

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 IN AND FOR THE COUNTY OF SAN DIEGO  
3 DEPARTMENT 67 HON. DAVID B. OBERHOLTZER, JUDGE

4  
5 CITY OF SAN DIEGO, )  
6 )  
7 ) PETITIONER, )  
8 )  
9 ) VS. ) CASE NO. 37-2009-00086499-  
10 ) CU-PT-CTL  
11 )  
12 ) SAN DIEGO POLICE OFFICERS )  
13 ) ASSOCIATION INCORPORATED, )  
14 )  
15 ) ET AL., )  
16 )  
17 ) RESPONDENT. )  
18 )  
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REPORTER'S TRANSCRIPT

MONDAY, JUNE 8, 2009

PAGES 1 THROUGH 67

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OFFICIAL REPORTER  
SAN DIEGO SUPERIOR COURT  
SAN DIEGO, CALIFORNIA 92101

1 APPEARANCES:

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4 -AND-

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5 BY: DAPHNE M. ANNEET  
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6 LOS ANGELES, CA 90071

7 FOR THE RESPONDENT: MICHAEL A. CONGER

ATTORNEY AT LAW  
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9 -AND-

TOSDAL, SMITH, STEINER & WAX  
10 BY: ANN M. SMITH  
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1 SAN DIEGO, CALIFORNIA, MONDAY, JUNE 8, 2009, 11:07 A.M.

2 -- 000 --

3 PROCEEDINGS

4 THE COURT: GOOD MORNING, EVERYBODY.

5 CITY OF SAN DIEGO VS. THE SAN DIEGO POLICE  
6 OFFICERS ASSOCIATION. MAY I HAVE YOUR APPEARANCES,  
7 PLEASE.

8 MR. CONGER: YOUR HONOR, MICHAEL CONGER ON BEHALF OF  
9 THE SAN DIEGO POLICE OFFICERS ASSOCIATION. GOOD MORNING.

10 THE COURT: GOOD MORNING.

11 MS. SMITH: GOOD MORNING, YOUR HONOR. ANN SMITH ON  
12 BEHALF OF THE PROPOSED INTERVENER, SAN DIEGO MUNICIPAL  
13 EMPLOYEES ASSOCIATION.

14 MR. DAVIS: TIMOTHY DAVIS ON BEHALF OF THE CITY OF  
15 SAN DIEGO.

16 MS. ANNEET: GOOD MORNING, YOUR HONOR.  
17 DAPHNE ANNEET ON BEHALF OF THE CITY OF SAN DIEGO.

18 THE COURT: OKAY. I DON'T KNOW HOW MUCH OF THIS HAS  
19 BEEN DONE ON THE RECORD, HOW MUCH OF IT HAS BEEN DONE OFF  
20 THE RECORD. I KNOW WE HAVE EXCHANGED E-MAILS. BUT JUST  
21 TO REVIEW FOR A MOMENT HERE, AFTER WE TALKED ON FRIDAY,  
22 WHICH WAS A CASE MANAGEMENT CONFERENCE OR A STATUS  
23 CONFERENCE?

24 MR. CONGER: YES, YOUR HONOR.

25 THE COURT: OKAY. AND TODAY'S MONDAY, OF COURSE.  
26 WE -- WELL, THAT IS I PROPOSED -- I GUESS I DIDN'T  
27 PROPOSE IT. I ISSUED AN ORDER TO SHOW CAUSE, ANSWERABLE  
28 THIS MORNING AT 11 O'CLOCK, THIS HEARING, WHY THE CITY

1 SHOULD NOT HAVE A TEMPORARY RESTRAINING ORDER ISSUED  
2 AGAINST IT TO PREVENT THE FORFEITURE OF ANY BENEFITS ON  
3 BEHALF OF THE POLICE OFFICERS.

4 AND I EXPANDED THAT TO INCLUDE THE CITY  
5 EMPLOYEES AND, I BELIEVE, FIREFIGHTERS. BY VIRTUE OF THE  
6 FACT THAT THIS MANDAMUS PROCEEDING WAS BEING HEARD HERE,  
7 AND THAT IF, AFTER THE CONCLUSION OF THIS PROCEEDING,  
8 THEY MAKE AN ELECTION THAT SHOULD HAVE BEEN MADE  
9 DURING -- POTENTIALLY DURING JUNE, WHILE THEY'RE DOING  
10 THIS, IT WILL BE CONSIDERED TO HAVE BEEN MADE ON THE DATE  
11 THAT IT SHOULD HAVE BEEN MADE NUNC PRO TUNC.

12 AND THAT'S NOT AN EXACT QUOTE, BUT I THINK  
13 THAT'S THE SUBSTANCE OF WHAT I ISSUED. I ACTUALLY SENT  
14 THAT ONE OVER E-MAIL BECAUSE THE HEARING IS SO IMMINENT.  
15 SO WE HAVE THAT ORDER TO SHOW CAUSE TODAY. I BELIEVE WE  
16 HAVE AN EX PARTE APPLICATION ON THE PART OF THE CITY  
17 EMPLOYEES FROM MS. SMITH --

18 MS. SMITH: THAT'S RIGHT, YOUR HONOR.

19 THE COURT: -- FOR MS. SMITH TO INTERVENE. IS THERE  
20 ANYTHING ELSE ON CALENDAR?

21 MR. CONGER: I DON'T BELIEVE SO, YOUR HONOR.

22 THE COURT: OKAY. OH, THE OTHER THING WE DID WAS  
23 SET DATES FOR THE HEARING, WHICH I BELIEVE IS JUNE 26TH.

24 MR. CONGER: JUNE 25TH, I BELIEVE, YOUR HONOR.

25 THE COURT: JUNE 25TH. EXACTLY. AT 9 O'CLOCK. SO  
26 LET'S TAKE THE ORDER TO SHOW CAUSE, FIRST.

27 MS. ANNEET: THANK YOU, YOUR HONOR.

28 THANK YOU FOR CLARIFYING THE PROCEDURAL POSTURE

1 OF FRIDAY NIGHT. I HAVE TO ADMIT, I WAS A LITTLE  
2 UNCERTAIN AT THE END OF OUR CALL EXACTLY WHAT HAD  
3 HAPPENED. AND I THINK WHAT I UNDERSTOOD WAS THAT YOU HAD  
4 PROPOSED THE ORDER TO SHOW CAUSE, AND THAT I HAD  
5 INDICATED THAT I THOUGHT THE CITY WOULD BE AMENABLE, IN  
6 PRINCIPAL, TO TERMS, AND THAT WE WOULD BE COMING HERE ON  
7 MONDAY TO TALK ABOUT WHETHER OR NOT A TRO SHOULD ISSUE,  
8 THEN YOU WOULD THEN SET A RETURN HEARING ON THE TRO, IF  
9 YOU, IN FACT, DID ISSUE ONE.

10 THE COURT: YOU'RE EXACTLY RIGHT ON EVERY ONE OF  
11 THOSE POINTS. I WAS CONTEMPLATING THAT THE RETURN DATE  
12 WOULD BE THE 25TH.

13 MS. ANNEET: OKAY. THANK YOU.

14 THE COURT: OKAY.

15 MS. ANNEET: OKAY. BUT BEFORE WE GET THAT FAR DOWN  
16 THE ROAD, I DID WANT TO REVISIT THE ISSUE OF WHETHER TRO  
17 SHOULD ISSUE. WE DID PREPARE A STIPULATION. I MEAN,  
18 THERE WASN'T A LOT OF TIME BETWEEN FRIDAY AFTERNOON AND  
19 THIS MORNING. MR. CONGER WAS KIND ENOUGH TO LOOK AT MY  
20 E-MAIL THAT I SENT AROUND 7 O'CLOCK THIS MORNING, AND WE  
21 WEREN'T ABLE TO REACH AGREEMENT ON THE PROPOSAL THAT THE  
22 CITY OF SAN DIEGO MADE.

23 BUT, FOR THE RECORD, WE'D LIKE TO STATE  
24 CLEARLY, THAT WITH THE JUNE 25TH HEARING DATE, THE CITY  
25 HAS NO INTENTION OF TAKING ANY ACTION THAT WOULD IMPAIR  
26 THE RIGHTS OF THE MEMBERS OF THE POLICE OFFICERS  
27 ASSOCIATION. AND, MORE IMPORTANTLY, BECAUSE WE ARE  
28 DEALING WITH A TRO NOW, AS OPPOSED TO THE PRELIMINARY

1 INJUNCTION, THAT IS, OBVIOUSLY, ONCE AGAIN, A HIGH BURDEN  
2 FOR THE OFFICERS TO ESTABLISH, THAT BETWEEN NOW AND THE  
3 TIME OF JUNE 25TH, WHAT IRREPARABLE HARM WILL THEY  
4 SUSTAIN.

5 FROM THE CITY'S PERSPECTIVE, WE'RE LOOKING AT  
6 TWO SPECIFIC ISSUES. AND FOCUSING ON YOUR ORDER FOR A  
7 MINUTE, THE FIRST THING THAT STANDS OUT IS THE BROAD  
8 NATURE OF THE ORDER. THE CROSS PETITION IS FAIRLY  
9 SPECIFIC IN TERMS OF WHAT IT IS THE POA SEEKS TO  
10 ACCOMPLISH. NAMELY, THEY SEEK TO ACCOMPLISH TWO THINGS:  
11 TO PREVENT THE IMPOSITION OF THE TERMS AND CONDITIONS ON  
12 THE INTEREST RATE ISSUE; AND THE TERMS AND CONDITIONS ON  
13 THE AGE ELIGIBILITY FOR THE DROP.

14 THOSE TWO TERMS AND CONDITIONS WILL BECOME  
15 TERMS AND CONDITIONS AFTER A VERY, YOU KNOW, TUMULTUOUS  
16 PERIOD, WHERE THERE WAS A LOT OF HEAVY BARGAINING THAT  
17 WENT TO IMPASSE, THAT ULTIMATELY RESULTED IN THE CITY  
18 COUNCIL VOTING EIGHT ZERO TO IMPOSE THE TERMS AND  
19 CONDITIONS OF THAT AGREEMENT.

20 SO JUST TO PUT IT IN SOME CONTEXT, IF YOUR  
21 HONOR IS GOING TO BE CONSIDERING ISSUING THE TRO, WE  
22 WOULD RESPECTFULLY REQUEST THAT IT BE SPECIFICALLY  
23 TAILORED TO ADDRESS THE SPECIFIC ISSUES THAT ARE HERE.  
24 BECAUSE A GENERAL ORDER, I THINK, MIGHT CREATE SOME  
25 CONFUSION BECAUSE DROP IS ABOUT MORE THAN JUST THESE TWO  
26 ELEMENTS. BUT THE OTHER ELEMENTS AREN'T IN DISPUTE RIGHT  
27 NOW.

28 WITH RESPECT --

1 THE COURT: OKAY. CAN I -- KEEP GOING.

2 MS. ANNEET: SURE.

3 WE -- MR. CONGER AND I HAVE BEEN TRYING TO WORK  
4 OUT SOME KIND OF ARRANGEMENT FOR A WHILE IN TERMS OF  
5 REACHING AN AGREEMENT. AND I THINK IN TERMS OF THE AGE  
6 PIECE OF IT, THERE WAS NO PROBLEM FOR THE CITY TO AGREE  
7 NOT TO TAKE ANY ACTION ON THE AGE REQUIREMENT UNTIL THE  
8 DATE OF THE HEARING, AND FOR WEEKS THEREAFTER. THE  
9 REASON FOR THAT IS THE CITY HAS COMPLETE CONTROL OVER THE  
10 PROCESS.

11 FOR THAT AGE ELIGIBILITY REQUIREMENT TO BE  
12 CHANGED, THE CITY IS GOING TO HAVE TO GO AHEAD AND  
13 INTRODUCE AN ORDINANCE AND GO THROUGH NOTICE OF PROCESS  
14 WITH THE CITY COUNCIL. AND THE CITY'S ALREADY SAID THAT  
15 IF YOUR HONOR WERE INCLINED TO NOT ISSUE THE TRO, THE  
16 CITY WOULD AGREE TO COME IN AND NOTIFY THE COURT AND POA  
17 WEEKS IN ADVANCE OF ANY INTENT TO START THAT PROCESS, SO  
18 THERE WOULD BE AN ORDER TO IT.

19 WITH RESPECT TO THE INTEREST RATE, THOUGH,  
20 WE'VE HAD MORE OF A PROBLEM. AND THE PROBLEM IS THAT THE  
21 CITY DOESN'T CONTROL THE INTEREST RATES. AND I  
22 APOLOGIZE, WE HAD PREPARED A SUBMISSION FOR THE COURT,  
23 WHICH PROBABLY JUST ARRIVED, LAYING OUT THE VARIOUS  
24 SOURCES OF AUTHORITY OF THE SAN DIEGO CITY EMPLOYEE  
25 RETIREMENT SYSTEM TO SET INTEREST RATES.

26 AND SO IF YOUR HONOR WERE TO TAKE A LOOK AT THE  
27 CITY CHARTER, SECTION 144, OR IF YOU WERE TO TAKE A LOOK  
28 AT THE PROVISION OF THE MUNICIPAL CODE, 2404(C)(3), I

1 BELIEVE, YOU WILL SEE THAT, VERY CLEARLY, IT'S SDCERS  
2 THAT HAS THE SOLE AND EXCLUSIVE AUTHORITY TO SET THE  
3 INTEREST RATES.

4 AND SO GETTING BACK TO YOUR PROPOSED TRO FROM  
5 FRIDAY, I'M NOT SURE WHETHER IT WOULD ACCOMPLISH WHAT  
6 YOUR HONOR WAS SEEKING, BECAUSE THERE'S NO BASIS FOR THE  
7 COURT TO ORDER THE CITY TO PREVENT THE IMPLEMENTATION OF  
8 THE INTEREST RATE BECAUSE THE CITY DOESN'T HAVE THE  
9 AUTHORITY TO DO THAT.

10 THE COURT: ACTUALLY, THAT'S A LITTLE DIFFERENT FROM  
11 WHAT I INTENDED TO SAY. AND, PERHAPS, I CONFUSED YOU.  
12 MY ORDER TO SHOW CAUSE AND MY PROPOSED TEMPORARY  
13 RESTRAINING ORDER WAS AIMED SOLELY AT GIVING SOME RELIEF  
14 TO THE EMPLOYEES, THE POLICE OFFICERS SPECIFICALLY. BUT  
15 I DID -- IT WAS VERY BROAD. I EXTENDED IT TO THE  
16 FIREFIGHTERS AND TO THE MUNICIPAL EMPLOYEES, AS WELL,  
17 THAT IS, THE ORDER TO SHOW CAUSE. THERE IS NO TRO ISSUED  
18 YET.

19 MS. ANNEET: RIGHT.

20 THE COURT: I WANTED TO MAKE SURE THAT THEY DIDN'T  
21 HAVE TO GUESS AT WHAT THE OUTCOME OF THIS WAS GOING TO  
22 BE, AND THAT THEY COULD WAIT UNTIL AFTER THESE  
23 PROCEEDINGS ARE COMPLETED OR, DEPENDING ON WHAT HAPPENS,  
24 IF THERE'S AN APPEAL. BUT FOR MY PURPOSES, RIGHT NOW,  
25 THEY CAN WAIT UNTIL AFTER WE ISSUE A DECISION ON THE 25TH  
26 OF JUNE TO MAKE AN ELECTION.

27 BECAUSE IF THE -- FOR EXAMPLE, SOMEBODY HAS  
28 TO -- A 45-YEAR-OLD WANTS TO ENTER THE DROP PROGRAM, HAS



1 TO MAKE THAT ELECTION THIS WEEK. I DON'T KNOW IF THIS IS  
2 A GOOD EXAMPLE OR NOT, BUT DOESN'T KNOW WHETHER HE OR SHE  
3 WILL BE ABLE TO RETIRE AT 50, 55, 60, WHAT HAVE YOU.

4 MS. ANNEET: RIGHT. WELL, I APPRECIATE THAT.

5 WITH RESPECT TO THE AGE -- AND THAT'S WHY THE  
6 CITY, IN ITS PROPOSED STIPULATION, AGREED TO REFRAIN FROM  
7 TAKING ANY ACTION FOR 30 DAYS FOLLOWING THE JUNE 25TH  
8 HEARING, AND TO GIVE TWO WEEKS NOTICE TO THE POA IN THE  
9 EVENT THE CITY WERE TO MOVE FORWARD ON IMPLEMENTING AN  
10 ORDINANCE. AT THIS POINT IN TIME, THE CITY'S NOT IN ANY  
11 PROCEDURAL POSTURE TO BEGIN THE PROCESS.

12 I MEAN, JUST FOR YOUR INFORMATION, BEFORE THE  
13 ORDINANCE CAN BE IMPLEMENTED, FOR EXAMPLE, THEY NEED TO  
14 GET AN ACTIVE BARGAINING REPORT FROM SDCERS. AND THAT'S  
15 NOT GOING TO HAPPEN ANYTIME SOON.

16 THE COURT: WELL, LET ME ASK YOU A QUESTION. YOU  
17 KNOW, AFTER MY RULING, WHICH IS PRELIMINARY, IF IT GOES  
18 TO THE COURT OF APPEAL, I REALIZE THAT, BUT IF I SAY THE  
19 CITY'S FREE TO DO WHAT IT'S PROPOSING, THEN THE PEOPLE  
20 WHO ARE AT THE POINT OF MAKING AN ELECTION MAY CHOOSE TO  
21 DO ONE THING.

22 AND IF MY RULING IS TO THE CONTRARY, THAT THIS  
23 IS A VESTED RIGHT AND YOU CAN'T CHANGE THIS WITHOUT DOING  
24 SUBSTANTIALLY MORE THAN SENDING IT THROUGH THE CITY  
25 COUNCIL, THEN THE PEOPLE WHO HAVE TO MAKE AN ELECTION MAY  
26 DECIDE A DIFFERENT WAY.

27 SEE, I DON'T WANT -- MY INTENT IS NOT TO CHANGE  
28 ANYTHING THAT THE CITY DOES OR IS PLANNING TO DO, OR THAT

1 SDCERS IS DOING OR PLANNING TO DO. THAT IS BEING HANDLED  
2 BY THE WRIT, AND I DON'T WANT TO ENTER ANY SORT OF  
3 TEMPORARY ORDER ON THE ISSUES TO BE DETERMINED IN THE  
4 WRIT. THAT'S NOT MY INTENT.

5 MS. ANNEET: OKAY.

6 THE COURT: I KNOW THAT'S WHAT MR. CONGER ASKED FOR,  
7 BUT THAT'S NOT WHAT I WANTED TO ADDRESS. WHAT I WANTED  
8 TO ADDRESS IS THE VERY NARROW QUESTION OF THE PEOPLE THAT  
9 ARE CAUGHT IN THE GAP, AND TO GIVE THEM SOME COMFORT THAT  
10 THEY DON'T HAVE TO GUESS HOW THIS IS GOING TO COME OUT.  
11 THEY GET TO MAKE AN ELECTION AFTER A CERTAIN POINT, TO BE  
12 DETERMINED BY FURTHER ORDER OF THIS COURT.

13 THAT ORDER WILL STATE CLEARLY THAT THOSE OF YOU  
14 WHO HAD TO MAKE OR, PERHAPS, IT WAS PRUDENT TO MAKE AN  
15 ELECTION BETWEEN TODAY AND, SAY, THE END OF JUNE, CAN DO  
16 IT NOW. THAT'S ALL I WANTED TO SAY.

