any written policies or procedures  
13 by which you think the Accounting Department was to allocate  
14 your salary across departments?

15 A I think it was always that way, so it just  
16 continued.

17 Q Was there a particular position or person in the  
18 Accounting Department that you believe was responsible for  
19 allocating your salary across departments?

20 A Probably the Assistant Finance Director.

21 Q This is a person within the Finance Department;  
22 correct?

23 A That's who is responsible to create the budget.

24 Q And you were the head of the Finance Department?

25 A I was.

1 Q So you would review the allocation that was made for  
2 your salary?

3 A When it was brought to the -- to the City  
4 Administrator for him to review, I did.

5 Q Did you ever question the allocation of your  
6 salary?

7 A No.

8 Q Did you ever have discussions with the Accounting  
9 Department as to how they arrived at the allocation of your  
10 particular salary?

11 A No.

12 Q Did you ever have any discussion with the Accounting  
13 Department about whether the allocation in the upcoming  
14 budget year of your salary should reflect your time  
15 commitment in those departments?

16 A No.

17 Q Gloria Orozco, she was your secretary beginning in  
18 1986; is that right?

19 A Before that.

20 Q I'm sorry?

21 A Before that. I think she worked in the City in  
22 '81.

23 Q '81. Was she your secretary for the entire period  
24 of time from 1981 until you requirement?

25 A Until she was given added responsibility for

1 Assistant City -- Chief Deputy City Clerk. That may have  
2 been where '86 came in.

3 Q Did she --

4 A I don't know that for sure.

5 Q -- but she maintained the position of being your  
6 secretary up until the point in time that you retired?

7 A Yep.

8 Q There's a period of time before you retired that she  
9 was no longer your secretary?

10 A Correct.

11 Q When was that?

12 A I think it was 2004.

13 Q So just so we're clear. Ms. Orozco was your  
14 secretary from 1981 to 2004?

15 A Approximately.

16 Q Okay. Was Ms. Orozco's job to screen and then  
17 turnover to you all the mail that she thought that you needed  
18 to see?

19 A Probably.

20 Q Was it your expectation that if Ms. Orozco received  
21 in the mail correspondence in communications that concerned  
22 you personally that she would -- she would turn it over to  
23 you?

24 MR. JENSEN: Objection. Relevance to him  
25 personally. What does his personal life have to do with any

1 of this?

2 THE COURT: Go ahead, Mr. Levin.

3 MR. LEVIN: I'll reask the question.

4 BY MR. LEVIN:

5 Q Was it your expectation that if Ms. Orozco received  
6 correspondence that mentioned you or specific to you that she  
7 would turn it over to you so you could see it?

8 A I don't recall that happening, but -- no. I would  
9 assume she would give it to me no matter what it was.

10 Q Do you ever recall seeing communications -- withdraw  
11 that.

12 During the period of time that Ms. Orozco worked as  
13 your secretary, did you ever discuss with her CalPERS pension  
14 issues?

15 THE COURT: Excuse me.

16 MR. JENSEN: Bless you.

17 THE WITNESS: I don't recall. I may have. But I  
18 don't recall it.

19 BY MR. LEVIN:

20 Q During the period of time that Ms. Orozco was  
21 serving as your secretary, do you recall seeing CalPERS  
22 communications about your retirement account?

23 A I don't recall it at that time. I have seen a  
24 document since.

25 Q Do you recall approximately in 1994 whether the

1 State Controller's Office on behalf of CalPERS did an audit  
2 of the City of Vernon?

3 A I thought it was audited every year.

4 Q I'm sorry?

5 A I thought it was audited every year.

6 Q Was there a person or persons at the City of Vernon  
7 who were responsible for interacting with CalPERS?

8 A I think it was Assistant Personnel Record.

9 Q Who was that?

10 A At that time -- I don't recall her name.

11 Joan Frankoteen (phonetic).

12 Q During the period of time that you worked at the  
13 City of Vernon, do you recall hearing about or seeing any  
14 communication about a concern with City employees holding  
15 multiple positions?

16 A Again, I did not recall seeing it at that time. I  
17 have seen that document 1995 since.

18 THE COURT: I have seen that document -- what?

19 THE WITNESS: Somebody showed me the document since  
20 then.

21 THE COURT: I see.

22 THE WITNESS: I don't recall seeing it at that  
23 time.

24 BY MR. LEVIN:

25 Q Have you heard the slang word "pursable" or

1 "persable"?

2 A No.

3 Q That means -- that refers to whether or not an item  
4 of compensation does count towards a member's retirement  
5 allowance. Have you ever heard that word before?

6 A Not persable. No. Persable. That's what you're  
7 saying?

8 Q Yes.

9 A No.

10 Q Do you ever recall a point in time when you were at  
11 the City of Vernon hearing that CalPERS believed that the  
12 City of Vernon had a problem in reporting items of  
13 compensation that CalPERS believed shouldn't count towards  
14 retirement allowances?

15 A I don't recall that. They audit us every year.  
16 Nobody -- I mean they came and did the audit. I thought they  
17 got a resolution when they felt they had a problem, but they  
18 didn't really think they had a problem, they didn't resolve  
19 it.

20 Q Do you believe that you were informed about the  
21 results of the audits that CalPERS did of the City of Vernon  
22 while you were the City Administrator?

23 A No.

24 Q Was there somebody at the City of Vernon that you  
25 believe had the responsibility of keeping you informed about

1 the outcome of CalPERS audits?

2 A In what time frame we talking?

3 Q The entire period of time you were the City  
4 Administrator?

5 A When I left, they did. They said that my pension  
6 was incorrect and they reduced it. Fifteen, sixteen months  
7 later after they had their hearing, they came back and said,  
8 "No. You're okay."

9 Q When you were the City Administrator, was there an  
10 employee of the City of Vernon that you thought was  
11 responsible for keeping you apprised of the outcome of  
12 CalPERS' audits?

13 A CalPERS since the audit -- it wasn't the Personnel,  
14 yeah. I don't know that there was a request at that time.

15 Q Did you ever read --

16 A No.

17 Q -- an audit when you were at the City of Vernon?

18 A When I was asked what?

19 Q When you were at the City of Vernon working as the  
20 City Administrator, did you ever receive and review an  
21 audit?

22 A No.

23 Q Was there ever a time when somebody else at the City  
24 of Vernon came to you and said, "Mr. Malkenhorst, let me tell  
25 you about the results of this CalPERS audit"?

1           A     It never happened.

2           Q     Was there somebody at the City of Vernon that you  
3     thought was responsible for keeping you informed about the  
4     outcome of CalPERS audits?

5           A     I know the audit did not come to me. I assume it  
6     went to Personnel. I would think that if they said they had  
7     a problem, they would have brought it to me.

8           Q     Do you ever recall somebody coming to you as City  
9     Administrator and explaining to you a problem that CalPERS  
10    had?

