

OFFICIAL REPORT OF PROCEEDINGS

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

REGION 21

In the Matter of:

Case No. 21-CA-39296

Southern California Permanente  
Medical Group; and Kaiser  
Los Angeles Medical Center,

Employer,

and

National Union Of Healthcare  
Workers,

Union.

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Place: Los Angeles, California

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**BEFORE THE  
NATIONAL LABOR RELATIONS BOARD  
REGION 21**

	)	
In the Matter of:	)	
	)	
SOUTHERN CALIFORNIA PERMANENTE	)	
MEDICAL GROUP; AND KAISER	)	
LOS ANGELES MEDICAL CENTER,	)	
	)	
Employer,	)	
	)	
and	)	Case No. 21-CA-39296
	)	
NATIONAL UNION OF HEALTHCARE	)	
WORKERS,	)	
	)	
Union.	)	

The above-entitled matter came on for hearing, pursuant to notice, before **WILLIAM L. SCHMIDT**, Administrative Law Judge, at the National Labor Relations Board, Region 21, 888 South Figueroa Street, Suite 902, Los Angeles, California 90017, on **TUESDAY, OCTOBER 19, 2010, at 9:01 a.m.**



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I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>	<u>CRT EXAM</u>
Gabriel Kristal	97	123 124	128	130		
John Borsos	132	138				
Richard Rosas	140 163	176 184				162
Maryanne Miller	187	212 213				



**EXHIBITS**

<b><u>EXHIBIT</u></b>	<b><u>IDENTIFIED</u></b>	<b><u>IN EVIDENCE</u></b>
<b>General Counsel</b>		
12	86	86
13	86	86
14	87	87
15	87	88
16	89	
17	90	91
18	90	91
<b>Respondent</b>		
1	145	146
2	156	157
3	157	158
4	174	175
5	190	192
6	200	200
7	205	206

P R O C E E D I N G S

1  
2           **JUDGE SCHMIDT:** This will be on the record. This is a  
3 continuation of the hearing in Southern California Permanente  
4 Medical Group and Kaiser Foundation Hospitals and the National  
5 Union of Healthcare Workers, Case 21 CA 39296.

6           You may proceed, General Counsel.

7           **MR. MACKAY:** Your Honor, just a few housekeeping matters.  
8 First I'd like to -- with respect to General Counsel's Exhibit  
9 7. Yesterday, I know we did not have copies and so I withdrew  
10 the exhibit to make copies.

11           I just want to reflect that I'm providing the Court  
12 reporter with two copies of General Counsel's Exhibit 7, which  
13 are the executed copies of the 2008 memorandum of agreement.  
14 And I provided the parties with the same copy.

15           **JUDGE SCHMIDT:** Very well.

16           (Counsel confer)

17           **MR. MACKAY:** Next housekeeping matter, Your Honor, I'd  
18 like to substitute. Yesterday I mentioned with respect to  
19 joint Exhibit 1, it was an unsigned copy of the stipulation.

20           I'm substituting now a copy of the stipulation that was  
21 file with the District Court that contains the signature of  
22 counsel, her Respondent and for the acting General Counsel.  
23 That's Joint Exhibit 1, replacing that.

24           **JUDGE SCHMIDT:** All right. Thank you.

25           (Counsel confer)

1 MR. MACKAY: Your Honor, I marked as General Counsel's  
2 Exhibit 12, a post hearing brief submitted by the Respondents  
3 in connection with the underlying R Case.

4 I have circled on the second page, the relevant facts that  
5 I'm seeking to introduce for purposes of this case.

6 I move for the introduction of General Counsel's Exhibit  
7 12.

8 JUDGE SCHMIDT: Any objection?

9 MR. LINDSAY: No objection.

10 JUDGE SCHMIDT: Received.

11 **(General Counsel Exhibit 12 received into evidence.)**

12 JUDGE SCHMIDT: Well, but you're limiting GC 12 to the  
13 circled portion on the second page. Is that my understanding?

14 MR. MACKAY: Well, I'm introducing it for that. I have no  
15 objection to the entire document being received and for the  
16 sake of completeness, I wanted to introduce the entire thing.

17 JUDGE SCHMIDT: I see. Is that compatible with everybody  
18 else's understanding? Good. That being the case, I'll receive  
19 it.

20 (Counsel confer)

21 MR. MACKAY: I have marked as General Counsel's Exhibit  
22 13, an internal email between representatives of Respondent's.

23 **(General Counsel Exhibit 13 marked for identification.)**

24 MR. MACKAY: This time I move for the introduction of  
25 General Counsel's Exhibit 13.

1 JUDGE SCHMIDT: Any objections?

2 MR. LINDSAY: No objection.

3 JUDGE SCHMIDT: Received.

4 **(General Counsel Exhibit 13 received into evidence.)**

5 (Counsel confer)

6 MR. MACKAY: I've marked as General Counsel's Exhibit 14,  
7 an email exchange between the Union's Chapter secretary, David  
8 Mallon, an agent of the Union and Richard Rosas (phonetic),  
9 Assistant Director of Labor Relations Department for  
10 Respondent's.

11 **(General Counsel Exhibit 14 marked for identification.)**

12 MR. MACKAY: I move for the introduction of General  
13 Counsel's Exhibit 14.

14 MR. LINDSAY: No objection.

15 JUDGE SCHMIDT: Received.

16 **(General Counsel Exhibit 14 received into evidence.)**

17 (Counsel confer)

18 MR. MACKAY: I've marked as General Counsel's Exhibit 15,  
19 an internal email exchange between Respondent's  
20 representatives.

21 **(General Counsel Exhibit 15 marked for identification.)**

22 MR. MACKAY: I move for the introduction of General  
23 Counsel's Exhibit 15.

24 MR. LINDSAY: May I inquire as to relevance?

25 MR. MACKAY: The email discusses this issue of tuition

1 reimbursement. And the very last response, which is the top  
2 response from Mr. Rosas --

3 MR. LINDSAY: Okay. That's what you want to focus in on?

4 MR. MACKAY: Well --

5 MR. LINDSAY: Because I --

6 MR. MACKAY: Yeah. Well, I mean, although I think you  
7 need to see the other emails just to get the context of what  
8 the issue is. But I believe the relevance at -- for the most  
9 part is Mr. Rosas' statements.

10 MR. LINDSAY: No objection.

11 (Counsel confer)

12 JUDGE SCHMIDT: Received.

13 **(General Counsel Exhibit 15 received into evidence.)**

14 MR. MACKAY: That was 15, correct?

15 JUDGE SCHMIDT: Yes.

16 MS. PARKER: 16.

17 MR. MACKAY: That I just introduced 16?

18 MS PARKER: No, you just introduced 15 and we're on 16.

19 MR. MACKAY: Okay.

20 (Counsel confer)

21 MR. MACKAY: May I have a second, Your Honor?

22 JUDGE SCHMIDT: Yes. Let's be off the record. Signify  
23 when you're ready.

24 MR. MACKAY: Okay. Thank you, Your Honor, I apologize I'm  
25 ready.

1 (Off the record)

2 JUDGE SCHMIDT: Ready? On the record.

3 MR. MACKAY: Yes.

4 JUDGE SCHMIDT: You may proceed, General Counsel.

5 MR. MACKAY: Your Honor, yesterday there was a reference  
6 to a CB charge involving SEIU.

7 MR. MACKAY: I've marked as General Counsel's Exhibit 16 a  
8 copy of the dismissal letter that issued from Region 21 in that  
9 case.

10 **(General Counsel Exhibit 16 marked for identification.)**

11 MR. MACKAY: The Union appealed and that appeal is  
12 currently before the Office of Appeals where the case file is.  
13 So you'll see that this is an unsigned copy of the dismissal  
14 letter.

15 JUDGE SCHMIDT: All right.

16 MR. MACKAY: But, nevertheless, I offer as General  
17 Counsel's Exhibit 16, a copy of Region 21's dismissal letter in  
18 that case.

19 JUDGE SCHMIDT: All right. I'm going to take  
20 administrative notice of that. Thanks.

21 (Counsel confer)

22 MR. MACKAY: I will provide you another copy shortly.

23 (pause)

24 MR. MACKAY: Your Honor, I've marked as General Counsel's  
25 Exhibit 17 and 18.

1           **(General Counsel Exhibit 17 and 18 marked for**  
2 **identification.)**

3           MR. MACKAY: Exhibit 17, a May 20th, 2010 position  
4 statement submitted by Respondent's to the National Labor  
5 Relations Board in connection with this case.

6           General Counsel's Exhibit 18 is a follow up email  
7 submitted by respondent to Region 21 of the NLRB in connection  
8 with this case.

9           I move for the introduction of General Counsel's Exhibit  
10 17 and 18.

11          MR. LINDSAY: I note that both 17 and 18 address a number  
12 of issues that are no longer part of this case.

13          MR. MACKAY: And to help illustrate that so that time is  
14 not spent on that, in Exhibit 17, there is a section called  
15 dues deduction. So it's not being offered for anything in  
16 connection with the dues deduction section.

17 (Counsel confer)

18          JUDGE SCHMIDT: You were going to speak further or --

19          MR. MACKAY: Oh --

20          JUDGE SCHMIDT: -- is that it?

21          MR. MACKAY: -- were there other --

22          MR. LINDSAY: I believe it also addresses the EBTs.

23          MS. PARKER: I think that's in the supplemental.

24          MR. LINDSAY: Or is that in 18?

25          MS. PARKER: I think that's in 18 from my recollection.

1 MR. LINDSAY: Okay.

2 MS. PARKER: Right. This is where it talks about the  
3 special assignments.

4 MR. MACKAY: In looking at General Counsel's Exhibit 18,  
5 section Number 2, it's not being introduced in connection with  
6 section Number 2 of GC 18, however the very last paragraph on  
7 Page 2, I do wish to include. The one paragraph that starts,  
8 The employers continue to believe.

9 MR. LINDSAY: And I believe Exhibit C to General Counsel's  
10 17 is addressed to those issues as well, C1.

11 JUDGE SCHMIDT: Well, can we approach it in this fashion  
12 to the extent that GC 17 addresses the issues covered by the  
13 complaint, it can be received?

14 MR. LINDSAY: That would be fine, 17 and 18.

15 JUDGE SCHMIDT: All right. Good. Those are received.

16 **(General Counsel Exhibit 17 and 18 received into**  
17 **evidence.)**

18 MR. MACKAY: And then I think I may be resting shortly,  
19 but may we go off the record, just so I can look at these last  
20 set of documents that were introduced to make sure I have not  
21 missed something?

22 JUDGE SCHMIDT: Yes. Let's be off the record.

23 (Counsel confer)

24 MR. MACKAY: Thank you for your patience, Your Honor, I'm  
25 ready.

1 JUDGE SCHMIDT: On the record. You may proceed, General  
2 Counsel.

3 MR. MACKAY: Counsel for the acting General Counsel,  
4 rests, Your Honor.

5 JUDGE SCHMIDT: Does the Charging Party care to supplement  
6 the acting General Counsel's case?

7 MS. HOFFMAN: No, Your Honor.

8 JUDGE SCHMIDT: All right. Respondent, ready to proceed?

9 MR. LINDSAY: We are, Your Honor.

10 JUDGE SCHMIDT: You may proceed.

11 MR. LINDSAY: I will begin with our reserved opening  
12 statement.

13 JUDGE SCHMIDT: Yes.

14 MR. LINDSAY: And then pursuant to the stipulation that  
15 we have worked out several of the Union witnesses in support of  
16 the 10J will be questioned here. That questioning will largely  
17 relate to the 10J issue.

18 JUDGE SCHMIDT: All right.

19 MR. LINDSAY: We will then proceed to put in our witnesses  
20 after -- following those two members of the Union.

21 JUDGE SCHMIDT: All right.

22 MR. LINDSAY: Okay. By way of an opening statement, I  
23 will be relatively brief. I think this isn't about the  
24 national agreements, the master agreement or the local  
25 agreements. It's really about what happens when one union

1 supplants another and you have that interim period before a new  
2 bargaining agreement is reached.

3 The employer clearly has an obligation to maintain the  
4 status quo as a general rule. There are exceptions to that  
5 general rule.

6 So there's really two issues. What was the status quo and  
7 what are the exceptions to the general rule that you maintain  
8 the status quo?

9 To determine the status quo you really have three issues  
10 in this case. The continuing education -- the tuition  
11 reimbursement for the continuing education credits, the  
12 training time for the stewards and the two percent across the  
13 board increase.

14 The continuing education payments under Kaiser's policy,  
15 its corporate policy governs for all employees except those who  
16 are members of a coalition union. And there is an exception in  
17 the written policy for the coalition union.

18 So if you're not in the coalition union, you're limited to  
19 the four corners of the policy and that's a benefit that Kaiser  
20 provided to these employees following the certification and the  
21 certification of NUHW.

22 JUDGE SCHMIDT: Well, is the corporate, pardon my  
23 interruption.

24 MR. LINDSAY: Certainly.

25 JUDGE SCHMIDT: Is the corporate policy and the -- what

1 was negotiated by the coalition unions the same or are they  
2 different?

3 MR. LINDSAY: The policy provides that for all employees  
4 not covered by the coalition of unions, you get this. For  
5 employees provided -- covered by the coalition of unions, you  
6 get whatever is in the coalition agreement. But you have to be  
7 a member of a union within the coalition.

8 JUDGE SCHMIDT: You have to be a member of the unit?

9 MR. LINDSAY: You have to be a member of a union within  
10 the coalition under Kaiser's policy.

11 I understand the distinction that Your Honor is making,  
12 but the way the policy itself is written, it's written in terms  
13 of what the -- whether you are a member of a union in the  
14 coalition. It's just the way it's drafted.

15 JUDGE SCHMIDT: All right.

16 MR. LINDSAY: Okay. With respect to training time,  
17 training time is a pure creature of the LMP, the Labor  
18 Management Partnership. It relates to the formation of the  
19 contract. Obviously, our contention is that that does not  
20 continue as part of the status quo.

21 The exception to the general rule is where an event is  
22 going to take place in the future. Following certification, at  
23 some point in the future, some event is going to take place.

24 There's a well established line of cases, some of them  
25 coming from this very Region, including Neighborhood House,

1 which came from this Region to the board and in 2006, the board  
2 held that where there is a future event, such as an across the  
3 board pay increase in Neighborhood House it was a cost of  
4 living increase and the employer announces its position and  
5 allows an opportunity for bargaining, the employer has not  
6 violated the act. And that's what happened with respect to the  
7 two percent. So --

8 JUDGE SCHMIDT: What's the Neighborhood House case again?

9 MR. LINDSAY: It is -- I have to find the file with those  
10 cases. The citation on Neighborhood House is 347 NLRB 553.

11 JUDGE SCHMIDT: Okay. So you say when I get into reading  
12 those cases, I'm going to find that -- did Neighborhood House,  
13 involved supplanting -- one union supplanting another or --

14 MR. LINDSAY: It involved a certification for a --  
15 following a first contract in a situation where the employer,  
16 because of its governmental contracts, had an annual cost of  
17 living increase --

18 JUDGE SCHMIDT: Okay.

19 MR. LINDSAY: -- that it provided each year. It follows  
20 Stone Container and TXU, which were earlier cases following the  
21 same principles.

22 JUDGE SCHMIDT: All right.

23 MR. LINDSAY: Okay. And what the board actually said that  
24 was because the COLA, the cost of living increase and I'm  
25 quoting here from Neighborhood House, constituted a discreet

1 event that was scheduled to occur during negotiations for an  
2 initial contract. The Respondent was free to implement its  
3 proposal as long as the Respondent provided the Union with  
4 reasonable advance notice and an opportunity to bargain.

5 And as far as the two percent, it was a discreet event,  
6 occurring in the future. The company informed -- Kaiser  
7 informed the Union of its position and they had opportunities  
8 to discuss and bargain.

9 JUDGE SCHMIDT: But does that case involve the granting of  
10 a previously announced benefit while bargaining is going on?

11 MR. LINDSAY: This case involves the withholding of a  
12 previous announced benefit.

13 JUDGE SCHMIDT: All right.

14 MR. LINDSAY: As does TXU and as does Stone Container.  
15 There are earlier cases from the board that have involved a  
16 situation Your Honor just referred to where the employer  
17 granted a benefit as well. And there are cases, frankly, on  
18 both sides of that issue.

19 JUDGE SCHMIDT: All right.

20 MR. LINDSAY: Okay. So just to kind of set the framework  
21 for where evidence is going to go. So I wanted to kind of  
22 lay that out so that you would --

23 JUDGE SCHMIDT: All right.

24 MR. LINDSAY: -- understand where we are coming from and  
25 what our position is.

1 JUDGE SCHMIDT: Very well.

2 MR. LINDSAY: Okay. And with that, I'm going to turn the  
3 time over to Mr. Neulight who is going to take the Union's  
4 witnesses at this point.

5 JUDGE SCHMIDT: Good.

6 MR. NEULIGHT: Thank you. The Respondent's call at this  
7 time, Gabe Kristal.

8 JUDGE SCHMIDT: Please step forward. We're going to have  
9 you raise your right hand.

10 (Whereupon,

11 **GABRIEL KRISTAL**

12 having been first duly sworn, was called as a witness herein  
13 and was examined and testified as follows:)

14 JUDGE SCHMIDT: Proceed.

15 **DIRECT EXAMINATION**

16 Q BY MR. NEULIGHT: Mr. Kristal, by whom are you employed?

17 A The National Union of Healthcare Workers.

18 Q And what is your position?

19 A Field representative organizer.

20 JUDGE SCHMIDT: Before you go further, could you spell  
21 your name for the record, please?

22 THE WITNESS: K-R-I-S-T-A-L and that's pronounced crystal.

23 MR. MACKAY: I apologize for interrupting. Ms. Parker is  
24 co-counsel and I anticipate she may handle any cross. I'm just  
25 waiting -- if you'd let her take a seat here.

1 JUDGE SCHMIDT: Oh.

2 MR. NEULIGHT: I'm sorry. No problem. My apologies.

3 MR. MACKAY: I should have jumped in earlier and said  
4 that. That's my fault actually. I apologize for the  
5 interruption.

6 JUDGE SCHMIDT: All right. That's fine. We're all set  
7 now. You can proceed.

8 Q BY MR. NEULIGHT: Thank you. Mr. Kristal, when did you  
9 begin your position as a field representative organizer for  
10 NUHW?

11 A Most recently, I've been employed since May 1st of this  
12 year.

13 Q And prior to that date, did you hold a position with SEIU,  
14 UHW?

15 A Yes.

16 Q What was that position?

17 A At the time of my -- at the time I left SEIU or --

18 Q Yes.

19 A -- I held a number of positions? Assistant director.

20 Q And how long had you held that position?

21 A About a year and a half.

22 Q So could you tell us, generally what your duties are as  
23 field representative organizer for NUHW?

24 A Sure. I mean, I'm sure that I'm going to leave some out,  
25 but generally it's my responsibility to recruit leaders,

1 stewards, leaders, bargaining committee representatives about  
2 -- to have support for the Union's program.

3 I communicate with a number of -- with individual members  
4 about what's happening with negotiations, contract enforcement,  
5 grievance solicitation, grievance filing, grievance processing.

6 I -- just there are so many things that I know I'm going  
7 to probably leave out 80 percent of the stuff that I do on a  
8 daily basis. But answering phone calls about the Union. Going  
9 to different facilities, distributing leaflets, writing  
10 leaflets.

