

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAYMOND DELUCCHI and  
TOMMY HOLLIS,

Appellants,

v.

PAT SONGER and ERICKSON  
THORPE & SWAINSTON, LTD.

Respondents

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District Court: Travis K. Lindeman  
Clerk of Supreme Court

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**JOINT APPENDIX**

**VOLUME II OF VII**

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Appeal from the Fifth Judicial District Court  
Case. No. CV35969

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## CERTIFICATE OF SERVICE BY ELECTRONIC MEANS

I hereby certify that I am an employee of the Law Office of Daniel Marks and that on the 8th day of August, 2016, I did serve the above and forgoing JOINT APPENDIX, VOLUME II of VII by way of Notice of Electronic Filing provided by the court mandated E-Flex filing service, to the following:

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## **EXHIBIT “8”**

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IN ARBITRATION PROCEEDINGS  
PURSUANT TO AGREEMENT OF THE PARTIES

In the Matter of a Controversy between

TOWN OF PAHRUMP,

Employer,

and

INTERNATIONAL ASSOCIATION  
OF FIREFIGHTERS LOCAL 4068,

Union,

Re: grievances of R. Delucchi and T. Hollis.

OPINION AND AWARD

AAA Case No. 79 390 00124 12

This matter was heard on August 12, August 13, September 13, and September 24, 2013 before Catherine Harris, Esq., a neutral arbitrator mutually selected by the parties to render a final and binding decision pursuant to the parties' labor agreement.<sup>1</sup>

Richard G. Campbell, Jr., Esq., Armstrong Teasdale, LLP, appeared on behalf of the TOWN OF PAHRUMP (herein "the Town").<sup>2</sup>

The INTERNATIONAL ASSOCIATION OF FIREFIGHTERS LOCAL 4068 (herein "the Union ") was represented by Adam Levine, Esq., Law Office of Daniel Marks. Firefighter/Paramedic Ray Delucci and Firefighter/EMT Tommy Hollis (herein "the Grievants") were present throughout the hearing.<sup>3</sup>

<sup>1</sup> The first two days of hearing were held at Pahrump, Nevada and the third day of hearing was held at Las Vegas, Nevada. The arbitrator presided over a fourth and final day of hearing from her office in Sacramento, California by telephone while attorneys, witnesses and parties assembled at the same location in Las Vegas. The hearing was transcribed and the arbitrator was supplied with transcripts of all four days of hearing.

<sup>2</sup> Bret F. Meich, Esq. appeared on brief. Also present on behalf of the Town during day 1 and day 2 of the hearing was Rebecca Bruch, Esq., Erickson, Thorpe & Swainston.

<sup>3</sup> The Union's current president Justin Snow and Dean Fletcher (a representative of Professional Firefighters of Nevada) also attended the hearing on behalf of the Union and the Grievants.

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1 At the hearing, each party was given the opportunity to present testimonial<sup>4</sup> and  
2 documentary evidence,<sup>5</sup> to cross-examine the other party's witnesses and to make argument  
3 to the arbitrator.<sup>6</sup> The parties further stipulated that the arbitrator would have forty-five (45)  
4 days from the closing of the record on November 22, 2013 in which to transmit her Opinion  
5 and Award by regular mail, duplicate originals, to both parties.<sup>7</sup>

### 6 RELEVANT PROVISIONS OF THE AGREEMENT

7 Both parties agree that the relevant collective bargaining agreement for the purpose  
8 of resolving this dispute is the Agreement between the Town of Pahrump and International  
9 Association of Firefighters Local 4068 for the period July 1, 2011 through June 30, 2012  
10

11  
12 <sup>4</sup> At the hearing, the Town presented the testimony of William Kohbarger, Pat Songer,  
13 Scott Lewis, Brittnie Choyce and Kevin Slaughter, M.D (by telephone). The Union presented the  
14 following witnesses: John Sivia, Noe Martinez (by telephone), Dustin Knutson, Chad Weston, Justin  
15 Snow, Tommy Hollis, and Ray Delucchi. William Kohbarger and Pat Songer (by telephone) were  
16 recalled as rebuttal witnesses by the Town and Justin Snow and Ray Delucchi were recalled as sur-  
17 rebuttal witnesses by the Union.

18 <sup>5</sup> During the course of the hearing, the arbitrator received Town Exhibits "1" through "38"  
19 and Union Exhibits "A" through "AA" into evidence.

20 <sup>6</sup> At the close of the hearing, the parties agreed to submit simultaneous post-hearing briefs  
21 to be mailed to the arbitrator by no later than November 12, 2013. Consistent with the stipulation,  
22 both parties' briefs had been received in the arbitrator's office as of November 15; however, due to  
23 the inclusion of two unauthorized exhibits attached to the Town's brief, the arbitrator declined to  
24 close the record without giving the Union an opportunity to respond to additional evidence  
25 submitted without a motion to reopen the record. Ultimately, the Union, by letter dated November  
26 22, 2013, waived objection to the new exhibits provided that its additional documentary evidence  
27 was also accepted. Accordingly, the arbitrator will mark for identification and receive into  
28 evidence Town Exhibit "39" (Notice of Revocation of License dated October 1, 2013 re: Tommy  
Hollis) and Town Exhibit "40" (Notice of Revocation of License dated October 1, 2013 re: Ray  
Delucchi), as well as Union Exhibit "BB" (letter dated October 11, 2013 appealing the Notices of  
Revocation); Union Exhibit "CC" (letter dated October 14, 2013 appealing Amended Notices of  
Revocation); Union Exhibit "DD" (electronic copy of letter dated November 15, 2013 from Office of  
the Attorney General to Union counsel memorializing an agreement to delay the processing of the  
appeal pending review of the arbitrator's decision).

<sup>7</sup> The arbitrator notified the AAA Case Manager that she considered the record closed upon  
receipt of Union counsel's letter agreeing to supplement the record with documents supplied by both  
parties regarding the status of the proceeding before the Division of Public and Behavioral Health of  
the State of Nevada. (herein "the Health Division").

1 (herein "the Agreement") which contains the following provisions:

2 **ARTICLE 4 – SAFETY AND HEALTH**

3 **Section 1:**

4 It is the desire and goal of the TOWN and the UNION to maintain the highest standards of  
5 safety and health in order to eliminate, as much as possible, accident, death, injuries, and  
6 illness in the fire and emergency care service.

7 ...

8 **Section 4:**

9 Safety is a primary goal and consensus is desired. Final decisions on the recommendations to  
10 the Fire Chief shall be reached when a simple majority vote[s] for or against is cast. Either  
11 party may submit a recommendation to the Fire Chief.

12 ...

13 **Section 9:**

14 The TOWN shall comply with all standards, laws, regulations and ordinances relating to the  
15 fire department.

16

17 **ARTICLE 22 – PROGRESSIVE AND CORRECTIVE DISCIPLINARY ACTION**

18 **Section 1:**

19 The TOWN shall not discipline nor discharge a post probationary EMPLOYEE without just  
20 cause.

21 **Section 2:**

22 Prior to disciplining or discharging any post probationary EMPLOYEE, the TOWN shall  
23 afford him/her procedural due process by making certain he/she is made aware of the  
24 violation and given the opportunity to provide his/her response prior to a final decision being  
25 made.

26 **Section 3:**

27 The TOWN shall first administer constructive and progressive discipline, in the following  
28 order, prior to discharging a post-probationary EMPLOYEE, except where his/her  
misconduct is so serious as to constitute an immediately dischargeable offense:

- Verbal Reprimand
- Written Reprimand
- Suspension Without Pay
- Temporary Pay Reduction (One (1) step two (2) pay cycles
- Demotion (if applicable)
- Discharge

29 **Article 25 - Grievance Procedure**

30 ...

1 **Section 5:**

2 The costs of arbitration shall be borne as follows:

3 (a) ...

4 (b) The arbitrator's fees and expenses, and the cost of any hearing room shall be borne  
5 by the losing party to the arbitration. The arbitrator shall specify the payer of the  
6 costs.

7 **ISSUES PRESENTED**

8 The parties agree that both grievances are properly before the arbitrator for final and  
9 binding determination in a single proceeding. The issue to be determined separately as to  
10 each of the Grievants is whether the Grievant was terminated for just cause and, if not, what  
11 shall be the appropriate remedy. An additional issue to be determined by the arbitrator is the  
12 application of the "loser pays" provision of Article 25, Section 5 of the Agreement. The  
13 parties jointly requested, in the event a remedy were to be ordered, that the arbitrator retain  
14 jurisdiction over implementation of the award.

15 **STATEMENT OF THE CASE**

16 **Background**

17 As of the date of his termination, Grievant Raymond Delucchi had been employed by  
18 the Town as a Firefighter/Paramedic for approximately four and a half years. Delucchi came  
19 to this position after serving a year and a half as a firefighter for the San Ramon Valley Fire  
20 Protection District. He had previously served three years as a volunteer firefighter. At the  
21 time of these events, Delucchi had been serving as the Union's president since April 1, 2012<sup>8</sup>  
22 and had previously served as the Union's vice-president. Prior to the events of this case,  
23 Delucchi had never been the subject of an official complaint or any form of disciplinary  
24 action. Firefighter/EMT Intermediate Tommy Hollis was a volunteer firefighter for  
25 Pahrump Valley Fire and Rescue Service (PVFRS) for fifteen years before being hired by  
26

27  
28 <sup>8</sup> Unless otherwise indicated, all references to dates herein are to calendar year 2012.

1 the Town as a paid full-time firefighter in 2005. Prior to the events of this case, Hollis' only  
2 prior discipline during his 22 years as a firefighter was a "write-up" for backing an engine  
3 into a bay when the side doors to the building were partially open, i.e., causing damage to  
4 the building.<sup>9</sup> As of the date of the incident that is the subject of this case, Hollis held no  
5 position as representative or official of the Union although he had previously served on the  
6 Union's executive board. During times material to this case, the Grievants were partners  
7 assigned to a two-person ambulance crew (Medic 3) and reported to the on-duty lieutenant.

#### 8 **The Van Leuven Arbitration**

9 In his capacity as the president of the Union, Delucchi attended an arbitration on May  
10 30 involving the termination of Firefighter/Paramedic Chris Van Leuven by Fire Chief Scott  
11 Lewis.<sup>10</sup> According to Union witnesses, tensions at the Van Leuven arbitration escalated  
12 when the Union's attorney questioned Chief Lewis about his dating relationship with a  
13 woman who had also had a dating relationship with Firefighter Van Leuven. After providing  
14 testimony at the Van Leuven arbitration, Chief Lewis returned to his office and received an  
15 external complaint related to the Grievants.

#### 16 **The Telephone Call from Vickie**

17 On May 30, at approximately 3:30 p.m., Administrative Director Tony Glines  
18 informed Chief Lewis that she had received a telephonic complaint from an individual  
19 named Vickie concerning an incident that had occurred on Highway 160 involving a  
20 PVFRS ambulance crew. In the presence of Lt. Steve Moody, Chief Lewis returned the  
21 call to Vickie who then placed her daughter Brittnie Choyce (herein "Mrs. Choyce") on the  
22 telephone to provide her version of what had occurred on May 25 at approximately midnight  
23 about a mile north of the Spring Mountain pass. Later on in the call, Brittnie's husband  
24 James Choyce (herein "Mr. Choyce") also came on the line to provide further details of the  
25

26 <sup>9</sup> The record does not disclose the date or approximate date of this incident nor is this  
27 incident mentioned in the Notice of Intent to Terminate.

28 <sup>10</sup> Lewis has served as the Town's Fire Chief for approximately 11 years.

1 incident from his perspective.

2 Notes compiled by Chief Lewis sometime during the period from May 30 to June  
3 20,<sup>11</sup> contain the following hearsay description of what Mrs. Choyce told Chief Lewis during  
4 the telephone conversation on May 30:

5 Brittney(sic) explained that she had been 17½ weeks pregnant with her fourth child  
6 when it was determined that she was carrying a stillborn child. She informed me of a  
7 scheduled appointment the next day for the evacuation of the stillborn. In the  
8 meantime, her Doctor informed her to be extremely careful and if she were to begin  
9 experiencing problems to get to Summerlin Hospital in Las Vegas. Later she began  
10 to have problems including bleeding and her husband began to drive her to  
11 Summerlin as the local Pahrump Hospital (Desert View) was unable to provide the  
12 level of care.<sup>12</sup>

13 As they drove [to] on Highway 160 her condition deteriorated and her water broke  
14 approximately 5-10 miles before the top of Spring Mountain and at some point she  
15 began delivery of the stillborn child with profuse bleeding. At the top of the Spring  
16 Mountain on Highway 160, they passed PVFRS Medic 3 traveling in the opposite  
17 direction (toward Pahrump). Her husband pulled a U-turn and attempted to catch up  
18 to Medic 3 while flashing his lights. Approximately 2 miles from Fire Station 79,  
19 Medic 3 pulled onto the shoulder of the road and her husband jumped out to tell the  
20 crew that she was having a miscarriage and needed help.

21 She stated that a "bald" medic approached her side of the car and through an open  
22 window asked "What's going on"? She was crying while she informed him that she  
23 was having a miscarriage and was bleeding. She stated by this time the stillborn was  
24 delivered and was "in her pants." She stated her need for help to the same medic, but  
25 again he did not help. Eventually, he offered to drive them back to the Pahrump  
26 Hospital, but only offered the name and directions to the closest Las Vegas Hospital.  
27 Brittney (sic) stated that her husband was becoming more agitated and finally began  
28 to drive her to Las Vegas after making another u-turn on Highway 160. Shortly after,  
she passed out. At the Las Vegas Hospital, she received 5 blood transfusions and  
passed 5 large blood clots.<sup>13</sup>

Chief Lewis's notes contain an additional notation that Mr. Choyce then came on the line  
and relayed "the same story with some additional points" as follows:

<sup>11</sup> There is no evidence that these notes were contemporaneous with either the return call to  
Vickie or the visit to the Choyce residence. As explained herein, on June 20 the investigation was  
reassigned to an outside investigator in response to the filing of cross complaints by Delucchi and  
Chief Lewis.

<sup>12</sup> To what extent, if any, these facts were communicated to the Grievants is extremely  
questionable given the short duration of the encounter, Mr. Choyce's level of agitation, and his snap  
decision to speed away from the scene at the mention of the Pahrump Hospital (Desert View).

<sup>13</sup> No medical records were produced that verify these hearsay statements.

1 He stated that he is a veteran and feels that the medics did not take his wife's  
2 situation seriously. He stated that her seat was covered in her blood and she was on  
3 the verge of passing out from the miscarriage. He was previously informed by their  
4 Dr. that if this condition presented, that it was a true life emergency. He stated that  
5 he was talking with the Dr. and trying to reach the hospital on the way.<sup>14</sup> He stated  
6 that when he observed Medic 3 he began flashing his lights, made a u-turn,  
7 attempted to catch up with them. He pulled aside the ambulance and they eventually  
8 pulled over. He approached the driver's window and spoke with the "bald" driver.  
9 He informed the driver that his wife was having a miscarriage. The "bald" medic and  
10 his passenger seated partner got out of the vehicle and approached his wife's side  
11 window and asked her "what's going on"? She was crying and informing him that  
12 she was having a miscarriage and was bleeding. The medic responded that it wasn't  
13 that much blood and that they could take her back to Pahrump as that was the  
14 direction they were heading. James explained that they were instructed to get to Las  
15 Vegas not Desert View. James stated that he became angrier and finally just drove  
16 away after the crew informed them of the closest LV hospital off of Fort Apache.

17 According to Chief Lewis, Mr. and Mrs. Choyce indicated that they would prefer to submit  
18 written statements, as opposed to submitting to recorded interviews.<sup>15</sup> As a result of this  
19 telephone conversation, Chief Lewis commenced a formal investigation including an initial  
20 record review which confirmed that Medic 3 had been in the same area at the same time as  
21 described by the complainants.

#### 22 **The Meeting between the Town Manager and the Fire Chief**

23 On May 31, at approximately 8:30 a.m., Chief Lewis met with Town Manager  
24 William Kohbarger and HR Director Terry Bostwick at the Town Office to review what was  
25 still a verbal complaint received by telephone. On this occasion, Kohbarger instructed Chief  
26 Lewis to assign Lt. Moody to the investigation with direct assistance from Chief Lewis who  
27 would coach Lt. Moody through the investigative process.<sup>16</sup> Chief Lewis was also  
28

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22 <sup>14</sup> No evidence was presented to verify the claim that Mr. Choyce had been talking to a  
23 doctor on his way to Las Vegas.

24 <sup>15</sup> Firefighter Noe Martinez provided testimony that from his position in the training room,  
25 he overheard the conversation that was taking place over the Chief's speaker phone. According to  
26 Martinez, he heard a female telling Chief Lewis that she just wanted to forget about it, i.e., that  
27 nothing could change the outcome at this point. He also overheard the female tell Chief Lewis that  
28 she did *not* want to write a statement and that she did *not* want him to come to her house.

<sup>16</sup> Lt. Moody lacked experience conducting investigations so this was going to be an  
opportunity for Lt. Moody to receive training under the supervision of Chief Lewis.

1 specifically directed by Kohbarger to record the Grievants' interviews.<sup>17</sup> At approximately  
2 9:00 a.m., Chief Lewis telephoned Lt. Moody and asked him to direct the Medic 3 crew to  
3 come to Station 1 for interviews<sup>18</sup> and that he would be joining them shortly.

#### 4 **The Special Circumstance Report**

5 On the morning of their return to work on May 31, the Grievants were requested by  
6 their supervisor Lt. Moody to prepare a special circumstance report concerning what had  
7 occurred up on the hill during their last shift on May 25.<sup>19</sup> That report which constitutes the  
8 Grievants' first official description of the incident provides as follows:<sup>20</sup>

9 On A-shift after a transfer to a Vegas hospital from P.V. hospital M-3 was on the way  
10 back to Pahrump appx ¼ mile from Mountain Springs Fire Station on the Pahrump  
11 side a very dangerous and erratic vehicle pulled up beside M-3. The driver of the  
12 vehicle was pointing & yelling at M-3 to stop. Due to the circumstances & area  
13 having no lighting, we stopped in the best- most safe place[to] as possible. Before  
14 getting out of the medic unit a very excited & arrattic (sic) male appeared in the  
15 driver's window screaming my wife is having a miscarriage, both myself and my  
16 partner were yelling calm down through the window of the medic unit at the male  
17 who was obviously out of control. My partner & I were in fear due to the unknown.  
18 We cautiously approached the vehicle on the passenger side of the car where a  
19 woman was crying, the passenger window was down half way - the male had jumped  
20 back in the driver's seat of car and was yelling arratically (sic). We my partner & I  
21 told him to calm down & we offered to take her to the hospital in Pahrump and the  
22 male yelled F Desert View & put the car in drive so we moved back from the car not  
23 knowing what the driver was gonna do, still yelling calm down & the car started to  
24 move & the driver was still yelling & not making any sense and sped away.

25 The Grievants were also instructed by Lt. Moody to proceed directly to Station 1 in order to  
26 be interviewed.

#### 27 **The Grievants' Interviews on May 31**

28 When Chief Lewis arrived back to Station 1 at approximately 9:47 a.m., Lt. Moody,  
who had already completed his interview of Hollis, was in the process of interviewing

<sup>17</sup> At the hearing, Chief Lewis testified that the Town Manager also asked that they try to get  
a recorded interview from the complainants.

<sup>18</sup> The Medic 3 crew was regularly assigned to Station 3.

<sup>19</sup> The Grievants had not worked since the shift that led to this proceeding.

<sup>20</sup> Although the report was actually written up by Hollis, it was prepared as a product of  
discussion between the Grievants and signed by both Hollis and Delucchi.

1 Delucchi behind closed doors in the presence of union representative Nate Alexander.<sup>21</sup>  
2 According to Chief Lewis, he opened the door without knowing who was inside and when he  
3 saw what was happening, he directed that the interview be stopped and that Lt. Moody join  
4 him out in the hall for a private conversation. Chief Lewis then told Lt. Moody that  
5 Kohbarger wanted them to record the Grievants' interviews. The parties then moved to the  
6 training room to re-commence Delucchi's interview and to repeat the Hollis interview in  
7 compliance with Kohbarger's instructions.

8 After the introduction to his *recorded* interview, Delucchi stated that he felt he was  
9 the subject of retaliation and feared for his job, i.e., requesting that HR Director Terry  
10 Bostwick and Town Manager Kohbarger be present during the interview.<sup>22</sup> Upon  
11 completion of Delucchi's interview (conducted in the presence of Lewis, Moody, Kohbarger,  
12 Bostwick and union representative Nate Alexander), a second *recorded* interview of Hollis  
13 was conducted (also in the presence of Lewis, Moody, Kohbarger, Bostwick and Alexander).  
14 Several minutes into the Hollis interview, Chief Lewis excused himself due to a prior  
15 commitment.

16 During the Grievants' interviews,<sup>23</sup> both men consistently described the incident as  
17 follows: a car with its hazard lights flashing approached Medic 3 at high speed from behind  
18 and came up alongside the ambulance driver gesturing for Medic 3 to pull over. According  
19 to the Grievants, the male driver of the vehicle was yelling, screaming and using profanity.  
20 Fearing that they would be driven off the road or become involved in an accident, Delucchi

21  
22  
23 <sup>21</sup> According to Delucchi, he had already pretty much told the entire story to Lt. Moody at  
the time that Chief Lewis barged in.

24 <sup>22</sup> Delucchi testified, in so many words, that he felt that he needed a second set of eyes and  
25 ears to assure the fairness of the process.

26 <sup>23</sup> The Grievants' recorded interviews were transcribed and submitted into evidence at the  
27 arbitration hearing. The arbitrator was also provided with the recordings. The interviews were  
28 conducted by Lt. Moody, Chief Lewis, and Town Manager Kohbarger. During the Hollis interview,  
Hollis asked if he needed to fear retaliation and Kohbarger, in a reassuring manner, acknowledged  
that most of the complaints that are filed against firefighters are bogus.

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1 pulled over and turned on the emergency lights (not the scene lights) and the passenger  
2 vehicle pulled behind them. The driver of the passenger vehicle then ran up to the window on  
3 the left or driver's side of the ambulance as he continued to yell and scream while moving his  
4 hands.<sup>24</sup> Although the man was so agitated that he was difficult to understand, the Grievants  
5 did hear him say "my wife is having a miscarriage." The Grievants asked the man to calm  
6 down and step away from the ambulance. When the man complied, they exited the  
7 ambulance and cautiously approached the passenger vehicle to within 5-10 feet of the female  
8 passenger who could be seen in the passenger seat crying. Both firefighters recalled that the  
9 man, instead of proceeding to the passenger door to allow them access to the female  
10 passenger, got back into the driver's seat of the vehicle. As soon as the man was back behind  
11 the wheel, he resumed acting wild and erratic, i.e., moving around the driver's seat and  
12 yelling over the top of the female passenger. The Grievants tried to explain to the extremely  
13 agitated male that they could not do anything to help until he calmed down enough for them  
14 to find out what was going on. When the Grievants failed to get the screaming man out of  
15 the car, in an effort to de-escalate the situation, they offered to transport the couple to Desert  
16 View in Pahrump. The man responded "fuck Desert View," placed the vehicle in gear,<sup>25</sup> and  
17 sped off. The Grievants got back in their vehicle and sat there long enough to witness the  
18 couple reverse direction at the nearby "turnaround" and head back to Las Vegas.

19 During separate and independent interviews, both of the Grievants confirmed that the  
20 incident took approximately 60 seconds before the driver sped off and that the driver was  
21 acting erratically and aggressively causing both men to feel unsafe for the entire duration of  
22  
23

24 In his recorded interview by Lt. Moody, Hollis stated that the excited male was "all over the window and trying to open the door even."

25 The recorded interviews do not discuss whether or not the Choyce vehicle was running. Both of the Grievants described seeing the male driver put the car into drive and speed away with no mention of turning on the ignition. Consistent with the recorded interviews, Hollis testified at arbitration that when Mr. Choyce got back into the driver's seat, the car was "obviously running."

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1 of his involvement with the Van Leuven arbitration that had occurred just one day earlier.<sup>29</sup>

2 **The Visit by Chief Lewis and Lt. Moody to the Choyce Residence**

3 Chief Lewis returned to the training room towards the end of the Hollis interview.  
4 After the interview was concluded, Chief Lewis made an appointment to visit the Choyce  
5 residence that same day at 1:00 p.m. During the visit to the Choyce residence, the  
6 investigators were informed that Mr. Choyce was a member of the U.S. Army Reserves who  
7 had served two tours of duty in Afghanistan. and was going to be entering the Special Forces  
8 in July or August.<sup>30</sup> At the appointment, the Choyces showed Chief Lewis and Lt. Moody a  
9 silver-colored Dodge Caravan with what appeared to be large blood stains on the front  
10 passenger seat cushion, the lower seat back and under the seat. The Choyces also performed  
11 a demonstration to show the position of the Grievants from the passenger window of their  
12 van, i.e., a photo admitted into evidence shows that the distance was measured as three feet,  
13 nine inches.<sup>31</sup> Mr. Choyce told the investigators that the entire encounter with Medic 3 lasted  
14 approximately 5 minutes. According to Chief Lewis, when asked to provide a recorded  
15 interview, Mr. and Mrs. Choyce reiterated that they would prefer to write written  
16 statements.<sup>32</sup> On this same date, Chief Lewis and Lt. Moody also visited the site of the  
17 incident at approximately mile marker 23 where there is a "turnaround" less than a mile  
18 away. Notes prepared by Chief Lewis sometime between May 30 and June 20 reflect that  
19

20  
21 <sup>29</sup> This complaint, along with a cross complaint filed by Chief Lewis, was referred to an  
22 outside investigator (Cindy Davis) for investigation. In her report, Davis characterizes Delucchi's  
complaint as a complaint of harassment, retaliation, favoritism, and bullying.

23 <sup>30</sup> An obituary presented by the Union reflects that Mr. Choyce, who suffered from post-  
24 traumatic stress disorder, committed suicide on October 6. Prior to his death, Mr. Choyce never  
provided either a written or recorded statement concerning the May 25 incident.

25 <sup>31</sup> The investigators were shown a photo of the stillborn infant taken upon arrival at the  
26 hospital which was also admitted into evidence at the arbitration hearing.

27 <sup>32</sup> Chief Lewis testified that he and Lt. Moody returned to the Choyce residence on June 6  
28 at which time they were told that the couple still wished to pursue their complaint but that they had  
not been able to complete their written statements.

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1 the site visit occurred at 1:30 p.m. Although not captured clearly in photos of the roadway,<sup>33</sup>  
2 testimonial evidence presented by both parties reflects that the Choyce vehicle and Medic 3  
3 were stopped on a shoulder that slopes gradually downward away from the road.

#### 4 **The Chief's Complaint against Delucchi**

5 That same day, at 1:30 p.m.,<sup>34</sup> Chief Lewis filed a complaint against Delucchi alleging  
6 that Delucchi had demanded that the Town Manager and the HR Director be present during  
7 the interviews contrary to the complaint process contained in the labor agreement.<sup>35</sup> The  
8 complaint by Chief Lewis further alleges that Delucchi was attempting to use his role as  
9 Union president to thwart management's ability and his authority to conduct an investigation  
10 of a serious external complaint.<sup>36</sup>

#### 11 **The Town's Decision to Refer Investigation of the Cross Complaints to a Third Party**

12 At the arbitration hearing, Kohbarger testified that once Delucchi filed a complaint  
13 against Chief Lewis, he did not think it would be appropriate to continue as planned with  
14 Chief Lewis in charge of the investigation. Accordingly, on June 7, the Town retained the  
15 services of Strategic HR Partners to investigate the cross complaints of Chief Lewis and  
16 Delucchi.<sup>37</sup> Although not part of the charges before the arbitrator in this proceeding (the  
17 Davis report had not issued when the Town adopted third party recommendations for  
18

19 <sup>33</sup> These photos were also admitted into evidence at the hearing. At his recorded interview,  
20 Hollis described the location of the Choyce vehicle as parked "close to the ditch area."

21 <sup>34</sup> The notes prepared by Chief Lewis reflect that he visited the incident and scene and filed  
22 a complaint against Delucchi simultaneously; however, the record as a whole reflects that charges  
23 were filed by Chief Lewis against Delucchi upon his return from visiting the Choyce home and the  
24 incident scene.

25 <sup>35</sup> This may have been a reference to the lower steps of the grievance procedure but it is not  
26 clear from the record.

27 <sup>36</sup> The third party investigator (Cindy Davis) characterizes Chief Lewis' complaint as a  
28 complaint of bullying and violation of the collective bargaining agreement.

<sup>37</sup> The investigative report prepared by Cindy Davis is part of the record before the  
arbitrator; however, this report does not squarely address the issues to be determined by the  
arbitrator.

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1 termination of both Grievants), the Town introduced the Davis report in an effort to rebut  
2 the Union's allegations of retaliation and unfair treatment. By letter dated December 20, the  
3 Union's attorney was informed that should Delucchi be returned to employment with the  
4 Town, the Town will then notice its intent to terminate Delucchi for violations identified in  
5 the Davis report (that are not before the arbitrator in this proceeding).

#### 6 **The Town's Decision to Refer the Disciplinary Investigation to a Third Party**

7 On June 20, the Town engaged Pat Songer, the Director of Emergency Medical  
8 Services at Humboldt General Hospital, to perform an investigation into the external  
9 complaint made by the Choyces.<sup>38</sup> Kohbarger provided unrebutted testimony that he  
10 contacted attorney Rebecca Bruch who selected Songer without his (Kohbarger's)  
11 participation or involvement and that he (Kohbarger) only talked to Songer after Songer's  
12 report had been completed and Bruch had submitted Songer's final report and  
13 recommendations. Notwithstanding the delegation of the investigation of the incident and  
14 the cross complaints to third parties, it is undisputed that Town Manager Kohbarger did *not*  
15 delegate his authority to make the ultimate decision with respect to whether the Grievants  
16 should be disciplined or discharged.

#### 17 **The Town's Request to Reopen Wages**

18 On June 28, Town Manager Kohbarger, in anticipation of a 4% step increase coming  
19 due under the Agreement, requested that the Union reopen wages due to decreasing  
20 revenues. On July 3, Delucchi responded, in his capacity as Union president, declining to  
21 reopen wages until the 2013 scheduled negotiations. Delucchi's letter challenges the  
22 Town's claim that it was forced by declining revenue to find alternatives to paying the  
23 negotiated increase. In response to the Union's refusal to reopen negotiations, the Town  
24 initiated a discussion regarding potential layoffs. On July 22, the Union issued a press  
25

26 <sup>38</sup> During the third party investigation, no recorded or written statement was ever provided  
27 by Mrs. Choyce who gave her first formal statement in support of her complaint at the hearing  
28 before the arbitrator. As previously noted, Mr. Choyce never gave any written or recorded statement  
prior to committing suicide.

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1 release critical of the Town Manager for having failed to include a scheduled wage increase  
2 in the FY 2012 budget. The press release reflects that union members had agreed to wage  
3 concessions for the past three contracts and questions the need for reducing staffing levels  
4 when no other departments were facing reductions. Responding to what he regarded as an  
5 inaccurate press release and the Union's unwillingness to negotiate concessions, Town  
6 Manager Kohbarger authored an agenda item proposing that the Town Board consider laying  
7 off firefighters in order to save money.

8 In testimony at the hearing, Kohbarger admitted having made the following  
9 statements attributed to him by the Pahrump Valley Times in a July 25 posting:

10 Up to about April of this year, the fire department got a new union president who by  
11 his own words had been meeting with the union presidents in North Las Vegas and  
12 Las Vegas and is following their lead. To heck with the Town, to heck with  
everybody else, we are the Union, we're going to flex our muscles and we are going  
to get what we want.

13 The posting went on to quote Kohbarger to the effect that in the three and a half months since  
14 Delucchi took office, the Union has filed six grievances and that two grievances were already  
15 scheduled to go to arbitration. Kohbarger also drew an unfavorable comparison between  
16 Delucchi and the former union president, i.e., suggesting that the former union president was  
17 willing to come to the table and work things out while the new president (Delucchi) was only  
18 interested in flexing the Union's muscles at the expense of the Town. At the hearing, the  
19 Union introduced a video in which Kohbarger made these same comments regarding  
20 Delucchi to the local television station.