11          A     CalPERS didn't.

12          Q     Do you recall anybody at the City of Vernon coming  
13    to you and talking about a problem?

14          A     No.

15                MR. LEVIN: Your Honor, may I approach the Witness  
16    to bring him the next binder?

17                THE COURT: You may.

18                MR. JENSEN: Exhibit.

19                THE COURT: Which binder?

20                MR. LEVIN: Actually, I believe it's still in  
21    volume 2, at Exhibit 46

22                THE WITNESS: In here?

23                THE COURT: Still in there. Volume 2.

24                THE WITNESS: Okay.

25    ///

1 BY MR. LEVIN:

2 Q Mr. Malkenhorst, could you please take a look at  
3 Exhibit 46 and tell me if you've seen it before?

4 THE COURT: The entirety of the document? It's  
5 quite voluminous.

6 MR. LEVIN: Just the first page.

7 THE WITNESS: This is the -- I did see this, but I  
8 did not see it at that time. I seen it since.

9 BY MR. LEVIN:

10 Q So when you were -- when you were the City  
11 Administrator, you didn't see this letter?

12 A I did not.

13 Q Was it your expectation that that Ms. Orozco would  
14 correspond with CalPERS when she was working for you?

15 A Whether it was Ms. Orozco or the Personnel Director.

16 Q I'm sorry?

17 A The Personnel -- Assistant Personnel Director.

18 Q The first page of Exhibit 46, the exhibit -- you see  
19 this is a letter from Gloria Orozco to CalPERS; do you see  
20 that?

21 A I do.

22 Q This letter concerns you in a way; correct?

23 A Yes.

24 Q Do you ever recall discussing with Ms. Orozco the  
25 substance of this communication she had with CalPERS?

1 A No.

2 Q Do you think that Ms. Orozco was obligated as part  
3 of her job description to discuss with you --

4 A No, she could resolve it.

5 Q It was your expectation that she could resolve it  
6 without your input?

7 A Sure. Probably at first she didn't, but I would  
8 think that she could. Anytime somebody had a problem they  
9 could resolve and didn't bring it to me. I expected that.

10 Q Do you recall in the 1995 time period asking CalPERS  
11 for a preliminary determination of what your retirement  
12 benefit might be?

13 A Yes.

14 Q Do you recall receiving information back from  
15 CalPERS that CalPERS needed certain information before it  
16 could provide that --

17 A I don't --

18 Q -- estimate for you?

19 A -- I don't recall that.

20 Q Could you please turn to Exhibit 47. This is a  
21 one-page letter from CalPERS to Ms. Orozco. Have you ever  
22 seen it before?

23 A I have not.

24 Q Well, let me ask a better question. Is this  
25 something that you think you saw while you were working at

1 the City of Vernon?

2 A No. I didn't see it while at the City of Vernon.

3 Q You see the end of the first paragraph of this  
4 letter there's this sentence, "However, the other duties for  
5 the positions listed upon would be considered overtime."

6 Do you see that?

7 A I see that.

8 Q And that statement was made in connection with the  
9 various job duties that you held at the City of Vernon;  
10 correct?

11 MR. JENSEN: Objection. Argumentative and  
12 irrelevant. The document speaks for itself. You can't put  
13 these CalPERS documents into the mouth of Mr. Malkenhorst  
14 when he's never seen it.

15 THE COURT: Sustained.

16 BY MR. LEVIN:

17 Q Mr. Malkenhorst, did Ms. Orozco ever discuss with  
18 you an inquiry to CalPERS as to whether you were working  
19 overtime?

20 MR. JENSEN: Objection. Asked and answered, your  
21 Honor.

22 THE COURT: One more time you may answer.

23 THE WITNESS: I don't recall it, if they did.

24 BY MR. LEVIN:

25 Q Could you please turn to Exhibit 48. So one-page

1 letter from CalPERS to Ms. Orozco. Have you seen this  
2 before?

3 A No.

4 THE COURT: No?

5 THE WITNESS: No.

6 THE COURT: Thank you.

7 BY MR. LEVIN:

8 Q Did you ever discuss the contents of Exhibit 48 with  
9 Ms. Orozco?

10 A I never seen it. Why would I? No, I did not.

11 Q Did Ms. Orozco ever discuss with you the notion that  
12 you should track the percentage of time spent in the various  
13 positions or duties you held with the City of Vernon?

14 A I'm not sure I understand your question.

15 Q Did Ms. Orozco ever discuss with you whether you  
16 were keeping track of the number of hours that you spent in  
17 connection with the various titles that you held --

18 A No.

19 Q -- at the City of Vernon? When you were working at  
20 the City of Vernon, did you discuss with anybody whether or  
21 not you should be keeping track of the number of hours you  
22 spent in connection with the various departments for which  
23 you did work?

24 MR. JENSEN: Objection. Misstates his testimony  
25 that he worked for various departments.

1 THE COURT: Overruled. You may answer.

2 THE WITNESS: I don't recall ever talking to anybody  
3 about my hours.

4 BY MR. LEVIN:

5 Q Looking at Exhibit 48, would it have been your  
6 expectation that Ms. Orozco forwarded this type of letter to  
7 you for review?

8 MR. JENSEN: Forwarded or would have forwarded?  
9 Objection as vague and ambiguous.

10 THE COURT: Overruled. You may answer.

11 THE WITNESS: What's the question again?

12 BY MR. LEVIN:

13 Q Was it your expectation that Ms. Orozco would have  
14 forwarded Exhibit 48 to you?

15 A Not if she felt like she could handle it. No.

16 THE COURT: Let's go off the record momentarily.

17 (Recess)

18 THE COURT: Back on the record.

19 MR. JENSEN: Thank you, your Honor.

20 BY MR. LEVIN:

21 Q Mr. Malkenhorst, was there ever a period of months  
22 when you were the City Administrator when you found yourself  
23 routinely working more than forty-five hours a week?

24 A Routinely?

25 Q Correct.

1           A     I don't recall it.

2           Q     Did you have an understanding as to why if the City  
3 Council wanted to give you new job duties they felt it  
4 necessary not only to give you the duties but to give you a  
5 new title?

6           A     No.

7           Q     Never had that discussion with anybody, with  
8 Council?

9           A     No.

10          Q     No understanding as to why that happened?

11          A     No. I worked for the Council, so whatever they told  
12 me to do I did. If they want to put a title on it, they want  
13 the City Attorney to memorialize it, then the Council --

14          Q     Did you ever request a title from the City Council?

15          A     Yes. City Manager.

16          Q     This morning you talked about being an exempt  
17 employee.

18          A     Yes.

19          Q     The word "exempt," do you -- do you understand that  
20 word to be something that's defined by the Fair Labor  
21 Standards Act?

22          A     I assume that.

23                MR. JENSEN: Objection. He's asking for a legal  
24 interpretation of Fair Labor Standards Act. That's a  
25 legal interpretation.

