

May 21, 2012

Department of Personnel Administration
Statutory Appeals Unit
1515 "S" Street, North Building, Suite 400
Sacramento, California 95811-7258

OPA
MAY 22 2012
STATUTORY APPEALS

Dear Department of Personnel Administration:

My name is Ari Delay and I am a Battalion Chief for the Department of Forestry & Fire Protection also known as CALFIRE. I work at the Half Moon Bay office at 1191 Main Street in Half Moon Bay California. I have worked at this office or within the Coastside Fire Protection District for the last 16 years. I was blanketed into state service in July of 2007 when the Coastside Fire Protection District contracted personnel services through CALFIRE. I work in bargaining unit 8.

I am writing you this letter to appeal or protest to an involuntary geographic transfer as described in CALFIRE policy 1028.3 & Pursuant to Government Code 19994.1. I have not waived my rights under the CALFIRE policy

I am filing this appeal on my own behalf, as I believe I would be unable to receive fair and impartial representation from the union representing my bargaining unit. My reasons for believing so are described below.

I am under the understanding that this appeal is under your jurisdiction as an involuntary geographic transfer.

ISSUES:

- 1.) I believe the transfer is for the purpose of discipline and harassment.**
- 2.) CALFIRE senior management has failed to properly notice me of my involuntary geographic transfer.**
- 3.) I believe CALFIRE senior management has worked in concert with the union to have me transferred.**

BACKGROUND:

On or about the 6th of February 2012, I was told by a firefighter, and then by my peer, both of who were at a union meeting at the Half Moon Bay Fire Station, that Chief Ferreira had announced at the union meeting (held on 2/6/2012) that he was moving a Battalion Chief from the Coast. Both stated that it was clear by all attending the meeting that he was talking about me. I had initially dismissed this as rumor, until I was sent an email by my supervisor noting that Chief Ferreira wanted to meet with him and I about an assignment to the South Division. This meeting did not happen until 4/27/12.

On 2/15/2012, my supervisor, Chief Paul Cole, sent an email to Chief Scott Jalbert and Chief John Ferreira that he did *not* support the idea of transferring me, as he has not been made aware of any issues, nor has he been asked or involved in efforts to verify any allegations. No issues have been brought fourth as of 5/20/2012.

On 4/19/2012, my supervisor, Chief Paul Cole, forwarded me an email with the heading "Staff Report," in which a Microsoft Word document titled "Delay Transfer Memo.doc" was attached. I spoke with my supervisor shortly after, and he said he wanted to give me a "heads up" so I was not blind-sided by the memo, as it was to be included in a board packet as a "Staff Report" for the Coastside Fire Protection District Board of Directors, and available for public review. The Coastside Fire Protection District currently has a contract for Fire & Rescue services with CALFIRE, however I am a state employee and personnel issues are not under their jurisdiction.

On 4/20/2012, I sent a reply to my supervisor expressing my displeasure with the staff report. Regardless of whether I agreed with it or not, it was a personnel matter (as indicated by the title of the document) and did not belong in a public forum.

The contents of the staff report characterize issues such as mistrust, lack of confidence, attitude and deficiencies. This document draws information from a report generated by a consultant outside of the State system, and was not specifically targeted toward me, but department leadership in general. Chief Ferreira quoted directly from the report, applying their phrasing towards me specifically in the staff report. It is also important to note that the consultant drew these conclusions regarding department leadership from hearsay information and conjecture. The consultant's report was not accepted by the Coastside Fire Protection Board of Directors, as they believed it was strongly biased and unanimously passed a motion to discount consultant's report.

In any event, neither Chief Ferreira nor my supervisor has ever brought these subjects up in any discipline or performance review. There have been no meetings regarding deficiencies and there are no notations in my supervisors working file or my official personnel file regarding any such issues. **By not conducting their own evaluation and their lack of communication with me, it is my belief that CALFIRE failed to comply with "due process" as defined and required under the Firefighters Bill of Rights (Government Code Section 3250-3262).**

On 4/21/2012, my email was forwarded to Chief Ferreira with the comments that I am taking exception to the report, as well as the venue in which it will be disclosed and discussed. Chief Cole reiterates that I ask Chief Ferreira to remove it from the agenda packets and not openly reference it at the Board meeting.

On 4/21/2012 Chief Ferreira replies stating that he is relying on an "outside analysis" of our program.

On 4/27/2012, I was called to a meeting with Chief Ferreira, Chief Cole and Chief Jalbert. At that meeting, Chief Ferreira verbally notified me that I was being transferred to the South Division and that "the reason did not matter." He stated that I would receive something in writing shortly. Chief Ferreira instructed me to speak with Chief Jalbert about the particulars of the assignment and left the room.

On 5/4/2012 I met with Chief Scott Jalbert to review my personnel file. At that meeting, Chief Jalbert verbally informed me that I would be working out of the Felton Headquarters at 6059 Highway 9 Felton, CA.

This assignment triggers the requirements under CALFIRE policy 1028.3 (INVOLUNTARY GEOGRAPHIC TRANSFERS) for the following reasons.

The following is CALFIRE POLICY 1028.3

1.) For geographic involuntary transfers the Department must follow all the guidelines outlined in Section 1028.3. Pursuant to Government Code 19994.1, when a transfer under this section reasonably requires an employee to change his or her place of residence, **the appointing power**

shall give the employee a written notice of transfer 60 days in advance of the effective date of the transfer, unless the employee waives this right. Notice should include the reason for the transfer, information regarding entitlement to relocation expenses (if any), and other pertinent information (e.g., reporting date, available alternate positions, alternate options, etc.). An employee is reasonably expected to change his/her place of residence when the move results in:

- a distance of at least 35 miles between the old work location and new work location; and
- a distance of at least 35 miles between the old residence and new residence; and
- a distance of at least 35 miles between the old residence and new work location.

1028-3 In addition, the new residence shall not be farther from the new work location than the old residence is from the new work location.

From my home address at 110 Hildebrand Road, La Honda, CA 94020, the distance to Felton Headquarters at 6059 Highway 9, Felton, CA 95018 is:

49.5 miles (1 hour, 14 minutes) via Hwy 84 to Hwy 1 to Hwy 17 to Hwy 9

or

38.6 miles (1 hour, 8 minutes) via Hwy 84 to Hwy 35 to Hwy 9

From my home address at 110 Hildebrand Road, La Honda CA 94020 the distance to Half Moon Bay Office at 1191 Main Street Half Moon Bay, CA 95019 is:

19.3 Miles (28 minutes) via Hwy 84 to Hwy 1

Therefore, this transfer qualifies as an involuntary geographic transfer.

Lastly, I believe it is important to recognize the influence of the union on decisions made by Chief Ferreira. In an email dated 9/23/11 from Chief Ferreira to myself, he indicates that I have people "gunning for me." This transfer, as well as a previous non-geographic transfer already imposed upon me, are conciliations to hostile union leadership.

I believe that I have lost the support of the union leadership by enforcing state standards that were not previously upheld by my predecessors. In my tenure with CALFIRE, I have used the progressive discipline process to address timecard inaccuracies, including blatant falsification of timecards by employees, which were subsequently signed off by supervisors.

In addition, I required employees to follow state policy with regard to travel time for training assignments. I had found that supervisors had allowed employees "travel days" (paid, without the use of leave) before training assignments. Additionally, another Battalion Chief and myself disallowed the use of "sick time" to be used for vacations, a policy that was previously allowed. The culture is one of lax enforcement of rules and accountability. In my efforts to improve fiscal oversight and a "do the right thing" mentality, I have angered some of the old guard union leadership.

CONCLUSION:

I believe that the arbitrary decision to transfer me to the South Division should be reversed for the following reasons:

- The transfer is for the purpose of harassment and discipline according to Government Code 19994.3. Chief Ferreira states in the aforementioned Staff Report that they are attempting to "correct deficiencies." There have been no previous communications with me regarding any deficiencies or other personnel issues. I have checked my personnel files and confirmed that there are no negative comments, memos or disciplinary documents contained within them.
- The assignment itself can be considered "punishment" as it would require me to cover Battalions 1, 3, and 4 (which covers the majority of San Mateo and Santa Cruz counties). Previously, employees were assigned to either the North or South division, and not required to cover both on a routine basis.
- CALFIRE senior management has failed to properly notice me about the involuntary geographic transfer according to their own policy and pursuant to Government Code 19994.1.

It is my hope that you will carefully review this protest and the remedy I seek is to not be transferred. I look forward to discussing these issues with you further.

Ari Delay
Battalion Chief
California Department of Forestry and Fire Protection
P.O. Box 173, La Honda, CA 94020.
(650) 740-4636
aridelay@coastside.net.

Thank you for your attention.

Sincerely,



Ari Delay

To date, I have received nothing in writing stating where, when or why I am being transferred.

From: Ari DELAY

P.O. Box 173

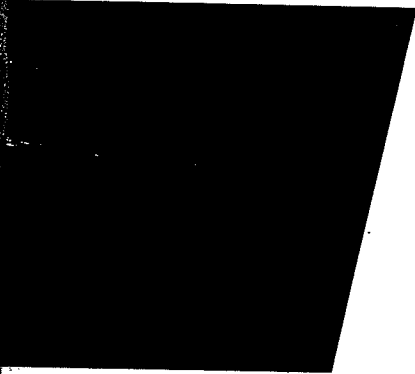
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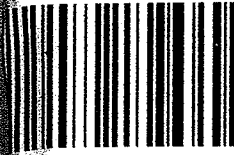
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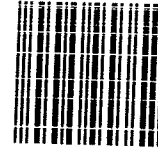


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To: Department of Personnel Administration
Statutory Appeals Unit
1515 "S" STREET, NORTH BUILDING, Suite 400
SACRAMENTO, CA 95811-7258

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**STATE OF CALIFORNIA
BEFORE THE
DEPARTMENT OF PERSONNEL ADMINISTRATION**

In the Matter of the Appeal By:

Case No. 12-D-0163

ARI DELAY

Notice of Time and Place of Hearing

From:

Appeal of Involuntary Geographic Transfer

APPELLANT:

Ari Delay
PO Box 173
La Honda, CA 94020

APPELLANT'S REPRESENTATIVE:

in pro. per.

RESPONDENT:

Department of Forestry & Fire Protection (CALFIRE)
Human Resource Division
1416 – 9th Street – PO Box 944246
Sacramento, CA 94244-2460

RESPONDENT'S REPRESENTATIVE:

Department of Forestry & Fire Protection (CALFIRE)
Legal Division
1416 – 9th Street – PO Box 944246
Sacramento, CA 94244-2460

Please take notice that the above-captioned matter has been set for hearing as follows:

DATE:

July 10, 2012

TIME:

1:00 p.m.

LOCATION:

Department of Personnel Administration
1515 'S' Street, North Building, #400
Legal Conference Room
Sacramento, CA 95811-7258

before the Administrative Law Judge, Department of Personnel Administration, the person appointed and authorized by the Department of Personnel Administration as its representative to hold and conduct the hearing in said matter.

Each party to said proceedings are entitled to, but are not required, be represented by counsel at his/her own expense. Upon application to said department or its Hearing Officer, subpoenas may be issued as provided by law. At said hearing, each party will be given full opportunity to examine and cross-examine witnesses and to present any relevant evidence. All inquiries, including requests for continuances or off calendar, must be directed to the address and telephone numbers below.

PROOF OF SERVICE

I am a citizen of the United States, over the age of eighteen years, and not a party to the above proceeding. I am employed in the County of Sacramento, State of California, and my business address is 1515 'S' Street, North Building, #400, Sacramento, California 95811-7258. On the date shown below I served the Notice of Time and Place of Hearing on each of the above parties by placing said notice in separate envelopes, addressed to said parties to last known addresses thereof, and then sealed and deposited said envelopes in the United States mail.

I declare under penalty of perjury that the foregoing is true and correct. Dated at Sacramento, California on May 23, 2012.


Victoria Z. Rochester, Authorized Representative



Department of Personnel Administration, Statutory Appeals Unit 1515 'S' Street, North Building, #400, Sacramento, CA 95811-7258
(916) 324-3857 CALNET 8-454-3857 (916) 322-5709 fax

DPA's Hearing Process for Statutory Appeals

The following description of DPA's hearing process for non-merit statutory appeals summarizes the DPA's website (www.dpa.ca.gov, under "DPA Home; Appeals; Non-Merit Statutory Appeals"). This information does not substitute for advice from a representative or attorney.

Background

DPA's hearing authority is found in Government Code section 19815 et seq., and California Code of Regulations, title 2, sections 599.893-599.910 which define the general hearing procedures; California Code of Regulations, title 2, section 599.906 defines statutory appeals for rank-and-file employees; and California Code of Regulations, title 2, section 599.859 defines appeals for excluded employees.

For rank-and-file employees, a memorandum of understanding (MOU) may contain provisions which vary from these laws and rules. The MOU language may supersede the law.

Appeals must be brought to hearing within 3 years unless both sides agree in writing, and submit the agreement to DPA's Statutory Appeals Unit (SAU). The SAU is the DPA division charged with holding hearings. After an appeal is filed, SAU may hold administrative hearings and/or investigation before an Administrative Law Judge (ALJ).

Prior to the Hearing

- If the notice on the reverse side contains any incorrect information, immediately notify the Statutory Appeals Unit.
- You may represent yourself at the hearing or use a representative. If using a representative, provide the name and contact information to the Statutory Appeals Unit.
- Any documents you plan to present at the hearing must be copied ahead of time. Bring three copies and your original to the hearing.
- If you plan to subpoena witnesses or documents, contact the Statutory Appeals Unit to request the subpoena(s). You are responsible for serving the subpoenas. Allow sufficient time for subpoenaed parties to gather required documents and prepare for the hearing. If a witness asks for witness and/or mileage fees, the party requesting the subpoena is required by law to pay these fees.
- If you need an interpreter at the hearing, you must submit a written request to the Statutory Appeals Unit at least 2 weeks in advance. The cost of providing an interpreter shall be paid by the agency having jurisdiction over the matter if the ALJ so directs, otherwise by the party at whose request the interpreter is provided.
- If you need a reasonable accommodation at the hearing, you must submit a written request to the Statutory Appeals Unit at least 2 weeks in advance.
- The parties may want to discuss settling the appeal.
- A scheduled hearing may be postponed if you show good cause, consistent with the law. Before requesting a "continuance," contact the opposing party or representative to see if he or she will agree to postpone and identify possible new hearing dates. Include this information in a written request

to the Statutory Appeals Unit with the reason you need a postponement. Requests must be made at least **3 business days** before the hearing date.

- If the hearing is not continued by the ALJ, and you fail to appear, the ALJ has discretion to treat your non-appearance as a withdrawal.

At the Hearing

- The hearing is not conducted according to technical rules relating to evidence and witnesses, except as explained in the California Code of Regulations, title 2, article 25.
- Both sides may present oral evidence only under oath.
- Any relevant evidence will be admitted if it is the type of evidence responsible persons are accustomed to rely upon in the conduct of serious affairs, regardless of the existence of any common law or statutory rule.
- Each side has the right to call and examine witnesses under oath.
- DPA makes an audio record of the testimony. At the ALJ's discretion, each side may cross-examine opposing witnesses on any matter relevant to the issues even if that matter wasn't covered in the direct examination, and impeach any witness regardless of which party first called the witness to testify.
- Consistent with the laws governing burden of proof, the appellant presents evidence first. The respondent presents evidence next. Each side may call witnesses to rebut presented evidence. Hearsay evidence may be presented to supplement or explain other evidence. However, if there is a timely objection, the ALJ may not consider the Hearsay evidence sufficient to support a finding unless it would be admissible over objection in a civil action.
- The ALJ has discretion to exclude evidence if its value to prove something is substantially outweighed by the probability its admission will take an undue amount of time or be prejudicial to a party.

After the Hearing

- The ALJ issues a proposed decision, which may be adopted, rejected, or amended by DPA's Director.
- DPA sends a copy of the final decision and the Director's Order to all parties. One year after the ruling, some final decisions are posted on DPA's website under "Appeals; Final Decision."
- If your address changes, you are responsible for notifying the Statutory Appeals Unit and all parties.
- The decision becomes final 30 days after DPA serves the parties with the decision, unless a proper application for rehearing is made. Within this 30-day rehearing period, either party may request a rehearing by faxing, mailing, or delivering a petition for rehearing to the Statutory Appeals Unit. If the Statutory Appeals Unit does not act within 90 days, the petition is considered denied by operation of law.

PERETZ & ASSOCIATES

22 BATTERY STREET, SUITE 202
SAN FRANCISCO, CALIFORNIA 94111

TELEPHONE: (415) 732-3777
FACSIMILE: (415) 732-3791

YOSEF PERETZ, ESQ.
EMILY KNOLES, ESQ.
MICHAEL D. BURSTEIN, ESQ.

Email: yperetz@peretzlaw.com
Email: eknoles@peretzlaw.com
Email: mburstein@peretzlaw.com

July 3, 2012

Via Facsimile and U.S. Mail

Department of Personnel Administration
Statutory Appeals Unit
1515 "S" Street, North Building, #400
Sacramento, California 95811-7258

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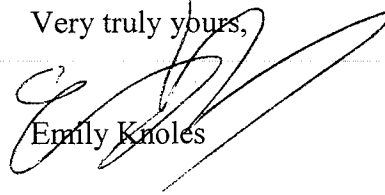
Re: In the Matter of Appeal by Ari Delay
Case No. 12-D-0163

To whom it may concern:

My firm has just been retained by the Appellant in the above-referenced matter, Ari Delay, to represent him in this appeal. As we currently understand it this appeal is scheduled to be heard on July 10, 2012. We would like to request an extension to the hearing date until August 20, 2012 in order to allow our firm to get up to speed and to adequately represent Mr. Delay's interests. Additionally, we intend to send subpoenas which require at least three weeks to respond to. Please let me know if such a continuance is possible and what other information you need from our office.

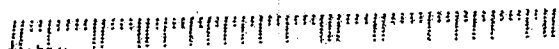
Thank you for your anticipated cooperation. Please feel free to contact me with any questions or concerns.

Very truly yours,

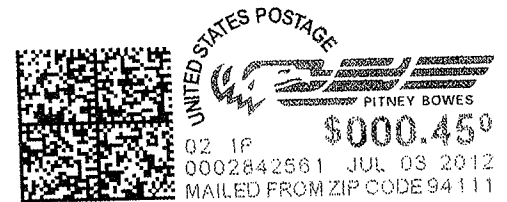


Emily Knoles

Peretz & Associates
22 Battery Street, Suite 202
San Francisco, CA 94111



9900 852181 1036



Department of Personnel Administration
Statutory Appeals Unit
1515 "S" Street, North Building, #400
Sacramento, California 95811-7258

PERETZ & ASSOCIATES
22 BATTERY STREET, SUITE 202
SAN FRANCISCO, CA 94111
T: (415) 732-3777 F: (415) 732-3791

FACSIMILE TRANSMITTAL TO:

To: Attn: Dept. Of Personnel Administration / Statutory Appeals Board.

Fax: 916-322-5709

From: PERETZ & ASSOCIATES Re: Ari Delay - Case No. 12-D-0163

2 Pages (including this sheet) Date: July 3, 2012

Urgent For Review Please Comment Please Reply Please Recycle

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS CONFIDENTIAL AND MAY BE LEGALLY PROTECTED BY THE ATTORNEY/CLIENT PRIVILEGE OR THE ATTORNEY WORK PRODUCT DOCTRINE. IT IS INTENDED ONLY FOR THE USE OF THE RECIPIENT(S) NAMED ABOVE IN THIS FACSIMILE. IF THE PERSON ACTUALLY RECEIVING THIS FACSIMILE OR ANY OTHER READER IS NOT THE PERSON TO WHOM IT IS ADDRESSED OR NOT RESPONSIBLE TO DELIVER IT TO THE NAMED RECIPIENT(S), ITS USE OR COMMUNICATION IS STRICTLY PROHIBITED. IF YOU RECEIVE THIS MESSAGE IN ERROR, PLEASE CALL US COLLECT IMMEDIATELY AND RETURN THE ORIGINAL MESSAGE BY MAIL TO US. THANK YOU

PERETZ & ASSOCIATES

22 BATTERY STREET, SUITE 202
SAN FRANCISCO, CALIFORNIA 94111

TELEPHONE: (415) 732-3777
FACSIMILE: (415) 732-3791

YOSEF PERETZ, ESQ.
EMILY KNOLES, ESQ.
MICHAEL D. BURSTEIN, ESQ.

Email: yperetz@peretzlaw.com
Email: eknoles@peretzlaw.com
Email: mburstein@peretzlaw.com

July 3, 2012

Via Facsimile and U.S. Mail

Department of Personnel Administration
Statutory Appeals Unit
1515 "S" Street, North Building, #400
Sacramento, California 95811-7258

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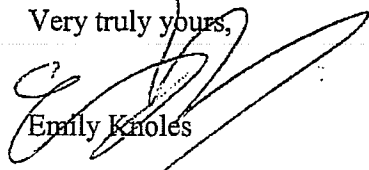
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Case No. 12-D-0163

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Thank you for your anticipated cooperation. Please feel free to contact me with any questions or concerns.

Very truly yours,



Emily Knoles

Rochester, Victoria

From: FAXCOM Anywhere <fax@faxcomanywhere.com>
Sent: Tuesday, July 03, 2012 3:25 PM
To: Rochester, Victoria
Subject: Received Fax From: 4157323791
Attachments: FAX.PDF

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Caller ID: 4157323791

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Rochester, Victoria

From: Emily Knoles <eknoles@peretzlaw.com>
Sent: Friday, July 06, 2012 12:14 PM
To: Rochester, Victoria; Yosef Peretz; Sumy Kim; bruce.crane@fire.ca.gov
Subject: Re: Ari Delay - CalHR Case No.: 12-D-0163

Dear Ms. Rochester,

I have conferred with the Respondent's counsel, Bruce Crane, and Respondent has no objection to moving the hearing date and is amenable to the August 20, 2012 date proposed by my office. Please confirm as soon as possible if the Department of Human Resources will continue the hearing as requested.

Thank you for your continued assistance.

Emily Knoles

On Jul 6, 2012, at 7:06 AM, "Rochester, Victoria" <Victoria.Rochester@calhr.ca.gov> wrote:

Good morning Ms. Knoles:

I am in receipt of the request for continuance in the above matter. Please confer with respondent as to whether they agree or disagree with continuing this matter and advise this Unit in writing of their response. Upon receipt, we will follow-up on Monday. Thank you.

Victoria Zinner Rochester

Paralegal for Karla Broussard-Boyd

Administrative Law Judge

Department of Human Resources

Statutory Appeals Unit

1515 'S' Street, North Bldg., #400

Sacramento, CA 95811-7258

Phone: 916-324-3857

Fax: 916-322-5709

e-mail: Victoria.Rochester@calhr.ca.gov

The information contained in this facsimile transmission is confidential, and may be legally privileged or protected. The information is intended only for the use of the recipient(s) named above. If you have received this information in error, please immediately notify us by telephone to arrange for return of all documents. Any unauthorized disclosure, distribution, or taking of any action in reliance on the contents of this information is strictly prohibited and may be unlawful.

DPA email addresses have changed to @CalHR.ca.gov in preparation for the new department's launch on July 1.

DEPARTMENT OF HUMAN RESOURCES

STATUTORY APPEALS UNIT
1515 'S' STREET, NORTH BUILDING, # 400
SACRAMENTO, CA 95811-7258
(916) 324-3857 FAX (916) 322-5709



July 9, 2012

Emily Knoles, Esq.
Peretz & Associates
22 Battery Street, #202
San Francisco, CA 94111

Bruce Crane, Staff Counsel
Department of Forestry & Fire
Legal Division
1416 – 9th Street – PO Box 944246
Sacramento, CA 94244-2460

Re: **CalHR Case No. 12-D-0163 – Ari Delay**
Appeal of Involuntary Geographic Transfer

TO ALL PARTIES AND THEIR REPRESENTATIVES:

The above matter has been continued at the request of appellant and with the agreement of respondent's representative. A Notice of Time and Place of Continued Hearing is attached herewith.

There will be no hearing on July 10, 2012 at 1:00 p.m. Please direct any questions to Victoria Rochester, Paralegal, at (916) 324-3857.

A handwritten signature in black ink, appearing to read "Karla Broussard-Boyd", written over a horizontal line.

KARLA BROUSSARD-BOYD
Administrative Law Judge
Department of Human Resources

Attachment

cc: See attached Proof of Service

**STATE OF CALIFORNIA
BEFORE THE
DEPARTMENT OF HUMAN RESOURCES**

In the Matter of the Appeal By:

Case No. 12-D-0163

ARI DELAY

Notice of Time and Place of Continued Hearing
(Moved from July 10, 2012 to August 20, 2012)

From:

Appeal of Involuntary Geographic Transfer

APPELLANT:

Ari Delay
PO Box 173
La Honda, CA 94020

APPELLANT'S REPRESENTATIVE:

Emily Knoles, Esq.
Peretz & Associates
22 Batter Street, #202
San Francisco, CA 94111

RESPONDENT:

Department of Forestry & Fire Protection (CALFIRE)
Human Resource Division
1416 – 9th Street – PO Box 944246
Sacramento, CA 94244-2460

RESPONDENT'S REPRESENTATIVE:

Bruce Crane, Staff Counsel
Department of Forestry & Fire Protection (CALFIRE)
Legal Division
1416 – 9th Street – PO Box 944246
Sacramento, CA 94244-2460

Please take notice that the above-captioned matter has been set for hearing as follows:

DATE:

August 20, 2012

TIME:

9:00 a.m.

LOCATION:

Department of Human Resources
1515 'S' Street, North Building, #400
Legal Conference Room
Sacramento, CA 95811-7258

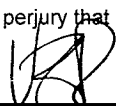
before the Administrative Law Judge, Department of Human Resources, the person appointed and authorized by the Department of Human Resources as its representative to hold and conduct the hearing in said matter.

Each party to said proceedings are entitled to, but are not required, be represented by counsel at his/her own expense. Upon application to said department or its Hearing Officer, subpoenas may be issued as provided by law. At said hearing, each party will be given full opportunity to examine and cross-examine witnesses and to present any relevant evidence. All inquiries, including requests for continuances or off calendar, must be directed to the address and telephone numbers below.

PROOF OF SERVICE

I am a citizen of the United States, over the age of eighteen years, and not a party to the above proceeding. I am employed in the County of Sacramento, State of California, and my business address is 1515 'S' Street, North Building, #400, Sacramento, California 95811-7258. On the date shown below I served the Notice of Time and Place of Continued Hearing on each of the above parties by placing said notice in separate envelopes, addressed to said parties to last known addresses thereof, and then sealed and deposited said envelopes in the United States mail.

I declare under penalty of perjury that the foregoing is true and correct. Dated at Sacramento, California on July 9, 2012.


Victoria Z. Rochester, Authorized Representative



Department of Human Resources, Statutory Appeals Unit 1515 'S' Street, North Building, #400, Sacramento, CA 95811-7258
(916) 324-3857 CALNET 8-454-3857 (916) 322-5709 fax

CALHR Hearing Process for Statutory Appeals

The following description of CalHRs' hearing process for non-merit statutory appeals summarizes the CALHR website (www.calhr.ca.gov, under "CalHR Home; Appeals and Grievances; Non-Merit Statutory Appeals"). This information does not substitute for advice from a representative or attorney.

Background

CalHRs' hearing authority is found in Government Code section 19815 et seq., and California Code of Regulations, title 2, sections 599.893-599.910 which define the general hearing procedures; California Code of Regulations, title 2, section 599.906 defines statutory appeals for rank-and-file employees; and California Code of Regulations, title 2, section 599.859 defines appeals for excluded employees.

For rank-and-file employees, a memorandum of understanding (MOU) may contain provisions which vary from these laws and rules. The MOU language may supersede the law.

Appeals must be brought to hearing within 3 years unless both sides agree in writing, and submit the agreement to CalHRs' Statutory Appeals Unit (SAU). The SAU is the CalHR division charged with holding hearings. After an appeal is filed, SAU may hold administrative hearings and/or investigation before an Administrative Law Judge (ALJ).

Prior to the Hearing

- If the notice on the reverse side contains any incorrect information, immediately notify the Statutory Appeals Unit.
- You may represent yourself at the hearing or use a representative. If using a representative, provide the name and contact information to the Statutory Appeals Unit.
- Any documents you plan to present at the hearing must be copied ahead of time. Bring three copies and your original to the hearing.
- If you plan to subpoena witnesses or documents, contact the Statutory Appeals Unit to request the subpoena(s). You are responsible for serving the subpoenas. Allow sufficient time for subpoenaed parties to gather required documents and prepare for the hearing. If a witness asks for witness and/or mileage fees, the party requesting the subpoena is required by law to pay these fees.
- If you need an interpreter at the hearing, you must submit a written request to the Statutory Appeals Unit at least 2 weeks in advance. The cost of providing an interpreter shall be paid by the agency having jurisdiction over the matter if the ALJ so directs, otherwise by the party at whose request the interpreter is provided.
- If you need a reasonable accommodation at the hearing, you must submit a written request to the Statutory Appeals Unit at least 2 weeks in advance.
- The parties may want to discuss settling the appeal.
- A scheduled hearing may be postponed if you show good cause, consistent with the law. Before requesting a "continuance," contact the opposing party or representative to see if he or she will agree to postpone and identify possible new hearing dates. Include this information in a written request

to the Statutory Appeals Unit with the reason you need a postponement. Requests must be made at least **3 business days** before the hearing date.

- If the hearing is not continued by the ALJ, and you fail to appear, the ALJ has discretion to treat your non-appearance as a withdrawal.

At the Hearing

- The hearing is not conducted according to technical rules relating to evidence and witnesses, except as explained in the California Code of Regulations, title 2, article 25.
- Both sides may present oral evidence only under oath.
- Any relevant evidence will be admitted if it is the type of evidence responsible persons are accustomed to rely upon in the conduct of serious affairs, regardless of the existence of any common law or statutory rule.
- Each side has the right to call and examine witnesses under oath.
- CalHR makes an audio record of the testimony. At the ALJ's discretion, each side may cross-examine opposing witnesses on any matter relevant to the issues even if that matter wasn't covered in the direct examination, and impeach any witness regardless of which party first called the witness to testify.
- Consistent with the laws governing burden of proof, the appellant presents evidence first. The respondent presents evidence next. Each side may call witnesses to rebut presented evidence. Hearsay evidence may be presented to supplement or explain other evidence. However, if there is a timely objection, the ALJ may not consider the Hearsay evidence sufficient to support a finding unless it would be admissible over objection in a civil action.
- The ALJ has discretion to exclude evidence if its value to prove something is substantially outweighed by the probability its admission will take an undue amount of time or be prejudicial to a party.

After the Hearing

- The ALJ issues a proposed decision, which may be adopted, rejected, or amended by CalHRs' Director.
- CalHR sends a copy of the final decision and the Director's Order to all parties. One year after the ruling, some final decisions are posted on CalHRs' website under "Appeals and Grievances; Final Decisions."
- If your address changes, you are responsible for notifying the Statutory Appeals Unit and all parties.
- The decision becomes final 30 days after CalHR serves the parties with the decision, unless a proper application for rehearing is made. Within this 30-day rehearing period, either party may request a rehearing by faxing, mailing, or delivering a petition for rehearing to the Statutory Appeals Unit. If the Statutory Appeals Unit does not act within 90 days, the petition is considered denied by operation of law.

DEPARTMENT OF HUMAN RESOURCES

Statutory Appeals Unit
1515 'S' Street, North Building, #400
Sacramento, CA 95811
Phone: (916) 324-3857
Fax: (916) 322-5709

____ KARLA BROUSSARD-BOYD
Administrative Law Judge

VICTORIA ROCHESTER
Paralegal



7-9-12

DATE
Bruce Crane, Staff Counsel

TO
Calfile

ORGANIZATION/AGENCY
657-4072

FAX NUMBER
 COPY WILL FOLLOW
 COPY WILL NOT FOLLOW
5

NUMBER OF PAGES (INCLUDING COVER SHEET)

COMMENTS: Pl's. Ari Delay - CalHR # 12-D-0163
Please see attached. Hearing moved 7-10-12 to
8-20-12. Thank you.

The information contained in this facsimile transmission is confidential, and may be legally privileged or protected. The information is intended only for the use of the recipient(s) named above. If you have received this information in error, please immediately notify us by telephone to arrange for return of all documents. Any unauthorized disclosure, distribution, or taking of any action in reliance on the contents of this information is strictly prohibited and may be unlawful.

TRANSMISSION VERIFICATION REPORT

TIME : 07/09/2012 13:36
NAME : DPA
FAX : 9163225709
TEL :
SER. # : BROL5J379266

DATE, TIME : 07/09 13:35
FAX NO./NAME : 6574072
DURATION : 00:00:57
PAGE(S) : 05
RESULT : OK
MODE : STANDARD
ECM

DEPARTMENT OF HUMAN RESOURCES

Statutory Appeals Unit
1515 'S' Street, North Building, #400
Sacramento, CA 95811
Phone: (916) 324-3857
Fax: (916) 322-5709

____ KARLA BROUSSARD-BOYD
Administrative Law Judge

X VICTORIA ROCHESTER
Paralegal



7-9-12

DATE
Bruce Crane, Staff Counsel

TO
Calfil

ORGANIZATION/AGENCY
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FAX NUMBER

COPY WILL FOLLOW
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DEPARTMENT OF HUMAN RESOURCES

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Sacramento, CA 95811
Phone: (916) 324-3857
Fax: (916) 322-5709

____ KARLA BROUSSARD-BOYD
Administrative Law Judge

____ VICTORIA ROCHESTER
Paralegal



7.9.12
____ DATE
Emily Knoles, Esq.
____ TO
Peretz & Assoc.
____ ORGANIZATION/AGENCY
415-732-3791
____ FAX NUMBER
 COPY WILL FOLLOW
 COPY WILL NOT FOLLOW
5
____ NUMBER OF PAGES (INCLUDING COVER SHEET)

COMMENTS: Pl. Air Delay - CalHE# 12-D-0163

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TIME : 07/09/2012 13:35
NAME : DPA
FAX : 9163225709
TEL :
SER. # : BROL5J379266

DATE, TIME 07/09 13:34
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DURATION 00:00:54
PAGE(S) 05
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DEPARTMENT OF HUMAN RESOURCES

Statutory Appeals Unit
1515 'S' Street, North Building, #400
Sacramento, CA 95811
Phone: (916) 324-3857
Fax: (916) 322-5709

____ **KARLA BROUSSARD-BOYD**
Administrative Law Judge

____ **VICTORIA ROCHESTER**
Paralegal



7-9-12
DATE
Emily Knoles, Esq.
TO
Peretz & Assoc.
ORGANIZATION/AGENCY
415-732-3791
FAX NUMBER

COPY WILL FOLLOW
 COPY WILL NOT FOLLOW

PERETZ & ASSOCIATES

22 BATTERY STREET, SUITE 202
SAN FRANCISCO, CALIFORNIA 94111

TELEPHONE: (415) 732-3777
FACSIMILE: (415) 732-3791

YOSEF PERETZ, ESQ.
EMILY KNOLES, ESQ.
MICHAEL D. BURSTEIN, ESQ.

Email: yperetz@peretzlaw.com
Email: eknoles@peretzlaw.com
Email: mburstein@peretzlaw.com

July 10, 2012

Via Facsimile and U.S. Mail

Department of Personnel Administration
Statutory Appeals Unit
1515 "S" Street, North Building, #400
Sacramento, California 95811-7258

Re: In the Matter of Appeal by Ari Delay
Case No. 12-D-0163

To whom it may concern:

We would like to request the Subpoena Duces Tecum forms in lieu of the pending appeal scheduled for August 30, 2012.

Thank you for your anticipated cooperation. Please feel free to contact me with any questions or concerns.

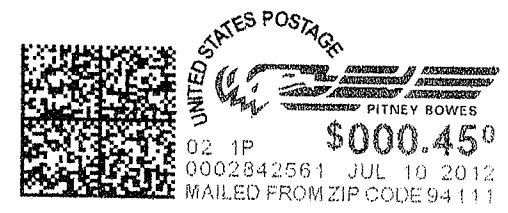
Very truly yours,



Sumy Kim

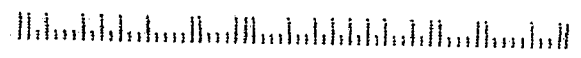
JUL 12 2012

Peretz & Associates
22 Battery Street, Suite 202
in Francisco, CA 94111



Department of Personnel Administration
Statutory Appeals Unit
1515 "S" Street, North Building, #400
Sacramento, California 95811-7258

9581187258 0066



PERETZ & ASSOCIATES

22 BATTERY STREET, SUITE 202
SAN FRANCISCO, CALIFORNIA 94111

TELEPHONE: (415) 732-3777
FACSIMILE: (415) 732-3791

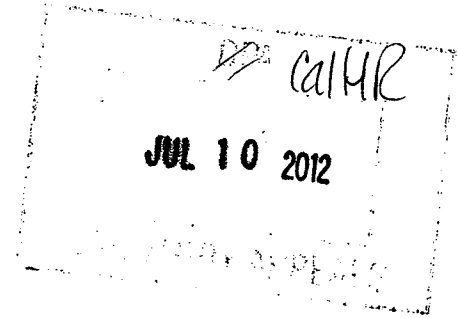
YOSEF PERETZ, ESQ.
EMILY KNOLES, ESQ.
MICHAEL D. BURSTEIN, ESQ.

Email: yperetz@peretzlaw.com
Email: eknoles@peretzlaw.com
Email: mburstein@peretzlaw.com

July 10, 2012

Via Facsimile and U.S. Mail

Department of Personnel Administration
Statutory Appeals Unit
1515 "S" Street, North Building, #400
Sacramento, California 95811-7258



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Case No. 12-D-0163

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Very truly yours,

Sumy Kim

PERETZ & ASSOCIATES
22 BATTERY STREET, SUITE 202
SAN FRANCISCO, CA 94111
T: (415) 732-3777 F: (415) 732-3791

FACSIMILE TRANSMITTAL TO:

To: Attn: Dept. Of Personnel Administration / Statutory Appeals Board.

Fax: 916-322-5709

From: PERETZ & ASSOCIATES Re: Ari Delay – Case No. 12-D-0163

2 Pages (including this sheet) Date: July 10, 2012

Urgent For Review Please Comment Please Reply Please Recycle

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS CONFIDENTIAL AND MAY BE LEGALLY PROTECTED BY THE ATTORNEY/CLIENT PRIVILEGE OR THE ATTORNEY WORK PRODUCT DOCTRINE. IT IS INTENDED ONLY FOR THE USE OF THE RECIPIENT(S) NAMED ABOVE IN THIS FACSIMILE. IF THE PERSON ACTUALLY RECEIVING THIS FACSIMILE OR ANY OTHER READER IS NOT THE PERSON TO WHOM IT IS ADDRESSED OR NOT RESPONSIBLE TO DELIVER IT TO THE NAMED RECIPIENT(S), ITS USE OR COMMUNICATION IS STRICTLY PROHIBITED. IF YOU RECEIVE THIS MESSAGE IN ERROR, PLEASE CALL US COLLECT IMMEDIATELY AND RETURN THE ORIGINAL MESSAGE BY MAIL TO US. THANK YOU

DEPARTMENT OF HUMAN RESOURCES¹

STATUTORY APPEALS UNIT
1515 'S' STREET, NORTH BUILDING, #400
SACRAMENTO, CA 95811
(916) 324-3857 FAX (916) 322-5709



July 10, 2012

Emily Knoles, Esq.
Peretz & Associates
22 Battery Street, #202
San Francisco, CA 94111

Re: **CalHR Case No. 12-D-0163 – Ari Delay**
Request for Subpoenas Duces Tecum

Dear Ms. Knoles:

Pursuant to Ms. Kim's July 10, 2012 request, the Statutory Appeals Unit is providing you with five (5) Subpoenas Duces Tecum on this date.

Thank you.

A handwritten signature in black ink that reads "Victoria Z. Rochester".

Victoria Z. Rochester, Paralegal
Department of Human Resources

Attachment

cc: See attached Proof of Service

¹On July 1, 2012, the Department of Human Resources succeeded the former Department of Personnel Administration in all functions and duties.

1 **PROOF OF SERVICE**

2 (Code of Civ. Proc. §1013(a))

3 Re: **CalHR Case No. 12-D-0163 – Ari Delay**
4 Request for Subpoenas Duces Tecum

5 I declare that I am employed in the County of Sacramento, California. I am over the age of
6 18 and not a party to the within-captioned cause. My business address is 1515 'S' Street, North
7 Building, #400, Sacramento, California 95811. On July 10, 2012, I served the following
8 documents:

9 **Correspondence of this date**
10 **5 Subpoenas Duces Tecum**

11 on the parties listed below by:

- 12 X placing a true copy thereof enclosed in a sealed envelope with postage thereon fully
13 prepaid, in the United States mail at Sacramento, California.
- 14 via personal service on the individual named below.
- 15 via faxing a true copy followed by regular mail.

16 Ari Delay
17 PO Box 173
18 La Honda, CA 94020

19 Emily Knoles, Esq.
20 Peretz & Associates
21 22 Battery Street, #202
22 San Francisco, CA 94111
23 (w/ SDT)


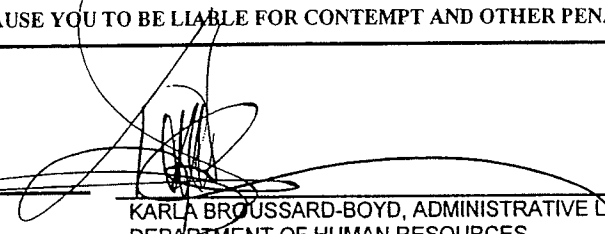
24 Department of Forestry & Fire Protection
25 (CALFIRE)
26 Human Resource Division
27 1416 – 9th Street – PO Box 944246
28 Sacramento, CA 94244-2460

Bruce Crane, Staff Counsel
Department of Forestry & Fire
Legal Division
1416 – 9th Street – PO Box 944246
Sacramento, CA 94244-2460

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on July 10, 2012, at Sacramento, California.


Victoria Z. Rochester

**BEFORE THE DEPARTMENT OF HUMAN RESOURCES
OF THE STATE OF CALIFORNIA**

ATTORNEY/REPRESENTATIVE (NAME AND ADDRESS):	<i>FOR CALHR USE ONLY</i>
APPELLANT:	
RESPONDENT:	
SUBPOENA <input checked="" type="checkbox"/> DUCES TECUM <input type="checkbox"/> STATEWIDE	CASE NUMBER
THE PEOPLE OF THE STATE OF CALIFORNIA, TO (NAME):	
1. YOU, AND EACH OF YOU ARE ORDERED TO APPEAR AS A WITNESS, in this action as set forth below unless you make a special agreement with the person named in item 3:	
a. Date:	Time:
b. Address:	
2. AND YOU ARE: <ul style="list-style-type: none"> a. <input type="checkbox"/> ordered to appear in person and attend at a hearing to be held in the above-captioned matter before the Administrative Law Judge, Department of Human Resources. b. <input type="checkbox"/> not required to appear in person if you produce the records described in the accompanying affidavit in compliance with Evidence Code sections 1560 and 1561. c. <input checked="" type="checkbox"/> ordered to appear in person and to produce the records described in the accompanying affidavit. The personal attendance of the custodian or other qualified witness and the production of the original records is required by this subpoena. The procedure authorized pursuant to subdivision (b) of section 1560, and sections 1561 and 1562, of the Evidence Code will not be deemed sufficient compliance with this subpoena. d. <input type="checkbox"/> ordered to designate one or more persons to testify on your behalf as to the matters described in the accompany statement. 	
3. IF YOU HAVE ANY QUESTIONS ABOUT WITNESS FEES OR THE TIME OR DATE FOR YOU TO APPEAR, OR IF YOU WANT TO BE CERTAIN THAT YOUR PRESENCE IS REQUIRED, CONTACT THE FOLLOWING PERSON BEFORE THE DATE ON WHICH YOU ARE TO APPEAR:	
a. Name:	b. Telephone Number:
4. WITNESS FEES: You are entitled to receive witness fees and mileage actually traveled, as provided by law, if you request them BEFORE your scheduled appearance. Request them from the person named in item 3.	
DISOBEDIENCE OF THIS SUBPOENA MAY CAUSE YOU TO BE LIABLE FOR CONTEMPT AND OTHER PENALTIES PROVIDED BY LAW.	
	<div style="text-align: center;"> <p style="font-size: 1.5em; margin: 0;">7-10-12</p> <p style="margin: 0;">Date</p> </div> <div style="text-align: center; margin-top: 20px;">  <p style="margin: 0;">KARLA BROUSSARD-BOYD, ADMINISTRATIVE LAW JUDGE DEPARTMENT OF HUMAN RESOURCES</p> <p style="margin: 5px 0 0 0;"><i>(See reverse for proof of service)</i></p> </div>

PROOF OF SERVICE OF SUBPOENA

1. I served this subpoena subpoena duces tecum and supporting affidavit by delivering a copy personally to the person served as follows:

a. Person Served (*name*):

c. Date of Delivery:

b. Address Where Served:

d. Time of Delivery:

e. Witness Fees (*Check one*):

1. were offered or demanded and paid. Amount: \$

2. were not demanded or paid.

f. Fees for Service. Amount: \$

2. I received this subpoena for service on (*date*):

3. Person serving:

a. Not a registered California process server.

b. Registered California process server.

c. Employee or independent contractor of a registered California process server.

d. Exempt from registration under Business & Professions Code section 22350(b).

e. California sheriff, marshal, or constable.

f. Other.

g. Name, address and telephone number and, if applicable, county of registration and number:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on:

(*date*):

Signature:

(*For California sheriff, marshal, or constable use only*)


I certify that the foregoing is true and correct and that this certificate is executed on:

(*date*):

at (*place*):

Signature:

**BEFORE THE DEPARTMENT OF HUMAN RESOURCES
OF THE STATE OF CALIFORNIA**

ATTORNEY/REPRESENTATIVE (NAME AND ADDRESS):	<i>FOR CALHR USE ONLY</i>
APPELLANT:	
RESPONDENT:	
SUBPOENA <input checked="" type="checkbox"/> DUCES TECUM <input type="checkbox"/> STATEWIDE	CASE NUMBER
THE PEOPLE OF THE STATE OF CALIFORNIA, TO (NAME):	
1. YOU, AND EACH OF YOU ARE ORDERED TO APPEAR AS A WITNESS, in this action as set forth below unless you make a special agreement with the person named in item 3:	
a. Date:	Time:
b. Address:	
2. AND YOU ARE:	
a. <input type="checkbox"/> ordered to appear in person and attend at a hearing to be held in the above-captioned matter before the Administrative Law Judge, Department of Human Resources.	
b. <input type="checkbox"/> not required to appear in person if you produce the records described in the accompanying affidavit in compliance with Evidence Code sections 1560 and 1561.	
c. <input checked="" type="checkbox"/> ordered to appear in person and to produce the records described in the accompanying affidavit. The personal attendance of the custodian or other qualified witness and the production of the original records is required by this subpoena. The procedure authorized pursuant to subdivision (b) of section 1560, and sections 1561 and 1562, of the Evidence Code will not be deemed sufficient compliance with this subpoena.	
d. <input type="checkbox"/> ordered to designate one or more persons to testify on your behalf as to the matters described in the accompany statement.	
3. IF YOU HAVE ANY QUESTIONS ABOUT WITNESS FEES OR THE TIME OR DATE FOR YOU TO APPEAR, OR IF YOU WANT TO BE CERTAIN THAT YOUR PRESENCE IS REQUIRED, CONTACT THE FOLLOWING PERSON BEFORE THE DATE ON WHICH YOU ARE TO APPEAR:	
a. Name:	b. Telephone Number:
4. WITNESS FEES: You are entitled to receive witness fees and mileage actually traveled, as provided by law, if you request them BEFORE your scheduled appearance. Request them from the person named in item 3.	
DISOBEDIENCE OF THIS SUBPOENA MAY CAUSE YOU TO BE LIABLE FOR CONTEMPT AND OTHER PENALTIES PROVIDED BY LAW.	
	<p style="font-size: 1.5em; margin: 0;">7-10-12</p> <p>Date</p> <p style="text-align: center; margin: 0;"><i>[Signature]</i></p> <p style="text-align: center; margin: 0;">KARLA BROUSSARD-BOYD, ADMINISTRATIVE LAW JUDGE DEPARTMENT OF HUMAN RESOURCES</p> <p style="text-align: center; margin: 0;"><i>(See reverse for proof of service)</i></p>

PROOF OF SERVICE OF SUBPOENA

1. I served this subpoena subpoena duces tecum and supporting affidavit by delivering a copy personally to the person served as follows:

a. Person Served (*name*):

c. Date of Delivery:

b. Address Where Served:

d. Time of Delivery:

e. Witness Fees (*Check one*):

1. were offered or demanded and paid. Amount: \$

2. were not demanded or paid.

f. Fees for Service. Amount: \$

2. I received this subpoena for service on (*date*):

3. Person serving:

a. Not a registered California process server.

b. Registered California process server.

c. Employee or independent contractor of a registered California process server.

d. Exempt from registration under Business & Professions Code section 22350(b).

e. California sheriff, marshal, or constable.

f. Other.

g. Name, address and telephone number and, if applicable, county of registration and number:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on:

(*date*):

Signature:

(*For California sheriff, marshal, or constable use only*)

I certify that the foregoing is true and correct and that this certificate is executed on:

(*date*):

at (*place*):

Signature:

**BEFORE THE DEPARTMENT OF HUMAN RESOURCES
OF THE STATE OF CALIFORNIA**

ATTORNEY/REPRESENTATIVE (NAME AND ADDRESS):	<i>FOR CALHR USE ONLY</i>
APPELLANT:	
RESPONDENT:	

SUBPOENA <input checked="" type="checkbox"/> DUCES TECUM <input type="checkbox"/> STATEWIDE	CASE NUMBER
---	-------------

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (NAME):

1. **YOU, AND EACH OF YOU ARE ORDERED TO APPEAR AS A WITNESS, in this action as set forth below unless you make a special agreement with the person named in item 3:**

a. Date:	Time:
b. Address:	

2. **AND YOU ARE:**


- a. ordered to appear in person and attend at a hearing to be held in the above-captioned matter before the Administrative Law Judge, Department of Human Resources.
- b. not required to appear in person if you produce the records described in the accompanying affidavit in compliance with Evidence Code sections 1560 and 1561.
- c. ordered to appear in person and to produce the records described in the accompanying affidavit. The personal attendance of the custodian or other qualified witness and the production of the original records is required by this subpoena. The procedure authorized pursuant to subdivision (b) of section 1560, and sections 1561 and 1562, of the Evidence Code will not be deemed sufficient compliance with this subpoena.
- d. ordered to designate one or more persons to testify on your behalf as to the matters described in the accompany statement.

3. **IF YOU HAVE ANY QUESTIONS ABOUT WITNESS FEES OR THE TIME OR DATE FOR YOU TO APPEAR, OR IF YOU WANT TO BE CERTAIN THAT YOUR PRESENCE IS REQUIRED, CONTACT THE FOLLOWING PERSON BEFORE THE DATE ON WHICH YOU ARE TO APPEAR:**

a. Name:	b. Telephone Number:
----------	----------------------

4. **WITNESS FEES:** You are entitled to receive witness fees and mileage actually traveled, as provided by law, if you request them **BEFORE** your scheduled appearance. Request them from the person named in item 3.

DISOBEDIENCE OF THIS SUBPOENA MAY CAUSE YOU TO BE LLABLE FOR CONTEMPT AND OTHER PENALTIES PROVIDED BY LAW.

	<p style="font-size: 1.5em; font-family: cursive;">7-10-12</p> <p>Date</p>	<p style="font-size: 1.5em; font-family: cursive;">[Signature]</p> <p>KARLA BROUSSARD-BOYD, ADMINISTRATIVE LAW JUDGE DEPARTMENT OF HUMAN RESOURCES</p> <p align="center"><i>(See reverse for proof of service)</i></p>
--	--	--

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f. Fees for Service. Amount: \$

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b. Registered California process server.

c. Employee or independent contractor of a registered California process server.

d. Exempt from registration under Business & Professions Code section 22350(b).

e. California sheriff, marshal, or constable.

f. Other.

g. Name, address and telephone number and, if applicable, county of registration and number:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on:

(*date*):

Signature:

(*For California sheriff, marshal, or constable use only*)


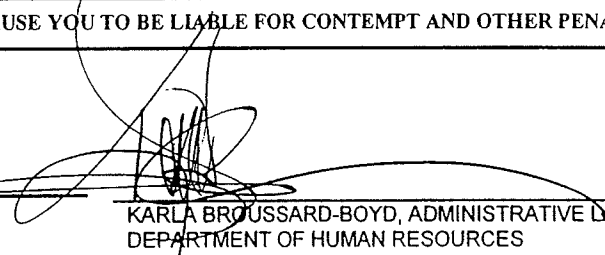
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(*date*):

at (*place*):

Signature:

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RESPONDENT:	
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a. Name:	b. Telephone Number:
4. WITNESS FEES: You are entitled to receive witness fees and mileage actually traveled, as provided by law, if you request them BEFORE your scheduled appearance. Request them from the person named in item 3.	
DISOBEDIENCE OF THIS SUBPOENA MAY CAUSE YOU TO BE LIABLE FOR CONTEMPT AND OTHER PENALTIES PROVIDED BY LAW.	
	<div style="text-align: center;"> <p style="font-size: 1.5em; margin: 0;">1-10-12</p> <hr style="border: 0; border-top: 1px solid black; margin: 0;"/> <p style="margin: 0;">Date</p> </div> <div style="text-align: center; margin-top: 10px;">  <p style="margin: 0;">KARLA BROUSSARD-BOYD, ADMINISTRATIVE LAW JUDGE DEPARTMENT OF HUMAN RESOURCES</p> <p style="font-size: 0.8em; margin: 5px 0 0 0;"><i>(See reverse for proof of service)</i></p> </div>

PROOF OF SERVICE OF SUBPOENA

1. I served this *subpoena* *subpoena duces tecum* and supporting affidavit by delivering a copy personally to the person served as follows:

a. Person Served (*name*):

c. Date of Delivery:

b. Address Where Served:

d. Time of Delivery:

e. Witness Fees (*Check one*):

1. were offered or demanded and paid. Amount: \$

2. were not demanded or paid.

f. Fees for Service. Amount: \$

2. I received this subpoena for service on (*date*):

3. Person serving:

a. Not a registered California process server.

b. Registered California process server.

c. Employee or independent contractor of a registered California process server.

d. Exempt from registration under Business & Professions Code section 22350(b).

e. California sheriff, marshal, or constable.

f. Other.

g. Name, address and telephone number and, if applicable, county of registration and number:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on:

(*date*):

Signature:

(*For California sheriff, marshal, or constable use only*)


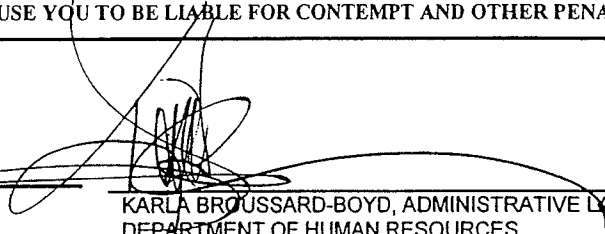
I certify that the foregoing is true and correct and that this certificate is executed on:

(*date*):

at (*place*):

Signature:

**BEFORE THE DEPARTMENT OF HUMAN RESOURCES
OF THE STATE OF CALIFORNIA**

ATTORNEY/REPRESENTATIVE (NAME AND ADDRESS):	FOR CALHR USE ONLY
APPELLANT:	
RESPONDENT:	
SUBPOENA <input checked="" type="checkbox"/> DUCES TECUM <input type="checkbox"/> STATEWIDE	CASE NUMBER
THE PEOPLE OF THE STATE OF CALIFORNIA, TO (NAME):	
1. YOU, AND EACH OF YOU ARE ORDERED TO APPEAR AS A WITNESS, in this action as set forth below unless you make a special agreement with the person named in item 3:	
a. Date:	Time:
b. Address:	
2. AND YOU ARE: <ul style="list-style-type: none"> a. <input type="checkbox"/> ordered to appear in person and attend at a hearing to be held in the above-captioned matter before the Administrative Law Judge, Department of Human Resources. b. <input type="checkbox"/> not required to appear in person if you produce the records described in the accompanying affidavit in compliance with Evidence Code sections 1560 and 1561. c. <input checked="" type="checkbox"/> ordered to appear in person and to produce the records described in the accompanying affidavit. The personal attendance of the custodian or other qualified witness and the production of the original records is required by this subpoena. The procedure authorized pursuant to subdivision (b) of section 1560, and sections 1561 and 1562, of the Evidence Code will not be deemed sufficient compliance with this subpoena. d. <input type="checkbox"/> ordered to designate one or more persons to testify on your behalf as to the matters described in the accompany statement. 	
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	<div style="text-align: center;">  _____ KARLA BROUSSARD-BOYD, ADMINISTRATIVE LAW JUDGE DEPARTMENT OF HUMAN RESOURCES </div>
(See reverse for proof of service)	

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e. California sheriff, marshal, or constable.

f. Other.

g. Name, address and telephone number and, if applicable, county of registration and number:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on:

(date):

Signature:

(For California sheriff, marshal, or constable use only)

I certify that the foregoing is true and correct and that this certificate is executed on:

(date):

at (place):

Signature:

Rochester, Victoria

From: Sumy Kim <skim@peretzlaw.com>
Sent: Tuesday, July 10, 2012 9:22 AM
To: Rochester, Victoria
Subject: RE: Request for Subpoena Duces Tecum Forms - Ari Delay (Case No. 12-D-0163).

Good morning~

Thank you for your quick response. We will need 5 subpoenas issued if possible. And my apologies- the hearing is scheduled for August 20, 2012.

Thanks again!

Sumy Kim

From: Rochester, Victoria [mailto:Victoria.Rochester@calhr.ca.gov]
Sent: Tuesday, July 10, 2012 9:20 AM
To: Sumy Kim
Subject: RE: Request for Subpoena Duces Tecum Forms - Ari Delay (Case No. 12-D-0163).

Good morning Sumy:

I am in receipt of your request for SDT. I need to know how many to issue. Additionally, please note the hearing is scheduled for 8/20/12. Thank you.

Victoria Zinner Rochester
Paralegal for Karla Broussard-Boyd
Administrative Law Judge
Department of Human Resources
Statutory Appeals Unit
1515 'S' Street, North Bldg., #400
Sacramento, CA 95811-7258
Phone: 916-324-3857
Fax: 916-322-5709
e-mail: Victoria.Rochester@calhr.ca.gov

The information contained in this facsimile transmission is confidential, and may be legally privileged or protected. The information is intended only for the use of the recipient(s) named above. If you have received this information in error, please immediately notify us by telephone to arrange for return of all documents. Any unauthorized disclosure, distribution, or taking of any action in reliance on the contents of this information is strictly prohibited and may be unlawful.

From: Sumy Kim [mailto:skim@peretzlaw.com]
Sent: Tuesday, July 10, 2012 8:52 AM
To: Rochester, Victoria
Subject: Request for Subpoena Duces Tecum Forms

Dear Ms. Rochester,

Unfortunately our fax is unable to get through to your fax line, so we are e-mailing the above correspondence regarding the case of Ari Delay (Case No. 12-D-0163).

Thank you!

Sumy Kim
PERETZ & ASSOCIATES
22 Battery Street, Suite 202
San Francisco, CA 94111
Phone: 415.732.3777
Fax: 415.732.3791

This message contains information which may be confidential and privileged. You may not use, copy or disclose to anyone this message or any information contained in this message unless you are the intended recipient. If you have received the message in error, please advise the sender by return e-mail and delete the message from your system. Thank you for your cooperation.

DPA email addresses have changed to @CalHR.ca.gov in preparation for the new department's launch on July 1.

No virus found in this message.
Checked by AVG - www.avg.com
Version: 2012.0.2195 / Virus Database: 2437/5123 - Release Date: 07/10/12

Rochester, Victoria

From: Rochester, Victoria
Sent: Wednesday, July 11, 2012 10:16 AM
To: 'Emily Knoles'
Subject: RE: Ari Delay - CalHR Case No.: 12-D-0163

Hi Emily:

No, we don't issue subpoenas via fax, only by mail. Thank you. Victoria

From: Emily Knoles [mailto:eknoles@peretzlaw.com]
Sent: Wednesday, July 11, 2012 10:13 AM
To: Rochester, Victoria
Subject: RE: Ari Delay - CalHR Case No.: 12-D-0163

Victoria,

Is it possible to receive a copy by fax?

Emily Knoles
PERETZ & ASSOCIATES
22 Battery Street, Suite 202
San Francisco, California 94111
Tel. 415.732.3777
Fax. 415.732.3791
Email. eknoles@peretzlaw.com

From: Rochester, Victoria [mailto:Victoria.Rochester@calhr.ca.gov]
Sent: Wednesday, July 11, 2012 9:44 AM
To: Emily Knoles
Subject: RE: Ari Delay - CalHR Case No.: 12-D-0163

Good morning:

I mailed them out yesterday. The original needs to be served on witnesses. Thank you. Victoria/CalHR, SAU.

From: Emily Knoles [mailto:eknoles@peretzlaw.com]
Sent: Wednesday, July 11, 2012 9:21 AM
To: Rochester, Victoria
Subject: RE: Ari Delay - CalHR Case No.: 12-D-0163

Hi Victoria,

My assistant, Sumy Kim requested five subpoenas duces tecum from you for this case, but hasn't received a response. Could I get a status update on this?

Thanks,

Emily

Rochester, Victoria

To: Emily Knoles
Subject: RE: Ari Delay - CalHR Case No.: 12-D-0163

From: Emily Knoles [mailto:eknoles@peretzlaw.com]
Sent: Monday, July 23, 2012 12:20 PM
To: Rochester, Victoria
Subject: RE: Ari Delay - CalHR Case No.: 12-D-0163

Victoria,

Is it also possible to have five Subpoenas for Appearance at Hearing (box 2a) sent to us for issuance?

Thank you,

Emily Knoles
PERETZ & ASSOCIATES
22 Battery Street, Suite 202
San Francisco, California 94111
Tel. 415.732.3777
Fax. 415.732.3791
Email. eknoles@peretzlaw.com

From: Rochester, Victoria [mailto:Victoria.Rochester@calhr.ca.gov]
Sent: Wednesday, July 11, 2012 9:44 AM
To: Emily Knoles
Subject: RE: Ari Delay - CalHR Case No.: 12-D-0163

Good morning:

I mailed them out yesterday. The original needs to be served on witnesses. Thank you. Victoria/CalHR, SAU.

From: Emily Knoles [mailto:eknoles@peretzlaw.com]
Sent: Wednesday, July 11, 2012 9:21 AM
To: Rochester, Victoria
Subject: RE: Ari Delay - CalHR Case No.: 12-D-0163

Hi Victoria,

My assistant, Sumy Kim requested five subpoenas duces tecum from you for this case, but hasn't received a response. Could I get a status update on this?

Thanks,

Emily

From: Rochester, Victoria [mailto:Victoria.Rochester@calhr.ca.gov]
Sent: Friday, July 06, 2012 7:05 AM

To: Emily Knoles

Subject: Ari Delay - CalHR Case No.: 12-D-0163

Good morning Ms. Knoles:

I am in receipt of the request for continuance in the above matter. Please confer with respondent as to whether they agree or disagree with continuing this matter and advise this Unit in writing of their response. Upon receipt, we will follow-up on Monday. Thank you.

Victoria Zinner Rochester
Paralegal for Karla Broussard-Boyd
Administrative Law Judge
Department of Human Resources
Statutory Appeals Unit
1515 'S' Street, North Bldg., #400
Sacramento, CA 95811-7258
Phone: 916-324-3857
Fax: 916-322-5709
e-mail: Victoria.Rochester@calhr.ca.gov

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DPA email addresses have changed to @CalHR.ca.gov in preparation for the new department's launch on July 1.

DEPARTMENT OF HUMAN RESOURCES¹

STATUTORY APPEALS UNIT
1515 'S' STREET, NORTH BUILDING, #400
SACRAMENTO, CA 95811
(916) 324-3857 FAX (916) 322-5709



July 24, 2012

Emily Knoles, Esq.
Peretz & Associates
22 Battery Street, #202
San Francisco, CA 94111

Re: **CalHR Case No. 12-D-0163 – Ari Delay**
Request for Subpoenas

Dear Ms. Knoles:

Pursuant to your request of July 23, 2012, the Statutory Appeals Unit is providing you with five (5) Subpoenas on this date.

A handwritten signature in black ink that reads "Victoria Z. Rochester".

Victoria Z. Rochester, Paralegal
Department of Human Resources

Attachment

cc: See attached Proof of Service

¹On July 1, 2012, the Department of Human Resources succeeded the former Department of Personnel Administration in all functions and duties.

1 **PROOF OF SERVICE**

2 **(Code of Civ. Proc. §1013(a))**

3 Re: **CalHR Case No. 12-D-0163 – Ari Delay**
4 Request for Subpoenas

5 I declare that I am employed in the County of Sacramento, California. I am over the age of
6 18 and not a party to the within-captioned cause. My business address is 1515 'S' Street, North
7 Building, #400, Sacramento, California 95811. On July 24, 2012, I served the following
8 documents:

9 **Correspondence of this date**
10 **5 Subpoenas**

11 on the parties listed below by:

- 12 X placing a true copy thereof enclosed in a sealed envelope with postage thereon fully
13 prepaid, in the United States mail at Sacramento, California.
- 14 _____ via personal service on the individual named below.
- 15 _____ via faxing a true copy followed by regular mail.

16 Ari Delay
17 PO Box 173
18 La Honda, CA 94020

19 Emily Knoles, Esq.
20 Peretz & Associates
21 22 Battery Street, #202
22 San Francisco, CA 94111
23 (w/ Subpoenas)


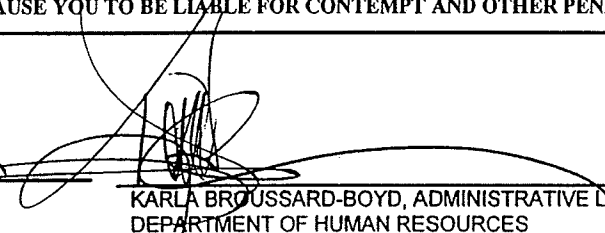
24 Department of Forestry & Fire Protection
25 (CALFIRE)
26 Human Resource Division
27 1416 – 9th Street – PO Box 944246
28 Sacramento, CA 94244-2460

Bruce Crane, Staff Counsel
Department of Forestry & Fire
Legal Division
1416 – 9th Street – PO Box 944246
Sacramento, CA 94244-2460

29 I declare under penalty of perjury of the laws of the State of California that the foregoing is
30 true and correct, and that this declaration was executed on July 24, 2012, at Sacramento,
31 California.

32 
33 _____
34 Victoria Z. Rochester

**BEFORE THE DEPARTMENT OF HUMAN RESOURCES
OF THE STATE OF CALIFORNIA**

ATTORNEY/REPRESENTATIVE (NAME AND ADDRESS):	<i>FOR CALHR USE ONLY</i>
APPELLANT:	
RESPONDENT:	
SUBPOENA <input type="checkbox"/> DUCES TECUM <input checked="" type="checkbox"/> STATEWIDE	CASE NUMBER
THE PEOPLE OF THE STATE OF CALIFORNIA, TO (NAME):	
1. YOU, AND EACH OF YOU ARE ORDERED TO APPEAR AS A WITNESS, in this action as set forth below unless you make a special agreement with the person named in item 3:	
a. Date:	Time:
b. Address:	
2. AND YOU ARE: a. <input checked="" type="checkbox"/> ordered to appear in person and attend at a hearing to be held in the above-captioned matter before the Administrative Law Judge, Department of Human Resources. b. <input type="checkbox"/> not required to appear in person if you produce the records described in the accompanying affidavit in compliance with Evidence Code sections 1560 and 1561. c. <input type="checkbox"/> ordered to appear in person and to produce the records described in the accompanying affidavit. The personal attendance of the custodian or other qualified witness and the production of the original records is required by this subpoena. The procedure authorized pursuant to subdivision (b) of section 1560, and sections 1561 and 1562, of the Evidence Code will not be deemed sufficient compliance with this subpoena. d. <input type="checkbox"/> ordered to designate one or more persons to testify on your behalf as to the matters described in the accompany statement.	
3. IF YOU HAVE ANY QUESTIONS ABOUT WITNESS FEES OR THE TIME OR DATE FOR YOU TO APPEAR, OR IF YOU WANT TO BE CERTAIN THAT YOUR PRESENCE IS REQUIRED, CONTACT THE FOLLOWING PERSON BEFORE THE DATE ON WHICH YOU ARE TO APPEAR:	
a. Name:	b. Telephone Number:
4. WITNESS FEES: You are entitled to receive witness fees and mileage actually traveled, as provided by law, if you request them BEFORE your scheduled appearance. Request them from the person named in item 3.	
DISOBEDIENCE OF THIS SUBPOENA MAY CAUSE YOU TO BE LIABLE FOR CONTEMPT AND OTHER PENALTIES PROVIDED BY LAW.	
	<div style="text-align: center;"> <p style="font-size: 1.5em; margin: 0;">7-24-12</p> <p style="margin: 0;">Date</p>  <p style="margin: 0;">KARLA BROUSSARD-BOYD, ADMINISTRATIVE LAW JUDGE DEPARTMENT OF HUMAN RESOURCES</p> <p style="font-size: 0.8em; margin: 0;">(See reverse for proof of service)</p> </div>

PROOF OF SERVICE OF SUBPOENA

1. I served this subpoena subpoena duces tecum and supporting affidavit by delivering a copy personally to the person served as follows:

a. Person Served (name):

c. Date of Delivery:

b. Address Where Served:

d. Time of Delivery:

e. Witness Fees (Check one):

1. were offered or demanded and paid. Amount: \$

2. were not demanded or paid.

f. Fees for Service. Amount: \$

2. I received this subpoena for service on (date):

3. Person serving:

a. Not a registered California process server.

b. Registered California process server.

c. Employee or independent contractor of a registered California process server.

d. Exempt from registration under Business & Professions Code section 22350(b).

e. California sheriff, marshal, or constable.

f. Other.

g. Name, address and telephone number and, if applicable, county of registration and number:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on:

(date):

Signature:

(For California sheriff, marshal, or constable use only)


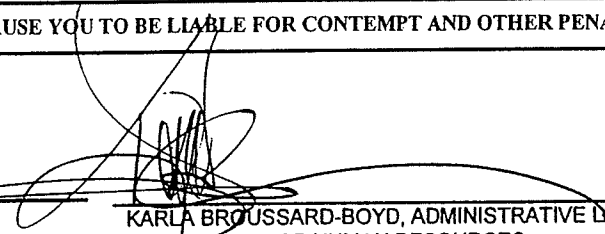
I certify that the foregoing is true and correct and that this certificate is executed on:

(date):

at (place):

Signature:

**BEFOR THE DEPARTMENT OF HUMAN RESOURCES
OF THE STATE OF CALIFORNIA**

ATTORNEY/REPRESENTATIVE (NAME AND ADDRESS):	<i>FOR CALHR USE ONLY</i>
APPELLANT:	
RESPONDENT:	
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f. Other.

g. Name, address and telephone number and, if applicable, county of registration and number:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on:

(date):

Signature:

(For California sheriff, marshal, or constable use only)


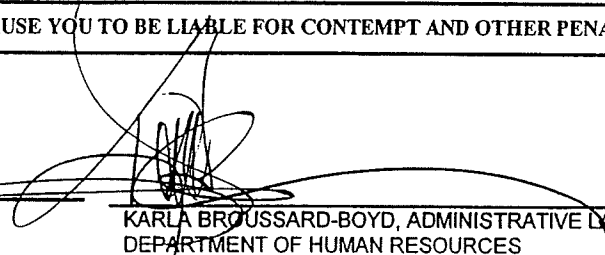
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Signature:

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OF THE STATE OF CALIFORNIA**

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 Date <u>7-24-12</u>	 KARLA BROUSSARD-BOYD, ADMINISTRATIVE LAW JUDGE DEPARTMENT OF HUMAN RESOURCES <i>(See reverse for proof of service)</i>

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e. California sheriff, marshal, or constable.

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g. Name, address and telephone number and, if applicable, county of registration and number:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on:

(*date*):

Signature:

(*For California sheriff, marshal, or constable use only*)


I certify that the foregoing is true and correct and that this certificate is executed on:

(*date*):

at (*place*):

Signature:

**BEFORE THE DEPARTMENT OF HUMAN RESOURCES
OF THE STATE OF CALIFORNIA**

ATTORNEY/REPRESENTATIVE (NAME AND ADDRESS):	<i>FOR CALHR USE ONLY</i>
APPELLANT:	
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a. Name:	b. Telephone Number:
4. WITNESS FEES: You are entitled to receive witness fees and mileage actually traveled, as provided by law, if you request them BEFORE your scheduled appearance. Request them from the person named in item 3.	
DISOBEDIENCE OF THIS SUBPOENA MAY CAUSE YOU TO BE LIABLE FOR CONTEMPT AND OTHER PENALTIES PROVIDED BY LAW.	
	<div style="text-align: center;"> <p><i>7-24-12</i></p> <p>Date</p> <p><i>[Signature]</i></p> <p>KARLA BROUSSARD-BOYD, ADMINISTRATIVE LAW JUDGE DEPARTMENT OF HUMAN RESOURCES</p> <p><i>(See reverse for proof of service)</i></p> </div>

PROOF OF SERVICE OF SUBPOENA

1. I served this subpoena subpoena duces tecum and supporting affidavit by delivering a copy personally to the person served as follows:

a. Person Served (name):

c. Date of Delivery:

b. Address Where Served:

d. Time of Delivery:

e. Witness Fees (Check one):

1. were offered or demanded and paid. Amount: \$

2. were not demanded or paid.

f. Fees for Service. Amount: \$

2. I received this subpoena for service on (date):

3. Person serving:

a. Not a registered California process server.

b. Registered California process server.

c. Employee or independent contractor of a registered California process server.

d. Exempt from registration under Business & Professions Code section 22350(b).

e. California sheriff, marshal, or constable.

f. Other.

g. Name, address and telephone number and, if applicable, county of registration and number:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on:

(date):

Signature:

(For California sheriff, marshal, or constable use only)


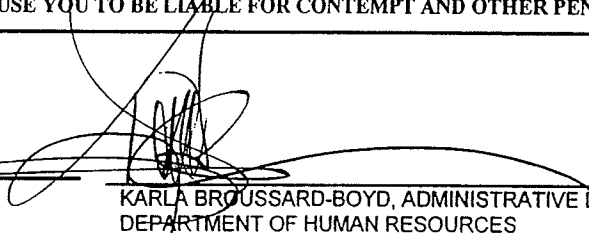
I certify that the foregoing is true and correct and that this certificate is executed on:

(date):

at (place):

Signature:

BEFORE THE DEPARTMENT OF HUMAN RESOURCES
OF THE STATE OF CALIFORNIA

ATTORNEY/REPRESENTATIVE (NAME AND ADDRESS):		FOR CALHR USE ONLY
APPELLANT:		
RESPONDENT:		
SUBPOENA <input type="checkbox"/> DUCES TECUM <input checked="" type="checkbox"/> STATEWIDE		CASE NUMBER
THE PEOPLE OF THE STATE OF CALIFORNIA, TO (NAME):		
1. YOU, AND EACH OF YOU ARE ORDERED TO APPEAR AS A WITNESS, in this action as set forth below unless you make a special agreement with the person named in item 3:		
a. Date:		Time:
b. Address:		
2. AND YOU ARE:		
a. <input checked="" type="checkbox"/> ordered to appear in person and attend at a hearing to be held in the above-captioned matter before the Administrative Law Judge, Department of Human Resources.		
b. <input type="checkbox"/> not required to appear in person if you produce the records described in the accompanying affidavit in compliance with Evidence Code sections 1560 and 1561.		
c. <input type="checkbox"/> ordered to appear in person and to produce the records described in the accompanying affidavit. The personal attendance of the custodian or other qualified witness and the production of the original records is required by this subpoena. The procedure authorized pursuant to subdivision (b) of section 1560, and sections 1561 and 1562, of the Evidence Code will not be deemed sufficient compliance with this subpoena.		
d. <input type="checkbox"/> ordered to designate one or more persons to testify on your behalf as to the matters described in the accompany statement.		
3. IF YOU HAVE ANY QUESTIONS ABOUT WITNESS FEES OR THE TIME OR DATE FOR YOU TO APPEAR, OR IF YOU WANT TO BE CERTAIN THAT YOUR PRESENCE IS REQUIRED, CONTACT THE FOLLOWING PERSON BEFORE THE DATE ON WHICH YOU ARE TO APPEAR:		
a. Name:		b. Telephone Number:
4. WITNESS FEES: You are entitled to receive witness fees and mileage actually traveled, as provided by law, if you request them BEFORE your scheduled appearance. Request them from the person named in item 3.		
DISOBEDIENCE OF THIS SUBPOENA MAY CAUSE YOU TO BE LIABLE FOR CONTEMPT AND OTHER PENALTIES PROVIDED BY LAW.		
	Date 7-24-12	 KARLA BROUSSARD-BOYD, ADMINISTRATIVE LAW JUDGE DEPARTMENT OF HUMAN RESOURCES
(See reverse for proof of service)		

PROOF OF SERVICE OF SUBPOENA

1. I served this subpoena subpoena duces tecum and supporting affidavit by delivering a copy personally to the person served as follows:

a. Person Served (name):

c. Date of Delivery:

b. Address Where Served:

d. Time of Delivery:

e. Witness Fees (Check one):

1. were offered or demanded and paid. Amount: \$

2. were not demanded or paid.

f. Fees for Service. Amount: \$

2. I received this subpoena for service on (date):

3. Person serving:

a. Not a registered California process server.

b. Registered California process server.

c. Employee or independent contractor of a registered California process server.

d. Exempt from registration under Business & Professions Code section 22350(b).

e. California sheriff, marshal, or constable.

f. Other.

g. Name, address and telephone number and, if applicable, county of registration and number:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on:

(date):

Signature:

(For California sheriff, marshal, or constable use only)

I certify that the foregoing is true and correct and that this certificate is executed on:

(date):

at (place):

Signature:

1 Bruce Crane (SBN 133581)
 2 Senior Staff Counsel
 3 California Department of Forestry
 4 and Fire Protection
 5 1416 Ninth Street, Room 1516-20
 6 Sacramento, California 95814
 7 Telephone: (916) 651-6337
 8 Facsimile: (916) 657-4072

9 Attorney for California Department
 10 of Forestry and Fire Protection (CAL FIRE)

11
 12
 13 **BEFORE THE DEPARTMENT OF HUMAN RESOURCES**
 14 **OF THE STATE OF CALIFORNIA**

15 In the matter of the Appeal by Ari
 16 Delay

17 Case No. 12-D-0163
 18 Motion for Protective Order of CAL FIRE-
 19 -Govt. Code section 18672.1

20 **BACKGROUND**

21
 22 This case arises out of an appeal by CAL FIRE employee (Ari Delay) from what
 23 he alleges to be an involuntary geographic transfer. Mr. Delay was originally
 24 representing himself in this matter. He filed his appeal with the Department of Human
 25 Resources on or about May 21, 2102 and the matter was set for hearing on July 10,
 26 2012.

27 However, on Friday July 6, 2012 counsel for CAL F IRE was contacted by the
 28 new counsel (Emily Knowles) for Mr. Delay who requested CAL FIRE's acquiescence in

1 a last minute continuance of the July 10, 2012 hearing. Apparently, Mr. Delay had
2 suddenly decided just a few days before the July 10, 2012 hearing to obtain legal
3 representation. In the spirit of professional courtesy and good faith, CAL FIRE agreed
4 to the continuance of the July 10, 2012 hearing date and the matter was continued to
5 the present date of August 20, 2012. The new hearing date of August 20, 2012 was
6 proposed by Judge Broussard and was agreed to by both parties to this matter.

7 Thereafter, on Monday July 30, 2012, the CAL FIRE Legal Office received a
8 subpoena duces tecum (Exhibit A) from counsel for Mr. Delay.

9
10 **GOVERNMENT CODE SECTION 18672.1 PROVIDES THAT A PERSON**
11 **SERVED WITH A SUBPOENA DUES TECUM MAY OBJECT TO ITS TERMS**
12 **BY A MOTION FOR PROTECTIVE ORDER, INCLUDING A MOTION TO**
13 **QUASH.**

14
15 Government Code section 18672.1 (a) states in part that "A person served with a
16 subpoena or a subpoena duces tecum may object to its terms by a motion for a
17 protective order, including a motion to quash made orally to the board or its authorized
18 representative or in writing."

19
20 **CAL FIRE CONTENDS THAT ONLY THREE DAYS NOTICE TO COMPLY**
21 **WITH THE SUBPOENA DUCES TECUM OF MR. DELAY IS NOT REASONABLE**
22 **UNDER GOVERNMENT CODE SECTION 18672.**

23
24 The CAL FIRE Legal Office was served with the subpoena duces tecum on
25 Monday July 30, 2012. The subpoena duces tecum demands that CAL FIRE produce
26 twenty five (25) categories of documents in only three days (The production date is
27 August 2, 2012 at 9:00 in San Francisco). CAL FIRE contends that such a such
28 turnaround of three days does not constitute the "production of documents at any

Bruce A. Crane

8/1/12

Bruce A. Crane

Dated


Senior Staff Counsel

CAL FIRE

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EXHIBIT A

BEFORE THE DEPARTMENT OF HUMAN RESOURCES
OF THE STATE OF CALIFORNIA

ATTORNEY/REPRESENTATIVE (NAME AND ADDRESS): Emily Knoles (24)671 Peretz & Associates 22 Battery St. # 202 San Francisco, CA 94111		FOR CALHR USE ONLY CAL FIRE JUL 30 2012 LEGAL SERVICES	
APPELLANT: Am Deby			
RESPONDENT: Cal. Dept. of Forestry and Fire Protection			
SUBPOENA <input checked="" type="checkbox"/> DUCES TECUM <input type="checkbox"/> STATEWIDE		CASE NUMBER 12-D-0163	
THE PEOPLE OF THE STATE OF CALIFORNIA, TO (NAME): Person most knowledgeable from Cal. Dept. of Forestry and Fire Protection regarding the records requested			
1. YOU, AND EACH OF YOU ARE ORDERED TO APPEAR AS A WITNESS, in this action as set forth below unless you make a special agreement with the person named in item 3:			
a. Date: August 2, 2012		Time: 9:00 am	
b. Address: 22 Battery Street, Ste 202, San Francisco, CA 94111			
2. AND YOU ARE:			
a. <input type="checkbox"/> ordered to appear in person and attend at a hearing to be held in the above-captioned matter before the Administrative Law Judge, Department of Human Resources.			
b. <input type="checkbox"/> not required to appear in person if you produce the records described in the accompanying affidavit in compliance with Evidence Code sections 1560 and 1561.			
c. <input checked="" type="checkbox"/> ordered to appear in person and to produce the records described in the accompanying affidavit. The personal attendance of the custodian or other qualified witness and the production of the original records is required by this subpoena. The procedure authorized pursuant to subdivision (b) of section 1560, and sections 1561 and 1562, of the Evidence Code will not be deemed sufficient compliance with this subpoena.			
d. <input type="checkbox"/> ordered to designate one or more persons to testify on your behalf as to the matters described in the accompanying statement.			
3. IF YOU HAVE ANY QUESTIONS ABOUT WITNESS FEES OR THE TIME OR DATE FOR YOU TO APPEAR, OR IF YOU WANT TO BE CERTAIN THAT YOUR PRESENCE IS REQUIRED, CONTACT THE FOLLOWING PERSON BEFORE THE DATE ON WHICH YOU ARE TO APPEAR:			
a. Name: Emily Knoles		b. Telephone Number: (415) 732-3777	
4. WITNESS FEES: You are entitled to receive witness fees and mileage actually traveled, as provided by law, if you request them BEFORE your scheduled appearance. Request them from the person named in item 3.			
DISOBEDIENCE OF THIS SUBPOENA MAY CAUSE YOU TO BE LIABLE FOR CONTEMPT AND OTHER PENALTIES PROVIDED BY LAW.			
		Date: 7-10-12	
		KARLA BROUSSARD-BOYD, ADMINISTRATIVE LAW JUDGE DEPARTMENT OF HUMAN RESOURCES	
(See reverse for proof of service)			

PROOF OF SERVICE OF SUBPOENA

1. I served this subpoena subpoena duces tecum and supporting affidavit by delivering a copy personally to the person served as follows:

a. Person Served (name):

c. Date of Delivery:

b. Address Where Served:

d. Time of Delivery:

e. Witness Fees (Check one):

1. were offered or demanded and paid. Amount: \$

2. were not demanded or paid.

f. Fees for Service. Amount: \$

2. I received this subpoena for service on (date):

3. Person serving:

a. Not a registered California process server.

b. Registered California process server.

c. Employee or independent contractor of a registered California process server.

d. Exempt from registration under Business & Professions Code section 22350(b).

e. California sheriff, marshal, or constable.

f. Other.

g. Name, address and telephone number and, if applicable, county of registration and number:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on:

(date):

Signature:

(For California sheriff, marshal, or constable use only)

I certify that the foregoing is true and correct and that this certificate is executed on:

(date):

at (place):

Signature:

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AFFIDAVIT FOR PRODUCTION OF RECORDS

I. DEFINITIONS AND INSTRUCTIONS

A. Definition

1. "YOU" or "YOUR" OR "CALFIRE" shall mean the Respondent CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION and anyone acting on its behalf, including its agents, sister or parent companies, experts, consultants, employees, managing directors, attorneys, accountants, investigators, deputies, officers, anyone else acting on its behalf, and its insurance companies, their agents, their employees, their attorneys, their accountants, their investigators.

2. "DELAY" shall mean Appellant ARI DELAY.

3. "HALF MOON BAY STATION" shall mean YOUR office located at 1191 Main Street, Half Moon Bay, California 94019.

4. "FELTON STATION" shall mean YOUR office located at 6059 Highway 9, Felton, California 95018.

5. "SAN MATEO STATION" shall mean YOUR office located at 320 Paul Scannell Drive San Mateo, CA 94402.

6. "FERREIRA" shall mean Chief John Ferreira.

7. The term "DOCUMENT," or "DOCUMENTS," as used herein, shall mean the original, or a copy of any kind, of written, typewritten, printed or recorded material whatsoever, including, but not limited to, notes, memoranda, letters, diaries, calendars, articles, correspondence, worksheets, recordings, transcriptions of recordings, studies, analyses, opinions, books, reports, information retrievable from computers, pictures, drawings, photographs or other graphic representations, and any other physical means of communication, including tape recordings and magnetic tape. The term specifically includes any drafts of the foregoing, whether or not used, and any altered or annotated copies of the foregoing.

8. The term "ELECTRONICALLY STORED INFORMATION" means all information generated, recorded, preserved or maintained by electronic magnetic, optical, or telephonic means, including, but not limited to, information generated, recorded, preserved or maintained on computer hard drives, floppy disks, computer files, deleted computer files, back-up computer files or tapes, magnetic tapes, compact discs, computer archives, computer memory,

1 servers, e-mails, or any other form of computer readable storage media; and all copies,
2 archives and versions thereof.

3 9. The term "COMMUNICATION" means any transmittal, receipt or display of words,
4 data, information or concepts by whatever manner or means, and regardless of how or by
5 whom the communication was initiated, including, but not limited to, transmittals between
6 and among natural persons who are officers, supervisors, directors, employees or agents of the
7 same corporation or government entity.

8 10. The term "RELATING TO" shall mean reflecting, regarding, comprising, stating,
9 describing, summarizing, explaining, mentioning or otherwise having a connection with.

10 **B. INSTRUCTIONS**

11 1. If YOU refuse to answer a request under a claim of privacy, YOU shall provide
12 information sufficient for Plaintiff to evaluate the validity of the claimed protection.

13 2. If any request is defined using a term of art or other terms that YOU believe to be
14 incorrect, but YOU understand the nature of the request, YOU shall answer the question fully
15 notwithstanding the semantic or definitional error. YOU shall also provide the definition that
16 YOU believe is correct and relied upon in answering the question.

17 3. YOU are requested to produce not only those documents in YOUR possession,
18 custody, or control, but also those documents reasonably available to you, including those in
19 the custody or control of YOUR present or former attorneys, insurers, investigators, experts,
20 consultants, agents, or anyone else acting on YOUR behalf.

21 **II. REQUESTS FOR PRODUCTION OF DOCUMENTS**

22 1. Any and all DOCUMENTS, COMMUNICATIONS or ELECTRONICALLY STORED
23 INFORMATION comprising the complete official personnel file maintained by YOU for
24 DELAY throughout his employment with YOU.

25 2. Any and all DOCUMENTS, COMMUNICATIONS or ELECTRONICALLY STORED
26 INFORMATION comprising the working file maintained by YOU for DELAY throughout his
27 employment with YOU.

28 3. Any and all DOCUMENTS, COMMUNICATIONS or ELECTRONICALLY STORED
INFORMATION comprising the training files maintained by YOU for DELAY throughout his
employment with YOU, including all task books.

- 1 4. Any and all DOCUMENTS, COMMUNICATIONS or ELECTRONICALLY STORED
2 INFORMATION comprising the individual development plan maintained by YOU for DELAY
3 throughout his employment with YOU.
- 4 5. Any and all DOCUMENTS, COMMUNICATIONS or ELECTRONICALLY STORED
5 INFORMATION evidencing any and all complaints YOU received RELATING TO DELAY.
- 6 6. Any and all emails written by FERREIRA RELATING TO DELAY.
- 7 7. Any and all Electronic Data sent or received via email or text message to the phone
8 number (831) 254-1700 RELATING TO DELAY.
- 9 8. Any and all Electronic Data sent or received via email or text message to the phone
10 number (831) 332-2680 RELATING TO DELAY.
- 11 9. Any and all Electronic Data sent or received via email or text message to the phone
12 number (650) 242-2400 RELATING TO DELAY.
- 13 10. Any and all Electronic Data sent or received via email or text message RELATING TO
14 DELAY exchanged between any of YOUR employees, including but not limited to
15 FERREIRA, Joe Santos, Dave Cosgrave, Justin Sheaff, Scott Jalbert and Paul Cole.
- 16 11. Any and all DOCUMENTS COMMUNICATIONS OR ELECTRONICALLY STORED
17 INFORMATION FERREIRA relied on in creating the April 17, 2012 Staff Report.
- 18 12. All DOCUMENTS, COMMUNICATIONS OR ELECTRONICALLY STORED
19 INFORMATION RELATING TO FERREIRA's involvement with the transfer of DELAY to
20 the FELTON STATION.
- 21 13. Any and all DOCUMENTS, COMMUNICATIONS or ELECTRONICALLY STORED
22 INFORMATION pertaining to all the reasons why DELAY is being transferred to the FELTON
23 STATION.
- 24 14. Any and all DOCUMENTS, COMMUNICATIONS or ELECTRONICALLY STORED
25 INFORMATION relied on by FERREIRA in deciding to transfer DELAY to the FELTON
26 STATION.
- 27 15. Any and all DOCUMENTS, COMMUNICATIONS or ELECTRONICALLY STORED
28 INFORMATION relied on by YOU in deciding to transfer DELAY to the FELTON STATION.
16. Any and all DOCUMENTS, COMMUNICATIONS or ELECTRONICALLY STORED
INFORMATION that evidence who will provide DELAY with mentoring at the FELTON
STATION.

- 1 17. Any and all DOCUMENTS, COMMUNICATIONS or ELECTRONICALLY STORED
- 2 INFORMATION that pertain to all training DELAY will receive at the FELTON STATION.
- 3 18. Any and all DOCUMENTS, COMMUNICATIONS or ELECTRONICALLY STORED
- 4 INFORMATION that substantiate that YOU complied with California Government Code
- 5 section 19994.1 with regard to the transfer of DELAY to the FELTON STATION.
- 6 19. Any and all DOCUMENTS, COMMUNICATIONS or ELECTRONICALLY STORED
- 7 INFORMATION pertaining to all the reasons why DELAY was transferred to the SAN
- 8 MATEO STATION on or about March 1, 2009.
- 9 20. Any and all DOCUMENTS, COMMUNICATIONS or ELECTRONICALLY STORED
- 10 INFORMATION relied on by FERREIRA in deciding to transfer DELAY to the SAN MATEO
- 11 STATION on or about March 1, 2009.
- 12 21. Any and all DOCUMENTS, COMMUNICATIONS or ELECTRONICALLY STORED
- 13 INFORMATION relied on by YOU in deciding to transfer DELAY to the SAN MATEO
- 14 STATION on or about March 1, 2009.
- 15 22. Any and all DOCUMENTS, COMMUNICATIONS or ELECTRONICALLY STORED
- 16 INFORMATION that pertain to reasons upon which DELAY was transferred back to the HALF
- 17 MOON BAY STATION from the SAN MATEO STATION on or about May 13, 2009.
- 18 23. Any and all DOCUMENTS, COMMUNICATIONS or ELECTRONICALLY STORED
- 19 INFORMATION pertaining to any and all involuntary transfers out of the HALF MOON BAY
- 20 STATION at any time from January 1, 2007 through the present.
- 21 24. Any and all DOCUMENTS, COMMUNICATIONS or ELECTRONICALLY STORED
- 22 INFORMATION pertaining to any and all involuntary transfers of firefighters out of a Fire
- 23 Station in the [district/division] at any time from January 1, 2007 through the present.
- 24 25. Any and all DOCUMENTS, COMMUNICATIONS or ELECTRONICALLY STORED
- 25 INFORMATION pertaining to any and all involuntary transfers of firefighters out of a Fire
- 26 Station in the [district/division] for the purpose of training at any time from January 1, 2007
- 27 through the present.
- 28

Rochester, Victoria

From: FAXCOM Anywhere <fax@faxcomanywhere.com>
Sent: Wednesday, August 01, 2012 5:56 PM
To: Rochester, Victoria
Subject: Received Fax From: 9166574072
Attachments: FAX.PDF

-----Fax Reception Report-----

Received Time: 08/01/12 17:51
Result: All pages received OK
Pages Received: 011
Remote TSI:
Caller ID: 9166574072

The received fax is included as an attachment in this email message.

Thank you for choosing FAXCOM Anywhere as your fax provider.
<http://www.faxcomanywhere.com/>

Rochester, Victoria

From: Emily Knoles <eknoles@peretzlaw.com>
Sent: Thursday, August 02, 2012 1:16 PM
To: Rochester, Victoria
Cc: Yosef Peretz
Subject: In the Matter of Air Delay, Case No. 12-D-0163
Attachments: Decl in Opp to Motion for Protective Order.pdf

Ms. Rochester,

We are attempting to respond to the Motion for Protective Order filed by CALFIRE in the above-referenced case. However, I am receiving an undeliverable response to the email address produced by Respondent for Hon. Broussard-Boyd. I would request that you please ensure the ALJ receive our response.

Thank you for your assistance.

Emily Knoles
PERETZ & ASSOCIATES
22 Battery Street, Suite 202
San Francisco, California 94111
Tel. 415.732.3777
Fax. 415.732.3791
Email. eknoles@peretzlaw.com

-----Original Message-----

From: Emily Knoles
Sent: Thursday, August 02, 2012 1:13 PM
To: 'karla_broussard-boyd@calhr.ca.gov'
Cc: Yosef Peretz
Subject: FW: Emailing: delay.pdf

I am re-forwarding the attached Opposition as I received an undeliverable notice to my prior e-mail.

Thank you,

Emily Knoles

-----Original Message-----

From: Emily Knoles
Sent: Thursday, August 02, 2012 12:59 PM
To: 'Crane, Bruce'; 'karla_broussard-boyd@calhr.ca.gov'
Cc: Ferreira, John
Subject: RE: Emailing: delay.pdf

Dear Hon. Judge Broussard-Boyd and Crane,

Attached is Appellant's Opposition to the Motion for Protective Order filed by CAL FIRE.

Thank you,

Emily Knoles
PERETZ & ASSOCIATES
22 Battery Street, Suite 202
San Francisco, California 94111
Tel. 415.732.3777
Fax. 415.732.3791
Email. eknoles@peretzlaw.com

-----Original Message-----

From: Crane, Bruce [mailto:Bruce.Crane@fire.ca.gov]
Sent: Wednesday, August 01, 2012 5:57 PM
To: Emily Knoles; 'karla_broussard-boyd@calhr.ca.gov'
Cc: Ferreira, John
Subject: Emailing: delay.pdf

Dear Judge Broussard-Boyd and Ms. Knowles

Attached please find CAL FIRE's response to the subpoena duces tecum of Mr. Delay in CAL HR Case No. 12-D-0163.

Bruce Crane
CAL FIRE Legal

The message is ready to be sent with the following file or link attachments:

delay.pdf

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

1 Yosef Peretz (SBN 209288)
2 Emily A. Knoles (SBN 241671)
3 Michael D. Burstein (SBN 248516)
4 PERETZ & ASSOCIATES
5 22 Battery Street, Suite 202
6 San Francisco, CA 94111
7 Telephone: 415.732.3777
8 Facsimile: 415.372.3791

9 Attorneys for Appellant ARI DELAY

10 **DEPARTMENT OF HUMAN RESOURCES OF THE STATE OF CALIFORNIA**
11 **STATUTORY APPEALS UNIT**

12 In the Matter of Appeal by Ari Delay

13 Case No. 12-D-0163

14 **DECLARATION OF EMILY KNOLES**
15 **IN OPPOSITION TO THE REQUEST**
16 **FOR A PROTECTIVE ORDER**

17 I, Emily Knoles, declare:

18 1. I am licensed to practice before the Courts of the State of California, and I am an
19 associate in Peretz & Associates, attorneys of record for Appellant ARI DELAY ("Appellant").

20 2. This declaration is submitted in Opposition to Respondent California Department of
21 Forestry and Fire Protection ("Respondent")'s Motion for a Protective Order.

22 3. On July 3, 2012 my office was retained to represent Appellant in the above-
23 referenced matter.

24 4. Upon retention and in order to adequately represent our client, Appellant, we sought
25 a continuance of hearing from July 10, 2012 to a later date. A true and correct copy of the July
26 3, 2012, letter seeking a continuance of the appeal hearing is attached hereto as Exhibit "A".
27
28

DECLARATION OF EMILY KNOLES IN OPPOSITION TO THE REQUEST FOR A PROTECTIVE ORDER

1 5. After counsel for Respondent agreed to continue the hearing to August 20, 2012, we
2 received a continuance from this Department on July 9, 2012.

3 6. The next day, on July 10, 2012, as required by this Department, my office submitted
4 a written request for Subpoenas *Duces Tecum*. A true and correct copy of the July 10, 2012
5 letter is attached hereto as Exhibit "B".

6 7. Thereafter, on July 11, 2012, I was informed by Victoria Rochester, paralegal to
7 Administrative Law Judge, Hon. Karla Broussard-Boyd, that these Subpoenas are only issued
8 by mail. A true and correct copy of the e-mail chain with Ms. Rochester is attached hereto as
9 Exhibit "C".

10 8. Upon receipt of the Subpoena forms, my office expeditiously prepared a Subpoena.
11 Additionally, we obtained permission from Respondent's counsel to serve him with the
12 Subpoena. Mr. Crane did not authorize or propose that we may serve him electronically with the
13 Subpoena. A true and correct copy of the e-mail correspondence between my office and Mr.
14 Crane is attached hereto as Exhibit "D".

15 9. Immediately upon receipt of this authorization, my office sent the Subpoena for
16 service on July 20, 2012. For reasons beyond my office's knowledge and control, the Subpoena
17 was apparently not delivered until July 27, 2012. A true and correct copy of the Proof of Service
18 is attached hereto as Exhibit "E".

19 10. In light of the August 20, 2012 hearing and with regard to the apparent delay in
20 service of the Subpoena, Appellant is amenable to allowing production of the documents
21 responsive to the Subpoena to be moved to August 10, 2012. However, any delay beyond that
22 would preclude Appellant from properly preparing for the August 20, 2012 hearing and would
23 therefore prejudice Appellant at the hearing.

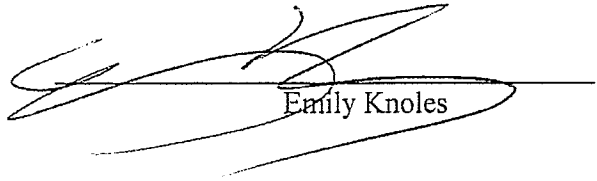
24 11. On July 30, 2012, I made the above-referenced proposal to Mr. Crane, however
25 rather than respond or attempt to make a stipulation on the scope of the responses to allow for
26 timely production, Mr. Crane accused me of acting in bad faith and threatened the "weight of
27 the resources of the state of California" against me.

28 12. As such, we oppose the remedy requested by the Respondent.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on this 2nd day of August 2012 in San Francisco, California.



Emily Knoles

EXHIBIT A

PERETZ & ASSOCIATES

22 BATTERY STREET, SUITE 202
SAN FRANCISCO, CALIFORNIA 94111

TELEPHONE: (415) 732-3777
FACSIMILE: (415) 732-3791

YOSEF PERETZ, ESQ.
EMILY KNOLES, ESQ.
MICHAEL D. BURSTEIN, ESQ.

Email: yperetz@peretzlaw.com
Email: eknoles@peretzlaw.com
Email: mburstein@peretzlaw.com

July 3, 2012

Via Facsimile and U.S. Mail

Department of Personnel Administration
Statutory Appeals Unit
1515 "S" Street, North Building, #400
Sacramento, California 95811-7258

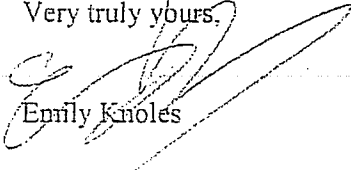
Re: In the Matter of Appeal by Ari Delay
Case No. 12-D-0163

To whom it may concern:

My firm has just been retained by the Appellant in the above-referenced matter, Ari Delay, to represent him in this appeal. As we currently understand it this appeal is scheduled to be heard on July 10, 2012. We would like to request an extension to the hearing date until August 20, 2012 in order to allow our firm to get up to speed and to adequately represent Mr. Delay's interests. Additionally, we intend to send subpoenas which require at least three weeks to respond to. Please let me know if such a continuance is possible and what other information you need from our office.

Thank you for your anticipated cooperation. Please feel free to contact me with any questions or concerns.

Very truly yours,



Emily Knoles

PERETZ & ASSOCIATES
22 BATTERY STREET, SUITE 202
SAN FRANCISCO, CA 94111
T: (415) 732-3777 F: (415) 732-3791

FACSIMILE TRANSMITTAL TO:

To: Attn: Dept. Of Personnel Administration / *Statutory Appeals Board.*

Fax: 916-322-5709

From: PERETZ & ASSOCIATES Re: Ari Delay – Case No. 12-D-0163

2 Pages (including this sheet) Date: July 3, 2012

Urgent For Review Please Comment Please Reply Please Recycle

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS CONFIDENTIAL AND MAY BE LEGALLY PROTECTED BY THE ATTORNEY/CLIENT PRIVILEGE OR THE ATTORNEY WORK PRODUCT DOCTRINE. IT IS INTENDED ONLY FOR THE USE OF THE RECIPIENT(S) NAMED ABOVE IN THIS FACSIMILE. IF THE PERSON ACTUALLY RECEIVING THIS FACSIMILE OR ANY OTHER READER IS NOT THE PERSON TO WHOM IT IS ADDRESSED OR NOT RESPONSIBLE TO DELIVER IT TO THE NAMED RECIPIENT(S), ITS USE OR COMMUNICATION IS STRICTLY PROHIBITED. IF YOU RECEIVE THIS MESSAGE IN ERROR, PLEASE CALL US COLLECT IMMEDIATELY AND RETURN THE ORIGINAL MESSAGE BY MAIL TO US. THANK YOU

EXHIBIT B

PERETZ & ASSOCIATES

22 BATTERY STREET, SUITE 202
SAN FRANCISCO, CALIFORNIA 94111

TELEPHONE: (415) 732-3777
FACSIMILE: (415) 732-3791

YOSEF PERETZ, ESQ.
EMILY KNOLES, ESQ.
MICHAEL D. BURSTEIN, ESQ.

Email: yperetz@peretzlaw.com
Email: eknoles@peretzlaw.com
Email: mburstein@peretzlaw.com

July 10, 2012

Via Facsimile and U.S. Mail

Department of Personnel Administration
Statutory Appeals Unit
1515 "S" Street, North Building, #400
Sacramento, California 95811-7258

Re: In the Matter of Appeal by Ari Delay
Case No. 12-D-0163

To whom it may concern:

We would like to request the Subpoena Duces Tecum forms in lieu of the pending appeal scheduled for August 30, 2012.

Thank you for your anticipated cooperation. Please feel free to contact me with any questions or concerns.

Very truly yours,



Sumy Kim

PERETZ & ASSOCIATES
22 BATTERY STREET, SUITE 202
SAN FRANCISCO, CA 94111
T: (415) 732-3777 F: (415) 732-3791

FACSIMILE TRANSMITTAL TO:

To: Attn: Dept. Of Personnel Administration / *Statutory Appeals Board*

Fax: 916-322-5709

From: PERETZ & ASSOCIATES Re: Ari Delay -- Case No. 12-D-0163

2 Pages (including this sheet) Date: July 10, 2012

Urgent For Review Please Comment Please Reply Please Recycle

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS CONFIDENTIAL AND MAY BE LEGALLY PROTECTED BY THE ATTORNEY/CLIENT PRIVILEGE OR THE ATTORNEY WORK PRODUCT DOCTRINE. IT IS INTENDED ONLY FOR THE USE OF THE RECIPIENT(S) NAMED ABOVE IN THIS FACSIMILE. IF THE PERSON ACTUALLY RECEIVING THIS FACSIMILE OR ANY OTHER READER IS NOT THE PERSON TO WHOM IT IS ADDRESSED OR NOT RESPONSIBLE TO DELIVER IT TO THE NAMED RECIPIENT(S), ITS USE OR COMMUNICATION IS STRICTLY PROHIBITED. IF YOU RECEIVE THIS MESSAGE IN ERROR, PLEASE CALL US COLLECT IMMEDIATELY AND RETURN THE ORIGINAL MESSAGE BY MAIL TO US. THANK YOU

EXHIBIT C

Emily Knoles

From: Rochester, Victoria [Victoria.Rochester@calhr.ca.gov]
Sent: Wednesday, July 11, 2012 10:16 AM
To: Emily Knoles
Subject: RE: Ari Delay - CalHR Case No.: 12-D-0163

Hi Emily:

No, we don't issue subpoenas via fax, only by mail. Thank you. Victoria

From: Emily Knoles [mailto:eknoles@peretzlaw.com]
Sent: Wednesday, July 11, 2012 10:13 AM
To: Rochester, Victoria
Subject: RE: Ari Delay - CalHR Case No.: 12-D-0163

Victoria,

Is it possible to receive a copy by fax?

Emily Knoles
PERETZ & ASSOCIATES
22 Battery Street, Suite 202
San Francisco, California 94111
Tel. 415.732.3777
Fax. 415.732.3791
Email. eknoles@peretzlaw.com

From: Rochester, Victoria [mailto:Victoria.Rochester@calhr.ca.gov]
Sent: Wednesday, July 11, 2012 9:44 AM
To: Emily Knoles
Subject: RE: Ari Delay - CalHR Case No.: 12-D-0163

Good morning:

I mailed them out yesterday. The original needs to be served on witnesses. Thank you. Victoria/CalHR, SAU.

From: Emily Knoles [mailto:eknoles@peretzlaw.com]
Sent: Wednesday, July 11, 2012 9:21 AM
To: Rochester, Victoria
Subject: RE: Ari Delay - CalHR Case No.: 12-D-0163

Hi Victoria,

My assistant, Sumy Kim requested five subpoenas duces tecum from you for this case, but hasn't received a response. Could I get a status update on this?

Thanks,

Emily

From: Rochester, Victoria [<mailto:Victoria.Rochester@calhr.ca.gov>]
Sent: Friday, July 06, 2012 7:05 AM
To: Emily Knoles
Subject: Ari Delay - CalHR Case No.: 12-D-0163

Good morning Ms. Knoles:

I am in receipt of the request for continuance in the above matter. Please confer with respondent as to whether they agree or disagree with continuing this matter and advise this Unit in writing of their response. Upon receipt, we will follow-up on Monday. Thank you.

Victoria Zinner Rochester
Paralegal for Karla Broussard-Boyd
Administrative Law Judge
Department of Human Resources
Statutory Appeals Unit
1515 'S' Street, North Bldg., #400
Sacramento, CA 95811-7258
Phone: 916-324-3857
Fax: 916-322-5709
e-mail: Victoria.Rochester@calhr.ca.gov

The information contained in this facsimile transmission is confidential, and may be legally privileged or protected. The information is intended only for the use of the recipient(s) named above. If you have received this information in error, please immediately notify us by telephone to arrange for return of all documents. Any unauthorized disclosure, distribution, or taking of any action in reliance on the contents of this information is strictly prohibited and may be unlawful.

DPA email addresses have changed to @CalHR.ca.gov in preparation for the new department's launch on July 1.

EXHIBIT D

Emily Knoles

From: Crane, Bruce [Bruce.Crane@fire.ca.gov]
Sent: Friday, July 20, 2012 9:16 AM
To: Emily Knoles
Cc: Spire, Kim; Ferreira, John
Subject: RE: In re Ari Delay, Case No. 12-D-0163

That would be fine. CAL FIRE may be served with the subpoena *duces tecum* at 1416 9th Street, Room 1561-20, Sacramento, CA.

Bruce Crane
CAL FIRE Legal

From: Emily Knoles [<mailto:eknoles@peretzlaw.com>]
Sent: Thursday, July 19, 2012 12:49 PM
To: Crane, Bruce
Subject: In re Ari Delay, Case No. 12-D-0163

Bruce,

Would you be willing to accept service of a Subpoena *duces tecum* on behalf of your client in this matter?