17 MS. ANNEET: WELL, THEN, YOUR HONOR, IF THAT'S THE  
18 CASE -- I'M FEELING BETTER. NO.

19 THE MAIN ISSUE, OF COURSE, IS THE INTEREST RATE  
20 POST JULY 1ST, BECAUSE THE CITY HAS GONE THROUGH IT'S  
21 BUDGETARY PROCESS. AND IF -- IF THERE'S AN INJUNCTION  
22 THAT'S GOING TO ALLOW PEOPLE TO CONTINUE TO GET DROP  
23 RETIREMENT AT 7 -- 7.5 PERCENT, WHEN EVERYBODY ELSE IS  
24 GETTING, YOU KNOW, 3 AND A HALF PERCENT, AND THAT'S WAY  
25 BETTER THAN THE REST OF THE COMMUNITY IS DOING IN THEIR  
26 FUNDS, THAT'S OBVIOUSLY GOING TO HAVE A SIGNIFICANT  
27 FINANCIAL IMPACT ON THE CITY.

28 THE COURT: DID YOU READ THAT INTO MY PROPOSED TRO?

1 I'M SERIOUS. IS THAT IN THERE?

2 MS. ANNEET: WELL, BECAUSE THERE'S NO END DATE. SO  
3 THAT WAS MY -- MY CONCERN, WHEN THE PAPERS ARRIVE, I  
4 THINK YOU'LL SEE THAT OUR SORT OF FINAL PROPOSAL WAS,  
5 HAVING HEARD YOUR HONOR'S CONCERNS ON FRIDAY AND HEARING  
6 THEM AGAIN TODAY, AS LONG AS -- IF THERE'S NO TRO ISSUED  
7 AT THIS POINT, BUT YOU SET THE RETURN DATE TO BE  
8 COINCIDENT WITH THE WRIT. THAT WAY, YOU'LL HAVE THE  
9 OPPORTUNITY TO LOOK AT THE MERITS OF THE CASE AND, ALSO,  
10 DECIDE WHETHER OR NOT A TRO SHOULD ISSUE.

11 THEN I THINK THAT WOULD BE SOMETHING THAT WOULD  
12 GET US WHERE WE NEED TO GO, AND THE CITY IS NOT TAKING  
13 ANY ACTION BETWEEN NOW AND JUNE 25TH. I MEAN, THERE'S  
14 SIMPLY NOTHING THAT IS GOING TO OCCUR THAT IS GOING TO  
15 IMPAIR THE RIGHTS OF THE MEMBERS OF THE SDPOA.

16 THE COURT: YOU KNOW, I'D BE MORE CONFIDENT IN THAT  
17 IF IT WEREN'T FOR THE FACT THAT -- I KNOW THE CITY'S NOT  
18 GOING TO DO A THING. BUT, ONE, I CAN SEE THAT THERE ARE  
19 THESE REGULATIONS BURIED SOMEPLACE IN THE RETIREMENT  
20 DOCUMENTS, RULES, WHAT HAVE YOU, AT SDCERS, AN OBSCURE  
21 STATE LAW, SOME ADMINISTRATIVE REGULATION, OR EVEN  
22 SOMEBODY SITTING AT A DESK WHO HAS THE POWER TO SAY "YES"  
23 OR "NO," AND SAYS "THIS IS AFTER THE DATE. I CAN'T  
24 ACCEPT THIS." AND I WANT TO MAKE IT CLEAR THAT NO ONE  
25 HAS TO WORRY ABOUT THAT. THAT IS ALL I'M SAYING.

26 MS. ANNEET: OKAY. WELL, THE DATE THAT -- THERE'S  
27 TWO DATES. THE DATE THAT AN INDIVIDUAL HAS TO ELECT  
28 RETIREMENT TO BE ABLE TO BENEFIT FROM THE 7.75 PERCENT

1 ANNUITY, IS JUNE 29TH. BUT IT -- THEY HAVE TO PRESENT  
2 THEMSELVES AT THE SDCERS OFFICE BY NO LATER THAN 5  
3 O'CLOCK ON JUNE 29TH.

4 THE COURT: OKAY.

5 MS. ANNEET: OKAY. FOR THE AGE, IF WE WERE TO JUST  
6 STICK WITH THE WAY THINGS ARE, SET ASIDE THE CITY'S OFFER  
7 AT THIS POINT TO STIPULATE UNDER OATH THAT THEY'RE NOT  
8 GOING TO TAKE ANY ACTION, THE DEADLINE FOR THE DROP  
9 PROGRAM, FROM SDCERS' PERSPECTIVE, WOULD HAVE BEEN  
10 JUNE 26, IF THE JULY 1ST DATE WAS THE DROP DEAD DATE.

11 BUT, AS WE'RE TELLING YOU, THE CITY WILL NOT  
12 CONSIDER THE JULY 1ST TO BE A DROP DEAD DATE. AS A  
13 PRACTICAL MATTER, THE CITY KNOWS THAT IT WILL NOT BE  
14 MOVING FORWARD WITH ANY ORDINANCE BETWEEN NOW AND THE  
15 25TH THAT WOULD BE REQUIRED TO IMPLEMENT THE AGE  
16 REQUIREMENT.

17 THE COURT: OKAY. SO IF SOMEONE WERE TO ENTER THE  
18 DROP PROGRAM BEFORE THE DEADLINE, THEY WOULD GET THE  
19 HIGHER INTEREST RATE?

20 MS. ANNEET: YES.

21 THE COURT: IRRESPECTIVE OF WHAT HAPPENS DURING  
22 THIS?

23 MS. ANNEET: OH, YES. THEY'RE SECURING -- ANYONE  
24 WHO ACTS NOW IS SECURING -- IS SECURING THE RATE, NO  
25 MATTER WHAT HAPPENS. BECAUSE THE RATE CHANGES ON  
26 JULY 1ST, AND THAT'S A RESULT OF TWO SEPARATE EVENTS;  
27 RIGHT? THE MOU, THAT PROVIDED FOR A SPECIFIC RATE, WHICH  
28 WAS THE RATE THAT SDCERS USUALLY GIVES TO THE RETIREMENT

1 ACCOUNTS.

2 UP UNTIL THIS YEAR, YOUR RETIREMENT ACCOUNT AND  
3 YOUR DROP ACCOUNT, SDCERS HAD THE SAME INTEREST RATE  
4 CREDITED. BUT LAST YEAR, THEY HAD SOME REPORTS AND SOME  
5 REVIEWS, AND IT GOT -- THEY WERE GOING TO LOOK AT THE  
6 DROP ACCOUNTS, AND THEY WENT AHEAD AND CHANGED THE RATE.  
7 AND SO THE MOU WOULD CHOOSE TO TRACK THE RETIREMENT RATE  
8 WITH THE DROP RATE. NOW, STARTING ON JULY 1ST, THE  
9 RETIREMENT RATES NOT TRACKING THE DROP INTEREST RATES.

10 THAT MOU IS GOING TO EXPIRE ON ITS OWN TERMS  
11 JUNE 30TH, THE CONTRACT IS UP JUNE 30TH. AND THEN  
12 JULY 1ST, WE'RE LOOKING AT THE CONTRACT THAT THE CITY  
13 COUNCIL IMPOSED. THAT CONTRACT SAYS THE INTEREST RATE  
14 SHALL BE THE RATE THAT SDCERS DETERMINES.

15 THE COURT: OKAY.

16 MS. ANNEET: WE ALL KNOW WHAT THAT RATE IS.

17 THE COURT: OKAY. I'M JOE COP, AND I GO IN AND  
18 ELECT THE DROP PROGRAM TOMORROW. DOES THAT MEAN THAT MY  
19 INTEREST RATE IS SEVEN-PLUS PERCENT FOR THE WHOLE TIME  
20 I'M IN THE DROP PROGRAM?

21 MS. ANNEET: THERE'S TWO DIFFERENT RATES, YOUR  
22 HONOR. THERE ARE RATES THAT ARE GIVEN TO THE ACTIVE DROP  
23 ACCOUNT, AND THEN THERE'S A RATE THAT'S GIVEN TO THE  
24 ANNUITY ACCOUNT. SO THOSE OFFICERS WHO ARE IN DROP RIGHT  
25 NOW, BETWEEN THE AGE OF 50 AND 55, THEY CAN ELECT TO  
26 RETIRE AT ANY TIME; RIGHT?

27 SO ANY OFFICER WHO, BETWEEN NOW AND JULY 1ST,  
28 WHO'S IN THE DROP ACCOUNT, IN THE DROP PROGRAM, RETIRES,

1 THEY'RE GOING TO GET THEIR RETIREMENT RATE AT 7.75.

2 THEY'RE ALREADY IN THE PROGRAM.

3 THE COURT: OKAY. ON THE ANNUITY?

4 MS. ANNEET: ON THE ANNUITY, 7.75 PERCENT. IF YOU  
5 DON'T -- IF YOU DON'T RETIRE BEFORE JULY 1ST, YOU RETIRE  
6 ON JULY 2ND, YOU'RE GOING TO GET A 3.35 PERCENT.

7 THE COURT: ON YOUR ANNUITY?

8 MS. ANNEET: ON YOUR ANNUITY. IF YOU'RE AN ACTIVE  
9 EMPLOYEE, MEANING YOU'RE STILL WORKING WITH THE CITY, AND  
10 YOU ARE RECEIVING YOUR SALARY AND YOUR CONTRIBUTION --

11 THE COURT: YOUR COLLEAGUE IS UPSET.

12 MR. DAVIS: -- IT JUST -- IT'S 5 PERCENT ON THE  
13 ANNUITY --

14 MS. ANNEET: FIVE PERCENT ON THE ANNUITY --

15 MR. DAVIS: -- AFTER JULY 1.

16 MS. ANNEET: -- AFTER JULY 1, SORRY.

17 THE REPORTER: SAY THAT AGAIN.

18 MS. ANNEET: THERE'S THE ACTIVE ACCOUNT, AND THERE'S  
19 THE DROP ACCOUNT. SO THE RETIRED ACCOUNT'S GOING TO GO  
20 FROM 7.75 PERCENT --

21 THE COURT: SLOW DOWN A LITTLE BIT.

22 MS. ANNEET: -- TO 5 PERCENT. I HAVE THAT IN MY  
23 PAPERS. SORRY.

24 AND THEN THE ACTIVE, MEANING THE FUNDS THAT ARE  
25 IN THE ACCOUNT, THEY'RE GOING TO GET THE INTEREST RATE OF  
26 3.54 PERCENT, INSTEAD OF WHAT THEY'RE GETTING NOW, WHICH  
27 IS 7.75.

28 THE COURT: OKAY. LET ME REPEAT IT BACK TO YOU TO

1 MAKE SURE I UNDERSTAND.

2 I'M ON ACTIVE DUTY IN THE POLICE FORCE, AND I  
3 HAVE ELECTED DROP A YEAR AGO. WHILE I'M IN THE FIVE  
4 YEARS, MY DEPOSITS INTO THIS ANNUITY ACCOUNT WILL DRAW  
5 7.5 PERCENT.

6 MS. ANNEET: UNTIL JULY 1ST.

7 MR. CONGER: IT'S ACTUALLY 7.75 PERCENT, WHICH IS  
8 THE SAME RATE AS THE EMPLOYEE --

9 THE COURT: I'LL GET TO YOU, MR. CONGER.

10 MR. CONGER: ALL RIGHT.

11 THE COURT: UNTIL JULY 1ST?

12 MS. ANNEET: CORRECT.

13 THE COURT: SO EVERYBODY IN THE DROP PROGRAM,  
14 ASSUMING ALL OF THIS IS APPROVED, WILL HAVE THEIR  
15 INTEREST RATES ON THEIR -- THE PORTION THAT'S BEING  
16 DEPOSITED INTO THEIR ANNUITY ACCOUNT, THE INTEREST RATE  
17 WILL DROP?

18 MS. ANNEET: CORRECT.

19 THE COURT: EVERYBODY?

20 MS. ANNEET: RIGHT.

21 THE COURT: IRRESPECTIVE OF WHEN THAT PERSON ELECTED  
22 TO JOIN THE DROP PROGRAM?

23 MS. ANNEET: RIGHT. THOSE PEOPLE WHO ARE IN THE  
24 PROGRAM ARE ALL GOING TO BE SUBJECT TO THE NEW INTEREST  
25 RATE. AND, BY THE WAY, THAT'S NOT JUST THE OFFICERS.  
26 THE MEA, FOR EXAMPLE, THEIR CONTRACT ALREADY ACKNOWLEDGES  
27 THAT THE RATE'S WHATEVER SDCERS SETS.

28 THE COURT: I'M SAYING "OFFICERS" BECAUSE OF YOUR

1 STATED OPPOSITION AT --

2 MS. ANNEET: EXACTLY.

3 THE COURT: -- THE JOINDER.

4 MS. ANNEET: EXACTLY.

5 THE COURT: OKAY. NOW, THE PEOPLE WHO HAVE ALREADY  
6 RETIRED AFTER THE DROP PROGRAM AND HAVE ELECTED TO DRAW  
7 DOWN ON THIS ANNUITY ACCOUNT -- INCIDENTALLY, IS THAT A  
8 PROPER WAY OF REFERRING TO IT?

9 MS. ANNEET: SURE.

10 THE COURT: OKAY. THEY'VE ELECTED TO DRAW DOWN ON  
11 THIS ANNUITY ACCOUNT WHATEVER THE REGULATIONS ARE ON  
12 THAT. WILL THEIR INTEREST RATE DROP DOWN TO 3.5 PERCENT,  
13 AS WELL?

14 MS. ANNEET: THE OFFICERS WHO HAVE ALREADY RETIRED  
15 AND FUNDED THEIR ANNUITY ACCOUNT, THAT RATE IS  
16 7.75 PERCENT. THAT'S -- THAT'S VESTED AT THAT POINT, AND  
17 THAT CANNOT BE CHANGED.

18 THE COURT: OKAY. SO I'M JOE COP AGAIN, AND I'M  
19 THINKING THAT IF I RETIRE IN JUNE, PRIOR TO THE DATES AT  
20 WHICH THESE THINGS ARE NO LONGER AVAILABLE, I KNOW THAT  
21 MY ANNUITY ACCOUNT, AFTER MY RETIREMENT, WILL CONTINUE TO  
22 EARN 7.75 PERCENT; IS THAT RIGHT?

23 MS. ANNEET: IF YOU'RE AN OFFICER THAT'S CURRENTLY  
24 IN THE DROP PROGRAM AND YOU ELECT DROP RETIREMENT BEFORE  
25 JULY 1ST, YES, YOU WILL GET THE 7.75 PERCENT.

26 THE COURT: AND IF I STAY PAST THAT, DEPENDING ON  
27 HOW THIS ALL COMES OUT, IT COULD BE 7.75 PERCENT OR IT  
28 COULD BE 3.5 PERCENT?



1 MS. ANNEET: YOU WON'T KNOW WHAT YOUR INTEREST RATE  
2 WILL BE UNTIL YOU ARE AT RETIREMENT.

3 THE COURT: SHOULDN'T JOE COP HAVE THE OPPORTUNITY  
4 TO WAIT UNTIL JULY TO FIND OUT BEFORE HE MAKES THE  
5 RETIREMENT -- HE OR SHE MAKES THE RETIREMENT DECISION?

6 MS. ANNEET: THAT'S WHY -- I BELIEVE SO. I MEAN, I  
7 THINK THAT'S WHY IT WOULD BE FAIR TO HAVE THE HEARING.  
8 MY PROPOSAL TO MR., CONGER WAS TO INCLUDE THE INTEREST  
9 RATE AND THE AGE ISSUE AS PART OF THE HEARING ON THE  
10 25TH, BECAUSE THEY ALL ADDRESS THE ISSUE OF VESTING.

11 THE COURT: NEVERTHELESS, THAT'S -- I MEAN, THAT'S A  
12 FRIDAY, A WEEKEND, AND TWO DAYS. AND YOU JUST SAID THE  
13 SIGN-UP DATES ARE PRIOR TO THAT; RIGHT?

14 MS. ANNEET: THE LAST DAY YOU CAN RETIRE IS  
15 JUNE 29TH. YOU HAVE TO BE IN THE SDCERS OFFICE ON  
16 JUNE 29TH.

17 THE COURT: OKAY. SO SAY I TAKE IT UNDER SUBMISSION  
18 FOR THE WEEKEND, AND WHAT DO I DO? YOU KNOW, I CALL THE  
19 DISPATCHER ON SUNDAY NIGHT AND TELL THEM WHAT MY  
20 DECISION'S GOING TO BE?

21 MS. ANNEET: WELL, THAT IS WHY WE WOULD PROPOSE, IN  
22 CONNECTION WITH THE HEARING ON THE MERITS, THAT THE  
23 INJUNCTION WOULD THEN BE DECIDED. BECAUSE THE CONTEXT OF  
24 THIS, YOUR HONOR, IS THAT THESE PARTIES HAVE BEEN IN  
25 NEGOTIATIONS SINCE FEBRUARY.

26 MR. DAVIS: JANUARY.

27 MS. ANNEET: JANUARY. SO THESE ISSUES HAVE BEEN ON  
28 THE TABLE AS PART OF NEGOTIATIONS FOR MONTHS. AND THE

1 SDPOA ELECTED NOT TO BARGAIN ON CERTAIN ISSUES, AND THEY  
2 TOOK A BARGAIN -- THEY TOOK A CHANCE. IT WENT TO THE  
3 CITY COUNCIL, AND THE CITY COUNCIL SAID, YOU KNOW, EVERY  
4 OTHER -- EVERY OTHER BARGAINING GROUP HAS TAKEN A FAIR  
5 SHARE OF THIS ECONOMIC CRISIS, AND WE'RE GOING TO IMPOSE  
6 YOURS ON YOU BECAUSE YOU DIDN'T AGREE.

7 THE COURT: WHICH IS FAIR.

8 MS. ANNEET: RIGHT.

9 THE COURT: YOU KNOW, SUBJECT TO MY REVIEW, THERE'S  
10 NOTHING WRONG WITH THAT. THE PROBLEM THAT I HAVE IS  
11 THESE PERSONS THAT ARE CAUGHT IN A POSITION WHERE THEY  
12 HAVE TO ELECT BEFORE THE END OF JULY -- JUNE, RATHER, AND  
13 IT WOULD MAKE A SUBSTANTIAL DIFFERENCE ON THEIR ABILITY  
14 TO LIVE AND DRAW FROM THEIR ANNUITY ACCOUNT. THERE'S A  
15 SUBSTANTIAL DIFFERENCE BETWEEN 7.75 AND 3.5, AND THIS --  
16 THE BRINKMANSHIP, IF YOU WILL, THAT'S BEING USED BY BOTH  
17 SIDES, FALLS DISPROPORTIONATELY ON THEM.

18 IF, YOU KNOW, JOE COP JUNIOR IS 25, HE DOESN'T  
19 CARE. BUT I JUST DON'T THINK IT'S APPROPRIATE THAT WE  
20 SHOULD MAKE THESE PEOPLE -- AND I DON'T KNOW HOW MANY  
21 THERE ARE, THERE MIGHT BE ONE, THERE MIGHT BE TEN, THERE  
22 MIGHT BE 200.