1 THE COURT: And the objection is sustained.

2 MR. JENSEN: Thank you.

3 BY MR. LEVIN:

4 Q Are you familiar with the Fair Labor Standards  
5 Act?

6 A Pardon me?

7 Q Are you familiar with the Fair Labor Standards  
8 Act?

9 A Not really.

10 Q Have you heard of it?

11 A I've heard of it.

12 Q Do you have an understanding that it defines when  
13 employees are not exempt?

14 MR. JENSEN: Objection, your Honor.

15 THE COURT: Sustained. Are you asking this witness  
16 for legal conclusions?

17 MR. LEVIN: No. No, your Honor.

18 THE COURT: It sounds to me very close to that.

19 MR. LEVIN: Your Honor, if I may explain. He said  
20 he was an exempt employee. I'm trying to figure out what he  
21 means by "exempt."

22 THE COURT: You may ask him that.

23 BY MR. LEVIN:

24 Q What did you mean by "exempt" by your testimony this  
25 morning, Mr. Malkenhorst?

1           A     I knew I wasn't going to get paid overtime.

2           THE COURT:   I'm sorry?

3           THE WITNESS:   I knew I was not going to get paid  
4 overtime.

5           Q     Were you aware of the City of Vernon having policies  
6 or procedures to who gets paid overtime?

7           A     Yes, I did.

8           Q     What written policies or procedures existed on that  
9 point?

10          A     I don't know that I saw any written procedures.  I  
11 think it was just the people that had been -- were called out  
12 on their off-duty hours and were paid overtime.  If they --  
13 the department had come in and overseen it, they were not  
14 paid overtime.

15          Q     Were there other employees of the City of Vernon  
16 apart from yourself whose salaries were allocated across  
17 various departments?

18          A     Probably the Chief Deputy City Clerk.  You know  
19 that's not it either, because they were charged by the City's  
20 Clerk Office.  No, I don't think so.  I don't recall.

21          Q     There was a City Administration Department?

22          A     Yes.

23          Q     And you worked in that department?

24          A     I worked in that department.

25          Q     There was a City Clerk Department; right?

1 A It was -- yes.

2 Q Did you work in that department?

3 A I was a Clerk -- excuse me.

4 MR. JENSEN: Objection. Work in that department. I  
5 mean --

6 THE COURT: Overruled.

7 THE WITNESS: I already answered.

8 THE COURT: Do you know the answer?

9 THE WITNESS: City Clerk. Yes. I was City Clerk.

10 BY MR. LEVIN:

11 Q You were the department head of the City Clerk?

12 A I was City Administrator-City Clerk.

13 Q You were the head of City Clerk Department?

14 A I was City Clerk.

15 Q Okay. Do you consider that the head of that  
16 department?

17 A Yes.

18 Q There was a Finance Department?

19 A Yes.

20 Q And you were the head of the Finance Department?

21 A I was Finance Director.

22 Q There was a Treasurer Department?

23 A I think she worked on the Finance Department.

24 Q Are you aware of the various departments used by the  
25 City of Vernon's Accounting Group for various -- for any

1 reasons?

2 A Pardon me?

3 Q Let me withdraw that. I'd like to refer the Witness  
4 to Exhibit 81.

5 THE COURT: Okay.

6 MR. LEVIN: If I may approach, I'll get the notebook  
7 for the Witness.

8 THE COURT: Please. Go ahead.

9 BY MR. LEVIN:

10 Q Mr. Malkenhorst, does Exhibit 81 look familiar to  
11 you?

12 A No.

13 THE COURT: Did you say, "No"?

14 THE WITNESS: I said, "No."

15 THE COURT: Thank you very much.

16 BY MR. LEVIN:

17 Q Are you aware of why the City of Vernon grouped its  
18 employees into departments?

19 A Why they did what?

20 Q Why the City of Vernon grouped its employees into  
21 departments?

22 A Why they grouped them into departments?

23 Q Yes.

24 A Because most of them had light duties or they had  
25 duties that one clerk could do, more than one job, one

1 responsibility.

2 Q What departments are you aware of at the City of  
3 Vernon while you were working there into which employees were  
4 grouped?

5 A Employees were what?

6 Q What departments do you recall being in existence  
7 when you were the City Administrator?

8 A I'm still missing your question.

9 Q There were departments --

10 A Right.

11 Q -- at the City of Vernon. What departments do you  
12 recall existing when you were there?

13 A Oh. Finance Department. City Clerk Department.  
14 City Administrative Department. Health Department. Public  
15 Works Department. Water Department. Police Department.  
16 Fire Department.

17 Q Light and power?

18 A Light and Power. Yeah. Light and Power.

19 Q And do you know whether the City of Vernon -- the  
20 use the City Vernon made of those various departments  
21 in creating its budgets? Withdraw that question.

22 Was the budget in the process of the City of Vernon  
23 done on a department by department basis?

24 A Yes.

25 Q And why was it done that way?

1           A     Well, the department was responsible for what they  
2     thought they were going to have to spend through the year.

3           Q     Was there some intent to then match up the amount of  
4     money that was budgeted for a department and the amount of  
5     money that department was expected to spend in the coming  
6     year?

7           A     Trying to match up what they --

8           Q     The City was trying to match up the amount of money  
9     that it budgeted to a department to match the amount of money  
10    they expected that department to spend in the upcoming  
11    year?

12          A     Yes.

13          Q     Do you know the reason why the City of Vernon in  
14    some instances would allocate individual salaries across  
15    departments, how that played into its budgeting process?

16          A     They allocated the cost of salary to a department.  
17    It was basically a percentage paid on the value of that  
18    department, the cost of running that department.

19          Q     Was there a reason why the City just didn't allocate  
20    a hundred percent of your salary to the City Administration  
21    Department?

22          A     City Administration Department didn't bring funds  
23    in -- money in.

24          Q     And so --

25          A     So you had to offset the income generated by that

1 department.

2 Q So in some cases salary would be allocated to  
3 departments that had income as a sort of offset?

4 A That created it, yes.

5 THE COURT: Mr. Levin, we're going to take a fifteen  
6 minute break. Let's go off the record.

7 MR. JENSEN: Thank you, your Honor.

8 (Recess)

9 THE COURT: Back on the record. Mr. Levin, go  
10 ahead.

11 MR. LEVIN: Your honor. Apart from five or so  
12 questions on the felony convictions, I have no further  
13 questions.

14 THE COURT: Okay. Thank you. Then let me address  
15 the objection to questions regarding the felony conviction  
16 that Respondent testified to. Based on the cases cited to me  
17 by Respondent's Counsel and some additional cases, there is  
18 only very limited questioning permitted to impeach a witness  
19 with respect to credibility. When the witness testifies that  
20 he has been convicted of a felony, the permissible scope is  
21 identified in several of those cases including the McCullen  
22 case cited by Respondent's Counsel as being relied on by the  
23 -- case that he first cited and also relied on by CalPERS  
24 Counsel.