Thanks,

Emily Knoles
PERETZ & ASSOCIATES
22 Battery Street, Suite 202
San Francisco, California 94111
Tel. 415.732.3777
Fax. 415.732.3791
Email. eknoles@peretzlaw.com

EXHIBIT E

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): Yosef Peretz, 209288 Peretz & Associates 22 Battery Street San Francisco, CA 94111		TELEPHONE NO.: (415) 732-3777	FOR COURT USE ONLY	
ATTORNEY FOR (Name): Plaintiff		Ref. No. or File No.	none	
Insert name of court, judicial district or branch court, if any: Administrative Hearing , CA				
PLAINTIFF: Ari Delay				
DEFENDANT: CA Department of Forestry & Fire Protection				
PROOF OF SERVICE	DATE: 8/2/2012	TIME: 9:00 AM	DEPT/DIV: Suite 202	CASE NUMBER: 12-D-0163

1. At the time of service I was a citizen of the United States, over 18 years of age and not a party to this action, and I served copies of: Subpoena Duces Tecum

2. Person Served (name): CA Department of Forestry & Fire Protection, by serving Jeannie Agpoon, Administrative Assistant - Person Authorized to Accept

3. Date and Time of Delivery: 7/27/2012 3:28 PM

4. Address where served: 1416 9th Street Rm 1561-20
Sacramento, CA 95814

5. I received the above document(s) for service on (date): 7/20/2012

6. Witness Fees: Witness fees and mileage both ways were not demanded or paid.

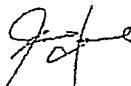
BY FAX

Fee for service (including Witness Fees if paid) \$:87.95

Registered California process server.
County: SACRAMENTO
Registration No.:2008-47

Jermaine de Jose
One Legal - 194-Marin
504 Redwood Blvd #223
Novato, CA 94947
415-491-0606

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct and that this declaration was executed on 7/30/2012 at Oakland, California.

Signature: 
Jermaine de Jose

OL# 6785042

1 Yosef Peretz (SBN 209288)
Emily A. Knoles (SBN 241671)
2 Michael D. Burstein (SBN 248516)
3 PERETZ & ASSOCIATES
22 Battery Street, Suite 202
4 San Francisco, CA 94111
Telephone: 415.732.3777
5 Facsimile: 415.372.3791

6 Attorneys for Appellant ARI DELAY

7 **DEPARTMENT OF HUMAN RESOURCES OF THE STATE OF CALIFORNIA**
8 **STATUTORY APPEALS UNIT**
9

10 In the Matter of Appeal by Ari Delay

Case No. 12-D-0163

11 **PROOF OF SERVICE**
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20 I, Emily Knoles , declare that I am over the age of eighteen years, and not a party to the within
21 action. My business address is 22 Battery Street, Suite 202, San Francisco, California 94111.

22 On August 2, 2012 I directed a true and correct copied of the following attached documents:

- 23 1. DECLARATION OF EMILY KNOLES IN OPPOSITION TO THE REQUEST FOR
24 A PROTECTIVE ORDER

25 to be delivered to the below-named interested party(ies):
26
27
28

1 Bruce Crane
2 California Department of Forestry and Fire
Protection
3 1416 Ninth Street, Room 1516-20
4 Sacramento, California 95814
Bruce.Crane@fire.ca.gov

Attorney for Respondent

5 in the manner indicated below:

6 [X] **Electronic Transmission:** I sent an e-mail inclusive of the above document(s) via
7 electronic transmission (e-mail) using the e-mail address skim@peretzlaw.com to the e-
8 mail address designated for each party identified above. I did not receive, within a
9 reasonable time after the transmission, any electronic message or other indication that the
transmission was unsuccessful.

10 [X] **Service By First Class Mail (C.C.P. 1013a):** I am readily familiar with the business'
11 practice for collecting and processing of correspondence for mailing with the U.S.
Postal Service, and that I sealed and deposited into the U.S. Postal Service mails the
12 sealed envelope(s), with postage thereon fully prepaid, following ordinary business
practices

13 I declare under penalty of perjury under the laws of the State of California that the
14 foregoing is true and correct, and was executed on August 2, 2012 at San Francisco, California.

15
16 Dated: August 2, 2012

17 
Emily Knoles

**STATE OF CALIFORNIA
BEFORE THE
DEPARTMENT OF HUMAN RESOURCES**

In the Matter of the Appeal by

Case No. **12-D-0163**

ARI DELAY

Represented by:

Battalion Chief
Appeal of Involuntary Geographic Transfer

Emily Knoles, Esq.
Peretz & Associates
22 Battery Street, #202
San Francisco, CA 94111

Respondent:

Represented by:

Department of Forestry & Fire Protection
(CALFIRE)
Human Resource Division
1416 – 9th Street – PO Box 944246
Sacramento, CA 94244-2460

Bruce Crane, Senior Staff Counsel
Department of Forestry & Fire Protection
Legal Division
1416 – 9th Street, Rm. 1516-20
Sacramento, CA 95814

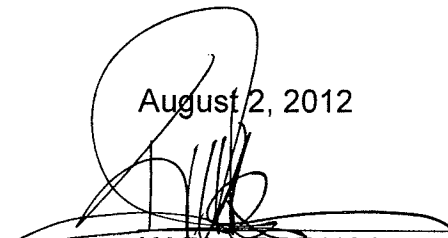
PROTECTIVE ORDER

On August 1, 2012, respondent's representative filed a Protective Order motion with the Department of Human Resources (CalHR). The motion was based on appellant's untimely, overbroad SUBPOENA DUCES TECUM served on July 30, 2012.

The Protective Order is granted. Respondent shall have until close of business on August 15, 2012 to provide non-privileged documents responsive to appellant's requests numbered 1-22 only. Requests 23, 24, and 25 are either overbroad, onerous, or vague and are stricken.

IT IS SO ORDERED:

August 2, 2012


KARLA BROUSSARD-BOYD
Administrative Law Judge
Department of Human Resources

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PROOF OF SERVICE

(Code of Civ. Proc. §1013(a))

CalHR Case No. 12-D-0163 – Ari Delay
Appeal of Involuntary Geographic Transfer

I declare that I am employed in the County of Sacramento, California. I am over the age of 18 and not a party to the within-captioned cause. My business address is 1515 S Street, Suite 400, Sacramento, California 95811. On August 2, 2012, I served the following documents:

PROTECTIVE ORDER

on the parties listed below by:

- placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Sacramento, California.
- via personal service on the individual named below.
- via faxing a true copy followed by regular mail.*

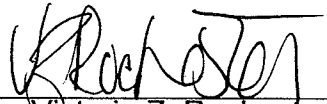
Ari Delay
PO Box 173
La Honda, CA 94020

Emily Knoles, Esq.*
Peretz & Associates
22 Battery Street, #202
San Francisco, CA 94111

Department of Forestry & Fire Protection
(CALFIRE)
Human Resource Division
1416 – 9th Street – PO Box 944246
Sacramento, CA 94244-2460

Bruce Crane, Senior Staff Counsel*
Department of Forestry & Fire Protection
Legal Division
1416 – 9th Street, Rm. 1516-20
Sacramento, CA 95814

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct, and that this declaration was executed August 2, 2012, Sacramento, California.



Victoria Z. Rochester

DEPARTMENT OF HUMAN RESOURCES

Statutory Appeals Unit
1515 'S' Street, North Building, #400
Sacramento, CA 95811
Phone: (916) 324-3857
Fax: (916) 322-5709

____ KARLA BROUSSARD-BOYD
Administrative Law Judge

 VICTORIA ROCHESTER
Paralegal



8-2-12
____ DATE
Bruce Crane, Senior Staff Counsel
____ TO
Calfile
____ ORGANIZATION/AGENCY
657-4072
____ FAX NUMBER
 COPY WILL FOLLOW
 COPY WILL NOT FOLLOW
3
____ NUMBER OF PAGES (INCLUDING COVER SHEET)

COMMENTS: Re: An delay - 12-D-0163

Please see attached protective order.
Thank you.

The information contained in this facsimile transmission is confidential, and may be legally privileged or protected. The information is intended only for the use of the recipient(s) named above. If you have received this information in error, please immediately notify us by telephone to arrange for return of all documents. Any unauthorized disclosure, distribution, or taking of any action in reliance on the contents of this information is strictly prohibited and may be unlawful.

TRANSMISSION VERIFICATION REPORT

TIME : 08/02/2012 15:31
NAME : CALHR
FAX : 9163225709
TEL :
SER. # : BROL5J379266

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cal file

DEPARTMENT OF HUMAN RESOURCES

Statutory Appeals Unit
1515 'S' Street, North Building, #400
Sacramento, CA 95811
Phone: (916) 324-3857
Fax: (916) 322-5709

— KARLA BROUSSARD-BOYD
Administrative Law Judge

X VICTORIA ROCHESTER
Paralegal



8-2-12
DATE
Emily Knoles, Esq.
TO
Peretz & Assoc.
ORGANIZATION/AGENCY
415-372-3791
FAX NUMBER
 COPY WILL FOLLOW
 COPY WILL NOT FOLLOW
3
NUMBER OF PAGES (INCLUDING COVER SHEET)

COMMENTS: Re: Air Delay - 12-D-0163

Please see attached protective order.
Thank you.

The information contained in this facsimile transmission is confidential, and may be legally privileged or protected. The information is intended only for the use of the recipient(s) named above. If you have received this information in error, please immediately notify us by telephone to arrange for return of all documents. Any unauthorized disclosure, distribution, or taking of any action in reliance on the contents of this information is strictly prohibited and may be unlawful.

TRANSMISSION VERIFICATION REPORT

TIME : 08/02/2012 15:49
NAME : CALHR
FAX : 9163225709
TEL :
SER. # : BRQL5J379266

DATE, TIME
FAX NO./NAME
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STANDARD

Partz Assoc

BUSY: BUSY/NO RESPONSE

PERETZ & ASSOCIATES

22 BATTERY STREET, SUITE 202
SAN FRANCISCO, CALIFORNIA 94111

TELEPHONE: (415) 732-3777
FACSIMILE: (415) 732-3791

YOSEF PERETZ, ESQ.
EMILY KNOLES, ESQ.
MICHAEL D. BURSTEIN, ESQ.

Email: yperetz@peretzlaw.com
Email: eknoles@peretzlaw.com
Email: mburstein@peretzlaw.com

August 15, 2012

Via Facsimile to 916-322-5709


Department of Personnel Administration
Statutory Appeals Unit
1515 "S" Street, North Building, #400
Sacramento, California 95811-7258

Re: In the Matter of Appeal by Ari Delay
Case No. 12-D-0163

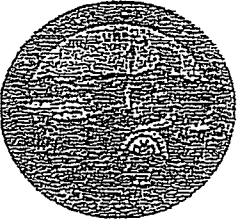
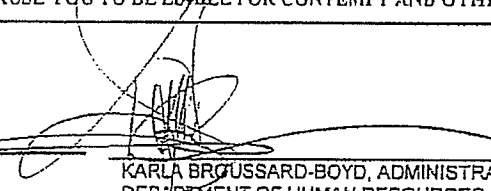
Dear Ms. Rochester:

Attached is a copy of the final page of the SDT for Mr. Joe Santos. Thank you for your assistance on this matter.

Very truly yours,


Emily Knoles

**BEFORE THE DEPARTMENT OF HUMAN RESOURCES
OF THE STATE OF CALIFORNIA**

ATTORNEY/REPRESENTATIVE (NAME AND ADDRESS): <i>Emily Knoles (SAN 241671)</i> <i>Peretz & Associates</i> <i>22 Battery Street, STE 202</i> <i>San Francisco, CA 94111</i>	FOR CALHR USE ONLY
APPELLANT: <i>Am Delay</i>	
RESPONDENT: <i>CAL FIRE</i>	
SUBPOENA <input checked="" type="checkbox"/> DUCES TECUM <input type="checkbox"/> STATEWIDE	CASE NUMBER <i>12-D-0163</i>
THE PEOPLE OF THE STATE OF CALIFORNIA, TO (NAME): <i>Joe Santos</i>	
1. YOU, AND EACH OF YOU ARE ORDERED TO APPEAR AS A WITNESS, in this action as set forth below unless you make a special agreement with the person named in item 3:	
a. Date: <i>August 20, 2012</i>	Time: <i>9:00 am.</i>
b. Address: <i>1515 "S" Street, North Bldg. Room #400, Sacramento, CA 95811</i>	
2. AND YOU ARE: <ul style="list-style-type: none"> a. <input type="checkbox"/> ordered to appear in person and attend at a hearing to be held in the above-captioned matter before the Administrative Law Judge, Department of Human Resources. b. <input type="checkbox"/> not required to appear in person if you produce the records described in the accompanying affidavit in compliance with Evidence Code sections 1560 and 1561. c. <input checked="" type="checkbox"/> ordered to appear in person and to produce the records described in the accompanying affidavit. The personal attendance of the custodian or other qualified witness and the production of the original records is required by this subpoena. The procedure authorized pursuant to subdivision (b) of section 1560, and sections 1561 and 1562, of the Evidence Code will not be deemed sufficient compliance with this subpoena. d. <input type="checkbox"/> ordered to designate one or more persons to testify on your behalf as to the matters described in the accompany statement. 	
3. IF YOU HAVE ANY QUESTIONS ABOUT WITNESS FEES OR THE TIME OR DATE FOR YOU TO APPEAR, OR IF YOU WANT TO BE CERTAIN THAT YOUR PRESENCE IS REQUIRED, CONTACT THE FOLLOWING PERSON BEFORE THE DATE ON WHICH YOU ARE TO APPEAR:	
a. Name: <i>Emily Knoles</i>	b. Telephone Number: <i>(415) 732-3777</i>
4. WITNESS FEES: You are entitled to receive witness fees and mileage actually traveled, as provided by law, if you request them BEFORE your scheduled appearance. Request them from the person named in item 3.	
DISOBEDIENCE OF THIS SUBPOENA MAY CAUSE YOU TO BE LIABLE FOR CONTEMPT AND OTHER PENALTIES PROVIDED BY LAW.	
	<div style="text-align: center;"> <i>7-10-12</i> <hr/> Date </div> <div style="text-align: center;">  <hr/> KARLA BROUSSARD-BOYD, ADMINISTRATIVE LAW JUDGE DEPARTMENT OF HUMAN RESOURCES </div> <p align="center"><small>(See reverse for proof of service)</small></p>

PROOF OF SERVICE OF SUBPOENA

1. I served this subpoena subpoena duces tecum and supporting affidavit by delivering a copy personally to the person served as follows:

a. Person Served (name):

c. Date of Delivery:

b. Address Where Served:

d. Time of Delivery:

e. Witness Fees (Check one):

1. were offered or demanded and paid. Amount: \$

2. were not demanded or paid.

f. Fees for Service. Amount: \$

2. I received this subpoena for service on (date):

3. Person serving:

a. Not a registered California process server.

b. Registered California process server.

c. Employee or independent contractor of a registered California process server.

d. Exempt from registration under Business & Professions Code section 22350(b).

e. California sheriff, marshal, or constable.

f. Other.

g. Name, address and telephone number and, if applicable, county of registration and number:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on:

(date):

Signature:

(For California sheriff, marshal, or constable use only)

I certify that the foregoing is true and correct and that this certificate is executed on:

(date):

at (place):

Signature:

1 AFFIDAVIT FOR PRODUCTION OF RECORDS

2 I. DEFINITIONS AND INSTRUCTIONS

3 A. Definition

4 1. "YOU" or "YOUR" shall mean Joe Santos.

5 2. "CALFIRE" shall mean the Respondent CALIFORNIA DEPARTMENT OF
6 FORESTRY AND FIRE PROTECTION and anyone acting on its behalf, including its
7 agents, sister or parent companies, experts, consultants, employees, managing directors,
8 attorneys, accountants, investigators, deputies, officers, anyone else acting on its behalf, and
9 its insurance companies, their agents, their employees, their attorneys, their accountants, their
investigators.

10 3. "DELAY" shall mean Appellant ARI DELAY.

11 4. "HALF MOON BAY STATION" shall mean the CALFIRE office located at 1191
12 Main Street, Half Moon Bay, California 94019.

13 5. "FELTON STATION" shall mean the CALFIRE office located at 6059 Highway 9,
14 Felton, California 95018.

15 6. The term "DOCUMENT," or "DOCUMENTS," as used herein, shall mean the
16 original, or a copy of any kind, of written, typewritten, printed or recorded material
17 whatsoever, including, but not limited to, notes, memoranda, letters, diaries, calendars,
18 articles, correspondence, worksheets, recordings, transcriptions of recordings, studies,
19 analyses, opinions, books, reports, information retrievable from computers, pictures,
20 drawings, photographs or other graphic representations, and any other physical means of
21 communication, including tape recordings and magnetic tape. The term specifically includes
22 any drafts of the foregoing, whether or not used, and any altered or annotated copies of the
foregoing.

23 7. The term "ELECTRONICALLY STORED INFORMATION" means all information
24 generated, recorded, preserved or maintained by electronic magnetic, optical, or telephonic
25 means, including, but not limited to, information generated, recorded, preserved or maintained
26 on computer hard drives, floppy disks, computer files, deleted computer files, back-up
27 computer files or tapes, magnetic tapes, compact discs, computer archives, computer memory,
28 servers, e-mails, or any other form of computer readable storage media; and all copies,
archives and versions thereof.

AFFIDAVIT FOR PRODUCTION OF RECORDS

1 8. The term "COMMUNICATION" means any transmittal, receipt or display of words,
2 data, information or concepts by whatever manner or means, and regardless of how or by
3 whom the communication was initiated, including, but not limited to, transmittals between
4 and among natural persons who are officers, supervisors, directors, employees or agents of the
5 same corporation or government entity.

6 9. The term "RELATING TO" shall mean reflecting, regarding, comprising, stating,
7 describing, summarizing, explaining, mentioning or otherwise having a connection with.

8 **B. INSTRUCTIONS**

9 1. If YOU refuse to answer a request under a claim of privacy, YOU shall provide
10 information sufficient for Plaintiff to evaluate the validity of the claimed protection.

11 2. If any request is defined using a term of art or other terms that YOU believe to be
12 incorrect, but YOU understand the nature of the request, YOU shall answer the question fully
13 notwithstanding the semantic or definitional error. YOU shall also provide the definition that
14 YOU believe is correct and relied upon in answering the question.

15 3. YOU are requested to produce not only those documents in YOUR possession,
16 custody, or control, but also those documents reasonably available to you, including those in
17 the custody or control of YOUR present or former attorneys, insurers, investigators, experts,
18 consultants, agents, or anyone else acting on YOUR behalf.

19 **II. REQUESTS FOR PRODUCTION OF DOCUMENTS**

20 1. Any and all DOCUMENTS, COMMUNICATIONS or ELECTRONICALLY STORED
21 INFORMATION YOU have RELATING TO the transfer of DELAY from the HALF MOON
22 BAY STATION to the FELTON STATION, including but not limited to, e-mails, text
23 messages, letters, saved voicemails, reports, and orders YOU received or issued.
24
25
26
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Send Result Report



MFP
KM-3060

Firmware Version 2H0_2F00.035.003 2010.04.27

Job No. : 107791 Total Time : -'-'" Page : 002

No response

Document : doc20120815132857

No.	Date and Time	Destination	Times	Type	Result	Resolution / ECM
001	08/15/2012 13:29	19163225709	0'00'00"	FAX	BUSY	200x100 Normal / Off

Crane, Bruce

From: Crane, Bruce
Sent: Wednesday, August 15, 2012 10:35 AM
To: 'Emily Knoles'; 'karla_broussard-boyd@calhr.ca.gov'
Subject: Emailing: DOCdelay5.pdf
Attachments: DOCdelay5.pdf



DOCdelay5.pdf
 (274 KB)

Dear Judge Broussard-Boyd and Ms. Knoles,

Attached please find CAL FIRE's August 15, 2012 Motion for Protective Order in CAL HR Case 12-D-0163.

Thank you.

Bruce Crane
 CAL FIRE Legal

The message is ready to be sent with the following file or link attachments:

DOCdelay5.pdf

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

1 Bruce Crane (SBN 133581)
 2 Senior Staff Counsel
 3 California Department of Forestry
 4 and Fire Protection
 5 1416 Ninth Street, Room 1516-20
 6 Sacramento, California 95814
 7 Telephone: (916) 651-6337
 8 Facsimile: (916) 657-4072

9 Attorney for California Department
 10 of Forestry and Fire Protection (CAL FIRE)

11 BEFORE THE DEPARTMENT OF HUMAN RESOURCES
 12 OF THE STATE OF CALIFORNIA

13 In the matter of the Appeal by Ari
 14 Delay

15 Case No. 12-D-0163
 16 Motion for Protective Order of CAL FIRE-
 17 -Govt. Code section 18672.1

18
 19
 20 **BACKGROUND**

21
 22 This case arises out of an appeal by CAL FIRE employee (Ari Delay) from what
 23 he alleges to be an involuntary geographic transfer. Mr. Delay was originally
 24 representing himself in this matter. He filed his appeal with the Department of Human
 25 Resources on or about May 21, 2102 and the matter was set for hearing on July 10,
 26 2012.

27 On Friday July 6, 2012 counsel for CAL F IRE was contacted by the new counsel
 28 (Emily Knowles) for Mr. Delay who requested CAL FIRE's acquiescence in a last minute

1 continuance of the July 10, 2012 hearing. CAL FIRE agreed to the continuance of the
2 July 10, 2012 hearing date and the matter was continued to the present date of August
3 20, 2012. The new hearing date of August 20, 2012 was proposed by Judge Broussard
4 and was agreed to by both parties to this matter.

5 The subject of this Motion for a Protective Order is an appearance subpoena for
6 CAL FIRE employee Joe Santos.

7
8 **GOVERNMENT CODE SECTION 18672.1 PROVIDES THAT A PERSON**
9 **SERVED WITH A SUBPOENA DUES TECUM MAY OBJECT TO ITS TERMS**
10 **BY A MOTION FOR PROTECTIVE ORDER, INCLUDING A MOTION TO**
11 **QUASH.**

12
13 Government Code section 18672.1 (a) states in part that "A person served with a
14 subpoena or a subpoena duces tecum may object to its terms by a motion for a
15 protective order, including a motion to quash made orally to the board or its authorized
16 representative or in writing."

17
18 **CAL FIRE EMPLOYEE JOE SANTOS WAS PERSONALLY SERVED ON**
19 **AUGUST 12, 2012 FOR AN APPEARANCE IN THIS MATTER ON AUGUST 20, 2012.**
20 **THE SHORT NOTICE GIVEN TO HIM FOR HIS APPEARANCE ON AUGUST 20, 2012**
21 **WILL CAUSE SUBSTANTIAL HARDSHIP TO MR. SANTOS.**


22
23 As discussed in the declaration of Joe Santos (Exhibit A) attached to this motion
24 Mr. Santos's first notice that he was going to be subpoenaed for an appearance on
25 August 20, 2012 was the subpoena he received from counsel for Mr. Delay on August
26 12, 2012. While eight calendar days notice might be sufficient notice for Mr. Santos
27 under normal circumstances, the scant amount of notice given to Mr. Santos means
28 that he will miss a significant amount of an important family vacation that he has

1 planned since October 2011. Moreover, the lack of notice for the proposed August 20,
 2 2012 means that Mr. Santos cannot obtain a refund for travel reservations that he made
 3 many months ago.

4 Given the fact that Appellant filed his appeal with CAL HR on May 21, 2012 and
 5 that Appellant has had counsel in this matter since July 6, 2012 the delay until August
 6 12, 2012 in serving the hearing appearance subpoena on Mr. Santos is simply not
 7 reasonable or acceptable. Had counsel for Appellant acted with greater diligence in
 8 serving the hearing subpoena on Mr. Santos this Motion for Protective Order would not
 9 have been required as Mr. Santos could have altered his vacation plans without
 10 significant financial hardship.

11
 12 **REMEDY REQUESTED**

13
 14 CAL FIRE requests that the Department of Human Resources issue a protective
 15 order that Mr. Santos either not be required to appear at all at the hearing on August
 16 20, 2012 or in the alternative that he be allowed to appear at the hearing by telephone
 17 at the August 20, 2012 hearing. Appearance by telephone will allow Appellant to have
 18 the benefit of Mr. Santos's testimony and will allow Mr. Santos to enjoy his long planned
 19 vacation with only a minimal interruption.

20
 21
 22 
 23 **Bruce A. Crane**
 24 **Senior Staff Counsel**
 25 **CAL FIRE**

26
 27
 28
 8/15/12
 Dated

EXHIBIT A

1 Bruce Crane (State Bar No. 133581)
 Staff Counsel
 2 California Department of Forestry
 and Fire Protection
 3 1416 Ninth Street, Room 1516-20
 Sacramento, California 95814
 4 Telephone: (916) 651-6337
 Facsimile: (916) 657-4072
 5
 6
 7

8 Attorney for California Department
 of Forestry and Fire Protection
 9

10 BEFORE THE
 11 DEPARTMENT OF HUMAN RESOURCES
 12

13 In the Matter of : 14 Appeal of Ari Delay 15 From Involuntary Geographic Transfer 16 17	}	No. 12-D-0163 Declaration of FC Joe Santos Hearing Date: August 20, 2012 Sacramento
--	---	--

18
 19 I, Joe Santos, declare as follows:
 20

21 1. That I am employed by the California Department of Forestry and Fire
 22 Protection (CAL FIRE) as a Fire Captain (FC) and my most recent assignment
 23 is as a station captain staffing a fire engine at the Coastside Battalion for CAL
 24 FIRE's San Mateo Santa Cruz Unit (CZU).
 25

26 2. On Sunday August 12, 2012 at 7:00 pm I was personally served with a
 27 subpoena for an appearance on August 20, 2012 in Sacramento in the matter
 28 of the Appeal by Ari Delay from Involuntary Geographic Transfer , Case No. 12-

1 D-0163. The subpoena originated from counsel for Mr. Delay, Ms. Emily
2 Knowles. Service of that subpoena on me on August 12, 2012 was my first
3 notice of any kind that counsel for Mr. Delay wanted me to testify at the hearing
4 in Sacramento on August 20, 2012.
5

6 3. That in early October 2011, I submitted to the management staff at CZU my
7 request for MOU vacation during the week of August 20, 2012. That vacation
8 request was approved by CZU management on or about October 31, 2011. As
9 my vacation was approved in late October 2011 I began, at that time, making
10 plans for my August vacation which plans included being in Southern
11 California from Sunday August 19, 2012 to September 2, 2012.
12

13 4. That my vacation plans for August 19, 2012 to September 2, 2012 include a
14 trip to Southern California to visit family members. As my vacation for August
15 19, 2012 to September 2, 2012 was pre-approved in October 2011, I made
16 travel reservations that cannot be canceled at this late date without substantial
17 financial penalty to me. In addition, family members in Southern California
18 have made specific plans to spend time with me during the time period in
19 question and I will be attending family functions and events of great personal
20 significance to me and my family. Having to appear at the hearing on August
21 20, 2012 in Sacramento on such short (8 days) notice will constitute a severe
22 and substantial monetary and personal hardship on me and my family.
23

24 5. In the spirit of cooperation with counsel for Mr. Delay and with the CAL HR
25 hearing process, I am willing to be available, by telephone, during the hours of
26 9:00 am and 5:00 pm on August 20, 2012 to testify by telephone if I am required
27 to do so. However, as stated above, for me to be physically present in
28

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Sacramento on August 20, 2012 to testify at the hearing on this matter will be significant and severe burden on me and my family.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and accurate to the best of my personal knowledge, and that his declaration was signed in Santa Mateo County, California and if called upon to testify would competently testify to the foregoing.

Dated: 8/14/12



FC Joe Santos

Rochester, Victoria

From: FAXCOM Anywhere <fax@faxcomanywhere.com>
Sent: Thursday, August 16, 2012 8:58 AM
To: Rochester, Victoria
Subject: Received Fax From: 9166574072
Attachments: FAX.PDF

-----Fax Reception Report-----

Received Time: 08/16/12 08:55
Result: All pages received OK
Pages Received: 008
Remote TSI:
Caller ID: 9166574072

The received fax is included as an attachment in this email message.

Thank you for choosing FAXCOM Anywhere as your fax provider.
<http://www.faxcomanywhere.com/>

**STATE OF CALIFORNIA
BEFORE THE
DEPARTMENT OF HUMAN RESOURCES**

In the Matter of the Appeal by

Case No. **12-D-0163**

ARI DELAY

Represented by:

Battalion Chief
Appeal of Involuntary Geographic Transfer

Emily Knoles, Esq.
Peretz & Associates
22 Battery Street, #202
San Francisco, CA 94111

Respondent:

Represented by:

Department of Forestry & Fire Protection
(CALFIRE)
Human Resource Division
1416 – 9th Street – PO Box 944246
Sacramento, CA 94244-2460

Bruce Crane, Senior Staff Counsel
Department of Forestry & Fire Protection
Legal Division
1416 – 9th Street, Rm. 1516-20
Sacramento, CA 95814

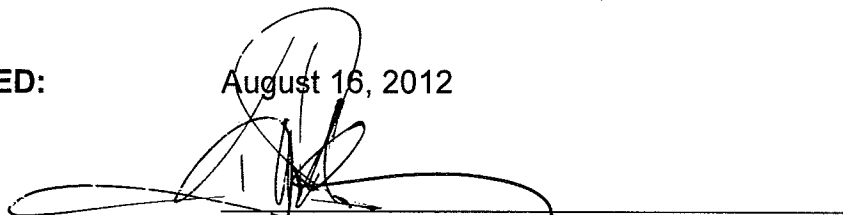
PROTECTIVE ORDER

On August 16, 2012, respondent's representative filed a Protective Order motion with the Department of Human Resources (CalHR). The motion was based on appellant's untimely SUBPOENA DUCES TECUM served on Joe Santos on Sunday, August 12, 2012.

The Protective Order is granted. Joe Santos shall be allowed to testify telephonically at the hearing on August 20, 2012.

IT IS SO ORDERED:

August 16, 2012



KARLA BROUSSARD-BOYD
Administrative Law Judge
Department of Human Resources

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PROOF OF SERVICE

(Code of Civ. Proc. §1013(a))

CalHR Case No. 12-D-0163 – Ari Delay
Appeal of Involuntary Geographic Transfer

I declare that I am employed in the County of Sacramento, California. I am over the age of 18 and not a party to the within-captioned cause. My business address is 1515 S Street, Suite 400, Sacramento, California 95811. On August 16, 2012, I served the following documents:

PROTECTIVE ORDER

on the parties listed below by:

- placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Sacramento, California.
- via personal service on the individual named below.
- via faxing a true copy followed by regular mail.*

Ari Delay
PO Box 173
La Honda, CA 94020

Emily Knoles, Esq.*
Peretz & Associates
22 Battery Street, #202
San Francisco, CA 94111

Department of Forestry & Fire Protection
(CALFIRE)
Human Resource Division
1416 – 9th Street – PO Box 944246
Sacramento, CA 94244-2460

Bruce Crane, Senior Staff Counsel*
Department of Forestry & Fire Protection
Legal Division
1416 – 9th Street, Rm. 1516-20
Sacramento, CA 95814

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct, and that this declaration was executed August 16, 2012, Sacramento, California.



Victoria Z. Rochester

DEPARTMENT OF HUMAN RESOURCES

Statutory Appeals Unit
1515 'S' Street, North Building, #400
Sacramento, CA 95811
Phone: (916) 324-3857
Fax: (916) 322-5709

____ KARLA BROUSSARD-BOYD
Administrative Law Judge

~~X~~ VICTORIA ROCHESTER
Paralegal



8-16-12

DATE

Emily Knoles, Esq

TO

Peretz & Assoc.

ORGANIZATION/AGENCY

415-372-3791

FAX NUMBER

COPY WILL FOLLOW
 COPY WILL NOT FOLLOW

3

NUMBER OF PAGES (INCLUDING COVER SHEET)

COMMENTS:

Re: An Delay - 12-D-0163
Please see attached protective order

Thx

The information contained in this facsimile transmission is confidential, and may be legally privileged or protected. The information is intended only for the use of the recipient(s) named above. If you have received this information in error, please immediately notify us by telephone to arrange for return of all documents. Any unauthorized disclosure, distribution, or taking of any action in reliance on the contents of this information is strictly prohibited and may be unlawful.

TRANSMISSION VERIFICATION REPORT

TIME : 08/16/2012 10:49
NAME : CALHR
FAX : 9163225709
TEL :
SER.# : BR0L5J379266

DATE, TIME 08/16 10:49
FAX NO./NAME 914153723791
DURATION 00:00:00
PAGE(S) 00
RESULT BUSY
MODE STANDARD

BUSY: BUSY/NO RESPONSE

DEPARTMENT OF HUMAN RESOURCES

Statutory Appeals Unit
1515 'S' Street, North Building, #400
Sacramento, CA 95811

Phone: (916) 324-3857
Fax: (916) 322-5709

KARLA BROUSSARD-BOYD
Administrative Law Judge

X VICTORIA ROCHESTER
Paralegal



8.16.12

DATE

Emily Knoles, Esq

TO

Peretz & Assoc.

ORGANIZATION/AGENCY

916-372-3791

FAX NUMBER

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DEPARTMENT OF HUMAN RESOURCES

Statutory Appeals Unit
1515 'S' Street, North Building, #400
Sacramento, CA 95811

Phone: (916) 324-3857

Fax: (916) 322-5709

____ KARLA BROUSSARD-BOYD
Administrative Law Judge

X VICTORIA ROCHESTER
Paralegal



8-16-12

DATE
Bruce Crane, Sr Staff Counsel

TO
Cal File

ORGANIZATION/AGENCY
657-4072

FAX NUMBER
 COPY WILL FOLLOW
 COPY WILL NOT FOLLOW
3

NUMBER OF PAGES (INCLUDING COVER SHEET)

COMMENTS: Re' Ari delay - 12-D-0163
please see attached procedural order
-mx

The information contained in this facsimile transmission is confidential, and may be legally privileged or protected. The information is intended only for the use of the recipient(s) named above. If you have received this information in error, please immediately notify us by telephone to arrange for return of all documents. Any unauthorized disclosure, distribution, or taking of any action in reliance on the contents of this information is strictly prohibited and may be unlawful.

TRANSMISSION VERIFICATION REPORT

TIME : 08/16/2012 10:30
NAME : CALHR
FAX : 9163225709
TEL :
SER.# : BROL5J379266

DATE, TIME 08/16 10:30
FAX NO./NAME 6574072
DURATION 00:00:33
PAGE(S) 03
RESULT OK
MODE STANDARD
ECM

DEPARTMENT OF HUMAN RESOURCES

Statutory Appeals Unit
1515 'S' Street, North Building, #400
Sacramento, CA 95811
Phone: (916) 324-3857
Fax: (916) 322-5709

KARLA BROUSSARD-BOYD
Administrative Law Judge

 VICTORIA ROCHESTER
Paralegal



8-16-12
DATE
Bruce Crane, Sr Staff Counsel
TO
Cal File
ORGANIZATION/AGENCY
657-4072
FAX NUMBER

COPY WILL FOLLOW
 COPY WILL NOT FOLLOW

**STATE OF CALIFORNIA
BEFORE THE
DEPARTMENT OF HUMAN RESOURCES**

In the Matter of the Appeal By:

Case No. 12-D-0163

ARI DELAY

Notice of Time and Place of Hearing

From:

Appeal of Involuntary Geographic Transfer

APPELLANT:

Ari Delay
PO Box 173
La Honda, CA 94020

APPELLANT'S REPRESENTATIVE:

Emily Knoles, Esq.
Peretz & Associates
22 Battery Street, #202
San Francisco, CA 94111

RESPONDENT:

Department of Forestry & Fire Protection (CALFIRE)
Human Resource Division
1416 – 9th Street – PO Box 944246
Sacramento, CA 94244-2460

RESPONDENT'S REPRESENTATIVE:

Bruce A. Crane, Senior Staff Counsel
Department of Forestry & Fire Protection (CALFIRE)
Legal Division
1416 – 9th Street – PO Box 944246
Sacramento, CA 94244-2460

Sandra L. Lusich, Labor Relations Counsel*
Department of Human Resources – Legal Division
1515 'S' Street, North Building, #400
Sacramento, CA 95811

Please take notice that the above-captioned matter has been set for hearing as follows:

DATE:

October 22, 2012

TIME:

9:00 a.m.

LOCATION:

Department of Human Resources
1515 'S' Street, North Building, #400
Legal Conference Room
Sacramento, CA 95811-7258

before the Administrative Law Judge, Department of Human Resources, the person appointed and authorized by the Department of Human Resources as its representative to hold and conduct the hearing in said matter.

Each party to said proceedings are entitled to, but are not required, be represented by counsel at his/her own expense. Upon application to said department or its Hearing Officer, subpoenas may be issued as provided by law. At said hearing, each party will be given full opportunity to examine and cross-examine witnesses and to present any relevant evidence. All inquiries, including requests for continuances or off calendar, must be directed to the address and telephone numbers below.



*Via Personal Service

PROOF OF SERVICE

I am a citizen of the United States, over the age of eighteen years, and not a party to the above proceeding. I am employed in the County of Sacramento, State of California, and my business address is 1515 'S' Street, North Building, #400, Sacramento, California 95811-7258. On the date shown below I served the Notice of Time and Place of Continued Hearing on each of the above parties by placing said notice in separate envelopes, addressed to said parties to last known addresses thereof, and then sealed and deposited said envelopes in the United States mail.

I declare under penalty of perjury that the foregoing is true and correct. Dated at Sacramento, California on August 22, 2012.

Victoria Z. Rochester, Authorized Representative

Department of Human Resources, Statutory Appeals Unit 1515 'S' Street, North Building, #400, Sacramento, CA 95811-7258
(916) 324-3857 CALNET 8-454-3857 (916) 322-5709 fax

CalHR's Hearing Process for Statutory Appeals

The following description of CalHR's hearing process for non-merit statutory appeals summarizes the CALHR website (www.calhr.ca.gov, under "CalHR Home; Appeals and Grievances; Non-Merit Statutory Appeals"). This information does not substitute for advice from a representative or attorney.

Background

CalHR's hearing authority is found in Government Code section 19815 et seq., and California Code of Regulations, title 2, sections 599.893-599.910 which define the general hearing procedures; California Code of Regulations, title 2, section 599.906 defines statutory appeals for rank-and-file employees; and California Code of Regulations, title 2, section 599.859 defines appeals for excluded employees.

For rank-and-file employees, a memorandum of understanding (MOU) may contain provisions which vary from these laws and rules. The MOU language may supersede the law.

Appeals must be brought to hearing within 3 years unless both sides agree in writing, and submit the agreement to CalHR's Statutory Appeals Unit (SAU). The SAU is the CalHR division charged with holding hearings. After an appeal is filed, SAU may hold administrative hearings and/or investigation before an Administrative Law Judge (ALJ).

Prior to the Hearing

- If the notice on the reverse side contains any incorrect information, immediately notify the Statutory Appeals Unit.
- You may represent yourself at the hearing or use a representative. If using a representative, provide the name and contact information to the Statutory Appeals Unit.
- Any documents you plan to present at the hearing must be copied ahead of time. Bring three copies and your original to the hearing.
- If you plan to subpoena witnesses or documents, contact the Statutory Appeals Unit to request the subpoena(s). You are responsible for serving the subpoenas. Allow sufficient time for subpoenaed parties to gather required documents and prepare for the hearing. If a witness asks for witness and/or mileage fees, the party requesting the subpoena is required by law to pay these fees.
- If you need an interpreter at the hearing, you must submit a written request to the Statutory Appeals Unit at least 2 weeks in advance. The cost of providing an interpreter shall be paid by the agency having jurisdiction over the matter if the ALJ so directs, otherwise by the party at whose request the interpreter is provided.
- If you need a reasonable accommodation at the hearing, you must submit a written request to the Statutory Appeals Unit at least 2 weeks in advance.
- The parties may want to discuss settling the appeal.
- A scheduled hearing may be postponed if you show good cause, consistent with the law. Before requesting a "continuance," contact the opposing party or representative to see if he or she will agree to postpone and identify possible new hearing dates. Include this information in a written request

to the Statutory Appeals Unit with the reason you need a postponement. Requests must be made at least **3 business days** before the hearing date.

- If the hearing is not continued by the ALJ, and you fail to appear, the ALJ has discretion to treat your non-appearance as a withdrawal.

At the Hearing

- The hearing is not conducted according to technical rules relating to evidence and witnesses, except as explained in the California Code of Regulations, title 2, article 25.
- Both sides may present oral evidence only under oath.
- Any relevant evidence will be admitted if it is the type of evidence responsible persons are accustomed to rely upon in the conduct of serious affairs, regardless of the existence of any common law or statutory rule.
- Each side has the right to call and examine witnesses under oath.
- CalHR makes an audio record of the testimony. At the ALJ's discretion, each side may cross-examine opposing witnesses on any matter relevant to the issues even if that matter wasn't covered in the direct examination, and impeach any witness regardless of which party first called the witness to testify.
- Consistent with the laws governing burden of proof, the appellant presents evidence first. The respondent presents evidence next. Each side may call witnesses to rebut presented evidence. Hearsay evidence may be presented to supplement or explain other evidence. However, if there is a timely objection, the ALJ may not consider the Hearsay evidence sufficient to support a finding unless it would be admissible over objection in a civil action.
- The ALJ has discretion to exclude evidence if its value to prove something is substantially outweighed by the probability its admission will take an undue amount of time or be prejudicial to a party.

After the Hearing

- The ALJ issues a proposed decision, which may be adopted, rejected, or amended by CalHR's Director.
- CalHR sends a copy of the final decision and the Director's Order to all parties. One year after the ruling, some final decisions are posted on CalHR's website under "Appeals and Grievances; Final Decisions."
- If your address changes, you are responsible for notifying the Statutory Appeals Unit and all parties.
- The decision becomes final 30 days after CalHR serves the parties with the decision, unless a proper application for rehearing is made. Within this 30-day rehearing period, either party may request a rehearing by faxing, mailing, or delivering a petition for rehearing to the Statutory Appeals Unit. If the Statutory Appeals Unit does not act within 90 days, the petition is considered denied by operation of law.

APPELLANT

RESPONDENT

Description

Description

No.	Id.	Ev.		No.	Id.	Ev.
A	✓	✓	2/6/12 MEETING MINUTES ^{CDC FIRE FIGHTERS} PO109 DRAFT	1	✓	✓
B	✓	✓	2/14 - 2/15/12 email peris	2	✓	✓
C	✓	✓	4/12 - 4/20/12 " " " " 9/1/11	3	✓	✓
D	✓	✓	STAFF REPORT dtd 4/9/12	4	✓	✓
E	✓	✓	5/16 - 5/17/12 email peris	5	✓	✓
F	✓	✓	2/12/09 MEMO FROM WALLARI	6		
G	✓	✓	2/14 - 2/15 email peris	7		
H	✓	✓	SUBJECT FOR 202 emails	8		
I	✓	✓	PO109 (signed by A)	9		
J	✓	✓	EXHIBIT "B" of "K"	10		
K	✓	✓	4/8/12 DELAY TRAFFIC MEMO	11		
L	✓	✓	9/23/11 EMAIL TO (A)	12		
M	✓	✓	MAPS	13		
N	✓	✓	5/18/12 LTR TO (A)	14		
O	✓	✓	(A) & APPEAL 5/21/12	15		
P	✓	✓	EXPLANATION of TRANSP LTR 5/22/12	16		
Q	✓	✓	EMAIL 7/1 - 7/2/12 ^{2 PPS}	17		
R				18		
S				19		
T				20		
U				21		
V				22		
W				23		
X				24		
Y				25		
Z				26		

ON: 1) SPB SPEC

ON:

ON: 2) SCO HISTORY

ON:

- 3) SECTION 4.1 EMPLOYER RIGHTS
- 4) ARTICLE 19 DISCIPLINE
- 5) ARTICLE 12

7) SPB GOV CODES
 - assoc regulations

5/22/12

6) 399.714.1 Title 2
 TOP PART of EX "G" only

* email only
 you HEAVY objections



CDF FIREFIGHTERS

CZU Chapter Meeting

February 6, 2012

09:00HRS @ Half Moon Bay

13:30HRS @ Casserly Hall



A. Call to order

09:20/

B. OFFICERS PRESENT:

C. MEMBERS PRESENT:

D. Introduction of guests

Wolf, 1700 via phone, Mike Lopez

Lopez: Directed to put together a Paycheck Deception management Team. 1. Every member must be a registered voter. 2. Make sure everyone votes. 3. Make sure everyone is informed and educated on the topic and fist to know. DVD's have been sent out with info and background on paycheck deception. The point is to cut down labor across the country. Makes it illegal for unions to put money towards PACs. Makes it harder for unions to raise money from its members.

WOLF: Cannot use money towards Ballot Measures.

Lopez: 57 and 58 year old retirement plan. Defined compensation and 401K retirement system and signatures are being gathered right now.

Wolf: Currently it is state law that public employees' pension cannot be in 401K type retirement. The point of this ballot measure is to strip the Unions of power and to roll back our benefits and retirement and ability to fight back. Retirement, Cancer presumption, and compensation is at risk.

Lopez: The command structure was put in place to empower the union body to work in a grass roots method to defeat this ballot measure. This is the third effort to put paycheck deception on the ballot.

WOLF: Every Union organization is involved in fighting this ballot measure.

SHEAFF: Wolf, could you speak to the Coastside employees in regards to the possible cancelation of the CAL FIRE contract.

WOLF:

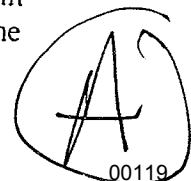
Colbert: Will the red circle go away if the Coastside employees stay with the next Coastside Fire Department.

WOLF: I believe it is at risk. I don't know if there is any law requiring them to maintain the red circle when they cancel the contract with CAL FIRE.

Beverlin: What do you need us to do?

WOLF: You guys need to meet with Justin and put together a plan. You need to fight the board on all the inaccurate information they putting out at the meeting. We in Sacramento will support you but the boots on the ground have to be onboard with the fight.

Sheaff: 1700 is now on the conference call.



1700: Jalbert is here on the line as well. I will talk about Coastside and San Mateo County. Employee retention was a main problem Alifano had with cal fire. Employees not living locally is another issue. Training of employees is another issue the board has. Alifano also cited the district wants to be able to hire locally. The district Lawyer Gene Savory proposed a framework for separating from Cal Fire instead of a fact finding mission. The board went into closed session and began discussion on the type and framework of the new department. My goal is to uphold the department stance that the board is in charge of who provides there service. I am pressing that the board offer a position to all Coastside employees when they transition. I cannot guarantee a job to every employee who is displaced by the transition. We cannot separate from Coastside in five months. All references to terminating the contract will get one year's notice before the separation. After discussion with Alifano, he is starting to understand that separation may become an expensive proposition. Everything is in flux and I will make sure that every employee will be taken care of.

WOLF: Can you speak to individuals in the Coastside that are working against the CAL FIRE mission in the ranks.

1700: A plan is being looked at to address the problems of possible insiders that are creating problems for CAL FIRE from the inside.

WOLF: Thank you for speaking to the issue. We are going to stand with the employees and support them in fighting the lies individual board members are putting out.

Tyler Martin: Do we, or do we not have a year before they try to separate.

1700: They have backed away from the June 30th, 2012 date to cancel the contract. At the next meeting we will be bringing in a one year contract.

R. Gallardo: Can you outline the process on how it would work finding homes for displaced employees due to the Coastside separation.

WOLF: Every employee will be taken care of.

1700: I am looking at retaining all the LT's in the Unit and not allowing them to be displaced by the Coastside separation.

Ty Martin: Bob Wolf will you be at the next Coastside District board meeting?

WOLF: It is a double edged sword to have me show up. You are better off educating the public on the issue. If I make an appearance it becomes a Union battle, you better off getting public public support.

SAN MATEO COUNTY

1700: After Prop 13, the county elected to fund county fire is funded 50% by unsecured taxes and every year we have been cutting the budget. My plan is to get them to fund us by 90% secured property tax. I am going to make a big push for the San Mateo County board to make this change.

WOLF: Is there still a push by Redwood City to take over 18?

1700: San Carlos are looking to have 18 closed to improve their position. The county has stood and said that 17 cannot be closed.

E. Minutes of last meeting

F. Director of Finance:

Checking Account: \$2,882.81
Kilfoil: \$8,414.75
CZU Chapter Benevolent Fund:
Total: \$11,297
Income:

G. Communications

Chapter Director:

Coastside Update, San Mateo County Update

Sheaff: Sue is now at Valley Medical Center and is training five to six hours a day in a rehab program. Anyone who wants to visit is welcome to. She should be released in the next coming weeks.

Al Bartal was readmitted to an ICU to address his rise in temperature due to an infection. Unfortunately it looks at this time that his condition is not expected to improve. Chris Leddy organized the bracerlets for Al's relief fund and each bracerlet as made about 4 dollars of profit for the fund.

We are looking to have a Unit party to raise funds for Al.

Nolan and myself have spent a lot of time at the county building working to ensure that all of our current staffing levels are left the same.

Rank & File:

Rank and File report presented by Scott Ernest

Ernest: A pay issue and a possible adverse action are the two issues Rank and File are working on it.

Green: We are working on the CZU Unit policy on Union Time Release. It is being resolved through Labor relations and Sacramento. We are also looking at reports that individuals in the north division were not allowed to use the amount of vacation they were allotted.

H. Committee reports

San Mateo County Labor Council- Marc Colbert

Colbert: The labor council is looking to increase dues because they are running out of money and they have not increase dues in ten years.

Santa Cruz County Labor Council Committee. Jed Wilson (Chair) Stuart Carlson

Chapter Policy and Procedure Committee Jake Magee (Chair) Jaime Norton, Marc Colbert

Fund-raising Events Committee (N) Justin Sheaff, Paul Provence (S) Jed Wilson, Justin Sheaff

Sheaff: We are looking at the possibility of a crab feed and fund raiser to build the CZU Benevolent fund. Possibly a price tag of \$5,500 dollars and will be held on South San Francisco around March or April.

Provence: The closing of crab season in June is the benchmark for what kind of function

I. Open Discussion

J. Old business

19

Saturday, May 12, 2012 8:36:00 AM PT

Subject: FW: Meeting with Ari
Date: Wednesday, February 15, 2012 9:36:09 AM PT
From: Cole, Paul
To: pcole@coastsidefire.org

From: Cole, Paul
Sent: Wednesday, February 15, 2012 6:25 AM
To: Jalbert, Scotty
Cc: Ferreira, John
Subject: RE: Meeting with Ari

I will let Ari know about the meeting on the 24th.

For the record, I do not support Ari being moved to B3. From what I've heard and observed the move is based upon perceived actions and behaviors, not substantiated facts. If those facts do exist, I certainly have not been made privy to any of them. As his supervisor one would reasonably expect to be informed and presented with them. I've certainly heard "rumors" of things said or allegedly done. However, at no time have I been asked, or involved in, efforts to verify the allegations. Furthermore, the action has the potential to exacerbate the current situation on the Coastside.

I respectfully request he not be moved, and we present the concerns to Ari providing him with an opportunity to respond to them.

Paul

From: Jalbert, Scotty
Sent: Tuesday, February 14, 2012 8:14 PM
To: Cole, Paul
Cc: Ferreira, John
Subject: RE: Meeting with Ari

Ok

Scott M. Jalbert
Deputy Chief - Operations

CAL FIRE CZU
Santa Cruz County Fire
Pajaro Valley FPD
Ben Lomond Fire Camp
831-335-6701 Office
831-254-1701 Cell
831-335-4052 Fax

From: Cole, Paul
Sent: Tuesday, February 14, 2012 4:38 PM
To: Jalbert, Scotty
Cc: Ferreira, John
Subject: RE: Meeting with Ari

Ari is off next week (TFS). How does Friday the 24th work for each of you?

From: Jalbert, Scotty
Sent: Tuesday, February 14, 2012 12:46 PM

B

To: Cole, Paul
Cc: Ferreira, John
Subject: Meeting with Ari

Paul,

At the request of the Chief, he would like to have a meeting with the three of us, and Ari, about his assignment to the SD.

February 27 0900 at FS 40...

Please let us know if this date and time will work for you and Ari.

Thanks

Scott M. Jalbert
Deputy Chief - Operations

CAL FIRE CZU
Santa Cruz County Fire
Pajaro Valley FPD
Ben Lomond Fire Camp
831-335-6701 Office
831-254-1701 Cell
831-335-4052 Fax

23

Ferreira, John

From: Ferreira, John
Sent: Friday, April 20, 2012 11:33 AM
To: 'hmbrs@comcast.net'
Subject: Re: Wednesday's meeting

Dir Mackintosh - CALFIRE Northern Region Chief Bill Holmes plans to attend next week's Board meeting. JF

From: Ferreira, John
Sent: Monday, April 16, 2012 08:03 AM
To: hmbrs@comcast.net <hmbrs@comcast.net>
Subject: RE: Wednesday's meeting

Have a good time. I'll keep you updated.
 JF

From: hmbrs@comcast.net [mailto:hmbrs@comcast.net]
Sent: Monday, April 16, 2012 7:59 AM
To: Ferreira, John
Cc: dmackintosh@coastsidefire.org
Subject: Re: Wednesday's meeting

Unfortunately I am in Colorado this week but am available via cell phone and will try and check my Email daily.

Thanks again
 Doug

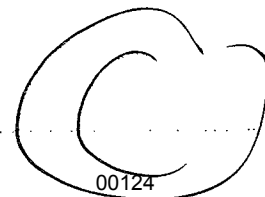
From: "John Ferreira" <John.Ferreira@fire.ca.gov>
To: hmbrs@comcast.net
Sent: Monday, April 16, 2012 7:43:31 AM
Subject: RE: Wednesday's meeting

Doug – I completely understand regards the opinions discussed and appreciate your position on the relocation of Chief Delay but still believe that it's in the best interest of addressing some of the stresses on the line staff. I and others intend to work with Chief Delay during his reassignment to identify and resolve concerns so that he can be a more effective Chief Officer – I know that he has many fine attributes and that he has the potential to be a very good BC.

Regards the issue of Chief Cole's full time presence in the District, I'll prepare a second set of fiscal documents along with a letter describing the recommendation to go out with the Board Packet. I noticed that the LG-1 was not on the agenda and have requested that Chief Cole add it. As discussed at the last Board meeting, for us to proceed into FY 12/13 we'll need something in place. I'm also working on an addition to exhibit E that would partially describe the process for incrementally transitioning from CALFIRE back to District retained staff. I should have that done and vetted by Sacramento (for appropriateness and accuracy) so that it can also go out with the Brd packet.

Would you like to get together sometime this week to go over it?
 John

8/1/2012



00124

From: hmbrs@comcast.net [mailto:hmbrs@comcast.net]
Sent: Monday, April 16, 2012 7:25 AM
To: Ferreira, John
Cc: doug@coastsidefire.org
Subject: Re: Wednesday's meeting

Several notes

First let me reiterate – all comments and opinions expressed were mine alone I am not speaking with any authority bestowed by the Board.

Because of that the transfer of Chief Cole to full time status in the District is dependent on the Board approving the change and agreeing to the additional cost. To facilitate this in a timely manner I would suggest it probably should be put on this month's agenda.

While I understanding your position on Chief Delay I respectfully disagree.

Thank you again for your and Jake's time

Doug

From: "John Ferreira" <John.Ferreira@fire.ca.gov>
To: "Doug Mackintosh" <dmackintosh@coastsidefire.org>
Sent: Thursday, April 12, 2012 12:00:26 PM
Subject: FW: Wednesday's meeting

Pres. Mackintosh – Thank you for meeting with me yesterday to discuss the near future of Coastside Fire District. I also appreciate your and Dir. Alifano's concerns over the complications and impacts involved in the possible dissolution of the Coastside & CALFIRE relationship and know that the L-2881 rep Jake Magee left with a better understanding of the situation.

I'd like to take a moment to recap a few of the things that we discussed.

Since the meeting I have had an opportunity to discuss the Agreement issues with CALFIRE Assistant Deputy Director Clare Frank (Cooperative Fire Protection). I described your desire to have CALFIRE provide services during FY 2012/13 absent a signed Cooperative Fire Program Fire Protection Reimbursement Agreement (LG-1). Under the current rules of the State's Department of General Services, that is not possible. Chief Frank and I agree that the best option to provide flexibility for the District in a stepped reduction of services towards eventual dissolution would be to approve the agreement as presented and then rely on the Exhibit C, 2 Amendment clause as the mechanism to diminish services with a simultaneous letter of intent stating that the District will be concluding all agreement with the State effective June 30, 2013. At Exhibit C, 2 you see that the agreement may be amended by mutual consent and that any reductions in the number of State Civil Service employees will occur following a 120-day written notice from the District. As I understand your intentions: such reductions may commence prior to the winter and then be completed in the spring; except for staff employees, reductions may occur one engine (or station) at a time and would be based on the number of employees that either transition back to the District or are otherwise employed and trained (if necessary) by the District; a definite end-date can not be determined until the Board approves the action to do so following the report being prepared by counsel; and the number of employees transitioning back to Coastside may not be known until after the District publishes it's employee's salary and benefits matrix. I recognize that all of the preceding factors prevent the Board from setting a determined end date and assure you that CALFIRE will cooperate in every way allowable to make the transition smooth while continuing to protect the community and the employees. That being said, however, CALFIRE cannot provide services without an approved agreement. I do have a call in to the District's Counsel (Jean Savaree) to discuss the situation to see if there's an alternative that we haven't thought of.

I appreciate Jake Magee's comments regarding presenting options to employees assigned. As stated above and previously, this may not commence until the Board has established its salary/benefits package. Contact with employees regarding this matter must be coordinated with L-2881's Chapter Director Justin Sheaff and Rank-and-File Representatives. Additionally, as per the District's transitional MOU, there are other previous Coastside employees (Chief Jolley and FC Michaelson) that must be afforded the same option. Your stated intent was to assure that no employee is left without a job and I thank you for confirming that as it's my goal too. Over the past few weeks I have been questioned by former transitioned employees regarding the continuation of their "Red Circled" salaries if they remain with CALFIRE post dissolution. The transitional MOU between the District and the individual employees at transition expresses the Board's intent that the employees will continue to receive the same annual compensation (+4%) that they had at the District. As those salaries presented by the District were accepted by the State's Personnel Board, they will continue at that rate and the District will remain responsible for all costs above CALFIRE top-step.

Regards the management of District operations once transition commences – as you'll recall, when CALFIRE first came to the coastside we staffed only the Montara Fire Station. The Half Moon Bay Chief was responsible for all operations but we had a CALFIRE Chief Officer manage and coordinate the non-emergency activities of the CALFIRE employees. I imagine that the same should work in reverse. As the District commences accumulating staff, they would cover the Montara Station and continue to work their way down until all three stations are staffed by District employees. This would also mean that the District would have to hire a Chief or other officer to manage those employees that are not State Civil Service as neither I nor my staff can be responsible for enforcing a different agency's employee agreement. Overall, I don't think that this'll be a huge hurdle to overcome.

I have also given additional thought to your concerns over the June reassignment of BC Delay and am fully aware of how that move may be perceived by the community and the Board. My professional experience leads me to realize that this change is imperative to accomplishing as unproblematic a transition as possible. Now is when leadership is most important and even though you and I may regret the loss of Chief Delay's other skills, I know that this will resolve concerns held by me and his subordinates. As you've suggested, I will recommend to the Board that Chief Cole be reassigned solely to the District and am already working on a plan to replace Chief Delay in the interim. I have confirmed with San Mateo County and they will agree to the change with Chief Cole. I will need a few days to present this information to Chief Cole prior to widespread release.

Finally – as you and Director Alifano mentioned, the successful implementation of this action will depend on regular communication between the Board and me and I hope that we can continue to meet on a regular basis as things develop.

Sincerely,
John Ferreira.

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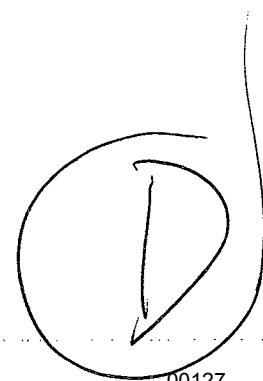
Ferreira, John

From: Ferreira, John
Sent: Thursday, April 19, 2012 11:03 AM
To: Cole, Paul; Cochran, Janice
Subject: FW: Coastside Contract 3rd Revision
Attachments: 11-CFR 2012-13 lgl.(3).pdf; 2-CFR 2012-13 STD 215(3).pdf; 3-CFR 2012-13 LG-1(3).pdf; 5-Schedule A CFR12-13jf(3).pdf, Staff Report, CFR modified LG-1.dot

Jan -- please include these 4 PDF files and the Word file into the Board packets under the agenda item regards Review and Approve CLAFIRE Reimbursement Agreement.

Within an hour or two I should have an additional letter that will be included in that agenda item as well.

Thank you
John F.





DEPARTMENT OF FORESTRY AND FIRE PROTECTION

6959 Highway 9
Felton CA 9508
(831) 335-5355
Website: www.fire.ca.gov



Coastside Fire District Board of Directors

April 17, 2012

Fire Board
Agenda
April 25, 2012

STAFF REPORT

Subject: Reassignment of CFR Battalion Chief and discontinuation of shared Division Chief services with San Mateo County Fire.

Summary:

In June, 2012, a Battalion Chief that is now assigned to Coastside Fire District Command Staff - Operations will be reassigned outside the District and replaced. To facilitate the continuity of administrative functions provided by the reassigned Battalion Chief, it is recommended that the District discontinue sharing its Division Chief (Cole) with the San Mateo County Fire Department and return him to District Administration and Operations full-time.

Background and Discussion

Effective emergency operations and most field level administrative functions rely on established trust and confidence amongst firefighters, company officers, and chief officers.

In the initial years of the cooperative agreement between the District and CALFIRE, efforts were made to cultivate this bond by providing Department sponsored supervision and management training to transitioned staff so that all employees assigned to the District shared similar attitudes and comprehension of the roles expected of every classification or rank. Temporary and short term reassignments were also utilized to advance the development of cultural insight necessary to becoming an effective leader in the fire service.

The recent ancillary stress affecting line staff in the District has highlighted inadequacy in our attempts to correct issues rooted in the lack of cohesiveness amongst all assignees. This deficiency has been reported by employees, personally observed by the Chief of the District, and noted by consultants engaged by the District.

CONSERVATION IS WISE-KEEP CALIFORNIA GREEN AND GOLDEN

PLEASE REMEMBER TO CONSERVE ENERGY. FOR TIPS AND INFORMATION, VISIT "FLEX YOUR POWER" AT WWW.CA.GOV.

00128

To achieve the greatest performance of the District's line staff, it is imperative that the significant gap between transitioned employees and other CALFIRE firefighters be eliminated. To affect this change, the Battalion Chief and perhaps other employees will be reassigned for an extensive period of time so that they can be more carefully mentored and allowed to experience other leadership techniques.

Although the Battalion Chief will be replaced straight away, there will be some diminishment in the administrative functions that he currently performs. To minimize this impact it is recommended that the District's Division Chief be recalled to the District full time. San Mateo County Fire is aware of this change.

An amended Fiscal Sheet (Schedule "A") has been prepared showing this change. The net difference, when coupled with the elimination of the 4 Firefighter I's for 3 months (fire safe clearance and hydrants) and the exclusion of operating costs except for travel, is an estimated \$30,394 reduction as compared to the Fiscal Sheets previously submitted as the initial estimate of \$5,785,240 provided in February, 2012 (2nd estimate of \$5,765,838 provided in March, 2012, deleted operational costs for postage, PPE, and proportional share of utilities).

Respectfully submitted,

John E. Ferreira
Fire Chief

Ferreira, John

From: Ferreira, John
Sent: Thursday, May 17, 2012 12:09 PM
To: Schori, Kathleen; Anderson, Terry; Ramirez, Tina
Cc: Holmes, Bill
Subject: FW: Transfer
Importance: High

Kathleen, Terry, and Tina – as you can see by the message below (first in the string) from CZU BC Delay, he will be appealing his reassignment from the Coastside Fire District to Unit BC Relief, Safety Officer position. I know that I had a conversation with Kathleen and Terry (at least I think I know) soon after 4/25 when I sent the message below but can't find my notes on the topic. I'm drafting a response and would like your input. Here's what I have so far. Please take special note of my paragraph regards relocating. Would like to get this to him tomorrow.

Thank you
 JF

Chief Delay, I appreciate the concerns you submitted to me regards your reassignment to the Unit's Safety Officer/Relief Battalion Chief position headquartered in Santa Cruz County. As I stated to you at our meeting in Half Moon Bay on April 27th, I have put a great deal of consideration into this matter. Please let me reiterate the foundation for my decision.

I and the overall majority of the Unit's Chief Officers as well as senior Northern Region staff are certain that your future accomplishment with CALFIRE is dependent not only by your exhibiting sound emergency operations and incident command skills, but also with the attainment of a solid comprehension of CALFIRE behaviours, management and supervisory practices, and our cultural and institutional distinctions. This long held determination was reinforced by an independent consultant's assessment of the Coastside Fire District, wherein a retired Chief of another fire agency noted "The Chief Officers in the Fire District are all former Coastside officers. They are not as familiar with the culture or operating policies of CALFIRE...", and, "To improve the organization and complete a successful transition, we recommend the gradual reassignment of the current chief officers to other CALFIRE assignments...".

This lack of understanding was twice noted in reviews of your performance as an Assistant Strike Team Leader; in July of 2008, BC R. Sherman commented "More knowledge of CDF policies, procedures, and paperwork will come with time", and then in August 2011, he again comments "Several things to work on: 1)obtain more knowledge on CALFIRE Policy & Procedures 2)stock and maintain appropriate CALFIRE and ICS Forms 3)Hot line needed to appropriately evaluate skills under stress". That apparently little CALFIRE understanding had been gained in the intervening 3 years indicates that there is little opportunity to expand such knowledge within the confines of your current assignment.

In your letter (5/16/12 e-mail to Chief Cole), you cite CALFIRE Policy 1028.3 and CA GC 19994.1.

Section 1028.3 is a subsection of 1028 Involuntary Transfers Between Classifications. References for section 1028 include:

- BU8 MOU which has no Article, Section, or Subsection containing any reference to Involuntary Transfers except at Article 4 – Employer Rights, Section 4.1 where, in-part, it states "Except as expressly abridged by any provision of this Agreement, the State and the department reserve and retain all of their normal and inherent rights with respect to management of their affairs in all respects in accordance with their responsibilities, whether exercised or not, including but not limited to the rights to determine and from time to time re-determine ... assignment of duties...; to establish and change work schedules, assignments, and facility locations;... and otherwise take such measures as the employer may determine to be necessary for the orderly, efficient and economical operation of the Department of Forestry and Fire Protection."
- CCR 431 – Salary and Class Level Comparisons. As part of Article 19, this reference provides definitions

of Salary Ranges, etc, to be used when changing "classes".

- CCR 434 – Involuntary Transfer Between Classes
- CCR 599.714 – Moving and relocation Expenses
- GC 3517.6 – in sub (3) reference is made to BU8 and its MOU and the understanding that the MOU shall be controlling vs a litany of code sections however, none of the references cited in 1028.1 are included in the listing.
- GC 18525.3 defines "Transfer" as meaning: (a) The appointment of an employee to another position in the same class but under another appointing power (N/A in this case) or (b) "The appointment of an employee in a different classification that has the same level of duties..."
- GC 19050.4 states that a transfer, as defined in 18525.3 may be accomplished without an examination. The Board may require an employee to demonstrate in an examination that he or she possesses any additional of different requirements tat are included in the minimum qualifications of the class to which the employee is transferring.
- GC 19050.5 – grants the appointing power the ability to transfer an employee to a "different class".
- GC 19994 includes information regarding the entitlement to sick leave and seniority credits when transferring from another agency to the State.
- GC 19997.9 discusses transferring to another class in lieu of layoff
- SPB "Delegation of Function re: Involuntary Transfer – Change in Class"

Except for CCR 599.714 and the BU8 MOU, all others relate to changes in classification. Clearly, then, CALFIRE Section 1028 and its subsections are not applicable to this discussion as this reassignment is not a change in classification so I will exclude them and their provisions from further reference in this letter, including your references to letters from the Region or Headquarters Administrative Officer.

We are then left with 19994.1. Here (a) grants the appointing power the authority to transfer any employee to another position in the same class. Sub (b) includes that 60 days written notice must be given when the transfer *reasonably requires* an employee to change their place of residence. In this case, there is neither the requirement nor expectation that you change your place of residence. As discussed by Chief Jalbert, you will be allowed a government vehicle/fuel for travel so there is no matter of a financial impact. Our records show your home address as 9300 LaHonda Rd and by Google maps, the distance travelled from your old address to new headquarters is 36.2 miles. The distance between your old headquarters and new headquarters is 49.4 miles. Please provide us with the distance between your old (current) residence and new residence so that we may prepare for relocation expenses.

You claim that this reassignment is a hardship and that it will cause irreparable harm to your family. Chief Jalbert has previously informed you that there will be no change in either duty schedule or days. As the Unit Safety Officer you will not be required to reside at a fire station so you may spend your nights at home with your family if you so choose (I am aware that you currently spend your 3 duty nights in a fire station away from your family). Please provide me with specific examples of either the hardship or harm so that I can perhaps mitigate them.

In your letter you allege that this reassignment is being done "for the purpose of harassment and discipline". I encourage you to follow the Department's employee Complaint or EEO processes to pursue that aspect if you so chose. Please also take advantage of the Department's EAP program.

Chief Delay, I fully understand your anxiety that this change has created. Please trust this effort is being taken to help your Chief Officer future with CALFIRE or any other emergency service organization and be assured that all of the staff here have committed to supporting you in this assignment.

Sincerely, John Ferreira

Email sent 4/25

Kathleen and Terry – CZU intends to reassign a Battalion Chief from Half Moon Bay to Santa Cruz County. The employee will be made to do this against his will. As per policy and common sense, the move is not being made for any disciplinary reason; it is being made to assist the employee in his transition from local to State employment by exposing him to CALFIRE processes and programs that he is excluded from in his current assignment. The reassignment may be limited to a two year term.

The only reference I can find in the procedures handbook is at 1028 – which is titled "Involuntary Transfers Between Classifications". That's not what this is. There is a section 1028.3 that talks about involuntary Geographic Transfers which does apply – unless it's a subsection of the Classifications criteria. If it's not, then it might be a good idea to make it it's own section so that others researching the issue don't pass over it when consulting the index.

That being said, please confirm that, as opposed to a 50 mile limit prior to qualifying for relocation expenses (promotions), the limit in this case might be 35 miles (we believe the employees residence is 36.6 to Felton HQ). I'm also aware tht we may need to provide 60 days notice.

Thank you for your help.

John F.

From: Cole, Paul
Sent: Wednesday, May 16, 2012 4:20 PM
To: Ferreira, John
Subject: FW: Transfer
Importance: High

John - please see the request and supporting information below from Ari.

Paul

From: Delay, Ari
Sent: Wednesday, May 16, 2012 2:09 PM
To: Cole, Paul
Subject: Transfer
Importance: High

Chief Cole,

I am requesting that my geographic involuntary transfer be reconsidered as I have researched the issue and found that it was improperly noticed and is being done for the purpose of harassment and discipline.

When I met with Chief Jalbert about particulars of the assignment as was verbally directed by Chief Ferreira I was informed verbally that I would be working out of the Felton office. With that information, this transfer is considered a geographic involuntary transfer according to CALFIRE POLICY 1028.3 & California Government Code 19994.1 (see below)

I have not waived my rights under the government code, and do not intend to.

The following is CALFIRE POLICY 1028.3

1.) For geographic involuntary transfers the Department must follow all the guidelines outlined in Section 1028.3. Pursuant to Government Code 19994.1, when a transfer under this section reasonably requires an employee to change his or her place of residence, **the appointing power shall give the employee a written notice of transfer 60 days in advance of the effective date of the transfer, unless the employee waives this right.** Notice should include the reason for the transfer, information regarding entitlement to relocation expenses (if any), and other pertinent information (e.g., reporting date, available alternate positions, alternate options, etc.). An employee is reasonably expected to change his/her place of residence when the move results in:

- a distance of at least 35 miles between the old work location and new work location; and
- a distance of at least 35 miles between the old residence and new residence; and
- a distance of at least 35 miles between the old residence and new work location.

1028-3 In addition, the new residence shall not be farther from the new work location than the old residence is from the new work location.

PROCESS 1028.4

(No. 155 September 2011)

1. All involuntary transfers must be approved by the Director or his/her designee.
2. The Region Administrative Officer for field units, or Classification and Pay Analyst for Headquarters units shall submit requests for involuntary transfers in writing, with documentation attached to the Chief of Personnel Services. Documentation shall include a justification, in memorandum format, detailing the purpose for the transfer, all options previously explored, proof of the employee's transfer eligibility, current and proposed Position Essential Functions Duties Statements (PO 199s) for the position(s), and current and proposed organizational charts for the affected unit(s).
3. The Chief of Personnel Services will review the transfer request to ensure the transfer complies with the guidelines above and provide a recommendation to the Assistant Deputy Director of Labor and Human Resource Management.
4. If the transfer is approved, an approval memorandum will be sent to the Region Administrative Officer or Headquarter's Administrative Officer, who shall notify the employee in writing of the transfer.

1.) I believe senior management in CALFIRE San Mateo / Santa Cruz including the unit chief and admin officer have failed to follow established Department policy outlining process and notification as required by CALFIRE policy and California Government Code.

2.) I have never received a letter from the Region Administrative Officer or the Headquarters Administrative officer leading me to believe this involuntary geographic transfer has never gone through proper channels.

3.) This transfer is a hardship on me and my family and will do irreparable harm. I ask that it not take place. I am awaiting a response and if I do not hear by the Monday May 21st 2012 I will file a protest with DPA outlining the above items as well as others that I believe have led to the decision of me being transferred. Additionally I intend to explore all options available through the legal system and grievance process. I want you to know I am attempting to handle this issue at the lowest level and hope to receive a response soon. Please feel free to pass this along through the chain of command to Chief Ferreira. Thank you in advance for your consideration.

Ari Delay
Battalion Chief
Coastside Fire Protection District – CAL FIRE
650-740-7250 cell
650-726-5213 office

From: "Ferreira, John" <John.Ferreira@fire.ca.gov>
Subject: Chief Officer temporary interchange
Date: February 12, 2009 2:55:48 PM PST
To: "Sims, John" <John.Sims@fire.ca.gov>, "Cole, Paul" <Paul.Cole@fire.ca.gov>, "Delay, Ari" <Ari.Delay@fire.ca.gov>, "Jalbert, Scotty" <Scotty.Jalbert@fire.ca.gov>
Cc: "Lineberry, Kathleen" <Kathleen.Lineberry@fire.ca.gov>, "Woodill, Steve" <Steve.Woodill@fire.ca.gov>

1 Attachment, 31 KB

As you all know, I've been contemplating some type of "change" to help us overcome some issues that are hampering the full transition with the Coastside FD.

I've determined that temporarily switching some of our Chief Officers around will help us toward that end

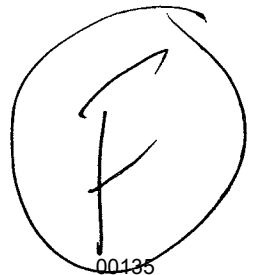
Please review the attached and reply with comments.

I've already briefly mentioned this with most of you.

Paul – I'll be at the Academy tomorrow and, if there's time and energy, can go over it with you there.

John F.

[exchange.doc \(31 KB\)](#)



Memorandum

To: DCs John Sims and Paul Cole
BCs Ari Delay and Scott Jalbert

From: Department of Forestry and Fire Protection
John Ferreira, Unit Chief
San Mateo and Santa Cruz Unit

Subject: Temporary Reassignments
Coastside / Bayside BCs

Date: February 12, 2009

Telephone: (831)335-6700

Attached you'll find my proposal to interchange BCs Delay and Jalbert during March and April.

Please review and respond with comments.

February 12, 2009

Chief Officer Temporary Reassignments
CZU Coastside & Bayside Battalions

The intent of initiating Chief Officer temporary reassignments between the Coast and Bayside battalions is to hasten the inclusion of newly transitioned Coastside Fire District personnel into mainstream CAL FIRE procedures and operations. As personnel in both battalions share commonality in San Mateo County (non-CAL FIRE) operations, the focus of learning and instruction during the period of these assignments will be towards "State" idiosyncrasies as reflected in personnel management, logistics, finance, communications, and other administrative processes. A somewhat "total immersion" can only aid in this endeavour.

This initial phase of this program will commence Sunday, March 1, 2009 and *may* conclude May 18 or before. The first two Chief Officers to participate in this program will be Bayside BC Jalbert and Coastside BC Delay. I ask that Division Chiefs Cole and Sims facilitate necessary schedule changes and minimize any UPOT and other disruptions to employees (I realize that BC Nolan is scheduled for two weeks Union Leave and one week Vacation in March)

Expectations:

BC Jalbert in Coastside – This assignment is meant to maximize the interaction and information exchange between Chiefs Cole and Jalbert. Recognizing that the focus of this assignment is the learning of CAL FIRE/State idiosyncrasies, BC Jalbert has a very strong base of knowledge regarding personnel management (CAL FIRE BU8 MOU, progressive discipline, leave administration, supervision, EEO, hiring, and scheduling). Learning opportunities will also occur regarding San Mateo County Fire operations and administration (Pescadero inclusion in Coastside Battalion), volunteer brigade operations and relationships, CAL FIRE "B" operations and state-wide response system, and the CAL FIRE Automotive PM program and the relationship with the Felton based FEM.. If possible, the schedule could be altered so that BC Jalbert "doubles-up" with BC Cosgrave so that a similar exchange of information can/will occur. Chief Jalbert will also learn specifics regarding Coastside Fire administration and operations particularly the interaction with the District's Board, the District's system of tracking personnel and overtime costs, rescue and tunnel operations. Ancillary to the information exchange, BC Jalbert will also be available to facilitate the enhancement of communications from field personnel to mid-management (DC Cole). To maximize impact, DC Cole would need to include BC Jalbert in much of the day to day management of the District and Battalion. BC Jalbert can assist in the decrease in redundant procedures/forms that may be present in the Coastside District

BC Delay in Bayside – This assignment is meant to maximize the interaction and information exchange between Chiefs Sims and Delay. Recognizing that the focus of this assignment is the learning of CAL FIRE/State idiosyncrasies, Chief Sims has a very strong base of knowledge regarding personnel management (CAL FIRE BU8 MOU, progressive discipline, leave administration, supervision, EEO, hiring, and scheduling). Learning opportunities will also occur regarding San Mateo County Fire operations and administration (Pescadero inclusion in Coastside Battalion), volunteer brigade operations and relationships, CAL FIRE "B" operations and state-wide response system, and the CAL FIRE Automotive PM program and the relationship with the Felton based FEM.. Chief Delay will also learn specifics regarding County Fire Administration and operations particularly the interaction with the County Board of Supervisors and staff. Additionally, Chief Delay will be able to practice supervision skills with a group of subordinates that are more familiar with CAL FIRE procedures and their knowledge and understanding of the system can be drawn from. To maximize impact, DC Sims will need to include BC Delay in much of the day to day management of County Fire and the Battalion.

Expected Outcomes:

It's anticipated that this immersion proposal will hasten the transition of both Chiefs Cole and Delay by increasing their exposure to CAL FIRE by having an immediate mentoring authority.

Success at this level should resolve many of the sniggling issues that continue to impact the full transition of the District and its employees into CAL FIRE.

Success at this level will help develop more appropriate subordinate attitudes towards District management.

Measurement:

The most immediate way of measuring the success of this effort may be the reduced number of contacts between Coastside field staff and CDFFF representatives with the Unit Chief. Although such communication is healthy, it does blur the typical lines of authority and causes some concern.

At least monthly, Chiefs Cole, Sims, Jalbert, Delay, Ferreira, and Lineberry will meet to discuss progress. To that end, I'd like to mark Wednesday, March 25th and Wednesday, April 22nd and Wednesday, May 13th as possible dates to meet. These meetings will provide the group an open forum to assess the value of continuing the length or scope of this program.

Ferreira, John

From: Ferreira, John
Sent: Sunday, February 15, 2009 6:43 PM
To: Paul Cole
Subject: RE: Movement of Delay

Paul - Sorry we didn't get to continue the conversation on Friday. Got a little hectic. Did go down and see Brunton and he announced that he was getting re-married and wants me in the wedding. That threw me for a loop!

I believe that you are in class again next week. I'll be in HMB for the race first thing tomorrow morning.

Regards Ari - Please don't think that I base my decisions merely on inuendo and stories. After 37 years in the business, 19 of them as a Chief Officer, and about 10 of those teaching supervision and management... I can sort of figure things out on my own. And my "sources" just aren't people on the Coast. And this isn't just about people who have gone cross ways with Ari or disagreed with something he has directed. Remember what we discussed when you first promoted Ari. The interview/testing panel didn't feel he was ready to promote. You felt somewhat the same way. This is one way to build Ari up with some more tools to overcome his lack of supervisory experience. I think it will be a real eye opener for him.

We can talk more if you'd like but it is my opinion that this is a strong strategic move to help Ari and to better our services on the Coastside. If successful, we will then extend the opportunity to Dave.

John F.

From: Paul Cole [mailto:PCole@coastsidefire.org]
Sent: Sat 2/14/2009 2:38 PM
To: Ferreira, John
Subject: Movement of Delay

John,

Unfortunately our conversation was interrupted the other day as the signal dropped. To pick up where we left off, I understand you want move Ari because of all the complaints you've been receiving from certain firefighters and captains on the Coastside. I have to tell you I'm not in support of the idea. Complaints, without verification, are just that, unsubstantiated opinions.

I'd like to suggest in lieu of moving Ari, you and I sit down with him and all his detractors to explore the credibility of the what is being said to you. In my experience with some of your sources on the Coast, I'm inclined to support Ari as these same sources have lied to you concerning things I've allegedly said and done as well.

Thanks.
Paul



Ferreira, John

From: Ferreira, John
Sent: Tuesday, February 14, 2012 11:48 AM
To: Jalbert, Scotty
Subject: Re: Help this week

Yes on the dates for the meeting.

We will collaboratively make the decision on the T&D. Would like to interview him together to get everything out on the table. And can we get a replacement?

From: Jalbert, Scotty
Sent: Tuesday, February 14, 2012 09:47 AM
To: Ferreira, John
Subject: RE: Help this week

Chief:

A couple of things:

1. Based on what I see, I can assume we are going forth with the T&D? If so, is the expectation to start at fire season?
2. Are you available on the 27th, 28th, or 29th for the Ari Meeting?

Scott M. Jalbert
Deputy Chief - Operations

CAL FIRE CZU
Santa Cruz County Fire
Pajaro Valley FPD
Ben Lomond Fire Camp
831-335-6701 Office
831-254-1701 Cell
831-335-4052 Fax

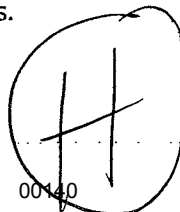
From: Ferreira, John
Sent: Tuesday, February 14, 2012 9:09 AM
To: Cole, Paul; Jalbert, Scotty; Larkin, Ian
Subject: Help this week

Paul, Scott, and Ian

On the conf call this morning I mentioned that a few things popped up over the weekend that I'll need help with this week. I typed this up about 20 minutes ago but then my home computer shut down and I don't know what happened - it may have sent but it doesn't show up in my sent e-mail folder so I'll do it again.

The 1st SMCOUNTY GJury report will be released tomorrow morning so we need to be prepared for questions. Besides that, I have to gather some information but unfortunately cannot disclose why or for whom.

8/1/2012



Paul - as CFR is under the microscope, much of the informatino will need to come from you.... so here's part of the list:

- a) please provide a brief summary of the differences between the State certied rope rescue and what we've adopted in CFR. I know we've done this before but, sorry, I need it again. Also reasoning in support of the the requirement we have would be helpful as well as a rundown of how many CFR asignees have completed the upgrade.
- b) please provide a brief summary of the "gate" incident. I know I can consult the accident report but I'd also like a reiteration of who and where and when this happened. It is now being referred to as the "Ritz Carlton" gate but I don't recall that that's where it happened but could be mistaken. Also a brief rundown of how many times our employees have taken the wrong route to an incident.
- c) employee turnover data. I last prepared a spreadsheet on this about a year ago and am certain I can pull it up but I will need to add what has occurred over the past 18 or so months so please work with Ian and Carla to get the info. Am looking only for those employees assigned to the District, not those that may have been used there to cover for UPOT.
- d) Paul - I need to confirm work schedule. When we last discussed this we agreed that at least 1/2 of your duty days would be spent in CFR and those days would go until late afternoon. Please confirm.
- e) Please confirm the number of business inspections that were completed each year for the past few years.
- f) please confirm the status of the Pre-Plan program. I know that the responsiibility for completing these was assigned to the same crew that also put the new engines in service so please confirm that. Also, are we up and running with the program on the I-Pads.
- g) status of the HMB Volunteer MOU or Handbook
- h) Please recount the damage done to a thermal imaging camera. I believe that this occurred about 18 months ago and was disclosed to the Board so I'll need dates on when those two things happened.
- i) Please confirm when and why the previous to CALFIRE FFs informed the Board that they would no longer be performing surf rescues by going in off the beaches.
- j) Please work with training to determine the training level of employees in the District as they reflect the agreed to requirements in Exhibit E.

Scott and Paul - as I asked on the conf call (Paul - I know you were unable to be on it), but please set up a meeting with BC Delay, me, and the two of you to discuss reassignment.

Scott, Paul, Ian - plese set up a date for the four of us to meet with Training and HFEO Sheaff to discuss T&D.

Ian - Please check why HFEO Abel's hardship transfer has been rescinded. He called this morning and asked me and I knew nothing about it except the recollectin of a conversatin with Chiefs Schori and Holmes a few weeks a go asking whether hardships had to be renewed annually. I left that conversation with the impression that they didn't.

I may have more when my head clears. I appreciate your haste in this regard.

Thank you (and please forgive spelling errors)

JF

STATE OF CALIFORNIA
 DEPARTMENT OF FORESTRY AND FIRE PROTECTION
POSITION ESSENTIAL FUNCTIONS DUTIES STATEMENT
 PO-199 (04/01)

Working Title of Position
 Battalion Chief-Safety Officer / Relief

Division and/or Subdivision
 Northern Region - San Mateo-Santa Cruz Unit

Location of Headquarters
 Felton

Class Title of Position
 Battalion Chief

Position Number
 542-117-9723-013

Effective Date
 08/01/12

INSTRUCTIONS: The Director is required by Government Code Section 19818.12 to report (or to record) "...material changes in the duties of any position in his or her jurisdiction". The Position Essential Functions Duties Statement is used for this purpose. Enter identifying information and effective date at the right. Enter brief description of each of the important duties and responsibilities of the position below. Group related duties in numbered paragraphs and indicate the percentage of total time occupied. Indicate the "essential functions" of the position by placing an asterisk (*) in front of those individual duties you determine to be essential to the job. Discuss the duties with the employee assigned to the position. Both the employee and supervisor sign the document where indicated. The supervisor retains the original document and provides a copy to the employee.

Percentage of Time Required

Effective on the date indicated, the employee assigned to the position identified above performs the following duties and responsibilities.

20%

10%

10%

40%

Under the supervision of the Operations Chief, the Battalion Chief will perform the following duties when responsible for duty battalion coverage:

1. FIRE SUPPRESSION AND EMERGENCY OPERATIONS
 Assumes primary responsibilities for all fire suppression activities; supervises and carries out fire suppression assignments, rescue, medical aid and public assistance calls.
2. ADMINISTRATIVE
 Supervises on duty fire captains, fire apparatus engineers, and volunteer company officers when responsible for duty battalion coverage. Ensures that all movement and approval of reports, finance documents, and other related paper work are completed. Assist the operations and administrative chiefs, and other battalion chiefs with their administrative duties.
3. FACILITIES/EQUIPMENT MAINTENANCE
 Support battalion chiefs, and station captains with the management of maintenance for state and county fire stations and support structures; assist the fire stations and FEMI with the movement of apparatus for maintenance.

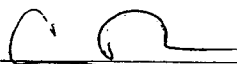
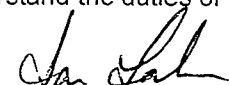
Under the supervision of the Administrative Chief, the Battalion Chief will perform the following:

4. UNIT SAFETY OFFICER
 Will assist the Unit Administrative Chief with the overall Safety program management for the San Mateo Santa Cruz Unit. Conduct program and product evaluation and development in order to provide a safer working environment for the employees, both paid and volunteer, of CAL FIRE San Mateo Santa Cruz Unit. Acts as a program manager to insure compliance with National, State, County and Departmental safety regulations, recommendations and policies. Will ensure that all paid and volunteer facilities are in compliance of CAL FIRE's IIPP Program; Will coordinate the unit fit testing program; and assist unit personnel and supervisor with any safety related issues including, but not limited to item in the HB1700.

*These are the essential functions for this position. Essential functions are those functions that the individual who holds the position must be able to perform unaided or with the assistance of a reasonable accommodation.

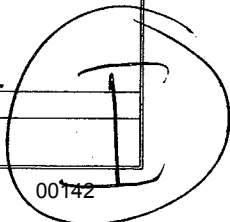
Job qualifications and/or conditions of employment: Required: Completion of S-401 Safety Officer course within 12 months of assuming the duties of the position.

"We have discussed this document in its entirety and understand the duties of this position."

Employee Signature  Date 8/10/2012 Supervisor Signature  Date 8/10/12

Personnel use only Posted to Directory

Initials and date



20%

5. PROFESSIONAL DEVELOPMENT

Will conduct self directed training with the CAL FIRE Hand Books; as directed, will receive orientation on CAL FIRE programs such as: ECC, automotive, law enforcement, resource management, finance, personnel and conservation camps.

Date Completed

Professional Development Plan

1. Locate and visit following stations/facilities: Pajaro Dunes, Pajaro Valley, Corralitos, Burrell, Soquel & Demo Forest, Loma Prieta, Fall Creek/McDermott, Martin, Davenport, Big Creek, Saratoga Summit, Jamison Creek, and Los Cumbres.
2. Conduct an orientation with B1712, B1713, B1714 on division operations
3. Conduct an orientation with B1716 on the Pajaro Valley FPD Contract *JE*
4. Obtain operational knowledge with fire agencies in Santa Cruz County *So. Co JE*
5. Receive an orientation with Santa Cruz FD on their water rescue program
6. Become familiar with the Santa Cruz County Coastal Incident Response Plan (CIRP)
7. Receive an orientation on unit and county response plans
8. Conduct LRA/SRA/MTZ Boundary Orientation in Santa Cruz County *PUPFD JE*
9. Receive an orientation on the ECC
10. Receive an orientation on the State Automotive Program by the FEM
11. Receive an orientation on the Soquel Demo Forest
12. Receive an orientation on state law enforcement and prevention
13. Receive an orientation on resource management
14. Receive an orientation on Ben Lomond Camp with D1706
15. Receive an orientation on unit finance
16. Receive an orientation on unit personnel office
17. Receive an orientation on CAPCOM with B1712

Job qualifications and/or conditions of employment:

"We have discussed this document in its entirety and understand the duties of this position."

CD
 Employee Signature

8/10/2012
 Date

Jan Sal...
 Supervisor Signature

8/10/12
 Date

Personnel use only

Posted to Directory

Initials and date

51

EXHIBIT E
DESCRIPTION OF OTHER SERVICES

Summary of the services to be provided to:
San Mateo County - Coastside Fire Protection District
July 1, 2011 (for LG-1 FY 11/12)

Definitions at end of document.

District Retained Authority

- The District retains authority for establishing policies and developing the budget that determines the operational and administrative services levels for the District.
- The District retains its local identity (use of the name, signage, ICS designation, website, etc).
- The District retains ownership of facilities, apparatus, supplies, tools, and equipment.
- The District establishes and approves the type, range, and level of service provided within the District.
- The District determines the level of funding for operational, administrative, and community services by approval of Schedules "A", Schedule "C" and Exhibit "E" contained in the LG-1.
- The District retains authority to approve new or continued participation in operational agreements (i.e. Mutual Aid/or Automatic aid and membership in JPA's or other cooperative agreements).
- The District retains authority for life and safety code adoption/revision and serves as final authority on approval, denial, or modification of proposals and plans for development.
- The District retains authority to operate a Volunteer Firefighter program.

CAL FIRE General Responsibilities

- CAL FIRE shall provide services deemed necessary by the District to fulfill its operational and administrative mission through an LG-1.
- CAL FIRE shall manage that service delivery within the budget and applicable policies approved by the Board and within CAL FIRE and State Civil Service policies and directives.
- CAL FIRE shall expend budgeted funds as directed by the District.
- CAL FIRE shall be entitled to reimbursement for its actual direct and indirect expenses incurred on behalf of the District per the LG-1.

Executive Management

Fire Chief – CAL FIRE's CZU Unit Chief will be the Chief of the District. The Chief shall perform the following duties and responsibilities:

1. Supervise the District's operations in compliance with Board instructions, adopted policies and legislative mandates;
2. Attend Board meetings;
3. Prepare and present, in conjunction with the District's Finance sub-committee, for approval by the Board, an annual budget for the District;
4. Administer the District's approved budget;
5. Prepare and present, for Board approval, new or amended policies related to operational or administrative matters that are within the jurisdiction of the District;
6. Prepare an annual report in a format approved by the Board;
7. Assure welfare and safety of personnel assigned to the District, and fire District preparedness;
8. Recruit and hire, train, evaluate, recognize, retain and discipline personnel assigned to the District;
9. Assure facility, equipment, and automotive resource suitability and readiness;

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00144

10. Represent the District at the San Mateo County Fire Chiefs' Association meetings and other official functions;
11. Serve as liaison with District Legal Counsel, obtaining legal advice as needed;
12. Attend relevant community and professional events and meetings;
13. Monitor and report to Board on compliance with the terms of this Agreement.

Assistant (Division) Chief – The Assistant Chief shall perform the following duties and responsibilities:

1. Under the direction of CAL FIRE's CZU Unit Chief, plan, direct, and oversee the management, operations, and activities of the District, including strategic planning, organizing and managing the District's administrative, operational, and volunteer resources;
2. Maintain an office at the District headquarters in Half Moon Bay, CA;
3. Attend Board and committee meetings;
4. Manage all District services and activities including fire suppression, prevention, investigation and emergency medical response;
5. Assist in recommending developing, implementing and managing the District's goals, objectives, work standards, policies and priorities;
6. Administer adopted policies and procedures;
7. Plan, direct and coordinate the District's work plan; assign projects and programmatic areas of responsibility; review and evaluate work methods and procedures; work with staff to resolve issues;
8. Direct disaster preparedness and other programs to minimize the loss of life and property within the District;
9. Supervise, train, lead, and evaluate personnel assigned to the District and CZU Coastside Battalion; review work, recommend discipline, adverse action, and conduct performance evaluations pursuant to the standards established by Exhibit E;
10. Oversee and participate in the development and administration of the District's budget; monitor and forecast staffing, equipment, material, and supply needs; monitor and implement budgetary adjustments as appropriate and necessary;
11. In conjunction with the District's Finance Committee, monitor the effects of budget increases or reductions;
12. In conjunction with the District's Finance Committee, educate the community regarding the potential for changes in services;
13. Apply for, monitor and report to the Board on grant applications to purchase equipment/apparatus, and fund facilities maintenance and improvements;
14. Recommend and confer with the Board regarding proposed decreases, expansions, or upgrades in services and/or changes in laws and policies;
15. Provide staff support to the Board in preparation for and during its meetings;
16. Be the initial point of contact for Board members with questions or concerns regarding emergency services, fire protection, planning and code enforcement, vegetation management, personnel, budget, fleet, equipment, facilities, and the community;
17. Be the first level of resolution in personnel grievances and complaints;
18. Respond to emergency incidents in place of, or in addition to, Battalion Chiefs, if necessary, and assume command at complex incidents as appropriate;
19. Liaise with staff or representatives of City of Half Moon Bay, Montara, El Granada, Princeton, Miramar, Pescadero, San Gregorio, Moss Beach, and San Mateo County;
20. Assure continuance of appropriate emergency communications and participation in the County Chiefs Greater Alarm, ALS deployment, and mutual aid plans;
21. Work with Fire NET 6 and Public Safety Communications (PSC) to assure a smooth transition to new radio infrastructure;
22. Verify the resolution of radio use and other communications devices' complications;
23. Coordinate with the CZU Administrative Division Chief in all financial and personnel matters and assist with LG-1 preparation and monitoring;
24. Coordinate the recruitment, selection, and retention of volunteer firefighters;
25. Coordinate and participate in the selection and promotion of administrative and suppression personnel;
26. Supervise Battalion Chief(s) assigned to the CZU Coastside Battalion;

27. Coordinate with the District's Fire Prevention Battalion Chief regarding scheduling and assigning public safety education (schools, organizations, etc) and other community public relations efforts;
28. In conjunction with the Chief of the District, represent the District at the San Mateo County Fire Chief's Association and other official functions;
29. Coordinate Operations with San Mateo County Fire and State funded resources;
30. Coordinate Operations with other San Mateo County emergency service providers;
31. Represent the District at relevant professional and community meetings and events;
32. Develop a facilities repair and replacement budget and prioritize necessary repairs and improvements to facilities and monitor repairs by inclusion in the quarterly progress report;
33. Present a policy for approval by the Facilities Committee regarding the standards for assessing District fire stations and real property;
34. Inspect and report annually to the Facilities Committee on the condition of all District facilities and include results in the quarterly progress report;
35. In conjunction with CZU staff, assure personnel's use of the CAL FIRE Physical Fitness Program (CAL FIRE HB 1800) – see also section on Station / Engine staffing and use regards Respiratory Protection Program and CAL FIRE 4039 (CICCS) Fitness Standards;
36. Provide the Board with information regarding injury/illness and OSHA Summary of Work Related Injuries;
37. Conduct required District, Battalion, or Division safety committee meetings;
38. Prepare and update, as needed, an IIPP for District facilities;
39. Strive to achieve the goal of less than one (1) injury per three hundred (300) incidents (.35%);
40. Develop a Customer Service Survey for approval by the Board which calls for collecting information from every tenth "customer" and, thereafter, provide an annual survey report for the Board with a goal of 95% of "good" or better customer service ratings;
41. Research and develop an electronic Pre-Incident Plan program and determine time line for completion of such plan for all target hazards and commercial/public occupancies (approximately eight hundred six (806));
42. In conjunction with District Prevention Bureau staff, reevaluate the fee schedule to assure all costs are correct and annually prepare a report to evaluate Revenue/Expenses for Board review and action;
43. Develop, for Board review, options for water supply during a disaster including saltwater supply and water tenders;
44. Assure listing of water sources in engine response/run books;
45. With San Mateo County OES, participate in the Earthquake & Tsunami Emergency Response Plans and assure all District personnel are familiar with their use;
46. In conjunction with staff, develop a plan for District operations during and following an earthquake or tsunami;
47. In conjunction with County OES and other coastal communities, develop a secondary EOC for the coastal area;
48. Monitor District established Engine "Chute" or "Turnout" Time and include date in Monthly Chief's Report;
49. With Board's Volunteer Firefighter program liaison and Volunteer Chief, develop policy and standards for volunteers;
50. Monitor and update the District's Website;
51. In conjunction with CZU and District Fire Prevention and control staff, develop and deliver annually at least one (1) Fire Prevention/Safety presentation at each of the seven (7) schools and nine (9) preschools in the District;
52. Develop and report quarterly to the Board on a "work plan" that includes the measurable portions of LG-1 Exhibit E and determine a process that uses the work plan to evaluate the District's/CAL FIRE accomplishment of identified annual goals;
53. In conjunction with the District's Water Supply Committee, coordinate efforts to improve the water supply available for firefighting purposes, including provisions for flow-testing;
54. Identify and report to the Board on options for the sharing of services with other agencies for special operations such as the Air Units, Water Tenders, Wildland resources, etc.

Battalion Chiefs (Operations) – Two (2) Battalion Chiefs shall be assigned 3-day (72 hr.) work shifts. The Battalion Chiefs shall perform the following duties and responsibilities:

1. Under the direction of the Assistant (Division) Chief, provide emergency response availability for the San Mateo County coastal areas;
2. Assign, evaluate and supervise subordinate personnel;
3. Provide administrative assistance and support to the Assistant (Division) Chief by managing and participating in administrative tasks, programs, and projects (such as Training, Prevention, Facilities, Automotive, CERT, Rescue, etc) as assigned by the Assistant (Division) Chief;
4. Assign program activities to subordinate personnel including training, facility/equipment maintenance, and communications related to programs and services;
5. Manage and participate in the development and implementation of goals, objectives, policies, and priorities for assigned programs and services;
6. Recommend proposed changes to and administer adopted policies and procedures;
7. Monitor and evaluate the efficiency/effectiveness of service delivery methods/procedures and recommend appropriate service/staffing levels;
8. Communicate, to the Chief and/or Assistant Chief, potential or current problems and recommended solutions;
9. Display professional constructive demeanor at all times;
10. Prioritize, assign, supervise and review the work of company officers; prepare performance evaluations and individual development plans; assist employee in correcting deficiencies; seek informal resolution to grievances and performance issues; and recommend necessary disciplinary actions;
11. Coordinate activities with other Battalion Chiefs to achieve consistency throughout the District and CAL FIRE organization;
12. Assume command at emergency incidents that are beyond the ability of engine company personnel to manage;
13. Monitor personnel's compliance with State, District, Unit, ALS JPA, MOU, OSHA, and other established and applicable procedures and regulations;
14. Communicate the District's policies and procedures to all subordinate personnel;
15. Immediately respond to emergency incidents within the District/Coastside Battalion and outside the District as identified in the County Chiefs Response Plan or CAL EMA/County Operational Area agreement;
16. Immediately respond as directed by the Unit Chief in support of State Responsibility incidents or activities (note: State's use of District Employees in such cases, creating a need for backfill, will be reimbursed to the District in the invoicing process or filled behind by other similarly qualified employees).

CAL FIRE Funded Battalion Chief – One (1) CAL FIRE funded Battalion Chief shall be assigned to the coastal area and will be supervised by the Assistant (Division) Chief. It is the intent of CZU that this individual be included in all District operations as enumerated above for Battalion Chiefs (Operations).

Relief Battalion Chiefs – Battalion coverage shall primarily be provided by District Battalion Chiefs and the CAL FIRE Coastal Battalion Chief. However, as necessary, CAL FIRE State funded or San Mateo County Fire Battalion Chiefs may be assigned to provide emergency response coverage in the District. Similarly, District Battalion Chiefs may be assigned to provide emergency response to other parts of San Mateo County or CZU. If no other "on-duty" BCs are available, then District Unplanned Overtime may be used to provide coverage. If the District funded Battalion Chief's absence is due to an assignment for the benefit of the State (emergency response or other), then the accrued overtime will be charged to the State or other CZU Program Cost Account.

Emergency Response – Incident Command

Incident Command – CAL FIRE shall arrange for or provide all District personnel with training and certification for ICS positions. At a minimum:

1. Battalion Chiefs shall be trained and certified to the Type II, Operations Section Chief Level;

2. Fire Captains shall be trained and certified to the Division/Group Supervisor and Strike Team Leader /Task Force Leader level;
3. Chief and Company Officers shall be guided towards one other ICS General Staff function (i.e. Planning, Finance, or Logistics) to receive additional training and certification;
4. Selected personnel may be trained to Command Staff functions (Safety, Information, or Liaison Officers) and may serve on Incident Command Teams;
5. At either their request or at the District's recommendation, other government leaders or employees in the District and communities within the District shall be provided SEMS and NIMS mandated training regards emergency management;
6. At either their request or at the District's recommendation, government leaders in the District and communities within the District shall be provided appropriate ICS training regards emergency management;
7. Engine response times shall be in compliance with the standards set by the SMCO EMSA;
8. Engine Chute Time (NFPA Turnout Time) shall be within NFPA Guidelines;
9. All fire control personnel assigned to the District shall be trained in ICS 100, 200, and NIMS 700 within one (1) year of assignment, and trained in ICS 300 within three (3) years of assignment;
10. All non-fire control personnel assigned to the District shall be trained to ICS 100, 200, and NIMS 700 within two (2) years of assignment;
11. Incident action plans shall be developed and reviewed annually, addressing special events within the District and their impact on responses (i.e. 4th of July, Pumpkin Festival. Dream Machines, Night of Lights, Maverick's, etc).

Station / Engine Staffing and Use

1. Personnel assigned to the District shall be stationed at the three (3) existing District stations;
2. Personnel assigned to any District company/station shall, within twelve (12) months, initiate and successfully complete the following operational taskbooks as developed by the staff; Equipment/Apparatus Operations, Cliff Rescue, Water Rescue and Area Familiarization. Overtime personnel must have initiated the above mentioned task books and received orientation training prior to being assigned to work on a District engine company;
3. Each of the three (3) engine companies shall be staffed on a daily basis by at least one (1) paramedic with the necessary equipment to provide ALS service consistent with San Mateo County EMS, ALS JPA, and District protocols and policies;
4. Engines/Stations shall normally be staffed twenty-four (24) hours per day, seven (7) days per week with fully qualified personnel with a minimum daily staffing of a fire officer and two (2) FAEs. The fire officer or one (1) of the FAE's shall be a paramedic, exceptions shall be reported to the Board in the Monthly Chief's Report;
5. Engines may be "dispatched" outside the District;
 - a. As part of a County-wide or Multi-company training opportunity
 - b. As part of the Statewide Mutual Aid Plan
 - c. As part of the ALS JPA or County Chief's Move and Cover plan.

In addition to emergency responses, engine companies and personnel shall be responsible to:

1. Maintain skill and competency in the following District service disciplines: Rope Rescue, Water Rescue, Confined Space Rescue and EMS. Skill sets and competency levels shall be developed and maintained in accordance with District established standards;
2. Maintain physical fitness in compliance with CAL FIRE Respiratory Protection Program protocols and CDF 4039 (CICCS) fitness standards;
3. Conduct annual individual and company performance evaluations to include suppression, rescue, emergency medical operations and District familiarization;
4. Conduct County-wide and in-house training and drilling of engine companies and volunteers or reserves;
5. Conduct routine vehicle and station maintenance;
6. Conduct company fire safety inspections and pre-plans of commercial and or residential occupancies;

7. Conduct school safety and fire prevention and education programs;
8. Make presentations to community groups;
9. Perform special assignments and other duties approved and directed by the duty Battalion Chief;
10. Perform community service activities as approved by the Chief;
11. Maintain the established District Daily Operational Priorities;
12. Upon the development of the District Pre Incident Plan program and selection of software for electronic creation, distribution, and storage of such plan, complete forty-two (42) pre-incident plans annually; six (6) per assigned shift module per year starting with State Regulated Occupancies and continue until all covered occupancies are addressed;
13. At the direction of District's Fire Prevention Chief and along with other available trained staff, annually inspect and perform simple maintenance on all fire hydrants in the District and document activities to assure that the hydrants are adequately marked and in good working order.

Engine Company Relief – Personnel beyond the required twenty-one (21) needed to staff the three (3) engine companies shall be designated as “relief” personnel to provide coverage for engine personnel who are utilizing leave credits or participating in training opportunities and special assignments. All relief personnel shall be expected to perform the same functions and be trained to the same standards as those identified for engine company personnel above, Station/Engine Staffing and Use, #2. When not assigned to “relief” duties, personnel may provide added staffing to engines (i.e. 4th person), other resources (Truck or Rescue squad), or special projects.

Based on availability, qualified CZU employees from other programs may provide engine coverage due to District assigned personnel absences or assignments to tasks/training. Similarly, District assigned personnel may be used in other CZU programs. The impact of this sharing of positions shall be reviewed annually to assure equity amongst CZU cooperative programs.

In cases where no on duty personnel are available to cover District personnel absences, then the Local 2881 MOU provisions for the rotation of unplanned overtime shall be used.

Unplanned Overtime

1. Unplanned Overtime caused by the State's mission will be charged to the State;
2. CAL FIRE shall report monthly to the Board on unplanned overtime costs. This information shall also be made available quarterly in the billing/invoice package provided to the Board;
3. CAL FIRE shall take every opportunity to reduce unplanned overtime.

Volunteer Fire Company – CAL FIRE recognizes the contribution that the District's Volunteer Firefighters make to the fire service – both by adding additional resources at a nominal cost and by providing a recruiting pool for new hires. CAL FIRE shall support the District's program to the same standard as other CZU companies and consistent with District policies. Costs for insurance, stipends, and personal protective equipment shall be included in the District budget. In addition to emergency and support responses, volunteers may be responsible for;

1. County-wide and in-house training and drilling;
2. School safety, fire prevention, and education programs;
3. Presentations to community groups;
4. Community service activities;
5. Special assignments approved and directed by the duty Battalion Chief.

Surf/Technical/Tunnel/Confined Space Operations

Both the San Mateo County Fire Department and the District have an interest in developing and maintaining surf, cliff, swift water, and other technical rescue programs.

These shared needs shall be met through a functional consolidation between District, San Mateo County Fire, and State funded resources to incorporate similar training, equipment, and response requirements of these disciplines. All training, equipment and procedures utilized shall be in accordance with existing District or other approved performance standards and service levels.

Water Rescue – The District shall continue to provide water rescue services in conjunction with the San Mateo County Harbor District, State Parks, and San Mateo County Sheriff's Office personnel.

Cliff Rescue

1. Guidelines, policies, and a training program for Cliff Rescue shall be maintained;
2. Sixty percent (60%) of on-duty personnel will be trained to the level described in the above mentioned program;
3. On a daily basis, one (1) "Rescue Group Supervisor", one (1) "Edge", two (2) "over the side", one (1) "rigger", and one (1) Technical Safety Officer shall be available in the Coastside Battalion.

Tunnel/Confined Space

1. District shall utilize local and Countywide resources for rescues within permit required confined spaces;
2. All District personnel shall be trained to a confined space awareness level as established by the California State Fire Marshal;
3. An Incident Action Plan shall be maintained documenting response procedures for incidents occurring in the Devil's Slide Tunnel.

Emergency Medical Services

All employees assigned to District engine companies shall be certified at the EMTI level or higher and, as such, capable of providing BLS services. Line staff shall participate in community CPR and other EMS training as directed and approved by the Board.

ALS/EMS Coordinator – The District's ALS/EMS coordinator (currently provided via in kind service by the San Mateo County Fire Department in recognition of the use of the District's current ALS training provider) shall:

1. Assure the training of all staff (clerical, automotive, etc) in CPR and Basic First Aid;
2. Assure the training of all District Volunteers to the EMR level as required by, and more specifically enumerated in, the District's Volunteer Program Policies and Procedures;
3. Coordinate with District Volunteers who are desirous of obtaining EMT certification, utilizing District funds for tuition, supplies, etc.;
4. Assure that four (4) community CPR and/or First Aid classes are conducted annually;
5. Monitor response exception reports and assure compliance with ALS JPA and County Fire Chief's standards;
6. Coordinate the District's relationship with CMERT and integrate CMERT into District disaster preparedness systems and training drills;
7. Monitor and report to Board on District's compliance with County EMS Exposure Control Plan (HIN1, etc);
8. Serve as the primary liaison for ongoing clinical oversight, quality improvement, education, and daily operational EMS issues;
9. Serve as primary point of contact with San Mateo County EMS regarding medical response issues.

Advanced Life Support Engines

1. Each of the District's three (3) engine companies shall be staffed on a daily basis by at least one (1) paramedic with the necessary equipment to provide ALS service consistent with San Mateo County EMS, ALS JPA, and District protocols and policies;
2. Funds for ALS supplies, equipment and training costs shall be established by the Board in the District yearly budget;
3. In conjunction with the Board Liaison, CAL FIRE will represent the District with the ALS JPA;

4. CAL FIRE will strive to maintain a minimum force of four (4) ALS qualified personnel for each fire station engine company (for a total of twelve (12) for the three (3) stations) and recommends that the District exceed this amount whenever practical.

