

STATE OF MICHIGAN
DEPARTMENT OF CIVIL SERVICE
HEARINGS, EMPLOYEE RELATIONS, AND MEDIATION

DAVID ROBINSON,

Grievant,

v

Reference Number: 2010-02283

DEPARTMENT OF ENERGY, LABOR
AND ECONOMIC GROWTH,

Respondent.

/

GRIEVANCE HEARING
BEFORE WILLIAM P. HUTCHENS, HEARING OFFICER
400 South Pine Street, Lansing, Michigan
Tuesday, September 7, 2010, 9:30 a.m.

APPEARANCES:

For the Grievant:

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MR. GERALD JOSEPH CICHOCKI (P68223)
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For the Respondent:

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Department of Labor & Economic Growth
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Also Present:

James Hull
Fred Wurtzel

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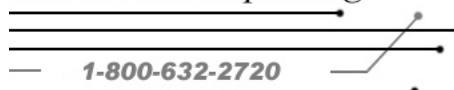
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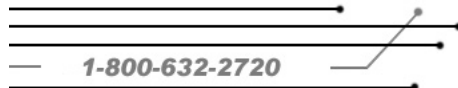
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1 Lansing, Michigan

2 Tuesday, September 7, 2010 - 9:41 a.m.

3 MR. HUTCHENS: We'll open the record then. This
4 is the third step grievance hearing of David Robinson and
5 the Department of Energy, Labor & Economic Growth. Today's
6 date is September 7th, 2010. The time is approximately 9:40
7 a.m. We are located today at 400 South Pine Street,
8 Lansing, Michigan. For the record, my name is William
9 Hutchens. I'm employed by the Civil Service Commission as a
10 hearing officer. I have been assigned to hear the matters
11 in dispute between the parties today. Based on the
12 documentation and testimony that is presented to me, it is
13 my job to issue a just and fair decision to the best of my
14 ability. What I would like to do at this point is to
15 disclose the documents contained in the hearing officer's
16 folder. These documents lead to my understanding of the
17 case up until this point and I would propose that they be
18 marked and entered into the record as joint exhibits. The
19 first such document is the Notice of Grievance Hearing
20 setting the hearing for today's date at this time and
21 address. I would propose that that be marked and entered
22 into the record as Joint Exhibit Number 1 if there is no
23 objection.

24 MR. KAMAR: None.

25 MR. HUTCHENS: Hearing no objection, that is

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1 entered as Joint Exhibit Number 1.

2 (Joint Exhibit 1 marked and received)

3 MR. HUTCHENS: As Joint Exhibit Number 2 I would
4 propose the grievance chain. This is covered by a couple of
5 letters from our office. I have numbered the documents at
6 the lower right-hand corner, pages 1 through 11. I would
7 ask the parties if there is any objection to that series of
8 documents being entered together as Joint Exhibit Number 2.

9 MS. SMITH: None.

10 MR. KAMAR: None.

11 MR. HUTCHENS: The grievance chain is entered as
12 Joint Exhibit 2.

13 (Joint Exhibit 2 marked and received)

14 MR. HUTCHENS: Those are the only documents I have
15 to offer into the record. Are there any other documents
16 that the parties have that they wish to offer into the
17 record at this time as joint exhibits?

18 MS. SMITH: No.

19 MR. KAMAR: No.

20 MR. HUTCHENS: Okay. What I would like to do at
21 this point then is to discuss the issue. The issue as it
22 appears on the Notice of Hearing reads as follows: "Was the
23 grievant dismissed for just cause?" It's my understanding
24 that's why we're here today. Is that a satisfactory and
25 complete statement of issue to both sides?

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1 MR. KAMAR: It is.

2 MS. SMITH: What was that again?

3 MR. HUTCHENS: The issue on the Notice of Hearing
4 reads, "Was the grievant dismissed for just cause?" Is that
5 a satisfactory statement of issue?

6 MS. SMITH: Yes.

7 MR. HUTCHENS: All right. We'll proceed on that
8 statement of issue.

9 MR. KAMAR: We had put in our basis of grievance
10 and relief request that as a result of the -- we cited the
11 rule -- the prohibited discrimination which is MDCS Rule
12 8.13, which is wrongfully based not only upon just cause,
13 but upon partisan considerations. So we had put that in the
14 basis of our grievance and relief request.

15 MR. HUTCHENS: That would be covered the broader
16 ambit of the concept of just cause and certainly that's an
17 issue that I will consider as you put forth your case
18 presentation.

19 MR. KAMAR: Okay. Thank you. Thank you.

20 MR. HUTCHENS: With that, Ms. Smith, I would ask
21 you for the Department's opening statement at this point.

22 MS. SMITH: The issue before the hearing officer
23 which you've already indicated for us -- so I'll skip over
24 that part. The grievant alleges that the dismissal was a
25 planned scheme of Business Enterprise Program supervisors to

1 remove him from the BEP staff and that it was solely based
2 on membership in a private organization, the National
3 Federation of the Blind of Michigan. Excuse me. Let me
4 stop here. I would like to request -- they have a witness
5 here, Fred Wurtzel, and I would like to request that the
6 witness be sequestered.