11 That pretty generally covers it. Ask me any of the  
12 specifics you want.

13 Q And do your duties encompass, as you've describe them, the  
14 bargaining units of employees at issue here, namely the AFN  
15 Unit, the Psych Social Unit and the Healthcare Professionals  
16 Unit?

17 A Yes.

18 Q Okay. Mr. Kristal, do you recall giving an affidavit to  
19 the board on September 29th 2010?

20 A Yes. I'm not sure the exact date, but --

21 Q Okay.

22 A -- it sounds right.

23 Q Do you have in mind the contents of that affidavit?

24 A I'd like to see it. I've given a couple affidavits. I'd  
25 like to see a copy if I could.

1 MR. NEULIGHT: Counsel, do you have a copy or I have one  
2 as well?

3 MR. MACKAY: We've got an extra copy.

4 MS. HOFFMAN: I have it, Your Honor.

5 (Pause)

6 Q BY MR. NEULIGHT: Mr. Kristal, do you now have it in front  
7 of you, the affidavit you made out on September 29th, 2010?

8 A Yes.

9 Q Turning your attention to Page 1 of the affidavit, Line  
10 24.

11 A Uh-huh.

12 Q You state there that you estimate you had between 50 and  
13 100 conversations with between 50 and 100 unit employees during  
14 the course of the day.

15 How did you arrive at that estimate?

16 A Oh, I'd be happy to go through that with you. And if  
17 you'll indulge me, part of that would require me explaining,  
18 kind of my typical day as representative at Kaiser LEMC.

19 Q Please.

20 A So if I could -- I'm just going to try and give you a  
21 visual of how I arrived at that. The -- Kaiser Los Angeles  
22 Medical Center is the largest medical center for Kaiser in  
23 southern California. It's a tertiary care center and by that  
24 it's -- the sickest patients in all of Kaiser are at that.

25 So the nursing staff -- it's a brand new state of the art

1 facility and it's laid out in a way that which -- it's a seven  
2 story building and the first floor of the building is --  
3 there's, of course a basement, but the first floor of the  
4 building is O.R. the operating room, the post anesthesia care  
5 unit, PACU and pre-op, of which --

6 I say this because I generally start my day out by  
7 visiting every single unit of the -- every floor of the seven  
8 floors. And there's between ten and fifteen units, I could go  
9 through those with you one by one if you wanted. But in the  
10 course of doing that, we've recruited about 50 to 70 active  
11 shop stewards since the certification election.

12 So my duties, involve on a general day -- I'll go to every  
13 unit, contact -- my first point of contact would be stewards  
14 and there will be, you know, generally five to ten nurses, you  
15 know, anywhere from three to ten nurses in that range, who are  
16 at the nursing station, who are in the break room and who will  
17 come to me. And I would say that on an average day I speak to  
18 about 50 to 100 nurses.

19 Q So these conversations you reference are all conversations  
20 you've had with employees on non-work time?

21 A Or incidental to their -- I mean, if somebody is working  
22 at the nursing station and they say to me, When are we going to  
23 get our two percent raise, I don't say to that person, I'm not  
24 going to answer your question. I'll answer their question.  
25 I'll say, I'll be in the break room if you want to talk to me

1 there.

2 Q And I'm just trying to understand in terms of your  
3 estimate here, is that a daily estimate for communications that  
4 you've had from when you started in this position through at  
5 least the end of September or is it varied?

6 A I mean in order for me to get more comprehensive on that,  
7 I would have to, of course go back to my calendar and look at a  
8 day to day at what I did. But what I tried to capture in that  
9 estimate was my general day where I try to go to the hospital  
10 and visit every unit and check in with everyone of my working  
11 stewards.

12 Q And --

13 A And if I may, there are some exceptions of course.  
14 Probably three times a week, between two and three times a  
15 week, I actually have a formal meeting with a department, which  
16 might be an issue of there's a change the employer wants to  
17 make to the way scheduling is happening or we have a concern  
18 with the way that the on call policy is being administered.

19 And so the department will schedule -- so we'll schedule  
20 an actual meeting like for example, I would have tomorrow,  
21 which is Wednesday, I had a meeting scheduled with the hospice  
22 department, to where they want to meet to discuss what happens  
23 on their week on call. Because there's a problem with that and  
24 in an -- and 15 nurses will show up at that meeting.

25 And so that meeting is not going to happen without workers



1 first asking me about the contents of what I reference here in  
2 the two percent, because it's the issue that's primary on their  
3 mind is when are we going to get our raise, do we actually have  
4 a union?

5 I have to establish credibility for what the Union is  
6 doing before we actually talk about the nuts and bolts issue  
7 that work side issue that they had.

8 Q So out of these 50 to 100 conversations you state in your  
9 affidavit that you estimate in about half of those, employees  
10 have asked you about or complained to you about not getting the  
11 two percent wage increase. Is that correct?

12 A Uh-huh. That's correct.

13 Q So your estimate then is approximately 25 to 50 employees  
14 have broached that subject with you?

15 A Absolutely.

16 Q And has that been the case for the entire time you've been  
17 field organizer from May through the present or the end of  
18 September?

19 A Well, I, I mean, in order to answer that question, I think  
20 it's important that I clarify that I am actually -- I  
21 volunteered to help with this. I've been with this unit, I  
22 helped on a volunteer basis, organize -- just going back to  
23 December of last year when the election was announced.

24 So it is not -- it has not been the case that I've been  
25 asked that question throughout my time of representing the

1 employees. I'd say probably from May when I was actually on  
2 staff on, it's been somewhere close to that estimate, but it's  
3 escalated over the last -- it's increased over time since going  
4 back to certification. The number of questions asked about the  
5 two percent.

6 Q Okay. Well, can you then provide me with some -- or  
7 quantify the number of inquiries that you've had from employees  
8 or complaints that you've had from employees about the two  
9 percent from the date of certification in February through the  
10 present day?

11 A I'm not going to be able to, obviously, arrive at an exact  
12 number, but I can -- if you will I can kind of walk you through  
13 that.

14 Q What I'm trying to get at is you said that it's fluctuated  
15 and so I'm -- you make a statement here that you received about  
16 25 to 50 inquiries a day from employees about that subject, at  
17 least as of the time you wrote this declaration in September  
18 2010.

19 A And today if I were to go back to the hospital or if I  
20 were to go to the hospital, that would be the number I would  
21 receive, yes.

22 Q So when you say it's increased, can you give me some sense  
23 as to how much it's increased and when that increase has taken  
24 place?

25 A Sure. Obviously, in February the inquiries that I had

1 about it were questions from employees who asked the question  
2 and very intermittent. You know, because a lot of enthusiasm  
3 about the fact that people had chosen NUHW as their new union  
4 overwhelmingly, but people -- but on occasion, I'll say maybe  
5 one out of ten to twenty conversations I would have, people  
6 would say, So are we still going to get our raise in April?  
7 Are we still going to get this two percent raise in April.

8 My response at that time was, Well of course the law  
9 states that and I would cite More Truck Lines for example. And  
10 I would say, Yes, it's our understanding that's going to  
11 happen.

12 So -- but it wasn't an issue of concern. It didn't become  
13 an issue of concern until the employer stated that they were  
14 not going to provide that two percent wage increase. And then  
15 -- and they had an active partner in SEIU who communicated that  
16 in a leaflet to our members frequent -- regularly, through  
17 leaflets and through email regularly.

18 And had staff people soliciting -- given access by Kaiser  
19 soliciting dissent among the registered nurses by talking about  
20 how they hadn't received the two percent and it was a mistake  
21 for them to choose our union. So the inquiries increased over  
22 time.

23 And then, you know, of course there is the -- we have a  
24 different proceedings of which this is a culmination of one,  
25 where we filed the charge, we explained the charge, what that

1 meant, our rationale behind it and how it's always been our  
2 position that Kaiser has -- that Kaiser violated the law by not  
3 allowing the employees a two percent increase.

4 And so just to explain that process and as we went  
5 further, dissatisfaction has increased and -- the further  
6 people got away from when they should have received their wage  
7 increase. And that reflects the increase -- number of  
8 inquiries.

9 So I would say in February one to ten to one and twenty  
10 up. And I don't know if it had been a consistent increase, but  
11 I do know that now about half the conversations I have the  
12 question is raised about the two percent.

13 Q And you list some illustrative questions here in your  
14 declaration. Are these actual questions that you got from  
15 employees or sort of paraphrased summaries on your part?

16 A Actual questions.

17 Q And are there any other types of questions that you've  
18 gotten about the two percent increase beyond those that you  
19 illustrate here?

20 A Certainly.

21 Q Can you identify those?

22 A One that just in the last few days, Can we get our two  
23 percent if we go back to SEIU?

24 Is that helpful or do you want more?

25 Q Are there any others that you can think of?

1 A Sure. Why is Kaiser punishing us for choosing the Union  
2 that we had -- or for choosing this union?

3 Q That was an actual question you got --

4 A That was an actual question.

5 Q When did that question come up?

6 A That's happened a number of times, most recently about a  
7 month -- I was -- I just got back from vacation so right before  
8 I went on vacation. So about a month ago.

9 And another one just came to my mind too. Why is Kaiser  
10 helping SEIU by denying us our two percent wage increase?

11 Q Have any of the employees with whom you've spoken about  
12 the two percent, expressed to you or identified for you any  
13 personal harm or consequences that they have suffered as a  
14 result of not getting the two percent?

15 A Define harm, please?

16 Q Any adverse impact on them personally?

17 A Other than they're not receiving their monetary benefit?

18 Q Yes.

19 A Yes, actually.

20 Q What?

21 A Their personally credibility as leaders of the Union who  
22 advocated for this union has been -- and I've had -- I can name  
23 a few nurses who absolutely have said that not getting the two  
24 percent makes them look like bad leaders because they told  
25 people they would get the two percent and they're not receiving

1 it.

2 Q Okay. Have any of these employees identified for you any  
3 personal financial consequences to them that have resulted  
4 based on their not getting the two percent increase?

5 A Well, that would require a better definition of financial  
6 consequence. I think it's -- if somebody -- I will answer your  
7 question as yes, with a proviso or with an explanation.

8 Which is that if somebody says to me, My pay is less than  
9 it should be, I would say that's a financial consequence. And  
10 My pay is less than it was -- than I was expecting. I based my  
11 wages upon what -- promised wage increases and I'm not getting  
12 that pay. I would say that's a financial consequence.

13 Q Okay. But beyond the obvious fact that they are being  
14 paid less money than they otherwise would have, had the  
15 Respondent's granted the two percent increase.

16 Have any of the employees with whom you've communicated on  
17 a daily basis, these 50 to 100 employees, identified for you  
18 any adverse financial consequences that have -- that they have  
19 experienced as a result of not getting the two percent?

20 A I don't think it's my business to be a financial counselor  
21 for employees. Nurses, I mean, and I'll -- to be frank, make a  
22 lot of money. I mean, so I don't know that they would  
23 volunteer that information to me.

24 Q So it would be fair to say you have no knowledge that any  
25 employees, at least so far as has been communicated to you, who

1 have suffered irreversible financial harm as a result of not  
2 getting the two percent?

3 A You mean, like, bankruptcy, that type of thing?

4 Q Sure.

5 A Nobody has communicated that to me.

6 Q I'd like to turn your attention to Page 2 of your  
7 affidavit. Lines 1 through 3, you state there, "I have tried  
8 to explain to these employees that Kaiser violated the law by  
9 not giving the pay raises and by taking away the other benefits  
10 too. Their response to this has been along the lines of 'Well,  
11 we haven't gotten the money. Kaiser's not giving us the raise  
12 so why should we believe you?'"

13 Mr. Kristal, the comments here that you have in quotes,  
14 was that an actual statement that was made by a particular  
15 employee or is that, again, a summary or an interpretation by  
16 you of a combination of things that you've heard from  
17 employees?

18 A I wouldn't characterize it as an interpretation. I would  
19 say more along the lines of a summary of cumulative -- of many  
20 questions asked. I tried to paraphrase it. I tried to  
21 summarize that in those lines.

22 Q Okay. So to be clear then, you're not quoting here any  
23 particular comment or remark made by any specific employee that  
24 you heard?

25 A I could give you -- I could give you -- be more specific

1 if you'd like I can give you an actual quote --

2 Q Well, no, my --

3 A -- that reflects that. I was just -- there were a number  
4 of employees who said things that all fit within the framework  
5 of those three sentences.

6 Q Okay. All I want to clarify and I think you've answered  
7 this, but I just do want to just make sure that I have it clear  
8 that the quoted statements on Page 2, Lines 2 to 3 of your  
9 declaration do not reflect specific statements you actually  
10 heard by any specific employee, correct?

11 A With the clarification I provided, that's correct.

12 Q On the same page of your affidavit 2, lines 4 through 8,  
13 you make reference to scheduling monthly meetings with the  
14 stewards. Do you see that?

15 A Yes.

16 Q And are those monthly meetings held with stewards from all  
17 three of the units at issue here, or do you hold meetings with  
18 each of them separately?

19 A They are different meetings. So yes, to all of your  
20 questions actually.

21 Q Well, can you tell me with respect to your regular monthly  
22 meetings, are those meetings that you hold with stewards from  
23 each of the three units as a combination, or I'm just trying to  
24 get a sense for how you organize those meetings.

25 A Could you repeat -- I still don't understand your

1 question.

2 Q So you indicated here that you schedule at least one  
3 meeting a month for stewards to come and meet with you.

4 A Yes.

5 Q And what I'm trying to understand is who is it that you  
6 invite to that meeting or those meetings, if there are more  
7 than one?

8 A Okay. I don't think you wanted to ask the question you  
9 just asked, which is I invite everybody to attend our meetings,  
10 every member.

11 Q Everybody meaning who?

12 A Every member of NUHW is invited to attend our meetings.

13 Q Well, but you stated here that this was a monthly meeting  
14 for stewards.

15 A The targeted turnout group is stewards, and the voting  
16 body would be shop stewards. However, everybody is invited to  
17 attend our meetings.

18 JUDGE SCHMIDT: It's not clear in my mind. When you try  
19 to schedule a meeting with the stewards once a month, that's  
20 stewards as a group as opposed to individual stewards?

21 THE WITNESS: That's correct. And if you -- just in  
22 response to his question, I apologize for my trying to be too  
23 specific there.

24 But yes, I invite all the shop stewards from the different  
25 group, depending on the meeting that it is. The members are

1 always also invited to come to there, because we're trying to  
2 generate more interest, more participation in stewards.

3 And you don't have to technically be an elected steward to  
4 come to the steward meeting. You do have to be a steward to  
5 have a vote in the meeting.

6 JUDGE SCHMIDT: Go ahead.

7 Q BY MR. NEULIGHT: Between the time that you started as  
8 field organizer in May to the present, can you estimate how  
9 many of these meetings you've held?

10 A Oh, God, I have to say it's -- there was a period in which  
11 we were having one or two every week. So I would -- I'd say  
12 approximately a dozen.

13 Q Okay. And you stated in here in your declaration that  
14 over the course of the last few months prior to the end of  
15 September 2010, that attendance was dwindling, that when you  
16 first started holding them there would be 40 to 50, and then  
17 attendance went down to 15 or 20.

18 When did you first start -- when you say when you first  
19 started holding these meetings, what time or period are you  
20 referring to?

21 A And that's where I wanted to get a little clarification.  
22 I would -- the gap in when I actually began working as an  
23 employee versus being a volunteer. The meetings that I began  
24 first -- the first meetings that I attended were -- or started  
25 holding were in February of this year.

1 Q And so in February of this year there were about 40 or 50  
2 stewards who attended those meetings?

3 A Consistently.

4 Q And that number has decreased to 15 or 20?

5 A That's the average, yeah.

6 Q And did you ever poll any of the stewards to find out why  
7 there was a decrease in attendance?

8 A A formal poll, no, but informally, yes.

9 Q And in your informal inquiries what, if anything, did you  
10 learn as to the reason why attendance was dwindling?

11 A A couple factors. The first of which being that it was  
12 just too difficult based on the fact that they weren't getting  
13 paid anymore to go to the steward meetings, steward training.  
14 And these nurses work 12-hour shifts. So for them to -- for  
15 any meeting we have has to be at 8:00 p.m. if we aren't able to  
16 schedule it during regular off work time. So the meeting would  
17 start at 8:00 p.m., wouldn't conclude until 10:00 p.m. at the  
18 earliest. And then the following -- and then the next day  
19 they'd -- many nurses had to come back to work, have to be back  
20 at work at 7:00 a.m., and it's just -- it was just too much of  
21 -- and that's one factor.

22 The other factor is, you know, really dissatisfaction with  
23 the way the processes happen, the bargaining process, the way  
24 that Kaiser hasn't, you know, really provided for many of the  
25 things that we said that they were obligated to provide for

1 under the law. So dissatisfaction with the Union.

2 Q And is that your interpretation as to why the attendance  
3 is dwindling, or have the stewards actually told you that?

4 A The stewards have told me that.

5 Q And these meetings that you hold on a monthly basis or  
6 more often as you testified to, are these the steward training  
7 meetings, or are these other meetings held for different  
8 purposes, or some combination?

9 A Well, I was a rep for Kaiser under SEIU, and these are the  
10 meetings very consistent with what Kaiser was paying people for  
11 steward training in the past. So within the four corners of  
12 what Kaiser has always paid for the steward training.

13 Q And you conduct that training?

14 A Many times.

15 Q And that training relates to grievance administration  
16 under the contract?

17 A Sometimes. Other times it's about bargaining, you know,  
18 the Union's priorities and bargaining. And that's pretty  
19 much -- and there are other things that are discussed as well,  
20 business of the Union, but all things that were -- that Kaiser  
21 has historically paid these group of workers for in the  
22 training.

23 Q And that includes interpretation of the contract?

24 A Yes.

25 Q Would you say that the primary duty of a shop steward is

1 to administer grievances and interpret the contract for its  
2 members?

3 A That would not be my definition of the primary duty of a  
4 steward.

5 Q What's your definition?

6 A My definition would be the primary duty of a shop steward  
7 is to be an effective leader for his or her constituents.

8 Q In terms of the primary tasks, however, that a shop  
9 steward undertakes, is there anything that they do more often  
10 than assist unit members in adjusting grievances and  
11 interpreting the collective bargaining agreement?

12 A I'd say those are the primary -- I'd say those are the  
13 primary tasks. Education -- I'd add education as well. They  
14 need to educate their members about the contract.

15 Q Do you recall, Mr. Kristal, in or about June, early June  
16 of 2010 proposing specifically to Richard Rosas on behalf of  
17 the respondents, that the weekend call shifts for hospice  
18 nurses be moved from 24-hour call shifts to two 12-hour shifts?

19 A Yes. In fact I just referenced that issue in the meeting  
20 I was going to have with the hospice department tomorrow.

21 Q And did you ask Mr. Rosas to discuss this issue through HR  
22 on an urgent basis away from the bargaining table?

23 A Yes.

24 Q Why?

25 A Okay. Because the way that Kaiser's policy work, an

1 employee -- an RN could -- and sir, I'm probably going to bore  
2 you to death with the nuts and bolts of nursing, but --

3 JUDGE SCHMIDT: That's all right. Go ahead. You know --

4 THE WITNESS: But I --

5 JUDGE SCHMIDT: Believe me this is interesting compared to  
6 some things I've heard.

7 THE WITNESS: So part of this requires an understanding of  
8 the way the old collective bargaining agreement dealt with  
9 this, which is that for everywhere in the hospital employees  
10 would be paid \$12 an hour to carry a beeper when they're off  
11 duty. Some departments that do that are the OR department,  
12 acute dialysis.