23 MS. ANNEET: RIGHT.

24 THE COURT: BUT APPROPRIATE TO ALLOW THEM TO WAIT  
25 AND SEE WHAT HAPPENS, AND THEN MAKE THEIR ELECTION. THEY  
26 MIGHT WANT TO RETIRE IF IT'S 7.75 PERCENT; THEY MIGHT  
27 CHOOSE NOT TO RETIRE IF IT'S 3.5 PERCENT. AND I'M  
28 TALKING ABOUT THE PEOPLE THAT ARE LIKE TWO YEARS INTO THE

1 DROP PROGRAM.

2 MS. ANNEET: RIGHT. I MEAN, I DIDN'T WANT TO GET  
3 INTO THE MERITS OF THE PRELIMINARY INJUNCTION TODAY. BUT  
4 THE DECLARATIONS THAT WERE PUT FORWARD, I'M NOT SURE  
5 YOU'VE HAD A CHANCE TO WADE THROUGH ALL OF OUR PAPERWORK.  
6 I KNOW WE INUNDATED YOU.

7 BUT THE DECLARATIONS WERE FAIRLY NONDESCRIPT.  
8 AND THERE'S A BIG DIFFERENCE BETWEEN SOMEONE WHO IS 54  
9 YEARS OLD AND LOOKING AT ONE YEAR VERSUS SOMEONE WHO'S 50  
10 AND, YOU KNOW, YOU START LOOKING AT PEOPLE BEING ABLE TO  
11 RETIRE WITH A 7.75 RATE VERSUS STICKING AROUND AND  
12 GETTING THREE POINT -- 3.35 PERCENT. I MEAN, WHO KNOWS,  
13 WHERE IS THE DAMAGE? WHICH WAY DOES THE DAMAGE FLOW,  
14 ULTIMATELY? I MEAN, THOSE --

15 THE COURT: I DON'T KNOW. DO YOU?

16 MS. ANNEET: -- ARE THINGS WE DON'T KNOW YET. WE'D  
17 HAVE TO LOOK INTO THAT BEFORE A SUBSTANTIVE HEARING.

18 THE COURT: WELL, BECAUSE WE DON'T KNOW, ISN'T THAT  
19 A PERFECT OCCASION TO ISSUE A TEMPORARY RESTRAINING ORDER  
20 TO FREEZE THE SITUATION?

21 MS. ANNEET: WELL, IF THERE WERE SOMETHING TO  
22 FREEZE. I GUESS -- I GUESS OUR POINT IS, THAT THERE IS  
23 NO ACTION GOING ON RIGHT NOW THAT REQUIRES A FREEZING.

24 THE COURT: NOT TRUE, NOT TRUE. THESE POLICE  
25 OFFICERS WHO ARE RIGHT ON THE EDGE ARE MAKING A CHOICE.  
26 AND THAT CHOICE IS, DO I RETIRE FROM A JOB I REALLY LIKE  
27 THREE YEARS SOONER THAN I SHOULD, THAN I WAS PLANNING TO,  
28 BECAUSE OF THE INTEREST RATE CHANGE? OR DO I STAY ON AND

1 HOPE THAT I GET THE 7.75 PERCENT? BUT IF I GET THE --

2 HOPE THAT I GET THE 7.75 PERCENT, BECAUSE IT MAKES A

3 SUBSTANTIAL DIFFERENCE IN MY LIFESTYLE IF I RETIRE.

4 MS. ANNEET: WELL, ESSENTIALLY, IF YOUR HONOR WERE

5 INCLINED TO ISSUE SOME KIND OF ORDER, YOU WOULD,

6 ESSENTIALLY, BE UNDOING WHAT WAS AGREED TO THROUGH THE

7 COLLECTIVE BARGAINING PROCESS AND WHAT WAS IMPOSED

8 THROUGH THAT PROCESS. AND THE POLICE OFFICERS WOULD END

9 UP BEING THE ONE BARGAINING UNIT THAT WOULD BE AHEAD OF

10 ALL OF THE OTHERS, BECAUSE EVERY OTHER EMPLOYEE IN THE

11 CITY IS GOING TO HAVE THEIR DROP RATE ADJUSTED.

12 THE COURT: NOT IF I ISSUE THE TEMPORARY RESTRAINING

13 ORDER AS DRAFTED.

14 MS. ANNEET: WELL, THAT WOULD BE -- THAT WOULD BE A

15 SPECIFIC OBJECTION TO THE PROPOSED ORDER BECAUSE THE

16 COURT DOESN'T HAVE JURISDICTION OVER THE MEA OR THE

17 AFSCME OR ANY OF THESE OTHER ORGANIZATIONS. WE'RE ONLY

18 HERE TODAY BECAUSE IT SO HAPPENS THE POA HAS ACCEPTED

19 EXCLUSIVE JURISDICTION OF PERB. BUT TO THE EXTENT THAT

20 THESE -- THERE ARE OTHER BARGAINING -- THERE WERE ISSUES,

21 WHICH THERE ARE NOT, THOSE UNIONS WOULD BE ABLE TO GO

22 FILE AN UNFAIR PRACTICE.

23 I MEAN, THE PROVISIONS THAT ARE AT ISSUE IN

24 THIS LAWSUIT WITH THE POA, THESE ARE TERMS THAT THE OTHER

25 BARGAINING UNITS ALREADY AGREED TO, SO THEY'RE NOT AT

26 ISSUE WHEN IT COMES TO THIS. THE POA WAS THE HOLDUP

27 GROUP ON THIS PROVISION.

28 THE COURT: SO IF I WERE TO RULE IN THE POA'S FAVOR

1 HERE, THAT WOULD HAVE NO EFFECT ON THE OTHER BARGAINING  
2 UNITS?

3 MS. ANNEET: WELL, IN TERMS OF -- IN TERMS OF THE  
4 INTEREST RATE, THE MEA AGREEMENT, I DON'T HAVE A COPY  
5 WITH ME HERE, BUT I THINK IT'S ARTICLE 22 OR IT'S ARTICLE  
6 44, SPECIFICALLY PROVIDES THAT THE INTEREST RATE IS THE  
7 RATE SET BY SDCERS. THE SAME FOR FIRE. I DIDN'T CHECK  
8 THE AFSCME AGREEMENT BEFORE THE HEARING.

9 MR. DAVIS: IT'S THE SAME, YOUR HONOR.

10 MS. ANNEET: SO BASICALLY, ALL OF THE OTHER  
11 BARGAINING UNITS AGREED THAT THE RATE --

12 THE COURT: BUT IS THEIR AGREEMENT THE ISSUE HERE?  
13 I THOUGHT THAT MR. CONGER WAS COMING IN AND TELLING THE  
14 CITY "YOU CAN'T DO THIS, WHETHER WE AGREE OR NOT."

15 MS. ANNEET: WELL, BECAUSE MR. CONGER HAS ARGUMENTS  
16 REGARDING HIS CONTRACT AND THE VESTING OF THE BENEFITS.  
17 BUT IN TERMS OF THE INTEREST RATE ISSUE AND THE AGE  
18 ISSUE, THOSE AREN'T IN DISPUTE WITH THE OTHER BARGAINING  
19 UNITS.

20 THE COURT: UNLESS WHAT THEY HAVE AGREED TO IS  
21 UNLAWFUL.

22 MS. ANNEET: WELL, I THINK IF WE GO THROUGH A  
23 HEARING ON THE MERITS, YOUR HONOR, YOU WILL SEE FROM THE  
24 CITY CHARTER, YOU WILL SEE THAT SDCERS IS THE BODY THAT  
25 DETERMINES WHAT THE RATE IS, THAT THE INTEREST RATE IS  
26 NOT THE PENSION. IT'S NOT THE BENEFIT THAT ACCRUES --

27 THE COURT: DOES MR. CONGER AGREE WITH THAT?

28 MS. ANNEET: HE DOESN'T. WE'LL GO THROUGH THAT ON

1 THE HEARING OF THE MERITS, I ASSUME.

2 THE COURT: OKAY. WELL, THAT'S EXACTLY MY POINT.

3 MR. DAVIS: YOUR HONOR, IF I COULD JUST ADDRESS THE  
4 INTEREST RATE.

5 THE COURT: IF SHE'LL LET YOU.

6 MR. DAVIS: SORRY. I WAS ONE OF THE CHIEF  
7 NEGOTIATORS AT THE TABLE NEGOTIATING ALL OF THESE  
8 AGREEMENTS ON BEHALF OF THE CITY, WITH MY PARTNER  
9 PHIL KAY. SO I HAVE A LITTLE MORE INTIMATE KNOWLEDGE OF  
10 THE LABOR CONTRACTS. AND I'M JUST TALKING SPECIFICALLY  
11 ABOUT THE INTEREST RATE, ONLY.

12 ALL OF THE CONTRACTS, THE HISTORY AND,  
13 CERTAINLY, MR. CONGER'S PAPERS, AS WELL AS MS. SMITH'S  
14 PAPERS, TALK ABOUT DROP GOING BACK TO 1997 AND COMING  
15 FORWARD. THE CONTRACTS FOR THE FIVE BARGAINING GROUPS  
16 HAVE NOT BEEN IDENTICAL WITH RESPECT TO THE LANGUAGE  
17 ABOUT WHO SETS THE INTEREST RATE.

18 IN THREE OF THE AGREEMENTS, BOTH AFSCME, MEA,  
19 DCAA, IT WAS VERY CLEAR THAT THAT WAS DONE IN ACCORDANCE  
20 WITH SDCERS. FOR POLICE AND FIRE, IT WAS DIFFERENT, AND  
21 IT JUST SAID 7.75 PERCENT.

22 GOING THROUGH THIS LAST GROUP OF BARGAINING,  
23 THE CITY PROPOSED, WITH FIRE, AND FIRE AGREED ON BEHALF  
24 OF THEIR MEMBERS, TO ALLOW THAT SPECIFIC PROVISION TO SAY  
25 "IN ACCORDANCE WITH SDCERS SETTING THE RATE." POA,  
26 BECAUSE THE CITY DID NOT COME TO AN AGREEMENT AND WENT  
27 THROUGH AN IMPASSE, HAD THAT SPECIFIC PROVISION IMPOSED.

28 SO WHEN YOU -- WE CERTAINLY ARE UNDERSTANDING

1 OF WHAT MR. CONGER'S ARGUMENTS ARE WITH REGARDS TO WHY IT  
2 IS WE CANNOT CHANGE THAT, BUT THAT IS FUNDAMENTALLY  
3 DIFFERENT THAN WHAT IT IS FOR MEA, CERTAINLY WITH, YOU  
4 KNOW, THE THEN DCAA. AND FIRE, OF COURSE, AGREED.

5 SO THERE ARE SOME DIFFERENCES THAT -- WITH  
6 RESPECT TO THE GROUPS. AND THAT'S ANOTHER REASON WHY WE  
7 THINK THAT THE ORDER COULD NOT GO TO THE OTHER GROUPS.  
8 IT SHOULD ONLY GO TO THE POA.

9 THE COURT: IF I ISSUE IT.

10 MR. DAVIS: IF YOU ISSUE IT.

11 THE COURT: BARGAINING UNITS? FIRE, POLICE --

12 MR. DAVIS: DCAA, WHICH IS THE DEPUTY CITY  
13 ATTORNEYS; AFSCME, WHICH IS, ESSENTIALLY, THE BLUE COLLAR  
14 GROUP; MEA IS THE PROFESSIONAL GROUP. AND WE ALSO HAVE  
15 FIRE AND POLICE.

16 THE COURT: OKAY. AND WHAT'S THE EXECUTIVE GROUP?

17 MR. DAVIS: THAT'S MEA. THEY'RE -- THEY HAVE  
18 BOTH -- I MEAN, BLUE -- NOT -- YEAH, BLUE COLLAR  
19 PROFESSIONAL. THEY'RE A PRETTY DIVERSE GROUP IN TERMS OF  
20 THE VARIOUS -- ITS VARIOUS MAKEUP.

21 MS. SMITH: YOUR HONOR, IF YOU WOULD PERMIT ME --

22 THE COURT: YES. I'M GOING TO GET TO YOU IN JUST A  
23 SECOND.

24 MS. SMITH: ALL RIGHT. THANK YOU.

25 MS. ANNEET: YOUR HONOR, I -- THE CITY APPRECIATES  
26 THE CONCERNS. AND AS I SAID, WE HAD BEEN WORKING TO TRY  
27 TO COME UP WITH A SOLUTION WITH MR. CONGER ON THE  
28 INTEREST RATE THAT WOULD PROVIDE AN OPPORTUNITY TO GET A

1 RULING ON THE MERITS BEFORE THE DATE COMES INTO PLAY.

2 BECAUSE THE FINANCIAL IMPACT --

3 THE COURT: I DON'T REALLY WANT TO KNOW ABOUT WHAT  
4 YOU'VE NEGOTIATED THAT YOU HAVEN'T AGREED ON. I DON'T  
5 THINK THAT'S APPROPRIATE.

6 MS. ANNEET: NO. I'M SORRY, YOUR HONOR. THE  
7 INTEREST RATE ISSUE POSES THE PROBLEM, BECAUSE THE CITY  
8 DOESN'T BELIEVE THAT IT EVEN HAS THE POWER TO ALTER THE  
9 INTEREST RATE AFTER JULY 1ST.

10 THE COURT: AND, ONCE AGAIN, MY PROPOSED TRO HAS  
11 NOTHING TO DO WITH THAT.

12 MS. ANNEET: OKAY.

13 THE COURT: NOTHING WHATSOEVER.

14 MR. DAVIS: THE ONLY PROBLEM, IF YOU WILL, IS THAT  
15 AFTER JULY 1, SDCERS IS GOING TO CHANGE THAT RATE. SO  
16 THAT -- THAT EVENT'S GOING TO HAPPEN.

17 THE COURT: YES.

18 MR. DAVIS: AND SO THE DIFFERENTIAL BETWEEN THE 3.54  
19 FOR THE ACTIVE DROP PARTICIPANTS AND 7.75, AS WELL AS THE  
20 ANNUITY BEING 5 PERCENT, IF THEY ARE CORRECT, WOULD BE A  
21 BASIS FOR MONEY DAMAGES TO CALCULATE IT. IF THEY --

22 THE COURT: I DON'T WANT TO DO THAT.

23 MR. DAVIS: -- BUT IF THEY ARE WRONG, IF THEY ARE  
24 WRONG, THEN, ESSENTIALLY, THE CITY HAS NOW SHOULDERED  
25 THAT FINANCIAL EXPOSURE FOR A DATE CERTAIN, WITHOUT EVEN  
26 AN UNDERTAKING, SO MUCH BEING IN PLACE, IF WE GET IT BY  
27 JULY 1, THAT'S WHY WE WOULD LIKE A HEARING BEFORE THEN  
28 TO -- TO AVOID THOSE ISSUES.



1 THE COURT: HOW HAS THE CITY SHOULDERED ANY BURDEN,  
2 AT ALL?

3 MR. DAVIS: WITH RESPECT TO WHAT, YOUR HONOR?

4 THE COURT: IF THE TRO IS ISSUED.

5 MR. DAVIS: WE WERE TALKING ABOUT THE END DATE. AND  
6 THAT IS ESSENTIAL --

7 THE COURT: OKAY. LET ME BACK UP HERE.

8 THE RETIREMENT BOARD IS GOING TO DO WHAT IT'S  
9 GOING TO DO. ALL I'M SAYING IS THAT SOMEBODY WHO COULD  
10 HAVE ELECTED IN JUNE, INSTEAD, ELECTS IN JULY, AND THE  
11 EFFECTIVE DATE OF THAT ELECTION IS IN JUNE, SO THAT  
12 PERSON GETS THE OLD RATES. AND I'M PRETTY SURE THAT THE  
13 PEOPLE AT SDCERS KNOW ABOUT THIS, AND THAT'S ALL I NEED.  
14 THEY'RE BOUND.

15 MS. ANNEET: SO THE ONE FINAL CONSIDERATION WOULD BE  
16 THE ISSUANCE OF A TRO NOW VERSUS LATER WITHOUT HAVING THE  
17 HEARING ON THE MERITS. YOUR HONOR HAD REFERRED TO,  
18 EARLIER, ABOUT POTENTIAL FOR AN APPEAL. AND SO TO THE  
19 EXTENT THAT WE WANT TO PROVIDE THE OFFICERS THE WINDOW OF  
20 TIME TO MAKE AN ELECTION, IF THAT WINDOW OF TIME WOULD  
21 THEN CONTINUE TO GROW ONCE WE GET INTO AN APPELLATE  
22 PROCESS, THAT WOULD START HAVING SIGNIFICANT FINANCIAL  
23 REPERCUSSIONS FOR THE CITY.

24 THE COURT: HOW?

25 MS. ANNEET: BECAUSE THEY WOULD HAVE THE  
26 DIFFERENTIAL BETWEEN THE THREE -- THE PERCENTAGES THAT  
27 THE SDCERS HAS SET AS THE RATE AND THE PERCENTAGES THAT  
28 THE OFFICERS ARE GETTING.

1 THE COURT: BUT THEY WOULD HAVE THAT DIFFERENTIAL,  
2 NOTWITHSTANDING, IF THESE OFFICERS DECIDED TO ALL GO IN  
3 AND RETIRE BEFORE THE 29TH.

4 MR. DAVIS: IF I COULD, THERE'S TWO POINTS TO THAT.  
5 ONE IS WHAT THE -- AND PART OF IT IS THIS SORT OF  
6 CONFUSING NATURE OF DROP. BECAUSE YOU -- WHEN YOU REACH,  
7 QUOTE, RETIREMENT AGE, PERIOD, 3 PERCENT AT 50, YOU CAN  
8 RETIRE, YOU CAN CONTINUE WORKING, OR YOU COULD ENTER INTO  
9 THE DROP PROGRAM.

10 THE COURT: YOU KNOW, I THINK I UNDERSTAND A LOT  
11 MORE THAN YOU THINK I DO.

12 MR. DAVIS: OKAY.

13 THE COURT: I'M TALKING ABOUT A GUY THAT HAS ELECTED  
14 DROP AT 50. THAT GUY IS 52 YEARS OLD. IF HE -- HE'S  
15 ELIGIBLE TO RETIRE; RIGHT?

16 MR. DAVIS: (NODS HEAD.)

17 THE COURT: HE WANTS TO KNOW WHETHER HE SHOULD  
18 RETIRE BEFORE THE 29TH, AND CONTINUE TO GET THE  
19 SEVEN-POINT -- 7.75 PERCENT ON HIS ANNUITY, OR SHOULD HE  
20 WAIT UNTIL JULY, HOPING THAT SOMETHING GOOD HAPPENS,  
21 BECAUSE HE LIKES HIS JOB AND HE'S ACTUALLY A PRETTY GOOD  
22 COP, AND WE'D LIKE TO KEEP HIM AROUND.

23 MR. DAVIS: YEAH, THAT -- THAT PART, I THINK, YOU'VE  
24 ARTICULATED CORRECTLY, AND IT WOULD BE 5 PERCENT WOULD BE  
25 THE NEW PART OF THE ANNUITY. WHEN YOU'RE GONE, 3.54  
26 ACCRUING IN YOUR DROP ACCOUNT AFTER JULY 1. SO THERE ARE  
27 THOSE TWO SPECIFIC FACETS.

28 THE COURT: THEN I HAD THAT BACKWARDS.

1 MR. DAVIS: YEAH, BUT --

2 THE COURT: POSTRETIREMENT, THE ACCRUAL, OR THE  
3 INTEREST RATE IN THE ANNUITY FUND IS -- WHAT IS IT NOW?

4 MR. DAVIS: 7.75.

5 THE COURT: AND AFTER JULY 1ST IT'S GOING TO BE?

6 MR. DAVIS: FIVE PERCENT.

7 THE COURT: OKAY. SO IT'S NOT THE DELTA THAT I  
8 THOUGHT IT WAS. IT'S JUST THE --

9 MR. CONGER: HE'S INCORRECT, THOUGH, YOUR HONOR.  
10 THAT'S NOT RIGHT, FACTUALLY.

11 IF YOU RETIRE BEFORE THE END OF THE MONTH, IT'S  
12 7.75 PERCENT PER CAPITA. IF YOU STAY AND DON'T ELECT BY  
13 THE 29TH, IT DROPS, IT LOWERS.