General Administration – Administrative Services

Assistant Chief, Administration – The CZU Administrative Division Chief shall provide the following:

1. Contract preparation and compliance review;
2. Accounting and invoicing as required by Schedule A and Schedule C;
3. Personnel hiring and management;
4. Coordination of District business with PERS and insurance carriers;
5. Budget preparation and management;
6. Financial oversight;
7. Recommendations to the Board on Fee Schedules changes;
8. Adverse action processing.

Human Resource Management & Personnel – CAL FIRE Unit Personnel Office (Personnel Specialist II) shall, under the direction of the Unit Administrative Chief:

1. Provide all human resources services for fulltime personnel including recruitment, appointment, development, advancement, labor relations, discipline, performance evaluation and workers compensation injury management;
2. Collective Bargaining services are provided utilizing statewide resources and this cost is included in the LG-1 Administrative Charge;
3. The District Volunteer Firefighters are not covered by CAL FIRE's workers compensation insurance but shall be managed by CAL FIRE.

Administrative Staff – District administrative staff, consisting of one (1) Administrative Assistant and one (1) Administrative Secretary as identified in Schedule "A", shall:

1. Assist the CAL FIRE Administrative Division Chief and the District Division Chief with the preparation and administration of the District's budget;
2. Provide clerical support to the Board and staff in preparing agendas for public meetings, public notices, reports, and other board related matters, including elections;
3. Provide information to the public;
4. Continue to perform functions previously performed by District administrative staff and employees.

In addition to the above-referenced tasks, District administrative staff shall also be trained to perform the following human resources functions, tasks and working at the direction of the Unit Personnel Office:

1. Recruiting, testing, and hiring of personnel;
2. Monthly timekeeping, payroll, overtime, and other personnel payroll services ;
3. Driver's Licensing, Respiratory Protection, and Personnel Medical clearance;
4. Substance abuse testing, worker's compensation for injury management;
5. Return to work coordination;
6. Administration of payroll, time reporting, and health care benefits for assigned personnel, volunteers and Board;
7. IIPP administration;
8. Grievance/complaint review and processing.

Purchasing and Supplies – Review District policies and practices of purchasing and, with the Board's approval, have them mirror those used by CAL FIRE to the extent provided by law. CAL FIRE will coordinate and consolidate purchases with State and San Mateo County Fire when possible to maximize efficient use of funds through cooperative purchasing. CAL FIRE Service Center warehouse/procurement staff will coordinate consolidated purchases at no charge to the District.

Facilities, Equipment and Vehicles

Facilities and Equipment

1. Ownership of all facilities and equipment will be retained by the District;
2. Routine maintenance of facilities and equipment will be accomplished by station personnel at the direction of the company officer and will be managed by the Division Chief and Battalion Chiefs;
3. CAL FIRE shall be included as an "additional insured" on District Insurance for general liability and automotive policies;
4. Facilities and equipment maintenance costs shall not exceed those listed in the proposed and adopted District budget;
5. A Station and Equipment replacement fund shall be available for use as directed by the Board;
6. Facilities and fire equipment owned by the District shall be made available for use by CAL FIRE at no charge to the State, when CAL FIRE is providing Board approved emergency services;
7. CAL FIRE shall inform and obtain Board approval for all necessary repairs to either the facilities or equipment when the cost exceeds \$3,000 and include such expenditures in the Chief's Monthly Report;
8. With Board approval, CAL FIRE may include CAL FIRE identification in addition to existing District identification on facilities.

Vehicles

1. Ownership of all vehicles will be retained by the District;
2. Routine preventive automotive maintenance will be accomplished by District field fire station staff and as described in the CAL FIRE automotive handbook;
3. The CAL FIRE Fleet Manager will oversee the automotive program. The existing District Mechanic, as described in the District Salary Schedule, will continue providing local services;
4. The established vehicle replacement fund shall be used for engine and vehicle purposes;
5. Vehicles will be available for the use of CAL FIRE in providing Board approved emergency services at no charge to the State;
6. CAL FIRE shall be included as an additional insured on District vehicle insurance policies;
7. CAL FIRE shall inform the Board of necessary repairs to vehicles when the cost exceeds \$3,000 and include such expenditures in the Chief's Monthly Report;
8. CAL FIRE shall provide design assistance and concurrence as new vehicles are considered;
9. With Board approval, CAL FIRE may include some CAL FIRE identification in addition to existing District identification on fire apparatus and equipment;
10. The District Mechanic may have full use of the tools, facilities, and equipment contained in the two (2) CAL FIRE automotive shops;
11. CAL FIRE or San Mateo County Fire automotive staff may be used to design or repair District equipment, similarly, District automotive staff may be used to design or repair CAL FIRE or County Fire equipment.

Fire Prevention/Code Enforcement

The District's Fire Marshal shall perform the following duties and responsibilities:

1. Coordinate Fire Prevention Bureau activities with other programs within the District;
2. Review development and construction activities that affect the District, including plan checks of building construction, fire alarm systems, fire sprinkler and other protection systems;
3. Inspect, or direct inspection of all places where fire hazards may exist including difficult and complicated occupancies; enforce state and local laws, ordinances and regulations pertaining to the prevention and control of fire, the protection of life and property from fire, explosion or panic;
4. Meet with architects, engineers, contractors and others involved in development and construction activities, which may affect the District's fire prevention program;
5. Oversee and participate in the management of fire scene cause and origin investigations;

6. Oversee the District's Weed Abatement Program;
7. Oversee the District's engine company inspection program;
8. Oversee the District's Public Education and Public Information Programs;
9. Investigate complaints, recommend corrective action where needed and follow up to see that hazards have been eliminated;
10. Assure proposed construction conforms with the adopted building and fire codes applicable within the District;
11. Align the current codes to local, county and/or state standards;
12. Assess appropriate modifications to the codes and present them to the Board for adoption; as appropriate;
13. Present requested variances to the Board for their approval;
14. Prepare necessary and appropriate reports;
15. Direct the training and workload of the Fire Inspector assigned to the District;
16. Conduct subdivision reviews;
17. Represent the District at Planning Commissions meetings as appropriate;
18. Perform other duties as assigned by Assistant (Division) Chief, Operations;
19. Determine inspection schedule for existing commercial and public occupancies;
20. Maintain a list of occupancies requiring annual, biannual or tri-annual inspections and monitors District progress in completing such inspections (list to be considered for pre-incident plan inclusion);
21. Maintain a training/reinforcement program on commercial and hazard occupancy inspections to be delivered to engine personnel and/or District inspectors;
22. In conjunction with engine companies and other staff, conduct annual inspections of approximately two hundred fifty-five (255) occupancies of the following type: A-1 (Assembly uses >50, fixed seating), A2 (Assembly uses >50 –Restaurants), A3 (Assembly uses >50, worship, recreation, and amusement), E1 (Educational), E2 (Educational), H (high hazard occupancies), I1.1, I2, I3, I4 (Institutional Group), R1 (Transient Residential), R2 (Residential >2 dwelling units), R2.2, and R2.2.1 (24 hr residential care group);
23. In conjunction with engine companies and other staff, conduct and inspect fifty percent (50%) of the following types of occupancies: annually B (offices, professional), F (Factory and Industrial – moderate or light hazard), M, M3 (Mercantile Group), R3 (Residential care less than 24 hours), S1, S3 (Storage group), and U (Miscellaneous group);
24. Assure completion within fifteen (15) working days, following receipt of fees, of at least ninety percent (90%) of all Development Review, New Construction, and Tenant Improvement Plans;
25. Evaluate and propose amendments to District's Automatic Sprinkler and Extinguishing System ordinance to assure compliance with State Code;
26. Prepare and present to Board for adoption, current State adopted/proposed Fire Code amendments;
27. Develop policy for plan checking activities;
28. Develop fire hydrant inspection maintenance protocol and documentation procedure to assure line staff are proficient in performing such inspections;
29. Monitor hydrant inspection progress to assure that all hydrants are inspected annually and that the workload is distributed evenly amongst the District's three (3) companies and other available staff;
30. In conjunction with the District's Division Chief and in collaboration with the various water providers in the District, develop a Fire-Flow testing program that has minimal impact to capacity and customer use;
31. Propose revisions to the District's codes and standards if needed to appropriately address the wildland urban interface areas of the District.

Inspector – The Inspector shall:

1. Be trained and assigned to perform the functions of the District's Fire Prevention Inspector/Planner, under the direction of the District Fire Marshal;
2. Coordinate activities with other District personnel and San Mateo County Fire Prevention Bureau staff;
3. Coordinate the activities of engine companies to assist with fire prevention programs;
4. Review plans for compliance with District's ordinances and other codes;

5. Inspect projects;
6. Work with project proposers to assure compliance;
7. Conduct occupancy inspections of public occupancies;
8. Perform special event planning and inspections;
9. Perform other typical fire prevention and fire protection planning duties.

Fire Cause and Arson Investigation

CAL FIRE Assistant Chief – Resource Management and Fire Prevention Division – CZU CAL FIRE Division Chief shall have oversight of the Fire Cause and Investigation needs of the District. Activities will be performed within District’s policies, statewide CAL FIRE policies and standards and coordinated with the State Fire Marshal’s Office and San Mateo District Attorney’s Office.

Preliminary Fire Cause Investigation – All fire station and line personnel shall be trained to provide Preliminary Fire Cause Investigation and the process for reporting this information.

CAL FIRE Fire Prevention and Investigation Officers –

1. CAL FIRE Fire Prevention Bureau Staff shall coordinate cause analysis of fires occurring in the District. CAL FIRE fire investigators are Peace Officers certified by the P.O.S.T. program;
2. In the instances where a greater than preliminary cause investigation of a specific incident is warranted, existing CZU Fire Prevention/Law Enforcement staff may be assigned to assist the District with the investigation and, if applicable, prosecution;
3. CZU shall provide on-duty personnel at no charge to the District, but in the instance where work must be performed beyond the normal duty-hours of CZU staff, then actual overtime shall be charged to the District. All wildland fires occurring in the SRA portions of the District will continue to be investigated at no charge to the District;
4. CAL FIRE shall assist the District in the preparation of applicable Criminal and Civil prosecutions;
5. CAL FIRE shall initiate a “cost collection” policy and program to provide for the reimbursement of operating costs directly resulting from an identified negligent party’s actions;
6. CAL FIRE Fire Prevention staff shall assist personnel assigned to the District in preparing an annual “Pre-Ignition” Management Plan to identify patterns or anomalies in expected fire cause patterns that allow focus on specific preventative measures to mitigate the fire causes.

Hazard Reduction and Vegetation Management

CAL FIRE Assistant Chief – Resource Management and Fire Prevention Division – This CZU Division Chief shall have oversight of all resource management, hazard fuel reduction, and vegetation management programs within the District. Hazard fuel reduction includes applicable local weed abatement, hazard reduction, fuel break design and maintenance,

CAL FIRE Forester – Vegetation Management Program (VMP) Coordinator – The CZU VMP coordinator shall:

1. Work with District staff to identify areas where it would be advantageous to provide fire defense improvements through vegetation modification or removal;
2. Work with District staff or private/public landowners in preparing grant applications for the VMP;
3. Work with CZU staff (Camp Ben Lomond) to provide work-crews to accomplish vegetation management.

Hazard Reduction and Weed Abatement programs-CAL FIRE shall administer and conduct appropriate hazard reduction programs within the District as authorized by state law or local District ordinance. This shall include:

1. Providing oversight to continue the District’s Weed Abatement Program;

2. In conjunction with CZU staff, developing a program wherein five hundred (500) defensible space inspections (CAL FIRE LE100) are completed annually within the District's SRA to insure that all structures are surrounded by one hundred feet (100') of cleared defensible space. The estimated total inspections required within the District are one thousand five hundred (1,500).

Public Education and Community Relations

District Fire Marshal shall:

1. Coordinate with the CZU Fire Prevention Battalion to schedule activities and garner materials for presentations to schools, community groups and organizations, and community events;
2. Assure that engine companies and other available personnel participate in fire prevention, safety, and education presentations;
3. Coordinate I-403, ICS Information Officer, training for District Battalion Chiefs and other qualified candidates;
4. In conjunction with CZU and District Fire Prevention and fire control staff, develop and present annually at least four (4) fire prevention, safety, preparedness, or other topical matter presentations for different District community groups (i.e., service organizations, care facilities, govt. entities, etc).

Fire Safe Council

District and CAL FIRE, as active members and supporters of Fire Safe Councils, recognize the values inherent in establishing cooperative relationships between government and private agencies as well as community groups. San Mateo County's Fire Safe Council includes CAL FIRE, the San Mateo County Fire Department, the Woodside Fire Protection District, the Belmont-San Carlos Fire Department, CA State Parks, San Mateo County Parks, MPROSD, Stanford University, San Francisco Water, Pacific Gas & Electric, Bay Area Air Quality Management District, Central County Fire Department, Millbrae Fire Department, National Park Service, Redwood City Fire Department, San Bruno Fire Department, San Mateo County SO, South San Francisco Fire Department, and the San Mateo Fire Department. District's Fire Marshal shall represent the District in this program through the North Division Operations Chief.

Community Emergency Response Team (CERT)

The value of community involvement in District activities is well documented. Successful CERT programs allow for broader application of emergency preparedness, dissemination of prevention information and services. CERT also provides a trained group to supplement the efforts of paid staff. CAL FIRE shall:

1. Coordinate with local law enforcement to maintain a CERT program in Half Moon Bay;
2. Investigate the incorporation of CERT with its Volunteers-In-Prevention program to assist in the educational element of its Fire Prevention program;
3. Develop a policy which defines the District's relationship with CERT to integrate the group into District disaster preparedness systems and training drills;
4. Investigate the feasibility and sustainability of developing CERT proximal to District Stations 41 and 44.

Dispatch and Communications

The District is party to an Agreement with San Mateo County Communications and maintains membership in the FireNET6 JPA. The District's current use and ownership of radio frequencies will continue, along with current dispatch procedures and protocols.

Training

CAL FIRE, the San Mateo County Fire Department and the Santa Cruz County Fire Department have an established Training Battalion that provides and facilitates in-service/company drills, and Unit-Wide / Regional /

Statewide training programs for career and volunteer staff. The costs for training battalion personnel and materials are shared by the participating agencies.

Clerical support for the Training Battalion is shared by participating agencies. District shall be responsible for 3/8ths of the costs of one (1) Clerical assigned to the Training Battalion.

The District's Training Officer (Fire Captain) will oversee and coordinate the day to day training programs within the District. This position will be responsible for assuring that training standards are maintained for personnel (volunteer, administrative, and career fire fighters). This position will be supervised by the CZU Training Battalion Chief who will coordinate activities and participate with other San Mateo County Training Officers to:

1. Develop a program to train personnel on the preparation of pre-incident plans;
2. Integrate review and use of pre-incident plans into District training;
3. Assure all fire control staff has attended a live EVOC course;
4. Maintain a District familiarization (geographical) program to be delivered to all assigned personnel;
5. Assure that all assigned employees shall receive Harassment, Discrimination and Retaliation Training;
6. Assure that all assigned fire control personnel shall meet or exceed the training requirements for NWCG FFI;
7. Assure that all assigned fire control personnel shall meet or exceed the training requirements for NWCG Engine Boss;
8. All assigned BCs shall meet or exceed the training requirements for NWCG Strike Team Leader (STL) / Task Force Leader (TFL). The Unit Chief may certify individuals as STL /TFL upon completion of additional requirements as outlined in CAL FIRE 4039;
9. All Volunteer Firefighters shall meet or exceed the training requirements for NWCG S-130 and S-190;
10. All fire control personnel assigned to the District and volunteers shall meet or exceed the training requirements of NWCG RT-130;
11. All Fire Control personnel assigned to the District and volunteers shall meet or exceed the training requirements for Hazardous Materials – First Responder Operational;
12. All Fire Control personnel assigned to the District and volunteers shall meet or exceed the training requirements for Confined Space – Awareness;
13. Develop a Truck/Quint Operator Policy, training curriculum and guide which shall be delivered to all operators of the District's Truck/Quint within twelve (12) months of executing this Agreement;
14. Investigate options for and report to Board on feasibility of sending District employees to an established Truck Academy;
15. Assure that all District Volunteer Firefighters meet or exceed the training standards for State Fire Marshal FFI within three (3) years of execution of this Agreement or appointment into the volunteer firefighter program;

The amount of time required to meet this commitment is pending a training review of existing volunteers and assessment of the needed training required for this increased level of certification.

16. Coordinate participation with County OES and other agencies that conduct training events or participate in training events that incorporate CERT, CMERT, volunteers, EOC, Law Enforcement, and District assigned personnel;
17. Monitor and report to Board on participation of all appropriate personnel (including staff, Board, fire control) in ethics training required by State law;
18. Investigate options for and report to Board on feasibility of procurement of a computer simulator for the delivery of tactical and strategic training.

Definitions

“ALS” or “Paramedic” means advanced life support services.

“ALS JPA” means Advanced Life Support Joint Powers Authority.

“BLS” means basic life support services.

“Board” means the elected Board of Directors for the Coastside Fire Protection District.

“Cal EMA” means California Emergency Management Agency.

“CAL FIRE” means the California Department of Forestry and Fire Protection.

“CERT” means Community Emergency Response Team.

“CICCS” means California Incident Command and Certification System.

“CMERT” means Coastside Medical Emergency Response Team.

“Coastside Battalion” means the geographic area west of Highway 35 from Devil’s Slide to the Santa Cruz County line.

“CZU” means San Mateo and Santa Cruz unit of CAL FIRE.

“District” means the Coastside Fire Protection District.

“EMR” means Emergency Medical Responder.

“EMS” means Emergency Medical Services.

“EMSA” means San Mateo County Emergency Medical Services Agency.

“EMT” means Emergency Medical Technician.

“EOC” means Emergency Operations Center.

“EVOC” means Emergency Vehicle Operations Course, Exhibit E.

“Exhibit E” means summary of services contained in Cooperative Agreement between the District and CAL FIRE (LG-1).

“FAE” means Fire Apparatus Engineer.

“Fire NET 6” means the joint powers authority comprised of Coastside Fire Protection District, Menlo Park Fire Protection District, Woodside Fire Protection District, Belmont-San Carlos Fire Department, Redwood City Fire Department and San Mateo County Fire.

“ICS” means Incident Command System.

“IDP” means Individual Development Plan.

“IIPP” means Illness and Injury Prevention Program.

“JPA” means Joint Powers Authority.

“LG-1” means the Cooperative Agreement document that describes the financial, administrative and operational relationship between the District and the State.

“LRA” means Local govt. Responsibility Area.

“MOU” means Memorandum of Understanding.

“NFPA” means National Fire Protection Agency.

“NIMS” means National Incident Management System.

“NWCG” means National Wildlife Coordinating Group.

“OES” means San Mateo County Office of Emergency Services.

“OSHA” means Occupational Safety and Health Administration.

“POST” means Peace Officer Standards and Training.

“PSC” means Public Safety Communication Service provider to San Mateo County.

“Schedule A” means the Personnel Services exhibit attached to the Cooperative Agreement between the District and CAL FIRE (LG-1).

“Schedule C” means the Operations exhibit attached to the Cooperative Agreement between the District and CAL FIRE (LG-1).

“SEMS” means State Emergency Management System.

“SRA” means State Responsibility Area.

“VMP” means Vegetation Management Program.

Cole, Paul

From: Cole, Paul
Sent: Thursday, April 19, 2012 12:49 PM
To: Delay, Ari
Subject: Staff Report

Attachments: Delay Transfer Memo.doc



Delay Transfer
Memo.doc (292 K...

Ari,

Attached is the staff report being submitted to the Board in regards to your transfer. Please call with any questions.

Paul

Cole, Paul

From: Cole, Paul
Sent: Thursday, April 12, 2012 5:12 AM
To: Delay, Ari
Subject: ECMS

Ari - I received an invoice from ECMS in the amount of \$1132.32 for La Honda Fire. Looks like turnout or PPE repair. Is this something you were aware of? Paul

Cole, Paul

From: Cole, Paul
Sent: Sunday, April 08, 2012 3:34 PM
To: Delay, Ari
Cc: Cosgrave, David; Lord, Ken
Subject: RE: Unusual Occurrence

Good idea on the training. Long overdue.

-----Original Message-----

From: Delay, Ari
Sent: Sunday, April 08, 2012 9:34 AM
To: Cole, Paul
Cc: Cosgrave, David; Lord, Ken
Subject: Unusual Occurrence

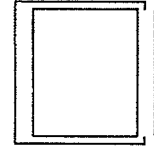
Chief,

I just received a phone call from Chief Pimentel that while at the birthday party yesterday Captain Chris Miller was notified that a young girl had tripped and struck the running board of the antique (he was unaware that it had happened). She was taken to Seton Coastsides for a few stitches. Captain Miller followed up at Seton Coastsides with the family and all seems to be well, however he failed to get any contact information. I have had a discussion with both Chief Pimentel and Captain Miller about the situation and the lack of documentation. I have Captain Miller coming in Monday morning to fill out an unusual occurrence form and working to get the contact information. I would like to put

DEPARTMENT OF FORESTRY AND FIRE PROTECTION

6959 Highway 9
Felton CA 9508
(831) 335-5355

Website: www.fire.ca.gov



Coastside Fire District Board of Directors

April 17, 2012

Fire Board
Agenda
April 25, 2012

STAFF REPORT

Subject: Reassignment of CFR Battalion Chief and discontinuation of shared Division Chief services with San Mateo County Fire.

Summary:

In June, 2012, a Battalion Chief that is now assigned to Coastside Fire District Command Staff - Operations will be reassigned outside the District and replaced. To facilitate the continuity of administrative functions provided by the reassigned Battalion Chief, it is recommended that the District discontinue sharing its Division Chief (Cole) with the San Mateo County Fire Department and return him to District Administration and Operations full-time.

Background and Discussion

Effective emergency operations and most field level administrative functions rely on established trust and confidence amongst firefighters, company officers, and chief officers. In the initial years of the cooperative agreement between the District and CALFIRE, efforts were made to cultivate this bond by providing Department sponsored supervision and management training to transitioned staff so that all employees assigned to the District shared similar attitudes and comprehension of the roles expected of every classification or rank. Temporary and short term reassignments were also utilized to advance the development of cultural insight necessary to becoming an effective leader in the fire service.

The recent ancillary stress affecting line staff in the District has highlighted inadequacy in our attempts to correct issues rooted in the lack of cohesiveness amongst all assignees. This deficiency has been reported by employees, personally observed by the Chief of the District, and noted by consultants engaged by the District.

To achieve the greatest performance of the District's line staff, it is imperative that the significant gap between transitioned employees and other CALFIRE firefighters be eliminated. To affect this change, the Battalion Chief and perhaps other employees will be reassigned for an extensive period of time so that they can be more carefully mentored and allowed to experience other leadership techniques.

Although the Battalion Chief will be replaced straight away, there will be some diminishment in the administrative functions that he currently performs. To minimize this impact it is recommended that the District's Division Chief be recalled to the District full time. San Mateo County Fire is aware of this change.

An amended Fiscal Sheet (Schedule "A") in the amount of \$5,784,486 has been prepared showing this change. The net difference, when coupled with the elimination of the 4 Firefighter I's for 3 months (fire safe clearance and hydrants) and the exclusion of operating costs except for travel is an estimated \$30,394 reduction as compared to the Fiscal Sheets previously submitted as the initial estimate of \$5,785,240 provided in February, 2012 (2nd estimate of \$5,765,838 provided in March, 2012, deleted operational costs for postage, PPE, and proportional share of utilities at the Board's direction).

Respectfully submitted,

John E. Ferreira
Fire Chief

Ferreira, John

From: Ferreira, John
Sent: Friday, September 23, 2011 6:41 AM
To: Delay, Ari
Subject: heads-up


Ari – I got a second hit on the LaHonda ALS rumor. Trust that I'm forwarding this excerpt from an unsolicited text I received 2 days ago so that you are aware of how some (admittedly not all) of your subordinates "perceive" your motivation. (I've obviously deleted names).

"xxxx is telling me that delay has a grand scheme to close 58 and cover r57 with a medic and then, the rest I'm not real sure how valid a threat it is, but to even get the wildland engines out of san mateo. Xxxx said Larry made a comment about 58 being on the chopping blocks".

Either you've got people gunning for you or it's true. I believe the former is accurate. The point of me sending you this, as we've discussed before, is to try and help you succeed as a leader (making my life easier). But I can't figure out how you can overcome this – or really, if you even care to. Certainly can't be expected to please everyone. JF

A handwritten letter 'L' is enclosed within a hand-drawn circle. The circle is slightly irregular and overlaps itself at the top.

A 110 Hildebrand Rd, La Honda, CA 94020

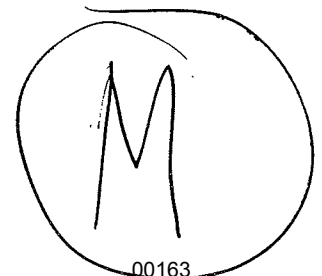
- 1. Head **south** on **Hildebrand Rd** toward **CA-84 W/La Honda Rd** go 0.9 mi
total 0.9 mi
About 2 mins
- 84** 2. Turn **right** onto **CA-84 E/La Honda Rd** go 2.9 mi
total 3.8 mi
About 5 mins
-  3. Slight **right** onto **Old La Honda Rd** go 2.6 mi
total 6.3 mi
About 6 mins
- 35** 4. Turn **right** onto **CA-35 S/Skyline Blvd** go 12.1 mi
total 18.4 mi
About 18 mins
- 9** 5. Turn **right** onto **CA-9 S/Big Basin Way** (signs for **State 9/Boulder Creek/Santa Cruz**) go 6.1 mi
total 24.5 mi
About 10 mins
- 9** 6. Turn **left** onto **CA-9 S/Hwy 9** go 14.6 mi
total 39.1 mi
Destination will be on the right
About 27 mins

B 6059 Hwy 9, Felton, CA 95018

These directions are for planning purposes only. You may find that construction projects, traffic, weather, or other events may cause conditions to differ from the map results, and you should plan your route accordingly. You must obey all signs or notices regarding your route.

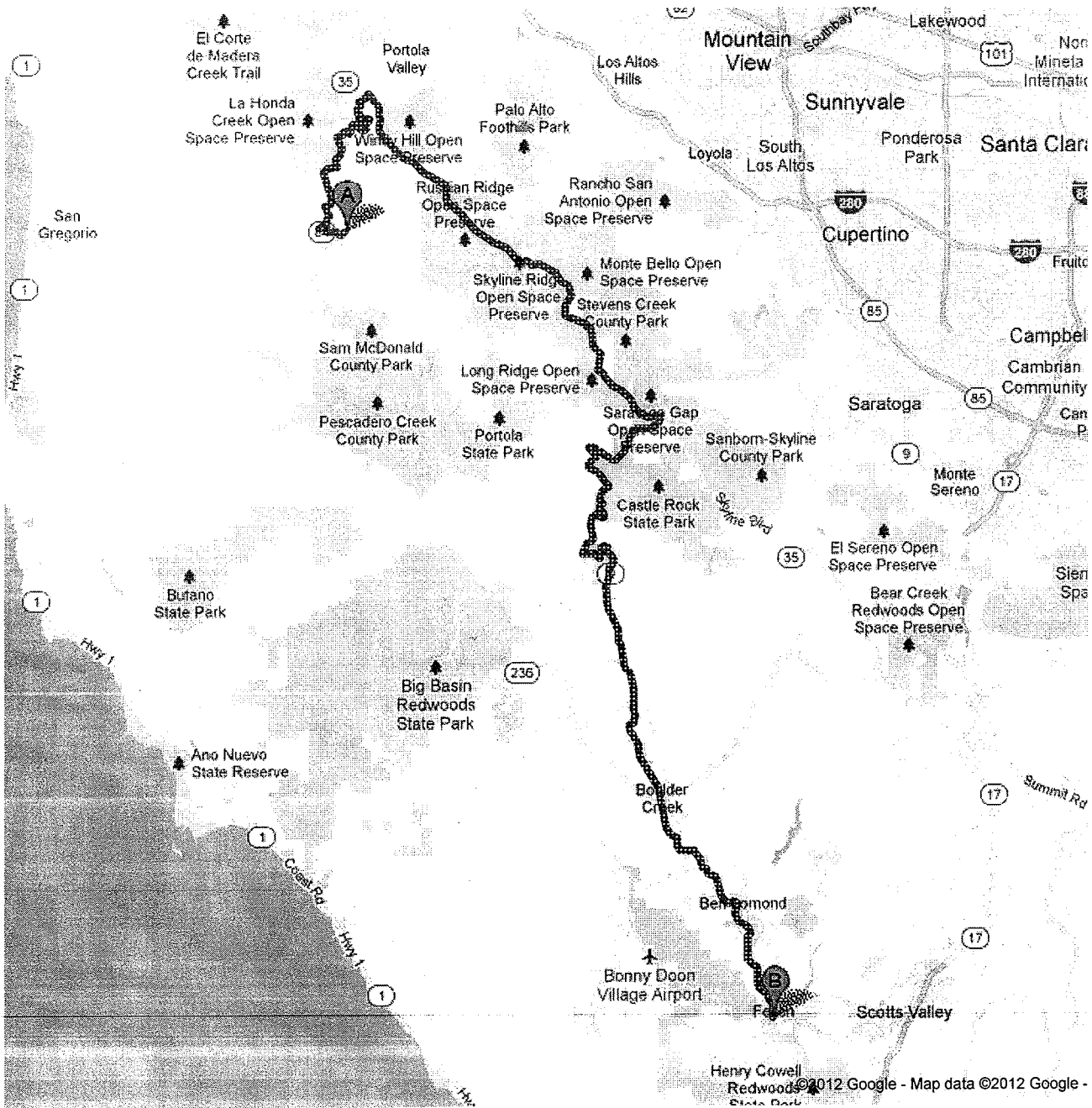
Map data ©2012 Google

Directions weren't right? Please find your route on maps.google.com and click "Report a problem" at the bottom left.











Directions to 6059 Hwy 9, Felton, CA 95018
39.1 mi – about 1 hour 9 mins



©2012 Google - Map data ©2012 Google -

 110 Hildebrand Rd, La Honda, CA 94020

-
1. Head **south** on **Hildebrand Rd** toward **CA-84 W/La Honda Rd**
About 2 mins go 0.9 mi
total 0.9 mi
 -  2. Turn left onto **CA-84 W/La Honda Rd**
About 14 mins go 9.3 mi
total 10.2 mi
 -  3. Turn right onto **CA-1 N/Cabrillo Hwy S**
About 12 mins go 9.5 mi
total 19.8 mi
 -  4. Turn right onto **Main St**
go 364 ft
total 19.8 mi
 -  5. Turn left to stay on **Main St**
Destination will be on the left go 151 ft
total 19.9 mi

 1191 Main St, Half Moon Bay, CA 94019

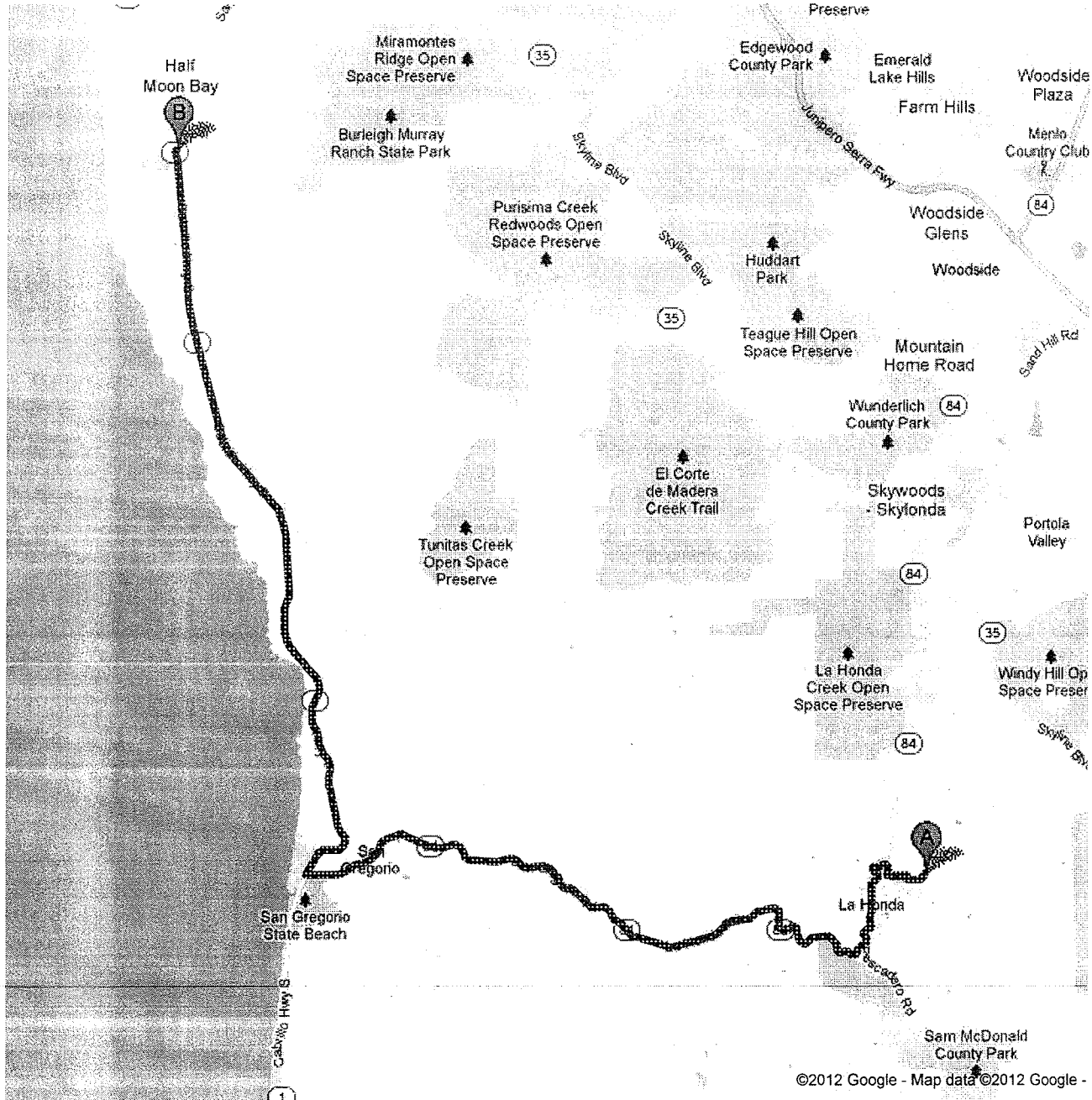
These directions are for planning purposes only. You may find that construction projects, traffic, weather, or other events may cause conditions to differ from the map results, and you should plan your route accordingly. You must obey all signs or notices regarding your route.


Map data ©2012 Google





Directions weren't right? Please find your route on maps.google.com and click "Report a problem" at the bottom left.



Directions to 1191 Main St, Half Moon Bay, CA 94019
19.9 mi – about 29 mins



 110 Hildebrand Rd, La Honda, CA 94020

- | | | |
|---|---|-----------------------------|
| | 1. Head south on Hildebrand Rd toward CA-84 W/La Honda Rd
About 2 mins | go 0.9 mi
total 0.9 mi |
|  | 2. Turn right onto CA-84 E/La Honda Rd
About 17 mins | go 9.1 mi
total 10.0 mi |
|  | 3. Sharp right onto Portola Rd
About 2 mins | go 0.8 mi
total 10.9 mi |
|  | 4. Turn left onto Sand Hill Rd
About 3 mins | go 2.0 mi
total 12.8 mi |
|  | 5. Merge onto I-280 S via the ramp to San Jose
About 11 mins | go 11.4 mi
total 24.2 mi |
|  | 6. Take exit 12 to merge onto CA-85 S toward Gilroy
About 8 mins | go 7.8 mi
total 32.0 mi |
|  | 7. Take exit 11A to merge onto State Hwy 17 S/CA-17 S toward Santa Cruz
About 21 mins | go 16.6 mi
total 48.6 mi |
|  | 8. Take exit 5 for Scotts Valley Dr toward Granite Creek Rd | go 0.2 mi
total 48.8 mi |
|  | 9. Turn left onto Scotts Valley Dr
About 3 mins | go 1.0 mi
total 49.7 mi |
|  | 10. Turn left onto Carbonero Way | go 23 ft
total 49.7 mi |

 **map**
Scotts Valley, CA

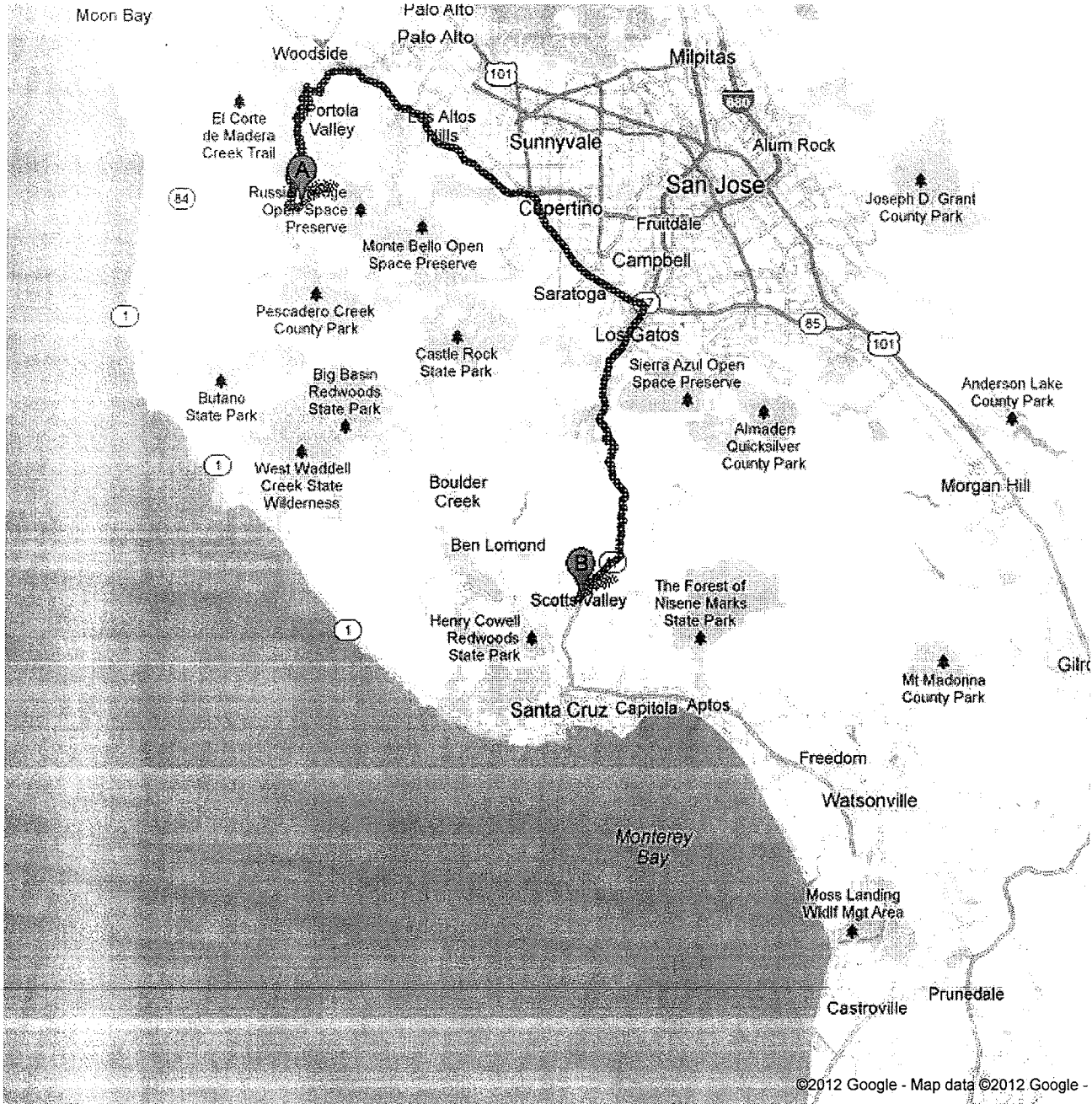
These directions are for planning purposes only. You may find that construction projects, traffic, weather, or other events may cause conditions to differ from the map results, and you should plan your route accordingly. You must obey all signs or notices regarding your route.

Map data ©2012 Google

Directions weren't right? Please find your route on maps.google.com and click "Report a problem" at the bottom left.



Directions to map
Scotts Valley, CA
49.7 mi – about 1 hour 7 mins





DEPARTMENT OF FORESTRY AND FIRE PROTECTION
6059 Highway 9
Felton, CA, 95018
(831)335-5355
Website: www.fire.ca.gov



Ari Delay, Battalion Chief
c/o Coastside Fire Protection District
1191 Main St
Half Moon Bay, CA 94019

May 18, 2012

Chief Delay,

I appreciate the concerns you submitted to me regards your reassignment to the Unit's Safety Officer/Relief Battalion Chief position headquartered in Santa Cruz County. As I stated to you at our meeting in Half Moon Bay on April 27th, I have put a great deal of consideration into this matter. Please let me reiterate the foundation for my decision.

In the BU8 MOU, at Article 4, Section 4.1, it states, in-part, "Except as expressly abridged by any provision of this Agreement, the State and the department reserve and retain all of their normal and inherent rights with respect to management of their affairs in all respects in accordance with their responsibilities, whether exercised or not, including but not limited to the rights to determine and from time to time re-determine ... assignment of duties...; to establish and change work schedules, assignments, and facility locations;... and otherwise take such measures as the employer may determine to be necessary for the orderly, efficient and economical operation of the Department of Forestry and Fire Protection."

In the BU8 MOU, at Article 9, Section 9.2.1, it states, in part, "The parties recognize that when the State deems it necessary to fill a vacant position, the needs of the State must be given first priority. The needs of the State include the right to fill vacant positions using such methods as involuntary transfer, reassignment, reinstatement, substantiated hardship, or other selection alternative for reasons such as staff redistribution, affirmative action, special skills, abilities or aptitudes."

Management has elected to fill the unit's vacant Safety Officer/Relief Battalion Chief position headquartered in Felton with your reassignment. Chief Jalbert has previously informed you that there will be no change in either duty schedule or days. As the Unit-wide Safety Officer, you are not required to spend your nights in a particular location. You may spend your nights at home with your family if you so choose. On the nights that you are required to provide emergency response coverage, you will be provided with quarters in Santa Cruz County. As you now spend three nights a week in Half Moon Bay, this reassignment should decrease the amount of time you are currently away from your family. I must reiterate that it is not the intention or expectation of management, that you change residence to accommodate this reassignment. Additionally, as discussed by Chief Jalbert, you will be allowed a Department vehicle and fuel for travel, so there is no matter of a financial impact.

In your letter you allege that this reassignment is being done "for the purpose of harassment and discipline", which I assure you it is not. The Department's employee Complaint or EEO processes is available to you if you if you so chose. Please also consider the Department's EAP program.

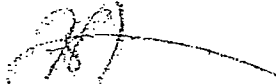
CONSERVATION IS WISE-KEEP CALIFORNIA GREEN AND GOLDEN

PLEASE REMEMBER TO CONSERVE ENERGY FOR TIPS AND INFORMATION, VISIT "FLEX YOUR POWER" AT WWW.CA.GOV

N

Chief Delay, I fully understand your anxiety that this change has created. Please trust that this effort is being taken to further and enhance your career as a Chief Officer with CAL FIRE. Be assured that all of the staff here have committed to supporting and helping you succeed in your new assignment.

Sincerely,

A handwritten signature in black ink, appearing to read "John E. Ferreira", with a long horizontal flourish extending to the right.

John E. Ferreira, Chief
CAL FIRE CZU

33

May 21, 2012

OPA
MAY 22 2012
STATUTORY APPEALS

Department of Personnel Administration
Statutory Appeals Unit
1515 "S" Street, North Building, Suite 400
Sacramento, California 95811-7258

Dear Department of Personnel Administration:

My name is Ari Delay and I am a Battalion Chief for the Department of Forestry & Fire Protection also known as CALFIRE. I work at the Half Moon Bay office at 1191 Main Street in Half Moon Bay California. I have worked at this office or within the Coastside Fire Protection District for the last 16 years. I was blanketed into state service in July of 2007 when the Coastside Fire Protection District contracted personnel services through CALFIRE. I work in bargaining unit 8.

I am writing you this letter to appeal or protest to an involuntary geographic transfer as described in CALFIRE policy 1028.3 & Pursuant to Government Code 19994.1. I have not waived my rights under the CALFIRE policy

I am filing this appeal on my own behalf, as I believe I would be unable to receive fair and impartial representation from the union representing my bargaining unit. My reasons for believing so are described below.

I am under the understanding that this appeal is under your jurisdiction as an involuntary geographic transfer.

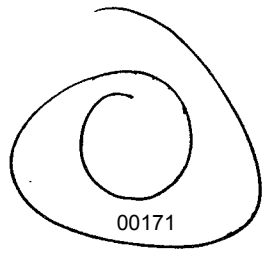
ISSUES:

- 1.) I believe the transfer is for the purpose of discipline and harassment.
- 2.) CALFIRE senior management has failed to properly notice me of my involuntary geographic transfer.
- 3.) I believe CALFIRE senior management has worked in concert with the union to have me transferred.

BACKGROUND:

On or about the 6th of February 2012, I was told by a firefighter, and then by my peer, both of who were at a union meeting at the Half Moon Bay Fire Station, that Chief Ferreira had announced at the union meeting (held on 2/6/2012) that he was moving a Battalion Chief from the Coast. Both stated that it was clear by all attending the meeting that he was talking about me. I had initially dismissed this as rumor, until I was sent an email by my supervisor noting that Chief Ferreira wanted to meet with him and I about an assignment to the South Division. This meeting did not happened until 4/27/12.

On 2/15/2012, my supervisor, Chief Paul Cole, sent an email to Chief Scott Jalbert and Chief John Ferreira that he did *not* support the idea of transferring me, as he has not been made aware of any issues, nor has he been asked or involved in efforts to verify any allegations. No issues have been brought fourth as of 5/20/2012.



On 4/19/2012, my supervisor, Chief Paul Cole, forwarded me an email with the heading "Staff Report," in which a Microsoft Word document titled "Delay Transfer Memo.doc" was attached. I spoke with my supervisor shortly after, and he said he wanted to give me a "heads up" so I was not blind-sided by the memo, as it was to be included in a board packet as a "Staff Report" for the Coastside Fire Protection District Board of Directors, and available for public review.. The Coastside Fire Protection District currently has a contract for Fire & Rescue services with CALFIRE, however I am a state employee and personnel issues are not under their jurisdiction.

On 4/20/2012, I sent a reply to my supervisor expressing my displeasure with the staff report. Regardless of whether I agreed with it or not, it was a personnel matter (as indicated by the title of the document) and did not belong in a public forum.

The contents of the staff report characterize issues such as mistrust, lack of confidence, attitude and deficiencies. This document draws information from a report generated by a consultant outside of the State system, and was not specifically targeted toward me, but department leadership in general. Chief Ferreira quoted directly from the report, applying their phrasing towards me specifically in the staff report. It is also important to note that the consultant drew these conclusions regarding department leadership from hearsay information and conjecture. The consultant's report was not accepted by the Coastside Fire Protection Board of Directors, as they believed it was strongly biased and unanimously passed a motion to discount consultant's report.

In any event, neither Chief Ferreira nor my supervisor has ever brought these subjects up in any discipline or performance review. There have been no meetings regarding deficiencies and there are no notations in my supervisors working file or my official personnel file regarding any such issues. **By not conducting their own evaluation and their lack of communication with me, it is my belief that CALFIRE failed to comply with "due process" as defined and required under the Firefighters Bill of Rights (Government Code Section 3250-3262).**

On 4/21/2012, my email was forwarded to Chief Ferreira with the comments that I am taking exception to the report, as well as the venue in which it will be disclosed and discussed. Chief Cole reiterates that I ask Chief Ferreira to remove it from the agenda packets and not openly reference it at the Board meeting.

On 4/21/2012 Chief Ferreira replies stating that he is relying on an "outside analysis" of our program.

On 4/27/2012, I was called to a meeting with Chief Ferreira, Chief Cole and Chief Jalbert. At that meeting, Chief Ferreira verbally notified me that I was being transferred to the South Division and that "the reason did not matter." He stated that I would receive something in writing shortly. Chief Ferreira instructed me to speak with Chief Jalbert about the particulars of the assignment and left the room.

On 5/4/2012 I met with Chief Scott Jalbert to review my personnel file. At that meeting, Chief Jalbert verbally informed me that I would be working out of the Felton Headquarters at 6059 Highway 9 Felton, CA.

This assignment triggers the requirements under CALFIRE policy 1028.3 (INVOLUNTARY GEOGRAPHIC TRANSFERS) for the following reasons.

The following is CALFIRE POLICY 1028.3

1.) For geographic involuntary transfers the Department must follow all the guidelines outlined in Section 1028.3. Pursuant to Government Code 19994.1, when a transfer under this section reasonably requires an employee to change his or her place of residence, **the appointing power**

shall give the employee a written notice of transfer 60 days in advance of the effective date of the transfer, unless the employee waives this right. Notice should include the reason for the transfer, information regarding entitlement to relocation expenses (if any), and other pertinent information (e.g., reporting date, available alternate positions, alternate options, etc.). An employee is reasonably expected to change his/her place of residence when the move results in:

- a distance of at least 35 miles between the old work location and new work location; and
- a distance of at least 35 miles between the old residence and new residence; and
- a distance of at least 35 miles between the old residence and new work location.

1028-3 In addition, the new residence shall not be farther from the new work location than the old residence is from the new work location.

From my home address at 110 Hildebrand Road, La Honda, CA 94020, the distance to Felton Headquarters at 6059 Highway 9, Felton, CA 95018 is:

49.5 miles (1 hour, 14 minutes) via Hwy 84 to Hwy 1 to Hwy 17 to Hwy 9

or

38.6 miles (1 hour, 8 minutes) via Hwy 84 to Hwy 35 to Hwy 9

From my home address at 110 Hildebrand Road, La Honda CA 94020 the distance to Half Moon Bay Office at 1191 Main Street Half Moon Bay, CA 95019 is:

19.3 Miles (28 minutes) via Hwy 84 to Hwy 1

Therefore, this transfer qualifies as an involuntary geographic transfer.

Lastly, I believe it is important to recognize the influence of the union on decisions made by Chief Ferreira. In an email dated 9/23/11 from Chief Ferreira to myself, he indicates that I have people "gunning for me." This transfer, as well as a previous non-geographic transfer already imposed upon me, are conciliations to hostile union leadership.

I believe that I have lost the support of the union leadership by enforcing state standards that were not previously upheld by my predecessors. In my tenure with CALFIRE, I have used the progressive discipline process to address timecard inaccuracies, including blatant falsification of timecards by employees, which were subsequently signed off by supervisors.

In addition, I required employees to follow state policy with regard to travel time for training assignments. I had found that supervisors had allowed employees "travel days" (paid, without the use of leave) before training assignments. Additionally, another Battalion Chief and myself disallowed the use of "sick time" to be used for vacations, a policy that was previously allowed. The culture is one of lax enforcement of rules and accountability. In my efforts to improve fiscal oversight and a "do the right thing" mentality, I have angered some of the old guard union leadership.

CONCLUSION:

I believe that the arbitrary decision to transfer me to the South Division should be reversed for the following reasons:

- The transfer is for the purpose of harassment and discipline according to Government Code 19994.3. Chief Ferreira states in the aforementioned Staff Report that they are attempting to "correct deficiencies." There have been no previous communications with me regarding any deficiencies or other personnel issues. I have checked my personnel files and confirmed that there are no negative comments, memos or disciplinary documents contained within them.
- The assignment itself can be considered "punishment" as it would require me to cover Battalions 1, 3, and 4 (which covers the majority of San Mateo and Santa Cruz counties). Previously, employees were assigned to either the North or South division, and not required to cover both on a routine basis.
- CALFIRE senior management has failed to properly notice me about the involuntary geographic transfer according to their own policy and pursuant to Government Code 19994.1.

It is my hope that you will carefully review this protest and the remedy I seek is to not be transferred. I look forward to discussing these issues with you further.

Ari Delay
Battalion Chief
California Department of Forestry and Fire Protection
P.O. Box 173, La Honda, CA 94020.
(650) 740-4636
aridelay@coastside.net.

Thank you for your attention.

Sincerely,



Ari Delay

To date, I have received nothing in writing stating where, when or why I am being transferred.

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DEPARTMENT OF FORESTRY AND FIRE PROTECTION
6059 Highway 9
Felton, CA, 95018
(831)335-5355
Website: www.fire.ca.gov



Ari Delay, Battalion Chief
c/o Coastside Fire Protection District
1191 Main St
Half Moon Bay, CA 94019

May 22, 2012

Chief Delay,

As I understand the requests in your May 21, 2012 e-mail to Chief Cole, you're asking for further information regards applicability of CA GC 19994.1 and 19994.3 that were not addressed in my initial response to you (Letter sent 5/18/12) regards your reassignment.

CA GC 19994.1 (a) grants the appointing power the authority to transfer any employee to another position in the same class. Sub (b) includes that 60 days written notice must be given when the transfer reasonably requires an employee to change their place of residence.

To define "reasonably requires" as used in section 19994.1, I consulted the language in GC 559.714 and CALFIRE 1028.3 and considered the 4 pronged test that you included in your e-mail. Our records show your home address as 9300 LaHonda Rd. By Google Maps, the distance travelled from that address to new headquarters is 36.2 miles. The distance between your old headquarters and new headquarters is 49.4 miles. In your e-mail of May 21, 2012 to Chief Cole, you indicate that your actual home address is 110 Hildebrand Road, La Honda. The difference is relatively inconsequential to this discussion. In either instance, if you are suggesting that despite the use of a Department provided vehicle and fuel, you will be relocating, then please provide us with the distance between your old (current) residence and new or proposed residence so that we may assure that all conditions of the test have been met. Please be mindful of the requirement that the new location must be at least 35 miles from your current residence and not farther than 36.2 miles from 6059 Highway 9, Felton.

I must reiterate that, in this case, management neither requires nor expects you to change your place of residence nor is it reasonable to assume that you'll be changing your residence as the Department will be providing a vehicle and fuel. Absent the requirement to relocate, the 60 day notice is moot.

CA GC 19994.3 (a) allows the appointing power to enact the transfer during the period that an employee may be protesting the reassignment claiming its being made for the purposes of harassment or discipline.

You claim that this code citation confirms your allegations that this reassignment is harassment or discipline but I see no such evidence of such in its wording. As stated in the staff report you've mentioned (prepared 4/17/12 for 4/25/12 CFR Brd Mtg), it is imperative that the significant gap between transitioned employees (such as you) and other CALFIRE employees be eliminated to achieve the greatest performance of the District's (CFR) line staff and that enhanced mentoring as well as exposure to other CALFIRE processes would help affect this change. This gap was also identified by an outside analyst who wrote "The Chief Officers in the Fire District are all former Coastside officers. They are not as familiar with the

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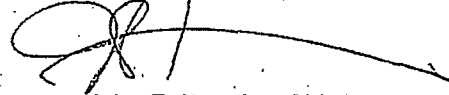
PLEASE REMEMBER TO CONSERVE ENERGY. FOR TIPS AND INFORMATION, VISIT "FLEX YOUR POWER" AT WWW.CA.GOV.

culture and operating policies of CALFIRE" (Tri-Data Final Report, Aug, 2011). This is the "deficiency" I am attempting to correct.

You have recently reviewed your personnel and training files which included two Incident Personnel Performance Ratings (ICS Form 225) for Engine Strike Team Leader (STEN) assignments. The first report from July 19, 2008, (countersigned by you on the same date) notes that "More knowledge of CDF Policies, procedures, and paperwork will come with time". The subsequent report from a STEN assignment prepared on August 31, 2011, (countersigned by you on September 1, 2011) actually shows a decrease in skills and knowledge, indicates improvement is needed, and includes the following remark "Several things to work on: 1) Obtain more knowledge on CALFIRE Policy and procedures...". I agree with you that there are no "disciplinary documents" in your personnel file, only the above mentioned evaluations that reemphasize your need for greater exposure to this Department's systems and culture. Due to the somewhat insulated location of the Coastside Fire District, I can devise no alternative ways except this reassignment to provide you with consistent mentoring and increased CALFIRE familiarity.

As Unit Chief I am obliged to first assure that our operations and service to the community are at the highest level and then to afford every employee an equal opportunity to succeed. Please accept that my determination in this matter is intended to benefit you and your career with CALFIRE by working towards such success.

Sincerely,

A handwritten signature in black ink, appearing to read 'John E. Ferreira', with a long horizontal flourish extending to the right.

John E. Ferreira, Chief
CALFIRE CZU

Ferreira, John

From: Tyler Martin [tmart50@att.net]
Sent: Monday, July 02, 2012 10:38 AM
To: Ferreira, John
Cc: tmart50@att.net
Subject: Fw: Coastside Information

Chief Ferreira-

Attached is the letter that I forwarded to FC Cox. I thought you might want to see it first hand, prior to the Tuesday Meeting. Currently I am not assigned to Station 40 on Tuesday, so it doesn't look like I am going to be there. If you have any questions or need any more ammo, please let me know.

Your loyal CAL-Fire Employee,

Tyler Martin
 (925) 381-3778

----- Forwarded Message -----

From: Tyler Martin <tmart50@att.net>
To: jonathanpcox@yahoo.com
Sent: Sun, July 1, 2012 8:12:13 PM
Subject: Coastside Information

Captain Cox-

After this morning's discussion with Ari, it is blatantly obvious that both he and Alifano are one and the same. He argued about local control, retention issues, and false promises by Chief Ferreira. While FC Santos, FAE Blake and myself talked about morale, lack of support from Command Staff, and deception. Regardless of whether our rap session truly hit home, at least we found out exactly who our #1 internal spy is. Attached are examples of some of the things that I have seen and experienced since I have been here.

-Maintaining 100% Control

ie: Any important function within CFPD is performed by a former Coastside Employee. From the managers to the most basic ground level employee. This allows for high praise if things go well, and cover-up if things don't go well. Volunteer's, Engine Committee, Equipment, Medical Supplies, Training, Plans. Every CAL-Fire Employee skills are digressing, due to the fact that things are done differently here, than anywhere else that is CAL-Fire. From the forms, to the inspections/plans, having never accepted CAL-Fire, it makes for a confusing and frustrating work environment.

-Lack of Support

ie: Most key figures within 17750 show little to no support towards CAL-Fire Employee's. On numerous occasions employee's have been accused of things without having proof, of any wrong doing. Case in point.... While FC Silva was fabricating Fire Engine's, DC Cole accused him of damaging a

Ventilation Fan during the fabrication process. Fan had been damaged years before FC Silva began work on the "New Engine's". Here is another example, FAE/PM West called in FSL for a particular day. The next day he called out FSL. BC Cosgrave told him he needed a note and that he had to call and notify DC Sampson for approval. Though calling out Sick for a full shift because a pet died, is acceptable without excuse if you are red circled. Again, when I used the restroom prior to our 2 1/2 Hour Boat Ride / Rescue Incident, BC Cosgrave was more concerned who held up the call, than Crew Safety. There are many instances, these are just a few.

-Set Up for Failure

ie: We have little to no time to train or orient ourselves / crew due to all the things that are put on our plate. Priority is put on Business Inspections, Pre-Fire Plans, LE-100 Inspections, Hydrant Inspections, Smoke Detector Inspections, and Exhibit "E" Testing. If these are not completed, we are not fulfilling our commitment to CFPD. There is no such thing as training here, we DRILL and TEST. This environment that is set by management, is unrealistic and set up for CAL-Fire to fail. Since being assigned here, the only organized training that we have is EMS Training that is provided by Mike Jacobs. We see plenty of training going on, but its for the future of the "Stand Alone" Fire Department and the HMB Volunteer's. It's quite sad in my opinion.

Hopefully this will help. If there is anything that I can add or bring light to, please let me know.

Thanks,

Tyler Martin

INCIDENT PERSONNEL PERFORMANCE RATING

INSTRUCTIONS: The immediate job supervisor will prepare this form for each subordinate. It will be delivered to the planning section before the rater leaves the fire. Rating will be reviewed with employee who will sign at the bottom.

THIS RATING IS TO BE USED ONLY FOR DETERMINING AN INDIVIDUAL'S PERFORMANCE

1. Name ARI DELAT		2. Fire Name and Number BTU Lightning Complex BTU 7660	
3. Home Unit (address) CZU		4. Location of Fire (address) CONLOW 1/2 PARADISE AREA	
5. Fire Position STEN (T)	6. Date of Assignment From: 7/11/08 To: 7/19/08	7. Acres Burned 53,000 +	8. Fuel Type(s) MODEL 10 1/2 11

9. Evaluation

Enter X under appropriate rating number and under proper heading for each category listed. Definition for each rating number follows:

- 0— Deficient. Does not meet minimum requirements of the individual element. DEFICIENCIES MUST BE IDENTIFIED IN REMARKS.
- 1— Needs to improve. Meets some or most of the requirements of the individual element. IDENTIFY IMPROVEMENT NEEDED IN REMARKS.
- 2— Satisfactory. Employee meets all requirements of the individual element.
- 3— Superior. Employee consistently exceeds the performance requirements.

Rating Factors	Hot Line				Mop-Up				Camp				Other (specify)			
	0	1	2	3	0	1	2	3	0	1	2	3	0	1	2	3
Knowledge of the job							X									
Ability to obtain performance								X								
Attitude								X								
Decisions under stress							X									
Initiative								X								
Consideration for personnel welfare								X								
Obtain necessary equipment and supplies							X									
Physical ability for the job								X								
Safety							X									
Other (specify)																

10. Remarks

ARI, Good Job on the Basic Knowledge of A STEN. Good Delegation. 1/2 Assignment of Resources. More Knowledge of CAD Policies, Procedures 1/2 Paperwork will come with Time. Thanks for a Job well done

11. Employee (signature) This rating has been discussed with me

[Signature]

12. Date

7/19/08

13. Rated By (signature)

[Signature]

14. Home Unit

CZU

15. Position on Fire

STEN

16. Date

7/19/08

2

INCIDENT PERSONNEL PERFORMANCE RATING

INSTRUCTIONS: The immediate job supervisor will prepare this form for each subordinate. It will be delivered to the planning section before the rater leaves the fire. Rating will be reviewed with employee who will sign at the bottom.

THIS RATING IS TO BE USED ONLY FOR DETERMINING AN INDIVIDUAL'S PERFORMANCE

1. Name Ari Delay		2. Fire Name and Number Argyle BEU 2956 Para 3 MVC 9673	
3. Home Unit (address) CZU		4. Location of Fire (address) Argyle Para 3	
5. Fire Position STEN	6. Date of Assignment From: 8/27/11 To: 9/1/11	7. Acres Burned 350 total	8. Fuel Type(s) Various

9. Evaluation

Enter X under appropriate rating number and under proper heading for each category listed. Definition for each rating number follows:

- 0— Deficient. Does not meet minimum requirements of the individual element. DEFICIENCIES MUST BE IDENTIFIED IN REMARKS.
- 1— Needs to improve. Meets some or most of the requirements of the individual element. IDENTIFY IMPROVEMENT NEEDED IN REMARKS.
- 2— Satisfactory. Employee meets all requirements of the individual element.
- 3— Superior. Employee consistently exceeds the performance requirements.

Rating Factors	Hot Line				Mop-Up				Camp				Other (specify)			
	0	1	2	3	0	1	2	3	0	1	2	3	0	1	2	3
Knowledge of the job					X		X									
Ability to obtain performance							X									
Attitude							X									
Decisions under stress							X									
Initiative								X								
Consideration for personnel welfare							X									
Obtain necessary equipment and supplies							X									
Physical ability for the job							X									
Safety							X									
Other (specify)					X											

10. Remarks **BC Delay Good attitude during this assignment. Several things to work on: 1) Obtain more knowledge on CAL FIRE Policies & procedures 2) stock & maintain appropriate CAL FIRE ICS Forms 3) Hot Line needed to appropriately evaluate skills under stress.**

Good Team Work & willingness to learn. Thanks for the help.

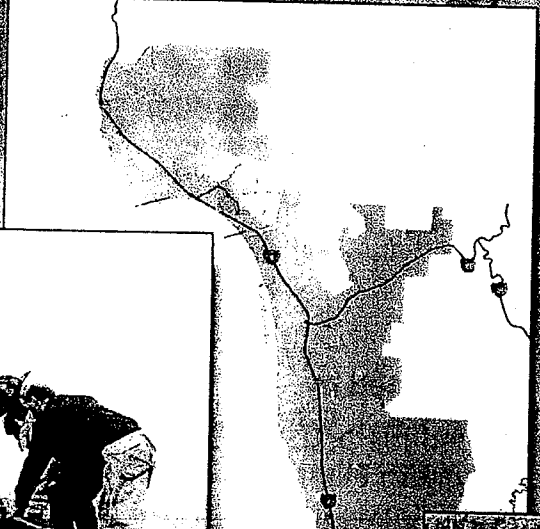
11. Employee (signature) This rating has been discussed with me 		12. Date 9/1/11	
13. Rated By (signature) 	14. Home Unit CZU	15. Position on Fire STEN	16. Date 8/31/11

3

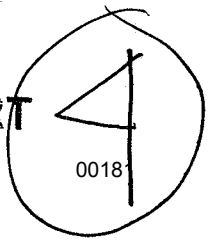


TriData Division

FIRE SERVICES OPERATIONAL AUDIT COASTSIDE FIRE PROTECTION DISTRICT



FINAL REPORT
August 2011



Fire Services Operational Audit
Coastside Fire Protection District

FINAL REPORT

Submitted to:

Gregg Hosfeldt, President
Board of Directors, Coastside Fire Protection District
1191 Main Street
Half Moon Bay, CA 94019

Submitted by:

Philip Schaeenman, President
TriData Division, System Planning Corporation
3601 Wilson Boulevard, 3rd Floor
Arlington, VA 22201
(703) 351-8300

August 2011

Response times are good, only 30 seconds over the goal in the NFPA standard for EMS incidents and 16 to 100 seconds over for other call types. The response times can be improved at low cost by improving the dispatch call-processing time and personnel turnout times at night.

Fire and EMS Operations

CAL FIRE is a nationally recognized organization with excellent resources. The District is receiving excellent service at a lower cost than if provided independently. A major factor in the lower cost is the 72-hour work week for CAL FIRE personnel.

Services to the District are provided from three stations. The headquarters station (40) located in Half Moon Bay is the District's busiest. The other stations (41 and 44) are located at 531 Obispo Road, El Granada and 501 Stetson Street, Moss Beach, respectively. Three personnel, one of which is a paramedic/ firefighter, are on duty at each station. EMS transport is provided by the county's contracted medical service, AMR.

The chief officers of CAL FIRE in the District are all former Coastside officers. They are not as familiar with the culture or operating policies of CAL FIRE and there are professional and personal agendas negatively affecting the organization. As a result, the transition to CAL FIRE did not go smoothly. To improve the organization and complete a successful transition, we recommend the gradual reassignment of the current chief officers to other CAL FIRE assignments and bringing in new officers.

The participation level of volunteers has decreased since CAL FIRE took over and the intake process for new members is too long. Improving volunteer participation should be a major focus for the District and CAL FIRE.

Another situation to improve is the County's move-up system that requires Coastside units to frequently relocate to cover other stations. The busiest engine (40) is the one most often moved and this causes longer response times for Half Moon Bay where most District calls occur.

The only ambulance operated by AMR can be out of the District for long periods because of transport times to San Mateo General Hospital. To address the increased medical calls and transports, a second transport is needed but the demand does not warrant a fulltime unit. To achieve the benefit without increasing costs, the District should cross-staff one of the engine companies and use volunteers to back up the engine crew if the engine is unavailable for an extended period because of a patient transport. Before making a final decision a committee of representatives from the Board, CAL FIRE, AMR, volunteers, and the County's Health Officer should study the situation and recommend this or another cost-effective solution to the Board.

The best options in lieu of CAL FIRE providing service are to return to a locally formed department, participate in the North County Federation along with Pacifica, or participate in the formation of a regional or county fire department. Re-forming a local department is not a good

Coastside Fire Protection District
Fire Services Operational Audit

idea because its cost is too high and a county fire department is not likely to happen any time soon. The best option is to join the North County Federation. For the immediate future, the District should continue to contract with CAL FIRE while continuing to improve the current system.

Recommendations to improve the operation include:

- Better recruitment and intake of volunteers, and improving their training, record keeping, and participation in District planning and budget process
- Meet with the San Mateo County Chiefs Communication's Committee to jointly explore protocols to reduce the impact of move-ups on Coastside response times
- Improve the cliff high-angle rescue program by one of several options: 1) providing basic high-angle rescue training to every responder; 2) maintaining a minimum of technician-level responders on duty at Station 41; 3) establishing the cliff rescue program under the auspices of the District's volunteers; 4) forming a regional cliff and high-angle rescue team with the North County Fire Authority and County Sheriff's Office
- Do not establish an ocean rescue program unless the effort is a regionalized team.

Improved emergency planning is also needed. To do this we suggest:

- Establishing a formal pre-emergency planning program special and formal communication with all marine agencies
- Revising the major emergency plans to comply with Federal guidelines and formalize the District's EOC operations with specific annexes to guide positions at the EOC
- Developing a matrix of duties for all EOC positions and provide the training for them

Fire Prevention, Training, and Facilities

Fire inspections are mostly assigned to the stations; however a backlog currently exists because some stations do not get their inspections completed. There is also a need to improve public education, which aside from Community Emergency Response Team (CERT) training is almost non-existent. Recommendations to improve risk prevention efforts include:

- Prepare a public education needs assessment to include costs
- Increase the training for station personnel about inspections and code enforcement techniques; have the fire marshal observe company inspections periodically to insure quality

INVOLUNTARY TRANSFERS BETWEEN CLASSIFICATIONS 1028

(No. 155 September 2011)

To provide operational flexibility and effectively utilize employees, the Department may make staffing and assignment changes by transferring employees without their consent. Such movement may be due to anticipated layoffs, changes in program or unit function or reorganization. The decision to involuntarily transfer an employee between classifications is management initiated and must comply with the guidelines below.

REFERENCES

1028.1

(No. 155 September 2011)

Applicable Bargaining Unit Memorandum of Understanding (MOU)

California Code of Regulations, Sections 431, 434

California Code of Regulations, Section 599.714

Government Code, Sections 3517.6, 18525.3, 19050.4, 19050.5, 19994, 19997.8

SPB Personnel Management Policy and Procedures Manual (PMPPM), Section 315, "Transfers"

State Personnel Board (SPB) Memorandum to All State Agencies and Employee Organizations, April 5, 1994, "Delegation of Function re: Involuntary Transfer – Change in Class"

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GUIDELINES


1028.2

(No. 155 September 2011)

It is important to strike a balance between the interests of the Department and the employee. The employee's rights in an involuntary transfer situation are to retain his/her present type and level of employment and be treated equitably in relation to other employees.

Involuntary transfers between classifications must meet the general transfer criteria as outlined in Section 1021.9 for voluntary transfers between classifications, in addition to the following additional standards which protect the employee's career advancement opportunities, status, rights and salary. Involuntary transfers are relatively rare and questions regarding the appropriateness of involuntary transfers should be referred to the appropriate Unit or Region Administrative Officer, or, for Headquarters Units, the Classification and Pay Unit within Labor and Human Resource Management.

1. The salary and benefits of the new classification must be at least equal, but no more than two steps higher than that of the employee's current classification. **No salary or benefit loss is permitted.**
 - Salary or benefit loss includes any supervisory benefits and pay differentials associated with the classification (e.g., Longevity Pay, Educational Incentive Pay, etc.).


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- Salary or benefit loss does not include pay differentials and other compensation associated with the position [e.g., Night Shift Differential Pay, Recruitment and Retention Differential-Hazmat (Hazardous Materials), etc.].
 - For information regarding pay differentials, please see the Pay Differential Matrix located on the CAL FIRE Intranet, under Labor and Human Resource Management/Classification and Pay.
2. The employee's career advancement opportunities must not be unreasonably stifled.
 3. The new classification must be in the same or a reasonably comparable class series.
 4. The level of duties and responsibilities for the new classification must be reasonably related to those of the old classification and must afford the employee reasonable expectations of job success.
 5. The transfer must not affect the employee's rights in an impending layoff.

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These standards substantially limit the ability to involuntarily transfer employees between classifications. Involuntary classification changes will typically need to be accomplished through a more structured process, such as layoff, disciplinary action or medical demotion, depending on the specific reason for the change. These processes are preferred as they appropriately deal with the specific concerns that arise when employees are involuntarily removed from their classification.

INVOLUNTARY GEOGRAPHIC TRANSFERS

1028.3

(No. 155 September 2011)

For non-geographic involuntary transfers, written notification must be provided to the employee at least 30 days prior to the effective date of the transfer. Notice should include the reason for the transfer, information regarding entitlement to relocation expenses (if any), and other pertinent information (e.g., reporting date, available alternate positions, alternate options, etc.).

For geographic involuntary transfers the Department must follow all the guidelines outlined in Section 1028.3. Pursuant to Government Code 19994.1, when a transfer under this section reasonably requires an employee to change his or her place of residence, the appointing power shall give the employee a written notice of transfer 60 days in advance of the effective date of the transfer, unless the employee waives this right,. Notice should include the reason for the transfer, information regarding entitlement to relocation expenses (if any), and other pertinent information (e.g., reporting date, available alternate positions, alternate options, etc.).

An employee is reasonably expected to change his/her place of residence when the move results in:

- a distance of at least 35 miles between the old work location and new work location; and
- a distance of at least 35 miles between the old residence and new residence; and
- a distance of at least 35 miles between the old residence and new work location.

In addition, the new residence shall not be farther from the new work location than the old residence is from the new work location.

PROCESS

1028.4

(No. 155 September 2011)

1. All involuntary transfers must be approved by the Director or his/her designee.
2. The Region Administrative Officer for field units, or Classification and Pay Analyst for Headquarters units shall submit requests for involuntary transfers in writing, with documentation attached to the Chief of Personnel Services.

Documentation shall include a justification, in memorandum format, detailing the purpose for the transfer, all options previously explored, proof of the employee's transfer eligibility, current and proposed Position Essential Functions Duties Statements(PO 199s) for the position(s), and current and proposed organizational charts for the affected unit(s).

3. The Chief of Personnel Services will review the transfer request to ensure the transfer complies with the guidelines above and provide a recommendation to the Assistant Deputy Director of Labor and Human Resource Management.
4. If the transfer is approved, an approval memorandum will be sent to the Region Administrative Officer or Headquarter's Administrative Officer, who shall notify the employee in writing of the transfer.

(see next section)

(see HB Table of Contents)

(see Forms or Forms Samples)

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CALIFORNIA STATE PERSONNEL BOARD
SPECIFICATION

CHIEF, DEPARTMENT OF FORESTRY AND FIRE PROTECTION
Series Specification
(Established July 28, 1971)

SCOPE

This series specification describes three Chief classifications used in the California Department of Forestry and Fire Protection (CAL FIRE).

Schem Code	Class Code	Class
BX60	9723	Battalion Chief
BX40	1039	Assistant Chief
BX20	1037	Unit Chief

DEFINITION OF SERIES

The Chief series describes work concerned primarily with an integrated program of multipurpose forestry and fire protection activities including response to emergencies of all types and protection of the State's natural resources.

Levels within the series perform fire protection and/or emergency response program management functions at headquarters, regions, units, and conservation camps. Program management includes planning, development, and administration of the Department's programs.

Positions in the series deliver fire protection services for private and publicly-owned forest, range, and watershed lands by protecting such lands from damage by fire; by reducing the occurrence of human-caused fires; by holding structural, improvement, and wildland fire losses to a minimum; by maintaining continual preparedness and capability to assist in the protection of life and property in the event of human-caused or natural disasters and other emergency situations; and by providing contractual fire and emergency services to local government.

Typical work assignments in headquarters, regions, or unit offices involve staff and support responsibility in emergency dispatching, supervisory fire suppression, classroom and field training, fire prevention, air attack base management, fire protection planning, unit administration, conservation camp and conservation training center management, public information, arson investigation, vegetation management, and when full fire protection services are provided under contract, may also perform fire marshal duties.

JOB CHARACTERISTICS

Certain positions in these classifications require peace officer status as a condition of appointment and continued employment.

FACTORS AFFECTING POSITION ALLOCATION

Difficulty of assignments, complexity of work, variety of activity, geographic responsibility area, independence of action and decision, supervision received, and in the higher levels, degree of program control and influence on methods of program performance serve as differentiating factors between individual classifications.

DEFINITION OF LEVELS

ONLY

BATTALION CHIEF

This is the first working supervisory level. Under direction, Battalion Chiefs perform as subunit managers and direct personnel in the implementation of various departmental programs (e.g., training, safety, emergency command center, fire prevention, air operations, camps, fire stations); or perform staff and support functions of comparable difficulty and responsibility as either unit or Academy training officers, fire protection planning and/or prevention officers, local government fire marshals, or as region command center officers. In a headquarters or region assignment, a Battalion Chief provides staff support to a higher level manager who has responsibility for a major Department program. Responsibilities may include conducting arson and preliminary fire investigations, public information activities, and relief field battalion coverage.

ASSISTANT CHIEF

This is the full supervisory level. In a typical unit, Assistant Chiefs serve as Division Chiefs supervising either the entire administrative program, operations program, or conservation camp.

Positions at this level ensure consistent application of the Department's fire prevention, pre-fire engineering, education, information, volunteers in prevention, and law enforcement policies and procedures.

In unit administration, Assistant Chiefs are responsible for the unit's budget, personnel functions, including the selection, hiring, assignment, staffing, training, performance, promotion, discipline, and grievances of employees; Assistant Chiefs in administration will also have other unit program responsibilities such as the emergency command center, mobile equipment, fire prevention, or training and safety.

In unit operations, Assistant Chiefs assure that emergency resources, personnel, and equipment are trained, available, and ready to respond to fires and other emergencies; establish incident objectives and ensure the effective management and mitigation of emergencies; coordinate, develop, and implement the unit's Emergency Resource Directory, County Emergency Response Plan, Local Government Mutual Aid Plans, Local Government Automatic Aid Plans, and Interagency Operational Plans.

In a conservation camp, Assistant Chiefs liaise with the California Department of Corrections and Rehabilitation staff to ensure the cooperative program function within the policies and guidelines of both agencies; direct the workday custody, training, and daily ratings of inmates and wards; responsible for planning, developing, inspecting, implementing, and evaluating work projects for federal, state, and local agencies.

In a region or headquarters office, Assistant Chiefs serve as Division Chiefs supervising program staff and assisting higher level managers with direction of a major fire protection or fire prevention program. Assistant Chiefs may have other unit program responsibilities.

Assistant Chiefs may also serve as Deputy Chiefs in very large and complex units or have staff responsibility for program direction in a region or headquarters office.

UNIT CHIEF

This is the administrative level for this series. Unit Chiefs have management

responsibility for a specified geographical area called a unit.

Positions at this level provide guidance and leadership to subordinate supervisors and unit employees and oversee all operational and administrative functions within a unit; and ensure unit compliance with federal and state laws, and departmental policies and procedures.

Unit Chiefs assure that emergency resources, personnel, and equipment are trained, available, and ready to respond to fires and other emergencies; ensure the unit coordinates, develops, and implements the unit's Interagency Operational Plans; serve as State Office of Emergency Services Operational Area Coordinator; coordinate with local governing bodies to prepare and implement contractual fire protection services; and liaise with California Department of Corrections and Rehabilitation staff to ensure that cooperative programs function within the policies and guidelines of both agencies.

Positions at this level also review, analyze, and ensure the development and implementation of the unit's Fire Plan and Fire Prevention Program, including law enforcement, civil cost recovery, Fire Safe and Land Use Planning, and promote public interest and participation in fire prevention efforts.

Unit Chiefs oversee a unit's administrative functions, including purchasing, acquisition, storage, inventory, and distribution of supplies and equipment; budget management; and personnel management, including the selection, hiring, assignment, staffing, training, performance, promotion, discipline, and grievances of employees. Positions at this level also review and recommend Capital Outlay Budget Change Proposals and special repairs priorities, serve as unit contact for internal and external audits, and ensure that the mobile equipment fleet is managed, operated, and maintained safely.

Unit Chiefs serve as the unit contact, developing and maintaining positive working relationships with various groups, including political officials and governmental representatives at the federal, state, and local levels, cooperating agencies, media, landowners, and specialists from within the Department and from outside organizations.

MINIMUM QUALIFICATIONS

Breadth of experience through a variety of job assignments is a factor in planned manager development for the Chief series. Positions at Battalion Chief and Assistant Chief may be utilized where possible and practicable for rotational assignments in order to enhance the breadth of knowledge and experience.

ALL LEVELS:

All classifications in the series require possession of a valid driver license of the appropriate class issued by the Department of Motor Vehicles. (Applicants who do not possess the license will be admitted to the examination but must secure the license prior to appointment.)

BATTALION CHIEF

Either I

Three years of experience in the California state service performing the duties of a Fire Captain or Fire Captain (Paramedic). [Applicants who gained employment with CAL FIRE by Board Resolution may compete if they have three years of full-time experience as a Fire Captain or Fire Captain (Paramedic). Experience with CAL FIRE may be combined with prior Fire Captain or Fire Captain (Paramedic) experience to meet this requirement.]

Or II

Five years of experience in the California state service performing the duties of a Heavy Fire Equipment Operator (two years of which must have been as a result of successful completion of a formal Training and Development assignment to the Fire Captain classification) and successful completion of Basic Fire Control training which includes the Fire Fighter Academy and Company Officer Academy.

(Applicants who are within six months of satisfying the experience requirement for either Pattern I or II will be admitted to the examination, but must fully meet the experience requirement before being eligible for appointment.)

ASSISTANT CHIEF

Two years of experience in the California state service performing the duties of a Battalion Chief. (Applicants who are within six months of satisfying the experience requirement will be admitted to the examination, but must fully meet the experience requirement before being eligible for appointment.)

UNIT CHIEF

Two years of experience in the California state service performing the duties of an Assistant Chief with Fire Administration/Fire Operations experience. (Applicants who are within six months of satisfying the experience requirement will be admitted to the examination, but must fully meet the experience requirement before being eligible for appointment.)

KNOWLEDGE AND ABILITIES

BATTALION CHIEF

Knowledge of: Fire behavior to safely and successfully mitigate fires; fuel, weather, and topography as they relate to wildland fire behavior; strategies and tactics used to suppress various types of fires; emergency incident management including the Incident Command System, the Standardized Emergency Management System, and the National Incident Management System; wildland urban interface strategies and tactics for structure protection; rapid intervention crew tactics for firefighter safety and rescue; Three Stripes You're Out hazardous flagging policy for firefighter safety; rescue, exposure, confinement, extinguishment, and overhaul with salvage and ventilation procedures to effectively mitigate the situation; current fire protection organization standards to deliver wildland and structural fire protection, and other emergency services; hazardous material incident operations to identify and recognize the appropriate response; emergency response guides to ensure firefighter safety; firing methods, techniques, and equipment for fire activities, fire prevention, suppression, and mitigation; building construction types for fire suppression tactics and firefighter safety; departmental policy and local, state, and federal Occupational Safety and Health regulations, and departmental Injury and Illness Prevention Program to ensure the health and welfare of employees and safe operations; hazardous material incident command structures to safely mitigate the incident; extinguishing agents and their appropriate use in fire suppression; proper spelling, grammar, punctuation, and sentence structure to ensure that written materials prepared and reviewed are complete, concise, and error-free; extrication techniques and equipment to safely and successfully perform a rescue; characteristics of building materials under varying degrees of fire intensity and duration to mitigate and suppress fires; cooperative agreements with local, state, and federal jurisdictions for fire suppression; inspection, maintenance, and safe operation of department and local government mobile equipment; specialized and technical rescue procedures to mitigate incidents and ensure firefighter safety and survival; adverse

effects of emergency operations to mitigate damage and comply with departmental policy and local, state, and federal regulations; conflict resolution techniques to address and deal with conflicts and issues within the workplace; fire protection and prevention methods used to suppress and prevent various types of fires; basic techniques and methods of team building and leadership to maintain positive working environments; tactics and strategies used in air support operations for fire suppression; support programs available to employees including Employee Assistance Program, Critical Incident Stress Management Program, and the Substance Abuse Program to ensure proper administration within the programs and to provide for employee health and welfare; various local, state, and federal laws, codes, and ordinances relating to land use, life hazard, fire hazard, and risk reduction to ensure compliance; fire protection systems for preplanning and fire suppression; project management techniques to ensure the progress and completion of work assignments and tasks conform to the overall project and organizational objectives; investigation techniques, methods, and practices to gather information for fire prevention and/or enforcing fire laws; supervisory responsibilities under the Fire Fighter Bill of Rights Act and the Peace Officer Bill of Rights Act to protect employee rights; principles and methods of disciplinary actions to ensure appropriate corrective action is taken; a supervisor's role in promoting equal employment opportunity in hiring, development, and promotion of employees and for maintaining a work environment which is free of discrimination and harassment; principles and methods of effective supervision to ensure a safe, productive, and healthy work environment; employee performance evaluations to ensure performance is critiqued, goals are outlined, and personnel are informed and to maintain acceptable standards; bargaining unit agreements for all employees to ensure management and personnel are working in compliance with agreements; and supervisory responsibilities under the Ralph C. Dills Act (Government Code 3512 to 3524) to protect employee rights.

Ability to: Direct and evaluate operational resources to safely and successfully mitigate incidents and ensure firefighter safety; remain calm and perform effectively in high stress situations; perform regular and/or relief field battalion coverage to manage day-to-day operations and all-risk emergency incidents; demonstrate leadership under unusually stressful conditions in both emergency and non-emergency situations; command emergency incidents in compliance with law, policy, various agency agreements, and established procedures in order to mitigate the incident; analyze situations and data to determine the most appropriate course of action to mitigate incidents or problems; work independently on projects or assignments with minimal supervision or detailed instructions; work as a member of a team to reach a common goal and/or objective; create and maintain a healthy work environment that is free of discrimination and harassment; safely coordinate operations on the ground with air resources to maximize available resources and ensure safe operations; be flexible in adapting to changes in priorities, work assignments, and other interactions that may impact pre-established courses of action for completing projects and assignments; use tact and diplomacy when working with people of different perspectives and viewpoints; establish and maintain cooperative relationships with individuals and organizations to meet departmental goals and objectives; establish and maintain priorities in order to complete projects and assignments on time and within budgetary constraints; calm emotionally distressed or distraught patients, victims, relatives, friends, co-workers, and spectators at an incident; effectively manage time with multiple assignments and deadlines to ensure timely completion of projects; identify problems or issues which impact the progress of work projects or assignments; resolve interpersonal problems or conflicts in order to maintain and improve work environment; listen intently to ensure optimal comprehension of information, ideas, or directives; compile and maintain records required for work proposed, in process, or completed; read and understand written materials in order to apply information and determine

appropriate courses of action; verbally communicate ideas and explain complicated information to ensure comprehension from a variety of audiences; write and edit documents and reports to ensure accuracy and completeness while complying with departmental policies and procedures; provide feedback and recommendations to others to aid in their understanding and development and to ensure performance objectives/expectations are met; and prepare adverse actions, including a chronological history of what occurred and supporting documentation to ensure the appropriate corrective action is taken.

ASSISTANT CHIEF

Knowledge of: Modern fire protection organization standards and management practices used to deliver wildland and structural fire protection, and other emergency services; fire laws and methods of enforcement; contemporary methods of emergency incident management including the Incident Command System, fire- and nonfire-related emergencies; natural and human-caused disasters; emergency command center operations; Department and unit level computer programs; safety practices; public education, information techniques, and training; departmental codes, rules, Memorandums of Understanding (MOUs), statutes, policies, and procedures, including fiscal, property, procurement, personnel policies, and standards; Department's budgeting process to develop or oversee the development of a program budget; mission, vision, and values of the Department; cooperative fire protection programs/agreements with federal, state, and local agencies; principles, methods, and terminology of forest management, environmental (California Environmental Quality Act, National Environmental Protection Act), wildland management, and conservation; methods, principles, techniques, and fire hazard reduction methods to develop, implement, and document fire prevention programs; various state, local, and federal laws, codes, and ordinances relating to land use, life hazard, fire hazard, and risk reduction; Department's public information/education policy; contemporary methods of emergency incident management including the Incident Command System, the Standardized Emergency Management System, and the National Incident Management System; departmental command and control policies and procedures for emergencies; fire behavior; adverse effects of emergency operations; modern fire protection organization standards, management practices, operations, and programs used to deliver wildland and structural fire protection, and other emergency services; state forest and fire laws and methods of enforcement; conservation camp operations, organization, and objectives; California Department of Corrections and Rehabilitation laws and rules for fire crews; care, maintenance, application, and replacement of personal protective equipment, mobile equipment, facilities, infrastructure, and other equipment; law enforcement operations, techniques, and programs (e.g., cost recovery) and procedures; safe work practices to provide a safe work environment; methods to monitor activities and progress of departmental programs; research and statistical methodology; a supervisor's role in promoting equal opportunity in hiring, development, and promotion of employees and for maintaining a work environment which is free of discrimination and harassment; principles and methods of effective supervision and leadership, disciplinary actions, and employee evaluations; supervisory responsibilities under the Ralph C. Dills Act (Government Code 3512 to 3524); resources available for employees having personal or work-related problems; signs and symptoms to recognize a substance abuse problem and take appropriate corrective action; and employment interviewing principles and techniques used to select/hire personnel.

Ability to: Work effectively with timber operators, land owners, other fire protection agencies, and the public; communicate effectively, including making presentations; exercise good judgment; perform at a command level on emergencies; respond to complaints or concerns from citizens; work effectively and cooperatively with others; effectively organize and conduct fire prevention, law enforcement, and public education programs; develop and

maintain plans for cooperative fire protection and emergency services systems; participate in and assist with projects; combine details from several sources to reach a conclusion, develop program plans and standards, and evaluate and transfer strategic analysis into tactical action; interpret and explain codes, rules, and departmental policies and procedures; adjust in a changing work environment; demonstrate leadership and effective supervision under unusually stressful conditions in both emergency and nonemergency situations; effectively promote equal opportunity in employment and maintain a work environment which is free of discrimination and harassment; effectively coordinate the work of others and establish priorities to meet goals and objectives; identify problems and take appropriate action when problems arise; effectively plan, organize, direct, and control programs, projects, and emergency operations; and fulfill supervisory responsibilities under the Ralph C. Dills Act.

UNIT CHIEF

Knowledge of: All of the Assistant Chief, and public relations methods and interagency relationships in fire protection and resource management programs in California; and cultural heritage and demographics.

Ability to: All of the Assistant Chief, and ensure that the unit's policies are consistent with the Department's Strategic Plan, Fire Plan, and Board of Forestry and Fire Protection policies.

FELONY DISQUALIFICATION

ALL LEVELS:

Pursuant to Government Code Section 1029, persons convicted of a felony are disqualified from employment as peace officers except as provided under Welfare and Institutions Code, Division 2, Chapter 3, Article 8, Section 1179 (b), or Division 2.5, Chapter 1, Article 4, Section 1722 (b). Except as provided for these by these statutes, persons convicted of a felony are not eligible to compete for, or be appointed to, positions in these classifications. This felony disqualification applies only to those positions designated as peace officers within these classifications.

BACKGROUND INVESTIGATION

ALL LEVELS:

Pursuant to Government Code Section 1031, persons successful in peace officer examinations shall be required to undergo a thorough background investigation prior to appointment. This background investigation applies only to those positions designated as peace officers within these classifications.

CITIZENSHIP REQUIREMENTS

ALL LEVELS:

Pursuant to Government Code Section 1031 (a), in order to be a peace officer, a person must be either a U.S. citizen or be a permanent resident alien who is eligible for and has applied for U.S. citizenship. Any permanent resident alien who is employed as a peace officer shall be disqualified from holding that position if his/her application for citizenship is denied.

AGE REQUIREMENT

ALL LEVELS:

Existing law provides that a peace officer must be at least 18 years of age at the time of appointment.

EDUCATION REQUIREMENT

ALL LEVELS:

Existing law provides that a peace officer must be a high school graduate, pass the General Education Development (GED) Test indicating high school graduation level, pass the California High School Proficiency Examination, or have attained a two-year or four-year degree from an accredited college or university.

CLASS HISTORY

Class	Date Established	Date Revised	Title Changed
Battalion Chief	01/18/1995	06/21/2011	06/21/2011
Assistant Chief	02/06/1934	06/21/2011	06/21/2011
Unit Chief	10/08/1959	06/21/2011	04/23/1996

EMPLOYEE HISTORY SUMMARY

EFF DATE	TRAN	NAME DELAY	AGY-UNT-CLAS-SER	SPB AGENCY	ARI	ENT DATE	PSD REF #	HISTORY SPB	TYPES	ID
x 01/01/12	SAL		542-117-9723-606	FOREST&FR	PR	01/17/12	120170144	B		
08/02/11	120		542-117-9723-606	FOREST&FR	PR	08/05/11	442179004			
06/01/11	120		542-117-9723-012	FOREST&FR	PR	08/05/11	442179004			
12/02/10	350C		542-117-9723-606	FOREST&FR	PR	03/11/11	440709002	B		
12/02/10	350D		542-117-9723-606	FOREST&FR	PR	01/04/11	440049004	B		
12/02/10	350D		542-117-9723-008	FOREST&FR	PR	12/06/10	443409010	B		
11/02/10	120C		542-117-9723-606	FOREST&FR	PR	03/11/11	440709002	B		
11/02/10	120D		542-117-9723-606	FOREST&FR	PR	01/04/11	440049004	B		
10/01/10	505		542-117-9723-008	FOREST&FR	PR	10/05/10	102789999		HC	
09/01/10	505E		542-117-9723-008	FOREST&FR	PR	09/03/10	102469999		HC	
07/05/10	120		542-117-9723-008	FOREST&FR	PR	07/28/10	442099004			
11/30/09	565		542-117-9723-606	FOREST&FR	PR	12/15/09	493498003		C	IJ
09/29/09	565		542-117-9723-606	FOREST&FR	PR	11/17/09	443218001	A	C	IJ
06/22/09	565		542-117-9723-606	FOREST&FR	PR	11/13/09	443178005		C	IJ
06/01/09	350C		542-117-9723-606	FOREST&FR	PR	11/13/09	443178005	B	C	

-----H I S T O R Y T Y P E S-----
 A = APPT C = EMP COND E = REEMP COND G = APPT CERT I = GEN PAYROLL
 B = SALARY D = SERVICE F = SEPARATION H = RETIREMENT J = SEP PAYROLL
 SELECT DETAIL SELECT HISTORY TYPES: OR MANUAL AUDITS

EMPLOYEE HISTORY SUMMARY

EFF DATE	TRAN	NAME DELAY	AGY-UNT-CLAS-SER	SPB AGENCY	ARI	ENT DATE	PSD REF #	HISTORY SPB	TYPES	ID
06/01/09	350D		542-117-9723-606	FOREST&FR	PR	06/19/09	091699999	B	C	
05/08/09	565		542-117-9723-606	FOREST&FR	PR	11/13/09	443178005	A	C	IJ
04/06/09	565		542-117-9723-606	FOREST&FR	PR	11/13/09	443178005		C	IJ
03/02/09	565		542-117-9723-606	FOREST&FR	PR	11/13/09	443178005	A	C	IJ
01/30/09	350C		542-117-9723-606	FOREST&FR	PR	03/20/09	440799006	B	C	
01/30/09	350D		542-117-9723-606	FOREST&FR	PR	02/10/09	090419999	B	C	
06/02/08	A03C		542-117-9723-606	FOREST&FR	PR	03/20/09	440799006	BAGHC	D	
06/02/08	A03D		542-117-9723-606	FOREST&FR	PR	06/09/08	441619004	BAGHC	D	
10/23/94	S31		542-113-1083-901	FOREST&FR	PR	11/01/94	453057037			IJ
10/01/94	SAL		542-113-1083-901	FOREST&FR	PR	10/05/94	452787009	B		
06/20/94	A01		542-113-1083-901	FOREST&FR	PR	06/22/94	451737025	BAG	C D	
10/10/93	S31		542-113-1083-901	FOREST&FR	PR	10/12/93	452857010			IJ
06/21/93	A01		542-113-1083-901	FOREST&FR	PR	06/21/93	451727015	AG	D	
05/11/93	S31		542-113-1083-901	FOREST&FR	PR	05/04/93	451247032			IJ
05/03/93	A01		542-113-1083-901	FOREST&FR	PR	05/04/93	451247030	AG	C D	

-----H I S T O R Y T Y P E S-----
 A = APPT C = EMP COND E = REEMP COND G = APPT CERT I = GEN PAYROLL
 B = SALARY D = SERVICE F = SEPARATION H = RETIREMENT J = SEP PAYROLL
 SELECT DETAIL SELECT HISTORY TYPES: OR MANUAL AUDITS

EMPLOYEE HISTORY SUMMARY

EFF DATE	TRAN	NAME DELAY	AGY-UNT-CLAS-SER	SPB AGENCY	ARI	ENT DATE	PSD REF #	HISTORY SPB	TYPES	ID
09/06/92	S31V		542-117-1083-901	FOREST&FR	PR	09/21/92	442658019			IJ
09/06/92	S01		542-117-1083-901	FOREST&FR	PR	09/21/92	442658022		F	IJ
08/24/92	A01		542-117-1083-901	FOREST&FR	PR	09/21/92	442659018	BAGHC	D I	

-----H I S T O R Y T Y P E S-----
 A = APPT C = EMP COND E = REEMP COND G = APPT CERT I = GEN PAYROLL
 B = SALARY D = SERVICE F = SEPARATION H = RETIREMENT J = SEP PAYROLL
 SELECT DETAIL SELECT HISTORY TYPES: a b OR MANUAL AUDITS

EMPLOYEE HISTORY TYPES

NAME DELAY , ARI

EFF 01/01/12 TRAN SAL POS# 542-117-9723-606 SPBAY 5410 TEN P TB FT
 BPAY 5869.00 PR M FREQ M PLUS 1131.00 EXP IN/DE/F AN MA/X AR AL RG CR
 ACSAL 5869.00 SALTOT 6796.22 SALFUL 6796.22 PR S SHD SPAY 2ND AN 00/00
 SAL INC CERT 000000 SAL INC DENIED HAM SUBSTN COMMTMT 00/00/00
 FIRE SEAS HEAR DECIS / / CTYPE
 MHR APPT TYPE B GSI EE CB ID R08 PS CB ID

-----ESTABLISHED EARNINGS-----

L 8E6 75.00 L 8VL1 278.78 0.00
 EFF 01/01/12 TRAN SAL POS# 542-117-9723-606 SPBAY 5410 TEN P CERT
 LST TB FT CO 44 #MO APEXP 00/00/00 PROB N END 00/00/00
 WWGRP 2G PL# - PL EXP 00/00/00 LEGAL REF ANN RGRET RMPL
 DMOTN REAS EX AUTH LT JUST 00/00/00 ADD POS SUBSTN 00/00/00 TBSUBSTN
 OTHER SUBSTN EMER QULFY
 REORG SUBSTN LAST DA PAY EMPLOY LOA
 TRNG SUBSTN HEAR DECIS / / INT HRS EXP BKUP INFO
 RMPL DT 00/00/00 CLASS TITLE BATTALN CHIEF CLASS TITLE VARIATION
 TAU CLEAR CTYPE EE CB ID R08 PS CB ID

ARTICLE 4 - EMPLOYER RIGHTS

Section 4.1 Employer Rights

- 4.1.1 Except as expressly abridged by any provision of this Agreement, the State and the department reserve and retain all of their normal and inherent rights with respect to management of their affairs in all respects in accordance with their responsibilities, whether exercised or not, including but not limited to the rights to determine and from time to time to re-determine the number, location, and type of work forces, facilities, operations, and the methods, processes and equipment to be employed; the scope of services to be performed, the method of service, assignment of duties, and the schedule of work time and work hours, including overtime; to contract and subcontract existing and future work; to discontinue conduct of their mission or operations in whole or in part; to determine whether and to what extent the work required in their operations shall be performed by employees covered by this Agreement; to transfer work from or to, either in whole or in part, any of the work forces or facilities and locations; to determine the number, types and classification of positions or employees assigned to program, or project unit; to establish and change work schedules, assignments and facility locations; to hire, transfer, promote or demote employees; to lay off, terminate or otherwise relieve employees from duty for lack of work or other legitimate reasons; to suspend, discharge or discipline employees; to alter, discontinue or vary past practices and otherwise to take such measures as the employer may determine to be necessary for the orderly, efficient and economical operation of the Department of Forestry and Fire Protection.
- 4.1.2 The State has the sole authority to determine the purpose, mission and title of the department and the amount and allocations of the budget.

ARTICLE 5 – GENERAL PROVISIONS

Section 5.1 No-Strike

- 5.1.1 During the term of this Agreement, neither CDF FIREFIGHTERS nor its agents nor any employee, for any reason, will authorize, institute, aid, condone or engage in a work slowdown, work stoppage, strike, or any other interference with the work and statutory functions or obligations of the State.
- 5.1.2 CDF FIREFIGHTERS agrees to notify all of its officers, stewards, and staff of their obligation and responsibility for maintaining compliance with this Section, including the responsibility to remain at work during an interruption, which may be caused or initiated by others, and to encourage employees violating this Section to return to work.
- 5.1.3 The State may discharge, suspend, demote, or otherwise discipline any employee who violates this Section. Nothing contained herein shall preclude the State from obtaining judicial restraint and damages in the event of a violation of this Section. Violation of this Section by CDF FIREFIGHTERS shall result in termination of the State's obligation to deduct dues and Fair Share fees from CDF FIREFIGHTERS members and to remit such dues to CDF FIREFIGHTERS, as provided in Section 3.1 Payroll Dues Deduction of this Agreement.

18.1.3.1	The parties agree that all or part of the apprenticeship training academy for Fire Fighter II or Fire Fighter II (Paramedic) may at the State's option be conducted at the region or ranger unit level if approved by the Sub- JAC. The training will ensure a competency level of certified Fire Fighter I by the State Fire Marshal while allowing recognition of local needs.	Secur 19.2.1 19.2.1.
18.1.4	The apprenticeship training academy program for Fire Apparatus Engineer and Fire Apparatus Engineer (Paramedic) will consist of an additional four weeks of training which will be added to the Fire Fighter II class. The class will include sufficient training to assure employees of Fire Fighter I, Fire Apparatus Driver/Operator and Fire Investigator IA certification by the State Fire Marshal. The Sub-JAC may change these terms by majority vote of both labor and management members. One of the ten weeks may at the State's option consist of training academies at centralized regional locations immediately followed by nine weeks of training at the CDF Academy.	19.2.2 19.2.2 19.2.2 19.2.2
18.1.5	CDF shall conduct all such apprenticeship training academies in accordance with the apprenticeship standards developed for CDF and approved by the Administrator of Apprenticeship, Division of Apprenticeship Standards. The Sub-JAC may change the curriculum by majority vote of both labor and management members.	19.2.2
18.1.6	Following successful completion of academy training, apprentices will, as a condition of employment, participate in training provided by CDF consistent with the Apprenticeship Standard requirements and the curriculum established by Sub-JAC. Such related and supplemental training will average 144 hours per year over a 36-month apprenticeship term. Current practice concerning early final exams may not be changed without the consent of the Sub-JAC.	19.2.2 19.2.3 19.2.3
18.1.7	The employer may apply hours of community college training toward related and supplemental training required during the three-year apprenticeship only as allowed by the Apprenticeship Standards. The courses must be approved by Sub-JAC.	19.2.3
18.1.8	FAE's and FAE (Paramedics) hired after inception of the apprenticeship program will be required to successfully complete their apprenticeship before appointment to the Fire Captain classification.	19.2.4
18.1.9	An appeals process for persons terminated from apprenticeship positions because of a failure to meet training standards will be governed by the Apprenticeship Standard and applicable provisions of the Apprenticeship Law.	

ARTICLE 19 – DISCIPLINE

Section 19.1 Introduction

19.1.1	This article sets forth terms pertaining to disciplinary actions, and the exclusive procedures that shall be used to seek review of disciplinary actions.	19.2.5 19.2.5
19.1.2	Employees who receive major or minor disciplinary actions can either appeal to the State Personnel Board, or file a grievance pursuant to the terms of this article.	19.2.5 19.2.5 19.2.5

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Section 19.2 General Provisions

- 19.2.1 Exclusive Procedure
- 19.2.1.1 The grievance procedure contained in this article shall be the exclusive procedure for resolving disciplinary actions when employees waive direct appeal to the State Personnel Board.
- 19.2.2 Definitions
- 19.2.2.1 Disciplinary (Adverse) Action
- 19.2.2.1.1 "Discipline", "disciplinary action" and "adverse action" mean punitive dismissals, demotions, suspensions, or reductions in pay.
- 19.2.2.1.2 Written reprimands and rejection during probation are not considered disciplinary action, and as such, may not be grieved or arbitrated pursuant to the terms of this article.
- 19.2.2.2 Major Discipline
- Major discipline is defined as dismissal, permanent demotion, suspension of more than 5 days, or a temporary demotion or reduction in pay greater than 5 percent (or one step) for more than five months (or equivalent).
- 19.2.2.3 Minor Discipline
- Minor discipline is defined as suspension for 5 days or less, or a reduction in pay of 5 percent (or one step) for five months or less (or equivalent).
- 19.2.3 Process for seeking review of reprimands and rejections during probation.
- 19.2.3.1 Rejections on probation shall be subject to review by the State Personnel Board pursuant to Govt. Code § 19175.3 only.
- 19.2.3.2 Written reprimands may not be appealed to the State Personnel Board. Written reprimands may be grieved up to the third step of the grievance procedure contained in Article 6.
- 19.2.4 Grounds for Taking Disciplinary Action
- Discipline irrespective of whether it is major or minor, and regardless of whether it is grieved pursuant to the terms of this Article or appealed to the State Personnel Board, may be taken against an employee for (1) just cause; (2) any of the causes for discipline listed in Government Code Section 19572.1; and/or (3) that specified in Government Code Section 18155.
- 19.2.5 Timing, Service and Contents of Disciplinary Actions
- 19.2.5.1 Disciplinary action shall be served on the employee at least five (5) Monday-Friday working days prior to the effective date of the proposed discipline.
- 19.2.5.2 The notice of disciplinary action shall be served personally or by regular first class U.S. mail by the enclosure of such notice in a sealed envelope addressed to the employee's last known address.
- 19.2.5.3 The notice shall include:
- 19.2.5.3.1 A statement of the nature of the discipline;
- 19.2.5.3.2 The effective dates of the action;



AGREEMENT
between
STATE OF CALIFORNIA
and
CDF Firefighters
covering

BARGAINING UNIT 8
FIREFIGHTER

Effective

~~July 2, 2001~~ July 1, 2010 through ~~June 30, 2008~~ July 1, 2013

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- 11.22.5 Contingent upon passage of enabling legislation referenced in subsection 11.22.6 below, the State employer agrees to establish a Work and Family Fund. On July 1, 2000, the State employer will appropriate \$5,000,000 for the Work and Family Fund, which shall be administered by the Department of Personnel Administration. The amounts expended annually from the Work and Family Fund shall be determined by the Department and the Labor-Management Work and Family Committee.
- 11.22.6 The union agrees to support legislation that would establish and maintain the Work and Family Fund.

Section 11.23 DOT Requirements

The Department shall continue its policy to ensure that all CDF vehicles carrying hazardous cargo be required to meet the DOT requirements for hazardous materials transporting and placarding.

Section 11.24 Hearing Protection

The employer shall provide combined hearing protection/communications systems on all new Fire Apparatus, Dozer Transports, and CCV's. The system shall be provided for each vehicle consistent with the number of standard seat belts in the vehicle (CCV Cab only). Radio communications abilities shall be available in the driver seat of all vehicles and also the right front seat on all fire engines. The communications system will also interface with the public (AM/FM etc.) radio system.

Section 11.25 Exhaust Removal Systems

It is hereby agreed between the Union and the Employer that all new facilities designed to house apparatus (engines, CCV's, transports, etc.) will be equipped with an exhaust removal system.

ARTICLE 12 – ALLOWANCES AND REIMBURSEMENTS

Section 12.1 Allowances and Reimbursements

The State agrees to reimburse employees for actual, necessary and appropriate business expenses and travel expenses incurred 50 miles or more from home and headquarters, in accordance with existing DPA rules and as set forth below. Lodging and/or meals provided by the State or included in hotel expenses or conference fees or in transportation costs such as airline tickets or otherwise provided shall not be claimed for reimbursement. Snacks and continental breakfasts such as rolls, juice and coffee are not considered to be meals. Each item of expenses of \$25 or more requires a receipt; receipts may be required for items of expense that are less than \$25. When receipts are not required to be submitted with the claim, it is the employee's responsibility to maintain receipts and records of his/her actual expenses. Each State agency shall determine the necessity for and method of travel.

12.1.1 Meals/Incidentals. Meal expenses for breakfast, lunch and dinner will be reimbursed in the amount of actual expenses up to the maximums. Receipts for meals must be maintained by the employee, as substantiation that the amount claimed was not in excess of the amount of actual expense. The term "incidentals" includes but is not limited to, expenses for laundry, cleaning and pressing of clothing, and fees and tips for services, such as for porters and baggage carriers. It does not include taxicab fares, lodging taxes or the costs of telegrams or telephone calls.

12.1.1.1 Rates. Actual meal/incidental expenses incurred will be reimbursed in accordance with the maximum rates and time frame requirements outlined below.

Breakfast	up to	\$ 6.00
Lunch	up to	\$10.00
Dinner	up to	\$18.00
Incidentals	up to	\$ 6.00
Total	up to	\$40.00 (every full 24 hours of travel)

12.1.1.2 Timeframes. For continuous short-term travel of more than 24 hours but less than 31 days, the employee will be reimbursed for actual costs up to the maximum for each meal, incidental, and lodging expense for each complete 24 hours of travel, beginning with the traveler's time of departure and return as follows:

12.1.1.2.1 On the fractional day of travel at the end of a trip of more than 24 hours:

Trip begins at or before 6 am - breakfast may be claimed

Trip begins at or before 11 am - lunch may be claimed

Trip begins at or before 5 pm - dinner may be claimed

12.1.1.2.2 On the fractional day of travel at the end of a trip of more than 24 hours:

Trip ends at or after 8 am - breakfast may be claimed

Trip ends at or after 2 pm - lunch may be claimed

Trip ends at or after 7 pm - dinner may be claimed

If the fractional day includes an overnight stay, receipted lodging may be claimed. No meal or lodging expenses may be claimed or reimbursed more than once on any given date or during any 24-hour period.

