

BEFORE THE
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
STATE OF CALIFORNIA
MARY AGNES MATYSZEWSKI, ADMINISTRATIVE LAW JUDGE

In the Matter of Calculation of Final)
Compensation of:)
RICHARD LEWIS,)OAH No. 2014040945
Respondent,)Case No. 2014-0256
and)
CITY OF SAN BERNARDINO,)
Respondent.)
_____)

TRANSCRIPT OF PROCEEDINGS
San Bernardino, California
Wednesday, February 25, 2015

Reported by:

ADRIANA PATRON,
CSR No. 13834

Job No.:
4452OSD

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TRANSCRIPT OF PROCEEDINGS, taken at
650 East Hospitality Lane, Suite 330,
San Bernardino, California, commencing at
10:25 a.m. on Wednesday, February 25, 2015,
heard before MARY AGNES MATYSZEWSKI,
Administrative Law Judge, reported by
ADRIANA PATRON, CSR No. 13834, a Certified
Shorthand Reporter in and for the State of
California.

1 APPEARANCES:

2
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10 For the RESPONDENT LAW OFFICES OF
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20
21
22
23
24
25

I N D E X

RESPONDENT'S

Witnesses:

Direct	Cross	Redirect	Recross
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Stephanie Easland

19

51

75

82

Core Glave

85

97

113

120

125

126

Wendy McCammack

128

Richard Lewis

153

E X H I B I T S

DEPARTMENT'S:

Marked for Identification	Received in Evidence
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40 - Mr. Suine's Subpoena

7

41 - Packet of E-mails

7

42 - February 23, 2015

8

8

Letter from Mr. Jensen

43 - PMK Subpoena

8

8

44 - October 9, 2014 Letter

8

8

45 - Letter

169

RESPONDENT'S:

1 - Settlement Agreement

32

San Bernardino, California, Wednesday, February 25, 2015

10:25 a.m.

THE COURT: In the Matter of the Statement of Issues
before CalPERS against Richard Lewis and the City of
San Bernardino.

My name is Mary Agnes Matyszewski. I'm here for
day three of the hearing, February 25, 2015.

OAH number 2014040945, Agency number 20140256.
We're at the San Bernardino CalPERS office.

Can I have appearances, please, beginning with the
Agency representative.

MR. KENNEDY: Wesley Kennedy, senior staff counsel,
California Public Employees' Retirement System.

MR. JENSEN: Good morning, your Honor. John Jensen on
behalf of Richard Lewis, who is present in the courtroom.

THE COURT: We've been having a discussion off the
record which I'd like to put on the record regarding
witnesses and subpoenas.

Go ahead, Mr. Kennedy.

MR. KENNEDY: Just for the sake of the record, I want to
make it very clear that there was an issue that we believe
was resurrected by counsel concerning the purported subpoena
of a Mr. Anthony Suine, a division chief at the time, at

1 CalPERS.

2 Mr. Jensen did provide -- and I have a copy of that
3 subpoena here, provide a subpoena for Mr. Suine's
4 appearance. I can have that marked or maybe it's better to
5 have it marked all at once at the end of the discussion.
6 But it was for his appearance and to produce certain
7 specified documents.

8 There was also a subpoena issued at that time for
9 the PMK. I did receive those subpoenas, and there was a
10 discussion concerning whether I would accept the subpoenas
11 on behalf of Mr. Suine. And Mr. Jensen and I had a
12 discussion concerning that, and I indicated that -- he
13 indicated in his letter to me that he would be willing to
14 accept as an alternative to Mr. Suine a PMK of some sort.

15 In response to that, I had discussions with staff,
16 including Ms. Leuras, and felt she was going to be competent
17 to serve as -- in any capacity as either an expert
18 witness -- not an expert, but a witness on behalf of the
19 program as well as the PMK if necessary and if appropriate.
20 So she was able to respond to that.

21 I indicated that to Mr. Jensen as my intent in what
22 I would be doing, and we brought Ms. Leuras here to testify.
23 She was examined concerning -- concerning areas that were
24 reflected in the subpoena and as a PMK. There was no
25 request at that time to mention Mr. Suine's return or

1 mention any agreement of that, so we didn't get it on the
2 record then.

3 I just want to make sure for the record now that
4 for purposes of any potential appeal or any challenge to
5 Mr. Suine not being here that at that time that Mr. Jensen
6 and I were discussing this, I have sent an e-mail to
7 Mr. Jensen on October 3rd, 2014, in which I indicated
8 that -- maybe I should just mark it and give it to the Court
9 and give it to Mr. Jensen. I indicated what I would be
10 doing as far as Mr. Suine not appearing and as far as
11 Ms. Leuras taking the role. Here's a copy for Mr. Jensen.

12 I'd like to have these marked for identification in
13 whatever order the Court wishes. Here's the subpoena for
14 Mr. Suine.

15 THE COURT: I'll mark as Exhibit 40 Mr. Suine's
16 subpoena. For the record, his last name is S-u-i-n-e.

17 I'll mark as Exhibit 41 the packet of e-mails
18 between the two attorneys.

19 (Department's Exhibits 40 and 41 were marked
20 for identification by the Court.)

21 MR. KENNEDY: Also there's a letter of
22 February 23rd, 2015, which I received from Mr. Jensen which
23 is the -- he further states that he informed me he would be
24 willing to accept the testimony of a CalPERS representative
25 in Mr. Suine's place if I preferred, so long as the

1 individual was qualified to testify on certain issues.

2 THE COURT: I'll mark that document Exhibit 42 and
3 receive it.

4 (Department's Exhibit 42 was marked for
5 identification by the Court and received in
6 evidence.)

7 MR. KENNEDY: And the next document, your Honor, is a
8 subpoena for the PMK by Mr. Jensen, dated the same date in
9 October.

10 MR. JENSEN: You're putting in the October 3rd letter?

11 MR. KENNEDY: Yes.

12 MR. JENSEN: Okay.

13 THE COURT: I'll mark as Exhibit 43 the person most
14 knowledgeable subpoena and receive that.

15 (Department's Exhibit 43 was marked for
16 identification by the Court and received in
17 evidence.)

18 MR. KENNEDY: There's the October 9th, 2014, letter in
19 which Mr. Jensen also states that he -- so long as I
20 provided somebody capable of testifying to the issues that,
21 he would be amenable to having that person testify in
22 Mr. Suine's place.

23 THE COURT: I'll mark the October 9th, 2014, letter
24 Exhibit 44 and receive it.

25 (Department's Exhibit 44 was marked for

1 identification by the Court and received in
2 evidence.)

3 MR. JENSEN: Exhibit 40 is the subpoena?

4 THE COURT: Yes, Mr. Suine's subpoena. Exhibit 41 is
5 the e-mail exchanges between the parties. It's a four-page
6 document. Exhibit 42 is the February 23, 2015 letter.
7 Exhibit 43 is the person most knowledgeable subpoena, and 44
8 is the October 9, 2014, letter from you to Mr. Kennedy.

9 MR. JENSEN: Right. Thank you.

10 THE COURT: Anything further?

11 MR. KENNEDY: I think it's rather evident that in my
12 October 3rd response that he went through a whole hearing
13 with Ms. Leuras testifying on these issues and being
14 examined on these issues that any contention now that we've
15 somehow not provided or responded to proper and appropriate
16 requests for production of a party or evidence is, at best,
17 moot, but maybe at worst, misguided or misstated.

18 THE COURT: Mr. Jensen?

19 MR. JENSEN: Thank you, your Honor.

20 So the issue on which we sought for the person most
21 knowledgeable was about the final compensation of safety
22 employees who have a one-year final compensation period who
23 are placed on disability leave from active duty and who
24 remain on disability leave for at least the final year of
25 their employment without performing any active duty

1 responsibilities and then retire to -- without returning to
2 active duty.

3 We're seeking the person most knowledgeable about
4 CalPERS's policy and procedures about that. That was what
5 the testimony that we sought was. I think when we talked to
6 Ms. Leuras, she was -- I have to check the testimony, but I
7 don't think that she produced any definitive policy or
8 procedure from CalPERS regarding this disability leave in
9 the final year. It's also known as 4850 time. It is true
10 that we try to work with CalPERS to try to elicit the
11 testimony of CalPERS personnel that would have definitive
12 knowledge about that subject.

13 We did, in good faith, try to initially identify an
14 agency representative that could testify to that 4850 time
15 for that one year of disability leave. We are at somewhat
16 of a disadvantage because we are not knowledgeable of who
17 would be the person at CalPERS who would be able to bring
18 documents regarding that CalPERS policy and procedure
19 documentation and who could testify regarding the general
20 policy of CalPERS with some authority.

21 So we did engage in a good amount of correspondence
22 with Mr. Kennedy, focused on that issue, particularly about
23 who would be the agency representative to testify about 4850
24 time. We did, as you'll see in the documents, send a
25 subpoena duces tecum both on Anthony Suine and on the person

1 most knowledgeable regarding these issues. It is my
2 understanding that CalPERS doesn't always accept a person
3 most knowledgeable subpoena, so that makes it doubly tricky
4 for us.

5 If you look at all of the letters that I sent to
6 Mr. Kennedy regarding this issue, including the October 9th
7 letter and the October 3rd letter and the most recent
8 letter, it has all been premised on this idea that CalPERS
9 would be the one who would know who could identify a
10 witness, other than Mr. Suine, who is authoritative on that
11 issue and then produce them with documents.

12 I have not refreshed my understanding of what
13 Ms. Leuras testified about that specific issue, but she did
14 not produce any documents regarding it. In this case, it
15 might be essential because Mr. Lewis was actually on
16 disability leave where he did not have to perform any active
17 duties for that last year, which would be his final
18 compensation period.

19 I don't want to overreach and say Ms. Leuras was
20 not the person most knowledgeable on that issue, but I do
21 know we don't have any documents in the record about this
22 important policy about how they treat that final
23 compensation period, including -- because the statute
24 specifically refers to 4850 time. So I'm at kind of a loss
25 about whether there would be somebody.

1 And I don't want to make a big thing out of it, but
2 there is also the negative inference, your Honor, which I
3 want to bring to Mr. Kennedy's attention, that if they have
4 no policies and procedures regarding 4850 time or disability
5 leave in that last year, then the underlying rule of
6 statutory construction is it has to be construed in the
7 member's favor.

8 So while the burden of proof issues may be
9 unresolved, I think we have done everything we possibly can
10 to get this information in the record. I don't believe
11 there was any documents produced that would be responsive to
12 our subpoena on that matter.

13 THE COURT: Mr. Kennedy?

14 MR. KENNEDY: Yes, your Honor.

15 I don't see the term -- I don't see the use of the
16 term "4850 pay" in any point in their discussions. And
17 certainly the discussions, which were described previously
18 in Mr. Jensen's representation as being a brief discussion,
19 now are a good deal of discussions. The subpoena doesn't
20 mention 4850. There's -- neither do the PMK nor to
21 Mr. Suine.

22 I did look at the record before I came here today.
23 I know Mr. Lewis testified to 4850 and Nicki testified to
24 4850. I believe -- testified regarding 4850 pay.
25 Section 20630 of the PERL specifically refers to 4850 pay.

1 In addition, your Honor, not only did Mr. Jensen
2 engage in discovery in this matter prior to coming to
3 hearing, he also -- I'd like to have his discovery request,
4 his Public Records Act request also submitted, which he
5 requested of CalPERS on October 2nd, 2013, and got a
6 response on, in which he -- 4850 is not mentioned and there
7 was no follow up on. I have his response on that as well.

8 My only concern in bringing this up now is there
9 was written implications by Mr. Jensen that we had thwarted
10 or failed to comply with, in his reference, in agreement to
11 produce Mr. Suine. And now it's morphed into we've agreed
12 to produce documents concerning 4850 pay.

13 I can tell you right now it's my understanding that
14 Mrs. Leuras's testimony did provide that. And if there was
15 any issue or question about that, Mr. Jensen had Ms. Leuras
16 on, as this Court recalls, for a full day of testimony.
17 This was not brought up except for discussions concerning
18 the application of the PERL.

19 I just want to point that out and mention that now
20 just for the record, just in case this goes up. There's
21 just a finding that there was no disobedience of a subpoena.
22 There was no agreement to produce Mr. Suine at this hearing.
23 In fact, it was just the opposite. It was noticed well in
24 advance that he wouldn't be appearing -- by agreement, would
25 not be appearing and that Ms. Leuras would be testifying.

1 If Mr. Jensen wished to ask for documents
2 concerning 4850, he certainly could have made that specific
3 request. Instead, he said, you know, someone on disability
4 who's still getting paid. That's covered under 20630 as
5 compensation in the PERL and specifically references the
6 term 4850 in that section.

7 I think, as Ms. Leuras testified at the hearing,
8 the policies and procedures that are being followed are
9 those set forth in the PERL and set forth in Title 2 of the
10 California Code of Regulations dealing with special
11 compensation.

12 THE COURT: Mr. Jensen?

13 MR. JENSEN: Yes, your Honor.

14 The STT is our discovery method. I think the
15 broader -- actually, I think our description in here
16 regarding disability leave is broader than 4850. I wouldn't
17 want to specify just to 4850 because as Mr. Kennedy said,
18 there are other statutory Code sections that may apply.

19 I hate to say it's a hide-the-ball when we're on
20 the outside and we endeavor to certainly reach these issues
21 with our subpoena and in our cover letters, which he admits
22 receiving. The issue is not just specifically 4850 time,
23 which would fall in the broader category of disability
24 leave.

25 So I think it unfairly characterizes what we

1 sought, and it unfairly characterizes the sort of diligence
2 that we tried to pursue this information. Again, to me, I
3 don't care if Mr. Suine himself testifies. I don't -- as
4 long as it's somebody who is really knowledgeable about this
5 particular aspect of both going on disability leave and how
6 it affects a final compensation if they never return back.

7 THE COURT: Is it your position that you did not get
8 that testimony from Ms. Leuras?

9 MR. JENSEN: Yes, I believe so. I believe Ms. Leuras
10 testified to the final compensation aspects of it which, as
11 Mr. Kennedy has clarified for us here, that's not -- that's
12 not all the testimony we have sought. There is the PERL
13 aspects of 20630 or whatever the other Code sections are,
14 and then there's the larger issue about how this disability
15 leave in the final year without active duty affects the
16 final compensation.

17 MR. KENNEDY: Your Honor, in Ms. Leuras's testimony,
18 page 87, we see the question from Mr. Jensen, "So are you
19 aware of what is considered to be 4850 time?" "Yes, I'm
20 aware of the term." "What is your understanding of 4850
21 time?"

22 She goes on to a discussion further on that, I
23 believe, at page 46.

24 MR. JENSEN: What is the nature of the discussion?

25 MR. KENNEDY: Well, it's in the record.

1 THE COURT: I'm going to stop you both there.
2 Basically, as I've looked at it, I'm going to find that
3 CalPERS didn't do anything, you know, tried to hide the ball
4 or anything like that. There's been no allegation that it
5 has been.

6 As I look at Mr. Jensen's letters, he basically
7 kept indicating that he wanted -- that this is the
8 information he wanted, and he'd be happy to have a PMK
9 witness satisfy that request. He did send a subpoena to
10 Mr. Suine. That subpoena has not been recalled.

11 The burden of proof in this Matter is on
12 Mr. Jensen -- excuse me -- on Mr. Lewis because he is the
13 CalPERS member who is seeking the benefit that CalPERS has
14 denied. I find that the letters were qualified saying he
15 would settle for a different witness if he didn't get it.

16 There's nothing that requires him to specifically
17 identify the specific Code sections or the information that
18 he wants. His request in the subpoena was pretty broad as
19 to the sort of documents he was seeking. It is his position
20 that he doesn't think Ms. Leuras satisfied the information
21 that he was seeking.

22 Since he has the burden of proof, I'm going to
23 allow him to call another witness on that issue.

24 MR. KENNEDY: Your Honor, I have Mr. -- Ms. Leuras here,
25 and it's not that Mr. Jensen's not discussing whether or not

1 he wants Mr. Suine, as division chief, to show up and
2 testify on that issue. What he's saying is he didn't get
3 documentation concerning that. He didn't get any policy and
4 procedure on that. It was explained to him by Ms. Leuras,
5 who was here as the PMK, that the documentation is set forth
6 in the PERL.

7 THE COURT: Well, Ms. Leuras -- she can testify and,
8 Mr. Jensen, you can ask her more questions. But if you are
9 not satisfied with the answers you're getting, I'm going to
10 allow for you to call -- since your subpoena has not been
11 recalled, another PMK.

12 MR. KENNEDY: Your, Honor, what is the Court's position
13 then on my October 3rd letter to Mr. Jensen in which it is
14 indicated to him that I would bring Ms. Leuras as a PMK, and
15 I also indicated at that time to the extent that -- I
16 responded to the subpoena, both to Mr. Suine and the PMK.

17 THE COURT: What I'm hearing Mr. Jensen tell me is that
18 he doesn't think that satisfies it, and he hasn't gotten
19 what he wants in the matter. I don't see him ever in the
20 letters or e-mails saying he's releasing anybody or he's
21 satisfied.

22 He basically keeps saying that this is what he's
23 looking for. And I'm looking and he says he doesn't think
24 he got what he needs. Since his client has the burden of
25 proof in this Matter, I'm going to allow it.

1 MR. KENNEDY: We will need a further day down the road
2 then.

3 THE COURT: All right.

4 MR. KENNEDY: Just for the record, I don't believe that
5 Mr. Jensen's statement concerning an STT to hearing as being
6 discovery. The APA, as you know, has a specific limit on
7 discovery, which was provided to Mr. Jensen in response to a
8 discovery request prior to the hearing, and the STT itself
9 is not a discovery device. And as far as I'm aware, the
10 only place that a PMK exists is under the civil discovery
11 provision and not under the APA or necessarily as a subpoena
12 to trial.

13 THE COURT: As I'm looking at his subpoena, he did not
14 know who the people were when he was requesting persons give
15 him this information. So since Mr. Jensen is a member of
16 CalPERS --

17 MR. KENNEDY: Mr. Lewis.

18 THE COURT: Sorry. Mr. Lewis. I'm going to allow him
19 since he has the burden of proof. But I'm making it very
20 clear, I don't find that CalPERS played any games. There
21 was just a miscommunication between the attorneys.

22 MR. JENSEN: Thank you.

23 Can I call my first witness? We've got
24 Stephanie Easland.

25 THE COURT: Raise your right hand, please.

1 STEPHANIE EASLAND,
2 called as a witness, and having been first duly sworn by
3 the Court, was examined and testified as follows:

4 THE WITNESS: I do.

5 THE COURT: State your full name and spell your last
6 name for the record.

7 THE WITNESS: Stephanie Easland, E-a-s-l-a-n-d.

8 THE COURT: Mr. Jensen.

9

10 DIRECT EXAMINATION

11 BY MR. JENSEN:

12 Q Good morning, Ms. Easland. Thank you for coming to
13 testify.

14 Can you give me a brief job history about your
15 employment with the City of San Bernardino?

16 A Sure. I started there in 1990 as a paralegal and
17 then went to law school at night. I was working as a
18 paralegal and graduated and passed the bar in 1995 and was
19 promoted to the City Attorney's Office and then worked
20 various positions within that office through 2012, at which
21 time I retired from there.

22 Q And have you worked as an attorney for any other
23 employer than the City of San Bernardino?

24 A No, I have not.

25 Q So briefly describe the scope of your work as an

1 attorney for the City.

2 A Oh, wow. I've done a little bit of everything
3 there. I started out as a Deputy 1, so I did Code
4 enforcement. I did Code enforcement, municipal
5 prosecutions, and I also advised various departments.
6 Probably my longest run was doing employment law for the
7 City, advising the Human Resources Department and any other
8 department that had employment or labor questions.

9 And then I also -- the last few years there I was
10 promoted to Senior Assistant City Attorney. I advised
11 boards and commissions and the City Council in absence of
12 the City Attorney.

13 Q Do you recall what date you became Senior Assistant
14 City Attorney?

15 A It might have been -- that's when John Wilson left.
16 It probably would have been around 2010.

17 Q Can you describe the nature of the matters that you
18 provided advice on in the human resources department?

19 A Gosh. It would be a little bit of everything. I'd
20 advise on discipline. I advised on contracts. I'd advise
21 on PERS issues. I'd advise on MLU Labor issues, Charter
22 issues, 186. There can be so much. Civil rights issues,
23 discrimination. That's why I enjoyed the job. It never got
24 boring. It was always something.

25 Q What is 186?

1 A Charter Section 186 is the pay for the City's
2 safety personnel.

3 Q And can you briefly describe to us what Charter 186
4 says?

5 A It says a lot. It provides for --

6 MR. KENNEDY: Your Honor, at this time I'd like to point
7 out for the Court and for the record that Ms. Easland has
8 already indicated she was an attorney for the City. I don't
9 see Ms. Doby here. I don't see anyone representing the
10 City. I don't think that Ms. Easland would have any
11 capacity to waive the attorney-client privilege.

12 Also, at this point in time, as far as any legal
13 interpretation she may offer this court, I could raise an
14 objection to competency because interpretations of law are
15 not necessarily within the competence of an attorney on the
16 stand.

17 THE COURT: Well, the City was a party to this Matter
18 and they were noticed and haven't appeared.

19 Do you have any waiver from the City for allowing
20 this witness to testify?

21 MR. JENSEN: Yes, we do -- waives attorney-client
22 privilege for Ms. Easland. And, additionally, Mr. Kennedy
23 would not be in any position to assert the attorney-client
24 privilege.

25 MR. KENNEDY: I believe there's no written waiver that

1 I've seen and there's no representation other than
2 Mr. Jensen's representation.

3 MR. JENSEN: Why don't we ask Ms. Easland?

4 THE COURT: One thing, I'm going to overrule the
5 objection. I understood she's testifying to me about how
6 the City interpreted the law and why they took the actions
7 they took; is that correct?