14 THE COURT: THAT'S EXACTLY WHAT I SAID.

15 MR. CONGER: AND YOU'RE CORRECT AND MR. DAVIS, WHAT  
16 HE JUST SAID TO YOU IS INCORRECT.

17 THE COURT: NO, WAIT A MINUTE. SIT DOWN. SIT DOWN.  
18 SIT DOWN.

19 MR. DAVIS: I DON'T AGREE THAT'S WHAT IT IS.

20 THE COURT: NO, HE WASN'T INCORRECT. HE SAID IT  
21 CORRECTLY. WE UNDERSTAND EACH OTHER.

22 WE'VE GOT TWO PEOPLE, BOTH 52, BOTH IN THE DROP  
23 PROGRAM, ONE WALKS INTO THE OFFICE, I GUESS. DOES IT  
24 HAVE TO BE INSIDE THE DOOR OR CAN THEY BE IN LINE?

25 MS. ANNEET: THEY HAVE TO BE INSIDE THE DOOR. THEY  
26 HAVE TO COMPLETE THEIR APPLICATION.

27 THE COURT: THEY HAVE TO COMPLETE THEIR APPLICATION  
28 BY THE 29TH?

1 MS. ANNEET: BY 5 O'CLOCK. AND IF THEY'RE IN THE  
2 DOCTOR AND THEY CAN'T COMPLETE IT, THEY'LL ALLOW THEM TO  
3 COMPLETE IT THE NEXT DAY.

4 THE COURT: OKAY. WHAT IF THEY'RE IN THE LINE?

5 MS. ANNEET: WELL, THEY'LL LET EVERYONE IN THE DOOR.

6 THE COURT: NO, THAT ISN'T WHAT I ASKED YOU. WHAT  
7 IF THEY'RE IN A LINE THAT GOES OUT INTO THE HALL?

8 MR. DAVIS: WE WOULD DEFER TO SDCERS, YOUR HONOR,  
9 HOW WE PROCESS THAT.

10 THE COURT: WE DON'T KNOW WHAT THEY'RE GOING TO DO,  
11 DO WE? YOU'RE TALKING ME MORE AND MORE INTO THIS.

12 MS. ANNEET: I CERTAINLY DON'T WANT TO DO THAT, YOUR  
13 HONOR.

14 THE COURT: BUT LET'S GO BACK TO MY HYPOTHETICAL.  
15 WE'VE GOT TWO PEOPLE, 52 YEARS OLD. THEY'VE BEEN COPS  
16 SINCE THEY WERE GRADUATED FROM COLLEGE, BOTH IN THE DROP  
17 PROGRAM, ONE OF THEM RETIRES, CHOOSES TO RETIRE ON THE  
18 29TH, AND THE OTHER ONE RETIRES FOUR DAYS LATER. THEY  
19 ARE GOING TO WIND UP WITH FUNDAMENTALLY DIFFERENT  
20 RETIREMENTS; RIGHT?

21 MS. ANNEET: IT WILL DEPEND ON THE OUTCOME OF THE  
22 WRIT.

23 THE COURT: BUT UNDER THE CITY'S PROPOSAL.

24 MS. ANNEET: YEAH. IF -- IF THE CITY PREVAILS ON  
25 THE WRIT, THEN THE INDIVIDUAL WHO RETIRED ON THE 29TH IS  
26 NO FURTHER AHEAD OR FURTHER BEHIND, OTHER THAN HE GOT  
27 WHAT HE WAS ENTITLED TO AT THE TIME.

28 THE COURT: SAY THAT AGAIN.

1 MS. ANNEET: IF THE CITY PREVAILS ON THE WRIT --

2 THE COURT: YES.

3 MS. ANNEET: -- AND THERE IS NO VESTED RIGHT --

4 THE COURT: YES.

5 MS. ANNEET: -- TO A SPECIFIC INTEREST RATE, AND THE  
6 CITY WAS WITHIN ITS AUTHORITY TO REQUEST THAT THE POA  
7 MEET AND CONFER ON THE ISSUE --

8 THE COURT: YES.

9 MS. ANNEET: -- THEN COME JULY 1ST, THE SDCERS  
10 INTEREST RATE WILL BE IN PLACE. THE GENTLEMAN WHO  
11 RETIRED ON THE 29TH WILL BE AHEAD BECAUSE HE OPTED TO GO  
12 EARLY. AND HE'S GETTING THE HIGHER RATE, ASSUMING THAT  
13 HE WAS CLOSE ENOUGH TO RETIREMENT THAT IT ALL WORKS OUT  
14 DIFFERENTIALLY.

15 THE COURT: OKAY. MAYBE CHANGE THE HYPOTHETICAL TO  
16 SOMEONE WHO'S 54 AND A HALF.

17 MS. ANNEET: OKAY. SO FOR SOMEONE WHO'S 54 AND A  
18 HALF, THEY ARE GOING TO REALLY NOT HAVE MUCH ACTIVE  
19 SERVICE LEFT. THAT IS SOMEONE WHO'S MOST LIKELY GOING TO  
20 OPT TO SECURE THE 7.75 PERCENT. BECAUSE NO MATTER WHAT  
21 HAPPENS, THE 7.75 PERCENT IS GOING TO PUT THAT PERSON IN  
22 THE BEST SITUATION.

23 THE COURT: YES, BUT, YOU KNOW, JOE COP ONE MIGHT BE  
24 IN THE MIDDLE OF A VERY, VERY DELICATE INVESTIGATION, AND  
25 HE OR SHE MIGHT WANT TO FINISH THAT INVESTIGATION. I  
26 UNDERSTAND THAT THEY CAN COME IN ON THEIR OWN TIME AND  
27 FINISH IT, BUT THERE ARE JUST TOO MANY UNKNOWNNS HERE.

28 AND, AS I SAID, IT IS A -- I UNDERSTAND THE

1 WALKING TO THE EDGE OF THE CLIFF WITH THE BARGAINING  
2 UNIT. THAT'S A PERFECTLY LEGITIMATE BARGAINING  
3 TECHNIQUE. YOU BOTH PLAN. I DON'T THINK IT'S FAIR THAT  
4 CERTAIN OFFICERS OR CERTAIN EMPLOYEES WHO REALLY HAVE  
5 NOTHING TO DO WITH THIS CHANGE BECAUSE, FRANKLY, THEY'RE  
6 ON THE BACK END OF THEIR CAREER, AND THEY'RE GOING TO  
7 RETIRE SOON.

8 AND THEY MAY EVEN AGREE WITH THE CITY, FOR ALL  
9 I KNOW. THEY MIGHT NOT FAVOR WHAT THEIR POLICE OFFICERS  
10 ASSOCIATION IS DOING, BUT THEY'RE CAUGHT IN THIS  
11 SITUATION WHERE THEY HAVE TO MAKE AN ELECTION, AND THEY  
12 CAN LOSE BIG IF THEY DON'T. THEY'RE ROLLING THE DICE.  
13 AND THEY'VE EVEN BEEN TO THEIR LAWYER AT SULLIVAN AND  
14 CROMWELL TO SEE WHAT IS THE LIKELY OUTCOME OF THIS THING.  
15 SULLIVAN AND CROMWELL SAYS "I DON'T KNOW."

16 SO IT IS THAT PERSON THAT'S LEFT IN LIMBO. AND  
17 I HAVEN'T -- YOUR ARGUMENT IS ARTICULATE, AND I  
18 UNDERSTAND. I STILL THINK IT'S A GOOD IDEA TO ISSUE THE  
19 TRO. AND I WANT TO MAKE THIS PERFECTLY CLEAR. THIS DOES  
20 NOTHING, NOTHING AT ALL, TO THE ISSUE OF WHETHER THE  
21 INTEREST RATES GO UP OR DOWN OR STAY WHERE THEY ARE OR  
22 THE AGE AT WHICH SOMEBODY CAN RETIRE. WHATEVER COMES OUT  
23 AT THE END IS WHAT COMES OUT, AND EITHER THE CITY CAN OR  
24 IT CAN'T CHANGE THAT. EITHER THE SDCERS CAN OR CANNOT  
25 CHANGE THAT.

26 I DON'T KNOW IF I'M RULING ON SDCERS OR NOT,  
27 BUT, ANYWAY, THE INTEREST RATES CAN GO UP OR DOWN BASED  
28 UPON -- NOT UP, BUT THEY CAN GO DOWN BASED UPON THE

1 IMPASSE. ALL OF THAT GETS TO HAPPEN, IRRESPECTIVE OF  
2 THIS TRO. THE ONLY THING THE TRO DOES IS LETS -- IT LETS  
3 CERTAIN PEOPLE WHO ARE CAUGHT IN THE GAP, HOLD OFF TO  
4 MAKE THEIR ELECTIONS TO SEE WHAT HAPPENS.

5 MS. ANNEET: YOUR HONOR, TAKING THAT FORWARD TO  
6 PROCEDURAL ISSUES --

7 THE COURT: YES.

8 MS. ANNEET: -- TO CALL SOMETHING A TRO WITHOUT A  
9 RETURN DATE IS ACTUALLY A PRELIMINARY INJUNCTION. AND SO  
10 IF YOU'RE GOING TO GO DOWN THIS ROUTE, THEN I WOULD  
11 LIKE -- I REQUEST THAT WE SET WHAT THE RETURN DATE WOULD  
12 BE TO INSURE THAT WE PRESERVE THE NATURE OF THIS RULING  
13 AS THAT OF A TRO, AND THAT WE HAVE THE RETURN DATE. I  
14 THINK WE GO TO THE 22 DAYS SAYING IT'S EXIGENT  
15 CIRCUMSTANCES, BUT KEEP GOING DOWN THE PROCEDURAL PATH OF  
16 THE TRO.

17 THE COURT: OKAY. THE RETURN DATE IS JUNE 25TH.

18 MS. ANNEET: OKAY. AND THEN THE UNDERSTANDING BEING  
19 THAT IT'S THE JUNE 25TH HEARING WHERE, REALLY, THE  
20 RUBBER'S GOING TO HIT THE ROAD. BECAUSE AT THAT POINT,  
21 YOUR HONOR WILL BE LOOKING AT THE MERITS OF THE CASE, AND  
22 YOU WILL BE DECIDING WHETHER THE POLICE OFFICER IN THIS  
23 QUANDARY IS ENTITLED TO ANOTHER COUPLE WEEKS OF RELIEF TO  
24 MAKE A DECISION OR NOT. IS THAT WHAT I'M HEARING?

25 THE COURT: IF I STILL HAVE JURISDICTION, NOW THAT  
26 YOU'VE -- YOU'VE TOUCHED ON A REAL FINE POINT THERE. BUT  
27 IT IS POSSIBLE THAT THE ISSUE OF WHETHER THAT, WHAT WOULD  
28 THEN BE AN INJUNCTION, WOULD CONTINUE, WOULD HAVE TO BE

1 BROUGHT BEFORE THE COURT OF APPEAL.

2 MS. ANNEET: CORRECT. BUT THE ISSUE THAT WE'D BE  
3 GOING UP TO THE COURT OF APPEAL ON WAS WHETHER OR NOT  
4 YOUR HONOR WAS CORRECT IN ISSUING THE TRO.

5 THE COURT: NO. BECAUSE, BY THEN, IT WILL BE AN  
6 INJUNCTION, IF IT STAYS.

7 MS. ANNEET: OKAY. SO WE WOULD BE SEEKING A WRIT ON  
8 THE PRELIMINARY INJUNCTION?

9 THE COURT: SURE.

10 MS. ANNEET: AND WE WOULD BE LOOKING AT THE  
11 STANDARDS FOR THE PRELIMINARY INJUNCTION.

12 FOR THE RECORD, I UNDERSTAND THAT THERE'S A  
13 PERSONAL ELEMENT TO THIS. AND THEN, YOU KNOW, WE'RE THE  
14 LAWYERS, AND WE LOOK AT THE REQUIREMENTS AND THE  
15 PROCEDURAL ISSUES. AND IN TERMS OF THE IRREPARABLE HARM  
16 AND ALL OF THOSE SPECIFIC ELEMENTS, WHETHER OR NOT THOSE  
17 HAVE BEEN MET OR NOT, THOSE WOULD BE ISSUES THAT WE WOULD  
18 DEAL WITH AT THE PRELIMINARY INJUNCTION PHASE.

19 THE COURT: WELL, I GUESS YOU BETTER REMEMBER THAT I  
20 WENT TO THE UNIVERSITY OF WISCONSIN LAW SCHOOL, WHICH IS  
21 STEEPED IN THE TRADITION THAT WE LOOK AT THE LAW IN TERMS  
22 OF HOW IT REALLY AFFECTS PEOPLE --

23 MS. ANNEET: I UNDERSTAND.

24 THE COURT: -- RATHER THAN THESE FINE LITTLE POINTS  
25 OF PROCEDURE.

26 MS. ANNEET: YOU APPRECIATE I HAVE TO MAKE THE  
27 RECORD.

28 THE COURT: OF COURSE.



1 MS. ANNEET: OKAY.

2 THE COURT: OF COURSE. AND YOU'RE DOING A GOOD JOB.

3 I APPRECIATE IT.

4 BUT JUST TO FOLLOW UP ON THAT, I THINK THE ONLY  
5 TIME THAT WOULD BECOME AN ISSUE WOULD BE IF MR. CONGER  
6 WERE APPEALING.

7 MS. ANNEET: CORRECT.

8 THE COURT: AND IF MR. CONGER WERE APPEALING, WE  
9 COULD -- THERE'S ANY NUMBER OF THINGS WE COULD DO. BUT  
10 YOU WOULD ARGUE THAT POINT. I THINK YOU'D BOTH ARGUE  
11 THAT POINT, AND WE'D MAKE A DECISION AND SAY, OKAY, THIS  
12 ENDS IN 14 DAYS.

13 MS. ANNEET: RIGHT. THE MAIN -- OBVIOUSLY, THE  
14 MAIN -- AND, YOUR HONOR, I REALLY APPRECIATE ALL THE  
15 THOUGHT YOU'VE OBVIOUSLY GIVEN THIS BEFORE WE CAME IN.  
16 BUT THE MAIN ISSUE FOR THE CITY, OBVIOUSLY, WAS THAT WE  
17 DIDN'T WALK OUT OF HERE TODAY WITH THE POSSIBILITY THAT  
18 WE'RE IN A SITUATION THAT A TRO COULD ISSUE THAT WOULD  
19 JUST CONTINUE INTO SOMETIME THAT NO ONE'S REALLY CLEAR  
20 THAT WOULD END.

21 THE COURT: I CAN'T DO THAT. I CAN'T DO THAT. I  
22 MEAN, THERE ARE CERTAIN PROVISIONS UNDER THE CODE OF  
23 CIVIL PROCEDURE THAT I REALLY HAVE TO FOLLOW,  
24 IRRESPECTIVE OF THE WAY PEOPLE REALLY ACT OR NOT. AND  
25 THAT'S ONE OF THEM.

26 MS. ANNEET: AND I GUESS MY FINAL PITCH WOULD BE IF  
27 YOU START LOOKING AT THE FINER DETAILS OF A TRO, I  
28 WOULD -- I WOULD REQUEST THAT THE TRO BE LIMITED TO THE

1 PARTIES THAT ARE CURRENTLY BEFORE THE COURT --

2 THE COURT: OKAY.

3 MS. ANNEET: -- AND TO THE ISSUES -- WELL, TO THE

4 PARTIES BEFORE THE COURT. AND THAT WOULD BE THE POA.

5 AND THE BASIS FOR THAT WOULD BE THAT, AS FAR AS THE OTHER

6 BARGAINING UNITS GO, IF THERE'S GOING TO BE DISPUTES,

7 THOSE WOULD BE THINGS THEY CAN TAKE TO PERB UNDER THE

8 PERB UNFAIR PRACTICES JURISDICTION.

9 THE COURT: OKAY. LET ME ASK YOU A QUESTION.

10 THE OTHER BARGAINING UNITS THAT HAVE AGREED TO

11 DROPPING THE INTEREST RATE, IS MY RULING ON THAT ISSUE

12 GOING TO DETERMINE WHETHER IT WAS JUST AN ISSUE BETWEEN

13 SAN DIEGO AND THE POLICE OFFICERS, OR IS THERE A

14 POTENTIAL FOR MY FINDING THAT THE CITY DID NOT HAVE THE

15 AUTHORITY TO CHANGE THAT, IRRESPECTIVE OF WHETHER THEY

16 GOT THE AGREEMENT OF THE OTHER BARGAINING UNITS?

17 YOUR PARTNER REALLY WANTS TO TALK HERE.

18 MR. DAVIS: MY ONLY THING IS -- YOUR HONOR, IS THAT,

19 CLEARLY, WITH RESPECT TO MEA, WHO IS HERE AND YOU CAN

20 HEAR FROM, THERE WAS NO CHANGE WITH RESPECT TO WHO HAS

21 THE AUTHORITY TO -- IN THEIR CONTRACT ON THE INTEREST

22 RATE. IN OTHER WORDS --

23 THE COURT: WELL, THAT'S THE SUBSTANCE.

24 MR. DAVIS: BUT THAT'S -- THAT'S AN IMPORTANT --

25 THAT'S AN IMPORTANT COMPONENT HERE. BECAUSE WHEN WE WENT

26 THROUGH THE MEET AND CONFER PROCESS ON THE ISSUE OF THE

27 INTEREST RATE --

28 THE COURT: I'M NOT DECIDING THAT TODAY.

1 MR. DAVIS: BUT, IN ESSENCE, WE WOULD BE GOING BACK  
2 AND CHANGING THE STATUS QUO FROM WHAT IT WAS ALREADY.  
3 BECAUSE WITH RESPECT TO MEA, FOR EXAMPLE --

4 THE COURT: THAT'S MY QUESTION.

5 MR. DAVIS: YEAH.

6 THE COURT: DO YOU HAVE THE AUTHORITY TO CHANGE THE  
7 STATUS QUO?

8 MR. DAVIS: AND --

9 MS. ANNEET: NO.

10 MR. DAVIS: -- WE -- WE HAVE NOT WITH RESPECT TO MEA  
11 OR AFSCME. WE HAVE WITH RESPECT TO FIRE AND POLICE. BUT  
12 WITH THE OTHER THREE BARGAINING GROUPS, THAT WAS THE  
13 STATUS QUO, THAT SDCERS WOULD CHANGE THE INTEREST RATE.

14 THE COURT: AND WHEN WAS THAT AGREED TO?

15 MR. DAVIS: WELL, WITH MEA, THAT'S GOING BACK TO  
16 1997.

17 THE COURT: IT'S A LONG TIME.

18 MR. DAVIS: YEAH.

19 THE COURT: HOW ABOUT THE OTHERS?

20 MR. DAVIS: I -- I --

21 THE COURT: BALLPARK.

22 MR. DAVIS: YEAH. IT'S -- IT'S -- THAT'S BEEN THE  
23 STATUS QUO FOR EVERYBODY, THAT I CAN REMEMBER, WITH TWO  
24 EXCEPTIONS, AND THAT'S POLICE AND FIRE. AND THAT -- AND  
25 THAT WAS CHANGED THIS YEAR THROUGH THE COLLECTIVE  
26 BARGAINING PROCESS.