25 The name or nature of the crime may be asked, that

1 is the Penal Code section that the Respondent was convicted  
2 of violating or any other code section; the place and date of  
3 the conviction itself; the number of felonies of which he was  
4 convicted when they were committed, and that is all. So if  
5 you have those four questions you may ask them.

6 MR. LEVIN: Your Honor, one point of clarification.  
7 This is in reference to ask questions about the Penal code  
8 section which I have in front of me, Penal code 424. I  
9 intended to clarify the aspect of 424 that the Witness --

10 THE COURT: If there are some parts you may ask  
11 about that. You may ask the code section and subdivision --

12 MR. LEVIN: Thank you, your Honor.

13 THE COURT: -- under which Respondent was convicted.  
14 And that's as far as it goes.

15 MR. LEVIN: Fine, your Honor.

16 THE COURT: Go ahead.

17 BY MR. LEVIN:

18 Q Mr. Malkenhorst, you pleaded guilty to a felony  
19 under Penal Code Section 424; correct?

20 A I don't know the number offhand.

21 Q Okay. The Penal Code section that you pleaded  
22 guilty to involved the misappropriation of public monies; is  
23 that correct?

24 MR. JENSEN: Objection, your Honor. That goes  
25 beyond the -- that's inappropriate impeachment.

1 THE COURT: Actually in fact that is exactly what  
2 Respondent testified to. It's been asked and answered,  
3 Counsel.

4 MR. LEVIN: Okay. Just for clarification, your  
5 Honor. I believe he testified to property before. I just  
6 wanted to make sure we're clear as to with monies.

7 THE COURT: It was funds.

8 MR. LEVIN: Funds. Thank you, your Honor.

9 BY MR. LEVIN:

10 Q The misappropriation that was at the base or on  
11 which your conviction was premised -- withdraw that question.

12 During what period of time did you misappropriate  
13 public funds from the City of Vernon?

14 MR. JENSEN: Objection. Inappropriate impeachment.  
15 Goes beyond the scope of the allowed testimony.

16 THE COURT: Sustained.

17 MR. LEVIN: Your Honor, I believe --

18 THE COURT: One moment. When the felonies were  
19 committed. You may ask that question. You may ask when the  
20 felonies were committed. Felony or felonies.

21 MR. LEVIN: Okay.

22 BY MR. LEVIN:

23 Q Mr. Malkenhorst, when did you commit your felony?

24 A When did I commit the felonies? Is that the  
25 question?

1 Q Yes.

2 A When did I commit the felony? I don't think -- I'm  
3 not familiar with the dates, but can I say something?

4 THE COURT: You may.

5 THE WITNESS: I would not have pled guilty had  
6 CalPERS had not said my pension was okay and the D.A. told  
7 me, you know, they can't touch your pension. Why don't you  
8 just plead and get out of -- we've been going five years at  
9 the time.

10 THE COURT: When did you receive your conviction?

11 THE WITNESS: I received it in 2010, 2011.

12 THE COURT: Anything else?

13 MR. LEVIN: Your Honor, I would either like to  
14 cross-examine the Witness on his statement or more that it be  
15 stricken as nonresponsive.

16 THE COURT: It is stricken.

17 MR. LEVIN: No further questions.

18 THE COURT: Aside from the conviction dates.

19 MR. LEVIN: Yes, your Honor.

20 THE COURT: Okay. No further questions. Anything  
21 on redirect?

22 MR. JENSEN: Yes, your Honor. Just briefly.

23 THE COURT: Go ahead.

24 ///

25 ///

REDIRECT EXAMINATION

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BY MR. JENSEN:

Q There was an implication that -- well, you were asked a question whether you received money for performing the Treasurer responsibilities when those were initially transferred to you, and then Counsel referred you to a document. And did you ever receive any funds for undertaking the Treasurer responsibilities?

A No.

Q And who did receive those funds?

A I think at that time it said it was Louise Hilton and then somebody else. I don't recall the name. Sharon Dalwon.

Q Let me ask you a question. There's been testimony about which job titles are put on the pay schedule. Did Vernon ever put job titles or responsibilities on the pay schedule to which there was no pay?

A No.

Q And why did Vernon put job titles on a salary schedule?

A Why did I put on a salary schedule?

Q Yes.

A That was --

THE REPORTER: What was that?

THE WITNESS: That was the amount that would be paid.

1 BY MR. JENSEN:

2 Q And were only full-time jobs put on a salary  
3 schedule?

4 A City Administrator-City Clerk.

5 Q Let me start over again. Are you aware of whether  
6 it was only full-time positions put on a salary schedule? I  
7 withdraw the question.

8 So when you testified that you had an expectation of  
9 a higher salary when you requested additional monies, did the  
10 Finance Committee give you what you desired?

11 A Not always.

12 Q And was your expectation of a higher salary just  
13 associated in general with your accomplishments for the  
14 City?

15 A Yes.

16 Q And let me just briefly address the location of your  
17 work. The normal working location -- where was your normal  
18 working location?

19 A City Hall.

20 Q And did you spend full time working in the City Hall  
21 on average every year?

22 A On average.

23 Q And let me address another question. You addressed  
24 -- you testified to other employees that were on a step scale  
25 and receiving raises or scales steps within -- on the salary

1 schedule. Do you recall that testimony?

2 A I -- there was a scale, a step scale. Yeah. And it  
3 starts normally when they were hired whatever level they went  
4 to. If there was a person who had no experience, started  
5 very bottom. Person from another city they started out a  
6 little hire level.

7 Q And once you're in the City Administrator-City Clerk  
8 position, were you ever on a scale?

9 A No.

10 Q And was the expectation of the City that annually  
11 you would renegotiate your salary as City Administrator-City  
12 Clerk?

13 A It was reviewed.

14 MR. LEVIN: Objection. Leading.

15 THE COURT: Overruled. You may answer.

16 THE WITNESS: They would review my performance over  
17 the past year.

18 BY MR. JENSEN:

19 Q And your understanding was it the expectation of the  
20 City that there would be an annual increase in your salary  
21 every year?

22 A I don't know about them, but I did.

23 Q So no matter whether you took an additional  
24 responsibility or not, if you performed well your existing  
25 responsibilities you still sought a raise?

1 A I thought we did well, so yeah.

2 Q So I want to briefly address your attention to the  
3 City code which CalPERS just asked you some questions about,  
4 which is Exhibit 10.

5 Your Honor, may I approach the Witness?

6 THE COURT: You may.

7 BY MR. JENSEN:

8 Q This is the document that CalPERS asked you to look  
9 at. This is the City -- your Honor, may I approach?

10 This is the Exhibit 10 that I'm referring to. Do  
11 you know the date of this document?

12 A No.

13 Q Did the City code change when you were -- at all  
14 during your thirty year tenure at the City?

15 A It sure did.

16 Q Do you know which date this document -- this City  
17 code is?

18 A If it was adopted when they adopted me as City  
19 Administrator it was probably in -- appointed -- looking for  
20 a date -- October, November of '78.