8 THE WITNESS: Yes.

9 THE COURT: Whether she's correct --

10 THE WITNESS: My interpretation.

11 THE COURT: Right. You're going to tell me what you
12 people did with what you had, but I ultimately get to make
13 the decision.

14 Overruled. Go ahead, Counsel.

15 BY MR. JENSEN:

16 Q Can you describe to us whether the City has waived
17 the attorney-client privilege and allowed you to testify?

18 A I double checked with the City Attorney's Office
19 today to confirm that the City Council and the City had
20 waived the privilege, and I was told yes.

21 Q Did I previously provide documents to you that was
22 a letter from the City waived attorney-client privilege?

23 A I believe so.

24 MR. KENNEDY: Your Honor, I think that we need to know
25 what the scope of the waiver is.

1 MR. JENSEN: Your Honor --

2 MR. KENNEDY: If there's --

3 (Speaking simultaneously)

4 MR. KENNEDY: If there's a document, may that be
5 produced?

6 MR. JENSEN: There is a document. I mean, I --

7 BY MR. JENSEN:

8 Q Ms. Easland, can you describe to us, while I look
9 for this document, what is your understanding about the
10 scope of the waiver?

11 MR. KENNEDY: Objection. Hearsay.

12 THE COURT: Overruled.

13 MR. KENNEDY: Objection. Best evidence.

14 THE COURT: Overruled.

15 What is your understanding of the waiver?

16 THE WITNESS: My understanding of the waiver is that I
17 could testify as to -- testify in regards to questions on
18 interpretations I made of settlement agreements and memos I
19 wrote to finance.

20 THE COURT: Involving Mr. Lewis?

21 THE WITNESS: Yes, sorry.

22 THE COURT: Overruled. I'm going to allow the witness
23 to testify.

24 Go ahead, sir, with your direct examination.

25 MR. JENSEN: Would you like the e-mail?

1 THE COURT: No, it's okay. Go ahead.

2 MR. KENNEDY: Is that the e-mail concerning the waiver?

3 MR. JENSEN: Well, this actually doesn't have any -- so
4 I'm not sure --

5 THE COURT: I'm making a finding that the witness's
6 testimony is sufficient for the scope of the waiver that she
7 was given by the City.

8 You may continue with your direct examination.

9 MR. KENNEDY: Okay. Your honor, my -- is concerning the
10 settlement agreement and what was the other.

11 THE WITNESS: This is my interpretation. In regards to
12 the waiver, it would be questions in regards to a memo I
13 wrote to finance, which involved interpretation of the
14 settlement agreement between the City and Richard Lewis.

15 MR. JENSEN: Do you want me to look for that?

16 THE COURT: No.

17 MR. JENSEN: So Ms. Easland -- let me just get to the
18 documents.

19 May I approach, your Honor?

20 THE COURT: Uh-huh.

21 BY MR. JENSEN:

22 Q Ms. Easland, do you recognize this document in
23 Exhibit 1?

24 A Yes. I don't recognize the handwriting on it, but
25 the typed portion appears to be the settlement agreement

1 between the City and Richard Lewis.

2 Q And briefly, can you describe to us what the
3 background was that led to the settlement, the background
4 that led to the settlement agreement?

5 MR. KENNEDY: Vague.

6 THE COURT: Overruled.

7 THE WITNESS: It's been so long. I recall it's that
8 Mr. Lewis was passed over for promotion to battalion chief,
9 that another captain, I think it was Denis Moon, had been
10 promoted. I can't recall the actual dispute.

11 BY MR. JENSEN:

12 Q And let me just turn your attention to the second
13 page of Exhibit 1 in paragraph 2.

14 THE COURT: For the record, we have two sets. This is
15 Respondent's Exhibit 1.

16 MR. JENSEN: Thank you, your Honor.

17 BY MR. JENSEN:

18 Q It's Respondent's Exhibit 1, page 2, paragraph 2,
19 Subsection B. Take a moment to read that.

20 A Okay.

21 Q What is your understanding of the intent of this
22 term in the agreement?

23 MR. KENNEDY: Objection. Relevancy, also competency. I
24 don't think this witness actually prepared this agreement.

25 THE COURT: By asking her for the intent, you're asking

1 for speculation. Sustained on that ground.

2 You can ask what she did with it.

3 BY MR. JENSEN:

4 Q What did you do with this once you received this
5 agreement, especially this Subsection 2(b)?

6 A When I received this agreement, meaning when I
7 first received it? I mean, I would have -- after it was
8 approved?

9 Q Yes.

10 A I would have placed it in the file. And then if
11 the department had a question that related to this
12 agreement, I would have reviewed it and answered their
13 questions based upon my review.

14 Q And prior to it being approved, did you do anything
15 with this?

16 A No, no. We had outside counsel representing the
17 City on this matter. He would have discussed it with our
18 office prior to taking it to the council for their approval
19 in regards to the terms of the agreement. But other than
20 that, he probably would have discussed it with Mr. Penman,
21 the two of us.

22 Q Did you do anything regarding this agreement that
23 was in the nature of making inquiries about pension benefits
24 for Mr. Lewis?

25 MR. KENNEDY: Objection. At what time? After its

1 approval?

2 THE COURT: After or before?

3 MR. JENSEN: At any time.

4 MR. KENNEDY: Relevancy.

5 THE COURT: Overruled.

6 THE WITNESS: I don't recall ever contacting PERS in
7 regards to pension benefits in relation to this agreement.

8 BY MR. JENSEN:

9 Q Did you contact or communicate with Laura King or
10 Yarva Nicki about this?

11 A Yes.

12 Q What did you do? What was that contact?

13 A I believe I received a memo from Laura in regards
14 to questions on how to implement the provisions of the
15 settlement agreement.

16 Q And what were the question?

17 A I mean implement through finance. And so based
18 upon -- she had sent a memo of specific questions, I
19 believe, for me to answer, and so to answer those, I went to
20 this agreement and based my response on my interpretation of
21 the agreement, the language of the agreement.

22 Q And tell me what you did as far as the language of
23 the agreement and your interpretation?

24 MR. KENNEDY: Vague.

25 THE COURT: Overruled.

1 THE WITNESS: I'd have to look at the questions.

2 MR. JENSEN: So let me --

3 THE COURT: Wait.

4 THE WITNESS: I can't recall the questions off the top
5 of my head. I've seen them recently, but I can't -- it was
6 basically -- I think she was asking how these amounts were
7 to be reported to PERS.

8 BY MR. JENSEN:

9 Q She was asking you these questions?

10 A I believe so. If I looked at the memo --

11 Q Let me turn your attention to Exhibit 2 and see if
12 that refreshes your recollection.

13 THE COURT: That would be Respondent's 2.

14 BY MR. JENSEN:

15 Q Respondent's 2.

16 A It looks like it's a letter from Jim Odium,
17 O-d-l-u-m. It looks like it's a settlement agreement also.

18 Q Turn to Respondent's 3. Take a moment to look at
19 them.

20 A Yeah, this is the memo that I responded to.

21 Q And was it typical for the payroll supervisor to
22 write a formal memo to you for your input?

23 MR. KENNEDY: Objection. Vague. Relevancy.

24 THE COURT: Overruled. He's just getting background.

25 THE WITNESS: Yes, she would write memos when she had

1 questions.

2 BY MR. JENSEN:

3 Q Can you briefly take a moment to look at this
4 two-page memo? Let me know when you're finished.

5 A Okay.

6 Q Can I point your attention to the third paragraph
7 down where it says, "Please clarify the following: Shall
8 the back pay be CalPERS reportable or non-reportable?"

9 MR. KENNEDY: This is the letter from June 19th?

10 THE COURT: No. Exhibit 3 in Respondent's,
11 May 24, 2007, from Ms. King to Ms. Easland.

12 MR. KENNEDY: I understand. Okay.

13 MR. JENSEN: Is that an objection?

14 MR. KENNEDY: Okay.

15 BY MR. JENSEN:

16 Q Do you see the sentence where it says, "Shall the
17 back pay be CalPERS reportable or non-reportable
18 compensation?"

19 A Yes, I see it.

20 Q What did you understand that question to mean to
21 you?

22 MR. KENNEDY: Objection -- oh. I'm sorry.

23 THE COURT: Are you withdrawing the objection?

24 MR. KENNEDY: Yes.

25 THE COURT: Thanks.

1 THE WITNESS: I took that -- it's been a while.

2 Probably she had questions on how the additional pay should
3 be treated by finance.

4 BY MR. JENSEN:

5 Q What was the additional pay?

6 A The pay specified in the settlement agreement. I
7 believe it was the battalion chief salary.

8 Q It was the battalion chief salary or the difference
9 between the battalion chief salary and the amount he was
10 paid from the time he was denied the promotion to the time
11 of the settlement agreement?

12 MR. KENNEDY: Objection. It's vague.

13 THE COURT: Overruled. Go ahead.

14 THE WITNESS: I went to the agreement and it stated he
15 should be compensated as a battalion chief from -- should be
16 compensated as if he had been promoted to battalion chief
17 position. And based on that, I think that's how I came up
18 with my conclusion. I can't remember the exact words I put
19 in my memo.

20 BY MR. JENSEN:

21 Q Turn to the second page of the memo. It's the very
22 first paragraph that says, "Shall all regular pay earned
23 based on the difference between captain and battalion chief
24 pay be CalPERS reportable or non-reportable?"

25 Do you see that?

1 A Yes.

2 Q What was your understanding of that question?

3 A I believe I concluded that it should be the --

4 THE COURT: He's not asking what your answer was. He's
5 asking for your understanding of the question.

6 THE WITNESS: She is again trying to see how the extra
7 salary is to be reported to PERS.

8 BY MR. JENSEN:

9 Q So the question was whether he would earn a pension
10 based on the higher salary?

11 MR. KENNEDY: Objection. Misstates the question.

12 THE COURT: Sustained. The document speaks for itself.

13 BY MR. JENSEN:

14 Q Just a quick follow-up.

15 What would be the effect if it was CalPERS
16 reportable?

17 MR. KENNEDY: Objection. Calls for speculation. Vague.
18 Lack of competency. There's no foundation.

19 THE COURT: Sustained.

20 BY MR. JENSEN:

21 Q What is your understanding of what it would mean to
22 be CalPERS reportable?

23 MR. KENNEDY: Same objection.

24 THE COURT: Overruled.

25 THE WITNESS: My understanding is if it's CalPERS

1 reportable, it would go towards their future retirement
2 amounts.

3 MR. JENSEN: Thank you. Your Honor, are documents 1, 2
4 and 3 in the record?

5 THE COURT: Everything is in the record except --
6 actually, number 1 of yours is not in the record and 32 of
7 yours is not in the record because you were going to bring
8 those documents to me today.

9 MR. JENSEN: Thank you. I'll get those to you before
10 the end of the day.

11 BY MR. JENSEN:

12 Q Ms. Easland, do you recognize the document that's
13 in Exhibit 1?

14 A Yes, I do.

15 MR. JENSEN: Your Honor, I'd like to admit Exhibit 1.

16 THE COURT: Any objection to Exhibit 1, the settlement
17 agreement?

18 MR. KENNEDY: Well, it's already -- I believe a copy of
19 it is already admitted as CalPERS Exhibit 6 and the CalPERS
20 Exhibit 6 also has the benefit of not having the notations,
21 writings, calculations that Exhibit 1 does.

22 THE COURT: I'll overrule the objection. There's been
23 various testimony about the writing on page 2 of Exhibit 1.
24 Exhibit 1 will be received.

25 (Respondent's Exhibit 1 was received in

1 evidence by the Court.)

2 BY MR. JENSEN:

3 Q Ms. Easland, can I turn your attention to

4 Exhibit 4.

5 Do you recognize this document?

6 A Yes, I do.

7 Q What is this document?

8 A It's my response to Laura King's May 24th memo.

9 Q I just want to turn your attention to the second
10 paragraph of that -- actually, the third where it says, "All
11 future monthly pay rates will be battalion chief rate and
12 CalPERS reportable."

13 What did you mean by that sentence?

14 A Based on the language of the agreement -- the
15 settlement agreement, is that he is being -- he was being
16 paid as if he had been promoted to the battalion chief
17 position. Again, I was limiting my review to the language
18 of the settlement agreement because that's what I had to
19 work off of.

20 Q Did you make any other research when you were
21 writing this?

22 A I don't recall specifically, but knowing how I
23 usually approach things, I would have probably looked at the
24 PERS law.

25 Q What PERS law would you have looked at?

1 A I don't remember the sections off hand.

2 Q Tell me how you would usually work. What would be
3 your process in coming to this conclusion?

4 A I would probably do research on the computer, go on
5 to PERS website. To narrow it down, I would go in the
6 library and look at the Government Code.

7 Q Were you using a computer database at this time?

8 A I would have initially started off with
9 computerized research. I think we had Westlaw at that time.

10 Q And can you tell -- elaborate on your thought
11 process or your research method?

12 MR. KENNEDY: Objection. Relevancy.

13 THE COURT: Overruled.

14 THE WITNESS: I probably would have first gone to the
15 PERS website to try to get guidance from there. I might
16 have thrown in search terms into Westlaw, you know,
17 "settlement agreement, increased pay," such as that sort. I
18 would have gone to Government Code of PERS law regarding
19 compensation, how it's to be treated and reported.

20 BY MR. JENSEN:

21 Q Let's start with the PERS website.

22 What information was available to you as the City
23 Attorney for the City of San Bernardino on the PERS website?

24 A Probably the same as anybody else. I would log in
25 as -- I'm trying to think of the login -- as a member.

1 There's memos on there. There's administrative decisions.

2 Q Did you recall reviewing any of those in preparing
3 this June 13th, 2007, letter?

4 A I don't recall specifically. If I found something
5 exactly on point, I would have probably cited it in the
6 memo.

7 Q And do you remember about how long you spent trying
8 to research this?

9 A I don't, not offhand.

10 Q Is this an important issue for the City Attorney at
11 that time?

12 A They're all important, but being that this was
13 something that finance hasn't dealt with before and we
14 hasn't really dealt with before, I probably would have spent
15 more time on it. It's not like I had prior research to go
16 to.

17 Q You've mentioned search terms into Westlaw.

18 Why would you enter the search terms into Westlaw?

19 MR. KENNEDY: Objection. Relevancy.

20 THE COURT: Overruled. He's just trying to establish
21 what she did.

22 THE WITNESS: I would have to narrow down where to look.
23 I would do my initial research on the computer to narrow
24 down, and I always like to go and pull books and statutes
25 and look at the annotations that way.

1 BY MR. JENSEN:

2 Q Did the City Attorney's Office have physical copies
3 of the Government Code?

4 A Yes and case law.

5 Q And the physical copies of the Public Employees
6 Retirement Law?

7 A Yes.

8 Q Does the City Attorney's Office have any other
9 references or manuals or information from CalPERS that you
10 looked at?

11 A No. Those I would have to get online. I didn't
12 have, like, a notebook or anything, a CalPERS notebook.

13 Q You mentioned you went to the PERS website.
14 Did you find anything that was -- that you found
15 important?

16 A I don't recall. If anything. It probably led me
17 to the Code sections to look at.

18 Q Do you recall which Code sections you looked at.

19 A I don't recall the numbers.

20 Q Do you recall that you did anything else with
21 respect to research, prior to writing this opinion that all
22 future pay rates will be CalPERS reportable compensation at
23 the rate of battalion chief?

24 A The only other thing I could think of is I might
25 have contacted Jim Odlum.

1 MR. KENNEDY: I didn't hear the last word.

2 THE COURT: Jim Odlum.

3 BY MR. JENSEN:

4 Q Who is Jim Odlum?

5 A He was the attorney that handled the settlement --
6 or who drafted the settlement agreement, along with
7 Mr. Lewis's attorney.

8 Q And Mr. Odlum represented the City?

9 A Yes.

10 Q Do you recall whether he said anything about this?

11 MR. KENNEDY: Objection. Hearsay.

12 THE COURT: I'll hear it as administrative hearsay.

13 THE WITNESS: I don't recall. I think I might have
14 asked him of the issue of how the extra income was to be
15 treated for retirement purposes, and I don't -- well, I
16 don't recall his response.

17 BY MR. JENSEN:

18 Q Do you recall anything else you did as far as
19 research or preparation prior to writing this
20 June 13th, 2007, letter?

21 A Not specifically. I might have discussed it with
22 the City Attorney.

23 Q And who is the City Attorney at that time?

24 A Jim Penman.

25 Q Do you recall anything now about that discussion?

1 A No.

2 Q I want to turn your attention to this paragraph as
3 to future benefits. "Captain Lewis is to receive all
4 current and future benefits granted to battalion chiefs in
5 lieu of those granted to Captain, except overtime."

6 Do you see that?

7 A Yes.

8 Q What were you considering when you wrote that
9 sentence?

10 A It would have been the settlement agreement
11 language.

12 Q What did you mean by "Lewis was to receive all
13 current and future benefits granted to battalion chiefs"?

14 A Benefits meaning those items in addition to pay
15 that battalion chiefs received as part of -- they didn't
16 have a contract. They had -- they had benefit resolution,
17 management did. So I took that as he would receive benefits
18 that were set forth in that resolution that applied to
19 battalion chiefs.

20 Q Was one of those benefits known as employer paid
21 member contributions, EPMC?

22 A Yes.

23 Q So it was your position that Mr. Lewis was entitled
24 to receive EPMC?

25 A I didn't make that determination specifically, but

1 my determination was that any benefits that the battalion
2 chiefs received, he should receive.

3 Q And it says, "I appreciate your assistance in
4 implementing the settlement agreement."

5 When you say the sentence of implementing, was it
6 your understanding that the City did report the battalion
7 chief compensation to CalPERS for Mr. Lewis?

8 A I did not have specific knowledge if they did but
9 that was -- that was my assumption after writing the memo.

10 Q And did you think Mr. Lewis was entitled to receive
11 a CalPERS pension based on the battalion chief compensation?

12 MR. KENNEDY: Objection. Relevancy as to whether she
13 believes he's entitled.

14 THE COURT: Why don't you ask her for her determination.

15 BY MR. JENSEN:

16 Q What was your determination with respect to the
17 compensation base for Mr. Lewis's CalPERS pension?

18 A Based upon the settlement agreement, my
19 understanding was that he was getting paid as a battalion
20 chief and it would get reported to PERS accordingly. How
21 PERS ultimately treated that, I found is -- it was -- it was
22 their decision. We would do the reporting and based on the
23 agreement, our intent was to have him paid as battalion
24 chief.

25 Q Was it your intent to have him receive the

1 CalPERS -- within the City's control --

2 MR. KENNEDY: Objection.

3 BY MR. JENSEN:

4 Q -- receive the CalPERS benefits at the rate of
5 battalion chief?

6 A I don't think I got that far. I mean, I assumed --
7 my assumption was that that was negotiated and the reason to
8 get paid as a battalion chief -- one of the reasons is to
9 benefit your retirement.

10 Q Did the City do everything it could in its control
11 to provide Mr. Lewis the groundwork for receiving a CalPERS
12 pension at the rate of battalion chief?

13 MR. KENNEDY: Objection. Vague. Calls for speculation.
14 Lack of foundation.

15 THE COURT: Sustained. Why don't you ask what she did.

16 BY MR. JENSEN:

17 Q Did you do everything within your control to lay
18 the groundwork for Mr. Lewis to receive a CalPERS pension at
19 the rate of a battalion chief?

20 MR. KENNEDY: Same objection, your Honor.

21 THE COURT: Overruled.

22 THE WITNESS: My intent in writing the memo was to
23 interpret the settlement agreement. It wasn't specifically
24 to -- it was to implement the settlement agreement. One of
25 the results of the settlement agreement was to receive an

1 increased retirement. But the purpose in the memo was to
2 interpret that settlement agreement.

3 BY MR. JENSEN:

4 Q And in interpreting that settlement agreement, did
5 you reach an opinion that it was the intent of the agreement
6 to provide Mr. Lewis with the CalPERS pension at the rate of
7 battalion chief?

8 MR. KENNEDY: Objection. Calls for speculation. Lack
9 of foundation. Competency of this witness, and also PERL
10 Evidence Rule.

11 THE COURT: Overruled. He's just asking her what her
12 conclusion was.

13 THE WITNESS: Could you repeat that?

14 BY MR. JENSEN:

15 Q When you interpreted the settlement agreement, did
16 you come to the conclusion that it was the intent of the
17 settlement agreement to provide Mr. Lewis with a CalPERS
18 pension based on the rate of the battalion chief?

19 A It was -- after reviewing the agreement, it was my
20 assumption that the reason Mr. Lewis agreed to the
21 provisions of the settlement agreement is to increase his
22 salary which would then ultimately increase the retirement
23 as if he had been promoted to battalion chief.

24 MR. KENNEDY: Your Honor, I'd like to move to strike.
25 It's speculative. It's hearsay. It's nonresponsive. She's

1 testified to what she assumed was in Mr. Lewis's intent in
2 executing the agreement.

3 MR. JENSEN: I think your --

4 THE COURT: I'm going to sustain the part about his
5 intent, but I'm going to overrule the objection because
6 she's just telling me how she read the document and she was
7 asked to write the memo about it and how she interpreted it.
8 Whether she's right or wrong, I'll know when I read
9 everything and make my decision.

10 BY MR. JENSEN:

11 Q Can I turn your attention to Exhibit 6?

12 Do you recognize the handwriting on this page?

13 A I do not.

14 Q Is this your handwriting?

15 A No, it's not.

16 Q Do you recognize the notation of "PERS 5"?

17 MR. KENNEDY: Objection. Vague.

18 MR. JENSEN: There's a marking on this page that says
19 "PERS 5" under the little --

20 THE COURT: Under the "Please clarify section"?

21 MR. JENSEN: Yes.

22 THE COURT: Are you asking her if she recognizes that
23 handwriting?

24 MR. JENSEN: I'm asking if she recognizes the term
25 "PERS" and then (5).

1 THE WITNESS: No, I don't.

2 BY MR. JENSEN:

3 Q Can I turn your attention to the second page of
4 Exhibit 6 where there is on the bottom in handwriting, it
5 says "PERS." I'm not asking you if you recognize the
6 handwriting, but do you recognize the number five and then
7 this retro salary adjustment.