27 THE COURT: THANK YOU. THAT'S EXACTLY WHAT I NEEDED  
28 TO KNOW. THANK YOU VERY MUCH.

1 MS. ANNEET: AND, YOUR HONOR, YOU'LL SEE IN THE  
2 SUBMISSION THAT WE MADE TODAY, I INCLUDED COPIES OF THE  
3 CITY CHARTER, COPIES OF THE DROP PROGRAM, ACTUARIAL  
4 REPORTS FROM THE VARIOUS SDCERS FOLKS, PRESS RELEASES,  
5 JUST DOCUMENTATION TO GIVE YOUR HONOR BACKGROUND ON THE  
6 AUTHORITY OF SDCERS ON THIS ISSUE.

7 THE COURT: I APPRECIATE THAT, BECAUSE DO YOU KNOW  
8 HOW HARD IT IS TO FIND REGULATIONS ON THE CITY'S WEBSITE?  
9 IT WAS -- IT ALMOST GOT TO THE POINT OF THE FIST THROUGH  
10 THE MONITOR.

11 MS. ANNEET: I DID INCLUDE THE DROP REGULATIONS  
12 ATTACHED TO OUR PETITION, BECAUSE I APPRECIATE SOMETIMES  
13 IT'S TRICKY TO FIND THESE THINGS.

14 THE COURT: YES, AND YOU CAN'T GET IT THROUGH  
15 WESTLAW.

16 MS. ANNEET: NO.

17 THE COURT: SO THANK YOU FOR BRINGING THOSE THINGS  
18 IN.

19 MS. SMITH.

20 MS. SMITH: YES, YOUR HONOR.

21 MS. ANNEET: THANK YOU, YOUR HONOR.

22 THE COURT: THANK YOU. AND THANK YOU FOR A WELL  
23 PREPARED ARGUMENT.

24 WHAT'S YOUR PITCH? WHY SHOULD I INCLUDE YOUR  
25 PEOPLE ON THIS WHEN THEY AGREED TO IT TEN YEARS AGO?

26 MS. SMITH: WELL, FIRST, YOUR HONOR, MAY I ADDRESS  
27 THE APPLICATION TO INTERVENE? AND THEN WE'LL COME BACK  
28 TO THE INTEREST RATE ISSUE, BECAUSE I THINK THE

1 FUNDAMENTAL QUESTION, FIRST OF ALL, IS WHETHER OR NOT THE  
2 SAN DIEGO MUNICIPAL EMPLOYEES ASSOCIATION HAS A PROPER  
3 INTEREST ON BEHALF OF 4,700 CITY OF SAN DIEGO EMPLOYEES  
4 WHO ARE IN -- MR. DAVIS IS QUITE CORRECT, YOUR HONOR, IT  
5 IS A VERY LARGE DIVERSE GROUP.

6 BUT THEY SPAN THE PROFESSIONAL BARGAINING UNIT,  
7 THE TECHNICAL BARGAINING UNIT, WHICH, BY THE WAY,  
8 INCLUDES ALL OF THE NON-SWORN EMPLOYEES IN THE POLICE  
9 DEPARTMENT AND IN THE FIRE DEPARTMENT, AND, AS WELL, THE  
10 SUPERVISORY BARGAINING UNIT AND THE ADMINISTRATIVE  
11 SUPPORT AND FIELD SERVICE UNIT. SO THESE ARE EMPLOYEES  
12 IN APPROXIMATELY 400 SOME ODD DIFFERENT JOB  
13 CLASSIFICATIONS.

14 THE INTEREST THAT MEA HAS IN INTERVENING HERE  
15 IS BECAUSE OF TWO PARTICULAR GROUNDS. THE FIRST IS THAT  
16 THE CITY'S STATED INTENTION WITH REGARD TO THIS ACTION  
17 HAS BEEN, AND CONTINUES TO BE, AND WAS LAST YEAR, AND  
18 WAS, AS A SNEAK PREVIEW THE YEAR BEFORE, THE INTENTION TO  
19 GET A RULING FROM THIS COURT ON WHETHER OR NOT DROP IS A  
20 VESTED BENEFIT. IF IT'S A VESTED BENEFIT, THEN IT TAKES  
21 ON THE INDICIA OF PROTECTION AS AN INDIVIDUAL INTEREST BY  
22 EACH EMPLOYEE, PART OF THEIR COMPENSATION PROTECTED BY  
23 THE CONSTITUTION OF THE STATE AND FEDERAL GOVERNMENT.

24 THE COURT: RIGHT.

25 MS. SMITH: AND, THEREFORE, A UNION CAN'T BARGAIN IT  
26 AWAY. THAT'S WHY THE CITY IS ULTIMATELY BEFORE THIS  
27 COURT TO GET THAT DETERMINATION AND --

28 THE COURT: THERE IS A STATUTE OF LIMITATIONS THAT

1 APPLIES HERE, ESPECIALLY WITH A WRIT OF MANDAMUS. I

2 DON'T KNOW WHERE YOU ARE ON THAT.

3 MS. SMITH: AND I WILL ADD, YOUR HONOR, TO -- TO MY

4 FUNDAMENTAL POINTS, THAT MEA, AS A UNION, TOGETHER WITH

5 OTHER UNIONS IN THIS CITY, HAS ALREADY BEEN IN LITIGATION

6 WITH THE CITY -- GOING ON WHAT IS NOW THE FOURTH

7 ANNIVERSARY COMING UP IN JULY -- ON THE CITY'S CLAIMS,

8 WHICH SEEM -- IT SEEMS TO HAVE, ESSENTIALLY, OF AN

9 ATTITUDE THAT WHATEVER IT BARGAINED, IF IT COMES TO

10 REGRET IT OR SOMEONE SAYS THAT THE CITY SHOULD REGRET IT,

11 THAT IT SHOULD BE SUBJECT TO REVIEW BY A COURT IN

12 POTENTIAL ELIMINATION OR DIMINISHMENT.

13 SO WE'VE ALREADY BEEN IN LITIGATION FOR FOUR

14 YEARS WITH THE CITY ON, ESSENTIALLY, ALL OF ITS CURRENT

15 PENSION BENEFITS.

16 THE COURT: SOVEREIGNS TEND TO TAKE THAT ATTITUDE.

17 MS. SMITH: AND YOUR COLLEAGUE ON THE BENCH, YOUR

18 HONOR, JUDGE BARTON, HAS ENDURED, I MIGHT NOTE, THOSE

19 FOUR YEARS OF LITIGATION. AND THERE IS CONSIDERABLE

20 OPINION WRITING THAT HAS ALREADY GONE ON ABOUT SOME OF

21 THESE ISSUES, AS WELL AS A JUDGMENT THAT'S BEEN ENTERED

22 AGAINST THE CITY, DISMISSING ITS CLAIMS ON VARIOUS

23 BENEFITS.

24 THE COURT: ON ENTIRELY DIFFERENT GROUNDS, HOWEVER.

25 MS. SMITH: ON DIFFERENT GROUNDS. BUT WHERE THE

26 CITY'S ISSUE WAS, THESE BENEFITS ARE ALL NULL AND VOID.

27 AND WE HAVE CERTAIN PRINCIPALS, AS YOUR HONOR WELL KNOWS,

28 ABOUT RES JUDICATA, ET CETERA, WHEREBY A CLAIMANT HAS GOT

1 TO, AT SOME POINT, RAISE IN A PARTICULAR PIECE OF  
2 LITIGATION, ESPECIALLY WHERE WE WERE ON THE SIXTH AMENDED  
3 CROSS COMPLAINT BY THE CITY WITH REGARD TO CHALLENGING  
4 BENEFITS, WHERE CERTAIN ISSUES SHOULD HAVE BEEN, AND IF  
5 THEY WERENT, THEY CANNOT NOW BE BROUGHT UP IN A NEW  
6 PIECE OF LITIGATION. AND DROP IS CERTAINLY GOING TO BE  
7 RIGHT IN THE MIDDLE OF THAT -- OF THAT BATTLEFIELD.

8 SO NOT ONLY BECAUSE OF THE RECORD OF LITIGATION  
9 THAT'S ALREADY TAKEN PLACE, BUT BECAUSE MEA'S INTEREST,  
10 AS A COLLECTIVE BARGAINING REPRESENTATIVE, IS THAT IF A  
11 BARGAIN IS MADE, AND A VESTED PENSION BENEFIT FLOWS FROM  
12 IT, WHICH THEN INURES TO THE BENEFIT OF AN INDIVIDUAL  
13 EMPLOYEE, THEN MEA HAS AN INTEREST, CERTAINLY, IN  
14 ENFORCING THOSE COLLECTIVE BARGAINING AGREEMENTS,  
15 ENFORCING THE INTEGRITY OF A PROMISE THAT'S MADE SO THAT  
16 ANY EMPLOYEE, INCLUDING THOSE THAT MEA REPRESENTS, WHO  
17 JUST RATIFIED A NEW MOU ON THE THEORY THAT DROP WAS AN  
18 INHERENT BENEFIT INCLUDED IN THAT MOU AND, NOW, LAST WEEK  
19 READS THAT THE CITY FEELS THAT DROP DOESN'T EVEN EXIST  
20 ANYMORE. THE EMPLOYEES THAT MEA REPRESENTS HAVE A VITAL  
21 INTEREST IN BEING HEARD BY THIS COURT, WHEN THIS COURT IS  
22 GOING TO HEAR AN ARGUMENT FROM THE CITY OF SAN DIEGO  
23 THAT, 12 YEARS AFTER THE FACT, THE CITY HAS NOW  
24 DISCOVERED THAT THE CITY THINKS DROP NEVER WENT INTO  
25 EFFECT. SO WE HAVE BOTH --

26 THE COURT: OH, THAT'S A SEPARATE ISSUE.

27 MS. SMITH: BUT IT'S GOING TO BE VITAL TO THE  
28 OUTCOME HERE, YOUR HONOR. BECAUSE ONE OF THE REASONS WHY

1 THE CITY HAS TAKEN THAT POSITION, IS BECAUSE THE POLICE  
2 OFFICERS CORRECTLY ASSERTED, AND SDCERS CORRECTLY AGREED,  
3 THAT THESE CHANGES TO DROP CAN'T BE MADE AND BECOME LAW  
4 UNLESS AND UNTIL THERE'S BOTH AN ORDINANCE AND THEN THE  
5 REQUISITE VOTE OF THE PLAN PARTICIPANTS TAKES PLACE UNDER  
6 THE CHARTER.

7 THE COURT: OKAY.

8 MS. SMITH: AND THAT IS AN ARGUMENT THAT -- THAT  
9 PERTAINS NOT ONLY TO THE POLICE OFFICERS, BUT TO EVERY  
10 CITY EMPLOYEE WHO IS PRESENTLY BENEFITED BY THE EXISTENCE  
11 AND AVAILABILITY OF THE DROP BENEFIT, AND THAT INCLUDES  
12 MEA REPRESENTED EMPLOYEES.

13 THE COURT: OKAY. SO THAT'S THE REASON FOR THE WANT  
14 TO INTERVENE.

15 MS. SMITH: EXACTLY.

16 THE COURT: I UNDERSTAND THAT. IS THAT GOING TO BE  
17 PART OF OUR CASE? IT'S NOT.

18 MS. ANNEET: (SHAKES HEAD.)

19 THE COURT: THE ADOPTION, WHETHER IT WAS REALLY  
20 ADOPTED?

21 MS. ANNEET: OH, WE DON'T HAVE A POSITION ON THAT  
22 YET, YOUR HONOR.

23 THE COURT: I DON'T THINK THE CITY DOES, EITHER.  
24 PROBABLY WHY YOU DON'T.

25 MR. DAVIS: CORRECT.

26 MS. ANNEET: CORRECT.

27 MR. DAVIS: CORRECT.

28 MS. ANNEET: THE HYPOTHETICAL ARGUMENTS THAT MAY BE



1 MADE SHOULDN'T BE THE BASIS FOR A PARTY TO INTERVENE IN A  
2 LAWSUIT, RESPECTFULLY.

3 MS. SMITH: YOUR HONOR, I'M NOT GOING BY  
4 HYPOTHETICAL ARGUMENTS. I WILL TELL YOU WHAT I'M RELYING  
5 ON. I'M RELYING ON, NUMBER ONE, THE FACT THAT THE CITY  
6 SUMMONED MEA, WITHOUT PRIOR NOTICE OF WHAT THE AGENDA  
7 WAS, TO A MEETING LAST TUESDAY MORNING, JUNE 2ND. AT  
8 WHICH THE CITY ADVISED MEA, IN WRITING AND ORALLY, THAT  
9 IT HAD DISCOVERED THE DROP IS NOT IN EFFECT, AND THAT IT  
10 HAD ALREADY SENT A LETTER TO SDCERS, ESSENTIALLY,  
11 INFORMING SDCERS OF THIS DISCOVERY AND THE DROP IS NOT IN  
12 EFFECT.

13 AND YOU MIGHT IMAGINE, YOUR HONOR, THAT THAT  
14 MEETING THEN BECAME A FAIRLY CONTENTIOUS EXCHANGE, BASED  
15 ON THIS ANNOUNCEMENT BY THE CITY, WHEN MEA HAD JUST, IN  
16 GOOD FAITH, NEGOTIATED A NEW TWO-YEAR MOU WITH THE CITY,  
17 AND CITY EMPLOYEES STEPPED UP TO MAKE THIS SET OF  
18 CONCESSIONS THAT WAS, QUOTE, THEIR SHARE OF THE PAIN.

19 AND HAVING AGREED AND RATIFIED, AND THEN BEEN  
20 SUMMONED TO A MEETING ON JUNE 2ND, WHEN THAT AGREEMENT  
21 IS, ESSENTIALLY, READY TO BE MEMORIALIZED, HAS ALREADY  
22 BEEN ADOPTED BY THE CITY COUNSEL, IT IS A FAIRLY  
23 STARTLING REVELATION.

24 THE COURT: OKAY. I JUST WONDERED IF THE CITY  
25 BOTHERED TO TELL THEIR LAWYERS ABOUT THIS MEETING.

26 MS. SMITH: THEIR LAWYERS WERE PRESENT AT THE  
27 MEETING. MR. DAVIS WAS IN THE MEETING.

28 THE COURT: OKAY.

1 MS. SMITH: THE CITY ATTORNEY WAS IN THE MEETING.

2 MR. KAY, HIS PARTNER WITH WHOM MEA AND I DID THE LAST  
3 FIVE MONTHS OF COLLECTIVE BARGAINING, WAS ALSO IN THE  
4 MEETING, AS WAS THE LABOR RELATIONS OFFICER AND A HOST OF  
5 OTHER CITY ATTORNEYS.

6 THE COURT: OKAY. WELL, LET'S SET THE -- SET THE  
7 INTEREST IN THE LITIGATION ASIDE FOR JUST A MOMENT. WHAT  
8 ABOUT THE TRO?

9 MS. SMITH: YOUR HONOR, YOU RAISED THE POINT. AND,  
10 FIRST OF ALL, I -- I DON'T AGREE WITH EVERY FACTUAL  
11 CHARACTERIZATION THAT WAS MADE HERE THIS MORNING, BUT --

12 THE COURT: I'M NOT ASSUMING THAT YOU WILL.

13 MS. SMITH: OKAY. BUT YOU HAVE RAISED THE POINT,  
14 AND I AGREE, THAT SINCE THE FIRST MOU THAT MEMORIALIZED  
15 THE DROP BENEFIT, AND IT WAS THEREAFTER, OF COURSE,  
16 IMPLEMENTED BY AN ORDINANCE AMENDING THE SAN DIEGO  
17 MUNICIPAL CODE, AND A VOTE WAS TAKEN UNDER THE CHARTER --

18 THE COURT: I KNOW ALL THAT STUFF WAS DONE.

19 MS. SMITH: OKAY. SO AT THAT TIME, AND IN EVERY  
20 SUCCESSIVE MOU, THE LANGUAGE HAS SAID THAT THE INTEREST  
21 RATE WILL BE DETERMINED BY THE SDCERS BOARD. THAT'S  
22 ABSOLUTELY TRUE. EVERY MOU THAT MEA HAS HAD.

23 NOW, UP UNTIL THIS LAST FEW MONTHS, THAT  
24 INTEREST RATE FOR DROP ACCOUNTS WAS ALWAYS THE SAME AS  
25 THE ASSUMED INTEREST RATE FOR THE SYSTEM AND THE INTEREST  
26 RATE THAT WAS CREDITED TO EMPLOYEE CONTRIBUTION ACCOUNTS,  
27 AND THAT WAS 8 PERCENT. AND A FEW MONTHS AGO, IN  
28 DECEMBER, THE SDCERS BOARD VOTED TO LOWER THAT INTEREST

1 RATE FOR DROP ACCOUNTS AND FOR THE ASSUMED INTEREST RATE  
2 OF THE SYSTEM TO 7.75 PERCENT, SO THE INTEREST RATE WAS  
3 ALWAYS THE SAME WHEN SET BY SDCERS. AND IT HAD BEEN  
4 8 PERCENT, AND THEN IT BECAME 7.75 PERCENT. AND THE  
5 POLICE OFFICERS AND THE FIREFIGHTERS HAD COLLECTIVE  
6 BARGAINING AGREEMENTS THAT SAID THAT THE INTEREST RATE  
7 WOULD BE WHATEVER -- FOR DROP, WOULD BE WHATEVER THE  
8 ASSUMED INTEREST RATE WAS FOR THE SYSTEM, AND THEY WERE  
9 ALWAYS THE SAME.

10 NOW, WE HAVE THIS NEW DECOUPLING EVENT THAT HAS  
11 OCCURRED BY A DETERMINATION OF THE SDCERS BOARD, WHEREBY  
12 THE BOARD HAS DECIDED THAT THE INTEREST RATE TO BE  
13 CREDITED TO DROP ACCOUNTS WILL NO LONGER BE THE SAME AS  
14 THE INTEREST RATE THAT'S THE ASSUMED RATE FOR THE SYSTEM  
15 AND THAT'S CREDITED TO THE EMPLOYEE CONTRIBUTION  
16 ACCOUNTS. AND WE HAVE THIS ISSUE, NOW, ARISING BECAUSE  
17 OF THAT.

18 NOW, AS FAR AS MEA'S COLLECTIVE BARGAINING  
19 AGREEMENT GOES, IT IS TRUE THAT IT SAYS THAT THE SDCERS  
20 BOARD IS GOING TO SET THAT RATE. NOW, IS THERE AN  
21 ARGUMENT THAT IS GOING TO BE MADE IN THIS LITIGATION THAT  
22 AN EMPLOYEE WHO WAS ALREADY IN DROP SHOULD HAVE GOTTEN  
23 AND SHOULD CONTINUE TO GET THE BENEFIT OF THE INTEREST  
24 RATE THAT WAS BEING CREDITED WHEN THEY ENTERED DROP?  
25 THAT MAY BE, AND THAT COULD BE AN INDIVIDUAL VESTED  
26 BENEFIT ISSUE THAT MIGHT ARISE OUT OF THIS LITIGATION.