7 MR. KAMAR: I don't have any problem with that as
8 long as it goes to both sides. So Mr. Wurtzel will have to
9 step out.

10 MR. HUTCHENS: Well, that's fine. Sir, we have
11 chairs out in the hallway.

12 (Mr. Wurtzel exits hearing at 9:45 a.m.)

13 MS. SMITH: Mr. Hull is a witness and Mr. Hull
14 will also be serving as second chair for me.

15 MR. HUTCHENS: That's fine.

16 MS. SMITH: The grievant alleges that the
17 dismissal was a planned scheme of Business Enterprise
18 Program supervisors to remove him from the BEP staff and
19 that it was solely based on membership in a private
20 organization, the National Federation of the Blind of
21 Michigan. He further claims the issues outlined in the
22 unsatisfactory performance rating were without substance and
23 show a deliberate and ongoing practice to remove him from
24 his position. The grievant had received formal counselings
25 for his failure to follow directions, completing

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1 inventories, entering evaluations, updating and documenting
2 site visits in the database. The evidence will show the
3 grievant's previous supervisor, Ms. Zanger, made attempts to
4 correct these performance deficiencies before she moved to a
5 different position. When Mr. Hull became the immediate
6 supervisor, he experienced the same problems and concerns as
7 Ms. Zanger. On August 5th, 2009, the grievant received a
8 one-day suspension for falsification of work-related
9 documents. As a result of his failure to correct his
10 performance deficiencies, he was issued an interim rating on
11 September 17th, 2009. These actions were not grieved. The
12 interim rating required him to enter all site visits from
13 the past 12 months by October 17th, 2009 and submit a plan
14 to his supervisor within one week as to how he would
15 maintain site visits on the database. He was required to
16 make necessary visits and enter them within one week, to
17 submit a proposed itinerary for five workdays, and a summary
18 of previous weeks' visits as well as to comply with all
19 directives. The Department will argue and prove through
20 testimony and documentary evidence that the grievant did not
21 comply with the interim rating requirements. He failed to
22 follow through on directives given, failed to communicate to
23 operators and BEP management on the SEC popcorn giveaway,
24 failed to communicate on the transition of operators at the
25 Hall of Justice, failed to follow the directive to provide

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1 an invoice on the JRTC inventory, and failed to follow a
2 directive to keep the Ottawa store open. The evidence will
3 show that Mr. Hull made numerous attempts to have the
4 grievant comply with the directives, but the grievant failed
5 to do so even with extended deadlines. The grievant
6 blatantly refused to respond to supervisory directives and
7 expectations. The dismissal of the grievant was for
8 unsatisfactory performance as indicated in his
9 unsatisfactory interim rating. There has been no violation
10 of the Civil Service rules and no evidence of discrimination
11 based upon the grievant's affiliation with the NFB. The
12 Department respectfully requests the denial of this
13 grievance in its entirety.

14 MR. HUTCHENS: Mr. Kamar, does the grievant have
15 an opening statement at this time?

16 MR. KAMAR: Can I reserve it?

17 MR. HUTCHENS: Yes, you can.

18 MR. KAMAR: I would like to reserve it.

19 MR. HUTCHENS: All right. Ms. Smith, who is the
20 Department's first witness?

21 MS. SMITH: James Hull.

22 MR. HUTCHENS: Would it be easier for you, sir, to
23 remain there?

24 MR. HALL: Actually, it would be easier so I could
25 take a look at Marilyn and Mr. Kamar as they're questioning.

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1 Is there a seat up here?

2 MR. HUTCHENS: Yes, there is a seat up here for
3 you, sir. It would be to your left and then there's a table
4 right here and it's right at the end of the table.

5 MS. SMITH: Mr. Hull, would you please --

6 MR. HUTCHENS: We need to -- be sworn in first.

7 MS. SMITH: Oh, I'm sorry.

8 REPORTER: Would you please raise your right hand?
9 Do you solemnly swear or affirm that the testimony you give
10 today will be the whole truth?

11 MR. HULL: Yes.

12 MR. HUTCHENS: Go ahead, ma'am.

13 JAMES HULL

14 having been called by the Respondent and sworn:

15 DIRECT EXAMINATION

16 BY MS. SMITH:

17 Q Mr. Hull, would you please state and spell your name for the
18 record, please?

19 A James Hull; J-a-m-e-s H-u-l-l.

20 Q And, Mr. Hull, how long have you been employed with the
21 State?

22 A It will be six years this October.

23 Q And what is your current position?

24 A My current position is the acting Business Enterprise
25 Program manager.

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1 Q And how long have you been in this position?

2 A I was given this acting assignment on June 14th of this
3 year.

4 Q And prior to this appointment, what position were you in?

5 A I was the assistant Business Enterprise Program manager.

6 Q And did you supervise the grievant?

7 A I did.

8 Q And that was while you were in that position?

9 A That was one of my roles, yes.

10 Q And from what dates did you supervise the grievant?

11 A I began as the assistant program manager on the 1st of June
12 2009, so it would have been from then until his separation.