8 Would that be a payroll recording code or anything?

9 A No, I don't know what it is.

10 Q Let me turn your attention to Exhibit 7.

11 Have you seen this letter before?

12 A Just recently.

13 Q What do you mean recently?

14 A Probably within the last couple months.

15 Q Was it one of the letters I sent you?

16 A Yes.

17 Q And which documents did I send to you for your
18 review?

19 A I believe they were marked as Exhibits 1 through 5.

20 Q This is Exhibit 7.

21 Does that change -- I provided this document to
22 you?

23 A Yes.

24 THE COURT: I don't know that Exhibit 1 through 5 is the
25 same packet she got and the same 1 through 5.

1 BY MR. JENSEN:

2 Q Oh, that's right. Let's go through and can you
3 identify which documents I sent you, just looking at
4 Respondent's exhibit book.

5 A Respondent's Exhibit 1 was one of them. And then
6 2, and then Exhibit number 3 was one, and number 4 and then
7 number 7.

8 Q Did I send you any other documents?

9 A I think you sent me an e-mail from the City
10 Attorney's Office regarding the privilege.

11 Q Oh, yes. That's correct. And the waiver of the
12 privilege?

13 MR. KENNEDY: Your Honor, before we go any further than
14 that, can I say something? Can counsel provide that to me?

15 THE COURT: Can you get that?

16 MR. JENSEN: You want me to get it to you right now?

17 THE COURT: No.

18 MR. JENSEN: I'll get it to you on the break if that's
19 okay.

20 MR. KENNEDY: Thank you.

21 BY MR. JENSEN:

22 Q Can I turn your attention to Exhibit 7.

23 When you worked at the City of San Bernardino, did
24 you see this document?

25 A I don't believe so. I don't recall seeing it.

1 THE COURT: Counsel, seven is the one she only saw
2 recently.

3 MR. JENSEN: Right. I'm just clarifying.

4 THE COURT: You just asked her if she's seen it when she
5 was working at the City Attorney's Office.

6 MR. KENNEDY: Asked and answered.

7 THE COURT: Sustained.

8 BY MR. JENSEN:

9 Q Did you direct Ms. King to communicate to CalPERS
10 any inquiries or questions?

11 A No.

12 Q Was there any discussion between you and Ms. King
13 about contacting CalPERS?

14 A I don't recall. We might have talked about how
15 she -- no, I don't recall discussions.

16 Q On the third paragraph down, do you recall any
17 discussion about temporary upgrade pay?

18 A No.

19 Q Would Ms. King have brought this back to you for
20 your approval as CalPERS's response after you wrote that
21 memo?

22 A No.

23 Q Is there anything in this that's inconsistent with
24 your determination that this matter -- that Mr. Lewis's
25 salary as battalion chief was reportable to CalPERS?

1 A I can't really answer that because I don't know
2 what the definition temporary -- I'm not familiar with
3 temporary upgrade pay. So I don't know how that fits in
4 with my prior memo.

5 Q Does the City use the term "temporary upgrade pay"?

6 A You know, I don't know. Finance uses their terms
7 of art or their terms. For all I know, it could have been
8 in an MOU or in a charter, but I'd never had to deal with
9 it. So I don't recall any definition.

10 Q Do you recall ever hearing the term temporary
11 upgrade pay?

12 A No.

13 Q Now, looking at this document, do you see anything
14 inconsistent with your determination and this letter from
15 CalPERS?

16 THE COURT: Other than what she just told us about
17 temporary upgrade pay?

18 BY MR. JENSEN:

19 Q Yes. Other than what you just told us about
20 temporary upgrade pay.

21 MR. KENNEDY: I'm sorry. Is the witness being asked to
22 make an opinion now based upon taking this into
23 consideration now in what she would have -- whether that
24 would or would not have change her opinion?

25 THE COURT: I don't know.

1 MR. JENSEN: I'm asking her if there's anything
2 inconsistent between her determination and this letter.

3 MR. KENNEDY: Then I would argue relevancy.

4 THE COURT: Also, she said she never saw it and she
5 didn't have any discussions with anybody about it and she
6 doesn't know what temporary upgrade pay is. This basically,
7 as I look at Exhibit 7, correct me if I'm wrong,
8 Mr. Kennedy, this is basically CalPERS reporting to Ms. King
9 how to report it and what to do.

10 MR. KENNEDY: Our understanding of the letter is it says
11 if you're going to report this, put it in this bucket.

12 MR. JENSEN: I withdraw that question.

13 BY MR. JENSEN:

14 Q Ms. Easland, if CalPERS had come back and said this
15 money was not reportable, would that have been brought to
16 your attention?

17 A I don't know. A lot of times finance would not
18 inform me of things. So I have no way of knowing if they
19 would have let me know.

20 Q If it was that -- if CalPERS brought it to your
21 attention that this money was not reportable, would that
22 have changed your determination?

23 A Yes.

24 Q And what would have -- what would you have done had
25 you received that piece of information?

1 MR. KENNEDY: Objection. Vague. It's not reportable.

2 MR. JENSEN: I withdraw the question.

3 BY MR. JENSEN:

4 Q If CalPERS had told you that in its present form,
5 this settlement agreement would not affect the result of it
6 being reportable, what would you have done?

7 A I would have informed finance of CalPERS's
8 findings. I would have informed Mr. Lewis of CalPERS's
9 findings because he probably would have wanted to follow up
10 on that. I would have double-checked the settlement
11 agreement to see if we were in violation of the settlement
12 agreement.

13 The settlement agreement doesn't specifically state
14 that the amounts are going to be PERS-able or reported. I
15 don't know how to explain that. It go towards Mr. Lewis's
16 retirement. So it wouldn't necessarily have been in
17 violation of the settlement agreement. I definitely would
18 have followed up with Finance and Mr. Lewis.

19 Q Let me just follow up on that question. Let me
20 turn your attention to Exhibit 2. This is page 3 of the
21 agreement under 2(b). It says on 2(b) -- let me see.
22 "Mr. Lewis shall be compensated from the date of this
23 agreement forward as if he had been promoted to the position
24 of battalion chief, including all current and future
25 benefits granted to battalion chiefs."

1 So let me just ask you a question: What is the
2 most important benefit that a safety officer has?

3 MR. KENNEDY: Objection. Vague. Speculation.

4 THE COURT: Sustained. Every employee is different.
5 What might be important to one isn't important to another.

6 BY MR. JENSEN:

7 Q To the City -- in your acting for -- as advising
8 the personnel department, were you aware of which benefits
9 were encapsulated or included in this "all current or future
10 benefits"?

11 MR. KENNEDY: Objection. Vague.

12 BY MR. JENSEN:

13 Q Is the CalPERS pension at the rate of battalion
14 chief included in this phrase "all current or future
15 benefits granted to battalion chiefs"?

16 MR. KENNEDY: Objection on the ground that the document
17 speaks for itself. It's asking for speculation as to
18 whether or not -- the document speaks for itself. Asking
19 for speculation.

20 THE COURT: That's the question of fact in this case.
21 So sustained.

22 I've had -- for quite a while, this witness -- she
23 looked at the document. She was asked by Finance what to
24 do. She give a memo. She told them how she interpreted it.
25 And CalPERS disagrees with that interpretation. That's why

1 we're all here today.

2 MR. JENSEN: But, your Honor, there is one sort of
3 clarification. Ms. Easland just testified that it would not
4 have been a breach of the settlement agreement if Mr. Lewis
5 did not receive the CalPERS benefit at the rate of battalion
6 chief.

7 Is that your testimony?

8 MR. KENNEDY: Again, it's leading. The document speaks
9 for itself and it's asking her to speculate.

10 MR. JENSEN: It's actually asking for --

11 THE COURT: Overruled. He's clarifying the previous
12 answer.

13 THE WITNESS: It's hard to say a definitive statement
14 like that because I would have researched -- if we were in
15 that situation, I would have had to do further research to
16 see what liability, if any, the City had in regards to
17 CalPERS not treating it as reportable income.

18 There's all kinds of things I would have been
19 looking at to see -- I would have had to determine whether
20 or not there was a breach of the settlement agreement and
21 what we were to do with that. It's hard to say right now
22 because off the top of my head, I'm not able to do that
23 research, follow up on that.

24 BY MR. JENSEN:

25 Q So before you made a sort of qualified opinion that

1 it would not be a breach. And to clarify now, you're saying
2 you would have to research it to determine?

3 A Yeah. I don't want to say just flat out that it
4 would not be a breach. It's something I would definitely --
5 the office would have had to look at.

6 Q And let me just ask you, how much of your day would
7 you, in a year, spend interpreting the Public Employees'
8 Retirement Law?

9 A It depended on what -- gosh, I don't know. I
10 honestly don't know. It would have -- just whatever
11 questions arose. You know, there were times where there's
12 layoffs or things going on there's going to be more issues
13 than others. It's not consistent.

14 Q Let me ask you another question: Was it the intent
15 of the settlement agreement to make Mr. Lewis whole for the
16 problems associated with failing to promote him to the
17 battalion chief position?

18 MR. KENNEDY: Objection. Calls for speculation.

19 THE COURT: Sustained.

20 MR. JENSEN: I have no further questions.

21 THE COURT: Cross-examine.

22

23 CROSS-EXAMINATION

24 BY MR. KENNEDY:

25 Q When did you leave the City Attorney's Office?

1 A 2012.

2 Q And since the agreement, you've had other instances
3 where you've had opportunities to get involved with issues
4 concerning -- or do legal research on whether matters are
5 properly included in PERS pension?

6 MR. JENSEN: Objection. Relevance.

7 THE COURT: Overruled.

8 THE WITNESS: Yes.

9 BY MR. KENNEDY:

10 Q Are you familiar with the Prentice case?

11 A Yes, I am.

12 Q After seeing the Prentice case, would it affect
13 your opinion as to whether the payment income in this
14 agreement would or would not be PERS-able?

15 MR. JENSEN: Objection. Calls for speculation. The
16 Prentice case was, I believe, not even in affect at that
17 time.

18 THE COURT: Sustained.

19 BY MR. KENNEDY:

20 Q I'm asking for your opinion as if you were working
21 with the City, would the affect of the Prentice decision
22 have altered your opinion as to whether or not payments
23 pursuant to settlement agreement, such as this, would be
24 PERS-able?

25 MR. JENSEN: Objection. Calls for speculation.

1 THE COURT: Overruled. He's just asking if the Prentice
2 case would have affected the memo that she wrote.

3 MR. KENNEDY: That's my question. Thank you, your
4 Honor.

5 MR. JENSEN: One more objection, your Honor, is that
6 it's vague as to time because the Prentice case, I believe,
7 occurred after this.

8 THE COURT: Right. The question is, because I'm sure
9 I'm going to hear argument about the Prentice case in this
10 matter, is does that affect any conclusions she reached in
11 Exhibit 4. I'm going to allow her to answer that.

12 THE WITNESS: More than likely, it would have.

13 BY MR. KENNEDY:

14 Q In what way?

15 A In determining whether it was reportable
16 compensation for retirement purposes.

17 Q Could you explain what you mean by that?

18 A I haven't read the Prentice case in a while, but --

19 MR. JENSEN: Motion to strike.

20 THE COURT: Overruled.

21 THE WITNESS: I recall it set out certain elements you
22 have to meet for it to be considered reportable compensation
23 to PERS. And I recall -- I think there were two elements,
24 but one of them is that it has to be -- the additional
25 compensation has to be offered to all persons in the same

1 class or classification. So in this case, it'd have to be
2 offered to all captains in the fire department.

3 BY MR. KENNEDY:

4 Q Now, you mentioned before about -- that this
5 agreement was approved?

6 A It would have had to go and receive City Council
7 approval.

8 Q Did you have any participation in that approval
9 process?

10 A I probably would have made sure it got on the
11 closed-session agenda. I would have briefed the City
12 Attorney on it, and then arranged for Mr. Odlum, our outside
13 counsel, to come and brief the council on the matter.

14 Q So the approval that you're referring to was the
15 approval in a closed-session meeting of the City Council?

16 A Yes, I believe so.

17 Q After it was approved, then the document would be
18 placed in a file in the legal office with the City Attorney;
19 right?

20 A Yes, after all the signatures are obtained.

21 Q If individual department members had need or
22 necessity of looking at the document or asking questions
23 about -- not looking, but asking questions about the
24 document, they would contact the legal office and ask for
25 your legal advice?

1 A Yes, that's what I would hope they would do.

2 Q Do you recall whether a member of the public ever
3 contacted you regarding the settlement agreement?

4 A No.

5 THE COURT: No, you don't recall or no, they didn't?

6 THE WITNESS: I don't recall a member of the public
7 contacting me.

8 BY MR. KENNEDY:

9 Q Just to clarify, I think you mentioned this. It is
10 not your belief, is it, that merely because an employer or
11 the City could report say, someone's pay or someone's
12 compensation to CalPERS, that that rendered it includable in
13 their calculation of their retirement, right -- I'm sorry.
14 The mere fact of reporting it.

15 A The mere fact of reporting it, no. Obviously, we
16 look at things a certain way, but CalPERS would have their
17 input.

18 Q And do you have -- when you were advising your
19 client on this settlement agreement, is that the advice you
20 gave them, that you basically rendered what you understood
21 but that CalPERS would be the final arbiter of whether it
22 was or was not includable in the pension retirement
23 calculation?

24 MR. JENSEN: Misstates her testimony on whether she was
25 advising them on the making of the settlement agreement.

1 THE COURT: Rephrase, Counsel. Sustained.

2 BY MR. KENNEDY:

3 Q Were you asked whether or not the settlement
4 payments to Mr. Lewis would be included in the calculation
5 of his retirement allowance by CalPERS?

6 A Asked by whom?

7 Q By your client.

8 A By the City.

9 Q By the City.

10 A I was not. I don't recall if Mr. Odlum was he
11 presented it to the council.

12 Q You never rendered an opinion concerning that?

13 A To the City Council?

14 Q To the City Council or to the City.

15 A Just the opinion that I put in my memo to
16 Laura King.

17 Q That they report it the CalPERS?

18 A Correct.

19 Q Did you distinguish -- is there a distinction, in
20 your mind, between whether they can report it to CalPERS --
21 or they should report it to CalPERS and whether it would or
22 would not be included in the calculation of the retirement?
23 Are you aware of this?

24 A In future cases, yes. Not at this time. And prior
25 to Prentice and everything, not as aware. My determination

1 was that the settlement agreement was to have him paid as a
2 battalion chief. So in my mind, he was getting compensated;
3 and therefore, received retirement based on that, being that
4 it was prior to the Prentice case.

5 Q You no longer have that opinion; correct?

6 A Correct.

7 Q Now, pay as if he were a battalion chief.

8 Mr. Lewis never was a battalion chief, never held
9 the rank of battalion chief, did he?

10 A I don't know if you did acting ever. There's --

11 Q Mr. Lewis just nodded.

12 THE COURT: Ma'am, you can't ask the witness.

13 THE WITNESS: I personally am not aware if he worked as
14 battalion chief.

15 BY MR. KENNEDY:

16 Q You used the term "acting." Mr. Jensen previously
17 asked you about temporary upgrade pay.

18 You weren't familiar with that term?

19 A Correct.

20 Q Do you remember the term acting pay?

21 A Acting pay, yes.

22 Q Is that a term that's defined by the Charter?

23 A Either the Charter or the MOU. I don't recall
24 offhand.

25 Q In other words, to qualify as acting pay --

1 describe for us what is acting pay.

2 A Acting pay is -- for example, a captain is -- steps
3 up to perform the duties of battalion chief, say, during a
4 vacancy or someone's absence. I believe maybe you have
5 to -- I don't recall exactly what their MOU or the Charter
6 says, but a lot of times you work in the position for a
7 certain amount of time and you start receiving the pay of
8 the higher position for the period of time that you were
9 acting in that position. I think there's a limit on the
10 amount of time you can act.

11 Q When you say you work for a period of time -- are
12 you familiar with the term --

13 A No.

14 Q So would it be true in the City that people could
15 perform functions that might be overlapping into a battalion
16 chief or might be asked to stand in for a day or a period
17 and they wouldn't be considered to be acting and getting
18 acting pay?

19 A I don't have personal knowledge of how the
20 departments work.

21 Q I have the Charter. Would that help you?

22 A Not so much on the daily basis. I don't know if
23 that's how the fire department worked. I assumed if there
24 was a vacancy and they needed someone to perform battalion
25 chief duties, that someone is going to step up and do it.

1 Q Would that be the same as receiving acting pay
2 under the Charter?

3 A Acting pay -- to be an acting battalion chief, if I
4 recall, it has to go to council for approval.

5 Q Are you ever aware of Mr. Lewis ever obtaining
6 approval to be an acting battalion chief?

7 A Not off the top of my head.

8 Q So would it also require them to be acting or
9 performing the duties of a battalion chief for a specific --
10 a specific minute period of time?

11 MR. JENSEN: Objection. Vague and ambiguous as to what
12 he's referring to.

13 BY MR. KENNEDY:

14 Q I have the Charter. Do you want me to read the
15 Charter? Is the definition and the application by the City
16 of acting or acting pay a matter controlled by the Charter?

17 A Yes, and MOUs.

18 Q And can the MOU or the fire department undertake a
19 practice or procedure that would be in violation of the
20 Charter?

21 A No.

22 MR. JENSEN: Is this in evidence as an exhibit?

23 MR. KENNEDY: It's in evidence, but I don't think it's
24 in the book.

25 THE COURT: Is it one of the exhibits, Counsel?

1 MR. KENNEDY: I believe it's in the exhibits.

2 THE COURT: I have all the resolutions in.

3 MR. KENNEDY: I believe it was Ms. Nicki we introduced
4 the Charter.

5 THE COURT: Not that I see. I have the MOUs, and I have
6 a bunch of resolutions.

7 MR. JENSEN: I don't have a copy of it.

8 THE COURT: I don't have the Charter.

9 MR. KENNEDY: I'll make a copy of it before I ask the
10 question. Can we have a small break?

11 MR. JENSEN: Your Honor --

12 THE COURT: Let's go off the record.

13 (Recess)

14 THE COURT: Back on the record.

15 May I remind you you're still under oath.

16 BY MR. KENNEDY:

17 Q So the amount of the settlement agreement that was
18 entered into was the differential between the compensation of
19 the captain and -- the base salary of captain and the base
20 salary of a battalion chief; right?

21 A Correct.

22 Q And there also were other benefits that were
23 included as part of that compensation; right?

24 A Yes.

25 Q One of the distinctions in the settlement agreement

1 amount, and I think was also addressed in your memo, was the
2 overtime?

3 A Yes.

4 Q While Mr. Lewis would be given, as part of the
5 settlement agreement, an additional sum of money each month
6 to reflect the difference in the base pay, his pay rate
7 would still be that of the captain; right?

8 A For overtime purposes.

9 Q I'm saying for his base pay was still that of a
10 captain; right?

11 A Yes.

12 Q You had a salary schedule for a captain?

13 A Yes.

14 Q That was his pay rate as a captain?

15 MR. JENSEN: Objection.

16 BY MR. KENNEDY:

17 Q He wasn't the battalion chief, was he?

18 A No. He was getting compensated as if he was the
19 battalion chief. So pay rate -- I don't know how it showed
20 up -- when you say pay rate, how it showed up on his checks.

21 Q Can I show you a copy of his check?

22 A Sure.

23 Q We have it as an exhibit I think. It's Exhibit 30
24 in the blue binder.

25 THE COURT: Actually, they're not in the binder.

1 They're loose exhibits. I have them up here. Exhibit 30 is
2 two pages in there.

3 BY MR. KENNEDY:

4 Q So his regular pay rate was that of a captain?

5 A I assume with the regular, that that's the captain.

6 Q On the left-hand side of the column in the -- is
7 the additional delta, if you will, between the captain and
8 the battalion chief; correct?

9 A Where it says BC pay, I think.

10 Q Have you ever seen -- are you familiar with
11 warrants such as this where someone's been acting?

12 A No.

13 Q Have you ever been acting?

14 A No.

15 Q Mr. Lewis -- do battalion chiefs -- are they -- you
16 are familiar with FSLA; right?

17 A Yes.

18 Q And are they exempt from overtime in FSLA?

19 MR. JENSEN: Objection. Relevance to this issue.

20 THE COURT: Overruled.

21 THE WITNESS: I'm trying to think of the battalion
22 chief. Seems like there was an issue of overtime with them.
23 Under FSLA, a management position oftentimes is exempt, but
24 I don't know if they negotiated overtime or -- I can't
25 recall.

1 BY MR. KENNEDY:

2 Q It would be in the MOU; right?

3 A If they negotiated overtime, yes.

4 Q Now, it indicates in the settlement agreement that
5 he would be paid -- he would receive, as his settlement
6 payments, the pay of a battalion chief except for overtime.

7 What was your understanding of why -- what the
8 distinction was as to his overtime?

9 A I don't believe I ever asked whatever was
10 negotiated.

11 Q Are you familiar with any other battalion chief
12 that gets paid overtime pay at the captain level?

13 A A battalion chief getting paid at a captain -- I
14 don't think under the law we can do that.

15 Q But under the settlement agreement, you could. You
16 could agree to pay somebody that?

17 A It depends on all the circumstances because the
18 FSLA isn't -- there's all kind of mind traps in that.
19 Knowing what I know now today, I don't know if I would agree
20 to that.

21 Q Do you have an understanding of what the difference
22 is between -- what did it mean, in your understanding, that
23 it would include all current and future benefits except for
24 overtime? What was the difference that a captain's
25 overtime -- what does that phrase mean, overtime for fire

1 captains?

2 A Looking at this, I'm thinking the battalion chief
3 did not get overtime. So he was not going to give -- so
4 Mr. Lewis would still be -- receive overtime at his regular
5 rate of pay, the captain's pay.