27 THE COURT: OKAY. LET ME STOP YOU RIGHT THERE. IS  
28 THAT ONE OF THE ISSUES?

1 MR. CONGER: FROM OUR PERSPECTIVE, NO, FROM THE

2 SDPOA, BECAUSE --

3 THE COURT: I UNDERSTAND.

4 MR. CONGER: OKAY. NOT FOR OUR MEMBERS, YOUR HONOR.

5 THE COURT: OKAY.

6 MS. SMITH: SO THE BOTTOM LINE IS, YOUR HONOR, THAT

7 MEA INTENDS TO HONOR THE COLLECTIVE BARGAINING AGREEMENT

8 THAT IT ENTERED, AND WOULD EXPECT THE CITY TO DO THE

9 SAME. AND IF THERE IS A DETERMINATION THAT EMERGES AS

10 THE ISSUES GET FRAMED IN THIS CASE, AS TO INDIVIDUAL

11 EMPLOYEES RIGHTS, ONCE IN DROP, THEN I -- I -- I THINK

12 THERE IS THE POTENTIAL FOR YOUR HONOR'S DETERMINATIONS IN

13 THIS CASE TO HAVE -- TO HAVE APPLICATION, THEN, TO OTHER

14 EMPLOYEES.

15 BUT MEA DOES NOT DISAGREE WITH THE FACT THAT IT

16 HAS ALWAYS ACKNOWLEDGED IN ITS MOU THAT THE SETTING OF

17 THE INTEREST IN DROP ACCOUNTS WOULD BE THE DETERMINATION

18 OF THE SDCERS BOARD ACTING WITHIN ITS FIDUCIARY

19 AUTHORITY.

20 THE COURT: WOULDN'T I NEED SCERS IN HERE TO -- AS

21 AN ADVERSARY FOR YOU TO MAKE THESE ARGUMENTS?

22 MS. SMITH: WELL, I -- MEA WOULD NOT BE ARGUING --

23 WELL, I SUPPOSE YOU COULD POTENTIALLY RAISE THE QUESTION

24 ABOUT WHETHER OR NOT THE FIDUCIARY DUTY OF THE BOARD IS

25 SUCH THAT -- THAT IT SHOULD NOT LOWER THE INTEREST RATE

26 ONCE SOMEONE IS IN DROP.

27 THE COURT: I DON'T WANT -- YEAH. I DON'T WANT TO

28 GO NEAR THAT.

1 MS. SMITH: NO, AND I'M NOT INVITING THAT EITHER,  
2 YOUR HONOR, THOUGH I DO THINK THAT WE WILL HAVE A  
3 QUESTION, POTENTIALLY, ABOUT THIS -- THIS CHARTER SECTION  
4 143.1 ISSUE, IF THE CITY IS, INDEED, GOING TO RAISE THAT  
5 AS -- AS -- AS AN ISSUE, WHICH, AT LEAST SO FAR AS I HAVE  
6 BEEN INFORMED BY THE CITY ATTORNEY, IT IS THE CITY'S  
7 INTENTION THAT YOUR HONOR IS GOING TO DECIDE THAT ISSUE  
8 IN THIS LITIGATION. AND THAT'S WHY I'M STANDING HERE  
9 BEFORE YOU, BECAUSE THAT IS A CRITICAL ISSUE FOR THE  
10 EMPLOYEES.

11 THE COURT: THAT ISSUE?

12 MS. SMITH: THAT ISSUE.

13 THE COURT: WHAT IS "THAT ISSUE"?

14 MS. SMITH: THAT ISSUE IS, IS DROP IN EFFECT OR NOT?  
15 WAS THERE A CHARTER 143.1 VOTE THAT TOOK PLACE THAT WAS  
16 PROPER IN 1997, OR WAS THAT ALL JUST A BIG FIGMENT OF OUR  
17 IMAGINATION? AND DROP WASN'T IN EFFECT 12 YEARS AGO, AND  
18 IT ISN'T IN EFFECT TODAY. THAT'S THE CITY ATTORNEY'S  
19 VIEW, AS -- AT LEAST AS IT'S BEEN DESCRIBED TO MEA.

20 AND IF THAT'S THE CASE, THEN EVERY CITY  
21 EMPLOYEE THAT MEA REPRESENTS AND EVERY OTHER CITY  
22 EMPLOYEE HAS CAUSE TO BE CONCERNED THAT THE CITY'S  
23 POSITION IS THAT THIS BENEFIT HAS NOW DISAPPEARED OFF THE  
24 FACE OF THE PLANET BECAUSE OF SOME ALLEGATION THAT SDCERS  
25 DIDN'T CONDUCT A PROPER VOTE IN 1997.

26 SO THE CITY ATTORNEY'S MESSAGE TO MEA IN THE  
27 MEETING ON JUNE 2ND, AND IN CORRESPONDENCE AND IN E-MAILS  
28 THEREAFTER, HAS BEEN AND CONTINUES TO BE, SDCERS SHOULD

1 KEEP TAKING DROP APPLICATIONS FROM MEA REPRESENTED  
2 EMPLOYEES UNTIL THIS COURT DECIDES WHETHER OR NOT DROP  
3 EXISTS. AND I'M HERE FOR THAT REASON, AMONG OTHERS.

4 THE COURT: SO IF I CAN REPEAT THIS BACK TO YOU.

5 AND LET'S SEE, I AM NOW JOLENE ENGINEER.

6 MS. SMITH: VERY GOOD, YOUR HONOR.

7 THE COURT: AND THIS DROP PROGRAM LOOKS LIKE A  
8 PRETTY GOOD DEAL. BUT GIVEN OBERHOLTZER'S WELL-KNOWN  
9 REPUTATION FOR JUST GOING OFF IN ALL DIRECTIONS,  
10 UNPREDICTABLY, I DON'T KNOW WHAT'S GOING TO HAPPEN AFTER  
11 THE HEARING, AND DO I WANT TO ENROLL IN DROP NOW AND KEEP  
12 IT, OR DO I WAIT UNTIL AFTER THAT, AND I DON'T KEEP IT?

13 BUT HAVING JUST STATED THAT, THERE IS NO CUTOFF, IS  
14 THERE? IT EITHER EXISTS OR IT DOESN'T?

15 MS. SMITH: EXACTLY, YOUR HONOR. IN OTHER WORDS,  
16 THIS TWO YEAR MOU THAT HAS BEEN RATIFIED ON THE BELIEF,  
17 IN GOOD FAITH, THAT DROP IS IN EXISTENCE, WHATEVER MIGHT  
18 HAPPEN DOWN THE ROAD WITH LITIGATION THAT THE CITY SAID  
19 IT WAS GOING TO BRING -- AND, IN FACT, HAD BROUGHT --  
20 NOW, THE CITY HAS CHANGED THE LANDSCAPE MORE DRASTICALLY  
21 AND SAID, AT LEAST POTENTIALLY, YOU THOUGHT YOU HAD DROP,  
22 BUT YOU DON'T HAVE DROP AT ALL.

23 THE COURT: BUT JOLENE ENGINEER'S IN THE SAME  
24 POSITION SHE -- SAME POSITION TODAY THAT SHE WILL BE IN  
25 IN 30 DAYS.

26 MS. SMITH: THAT'S RIGHT.

27 THE COURT: OKAY.

28 MS. SMITH: THAT'S RIGHT. SHE WILL BE BETTER OFF IF

1 I'M PERMITTED TO INTERVENE SO THAT SHE, THROUGH MEA, CAN  
2 BE HEARD AS TO WHETHER OR NOT DROP IS IN EFFECT OR NOT.

3 THE COURT: BUT SHE DOESN'T HAVE TO MAKE A CHOICE  
4 BETWEEN --

5 MS. SMITH: THAT'S RIGHT.

6 THE COURT: -- MAKING AN ELECTION?

7 MS. SMITH: THAT'S RIGHT.

8 THE COURT: OKAY. ALL RIGHT. THANK YOU.

9 MS. SMITH: THANK YOU, YOUR HONOR.

10 THE COURT: MR. CONGER, DO YOU HAVE ANYTHING TO ADD?

11 WHAT I HAVEN'T ASKED YOU IS DO YOU WANT THEM IN  
12 YOUR LAWSUIT?

13 MR. CONGER: WELL, I AGREE WITH MS. SMITH'S

14 ANALYSIS, THAT THESE ARE -- MEA DOESN'T -- DOESN'T HAVE  
15 EVERY ISSUE THAT THE SDPOA HAS, BUT THERE ARE THESE

16 IMPORTANT ISSUES THAT WE HAVE IN COMMON: ONE, WHETHER  
17 DROP IS A VESTED BENEFIT, WHICH WILL COME OUT OF THIS ON  
18 THE CITY'S PETITION, PROBABLY ALSO ON THE CROSS-PETITION.

19 EVERY EMPLOYEE, ACTUALLY, HAS THAT INTEREST, IS IT VESTED  
20 OR NOT? CAN YOU -- WHICH MEANS, CAN YOU CHANGE IT

21 WITHOUT PROVIDING A COMPARABLE NEW BENEFIT, UNDER WHAT I  
22 CALL THE SUPREME COURT'S RULING BETTS.

23 AND THE SECOND ISSUE IS, THAT NOW LOOKS LIKE  
24 IT'S GOING TO BE AN ISSUE, ONLY BECAUSE OF WHAT THE CITY  
25 ATTORNEY HAS WRITTEN LAST WEEK, AND, THAT IS, WHETHER  
26 DROP EVEN EXISTS, BECAUSE IT WASN'T CORRECTLY ADOPTED.

27 THE COURT: WELL, THAT'S -- THOSE ARE TWO ATTACKS AT  
28 THE SAME THING.

1 MR. CONGER: RIGHT. AND I BELIEVE -- I MEAN, THIS  
2 IS -- YOU HAVE THIS BEFORE YOU IN MY OPPOSITION PAPERS.  
3 ON THE 4TH OF JUNE, THE CITY ATTORNEY WROTE TO THE  
4 RETIREMENT ADMINISTRATOR, DAVID WESCOE, IN AN E-MAIL AND  
5 SAID, IN PART, AS I UNDERSTAND IT, THE CITY AGREED IN  
6 2008 TO FILE THIS LAWSUIT, TALKING ABOUT OUR LAWSUIT  
7 HERE, TO DETERMINE WHETHER DROP IS A VESTED BENEFIT,  
8 BECAUSE THE CITY WANTED TO NEGOTIATE IT, END QUOTE.

9 AND THAT'S, I BELIEVE, HOW THE CITY SEES,  
10 REALLY, THE PRIMARY ISSUE IN THIS CASE, ALSO BECAUSE OF  
11 THE PROPOSED STIPULATION THAT I RECEIVED FROM COUNSEL  
12 THIS MORNING. THAT'S -- THAT'S A SEMINAL ISSUE, IF YOU  
13 WILL, IS DROP A VESTED BENEFIT? AND MEA HAS AN INTEREST  
14 IN THAT ISSUE, BIG TIME.

15 SO I DO BELIEVE THEY OUGHT TO BE PERMITTED TO  
16 INTERVENE. AND IF NOT PERMITTED TO INTERVENE, THEN I  
17 THINK IT'S A BIG MORASS OF A PROBLEM LATER, BECAUSE THEY  
18 ASKED TO INTERVENE. IF THE RULING WINDS UP AFFECTING  
19 THEIR RIGHTS, THEN WHAT? IT'S EASIER TO LET THEM IN.

20 THE COURT: THE FIREFIGHTERS BARGAINING UNIT HAS --  
21 INCIDENTALLY, ARE ANY OF THESE UNIONS, ARE THEY  
22 BARGAINING UNITS?

23 MS. SMITH: YOUR HONOR, THE TERMINOLOGY GOES LIKE  
24 THIS: A UNION, IF IT'S A RECOGNIZED REPRESENTATIVE OF A  
25 BARGAINING UNIT. SO THE UNIT IS AN ENTITY, THE  
26 BARGAINING UNITS ARE THE DESIGNATION OF WHAT GROUP OF  
27 EMPLOYEES YOU REPRESENT.

28 SO WITH MEA, FOR EXAMPLE, THERE'S FOUR



1 BARGAINING UNITS, THE ONES I DELINEATED TO YOU. THE  
2 FIREFIGHTERS HAVE A SINGLE BARGAINING UNIT OF SWORN  
3 FIREFIGHTERS. THE POLICE OFFICERS HAVE A SINGLE  
4 BARGAINING UNIT OF SWORN POLICE OFFICERS.

5 THE COURT: AND WHAT'S THE UNION?

6 MS. SMITH: THE UNION -- IN MY SITUATION, MY CLIENT  
7 IS THE SAN DIEGO MUNICIPAL EMPLOYEES ASSOCIATION,  
8 COMMONLY REFERRED TO AS MEA. THE FIREFIGHTERS ARE THE  
9 SAN DIEGO CITY FIREFIGHTERS, LOCAL 145. AND PEOPLE REFER  
10 TO THEM AS THE FIREFIGHTERS UNION OR LOCAL 145. THE  
11 DEPUTY CITY ATTORNEY ASSOCIATION IS DCAA, AND THEY  
12 REPRESENT A SINGLE UNIT OF THE DEPUTY CITY ATTORNEYS.

13 THE COURT: ARE THEY AFFILIATED WITH THE UNION?

14 MS. SMITH: THEY ARE UNION. THEY ARE A SEPARATE  
15 UNION ONTO THEMSELVES. AND THEN AFSCME, LOCAL 127, IS A  
16 UNION THAT REPRESENTS A BARGAINING UNIT OF TRASH  
17 COLLECTORS AND SKILLED TRADES EMPLOYEES, COMMONLY  
18 REFERRED TO AS THE CITY'S BLUE COLLAR WORKFORCE.

19 THE COURT: AND THE FIREFIGHTERS ARE FROM WHAT  
20 LOCAL?

21 MS. SMITH: FIREFIGHTERS ARE FROM LOCAL 145. AND  
22 THEY HAVE ABOUT A THOUSAND FIREFIGHTERS THEY REPRESENT.  
23 AFSCME LOCAL 127 REPRESENTS SOMETHING SHY OF 2,000 CITY  
24 EMPLOYEES.

25 THE COURT: OKAY. AND IS THE POLICE OFFICERS  
26 ASSOCIATION A UNION --

27 MR. CONGER: THEY'RE --

28 THE COURT: -- BARGAINING UNIT A LOCAL?

1 MR. CONGER: THEY'RE A UNION OF SIGNIFICANCE.  
2 THEY'RE A RECOGNIZED BARGAINING UNIT THAT THE CITY HAS TO  
3 NEGOTIATE WITH UNDER THE MYERS-MILIAS-BROWN ACT. THERE'S  
4 ABOUT 1600, I BELIEVE.

5 UNIDENTIFIED SPEAKER: LITTLE UNDER 2,000.

6 MR. CONGER: LITTLE UNDER 2,000, YOUR HONOR.

7 THE COURT: I READ THE ACT, AND IT SEEMS TO ME THESE  
8 BARGAINING UNITS CAN BE SET UP WITHOUT ACTUALLY BECOMING  
9 A UNION. AND THAT'S DEFINED BY THE NATIONAL LABOR  
10 RELATIONS ACT, SO THAT'S WHY I'M ASKING. I DON'T KNOW IF  
11 IT MAKES A DIFFERENCE.

12 MR. CONGER: AS I ANALYZE IT, YOUR HONOR, I DON'T  
13 THINK IT MAKES A DIFFERENCE FOR THE ISSUES WE HAVE HERE  
14 THAT ARE RAISED BY THE PETITION AND CROSS-PETITION.

15 THE COURT: IS THERE A DIFFERENCE BETWEEN THE -- I  
16 THINK THERE IS -- THE SAN DIEGO POLICE OFFICERS  
17 ASSOCIATION AND PORAC?

18 MS. SMITH: YES.

19 THE COURT: OKAY. BECAUSE SEVEN YEARS AGO, OR  
20 WHATEVER IT IS NOW, I DID GET AN ENDORSEMENT FROM PORAC.  
21 I'M GOING TO NEED TO DISCLOSE THAT.

22 OH, ONE MORE THING. MR. CONGER, I KNOW YOU'RE  
23 NOT REPRESENTING THEM, BUT THE FIREFIGHTERS, ARE ANY OF  
24 THEM IN THE SAME SITUATION THAT YOUR POLICE OFFICERS ARE,  
25 THAT THEY ARE GOING TO BE CAUGHT HAVING TO MAKE A  
26 DECISION THAT IS IRREVOCABLE?

27 MR. CONGER: I BELIEVE THE ANSWER IS YES. AS I  
28 UNDERSTAND IT, AND I'M NOT A THOUSAND PERCENT SURE, SO

1 I'M GOING TO LOOK BOTH WAYS HERE, BUT THE FIRE AND THE  
2 CITY AGREED NOT TO CHANGE THE DROP ENTER AGE TO 55. SO  
3 THAT'S -- THEY'RE NOT GOING TO BE AFFECTED BY THAT ONE.

4 BUT THE CITY AND THE FIREFIGHTERS DID, ALSO,  
5 AGREE TO CHANGE THE PREEXISTING MOU'S, WHICH SET THE DROP  
6 INTEREST RATE THE SAME AS IS THE ASSUMED ACTUARY RATE OF  
7 RETURN. THE FIREFIGHTERS UNION AGREED TO LOWER IT, AND I  
8 BELIEVE THAT IT'S -- I THINK SOME OF THEM ARE GOING TO BE  
9 IN THE SAME BOAT ON THE INTEREST ISSUE, BECAUSE THEY HAVE  
10 TO RETIRE BEFORE JULY 1 TO LOCK IN THE RATE THAT THEY'VE  
11 ALWAYS BEEN GUARANTEED IN THEIR MOU. AND THE ISSUE WE  
12 RAISE IS CAN YOU CHANGE THAT RATE.

13 THE COURT: OKAY. I KNOW WHAT THE ISSUE IS.

14 MR. CONGER: SO THE ANSWER ON THE INTEREST, I  
15 BELIEVE, IS YES. EVEN THOUGH THE UNION AGREED, I  
16 PERSONALLY BELIEVE THAT'S AN AGREEMENT THAT THE UNION  
17 CANNOT MAKE BECAUSE IT AFFECTS A VESTED RIGHT OF AN  
18 INDIVIDUAL.

19 THE COURT: I UNDERSTAND THAT.

20 MR. CONGER: BUT THEY HAVE -- TO MY KNOWLEDGE, THEY  
21 DON'T EVEN KNOW ABOUT THIS CASE. I DON'T KNOW ONE WAY OR  
22 THE OTHER. I'VE BEEN IN CONTACT WITH -- THEIR ATTORNEY  
23 THAT USUALLY REPRESENTS THEM IS JOEL KLEVENS ON SOME  
24 OTHER ISSUES I HAVE, BUT I DON'T KNOW THAT HE'S AWARE OF  
25 THESE PROCEEDINGS OR NOT.

26 MS. SMITH: YOUR HONOR, JUST TO CLARIFY, HE IS  
27 AWARE. I HAVE SENT HIM MY INTERVENTION PAPERS, BECAUSE  
28 HE IS CO-COUNSEL WITH ME IN THE LITIGATION TO WHICH I

1 REFERRED EARLIER. SO HE IS AWARE, AND I THINK HIS CLIENT  
2 IS GOING TO MAKE A DECISION ABOUT WHETHER INTERVENTION IS  
3 APPROPRIATE OR NOT.

4       HOWEVER, I WOULD NOTE THAT EVERY CITY EMPLOYEE  
5 IS IN THE SAME SITUATION, THAT IF HE OR SHE DOES NOT TAKE  
6 ACTION BEFORE JULY 1, EITHER TO RETIRE FROM THEIR STATUS  
7 AS A DROP ACTIVE EMPLOYEE, THEN THE CHANGE IN THE  
8 INTEREST RATE WILL APPLY TO ANY ANNUITY TO WHICH THEY  
9 WOULD BE ENTITLED WHEN THEY LEAVE DROP.