13 But there was an exception carved -- that's carved out in  
14 the collective bargaining agreement that says that hospice  
15 nurse who work a Monday -- and you understand what hospice is?

16 JUDGE SCHMIDT: Yes.

17 THE WITNESS: People -- hospice and palliative care,  
18 people in their final --

19 JUDGE SCHMIDT: Waning days.

20 THE WITNESS: It's conducted in their home. And really a  
21 special kind of nurse.

22 But in doing that -- but it's generally a Monday through  
23 Friday position. It was Monday through Friday, 9:00 to 5:00  
24 type position where it was -- how the entire hospital was -- or  
25 how the entire department was scheduled.

1           And historically there had been -- they said, "Well, we  
2 might need one nurse per shift in off time to carry the beeper,  
3 to carry this beeper to deal with calls that happen. You know,  
4 somebody messes up their pump for their medication. We might  
5 need a nurse to come out and do that."

6           And when that was negotiated it ended up being maybe one  
7 call every ten times you had the beeper. And the census and  
8 the amount of work the hospice and palliative care department  
9 had done had increased -- had tripled over the past few years.  
10 And it was an ever-expanding department.

11           So the nurse who had the beeper on Saturday would -- it  
12 wasn't a situation just having a beeper and dealing with one  
13 call. They were actively working between on average 12 hours  
14 spread out over 24 hours, but many times up to 19 and 20 hours  
15 in a 24-hour period.

16           And that -- it's not like you went to work at 7:00 a.m.,  
17 and you were done 19 hours later. It was you were finishing  
18 your last call at 4:00 a.m. the next morning. And they're  
19 driving all over the community.

20           And the nurses were greatly concerned, and they expressed  
21 great concern to me that they would be losing -- they were  
22 endangering themselves and their licenses, and the patients,  
23 and the community by driving. And we felt that it was an  
24 emergent situation that had to be dealt with away from the  
25 collective bargaining agreement.

1           And the remedy that we were asking for was just was a  
2 cost-neutral remedy which was just instead of having a nurse  
3 carry it for 24 hours on a Saturday or a Sunday, that the  
4 nurses would two twice as many shifts and just take 12 hours  
5 per -- would just take a 12-hour shift on a Saturday or Sunday.

6           So that was the most any nurse ended up working in one  
7 24-hour period was 12 hours. I thought it was a reasonable  
8 thing that we could deal with outside of bargaining.

9       Q     BY MR. NEULIGHT: Well, would it be fair to say though  
10 that the reason why you asked that this be -- issue be  
11 addressed on an immediate basis away from the table was  
12 because, at least in your view, you viewed it as an urgent  
13 issue requiring immediate attention?

14    A     I would say I viewed it as an emergent issue, yes.

15    Q     Do you draw a distinction between "emergent" and "urgent"?

16    A     I felt that it was -- when it was explained to me that  
17 people were being forced to drive when they couldn't see the  
18 lines -- when the lines on the freeway were moving back and  
19 forth, and that was repeated to me twice, and that they were  
20 afraid of losing their job for not doing that, I considered  
21 that to be an emergency situation.

22           One in which under the statute I felt they would have a  
23 right to refuse that work. And so that's why I felt like that  
24 we should deal with that rather than have to go through the  
25 nonsense of them being terminated for insubordination.

1 Q Okay. So the weekend call shifts for hospice nurses, in  
2 your view, was an issue that raised potential harm to the unit  
3 employees. And therefore, you wanted to deal with it and have  
4 the respondents deal with it on an immediate basis. Is that  
5 fair to say?

6 A Union employees, and the greater public, and Kaiser  
7 Permanente as an organization. Because if -- I shudder to  
8 think of the liability that Kaiser would have if a nurse killed  
9 somebody while driving back after being forced to work a shift.

10 Q And when you broached this issue with Mr. Rosas, what was  
11 his response?

12 A I don't remember the exact response, but essentially it  
13 was -- it was communicated through his representative in human  
14 resources, Sam Park. I mean the most -- the response that I  
15 can think of. Which was that there was no way they were  
16 willing to make a change through the collective bargaining  
17 agreement of our proposal about the 24 hours going to 12-hour  
18 shifts outside of the context of the global settlement.

19 Q So was this an issue that, in response to your request,  
20 the respondents said that they would address away from the  
21 table or not?

22 A With their parameters, not with our parameters.

23 Q Well, regardless of the parameters, did the respondents  
24 agree to address or discuss this issue with you away from the  
25 table?

1 A By saying that there could be no change to -- at the  
2 outset there could be no change to the 24 hour, and that was  
3 communicated to me in writing -- the 24 hour, people carrying a  
4 beeper for 24 hours.

5 Q The change of weekend call shifts for hospice nurses, is  
6 that a change that you had requested under the old contract as  
7 well?

8 A I wasn't the rep -- I wouldn't know.

9 Q I take it you never asked, either you nor anyone else to  
10 your knowledge representing NUHW, asked that the issue of the  
11 steward training be discussed on an immediate basis away from  
12 the table; correct?

13 A Yes, we did.

14 Q When did that occur?

15 A We raised it in our -- when we met with the director of  
16 nursing.

17 Q When was it raised?

18 A February, February or March.

19 Q And by the director of nursing, are you referring to Debra  
20 Grant?

21 A That's correct.

22 Q And did you indicate to Ms. Grant at that time that you  
23 felt that the steward training was an issue that required  
24 immediate attention based on consequences to union members?

25 A I wouldn't characterize it like that, no.

1 Q Did you express to Ms. Grant any type of urgency in  
2 discussing the issue of restoring the steward training?

3 A I would never -- that would be so unprofessional to try  
4 and compare a woman who deals with life and death every day in  
5 the most significant -- acute hospital in Southern California,  
6 for me to put -- for me to say that this -- it just wouldn't be  
7 appropriate for me to raise steward training with her in that  
8 way as being an urgent or emergent thing, or being an emergent  
9 thing.

10 Q And you didn't do so?

11 A I raised it as being important to the Union --

12 Q But you didn't --

13 A -- and being helpful to the employer.

14 Q But you didn't raise it as an urgent issue, that it  
15 required immediate attention?

16 A I mean you understand what are considered to be the issues  
17 that require immediate attention, urgent in a medical facility.

18 Q Did you ever raise with Kaiser the issue of tuition  
19 reimbursement for continuing education as an immediate issue, a  
20 discontinuation of which had consequences to Kaiser members,  
21 Kaiser employees that required discussion away from the table?

22 A I didn't, no.

23 Q Is that also because in your view that didn't constitute  
24 an urgent issue that required immediate attention?

25 A If you're asking if I raised it with Debra Grant as an

1 urgent issue requiring immediate attention, the issues that I  
2 raised with Debra Grant as being urgent issues requiring  
3 immediate attention are issues related to patient care and the  
4 safety of the staff and patients at the hospital.

5 Q And so you wouldn't put the steward training or the  
6 tuition reimbursement for continuing education in that  
7 category?

8 A That's a judgment call on my part, but I think that that  
9 would not be appropriate.

10 Q Leaving aside Debra Grant, did you raise with Richard  
11 Rosas or anyone on behalf of the employer either tuition  
12 reimbursement or steward training as issues that required  
13 immediate discussion away from the table based on their  
14 consequences to unit members?

15 A I raised it. I don't think I raised it in that context,  
16 no.

17 MR. NEULIGHT: Nothing further. Thank you.

18 JUDGE SCHMIDT: General Counsel?

19 MS. PARKER: Could we have just a few minutes, Your  
20 Honor?

21 JUDGE SCHMIDT: Oh, yeah. Let's be off the record.  
22 Signify when you're ready.

23 (Off the record)

24 JUDGE SCHMIDT: Let's be on the record.

25 You may examine the witness.

**CROSS-EXAMINATION**

1

2 Q BY MS. PARKER: Mr. Kristal, I'd like to just ask you a  
3 few questions about duties of shop stewards.

4 A Sure.

5 Q Do stewards have the authority to make verbal or written  
6 information requests?

7 A Yes.

8 Q Who would an employee go to first if they're having some  
9 type of problem in the work place?

10 A Their steward.

11 Q Do you and your -- in your position keep stewards updated  
12 on respondents' terms and conditions of employment?

13 A Yes.

14 Q And to your knowledge, do stewards then communicate these  
15 issues to the employees?

16 A I'm -- yes.

17 Q Did you understand my question?

18 A Yes, yes.

19 Q Do stewards ever come to you and relate questions that  
20 their co-workers are having about their terms and conditions of  
21 employment?

22 A Frequently.

23 Q Do stewards ever meet with supervisors or managers?

24 A Yes.

25 JUDGE SCHMIDT: The answer is yes?

1 THE WITNESS: Yes.

2 JUDGE SCHMIDT: Okay, go ahead.

3 Q BY MS. PARKER: Do stewards ever serve as Winegarden  
4 (phonetic) representatives in meetings?

5 A Oh, yes.

6 MS. PARKER: No further questions.

7 JUDGE SCHMIDT: Ms. Hoffman?

8 MS. HOFFMAN: I have a couple of questions.

9 JUDGE SCHMIDT: Very well.

10 **CROSS-EXAMINATION**

11 Q BY MS. HOFFMAN: Does SEIU represent other units of  
12 employees at the facility where you represent employees?

13 A Yes.

14 Q And do the SEIU represented employees work with the  
15 employees that you represent at that facility?

16 A Yes.

17 Q And are the employees that you represent aware or know  
18 that the SEIU represented employees receive the two-percent  
19 increase?

20 A Yes.

21 Q And are they aware that they're still getting tuition  
22 reimbursement?

23 A Yes.

24 Q And are they aware that they're still paying for stewards  
25 for SEIU?

1 A Oh, yes.

2 Q Okay. And do SEIU reps --

3 JUDGE SCHMIDT: Wait. Can you hold for a second?

4 (Pause)

5 JUDGE SCHMIDT: Pardon the interruption. You may  
6 continue.

7 Q BY MS. HOFFMAN: And do SEIU representatives also  
8 represent employees of the -- on the same floors and at the  
9 same facility that you do?

10 A Yes.

11 Q Okay. And do they communicate with your represented  
12 employees about the advantages of being an SEIU member, and  
13 that they would receive these benefits?

14 A Yes.

15 Q And how does that affect the employees that you represent  
16 that every day they see SEIU employees or SEIU reps.  
17 communicating to them that they're receiving the two-percent  
18 wage benefits that they're not receiving?

19 MR. NEULIGHT: Objection; leading, lacks foundation.

20 JUDGE SCHMIDT: Overruled. You may answer.

21 THE WITNESS: Okay. Can you repeat the question.

22 MS. HOFFMAN: Can the court reporter repeat my question?

23 (Pause)

24 THE WITNESS: It was a long question you asked, Florice.

25 THE REPORTER: How does that affect -- apologize, Your

1 Honor.

2 MS. HOFFMAN: I guess I can ask another question.

3 Q BY MS. HOFFMAN: How does the fact that the employees that  
4 you represent know that the SEIU represented employees received  
5 the wage increase, the tuition reimbursement, or the -- and the  
6 shop steward training benefit? How does that affect the  
7 employees that you represent?

8 MR. NEULIGHT: Objection; lacks foundation, leading.

9 JUDGE SCHMIDT: Well, I don't think it's leading. But  
10 have employees complained to you at all about --

11 THE WITNESS: Yes.

12 JUDGE SCHMIDT: -- what they're hearing from  
13 representatives of other unions?

14 THE WITNESS: Yes.

15 JUDGE SCHMIDT: What types of things have you heard?

16 THE WITNESS: Well, this morning in fact I received a  
17 phone call that SEIU one-to-one RN, which doesn't represent any  
18 employees but is allowed into that facility by Kaiser, was  
19 distributing leaflets talking about how they -- Kaiser didn't  
20 represent them, or Kaiser didn't recognize our union. And it  
21 was repeated, "We should just go back to SEIU. We want to just  
22 go back to SEIU so that we could get the two percent."

23 JUDGE SCHMIDT: I guess I missed what it is you're saying.  
24 Somebody was in distributing a leaflet saying what?

25 THE WITNESS: Disparaging our union and talking about the

1 benefits of SEIU.

2 JUDGE SCHMIDT: Oh, saying that the -- and the NUHW did  
3 not represent them in the sense that they weren't doing a very  
4 good job. Is that the gist of what this was saying?

5 THE WITNESS: No. That Kaiser wasn't recognizing us.  
6 That's what was communicated to me.

7 JUDGE SCHMIDT: Oh, I see.

8 Q BY MS. HOFFMAN: I'm asking you more specifically about  
9 what employees you represent have said about the fact that SEIU  
10 employees working with them received the benefits that they're  
11 not receiving.

12 A Well, along that same lines, along those same lines, I'm  
13 trying to recall the specific conversation I had a few weeks  
14 ago with a nurse who said, "It really seems to me like Kaiser  
15 likes SEIU better. And would we have -- would we get the two  
16 percent wage increase if we went back to SEIU?"

17 Q Okay. Did one of the per-diem nurses in the bargaining  
18 unit that you represent actually put out a flyer that said that  
19 she had wished she hadn't voted for NUHW, because she would  
20 have received the raises?

21 A Yes.

22 Q Have you heard other employees say similar things?

23 A Yes.

24 Q Okay. And is -- did -- and is NUHW actively trying to  
25 organize other employees at Kaiser?

1 A Yes.

2 Q And what is the major issue that comes up when you're  
3 trying to organize other employees at Kaiser?

4 A They lost their raises.

5 Q The employees you represent lost their raises?

6 A Yeah.

7 Q And you mentioned that are other unions actively trying to  
8 decertify NUHW at Kaiser?

9 A Yes.

10 Q And what is the issue that they're using in attempting to  
11 decertify NUHW at Kaiser?

12 A They receive raises if they're part of the coalition.

13 MS. HOFFMAN: I have no further questions.

14 JUDGE SCHMIDT: redirect?

15 MR. NEULIGHT: Just one question, Your Honor.

16 **REDIRECT EXAMINATION**

17 Q BY MR. NEULIGHT: Mr. Kristal, you testified to some  
18 additional duties of shop stewards, those being among others,  
19 that they may from time to time make requests for information,  
20 address problems with employees in the workplace, update  
21 employees on terms and conditions of employment.

22 Are the shop stewards paid for their time spent in those  
23 activities?

24 A It varies.

25 Q What are the factors as to when it varies?

1 A Probably the primary factors is the different department  
2 manager and department administrators.

3 Q How does the identity of the department manager or  
4 administrator factor into whether or not the shop steward gets  
5 paid for the activities you've identified?

6 A Because some department administrators are much -- they  
7 view -- some department administrators have relationships with  
8 their stewards where they say, "If you need to go represent  
9 this person, I'll relieve you so that you can go represent this  
10 person." They get paid.

11 Other department administrators say, "We don't have  
12 time" -- or, "After you finish your shift you can go represent  
13 that person." And when they do that it's largely done on their  
14 own time.

15 Q And this practice, how do you know that this is the  
16 practice in terms of whether shop stewards get paid for those  
17 activities?

18 A It's what's communicated to me by the stewards.

19 Q And how long has that been the case that whether or not  
20 shop stewards get paid for the types of activities that you  
21 referenced here depends upon the particular department manager  
22 or administrator? How long has that practice been in place?

23 A Well, since certification of our union.

24 Q And what about prior to certification?

25 A Well, prior to certification it was expressly stated that

1 employees wouldn't -- that stewards would be compensated.

2 Q Regardless of who the department manager or administrator  
3 was?

4 A Within certain parameters.

5 Q What were the parameters?

6 A There's an eight-hour meeting which the stewards met with  
7 the Union, dealt with the handling of grievances, and it was  
8 just -- it was clear that if you were to represent somebody you  
9 were paid to represent somebody.

10 Q And again that was regardless of the discretion of the  
11 particular department administrator?

12 A Yes.

13 MR. NEULIGHT: Nothing further.

14 JUDGE SCHMIDT: Is that it?

15 MR. NEULIGHT: That's it.

16 JUDGE SCHMIDT: Thank you. You may be --

17 You're saying you have other questions?

18 MR. MACKAY: May we consult for just 30 seconds?

19 JUDGE SCHMIDT: All right. Off the record.

20 (Off the record)

21 MS. PARKER: Just one additional question.

22 JUDGE SCHMIDT: On the record.

23 **REXCROSS-EXAMINATION**

24 Q BY MS. PARKER: Now, previously when you were asked --  
25 when you were answering the question about stewards being paid

1 for performing certain duties you were referring to duties that  
2 stewards might perform throughout the workday and not paid time  
3 off for monthly steward trainings; correct?

4 A Yes.

5 JUDGE SCHMIDT: Very well. Thank you. You may be excused  
6 as a witness.

7 Next witness.

8 MR. NEULIGHT: The respondents call Mr. John Borsos.

9 JUDGE SCHMIDT: Is he out of the room?

10 MS. HOFFMAN: Yes.

11 JUDGE SCHMIDT: All right. Let's be off the record until  
12 you have him come in.

13 (Off the record)

14 JUDGE SCHMIDT: On the record.

15 Mr. Borsos, you may come around this way. You won't get  
16 there --

17 WITNESS/BORSOS: I guess I can't --

18 JUDGE SCHMIDT: No, no. You can't make it that way.

19 WITNESS/BORSOS: You're right. It's a maze.

20 JUDGE SCHMIDT: If I can have you raise your right hand.

21 Whereupon,

22 **JOHN BORSOS**

23 having been first duly sworn, was called as a witness herein  
24 and was examined and testified as follows:

25 JUDGE SCHMIDT: Be seated.

1 Proceed.

2 **DIRECT EXAMINATION**

3 Q BY MR. NEULIGHT: Mr. Borsos, good morning. Could you  
4 please state and spell your full name, please for the record.

5 A Sure. It's John Borsos. J-O-H-N. My last name is  
6 B-O-R-S-O-S.

7 Q By whom are you currently employed?

8 A The National Union of Healthcare Workers.

9 Q And what's your position?

10 A I'm a vice president.

11 Q How long have you held that position?

12 A Since January 28, 2009.

13 Q Will you describe generally what your duties and  
14 responsibilities are in that position.

15 A Pretty varied. Sometimes responsible for new organizing,  
16 sometimes for collective bargaining, kind of as needed as  
17 things unfold.

18 Q And do you have responsibilities in your current position  
19 that relate to the three bargaining units of employees at issue  
20 here, namely the AFN Unit, Psych Social Unit, and the  
21 Healthcare Professionals Unit?

22 A Yes, I do.

23 Q What are those responsibilities?

24 A I work with Ralph, and Gabe, and I guess now it's Cathy  
25 Baca to help to do the contract negotiations, and the

1 collective bargaining, and the enforcement of the terms and  
2 conditions of the previously expired contract.