13 Q Okay. And would you briefly describe the job duties of the
14 grievant?

15 A The promotional agent is the prime liaison between operators
16 working in the Business Enterprise Program and our
17 administrative staff. The promotional agent is responsible
18 to determine and procure equipment for the continued
19 operation of our facilities. They're also required to work
20 with the operators to ensure that they have all proper
21 training and skills in order to successfully operate food
22 service establishments within our program. In order to do
23 that, they have specific requirements that they have to meet
24 which are laid out in both the position description and the
25 promulgated rules. Requirements such as making site visits

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1 at the facility every six weeks or when that's not
2 physically possible to make contacts with the operators
3 every six weeks and document that in the Business Enterprise
4 Program database. Additionally, they're required to
5 evaluate the operators on an annual basis. This evaluation
6 rates whether or not the individual is meeting expectations,
7 helps to determine that the individual operators might need
8 and additionally it helps us to comply with our fiduciary
9 responsibilities of conducting an evaluation on an annual
10 basis.

11 Q Okay. I'm holding in my hand two documents. One is a
12 position description for Mr. Robinson and the other is the
13 promulgated rules for the Department. Are those the two
14 documents that you're speaking of in terms of what his
15 position -- what he does in his position?

16 A Yes.

17 MS. SMITH: I would like to have these documents
18 entered into the record.

19 MR. KAMAR: Can I just see them?

20 (Counsel reviews document)

21 MR. KAMAR: Do you know which ones they're talking
22 about so when I hand them to him --

23 MR. CICHOCKI: Yes, I do.

24 MR. KAMAR: So those will be marked as 1 and 2?

25 MR. HUTCHENS: Department Exhibits 1 and 2. The

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1 position description for Mr. Robinson's position as a
2 promotional agent 12 is entered into the record as
3 Department Exhibit Number 1.

4 (Department Exhibit 1 marked and received)

5 MR. HUTCHENS: The document entitled "Department
6 of Labor & Economic Growth Commission for the Blind Vending
7 Facility Program" -- this is -- there don't appear to be
8 page numbers on here. Oh, wait a second. I'm looking at
9 the wrong document. It's a 37-page document. That's
10 entered as Department Exhibit Number 2.

11 (Department Exhibit 2 marked and received)

12 MR. HUTCHENS: Go ahead, ma'am.

13 MS. SMITH: Okay.

14 Q When you started to supervise the grievant, did you have any
15 problems or concerns with his time or attendance?

16 A In the first month of working as the grievant's supervisor,
17 I did have an incident where I had concern about his time
18 and attendance. He had stated that he had worked eight
19 hours of regular time on the 30th of June and it had been
20 brought to the Agency's attention that he had gone and met
21 with representatives from the DELEG administrative staff
22 representing an organization other than the State of
23 Michigan which he did not delineate as any sort of annual
24 leave or leave time on his timesheet.

25 Q And as a result, did you conduct an investigation?

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1 A I did. I spoke with several individuals from the DELEG
2 administrative offices including Debbie Huntley who informed
3 me that the grievant had attended a meeting. He represented
4 himself as from an organization not affiliated with the
5 Commission for the Blind and at no time in that meeting did
6 he acknowledge that he was an employee of the State of
7 Michigan. I further investigated this matter by consulting
8 with the director of our agency, Pat Cannon, who informed me
9 that he had received on that day a phone call from
10 individuals from DELEG stating something similar; that Mr.
11 Robinson had met with them and that they were unaware that
12 he was a State employee. I further followed that up by
13 checking David's time and attendance log which he submitted
14 to our bookkeeper certifying that the hours that he worked
15 that day were all eight hours of regular work time.

16 Q Okay. And as a result of this investigation, what happened?

17 A A disciplinary conference was held with the grievant. He
18 was asked if he did attend the meeting. He said that, yes,
19 he did, and a one-day suspension was issued as a result from
20 that conference.

21 MS. SMITH: Okay. I would like to -- I have in my
22 hand a document that indicates a notice of charges and
23 disciplinary action to Mr. Robinson. It's dated August the
24 4th, and it speaks to the one-day suspension indicating that
25 he violated the DELEG handbook and falsified work related

1 documents. I would like to have this entered as Department
2 Exhibit 3.

3 MR. KAMAR: No objection.

4 MR. HUTCHENS: I'm looking for the document. That
5 appears to be out of order in your packet here. Okay.
6 That's dated August 4th, 2009?

7 MS. SMITH: August 4th, yes, to David Robinson,
8 Notice of Charges.

9 MR. HUTCHENS: Okay. I've located the document.
10 Mr. Kamar, there's no objection to this?

11 MR. KAMAR: No.

12 MR. HUTCHENS: All right. That's entered as
13 Department Exhibit 3.

14 (Department Exhibit 3 marked and received)

15 Q Had he had any problems that you know of conducting personal
16 business in the past?

17 A I was made aware when I became the grievant's supervisor
18 that he had had some formal counseling in the past and that
19 he had used State time to represent an organization other
20 than the State of Michigan, and he had been made aware that
21 that was inappropriate use of State time and that he would
22 need to in the future request annual to conduct such
23 business and for the time that he had taken or had done
24 that, that he would be forced to use annual time; yes.