10       SO THIS JULY 1 DATE IS GOING TO AFFECT  
11 EVERYBODY IN PRECISELY THE SAME WAY, THOUGH EVERYONE MAY  
12 HAVE SOMEWHAT DIFFERENT ISSUES, IN TERMS OF THEIR RIGHTS,  
13 WITH REGARD TO DROP. BUT EVERYBODY'S GOING TO BE  
14 AFFECTED.

15       THE COURT: ALL RIGHT. THANK YOU.

16       ON THE INTERVENTION?

17       MR. DAVIS: THANK YOU, YOUR HONOR.

18       OUR ARGUMENT ON THE INTERVENTION IS PRETTY  
19 STRAIGHTFORWARD. WE WOULD CERTAINLY AGREE WITH  
20 MS. SMITH'S CHARACTERIZATION, THAT THE CITY AND MEA HAVE  
21 A BINDING TWO-YEAR AGREEMENT THAT HAS BEEN -- THE  
22 TENTATIVE AGREEMENT OF WHICH HAS BEEN RATIFIED BY THEIR  
23 MEMBERS, AND HAS BEEN ADOPTED BY THE CITY COUNSEL. IT  
24 WILL CERTAINLY GO INTO EFFECT JULY 1. AND WITHIN THAT  
25 AGREEMENT, ABSOLUTELY, THERE IS A PROVISION FOR DROP. WE  
26 WOULD AGREE WITH THAT.

27       OUR DIFFERENCE, REALLY, IS -- IS IN THIS  
28 MANNER: GIVEN THAT WE HAVE A BINDING AGREEMENT ON THIS

1 SUBJECT, IF THE CITY WAS TO TAKE INAPPROPRIATE ACTION --  
2 I'M NOT SUGGESTING THAT IT DID, BUT IF THEY DID, THAT  
3 WOULD CLEARLY BE A VIOLATION OF THE MEYERS-MILIAS-BROWN  
4 ACT, THE MMBA. AND THE MMBA IS VERY CLEAR. AND IT SAYS  
5 THAT PERB HAS JURISDICTION OVER UNFAIR LABOR PRACTICES  
6 AND HAS INITIAL AND EXCLUSIVE JURISDICTION.

7 AND WE'VE CITED TWO CASES FOR YOU, TWO  
8 CALIFORNIA SUPREME COURT CASES, THAT ARE UNDER ERA, THE  
9 EDUCATION STATUTE, THAT PRECEDED WHEN THE MMBA WAS UNDER  
10 PERB'S JURISDICTION, AND THAT HAPPENED IN 2001.

11 THE COURT: OKAY. LET ME REPEAT SOMETHING BACK TO  
12 YOU SO THAT I MAKE SURE I UNDERSTAND THIS.

13 THE ISSUES THAT ARE BEING ADDRESSED IN THIS  
14 WRIT OF MANDAMUS ARE LIMITED TO THE POLICE OFFICERS  
15 ASSOCIATION BECAUSE IT IS THE ONLY LABOR ORGANIZATION  
16 THAT HAS HAD A CONTRACT IMPOSED ON IT AFTER A DEADLOCK?

17 MR. DAVIS: CORRECT. AND WE ARE SEEKING TO HAVE  
18 THEM MEET AND CONFER WITH US UNDERNEATH THE LABOR  
19 STATUTE, WHICH IS WHY WE'RE BRINGING IT AS AN UNFAIR  
20 LABOR PRACTICE. WE'RE NOT SEEKING TO HAVE MEA, AT THIS  
21 POINT, MEET AND CONFER WITH US WITH RESPECT TO THIS  
22 LITIGATION.

23 NOW, WE CERTAINLY ACKNOWLEDGE THAT THERE WAS A  
24 PRONOUNCEMENT ON JUNE 2ND BY THE CITY ATTORNEY'S OFFICE.  
25 THERE WAS A MEETING DISCUSSING DROP, ABSOLUTELY. AND  
26 WE'VE SAID THEN, AS WE SAY NOW, THAT WE WILL CONTINUE TO  
27 MEET OUR OBLIGATIONS UNDERNEATH THE MMBA WITH RESPECT TO  
28 THAT ISSUE, IRRESPECTIVE OF HOW IT TURNS OUT. BECAUSE IT

1 COULD TURN OUT A LOT OF DIFFERENT WAYS, AND YOU CAN SHAKE  
2 UP A LOT OF THINGS.

3 BECAUSE WHETHER -- WHETHER DROP WAS LEGALLY IN  
4 EFFECT OR NOT, UNDER THE CHARTER, NO ONE'S GOING TO  
5 DISPUTE THAT SINCE 1997, PEOPLE HAVE BEEN DRAWING DROP  
6 BENEFITS. SO THERE IS AN OBLIGATION, AT A BARE  
7 MINIMUM -- AND WE WOULD ACKNOWLEDGE IT -- THAT WE HAVE,  
8 UNDER THE MMBA, TO RESOLVE THAT ISSUE.

9 THE COURT: OKAY. AND JUST TO REPEAT SOMETHING THAT  
10 YOU SAID EARLIER. IF THE TWO OF YOU BECOME -- GET THE  
11 DAGGERS DRAWN, IT'S NOT DECIDED HERE.

12 MR. DAVIS: ABSOLUTELY. IT WOULD BE DECIDED IN  
13 PERB.

14 THE COURT: OKAY.

15 MS. SMITH: YOUR HONOR, MAY I BE HEARD ON THAT  
16 POINT, BECAUSE I STRENUOUSLY DISAGREE.

17 THE COURT: OKAY. STRENUOUSLY DISAGREE?

18 MS. SMITH: FIRST OF ALL, ONE OF THE AGREEMENTS WE  
19 HAVE MADE WITH THE CITY IN THIS MOU IS AN ACKNOWLEDGMENT  
20 THAT THERE IS GOING TO BE A COURT ISSUE RAISED AND  
21 RESOLVED RELATED TO DROP. AND WE PUT THAT IN THE MOU.  
22 AND AT THE TIME THAT WE BARGAINED THAT PROVISION, IT WAS  
23 BECAUSE OF THREE REASONS. FIRST OF ALL, LAST YEAR IN  
24 IT'S NEGOTIATIONS --

25 THE COURT: HOLD ON. THIS IS SUBSTANCE. MY THOUGHT  
26 GOES TO JURISDICTION. IF THEY BREAK YOUR CONTRACT AND --  
27 SAY, "YOUR MOU, YEAH, I KNOW IT'S IN THERE, BUT WE'RE NOT  
28 GOING TO ABIDE BY IT, BECAUSE IT'S UNLAWFUL. AND DO WHAT

1 YOU WILL," WOULD THAT DISPUTE, THEN, GO TO AN  
2 ADMINISTRATIVE AGENCY?

3 MS. SMITH: THIS IS EXACTLY MY POINT, YOUR HONOR, IS  
4 THAT THAT SAME MOU THAT HAS DROP IN IT, ALSO HAS AN  
5 ACKNOWLEDGMENT THAT THERE'S GOING TO BE LITIGATION ABOUT  
6 DROP. AND THAT'S IN THE SAME DOCUMENT, AND THIS IS THAT  
7 LITIGATION. THE CITY HAD ALREADY FILED THIS CASE BEFORE  
8 WE CONCLUDED THE BARGAINING ON THIS MOU.

9 THE COURT: SO I SHOULD HAVE GONE THROUGH YOUR MOU  
10 AND HIGHLIGHTED THINGS JUST LIKE --

11 MS. SMITH: BUT YOU DIDN'T HAVE IT, YOUR HONOR,  
12 UNFORTUNATELY. BECAUSE WHAT I HAVE IS THE LATEST DRAFT  
13 THE CITY SENT ME, READY FOR SIGNING. AND SO  
14 UNFORTUNATELY, YOU DIDN'T HAVE IT. BUT THIS IS MY POINT,  
15 IS THAT -- THAT DURING THE BARGAINING, MEA TOOK THE SAME  
16 EXACT POSITION THAT THE POA DID. AND THAT WAS TO SAY,  
17 YOU KNOW WHAT, YOU WANT TO ELIMINATE DROP, YOU WANT TO  
18 CHANGE THE AGE, WHICH THE CITY WANTED TO DO TO THE MEA  
19 REPRESENTED EMPLOYEES FROM AGE 55 TO 60, AS GENERAL  
20 MEMBERS OF THE SYSTEM, WE SAID, YOU KNOW WHAT, WE'RE NOT  
21 BARGAINING THESE CHANGES, BECAUSE THIS IS A VESTED  
22 BENEFIT.

23 THE SAME THING HAPPENED LAST YEAR IN THE  
24 BARGAINING, YOUR HONOR. THIS IS -- I MEAN, YOU'RE  
25 GETTING THIS DUMPED ON YOU. BUT A YEAR AGO, WE TOOK THE  
26 SAME POSITION, AND THE CITY AGREED THAT THEY WERE GOING  
27 TO GO TO COURT AND FINALLY, BY GOD, THEY WERE GOING TO  
28 GET THIS RESOLVED. WELL, THEY DON'T DO IT UNTIL, YOU

1 KNOW, APRIL.

2 BUT IN THE NEGOTIATIONS, WE SAID WE'RE NOT  
3 AGREEING TO CHANGES IN THIS VESTED BENEFIT. WE CAN'T,  
4 EVEN IF WE WANTED TO, WHICH WE DON'T, BECAUSE WE'RE  
5 LEGALLY OBLIGATED TO HONOR THE INDIVIDUAL VESTED RIGHTS  
6 OF OUR MEMBERS.

7 THE COURT: OKAY. IS THAT IN THERE?

8 MS. SMITH: THAT'S -- THE PROVISION IS IN HERE THAT  
9 SAYS DURING THE TERM OF THIS MOU, IF ANY ASPECT OF THE  
10 DROP IS FOUND TO BE A MANDATORY SUBJECT OF MEET AND  
11 CONFER BY A FINAL DETERMINATION OF A COURT OF COMPETENT  
12 JURISDICTION -- THAT WOULD BE YOU -- OR BY A PERB  
13 DECISION THAT HAS BECOME FINAL, THE PARTIES WILL REOPEN  
14 NEGOTIATIONS ON THOSE ASPECTS DESIGNATED AS MANDATORY  
15 SUBJECTS. SO --

16 THE COURT: BUT THE ISSUE HERE --

17 MS. SMITH: IS?

18 THE COURT: -- WHETHER THE -- NOT WHETHER. THE  
19 ISSUE HERE IS THE CITY WANTS ME TO COMPEL THE POLICE  
20 OFFICERS TO MEET AND CONFER.

21 MS. SMITH: BUT THAT'S JUST THE OUTCOME THEY WANT.  
22 THE UNDERLYING DETERMINATION YOU HAVE TO MAKE BEFORE YOU  
23 COULD DECIDE, THAT YOU SHOULD COMPEL IS, YES, DROP IS AN  
24 EMPLOYMENT BENEFIT, NOT A VESTED PENSION BENEFIT. AND  
25 THAT'S WHERE WE COME IN, YOUR HONOR, WHICH THE CITY  
26 ACKNOWLEDGED WHEN WE BARGAINED THIS PROVISION --

27 THE COURT: OKAY.

28 MS. SMITH: -- THAT THIS WAS GOING TO BE DECIDED BY



1 A COURT, AND THAT MEA SHOULD HAVE A SEAT AT THAT TABLE.  
2 PHIL KAY, WITH WHOM I BARGAINED FOR FIVE MONTHS,  
3 MR. DAVIS' PARTNER, SAID TO ME OVER AND OVER AGAIN, "ANN,  
4 WE KNOW YOU'RE GOING TO BE IN THIS. WE KNOW MEA IS GOING  
5 TO BE IN THIS CASE."

6 AND THIS IS WHERE THE ACTION IS, YOUR HONOR.  
7 THERE'S NOTHING HAPPENING AT PERB. WE AGREED THAT WE HAD  
8 A NEW MOU, BUT THAT THERE WOULD BE A LEGAL DETERMINATION  
9 ABOUT WHETHER DROP IS VESTED OR NOT. AND MY CLIENT, ON  
10 BEHALF OF 4,700 CITY EMPLOYEES, WANTS TO BE HEARD WHEN  
11 YOU MAKE A DECISION ABOUT WHETHER DROP IS A VESTED  
12 BENEFIT OR NOT.

13 AND YOU HAVE TO MAKE THAT DECISION FIRST,  
14 BEFORE YOU COMPEL THE POA TO DO ANYTHING. AND IF YOU  
15 MAKE THE DECISION THAT IT ISN'T A VESTED BENEFIT AND  
16 COMPEL THEM TO BARGAIN, GUESS WHAT, THAT DECISION IS THEN  
17 GOING TO BE VISITED UPON MY CLIENT. AND THE OUTCOME IS  
18 GOING TO BE THAT WE'RE GOING TO BE TOLD WE HAVE TO  
19 BARGAIN THIS, AND EITHER GIVE IT AWAY OR REDUCE IT OR  
20 IMPAIR IT, OR HAVE IT SHOVED DOWN OUR THROATS.

21 THE COURT: WAS THE -- WELL, COME ON.

22 MS. SMITH: WELL, YOUR HONOR, I'VE BEEN BARGAINING  
23 WITH THE CITY FOR 24 YEARS. AND BELIEVE ME, SHOVED DOWN  
24 YOUR THROAT IS EXACTLY THE WAY TO DESCRIBE IT.

25 THE COURT: WELL, LET'S NOT PERSONALIZE ANY OF THIS.

26 MS. SMITH: OKAY. ALL RIGHT. I'LL TAKE IT BACK,  
27 THEN. OKAY.

28 THE COURT: WE'LL STAY ABOVE THAT, BUT -- AND THIS

1 SOUNDS FLIP, BUT I DON'T MEAN IT TO BE FLIP. WOULDN'T  
2 YOU BE IN JUST AS GOOD A POSITION IF THE CITY PREVAILED,  
3 IF YOU WERE TO FILE AN AMICUS BRIEF AT THE COURT OF  
4 APPEAL?

5 MS. SMITH: YOUR HONOR, IN MY HUMBLE AND LIMITED  
6 EXPERIENCES, THE TIME TO INFLUENCE JUSTICE IS WHEN  
7 JUSTICE IS BEING DONE. AND THAT STARTS HERE, WITH YOU.  
8 THE TIME TO INFLUENCE YOUR THINKING AND YOUR  
9 UNDERSTANDING AND YOUR HISTORICAL PERSPECTIVE AND WHAT  
10 HAS HAPPENED WITH THIS BENEFIT IN THE LAST 12 YEARS, THIS  
11 IS THE TIME TO INFLUENCE THAT, AND NOT AFTER YOU HAVE  
12 FORMED AN OPINION AND REACHED A DECISION, AND THEN I'M  
13 TRYING TO TELL ANOTHER SET OF JUDGES THAT THERE WAS  
14 SOMETHING WRONG. THE RECORD WILL BE MADE. WHAT'S PUT IN  
15 THE RECORD WILL BE CRUCIAL.

16 THE COURT: WELL, IF YOU'RE GOING TO BRING JUSTICE  
17 INTO IT, I AGREE. I MEAN, THAT'S --

18 MS. SMITH: AND JUSTICE IS WHERE IT'S AT, YOUR  
19 HONOR.

20 MR. CONGER: YOUR HONOR, I REALLY DON'T HAVE A DOG  
21 IN THIS FIGHT, BUT -- EXCEPT THAT I REALLY WANT TO SEE IT  
22 TURN OUT THE WAY IT SHOULD. AND, YOU KNOW --

23 THE COURT: CAN I TELL YOU WHAT I'M PLANNING TO DO?

24 MR. CONGER: YES, SIR.

25 THE COURT: I'M PLANNING TO ISSUE THE TRO WITH  
26 RESPECT TO THE POLICE OFFICERS ASSOCIATION, ONLY. AND  
27 I'M PLANNING TO TAKE THE JOINDER, OR THE INTERVENTION, IF  
28 YOU WILL, UNDER SUBMISSION AND THINK ABOUT IT A LITTLE

1 MORE. DO I HAVE EVERYTHING I NEED ON THE INTERVENTION,  
2 BECAUSE I DIDN'T REALLY SEE THAT MUCH LAST NIGHT. DID I  
3 MISS IT OR DID I NOT TAKE IT HOME?

4 MR. DAVIS: WE -- WE FILED THIS MORNING, PROBABLY  
5 WHILE YOUR HONOR WAS ON THE BENCH, A VERY BRIEF  
6 OPPOSITION. WE DO THINK THAT THERE ARE MORE ISSUES HERE  
7 THAT, IF FURTHER BRIEFING WOULD BE REQUIRED, WE'D BE  
8 HAPPY TO DO --

9 THE COURT: I'LL LET YOU KNOW.

10 MR. DAVIS: -- ON SOME OF THE FACTUAL ISSUES.

11 AND -- AND PRIMARILY, JUST SAY, VERY BRIEFLY,  
12 THAT MEA'S PREMATURE. THEY'RE PREMATURE IN THEIR  
13 ASSUMPTIONS, WHAT THE CITY IS OR IS NOT GOING TO DO. AND  
14 IF THE CITY DOES NOT FOLLOW ITS OBLIGATIONS UNDER THE  
15 MMBA, THAT, CLEARLY, PERB HAS JURISDICTION TO RESOLVE  
16 THAT DISPUTE.

17 THE COURT: DON'T YOU HAVE A DEC RELIEF?

18 MS. SMITH: YES.

19 MS. ANNEET: YOUR HONOR, JUST ONE QUICK -- ONE QUICK  
20 COMMENT --

21 THE COURT: SURE.

22 MS. ANNEET: -- AS I LISTEN TO ALL THIS. AND WE  
23 JUST SPENT THE LAST TWO WEEKS WORKING VERY HARD TO GET TO  
24 THE POINT WHERE WE SET A HEARING DATE ON THE CITY'S  
25 PETITION.

26 THE COURT: THE HEARING DATE IS NOT GOING TO BE PUT  
27 OVER.

28 MS. ANNEET: OKAY. BECAUSE --

1 THE COURT: NO CHANCE.

2 MS. ANNEET: -- NO MATTER WHAT HAPPENS --

3 THE COURT: NO CHANCE.

4 MS. ANNEET: -- THAT, TO ME, IS THE CRITICAL,

5 BULLETPROOF DATE. AND THERE CAN BE NO REQUEST FOR

6 INTERVENERS OR EXTRA TIME. THERE CAN BE NO -- WE NEED TO

7 HAVE THIS HEARING ON THE 25TH.

8 THE COURT: AND WE WILL. MS. SMITH HAS BEEN HERE

9 FOR THE LAST THREE HEARINGS, I'M SURE SHE'S UP TO SPEED.

10 I'M SURE SHE KNOWS WHAT TO -- WHAT SHE HAS TO DO, IF I

11 ALLOW THEM TO INTERVENE.

12 MS. ANNEET: AND JUST BECAUSE OF THE TIMING OF HOW

13 THIS ISSUE CAME UP, AND WE WERE PRETTY MUCH ENTHRALLED IN

14 THE MIDST OF WHAT WE THOUGHT WAS GOING TO BE A

15 PRELIMINARY INJUNCTION HEARING ON FRIDAY, I WOULD THINK

16 THAT WE COULD APPRECIATE MAYBE A DAY OR TWO TO PROVIDE

17 YOU WITH SOME SUPPLEMENTAL BRIEFINGS, SPECIFICALLY ON THE

18 ISSUES OF THE EXCLUSIVE JURISDICTION OF PERB AND HOW THE

19 FACT THAT THERE IS AN ISSUE PENDING IN A LAWSUIT THAT

20 MIGHT IMPACT, ULTIMATELY, SOME OTHER GROUP.

21 I MEAN, EVERY LAWSUIT HAS THE POTENTIAL TO

22 IMPACT OTHER GROUPS. AND, CLEARLY, NOT EVERY GROUP GETS

23 TO INTERVENE.

24 THE COURT: I JUST RUINED SOME POOR ASSOCIATE'S

25 MONDAY NIGHT?

26 MS. ANNEET: NO, THAT WOULD BE MY MONDAY NIGHT, YOUR

27 HONOR.

28 THE COURT: I DON'T MEAN TO DO THAT, BUT THAT WOULD

1 BE HELPFUL TO ME.

2 MS. ANNEET: OKAY. THANK YOU.

3 MS. SMITH: YOUR HONOR, IF WE'RE ACTUALLY GOING TO  
4 DO A BRIEFING SCHEDULE, THEN, ABOUT -- ABOUT THE  
5 INTERVENTION, BECAUSE I DON'T HAVE AN UNFAIR LABOR  
6 PRACTICE CHARGE TO BRING TO PREVUE. THIS IS A  
7 DECLARATORY RELIEF ACTION ABOUT WHETHER DROP IS VESTED  
8 AND THE IMPACT OF 143.1.