3 Q And have you attended any of the bargaining sessions  
4 between NUHW and Kaiser for any of the three units?

5 A I think I attended a total of three.

6 Q And were those sessions for the AFN Unit and the Psych  
7 Social Unit?

8 A Two were for the AFN Unit, if I remember right, and one  
9 was for the Psych Social Unit.

10 Q So you've not attended any bargaining sessions for the  
11 Healthcare Professionals Unit?

12 A I don't believe so.

13 Q Did you attend a bargaining session for the AFN Unit on or  
14 about May 28, 2010?

15 A I think that was the first one. I remember it being in  
16 May. I don't remember the specific date.

17 Q Okay. And was that in the basement of the Kaiser Sunset  
18 Hospital?

19 A Yes, I believe it was.

20 Q And did you attend that entire session?

21 A I don't think I stayed for the whole session, and I know I  
22 was in and out of it.

23 Q And do you recall giving a declaration or affidavit in --  
24 to the board signed and subscribed by you on August 30th, 2010?

25 A Yes.

1 Q You reference in your affidavit that at this particular  
2 negotiating session the Union committee presented about ten  
3 bullet points of issues that they needed to address; is that  
4 correct?

5 A Yes.

6 Q And one of those issues was the two-percent wage increase?

7 A Yes.

8 Q And do you recall what the other issues were?

9 A There was an issue on one of the RNs had been physically  
10 attacked by an SEIU steward. And from our perspective, Kaiser  
11 hadn't done anything about it. I know that issue was raised.

12 There were issues about staffing. It was like an  
13 overview, bullet points of the kind of proposals we'd be making  
14 more formally is how I remember it.

15 Q Was there someone representing NUHW that presented those  
16 ten bullet points of issues --

17 A Yes.

18 Q -- on behalf of the Union?

19 A Yeah, yes.

20 Q Who was that?

21 A Ralph Cornejo.

22 Q Did you speak on any of those issues?

23 A No, I did not.

24 Q With respect to the two percent wage increase, do you have  
25 any memory as to how Mr. Cornejo presented that issue to the

1 employer?

2 A Just in the sense that it was something that was a  
3 previous term and condition of employment, and should have been  
4 provided in April, and it wasn't.

5 Q And do you recall what the response was, if any, from any  
6 representatives on the employer side of that session?

7 A Yeah. Rick Rosas was the spokesperson for the hospital.  
8 And I remember him saying that it was something that came from  
9 the national agreement, and therefore something that they  
10 didn't have to abide by, that they weren't going to talk about  
11 it.

12 Q And when you say that Mr. Rosas said that they weren't  
13 going to talk about it, you're referring specifically to the  
14 two-percent wage increase?

15 A Yes.

16 Q Did Mr. Rosas ever say that the employer wasn't going to  
17 talk about any wage proposal?

18 A You have to rephrase your question. It's kind of -- I  
19 don't quite understand it.

20 Q Well, did Mr. Rosas or anyone else on the employer side at  
21 that session make any comment to the effect that the employer  
22 refused to talk about any wage issue?

23 A They refused to talk about the two percent.

24 Q I take it that the director of nursing, Debra Grant, did  
25 not attend this particular session?

1 A She did not.

2 Q And did any management representatives with nursing  
3 responsibilities attend the bargaining session at the end of  
4 May that you attended on behalf of the employer?

5 A Yes.

6 Q And was that Mindy Ophiana and Gail Owens?

7 A I don't know.

8 Q You don't know.

9 But there were management representatives with nursing  
10 responsibilities at the table?

11 A I don't know what those two individuals' responsibility  
12 is. It's unusual. Typically the director of nursing and RN  
13 bargaining is participating in the bargaining.

14 Q And what is your basis for that statement?

15 A Twenty years of bargaining in healthcare.

16 Q And in your 20 years or bargaining, do the director of  
17 nursing always attend bargaining sessions for the nursing unit?

18 A They mostly attend bargaining. Not always, but it's --  
19 especially with an RN unit, even in our experience with a CNA,  
20 it's the director of nursing is typically involved in  
21 negotiations with an RN unit.

22 Q Okay. But you had experience with RN unit bargaining  
23 sessions where the director of nursing did not attend, other  
24 than this one?

25 A Yes.

1 Q Is the California Nursing Association Union part of the  
2 coalition?

3 A Part of what coalition?

4 Q Coalition at Kaiser unions.

5 A I don't believe so.

6 Q Was the issue of paid time off for steward training raised  
7 by anyone on behalf of NUHW at this late May bargaining session  
8 you attended?

9 A I don't remember.

10 Q Was the issue of tuition reimbursement for continuing  
11 education raised by the Union at this session?

12 A I believe that was raised, but I don't specifically  
13 remember.

14 Q Do you have any recollection as to who spoke on that  
15 issue?

16 A The primary spokesperson for the Union -- I assume you're  
17 talking about for the Union.

18 Q Yes.

19 A Was Ralph.

20 Q Do you have any recollection as to what Ralph said on that  
21 issue at this session you attended?

22 A I don't. As I said, I don't remember.

23 MR. NEULIGHT: Nothing further.

24 JUDGE SCHMIDT: Why don't we take about ten minutes at  
25 this point. All right?

1 THE WITNESS: Am I done?

2 JUDGE SCHMIDT: Oh, no, you're not done.

3 THE WITNESS: Oh, okay.

4 JUDGE SCHMIDT: You can stand up, move about. Just don't  
5 discuss your testimony with anyone but counsel.

6 THE WITNESS: Thank you.

7 JUDGE SCHMIDT: All right.

8 (Off the record)

9 JUDGE SCHMIDT: On the record. You may examine the  
10 witness.

11 MS. PARKER: We have no additional questions for  
12 Mr. Borsos.

13 JUDGE SCHMIDT: You have no questions? Okay.

14 Ms. Hoffman?

15 MS. HOFFMAN: I just have one, I think.

16 JUDGE SCHMIDT: I won't hold you to that.

17 MS. HOFFMAN: Okay.

18 JUDGE SCHMIDT: Go ahead.

19 MS. HOFFMAN: That's why I said "I think" afterwards.

20 **CROSS EXAMINATION**

21 Q BY MS. HOFFMAN: You testified that you had 20 years  
22 experience in negotiations. Could you explain your background  
23 prior to being vice president for NUHW?

24 A Yeah, I was a vice president of SEIU United Health Care  
25 Workers West and before that I had worked for an SEIU local in

1 Pennsylvania.

2 Q And how many years were you with SEIU UHW?

3 A Since January of 1996.

4 MS. HOFFMAN: I have no further questions.

5 MR. NEULIGHT: Nothing further.

6 JUDGE SCHMIDT: Thank you. You may be excused.

7 THE WITNESS: Sure, thank you.

8 JUDGE SCHMIDT: Appreciate your patience.

9 THE WITNESS: Oh, not a problem.

10 MR. LINDSAY: I'm going to go next door.

11 JUDGE SCHMIDT: For the witness, let's be off the record  
12 until Respondent obtains its next witness.

13 (Off the record)

14 MR. LINDSAY: Respondent -- let's go back on the record.

15 JUDGE SCHMIDT: On the record.

16 MR. LINDSAY: Respondent calls as its first witness for  
17 this portion of this case Mr. Richard Rosas.

18 JUDGE SCHMIDT: Please step forward. If I can have you  
19 raise your right hand.

20 (Whereupon,

21 **RICHARD ROSAS**

22 having been first duly sworn, was called as a witness herein  
23 and was examined and testified as follows:)

24 JUDGE SCHMIDT: Be seated.

25 THE WITNESS: Thank you.

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1 JUDGE SCHMIDT: You may proceed.

2 **DIRECT EXAMINATION**

3 Q BY MR. LINDSAY: Mr. Rosas, could you state and spell your  
4 name for the record for the benefit of the Clerk?

5 A Richard Rosas, R-I-C-H-A-R-D R-O-S-A-S.

6 Q And what position do you currently hold?

7 A Assistant director, labor relations, Kaiser Permanente.

8 Q And how long have you held that position?

9 A About five years.

10 Q And what was your position before that?

11 A Senior labor relations representative.

12 Q Where?

13 A Kaiser Permanente.

14 Q And how long have you been employed with Kaiser in total?

15 A Little over 20 years.

16 Q And what positions have you held with Kaiser during that  
17 time period besides the two you just identified?

18 A Various HR and labor relations positions.

19 Q And in your current position, what are you responsible for  
20 primarily?

21 A The day to day operations of labor relations, managing the  
22 staff.

23 Q Is --

24 A Contract negotiations.

25 Q Anything else?

1 A Managing grievances and arbitrations.

2 Q Is there a particular area or region or territory that you  
3 are associated with?

4 A Yes, southern California region and I administer a couple  
5 of contracts.

6 Q Okay. And what are those contracts for which you are  
7 primarily responsible?

8 A UNAC which is the United Nurses Association of California  
9 and I'm currently bargaining with AFN and UHWA I've had one.

10 Q Which is one of the units involved in this proceeding, is  
11 that correct?

12 A Correct.

13 Q Prior to the certification election in February of this  
14 year, did you have any responsibility for the AFN unit?

15 A A few years ago I did.

16 Q And what was your responsibility for that unit at that  
17 time?

18 A Years ago when I was a labor relations rep, I was  
19 responsible for hearing grievances at LA Medical Center. And  
20 so I also administered the AFN agreement at that time.

21 Q The AFN agreement was one of the units then located at the  
22 LA Medical Center?

23 A Correct.

24 Q All right. And how long did you have that position where  
25 you were administering those contracts?

1 A The AFN agreement?

2 Q Yes.

3 A Approximately two years.

4 Q And when did that end?

5 A The early 2000s.

6 Q Okay. Did you have any responsibility for the AFN unit at  
7 the time of the 2005 negotiations?

8 A No.

9 Q Until -- from the 2005 negotiations until the  
10 certification earlier this year, did you have any  
11 responsibility for the AFN unit?

12 A Only to the extent that I managed the staff.

13 Q Somebody who reported to you then had that responsibility?

14 A To me and Maryanne Malzone.

15 Q Okay. And who is Ms. Malzone?

16 A Ms. Malzone is sitting at the table next to you.

17 Q And what is her position?

18 A She's a senior director of human resources and I report to  
19 her.

20 Q All right. Did you attend the ballot count for the three  
21 units at issue in this matter?

22 A Yes, I did.

23 Q Okay. And do you recall the margins of victory in that  
24 ballot count?

25 A I could not recite the numbers chapter and verse but quite

1 frankly it was overwhelming in favor of NUHW.

2 Q Understood. And at some point did you learn whether or  
3 not SEIU was going to file any objections to the election  
4 results?

5 A I understood a couple days after the actual ballot count  
6 that -- I was starting to hear that they were not going to file  
7 an objection.

8 Q What did you do in -- did you do anything in response to  
9 learning that information?

10 A Well, even before hearing that information, I was already  
11 starting to think about bargaining with NUHW and starting to  
12 think through basically what was going to be status quo, how we  
13 were going to deal with the contracts going forward, how we  
14 were going to communicate with the HR offices, how they were  
15 going to communicate with operations.

16 Q What was your understanding of Kaiser's obligations with  
17 respect to the contracts that had existed with SEIU prior to  
18 the certification as that's being -- the elections being  
19 certified?

20 A High level maintain status quo.

21 Q When you talk about that you started looking at the status  
22 quo, what -- to determine what the status quo is, what did you  
23 do?

24 A The first thing frankly that I was trying to ascertain was  
25 really just trying to come up with categories of things that we

1 would have to look at. There's a lot of things contained in  
2 the contracts and originally trying to get, you know, my arms  
3 around what the categories were.

4 Q Why were you doing this as opposed to somebody else?

5 A That's part of my role as assistant director of labor  
6 relations. In part to do the work but also to manage that  
7 work. I was not doing that in isolation. I was doing that  
8 with others as well.

9 Q Okay. It's my understanding there was a meeting with the  
10 Union on February 12, 2010, is that your understanding as well?

11 A Yes.

12 Q Did you attend that meeting?

13 A I did.

14 Q Who did you attend it with?

15 A Maryanne Malzone and Arlene Peasnall, a senior VP of human  
16 resources.

17 Q And as you approached that meeting, what was your  
18 understanding of the purpose of that meeting?

19 A Going in I understood that to be a meet and greet, get  
20 acquainted meeting.

21 Q Okay. When you got there, who was present besides  
22 yourselves?

23 A There was about 15, 17 people I would say from NUHW. I  
24 certainly would not remember everyone but certainly Ralph  
25 Cornejo, David Mallon, Gabe Kristal, Jim Clifford, Donna Rice,

1 Layla Valdivia, Lynetta Fitzhugh (phonetic) and then after that  
2 I wouldn't know without seeing my notes.

3 Q Did you take notes at that meeting?

4 A Yes.

5 Q Okay.

6 MR. LINDSAY: I need to get this marked. Oops, I should  
7 mark it. Sorry. Respondent's Exhibit 1.

8 **(Respondent Exhibit 1 marked for identification.)**

9 THE WITNESS: Thanks.

10 Q BY MR. LINDSAY: You have before you a five-page document  
11 that's been marked for identification as Respondent's Exhibit  
12 1. Can you identify this document for me? Tell me what it is?

13 A These are my notes take the day of the meeting.

14 Q And why did you take these notes?

15 A You know, my role that day was more of an observer and I  
16 wanted to keep track of what was happening in the meeting.

17 MR. LINDSAY: We'd move the admission of Respondent's  
18 Exhibit 1.

19 MR. MACKAY: No objection.

20 MS. HOFFMAN: I can't read some of the notes at the bottom  
21 of the first and second page. Do you have better copies?

22 MR. LINDSAY: This is all I have.

23 JUDGE SCHMIDT: Oh, it's a copy thing?

24 MR. LINDSAY: Yeah.

25 JUDGE SCHMIDT: Oh, I think I know what she's talking

1 about. It's -- I noticed on, yeah, on mine it looks like there  
2 is a line cut off.

3 MR. LINDSAY: Oh, okay.

4 MS. HOFFMAN: Also it says what will KP's position be re  
5 NUHW reports participating in and there's something.

6 MR. LINDSAY: Oh, I see that. Okay, we'll see if we can  
7 get a better copy.

8 MR. MACKAY: Okay.

9 JUDGE SCHMIDT: All right.

10 MR. MACKAY: If it helps, I would -- it just appears to me  
11 that these are the same notes that are part of the Employer's  
12 position statement that was introduced in GC17 and in that copy  
13 it's Exhibit F. I can read the bottom line that you're talking  
14 about.

15 MR. LINDSAY: I think it was reduced in Exhibit F and this  
16 is a full copy.

17 JUDGE SCHMIDT: Oh.

18 MR. MACKAY: Exhibit F of GC17 appears to be the same  
19 notes and you can read the bottom. I don't know if that helps  
20 or it doesn't help but I just --

21 JUDGE SCHMIDT: Well, oh -- have you found Exhibit F yet?

22 MS. HOFFMAN: Yes, I have.

23 JUDGE SCHMIDT: Okay. Well, it appearing that they're  
24 both the same, I'll receive it.

25 **(Respondent Exhibit 1 received into evidence.)**

1 MR. LINDSAY: All right. Thank you.

2 JUDGE SCHMIDT: Respondent's 1.

3 Q BY MR. LINDSAY: Going through your notes for just a  
4 moment, can you identify some of the abbreviations in it? You  
5 have RC. Who and/or what was RC?

6 A Ralph Cornejo.

7 Q AP?

8 A Arlene Peasnall.

9 Q CKPU.

10 A Kaiser Coalition Permanente Unions.

11 Q Okay. UBTs?

12 A Unit based teams.

13 Q And let's see if I see any other abbreviations. Oh, PSP.

14 A Performance sharing plan.

15 Q And Lela (phonetic)?

16 A Layla Valdivia.

17 Q I just see a Layla, okay, that's Layla Valdivia?

18 Clifford.

19 A Jim Clifford.

20 Q Okay, who's Jim Clifford?

21 A A member of NUHW.

22 Q All right.

23 A And a Kaiser employee.

24 Q All right. Mallon.

25 A David Mallon.

1 Q This is the individual you identified earlier?

2 A Yes, he's a member of NUHW and a Kaiser employee.

3 Q All right. Can you tell us what happened at this first  
4 meeting? Who spoke first? What was said?

5 A Ralph opened the meeting, identified it as a getting  
6 reacquainted. You know, I certainly walked into the meeting  
7 expecting just that, a reacquainted meet and greet type  
8 meeting. I think it transitioned pretty quickly into something  
9 more of Ralph giving us proposals. And so he proceeded to give  
10 us some proposals during the meeting.

11 Q What did Ralph -- and by Ralph, you're talking about  
12 Mr. Cornejo?

13 A Correct.

14 Q And what did he propose?

15 A I'm not saying -- I'm not giving this to you  
16 chronologically. He proposed that we extend the three  
17 contracts through September 30th. He proposed that the three  
18 contracts, basically the terms and conditions of these  
19 contracts remain in place with the exception of dues and  
20 arbitration. And then he made some more specific itemized  
21 proposals which I'd have to look at my notes to go through.

22 Q Well, I'd like you to look at your notes and tell me what  
23 other specific proposals were made by Mr. Cornejo at this first  
24 meeting. Have you looked at your -- having looked at your  
25 notes, do you now have a refreshed recollection of some of the

1 proposals that Mr. Cornejo made besides the ones you've already  
2 identified in your testimony here today?

3 A Yes, I do.

4 Q Okay, could you tell us what other proposals you recall  
5 him making?

6 A Sure. You know, the meeting I believe took place on a  
7 Friday and so that was a payday. So he was referencing that  
8 dues had been taken out that pay period so he was proposing  
9 that the dues money that had been taken out for that pay period  
10 be returned to the NUHW members because he was suggesting that  
11 was inappropriately taken out, deducted from their paycheck.

12 Q What dues payments had been deducted from their paycheck?

13 A Union dues.

14 Q For which union?

15 A SEIU.

16 Q Was SEIU the bargaining representative for these employees  
17 during a portion of that pay period?

18 A For the majority of those days in that pay period, yes.

19 Q I understand. What --

20 A I'm sorry.

21 Q Did anyone on Kaiser's behalf make a response to that  
22 statement?

23 A Not that day.

24 Q All right. Go ahead. What else can you recall Mr.  
25 Cornejo raising at that meeting?

1 A Other things that were mentioned or proposed, he proposed  
2 that we would honor dues deduction upon receipt of dues  
3 authorization. He proposed that the grievance procedure would  
4 stay in effect though arbitration would not. Also noted that  
5 these employees have corrective action and that should not  
6 change during the interim period.

7 Q Where did corrective action come from? Is that part of  
8 the collective bargaining or is that some of the process?

9 A Corrective action is actually through collective  
10 bargaining. Then he also mentioned sort of a catchall where  
11 benefits and working conditions should stay in effect and he  
12 listed a number of items. Bulletin boards, access to KP email,  
13 office space for stewards, steward counsel days and then he  
14 noted that stewards should continue to have the same rights and  
15 privileges as noted in the CBA.

16 Q Did anyone on behalf of Kaiser make any response to any of  
17 these proposals at this first meeting?

18 A Not that day. We really were in a listening mode and  
19 making sure that we understood the proposals he was making.  
20 Later in the meeting, he also proposed -- requested that we  
21 provide Gabe Kristal with a badge and let me see if there's  
22 anything else that was -- oh, he also proposed that the people  
23 who were on special assignment continue on their special  
24 assignments and not be returned to their home department in  
25 part because they'd been out long enough to where they would

1 not be ready to go back and see patients. He also made a  
2 proposal regarding the performance sharing program,  
3 specifically related to the psych-social employees.