21 During the period from July 19 through July 24, the approximately 29 members of  
22 the bargaining unit, by what the Union characterizes as an "overwhelming" majority, voted  
23 to express their lack of confidence in Fire Chief Lewis. By letter dated September 4, the  
24 Union requested that in the absence of immediate reforms or close oversight by the Pahrump  
25 Town Manager and the Town Board in matters related to public safety, firefighter safety,  
26 treatment of firefighters, and poor morale; Fire Chief Lewis be asked to resign immediately.  
27 Although the Town Board met with the Union to discuss the concerns raised by the vote of  
28 no confidence, the Town Board continued to support Chief Lewis.

1 **The Songer Investigation and Report**

2 Third party investigator Pat Songer testified that he was contacted in late June by  
3 Attorney Rebecca Bruch, initially to review facts and interview witnesses and later to make  
4 recommendations.<sup>39</sup> Songer's resume reflects a 22-year career in emergency medical services  
5 (including five years of experience in law enforcement) but no experience conducting  
6 investigations. As part of his investigation of the Grievants' conduct on the night in question,  
7 Songer reviewed HR records, the Town's policies and procedures and the Nevada  
8 Administrative Code. He also performed interviews of the Grievants and compared the  
9 interviews conducted by him with interviews conducted by Chief Lewis and Lt. Moody.<sup>40</sup> He  
10 did *not* interview Mr. Choyce or Mrs. Choyce because they refused to cooperate or they  
11 could not be contacted.<sup>41</sup> Nor did he interview Mrs. Choyce's mother (Vickie) or Lt. Moody.  
12 Songer produced a draft report which was supplied to Attorney Bruch who, while offering  
13 copious edits, did not recommend any changes in Songer's recommendations.

14 In his report, Songer makes findings concerning the incident based on the notes

15  
16 <sup>39</sup> It is not clear from the record exactly when the change was made in the scope of Songer's  
17 assignment; however, based on the record as a whole, the expanded scope of Songer's assignment  
18 may have related to the growing tension between Town Manager Kohbarger and Delucchi (in his  
capacity as Union president) regarding the issue of the 4% step increase.

19 <sup>40</sup> During these interviews, both Grievants told Songer that in hindsight it would have been  
20 better to tell their supervisor what had happened prior to being requested to write the special  
21 circumstances report. The recordings of the Grievants' interviews (supplied to the Union and  
22 admitted into evidence at the hearing) are contained in five different audio files referred to as  
23 "partial recordings" by Union counsel. The files lack continuity insofar as they do not specifically  
reflect that one file is being ended and a new file opened as would be expected in a formal interview  
process. At the hearing, Songer insisted that he turned over all the recordings he had and did not  
explain why the recordings are contained in separate files.

24 <sup>41</sup> At the hearing, Songer admitted that even after he received the phone number of the  
25 Choyce residence 11 days before he interviewed the Grievants on July 31, he made no effort to  
26 contact Mrs. Choyce in advance of the Grievants' interviews. At the hearing, Delucchi testified that  
27 when he asked Songer why he had not interviewed the Choyces, Songer responded that William  
Kohbarger would not let him due to a possible lawsuit. This statement was denied by both Songer  
28 and Kohbarger on rebuttal and no portion of the partial recordings of the Delucchi interview contain  
the statement attributed to Songer by Delucchi, or any discussion of why the statements of the  
Choyces were not taken

1 prepared by Fire Chief Lewis sometime after his visit to the Choyces' residence on May 31  
2 but prior to June 20 (when responsibility for the investigation was transferred to Songer). A  
3 comparison of the language of the Songer report with the language of Chief Lewis' notes,  
4 considered in tandem with Songer's admission that he never interviewed either Mr. or Mrs.  
5 Choyce, reveals that Songer resolved discrepancies between the hearsay statements of Mr.  
6 and Mrs. Choyce and the direct testimony of the Grievants in the Town's favor based *only*  
7 on what Chief Lewis reported that the Choyces had told him. When questioned about Chief  
8 Lewis' notes by Union counsel at the hearing, Songer first testified that he assumed that the  
9 document identified by Chief Lewis as his notes during his testimony at arbitration, had been  
10 written by the lead investigator Lt. Moody. Later he changed his statement that the notes  
11 were written by either Lt. Moody or Chief Lewis.

12 Songer's report, on its face, contains material misrepresentations. First, the report  
13 states that Mrs. Choyce's statements were *recorded* by Lt. Moody whereas both parties  
14 acknowledge that there is no written or recorded statement by Mrs. Choyce that pre-dates her  
15 testimony at the arbitration hearing. The report also reflects that Mr. Choyce was interviewed  
16 although it is undisputed that Mr. Choyce never gave an interview either by way of a written  
17 or recorded statement. Thus, Songer not only formulated Mrs. Choyce's statements for  
18 purposes of his report based on what was written in Chief Lewis' notes, but he also prepared  
19 a report that does *not* disclose that statements attributed to Mr. and Mrs. Choyce are hearsay  
20 statements. Songer provided no explanation for these material misrepresentations and could  
21 not explain some of his recommendations.<sup>42</sup> Songer admitted that he was shown pictures of  
22 the miscarriage and the bloody car seat by HR but these pictures were not left with him or  
23 mentioned in his report and recommendations.

#### 24 **The Rationale for Songer's Recommendations**

25 In his testimony before the arbitrator, Songer admitted that, under the circumstances

26 \_\_\_\_\_  
27 <sup>42</sup> For example, when questioned as to why he recommended that the Grievants be charged  
28 with intimidation, he could not recall why he had put this recommendation in his report, or any  
evidence that might support such a recommendation.

1 presented here, the Grievants were validly concerned about their own safety;<sup>43</sup> however, he  
2 reasoned that had the Grievants been as scared as they claimed, they would have reported  
3 their concerns in the interest of public safety. Thus, he rejected the Grievants' statements that  
4 they were never able to secure the scene to make it safe enough for them to approach the  
5 female passenger. Songer saw no reason why the Grievants, despite their safety concerns,  
6 should not have been able to "verbally mitigate" the excitement of the husband in order to  
7 move in closer to the Choyces' vehicle to assess the patient.

8 While documenting his report to falsely reflect that Mrs. Choyce's statement was  
9 recorded by Lt. Moody and that Mr. Choyce was interviewed, Songer reached his  
10 conclusions without independently evaluating the credibility of the complainants. Crediting  
11 Chief Lewis' report of what Mr. Choyce told him, i.e., the alleged "not much blood"  
12 comment, Songer also concluded that the Grievants got close enough to Mrs. Choyce such  
13 that their actions should be characterized as patient contact. Thus, he reasoned that the  
14 Grievants owed a duty to provide emergency assistance to the female passenger despite their  
15 safety concerns related to Mr. Choyce's "excited" behavior. Songer concluded that the  
16 Grievants callously refused to provide emergency services to a patient in a life threatening  
17 situation and that they then failed to document the incident to cover up their wrongdoing.

18 At the hearing, Songer also expressed his view that a patient report is required for any  
19 individual who is a subject of an EMS call<sup>44</sup> whether or not transported<sup>45</sup> He insisted that  
20

21 <sup>43</sup> In this regard Songer acknowledged that ambulances are targets for robbery as they  
22 typically carry narcotics.

23 <sup>44</sup> The PVFRS protocols contain the following definition of a patient: "any person who is the  
24 subject of an EMS call." Songer testified that in his opinion flagging down an ambulance  
25 constitutes an EMS call but there is no documentation that supports this interpretation or confirms  
26 that this interpretation was part of the Grievants' training.

27 <sup>45</sup> Songer does not address the Grievants' statements that the offer to transport was made in  
28 an effort to calm Mr. Choyce so that they could safely approach the female passenger; however, at  
the arbitration hearing, he stated that even if the incident occurred exactly as described by both  
Grievants, he would not change his opinion. On the other hand, Kohbarger admitted that if the  
Grievants' version of events is correct, they did *not* have the opportunity to assess Mrs. Choyce.

1 the female passenger became a "patient" as soon as her husband announced that she was  
2 having a miscarriage.<sup>46</sup> Noting that Medic 3 was approximately midway between Summerlin  
3 Hospital (where Mrs. Choyce's doctor wanted her to go) and Pahrump Hospital (which has  
4 no OB Department), Songer further concluded that the Grievants wanted to take Mrs. Choyce  
5 to Pahrump Hospital for their own personal convenience, i.e., because they were on their way  
6 to Pahrump.

7 With regard to his recommendation for termination, Songer further opined that the  
8 Grievants' statements that they had used their best judgment in a difficult situation, as well as  
9 their lack of remorse, signify that there may be repeated poor judgments in the future. He  
10 thus recommended that the Town notify the Medical Director Kevin Slaughter, M.D. for  
11 evaluation of whether he would continue to sponsor their licenses and, assuming withdrawal  
12 of Dr. Slaughter's support, then notification to the licensing agency. Songer recommended  
13 that the Grievants be placed on unpaid administrative leave pending a notice of intent to  
14 terminate their employment. Following his review of Songer's report, Kohbarger presented  
15 the Songer report to Dr. Slaughter.<sup>47</sup>

#### 16 **The Grievants' Unpaid Administrative Leaves**

17 Based on Songer's findings, Dr. Slaughter,<sup>48</sup> in consultation with Chief Lewis and

18  
19 <sup>46</sup> When pressed by Union counsel as to what kind of report could have been made, Songer,  
20 adopting the Grievants' version of events, responded that the Grievants could have reported an  
erratic driver who almost drove them off the road.

21 <sup>47</sup> Kohbarger testified that at the time he accepted Songer's report he did *not* know that the  
22 driver and passenger of the vehicle had not provided recorded or written statements, i.e., insisting  
23 that he first learned that no statements were ever given by either Mr. or Mrs. Choyce during the  
investigation at the time of the arbitration hearing. Union president Justin Snow likewise testified  
24 that he only found out that Songer had not interviewed the complainants at the arbitration hearing.

25 <sup>48</sup> Contrary to the testimony of Chief Lewis, Dr. Slaughter testified that he *and* Chief Lewis  
26 decided to end sponsorship of the Grievants' medical licenses. He also testified that either Chief  
Lewis or Lt. Moody gave him a brief outline of the case and told him that the family had filed some  
27 sort of grievance or threat to sue. Dr. Slaughter could not recall whether he was told that Songer  
had not met with the Choyces prior to making his recommendations. Dr. Slaughter did not speak  
28 with the Grievants and was unable to state whether or not he had ever reviewed the incident report  
submitted by the Grievants on May 31, i.e., their first official statements regarding the incident.

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1 without ever speaking directly with either of the Grievants, decided that he could no longer  
2 sponsor the Grievants' licenses effective September 13.<sup>49</sup> In identical letters dated September  
3 13, both Grievants were advised:

4 This is to notify you that the Town of Pahrump received notice of a revocation of your  
5 sponsorship to work under our Medical Director's license, effective September 13,  
6 2012. The EMS Medical Director for Pahrump Valley Fire-Rescue Service gave this  
7 notice based on the findings of a third-party investigation into the events that occurred  
8 on or about May 25, 2012, involving James and Brittney Choyce.

9 The Town of Pahrump Personnel Policy, under 3.23. (3) of the *License/Occupational*  
10 *Certification* policy, states, "In the event the employee does not have a valid license,  
11 certificate, permit, or occupational certification, s/he does not meet the job  
12 requirements. Failure to meet the job requirement will result in termination."

13 Because your sponsorship has been revoked, you do not meet the job requirements,  
14 therefore, you are being placed on unpaid Administrative Leave per the Town of  
15 Pahrump Personnel Policy 11.1.4. *Administrative Leave* pending notice of intent to  
16 terminate.

17 This letter was presented at a meeting on September 14.<sup>50</sup>

### 18 The Meeting of September 14, 2012

19 A meeting was held on September 14 attended by the Grievants, Town Manager  
20 Kohbarger, Union President-elect Justin Snow, HR Director Bostwick, and union  
21 representative Nate Alexander to discuss the third party report prepared by Songer.  
22 Kohbarger explained that the recommendation of the third party investigator was to terminate  
23 based on numerous policy violations. At this meeting, Kohbarger also announced that Dr.  
24 Slaughter had decided, as reflected in an e-mail dated September [13], to withdraw his

25 <sup>49</sup> According to Kohbarger, Dr. Slaughter told him, "you have to terminate." In his  
26 testimony, Dr. Slaughter was clearly concerned that based on his discussions with Chief Lewis, the  
27 Grievants' conduct had put the Town, as well as Dr. Slaughter's medical license, at risk.

28 <sup>50</sup> At the hearing, Kohbarger admitted that when the Grievants were placed on unpaid  
administrative leave, they still had valid licenses which had not been revoked by the State of  
Nevada. Consistent with NAC 450B.505.4(b), the Medical Director is empowered to recommend  
revocation of the license to the Health Division and suspend an employee pending review and  
evaluation by the Health Division. Documents submitted post-hearing by the Town reflect that on  
October 1, 2013, the Grievants were separately notified in writing that their licenses were being  
revoked based on an investigation which included review of transcripts of the arbitration hearings  
dated August 12 and 13 and September 13, 2013. As reflected in the Union's post-hearing  
submission, the Grievants have appealed the revocations and the hearing of their appeals is being  
delayed pending receipt of the arbitrator's decision.

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1 sponsorship of the Grievants' medical licenses. At this meeting, Kohbarger further explained  
2 that he would be forwarding the Songer report to the Nevada state licensing authority. The  
3 Grievants protested this action stating that they were being terminated for having exercised  
4 their best judgment in a situation for which there was no protocol.<sup>51</sup> At the time of this  
5 meeting, the Grievants had not yet seen the Songer report.<sup>52</sup>

#### 6 **The Notices of Intent to Terminate**

7 On September 18, the Grievants were notified in writing of Town Manager  
8 Kohbarger's intent to terminate their employment based on Dr. Slaughter's revocation of  
9 sponsorship and the findings of the third-party investigator (Songer). Attached to the Notice  
10 of Intent is a copy of the Songer report, as well as an e-mail from Dr. Slaughter. The Notice  
11 alleges violations of Town policies: conduct unbecoming an employee, falsification of  
12 records, actual or threatened physical violence including but not limited to intimidation; and  
13 dishonesty and wilful violation of policy. The Notice also alleges violations of PVFRS rules  
14 and regulations: negligence or indifference in the performance of duty; falsification of  
15 records and wilful and flagrant disregard for reporting and documenting, as well as violation  
16 of EMS protocols.<sup>53</sup>

#### 17 **The Pre-hearing Conference on September 25**

18 A pre-hearing conference was held on September 25 at the Town Manager's office.

19  
20 <sup>51</sup> At the hearing, there was no policy or protocol presented by the Town that provides  
21 guidance on how firefighter personnel are supposed to conduct themselves when citizens flag down  
an ambulance.

22 <sup>52</sup> At the conclusion of this meeting, President-elect Snow requested the report and all other  
23 relevant documents.

24 <sup>53</sup> Section 2.03.01 of the Rules of Conduct of the PVFRS lists offenses which may result in  
25 discipline up to and including termination as follows: insubordination; theft of property; conviction  
26 of a felony; negligence or indifference in the performance of duty; conduct unbecoming a member  
27 of the Department; disrespect toward an officer of the Department; failure to follow a direct order  
28 by a higher ranking officer; falsification or destruction of records, reports or documents; being  
under the influence of alcohol or illicit drugs while on duty, physical violence towards another  
member of the Department and any flagrant violation of the Department's Rules and Regulations or  
Standard Operating Guidelines.

Following the pre-hearing conference, Kohbarger concluded that the investigation disclosed actions sufficiently egregious to warrant termination without progressive discipline and he made the decision to uphold the terminations effective October 2.<sup>55</sup> He also admitted that although both men had raised concerns about scene safety, he did not ascertain what, if anything, firefighters are taught with regard to scene safety. On or about December 7, Kohbarger reported the outcome of the investigation to the state of Nevada Health Division (Emergency Medical Services). Kohbarger also revealed that Dr. Slaughter had at some point

27           <sup>55</sup> In his testimony before the arbitrator, Kohbarger emphasized that Chief Lewis had no  
28     impact on the decision.

1 obtained the records from Summerlin Hospital pertaining to the incident in question.<sup>56</sup>

## 2 **The Filing of the Grievance**

3 On October 2, the Union grieved the terminations claiming violations of Article 4  
4 (Safety and Health); Article 6 (Prevailing Rights); Article 7 (Non-discrimination); Article 21  
5 (Rules, Regulations and Department Standard Operating Procedures and Article 22  
6 (Progressive and Corrective Disciplinary Action). At the Step 3 meeting on October 16,  
7 Town Manager Kohbarger asked the Grievants and their representative Justin Snow to  
8 explain how, once Dr. Slaughter "revoked" their licenses, they would be able to continue  
9 working in their former positions. He also asked them to explain what authority he would  
10 have to override the recommendation of a third party investigator where the parties had  
11 "agreed" to an outside investigation.<sup>57</sup> At the conclusion of the meeting, Kohbarger  
12 indicated that he would issue his decision within seven (7) business days as required by the  
13 contract. By letter dated October 16, Kohbarger, after reviewing the Union's evidence and  
14 speaking with Dr. Slaughter and Pat Songer, denied the Union's grievance. Thereafter, the  
15 Union demanded arbitration and this hearing followed.

## 16 **The Testimony of Mrs. Choyce at the Arbitration Hearing**

17 When an ultrasound (undergone by Mrs. Choyce prior to May 25) revealed no fetal  
18 heartbeat, an appointment was made for surgical removal of the fetal remains for May 26 at  
19 10:15 a.m. at Summerlin Hospital in Las Vegas;<sup>58</sup> however, on the evening of May 25, she  
20 developed cramping and bleeding and, pursuant to the instructions she had received from her  
21 attending physician, she was being driven by her husband to Las Vegas. Mrs. Choyce

22 \_\_\_\_\_  
23 <sup>56</sup> No records regarding Mrs. Choyce's condition during times material to this case were  
24 introduced by either party. Assuming that Dr. Slaughter reviewed any medical records, these records  
were not supplied to the Union or produced at arbitration.

25 <sup>57</sup> The Union has always disputed that they ever entered into any such agreement.

26 <sup>58</sup> Mrs. Choyce explained that she underwent a procedure to make the delivery easier  
27 (insertion of seaweed) but it put her into labor. She also indicated that the doctor had told her that  
28 if she had the baby on her own, she was going to hemorrhage, i.e., a fact which she alleges that her  
husband reported to the Grievants.

1 confirmed that while on route to the hospital from their home in Pahrump,<sup>59</sup> she delivered a  
2 stillborn child with heavy bleeding. A few minutes later, Mr. Choyce spotted Medic 3,  
3 turned around to head back to Pahrump, and came alongside the ambulance gesturing at the  
4 driver to pull over.

5 Mrs. Choyce described what occurred as the Grievants stood between the ambulance  
6 and the hood of her vehicle and she listened with the windows down on both the driver and  
7 passenger side of the vehicle. According to Mrs. Choyce, her husband told "the medics" that  
8 she had just delivered and was hemorrhaging. She yelled out the window crying, "please  
9 come. Just look at me. Please come." She recalled that, in response to her request for  
10 assistance, the Grievants kept telling her husband to calm down while stating that there was  
11 nothing they could do because they were in Clark (as opposed to Nye) County. Mrs. Choyce  
12 also recalled the Grievants additionally stating that by the time we call somebody to get here,  
13 you could drive yourself to the hospital.

14 In describing her perception that the Grievants were refusing to provide any  
15 emergency services, Mrs. Choyce specifically stated:

16 They kept telling me to calm down, and that's all they kept telling me to do is calm  
17 down. They didn't even literally, like, come up to the window and look at me. They  
just—they were several feet away and they just looked.<sup>60</sup>

18 She then said that if they (the Grievants) would have come a little closer and let me turn on  
19 the light, they would have seen the blood pouring down. As her testimony went on, Mrs.  
20 Choyce changed her statement noting that the Grievants "peeked at her" and that one of the  
21 men just walked around and looked inside and stated that "You're not hemorrhaging. You're  
22 not bleeding that bad. This is normal for delivery of a baby." Mrs. Choyce also confirmed  
23 that there was no light on inside the Choyces' vehicle.

24  
25 <sup>59</sup> Mrs. Choyce testified that at this time she and her husband had a house in Pahrump and an  
26 apartment in Las Vegas but notwithstanding their appointment on May 26, they were at the Pahrump  
house when she began experiencing contractions.

27 <sup>60</sup> This is consistent with Chief Lewis' notes of the May 31 visit to the Choyce residence,  
28 i.e., that the couple demonstrated how close the Grievants were to the passenger window (measured  
as three feet, nine inches).

1 With regard to her husband's demeanor, Mrs. Choyce insisted that her husband was  
2 "not irate" but only "worried" as he could not understand why the Grievants would not help  
3 her and the Grievants kept responding that they would not do anything to help someone in  
4 Clark County.<sup>61</sup> Mrs. Choyce did not recall any offer to transport her. She described the end  
5 of the encounter stating that when the Grievants kept refusing to help, her husband said  
6 "fuck you," spun the tires, and sped off, i.e., turning around and heading back to Las Vegas  
7 where she was eventually treated at Southern Hills Hospital. She did recall that, at the time  
8 of the incident, she was losing consciousness and passed out on the way to the hospital. She  
9 then added that her husband had called the hospital to tell them that she was hemorrhaging  
10 and to have someone waiting. Mrs. Choyce additionally stated that she was told by  
11 unidentified doctors that had the Grievants administered fluids, she would not have lost  
12 consciousness and she would not currently be suffering short term memory loss.<sup>62</sup> When  
13 asked why she never provided a written statement at an earlier time, she responded that she  
14 wasn't ready to talk until the time of the arbitration hearing.<sup>63</sup>

#### 15 **The Investigation by the Health Division**

16 In the state of Nevada, EMTs and Paramedics hold licenses that are issued by the  
17 Health Division. At the request of the Town, an investigation was still being conducted into  
18 the Grievants' conduct on the night in question as of the date of the arbitration hearing. On  
19 October 1, 2013, Chad Weston, Bureau Chief, issued a Notice of Revocation of License  
20

21 <sup>61</sup> Unrebutted testimony from both Delucchi and Hollis reflects that PVFRS crews are in and  
22 out of Clark County on a daily basis. Indeed, Chief Scott Lewis confirmed that PVFRS gets called  
23 on motor vehicle calls and other calls for service where Clark County is unable to get there in a  
timely fashion.

24 <sup>62</sup> No evidence was offered by either party as to whether the Choyces ever filed a claim  
25 against public entity or a lawsuit in connection with the incident other than Dr. Slaughter's  
26 testimony that either Chief Lewis or Lt. Moody gave him a brief outline of the case and told him that  
the family had filed some sort of grievance or threat to sue.

27 <sup>63</sup> The arbitrator notes in passing that this testimony corroborates the testimony of Noe  
28 Martinez that Mrs. Choyce was heard to tell Chief Lewis that she did not want to make a written  
statement during the telephone call on May 30.

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1 based on a review of the transcripts of the first three days of the arbitration hearing which  
2 states in pertinent part:

3 The findings are that EMT- Paramedic (EMT-P) Ray DeLucchi, EMS #11733 and  
4 EMT-Intermediate (EMT-I) Tommy Hollis, EMS # 18568 had a Duty to Act and  
5 there was a Breach of Duty, Negligence and Patient Abandonment on the night of  
6 May 25, 2012 on State Highway 160 at or near Spring Mountain. The two EMS  
7 individuals also failed to complete a patient care report, incident report, notify  
dispatch of patient contact and to notify a superior of an incident because they did not  
want to wake him up and anger him. They failed to act in a manner that any other  
EMS professional in the same situation with the same training, certification and/or  
licensure would have acted.

8 The Grievants have appealed the revocation of their licenses denying that they ever had any  
9 opportunity to assess the patient or provide emergency services due to Mr. Choyce's conduct.

#### 10 POSITION OF THE TOWN

11 The Grievants acted negligently and with wanton disregard for Mrs. Choyce's safety.  
12 The Union cannot successfully argue that scene safety always trumps the Grievants' duty to  
13 the patient.

14 The Town's decision to terminate was reached honestly after an appropriate  
15 investigation. Gross negligence or wanton disregard for the safety of persons or property,  
16 even if a first offense, provides just cause for termination.

17 The Town did not act in an arbitrary fashion or for pretextual reasons. Had the Town  
18 Manager been out to get Mr. Delucchi, he would not have directed that an independent  
19 investigation be performed and the record establishes that the Town Manager never spoke to  
20 the independent investigator until the report was finished. The independent investigator  
21 made credibility determinations that were not favorable to Mr. Delucchi.

22 The failure to report the incident is a further basis for termination and shows that the  
23 Grievants were covering up the incident and, in addition, puts their credibility at issue. The  
24 Grievants' excuses for not reporting the incident are not believable. The Town's protocols  
25 clearly and unequivocally defined Mrs. Choyce as a patient so that there needed to be a report  
26 of the incident.

27 The Grievants could no longer work for the Town in light of the Medical Director's  
28 decision to no longer support the Grievants' licenses. Once Dr. Slaughter decided that he

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1 could no longer sponsor the Grievants to work under his license, the Grievants were no  
2 longer able to meet their job requirements. Based on the third party report and Dr.  
3 Slaughter's decision, Kohbarger was justified in his decision to terminate both Grievants.

#### 4 POSITION OF THE UNION

5 The Grievants acted reasonably and in accordance with their training and did not  
6 violate any rules in connection with the incident on Highway 160. Former Town Manager  
7 Kohbarger conceded that there were no policies or protocols covering the situation faced by  
8 the Grievants and that, in such circumstances, they are to use discretion and exercise their  
9 best judgment.

10 Discrepancies between the Grievants' accounts of the incident and Mrs. Choyce's  
11 account should be resolved in favor of the Grievants, where Mrs. Choyce's memory is  
12 clouded by the traumatic nature of what she experienced. Had Mr. Choyce responded to the  
13 offer to transport his wife to Pahrump Valley Hospital by getting out of his vehicle and  
14 opening the passenger door, instead of speeding away while yelling "fuck you," Mrs. Choyce  
15 would have been assessed and treated by the Grievants.

16 The investigation was neither fair nor objective. The investigation report falsely  
17 suggests that the Choyces were interviewed when, in fact, their hearsay statements were  
18 reported through a report by Chief Lewis and Lt. Moody. Songer's recommendations, some  
19 of which he could not explain, were flawed and dishonest. Mrs. Choyce was not a patient so  
20 as to require completion of a Patient Care Report.

21 The Town lacked just cause for terminating the Grievants under Policy 3.23.2 (3)  
22 Dr. Slaughter only had authority to *recommend* to the Health Division the revocation of the  
23 Grievant's licenses and to *suspend* the Grievants pending review and evaluation by the  
24 Health Division. Dr. Slaughter did not afford the Grievants a hearing.

#### 25 OPINION

26 This is a case in which the parties have two completely different views of what  
27 happened on Highway 160 when, by all accounts, Medic 3 had a brief encounter with the  
28 Choyces. On the one hand, the Town argues that this is a case in which two career

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1 firefighters callously and without regard to their professional responsibilities, refused to  
2 provide emergency assistance to a young woman in a life-threatening situation. On the other  
3 hand, the Union, on behalf of the Grievants, asserts that the Grievants were never given the  
4 opportunity to assess Mrs. Choyce, or to provide treatment, due to the threatening conduct  
5 of Mr. Choyce and his unilateral decision to depart the scene before emergency services  
6 could be safely rendered. In order to decide the issues raised by the grievances, the arbitrator  
7 must determine which of these interpretations more closely parallels what actually happened  
8 at the scene of the incident. In order to make this determination, the arbitrator will begin by  
9 evaluating, based on the testimonial and documentary evidence, how to properly characterize  
10 Mr. Choyce's conduct and demeanor on the night in question.

11 ***The Grievants' description of Mr. Choyce's demeanor is more credible than the***  
12 ***description provided by his widow.***

13 Since Mr. Choyce never provided a statement before committing suicide a few  
14 months after the incident, the most appropriate way for the arbitrator to assess his behavior at  
15 this late date is to focus on the contemporaneous statements of the Grievants, hearsay  
16 statements attributed to Mr. and Mrs. Choyce by Chief Lewis, and Mrs. Choyce's belated  
17 testimony at the arbitration hearing. These are the only sources of evidence which bear  
18 directly on this issue. If the behavior of Mr. Choyce is accurately described by the Grievants  
19 as an out-of-control individual reasonably perceived as a threat, then there is no question that  
20 the Grievants' first priority was to secure the scene in accordance with PVFRS protocol, i.e.,  
21 making scene safety a number one priority. Alternatively, if Mrs. Choyce is accurately  
22 describing her deceased husband's demeanor as merely concerned and non-threatening, then  
23 the Grievants should have been able to move in closer to perform an assessment and provide  
24 emergency services.

25 Given Mrs. Choyce's self-described medical condition (on the verge of passing out  
26 from blood loss) at the time of these traumatic events, her rendition of what occurred on the  
27 night in question (more than a year after the traumatic event) is, at best, unreliable. More  
28 convincing to the arbitrator is the Grievants' testimony (memorialized within a few days of

1 the incident) that, after being almost run off the road on an isolated and dark stretch of  
2 highway, they were immediately suspicious of Mr. Choyce who was acting in an erratic and  
3 aggressive manner, i.e., yelling and screaming profanities and even trying to open the door of  
4 the ambulance. Lending additional support to this conclusion, the record reflects that, after he  
5 was asked to back away from the ambulance and calm down, Mr. Choyce, still in a very  
6 agitated state, jumped back behind the wheel of his vehicle with the engine running (instead  
7 of opening the door on the passenger side of the van as the Grievants would have expected).  
8 In sum, the arbitrator credits the Grievants' testimony that Mr. Choyce was the focus of their  
9 attention and that, until they were able to secure the scene, they were genuinely afraid to  
10 approach Mrs. Choyce in order to assess her medical condition.

11 In the arbitrator's view, the Grievants cannot be faulted for taking one to two minutes  
12 to establish the safe working environment required by the PVFRS EMS protocols prior to  
13 providing emergency services *as required by their training*. Mrs. Choyce's claim that the  
14 Grievants callously ignored her pleas for help (telling her only to calm down) is not  
15 persuasive to the arbitrator. A much more plausible interpretation of the record is that Mrs.  
16 Choyce, in less than a fully alert condition, misunderstood to whom the Grievants were  
17 addressing their remarks, i.e., not realizing that the Grievants were actually directing their  
18 statements to her husband. Moreover, Mr. Choyce was so agitated and loud that any  
19 statements made by Mrs. Choyce would have been inaudible to the Grievants. Under these  
20 circumstances, the Grievants were justifiably preoccupied with calming Mr. Choyce as their  
21 first order of business.<sup>64</sup>

22 ***Mrs. Choyce's overall description of the encounter with Medic 3 lacks credibility.***

23 The single most important discrepancy between Mrs. Choyce's testimony and the  
24 testimony of the Grievants is her assertion that she engaged with the Grievants, asked for

25  
26 <sup>64</sup> With the benefit of hindsight and a fully developed record, it is easy to understand why  
27 Mr. Choyce would have been upset having elected to stay at the Pahrump house rather than their Las  
28 Vegas apartment on the eve of a scheduled surgery; having failed to call an ambulance when his  
wife went into labor; and having witnessed the birth of a stillborn baby in the passenger seat of a  
vehicle that he was driving in a remote area.

1 help, and was denied assistance.<sup>65</sup> This is in sharp contrast to the Grievants' assertions that  
2 they engaged only with Mr. Choyce whose threatening demeanor, including his yelling and  
3 screaming, prevented them from taking the initial step of assessing Mrs. Choyce's medical  
4 condition.