25 Q Now, while he was under your supervision also, did you have

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1 any issues with his performance?

2 A Yes.

3 Q And what kind of issues did you have with his performance?

4 A The first issue that I became aware of was in regards to
5 site visits.

6 Q What was? I'm sorry.

7 A In regards to site visits. As I stated, site visits are an
8 essential duty as outlined in the position description in
9 the promulgated rules. And as we were short one promotional
10 agent, it was even more critical that all staff stay current
11 with all their documentation and all their paperwork. I did
12 a review of the site visits for all of the promotional
13 agents and noticed that each of them were anywhere from one
14 to four weeks behind on entering their information, but
15 after reviewing the grievant's history, I noticed that he
16 had not entered a site visit since December 4th of 2008.

17 MR. KAMAR: By "he," I assume you're meaning Mr.
18 Robinson?

19 THE WITNESS: The grievant, yes.

20 A On June 12th, I issued a directive to all promotional agents
21 to enter all outstanding site visits by a specific deadline
22 and to maintain current on all their site visits from that
23 point forward.

24 Q Did you have any problems with his summary of weekly
25 activities or tentative itineraries?

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1 A One of the things that I also asked all the promotional
2 agents to do was provide me with a projected itinerary and a
3 summary of their activities from the previous week. It was
4 in this way that I was hoping to help them -- help assist
5 them in regulating their time and also keeping current on
6 what was going on throughout the program and what they were
7 doing in their individual facilities. At the onset of my
8 supervision of the grievant, he failed to provide these on a
9 regular basis. As he and I had informal discussions and
10 informal counseling regarding this issue, he began providing
11 the itinerary. However, his summaries were very vague and
12 not very descriptive in regards to his actual activities;
13 just simply stating that he had met with a particular
14 individual, but not providing any additional information
15 regarding that.

16 Q Okay. I have an email here in my hand to you -- I'm
17 sorry -- from you to David, and it's dated August 12th, and
18 the subject is "Rescheduled appointments." And in that
19 document, you asked him to submit tentative itinerary and
20 summary of activities weekly because you had not received
21 this from him for some time; is that correct?

22 A That is correct.

23 MS. SMITH: I would like to have this entered as
24 Department Exhibit 4. It's dated August 12th.

25 MR. HUTCHENS: Okay. And the subject was

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1 "Rescheduled appointments"?

2 MS. SMITH: Rescheduled appointments.

3 MR. HUTCHENS: Mr. Kamar, is there any objection
4 to the document?

5 MR. KAMAR: One second, sir.

6 (Counsel reviews document)

7 MR. KAMAR: I have no objection.

8 MR. HUTCHENS: It's entered as D-4.

9 (Department Exhibit 4 marked and received)

10 Q Have there been any previous corrective actions to your
11 knowledge on Mr. Robinson before you started to supervise
12 him?

13 A When I became Mr. Robinson's supervisor, I spoke with his
14 previous supervisor, Constance Zanger, who had been the
15 supervisor of all of the promotional agents to find out the
16 status of any issues with any of the promotional agents and
17 she had let me know that the grievant had been working --
18 while working with the Department had received several
19 formal counselings prior to my supervision of him.

20 MS. SMITH: I have in my hand three formal
21 counselings. One is from a Cheryl Heibeck dated March 20th.
22 The other one -- the other two are from a Constance Zanger
23 dated July 22nd, 2008, and October 10th, 2008. I would like
24 to have these entered into the record as Department Exhibit
25 5. I believe it's 5.

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1 MR. KAMAR: No objection to Number 5.

2 MR. HUTCHENS: All right. The three counseling
3 memos are entered together as Department Exhibit Number 5.
4 The first as indicated is dated March 20th, 2008. The
5 second is July 22nd, 2008. The third is October 10th, 2008.

6 (Department Exhibit 5 marked and received)

7 Q Mr. Hull, you mentioned earlier that you had given the
8 grievant a directive to make all site visits current. Did
9 he do that?

10 A No.

11 Q Did he ask for an extension?

12 A No.

13 Q Did he come to you and indicate that he had any problems in
14 catching up to make these visits current?

15 A When he was issued the interim rating in September, he did
16 request an air card in order to facilitate these site visits
17 outside of the office.

18 Q Okay. But this is prior to the interim --

19 A Prior to the interim rating, no.

20 Q Okay. So his performance did not improve; is that correct?

21 A No.

22 Q Okay. So you -- at that point you issued the interim
23 rating?

24 A That is correct.

25 MS. SMITH: I have in my hand the interim rating.

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1 The effective date is 9/17/2009. It is indicated as the
2 initial interim rating to David Robinson. I would like to
3 have that entered into the record, please.