4 Q What was that proposal?

5 A Simply that psych-social, they have a performance sharing  
6 program and also an alternate sharing performance sharing  
7 program and that they should get the better of the two. He  
8 also mentioned contract specialists and my notes indicate here  
9 that he proposed that -- I think they wanted to continue the  
10 contract specialists but he was not specific on the numbers.

11 Q Okay. Can you recall anything else that happened in this  
12 first meeting?

13 A I'd have to look at my notes to refresh my memory.

14 Q Please do. See if there's anything else that comes to  
15 mind.

16 A Ralph also mentioned wanting the access rights, proposing  
17 access rights per the old CBA. And then there were other  
18 things that came up but they were more about staffing concerns  
19 raised by one of the nurses at LAMC.

20 Q When you talk about access rights, what kind of access  
21 rights are you talking about here?

22 A Referring to steward access rights is my understanding.

23 Q And what kind of access rights did the stewards have?

24 A Well, in the -- they had access rights pursuant to the  
25 local CBA which was actually something pursuant to cross

1 regional bargaining. And so this language actually existed in  
2 all the SEIU contracts and it was really greater access than  
3 what is provided by law.

4 Q Okay. How did this meeting end?

5 A Discussion about having a second meeting and I don't  
6 believe that we actually set a date that day but we ended up  
7 having a second meeting.

8 Q Did you -- was there a second meeting?

9 A There was a second meeting.

10 Q And did you do anything to prepare for that second meeting  
11 before it was held?

12 A Yes, I did.

13 Q And just so that we're all talking about the same meeting,  
14 the second meeting took place on February 26th, 2010?

15 A Correct.

16 Q Yes.

17 A That's correct.

18 Q Okay. And what did you do in preparation for that  
19 meeting?

20 A Well, the idea certainly was for us to either respond to  
21 the proposals that were made in the first meeting. So sort of  
22 continuing the process that we'd already started even prior to  
23 the first meeting, but now continuing with kind of a renewed  
24 focus was to sort of itemize now the -- itemize the categories  
25 that were raised in the first meeting and prepare to respond to

1 those. So certainly we were doing some work in the labor  
2 relations department and also consulting with our legal  
3 department.

4 Q And when was the second -- at the second meeting, blah,  
5 sorry. I'll get a good question out of here in a second. When  
6 you attended the second meeting, who else attended it with you  
7 on behalf of Kaiser?

8 A Arlene Peasnall and Maryanne Malzone.

9 Q Okay. Who was the primary spokesperson for Kaiser at this  
10 second meeting?

11 A Arlene Peasnall.

12 Q Did you have an expected role as a spokesperson at this  
13 meeting?

14 A I did. I was expected to take an active role in that  
15 meeting. I was expecting that if Arlene needed any assistance  
16 in leading the meeting, that I was going to fill in the blanks  
17 so to speak.

18 Q As it turned out, did she need any assistance?

19 A Not much.

20 Q Okay. What happened at this -- what did Kaiser inform the  
21 Union or strike that. What happened at the second meeting?

22 A At the second meeting, we responded to the proposals. It  
23 was about 15, 16 different items that ranged from contract  
24 specialists, steward training, UBTs, I'm sure there were -- oh,  
25 office space, I'm sure there are many others. I'd have to see

1 notes to remember them all. And within that discussion we  
2 ended up also discussing the two percent increase.

3 Q Okay. Let's talk about the three issues that are relevant  
4 to this case. The two percent pay increase, the credit for  
5 continuing or the tuition reimbursement for continuing  
6 education and the steward training time if I can shorten it to  
7 that abbreviation.

8 A Sure.

9 Q What do you recall being said about the two percent pay  
10 increase?

11 A We were asked a direct question from Jim Clifford about  
12 the two percent increase and in response Arlene said that we  
13 were not providing the two percent increase.

14 Q Were you asked to explain why?

15 A Yes.

16 Q And what was the explanation that was given?

17 A Arlene said that it was a future event.

18 Q And --

19 JUDGE SCHMIDT: It was what? I'm sorry.

20 MR. LINDSAY: That's all right.

21 JUDGE SCHMIDT: Pardon my interruption. I didn't hear  
22 your answer.

23 THE WITNESS: Arlene said that it was a future event.

24 JUDGE SCHMIDT: Go ahead.

25 Q BY MR. LINDSAY: Okay. What conversation do you recall

1 with respect to the education or the continuing education  
2 credits and the tuition reimbursement as to that? Was that  
3 discussed?

4 A Give me a second to think that through. I know that it  
5 did come up, yes.

6 Q Do you recall who raised it?

7 A I think that was part -- I don't think that was in  
8 response to a question. I think that was something that Arlene  
9 raised affirmatively as she was going through the items that  
10 she planned on discussing.

11 Q Okay. And was there a discussion with respect to paid  
12 training time for the stewards?

13 A Are you referring to -- can you clarify the question  
14 please?

15 Q Okay. One of the issues in this case as I understand it  
16 is that Kaiser did not provide paid leave for the stewards to  
17 attend certain training sessions as stewards. My question is  
18 is was this discussed at that --

19 A Oh, steward training?

20 Q Steward training, thank you.

21 A Oh.

22 Q Sorry.

23 A Okay.

24 Q I forget that you are the one who has not been here for  
25 the past 24 hours. My apologies.

1 A Yes, steward training came --

2 Q Okay, steward training.

3 A I'm sorry to cut you off.

4 Q Was steward training discussed?

5 A Yes, it came up.

6 Q And who initiated that part of that conversation?

7 A Arlene.

8 Q Okay. Did you take notes during this meeting?

9 A No. Well, very sketchy, very sketchy.

10 MR. LINDSAY: Okay. I'm going to have this marked as  
11 Respondent's 2.

12 **(Respondent Exhibit 2 marked for identification.)**

13 THE WITNESS: Thank you.

14 Q BY MR. LINDSAY: Can you identify this document?

15 A These are my notes from that meeting taken the day of the  
16 meeting.

17 Q I notice these notes are somewhat shorter than your notes  
18 from the first meeting. Is there an explanation for that?

19 A Yes. I was expecting to take a more active role in this  
20 meeting and so I was relying on Maryanne's notes, Maryanne  
21 Malzone's notes, as she was the designated minute taker for the  
22 meeting for us.

23 Q With respect to the continuing education units -- I'll  
24 move the admission of Respondent's 2.

25 MR. MACKAY: No objection.

1 MS. HOFFMAN: No objection.

2 JUDGE SCHMIDT: Received.

3 **(Respondent Exhibit 2 received into evidence.)**

4 MR. LINDSAY: Okay.

5 Q BY MR. LINDSAY: With respect to the continuing education  
6 units, what was the position that Kaiser initially articulated  
7 at this meeting?

8 A With the CEUs?

9 Q For the CEUs?

10 A That since the -- since NUHW was no longer part of the  
11 coalition, then really our guiding document was our corporate  
12 policy and the corporate policy indicates that CEUs are only  
13 reimbursed for unions that are part of the LMP.

14 Q Okay. Let me have --

15 JUDGE SCHMIDT: I'm sorry. What's only reimbursed?

16 THE WITNESS: Continuing education units, CEUs.

17 JUDGE SCHMIDT: I see. Okay.

18 MR. LINDSAY: All right.

19 JUDGE SCHMIDT: And they're only reimbursed for whom?

20 THE WITNESS: For unions that are part of the labor  
21 management partnership, the LMP.

22 JUDGE SCHMIDT: I -- okay. Gotcha.

23 MR. LINDSAY: Okay. Did I mark that as 3? I'm sorry,

24 RX3.

25 **(Respondent Exhibit 3 marked for identification.)**

1 MR. LINDSAY: I'd ask that the witness be shown your copy  
2 because for some reason I only have four of those or five of  
3 those.

4 Q BY MR. LINDSAY: You have before you a document that's  
5 been marked for identification as Respondent's Exhibit 3. It's  
6 an eight-page document with the logo KP8, 9, 10 and 11 on the  
7 lower right hand corner. Can you identify this document for  
8 the record?

9 A Yes, this is southern California regional policy and  
10 procedure for tuition reimbursement.

11 Q All right. And I will represent that this was a document  
12 that was produced by Kaiser to the General Counsel in response  
13 to the General Counsel's subpoena. And move its admission.

14 MR. MACKAY: I have no objection with of course  
15 maintaining the fact of what legal arguments I'm going to be  
16 making about what terms apply to these units or not. But to  
17 the extent this has been identified as their tuition  
18 reimbursement policy, I have no objection.

19 JUDGE SCHMIDT: Yeah, okay. Charging party?

20 MS. HOFFMAN: No objection.

21 JUDGE SCHMIDT: Then I'll receive this.

22 **(Respondent Exhibit 3 received into evidence.)**

23 JUDGE SCHMIDT: Before you plunge on though, this does  
24 raise a matter. With respect to the -- you have -- I think  
25 this came up before. You have a separate tuition reimbursement

1 policy for people who are not a part of the coalition. There's  
2 a house policy, correct? This is what this is, Respondent's 3?

3 MR. LINDSAY: Actually if I may, Your Honor, direct your  
4 attention to paragraph 5.1.2.3 of this policy. It specifically  
5 addresses employees represented by LMP units, unions are also  
6 eligible for courses including -- and including at the very end  
7 of that for continuing education and/or to maintain licensure  
8 or certification. So the policy actually is -- includes  
9 reference to the LMP unions.

10 JUDGE SCHMIDT: I see.

11 MR. LINDSAY: And I was simply going to direct the witness  
12 to present Your Honor with what I just did. So --

13 JUDGE SCHMIDT: Yeah, yeah, all right. Well, okay, but  
14 this leads to my question. Am I getting this right that there  
15 came a time where as I understood the testimony yesterday the  
16 tuition reimbursement that had been approved up to a certain  
17 point was paid out? That was paid to the members of the three  
18 units that were where the NUHW was certified as the  
19 representative. But thereafter did the house policy apply to  
20 those three units?

21 MR. LINDSAY: It's the employer's position that this  
22 policy applies to all employees at all times. Okay.

23 JUDGE SCHMIDT: Right.

24 MR. LINDSAY: And that this policy contains a specific  
25 provision for those employees who are part of a union -- that

1 is part of the LMP. I think the confusion arose yesterday and  
2 I was just about to go there with this witness so.

3 JUDGE SCHMIDT: Oh, then maybe I'm rushing it.

4 MR. LINDSAY: Okay.

5 JUDGE SCHMIDT: I'll zip up and let you proceed.

6 MR. LINDSAY: All right.

7 Q BY MR. LINDSAY: At the meeting on February 26th, was the  
8 issue of what Kaiser would do in connection with the continuing  
9 education tuition reimbursement, did that arise beyond the  
10 statement made by Ms. Peasnall, good thing she's not here, that  
11 Kaiser considered that ended as a part of this policy effective  
12 the certification date?

13 A Could you repeat that question please?

14 Q I doubt it. Let me try and ask a better one. Did an  
15 employee raise with Ms. Peasnall this policy and what -- how  
16 Kaiser would treat requests that had been approved after the  
17 certification date?

18 A Yes.

19 Q And what, if anything, did Ms. Peasnall say in response to  
20 that question?

21 A I'm paraphrasing but essentially that we'd take it under  
22 advisement.

23 Q To your knowledge did anyone on behalf of Kaiser ever  
24 respond to anyone at the Union with respect to that issue?

25 A Yes.

1 Q And what happened?

2 A Maryanne Malzone responded to Ralph Cornejo and we did  
3 modify our position on that matter.

4 Q Okay. And how was it modified?

5 A We extended the cutoff date.

6 Q To?

7 A I believe -- I don't like to do this on the stand. I  
8 think it was March 1st but I am not certain of that.

9 Q Okay.

10 A But we did extend it by some time period.

11 Q All right.

12 A To accommodate -- it was Ms. Wilson who raised the issue  
13 at the 2/26 meeting.

14 Q I'm going to --

15 JUDGE SCHMIDT: Oh, I'm sorry.

16 MR. LINDSAY: Okay. I was just going to --

17 JUDGE SCHMIDT: Were you concluded with that inquiry?

18 MR. LINDSAY: I was just going to ask that he be shown  
19 General Counsel's Exhibit 8, which I believe is on page --

20 THE WITNESS: Thank you.

21 Q BY MR. LINDSAY: You have before you a document that was  
22 marked earlier in this matter, General Counsel's Exhibit number  
23 8. And I'm going to ask if you've seen the bottom portion of  
24 this that -- of this email which we understood from testimony  
25 yesterday was an email and a response. The bottom part that

1 begins Ralph and I direct your attention to paragraph 4 of that  
2 email. Have you ever seen this email before?

3 A Yes.

4 Q Okay. And having reviewed paragraph 4, does that refresh  
5 your recollection as to what position Kaiser took eventually  
6 after the discussions with Ms. Wilson?

7 A Yes. My recollection on the date was actually correct.  
8 It was March 1st.

9 MR. LINDSAY: All right. With that, Your Honor, I have  
10 finished with this area if you have any questions.

11 JUDGE SCHMIDT: You've finished -- oh, this area.

12 MR. LINDSAY: No, no, with this area.

13 JUDGE SCHMIDT: Yeah, all right.

14 MR. LINDSAY: Okay.

15 **COURT EXAMINATION**

16 Q BY JUDGE SCHMIDT: Well, just clear this up in my mind  
17 right now. For these three units, as of today, is there any  
18 kind of tuition reimbursement policy applicable to them?

19 A Yes.

20 Q And that is the house policy? The standard house  
21 policy?

22 A Correct.

23 Q Okay. Good.

24 JUDGE SCHMIDT: I'm through.

25 MR. LINDSAY: I will follow up with one.

DIRECT EXAMINATION CONTINUED

1

2 Q BY MR. LINDSAY: Prior to the certification, was this  
3 policy in effect as to them?

4 A Yes.

5 Q This policy -- oh, I'm sorry, this policy was the policy  
6 that the Judge was showing which was Respondent's Exhibit 3,  
7 correct?

8 A Correct.

9 JUDGE SCHMIDT: Yeah, sorry.

10 MR. LINDSAY: Thank you, Seth. Somebody will clean up the  
11 record for us eventually,

12 JUDGE SCHMIDT: Yeah, I know.

13 Q BY MR. LINDSAY: Was there yet a subsequent meeting with  
14 the Union in --

15 A There was a third meeting, yes.

16 Q And prior to the third meeting, strike that. During the  
17 second meeting, were you asked to provide any information to a  
18 member of the Union?

19 A Yes.

20 Q Okay. And what were you asked to provide?

21 A When we provided our perspective on the two percent, Jim  
22 Clifford and David Mallon had asked that we provide our legal  
23 research that would support our perspective on that. So I  
24 committed to David Mallon that I would provide that.

25 MR. LINDSAY: Okay. Can I have one second off the record,

1 Your Honor? I'm --

2 JUDGE SCHMIDT: Yes, let's be off the record. Signify when  
3 you're ready.

4 (Off the record)

5 MR. LINDSAY: Okay, let's go back on.

6 JUDGE SCHMIDT: On the record.

7 MR. LINDSAY: I'm going to ask that the witness be shown  
8 General Counsel's Exhibit number 14 which is KP85 and KP86 that  
9 was marked and admitted earlier today.

10 JUDGE SCHMIDT: I've got them. Here.

11 THE WITNESS: Thank you.

12 Q BY MR. LINDSAY: Now Mr. Rosas, this is the document that  
13 was marked for -- that has been admitted into evidence earlier  
14 today. Can you identify this document for me?

15 A Yes, this is the email that I sent to David Mallon in  
16 response to his request.

17 Q That's the top part. There is a second part and a third  
18 part. Can you identify each of the three parts?

19 A The first email from David to me was reiterating his  
20 request for supporting documentation. My second email was  
21 really an acknowledgment that I was not meeting his timeline.  
22 And then the third email is my complying with his request.

23 Q All right. Thank you. Between the second and the third  
24 meeting, did you do anything else to prepare -- oh, strike  
25 that. It's my understanding that there was a request at the

1 end of the second meeting for a written proposal -- for a  
2 written response from Kaiser to the Union, is that correct?

3 A Yes.

4 Q Okay. And did Kaiser agree to provide that written  
5 response?

6 A I actually don't -- can I back up for just a moment?

7 Q Sure.

8 A Certainly at the conclusion of the second meeting, NUHW  
9 was taking the position that we need to be more specific with  
10 what we saw as status quo and what we didn't. I don't recall  
11 if we committed at that meeting to giving them that information  
12 or not. We did commit to having a third meeting.

13 Q And sometime between the second and the third meeting, did  
14 you undertake to prepare a writing that reflected Kaiser's  
15 position between the status quo and the non-status quo issues?

16 A Yes.

17 MR. LINDSAY: Okay. I'm going to ask that you be shown  
18 General Counsel's Exhibit number 10 from yesterday.

19 JUDGE SCHMIDT: I'll hand it to him. Go ahead.

20 Q BY MR. LINDSAY: Okay. This was entered into evidence  
21 yesterday as General Counsel's Exhibit Number 10. We  
22 established at that time it was three separate documents that  
23 to save the government the cost of a staple were consolidated  
24 into a single one. Can you identify this document for us?

25 A This is one of the documents that we distributed at that

1 meeting.

2 Q Did you prepare this document?

3 A Yes, I was one of the people who prepared this document.

4 Q Okay. How did you go about preparing this document? What  
5 was the process that led to it?

6 A I was the, for lack of a better phrase, I was the lead on  
7 compiling this information. Simply went through the local  
8 agreements and tried to identify the pertinent sections, worked  
9 with two other folks on our labor relations staff and then  
10 ultimately consulted with legal on our findings.

11 Q And when you first undertook to prepare this document, was  
12 the primary audience the Union or was it some other purpose?

13 A Initially it was not the Union. Initially, at the request  
14 of Arlene Peasnall we were compiling this information really to  
15 get our arms around what was out there. I think -- we had  
16 multiple audiences and certainly one audience for me would have  
17 been Arlene so she made the request. Another would have been  
18 Maryanne. But we also were thinking of the HR offices. And  
19 then as we were having our meetings with the Union, it became  
20 clear that they were another audience.

21 Q And then did you -- and then you said you ultimately  
22 presented this to the Union at the meeting on March 18th, is  
23 that correct?

24 A Yes, we did and it was not one document like this. It was  
25 three.

1 Q Okay. Do you have any notes from the meeting at March 18?

2 A None.

3 Q Okay. Why not?

4 A That meeting I knew I was going to be taking a lead role  
5 in that meeting because of all the work I put into this and so  
6 I was really reliant on Maryanne as again our designated note  
7 taker for that meeting. That's standard fare for me. If I'm  
8 going to take a lead role in a meeting like that or even when  
9 I'm negotiating as a chief negotiator, like in our AFN  
10 sessions, I've always had someone take notes for me.

11 Q Understood. What do you recall about the meeting on March  
12 18?

13 A On March 18th, we -- there was basically four documents  
14 that we distributed.

15 Q Those in General Counsel's 10?

16 A Right. I'm counting this as three separate documents.

17 Q Okay. And just to be clear that we are all talking about  
18 the same one, it was either 11 or 9.

19 JUDGE SCHMIDT: 11.

20 Q BY MR. LINDSAY: Okay. General Counsel's 11 was the other  
21 document. I'm just going to show you the copy I've got.