9 THE COURT: I UNDERSTAND.

10 MS. SMITH: I WOULD LIKE TO LODGE WITH THE COURT, IF  
11 I COULD, THEN -- THIS IS A COPY OF THE MOU THAT IS ON ITS  
12 WAY TO BEING SIGNED.

13 THE COURT: I ASSUMED YOU WERE GOING TO LEAVE THAT  
14 FOR ME.

15 MS. SMITH: YES. AND I HIGHLIGHTED THE SECTION  
16 ABOUT WHAT WAS AGREED TO, THAT DROP WOULD BE DETERMINED  
17 BY A COURT OF COMPETENT JURISDICTION. AND I'D ALSO LIKE  
18 TO GIVE YOU THE LETTER THAT THE CITY PROVIDED TO MEA,  
19 ADDRESSED TO SDCERS, AFTER THE MEETING ON JUNE 2ND, WHERE  
20 IT WAS ANNOUNCED THAT DROP ISN'T, IN FACT, ANYMORE.

21 AND THEN THIS LETTER CLARIFIED, BECAUSE OF THE  
22 ISSUES THAT WE RAISED, THAT THE CITY IS NOT OBJECTING TO  
23 SDCERS CONTINUING TO TAKE DROP APPLICATIONS FROM MEA  
24 REPRESENTED EMPLOYEES, QUOTE, AS LONG AS IT IS CLEAR THAT  
25 THE APPLICATIONS ARE SUBJECT TO THE LEGAL ISSUES RELATED  
26 TO DROP BEING RESOLVED. AND I'VE -- I'VE FLAGGED THAT  
27 SECTION FOR YOU, WHICH IS THIS CASE --

28 THE COURT: HOLD ON JUST A SECOND.

1 MS. ANNEET, ANY OBJECTION TO MY SEEING THAT?

2 MR. DAVIS?

3 MR. DAVIS: IF WE CAN LOOK AT IT. I DON'T HAVE ANY  
4 DOUBT THAT IT'S WHAT IT IS.

5 MS. SMITH: MR. KAY SIGNED THE LETTER, YOUR PARTNER.

6 MR. DAVIS: NOT THE LETTER, JUST THE MOU. I HAVEN'T  
7 SEEN THE LATEST VERSION OF THE MOU.

8 MS. SMITH: OKAY.

9 MR. DAVIS: I DON'T HAVE ANY DISPUTE ABOUT IT.

10 MS. ANNEET: I WOULD JUST ADD, IN WEIGHING THE  
11 EFFICACY AND EXERCISING DISCRETION ON INTERVENTION, ONE  
12 OF THE ISSUES IS HOW IT'S GOING TO IMPACT THE EFFICIENT  
13 AND SWIFT RESOLUTION OF THE ISSUES BEFORE THE COURT. AND  
14 JUST FOR THE LITTLE BIT I'VE HEARD ALREADY TODAY WITH  
15 DISCUSSIONS THAT, SO FAR, THIS LITIGATION HAS NOT ENTERED  
16 THIS COURTROOM, THROUGH POTENTIAL INTERVENER, THE  
17 POTENTIAL FOR THIS LITIGATION TO GET WAY OFF TRACK AND  
18 SIDETRACKED FROM THE ISSUES WE NEEDED TO DECIDE --

19 THE COURT: I BELIEVE THAT WHAT MS. SMITH WAS -- IS  
20 ARGUING WAS HER FULL STANDING, THAT SHE HAS A STAKE IN  
21 THE OUTCOME HERE AND THAT SHE WOULD LIKE TO BE HEARD.  
22 WHICH MAKES SOME SENSE TO ME, BUT THERE MAY BE REASONS  
23 WHY IT'S INAPPROPRIATE, AS WELL. SO I'D JUST LIKE TO  
24 LOOK AT IT. AND IF YOU WANT TO GIVE ME ANY SUPPLEMENTAL  
25 BRIEF, YOU'RE CERTAINLY WELCOME TO DO THAT.

26 IS IT ALL IN YOUR EX PARTE PAPERS?

27 MS. SMITH: YOUR HONOR, WHAT I SET FORTH WAS THE  
28 STANDARDS UNDER 387, BOTH (A) AND (B). AND I -- I

1 HAVEN'T -- I HAVE HEARD THIS ARGUMENT THAT I SHOULD GO TO  
2 PERB, BUT PERB HAS NO RELIEF TO PROVIDE -- AND I HAVE NO  
3 UNFAIR LABOR PRACTICE TO TAKE TO PERB.

4 THE COURT: WHY DON'T YOU TELL ME ABOUT THAT.

5 MS. SMITH: SHALL I WRITE TO YOU ABOUT THAT?

6 THE COURT: YES.

7 MS. SMITH: OR SHALL I ADDRESS IT HERE? BECAUSE --

8 THE COURT: I CAN'T HIGHLIGHT WHAT YOU'RE TELLING  
9 ME.

10 MS. SMITH: OKAY.

11 THE COURT: YOU MIGHT ACTUALLY HAVE SOME REFERENCE  
12 TO STATUTES AND REGULATIONS AND THINGS THAT I MIGHT WANT  
13 TO LOOK AT.

14 MS. SMITH: OKAY. WHEN DO YOU WANT TO HAVE -- FIRST  
15 OF ALL, I GUESS THERE'S GOING TO BE A BRIEFING SCHEDULE  
16 THAT RELATES TO JUNE 25TH?

17 THE COURT: THAT'S ALL SET.

18 MS. SMITH: BUT KNOWING WHETHER OR NOT I'M GOING TO  
19 BE WRITING A BRIEF OR PARTICIPATING IN THE MERITS OF THE  
20 CASE IS, OBVIOUSLY, IMPORTANT TO ME. AND SO WHEN DO YOU  
21 WANT -- I MEAN, I HAVEN'T HEARD ANYTHING HERE, YOUR  
22 HONOR, THAT DENIES THAT MEA IS A PRACTICAL MATTER --

23 THE COURT: LET ME TELL YOU WHAT I WANT.

24 MS. SMITH: OKAY.

25 THE COURT: I WOULD LIKE -- WHEN DO YOU WANT TO GET  
26 YOUR BRIEF IN? WHAT'S APPROPRIATE FOR YOU? ON THE  
27 JOINDER.

28 MS. ANNEET: WEDNESDAY? WEDNESDAY?

1 THE COURT: OKAY.

2 MR. DAVIS: OKAY.

3 THE COURT: ABOUT NOON ON WEDNESDAY?

4 MR. DAVIS: FINE.

5 THE COURT: WILL THAT BE --

6 MR. DAVIS: YEAH, YES.

7 THE COURT: LOOK, I WAS A PARTNER IN A LAW FIRM. I

8 KNOW WHAT THIS MEANS; OKAY?

9 MS. ANNEET: I WAS TRYING TO FIGURE IT OUT.

10 MR. DAVIS: WE'VE -- YEAH. WE FILED ONE, WE CAN

11 CERTAINLY, YOU KNOW, DO ANOTHER ONE.

12 THE COURT: I REALLY DON'T WANT ANYBODY TO MISS A

13 BASEBALL GAME OR SOCCER GAME OR SOMETHING TO GET THIS

14 DONE. I REALLY, REALLY DON'T.

15 MR. DAVIS: IT WAS A BAD BASEBALL GAME, BY THE WAY.

16 THE COURT: I MEAN THE KIDS' BASEBALL GAME. I DON'T

17 CARE ABOUT THE PADRES.

18 MS. ANNEET: I JUST THINK THAT GIVEN THE IMPORTANCE

19 OF THE ISSUE AND THAT THIS ISSUE CAME UP RATHER QUICKLY,

20 AND WE WERE ALL DOING A LOT OF THINGS IN THOSE FEW DAYS

21 THAT -- TO HAVE HAD -- TO HAVE THE OPPORTUNITY TO LOOK AT

22 IT, TO DISCUSS IT WITH THE CLIENT, TO HAVE A REASONED

23 POSITION AND TO COME BACK AND RESPOND TO THE POINTS THAT

24 MS. SMITH RAISED WOULD BE HELPFUL.

25 BECAUSE CLEARLY, THE INTERVENTION OF MEA IS

26 GOING TO GEAR UP THE WORK AND THE LEVEL OF LITIGATION

27 THAT'S GOING TO GO ON IN THE NEXT COUPLE OF WEEKS.

28 THE COURT: AND I AGREE. BUT THE ONLY QUESTION HERE



1 IS HOW MUCH TIME DO YOU NEED TO GET IT DONE, ASSUMING YOU  
2 STILL GET TO GO TO YOUR KIDS' SOCCER GAMES.

3 MS. ANNEET: WEDNESDAY IS FINE, BECAUSE WE HAVE TO  
4 GET READY FOR THE WRIT.

5 THE COURT: OKAY. I WANT YOURS BY WEDNESDAY  
6 AFTERNOON, AS WELL.

7 MS. SMITH: AND IS MINE TO BE RESPONSIVE TO THEIR'S,  
8 YOUR HONOR? NO, JUST INDEPENDENT.

9 THE COURT: JUST GIVE ME YOUR BEST SHOT.

10 AND WITH RESPECT TO THE WRIT AND THE BRIEFING  
11 OF THE WRIT, I THINK THAT -- AS YOU HAVE ALL ALONG, YOU  
12 WANT TO BE IN IT, SO PREPARE AS IF YOU'RE GOING TO BE,  
13 EVEN IF YOU ARE NOT.

14 DOES THAT MAKE ANY SENSE? IF YOU WAIT FOR MY  
15 RULING --

16 MS. SMITH: RIGHT.

17 THE COURT: -- ON WHETHER YOU'RE GOING TO BE ABLE TO  
18 INTERVENE OR NOT, YOU'RE TOO LATE.

19 MS. SMITH: RIGHT. AND I WON'T, YOUR HONOR. I  
20 DROPPED EVERYTHING ELSE. TALKING ABOUT MISSING BASEBALL  
21 GAMES? I MEAN, ONE -- THE CITY ANNOUNCED, AS IT DID LAST  
22 WEEK -- I MEAN, I DROPPED EVERYTHING TO PREPARE MY  
23 APPLICATION AND TO COME BEFORE THE COURT. AND I ASKED  
24 FOR A STIPULATION BECAUSE I THOUGHT IT WAS FAIRLY --

25 THE COURT: AND I DON'T WANT TO HEAR ABOUT THE POST  
26 STIPULATIONS THAT WEREN'T ACCEPTED. BUT, YOU KNOW, IF  
27 YOU NEED SOME SLACK FROM THE OTHER CLIENTS, I'LL GIVE  
28 THEM A CALL, TELL --

1 MS. SMITH: NO. I'M NOT SAYING THAT, YOUR HONOR.

2 I'M JUST SAYING THAT I HAVE GIVEN THIS TOP PRIORITY,

3 BECAUSE IT IS OF TOP PRIORITY.

4 THE COURT: I'M BEING FACETIOUS.

5 MS. SMITH: NO, I APPRECIATE IT, YOUR HONOR.

6 THE COURT: IT'S A HARD, HARD JOB YOU GUYS ARE

7 DOING, AND IT TAKES A LOT OF TIME, A LOT OF EXTRA TIME.

8 AND I KNOW THAT.

9 MR. CONGER: AND IT'S A GOOD THING ANN SMITH -- I'LL

10 SAY THIS ON THE RECORD. SHE KNOWS THIS STUFF BACKWARDS

11 AND FORWARDS.

12 YOUR HONOR, ON THE BRIEFING SCHEDULE ON THE

13 WRIT, I JUST WANT TO MAKE SURE THAT IT LOOKS -- I'VE

14 SPOKEN WITH COUNSEL, AND IT'S OUR INTENT FOR THE WRIT ON

15 THE 25TH TO BOTH ADDRESS THE ISSUES RAISED BY THE

16 PETITION AND THE ISSUES RAISED BY THE CROSS-PETITION,

17 WHICH WE -- WE'VE REALLY ALREADY BRIEFED IN OUR

18 PRELIMINARY INJUNCTION APPLICATION.

19 AND SO THE BRIEFING SCHEDULE, AS I UNDERSTAND

20 IT, IS THE CITY WOULD FILE OPENING BRIEFS ON THE 15TH?

21 OKAY. THAT'S WHAT I WAS WONDERING.

22 THE COURT: I THOUGHT IT WAS BY CODE.

23 MS. ANNEET: WE DON'T HAVE TIME FOR CODE.

24 THE COURT: DID I JUST SEND YOU OUT AND SAY AGREE ON

25 A BRIEFING SCHEDULE?

26 MS. ANNEET: I THINK WE WERE SUPPOSED TO DO THAT.

27 WE HAVEN'T HAD A CHANCE TO SPEAK ABOUT IT.

28 THE COURT: LET'S -- WELL, DO WE NEED TO BE ON THE

1 RECORD FOR THIS, FOR THE BRIEFING SCHEDULE?

2 MS. ANNEET: FOR THE BRIEFING SCHEDULE, YOUR HONOR,  
3 THE CITY HAS SUBPOENAED THE REPRESENTATIVE OF SCERS. I  
4 DID THAT ON THE 5TH, ONCE SCERS INDICATED THAT THEY  
5 NEEDED A SUBPOENA TO PROVIDE THIS INFORMATION. SO THE  
6 EARLIEST DATE I CAN HAVE FOR DEPOSITION IS THE 15TH. AND  
7 I -- I'M ASSUMING I'M GOING TO NEED HIS DEPOSITION BEFORE  
8 WE CAN FINALIZE OUR PAPERS. SO THAT PUTS A LITTLE BIT OF  
9 A WRINKLE IN IT. BUT I CAN GET AN EXPEDITED TRANSCRIPT,  
10 SO IF WE CAN GET OUR PAPERS ON FILE BY THE 18TH, WOULD  
11 THAT WORK?

12 THE COURT: SURE.

13 MS. ANNEET: OKAY.

14 THE COURT: OH, GEEZ. DO YOU MIND -- WOULD YOU MIND  
15 OVERNIGHT MAILING --

16 MS. ANNEET: NOT AT ALL.

17 THE COURT: -- THIS STUFF TO MY MOM'S HOUSE BACK IN  
18 WISCONSIN?

19 MS. ANNEET: OH, NOT AT ALL.

20 THE COURT: OKAY. JUST A COPY.

21 MS. ANNEET: COURTESY COPY.

22 THE COURT: IT'S MY NEPHEW'S WEDDING.

23 MS. ANNEET: I REMEMBER YOU SAID THAT.

24 THE COURT: I JUST HAVE TO BE THERE. I DON'T HAVE  
25 TO BE INVOLVED. DON'T LET MY BROTHER ORDER THIS  
26 TRANSCRIPT.

27 ALL RIGHT. AND THE OPPOSITION?

28 MR. CONGER: 24TH TOO LATE?

1 THE COURT: WAY TOO LATE.

2 MR. CONGER: I MIGHT NEED MORE THAN A DAY OR TWO.

3 THE COURT: OKAY. HAVE IT TO MY CLERK BY THE 22ND,  
4 AND SEND IT OUT TO ME BY FED EX BY THE 23RD. OKAY?

5 MR. CONGER: OR COUNSEL'S INDICATING TO ME, SHOULD  
6 WE BRIEF IT AS, REALLY, CROSS-OPENING? AND THEN --

7 THE COURT: YES.

8 MR. CONGER: SO THEN WE'LL DO ONE BY THE 18TH, ALSO?

9 THE COURT: OH, YEAH. EVERYBODY.

10 MR. CONGER: OKAY.

11 MS. ANNEET: WE SHOULD DO CROSS-MOTIONS, BECAUSE  
12 YOU'LL DO YOUR OPENING ON YOUR CROSS-PETITION, AND WE'LL  
13 DO OUR OPENING ON THE PETITION, AND WE'LL CROSS EACH  
14 OTHER.

15 MR. CONGER: PERHAPS YOUR STAFF, YOU HAVE OUR E-MAIL  
16 ADDRESSES? BECAUSE WE RECEIVE -- YOU CAN E-MAIL US THE  
17 ADDRESS WE'RE SUPPOSED TO FED EX TO. MAYBE THAT'S THE  
18 WAY TO DO IT.

19 THE COURT: I'LL GIVE IT TO YOU NOW. LET'S GO OFF  
20 THE RECORD.

21 (DISCUSSION OFF THE RECORD.)

22 MS. SMITH: YOUR HONOR, WHAT TIME ON WEDNESDAY DID  
23 YOU WANT THE SUPPLEMENTAL PAPERS?

24 THE COURT: CLOSE OF BUSINESS. AND --

25 MR. CONGER: AS FAR AS A TRO, WILL YOUR HONOR JUST  
26 BE FORWARDING THAT TO US, THE ACTUAL TRO?

27 THE COURT: OH, YOU GET THAT TODAY.

28 MR. CONGER: OKAY. THANK YOU, YOUR HONOR.

1 THE COURT: ALL RIGHT. THANK YOU. WHAT DO YOU --  
2 DID I SAY NOON? THAT'S RIGHT. I DID SAY NOON, NOON ON  
3 WEDNESDAY. YES, I DID SAY NOON, OR THEREABOUTS. AND IF  
4 YOU COULD, PLEASE, INSOFAR AS YOU CAN DELIVER THAT  
5 DIRECTLY TO THE COURTROOM.

6 MS. SMITH: YES.

7 MR. CONGER: THANK YOU, YOUR HONOR.

8 THE COURT: OKAY.

9 MS. ANNEET: YOUR HONOR, THANK YOU VERY MUCH.

10 THE COURT: ALL RIGHT. THANK YOU. AND --

11 MS. SMITH: THANK YOU, YOUR HONOR.

12 THE COURT: -- I HAVE TO TELL YOU, I REALLY  
13 APPRECIATE THE LEVEL OF ADVOCACY. VERY WELL DONE, ON ALL  
14 OF YOUR PARTS. I KNOW IT'S IMPORTANT. IT'S GOING TO  
15 MAKE IT A LOT EASIER FOR ME.

16 MR. CONGER: THANK YOU, YOUR HONOR.

17 MS. ANNEET: THANK YOU.

18 (AT 12:52 P.M., THE MATTER WAS CONCLUDED.)

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