5 When Mrs. Choyce finally gave a formal statement<sup>66</sup> at the arbitration hearing on  
6 August 13, 2013, she provided inconsistent testimony with respect to the pivotal issue of  
7 whether or not the Grievants interacted with her or made any assessment of her condition.  
8 On the one hand, she initially insisted that the Grievants never approached the passenger  
9 window of the car (they didn't come and look at me; they were several feet away; if they  
10 would have come, I could have turned on the interior light and they would have seen the  
11 blood loss) but later stated that the Grievants "peeked in" and commented that the amount of  
12 blood she was losing was normal in childbirth. It is impossible to reconcile Mrs. Choyce's  
13 claim that the Grievants would not come and look at her with the contradictory claim that  
14 they "peeked in" and made a judgment as to the severity of her blood loss. Nor is there any  
15 evidence that the Grievants would have been able to view large blood stains on the front  
16 passenger seat cushion, the lower seat back and under the seat from their vantage point  
17 almost four feet (using the measurement as reported by Chief Lewis) from the passenger  
18 window of a vehicle parked on a sloping shoulder.<sup>67</sup> Weighing Mrs. Choyce's inconsistent  
19

20 <sup>65</sup> Mrs. Choyce's claim that the Grievants were unwilling to assist her because they were  
21 outside their jurisdiction is equally unconvincing. Unrebutted testimony from the Grievants,  
22 corroborated by Chief Lewis, demonstrates that Medic 3 routinely operates in Clark County.

23 <sup>66</sup> The telephone conference on May 30 and conversations that occurred between the couple  
24 and the investigators during the visits to the Choyce residence on May 31 and June 6 do not rise to  
25 the level of formal statements in written or recorded format.

26 <sup>67</sup> In resolving this discrepancy in favor of the Grievants, the arbitrator notes that these same  
27 internal inconsistencies were also present in the account presented to Chief Lewis by Mr. Choyce  
28 during the initial visit to the Choyce residence, i.e., his assertion that the Grievants were almost four  
feet (three feet, nine inches) away from the passenger window but were still able to see into the  
dark interior of the Choyces' vehicle in order to evaluate the severity of blood loss. There is no  
indication that this discrepancy was noted by the investigators (Lewis and Moody) prior to turning  
the investigation over to Songer.

1 statements at the time of hearing against the consistent statements of both of the Grievants  
2 (who continued to explain in multiple interviews from May 31, 2012 to the time of the  
3 arbitration hearing that they never had the opportunity to assess Mrs. Choyce), the arbitrator  
4 must credit the Grievants' testimony.

5 Where the Grievants were standing several feet away from the car (whether five to ten  
6 feet as described by the Grievants or three feet, nine inches as initially described by the  
7 Choyces), they were in no position to assess Mrs. Choyce's medical condition. By all  
8 accounts, Mrs. Choyce's blood loss and the remains of her stillborn child (as well as any  
9 portion of her lap) could not possibly have been visualized by the Grievants through the  
10 passenger-side window from their location outside the vehicle. Simply stated, the weight of  
11 the evidence demonstrates that the Grievants could not hear Mrs. Choyce's statements nor  
12 could they see what was going on inside the vehicle during the 1-2 minutes that they were  
13 attempting to calm her husband.

14 Similarly, Mrs. Choyce's insistence that her husband was *not* irate but only worried  
15 does not have the ring of truth where, as here, it is undisputed that he uttered profanities,  
16 placed the car in drive, spun the tires and sped off in response to the Grievants' unsuccessful  
17 efforts to calm him. Her insistence that her husband was not angry is also contradicted by  
18 Chief Lewis' notes, i.e., documenting that Mr. Choyce (when he heard the offer of taking his  
19 wife to Pahrump) became *angrier* (suggesting that he was already angry earlier on in the  
20 encounter). Where Mr. Choyce had already demonstrated his propensity for using his  
21 vehicle in an extremely aggressive manner to force Medic 3 to pull over, it was reasonable  
22 for the Grievants to fear further actions Mr. Choyce might take as he sat behind the wheel  
23 with the engine running and continued to scream, yell, and use profanity.

24 In sum, a review of all the documentary and testimonial evidence leads the arbitrator  
25 to conclude that the allegations made by the Choyces against the Grievants lack credibility.  
26 Both of the Grievants have, with great consistency and on multiple occasions, provided the  
27 same account of how an agitated male driver prevented them from getting close enough to  
28 assess a female passenger and then sped away before they could get the male driver under

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1 control and out of the vehicle for their own safety. Weighing the testimony of Mrs. Choyce,  
2 a traumatized victim who declined to memorialize her statement at or around the time of the  
3 incident, against the testimony of two career firefighters with good work records and no  
4 previous complaints, the arbitrator credits the Grievants' testimony, i.e., that Mr. Choyce  
5 presented genuine safety concerns that needed to be addressed before they could engage with  
6 Mrs. Choyce. In the arbitrator's judgment, the Grievants were acting in accordance with  
7 PVFRS protocols that require that firefighters treat scene safety as a number one priority  
8 when Mr. Choyce made his snap decision to terminate the encounter. Under these  
9 circumstances, the arbitrator determines that the Town has not met its burden of establishing  
10 that the Grievants callously failed to perform their duty to render emergency services, acted  
11 negligently, or otherwise violated EMS protocols.

12 *Neither the third party investigator nor the PVFRS Medical Director provided an  
independent evaluation supported by cogent and reliable evidence.*

13 Kohbarger, in making the final decision to terminate the Grievants' employment,  
14 relied on a third party report that failed to independently evaluate the credibility of the  
15 complaining witnesses whose hearsay statements form the basis for the allegations of  
16 misconduct.<sup>68</sup> The third party report prepared by Songer intentionally misrepresents that  
17 Mrs. Choyce's statement was recorded by Lt. Moody and that Mr. Choyce was interviewed,  
18 i.e., statements which are conceded by both parties to be false and inaccurate. At the  
19 hearing, the third party investigator (Songer) confirmed that, in preparing his report, he had  
20 used Chief Lewis' notes to attribute hearsay statements to the complaining witnesses as if he  
21 had gathered the statements directly during his own interviews. A report that covertly relies  
22 on hearsay statements by management to determine the complainants' version of events can  
23 hardly be deemed a fair and objective report by a disinterested third party.

24 Further diminishing the legitimacy of his report, Songer never resolved factual  
25

26 <sup>68</sup> Kohbarger's statement that he did not know that the Choyces had not been interviewed  
27 until the time of the arbitration hearing lacks credibility where he admits having spoken to Songer  
28 about the report after it was submitted and prior to making the decision to deny the Union's  
grievances.

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1 discrepancies or explained how he derived his ultimate conclusions from the testimonial  
2 and/or documentary evidence. Specifically, Songer did not address the inconsistencies raised  
3 by contradictory claims that the Grievants would not come closer than three feet nine inches  
4 from the window but yet were able to assess the amount of blood loss through the  
5 passenger-side window from a distance. Songer's conclusion that the Grievants should have  
6 been able to use their verbal skills to bring Mr. Choyce under control and move in for a closer  
7 look at Mrs. Choyce is nothing more than Monday morning quarterbacking unsupported by  
8 any persuasive evidence, especially where he did *not* independently assess the credibility of  
9 the complainants. His further conclusion that the Grievants wanted to transport Mrs. Choyce  
10 to Pahrump for their own personal convenience (even though the Grievants were nowhere  
11 near the end of their 24-hour shift) is also pure speculation with no evidentiary basis.  
12 Despite his extensive background in emergency medical services, Songer failed to adequately  
13 reconcile the Grievant's training regarding the priority to be given to scene safety with his  
14 conclusion that the Grievants failed to perform their duty.

15 Further detracting from the credibility of the Town's case against the Grievants is the  
16 undisputed fact that the decision to end the sponsorship of the Grievants' medical licenses  
17 was made by Dr. Slaughter *and* Chief Lewis, as confirmed by Dr. Slaughter. Where Chief  
18 Lewis participated in the decision to revoke sponsorship of the Grievants' licenses and his  
19 notes were the sole source of all of the statements attributed to the complaining parties by  
20 Songer, the arbitrator cannot accept Kohbarger's testimony that Chief Lewis had no impact  
21 on his decision to terminate the Grievants' employment. These facts seriously undermine the  
22 Town's argument that Chief Lewis was removed from any influential role in the investigation  
23 and that Kohbarger's final decision to terminate was based on the conclusions of a fair and  
24 objective third party investigator and the Town's Medical Director.<sup>69</sup>

25 In sum, both Town Manager Kohbarger and Dr. Slaughter relied on a report with  
26

27 <sup>69</sup> Based on the Songer report and his understanding that the Choyces were taking some  
28 form of legal action, Dr. Slaughter, by his own admission, was concerned about his own medical  
license.

1 material misrepresentations and unaddressed inconsistencies. Kohbarger and Dr. Slaughter  
2 discredited the Grievants' statements either based on what they mistakenly believed was  
3 direct evidence from the complaining parties, or without making a professional evaluation of  
4 the quality of Songer's evidence. Under these circumstances, the arbitrator must conclude  
5 that the Town's decision-making process for withdrawing sponsorship of the Grievants'  
6 licenses and terminating their employment was tainted by a report that, while purporting to be  
7 an independent evaluation, merely adopted the findings of Chief Lewis without collecting  
8 pertinent additional evidence or weighing the credibility of the complaining witnesses.

9 *The Grievants were denied due process.*

10 Consistent with Article 22, Section 2 of the Agreement, the Town's Personnel  
11 Policies (Disciplinary Actions and Appeals) provides as follows:

12 Prior to taking disciplinary action involving suspension or termination against any  
13 regular employee, the Town of Pahrump will take action intended to insure that the  
employee is afforded due process.

14 By referring the investigation out to a third party, the Town cannot escape its obligation to  
15 insure that employees receive notice of what they are being charged with and an opportunity  
16 to refute the allegations. When the Grievants were initially placed on unpaid administrative  
17 leave, they had not seen the Songer report, thus limiting their ability to refute its allegations.  
18 Later, when they were notified of the Town's intent to terminate them, they were then  
19 furnished with a report that misrepresented the facts surrounding the investigation, failed to  
20 include evidence that was reviewed by Songer (e.g., the photograph of the stillborn baby),  
21 based its conclusions largely on hearsay evidence supplied by management, and provided no  
22 explanation as to why hearsay allegations were deemed more credible than the Grievants'  
23 statements. This procedural defect is not cured by putting forth the only direct evidence that  
24 arguably supports disciplinary action (Mrs. Choyce's direct testimony) at the time of the  
25 arbitration hearing.

26 *Under the circumstances presented here, the Grievants were not required to make a special  
27 circumstance report or to report a patient contact.*

28 There are no written policies, directives, or protocols which require the filing of a

1 special circumstance report, or that specify when such a report must be completed. Similarly,  
2 no evidence was presented by the Town that firefighters are taught that any specific  
3 circumstances trigger a duty to file a special circumstance report, or that there are prescribed  
4 time lines which apply to such filings. Rather, the weight of the evidence establishes that  
5 special circumstance reports are either discretionary or at the direction of a supervisor.  
6 Thus, there is no evidentiary basis for a finding that the Grievants knew or should have  
7 known that a report had to be filed at any time, much less during the same 24-hour shift as  
8 the occurrence. The Grievants' after-the-fact acknowledgment that in hindsight it would have  
9 been better to report this matter to their lieutenant does not change the arbitrator's opinion,  
10 i.e., that in order to sustain a discipline for failure to make a report, an employer must prove  
11 that the Grievants knew or should have known that the failure to file a report at the time of  
12 the incident would jeopardize their continued employment.

13 With regard to the Grievants' failure to file a report of patient contact, the arbitrator is  
14 not convinced that this was improper under the circumstances. The Town's argument that  
15 the Grievants had a legal duty to report their contact with Mrs. Choyce, a patient, is belied  
16 by the NAC 450B.180 which defines a patient as:

17 any person who is sick, injured, wounded, or otherwise incapacitated or helpless and  
18 who is carried in an ambulance or air ambulance or is cared for at the scene of an  
emergency by a basic, intermediate or advanced emergency medical technician.

19 Under this definition and crediting the Grievants' testimony, Mrs. Choyce does not meet  
20 either the "transport" or "treatment" criteria. Moreover, the Agreement specifically provides  
21 that the Town shall comply with all standards, laws, regulations and ordinances relating to  
22 the fire department, i.e., incorporating the NAC standard into the Agreement. Assuming  
23 arguendo that a patient is defined as "anyone who is the subject of an EMS call," there is still  
24 no evidence that the Grievants knew or should have known that there was an obligation to  
25 file a report where they performed no assessment and provided no transport or treatment.

26 Finally, the Grievants testified that it was their usual custom and practice to see the  
27 lieutenant at Station 1 prior to leaving at the end of their shifts. Unrebutted testimony was  
28 presented by the Union that their lieutenant was not present on the morning of May 25 as he

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1 had gone home early after working double shifts. When the Grievants returned to work after  
2 four days off, they were immediately asked to file a special circumstances report which they  
3 did. Where there are no "published" time lines that apply to the filing of a special  
4 circumstance report, it cannot be found that the Grievants never intended to make either an  
5 oral or written report of the incident.

6 The allegation that the failure to file a report was part of a cover-up only makes sense  
7 if you accept that the Grievants callously and with reckless disregard for Mrs. Choyce's well-  
8 being failed to render emergency services. As explained herein, the arbitrator does not accept  
9 this interpretation. To the contrary, the Grievants, when faced with a challenging and novel  
10 situation for which they had received no training, acted reasonably and used their best  
11 judgment in an effort to secure the scene before approaching the female passenger. The  
12 refusal of the male driver Choyce to calm down (or get out from behind the wheel of a  
13 running vehicle) and his decision to speed away from the scene were circumstances beyond  
14 the control of the Grievants. Thus, the arbitrator rejects Songer's unsubstantiated theory that  
15 the Grievants failed to report the incident in order to conceal wrongdoing. For all of these  
16 reasons, the Town has failed to establish that the Grievants knew, or should have known, that  
17 they were required to report the incident to their lieutenant, NHP, or some other authority at  
18 the time of its occurrence.

### 19 CONCLUSION

20 Where the Grievants were never given an opportunity to assess Mrs. Choyce or  
21 provide treatment due to circumstances beyond their control, they cannot be justly  
22 terminated for failure to provide emergency services. In accordance with Article 4, Section 1  
23 of the Agreement and PVFRS EMS protocols, the Town cannot expect its firefighters to  
24 assess and perform emergency services in an unsafe working environment, i.e., in close  
25 proximity to a distraught and angry individual behind the wheel of a running vehicle.  
26 Moreover, the weight of the evidence establishes that the filing of special circumstance  
27 reports are either discretionary, or at the direction of a supervisor. Nor is there any  
28 persuasive evidence that the Grievants knew or should have known that a patient contact

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1 report was required to be filed under these circumstances. Neither Songer's report, nor Dr.  
2 Slaughter's decision to withdraw his sponsorship of the Grievants' licenses, serves to alter  
3 the arbitrator's conclusions. In reaching these conclusions, the arbitrator has not failed to  
4 note that the Grievants' licenses were ultimately revoked while this matter was still pending  
5 based on Mrs. Choyce's allegations; however, the Health Division hearing officer has not yet  
6 made an evaluation of evidence presented at a hearing. Due to the Town's failure to  
7 establish just cause for termination, it is not necessary for the arbitrator to reach the issue of  
8 whether the Grievants' terminations were in retaliation for Delucchi's union activities.<sup>70</sup>

9 Based on the foregoing findings and conclusions, the following award is made:

#### 10 AWARD

11 The grievances are granted.

12 There was no just cause for the Grievants' terminations.

13 The Grievants are to be reinstated to their former positions upon presentation of valid  
14 licenses.

15 The Grievants are to be made whole for the loss of wages and benefits from the  
16 initiation of their unpaid leave of absence on September 14, 2012 up to and including the date  
17 of revocation of their licenses on October 1, 2013.

18 If the Grievants' license revocations are set aside, they are to be reinstated and made  
19 whole for loss of wages and benefits for the period from October 1, 2013 to the date of their  
20 reinstatements to PVFRS employment.

21 Pursuant to the Article 25, Section 5 (the prevailing party clause of the Agreement),  
22 the Town shall be solely responsible for the payment of the arbitrator's fees and expenses.

23 The arbitrator retains jurisdiction over implementation of the award.

24 January 5, 2014

  
CATHERINE HARRIS, Arbitrator

25  
26  
27  
28 <sup>70</sup> The provisional limitation on the arbitrator's make-whole remedy flows from the October 1, 2013 revocation of their licenses which is subject to the outcome of the Grievants' appeals.

## **EXHIBIT “9”**

Senate Bill No. 286—Senators Jones,  
Segerblom, Kihuen; and Ford

CHAPTER.....

AN ACT relating to civil actions; providing immunity from civil action for certain claims based on the right to petition and the right to free speech under certain circumstances; establishing the burden of proof for a special motion to dismiss; providing for the interlocutory appeal from an order denying a special motion to dismiss; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law establishes certain provisions to deter frivolous or vexatious lawsuits (Strategic Lawsuits Against Public Participation, commonly known as "SLAPP lawsuits"). (Chapter 387, Statutes of Nevada 1997, p. 1363; NRS 41.635-41.670) A SLAPP lawsuit is characterized as a meritless suit filed primarily to discourage the named defendant's exercise of First Amendment rights. "The hallmark of a SLAPP lawsuit is that it is filed to obtain a financial advantage over one's adversary by increasing litigation costs until the adversary's case is weakened or abandoned." (*Metabolic Research, Inc. v. Ferrell*, 693 F.3d 795, 796 n.1 (9th Cir. 2012))

The Ninth Circuit Court of Appeals recently held that the provisions of NRS concerning such lawsuits only protect communications made directly to a governmental agency. The Ninth Circuit also held that, as written, these provisions of NRS provide protection from liability but not from trial. That distinction, when coupled with the lack of an express statutory right to an interlocutory appeal, led the court to conclude that these provisions of NRS do not provide for an immediate appeal of an order denying a special motion to dismiss a SLAPP lawsuit. (*Metabolic*, at 802)

Existing law provides that a person who engages in good faith communication in furtherance of the right to petition is immune from civil liability for claims based upon that communication. (NRS 41.650) **Section 2** of this bill expands the scope of that immunity by providing that a person who exercises the right to free speech in direct connection with an issue of public concern is also immune from any civil action for claims based upon that communication.

Existing law defines certain communications, for purposes of statutory provisions concerning SLAPP lawsuits, as communications made by a person in connection with certain governmental actions, officers, employees or entities. (NRS 41.637) **Section 1** of this bill includes within the meaning of such communications those that are made in direct connection with an issue of public interest in a place open to the public or in a public forum. **Section 3** of this bill establishes the burden of proof for a dismissal by special motion of a SLAPP lawsuit. **Section 3** reduces from 30 days to 7 judicial days the time within which a court must rule on a special motion to dismiss.

Existing law requires, under certain circumstances, an award of reasonable costs and attorney's fees to the person against whom a SLAPP lawsuit was brought if a court grants a special motion to dismiss. (NRS 41.670) **Section 4** of this bill authorizes, in addition to an award of costs and attorney's fees, an award of up to \$10,000 if a special motion to dismiss is granted. **Section 4** also provides that if a court finds that a special motion to dismiss was frivolous or vexatious, the court shall award the prevailing party reasonable costs and attorney's fees and may award



an amount of up to \$10,000 and any such additional relief as the court deems proper to punish and deter the filing of frivolous or vexatious motions.

EXPLANATION - Matter in *bolded italics* is new; matter between brackets ~~(omitted material)~~ is material to be omitted.

---

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

**Section 1.** NRS 41.637 is hereby amended to read as follows:

41.637 "Good faith communication in furtherance of the right to petition ~~{ }~~ *or the right to free speech in direct connection with an issue of public concern*" means any:

1. Communication that is aimed at procuring any governmental or electoral action, result or outcome;

2. Communication of information or a complaint to a Legislator, officer or employee of the Federal Government, this state or a political subdivision of this state, regarding a matter reasonably of concern to the respective governmental entity; ~~{or}~~

3. Written or oral statement made in direct connection with an issue under consideration by a legislative, executive or judicial body, or any other official proceeding authorized by law ~~{ }~~; *or*

4. *Communication made in direct connection with an issue of public interest in a place open to the public or in a public forum,*  
→ which is truthful or is made without knowledge of its falsehood.

**Sec. 2.** NRS 41.650 is hereby amended to read as follows:

41.650 A person who engages in a good faith communication in furtherance of the right to petition *or the right to free speech in direct connection with an issue of public concern* is immune from any civil ~~liability~~ *action* for claims based upon the communication.

**Sec. 3.** NRS 41.660 is hereby amended to read as follows:

41.660 1. If an action is brought against a person based upon a good faith communication in furtherance of the right to petition ~~{ }~~ *or the right to free speech in direct connection with an issue of public concern:*

(a) The person against whom the action is brought may file a special motion to dismiss; and

(b) The Attorney General or the chief legal officer or attorney of a political subdivision of this State may defend or otherwise support the person against whom the action is brought. If the Attorney General or the chief legal officer or attorney of a political subdivision has a conflict of interest in, or is otherwise disqualified from, defending or otherwise supporting the person, the Attorney General or the chief legal officer or attorney of a political



subdivision may employ special counsel to defend or otherwise support the person.

2. A special motion to dismiss must be filed within 60 days after service of the complaint, which period may be extended by the court for good cause shown.

3. If a special motion to dismiss is filed pursuant to subsection 2, the court shall:

(a) ~~{Treat the motion as a motion for summary judgment;}~~  
*Determine whether the moving party has established, by a preponderance of the evidence, that the claim is based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern;*

(b) *If the court determines that the moving party has met the burden pursuant to paragraph (a), determine whether the plaintiff has established by clear and convincing evidence a probability of prevailing on the claim;*

(c) *If the court determines that the plaintiff has established a probability of prevailing on the claim pursuant to paragraph (b), ensure that such determination will not:*

(1) *Be admitted into evidence at any later stage of the underlying action or subsequent proceeding; or*

(2) *Affect the burden of proof that is applied in the underlying action or subsequent proceeding;*

(d) *Consider such evidence, written or oral, by witnesses or affidavits, as may be material in making a determination pursuant to paragraphs (a) and (b);*

(e) *Stay discovery pending:*

(1) *A ruling by the court on the motion; and*

(2) *The disposition of any appeal from the ruling on the motion; and*

~~{(e)}~~ (f) *Rule on the motion within ~~{30}~~ 7 judicial days after the motion is ~~{filed}~~ served upon the plaintiff.*

4. If the court dismisses the action pursuant to a special motion to dismiss filed pursuant to subsection 2, the dismissal operates as an adjudication upon the merits.

**Sec. 4.** NRS 41.670 is hereby amended to read as follows:

41.670 1. If the court grants a special motion to dismiss filed pursuant to NRS 41.660:

~~{(a)}~~ (a) The court shall award reasonable costs and attorney's fees to the person against whom the action was brought, except that the court shall award reasonable costs and attorney's fees to this State or to the appropriate political subdivision of this State if the



Attorney General, the chief legal officer or attorney of the political subdivision or special counsel provided the defense for the person pursuant to NRS 41.660.

~~{2-}~~ (b) *The court may award, in addition to reasonable costs and attorney's fees awarded pursuant to paragraph (a), an amount of up to \$10,000 to the person against whom the action was brought.*

(c) The person against whom the action is brought may bring a separate action to recover:

- ~~{(a)}~~ (1) Compensatory damages;
- ~~{(b)}~~ (2) Punitive damages; and
- ~~{(c)}~~ (3) Attorney's fees and costs of bringing the separate action.

2. *If the court denies a special motion to dismiss filed pursuant to NRS 41.660 and finds that the motion was frivolous or vexatious, the court shall award to the prevailing party reasonable costs and attorney's fees incurred in responding to the motion.*

3. *In addition to reasonable costs and attorney's fees awarded pursuant to subsection 2, the court may award:*

- (a) *An amount of up to \$10,000; and*
- (b) *Any such additional relief as the court deems proper to punish and deter the filing of frivolous or vexatious motions.*

4. *If the court denies the special motion to dismiss filed pursuant to NRS 41.660, an interlocutory appeal lies to the Supreme Court.*



## **EXHIBIT “10”**

RECEIVED  
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TRANSCRIPT OF PROCEEDINGS

RE GRIEVANCES OF

TOMMY HOLLIS

AND

RAYMOND DELUCCHI

September 13, 2013

10:00 A.M.

3770 Howard Hughes Parkway

Suite 200

Las Vegas, Nevada

Reported by: Jennifer A. Clark, RDR, CRR, CCR #422

## 1 APPEARANCES:

2 For the Town of Pahrump:

3 RICHARD G. CAMPBELL, JR., ESQ.  
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11 For the Grievants Tommy Hollis and Raymond Delucchi:

12 ADAM LEVINE, ESQ.  
13 LAW OFFICES OF DANIEL MARKS  
14 530 South Las Vegas Boulevard  
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19 The Arbitrator:

20 CATHERINE HARRIS, ESQ.  
21 5960 South Land Park Drive  
22 Suite 255  
23 Sacramento, California 95822-3313  
24 disputeresolutions@att.net

25 Also Present:

Raymond Delucchi  
Tommy Hollis  
Dean Fletcher  
William J. Snow

I N D E X

<u>Witness</u>	<u>Page</u>
RAYMOND DELUCCHI	
Direct Examination by Mr. Levine	584
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E X H I B I T S

<u>Number</u>	<u>Marked</u>	<u>Admitted into Evidence</u>
UNION		
W	581	583
X	581	583
Y	595	596
Z	670	675

1 LAS VEGAS, NEVADA; SEPTEMBER 13, 2013

2 10:00 A.M.

3 -o0o-

4  
5 THE ARBITRATOR: On the record.

6 Good morning, everyone. This is day  
7 three in the Delucchi/Hollis grievance arbitration.  
8 When we adjourned on August 13, after two days of  
9 hearing, the Union was still in the process of  
10 presenting its case. So unless there's some  
11 preliminary matter that either party wishes to  
12 raise --

13 MR. LEVINE: Only very briefly with  
14 regard to a matter that was discussed off the record  
15 regarding the State of Nevada Division of Public and  
16 Behavioral Health.

17 Just for informational purposes, I'd  
18 like to mark Exhibits W and X.

19 (Union Exhibits W and X were  
20 marked for identification.)

21 MR. LEVINE: W is a letter I wrote to  
22 the division requesting that they stay any decisions  
23 so as not to interfere with the bargained-for  
24 contractual process, asking that they -- we allow  
25 the process to complete first and enclosing a copy

1 of the transcripts.

2 Exhibit X was sent by the division to me  
3 before my letter arrived, basically stating that  
4 they would like to have the transcripts so that they  
5 can do as thorough an investigation as possible. I  
6 responded saying I sent you a letter yesterday  
7 asking you to stay and enclosing those transcripts  
8 and basically saying, hey, I haven't gotten your  
9 letter yet as of the time of this and thanking me  
10 for the prompt response. They have subsequently  
11 received the letter and the transcripts so --

12 THE ARBITRATOR: So X is an E-mail chain  
13 between you and --

14 MR. LEVINE: Mr. Westom.

15 THE ARBITRATOR: So if I understand this  
16 correctly, we don't know for sure that they're going  
17 to stay the proceeding but --

18 MR. LEVINE: We don't know for sure, but  
19 I have a reasonable belief that they are, because  
20 they are also going to want to have the transcript  
21 of today's decision. I suspect the State will do  
22 what the State will do. It's beyond our control.  
23 But just so everybody knows what sort of the status  
24 of the posture is, I thought I would mark those.

25 THE ARBITRATOR: All right. Is there

1 anything the Town would like to add to what  
2 Mr. Levine has said?

3 MR. CAMPBELL: No. We're fine. We'll  
4 stipulate to the admission of the exhibits.

5 THE ARBITRATOR: Exhibits W and X are  
6 received.

7 (Union Exhibits W and X were  
8 admitted into evidence.)

9 THE ARBITRATOR: Any other preliminary  
10 matters?

11 MR. LEVINE: I don't believe so.

12 THE ARBITRATOR: Then Mr. Levine, would  
13 you like to call your witness?

14 MR. LEVINE: Yes. We would call Ray  
15 Delucchi.

16  
17 RAYMOND DELUCCHI,  
18 having been called as a witness and having been  
19 first duly sworn, was examined and testified as  
20 follows:

21 THE ARBITRATOR: Thank you. State your  
22 name for the record, please.

23 THE WITNESS: Raymond Delucchi.

24 THE ARBITRATOR: Thank you. Please  
25 proceed.

## DIRECT EXAMINATION

BY MR. LEVINE:

Q. I'm just going to call you Ray rather than Mr. Delucchi from here on out. Okay?

A. Okay.

Q. Ray, tell the arbitrator a little bit about your background and how you got into firefighting.

A. My uncle was a San Francisco fireman for about 25 years, and I would go down to the fire station once a month with my family. And pretty much I liked what I saw, and I liked the stories he told. Pretty much ended up started doing ride-alongs through high school. Got on as a volunteer firefighter for about three years, then became a professional firefighter for a year and a half, then took the job out in Pahrump, and I was a firefighter for about four and a half years.

Q. The year and a half that you served as a firefighter before taking the job in Pahrump, where was that?

A. San Ramon Valley Fire Protection District.

Q. San Ramon?

A. Yes.

1 Q. Is that a rural area sort of like  
2 Pahrump?

3 A. No.

4 Q. No?

5 A. No. That's where I was born and  
6 raised.

7 Q. And when did you transfer over to  
8 Pahrump Valley Fire and Rescue?

9 A. End of 2007, beginning of 2008.

10 Q. And in the year and a half you were in  
11 San Ramon, in the approximately four years you were  
12 with Pahrump Valley, did you ever have any prior  
13 discipline?

14 A. No.

15 Q. After taking a position with Pahrump  
16 Valley Fire and Rescue, did you become involved with  
17 the Union, Local 4068?

18 A. Yes.

19 Q. Tell the arbitrator a little bit about  
20 your Union involvement.

21 A. I was partnered up, when I first got  
22 hired in Pahrump, with the former Union president  
23 Timothy Murray. I didn't know much about unions at  
24 the time, but he got me actively involved. And in  
25 my four and a half years that I was there, I served

1 as the president, vice president, and I'm currently  
2 the secretary/treasurer.

3 Q. As of the date of the incident that is  
4 the subject of this arbitration, May 25, 2012, what  
5 position did you hold with 4068?

6 A. President.

7 Q. Prior to May 25, 2012, how would you  
8 characterize the labor relations between the Town of  
9 Pahrump and Local 4068?

10 A. Poor.

11 Q. Why were they poor?

12 A. There was multiple grievances. There  
13 was a wrongful termination case.

14 Q. We've heard testimony on day one with  
15 reference to what was called the Van Leuven  
16 arbitration. Was that one of the sticking points  
17 between --

18 A. Yes.

19 Q. -- 4068 and the Town of Pahrump?

20 A. Yes.

21 Q. All right. Let's talk about the  
22 incident of May 25, 2012. What happened?

23 A. My partner, Firefighter Hollis, and I  
24 were on our way back from a transport, which was  
25 interfacility from Pahrump to Vegas. We were headed

1 back to Pahrump. It was after midnight, maybe  
2 closer to 1:00 A.M. I noticed a vehicle fastly  
3 approaching with their hazard lights on. The  
4 vehicle came up to the side of my ambulance. It was  
5 swerving towards the ambulance. I felt like I was  
6 going to go off the side of the road.

7 I feared for my life at that point,  
8 because I saw somebody waving -- sort of holding the  
9 steering wheel, waving, and I couldn't hear  
10 shouting, but it looked like the male driver was  
11 shouting. There was also a passenger. I don't know  
12 if I hit the bumps on the side of the freeway or the  
13 rocks, but we ended up -- I felt I had to pull over.  
14 I think I had a quick discussion with Firefighter  
15 Hollis, and I decided it was best to pull over.

16 I saw that vehicle pulled behind us. I  
17 don't remember exactly how far back. The driver got  
18 out and ran up to my window.

19 Q. Let me stop you right there. Before you  
20 go on with what the driver did, the area where you  
21 pulled over, approximately what mile marker was it  
22 and can you describe the area for the arbitrator.

23 A. It was approximately mile marker 22, 23,  
24 a really rural area in between Pahrump and  
25 Las Vegas. It's not lit, very dark.