12.1.1.2.3 For continuous travel of less than 24 hours, the employee will be reimbursed for actual expenses up to the maximum as follows:

12.1.1.2.3.1 Travel begins at or before 6 am and ends at or after 9 am: Breakfast may be claimed.

12.1.1.2.3.2 Travel begins at or before 4 pm and ends at or after 7 pm: Dinner may be claimed.

12.1.1.2.3.3 If the trip extends overnight, receipted lodging may be claimed. No lunch or incidentals may be claimed on a trip of less than 24 hours.

- 12.1.2 Lodging: All lodging reimbursement requires a receipt from a commercial lodging establishment such as a hotel, motel, bed and breakfast inn, or public campground that caters to the general public. No lodging will be reimbursed without a valid receipt.
- 12.1.2.1 Regular State Business Travel:
- 12.1.2.1.1 Statewide, in all locations not listed in subsection 12.1.2.1.3 below, for receipted lodging while on travel status to conduct State business:
With a lodging receipt: Actual lodging up to \$79.00 plus applicable taxes.
- 12.1.2.1.2 Effective November 2, 1999, Statewide, in all locations not listed in subsection 12.1.2.1.3 below for receipted lodging while on travel status to conduct State business.
With a lodging receipt: Actual lodging up to \$84 plus applicable taxes.
- 12.1.2.1.3 When employees are required to do business and obtain lodging in the counties of Los Angeles and San Diego, reimbursement will be for actual receipted lodging to a maximum of \$110 plus applicable taxes. When employees are required to do business and obtain lodging in the counties of San Francisco, Alameda, San Mateo and Santa Clara, reimbursement will be for actual receipted lodging to a maximum of \$140 plus applicable taxes.
- 12.1.2.2 State Sponsored Conferences or Conventions: for receipted lodging while attending State Sponsored conferences and conventions, when the lodging is contracted by the State sponsor for the event, and the appointing authority has granted prior approval for attendance and lodging at the contracted rate and establishment.
Statewide, with a lodging receipt. Actual lodging up to \$110 plus applicable taxes.
- 12.1.2.3 Non-State Sponsored Conferences or Conventions: for receipted lodging while attending Non-State sponsored conferences and conventions, when the lodging is contracted by the sponsor for the event, and the appointing authority has granted prior approval for attendance and lodging at the contracted rate and establishment.
Statewide, with a lodging receipt. Actual lodging when approved in advance by the appointing authority.
Reimbursement of lodging expenses in excess of specified amounts, excluding taxes, requires advance written approval from DPA. DPA may delegate approval authority to departmental appointing powers or increase the lodging maximum rate for the geographical area and period of time deemed necessary to meet the needs of the State. An employee may not claim lodging, meal or incidental expenses within 50 miles of his/her home or headquarters.
- 12.1.3 Long term Travel: Actual expenses for long term meals and receipted lodging will be reimbursed when the employee incurs expenses in one location comparable to those arising from the use of establishments catering to the long-term visitor.
- 12.1.3.1 Full Long-term Travel: In order to qualify for full long-term travel reimbursement, the employee on long-term field assignment must meet the following criteria:

The employee continues to maintain a permanent residence at the primary headquarters, and,

The permanent residence is occupied by the employee's dependents, or,

The permanent residence is maintained at a net expense to the employee exceeding \$200 per month. The employee on full long-term travel who is living at the long-term location may claim either:

- 12.1.3.1.1 Reimbursement for actual individual expense, substantiated by receipts, for lodging, water, sewer, gas and electricity, up to a maximum of \$1130 per calendar month while on the long-term assignment, and actual expenses up to \$10.00 for meals and incidentals, for each period of 12 to 24 hours and up to \$5.00 for actual meals and incidentals for each period of less than 12 hours at the long-term location, or
- 12.1.3.1.2 Long-term subsistence rates of \$24.00 for actual meals and incidentals and \$24.00 for receipted lodging for travel of 12 hours up to 24 hours; either \$24.00 for actual meals or \$24.00 for receipted lodging for travel less than 12 hours when the employee incurs expenses in one location comparable to those arising from the use of establishments catering to the long-term visitor.
- 12.1.3.2 An employee on long-term field assignment who does not maintain a separate residence in the headquarters area may claim long-term subsistence rates of up to \$12.00 for actual meals and incidentals and \$12.00 for receipted lodging for travel of 12 hours up to 24 hours at the long-term location; either \$12.00 for actual meals or \$12.00 for receipted lodging for travel less than 12 hours at the long-term location.
- 12.1.4 Out-of-state Travel: For short-term out-of-state travel, State employees will be reimbursed actual lodging, supported by a receipt, and will be reimbursed for actual meal and incidental expenses in accordance with above. Failure to furnish lodging receipts will limit reimbursement to the meal/incidental rate above. Long-term out-of-state travel will be reimbursed in accordance with the provisions of Long-term Travel above.
- 12.1.5 Out of Country Travel: For short-term out of country travel, State employees will be reimbursed actual lodging, substantiated by a receipt, and will be reimbursed actual meals and incidentals up to the maximums published in column B of the Maximum Travel per Diem Allowances for Foreign Areas, Section 925, U.S. Department of State Standardized Regulations and the meal/incidental breakdown in Federal Travel Regulation Chapter 301, Travel Allowances, Appendix B. Long-Term Out of Country travel will be reimbursed in accordance with the provisions of Long-Term travel above, or as determined by DPA.

Subsistence shall be paid in accordance with procedures prescribed by the Department of Personnel Administration. It is the responsibility of the individual employee to maintain receipts for their actual meal expenses.

- 12.1.6 Transportation. Transportation expenses include, but are not limited to airplane, train, bus, and taxi fares, rental cars, parking, mileage reimbursement and tolls that are reasonably and necessarily incurred as a result of conducting State business. Each State agency shall determine the method of and necessity for travel. Transportation will be accomplished and reimbursed in accordance with the best interest of the State. An employee who chooses and is approved to use an alternate method of transportation will be reimbursed only for the method that reflects the best interest of the State.
- 12.1.6.1 Mileage Reimbursement
 - 12.1.6.1.1 When an employee is authorized by his/her appointing authority or designee to operate a privately owned vehicle on State business the employee will be allowed to claim and be reimbursed Federal Standard Mileage Rate (FSMR). Mileage reimbursement includes all expenses related to the use, and maintenance of the vehicle, including but not limited to gasoline, up-keep, wear and tear, tires, and all insurance including liability, collision and comprehensive coverage; breakdowns, towing and any repairs, and any additional personal expenses that may be incurred by an individual as a result of mechanical breakdown or collision.
 - 12.1.6.1.2 When an employee is required to report to an alternative work location, the employee may be reimbursed for the number of miles driven in excess of his/her normal commute.
 - 12.1.6.2 Specialized Vehicles - Employees who must operate a motor vehicle on official State business and who, because of a physical disability, may operate only specially equipped or modified vehicles may claim the Federal Standard Mileage Rate, with certification. Supervisors who approve claims pursuant to this Subsection have the responsibility of determining the need for the use of such vehicles.
 - 12.1.6.3 Private Aircraft Mileage - When an employee is authorized by his/her department, reimbursement for the use of the employee's privately owned aircraft on State business shall be made at the rate of 50 cents per statute mile. Pilot qualifications and insurance requirements will be maintained in accordance with DPA rule 599.628.1 and the State Office of Risk and Insurance Management.
 - 12.1.6.4 Mileage to/from a common carrier - When the employee's use of a privately owned vehicle is authorized for travel to or from a common carrier terminal, and the employee's vehicle is not parked at the terminal during the period of absence, the employee may claim double the number of miles between the terminal and the employee's headquarters or residence, whichever is less, while the employee occupies the vehicle. Exception to "whichever is less": If the employee begins travel one hour or more before he normally leaves his home, or on a regularly scheduled day off, mileage may be computed from his/her residence.
- 12.1.7 Receipts. Receipts or vouchers shall be submitted for every item of expense of \$25 or more. In addition, receipts are required for every item of transportation and business expenses incurred as a result of conducting State business except for actual expenses as follows:
 - 12.1.7.1 Railroad and bus fares of less than \$25 when travel is wholly within the State of California.

- 12.1.7.2 Street car, ferry fares, bridge and road tolls, local rapid transit system, taxi, shuttle or hotel bus fares, and parking fees of \$10.00 or less for each continuous period of parking or each separate transportation expense noted in this item.
- 12.1.7.3 Telephone, telegraph, fax or other business charges related to State business of \$5.00 or less.
- 12.1.7.4 In the absence of a receipt, reimbursement will be limited to the non-receipted amount above.
- 12.1.7.5 Reimbursement will be claimed only for the actual and necessary expenses noted above. Regardless of the above exceptions, the approving officer may require additional certification and/or explanation in order to determine that an expense was actually and reasonably incurred. In the absence of a satisfactory explanation, the expense shall not be allowed.
- 12.1.8 Miscellaneous
 - 12.1.8.1 When an employee is assigned to attend a training assignment as a student or instructor for more than 24 hours, and where lodging is provided by the employer for the employee, and the employee is required or chooses to remain at the training location, the employee shall be reimbursed for actual incidental expenses as set forth in Section 12.1.1 above.
 - 12.1.8.2 When an employee is engaged in emergency fire suppression or other emergency activities where an incident number is assigned, the employee shall be reimbursed for actual cost of meals not provided by the employer, and for actual incidental expenses, without regard to the mileage limitations set forth in this Section 12.1. All other travel rules will apply.
 - 12.1.8.3 Notwithstanding 12.1.3. an employee who voluntarily accepts a (promotional) limited term appointment, shall receive the following actual business and travel expenses when the 50 mile requirement is met:
 - 12.1.8.3.1 On duty days only:
 - 12.1.8.3.1.1 Where lodging and meals are provided,\$0.00 per day
 - 12.1.8.3.1.2 Where no lodging or meals are provided 12.1.1 above applies
 - 12.1.8.3.1.3 Where lodging but no meals are provided actual expenses up to \$15.00 per day
 - 12.1.8.3.2 Mileage to and from the assignment one time.
 - 12.1.8.3.3 Non-permanent employees shall bear any travel and subsistence costs.
- 12.1.9 Moving and Relocation Expenses

Whenever an employee is reasonably required by the State to change his or her place of residence, the State shall reimburse the employee for approved items in accordance with the lodging, meal and incidental rates and time frames established in Section 12.1 and in accordance with the existing requirements, time frames and administrative rules and regulations for reimbursement of relocation expenses that apply to excluded employees.

Section 12.2 Meals: Non-Travel Status

- 12.2.1 Unit 8 employees are required to eat meals at the convenience of the employer. Each employee shall pay for all chargeable on-duty meals at the rate equivalent to the average meal cost in the Ranger Unit where he/she is employed. The amount charged will be adjusted annually based on the previous twelve (12) month average, from January to January.
- 12.2.2 When on a scheduled shift, bargaining unit employees will not be entitled to claim reimbursement for "overtime meals". However, the practice of the "4th meal" will continue.
- 12.2.3 "Non-pay meals" mean employer-provided meals for which the bargaining unit member is not required to reimburse the Department for the actual cost of the meal.
- 12.2.4 "Pay meals," mean employer-provided meals for which the bargaining unit member is required to reimburse the Department for the actual cost of the meal.
- 12.2.5 All employer provided meals are "pay meals" except as follows:
 - 12.2.5.1 When a bargaining unit employee eats an employer-provided meal while on "move-up-and-cover" assignment for which an incident number has been assigned.
 - 12.2.5.2 Where a bargaining unit employee is otherwise on travel status as defined in Section 12.1.
 - 12.2.5.3 Where a Bargaining Unit 8 employee eats an employer-provided or employer-authorized meal while assigned to an emergency incident. The cost limitations defined in DPA travel rules shall apply to all employer-authorized meals covered in this section unless specifically waived by the incident commander.
- 12.2.6 Meals not provided by the employer in an established mess, are not reimbursable to the employee unless specifically authorized by the Department or by DPA rules.
- 12.2.7 Notwithstanding the above, when an employee is required to work overtime, meals will be provided by the employer, or if there is no such provision, meal expenses will be reimbursed as provided in existing DPA Rule 599.623.

Section 12.3 Uniforms

- 12.3.1 Permanent employees required by CDF to wear a uniform on a full-time basis shall be eligible for a uniform allowance of \$540 and a boot allowance of \$290 per year payable after one year of service in a position requiring a uniform. New employees, or those with a hardship, may request and receive an advance of up to \$210 on their uniform allowance. Any amount of the uniform allowance that has been advanced to employees shall be deducted from their uniform allowance checks at their normal date of issue. If an employee separates from employment with CDF before his/her uniform anniversary date, the employee must repay the advance. Prorating of the allowance in accordance with subsection 12.3.2 below will offset the advance for up to \$210.



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2 CA ADC § 599.714.1 § 599.714.1. Scope -Excluded Employees.

2 CCR § 599.714.1

Cal. Admin. Code tit. 2, § 599.714.1

Barclays Official California Code of Regulations Currentness

Title 2. Administration

Division 1. Administrative Personnel

Chapter 3. Department of Personnel Administration

Subchapter 1. General Civil Service Rules

Article 7. Moving and Relocation Expenses

➔ **§ 599.714.1. Scope -Excluded Employees.**

(a) Whenever a permanent state officer or employee is required by any appointing power because of a change in assignment, promotion or other reason related to his/her duties, to change his/her place of residence, such officer, agent or employee shall receive reimbursement of his/her actual and necessary moving and relocation expenses incurred by him/her both before and after and by reason of such change of residence, subject to the provisions and limitations of this article.

(b) For the purposes of this article, a move occurs on the official reporting date to the new headquarters, and when a change in residence is reasonably to be required. Relocation shall be paid, when the following conditions are met:

(1) The officer's or employee's officially designated headquarters is changed for the advantage of the State, which includes the following:

(A) A promotion offered by any appointing authority, not including those movements that the employee could make through transfer, reinstatement or reemployment eligibility; or

(B) An involuntary transfer initiated by and at the discretion of the appointing authority,

(C) An involuntary transfer required to affect a mandatory reinstatement following:

(I) termination of a career executive or exempt appointment

(II) leave of absence

(III) rejection from probation

(D) any involuntary transfer required to affect a mandatory reinstatement following the expiration or involuntary termination of a temporary appointment, limited term appointment or training and development assignment when:

(I) the employee did not relocate to accept the appointment or assignment, or

(II) the employee did relocate, at State expense, to accept the appointment or assignment.

(2) The move must be a minimum of 50 miles plus the number of miles between the old residence

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and the old headquarters.

(3) Relocations that meet the above criteria will be fully reimbursed to the extent and limitations in this article.

(c) A change of residence is not deemed reasonable to be required for voluntary transfers or permissive reinstatements, with or without a salary increase, in response to general requests which specify that moving and relocation expenses will not be paid, or for any non-promotional transfer which is primarily for the benefit of the officer or employee.

(d) When an appointment does not meet the criteria in (a) and (b) the appointing power may, at his/her discretion, determine in advance that it is in the best interest of the State to reimburse all or part of the actual reasonable and necessary relocation expenses provided in this article as an incentive to recruit employees to positions that are designated by the appointing power as difficult to fill or because of outstanding qualifications of the appointee, or due to unusual and unavoidable hardship to the employee by reason of the change of residence.

(1) Relocations that meet this criteria shall be reimbursed only for the items in this article specifically authorized by the appointing power and may be subject to further limitations designated by the appointing power.

(2) Upon determination that any reimbursement will be made, the appointing power shall:

(A) Determine which provisions will apply to the relocation and establish any additional limitations to those provisions such as dollar limits, weight limits or time limits.

(B) Notify the employee, in writing, of specific allowable reimbursements prior to the move.

(e) Requirements and limitations specified in this article may not be waived or exceeded by the appointing power.

(f) Unauthorized relocation expenses and relocation expenses incurred prior to receipt of a written notice of allowable relocation expenses are the responsibility of the employee.

Note: Authority cited: Sections 19815.4(d), 19816 and 19820, Government Code. Reference: Section 19841, Government Code.

HISTORY

1. New section filed 12-27-95; operative 1-1-96. Submitted to OAL for printing only pursuant to Government Code section 3539.5 (Register 95, No. 52).

2 CCR § 599.714.1, 2 CA ADC § 599.714.1

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BEFORE THE STATE OF CALIFORNIA
DEPARTMENT OF HUMAN RESOURCES

In the Matter of the Appeal by)
ARI DELAY,)
Battalion Chief) Case No. 12-D-0163
Appeal of Involuntary Geographic)
Transfer)

August 20, 2012

KARLA BROUSSARD-BOYD
Administrative Law Judge

Sacramento, California

ORIGINAL

Transcribed by: Tamyra Morgan

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PROCEEDINGS - August 20, 2012

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ALJ BROUSSARD-BOYD: Good morning. This is the time and place for the appeal of Battalion Chief Ari Delay in an Involuntary Transfer, both geographic and for purposes of discipline.

We're here in Sacramento, California on August 20th, 2012. It's a little after 9:00 o'clock in the morning. My name is Karla Broussard-Boyd. I'm the Administrative Law Judge for CalHR, also known as Department of Human Resources, formerly known as DPA, Department of Personnel Administration.

The Appellant, Battalion Chief Delay is here and is represented by Ms. Emily Knoles from Peretz & Associates in San Francisco, California. And Mr. Crane, Bruce Crane, Senior Staff Counsel from Department of Forestry and Fire Protection. And I see you also have with you Ms. Sandra Lusich, Labor Relations Counsel, and before we went on the record, Chief Ferreira.

MR. CRANE: Yes.

ALJ BROUSSARD-BOYD: Ferreira was introduced. He is the representative.

All witnesses have been excluded based on a motion prior to going on the record by Ms. Knoles.

Now, I'm going to take official notice at this time

1 of two items. Number one, I'm going to take official
2 notice of the State Personnel Board specification of
3 Battalion Chief. That will be official notice one.

4 I'm also going to take official notice of Battalion
5 Chief Delay's State Controller's Office work history,
6 which shows he began working for the State of California
7 originally on August 24th, 1992 and most recently was
8 appointed to the position of Battalion Chief in 2008.
9 Does that sound correct?

10 **MR. DELAY:** Correct. There was a gap in service --

11 **ALJ BROUSSARD-BOYD:** Okay.

12 **MR. DELAY:** -- but I was blanketed in state service
13 in that time.

14 **ALJ BROUSSARD-BOYD:** Okay. And that will be --

15 **MR. DELAY:** (Inaudible.)

16 **ALJ BROUSSARD-BOYD:** -- like I said, official notice
17 two.

18 Now, that said, the appeal today is on an
19 Involuntary Geographic Transfer, both for purposes of
20 discipline under Government Code 19994.3 and because it
21 was improperly noticed under Government Code 19994.1.

22 Now, the burden of proof is on the Appellant to show
23 that there were procedural errors under the Government
24 Code and/or that the transfer was for disciplinary
25 reasons. That burden of proof is by a preponderance of

1 the evidence. We've excluded witnesses. Are there any
2 preliminary matters before I hear opening statements?

3 **MS. KNOLES:** Your Honor, if the two people in the
4 back of the room could identify themselves and confirm
5 that they won't in fact be testifying.

6 **ALJ BROUSSARD-BOYD:** Okay. Ma'am, we'll start with
7 you again.

8 **MS. RAMIREZ:** I'm Tina Ramirez. I'm a Labor
9 Relations Manager in the CalFIRE Labor Relations Office
10 and I will not be a witness today.

11 **ALJ BROUSSARD-BOYD:** And that's Ms. Ramirez.

12 **MS. RAMIREZ:** Ramirez.

13 **ALJ BROUSSARD-BOYD:** And you're a manager of Labor
14 Relations?

15 **MS. RAMIREZ:** Labor Relations Manager.

16 **ALJ BROUSSARD-BOYD:** Okay, perfect. And you are?

17 **MS. RODRIGUEZ:** Christine Rodriguez. I am the
18 Assistant Deputy Director for Labor and Human Resources
19 at CalFIRE.

20 **ALJ BROUSSARD-BOYD:** Okay. Christine Rodriguez.
21 Why does that name sound familiar?

22 **MS. RODRIGUEZ:** I formerly worked for DPA.

23 **ALJ BROUSSARD-BOYD:** Okay. And so your title now
24 is?

25 **MS. RAMIREZ:** Assistant Deputy Director for Labor

1 and Human Resource Management.

2 **ALJ BROUSSARD-BOYD:** Okay, thank you. And you will
3 not be testifying.

4 **MS. RODRIGUEZ:** I will not be testifying.

5 **ALJ BROUSSARD-BOYD:** Okay. Anything else?

6 **MS. KNOLES:** That's it, Your Honor.

7 **ALJ BROUSSARD-BOYD:** All right. The burden of
8 proof, as I said is on the Appellant. The Appellant goes
9 first. The Respondent doesn't have anything to prove
10 here today unless the Appellant is able to meet that
11 burden.

12 Did you want to make an opening statement, Ms.
13 Knoles?

14 **MS. KNOLES:** Yes, Your Honor, just briefly.

15 As you've already mentioned, Battalion Chief Ari
16 Delay is appealing the involuntary transfer that he was
17 subjected to under CalFIRE Policy and Procedures, Section
18 1028.3 and 1028.4 and in violation of Government Code
19 Section 19994.1 and pursuant to 19994.3.

20 As we all will be shown today at the hearing, he was
21 subjected to this involuntary transfer in violation of
22 the sections when he was moved from his duty station at
23 Half Moon Bay where he's been working for over 16 years
24 to the Felton Duty Station, which is more than 35 miles
25 away.

1 In these circumstances an employee is reasonably
2 expected to change his place of residence when the move
3 results in a distance of at least 35 miles between the
4 old work location and the new work location, which it
5 did, a distance of 35 miles between the old residence and
6 a new residence, which it will, and a distance of 35
7 miles between the old residence and the new work
8 locations, which it is.

9 Each of these requirements is met here and in so
10 moving, Chief Ferreira, who guided and instructed the
11 transfer to take place was required to comply with the
12 notice provisions of this policy, which required at least
13 a 60 day written notice of the transfer and that notice
14 required the transfer -- the reason for the transfer, the
15 information regarding various other information regarding
16 entitlements under the transfer and other pertinent
17 information such as available alternative positions or
18 alternative options to that move.

19 Here, no such notice was given at all. Even under a
20 voluntary -- an involuntary transfer of less than 35
21 miles he would've been required to have 30 days notice,
22 which he was not given.

23 Furthermore, the transfer, as we will show, violated
24 Battalion Chief Delay's rights because it was both
25 retaliatory and harassing, so we are here to appeal that

1 decision and we will establish each of those elements.

2 **ALJ BROUSSARD-BOYD:** Okay, thank you. Mr. Crane,
3 did you wish to make an opening statement?

4 **MR. CRANE:** Yes, Your Honor. Thank you.

5 You're going to hear testimony today from Debbie
6 Reya who is an SSM in the Human Relations Department of
7 CalFIRE that 1028, the policy upon which they're relying
8 refers only to changes between civil service
9 classifications and is for layoffs and is rarely used and
10 is not in any way applicable in this situation. Because
11 Mr. Delay has remained at the same civil service
12 classification for the entire time, that is Battalion
13 Chief, 1028 is not in any way applicable to this case.

14 There's been no change of residence, as a matter of
15 fact, so it's our position that no notice is required.
16 But, and also he was not reasonably required to change
17 his residence because under the Bargaining Unit 8 MOU,
18 Section 12.1.9, all Unit 8 employees are subjected to be
19 excluded employees for purposes of moving and relocation.
20 And that refers them to Section 599714.1, which says
21 reimbursement of expenses is required when a move is a
22 minimum of 50 miles, plus the distance between the old
23 residence and the old headquarters.

24 So if you look at the face of Mr. Delay's appeal,
25 his transfer does not contemplate a change in residence

1 because the move is not a minimum of 69 miles. So that
2 would be 50 miles under 599714.1, plus the 19 miles from
3 Mr. Delay's Half Moon Bay -- from his Half Moon Bay
4 station. So he admits that it only, at the most is 49.5
5 miles and maybe only 36.8 miles would be an alternative
6 route, so there is no notice requirement.

7 But even if there was a notice requirement, he was
8 given written notice on 5/18/12 and the report date, his
9 transfer date was not until August 1st, 2012.

10 Further, there's no adverse or detrimental impact as
11 a result of the transfer. There's no requirement that he
12 spend the night at the new location. The new -- the
13 transfer actually will provide for less time away from
14 his family. A state vehicle is going to be provided for
15 his commute because he's a battalion chief. Fuel will be
16 provided for that vehicle. There is no change in his
17 duty schedule or his days off.

18 And as to this being harassment or discipline,
19 you'll hear testimony from Chief John Ferreira who's the
20 unit chief, who was the sole decider to make -- to
21 transfer Mr. Delay. And you will hear his reasoning and
22 documentation supporting that, that it was strictly to
23 provide Mr. Delay with additional exposure to CalFIRE
24 management, CalFIRE policies and procedures. It was not
25 in any way to discipline, correct, penalize or harass

1 him. There was no adverse action that has been
2 contemplated or is pending. There is no investigation
3 for misbehavior that was contemplated or has been done.

4 So this was a completely legitimate transfer and we
5 request that it be upheld.

6 **ALJ BROUSSARD-BOYD:** Okay, thank you. You can call
7 your first witness, Ms. Knoles.

8 **MS. KNOLES:** I'm going to be calling Chief John
9 Ferreira as our first witness.

10 **ALJ BROUSSARD-BOYD:** Okay, Chief Ferreira, come
11 forward please and be sworn. Would you raise your right
12 hand, sir.

13 (Whereupon the witness was duly sworn.)

14 **THE WITNESS:** Yes, I do.

15 **ALJ BROUSSARD-BOYD:** Please have a seat, please, and
16 state your name for the record.

17 **THE WITNESS:** John Ferreira, F-E-R-R-E-I-R-A.

18 **ALJ BROUSSARD-BOYD:** F-E-R-R --

19 **THE WITNESS:** E-I --

20 **ALJ BROUSSARD-BOYD:** -- E-I --

21 **THE WITNESS:** -- R-A.

22 **ALJ BROUSSARD-BOYD:** -- R-A. Thank you. Your
23 witness.

24 Testimony of
25 JOHN FERREIRA

1 having been duly sworn, testified as follows:

2 DIRECT EXAMINATION BY MS. KNOLES

3 Q. **(BY MS. KNOLES)**: Thank you. Chief Ferreira,
4 how long have you worked for CalFIRE?

5 A. This is my 40th fire season. I started in
6 1973.

7 Q. And what was your first position with CalFIRE?

8 A. I was a seasonal firefighter.

9 Q. So you've made your career entirely within the
10 CalFIRE system?

11 A. Yes. No, prior to my work with CalFIRE I
12 worked for a fire district above Hayward, the Fairview
13 Fire District and I started there in 1971 until I got my
14 position with the CalFIRE.

15 Q. And throughout your tenure with CalFIRE, have
16 you also been a member of the union?

17 **MR. CRANE**: I would just object as to the relevance.

18 **MS. KNOLES**: One of the issues in this case, as Mr.
19 Delay states in his appeal is that he believes part of
20 the harassment and retaliation is because he's fallen out
21 of favor with the union. Chief John Ferreira has made
22 the move and he made the decision. His relationship to
23 the union is necessarily relevant to the decisions he
24 made.

25 **ALJ BROUSSARD-BOYD**: But the union doesn't

1 discipline state employees.

2 **MS. KNOLES:** The union doesn't necessarily
3 discipline state employees, but if someone is acting as
4 the arm of the union in making their decision-making,
5 then the decision could have been made for reasons
6 outside the permissible scope of the code.

7 **ALJ BROUSSARD-BOYD:** Okay. Did you wish to speak
8 again, Mr. Crane?

9 **MR. CRANE:** Well, I mean, Chief Ferreira is --
10 you're going to hear testimony that he's the chief person
11 that made the decision. If she wants to ask what factors
12 he took into consideration, that's a question, but I
13 don't see what his connection with the union is or how
14 long he's been a union member has any basis on why he
15 made the decision. I just don't see the relevance of it.

16 **ALJ BROUSSARD-BOYD:** Okay. I'm going to overrule
17 the objection. I'm going to allow you latitude in
18 establishing what he does for the union in conjunction
19 with his job.

20 **MS. KNOLES:** Thank you.

21 **ALJ BROUSSARD-BOYD:** Okay.

22 **THE WITNESS:** Could you repeat the question?

23 Q. **(BY MS. KNOLES):** Throughout your tenure, have
24 you always been a union member?

25 A. For the first ten or 12 years, we didn't have a

1 union. It was just an employees' association and then
2 under the Meyers Milias Brown Act, I believe, when
3 bargaining units were set up with the state, then yes, we
4 became a union member and I've been a member ever since
5 and for the last ten years I'm an excluded member, but
6 continue to pay dues.

7 Q. And what does an excluded member mean, just for
8 the record.

9 A. Is I'm not represented. I guess the term would
10 be not represented.

11 Q. Sure, okay. And since 2007 you've worked with
12 Battalion Chief Delay, correct?

13 A. No.

14 Q. When did you first --

15 A. I actually met Ari Delay through his
16 participation with the La Honda volunteers and that
17 would've been when I first went over to the San
18 Mateo/Santa Cruz unit in 2003 and the La Honda volunteers
19 are a part of the San Mateo County Fire Department. And
20 as the unit chief for CalFIRE in San Mateo and Santa Cruz
21 counties, then La Honda Volunteer Fire Brigade came under
22 my responsibility.

23 Q. Okay. Let me narrow that down. Since 2000 --
24 since 2007, Battalion Chief Delay has worked for CalFIRE;
25 is that correct?

1 A. No. He started working for CalFIRE in 2008, I
2 believe.

3 Q. Okay. And since 2008 you're in his supervising
4 command chain; is that correct?

5 A. Yes.

6 Q. Okay. And am I correct in saying that
7 Battalion Chief Delay reports to Chief Cole directly?

8 A. Directly, yes.

9 Q. And then Chief Cole reports to you?

10 A. Yes.

11 Q. Okay. Prior to coming here today you were
12 asked to look for documents and electronic data regarding
13 Battalion Chief Delay; is that correct?

14 A. Yes.

15 Q. And did you do that?

16 A. Yes.

17 Q. And did you also check -- you checked all your
18 emails?

19 A. Yes.

20 Q. Emails regarding him. And is your work cell
21 phone number 831-254-1700?

22 A. Yes.

23 Q. Did you check your cell phone for text messages
24 regarding Battalion Chief Delay?

25 A. I guess in a way. My phone only saves text

1 messages for a period of time and I've got nothing that
2 goes back to the periods more than two months ago and I
3 know that there were no text messages on there that
4 referred to Ari Delay in any way.

5 Q. Okay. So your testimony is that you don't have
6 any data regarding Mr. Delay prior to two months ago?

7 A. Correct.

8 Q. And that's because --

9 A. On my text phone.

10 Q. On --

11 A. Or text on my cell phone.

12 Q. That's -- yes. And in the last two months you
13 haven't received any text messages regarding Battalion
14 Chief Delay?

15 A. No.

16 Q. Do you have any method of saving text messages?

17 A. No. Well, I'm sure there's a method. I don't
18 know how to do it.

19 Q. Okay. Other than what has been produced to us,
20 did you have any other documents to bring today regarding
21 Mr. Delay?

22 A. No.

23 Q. Okay. It was your decision to transfer
24 Battalion Chief Delay to the Felton Stations, correct?

25 A. To the safety officer's position who's office

1 is at Felton, yes.

2 Q. Okay.

3 A. That's the unit headquarters, just to
4 differentiate from what's sometimes referred to as the
5 Felton Fire Station, which is the same location.

6 Q. Okay. You made this decision in January of
7 2012, correct?

8 A. About that time, yes.

9 Q. Okay. And in February, on February 6th, 2012,
10 you had a meeting with the union chapter; is that
11 correct?

12 A. I know the union had a meeting. I was not at
13 it. I think I called in on the phone, if that's the same
14 meeting that you're referring to.

15 Q. Okay. So you called in on the phone in a union
16 meeting in February of 2012?

17 A. Yes.

18 Q. Okay. And in that meeting didn't you make
19 statements that the -- that you were attempting to deal
20 with the problem-makers in the unit?

21 A. No.

22 Q. Okay. I'd like you to turn to Exhibit 17.

23 **ALJ BROUSSARD-BOYD:** Okay. Ms. Knowles has produced
24 a --

25 **MS. KNOLES:** Yes.

1 **ALJ BROUSSARD-BOYD:** -- three inch binder full of
2 paper here. It's before the witness and if there's no
3 objection from Respondent, I'll allow these to be set in
4 front of the witness, but they still have to be marked
5 and admitted and I'll entertain any objections to any of
6 the documents.

7 Now, which page do you want him to turn to?

8 **MS. KNOLES:** Exhibit 17.

9 **ALJ BROUSSARD-BOYD:** Okay. Now, Exhibit 17, for
10 purposes of keeping a clear record will now become the
11 Appellant's first in order.

12 **MS. KNOLES:** Understood.

13 **ALJ BROUSSARD-BOYD:** Okay.

14 **MS. KNOLES:** So --

15 **ALJ BROUSSARD-BOYD:** It will be Appellant's A.

16 (Whereupon, Appellant's A
17 was marked for identification.)

18 **MS. KNOLES:** -- we'll mark 17 as Appellant's A. And
19 for the record, the title of the exhibit is the CDF
20 Firefighters CZU Chapter Meeting, dated February 6th,
21 2012.

22 Q. **(BY MS. KNOLES):** This is the meeting we were
23 just talking about, correct?

24 A. Yes.

25 Q. And on page 1, Section D, it says Introduction

1 of Guests. Do you see that?

2 A. Yes.

3 Q. And it says 1700 via phone. That's you, isn't
4 it?

5 A. Right.

6 Q. Okay. And that 1700 refers to your cell phone
7 number?

8 A. No. That's my state assigned position number.

9 Q. Okay.

10 A. But it's also my last cell phone -- the last
11 four digits of my cell phone number.

12 Q. Okay. And on the bottom of page 1 it says,
13 "1700 is now on the conference call." That's you, right?

14 A. Yes.

15 Q. And you responded and you stated that,
16 "Jalbert's here on the line as well." This is on page 2.
17 Are you referring to Scott Jalbert there?

18 A. Yes.

19 Q. Okay. And looking further down that page,
20 1700, it says, "A plan is being looked at to address the
21 problems of possible insiders that are creating a problem
22 for CalFIRE from the inside." Do you see that?

23 A. Yes.

24 Q. Do you remember making that statement?

25 A. I made something similar to that, yes.

1 Q. Okay. And the question leading to that says,
2 "Can you speak to the individuals in the Coastside that
3 are working against the CalFIRE mission in the ranks."
4 Do you see that?

5 A. Yes.

6 Q. And who's Wolfe?

7 A. That refers to Bob Wolfe who's the statewide
8 union president who had also called in on the telephone.

9 Q. Okay. And here where you're saying this
10 problem of possible insiders working against the CalFIRE
11 mission, you were talking about Battalion Chief Delay,
12 weren't you?

13 A. No, not necessarily.

14 Q. Who were you talking about?

15 A. Well, there is a group of employees that I'm
16 referring to there.

17 Q. And Battalion Chief Delay is one of them,
18 correct?

19 A. Yes.

20 Q. Okay. And Chief Cole is another one; is that
21 correct?

22 A. Yes.

23 Q. Okay. And the problem of possible insiders
24 working against the CalFIRE mission that's being
25 discussed here, that was -- that's in response to the

1 issue of certain members of CalFIRE who work in the
2 Coastside District who want to separate, correct?

3 **ALJ BROUSSARD-BOYD:** Could you rephrase that,
4 please?

5 **MR. CRANE:** Yeah, that's pretty leading.

6 **MS. KNOLES:** Yes, Your Honor.

7 **MR. CRANE:** Thank you.

8 **MS. KNOLES:** Let me break that down into a couple of
9 pieces.

10 **MR. CRANE:** Thank you.

11 Q. **(BY MS. KNOLES):** CalFIRE contracted with the
12 Coastside Fire District in 2007 or 2008; is that correct?

13 A. Yes.

14 Q. Okay. And since that time there have been
15 issues with members of the Coastside Fire District who
16 now work for CalFIRE wanting to separate from CalFIRE,
17 correct?

18 **MR. CRANE:** I would just object. It's leading.

19 **ALJ BROUSSARD-BOYD:** Sustained.

20 **MR. CRANE:** She needs to have open-ended questions.

21 **ALJ BROUSSARD-BOYD:** Sustained.

22 **MR. CRANE:** Don't answer.

23 Q. **(BY MS. KNOLES):** The acquisition or the
24 contract with Coastside and CalFIRE has not always been
25 easy, has it?

1 A. No.

2 Q. And one of the issues there includes that some
3 of the members are dissatisfied with the CalFIRE
4 representation, correct?

5 **MR. CRANE:** Objection, lacks foundation, facts not
6 in evidence.

7 **ALJ BROUSSARD-BOYD:** I'm going to sustain the
8 objection.

9 Could you -- if there are more than one union
10 involved here, could you ask the Chief about those unions
11 so I understand what the CZU Chapter is?

12 **MS. KNOLES:** Sure.

13 **ALJ BROUSSARD-BOYD:** And CDF firefighters and then
14 there's IAF (verbatim) and --

15 **MS. KNOLES:** We can go -- sure.

16 **ALJ BROUSSARD-BOYD:** Thank you.

17 **THE WITNESS:** To save time, would you like me just
18 to explain it and kind of (indiscernible)?

19 Q. **(BY MS. KNOLES):** Could you please explain the
20 chapter meeting and just --

21 A. Correct.

22 Q. -- who that represents.

23 A. There's CDF Firefighters are Bargaining Unit 8
24 and Bargaining Unit 8 is represented by the California
25 Department of Forestry -- California Department of

1 Forestry and Fire Protection employees, CDEFP, I think.
2 And as a statewide organization, they're affiliated with
3 the International Association of Federated Firefighters,
4 or IAFF. And the CDF Firefighters bargaining unit is
5 known as Local 2881.

6 **ALJ BROUSSARD-BOYD:** CDF is?

7 **THE WITNESS:** CDF Firefighters.

8 **ALJ BROUSSARD-BOYD:** Is that the CDFP (verbatim) or
9 is that the CDF?

10 **THE WITNESS:** Well, they still call themselves the
11 CDF Firefighters Association. CDF, California Department
12 of Forestry and Fire Protection Firefighters, CDEFP.

13 **ALJ BROUSSARD-BOYD:** CDEFP?

14 **THE WITNESS:** CDF, California Department of Forestry
15 Firefighters, CDEFP. So they are a separate local, as a
16 statewide organization and then the state is divided up
17 into 22 subunits, San Mateo/Santa Cruz unit being one of
18 those subunits and each one of those subunits has a
19 separate chapter, although they all report to the
20 statewide organization.

21 **ALJ BROUSSARD-BOYD:** And how does Bargaining Unit 8
22 fit into CDEFP?

23 **THE WITNESS:** That is Bargaining Unit 8.

24 **ALJ BROUSSARD-BOYD:** Okay.

25 **THE WITNESS:** And they're the only -- like CHP, CDF

1 Firefighters is a separate bargaining unit. And I don't
2 think -- yeah, there's no other state organizations that
3 have membership in CDF Firefighters.

4 Q. (BY MS. KNOLES): Okay. So in turning back to
5 page 2, you've identified that the possible insiders
6 creating problems for CalFIRE included -

7 MR. CRANE: I would object. That mischaracterizes
8 the testimony. It says problems of possible insiders.
9 It doesn't say anything about insiders creating.

10 ALJ BROUSSARD-BOYD: Okay. Well, let her finish the
11 question before you object, please.

12 MR. CRANE: I will, Your Honor.

13 ALJ BROUSSARD-BOYD: So why don't you start again,
14 please.

15 Q. (BY MS. KNOLES): Okay, 1700, you state this is
16 you, as we've previously identified. You've stated a
17 plan is being looked at to address the problems of
18 possible insiders that are creating problems for CalFIRE
19 from the inside. You've identified that you were
20 discussing a group of people of which Battalion Chief
21 Delay is one of them. What problems were they creating?

22 A. Well, these problems with understanding the
23 CalFIRE methods and terminologies and culture of CalFIRE,
24 so that's one of the problems we've had over the four
25 years.

1 There is, as was addressed in this separate study of
2 CalFIRE that was done called the Tri-Data report, which
3 I'm sure is part of this, there's mention there that an
4 outside organization detect -- I'm sorry?

5 Q. I'm sorry. Are you referring here, because you
6 said you mentioned there. I'd like you to go back to
7 this, the problems of possible insiders creating problems
8 for CalFIRE.

9 A. Yes.

10 Q. Are you saying -- I need you to clarify what
11 you're talking about now because you're saying there --

12 A. Okay.

13 Q. But you've mentioned another report now.

14 A. The problems I'm talking about are the
15 management supervision of employees and understanding
16 CalFIRE culture. That's part of the problems that we've
17 been trying to deal with for four years.

18 **ALJ BROUSSARD-BOYD:** So when you say that, are you
19 saying the managers and the supervisors were the problem
20 or the employees were the problem?

21 **THE WITNESS:** A combination of both --

22 **ALJ BROUSSARD-BOYD:** Okay.

23 **THE WITNESS:** -- that were assigned directly to the
24 Coastside Fire District.

25 **ALJ BROUSSARD-BOYD:** And the Coastside Fire District

1 is what? Coastside Fire District, when you say that,
2 what are you referring to?

3 **THE WITNESS:** I mean a geographical area around Half
4 Moon Bay, California that began a cooperative
5 relationship with CalFIRE or a contract with CalFIRE for
6 management and employees to provide emergency services.
7 It's an independent district and in 2005 or '06 they
8 began a process of attempting to enter into the state
9 system, like Riverside County or a bunch of -- about 150
10 other fire departments In the state, for us to provide
11 those services.

12 And then we finally began to provide the services to
13 part of the district in 2007 and then to the entire
14 district, which has three fire stations in June of 2008.

15 **ALJ BROUSSARD-BOYD:** Okay.

16 **Q. (BY MS. KNOLES):** Okay. So the problems you're
17 talking about here, working against the CalFIRE mission
18 in the ranks, aren't you actually talking about the fact
19 that there were CalFIRE employees at Coastside who were
20 advocating leaving the contract with CalFIRE?

21 **A.** That was part of it, yes.

22 **MR. CRANE:** I would object that it mischaracterizes
23 his testimony. He never talked about anybody working
24 against the ranks. He talked about a group of people
25 that had no understanding of CalFIRE culture, policies or

1 procedures.

2 **MS. KNOLES:** I'm reading from the document and the
3 response to the document.

4 **ALJ BROUSSARD-BOYD:** Okay. I'm going to overrule
5 the objection. He did say methods, terminology, culture
6 of CalFIRE, so that I'm going to allow her to explore
7 that.

8 Q. **(BY MS. KNOLES):** And your answer to that was
9 yes, that was --

10 A. Yes.

11 Q. And if the -- and your goal was to keep
12 Coastside as part of CalFIRE, correct?

13 **MR. CRANE:** Object, leading.

14 **ALJ BROUSSARD-BOYD:** Sustained.

15 Q. **(BY MS. KNOLES):** Why was it a problem if some
16 of the employees were fighting to separate Coastside from
17 CalFIRE?

18 **MR. CRANE:** Object. It assumes facts not in
19 evidence. There's been no discussion about anybody --
20 any employees trying to separate Coastside from CalFIRE.

21 **MS. KNOLES:** He just testified that one of the
22 issues was people trying to.

23 **ALJ BROUSSARD-BOYD:** Okay. I'm going to sustain the
24 objection. I think you can lay a better foundation,
25 please.

1 Q. (BY MS. KNOLES): There was an issue with some
2 of the management adapting to the culture of CalFIRE.
3 You've testified to that, correct?

4 A. Yes.

5 Q. And that management were people that came from
6 Coastside to CalFIRE when the contract was made, correct?

7 A. Yes.

8 Q. And Battalion Chief Delay is one of those
9 managers that you're talking about, correct?

10 A. Yes.

11 Q. Okay. And part of that failure to adapt was a
12 desire to break the contract, correct?

13 MR. CRANE: Object. It calls for speculation as to
14 what they were doing, what was in their minds, the
15 employees. And he hasn't testified to anything about
16 them trying to break the contract with CalFIRE. And I
17 don't know what the relevance of this is anyway.

18 ALJ BROUSSARD-BOYD: Okay. Your objection on
19 relevance is overruled, but your objection as to lack of
20 foundation is sustained.

21 Q. (BY MS. KNOLES): Your understanding -- or
22 strike that.

23 Why were you discussing this issue with the union?

24 A. Because they were asking for an update on what
25 was occurring in the Coastside Fire District.

1 Q. And did -- no, strike that.

2 Did you -- but you never actually had any direct
3 conversations with Battalion Chief Delay about these
4 issues you're talking about here, are you?

5 **MR. CRANE:** I would object. It's vague. What is
6 she -- what issues is she referring to?

7 **ALJ BROUSSARD-BOYD:** I'm going to sustain the
8 objection. I think you can ask a better question.

9 **MS. KNOLES:** Yeah.

10 **ALJ BROUSSARD-BOYD:** Thank you.

11 Q. **(BY MS. KNOLES):** You just testified as to the
12 -- you know what, strike that.

13 You testified that the problems being creating were
14 a litany of things including a failure to adapt to the
15 culture and the rules and the regulations, etcetera, of
16 CalFIRE, correct?

17 A. Yes.

18 Q. Prior to this meeting you had never had any
19 conversations with Battalion Chief Delay about these
20 issues, had you?

21 A. Yes, I had.

22 Q. Did you have any written documentation of those
23 meetings?

24 A. No.

25 Q. Did you ever write up any development plans for

1 Battalion Chief Delay about how he could improve on these
2 areas?

3 A. That would have been the responsibility of
4 Chief Cole, so no, I didn't.

5 Q. And you never instructed Chief Cole to make
6 those write-ups, did you?

7 A. Chief Cole and I had discussed the issues, yes.

8 Q. But you had never specifically said I think
9 Battalion Chief Delay needs some further instructions. I
10 think you should write up a development plan for him.

11 A. Several years prior to this I had tried to
12 provide the extra instruction via an exchange or an
13 immersion --

14 Q. I'm sorry, I want to strike that as non-
15 responsive.

16 The question is, did you ever write up a plan or
17 instruct that a plan was to be written up?

18 **MR. CRANE:** I would object. It's compound. She's
19 asking two questions.

20 **ALJ BROUSSARD-BOYD:** Okay. I'm going to sustain the
21 objection. One at a time, please.

22 Q. **(BY MS. KNOLES):** My question was you never
23 instructed Chief Cole to write up Battalion Chief Delay
24 for these various deficits you saw?

25 **MR. CRANE:** And I'd also object, it's vague as to

1 the term write-up. Does she mean instruct or write-up in
2 the terms of a disciplinary? That's kind of a term of
3 art we use if someone is written up.

4 **ALJ BROUSSARD-BOYD:** Okay. I'm going to sustain the
5 objection.

6 **MS. KNOLES:** I would argue that this person is
7 knowledgeable about the processes and can clarify what he
8 did and did not do.

9 **ALJ BROUSSARD-BOYD:** Well, for the purposes of
10 write-up, do you mean disciplinary? You know, what do
11 you mean?

12 **MS. KNOLES:** Sure.

13 **ALJ BROUSSARD-BOYD:** What is write-up?

14 **Q. (BY MS. KNOLES):** There is a system in place
15 with CalFIRE called an IDP, correct?

16 **A.** Yes.

17 **Q.** Could you -- could you define what an IDP is?

18 **A.** An IDP is a two-part record. One showing
19 whether the employee meets certain standards of
20 performance.

21 **Q.** Uh-huh.

22 **A.** And how well they meet those standards.

23 And then the second half of the form is a plan on
24 how to either improve the employee's performance or
25 expand their knowledge and skills.

1 Q. Okay. And that's a tool that you could use
2 when an employee needed to improve their knowledge,
3 skills, etcetera, correct?

4 A. That's one tool, yes.

5 Q. Okay. And you never instructed Chief Cole to
6 develop an IDB for Battalion Chief Delay, did you?

7 A. Well, I've told all of our divisions chiefs
8 every year that IDPs are due at the beginning of the year
9 in January and we can find no record of Chief Cole doing
10 an IDP on Chief Delay.

11 Q. Did you ever specifically instruct Chief Cole
12 to develop an IDP for the areas where you believed
13 Battalion Chief Delay was lacking?

14 A. No.

15 Q. You did not.

16 A. No.

17 Q. And is that because you thought that Chief Cole
18 would not -- strike that.

19 Do you think that Chief Cole also lacked in those
20 same areas?

21 A. Many --

22 **MR. CRANE:** Objection. It's vague and ambiguous.
23 There's no foundation and also there's no relevance about
24 what he thought about Chief Cole.

25 **ALJ BROUSSARD-BOYD:** Well, Chief Cole has been

1 testified to as in the chain of command and was Chief
2 Delay's supervisor, so I'm going to overrule the
3 objection.

4 **MR. CRANE:** Thank you, Your Honor.

5 **THE WITNESS:** If I understand your question
6 correctly, do I believe that Chief Cole lacks a complete
7 understanding. Well, I'm going to paraphrase your
8 question.

9 Q. **(BY MS. KNOLES):** Sure.

10 A. What I understand your question to be is asking
11 about Chief Cole's knowledge of the culture and
12 particular things that are unique to CalFIRE and I would
13 say no, he doesn't.

14 Q. Okay. And as his direct supervisor, you never
15 developed an IDP for him, did you?

16 A. Yes, I did.

17 Q. You did, okay. So you knew how the process
18 worked.

19 A. Yes.

20 Q. And if you thought that Battalion Chief Delay
21 was equally lacking, you could have instructed that
22 process to begin, correct?

23 **MR. CRANE:** I would object as asked and answered.
24 He's already testified that he instructed all of his
25 supervisors to do an IDP every year.

1 **ALJ BROUSSARD-BOYD:** He did, but she's asking now
2 did he do an IDP --

3 **MS. KNOLES:** Uh-huh.

4 **ALJ BROUSSARD-BOYD:** -- on Chief Cole.

5 **THE WITNESS:** Yes.

6 **ALJ BROUSSARD-BOYD:** Okay. So --

7 **MR. CRANE:** Okay.

8 **ALJ BROUSSARD-BOYD:** -- the objection is overruled.
9 If he did it, he did it. Okay.

10 **MS. KNOLES:** Okay.

11 **ALJ BROUSSARD-BOYD:** And you did do an IDP?

12 **THE WITNESS:** Yeah, I think I've done one or two of
13 them in the four years that he's worked for CalFIRE, yes.

14 **ALJ BROUSSARD-BOYD:** Okay.

15 **Q. (BY MS. KNOLES):** But as far as you're aware,
16 Battalion Chief Delay has never had one, correct?

17 **A.** We couldn't find any records and Chief Cole
18 said he couldn't find any records either.

19 **Q.** Okay. You testified before that the reason
20 that you made the decision -- let me strike that.

21 You -- let me go back and make sure I understand
22 your testimony correctly. You testified that it was your
23 decision to move Battalion Chief Delay, but you did not
24 actually consult Chief Cole on that decision, did you?

25 **A.** Chief Cole and I had discussed it several times

1 but when it came to the actual decision, no, I didn't
2 consult with him.

3 Q. Okay. And even though he was the direct
4 supervisor of Battalion Chief Delay, you didn't consult
5 him?

6 A. I didn't ask his permission, no.

7 **ALJ BROUSSARD-BOYD:** Well, I guess her question
8 isn't if you asked permission, Chief.

9 **THE WITNESS:** Right.

10 **ALJ BROUSSARD-BOYD:** I think it's did you consult
11 with Cole regarding the transfer of Delay.

12 **THE WITNESS:** On the final decision or when I came
13 to my -- when I came to my final conclusion to transfer
14 him, no, I did not consult with Paul Cole.

15 **ALJ BROUSSARD-BOYD:** Well, prior to coming to your
16 final conclusion --

17 **THE WITNESS:** Yes.

18 **ALJ BROUSSARD-BOYD:** -- did you consult with Cole?

19 **THE WITNESS:** Yes.

20 **ALJ BROUSSARD-BOYD:** On how many occasions did you
21 consult with Cole, his supervisor?

22 **THE WITNESS:** Oh, I would imagine over the four year
23 period, two or three times.

24 **ALJ BROUSSARD-BOYD:** Well, I don't think you decided
25 to transfer him four years ago, three years ago, two

1 years ago. You testified you decided to transfer him in
2 January 2012, correct?

3 **THE WITNESS:** That's when I made the ultimate
4 decision, yes.

5 **ALJ BROUSSARD-BOYD:** Right.

6 **THE WITNESS:** If I could explain a little bit?

7 **ALJ BROUSSARD-BOYD:** Well, when did you decide to
8 transfer him? I thought you testified January 2012.

9 **THE WITNESS:** Well, that's --

10 **ALJ BROUSSARD-BOYD:** Am I wrong? I might be wrong.
11 Am I wrong?

12 **THE WITNESS:** No. That's when I came to the final
13 conclusion, yes.

14 **ALJ BROUSSARD-BOYD:** You made the decision to
15 transfer Appellant --

16 **THE WITNESS:** Yes.

17 **ALJ BROUSSARD-BOYD:** -- in January of 2012. Okay.

18 And in leading up to that decision, I guess the question
19 is did you talk to Chief Cole. Your answer is yes.

20 **THE WITNESS:** Yes.

21 **ALJ BROUSSARD-BOYD:** Then I guess the question is
22 how many times.

23 **THE WITNESS:** Well, and if I could just clarify.

24 Chief Cole also came over in this agreement with
25 Coastside Fire District.

1 **ALJ BROUSSARD-BOYD:** I don't care. I'm asking you
2 how many times you talked to Cole before you made the
3 decision, that's all.

4 **THE WITNESS:** Okay. Well --

5 **ALJ BROUSSARD-BOYD:** Once, five times?

6 **THE WITNESS:** Well, I think about three times.

7 **ALJ BROUSSARD-BOYD:** Okay.

8 **Q. (BY MS. KNOLES):** When were those discussions?

9 **A.** Over the period of time from when Coastside
10 Fire District transitioned to CalFIRE in January of 2012.

11 **Q.** Can you identify any specific things?

12 **A.** No.

13 **Q.** Can you identify the locations where those
14 conversations took place?

15 **A.** It was either at his office in Half Moon Bay or
16 my office in Felton.

17 **Q.** Do you have any specific memory of the
18 conversations?

19 **A.** Not specific, no.

20 **Q.** Okay. And in fact after January 2012, Chief
21 Cole disagreed with your decision to move Battalion Chief
22 Delay, didn't he?

23 **A.** Yes.

24 **Q.** And let's address that. One, two, I'm going to
25 turn to Exhibit 19. Before we turn to Exhibit 19, just

1 addressing Exhibit 17 --

2 **ALJ BROUSSARD-BOYD:** Which is now known as
3 Appellant's A.

4 **MS. KNOLES:** Appellant's 1 (verbatim).

5 **ALJ BROUSSARD-BOYD:** Any objection to Appellant's A,
6 Mr. Crane?

7 **MR. CRANE:** Well, she's laid no foundation for it.
8 We have no idea if this is an accurate -- we have no idea
9 who translated -- or who transcribed this. We have no
10 idea what this is. We don't know if this is actually
11 what happened. Chief Ferreira says, yeah, I said
12 something like this. Yes, I may have said something like
13 this.

14 But this is a document that has very little
15 authenticity in terms of is it even the accurate
16 document. Is it an accurate transcription of what was
17 supposedly said. It's all hearsay.

18 **ALJ BROUSSARD-BOYD:** Okay. Is there any foundation
19 you can lay on this document marked as Exhibit A,
20 formerly known as Exhibit 17, Ms. Knoles?

21 **MS. KNOLES:** Well, I'll say first of all that it was
22 produced by CalFIRE to us in response to the document
23 production.

24 Second, I would ask Chief Ferreira to -- he's
25 reviewed portions of it, everything marked 1700. He's

1 represented that it's an accurate representation of his
2 memory. While he might not remember the specific words,
3 the context and the discussion is the same. I would ask
4 him to continue to review the document and if there's
5 anything that seems grossly inaccurate to identify that.
6 But otherwise --

7 **ALJ BROUSSARD-BOYD:** Okay.

8 **MS. KNOLES:** -- I think it's a fair representation.

9 **ALJ BROUSSARD-BOYD:** All right, Chief Ferreira, what
10 is this document or what do you believe this document
11 that's been marked as Exhibit A to be, which was formerly
12 17?

13 **THE WITNESS:** I believe this was the minutes of the
14 meeting that they held at the Half Moon Bay Fire Station
15 on February 6th.

16 But I also believe that it might contain -- because
17 they have -- typically have two meetings at the same time
18 and you'll see up here where it's marked at 9:00 a.m. at
19 Half Moon Bay and 1:30 at Casserly Hall, which is near
20 Watsonville.

21 **ALJ BROUSSARD-BOYD:** And did you attend both
22 meetings --

23 **THE WITNESS:** Well, I --

24 **ALJ BROUSSARD-BOYD:** -- by phone?

25 **THE WITNESS:** -- phoned into this one. I don't

1 recall --

2 **ALJ BROUSSARD-BOYD:** This one being Half Moon Bay?

3 **THE WITNESS:** I'm sorry, yes, the one at Half Moon
4 Bay. I don't recall if I attended the one in
5 Watsonville. That would've been on my way home and
6 sometimes --

7 **ALJ BROUSSARD-BOYD:** Is that the San Mateo County
8 one?

9 **THE WITNESS:** No. Half Moon Bay is the San Mateo --

10 **ALJ BROUSSARD-BOYD:** No, no.

11 **THE WITNESS:** -- County one. Casserly Hall is Santa
12 Cruz County. That's Watsonville, but I don't see
13 anything here --

14 **ALJ BROUSSARD-BOYD:** There doesn't appear to be
15 (indiscernible).

16 **THE WITNESS:** -- where they distinguish between the
17 two.

18 **ALJ BROUSSARD-BOYD:** Okay. And you've attended
19 these meetings before by phone or in person, these types
20 of meetings?

21 **THE WITNESS:** I'll bet I've attended five in the
22 nine years that I've been a unit chief.

23 **ALJ BROUSSARD-BOYD:** So you're familiar with CZU.
24 What does CZU stand for?

25 **THE WITNESS:** CZU is the national designator for the

1 San Mateo/Santa Cruz unit of CalFIRE and it's San Mateo
2 and Santa Cruz counties.

3 **ALJ BROUSSARD-BOYD:** Okay. So have you ever seen a
4 document such as this? Have you ever seen --

5 **THE WITNESS:** Similar, yes.

6 **ALJ BROUSSARD-BOYD:** Okay.

7 **THE WITNESS:** It looks like their minutes.

8 **ALJ BROUSSARD-BOYD:** That it looks like their
9 minutes. So do you have any reason to doubt the veracity
10 of these minutes, the honesty of these minutes?

11 **THE WITNESS:** No. I --

12 **ALJ BROUSSARD-BOYD:** Particularly where you're
13 quoted as 1700?

14 **THE WITNESS:** Yeah. I'm sure where they quoted me
15 as 1700 I was probably talking on the phone. I wasn't
16 there at the beginning of the meeting or even on the
17 phone at the beginning, so I can't testify as to --

18 **ALJ BROUSSARD-BOYD:** Okay. I'm going to --

19 **THE WITNESS:** -- what occurred prior to that.

20 **ALJ BROUSSARD-BOYD:** I'm going to allow Exhibit A in
21 and give it the weight it's due.

22 (Whereupon, Appellant's A
23 was admitted into evidence.)

24 **ALJ BROUSSARD-BOYD:** Anything else, Ms. Knoles?

25 Q. **(BY MS. KNOLES):** You mentioned that you only

1 -- just to go back to this, you mentioned that you've
2 only attended five of these in the last nine years or so?

3 A. Probably about that, yes.

4 Q. Was the sole purpose of you attending to state
5 forth that you had a plan to address the problem of
6 possible insiders that were creating problems for CalFIRE
7 on the inside?

8 **MR. CRANE:** Objection, leading.

9 **ALJ BROUSSARD-BOYD:** Sustained.

10 Q. **(BY MS. KNOLES):** Why did you decide to attend
11 this meeting?

12 A. Well, I was asked by the union to give an
13 update on what was occurring in Half Moon Bay, or
14 Coastside Fire District, San Mateo County Fire, Santa
15 Cruz County Fire, all of our valley fire districts which
16 are all entities under my responsibility as the unit
17 chief.

18 Q. Uh-huh.

19 A. And because of recent budget cuts being
20 proposed in all those entities, I was asked to update the
21 chapter on what was going on in the unit financially as
22 far as positions that may be lost. Certainly no
23 positions were going to be gained.

24 Q. And that's here where on page 2 you're stating
25 where you're discussing, "I'm pressing that the Board

1 offer a position to all Coastside employees when they
2 transition. I cannot guarantee a job to every employee
3 who is displaced by the transition."

4 A. Yeah, that speaks specific to the Coastside
5 Fire District and then if I could show down below --

6 Q. Uh-huh.

7 A. -- in San Mateo County, I talk about what's
8 going on in the San Mateo County Fire Department where
9 they're also talking about an engine reduction and doing
10 a shared resources thing with the city of Redwood City.

11 Q. Absolutely, I see what you're saying.

12 A. Yeah.

13 Q. Okay. So this section, the section under San
14 Mateo and the first section on CalFIRE. What's the
15 transition you're talking about there? The "I cannot
16 guarantee." You said it's with regard to Coastside,
17 which includes Half Moon Bay, right?

18 A. Right.

19 Q. What is the "I cannot guarantee a job to every
20 employee who is displaced by the transition. We cannot
21 separate from Coastside, including Half Moon Bay in five
22 months." What's the transition you're talking about
23 there?

24 A. When --

25 **MR. CRANE:** Objection as to the relevance, what this

1 has to do with Mr. Delay.

2 **MS. KNOLES:** Well, he previously testified that
3 within this line of questioning he's talking about
4 problem employees and Delay is one of them. This is
5 within that same context. I think it's important that we
6 understand what was going on at Coastside during this
7 time to understand why --

8 **ALJ BROUSSARD-BOYD:** And you want an explanation of
9 the statement, "We cannot separate from Coastside in five
10 months?"

11 **MS. KNOLES:** No, no, I want to understand what
12 transition he's talking about. I want to give context to
13 the transition.

14 **ALJ BROUSSARD-BOYD:** Okay. I'm going to overrule
15 the objection. What is transition?

16 **THE WITNESS:** Well, the first I'd like to add, I've
17 said about problem employees. However, in the part about
18 transition, when Coastside Fire District came to CalFIRE
19 to ask us to provide employees, we had to guarantee a job
20 for every employee from the Coastside Fire District that
21 wanted to become a state employee.

22 Q. **(BY MS. KNOLES):** Okay.

23 A. In the discussions that the Coastside Fire
24 Board is now and continuing to have and was having at
25 this time, they were as yet unwilling to guarantee a job

1 for every employee if they created their own fire
2 district, and that's the transition.

3 Q. So the transition is that Coastside wants to
4 create their own fire district; is that correct?

5 A. They want to create their own, yes. Or they
6 want to go back to a stand alone fire department.

7 Q. Okay. And they wanted to separate from CalFIRE
8 and go back to their own stand alone fire district.

9 A. Yes. The majority is asking for that.

10 Q. Okay.

11 **ALJ BROUSSARD-BOYD:** The what is asking for that?

12 **THE WITNESS:** The fire district board, as an
13 independent district, they have their own elected board
14 of --

15 **ALJ BROUSSARD-BOYD:** So they want to go back to the
16 status quo before the initial transition. They want --

17 **THE WITNESS:** Before they came to CalFIRE, yes.

18 **ALJ BROUSSARD-BOYD:** They want to go back.

19 **THE WITNESS:** Yes.

20 **MS. KNOLES:** Uh-huh.

21 **ALJ BROUSSARD-BOYD:** Okay.

22 Q. **(BY MS. KNOLES):** And as part of that, they
23 were not willing to guarantee a job to every employee who
24 was currently at Half Moon Bay or at the Coastside Fire
25 Departments.

1 A. Yes.

2 Q. And that would affect the union because there
3 were union members in those fire stations, correct?

4 A. Right. I think I remember as a union member or
5 a fair share employee, yes.

6 Q. Okay. And then in response to this, this is
7 where then Wolfe, who you've testified is the union
8 representative or a union president, I believe --

9 A. Uh-huh.

10 Q. -- said, "Can you speak to individuals in the
11 Coastside that are working against the CalFIRE mission in
12 the ranks."

13 **MR. CRANE:** Your Honor, I'll just object as this is
14 hearsay as to what --

15 **ALJ BROUSSARD-BOYD:** The objection of hearsay is
16 already on the record.

17 **MR. CRANE:** Right.

18 **ALJ BROUSSARD-BOYD:** I'll hear -- I'll overrule that
19 last objection.

20 **MR. CRANE:** And I don't know what the relevance is
21 of what the union chapter said about the Coastside
22 situation to Mr. Delay's move.

23 **MS. KNOLES:** Well, I believe, and I'm not attempting
24 to miss-cite (verbatim) anyone's testimony here. I'm
25 attempting to make sure we are on the same page. Chief

1 Ferreira --

2 **ALJ BROUSSARD-BOYD:** What page are you on, by the
3 way?

4 **MS. KNOLES:** I'm on page 2.

5 **ALJ BROUSSARD-BOYD:** Okay.

6 **MS. KNOLES:** Chief Ferreira previously testified
7 that a plan is -- that his statement regarding these
8 possible insiders creating problems for CalFIRE had to do
9 with a group of employees, including Battalion Chief
10 Delay and Chief Cole. And he said that the problems were
11 following policies and procedures.

12 Q. **(BY MS. KNOLES):** But it appears to me here
13 what you're actually responding to is a question that the
14 positions can't be guaranteed should the transition of
15 separation occur and then you state that it could be
16 expensive, an expensive proposition. Do you see that?
17 And in response to that --

18 A. I don't see --

19 **ALJ BROUSSARD-BOYD:** No, I don't see --

20 **MS. KNOLES:** Oh, I'm sorry.

21 **ALJ BROUSSARD-BOYD:** -- where you're at.

22 **MS. KNOLES:** Sorry.

23 **ALJ BROUSSARD-BOYD:** You're on page 2.

24 **MS. KNOLES:** I'm on page 2. I'm looking at the
25 first paragraph. We're going to get there. We're going

1 to get there.

2 Q. (BY MS. KNOLES): The first large paragraph
3 after we've talked about the separation and the
4 transition, you say, "After discussing with Alifano."
5 Who's Alifano?

6 A. He's one of the board members.

7 Q. And he's one of the board members voting for or
8 against the separation. Is that the same board? I just
9 want to establish it's --

10 A. Yeah. He's --

11 Q. -- the same fire board.

12 A. He's on the fire board, yes.

13 Q. Okay. And he is starting to understand that
14 separation may become an expensive proposition.

15 ALJ BROUSSARD-BOYD: Is that a question?

16 Q. (BY MS. KNOLES): I just want to make sure, did
17 you see the statement that I'm reading here?

18 A. Yes.

19 Q. Okay. The document speaks for itself. I just
20 want to make sure we're looking in the same place.

21 Okay. This is your discussion of the issue with
22 regard to the transition of separating the Coastside Fire
23 District from CalFIRE, correct?

24 A. That paragraph, yes.

25 Q. Yes. Okay. And in response to that context,

1 that's the context, Wolfe says, "Can you speak to the
2 individuals in the Coastside that are working against the
3 CalFIRE mission in the ranks." Do you remember that?

4 A. I don't remember that --

5 Q. Okay.

6 A. -- exact question, no.

7 Q. Do you see this here?

8 A. Yes.

9 Q. Do you have any reason to believe that he's not
10 responding to your statements about the transition there
11 and the individuals working against the CalFIRE mission
12 with regard to those transitions?

13 **MR. CRANE:** I would just object that it's
14 speculation. So she's asking Chief Ferreira to get in
15 the mind of Mr. Wolfe and say what he was thinking?

16 **ALJ BROUSSARD-BOYD:** I'll sustain the objection.

17 **MS. KNOLES:** That's fine. I think the document
18 speaks for itself.

19 **ALJ BROUSSARD-BOYD:** It has been entered. There is
20 a hearsay objection against it however.

21 **MS. KNOLES:** Okay. Turning back to Exhibit 19,
22 which is where we were going before, which will be marked
23 as Exhibit --

24 **ALJ BROUSSARD-BOYD:** B.

25 **MS. KNOLES:** -- B.

1 **ALJ BROUSSARD-BOYD:** Marking as B, it looks like an
2 email series, two pages and --

3 (Whereupon, Appellant's B
4 was marked for identification.)

5 **THE WITNESS:** Can I mark this for you?

6 **ALJ BROUSSARD-BOYD:** You can, thank you.

7 **THE WITNESS:** Capital?

8 **ALJ BROUSSARD-BOYD:** It's before the witness. A
9 big, gigantic B. Thank you.

10 **Q. (BY MS. KNOLES):** Okay. Earlier you testified
11 that Chief Cole took issue, or disagreed with your
12 proposal to transfer Battalion Chief Delay to the Felton
13 Station, correct?

14 **MR. CRANE:** I'd just object. It calls for hearsay.

15 **MS. KNOLES:** I'm --

16 **ALJ BROUSSARD-BOYD:** Well, I'm going to sustain the
17 objection. It's also leading. You just might want him
18 to identify this, if he's seen it. Lay a foundation,
19 please.

20 **MS. KNOLES:** I was actually just trying to lay a
21 foundation. That's fine.

22 **Q. (BY MS. KNOLES):** Please review Exhibit B.

23 **A.** Uh-huh.

24 **Q.** Okay. And Exhibit B is an email chain and the
25 first textual email on the page is dated February 15th,

1 2012 and it's from Paul Cole to you, correct?

2 A. What was that?

3 **ALJ BROUSSARD-BOYD:** She's on the first page. The
4 first email.

5 **THE WITNESS:** Oh. So you're not going
6 chronologically. You're going by --

7 **ALJ BROUSSARD-BOYD:** No. She's starting right
8 there.

9 Q. **(BY MS. KNOLES):** I'm starting right there.

10 A. Okay.

11 Q. Do you see that?

12 A. Uh-huh.

13 Q. Okay. And could you review just this part of
14 the email chain?

15 A. Sure.

16 Q. And let me know if you -- just let me know when
17 you're done.

18 A. Yeah, I think -- okay. Okay, I'm done.

19 Q. Do you remember receiving this email?

20 A. I believe so and I would've responded to it,
21 but I don't see my response here.

22 Q. Okay. But you remember receiving it?

23 A. I remember Paul objecting, yes.

24 Q. Okay. And where it says here that he does not
25 support Ari, where we're -- I'm talking about Ari Delay

1 being moved to B-3.

2 A. Uh-huh.

3 Q. Could you just identify what you understand B-3
4 to be?

5 A. Battalion 3 is in -- geographically in Santa
6 Cruz County.

7 Q. Okay. And here he's asking -- he's saying that
8 he hasn't seen any facts that support the move and he
9 hasn't been made privy to those facts. Did you address
10 this issue with Chief Cole?

11 A. I think I did respond to this, yes.

12 Q. Did you provide him with any specific facts
13 which you base your move on?

14 A. If I could review the next email to this, I
15 could probably tell you how I replied.

16 Q. Had that email been provided to us, perhaps we
17 could. But I'm asking now for your specific
18 recollection. If you don't have a recollection, perhaps
19 your memory will be refreshed later.

20 A. All right.

21 Q. But do you have any specific recollection of
22 your response to this email?

23 A. Yes.

24 Q. Okay. What is your specific recollection?

25 **ALJ BROUSSARD-BOYD:** Okay, Chief Ferreira, you don't

1 have to look at that. She says she doesn't have it, so
2 she's just asking about your --

3 **MS. KNOLES:** Yeah.

4 **ALJ BROUSSARD-BOYD:** -- recollection of it. Do you
5 recall --

6 **THE WITNESS:** Yeah. In essence --

7 **ALJ BROUSSARD-BOYD:** -- giving any specifics or
8 substantiating the facts that support your transfer of
9 Chief Delay?

10 **THE WITNESS:** And I'm trying to recall what I wrote.
11 It was in essence that I wasn't making this decision
12 lightly. That I was doing this to, in essence both
13 mentor Chief Delay --

14 **MS. KNOLES:** Uh-huh.

15 **THE WITNESS:** -- to take the opportunity for him to
16 see other parts of CalFIRE that he does not get to see in
17 Coastside.

18 And Chief Cole, because his -- in my opinion, his
19 knowledge of CalFIRE's culture is also limited, that he
20 would not be able to get that mentoring from Chief Cole.

21 Q. **(BY MS. KNOLES):** Did you provide any specific
22 examples of facts that establish that Battalion Chief
23 Delay did not have specific knowledge of the CalFIRE?

24 A. Not in that email, no.

25 Q. Okay. And have you ever identified specific

1 areas where Battalion Chief Delay does not have the
2 specific knowledge of CalFIRE?

3 A. Yes.

4 Q. Okay. And what are those?

5 A. Well, your question was had I discussed it with
6 him?

7 Q. No. My discussion (verbatim) was have you
8 personally ever identified the specific reasons why you
9 believe Battalion Chief Delay does not have the
10 understanding and knowledge of CalFIRE?

11 A. If I understand your question, have I
12 identified why he doesn't have the understanding?

13 Q. Yes.

14 A. It's because he hasn't worked for CalFIRE for
15 that long. And he came over to CalFIRE as a battalion
16 chief in 2008 without having experienced CalFIRE as a
17 fire captain or as an engineer or in essence, growing up
18 within the department. He was a seasonal firefighter, I
19 believe, in 1992 for -- and I can't ask him questions.

20 Q. So --

21 A. But then there was 14, 15 years where he did
22 not work for CalFIRE. So if you're asking for my reasons
23 of why he doesn't understand our culture, it's because he
24 never worked for us.

25 Q. So your reason for moving Battalion Chief Delay

1 is because he had only worked for you for four years at
2 this time and only as a battalion chief.

3 **MR. CRANE:** I would object. It mischaracterizes his
4 testimony. He says in the four years he's not gained a
5 knowledge of CalFIRE culture, policies and procedures.

6 **MS. KNOLES:** I don't --

7 **MR. CRANE:** It's not because he's only worked for it
8 for four years. It's what he has (indiscernible) during
9 those four years.

10 **ALJ BROUSSARD-BOYD:** Okay. I'm going to sustain the
11 objection.

12 Q. **(BY MS. KNOLES):** Do you have any specific
13 instances of where you can identify Battalion Chief
14 Delay's knowledge of CalFIRE policies, procedures and
15 culture are lacking at the time that you made the
16 decision?

17 A. I don't fully understand your question. Can I
18 ask if you would clarify? You're asking me if in
19 February or whenever the final decision in my mind was
20 made that I needed to get Ari some mentoring in
21 transitioning or transferring him, did I have specific
22 reasons that day or?

23 Q. I'm asking were there specific events that
24 triggered this decision. Was there specific conduct
25 where you said he doesn't get it. Specific events that

1 are not unsubstantiated facts, perceived actions or
2 behaviors?

3 A. Yes.

4 Q. Okay. What are they?

5 A. Well, over the period of four years I've
6 noticed that because of the misunderstanding of the
7 importance of state processes, not only CalFIRE
8 processes, but CDF processes, that insubordinate
9 employees would submit transfers and in general, in the
10 Coastside Fire District, which Ari is -- or Chief Delay
11 is a part of the management of that district, sometimes
12 those documents aren't processed timely enough.

13 There's a general sense that rather than accept and
14 adapt to the state policies and processes, that in the
15 Coastside Fire District, they prefer to use Coastside
16 documents that are not -- they may look the same and
17 contain the same information, but they're not exactly the
18 same as the state process.

19 Q. Okay. I want to stop you right there. What
20 I've heard you say is in --

21 **MR. CRANE:** Well, I would object. He's trying to
22 answer the question.

23 **ALJ BROUSSARD-BOYD:** Well, his answer is on the
24 record. He wanted to explain himself and he's done so.

25 **MR. CRANE:** I don't think he's even done that

1 though.

2 **MS. KNOLES:** I want to -- he can keep going, but I
3 need to clarify some points before he moves on.

4 **ALJ BROUSSARD-BOYD:** Okay. I'll allow it.

5 **Q. (BY MS. KNOLES):** You've stated that the
6 district doesn't process documents fast enough. Is Chief
7 Delay the only person in the district who --

8 **A. No.**

9 **Q. Okay. And you've stated that --**

10 **ALJ BROUSSARD-BOYD:** Let her finish the question.

11 **THE WITNESS:** Okay. I'm sorry.

12 **ALJ BROUSSARD-BOYD:** The only person in the district
13 who?

14 **Q. (BY MS. KNOLES):** Who processes documents.

15 **A. Right.**

16 **Q. And you state that there's a general sense that**
17 **Coastside doesn't use the CalFIRE documents, that they**
18 **use the Coastside documents. That's a general sense.**
19 **That's not Chief Delay, or Battalion Chief Delay**
20 **specifically, is it?**

21 **A. No.**

22 **Q. Okay. Now, how many battalion chiefs are at**
23 **the -- in the Coastside District?**

24 **A. Two.**

25 **Q. And above them is Chief Cole, correct?**

1 A. Correct.

2 Q. And your feeling is that Chief Cole also
3 doesn't do these things, correct?

4 A. Correct.

5 Q. Why didn't you move Chief Cole for training?

6 A. Well, it's easiest to move Chief Delay and
7 based on seniority, it would be logical to start if --
8 the general plan was to provide such mentoring to all of
9 the management there.

10 Q. So you wanted to provide this training to all
11 the management.

12 A. Yes.

13 Q. But the only person in four years that you've
14 moved out of the district is Chief Delay -- or Battalion
15 Chief Delay, right?

16 A. No.

17 Q. All right. Chief Cole came over from
18 Coastside, correct?

19 A. Yes.

20 Q. And is it -- and Battalion Chief Dave Cosgrave
21 came over as well?

22 A. Yes.

23 Q. Okay. And are they the three most senior
24 people from Coastside in that division?

25 A. Not by rank, no.

1 Q. Okay. Who else came with them?

2 A. Battalion Chief Jolley.

3 Q. Okay.

4 A. And there are other subordinate employees,
5 captains that might have more seniority.

6 Q. In terms of rank --

7 A. Uh-huh.

8 Q. -- it was Chief Cole.

9 A. Uh-huh.

10 Q. You said Battalion Chief Jolley?

11 A. Yes.

12 Q. Battalion Chief Cosgrave -- Grove.

13 A. Cosgrave.

14 Q. I know of -- and Battalion Chief Delay,
15 correct?

16 A. Yes.

17 Q. Okay. And Chief Jolley left voluntarily,
18 correct?

19 A. Well, he's still there as the Fire Marshal. We
20 were sharing his position with San Mateo County Fire and
21 Coastside Fire District and then for a period of time he
22 asked -- and this just occurred within the last year, I
23 think since last July, he asked to be the state funded
24 battalion chief in the same geographical area, but not
25 necessarily under the context of being part of the

1 Coastside Fire District.

2 Q. But that was his request to do that.

3 A. Yes.

4 Q. Okay. And Battalion Chief Cosgrave is still at
5 Coastside, correct?

6 A. Yes. But there was a period of time that I'd
7 moved him for several months for the same mentoring.

8 Q. Where did you move him?

9 A. San Mateo County Fire.

10 Q. When did you do that?

11 A. I believe in 2009.

12 Q. Okay. I'd like you to turn -- isn't it true in
13 fact that you moved Battalion Chief Delay to San Mateo in
14 2009?

15 A. I believe I moved both of them for a period of
16 time. Either one before the other or one after the
17 other.

18 Q. And that was temporary?

19 A. For several months, yes.

20 Q. Okay. Going back to your facts which support
21 your decision and you've talked -- you've listed a couple
22 of reasons. Did you have any other reasons specific?

23 A. Yeah. In general, it's CalFIRE processes, like
24 our meal costs and I don't think you want me to go into
25 detail how those are handled, but without being a --

1 without understanding how to have done it as a fire
2 captain in the fire station, it's difficult to understand
3 how to audit it when it's turned in every month. Travel
4 claims, the entire process now and with our electronic
5 accident reporting and keeping records of our -- it's
6 called IAPS.

7 Q. Did you ever, in the four years that Battalion
8 Chief Delay was there address specifically with him these
9 issues that you felt he needed to improve his
10 understanding of these processes, the meal costs, the
11 accident reports, etcetera?

12 A. Well, I know just recently I've had to contact
13 Ari several times on a vehicle accident report.

14 Q. Was that before or after you made the decision
15 to move him?

16 A. I think the accident happened before, but we
17 still haven't completed the accident report.

18 Q. So an accident happened before January 2012?

19 A. Yeah. I think it was in January. It was
20 the --

21 **ALJ BROUSSARD-BOYD:** Well, let's not stray too far
22 from the question.

23 **THE WITNESS:** Yeah.

24 **ALJ BROUSSARD-BOYD:** I think her question was you
25 wanted substantiating facts as to the -- you mentioned

1 all these different things about the gas and the travel
2 claims and -- but what were those listed there?

3 **MS. KNOLES:** Yeah.

4 **THE WITNESS:** Gasoline. The vacation request
5 process.

6 **MS. KNOLES:** Yeah, yeah.

7 **ALJ BROUSSARD-BOYD:** Right. Did you ever -- I guess
8 the question was did you ever talk to Chief Delay about
9 these deficiencies?

10 **THE WITNESS:** And if you're looking for the period
11 prior to February, I think the only real issue I had to
12 help Ari with was on a letter of counseling or informal
13 letter of reprimand with an employee. And I'm trying to
14 recall what the issue was but I know we had to go back
15 and forth several times on the way it was written so that
16 it complied with what we need as far as our process is
17 about name --

18 **ALJ BROUSSARD-BOYD:** Okay. When was that?

19 **THE WITNESS:** I'm going to -- my best estimate was
20 2010.

21 **ALJ BROUSSARD-BOYD:** So it wasn't in 2012.

22 **THE WITNESS:** No.

23 **ALJ BROUSSARD-BOYD:** Okay.

24 **THE WITNESS:** No.

25 **Q. (BY MS. KNOLES):** And you were able to assist

1 him with that where he was?

2 A. Yes.

3 Q. And it was a CalFIRE process that he needed
4 some understanding of.

5 A. Right.

6 **MS. KNOLES:** Okay. I'd like to introduce into
7 evidence Exhibit B, Appellant's Exhibit B.

8 **ALJ BROUSSARD-BOYD:** Okay. We've marked Exhibit B
9 as two pages, the email series dated February 14th
10 through February 15th. Mr. Crane, any objection?

11 **MR. CRANE:** Well, again she hasn't laid any
12 foundation that this is accurate. This is between Paul
13 Cole and Scott Jalbert.

14 **ALJ BROUSSARD-BOYD:** Well, the testifying witness
15 received a carbon copy of it.

16 **MS. KNOLES:** On page 2.

17 **ALJ BROUSSARD-BOYD:** Anything else, Mr. Crane?

18 **MR. CRANE:** No.

19 **ALJ BROUSSARD-BOYD:** Okay, it's entered.

20 (Whereupon, Appellant's B
21 was admitted into evidence.)

22 **MS. KNOLES:** Okay. And turning to what is marked as
23 23 and I'd like to mark it as C.

24 **ALJ BROUSSARD-BOYD:** Okay. Marking as C, another,
25 it looks like an email series and there are three pages

1 and it's before the witness as C.

2 (Whereupon, Appellant's C
3 was marked for identification.)

4 Q. (BY MS. KNOLES): Okay. This is a three-page
5 email chain. At the top of the page, I'll just do this
6 from the beginning, it says your name there, John
7 Ferreira, and I see that on each one of these page you're
8 either the receiver or sender of the email chain. If you
9 could take a couple minutes and --

10 MR. CRANE: Which one are you looking at, Counsel?

11 MS. KNOLES: It's 23, tab 23.

12 MR. CRANE: Thank you.

13 MS. KNOLES: And we're marking it as C.

14 Q. (BY MS. KNOLES): If you could take a minute
15 and let me know, do you recognize this email chain?

16 A. Yes.

17 Q. Okay. And that john.fer@fire.ca.gov, that's
18 your email address, correct?

19 A. Yes.

20 Q. Who's email address is hmbrs@comcast.net?

21 A. That's Mr. Doug Mackintosh and he's the
22 president of the Board of Directors for the Coastside
23 Fire District.

24 Q. Okay. Turning to page 3, which is, my
25 understanding is the original, the end of the original

1 email which was sent from you to D. Mackintosh who is the
2 same person?

3 A. Yes.

4 Q. Okay. You say here, and this was sent on April
5 12th --

6 A. Yes.

7 Q. -- the second to the last paragraph, "I have
8 also given additional thought to your concerns over the
9 June reassignment of Battalion Chief Delay and I am fully
10 aware of how that move may be perceived by the community
11 and the board. My professional experience leads me to
12 realize that this change is imperative to accomplishing
13 as unproblematic a transition as possible." Do you see
14 that?

15 A. Yes.

16 Q. Was this, the unproblematic transition you were
17 referring to there the same transition of Coastside
18 separating from CalFIRE?

19 A. Yes.

20 Q. Okay. So your decision and your professional
21 experience in moving Battalion Chief Delay was actually
22 imperative to accomplishing this unproblematic
23 transition, correct?

24 **MR. CRANE:** I would object. For one thing this is
25 after he says he's already made his decision in January

1 2012. So this is discussions after the fact when facts
2 have changed.

3 **ALJ BROUSSARD-BOYD:** I'm going to sustain the
4 objection. This is three months, four months after he
5 made the decision.

6 **MS. KNOLES:** Uh-huh.

7 **ALJ BROUSSARD-BOYD:** So I'm going to sustain the
8 objection. Perhaps you can ask another question.

9 Q. **(BY MS. KNOLES):** Did Doug Mackintosh -- based
10 on my reading of this email, did Doug Mackintosh raise
11 concerns over the reassignment of Battalion Chief Delay?

12 **MR. CRANE:** I would object. It's hearsay.

13 **MS. KNOLES:** It's not going to the truth of the
14 matter of whether or not he was actually reassigned, but
15 whether or not this email is responsive to a request.

16 **ALJ BROUSSARD-BOYD:** I'm going to overrule the
17 objection on that basis.

18 **MR. CRANE:** And I'd also object as to what's the
19 relevance of conversations he had four months later with
20 Mr. Mackintosh.

21 **ALJ BROUSSARD-BOYD:** I'm going to overrule. I find
22 it relevant.

23 **MR. CRANE:** Thank you, Your Honor.

24 Q. **(BY MS. KNOLES):** Could you answer the
25 question?

1 A. Can you repeat the question or the context of
2 the question?

3 Q. I'm going to have to remember my questions more
4 specifically without a court reporter. Have you -- this
5 -- is it -- did Doug Mackintosh raise concerns over the
6 June, which would be a future reassignment of Battalion
7 Chief Delay to you?

8 A. And this was the result -- and I'll get to your
9 answer. This was the result of a meeting that I had with
10 the board president --

11 Q. Okay.

12 A. -- along with Director Alifano, I believe.

13 Q. Okay.

14 A. And Director Alifano had asked for our union to
15 send a representative also and that's Jake McGee and that
16 I think you see his name in here somewhere. And what we
17 were talking about in general was the entire concept of
18 the transition and what might happen to employees and the
19 board members wanted our employees to understand that
20 this was not a vendetta or action against the employees.
21 It was just the contract and system.

22 Towards the end of our meeting, the board members
23 also asked me about the movement of Battalion Chief
24 Delay.

25 Q. Uh-huh.

1 A. And I don't believe that either one of them
2 supported it, no.

3 Q. Okay. And they raised concerns about it.

4 A. Yeah, but they're -- in my recollection, the
5 concerns were more of the how is the fire district going
6 to get along without having Chief Delay here because
7 Chief Delay is very involved in a lot of the activities
8 of the district and the computer system or data systems
9 in the district.

10 Q. Okay.

11 A. And in that same meeting, then the board
12 suggested that if this move was going to occur, that I
13 consider returning Chief Cole full-time to the fire
14 district because at this time he was being split in
15 between the two, if that's the meeting that I'm talking
16 about here.

17 Q. Okay. And in response to these concerns, you
18 state here that you think that the change, meaning the
19 reassignment --

20 A. Uh-huh.

21 Q. -- of Battalion Chief Delay is imperative to
22 accomplishing as unproblematic a transition as possible.

23 A. Yes.

24 Q. Okay. You didn't say --

25 **MR. CRANE:** Well, I'd just object.

1 Q. (BY MS. KNOLES): -- in my professional
2 experience, Battalion Chief Delay needs to learn the
3 policies and procedures of other stations.

4 A. No.

5 Q. Okay.

6 MR. CRANE: I would just object. The document
7 speaks for itself and what it says is what it says.

8 ALJ BROUSSARD-BOYD: You have no objection to its
9 entry into evidence, Mr. Crane?

10 MR. CRANE: Well, I was objecting to that question.
11 She's saying, well, you didn't write this.

12 MS. KNOLES: I'm suspecting he does.

13 MR. CRANE: But what it says is, you know, it simply
14 says what it says.

15 ALJ BROUSSARD-BOYD: Right, it does. But I'm asking
16 you, do you object to its entry into evidence; any
17 objections?

18 MR. CRANE: No.

19 ALJ BROUSSARD-BOYD: Okay.

20 MS. KNOLES: Okay.

21 MR. CRANE: Well, I mean it is hearsay.

22 ALJ BROUSSARD-BOYD: All right. Your hearsay
23 objection is noted. Thank you. It's marked and entered.

24 (Whereupon, Appellant's B
25 was admitted into evidence.)

1 Q. (BY MS. KNOLES): Why didn't you address the
2 need of -- oh, never mind. Strike that.

3 The next sentence, and I agree it speaks for itself,
4 but I want to give you some context. "Now is when
5 leadership is most important and even though you and I
6 may regret the loss of Chief Delay's other skills, I know
7 that this will resolve concerns held by me and his
8 subordinates." Do you see that?

9 A. Yes.

10 Q. Okay. What concerns are you talking about
11 there?

12 A. Well, and again, this goes back, or not again,
13 maybe I haven't said it yet, it was becoming a very
14 stressful period for employees and I was concerned about
15 performance because of decreases in morale. And it goes
16 back again to the issue of employees not knowing whether
17 they were going to have a job or what type of benefits
18 they would get.

19 Q. Okay. So you were concerned then about the
20 stress on the employees and subordinates --

21 A. Yes.

22 Q. -- of Battalion Chief Cole and employees of the
23 Coastside District because of the stresses of the
24 Coastside Fire District separating from CalFIRE?

25 A. Right. And they weren't employees of the

1 Coastside Fire District. They were state employees.

2 Q. They were state employees and there were
3 concerns and stresses because there was going to be a
4 separation of Coastside and CalFIRE and Coastside was not
5 going to guarantee the transfer of all the employees.

6 MR. CRANE: I would object. It's leading and
7 assumes facts not in evidence.

8 MS. KNOLES: He's testified to all of those factors.

9 MR. CRANE: I don't think there's a question in
10 there.

11 ALJ BROUSSARD-BOYD: Well, you're right, he has
12 testified to that, those facts.

13 MS. KNOLES: Okay.

14 ALJ BROUSSARD-BOYD: But at the same time I didn't
15 hear a question either, so is there a question?

16 Q. (BY MS. KNOLES): The concerns that you have,
17 which you say here I have concerns.

18 A. Uh-huh.

19 Q. I want to ensure that I understand that the
20 phrase "stressful on the employees" and the "decreased
21 morale" was a result of this CalFIRE, Coastside
22 transition.

23 A. Yes.

24 Q. Is that what you were referring to?

25 A. Yes.

1 Q. Okay. And it has no reference to Chief Delay's
2 lack of knowledge of the policies and procedures of
3 CalFIRE's other units.

4 A. Well, I --

5 **MR. CRANE:** I would object. It's vague. We've
6 never talked about his lack of knowledge of CalFIRE's
7 other units. CalFIRE has 22 other units. They're all --
8 all the policies and procedures are the same throughout
9 the state, so that question is pretty vague and doesn't
10 make any sense.

11 **ALJ BROUSSARD-BOYD:** I disagree. I'm going to
12 overrule the objection.

13 **THE WITNESS:** I won't ask you to repeat it.

14 Part of the goal was to try to get someone in the
15 district that understood how a layoff process would work
16 and how we could go about addressing the needs of the
17 employees. And part of the accomplishment of doing that
18 was to, I don't know, if I could find someone that had
19 better knowledge of CalFIRE's systems and processes as we
20 go through this stressful period that would be
21 advantageous to me as the unit chief and to the employees
22 of the district.

23 Q. **(BY MS. KNOLES):** So you wanted to move -- what
24 I hear you saying is you wanted to move Chief --
25 Battalion Chief Delay so then you could bring someone

1 else in who was more aware of the layoff issues of
2 CalFIRE?

3 **MR. CRANE:** I'd object. It mischaracterizes his
4 testimony. That's not what he said.

5 **ALJ BROUSSARD-BOYD:** Well, no, I'm going to overrule
6 the objection. She asked, if I hear what you're saying.
7 Is that what you're saying? Please, is this what you're
8 saying?

9 **THE WITNESS:** Yeah, not specifically that, no. But
10 I was looking at how am I going to best be able to
11 facilitate this move, which may not take place for a
12 year --

13 **MS. KNOLES:** Uh-huh.

14 **THE WITNESS:** -- if I don't have employees that
15 understand the state's layoff system and all these other
16 processes with time reports and the other things that I
17 mentioned.

18 Q. **(BY MS. KNOLES):** Okay. So the meal costs and
19 accident reports that you mentioned before went into that
20 layoff issue consideration?

21 A. Well, it was part of the employees' stress.

22 Q. Would Battalion Chief Delay be the only
23 individual in the Coastside Fire District in charge of
24 layoffs, should they occur?

25 A. No.

1 Q. Chief Cole would be in charge as well?

2 A. Well, the layoff determinations would be
3 probably made out of Sacramento, but to facilitate all
4 those actions and the gathering of information.

5 Q. Would you have been involved in those?

6 A. More than likely, yes.

7 Q. And so you would oversee how that went?

8 A. Yes.

9 Q. So you might be the person to best train Chief
10 Cole and Chief Delay on those issues?

11 A. No.

12 Q. No.

13 A. I've never had to deal with employee layoffs
14 before. I've done it for seasonal employees --

15 Q. Uh-huh.

16 A. -- every year, but now we're talking about
17 permanent employees and I've never had to layoff because
18 of a situation like this.

19 Q. Did moving Battalion Chief Delay, was that
20 required to make space for someone who had experience in
21 layoffs? Is that why you did it?

22 A. Not necessarily, because I've been able, so far
23 in the four years we've been there in the shared
24 positions and --

25 Q. Okay.

1 A. -- used people from other places to assist with
2 that.

3 Q. Okay.

4 A. Or not with that, but with other permanent use.

5 Q. You could bring in a temporary battalion chief
6 to -- or someone of whatever appropriate ranking?

7 A. Yes.

8 Q. Okay. And so I'm not sure how I understand how
9 moving Battalion Chief Delay resolved the concerns then
10 that you've just identified held by me and his
11 subordinates.

12 A. Well, and I guess I could best characterize it
13 and it goes back to the whole issue of morale and
14 performance. That with, now the added stress of the
15 possible transition --

16 Q. Uh-huh.

17 A. -- on top of all of the other issues that I
18 had, you know, previously discussed that, okay, I'm not
19 going to be able to do a whole lot about the transition,
20 but maybe I can relieve some of the stress with this
21 general lack of understanding of CalFIRE culture.

22 Q. Okay. You didn't bring anyone in to replace
23 Battalion Chief Delay, have you?

24 A. Since then, yes.

25 Q. Okay. Who have you brought in?

1 A. Cortland Rounds.

2 Q. Uh-huh. Can you turn to the next exhibit,
3 which is -- I'd like to mark it as D and this is an
4 email.

5 **ALJ BROUSSARD-BOYD:** Is this number 24? Which one
6 is it?

7 **MS. KNOLES:** Yes, I'm sorry, Exhibit 24, or tab.
8 I'll try to distinguish.

9 **ALJ BROUSSARD-BOYD:** Okay, tab 24.

10 **MS. KNOLES:** The tab 24, which I'd like to mark as
11 Exhibit D.

12 **ALJ BROUSSARD-BOYD:** Okay. Marking as D an email
13 and it appears to have a letter attached. There are
14 three pages. It's D and it's before the witness.

15 (Whereupon, Appellant's D
16 was marked for identification.

17 Q. **(BY MS. KNOLES):** Okay. And this is an email
18 from you and it references certain attachments and of
19 these attachments is a staff report dated April 17th,
20 2012 and in the attachment portion of the email it says
21 staff report, CFR modified, LG-1. Do you see that?

22 A. Yes.

23 Q. Okay. You sent this email and do you -- or can
24 you confirm that you sent this email?

25 A. Yes.

1 Q. Okay. And was this document one of the
2 attachments to this email?

3 A. Yes.

4 Q. Okay. Did you write this staff report that
5 starts on page 2 of Exhibit D?

6 A. Yes.

7 Q. Okay. And this is an April 17th, 2012 staff
8 report that says, "Reassignment of CFR Battalion Chief
9 and Discontinuation of Shared Division Chief Services at
10 San Mateo County Fire." The battalion chief you're
11 referencing there is Chief Delay, correct?

12 A. Yes, although his name's not mentioned.

13 Q. His name's not mentioned but you had previously
14 had this discussion with the board, which we talked about
15 in Exhibit C?

16 A. Yes.

17 Q. And so they knew that you were referencing
18 Chief Delay there?

19 **MR. CRANE:** I would object. It calls for
20 speculation as to what the board members did or didn't
21 know.

22 **ALJ BROUSSARD-BOYD:** Sustained.

23 Q. **(BY MS. KNOLES):** You previously discussed with
24 certain board members Battalion Chief Delay being
25 reassigned and they questioned that, correct?

1 A. Yes.

2 Q. Okay. And then you prepared this staff report,
3 which does not mention by name a battalion chief, but it
4 does reference that a battalion chief will be moved,
5 correct?

6 A. Yes.

7 Q. Okay. You were referring to Chief Delay here,
8 correct?

9 A. Yes.

10 Q. All right. And here on page 2 you say, the
11 first paragraph, or I guess it's page 3 of the exhibit,
12 page 2 of the letter, "To achieve the greatest
13 performance of the District's line staff it is imperative
14 that the significant gap between the transitioned
15 employees and other CalFIRE firefighters be eliminated."

16 A. Yes.

17 Q. "To effect this change, the battalion chief and
18 perhaps other employees will be reassigned for an
19 extensive period of time so that they can be carefully
20 mentored and allowed to experience other leadership
21 techniques." You wrote that, correct?

22 A. Yes.

23 Q. And at this time, April 19th when this was
24 sent, although it's dated April 17th, this was the basis
25 for your decision to move Battalion Chief Delay; is that

1 correct?

2 **MR. CRANE:** I would just object. It
3 mischaracterizes his testimony. I think he's talked
4 about several bases for the decision.

5 **MS. KNOLES:** He has, which is my point.

6 **ALJ BROUSSARD-BOYD:** Okay. Well, I'm going to
7 sustain the objection. Perhaps you can break it down,
8 the different reasons.

9 **MS. KNOLES:** Okay, sure.

10 Q. **(BY MS. KNOLES):** At this time the
11 representation that you were making to the Board of
12 Directors for the Coastside Fire District is that the
13 reason to move Battalion Chief Delay, albeit you don't
14 list his name, was so that he could be carefully mentored
15 and allowed to experience other leadership techniques.
16 That was your --

17 A. Yes.

18 Q. Okay. And prior to that, your opinion was that
19 he needed to understand policies and procedures.

20 A. Yes.

21 Q. Okay. And you -- that's fine. You had made
22 the decision four months prior to this statement,
23 correct?

24 A. Yes.

25 Q. Between those four months --

1 A. Well, it might have been two or three months.
2 This was April and I think the decision would've been in
3 January or February --

4 Q. Well, you --

5 A. -- which would be two months.

6 Q. You stated earlier that you made the decision
7 in January.

8 A. Okay.

9 Q. The finally decision --

10 A. Yeah.

11 Q. -- in January of 2012.

12 A. Okay.

13 Q. But you'd been thinking about it for three or
14 four years.

15 A. Yes.

16 Q. Okay. In those four months there was
17 (indiscernible). What steps did you put in place to
18 mentor Battalion Chief Delay?

19 **MR. CRANE:** I would object as to the relevance.
20 That's not one of the issues that we're here to decide,
21 what he put in place, what he did or didn't
22 (indiscernible), the reasons for the transfer.

23 **ALJ BROUSSARD-BOYD:** Well, I think I'm going to
24 overrule the objection. Because mentoring is part of
25 discipline, is part of the progressive discipline process

1 in the state of California, so mentoring is a very
2 important part. So I'll overrule the objection and you
3 can answer the question.

4 **MR. CRANE:** Thank you, Your Honor.

5 **THE WITNESS:** So you're asking had any steps been
6 put into place yet?

7 **MS. KNOLES:** Uh-huh.

8 **THE WITNESS:** At the time of this writing?

9 **MS. KNOLES:** Yeah.

10 **THE WITNESS:** No.

11 Q. **(BY MS. KNOLES):** Okay. I don't want this to
12 come off as leading, so I'm going to try and break this
13 down. At the CalFIRE duty stations, you know, Chief
14 Delay -- Battalion Chief Delay was at Half Moon Bay and
15 now he's at the Felton duty station, correct?

16 A. The Felton Headquarters, yes.

17 Q. The Felton Headquarters. There are -- how many
18 battalion chiefs work at any given time on duty?

19 **ALJ BROUSSARD-BOYD:** In what area are you talking
20 about? In Felton?

21 Q. **(BY MS. KNOLES):** That's good, at Felton.

22 A. At Felton?

23 **ALJ BROUSSARD-BOYD:** Felton HQ, how many --

24 **MS. KNOLES:** Yes.

25 **ALJ BROUSSARD-BOYD:** -- battalion chiefs?

1 Q. (BY MS. KNOLES): On -- at any time.

2 A. It could be four.

3 Q. On duty?

4 A. Yes.

5 Q. So at 8:00 on Monday morning you walk into the
6 headquarters and there are four battalion chiefs.

7 A. I'm not sure of their duty schedules, but you
8 have the Emergency Command Center Chief, the Fire
9 Prevention Bureau Chief, the Training Bureau Chief, the
10 Field Battalion Chief and they all work out of
11 headquarters.

12 Q. They all --

13 A. But they may work different days, but in
14 general I can't say on a given day.

15 Q. Generally is it only one battalion chief on --
16 at any given time?

17 A. In a field battalion, yes. Headquarters isn't
18 a field battalion.

19 Q. Okay.

20 A. And Chief Delay was coming to the safety
21 officer, relief battalion chief position for the south
22 division, which would've included Battalions 3 and 4.
23 And at the headquarters station would have access and the
24 ability to interact with training, law enforcement, our
25 forest practice, who are actually called foresters but

1 they have about the same rank as a battalion chief.

2 Q. They all have different duties, correct?

3 A. Yes.

4 Q. Okay. And their duties were all different than
5 -- are all different than Battalion Chief Delay's duties?

6 A. There's a lot of duties that they have in
7 general together, but yes, there are specific differences
8 between the emergency command center chief and the fire
9 prevention officer and the safety officer and the
10 training bureau chief, yes.

11 Q. Okay.

12 A. Can I add onto that?

13 **ALJ BROUSSARD-BOYD:** No.

14 **THE WITNESS:** Okay.

15 Q. **(BY MS. KNOLES):** Okay. If you'd turn to --

16 **ALJ BROUSSARD-BOYD:** Any objection to the staff
17 report --

18 **MS. KNOLES:** Oh, yes.

19 **ALJ BROUSSARD-BOYD:** -- dated April 19, Mr. Crane?

20 **MR. CRANE:** No, Your Honor.

21 **ALJ BROUSSARD-BOYD:** Okay. It's marked and entered.

22 (Whereupon, Appellant's D
23 was admitted into evidence.)

24 **MS. KNOLES:** Would you turn to tab 30? And I'd like
25 to mark this as Exhibit E.

1 **ALJ BROUSSARD-BOYD:** Okay. Marking as Exhibit E tab
2 30, marking it as it used to be tab 30. So one, two, six
3 -- no, five pieces of paper and it appears to be an email
4 series and it's before the witness.

5 (Whereupon, Appellant's E
6 was marked for identification.)

7 **Q. (BY MS. KNOLES):** Okay. Before we dive into
8 this, when was the first time you spoke with Mr. Delay
9 about his transfer?

10 **A.** I think he and I had a conversation in the
11 parking lot at headquarters and I'm going to say it was
12 in March or April as he was turning in some documentation
13 on a grant application.

14 **ALJ BROUSSARD-BOYD:** Of this year, March or April of
15 this year, the parking lot conversation you had with the
16 battalion chief?

17 **THE WITNESS:** I think that's about when it was, yes.

18 **ALJ BROUSSARD-BOYD:** So, okay, thank you.

19 **Q. (BY MS. KNOLES):** But that wasn't a formal sit-
20 down or a --

21 **A.** No.

22 **Q.** You didn't say --

23 **A.** No. I'd been trying to set up a meeting or
24 have Chief Cole set up a meeting since January to have
25 that sit-down discussion --

1 Q. Okay.

2 A. -- and we just weren't able to come up with --

3 Q. So you --

4 A. -- dates.

5 Q. -- mentioned in passing in a parking lot, I'm
6 going to move you to Felton?

7 A. No.

8 Q. Okay.

9 A. It was a slightly more in-depth conversation
10 than that where I was telling Ari about the opportunities
11 and things he would be exposed to in Felton and I
12 understood that this was a significant experience.

13 Q. Okay. If you'd turn to page 3 of this five
14 page exhibit, here there's an email from Ari to -- Ari
15 Delay to Paul Cole and it says directly above that that
16 Paul Cole then forwarded this to you, where it says
17 forward transfer, "John, please see the request and
18 supporting information below from Ari." Do you see that?

19 A. Yes.

20 Q. And this is a request by Battalion Chief Delay
21 requesting that his involuntary geographic transfer be
22 reconsidered.

23 A. Yes.

24 Q. You see that. Do you remember receiving this
25 email?

1 A. Yes.

2 Q. Okay. And the first two and a half pages of
3 this document appear to be an email from you to various
4 individuals regarding Battalion Chief Delay's request; do
5 you see that?

6 A. Yes.

7 Q. And am I correct in saying that underneath this
8 kind of half line on the first page is your proposed
9 response?

10 A. It was a draft, yes.

11 Q. Yes, okay. And in the second two paragraphs of
12 this draft, you state that, "This lack of understanding
13 was twice noted in reviews of your performance."

14 A. Yes.

15 Q. And you reference here a July 2008 review and
16 an August 2011 review; do you see that?

17 A. Well, it's performance as an assistant strike
18 team leader, specific to that.

19 Q. Right, okay. And this lack of understanding is
20 your reference to Battalion Chief Delay's lack of
21 understanding of CalFIRE policies and procedures?

22 A. The person writing that performance report
23 wrote that, yes.

24 Q. This is your draft response to this letter.

25 A. Right.

1 Q. It's your draft response to Battalion Chief
2 Delay's request that you reconsider his involuntary
3 geographic transfer.

4 A. Yes.

5 Q. And in drafting this, you are addressing why
6 you are moving him; do you see that?

7 A. Yes.

8 Q. Okay. And that you want to improve the
9 organization, etcetera. No, I'm sorry, strike that.
10 That is a citation. Are you relying on these two, July
11 2008 and August 2011 statements of other individuals, I
12 recognize they're not your statements, they're BC R.
13 Sherman's statements --

14 A. Uh-huh.

15 Q. -- to support your basis that Battalion Chief
16 Delay needs more training?

17 A. These were a part of it, yes.

18 Q. Okay. Did you ever question Battalion Chief R.
19 Sherman about the statements that he made?

20 A. I don't recall having long conversations about
21 it, no.

22 Q. Okay. Did you ever talk to Battalion Chief
23 Delay about his performance on these two specific
24 instances as an assistant strike team leader?

25 A. I don't think I did, no.

1 Q. Did you ever counsel him about the statements
2 made in those performance reviews prior to your decision
3 to move him?

4 A. I don't think I did, no.

5 Q. Okay. So you have no personal knowledge about
6 the performance that Battalion Chief Delay had as an
7 assistant strike team leader in July 2008 and August
8 2011?

9 A. No.

10 Q. Okay.

11 **MS. KNOLES:** I'd like to enter this into the record,
12 unless there's any objections.

13 **ALJ BROUSSARD-BOYD:** Okay. Any objection, Mr.
14 Crane?

15 **MR. CRANE:** No objection.

16 **ALJ BROUSSARD-BOYD:** Okay. It's entered.

17 (Whereupon, Appellant's E
18 was admitted into evidence.)

19 **ALJ BROUSSARD-BOYD:** You may proceed. How much
20 longer do you think you have?

21 **MS. KNOLES:** This could be a time for a brief recess
22 actually.

23 **ALJ BROUSSARD-BOYD:** Okay. That's a good idea. Why
24 don't we take a ten minute recess. I have a key here for
25 those of you who are not -- don't have a key card. This

1 gets you back from the elevator and the restrooms, which
2 are near the elevators.

3 Okay, we'll go off the record.

4 **THE WITNESS:** There's time to go outside?

5 (Off the record.)

6 **ALJ BROUSSARD-BOYD:** Okay. We're back on the record
7 in the matter of Ari Delay and his Involuntary Geographic
8 Transfer Appeal. Is it just Chief or is it Chief?

9 **THE WITNESS:** Chief.

10 **ALJ BROUSSARD-BOYD:** Okay. So Battalion Chief is
11 low -- is the lower.

12 **THE WITNESS:** Correct.

13 **ALJ BROUSSARD-BOYD:** Okay. So it's Chief. Okay, so
14 Chief --

15 **MR. CRANE:** We've got lots of chiefs, Your Honor.

16 **ALJ BROUSSARD-BOYD:** Okay. Chief Ferreira is still
17 under direct examination by Ms. Knoles. Ms. Knoles,
18 please.

19 **MS. KNOLES:** Thank you.

20 Q. **(BY MS. KNOLES):** Chief Ferreira, prior to
21 informing Battalion Chief Delay of his transfer you
22 didn't provide him with any written memorandum or notice,
23 did you?

24 A. Regarding the --

25 Q. Transfer.

1 A. -- reassignment, no.

2 Q. Okay. And you did not have his transfer
3 approved by the director, did you?

4 A. The reassignment?

5 Q. Yeah.

6 A. No.

7 Q. Okay. Did you submit the request for
8 Involuntary Transfer to the chief of Personnel Services?

9 A. No.

10 Q. And did you ever receive an approval memorandum
11 with regard to the transfer of Battalion Chief Delay for
12 the Involuntary Geographic Transfer to Felton?