6 Q As you said before, he would be -- his situation
7 was a bit of a one-off; correct?

8 MR. JENSEN: Objection.

9 THE WITNESS: I don't know what one-off means.

10 MR. KENNEDY: In other words --

11 THE COURT: Counsel, stop. The objection is sustained.

12 When an objection is made, please wait for me to
13 rule on them.

14 BY MR. KENNEDY:

15 Q His situation was that he was -- he received a type
16 or amount of compensation different than other captains and
17 different than other battalion chiefs?

18 A Yes. Different from captains because he received
19 the extra battalion chief pay; different from battalion
20 chief because he received overtime pay. Again, I'm not real
21 clear on battalion chiefs receiving overtime, but I don't
22 think they did based on the fact that was put in the
23 agreement.

24 MR. KENNEDY: I do have what I would like mark for
25 identification purposes.

1 THE COURT: Complainant's Exhibit 18.

2 BY MR. KENNEDY:

3 Q Let me show you what's been marked as Exhibit 18.

4 That is the City Charter for San Bernardino.

5 Can I direct you attention to page C32,

6 particularly on Subparagraph B.

7 A Which paragraph?

8 Q Subparagraph B, as in boy, at the bottom of the

9 page. Let me know when you've had a chance to read that.

10 Is that provision discussing the acting pay for --

11 A Yes, it is.

12 Q That would be the organic or controlling provision

13 concerning that pay?

14 A Yes.

15 MR. JENSEN: Objection.

16 THE COURT: Overruled.

17 MR. KENNEDY: I'm sorry?

18 THE COURT: I overruled his objection.

19 BY MR. KENNEDY:

20 Q Having reviewed that, my question again is, to

21 receive acting pay, you would have to get approval of the

22 City Council and the City manager.

23 MR. JENSEN: Objection. I'm sorry. You said it's

24 referring to this document here?

25 ///

1 BY MR. KENNEDY:

2 Q Prior testimony.

3 Is that your understanding?

4 A Yes. But now looking at that, it says the chief's
5 certify as to the assignment. I'm thinking maybe the chief
6 just certifies as to finance without it having to go
7 council.

8 Q You're assuming that?

9 A I'm reading that.

10 Q The chief certifies that to go to finance, then
11 finance -- there are other provisions that require finance
12 to get approval by the City manager; correct?

13 MR. JENSEN: Objection, your Honor. Lacks foundation.

14 THE COURT: He's asking "are there."

15 THE WITNESS: Based on this, there is. I'm trying to
16 think if we've had acting go to the City Council.

17 THE COURT: "This" being page C32 in the Charter,
18 Subparagraph B, under the heading "Special Salary
19 Provision."

20 THE WITNESS: Yeah. Under that provision, it looks like
21 the chief will certify as to the assignment.

22 BY MR. KENNEDY:

23 Q What does the chief certify to?

24 A Certify they're being assigned to the acting
25 position.

1 Q And under that provision, there's a minimum number
2 of shifts or consecutive days they have to --

3 A Right. It's up above there. They have be in that
4 period of acting or during a vacancy for more than ten
5 consecutive working days or five consecutive shifts before
6 they start receiving the same salary. I just can't recall
7 if it went to council or not. I can visualize it, but for
8 years, it changes.

9 Q I think we had testimony from Ms. Nicki about that.

10 A Okay.

11 Q Now, as to the pay, the acting pay, would the
12 pay -- let's say I'm fire captain and I worked five shifts,
13 consecutive shifts.

14 Do I now receive battalion chief pay for the rest
15 of my career?

16 A No.

17 Q For what period do I receive the acting pay?

18 A I don't think it's limited in the Charter. It
19 might be limited -- wait, wait, wait.

20 Q If you know.

21 A It might be under Civil Service Provisions. I'm
22 thinking it might be under Civil Service Rules which aren't
23 here because they don't want departments doing a -- running
24 around the competitive process through Civil Service.

25 Q Can I direct your attention to page C45.

1 Is that what you're looking for?

2 A Actually, I think it's in the Civil Service Rules.

3 Q Is that page C11?

4 A No. That's a separate document which implements
5 the Charter provisions. I think the rules might put a limit
6 as to how long you can hold an acting position.

7 Q But suffice it to say, would it not be correct that
8 the pay would be for the period of time that the person was
9 actually performing as an acting captain to qualify?

10 MR. JENSEN: Objection.

11 THE COURT: Overruled. If you know.

12 THE WITNESS: They receive the higher salary only while
13 they're in an acting position for a person in the acting
14 position.

15 BY MR. KENNEDY:

16 Q To be in an acting position, they have to meet that
17 minimum qualification under the Charter?

18 A To be in an acting position. That provision
19 relates to safety.

20 MR. KENNEDY: I'd like to request to admit Exhibit 18.

21 THE COURT: Any objection?

22 MR. JENSEN: No objection.

23 THE COURT: Exhibit C18 will be received, C for
24 Complainant.

25 ///

1 BY MR. KENNEDY:

2 Q Are you familiar with 4850 Pay?

3 A Yes.

4 Q What is that?

5 A That is pay under Labor Code when a safety officer
6 is injured -- work-related injury.

7 Q What distinguishes that type of pay from other
8 types of pay, or is it a benefit under the Labor Code?

9 A I guess you could consider it a benefit. It's to
10 ensure they receive their full salary while they're injured.

11 Q Basically, they receive a compensation they were
12 receiving for up to at least a year?

13 A Up to a year. I don't believe it's taxable, but I
14 don't recall.

15 Q Okay. The settlement agreement itself, your review
16 of it, doesn't address -- doesn't address the issue of
17 whether or not the additional payment or PERS-able; correct?

18 A Correct.

19 Q Subsequent to this agreement, have you had an
20 opportunity to give any advice to your client concerning
21 similar agreements where someone is paid compensation in
22 addition to their base salary?

23 A Yes, in other case.

24 Q Yes?

25 A Yes.

1 Q Is it your opinion that additional compensation
2 would be PERS-able, would be included in their final
3 compensation?

4 MR. JENSEN: Objection. Vague.

5 MR. KENNEDY: Withdraw the question.

6 Your Honor, may I have a five-minute break?

7 THE COURT: We'll go off the record for a few minutes.

8 (Recess)

9 THE COURT: Back on the record.

10 BY MR. KENNEDY:

11 Q Ms. Easland, could you turn to the white binder,
12 CalPERS binder under tab 13 and direct your attention to
13 page 31, subpart E. I'm sorry. Exhibit 13, page 21,
14 subpart E. Let me know when you've have a chance to read
15 it.

16 Are you ready?

17 A Yes.

18 Q Is it your understanding that this is the provision
19 from the Charter that's being incorporated from the fire
20 safety MOU?

21 A Yes.

22 Q And it specifies the period of time that a person
23 will get paid for any upgrade and also the minimum
24 qualifications for that?

25 A Yes. I believe it mirrors the Charter language.

1 Q Are there any other distinctions that you're aware
2 of in the compensation package between -- that was given
3 to -- the settlement agreement that was entered into with
4 Mr. Lewis that would be different from the position of the
5 battalion chief? We've identified that battalion chief is
6 the overtime, is one distinction; correct?

7 Is there any other distinction that you're aware of
8 between the compensation of a battalion chief and Mr. Lewis
9 as a fire captain?

10 MR. JENSEN: Objection. Vague and ambiguous.

11 THE COURT: Overruled.

12 THE WITNESS: Based on the agreement, I don't believe so
13 because it says he would get all the benefits, et cetera, of
14 a battalion chief.

15 BY MR. KENNEDY:

16 Q In fact, wasn't he getting all the -- getting the
17 benefits of a battalion chief and any non-redundant benefits
18 of a fire captain?

19 A No, I believe he was just getting battalion chief
20 benefits.

21 Q Except for the overtime?

22 A Except for the overtime. Again, for some reason, I
23 was thinking the battalion chiefs get overtime, but it's
24 been so long. I don't remember.

25 Q Why would there be a distinction between the

1 overtime treatment for Mr. Lewis then?

2 A I don't know why they negotiated that.

3 Q There's a concession payment. What's that?

4 A Concession? I can't remember what that is.

5 Q Oh, battalion chiefs are -- are they represented?

6 A They are part of the management association, but I
7 think the safety -- management safety also had their own
8 group.

9 Q And management safety -- are fire captains part of
10 management safety or are they rank and file?

11 A No, management.

12 Q Fire captains?

13 A Oh, I'm sorry. Captains are not management.

14 Q So a different --

15 A Yes.

16 Q Were you involved at all in the negotiation of the
17 settlement agreement?

18 A No.

19 Q Were you in a position to communicate the
20 settlement offers back and forth between the counsel who was
21 involved in it and the City?

22 A It would have been Mr. Odlum presenting the
23 proposal to the City Council.

24 Q Prior to presenting the proposal, did you have
25 discussions with Mr. Odlum concerning the negotiations of

1 the settlement?

2 A Yes. Oftentimes, he would go directly to
3 Mr. Penman, the City Attorney.

4 Q Were you familiar with the authority the City had
5 in making the settlement offer to Mr. Lewis?

6 A Meaning?

7 Q The authority as far as the monetary level.

8 A It depends. Sometimes you take it to council and
9 get a certain amount of authority from them. We didn't have
10 blanket authority. We took everything to the council.

11 Q What was your authority in the negotiations with
12 Mr. Lewis?

13 A I don't recall.

14 MR. JENSEN: Objection. Misstates the testimony. She
15 wasn't negotiating it.

16 THE COURT: Sustained.

17 BY MR. KENNEDY:

18 Q Were you aware of what the authority was at one
19 time?

20 A I don't recall. I don't remember if I was.

21 Q The settlement -- why did you settle with
22 Mr. Lewis?

23 MR. JENSEN: Objection. She's already testified --

24 THE WITNESS: The City Council --

25 THE COURT: Hang on. Everybody stop.

1 What's your objection?

2 MR. JENSEN: She already said she wasn't involved in the
3 negotiation.

4 THE COURT: Overruled.

5 THE WITNESS: Why the City settled? I don't know. I
6 don't know why City Council agreed to it.

7 BY MR. KENNEDY:

8 Q Were you present when the City Council voted or
9 discussed the settlement agreement?

10 A More than likely I would have been in closed
11 session. It would have been in closed session.

12 Q Do you recall the conversation that went on?

13 A I don't.

14 Q Do you recall whether there were any individuals on
15 the City Council that opposed?

16 THE COURT: I think it was closed session.

17 MR. KENNEDY: I understand. She's also waived that
18 privilege because she's testifying as to the negotiation
19 settlement. They waived the attorney-client.

20 THE COURT: What she's testified is she doesn't recall
21 anything. I'm not going to let her talk about
22 closed-session discussions.

23 BY MR. KENNEDY:

24 Q Who is Wendy -- what's her name?

25 A McCammack. She was a council member.

1 Q At the time?

2 A I believe so.

3 Q And have you had any discussions with her since you
4 left the City -- the office of the City Attorney about
5 Mr. Lewis's case?

6 A No.

7 Q And did she vote on the approval one way or the
8 other? Was she a participant in the meeting?

9 A I assume she was there during the presentation.

10 MR. KENNEDY: Okay. That's it. Nothing else.

11 THE COURT: Redirect.

12 MR. JENSEN: Thank you, your Honor.

13

14 REDIRECT EXAMINATION

15 BY MR. JENSEN:

16 Q You mentioned that you reviewed the Prentice case
17 after this occurred.

18 Did you review the Prentice case after it was
19 decided?

20 A After it was decided.

21 Q And after you reviewed Prentice, did you go and
22 look at the settlement agreement and see whether it was
23 consistent with Prentice?

24 A No, not specifically.

25 Q You testified your opinion would have been

1 different had Prentice come out before the settlement
2 negotiations; is that correct?

3 A Yes. It would have given me more guidance on
4 questions.

5 Q And since you are interpreting this, do you believe
6 that the settlement negotiations would have been materially
7 different had Prentice come out beforehand?

8 MR. KENNEDY: Objection. Speculation.

9 THE WITNESS: I don't know about the negotiations. I
10 don't know what the negotiations were.

11 THE COURT: Overruled.

12 BY MR. JENSEN:

13 Q Do you think the settlement would have been written
14 differently as informed by Prentice?

15 A I don't know. I don't know because the settlement
16 agreement doesn't specifically talk about items being
17 PERS-able. So it very likely would have been written the
18 same way.

19 Q Was there ever any discussion about putting
20 Mr. Lewis actually in the battalion chief position?

21 A I wouldn't have been involved.

22 Q Did you hear of any to your knowledge?

23 A Not to my knowledge.

24 Q Was the legal action that was brought filed in
25 superior court?

1 A Mr. Lewis's legal action? I don't recall.

2 Q I'll just turn your attention to the first
3 exhibit -- I'm sorry. In the blue binder.

4 In that first page, in the recital, it says, "On
5 May 4th, 2005, plaintiffs filed a complaint."

6 A Oh, yes. This was in superior court.

7 Q So was this filed under seal or was it just a
8 regular complaint publicly available to everyone?

9 A I assume it was a complaint, not under seal.

10 Q Are you aware whether the settlement agreement was
11 filed with the court?

12 A I don't recall, but it looks like it was removed to
13 District Court after it was filed.

14 Q And do you recall whether the settlement agreement
15 was filed in a District Court?

16 A I don't.

17 Q And do you recall whether the City Council ever, in
18 open session, approved minutes or otherwise approved the
19 settlement agreement?

20 A I don't remember if they did. If they did, there
21 would be a resolution approving it and I don't recall that.

22 Q Let me ask you a question: Is the BC, battalion
23 chief, pay rate publicly available?

24 A Yes.

25 Q How so?

1 A Through the salary resolutions of the City.

2 Q And in any other way were the pay rates publicly
3 available by the memorandums of understanding? Is the
4 Charter publicly available?

5 A Yes.

6 Q There was a significant discussions today about the
7 overtime provisions.

8 Do you recall that?

9 A Yes.

10 Q Are you aware of whether any of Mr. Lewis's
11 payments of overtime were ever reported to CalPERS?

12 A I have no knowledge.

13 Q In your knowledge of the Public Employees'
14 Retirement Fund, are these overtime payments reportable for
15 CalPERS for pension purpose?

16 A Off the top of my head, I don't remember.

17 Q Let me get to the significance of acting battalion
18 chief.

19 What is the purpose of the acting position, the
20 acting designation?

21 A The acting is to fill a temporary vacancy until the
22 person comes back from leave or for whatever reason or the
23 position goes through the recruitment process and is filled.

24 Q Isn't it one of the main reasons to be designated
25 acting in order to receive the salary of that position?

1 A Absolutely, yes.

2 Q If Mr. Lewis was already receiving the salary of a
3 battalion chief, would he have to be designated as acting?

4 A I don't know. He's a unique situation. He doesn't
5 follow the norms.

6 Q If he was already receiving the battalion chief
7 salary, would he have -- what would be the purpose?

8 A He was receiving the battalion chief salary
9 pursuant to the settlement agreement.

10 Q Was the department aware he was receiving it?

11 A Yes.

12 Q Was it within the purview of the fire chief to
13 certify someone in an acting position?

14 A The fire chief would be the one to certify.

15 Q Was the fire chief aware he was receiving the
16 battalion chief salary?

17 A I believe the fire chief -- Larry Pitts signed off
18 on the settlement agreement.

19 Q So he would be aware?

20 A Yes.

21 Q Would it be fair to say the principal purposes of
22 designating someone in an acting position is to provide them
23 with the higher pay?

24 A Right. And to follow the provisions of the Charter
25 so we don't also get sideways of Civil Service for these

1 temporary fillings of positions.

2 Q The question sort of is -- to clarify, if the goal
3 or the purpose of documenting someone acting in an acting
4 position is to provide them grounds for being paid a higher
5 salary, what would be the purpose of designating Mr. Lewis
6 of acting battalion chief when he was already being paid as
7 battalion chief?

8 A Well, I don't know what would be in the mind of the
9 fire chief, but to be designated acting battalion chief, you
10 would be taking on all the duties of the battalion chief for
11 that period of time.

12 Q But that would be the fire chief's certification
13 about whether the individual was performing those duties?

14 A Right. Because people aren't supposed to be
15 performing duties out of their class. So to be able to
16 perform duties out of the class, they go through the
17 process.

18 Q As you recall, the fire chief signed this
19 agreement --

20 A Yes.

21 Q -- designating Mr. Lewis as having the title -- the
22 pay of the battalion chief?

23 MR. KENNEDY: Objection. Compound. Vague.

24 THE COURT: You made your point, Counsel. There's
25 nothing in the agreement that says what his duties are going

1 to be. She's testified that one of the reasons you
2 designate acting so you know they're doing those duties.

3 BY MR. JENSEN:

4 Q And the question is: It's the fire chief that
5 designates when an individual performs certain duties in an
6 acting position?

7 A Well, pursuant to the Charter. But the fire chief
8 certifies the person for the acting position which, as I
9 recall, goes to council to get their blessing or Civil
10 Service.

11 Q And did you -- can you point out where it says the
12 City Council or Civil Service has to approve it?

13 A I think it might be in the Civil Service Rules, and
14 I don't know if you have those.

15 Q But in the rules you have in front of you, is there
16 any requirement that the City Council or the Civil Service
17 Commission approve it, in the documents in front of you?

18 A It might be in the Charter. I don't think I have
19 the Charter in front of me.

20 MR. KENNEDY: You have 18. Exhibit 18.

21 THE COURT: We looked at it at length already. It
22 basically says the fire chief certifies it.

23 MR. JENSEN: I'm just asking if there was any authority
24 for having to be approved by --

25 THE COURT: She said it might be in the Civil Service

1 documents that aren't here in this courtroom.

2 BY MR. JENSEN:

3 Q Were you aware of whether or how the fire chief
4 certified people in an acting position?

5 A Within the department, no. But I think there was
6 probably a Civil Service document, now that I'm thinking
7 about it. Something has to be sent to Civil Service to get
8 their okay, which -- that's how it gets on the council
9 agenda under personnel actions.

10 MR. JENSEN: I have no further questions.

11 THE COURT: Cross.

12

13 RECROSS-EXAMINATION

14 BY MR. KENNEDY:

15 Q Do you interpret anything in the settlement
16 agreement as being a certification that Mr. Lewis was acting
17 as a battalion chief?

18 A That he was doing the duties of the battalion
19 chief?

20 Q Correct.

21 A Nothing in the settlement agreement.

22 Q All the settlement agreement does is calculate a
23 payoff to Mr. Lewis equal to the difference between the
24 amount of pay received by a captain and the battalion chief;
25 correct?

1 MR. JENSEN: Objection. Misstates the document. The
2 document speaks for itself.

3 MR. KENNEDY: Is that your interpretation?

4 THE COURT: Wait, Counsel.

5 The objection is sustained.

6 BY MR. KENNEDY:

7 Q Is that your interpretation of the agreement?

8 MR. JENSEN: Objection, your Honor.

9 THE COURT: I sustained the objection. She already told
10 me at length about her interpretation, and I have her memo
11 in Exhibit 4.

12 BY MR. KENNEDY:

13 Q Can I direct your attention to page 29.

14 A Okay. What section?

15 Q I withdraw that question.

16 Are the Civil Service Rules that you're talking
17 about online?

18 A They probably are.

19 Q This certification process -- when did you start to
20 work for the City?

21 A 1990.

22 Q 1990?

23 A Yeah.

24 Q The process of certifying an employee to serve in
25 an acting capacity, you mentioned a personnel action form?

1 A There might have been a personnel action form.

2 Q So the --

3 A I'm just trying to recall how we did it in our
4 office.

5 Q Did that process change, as far as you know,
6 between, let's say, 2000 and -- well, when you left?

7 A Between 2000 and 2012? Probably not. Probably
8 not.

9 Q Was it your understanding that the intent of this
10 agreement would serve as a certification of Mr. Lewis to be
11 acting in a capacity of battalion chief? That's just a yes
12 or no.

13 A No. My understanding is it was the settlement of
14 his lawsuit.

15 MR. KENNEDY: I have no other questions, your Honor.

16 THE COURT: Thank you. You may be released.

17 MR. JENSEN: Your Honor, can we take this witness before
18 lunch?

19 THE COURT: How long are you going to be with him?

20 MR. KENNEDY: What's your status on Ms. Tran?

21 MR. JENSEN: I don't have an update on Ms. Tran. I can
22 get it over lunch.

23 Can I grab this witness?

24 THE COURT: Yes.

25 Raise your right hand.

1 COREY GLAVE,
2 called as a witness, and having been first duly sworn by
3 the Court, was examined and testified as follows:

4 THE WITNESS: I do.

5 THE COURT: State your full name and spell your last
6 name for the record.

7 THE WITNESS: Full name is Corey William Glave; last
8 name is G-l-a-v-e.

9 THE COURT: Can you spell Corey, please.

10 THE WITNESS: C-o-r-e-y.

11

12 DIRECT EXAMINATION

13 BY MR. JENSEN:

14 Q What is your profession?

15 A I'm an attorney.

16 Q And did you represent Mr. Lewis in his lawsuit
17 against the City regarding the battalion chief issue?

18 A Yes, I did.

19 Q And can you briefly tell us a little bit of
20 procedural background as far as that matter?

21 A Procedural background: We filed a complaint.
22 There was a first summary judgment that was granted as my
23 opposition was late. Thanks for bringing that memory back
24 up.

25 There was a second summary judgment brought on the

1 1983 action, and that one was denied. And we were
2 proceeding to trial and we had a settlement conference in
3 there with Magistrate Judge Prada.

4 MR. JENSEN: Your Honor, if I may approach the witness?

5 THE COURT: Yes.

6 BY MR. JENSEN:

7 Q Do you recall negotiating a settlement agreement?

8 A Yes.

9 Q You can take a moment to look at Exhibit 1.

10 What is this document?

11 A It looks like several different copies of the
12 settlement agreement on LEW01-2, there's a bunch of
13 handwriting on it that I'm not familiar with it. At the end
14 of that document on LEW1-6, I believe that's Mr. Lewis's
15 signature. That's the signature for Scott Moss, who was
16 president of the union for the time. On LEW01-7 is my
17 signature.