1           Q.       And in this area around mile marker 22,  
2       23 -- and it's Highway 160; is that correct?

3           A.       Yes.

4           Q.       Is there any communications contact --  
5       communications ability in that area?

6           A.       No. It's a radio dead zone.

7           Q.       What about cell phones?

8           A.       It's very spotty.

9           Q.       Okay. Please continue, then, with what  
10       happened when you first pull over.

11          A.       I noticed that there was a male standing  
12       in the window, yelling and screaming. I couldn't  
13       understand what he was saying. I could pretty much  
14       hear him say something about a miscarriage. I told  
15       him, like we're trained, calm down, sir. Calm down.  
16       Back away from the vehicle and -- well, actually, I  
17       think I had the window down just a crack so I could  
18       speak through.

19                   And he ended up calming down a little  
20       bit and then going back to the -- or doing a fast  
21       walk or maybe a jog back to his vehicle. I got -- I  
22       think me and Tommy had a quick discussion to meet on  
23       the side of the -- the highway.

24                   THE ARBITRATOR: Excuse me. I'm trying  
25       to visualize this. Is the party that flagged you

1 down's vehicle parked right in back of your vehicle  
2 or in front of your vehicle?

3 THE WITNESS: I don't remember exactly.  
4 No, no. It was the rear. I don't remember exactly  
5 how far, maybe 20 yards.

6 THE ARBITRATOR: Behind you?

7 THE WITNESS: Yeah, 10 yards, about that  
8 area.

9 THE ARBITRATOR: Okay. Thank you.

10 THE WITNESS: And as I got out of the  
11 vehicle, he had ran back to his -- and got in the  
12 driver's seat. Me and Tommy met on the side of the  
13 highway, stayed next to each other. I was concerned  
14 why he would run back if -- if there was an issue,  
15 why he would run back into his driver's seat if  
16 there was a potential miscarriage, that he didn't  
17 show me where I needed to assess the situation so --  
18 BY MR. LEVINE:

19 Q. Let me ask you, did he open the door to  
20 the passenger side of the vehicle so as to provide  
21 you access?

22 A. No.

23 Q. Okay. Please continue.

24 A. So Firefighter Hollis and I were on the  
25 side of the freeway, yelling -- he was raising his

1 voice. We were yelling at him to calm down, calm  
2 down. I could see there was a female crying in the  
3 passenger front seat. The driver was moving his  
4 hands. He was still on the steering wheel.

5 Me and Firefighter Hollis were being  
6 very precautious. We didn't understand sort of why  
7 it was being handled the way it did, whether it was  
8 a possible setup, whether somebody was on drugs,  
9 whether -- we didn't know or --

10 Q. Let me interrupt you right there. When  
11 you say "a possible setup," what is the danger  
12 presented by the scenario that you have just  
13 described?

14 A. Ambulances carry narcotics, medications,  
15 and potentially, you could be robbed. We're in  
16 Pahrump, which is more of a wild -- we call wild  
17 west area, open carries, very active people as far  
18 as --

19 Q. Open carry is a reference to?

20 A. Guns.

21 Q. Okay. Please continue.

22 A. And then we told him to calm down. He  
23 ended up using curse words at us and saying the  
24 F word, the S word, and pretty much ended up taking  
25 off before we had a chance to assess the situation

1 fully.

2 Q. All right. Let me ask you some  
3 questions.

4 Did you ever have an opportunity to talk  
5 directly to the female you saw crying in the front  
6 seat?

7 A. No.

8 Q. When you were shouting to him, can you  
9 explain to the arbitrator your positioning versus  
10 where he was.

11 A. He was in the driver's seat. She was in  
12 the passenger's seat. I was at the -- I would say  
13 the front corner, about five to ten feet away from  
14 the vehicle, yelling to him, calm down, sir, calm  
15 down.

16 Q. Did you make an offer to transport to a  
17 particular location?

18 A. To -- I saw the situation was  
19 escalating, and in an attempt to calm him down, I  
20 yelled, we can take you guys or we can take you to  
21 the Pahrump hospital or Desert View Hospital. I  
22 don't remember the exact term but the same  
23 hospital.

24 Q. Okay. And in response to that offer,  
25 what did he do?

1           A.       He said the F word and spun off and  
2 left.

3           Q.       At any point, did you have an  
4 opportunity to perform a paramedical or an EMT  
5 assessment on the passenger in the front seat?

6           A.       No.

7           Q.       Did you even know their names?

8           A.       No.

9           Q.       Did you know the make and model of the  
10 car?

11          A.       No.

12          Q.       Did you have a license plate number?

13          A.       No.

14          Q.       How long did this entire incident take?

15          A.       I'd say about 60 seconds, maybe one to  
16 two minutes at the most.

17          Q.       We now know that the passenger's name  
18 was Brittanie Choyce, and you heard her testimony  
19 on -- I believe it was August 13 when we were last  
20 here.

21          A.       Yes.

22          Q.       She claims in her testimony you spoke  
23 with her and told her to calm down. Is that  
24 accurate?

25          A.       That's inaccurate.

1 Q. Okay. Who were you telling to calm  
2 down?

3 A. The driver of the vehicle.

4 Q. Okay.

5 A. He was the one that was being  
6 aggressive, acting erratic.

7 Q. Ms. Choyce, in her testimony, said that  
8 either you or Firefighter Hollis said there's  
9 nothing we can do for you because you are on the  
10 Clark County line. You're going to have to call it  
11 in. Was that accurate?

12 A. That's inaccurate.

13 Q. Can you tell the arbitrator why it's  
14 inaccurate.

15 A. First of all, that doesn't make sense.  
16 The Clark County line is about 20, 21 miles north of  
17 the location we were at. Firefighter Hollis and I  
18 are in the south part of Pahrump at station 3, and  
19 we commonly go into parts of California for  
20 incidences, whether it's fire or EMS, and we also go  
21 into Clark County on a daily basis. The line  
22 doesn't matter, and we weren't near a line.

23 Q. Ms. Choyce, in her testimony, said that  
24 one of you looked in the car and said you're not  
25 bleeding that bad, that is normal. Was that true?

1           A.       That's inaccurate.

2           Q.       Okay. Again, did you even speak to  
3 her -- either of you speak to her at all?

4           A.       No.

5           Q.       Okay. Did she offer contradictory  
6 testimony with regard to looking in the car?

7           A.       Yes.

8           Q.       What was that?

9           A.       I believe she stated that we would not  
10 approach the vehicle or even take a look.

11          Q.       Okay. Ms. Choyce, in her testimony,  
12 also said that James, I guess, said or yelled --  
13 pardon me and the arbitrator -- "fuck you" and spun  
14 the tires and peeled out. Was that accurate?

15          A.       Yes, that's accurate.

16          Q.       Okay. And again, when was that  
17 statement made and when did he drop the car into  
18 gear and pull out?

19          A.       After we were telling him to calm down.

20          Q.       It has been brought up twice in these  
21 arbitration proceedings that James Choyce is -- has  
22 passed away. It was noted in the prehearing  
23 statement submitted by the Town of Pahrump that he  
24 committed suicide, and I think it was mentioned by  
25 Ms. Choyce. Were you familiar with that?

1 A. Yes.

2 Q. Okay. What is it that you know about  
3 that?

4 A. There was an obituary in the newspapers,  
5 and the firefighters had it around the station.

6 Q. Okay. Do you have a copy of that?

7 A. Yes.

8 Q. Do you have a copy? You can get it.

9 THE ARBITRATOR: Off the record while  
10 we're looking for this document.

11 (A discussion was held off the  
12 record.)

13 THE ARBITRATOR: Back on the record.

14 MR. LEVINE: I'll have this marked as Y.

15 (Union Y was marked for  
16 identification.)

17 BY MR. LEVINE:

18 Q. Is this the obituary for James Choyce  
19 that was passed around the fire station?

20 A. Yes.

21 Q. What was the common understanding of  
22 what James Choyce suffered from?

23 A. PTSD.

24 Q. And was that related to his military  
25 service?

1           A.       I can't accurately say that, but I  
2 believe so.

3           Q.       Okay. Just for the record, PTSD is  
4 short for?

5           A.       Post-traumatic --

6           Q.       Post-traumatic stress disorder?

7           A.       -- stress disorder.

8                   MR. LEVINE: Move admission of  
9 Exhibit Y.

10                  MR. CAMPBELL: No objection.

11                  THE ARBITRATOR: Y will be received.

12                         (Union Exhibit Y was admitted  
13 into evidence.)

14 BY MR. LEVINE:

15           Q.       All right. After Mr. Choyce -- after  
16 you told him to calm down and said, hey, we can take  
17 you to Desert View or Pahrump Valley and then he  
18 cursed you out, spun the tires and peeled off --  
19 after that happened, what did you do next?

20           A.       Firefighter Hollis and I stayed put for  
21 a minute or two to see what the vehicle was going to  
22 do. We noticed that the vehicle drove down a couple  
23 miles where there's a turnaround point. I believe  
24 it's Lovell Canyon where they turned around, and  
25 then they headed at it looked like a fast speed

1 towards Las Vegas on 160 south.

2 Q. Okay. That raises a point I'd like to  
3 elaborate on.

4 At the area where the Choyces' vehicle  
5 forced Medic 3, the ambulance, off to the side of  
6 the road, do you have the --

7 MR. CAMPBELL: I'm going to object to  
8 that. It's mischaracterizing testimony about  
9 forcing them off the road.

10 THE ARBITRATOR: Well, I guess that's  
11 his -- it was the perception of the driver of  
12 Medic 3 that -- so I understand that it's his  
13 perception and that you may have a different  
14 version.

15 So go ahead.

16 BY MR. LEVINE:

17 Q. At the area where you felt Medic 3 was  
18 forced off to the side of the road, do you have the  
19 opportunity of just making a U-turn there to head  
20 right back to Las Vegas?

21 A. No.

22 Q. Why?

23 A. As I stated, you have to drive a couple  
24 miles -- continue a couple miles north on 160 to a  
25 turnaround point somewhere near Lovell Canyon Road.

1 Q. Why can't you just drive across the dirt  
2 to the other side of the highway?

3 A. There's a barrier that is in between the  
4 two freeways that is used to help vehicles from not  
5 rolling over. It catches them when it hits him --  
6 when they hit it.

7 Q. I think --  
8 Is Exhibit 38 the photos that you put  
9 in?

10 THE ARBITRATOR: Yes.

11 MR. CAMPBELL: Yes.

12 BY MR. LEVINE:

13 Q. If we were to take a look at Exhibit 38,  
14 is that the barrier you're referring to?

15 A. Yes.

16 MR. CAMPBELL: Do you have that?

17 THE ARBITRATOR: Let me get that out. I  
18 have it.

19 MR. LEVINE: Yes, that is the photo.

20 BY MR. LEVINE:

21 Q. Just to identify, that's the barrier  
22 right there that goes for several miles?

23 A. Yes.

24 THE ARBITRATOR: Now, what are you --  
25 are you pointing to --

1                   MR. LEVINE: This is the barrier that  
2 would keep you from going to the other side of the  
3 highway.

4                   THE ARBITRATOR: Oh, okay. So it's a  
5 four lane.

6                   MR. LEVINE: Right. But the lanes are  
7 not accessible because of that barrier.

8                   THE ARBITRATOR: Okay.

9 BY MR. LEVINE:

10           Q.       After you watched the vehicle go -- I  
11 believe it would be north a couple miles and then  
12 apparently it would make a U-turn and head back  
13 south, what did you and Firefighter Hollis do next?

14           A.       We got in the vehicle, collected our  
15 thoughts just to try to understand what just  
16 happened. It was a really quick incident. We were  
17 still in fear and nervous of the whole situation and  
18 shaken up, and we ended up driving back to Pahrump.

19           Q.       Now, how much longer did you have on  
20 your shift?

21           A.       If the incident happened at  
22 approximately 1:00 o'clock, we had about seven  
23 hours. We get off at 8:00 A.M. every morning.

24           Q.       Just for the record, how long shifts do  
25 you work?

1 A. 24-hour shifts in Pahrump.

2 Q. Okay. For the remaining seven hours  
3 after you returned to Pahrump, did you go out on  
4 other calls?

5 A. I don't recall, but I'm sure we did.  
6 We're a pretty busy department. We're one of the  
7 busiest in the state of Nevada. It's a small  
8 department.

9 Q. When you got back during that remaining  
10 seven hours or in between other calls, did you fill  
11 out a patient care report?

12 A. No.

13 Q. Why?

14 A. Because we didn't have the patient.

15 Q. You were present during day one of the  
16 arbitration where Mr. Songer claimed that there was  
17 a patient.

18 A. Correct.

19 Q. Is Mr. Songer correct?

20 A. No.

21 Q. Explain why Mr. Songer is not correct.

22 THE ARBITRATOR: Wasn't that a doctor?

23 MR. LEVINE: No.

24 THE ARBITRATOR: Oh, no. I'm thinking

25 of --

1 MR. LEVINE: Slaughter was the doctor.

2 THE ARBITRATOR: Slaughter was the  
3 doctor.

4 MR. LEVINE: Unfortunate name for a  
5 doctor.

6 THE ARBITRATOR: I'm sorry.

7 MR. LEVINE: Songer was the investigator  
8 they brought in.

9 THE ARBITRATOR: Okay. Sorry for the  
10 confusion. All right.

11 MR. LEVINE: It took me time to learn  
12 them too.

13 BY MR. LEVINE:

14 Q. The investigator that they had testified  
15 on day one, Mr. Songer -- he said there was. You  
16 say there's not. Why was Mr. Songer wrong?

17 A. Per the NACs, the definition of a  
18 patient is clearly defined, and we did not do that.

19 Q. And the definition, so we're clear,  
20 under NAC 450B.180, which is, again, the one I  
21 unfortunately marked for you, what does it require  
22 to be a patient?

23 A. You have to provide care on the scene,  
24 or you have to place a patient in an ambulance or  
25 air ambulance.

1 Q. Okay. And for the record, is that --

2 THE ARBITRATOR: I think the word was  
3 "transport" in the statute. I remember that.

4 MR. LEVINE: Transport. All right.

5 BY MR. LEVINE:

6 Q. Your collective bargaining agreement,  
7 does it adopt and incorporate those regulations in  
8 NAC 450B?

9 A. Yes.

10 Q. I direct your attention to Exhibit 6,  
11 article 4. You'll find it -- article 4 is health  
12 and safety, section 9, which is on page 8. Just can  
13 you read it into the record. It's section 9.

14 A. (Reading:)

15 "The Town shall comply with  
16 all standards, laws, regulations,  
17 and ordinances related to the  
18 fire department."

19 Q. And to your understanding, does that  
20 encompass NAC Chapter 450B, emergency medical  
21 services?

22 A. Yes.

23 Q. At any point, did the Town of Pahrump  
24 suggest that there should be bargaining for some  
25 other definition of patient or some other standards

1 to be applied?

2 A. No.

3 Q. Was Mr. Songer familiar with the  
4 provisions of your collective bargaining agreement?

5 A. No, because per his testimony, he stated  
6 that he did not review the collective bargaining  
7 agreement.

8 Q. Did he appear to be familiar with  
9 NAC 450B.180?

10 A. Apparently not.

11 Q. When were you interviewed by Mr. Songer?

12 A. July 31, 2012.

13 Q. Did you tell him during that interview  
14 that there was no patient?

15 A. Yes.

16 Q. More than once?

17 A. Multiple times.

18 MR. LEVINE: At this point, I'd like to  
19 actually play some excerpts of that interview.

20 THE ARBITRATOR: All right.

21 MR. LEVINE: Let me ask the arbitrator's  
22 preference. Does the arbitrator plan to listen to  
23 all of these audio files, or do you prefer that I  
24 highlight portions by playing them on the record  
25 here?

1 THE ARBITRATOR: Well, do I have the  
2 transcripts of those?

3 MR. LEVINE: No. They're not  
4 transcripts. You will receive discs of the audio  
5 files in, like, an MP3 or MP4 format, which can be  
6 played on a standard media player. And I don't know  
7 what your custom and practice is when you receive  
8 these.

9 THE ARBITRATOR: While I normally try to  
10 avoid listening to tapes except to resolve  
11 inconsistencies in testimony, in this particular  
12 situation, I think I'm going to be listening to the  
13 audio recordings because of the complexity of the  
14 report and the different levels of, you know, when  
15 certain facts came out and so on and so forth. I  
16 think I will be listening to the audiotapes.

17 MR. LEVINE: Okay. I think I'm just  
18 going to go ahead and play it. They're not  
19 particularly long.

20 THE ARBITRATOR: Are those part of my  
21 exhibit package already?

22 MR. LEVINE: Yes. I'm going to be  
23 identifying what I'm going to be playing. Certain  
24 exhibits have an envelope here, and it contains a  
25 disc which is marked.

1 THE ARBITRATOR: Okay. And when I open  
2 up that disc on my computer, will I be able to see a  
3 listing of files?

4 MR. LEVINE: Yes. I will identify for  
5 you, as I go through the testimony today, what they  
6 are and where they are.

7 THE ARBITRATOR: Okay.

8 MR. LEVINE: And for the record, I am  
9 now going to play a brief excerpt from Exhibit Q.

10 THE ARBITRATOR: And it's understood  
11 that we're going to play this while we're off the  
12 record so that the reporter does not have to  
13 transcribe it; correct?

14 MR. LEVINE: Actually, I believe --  
15 because the State of Nevada division wants to review  
16 the transcripts, I think it is our preference that  
17 these three or four minutes be transcribed  
18 because --

19 THE ARBITRATOR: Okay. Let's go off the  
20 record to discuss that.

21 (A discussion was held off the  
22 record.)

23 THE ARBITRATOR: Back on the record.

24 We've had some off-the-record  
25 discussions, and I believe counsel are in agreement

1 that we're going to play the recording off the  
2 record.

3 MR. LEVINE: Correct.

4 THE ARBITRATOR: Thus relieving the  
5 court reporter of any responsibility to transcribe  
6 it. So stipulated?

7 MR. LEVINE: Yes.

8 MR. CAMPBELL: Yes.

9 THE ARBITRATOR: Off the record.

10 (A discussion was held off the  
11 record.)

12 THE ARBITRATOR: Back on the record.

13 Mr. Levine.

14 MR. LEVINE: Okay. I'm going to play a  
15 portion of Exhibit Q. When the menu for Exhibit Q  
16 is pulled up, it actually says music. I don't know  
17 why it says music. It shouldn't say music. But for  
18 the record, you click on that. There are a number  
19 of recordings. It says recordings 1 through 5.  
20 When Mr. Songer produced his recordings to us, it  
21 came in five partial, non-complete files. The  
22 excerpt I am going to play is from the file that is  
23 named recording number 5.

24 THE ARBITRATOR: Okay. So let's go off  
25 the record.

1 (A discussion was held off the  
2 record.)

3 THE ARBITRATOR: Back on the record.

4 We have had some off-the-record  
5 discussions. We tried playing the audio file, and  
6 it was not sufficiently loud for everyone in this  
7 room to hear it from various points in the room. So  
8 I believe counsel have agreed to proceed in a  
9 different fashion.

10 Mr. Levine is going to make a  
11 representation on the record as to what a certain  
12 portion of the audio file number 5 states.

13 MR. LEVINE: Correct.

14 THE ARBITRATOR: And then that way,  
15 Mr. Campbell will know what the Union is talking  
16 about in terms of whatever potential rebuttal he may  
17 wish to come forward with.

18 And it's also been agreed that during  
19 the next break, the arbitrator will use her  
20 headphones to make sure that she can hear the audio  
21 files sufficiently using earbuds or earphones just  
22 to make sure that we don't need to do some kind of  
23 an enhancement on the files which are in evidence.

24 MR. CAMPBELL: For the record, my  
25 understanding was Mr. Levine was going to reference

1 the arbitrator to the section that he wanted her to  
2 listen to now, not to put an interpretation but  
3 maybe general subject matter.

4 MR. LEVINE: I'm going to represent that  
5 it's close to verbatim, the statement.

6 THE ARBITRATOR: The reason I wanted him  
7 to do that was so that you would know what he's  
8 referring to in terms of having a fair opportunity  
9 to meet any evidence that he wishes to highlight  
10 with your own evidence. So that was my concern.

11 MR. LEVINE: All right. Again, these  
12 will be representations that the arbitrator can  
13 verify or nonverify. Just so we're clear --

14 THE ARBITRATOR: And keep in mind, I'm  
15 not going to trust, you know, Counsel's  
16 representations as a source of evidence.

17 MR. LEVINE: Correct.

18 THE ARBITRATOR: I have to go right to  
19 the file.

20 MR. LEVINE: Right. The representation  
21 is going to be for purposes of identification and  
22 assistance.

23 THE ARBITRATOR: And also notice to the  
24 Town as to what you're talking about. Okay.

25 MR. LEVINE: And Rick, just so we're

1 clear, is the disc that you put in yours -- it's not  
2 behind 37. Was it intended to be Exhibit 37, the  
3 audio recordings?

4 MR. CAMPBELL: I would assume so, yeah.

5 MR. LEVINE: Can you double-check so we  
6 can make a correct identification as to the exhibit  
7 number?

8 THE ARBITRATOR: If it's the last  
9 exhibit before the photograph, it would have to be  
10 37.

11 MR. LEVINE: I believe it is. It may  
12 be -- maybe they just affixed it to the wrong side  
13 of the tab.

14 MR. CAMPBELL: It's on the front the  
15 tab.

16 MR. LEVINE: But it was supposed to be  
17 37.

18 MR. CAMPBELL: Yeah, because 36 is the  
19 investigative report, which is behind the tab.

20 MR. LEVINE: Okay. I wanted to clarify.  
21 All right.

22 THE ARBITRATOR: I think we don't yet  
23 have on the record that Exhibit 37 was the same  
24 exhibit as Union --

25 MR. LEVINE: Q.

1 THE ARBITRATOR: -- Q.

2 MR. LEVINE: Well, it contains --  
3 Exhibit 37 appears to be all of the audio recordings  
4 from various dates put on one disc. In Exhibit 37,  
5 you will see five partial recordings which are from  
6 the July 31, 2012 interview by Pat Songer of Ray  
7 Delucchi and Tommy Hollis.

8 File number 5, for purposes of  
9 representation, is the recording -- partial  
10 recording of the partial interview with Ray  
11 Delucchi. And I will represent, subject to the  
12 arbitrator's listening to it for purposes of just --  
13 at the 4 minute mark, Mr. Delucchi tells Mr. Songer  
14 he didn't go up to the vehicle, was five to ten feet  
15 away, and there was no patient at that point.

16 At the 4 minute, 52 second mark,  
17 approximately, he tells Mr. Songer there was  
18 assumption that there was no patient but potentially  
19 could be one.

20 At the 15 minute mark to 15:32, he  
21 emphasizes that you only fill out a patient care  
22 report on incidences involving patients, and there's  
23 only a patient if there is patient contact. So  
24 those are the -- wait a second.

25 Also at 25:52, approximately,

1 25 minutes, 52 seconds, he's asked by Mr. Songer  
2 what, in your mind, constitutes a patient, and he  
3 asks did you assess them physically or ask them four  
4 particular questions.

5 BY MR. LEVINE:

6 Q. All right. So Ray, let's go back to the  
7 direct examination with those identifications of the  
8 aspects of file 5.

9 Before we went off the record and had  
10 all of our recording issues that we have now moved  
11 past, I was asking you about -- the subject was why  
12 you didn't fill out a patient care report, and I  
13 think you've answered that, and I think I've  
14 identified where you explain that to Mr. Songer.

15 Let's turn to the subject of a special  
16 circumstance report. Is that different than a  
17 patient care report?

18 A. Yes.

19 Q. And what is a special circumstance  
20 report?

21 A. It's a piece of paper that pretty much  
22 at the top says Special Circumstance Report. It's  
23 something that, at the discretion of the providers,  
24 you fill out, or at an order of a lieutenant, you  
25 fill out maybe in an odd situation.

1 Q. And did you fill out a special  
2 circumstance report that night?

3 A. No.

4 Q. When -- how often in the four and a half  
5 years have you filled out a special circumstance  
6 report?

7 A. Maybe one or two, a handful at the most.

8 Q. Okay. Is it mandatory?

9 A. No.

10 Q. Okay. Is there any rule that says you  
11 have to have fill out a special circumstance report  
12 under certain circumstances?

13 A. No.

14 Q. Did you later at a later date fill out a  
15 special circumstance report as it relates to the  
16 incident of May 25?

17 A. Yes.

18 Q. And why did you later fill one out?

19 A. Firefighter Hollis and I were ordered to  
20 fill one out from Lieutenant Moody, who is A shift  
21 lieutenant.

22 Q. Okay. And who wrote that special  
23 circumstance report?

24 A. Tommy.

25 Q. And if I could have you take a look at

1 Exhibit A. Is that the special circumstance report  
2 filled out by Firefighter Hollis and signed by both  
3 of you that was done at the request of your  
4 lieutenant?

5 A. Yes.

6 Q. I'll give the arbitrator a chance to  
7 read it. Did you get both pages? There's a second  
8 page.

9 THE ARBITRATOR: Oh, yes.

10 BY MR. LEVINE:

11 Q. Is it accurate?

12 A. Yes.

13 Q. After you finished your shift on the  
14 25th, did you work the 26th and the 27th?

15 A. No.

16 Q. Okay. How many days would you  
17 customarily have off?

18 A. Four days. We're on -- it's called a  
19 Kelly system. It's one day on, one day off, one day  
20 on, one day off, one day on, four days off. And  
21 these are 24-hour shifts each.

22 Q. So after the 25th, you wouldn't be going  
23 back until when?

24 A. Approximately the 29th, I believe.

25 Q. Okay. And was there something that was

1       forthcoming that would have caused you not to work a  
2       regular shift on the 29th?

3           A.       Yeah. I -- you usually use union leave  
4       or a personal leave to prepare for arbitrations. We  
5       had the Van Leuven arbitration on the 30th.

6           Q.       Okay. So when you went back for your  
7       next -- instead of going back for a regular shift on  
8       the 29th, you would have been doing what?

9           A.       Can you repeat again.

10          Q.       So would you have been preparing for the  
11       Van Leuven arbitration when you went back on the  
12       29th?

13          A.       The whole four day, yes.

14          Q.       Okay. And when did the Van Leuven  
15       arbitration take place?

16          A.       May 30, 2012.

17          Q.       Okay. And there was some testimony  
18       during day one regarding the Van Leuven arbitration,  
19       including Mr. Kohbarger acknowledging that it got  
20       pretty heated. Can you -- with the chief.

21                    Can you tell the arbitrator why things  
22       got so hot between the chief and the Union at the  
23       Van Leuven arbitration on the 30th.

24          A.       During -- I don't remember if it was  
25       direct or cross-examination, but the attorney for

1 the Union was talking about personal stuff between  
2 Fire Chief Scott Lewis and Firefighter/Paramedic  
3 Chris Van Leuven, how the fire chief was cheating on  
4 his wife and dating the female that Firefighter  
5 Chris Van Leuven was seeing and how there's an  
6 incident where Chris was -- and the fire chief --  
7 the fire chief got in Chris's face, told him that  
8 this is my girl. And he said -- and Chris said, I  
9 thought you were married. And he said, don't worry  
10 about my business.

11 There's a later incident in the back of  
12 an ambulance where Firefighter/Paramedic Chris  
13 Van Leuven accused the chief of assaulting him  
14 regarding the same thing.

15 At the request of the Union attorney,  
16 Fire Chief Scott Lewis was asked to leave the  
17 courtroom after testifying and was no longer  
18 permitted to be in the courtroom during the rest of  
19 the arbitration.

20 Q. Now, the exclusion of the -- what was  
21 the chief's demeanor like towards you and the Union  
22 attorney when this testimony was being elicited?

23 A. He was eyeing me. He was being very  
24 loud and aggressive. He was very unhappy that stuff  
25 was being brought up.

1 Q. When he was excused by -- was it  
2 Arbitrator Adler?

3 A. Arbitrator Sara Adler, yes.

4 Q. Was that a normal exclusion, i.e.,  
5 witnesses are to leave the room, or was this  
6 something different?

7 A. No, this --

8 MR. CAMPBELL: I'm going to object. I  
9 don't think this witness has the recall to testify  
10 to this. There was a rule exclusion in effect at  
11 that hearing, I believe.

12 BY MR. LEVINE:

13 Q. Wasn't the chief -- was the chief the  
14 representative -- the designated representative of  
15 the Town, sitting through the entire hearing?

16 A. The chief and the Town manager, yes.

17 Q. Okay. When did the complaint, to your  
18 knowledge, relating to the incident on Highway 160  
19 come into the chief?

20 A. I believe it was after arbitration. I  
21 don't know the exact time but after the arbitration  
22 that day.

23 Q. Right after the Van Leuven arbitration.

24 A. Yes.

25 Q. The day he was asked to leave.

1 A. Yes.

2 Q. Did he notify you or contact you, after  
3 the arbitration was over, that he had received any  
4 sort of complaints?

5 A. No.

6 Q. Okay. Did you report to work for a  
7 normal shift as opposed to arbitration on the 31st?

8 A. Yes.

9 Q. And what happened on the 31st?

10 A. We received -- Firefighter Hollis and I  
11 received a phone call from Lieutenant Steve Moody,  
12 who was our A shift lieutenant. He said, I need you  
13 guys to fill out a special circumstance. As soon as  
14 you're done at station 3, come up to station 1, and  
15 you're going to be interviewed.

16 Q. Okay. And who was questioned first?

17 A. Firefighter Hollis.

18 Q. Were you present for that?

19 A. No.

20 Q. Did you know what he said?

21 A. No.

22 Q. Okay. Were you then questioned by  
23 Lieutenant Moody?

24 A. Yes.

25 Q. And did something, to your perception,

1 unusual occur during that questioning by Lieutenant  
2 Moody?

3 A. Yes. I was sitting in the lieutenant's  
4 office. There's a few rooms next to each other at  
5 station 1. I don't remember if I was halfway done  
6 or almost done, but Steve Moody -- Lieutenant Steve  
7 Moody was interviewing me. I had my steward rep,  
8 and the door opened. The chief started yelling,  
9 stop, stop, stop.

10 Q. Have you ever experienced anything like  
11 that before in an investigatory interview?

12 A. No.

13 Q. Okay. Why did it concern you?

14 A. Because Steve Moody was interviewing me  
15 and I didn't understand why the fire chief would  
16 abruptly open up a door while I'm being interviewed  
17 and yell, stop, stop, stop.

18 Q. Did you have particular concerns as to  
19 what the chief was doing?

20 A. Yes, because --

21 Q. What was --

22 A. Because the fire chief said, Lieutenant  
23 Moody, and said something like I need you to come  
24 outside and talk to you. They both stayed outside  
25 the room for a minute or so and then peeked back in

1 and said, hey, come with me.

2 Q. They told you to come with them?

3 A. After they were outside.

4 Q. Okay.

5 A. Moody or the fire chief said, come with  
6 me.

7 Q. Okay. And what did you do in response?

8 A. I said, yes, sir, and went with them  
9 into a training room, and they restated the  
10 interview.

11 Q. They started the whole interview all  
12 over.

13 A. Yes.

14 Q. Okay. At that point, did that raise  
15 additional concerns for you?

16 A. Yes.

17 Q. What were those additional concerns?

18 A. The fire chief looked to be taking over  
19 the interview, and I didn't understand why. And the  
20 way it was handled was sort of odd to me, since  
21 Lieutenant Moody said I'm going to be the point  
22 person on this and be doing the investigation.

23 Q. Okay. When -- and just so we're clear,  
24 is this one day after the heated exchange on the  
25 Van Leuven arbitration?

1           A.       Yes.

2           Q.       What did you do when it appeared to you  
3           that the chief was injecting himself into an  
4           investigation that Lieutenant Moody was supposed to  
5           be the point person on?

6                   MR. CAMPBELL:  Objection.  That  
7           mischaracterizes the testimony.

8                   THE ARBITRATOR:  Well, please rephrase.

9           BY MR. LEVINE:

10          Q.       Okay.  What did you do after this  
11          happened?

12          A.       Fire Chief Scott Lewis and Lieutenant  
13          Steve Moody sat down in the training room with me.  
14          I was sitting with my steward rep, Nate Alexander.  
15          Fire Chief Lewis said we're going to start -- I  
16          don't remember the exact word.  It's in the  
17          recording, but he's going to start it over, and  
18          we're going to record it now.  And I felt very  
19          uncomfortable, and so I requested for HR, who was  
20          Terry Bostwick, and Town manager William Kohbarger  
21          to be a second set of eyes and ears to watch.  I've  
22          been involved with the Union, and I could see where  
23          this was going.