13 A. Yeah. I termed it a reassignment, but no.

14 Q. You termed it a reassignment, sure. I
15 obviously understand there's a dispute here about what
16 happened.

17 Okay. You previously testified that in 2009 you
18 transferred Battalion Chief Delay to a different station;
19 do you recall that testimony?

20 A. I reassigned him, yes.

21 Q. Okay. And --

22 A. To a different battalion.

23 Q. To a different battalion and where was that
24 battalion?

25 A. San Mateo County --

1 Q. Okay.

2 A. -- Fire on the other side of the hill from Half
3 Moon Bay.

4 Q. I know it well. I grew up in Belmont. And was
5 he transferred to the Belmont Station?

6 A. Well, as a battalion chief he's not at a
7 station.

8 Q. Right.

9 A. He's in a battalion but that's the battalion
10 headquarters, yes.

11 Q. Okay.

12 **ALJ BROUSSARD-BOYD:** Perhaps now is a good time for
13 the Chief to explain. There's 22 districts and whether
14 he's in charge of a district, how many people are under
15 his command, that kind of thing.

16 **MS. KNOLES:** Sure.

17 **MR. CRANE:** Your Honor, I have all those questions
18 in my direct, if you'd like or if you want it now.

19 **ALJ BROUSSARD-BOYD:** Okay. I'll just wait.

20 **MR. CRANE:** But I have all those. I had all the --
21 I had an entire --

22 **ALJ BROUSSARD-BOYD:** Perhaps it was a good time,
23 maybe it's not.

24 **MR. CRANE:** I had an entire background --

25 **ALJ BROUSSARD-BOYD:** Okay.

1 **MR. CRANE:** -- for Chief Ferreira.

2 **Q. (BY MS. KNOLES):** Okay. What was the purpose
3 of the 2009 transfer of Battalion Chief Delay to a
4 different battalion?

5 **A.** Similar to this reassignment, an immersion into
6 the CalFIRE system where he could learn from other
7 employees. Even though they may have been subordinate
8 employees, they had years of CalFIRE experience and know
9 the CalFIRE processes.

10 **Q.** And that's what you're trying to do here too as
11 well, apparently?

12 **A.** Part of it, yes.

13 **Q.** Okay. In transferring a battalion chief like
14 Chief Delay to another duty station, let me be specific,
15 in 2009 when you transferred Battalion Chief Delay to the
16 other battalion, you didn't have any training programs in
17 place, did you?

18 **MR. CRANE:** Objection. Mischaracterizes his
19 testimony and I think we already --

20 **ALJ BROUSSARD-BOYD:** He didn't have any other
21 training in place?

22 **Q. (BY MS. KNOLES):** I'm saying you transferred
23 him for training. That's the testimony. And I'm saying
24 you didn't have any training -- I'm asking a question.
25 You didn't have any training programs in place when you

1 made that transfer.

2 **MR. CRANE:** And Chief Ferreira has called it -- it
3 mischaracterizes his testimony. He's called it a
4 reassignment, not a transfer.

5 **ALJ BROUSSARD-BOYD:** Okay. I'm going to sustain the
6 question. Perhaps you can ask a clearer question. Thank
7 you.

8 Q. **(BY MS. KNOLES):** In 2009 when you -- it's your
9 opinion that you reassigned Battalion Chief Delay to a
10 different battalion in 2009?

11 A. Yes.

12 Q. Okay. And when you made that reassignment, did
13 you have any training programs in place for him when he
14 got there?

15 A. Well, there's formal training but the
16 reassignment was actually for an immersion or mentoring.
17 There was no specific course outline or syllabus that
18 described today you're going to work on a meal cost.

19 Q. Did you identify who would be doing his
20 mentoring?

21 A. No.

22 Q. Did you talk to anyone in the new battalion
23 about, hey, you should mentor Battalion Chief Delay when
24 he gets here?

25 A. Well, Chief Cole and at that time Division

1 Chief Sims --

2 Q. Uh-huh.

3 A. -- who has since retired were all part of that
4 discussion about the intent or the reason that we were
5 going to do this, both for the Coastside employees, which
6 had been Chief Delay and Chief Cosgrave and then also we
7 were flip-flopping and moving a battalion chief from the
8 Bayside, which is what we call that battalion in San
9 Mateo to learn the Coastside thing so that we could help
10 transition not only the employees, but the whole
11 organization to CalFIRE.

12 Q. And I appreciate that, but that's not actually
13 my question. My question is did you specifically direct
14 anyone to mentor Battalion Chief Delay when he got to the
15 new battalion?

16 A. No.

17 Q. Okay. And that reassignment was short, wasn't
18 it?

19 A. Yes.

20 Q. Okay. And what was the reason that it was
21 undone?

22 A. I believe Chief Delay had an injury.

23 Q. Prior to moving Chief Delay, did you have a
24 meeting with Battalion Chief Cosgrove and other employees
25 of the union about this move?

1 **ALJ BROUSSARD-BOYD:** Which move?

2 Q. **(BY MS. KNOLES):** The 2009 move.

3 A. Did you say employees of the union?

4 Q. Or do you recall meeting with Battalion Chief

5 Cosgrave and other individuals, I'm not sure who's in the

6 union or not, prior to that 2009 transfer?

7 A. I'm sure we met, yes.

8 Q. Do you recall Battalion Chief Cosgrave offering

9 to move, to take the reassignment to the battalion at

10 that time?

11 **MR. CRANE:** I'll just object as to the relevance to

12 this.

13 **MS. KNOLES:** I'm trying to establish a pattern and

14 practice of moving Chief Delay without reason when

15 there's other individuals who could've been moved.

16 **ALJ BROUSSARD-BOYD:** Well, a pattern and practice, I

17 don't know that that's going to help him in this. That

18 was three years. I don't know that it's going to help.

19 Is there another transfer that you're going to talk

20 about? There's lots --

21 **MS. KNOLES:** Well, there was --

22 **ALJ BROUSSARD-BOYD:** -- of reassignments or

23 transfers?

24 **MS. KNOLES:** No. There were two.

25 **ALJ BROUSSARD-BOYD:** Or just this one?

1 **MS. KNOLES:** There were two, but the witness
2 previously testified that this was something he had done
3 before similarly to train Chief Delay and I think the
4 circumstances of that are useful in providing context to
5 the circumstances of this transfer or reassignment or
6 whatever you want to --

7 **ALJ BROUSSARD-BOYD:** Yeah. I'm going to sustain the
8 objection because whether there was a volunteer or not
9 doesn't help --

10 **MS. KNOLES:** Okay.

11 **ALJ BROUSSARD-BOYD:** -- the Appellant at this time.

12 **Q. (BY MS. KNOLES):** Did you state that you
13 received pressure from the union to move Battalion Chief
14 Delay at that time in 2009?

15 **A.** I don't recall that, no.

16 **ALJ BROUSSARD-BOYD:** You have to speak up.

17 **THE WITNESS:** I don't recall that, no.

18 **ALJ BROUSSARD-BOYD:** Okay.

19 **MS. KNOLES:** Turning, if you will to tab three.

20 **ALJ BROUSSARD-BOYD:** Okay. Tab three is a four page
21 document that we've marked as Appellant's Exhibit F and
22 it appears to be an email with attachments.

23 (Whereupon, Appellant's F
24 was marked for identification.)

25 **Q. (BY MS. KNOLES):** This is an email dated

1 February 12th, 2009. It says it's from you to a number
2 of other individuals including Paul Cole, Chief Cole,
3 Battalion Chief Ari Delay, Scotty Jalbert. Do you see
4 that?

5 A. Yes.

6 Q. And it references an exchange doc is attached;
7 do you see that as well?

8 A. Yes.

9 Q. Turning to the next three pages of this
10 exhibit, it's a memorandum that says, "Attached you'll
11 find my proposal to interchange Battalion Chiefs Delay
12 and Jalbert during March and April." And I'm assuming
13 this is referring to February, to 2009. Do you see that?

14 A. Yes.

15 Q. Did you write this memo?

16 A. Yes.

17 Q. And this memo, on the first page, in the email
18 you say, "I've been contemplating some change to help us
19 overcome some of the issues that are hampering the full
20 transition. I'm temporarily switching some of the chief
21 officers around the end." Do you see that?

22 A. Yes.

23 Q. And then you write a two-page memo and I'm
24 looking on page 2 of the exhibit -- or page 3 of the
25 exhibit and it says here, expectations, and it says, "BC

1 Jalbert in Coastside." And it's my understanding that BC
2 Jalbert is the one who you were flip-flopping --

3 A. Yes.

4 Q. -- with Battalion Chief Delay.

5 A. Yes.

6 Q. And here's his assignment and then you say, "BC
7 Delay in Bayside." And that's the new battalion; is that
8 correct?

9 A. Yes.

10 Q. Okay.

11 A. New at the time.

12 Q. Well --

13 A. Coastside is the new battalion to CalFIRE.
14 Bayside was the existing battalion.

15 Q. I meant BC Delay, his new battalion that he was
16 going to be reassigned to.

17 A. Yes.

18 Q. Okay. And you lay out here a series of
19 expectations and there's an expected outcome.

20 A. Uh-huh.

21 Q. And there's a measurement. You didn't do that
22 in this current transfer, did you?

23 A. No.

24 Q. Okay. But this was your practice before?

25 A. This was the first time I'd ever done this

1 before so it wasn't necessarily a practice.

2 Q. This is the first time you'd ever done any sort
3 of transfer or reassignment, using your language?

4 A. Well, a temporary reassignment for the purposes
5 of --

6 Q. Right.

7 A. -- getting through this transition of employees
8 from local government to state government.

9 Q. Okay. And then you stated that you -- the
10 transition ended after a couple months.

11 A. I believe it ended after a couple of weeks.

12 Q. Okay. And why did it end?

13 A. Because I believe Chief Delay had a back -- I
14 don't want to violate HIPAA here, a back injury.

15 Q. And that was the sole reason for your decision
16 to un-reassign the individuals?

17 A. Correct. Because it was my understanding that
18 it was a preexisting back injury and in this case, San
19 Mateo County Fire had been the one who had been paying
20 for the overtime to cover behind Chief Delay during his
21 absence --

22 Q. Uh-huh.

23 A. -- so we switched it back.

24 Q. Okay. And between 2009 when you made this
25 original attempt and then just recently, over three years

1 later actually, almost to the date, you didn't make any
2 attempts in that interim to attain the goals that you
3 were seeking to attain with this original assignment?

4 **MR. CRANE:** I would object as leading.

5 **ALJ BROUSSARD-BOYD:** Sustained.

6 Q. **(BY MS. KNOLES):** Did you make any efforts in
7 the three year window between this original reassignment
8 to learn the inclusion into the main -- the inclusion --
9 to hasten the inclusion and merely transition Coastside
10 Fire District personnel into the mainstreamed CalFIRE
11 procedures and operations with Battalion Chief Delay?

12 A. I believe we sent him to formal training
13 classes and did some other things, but no, we did not try
14 a new assignment, no.

15 Q. Okay. And those formal training classes,
16 everyone was -- strike that.

17 Were those formal training classes offered to all
18 newly acquired Coastside employees?

19 A. No. Depending on their rank, there's other
20 specific classes that each of the CalFIRE classifications
21 have to complete as part of their --

22 Q. Okay.

23 A. In most cases, it would be probationary status
24 and I don't recall if Chief Jalbert was on probation
25 because I know he had just made battalion chief shortly

1 prior to the transition to CalFIRE. I don't recall what
2 that status was, but we tried to get him to all the
3 classes that we would expect of a battalion chief and to
4 see if he could attain the ICS qualifications, the
5 Incident Command System qualifications that we expect of
6 our battalion chiefs.

7 Q. Okay. And all the battalion chiefs were
8 expected to take those courses or similar courses?

9 A. Correct.

10 Q. And to your understanding, did Battalion Chief
11 Delay take those courses?

12 A. I don't know if he's completed them all.

13 Q. Okay. Did you ever look into checking if he
14 had completed them all before you decided to transfer him
15 to Felton?

16 A. No.

17 Q. Would those classes cover the policies and
18 procedures of CalFIRE?

19 A. Some do, yes.

20 Q. Okay. And I think I just have one more
21 question. You testified that since Battalion Chief Delay
22 was transferred or retransferred on August 1st of this
23 year, you had filled his position?

24 A. Yes.

25 Q. And what was the name of the individual that

1 you filled that position with?

2 A. Cortland Rounds.

3 Q. And was Mr. Rounds a battalion chief before?

4 A. No.

5 Q. So he's a new battalion chief?

6 A. Yes.

7 Q. And did he work in the Coastside Fire District
8 before?

9 A. Yes.

10 Q. And was Battalion Chief Delay his supervisor
11 before?

12 **MR. CRANE:** Your Honor, I would object as to what
13 the relevance is in this line of questioning.

14 **ALJ BROUSSARD-BOYD:** Overruled.

15 **THE WITNESS:** Yes.

16 Q. (**BY MS. KNOLES**): So Battalion Chief Delay
17 actually would have been the supervising officer for
18 Cortland Rounds prior to him becoming a battalion chief,
19 correct?

20 A. Depending on what duty days they had. I don't
21 know if Ari Delay was on duty the days that Cortland
22 Rounds --

23 Q. Sure.

24 A. -- was on duty.

25 Q. But it would have either been Mr. Delay or

1 Battalion Chief Cosgrove, correct?

2 A. Cosgrave, yes.

3 Q. Grave, I'm so sorry.

4 A. That's okay.

5 Q. Are you aware that Mr. Rounds has any specific
6 knowledge as to CalFIRE's layoff procedures?

7 A. No.

8 Q. Okay. So your purpose in instilling him there
9 hadn't -- does not actually relate to the upcoming
10 concerns of layoffs that are going to occur?

11 A. No. But as I said previously, it has to do
12 with all the other issues that were creating stress with
13 the employees, to reduce those so that we could
14 concentrate on the stresses of the transition.

15 Q. So your decision was to promote someone who was
16 working under -- directly under Battalion Chief Delay in
17 the same division and Battalion Chief Cole -- and Chief
18 Cole who you've also testified you don't trust to know
19 the policies --

20 A. I'm sorry, I --

21 **MR. CRANE:** Objection.

22 Q. **(BY MS. KNOLES):** -- and procedures of CalFIRE.

23 **MR. CRANE:** That mischaracterizes his testimony.

24 **ALJ BROUSSARD-BOYD:** If there's an objection, I
25 don't remember hearing that no one trusted Cole.

1 Q. (BY MS. KNOLES): You don't believe understands
2 the policies and procedures of CalFIRE either.

3 A. Not fully, no.

4 Q. Okay. And so you made the decision to promote
5 someone under their direct supervision.

6 A. Well, actually Chief Rounds promoted to the
7 Bayside Division and worked there for several months
8 before being reassigned over to Coastside.

9 Q. Does Battalion Chief Cole oversee both Bayside
10 and Coastside?

11 A. Not now, no.

12 Q. In the few months that -- do you know, in the
13 few months that Chief Rounds was training there if he
14 did?

15 A. He may have. I think that was just around the
16 1st of July.

17 Q. I'm sorry, what was just around the first of
18 July?

19 A. When Chief Cole was fully reassigned back to
20 Coastside Fire District and no longer had supervisory or
21 management over the Bayside Battalion, which would have
22 been --

23 Q. Okay.

24 A. -- the Belmont area.

25 MS. KNOLES: All right. I have no further questions

1 at this time.

2 **ALJ BROUSSARD-BOYD:** Okay, thank you. Cross-
3 examination, Mr. Crane, if you choose to.

4 **MR. CRANE:** If I could, I think I'd rather save my
5 cross for when I do direct, I'm going to call Chief
6 Ferreira as a witness.

7 **ALJ BROUSSARD-BOYD:** Okay.

8 **MR. CRANE:** And I'll save my questions for him to
9 that time.

10 **ALJ BROUSSARD-BOYD:** Okay. You do know he's subject
11 to cross-examination by the other party?

12 **MR. CRANE:** Yes. Yeah, I'll call him.

13 **ALJ BROUSSARD-BOYD:** Okay. All right.

14 **MR. CRANE:** That's what I figured.

15 **ALJ BROUSSARD-BOYD:** I think you're done. Thank
16 you, Chief. The next witness?

17 **MS. KNOLES:** Yes, Your Honor. I'd like to call
18 Battalion Chief Cosgrave.

19 **MR. CRANE:** Your Honor, before we have Battalion
20 Chief Cosgrave, perhaps we can get an offer of proof as
21 to what he's going to testify about.

22 **ALJ BROUSSARD-BOYD:** Ms. Knoles?

23 **MS. KNOLES:** He's going to testify about his
24 personal knowledge of the 2009 transfer, the current
25 involuntary transfer and the environment at Coastside,

1 which appears to be at issue.

2 **ALJ BROUSSARD-BOYD:** The environment?

3 **MS. KNOLES:** The stress, if you will, that has been
4 discussed about being at Coastside.

5 **ALJ BROUSSARD-BOYD:** You mean the transition?

6 **MS. KNOLES:** Uh-huh.

7 **MR. CRANE:** Your Honor, here's my point. You've
8 already heard that Chief Ferreira was the sole decider
9 and the reasons for the -- he made the ultimate decision,
10 so I can't see how Chief Cosgrave is going to have
11 anything to add, because he's not the decider. It was
12 Chief Ferreira.

13 **ALJ BROUSSARD-BOYD:** Well, do you want to stipulate
14 what -- is it Battalion Chief Cosgrave, do you want to
15 stipulate as to what his position is and when he took
16 that position?

17 **MR. CRANE:** You mean as to his --

18 **ALJ BROUSSARD-BOYD:** I mean, if you want to
19 stipulate as to -- I mean there's been testimony that
20 Cosgrave, who was promoted into a battalion chief
21 position while ostensibly your client transferred someone
22 who was already a battalion chief out, is that the
23 (indiscernible)?

24 **MS. KNOLES:** Oh, no, different people. You know, I
25 think --

1 **ALJ BROUSSARD-BOYD:** Oh, who is Cosgrave then?

2 **MS. KNOLES:** Cosgrave is the similarly situated peer
3 who was not transferred.

4 **MR. CRANE:** I guess I wonder what he's going to add
5 to Chief Ferreira's reasons for reassignment.

6 **ALJ BROUSSARD-BOYD:** So Cosgrave is not the person
7 that took the position.

8 **MR. FERREIRA:** Your Honor, that was Cortland Rounds.

9 **MS. KNOLES:** Rounds. That's Cortland Rounds.

10 **ALJ BROUSSARD-BOYD:** Oh, Cortland Rounds, thank you.
11 Okay.

12 **MS. KNOLES:** There's a lot of names.

13 **ALJ BROUSSARD-BOYD:** So Cosgrave is essentially a
14 coworker of your client.

15 **MS. KNOLES:** Yes.

16 **MR. CRANE:** So he's probably just going to testify
17 as to his speculation as to what he believes are the
18 reasons for the reassignment, but the decision-maker is
19 Chief Ferreira and he's the only one that's really
20 relevant to hear.

21 **ALJ BROUSSARD-BOYD:** And Cosgrave's a battalion
22 chief.

23 **MS. KNOLES:** Wait, I just want to understand here.
24 Are you objecting to anyone else's testimony? Because
25 you just said that.

1 **MR. CRANE:** I don't know why -- how they're going to
2 impact, because the --

3 **ALJ BROUSSARD-BOYD:** Well, let's just stick with
4 Cosgrave.

5 **MR. CRANE:** Okay.

6 **ALJ BROUSSARD-BOYD:** Cosgrave, now that I'm
7 corrected is a coworker of your client.

8 **MS. KNOLES:** Yes.

9 **ALJ BROUSSARD-BOYD:** He's in the same position,
10 battalion chief.

11 **MS. KNOLES:** Yes.

12 **ALJ BROUSSARD-BOYD:** Irrespective of where he is,
13 Coastside, Bayside, Eastside.

14 **MS. KNOLES:** Yes.

15 **ALJ BROUSSARD-BOYD:** Okay. So Cosgrave would
16 testify to the tenor of the transition and what's going
17 on and background?

18 **MS. KNOLES:** And the various transfers. I mean,
19 here you have a similarly situated person who we've got
20 an issue of it's not just procedural. It's harassment
21 and retaliation if my client is being viewed differently
22 than someone else. His personal experiences within
23 those.

24 **MR. CRANE:** It seems like it's going to be pretty
25 far afield because you're going to have to prove that

1 they're similarly situated and every battalion chief is
2 different, has different strengths and weaknesses, has a
3 different background.

4 So we're going to have to take this big detour as to
5 what his experiences were. And again, aren't we getting
6 a long ways away for the reasons for the reassignment,
7 which Chief Ferreira has already testified to.

8 **MS. KNOLES:** You know what I'd be willing to do to
9 maybe move this process along? I'd be willing to take
10 Chief Cole first and to the extent his testimony --

11 **ALJ BROUSSARD-BOYD:** Raises questions.

12 **MS. KNOLES:** -- raises questions --

13 **ALJ BROUSSARD-BOYD:** Okay.

14 **MS. KNOLES:** -- I would do that.

15 **ALJ BROUSSARD-BOYD:** All right. So at this time I
16 will not rule on whether or not Cosgrave offers the tryer
17 of fact anything, but Officer Cole, now Officer Cole is
18 the --

19 **MS. KNOLES:** The direct supervisor.

20 **ALJ BROUSSARD-BOYD:** Is he a chief, a battalion
21 chief or otherwise another chief?

22 **MR. FERREIRA:** Division chief.

23 **ALJ BROUSSARD-BOYD:** Division chief, okay.

24 **MS. KNOLES:** Lots of chiefs.

25 **ALJ BROUSSARD-BOYD:** And is under you, Chief

1 Ferreira?

2 **MR. FERREIRA:** Yes.

3 **ALJ BROUSSARD-BOYD:** Okay.

4 **MR. CRANE:** Your Honor, I'm going to make the same
5 -- I'm going to make the same objection as to all the
6 witnesses, because again --

7 **ALJ BROUSSARD-BOYD:** Well, under Division Chief
8 Cole, denied.

9 **MR. CRANE:** Okay.

10 **ALJ BROUSSARD-BOYD:** I want to hear what Division
11 Chief Cole has to say about his employee who was
12 transferred.

13 **MR. CRANE:** Okay.

14 **ALJ BROUSSARD-BOYD:** Do you know where the
15 whereabouts of Division Chief Cole is?

16 **MR. FERREIRA:** May I get him?

17 **ALJ BROUSSARD-BOYD:** Okay.

18 **MS. KNOLES:** Sure.

19 **ALJ BROUSSARD-BOYD:** You might need this key because
20 you won't be able to get back, sir. Thank you.

21 So we'll just go off the record while he gathers --

22 (Off the record.)

23 **ALJ BROUSSARD-BOYD:** We're back on the record in the
24 matter of Ari Delay and his Involuntary Geographic
25 Transfer Appeal.

1 We have a new witness. All I know is it's Division
2 Chief Cole. Would you please state your full name for
3 the record?

4 (Whereupon the witness was duly sworn.)

5 **THE WITNESS:** Paul Alexander Cole.

6 **ALJ BROUSSARD-BOYD:** Mr. Cole, would you raise your
7 right hand.

8 **THE WITNESS:** I do.

9 **ALJ BROUSSARD-BOYD:** Please state your name again
10 for the record.

11 **THE WITNESS:** Paul Alexander Cole.

12 **ALJ BROUSSARD-BOYD:** Thank you. Your witness.

13 Testimony of

14 PAUL ALEXANDER COLE

15 having been duly sworn, testified as follows:

16 DIRECT EXAMINATION BY MS. KNOLES

17 Q. **(BY MS. KNOLES):** Good morning, Chief Cole.

18 A. Good morning.

19 Q. Thank you for being here. How long have you
20 worked for CalFIRE?

21 A. Approximately five years.

22 Q. Okay. And during that time has your title
23 always been Division or Assistant Chief Cole?

24 A. Yes, ma'am.

25 Q. Okay. Prior to working with CalFIRE were you

1 with the Coastside Fire District?

2 A. Yes, ma'am.

3 Q. For how long?

4 A. Approximately 15 years.

5 Q. Okay. And how long have you worked with
6 Battalion Chief Delay?

7 A. Since my time with Coastside Fire, he's been a
8 member of the organization.

9 Q. Okay. So the entire 15 years that you were
10 with Coastside Fire and then the additional five years
11 since you've been with CalFIRE?

12 A. Let me back up for a moment.

13 Q. Sure.

14 A. I counted my time with CalFIRE. Approximately
15 11 years with --

16 Q. Okay.

17 A. -- Coastside Fire.

18 Q. Oh, I see.

19 A. Previously (indiscernible), yes, ma'am.

20 Q. Okay. So 11 years with Coastside Fire and then
21 an additional five years or so with CalFIRE.

22 A. Yes, ma'am.

23 Q. Okay. And what was your title at Coastside
24 Fire when they contracted with CalFIRE?

25 A. Fire Chief.

1 Q. Okay. And were you involved in the transition
2 with CalFIRE from Coastside?

3 A. Yes, ma'am, I was.

4 Q. Have there been issues with the adaptation to
5 CalFIRE with the Coastside Fire District?

6 **MR. CRANE:** I would just object as to the relevance,
7 as to what this has to do with the decision to reassign
8 Mr. Delay.

9 **ALJ BROUSSARD-BOYD:** Overruled.

10 **THE WITNESS:** Could you please elaborate a little
11 for me?

12 Q. **(BY MS. KNOLES):** Sure. You've got -- let me
13 provide you with some context.

14 A. Okay.

15 Q. The Coastside Fire District was its own
16 autonomous fire district, correct?

17 A. Yes, ma'am.

18 **MR. CRANE:** Objection, leading.

19 **ALJ BROUSSARD-BOYD:** She's laying a foundation.
20 I'll allow leading questions on foundation. Overruled.

21 Q. **(BY MS. KNOLES):** And when Coastside contracted
22 with CalFIRE, and let's just establish, that was around
23 2008; is that correct?

24 A. Yes, ma'am.

25 Q. There was an adaptation to the -- of the

1 Coastside Fire District to the CalFIRE way of doing
2 things, correct?

3 A. Yes.

4 Q. Okay. And additionally came with that new
5 firefighters, etcetera who were part of the CalFIRE
6 Department.

7 A. Yes.

8 Q. Okay. Have there been tensions with regard to
9 the joining of those two agencies?

10 A. Yes.

11 Q. Okay. And could you explain some of -- how
12 those tensions play out?

13 A. It started prior to the transition.

14 Q. Okay.

15 A. The transition was contested by a former group
16 or representation and I think that that former tension
17 kind of carried over.

18 Q. Okay.

19 A. There were those that didn't want to
20 transition.

21 Q. Transition into becoming a part of CalFIRE or?

22 A. I think transition in general. Transitioning
23 to (indiscernible) for an RFP, but --

24 Q. Okay.

25 A. -- yes, specifically to CalFIRE, yes.

1 Q. Okay. Okay, and that sort of tension carried
2 over once the transition occurred?

3 A. Yes.

4 Q. Okay. And the Coastside Fire District has its
5 own Board of Directors; is that the correct term?

6 A. Yes, ma'am.

7 Q. Okay. And how many Board of Directors are
8 there?

9 A. Currently five.

10 Q. Okay. Is there a plan -- or let me break that
11 up. When did the contract with CalFIRE expire?

12 A. Expire?

13 Q. When did it --

14 **MR. CRANE:** Objection, no foundation, assumes facts
15 not in evidence.

16 **ALJ BROUSSARD-BOYD:** Sustained.

17 Q. (**BY MS. KNOLES**): There was a -- let me
18 (indiscernible). How long was the contract with CalFIRE?

19 A. Since we started in '08 --

20 Q. Yes.

21 A. -- and each year we look at the terms of the
22 contract. This current contract expired on June 31st of
23 2012.

24 Q. Okay.

25 A. However it was extended --

1 Q. Okay.

2 A. -- for an additional year.

3 Q. And the Board makes that decision, correct, to
4 extend or not renew the contract?

5 A. In this case the Board elected not to enter
6 into a new agreement.

7 Q. Okay.

8 A. And the state elected, per the condition of the
9 contract to extend the contract.

10 Q. Okay. So I just want to make sure I understand
11 this. You can just correct me if I'm wrong with this.
12 Essentially part of the contract between CalFIRE and the
13 Coastside Fire District allows CalFIRE to keep the
14 contract in place for a year should the Coastside Fire
15 District not renew?

16 A. I believe that's correct.

17 Q. Okay. And that's the procedure that's taken
18 place right now.

19 A. Yes, ma'am.

20 Q. Okay. If the -- based on your knowledge, does
21 the removal of the contract by the Coastside Fire
22 District from CalFIRE result in a loss to CalFIRE?

23 **MR. CRANE:** Objection. What's the relevance?
24 There's been no foundation that he knows what the terms
25 of the contract are.

1 **ALJ BROUSSARD-BOYD:** I'm going to sustain the
2 objection. The contract terms are elusive at this time.

3 **Q. (BY MS. KNOLES):** Yeah. What happens if in the
4 next year if the Board continues not to renew the
5 contract and the extension expires? What would happen
6 then?

7 **MR. CRANE:** I would just object. There's been no
8 testimony that -- the contract's not in front of us and
9 there's been no testimony from Chief Cole that he
10 understands the contract and understands the terms of it.

11 And also, what's the relevance as to --

12 **ALJ BROUSSARD-BOYD:** Okay. So lack of foundation
13 and relevance. I'm going to sustain them both. There is
14 no foundation and again, the contract terms are made
15 elusive, so, and relevance because we don't know the -- I
16 don't know the (indiscernible).

17 **MS. KNOLES:** Fair enough.

18 **Q. (BY MS. KNOLES):** Are you aware that Chief
19 Ferreira would want the contract with CalFIRE and the
20 Coastside Fire District to be renewed?

21 **MR. CRANE:** Objection. It calls for speculation on
22 behalf of -- on behalf of (indiscernible).

23 **ALJ BROUSSARD-BOYD:** Overruled. If he's aware, he's
24 aware. If he's not, he's not.

25 **THE WITNESS:** To have it be renewed?

1 **MS. KNOLES:** Yeah.

2 **THE WITNESS:** Yes.

3 Q. **(BY MS. KNOLES):** That's his desire?

4 A. Yes.

5 Q. Okay. And are you aware that Chief Ferreira
6 thinks that Battalion Chief Delay is associated with the
7 individuals who don't want to renew that contract?

8 **MR. CRANE:** Objection, calls for speculation.

9 **ALJ BROUSSARD-BOYD:** Overruled. If he's aware, he's
10 aware.

11 **THE WITNESS:** How would you define aware?

12 Q. **(BY MS. KNOLES):** Simply that is it in your
13 awareness that this is ongoing?

14 A. I believe it is an awareness, yes.

15 Q. Okay. Are you aware of whether the CalFIRE
16 union chapter that currently operates in the Coastside
17 Fire Division, I'm just going to call it CFD wants to
18 renew the contract with the state?

19 **MR. CRANE:** I'd object. It assumes facts not in
20 evidence. It calls for speculation.

21 **ALJ BROUSSARD-BOYD:** Sustained.

22 Q. **(BY MS. KNOLES):** When did you first learn that
23 Battalion Chief Delay was going to be transferred out of
24 your division to Felton?

25 A. I don't have an exact date, but a few months

1 ago.

2 Q. Okay. And I'm just going to ask if you can
3 give me a little bit more context. January, February,
4 March, April, May, do you have any specific context?

5 A. Not at this moment.

6 Q. Okay. How did you find out?

7 A. From the chief.

8 Q. Chief Ferreira?

9 A. Chief Ferreira.

10 Q. And what did he -- strike that. He didn't
11 consult you in making the decision to move Battalion
12 Chief Delay, did he?

13 **MR. CRANE:** Objection. It's leading.

14 **ALJ BROUSSARD-BOYD:** Sustained.

15 Q. (**BY MS. KNOLES**): What was the context in which
16 he told you that he was moving Battalion Chief Delay?

17 **MR. CRANE:** Well, again, assumes facts in evidence
18 that he told him.

19 **MS. KNOLES:** He just testified to that.

20 **ALJ BROUSSARD-BOYD:** Overruled. So you can answer
21 the question, in what context did you learn?

22 **THE WITNESS:** A change needed to take place and that
23 he was going to move Chief Delay down to the Southside.

24 Q. (**BY MS. KNOLES**): Okay. Did he tell you why a
25 changed needed to take place?

1 A. I recall a conversation regarding the strife,
2 if you will that was currently occurring within the
3 Coastside Fire contract.

4 Q. What do you think he was referencing when he
5 said -- or what was your understanding of what he was
6 referencing when he said strife?

7 A. I think the perception of Chief Delay and how
8 he was either received or not received from the labor
9 group or certain factions within the Coastside contract.

10 Q. Did Chief Ferreira provide you with any
11 specific examples as to why the change needed to take
12 place?

13 A. They were perception issues and how Chief Delay
14 was perceived. I recall his affiliation with the typical
15 labor group, previous labor group and I recall something
16 about a union sticker on the back of a truck. That's
17 what I recall there.

18 Q. Okay. So, and I'm just seeking to clarify for
19 the record, he was perceived by -- when you're saying
20 labor, do you mean the union members?

21 A. I do.

22 Q. Okay. And he was perceived as being associated
23 with a previous labor or union group prior to the CalFIRE
24 union chapter that was there?

25 A. Uh-huh. Yes.

1 Q. And then that was causing some internal stress.

2 A. Yes.

3 Q. Did he ask you to investigate any allegations
4 of wrongful conduct by Chief Delay -- Battalion Chief
5 Delay?

6 A. No.

7 Q. Okay. Did he ask you to confirm that Battalion
8 Chief Delay had done any specific acts?

9 A. No, I don't recall that.

10 Q. Okay. Can you turn to this binder in front of
11 you to tab 19 and this has been previously marked as
12 Appellant's Exhibit B. There's a -- this is series of an
13 email chain and the first textual email there is from
14 you, Paul Cole, and it's dated February 15th, 2012 and it
15 goes out to Scotty Jalbert and John Ferreira. Do you see
16 that?

17 A. I do.

18 Q. Did you write this email?

19 A. I did.

20 Q. And this -- do you recall that this email was
21 written in response to you being informed that they were
22 going -- that Chief Ferreira had made the decision to
23 move Battalion Chief Delay?

24 A. Yes.

25 Q. Okay. And you ask in here for substantiated

1 facts. Do you see that?

2 A. Yes.

3 Q. Were you ever provided with any?

4 A. No.

5 Q. Okay. And you asked that we present the
6 concerns to Ari, providing him with an opportunity to
7 respond to them. Do you see that?

8 A. I do.

9 Q. Did Chief Ferreira agree to that request?

10 **MR. CRANE:** Objection, calls for speculation. I
11 guess he can testify if he knows, but all he can say
12 is --

13 **ALJ BROUSSARD-BOYD:** That's only what we're asking
14 for. Overruled. If you know, you can answer.

15 **THE WITNESS:** Yeah. I don't recall getting a
16 response to this, to them.

17 Q. (**BY MS. KNOLES**): Okay. And were you ever
18 given an opportunity to meet with Battalion Chief Delay
19 and allow him to respond to any accusations made against
20 him?

21 A. No.

22 Q. Okay. Did Chief Ferreira ever instruct you to
23 provide Battalion Chief Delay with any specific training
24 on CalFIRE policies and procedures?

25 A. No.

1 Q. Did he ever suggest that you create an IDP for
2 Battalion Chief Delay?

3 A. IDPs are pretty much across the board, not
4 specifically for Chief Delay, but it's generally
5 something that's done for all employees.

6 Q. Okay. And would it have been your
7 responsibility to create such an IDP for Chief Delay?

8 A. It would have been.

9 Q. Okay. Did you ever in the years working for
10 CALFIRE create an IDP for Chief Delay?

11 A. I did not.

12 Q. Did you ever -- and I want to limit my time
13 here to that time with CalFIRE, so just assume unless
14 otherwise that I'm talking about your work with CalFIRE.

15 Did you ever feel the need on any specific instances
16 to provide any sort of informal reprimand to Battalion
17 Chief Delay for not knowing CalFIRE policies and
18 procedures?

19 A. No, ma'am.

20 Q. Okay. Did you ever have any reason to write a
21 formal reprimand for Battalion Chief Delay not knowing
22 policies and procedures?

23 A. No, ma'am.

24 Q. Did you ever convey to Chief Ferreira that you
25 thought that Battalion Chief Delay did not know CalFIRE

1 policies and procedures?

2 A. No, ma'am.

3 Q. Was it your general experience with Battalion
4 Chief Delay that in fact he did know CalFIRE policies and
5 procedures?

6 **MR. CRANE:** Objection, leading.

7 **ALJ BROUSSARD-BOYD:** Sustained.

8 Q. (**BY MS. KNOLES**): That's fine. Did Chief
9 Ferreira ever -- strike that.

10 Did you ever have any conversations with Chief
11 Ferreira about Battalion Chief Delay's implementation of
12 the overtime hours with the line employees?

13 A. Could ask that again, please?

14 Q. Yeah, strike that. I'm sorry. Did you ever
15 have any conversations with Chief Ferreira about Ari's --
16 about Battalion Chief Delay's implementation of overtime
17 procedures at the Coastside Fire District?

18 A. No, ma'am, I do not recall.

19 Q. Okay. Did you ever have any conversations with
20 Chief Ferreira about Battalion Chief Delay's use of task
21 books at the -- in the Coastside Fire District?

22 A. I don't recall.

23 Q. Did you ever convey any sentiment to Chief
24 Ferreira that Chief Delay did not properly implement
25 policies and procedures at CalFIRE?

1 **MR. CRANE:** Objection, leading.

2 **ALJ BROUSSARD-BOYD:** Sustained.

3 Q. **(BY MS. KNOLES):** Did you ever convey to Chief
4 Ferreira any issues with Battalion Chief Delay's
5 performance while working for CalFIRE?

6 A. No.

7 Q. You were chief -- while employed at the
8 Coastside Division you were Chief Delay's direct
9 supervisor, correct?

10 A. Correct.

11 Q. And would you consider yourself a person who is
12 knowledgeable about his work performance?

13 A. Yes.

14 Q. How did you find Battalion Chief Delay as an
15 employee?

16 A. He was a very good employee.

17 Q. Would you say that he meets or exceeds
18 expectations?

19 **MR. CRANE:** I would just object, leading. She's not
20 asking open-ended questions.

21 **ALJ BROUSSARD-BOYD:** Okay. Yeah, I'm going to
22 sustain it.

23 **MS. KNOLES:** Okay.

24 **ALJ BROUSSARD-BOYD:** I think you've had an
25 opportunity to lay a foundation with this witness, so --

1 MS. KNOLES: Okay.

2 ALJ BROUSSARD-BOYD: -- move on.

3 Q. (BY MS. KNOLES): Did Chief Ferreira ever
4 discuss with you areas where he believed Chief --
5 Battalion Chief Delay needed improvement?

6 A. Yes.

7 Q. What were those areas?

8 A. More culturally based, understanding what he
9 felt -- understanding the CalFIRE culture more.

10 Q. Okay. What do you -- what did you understand
11 his reference to the CalFIRE culture to be?

12 A. No longer the Coastside, former Coastside way,
13 but how it's done, you know, in the CalFIRE way.

14 Q. Did he ever direct you to provide training to
15 Battalion Chief Delay on that issue?

16 A. We moved Chief Delay into another battalion --

17 Q. Uh-huh.

18 A. -- for, oh, approximately a month, a month and
19 a half and into the adjacent battalion --

20 Q. Uh-huh.

21 A. -- as part of that immersion into the different
22 facets of the operation.

23 Q. And was that the 2009 transfer?

24 A. Approximately in that time.

25 Q. Okay. After that, did Chief Ferreira convey to

1 you -- prior to February of this year, did Chief Ferreira
2 convey any desire that Battalion Chief Delay receive
3 additional training on the culture of CalFIRE?

4 A. Prior to the '09?

5 Q. After the '09. Meaning after that initial
6 transfer took place.

7 A. No, I don't believe so. I think it came up
8 after the decision was made and how it was starting to be
9 perceived with the extending of the contract or not.
10 That's when it kind of came to light. There was nothing
11 that -- the transfer was done to the other battalion.

12 Q. Okay. In 2009?

13 A. In 2009 and there was no subsequent additional
14 training recommended, other than what we normally do
15 through --

16 Q. Sure.

17 A. -- overhead assignments and working in other
18 battalions. That was it.

19 Q. Okay. And not again until -- you said until
20 the contract issue came up?

21 A. Uh-huh.

22 Q. And when was that?

23 A. Approximately December of last year, December
24 or January of this year.

25 Q. Okay. Can you turn to what is tab 4 in the

1 binder in front of you.

2 MS. KNOLES: And I believe we're at F?

3 ALJ BROUSSARD-BOYD: G.

4 MS. KNOLES: G.

5 ALJ BROUSSARD-BOYD: F is marked but not entered.

6 MS. KNOLES: Oh.

7 ALJ BROUSSARD-BOYD: It's the February 12, 2009 memo
8 from Chief Ferreira.

9 MS. KNOLES: Let me -- I would like to mark
10 (verbatim) F if there are no objections.

11 ALJ BROUSSARD-BOYD: Any objection to Exhibit F, Mr.
12 Crane, the Ferreira memo?

13 MR. CRANE: This would be tab 4?

14 ALJ BROUSSARD-BOYD: No. I'm talking about F right
15 now.

16 MR. CRANE: No, no, that's fine.

17 ALJ BROUSSARD-BOYD: Okay. So F, no objection, it's
18 entered.

19 (Whereupon, Appellant's F
20 was admitted into evidence.)

21 ALJ BROUSSARD-BOYD: And this would be --

22 MS. KNOLES: G.

23 ALJ BROUSSARD-BOYD: -- G.

24 MS. KNOLES: Okay.

25 ALJ BROUSSARD-BOYD: G is a one-page document and

1 let me see the binder, please. I need to mark it, sir.

2 **THE WITNESS:** Yes, ma'am.

3 **ALJ BROUSSARD-BOYD:** Thank you.

4 **THE WITNESS:** And this is out, so.

5 **MS. KNOLES:** Oh, sorry, that would be mine.

6 **ALJ BROUSSARD-BOYD:** Right. So we're just going to
7 mark that as a G. All right. And it's before the
8 witness.

9 (Whereupon, Appellant's G
10 was marked for identification.)

11 Q. (**BY MS. KNOLES**): Can you review this document
12 and this is two emails, the first sent on February 14th,
13 2009. It says from Paul Cole and there it says
14 pcole@coastsidefire.org. Is that you?

15 A. Yes, ma'am.

16 Q. And it says to John Ferreira. Do you see that?

17 A. Yes.

18 Q. And did you write this email?

19 A. I did.

20 Q. Okay. And this is titled Movement of Delay.

21 Is this in regard to that 2009 transfer that we were
22 previously talking about?

23 A. This is in regards to the transfer, yes.

24 Q. Okay. And it says here, you say here, "I'd
25 like to suggest in lieu of moving Ari you and I sit down

1 with him and all of his detractors to explore the
2 credibility of what is being said to you." Do you see
3 that?

4 A. Yes.

5 Q. What are you referring to there?

6 A. Which part, ma'am?

7 Q. The credibility. What -- this is in response
8 to a conversation that you had with Chief Ferreira,
9 correct?

10 A. It is.

11 Q. Do you remember what was said during that
12 conversation?

13 A. In regards to me mentioning credibility --

14 Q. Yes.

15 A. -- on sources? Yes, I do. Since my time with
16 CalFIRE it has come up periodically that certain things
17 are brought to the Chief's attention and when presented
18 with some of the facts and information, I have questioned
19 the credibility of the source, if you will.

20 Q. Uh-huh.

21 A. And that's what that refers to, so not just in
22 specific to Mr. Delay's case or Chief Delay's case, but
23 to some occurrences that I have had firsthand, so.

24 Q. Okay. And when you say brought to the Chief's
25 attention, you're referring to Chief Ferreira, correct?

1 A. Yes, ma'am.

2 Q. And are you saying that -- I just want to
3 understand what you're saying. That instead of going
4 through you or through Battalion Chief Delay, they're
5 going directly to Chief Ferreira?

6 **MR. CRANE:** I would object as leading.

7 **ALJ BROUSSARD-BOYD:** Sustained.

8 Q. (**BY MS. KNOLES**): What did you mean by the
9 phrase "brought to the Chief's attention?"

10 A. How he receives the information.

11 Q. Okay. And what was your understanding of how
12 he was receiving the information?

13 A. From members within the organization, not
14 necessarily through the chain of command.

15 Q. Okay. And you asked for the opportunity to
16 explore the credibility of the statements. Were you
17 given that opportunity?

18 A. Not with those in question, no, ma'am.

19 Q. Okay. And then the upper email here is Chief
20 Ferreira responding to you, Cole, and it's the next day
21 and it says here, in regards to Ari. Do you see that?

22 A. Yes, ma'am, I do.

23 Q. And did you -- do you remember receiving this
24 email?

25 A. Yes, ma'am.

1 Q. Okay. Other than this email, did you receive
2 any response to -- from Chief Ferreira on this issue?

3 A. I don't recall.

4 Q. Okay.

5 A. No.

6 **MS. KNOLES:** I would like to enter G into evidence.

7 **ALJ BROUSSARD-BOYD:** Okay. Any objection to the
8 one-page email series known as G?

9 **MR. CRANE:** Well, it's hearsay, Your Honor, but, and
10 I don't know what the relevance is.

11 **ALJ BROUSSARD-BOYD:** Well, only one part of it would
12 be hearsay. This is the testifying witness here who
13 wrote this. He's testified he wrote it.

14 **MR. CRANE:** Right, the lower one.

15 **MS. KNOLES:** And I would --

16 **ALJ BROUSSARD-BOYD:** You're saying the top part is
17 hearsay?

18 **MS. KNOLES:** I would argue a statement by a party
19 opponent.

20 **MR. CRANE:** Well, there's no foundation for it.

21 **MS. KNOLES:** He received it and he testified that
22 this was his response. It doesn't need to go to the
23 truth.

24 **ALJ BROUSSARD-BOYD:** Right. The hearsay objection
25 is on the record. I'm going to allow it and give it the

1 weight it's due. Anything else?

2 (Whereupon, Appellant's G
3 was admitted into evidence.)

4 **MR. CRANE:** No, Your Honor.

5 **ALJ BROUSSARD-BOYD:** Okay. Ms. Knoles, anything
6 else?

7 **MS. KNOLES:** Thank you. Just briefly, Your Honor.

8 Q. (**BY MS. KNOLES**): As his direct supervisor,
9 would you have recommended transferring Battalion Chief
10 Delay to a different division?

11 **MR. CRANE:** Calls for speculation.

12 **ALJ BROUSSARD-BOYD:** Overruled.

13 **THE WITNESS:** Are we talking about under these
14 circumstances?

15 **MS. KNOLES:** Correct.

16 **THE WITNESS:** No.

17 **MS. KNOLES:** No further questions.

18 **ALJ BROUSSARD-BOYD:** Okay. Any cross-examination,
19 Mr. Crane?

20 **MR. CRANE:** Yes, thank you.

21 **ALJ BROUSSARD-BOYD:** Okay, proceed.

22 CROSS-EXAMINATION BY MR. CRANE

23 Q. (**BY MR. CRANE**): Chief Cole, were you privy to
24 -- do you know if you were privy to all of the
25 information that Chief Ferreira used to make the decision

1 to reassign Chief Delay?

2 **MS. KNOLES:** Objection, lacks foundation as to what
3 information was relied on. He can't testify that he's
4 aware of all of it if we don't know what all of it is.

5 **ALJ BROUSSARD-BOYD:** Okay, it's hard to prove a
6 negative. Sustained.

7 Q. **(BY MR. CRANE):** Okay. Did Chief Ferreira tell
8 you every bit of information that he used to make his
9 decision to reassign Mr. Delay?

10 **MS. KNOLES:** Objection, lacks foundation.

11 **ALJ BROUSSARD-BOYD:** Sustained. Yeah, he can't tell
12 you what Chief Ferreira didn't tell him because he
13 wouldn't know. So let's move onto another line, please.

14 Q. **(BY MR. CRANE):** Did Chief Ferreira give you
15 his reasons for moving Mr. Delay?

16 **MS. KNOLES:** Asked and answered.

17 **ALJ BROUSSARD-BOYD:** Overruled.

18 **THE WITNESS:** Yes, sir, as I think I previously
19 stated. The issues with the transition would, I believe
20 stand alone going back potentially on its own and how Ari
21 was perceived by individuals in the organization.

22 Q. **(BY MR. CRANE):** Did you receive from any
23 CalFIRE employees any negative comments as to Chief
24 Delay's performance as a battalion chief?

25 **MS. KNOLES:** Objection, relevance. A negative

1 comment is a very broad statement that has no meritorious
2 value.

3 **ALJ BROUSSARD-BOYD:** Okay. I'm going to sustain
4 that objection on the basis that the question is vague.
5 So you can perhaps rephrase it.

6 Q. **(BY MR. CRANE):** Okay. Did you receive any
7 information from any CalFIRE employees that called into
8 question Chief Delay's ability to do his job as a
9 battalion chief?

10 A. No.

11 Q. Not from anyone ever?

12 **MS. KNOLES:** Objection, lack -- it's overboard and
13 vague, lacks his ability to do his job. I don't know
14 that anyone knows what Chief Delay's --

15 **ALJ BROUSSARD-BOYD:** Okay.

16 **MS. KNOLES:** -- job is other than Chief Delay.

17 **ALJ BROUSSARD-BOYD:** Okay. I think he's answered
18 the question by saying no, even if it was overbroad. So
19 he said no, which encompasses all. So any other
20 questions?

21 Q. **(BY MR. CRANE):** You testified you didn't do an
22 IDP for Chief Delay, correct?

23 A. Correct.

24 Q. Were you directed to do so by Chief Ferreira?

25 **MS. KNOLES:** Objection, asked and answered.

1 **ALJ BROUSSARD-BOYD:** Overruled.

2 **THE WITNESS:** Not directly.

3 Q. **(BY MR. CRANE):** Was it your understanding that
4 that was a CalFIRE policy and procedure that you were
5 supposed to follow and to do that yearly?

6 A. Yes.

7 Q. What was your reason for not doing that?

8 **MS. KNOLES:** Objection, relevance.

9 **ALJ BROUSSARD-BOYD:** Overruled.

10 **THE WITNESS:** The reason. In light of everything
11 that was going on and the workload, the priority, I
12 believe I've only received half of one in my five years
13 myself, so I didn't get it done.

14 Q. **(BY MR. CRANE):** Did you think it was important
15 to do that?

16 **ALJ BROUSSARD-BOYD:** Next question.

17 **MR. CRANE:** That's all I had.

18 **ALJ BROUSSARD-BOYD:** Okay. Any redirect?

19 **MS. KNOLES:** No, Your Honor.

20 **ALJ BROUSSARD-BOYD:** Okay. I thought I had a
21 question but I don't remember. You said there's a Board
22 of Directors for Coastsides?

23 **THE WITNESS:** Yes, ma'am.

24 **ALJ BROUSSARD-BOYD:** Is that Board of Directors
25 still in place today?

1 **THE WITNESS:** Yes, ma'am.

2 **ALJ BROUSSARD-BOYD:** Who else has a Board of
3 Directors? Does Southside have a Board of Directors? Is
4 there at Southside or San Mateo or another area or is
5 this just one Board of Directors?

6 **THE WITNESS:** Yeah. One Board of Directors for the
7 Coastside Fire Protection District. Special districts --

8 **ALJ BROUSSARD-BOYD:** Coastside Fire --

9 **THE WITNESS:** Fire.

10 **ALJ BROUSSARD-BOYD:** -- Protection District.

11 **THE WITNESS:** Yes, ma'am.

12 **ALJ BROUSSARD-BOYD:** And is it an elected Board?

13 **THE WITNESS:** It is.

14 **ALJ BROUSSARD-BOYD:** Do you know how long they
15 serve?

16 **THE WITNESS:** Four year terms.

17 **ALJ BROUSSARD-BOYD:** And prior to this contract, was
18 Coastside Fire Protection District, Board of Directors in
19 place prior to the contract?

20 **THE WITNESS:** Yes, ma'am.

21 **ALJ BROUSSARD-BOYD:** So when the contract started,
22 the Coastside firefighters became state employees?

23 **THE WITNESS:** Yes, ma'am.

24 **ALJ BROUSSARD-BOYD:** Do you know, if you know, does
25 this contract determine whether or not these people are

1 state employees? In other words, if the contract expires
2 next year, will the state employees that are now with
3 CalFIRE, if that contract expires, do they become
4 Coastside employees again?

5 **THE WITNESS:** No, ma'am, they're blanketed into
6 civil service all with state employees.

7 **ALJ BROUSSARD-BOYD:** So if they're blanketed into
8 civil service, then why is the need for the contract, if
9 you know? Why is there a contract, if you know.

10 **THE WITNESS:** It was for the personnel delivery
11 system of the fire department. It was to contract the --
12 really, the personnel's services, the Human Resource
13 aspect of the fire district. The fire district still has
14 it's own budget, retains its own stations. All of the
15 equipment is owned by the fire district. The only thing
16 that they don't have are employees.

17 So the employee element is contracted to the state
18 of California and all the employees that transitioned are
19 state employees now.

20 **ALJ BROUSSARD-BOYD:** But aren't those state
21 employees at risk if this transition falls through or the
22 contract is not renewed after the one year expires next
23 June? Or will they stay state employees?

24 **THE WITNESS:** They're going to stay state employees
25 and I believe it's the intent of anybody that does go

1 back to find positions and spots for them. That's the
2 intent.

3 **ALJ BROUSSARD-BOYD:** Find positions for them where?

4 **THE WITNESS:** In the CalFIRE system.

5 **ALJ BROUSSARD-BOYD:** So they would not be CalFIRE
6 employees if the contract reverts back. In other words,
7 if the contract is not renewed, okay, then what happens
8 to those transitioned employees who were Coastside and
9 now are CalFIRE?

10 **THE WITNESS:** They remain CalFIRE.

11 **ALJ BROUSSARD-BOYD:** So then who do you need to find
12 positions for?

13 **THE WITNESS:** The spots for them to work at, a
14 station location, there's contracts to work out of. For
15 example, there's 28 to 31 people assigned to the
16 Coastside contract. If that goes away and those bodies
17 are still there, we would have to find places for them
18 now within the system beyond the Coastside contract to
19 work San Mateo County, Santa Cruz County, Contra, other
20 units that may be able to take the employee.

21 **ALJ BROUSSARD-BOYD:** But they'd still be CalFIRE
22 employees.

23 **THE WITNESS:** Yes, ma'am.

24 **ALJ BROUSSARD-BOYD:** But now Coastside would kick
25 them out of their Coastside area and say go away, we need

1 to have our own employees here? If the contract is
2 specifically --

3 **THE WITNESS:** Yeah.

4 **ALJ BROUSSARD-BOYD:** -- for employment.

5 **THE WITNESS:** Yeah. Coastside would go back and
6 hire their own employees.

7 **ALJ BROUSSARD-BOYD:** I don't want to ask anymore
8 questions about that. Is anyone going to introduce this
9 contract?

10 **MR. CRANE:** I didn't see it has any relevance.

11 **ALJ BROUSSARD-BOYD:** Okay. We've gotten into the
12 contract transition. I didn't ask any questions about
13 it. I've learned about it today, so it must be relevant
14 somehow.

15 So this contract, I understand now. Okay, thank
16 you. Anything else?

17 **MS. KNOLES:** I just want to -- can I ask a follow-up
18 to --

19 **ALJ BROUSSARD-BOYD:** Oh, certainly. Certainly.

20 REDIRECT EXAMINATION BY MS. KNOLES

21 Q. **(BY MS. KNOLES):** If the contract is not
22 renewed and all the CalFIRE employees, as you've stated
23 will remain CalFIRE employees, Coastside would then go
24 out and hire new employees; is that -- is that correct?

25 A. That's correct.

1 Q. And so all of the firefighters who are
2 currently in the Coastside Fire Department, in theory,
3 and I realize this is an incomplete hypothetical, but
4 it's in the future, it's future conduct, in theory they
5 would be with CalFIRE but they could be hired by
6 Coastside?

7 MR. CRANE: This is all -- I object, it's all
8 speculation and I think we're getting way off --

9 ALJ BROUSSARD-BOYD: Well --

10 MR. CRANE: -- the track here.

11 ALJ BROUSSARD-BOYD: I mean, if you know.

12 THE WITNESS: There would be potential for the
13 opportunity.

14 Q. (BY MS. KNOLES): Okay. But the union, the
15 CalFIRE union would no longer have a place in Coastside.

16 MR. CRANE: Again, it calls for speculation and
17 relevance.

18 ALJ BROUSSARD-BOYD: I'm not quite sure under the
19 CalFIRE union.

20 Q. (BY MS. KNOLES): The chapter, the CalFIRE
21 union chapter, the CZU chapter --

22 ALJ BROUSSARD-BOYD: CZU chapter, okay.

23 Q. (BY MS. KNOLES): -- that currently has
24 employees at the Coastside Fire Stations would no longer
25 be a represented union there.

1 A. That's correct.

2 **MS. KNOLES:** Okay, thank you.

3 **ALJ BROUSSARD-BOYD:** Is it CalFIRE you mean or CZU
4 you mean?

5 **THE WITNESS:** The International Association of
6 Firefighters, it's one union --

7 **ALJ BROUSSARD-BOYD:** Right.

8 **THE WITNESS:** -- with different chapters. Twenty --
9 our current 2081 affiliation and then there's another --
10 there's a few actually, a couple more in the same county.
11 There's another group, 2400 as a chapter. The 2400 would
12 represent those in San Mateo, the county that we're in
13 and then the CalFIRE represents its CalFIRE
14 representatives.

15 **ALJ BROUSSARD-BOYD:** Okay. One last question. You
16 made a comment that Battalion Chief Delay needed a better
17 understanding of the CalFIRE culture. I think the
18 comment was made to you by Chief Ferreira. Do you know
19 what is meant by the CalFIRE culture? I've heard that a
20 couple times today. What is that?

21 **THE WITNESS:** Yeah.

22 **ALJ BROUSSARD-BOYD:** What is the CalFIRE culture?

23 **THE WITNESS:** Yeah.

24 **ALJ BROUSSARD-BOYD:** I mean, you fight fires, right?

25 **THE WITNESS:** That's not the -- that's the easy

1 part. That's the easy part.

2 **ALJ BROUSSARD-BOYD:** Oh, okay.

3 **THE WITNESS:** The easy part is, you know, all
4 firemen in the state, CalFIRE or whatever, that's the
5 easy part of it. It's understanding, you know, we went
6 from a small, three station department into the largest
7 fire department in the state of California and the
8 processes and procedures and there's a lot to learn. And
9 within that, there's a great deal of exposure, you know,
10 to the different aspects of what we provide in the state.

11 So with -- there is a distinct, in every
12 organization, a culture, a way of doing things. So that
13 was part of that transition process to kind of step into
14 that and understand those.

15 **ALJ BROUSSARD-BOYD:** Well, isn't a culture, wouldn't
16 that be regulations? You fight the fires differently or
17 you report to different people. The difference from the
18 three station culture to the largest firefighting
19 organization in the state, that culture still has to be
20 from something. Is it from statute, regulation, that
21 kind of thing?

22 **THE WITNESS:** Yes, ma'am.

23 **ALJ BROUSSARD-BOYD:** Okay.

24 **THE WITNESS:** Statute and regulation and policy and
25 procedure, yes, ma'am.

1 **ALJ BROUSSARD-BOYD:** Okay, okay. So when Chief
2 Ferreira made the comment to you that Cole (verbatim)
3 needed a better understanding of the CalFIRE culture, did
4 you undertake to make sure he understood all the
5 regulations and the statutes and to make sure he
6 understood the culture?

7 **THE WITNESS:** I didn't do that directly, no, ma'am,
8 because I was part of the same process of understanding
9 the same culture myself.

10 **ALJ BROUSSARD-BOYD:** So did someone send you to
11 train and to learn the culture?

12 **THE WITNESS:** There's an introduction, but it takes
13 -- as you know, it takes a great deal of time and over a
14 period of time to get to that point.

15 **ALJ BROUSSARD-BOYD:** Four years?

16 **THE WITNESS:** But it's very broad, very big and we
17 -- yeah, there was a series of classes that we went to
18 that helped teach us that. We have an Academy that
19 myself and Chief Delay and the others in the organization
20 took some classes there which kind of introduced the --
21 some of the aspects of how we operate, both on the fire
22 ground as well as understanding some of the policies and
23 procedures and processes, forms and so forth, so it was a
24 great deal to learn.

25 **ALJ BROUSSARD-BOYD:** Uh-huh.

1 **THE WITNESS:** A great deal.

2 **ALJ BROUSSARD-BOYD:** Uh-huh, okay, thank you. All
3 right, anything else for the Division Chief Cole? Okay.
4 Thank you very much, sir.

5 **MS. KNOLES:** Thank you.

6 **ALJ BROUSSARD-BOYD:** We appreciate your time here
7 today.

8 **THE WITNESS:** Am I done for the day?

9 **MR. CRANE:** Yes, yes.

10 **ALJ BROUSSARD-BOYD:** Okay, yes. Thank you, sir.

11 **MR. COLE:** Thank you.

12 **MS. KNOLES:** Thank you so much.

13 **ALJ BROUSSARD-BOYD:** Anybody else that you wanted to
14 call?

15 **MS. KNOLES:** So --

16 **ALJ BROUSSARD-BOYD:** Ms. Knoles?

17 **MS. KNOLES:** Yes. So I would --

18 **MR. COLE:** You didn't need me to grab anyone?

19 **MS. KNOLES:** We will take care of it. Thank you.
20 I would propose Scott Jalbert who's the new
21 supervisor at the Felton branch and I understand that
22 these people are busy. I would suggest we do him now,
23 take his testimony now and then --

24 **ALJ BROUSSARD-BOYD:** And this chief is a what kind
25 of a chief, a division chief?

1 **MS. KNOLES:** I believe he's a division chief. Yeah,
2 the same -- he is --

3 **MR. FERREIRA:** He's a deputy chief.

4 **MS. KNOLES:** Okay.

5 **ALJ BROUSSARD-BOYD:** Oh, he's a deputy chief, okay.
6 So a deputy chief, not a division chief and your offer of
7 proof for how it will support your client's case today?

8 **MS. KNOLES:** Is that he can speak to the training
9 that Battalion Chief Delay is supposedly undertaking at
10 his new division where he's been now for three weeks,
11 four weeks. And what instructions he's been given as his
12 new supervisor.

13 **ALJ BROUSSARD-BOYD:** And is Deputy Chief Jalbert
14 here today?

15 **MS. KNOLES:** He is.

16 **ALJ BROUSSARD-BOYD:** Okay.

17 **MR. CRANE:** He is.

18 **ALJ BROUSSARD-BOYD:** And he was a subpoenaed
19 witness?

20 **MS. KNOLES:** He was.

21 **MR. CRANE:** He was. And again, Your Honor, I have
22 the same objection to Chief Jalbert because the decision-
23 marker is Chief Ferreira and so all we're going to end up
24 with witness after witness is their speculation as to
25 what Chief Ferreira's reasons for moving him.

1 **ALJ BROUSSARD-BOYD:** Well, I'm going to allow Deputy
2 Chief Jalbert to testify but I'm going to limit the
3 testimony to obviously just a three week period as to
4 what he has done, and more what instructions he received
5 to do. So I'm going to allow Deputy Chief Jalbert on
6 that limited basis. I don't need to hear more about --

7 **MR. CRANE:** You mean, since the move, since he's --

8 **ALJ BROUSSARD-BOYD:** Since he was there, okay?

9 **MS. KNOLES:** Yeah. I would say what he was told in
10 anticipation of the move and --

11 **ALJ BROUSSARD-BOYD:** Right, yeah.

12 **MR. CRANE:** You mean just since August? I guess
13 August 2nd.

14 **MS. KNOLES:** Well --

15 **ALJ BROUSSARD-BOYD:** What his instructions were. He
16 received an employee who needed immersion in the CalFIRE
17 culture.

18 **MS. KNOLES:** And his --

19 **ALJ BROUSSARD-BOYD:** So if he was assigned the
20 employee, I'd like to hear what he was told about the
21 immersion into the CalFIRE culture.

22 So can we get Deputy Chief Jalbert?

23 **MR. FERREIRA:** (Indiscernible.)

24 **ALJ BROUSSARD-BOYD:** Okay. All right. Chief
25 Ferreira is going to get Deputy Chief Jalbert. And we'll

1 just go off the record for a moment here.

2 (Off the record.)

3 **ALJ BROUSSARD-BOYD:** All right. We're back on the
4 record in the matter of Ari Delay and I have a new
5 witness here, Deputy Chief Jalbert.

6 **THE WITNESS:** That's actually correct.

7 **ALJ BROUSSARD-BOYD:** Okay. If you'd raise your
8 right hand, please.

9 (Whereupon the witness was duly sworn.)

10 **THE WITNESS:** Yes.

11 **ALJ BROUSSARD-BOYD:** Please state your name for the
12 record.

13 **THE WITNESS:** Scott Jalbert.

14 **ALJ BROUSSARD-BOYD:** Scott Jalbert.

15 **THE WITNESS:** The French version, yes, you're
16 correct.

17 **ALJ BROUSSARD-BOYD:** Okay. All right, Scott
18 Jalbert, your witness.

19 Testimony of

20 SCOTT JALBERT

21 having been duly sworn, testified as follows:

22 DIRECT EXAMINATION BY MS. KNOLES

23 Q. **(BY MS. KNOLES):** All right. Chief Jalbert,
24 what is your official title with CalFIRE?

25 A. I am the Deputy Chief of Operations for the San

1 Mateo/Santa Cruz unit for CalFIRE.

2 Q. Okay. And how long have you held that
3 position?

4 A. Since December 2010.

5 Q. Okay.

6 A. I think. I don't -- I think that's close.

7 Q. And prior to holding that very long title, did
8 you work with CalFIRE?

9 A. Yes.

10 Q. And what was -- for how long?

11 A. Well, I think I'm going on 25 years.

12 Q. And your position immediately prior to becoming
13 the Deputy Chief?

14 A. I was the Division Chief for Ben Lomand Fire
15 Camp.

16 Q. Okay. And how long did you hold that title?

17 A. I have to use my fingers here. Ten months.

18 Q. Okay.

19 A. Nine, ten months, somewhere in there. I don't
20 know exactly.

21 Q. Have you recently been assigned Battalion Chief
22 Delay to your command?

23 A. Yes.

24 Q. And when did you first hear about that
25 assignment?

1 A. Specifically, I don't recall. But it's been in
2 the last couple months, whenever it's been. I don't
3 recall exactly.

4 Q. Okay. But in 2012?

5 A. Yes.

6 Q. Okay. And how did you find out about Battalion
7 Chief Delay being transferred to your command?

8 A. I'm assuming that it was a discussion that the
9 Chief and I had, but I don't recall specifically how.
10 I'm trying to remember. I'm sorry. I can't remember if
11 it was a discussion or if it was a formal email, but I'm
12 sure we had a discussion about it.

13 Q. Okay. But it was from Chief Ferreira --

14 A. Yes.

15 Q. -- that you learned?

16 A. That was assigned to me, that assignment, yes.

17 Q. Okay. And what -- do you recall specifically
18 anything that Chief Ferreira said about the assignment?

19 A. It had -- okay, it's starting to kind of come
20 back to me. It had to do with Chief Cole being totally
21 assigned to the Coastside Battalion and moving Ari to the
22 south.

23 Q. Okay. Did he provide you any reason for that?

24 A. It was to better integrate Chief Delay into the
25 CalFIRE system.

1 Q. Were you aware of how long Chief Delay had
2 worked in the CalFIRE system prior to --
3 A. When they came over on the contract.
4 Q. Okay.
5 A. I don't remember.
6 Q. Had you worked with Chief Delay prior to him
7 being assigned to you?
8 A. Yes.
9 Q. For how long?
10 A. Years. I've know Chief Delay prior to him even
11 working for the Coastside Fire Protection District as a
12 volunteer and when he was employed with the Coastside.
13 Q. Okay.
14 A. So I can't remember specifically. It's been
15 years.
16 Q. But you've known him in a somewhat professional
17 capacity --
18 A. Yes.
19 Q. -- preceding his work with CalFIRE.
20 A. That's correct.
21 Q. Okay. Did Chief Ferreira give you any specific
22 instructions about working with Chief Delay?
23 A. The only specifics that I can recall is to make
24 sure that he was given a clear training plan on this PO
25 199 and to make --

1 **ALJ BROUSSARD-BOYD:** On the what?
2 **THE WITNESS:** I'm sorry, the PO 199.
3 **ALJ BROUSSARD-BOYD:** PL?
4 **THE WITNESS:** PO, I'm sorry.
5 **ALJ BROUSSARD-BOYD:** An O 199.
6 **THE WITNESS:** PO 199.
7 **ALJ BROUSSARD-BOYD:** PO 199, thank you.
8 **THE WITNESS:** And in regards to his assignment and
9 to make sure that I get all aspects of the department
10 that we were involved with, the camp, ECC, resource
11 management.
12 **MS. KNOLES:** Okay.
13 **THE WITNESS:** And so on, I mean.
14 **Q. (BY MS. KNOLES):** And what's a PO?
15 **A.** I'm sorry. A PO 199 is a job duty -- job
16 description or a duty statement.
17 **Q.** Okay.
18 **A.** Something like that. I couldn't tell you
19 specifically.
20 **Q.** And did you create one of those?
21 **A.** Yes, I did.
22 **Q.** Okay. How long has Chief Delay been working in
23 your division now?
24 **A.** I can't -- it was the first week of August, I
25 believe.

1 Q. Okay.

2 A. August 1st or I think it was effective August
3 1st, but he came back from vacation like on the 3rd or
4 something like that.

5 Q. Okay. And that was just because of the days
6 that he was on?

7 A. That's correct.

8 Q. What position is Chief Delay filling?

9 A. He is filling the division relief position and
10 safety officer. It's kind of a combined position.

11 Q. Okay.

12 A. That's the -- what you would call the position.

13 Q. Okay. In that safety officer position, has
14 that been -- was that vacant before Chief Delay filled
15 it?

16 A. Yes.

17 Q. Do you know for how long?

18 A. Well, I have to go back a second because there
19 was a movement. It was vacant. We had a battalion chief
20 in there. He was a temporary employee. We laid him off.
21 We hired a battalion chief into that position.

22 Q. Okay.

23 A. And when Chief Delay moved to the safety
24 position, we did a three-way move, so I'm just trying to
25 make sure I get the accurate information.

1 So Chief Delay went to the safety position, Chief
2 Rounds went behind Chief Delay and the person that we
3 hired in that position temporarily went to the San Mateo
4 position.

5 Q. That Chief Rounds was -- vacated.

6 A. Correct. It was like that. That explains it.

7 Q. Okay.

8 **ALJ BROUSSARD-BOYD:** So the position wasn't vacant.
9 You said the relief and safety officer were
10 (indiscernible).

11 **THE WITNESS:** We hired -- well, we hired a person
12 into that coding, that position coding. The person was
13 not -- the person was not filling the job duties. He was
14 hired into that coded position.

15 Q. **(BY MS. KNOLES):** But he wasn't actually
16 fulfilling the job duties of the safety --

17 A. That's correct.

18 Q. Okay.

19 A. That's correct.

20 Q. So he technically was holding a title, but not
21 doing the job duties.

22 A. He did not hold the title. And then this is
23 where we're -- and this is why I'm making sure I'm very
24 clear on this. The position itself as far as relief and
25 safety officer was not -- the duties weren't being done,

1 but the position was filled and we were using it because
2 Chief Delay was on vacation for a month prior to the
3 movement.

4 So in order to save money in overtime, we moved --
5 we hired into that position, coded that position, but
6 used it for something else for the month until he
7 returned from vacation.

8 Q. Okay. Prior to that month --

9 A. Yes.

10 Q. -- was anyone fulfilling the duties of the
11 safety officer position?

12 A. No.

13 Q. Okay. For how long, if you know.

14 A. I believe it was November of last year, if I
15 remember correctly.

16 Q. Okay.

17 A. So November of 2011 and that's when Chief
18 O'Donoghue was put back as a fire captain.

19 Q. So he had been doing those duties before he
20 stopped doing those duties --

21 A. Yes.

22 Q. -- to get (indiscernible).

23 A. He went back to being -- as a temporary hire he
24 was -- I know it gets complicated. It's like a shell
25 game. So he was in the fire -- he was in the battalion

1 chief position. He was demoted back to fire captain and
2 the position was left vacant until, I believe July or
3 August. I can't remember.

4 Q. Okay. And so it was vacant from November of
5 2011 until it was -- and essentially until Mr. Delay took
6 it.

7 A. The duties, yes. I'm sorry.

8 Q. Okay. So, all right.

9 A. Sorry. I know it's a little --

10 Q. No.

11 A. -- complicated.

12 Q. That's fine. We're learning the inner-workings
13 of the CalFIRE Department. And the other position that
14 you said Chief Delay is currently filling is a relief at
15 the -- relief battalion commander; is that correct?

16 A. Well, it's not a different position.

17 Q. Oh, okay.

18 A. It's a duty of that position.

19 Q. I see.

20 A. That's correct.

21 Q. And what are his duties there or what do those
22 duties -- let me strike that.

23 What are his -- what are Battalion Chief Delay's
24 duties at Felton?

25 A. His duties are to respond to emergency

1 incidents, to -- he's responsible for the unit Safety
2 Program and I'm trying to go off the top of my head here.
3 He's responsible for the unit Safety Program and part of
4 his duties is to get -- I don't know what word to use, to
5 be more involved in the CalFIRE system.

6 Q. That's a delineated duty?

7 A. It's not a duty. It's part of the -- his PO
8 199.

9 Q. His training.

10 A. Yes. Personal development, so part of it is
11 the personal development training for him into that
12 program.

13 Q. Okay. And who is giving Battalion Chief Delay
14 that training?

15 A. It's conglomerate of people. We're assigning
16 him to different -- not assigning him, but he's working
17 with other battalion chiefs, other program managers and
18 he's to spend time with -- for an example, when he goes
19 out to the Soquel Demonstration Forest, he's going to
20 spend time with Chief -- I don't even know how to
21 pronounce her name, Angela. Let's call her Angela.

22 Q. Okay.

23 A. Angela, when he's to spend time like he did in
24 ECC, the ECC chief, the emergency command center chief
25 and captains and he's to spend time with the other

1 operational battalion chiefs to learn about the programs
2 and the specifics of those battalions, more specifically
3 for orientation, so when he runs emergency incidents.

4 Q. Okay. Have any of those programs started?

5 A. Yes. Well, yeah, it's not a very specific
6 scheduled program. It's more like, hey, today, Ari, go
7 to hang out with this person and get some orientation and
8 go to this program.

9 But to my knowledge, he has spent time with our ECC.
10 I believe he spent time with our Battalion 3 battalion
11 chiefs, but I can't confirm that. And just this morning
12 I spoke with Chief Estrada on an unrelated matter and he
13 told me he spent some time with him.

14 Q. Okay.

15 A. And I don't know if there's -- I've been gone,
16 so.

17 Q. Do you know if any of those individuals were
18 given any instructions about what Battalion Chief Delay
19 was supposed to learn from them?

20 A. Yes, from me.

21 Q. Okay. You gave them to them.

22 A. Yes.

23 Q. Are they sheets?

24 A. It was verbal.

25 Q. It was verbal. And did you kind of just make

1 it up or were you given instructions from Chief Ferreira?

2 A. I made it up.

3 Q. Okay. Did Chief Ferreira give you any specific
4 directions about what the program should include?

5 A. I showed him the PO 199 and he looked at it to
6 make sure it was all-inclusive of all of our programs.

7 Q. Okay. Have you ever -- strike that. Can you
8 turn to tab 17?

9 **ALJ BROUSSARD-BOYD:** Okay. Exhibit A is before the
10 witness.

11 **THE WITNESS:** Okay.

12 Q. **(BY MS. KNOLES):** Okay. This, I will represent
13 to you is the minutes of a CZU chapter meeting from
14 February 6th, 2012. Do you know what the CZU chapter is?

15 A. Yes.

16 Q. What is it?

17 A. It's our local chapter of the 2081 CDF
18 firefighters. Every unit has one, so it's the -- it's
19 basically the local union group.

20 Q. Okay.

21 **MR. CRANE:** Your Honor, I would object to this line
22 of questioning. I think this is beyond what we had
23 talked about for Chief Jalbert.

24 **MS. KNOLES:** He doesn't have a specific memory of
25 the conversation with Chief Ferreira and I'm just trying

1 to establish a timeline. I don't think it will take --

2 **ALJ BROUSSARD-BOYD:** You think this document's going
3 to refresh his memory?

4 **MS. KNOLES:** I do.

5 **ALJ BROUSSARD-BOYD:** Okay. If it's for the limited
6 purpose of refreshing his memory as to when he spoke with
7 -- okay, I'll overrule the objection.

8 Q. **(BY MS. KNOLES):** Turning to page 2, the first
9 line there says 1700. Chief --

10 **ALJ BROUSSARD-BOYD:** Why don't you just let him look
11 at it --

12 **MS. KNOLES:** Yeah.

13 **ALJ BROUSSARD-BOYD:** -- and see if it refreshes his
14 memory.

15 **THE WITNESS:** Okay.

16 Q. **(BY MS. KNOLES):** If you could review this
17 page.

18 A. Sure. Do you want me to read the thing or just
19 where it says Jalbert is here?

20 Q. Why don't you read everything down to San Mateo
21 County.

22 A. Okay.

23 **ALJ BROUSSARD-BOYD:** And while he's reading that,
24 I'm just going to take the opportunity to say that
25 Cosgrave has been released as a witness, for the record.

1 **MR. CRANE:** Thank you, Your Honor.

2 **THE WITNESS:** What was the date on this?

3 **MS. KNOLES:** February 6th, 2012.

4 **THE WITNESS:** Okay. Okay.

5 Q. **(BY MS. KNOLES):** Do you remember this?

6 A. If I remember correctly, this was a conference

7 call that I was on and I was in my office listening in

8 onto the conference call.

9 Q. Okay. And was --

10 A. If this is the one I think it is.

11 Q. Was Chief Ferreira with you?

12 A. No, he was in the next room.

13 Q. Okay. And do you recall having your meeting

14 with Chief Ferreira about Battalion Chief Delay prior to

15 this conference?

16 A. I do not.

17 Q. Okay. Not one way or another or do you think

18 it was after?

19 A. Oh, you mean where he told me specifically?

20 Q. Yeah.

21 A. It was after.

22 Q. It was after.

23 A. I'm pretty sure, yes.

24 Q. Okay.

25 A. If I remember correctly.

1 Q. Okay. And then if you can turn to the next
2 tab.

3 MS. KNOLES: Which I would mark as -- so that's tab
4 18 for the record and I would mark this as H.

5 ALJ BROUSSARD-BOYD: Okay. Marking as H --

6 MS. KNOLES: And --

7 ALJ BROUSSARD-BOYD: -- a two-page document. It
8 appears to be a -- I need to see the book for a minute.

9 THE WITNESS: I'm sorry.

10 ALJ BROUSSARD-BOYD: It appears to be an email
11 series and it's before the witness.

12 (Whereupon, Appellant's H
13 was marked for identification.)

14 THE WITNESS: Okay.

15 Q. (BY MS. KNOLES): And this is a series of
16 emails between you and Chief Ferreira; do you see that?

17 A. Uh-huh.

18 Q. And this is you, Scotty Jalbert?

19 A. Uh-huh.

20 ALJ BROUSSARD-BOYD: Is that a yes? Yes?

21 THE WITNESS: Yes, I'm sorry.

22 ALJ BROUSSARD-BOYD: Okay.

23 THE WITNESS: I'm sorry. Yes, yes.

24 Q. (BY MS. KNOLES): And here you say, the second
25 email down dated February 14th, 2012, "Chief, a couple of

1 things. Based on what I see, I can assume we're going
2 forward with the T & D." What is T & D?

3 A. Training and development assignment.

4 Q. And is that with regard to Battalion Chief
5 Delay?

6 A. No.

7 Q. Okay. And then here where it says, "Are you
8 available on these dates for the Ari meeting?"

9 A. Right.

10 Q. Do you have a specific recollection as to what
11 you were referring to there?

12 A. I'm assuming it had to do with Ari moving
13 maybe. I don't recall.

14 Q. Okay.

15 A. I really don't.

16 Q. You don't recall. And do you recall if you
17 were aware that Chief Delay was moving before you wrote
18 this email?

19 A. I must have, if I saw that, yes.

20 Q. Okay. And then here the response from Chief
21 Ferreira says yes, on the dates for the meeting. Do you
22 see that?

23 A. Yes.

24 Q. Okay. Do you remember receiving that email?

25 A. No.

1 Q. Okay.

2 A. But I'm sure I did. I'm sorry. Just like
3 everybody else --

4 Q. Yeah.

5 A. -- I get of ton of emails I don't remember.
6 But yes, I'm sure I did.

7 Q. Do you have any reason to believe why you
8 didn't receive this email?

9 A. No.

10 **MS. KNOLES:** Okay. I would move to mark this as H.

11 **ALJ BROUSSARD-BOYD:** Okay. Well, it's marked as H.

12 Any objection, Mr. Crane?

13 **MR. CRANE:** No objection.

14 **ALJ BROUSSARD-BOYD:** Okay. It's entered. You may
15 proceed.

16 (Whereupon, Appellant's H
17 was admitted into evidence.)

18 Q. **(BY MS. KNOLES):** And then if you could turn to
19 the next tab which is 19 and this has previously been
20 marked as B. So you're going to turn to the next tab,
21 which is 19.

22 A. I'm sorry.

23 **MR. CRANE:** Your Honor, again, we're getting pretty
24 far beyond the last three weeks. That was the -- that
25 was the understanding, that we were going to talk about

1 August 1st on.

2 **MS. KNOLES:** Well, I actually tried to specifically
3 address that before we went on, which is his
4 conversations leading to the transfer and his
5 understanding is relevant. While the duties started on
6 August 1st, his involvement prior to that, I think is
7 relevant.

8 **ALJ BROUSSARD-BOYD:** Well, you've already shown that
9 he was involved as early as the middle of February 2012.
10 What else do you need to show?

11 **MS. KNOLES:** Okay. I had two questions, so.

12 **ALJ BROUSSARD-BOYD:** Well, let's hear the questions
13 and see if they're objectionable to Respondent.

14 **MS. KNOLES:** Sure.

15 **ALJ BROUSSARD-BOYD:** What's the first question?

16 **Q. (BY MS. KNOLES):** You're included on this email
17 chain, the second -- the textual one dated --

18 **ALJ BROUSSARD-BOYD:** Now, you're looking at Exhibit
19 B?

20 **MS. KNOLES:** I am looking at Exhibit B.

21 **ALJ BROUSSARD-BOYD:** Okay.

22 **THE WITNESS:** This one right here, the 18th?

23 **Q. (BY MS. KNOLES):** Yes. And there's an email
24 here from Paul Cole and it's addressed to you --

25 **A.** Uh-huh.

1 Q. -- and John Ferreira; do you see that?

2 A. Yes.

3 Q. And here Chief Cole is expressing some concerns
4 regarding Chief Delay. Do you see that?

5 A. Yes.

6 Q. Did you have any concerns about moving Chief
7 Delay as well?

8 A. The only concerns that I had is that if
9 Coastside Fire was going to go back on their own, then
10 Chief Delay was going to go back with Coastside Fire,
11 that I was -- the concern that I have is that what is the
12 purpose of that, if that's going to happen.

13 Q. And when you say the purpose of that, what do
14 you mean?

15 A. Of moving him and developing him in his current
16 duties.

17 Q. Okay. And did you have any discussions about
18 that with Chief Ferreira or Chief Cole?

19 A. Yes.

20 Q. And did anyone address those concerns?

21 A. I don't know about addressing the concerns. I
22 just spoke my personal opinion in regards to it.

23 Q. Uh-huh.

24 A. I don't remember the exact conversations, but I
25 know I stated that.

1 Q. Okay. And did Chief Ferreira provide any
2 information to you to relieve your concerns?

3 A. Well, I don't think he relieved my concerns.
4 He -- essentially is we have to go forth as if -- until
5 that happens.

6 Q. Okay. Have you had any issues with Battalion
7 Chief Delay's performance since he's been working at the
8 Felton Station?

9 A. No.

10 Q. And have you found that he is aware of
11 CalFIRE's culture?

12 **MR. CRANE:** I would object. It's vague and
13 ambiguous as to aware and it would call for speculation.
14 He'd have to get inside Chief Delay's head to know that.

15 **ALJ BROUSSARD-BOYD:** Is he aware of whether or not
16 Battalion Chief Delay understands the CalFIRE culture?

17 **MS. KNOLES:** Yeah.

18 **ALJ BROUSSARD-BOYD:** I'm going to overrule the
19 objection at this time.

20 **THE WITNESS:** I'm sorry, ask the question again.

21 Q. **(BY MS. KNOLES):** Are you aware that Battalion
22 Chief Delay has a familiarity with the CalFIRE culture?

23 A. To use the specific words famil -- I can't say
24 that word, thank you, and the culture, I would say he has
25 an awareness, yes.

1 Q. Okay. Have you found that Battalion Chief
2 Delay is versed in the CalFIRE policies and procedures?

3 A. I would not say that he's versed. I would say
4 he's familiar with them.

5 Q. Uh-huh.

6 A. And to comparing apples to apples and oranges
7 to oranges, someone that came from another organization
8 into our organization, I would say that he -- because of
9 his background (indiscernible) has -- he's familiar.

10 Q. He's familiar.

11 A. Yes.

12 Q. Would you -- and what you're saying or I'm not
13 trying to -- strike that.

14 Is your -- strike that. Did you tell Chief Delay,
15 Battalion Chief Delay your expectations of him when he
16 transferred to Felton?

17 A. Yes.

18 Q. Did you tell him that your expectations are for
19 him to hold down the fort?

20 A. Yes.

21 **MS. KNOLES:** No further questions.

22 **ALJ BROUSSARD-BOYD:** Okay. Did you wish to cross-
23 examine this deputy chief?

24 **MR. CRANE:** Yes.

25 **ALJ BROUSSARD-BOYD:** Okay.

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CROSS-EXAMINATION BY MR. CRANE

Q. (BY MR. CRANE): Chief, I'm going to show you a document and I'll have this marked as --

ALJ BROUSSARD-BOYD: Respondent's 1.

MR. CRANE: Respondent's 1.

ALJ BROUSSARD-BOYD: Marking as 1, an Essential Functions Duty Statement for Battalion Chief, Safety Officer Relief and Safety Officer.

MR. CRANE: This is the PO 199 we've been hearing about.

ALJ BROUSSARD-BOYD: A PO 199, that's what I'll mark that. Okay, it's before the witness as 1.

Q. (BY MR. CRANE): Do you recognize that document?

A. Yes.

Q. Okay. What is that document?

A. This is the document that we utilize and I'm not sure if it's just a CalFIRE form or if it's an actual -- I'm sure because it's a PO, it's an actual state document that we give to employees so they understand what their job description is, what the responsibilities are.

MS. KNOLES: I would object, just to the fact that this is a -- he's just testified that this is a general CalFIRE form and hasn't -- I don't know that it has any

1 relevance.

2 **ALJ BROUSSARD-BOYD:** What is the relevance, Mr.
3 Crane?

4 **MR. CRANE:** Well, we just -- this is Mr. -- I
5 believe that Chief Jalbert is going to say that this is
6 the PO 199 for Mr. Delay and this is part of his new job
7 duties and this --

8 **ALJ BROUSSARD-BOYD:** Well, let's see if he says it
9 was created especially for Battalion Chief Delay. What
10 is created especially for Battalion Chief Delay?

11 **THE WITNESS:** This specific PO 199?

12 **ALJ BROUSSARD-BOYD:** This PO --

13 **THE WITNESS:** Yes.

14 **ALJ BROUSSARD-BOYD:** PO 199.

15 **THE WITNESS:** Yes.

16 **ALJ BROUSSARD-BOYD:** Was created specifically for --
17 oh, but it's dated April of 2001.

18 **MS. KNOLES:** Yes, Your Honor.

19 **ALJ BROUSSARD-BOYD:** And it's not signed by anyone.

20 **MR. CRANE:** The effective date is 8/1/12.

21 **MS. KNOLES:** Your Honor, I would object and I --
22 that in fact this is not --

23 **ALJ BROUSSARD-BOYD:** Let me just -- I've taken
24 official notice of the State Controller's work history
25 and it doesn't have the same position number as the -- as

1 the Appellant's position number.

2 So, as you know, at the beginning I took official
3 notice of the work history and this is not the position
4 number of this Appellant. So I'm going to sustain the
5 objection --

6 **MR. CRANE:** I haven't even --

7 **ALJ BROUSSARD-BOYD:** -- by counsel.

8 **MR. CRANE:** I haven't even finished though. I was
9 just starting to ask him questions about what it is.

10 **ALJ BROUSSARD-BOYD:** Well, the relevance is what is
11 at issue.

12 **MR. CRANE:** Well --

13 **ALJ BROUSSARD-BOYD:** So was this created -- my
14 question was, was this created specifically for the
15 Appellant. Answer, yes. Looking at position number,
16 answer, no.

17 Q. **(BY MR. CRANE):** What is this? Who is this
18 document for?

19 A. It's for the position that Chief Delay is
20 holding.

21 Q. And is it the position he's currently in now?

22 A. To my knowledge that position number is the
23 correct position number that he should be coded to.

24 **ALJ BROUSSARD-BOYD:** Did you write this?

25 **THE WITNESS:** Yes.

1 **ALJ BROUSSARD-BOYD:** Okay. Well, again, the
2 objection is on the record, but the position number is
3 not the same position number as the official record of
4 the State of California.

5 **MR. CRANE:** Well --

6 **ALJ BROUSSARD-BOYD:** So, I mean, if that's his
7 testimony that he created it for this --

8 **MR. CRANE:** Right.

9 **ALJ BROUSSARD-BOYD:** -- person.

10 **Q. (BY MR. CRANE):** And is that your
11 understanding, that that is the --

12 **A.** Yes.

13 **Q.** -- expectations for Chief Delay?

14 **A.** Yes.

15 **MS. KNOLES:** I'm going to object. I'm going to
16 maintain an objection to this, that --

17 **ALJ BROUSSARD-BOYD:** Well, it's only marked at this
18 time.

19 **MS. KNOLES:** Yeah.

20 **ALJ BROUSSARD-BOYD:** It's not entered, so let me
21 just take a look here.

22 **MR. CRANE:** Your Honor, it's also possible that this
23 is -- effective date, August 1 of '12 and this is only 19
24 days ago, it's possible that the transaction dates
25 haven't been keyed in. Chief Jalbert's testified that

1 this is his -- this is the PO 199 for Mr. Delay.

2 **ALJ BROUSSARD-BOYD:** Okay. I'll tell you what, I
3 will run a new work history before the decision is
4 finalized and we'll see. But I will run a new work
5 history because I've taken official notice and it may as
6 well be current. Whether that's the problem or not, I
7 don't know.

8 Q. **(BY MR. CRANE):** Is it your understanding that
9 this document accurately reflects what Chief Delay is --

10 A. Yes.

11 Q. -- to do in his new position?

12 A. Yes.

13 Q. Okay. Is there a section that has personal
14 development on this?

15 A. Yes.

16 Q. Okay.

17 **MS. KNOLES:** I actually -- I object. I don't see
18 that anywhere, personal development.

19 **MR. CRANE:** Can I see the version you have?

20 **MS. KNOLES:** I'm also going to object that there
21 might be various versions here which goes to the
22 foundation of the document.

23 **ALJ BROUSSARD-BOYD:** We're looking at what's been
24 marked as Exhibit 1. It's not signed by anyone. It's
25 two pages. I need that one back.

1 **MR. CRANE:** Okay.

2 **ALJ BROUSSARD-BOYD:** We've already marked it as 1.
3 If you want to withdraw it, you can do that. Do you want
4 to withdraw?

5 **MR. CRANE:** No, no.

6 **ALJ BROUSSARD-BOYD:** I think -- give me the one
7 that's in your -- right there, the one I've marked in
8 your right hand. Yeah.

9 **MR. CRANE:** There you go.

10 **ALJ BROUSSARD-BOYD:** So we have this --

11 **MR. CRANE:** Maybe there are two different versions.

12 **ALJ BROUSSARD-BOYD:** Well, it says professional
13 development.

14 **MR. CRANE:** Okay. That's -- yeah.

15 **ALJ BROUSSARD-BOYD:** Is that what you're referring
16 to?

17 **MR. CRANE:** Yes.

18 **Q. (BY MR. CRANE):** Do you see the section where
19 it talks about professional development at the bottom?

20 **MS. KNOLES:** I'm also going to object that the
21 version I was handed by counsel does not match the
22 version that --

23 **MR. CRANE:** Okay.

24 **MS. KNOLES:** -- the witness is currently reading.

25 **MR. CRANE:** So maybe there's --

1 **MS. KNOLES:** Mine has five numbers.

2 **ALJ BROUSSARD-BOYD:** Do you want to go off the
3 record?

4 **MR. CRANE:** Yeah. We can make copies really
5 quickly.

6 **ALJ BROUSSARD-BOYD:** Let's just go off the record.

7 (Off the record.)

8 **ALJ BROUSSARD-BOYD:** Okay. We're back on the record
9 after making some copies and now we have a document here
10 that is different from the one we had before. Now, this
11 is -- did you want to withdraw the one you've already
12 marked as 1?

13 **MR. CRANE:** Yes. Yes.

14 **ALJ BROUSSARD-BOYD:** Okay. So we can just call this
15 one 1.

16 **MR. CRANE:** Right.

17 **ALJ BROUSSARD-BOYD:** Okay. So can I have that one,
18 please?

19 **MR. CRANE:** Sure.

20 **ALJ BROUSSARD-BOYD:** All right. So marking as 1, a
21 Position Essential Functions Duty Statement. It's before
22 the witness, marked as 1.

23 (Whereupon, Respondent's 1
24 was marked for identification.)

25 **Q. (BY MR. CRANE):** Why don't you take a moment

1 and look at that, if you would, Chief.

2 A. Okay.

3 Q. You ready?

4 A. Uh-huh.

5 Q. Do you recognize this document?

6 A. Yes.

7 Q. What is it?

8 A. Well, it's -- as I stated earlier, it's a PO
9 199 specific for this position, but it's not the final
10 version.

11 Q. Okay. So this is an interim version?

12 A. This was a -- well, I'm not quite sure. When I
13 wrote this, there were three pages and this right here --
14 and the reason why I know it's a draft, because when
15 you see where it says five percent and this ten percent,
16 this -- I don't know where -- how or where this came
17 about, but yeah, this was in process.

18 Q. Okay. So it's a draft version?

19 A. Yes.

20 **MR. CRANE:** Okay. Then on that basis I will
21 withdraw it.

22 **ALJ BROUSSARD-BOYD:** Oh, you're withdrawing another
23 one?

24 **MR. CRANE:** Right. And I apologize, Your Honor.

25 **ALJ BROUSSARD-BOYD:** Okay. All right. So, okay,

1 thank you.

2 Q. (BY MR. CRANE): Okay. You testified that Mr.
3 Delay was familiar enough with the CalFIRE policies and
4 procedures.

5 A. I didn't say familiar enough.

6 Q. Oh, familiar.

7 A. I just said familiar, yes.

8 Q. Based on your observations, is he familiar
9 enough for the -- to fulfill -- properly fulfill the
10 duties of a battalion chief?

11 MS. KNOLES: Objection. I think that there's an
12 issue. There's never been a call into question of
13 Battalion Chief Delay fulfilling his duties as a
14 battalion chief.

15 ALJ BROUSSARD-BOYD: Your objection is on what
16 basis?

17 MS. KNOLES: Lacks foundation.

18 ALJ BROUSSARD-BOYD: Sustained.

19 MS. KNOLES: Familiar and --

20 ALJ BROUSSARD-BOYD: Sustained.

21 MS. KNOLES: -- familiar enough.

22 Q. (BY MR. CRANE): Do you have an understanding
23 if Chief Delay is familiar enough with CalFIRE culture,
24 policies and procedures to adequately perform as
25 battalion chief?

1 **MS. KNOLES:** I'm going to object again as to the
2 phrase familiar enough. This witness has testified he's
3 only been supervising Chief Delay for three weeks.

4 **ALJ BROUSSARD-BOYD:** I'm going to overrule the
5 objection. I want to hear what Deputy Chief Jalbert has
6 to say. Do you want the question repeated?

7 **THE WITNESS:** No, I think I got the gist of it. I'm
8 just trying to formulate an answer.

9 I would say that I would have to say yes because if
10 that was not the case, then I would not allow or object
11 to him having the battalion coverage.

12 So to -- it's a very subjective thing. There's
13 different layers to it. I would say that by him having
14 the battalion coverage, allowing him to do so, then yes,
15 he can do the duties.

16 **Q. (BY MR. CRANE):** Based on your observations of
17 Chief Delay, would you -- would you be of -- would you
18 take the position that Chief Delay could benefit from
19 additional exposure to CalFIRE culture, policies and
20 procedures?

21 **MS. KNOLES:** I'm going to object. There's been no
22 foundation as to how much he's observed Chief Delay,
23 whether or not they were on duty at the same times,
24 whether or not he's seen Chief Delay in action. I have
25 no idea what his observation would be based on, so I

1 would object.

2 **ALJ BROUSSARD-BOYD:** Okay. Any offer of proof, Mr.
3 Crane?

4 Q. **(BY MR. CRANE):** Well, have you had the
5 opportunity --

6 **ALJ BROUSSARD-BOYD:** Well, no, any offer of proof,
7 no question. I mean, Ms. Knoles has said that she's
8 objected based on foundation and relevance perhaps?

9 **MS. KNOLES:** Uh-huh.

10 **ALJ BROUSSARD-BOYD:** Was that your other objection?
11 Okay. And I too -- anyone can -- you said would he
12 benefit from additional training. I think anyone could
13 benefit from additional training. So if nothing else,
14 it's vague.

15 So maybe a better question. I'll sustain the
16 objection.

17 Q. **(BY MR. CRANE):** Okay. Have you received
18 information from any sources that would indicate to you
19 that Chief Delay would be a better battalion chief if he
20 received additional immersion with CalFIRE culture and
21 policies and procedures?

22 **MS. KNOLES:** Objection, overbroad, vague, lacks
23 foundation as to sources and those sources' knowledge or
24 ability to direct this individual.

25 **ALJ BROUSSARD-BOYD:** And I think if you narrow --

1 I'm going to sustain the objection based on the fact that
2 it is overbroad and vague. Perhaps you can narrow it,
3 narrowly tailor it. It is cross-examination, so you can
4 ask leading questions.

5 Q. (BY MR. CRANE): Chief, wouldn't you agree that
6 it would be helpful for Battalion Chief Delay to have
7 additional immersion after coming over from Coastside
8 Fire District and being in a small three station
9 department to CalFIRE, which is a large fire department,
10 additional immersion into the various programs and
11 policies and procedures that CalFIRE follows?

12 ALJ BROUSSARD-BOYD: Okay, don't answer that. What
13 is immersion? What is -- what do you --

14 MR. CRANE: That's the term that they've used and
15 that's the term --

16 ALJ BROUSSARD-BOYD: Okay, I know. But, so why
17 don't we define immersion before he answers a question
18 like that. I know it's cross-examination, but I'm not
19 going to get anything as the tryer of fact if I don't
20 understand what he means when he says immersion.
21 Immersion.

22 Q. (BY MR. CRANE): Chief, what do you understand
23 -- do you have an understanding about immersion?

24 A. I believe so.

25 Q. Okay. What is that understanding?

1 A. To absorb, to be part of, to integrate. I
2 guess I don't know if I'm using the right words, but
3 immersion is to become part of the system, to immerse
4 into the system, to come from something else to become
5 part of it. I (indiscernible) right.

6 Q. Is it your understanding that the policies and
7 procedures for the Coastside Fire District were different
8 than the policies and procedures for CalFIRE?

9 A. Yes.

10 Q. Wouldn't you agree that it would take more --
11 that it would require a learning process to learn the
12 CalFIRE policies and procedures?

13 **MS. KNOLES:** Objection, relevance as to what this
14 witness's -- this witness didn't go through that process.
15 He has no personal knowledge as to the difference between
16 Coastside and CalFIRE and there's been no establishment
17 that this witness knows that there were different
18 policies.

19 **MR. CRANE:** All right. I can establish it.

20 **ALJ BROUSSARD-BOYD:** Okay, sustained.

21 Q. **(BY MR. CRANE):** Have you seen employees come
22 from other fire districts into CalFIRE --

23 **MS. KNOLES:** Objection.

24 Q. **(BY MR. CRANE):** -- over your career?

25 **MS. KNOLES:** Objection, relevance.

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ALJ BROUSSARD-BOYD: Overruled.

THE WITNESS: I'm sorry?

ALJ BROUSSARD-BOYD: You can answer.

THE WITNESS: Have I seen other employees come over,
yes.

Q. **(BY MR. CRANE):** Okay. On how many occasions?

A. My only experience would be when the Pajaro
Valley Fire Protection District employees came over to
CalFIRE or CDF at the time and it was a very limited
exposure.

ALJ BROUSSARD-BOYD: Why was it a limited exposure?
Did they leave after they came over?

THE WITNESS: No, where I was assigned.

ALJ BROUSSARD-BOYD: Okay.

THE WITNESS: So I didn't have direct-direct as I do
now.

ALJ BROUSSARD-BOYD: Okay.

Q. **(BY MR. CRANE):** Would you agree based on that
that it is helpful for employees being absorbed into
CalFIRE to receive as much training and exposure to
CalFIRE policies and procedures as possible?

MS. KNOLES: I'm going to just object. He's
testified that his experience was limited. He didn't
provide any reference how this is related to the
Coastside acquisition, if there were similar issues with

1 regard to that one at the Pajaro Valley.

2 **ALJ BROUSSARD-BOYD:** Okay. All right. I'm going to
3 sustain the objection. Anything else for Deputy Chief
4 Jalbert?

5 Q. **(BY MR. CRANE):** You stated that you gave
6 instructions to all of the other chiefs at Felton as to
7 what Mr. Delay was going to be mentored on; is that
8 correct?

9 A. Yes.

10 Q. Okay. What did you tell them?

11 A. I told -- I'm going back in my memory here, on
12 different occasions to make sure that we take the time to
13 integrate Chief Delay into our system and to make sure
14 that we set him up for success, to make sure that
15 whenever possible to integrate him into -- more into the
16 CalFIRE system and make sure that you specifically teach
17 him what he needs to know to cover the battalions within
18 his -- the battalions that he's be covering and to set
19 him up for success.

20 Q. Why did you do that?

21 A. For two parts. One is I want to see Ari do
22 well. I'm sorry, Chief Delay. I want to see Chief Delay
23 do well.

24 And the second part is I have concerns about some of
25 the potential feelings of Chief Delay and other Coastside

1 employees that came over, to make it very clear that I
2 don't want anything to be unfair to them.

3 Q. Were those instructions that you gave of your
4 -- on your own or were those instructions you were
5 relaying from somebody else?

6 A. From me. Well, and if I may?

7 **ALJ BROUSSARD-BOYD:** No. There's no question
8 pending.

9 **MR. CRANE:** No, that's all I have.

10 **ALJ BROUSSARD-BOYD:** Okay. Any redirect?

11 **MS. KNOLES:** I do.

12 **ALJ BROUSSARD-BOYD:** Okay.

13 **MS. KNOLES:** And actually I have a couple of
14 questions and then can I use that little photocopier that
15 was being used out there briefly?

16 **ALJ BROUSSARD-BOYD:** Yeah.

17 **MS. KNOLES:** Okay, it will be quick.

18 **ALJ BROUSSARD-BOYD:** Before or after your redirect?

19 **MS. KNOLES:** I'm going to -- as part of, so if I can
20 have two minutes.

21 **ALJ BROUSSARD-BOYD:** Okay.

22 **MS. KNOLES:** Just to --

23 **ALJ BROUSSARD-BOYD:** We'll go off the record.

24 **MS. KNOLES:** Thank you.

25 (Off the record.)

1 **ALJ BROUSSARD-BOYD:** Okay. We're back on the record
2 in the matter of Ari Delay and some copies were made and
3 we'll be marking --

4 **MS. KNOLES:** I?

5 **ALJ BROUSSARD-BOYD:** -- I. We'll be marking I --

6 **MS. KNOLES:** Appellant's I.

7 **ALJ BROUSSARD-BOYD:** -- for Appellant. Marking as
8 I, it looks like a PO 199, marking as I. Here, let me
9 see that one, sir. I'll staple it for you. There you
10 go. Okay, I is before the witness.

11 (Whereupon, Appellant's I
12 was marked for identification.)

13 REDIRECT EXAMINATION BY MS. KNOLES

14 **Q. (BY MS. KNOLES):** Okay. This appears to be a
15 PO 199 and it has two signatures at the bottom of the
16 first page and at the bottom of the second page. Do you
17 see that?

18 A. Yes.

19 **Q.** Do you recognize either of those signatures?

20 A. I don't recognize the employee's signature, but
21 I do recognize the supervisor's signature.

22 **Q.** And who's signature is that?

23 A. That's Division Chief Ian Larkin.

24 **Q.** Okay. And --

25 **ALJ BROUSSARD-BOYD:** Who?

1 **THE WITNESS:** Ian.

2 **ALJ BROUSSARD-BOYD** Larkin: Ian Larkin.

3 **THE WITNESS:** I-A-N, L-A-R-K-I-N, Ian Larkin.

4 **ALJ BROUSSARD-BOYD:** Okay. Ian Larkin.

5 Q. **(BY MS. KNOLES):** Okay. And is -- what is Mr.
6 Larkin's position?

7 A. He is the assistant chief of Administration for
8 the unit.

9 Q. For the unit.

10 A. Yes.

11 Q. And is it your understanding that he's
12 currently supervising Battalion Chief Delay?

13 **MR. CRANE:** Objection, leading.

14 **ALJ BROUSSARD-BOYD:** Overruled. She's laying a
15 foundation.

16 **THE WITNESS:** He's partially supervising.

17 Q. **(BY MS. KNOLES):** And reviewing this, did you
18 create this document, the typed portions of the document?

19 A. The foundation of it, it was given to Chief
20 Larkin to -- I'm just supposed to answer the question.
21 Sorry.

22 Q. Okay.

23 A. I'm sorry, ask your question again?

24 Q. You just testified that you created the
25 foundation of this document. What did you do next?

1 A. I sent it to -- and I can't remember which
2 happened which first. It was given to Chief Larkin
3 because Chief Larkin is responsible for the -- if you
4 look under here, it says under the supervision of the
5 administrative chief.

6 Q. Yes.

7 A. And if you see under here, it says under the
8 supervision of the operations chief. I wrote the
9 document.

10 Q. Okay.

11 A. And I gave it to Chief Larkin to review and
12 make whatever edits possible and then I went on a fire
13 assignment and I asked Chief Larkin to -- and it appears
14 that -- I'm assuming that that's Chief Delay's signature,
15 that to make sure he goes over this with him when I was
16 gone.

17 Q. Okay. So this -- that's fine. Under -- on the
18 second page where it says item number 5 and it says
19 professional development.

20 A. Yes.

21 Q. Here it says will conduct self-directed
22 training. Do you understand what that means?

23 A. Yes.

24 Q. What does that mean?

25 A. Self-directed training, in the way I wrote this

1 was to review the CalFIRE handbooks and other things. So
2 basically the intent of that was to make sure that he
3 took the initiative to go through with this program.

4 Q. Okay. So you laid out a program and then the
5 initiative would've been on -- I'm assuming when you say
6 he, you're referring to Battalion Chief Delay?

7 A. Well, in part, yes.

8 Q. Okay.

9 A. I mean, it's going to be supported by the
10 battalion chiefs and the direction that I give, but the
11 intent was to -- for him to take the initiative to make
12 sure that he completed all these items.

13 Q. Okay. And it says there, will conduct self-
14 directed training on the CalFIRE handbooks and receive
15 orientation --

16 A. Yes.

17 Q. -- on the CalFIRE programs. Those are the
18 programs you were talking about?

19 A. That's correct.

20 **MS. KNOLES:** Okay. I'm not going to move this in
21 yet, because I don't think that this witness can
22 authenticate it, but I'll keep it marked.

23 **ALJ BROUSSARD-BOYD:** Okay.

24 Q. **(BY MS. KNOLES):** One last question. Earlier
25 you were testifying that part of your direction was to

1 make sure that you didn't appear to be unfair to
2 Coastside employees. What did you mean?

3 A. Well, I didn't say to be unfair to Coastside
4 employees.

5 Q. Okay.

6 A. I said to be unfair with Chief Delay.

7 Q. And what did you mean?

8 A. Well, where I was going at is that
9 unfortunately there are -- there are some individuals out
10 there that may have some dislike, either based on fact or
11 rumor on Chief Delay in regards to his involvement with
12 the Coastside Fire Protection District. And when the
13 decision was to move Chief Delay down there, I wanted to
14 make sure that there was no -- for lack of a better term,
15 any funny business, making sure no one set him up for
16 failure, that he was to succeed in this program.

17 Q. Was it your impression that he was being set up
18 for failure at the Coastside Division because of the
19 funny business?

20 A. No.

21 Q. Okay. Was it -- were you aware that -- strike
22 that, that's fine.

23 **MS. KNOLES:** I have no further questions.

24 **ALJ BROUSSARD-BOYD:** Okay. Any recross?

25 **MR. CRANE:** I have no further questions.

1 **MS. KNOLES:** I'm not moving it in yet. I'm going to
2 wait --

3 **ALJ BROUSSARD-BOYD:** Understood.

4 **MS. KNOLES:** -- for the (indiscernible) witness.

5 **ALJ BROUSSARD-BOYD:** Did you say recross?

6 **MR. CRANE:** No.

7 **ALJ BROUSSARD-BOYD:** Any recross? No recross. I
8 have a question on page 2 of this document on number 12,
9 receive an orientation on state law enforcement and
10 prevention.

11 **THE WITNESS:** Uh-huh.

12 **ALJ BROUSSARD-BOYD:** Is that a typical -- would you
13 say that's a typical professional development plan for a
14 battalion chief who's been on the job for four years?

15 **THE WITNESS:** Yes.

16 **ALJ BROUSSARD-BOYD:** Why?

17 **THE WITNESS:** As a -- as an agent of the state and
18 for CalFIRE, you have to be familiar with law enforcement
19 operations. Not -- you're not becoming a peace officer
20 per se, but you have to be familiar with our law
21 enforcement responsibilities.

22 **ALJ BROUSSARD-BOYD:** But he's been in the position
23 for four years.

24 **THE WITNESS:** Yes.

25 **ALJ BROUSSARD-BOYD:** So you think this, number --

1 I'm just looking at number 12, that is something that --
2 receiving an orientation, which the way I see
3 orientation, that means the beginning.

4 **THE WITNESS:** Uh-huh.