21 Q Can you take a brief moment and see whether there is  
22 a date on this document?

23 A I don't see one.

24 Q So do you know when this document applies?

25 A Well, if this was when they named the created

1 position of Administrator it would have been in that period  
2 of time; October, November of '78.

3 Q But do you know how long that -- so you assume that  
4 this City code was in existence at least sometime after 1978;  
5 is that correct?

6 A Yes.

7 Q Do you know how long this document was in effect,  
8 this particular document in front of you?

9 A I don't.

10 Q So you have no ability from looking at this whether  
11 it was in effect for five years, one year, or twenty years?

12 A No.

13 Q So just for the purposes of narrowing this effect,  
14 do you -- to the year of 1978 after you were appointed City  
15 Administrator, I want to point your attention to what's  
16 marked as page 10-4 under the general supervision section.

17 Your Honor, may I approach again?

18 THE COURT: You may.

19 THE WITNESS: 10-4.

20 BY MR. JENSEN:

21 Q So this section here -- do you see where it says,  
22 "City Administrator shall execute on behalf of the  
23 Council"?

24 A Yes. Under the direction of Council.

25 Q Were you under the understanding that you were at

1 all times under the direction and control of the Council?

2 A Absolutely.

3 Q And that at -- that at least during this period of  
4 time when this document was in effect that the City Council  
5 would place control of such affairs as they wished in your  
6 charge, what do you --

7 A My area of the responsibility, yes.

8 Q Was there any limitation on that whatsoever?

9 A Not to my knowledge.

10 Q And so was the Council trying to effectively empower  
11 you to carry out the goals that they had authorized you to  
12 undertake?

13 A Of the City Council, yes.

14 Q And what position did you -- is this power given to  
15 you in?

16 A To what?

17 Q This power was given to you as the City  
18 Administrator; correct?

19 A Yes.

20 Q And then it says the City Council reserve the right  
21 to modify or supersede any action that you took. So they  
22 retained control even if you did undue any actions that you  
23 had done?

24 A Yes.

25 Q I just want to point out on page -- starting on page

1 10.7 it says, "Duty of other" --

2 THE COURT: You mean 10-7?

3 MR. JENSEN: Yeah. 10-7. Your Honor, may I  
4 approach?

5 THE COURT: You may.

6 BY MR. JENSEN:

7 Q 10-7 it says, "Duty of other Officer." And so in  
8 this section that is about the power and duties of the City  
9 Administrator. Did you take this to mean that you had the  
10 power to delegate your -- some of the duties and  
11 responsibilities that came into your possession or in your --  
12 were put upon you by the City Council to other officers of  
13 the City?

14 A I did understand that, that was all -- the way it  
15 got done. Including the City Clerk and City Treasurer which  
16 is what I was. That was in my area of my responsibility.

17 Q Right. And --

18 A Assume I did do a good writing.

19 Q And all other officers?

20 A All other officers.

21 Q You didn't take those to be a limitation?

22 A No.

23 Q And then on the last subsection "R" it says, "Powers  
24 and duties." And there's a very expansive phrase there.

25 THE COURT: What's the question, Counsel?

1 BY MR. JENSEN:

2 Q And so did the City ever assign or delegate duties  
3 to you that you would believe fell into this subsection  
4 "R"?

5 A Yes, they did.

6 Q Okay. And particularly I want to address this.  
7 This assignment of this job title of C.E.O. of Light and  
8 Power. When the Council assigned that to you, there were  
9 some prior history to how the Light and Power Department had  
10 worked; is that correct?

11 A That's true.

12 Q Can you tell us what that history is?

13 A Well, they had a contract employer who interrelated  
14 with what Southern California Edison on the rates and how the  
15 system was run. We had no employees that worked on it per  
16 se, but we did have Southern California Edison, and one of  
17 our buildings offering the system to it was in the City.

18 Q And was that -- did the Council find that  
19 individual's job performance satisfactory?

20 A No.

21 Q And so what did they do?

22 A They removed him.

23 Q And who did they give that overall responsibility of  
24 oversight to?

25 A City Administrator.

1 Q And was it at that time your main responsibilities  
2 as C.E.O. of Light and Power to negotiate deals or negotiate  
3 with third parties outside the City of Vernon?

4 A Yes.

5 Q And was -- was this job duty and responsible to  
6 benefit the City of Vernon or to benefit this Electrical  
7 Department?

8 A Well, it was two things it did. Benefit the  
9 Electrical Department, but it benefited the City of Vernon.

10 Q And who was your -- who were you working for?

11 A City Council.

12 Q And were you working for the City of Vernon? Were  
13 you working for the City of Vernon; you were employed by the  
14 City of Vernon?

15 A Yes, City Council.

16 Q Council said that you working to benefit the  
17 Electric Department.

18 A Yeah. It was for the City of Vernon.

19 Q Can you clarify that?

20 A It was for the City of Vernon. Matter of fact it  
21 was Electrical Department efficiently run and reduce cost,  
22 and it was benefit to the City of Vernon.

23 Q Is that why the City of Vernon had an Electric  
24 Department?

25 A They had Electrical Department to -- you want the

1 story?

2 Q No.

3 A Everything -- everything is history of Vernon. In  
4 1933 Vernon went to Edison who had the Electrical Department  
5 in the City at that time and wanted to -- a lower rate at  
6 night so they could bring more industry in. I -- no, screw  
7 you; so about a month later they noticed that power lines  
8 were being built on the streets of Vernon.

9 THE COURT: Mr. Malkenhorst.

10 BY MR. JENSEN:

11 Q Yeah. Let me just try to direct you to really --  
12 how would you describe what you were doing at the City as a  
13 City Administrator-City Clerk?

14 A What I was doing?

15 Q What were you doing?

16 A Doing what City Council told me to do.

17 Q And what -- so let me ask you a question. On a  
18 day-do-day basis, just a regular ordinary day of you as the  
19 City Administrator, what time would you arrive? And tell us  
20 your workday.

21 A Normal day. I don't think there was a normal day.

22 Q Well, if you were to take a --

23 A I was responsible to be in at 7:00 o'clock in the  
24 morning unless I had some other appointment outside the City.  
25 I worked until 5:30 unless there was something else to do, or

1 there was a Council meeting that day I work over. Work  
2 beyond 5:30 time.

3 Q And did you work -- and you worked in your office at  
4 the city -- City Hall?

5 A Yes.

6 Q And what -- on a typical day what sort of matters  
7 would be brought to you?

8 A Whatever problems that came up.

9 Q And was it a busy day; did you have a lot?

10 A Pretty much.

11 Q And did you have a busy -- work to do all day?

12 A Some days. Not all the time.

13 Q And you would perform this work as City  
14 Administrator-City Clerk?

15 A Yes.

16 Q And again, if you were to make an average of your  
17 hours worked in your Monday through Thursday, how many hours  
18 a week would you work in the City of Vernon?