18 Q And I just want to turn your attention to -- let's
19 look at LEW-01-9.

20 A I have that before me.

21 Q If I can turn your attention to 2B. If you can
22 briefly that sentence.

23 A Do you mind if I read Section 2?

24 Q Yes. Whatever you need to read to familiarize
25 yourself with it.

1 A Okay. I've read that section.

2 Q I want to turn your attention to 2B that says,
3 "Mr. Lewis shall be compensated from the date of this
4 agreement forward as if he had been promoted to the position
5 of battalion chief, including all current and/or future
6 benefits granted to battalion chiefs."

7 THE COURT: "With the exception of the provision
8 Subsection C below," is how the entire sentence would read.

9 MR. JENSEN: "With the exception of the provision in
10 Subsection C below."

11 BY MR. JENSEN:

12 Q Mr. Glave, tell us what consideration a CalPERS
13 pension benefit based on the salary of the battalion chief
14 was discussed in these negotiation.

15 MR. KENNEDY: Objection. There's an integrated
16 document. There's a paragraph that talks about all
17 discussions being -- these are irrelevant.

18 THE COURT: I'm going to overrule. Mr. Lewis talked
19 about them as well.

20 You may answer the question. Were there any
21 discussions about PERS?

22 THE WITNESS: I don't recall. There was two sets of
23 negotiations. One was in the settlement conference with
24 Judge Prada. And then afterwards, there was communications
25 between my office -- myself and Mr. James Odum, who was the

1 attorney representing the City. He's a private contract
2 attorney.

3 Within one set of those discussions, retirement was
4 discussed because we were talking about all benefits. If
5 they didn't want to provide -- I'm trying to explain this.
6 There was two lines of discussions. One was with him being
7 promoted to the position of battalion chief, and one was if
8 he wasn't promoted.

9 Along the lines of if he wasn't to get the actual
10 promotion, then we wanted him paid the same wages as if he
11 had been promoted, and that included all benefits. When we
12 discussed those benefits and they said, "Well, what would be
13 a lump sum," we calculated what the retirement -- the
14 difference in retirement would be also. So there was
15 discussions of retirement being included in those
16 settlements.

17 BY MR. JENSEN:

18 Q Was there a lump sum ever paid for -- as a present
19 value of the future CalPERS benefits that would be payable
20 if it was consistent with the battalion chief position?

21 A No, because the City -- well the parties agreed he
22 would be promoted -- not promoted. That he would be treated
23 as if he had been promoted to battalion chief without
24 getting the actual position.

25 The City's position was, "We can't put Mr. Lewis

1 into this group of battalion chiefs that don't like him
2 because of his union activities." So there's some law
3 regarding the equitable relief that a judge can grant in a
4 civil rights. One is the judge can order him, Mr. Lewis,
5 promoted to battalion chief.

6 Mr. Pitzer, who was then the fire chief, did not
7 want him part of his management staff. So it was, here's
8 the lump sum that included retirement, or you can continue
9 to pay him. He'll be a fire captain, but you can pay him
10 and give him all the benefits as if he was the battalion
11 chief.

12 Q How explicit was this discussion?

13 A I don't understand your question.

14 Q Were these points -- was the CalPERS pension
15 specifically addressed in these negotiations?

16 A I don't know if I would use the term "CalPERS," but
17 we talked about his PERS retirement and the difference
18 between what he would -- the difference that the captain's
19 wages would have versus the battalion chief's wages.
20 Because you look at back pay if he had been promoted when he
21 should have been; and then front pay, which would include
22 all future earnings and retirement benefits.

23 Q So your position is that Mr. Lewis had a legal,
24 equitable right to hold the position of battalion chief?

25 MR. KENNEDY: Objection, your Honor. Mischaracterizes

1 testimony. Calls for speculation.

2 THE COURT: Sustained.

3 BY MR. JENSEN:

4 Q In this negotiation, there was a specific
5 negotiation that one of the options was that he take the
6 position of battalion chief?

7 A Yes. That's where we had -- that was the starting
8 position. We had. We wanted him promoted because we
9 believed he had been wronged in because of his union
10 activities. Some of the discussions regarding him being
11 promoted was what would be the effective date of that
12 promotion. So we were looking at back pay and then going
13 forward also.

14 Q The going forward part would be him actually in the
15 position of battalion chief?

16 MR. KENNEDY: Mischaracterizes testimony.

17 THE COURT: Sustained.

18 BY MR. JENSEN:

19 Q In what capacity would he go forward in the future?

20 A The discussions went with him being promoted to
21 battalion chief retroactive, or him continuing as a captain
22 with all the battalion chief's wages. The lump sum
23 discussion was very limited because once they -- when the
24 discussions discussed the cost of that, being the difference
25 in wages, the difference in retirement, the difference in

1 whatever other benefits there were at the time, that became
2 a huge amount for the City.

3 Q And so what was the -- was the settlement that was
4 entered into considered to be financially equivalent to that
5 lump sum?

6 A In my mind, yes. This is a million-dollar
7 settlement.

8 Q Let me ask you a question: There was testimony by
9 Ms. Easland today that this agreement does not promise
10 Mr. Lewis a CalPERS pension based on the battalion chief
11 salary.

12 Is that your understanding of it?

13 MR. KENNEDY: Objection, your Honor. Paragraph 9,
14 page 5 states that the agreement constitute and contain the
15 entire agreement and understanding -- and supersedes all
16 other negotiations and agreements proposed or otherwise,
17 written or oral.

18 MR. JENSEN: Your Honor, if I can address --

19 MR. KENNEDY: And the agreement is silent as to the term
20 "PERS."

21 MR. JENSEN: The PERL evidence is allowed in any
22 ambiguity, and clearly this agreement is ambiguous. Well,
23 the City has declared it to be ambiguous. And to the extent
24 that PERL evidence is allowed to clarify an ambiguity,
25 Mr. Glave can testify all day.

1 THE COURT: I'm going to allow it because everyone is
2 arguing over what this term "benefits" means in the
3 agreement. This is the person who was part of the
4 negotiation.

5 MR. JENSEN: You may answer.

6 THE WITNESS: Can I get the question back?

7 MR. KENNEDY: Your Honor, may I ask a clarification of
8 the Court? In what portions of the agreement does it refer
9 to the term "benefits"?

10 THE COURT: That 2B Section on page 2 that everyone
11 keeps coming back to, "including all current and/or future
12 benefits."

13 MR. JENSEN: Can I have a read back from the court
14 reporter about the question that was objected to as far as
15 PERL evidence.

16 Do you want me to just try and restate it?

17 BY MR. JENSEN:

18 Q The question was Ms. Easland testified earlier
19 today that there was no promise in this agreement by the
20 City to provide or to cause Mr. Lewis to gain the retirement
21 benefits as a battalion chief salary, and I just wanted to
22 get your understanding of whether that was the case?

23 MR. KENNEDY: That's a mischaracterization of the
24 testimony, your Honor.

25 THE COURT: Sustained. I didn't hear him say that.

1 Why don't we just ask him his involvement?

2 BY MR. JENSEN:

3 Q What was your involvement in negotiating this
4 agreement regarding Mr. Lewis's future retirement benefits?

5 A I mean my role was --

6 THE COURT: Other than what you already told us.

7 THE WITNESS: In regards to all current and future
8 benefits, it was everything. If they got a phone allowance,
9 he would get a phone allowance. If they got a CalPERS
10 retirement, he'd get a CalPERS retirement under whatever the
11 battalion chiefs were receiving. The only exception --
12 there's two exceptions in the agreement, and I apologize
13 because I haven't reviewed it in some time.

14 One was Subsection C regarding the overtime. The
15 City was trying not to pay him overtime at the battalion
16 chief wages because a lot of the battalion chiefs have very
17 limited access to overtime, and this was something that
18 Mr. Lewis was going to have much access to in the City of
19 San Bernardino.

20 And there was another exception as to what claims
21 he was waiving, if I recall correctly, that he wasn't waving
22 any workers' compensation claims. That's not a benefit.
23 That's an exception to the claims.

24 It was our understanding that all benefits would be
25 included as part of this. That's why we didn't go through

1 and set out -- I didn't set out each and every benefit
2 because they're all included with the exception as stated in
3 the agreement.

4 BY MR. JENSEN:

5 Q That would include CalPERS benefit?

6 A Not as part of the exception, as part of what was
7 being granted.

8 Q So do you believe it's a breach of this agreement
9 for Mr. Lewis not to receive the CalPERS pension at the
10 battalion chief position?

11 MR. KENNEDY: Objection. Calls for a legal conclusion.

12 THE COURT: Sustained. CalPERS is not part of the
13 agreement. They have their position and the City and
14 Mr. Lewis had theirs. That's why I'm here.

15 BY MR. JENSEN:

16 Q Was it your understanding that the City would do
17 everything necessary to cause Mr. Lewis to receive the
18 CalPERS benefits at the battalion chief rates?

19 MR. KENNEDY: Again, your Honor, same objection as to
20 paragraph 9. We're getting off the term "benefits."

21 THE COURT: Sustained.

22 Sir, you had no reason to believe the City wouldn't
23 honor its side agreement?

24 THE WITNESS: I had every reason to believe that they
25 would either honor it, or we would be back in court.

1 THE COURT: Thank you.

2 MR. JENSEN: I have no further questions -- well, let me
3 just ask my client.

4 BY MR. JENSEN:

5 Q Okay. So was the -- in your discussion about
6 whether to accept having Mr. Lewis stay in the -- with the
7 duties, at least at some point, of fire captain but have the
8 pay as the battalion chief, was there discussion with him
9 about the whether the -- was it important to him to get the
10 CalPERS benefit at the battalion chief rate?

11 A Him being Mr. Lewis?

12 Q Mr. Lewis.

13 A Yes.

14 Q If there was some thought or concern -- was there
15 any thought or concern at the time that -- or risk that
16 Mr. Lewis was assuming in this agreement that he would not
17 receive the pension at the BC rate?

18 A My understanding was he was going to receive the
19 pension at the battalion chief rate because when we talked
20 about --

21 MR. KENNEDY: Objection. Move to strike. It's not
22 relevant.

23 THE COURT: Overruled.

24 THE WITNESS: When we talked about the high figure for
25 the lump sum payment, it was clear we were looking at

1 retirement issues and the difference between a battalion
2 chief and a fire captain, so we incorporated that into the
3 agreement. Looking at it now, we probably could have done a
4 better job, but we wanted to make sure that he had all the
5 benefits that they had at that time, if he would have been
6 promoted, and everything they would receive in the future.

7 BY MR. JENSEN:

8 Q In other words, the CalPERS issues was a material
9 issue in this agreement?

10 A Oh, absolutely.

11 Q And if you were to understand -- was Mr. Lewis
12 understanding there was any risk to him that he may not
13 receive that benefit at the BC rate?

14 MR. KENNEDY: Objection, your Honor. Calls for
15 speculation.

16 THE COURT: Sustained.

17 BY MR. JENSEN:

18 Q Was there any discussions between you and Mr. Lewis
19 that there was some risk that he might not receive the
20 CalPERS pension at the BC rate?

21 A I have to be careful. That was my client.

22 MR. LEWIS: I'll waive.

23 MR. JENSEN: It's up to you guys. I don't know the
24 content of it. If it's something you want to keep
25 confidential.

1 MR. KENNEDY: Well, your Honor, I think he's already
2 waived.

3 THE COURT: Well, yeah. He's here testifying.

4 BY MR. JENSEN:

5 Q In your discussions that you recall, would
6 Mr. Lewis have taken the settlement agreement if he was
7 apprised there was a higher risk of him not receiving the
8 pension at the BC rate?

9 MR. KENNEDY: Objection. Calls for speculation.

10 THE COURT: Overruled. Mr. Lewis already testified he
11 wouldn't have.

12 THE WITNESS: Having Mr. Lewis waive his attorney-client
13 privilege of the discussions we had, there was no risk we
14 were taking about not getting the retirement. And, no, he
15 would not have accepted if that was not included.

16 MR. JENSEN: No further questions.

17 THE COURT: Cross-examine.

18

19 CROSS-EXAMINATION

20 BY MR. KENNEDY:

21 Q So the PERS-ability of this additional -- this
22 settlement amount, being able to have PERS accept it and
23 included in his retirement was an important factor in
24 Mr. Lewis's mind and your mind in negotiations?

25 MR. JENSEN: Objection as to "settlement amount."

1 THE COURT: Overruled.

2 BY MR. KENNEDY:

3 Q Correct?

4 A There was a couple of questions in there.

5 Q Was the -- I'm just trying to recapitulate your
6 testimony.

7 In your mind and Mr. Lewis's -- as to the best of
8 your knowledge, Mr. Lewis's mind, the prospect that this
9 would be included in the calculation of his CalPERS
10 retirement, this additional settlement payment, was an
11 important factor?

12 MR. JENSEN: Objection as to "settlement payment."

13 THE COURT: Sustained. Why don't you say -- he's
14 talking about -- you're saying "settlement payment."
15 There's no payment.

16 MR. KENNEDY: Well, there is.

17 THE COURT: Because testimony was there was discussion
18 of lump sum payment and then this agreement.

19 BY MR. KENNEDY:

20 Q Well, the addition of the additional payment per
21 month, the delta between the captain and the battalion
22 chief, that that being included as part of his CalPERS
23 pension was an important consideration?

24 A One of many important considerations, yes.

25 Q You contacted CalPERS prior to negotiating the

1 agreement to confirm that would be the case; correct?

2 MR. JENSEN: Objection. Misstates his testimony.

3 THE COURT: Overruled.

4 BY MR. KENNEDY:

5 Q Did you?

6 A I had no contact with CalPERS. I need to correct
7 that. I don't believe I had any contact with CalPERS's
8 office. I may have had contact, and I can't say certainly
9 that I didn't talk to a specialist in the area of CalPERS
10 retirement.

11 Q Outside of CalPERS?

12 A Correct. Well, he may have been an employee
13 representative on -- I forget how they do it. One employee
14 representative is elected from different regions. He may
15 have been one of those or running for that position.

16 Q You mean a Board member?

17 A Yeah.

18 Q Who did you speak to?

19 A I don't recall his name.

20 Q When was this?

21 A It would have been around this time period.

22 Q Before or after the settlement agreement?

23 A Oh, it would have been before. I just couldn't
24 tell you how long before. There were different PERS issues
25 in my practice at that time.

1 Q Wasn't there a contact after settlement agreement
2 with someone in the State assembly that was related to
3 CalPERS, that you're aware of?

4 A By me?

5 Q Not by you?

6 A I don't recall doing that. I don't recall having
7 any contact with somebody in the State assembly.

8 Q The 1983 action was against whom?

9 A Originally it was filed against the chief, the fire
10 chief and the City.

11 Q And eventually?

12 A The City was dismissed and it remained against
13 Chief Pitzer.

14 Q Did you have any participation in the closed
15 session to approve the settlement agreement?

16 A Closed session with the City?

17 Q Correct.

18 A No.

19 Q In calculation of the lump sum as part of your
20 negotiations, you say this was a million-dollar settlement?

21 A In general terms, yes.

22 Q Was that the equivalent of what you roughly feel
23 the lump sum would have been had they used present-value
24 approach?

25 A I don't know if we did calculations on present

1 value like you would do for a jury. We did a rough estimate
2 of the difference between captain's wages and battalion's
3 wages. We looked at the percentage we thought he would
4 retire at, and then use, I think, the 20-year term after
5 retirement of still receiving the retirement benefits.

6 Q What period did you use for determining when he was
7 going to retire? How did you determine that?

8 A I want to say what you had looked at as retirement
9 from the department. To best of the memory, it was age 55
10 or somewhere around there.

11 Q So when you were setting the amount -- do you feel
12 that the -- the payment through the payroll process on a
13 monthly basis, that delta, that was another version of an
14 alternative to the lump sum; right?

15 A When we did lump sum, we did it as an estimate of
16 any back wages owed, which would be the difference between
17 captain and battalion chief, any front wages owed until he
18 retired which would be the difference between captain and
19 battalion chief, and then retirement going forward. And we
20 used the 20-year mark as far as the difference between
21 retiring under captain's wages and battalion wages.

22 Q And in that calculation, the agreement was issued
23 in 2007?

24 A Correct.

25 Q And did you have a projection of how low -- or a

1 discussion of how much longer Mr. Lewis was going to work
2 for the City or for the department?

3 MR. JENSEN: Objection. Asked and answered.

4 THE COURT: Retirement was 55 years of age?

5 THE WITNESS: I believe that's what we were looking at.

6 BY MR. KENNEDY:

7 Q How old was he then?

8 A I don't recall.

9 Q Just an alternative way of asking, did you have an
10 idea of how much longer he would work if it was going to be
11 using the process of an increase to his pay or compensation?

12 A We did an estimate. I couldn't tell you what that
13 was because we were looking at -- as I said, we were looking
14 at front wages. So that lump sum would include those front
15 wages.

16 Q I'm just asking you -- I'm trying to get an idea
17 how far was that projected? How many years ahead from 2007
18 was that being projected?

19 A Until he turned 55, I believe. I couldn't tell you
20 as I sit here right now.

21 Q What's his age?

22 So whatever that number of year -- whatever that
23 number of years was, that was the determiner of the
24 calculation of the lump sum settlement?

25 A That was at least one version of it, yes.

1 Q So why -- you say the City -- I guess the City
2 opted for the method of paying him the higher compensation
3 for the fact and projection to age 55 instead of lump sum
4 because of the cost to them?

5 A I couldn't tell you why they decided to go that
6 way.

7 Q I thought you said that -- well, maybe I
8 misunderstood you. I thought you said that when they
9 realized the cost?

10 A That was my impression that when they saw this
11 figure that they realized -- they were going to be paying a
12 figure that large to a current employee.

13 Q What was that figure?

14 A My best memory was 890,000. It was under a
15 million. But just so I'm clear, there was a payment --
16 settlement payment made, but not to Mr. Lewis. There was a
17 \$75,000 lump sum to the union. I don't want to confuse
18 issues. Someone said there was no payment and that's not
19 necessarily true.

20 Q This calculation indicated in 2007, based on
21 Mr. Lewis's birthday, he was 56.

22 Is there a -- does that refresh your recollection,
23 or do you want to revise your projection? He retired in
24 2012. Does that help you at all?

25 A I thought he retired in 2012 on disability.

1 Q Correct.

2 A I don't know his age today, and I don't know his
3 age at that time. I could be wrong about the 57 mark, but
4 that's what -- when I was doing the calculation, I think
5 that's the number I was using.

6 Q You worked -- those calculations, you were working
7 with Mr. Lewis, too?

8 THE COURT: He just said 57. Earlier you said 55. Do
9 you remember what age you were looking at?

10 THE WITNESS: The best of my memory was 55.

11 And was I working with Mr. Lewis on it? I don't
12 believe so. I believe I was drafting a settlement
13 statement, whatever Judge Prada required.

14 BY MR. KENNEDY:

15 Q But the concept was that he wasn't -- he was going
16 to stay compensated only at the rate of a fire captain,
17 there was going to be a lump sum payment given to him there
18 and that would cover the delta between the captain and the
19 battalion chief; correct?

20 A That would cover the -- it was going to be a lump
21 sum that would cover the delta, as you call it, between the
22 captain and battalion chief retroactively, going forward
23 into retirement and 20 years into retirement.

24 Q But there was -- about the age, let's move off the
25 age. There was an finite period of years you were

1 projecting before his retirement?

2 A I believe I used five years. So you had back
3 wages, which was one or two years by that time; five years
4 forward pay -- front pay and then retirement payment.

5 Q This agreement didn't promote Mr. Lewis into a
6 battalion chief, did it?

7 A No. He never -- on a permanent basis, never became
8 battalion chief.

9 Q Did this agreement constitute a certification of
10 his acting in the capacity of a battalion chief?

11 MR. JENSEN: Objection. Lacks foundation.

12 THE COURT: Overruled.

13 THE WITNESS: Can you repeat the question? I'm sorry.
14 I had a phone call that distracted me.

15 BY MR. KENNEDY:

16 Q Does that agreement constitute a statement or
17 agreement that Mr. Lewis would be acting in the capacity of
18 a battalion chief?

19 A I don't believe there's any provision in here that
20 says he will be an acting battalion chief. However, part of
21 the summary judgment was based on him being in that
22 capacity -- that he acted in that capacity without issue.

23 Q When you use the term "acting," you're -- are you
24 still counsel for the union?

25 A I am.

1 Q And is that 891?

2 A Yes. San Bernardino City Professional Fire
3 Fighters Local 891.

4 Q Thank you.

5 That's rank and file; right?

6 A That is captain and below.

7 Q And above captain, battalion chief is management?

8 A They're supervisors.

9 Q Boss and superiors?

10 A They wouldn't be superiors.

11 Q Battalion chief as management, there's a 40-hour,
12 56-hour when you're talking about overtime.

13 Are you familiar with that? There's a limited
14 amount of overtime that a battalion chief gets versus what a
15 captain gets?

16 A Yes. I don't want to correct you if it's not
17 needed. In the fire safety unit, there's 40-hour positions
18 and 56-hours positions. In the battalion chief ranks,
19 there's 40-hour position and, at that time, 56-hour
20 positions also because there was on-duty battalion chiefs
21 and they would also -- I don't know if at that time they
22 were, but currently, the battalion chief are allowed to go
23 out on strike team and earn overtime. I don't know if that
24 answers your question.

25 Q Currently. As of when?

1 A I couldn't tell you when that started. I know
2 because it's part of bankruptcy case.

3 Q But since the bankruptcy case?

4 A Oh, at least.

5 Q But not before?

6 A Oh, I think it's before bankruptcy that they've
7 been allowed to earn overtime on strike teams. I don't know
8 if they were being assigned regularly to strike teams.

9 Q Oh, I see. I see what you're saying. If there's a
10 strike?

11 A Strike team. If there's a brush fire or forest
12 fire in Santa Barbara, San Bernardino sends a strike team
13 which may be commanded by a battalion chief or fire captain.
14 They go fight that fire. They're on 24-hour shifts for a
15 number of days and then come back. That's what a strike
16 team is.