5 **ALJ BROUSSARD-BOYD:** And he's been on the job for
6 four years. Why is it important that his professional
7 development plan included orientation on state law
8 enforcement and prevention. I mean, isn't that the basic
9 intent of his job?

10 **THE WITNESS:** The way I viewed this, was to
11 developed like a joint apprenticeship program, that we
12 take our new employees, that they go through. And I
13 wanted to make sure that he knew what our state law
14 enforcement program was about, what their capabilities
15 were, how our fire prevention program worked and the
16 responsibilities as it tied in to being a battalion
17 chief.

18 **ALJ BROUSSARD-BOYD:** Even though he'd been one for
19 some time?

20 **THE WITNESS:** I -- to be quite honest with you, I'm
21 not sure that he received any training or orientation to
22 that program since he's been with us. And under the
23 direction, I wanted to make sure that it was -- as much
24 as I can make it, a complete program to make sure that he
25 at least, even if it was a 30 minute conversation with

1 our law enforcement chief, that he understood how the
2 department worked.

3 **ALJ BROUSSARD-BOYD:** Okay, thank you. Anything
4 else --

5 **MS. KNOLES:** Nope.

6 **ALJ BROUSSARD-BOYD:** -- for the Deputy Chief? Okay.
7 All right. Thank you very much.

8 **THE WITNESS:** Thank you.

9 **MS. KNOLES:** Thank you so much.

10 **ALJ BROUSSARD-BOYD:** And so there's no other
11 questions today in this proceeding at all for this
12 witness, correct?

13 **MR. CRANE:** Yes.

14 **ALJ BROUSSARD-BOYD:** Okay. Thank you very much for
15 taking the time out today.

16 **MR. JALBERT:** Thank you, Your Honor.

17 **ALJ BROUSSARD-BOYD:** Okay. It's 1:00 o'clock and I
18 understand you have one more witness and that is the
19 Appellant, Mr. -- Battalion Chief Delay.

20 And without further delay, I'm going to call for a
21 lunch recess. I'm going to give you until 2:15 because
22 it's quite busy out there, so 2:15.

23 How many witnesses do you have, Mr. Crane?

24 **MR. CRANE:** I've just got Chief Ferreira.

25 **ALJ BROUSSARD-BOYD:** Oh, you're going to recall him.

1 Okay, so 2:15 we'll be back, okay?

2 **MS. KNOLES:** Thank you.

3 **ALJ BROUSSARD-BOYD:** We're off the record.

4 **MR. CRANE:** Oh, yes. No, I'm sorry, I've got two
5 witnesses.

6 (off the record.)

7 **ALJ BROUSSARD-BOYD:** We're back on the record in the
8 matter of Ari Delay in his appeal to an involuntary --
9 from an Involuntary Geographic Transfer.

10 And Mr. Delay is sitting in my witness chair, so I
11 presume you're the next to testify. Please raise your
12 right hand.

13 (Whereupon the witness was duly sworn.)

14 **THE WITNESS:** I do.

15 **ALJ BROUSSARD-BOYD:** Please state your name for the
16 record.

17 **THE WITNESS:** Ari Delay.

18 **ALJ BROUSSARD-BOYD:** Okay. Thank you. Your
19 witness, Ms. Knoles.

20 Testimony of

21 ARI DELAY

22 having been duly sworn, testified as follows:

23 DIRECT EXAMINATION BY MS. KNOLES

24 Q. **(BY MS. KNOLES):** All right, thank you. Mr.
25 Delay, you currently work for CalFIRE; is that correct?

1 A. Correct.

2 Q. How long have you worked for CalFIRE?

3 A. Approximately five years.

4 Q. Okay. And what is your title?

5 A. Battalion chief.

6 Q. How long have you held that title?

7 A. Approximately five and a half, six years.

8 Q. Prior to working with CalFIRE who was your
9 employer?

10 A. The Coastside Fire Protection District.

11 Q. And how long did you work with them?

12 A. I'm trying to do the same math. Approximately
13 11 years or so.

14 Q. And what was your starting position with the
15 Coastside Fire District?

16 A. I started as a firefighter/paramedic.

17 Q. And then you were promoted up the ranks to
18 battalion chief?

19 A. Correct.

20 Q. Okay. Prior to working with Coastside Fire
21 District, did you work as a firefighter or a paramedic?

22 A. I did. I had previously worked as a volunteer
23 firefighter in La Honda. I had worked as a seasonal
24 firefighter for the US Forest Service and also a seasonal
25 firefighter for -- it was CDF at the time, but CalFIRE

1 now.

2 Q. Okay.

3 A. The same organization for two summers.

4 Q. So you worked as a seasonal firefighter in La
5 Honda?

6 A. No, in Mendocino County.

7 Q. Oh, in Mendocino County.

8 A. For CalFIRE.

9 Q. For CalFIRE. And how long ago was that?

10 A. That was 1992 and 1993.

11 Q. Okay. And who did you work for in La Honda?

12 A. La Honda is an all volunteer fire department
13 and over the years it had been different folks, but most
14 recently Larry Whitney, who is the chief of the
15 department and he retired and actually I took the job as
16 the chief of the volunteer fire department and I
17 currently am doing that job.

18 Q. Does the La Honda Fire Department have any
19 relationship to CalFIRE?

20 A. Yes.

21 Q. How?

22 A. A little bit of a convoluted story, but La
23 Honda is an all volunteer fire department. It works
24 cooperatively with the county of San Mateo. The county
25 of San Mateo contracts their fire department through

1 CalFIRE, very similar to the relationship with the
2 Coastside Fire Protection District. And part of that
3 agreement with the county is to oversee the training,
4 education and support of the volunteer fire departments
5 throughout the county that exist.

6 Q. And so through your work with La Honda, in
7 addition to your current work with CalFIRE, were you made
8 aware of various CalFIRE policies and procedures?

9 **MR. CRANE:** Objection, leading.

10 **ALJ BROUSSARD-BOYD:** I'm going to sustain it. You
11 can ask (indiscernible).

12 Q. **(BY MS. KNOLES):** Through your work with La
13 Honda, did you gain any knowledge about CalFIRE?

14 A. I would say yes, a combination of my previous
15 experience, but with La Honda specifically, we worked
16 with the CalFIRE folks even prior to me working for
17 CalFIRE on a day to day basis. We worked on incidents
18 regularly, whether it was emergency scene management or
19 just operational stuff. We had worked together often and
20 a lot of the training that we had conducted and both the
21 CalFIRE employees for our folks, from the volunteers and
22 also globally where a lot of the CalFIRE policies were
23 actually implemented at the local level and through the
24 volunteers as well.

25 Q. All right, thank you. Now, primarily for the

1 last, tell me if my numbers off, 16 years you've worked
2 at the -- in the Coastside District first as a separate
3 entity and then as CalFIRE, correct?

4 A. Correct.

5 Q. And where are the -- what's your station there?

6 A. I'm responsible for the Coastside Battalion,
7 but boundaries have changed a little bit. The majority
8 of the lion's share of the Coastside Fire District is the
9 Coastside Battalion. It used to include the Pescadero
10 Fire Station, which is a county station. There's a state
11 engine that's assigned there. Also, the battalion
12 coverage covered Loma Mar volunteers and La Honda
13 volunteers.

14 Q. Okay. While working for CalFIRE, what have
15 your duties as a battalion chief been?

16 A. In which capacity? In the Half Moon Bay?

17 Q. Yes.

18 A. Okay.

19 Q. Up until August 1st of this year.

20 A. Okay. That's going to be a long list. The
21 normal job of a battalion chief, I performed all of those
22 functions, emergency scene management, personnel issues,
23 all those duties that encompass the general scope of the
24 battalion chief.

25 In addition to that job, in the Coastside Fire

1 Protection District I'm responsible for a multitude of
2 programs and projects, I would say. I did a
3 specification bid process and acceptance of new battalion
4 chief's vehicle; that was one of my projects.

5 We recently did a bid process, kind of the same
6 process for three brand new fire engines from the coast
7 and I was responsible for managing that process within
8 the district.

9 I'm responsible for the computer system in the
10 district. I most recently implemented a program where we
11 conduct our business inspection program on the iPads.
12 That was the thing I implemented most recently, which has
13 allowed us to be a lot more efficient on the coast and
14 collecting and tracking that process.

15 Some of the fleet issues I'm responsible for.
16 Personal protective equipment for all the firefighters,
17 including the career and volunteer firefighters. I'm
18 responsible for that program.

19 And, you know, other duties assigned captures a lot
20 of stuff, so there's a lot of other things that are out
21 there, but that's kind of the general scope, I would say
22 of things.

23 Q. Okay. And who's your direct -- who was your
24 direct supervisor while you were stationed in Half Moon
25 Bay?

1 A. Chief Cole.

2 Q. And do you know who his direct supervisor was?

3 A. Chief Ferreira.

4 Q. And how long did you work with -- how long have
5 you worked with Chief Cole?

6 A. I was employed within the Coastside Fire
7 Protection District just before he was hired by the
8 district prior to the CalFIRE operation, so I would say
9 right around the same, 15 or 16 years.

10 Q. Okay.

11 A. With a little bit of "ish" in there.

12 Q. Okay. Now, approximately five years ago the
13 Coastside Fire District joined CalFIRE, correct?

14 A. Correct.

15 Q. Okay. Have there been issues in the Coastside
16 Fire District as a result of this transition?

17 **MR. CRANE:** I'd just object as vague as to issues.

18 **ALJ BROUSSARD-BOYD:** Sustained.

19 Q. **(BY MS. KNOLES):** Since the transition of -- in
20 joining CalFIRE, have you worked to adapt to the CalFIRE
21 system?

22 A. I think so. There's a lot of differences in
23 process and procedure, but I think honestly, I've worked
24 to embrace, you know, the processes and the procedures
25 from a global statewide perspective. And I think

1 anywhere you work within the CalFIRE system, Chief
2 Jalbert had talked about the Pajaro Valley, they have
3 specifics that are specific to that district and
4 requirements for a battalion chief to be able to operate
5 that district and we have some of those specifics within
6 the Coastside Fire Protection District that are -- have
7 to encompass the global CalFIRE process and policies and
8 procedures.

9 But there's also a narrow focus to some of those,
10 you know, specific area things. And I think it's --
11 I've, you know, worked to try and incorporate those
12 together throughout the last four or five years.

13 Q. Okay. Over those four or five years, have you
14 received training from CalFIRE about their processes and
15 procedures?

16 A. I think processes and procedures, I've been to
17 classes throughout the last five years on specific job
18 functions, the operation section chief's class.
19 (Indiscernible) prior to that, but a few of those type of
20 classes.

21 However we did take a class on CAL-Card, which is
22 our purchasing process throughout the state and how to
23 use the CAL-Card and what are the requirements. Not
24 official training, but I've worked with some of the
25 Finance folks and Human Resources folks in Felton to, you

1 know, kind of navigate a few of the processes that we
2 have, you know, day to day that crop up for, you know,
3 some guidance in those type of things.

4 Q. So when you encounter a process, you just
5 mentioned this CAL-Card purchasing system.

6 A. Uh-huh.

7 Q. When you would encounter a process like that
8 that had not previously been a part of the Coastside Fire
9 District, how would you approach it?

10 A. Well, for that particular instance there was a
11 class that was put on locally. And then, you know, in
12 our job a lot of times you don't have -- we're dealing
13 with emergencies most of the day, so we have a lot of
14 times when we don't have discretionary time. But issues
15 that come up with process and procedure are typically
16 non-emergency related, we have discretionary time where
17 we can use our references.

18 So the manuals, the 1000 manual, the 7000, all these
19 manuals that are available online, I've utilized that
20 process. And then honestly, making the phone calls to
21 the people at Felton when there was a payroll issue and
22 dealing with the gals that deal with payroll or a finance
23 question dealing with Karen Healy who does the finance
24 and just using those as references and to be able to help
25 guide me through the process if there was something that

1 was unclear.

2 Q. And just to clarify the record, you are
3 referring to Felton. Is that because the local
4 headquarters were there?

5 A. Correct.

6 Q. Okay. And that's where some of the more
7 administrative functions are out of?

8 A. Correct.

9 Q. Okay. In 2009 you were transferred to a
10 different duty station; is that correct?

11 A. Correct.

12 Q. Where were you transferred to?

13 A. The Bayside Battalion or the Belmont Fire
14 Station is basically kind of the base of operations on
15 that side of the hill.

16 Q. Prior to that transfer were you told why you
17 were being transferred?

18 A. Yeah. There was a -- I think it goes back to
19 this issue of this immersion that I was told as the
20 reason that I needed to be transferred over there for
21 immersion into the CalFIRE, the state system. That's
22 what I was officially told.

23 Unofficially, it was fairly well known --

24 **MR. CRANE:** Your Honor, I would just move to object.
25 It was a yes or no question. He's already answered yes,

1 what he was told.

2 **ALJ BROUSSARD-BOYD:** Okay. You've answered the
3 question. Any other questions?

4 **MS. KNOLES:** Sure.

5 Q. **(BY MS. KNOLES):** You were given a specific
6 reason of immersion, which we'll get into. Did you
7 believe there to be any other reasons for your transfer?

8 A. Yes.

9 Q. What did you believe those reasons to be?

10 **ALJ BROUSSARD-BOYD:** And this is the 2009 transfer?

11 **MS. KNOLES:** Yes.

12 **THE WITNESS:** I believed those reasons to be were
13 that the union was basically unhappy with me and however
14 it transpired, basically that they had requested that I
15 be moved.

16 Q. **(BY MS. KNOLES):** Okay. And were you told that
17 this was going to be a temporary assignment, the 2009
18 transfer?

19 **MR. CRANE:** I'd just object as hearsay.

20 **ALJ BROUSSARD-BOYD:** Overruled. What were you told
21 when you were transferred in 2009? Was it temporary,
22 permanent?

23 **THE WITNESS:** I believe they said it was going to be
24 temporary.

25 Q. **(BY MS. KNOLES):** Okay. And, now you were

1 recently transferred as well, right?

2 A. Correct.

3 Q. Were you told the duration of your assignment
4 now?

5 A. No. It was undetermined.

6 Q. You were told that it was undetermined?

7 A. I think it even says it in the staff report
8 somewhere, the exact language. I don't know, but I think
9 it says for an unknown time. I'm not sure exactly, if
10 there was an end point to it.

11 Q. And you've never specifically been told an end
12 point, have you?

13 A. No.

14 Q. Okay. And after -- how long were you at the
15 Belmont/Bayside Station in 2009?

16 A. A couple of months.

17 Q. Okay. And after that concluded, did any --
18 prior to 2012, did anyone talk to you about the need for
19 you to be re-immersed in the CalFIRE system?

20 A. Not until I was alerted to the situation by one
21 of the firefighters.

22 Q. And what situation are you referring to?

23 A. Early in 2012 I had heard from one of the
24 firefighters that I was being transferred to the South
25 Division, so this is one of my subordinates that informed

1 me that I was being transferred and that was shortly
2 after that union meeting.

3 Q. Okay. Between that 2009 time window and this
4 conversation you had with one of your subordinates, no
5 one -- Chief Ferreira never talked to you about the need
6 for you to experience immersion into CalFIRE cultures?

7 A. None of my superiors had offered that as --

8 Q. Uh-huh.

9 A. -- a requirement.

10 Q. And between 2009 and the present did anyone --
11 did you ever -- strike that.

12 Between 2009 and the present were you ever informed
13 that you were not complying with CalFIRE processes?

14 A. I think there would be maybe a couple of
15 instance where there was a -- and I wouldn't say not
16 complying. I would say confusion on what is the right
17 path to take, so to speak. The district has a set of
18 policies and procedures. The state has a set of policies
19 and procedures. The contract that we operate under
20 within the district requires the district policies be
21 followed unless they conflict with state policies and the
22 state policies would take precedent.

23 An example of that is our vehicle accident policy.
24 If there's -- within the state if there's a vehicle
25 accident, there's different forms, a 269, a 270 and the

1 supervisors' reports, the 274s that have to be filled
2 out. But the district has a vehicle accident report form
3 too and that report form is required by the district to
4 get filled out as well because they own the vehicle.

5 So there's two different processes that run parallel
6 with each other. And there was some angst honestly from
7 some employees when I -- you know, hey, we have to fill
8 out this form as well. Well, that's not a state form, we
9 don't fill those out. And it's a requirement of the
10 district that those forms get filled out for their
11 vehicle if it's involved in an accident.

12 So those are some of the conflicts that would come
13 up.

14 Q. And as they would come up, would you work
15 through them in this specific instance?

16 **MR. CRANE:** Objection, leading.

17 **ALJ BROUSSARD-BOYD:** Overruled.

18 Q. **(BY MS. KNOLES):** You can answer.

19 A. Yeah. We would navigate the process to do --
20 to make sure we were consistent with the state policy as
21 a precedent. If something was state policy, that would
22 obviously take precedence based on that contract and
23 their requirement and also meet the requirements of the
24 district.

25 Q. And would you engage in discussions with your

1 supervisors about these issues as they came up?

2 A. Yes.

3 Q. And after those issues came up, the next time
4 you would approach them -- how would you approach them?

5 A. I think it became a point where the employees
6 at some point kind of recognized that there was a --
7 there's -- although we're CalFIRE, there are some
8 differences locally that have to be achieved here within
9 the district by their requirements and the contract that
10 we serve. And 99 percent of them, no big deal, move on
11 with life, everything is fine. Some particular employees
12 had some heartache and there was some angst over some of
13 those things, but we tried to navigate the process.

14 And, you know, what we ended up doing, Dave
15 Cosgrave, my partner and I, because it was never really,
16 I think fully explained to the employees, we got a copy
17 of the contract in Exhibit E and gave it to the employees
18 and said, hey, this is what we're tasked with doing here
19 locally so you know that I'm not doing -- this is not my
20 policy. This is the district's policy and the contract
21 with the state and this is what we're required to do, so
22 they have a better understanding of what the expectation
23 is. And that's what we tried to do to accomplish that
24 and try to at least get it -- hopefully they would
25 understand why some of these things had to be

1 accomplished.

2 Q. And could you just back up? What is Exhibit E
3 that you're referencing?

4 A. Within the state there's a contract with a
5 multitude of agencies, Coastside Fire District being one.
6 And Exhibit E is basically the -- is the boilerplate
7 language of the contract, who does what and when, why and
8 how. And Exhibit E is basically the really definitive
9 stuff that's kind of focused, like I said, on the
10 district and its operations and its expectations of the
11 state operating in their area.

12 Q. Okay. Can you turn to Exhibit 57 -- or I'm
13 sorry, tab 57 in this binder in front of you? And she's
14 going to mark that as J.

15 **ALJ BROUSSARD-BOYD:** Okay. Item J would be
16 originally 57 and I will mark this for the witness and
17 it's before the witness. And it appears to be something
18 called Exhibit E and it is 16 pages long, however they're
19 not numbered sequentially. Who's got 16?

20 (Whereupon, Appellant's J
21 was marked for identification.)

22 **THE WITNESS:** It's 9 and then 111.

23 **MS. KNOLES:** Yeah.

24 Q. **(BY MS. KNOLES):** Is this document, 57 -- I'm
25 sorry, J, the Exhibit E that you were referencing?

1 A. It appears to be on the surface. Obviously I
2 haven't read the whole document, but it appears to be
3 Exhibit E.

4 Q. And this says it's a summary of the services to
5 be provided to San Mateo County, Coastside Fire
6 Protection District. Do you know who created this
7 document?

8 A. I believe Chief Ferreira --

9 Q. Okay.

10 A. -- in consultation with the Fire Board.

11 Q. Okay. And this up here is to outline the
12 various general responsibilities of executive management.
13 Do you see that?

14 A. Yes.

15 Q. Okay. Turning to page 4, this says Battalion
16 Chief Operations. Reviewing this, did you understand
17 this to be your duties under the -- as a battalion chief
18 contracted with CalFIRE?

19 A. Yes.

20 Q. Okay.

21 **ALJ BROUSSARD-BOYD:** Your battalion chief's
22 operations --

23 **THE WITNESS:** Correct.

24 **ALJ BROUSSARD-BOYD:** -- before your transfer?

25 **THE WITNESS:** Correct. And too is my partner Dave

1 Cosgrave is the second battalion chief.

2 Q. (BY MS. KNOLES): Okay, thank you. In your
3 time working with CalFIRE have you -- prior to being
4 moved to Felton, did you -- were you ever subjected to
5 any informal warnings about your performance?

6 A. Performance, no.

7 Q. About -- were you ever -- did you ever receive
8 any formal warnings?

9 A. No.

10 Q. When did you first find out that you were being
11 transferred to Felton?

12 A. Like I had stated earlier, it was sometime
13 right around the time of that union meeting, within the
14 couple of days after that.

15 Q. Okay. And you didn't find out directly from
16 Chief Ferreira. You found out from a subordinate?

17 A. Correct.

18 Q. What did you do after you found out or that you
19 heard this information from a subordinate?

20 A. Honestly, I dismissed it as rumor because it's
21 the fire station and there's a lot of rumors that go
22 around the fire station. But it kind of caught me to
23 pause and made me think about it and, you know, it was
24 kind of -- I dismissed it at that point but I definitely
25 took note of it.

1 Q. Are you aware that that -- the person who
2 informed you, are you aware of whether or not they're a
3 member of the local CalFIRE union?

4 A. I would imagine so. I don't know 100 percent,
5 but I imagine --

6 **MR. CRANE:** Objection, calls for speculation.

7 **ALJ BROUSSARD-BOYD:** Okay. I'll strike the answer.

8 **MR. CRANE:** I was a little slow on the objection.

9 **ALJ BROUSSARD-BOYD:** Okay. I'll sustain the
10 objection.

11 Q. **(BY MS. KNOLES):** Okay. What was the next that
12 you heard about possibly being transferred to Felton?

13 A. I believe the next time, if I'm correct, was I
14 was forwarded a document from Chief Cole and he basically
15 said, hey, I want to give you a heads up, this is coming
16 out at the next board meeting and I don't want you to get
17 blindsided by it. And that was -- I think we had looked
18 at that earlier today. It was that -- it was titled
19 Delaytransfer.doc. And it was the document explaining to
20 the board that a battalion chief was being moved and the
21 division chief was being moved back to Half Moon Bay.

22 Q. Okay. And if you could turn to tab 25.

23 **ALJ BROUSSARD-BOYD:** Okay. Marking as Exhibit K, it
24 appears to be an email string -- an email with --

25 **MS. KNOLES:** Wait. Yeah. Yes.

1 **ALJ BROUSSARD-BOYD:** An email dated April 19, 2012
2 and it appears to have a staff report attached to it and
3 we'll mark it as K and it's before the witness.

4 (Whereupon, Appellant's K
5 was marked for identification.)

6 **Q. (BY MS. KNOLES):** And is this the email you
7 were referencing?

8 A. Correct.

9 **Q.** And here it says attachment, Delay Transfer
10 Memo.

11 A. Correct.

12 **Q.** And the second page of this and the third page
13 of it is a staff report. Do you see that?

14 A. Correct.

15 **Q.** Is this the document that was attached to the
16 email that you received?

17 A. Yes.

18 **Q.** Okay. And your understanding was that Chief
19 Cole was forwarding you this with regards to your
20 transfer?

21 A. Correct.

22 **Q.** Okay. Were you surprised to receive this
23 information in a staff report like this?

24 A. I was, yes. I was surprised on a multitude of
25 levels, but first to hear it from a subordinate and then

1 to hear it in this manner.

2 **ALJ BROUSSARD-BOYD:** Tell me what your understanding
3 is of a staff report, if it was so unusual to hear what's
4 in here. Yes, what is a staff report?

5 **THE WITNESS:** A staff report typically is a report
6 that staff -- either the chief, the assistant chief or
7 one of the battalion chiefs would collect and put
8 together for the board and make a presentation to the
9 board on a recommendation or their findings.

10 **ALJ BROUSSARD-BOYD:** And that's the Coastside.

11 **THE WITNESS:** Fire Protection District.

12 **ALJ BROUSSARD-BOYD:** Five people on the board.

13 **THE WITNESS:** Correct.

14 **ALJ BROUSSARD-BOYD:** So you could also do a staff
15 report if you wanted to?

16 **THE WITNESS:** Correct. And I have done them on
17 various things.

18 **ALJ BROUSSARD-BOYD:** But if you did a staff report,
19 could you write a staff report and then just present it
20 to the board or is there a method to go through to get
21 that on the board agenda?

22 **THE WITNESS:** Typically a staff report would be
23 generated by some conclusion of the board that they
24 wanted information or wanted some action taken. They
25 would direct staff to generate a report and give them

1 their recommendation as to, you know, what they believe
2 is the best course to proceed or action to take.

3 **ALJ BROUSSARD-BOYD:** Okay. One last question. So
4 you're saying a staff report is in response to a board
5 inquiry?

6 **THE WITNESS:** Typically.

7 **ALJ BROUSSARD-BOYD:** Not always?

8 **THE WITNESS:** No, it could not always be. It could
9 be not always. It could be that there's some revelation
10 within the organization that they've come up with that
11 they need to take some action.

12 **ALJ BROUSSARD-BOYD:** To bring it to the board's
13 attention.

14 **THE WITNESS:** To bring it to the board's attention.

15 **ALJ BROUSSARD-BOYD:** Okay, thank you.

16 **THE WITNESS:** Sure.

17 **Q. (BY MS. KNOLES):** This document on the final
18 page of the document says that to effect the change, the
19 battalion chief and perhaps other employees will be
20 reassigned for an extensive period of time so that they
21 can be more carefully mentored and allowed to experience
22 other leadership techniques. Do you see that?

23 **A.** Yes.

24 **Q.** And did you understand this staff report to be
25 talking about you when it's saying battalion chief?

1 A. It was pretty clear. I had heard from the
2 firefighter. I had been forwarded the email from my boss
3 and he in no under uncertain terms told me, hey, this is
4 coming down the pike. And he didn't want it to go to a
5 public meeting and me not even know about it and find
6 out, again, from somebody else that I was being
7 transferred.

8 Q. But you hadn't heard yet from Chief Ferreira or
9 from Chief Cole prior to this that you were being
10 transferred or why you might be transferred?

11 A. Not that I recall.

12 Q. Okay.

13 A. I don't believe so.

14 Q. And so prior to receiving this attachment to an
15 email, were you ever informed by Chief Ferreira that you
16 required more careful mentoring?

17 A. The only time we had a discussion in regards
18 to, I don't know if you'd even call it mentoring, but
19 Chief Ferreira had sent me an email. I don't know, it's
20 not in any of these documents for some reason, but in
21 regards to the perception issues with the man, so to
22 speak, and how to try to navigate that process in the
23 future.

24 Q. What perception issues did you understand that
25 he was referring to?

1 A. It was alleged that I had created a list of
2 employees that were -- had gone through the district.

3 Q. Uh-huh.

4 A. We had a discussion at a -- I don't know if I
5 even know if it was a staff meeting.

6 **ALJ BROUSSARD-BOYD:** Well, what are perception
7 issues? I think that's the question. What are the
8 perception issues?

9 **THE WITNESS:** Well, the perception was that I had
10 created a list of how many employees that had gone
11 through the district and --

12 **ALJ BROUSSARD-BOYD:** Gone through the district?
13 Walked --

14 **THE WITNESS:** Have worked for the district.

15 **ALJ BROUSSARD-BOYD:** Worked for the district?

16 **THE WITNESS:** Correct.

17 **ALJ BROUSSARD-BOYD:** A list? What's perceived by
18 you creating a list for those employees working for the
19 district? What is perceived by that, that you didn't
20 want to write a list?

21 **THE WITNESS:** No. No, I think the perception was
22 that somehow I was negatively trying to influence what
23 was going on by saying that all of these employees had
24 gone through the district.

25 **ALJ BROUSSARD-BOYD:** And again, gone through the

1 district, you mean working for the district?

2 **THE WITNESS:** Worked for the district.

3 **ALJ BROUSSARD-BOYD:** All right.

4 **THE WITNESS:** However, I was tasked with creating
5 that list officially maybe two weeks later by the chief.
6 He asked me to do a staff report for the board and create
7 that same list that I was accused of creating in the
8 first place.

9 And the context of what we were talking about is we
10 had very many employees that were on what we call JAC,
11 the Joint Apprenticeship Committee. It's like their
12 first three years technically on the job, should be, and
13 we had, at one point I believe in the neighborhood of 28
14 out of 47 employees, I think that were on the JAC.

15 And it was -- the context of the discussion was that
16 we have a ton of new folks that we have to get through
17 and I've been through the district and we have to try to
18 get them, you know, oriented to the place and all these
19 different things we have to do. And we made a list of
20 how many people had worked there. You know, these are
21 all the employees that have worked there.

22 So that was the perception issue that I was dealing
23 with is that I've created this list of how many people
24 have worked in the district.

25 **ALJ BROUSSARD-BOYD:** And who had that perception, do

1 you think? Who had the perception?

2 **THE WITNESS:** The chief, the line guys. I mean --

3 **ALJ BROUSSARD-BOYD:** Well, who talked to you about
4 it? You said someone was talking --

5 **THE WITNESS:** Chief Ferreira had sent me an email.

6 **ALJ BROUSSARD-BOYD:** Sent you an email about the
7 perception issue. Okay, thank you. Go ahead.

8 **MS. KNOLES:** So just briefly, unless there's any
9 objections, I'd like to move in J.

10 **ALJ BROUSSARD-BOYD:** Okay, J is Exhibit E of the
11 contract.

12 **MS. KNOLES:** Oh, not J, K.

13 **ALJ BROUSSARD-BOYD:** K is the email from Cole --

14 **MS. KNOLES:** Yes.

15 **ALJ BROUSSARD-BOYD:** -- to Mr. Delay about
16 (indiscernible) Mr. Delay about a staff report. Mr.
17 Crane?

18 **MR. CRANE:** And which tab is that? Is that 25?

19 **MS. KNOLES:** Yes.

20 **MR. CRANE:** Well, again, there's been no foundation
21 that this is what Paul Cole sent.

22 **ALJ BROUSSARD-BOYD:** Well, did you receive this?

23 **THE WITNESS:** Yes.

24 **MS. KNOLES:** He said he received it and he said that
25 the attachment is -- the attachment here is the same

1 attachment that was attached to the email. So I'm not
2 exactly --

3 **ALJ BROUSSARD-BOYD:** Any other objection, Mr. Crane?

4 **MR. CRANE:** Well, it's hearsay, but it seems like
5 the time and place to bring this in would've been with
6 Chief Cole and then we wouldn't have these foundational
7 or hearsay issues.

8 **MS. KNOLES:** If he received it, he can provide
9 foundation as to receiving it.

10 **ALJ BROUSSARD-BOYD:** And what exactly are you saying
11 is the hearsay issue in this staff report? What is it
12 that you believe, your offer of proof?

13 **MR. CRANE:** Well, no, it's not the staff report. I
14 think that's already in, isn't it? I thought that was
15 already in previously. I'm just talking about these
16 emails of April 19th.

17 **ALJ BROUSSARD-BOYD:** Right. The staff -- okay, so
18 the staff report is already in?

19 **MR. CRANE:** Yeah. Yeah, the staff reports, yeah, I
20 don't have an objection.

21 **ALJ BROUSSARD-BOYD:** Yeah, okay.

22 **MR. CRANE:** That's already in.

23 **ALJ BROUSSARD-BOYD:** Okay. So you have a -- you
24 have a hearsay objection --

25 **MR. CRANE:** Right, yeah.

1 **ALJ BROUSSARD-BOYD:** -- to why Mr. Cole --

2 **MR. CRANE:** Right.

3 **ALJ BROUSSARD-BOYD:** -- wrote to -- Chief Cole wrote
4 to Chief Delay.

5 **MR. CRANE:** Right.

6 **MS. KNOLES:** It would probably be even more
7 confusing if we actually just called everybody chief.

8 **ALJ BROUSSARD-BOYD:** Yeah. Okay, so K is in. The
9 hearsay objection is on the record, but it's entered.
10 Okay.

11 (Whereupon, Appellant's K
12 was admitted into evidence.)

13 **MS. KNOLES:** And if you could turn to tab 16. Sorry
14 about the --

15 **ALJ BROUSSARD-BOYD:** Okay. So we'll mark this as
16 Appellant's L. It's a one-page document. Okay, and it's
17 before the witness.

18 (Whereupon, Appellant's L
19 was marked for identification.)

20 Q. **(BY MS. KNOLES):** Okay. Is this the email that
21 you were referring to before?

22 A. Actually, no.

23 Q. Okay.

24 A. This is a separate email.

25 Q. Okay. So you were stating before that there

1 was a perception issue about you based off of a list that
2 was in dispute.

3 A. Correct.

4 Q. Okay. Do you recall when that issue came up?

5 A. June, July maybe of '11.

6 Q. Okay. So approximately a year ago?

7 A. Somewhere in that neighborhood.

8 Q. Okay. Turning to this exhibit, did you -- I'm
9 sorry, L, what we've marked as L, did you receive this
10 exhibit, this document?

11 A. Yes.

12 Q. And this is an email from John Ferreira. It
13 says, "To Ari Delay, a heads up."

14 A. Correct.

15 Q. And it says here that he got a second hit on
16 the La Honda ALS rumor. What is your understanding of
17 the ALS rumor, the La Honda ALS rumor?

18 **MR. CRANE:** I would object. It calls for
19 speculation. The email is from Chief Ferreira, so he's
20 going to be speculating as to what Chief Ferreira means.

21 **ALJ BROUSSARD-BOYD:** Okay. I'll sustain the
22 objection. Did you want to ask another question?

23 **MS. KNOLES:** Sure.

24 Q. **(BY MS. KNOLES):** This says here that your --
25 he received an unsolicited text that some of your

1 subordinates perceive your motivation. Do you know what
2 he's referring to with regard to motivation?

3 **MR. CRANE:** The same objection, Your Honor. I mean,
4 if she's going to ask him what Chief Ferreira is
5 referring to.

6 **MS. KNOLES:** I'm asking if he is aware, what is his
7 understanding, his personal understanding of what is
8 being referred to in this email.

9 **MR. CRANE:** Well, it's not --

10 **MS. KNOLES:** If his personal understanding is
11 different, that will come out as well.

12 **ALJ BROUSSARD-BOYD:** Okay.

13 **MR. CRANE:** Well, it's not relevant what his
14 understanding is. What's relevant is what Chief Ferreira
15 meant when he sent the email.

16 So he can have whatever understanding he has, but
17 that's not going to be relevant to what Chief Ferreira
18 means when he sends the email. I mean, he can talk about
19 what the effect of the email was on him, but he could
20 speculate all day as to what Chief Ferreira meant without
21 any success.

22 **ALJ BROUSSARD-BOYD:** Are you calling Chief Ferreira
23 again in your case in chief?

24 **MR. CRANE:** Yes.

25 **ALJ BROUSSARD-BOYD:** Okay. I'll overrule the

1 objection. I mean, it's clear that it's very difficult
2 to understand what is meant by this, but perhaps if Mr.
3 -- if Battalion Chief Delay knows what was meant. Do you
4 know what this means?

5 **THE WITNESS:** I do.

6 **ALJ BROUSSARD-BOYD:** Oh.

7 **THE WITNESS:** And I believe we had either a
8 telephone or a face-to-face conversation about it, prior
9 to this email even being sent and I think that's what
10 prompted the "I got a second hit on this rumor."

11 **ALJ BROUSSARD-BOYD:** What's ALS?

12 **THE WITNESS:** Advanced Life Support or paramedics.

13 **ALJ BROUSSARD-BOYD:** Okay.

14 **THE WITNESS:** So, as I spoke about earlier is I'm a
15 volunteer with the La Honda Volunteer Fire Department.
16 Volunteerism and the union are not, I would say congruent
17 in my opinion.

18 **ALJ BROUSSARD-BOYD:** So you're both a volunteer and
19 you also work for CalFIRE.

20 **THE WITNESS:** Correct.

21 **ALJ BROUSSARD-BOYD:** Okay.

22 **THE WITNESS:** So there's been some angst from the
23 career folks in regards to me being a volunteer
24 firefighter. It actually even came up at a staff meeting
25 that -- how we use volunteers and throughout the county.

1 **ALJ BROUSSARD-BOYD:** But what does this mean? What
2 is he saying to you here?

3 **THE WITNESS:** Well, so he --

4 **ALJ BROUSSARD-BOYD:** I mean --

5 **THE WITNESS:** Sure.

6 **ALJ BROUSSARD-BOYD:** When you received this, you say
7 you understand what he meant. What did you -- what did
8 you perceive this to mean?

9 **THE WITNESS:** Sure.

10 **ALJ BROUSSARD-BOYD:** What was he telling you?

11 **THE WITNESS:** Someone had reported to him that La
12 Honda Volunteer Fire Department was going to provide
13 Advanced Life Support at the fire station.

14 **ALJ BROUSSARD-BOYD:** So?

15 **THE WITNESS:** Well, the perception is, that he's
16 alluding to here in my estimation, my opinion is that La
17 Honda is somehow going to go ALS and they're not going to
18 have a career fire station next door because they're
19 going to have Advanced Life Support capabilities.

20 **MR. CRANE:** Your Honor, I guess I'd just object.
21 What's the relevance of this? It's all opinions and
22 speculation.

23 **MS. KNOLES:** And I'm --

24 **MR. CRANE:** It seems like we're pretty far afield.

25 **ALJ BROUSSARD-BOYD:** Well, it goes to Chief

1 Ferreira's testimony that there were some problems with
2 the not adhering to the CalFIRE culture. So to the
3 extent I can understand that, Exhibit L, I'm going to
4 overrule the objection.

5 **MR. CRANE:** All right.

6 **ALJ BROUSSARD-BOYD:** So anything else, other than
7 the fact that they're going to go paramedic at the La
8 Honda station?

9 **MS. KNOLES:** So --

10 **THE WITNESS:** I was just --

11 **ALJ BROUSSARD-BOYD:** What else does it mean?

12 **THE WITNESS:** And basically, and my perception is
13 that the union thinks that we're going to close 58 and
14 the volunteers are going to become ALS and it's going to
15 affect --

16 **ALJ BROUSSARD-BOYD:** Why is the union involved? It
17 doesn't say anything about a union.

18 **THE WITNESS:** Well, it doesn't say it, but --

19 **ALJ BROUSSARD-BOYD:** Why do you say a union is
20 there? Why are you reading that into it, is what I want
21 to know.

22 **THE WITNESS:** You can ask the Chief where he got the
23 text.

24 **MS. KNOLES:** Let me -- let me actually back up for
25 second.

1 **ALJ BROUSSARD-BOYD:** Okay.

2 **Q. (BY MS. KNOLES):** You'd had a prior
3 conversation with Chief Ferreira about these issues.

4 **A.** Correct.

5 **Q.** In the course of that conversation were you
6 aware that the issue was stemming from members of the
7 union?

8 **A.** Yes.

9 **Q.** And so when you were made aware now that there
10 was this second hit on the rumors, you understood -- did
11 you understand that those rumors were coming from the
12 same place?

13 **A.** I didn't know where.

14 **Q.** Okay.

15 **MR. CRANE:** I would just object. I just don't
16 understand how what the union -- what his speculation is
17 about union motives has anything to do with Chief
18 Ferreira's decisions.

19 **ALJ BROUSSARD-BOYD:** Well, I think that's why we're
20 here today, Mr. Crane.

21 **MR. CRANE:** Okay.

22 **ALJ BROUSSARD-BOYD:** So I'm going to overrule the
23 objection. Okay, but he's already answered the question.

24 **MS. KNOLES:** Yeah.

25 **Q. (BY MS. KNOLES):** And Chief Ferreira here says,

1 "Either you've got people gunning for you or it's true
2 and I believe that the former is accurate." Did you feel
3 like you had people gunning for you?

4 **MR. CRANE:** Object as to vague as to gunning.
5 That's a pretty vague and ambiguous term. And again,
6 he's taking the -- she's taking the term from Chief
7 Ferreira's email and asking him if he understands what
8 that means.

9 **ALJ BROUSSARD-BOYD:** Well, it was addressed to him,
10 so I'm going to overrule the objection.

11 Do you understand what this meant and did you
12 believe it to be true?

13 **THE WITNESS:** I believed it to be true.

14 **ALJ BROUSSARD-BOYD:** And you understand what it
15 meant, people gunning for you?

16 **THE WITNESS:** Basically trying to find something to
17 get you on, gunning for you. That's my perception of the
18 issue.

19 **ALJ BROUSSARD-BOYD:** And that's what you understood
20 it to be?

21 **THE WITNESS:** Correct.

22 **ALJ BROUSSARD-BOYD:** And you believed people were?

23 **THE WITNESS:** Yeah. And in fact we had a staff
24 meeting at the senior staff level and one of the
25 battalion chiefs took me aside after the meeting and says

1 I think the best thing for you to do is quit being a
2 volunteer.

3 Q. (BY MS. KNOLES): And, okay. Okay. You were
4 transitioned to the Felton Fire Station, effective August
5 1st, correct?

6 A. That was the effective date. I believe my
7 first day was August 2nd.

8 Q. Okay.

9 A. Actually on duty.

10 Q. And do you -- how far is the Felton station
11 from your home?

12 A. I had an opportunity to drive it quite a few
13 times in the last few weeks and the fire station, or the
14 headquarters where my office would be is 38 to 40 some
15 odd miles. It just depends on which way you go. There's
16 three or four different ways you can actually get there.

17 Q. Okay. And are each of those ways over 35
18 miles?

19 A. Yes.

20 Q. Do you currently own your home?

21 A. Yes.

22 Q. How long have you lived there?

23 A. Thirty-nine years.

24 Q. Okay.

25 A. Thirty-eight and some change because my

1 birthday is Wednesday.

2 Q. So you grew up there.

3 A. I grew up there, yes.

4 Q. On the same property.

5 A. Correct.

6 Q. Okay. Since the move, how many hours do you
7 spend commuting?

8 A. When I do go home or back and forth, it's about
9 an hour to an hour -- an hour and 15 at tops.

10 **MR. CRANE:** Your Honor, a belated objection, how
11 many hours he spends. The issue is not how many hours.
12 It's mileage, so it really doesn't matter if he spends
13 ten minutes or three hours. There's nothing in any of
14 the regulations about how long it takes.

15 **ALJ BROUSSARD-BOYD:** Well, the statute does say
16 regular travel allowance for the period of time he's away
17 from his original headquarters. But that doesn't really
18 involve commute time. So I think we'll stick to the
19 mileage.

20 **MS. KNOLES:** Okay.

21 **ALJ BROUSSARD-BOYD:** I'll sustain the objection.

22 Q. **(BY MS. KNOLES):** And how far, if you know is
23 your -- was the Half Moon Bay duty station from your
24 home?

25 A. Twenty miles, 19.8, I think it is.

1 Q. Okay. And do you know how far the Half Moon
2 Bay station is from the Felton station?

3 A. From the Felton station, I've never actually
4 done the mileage that way, but it's well over 35 miles.

5 Q. Do you want to turn to tab 59? I'll represent
6 that 59 is a series of three maps. What is 110
7 Hidlebrand Road?

8 A. That's my address. It's 110 Hildebrand.

9 Q. Ah, Hildebrand. And --

10 **ALJ BROUSSARD-BOYD:** So you want this marked as
11 Exhibit M, these six pages?

12 **MS. KNOLES:** Yes.

13 **ALJ BROUSSARD-BOYD:** Okay. There's six pages. It
14 appears to be some maps and (indiscernible). Okay, and
15 marking as M. It's before the witness, a series of maps.

16 (Whereupon, Appellant's M
17 was marked for identification.)

18 Q. **(BY MS. KNOLES):** And the first two pages is a
19 series of written directions and then a corresponding map
20 from 110 Hildebrand -- Hidle -- Hildebrand?

21 A. Hildebrand.

22 Q. Hildebrand Road to 6059 Highway 9, Felton.
23 What is 6059 Highway 9 in Felton?

24 A. That's the unit headquarters.

25 Q. Okay.

1 A. Where my office would be.

2 Q. And --

3 **ALJ BROUSSARD-BOYD:** Your new office.

4 **THE WITNESS:** My new office.

5 Q. **(BY MS. KNOLES):** And so from your home to the
6 new office, this map represents mileage of 39.1 miles.

7 Do you see that on the second page?

8 A. Correct.

9 Q. And is that one of the routes that you can
10 take?

11 A. Yes.

12 Q. And are all the routes approximately the same
13 mileage?

14 A. Yeah, within a mile. The Highway 1 route is
15 quite a bit longer, but this is probably one of the
16 shortest mileages to get there.

17 Q. Okay. And turning to the third page of M, the
18 starting point in this is 110 Hildebrand Road, La Honda,
19 and you previously stated that that's your address. And
20 B is 1191 Main Street, Half Moon Bay, California. What
21 is that address?

22 A. That address is my old office, I think. We're
23 on a different page from each other, but 1191 Main Street
24 is my old office in Half Moon Bay.

25 Q. Okay. And on the fourth page in this -- in

1 Exhibit M is a map representing those directions.

2 A. To 1191 Main Street?

3 Q. Yes.

4 A. Okay. I think this -- okay.

5 Q. Do you see that?

6 A. Correct.

7 Q. And this says it's approximately 19.9 miles.

8 Does that sound -- does that look like the correct route?

9 A. Correct.

10 Q. Okay. The last map -- we'll turn the page is
11 110 Hidlebrand Road -- Hildebrand Road, which is your
12 current address, correct?

13 A. Correct.

14 Q. And this references Scott's Valley. What is
15 Scott's Valley?

16 A. Scott's Valley is the neighborhood and
17 proximity of the Felton Station and if I were to have to
18 make a move, that would be a neighborhood to be able to
19 move into, approximately by the headquarters' office.

20 Q. Okay. And if you were required to stay
21 stationed at the Felton duty station, would you have to
22 move?

23 A. Yeah, I believe so. I mean, something has to
24 change. You know, the work schedule that I'm currently
25 on, my wife works Monday through Friday. I work

1 Thursday, Friday, Saturday. I don't get home until
2 Sunday morning. We have a six-year-old and a two-year-
3 old at home and the bottom line is we see each other for
4 about eight hours a week and that's about it.

5 The one advantage to working on the coast is my in-
6 laws work out there within the fire district and, you
7 know, I'm fortunate enough to have the opportunity --
8 typically our routine is Friday afternoons my in-laws
9 pick up the kids. They truck them out to their house on
10 the coast. My wife meets us there after work and we all
11 get together and try to have dinner, so it kind of breaks
12 up the week because like I said, we only see each other
13 once a week for about eight hours.

14 Q. And now that you've been reassigned to Felton,
15 your commute is longer, correct?

16 A. Yeah. Yes.

17 Q. And you stated that you're on -- what days are
18 you on?

19 A. My work schedule is the same, so Thursday,
20 Friday, Saturday shift.

21 Q. And you don't get home every night after your
22 work schedule?

23 A. I think the agreement was that I was going to
24 be able to go home every night, but that hasn't -- I did
25 a short stretch of about three days worth of training at

1 Felton and after that I've been on for, I think 12 or 13
2 days, somewhere around that neighborhood and I've been
3 home one night in those 12 or 13 days.

4 Q. Okay. So despite the representations that were
5 made to you, you haven't actually been able to go home?

6 A. Yeah. I've been asked to do the duty coverage.

7 Q. And you said before that you were told that
8 this would be an indefinite amount of time that you would
9 be stationed at Felton?

10 A. Yeah. There's been no time frame put on it,
11 like when the start and when the end of this immersion
12 were to take place. It's been open-ended.

13 Q. So given the potential length of that
14 assignment, is it my understanding that you've looked at
15 Scott's Valley as an alternative place to reside?

16 A. Yes.

17 Q. Okay. And this map says that Scott's Valley is
18 49.7 miles from your current residence. Is that
19 accurate?

20 A. Right in that neighborhood, yeah.

21 Q. Depending on the route?

22 A. Depending on the route.

23 **MS. KNOLES:** Okay. I would like to move Exhibit M
24 in.

25 **MR. CRANE:** I would object, Your Honor. These are

1 all hearsay. There's been no foundation laid as to their
2 accuracy or where they came from. I don't know if that's
3 the only route. I don't know where these were generated,
4 how these were generated. I think they're extremely
5 unreliable.

6 **ALJ BROUSSARD-BOYD:** Well, it says it's Google maps,
7 not (indiscernible). I mean, if we need to, we could go
8 through the exercise and I could use my computer here to
9 do the same thing, but I don't see that they lack any
10 reliability. This witness has testified to the
11 addresses, so we know the start point and the end point.
12 I don't see the concern. This appears to be what many
13 people rely on, the Google maps.

14 **MR. CRANE:** I understand, Your Honor.

15 **ALJ BROUSSARD-BOYD:** But we could do the same thing
16 here, so I don't see any problem with the reliability.

17 **MR. CRANE:** Well, and I don't even know if there are
18 alternative routes. I mean, that's just placing a lot of
19 -- a lot of -- you know, I understand that you might use
20 that for, you know, getting to another town and might use
21 that for directions. But for the accuracy of a court
22 hearing as to mileage, I don't know how accurate that is.

23 **ALJ BROUSSARD-BOYD:** Okay.

24 **MR. CRANE:** And she's -- and she's made no
25 representations, so I certainly don't feel comfortable

1 relying on it.

2 **MS. KNOLES:** I would just briefly like to address
3 that. Mr. Delay testified that not only are these
4 accurate but that he in fact is aware of other routes and
5 that they are all substantially similar.

6 **ALJ BROUSSARD-BOYD:** I think that if the -- if
7 there's a problem, and I don't really see one with the
8 Google maps, the witness has testified that he has
9 clocked the mileage and who knows better than he where he
10 lives and where he has to report to work.

11 So I'm going to enter Exhibit M, the maps to the
12 extent that they're helpful in determining the mileage.

13 (Whereupon, Appellant's M
14 was admitted into evidence.)

15 **MS. KNOLES:** Thank you, Your Honor.

16 **ALJ BROUSSARD-BOYD:** Okay. Now, we still have
17 outstanding I, J and L.

18 **MS. KNOLES:** Yes. That I do know.

19 **ALJ BROUSSARD-BOYD:** Okay.

20 **MS. KNOLES:** Okay. Speaking of, why don't we turn
21 to Exhibit I.

22 **ALJ BROUSSARD-BOYD:** Okay.

23 Q. **(BY MS. KNOLES):** Who's your supervisor since
24 you've been reassigned to Felton?

25 A. As Chief Jalbert had spoke about earlier, I

1 have two different supervisors. He is one of them for
2 the lion's share of the job responsibilities and Chief
3 Larkin is the other supervisor for the unit Safety
4 Program.

5 Q. Okay. And when you arrived at Felton, did you
6 have any conversations with Jalbert about your duties and
7 responsibilities there?

8 A. Yes.

9 Q. And what did he tell you his expectation of you
10 was?

11 A. His expectations were to hold down the fort,
12 for me to baby-sit while I was providing the coverage and
13 he alluded to the fact that if there was any significant
14 issues that had to do with each one of the respective
15 battalions, that unless it needed emergency kind of
16 intervention, to let the other battalion chiefs handle it
17 and you just cover the battalion, respond to emergency
18 calls if necessary.

19 Q. So what has been -- what is your specific job
20 assignment at Felton? Were you given a title?

21 **MR. CRANE:** Objection. That's a compound question.

22 **ALJ BROUSSARD-BOYD:** What was your job assignment
23 was the first question.

24 **MS. KNOLES:** Yeah.

25 **THE WITNESS:** My job assignment was relief battalion

1 chief coverage and unit safety officer.

2 **ALJ BROUSSARD-BOYD:** All right.

3 Q. **(BY MS. KNOLES):** Okay. And what does relief
4 battalion chief coverage mean?

5 A. Relief battalion chief coverage would entail
6 covering the battalion chief job function for anybody who
7 was out sick, injured, ill, that sort of thing.

8 Q. So as a relief battalion chief --

9 A. Vacation. Sorry.

10 Q. -- would other -- I'm trying to make
11 (indiscernible) here. How many other battalion chiefs
12 would be on in the division when you were on?

13 **MR. CRANE:** Objection, vague. It depends on what
14 days of the week, what time of year. It's vague and
15 ambiguous.

16 **ALJ BROUSSARD-BOYD:** I'm going to sustain the
17 objection, only because I'd like to hear foundation as to
18 how the schedule that your client works on Thursday,
19 Friday, Saturday and he says he's worked 12 days since
20 he's been there, August 2nd.

21 **MS. KNOLES:** Okay.

22 **ALJ BROUSSARD-BOYD:** I'm not -- sustained.

23 Q. **(BY MS. KNOLES):** As a relief battalion chief,
24 do you work with other battalion chiefs when you're on
25 duty?

1 A. As a relief battalion chief, I would say
2 there's other battalion chiefs that would be in the
3 office during different job functions.

4 But the whole idea of me being the relief battalion
5 chief and relieving somebody is that they're not there in
6 that capacity.

7 Q. So you're covering for someone who's out for
8 some reason.

9 A. For a geographic area, correct.

10 Q. Okay. And as the unit safety officer, what are
11 your duties?

12 A. It's not completely clear yet. I was
13 instructed by Chief Jalbert that they would give me some
14 clear instructions about what the job entailed. I was to
15 meet with Chief Larkin, as he was described as my --
16 going to be the supervisor for that job function. And
17 there's not been a meeting set up yet to do that.

18 Knowing that I had to do that job, I've met with Jed
19 Wilson, who is in the training division who is kind of
20 holding that project. I met with him the other day and
21 kind of got an outline of at least what he knows about
22 the program and the project so far and basically got a
23 stack of documents about that big about the unit Safety
24 Program so far.

25 Q. Is there anyone there currently who has acted

1 as a unit safety officer who could train you?

2 A. You know, I don't know. I don't know if
3 anybody has fulfilled that function. I know the last
4 person in the job was Tim O'Donoghue, the person that
5 they had said had the job temporarily and is no longer
6 doing it. I'm actually -- I don't know.

7 Q. Okay. Do you recognize Exhibit I?

8 A. Yes. This is the PO 199 that I was given by
9 Chief Larkin my first -- it may have been my second week
10 on the job.

11 Q. Okay. And is this your signature in the lower
12 left hand corner of both pages?

13 A. It is.

14 Q. Okay. On page 2, bullet point five says
15 professional development; do you see that?

16 A. Yes.

17 Q. Did Chief Larkin talk to you about this section
18 at all?

19 A. I don't think he even discussed the document
20 with me honestly. I think he said, hey, I've got your PO
21 199 for your job. I need you to sign it real quick
22 before you get going for the day and I quickly reviewed
23 the document and made sure nothing was completely out of
24 whack and signed it for him and then went about my day.

25 Q. Okay. Prior to your being transferred, did

1 Chief Ferreira ever tell you the purpose of your
2 transfer?

3 A. Not at our meeting we had in regards to the
4 transfer. We had a meeting --

5 **ALJ BROUSSARD-BOYD:** Well, the question is did he
6 ever tell you. She didn't say anything about a meeting.
7 Did Chief Ferreira tell you why you were being
8 transferred?

9 **THE WITNESS:** He said in the past that I had needed
10 to be able to experience the full CalFIRE experience.

11 **ALJ BROUSSARD-BOYD:** Okay. Well, you're qualifying
12 your answer again, in the past. And the question is, did
13 Chief Ferreira ever tell you why -- did Chief Ferreira
14 tell you why you were being transferred?

15 **MS. KNOLES:** To Felton.

16 **ALJ BROUSSARD-BOYD:** To Felton.

17 **THE WITNESS:** To be immersed in the CalFIRE system.

18 **ALJ BROUSSARD-BOYD:** So he did.

19 **MS. KNOLES:** Okay.

20 **ALJ BROUSSARD-BOYD:** Okay.

21 Q. **(BY MS. KNOLES):** Do you remember when he told
22 you that?

23 A. It was prior to our meeting in regards to the
24 transfer when I met with him and Chief Jalbert and Chief
25 Cole.

1 Q. Did he provide you with any specific examples
2 as to what part of your culture you needed to have some
3 immersion in?

4 A. I'm just trying to think of the language.
5 Maybe systems or processes, I think that's kind of some
6 of the general concept of the language that he used.

7 Q. Okay.

8 A. And this was all obviously verbal conversations
9 that we had in the past.

10 Q. He never gave you any written directive as to
11 the basis for your transfer or outlined the goal? He
12 never gave you that?

13 A. No.

14 Q. Had he ever given you a written directive as to
15 the goals he hoped you would achieve by your transfer?

16 A. The only written documentation that I received
17 in regards to my transfer was what I read from the staff
18 report. That was it.

19 Q. Okay. He never outlined his expectations of
20 the processes or procedures that you would learn?

21 A. There's been nothing written.

22 Q. Okay.

23 A. This document is the only thing that I've
24 received from a written perspective about what I was
25 expected to do.

1 Q. Okay. And this -- so looking at page 2 of this
2 document, it says it's a professional development plan.
3 Do you see that, page 2?

4 A. Okay.

5 Q. Okay. And below it lists 17 items and next to
6 those appear to be some signatures. Do you see those?

7 A. Yes.

8 Q. What are those signatures?

9 A. As soon as I was transferred to Santa Cruz
10 County I began to work on the list and my thought process
11 is the sooner I get done with this list, the sooner I can
12 go back to my home station and get back to my family,
13 honestly.

14 And so I met with -- this particular one, it says
15 GE, I think it's Greg Estrada who is Battalion 1714, his
16 number is listed there. I met with him, went through the
17 operation of his battalion and the district he works in
18 is very similar. It's a contract district that the state
19 provides services for, so a lot of similarities. Rode
20 around with him all day, learned about the geographic
21 locations within the district, some of the target hazards
22 and all the associated that you'll see listed here that
23 are signed off.

24 Q. Okay. So those skills, the geographic
25 boundaries of the district and the operations for --

1 division operations for B-1714, etcetera, those are
2 specific to that district, correct?

3 **MR. CRANE:** Objection, leading.

4 **ALJ BROUSSARD-BOYD:** Sustained.

5 Q. **(BY MS. KNOLES):** All right, let's just move
6 on. Bullet point number three here says conduct an
7 orientation with B-1716 on the Pajaro Valley FPB
8 contract, correct?

9 A. Correct.

10 Q. You did that?

11 A. Correct.

12 Q. What did that entail?

13 A. There was a combination. We met in his office.
14 We talked about his Board of Directors, what their
15 relationship was with the board, how the interaction
16 goes, when they meet, how they meet, upcoming elections.
17 I mean, all -- I mean, all-inclusive of kind of his
18 operation and how he has to deal with the fire district,
19 his responsibilities as a battalion chief and the
20 interaction with them locally.

21 We went over the boundaries of the district. We
22 actually physically drove the fire district boundaries,
23 SRA boundaries and the state responsibility areas, all
24 those type of things that were specific to his district.

25 Q. So if you weren't working in that district,

1 would you need the operational knowledge of how the Board
2 operates there?

3 **MR. CRANE:** I'd object. It calls for speculation.

4 **ALJ BROUSSARD-BOYD:** Well, he can only testify
5 to what he witnessed. I'm going to overrule the
6 objection. If he needs to -- he'll know if he needs it
7 or not.

8 **THE WITNESS:** If I wasn't geographically located
9 there as my primary office, I would say not specific to
10 that district. I would say maybe general knowledge of
11 special districts and how they work in the state,
12 independent versus dependent special districts, those
13 type of things is important to know as a CalFIRE BC.

14 But specifically to that district, I could just as
15 well be in Riverside County and work in a district down
16 there.

17 Q. **(BY MS. KNOLES):** And do you think that you
18 could've -- do you think -- while you were working at the
19 Coastside District, did you obtain general knowledge as
20 to how special districts worked in California?

21 **MR. CRANE:** I would object. It's vague and
22 ambiguous as to special knowledge and it's a completely
23 vague (indiscernible) question.

24 **ALJ BROUSSARD-BOYD:** Well, it is kind of leading.
25 I'm going to sustain the objection. Just ask him a

1 direct question, who, what, what did he learn, if he
2 learned anything. And I think at this point, I don't
3 know what the relevance of what he learned thus far a few
4 days into the job.

5 **MS. KNOLES:** Sure. Fair enough.

6 Q. **(BY MS. KNOLES):** Do you know who made up this
7 list one through seventeen?

8 A. I was given the document by Chief Larkin, and
9 from what I understand from this morning, Chief Jalbert
10 had put the list of what he expected --

11 Q. Okay.

12 A. -- and needed to get accomplished.

13 Q. Are any of the issues identified on this list
14 were you ever asked by Chief Ferreira prior to being
15 transferred to obtain knowledge about any of the issues
16 on this list?

17 A. I don't think a specific direction like go
18 out and get this knowledge. You know, I think the
19 training -- anything additional for people is good.
20 Knowledge is good for us especially in the fire service,
21 so there's nothing specifically that says I want you to
22 go to Soquel Demonstration Forest and learn about what
23 they do. There's nothing specific about that.

24 Q. Okay. And are you aware prior to August 1st,
25 2012, were you aware of how the personnel office works

1 for CalFIRE?

2 A. I think in general. I mean to the extent that,
3 you know, a battalion chief would deal with the personnel
4 office.

5 Q. As you started doing these duties, do you
6 think that in obtaining these skills in your opinion
7 could you have obtained these skills without being
8 transferred?

9 **MR. CRANE:** I would object. I don't know what the
10 relevance of this is.

11 **ALJ BROUSSARD-BOYD:** Overruled. Could you obtain
12 these skills without being transferred?

13 **THE WITNESS:** I would say the lion's share of them,
14 yes, without -- The only exception to that would be the
15 direct observation of like the district boundaries, to go
16 out there and physically drive those type of things. But
17 a lot of these things are policy and reference questions
18 that you could easily do with reference material or
19 contacting somebody by phone maybe.

20 Q. **(BY MS. KNOLES):** For the areas where you would
21 need to specifically view something like the boundary
22 orientation, would that require an indefinite assignment
23 or do you think you could accomplish that in a short term
24 assignment?

25 **MR. CRANE:** Again I would object. It calls for

1 speculation on his part.

2 **ALJ BROUSSARD-BOYD:** Overruled.

3 **THE WITNESS:** Well, as you can see on the document
4 here that I've worked with one of the individuals for a
5 day and have accomplished these tasks that he's signed
6 off. And in addition, there's another piece of paper
7 with all the even more detailed list of stuff for his
8 particular district.

9 And so I mean actually one of the things I've even
10 done the EEC orientation already. That's completed, so I
11 would say, you know, a couple of days for the work would
12 accomplish this stuff.

13 **MS. KNOLES:** All right. And can you turn to
14 Exhibit -- I'd like to move Exhibit I into evidence.

15 **ALJ BROUSSARD-BOYD:** Any objection to I?

16 **MR. CRANE:** No objection.

17 **ALJ BROUSSARD-BOYD:** Okay. It's entered.

18 (Whereupon, Appellant's I
19 was admitted into evidence.)

20 Q. **(BY MS. KNOLES):** Okay. I'm just going to set
21 that aside.

22 A. Sure.

23 Q. And can you turn to Exhibit -- tab 31.

24 **ALJ BROUSSARD-BOYD:** Okay. 31 is a -- it's two
25 pages. It's a letter. It's addressed to the testifying

1 witness, and we'll mark this as Appellant's N. Marking
2 as N is before the witness.

3 (Whereupon, Appellant's N
4 was marked for identification.)

5 Q. (BY MS. KNOLES): Okay. Do you recognize this
6 document?

7 A. Yes.

8 Q. Did you receive this letter?

9 A. I did.

10 Q. Okay. And on paragraph four of the first page
11 of this letter -- I'm sorry. Who did you receive this
12 letter from?

13 A. I received I believe electronically from Jenny
14 Petris (phonetic) who is our person in Felton and she --
15 there was a follow-up hardcopy in the mail that came to
16 me.

17 Q. Okay. And this is signed by Chief Ferreira.
18 Do you see that?

19 A. Yes.

20 Q. Do you recognize the signature as Chief
21 Ferreira's signature?

22 A. Yes.

23 Q. Do you have any reason to believe that this
24 document did not originate from him?

25 A. No.

1 Q. Okay. Paragraph four says that management has
2 elected to fill the unit vacant safety officer or relief
3 battalion chief position headquartered in Felton with
4 your reassignment. Do you see that?

5 A. I do.

6 Q. Are you aware of how long that safety officer
7 position was vacant prior to you being -- to you filling
8 it?

9 **MR. CRANE:** Objection. Relevance.

10 **ALJ BROUSSARD-BOYD:** Sustained.

11 Q. **(BY MS. KNOLES):** Prior to this letter, did
12 Chief Ferreira ever tell you that the purpose of your
13 reassignment was to fill this vacant position?

14 A. I don't know if it came up directly in
15 conversation between him and I, but it was known to me
16 that that was kind of where they were heading.

17 Q. Okay.

18 A. I don't know if it was a --

19 Q. That's fine. And it says here that you are not
20 required to spend your nights in a particular location.
21 Do you see that?

22 A. I do.

23 Q. But, in fact, since you've been at Felton,
24 you've had to spend most of your nights on duty at the
25 Felton Station, correct?

1 A. Correct, with the exception of those first
2 three days. Like I said, I was able to go home on those
3 first three days and then maybe one day in between the
4 other days I was out on duty.

5 Q. Okay. And then it says this reassignment
6 should decrease the amount of time you're currently away
7 from your family. Do you see that?

8 A. I do.

9 Q. Has that statement been true so far?

10 A. Not so far.

11 **MS. KNOLES:** Unless there are any objections, I'd
12 like to move this into evidence.

13 **ALJ BROUSSARD-BOYD:** Any objection to the May 18,
14 2012, letter?

15 **MR. CRANE:** No.

16 **ALJ BROUSSARD-BOYD:** Okay. Entered.

17 (Whereupon, Appellant's N
18 was admitted into evidence.)

19 **MR. CRANE:** And what was that one? What was it?
20 Was it --

21 **ALJ BROUSSARD-BOYD:** N.

22 **MR. CRANE:** Oh, N. Okay.

23 **ALJ BROUSSARD-BOYD:** And it was previously 31.

24 **MS. KNOLES:** Yes. And if you can turn to tab 33 --

25 **ALJ BROUSSARD-BOYD:** Okay. 33 --

1 **MS. KNOLES:** -- I guess would be O.

2 **ALJ BROUSSARD-BOYD:** -- is a four-page letter. It's
3 dated May 21, 2012. We'll mark it as O.

4 (Whereupon, Appellant's O
5 was marked for identification.)

6 **Q. (BY MS. KNOLES):** Do you recognize this
7 document?

8 A. I do.

9 **Q.** And what is this?

10 A. This is the appeal to the involuntary
11 geographic transfer that I had sent to DPA at the time.

12 **Q.** Okay. And in this appeal, you cite the belief
13 that this assignment triggers the requirements under
14 CalFIRE policy 1028.3. Do you see that on, I'm sorry,
15 page 2 on the bottom of the page?

16 A. Yes.

17 **Q.** Okay. Is there any part of -- Do you have any
18 reason to believe that CalFIRE policy 1028.3 does not
19 apply to you?

20 A. No.

21 **Q.** Okay. And turning to the last page, you state
22 here that you -- Is that your signature?

23 A. It is.

24 **MS. KNOLES:** I'd like to move this into evidence.

25 **ALJ BROUSSARD-BOYD:** Any objection to the

1 Appellant's appeal?

2 **MR. CRANE:** No, Your Honor.

3 **ALJ BROUSSARD-BOYD:** Okay. It's entered.

4 (Whereupon, Appellant's O
5 was admitted into evidence.)

6 **MS. KNOLES:** Okay. Turning to the next tab, which
7 is 34.

8 **ALJ BROUSSARD-BOYD:** Okay. Marking as P a letter
9 addressed to the witness and it's dated May 22nd, and
10 it's before the witness, two pages.

11 (Whereupon, Appellant's P
12 was marked for identification.)

13 Q. **(BY MS. KNOLES):** Okay. And did you receive
14 this document?

15 A. I did.

16 Q. And do recognize the signature at the bottom of
17 that document on the second page to be Chief Ferreira's
18 signature?

19 A. I do.

20 Q. Okay. And this second page of this letter the
21 large paragraph on that page says, "There's two
22 incidents, personnel performance ratings, one from 2008
23 and one from 2011." Do you see that?

24 A. I do.

25 Q. And prior to informing you that he was

1 transferring you, did Chief Ferreira ever talk to you
2 about those incident reports?

3 A. No.

4 Q. Did Chief Ferreira ever question you about the
5 information that was in those incident reports?

6 A. No.

7 Q. Did Chief Cole ever question you about those
8 incident reports?

9 A. No.

10 Q. Okay. You're currently doing self-directed
11 training in Felton; is that correct?

12 **MR. CRANE:** Objection. Asked and answered.

13 **ALJ BROUSSARD-BOYD:** Sustained.

14 Q. **(BY MS. KNOLES):** What's your understanding of
15 why you were transferred?

16 A. I think on the surface, it's stated that I
17 needed immersion to the CalFIRE system and the policies
18 and procedures and those things associated with CalFIRE.
19 But the undercurrents and I believe what's really going
20 on is that there's a perception that I'm not on board
21 with the program, so to speak. And that the union
22 basically doesn't want me there, and they've somehow
23 asked to get me moved from the district.

24 And, you know, I've had some direct conversations
25 with my peers in regards to that, and there's

1 conversations that took place that they've stated to me
2 that the union has asked that I be moved. And that's
3 what I think what's really going on under the surface on
4 this, you know, the undercurrents of it. On the surface,
5 you need to be immersed. But from my perspective, if I
6 needed to be immersed, it would have been in the first
7 year that I was assigned to CalFIRE and not four and a
8 half years later into the whole operation.

9 Q. And since you've been assigned with CalFIRE,
10 how would you describe your level of work?

11 A. My level of work?

12 Q. Right. Are you a hard worker?

13 A. I'd like to this so. You know, no matter when
14 I was reassigned to San Mateo County, the contract there,
15 I put absolutely just as much effort into that job as
16 that I did when I was assigned to the Coastside District.
17 And my philosophy is it doesn't matter what patch you're
18 wearing on your shoulder or where you're working, you're
19 going to do the very best you can.

20 I went -- I worked for Chief Sims over there. I
21 took care of a bunch of projects for him and he was --
22 there was nothing negative, and he said he was extremely
23 happy with my work product. And there's no negative
24 comments or any discipline or anything, you know, from my
25 assignment over there. So, you know, I pride myself in

1 the ability to, you know, hey, I don't want to go, but
2 I'm going to do the best I can while I'm there, and I've
3 taken the same approach to the assignment in Felton.

4 I spoke with Chief Jalbert. I told him that, "Hey,
5 when I go down there, I'm going to do the very best job I
6 can do for you, and I promise you that. You know,
7 despite all the perceptions and all that sort of stuff,
8 I'm going to do the best I can for you and try to work
9 hard. And if there's anything specifically you need me
10 to do, I'll do it."

11 And I've had that same conversation with the peers
12 down there in Felton. Chief Estrada, you can call him
13 and ask him the same question, and ask him what my
14 attitude was because I mean this is not a good thing for
15 me personally on a personal level. But I've tried to
16 maintain a professional demeanor and try to work, you
17 know, with the folks down there, and it's not their
18 fault, you know, so I'm just trying to do the right
19 thing.

20 Q. And if someone -- if while you were working at
21 the Coastside Station and someone had said to you, "Hey,
22 Ari, you really need to improve on this," what would you
23 have done?

24 **MR. CRANE:** Objection. Speculation.

25 **ALJ BROUSSARD-BOYD:** Overruled.

1 **THE WITNESS:** For me personally, I'm always kind of
2 my own worse critic. If somebody points something out or
3 something that needs to be addressed by me, I really, you
4 know, honestly I strive to please. I mean I really work
5 hard to try to do a good job. You know my typical
6 workday in the district I'd be out until midnight or one
7 o'clock in the morning working on projects and programs
8 and stuff and being up at 5:30. That's not the standard.
9 I can tell you that.

10 A lot of times chiefs work very hard, but I don't
11 see any of them up at midnight doing project work and
12 that was -- that's kind of my MO. The other day when I
13 was assigned to the south end, they assigned me a truck
14 that was -- had a quarter of a tank of fuel. It was
15 completely trashed, and I went there and I worked with
16 the mechanic until ten o'clock at night trying to fix up
17 the back of the truck to make it the best I could while I
18 was there so.

19 **MS. KNOLES:** Thank you. No further questions.

20 **ALJ BROUSSARD-BOYD:** Any cross-examination,
21 Mr. Crane?

22 **MR. CRANE:** Yes. Thank you.

23 **ALJ BROUSSARD-BOYD:** Okay.

24 CROSS-EXAMINATION BY MR. CRANE

25 **Q. (BY MR. CRANE):** Did Chief Ferreira ever tell

1 you directly that the reason you were being moved was
2 that the union wants you gone?

3 A. Me directly, no.

4 Q. Did Chief Ferreira ever send you a writing,
5 whether it's a letter or an email, that directly stated
6 you were being moved because the union wants you gone?

7 A. Me, no.

8 Q. Okay. So your belief that you were moved
9 because the union wants you gone is based not on any
10 direct communication from Chief Ferreira but on
11 speculation and rumors from other people, correct?

12 **MS. KNOLES:** Objection. Misstates his testimony
13 that it's speculation and rumors. There's no foundation.

14 **ALJ BROUSSARD-BOYD:** Well, I'm going to overrule the
15 objection. He can answer the question.

16 **THE WITNESS:** Can you repeat one more time for me?

17 Q. **(BY MR. CRANE):** Doubtful.

18 A. Well, give it a try.

19 Q. So without any direct communication from Chief
20 Ferreira that your move was due to union pressure,
21 whether that communication is either written or oral,
22 your belief that you were moved because of union pressure
23 is based on your speculation -- is based on speculation
24 and rumors that you had come up with?

25 **MS. KNOLES:** Objection. Harassing and misstates his

1 testimony. You've come up with?

2 **MR. CRANE:** Well, I don't know if I can phrase it
3 exactly without (indiscernible).

4 **ALJ BROUSSARD-BOYD:** I'll sustain the objection.
5 Okay. It's simple. It's (indiscernible). It's a --
6 You're on cross so you can ask leading questions. Tell
7 him what you -- Tell him what you want him to say
8 basically.

9 Q. **(BY MR. CRANE):** Isn't it true, sir, that
10 without any direct -- that your belief that you were
11 moved because of union pressure is based on your
12 speculation and opinions?

13 A. I think it's based on a direct conversation I
14 had with my peer, Dave Cosgrave.

15 Q. Okay. Did Dave Cosgrave make the decision to
16 move you?

17 A. He did not.

18 Q. Okay. So how would a conversation you had with
19 Dave Cosgrave have a bearing on what Chief Ferreira's
20 internal decision making was to move you?

21 A. Chief Cosgrave told me that he had a
22 conversation that Chief Ferreira was at and Chief Cole
23 was at after a board meeting and where Chief Ferreira
24 says, "I have to move someone." Chief Cosgrave had
25 offered that, since he grew up in Belmont, he knew the

1 community, his girls play softball there, that he could
2 take the assignment.

3 And from what he told me, this is a direct
4 conversation with him was that Chief Ferreira had told
5 him that you're making it hard on me because they want me
6 to move Ari.

7 Q. Okay. So you're basing this on your hearsay
8 recollection of somebody else telling you what they
9 overheard Chief Ferreira say, correct?

10 **MS. KNOLES:** Object that it requires a legal
11 conclusion as to hearsay.

12 **ALJ BROUSSARD-BOYD:** Sustained. The witness isn't
13 competent to testify on a legal conclusion.

14 **MR. CRANE:** That's fine, Your Honor.

15 Q. **(BY MR. CRANE):** You testified that you've been
16 on duty for 12 days, correct, since your new assignment,
17 12 days straight?

18 A. (Indiscernible) the exact days. Quite a few
19 days. It's been well over a week.

20 Q. What is the reason for that?

21 A. An emergency exists.

22 Q. Are you familiar with the term staffing
23 pattern?

24 A. I am.

25 Q. Okay. What is a staffing pattern?

1 A. A staffing pattern is a directive given by the
2 operation center within our region that directs what
3 personnel or equipment must be staffed or unstaffed at a
4 particular time.

5 Q. Okay. Does a staffing pattern mean that all
6 days off -- regular days off for all CalFIRE employees
7 that are in Bargaining Unit 8 for the entire state are
8 cancelled?

9 A. It does.

10 Q. Okay. Is that the reason you've been on 12
11 days in a row is because of a staffing pattern?

12 **MS. KNOLES:** Objection. Relevance.

13 **ALJ BROUSSARD-BOYD:** Overruled.

14 **THE WITNESS:** I believe so, yeah.

15 Q. **(BY MR. CRANE):** Okay. Do you know why the
16 staffing pattern is in place?

17 A. I do.

18 Q. Why is that, sir?

19 A. Because an emergency exists.

20 Q. Okay. And would those emergencies be 12 to 16
21 major wildland fires burning throughout the state?

22 A. Yeah.

23 Q. Okay. So would you agree, sir, that it's not
24 typical in your new assignment that you're going to be on
25 12 days in a row and that this is an anomaly based on

1 extraordinary fire activity?

2 **MS. KNOLES:** Objection. Lacks foundation as to
3 typical. This is his first new assignment in four years.
4 He can't speak to --

5 **MR. CRANE:** He's been in the fire service for 16
6 years, Counsel.

7 **ALJ BROUSSARD-BOYD:** I'm going to overrule the
8 objection. He can answer the question. He knows
9 staffing patterns.

10 **THE WITNESS:** I know staffing patterns and the
11 bottom line is prior to the staffing pattern even being
12 put on the unit or the region, I was assigned to cover a
13 shift, battalion coverage, from day one after that three
14 days of training.

15 I was already assigned to cover battalion three I
16 think for two days, battalion four I think for a day.
17 And the next week I was already pre-assigned regardless
18 of the staffing patterns before that was ever said to go
19 cover all those battalions.

20 **ALJ BROUSSARD-BOYD:** Well, I guess the question was
21 it's not typical what you're experiencing right now. Is
22 that your question?

23 **MR. CRANE:** Yes.

24 **ALJ BROUSSARD-BOYD:** Okay. Twelve days, five days,
25 seven days in a row when you're supposed to work three

1 days in a row, correct? Don't you usually work three
2 days in a row?

3 **THE WITNESS:** Yeah. Typically in the wintertime,
4 it's, yeah, we work three days in a row. Typically in
5 the wintertime, it's not a common occurrence, but it
6 seems to be in the last few years it has happened many,
7 many times.

8 Q. **(BY MR. CRANE):** Is it just happening to you,
9 sir, or are any other CalFIRE employees in the entire
10 state having to work overtime to deal with the 12 to 16
11 major wildland fires currently we're experiencing?

12 **MS. KNOLES:** Objection. I think it's somewhat
13 badgering at this point, and a little bit irrelevant what
14 everyone else is doing.

15 **MR. CRANE:** Well, no, he's --

16 **MS. KNOLES:** He's provided his personal knowledge as
17 to why he's on. He's acknowledged that there's fire
18 emergencies occurring. What the rest of the state is
19 doing I'm not sure where you're going with that. I don't
20 see any relevance.

21 **ALJ BROUSSARD-BOYD:** Well, I think you've made your
22 point, Counsel, that --

23 **MR. CRANE:** All right. Your Honor, I think that --

24 **ALJ BROUSSARD-BOYD:** -- an emergency exists and it's
25 not (indiscernible).

1 **MR. CRANE:** Yeah, but I think the point is he's
2 making it sound like after being moved into this new
3 position that he is somehow being singled out for all
4 these long days and it somehow changed everything.

5 And what I'd like -- what I'd like to get from him
6 is that he's in this new position. That everyone across
7 the state is working long hours because of the
8 emergencies; is that correct, sir?

9 **THE WITNESS:** That's correct. That staffing pattern
10 is currently on. However, like I said, those days were
11 pre-assigned to cover those battalions, not go home, to
12 cover those battalions before the staffing pattern
13 existed.

14 **Q. (BY MR. CRANE):** Okay. You also testified
15 that -- Well, have your days off changed since you were
16 at the Coastside Fire District and where you are now?

17 A. They have not.

18 **Q.** Okay. And you testified that you haven't been
19 able to see your wife except for one day a week, correct?

20 A. That's the typical routine.

21 **Q.** Have you asked for any -- Have you asked
22 anybody for different days off?

23 A. Yeah.

24 **MS. KNOLES:** Objection. I'm sorry, just vague as to
25 time.

1 **ALJ BROUSSARD-BOYD:** Well, and also relevance.
2 We're talking -- My jurisdiction here is limited even
3 though there's two different Government Codes we're
4 talking about. What happened after the transfer except
5 as it refers to training and that --

6 **MS. KNOLES:** Yeah.

7 **ALJ BROUSSARD-BOYD:** -- I don't think is relevant to
8 if this transfer was for harassment or retaliation or
9 whether it was properly done.

10 **MS. KNOLES:** To me --

11 **MR. CRANE:** Well, my point is, Your Honor, it seems
12 to me that they are trying to point out that this move
13 has been made and now that he's having all these
14 difficulties with seeing his family and working all these
15 days. And it seems to be part of their little scheme
16 that they're trying to show that it is part of a
17 retaliation. So I'm trying to show that they're -- that
18 he's got the exact same days, and if he's not seeing his
19 wife as much, he can certainly ask for different days
20 off.

21 **MS. KNOLES:** I'm going to just, first of all, object
22 to the characterization of our little scheme as being
23 unnecessarily --

24 **ALJ BROUSSARD-BOYD:** Okay. I think I --

25 **MS. KNOLES:** -- inflammatory. And I think he has

1 provided testimony as to the time and distance issues and
2 I think that anything else is irrelevant.

3 **ALJ BROUSSARD-BOYD:** Okay. Again, you've made your
4 point, Mr. Crane. Did you have any other --

5 **MR. CRANE:** Thank you, Counsel or Your Honor.

6 **ALJ BROUSSARD-BOYD:** -- questions.

7 **Q. (BY MR. CRANE):** Okay. Who are you referring
8 to when you testified earlier as the union?

9 **A.** Well, I think the union acts as a body just
10 like the fire board acts as a body. There's individuals
11 that have personal opinions and then there's the body.
12 Typically, they have a spokesperson for that body.
13 Locally in our region, it used to be Joe Santos and John
14 Pearl were the chapter director and rank file
15 representatives, and currently it's Justin Scheef and I
16 think John Pearl might be even still the rank and file.
17 I don't follow the union stuff.

18 **ALJ BROUSSARD-BOYD:** And you whispered that last
19 name. Who were you talking about? Justin and who else?

20 **THE WITNESS:** Justin Scheef and John Pearl, who is
21 currently temporarily assigned as a battalion chief right
22 now.

23 **Q. (BY MR. CRANE):** Isn't it true, sir, that the
24 union itself does not have the statutory authority to
25 make any direct decisions about a CalFIRE employee?

1 **MS. KNOLES:** Objection. Assumes facts not in
2 evidence.

3 **MR. CRANE:** Well, he's testified that he thinks the
4 union somehow pressured. It's been his testimony that he
5 thinks the union is all behind this, and I want to know
6 what his understanding is how he -- how he thinks the
7 processed worked.

8 **ALJ BROUSSARD-BOYD:** Okay. I'm going to overrule
9 the objection. You can answer if you believe you know
10 how the process works in terms of --

11 **THE WITNESS:** I will, yeah.

12 **ALJ BROUSSARD-BOYD:** -- the union and --

13 **THE WITNESS:** I was well aware that the chief has
14 the obligation, the responsibility, and authority to
15 hire, fire, and transfer and all that sort of stuff. I
16 get that part, but I think labor plays a big influence in
17 it.

18 **ALJ BROUSSARD-BOYD:** But I guess his question is how
19 do you believe labor plays an influence.

20 **THE WITNESS:** How do I believe labor plays an
21 influence?

22 **ALJ BROUSSARD-BOYD:** Right. You believe they played
23 an influence. How do you believe they played an
24 influence?

25 **THE WITNESS:** The unit chief speaking at their

1 meeting in regards to taking care of and having a plan
2 for the people.

3 **ALJ BROUSSARD-BOYD:** Who's the unit chief?

4 **THE WITNESS:** Chief Ferreira.

5 **ALJ BROUSSARD-BOYD:** I thought you were just a
6 chief.

7 **THE WITNESS:** In charge of this unit.

8 **ALJ BROUSSARD-BOYD:** Okay. So the unit chief, Chief
9 Ferreira specifically, goes to meetings.

10 **THE WITNESS:** He's conference called into the union
11 meeting and says that he has a plan in place for the
12 people in Half Moon Bay that they believes are causing
13 CalFIRE problems.

14 **ALJ BROUSSARD-BOYD:** And they think -- you think
15 that he was talking about you?

16 **THE WITNESS:** I don't think.

17 **ALJ BROUSSARD-BOYD:** Well, were you causing
18 problems?

19 **THE WITNESS:** I don't believe so. I think the
20 perception issues that we talked about before are with
21 kind of towing the line, holding us accountable whether
22 it's a CalFIRE or a former Coastside employee to the, you
23 know, letter of what we're supposed to do. We have an
24 unwritten trust in the fire service that we're going to
25 do the right thing always. We have that responsibility

1 every day. And, you know, whether I'm working in San
2 Mateo County Fire, I'm going to maintain that same, you
3 know, compass to guide me in my decisions every day to
4 make sure we're trying to do the right thing. And I
5 don't think sometimes that's not necessarily taken as a
6 good thing from a labor perspective.

7 **ALJ BROUSSARD-BOYD:** But are you acting outside the
8 CalFIRE culture when you're doing all this, I mean, in
9 your opinion? I mean --

10 **THE WITNESS:** My opinion?

11 **ALJ BROUSSARD-BOYD:** That's all I'm asking you for.

12 **THE WITNESS:** I think the culture in a lot of
13 respects for some things is pretty lax as far as the
14 rules and regulations.

15 **ALJ BROUSSARD-BOYD:** I know. But I'm not asking
16 what you think of it, but were you acting within that
17 culture in your belief? Were you acting within the
18 CalFIRE culture or were you acting outside the CalFIRE
19 culture as you know it to exist?

20 **THE WITNESS:** Culture or rules, policies --

21 **ALJ BROUSSARD-BOYD:** CalFIRE culture.

22 **THE WITNESS:** -- and procedures?

23 **ALJ BROUSSARD-BOYD:** You said you worked seven
24 (indiscernible) CalFIRE culture.

25 **THE WITNESS:** Yeah.

1 **ALJ BROUSSARD-BOYD:** Do you think you were acting
2 outside the CalFIRE culture or within the CalFIRE
3 culture, as you know it to exist?

4 **THE WITNESS:** Yeah. I think that's a tough thing
5 because there's no definition. There's no -- There's no
6 sides to that. It's all personal perception when we say
7 culture, right? And I think I bring somewhat of a
8 different perspective of things because I worked for
9 another agency before.

10 I worked for CalFIRE before I worked for the
11 district, and there's things that I've brought that are
12 great things from CalFIRE before. I have great things I
13 brought from Coastside, and, you know, certain things
14 come into play where, you know, it doesn't matter what
15 agency you're working for that's just not okay.

16 Certain things have transpired where there are
17 general rules don't allow you to, you know, do certain
18 things, and that's where I think the angst has come in.

19 **ALJ BROUSSARD-BOYD:** Any other questions on cross,
20 Mr. Crane?

21 **MR. CRANE:** Just a couple, Your Honor.

22 **Q. (BY MR. CRANE):** You testified earlier that
23 there were a lot of differences between CalFIRE and
24 Coastside Fire District. What were some of the
25 differences, some of the major ones?

1 A. Major differences? I think both organizations
2 have systems and processes, the former Coastside Fire
3 District and CalFIRE, and I think the major differences
4 is just, you know, working in a large operation with
5 many, many people and just navigating that process, you
6 know.

7 Q. Can you give an example?

8 A. The Cal Card process is a perfect example.
9 Just purchasing something with the district you have a
10 district credit card. If you need to go purchase
11 something that's appropriate for the department, we have
12 a procurement manual. It's very defined. It tells you
13 exactly what to buy. You turn in the receipt, you sign
14 it for the secretary, she would process it, and you're
15 done.

16 The Cal Card process is pretty labor intensive. You
17 know, you go out there. You've got to get CALSTARS
18 coding and all these different things that are associated
19 with it. I just actually dealt last week with following
20 up on I bought 50 burritos for a fire on San Bruno
21 Mountain that I ran, and part of that process is getting
22 a document signed by the purveyor of the business. Well,
23 it had to be his name, his signature on a certain line,
24 and it was the cashier who signed it at the time, so I
25 had to do a follow up with that whole process. The owner

1 wasn't there at the time, so this, you know, becomes a
2 cumbersome process.

3 And there's some things out there you just have to
4 navigate through, but those are not emergency kind of
5 type of situations. There's stuff where discretionary
6 time to use your resources.

7 Q. How much time as the battalion chief you spend
8 actually directly in fire suppression operations?

9 **MS. KNOLES:** Objection as to time. You just talked
10 about the difference apparently in the last few weeks to
11 before that, so are we talking about before the move,
12 after the move, and what is the relevance?

13 **ALJ BROUSSARD-BOYD:** Okay. Sustained. You can ask
14 another question.

15 Q. **(BY MR. CRANE):** How much would you estimate as
16 the battalion chief your job is in direct fire
17 suppression when you're out on an active incident as
18 opposed to just administrative supervisory, those type of
19 duties?

20 **ALJ BROUSSARD-BOYD:** What is the relevance of that
21 question, Counselor?

22 **MR. CRANE:** Well, the relevance --

23 **ALJ BROUSSARD-BOYD:** When you say fire suppression,
24 you mean putting out the fires?

25 **MR. CRANE:** Actually squirting water at it. The

1 relevance is that very little of his job is actual direct
2 fire suppression. The bulk of his job is going to be
3 administration, supervising, and so it's more important,
4 particularly as a battalion chief, you're less of a
5 firefighter and more of an administrator.

6 And that's why it's particularly important that he
7 be immersed in CalFIRE ways of administration,
8 supervision because as the further you go up the ranks,
9 the less time you smell -- the time you spend smelling
10 smoke and the more time you spend managing people and
11 paperwork and processes.

12 **ALJ BROUSSARD-BOYD:** Okay. I think, though, that
13 you've made that point already --

14 **MR. CRANE:** Okay.

15 **ALJ BROUSSARD-BOYD:** -- with --

16 **MR. CRANE:** Then I will move on, Your Honor.

17 **ALJ BROUSSARD-BOYD:** Yeah.

18 **Q. (BY MR. CRANE):** Okay. You said there was two
19 times when there was confusion as to what was the right
20 path to take, and I think you referenced one incident,
21 which was the state forms to fill out if there's a
22 vehicle accident. What was the other time?

23 **MS. KNOLES:** Objection. That I think it misstates
24 his testimony. I think he was probably giving examples.
25 I don't recall that being his testimony, so I'm just

1 going to object. It misstates his testimony.

2 **ALJ BROUSSARD-BOYD:** Okay. What is the relevance of
3 the other time? I mean he's articulated that one was the
4 vehicle accident, and how will it help the trier of fact
5 if I know what the second one is?

6 **MR. CRANE:** Well, the fact is that he's admitting
7 there were times that even he was confused from his own
8 lips as to CalFIRE processes and procedures. And he
9 mentioned one time in which he got -- there was some
10 difficulty with the state forms and the local forms, and
11 I was just curious as to what the second time was.

12 **ALJ BROUSSARD-BOYD:** Well, he's already said that he
13 was confused.

14 **MR. CRANE:** Okay.

15 **ALJ BROUSSARD-BOYD:** So I don't think he was
16 (indiscernible) confused.

17 **MR. CRANE:** All right. Then I'll move on, Your
18 Honor.

19 **ALJ BROUSSARD-BOYD:** Okay.

20 **MR. CRANE:** That's all I have for Mr. Delay.

21 **ALJ BROUSSARD-BOYD:** Okay. Any redirect?

22 **MS. KNOLES:** No --

23 **ALJ BROUSSARD-BOYD:** Okay.

24 **MS. KNOLES:** -- Your Honor. Thank you.

25 **ALJ BROUSSARD-BOYD:** No redirect. Okay. Now

1 before, let's see, P, Exhibit P, any objection to P, the
2 explanation of the transfer letter, May 22nd, 2010?

3 **MR. CRANE:** May 22nd?

4 **ALJ BROUSSARD-BOYD:** That's Chief Ferreira's --

5 **MS. KNOLES:** I believe that's -- Oh, yeah. I'm
6 sorry. I believe that's it.

7 **MR. CRANE:** Yes, that's fine. No objection.

8 **ALJ BROUSSARD-BOYD:** No objection.

9 (Whereupon, Appellant's P
10 was admitted into evidence.)

11 **MS. KNOLES:** No objection.

12 **ALJ BROUSSARD-BOYD:** Okay. And then we have the
13 September 23rd, 2011, email to the Appellant, Exhibit L.

14 **MS. KNOLES:** Which was tab 16 (indiscernible).

15 **ALJ BROUSSARD-BOYD:** Yes, formally known as tab 16.

16 **MS. KNOLES:** My own version of Prince.

17 **MR. CRANE:** Well, Chief Ferreira is going to be back
18 on, so I suppose if she wants to lay a foundation with
19 him, she can do so.

20 **MS. KNOLES:** Do we need to spend more time on that?

21 **ALJ BROUSSARD-BOYD:** The email. You're talking
22 about the email, L?

23 **MR. CRANE:** Right. Right.

24 **ALJ BROUSSARD-BOYD:** You're going to talk to the
25 chief about this?

1 **MR. CRANE:** I wasn't planning. I suppose if she
2 wants to.

3 **ALJ BROUSSARD-BOYD:** Okay.

4 **MS. KNOLES:** Are there any objections? Is that your
5 objection that --

6 **MR. CRANE:** Did you send the email to him?

7 **ALJ BROUSSARD-BOYD:** I think he wants you to lay
8 more of a --

9 **MS. KNOLES:** Okay.

10 **ALJ BROUSSARD-BOYD:** -- ask more questions. How
11 about J, the Exhibit E of the contract?

12 **MS. KNOLES:** Which is tab 57, which I'm prepared to
13 do with Chief Ferreira if we needed to.

14 **MR. CRANE:** No. That's fine, Your Honor.

15 **MS. KNOLES:** Okay.

16 **ALJ BROUSSARD-BOYD:** You don't have a problem with
17 the contract?

18 **MR. CRANE:** Is that (indiscernible)?

19 **ALJ BROUSSARD-BOYD:** Okay.

20 **MR. FERREIRA:** Yes.

21 **ALJ BROUSSARD-BOYD:** So J, Exhibit E of the contract
22 is entered. All right.

23 (Whereupon, Appellant's J
24 was admitted into evidence.)

25 **MR. CRANE:** And you know what, as to the email,

1 Chief Ferreira says he sent it, so we can allow that in
2 as well.

3 **ALJ BROUSSARD-BOYD:** Your client doesn't
4 (indiscernible) is not the Respondent.

5 **MR. CRANE:** No, that's -- I just want to make sure
6 it's accurate (indiscernible).

7 **ALJ BROUSSARD-BOYD:** Okay. So is there an objection
8 or do you want to clarify it?

9 **MR. CRANE:** No. There's no objection.

10 **ALJ BROUSSARD-BOYD:** Okay. So all the A through P
11 are all in.

12 (Whereupon, Appellant's L
13 was admitted into evidence.)

14 **ALJ BROUSSARD-BOYD:** Now I recall that there was a
15 protective order issued for a Joe Santos. Is Joe
16 Santos's testimony no longer required and who required
17 it? You -- Who required it?

18 **MS. KNOLES:** I had requested it. He had done a
19 protective order, and I think at this point I don't --

20 **ALJ BROUSSARD-BOYD:** You don't need Joe Santos?

21 **MS. KNOLES:** We can release Joe Santos.

22 **ALJ BROUSSARD-BOYD:** Okay. Well, he's not here to
23 release so --

24 **MS. KNOLES:** Yeah.

25 **ALJ BROUSSARD-BOYD:** -- I guess --

1 **MR. CRANE:** He's already on vacation.

2 **ALJ BROUSSARD-BOYD:** Right. But he was going to
3 call (indiscernible).

4 **MR. CRANE:** Yeah. Right. He was going to be in --

5 **ALJ BROUSSARD-BOYD:** Okay.

6 **MR. CRANE:** -- and I had instructed him to make
7 arrangements with counsel to give her the numbers and to
8 be aware.

9 **MS. KNOLES:** He did not do that. I was never
10 informed of that instruction, and I never received a way
11 to contact him.

12 **ALJ BROUSSARD-BOYD:** Well, you don't want to call
13 him anyway.

14 **MS. KNOLES:** I don't.

15 **ALJ BROUSSARD-BOYD:** Okay.

16 **MS. KNOLES:** I just want to clarify that
17 representation for the record.

18 **ALJ BROUSSARD-BOYD:** Okay.

19 **MR. CRANE:** That was what I instructed Mr. Santos to
20 do.

21 **ALJ BROUSSARD-BOYD:** Okay.

22 **MR. CRANE:** Since the subpoena came from counsel, I
23 said you need to work with her as to dates and times.
24 Maybe if we could take a break and I could call him and
25 let him know that we're not going to need him, and then

1 I'll also call my next -- I have Chief Ferreira ready to
2 go, but I have another witness coming over from --

3 **ALJ BROUSSARD-BOYD:** Okay. Do you rest your case-
4 in-chief at this time? All your exhibits are in, and
5 you've called your witnesses. You're not calling Joe
6 Santos.

7 **MS. KNOLES:** Correct. Yes, we rest.

8 **ALJ BROUSSARD-BOYD:** Okay. We'll take a break.
9 Please --

10 (Off the record.)

11 **ALJ BROUSSARD-BOYD:** All right. We're back on the
12 record. It's now four o'clock in the matter of Ari Delay
13 and his involuntary transfer -- geographic transfer
14 appeal. Okay. And we're waiting. You've rested your
15 case-in-chief. That's the Appellant's case-in-chief, and
16 Respondent is ready to begin its case-in-chief.

17 **MR. CRANE:** Right. But before we begin, Your
18 Honor, I'd like to make an oral motion to dismiss and
19 here's my reasoning. You know, as you've testified
20 earlier or as you instructed us earlier, they have the
21 burden of going forward and the burden of proof, and they
22 certainly put on, you know, one of the things they're
23 hanging their hat on is CalFIRE policy 1028 -- 1028.3,
24 and there's been no testimony that that is applicable to
25 this case.

1 I don't even know if 1028 has even been admitted
2 into evidence. So as to the mileage issue, like I said,
3 they're basing it on a CalFIRE and there's no evidence.
4 They have not met their burden of proof and not put on
5 any evidence as to that.

6 There's been no evidence put on of a protected
7 activity, and thereby no harassment or retaliation for a
8 protected activity. There's been no evidence of any kind
9 of discipline. In fact, the testimony has been pretty
10 uniform that he wasn't in trouble. There was no adverse
11 action pending. There was no investigation that he's
12 never been written up formally or informally.

13 So as to -- And certainly he's also testified that
14 he hasn't -- there's been no testimony that he's changed
15 his residence. In fact, he testified that he wants to
16 hurry up and get through this list on the PO 199 so he
17 can get back to his residence, so it doesn't even
18 indicate an intention to change his residence.

19 So I don't think that they have in any way met their
20 burden of proof, and we would ask that this case be
21 dismissed at this time, Your Honor.

22 **ALJ BROUSSARD-BOYD:** Okay. Well, you're correct.
23 1028.3 whatever that may be, is not in evidence before
24 me, but what I'm looking at is Government Code 19994.1
25 and 19994.3.

1 **MR. CRANE:** Right.

2 **ALJ BROUSSARD-BOYD:** And while there is no evidence
3 before me about protected activity as to harassment,
4 whistleblower retaliation is not the only type of
5 protected activity or the only type of possible
6 harassment.

7 And you said there's no formal discipline, but
8 it's exactly the lack of formal discipline that puts it
9 within the purview of Government Code 19994.3 because, in
10 lieu of formal discipline, someone is involuntary
11 transferred to send a message, to teach them a lesson for
12 retaliatory purposes. So the lack of formal discipline
13 is not dispositive, but I'm going to deny the motion to
14 dismiss for those reasons. Government Code 19994.1 and
15 19994.3 control, and at this time you wanted to call some
16 witnesses.

17 **MR. CRANE:** Thank you, Your Honor. All right. I'd
18 like to call Chief Ferreira, please.

19 **ALJ BROUSSARD-BOYD:** Okay. Chief Ferreira, would
20 you return to the stand? I'll just remind you're still
21 under oath, okay?

22 **THE WITNESS:** Yes.

23 **ALJ BROUSSARD-BOYD:** Thank you. And this is in the
24 direct examination of Chief Ferreira, and he's still
25 under oath. Thank you.

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Testimony of
JOHN FERREIRA

having previously been duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. CRANE

Q. (BY MR. CRANE): Good afternoon, Chief.

A. Good afternoon.

Q. What ranks have you held with CalFIRE?

A. Firefighter, fire apparatus engineer, fire captain, battalion chief, division chief of operations, division chief admin officer, and unit chief.

Q. And how long have you been a unit chief?

A. Nine years.

Q. Okay. Geographically, what is under your control as unit chief of CZU?

A. It's all CalFIRE operations in San Mateo and Santa Cruz Counties.

Q. Do you have parts of any other counties?

A. No. I apologize. San Francisco County also but there's very little state responsibility area in San Francisco.

Q. And do you have any contracts in CZU?

A. Yeah, cooperative agreements for --

Q. Yes.

A. -- fire protection we have six.

Q. Okay. And, well, what are the six really

1 quickly?

2 A. Well, in Santa Cruz County, it's the Santa Cruz
3 County Fire Department, it's the Pajaro Valley Fire
4 District, it's the Pajaro Dunes Santa Cruz County Service
5 Area Number Four. And in San Mateo County, it's the
6 Coastside Fire District, it's the San Mateo County Fire
7 Department, and it's the San Mateo County Service Area
8 Number One.

9 Q. And what function do you serve as the unit
10 chief of CZU in relation to those six cooperative fire
11 agreements?

12 A. I'm the fire chief for all six of those plus
13 the CalFIRE state responsibility.

14 Q. Okay.

15 **ALJ BROUSSARD-BOYD:** You called them a cooperative
16 what?

17 **MR. CRANE:** Cooperative fire agreements. Is that
18 the correct term, sir?

19 **ALJ BROUSSARD-BOYD:** Cooperative what?

20 **MR. CRANE:** Cooperative fire agreements.

21 **ALJ BROUSSARD-BOYD:** Fire agreements. Oh.

22 **MR. CRANE:** I'm mumbling and speaking quickly
23 (indiscernible).

24 **ALJ BROUSSARD-BOYD:** Okay. Fire agreements. Okay.

25 Thank you.

1 Q. (BY MR. CRANE): Is that the proper term,
2 Chief?

3 A. That's the term I use. A lot of people refer
4 to them as contracts, and there is a contract for
5 services, but the relationship between the state agency
6 and the local government agency is a more a cooperative
7 nature. And I serve on the state's local government
8 cooperative fire protection committee.

9 Q. How many employees do you supervise at this,
10 let's say, today? How many employees approximately are
11 you supervising today?

12 A. Well --

13 MS. KNOLES: I just want to object as to relevance
14 as to this line of questioning.

15 ALJ BROUSSARD-BOYD: It's helpful to understand as
16 foundation, so I'm going to overrule the objection.

17 THE WITNESS: Right now, plus or minus some
18 positions that are held vacant for salary saving
19 purposes, we have about 200.

20 Q. (BY MR. CRANE): So that's 200 what, CalFIRE?

21 A. Two hundred CalFIRE employees.

22 Q. Okay. And I have another 60 seasonal CalFIRE
23 employees that we hire during fire season to staff -- or
24 assist in staffing our fire engines. I have about 150
25 volunteer fire fighters within those various cooperating

1 agencies like Santa Cruz or San Mateo County Fire, and
2 another 125 inmates through an agreement with the
3 California Department of Corrections that work at our Ben
4 Lomond Fire Camp or Facility there, and we use those
5 people to staff fire fighting crews also.

6 Q. So if I'm -- Would it be correct to say that so
7 right now you're supervising about 500 firefighting
8 personnel?

9 A. I'm responsible for about 500 people, yes. I
10 supervise directly about seven.

11 Q. Okay. How many fire stations in CZU?

12 A. We've got eight fire stations that are
13 strictly state-owned and operated. We've got another
14 three that are a combination between state and local
15 government. We've got six that are purely local
16 government-owned and operated, and another six that are
17 completely volunteer -- I'm sorry, eight that are
18 completely volunteer.

19 Q. So is -- What number is that approximately
20 total?

21 **ALJ BROUSSARD-BOYD:** Twenty-five.

22 **THE WITNESS:** Thank you.

23 **MR. CRANE:** Wow.

24 **THE WITNESS:** I'll stipulate.

25 Q. **(BY MR. CRANE):** Okay. All right. So how did

1 Mr. Delay first come to CZU to your understanding?

2 A. Right. Besides being a La Honda volunteer and
3 being under the auspices of the San Mateo County Fire
4 Department, he was also employed professionally with the
5 Coastside Fire District. And in 2008, CalFIRE and
6 Coastside Fire District officially conjugated the
7 agreement to have the state provide the personnel for the
8 emergency services, and he was part of that transition
9 process in June of 2008.

10 Q. Before Coastside became a part of CalFIRE, what
11 was Coastside Fire Department?

12 A. Well, it was actually two different fire
13 departments. It was the Point Montara Fire District and
14 the Half Moon Bay Fire District. And then over a period
15 of years, they eventually consolidated into the one
16 agency called the Coastside Fire District, and I think
17 that happened in early 2008.

18 And in that agency, they had three fire stations, I
19 think a total of 35 employees, and maybe a couple more
20 between administrative staff and line people. They
21 staffed three paramedic engines, and for a period of
22 time, they staffed an ambulance but all in the Half Moon
23 Bay/Point Montara area between Pacifica and Atascadero if
24 you're familiar.

25 Q. So it was 35 employees and two or three

1 stations. It was a fairly small operation, correct?

2 A. Relatively small, yes.

3 Q. Do you know -- Did you have any knowledge of
4 Coastside Fire District policies and procedures prior to
5 the time that they came to be a part of CalFIRE?

6 **MS. KNOLES:** Objection. Relevance. This is getting
7 a little --

8 **MR. CRANE:** Well, the relevancy is did they have --
9 did they have different policies and procedures from
10 CalFIRE prior to being absorbed?

11 **MS. KNOLES:** This is --

12 **ALJ BROUSSARD-BOYD:** I think we've already had
13 testimony on this.

14 **MR. CRANE:** Okay. Then I'll move on, Your Honor.

15 **ALJ BROUSSARD-BOYD:** Okay.

16 **MR. CRANE:** Thank you.

17 Q. **(BY MR. CRANE):** Do you have an understanding
18 as to what the duties of a battalion chief with Coastside
19 Fire District were as opposed to the duties of a
20 battalion chief with CalFIRE?

21 A. Yes.

22 Q. Okay. Were they different?

23 **MS. KNOLES:** Objection. It lacks foundation.

24 **ALJ BROUSSARD-BOYD:** Well, I think we've already
25 established today that CalFIRE -- through two different

1 witnesses at least -- no, maybe three, CalFIRE and
2 Coastside because of the differences in size and
3 operation that they had different rules and regulations
4 and polices.

5 **MR. CRANE:** You know what, and I don't mean to
6 belabor this and I will move on, Your Honor.

7 **ALJ BROUSSARD-BOYD:** Okay.

8 Q. **(BY MR. CRANE):** When Mr. Delay first started
9 with CalFIRE, where was he assigned?

10 A. Coastside Fire District in Half Moon Bay.

11 Q. Are you familiar with the term battalion two?

12 A. Yes.

13 Q. Okay. Was he -- Was that the same thing?

14 A. And that was the name that we gave Coastside
15 Fire District as part of the CalFIRE San Mateo/Santa Cruz
16 unit operation. We have four battalions and that was the
17 second.

18 Q. Okay. Why was Mr. Delay initially put in
19 battalion two?

20 A. Because that's where he came from, and in the
21 early stages of the cooperative relationship, we tried
22 not to disrupt and move people arbitrarily from Coastside
23 to other places as they transitioned to state employment.

24 Q. Why did you do -- Whose decision was that to
25 not to do that?

1 A. It was mine personally.

2 Q. And why did you do that?

3 A. There was already a lot of concern and
4 consternation about becoming state employees and going
5 from a 56-hour workweek to a 72-hour workweek and
6 different retirement systems and health care systems and
7 all these other policies. And there was already some
8 concerns by the Fire District Board, and at that time,
9 the board was nine members and not the five they have
10 now, as far as employees knowing how to get to locations.

11 So I thought that the most appropriate action would
12 be to limit movement as much as possible particularly
13 during those first couple of years of the relationship.
14 And I had even told employees that during the orientation
15 process, that we would not arbitrarily move every
16 employee just for the sake of moving them to facilitate
17 the transition to CalFIRE.

18 Q. Whose decision was it to move Mr. Delay from
19 battalion two?

20 **MS. KNOLES:** Objection. Vague as to which decision.
21 There's been two testified about.

22 **ALJ BROUSSARD-BOYD:** Sustained. Are we talking 2009
23 or 2012?

24 Q. **(BY MR. CRANE):** In 2009, whose decision was it
25 to move Chief Delay from battalion two?

1 A. Mine.

2 Q. What was your reason for doing that?

3 A. To facilitate this transition and to learn
4 CalFIRE policies, procedures, and then the way our
5 employees typically act and operate.

6 Q. Can you give me a little more detail as to what
7 you mean when you say that?

8 A. (Indiscernible) and I'm talking about
9 understanding a history of knowing how our MOU and
10 certain elements of our MOU were developed. Things as
11 simple as when you can wear a T-shirt around the fire
12 station and when you have to wear your uniform shirt or
13 how we process vacation or our vacation selection
14 process.

15 It occurs in October for the next calendar year, so
16 there's a whole bunch of steps that you have to go
17 through to get the calendar for the following calendar
18 year, and there's a history as to why that occurred. And
19 sometimes if you have a better understanding of history,
20 it makes it a little easier to overcome hurdles and bumps
21 while you're doing the process.

22 Simple things like purchasing and paying for meals
23 when you're on a large wildland fire and what
24 documentation you need to make that work easiest and how
25 to relate that with the state's emergency fund and what

1 access you have to the emergency funds.

2 So it's a very big, broad scope of differences and
3 things that an employee, specially a battalion chief,
4 since they're leading a group of people on fire engines
5 and fire stations that a battalion chief as the leader
6 needs to be well versed in those things.

7 Q. Do you have an understanding -- Well, have you
8 supervised battalion chiefs?

9 A. Yes.

10 Q. And you've been a battalion chief?

11 A. Yes.

12 Q. Okay. What percentage of your job would you
13 estimate for a battalion is actual fire suppression and
14 what percentage is administration and supervision.