22 A Correct.

23 Q That's the other document that was --

24 A This, right, that is.

25 Q Okay. So those were the four documents that were

1 presented to the Union?

2 A Correct.

3 Q Okay. Was there any discussion about any of these  
4 documents at that meeting?

5 A Yes.

6 Q What discussion can you recall?

7 A The document --

8 Q Let's start with -- what discussions do you recall about  
9 General Counsel's 11 which is the letter?

10 A I don't have it in front of me but I can still -- I  
11 remember it pretty specifically. Thank you.

12 Q I'll give you my copy.

13 A We at Ralph's request, we went through this paragraph by  
14 paragraph. The first two or three paragraphs we were -- there  
15 were a couple of questions asked about those paragraphs. Once  
16 we got into paragraphs I think starting with number --  
17 paragraph number 4, really we were not into Q&A anymore. We  
18 were just simply reviewing the paragraphs for the benefit of  
19 presumably his members. He had a comment about paragraph  
20 number 4. He wasn't real pleased with the last sentence. But  
21 otherwise it was basically at that point just reviewing the  
22 last couple paragraphs after a Q&A regarding the first three.

23 Q What Q&A can you remember about the first three?

24 A He was asking if you look in the first -- it's actually  
25 the second and third paragraph where there's a reference to

1 clear language in the national agreement. He wanted to know  
2 what that clear language was. And I did not have an answer for  
3 him. And that was the extent of the Q&A regarding those  
4 paragraphs.

5 Q Do you recall any discussion around the document that has  
6 been marked as -- that has been admitted as GC10, which is  
7 the --

8 A Oh, yes, okay, I had to look for that number.

9 Q Which is the other one. Yes.

10 A Yes, there was quite a bit of discussion regarding these  
11 documents. It really did not come from Ralph. It really came  
12 from his membership. They had quite a few questions about this  
13 document. I had made the statement that in response to a  
14 question I believe that between the three documents, it should  
15 be pretty consistent. And then as luck would have it, there  
16 was one that was inconsistent and someone found that. So we  
17 spent some time talking about that.

18 Q What was the inconsistent provision?

19 A That would take me a second or maybe even more to figure  
20 out what that was.

21 Q Go ahead.

22 A Let's see. On my copy I circled it but these are dry  
23 copies and so I'm not sure which one it was.

24 Q Was it the non-discrimination provision?

25 A We talked a lot about the non-discrimination provision.

1 Let me see if that was the one that was different between the  
2 three. Oh, yes, that appears to be the one that was different.

3 Q And just to make sure that the record is clear, for the  
4 AFN and CBA inventory, and the health care CBA inventory, the  
5 non-discrimination clause is shown as terms and conditions  
6 whereas on the psych-social CBA, it was shown as a creation of  
7 the CBA, is that correct?

8 A Correct.

9 Q What do terms and conditions in creation of CBA mean to  
10 you who was the author of this document?

11 A Creation of the CBA, you know, from my perspective is  
12 something that doesn't really represent the status quo. And I  
13 know it's always dangerous to use the same term in the  
14 definition but it's not a term and condition of employment.  
15 It's not wages, it's not benefits, it doesn't fall into that  
16 category. So when we were speaking about the  
17 non-discrimination as an example, the questions that we were  
18 getting were are you saying now that we can discriminate since  
19 it's the creation of the contract. And the response to that  
20 was no, you know, even absent contract language, there's  
21 certainly policies that speak to our non-discrimination  
22 policies. What we're really getting at is the need to bargain.  
23 This type of language in the contract.

24 And if you, you know, the common theme through each of  
25 these three meetings was an eagerness for us to basically

1 continue our bargaining process in separate units.

2 Q What do you mean by in separate units?

3 A Well, we had these three meetings. We had three meetings  
4 with Maryanne, Arlene and I with NUHW. And you know as I  
5 mentioned earlier, in that first meeting, we were expecting  
6 more of a meet and greet. And then I -- certainly from my  
7 perspective, that turned into -- it turned into bargaining.  
8 You know, when you look at the composition of our group, it was  
9 Rich, Arlene and Maryanne. That's not a bargaining team per se  
10 in terms of having the operations folks at your side. Or akin  
11 to the Union side, having your membership with you, if you  
12 will. So we certainly wanted to get to the point where we  
13 could break into AFN, psych-social and the health care  
14 professionals and really continue now the bargaining process in  
15 those three units since there were separate contracts.

16 Q Okay. Was there any discussion that you can recall with  
17 respect to any of the other items that you had marked either as  
18 terms and conditions or creations of the CBA other than the  
19 non-discrimination one?

20 A I know that we had discussion about quite a few of them.  
21 Of the top, I don't recall which they were.

22 Q Okay.

23 A I'd have to see notes to jar that -- jar my memory.

24 Q And Maryanne was our note taker?

25 A Yes.

1 Q Okay. Then we'll deal with it with her. What was the  
2 next involvement that you had with the Union in connection with  
3 any of these matters? Either the across the board increase --  
4 well let me ask you a question. Did anyone ever discuss in any  
5 of these three meetings the health care reimbursement account?

6 A I don't recall the health care reimbursement account being  
7 raised.

8 Q Okay. Was there anything -- what was your next  
9 involvement in any of these matters?

10 A My next involvement was quite frankly waiting for Ralph  
11 and Maryanne to decide whether we were going into three tables  
12 or one table. So I can schedule my dates.

13 Q And at some point was that issue resolved?

14 A Yes, in May and then eventually I saw an email from Ralph  
15 saying I'm ready to bargain in May. We agreed on a May 28th  
16 date.

17 Q Okay. And did you attend the May 28th bargaining session?

18 A Yes.

19 Q Okay. And were you the company's lead spokesperson at  
20 that negotiating session?

21 A I was.

22 Q Okay. What happened at that bargaining session?

23 A At that bargaining session, certainly you know, I had  
24 prepped our bargaining team which was solely made up of LAMC,  
25 hospital nursing representatives that we were there to bargain,

1 the NUHW AFN agreement and when we walked in it was very clear  
2 that there were representatives from psych-social, health care  
3 professionals and AFN at the meeting.

4 Initially, quite frankly I didn't think much of that until  
5 it became apparent at some point that they believed they were  
6 there to bargain all three contracts.

7 Q What was your understanding of what you were going to be  
8 doing there?

9 A I said repeatedly ad nauseam that we were there to bargain  
10 the AFN agreement and that led to quite a bit of frustration on  
11 the part of the NUHW membership as it's my clear belief that  
12 they were not told that we were there to bargain the AFN  
13 agreement only.

14 Q Was any -- were any proposals made at this meeting?

15 A Ralph gave us two documents that day. The title of one  
16 document was a list of priorities. Priorities is the word that  
17 was actually in the title. It was a longer title than that but  
18 basically priorities. And then an extensive RFI, request for  
19 information. That was addressed to Maryanne, me, Bill Blank,  
20 and Chuck Norris. Bill Blank and Chuck Norris are the chief  
21 negotiators for the other two agreements.

22 Q Okay.

23 A And I made it very clear that I was accepting this on  
24 behalf of AFN and on behalf of the NUHW AFN bargaining table I  
25 would be passing it on to the other two chief negotiators to

1 have them address the RFI independently.

2 Q Okay. Anything else that you can recall from this first  
3 meeting?

4 A Not off the top, no.

5 Q Was there a second meeting held?

6 A On July 2nd.

7 Q Okay. And at the meeting on July 2nd, did Mr. Cornejo  
8 present you with a proposal for a new agreement?

9 A Yes.

10 MR. LINDSAY: Okay. This is -- we are to -- I'm sorry, 4?  
11 Thank you.

12 **(Respondent Exhibit 4 marked for identification.)**

13 THE WITNESS: I think I took this from you. I think.

14 THE CLERK: No.

15 Q BY MR. LINDSAY: You have before you a document that's  
16 been marked for identification as Respondent's Exhibit 4. Can  
17 you identify this document?

18 A This is the proposal that he gave us on July 2nd.

19 Q And there's some handwritten material on this document on  
20 page 1 and again on page 9 of it. Is that your handwriting?

21 A On page 1, that's my handwriting. I'm looking for page 9  
22 right now. And that's my handwriting on page 9.

23 MR. LINDSAY: I move the admission of Respondent's Exhibit  
24 4.

25 MR. MACKAY: No objection.

1 MS. HOFFMAN: No objection.

2 JUDGE SCHMIDT: Received.

3 **(Respondent Exhibit 4 received into evidence.)**

4 Q BY MR. LINDSAY: Okay. Let me direct your attention to  
5 page 2 of this agreement. Is there a -- and I'd like to direct  
6 your attention specifically to paragraph, oh, I forget it. The  
7 one that begins new section steward training.

8 A Yes.

9 Q Okay. Did you discuss this proposal at the table?

10 A To the extent that Ralph -- Ralph reviewed this entire  
11 document thoroughly so yes, it was reviewed.

12 Q Okay. And is your understanding of the paragraph entitled  
13 new section steward training an effort to incorporate the  
14 steward training from the so-called LMP or national agreement  
15 into this local agreement?

16 A That's my understanding, yes.

17 Q All right. There is some handwriting on page 5.

18 A That's my handwriting also.

19 Q Oh, thank you. Let me direct your attention now to page -  
20 - strike that. Is there anything in this agreement relating to  
21 continuing education benefits or tuition reimbursement for  
22 continuing education?

23 A No.

24 Q Okay. Is there anything in this agreement related to the  
25 across the board pay increase?

1 A No.

2 Q Are you continuing to negotiate with the Union at the AFN  
3 table?

4 A Yes, we have three dates scheduled.

5 MR. LINDSAY: Okay. If you'll give me a minute. Nothing  
6 further, Your Honor, of this witness.

7 JUDGE SCHMIDT: Cross?

8 MR. MACKAY: Could we maybe break for lunch and then  
9 resume?

10 JUDGE SCHMIDT: That a problem for your table?

11 MR. LINDSAY: I guess not.

12 JUDGE SCHMIDT: All right. We'll be in recess for lunch.  
13 Back at a quarter to 1:00. All right. Off the record. Well,  
14 do you anticipate finishing today?

15 MR. LINDSAY: Subject to how long their cross --  
16 (Off the record)

17 JUDGE SCHMIDT: Ready, General Counsel?

18 MR. MACKAY: Yes, Your Honor.

19 JUDGE SCHMIDT: All right. Let's be on the record.  
20 General Counsel, you may cross-examine.

21 MR. MACKAY: If I could have the witness shown General  
22 Counsel's Exhibit 11.

23 **CROSS EXAMINATION**

24 Q MR. MACKAY: Are you ready? And first, just so I  
25 introduce myself, my name is Robert Mackay and I'm here as

1 counsel on behalf of the acting General Counsel.

2 Looking at that document, does this letter correctly  
3 represent Respondents' positions regarding the national  
4 agreement and local agreement?

5 MR. LINDSAY: Objection. Calls for a legal conclusion;  
6 vague as to time.

7 JUDGE SCHMIDT: Let me look at this again.

8 Your question is what?

9 MR. MACKAY: Do the positions set forth by the Respondent  
10 to the Union in this letter accurately reflect Respondents'  
11 positions?

12 MR. LINDSAY: Objection. Vague as to time and it calls  
13 for a legal conclusion.

14 JUDGE SCHMIDT: Overruled.

15 THE WITNESS: I assume we're the respondent?

16 JUDGE SCHMIDT: Yes.

17 MR. MACKAY: Yes.

18 THE WITNESS: Okay. Yes.

19 Q BY MR. MACKAY: And Respondents have, in fact, eliminated  
20 paid time off for shop steward training as well as tuition  
21 reimbursement for continuing education courses for the  
22 employees involved in these bargaining units for the reasons  
23 described in this letter, correct?

24 MR. LINDSAY: Objection. Calls for a legal conclusion.

25 JUDGE SCHMIDT: Overruled.

1 THE WITNESS: So let's take them one at a time. The first  
2 one you asked me was steward training?

3 Q BY MR. MACKAY: Paid time off for steward training has  
4 been eliminated for each of the three units involved in this  
5 case, correct?

6 A Steward training has been -- paid steward training, we do  
7 not pay for that any longer. That's correct.

8 Q And that's for the reasons described in this letter,  
9 correct?

10 A Correct.

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

12 JUDGE SCHMIDT: Overruled.

13 THE WITNESS: Correct.

14 Q BY MR. MACKAY: And continuing -- tuition reimbursement  
15 for continuing education courses to obtain or maintain  
16 licensure, Respondents have eliminated that benefit as called  
17 for under the terms of the National Agreement for each of the  
18 three bargaining units involved in this case, correct?

19 MR. LINDSAY: Objection. Mischaracterizes the testimony  
20 and it calls for a legal conclusion.

21 JUDGE SCHMIDT: Overruled.

22 THE WITNESS: I previously testified that that was  
23 pursuant to our policy, our corporate policy.

24 MR. MACKAY: Okay.

25 Q BY MR. MACKAY: And your opinion -- your testimony that

1 the corporate policy is why it's been eliminated is because it  
2 is Respondents' position that the terms established through the  
3 national agreement no longer exist, correct?

4 MR. LINDSAY: Objection. Calls for a legal conclusion as  
5 to whether or not the terms of the national agreement still  
6 exist.

7 JUDGE SCHMIDT: Overruled.

8 THE WITNESS: The -- when the -- when NUHW was certified,  
9 the national agreement, essentially, was terminated.

10 Q BY MR. MACKAY: On the spot, correct?

11 MR. LINDSAY: Objection. Calls for a legal conclusion.  
12 He can answer.

13 JUDGE SCHMIDT: Overruled.

14 THE WITNESS: Yes.

15 Q BY MR. MACKAY: So the operative date is February 3rd,  
16 2010. And so terms and conditions of employment set forth in  
17 that national agreement expired, correct, under your -- under  
18 Respondents' position, correct?

19 MR. LINDSAY: Objection. Calls for a legal conclusion.

20 JUDGE SCHMIDT: Overruled. You may answer.

21 THE WITNESS: There would be some exceptions to that, but  
22 the national agreement itself no longer apply to NUHW.

23 MR. MACKAY: Okay.

24 Q BY MR. MACKAY: As of February 3rd, 2010?

25 A If that was the date of certification, yes.

1 Q And so terms, then, and conditions of employment that had  
2 been established for these unit employees solely through  
3 provisions, say, in that national agreement, those would expire  
4 on February 3rd, 2010 as well under Respondents' position,  
5 correct?

6 A Except for certain items that would be carried under the  
7 status quo.

8 Q All right. So let's say you have a contractually  
9 established provision -- well, why don't we discuss these ones?  
10 Tuition reimbursement for continuing education courses to  
11 obtain or maintain licensure. There is a provision in the  
12 national agreement section of the contracts, correct, that  
13 provides for this, correct?

14 A Could you please restate your question?

15 Q Sure. There is a provision in the national agreement that  
16 establishes continue -- tuition reimbursement for continuing  
17 education courses to obtain or maintain licensure, correct?

18 A I'm not certain of that.

19 Q Did employees in these three bargaining units prior to  
20 February 3rd, 2010 receive tuition reimbursement for continuing  
21 education benefits to obtain or maintain licensure up and until  
22 February 3rd, 2010?

23 MR. LINDSAY: Objection. This is a matter of stipulation  
24 already in the record, Counsel.

25 MR. MACKAY: I need to be able to cross --

1 JUDGE SCHMIDT: Overruled.

2 MR. MACKAY: -- this witness.

3 THE WITNESS: Yes, they did.

4 MR. MACKAY: Okay.

5 Q BY MR. MACKAY: After February 3rd, 2010, what is  
6 Respondents' position as to whether or not that contractually  
7 established term and condition of employment expired or not?  
8 Did it expire?

9 A NUHW is no longer a partner union. Therefore, the  
10 corporate policy would then apply --

11 Q In a corporate --

12 A And the corporate policy says that LMP unions are the only  
13 unions that that benefit applies to.

14 Q And your opinion that the corporate policy applies is  
15 because there's no other controlling section in the national  
16 agreement that applies, correct?

17 A Correct.

18 Q And for paid time off to attend steward training for each  
19 of the three bargaining units, this is something employees in  
20 each of the three units received up and until February 3rd,  
21 2010, correct?

22 A Correct.

23 Q After February 3rd, 2010, this is among those  
24 contractually established terms and conditions of employment  
25 that Respondent took the position expires upon the

1 certification, correct?

2 MR. LINDSAY: I'm going to object again. It calls for a  
3 legal conclusion from this witness.

4 JUDGE SCHMIDT: Overruled.

5 THE WITNESS: That's correct.

6 MR. MACKAY: Could I have the witness shown Respondents'  
7 Exhibit Number 2?

8 Q BY MR. MACKAY: Taking a look at Respondents' Exhibit  
9 Number 2, is there a reference there to More Trucking?

10 A Yes.

11 Q Okay. And who's the name next to More Trucking?

12 A Jim Clifford.

13 Q Okay. And is he a representative of the Union or on the  
14 Union's bargaining committee?

15 A That's my understanding. Yes.

16 Q Okay. And More Trucking, I take it you've heard that term  
17 before, right?

18 A Many times.

19 Q Okay. And that's a reference to a board case, correct?

20 A Correct.

21 Q And the Union has maintained the position since even as  
22 early as February 26th, 2010 that you're obligated to continue  
23 the working conditions involved in this case, the tuition  
24 reimbursement, the shop steward training, and the April wage  
25 increase, they've maintained the position that you are

1 obligated to maintain those under More Trucking, correct?

2 A Who did you say took that position? Did you say the board  
3 or NUHW? I'm sorry.

4 Q The Union, NUHW.

5 A Oh. Yes.

6 Q Okay. In each of the three bargaining units, there is  
7 currently still ongoing bargaining for the initial contract,  
8 correct?

9 A Correct.

10 Q No contract has been reached yet, correct?

11 A Correct.

12 Q And no impasse has been declared yet, correct?

13 A Correct.

14 Q Have you ever told any employees in any of the three  
15 bargaining units that they reason they did not receive the  
16 April 2010 wage increase is because the Union is not a member  
17 of the Coalition of Kaiser unions?

18 A I'm thinking through your question so I make -- so I'm  
19 sure I give you a thoughtful answer. Could you please repeat  
20 the question?

21 Q Have you ever told employees in any of the -- any employee  
22 in any of the three bargaining units that they reason they did  
23 not get the April 1st or the April 2 -- is it April 1st, 2010  
24 wage increase is because the Union is not a member -- the NUHW  
25 is not a member of the Coalition of Kaiser unions?

1 A Not that I recall. No.

2 MR. MACKAY: No further questions, Your Honor.

3 JUDGE SCHMIDT: Charging Party?

4 **CROSS EXAMINATION**

5 Q BY MS. HOFFMAN: Do you know when the Coalition of Kaiser  
6 unions was formed?

7 A I think it was in the late 90's, '99, 2000, but I'm not --  
8 well, between '99 -- between '97 and '99, I think, but I'm not  
9 certain of that.

10 Q Is it the position of the Respondents that if NUHW joined  
11 the coalition that the benefits under the national agreement  
12 would automatically apply to them without bargaining?