4 MR. KAMAR: No objection.

5 MR. HUTCHENS: I'm trying to locate the document.

6 MS. SMITH: It should be near the front of your
7 packet.

8 MR. HUTCHENS: Right. I have an interim employee
9 rating, but it is indicated as a followup rating.

10 MS. SMITH: No, this is the initial.

11 MR. HUTCHENS: The one I have has a box checked on
12 the front that says "followup rating." It's for that
13 period.

14 MS. SMITH: Do you have the initial there?

15 MR. HUTCHENS: That's what I was looking for.

16 MR. KAMAR: Does it say "Interim employee rating"?

17 MS. SMITH: Pardon?

18 MR. HUTCHENS: It says "Interim employee rating,"
19 but the box --

20 MS. SMITH: It will say --

21 MR. HUTCHENS: And it says for the period of
22 9/17/09 through 12/18.

23 MS. SMITH: All right. And the box for "Initial"
24 would be checked.

25 MR. HUTCHENS: Mine has the box "Followup rating"

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1 checked.

2 MR. KAMAR: That might be on the second page is
3 the way we have it if you got the same document we do.

4 MR. HUTCHENS: On mine, the final page is the
5 employee departure report so I assume this is the followup
6 rating with the discharge.

7 MR. KAMAR: Is this what you're referring to?
8 Ma'am, I think this is what you're referring to.

9 MS. SMITH: That's the initial.

10 MR. HUTCHENS: Ms. Smith, if you can let me have
11 your initial rating, I can just make a copy of it.

12 MS. SMITH: I have one here for you.

13 MR. KAMAR: We have it.

14 MS. SMITH: I have some extras.

15 MR. HUTCHENS: Thank you. Okay. I have the
16 initial rating at this point. Mr. Kamar, there is no
17 objection to that as D-6?

18 MR. KAMAR: No, sir.

19 MR. HUTCHENS: It's entered as D-6.

20 (Department Exhibit 6 marked and received)

21 Q Okay. Mr. Hull, in that initial rating, you instructed
22 him -- do you recall what you instructed him to do in that
23 initial rating?

24 A I recall that I instructed him to perform a variety of
25 tasks. The first was to become current on all site visits

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1 within one month of the issuance of the rating;
2 additionally, to make all site visits -- or to enter all
3 site visits within one week of making the contact from that
4 point forward. I instructed him to comply with all
5 directives from his supervisor. I believe I instructed him
6 to maintain providing an itinerary and a summary to his
7 supervisor for the duration of the interim rating. I do
8 believe that may have been everything.

9 Q Okay. To just briefly recap -- I'm sorry -- "to make all
10 site visits current within one month of the rating."

11 A Uh-huh; yes.

12 Q Was this something that he could accomplish?

13 A Yes.

14 Q "Submit a plan to your supervisor within one week of the
15 start of the interim rating as to how you will maintain site
16 visits on the database." Was this something that he could
17 accomplish?

18 A Yes.

19 Q "Make site visits to his facilities." Is this something
20 that he could have accomplished?

21 A Yes.

22 Q "Submit a proposed itinerary." Is this something that he
23 could accomplish?

24 A Yes.

25 Q Did he accomplish any of those during the rating period?

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1 A He did submit itineraries; he did not provide a plan for how
2 he was going to stay current on site visits; he did not
3 catch up on all site visits within one month; and it's my
4 recollection that he did not enter all site visits that he
5 made during the interim rating.

6 Q Did you have an opportunity to ask him why he did not
7 accomplish these directives that you had asked him to do?

8 A I believe we spoke --

9 Q Did you have an investigatory conference?

10 A Yes, we did have an investigatory conference in November;
11 around November 20th, 2009.

12 Q And did you talk about these things at the investigatory
13 conference?

14 A We did. Yes, we did. He had stated --

15 Q Wait just one second. Now, you indicated in here that he
16 was required to make some site visits. Did you provide him
17 with any training on making those site visits?

18 A Are you asking about making the site visits or entering the
19 site visits?

20 Q Pardon?

21 A Making the site visits or entering site visits?

22 Q Entering site visits. I'm sorry.

23 A Yes, I did provide him with some training on how to do that
24 in a more expeditious fashion. I explained --

25 Q I have here a document in my hand, "Site Visit

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1 Instructions," and that's dated September 17th. Is this
2 what you provided to him in terms of training for the site
3 visits? It speaks to cutting and pasting, opening a Word
4 document. Is that what you provided to him?

5 A Yes.

6 MS. SMITH: I would like to have this entered into
7 the record. It's a September 17th memo to Mr. Robinson from
8 Mr. Hull. The subject is "Site Visit Instructions."

9 MR. KAMAR: No objection.

10 MR. HUTCHENS: The document is entered as
11 Department Exhibit 7.

12 (Department Exhibit 7 marked and received)

13 Q Was this something Mr. Robinson asked for?

14 A Yes.

15 Q Did you provide any other training to him?

16 A I did provide for him an air card so that he could enter
17 information into the BEP database from outside of the office
18 and I gave him training on how to use that particular piece
19 of equipment.

20 Q What is an air card?

21 A An air card is a -- well, I guess it's a device that you
22 plug into your computer that allows you to log into the
23 internet anywhere that there's a cell phone signal.

24 Q Okay. And you provided training on that air card?

25 A I did.

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1 Q Okay. Now, tell me about the evaluations and master plans.

2 Was that in the initial rating?

3 A I cannot recall if that was in the initial rating.

4 Q Okay. All right. So you conducted an investigatory
5 conference with the grievant to find out why he had not
6 complied with the interim rating; is that correct?