15 **MS. KNOLES:** I'm going to object with this line of
16 questioning. We just talked about this as established
17 and --

18 **MR. CRANE:** But it goes to his state of mind as to
19 what decisions he made.

20 **ALJ BROUSSARD-BOYD:** As to what decisions the chief
21 made?

22 **MR. CRANE:** Right. I mean wouldn't it go to his
23 understanding of what a battalion chief does and why his
24 reasonings are for his decision to move Mr. Delay?

25 **ALJ BROUSSARD-BOYD:** Well, he's already said that

1 they're leaders and they need to lead people, so -- so
2 that's -- The fire suppression aspect for me -- I have
3 taken official notice of the State Personnel Board
4 specification, and I don't think it says in there that
5 they're doing fire suppression duties. So unless there's
6 something different you want to point out that is not in
7 the State Personnel Board's packet --

8 **MR. CRANE:** I'll move on, Your Honor.

9 **ALJ BROUSSARD-BOYD:** -- I'm going to sustain the
10 objection. Okay.

11 Q. **(BY MR. CRANE):** Okay. How long was Mr. Delay
12 moved in 2009? How long did the move -- How long was he
13 actually out of the battalion two assignment?

14 **MS. KNOLES:** Objection. Asked and answered. He
15 previously provided testimony on this question exactly.

16 **ALJ BROUSSARD-BOYD:** Yeah. I'm going to have to
17 sustain the objection. I know the answer.

18 Q. **(BY MR. CRANE):** Based on your reasoning for
19 moving Mr. Delay in 2009, did you feel that the lack
20 of -- that the amount of time he was out of battalion two
21 in 2009 was sufficient to accomplish the goals you had
22 set out?

23 A. No.

24 Q. Why do you say that? Why do you say that,
25 Chief?

1 A. The initial intention was for it to last for a
2 number of months, two months, but I believe it only
3 lasted a matter of weeks.

4 Q. Okay. Did you also -- Was it solely -- Well,
5 was it solely your decision to move Mr. Delay from
6 battalion two in 2012?

7 A. Yes.

8 Q. And what was your reasoning for moving
9 Mr. Delay in August in 2012 from battalion two?

10 **MS. KNOLES:** Objection. Asked and answered.

11 **ALJ BROUSSARD-BOYD:** Overruled.

12 **THE WITNESS:** The largest amount of the reason was,
13 again, to facilitate that learning of CalFIRE's ways of
14 doing things, our history, the way and reason why we
15 treat employees sometimes the way we do, and why in some
16 cases you might ignore a minor transgression if it didn't
17 have a larger impact on the direction that the department
18 was going in.

19 And just having that understanding that everything
20 that employee does is important, but some of it is not so
21 critical as far as the way you manage those employees.
22 And some things that might seem minor are very critical,
23 and knowing the history and the reason that some of those
24 differences occur is just very important. Another reason
25 is, particularly in this case and for all the employees

1 there, I don't know what's going to happen in that fire
2 district eight months from now.

3 There's certainly when the agreement that CalFIRE
4 extended to June, when that runs out, it may be that
5 Chief Delay is purely a -- not purely a CalFIRE employee,
6 but stays with CalFIRE and is going to have to function
7 completely separate from the Coastside Fire District.
8 We're just not really sure of which employees are going
9 to be offered positions in the Coastside Fire District
10 and which are not.

11 Q. So if I understand you correctly, is it
12 possible that in the future there would not even be any
13 option of Chief Delay working in the Coastside in
14 battalion two?

15 A. It's conceivable. We're not even --

16 **MS. KNOLES:** Objection. Incomplete hypothetical.

17 **ALJ BROUSSARD-BOYD:** Huh-uh. No. No. It's just
18 speculation, so I'm going to overrule the objection.

19 Q. **(BY MR. CRANE):** You can go ahead and answer,
20 Chief.

21 A. At this time, we're not certain whether the
22 board is truly going to form their own fire district or
23 not. There is a recall effort underway against three
24 members of the board that will have an impact on whether
25 they go as a standalone fire agency or not. And then

1 they still have not been clear in translating to us which
2 employees they may be offering continued employment with
3 at Coastside Fire District.

4 Q. So it's possible that at some point in the
5 future Chief Delay will have to be in some -- Is it
6 accurate to say that at some point in time Chief Delay
7 will have to be at someplace other than battalion two?

8 **MS. KNOLES:** Objection. Speculation.

9 **ALJ BROUSSARD-BOYD:** Yeah. I think we're going a
10 little bit too far into the crystal ball realm there.
11 I'm going to sustain the objection.

12 **MR. CRANE:** I'll move on then.

13 Q. **(BY MR. CRANE):** In 2012, where was Mr. Delay
14 physically? Where was his new duty station, physical
15 duty station?

16 **MS. KNOLES:** Objection. Vague.

17 **ALJ BROUSSARD-BOYD:** Before the transfer or after
18 the transfer? I'm going to sustain the objection.

19 **MR. CRANE:** Then I will ask a better question.

20 Q. **(BY MR. CRANE):** Currently where is Chief Delay
21 physically working from?

22 A. We have an office for him right at our
23 headquarters in Felton.

24 Q. Was there a reason for you moving him
25 physically to Felton?

1 A. Yes.

2 Q. What is that reason?

3 A. The reason is so he has immediate access and
4 can visibly see how other battalion chiefs or employees
5 interact with personnel and finance, and our
6 communication center, which is right there at Felton.
7 Our training bureau is right there in Felton.

8 Our law enforcement; and by the way, I'm also a
9 peace officer because CalFIRE has law enforcement powers,
10 that's right there in Felton and our resource management.
11 Felton seems to be -- Well, it is the hub. It's the
12 headquarters unit, and everything eventually flows
13 through Felton.

14 **ALJ BROUSSARD-BOYD:** And where do you work?

15 **THE WITNESS:** Felton.

16 **ALJ BROUSSARD-BOYD:** Okay. Plus, I'm there. Thank
17 you very much for pointing that out, and the admin
18 officer and the operations chief are all -- and the
19 deputy chief of operations are all right there.

20 Q. **(BY MR. CRANE):** How many chief officers are
21 currently stationed at the Felton Station or Felton
22 headquarters?

23 A. Counting division chiefs and deputy chief, 11
24 maybe.

25 Q. But it is accurate that you're there, Chief

1 Jalbert, is Chief Larkin there?

2 A. Yes, the admin officer, Chief Larkin.

3 Q. And Chief Sampson?

4 A. Chief Sampson is there. He's our resource
5 management and fire prevention assistant or division
6 chief.

7 Q. Can you give some examples as to how you
8 believe moving Mr. Delay to the unit safety officer and
9 relief battalion chief will have him become more familiar
10 with CalFIRE policies and procedures?

11 A. Certainly. It's that exposure to all of these
12 other elements and then physically being there and seeing
13 every day how state employees interact with each other.
14 How we react to notifications from Sacramento on POP days
15 or something like that as opposed to hearing about it
16 being out in the field several days later.

17 It's, you know, when you -- when you look at most
18 CalFIRE battalion chiefs, typically they promote into
19 that position from captains. Well, most of them -- all
20 of them have promoted as fire captains into that
21 position. And as fire captains, they've either been in
22 the command or the successful ones have been in the
23 command center, have been in the training bureau, and all
24 these other positions in CalFIRE so they know the little
25 subtle nuances and can understand perhaps why the

1 personnel clerk is a little grumpy today or something
2 like that. And there's really no other way to get that
3 experience without being there.

4 Q. I'm going to show a document, Chief.

5 **ALJ BROUSSARD-BOYD:** Okay. Since 1 has been
6 withdrawn, we'll mark this as Exhibit 2. We'll mark this
7 as Exhibit 2.

8 **THE WITNESS:** (Indiscernible).

9 **ALJ BROUSSARD-BOYD:** Okay. Marking as 2, a one-page
10 document Incident Personnel Performance Rating, and it's
11 before the witness.

12 (Whereupon, Respondent's 2
13 was marked for identification.)

14 Q. **(BY MR. CRANE):** Do you recognize that
15 document, Chief?

16 A. Yes, I do.

17 Q. Okay. What is it?

18 A. This is a performance rating written by our
19 CalFIRE San Mateo/Santa Cruz Unit Battalion Chief Rob
20 Sherman, and it's on an assignment with a strike team.
21 And do I need to define what a strike team is? It would
22 be five engines and a leader sent or formed up and sent
23 to an emergency incident. And in this case if you look
24 to the right, it's got BTU lightning complex and the BTU
25 7660. BTU refers to Butte County. The designator for

1 San Mateo/Santa Cruz is CZU.

2 So here, this strike team of engines with Rob
3 Sherman, who wrote this document as the strike team
4 leader, went to Butte County. They actually went to
5 Concow and Paradise or the Concow/Paradise area, and
6 Chief Delay was the trainee. When you look at box number
7 five, it says, "Fire position, STEN," which means strike
8 team leader engine's trainee, so Chief Delay was with
9 Chief Sherman learning how to be a strike team leader on
10 this incident.

11 **MS. KNOLES:** I just want to object. There's been no
12 evidence laid that this witness has any personal
13 knowledge of anything other than what is written on the
14 page. Whether or not this even occurred cannot be
15 verified by this witness. While it may say these things,
16 this witness lacks any personal knowledge about even the
17 handwriting on this page as it's stated.

18 **ALJ BROUSSARD-BOYD:** Well, how does it harm your
19 client?

20 **MS. KNOLES:** I don't know yet, but I'd like the --
21 I'd like it reserved on the record.

22 **MR. CRANE:** Well, Your Honor --

23 **MS. KNOLES:** He can testify that this is what is
24 says on the page, but he can't testify as to anything --
25 The document speaks for itself is I guess what I'm

1 saying, and he can't testify beyond what the document
2 actually says.

3 **ALJ BROUSSARD-BOYD:** Well, I mean when you're
4 looking at this, is there any -- is there -- do you doubt
5 the veracity of what this document is proposing to tell
6 us?

7 **MS. KNOLES:** I don't know, but I see that there's
8 section ten, which is remarks, and that's seems to be a
9 personal impression, and I would doubt that this witness
10 could -- has provided no evidence that he could testify
11 as to --

12 **ALJ BROUSSARD-BOYD:** All right. But it looks like
13 it's pretty good stuff here for your client. I think
14 he's doing a great job, superior, superior. There's five
15 superiors and four satisfactory. So in other words, I'm
16 saying it's not --

17 **MS. KNOLES:** To the extent this witness intends
18 to testify about anything other than what is written
19 here --

20 **ALJ BROUSSARD-BOYD:** Right.

21 **MS. KNOLES:** -- I would object.

22 **ALJ BROUSSARD-BOYD:** But you don't have any
23 objection to the being entered into evidence?

24 **MS. KNOLES:** No.

25 **ALJ BROUSSARD-BOYD:** Okay. Then we can move on.

1 It's marked and entered, and you can move on from this
2 document, Mr. Crane. It's entered into evidence.

3 (Whereupon, Respondent's 2
4 was admitted into evidence.)

5 Q. (BY MR. CRANE): When is the first time that
6 you saw this document?

7 A. I saw it soon after it was written. I can't
8 tell you the date.

9 ALJ BROUSSARD-BOYD: Okay. It's marked and entered,
10 so --

11 MR. CRANE: Okay.

12 ALJ BROUSSARD-BOYD: -- there's nothing else he can
13 tell me about the document that the document isn't going
14 to reveal in evidence.

15 Q. (BY MR. CRANE): Well, let me ask you this
16 since you -- is this one of the documents that you relied
17 upon in making the decision to move Mr. Delay in 2012?

18 MS. KNOLES: Objection. This witness has already
19 testified about what he relied on to make his decision.

20 ALJ BROUSSARD-BOYD: Sustained.

21 MR. CRANE: Well, he's testified as to his
22 reasoning. I don't think he's testified as to the --

23 MS. KNOLES: I specifically asked him what he relied
24 on to make his decision.

25 MR. CRANE: Well, he's testified as to his

1 reasonings for making the decision. I'm asking him what
2 are the --

3 **ALJ BROUSSARD-BOYD:** Is this one of those things
4 that he relied upon?

5 **MR. CRANE:** One of the pieces of evidence that he
6 used upon to make or how he came up with his reasoning.
7 I think that's different. If you look at the individual
8 pieces of evidence that he used and there's several
9 pieces of evidence and documents that he looked at over
10 the years, that he determined --

11 **ALJ BROUSSARD-BOYD:** All right. If your client
12 wants -- I mean, I'm sorry. If this witness wants to
13 testify that he relied on a four-year-old document in
14 determining this transfer and that's his testimony, if
15 that's going to be his testimony, it can go into
16 evidence. I have no -- I'm going to overrule the
17 objection if that's what he's going to testify to.

18 Q. **(BY MR. CRANE):** Is this one of the documents
19 that you relied upon in making the decision to move
20 Mr. Delay in either 2009 or 2012?

21 **MS. KNOLES:** Compound.

22 Q. **(BY MR. CRANE):** 2009?

23 A. Not in 2009, no.

24 Q. Okay. In 2012?

25 A. Yes.

1 Q. Okay. Why did you rely on this? Well, is this
2 the only document that you relied upon in making your
3 decision to move Mr. Delay in 2012?

4 A. No.

5 Q. Okay. Why did you rely on this -- in part rely
6 on this document?

7 A. I compared the information on this document to
8 other more recent documents that dealt with a similar
9 topic and saw that there was actually a decrease in
10 performance. And for the same reason where it says here,
11 "More knowledge of CDF policies, procedures, and
12 paperwork will come with time," and knowing that this
13 document written in July of 2008 was just months after
14 Chief Delay became a battalion chief with CalFIRE, so it
15 would be reasonable to suspect that, yes, knowledge and
16 experience will come with time.

17 Q. Whose -- Do you know who this signed this? Do
18 you recognize the signature on this document?

19 A. It's Battalion Chief Rob Sherman.

20 Q. Okay. At that time, where was Rob Sherman
21 assigned in 2008?

22 **MS. KNOLES:** Objection. Relevance.

23 **ALJ BROUSSARD-BOYD:** Okay. Relevance.

24 **MS. KNOLES:** This is getting tedious.

25 **ALJ BROUSSARD-BOYD:** No, it's not relevant. I think

1 he relied on it in 2012. He didn't rely on it in 2009.
2 He didn't write the document, so I think we can -- Is
3 there other documents there?

4 **MR. CRANE:** No. I have no other -- The reason I was
5 asking that question, Your Honor, was Mr. Sherman was the
6 training officer for CZU and could speak very well as to
7 he was very versed on CalFIRE policies and procedures and
8 could speak to when someone didn't know the right way to
9 do things. He was particular versed on that issue, and
10 that's why I was going to ask him.

11 **MS. KNOLES:** They have not called him as a witness
12 to testify about that.

13 **ALJ BROUSSARD-BOYD:** Not only that, I know this is
14 not a State Personnel Board disciplinary hearing, but
15 even then, they can only go back under the Government
16 Code three years. This goes back longer than that.

17 **MR. CRANE:** All right, Your Honor.

18 **ALJ BROUSSARD-BOYD:** And so I'll give it the weight
19 it's due. It's in evidence.

20 **MR. CRANE:** Okay. Chief, I'm going to show you
21 another document. I would ask that this be admitted.

22 **ALJ BROUSSARD-BOYD:** It has been admitted.

23 **MR. CRANE:** All right. Thank you.

24 **ALJ BROUSSARD-BOYD:** Okay. We'll mark this as
25 Exhibit 3. Marking as 3 a one-page document similar to

1 Exhibit 2, and it's before the witness.

2 (Whereupon, Respondent's 3
3 was marked for identification.)

4 Q. (BY MR. CRANE): All right. Chief, do you
5 recognize this document?

6 A. Yes.

7 Q. What is it?

8 A. This is a Performance Rating for Battalion
9 Chief Ari Delay as a strike team leader on engines
10 written again by Rob Sherman, but this was written in
11 August of 2011.

12 Q. Is this one of the documents you used when you
13 were making your decision as to whether or not you should
14 move Mr. Delay in 2012?

15 A. Yes.

16 Q. Okay. What is it about this document that
17 influenced your decision as to moving Chief Delay in
18 2012?

19 A. Well, it's written three years later, and when
20 you look at the performance ratings, most got the
21 satisfactory, but now there's a needs improvement. And
22 the only information I can see in the remarks section
23 that needs improvement is, again, obtain more knowledge
24 on CalFIRE policy and procedures, and this is three years
25 after, you know. We've tried the various methods of

1 mentoring and training and --

2 **MS. KNOLES:** Objection. Assumes facts not in
3 evidence. This witness hasn't set forth any evidence
4 that they've tried mentoring in the three years in
5 between these three -- these two exhibits.

6 **ALJ BROUSSARD-BOYD:** Well, his statement is already
7 on the record, so I'll give it --

8 **MS. KNOLES:** I'd like to have it stricken.

9 **ALJ BROUSSARD-BOYD:** Well, I won't strike it. It's
10 on -- It's on the record, so I'm going to overrule the
11 objection. You can move forward. Do you have anything
12 else that --

13 **MR. CRANE:** Yes, Your Honor, of course, I do.

14 **ALJ BROUSSARD-BOYD:** Okay

15 **Q. (BY MR. CRANE):** What was it about receiving
16 this incident personnel performance rating three years
17 after the previous incident personnel performance rating
18 that influenced your decision to move Chief Delay?

19 **A.** It was just concerning that the same issues
20 were still hampering his success as a strike team leader.

21 **Q.** Do you have any information one way or another
22 that Chief Sherman has any kind of bias --

23 **MS. KNOLES:** Objection.

24 **MR. CRANE:** -- against Mr. Delay?

25 **MS. KNOLES:** Speculation.

1 **ALJ BROUSSARD-BOYD:** Sustained.

2 **MR. CRANE:** All right. I would ask that this be
3 admitted into evidence.

4 **ALJ BROUSSARD-BOYD:** Okay. Exhibit 3 any objection,
5 Ms. Knoles, to the second performance rating?

6 **MS. KNOLES:** No.

7 **ALJ BROUSSARD-BOYD:** Okay. It's entered.
8 (Whereupon, Respondent's 3
9 was admitted into evidence.)

10 **MR. CRANE:** Okay. Chief, I'm going to show you
11 another document. This would be --

12 **ALJ BROUSSARD-BOYD:** I'm going to ask for an offer
13 of proof for this Fire Services Operational Audit. It's
14 double sided.

15 **MR. CRANE:** Counsel, I already provided you with a
16 copy of this.

17 **ALJ BROUSSARD-BOYD:** I'm sorry?

18 **MR. CRANE:** I've already provided Ms. Knoles with
19 that.

20 **MS. KNOLES:** And I'm going to object to any offer of
21 proof. No one here has created this document, and my
22 understanding and I can provide evidence is that this
23 document was rejected by the board. So I don't know who
24 can talk to the truth about the document since no one
25 here created it and no one here approved it.

1 **ALJ BROUSSARD-BOYD:** Oh, this is the TriData Report.

2 **MS. KNOLES:** Uh-huh.

3 **MR. CRANE:** Your Honor, I'm not offering this for
4 the truth of what's in it. I'm offering it for its
5 effect on Chief Ferreira. That's all I'm offering it for
6 is the fact that he reviewed it and what effect, if any,
7 it had on his decision to move Chief Delay.

8 **ALJ BROUSSARD-BOYD:** I'll --

9 **MR. CRANE:** And this is one of the documents that
10 he's going to testify he reviewed, and this is one of
11 the things that went into the hopper in making the
12 decision.

13 **MS. KNOLES:** I happen to think this is an extremely
14 large document with a lot of statements made by someone
15 who is not here and not able to be questioned.

16 **ALJ BROUSSARD-BOYD:** The TriData Division of
17 what? Of the Coastside Fire District? Is that what this
18 is?

19 **THE WITNESS:** No.

20 **MS. KNOLES:** No.

21 **THE WITNESS:** This is, if I might? This --

22 **ALJ BROUSSARD-BOYD:** Well, no. I mean, what is
23 this? I want an offer of proof as to why this is --
24 you're asking me to mark this and enter it into evidence.

25 **MR. CRANE:** Because this is -- Well, this is a

1 document that was requested by the Coastside Fire
2 District Board to look at the integration of Coastside
3 Fire District and CalFIRE. This was a document that was
4 made public and was shared with Chief Ferreira. It
5 was -- Like I said, it was commissioned by the board.
6 Chief Ferreira has reviewed the entire document, and this
7 was one of the many factors and one of the many things
8 that he looked at and considered when making his decision
9 to move Chief Delay.

10 And this was -- The TriData is a separate company
11 that comes in and performs audits on fire agencies. So
12 again, we're not looking at the truthfulness of it.
13 We're looking at the fact that it was authored by an
14 independent company requested by the board, that it talks
15 to how efficiently the integration between CalFIRE and
16 Coastside Fire District employees are going, and all I
17 wanted entered into is for the effect that it had on
18 Chief Ferreira.

19 **ALJ BROUSSARD-BOYD:** Well, I've had an opportunity
20 to flip through it, and I'm -- I see that there is one
21 page, page 5, that's been highlighted.

22 **MR. CRANE:** And that's really what I'm -- that's
23 really what I was going to refer to.

24 **ALJ BROUSSARD-BOYD:** Okay. Then why don't we do
25 this, I will take page 5 and 6 is on the back, which I

1 guess you wanted to save paper.

2 **MR. CRANE:** And I certainly --

3 **ALJ BROUSSARD-BOYD:** And I will give the rest of
4 it -- And I'll take --

5 **MR. CRANE:** The cover?

6 **ALJ BROUSSARD-BOYD:** -- the cover page.

7 **MR. CRANE:** Okay. And you know, Your Honor, it was
8 not my intention to pull out just selected sections. I
9 was trying to be intellectually --

10 **ALJ BROUSSARD-BOYD:** Well --

11 **MR. CRANE:** -- honest and provide the whole thing.

12 **ALJ BROUSSARD-BOYD:** -- I know. That's fine, but I
13 don't need all this in evidence. I don't understand most
14 of these graphs, and it would probably take me six months
15 to determine what all is meant by these acronyms and
16 FPAs, and I don't know how that refers to --

17 **MR. CRANE:** I have no desire to do that to you.

18 **ALJ BROUSSARD-BOYD:** Okay. All right. Good. So
19 what we'll do is we'll mark as 3 just an excerpt.

20 **MR. CRANE:** I think it would be 4, correct?

21 **ALJ BROUSSARD-BOYD:** I'm sorry, 4. Marked as 4 an
22 excerpt of this report, that excerpt being the cover
23 page, the --

24 **MR. CRANE:** And page 5 and 6.

25 **ALJ BROUSSARD-BOYD:** -- author page, and page 5 and

1 6, and so those two pages because they're highlighted.

2 (Whereupon, Respondent's 4
3 was marked for identification.)

4 **ALJ BROUSSARD-BOYD:** It appears someone has relied
5 on them for something, so any objection to that small
6 section of the -- of the --

7 **MS. KNOLES:** I do object.

8 **ALJ BROUSSARD-BOYD:** On the basis of?

9 **MS. KNOLES:** I can't verify where any of this
10 information came from.

11 **ALJ BROUSSARD-BOYD:** It goes to his state of mind.
12 What he -- What Chief Ferreira was believing when he --

13 **MS. KNOLES:** That's fine --

14 **ALJ BROUSSARD-BOYD:** -- was making --

15 **MS. KNOLES:** -- if what his testimony is going to be
16 that he relied on a document that he can't talk about
17 where it came from, sure.

18 **ALJ BROUSSARD-BOYD:** But it's what he read. If he
19 can testify he read it and he relied on it, that's all
20 that I think Mr. Crane is looking for.

21 (Whereupon, Respondent's 4
22 was admitted into evidence.)

23 **MS. KNOLES:** Okay.

24 Q. **(BY MR. CRANE):** Chief Ferreira, do you --
25 Well, I don't know if you have it in front of you.

1 Sorry. Do you recognize the document that's not in front
2 of you?

3 A. Yes, I do.

4 Q. I'll give you a chance to have just a couple
5 seconds to flip through that.

6 A. Okay.

7 Q. Not the whole thing.

8 **ALJ BROUSSARD-BOYD:** All you need is 5 and 6, and I
9 think it's highlighted there.

10 Q. **(BY MR. CRANE):** Do you recognize this
11 document?

12 A. Yes, I do.

13 Q. What is it?

14 A. This was a report that was commissioned by the
15 Fire District Board to audit the services provided by
16 CalFIRE and to try to estimate at the direction of the
17 board the actual costs of the fire services. And I
18 believe it was also meant to help the board determine
19 whether it was advisable to create a standalone fire
20 department and whether they could afford to do that or
21 not.

22 Q. When you say the board, to whom are you
23 referring?

24 A. The Coastside Fire Protection District Board of
25 Directors.

1 Q. Okay. Do you have any information as to who
2 authored this report?

3 A. Yes.

4 Q. And what is that?

5 A. I know one of the gentlemen that authored it,
6 John Montenero, and if you see one page 1, he's part of
7 the --

8 **ALJ BROUSSARD-BOYD:** Okay. I isn't entered into
9 evidence.

10 **THE WITNESS:** Okay.

11 **ALJ BROUSSARD-BOYD:** So you're familiar with the
12 person. Okay. Anything else?

13 Q. **(BY MR. CRANE):** Okay. Have you seen this
14 document prior to today?

15 A. Yes.

16 Q. Okay. When is the first time you saw this
17 document?

18 A. I actually saw a draft of the document several
19 months prior to this, and then this was the final report
20 that was presented to the board in August of 2011.

21 Q. Okay. Have you at any time -- Well, when you
22 saw the final document in August of 2011, did you read
23 the entire document at that time?

24 A. Yes.

25 Q. Okay. Cover to cover?

1 A. Yes.

2 Q. Did any part of this document have any role in
3 your decision to move Chief Delay out of battalion two in
4 2012?

5 A. Yes.

6 Q. Okay. What part of this document did you in
7 part rely on in making your decision to move Chief Delay
8 out of battalion two in 2012?

9 A. On page 5.

10 Q. Can you read to us what --

11 **ALJ BROUSSARD-BOYD:** Well, I think it's been entered
12 in over the objection, but it's been entered so he
13 doesn't need to read it. It is there.

14 Q. **(BY MR. CRANE):** Can you -- Can you refer to
15 which paragraph or paragraphs you referred to on page 5?

16 A. It talks about -- I'm sorry. Which paragraph?

17 Q. Yeah, which paragraphs did you rely on in
18 your -- in part -- rely on in part to make your decision
19 to move Chief Delay out of battalion two in 2012?

20 A. The fourth paragraph from the top that starts
21 with the term, "The chief officers of CalFIRE."

22 Q. And how did any -- how did the TriData report
23 influence your decision to move Mr. Delay in 2012 out of
24 battalion two?

25 A. If I can clarify, I don't know if it was

1 specifically when I read this to move a particular
2 individual like Chief Delay. But in general, it
3 confirmed that I knew or confirmed that I should have
4 when we transitioned the fire district to state
5 employment that there should have been some changes made
6 at that top chief officer level.

7 Whether it's the division chief or the battalion
8 chiefs, to assist in this cultural understanding of
9 CalFIRE because to leave the entire management in place
10 as it was prior to CalFIRE there would be very little
11 opportunity internal to the district to have access to
12 the different CalFIRE programs and policy or to have
13 someone at the chief officer level in the fire district
14 that was extremely well versed in the CalFIRE policies.
15 And this was written three years after, and they noticed
16 it. The TriData or the author of this noticed the same
17 thing.

18 **MS. KNOLES:** I just want to object as to any --
19 other than his own understanding in terms of they
20 noticed. He doesn't know what they noticed or who they
21 is or who noticed what or what it was based on. There's
22 no foundation.

23 **ALJ BROUSSARD-BOYD:** Understood. Okay.

24 **MR. CRANE:** I would ask that this be moved into
25 evidence.

1 **ALJ BROUSSARD-BOYD:** Okay. It's there. The page 5
2 and 6 of the TriData final report dated August 11, 2012,
3 is in evidence, but the rest of the report is not.

4 **MR. CRANE:** That's fine, Your Honor.

5 **ALJ BROUSSARD-BOYD:** Okay. Because that's the part
6 you wanted. We're good.

7 **MR. CRANE:** Okay. I've got some other documents,
8 and some are already in evidence, so I'm going to try to
9 move quickly, Your Honor.

10 **Q. (BY MR. CRANE):** Okay. Let me show you a
11 document. I know it's already been in evidence. It's a
12 4/17/12 staff report.

13 **ALJ BROUSSARD-BOYD:** Okay. That would be Exhibit D.

14 **MR. CRANE:** I'll show you.

15 **ALJ BROUSSARD-BOYD:** Well, I want to make sure it's
16 the Exhibit D. Where is the binder that the witness was
17 using? Were you reintroducing a new document?

18 **MS. KNOLES:** Here's the --

19 **ALJ BROUSSARD-BOYD:** I think it's Exhibit D, which
20 was formally known as --

21 **MS. KNOLES:** -- (indiscernible) formally known as --

22 **ALJ BROUSSARD-BOYD:** -- 24?

23 **MS. KNOLES:** -- the April staff report, 24.

24 **ALJ BROUSSARD-BOYD:** Is that the one you're looking
25 at, the April 17 memo? It has a cover email.

1 MS. KNOLES: So, yeah, 24 and you have it. Exhibit
2 24 --

3 ALJ BROUSSARD-BOYD: If you turn the page.

4 THE WITNESS: Yes.

5 ALJ BROUSSARD-BOYD: Yeah. Okay.

6 MS. KNOLES: -- includes it, and I believe
7 (indiscernible).

8 ALJ BROUSSARD-BOYD: Okay. So we have this as
9 Exhibit D, the staff report dated April 17 before the
10 witness and turn the page. Okay.

11 Q. (BY MR. CRANE): I'm going to be brief -- just
12 brief on my questions. I think we've already talked
13 about this. Did you author this report?

14 A. Yes, I did.

15 Q. Okay. When did you write it?

16 A. April 17th or perhaps the day before I started
17 working on it.

18 Q. Why did you write it?

19 A. To alert the board of changes in our
20 cooperative agreement and possible changes in the cost of
21 that agreement.

22 Q. Is there anything in this report that relates
23 to Mr. Delay?

24 MS. KNOLES: Objection. Asked and answered.

25 ALJ BROUSSARD-BOYD: Overruled. Was there anything

1 in there that relates to Mr. Delay?

2 **THE WITNESS:** Yes. Although he's not named,
3 Battalion Chief Delay is the battalion chief that would
4 be moving, which is what prompted the board to request me
5 to move the Division Chief Paul Cole back full time to
6 the district.

7 Q. **(BY MR. CRANE):** Does this document describe
8 your plan to provide Mr. Delay with mentoring as to
9 CalFIRE policies and procedures?

10 **MS. KNOLES:** Objection. The document speaks for
11 itself.

12 **ALJ BROUSSARD-BOYD:** Sustained.

13 Q. **(BY MR. CRANE):** Chief, now I'm going to move
14 on from that. As to Chief Delay's new assignment, his
15 August 1st, 2012, have there been any changes with
16 Mr. Delay's duty schedule or days off that you're aware
17 of?

18 **MS. KNOLES:** Objection. I believe this has been
19 well covered in Mr. Delay's --

20 **ALJ BROUSSARD-BOYD:** Change in his -- in his duties?

21 **MR. CRANE:** Duty schedule or days off.

22 **ALJ BROUSSARD-BOYD:** Okay. We've gone over that.

23 **MR. CRANE:** Okay. Then I'll move on.

24 **ALJ BROUSSARD-BOYD:** Yeah. We'll move on. Thank
25 you.

1 Q. (BY MR. CRANE): In his new assignment, will
2 Mr. Delay be given a CalFIRE vehicle and fuel to drive?

3 A. Yes.

4 Q. Is Chief Delay allowed to use his CalFIRE
5 vehicle and CalFIRE fuel when he leaves for his work
6 assignment from his home every day?

7 A. If that's where he's spending the night, yes.

8 Q. Okay. Does Chief Delay have other options as
9 to where to spend the night?

10 A. He could spend the night in a fire station.

11 MS. KNOLES: Objection. Speculation.

12 ALJ BROUSSARD-BOYD: Overruled.

13 THE WITNESS: Battalion chiefs typically will spend
14 the night in a fire station if they don't live close
15 enough to respond within a certain amount of time to an
16 emergency incident.

17 ALJ BROUSSARD-BOYD: That's different from the
18 Felton headquarters?

19 THE WITNESS: Well, Felton headquarters has a fire
20 station also, so --

21 ALJ BROUSSARD-BOYD: Right there?

22 THE WITNESS: -- they're willing to sleep there
23 also.

24 ALJ BROUSSARD-BOYD: Right there in the same area?

25 THE WITNESS: Yes.

1 **ALJ BROUSSARD-BOYD:** Okay.

2 **Q. (BY MR. CRANE):** So where could conceivably in
3 his new duty assignment -- Where could Chief Delay spend
4 the night in his new duty assignment?

5 **A.** Well, if he was required because he's covering
6 the field battalion, he could stay at the Felton Fire
7 Station. He could stay at any number of fire stations in
8 the vicinity of the area that he was providing the
9 emergency services availability for.

10 **Q.** Aside from the information in the documents
11 that you've already discussed and we've already entered
12 into evidence, did you have any information that you
13 obtained firsthand that you considered about Chief Delay
14 prior to making your decision to move him in 2012? Is
15 there anything that you saw yourself that made you --
16 that influenced your decision to move Chief Delay in
17 2012?

18 **MS. KNOLES:** I'm going to object that this witness
19 hasn't testified that he was ever actually directly
20 seeing Chief Delay do anything.

21 **ALJ BROUSSARD-BOYD:** Well, I want to hear his
22 testimony. I'm going overrule that objection.

23 **THE WITNESS:** I saw him (indiscernible) authority
24 relatively often and when I would go as being the chief
25 of the Coastside Fire District. When I would go to the

1 fire district, I would see Ari interacting with
2 employees. I saw Ari as -- or Chief Delay as the La
3 Honda I think it was the battalion chief in La Honda
4 Volunteer Fire Department and part of San Mateo County,
5 so I saw him there and talked to him there also. Yes, I
6 saw things.

7 Q. (BY MR. CRANE): Okay. Was there any of those
8 firsthand interactions you had with Chief Delay that
9 influenced your decision to move him in 2012?

10 MS. KNOLES: Objection that this was asked and
11 answered.

12 MR. CRANE: I don't think he's --

13 MS. KNOLES: If there were any -- I specifically
14 asked him if there were any specific instances he relied
15 on in making his decision.

16 MR. CRANE: Well, maybe that wasn't really the
17 question. I'm asking about his firsthand -- his
18 firsthand interactions.

19 MS. KNOLES: (Indiscernible) specific --

20 MR. CRANE: What he observed personally.

21 MS. KNOLES: -- instance.

22 ALJ BROUSSARD-BOYD: Well, the answer is probably
23 going to be no because I think we've already heard from
24 him on this regard -- in this regard, were there any
25 specific incidents he had personal knowledge of, at least

1 that's what my notes tell me, and I'll go back but --

2 **MR. CRANE:** I don't recall him being asked this
3 specific question.

4 **ALJ BROUSSARD-BOYD:** Okay. Since we're not going to
5 go back and listen to the entire tape, are there any
6 specific instances? I'll overrule the objection.

7 **THE WITNESS:** Over the course of four years, yes,
8 there were little things that occurred that just
9 confirmed that I needed to do a better job of teaching
10 the -- or having someone teach or certainly in some way
11 making sure that Ari learned the CalFIRE culture.

12 **Q. (BY MR. CRANE):** Can you give any examples, any
13 specific examples?

14 **A.** I think earlier I spoke about a vehicle
15 accident report that took a little bit longer to get to
16 me and I still don't believe is resolved where the
17 report-- and it's -- might not --

18 **MS. KNOLES:** I'm going to object that you testified
19 that this took place after you made your decision, which
20 goes back to my I guess it's already been testified
21 about.

22 **ALJ BROUSSARD-BOYD:** Well, perhaps. Yeah. Okay.
23 So I think that he -- I do recall that testimony about
24 the accident, which occurred -- about the paperwork. The
25 accident occurred prior to January but --

1 **THE WITNESS:** I think so. It was.

2 **ALJ BROUSSARD-BOYD:** -- the paperwork was wrong
3 after January so, okay.

4 **Q. (BY MR. CRANE):** Any other instances you can
5 think of, Chief?

6 **A.** Well, just, you know, and I have had a lot
7 of -- I believe a lot of conversations with Chief Delay,
8 more conversations than I would typically have with other
9 battalion chiefs on management styles. And I guess one
10 in particular that we did talk about was his relationship
11 with Fire Captain Santos, and Fire Captain Santos there
12 was an incident on a fire one time and --

13 **MS. KNOLES:** Objection. Hearsay. Sorry.

14 **MR. CRANE:** It's not for the truth of the matter.
15 It's on the effect of -- on Chief Ferreira's mindset in
16 making the decision.

17 **MS. KNOLES:** But --

18 **ALJ BROUSSARD-BOYD:** But it does go to the truth of
19 the matter.

20 **MS. KNOLES:** -- it goes to the truth.

21 **ALJ BROUSSARD-BOYD:** It does go to the truth of
22 what --

23 **MS. KNOLES:** Whether or not --

24 **ALJ BROUSSARD-BOYD:** -- Mr. Santos or Chief Santos,
25 I'm sure he's a chief of some sort, Chief Santos said,

1 which I just want to ask a question because I want to
2 understand something. You're the unit chief?

3 **THE WITNESS:** Correct.

4 **ALJ BROUSSARD-BOYD:** And then below you is the
5 division chief?

6 **THE WITNESS:** Below me I have a deputy chief --

7 **ALJ BROUSSARD-BOYD:** The deputy chief.

8 **THE WITNESS:** -- which is Chief Jalbert.

9 **ALJ BROUSSARD-BOYD:** Okay. So deputy, then
10 division, and then battalion?

11 **THE WITNESS:** Then there's division chiefs, then
12 battalion chiefs.

13 **ALJ BROUSSARD-BOYD:** Any other kind of chiefs?

14 **THE WITNESS:** Not below me, no.

15 **ALJ BROUSSARD-BOYD:** Okay. So it goes deputy,
16 division, and battalion?

17 **THE WITNESS:** Yes.

18 **ALJ BROUSSARD-BOYD:** Okay.

19 **THE WITNESS:** And sometimes division chief is also
20 called assistant chief, and assistance chief I think is a
21 classification.

22 **ALJ BROUSSARD-BOYD:** So synonymous?

23 **THE WITNESS:** (Indiscernible).

24 **ALJ BROUSSARD-BOYD:** Okay. Perfect. Thanks. Okay.
25 So we'll move on from Mr. Santos -- Chief Santo's --

1 **MR. CRANE:** Okay.

2 **ALJ BROUSSARD-BOYD:** -- statements.

3 Q. **(BY MR. CRANE):** Okay. Except for what you've
4 already testified to, are there any firsthand
5 interactions that you had with Chief Delay that
6 influenced your decision to move him in 2012?

7 A. Not that I can think of right now.

8 Q. Okay. Did you speak with any CalFIRE battalion
9 two employees under the direct supervision of Mr. Delay
10 about Mr. Delay prior to making your decision to move him
11 in 2012?

12 A. Yes.

13 Q. Okay. Who did you speak to?

14 A. I probably spoke to every employee. Not about
15 moving Ari Delay, but about different topics. Every time
16 I'm at the fire station, they're all in battalion two, so
17 just general conversations; how are things going, how's
18 the transition going, and then checking their level of
19 stress as this continuing issue with the Coastside Fire
20 District determination of whether to start a standalone
21 fire department may or may not happen.

22 Q. Why did you talk to all these employees?

23 **MS. KNOLES:** Objection. Asked and answered.

24 **ALJ BROUSSARD-BOYD:** Overruled.

25 **THE WITNESS:** To gauge what problems I might

1 encounter because of moral.

2 Q. (BY MR. CRANE): When did you talk to the
3 battalion two employees about Chief Delay?

4 MS. KNOLES: Objection. Vague. He just testified
5 he didn't speak to them directly about Chief Delay. He
6 testified he spoke to them about the environment in
7 general.

8 ALJ BROUSSARD-BOYD: Okay. So the question
9 mischaracterizes his testimony. I'll sustain the
10 objection.

11 Q. (BY MR. CRANE): Were any of these
12 conversations about -- with the battalion two employees
13 prior to the time you made the decision to move Chief
14 Delay in 2012?

15 MS. KNOLES: Objection. I don't understand the
16 question.

17 ALJ BROUSSARD-BOYD: Okay. All right. I'll sustain
18 the objection. You can ask a better question I think.

19 Q. (BY MR. CRANE): Okay. You've testified that
20 you made the decision to move Chief Delay in January
21 2012, correct?

22 A. About then, yes.

23 Q. Did you have any conversations with any
24 battalion two employees prior to January 2012 that in any
25 way influenced your decision to move Chief Delay in 2012?

1 A. Yes.

2 Q. Okay. What was the substance of those
3 conversations as best you can recall?

4 **MS. KNOLES:** I would object to those as hearsay
5 (indiscernible) going to the truth of the statements made
6 by those people, which were relied on.

7 **ALJ BROUSSARD-BOYD:** I'm going to have to sustain
8 the objection. I mean understanding it's the unit chief,
9 but anything that he testifies here today is hearsay
10 unless you're going to be calling a corroborating
11 witness.

12 **MR. CRANE:** Well, I understand that, Your Honor.
13 But if whether or not -- If we're looking at whether
14 Chief Ferreira's intentions were good or were for
15 purposes of harassing or punishing, whether or not it's
16 true if he got information that he believed to be
17 accurate and got it in good faith, wouldn't it have an
18 effect on his mindset?

19 So I mean whether or not -- whether or not it's
20 hearsay or not, it has an effect on his decision. And if
21 he's received it in good faith and believes it to be
22 accurate and he acts on that decision in good faith,
23 doesn't that -- isn't that -- isn't that relevant
24 information because it goes into his decision-making
25 process?

1 **ALJ BROUSSARD-BOYD:** Well, I'm sure --

2 **MR. CRANE:** And is that the only reason we're here?

3 **ALJ BROUSSARD-BOYD:** I'm sure it goes into his
4 decision-making process. But, again, these people -- The
5 Appellant has a right to cross-examine. This is not a
6 disciplinary hearing, yet you want to introduce evidence
7 that the unit heard things about the battalion chief that
8 led him to transfer him because he needed more exposure
9 and interaction and mentoring and understanding.

10 But the Appellant has a right to cross-examine those
11 witnesses, so it is hearsay, and it goes to the truth.
12 And I don't know how else to resolve that issue for you
13 except I have to sustain the objection because --

14 **MR. CRANE:** I understand, Your Honor.

15 **ALJ BROUSSARD-BOYD:** -- there's no -- unless you
16 plan to corroborate it somehow.

17 **MR. CRANE:** Well, no. I guess what's troubling is
18 then are we going to say that Chief Ferreira's move was
19 only appropriate if everything he relied upon was
20 truthful and he tracked down every last detail. I mean
21 he acts on it in good faith and he hears -- he hears
22 things that are troubling to him or of concern to him.
23 Whether or not it's all accurate or part accurate,
24 doesn't that just go to his mindset?

25 **ALJ BROUSSARD-BOYD:** Okay. You know what --

1 **MR. CRANE:** I'll move on if you want, Your Honor.

2 **ALJ BROUSSARD-BOYD:** -- I think we should move on.

3 Yes, I think we should move on.

4 **MR. CRANE:** Okay.

5 **ALJ BROUSSARD-BOYD:** I'll sustain the objection.

6 **MR. CRANE:** All right.

7 **MS. KNOLES:** Thank you.

8 **Q. (BY MR. CRANE):** Are you familiar with the term
9 the CalFIRE Academy?

10 **A.** Yes.

11 **Q.** Okay. Where is the CalFIRE Academy?

12 **A.** It's CalFIRE's training facility in Ione,
13 California.

14 **Q.** Okay. Did Chief Delay attend CalFIRE Academy
15 classes prior to the time that you made the decision to
16 move him in 2012?

17 **A.** He attended classes at the academy, yes.

18 **Q.** Okay. Do you what classes he attended at the
19 CalFIRE Academy?

20 **A.** I think it's our supervision series,
21 supervision one -- I'm sorry, supervision three and four,
22 and I think one of them I taught or at least taught a
23 portion of that Chief Delay was at. I think that
24 supervision four.

25 He might or I'm pretty confident that he attended

1 the fire management series, fire management three, and
2 these were all requirements that when the Coastside
3 employees transitioned to the state that our joint
4 apprenticeship or (indiscernible), which is the
5 combination of management and labor reviewed the training
6 records of these employees and then made recommendations
7 as to what training that they needed to attend so that
8 they could perform in the classifications that they were
9 going to be transitioned to.

10 And there may have been other classes. I don't -- I
11 just know that typically a battalion chief goes to the
12 management -- the fire management classes or an upper
13 level and the same with the supervision three and four.

14 Q. All right. Did you communicate with any of the
15 academy staff that had acted as Chief Delay's instructors
16 prior to the time you made the decision in 2012 to move
17 Chief Delay?

18 **MS. KNOLES:** I'm going to object to the relevance of
19 these. First of all, I don't know when he attended these
20 fire classes based on the testimony, so it could have
21 been over a four-year period. There's no information as
22 to -- any information that comes out as to the knowledge
23 that Chief Delay obtained or lacked, would it be going to
24 the truth of his knowledge, and that would be stated by
25 witnesses who are not here.

1 **ALJ BROUSSARD-BOYD:** Okay. An offer of proof,
2 Mr. Crane, on the CalFIRE Academy attendance.

3 **MR. CRANE:** Well, Chief Ferreira was going to
4 testify that after Chief Delay had attended the academy
5 classes, he received reports from academy instructors
6 indicating that Chief Delay was at a disadvantage with
7 the other students due to his lack of knowledge of
8 CalFIRE policies and procedures. And that's one of the
9 factors that Chief Ferreira relied upon in making the
10 decision in April 2012 -- certainly in 2012 to move Chief
11 Delay. This is one more piece of the puzzle that Chief
12 Delay -- that Chief Ferreira heard that made him think
13 that Chief Delay needed to be moved to receive more
14 mentoring.

15 **MS. KNOLES:** I hear no offering of proof as to when
16 these classes took place. I've got no evidence that
17 these reports were written or not. If they were written
18 and you want to produce them, fine. The document --

19 **ALJ BROUSSARD-BOYD:** Okay.

20 **MS. KNOLES:** -- would speak for itself.

21 **ALJ BROUSSARD-BOYD:** First thing, why don't we --
22 Okay. So I'm going to sustain the objection. We need to
23 hear something more specific. CalFIRE Academy we've gone
24 back to 2008 at some point today, and we're talking about
25 a transfer that occurred in 2012. So when was -- when

1 was the attendance at CalFIRE? Are there written
2 documents or are we delving into more hearsay that the
3 Appellant will not be allowed to cross-examine any
4 witness on?

5 Q. (BY MR. CRANE): Chief, when -- Well, did you
6 receive reports from academy staff -- CalFIRE Academy
7 staff about Chief Delay's performance at academy classes?

8 MS. KNOLES: Relevance.

9 MR. CRANE: Well, I'm trying to --

10 ALJ BROUSSARD-BOYD: Well, when are we talking
11 about? Can we narrow it?

12 MR. CRANE: Well, I'm trying to ask. Well, okay.

13 MS. KNOLES: When did the classes --

14 ALJ BROUSSARD-BOYD: When did he go to class? When
15 did he go to class?

16 Q. (BY MR. CRANE): When did he go to class?

17 A. They're in 2009 and 2010 --

18 MS. KNOLES: I'm just going to object.

19 THE WITNESS: -- and perhaps 2011.

20 MS. KNOLES: I object that this witness is
21 testifying he thinks. He actually had no personal
22 knowledge, and it's a three-year window.

23 MR. CRANE: Well, he's testifying to the best of his
24 recollection. I mean we've -- There's been a lot of
25 dates that we've all heard today that aren't exactly

1 accurate. He's testifying to the best of his
2 recollection it was somewhere between 2009 and 2011.

3 **MS. KNOLES:** This witness didn't take the class. He
4 didn't teach the class. He (indiscernible).

5 **ALJ BROUSSARD-BOYD:** Well, he said he might have
6 taught one of the supervising courses.

7 **MS. KNOLES:** Sure. So let's talk about --

8 **ALJ BROUSSARD-BOYD:** Okay.

9 **MS. KNOLES:** -- that one.

10 **ALJ BROUSSARD-BOYD:** All right. So --

11 **Q. (BY MR. CRANE):** Did you -- Did you -- Did you
12 ever personally instruct Chief Delay at a CalFIRE Academy
13 class?

14 **A.** I was part of the instructional cadre for
15 supervision four I believe, which is the highest level of
16 supervision class that our battalion chiefs attend.

17 **Q.** And was Chief Delay one of your -- one of your
18 students?

19 **A.** Yes.

20 **Q.** Okay. How did -- In your estimation, how did
21 Chief Delay perform in that class.

22 **MS. KNOLES:** I would like to object again as to
23 time. This is overboard.

24 **ALJ BROUSSARD-BOYD:** Well, he did say around 2009 or
25 2010 and maybe 2011.

1 **MS. KNOLES:** Well --

2 **Q. (BY MR. CRANE):** Okay. Chief, do you know when
3 you taught this class?

4 **A.** I don't have his training record in front of
5 me.

6 **Q.** Okay. Can you give us your best estimation?

7 **A.** It should have been 2009 or '10.

8 **Q.** Okay.

9 **MS. KNOLES:** Okay.

10 **Q. (BY MR. CRANE):** Okay. A year to two years
11 before you made the decision to move Chief Delay?

12 **A.** Yes.

13 **Q.** Okay. What did you observe of Chief Delay's
14 performance at the academy class when you personally
15 taught him?

16 **A.** In my section of the class, it dealt with
17 dealing with change, and I did not do an assessment of
18 employees, but I did speak with the other instructional
19 cadre.

20 **Q.** And what did they tell you?

21 **MS. KNOLES:** Again, I'm going to object. This is
22 hearsay what they told him about Chief Delay's
23 performance.

24 **ALJ BROUSSARD-BOYD:** Sustained.

25 **MR. CRANE:** Okay.

1 **ALJ BROUSSARD-BOYD:** Sustained.

2 **Q. (BY MR. CRANE):** Why was Chief Delay the first
3 battalion chief moved from Coastside Fire District?

4 **A.** Because of seniority.

5 **ALJ BROUSSARD-BOYD:** Lack of or increased?

6 **THE WITNESS:** Lack of. I'm sorry.

7 **ALJ BROUSSARD-BOYD:** Okay.

8 **Q. (BY MR. CRANE):** Was any part of your reasoning
9 for moving Chief Delay disciplinary in nature?

10 **MS. KNOLES:** Objection. Never mind. Go ahead.

11 **THE WITNESS:** No.

12 **Q. (BY MR. CRANE):** Why do you say that?

13 **A.** Because there was nothing to discipline him on.
14 It was a training issue or learning issue.

15 **Q.** If you had wanted to discipline Chief Delay, do
16 you have the tools as the unit chief to do so?

17 **A.** Yes.

18 **MS. KNOLES:** Objection as to the phrase discipline,
19 formal, informal?

20 **ALJ BROUSSARD-BOYD:** Okay.

21 **MS. KNOLES:** (Indiscernible) CalFIRE did they --

22 **ALJ BROUSSARD-BOYD:** All right. Okay.

23 **MS. KNOLES:** -- want to take him out back and --

24 **ALJ BROUSSARD-BOYD:** Okay. Objection noted.

25 **MS. KNOLES:** -- (indiscernible) him?

1 **ALJ BROUSSARD-BOYD:** Okay. All right. And now it's
2 after five.

3 (Off the record.)

4 **ALJ BROUSSARD-BOYD:** Okay. We're back on the record
5 in the matter of Ari Delay and his involuntary geographic
6 transfer appeal. It's now about 5:30, and the parties
7 have decided to continue the matter. And we were in the
8 middle of direct examination of Unit Chief Ferreira, and
9 we have three days; September 24th, October 3rd --
10 October 3rd, and October 22nd. I'm reserving entire
11 days. Please talk to each other and decide what day
12 would be the best. Mr. Crane, you had something for the
13 record before we went off.

14 **MR. CRANE:** Oh, I just would request that closing
15 argument be in writing because I think this is an issue
16 that needs to be briefed.

17 **ALJ BROUSSARD-BOYD:** Okay. So written closing
18 arguments I think are a very good idea because of the
19 fine line between Government Code 19994.3 and Government
20 Code 19572. So that will extend this out, but please
21 tomorrow let Victoria know and talk to each other what
22 day is acceptable, and I'll send out a hearing notice,
23 okay?

24 **MS. KNOLES:** Thank you.

25 **ALJ BROUSSARD-BOYD:** Anything else for the record?

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MR. CRANE: No. Thank you, Your Honor.

ALJ BROUSSARD-BOYD: All right. We'll go off the record --

MR. CRANE: Thank you for your time.

ALJ BROUSSARD-BOYD: -- and we'll reconvene.

MS. KNOLES: Can I get my --

(Proceedings concluded.)

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CERTIFICATE OF TRANSCRIBER

I, Tamyra Morgan, as the Transcriber, hereby
certify that the attached proceedings before
Administrative Law Judge Karla Broussard-Boyd, Department
of Human Resources,

In the Matter of the Appeal by)
ARI DELAY,) Case No. 12-D-0163
Battalion Chief)
Appeal of Involuntary Geographic)
Transfer)

were held as herein appears and that this is the original
transcript thereof, and that the statements that appear
in this transcript were transcribed by me to the best of
my ability.

I further certify that this transcript is a true,
complete, and accurate record of one CD provided in the
above-entitled proceeding. Vine, McKinnon & Hall
received the audio recordings on November 15, 2012.

Dated this 20th day of November, 2012, at West
Sacramento, California.

Tamyra Morgan

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Vine, McKinnon & Hall
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BEFORE THE STATE OF CALIFORNIA
DEPARTMENT OF HUMAN RESOURCES

In the Matter of the Appeal by)
ARI DELAY,)
Battalion Chief) Case No. 12-D-0163
Appeal of Involuntary Geographic)
Transfer)

October 22, 2012

KARLA BROUSSARD-BOYD
Administrative Law Judge

Sacramento, California

ORIGINAL

Transcribed by: Tamyra Morgan

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3 **ALJ BROUSSARD-BOYD:** Good morning. This is the time
4 and place for the continuation of Mr. -- Battalion Chief
5 Ari Delay's Geographic Transfer Appeal. My name is Karla
6 Broussard-Boyd. We're here in Sacramento, California.
7 It's about five minutes after ten o'clock on October
8 22nd, 2012.

9 And would you state your appearances for the record
10 starting with Ms. Knoles, please?

11 **MS. KNOLES:** Good morning. Emily Knoles on behalf
12 Appellant, Ari Delay.

13 **MR. DELAY:** Ari Delay.

14 **ALJ BROUSSARD-BOYD:** Okay.

15 **MR. CRANE:** Bruce Crane, Senior Staff Counsel,
16 CalFIRE.

17 **MS. LUSICH:** Sandra Lusich, CalHR, here on behalf of
18 CalFIRE.

19 **ALJ BROUSSARD-BOYD:** Okay. Thank you. Now before
20 we begin, are there any preliminary matters? I know when
21 we were off the record, a motion was made by Ms. Knoles
22 to excuse any witnesses and -- or exclude any witnesses
23 from the hearing room. And Chief -- Is he a Chief, Chief
24 Brunton?

25 **MR. CRANE:** Yes, Chief Brunton, B-R-U-N --

1 **ALJ BROUSSARD-BOYD:** Chief Brunton was -- is excused
2 and there are no other individuals here that are going to
3 testify except for Chief Ferreira, who we'll get to in
4 short order.

5 Any other preliminary matters?

6 **MS. KNOLES:** I did want to raise if I can get an
7 offer of proof as to what Chief Brunton is supposed to
8 testify about.

9 **ALJ BROUSSARD-BOYD:** Okay. So, Chief Brunton is the
10 individual who has been asked to leave the room, and he
11 is going to conceivably testify here today. And what is
12 the offer of proof from Respondent on Chief Brunton?

13 **MR. CRANE:** Your Honor, Chief Brunton is a 15-year
14 CalFIRE battalion chief. He came over to CalFIRE from a
15 Cameron Park Fire Department similar to the process by
16 which Mr. Delay came over. So he -- he will testify as
17 to what a battalion chief does for CalFIRE, why it's
18 important for him to have a thorough working knowledge of
19 CalFIRE policies, procedures, and practices.

20 He's going to testify about, you know, the process
21 of coming over from a separate fire district to CalFIRE
22 and having to get up to speed as to CalFIRE policies,
23 practices, procedures. He's going to testify as to
24 teaching Mr. Delay classes at the CalFIRE Academy in
25 supervision and the fact that he noted that Mr. Delay

1 seemed not to have a thorough grasp of CalFIRE policies,
2 practices, and procedures and that he passed that
3 information along to Chief Ferreira.

4 He's going to talk about, you know, the transition
5 from an outside fire district to CalFIRE. He's going to
6 testify as to the policies and practices of moving
7 battalion chiefs in CalFIRE for career development.

8 **ALJ BROUSSARD-BOYD:** Okay. Now -- Okay.

9 **MS. KNOLES:** (Indiscernible).

10 **ALJ BROUSSARD-BOYD:** I just want to, have we heard
11 the name Brunton before in the whole day of testimony we
12 had?

13 **MS. KNOLES:** No.

14 **ALJ BROUSSARD-BOYD:** The name seems new to me and I
15 don't see it in my notes.

16 **MR. CRANE:** I don't believe that we did. I don't
17 believe he was brought up --

18 **ALJ BROUSSARD-BOYD:** Okay.

19 **MR. CRANE:** -- Your Honor.

20 **ALJ BROUSSARD-BOYD:** Well, you mentioned procedures,
21 practices, and processes quite a few times. So I guess
22 what you're saying is Chief Brunton is similarly situated
23 as the Appellant, Chief Delay, is --

24 **MR. CRANE:** Yes.

25 **ALJ BROUSSARD-BOYD:** -- and could testify as to how

1 CalFIRE brings people up to speed. I guess that's
2 another moniker for immersion.

3 **MR. CRANE:** Yes.

4 **ALJ BROUSSARD-BOYD:** Okay. Anything that you wish
5 to add before I --

6 **MS. KNOLES:** I take --

7 **ALJ BROUSSARD-BOYD:** -- rule on the --

8 **MS. KNOLES:** Yeah. I take some issue with the scope
9 of his testimony. Having coming over from a different --
10 I think we're basically asking for a separate kind of
11 mini trial here as to how Mr. Delay or Coastside, I
12 should say, Fire was brought in.

13 I mean he's going to have to establish that
14 Coastside was brought in a similar manner. I don't think
15 that he can do that before his testimony about his
16 experience transitioning in has any relevance. He's
17 going to have to testify about all the training that they
18 did for Coastside. I don't know that he has that
19 experience or knowledge. I don't think that his parallel
20 experience is directly applicable to Mr. Delay in any
21 way.

22 And to the extent that they were under the
23 supervision of Chief Ferreira the whole time, presumably
24 Chief Ferreira can testify as to what is -- which he
25 already has at length, what is expected of battalion

1 chiefs moving in and the training and the things. I mean
2 we have covered that with Chief Ferreira, and Chief
3 Ferreira is knowledgeable about that. It sounds to me
4 like a lot of repeated testimony.

5 To the extent -- I mean anything other than his
6 personal experience with Mr. Delay is just circumstantial
7 and could be prejudicial in that it assumes information
8 about Mr. Delay's experience without actually providing
9 any relevant information about it. Aside from what I
10 hear that he taught Mr. Delay on occasion, you know, I
11 know that there was some contradicting testimony from
12 Chief Ferreira before and there was the issue of hearsay.
13 My understanding that this individual may be one of those
14 hearsay individuals, and to that extent, sure, for that
15 limited purpose.

16 But beyond that, beyond his personal experience with
17 Mr. Delay, anything else to say either Chief Delay or,
18 I'm sorry, Chief Ferreira has testified about or Chief
19 Cole, who was in Mr. Delay's battalion, his supervisor in
20 Coastside coming into the transition provided testimony
21 about, I have some hesitation beyond the limited scope of
22 his personal experience with Mr. Delay.

23 **MR. CRANE:** Your Honor, I also --

24 **ALJ BROUSSARD-BOYD:** Okay.

25 **MR. CRANE:** -- I also forgot one thing.

1 **ALJ BROUSSARD-BOYD:** Okay.

2 **MR. CRANE:** Chief Brunton was -- also spent six
3 months in Chief -- He's from Amador/El Dorado Unit. He
4 spent six months in Chief Ferreira's unit easing -- as
5 working on the transition of bringing Coastside in, so he
6 was, because of his experience working -- having come
7 over from an outside district, he was actually assigned
8 special duty to work with Chief Ferreira and help bring
9 the Coastside folks on.

10 He reviewed the training records of all Coastside
11 employees, made training recommendations for each of
12 them, and was intimately involved in the transition
13 process. So he can speak to what he felt the Coastside
14 employees needed in order to become fully conversed and
15 fully functional CalFIRE battalion chiefs.

16 **ALJ BROUSSARD-BOYD:** Okay. Well, you know, I think
17 I have to agree with Ms. Knoles that his testimony would
18 be, first of all, cumulative and his personal experience
19 in transferring or how he was brought over from a smaller
20 agency to CalFIRE, the largest fire suppression
21 department in the state. Unless he's just here, I think
22 I can call -- have him called as a witness for the
23 limited scope of his direct personal interaction with
24 Battalion Chief Delay and how he communicated same to
25 Chief Ferreira to overcome any hearsay objections that

1 are already on the record so, in other words, not
2 cumulative.

3 I know we heard from I think, was it, Chief Jalbert,
4 and we heard from Chief Delay and we've heard from Chief
5 Ferreira, who made the decision, so it's really that
6 testimony that is pivotal. But to the extent that, you
7 know, I'll allow Chief Brunton to testify not about
8 procedures, and practices, and policies and what he felt
9 is the right way.

10 I really -- What Chief Brunton feels is not really
11 relevant to my decision-making process in terms of an
12 involuntary geographic transfer, so I'm going to allow
13 the limited scope.

14 **MR. CRANE:** Well, Your Honor, I mean and I
15 understand your ruling, but, you know, we are entitled to
16 due process. I'm not trying to bring in any witnesses
17 that won't be -- that won't be helpful. And, you know,
18 like I considered a lot of people to testify, but this
19 was the one person I thought would give -- give you a
20 better understanding because, when I looked at the
21 record, it doesn't seem like it's really come out what a
22 CalFIRE battalion chief does and the fact that they're
23 not limited to one geographic area.

24 That they literally would go anywhere in the state,
25 and I think that Chief Brunton is going to be an

1 important bridge between what Chief Ferreira was trying
2 to accomplish in terms of training Mr. Delay and why
3 that's important, a context for that, because I don't see
4 when I looked at the record that there's been a lot of
5 discussion about the rather wide-ranging duties of the
6 battalion chief.

7 **ALJ BROUSSARD-BOYD:** Okay.

8 **MR. CRANE:** And so I was hoping that this would be
9 helpful to you, and that was my goal.

10 **ALJ BROUSSARD-BOYD:** Well, and I appreciate that.
11 But I think the wide-ranging duties of a battalion chief
12 I think I understand. I do understand. I heard -- We
13 heard quite a bit from I know I remember Chief Jalbert
14 and, of course, the Appellant, Chief Delay, and there was
15 another gentleman here that I have in my notes who
16 testified.

17 I mean I understand pretty much what they do and
18 that there are different ones that do different things,
19 whether they're at headquarters, or whether they're over
20 in Half Moon Bay, or at another satellite, that kind of
21 thing, so I don't need to hear any more cumulative
22 testimony.

23 **MR. CRANE:** But we --

24 **ALJ BROUSSARD-BOYD:** We've spent enough time on
25 that.

1 **MS. KNOLES:** I don't --

2 **ALJ BROUSSARD-BOYD:** So but as far as that you
3 believe that your client is due due process, the
4 individual who is due due process is Battalion Chief
5 Delay.

6 **MR. CRANE:** I understand, Your Honor.

7 **ALJ BROUSSARD-BOYD:** Okay.

8 **MR. CRANE:** But -- But --

9 **ALJ BROUSSARD-BOYD:** So, and at a minimum, that's
10 notice and opportunity to be heard, and that's what he's
11 here for today. So, and as you have so clearly told me
12 that irrespective, you know, if your client does not
13 prevail in this matter that you're planning on taking it
14 up on a writ, then that would be the time to maybe add
15 more cumulative information.

16 But it has to -- To be relevant, it has to be at
17 issue, and what battalion chiefs do I've already taken
18 official notice of the State Personnel Board
19 specification of what they do, and I've heard what I
20 would consider exhaustive testimony as to what they do.

21 **MR. CRANE:** And, Your Honor, but that came from an
22 (indiscernible) aspect and that came from their
23 witnesses. I'd like to put on our -- one of my -- just
24 one of my witnesses to talk about it because I -- when
25 I -- when I looked at the record, when I looked at my

1 notes, I don't think it was fully brought out that where
2 they go, the things that they do, the incredible
3 responsibilities that we give them, and I don't see that
4 in the record because I worked for CalFIRE myself. I
5 know what a battalion chief does, and I've worked for
6 CalFIRE for 12 years now. I don't see that it's clearly
7 in the record. And I understand that, you know, that we
8 will, you know, that this is going to be an appeal
9 process, but I'd like to have as thorough and complete a
10 record at this level as I can, so --

11 **MS. KNOLES:** May I?

12 **MR. CRANE:** -- I'm begging your indulgence --

13 **MS. KNOLES:** May I (indiscernible) briefly?

14 **MR. CRANE:** -- to let me put Chief Brunton on.

15 **MS. KNOLES:** Just briefly, Your Honor?

16 **ALJ BROUSSARD-BOYD:** Yes, Ms. Knoles.

17 **MS. KNOLES:** All of Mr. Delay's witnesses are
18 actually CalFIRE employees who trained Mr. Delay, who
19 have been assigned to train Mr. Delay, who work on behalf
20 of the state. Additionally, again, I'm at a loss why
21 Chief Ferreira's testimony would not be of use to the
22 extent the record is not clear. And again, this notion
23 that this gentleman is going to clarify the decision
24 making of an individual who's testified that he made his
25 decisions on his own I'm at a loss for.

1 **ALJ BROUSSARD-BOYD:** Okay. I'm just going to for
2 the record clarify what my scope of my jurisdiction is.
3 And that is under Government Code 19994.1(a) and it says
4 that, "When a transfer under this section reasonably
5 requires an employee to change his or her place of
6 residence, the appointing power shall give the employee,
7 unless the employee waives this right, a written notice
8 of transfer 60 days in advance of the effective date of
9 the transfer." Now that's the first sentence. I don't
10 see how Chief Brunton would assist me in resolving that
11 element that I need to.

12 The second part of it the statute says, "Unless the
13 employee waives the right to have something in writing,
14 the appointing power shall provide to the employee 60
15 days prior to the effective date of the transfer a
16 written notice setting forth in clear and concise
17 language the reason why the employee is being
18 transferred." Now, again, I do not see how Chief
19 Brunton's testimony would be relevant because it's not an
20 element or issue before me.

21 Next, if he was transferred unlawfully under
22 Government Code Section 19994.3, that's the statute that,
23 "Prohibits transfers made for the purpose of harassing or
24 disciplining the employee." Again, I do not see -- I'm
25 not going to read the entire statute on that one, but I

1 do not see how Chief Brunton is going to assist me, the
2 trier of fact.

3 So, again, I am willing to allow Chief Brunton and I
4 don't want a circus in here, but I'm willing to allow
5 Chief Brunton to testify on the limited scope of his
6 direct personal knowledge of Battalion Chief Delay and
7 what he told Chief Ferreira, which Chief Ferreira relied
8 on in his decision to transfer the Appellant. So if --
9 And I want that clear because we'll go off the record
10 because I don't want this objection, objection,
11 objection, objection after I've already given a clear
12 instruction about the limited scope. I mean it's
13 something, Mr. Crane.

14 **MR. CRANE:** I appreciate it, Your Honor.

15 **ALJ BROUSSARD-BOYD:** And it's something that will
16 assist me, the trier of fact.

17 **MR. CRANE:** Right.

18 **ALJ BROUSSARD-BOYD:** Because if Mr. Brunton, whose
19 name I have not heard -- Chief Brunton, who I have not
20 heard until today. I didn't hear him in the hierarchy of
21 Chief Ferreira, Cole, Jalbert, etcetera, and this is the
22 first time I've heard his name. But to the extent that
23 he had personal experience with the Appellant and that
24 personal experience was communicated to the decision
25 maker, certainly I think there's a lot of information

1 that would assist me in my decision, okay?

2 **MR. CRANE:** Well, again, thank you, Your Honor. But
3 I guess and, you know, and then I understand your
4 decision, but I just wanted to point out one thing. My
5 point in bringing in some rather detailed information
6 about what a battalion chief does was to explain a
7 context for Chief Ferreira's training program and why it
8 was meant to prepare Mr. Delay to be a fully functional,
9 interchangeable CalFIRE battalion chief.

10 And I believe that his testimony, which was having
11 been a battalion chief for 15 years, gave a context to
12 what Chief Ferreira's trying to do, what the PO 199 and
13 the 17 items that Mr. Delay was supposed to do, why we
14 were doing it and why it wasn't for the purpose of
15 harassment or discipline, and why it was to make him --
16 to give to Chief Delay the ability to perform his duties
17 anywhere in the state fighting any kind of emergency.

18 **ALJ BROUSSARD-BOYD:** Okay.

19 **MR. CRANE:** And that is my goal.

20 **ALJ BROUSSARD-BOYD:** Okay. But you're saying two
21 different things. First, you're saying you want me to
22 understand Chief Ferreira's training model to get a
23 battalion chief up to speed, if you will, as you used
24 that term before. Then you're -- Well, the best person
25 to do that is Chief Ferreira to explain his training

1 model, and you've already started direct exam of Chief
2 Ferreira and you can --

3 **MR. CRANE:** Okay.

4 **ALJ BROUSSARD-BOYD:** -- you're going to be
5 continuing that today. And so --

6 **MR. CRANE:** All right, Your Honor.

7 **ALJ BROUSSARD-BOYD:** -- if -- So I think that for
8 that limited scope, I'd like to hear from Chief Brunton
9 to see what he witnessed and what he communicated to
10 Chief Ferreira.

11 **MR. CRANE:** All right. I understand. Thank you.

12 **ALJ BROUSSARD-BOYD:** So, all right.

13 **MS. KNOLES:** Thank you --

14 **ALJ BROUSSARD-BOYD:** Great.

15 **MS. KNOLES:** -- Your Honor.

16 **ALJ BROUSSARD-BOYD:** Okay. So, Chief Ferreira,
17 please come forward and be sworn, and we're in -- we're
18 going to continue the direct examination of Chief
19 Ferreira. And we have a lot of foundation issues already
20 on the record. Sir, if you'd raise your right hand.

21 (Whereupon, the witness was duly sworn.)

22 **THE WITNESS:** Yes, I do.

23 **ALJ BROUSSARD-BOYD:** Please state your name for the
24 record.

25 **THE WITNESS:** John Ferreira.

1 **ALJ BROUSSARD-BOYD:** Okay. Thank you. Your
2 witness, Mr. Crane.

3 **MR. CRANE:** Thank you, Your Honor.

4 Testimony of
5 JOHN FERREIRA

6 having been duly sworn, testified as follows:

7 RESUMED DIRECT EXAMINATION BY MR. CRANE

8 Q. **(BY MR. CRANE):** Chief Ferreira, have you ever
9 heard the term all risk agency applied to CalFIRE?

10 A. Yes.

11 Q. Okay. What does that term mean?

12 A. As far as all risk in the fire service, it
13 means that the agency has the ability to fight any type
14 of emergency and to assist other agencies in the way they
15 handle emergencies such as earthquakes, hazardous
16 material spills, Exotic Newcastle Disease, and other
17 agencies within the state who may not have an expertise
18 or a system for managing those incidents. And when we
19 say that CalFIRE is all risk, we mean that it can do
20 everything.

21 Q. And you've listed some things. What else are
22 some things that CalFIRE does? You've listed Newcastle
23 Disease, earthquakes. Does CalFIRE respond to
24 earthquakes?

25 A. Yes.

1 Q. Can you (indiscernible)?

2 A. (Indiscernible) real quick, yeah. Well, this
3 month there hasn't been an earthquake, but in general,
4 it's those emergency incidents that occur in a geographic
5 area that are certainly beyond the scope or skills or
6 abilities of the local agency like the Oakland Fire
7 Department, for example.

8 Loma Prieta Earthquake, we sent in a team to assist
9 what they called the Cypress structure collapse, which
10 was the double-deck freeway. Loma Prieta earthquake we
11 had a command team go into Santa Cruz County and help
12 them manage the incident.

13 I'm mean certainly we're not experts in doing
14 earthquake repair, but we know how to manage incidents.
15 And it's very common in the state that we're called in to
16 other agencies to help them manage that type of an
17 incident.

18 Q. On a large emergency incident such as wildland
19 fire or (indiscernible) responsible, are all the
20 emergency responders be -- from CalFIRE be from the same
21 unit?

22 A. No.

23 Q. Okay. Typically, where will the CalFIRE
24 responders on a large emergency incident be from?

25 A. They can come from throughout the state.

1 Typically, you bring in people from an area that's not
2 affected by the incident so that you can give relief to
3 the people that are local, and plus you just don't have
4 the number of people locally to handle an incident. And
5 we also bring in some people from local agencies to do
6 some other -- to assist with the management of the
7 incident.

8 Q. Okay. So let's say you've got a large wildland
9 fire in Tulare unit, where else might you have CalFIRE
10 respond -- CalFIRE resources from fighting that fire?

11 **MS. KNOLES:** Your Honor?

12 **ALJ BROUSSARD-BOYD:** Okay. Hold on, Chief Ferreira.
13 You have an objection?

14 **MS. KNOLES:** I want to object to the relevancy of
15 this line of questioning. I don't see where this is
16 going, and we've gone through three or four questions
17 now. And I have no context as to how this is applicable
18 to Mr. Delay's involuntary transfer.

19 **ALJ BROUSSARD-BOYD:** Could you add some context,
20 please, Mr. Crane?

21 **MR. CRANE:** Yes, Your Honor. The PO 199 for
22 Mr. Delay asked him to do 17 things and to try to get an
23 overall understanding of various CalFIRE from training to
24 law enforcement to camps to personnel, and to try to get
25 him as much knowledge about the various things that

1 CalFIRE as possible. The reason I'm asking these
2 questions is he will be called upon as a CalFIRE
3 battalion chief in Coastside to go to Lassen/Modoc and
4 respond to an earthquake.

5 He will called upon to go to San Diego for an
6 airplane crash. And so I'm trying to -- trying to give a
7 context as to what CalFIRE does, that we literally go all
8 over the state, and actually we go outside the state, and
9 we've actually gone to Mexico on incidents.

10 **MS. KNOLES:** At this point, he's testifying.

11 **MR. CRANE:** And so what I'm trying to explain is the
12 reasoning -- there's a reason why Chief Ferreira is
13 trying to give him this information. It's job related.
14 It has nothing to do with discipline. He's trying to
15 give him this information so he can go anywhere in the
16 state and perform any kind of function.

17 **ALJ BROUSSARD-BOYD:** Okay.

18 **MR. CRANE:** And I don't know if that's really come
19 out.

20 **ALJ BROUSSARD-BOYD:** Okay. I think it has come out,
21 and I'm going to sustain the objection of Ms. Knoles.
22 I've heard what battalion chiefs do. I've heard that
23 they do different things. If Chief Ferreira wasn't to
24 specifically testify and tell me what was lacking, that's
25 one thing. But to explain a plethora of, oh, you know,

1 in 1989, we assisted when the bridge collapsed in East
2 Bay that is such ancient history.

3 I don't know what Chief Delay was doing then, but
4 I'd like to hear something specific to Battalion Chief
5 Delay. So without specifics, it is over -- it's not
6 overkill. I don't want to say that, but it's just
7 cumulative. I understood that they do a lot of things,
8 but I will tell you that what it is -- what Chief
9 Ferreira's testimony right now is serving to do is
10 serving to show that maybe Battalion Chief Delay should
11 have been trained 36 months earlier and not just when it
12 was convenient to the Respondent.

13 So showing me that, oh, he wasn't trained in this,
14 and he wasn't trained in that, that's what you're saying.
15 He didn't know this. He didn't know all risk. He
16 didn't -- He couldn't do everything. Well, that's an
17 argument for a different day because, again, it's just
18 showing me that maybe Chief Ferreira didn't train
19 Battalion Delay earlier. That's not really helping your
20 case.

21 **MS. KNOLES:** And I would like to add that there was
22 previous testimony that, in fact, it was Chief Jalbert
23 that created that list of 17 things, so Chief Ferreira's
24 testimony --

25 **ALJ BROUSSARD-BOYD:** Has no personal knowledge.

1 **MS. KNOLES:** -- has no personal knowledge about why
2 those 17 things are on that list.

3 **ALJ BROUSSARD-BOYD:** Well, he knows there's an
4 overall understanding of CalFIRE.

5 **MS. KNOLES:** Sure. And you know I think every
6 battalion chief in CalFIRE should have that
7 understanding.

8 **ALJ BROUSSARD-BOYD:** Right. So, I mean, I'm going
9 to sustain the objection on that basis. We've had enough
10 foundational, which is what I tried to say earlier when
11 we recalled Chief Ferreira to the stand is that I've had
12 enough foundational information. So if there's something
13 specific --

14 **MR. CRANE:** All right, Your Honor.

15 **ALJ BROUSSARD-BOYD:** -- particularly what Chief
16 Ferreira relied upon and personal knowledge of Battalion
17 Chief Delay.

18 **MR. CRANE:** All right. I'm going to step out and
19 use the restroom for a sec. Excuse me.

20 **ALJ BROUSSARD-BOYD:** Okay. We'll go off the record.
21 (Off the record.)

22 **ALJ BROUSSARD-BOYD:** We're back on the record after
23 a short break. And before we go any further, can I have
24 the names of the individuals here in the room?

25 **MS. RAMIREZ:** Tina Ramirez. I'm with CalFIRE. I

1 was (indiscernible) labor relations hearing
2 (indiscernible) Chief (indiscernible).

3 **ALJ BROUSSARD-BOYD:** Okay. Thank you. And?

4 **MR. HOLMES:** I'm Bill Holmes, Region Chief.

5 **ALJ BROUSSARD-BOYD:** You're a division chief?

6 **MR. HOLMES:** Region chief.

7 **ALJ BROUSSARD-BOYD:** Oh, region chief.

8 **MR. HOLMES:** Yeah, in Northern California.

9 **ALJ BROUSSARD-BOYD:** And that's Bill Holmes?

10 **MR. HOLMES:** Yeah.

11 **ALJ BROUSSARD-BOYD:** Okay. Thank you. All right.

12 You were going to continue with the direct examination of
13 Chief Ferreira.

14 **MR. CRANE:** Okay. Chief, I'm going to show you
15 document. It's from the Bargaining Unit 8 MOU. Your
16 Honor, I would ask you to take judicial notice of the
17 Bargaining Unit 8 MOU.

18 **ALJ BROUSSARD-BOYD:** Okay.

19 **MR. CRANE:** And this is a section from it.

20 **ALJ BROUSSARD-BOYD:** We don't have this MOU yet it
21 looks like, no. All right. And this is for what
22 purpose? For which number?

23 **MR. CRANE:** 4.1

24 **ALJ BROUSSARD-BOYD:** 4.1. Okay. Any objection to
25 my taking official notice of this Bargaining Unit 8

1 Section 4.1, Ms. Knoles?

2 **MS. KNOLES:** Not yet. I know.

3 **ALJ BROUSSARD-BOYD:** Well, all right. I'll make
4 this official notice three then. You may proceed.

5 Q. **(BY MR. CRANE):** Chief Ferreira, do you
6 recognize this document?

7 A. Yes, I do.

8 Q. Okay. What is it?

9 A. This is Article 4.1 of the current CDF
10 Firefighters Bargaining Unit 8 MOU, and this section is
11 specific to the employer's rights.

12 Q. Do you have an understanding as to why this
13 4.1.1 is in the MOU?

14 **MS. KNOLES:** Objection.

15 **THE WITNESS:** Yes.

16 **MS. KNOLES:** It's just a (indiscernible).

17 **ALJ BROUSSARD-BOYD:** What was the question? Does he
18 have any idea?

19 **MR. CRANE:** Do you have an understanding as to --

20 **ALJ BROUSSARD-BOYD:** Understanding.

21 **MR. CRANE:** -- why this is in the MOU?

22 **MS. KNOLES:** Unless he created the MOU, I don't
23 think he can speak to the --

24 **ALJ BROUSSARD-BOYD:** Well, I'm going to overrule the
25 objection. If Chief Ferreira has an understanding as to

1 why 4.1 is in the memorandum of understanding, I'll allow
2 it.

3 **MR. CRANE:** I can even rephrase the question.

4 **ALJ BROUSSARD-BOYD:** Okay.

5 Q. **(BY MR. CRANE):** Chief Ferreira, do you have an
6 understanding as to how CalFIRE uses Section 4.1.1 in its
7 running of the agency?

8 A. Yes.

9 Q. What is that understanding?

10 A. Well, these are all the rights that the
11 employer has to do specific things particularly useful at
12 the unit level I believe because it allows us flexibility
13 to assure that we have the right number of people in the
14 right positions doing the right jobs.

15 And when you look at the list of things here where
16 it allows management the right to change work schedules
17 and assignments and locations of facility and to hire and
18 transfer people or promote or demote employees, I think
19 that's all part of granting to the unit chief the ability
20 to, again, make sure that the right number of people and
21 the right persons are doing the jobs that they are
22 required to do.

23 Q. Okay. Do you have an understanding as to why
24 CalFIRE feels it needs to have flexibility as to its
25 employees?

1 **MS. KNOLES:** Objection. Overbroad.

2 **MR. CRANE:** Okay.

3 **ALJ BROUSSARD-BOYD:** He's going to rephrase, so I'll
4 sustain --

5 **MR. CRANE:** I'll come up with --

6 **ALJ BROUSSARD-BOYD:** -- the objection.

7 **MR. CRANE:** -- another question.

8 **ALJ BROUSSARD-BOYD:** Okay.

9 Q. **(BY MR. CRANE):** Why do you as a unit chief in
10 CalFIRE or do you as a unit chief in CalFIRE feel the
11 need to have flexibility as to where you assign your
12 employees?

13 A. Yes.

14 Q. Why is that?

15 A. Well, again, just that local level, and in
16 particular case in San Mateo and Santa Cruz Counties, I
17 have to make sure that -- that all of our employees are
18 capable of fully functioning in a lot of cases without
19 direction because of the changeable nature of our
20 business.

21 With the emergency services, you never have
22 obviously a set date when an emergency is going to occur.
23 What you have to do then to allow for that is to make
24 sure that every employee is capable of fully functioning
25 in their classification.

1 Q. And how -- how do you as a unit chief implement
2 your rights under 4.1.1?

3 A. Well, in working with my division chiefs and
4 deputy chief, we constantly review the activities of our
5 subordinates. In the case of the division chief, that
6 would be the battalion chiefs, and how things are
7 performing, and issues that come up during staff meetings
8 and things like that. And then we take that information,
9 and if we have to make adjustments to assignments, we do
10 that.

11 Q. Okay. All right. Chief, how do you -- does
12 the MOU also define discipline?

13 **MS. KNOLES:** Objection. This document itself does
14 not define -- If the document defines discipline, the
15 best evidence of that would be the document itself.

16 **MR. CRANE:** Okay.

17 **ALJ BROUSSARD-BOYD:** Okay. So you want to make a
18 statement as to the objection? She's objected because it
19 doesn't speak to that issue, this document here. Do you
20 have another document?

21 **MR. CRANE:** Your Honor, yes, I do.

22 **ALJ BROUSSARD-BOYD:** Okay. I'll sustain the
23 objection. You have another document. Is this something
24 (indiscernible) --

25 **MR. CRANE:** This is also another --

1 **ALJ BROUSSARD-BOYD:** -- official notice?
2 **MR. CRANE:** -- section of the -- Yes --
3 **ALJ BROUSSARD-BOYD:** Okay.
4 **MR. CRANE:** -- because it's also in the MOU.
5 **ALJ BROUSSARD-BOYD:** All right. We'll mark as
6 official notice four. What -- Okay.
7 **MR. CRANE:** Actually, this --
8 **ALJ BROUSSARD-BOYD:** And which section?
9 **MR. CRANE:** I think the MOU would be five, correct?
10 **MS. KNOLES:** No. She's talking about official
11 notice. Sorry.
12 **ALJ BROUSSARD-BOYD:** No. Official notice.
13 **MR. CRANE:** Okay.
14 **ALJ BROUSSARD-BOYD:** I'm taking official notice as I
15 did with the other one, and you're talking about Article
16 19?
17 **MR. CRANE:** Yes, 19.1.
18 **ALJ BROUSSARD-BOYD:** Article --
19 **MR. CRANE:** Well, yeah, just 19.1 generally.
20 **ALJ BROUSSARD-BOYD:** -- 19.1 has two provisions, 1.1
21 and 1.2. Is that what you want me to take --
22 **MR. CRANE:** Well, yes. Actually, there's -- Yes,
23 19.2. Thank you. Well, probably 19.1 and .2 because
24 they probably go together.
25 **ALJ BROUSSARD-BOYD:** Okay. This is defining

1 discipline and defining adverse actions and major and
2 minor discipline. Does it say anything about transfers?

3 **MS. KNOLES:** It does not.

4 **MR. CRANE:** It does not. It defines discipline.

5 And my questions for Chief Ferreira will be what
6 definition of discipline does he use as a unit chief.

7 **ALJ BROUSSARD-BOYD:** What definition does he use as
8 a unit chief?

9 **MR. CRANE:** Yes, of discipline.

10 **ALJ BROUSSARD-BOYD:** Okay. Well, that's prescribed
11 by statute by the State Personnel Board, so while I can
12 take official notice of this, I don't see its relevance.
13 Do you have an offer of proof as to why -- what the MOU
14 says about discipline is relevant? How will it help the
15 trier of fact?

16 **MR. CRANE:** Well, Your Honor, that Chief Ferreira
17 follows the MOU definition of discipline, and that's what
18 he uses to impose discipline on employees and that he
19 doesn't transfer employees for purposes of discipline.

20 **MS. KNOLES:** Your Honor, I'm going to object that
21 while that's a very nice broad statement, what's at issue
22 here is how Chief Ferreira handled the transfer of Ari
23 Delay.

24 **ALJ BROUSSARD-BOYD:** Okay. You know I -- I've
25 marked it as official notice for -- The document is

1 before the witness. Could I have those please to mark
2 them? And I'm going to allow limited questioning on it
3 as to what he uses for discipline, and it's official
4 notice four, and it's before the witness. So I'll
5 sustain the objection to the extent that it is overbroad.
6 So what does Chief Ferreira use, that kind of thing if
7 you can keep it specific?

8 **MR. CRANE:** I just have a couple questions.

9 Q. **(BY MR. CRANE):** Chief, would you look at
10 section 19.2.2.1.1? Are you familiar with that
11 provision?

12 A. Yes.

13 Q. Okay. What definition or is that the
14 definition of discipline that you use as a unit chief?

15 A. Yes.

16 Q. Okay. Have you ever transferred anyone for
17 disciplinary purposes?

18 A. No.

19 **MS. KNOLES:** Objection. It lacks foundation. I
20 don't --

21 **ALJ BROUSSARD-BOYD:** Well, the question is has he
22 ever transferred anyone for purposes of discipline.
23 Chief Ferreira says --

24 **THE WITNESS:** No.

25 **ALJ BROUSSARD-BOYD:** -- no, so I'm going to overrule

1 the objection. It's what his belief is. That he didn't
2 and he's never transferred anyone. But as the trier of
3 fact, I'm going to reserve the fact of whether or not
4 Chief Ferreira did so, so it goes to the ultimate issue,
5 but it's not necessarily dispositive of the ultimate
6 issue.

7 **MS. KNOLES:** Thank you, Your Honor.

8 Q. **(BY MR. CRANE):** Chief, are you -- were you
9 familiar with Coastside Fire District before they were
10 absorbed by CalFIRE?

11 A. Somewhat, yes.

12 Q. And how is it that you're familiar with the
13 Coastside before they became a part of CalFIRE?

14 A. Oh, as the chief of both the San Mateo and
15 Santa Cruz Units or Counties, Coastside Fire District is
16 in San Mateo County, and it's completely surrounded by
17 San Mateo County Fire Department, which is a cooperative
18 agreement with CalFIRE, and it's also many parts of it
19 are state responsibility areas for the purposes of
20 wildland firefighting.

21 Q. Do you know how many fire stations Coastside
22 had before they came over to CalFIRE?

23 A. Three.

24 **MS. KNOLES:** Objection. This is cumulative
25 evidence.

1 **ALJ BROUSSARD-BOYD:** Yeah, I believe it is. Do you
2 have anything to say before I rule on the objection,
3 Mr. Crane? She's saying it's cumulative. We know the
4 geographic location of these fire districts. We know how
5 many. We know who staffs them, how many staffed them.

6 **MR. CRANE:** I was --

7 **ALJ BROUSSARD-BOYD:** We've heard from Chief Jalbert
8 already.

9 **MR. CRANE:** I was just trying to point out that
10 Coastside was a relatively small department with
11 relatively --

12 **ALJ BROUSSARD-BOYD:** Okay. That's on the record.

13 **MR. CRANE:** -- with relatively few people.

14 **ALJ BROUSSARD-BOYD:** And that's on the record.

15 **MR. CRANE:** And that it was a transition to come to
16 a larger agency.

17 **ALJ BROUSSARD-BOYD:** Okay. I'm going to sustain the
18 objection because --

19 **MR. CRANE:** All right.

20 **ALJ BROUSSARD-BOYD:** -- that is already on the
21 record.

22 **MR. CRANE:** Okay. Then I'll move on, Your Honor.

23 **Q. (BY MR. CRANE):** In your experience, how does a
24 CalFIRE employee typically become a battalion chief?

25 **MS. KNOLES:** Again, objection. This is asked and

1 answered I believe by Chief Ferreira on -- before. And,
2 again, it's overbroad as to Mr. -- Mr. Delay already was
3 a battalion chief, and we talked about the fact that he
4 was a battalion chief before he came over to CalFIRE,
5 that we've gone --

6 **ALJ BROUSSARD-BOYD:** I understand.

7 **MS. KNOLES:** -- through all that.

8 **ALJ BROUSSARD-BOYD:** I understand the objection.

9 Mr. Crane, I would ask for an offer of proof as well as
10 to relevance. How one becomes a battalion chief is very
11 broad. More importantly, what is the relevance? How
12 does it assist the trier of fact in determining whether
13 or not this was a transfer for discipline or it was not
14 otherwise following the statutory scheme for transfers?

15 **MR. CRANE:** Your Honor, my intention was to show
16 that a typical career progression for a CalFIRE
17 employee -- He's been a CalFIRE employee all along from
18 firefighter -- is from firefighter one to battalion
19 chief. It's a 15 to 20-year process.

20 During that time, they gain significant
21 institutional knowledge as to CalFIRE policies and
22 practices and procedures. That Mr. Delay came over
23 directly as a battalion chief and was put into a position
24 where he had to function as a CalFIRE chief where he
25 didn't have that 15 to 20-year depth of knowledge.

1 **ALJ BROUSSARD-BOYD:** Okay. I appreciate that, but
2 I'm going to sustain the objection. Do you have any
3 other questions for Chief Ferreira?

4 **Q. (BY MR. CRANE):** Chief, did you have any
5 information you obtained firsthand that you considered
6 about Mr. Delay's workplace performance prior to making
7 the decision to moving him?

8 **MS. KNOLES:** Objection. Asked and answered.

9 **MR. CRANE:** Well, that may have been --

10 **ALJ BROUSSARD-BOYD:** Well, I think I have heard from
11 Chief Ferreira about how -- what he relied upon in making
12 the decision. Does your -- this question differ in any
13 way today than it did from August 20th of this year?

14 **MR. CRANE:** I'm not -- Well, I'm not so sure that
15 was brought out. I mean and it may have been brought out
16 in Mr. Delay's case, but I'm trying to ask him in my case
17 and see if there's any answers that he has or any
18 information that was not elicited. It's, you know -- Ms.
19 Knoles called Chief Ferreira, but I'm -- it's tough for
20 me to put on my case through the questions that were
21 asked through her case.

22 **MS. KNOLES:** And I do want to object that, in fact,
23 you had an opportunity to start the direct exam of Chief
24 Ferreira, and I objected then that the questions were
25 asked and answered, but we continued with them and I was

1 able to provide further explanation. He testified that
2 he relied on many things in the second part of his
3 testimony including as I understand the testimony of the
4 witness who is now going to come after him. I mean but
5 I --

6 **ALJ BROUSSARD-BOYD:** Anything else, Mr. Crane?
7 Anything else on that issue with the objection pending?

8 **MR. CRANE:** Well, I was trying to just make sure
9 that I, you know -- I mean --

10 **ALJ BROUSSARD-BOYD:** Well, I think I'm going to
11 sustain the objection asked and answered.

12 **MR. CRANE:** Okay.

13 **ALJ BROUSSARD-BOYD:** If you want to ask your witness
14 is there anything else that you haven't here before
15 testified about that you relied upon in transferring
16 Battalion Chief Delay, would that --

17 **MR. CRANE:** That's fine, Your Honor.

18 **ALJ BROUSSARD-BOYD:** Okay.

19 Q. **(BY MR. CRANE):** Chief Ferreira, you testified
20 back in August, correct?

21 A. Yes.

22 Q. Okay. Is there anything that you did not
23 testify about in August that went into your reasoning as
24 to your transfer of Mr. Delay?

25 A. Yeah. I can't remember exactly all the facts

1 that I provided, so if I could list what I used and maybe
2 someone can pick out the new ones for me if that would
3 help.

4 Q. Yes, please.

5 A. Okay. It was discussions with employees that
6 were directly working with Chief Delay. It was the
7 report from Chief Delay's activities as a trainee on a
8 strike team leader assignment where there were
9 deficiencies noticed, and those deficiencies had
10 initially been noticed two years prior I believe, and
11 then it was the same deficiencies that were noticed on
12 that performance evaluation.

13 **MS. KNOLES:** And we did go through all of this, Your
14 Honor.

15 **THE WITNESS:** Discussions with Chief Brunton on
16 performance at our academy in supervision and management
17 classes. And that may -- I think that may cover them
18 all.

19 Q. **(BY MR. CRANE):** How would you sum up your goal
20 for moving Mr. Delay?

21 A. Well, my goal was to fill in those gaps of
22 knowledge that I and others felt Chief Delay had.

23 Q. How did you -- How did you hope that moving
24 Mr. Delay would fill in his gaps of knowledge?

25 **ALJ BROUSSARD-BOYD:** Okay. I'm anticipating your

1 objection because I've heard this question before --

2 **MR. CRANE:** Okay.

3 **ALJ BROUSSARD-BOYD:** -- because of the immersion. I
4 think we were calling it immersion on August 20th of this
5 year, and so I understand. I've gone through the
6 transcript, and before this hearing today, and I
7 understand what those gaps of knowledge as Chief Ferreira
8 was referring to it today, so I'm going ask you to move
9 on if you would.

10 **MR. CRANE:** Yes, Your Honor.

11 Q. **(BY MR. CRANE):** Did you consider other ways of
12 filling in Mr. Delay's gaps of CalFIRE knowledge?

13 A. We sent Chief Delay and the other battalion
14 chiefs in the district to specific CalFIRE training
15 programs, and we attempted to do a short-term
16 reassignment of Chief Delay and the BCs, but that was
17 never completed due to an employee health issue.

18 And then just trying to involve those employees from
19 the Coastside Fire District for their transition to
20 CalFIRE, to involve them into other programs within
21 CalFIRE. One of the BCs is in charge of employee
22 accident reporting program, IAPS. Just a variety of
23 issues to try to get them involved so that they can --

24 **MS. KNOLES:** Your Honor, I have to move to -- I'm
25 sorry to interrupt you. I have to move to strike because

1 none of this testimony is about Mr. Delay himself. This
2 is all broadly about the CalFIRE employees from himself.

3 **ALJ BROUSSARD-BOYD:** I'm going -- I'm going to
4 overrule the objection. He was just describing what
5 he -- what he does and --

6 Q. **(BY MR. CRANE):** Continue on please, Chief.

7 A. Right. So by involving those employees into
8 the bigger picture as a unit, and particularly in the
9 case of Chief Delay, I tried several times to include him
10 in the firefighter hiring process and other processes
11 that we do not just so that he learns that process, but
12 so he sees how other CalFIRE battalion chiefs or chief
13 officers operate under those circumstances.

14 Q. Have there been other times as a unit chief
15 that you have transferred someone to compensate for a
16 deficient performance -- work performance?

17 A. Yes.

18 Q. And can you give an example?

19 A. Battalion Chief Gary So in San Mateo County was
20 stuck out on the Coastside for a while, not in Half Moon
21 Bay, but in the Atascadero area, and made arrangements
22 for him to get more experience in dealing with personnel
23 and a variety of other types of incidents by moving him
24 under the San Mateo County side of things and that was
25 part of Coastside. I brought a battalion chief from our

1 Corralitos area in Southern Santa Cruz County --

2 **ALJ BROUSSARD-BOYD:** You'll have an opportunity to
3 cross-examine so.

4 **THE WITNESS:** -- to Felton to assist with our admin
5 officer position because it was vacant. And I reassigned
6 that battalion chief up right to Felton headquarters to
7 assist the unit in administrative duties and also offered
8 him the opportunity to learn those other functions.

9 Q. **(BY MR. CRANE):** Do you recognize the name Ken
10 Biscay?

11 A. Yes.

12 Q. Who is that?

13 A. Ken Biscay was battalion chief in San Mateo
14 County, and I brought him down into Santa Cruz County to
15 work at our Felton headquarters for a period of time
16 also.

17 Q. And what was your reason in doing that?

18 A. Again, to broaden his horizons, his knowledge
19 of CalFIRE and his skills and abilities as a battalion
20 chief.

21 Q. Why was -- Why was Mr. Delay the battalion
22 chief moved from the former Coastside area?

23 A. Seniority or lack of seniority.

24 Q. Can you explain that?

25 A. Right. He was the junior chief officer there.

1 Q. Okay. Is Mr. Delay the only former Coastside
2 employee that you're planning on moving from Coastside?

3 A. No.

4 **MS. KNOLES:** Objection. Speculation.

5 **ALJ BROUSSARD-BOYD:** Overruled.

6 Q. **(BY MR. CRANE):** Who else do you plan on
7 moving?

8 A. Over a period of time over the next few years,
9 I'd like to see all the battalion chiefs and even the
10 division chief move out of that fire district at least
11 for a period of time so that they can see how the rest of
12 CalFIRE operates.

13 Q. Why haven't you moved any former Coastside
14 employees?

15 A. Well, initially, again, it was because, if I
16 said it before, it was a commitment made early on in the
17 process that every employee wouldn't be blanketly moved.
18 That was kind of against the advice of some of my
19 superiors or peers that suggested that everybody should
20 be moved and that would help the transition process, and
21 I chose not to do that.

22 Q. Who -- Do you know someone named Bill Holmes?

23 A. Yes.

24 Q. Okay. Who is Bill Holmes?

25 A. He's my supervisor. He's the region chief.

1 Q. Did Chief Holmes in 2008 or 2009 suggest to you
2 that some of the Coastside employees should be moved out
3 of Coastside area?

4 A. Yes.

5 Q. And what was your response to that suggestion?

6 A. In 2008?

7 Q. Well, whenever. When was it made?

8 A. I think it was -- Well, I can't tell you the
9 year, but I know that we had discussions about
10 integrating the employees.

11 Q. Okay. Since Mr. Delay has been in CalFIRE, has
12 he ever been under investigation for any misconduct?

13 A. No.

14 Q. Is Mr. Delay under investigation for misconduct
15 now?

16 A. No.

17 Q. Has formal discipline, such as a notice of
18 adverse action, ever been brought against Mr. Delay?

19 A. Not by CalFIRE, no.

20 Q. Okay. Is there any formal discipline now
21 pending against Mr. Delay?

22 A. No.

23 Q. Is any discipline whatsoever of any type been
24 contemplated by your against Mr. Delay?

25 A. No.

1 Q. As the unit chief, are you the person that
2 would be able to discipline Mr. Delay?

3 A. Yes.

4 Q. Was any part of your reasoning for moving
5 Mr. Delay disciplinary in nature?

6 A. No.

7 Q. Why do you say that, Chief?

8 A. First off, I know you can't do that, and second
9 off, the intent was to help the department and help Chief
10 Delay by expanding him, again, to this broader picture
11 that I have and others have about CalFIRE.

12 Q. Was moving Mr. Delay intended by you to correct
13 Mr. Delay?

14 A. And I'm trying to think of the definition of
15 correct. The intent, again, was to fill in those gaps of
16 knowledge that I saw existed and that others saw existed,
17 and if that's correction, then that's it. But I mean the
18 intent truly was to fill in those gaps of knowledge to
19 broaden his experience.

20 Q. Okay. Was moving Mr. Delay to chastise him?

21 A. No.

22 Q. To punish him?

23 A. No.

24 Q. Was it to penalize Mr. Delay in any way?

25 A. No.

1 Q. If you wanted to discipline Mr. Delay, do you
2 have the tools a unit chief to do so?

3 A. Yes.

4 Q. And what are those tools?

5 A. Well, I have our progressive discipline process
6 with starting with letters of corrections and letters of
7 warning, and then the official letters of reprimand and
8 suspension and termination and decrease in pay. Excuse
9 me, Your Honor. Every time she laughs during my answer,
10 it's very disconcerting, and I'm not sure if you can hear
11 it but it bothers me.

12 **ALJ BROUSSARD-BOYD:** Okay. Ms. Knoles, please
13 refrain --

14 **MS. KNOLES:** I'm so sorry.

15 **THE WITNESS:** Thank you.

16 **ALJ BROUSSARD-BOYD:** -- from laughing during his
17 testimony.

18 **MS. KNOLES:** I'm so sorry.

19 **ALJ BROUSSARD-BOYD:** Thank you.

20 Q. **(BY MR. CRANE):** Chief, was any part of your
21 reasoning for moving Mr. Delay to harass him?

22 A. No.

23 Q. Do you dislike Mr. Delay?

24 A. No.

25 Q. What's your overall impression of him just as a

1 person?

2 A. I think Chief Delay is very conscientious.
3 He's sometimes a bulldog on programs that he's got a
4 particular interest. I know he's very talented with IT
5 programs and computers. It far exceeds my knowledge, and
6 he's very good at dealing with those. He's got a bright
7 future. He's younger than I am, and he can choose a lot
8 of things CalFIRE or any other agency that he works for.

9 Q. In your experience, would Mr. Delay have been
10 at a disadvantage with his limited knowledge of CalFIRE
11 policies and procedures if he wanted to promote to say
12 division chief?

13 **MS. KNOLES:** Objection. Assumes facts that are not
14 in evidence that Mr. Delay has a deficiency of CalFIRE?

15 **ALJ BROUSSARD-BOYD:** Well, I'm going to sustain
16 the -- I think you can ask a better question.

17 **MR. CRANE:** Okay.

18 **ALJ BROUSSARD-BOYD:** Okay.

19 Q. **(BY MR. CRANE):** If based on your understanding
20 of what Chief Delay's CalFIRE knowledge is right now --

21 A. Yes.

22 Q. -- if he were to -- Let me back away. Have you
23 taken the exam for -- Let me back up a little more. What
24 is division chief?

25 A. Division chief is the later of the CalFIRE

1 chain of command above a battalion chief. And the
2 division chief is either a geographic assignment where
3 they'll be in charge of a geographical area, or a program
4 like fire prevention or our camp up at Ben Lomond.

5 Q. Okay. Have you been a division chief?

6 A. Yes.

7 Q. Okay. Did you take the test to --

8 A. Yes.

9 Q. -- become a division chief?

10 A. Yes, I did.

11 Q. Okay. Do you feel you have a good
12 understanding as to Mr. Delay's level of knowledge about
13 CalFIRE policies and procedures --

14 A. Yes.

15 Q. -- currently right now?

16 **MS. KNOLES:** Again objection. There's been no
17 foundation that he has any personal knowledge of
18 Mr. Delay's knowledge of CalFIRE policies and procedures.
19 He hasn't testified about anything that he's ever
20 personally engaged in to obtain what information
21 Mr. Delay has.

22 **ALJ BROUSSARD-BOYD:** Yeah. Mr. Crane, did you want
23 to speak to that issue?

24 **MR. CRANE:** Well, he has testified as to what he's
25 observed, as to what people have told him. I can ask

1 about based on his understanding of Mr. Delay's knowledge
2 of CalFIRE policies and --

3 **ALJ BROUSSARD-BOYD:** Right. And I think you're
4 right. He's testified as to what people told him and
5 what he observed. And he's already testified, that being
6 past tense, so I think I'm going to sustain the objection
7 and you can move on from there.

8 **MR. CRANE:** Okay.

9 **ALJ BROUSSARD-BOYD:** You said it yourself. We've
10 heard it. He has testified to that.

11 **MR. CRANE:** Well, the question I was trying to ask
12 is does he feel that Chief Delay would be successful in a
13 division chief exam at this current time in his career.

14 **MS. KNOLES:** I have to object to that. That's
15 highly speculative.

16 **ALJ BROUSSARD-BOYD:** On the basis -- All right.
17 That is, you know, a speculative question. So unless you
18 have an offer of proof why that's not a speculative
19 question, I mean obviously Chief Ferreira has his
20 opinion --

21 **MR. CRANE:** I understand.

22 **ALJ BROUSSARD-BOYD:** -- as to whether or not he'd be
23 successful, but how does it help me, the trier of fact?
24 So I'm going to sustain the objection.

25 Q. **(BY MR. CRANE):** Okay. Chief, did you believe

1 that moving Mr. Delay would make him more a competitive
2 promotion within CalFIRE?

3 A. Yes.

4 Q. Okay. Why do you say that?

5 A. Because I've partially assisted in designing
6 the division chief exam through our most recent process
7 of, and I can't remember what it's called, validating the
8 position and coming up with the new exam process. I know
9 what the questions are or I knew what the type of
10 questions were, and they're very sophisticated questions
11 that require the candidate to have or to be able to
12 connect different pieces of CalFIRE together to formulate
13 a response that's going to score you high enough to get a
14 promotion.

15 Q. Okay. Do you have plans to retire soon?

16 A. Yes.

17 Q. And when are you going to retire?

18 A. December 7th.

19 Q. Do you have a wish as to how you leave San
20 Mateo/Santa Cruz unit when you leave?

21 **MS. KNOLES:** Objection. Relevance.

22 **ALJ BROUSSARD-BOYD:** Mr. Crane?

23 **MR. CRANE:** It goes to Chief Ferreira's motivation
24 as to -- Well, the whole idea is his intention, and it
25 would be Mr. Delay.

1 **ALJ BROUSSARD-BOYD:** Well, I think you just said
2 that because it would make Mr. Delay more competitive --

3 **MR. CRANE:** Well, this has to do --

4 **ALJ BROUSSARD-BOYD:** -- (indiscernible)
5 sophisticated exam.

6 **MR. CRANE:** But this has to do with his retirement
7 and --

8 **ALJ BROUSSARD-BOYD:** Well, I appreciate the fact
9 that the chief is going to retire, but he's already
10 testified that he moved the Appellant because it would
11 make him more competitive in the division chief exam,
12 which is highly sophisticated.

13 **MR. CRANE:** Well, this actually has to do with kind
14 of another motivation but --

15 **MS. KNOLES:** Again, and, Your Honor, I have to
16 object here as leading the witness then. He was asked
17 the question what was your motivation. If it wasn't part
18 of his motivation, then a supplemental question is
19 leading on direct.

20 **ALJ BROUSSARD-BOYD:** I would have to agree. I'm
21 going to ask you move on, Mr. Crane.

22 **MR. CRANE:** Okay.

23 **ALJ BROUSSARD-BOYD:** I think the chief has testified
24 what his motivation was.

25 **Q. (BY MR. CRANE):** Chief Ferreira, in your

1 experience with CalFIRE, is it common for battalion
2 chiefs to be move from one geographic assignment to
3 another geographic assignment within their home unit?

4 A. It occurs, yes.

5 Q. Okay. How often does it occur in your
6 experience?

7 A. Well, I think in my time in the San Mateo/Santa
8 Cruz unit, I think it's occurred about four to five
9 times. Santa Clara unit where I've worked --

10 **ALJ BROUSSARD-BOYD:** I'm sorry. In what period of
11 time?

12 **THE WITNESS:** Ten years.

13 **ALJ BROUSSARD-BOYD:** Thank you.

14 **THE WITNESS:** In the Santa Clara unit, maybe three
15 times or four times when I was in a position to
16 understand why, as a division chief, because I was not
17 the unit chief in the Santa Clara unit.

18 Q. **(BY MR. CRANE):** Okay. Have you, as a unit
19 chief, moved other battalion chiefs from one geographic
20 assignment to another geographic assignment within CZU?

21 A. Yes.

22 Q. And have many times have you done that as a
23 unit chief?

24 A. I think it was about four. You said battalion
25 chiefs, correct?

1 Q. Right.

2 A. Yes. But there's -- If I can continue, there's
3 also issues of moving fire captains from one fire station
4 to another, so besides the battalion chiefs moving, which
5 I have total authority and approval over, there's a lot
6 of other reassignments that occur at a level below that
7 either as fire apparatus engineers, fire captains.

8 And in each case, the level of our hierarchy again
9 is doing that to assure that there's crews that are
10 aligned and that -- I mean you wouldn't put three brand
11 new fire apparatus engineers or captains or whatever on
12 the same engine company. You just wouldn't do that, so
13 you try to move people around at the station level so
14 that you have a mix of experience and new employees so
15 that that engine company can operate at its maximum.

16 Q. Okay. Besides battalion chiefs or any
17 firefighters being moved within CZU, is it your
18 understanding that that happens in other CalFIRE units as
19 well?

20 A. Yes.

21 Q. Okay. And what is that based on?

22 A. Pretty much the same criteria. Each unit
23 chief, and unit chiefs meet once a month and talk about
24 what's going on in their units, and it's not uncommon to
25 hear about a movement occurring in one unit that -- and

1 it all occurs within the unit or the county, so it's
2 pretty much the same basis.

3 **MR. CRANE:** Okay. I want to see if I can save us a
4 little time here and see if Chief Ferreira can help us
5 out with some CalFIRE policy rather than have me call
6 another witness. Okay. And let's see, I think this will
7 be marked 5.

8 **ALJ BROUSSARD-BOYD:** Okay. Marking as 5. Do you
9 have one for the witness?