24          Q.       Okay.  Did you -- how long did it take  
25          you to get Terry Bostwick from HR and Mr. Kohbarger?

1           A.       He halted the investigation, and in  
2           about nine or ten minutes, they came back in the  
3           room together.

4           Q.       Okay. And then after HR was present  
5           with Mr. Kohbarger, did the interview go forward?

6           A.       Yes.

7           Q.       Okay. Was that interview completed?

8           A.       Yes.

9           THE ARBITRATOR: So just so I know, when  
10          I listen to these recorded interviews, do I have in  
11          the audio files both the -- both pieces of this  
12          interview, the one that was started and then the  
13          second resumption of the interview?

14          MR. LEVINE: I don't know the answer to  
15          that because both the recorded interviews of  
16          Mr. Delucchi and Mr. Hollis were transcribed. Those  
17          are in evidence, and I think it won't be  
18          necessary -- I think you can read those transcripts.  
19          I think we've already stipulated them into evidence  
20          that they're sufficiently accurate that neither  
21          party had a problem.

22          THE ARBITRATOR: Okay.

23          MR. CAMPBELL: Yeah. I believe the  
24          first interview was not tape-recorded.

25          THE ARBITRATOR: Okay. All right.

1 MR. LEVINE: Right, the first one.  
2 Mr. Hollis's first interview was not tape-recorded,  
3 right. So all you will have is the second recorded  
4 one.

5 And just for identification in the  
6 record, let's identify for the arbitrator's  
7 convenience where -- those interviews that were  
8 transcribed after they were recorded are Exhibit 8  
9 for Ray Delucchi and Exhibit 9 for Mr. Hollis.

10 THE ARBITRATOR: All right. Thank you.  
11 I think you both did explain that to me earlier, but  
12 it's been a few weeks.

13 MR. LEVINE: You'll see it when you  
14 review the transcript, but it's always better to  
15 repoint it out.

16 THE ARBITRATOR: Okay.

17 BY MR. LEVINE:

18 Q. Did you know what Tommy Hollis stated in  
19 his recorded interview at the time?

20 A. No, no.

21 Q. Did you talk about it with Tommy?

22 A. No.

23 Q. Did you later get an opportunity to get  
24 the transcript of Tommy's interview?

25 A. Yes, well after the interviews.

1 Q. And did you get a copy of your  
2 transcribed interview as well?

3 A. Yes, well after the interviews.

4 Q. And were they consistent?

5 A. Yes.

6 Q. Were they both accurate?

7 A. Yes.

8 MR. LEVINE: Can we have a brief break?

9 THE ARBITRATOR: Certainly. Let's go  
10 off the record for a break.

11 (A recess was taken from 11:04  
12 to 11:21 A.M.)

13 THE ARBITRATOR: Back on the record.  
14 We're back on the record after our mid morning  
15 break, and Mr. Delucchi, you're still under oath.

16 Go ahead, Mr. Levine.

17 BY MR. LEVINE:

18 Q. Okay. Before the break, we were talking  
19 about the interviews that took place on May 31,  
20 2012.

21 Were you aware that that same day,  
22 Chief Van Leuven filed a personal complaint against  
23 you as the union president?

24 A. Who?

25 Q. I'm sorry. Chief -- not Van Leuven. I

1 just promoted the guy. Chief Lewis.

2 Were you aware that that same day, Chief  
3 Lewis filed a personal complaint against you as the  
4 union president?

5 A. No.

6 Q. Did you later learn that he had?

7 A. Yes.

8 Q. And let's take a look at Exhibit C.  
9 When did you learn that the chief had filed a  
10 personal complaint against you May 31, 2012, one day  
11 after the Van Leuven arbitration and the day that he  
12 injected himself into the interviews relating to the  
13 incident of May 25?

14 A. Not till well after I was terminated.

15 Q. I'd like to direct your attention  
16 basically to the last two paragraphs on the second  
17 page of Exhibit C. The chief, in his complaint,  
18 wrote:

19 "It became readily apparent  
20 to me that Ray Delucchi was  
21 attempting to use his role as the  
22 IAFF Local 4068 president to  
23 thwart our ability and my  
24 authority to conduct an  
25 investigation of a serious

1 external complaint. Never before  
2 has HR or the Town manager been  
3 specifically requested to  
4 participate in the early stage of  
5 an investigation. By doing so,  
6 Mr. Delucchi violated the CBA by  
7 involving the Town manager in  
8 this manner, as the manager is  
9 identified as a later step in a  
10 potential disciplinary process.

11 "In essence, he is trying to  
12 intimidate me and prevent me from  
13 performing my job."

14 First, is there anything about asking  
15 for a second set of eyes to be present at an  
16 interview one day after a contentious arbitration  
17 that you believe is thwarting his ability to conduct  
18 an investigation?

19 A. No.

20 Q. He accuses you of violating the CBA by  
21 involving the Town manager. Do you believe there's  
22 any merit to that accusation?

23 A. No.

24 Q. Why?

25 A. For his testimony, he was -- the Town

1 manager was already involved in the investigation.

2 Q. In that testimony, that involvement was  
3 what?

4 A. The parameters of the investigation.

5 Q. In fact, if we go back to the first page  
6 of the chief's complaint at Bates stamp PVF 0750,  
7 first, second, third -- fourth paragraph, does he  
8 write:

9 "The Town manager  
10 specifically instructed me to  
11 assign Lieutenant Moody to the  
12 investigation with my direct  
13 assistance to help coach him  
14 through the process. Specific  
15 parameters were directed to me,  
16 including the recording of both  
17 interviews"?

18 A. Yes.

19 Q. Was the Town manager already involved?

20 A. Yes.

21 Q. Were you intimidating or harassing the  
22 chief?

23 A. No.

24 Q. Did you, as the president of Local 4068,  
25 or somebody on behalf of Local 4068 other than you,

1 ever authorize the use of Mr. Songer as an outside  
2 investigator?

3 A. No.

4 Q. Did you have discussions about an  
5 outside investigator in another context?

6 A. Yes.

7 Q. Tell the arbitrator what you did discuss  
8 the use of an outside investigator for.

9 A. Prior to the chief filing a complaint  
10 against me, I had filed one against him, I believe,  
11 a couple hours earlier. I sent an E-mail to Terry  
12 Bostwick, who is Pahrump's human resources  
13 coordinator, requesting that an outside agency --  
14 I'd feel more comfortable if an outside agency  
15 investigate my specific complaint and not have the  
16 Town.

17 Q. But did you or the Local ever agree to  
18 allow an outside investigator for this disciplinary  
19 investigation of you?

20 A. No.

21 Q. And why was it important to you, as  
22 president of the Union, that the Union agree on who  
23 an outside investigator is going to be?

24 A. Because that's a subject of mandatory  
25 bargaining.

1 Q. For the record, discharge or  
2 disciplinary procedure?

3 A. Yes.

4 MR. LEVINE: If the arbitrator is not  
5 already familiar with it, I'd have her take judicial  
6 or arbitral notice of NRS 288.272(i), which makes  
7 discharge and disciplinary procedures subject to  
8 mandatory bargaining in Nevada.

9 BY MR. LEVINE:

10 Q. In fact, if we look at Exhibit 7, which  
11 are the rules and regulations, is there one for  
12 discipline?

13 A. Yes.

14 Q. And just can you identify what it is.

15 A. Up here? It is -- it says Discipline,  
16 and it's under the rules and regs.

17 Q. What's the guideline number, just for  
18 identification for the record?

19 A. 02.04.00.

20 Q. I'm not going to be referencing a  
21 specific portion, but in each of the rules and  
22 regulations in Exhibit 7, there are two signatures.  
23 Do you see them?

24 A. Yes.

25 Q. Who are those signatures of?

1           A.       One signature is Fire Chief Scott Lewis,  
2           and the second signature is Timothy Murray, the  
3           former president of the Union IAFF Local 4068.

4           Q.       On the subject of mandatory bargaining,  
5           before any of the rules or regulations are changed,  
6           was the Union president required to sign off on  
7           them?

8           A.       Yes.

9           THE ARBITRATOR:   What was the number on  
10          that again?

11          MR. LEVINE:   The regs aren't numbered in  
12          Exhibit 7.   The Discipline is 02.04.00.   It is  
13          approximately the sixth page in.   I had him identify  
14          the fact that all of these regs have signatures and  
15          have to be signed off on by the union president.

16          THE ARBITRATOR:   Okay.

17          BY MR. LEVINE:

18          Q.       When did you learn for the first time  
19          that the Town had brought in an outside investigator  
20          to conduct a disciplinary investigation of you?

21          A.       On January 31 -- January 30, 2012.

22          Q.       January or July?

23          A.       Excuse me.   July.   July 30, 2012, I  
24          called Terry Bostwick, the human resources  
25          coordinator, to let her know that I was coming back

1 from my FMLA leave, which was about a 30-day leave.  
2 When I spoke to her on the phone, she stated that,  
3 yes, you're to return the 31st, and you are to --  
4 when you return, you're to report to station 1.  
5 There's going to be a man named Mr. Pat Songer  
6 that's going to be investigating -- or interviewing  
7 you and Tommy.

8 Q. And so we're clear, what days were you  
9 on FMLA leave?

10 A. Approximately 6-29-2012 to 7-30-2012.

11 Q. For what reason?

12 A. The birth of my new child.

13 Q. Okay. So you learned, upon returning  
14 from basically -- I guess it would be called  
15 paternity leave under the FMLA, that you were going  
16 to be interviewed by this Mr. Songer?

17 A. Yes.

18 Q. Had you been interviewed by Mr. Songer  
19 before?

20 A. No.

21 Q. Do you know anything about Mr. Songer?

22 A. No.

23 Q. Did he conduct that interview on  
24 7-31-2012?

25 A. Yes.

1           Q.       And for the record, those are the five  
2 files in Exhibit Q and also in Exhibit 37 which  
3 we've now, I guess, ascertained can be listened to  
4 with the assistance of headphones.

5                   Did you immediately object, or did you  
6 raise an objection on the 31st to being questioned  
7 by Mr. Songer?

8           A.       Repeat it again.

9           Q.       Did you raise an objection?

10          A.       No.

11          Q.       Why not?

12          A.       Because he said that we were talking for  
13 about 20 minutes or so, and it's in the recording.  
14 He said that there was -- I was just here to collect  
15 the facts.

16          Q.       Okay. Did he specifically tell you he  
17 wasn't there to judge your actions?

18          A.       Yes.

19          Q.       Again, in light of the issues with  
20 regard to listening and playing the audiotape,  
21 rather than attempt to play that, I'll just identify  
22 where I believe those are in Exhibit Q. It's in  
23 recording number 1. Again, there's five recordings.  
24 The last one I referenced was recording 5. This is  
25 recording number 1 at approximately the 9 minute,

1 15 second through 9 minute, 40 second mark and again  
2 at approximately the 15 minute, 40 second mark, he  
3 states -- my representation is to be verified  
4 later -- I'm not here to judge, just collect the  
5 facts.

6 During this time period, after the  
7 Van Leuven arbitration, while the Town is conducting  
8 a disciplinary investigation of you and Firefighter  
9 Hollis relating to the incident of May 25, 2012, did  
10 the labor relations between yourself, as the  
11 president of Local 4068, and the Town get even  
12 worse?

13 A. Yes.

14 Q. What caused the labor relations between  
15 the Town of Pahrump and 4068 to get even worse  
16 during this period?

17 A. Mr. Kohbarger, the Town manager of  
18 Pahrump, sent me an E-mail requesting to open up the  
19 collective bargaining agreement regarding a  
20 4 percent step increase. In the agreement, it was  
21 a -- it was a two-year agreement to -- for the step  
22 increases. He stated he wanted to open up year two  
23 and change that, and so we didn't get it. And I  
24 later found out that he forgot to budget for our  
25 4 percent step increase in the collective bargaining

1 agreement.

2 Q. Okay. If I could have you turn to  
3 Exhibit G. And again, like so many E-mails, they  
4 oftentimes start at the back as the first, with the  
5 one on top being the last. Can you tell us what the  
6 E-mail exchange, starting with the second page in  
7 the back going to the top, Exhibit G is.

8 A. It says:

9 "Mr. Delucchi, the Town of  
10 Pahrump respectfully requests  
11 that the IAFF Local 4068 open  
12 negotiations on article 23,  
13 Wages. This request is due to a  
14 decrease in the Town's assessed  
15 valuation, which leads to a  
16 decrease in revenues. The budget  
17 that was prepared and submitted  
18 to the Town board showed a flat  
19 increase, and now in light of the  
20 IAFF requesting their 4 percent  
21 step increase, the Town board  
22 will have to consider  
23 alternatives.

24 "Please respond to this  
25 request no later than Friday,

1 July 6, 2012 by 4:00 P.M.

2 "William A. Kohbarger,  
3 Pahrump Town manager."

4 Q. Did you later learn that it wasn't due  
5 to the assessments but it was due to Mr. Kohbarger's  
6 mistaken budgeting?

7 A. Yes.

8 Q. Okay. What was the response of the  
9 IAFF?

10 A. I sent him an E-mail and wrote:

11 "Mr. Kohbarger, at this  
12 time, IAFF Local 4068  
13 respectfully declines the request  
14 from the Town of Pahrump in  
15 regards to opening article 26,  
16 Wages. I want to remind you  
17 about the FEMA assistance to  
18 firefighters grant program,  
19 specifically the AFG and SAFER  
20 grants. Currently, there are a  
21 few available grants and/or soon  
22 to be available. One is going to  
23 expire Friday, July 6, 2012 at  
24 5:00 P.M. Some of the grants  
25 have an extension to the

1 application submission deadline,  
2 but I'm not sure if this one  
3 does. If there is anything that  
4 IAFF Local 4068 or myself can do  
5 to help the Town with this  
6 process, please let me know."

7 And then there's [www.fema.gov/firegrants](http://www.fema.gov/firegrants)  
8 is the website. And it says:

9 "According to the Daniel C.  
10 McArthur audit, the Town of  
11 Pahrump seems to be finally  
12 sound. Also, IAFF Local 4068 has  
13 continued to negotiation [sic] in  
14 good faith with the Town of  
15 Pahrump over the years, and  
16 examples of this are giving up a  
17 contract raise, freezing a step  
18 increase, and freezing the  
19 training officer position. This  
20 has currently saved the Town of  
21 Pahrump nearly \$500,000 and will  
22 continue to save money for the  
23 Town of Pahrump over the years.  
24 In 2013, when the collective  
25 bargaining agreement is set to be

1 negotiated, I believe it would be  
2 a more appropriate time for both  
3 parties to discuss article 26,  
4 Wages.

5 "Sincerely, Raymond L.  
6 Delucchi, President, IAFF  
7 Local 4068."

8 Q. Okay. After you declined to reopen  
9 bargaining over the 4 percent step increase, did  
10 your dispute with Mr. Kohbarger go public?

11 A. Yes.

12 Q. Take a look at Exhibit H. What is  
13 Exhibit H? You don't have to read it. Just  
14 identify for us what it is.

15 A. It's a press release to the Pahrump  
16 media from the Pahrump Valley Firefighters IAFF  
17 Local 4068, challenging the financial crises of the  
18 Town.

19 Q. Okay. And in response, did  
20 Mr. Kohbarger attack you personally in the press?

21 A. Yes.

22 Q. If you turn to Exhibit I -- and you were  
23 present when I walked through this with  
24 Mr. Kohbarger on day one of the arbitration?

25 A. Yes.

1 Q. Okay. On the second page, he's quoted:

2 "In the three and a half  
3 months under his leadership" --  
4 meaning you -- "they have filed  
5 six grievances. The four years  
6 previous to that, there was six  
7 grievances filed. Out of those  
8 six grievances recently filed,  
9 three of them are already  
10 scheduled to go to arbitration.  
11 In the past, only two went to  
12 arbitration. Former Union  
13 president Tim Murray came into  
14 the office, sat down'" --

15 Did you -- did he also go on the news  
16 and attack you personally?

17 A. Yes.

18 Q. Accuse you of having lunch with IAFF  
19 counterparts in North Las Vegas, Henderson, and  
20 Las Vegas?

21 A. Yes.

22 MR. LEVINE: I played that video during  
23 day one. Do I need to replay it?

24 THE ARBITRATOR: I don't think so.

25 MR. LEVINE: Okay. Just as long as the

1 arbitrator remembers it.

2 BY MR. LEVINE:

3 Q. Can you identify Exhibit J for us.

4 A. Yes. This is an E-mail sent from Tom  
5 Waters, who is a Pahrump Town board member, to  
6 former president -- excuse me. This is an E-mail  
7 the other way around, sent from Tim.

8 Q. No. It's from Tom Waters. Are you in  
9 Exhibit J?

10 A. Am I in the wrong one?

11 Q. No, you're in the correct one. Who is  
12 it from?

13 A. Okay. This is an E-mail sent from Tom  
14 Waters, Pahrump Town board member, sent to Timothy  
15 Murray, who is the former president of the Union.

16 Q. And were you copied as the current  
17 president?

18 A. Yes.

19 Q. And does it talk about the public  
20 dispute between 4068 and Mr. Kohbarger?

21 A. Yes.

22 Q. And does it acknowledge that it was  
23 Mr. Kohbarger's failure to budget for the 4 percent  
24 that caused this?

25 A. Yes, yes.

1 Q. And is that in paragraph 2 and  
2 paragraph 3?

3 A. Yes.

4 Q. And can you identify Exhibit K for us.

5 A. This is an E-mail from Timothy Murray  
6 back to Tom Waters.

7 Q. And is it relating to, again, this  
8 problem with the Town manager failing to properly  
9 budget for the 4 percent step increase and then  
10 asking you guys to give it up?

11 A. Yes.

12 Q. Did Mr. Kohbarger ever publicly take  
13 responsibility for his failure to budget?

14 A. No.

15 Q. Obviously these are in July, these  
16 requests to reopen and this public dispute.  
17 According to these exhibits, they are in July and  
18 August.

19 A. Yes.

20 Q. Is this when this investigation of you  
21 and Mr. Hollis was still going on?

22 A. Yes.

23 Q. Did something then subsequently happen  
24 also in July which came to the attention of the Town  
25 manager and the Town board which impacted the labor

1 relations between the Town and 4068?

2 A. Yes.

3 Q. What was that?

4 A. The firefighters had discussed  
5 submitting a vote of no confidence in Fire Chief  
6 Scott Lewis to the Town manager and fire chief in  
7 2008, also in 2010, and again in the beginning of  
8 2012. The vote of no confidence is pretty much a  
9 last-ditch effort to try to get management aware of  
10 major safety concerns with firefighters and the  
11 public. It was voted on and approved by the  
12 firefighters by an overwhelming majority to address  
13 our concerns to the Town manager, the fire -- or the  
14 fire chief -- the fire chief, the Town board, and  
15 the public, consisting of about 43 documented  
16 incidences of mismanagement.

17 Q. And when did the vote of no confidence  
18 actually take place?

19 A. The vote was, I believe, July 19 through  
20 July 24, 2012. It was about five days.

21 Q. Okay. In other words, shortly before  
22 your interview by Mr. Songer?

23 A. Yes.

24 Q. And can you turn to Exhibit L. Can you  
25 tell us what Exhibit L is.

1           A.       This is a letter that myself and the  
2       E board sent to the Town manager and the entire Town  
3       board members regarding the vote of no confidence.

4           Q.       Okay. And Exhibit L actually consists  
5       of two documents. The first two pages, is that the  
6       letter that was sent?

7           A.       Yes.

8           Q.       Does it identify the date that the no  
9       confidence vote in the chief took place?

10          A.       Yes.

11          Q.       It's addressed to Mr. Kohbarger and also  
12       to Ms. Vicky Parker, Mr. Harley Kulkin, Dr. Tom  
13       Waters, who you previously identified, and a  
14       Mr. Mike Darby. And they consist of who,  
15       collectively?

16          A.       They're the five Town board members.

17          Q.       Okay. I'm going to let the  
18       arbitrator -- you've read it. Okay.

19                    After the first two pages dated  
20       September 4 -- after this was sent, did you receive  
21       a call from Town manager, Mr. Kohbarger, regarding  
22       this matter?

23          A.       Yes. Town manager Kohbarger called me  
24       about, I don't know, 10 or 20 minutes after I sent  
25       the E-mail to him, CC'ing the Town board, and said

1 why did you send that to my bosses? I thought you  
2 were going to send that to me.

3 And I said, as the president, I had to  
4 send it to you, the Town board, and the media if it  
5 is not addressed, because that's what the members  
6 voted on.

7 And he said you shouldn't have did that,  
8 you're going to pay for it.

9 Q. He said to you you shouldn't have done  
10 that, you're going to pay for it.

11 A. Yes.

12 Q. Mr. Kohbarger, the Town manager?

13 A. Yes.

14 Q. After Mr. Kohbarger called you and said  
15 you're going to pay for that, what did you do next  
16 with regard to the subject of the no confidence  
17 vote?

18 A. He ended up sending me an E-mail stating  
19 he would not have a valued member such as a fire  
20 chief relieved of his duty for stuff he didn't --  
21 for incidences he didn't know about. And if we  
22 could send him a list of concerns or something in  
23 that matter, that he'd be willing to look at it.

24 Q. Okay. And then if you take a look at  
25 pages 3 through 10 of Exhibit L, can you tell us

1 what that is.

2 A. Yeah. This is a declaration of  
3 firefighter concerns. There's about 65 concerns of  
4 documented incidences of firefighters bringing it to  
5 the E board. We narrowed it down to about 40 or 41.  
6 Pretty much everything on this declaration consists  
7 of firefighter safety and the public safety for  
8 mismanagement.

9 Q. By the chief?

10 A. By the fire chief.

11 Q. And per the address, it was sent to the  
12 Town manager and the Town board?

13 A. Yes.

14 Q. Okay. And that's on September 6?

15 A. Yes.

16 Q. Eight days later after this was sent,  
17 what happened? September-14.

18 A. I received a phone call -- Firefighter  
19 Hollis and I received a phone call from one of the  
20 lieutenants saying that you are to report to  
21 station 1 for a meeting with Town manager William  
22 Kohbarger and HR.

23 Q. And did you and Mr. Hollis show up?

24 A. Yes.

25 Q. And what happened when you met with Town

1 manager Kohbarger on September 14?

2 A. Firefighter Hollis and I were placed on  
3 unpaid admin leave pending termination.

4 Q. And were you -- let's turn to  
5 Exhibit 29. There's two letters in Exhibit 29 that  
6 are identical, one to Mr. Hollis and one to  
7 yourself, indicating that your revocation of  
8 sponsorship to work under the medical director's  
9 license has been revoked.

10 A. Yes.

11 Q. And that means you're being put on  
12 unpaid leave, pending termination.

13 When you were given this on  
14 September 14, were you provided with a copy of  
15 Mr. Songer's report?

16 A. No.

17 Q. What did Mr. Kohbarger say to you in the  
18 meeting -- to you and Mr. Hollis when he notified  
19 you that your sponsorship to work is being revoked  
20 and you're being put on unpaid leave pending  
21 termination?

22 A. He said, my hands are tied. It's in the  
23 recording. He said, my hands are tied. There's  
24 nothing I can do about this. An outside agency and  
25 a medical director are doing this.

1 Q. Were you given any explanation as to the  
2 basis or the evidence upon which this was being  
3 taken at the time that you were called in on  
4 September 14?

5 A. No.

6 Q. Were you subsequently given a subsequent  
7 pre-termination hearing?

8 A. Yes.

9 Q. And if I could have you turn to  
10 Exhibit 30, is this what you were given?

11 A. Yes, the intent to discipline letter.

12 Q. Okay. Prior -- when did the  
13 pre-termination hearing take place?

14 A. September 25, 2012.

15 Q. When we take a look at Exhibit 30, it's  
16 the same for both yours and Tommy's, but -- so I'll  
17 just use the first one. Take a look at the last  
18 paragraph signed by Mr. Kohbarger. It says:

19 "You have the right to file  
20 a written response or to request  
21 in writing a pre-disciplinary  
22 conference before the Town  
23 manager within five working days  
24 of receipt of the notice of  
25 proposed disciplinary action.

1 Failure to file a written  
2 response or request a  
3 pre-disciplinary hearing within  
4 five working days, or to appear  
5 at a pre-disciplinary after  
6 requesting such, will constitute  
7 a forfeiture of the employee's  
8 rights to further appeal."

9 Did I read that accurately?

10 A. Yes.

11 Q. Does that even comply with your  
12 contract?

13 A. No.

14 Q. If we take a look at the contract,  
15 Exhibit 6, if we can go to page 38, if I could  
16 direct your attention to section 4, subsection E, it  
17 states:

18 "A statement that the  
19 employee's failure to file a  
20 written response or request in  
21 writing a pre-disciplinary  
22 conference, or to appear at the  
23 pre-disciplinary conference, if  
24 one has been requested, will  
25 constitute an acknowledgment that

1                   he/she has been afforded  
2                   procedural due process."  
3                   Isn't that what it says?

4           A.       Yes.

5           Q.       Notwithstanding the fact that the  
6           language you were given did not comply with the  
7           contract, did you request a preterm hearing?

8           A.       Yes.

9           Q.       And that took place again on what date?

10          A.       September 25, 2012.

11          Q.       Did they finally provide you with the  
12          Songer report at or immediately prior to that  
13          pre-termination hearing?

14          A.       Yes.

15          Q.       All right. I'd like to go through the  
16          Songer report, which forms the basis for the  
17          recommendation to terminate. That is Exhibit 4.  
18          The first page of Exhibit 4, Ray, is it looks like a  
19          cover letter.

20                   The second page I want to direct your  
21          attention to, which also has a page number 1, it  
22          says -- it's entitled Facts From Pahrump Valley Fire  
23          Rescue Services Investigation, Points of Interview  
24          with Complainants. Do you see that?

25          A.       Yes.

1           Q.       In fact, did Mr. Songer ever interview  
2 the complainants?

3           A.       No.

4           Q.       Did you have a discussion with him on  
5 July 31, 2012 regarding the subject of interviewing  
6 the Choyces?

7           A.       Yes.

8           Q.       What did he tell you on July 31, 2012?

9           A.       He said that he was unable to interview  
10 the Choyces because William Kohbarger, he said,  
11 wouldn't let him due to a possible lawsuit.

12          Q.       Now, Mr. Songer's interview of you on  
13 the 31st, which he produced in this case, is it  
14 complete?

15          A.       No.

16          Q.       Is that portion on the portion that they  
17 did produce to us?

18          A.       No.

19          Q.       Okay.

20                 THE ARBITRATOR: I'm sorry. Can you run  
21 that by me again about your last question? I didn't  
22 understand it.

23                 MR. LEVINE: Okay. He testified that he  
24 was told by Songer that Songer shouldn't interview  
25 because -- by Kohbarger because of concerns about a

1 lawsuit. I asked him to acknowledge that the  
2 recordings that the Town turned over of Mr. Songer's  
3 interview -- were they complete recordings? And he  
4 said no. And I said was that exchange on the  
5 portion they did turn over to us? He answered no.

6 THE ARBITRATOR: Oh, you're talking  
7 about the audio recording of Mr. Delucchi's  
8 interview?

9 MR. LEVINE: That's right.

10 THE ARBITRATOR: Okay.

11 MR. LEVINE: When you listen to those  
12 five things, you will see they are only partials.  
13 They don't run -- they're not complete.

14 THE ARBITRATOR: Okay. I just wanted to  
15 make sure you were talking only of Mr. Delucchi's  
16 interview.

17 MR. LEVINE: That's correct.

18 Mr. Hollis's is not complete either. You'll see  
19 that when you listen to it.

20 BY MR. LEVINE:

21 Q. Okay. Does he write this -- when you  
22 read this, did you think he had somehow then  
23 interviewed the Choyces?

24 A. Yes.

25 Q. Okay. Did it turn out not to be true?

1 A. Correct.

2 Q. Do you -- you were accused of dishonesty  
3 by Mr. Songer, do you believe?

4 A. Yes.

5 Q. In your opinion, is writing a report  
6 that suggests an interview took place when it  
7 didn't -- what would you characterize that as?

8 A. Dishonesty.

9 Q. Let's go to the section entitled  
10 Conclusions From Pahrump Valley Fire Rescue Services  
11 Investigation, starting on -- again, each little  
12 section seems to restart with page number 1. It's  
13 in Exhibit 4. Go to page 1. Go to the section  
14 entitled Conclusions. Not Facts. Keep flipping.

15 Is the arbitrator there?

16 THE ARBITRATOR: I have it.

17 MR. LEVINE: I'm going to wait for the  
18 witness to get there.

19 THE WITNESS: I'm there.

20 BY MR. LEVINE:

21 Q. Okay. Mr. Songer starts his conclusions  
22 with a statement, "The complainants could have been  
23 more believable for the following reasons 2 through  
24 13," and then lays out why they may be more  
25 believable. Do you see that?

1 A. Yes.

2 Q. Do you believe or do you understand how  
3 Mr. Songer can reach a credible determination with  
4 regard to people he's never met or spoke with?

5 A. No.

6 Q. Item number 2, he writes, "There was  
7 'patient contact,'" and that your statement, "what's  
8 going on," at the right side of the vehicle  
9 constitutes patient contact. Do you agree with  
10 that?

11 A. No.

12 Q. Does he ever reference NAC 450B.180  
13 anywhere in his conclusions?

14 A. No.

15 Q. Item number 3, the large paragraph,  
16 "Brittnie's statements, recorded by Lieutenant Moody  
17 and witnessed by Chief Lewis, have a more believable  
18 and plausible pattern to it."

19 First, did Lieutenant Moody ever record  
20 a statement by Brittnie?

21 A. No.

22 Q. To your knowledge, was there ever a  
23 recorded statement given by either Brittnie or James  
24 Choyce?

25 A. No.

1 Q. Was there even a written statement given  
2 by Brittnie or James Choyce?

3 A. No.

4 Q. So when he writes her statement recorded  
5 by Lieutenant Moody, what do you consider that to  
6 be?

7 A. Falsification, dishonesty.

8 Q. Later in that paragraph, he writes:

9 "An EMS expert will tell you  
10 that the words that were stated  
11 by Brittnie would be a typical  
12 response to Paramedic Delucchi's  
13 question."

14 Well, first, did you ever question  
15 Brittnie?

16 A. No.

17 Q. Did she ever respond to you in any way?

18 A. No.

19 Q. As an -- as a paramedic, is there such a  
20 thing as a typical response, in your experience?

21 A. No.

22 Q. Further down, he writes:

23 "Additionally, for the two  
24 firefighter/EMS employees to have  
25 credibility and be considered

1                   believable, then STAR CARE (as in  
2                   the PVFRS rules and regulations)  
3                   would have to been demonstrated  
4                   by the A and the R (in STAR) and  
5                   the C, A, R, and E (in CARE).  
6                   And in this case, six out of the  
7                   eight STAR CARE topics were  
8                   disregarded."

9                   Do you have any idea what he's writing  
10                  about there?

11                 A.        I have no idea.

12                 Q.        If we go to page 2 -- actually, no.  
13                  Stay on page 1 for a moment. In the final  
14                  paragraph, he writes:

15                         "Moreover, failure by both  
16                         fire/EMS personnel together or  
17                         individually to document the  
18                         details of this encounter in a  
19                         PVFRS's patient care report or  
20                         PVFRS special circumstance report  
21                         (incident report) form will be  
22                         viewed as a coverup by the two  
23                         firefighter/EMS personnel."

24                         In your experience, has the failure to  
25                         file a patient care report ever been deemed a

1 coverup at the Pahrump Valley Fire and Rescue?

2 A. No.

3 Q. Was one actually needed in this case?

4 A. No.

5 Q. There are other cases that you're  
6 familiar with where a firefighter hasn't been or  
7 hasn't filed out a PVFRS patient care report. Are  
8 you familiar with other cases?

9 A. Yes.

10 Q. How were those handled?

11 A. They're asked to fill one out when  
12 they're told to.

13 Q. Has there ever been, through either  
14 contract --

15 A. Special circumstance report.

16 Q. Special circumstance report. Okay.

17 A. Yeah.

18 Q. Has there ever been, though, a rule or  
19 regulation by past practice establishing that if you  
20 don't do a patient care report, it's deemed a  
21 coverup?