13 MR. LINDSAY: Objection. Calls for a legal conclusion;  
14 beyond the scope of direct.

15 JUDGE SCHMIDT: Sustained.

16 Q BY MS. HOFFMAN: Could you look at Respondent's Exhibit 3?

17 A Okay.

18 Q Do you know what -- I noticed that it was revised in  
19 November of '09. Do you know what was revised in this document  
20 in November of '09?

21 A No, I don't.

22 MS. HOFFMAN: I have no further questions.

23 JUDGE SCHMIDT: No further?

24 Redirect?

25 MR. LINDSAY: Nothing further, Your Honor.

1 JUDGE SCHMIDT: At the risk of beating a dead horse, I  
2 work in one of these units. Before the certification of the  
3 NUHW if I took a continuing education course to maintain my  
4 license and I submitted a bill for that course, I would get  
5 paid, I assume, somehow?

6 THE WITNESS: You would be reimbursed.

7 JUDGE SCHMIDT: Reimbursed. Okay. After the  
8 certification of the NUHW, if I took a continuing education  
9 course for a licensure and submitted a bill for the course,  
10 would I get reimbursed?

11 THE WITNESS: Not for the CEUs, no.

12 JUDGE SCHMIDT: Pardon?

13 THE WITNESS: Not for the continuing education units, no.

14 JUDGE SCHMIDT: All right.

15 Respondent, questions as a result of mine?

16 MR. LINDSAY: None, Your Honor.

17 JUDGE SCHMIDT: General Counsel?

18 MR. MACKAY: None, Your Honor.

19 JUDGE SCHMIDT: Charging Party?

20 MS. HOFFMAN: None, Your Honor.

21 JUDGE SCHMIDT: All right.

22 Thank you. You may be excused. I appreciate your  
23 patience.

24 THE WITNESS: Thank you.

25 JUDGE SCHMIDT: All right.

1 Respondent, you may call your next witness.

2 MR. LINDSAY: Mr. Rosas has been subject to the  
3 sequestration order. We would not intend to call him again,  
4 but I --

5 MR. MACKAY: Oh, I apologize. I was talking to  
6 Ms. Parker. I missed the --

7 MR. LINDSAY: I'm sorry. Mr. Rosas has been subject to  
8 the sequestration order.

9 MR. MACKAY: I've got no objection to him staying if --

10 MR. LINDSAY: I --

11 MR. MACKAY: -- you don't anticipate calling him again.

12 MR. LINDSAY: Thank you.

13 Well, why don't -- why don't you step outside anyway, that  
14 way it's -- we'll keep the record as clean as possible.

15 The Respondent call -- Respondents call --

16 JUDGE SCHMIDT: Sorry.

17 MR. LINDSAY: Huh?

18 JUDGE SCHMIDT: Sorry. I keep doing the same thing.

19 MR. LINDSAY: I make a motion that the record be  
20 corrected; that the word "Respondent" be changed to  
21 "Respondents."

22 JUDGE SCHMIDT: Yeah. Granted.

23 Go ahead.

24 MR. LINDSAY: Respondents call Maryanne Malzone.

25 JUDGE SCHMIDT: Please step forward.

1 Can I have you raise your right hand?

2 (Whereupon,

3 **MARYANNE MALZONE MILLER**

4 having been first duly sworn, was called as a witness herein  
5 and was examined and testified as follows:)

6 JUDGE SCHMIDT: Be seated.

7 **DIRECT EXAMINATION**

8 Q BY MR. LINDSAY: Ms. Malzone, can you state and spell your  
9 name for the record?

10 A Sure. Maryanne Malzone Miller, M-A-R-Y-A-N-N-E, it's all  
11 one word, lowercase "a," Malzone, M-a-l-z-o-n-e, Miller,  
12 M-I-L-L-E-R.

13 Q And you are known as Maryanne Malzone for business  
14 purposes. Is that correct?

15 A I am.

16 Q What position do you currently hold?

17 A I'm the senior director of human resources.

18 Q Where?

19 A Kaiser Permanente Health Plan.

20 Q And how long have you held that position?

21 A I've held that particular position just about five years.

22 Q What position did you hold prior to that time?

23 A I was the director of HR operations prior to that.

24 Q And how long were you the director of HR operations?

25 A I don't recall exactly how many years in that role.

1 Q Okay. How -- how long have you worked in the human  
2 resources function in Kaiser?

3 A Twenty-five years.

4 Q How much of that time has been spent dealing with unions  
5 at Kaiser?

6 A In some capacity all 25 years.

7 Q Okay. And what has been your primary focus in your  
8 current job? What is the primary -- what are your primary  
9 duties in your current job?

10 A My current job, I oversee the operations of labor  
11 relations, compensation, diversity and HR special projects.

12 Q What do labor relations encompass?

13 A Labor relations encompasses traditional contract  
14 administration, grievance and arbitration handling for southern  
15 California, contract negotiations, contract interpretation.

16 Q Maybe I can short circuit this. Are you the person in  
17 charge of union matters for Kaiser in southern California?

18 A Yes.

19 Q Okay. And in this position you have had dealings under  
20 the national agreement and under various local agreements as  
21 well. Is that correct?

22 A Yes.

23 Q All right. Was there a meeting with the Union on February  
24 12th, 2010?

25 A Yes.

1 Q And by "the Union" I'm referring to the National Union of  
2 Healthcare Workers. And did you attend that meeting?

3 A I did.

4 Q And in what capacity were you attending that meeting?

5 Why --

6 A I --

7 Q -- were you attending that meeting?

8 A I attended as a -- in my leadership roles in labor  
9 relations and I also served as the note-taker at that meeting.

10 Q For the Kaiser?

11 A For the Kaiser. Yes.

12 Q Okay. When you began that meeting did you have an  
13 understanding of what the purpose of it was going to be?

14 A Yes, I did.

15 Q And what was that understanding?

16 A The purpose was, based on my conversations with Ralph,  
17 prior to the meeting we were going to have a get acquaint- --  
18 reacquainted meeting for all of the employees as well as the  
19 management representatives in the room.

20 Q And by Ralph you're referring to Mr. Cornejo?

21 A Yes.

22 Q And you had had previous conversations with him to arrange  
23 this meeting?

24 A That's correct.

25 Q Did you discuss anything of substance in any of those

1 prior conversations that relates either to the continuing  
2 education benefits, two percent across the board pay increase,  
3 or the paid leave for union stewards?

4 A No.

5 Q Can you give me a general description of what you  
6 discussed in the conversations you had with Mr. Cornejo prior  
7 to the February 12th, 2010 meeting?

8 A We had had conversations about Ralph's request for the  
9 meeting, and then I -- I took kind of the logistical role to  
10 coordinate the meeting.

11 Q Okay. You attended the meeting and you said that your  
12 role was to serve as note-taker primarily, correct?

13 A Yes.

14 Q All right.

15 MR. LINDSAY: Are we five or six?

16 MS. PARKER: Five.

17 JUDGE SCHMIDT: Yes, that's --

18 MR. LINDSAY: According to the --

19 JUDGE SCHMIDT: -- my understanding.

20 Thank you.

21 MR. LINDSAY: I'm going to have -- ask that the witness be  
22 shown the document that's been marked for identification as  
23 Respondents' Exhibit 5.

24 **(Respondent Exhibit 5 marked for identification.)**

25 Q BY MR. LINDSAY: Have you seen this document before?

1 A Yes.

2 Q Can you tell me where you saw it or where it came from?

3 A These are my notes from the meeting of February 12th.

4 Q I notice in the upper right-hand corner it's dated  
5 February 11th.

6 A Yes. I made an error.

7 Q Okay. Can you identify for me some of the abbreviations  
8 that appear in here? In the low -- upper right-hand -- upper  
9 left-hand corner the initials "R.C." appear. Is that Ralph  
10 Cornejo?

11 A Yes.

12 Q Okay. On the next page I see the words "AP." Is that for  
13 Arlene Peasnall?

14 A Yes.

15 Q On the lower part of Page 6 the initials "L.V." appear.  
16 Do you see that? Do you know who L.V. is?

17 A She is a nurse at Sunset and I can't pronounce her -- her  
18 name.

19 Q All right. There is a Layla identified on page -- I  
20 believe that's 8. Do you know who Layla is?

21 A Yes. That would be the nurse --

22 Q Oh.

23 A -- L.V.

24 Q Okay. And Barbara?

25 A Barbara Escobar is a Kaiser employee who attended that

1 meeting.

2 Q On behalf of the Union?

3 A Yes.

4 Q Okay. Jim?

5 A That is Jim Clifford, also a Kaiser employee who attended  
6 the meeting on behalf of NUHW.

7 Q Okay. At the top of the next page I see "D. Mallon"?

8 A David Mallon, again, a Kaiser employee who attended on  
9 behalf of NUHW.

10 Q And on Page 10 I have "D.M."?

11 A That would be David Mallon.

12 Q Okay. And I have another notation here, "Lynnetta"?

13 A Lynnetta. I don't recall her last name. She is a nurse  
14 at the LAMC Medical Center to the best of my recollection.

15 Q Did you --

16 MR. LINDSAY: I move the admission of Respondents' Exhibit  
17 5.

18 MR. MACKAY: No objection.

19 JUDGE SCHMIDT: Received.

20 **(Respondent Exhibit 5 received into evidence.)**

21 MR. LINDSAY: Thank you.

22 Q BY MR. LINDSAY: Can you tell me generally before we have  
23 you refresh your recollection with the notes what happened at  
24 this meeting?

25 A Sure. Ralph opened the meeting. We did some

1 introductions to make sure everybody knew each other. There  
2 were some familiar faces and some unfamiliar faces, so we did  
3 introductions. Ralph made opening comments, was happy that we  
4 were able to come together to have this conversation. He  
5 talked about people being the same people they were before the  
6 election and hoped that we could have a productive -- a  
7 productive meeting.

8 Q Anything else that you can recall right off the bat?  
9 We'll go through the notes in a minute.

10 A Okay. Nothing I can recall, you know, other than that.

11 Q Okay. In your notes on Page 1 there's a reference to, "If  
12 you looked at us as people in the past we honor agreements. We  
13 are credible. We don't pick at your facilities." Was this  
14 something Mr. Cornejo said to you at that first meeting?

15 A Yeah. Yes.

16 Q And what did you understand him to mean?

17 A My understanding of the comment was we had, in August of  
18 2009, negotiated with our labor unions under what we call the  
19 affordability and transition plan. And we had some potential  
20 reductions in force, and so we had a severance plan. We had a  
21 voluntary retirement plan to help the organization meet their  
22 affordability plan.

23 And so the Coalition of Unions entered into that agreement  
24 with us. We effectuated that agreement, and then shortly  
25 thereafter there was some picketing at some of our facilities

1 by members of SEIU UHW. So I related his comment to that  
2 activity that had taken place in August of 2009.

3 Q Was he associating or disassociating himself from  
4 picketing with those comments, if you had an understanding?

5 A I don't have an understanding.

6 Q Okay. Turning to the next page of notes, there's a  
7 comment from Arlene, "What do you mean about NUHW in  
8 relationship with CKPU and LMP?" Can you tell me what that  
9 sentence means?

10 A In the prior statement, Ralph -- Mr. Cornejo -- if Ralph's  
11 okay, that would --

12 Q Are you more comfortable with that?

13 A I'm more comfortable if -- whichever the record's --

14 Q That would be fine.

15 A Made some comments about having to kind of think through  
16 Kaiser's position with the LMP and what NUHW's position would  
17 be with the LMP and then you would -- that would be the Kaiser  
18 Permanente Coalition of Unions.

19 Q And so what was Arlene doing?

20 A I think Arlene was trying to get some clarification, to  
21 the best of my recollection --

22 Q And --

23 A -- of Ralph's comment.

24 Q -- was that clarification provided in this first meeting?

25 A Not clearly.

1 Q Proceeding through your notes on Page 3, I'm going to skip  
2 through the records as to UBTs, which are no longer part of  
3 this case, and then go down to several issues, paycheck today,  
4 dues deductions, wages, benefits, working conditions.

5 When you were taking your notes, were you trained to  
6 record what everybody was saying in the room?

7 A I -- you know, I did my best to record as much as I could  
8 of the conversation going on in the room. There were probably  
9 about fifteen, twenty people in the room. So --

10 Q Sometimes you ended up abbreviating and --

11 A Yes.

12 Q -- using the gist of what was being said rather than --

13 A That's --

14 Q -- the actual words?

15 A That's correct.

16 Q Okay. At some point during this first meeting did  
17 Mr. Cornejo propose extending the then terminated local  
18 agreements to September 30th, 2010?

19 A Yes, he did.

20 Q And did anyone on behalf of Kaiser respond to that  
21 proposal at that time?

22 A No, we did not.

23 Q Was there discussion about contract specialists at this  
24 meeting?

25 A There were comments made about contract specialists and

1 that NUHW would want to continue that and Ralph wasn't sure how  
2 many. I recall him saying more than one.

3 Q Was there any discussion about union stewards at this  
4 first meeting, who would be union stewards, who would be  
5 selected?

6 A I don't recall if it was at this meeting or a second  
7 meeting where Ralph stated they would be appointing stewards  
8 and letting us know who those representatives would be. But I  
9 can't recall which of the conversations.

10 Q Would it have been in your notes?

11 A It may have been in my notes.

12 Q Would you take a second? Let's look at the notes from the  
13 first meeting and see if it was there.

14 MR. LINDSAY: I will just represent to the witness I  
15 didn't see it in the notes of the first meeting.

16 THE WITNESS: I don't -- I don't see it referenced in  
17 these notes.

18 MR. LINDSAY: Okay. We'll look at the second note, the  
19 meetings from the -- the notes from the second meeting in a few  
20 minutes.

21 Q BY MR. LINDSAY: Was there a discussion about badges at  
22 this first meeting?

23 A Yes.

24 Q And what was that discussion?

25 A I recall Ralph had asked for a badge for Gabe Kristal and

1 that he was going to be starting spending more time at the LAMC  
2 Medical Center and wanted a badge for him.

3 Q Were there any other discussions about union access or  
4 union access to the facilities in this first meeting?

5 A I believe there was, but I would have to look at the notes  
6 to refresh my memory.

7 Q Why don't you just take a second and flip through and see  
8 if there is anything in there that gives you recollection or  
9 that would trigger your recollection?

10 A Okay. Could you repeat the question, please?

11 Q My question was as apart from the discussion about badges,  
12 was there anything else about access by the Union to the -- any  
13 of the facilities that you can recall from that first meeting?

14 A In -- in my notes I see a reference to --

15 Q Can you tell us where -- on what page?

16 A On Page 4, one of the issues that Ralph mentioned was  
17 stewards to be awarded the same privileges as in other units,  
18 and that's the reference that I make.

19 Q Okay. On Page 4 there's a reference, "CA current interim,  
20 that does not change." Can you tell me what you meant by those  
21 notes?

22 A Sure. CA is corrective action and that is one of the  
23 processes that we use for managing performance issues within --  
24 with the employees who are covered under the LMP. And so my  
25 notes are related to Ralph's comment that that -- in the

1 interim, that that would not change.

2 Q And then in Item Number 5 you've got "want these things to  
3 apply," and then there's a list of items. What did you mean  
4 when you wrote down "want these things to apply"?

5 A As I wrote the notes, that those are items that Ralph  
6 brought up that he wanted to apply immediately.

7 Q Was there any response to Kaiser in this first -- any  
8 response by Kaiser in this first meeting to any of these  
9 specific issues?

10 A No. We spent most of this meeting listening. The meeting  
11 took a little different turn than I had expected as we entered  
12 the room that afternoon.

13 Q And by "a different turn," what do you mean?

14 A Well, we had agreed this would be a get acquainted meeting  
15 and, clearly, after we went through introductions and some  
16 opening comments, Ralph had brought up some very specific  
17 issues, requests, proposals, and we didn't really plan for  
18 that.

19 Q So how did the -- let me direct your attention to Page 7.  
20 There is a line here from AP, "Not prepared to respond today."  
21 Is that something that Arlene Peasnall said, that Kaiser was  
22 not prepared to respond?

23 A Let me --

24 Q I'm sorry. This is on Page 7.

25 A I'm sorry. Which page?

1 Q Page -- oh, I'm sorry. Page 9. I apologize. We need  
2 that one pair -- common pair of glasses again.

3 A And I'm getting used to them, so.

4 Q It's about the -- just a little bit under -- well, it's  
5 right by the dot in --

6 A Yeah. As you can see from the notes above, Ralph had  
7 concluded talking through his proposals and some of the items  
8 he would like to continue or not continue. And then Mr. Mallon  
9 started talking and going back through each issue and wanting  
10 the employer to respond, and I think he got through a couple  
11 and it was at that point where Arlene clearly stated we weren't  
12 prepared to respond to any of these issues today.

13 Q Okay. And then what was -- what was going to happen next?  
14 Did the meeting end with no future plans or was there a future  
15 plan?

16 A We were going to meet again and Ralph, based on my notes,  
17 said any day of the week of the 22nd would be -- work for him,  
18 and so I think we -- I don't recall if we confirmed a date at  
19 that meeting, but we confirmed a date very quickly.

20 Q All right. And the next meeting was on February 26th,  
21 2010?

22 A Yes.

23 Q All right. And did you attend that meeting?

24 A Yes, I did.

25 Q And was your role at that meeting as well to serve

1 primarily as the note-taker for the Kaiser representatives?

2 A Yeah. I attended in my role as senior director and took  
3 on the duties of the note-taker. Yes.

4 Q Ah, thank you. It's always good when the witness cleans  
5 up my questions.

6 A Took place on February 26, 2010.

7 Q And are these the notes that you took?

8 A Yes.

9 MR. LINDSAY: I move the admission of Plaintiff's Exhibit  
10 6.

11 MR. MACKAY: No objection.

12 MS. HOFFMAN: No objection.

13 JUDGE SCHMIDT: Received.

14 **(Respondent Exhibit 6 received into evidence.)**

15 Q BY MR. LINDSAY: The first reference I see on page 1 here  
16 is talking points. Can you tell me what you meant by talking  
17 points?

18 A Yes. In preparation for the meeting, we had had some  
19 conversations, Arlene, Richard and I, to kind of talk about how  
20 the meeting was going to flow and which we would respond to in  
21 which order.

22 Q And so the talking points were the items that you and  
23 Arlene and Richard had discussed previously.

24 A Right, based on the meeting of February 12th.

25 Q While we're on that same first page, there's a line, we

1 cannot honor your request for extending the three agreements.

2 Do you see that?

3 A Yes, I do.

4 Q Okay. Can you tell me what was meant by that note?

5 A Yes. In the meeting of February 12th, Ralph had requested  
6 that the employer extend each of the three contracts, the  
7 health care professionals, the psych-social workers and the RN  
8 contract until September 30th of 2010 and my recollection  
9 having looked at the notes was to provide stability for NUHW  
10 and so in this meeting, Arlene was responding that those  
11 contracts, once the certification took place, they didn't exist  
12 and so we would not be extending those contracts, all three of  
13 them.

14 Q Did Ms. Peasnall announce during the second meeting  
15 Kaiser's position with respect to the two percent across the  
16 board pay increase?

17 A Yes, she did.

18 Q And what did she say?

19 A She stated we would not be processing the forthcoming  
20 April 1st increases for employees in the three units.

21 Q Did she announce Kaiser's position on the education, of  
22 the continuing education benefits for these employees?

23 A I believe she did. I have to look -- look through the  
24 notes. Yes, she did.

25 Q Okay. Can you tell me where in the notes that's referred

1 to?