10 **MR. CRANE:** I do, and I'll give him this one.

11 **ALJ BROUSSARD-BOYD:** Okay. I'll mark that, okay, as
12 5. All right. Marking as 5 a document that is three
13 pages in length, and it talks about involuntary transfers
14 between classifications starting number 1028 to 1028.4,
15 and that is before the witness.

16 (Whereupon, Respondent's 5
17 was marked for identification.)

18 Q. **(BY MR. CRANE):** Chief Ferreira, would you take
19 a moment and look at that document, please?

20 A. Okay.

21 Q. Do you recognize that document?

22 A. Oh, yes.

23 Q. And what is it?

24 A. This is the sections of personnel procedures
25 handbook that describe involuntary transfer between

1 classifications, Section 1028.

2 Q. Okay. As a CalFIRE unit chief, do you have a
3 working knowledge of what this section means?

4 A. Yes.

5 Q. Okay. Does this section apply to the
6 reassignment of Mr. Delay as your understanding as a
7 CalFIRE unit chief?

8 A. Well, and I don't think it does because Section
9 1028 deals with involuntary transfers between
10 classifications, and my assumption is everything that's
11 underneath that has to deal with involuntary transfers
12 between classifications.

13 Q. Okay.

14 A. And there was no change in classification.

15 Q. No change in classification as to who?

16 A. I'm sorry. In the case of Chief Delay, there
17 was no change in classification.

18 Q. So when he was in one assignment, he was
19 battalion chief, and he remained a battalion chief; is
20 that correct?

21 A. Yes.

22 Q. Okay. So the section that talks about 1028.3
23 that talks about mileage, is it your understanding that
24 1028.3 is applicable to the reassignment of Chief Delay,
25 who --

1 A. No.

2 Q. -- is the subject of this appeal?

3 A. No.

4 Q. Why do you say that?

5 A. Well, because a couple of reasons. One, there
6 is no expectation that the employee move. And the second
7 thing is Bargaining Unit 8 employees have agreed through
8 their MOU that the 35 miles distance is not applicable
9 to Bargaining Unit 8 employees. It's a 50-mile
10 difference.

11 **MS. KNOLES:** Objection. Assumes facts not in
12 evidence. I haven't seen that section of Bargaining Unit
13 8 introduced.

14 **MR. CRANE:** Of course, he's just testifying as to
15 his personal knowledge, Your Honor, what he knows as a
16 unit chief in CalFIRE.

17 **ALJ BROUSSARD-BOYD:** Okay. I'm going to overrule
18 the objection. It's just his personal knowledge. It's
19 not necessarily Bargaining Unit 8.

20 Q. **(BY MR. CRANE):** Chief, does this -- is this
21 the current version of Section 1028 to 1028.4?

22 A. I believe it is.

23 **MR. CRANE:** Okay. Your Honor, I would ask that this
24 be moved into evidence.

25 **MS. KNOLES:** And no objections.

1 **ALJ BROUSSARD-BOYD:** Okay. It's entered.
2 (Whereupon, Respondent's 5
3 was admitted into evidence.)
4 **MS. KNOLES:** And you said that was 5?
5 **ALJ BROUSSARD-BOYD:** That is 5.
6 **MR. CRANE:** Okay. I guess I can get this.
7 **MS. LUSICH:** Yeah.
8 **MR. CRANE:** And (indiscernible) know all these. I
9 think I have one. I have one more document, Your Honor.
10 Thank you for your (indiscernible).
11 **ALJ BROUSSARD-BOYD:** Okay. So you're going to mark
12 this as Exhibit 6 or is this an official notice?
13 **MR. CRANE:** This is an official notice. This is an
14 MOU section, and this is --
15 **ALJ BROUSSARD-BOYD:** Okay. This is --
16 **MR. CRANE:** Yeah, if you'd like to take judicial
17 notice of the entire Article 12 and in particular 12.1.
18 **ALJ BROUSSARD-BOYD:** 12.1 what?
19 **MR. CRANE:** .9. 12.1.9.
20 **ALJ BROUSSARD-BOYD:** Okay. So it looks like this is
21 only a portion of Article 12 because it starts at 1.7.2
22 Presumably there's numbers earlier.
23 **MS. KNOLES:** Your Honor, we can make it a full copy
24 of this just this particular section.
25 **ALJ BROUSSARD-BOYD:** But this is the only section.

1 **MR. CRANE:** Yeah, this is --
2 **MS. KNOLES:** Right. But if you'd like the entire --
3 **ALJ BROUSSARD-BOYD:** No.
4 **MS. KNOLES:** -- Article 12.
5 **ALJ BROUSSARD-BOYD:** No. So, specifically Section
6 12.1.9 but this entire page is what you're saying.
7 **MR. CRANE:** Yes.
8 **ALJ BROUSSARD-BOYD:** Okay. Any objection to this
9 portion of Article 12?
10 **MS. KNOLES:** Your Honor, I just object that I don't
11 have any -- in front of me of what Article 12 actually
12 speaks to.
13 **MS. LUSICH:** Fair enough, Your Honor.
14 **MS. KNOLES:** And I would -- I just think for the
15 clarity of the record --
16 **ALJ BROUSSARD-BOYD:** Okay.
17 **MS. KNOLES:** -- if we're going to apply 12.1.9 --
18 **ALJ BROUSSARD-BOYD:** We'll make copies. We'll go
19 off the record.
20 (Off the record.)
21 **ALJ BROUSSARD-BOYD:** Back on the record after a
22 short break to make some copies.
23 **MR. CRANE:** And I think we have all of the Article
24 12.1.
25 **ALJ BROUSSARD-BOYD:** Article 12, and it goes --

1 starts at Article 12, allowances and reimbursements, and
2 goes all the way to 12.2.7. And specifically, you wanted
3 me to take specific note of 12.1.9; is that correct?

4 **MR. CRANE:** Yes.

5 **ALJ BROUSSARD-BOYD:** Okay. That will be marked as
6 official notice five, and it is before the witness.

7 **THE WITNESS:** I'm going to refer to this one and not
8 to this one?

9 **MR. CRANE:** Yeah, you can.

10 **THE WITNESS:** (Indiscernible) part.

11 Q. **(BY MR. CRANE):** Okay. Chief Ferreira, do you
12 recognize this document, and I'm asking you to look at
13 12.1.9?

14 A. Yes.

15 Q. Okay. What is your understanding of excluded
16 employees?

17 A. Well, this is what our rank and file that have
18 agreed to as far as reimbursement and everything that has
19 to do with movement and what it does is --

20 **ALJ BROUSSARD-BOYD:** Okay. The question was about
21 excluded employees. He started -- He prefaced his answer
22 with rank and file, so why don't we start again?

23 Q. **(BY MR. CRANE):** Okay. All right. What is --
24 What is your -- Okay. Okay. Is this -- This is part of
25 the bargaining unit MOU; is that correct?

1 A. Yeah.

2 Q. Okay. What is -- What is -- Under the MOU,
3 what is a rank and file employee?

4 A. Rank and file is everything from the
5 classification of battalion and under, so battalion
6 chiefs, fire captains, fire apparatus engineers, and
7 firefighters are all rank and file.

8 Q. Okay. So what is a -- Okay. So what are the
9 other employees in CalFIRE who are not rank and file
10 employees?

11 A. They're either management or supervisory are
12 excluded.

13 Q. Okay. So they're excluded employees. Okay.
14 So what is your understanding as to what 12.1.9 who --
15 who does that apply to?

16 A. Rank and file.

17 Q. Okay. And would Mr. Delay be a rank and file
18 employee?

19 A. Yes.

20 Q. Okay. So is -- what is your understanding as
21 to the reassignment by Mr. Delay and the applicability of
22 12.1.9 to him?

23 A. Well, rather than the 35 miles, it's described
24 in our personnel procedures handbook 1028 marked here as
25 No. 5 here it says that for all purposes -- well, I

1 understand it to say that for all purposes, the
2 regulations for reimbursement of relocation expenses that
3 apply to excluded employees are in play and that's 50
4 miles when you track down the rules for the excluded
5 employees and not 35.

6 **ALJ BROUSSARD-BOYD:** Which is a good question. Are
7 we going to be tracking that down, the 50-mile rule?

8 **MR. CRANE:** Are we going to be -- Like where --

9 **ALJ BROUSSARD-BOYD:** That's what your witness just
10 said. Once when you track down the 50-mile rule, is that
11 Section 12.1? Is that what you're referring to --

12 **MR. CRANE:** Are you referring to 12.1.83, Chief?

13 **ALJ BROUSSARD-BOYD:** -- or just 12.1 on the second?
14 It's page 72 actually, the second page of official notice
15 five. Is that the 50-mile rule that he's referring to?

16 **THE WITNESS:** No. Oh, I'm sorry.

17 **ALJ BROUSSARD-BOYD:** Is it Section 12.1?

18 **MS. KNOLES:** He just said no.

19 **THE WITNESS:** I don't believe here -- This is
20 about --

21 **ALJ BROUSSARD-BOYD:** I don't want to -- I'm not
22 trying to confuse you, Chief. Go -- Turn -- Close the
23 whole thing up, and then turn to the second page and look
24 at 12.1. Is that where you're getting the 50-mile rule
25 that you just testified once we track it down? Do you

1 see it there or is it something else you're referring
2 to? You're looking at the right one, Section 12.1. You
3 just -- The only reason I'm trying to clarify it is he
4 said --

5 **THE WITNESS:** Yeah.

6 **ALJ BROUSSARD-BOYD:** -- the 50-mile rule.

7 **THE WITNESS:** That's travel expenses, but here --

8 **ALJ BROUSSARD-BOYD:** But that's not the 50-mile rule
9 you're referring to?

10 **THE WITNESS:** No.

11 **ALJ BROUSSARD-BOYD:** Okay.

12 **THE WITNESS:** What I'm referring to -- Or should I
13 just continue or --

14 **ALJ BROUSSARD-BOYD:** Well, I just need
15 clarification.

16 **THE WITNESS:** Yeah. In 12.1.9 is talking about the
17 rules for reimbursement for relocation, and for
18 relocation, it says that Bargaining Unit 8 employees or
19 rank and file employees use the rules for excluded
20 employees. So for relocation purposes --

21 **ALJ BROUSSARD-BOYD:** That wasn't the point of the
22 confusion. You said 50 miles.

23 **THE WITNESS:** Yes.

24 **ALJ BROUSSARD-BOYD:** And you said once we track down
25 that rule, and I'm asking, Mr. Crane, are we going to be

1 tracking down that rule?

2 **MR. CRANE:** Yes, Your Honor.

3 **ALJ BROUSSARD-BOYD:** Okay.

4 **MR. CRANE:** I'd ask you to take judicial notice
5 of --

6 **MS. LUSICH:** DPA regulation (indiscernible).

7 **MR. CRANE:** Yeah, DPA 599.714.1 scope and
8 (indiscernible).

9 **ALJ BROUSSARD-BOYD:** Okay. We'll mark this as
10 official notice six. Marking as official notice six a
11 two-page document, which is California Code of Regulation
12 599.714.1 out of Title 2, and I will take official notice
13 of that, so that is before the witness.

14 Q. **(BY MR. CRANE):** Chief Ferreira, why don't you
15 take a moment, please, and look at this document? Okay.
16 There's a reference in the MOU Section 12.1.9 that talks
17 about, "In accordance with existing requirements, time
18 claims, administrative rules and regulations for
19 reimbursement of relocations that apply to excluded
20 employees." Is your understanding that 599.714.1 defines
21 the -- defines the regulations for excluded employees?

22 A. Yes.

23 Q. Okay. And is this the source of that -- By
24 this, I mean official notice number six. Is this the
25 source of that 50-mile rule that you had referenced?

1 A. Yes.

2 Q. Okay. And where is it found in the document?

3 A. It's on the first page, number two at the
4 bottom of the page, "The move must be a minimum of 50
5 miles."

6 Q. Chief, I just have a couple more questions for
7 you. Have you heard the term interchangeability as to
8 CalFIRE Bargaining Unit 8 employees?

9 A. I believe so.

10 Q. Well, is it your understanding that a battalion
11 chief in your unit must be interchangeable with a
12 battalion chief in Lassen/Modoc unit?

13 A. As far as having the same knowledge skills and
14 abilities, yes.

15 Q. Okay. And why is that?

16 A. Because at any given time, that battalion chief
17 from San Mateo County could be doing the same job on an
18 emergency basis and not just responding to a fire but
19 covering that geographical area in Modoc County.

20 Q. What do you mean by covering?

21 A. Because those resources, and we'll use Modoc
22 County as the example, a big fire in Susanville, the
23 Modoc County or Lassen and Modoc County engines are all
24 assigned to that, we will move our employees and our
25 resources up to that area to provide all the initial

1 attack and everyday emergency services until things in
2 the area calm down and people that are normally assigned
3 there return.

4 Q. What will a battalion chief from your unit
5 that's covering Lassen and Modoc what will he or she be
6 required to do when they're in Lassen and Modoc on that
7 cover assignment?

8 A. Respond to fires, manage fire stations, apply
9 all the rules of the MOU in the different area but to the
10 same type of employees. They may not even be employees
11 that are typically his or hers to supervise.

12 **MR. CRANE:** That's all I have for Chief Ferreira.

13 **ALJ BROUSSARD-BOYD:** Okay. Any cross-examination,
14 Ms. Knoles?

15 **MS. KNOLES:** Yes, Your Honor.

16 **ALJ BROUSSARD-BOYD:** Okay.

17 CROSS-EXAMINATION BY MS. KNOLES.

18 Q. **(BY MS. KNOLES):** Okay. Chief Ferreira, can
19 you turn to tab 34, which was previously marked as
20 Exhibit P? And you see that you wrote this document,
21 correct?

22 A. Yeah.

23 Q. Okay. Do you see where in the middle of the
24 page under Cal Government Code 19994.1 you see where that
25 code section is?

1 A. Yes.

2 Q. And then under there you define whether or not
3 Mr. Delay was reasonably required to move in response to
4 your involuntary transfer?

5 A. Yes.

6 Q. Okay. And here you actually reference CalFIRE
7 Code Section 1028.3, correct --

8 A. Right.

9 Q. -- as applying to Mr. Delay's transfer?

10 A. Well, this was a response to a letter that Ari
11 Delay had written to me according to Section 19994.1.

12 Q. Well, okay. Well, I want to look at this
13 because what you actually wrote here, and I want the
14 record to be clear, is to define reasonably required as
15 used in Section 19994.1, I consulted the language --

16 A. Uh-huh.

17 Q. -- in GC 559.714 --

18 A. Uh-huh.

19 Q. -- which is the section we just went over and
20 CalFIRE 1028.3, and considered the four following tests
21 that you included in your email.

22 A. Uh-huh.

23 Q. And then you applied that full context under
24 the 35-mile analysis. Do you see that?

25 A. Uh-huh.

1 Q. Nowhere --

2 **ALJ BROUSSARD-BOYD:** Is that a yes?

3 **THE WITNESS:** Yeah.

4 **ALJ BROUSSARD-BOYD:** Okay.

5 **THE WITNESS:** I'm sorry.

6 Q. **(BY MS. KNOLES):** Nowhere in here did you say,
7 in fact, the 50-mile test applied --

8 A. No.

9 Q. -- did you?

10 A. And is it your understanding at the time you
11 wrote this that you believed that the 35-mile test
12 applied to Mr. Delay?

13 A. Well, I've always known that there was a 50-
14 mile application. I just didn't know where to find it.

15 **ALJ BROUSSARD-BOYD:** Okay. You're not answering the
16 question, sir.

17 **THE WITNESS:** Well --

18 **ALJ BROUSSARD-BOYD:** Let her ask it again.

19 **THE WITNESS:** -- okay.

20 Q. **(BY MS. KNOLES):** At the time you wrote this,
21 isn't it true that you understood that a 35-mile
22 application applied to Mr. Delay's transfer?

23 A. And my answer is I knew there was a 50-mile
24 rule. I just didn't know where to find it, and I was
25 responding here -- Well, yeah --

1 Q. So, but it says --

2 A. -- I know it sounds funny but --

3 Q. -- here that you -- But you did. You
4 referenced 559.714, which we just talked about in your
5 last exhibit as applying to the scope of excluded
6 employees and that there was a 50-mile limit there.

7 A. No. This is 599.714.1. I think 559.714 is
8 different.

9 Q. So would you then say at the time you had no
10 understanding that this code section that you just
11 applied actually applied to Mr. Delay?

12 **MR. CRANE:** I would object. It mischaracterizes his
13 testimony. I don't believe that's what he said.

14 **ALJ BROUSSARD-BOYD:** Overruled. She's asked --

15 **THE WITNESS:** Yeah.

16 **ALJ BROUSSARD-BOYD:** -- a leading question, which is
17 allowed on cross, and he's not answered it yet.

18 **THE WITNESS:** Well, and, again, my answer is I knew
19 that there was a 50-mile rule because that's what applies
20 to all of our travel. I didn't know where to find that
21 50-mile rule, so I responded in this letter to his
22 citation of 19994.1 where he's claimed the 35-mile rule.

23 Q. **(BY MS. KNOLES):** If you didn't know where to
24 find it, how would -- how would Battalion Chief Delay
25 know where to find it?

1 **MR. CRANE:** Objection. That calls for speculation.

2 **ALJ BROUSSARD-BOYD:** Okay. Sustained.

3 **Q. (BY MS. KNOLES):** Okay. Did you consult anyone
4 before you wrote this letter?

5 **A.** No.

6 **Q.** So even though you thought a different rule
7 applied, you didn't check with anyone else in CalFIRE
8 or --

9 **MR. CRANE:** Well, I think -- Yeah, object. It's
10 asked and answered. He just said he didn't -- he didn't
11 consult with anybody.

12 **ALJ BROUSSARD-BOYD:** Okay. The document has been
13 marked and entered into evidence as Appellant Exhibit P.

14 **MS. KNOLES:** (Indiscernible).

15 **ALJ BROUSSARD-BOYD:** Okay. Dated May 22nd, 2012,
16 correct?

17 **MS. KNOLES:** Yes.

18 **ALJ BROUSSARD-BOYD:** Yes. Okay. And Chief Delay
19 admits he wrote the letter, right?

20 **MS. KNOLES:** Chief Ferreira.

21 **ALJ BROUSSARD-BOYD:** I'm sorry, Chief Ferreira.

22 **MR. CRANE:** Too many chiefs.

23 **ALJ BROUSSARD-BOYD:** I'm looking at -- Yes. And
24 I'm looking at the same Chief Delay. You wrote this
25 letter --

1 **THE WITNESS:** Yes.

2 **ALJ BROUSSARD-BOYD:** -- Exhibit P. Okay. Well,
3 he's -- It's in evidence and he wrote the letter.

4 **Q. (BY MS. KNOLES):** Is there anything in the MOU
5 that specifies specifically that Mr. Delay was subject to
6 a 50-mile transfer section for reasonably requires him --
7 for the reasonably required standard to apply?

8 **A.** I believe so, yes.

9 **Q.** Are you referring to the section that you
10 testified about 12.1.9 that talked about the excluded
11 employees?

12 **A.** Yes.

13 **Q.** And is there anything in that code section,
14 sir, that -- You testified when you were discussing 1028
15 that the way that you knew that 1028.3 does not apply to
16 Mr. Delay is because you looked at the start of the
17 section as under involuntary transfers between
18 classifications, and then went because you didn't believe
19 this was a transfer between classifications nothing
20 within 1028 applied to Mr. Delay's transfer; is that
21 correct?

22 **A.** Right. And that's a question that I had about
23 the numbered system that I did ask of Sacramento staff.

24 **Q.** I have no idea what your response meant. Could
25 you --

1 A. I believe I asked. When I read that, I asked
2 for clarification because Chief Delay had cited the 1028,
3 and --

4 Q. Okay.

5 A. -- I did contact Sacramento to ask for
6 clarification since 1028 to me said between
7 classifications, and my assumption is then everything
8 that's 1028.1,3,4 and I think that was 3 is a subset of
9 1028, which transfers between classifications.

10 Q. Okay. So you did actually consult someone
11 about the code sections that Mr. Delay referenced?

12 A. About 1028.3, yes --

13 Q. Okay.

14 A. -- or 1028.

15 Q. And did -- When you consulted someone about
16 1028.3, did anyone point you in the direction of a
17 50-mile rule?

18 A. Much later. It was several weeks later in the
19 following discussions when there was, I think, a second
20 letter that went to Chief Delay I think after this May
21 22nd one.

22 Q. But at the time you decided to transfer Chief
23 Delay, you didn't have that information.

24 A. No.

25 Q. Okay. And is there anything in the MOU that

1 says that Government Code Section 19994.1 does not apply
2 to Chief Delay? Does anything in the MOU specifically
3 supersede that code section?

4 A. I don't understand your question.

5 **MS. KNOLES:** Sure. Your Honor, strike that. Okay.
6 You marked official notice three. Can you pull that up?
7 It's the Article employer rates.

8 **ALJ BROUSSARD-BOYD:** Okay. Yeah, office notice
9 three is before the witness.

10 Q. **(BY MS. KNOLES):** Okay. And is it your
11 understanding that the employer rates delineated here,
12 which you testified allow you to move people within your
13 division as needed, is there anything there that allows
14 you to violate Government Code Section 19994.1?

15 **MR. CRANE:** I object. It's argumentative and it
16 calls for kind of a legal analysis. Chief Ferreira
17 hasn't testified he's a lawyer or a definer of the MOU.

18 **ALJ BROUSSARD-BOYD:** Okay. I'm going to overrule
19 the objection. This was brought up on direct exam, and
20 he says he relies on this, so you can ask your question
21 again.

22 **MS. KNOLES:** Is there anything in --

23 **ALJ BROUSSARD-BOYD:** Official notice three.

24 Q. **(BY MS. KNOLES):** Sure. Is there anything in
25 this section that allows you when you're making your --

1 when you're engaging in your employer rights to transfer
2 individuals to violate Section 19994.1? And I'm just
3 talking about official notice three, which
4 (indiscernible) in front of you.

5 A. And I don't have a copy of 1999 --

6 **MR. CRANE:** Yeah. He'd probably like to look at the
7 code section.

8 **ALJ BROUSSARD-BOYD:** Okay. Well, this letter of May
9 22nd, Exhibit P, does outline -- it does have a heading
10 19994.1. Does that assist you?

11 **THE WITNESS:** Okay. I'm assuming and I can't -- I
12 apologize for getting confused because when you track
13 1999 -- Well, I don't want to say this. My understanding
14 is that same law, 19994.1, is called that in one place,
15 and then in another place it's the 1028.3. Is that the
16 same provision? And I apologize. It is confusing to me.

17 Q. **(BY MS. KNOLES):** Could you look -- That's
18 okay. Sure. I'm going to read for you so I don't have
19 to look this up into the record 19994.1. "An appointing
20 power may transfer an employee under his or her
21 jurisdiction to another position in the same class or
22 from one location to another whether in the same position
23 or in a different position as specified above in Section
24 1 or in Section 1050.5."

25 **ALJ BROUSSARD-BOYD:** Okay. Don't flip

1 (indiscernible) document. She's trying to read this to
2 you for your edification.

3 **MR. CRANE:** I'll just object. Why don't we make a
4 copy of that? We can -- And that way rather than have it
5 read to him, Chief Ferreira can read it for himself. I
6 think that would be a little more efficient than him -- I
7 know I don't do well by just listening.

8 **ALJ BROUSSARD-BOYD:** Well, you know, we don't have
9 to make a copy. Just put that --

10 **MS. KNOLES:** Can I --

11 **ALJ BROUSSARD-BOYD:** -- in front of Chief Ferreira,
12 and see if this refreshes your memory --

13 **MS. KNOLES:** All right.

14 **ALJ BROUSSARD-BOYD:** -- and then enables you to
15 answer the question.

16 **MR. CRANE:** Thank you.

17 **THE WITNESS:** Yes, I've read this before.

18 Q. **(BY MS. KNOLES):** Okay. So and I'm just going
19 to point you to Section B.

20 A. Uh-huh.

21 Q. All right. And in Section B, it says, "When a
22 transfer under this section, which reasonably requires an
23 employee," and there's that line, "which reasonably
24 requires an employee to change his or her place of
25 residence, the appointing power shall give the employee,

1 unless the employees waives the right," and I just --

2 A. "A written notice of transfer 60 days in
3 advance of the effective date of the transfer."

4 Q. Right. Okay. Is there anything in Section
5 12.1.1, which you testified in regards to your rights to
6 transfer people, that supersedes or allows you to violate
7 that section of the Government Code?

8 **MR. CRANE:** I'm just going to object. Your Honor,
9 that's really ultimately your call to make --

10 **ALJ BROUSSARD-BOYD:** Okay.

11 **MR. CRANE:** -- (indiscernible).

12 **ALJ BROUSSARD-BOYD:** Your witness has testified to
13 ultimate issues before. He's no stranger to testify to
14 that.

15 **MR. CRANE:** Okay.

16 **ALJ BROUSSARD-BOYD:** So let me just take a look
17 here. The problem is is that I think you may be asking
18 him for a legal conclusion.

19 **MS. KNOLES:** I am not. I'm not --

20 **ALJ BROUSSARD-BOYD:** If the section is in conflict
21 with the MOU, the MOU shall be controlling without
22 further legislative action. That's also part of 19994.1.

23 **MS. KNOLES:** Yes.

24 **MR. CRANE:** And, Your Honor, he's a unit chief who
25 is a firefighter who rose up through the ranks and tries

1 to apply these as best he can, but he's not an expert by
2 training or by trade as to the conflicts between the MOU
3 and statute and the regulations.

4 **ALJ BROUSSARD-BOYD:** You can't have it both ways,
5 Mr. Crane.

6 **MS. KNOLES:** Yeah.

7 **ALJ BROUSSARD-BOYD:** I've heard exhaustive testimony
8 from Chief Ferreira about why he transferred Chief Delay
9 and because he -- so I'm sorry.

10 **MR. CRANE:** Okay.

11 **ALJ BROUSSARD-BOYD:** I'm overruling that on that
12 basis that it's argumentative or any other basis. But I
13 want you to make sure you're not asking him a question
14 that calls for a legal conclusion. Okay.

15 **MS. KNOLES:** And I can reframe the question.

16 **ALJ BROUSSARD-BOYD:** All right.

17 Q. **(BY MS. KNOLES):** Okay. When you -- You
18 testified that you're aware of this Government Code
19 Section that we've been talking about, 1994 (verbatim).

20 A. I was directed to that in the letter by Ari
21 Delay.

22 Q. Okay. Prior to that, when you made your
23 transfer decisions, have you attempted to comply with
24 this code section?

25 **MR. CRANE:** Well, I guess it assumes facts in

1 evidence that he knew of that code section when he did
2 the prior transfer.

3 **THE WITNESS:** Yeah.

4 **MR. CRANE:** So, I object.

5 **MS. KNOLES:** Well (indiscernible).

6 **ALJ BROUSSARD-BOYD:** (Indiscernible) Ferreira, when
7 there's an objection, you don't (indiscernible).

8 **THE WITNESS:** Okay. I'm sorry.

9 **MR. CRANE:** It assumes facts in evidence that he was
10 aware of it and had even looked at it --

11 **MS. KNOLES:** But that's what I'm trying to
12 establish.

13 **MR. CRANE:** -- prior to that time.

14 **ALJ BROUSSARD-BOYD:** Okay. I'm going to sustain the
15 objection. Why don't you try and ask a new question to
16 establish what you're attempting to establish.

17 **Q. (BY MS. KNOLES):** Sure. You testified before
18 that you have transferred various individuals. You've
19 engaged in involuntary transfers for various individuals
20 while in your position as division chief.

21 **A.** Yes, as unit chief. Yes.

22 **Q.** As unit chief, when you have made those
23 involuntary transfers, have you provided the 60-day
24 notice in advance of the effective date of the
25 transfer --

1 **MR. CRANE:** I would just --

2 **MS. KNOLES:** -- (indiscernible)?

3 **MR. CRANE:** I would just object that it
4 characterizes them as involuntary transfers, and I think
5 we've called it all along a reassignment.

6 **ALJ BROUSSARD-BOYD:** Okay. Well, I don't have
7 jurisdiction over reassignments, so it's either an
8 involuntary transfer or we all go home.

9 **MR. CRANE:** Well, we don't consider it an
10 involuntary transfer but --

11 **ALJ BROUSSARD-BOYD:** Well, and he's testified to
12 ultimate issues, so I'm going to overrule the objection.
13 He's testified that he's never transferred anyone for
14 disciplinary purposes, and that's for me to determine as
15 the trier of fact.

16 **MR. CRANE:** All right.

17 **ALJ BROUSSARD-BOYD:** So now she's asking --

18 **MR. CRANE:** Correct.

19 **ALJ BROUSSARD-BOYD:** -- asking -- Ask your question
20 again.

21 **THE WITNESS:** Well, I think I have the question, and
22 the answer --

23 **MS. KNOLES:** All right.

24 **THE WITNESS:** -- is no one has ever appealed the
25 transfers that I've made previously, so I have never

1 referred to 19994 or whatever that Government Code
2 Section is.

3 Q. (BY MS. KNOLES): So prior to transferring
4 Mr. Delay involuntarily or whatever language you want to
5 use, you did not refer to this code section?

6 A. No.

7 Q. Okay. And I'm going to go back to what we were
8 just talking about. You mentioned that there were
9 various people that you transferred. You mentioned, I'm
10 going to butcher these names, Biscay --

11 A. Ken. Chief Ken Biscay.

12 Q. -- and someone named Corralitos.

13 A. Corralitos Battalion Chief Ron Hart.

14 Q. Hart. And then there was someone out in
15 Atascadero?

16 A. Battalion Chief Gary So, S-O.

17 Q. S-O. And in the case of -- And I'm just trying
18 to not make it (indiscernible). In the case of Gary So,
19 did you provide him with written notice of his transfer?

20 A. I don't recall.

21 MR. CRANE: Objection. Relevance.

22 MS. KNOLES: They brought up that these were
23 similarly situated individuals who could be comparable to
24 Mr. Delay. I'm trying to explore that.

25 ALJ BROUSSARD-BOYD: Uh-huh. I'm going to overrule

1 the objection. You opened the door, Mr. Crane.

2 **MR. CRANE:** All right.

3 Q. **(BY MS. KNOLES):** Did Mr. So put in for a
4 transfer?

5 A. No.

6 Q. Okay. With Ron --

7 A. Hart.

8 Q. -- Hart --

9 A. H-A-R-T.

10 Q. -- H-A-R-T, did you provide him written notice?

11 A. I provided him a notice of the job expectations
12 that I had had for him, but I can't tell you whether it
13 was for 60 days prior or not.

14 Q. Do you remember when was Mr. Hart's transfer?

15 A. 2010.

16 Q. And do you know how far he was transferred?

17 A. Well, from the Corralitos Battalion to Felton
18 headquarters, I think eight miles, ten miles.

19 Q. And --

20 A. It could be further.

21 Q. -- with Chief So, when was that transfer?

22 A. Probably it would have been about 2005 or 6.

23 Q. Do you remember how far that transfer was?

24 A. His headquarters I think was at Sky Londa and
25 it was to Belmont so about ten miles.

1 Q. And Chief Biscay.

2 A. Ken Biscay.

3 Q. Biscay, thank you. I apologize.

4 A. And Chief Biscay worked in the San Mateo
5 Division and I brought him to Felton, so it was -- well,
6 he lived in Felton or Santa Cruz, somewhere in there.

7 Q. So you actually brought him closer to home in
8 that case?

9 A. In that case, yes.

10 Q. Okay. And what year was that?

11 A. 2007, 6 or 7.

12 Q. You never wrote down or wrote a letter to
13 Mr. Delay explaining his areas of deficiency, did you?

14 A. Did I? No.

15 Q. And you never offered him a way to correct
16 those alleged deficiencies while he was at Coastside?

17 A. Well, we sent him to training classes, yes.

18 Q. Do you send everybody to training classes?

19 A. Yes.

20 Q. So you never specifically said, "Chief Delay,
21 you need to go to these training classes because you are
22 deficient in these areas?"

23 A. When we came to transition, we had Battalion
24 Chief Mark Brunton came and did a review of all the
25 training records of the employees in the district that

1 were going to transfer to CalFIRE, and he came up with
2 the recommendations as a training expert, yes.

3 Q. And that was at the initial transfer in the
4 subsequent years. I mean it's been three or four years
5 now since that. Did you ever go back and say,
6 "Mr. Delay, these are areas that we have these
7 deficiencies in?"

8 A. Did I personally? No.

9 Q. Okay. You mentioned you spoke to Chief Holmes
10 in around 2008 and 9.

11 A. Uh-huh. Yes.

12 Q. And was that initial discussion about
13 Mr. Delay's deficiencies?

14 A. No.

15 Q. Because you weren't aware of any at that time,
16 right?

17 A. No. I was aware of deficiencies, yes.

18 Q. Okay. But you didn't specifically talk about
19 them then --

20 A. No. No.

21 Q. -- or try to correct them immediately?

22 A. No.

23 Q. Okay. Have all of your battalion chiefs worked
24 at every duty station?

25 A. No.

1 Q. Have all your battalion chiefs received the 17-
2 item training list that Battalion Chief Delay has
3 received?

4 A. No.

5 Q. Do you even know what's on the 17-unit
6 training -- 17-item list that Chief Delay has received?

7 A. Of course, I do.

8 Q. Okay. But prior to moving him, you did not
9 create or identify these areas of training that he
10 needed?

11 A. What those items are there is representative of
12 all the things that we do in our unit, and those were the
13 things that we thought would be helpful in filling the
14 gaps, yes.

15 Q. That's nonresponsive. My question is prior to
16 moving him you did not create or identify any of the
17 items on this list.

18 **MR. CRANE:** Objection. It's vague and ambiguous
19 and --

20 **ALJ BROUSSARD-BOYD:** Well, I'm going to overrule the
21 objection.

22 **THE WITNESS:** If you're asking did we have a
23 specific list of all the things that we thought would be
24 helpful for Chief Delay, we did not have a specific
25 written list, no.

1 Q. (BY MS. KNOLES): Did you have a list of all
2 the areas of gaps in his knowledge?

3 A. No.

4 Q. Did you try to identify any areas of the gaps
5 in his knowledge that could be corrected while he was at
6 Half Moon Bay?

7 A. In contemplating how best to satisfy the need
8 to fill in those gaps, I concluded that there was no way
9 that he could do it in Half Moon Bay because those things
10 aren't available in Half Moon Bay, and there's no mentor
11 there that could assist him.

12 Q. And it would have been impossible for him to
13 get a day training? I mean you just testified that they
14 get training, correct, that they go to these training
15 sessions?

16 A. Yeah.

17 Q. And that --

18 **ALJ BROUSSARD-BOYD:** Let him answer. Was that a
19 yes? They go to these training sessions?

20 **THE WITNESS:** Right, but --

21 **ALJ BROUSSARD-BOYD:** Okay.

22 Q. (BY MS. KNOLES): And he could not have engaged
23 in a short-term training to deal with these gaps?

24 **MR. CRANE:** Your Honor, I just object. I understand
25 she can ask leading questions, and these are getting into

1 more argumentative area.

2 **ALJ BROUSSARD-BOYD:** Overruled.

3 **THE WITNESS:** No.

4 Q. **(BY MS. KNOLES):** Are you aware if Mr. Delay is
5 currently receiving any training on the San Diego Fire
6 Department -- Fire Department's orientation? Is he
7 receiving any orientation on San Diego County?

8 A. Not that I'm aware.

9 Q. Is he receiving any orientation on Lassen
10 County?

11 A. Not that I'm aware.

12 Q. Are you aware if he has any personal knowledge
13 about those areas?

14 A. No.

15 Q. You mentioned before that if you had your way
16 you would over the next few years you would move
17 everybody out of Coastside and have them position
18 elsewhere?

19 A. For a period of time, yes.

20 Q. Okay. But you're retiring, correct?

21 A. Yes.

22 Q. So you can't have any say in the transfers
23 other than Mr. Delay's?

24 A. No.

25 Q. Okay. And would you -- If when Mr. Delay were

1 to finish his training, would it then be your opinion
2 that he could go back?

3 A. Yes.

4 Q. Even if the position has been filled?

5 A. No. He'd have to wait for an opening, of
6 course.

7 Q. Have you, other than the two issues from past
8 years that you talked about, received any negative
9 feedback about Mr. Delay's knowledge of policies and
10 procedures?

11 A. Yes.

12 Q. In the field?

13 A. Yes.

14 Q. Other than the two that you relied on?

15 A. Yes.

16 Q. When?

17 A. Well, I can't think of specifics. Just through
18 conversations with other employees and the conversation
19 with Mr. Brunton about his training class.

20 Q. And when was that conversation?

21 A. It was several weeks after the class.

22 Q. When was the class?

23 A. I don't remember the date, 2011, 2010. I think
24 I taught part of the class.

25 Q. Did Battalion Chief Delay pass the class?

1 A. That's -- It's -- I don't think it's a class --
2 I think he got a certificate, yes --

3 Q. Okay.

4 A. -- that said he attended or completed the
5 class, yes.

6 Q. Did you see any documents from Mr. Delay's
7 performance in the class?

8 A. No.

9 Q. Okay. Did you ever follow up with Battalion
10 Chief Delay about his performance in the class?

11 A. No.

12 Q. Did you ever suggest to Battalion Chief Delay
13 that he should take that class again?

14 A. No.

15 Q. What was the class about?

16 A. It's a two-part class. I recall it supervision
17 three and supervision four. Supervision four is a five
18 days at our academy where -- I'm sorry. Supervision
19 three is five days at the academy where they talk about
20 the technical aspects of being a battalion chief and
21 applying the MOU and supervising your employees.

22 And then the supervision four portion is a little
23 more theoretical, and the class I teach, for instance, is
24 called pretty much dealing with change, and it's an hour
25 or two of me talking about the things that I've seen in

1 40 years and how things have changed in CalFIRE and how
2 they might be able to deal with some of those changes.

3 Q. Okay. Is it an interactive class or is it more
4 of a lecture?

5 A. The best part is it's supposed to be
6 interactive.

7 Q. Okay. Is there a written test at the end of
8 the class?

9 A. No.

10 Q. Is there a verbal exam?

11 A. No.

12 Q. Do you remember how many people were in the
13 class?

14 A. Between 15 and 20.

15 **MS. KNOLES:** Your Honor, I'm just trying to make
16 sure I don't repeat some of the areas we've previously
17 discussed.

18 Q. **(BY MS. KNOLES):** Have you had any complaints
19 about Battalion Chief Delay since he's been at Felton?

20 A. No.

21 Q. Has the union complained to you about Battalion
22 Chief Delay since he's been at Felton?

23 A. No.

24 Q. Turn to tab 42 --

25 **ALJ BROUSSARD-BOYD:** And will this be a new exhibit?

1 MS. KNOLES: Yes, this is a new exhibit.

2 MS. LUSICH: You have it. It's in the binder.

3 MS. KNOLES: Oh, sorry. Here's a new binder. It's
4 42.

5 ALJ BROUSSARD-BOYD: And I guess I would need a
6 binder as well.

7 MS. KNOLES: Yes. Let me make it easier for you and
8 just pull it out --

9 ALJ BROUSSARD-BOYD: Okay.

10 MS. KNOLES: -- so you don't have to deal with all
11 the extra papers.

12 ALJ BROUSSARD-BOYD: Okay. We'll mark this as
13 Appellant's next order, that being Exhibit --

14 MS. KNOLES: I think we're at Q.

15 ALJ BROUSSARD-BOYD: -- will be Q.

16 MS. KNOLES: I think (indiscernible).

17 ALJ BROUSSARD-BOYD: Formally known as 42.

18 MS. KNOLES: Yeah.

19 ALJ BROUSSARD-BOYD: Okay. So marking as Q it
20 appears to be an email -- two-page email series, and it's
21 before the witness.

22 (Whereupon, Appellant's Q
23 was marked for identification.)

24 Q. (BY MS. KNOLES): Okay. Can you take a second
25 and just review this email? Did you receive this email?

1 A. Yes.

2 Q. Okay. Who is Tyler Martin?

3 A. Tyler Martin is a fire apparatus engineer
4 paramedic that works in the Coastside Fire District.

5 Q. Okay. And Tyler sent an email, the first, the
6 top part of the email dated July 2nd, and he's forwarding
7 you an email that he sent to FC Cox. Who is FC Cox?

8 A. He's a fire captain that works in the Coastside
9 Fire District.

10 Q. Okay. And this Tyler Martin signed this, "Your
11 loyal CalFIRE employee." Do you see that?

12 A. Uh-huh.

13 Q. Do you know what he meant there?

14 **MR. CRANE:** Objection. Calls for speculation. What
15 it says is what it says.

16 **ALJ BROUSSARD-BOYD:** Okay. I'm inclined to sustain
17 the objection. You may ask another question.

18 Q. **(BY MS. KNOLES):** Is Tyler Martin a union
19 member?

20 A. I assume so, yes.

21 Q. And this is an email from Captain -- from
22 Jonathan Cox -- I'm sorry to Jonathan Cox from Tyler
23 Martin. Do you see that?

24 A. Uh-huh.

25 Q. Did you receive that?

1 A. Yes.

2 Q. And the first line in that email says, "After
3 this morning's discussion with Ari, it is blatantly
4 obvious that both he and Alfiano (verbatim) are one in
5 the same. He argued about local control over retention
6 issues and false promises by Chief Ferreira." Do you see
7 that?

8 A. Yes.

9 Q. Is it your understanding that the local union
10 was dissatisfied with Battalion Chief Delay's --

11 **MR. CRANE:** Objection. It calls for --

12 **ALJ BROUSSARD-BOYD:** I haven't heard the question
13 yet. You're premature. What is the question?

14 Q. **(BY MS. KNOLES):** In your -- Based on your
15 familiarity, isn't it true that the local CalFIRE union
16 employees stationed at Coastside did not like working
17 with Battalion Chief Delay?

18 **MR. CRANE:** Objection. It calls for speculation and
19 this is far beyond the scope of direct. I don't think
20 there was any questions put to Chief Ferreira today by me
21 about the union.

22 **MS. KNOLES:** He testified about the reasons he moved
23 him.

24 **ALJ BROUSSARD-BOYD:** Right. But Chief Ferreira has
25 testified about the union. This is not his only

1 testimony. We heard from him on August 20th, 2012, so on
2 that basis, I will overrule the objection. And also
3 she's allowed to go beyond the scope of your direct
4 examination in this administrative hearing. So do you
5 need the question again, sir?

6 **THE WITNESS:** I think she was asking -- Well, I'm
7 sorry, yes. Could you please repeat?

8 Q. **(BY MS. KNOLES):** Sure. Was it your
9 understanding based on your knowledge that the CalFIRE
10 union in the Coastside Fire District did not like working
11 with Battalion Chief Delay?

12 A. Many of the employees whether they were union
13 or not -- well, they're all union, so I don't understand
14 your question. They're all members of Local 2881, which
15 is the Firefighters Union. Some employees there don't
16 like Ari Delay and some do.

17 Q. Who is Alfiano?

18 A. That's Mike Alifano.

19 Q. Alifano. Thank you.

20 A. I assume that's who he's referring to. Juan
21 Alifano was the Mayor of Half Moon Bay, but I believe
22 this Alifano is one of the board members of the Coastside
23 Fire District.

24 Q. And at this time, is it your understanding that
25 the fire -- Strike that. We talked about -- We

1 previously talked about the fact that the fire district
2 has not renewed their contract as of yet with CalFIRE,
3 correct? Do you recall that?

4 **MR. CRANE:** Objection as to the relevance of this,
5 Your Honor. This is far beyond Chief Ferreira's reasons
6 for moving Mr. Delay. As to whether they're going to go
7 back or we're getting pretty far afield.

8 **ALJ BROUSSARD-BOYD:** Overruled.

9 **THE WITNESS:** Can you repeat your question, please?

10 Q. **(BY MS. KNOLES):** Do you recall that? Sure.

11 And I'm just -- I'm not trying to create or repeat
12 testimony, so I'm just asking to refresh your
13 recollection. Do you recall talking about how the fact
14 that CalFIRE and the contract with Coastside Fire has not
15 been renewed by the Fire District?

16 A. Right. And it's not a matter of renewal. They
17 would have to enter into a new contract --

18 Q. Right.

19 A. -- as the last one.

20 Q. And it expired?

21 A. Yes.

22 Q. Okay. And it hasn't been renewed as of yet?

23 A. Well, they haven't entered into the new
24 contract. It can't be renewed. It has to be a new
25 contract.

1 Q. And isn't it true that Alifano -- you view
2 Alifano as someone who is not supportive of a new
3 contract between CalFIRE and Coastside?

4 A. Yes, it's Alifano. And, no, he's not
5 supportive of it.

6 Q. And isn't it true that you associate Battalion
7 Chief Delay with Alifano? And I'm sorry if I keep
8 butchering that name.

9 A. Alifano. I've -- I don't necessarily associate
10 the two together.

11 Q. Well, who do you think -- What's this
12 discussion that is going on here between, if you know and
13 only if you know, the number one internal spy? Do you
14 know what they're referring to there?

15 A. I couldn't tell you.

16 Q. Okay. These -- This information that's being
17 forwarded to you about Battalion Chief Delay's argument
18 about local control, retention issues, and false promises
19 by you, do you see that?

20 A. Yes.

21 Q. Did you believe that -- Did you believe that
22 Battalion Chief Delay made these statements when you read
23 this?

24 **MR. CRANE:** Well, I just object. It calls for
25 speculation. He's asked to comment on an email somebody

1 else sent that was merely forwarded to him.

2 **ALJ BROUSSARD-BOYD:** Okay.

3 **MS. KNOLES:** I'm asking to his impression when he
4 read it if he believed those statements by Battalion
5 Chief Delay to have been made.

6 **MR. CRANE:** And this is also well after the
7 transfer. The transfer -- He sent the letter notifying
8 him of the transfer in May. This is in July. The
9 decision has already been made at that point in time.

10 **MS. KNOLES:** When I asked for a discovery of
11 documents relied on, this is what I got, so I'm -- I
12 acknowledge that it's after the fact, but I think there's
13 been a --

14 **MR. CRANE:** Well, what's --

15 **MS. KNOLES:** I think that he can speak to his -- And
16 I, you know, I'm not going to take this --

17 **ALJ BROUSSARD-BOYD:** Okay. Actually, I'm going to
18 sustain the objection. I sustain the objection. So, but
19 going forward, I need you to establish whether or not
20 Chief Ferreira received this --

21 **MS. KNOLES:** Oh, I thought he did.

22 **ALJ BROUSSARD-BOYD:** -- and what his belief was when
23 he read this. What he believed it to be, and then move
24 on, please.

25 **MS. KNOLES:** That's fine and I'm sorry.

1 Q. (BY MS. KNOLES): I thought that I had
2 established that you had received this email. Did you
3 receive this email that was --

4 A. Yes.

5 Q. Okay. When you read the email that was
6 forwarded, what did you believe it to be about?

7 A. Certainly a discussion had occurred between
8 some of our employees and Chief Delay about the way
9 things were working in Coastside Fire District.

10 Q. Did you ever speak to Chief Delay about the
11 conversation that allegedly took place?

12 A. No.

13 Q. Wasn't it your intent to keep Chief Delay out
14 of the Coastside Fire District until the issues with the
15 board and the renewal of the CalFIRE contract had been
16 taken care of?

17 A. No.

18 **ALJ BROUSSARD-BOYD:** What is Tyler Martin's
19 position?

20 **THE WITNESS:** He's a fire apparatus engineer
21 paramedic.

22 **ALJ BROUSSARD-BOYD:** Okay. So he's not a chief.

23 **THE WITNESS:** No. In fact, to reiterate it goes
24 unit chief, deputy chief, division chief, battalion
25 chief --

1 **ALJ BROUSSARD-BOYD:** I have that.

2 **THE WITNESS:** -- fire captain --

3 **ALJ BROUSSARD-BOYD:** Right.

4 **THE WITNESS:** -- engineer.

5 **ALJ BROUSSARD-BOYD:** Okay. Yeah, okay. I hadn't

6 heard the engineer, but I knew the chief hierarchy.

7 Thank you. When you read the line, "It is blatantly

8 obvious that both he and Alifano are one in the same,"

9 did that make any sense to you?

10 **THE WITNESS:** Not really, no.

11 **MS. KNOLES:** Okay. No further questions.

12 **ALJ BROUSSARD-BOYD:** Okay. Any redirect?

13 **MR. CRANE:** I just got a couple follow up.

14 REDIRECT EXAMINATION BY MR. CRANE

15 Q. **(BY MR. CRANE):** Chief, you said that you

16 talked with Sacramento staff about handbook section

17 1028.3.

18 A. Yes.

19 Q. After that conversation, was it your

20 understanding that 1028.3 was applicable to Mr. Delay's

21 reassignment?

22 A. And that's the excluded employee part.

23 Q. No. 1028.3 is the handbook --

24 A. Oh, I'm sorry.

25 Q. -- section.

1 A. It is my understanding that it did not apply.

2 Q. What were you told that gave you that
3 understanding?

4 A. And it was reiterated that this was all part of
5 Section 1028, which was between classifications, and
6 since there was no classification change, that it didn't
7 apply. And I'll be honest with you; I recommended to
8 Sacramento staff that perhaps they fix that. I mean if
9 there is supposed to be a section on other matters, that
10 it should be numbered and titled and that I found this
11 kind of confusing.

12 Q. You were asked questions about why you didn't
13 communicate with Mr. Delay about his work performance
14 deficiencies. Do you remember those?

15 A. Right.

16 Q. Is that typical as a unit chief that you would
17 communicate with a battalion chief about his specific
18 work performance deficiencies?

19 A. No.

20 Q. Why is that?

21 A. Because there's a layer of supervision in
22 between and that would be Division Chief Cole's
23 responsibility.

24 Q. Okay. So am I correct in understanding that
25 you expected Chief Cole to address any delay or any

1 deficiencies in Mr. Delay's work performance?

2 A. Yes.

3 Q. You were asked if any other BCs got that 17-
4 item kind of professional career development list that
5 Mr. Delay got.

6 A. Yes.

7 Q. Why haven't any other battalion chiefs gotten
8 that specific one?

9 A. They didn't --

10 **MS. KNOLES:** Objection. Overbroad --

11 **ALJ BROUSSARD-BOYD:** Overruled.

12 **MS. KNOLES:** -- just all of it.

13 **ALJ BROUSSARD-BOYD:** Overruled.

14 **THE WITNESS:** In most cases, they didn't come across
15 to CalFIRE as battalion chiefs, so they would have gained
16 a lot of those experiences and knowledge as either an
17 engineer or a captain or working in other assignments or
18 other areas of CalFIRE.

19 Q. **(BY MR. CRANE):** Have you given other employees
20 career development plans?

21 **MS. KNOLES:** Objection. Relevance.

22 **ALJ BROUSSARD-BOYD:** Overruled.

23 **THE WITNESS:** No.

24 Q. **(BY MR. CRANE):** Have other employees within
25 the unit to your knowledge been given like a career

1 development plan?

2 A. I'm sure they have by their supervisors, yes.

3 Q. Okay. And you said you had received negative
4 feedback. You had received other negative feedback from
5 Mr. Delay. Briefly, what was the nature of that negative
6 feedback?

7 A. From Mr. Delay?

8 **MS. KNOLES:** Objection. He --

9 **MR. CRANE:** About Mr. Delay.

10 **MS. KNOLES:** He testified that he couldn't recall
11 any specific instances. That's asked and answered.

12 Q. **(BY MR. CRANE):** Is there anything you can
13 recall about it?

14 **ALJ BROUSSARD-BOYD:** Well, he's already -- I'm going
15 to sustain the objection because he did testify that he
16 couldn't recall any specific instances. If you have
17 something to refresh his memory, of course, you can move
18 forward.

19 Q. **(BY MR. CRANE):** Were you told anything about
20 Mr. Delay's use of CalFIRE forms?

21 **MS. KNOLES:** Objection. Hearsay.

22 **ALJ BROUSSARD-BOYD:** We've gone down this before.
23 This witness has testified August 20th, 2012, at length,
24 so --

25 **MR. CRANE:** I'll move on, Your Honor.

1 **ALJ BROUSSARD-BOYD:** -- I'm going to sustain the
2 objection.

3 **Q. (BY MR. CRANE):** There was testimony about your
4 retirement. Is it your understanding that you will
5 provide input to your successor about what's happening
6 with CZU?

7 **A.** Oh, yes.

8 **Q.** Okay. Well, is it your understanding that that
9 input will also provide -- will also include input as to
10 the continued transition of the Coastside employees?

11 **A.** Certainly.

12 **Q.** Is there a difference between class training
13 and on-the-job training?

14 **A.** Yes.

15 **Q.** Okay. What is that difference?

16 **A.** Well, class training is structured and meant
17 for a broad audience. And the on-the-job stuff is
18 typically, I don't think intimate is the right word, but
19 it's one-on-one and doesn't have a read structure to it.
20 It's more goal oriented.

21 **Q.** Was it your hope that Mr. Delay in being a
22 CalFIRE battalion chief for several years would have
23 received on-the-job training?

24 **MS. KNOLES:** Objection. Assumes facts not in
25 evidence that he hasn't received on-the-job training.

1 **ALJ BROUSSARD-BOYD:** Overruled.

2 **THE WITNESS:** Yes. And I apologize. Could you
3 repeat the whole question again?

4 Q. **(BY MR. CRANE):** Probably not. Well, there
5 were questions about why you hadn't given Mr. Delay
6 specific training to address his work performance
7 deficiencies. Do you remember that?

8 A. Yes.

9 Q. Okay. Was it your hope that his working as a
10 battalion chief for CalFIRE prior to the time you moved
11 that the on-the-job training or the on-the-job experience
12 would have alleviated his work performance deficiencies?

13 A. Yes, but it --

14 **MS. KNOLES:** Objection. I'm sorry. It assumes
15 facts not in evidence. This witness has not testified
16 that he could identify the work performance areas that
17 were deficient.

18 **ALJ BROUSSARD-BOYD:** Well, his continuing theme is
19 that that was the reason for the transfer, so I'm going
20 to overrule the objection and allow him to answer the
21 question.

22 Q. **(BY MR. CRANE):** You can go ahead and answer,
23 Chief.

24 A. Yes. But the unfortunate part was there was
25 not within the Coastside Fire District people that could

1 provide that.

2 Q. What do you mean by that?

3 A. Well, Division Chief Cole transitioned from
4 Coastside Fire District.

5 **ALJ BROUSSARD-BOYD:** And we've gone through this
6 territory again. This is redirect. Can we have anything
7 new to ask Chief Ferreira?

8 **MR. CRANE:** I do not, Your Honor.

9 **ALJ BROUSSARD-BOYD:** Okay.

10 **MR. CRANE:** I have none.

11 **ALJ BROUSSARD-BOYD:** Any recross?

12 **MS. KNOLES:** I have just one question.

13 **ALJ BROUSSARD-BOYD:** Okay.

14 RE-CROSS-EXAMINATION BY MS. KNOLES

15 Q. **(BY MS. KNOLES):** And I think it should -- it
16 should work. And I just want to make sure that this is
17 clear. You testified that part of the issue you
18 identified was that Chief Delay had come over to CalFIRE
19 from Coastside but had not been made -- he had been made
20 battalion chief before he got there, correct?

21 A. Yes.

22 Q. And that that was one of the reasons that you
23 felt he needed additional training, correct?

24 A. That he had been made battalion chief prior to
25 coming to CalFIRE?

1 Q. That he had not spent his entire career with
2 CalFIRE? That he had come over later in his --

3 A. Prior to becoming a battalion chief?

4 Q. Yes.

5 A. Yes.

6 Q. Okay. And so that was one -- that seems to be
7 one of the reasons you've identified as why moving him
8 would -- was necessary.

9 A. Yes.

10 Q. Okay. Have you moved all battalion chiefs who
11 have come over from other fire departments?

12 A. No.

13 Q. Okay. No further questions.

14 **ALJ BROUSSARD-BOYD:** Okay. Anything else?

15 **MR. CRANE:** Well, a follow up.

16 FURTHER REDIRECT EXAMINATION BY MR. CRANE

17 Q. **(BY MR. CRANE):** Why haven't you moved all
18 other battalion chiefs that have come over from other
19 fire departments?

20 A. Well, there have only been two that would apply
21 in this case for me since in my ten years over in Felton
22 we've only entered into one such agreement that brought
23 over battalion chiefs to CalFIRE, and that would be Chief
24 Delay and Chief Cosgrave.

25 Q. And you testified it was your intention to move

1 Chief Cosgrave at some point in the future, correct?

2 A. Eventually, I think it's important to do that,
3 yes.

4 Q. Why?

5 **MS. KNOLES:** Asked and answered. We talked about
6 this.

7 **ALJ BROUSSARD-BOYD:** I'm going to sustain the
8 objection.

9 **MR. CRANE:** That's all I have, Your Honor.

10 **ALJ BROUSSARD-BOYD:** Okay. I have a couple of
11 questions. I would like you, sir, to turn if you would
12 to what we've marked as Exhibit A, and I'm going to have
13 to ask Ms. Knoles to cross-reference --

14 **MS. KNOLES:** Yes.

15 **ALJ BROUSSARD-BOYD:** -- for us what Exhibit A is.
16 It is --

17 **MS. KNOLES:** 17.

18 **ALJ BROUSSARD-BOYD:** -- okay, so tab 17. Thank you.
19 Okay. On tab 17, it's -- is Exhibit A, on page 2,
20 there's a Mr. Bob Wolf who says something about, "Thank
21 you for speaking to the issue," there.

22 **THE WITNESS:** Yes.

23 **ALJ BROUSSARD-BOYD:** Do you see that there? And
24 then I think he -- it says something about lies.

25 **THE WITNESS:** Yes.

1 **ALJ BROUSSARD-BOYD:** "And support them in fighting
2 the lies individual board members are putting out."

3 **THE WITNESS:** Yes.

4 **ALJ BROUSSARD-BOYD:** Do you know what lies Mr. Wolf
5 was referring to?

6 **THE WITNESS:** I think in this case he was referring
7 to statements made by Director Alifano that -- and it
8 wasn't just Director Alifano. It was --

9 **ALJ BROUSSARD-BOYD:** Well, what are the lies? What
10 lies? Do you know?

11 **THE WITNESS:** That CalFIRE has broken the contract,
12 that there's services that we were supposed to have
13 provided that we didn't provide. We can't do cliff
14 rescues.

15 **ALJ BROUSSARD-BOYD:** So just a lot of different --

16 **THE WITNESS:** Yes.

17 **ALJ BROUSSARD-BOYD:** -- just -- Okay. CalFIRE broke
18 the contract, no cliff rescues. Okay. So I notice here
19 in looking at Exhibit 1 there's this Tyler Martin here.

20 **THE WITNESS:** Yes.

21 **ALJ BROUSSARD-BOYD:** Now Tyler Martin when he sent
22 you this email that's been marked as Exhibit Q of the --
23 Exhibit Q, which was --

24 **THE WITNESS:** Your Honor, I'm sorry.

25 **ALJ BROUSSARD-BOYD:** No. I think it's Exhibit page

1 42 or --

2 **MS. KNOLES:** Yeah, it --

3 **ALJ BROUSSARD-BOYD:** -- tab 42.

4 **MS. KNOLES:** -- should be tab 42. That's correct.

5 **ALJ BROUSSARD-BOYD:** Okay. That's 42.

6 **THE WITNESS:** Yes.

7 **ALJ BROUSSARD-BOYD:** Now you just -- you were
8 telling me the hierarchy again where there's the unit
9 chief, and the division chief, and battalion chief and
10 then it goes down from there to what he is, which is a
11 what?

12 **THE WITNESS:** A fire apparatus engineer paramedic.

13 **ALJ BROUSSARD-BOYD:** Right. And but yet he feels
14 comfortable enough, even though he's very low or way down
15 on the chain of command, to directly tell you about
16 another employee or employees in this case. Did you --
17 When he sent you this, what was -- what did you think
18 when this Tyler Martin sent this to you?

19 **THE WITNESS:** Well, initially I had heard from
20 Captain Cox that Engineer Martin had written up this
21 document and that in it he was describing his
22 dissatisfaction with employees and etcetera. I said,
23 "Well, maybe I could talk to him. Send me a copy of it."

24 **ALJ BROUSSARD-BOYD:** So Captain -- you --

25 **THE WITNESS:** Which he did.

1 **ALJ BROUSSARD-BOYD:** So you told Captain Cox to have
2 Tyler Martin send you a --

3 **THE WITNESS:** Yes.

4 **ALJ BROUSSARD-BOYD:** -- copy of this. That -- Okay.

5 **THE WITNESS:** Yes.

6 **ALJ BROUSSARD-BOYD:** Now when this was sent to you,
7 do you think Mr. Martin and/or Captain Cox was acting
8 more as an employee of CalFIRE or more as a union member?
9 Were they acting in the capacity as a union member
10 because I notice he went --

11 **THE WITNESS:** Yeah.

12 **ALJ BROUSSARD-BOYD:** -- to this meeting here. He's
13 Tyler Martin. There he is.

14 **THE WITNESS:** Well, every -- every employee is a
15 member of the union.

16 **ALJ BROUSSARD-BOYD:** Right. But here's Tyler
17 Martin --

18 **THE WITNESS:** Yes.

19 **ALJ BROUSSARD-BOYD:** -- at this meeting --

20 **THE WITNESS:** Yes.

21 **ALJ BROUSSARD-BOYD:** -- that you phoned into.

22 **THE WITNESS:** Yes.

23 **ALJ BROUSSARD-BOYD:** So was he -- When you received
24 this, was it something that you were getting in your
25 capacity as union or more as the capacity as the

1 commander and chief, you know?

2 **THE WITNESS:** I think it's the commander and chief.
3 Tyler Martin --

4 **ALJ BROUSSARD-BOYD:** So this is another employee
5 telling you -- tattling about another employee? That's
6 how you characterize it, or how would you characterize
7 it?

8 **THE WITNESS:** And I've spoken with Tyler Martin
9 several times. His -- And I can describe to you --

10 **ALJ BROUSSARD-BOYD:** About?

11 **THE WITNESS:** -- the history. Just about CalFIRE in
12 general. Tyler Martin transferred to our unit eight
13 months ago, a year ago from Riverside County as a
14 paramedic. And I helped him with that transfer --

15 **ALJ BROUSSARD-BOYD:** I know but my only -- my only
16 question is --

17 **THE WITNESS:** No, I --

18 **ALJ BROUSSARD-BOYD:** -- is was he (indiscernible).

19 **THE WITNESS:** But there's a different relationship
20 between -- Well, I'm arguing with the judge. Sorry.

21 **ALJ BROUSSARD-BOYD:** All I'm asking is when you
22 received this, was it a surprise to you? You answered
23 no. Captain Cox had told you about it, so you said have
24 him forward it.

25 **THE WITNESS:** Yeah.

1 **ALJ BROUSSARD-BOYD:** When you received it and saw
2 what it said, which I haven't read the whole thing, but
3 when you received this from Tyler Martin, were you -- you
4 said you were -- you saw this as being part of your
5 commander and chief job and not as your union part job.

6 **THE WITNESS:** Yes.

7 **ALJ BROUSSARD-BOYD:** Okay. But it's from another
8 employee talking about another employee, right?

9 **THE WITNESS:** Yes.

10 **ALJ BROUSSARD-BOYD:** Okay. Okay. And so, okay. So
11 when you got this, did you do anything with it? Did you
12 act on it?

13 **THE WITNESS:** No. I talked to Tyler Martin about
14 it.

15 **ALJ BROUSSARD-BOYD:** Did you talk to Battalion Chief
16 Delay about it?

17 **THE WITNESS:** No.

18 **ALJ BROUSSARD-BOYD:** Any reason? I mean --

19 **THE WITNESS:** Yeah. No, none that I --

20 **ALJ BROUSSARD-BOYD:** -- there's no --

21 **THE WITNESS:** Well, by this time, we were already I
22 think through this process.

23 **ALJ BROUSSARD-BOYD:** Okay.

24 **THE WITNESS:** This was just several months ago.

25 **ALJ BROUSSARD-BOYD:** Okay. All right.

1 **THE WITNESS:** Now is there any objection to Exhibit
2 Q?

3 **MS. LUSICH:** Yes. Yes.

4 **MR. CRANE:** Okay. What's the objection?

5 **MS. LUSICH:** Relevance.

6 **MR. CRANE:** I would object as to the relevance of
7 this, Your Honor. I think we're a long ways afield
8 from --

9 **MS. LUSICH:** The reasons.

10 **MR. CRANE:** -- from the reasons that Chief Ferreira
11 has testified about for transferring Mr. Delay. I mean
12 all of sudden we're into these shadowy conspiracies and
13 the union and the contract, and it's -- it's hearsay. I
14 mean he got this thing -- I mean it's really kind of
15 double hearsay so --

16 **ALJ BROUSSARD-BOYD:** I can understand the hearsay,
17 but, of course, whatever Chief Ferreira did with it is
18 relevant and what he believed it was and what he thought
19 about it. It's state of mind exception would apply to
20 the hearsay, so I don't -- hearsay objection, I'm sorry,
21 it's already on the -- No, it's not on the record.
22 Hearsay objection is on the record for Exhibit Q. But
23 other than that --

24 **MS. KNOLES:** And --

25 **MR. CRANE:** Well, and it's also after the transfer,

1 so whatever -- whatever Chief Ferreira's state of mind
2 months after, you know, this is -- this is sometime after
3 he's made the decision. I mean the horse is already out
4 of the barn, so whatever he's thinking about at that
5 point in time I don't know how much that helps us.

6 **ALJ BROUSSARD-BOYD:** I know. Well -- Well, you
7 know, it does -- I think I've heard the word immersion
8 and CalFIRE culture many times. Not necessarily today
9 but on August 20, 2012, and this does help to explain
10 that culture. So relevance, you know, I give it the
11 weight it's due, and the hearsay objection is on the
12 record.

13 Did you want to speak to the issue, Ms. Knoles?

14 **MS. KNOLES:** No, Your Honor. That's fine.

15 **ALJ BROUSSARD-BOYD:** All right. So Q is entered
16 over the hearsay objection and the relevance objection.

17 (Whereupon, Appellant's Q
18 was admitted into evidence.)

19 **ALJ BROUSSARD-BOYD:** Okay. I had another question.
20 In going through Section 1028, that Section 1028 I think
21 I took official notice of it, and it would be official
22 notice --

23 **MR. CRANE:** Five.

24 **MS. KNOLES:** Uh-huh.

25 **ALJ BROUSSARD-BOYD:** No. No, no, no.

1 **MS. KNOLES:** I think I have it as five as well.

2 **ALJ BROUSSARD-BOYD:** I'm sorry. It's actually
3 Exhibit 5.

4 **MS. KNOLES:** Oh, okay.

5 **ALJ BROUSSARD-BOYD:** Exhibit 5. We've marked it as
6 Exhibit 5, and it's been entered. Is it my
7 understanding, sir, that when you saw 1028, you believed
8 that it did not apply to any transfer, involuntary or
9 otherwise reassignment, that you were contemplating with
10 Chief Delay?

11 **THE WITNESS:** Correct.

12 **ALJ BROUSSARD-BOYD:** It did not apply.

13 **THE WITNESS:** Correct.

14 **ALJ BROUSSARD-BOYD:** So you didn't talk to the chief
15 of personnel services and have them review the transfer
16 request?

17 **THE WITNESS:** Not prior to notifying Ari that the
18 transfer was going to occur. In the process of then
19 dealing with the appeal to the transfer, yes, I have
20 spoken with them.

21 **ALJ BROUSSARD-BOYD:** Right. But prior because 1028
22 outlines a process of which you should follow, but I'm
23 just trying to --

24 **THE WITNESS:** Right.

25 **ALJ BROUSSARD-BOYD:** -- understand did you follow

1 the process anyway even though you didn't believe it
2 applied or no?

3 **THE WITNESS:** No, I didn't.

4 **ALJ BROUSSARD-BOYD:** Because the process says did
5 the assistant deputy or does the assistant deputy
6 director -- did the -- did the assistant deputy director
7 see the transfer paperwork.

8 **THE WITNESS:** No. And there was not necessarily any
9 transfer paperwork. There was notification whether it
10 was oral or written describing to Chief Delay that on
11 such and such a date you are going to be transferred
12 here. There's no other documentation that I'm aware of.

13 **ALJ BROUSSARD-BOYD:** Okay. And, you know, I'm glad
14 you raised that issue. What of the documents that we've
15 brought here today that is the Exhibit that you believe
16 was your written -- 60-day written notification to
17 Mr. Delay? I don't -- Is it --

18 **MS. KNOLES:** There was none.

19 **ALJ BROUSSARD-BOYD:** -- Exhibit N? Which one is
20 Exhibit N, please?

21 **MR. CRANE:** Okay. Exhibit N is the May 18th.

22 **ALJ BROUSSARD-BOYD:** I know. But what is it in this
23 binder that we have here?

24 **MS. KNOLES:** Yes, in the tab.

25 **MS. LUSICH:** Thirty-four.

1 **MS. KNOLES:** It's 31 I believe.

2 **ALJ BROUSSARD-BOYD:** It's the May 18, 2012, letter
3 to Appellant is which, 34?

4 **MS. LUSICH:** Thirty-one.

5 **ALJ BROUSSARD-BOYD:** Thirty-one.

6 **MS. KNOLES:** Thirty-one.

7 **ALJ BROUSSARD-BOYD:** Okay.

8 **MS. KNOLES:** And this was --

9 **ALJ BROUSSARD-BOYD:** Okay.

10 **MS. KNOLES:** -- after.

11 **ALJ BROUSSARD-BOYD:** Well, this is the letter -- the
12 60-day notice to Mr. Delay that you gave him or is there
13 another letter that you gave him?

14 **THE WITNESS:** I think there was something previous
15 to this.

16 **MS. KNOLES:** Your Honor, can I just because our
17 position is that there was no written letter.

18 **ALJ BROUSSARD-BOYD:** Well, that's why I'm asking
19 Chief Ferreira.

20 **THE WITNESS:** And I don't recall without looking at
21 all the evidence.

22 **ALJ BROUSSARD-BOYD:** Well, you testified on this on
23 that's Exhibit -- that's before you there marked as
24 Exhibit N and it's dated May 18th, right?

25 **THE WITNESS:** Right.

1 **ALJ BROUSSARD-BOYD:** And you also had one dated May
2 22nd that we talked about.

3 **THE WITNESS:** Right.

4 **MS. KNOLES:** And that's Exhibit tab 34.

5 **ALJ BROUSSARD-BOYD:** And then so 34.

6 **THE WITNESS:** But I believe there was something
7 prior to May 18th because even here I appreciate his
8 concerns that he submitted to me in regards to the
9 reassignment.

10 **ALJ BROUSSARD-BOYD:** Okay.

11 **THE WITNESS:** So we must have notified him prior to
12 that.

13 **ALJ BROUSSARD-BOYD:** Okay.

14 **THE WITNESS:** I just -- I don't have it in front of
15 me about --

16 **ALJ BROUSSARD-BOYD:** Okay. All right. These are
17 just wrapping up just some questions that came up in the
18 last one. Exhibit G, which is entered, there's a hearsay
19 objection. It's an email series dated January 14th
20 through February 15th.

21 **MS. KNOLES:** And that's tab four --

22 **ALJ BROUSSARD-BOYD:** So on tab four --

23 **MR. CRANE:** Tab four.

24 **ALJ BROUSSARD-BOYD:** -- Chief, if you would --

25 **MS. KNOLES:** -- which I think you have from before.

1 It's G.

2 MS. LUSICH: G. It's Exhibit --

3 MR. CRANE: Okay.

4 MS. LUSICH: -- G.

5 ALJ BROUSSARD-BOYD: If you look at the top of

6 this --

7 MR. CRANE: Do I have G? (Indiscernible) G I'll

8 take it out of here.

9 ALJ BROUSSARD-BOYD: -- this refers to something

10 that occurred in, excuse me, 2009.

11 THE WITNESS: Yes.

12 ALJ BROUSSARD-BOYD: Was this the other reassignment

13 that you were talking about? This was sent to Paul --

14 THE WITNESS: Right.

15 ALJ BROUSSARD-BOYD: -- Chief Cole.

16 THE WITNESS: And I'm going to start down here at

17 the bottom. I think this was the two-month --

18 ALJ BROUSSARD-BOYD: So the prior move.

19 THE WITNESS: Yes.

20 ALJ BROUSSARD-BOYD: Okay. So that refers to the

21 prior move. Okay. And is that pretty much what you

22 recall from it?

23 THE WITNESS: Yes.

24 ALJ BROUSSARD-BOYD: Okay. Chief Cole objected.

25 And I was just saying why I believe we should go forward

1 with it.

2 **ALJ BROUSSARD-BOYD:** Okay. Okay. And who is
3 Kathleen Shori?

4 **THE WITNESS:** Kathleen Shori is that assistant
5 region chief in charge of administrative services, and
6 she works out of our Redding office.

7 **ALJ BROUSSARD-BOYD:** Assistant region chief?

8 **MR. HOLMES:** Staff chief for medical services.

9 **THE WITNESS:** I'm sorry. Staff chief for medical
10 services.

11 **ALJ BROUSSARD-BOYD:** Okay. Whatever you know, but I
12 just want your testimony, sir. Terry Anderson do you
13 know?

14 **THE WITNESS:** Terry is the staff person in charge of
15 administration non-uniformed, so Kathleen Schori is a
16 uniformed employee, and Terry Anderson is --

17 **ALJ BROUSSARD-BOYD:** But are they chiefs for the --

18 **THE WITNESS:** Well, Terry Anderson wouldn't be
19 titled a chief. Her title --

20 **MR. HOLMES:** She's (indiscernible).

21 **ALJ BROUSSARD-BOYD:** If you don't know it, you don't
22 have -- I just, well, if you know. That's all.

23 **THE WITNESS:** Regional administrative officer is her
24 title.

25 **ALJ BROUSSARD-BOYD:** Okay. And then there was an

1 exhibit. I think it was entered, the TriData final
2 report that was Exhibit 4.

3 **MR. CRANE:** I think we only entered certain pages of
4 that.

5 **ALJ BROUSSARD-BOYD:** Right.

6 **MR. CRANE:** Well, I didn't --

7 **ALJ BROUSSARD-BOYD:** You are correct.

8 **MR. CRANE:** I didn't give you the whole thing.

9 **ALJ BROUSSARD-BOYD:** This fire services operational
10 audit.

11 **THE WITNESS:** Yes.

12 **ALJ BROUSSARD-BOYD:** Now was -- This audit was --
13 Did the board accept this audit or was it rejected by the
14 board?

15 **THE WITNESS:** Opinions differ on this one.
16 Officially, they accepted it and then tabled discussion
17 on it and did not act on any of the issues --

18 **MS. KNOLES:** Yeah.

19 **THE WITNESS:** -- inside.

20 **MS. KNOLES:** Your Honor, I'm going to object that
21 that's actually considered as evidence. I think we have
22 the minutes from the board meeting that identifies
23 exactly what the board did with it. We can go on and do
24 that if we need to. But I think that that was a bit of
25 a --

1 **ALJ BROUSSARD-BOYD:** Well, he said opinions differ.
2 I'm just asking for Chief Ferreira's testimony. He said
3 opinions differ on what the board did. If the board did
4 not formally act on it, then perhaps opinions do differ.
5 But I'm just -- I just had some questions from the last
6 time we met at hearing, and part of it had to do with --
7 with that particular study. So I just asked if it was
8 rejected or accepted, and you said a little bit of both.

9 **THE WITNESS:** Right.

10 **ALJ BROUSSARD-BOYD:** Okay. All right. Thank you.
11 All right. So Q we entered, and then we have official
12 notice on everything else. Anything else for Chief
13 Ferreira, Mr. Crane?

14 **MR. CRANE:** I don't have any -- Well, am I allowed
15 to ask any more questions?

16 **ALJ BROUSSARD-BOYD:** Certainly. I just wanted to
17 clarify before we excused Chief Ferreira as a witness. I
18 just have one.

19 **Q. (BY MR. CRANE):** Chief, do you -- do you have a
20 job or a position in the CalFIRE union?

21 **A.** No.

22 **Q.** Have you ever?

23 **A.** Yes. That was in 1976 I was the chapter
24 director. I was the chapter secretary and treasurer just
25 for the local county chapter of the Santa Clara unit.

1 Q. Have you held any positions since those days?
2 A. No.
3 **MR. CRANE:** That's all.
4 **ALJ BROUSSARD-BOYD:** Anything else before we excuse
5 Chief Ferreira as a witness?
6 **MS. KNOLES:** No.
7 **ALJ BROUSSARD-BOYD:** Okay. Thank you so much.
8 **MR. CRANE:** I think we've rung him out.
9 **ALJ BROUSSARD-BOYD:** Thank you, sir. Okay. You
10 could leave --
11 **THE WITNESS:** Where do these go?
12 **ALJ BROUSSARD-BOYD:** -- it right there. Thank you.
13 Okay. All right. It's 12:30. You have one more
14 witness?
15 **MR. CRANE:** Yes.
16 **ALJ BROUSSARD-BOYD:** Okay.
17 **MS. KNOLES:** Can we maybe get an approximation? I
18 just want to have --
19 **MR. CRANE:** How long will it take?
20 **ALJ BROUSSARD-BOYD:** Why don't we go off the record
21 and take a short --
22 (Off the record.)
23 **ALJ BROUSSARD-BOYD:** Okay. We're back on the record
24 in the matter in the matter of Ari Delay and his
25 involuntary transfer appeal. And it's now about 1:40,

1 and we have a new witness in Respondent's case-in-chief.

2 If you raise your right hand, please, sir.

3 (Whereupon, the witness was duly sworn.)

4 **THE WITNESS:** Yes.

5 **ALJ BROUSSARD-BOYD:** Okay. And state your name for
6 the record.

7 **THE WITNESS:** Mark Brunton.

8 **ALJ BROUSSARD-BOYD:** Okay. Your witness, Mr. Crane.

9 Testimony of

10 MARK BRUNTON

11 having been duly sworn, testified as follows:

12 DIRECT EXAMINATION BY MR. CRANE

13 Q. **(BY MR. CRANE):** Are you currently employed?

14 A. Yes, I am.

15 Q. And by whom are you employed?

16 A. CalFIRE Amador/El Dorado unit.

17 Q. And what's your current rank?

18 A. Battalion chief.

19 Q. And how long have you been a battalion chief?

20 A. Fifteen years.

21 Q. And what are your current duties with Amador/El
22 Dorado?

23 A. I'm currently a field battalion chief.

24 Q. In October of 2006, were you given a special
25 assignment out of Amador/El-Dorado?

1 A. Yes, I was.

2 Q. Okay. And what was that assignment?

3 A. It was to be part of a transition team with a
4 Schedule A contract with the Coastside Fire Protection
5 District.

6 Q. Okay. So you were going to be working not for
7 Amador/El Dorado but who were you going to be working
8 for?

9 A. I was going to be on a temporary assignment to
10 the San Mateo/Santa Cruz unit working directly for Chief
11 Ferreira.

12 Q. Okay. And what was your understanding as to
13 what your job duties were?

14 A. As part of the transition team, it was a
15 multifaceted elements, one of which having gone through a
16 Schedule A contract myself having come across to the
17 department under that under the Cameron Park Schedule A
18 contract, I had some unique background in the fact that I
19 kind of been there, done that, and walked those shoes.
20 So I was able to give perspective to the employees, be a
21 reference there while assigned to assist them during the
22 transition process, answer questions related to business
23 practices, operation things, whatever would be helpful.

24 In addition to that, one of my other duties was to
25 review all the training records of the employees and to

1 establish an individual development plan for each
2 individual employee that would then go on to Sub JAC, and
3 at that point, they would make the determination as to
4 what training that each employee would have to attend.
5 And that came from my background of being a training
6 officer with the department and having that
7 understanding.

8 Q. Okay. What's -- You mentioned Sub JAC. What's
9 Sub JAC?

10 A. Sub JAC is an joint labor and management
11 committee that oversees the training of employees and new
12 employees in a particular -- with this case, a blanketed
13 in employees to find out if they were in the appropriate
14 rank for what CalFIRE's expectations and policy states,
15 what levels of training that they would be required to
16 meet policy.

17 Q. Okay. And how long did this special assignment
18 in CZU last?

19 A. From roughly I started October of '06 and I
20 reentered Amador/El Dorado approximately April of '07.

21 Q. And were you down there that period of time
22 continuously helping out CZU with the transition?

23 A. Yeah, I was assigned down there, and so I'd go
24 and spend at least four days a week each week down there
25 during that time. Sometimes it was at the actual

1 Coastside location. Other times it was at Felton
2 headquarters.

3 Q. And did you review the training records for all
4 of the Coastside employees that were coming over to
5 CalFIRE?

6 A. Yes.

7 Q. Okay. And approximately how many people was
8 that?

9 A. I'm trying to remember. It was somewhere in
10 the vicinity of 20 or so employees.

11 Q. Okay. Do you recall Mr. Delay's -- Well, do
12 you recall Mr. -- Do you know Ari Delay?

13 A. I met him while down there during that
14 transition period.

15 Q. Okay. And did you review his training records?

16 A. Yes.

17 **MS. KNOLES:** Objection. Vague as to what a training
18 record is.

19 **MR. CRANE:** Okay.

20 **ALJ BROUSSARD-BOYD:** Okay. I'm going to sustain the
21 objection. I think you can make a better question there,
22 please.

23 Q. **(BY MR. CRANE):** Okay. You've used the term
24 training record in your testimony. What do you mean by
25 that?

1 A. Training would be a file that contains all of
2 the employees' training so certifications and
3 qualifications. So if they had taken any of their
4 training classes, the academies that they attended upon
5 initially entering the department, drill records,
6 whatever. I mean each department varies as to exactly
7 what is contained within a training file, but that's
8 generally what is contained in a training file.

9 Q. And what was the rank -- Well, you reviewed
10 Mr. Delay's training records as you've defined them.

11 A. Correct.

12 Q. Okay. What rank was he when you were reviewing
13 his training record?

14 A. A captain.

15 Q. Okay.

16 **MS. KNOLES:** I'm sorry. Then I'm going to object as
17 vague as to time or vague as to phrase captain.

18 **ALJ BROUSSARD-BOYD:** Well, he said that he was
19 captain. I don't -- I'm going to overrule that
20 objection. As to time, I think he's established that it
21 was between October 2006 and April 2007.

22 Q. **(BY MR. CRANE):** Were you ever aware of
23 Mr. Delay holding the rank of battalion chief at the
24 Coastside Fire Department?

25 A. I knew that he had attained the rank of

1 battalion chief I believe shortly after I had left that
2 assignment.

3 Q. Okay. So how long -- Do you have an
4 understanding as to how long he was a battalion chief for
5 Coastside prior to the time that he became a CalFIRE
6 employee?

7 A. I believe that it was probably less than a
8 year.

9 Q. Okay. When you reviewed Mr. Delay's training
10 records, did it appear to you that he had the training
11 that you would expect a CalFIRE battalion chief to have?

12 **MS. KNOLES:** Objection. Relevance.

13 **ALJ BROUSSARD-BOYD:** Mr. Crane, relevance of that
14 question, whether or not this gentleman expected
15 Mr. Delay to have certain training --

16 **MS. KNOLES:** He's not in his chain --

17 **ALJ BROUSSARD-BOYD:** -- of battalion chief.

18 **MS. KNOLES:** -- of command. He didn't
19 (indiscernible) that decision.

20 **ALJ BROUSSARD-BOYD:** What's the relevance of it?

21 **MR. CRANE:** Well, what we're trying to show is that
22 when he came over, he didn't have all of the training,
23 and he didn't have all of the training that would be
24 expected of a CalFIRE employee, and that --

25 **ALJ BROUSSARD-BOYD:** Well, why did they make him a

1 battalion chief?

2 **MR. CRANE:** They didn't. Coastside did.

3 **ALJ BROUSSARD-BOYD:** Okay. So he was -- he was a
4 battalion chief.

5 **MR. CRANE:** He came over to us as a battalion chief.
6 We didn't have --

7 **MS. KNOLES:** I --

8 **MR. CRANE:** We didn't have that -- We didn't have a
9 say in that.

10 **ALJ BROUSSARD-BOYD:** Do you have an objection?

11 **MS. KNOLES:** I do have an objection. I have an
12 objection that whether or not Mr. -- Battalion Chief
13 Delay was made a battalion chief is not at issue here.
14 This was six years before the transfer that we're talking
15 about. This is an individual who is not involved in the
16 decision either to make him a battalion chief, or
17 according to Chief Ferreira in the actual transfer, and I
18 haven't heard any recommendation that Battalion Chief
19 should have been -- Battalion Chief Delay should have
20 been demoted at some point or --

21 **ALJ BROUSSARD-BOYD:** Okay. Well, you've --

22 **MS. KNOLES:** -- fired.

23 **ALJ BROUSSARD-BOYD:** -- brought up a few good
24 issues. First of all, six years ago is a long time ago.
25 How is that relevant to what I need to decide?

1 **MR. CRANE:** I'm just trying to show that Chief
2 Delay's baseline of knowledge when he --

3 **ALJ BROUSSARD-BOYD:** How is it relevant to what I'm
4 deciding in a transfer, baseline knowledge? How is
5 baseline knowledge relevant to what I have to decide in
6 an involuntary geographic transfer or reassignment or
7 transfer, whatever you want to call it?

8 **MR. CRANE:** What I'm trying to show is it was not
9 for the purposes of discipline or harassment. He didn't
10 come over with an appropriate baseline of knowledge as
11 what we would expect as a CalFIRE battalion chief, and
12 that that was -- that goes back to Chief Ferreira's
13 reasoning for moving him in the first place is that he
14 didn't have it when he came over. He didn't appear to
15 get it while he was there in Coastside, and so that was
16 the reason for the move.

17 **MS. KNOLES:** This is starting to sound
18 (indiscernible).

19 **ALJ BROUSSARD-BOYD:** The which move? The first
20 move, the second move, or the move --

21 **MR. CRANE:** The second move.

22 **ALJ BROUSSARD-BOYD:** -- that was contemplated?

23 **MR. CRANE:** The move August 1st, 2012.

24 **MS. KNOLES:** And Chief Ferreira has already
25 testified that this was -- that --

1 **ALJ BROUSSARD-BOYD:** Well, okay. I think we can --
2 Let me just ask Battalion Chief Brunton something. In
3 2011, the fall of 2011 or early 2012 or anytime in
4 2012 -- At the end of 2011 or at the beginning of 2012 up
5 to, say, May of 2012, did you personally talk with Chief
6 Ferreira about Battalion Chief Delay?

7 **THE WITNESS:** Somewhere within a period of time,
8 I -- I made cadre member for supervision four, which
9 Chief Delay attended, and somewhere within discussion,
10 Chief Ferreira asked how he had done and --

11 **ALJ BROUSSARD-BOYD:** And when was that?

12 **THE WITNESS:** I cannot recall the exact date of when
13 he attended, but it was sometime within that period of
14 time that I believe that that discussion took place

15 **ALJ BROUSSARD-BOYD:** So late in 2011 or early 2012?

16 **THE WITNESS:** Somewhere in that area.

17 **ALJ BROUSSARD-BOYD:** So you did talk to Chief
18 Ferreira about Battalion Chief Delay?

19 **MS. KNOLES:** This --

20 **ALJ BROUSSARD-BOYD:** And I just want to see what
21 personal knowledge this witness has --

22 **MS. KNOLES:** Sure.

23 **ALJ BROUSSARD-BOYD:** -- because, otherwise, I don't
24 really know that we need your help.

25 **THE WITNESS:** Okay.

1 **ALJ BROUSSARD-BOYD:** So and was it related to what
2 you found in 2006 and 2007?

3 **THE WITNESS:** Just in the fact that -- Basically,
4 the fact that within that course because his base
5 knowledge wasn't exactly there, that it kind of
6 translated he didn't have that kind of base knowledge
7 that a battalion chief would have, that a longstanding
8 battalion chief in the organization.

9 **ALJ BROUSSARD-BOYD:** Okay. And your objection is
10 that it's not relevant.

11 **MS. KNOLES:** Well, my objection is now it's actually
12 twofold. My first objection is that reviewing records
13 from before, which he does right before Battalion Chief
14 Delay was even made a battalion chief, is I find
15 irrelevant. And second, I believe that his testimony as
16 to when this alleged training took place contradicts
17 Chief Ferreira's testimony, and so his memory I --

18 **ALJ BROUSSARD-BOYD:** Okay. You know I have taken
19 official notice of when -- of the work history of
20 Battalion Chief Delay. He did not become a battalion
21 chief until the year 2008 and June 2nd to be exact, so
22 anything -- If you can move forward from 2006, 2007. I'm
23 going to sustain the relevancy objection. 2006, 2007 is
24 not relevant. He wasn't even a battalion chief at that
25 time. So, anything else for Battalion Chief Brunton?

1 Q. (BY MR. CRANE): Chief Brunton, are you
2 familiar with the term the CalFIRE Academy?

3 A. Yes.

4 Q. Okay. What does that term mean?

5 A. The CalFIRE Academy is our central training
6 hub, if you will, where all employees enter into the
7 department. They go through for their basic training and
8 then also has continuous training throughout.

9 Q. Have you ever taught at the academy?

10 A. Yes, I have.

11 Q. And when did you teach at the academy?

12 A. I was an actual staff member at the academy
13 from September of 2002 until roughly April of 2003 on
14 permanent staff. And then as a cadre member and
15 committee member on a number of committees, I teach and
16 attend the academy on fairly regular basis. One of the
17 cadres I'm on I'm there at least two weeks a year.

18 ALJ BROUSSARD-BOYD: Are you saying cadre,
19 C-A-D-R-E?

20 THE WITNESS: Correct.

21 ALJ BROUSSARD-BOYD: Okay.

22 MR. CRANE: The instructional staff.

23 Q. (BY MR. CRANE): In 2010 or 2011, did you teach
24 any classes at the academy?

25 MS. KNOLES: Objection. Leading.

1 **ALJ BROUSSARD-BOYD:** Well, sustained. Could you
2 rephrase the question, please?

3 **Q. (BY MR. CRANE):** When you were a cadre, what
4 classes did you teach at the academy?

5 **A.** I teach supervision four, and that's typically
6 taught, one, sometime in December and another time in the
7 spring, March or April.

8 **Q.** Okay. And what is supervision four?

9 **A.** It's a leadership class that's required for all
10 new chief officers or senior captains. Also, we have
11 administrative staff out of our regional headquarters
12 that attend.

13 **Q.** Okay.

14 **ALJ BROUSSARD-BOYD:** And can I just clarify? This
15 was in 2002 or 2003?

16 **THE WITNESS:** No, ma'am. I was a full time staff
17 member there at that time, but every year --

18 **ALJ BROUSSARD-BOYD:** But you're still teaching?

19 **THE WITNESS:** I still teach there.

20 **ALJ BROUSSARD-BOYD:** Okay. Thank you.

21 **Q. (BY MR. CRANE):** Did you teach supervision four
22 to -- Did you teach a class of supervision four and with
23 that class including members of the Coastside -- former
24 members of the Coastside Fire Department?

25 **A.** Correct.

1 Q. Okay. When was that?

2 A. There are four chief officers that attended the
3 class, and they all attended at different times. And
4 that was probably over a two to three-year period to my
5 recollection.

6 Q. Okay. And can you give us like a timeframe as
7 to when that was?

8 A. Roughly between probably 2010 to 2012.

9 Q. Okay. Was Mr. Delay in one of the classes you
10 taught of sup four?

11 A. He was.

12 Q. All right. Were there other employees besides
13 former Coastside employees in the supervision four class?

14 A. Correct.

15 Q. Okay. Who were the other employees?

16 A. All CalFIRE employees many of which
17 longstanding employees, some that had come across in
18 contracts -- previous contracts. We have some regional
19 and Sacramento administrative staff attend.

20 Q. Did you note any difference in the performance
21 in sup four between the longstanding CalFIRE employees
22 and the Coastside employees?

23 A. Yes.

24 **MS. KNOLES:** Objection. Lacks foundation and it's
25 very broad. Would apply to all CalFIRE or --

1 **ALJ BROUSSARD-BOYD:** Certainly, yeah. Mr. Crane, do
2 you want to speak to that objection before I rule?

3 **MR. CRANE:** Well, he taught what he calls
4 longstanding CalFIRE employees and he taught longstanding
5 Coastside employees or Coastside employees, and I
6 wondered if there was any difference that he noted in the
7 performance of them.

8 **ALJ BROUSSARD-BOYD:** Difference. That's such a
9 broad term.

10 **MR. CRANE:** Okay.

11 **ALJ BROUSSARD-BOYD:** Anything else?

12 **Q. (BY MR. CRANE):** Would you be able to tell
13 us --

14 **ALJ BROUSSARD-BOYD:** Well, no. I'm asking -- I'm
15 asking for an offer of proof for the question.

16 **MR. CRANE:** No. I'll withdraw the question.

17 **ALJ BROUSSARD-BOYD:** Okay.

18 **MR. CRANE:** I'll rephrase, Your Honor.

19 **ALJ BROUSSARD-BOYD:** The question is withdrawn.

20 **Q. (BY MR. CRANE):** Having taught supervision four
21 to both Coastside employees and long-term CalFIRE
22 employees as an instructor, which of the employees did
23 better?

24 **MS. KNOLES:** Objection. I'm sorry. Relevance as to
25 how all CalFIRE employees do and all Coastside employees

1 do, and the phrase better without setting forth some
2 objective standards is prejudicial.

3 **MR. CRANE:** Okay.

4 **ALJ BROUSSARD-BOYD:** Mr. Crane?

5 **MR. CRANE:** All right. I'll narrow the question to
6 Mr. Delay.

7 **ALJ BROUSSARD-BOYD:** Okay. Withdrawn.

8 Q. **(BY MR. CRANE):** Let me reask the question,
9 Chief. Did CalFIRE -- Did Mr. Delay perform up to the
10 standards of the long-term CalFIRE employees when you
11 taught him and other CalFIRE employees in supervision
12 four?

13 **MS. KNOLES:** Again, I have to object to this line of
14 questioning. There's been no foundation laid as to what
15 standards are expected to be met. If there's an
16 objective list of what is expected to be learned, fine.
17 If it's what longstanding CalFIRE -- I don't even know
18 that -- how this has any relevance to really anything if
19 there's no specific information to be gleaned from.
20 Comparing him to other CalFIRE employees without a
21 standard by which to compare them to is highly
22 prejudicial.

23 **MR. CRANE:** Well, that's for you to sort out.

24 **ALJ BROUSSARD-BOYD:** Mr. Crane? Well --

25 **MR. CRANE:** Give it the weight you want.

1 **ALJ BROUSSARD-BOYD:** -- no. I'm having to sort out
2 quite a bit here, and I really would hope that the
3 parties could settle this matter because I don't -- this
4 testimony, while not really relevant what, you know, even
5 though he's a teacher and he's here saying that he's
6 trying to testify that he was not -- Chief Delay was not
7 better or was worse than the others, but Ms. Knoles is
8 right. Where's the standard? What standard are we
9 using? There's no foundation for it at all.

10 How many people were in the class, who was in the
11 class, and we don't need to go through that because we're
12 talking about a transfer under two Government Code
13 Statutes, and it has nothing to do with the training.
14 And I'm going to go off the record for a moment because I
15 want to --

16 (Off the record.)

17 **ALJ BROUSSARD-BOYD:** Okay. We're back on the
18 record. While we were off the record, I discussed a
19 little bit about my ruling as to the personal knowledge
20 of Battalion Chief Mark Brunton, and I was -- asked
21 Mr. Crane to limit his testimony to the knowledge that
22 Battalion Chief Brunton shared with Chief Ferreira so
23 proceed, please.

24 Q. **(BY MR. CRANE):** Did you ever talk with Chief
25 Ferreira? Okay. Do you know John Ferreira?

1 A. Yes, I do.

2 Q. Okay. Did you ever talk with Chief Ferreira
3 about Ari Delay?

4 A. Yes.

5 Q. Okay. What did you tell him?

6 **ALJ BROUSSARD-BOYD:** Well, let's establish when.
7 Are we talking still about 2010 because that's where we
8 left off in 2010?

9 **THE WITNESS:** It was sometime after and I can't
10 exactly remember the timeframe after he had been through
11 the class and asked how he had done. I said that he had
12 participated in the class throughout the week but noted
13 that did not have as much that he brought to the table in
14 the discussion of the dynamic way we do the class. And I
15 believe because he didn't have a lot of the experiences
16 that a vast majority of the class had, background, and
17 that sort of thing, form of reference on a lot of the
18 issues.

19 Q. **(BY MR. CRANE):** Is that the only time that you
20 spoke to Chief Ferreira about Mr. Delay?

21 A. That I recall.

22 **MR. CRANE:** I don't have anything else for
23 Mr. Brunton.

24 **ALJ BROUSSARD-BOYD:** Okay. Any cross-examination,
25 Ms. Knoles?

1 MS. KNOLES: Just a few questions.

2 CROSS-EXAMINATION BY MS. KNOLES

3 Q. (BY MS. KNOLES): Do you have any specific
4 recollection as to the year that Chief Delay went through
5 your class?

6 A. Not off the top of my head.

7 Q. Okay. And you testified that your opinion was
8 based on the fact that Mr. Delay was not as vocal in the
9 class as some of the other participants; is that correct?

10 A. Correct.

11 Q. Okay. Other than that experience, have you
12 ever worked with Battalion Chief Delay in professional
13 capacity as battalion chief?

14 A. No.

15 Q. And have you ever seen him in the field?

16 A. I did see him on a couple of incidents down in
17 San Mateo/Santa Cruz when I was there.

18 Q. Okay. And none of those incidents prompted you
19 to talk to Chief Ferreira about Chief Delay's abilities,
20 did they?

21 A. No.

22 Q. Okay. And when you teach your class, do you
23 have any objective standards by which you measure the
24 participation of the employees?

25 A. If you mean by an examination, this course does

1 not require an examination.

2 Q. Okay. If you had concerns about Chief Delay's
3 ability to act as a battalion chief in a way that might
4 have been somehow harmful, would you have reported them?

5 A. If I thought it was a direct safety?

6 Q. Yep.

7 A. Yes, I would have.

8 Q. Okay. And you did not think that.

9 A. Not based on his performance in the course.

10 Q. Okay. And you didn't take any notes on Chief
11 Delay's performance, did you in the --

12 A. No.

13 **MS. KNOLES:** Okay. No further questions.

14 **ALJ BROUSSARD-BOYD:** Okay. Any redirect?

15 **MR. CRANE:** No.

16 **ALJ BROUSSARD-BOYD:** Okay. So you don't have -- you
17 know when you taught him the class. Is that what you're
18 saying?

19 **THE WITNESS:** I would have to go back and review
20 because I teach --

21 **ALJ BROUSSARD-BOYD:** Well, do you think maybe 2010
22 or --

23 **THE WITNESS:** It was between -- It was within the
24 past -- definitely within the past two years. Between
25 2010 -- It was either 2010, 2011.

1 **ALJ BROUSSARD-BOYD:** And it was just the one class
2 supervisor four?

3 **THE WITNESS:** Supervision four, yes, correct.

4 **ALJ BROUSSARD-BOYD:** So there's no test given. Is
5 it a pass/fail or it's just everyone pass? They all pass
6 (indiscernible).

7 **THE WITNESS:** Essentially everyone passes because it
8 is not a course in which there's a test given or any sort
9 of thing like that.

10 **ALJ BROUSSARD-BOYD:** Okay.

11 **THE WITNESS:** It's a leadership course in which you
12 don't test necessarily knowledge of theory, but it's
13 discussion of practices and sharing of ideas and --

14 **ALJ BROUSSARD-BOYD:** Now are these practices you're
15 teaching in your supervisor four course, are they related
16 to fire suppression or fire management?

17 **THE WITNESS:** Yeah, fire suppression. You know, not
18 so much the operational elements of it, but more so the
19 leadership aspects.

20 **ALJ BROUSSARD-BOYD:** Describe the leadership aspects
21 for me.

22 **THE WITNESS:** Basically, a lot of things we talk
23 about are what makes a good leader, positive leadership,
24 mentoring of personnel, coaching, development of
25 personnel, understanding things regarding the generation

1 gaps. I mean there's --

2 **ALJ BROUSSARD-BOYD:** Generation gaps?

3 **THE WITNESS:** Because --

4 **ALJ BROUSSARD-BOYD:** What about generation gaps?

5 **THE WITNESS:** In leading personnel, we find that we
6 have supervisor managers that have -- that are a
7 generation or two over the people that they are leading,
8 and the challenges that can come with that, and how to
9 better relate to those individuals to be more successful
10 as a leader and supervisor.

11 **ALJ BROUSSARD-BOYD:** Okay. So you're not talking
12 about specific policies about what to do and when you're
13 fighting fires or anything like that.

14 **THE WITNESS:** There is some -- There's some
15 discussion regarding department policy that comes up in
16 the discussions.

17 **ALJ BROUSSARD-BOYD:** Department policy regarding
18 what?

19 **THE WITNESS:** Regarding things such as like the
20 mentorship program. The department's policy I think in
21 regards to that. We talk a lot about policy in regards
22 to some of the discussion with our testing procedures and
23 processes. That tends to be a big discussion with the
24 way we do that and the policy that goes behind that and
25 doctrine, and I mean it just covers a wide gamut of

1 things regarding our department.

2 **ALJ BROUSSARD-BOYD:** When you say things, though,
3 you know, I have to deal in specific facts. You said
4 leadership, so --

5 **THE WITNESS:** Leadership.

6 **ALJ BROUSSARD-BOYD:** -- it's leadership and --

7 **THE WITNESS:** Supervision.

8 **ALJ BROUSSARD-BOYD:** -- supervision.

9 **THE WITNESS:** Management.

10 **ALJ BROUSSARD-BOYD:** And this is you only taught
11 Battalion Chief Delay one course.

12 **THE WITNESS:** Correct.

13 **ALJ BROUSSARD-BOYD:** And it was a week course.

14 **THE WITNESS:** Correct.

15 **ALJ BROUSSARD-BOYD:** One week. Okay. Thank you
16 very much for being so patient here today. Any other
17 questions for Battalion Chief Brunton?

18 **MR. CRANE:** No. Thank you.

19 **ALJ BROUSSARD-BOYD:** Okay. Thank you.

20 **THE WITNESS:** Thank you.

21 **MR. CRANE:** Thank you, Chief.

22 **MS. KNOLES:** Thank you.

23 **ALJ BROUSSARD-BOYD:** All right. And this is your
24 last witness, sir?

25 **MR. CRANE:** Yes, it is.

1 **ALJ BROUSSARD-BOYD:** Okay. Anything else?

2 **MS. KNOLES:** I really don't think so.

3 **ALJ BROUSSARD-BOYD:** Okay. Okay. So that brings
4 us to closing arguments, and given two days of testimony
5 or almost two full days of testimony, I'm presuming
6 that the parties would want to file written briefs. If
7 not, you don't have to. I'm just saying you might, so do
8 you?

9 **MS. KNOLES:** I think that the CalFIRE mentioned last
10 time they were interested in written briefs and --

11 **MR. CRANE:** Yeah, I certainly would like to and
12 gather my thoughts and look back on --

13 **ALJ BROUSSARD-BOYD:** Okay. Okay. As you gather
14 your thoughts, I'm going to now, as I said off the
15 record, take official notice of State Personnel Board
16 Government Codes dealing in progressive discipline. Any
17 associated and I know it's a lot, but you guys have
18 brought up a lot, associated regulations and/or published
19 policies regarding discipline, progressive or otherwise,
20 with the employees of the State of California.

21 So that said, how would you like to do the briefs,
22 simultaneous briefs, first from Appellant, and then a
23 response from Respondent, and then a reply?

24 **MR. CRANE:** You know, I don't know about Ms. Knoles,
25 I think we can just do something simultaneous. I think

1 it will be too much, you know, and I know that we want to
2 move this thing along. So, I think if we just do it
3 simultaneously.

4 **ALJ BROUSSARD-BOYD:** Simultaneous is fine.

5 **MS. KNOLES:** And no objection.

6 **ALJ BROUSSARD-BOYD:** Okay. You guys are easy. All
7 right. When did --

8 **MS. KNOLES:** You're saying we're easy?

9 **ALJ BROUSSARD-BOYD:** Well, I know the hearing is
10 over now. I can -- It's easy now. But usually they want
11 simultaneous briefs, and it will be January before we're
12 done. So when did you think that you wanted to file
13 these briefs? And of course, when the parties file with
14 me, they have to send a copy to each other --

15 **MS. KNOLES:** Right.

16 **MR. CRANE:** Of course.

17 **ALJ BROUSSARD-BOYD:** -- just to make sure you know
18 that. Today is --

19 **MR. CRANE:** The 22nd.

20 **ALJ BROUSSARD-BOYD:** -- the 22nd of October.

21 **MS. KNOLES:** I mean I think seven days, but I don't
22 know.

23 **MR. CRANE:** I'd like a little more time than seven
24 days because I know I've got some trial length coming up,
25 SPB matters. Can we do it like on 11/22?

1 **MS. KNOLES:** That's 30 days for a closing brief?
2 Mr. Delay -- I mean at this point, Mr. Delay has been out
3 of his position and under this transfer since August 1st.
4 We delayed the hearing. We agreed to the date, you know,
5 that worked best for the Respondents. I think that 30
6 days is excessive for --

7 **MR. CRANE:** How long would it take --

8 **MS. KNOLES:** -- a closing brief.

9 **MR. CRANE:** How long will it take to get the
10 transcript?

11 **ALJ BROUSSARD-BOYD:** Well, there are two of them,
12 and it's getting longer the more I speak here, and it
13 depends. They'll get it to you in 72 hours if you want
14 to pay.

15 **MR. CRANE:** Okay.

16 **ALJ BROUSSARD-BOYD:** But it's very expensive that
17 quickly. Usually, it's two to three weeks, and it's a
18 reasonable price.

19 **MR. CRANE:** Okay.

20 **ALJ BROUSSARD-BOYD:** So we don't do the
21 transcription. We have to send it out, so --

22 **MR. CRANE:** Okay.

23 **ALJ BROUSSARD-BOYD:** -- we give you a quote.

24 **MR. CRANE:** I'm going to want to get -- We're going
25 to want to get the transcript, right? Yeah.

1 **ALJ BROUSSARD-BOYD:** Okay.

2 **MR. CRANE:** Well, if we're going to need two or
3 three weeks to get the transcript, I mean and because we
4 went over two different days and because we did two days
5 of hearing, we went like a couple of months apart. I'd
6 just like to have some time to get the transcript and,
7 you know, and actually quote from the transcript and be
8 more accurate about what we're writing.

9 **MS. KNOLES:** It sounds to me like we're writing a
10 writ instead of a closing brief. And I think that
11 closing briefs are not to re-identify what is already
12 fully in the transcript.

13 **ALJ BROUSSARD-BOYD:** It's an argument.

14 **MS. KNOLES:** It's an argument.

15 **ALJ BROUSSARD-BOYD:** It's an argument. Right.

16 **MS. KNOLES:** And it's an argument --

17 **ALJ BROUSSARD-BOYD:** It's argument for the facts of
18 (indiscernible).

19 **MS. KNOLES:** -- that says apply this standard
20 because we've already put out our facts. So, I think
21 waiting -- I don't know that the transcript is either
22 necessary, or if they think that it's necessary that we
23 should further delayed because they don't want to pay the
24 cost of getting it in an expeditious manner. I'm --

25 **ALJ BROUSSARD-BOYD:** Well, Mr. Crane, you seem to

1 know your case inside and out. I really don't know how a
2 transcript would assist you.

3 **MR. CRANE:** Well, I certainly would -- I mean, just
4 for the record, that's what I'd like to have. And if you
5 want to do it faster, we'll do it.

6 **MS. KNOLES:** I've just never heard of a closing
7 argument that's based off of (indiscernible) and --

8 **ALJ BROUSSARD-BOYD:** Well, no. Now you have.

9 **MS. KNOLES:** But now I have.

10 **ALJ BROUSSARD-BOYD:** Yes. So and as -- Today is
11 the 22nd of October, so by the time you get the
12 transcripts, we're at the 22nd of November, and then
13 we're -- This isn't going to be an overnight proposed
14 decision and then it goes to the director, and I'll tell
15 the parties that the director -- this new director is
16 taking two and three months to just sign the proposed
17 decision for no other reason than that the plate is full
18 for the director.

19 **MR. CRANE:** Yeah. No, I understand.

20 **ALJ BROUSSARD-BOYD:** So --

21 **MS. KNOLES:** I just think there might be some
22 benefit to getting it to you before the Thanksgiving
23 holiday at his point but --

24 **ALJ BROUSSARD-BOYD:** No. It doesn't -- No. So I
25 don't want either party to feel that they didn't have an

1 opportunity to argue their case. And the fact that
2 you're doing simultaneous as opposed to reply and
3 response briefs, that will shorten the time a bit, but --
4 And if they end up filing a writ, you already have the
5 transcript.

6 So, okay, so what I will say is that the closing
7 arguments -- simultaneous closing arguments are due
8 December 10th, which is a Monday, and I will endeavor to
9 get it out of my office before the end of the year and
10 make sure that the director sees it. But again, I have
11 no control over when the director actually looks at
12 these, okay?

13 **MS. KNOLES:** Understood.

14 **MR. CRANE:** I understand, Your Honor. Thank you.

15 **ALJ BROUSSARD-BOYD:** But I believe that the parties
16 say there's a lot of issues that are brought up here.
17 I'm taking official notice of many Government Codes, and
18 with that knowledge that, you know, the parties may want
19 to put that in their brief as well as to what -- how that
20 affects their case. Okay.

21 **MR. CRANE:** Thank you.

22 **ALJ BROUSSARD-BOYD:** So December 10th it is, and you
23 can fax or mail. Do not email, please, directly but fax
24 or mail. Anything else before we go off the record in
25 the matter of Ari Delay involuntary geographic transfer

1 appeal? No?

2 **MS. KNOLES:** No, Your Honor.

3 **MR. CRANE:** Thank you for your time, Your Honor.

4 **ALJ BROUSSARD-BOYD:** Okay. We're off the record.

5 (Proceedings concluded.)

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CERTIFICATE OF TRANSCRIBER

I, Tamyra Morgan, as the Transcriber, hereby
certify that the attached proceedings before
Administrative Law Judge Karla Broussard-Boyd, Department
of Human Resources,

In the Matter of the Appeal by)
ARI DELAY,)
Battalion Chief) Case No. 12-D-0163
Appeal of Involuntary Geographic)
Transfer)

were held as herein appears and that this is the original
transcript thereof, and that the statements that appear
in this transcript were transcribed by me to the best of
my ability.

I further certify that this transcript is a true,
complete, and accurate record of one CD provided in the
above-entitled proceeding. Vine, McKinnon & Hall
received the audio recordings on November 15, 2012.

Dated this 24th day of November, 2012, at West
Sacramento, California.

Tamyra Morgan

Tamyra Morgan
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(916) 371-3376