7 A Yes, that's correct.

8 Q And as a result of that investigatory conference, what
9 happened?

10 A As a result of that investigatory conference, I felt that
11 the grievant had made no progress in complying with any of
12 the directives issued in the interim rating.

13 Q And what happened from that point? Well, you said he had
14 made no progress. What had happened during the interim
15 rating period that you felt he had made no progress?

16 A The grievant was instructed to do several things by the
17 interim rating and was globally instructed by their
18 statement to follow all directives from his supervisor.
19 During the period of the interim rating between September
20 17th and the date of the investigatory conference, Mr.
21 Robinson failed to enter all outstanding site visits that
22 were due into the BEP database; he failed to provide a plan
23 for how he would stay current on his site visits into the
24 BEP database in the timeline specified; he failed to ask for
25 any extensions to the timelines that were listed on the

1 interim rating; he failed to follow all directives from his
2 supervisor including the completion and submission of master
3 plans for his facilities. One of the responsibilities of a
4 promotional agent as outlined in the position description of
5 the promulgated rules is to determine the appropriate
6 equipment or renovations for a facility.

7 Q Is that a master plan?

8 A That is a master plan and that document is provided to the
9 supervisor of the program so that they can generate an
10 overall budget for the program and make plans for how -- and
11 prioritizing of the equipment that is to be purchased for
12 the program. At the time of the interim rating, Mr.
13 Robinson had failed to submit any master plans to the
14 central office. Additionally, there were issues regarding
15 Mr. Robinson's performance in regards to a proposed
16 transition at the Hall of Justice facility in downtown
17 Lansing.

18 Q Okay. Just one -- wait a second.

19 A Uh-huh (affirmative).

20 Q Did you speak about that in the followup rating?

21 A Yes.

22 MS. SMITH: I would like to enter into the record
23 the interim rating followup as a department exhibit.

24 MR. HUTCHENS: This is signed by the appointing
25 authority dated --

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1 MS. SMITH: It will be dated through 12/18. I'm
2 sorry. I didn't hear you.

3 MR. HUTCHENS: Yeah, I wasn't done. The
4 appointing authority signed this December 18th, 2009 and
5 there is attached to it the employee departure report.

6 MR. CICHOCKI: We didn't get that.

7 MR. KAMAR: We didn't get that.

8 MS. SMITH: You should have the department --

9 MR. CICHOCKI: No, the departure report.

10 MR. KAMAR: We have the interim -- the document he
11 was referring to through 12/18 of '09, but we don't have
12 that.

13 MS. SMITH: You should have that in your packet.

14 MR. KAMAR: You didn't have it in your papers?

15 MR. CICHOCKI: No.

16 MR. KAMAR: Maybe we can just simply have a copy
17 of it?

18 MR. HUTCHENS: I can make a quick copy of that.

19 MR. KAMAR: It might be easier. Thank you, sir.

20 (Off the record)

21 MR. HUTCHENS: We're back on the record at this
22 point. Is there any objection to the interim rating and the
23 attached employee departure report?

24 MR. KAMAR: No; no, sir.

25 MR. HUTCHENS: Those are entered together as

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1 Department Exhibit 8.

2 (Department Exhibit 8 marked and received)

3 MS. SMITH: Which number did you say?

4 MR. HUTCHENS: D-8.

5 Q Mr. Hull, in the interim followup rating, you have in here
6 on the -- during the rating period, you speak to him not
7 entering the site visits for the past 12 months into the
8 database.

9 A Yes.

10 Q Okay. And did he do that?

11 A No, he did not.

12 Q The next issue that you speak to is the State Employees
13 Charitable Campaign Popcorn Giveaway. What happened in that
14 incident?

15 A I became made aware on September 30th that the State
16 employees combined charity campaign had contacted Mr.
17 Robinson to try to set up a promotion for that day to give
18 away popcorn at all of our facilities. I became aware by
19 several operators who knew nothing about the event and had
20 people showing up in their facilities demanding free
21 popcorn. I followed up on that with Mr. Robinson and I also
22 followed up on that with a Lisa Moye -- I believe her last
23 name was -- who is -- who was the person who was
24 coordinating the event for the SECC.

25 Q And what did you find out from the -- about this

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1 particular --

2 A I communicated with her both over the phone and through
3 several emails and she informed me that she had contacted
4 Mr. Robinson in an effort to build on an event that they had
5 hosted the previous year at the Romney Building and that
6 they were hoping to be able to do this in all buildings
7 throughout the program that housed State employees with one
8 of our facilities in it. She said that she worked directly
9 with Mr. Robinson; that he would contact the operators and
10 let them know about the event and that he had negotiated the
11 price for the popcorn with the SECC for what would be
12 reimbursed for operators for participation in the event.