22 A. No.

23 Q. Again, did you believe one was warranted  
24 in this case?

25 A. No.

1 Q. Why?

2 A. Because there's no patient.

3 Q. Let's go to page 2. He starts with, on  
4 page 2, item 4, the allegations by complainant James  
5 Choyce. Again, did James Choyce ever submit to a  
6 recorded interview, to your knowledge?

7 A. No.

8 Q. Did he submit a written statement, to  
9 your knowledge?

10 A. No.

11 Q. In the absence of a written or recorded  
12 statement, do you know where Mr. Songer got these  
13 so-called allegations from James Choyce?

14 A. The fire chief's notes.

15 Q. He indicates on page 2 -- let's see  
16 where we can find it here. He concludes that the  
17 incident must have taken five minutes. Do you know  
18 how he reaches this conclusion?

19 A. When I was reading it, he said they  
20 reenacted the scenario.

21 Q. Based upon his determination of five  
22 minutes, did they reenact it accurately?

23 A. No.

24 Q. How long was the entire incident?

25 A. 60 seconds, maybe two minutes at the

1 most.

2 THE ARBITRATOR: Let's go off the record  
3 for just a moment.

4 (A discussion was held off the  
5 record.)

6 BY MR. LEVINE:

7 Q. If we go to item number 10 in his  
8 conclusions, he writes:

9 "The more damaging fact  
10 discovered in our investigation  
11 was the fact that Summerlin  
12 Hospital in Las Vegas, Nevada  
13 (where Brittanie's physician  
14 wanted her to go and an  
15 'appropriate hospital') was only  
16 approximately 33 miles away from  
17 their location. In comparison,  
18 Desert View Regional Medical  
19 Center in Pahrump, Nevada was  
20 approximately 31 miles away in  
21 the opposite (north) direction,  
22 and not an 'appropriate hospital'  
23 to transport to."

24 Did I read that correctly?

25 A. Yes.

1           Q.       Is that an accurate or correct  
2 assessment by Mr. Songer?

3           A.       No.

4           Q.       Okay. First I want you to assume, for  
5 purposes of my next question, that even though you  
6 didn't do an assessment that Brittnie Choyce had, in  
7 fact, had a miscarriage, the baby, as she testified,  
8 was already out and that she was bleeding. I want  
9 you to assume, for purposes of my next question,  
10 that you were given access to her and permitted to  
11 do an assessment in that case and found her to be  
12 bleeding. Under those circumstances, what would be  
13 the appropriate hospital to transport her to?

14          A.       Desert View Hospital in Pahrump.

15          Q.       Explain to the arbitrator why.

16          A.       At that point, I would be more fearful  
17 of some sort of shock, and I would take her to  
18 Pahrump, which would be the closest hospital if I  
19 traveled in the direction where I was already going.  
20 And also, the lieutenant's and fire chief pressure  
21 all our medic units to stay inside of Pahrump  
22 because we're so short staffed of firefighters. We  
23 rarely ever -- Firefighter Hollis and I transfer  
24 patients or -- to Las Vegas unless it's an  
25 interfacility.

1           Q.       And just can you explain for the  
2 arbitrator, what is an interfacility transport.

3           A.       Interfacility is what we were on. It's  
4 a most of the time scheduled transport from a  
5 Pahrump hospital to a Las Vegas hospital and then a  
6 return with one or more patients.

7           Q.       So if, under the hypothetical I gave  
8 you, you would have been permitted to assess her,  
9 Mr. Choyce had opened up the car door and given you  
10 access to her, you'd been able to assess her, you  
11 found the baby had already passed and that she was  
12 bleeding, is time of the essence when you're dealing  
13 with loss of blood and shock?

14          A.       Absolutely.

15          Q.       Which hospital is closer?

16          A.       Pahrump hospital.

17          Q.       Does Pahrump have the ability to  
18 stabilize somebody in hypovolumic shock suffering  
19 from blood loss?

20          A.       Yes.

21          Q.       In fact, if you were to go to Las Vegas,  
22 how many miles would you have to go towards Pahrump  
23 before you could even turn around and start going  
24 back the other direction?

25          A.       I would have to travel two miles north

1 to the turnaround and two miles back, and then I  
2 would have to travel up over the hill and down into  
3 Las Vegas.

4 Q. When you're dealing with issues of shock  
5 and blood loss, is time of the essence?

6 A. Absolutely.

7 Q. You mentioned that you were pressured by  
8 the chief and lieutenant to stay within Pahrump  
9 because of short staffing. What is it about the  
10 short staffing that makes it important that you take  
11 somebody to Pahrump Valley Medical Center, Desert  
12 View, as they call it, as opposed to going --  
13 leaving the valley? Assuming that that's an  
14 appropriate destination.

15 A. We have nine firefighters on duty on a  
16 good day, and it's split into four ambulances, two  
17 in the middle station, which is the center of town,  
18 one in the south part of town where Firefighter  
19 Hollis and I are, and one in the north. Every time  
20 an interfacility transport takes place, those two  
21 firefighters go to Las Vegas, and that leaves us  
22 with seven. We send multiple units out at a time.  
23 Most of the time, we have about five firefighters in  
24 the valley. We are trained and pressured to stay in  
25 town so we can respond to 911 calls and respond to

1 fire calls. Sometimes it gets so bad that we don't  
2 have ambulances available because of this reason.

3 Q. On page 4 of Mr. Songer's conclusions,  
4 after discussing or offering his opinions that  
5 Desert View Regional Medical Center, sometimes  
6 called Pahrump Valley Medical Center, is not an  
7 appropriate destination, after discussing that, he  
8 writes:

9 "Based on my interviews and  
10 review of documents, I concluded  
11 the EMS crew (paramedic and  
12 EMT-I) did not want to take the  
13 patient" --

14 And I'm on page 4, Madam Arbitrator, the  
15 last paragraph of section 11, right before  
16 section 12.

17 THE ARBITRATOR: This is still in the  
18 Conclusions?

19 MR. LEVINE: The Conclusions. It's  
20 item -- it's the last paragraph of item 11. It  
21 should have -- the page number should be 4.

22 THE ARBITRATOR: Okay. I'm there.

23 BY MR. LEVINE:

24 Q. Okay.

25 "Based on my interviews and

1 review of documents, I concluded  
2 the EMS crew (paramedic and  
3 EMT-I) did not want to take the  
4 patient to Summerlin Hospital in  
5 Las Vegas, but instead to Desert  
6 View Regional Medical Center in  
7 Pahrump, Nevada, the closest  
8 hospital to the EMS crew's fire  
9 station, for the EMS crew's  
10 personal convenience."

11 Is there any truth to that assertion?

12 A. No.

13 Q. Okay. Is the premise of the conclusion  
14 that it would convenience you to stay in Pahrump  
15 even accurate? Is that even accurate?

16 A. No.

17 Q. Can you explain why the notion that  
18 staying in Pahrump is somehow convenient for you is  
19 erroneous?

20 A. First of all, we're on duty till  
21 8:00 A.M. When we're back in Pahrump, we have to  
22 respond to fires, calls, regardless. And actually,  
23 if we would have taken someone to Vegas, it would  
24 have changed the rotation. It would have benefited  
25 Firefighter Hollis and I. Rotation meaning

1 ambulances -- I'll explain it. The four ambulances  
2 rotate to Vegas, so station 1, 3, 5, 1, 3, 5.

3 THE ARBITRATOR: I'm sorry. So how  
4 would that benefit you?

5 THE WITNESS: Because we would be doing  
6 a second transport to Vegas, which would put us back  
7 at the end of the rotation for twice.

8 BY MR. LEVINE:

9 Q. If you're driving somebody to Vegas, do  
10 you have to respond to fire calls or other  
11 emergencies?

12 A. No.

13 Q. Is it pretty easy?

14 A. Yes.

15 Q. Item number 12:

16 "No effort on either  
17 provider's part was made to  
18 contact law enforcement, another  
19 ambulance service, medical  
20 control, or PVFRS's supervisory  
21 personnel."

22 Okay. First, when you got, in your  
23 words, forced off the road at highway marker  
24 approximately 22, 23, do you have the ability to  
25 contact law enforcement?

1           A.       No.

2           Q.       Okay. How far did you have to travel to  
3 get back in radio and cell phone range from the area  
4 where the incident was?

5           A.       About probably 10 or -- 10 or 12 miles  
6 near Tecopa, heading north.

7           Q.       Okay. If 10 or 12 minutes after the  
8 Choyces had driven off, you got back in radio range,  
9 assuming hypothetically you contacted Nevada Highway  
10 Patrol, what information would you have to give  
11 them?

12          A.       I wouldn't have had information.

13          Q.       Did you believe there would be anything  
14 the highway patrol could do without a name, license  
15 plate, or make and model of a car?

16          A.       No.

17          Q.       Why didn't you call your lieutenant?

18          A.       If we -- if we would have called our  
19 lieutenant who works a lot of hours in the middle of  
20 the night and woke him up, he probably would have  
21 called us a foul name.

22          Q.       Normally if something unusual or  
23 noteworthy happens, instead of calling a lieutenant,  
24 who might be asleep and wake him up, how is that  
25 normally handled? How is it normally communicated

1 to the lieutenant?

2 A. Firefighter Hollis and I, every morning  
3 after shift, before 8:00 A.M., drive up to  
4 station 1, which is about ten miles away from our  
5 south station, and we do sort of a rollover. We  
6 fill it full of gas. We restock the unit, and we  
7 usually talk to our lieutenant about our shift, how  
8 it went.

9 Q. Now, on this particular morning, May 25,  
10 2012, when you came to the end of your shift and it  
11 was time to do rollover, was Lieutenant Moody  
12 available?

13 A. There was no lieutenant on duty from  
14 5:00 A.M. to 8:00 A.M.

15 Q. Why was your lieutenant not present to  
16 the end of your shift?

17 A. He took either annual time or comp time.

18 Q. He went home?

19 A. Yes.

20 Q. All right. Paragraph 13, Conclusions:

21 "This mindset of both  
22 Paramedic Delucchi and  
23 EMT-intermediate Tommy Hollis is  
24 that they used good sound  
25 judgment, which we can't

1 find/identify in either all the  
2 document by PVFRS or in our  
3 interviews or investigation.  
4 Additionally, their refusal to  
5 acknowledge any wrongdoing  
6 demonstrates a pattern of  
7 behavior and professional conduct  
8 that may be repeated in the  
9 future. Moreover, they showed no  
10 remorse for anything that  
11 transpired. This was their  
12 demeanor and mindset at the  
13 interviews. Therefore, their  
14 attitude leads me to believe that  
15 there may be repeated poor  
16 judgement in the future,  
17 resulting in ramifications for  
18 the Town of Pahrump. Probability  
19 in actuarial analysis tells us  
20 that it's not if, but when, the  
21 next event/incident will happen."  
22 Do you know where he got that?

23 A. No.

24 Q. Did I question him on that during day  
25 one?

1 A. Yes.

2 Q. And did he have an answer?

3 A. No.

4 Q. Do you have any idea what he's talking  
5 about as a probability in actuarial analysis to  
6 predict your future behavior?

7 A. No.

8 Q. Now, to go back to what Mr. Songer told  
9 you when you came back from FMLA leave and found out  
10 you were being interviewed by an outside  
11 investigator you hadn't agreed to, what was it again  
12 he said to you his role was?

13 A. To collect the facts and not pass  
14 judgment.

15 Q. Do you believe that's what he's doing in  
16 this report?

17 A. Absolutely.

18 Q. Just checking the facts or not passing  
19 judgment?

20 A. No, he was passing judgment.

21 Q. Did he ever tell you, oh -- at any point  
22 contact you and say, oh, by the way, my role in this  
23 investigation is going to be changing?

24 A. No.

25 Q. Did he follow the bargained-for

1 investigative process, disciplinary process?

2 A. No.

3 Q. What is it that your policies require  
4 and past practice has always utilized for  
5 suspensions and terminations? What is required by  
6 way of witness -- for witnesses in connections with  
7 suspensions and terminations under your policies and  
8 past practices?

9 A. All recordings and written statements  
10 will be received from -- or will be taken from all  
11 parties.

12 Q. Okay. In your experience by past  
13 practice, has there ever been either a suspension or  
14 a termination based upon a complainant that was not  
15 subject to either a recorded interview or a written  
16 statement?

17 A. No.

18 Q. Let's take a look at his recommendations  
19 now, and I believe they are identical for both you  
20 and Mr. Hollis. If I could have you turn to his  
21 recommendation on page 1 of the Recommendations.

22 Item G:

23 "Actions he/she as medical  
24 director may/should take  
25 immediately."

1 And then subsection 1 is:

2 "As medical director PVFRS,  
3 I have temporary [sic] revoked  
4 Paramedic Raymond Delucchi's and  
5 EMT-Intermediate Tommy Hollis's  
6 authorization to practice under  
7 my license, pending their  
8 investigation(s) outcome."

9 First, I'm not sure what he's writing  
10 there, but he says "I have" temporarily as if --  
11 does Mr. Songer have that authority?

12 A. No.

13 Q. Does Dr. Slaughter even have authority  
14 to revoke your authorization?

15 MR. CAMPBELL: Objection. That calls  
16 for a legal conclusion.

17 BY MR. LEVINE:

18 Q. To your understanding.

19 MR. CAMPBELL: Again, that calls for a  
20 local conclusion. This witness isn't qualified  
21 to --

22 THE ARBITRATOR: Well, I know what  
23 you're --

24 MR. LEVINE: You know where I'm going  
25 with it.

1 THE ARBITRATOR: I think we discussed  
2 this the last time we were together.

3 MR. LEVINE: Then I will leave it for  
4 briefing. Let me rephrase it this way.

5 BY MR. LEVINE:

6 Q. Is permitting a revocation and putting  
7 you on unpaid leave, unpaid pending termination --  
8 is that provided for in the contract under the  
9 disciplinary process?

10 A. No.

11 Q. Is there any provision for putting  
12 someone on unpaid leave pending termination?

13 A. No.

14 Q. By past practice, if they're going to  
15 terminate somebody, what sort of leave are they put  
16 on?

17 A. Paid leave.

18 Q. It was suggested in both the testimony  
19 of Mr. Songer and Chief Lewis that your job is  
20 inherently dangerous and it's part of your job to  
21 face danger. Do you recall testimony to that  
22 effect?

23 A. Yes.

24 Q. Is that how you are trained?

25 A. No.

1           Q.       Is that -- are those concepts consistent  
2 with the regulations you are provided in your  
3 contractual provisions?

4           A.       No.

5           Q.       What is it that your regulations state  
6 is the -- and your protocols state is the first most  
7 important aspect?

8           A.       Safety.

9           Q.       Is that scene safety?

10          A.       Scene safety, yes.

11               MR. LEVINE: Madam Arbitrator, I went  
12 through all of those with two witnesses in day one.  
13 Do I need to go over them again, or is it --

14               THE ARBITRATOR: I think that I can read  
15 the transcript from the previous day.

16               MR. LEVINE: Okay. And that will  
17 identify the exhibits. However, I would like to  
18 have marked an additional exhibit, which is -- I  
19 guess it's now going to be Z, on that very subject.  
20 And I have now completed all 26 letters of the  
21 alphabet.

22                       (Union Exhibit Z was marked for  
23 identification.)

24           BY MR. LEVINE:

25           Q.       Can you tell me what Exhibit Z -- the

1 book that these excerpts are from -- what is the  
2 book?

3 A. "Essentials of Firefighting."

4 MR. CAMPBELL: I'm going to object to  
5 this exhibit. I mean, it's a partial thing. I've  
6 never been provided it before. I think it's --

7 MR. LEVINE: I can lay an adequate  
8 foundation. The reason --

9 BY MR. LEVINE:

10 Q. First and foremost, is Exhibit Z taken  
11 from this book right here?

12 A. Yes.

13 MR. LEVINE: I'd like to lay a  
14 foundation for what it is.

15 THE ARBITRATOR: All right. Go ahead.

16 BY MR. LEVINE:

17 Q. Can you tell us what this book is.

18 A. This is the textbook that's used across  
19 America for firefighters trying to obtain their  
20 firefighter I, II, or III, per the states.

21 Q. And when you were trained as a  
22 firefighter, did you utilize this book?

23 A. Yes.

24 Q. And is it -- is this book, to your  
25 understanding, only for purposes of training, or

1 does it have -- is it -- in addition to just  
2 training new firefighters, what is it used for?

3 A. It states in there it's for lifelong  
4 experiences and referring back to incidences with  
5 paid professional firefighters.

6 Q. And in chapter 1 or page 28 under the  
7 "Essentials of Firefighting," does it address  
8 emergency scene safety?

9 A. Yes.

10 Q. Okay. And can you identify on pages 28  
11 and 29 for the arbitrator what it is you are trained  
12 and instructed on with regard to scene safety, which  
13 section it is.

14 A. Emergency scene safety and then NFPA  
15 1001, 3-3.4(a), 4-4.2(b).

16 MR. LEVINE: Does the arbitrator want to  
17 read those paragraphs or have them read into the  
18 record?

19 THE ARBITRATOR: I glanced at it.

20 BY MR. LEVINE:

21 Q. Okay. What is the pertinent portion of  
22 this in that section?

23 A. The second paragraph where it says:

24 "All firefighters must  
25 remember that they did not cause

1 the emergency incident. They are  
2 not responsible for the victim  
3 being in that situation, and they  
4 are not obligated to sacrifice  
5 themselves in a heroic attempt to  
6 save the victim, especially not  
7 in an attempt to recover a body.  
8 In fact, it is irresponsible and  
9 unprofessional for firefighters  
10 to take unnecessary risks that  
11 might result in their being  
12 incapacitated by an injury and  
13 therefore unable to perform the  
14 job for which they have been  
15 trained. The function of the  
16 fire rescue service is not to add  
17 victims to the situation."

18 Q. Keep reading.

19 A. Okay.

20 "The IC's first priority  
21 must be the firefighter's safety.  
22 The second priority is the  
23 victim's safety. The IC should  
24 never choose a course of action  
25 that requires firefighters to

1 take up necessary risks."

2 Q. In addition to the recommendation  
3 regarding the revocation of the authorization to  
4 practice, he makes termination recommendations --  
5 Mr. Songer does -- identifying what he believes to  
6 be the rules and regulations you violated. I'd like  
7 to walk through those with you right now.

8 THE ARBITRATOR: Before we leave, I  
9 assume you want me to take this as part of the  
10 record.

11 MR. LEVINE: Yes.

12 THE ARBITRATOR: Any objection?

13 MR. CAMPBELL: Same objection.

14 MR. LEVINE: That it's not the entire  
15 document?

16 THE ARBITRATOR: Is that your objection?

17 MR. CAMPBELL: Yeah.

18 MR. LEVINE: The entire document is  
19 rather voluminous.

20 THE ARBITRATOR: Yeah, the document  
21 would be -- the entire book from which this excerpt  
22 was taken is in the hearing room. And I have to say  
23 that as a veteran of many cases in fire service, I  
24 am heard this principle enunciated on numerous  
25 occasions.

1 MR. LEVINE: So if I'm beating a dead  
2 horse, that's fine. I just can't know in advance  
3 your necessary background and experience so --

4 THE ARBITRATOR: So I think that the  
5 grievants should have an opportunity to defend the  
6 action by citing aspects of their training so --

7 MR. CAMPBELL: Well, I think you can  
8 make reference to the book if you take  
9 administrative notice of the book itself. Of the  
10 entire book.

11 MR. LEVINE: As a learned treatise?

12 MR. CAMPBELL: Because I don't know  
13 what's in the book. There may be other places in  
14 the book that I can point to if he's going -- I'd  
15 just rather you take administrative notice of the  
16 publication.

17 MR. LEVINE: As a learned treatise?

18 THE ARBITRATOR: But what's the  
19 practical difference? I don't really know that it  
20 really matters that much. So anyway, I'll allow the  
21 excerpt to come in.

22 (Union Exhibit Z was admitted  
23 into evidence.)

24 MR. LEVINE: To speed things up, give me  
25 one minute.

1 THE ARBITRATOR: Is this an appropriate  
2 break right now?

3 MR. LEVINE: Yes.

4 THE ARBITRATOR: Let's take a very  
5 short, five-minute break.

6 (A recess was taken from 12:21  
7 to 12:42 P.M.)

8 THE ARBITRATOR: Back on the record.  
9 Please continue.

10 BY MR. LEVINE:

11 Q. I want to go through, Ray, the  
12 recommendations for termination and the bases  
13 asserted in Mr. Songer's report. Turn to Exhibit 4.  
14 Do you have that in front of you? I think it's on  
15 page 2 for you.

16 A. Yeah.

17 Q. Page 4 for Tommy. All right. First he  
18 references --

19 Madam Arbitrator, I'm going to be  
20 referring to the various policies listed, so I don't  
21 know if it's easier for to you remove the page so  
22 you can hold it in one hand as you look at the  
23 policies or if you want to flip within the binder.  
24 I'll leave it to your preference.

25 THE ARBITRATOR: Okay.

1 BY MR. LEVINE:

2 Q. Let's start with the -- what he refers  
3 to as the Town of Pahrump personnel policies, which  
4 is Exhibit 5, and he referenced disciplinary action  
5 which is, I believe, section 11.1. Do you see that?  
6 It says 11.1.1, 2, 7, 11, and 12. Do you see that?

7 A. Yes.

8 MR. LEVINE: And Madam Arbitrator, you  
9 will find those on page 91, using the page numbers  
10 at the bottom.

11 THE ARBITRATOR: I have it.

12 BY MR. LEVINE:

13 Q. Okay. 1.1:

14 "Conduct unbecoming an  
15 employee in the Town of Pahrump's  
16 service, or discourteous  
17 treatment of members of the  
18 public or a fellow employee."

19 Did you mistreat anybody?

20 A. No.

21 Q. Do you believe you ever engaged in any  
22 conduct unbecoming?

23 A. No.

24 Q. Item number 2:

25 "Falsification of or making

1 a material omission on forms,  
2 records, reports, including  
3 applications, time cards, and  
4 other Town of Pahrump records."  
5 Does that apply?

6 A. No.

7 Q. Based upon your knowledge of this  
8 circumstance?

9 A. No.

10 Q. Did you falsify or make any material  
11 omissions?

12 A. No.

13 Q. When you were later asked by your  
14 lieutenant to fill out a special circumstance  
15 report, did you leave anything out that was  
16 material?

17 A. No.

18 Q. That's Exhibit A.

19 A. No, I didn't leave anything out.

20 Q. Is it accurate?

21 A. Yes.

22 Q. Item number 7:

23 "Actual or threatened  
24 physical violence, including but  
25 not limited to intimidation,

1 overt or subtle threats,  
2 harassment, stalking, or any form  
3 of coercion, except as may be  
4 required of a peace officer in  
5 the course of his/her duties."

6 And that is number 7, and Mr. Songer  
7 actually wrote out "intimidation." Did you  
8 intimidate anybody?

9 A. No.

10 Q. Do you remember when I questioned  
11 Mr. Songer on the basis for that, do you recall his  
12 response?

13 A. Yes.

14 Q. Which was?

15 A. He wasn't sure how it got in his report.

16 Q. Do you know where that came from? Or do  
17 you have a belief as to where that came from?

18 A. Yes.

19 Q. Can you tell the arbitrator where that  
20 came from.

21 A. The chief's complaint against me for  
22 bullying and intimidation.

23 Q. In fact, did the Town of Pahrump, three  
24 days before you were put on unpaid admin leave and  
25 about three weeks before your termination, receive a

1 report from Cindy Davis relating to the chief's  
2 complaint against you?

3 A. Yes.

4 Q. Is that Exhibit 36?

5 A. Yes.

6 Q. In the big book.

7 And does Cindy Davis conclude that you  
8 intimidated the chief?

9 A. Yes.

10 Q. Was Mr. Songer's role to be  
11 investigating or passing judgment on the chief's  
12 complaint against you?

13 A. No.

14 Q. Who did Mr. Songer report to?

15 A. Becky Bruch.

16 Q. And who did Cindy Davis report to?

17 A. Becky Bruch.

18 Q. Did you listen to the audio recording of  
19 the meeting you had on September 14 with Bill  
20 Kohbarger?

21 A. Yes.

22 Q. Did he identify who he and Ms. Bruch had  
23 been talking to the day before for most of the day?

24 A. Pat Songer.

25 Q. And Becky Bruch?

1           A.       And Becky Bruch.

2           Q.       Were you even provided with Exhibit 36,  
3       which is the report which concludes that you  
4       intimidated the chief? Were you even provided with  
5       that before your termination at any point?

6           A.       No, no.

7           Q.       When did you receive it relative to your  
8       termination?

9           A.       Months after my termination, and it was  
10       through our attorney. We had to get attorneys.

11          Q.       Okay. Let's go to the -- actually,  
12       there was a letter --

13               THE ARBITRATOR: Excuse me. I have just  
14       one clarification. I remember Ms. Bruch from the  
15       previous days of hearing, and on her -- on the  
16       sign-up sheet, she's identified as Town attorney.

17               MR. CAMPBELL: Yes.

18               THE ARBITRATOR: But is she with a  
19       private firm?

20               MR. CAMPBELL: Yes.

21               THE ARBITRATOR: Okay. Is that agreed  
22       to?

23               MR. LEVINE: Yes.

24               THE ARBITRATOR: Okay. So she's not  
25       employed by the Town of Pahrump.

1 MR. CAMPBELL: She's outside counsel.

2 MR. LEVINE: She's not an employee in  
3 the W-2 agent sense.

4 THE ARBITRATOR: Okay. She's a private  
5 firm who has the Town of Pahrump as one of its  
6 clients.

7 MR. CAMPBELL: That's correct.

8 MR. LEVINE: Yes.

9 THE ARBITRATOR: Okay. Thank you.

10 BY MR. LEVINE:

11 Q. If I could have you turn to Exhibit 35.  
12 Can you tell us what Exhibit 35 is.

13 A. This is an E-mail that attorney Robert  
14 Rourke, who is the Local -- who was the Local's  
15 attorney, and myself received from Bret F. Meich  
16 from Armstrong Teasdale.

17 Q. And what does this letter say?

18 A. This says -- summarized, it says that  
19 they're going to terminate me again if I was able to  
20 successfully come back to work through the  
21 arbitration process, and they'll fault the CBA while  
22 doing it.

23 Q. Okay. So what they're telling you is  
24 even if you win this arbitration, they intend to  
25 refire you again for the intimidation complaint.

1           A.       Yes.

2           Q.       But wasn't intimidation included in  
3 Mr. Songer's report that was given to you before the  
4 first termination?

5           A.       Yes.

6           Q.       Let's go to item number 11, which is  
7 identified:

8                       "Dishonesty, including  
9                       intentionally or negligently  
10                      providing false information,  
11                      intentionally falsifying records,  
12                      employment applications, or other  
13                      documents."

14           Have you been dishonest, either  
15 intentionally or negligently, in any aspect in  
16 providing information to either Mr. Songer or Chief  
17 Lewis or Lieutenant Moody regarding the events of  
18 May 25, 2012?

19           A.       No.

20           Q.       And just to be clear, going back to this  
21 prior charge of intimidation, do you believe that  
22 going to human resources and saying I want a second  
23 set of eyes and ears at my interview, investigatory  
24 interview -- do you believe that is intimidation,  
25 bullying, or harassment of the chief?

1           A.       No.

2           Q.       I think the second item on Mr. Songer's  
3 recommendation is administrative leave without pay.  
4 It says 11.1.4. Do you see that?

5           A.       Yes.

6           Q.       That's listed in the Town's rules and  
7 regulations, but is the disciplinary process  
8 actually negotiated and contained within your  
9 contract?

10          A.       Yes.

11          Q.       Does that supersede, in your opinion,  
12 the Town's regulations?

13          A.       Yes.

14          Q.       Is there any provision in your contract  
15 for unpaid leave?

16          A.       No.

17          Q.       All right. And again, to your  
18 recollection, did Mr. Songer, before he wrote this,  
19 ever review your CBA?

20          A.       No. Per his testimony, no.

21          Q.       All right. Next he talks about the  
22 PVFRS rules and regulations, and I believe those are  
23 in Exhibit 7. All right. He first identifies and  
24 it's --

25                   Does the arbitrator have 02.03.01

1 entitled Rules of Conduct?

2 THE ARBITRATOR: Yes, I have it.

3 BY MR. LEVINE:

4 Q. Okay. He first accuses you of violating  
5 2.03.01D, "Negligence or indifference in the  
6 performance of your duties."

7 Were either you or Tommy Hollis  
8 negligent or indifferent in the early morning hours  
9 of May 25 of 2012?

10 A. No.

11 Q. H, "Falsification or destruction of  
12 records, reports, or documents."

13 Has Mr. Songer, to your knowledge,  
14 identified any document that was falsified or  
15 destroyed?

16 A. No.

17 Q. The next one is K, "Any flagrant  
18 violation of the department's rules and regulations  
19 or standard operating guidelines."

20 Was there ever even a rule, regulation,  
21 or SOG, standard operating guideline, that addressed  
22 the circumstance that you faced on the morning of  
23 May 25, 2012?

24 A. No.

25 Q. All right. The next item he identifies

1 is 02.03.02:

2 "Any department member that  
3 observes a violation of the  
4 department's rules and  
5 regulations or standard operating  
6 guidelines shall bring the  
7 violation to the attention of the  
8 officer in charge."

9 Did you observe Tommy Hollis -- on  
10 May 25, 2012, when you guys were forced off the road  
11 by the Choyce vehicle, did you observe Tommy Hollis  
12 violating any rules, regulations, or SOGs?

13 A. No.

14 Q. Did you believe there was anything that  
15 you had to report under this regulation?

16 A. No.

17 Q. The next one is 2.03.03:

18 "Department members shall  
19 use the chain of command when  
20 expressing their displeasure or  
21 concerns about the rules and  
22 regulations or standard operating  
23 guidelines or other written  
24 directives."

25 At any point in the investigation of the

1 event of May 25, did you express your displeasure or  
2 concerns about the rules and regulations or the  
3 standard operating guidelines?

4 A. No.

5 Q. Do you know where that charge originates  
6 from, in other words, a place where displeasure was  
7 raised or concerns were raised regarding the rules  
8 and regulations and the standard operating  
9 guidelines?

10 A. Yes.

11 Q. Where were concerns raised and  
12 displeasure expressed as it relates to those  
13 subjects?

14 A. The vote of no confidence in Fire Chief  
15 Scott Lewis.

16 Q. And if we were to go back and take a  
17 look at Exhibit L, pages 3 through 10, does that  
18 detail the expressions of displeasure which involves  
19 your emergency protocols and standard operating  
20 guidelines?

21 A. Yes.

22 Q. There are a great number of items raised  
23 in the vote of no confidence, but I would like to  
24 highlight -- I'll let the arbitrator get there.

25 THE ARBITRATOR: Okay.

1 MR. LEVINE: Unfortunately, Exhibit L is  
2 not Bates stamped, so I want -- if you go to the  
3 third page in, which is the September 6 listing of  
4 all the bases for the vote of no confidence, and if  
5 you would go to what would be page 7, which is --  
6 with the address to the Town manager being page 3,  
7 the next one is 4, 5, 6, if you go to 7 --

8 Are you there?

9 THE ARBITRATOR: Yes.

10 BY MR. LEVINE:

11 Q. Okay. Can you identify for the  
12 arbitrator and read, like, an example of the  
13 expression of concern or displeasure relating to the  
14 rules and regulations and the operating guidelines.  
15 For example, I'm going to direct your attention to  
16 that particular paragraph.

17 A. (Reading:)

18 "Whereas under the  
19 leadership of Fire Chief Scott  
20 Lewis, the Pahrump Valley Fire  
21 Rescue has neglected to form a  
22 team with International  
23 Associations of Firefighters  
24 Local 4068 to edit and update  
25 with Pahrump Valley Fire Rescue

1 EMS protocols that have been in  
2 effect since 2008. These  
3 protocols have pages with  
4 medications we don't carry.  
5 These protocols have pages that  
6 have procedures cut off and  
7 missing. These protocols have  
8 contradicting medicine dosages.  
9 These protocols have outdated CPR  
10 and ACLS procedures and put the  
11 health and well-being of the  
12 public and firefighters at higher  
13 risk."

14 Q. And the arbitrator can read this at her  
15 leisure.

16 Are there other aspects in here where  
17 the Union Local 4068, the entire membership, is  
18 expressing displeasure or concern with regard to the  
19 rules and regulations and standard operating  
20 guidelines?