17 Q That's not scheduled overtime?

18 A That's not scheduled overtime, no.

19 Q The difference here is the settlement agreement and
20 scheduled overtime was basically overtime for the fire
21 captain?

22 A Right.

23 (Interruption in the proceedings)

24 MR. KENNEDY: We're still in session.

25 MR. JENSEN: Can I ask --

1 BY MR. KENNEDY:

2 Q One of the questions. You talked about Mr. Pitzer?

3 A Pitzer, P-i-t-z-e-r.

4 Q He was a fire chief at the time that Mr. Lewis had
5 the lawsuit?

6 A Yes.

7 Q There was some discussion in Mr. Lewis's testimony
8 that there was animus between Mr. Pitzer and Mr. Lewis?

9 A I think there was animus by Mr. Pitzer towards the
10 union and those acting on behalf of the union.

11 Q And Mr. Lewis was at one time was head of the
12 union?

13 A He was president and I believe prior to that the
14 secretary or treasure, which is the number two position.

15 Q You indicated before that as far as the agreement,
16 that Mr. Pitzer did not want Mr. Lewis to be part of his
17 management team?

18 A I think that's a fair statement and also one of the
19 grounds as why we pursued it.

20 Q Can you explain what you mean by that was one of
21 the grounds?

22 A It was Mr. Pitzer's ultimate decision not to
23 promote Mr. Lewis to battalion chief that gave rise to the
24 lawsuit because he had skipped over Mr. Lewis when Mr. Lewis
25 was number one on the test. And then as discovery was

1 conducted in the case, we found a significant amount of
2 evidence that Mr. Lewis was being rated lower than, I think
3 it was Mr. Moon, who got promoted because of union
4 activities and positions taken by the union and some
5 animosity towards -- it was and still is a very
6 confrontational relationship between labor and management.

7 Q That was your position in the litigation?

8 A That was position in litigation. I believe that
9 was the position of the court in the second summary judgment
10 ruling.

11 Q What would have been different had Mr. Lewis --
12 what would have been different if Mr. Pitzer didn't want him
13 acting as battalion chief for him, right, didn't want him on
14 management team?

15 A Two different things there, Counsel. One is,
16 Pitzer didn't have a problem with him in an acting battalion
17 chief role. He said that Mr. Lewis had done it on numerous
18 occasions, and there was no issues. So the function of
19 being in an acting battalion chief role, he didn't have a
20 problem with. Mr. Lewis being a part of the management
21 team, was a huge item that he did not want.

22 Q Thank you.

23 How long have you been counsel for 891?

24 A Too long. I believe I started legal services for
25 891 about 20 years ago.

1 Q And has it been in San Bernardino County, City of
2 San Bernardino all that time?

3 A 891?

4 Q Correct. Has it been -- has 891 been part of the
5 City of San Bernardino?

6 A My representation of 891 was against City of
7 San Bernardino that entire time.

8 Q You're familiar with the requirements -- we use the
9 term "acting." When you say you have him acting, are you
10 familiar with the requirements under the MOU or the Charter
11 for acting battalion chief or acting in a higher capacity?

12 A The requirements have changed over the years. I
13 believe there is a provision in the Charter or Civil Service
14 Rules that is addresses acting, after so many shifts you get
15 the acting pay.

16 There was also -- through what's now part of an old
17 MOU, there was constant manning where they tried to make
18 sure each position of the lower ranks was done. The City
19 was tried to minimize the times, from my understanding, that
20 there would be a captain in an acting BC role. I don't know
21 if that answers your question. To say that I'm familiar
22 with the requirements, there's been different requirements
23 over the years.

24 Q In negotiating the MOUs, you've participated in
25 those?

1 A On some level, yes.

2 Q As far as the significance of acting being in the
3 Charter is because it relates in pay; right?

4 A I couldn't tell you the significance of why it's in
5 the Charter because I think that happened before I started
6 representing the union. As far as why it would be in the
7 MOU, it would not just be paid, but also because it would
8 give you an upper hand, per se, in promoting to battalion
9 chief.

10 Q And the fire chief -- if someone is an -- I'm
11 sorry.

12 You know what a personal action form is; right?

13 A Yes. In general, different cities call them
14 different things. I'm not sure what San Bernardino calls
15 them. They might call it personal action form.

16 Q You're familiar with the fact that -- are you
17 familiar with the fact that to function in an acting role
18 requires a personal action form filled out and approved by
19 the City?

20 THE COURT: I don't know if that's the case.

21 THE WITNESS: Neither do I.

22 MR. KENNEDY: I'm just asking if he is familiar with
23 that.

24 BY MR. KENNEDY:

25 Q Are you familiar with any informal arrangement

1 where, let's say, a secretary or a clerk at a fire station
2 would keep a notation of somebody moving -- doing a specific
3 assignment that might be at a higher level and then
4 qualifying that somehow for additional pay? Is that part of
5 the MOU?

6 MR. JENSEN: Objection. That's vague and ambiguous.

7 THE COURT: Overruled.

8 THE WITNESS: I don't know that a secretary would do
9 that, per se. There has been different staffing softwares
10 within the City of San Bernardino. I think they use
11 TeleStaff. So when somebody serves in a particular role --
12 the example you're using, being an acting BC, it would be
13 computerized so there's a data entry for that.

14 In 2006, there was somebody called FSLA
15 statistician that would be tracking those entries, not
16 necessarily a secretary. So there would be a tracking of
17 that. Employees would track their own because if they
18 weren't getting acting pay -- if you had to do five shifts
19 to qualify, they all pretty much watched whether they were
20 getting those shifts.

21 Q Once they committed those five shifts, they
22 qualified for additional pay?

23 A That's my understanding. I'm not quite when that
24 all that took place. In general, yes.

25 Q So the purpose of this tracking was to see if

1 they -- they wanted to make sure that once they fulfilled
2 that minimum, they would submit that and get that extra pay?

3 A I think on the employees standpoint, they would
4 track that to make sure they get that extra pay or put it on
5 their resume for promotion. And I think the City used it as
6 a way to track so if somebody had worked four shifts --
7 assuming the number is five, that if somebody worked four
8 shifts, they would look at taking him out of that position
9 so he wouldn't get the pay as a cost savings.

10 MR. KENNEDY: No other questions.

11 THE COURT: Redirect.

12
13 REDIRECT EXAMINATION

14 BY MR. JENSEN:

15 Q You said there was discussions about Mr. Lewis's
16 acting position in the context of the lawsuit and summary
17 judgment.

18 Can you explain that?

19 A One of the things -- the defense to us saying it
20 was a violation of the First Amendment Right was that they
21 tried to minimize Mr. Lewis's performance, of Mr. Moon was
22 better at certain things than Mr. Lewis. And through
23 deposition questioning, we were able to establish there were
24 certain times that Mr. Lewis worked as an acting battalion
25 chief and at the City -- the people doing the ratings,

1 including Mr. Pitzer, had no issues with him as the acting
2 battalion chief and they would use him in that capacity in
3 the future.

4 That became one of the determining factors for the
5 judge denying their summary judgment saying it's under the
6 discrimination context of pretext. You can say this is why,
7 but the evidence shows the reasons aren't necessarily true
8 or they're questionable. That's the context.

9 Q Can you describe the nature of the evidence that
10 you found of his performance at a specific fire incident in
11 acting as a battalion chief?

12 A I believe they were saying his fire ground command
13 on different incidents was less than Moon's. So we looked
14 at his evaluations. And, normally, I believe I did in this
15 case, you would ask the person you're deposing, "This is
16 your reason. That seems for a fire captain or an acting BC
17 that this is a significant issue that would be addressed in
18 performance evaluation or documented." They would answer
19 yes. Bringing forward the performance evaluations,
20 Mr. Lewis had -- were all outstanding. He wasn't rated
21 there. "Can you give me any specific examples, since it's
22 not documented, where this was?" They were not able to do
23 that.

24 Q So, basically, there was no claims that is
25 Mr. Lewis was not capable of performing the battalion chief

1 position?

2 A No.

3 Q In that documentation, did they ever use the term
4 "acting BC"?

5 A I don't know if in the documentation because I
6 don't remember the documents. I know in the depositions
7 that they acknowledged he was an acting BC, and they didn't
8 have any problems with his performance in that capacity.

9 Q Basically, there was recognizing he was acting --
10 he was in the acting BC position without calling him an
11 acting BC, is that fair to say? Without documenting it in
12 the paperwork that he was acting BC?

13 A In the depositions, they acknowledged he had been
14 in the capacity of acting BC. I can't sit here today and
15 tell you whether it was documented or not.

16 Q Another question is that you mentioned that BCs can
17 earn over time; is that correct?

18 A That is correct.

19 Q Is it in the similar -- you mentioned at a certain
20 point there was 4056 for fire captains and 4056 for BCs.

21 Can you explain that a little bit?

22 A Yes. There was -- in the line official for
23 captains, engineers and fire fighters, there is limited
24 administrative roles. There's a training captain and arson
25 investigation captain, and there might have been one more at

1 the time that were 40 hours. That's why you see -- I don't
2 if the MOU is in evidence, but you'll see the provision for
3 40 hours. And then for the most part, suppression is all
4 56.

5 Along the same lines of battalion chiefs, there
6 were certain battalion chiefs that had a 40-hour a week
7 position. One might have been the fire marshal. I don't
8 know if there was a trained BC in 2006 or not. Those would
9 be ones that were 40 hours a week. And then you would have
10 the 56 hours suppression battalion chiefs that would
11 actually go out to the fires, that would -- you know, if
12 there's a structural fire, they would actually go to the
13 fire and be present there. They were able to work because
14 they're suppression and not a managerial exception under
15 FSLA. They got overtime.

16 Q So in that fire suppression, BC's could get
17 overtime?

18 A Correct. There might have been roles that the
19 40 hours could have, but I'm not aware of any.

20 Q There was a discussion about the City being
21 dismissed out of the complaint.

22 Was the City a party to the settlement negotiation?

23 A Yes, because they were responsible for any damages
24 payable from Mr. Pitzer because he was -- under certain
25 Government Code provisions, they have to indemnify until

1 they find he was outside of the scope of his duties, that
2 City Council could then pay punitive damages. I don't know
3 if that's -- the City was responsible for, if anything, the
4 fines of Mr. Pitzer.

5 Q And the City was involved in all of the
6 negotiations regarding the settlement agreement?

7 A Through their counsel, that I'm aware of. I don't
8 meet with the mayor. I meet with Mr. Odlum, who was the
9 hired attorney for the City and all defendants.

10 Q I just want to briefly -- you mentioned something
11 about Mr. Moon's qualifications and Mr. Lewis's
12 qualifications.

13 Were there objective testing results that compared
14 the two of them?

15 MR. KENNEDY: Relevancy.

16 THE COURT: What's the relevancy?

17 MR. JENSEN: Just about qualifications.

18 THE COURT: It's not relevant. Sustained.

19 BY MR. JENSEN:

20 Q You mentioned some of the requirements of acting
21 have changed over the years.

22 Is it true it is over -- did things change over
23 Mr. Lewis's tenure from 2007 to 2012, if you know?

24 A I couldn't tell you who went. A lot of it was the
25 City trying to limit overtime, which obviously they've been

1 in bankruptcy since 2012. So as a representative of the
2 union, in those bankruptcy proceedings, I know the rules
3 have changed because I'm looking at them. I couldn't right
4 now go back and differentiate when those changes happened.

5 Q So is it fair to say that the principal reason that
6 Pitzer didn't want Lewis to be a battalion chief was solely
7 because of his union activities?

8 MR. KENNEDY: Objection. Relevancy.

9 THE COURT: Overruled.

10 THE WITNESS: I believe it was his union activities and
11 also --

12 MR. KENNEDY: Calls for speculation.

13 THE COURT: Sustained.

14 I've heard lengthy testimony about the interaction
15 between the parties.

16 BY MR. JENSEN:

17 Q Just one last question about -- is it your
18 experience that every time an individual is an acting BC
19 position, there's a personal action report or other
20 documentation written to describe that?

21 A My experience with the City of San Bernardino Fire
22 Department is that does not happen.

23 Q And so is there any documentation about when
24 Mr. Lewis was in an acting BC position after the settlement
25 agreement where that documentation would occur. If

1 anywhere?

2 A Can I explain? One of the things that has happened
3 is we have filed a FLC Act against the City. We discovered
4 there's records that were missing. Some of the records were
5 maintained by the FSLA statistician informally at the
6 station he was assigned to. Some were kept by a secretary
7 at the fire department. Some were kept by the City as far
8 as payroll sheets.

9 So your question of where those records would be,
10 the answer would be, one, I'm not sure they would exist if
11 it was one day he was in an acting capacity. If it was four
12 or five days, you would have to look at all these different
13 files to find out who worked what, when, and where.
14 Sometimes they matched up with the computer and sometimes
15 they didn't because we've gone through records on a
16 different action. So I can tell you my experiences is it's
17 not easy findings records with the City.

18 Q Just one last question.

19 There's a payroll slip of Mr. Lewis's. I believe
20 it's in the --

21 THE COURT: I have it. Exhibit 30 is two pages.

22 BY MR. JENSEN:

23 Q So there is this BC pay there separately
24 documented.

25 In your experience, is that similar -- or how

1 acting pay would be described in a payroll?

2 MR. KENNEDY: Objection. Vague as to the term
3 "similar."

4 THE COURT: Overruled.

5 THE WITNESS: I do not know.

6 MR. JENSEN: No further questions, your Honor.

7

8 RECROSS-EXAMINATION

9 BY MR. KENNEDY:

10 Q Keep the exhibit in front of you, sir, the BC pay.

11 A Yes.

12 Q Is that -- would you consider that to be an
13 indication of acting pay?

14 A I do not know. The City uses various designations.

15 Q Have you ever seen a paycheck with acting pay from
16 the fire department?

17 A I want to say yes because I saw every paycheck for
18 a three to four year period. Would I be able to tell you
19 what it says as far as acting pay, no.

20 Q The settlement agreement, the payments to the
21 settlement agreement, monthly payments, the BC pay, is that
22 for acting?

23 A No. He was supposed to receive BC pay whether he
24 was in the acting capacity or not. They could promote him
25 to BC, and he would have received that same pay. So I

1 couldn't tell you there was -- he didn't have to be in the
2 acting capacity to get that pay.

3 Q As far as the record maintenance and all that you
4 testified to, the City, I would assume, would have a
5 different view of that quality of documentation?

6 MR. JENSEN: Calls for speculation.

7 THE COURT: Overruled.

8 THE WITNESS: I don't believe the City would disagree
9 with my analysis of their record keeping.

10 BY MR. KENNEDY:

11 Q Part of the problem with Chief Pitzer was, as part
12 of this lawsuit, was you felt concerning Mr. Lewis and even
13 broader than that, they undertook -- they structured his
14 time and service to keep him out of or minimize their
15 receipt of acting pay. That's part of the allegation;
16 correct?

17 A In the lawsuit?

18 Q Yeah?

19 A No, I don't believe so.

20 Q I thought you indicated that once they got up to
21 the threshold for acting that they would suddenly switch
22 them out or swap them out?

23 A Do I believed that happened, generally, with the
24 San Bernardino Fire Department?

25 Q I'm talking about Mr. Lewis?

1 THE COURT: He wasn't talking about Mr. Lewis. He said
2 just in general, and correct me if I'm wrong, but the
3 testimony was that the employees kept track to make sure
4 they got paid if they worked the five shifts. And the City
5 kept track because as a cost-saving measure, if you had four
6 shifts, they would take you off shift.

7 THE WITNESS: Yes. I don't know if that happened with
8 Mr. Lewis.

9 THE COURT: The testimony as I heard it and have in my
10 notes it was a general question. It wasn't specifically to
11 Mr. Lewis.

12 THE WITNESS: You are correct.

13 BY MR. KENNEDY:

14 Q There are certain functions that without acting in
15 a capacity that would mimic or overlap between fire captain
16 and battalion chief, certain types of functions?

17 A Yes. For instance, the first truck to -- I'm
18 sorry. The first piece of equipment with a captain on it is
19 usually the engine that arrives at the fire. He's in
20 commanding control of that fire until the BC comes and
21 relieves him. So is there a cross-over function, yes.

22 Q Is that considered acting?

23 A No. That would be considered a captain. There
24 would be times when a BC is not available that the captain
25 would maintain control of that scene.

1 Q That's part of a captain's duties?

2 A It's part of a captain's duties, and it's part of a
3 battalion's duties. They overlap.

4 Q There is talk about the overtime. There is a
5 distinction between the types of overtime and the accrual of
6 overtime rights between a captain and a battalion chief?

7 MR. JENSEN: Objection. Asked and answered.

8 THE COURT: Overruled.

9 THE WITNESS: Could you say it one more time?

10 BY MR. KENNEDY:

11 Q In your settlement agreement, you have --

12 A Yes.

13 Q In 2C is that -- 2B says he'll get the pay and
14 benefits of a battalion chief, except for 2C. And 2C is he
15 shall get an overtime rate as a captain?

16 A Yes. I was trying to find it. I'm looking at it
17 2-3.

18 Q There's a distinction between this agreement, I
19 guess. You recognize a distinction between the overtime pay
20 that would be given to a battalion chief and given to a
21 captain?

22 A I'm not -- there is a difference in the ability of
23 a captain to earn overtime from a BC. Captains have more
24 access to it. BCs still have access to it, but not as much
25 as a fire captain, in a general sense.

1 Q So in this respect, Mr. Lewis was considered a
2 hybrid between getting some of the increment to cover some
3 of the compensation rate for a battalion chief, but also
4 getting a right to accrue and get overtime with the
5 captains?

6 A Under the FSLA, the fire captain had to be paid
7 overtime for anything in excess of whatever the FSLA
8 designated period was for fire that was between seven and
9 28 days. And there's an hour calculation under the FSLA.
10 There is no discretion to give him overtime. They have to
11 pay him overtime. A battalion chief, because he may take on
12 executive or a management role, would have some functions
13 that are exempt from overtime, while other function are not
14 exempt. I don't know if that answers your question.

15 Q It does. You're relating that on your 20 years of
16 experience with the City of San Bernardino negotiations?

17 A I'm basing that on my knowledge of the Fair Labor
18 Standard Act.

19 Q And San Bernardino?

20 A Yes.

21 MR. KENNEDY: No further questions.

22 THE COURT: What were the negotiations regarding the
23 fact that overtime was going to be given at the captain
24 rate, not a battalion chief rate?

25 THE WITNESS: The City was concerned that if he was paid

1 overtime at a battalion chief's rate for all overtime hours,
2 that he would make an extreme amount of money more than a
3 normal battalion chief. And I think there was some
4 apprehension about a current employee that sued the City
5 making more than all the other battalion chiefs. And
6 because -- as I just went over, he has mandatory overtime
7 hours, where battalion chiefs have some that are mandatory,
8 some that are not. They didn't want to provide him with --
9 that was the one benefit that was exempt.

10 THE COURT: Because he was still going to be doing fire
11 captain duties, he has more access to overtime than a
12 battalion chief would?

13 MR. JENSEN: Correct.

14 THE COURT: Mr. Jensen, do you have any questions based
15 on my questions?

16
17 FURTHER REDIRECT EXAMINATION

18 BY MR. JENSEN:

19 Q He was still doing fire captain duties and
20 therefore, he would be paid overtime, potentially or
21 required to be paid overtime.

22 So the issue, I believe, was his duties limited to
23 just the fire captain duties or was he prevented from acting
24 in a BC position by this agreement?

25 A No. My understanding is that he still performed in

1 an acting capacity as times, but his primary job duty was
2 fire captain. He did not get promoted to a permanent,
3 full-time battalion chief position. Although, he did serve
4 in the acting battalion chief capacity. I couldn't tell you
5 a number, but he did do it after the settlement agreement.

6 Q Just one more question: How would this disability
7 play into the circumstance when he was performing no duties
8 at all after being disabled in that last year with respect
9 to his CalPERS pension?

10 MR. KENNEDY: Objection. Lacks foundation. Asks for a
11 legal conclusion.

12 THE COURT: Do you know?

13 THE WITNESS: I don't.

14 THE COURT: Overruled. The answer is, "I don't know."

15 MR. JENSEN: No further questions.

16 THE COURT: Any recross?
17

18 FURTHER RECROSS-EXAMINATION

19 BY MR. KENNEDY:

20 Q Can you describe for us 4850 pay, what that is?

21 A What my knowledge is?

22 Q You have experience in it, don't you?

23 A I have limited experience. If I can give you the
24 same warning I give all my clients, 4850 is a work comp
25 issue. I don't like doctors. I don't like attorneys. I

1 don't like when they combine together. I try to stay out of
2 the workers' comp field.

3 My understanding of 4850 is it's workers' comp for
4 public safety employees. It can go for one year. It's at
5 the same rate of pay of your current assignment, but the
6 City cannot lower it. After that one year, you need to find
7 a disability retirement attorney.

8 Q You mentioned one thing -- you reminded me of
9 something about the workers' comp.

10 Under this agreement, Mr. Lewis retained the right
11 of rank and file of workers' comp?

12 A I don't know -- what we weren't waving -- to answer
13 your question, I don't know if -- as you phrase it, my
14 understanding, and I'd have to look at the agreement, was
15 there's certain workers' comp claims that most fire fighters
16 have from different presumptions and different injuries
17 through the years. Because they were doing a release, I
18 think there's a release in here.

19 Q Yes, there is.

20 A We wanted to make sure that any workers'
21 compensation claims were not being waived. Additionally, in
22 order to waive those, you would have to go through a
23 Workers' Compensation Appeals Board, and we didn't want
24 that.

25 Q It also creates a distinction between captain and

1 the battalion chief position. If he had been promoted to
2 battalion chief, would he have different benefits and rights
3 under the workers' comp?