13 Q Was that something he was supposed to do?

14 A No.

15 Q Was he supposed to set up the popcorn giveaway?

16 A No.

17 Q Did you receive any complaints about the popcorn giveaway?

18 A I did. I received complaints both from our customers, the
19 State employees in the buildings, and our customers, the
20 operators working in our facilities. The operators
21 complained that they weren't given any forewarning about the
22 event so they could not make any adjustments to their
23 purchasing in order to prepare for it. They could not make
24 any adjustments in their labor in order to prepare for it.
25 And they also complained that the price that had been agreed

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1 to did not cover the cost of the popcorn in any of -- you
2 know, in all cases. I received complaints from the State
3 employees who were the customers of our operators in the
4 buildings stating that they -- not all facilities
5 participated; that some facilities were completely unaware
6 that the event was taking place; that not all of our
7 facilities had the equipment to provide the service; things
8 of that nature.

9 Q And when you spoke to Mr. Robinson about this, did he take
10 responsibility for the popcorn giveaway?

11 A No.

12 Q Did he take responsibility indicating quoting a price?

13 A No.

14 Q Did he take any responsibility for the popcorn giveaway?

15 A He said that all he did was speak to someone from the SECC
16 and commit to giving them a list of operators in our
17 program.

18 Q I have in my hand a document from a Lisa Moye that you're
19 cc'd on and it's to Cherie Heibeck -- I believe is her
20 name -- and in it she speaks to Dave having quoted her an
21 amount for -- to be budget in compensating the vendors. Do
22 you recall that document?

23 A I do.

24 MS. SMITH: I would like to have this entered as
25 Department Exhibit 9, I think.

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1 MR. HUTCHENS: I'm looking for that. I'm not sure
2 that I have that. It's from Lisa Moye?

3 MS. SMITH: Yes. The top of the memo was Patty
4 Gamin, if that will help you, and it's a one-page document.

5 MR. KAMAR: If I can get some direction here; it's
6 indicated on the witness list there's several witnesses that
7 she intends on calling, and one of them is Patty Gamin.

8 MS. SMITH: Yes.

9 MR. KAMAR: Why are you calling her if you're
10 getting this in through him? I mean, is this going to be
11 redundant testimony?

12 MS. SMITH: No. This is -- no, this is cc'd to
13 him.

14 MR. KAMAR: I understand.

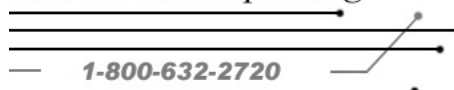
15 MS. SMITH: Okay. It's cc'd to him about the
16 popcorn giveaway. He sent a copy to Patty Gamin.

17 MR. KAMAR: All right. But then you're getting
18 into hearsay and then I understand that hearsay is
19 admissible in this hearing as to what Patty Gamin is telling
20 him.

21 MS. SMITH: No, Patty Gamin is not -- Patty Gamin
22 just got a copy of the document. The document -- this is
23 the document. Okay. That's the document.

24 MR. KAMAR: All right. Well, we'll just see how
25 it plays out.

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1 MR. HUTCHENS: I've found the document finally.

2 MS. SMITH: It's dated September 30th.

3 MR. HUTCHENS: Yes. Sir, is there any objection
4 to this as D-8?

5 MR. KAMAR: No.

6 MR. HUTCHENS: All right. It's entered as D-8 --
7 or excuse me. That's D-9. The rating was D-8.

8 (Department Exhibit 9 marked and received)

9 Q So in essence, Mr. Robinson had no authority to negotiate a
10 price or even to set up the popcorn giveaway; is that
11 correct?

12 A No, he did not.

13 Q The next item that you speak to in the interim rating is the
14 state email address. Can you tell me what happened with the
15 state email address?

16 A I was made aware sometime around mid October, I believe --
17 mid to late October that the grievant had his state email
18 address posted to receive direct information on behalf of an
19 organization other than the State of Michigan. I followed
20 up with Mr. Robinson on that and informed him that he was
21 not to be using his state email account for non-official
22 business and to have the email address removed from that
23 website immediately. I believe it was within 24 hours of
24 being notified of that email address.

25 Q Okay. I have here an email from you to Mr. Robinson dated

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1 September 29th. The subject is "State email" and in that
2 memo you have that he is to have it removed within 24 hours.

3 A Yes.

4 MS. SMITH: I would like to have this entered as
5 exhibit -- it has other attachments to it as well. It's all
6 about the same subject matter so we can have it entered as
7 one exhibit.

8 MR. KAMAR: Can we see that, please? See what the
9 other two are.

10 MR. HUTCHENS: There's only one attached page to
11 this two-page document.

12 MR. KAMAR: We have one attached page, too, but I
13 guess there's really nothing on the third page.

14 MR. HUTCHENS: I don't have a third page on mine.

15 MS. SMITH: Probably because I just saved a tree.

16 MR. CICHOCKI: Combined, this is ten.

17 MR. KAMAR: Combined, that's ten.

18 MS. SMITH: Okay. It's a two-page document. One
19 is dated September 29th. The other one is dated October
20 12th.

21 MR. HUTCHENS: Those are the ones I have. So
22 they're entered together as Department Exhibit 10.

23 (Department Exhibit 10 marked and received)

24 Q Okay. Now, the next document that's attached to that is
25 dated September 30th where Mr. Robinson responds to you that

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1 he will have it removed and you thank him for his prompt
2 attention to do this; is that correct?