21 A. Yes.

22 Q. Do you believe it was a proper role or  
23 function for Mr. Songer to be recommending  
24 discipline for you based upon a vote of no  
25 confidence approved overwhelmingly by the entire

1 Local 4068?

2 MR. CAMPBELL: Objection. I think that  
3 lacks any foundation and mischaracterizes the  
4 testimony.

5 THE ARBITRATOR: I think it's bordering  
6 on argumentative, so let's ask a new question.

7 BY MR. LEVINE:

8 Q. Okay. Were you ever informed -- were  
9 you ever given prior notice that Mr. Songer was  
10 going to be addressing subjects relating to the vote  
11 of no confidence?

12 A. No.

13 Q. Let's go to the next item, 2.03.04,  
14 which is again in Exhibit 7:

15 "Department members shall  
16 use the chain of command when  
17 airing concerns about  
18 department-related matters,  
19 including the conduct of other  
20 department members."

21 At any point in connection with the  
22 investigation of the incident of May 25, 2012, did  
23 you air concerns about department-related matters,  
24 including the conduct of other department members?

25 A. No.

1 Q. Again, where does that come from?  
2 MR. CAMPBELL: Objection. Again I think  
3 this calls for pure speculation as to where  
4 something in Mr. Songer's report comes from in this  
5 guy's mind.

6 THE ARBITRATOR: Well, I think more  
7 fundamental is the fact that all of these issues  
8 regarding what's in one document versus what's in  
9 another document can be argued at the time of final  
10 briefing.

11 MR. LEVINE: Okay.

12 THE ARBITRATOR: I don't know that we  
13 really need to go through it with the grievant.

14 MR. LEVINE: Okay. Let me speed it up.

15 BY MR. LEVINE:

16 Q. Were concerns relating to department  
17 matters and conduct of other department members --  
18 was that raised in the vote of no confidence?

19 A. Yes.

20 Q. The next item is 2.03.05:

21 "In all matters having a  
22 potential to affect the  
23 department in any way, proposed  
24 or contemplated by any member or  
25 group of members, the matter

1 shall be submitted to the fire  
2 chief before any action is  
3 taken."

4 To your understanding, did that have any  
5 application to the events of May 25, 2012?

6 A. No.

7 Q. 2.03.11:

8 "Department members shall  
9 not be involved in any activity  
10 that could disrupt department  
11 morale or bring discredit to the  
12 department or any department  
13 member."

14 Did you do anything that disrupted  
15 morale or brought discredit to the department or the  
16 department member?

17 A. No, no.

18 Q. Next he identifies 2.03.14:

19 "Department members shall  
20 not attempt to suppress, modify,  
21 or interfere with any written  
22 communications."

23 Did you in any way suppress, modify or  
24 interfere with my written communications?

25 A. No.

1 Q. Have you ever had any such  
2 communications that were suppressed, modified, or  
3 interfered with pointed out to you?

4 A. No.

5 Q. Next is 2.05.15, which is I think the  
6 next rule and regulation:

7 "Department members shall  
8 not use profane or indecent  
9 language while on duty. Members  
10 shall be respectful of internal  
11 and external customers and shall  
12 refrain from using terms of  
13 endearment such as honey,  
14 sweetie, et cetera."

15 Did you violate that regulation in any  
16 way, shape, or form?

17 A. No.

18 Q. Were you disrespectful to anybody on  
19 May 25, 2012?

20 A. No.

21 Q. Did you use any profane language?

22 A. No.

23 Q. Did you address anybody as honey,  
24 sweetie, or with terms of endearment?

25 A. No.

1 Q. 2.05.24:

2 "Department members shall  
3 maintain a professional attitude  
4 as well as maintaining  
5 appropriate hygiene while on  
6 duty."

7 Do you believe that you acted  
8 professionally on May 25, 2012.

9 A. Yes.

10 Q. I won't even ask you about the hygiene.

11 If we were to go through the other  
12 protocols which are on the next page,  
13 documentation -- I think we've touched upon this,  
14 why you didn't file a report. I don't think I need  
15 to go through it again.

16 The refusal of care under STAR CARE.  
17 What does the S in STAR CARE stand for?

18 A. Safety. For scene safety.

19 Q. He puts, "Childbirth, failure to  
20 evaluate or perform." Obviously you didn't have an  
21 opportunity to assess Ms. Choyce that -- in the  
22 early morning hours of May 25, 2004, but based on  
23 her own testimony that was put forward on August 13,  
24 would there be any reason to evaluate or perform  
25 childbirth?

1 A. No.

2 Q. Per her testimony, what had already  
3 happened before you were flagged down?

4 A. The birth already passed.

5 Q. Would the same criticism of Mr. Songer's  
6 conclusions also, then, apply to the protocol for  
7 preterm labor?

8 A. Can you ask that again.

9 Q. Well, is there any preterm labor for you  
10 to evaluate --

11 A. No.

12 Q. -- if it's already passed?

13 A. No.

14 Q. Okay. And I think you talked about  
15 already, if you had had an opportunity to evaluate  
16 her, where you would have taken them; correct?

17 A. Yes.

18 Q. Before -- and this will be the subject  
19 of briefing, but before Dr. Slaughter sent the note  
20 to the Town, I'm revoking their authorization to  
21 practice under my license, did the Town ever give  
22 you a copy of Mr. Songer's report and allow you to  
23 give your side of the story to Dr. Slaughter?

24 A. No.

25 Q. Did you ever have a chance to invoke the

1 discretion of Dr. Slaughter not to take that action  
2 before the Town put you on unpaid leave pending  
3 termination?

4 A. No.

5 Q. In short, you never got a hearing with  
6 them.

7 A. No.

8 Q. Does the negotiated bargaining agreement  
9 on the subject of discipline -- does it provide for  
10 progressive discipline?

11 A. Yes.

12 Q. And what does progressive discipline  
13 start with under the contract?

14 A. A verbal.

15 Q. And then it proceeds up through --

16 A. Write-up, suspension, I believe  
17 suspension two week, and then a demotion, and then  
18 termination.

19 Q. Okay. So suspensions are with two-week  
20 increments?

21 A. The second part of -- the second  
22 suspension.

23 Q. Okay. You've already identified in a  
24 prior answer that there is no policy and you had  
25 received no training for the circumstance you found

1 yourself in on the morning of May 25, 2012.

2 Does the Town have a policy that covers  
3 what happens when you face a circumstance that there  
4 is no policy covering it?

5 A. Yes.

6 Q. And what is it you're supposed to do?

7 A. Use your best judgment.

8 Q. And for the record, that's Exhibit 7,  
9 regulation 2.01.00.

10 Do you believe you used sound judgment?

11 A. Yes.

12 Q. Do you believe it is consistent with the  
13 principles of progressive discipline and just cause  
14 to summarily terminate somebody for the exercise of  
15 judgment and discretion?

16 A. No.

17 MR. LEVINE: I'll pass the witness.

18 THE ARBITRATOR: Cross-examination.

19

20 CROSS-EXAMINATION

21 BY MR. CAMPBELL:

22 Q. Good afternoon, Mr. Delucchi. Have you  
23 been on the -- you were on the Pahrump Valley Fire  
24 and Rescue for four and a half years, approximately?

25 A. Yes, sir.

1           Q.       So all your testimony today about past  
2 practices and actions that have taken place and  
3 other disciplinary proceedings, that was based on  
4 that four-and-a-half-year window; right?

5           A.       I'm also the secretary/treasurer, and I  
6 have access to all files going back since the  
7 formation of the Local.

8           Q.       But your personal knowledge, though, of  
9 what's going on was during that four and a half  
10 years. Anything else would have been review of  
11 records?

12          A.       Correct.

13          Q.       Let's cut to the chase and talk about  
14 the timing of what happened up there on that night,  
15 May 25, late at night, early in the morning, and  
16 then you guys go back to your station, and then no  
17 reporting whatsoever to any third party until  
18 May 31; right?

19          A.       Correct.

20          Q.       Now, you testified earlier that you  
21 didn't want to call your lieutenant because you  
22 didn't want to wake him up and make him mad?

23          A.       Correct.

24          Q.       Okay. Wasn't he at the station?

25          A.       He was sleeping at station 1, yes.

1 Q. So he was on -- he was at work that day.

2 A. Yes.

3 Q. So you didn't want to call him while he  
4 was at work?

5 A. Till 5:00 A.M., yes.

6 THE ARBITRATOR: You mean he was at the  
7 station until 5:00 A.M.?

8 THE WITNESS: Station 1, yes, center  
9 station.

10 THE ARBITRATOR: Okay.

11 BY MR. CAMPBELL:

12 Q. He wasn't at home. He was at work.

13 A. Yes, sir.

14 Q. And I assume while -- as a firefighter,  
15 the lieutenant is often called, and so are the units  
16 called, in the middle of the night to respond to  
17 incidences?

18 A. Yes.

19 Q. Okay. And you don't -- as a  
20 firefighter, you don't expect an uninterrupted  
21 night, do you, of sleep?

22 A. Can you -- can you ask that again.

23 Q. I mean, as a firefighter, you expect  
24 every night you're going to be able to sleep through  
25 the night at the station and not be woken up by

1 something?

2 A. No.

3 Q. So it wouldn't be unusual to be called  
4 in the middle of the night, would it?

5 A. Call -- what type of call?

6 Q. To call the lieutenant on something.

7 A. I normally don't call -- we normally  
8 don't call the lieutenants, as I stated, in the wee  
9 hours of the night.

10 Q. Because you didn't want to wake him up?

11 A. Correct.

12 Q. You found out about this incident on the  
13 late afternoon, evening of May 30; right?

14 A. Yes.

15 Q. Okay. And you found out by third  
16 parties, some other firefighters overhearing the  
17 chief's conversation with apparently the Choyces  
18 over the telephone?

19 A. You're going to have to ask that again.

20 Q. Did you overhear -- did other  
21 firefighters tell you that they overheard the  
22 chief's conversation with the Choyces?

23 A. The -- yeah. Okay. Yes.

24 Q. That's how you found out about it?

25 A. No. I found out by -- Lieutenant Moody

1 called Firefighter Hollis and I after the  
2 arbitration. About two hours after, I believe.

3 Q. You're saying on the 30th?

4 A. Yes.

5 Q. So you found out about it on the  
6 afternoon of the 30th or the evening of the 30th?

7 A. Late evening after I drove back from  
8 Pahrump to Las Vegas, yes.

9 Q. Okay. Let's look at Exhibit B. And if  
10 you look in that exhibit, it's Bates stamped  
11 PVF 0746. Do you see that?

12 A. What's the Bates stamp?

13 Q. 746.

14 A. Yes.

15 Q. If you look at the second paragraph, it  
16 looks like the last sentence:

17 "Later that evening, my  
18 station 3 partner and I got  
19 several phone calls from several  
20 firefighters saying the fire  
21 chief received a complaint on my  
22 station 3 partner and I, and that  
23 it" --

24 I can't read that.

25 THE ARBITRATOR: I think it's myself.

1 BY MR. CAMPBELL:

2 Q. -- "and that it also sounded like the  
3 same people that made the complaint" --

4 THE ARBITRATOR: Oh, wait a minute. I'm  
5 not looking at the right thing. I'm looking at  
6 PVF 0746.

7 MR. CAMPBELL: Yeah.

8 THE ARBITRATOR: Exhibit B, the second  
9 paragraph?

10 MR. CAMPBELL: Yes, at the bottom of the  
11 second paragraph, about the middle of the paragraph,  
12 "Later that evening."

13 THE ARBITRATOR: Yes.

14 BY MR. CAMPBELL:

15 Q. And to read on:

16 -- "and it also sounded like  
17 the same people that made the  
18 complaint also made another  
19 complaint on a different crew."

20 So this is the complaint you filled out  
21 against Chief Lewis; right?

22 A. Yes.

23 Q. And so -- when you made that complaint,  
24 you said that you first -- you heard about this from  
25 several firefighters calling you?

1           A.       Yes. I don't recall the exact date, but  
2 yes, I did receive phone calls at some time.

3           Q.       And that would have been on the night of  
4 the 30th?

5           A.       That's what I wrote in here, yes, sir.

6           Q.       Did you and Mr. Hollis talk to each  
7 other that evening about this incident?

8           A.       No.

9           Q.       Not one word?

10          A.       No.

11          Q.       And then the next morning, I believe  
12 your testimony was you were called into -- by  
13 Lieutenant Moody?

14          A.       Yeah, yes, sir.

15          Q.       And can you look at Exhibit A.  
16 Mr. Hollis testified that you and him sat in a room  
17 alone together and filled this report out.

18          A.       We were at station 3, received a phone  
19 call from Lieutenant Moody. Me and Tommy are the  
20 only firefighters at station 3 with no lieutenant.  
21 And we fill out a report at the request of the  
22 lieutenant, who said as soon as you're done filling  
23 it out, drive up to station 1, and we're going to  
24 have an investigation.

25          Q.       So this would have been the first thing

1       that happened on the 31st, the two of you filled out  
2       this report?

3           A.       Right after truck techs and receiving  
4       the call, yes, sir.

5           Q.       Then after that you went to the -- you  
6       went to the main station; right?

7           A.       Yes.

8           Q.       And then around 9:30, you started your  
9       interview with Lieutenant Moody?

10          A.       I believe, if that's what's in the  
11       record, yes, sir.

12          Q.       Okay. And then right after that was  
13       lieutenant -- Chief Lewis interrupted you?

14          A.       Towards the end of my interview, yes,  
15       sir.

16          Q.       And that would have been about 9:45,  
17       9:50?

18          A.       If that's in the record, yes, sir. I  
19       don't recall the exact time.

20          Q.       If you look at Exhibit Number B again,  
21       if you look down it the second-to-the-last  
22       paragraph, you say:

23                        "I also felt he was making  
24                        the investigation personal at  
25                        this point and not business. I

1                   fully understand when a complaint  
2                   comes in from a citizen, the fire  
3                   department is obligated --

4                   MR. LEVINE: I'm sorry. We're on the  
5                   wrong exhibit. I apologize. We were looking at  
6                   Exhibit A. You're in Exhibit B.

7                   MR. CAMPBELL: B now, yes.

8                   MR. LEVINE: I'm sorry.

9                   MR. CAMPBELL: 746, same page.

10                  MR. LEVINE: 746.

11                  BY MR. CAMPBELL:

12                  Q.        You see that second-to-the-last  
13                  paragraph?

14                  A.        Yes, sir.

15                  Q.        Why did you feel it was personal at this  
16                  point in the investigation?

17                  A.        The way it was being handled.

18                  Q.        This is the very first day. This is  
19                  right after you got -- the initial investigation  
20                  took place; right?

21                  A.        Yes.

22                  Q.        And you already thought it was personal?

23                  A.        Yes.

24                  Q.        And you already expected that the chief  
25                  was going -- he considered you guilty before you

1 could even explain to him?

2 A. Yes, by him barging in and the way he  
3 was handling himself in the beginning part of the  
4 interview.

5 Q. And then could you look at the very  
6 first page in Exhibit B there. In the  
7 second-to-the-last paragraph, you say, "The  
8 complaint investigation this morning" --

9 And just for the record, this first page  
10 is a -- looks like an unsigned complaint. It's  
11 dated 11:15 A.M., and this was provided by the Union  
12 in their production of documents. Is this something  
13 that you drafted or --

14 A. No, sir. After the interview took  
15 place, a little bit after that, I walked over to --  
16 I got permission from my lieutenant via text message  
17 that said do I have permission to go speak with HR?  
18 I went over to human resources, sat down with  
19 Miss Terry Bostwick, and she wrote notes on a  
20 complaint -- I mean on my complaint, documented  
21 incidences going back a couple weeks. And this  
22 is -- this is hers. And I said I would put a  
23 complaint in writing, and she said okay.

24 Q. This statement here, the complaint  
25 investigation, "I feel it's personal, not business.

1 I understand it has to happen but don't feel I'll  
2 get a fair shot," was that an accurate statement, or  
3 is that an accurate record of what you told  
4 Miss Bostwick?

5 A. To the best of my recollection, yes,  
6 sir.

7 Q. And why didn't you feel like you didn't  
8 get a fair shot?

9 A. That I wasn't going to get a fair shot.

10 Q. Why did you feel you weren't going to  
11 get a fair shot within less than an hour after the  
12 initial investigation took place?

13 A. For multiple reasons: The way the chief  
14 was handling himself, the heated arbitration, my  
15 week and a half to two weeks of documented incidence  
16 what I became the president. That's in this  
17 complaint as well.

18 Q. Okay. Let's go to the second page of  
19 that same document. It says at the bottom, "This is  
20 the first big trouble I've ever been in." Why did  
21 you think you were in big trouble?

22 A. Because the chief was getting involved  
23 in -- pretty much due to the -- the Van Leuven  
24 incident. Van Leuven was recommended a verbal or  
25 write-up by the lieutenant, and the fire chief took

1 over the investigation and decided to terminate him,  
2 which you were involved with, sir.

3 Q. Did you think you were in big trouble  
4 because of what happened up on Highway 160?

5 A. No. Big trouble that the chief was  
6 involved, because we all know what he has done and  
7 is capable of doing in the fire department.

8 Q. But the investigation had barely even  
9 commenced; right?

10 A. Yeah, yes, it had just started, yes,  
11 sir.

12 Q. Did you think you were in big trouble  
13 because you had never reported this to anybody?

14 A. No, sir.

15 Q. Is that an accurate statement, what you  
16 made to Miss Bostwick?

17 A. To the best of my recollection, yeah,  
18 it's pretty accurate.

19 Q. So you told Miss Bostwick that you  
20 thought this was the first big trouble you'd ever  
21 been?

22 A. This was going to be the first big  
23 trouble, yes, due to the chief being involved in  
24 this investigation.

25 Q. At that point, though, Mr. Kohbarger was

1 involved in the investigation too; right?

2 A. Yes, sir.

3 Q. And so was Ms. Bostwick, the human  
4 resources director; right?

5 A. Yes, sir.

6 Q. They were both there?

7 A. Yes, sir.

8 Q. And Mr. Lewis wasn't really doing the  
9 investigation, was he? Wasn't it Mr. Kohbarger?

10 A. Fire Chief Scott Lewis started asking --  
11 or I think -- I'd have to go back to the recording,  
12 but it was the Town manager, and then the fire chief  
13 chimed in or vice versa. And the Town manager  
14 actually told the fire chief to stop it, stop it,  
15 and said, come on, Lewis, stop, stop, a couple  
16 things like that. So it was back and forth, but the  
17 majority of it was Bill Kohbarger, yes.

18 Q. So the majority of it was Mr. Kohbarger,  
19 not Mr. Lewis doing the questioning.

20 A. At that point, yes.

21 Q. But you don't disagree that this was a  
22 proper investigation for the Town?

23 A. I think it was a very -- well, all  
24 complaints need to be investigated, but there's  
25 policy and procedures on how it takes place in past

1 practice.

2 Q. Basically, you agree that this -- that  
3 an investigation needed to take place on the  
4 complaint that was made by the Choyces.

5 A. There was no written statement or verbal  
6 statement.

7 Q. Okay. Listen to my question. Do you  
8 agree that a complaint needed to be done by the Town  
9 of Pahrump on the -- investigation needed to be done  
10 on the complaint made by the Choyces, yes or no?

11 A. Per the rules and regs, no, not until  
12 they got a written or verbal -- written or recorded  
13 statement, yes, sir.

14 Q. You don't think any complaint -- you  
15 don't think any investigation needed to be done on  
16 this matter?

17 A. Sir, do you realize how many complaints  
18 come in within this fire department that are bogus  
19 on a daily basis? There would be investigations  
20 night and day.

21 Q. Well, why do you say to Miss Bostwick,  
22 "I feel it's personal, not business. I understand  
23 it has to happen"?

24 A. Those -- yes, those are my words.

25 Q. Well, you understood that the complaint

1 needed to take place?

2 MR. LEVINE: A complaint needed to take  
3 place or an investigation?

4 BY MR. CAMPBELL:

5 Q. I mean an investigation needed to take  
6 place.

7 A. If those are my words, yes, but I  
8 reviewed the rules and regs with the attorneys and  
9 understood them a little better.

10 Q. Do you believe, as we sit here today,  
11 that Fire Chief Lewis was the one that made the  
12 decision to determinate you?

13 A. I believe he had a heavy role in it,  
14 yes, sir.

15 Q. Do you believe that he influenced  
16 Mr. Kohbarger's ultimate decision?

17 A. Do I believe?

18 Q. Yeah.

19 A. I think it was a group. I think Pat  
20 Songer is the --

21 Q. So a conspiracy, so to speak?

22 A. Not a conspiracy but it was pretty  
23 obvious what they were doing.

24 Q. So you believe Mr. Songer,  
25 Mr. Slaughter, Chief Lewis, Becky Bruch, and the HR

1 director all conspired together to terminate you?

2 A. I don't like the word "conspire," but I  
3 think that there was an obvious thing that happened,  
4 yes.

5 Q. Okay. And what was obvious?

6 A. How it was handled and the direction it  
7 went throughout the whole process.

8 Q. You mean how it was handled by the Town  
9 manager deciding to have an independent investigator  
10 take care of it, look into it?

11 A. That would be part of it but multiple  
12 things.

13 Q. So you would have rather had Chief Lewis  
14 investigate it.

15 A. I'd rather have a fire chief of honesty  
16 and integrity investigate it.

17 Q. And if you believe Chief Lewis doesn't  
18 have honesty and integrity, would you rather have an  
19 independent investigator to go look at it?

20 A. If it was agreed by the Union per the  
21 CBA, yes, sir.

22 Q. So do you believe that Chief Lewis  
23 influenced Dr. Slaughter's decision?

24 A. I think Chief Lewis, the notes he took,  
25 might have been a little inaccurate. And he passed

1 the buck per se. So ultimately, yeah, it could  
2 have.

3 Q. And you don't believe Mr. Songer was  
4 exercising his independent judgment in making his  
5 recommendations.

6 A. No.

7 Q. Now, you were here during Brittanie  
8 Choyce's testimony; right?

9 A. Yes, sir.

10 Q. And do you want to change anything under  
11 oath today after you've heard that testimony as to  
12 your version of the story?

13 A. No, sir.

14 Q. Okay. Do you have any reason to believe  
15 why Miss Choyce would want to lie under oath?

16 A. I think her recollection of events is a  
17 little out of whack or -- I don't know if that's the  
18 right word but is a little out of the ordinary or I  
19 would say out of whack. She was in a traumatic  
20 incident. She said she has short-term memory loss  
21 and her husband committed suicide and she lost the  
22 baby. I think it's a pretty traumatic event.

23 Q. Okay. So you don't believe that she  
24 knew what she was talking about either when she  
25 talked to Chief Lewis and Lieutenant Moody or two

1 and a half years later -- or a year and a half when  
2 she testified a month ago.

3 A. I think parts of the story which we've  
4 stated and are on the record are true and parts are  
5 inaccurate, yes, sir.

6 Q. Okay. Let's look back on that night. I  
7 just want to get some points straight on your  
8 version of what happened.

9 You said the car was driving very  
10 erratically, trying to get your attention; right?

11 A. Swerving into us. I believe I used the  
12 word "erratic," yes, sir.

13 Q. Did you consider it dangerous, that he  
14 was driving dangerously?

15 A. At that moment, yes, sir.

16 Q. Okay. But you pulled over; right?

17 A. Yeah, I was -- I was pretty much forced  
18 to pull over by him swerving and me having the  
19 control of the -- the wheel, being the driver,  
20 feeling I was going off the side of the road and --  
21 yes.

22 Q. Well, if you were -- you felt like you  
23 were forced to pull over when he stopped and pulled  
24 behind you, couldn't you have just driven away?

25 A. You know what, it happened so fast, as I

1 explained, I attempted to use my best judgment in  
2 the situation.

3 Q. Okay. Isn't it safe to assume that  
4 someone that was trying to flag down an ambulance  
5 was someone that was in need of help?

6 A. At first -- people that flag down  
7 ambulances -- there's multiple reasons. That could  
8 be one, yes, sir.

9 Q. Okay. And in fact, didn't you later say  
10 in one of your written statements or one of the  
11 interviews that you assumed that they needed help?

12 A. I think at one point, yeah, if that's in  
13 there, I said that at one point.

14 Q. And then Mr. Choyce pulled over. He  
15 comes up to the window. He says my wife is having a  
16 miscarriage; right?

17 A. He said either is or possibly. I was --  
18 I heard the word "miscarriage," sir, yes.

19 Q. Let's look at Exhibit A.

20 A. We wrote --

21 Q. You don't qualify might have been or  
22 maybe. You say --

23 A. He said the word "miscarriage," sir.  
24 Regardless of is or potentially, yes, he said the  
25 word "miscarriage."

1 Q. Doesn't it say "appeared in the driver's  
2 window, screaming my wife is having a miscarriage"?

3 A. If -- if that's in the record, yes.

4 Q. And you --

5 THE ARBITRATOR: I'm sorry. Which part  
6 of the --

7 MR. CAMPBELL: That would be the very  
8 first line. I'm sorry. On the second page.

9 THE ARBITRATOR: Okay. Thank you.

10 BY MR. CAMPBELL:

11 Q. Now, as a trained EMT, you understand  
12 the consequences of what might happen during a  
13 miscarriage?

14 A. Absolutely.

15 Q. And you understand that someone might  
16 bleed to death, that that's a possibility?

17 A. Yes, sir.

18 Q. In fact, a miscarriage can be life  
19 threatening.

20 MR. LEVINE: Objection. That's  
21 repetitive. If somebody can bleed to death from the  
22 prior question, it's by definition life threatening.

23 BY MR. CAMPBELL:

24 Q. In fact, under the EMS protocols that  
25 you operate under, if you have that exhibit in front

1 of you, which is Exhibit Number 14, page 46, did you  
2 see the treatment up there for childbirth, neonatal  
3 resuscitation?

4 A. What --

5 Q. It says Treatment:

6 "If a patient is bleeding  
7 vaginally (moderate to heavy),  
8 assess oxygenation and administer  
9 O2 as needed. Obtain IV access.  
10 If hypotensive, place patient on  
11 left side to displace uterus and  
12 treat per hypervolemic shock  
13 protocol."

14 Do you see that?

15 A. Yes, sir.

16 Q. And then next it says:

17 "Transport immediately if  
18 patient is bleeding vaginally or  
19 has an abnormal presenting part."

20 Do you see that?

21 A. Yes, sir.

22 Q. And you're familiar with these  
23 protocols?

24 A. Yes, sir.

25 Q. And you understand that these were

1 developed to have written standards of care which  
2 are consistent throughout the fire service?

3 A. Yes, sir.

4 Q. Okay. So you told Mr. Choyce, when you  
5 were engaging in the conversation with him when he  
6 was at your window, that you would go over to see  
7 what's going on; right?

8 A. Can you repeat that.

9 Q. Yeah. Didn't you tell Mr. Choyce, when  
10 he was screaming at you in the window, that you  
11 would go over there and see what was going on?

12 A. I believe so.

13 Q. And you thought it was best to see what  
14 was going on in light of him telling you that she  
15 was having a miscarriage?

16 A. Yes, sir.

17 Q. So then you got out of the car?

18 A. The ambulance.

19 Q. Out of the ambulance?

20 A. Yes, sir.

21 Q. And he was back in the driver's seat by  
22 now?

23 A. Yes.

24 Q. Okay. And then you and your partner got  
25 five to ten away -- feet away from the front of the

1 car.

2 A. Yes, sir.

3 Q. So you would have been standing between  
4 the ambulance and the front right fender of the  
5 car?

6 A. About that area, yes, sir.

7 Q. Okay. And you didn't get any closer  
8 than that, according to your testimony.

9 A. Correct.

10 Q. How were you going to go over and see  
11 what's going on or see what was in the best  
12 interests of the patient by standing too far away to  
13 even assess the patient?

14 MR. LEVINE: Objection to the form of  
15 the question, the use of the word "patient" in light  
16 of the prior testimony and the regulation.

17 THE ARBITRATOR: Okay. Please rephrase.

18 MR. CAMPBELL: Fine.

19 BY MR. CAMPBELL:

20 Q. Of Ms. Choyce.

21 A. Can you repeat it?

22 Q. Yeah. How were you going to go over and  
23 see what was going on with Ms. Choyce?

24 A. When I stated that to him at the window,  
25 that was what was going through my head. That was

1 the plan. But then when he ran back or walked very  
2 quickly into the driver's seat, that triggered  
3 another sense of safety concern and, well, that was  
4 weird sort of thing.

5 Q. So again, why were you -- what was so  
6 weird about him going back into his car, sitting  
7 next to his wife?

8 A. I had someone that almost ran me off the  
9 road that ran up to my window in the middle of the  
10 night, yelling at me, and I'm trying my best to calm  
11 him down. He goes directly back to his car. When I  
12 get out, you know, I can barely -- you know, it's  
13 real dark. I can barely see that -- the whole  
14 situation, you know. As I stated, it was a very odd  
15 situation.

16 Q. What prevented you from walking the  
17 extra -- I don't know how far it is from the front  
18 bumper of a car -- five feet away from the front  
19 bumper of a car to the passenger door?

20 A. Firefighter Hollis and I were  
21 positioned -- we're taught to, you know, be on  
22 guard. So, you know, you have sort of one foot in  
23 front of the other. You're not just walking open  
24 like this. You're walking -- you know, you're on  
25 guard. And we were right next to each other, and we

1 wouldn't proceed until we felt the situation was  
2 under control or it was more safe, as I stated in my  
3 interview.

4 Q. What were you worried about?

5 A. As I just previously stated, the odd  
6 behavior of the erratic driver.

7 Q. But what was the difference with him  
8 having odd behavior of standing in front of the car  
9 versus standing next to the passenger side door?

10 A. It would be completely different  
11 because, in fact, he would be doing what is expected  
12 or what would make more sense to myself as a health  
13 care provider to, hey, come over here. This is  
14 what's going on, look, not get back in the car and  
15 start yelling.

16 Q. But you already testified that you  
17 agreed that you wanted to go over and see what was  
18 going on.

19 A. I said that at the window, yes, sir.

20 Q. But you couldn't see what was going on  
21 from where you said you were standing.

22 A. What part of what's going on. I don't  
23 understand.

24 Q. You couldn't see what was going on in  
25 the car. You couldn't see Miss Choyce's condition

1 from where you were standing; right?

2 A. Correct.

3 Q. According to where you were standing?

4 A. Correct. I could only see that she was  
5 crying.

6 Q. Were you afraid that they were going to  
7 try to run you over?

8 A. In that situation, I was afraid of  
9 multiple things, them, you know, running us off the  
10 road, robbing us, pulling a gun, other people being  
11 in the car. There was multiple things.

12 Q. You didn't have any guns shown -- no gun  
13 was pointed at you; right?

14 A. No, sir.

15 Q. Did Mr. Choyce ever threaten you  
16 physically?

17 A. He didn't threaten me, but we felt  
18 threatened in the demeanor he was handling himself,  
19 yes, sir.

20 Q. And it would have been easier to run you  
21 over with his car when you were standing by the  
22 front bumper than it would be if you were standing  
23 by the passenger door, wouldn't it?

24 A. If we were a little bit off -- as we  
25 stated, off to the side, yes, he could have ran -- I

1 mean, if he put it -- ask it again. I'm sorry.

2 Q. It would have been easier to run you  
3 over if you were standing by his front bumper,  
4 wouldn't it?

5 A. Yes, yeah.

6 Q. And you would have been safer from being  
7 run over if you're standing off to the side of the  
8 car?

9 A. No, not necessarily. In the exhibits,  
10 the side of the road slopes and just -- we happened  
11 to position ourselves where we could see directly  
12 at -- you know, see a driver, see, you know, a  
13 passenger area, and the back of the -- attempt to.  
14 It was dark.

15 Q. Well, it was light enough for you to see  
16 that the road sloped.

17 A. No. Well, did I say see? I meant,  
18 well, we could feel it. I mean, it's common  
19 knowledge in that area.

20 Q. Okay. And the pictures show the road  
21 pretty accurately there on Exhibit 38. You have  
22 that in front of you?

23 MR. LEVINE: I have 38. It hasn't been  
24 established that this is the exact spot, but it's  
25 mile marker 23. We just don't know the exact spot.