19 A Approximately forty to forty-five hours a week.

20 Q And this is performing the duties and  
21 responsibilities of City Administrator?

22 A Yes, sir.

23 Q So there's been some testimony that you worked on --  
24 let me just move onto this next issue. I want to turn your  
25 attention to some documents from 1995. Do we have those?

1 Page 47. Oh, Exhibit 46, I believe.

2 Your Honor, may I approach?

3 THE COURT: You may.

4 THE WITNESS: Which one is it?

5 BY MR. JENSEN:

6 Q It's 46.

7 A And actually I was the one who showed you this  
8 document recently; is that correct?

9 A Yes.

10 Q And when we discussed this there was this question  
11 about whether your position -- well, actually in Ms. Orozco'  
12 letter here it says you also asked for salary schedules for  
13 the group of class of employees most closely related to  
14 Mr. Malkenhorst's position. And does that -- was that  
15 meaningful to you when that -- when we brought this up that  
16 it was a singular term?

17 A Which --

18 MR. LEVIN: Objection. Lacks foundation.

19 THE COURT: Sustained.

20 BY MR. JENSEN:

21 Q When you reviewed this document --

22 THE COURT: Recently?

23 THE WITNESS: Recently.

24 BY MR. JENSEN:

25 Q -- recently --

1           A     Yes.

2           Q     When you reviewed this document in the course of  
3 this litigation and this matter came up, did you have any  
4 thoughts about that sentence?

5           MR. LEVIN:  Objection.  Relevance.

6           THE COURT:  Sustained.

7 BY MR. JENSEN:

8           Q     Do you know -- do you know if Ms. Orozco believed  
9 that you held a single position?

10          MR. LEVIN:  Objection.  Hearsay?

11          THE COURT:  Sustained.

12          MR. JENSEN:  Can I have just a minute, your Honor?

13          THE COURT:  You may.

14          MR. JENSEN:  I think that's it, your Honor.

15          THE COURT:  Okay.  Thank you.  I think it was off  
16 the record when I asked Mr. Yim whether you have any  
17 questions on cross-examination.

18          MR. YIM:  No questions.

19          THE COURT:  No questions?

20          MR. YIM:  No questions, your Honor.  Thank you.

21          THE COURT:  You're welcome.  Anything on recross?

22          MR. LEVIN:  No, your Honor.

23          THE COURT:  Okay.  You may step down.

24          THE WITNESS:  Thank you, your Honor.

25          MR. JENSEN:  May I just walk him to the elevator?

1 THE COURT: Yes. Of course. You could just leave  
2 all that.

3 THE COURT: Let's go off the record for a moment.

4 MR. JENSEN: Thank you.

5 (Recess)

6 THE COURT: Back on the record. Mr. Jensen, any  
7 further testimony for Respondent?

8 MR. JENSEN: No, your Honor.

9 THE COURT: Respondent rests. Okay. Any witnesses  
10 for the City of Vernon?

11 MR. YIM: No witnesses, your Honor.

12 THE COURT: No other evidence?

13 MR. YIM: No other evidence.

14 THE COURT: Okay. Any rebuttal witnesses for  
15 CalPERS?

16 MR. LEVIN: No, your Honor.

17 THE COURT: All right. I'll address we're not going  
18 to be having oral closing. Closing will be by brief. Before  
19 I get to that, the parties earlier, during the course of the  
20 hearing, agreed to join me for a -- prepare a written list of  
21 all of City of Vernon's resolutions, charts and codes and  
22 minutes. When will that be submitted?

23 MR. LEVIN: Your Honor, if I may address that point.  
24 That stipulation occurred early in the process where I  
25 believe Mr. Jensen was going through the various City

1 resolutions and admitting them one at a time. I actually  
2 just said, "Prepare a list and I stipulate they can all be  
3 admitted." I think that that never happened, and instead  
4 your Honor went through exhibit by exhibit and created a list  
5 of those exhibits that have been admitted; so it is now moved

6 THE COURT: Okay. Is that correct, Mr. Jensen?

7 MR. JENSEN: That's my recollection too that I think  
8 all the -- my understanding is all the Vernon resolutions are  
9 admitted.

10 THE COURT: Okay. Good. That's the result.

11 MR. JENSEN: Not all the Vernon documents but all  
12 the Vernon resolutions.

13 THE COURT: You were very clear the first time,  
14 Mr. Jensen.

15 MR. JENSEN: Okay. Thank you.

16 THE COURT: All right. Let's look at the documents  
17 for the City of Vernon -- rather -- I'm sorry -- for CalPERS.  
18 We have Exhibits 1 through --

19 MR. LEVIN: Your Honor, if I may briefly interrupt?

20 THE COURT: You may.

21 MR. LEVIN: This is on the record at the very end of  
22 day five, and so we do have the record of everything that's  
23 been admitted if you weren't aware of that.

24 THE COURT: I was very aware of that.

25 MR. LEVIN: Oh, okay. Then I apologize.

1 THE COURT: Exhibits 1 through 65 were marked and  
2 admitted. Exhibit 66, was that withdrawn and removed from  
3 the exhibit binders? That was not marked?

4 MR. LEVIN: It was intentionally not moved into  
5 evidence, but it was not physically removed.

6 THE COURT: And I'm asking you if you're withdrawing  
7 it?

8 MR. LEVIN: Yes, your Honor.

9 THE COURT: Thank you.

10 MR. JENSEN: And if it's possible, I would like to  
11 have it destroyed if possible.

12 THE COURT: All right. Exhibit 66 is withdrawn. I  
13 will remove it from the record. 67 through 71 were marked  
14 and admitted. 72, 3 and 4 were not marked. Are they  
15 withdrawn?

16 MR. LEVIN: Yes, your Honor.

17 THE COURT: 76 through 78 were not marked or  
18 admitted. Are they withdrawn?

19 MR. LEVIN: One minute, your Honor.

20 THE COURT: Uh-huh.

21 MR. LEVIN: Well, your Honor, 76 through 78 I would  
22 like to have admitted into evidence to have a complete record  
23 of the various City resolutions.

24 MR. JENSEN: I would oppose that, your Honor. It's  
25 after the fact of his -- so that was not one of the

1 resolutions that I agreed to have admitted. And it's after  
2 his retirement. 77, 76, 77, and 78 should -- I don't  
3 stipulate to the acceptance.

4 THE COURT: All right. I will mark Exhibit 76, 77,  
5 and 78. There's been no testimony and no questioning of any  
6 witness about these exhibits. They are not admitted.

7 (Complainant's Exhibits 76, 77, and 78  
8 were marked for identification by the Court.)

9 MR. JENSEN: Thank you, your Honor.

10 THE COURT: Exhibit 80 was not marked or admitted.  
11 Are you withdrawing that?

12 MR. LEVIN: Yes, your Honor.

13 MR. JENSEN: And Exhibit 79 is not withdrawn as  
14 well.

15 THE COURT: No. Exhibit 79 was admitted.

16 MR. JENSEN: Was admitted?

17 THE COURT: Yes, it was. Exhibit 83 was neither  
18 marked or admitted. Are you withdrawing that?

19 MR. LEVIN: Yes, your Honor.

20 THE COURT: Okay. It's withdrawn, and same with  
21 Exhibit 87?

22 MR. LEVIN: 87 is withdrawn.

23 THE COURT: Okay. That's withdrawn. That covers  
24 CalPERS' exhibits. All right. Let's go to Respondent  
25 Malkenhorst's exhibits. RR, neither marked or admitted.