2 A I'm on page 7 and I have a notation with Arlene's  
3 initials, TR, which would be Tuition Reimbursement CEUs,  
4 Continuing Education Units, only covered for LMP in NUHW with  
5 my little note. It's not in the LMP.

6 Q And was this interpretation based on the Kaiser policy  
7 that has been -- that was introduced earlier as Respondent's  
8 Exhibit -- may I ask it be shown to you if I can find it.

9 JUDGE SCHMIDT: You're talking about General Counsel 10  
10 and 11?

11 MR. LINDSAY: No. I'm talking specifically about -- okay.  
12 It's Respondent's Exhibit Number 3.

13 THE WITNESS: Thank you very much.

14 Q BY MR. LINDSAY: So was the position articulated by  
15 Ms. Peasnell at this meeting based on this policy?

16 A Yes.

17 Q And was there any discussion in this second meeting  
18 concerning Kaiser's position with respect to supervisor -- I'm  
19 sorry, steward training or pay for the stewards to attend  
20 training sessions?

21 A Yes.

22 Q And where was that?

23 A I'm going to review the notes. On the top of page 6.

24 Q All right.

25 A And my notes reflect our response was that's covered in

1 the national agreement. It's a creation issue. It's not a  
2 status quo issue and it would be subject to bargaining.

3 Q In connection with the discussion concerning the  
4 continuing education tuition reimbursement policy, did one of  
5 the employees raise a question as to whether -- as to the  
6 effective date of Kaiser's decision on that issue?

7 A To the -- I recall, yes. Ms. Turusew Wilson I believe is  
8 her name, she's an employee at the west -- if I recall, the  
9 West LA Medical Center, and she, I think many of the employees  
10 in the room, you know, this was an important issue to them and  
11 we had made this decision and communicated it on this date and  
12 so they were concerned about pre-approved classes and had asked  
13 us to reconsider that effective date of February the 3rd.

14 Q And what did you say in the room that day?

15 A That we would take it under consideration.

16 Q And then did you eventually notify the Union of your  
17 decision on that issue?

18 A Yes, we did.

19 Q And it was you who sent the email?

20 A Yes.

21 Q Okay. I'm going to just show you, ask that you be shown  
22 Exhibit -- this is General Counsel's Exhibit -- yes, General  
23 Counsel's Exhibit Number 8. Thank you. I would just ask if  
24 you were the author of the bottom portion of that --

25 A Yes.

1 Q -- email chain.

2 A Yes, I was.

3 Q All right. How did this meeting on February 26th end?

4 What was the next steps if you will?

5 A There was a request for us to meet again. There were some  
6 unanswered questions and decisions to be made on some of the  
7 proposals Ralph had put forward. There was still Ms. Wilson's  
8 request that we consider the CEUs and there had been some  
9 request to be more detailed about our decision making process.  
10 So we agreed to have an additional meeting. We did not  
11 schedule it that day and that caused for some additional  
12 emotional reaction from our employees who were attending the  
13 meeting with their NUHW representative.

14 Q And was it at this meeting that a representative of NUHW  
15 raised More, M-O-R-E, Trucking for the first time with you?

16 A Yes.

17 Q And who raised that?

18 A I'd have to refer to my notes to know who raised it first.  
19 I recall both Mr. Mallen (phonetic), David Mallen, and I  
20 believe Mr. Clifford, and I'll check my notes. My notes aren't  
21 clear as to exactly who raised that.

22 Q Let me direct your attention to the bottom of page 10 of  
23 your notes.

24 A Okay.

25 Q And I see a reference here to David. We need research

1 from your legal counsel for trucking?

2 A Yes. That's David --

3 Q Is that a reference to David Mallen?

4 A Yes, it is.

5 Q Do you know Mr. Mallen by sight?

6 A I do.

7 Q Was he here in the hearing room yesterday afternoon?

8 A Yes, he was.

9 Q And was he excluded from the sequestration order that took  
10 effect?

11 A No, he was not.

12 Q And I think there was a third meeting with NUHW. Is that  
13 correct?

14 A That's correct.

15 Q And you attended this meeting both in your capacity as the  
16 director of human resources as well as the note taker. Is that  
17 correct?

18 A That's correct.

19 Q Which meeting was this? This is now the third meeting.  
20 I'm referring you to a document that's been marked as  
21 Respondent's Exhibit 7 for identification. Can you identify  
22 this document for us?

23 A Yes. These are the notes that reflect the meeting on  
24 March 18, 2010.

25 Q I see a new set of initials here. There's an R-R. Can you

1 tell me who RR is on the first page?

2 A Richard Rosas.

3 Q And on the second page, there's a W-A.

4 A W-A is Winnie Allen, who's a Kaiser employee and a member  
5 of the Psych Social Unit with NUHW.

6 Q And on page 3, there is D-M. Is that David Mallen again?

7 A Yes.

8 Q Okay. There's a D-R with a question mark. Can you tell  
9 me who that individual was?

10 A Donna Rice and she is a member, Kaiser Permanente  
11 employee, and she works in Addiction Medicine, I believe in the  
12 San Fernando Valley.

13 Q All right, and M-H at the bottom of that page?

14 A I don't recall who M-H is at this point in time.

15 Q All right. Thank you. J-C on page 6. Is that Mr.  
16 Clifford?

17 A Yes. That would be Jim Clifford.

18 Q All right. And on the bottom of page 7, the initials M-M?  
19 Is that you?

20 A That would be me.

21 Q All right. And on the bottom of page 8, the initials  
22 M-M-M?

23 A That would be me as well.

24 Q That would be you as well. All right. Can you tell me  
25 generally what happened in this third meeting?

1 A Yes. Prior to this meeting, the employer prepared four  
2 documents. There was a letter authored by Arlene and the three  
3 grid documents, and that was in request at the prior session to  
4 get some clarity around the issues moving forward and so we  
5 were prepared to provide those documents to Ralph and his  
6 bargaining team members.

7 Q And just so that the record is complete, I ask that the  
8 witness be shown I believe GC 11? Ten? I'm sorry. It's GC-10  
9 and GC-11. And are these the documents that Kaiser presented  
10 to the Union at this meeting?

11 A They are.

12 Q All right.

13 MR. LINDSAY: I'd like to move the admission of  
14 Respondent's Exhibit 7.

15 MR. MACKAY: No objection.

16 JUDGE SCHMIDT: Received.

17 **(Respondent Exhibit 7 received into evidence.)**

18 Q BY MR. LINDSAY: What happened in this? You presented the  
19 documents and then what happened in this third meeting?

20 A Arlene at the beginning of the meeting, Arlene Peasnall,  
21 presented the documents and asked Ralph if he would like some  
22 time to review the documents with his team. We would leave and  
23 then we would rejoin them at a later time, and Ralph said no,  
24 we'd like you to stay and review the documents with us.  
25 There's no reason for you to leave and then come back.

1 Q So did you then go through the documents?

2 A Yes.

3 Q Is -- are the details of that meeting reflected here in  
4 your notes as you review the documents?

5 A Yes.

6 Q At some point during this meeting, was the -- were the  
7 management representatives asked to explain why any of the  
8 decisions that they made, what they had done, what they had not  
9 done, what they'd included as continuing but they didn't put it  
10 as not continuing?

11 A It was quite a bit of discussion during this meeting from  
12 many of -- as you can see from my notes -- many of the team  
13 members, our employees and representative by NUHW.

14 Q Did the issue come up in this meeting about paying union  
15 stewards for time spent performing grievance adjustments or  
16 contract administration?

17 A I'd have to review the notes to see if that was this  
18 meeting or a prior meeting. Yes, it did, and I'm on page 4 of  
19 the notes.

20 Q And what was said in that connection?

21 A I'm reading the question from Donna Rice in regards to are  
22 you saying if someone has a grievance, people cannot be  
23 represented? Richard responded no, people can be represented  
24 by the stewards. So there was discussion about grievance  
25 meetings and if there were corrective action meetings as well.

1 Q Just for my benefit, we have three separate units. In the  
2 AFN Unit, the nurses are paid on an hourly basis. Is that  
3 correct?

4 A Yes.

5 Q And in the Psych-Social Unit and in the Healthcare  
6 Professionals Unit, the employees are paid on a salaried basis.  
7 Is that correct?

8 A Yes.

9 Q And for the salaried employees, if they perform any  
10 services at all for Kaiser in a given day, they are paid. Is  
11 that correct?

12 A Yes.

13 Q Regardless of how else they spend that day.

14 A Yes.

15 Q There is on pages 4 and 5 statements from Ms. Peasnell  
16 stating that -- well at least I'll stick with page 5, that we  
17 should come to the table and begin bargaining the three  
18 agreements. There are other statements to that effect through  
19 this document. Did representatives of Kaiser tell the Union  
20 that it was time to start bargaining at the table for these  
21 contracts, specific terms of the contract?

22 A Yes.

23 Q And following this meeting, were you ever contacted about  
24 making the arrangements to begin bargaining at individual  
25 tables or to continue the bargaining process following this

1 meeting?

2 A Yes.

3 Q And how did that contact come about?

4 A Through Ralph.

5 Q Did you contact him or did he contact you?

6 A I don't recall. I think Ralph contacted me.

7 Q Okay. And when did this contact take place?

8 A We had conversations about one table or three tables and I  
9 don't recall the exact timing of those meetings, but it would  
10 have been after the 18th of March.

11 Q And when you talk about one table or three tables, what is  
12 that a reference to?

13 A Our conversations related to -- Ralph had requested that  
14 we have one bargaining table for all three units, so the table  
15 would have representatives from AFN, the Healthcare  
16 Professionals and the Psych-Social and we would negotiate one  
17 table for all of those three separate units.

18 Q And what was Kaiser's position with respect to the one  
19 table?

20 A My position was that the elections took place. They were  
21 three separate units and that we would bargain a separate  
22 contract with each of those three units, the Healthcare  
23 Professionals, the Psych-Social Workers and the nurses at  
24 LAMC.

25 Q And what happened?

1 A Ralph and I had probably a couple of conversations about  
2 this topic and I was clear that was our position and that we  
3 were ready to bargain.

4 Q And ultimately did you decide to bargain with three  
5 tables?

6 A We did.

7 MR. LINDSAY: I have nothing further for this witness.

8 MS. PARKER: May I just have one minute, Your Honor?

9 JUDGE SCHMIDT: Yeah.

10 MS. PARKER: Thirty seconds?

11 JUDGE SCHMIDT: If I might, maybe -- I have just a few  
12 general questions if you don't mind my butting in at this  
13 point. Kaiser Southern California.

14 THE WITNESS: Yes.

15 JUDGE SCHMIDT: How many facilities are within this  
16 region?

17 THE WITNESS: We -- I believe we have 12 or it might be 13  
18 medical centers. We probably have -- don't quote me on these  
19 exact numbers.

20 JUDGE SCHMIDT: Right.

21 THE WITNESS: Over 200 medical office buildings where  
22 services are provided to our members.

23 JUDGE SCHMIDT: Okay. And how many employees overall,  
24 disregarding whether they're unionized or not unionized, are  
25 employed in this region?

1 THE WITNESS: I believe we have about 56,000 employees in  
2 Southern California, give or take a few.

3 JUDGE SCHMIDT: All right. And I know there's a Northern  
4 California region, too, or also. Is there some specific  
5 dividing line between northern, your northern region and your  
6 southern California region?

7 THE WITNESS: We -- Southern California Region goes up to  
8 Bakersfield.

9 JUDGE SCHMIDT: All right.

10 THE WITNESS: And then somewhere north of that, I don't  
11 know the exact dividing line, would be the Northern California  
12 Region.

13 JUDGE SCHMIDT: All right. That's all I, all I had.  
14 Now you want a couple of minutes, you say?

15 MS. PARKER: Not even that, maybe just 30 seconds.

16 JUDGE SCHMIDT: Okay. Let's be off the record. Signify  
17 when you're ready.

18 (Off the record)

19 MS. PARKER: Just a brief question. We're ready to go  
20 back on the record.

21 JUDGE SCHMIDT: All right. On the record. You may  
22 cross-examine.

23 MS. PARKER: Okay.

24 **CROSS EXAMINATION**

25 Q BY MS. PARKER: I just had a couple of quick questions for

1 you. In reference to Respondent's Exhibits 6 and 7. I think  
2 you probably still have those before you?

3 A I have 7 before me. I don't have 6. Oh, I do now.

4 Q Okay. I just wanted to confirm in your notes where it  
5 says A-P? Where it has a person identified as E-A-P. That's  
6 Arlene Peasnall? Just to be clear for the record?

7 A Yes.

8 Q Okay. And R-C?

9 A Ralph Cornejo.

10 Q Okay.

11 MS. PARKER: That's all.

12 JUDGE SCHMIDT: That's it?

13 MS. PARKER: Yes.

14 JUDGE SCHMIDT: Charging Party?

15 **CROSS EXAMINATION**

16 Q BY MS. HOFFMAN: Yes. Could you look at Respondent's  
17 Exhibit 3? And the stamps at the bottom, KP11.

18 A I don't have the document in front of me yet. I'm sorry.

19 JUDGE SCHMIDT: Go ahead.

20 Q BY MS. HOFFMAN: In Section 7, it says that this policy  
21 was signed by you. Is that correct?

22 A Yes.

23 Q And do you know what revisions remained in November of '09  
24 in the policy?

25 A I don't recall the revisions, all the revision, if there

1 were that were made at this time.

2 Q Okay. It's my understanding that the tuition  
3 reimbursement was negotiated by the coalition in 2005. Is that  
4 correct?

5 A I was not -- I did not participate in bargaining in 2005.

6 Q Okay. So you don't know when the tuition reimbursement  
7 was negotiated by the --

8 A I don't at this time, no.

9 Q The coalition? So you don't know why there wasn't any  
10 revision in 2005.

11 A No, I don't.

12 Q And you don't know what the revision was in 2009?

13 A I don't recall what the revisions were in 2009.

14 Q Did it change in any way who was eligible for the tuition  
15 reimbursement program?

16 A I don't recall which revisions, what revisions were made  
17 in this last revision of 11/13/2009.

18 MS. HOFFMAN: No further questions.

19 JUDGE SCHMIDT: Redirect?

20 MR. LINDSAY: I have nothing.

21 JUDGE SCHMIDT: Under the -- well I haven't looked at the  
22 other two collective bargaining agreements, but under the AFN  
23 agreement, as I understand, as part of the local agreement,  
24 there's a rate schedule here at the end and it shows a  
25 progression of rates. Look at that. And that apparently is

1 based on how much time you have worked at Kaiser as to whether  
2 or not you progress from one to the next one to the next one.  
3 Is that the way I should read that?

4 THE WITNESS: Yes, and there are --

5 JUDGE SCHMIDT: So I get a certain rate in a certain  
6 classification if I've worked there five years, and then when I  
7 click over to, say, six years, I would get another rate, an  
8 increased rate.

9 THE WITNESS: That's correct. And there are -- if I may,  
10 there are different rules in each collective bargaining  
11 agreement that tell you how you progress on the step.

12 JUDGE SCHMIDT: All right. Now in terms of the basic  
13 compensation for the employees in these NUHW agreements, are  
14 those same policies still being followed?

15 THE WITNESS: The progression?

16 JUDGE SCHMIDT: Yes.

17 THE WITNESS: Yes.

18 JUDGE SCHMIDT: Okay.

19 Respondent, any questions as a result of mine?

20 MR. LINDSAY: No, Your Honor.

21 JUDGE SCHMIDT: General counsel? Charging party?

22 MS. HOFFMAN: Nothing further.

23 JUDGE SCHMIDT: Okay. Thank you for your patience.

24 THE WITNESS: Thank you.

25 JUDGE SCHMIDT: You're excused. Next witness?

1 MR. LINDSAY: No further witnesses and simply joining in  
2 the General Counsel's request that we receive an expedited  
3 ruling.

4 JUDGE SCHMIDT: I see.

5 MR. LINDSAY: And with that, Respondent rests.

6 JUDGE SCHMIDT: General counsel, rebuttal?

7 MS. PARKER: Thirty seconds? This time I promise 30  
8 seconds. I keep going over that, I know.

9 JUDGE SCHMIDT: That's all right. Yes. Let's be off the  
10 record. Signify when you're ready.

11 (Off the record)

12 JUDGE SCHMIDT: Then we'll be back on the record. In  
13 off-the-record discussion, counsel for the General Counsel,  
14 counsel for the acting General Counsel, stated that there will  
15 be no rebuttal from that part of the table. Charging party  
16 also stated there would be rebuttal from that part of the  
17 table. I've also discussed with the parties the briefing date  
18 for this case and the parties are in agreement with the date  
19 that I discussed with them, which is November 17, 2010 will be  
20 the date for the filing of the post-hearing briefs in this  
21 matter.

22 In order to be timely filed, the briefs must be put in the  
23 mail or presented to a delivery service of some type the day  
24 before November 17 or actually delivered on November 17 to my  
25 office, which is at 901 Market Street, Suite 300, San

1 Francisco, California 94103.

2 In the event of some unforeseen emergency, and I want to  
3 underscore that, and I also want to say agreement of the  
4 parties is not an unforeseen emergency, that an extension of  
5 time for the filing of briefs is needed, the request for an  
6 extension of time should not, I underscore, should not be filed  
7 with me, should be filed with the Associate Chief  
8 Administrative Law Judge for the San Francisco Branch Office of  
9 the NLRB Division of Judges.

10 That person's name is Mary Mare Craycraft (phonetic), so  
11 if you need an extension of time, please file that request with  
12 Judge Craycraft.

13 After receiving the briefs, I will prepare and issue my  
14 decision and concurrent with that, an order transferring the  
15 case to the Board will issue. If you are not already signed on  
16 to the Board's electronic service system, I would urge you to  
17 do so. It will speed up the process a few days at least.

18 I want to thank the parties for their excellent  
19 presentation and professional manner in which this case has  
20 been presented. If there's -- General Counsel, do you have  
21 anything further at this point?

22 MR. MACKAY: Nothing further, Your Honor.

23 JUDGE SCHMIDT: Charging Party?

24 MS. HOFFMAN: Nothing.

25 JUDGE SCHMIDT: Respondents?

1           MR. LINDSAY: Nothing further. Thank you for your  
2 time.

3           JUDGE SCHMIDT: There being nothing further, then, the  
4 hearing is now closed. Thank you.

5           **(Whereupon, at 2:08 p.m., the hearing in the**  
6 **above-entitled matter was concluded)**

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**CERTIFICATION**

1  
2 This is to certify that the attached proceedings before the  
3 National Labor Relations Board (NLRB), Region 21,  
4 Case 21-CA-39296, Kaiser Foundation Hospitals; Southern  
5 California Permanente Medical Group; Kaiser Foundation Health  
6 Plan, Inc., at the National Labor Relations Board, Region 21,  
7 888 South Figueroa Street, Suite 902, Los Angeles, California  
8 90017, on Tuesday, October 19, 2010, at 9:01 a.m., was held  
9 according to the record, and that this is the original,  
10 complete, and true and accurate transcript that has been  
11 compared to the reporting or recording, accomplished at the  
12 hearing, that the exhibit files have been checked for  
13 completeness and no exhibits received in evidence or in the  
14 rejected exhibit files are missing.

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Troy Ray

Official Reporter

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