4 A I don't believe so because battalion chiefs still
5 falls under Public Safety Employee Clause.

6 MR. KENNEDY: No further questions, your Honor.

7 THE COURT: Thank you, sir. You are released.

8 We'll be in recess for an hour.

9 (Lunch recess)

10 THE COURT: On the record.

11 Please raise your right hand.

12
13 WENDY McCAMMACK,
14 called as a witness, and having been first duly sworn by
15 the Court, was examined and testified as follows:

16 THE WITNESS: I do.

17 THE COURT: State your full name and spell your last
18 name for the record.

19 THE WITNESS: Wendy McCammack, M-c-c-a-m-m-a-c-k.

20 THE COURT: Thank you. Counsel?

21
22 DIRECT EXAMINATION
23 BY MR. JENSEN:

24 Q Briefly, what is your profession?

25 A I'm licensed -- federally and state licensed tax

1 preparer, business owner. I don't know what you mean by
2 profession. We're three small businesses.

3 Q Did you serve on the City Council of the City of
4 San Bernardino?

5 A I did for 13 years.

6 Q Did you serve on any committees?

7 A I was the Chair of Ways and Means. I was on the
8 mayor's budget ad hock committee. I was appointed by the
9 mayor twice by two different mayors. And I was on the fire
10 ad hock committee for a period of time. I also served on
11 legislative review for a short period of time and a myriad
12 of other committees that the mayor and council --

13 Q Did you become familiar with the policies and
14 practices of the fire department personnel management?

15 A I did.

16 MR. KENNEDY: Objection. Vague.

17 THE COURT: Overruled.

18 BY MR. JENSEN:

19 Q How did you come to get that familiarity?

20 A Before I became a City Council member, I went to
21 every single department head in the City and did my due
22 diligence as far as what am I getting myself into? What do
23 I need to know to make appropriate decisions on both the
24 management and employee side because I knew that the City
25 had a history of management versus employee.

1 I learned a lot through being on the Personnel
2 Committee. I learned a lot from the City Attorney's office
3 because there were questions that would come up based on
4 agenda items that I needed knowledge of. And between the
5 fire chiefs, the assistant chiefs, battalion chiefs,
6 captains, I would get more and more information.

7 Q Did you become aware of some issues regarding the
8 people promoting into battalion chief?

9 A I was well aware about many different promotion
10 issues within the fire department through my knowledge and
11 my personal conversations with not only fire chiefs and
12 assistant chiefs, but with union leadership. I'm always the
13 one that wants to have both sides of the story before I make
14 a decision.

15 Q When did you become familiar with the dispute
16 regarding Mr. Lewis?

17 A He called me and told me he felt there was some
18 unfair civil service practices or at least biased civil
19 service practices. Richard was not the first --

20 MR. KENNEDY: Objection, your Honor. I move to strike.
21 Nonresponsive.

22 THE COURT: Overruled.

23 THE WITNESS: Richard was not the first employee to have
24 conflicts with management and testing procedures, testing
25 policies, consistency, fairness across the board.

1 MR. KENNEDY: Objection, your Honor. I move to strike.

2 The question was "when."

3 THE COURT: His question was limited to this situation.

4 THE WITNESS: I'm sorry. Would you repeat the question?

5 THE COURT: You've already answered it. Move on.

6 BY MR. JENSEN:

7 Q When did the issue of resolving Mr. Lewis's dispute
8 first come to your attention?

9 A I believe it was with the City manager and the City
10 Attorney. I was told --

11 MR. KENNEDY: Objection. Nonresponsive. That question
12 was when, and now she's getting --

13 THE COURT: Sustained.

14 BY MR. JENSEN:

15 Q So --

16 A I was told --

17 THE COURT: Wait for a question.

18 BY MR. JENSEN:

19 Q Let me ask you a question: Who brought the
20 resolution of Mr. Lewis's dispute to your attention?

21 MR. KENNEDY: Objection. Vague. Resolution?

22 THE COURT: Sustained.

23 BY MR. JENSEN:

24 Q What were the circumstances in which the resolution
25 or the negotiation of the resolution come to your attention?

1 MR. KENNEDY: Same objection.

2 THE COURT: Let's call it a settlement agreement. It's
3 just that there are resolutions in evidence which are
4 different.

5 BY MR. JENSEN:

6 Q To be clear, what were the circumstances of how the
7 negotiation for the settlement agreement came to your
8 attention?

9 MR. KENNEDY: Objection. Relevancy.

10 THE COURT: Overruled. You can answer.

11 THE WITNESS: I was told by the City manager and, I
12 believe, the City Attorney, that we may have a potential
13 lawsuit on our hands. And as the City Council, it was our
14 responsibility to be aware of those lawsuits and know the
15 facts and circumstances before we made an agreement or
16 settlement.

17 Richard had already explained to me what he thought
18 the issues were. And the City manager and the City Attorney
19 complained to me what they thought the issues were. During
20 those conversations, it was my opinion that this was
21 political.

22 MR. KENNEDY: Objection, your Honor. I move to strike
23 as nonresponsive.

24 THE COURT: Sustained. The last part is stricken.

25 ///

1 BY MR. JENSEN:

2 Q What were the terms that were discussed in the
3 negotiation of the settlement agreement?

4 MR. KENNEDY: Objection. Calls for hearsay.

5 THE COURT: Overruled.

6 MR. KENNEDY: Relevancy as far as her knowledge, intent.

7 THE COURT: Right. Limited to what she was involved
8 with.

9 BY MR. JENSEN:

10 Q That's right. What were the terms of the
11 negotiation that you were involved with?

12 MR. KENNEDY: Objection as far as relevancy as far as
13 her individual knowledge, involvement is irrelevant to any
14 issue in this case, including the agreement.

15 THE COURT: Overruled. One of the defenses is what the
16 City did in this case. I'll allow that and any statement
17 I'm going to receive is administrative hearsay.

18 You may answer.

19 THE WITNESS: Thank you. I was of the belief that
20 Richard was going to be promoted to BC. I knew the policies
21 and the testing procedures up to that point. I was not
22 present at his testing nor any other employees' testing, but
23 I did believe that Richard was going to be promoted to BC.

24 When I was told about this by the administration
25 about the controversy and the disagreement on Richard's

1 part, my question then was, "Why don't you just promote
2 him?" If he was entitled and capable, why not just promote
3 him. The conversation that I had with the City manager and
4 City Attorney was that if he is not promoted, I believe it's
5 retribution, political retribution.

6 MR. KENNEDY: Objection. It's hearsay. It's
7 nonresponsive, nor is it relevant.

8 THE COURT: She's just giving background facts about
9 what happened in her conversation.

10 The objection is overruled.

11 BY MR. JENSEN:

12 Q And the terms?

13 A And --

14 MR. KENNEDY: There's no question in front of the
15 witness.

16 BY MR. JENSEN:

17 Q What were the terms that you had personal knowledge
18 of the negotiation and settlement agreement?

19 A That Richard was to be promoted. That was the
20 original conversation. There were several conversations
21 prior to going into closed session.

22 Q Without discussing what happened in closed session,
23 was there subsequently an agreement that was brought into
24 open session?

25 A I don't recollect a resolution of the agreement

1 that your Honor is referencing. But I also know that that
2 agreement was available through Public Records Act request.
3 I also know that once Richard was paid as a BC, because
4 that's the rate of pay that was listed as a public employee
5 that was also public information.

6 Q Let me ask you, was the closed session item
7 approved in open session?

8 A It was not approved in open session that very day.
9 It couldn't have been. Both sides -- both sets of counsel
10 had to have another conversation before that could have been
11 approved in public session, and that happens with all of the
12 contracts were agreed upon.

13 Q Was it subsequently approved --

14 A I believe it was.

15 MR. KENNEDY: Objection. It's mischaracterizes her
16 prior testimony. She just said she had no recollection
17 about this agreement ever being presented in open session.
18 Now it's an anecdotal, "I believe it was."

19 I'd strike as lack of competency, lack of
20 foundation. I don't know what it's based on, but it could
21 very well be based on hearsay.

22 MR. JENSEN: Can we ask her to clarify?

23 THE COURT: Overruled.

24 BY MR. JENSEN:

25 Q Just clarify to try to answer.

1 THE COURT: Do you remember or not?

2 THE WITNESS: I do remember the conversation happening
3 in open session, but I know it was quite a distance past
4 that day when it when it was -- in closed session by the
5 City Council to pay Richard as a battalion chief.

6 MR. KENNEDY: Your Honor, I move to strike as being
7 vague. And the reason is because a conversation -- the
8 testimony was the agreement itself was never approved in
9 open session, never presented in open session. And now
10 we're talking about a conversation that may or may not have
11 occurred in open session.

12 THE WITNESS: I didn't say that.

13 THE COURT: Ma'am, you don't answer that; I do.

14 Basically, witnesses, as they testify in cases, add
15 more stuff, remember more stuff. I don't know what this
16 witness -- she's telling me about some conversation.

17 Overruled.

18 BY MR. JENSEN:

19 Q Is it your recollection that subsequently the
20 settlement agreement was brought into and approved in open
21 session?

22 A My recollection is that, publicly, we had a
23 conversation about Richard Lewis being paid as a BC,
24 publicly. Was the agreement in front of me? We were given
25 stacks this high every two weeks.

1 THE COURT: For the record, that's a foot.

2 THE WITNESS: I'm sorry. Stacks of agenda items 12
3 inches high. Do I remember seeing that agreement in that
4 document, I do not. I do remember the conversation publicly
5 in terms of during another budget discussion item about
6 personnel costs and that Richard was being paid as a BC when
7 we were discussing how many BCs were within the frame
8 reference of budget of captains and that kind of thing. I
9 absolutely remember it being discussed publicly. I can't
10 tell you the date.

11 BY MR. JENSEN:

12 Q Your recollection is that Richard Lewis was
13 publicly recognized in open session as being paid as a BC?

14 A Yes.

15 Q Let me ask you to address the specific term of the
16 CalPERS -- the amount of the CalPERS pension benefit.

17 Do you recall your involvement in negotiations
18 about whether Mr. Leis was entitled to be paid a CalPERS
19 benefit at the BC pay rate?

20 MR. KENNEDY: Lack of foundation.

21 THE COURT: Sustained.

22 BY MR. JENSEN:

23 Q Were you involved in discussions about Mr. Lewis's
24 CalPERS pension benefit?

25 A Yes.

1 Q Tell me what those negotiation discusses were.

2 MR. KENNEDY: Relevancy and vague as to time.

3 THE COURT: Why don't you give me a time frame. I'll
4 overrule the relevancy.

5 BY MR. JENSEN:

6 Q Sometime between 2005 and 2012.

7 THE COURT: I'm overruling the relevancy objection.

8 MR. KENNEDY: Again, I'd object -- she's simply asked
9 for the time period of seven years with a settlement
10 agreement in the middle of it.

11 THE COURT: Counsel, I want everybody to calm down a
12 little bit.

13 First of all, you told me this witness is here to
14 talk about the settlement agreement. You're all over the
15 place. Why don't you narrow it to discussions about PERS,
16 if there were any, because I don't know if there were any,
17 relevant to the settlement agreement.

18 BY MR. JENSEN:

19 Q Were there any discussions about his PERS benefit
20 related to the settlement agreement?

21 A There were several conversations.

22 Q Tell us about those.

23 MR. KENNEDY: I have a vagueness as to time.

24 THE COURT: When were these discussions, ma'am?

25 THE WITNESS: Once I had knowledge of the threat of

1 litigation, the conversation -- that's when I mentioned the
2 conversation earlier, "Well, Richard is going to be
3 promoted -- Richard should be promoted -- "

4 THE COURT: Ma'am, just give me some numbers timewise.

5 BY MR. JENSEN:

6 Q Dates.

7 A I don't have dates for you.

8 Q Approximate dates.

9 THE COURT: When you became aware there was a threat of
10 litigation. How long before the lawsuit was filed was that?

11 THE WITNESS: I would say probably just a few months.

12 BY MR. JENSEN:

13 Q Just to be clarify further, this is the lawsuit,
14 according to the records, that was filed in May 4, 2005.

15 MR. KENNEDY: This is in relation to the settlement?
16 I'm just trying to clarify.

17 THE COURT: Right. The settlement agreement is 2007,
18 but there were discussions beforehand and I'm going to let
19 her tell me about those.

20 MR. KENNEDY: I'm sorry. I don't mean to be -- I
21 thought the line of questioning was about the PERS benefit
22 related to the settlement payments.

23 THE COURT: No. The question any PERS discussions
24 relative to the settlement agreement. So she said there
25 were a number of discussion and she remembers them happening

1 a the few months before the lawsuit.

2 BY MR. JENSEN:

3 Q So if you can be as specific as you can about each
4 of these different discussions that you had.

5 A The reason for the conversation was to try to
6 eliminate the need for a lawsuit.

7 Q Focus on the PERS benefit aspect of the settlement
8 agreement.

9 A The conversations that I had with the City manager
10 and the City Attorney was if we're going to pay Richard --
11 if he's going to do the work as a BC, does that also mean
12 he's entitled to retirement benefits some day, as a BC or
13 whatever his last 12 months of rate of pay was. And I was
14 told yes and yes.

15 MR. KENNEDY: Objection, your Honor. Move to strike as
16 hearsay and as irrelevant concerning the actual settlement
17 of the lawsuit. And the document speaks for itself as to
18 the PERS-ability if the document hasn't been created as yet.

19 THE COURT: No. I'll receive the testimony as
20 administrative hearsay and overrule the other objections.

21 THE WITNESS: I just want to add --

22 MR. KENNEDY: There's no question in front of the
23 witness.

24 THE WITNESS: Before I was interrupted.

25 THE COURT: Ma'am, you arguing with the attorneys is not

1 helpful.

2 THE WITNESS: I'm sorry.

3 BY MR. JENSEN:

4 Q Listen to me, and I'll ask you questions and you
5 try to answer the specific questions I ask.

6 Was there anything more to that first discussion
7 about the PERS part of the settlement agreement?

8 A There was. My suggestion to the City manager and
9 City Attorney was, "Let's make sure PERS will accept it this
10 way."

11 Q Was there anything more about the PERS aspect of
12 that first discussion?

13 A I don't remember there was.

14 Q Was there a subsequent discussion about the PERS
15 aspect of the settlement agreement or the settlement
16 negotiation?

17 A There was.

18 Q What was that?

19 A That was in closed session that conversation
20 happened.

21 Q I won't ask you about a closed session item.

22 Was there another discussion about the PERS aspect,
23 either settlement negotiations or settlement agreement?

24 A The conversation in between those two time frames
25 was based on assumptions. So I can't tell you that I was

1 told that it will or it won't. I just remember saying to
2 the City manager that I can't assume it would be anything
3 but PERS-able because the City was required to pay its
4 percentage. And if we're paying our percentage of that rate
5 to PERS based on all the other employees' requirements, then
6 this had to be PERS-able. That was the conversation.

7 Q So let me clarify this: Were you under the
8 understanding that because you compensated -- you considered
9 compensating Mr. Lewis at the BC rate and the City paid a
10 percentage of Mr. Lewis's pay rate as BC, then Mr. Lewis
11 would be subsequently entitled to a pension at the BC rate?

12 MR. KENNEDY: Objection, your Honor. It's irrelevant
13 and lack of competency and pure speculation.

14 THE COURT: Sustained.

15 MR. JENSEN: I was just trying to tease out her
16 assumptions.

17 BY MR. JENSEN:

18 Q So was there -- can you explain to us your
19 assumptions in that interim period?

20 MR. KENNEDY: Irrelevant as to her assumptions.

21 THE COURT: Sustained.

22 BY MR. JENSEN:

23 Q Okay. Was there a subsequent conversation after
24 the closed session regarding the PERS aspect of the
25 settlement agreement at that point?

1 A I believe there was.

2 Q What was the substance of that?

3 A I remember asking the question -- I don't know if
4 it was the City Attorney or City manager. I do remember
5 asking the question, "Is PERS accepting the money" or
6 something like that. And I was told yes.

7 Q What do you mean yes accepting the money?

8 MR. KENNEDY: Objection. Calls for hearsay.

9 THE COURT: Overruled.

10 MR. KENNEDY: Vague as to -- if she's going to explain,
11 never mind. I withdraw that.

12 THE WITNESS: The knowledge that I had of the way the
13 City submitted his money to PERS was that in some cases,
14 PERS accepted the money as the City reported it and
15 sometimes they didn't. And that was one of the reasons I
16 asked the question about the money. I was told, "Yes, they
17 accepted the money." Had they not accepted the money they
18 would have sent it --

19 MR. KENNEDY: Objection. It's becoming nonresponsive.

20 THE COURT: Sustained.

21 BY MR. JENSEN:

22 Q Ms. McCammack, did you have any personal knowledge
23 of Mr. Lewis performing the duties of the battalion chief?

24 A I did.

25 Q Tell us, as specifically as you can, your personal

1 knowledge of his performance of these battalion chief
2 duties.

3 A The first time I saw Mr. Lewis perform BC duties
4 was during the old fire. That was October 2003.

5 Q What made you determine that he was performing BC
6 duties?

7 A Because I was actually at the mobile command center
8 in the City where all of the decisions were made by the
9 public safety administrators because it was close to my
10 house.

11 MR. KENNEDY: Your Honor, at this point I'd like to make
12 an objection against competency and lack of foundation. The
13 question is actually a question for the fire chief and not
14 an anecdotal statement by an observer, even an informed one.

15 THE COURT: It's also irrelevant because it's before the
16 time of the settlement agreement.

17 Sustained.

18 BY MR. JENSEN:

19 Q After 2007, did you have any personal knowledge of
20 him performing the duties of battalion chief?

21 A Yes.

22 MR. KENNEDY: Same objection.

23 THE COURT: Well, I don't know what her answer is, so
24 overruled.

25 What's your personal knowledge after the settlement

1 agreement, ma'am?

2 THE WITNESS: I made a habit of going to as many
3 incidents -- fire incidents or traffic collision incidents
4 as possible that happened within the district that I
5 represented. And I was able to help in many circumstances.

6 The fire chief was very rarely on an incident. I
7 don't know that he could tell me that I was or wasn't there.
8 But in many cases, fire captains acted as battalion chiefs
9 and Mr. Lewis, specifically, because his fire station where
10 he was assigned was very close to my house and also within
11 blocks of the district I represented. So that fire
12 personnel would actually be within the district I
13 represented very often and I personally saw him at several
14 incidents. If you ask me the specific dates, I couldn't
15 tell you.

16 BY MR. JENSEN:

17 Q How could you tell he was acting as a battalion
18 chief?

19 A Because there was no BC there. In some cases,
20 45 minutes to an hour later would a BC show up. And the
21 only person who was qualified at that point to be an acting
22 BC was the captain of the station.

23 Q How did you learn that policy or practice that --
24 regarding who was the acting BC?

25 A Because they would drive up in their Tahoe as

1 opposed to being with the unit.

2 MR. KENNEDY: Objection.

3 THE COURT: Overruled. That's the basis for her
4 opinion.

5 BY MR. JENSEN:

6 Q So in your capacity as a City Council person or
7 serving on these committees, were you taught or gained
8 experience to distinguish between what would be a battalion
9 chief position and a fire captain position?

10 A Yes.

11 Q How so?

12 A There were constant conversations throughout the
13 whole 13 years. How many BCs do we need? How many fire
14 captains do we need? How many assistant chiefs do we need?
15 When you show up to an incident within minutes of the call,
16 I guess, happening or hearing the sirens I should say, I
17 would often wonder why a BC wasn't there.

18 And I'm thinking in my head, we've approved this
19 many BC positions -- it just occurred to me often until they
20 would finally drive up. It was a source of concern for us
21 as decision-makers and those responsible for the budget that
22 we had the appropriate amount of staff in all circumstances.

23 MR. KENNEDY: Your Honor, I move to strike. The whole
24 last testimony was nonresponsive to the question.

25 THE COURT: Overruled. He's just probing into what's

1 the basis of her knowledge of knowing that someone is on
2 site as the BC.

3 BY MR. JENSEN:

4 Q Was it an issue that was discussed often in City
5 Council between City Council members?

6 MR. KENNEDY: Objection. Vague as to --

7 THE COURT: It's irrelevant. Sustained.

8 BY MR. JENSEN:

9 Q So I guess -- there was testimony earlier today
10 about whether the City intended, as part of the settlement,
11 to provide Mr. Lewis with CalPERS retirement benefits at the
12 BC rate.

13 What was your understanding of what the settlement
14 agreement provided as far as Mr. Lewis's retirement?

15 MR. KENNEDY: Objection. Relevancy, your Honor.

16 THE COURT: Overruled.

17 THE WITNESS: We read the agreement in closed session.
18 That's what we were asked to do.

19 MR. KENNEDY: Objection. Move to strike. The question
20 was her personal understanding or her intent. That was my
21 relevancy objection to it. She's responded now on behalf of
22 the Board, apparently.

23 THE COURT: I'm going to allow it. What I heard from
24 Mr. Lewis's testimony was that part of his understanding of
25 the settlement was that he was -- this was going to be his

1 retirement. That's the defense. It was -- to say this was
2 all part of the discussions as part of the settlement
3 agreement. And that's their position; is that correct,
4 Mr. Jensen?

5 MR. JENSEN: Yes.

6 THE COURT: Okay. I'll allow it. Next question.

7 BY MR. JENSEN:

8 Q What was your understanding as far as the
9 retirement benefits that the settlement agreement would
10 provide for Mr. Lewis?

11 A What it stated in the document which, if I remember
12 and I don't remember verbatim -- I remember reading
13 something about this being -- Mr. Lewis receiving all the
14 benefits related to being a battalion chief, something like
15 in everything -- I don't remember the words verbatim, but I
16 do remember reading that piece in the document which
17 connected my knowledge of having the conversation much
18 longer before that, "Is it PERS-able?" When I read that in
19 the document, my assumption was that meant it was PERS-able.

20 Q What is your understanding of why Mr. Lewis didn't
21 get the title of battalion chief?

22 MR. KENNEDY: Irrelevant.

23 THE COURT: Overruled.

24 THE WITNESS: That was the crux of the whole thing. Why
25 do we need a lawsuit if the man should be promoted? Can't

1 we save the tax payers some money from a lawsuit and
2 potentially a cash settlement as a strapped city if we can
3 avoid this?