1 Is that withdrawn?

2 MR. JENSEN: Your Honor, if I could have a moment.

3 Yeah. RR is withdrawn.

4 THE COURT: Okay. And triple D through triple F not  
5 marked or admitted. Are they withdrawn?

6 MR. JENSEN: Yes. Those are withdrawn. Triple D  
7 through triple F.

8 THE COURT: All right. Triple J?

9 MR. JENSEN: Yes. That is withdrawn as well, your  
10 Honor.

11 THE COURT: Thank you. Triple N through triple Z  
12 were neither marked or admitted. Are they withdrawn?

13 MR. JENSEN: Triple N through --

14 THE COURT: Triple Z.

15 MR. JENSEN: -- triple Z. Well we've requested  
16 those to be retained in the record because we were told to  
17 exhaust our administrative remedies on those claims by the --  
18 these are the Charter City pleadings, and so to the extent  
19 those are the scope of the claims that we brought in the  
20 various actions within the Charter City complaint of  
21 neglitory relief. The final ruling on that was to exhaust  
22 our administrative remedies on it. Actually, I misspoke  
23 there. Triple N through triple Y --

24 THE COURT: One moment, please. Triple N through  
25 triple Y.

1 MR. JENSEN: -- are pleadings that associated with  
2 the Charter City matter that, you know, we were ordered to  
3 exhaust and in the administrative process, and --

4 THE COURT: Is there any reason for me to mark them  
5 and admit them in this case?

6 MR. JENSEN: Well, if it happens to be that this  
7 case goes up on appeal again, I would like to at least --

8 THE COURT: Were they the subject matter of any of  
9 the motions that you filed prior to the hearing that are  
10 currently included in the motion to dismiss?

11 MR. JENSEN: I think the contents of the arguments  
12 were made to the Court in a separate motion.

13 THE COURT: I believe that's correct.

14 MR. JENSEN: And the only reason I would just  
15 request that they're marked is at least is to the extent that  
16 we showed that we followed through on our exhaustion  
17 requirements. Which may -- it makes themselves be challenged  
18 if this case goes forward.

19 THE COURT: I'm not sure marking this will establish  
20 exhaustion. Presumably these are all filings in other  
21 tribunals.

22 MR. JENSEN: And, your Honor, I'm presenting it.  
23 I'll defer to your judgment. I did have an obligation, I  
24 think, to present to you; but I'll defer to your ruling on  
25 it.

1 THE COURT: I mean the record in this case is your  
2 argument and the motion you brought in this particular action  
3 for the Office of Administrative Hearings. I will establish  
4 whether you have or not have exhausted administrative  
5 remedies. Do you not agree?

6 MR. JENSEN: I agree, and I mean I -- just to the  
7 extent that we've tried to show what these are, and therefore  
8 we presented them to you. I understand that -- I understood  
9 that to be our requirement to bring those forward, not  
10 necessarily the pleadings but our argument.

11 THE COURT: You feel that you did bring the  
12 arguments forward?

13 MR. JENSEN: I do believe we have, your Honor.

14 THE COURT: Any need for me to mark or admit these?

15 MR. JENSEN: No, if that's --

16 THE COURT: Okay. Exhibit triple N through triple Y  
17 are withdrawn.

18 MR. JENSEN: And then a similar situation exists  
19 with the collateral estoppel res judicata pleadings.

20 THE COURT: One moment, before we get to that. I  
21 have a lot of withdrawals to write here. Okay. Now we're  
22 looking at triple Z through --

23 MR. JENSEN: Well, through triple C.

24 THE COURT: One moment. Triple Z through quadruple  
25 C.

1 MR. JENSEN: Yeah.

2 THE COURT: What about those?

3 MR. JENSEN: Those would be pleadings related to the  
4 collateral estoppel res judicata arguments.

5 THE COURT: Pleadings filed in other actions?

6 MR. JENSEN: Yes, your Honor.

7 THE COURT: Any reason I have to mark them in this  
8 case?

9 MR. JENSEN: No, your Honor.

10 THE COURT: Okay. Are you withdrawing them?

11 MR. JENSEN: I will withdraw those.

12 THE COURT: Okay.

13 MR. JENSEN: And quadruple D is subpoena privilege  
14 log, and I'll withdraw that as well.

15 THE COURT: Okay. And quadruple E through quadruple  
16 G are those also withdrawn?

17 MR. JENSEN: Those are also withdrawn.

18 THE COURT: And then we go to quadruple I through  
19 quadruple K.

20 MR. JENSEN: I believe that quadruple J -- I'm not  
21 sure quadruple J.

22 THE COURT: Quadruple H was marked and admitted.  
23 Not quadruple I through quadruple K.

24 MR. JENSEN: I'm sorry. Your Honor.

25 THE COURT: That's okay.

1 MR. JENSEN: I'm just trying to finalize quadruple  
2 I. Was quadruple I -- was there any testimony on quadruple  
3 I? I don't believe so

4 THE COURT: It was neither marked nor moved.

5 MR. JENSEN: Yeah. That's fine. And then I think  
6 quadruple J.

7 THE COURT: That means you're withdrawing quadruple  
8 I?

9 MR. JENSEN: Yes, your Honor.

10 THE COURT: Okay. How about quadruple J?

11 MR. JENSEN: I'll withdraw quadruple J too.

12 THE COURT: Okay. Quadruple K?

13 MR. JENSEN: I'll withdraw quadruple K.

14 THE COURT: And quadruple M through quadruple Z  
15 neither marked nor admitted. Are they --

16 MR. JENSEN: I'm sorry what's the last?

17 THE COURT: Quadruple M through quadruple Z.

18 MR. JENSEN: Yes, these -- we --

19 THE COURT: How about M and N? Quadruple M and  
20 quadruple N?

21 MR. JENSEN: Yes. Quadruple M I will withdraw. And  
22 quadruple N I will withdraw.

23 THE COURT: Okay.

24 MR. JENSEN: And quadruple O I will withdraw, but  
25 quadruple P through quadruple double Z --

1 THE COURT: Quadruple Z?

2 MR. JENSEN: I'm sorry. I'm actually looking --  
3 it's the five C's. Our jurisdictional argument,  
4 jurisdictional -- our version of jurisdictional documents  
5 that we asked to be put in the record if CalPERS seeks to put  
6 in its jurisdictional documents

7 THE COURT: I see. One moment.

8 MR. JENSEN: And if I could help you, your Honor.

9 THE COURT: I may request some help.

10 MR. JENSEN: Okay. Actually, Steve, can you --

11 THE COURT: Let's go off the record for a moment.

12 (Recess)

13 THE COURT: Let's go on the record. All right.  
14 We're looking at Exhibit PPPP. That's quadruple P through  
15 quintuple C's. And, Mr. Jensen, are you arguing that these  
16 are to be marked in this action to establish your challenge  
17 to CalPERS jurisdiction?