1 BY MR. CAMPBELL:

2 Q. That's what you're talking about when  
3 you said the road sloped?

4 A. In that area when I went to the -- our  
5 Union meeting last month, I actually stopped there  
6 to take a look at it, and when you stand -- I don't  
7 know if it's right at that sign or a little forward  
8 or behind it, but the street is almost about maybe  
9 two feet or more when you're standing off to the  
10 side. I mean, it's pretty -- I don't know if this  
11 picture shows it the best, but if you go there and  
12 stand there, you can definitely understand it.

13 Q. Now, in your testimony this morning, you  
14 said that the driver yelled at you and -- after you  
15 and you then drove off. You didn't testify this  
16 morning about the conversation about going to the  
17 Pahrump hospital; right?

18 MR. LEVINE: Objection. Foundation. I  
19 did ask him about that.

20 MR. CAMPBELL: If you did, I didn't hear  
21 it.

22 BY MR. CAMPBELL:

23 Q. But wasn't there a conversation with the  
24 driver about going to the Pahrump hospital?

25 A. If you want to use the word

1 conversation. We were communicating with the  
2 driver, yes, sir.

3 Q. In fact, didn't you tell him we're on  
4 our way back to Pahrump, we can take you to the  
5 hospital?

6 A. If that's in my transcript, yes. We  
7 yelled a lot of things in an attempt to calm him  
8 down. I believe that was part of it.

9 Q. And then he had a tirade, according to  
10 your statement, about that hospital, the Pahrump  
11 hospital; right?

12 A. A?

13 Q. A tirade, I'll call it. He started  
14 yelling and screaming. I'll read from your  
15 statement:

16 "And at that point, he  
17 started yelling and screaming,  
18 dropping foul language such as  
19 the F word, the A word, the  
20 S word at the point about the  
21 hospital."

22 A. That was part of it, but if you read  
23 further up, he actually starts yelling and screaming  
24 again as soon as he gets in the car, if you just  
25 read a couple paragraphs up.

1           Q.       I'm talking about the specific  
2 conversation about going to the Pahrump hospital.

3           A.       Yeah, yes, he did.

4           Q.       In your notes, you say, "We can take you  
5 to the hospital." "We're on our way back to  
6 Pahrump." And right after that, he had -- I'll call  
7 it a conversation. You can call it yelling. He  
8 started yelling and screaming about that hospital.

9           A.       Yeah, that could be accurate, yes, sir.

10          Q.       Did he say I didn't want to go to that  
11 hospital? My wife is not going to get proper  
12 treatment at that hospital?

13          A.       Not at all. He said exactly what I  
14 stated. He started use the F bombs and S bombs and  
15 pretty much took off.

16          Q.       You didn't offer to say, well, we can  
17 take you to a hospital in Las Vegas?

18          A.       It happened that quick. I didn't have  
19 an opportunity.

20          Q.       But from standing off the side of the  
21 road, you were willing to take a patient -- you were  
22 willing to take Miss Choyce to the hospital.

23          A.       I think a better way to say it is I  
24 went -- got out of the ambulance, like I said, to  
25 see what was going on. And as I've stated in

1 multiple interviews, the situation elevated. We  
2 attempted to calm it down, elevated, attempted to  
3 calm him down.

4 Q. The plain matter is you offered to take  
5 her to the Pahrump hospital; right?

6 A. I was communicating with the driver, and  
7 whatever my words were -- I said either we can take  
8 you guys or we can -- it was -- yeah, it was an  
9 attempt to calm down, but there was no communication  
10 ever directly with the female in the front passenger  
11 seat.

12 Q. So I'm a little confused. You said you  
13 were so concerned for your safety that you didn't  
14 want to get next to the car, but you were willing to  
15 have Miss Choyce and Mr. Choyce get in the ambulance  
16 with you?

17 A. As I stated, the situation was  
18 escalating, and through my experience and training,  
19 I was attempting to deescalate the situation by  
20 saying that.

21 Q. Well, it looks like, according to your  
22 statement and the timing of things, that the  
23 situation was near over.

24 A. Yes.

25 Q. You offered to take him to the hospital.

1 He yelled some F bombs and took off.

2 A. Towards the end of the incident, yes,  
3 sir.

4 Q. So it wasn't a flow. It was at the very  
5 end of the incident, according to your testimony.

6 A. Well, what I was talking about is when  
7 they ran us -- almost ran us off the road, that  
8 escalated the situation. He came up to me, started  
9 yelling at me. I calmed him down a little bit. I  
10 felt I could step out of the ambulance. He went  
11 back, and then that escalated it again. And then  
12 with, I guess, the hospital, it went even higher.

13 Q. Okay. You're standing next to the car.  
14 Your testimony is you were scared to even move, but  
15 you weren't scared enough -- I mean, you were  
16 offering to take her and her husband to the Pahrump  
17 hospital; right?

18 A. Correct.

19 Q. I think in your statement, you also said  
20 that you tried to see in the back to see what was  
21 going on; is that correct?

22 A. Yes.

23 Q. But you were too far away?

24 A. Too far away and it was too dark, yes,  
25 sir.

1           Q.       And you felt it was too dangerous to get  
2 any closer to the car to see what was going on?

3           A.       Yes, sir.

4           Q.       That's your testimony?

5           A.       Yes, sir.

6           Q.       Through this thing, you say Mr. Choyce  
7 was acting very agitated. Have you ever seen a  
8 patient where the husband's present and his wife is  
9 seriously injured or in a dire medical situation?

10          A.       I could say yes.

11          Q.       Would you think -- is it unusual for a  
12 husband to get agitated if his wife is in some kind  
13 of serious medical condition?

14          A.       No. It happens. It definitely happens.

15          Q.       Knowing what we know now and listening  
16 to Mrs. Choyce's testimony, do you think it was  
17 strange that her husband was agitated in light of  
18 her basically bleeding profusely while she was in  
19 the car?

20          A.       I don't understand the question.

21          Q.       Do you think it was strange, in light of  
22 what we know from Mrs. Choyce's testimony about how  
23 much blood she'd lost, that her husband was very  
24 upset that night?

25          A.       Looking back at it now, yeah.

1 Q. You think it was strange?

2 A. I can't go back a year but -- oh, do I  
3 think it was strange? I'm sorry.

4 Q. Yeah, knowing what we know now that  
5 Miss Choyce in her testimony said, you know, she  
6 almost bled to death, they had to give her five or  
7 six pints of blood, do you think it was strange that  
8 her husband was acting like that?

9 A. No. My wife was seven months' pregnant  
10 at that time and with my first child. I know how  
11 serious pregnancy and that can be, so yeah.

12 Q. After Miss Choyce pulled away, I think  
13 your testimony earlier today was that he drove away  
14 at a very high speed?

15 A. At a fast speed, yes, sir.

16 Q. And then you saw him flip around down  
17 the road a mile or two?

18 A. Turn around at the turnaround point,  
19 yes, sir.

20 Q. Could you see him driving back the other  
21 way?

22 A. Headed to Vegas?

23 Q. Yeah.

24 A. Yes, sir.

25 Q. And was he at a pretty high speed at

1       that point?

2           A.       It looked like he was at a high speed,  
3       yes, sir.

4           Q.       Okay. In fact, when he was driving  
5       behind you, trying to get you to pull over, you  
6       thought he was driving dangerously?

7           A.       Yes.

8           Q.       If you thought he was dangerous and  
9       driving at a high speed, you didn't think it was  
10      necessary to ever call anybody and alert the law  
11      enforcement about this erratic driver on the highway  
12      driving dangerously?

13          A.       No. As we stated, that area -- it's  
14      commonly known that that area doesn't get good  
15      reception.

16          Q.       And you thought it was too late by the  
17      time you got into radio reception to make a  
18      difference?

19          A.       I wouldn't even know what to report,  
20      sir.

21          Q.       And it's your testimony that you had no  
22      idea what kind of car they were driving.

23          A.       Yes, sir.

24          Q.       Okay. From the headlights, the  
25      passing -- you know, passing by you after they

1 pulled away, seeing them pull back the other  
2 direction, you had no idea what kind of car it was?

3 A. No, sir. We were very startled on the  
4 car running up and -- yeah.

5 Q. I think Mr. Hollis testified he couldn't  
6 remember whether or not he turned on the scene  
7 lights. Do you remember whether the scene lights  
8 were turned on?

9 A. I don't believe we did. Or I don't  
10 believe I did.

11 Q. Okay. But you had scene lights that  
12 would have illuminated the area; right?

13 A. We have the emergency lights so people  
14 can spot us in the dark that turn around.

15 Q. The flashing lights?

16 A. Yes, sir.

17 Q. But you also have scene lights that will  
18 illuminate the scene; right?

19 A. We have scene lights that are on the  
20 left, right, and rear part, yes, sir.

21 Q. Isn't it normal a lot of times on  
22 ambulance calls that things will happen at night and  
23 you'll need to be able to see the scene to assess  
24 the situation?

25 A. Yes, sir.

1           Q.       But you never turned -- your testimony  
2 is today you never turned on the scene lights?

3           A.       To my best recollection, I don't believe  
4 we did.

5           Q.       Do you not know, or you just don't  
6 recall?

7                   MR. LEVINE: Objection. Is there a  
8 difference between not knowing and not recalling?

9                   THE ARBITRATOR: I guess there would be  
10 a difference between not being able to recall and --  
11 and being able to state that you didn't. I think  
12 that's the critical distinction.

13                   THE WITNESS: I don't recall.

14 BY MR. CAMPBELL:

15           Q.       Did the Choyces have their headlights  
16 on?

17           A.       Yes, sir.

18           Q.       And they were parked how far behind the  
19 ambulance?

20           A.       You know, I -- it's hard to measure.  
21 10, 20. 20 yards or so.

22           Q.       Were their internal lights on in the  
23 car?

24           A.       No, I don't believe so.

25           Q.       But with the lighting that you had, you

1 could see Mrs. Choyce in the car crying?

2 A. A silhouette, I could see, yes, sir.

3 Q. You touched a little bit about the  
4 Van Leuven hearing. The dispute in that hearing  
5 about the personal relationship, that was between  
6 Chris Van Leuven and Scott Lewis; right?

7 A. Yes, sir.

8 Q. That wasn't any personal dispute -- you  
9 weren't involved in any personal dispute with Scott  
10 Lewis at that time; right?

11 A. When -- when you're president of the --  
12 of the fire union, you oversee arbitration, and you  
13 put together a game plan with the attorney, and  
14 stuff is brought up, and you're looked at overall  
15 responsible how the arbitration takes place and --

16 Q. Okay. But the dispute that you were  
17 testifying about, it was a personal issue between  
18 Van Leuven and Scott Lewis.

19 A. At the Van Leuven arbitration?

20 Q. Yes.

21 A. I had incidences that were documented  
22 between me and him, becoming a new president.

23 Q. I'm not talking about that.

24 A. Okay.

25 Q. The dispute you were talking about was

1 just a personal dispute with Van Leuven and Chief  
2 Lewis.

3 A. That specific one, yes, sir.

4 Q. Okay. You weren't involved in that?

5 MR. LEVINE: We'll stipulate it wasn't a  
6 love triangle.

7 BY MR. CAMPBELL:

8 Q. And it's your testimony -- I want to be  
9 clear that you're testifying that the arbitrator  
10 kicked Chief Lewis out of the hearing?

11 A. At the request of attorney Robert  
12 Rourke, he requested that Fire Chief Scott Lewis be  
13 removed from the rest of arbitration. He was seen  
14 on the -- I guess the Town side as -- pretty much  
15 through that arbitration.

16 Q. That's your testimony?

17 A. Yes, sir.

18 Q. Okay.

19 THE ARBITRATOR: I'm sorry. So this  
20 happened during the course of the arbitration, not  
21 before the arbitration started?

22 THE WITNESS: Which part, ma'am?

23 THE ARBITRATOR: The arbitrator asking  
24 Chief Lewis to leave.

25 THE WITNESS: That was right after his

1 testimony took place.

2 THE ARBITRATOR: Okay. Thank you.

3 BY MR. CAMPBELL:

4 Q. Is Mr. Hollis involved in Union  
5 management?

6 A. He's a former executive board member,  
7 but currently, no, sir.

8 Q. At the time of this incident, was he  
9 involved in Union management?

10 A. No, sir.

11 Q. After this incident, up until the time  
12 of the termination, was he involved in Union  
13 management?

14 A. No, sir.

15 Q. You talked about your vote of no  
16 confidence against Chief Lewis. Do you remember  
17 that testimony?

18 A. Yes, sir.

19 Q. How long has Chief Lewis been the chief  
20 out there?

21 A. I would say probably 2003 or '4.

22 Q. Okay. And you weren't there that whole  
23 time; right?

24 A. No, sir.

25 Q. Do you know how many different boards

1 Chief Lewis has served under, Town boards?

2 A. No, sir.

3 Q. Did the Town board or any Town  
4 management take any action against Chief Lewis  
5 because of your vote of no confidence?

6 A. No, sir. Well, actually, I should say  
7 they sat down and met with the Union to discuss it  
8 and had Chief Lewis start to fix some of the  
9 concerns.

10 Q. Okay. But they didn't -- the Town board  
11 didn't terminate him?

12 A. No, sir.

13 Q. They didn't reprimand him in any way  
14 that you knew of?

15 A. Not that I'm aware of.

16 Q. Didn't discipline him in any way?

17 A. Not that I'm aware of.

18 Q. Have you contacted the North Las Vegas  
19 firefighters union about Mr. Kohbarger's employment  
20 in North Las Vegas?

21 MR. LEVINE: Objection. Relevance.

22 MR. CAMPBELL: I think there's been a  
23 lot of relevance about the interaction between  
24 Mr. Kohbarger and the personal animosity.

25 MR. LEVINE: Fine. Withdrawn.

1 THE ARBITRATOR: Go ahead.

2 THE WITNESS: Can you repeat the  
3 question.

4 BY MR. CAMPBELL:

5 Q. Have you contacted the City of North  
6 Las Vegas about Mr. Kohbarger's employment there?

7 A. No, sir.

8 Q. Not one word?

9 A. No, sir.

10 Q. Have you contacted the union serving the  
11 chapter of the arm of the union serving the North  
12 Las Vegas firefighters at all about Mr. Kohbarger's  
13 employment there?

14 MR. LEVINE: I'm going to object. I'm  
15 not sure that inter-union communications are a  
16 proper source of inquiry for management.

17 THE ARBITRATOR: These are two different  
18 locals but of the -- under the same international  
19 IAFF or --

20 MR. LEVINE: Correct.

21 MR. CAMPBELL: Well, I think it's  
22 relevant, if there's some kind of personal animosity  
23 going on here, to be able to flesh out the --  
24 they're trying to infer that somehow Mr. Kohbarger  
25 has some personal animosity against the Union.

1 THE ARBITRATOR: Well, it still seems to  
2 me that the cities get together to discuss how to  
3 deal with certain unions and unions get together to  
4 discuss how to deal with various representatives of  
5 management. And you know, I don't see anything that  
6 could be inferred from that, but I guess --

7 MR. CAMPBELL: I can if he says yes. I  
8 could ask him what he told the union about  
9 Mr. Kohbarger.

10 THE ARBITRATOR: What he told the union  
11 or -- I mean, even if he told the union something  
12 about Mr. Kohbarger, what would that show?

13 MR. CAMPBELL: Might infer some  
14 animosity going both ways.

15 THE ARBITRATOR: I don't really see that  
16 it would help me out on determining the motives of  
17 the parties here.

18 MR. CAMPBELL: Okay. So you're  
19 sustaining the objection, just for the record?

20 THE ARBITRATOR: Yes.

21 MR. CAMPBELL: Arbitrator's indulgence.  
22 I may be done here.

23 MR. LEVINE: While he's invoking the  
24 arbitrator's indulgence, to save time, may I also  
25 invoke the arbitrator's indulgence and step outside?

1 Well, no, he's still on the stand so I'll wait.

2 THE ARBITRATOR: Would this be an  
3 appropriate moment to take a short break?

4 MR. LEVINE: If it's an appropriate  
5 moment --

6 THE ARBITRATOR: All right. Let's take  
7 a very brief break, five minutes.

8 (A recess was taken from 1:47  
9 to 1:56 P.M.)

10 THE ARBITRATOR: Back on the record.

11 MR. CAMPBELL: I'll pass the witness.

12 THE ARBITRATOR: Any redirect?

13 MR. LEVINE: I don't believe I have any  
14 need for redirect.

15 THE ARBITRATOR: All right. Then I  
16 guess as we discussed, I believe this concludes the  
17 witnesses to be presented by the Union; correct?

18 MR. LEVINE: The Union rests its case.

19 THE ARBITRATOR: All right. And I've  
20 also been advised off the record that the Town  
21 wishes to present rebuttal.

22 MR. CAMPBELL: Yes.

23 THE ARBITRATOR: And I think we've all  
24 agreed that the parties and their representatives  
25 and the court reporter will assemble on September 24

1 here in Las Vegas in order to finish up the rebuttal  
2 testimony, and I will remain at my office in  
3 Sacramento. And someone will figure out how to put  
4 me on a speakerphone, and hopefully, we can arrange  
5 that I can hear the witnesses sufficiently and hear  
6 the questioner sufficiently that we can conclude the  
7 case with the arbitrator being at the remote  
8 location.

9 MR. LEVINE: Yes.

10 THE ARBITRATOR: Is that agreeable to  
11 both parties?

12 MR. CAMPBELL: Yes.

13 MR. LEVINE: Yes. And we're going to do  
14 it here because they have greater technical ability  
15 to ensure that you can be heard and that you can  
16 hear the witnesses.

17 THE ARBITRATOR: Very well. And that's  
18 all right with the Town?

19 MR. CAMPBELL: Yes, that's fine.

20 THE ARBITRATOR: All right. And I think  
21 it's also been represented to me that -- by  
22 Mr. Campbell that all the witnesses he intends to  
23 call are witnesses that have already been seen by  
24 the arbitrator.

25 MR. CAMPBELL: Correct.

1           MR. LEVINE: Right. Let's talk about a  
2 start time, because on the 24th, I have to be in  
3 that building across the street at 1:30, so I would  
4 like to start it early enough that I can go across  
5 the lawn.

6           MR. CAMPBELL: 8:30? 9:00?

7           MR. LEVINE: Do you think if we start at  
8 9:00, you'll be done by 1:30?

9           MR. CAMPBELL: I think I'll be done by  
10 10:00.

11          MR. LEVINE: Let's start at 9:00.

12          THE ARBITRATOR: Let's make it  
13 9:00 o'clock, then. And will someone arrange --  
14 you're just going to call me. I guess I'm the only  
15 party that has to be called on the telephone, so we  
16 don't need to establish any dial-in number.

17          MR. CAMPBELL: With the exception of Pat  
18 Songer. I may have him by telephone because of his  
19 proximity.

20          THE ARBITRATOR: All right. If any  
21 witness will be testifying by telephone, then we  
22 might need to figure out a dial-in number that the  
23 witness could also call in on the same line.

24          MR. LEVINE: I have another concern  
25 about Mr. Songer.

1 THE ARBITRATOR: Let's discuss these  
2 arrangements off the record. Would that be  
3 satisfactory to both parties?

4 MR. LEVINE: Yes.

5 MR. CAMPBELL: Yes.

6 THE ARBITRATOR: We'll be off the  
7 record.

8 (The proceedings were adjourned  
9 at 1:59 P.M.)

10 \* \* \* \* \*

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CERTIFICATE OF REPORTER

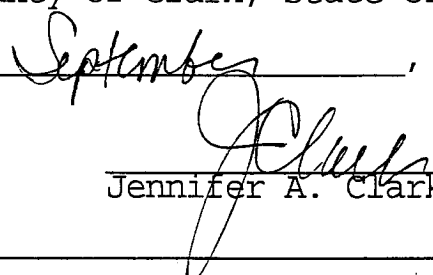
STATE OF NEVADA       )  
                                  SS:  
COUNTY OF CLARK     )

I, Jennifer A. Clark, a Certified Court Reporter licensed by the State of Nevada, do hereby certify: That I reported the arbitration proceedings commencing on September 13, 2013.

That prior to testifying, the witnesses were duly sworn to testify to the truth; that I thereafter transcribed my said stenographic notes into written form; that the typewritten transcript is a complete, true, and accurate transcription of said stenographic notes.

I further certify that I am not a relative, employee, or independent contractor of counsel or of any of the parties involved in the proceeding, nor a person financially interested in the proceeding, nor do I have any other relationship that may reasonably cause my impartiality to be questioned.

IN WITNESS WHEREOF, I have set my hand in the County of Clark, State of Nevada, this 15<sup>th</sup> day of September, 2013.

  
Jennifer A. Clark, RDR, CRR, CCR 422

REC-117  
J  
BY: \_\_\_\_\_

**CERTIFIED COPY**

TRANSCRIPT OF PROCEEDINGS

RE GRIEVANCES OF

TOMMY HOLLIS

AND

RAYMOND DELUCCHI

September 24, 2013

9:06 A.M.

3770 Howard Hughes Parkway

Suite 200

Las Vegas, Nevada

Reported by: Jennifer Clark, RDR, CRR, CCR #422

logged.

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Also Present:

Raymond Delucchi  
Tommy Hollis  
Dean Fletcher  
William J. Snow

I N D E X

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E X H I B I T S

<u>Number</u>	<u>Marked</u>	<u>Admitted into Evidence</u>
UNION		
AA	799	800

1 a copy of that?

2 MR. LEVINE: I'm giving it to him right  
3 now.

4 (Exhibit AA was marked for  
5 identification.)

6  
7 RAYMOND DELUCCHI,  
8 having been recalled as a witness and having been  
9 previously duly sworn, was examined and testified  
10 further as follows:

11  
12 DIRECT EXAMINATION

13 BY MR. LEVINE:

14 Q. Mr. Delucchi, I'm showing you what has  
15 been marked as Grievants' Exhibit AA. Is this a  
16 true and correct copy of the excerpts of scene  
17 safety from Essentials of Paramedic Care which I  
18 just discussed with Mr. Songer during his  
19 cross-examination?

20 A. Yes, sir.

21 Q. And did I read that portion regarding  
22 scene safety accurately?

23 A. Yes, sir.

24 MR. LEVINE: I would move the -- having  
25 identified the exhibit, I would move the admission

1 of AA.

2 MR. CAMPBELL: I have no objection.

3 THE ARBITRATOR: It will be received.

4 (Union Exhibit AA was admitted  
5 into evidence.)

6 MR. LEVINE: And I will make  
7 arrangements to forward it to you.

8 Or actually, if I could ask  
9 Mr. Campbell, will you forward it to her with the  
10 pages 95 and 96?

11 MR. CAMPBELL: Sure. You got an extra  
12 copy for me?

13 MR. LEVINE: Yes, I do, right here.

14 BY MR. LEVINE:

15 Q. Ray, the only other question I have is  
16 there was testimony regarding Mr. Kohbarger -- from  
17 Mr. Kohbarger where he couldn't recall exactly the  
18 exact details of certain firefighters and whether  
19 they were put on paid or unpaid leave pending  
20 termination.

21 Who were the other firefighters that  
22 were put on paid leave pending termination?

23 A. Christopher Van Leuven with grievance  
24 number 12-001.

25 Q. I need you to speak up so the arbitrator

1 can hear you.

2 A. Christopher Van Leuven with grievance  
3 number 12-001 and also Michael Campos, grievance  
4 number 10-002.

5 MR. LEVINE: Nothing further.

6 MR. CAMPBELL: No questions.

7 THE ARBITRATOR: Does that conclude the  
8 Union's surrebuttal?

9 MR. LEVINE: That concludes our  
10 surrebuttal.

11 THE ARBITRATOR: So is all of the  
12 testimony and documentary evidence in?

13 MR. LEVINE: Yes, at least from the  
14 Union's perspective.

15 MR. CAMPBELL: It is from our -- from  
16 the Town's perspective also.

17 THE ARBITRATOR: So at this point, I  
18 believe we have concluded the evidentiary portion of  
19 the hearing, with the understanding that  
20 Mr. Campbell will be forwarding to the arbitrator  
21 pages 95 and 96 of Town Exhibit 36 as well as a copy  
22 of what has been received today into evidence as  
23 Union Exhibit AA.

24 MR. CAMPBELL: That is correct.

25 THE ARBITRATOR: Mr. Campbell, do you

1 have that notated?

2 MR. CAMPBELL: I do. I've got the cover  
3 letter already almost drafted for you.

4 THE ARBITRATOR: So I'll be receiving  
5 that under separate cover.

6 MR. CAMPBELL: Yes.

7 THE ARBITRATOR: And please copy  
8 Mr. Levine.

9 MR. CAMPBELL: I will.

10 THE ARBITRATOR: All right. And then we  
11 did have some discussions off the record that I  
12 would like to make a matter of record.

13 And first of all, the final volume of  
14 the transcript is going to be prepared and will be  
15 supplied to the arbitrator and to at least the Town,  
16 if not both parties, within two weeks.

17 Now, I want to make sure that we have an  
18 understanding. I thought that both parties were  
19 sharing in the expense of the production of the  
20 original plus two copies of the transcripts. Has  
21 that been true up to this point?

22 MR. LEVINE: I have no clue.

23 THE REPORTER: That's how it was billed.

24 MR. CAMPBELL: That's how it was billed.  
25 I think ultimately under the collective bargaining

1 agreement, the prevailing party is going to be  
2 entitled to attorney's fees and costs anyway. So  
3 while we may split them now, probably there will be  
4 a true-up at a later date.

5 MR. LEVINE: I'm not aware of an  
6 attorney's fees provision in the contract but --

7 MR. CAMPBELL: Or costs. Arbitrator's  
8 fees.

9 MR. LEVINE: The contract says what it  
10 says.

11 MR. CAMPBELL: Yeah.

12 THE ARBITRATOR: Okay. But did we  
13 discuss the prevailing party issue during the first  
14 day of arbitration, yes or no?

15 MR. CAMPBELL: Yes, we did, I think, and  
16 we'll certainly probably brief that.

17 MR. LEVINE: I mean, it's one of those  
18 ones that, again, it's not -- what the contract says  
19 really isn't open to argument. It says what it  
20 says. If we misstate it on the record, it doesn't  
21 change what the contract says.

22 THE ARBITRATOR: Okay. But until --  
23 since the decision in this case is not going to be  
24 coming out until towards the end of the year,  
25 wouldn't the normal process be for the costs of

1 transcript production to be shared up until the  
2 point of the decision?

3 MR. CAMPBELL: The Town will agree to  
4 that, and we will also agree that any expedites we  
5 ask for, we will pay for the expedites.

6 MR. LEVINE: I think we're in agreement  
7 that the court reporter will get paid in the  
8 interim, which is of paramount importance to the  
9 court reporter, and reimbursements will be hashed  
10 out at a later date.

11 THE ARBITRATOR: And then as we  
12 discussed, the due date for the filing of  
13 simultaneous post-hearing briefs will be November 12  
14 of this year, 2013. And I have asked that my copy  
15 of the briefs be filed by regular mail so that I  
16 receive them in hard copy. The two of you may agree  
17 to service in any manner that is convenient for you,  
18 whether that be electronic or facsimile or mail.

19 Do you want to say what your agreement  
20 is now with respect to the serving of your briefs.

21 MR. LEVINE: Oh, I don't care. I don't  
22 care.

23 MR. CAMPBELL: Yeah.

24 MR. LEVINE: Since there's no rebuttal  
25 briefs, it doesn't real matter.

1 MR. CAMPBELL: Yeah. Let's just drop it  
2 in regular mail.

3 MR. LEVINE: We'll just drop it in  
4 regular mail. Maybe we'll get technically savvy and  
5 also E-mail a copy. One way or another, we'll get  
6 it to each other.

7 THE ARBITRATOR: Let's just have the  
8 understanding be that the due date for the filing  
9 and service of simultaneous post-hearing briefs by  
10 regular mail will be November 12, 2013.

11 MR. LEVINE: I have a question, though,  
12 as it relates to serving you by mail. This is one  
13 of those cases, if I recall, where we are dealing  
14 with AAA, I think a Tammie, as opposed to dealing  
15 with you directly. Is it anticipated that we submit  
16 it to Tammie at AAA or directly to you?

17 THE ARBITRATOR: My suggestion would be  
18 that you just send a copy of your cover letter to  
19 Tammie Flynn so that she knows that you sent out the  
20 brief.

21 MR. LEVINE: And then send the brief to  
22 you.

23 THE ARBITRATOR: Yes.

24 MR. LEVINE: Just in case I don't have  
25 the address -- I'm sure I can probably dig it up

1       somewhere -- what address would you like it sent to?

2               THE ARBITRATOR: My address is on the  
3 transcript, I believe.

4               MR. LEVINE: Okay. Then that should  
5 make it easy for me.

6               THE ARBITRATOR: My address is on the  
7 transcript.

8               MR. LEVINE: 5960 South Land Park Drive,  
9 Suite 255.

10              THE ARBITRATOR: Correct.

11              MR. LEVINE: Okay. I've got it.

12              THE ARBITRATOR: The important thing is  
13 that the AAA case manager be able to follow the  
14 progress of the case to its conclusion. So I don't  
15 think she needs to get a copy of the brief but just  
16 give her a copy of your transmittal or your cover  
17 letter so that she knows that the brief has been  
18 filed with me.

19              MR. LEVINE: All right.

20              THE ARBITRATOR: Mr. Campbell.

21              MR. CAMPBELL: I think we've covered  
22 everything.

23              THE ARBITRATOR: All right. So -- and  
24 then as I discussed with you off the record, as soon  
25 as I have received the final volume of the record,

1 the exhibits that I do not have, until Mr. Campbell  
2 supplies me with them and the -- both parties -- as  
3 soon as I've received all of that in my office, I  
4 will start the running of my 45-day clock towards  
5 the issuance of my opinion and award.

6 And as I also told you off the record,  
7 if either party should require an extension of time,  
8 as long as you can agree between yourselves to  
9 extend time, I have no objection as long as you  
10 confirm your agreement in writing. E-mail is  
11 sufficient. Copy me in and give me an additional  
12 15 days of deliberation time.

13 So if you timely file your briefs in  
14 accordance with your stipulation, my time limit will  
15 be 45 days. If you avail yourself of the  
16 opportunity to take an extension, you would give me  
17 an additional 15 days of deliberation time in  
18 addition to the 45, giving me the FMCS standard of  
19 60 days.

20 So is that acceptable to both parties?

21 MR. LEVINE: Yes.

22 MR. CAMPBELL: Yes, it is.

23 THE ARBITRATOR: All right. And then  
24 for your information, the case manager is Tammie  
25 Flynn, T-A-M-M-I-E, F-L-Y-N-N, and she's at the AAA

1 Western Case Management Center, 6795 North Palm  
2 Avenue, Second Floor, Fresno, 93704.

3 So is there any other matter that either  
4 party would like to raise before we adjourn the  
5 hearing?

6 MR. CAMPBELL: None from the Town.

7 MR. LEVINE: None from the Union.

8 THE ARBITRATOR: All right. Thank you  
9 all very much. We'll be adjourned.

10 (The proceedings were adjourned  
11 at 10:24 A.M.)

12 \* \* \* \* \*

CERTIFICATE OF REPORTER

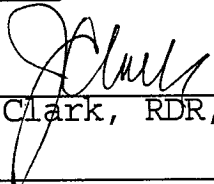
STATE OF NEVADA       )  
                                  SS:  
COUNTY OF CLARK       )

I, Jennifer A. Clark, a Certified Court Reporter licensed by the State of Nevada, do hereby certify: That I reported the arbitration proceedings commencing on September 24, 2013.

That prior to testifying, the witnesses were duly sworn to testify to the truth; that I thereafter transcribed my said stenographic notes into written form; that the typewritten transcript is a complete, true, and accurate transcription of said stenographic notes.

I further certify that I am not a relative, employee, or independent contractor of counsel or of any of the parties involved in the proceeding, nor a person financially interested in the proceeding, nor do I have any other relationship that may reasonably cause my impartiality to be questioned.

IN WITNESS WHEREOF, I have set my hand in the County of Clark, State of Nevada, this 24th day of October, 2013.

  
\_\_\_\_\_  
Jennifer A. Clark, RDR, CRR, CCR 422