4 And when it came down to it, I would say probably
5 half a dozen, maybe a dozen, phone calls had been made to me
6 personally, you know, "The Chief thinks you're going to
7 promote Richard to chief once you become mayor." And I was
8 also told "Richard is just so outspoken as secretary
9 treasure for the fire union, that the chief doesn't want
10 that around him." And I just felt the whole thing was
11 political, and I didn't think it was right. I didn't think
12 it was fair.

13 So, in my mind, the way to avoid the lawsuit was to
14 agree to the settlement because I felt that once
15 Chief Pitzer was gone, he was going to be promoted anyway
16 and go off into being a great BC and being on the other
17 side -- in my mind, being on the other side of
18 administration versus employees. I kept saying, "Isn't that
19 where we want him?" If he's such a loudmouth with the
20 union, wouldn't administration want him on the other side?
21 That was the conversation.

22 Q Let me ask you the question again, why was the
23 title of BC withheld?

24 MR. KENNEDY: Objection. Asks for speculation.

25 ///

1 BY MR. JENSEN:

2 Q In your understanding.

3 THE COURT: Overruled.

4 MR. KENNEDY: Relevancy.

5 THE WITNESS: I believe --

6 THE COURT: Not what you believe. I don't want her
7 speculating.

8 BY MR. JENSEN:

9 Q Did you have a concept that the title of battalion
10 chief was being withheld?

11 MR. KENNEDY: Same objection. Relevancy.

12 THE COURT: Sustained.

13 MR. JENSEN: Would you give me a minute?

14 THE COURT: I have no evidence in front of me refuting
15 your client and his attorney's presentation that it was
16 union -- and political.

17 MR. JENSEN: I understand.

18 BY MR. JENSEN:

19 Q What was your understanding of the duties that
20 Mr. Lewis regularly performed after the settlement
21 agreement?

22 MR. KENNEDY: Objection. Lack of foundation.

23 THE COURT: Sustained. Lay some foundation.

24 BY MR. JENSEN:

25 Q Did you have some understanding or personal

1 knowledge of the duties that Mr. Lewis performed after 2007
2 on a daily basis?

3 A I know he was acting in the capacity of BC in many
4 circumstances where I personally witnessed.

5 Q How often was that?

6 A Oh, I would say with clear recollection at least
7 once a month.

8 Q How did you gain that knowledge?

9 THE COURT: Isn't it her going to all these incidents
10 that she already told me about?

11 MR. JENSEN: Yeah, I guess.

12 THE WITNESS: There was one other --

13 MR. KENNEDY: Objection.

14 THE COURT: One other what?

15 THE WITNESS: There was one other reason you would think
16 Mr. Lewis was acting as BC.

17 BY MR. JENSEN:

18 Q Tell us.

19 A In some cases he was actually asked to present in
20 front of City Council. He wouldn't have been asked to
21 present certain things in front of the City Council as the
22 fire captain. This was only the typical behavior, let's put
23 it that way, of either a BC or a deputy chief or chief that
24 would make certain presentations to the City Council
25 regarding certain agenda items.

1 Q The question that Mr. Kennedy sort of asked you
2 before, was Mr. Lewis in uniform?

3 A Yes.

4 Q Do you recall what uniform he was wearing?

5 A I recognized it as a BC uniform.

6 Q Was this a public session?

7 A Yes.

8 Q And were these in any way televised or otherwise --

9 A We would have hoped they were televised. Since I
10 wasn't at home, it's hard to know.

11 MR. KENNEDY: Objection. The question -- there was a
12 reference to one session, and it's vague as to "they."

13 THE COURT: Overruled. She's just giving me the basis
14 of her knowledge of BC work.

15 BY MR. JENSEN:

16 Q You can finish your answer if there is anything
17 more.

18 A Well, there was. I just felt -- I felt that the
19 City did right by making the decision it made.

20 MR. KENNEDY: Objection. Move to strike as
21 nonresponsive and irrelevant.

22 THE COURT: Sustained.

23 MR. JENSEN: No further questions.

24 THE COURT: Cross-examine.

25 MR. KENNEDY: I have no questions, your Honor.

1 THE COURT: Thank you, ma'am. You are released.

2 THE WITNESS: Thank you.

3 MR. JENSEN: Can I walk her out?

4 THE COURT: We're off the record.

5 (Discussion off the record)

6 THE COURT: Back on the record.

7 Mr. Lewis, I'll remind you you are still under
8 oath.

9

10 DIRECT EXAMINATION (Continued)

11 MR. JENSEN: Mr. Lewis, I want to -- may I approach,
12 your Honor?

13 THE COURT: Yes.

14 BY MR. JENSEN:

15 Q Turn your attention to Exhibit 14.

16 THE COURT: For the record, it's Respondent's 14.

17 BY MR. JENSEN:

18 Q This is June of 2011?

19 A Yes.

20 Q Did you contact CalPERS at any time in this period
21 to ask whether you were -- if BC pay would increase your
22 pension?

23 A Yes. I made an appointment and it was actually --
24 I think it was in May when we made the appointment. I don't
25 know the exact date.

1 Q Does this refresh your recollection as far as the
2 date?

3 A Oh, yeah.

4 Q And one of these says Richard?

5 A Compensation review.

6 Q It would be the June 23rd, 2011?

7 A Yes.

8 Q Did you -- when you went in there, what did you ask
9 CalPERS?

10 A Well, I took my payroll stuff just in case they
11 needed to see it. And they contacted the counselor that was
12 there that I met with here in this office. They called up
13 to PERS and wanted to make sure that all of the calculations
14 were based on what my battalion chief pay was and employee
15 member paid part was.

16 Q Mr. Lewis, was it the payroll stubs?

17 MR. JENSEN: Your Honor, could I get that exhibit?

18 THE COURT: Exhibit 30.

19 BY MR. JENSEN:

20 Q Was this the document that you brought to PERS?

21 A I may have taken a couple more. I just had it so I
22 could make sure they could see how it was listed, and then
23 how the money went in for the -- what do they call it? The
24 temporary adjustment. The EPMC, am I saying it right?

25 Q Let me ask you questions.

1 Did you use the term "special compensation" when
2 you talked to PERS?

3 A I just said the BC pay because that's what I always
4 called it. I don't know if I really knew until I read that
5 letter from Carlos Johnson how they were reporting it. When
6 I read that letter, I could see they put it in temporary
7 acting pay. Apparently that was how they were directed from
8 PERS. I mean, I checked then to make sure that the right
9 amount -- the percentage was coming out of my check, which
10 it was, so obviously, it was sent to PERS.

11 And then I just wanted these with me in case there
12 was any question about whether it was there or not. I know
13 sometimes, like, if you have an educational and it's a small
14 amount of money, when they do the evaluation to see how much
15 you're going to get, they don't always include those.
16 Sometimes they're included afterwards. I just wanted to
17 make sure -- because it was such a large amount of money, I
18 wanted to make sure my retirement was based on that.

19 Q As part of your duties with the union as treasurer
20 of secretary, did you have to become familiar with the
21 PERS-able treatment of different items?

22 A Yes.

23 Q How did you do that?

24 A I got a lot of knowledge from the international and
25 state organizations. I went to seminars and stuff that --

1 things they were involved in with PERS so that -- we wanted
2 to make sure that we continue with what we represented to
3 the people from that city, that the City was actually doing
4 what they were supposed to do because I think some of your
5 witnesses have alluded to the fact that maybe the records
6 weren't the best or the way they were reporting certain
7 things might not be consistent with what's reality.

8 MR. KENNEDY: Objection. Move to strike as
9 nonresponsive at this point.

10 THE COURT: Sustained.

11 MR. JENSEN: Strike how much?

12 THE COURT: The last part about witnesses saying how the
13 records are kept.

14 BY MR. JENSEN:

15 Q Mr. Lewis, listen to my question: Were you
16 involved in negotiating the MOUs with the City?

17 A Yes.

18 Q In what capacity?

19 A I was the representation for Local 891.

20 Q Were the PERS-ability of certain items part of the
21 MOU discussion?

22 A Yes.

23 Q How did you learn about the PERS-ability of certain
24 items?

25 A Through the research we did in preparation for the

1 MOU negotiations. They document it. Everything is
2 documented from PERS. You can look up whatever you want to
3 find.

4 Q Were you relying on PERS's representations to you
5 about what certain -- whether certain items were PERS-able
6 in your negotiations?

7 A Yes.

8 Q How long did these negotiations -- how often did
9 they occur?

10 MR. KENNEDY: Your Honor, at this point it's relevancy
11 to the situation.

12 THE COURT: Sustained.

13 BY MR. JENSEN:

14 Q Let me get back to this period of when you went in
15 June 11, 2011.

16 What was your status at that time with your work
17 status with the City?

18 A In June I was still -- in June I was still on
19 injury. So I was under 4850 time.

20 Q When did you go on 4850 time?

21 A It was actually in 2010. So it was about a year
22 prior. I had injured my knee for the fourth time. So I was
23 on injury, and then I was diagnosed with cancer while I was
24 on that injury. In August, they stopped treatment for my
25 knee, and I began treatment -- I began chemo. And then I --

1 until I was completely done with chemo and they had six
2 months, they wouldn't redo anything about my knee. I went
3 back to injury for my knee. That's why I was off for about
4 18 months before I actually retired.

5 Q What is the typical period of --

6 MR. KENNEDY: Objection, you're Honor. Relevancy. This
7 is redundant of the testimony from prior.

8 THE COURT: First off, please let him finish his
9 question before stating the objection. But we did go over
10 this at length before.

11 BY MR. JENSEN:

12 Q What was the next communication that you received
13 from -- let me just ask you, on this date of
14 June 23rd, 2011, did you submit a retirement application on
15 that day?

16 A You know, I don't think I did. I hadn't applied
17 for retirement. I just filled out the paperwork that I
18 needed for the review, and I had taken the test before
19 you're going to retire about a year out. So that's what I
20 did.

21 Q Do you recall the next communication you received?

22 A I think it was the follow-up communication in
23 September.

24 Q Let me ask you a question: A couple days before
25 the meeting in the office, did you contact CalPERS and ask

1 them to do payroll review?

2 A I just asked them -- I wanted to make sure it
3 was -- that all of the pay would be included, and I was
4 going for the review.

5 Q Does this -- this is page 5 of Exhibit 14.

6 Did you call CalPERS and ask them to review the
7 payroll for a certain service period?

8 MR. KENNEDY: Objection. Vague as to the term "review."

9 THE WITNESS: Not specifically --

10 THE COURT: Hang on. There's an objection, and I get to
11 rule on it.

12 So what's your objection, Counsel?

13 MR. KENNEDY: The objection was vague as to the term
14 "review." The question was did he ask him to review
15 payroll?

16 THE COURT: Overruled. You can answer.

17 THE WITNESS: I remember I contacted them because I
18 was -- I wanted to make sure they had all current records
19 and everything was going to be there. And they said, "Don't
20 worry about it. It will be there."

21 I just asked them specifically about all the
22 compensation. So then I came into the office, and they said
23 it should be. And then she made a phone call to somebody up
24 at PERS, and they came back and did the calculation because
25 it took a little while.

1 And then they came back, and they had how much we
2 would get and what the compensation was. I just verified
3 all the stuff, the EPMC. But I knew that wasn't going to be
4 a problem because I negotiated it for the rank and file and
5 the battalion chiefs got it after the fact.

6 THE COURT: When they came back and gave you a number,
7 did that include the battalion chief?

8 THE WITNESS: Yes. And they did say it could be a few
9 dollars one way or another because that happens sometimes
10 with your educational incentive. We had educational
11 incentives. It might not be complete. It might be a little
12 bit more or a little bit less. It's just how they have to
13 do the final calculation on it. I said, "Okay. That's
14 fine. "

15 BY MR. JENSEN:

16 Q Then in October of the next year, did you request
17 an estimate of your retirement benefit?

18 A Yes, because I knew I was going to retire then.

19 Q And did they send you an estimated amount?

20 A I thought they did. It was either they sent me
21 one, or they confirmed the one we had gone over that I got
22 from this office prior to that.

23 THE COURT: Just for the record, when you're saying
24 "this office," we're in the CalPERS San Bernardino office.

25 THE WITNESS: CalPERS San Bernardino office.

1 It was very close to whatever that was, within a
2 few dollars. I didn't have any worry about it. I just
3 wanted to verify that it was okay.

4 BY MR. JENSEN:

5 Q When did you submit your retirement application?

6 A It was October.

7 MR. KENNEDY: The exhibit -- there's a document -- the
8 application is in the exhibit in the file and speaks for
9 itself. PERS 10 -- PERS 11. I'm sorry.

10 MR. JENSEN: Your Honor, may I approach?

11 THE COURT: Sure.

12 BY MR. JENSEN:

13 Q Is this the retirement application?

14 A Yes, October 11.

15 Q So what type of -- this is a disability retirement
16 application?

17 A Yes.

18 Q Was this application completely filled in? It
19 seems to be missing --

20 A I filled in what I thought I needed to. When I
21 went to personnel -- or risk management helped me finish the
22 rest of it because she needed to get it in right away
23 because there was something -- she said, "I think I can get
24 you retired by the end of the month."

25 Q Was that for the City of San Bernardino?

1 A Yes, because they had accepted everything.

2 Q What was the next communication you received from
3 CalPERS?

4 A I started getting the checks.

5 Q Oh, you did?

6 A I did. It took a while.

7 Q Do you recall receiving this letter?

8 A Yes, on May 13th.

9 MR. KENNEDY: I'm sorry. Which exhibit is that?

10 MR. JENSEN: This is Exhibit 16, Respondent's
11 Exhibit 16.

12 MR. KENNEDY: May 8th letter?

13 MR. JENSEN: Yes.

14 BY MR. JENSEN:

15 Q Were you aware -- with regard to this first
16 sentence here, it says that, "CalPERS has recently completed
17 a review of your compensation reported by the City."

18 Did CalPERS or the City request documents from you
19 in this review?

20 A No.

21 Q And let me ask you a little bit about what was your
22 experience about the record-keeping practices of the City's
23 fire department when you were employed there?

24 MR. KENNEDY: Vague as to time. Vague as to the
25 question.

1 THE COURT: Sustained.

2 BY MR. JENSEN:

3 Q From the period of 2005 to 2012 when you were
4 active with the City of San Bernardino, did you develop an
5 experience on the fire department's record -- the accuracy
6 of the fire department's record-keeping practices?

7 MR. KENNEDY: Same objection and relevancy at this
8 point.

9 THE COURT: Overruled. And it is relevant. PERS got
10 documents. He just testified he wasn't asked to give any
11 documents. The issue of the completeness of the documents
12 is in front of me.

13 THE WITNESS: I think that the record-keeping practices
14 in some areas were pretty poor.

15 BY MR. JENSEN:

16 Q Can you identify those areas?

17 A There was a lot of conflict with FSLA, a lot of
18 conflict at different times during that time period because
19 we were constantly under budget. The personnel issues or
20 the personnel responsibilities would be passed off from one
21 person to the next. So sometimes that wasn't always real
22 accurate.

23 I think our statistician that kept track of the
24 FSLA and those types of things probably did a better job
25 than anybody. The City, I think, had gotten better, but

1 they're receiving their information from the fire
2 department. We had a payroll clerk that recorded stuff and
3 sent it over to finance. So the people would get paid and
4 they can account for vacation and stuff. A lot of it was
5 just manually there in the office and then sent over.

6 Q I want to just focus right now your attention on
7 the documentation of when someone was acting -- when a
8 fire -- strike that.

9 I want to focus your attention on the circumstances
10 when a fire captain was acting as a battalion chief.

11 MR. KENNEDY: This line of questioning was gone into on
12 the first day of his testimony, specifically. If this is
13 going to continue, I can show the Court the transcript about
14 the discussion about the secretary and the clerk documenting
15 this and --

16 MR. JENSEN: The question is --

17 THE COURT: You're going beyond the completeness.
18 Counsel is right. We did go into a lot of this back in
19 October.

20 MR. JENSEN: Maybe I can simplify the question.

21 THE COURT: Please do.

22 BY MR. JENSEN:

23 Q Mr. Lewis, how often after 2007 were you performing
24 duties of the battalion chief?

25 A Whenever they asked me.

1 Q On a weekly basis, how many times?

2 A Sometimes -- and sometimes it would be more than
3 one day. It just depended on what they needed to have done.
4 It wasn't like it was a formal move up as much as it was
5 their convenience. They were paying me. So they didn't
6 have to pay any additional pay. So if they needed
7 something, if it was presentation or representation at some
8 event they needed to be at or some meeting they needed to be
9 at, they'd call me.

10 BY MR. JENSEN:

11 Q Let me ask you this to follow up: Were those
12 instances documented as you acting as a battalion chief?

13 A I would doubt it. I don't believe they did. They
14 may have written in their -- like a log book that they write
15 stuff in, handling different issues. And they might have
16 put my name in there that I'll cover this incident or I'll
17 cover the whatever.

18 It wasn't something -- they didn't need to keep
19 track of it. They were paying me anyway. So the whole
20 purpose for tracking was payment.

21 Q Was it your understanding that you were always
22 available to perform the BC duties?

23 A Yes.

24 Q Are you aware of whether the City ever
25 characterized your pay as pay rate for the -- toward

1 CalPERS, or was it always characterized as special
2 compensation?

3 A As far as I was concerned, it was just BC pay and
4 that's what it was on my check. What they did or what they
5 called specific things in finance, I have no idea. All I
6 know is what I got on my check.

7 Q I want to turn your attention to the second page of
8 this 2013 letter.

9 MR. JENSEN: Your Honor, may I approach?

10 THE COURT: Yes.

11 BY MR. JENSEN:

12 Q It's this sentence -- is the documentation provided
13 by the City, is it --

14 MR. KENNEDY: Which paragraph was that on?

15 MR. JENSEN: It's probably the 5th one down.

16 MR. KENNEDY: Thank you.

17 BY MR. JENSEN:

18 Q With the documentation provided by the City, it is
19 CalPERS's understanding you were not working in the capacity
20 of battalion chief, rather only receiving the benefits of
21 the position.

22 So my question to you is: Were you aware of what
23 documentation they were -- the City provided that would give
24 them that understanding?

25 A The only documentation that I know that they sent

1 them was the original settlement agreement that went to
2 Carlos Johnson that they reviewed and somehow reported the
3 income.

4 Q Were you aware of any --

5 A I wasn't aware of any income.

6 Q Were you aware of any documents about your work in
7 the capacity of a battalion chief?

8 MR. KENNEDY: Asked and answered.

9 THE WITNESS: No.

10 THE COURT: Overruled.

11 BY MR. JENSEN:

12 Q In the last paragraph of that page, it states -- as
13 previously stated, you did not perform the duties of a
14 battalion chief.

15 Are you aware of any facts that CalPERS has alleged
16 that would support that you did not perform the duties of a
17 battalion chief?

18 A No. To the contrary, I did and I don't believe
19 there's any documents or that the City would send any
20 documents that would have stated that. It would have about
21 false if they did.

22 Q The next sentence says, "The settlement agreement
23 suggested that the temporary upgrade pay was indefinite."

24 Are you aware of any facts that would suggest it
25 was indefinite?

1 A I don't think there was any term of time on the
2 settlement agreement at all. It just said I would be
3 compensated as though I had been promoted with all benefits
4 and future benefits.

5 Q Were you -- did you -- I withdraw that question.

6 Let me direct your attention to the top of the
7 third page there. It says you also received the value of
8 Employer Paid Member Contributions pursuant to a resolution
9 to management.

10 Were you -- did the City also have a resolution to
11 pay EPMC for fire captains as well?

12 A Yes, all the rank and fire got the EPMC. And once
13 we negotiated that and we actually paid for the first cost
14 on it so the City didn't have anything out of pocket, that
15 the battalion chiefs or management would be able to secure that
16 benefit under the same terms.

17 Q So in other words --

18 A All safety employees. And I think that was stated
19 by other witnesses when Laura testified.

20 Q On the third paragraph it says, "CalPERS
21 respectfully requests the City reverse all temporary upgrade
22 EPMC payments."

23 A Yes.

24 Q Did you make personal employee contributions --
25 were there any contributions you made personally on the BC

1 pay or were all of those paid by the City?

2 A No. The EPMC was paid out of our checks. They add
3 the 9 percent in on the left side of the check. And on the
4 right side of the check, it came back out. And so the
5 deferential cost was what the PERS cost was going to be to
6 the City. We paid that deferential. That was part of the
7 the --

8 Q Did you ever purchase any military time or air
9 time?

10 A I did. I did purchase four years of time.

11 Q And did you do that after 2007 or before 2007?

12 A No, I did that -- I believe it was 2004 or 2003.

13 MR. JENSEN: Your Honor, I'd like to offer 16 as
14 evidence.

15 THE COURT: It's already in evidence.

16 MR. JENSEN: Okay. All the other exhibits are in?

17 THE COURT: Except Exhibit 32, which you said you faxed
18 over to my office. Exhibit 45 is the letter we talked about
19 that this morning. I'm going to receive this.

20 (Department's Exhibit 45 was received in
21 evidence by the Court.)

22 BY MR. JENSEN:

23 Q One last question, Mr. Lewis.

24 Did you rely on CalPERS's representations regarding
25 the PERS-ability of these items at the time of

1 negotiating -- well, at the time of retiring?

2 A Yes.

3 Q Are you aware of any requirements in the PERL
4 regarding the temporary aspect of either acting or temporary
5 upgrade pay -- let me rephrase.

6 Did you ever hear the term "temporary upgrade pay,"
7 other than as applied to your case?

8 A No.

9 MR. JENSEN: I have no further questions for this
10 witness.

11 THE COURT: Cross-examine.

12 MR. KENNEDY: Your Honor, it's 4:30 p.m.

13 THE COURT: Everyone. Let's go off the record.

14 (Hearing adjourned at 4:30 p.m.)

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