18 MR. JENSEN: That was the reason that I moved them  
19 forward as my equivalence to challenging the jurisdiction  
20 and --

21 THE COURT: Haven't you filed a motion based on this  
22 challenging the jurisdiction?

23 MR. JENSEN: I have, your Honor. And I'm not trying  
24 to overburden you with paper, but I think as a companion  
25 piece to them entering their jurisdictional documents to the

1 O.A.H. power to act on this, I wanted to be able to at least  
2 put the issue -- preserve the issue and not waive it that the  
3 O.A.H. would also be either be preempted in the case to  
4 Charter City or collateral estoppel.

5 THE COURT: That is not an argument for O.A.H.

6 MR. JENSEN: It's just -- it's a preservation. See  
7 here's the real problem, your Honor, is that under the case  
8 law if you don't fully bring out all of your fully plum --  
9 all of your arguments at the lowest level then you are  
10 considered to waive them.

11 THE COURT: And have you not fully briefed those  
12 arguments in your motion to dismiss?

13 MR. JENSEN: And these actually are the motions to  
14 dismiss that we are seeking to just admit as sort of  
15 jurisdictional -- just a protection that we've attempted to  
16 preserve this jurisdictional challenge. I can understand if  
17 you rule against it, your Honor; but I do sort of feel like  
18 at least there could be the argument that I was required or  
19 or obliged to bring it forward to you, and so that's the  
20 reason I did it.

21 THE COURT: Okay. It's my understanding that you  
22 have challenged CalPERS' jurisdiction in a motion to dismiss,  
23 and I will be issuing as part of my proposed decision in this  
24 matter my disposition of issues raised in your motion to  
25 dismiss.

1 MR. JENSEN: Thank you, your Honor.

2 THE COURT: This Exhibit quadruple P through  
3 quintuple C, these are all filings in other tribunals?

4 MR. JENSEN: No. Actually, they're filings in  
5 this tribunal.

6 THE COURT: I'm sorry.

7 MR. JENSEN: I believe --

8 THE COURT: They were filings before the CalPERS  
9 Board of Administration?

10 MR. JENSEN: Yes, your Honor. Of filings in this  
11 particular administrative proceeding.

12 THE COURT: I see. Oh, this constitutes your  
13 motion.

14 MR. JENSEN: This --

15 THE COURT: Or these are component parts of your  
16 motion to dismiss; is that correct?

17 MR. JENSEN: Yeah. These are actually the pleadings  
18 that we filed as part of our motion to dismiss.

19 THE COURT: I see. And that's quadruple E to  
20 quintuple C; is that correct?

21 MR. JENSEN: Quadruple E through quintuple C. Yes,  
22 That's correct, your Honor.

23 THE COURT: All right. Those will be marked, but  
24 not admitted.

25 MR. JENSEN: Thank you, your Honor.

1           (Respondent's Exhibit EEEE through CCCCC were  
2           marked for identification by the Court.)

3           THE COURT: All right. Quintuple E and quintuple E  
4           are those withdraw, neither admitted or marked?

5           MR. JENSEN: Yes, your Honor. And same with  
6           quintuple F.

7           THE COURT: Quintuple F was already admitted, but if  
8           you want you may withdraw it.

9           MR. JENSEN: No. Sorry. No. Keep it admitted.

10          THE COURT: All right. Jump ahead. And in fact, I  
11          also have quintuple -- let's see -- quintuple G was admitted.  
12          as was quintuple H.

13          Let's go off the record for a moment.

14          (Recess)

15          THE COURT: Back on the record. Previous to today  
16          Respondent withdrew Exhibit quintuple S, and we have gone  
17          through on the records all of the other exhibits for CalPERS  
18          and for Respondent Malkenhorst have been either admitted or  
19          denied admission, and City of Vernon had no exhibits.

20          Do you wish to say something, Mr. Jensen?

21          MR. JENSEN: Yes, your Honor. There are just the  
22          demonstrative exhibits and they were labeled quintuple I.

23          THE COURT: They were all admitted exhibits except  
24          for the ones that were not --

25          MR. JENSEN: Great.

1 THE COURT: -- Exhibit quintuple S that was  
2 withdrawn.

3 MR. JENSEN: Great. Thank you, your Honor.

4 THE COURT: You're welcome: All right. Then let's  
5 get to the issue of closing briefs. Actually, let's go off  
6 the record briefly.

7 (Recess)

8 THE COURT: Back on the record. I'll be issuing an  
9 order, a written order regarding closing briefs addressing  
10 subject matter that I want to make sure the parties address  
11 in their closing briefs, in addition to anything else that  
12 they may wish to address.

13 Formatting rules for closing briefs, I'm going to  
14 allow. CalPERS has the burden of proof in this case, so it  
15 will file its closing brief first and I'll set a date after  
16 we have a discussion. After that, Respondent Malkenhorst,  
17 Respondent City of Vernon may each file a closing brief by  
18 another date and then CalPERS may file a reply brief.

19 There will be no other closing or post hearing  
20 brief, no reply briefs without prior determination by cause  
21 by me. No closing brief -- this will all be set out in the  
22 order -- but no closing brief will exceed thirty pages, and  
23 CalPERS reply brief will not exceed ten pages; and closing  
24 and reply briefs will be stand alone briefs and should not  
25 incorporate or reference any prior briefs -- whether or not

1 or admitted into evidence.

2 I will want the parties to include references to  
3 evidentiary support of the record and citations to legal  
4 authority. Let's go off the record while we discuss the  
5 briefing dates.

6 (Recess)

7 THE COURT: Back on the record. All right. Counsel  
8 for CalPERS and for Respondent, Malkenhorst and City of  
9 Vernon have discussed briefing dates and have reached the  
10 following agreement as to the following dates: CalPERS  
11 closing brief will be filed on or about Monday April 6th.  
12 Each of the Respondents may file closing briefs on or before  
13 Friday, May 22nd, and CalPERS may file a reply brief on or  
14 before June 15th; and unless something comes up, it alters,  
15 this record will be closed and the Matter submitted as of  
16 June 15th.

17 Anything else for the record today?

18 MR. LEVIN: No, your Honor.

19 THE COURT: Mr. Yim?

20 MR. YIM: Nothing, your Honor.

21 THE COURT: Mr. Jensen?

22 MR. JENSEN: Nothing, your Honor.

23 THE COURT: Thank thank you all very much. I look  
24 forward to reading your briefs, and we'll go off the record

25 MR. LEVIN: Thank you, your Honor.

1                   MR. JENSEN: Thank you, your Honor.  
2                   (Hearing concluded at 4:20 p.m.)  
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