3 A Yes.

4 Q And did he do that within the 24 hours?

5 A No.

6 Q What happened?

7 A I believe it took several weeks for the email address to be
8 removed from the website. Mr. Robinson stated that he had
9 no control over the website and that he could not get it
10 removed any faster than that.

11 Q And you had to ask him about removing that email address?

12 A I did have to follow up with him. He stated to me that he
13 thought that it had already been removed and that he would
14 follow up again on it.

15 Q But he made no attempt to come to you and say, you know,
16 "I'm working on this to be removed. No, it hasn't been
17 removed yet, but I'm working on it"?

18 A No.

19 Q And that was the gist of the October 12th memo where -- it's
20 "Email use" response where you indicate, "Two weeks ago you
21 were notified that your state email address had been
22 inappropriately used"?

23 A Yes, that's correct.

24 Q Okay. And that was your followup to him?

25 A Yes.

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1 Q And did you direct him to do something in that memo?

2 A I would have to read the entire memo to be certain if I said
3 direct, but it's my recollection that I directed him to have
4 it off again within 24 hours.

5 Q Okay. Well, in this October 12th memo you tell him, "I am
6 directing you to take" --

7 MR. KAMAR: Well, wait a minute. Wait a minute.
8 I understand the rules of evidence, but let's -- just save
9 some time. I withdraw the objection.

10 MR. HUTCHENS: Fine. Go ahead, ma'am.

11 Q "I'm directing you to take whatever steps necessary to have
12 your state account removed from the NFB website no later
13 than 4:00 p.m."

14 A Yes, that sounds familiar.

15 Q Okay. And you indicate to him that he has failed to follow
16 this directive that you issued to him two weeks ago.

17 A Uh-huh (affirmative).

18 Q Did he have it done after that point?

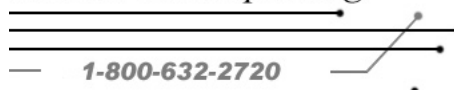
19 A It's my recollection that it took an additional five days
20 for that email address to be removed.

21 Q Okay. So it was only after threat of disciplinary action
22 did he have it removed?

23 A Yes.

24 Q Okay. The next item in the rating; you talk about inventory
25 at the JRTC. What is the JRTC?

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1 A The JRTC is the Joint Reserve Training Center. It would
2 later be renamed the Reserve Forces Service Center. It's a
3 facility that we had operating on Martin Luther King here in
4 Lansing that Mr. Robinson was the promotional agent for. It
5 was closed early May of 2009, I do believe, and a final
6 inventory and disposition of the inventory was needing to be
7 done.

8 Q Okay. Did you issue him a memo on July 16th indicating to
9 him that there was still some unresolved issues with the
10 facility when it closed?

11 A I did. As a part of the final disposition of the inventory
12 for the JRTC, the State of Michigan had sold to one of its
13 operators some of the remaining inventory. An invoice
14 needed to be provided in order to receipt in payment;
15 actually in order to bill for that product.

16 Q Why is an inventory important?

17 A The State of Michigan as a part of the Business Enterprise
18 Program provides to its operators a certain amount of
19 inventory in order to help them to establish a food service
20 business. It's in an effort to help mitigate some of the
21 out-of-pocket expenses that they would run into in starting
22 their own business. Conducting this inventory and keeping
23 accurate tabs on this inventory is very important because
24 this product is not given to the operator. It is
25 essentially loaned to the operator; and when they leave that

1 particular facility, they are required to turn over the
2 exact same amount of inventory calculated in with inflation
3 to the State of Michigan so that it can be provided to the
4 next operator going into a facility.

5 Q Okay. And so you directed him to do this inventory on July
6 16th; correct?

7 A I apologize. In a previous statement, I had mistaken dates.
8 July 16th would have been when the final inventory of
9 remaining product at the JRTC would have needed to have been
10 taken. So, yes, I believe that I would have directed him at
11 that -- on that date to go and conduct the final inventory
12 for the final product amounts left at the JRTC.

13 Q Okay. And in that memo you tell him to provide you with a
14 copy of an invoice to a Mr. Rutherford.

15 A Yes. As a part of that count -- as I had stated
16 previously -- some of that inventory had been sold to a Mr.
17 Rutherford Beard, an operator who moved to the Secretary of
18 State cafeteria.

19 MS. SMITH: I would like to have this entered into
20 the department exhibit. It's a July 16th memo and it says
21 "RFTC followup."

22 MR. HUTCHENS: Well, there are a number of
23 attachments.

24 MS. SMITH: And it's about four -- five pages.

25 MR. HUTCHENS: Mr. Kamar, is there any objection

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1 to this series of documents as Department Exhibit 11?

2 MR. KAMAR: As long as we have the same ones.

3 MS. SMITH: Okay. The first one is July 16th.

4 The second one is August 17th.

5 MR. KAMAR: Hold on, please. We have that.

6 MS. SMITH: Okay. The third is November 10th.

7 MR. KAMAR: We have that.

8 MS. SMITH: November 5th?

9 MR. KAMAR: We have that.

10 MS. SMITH: And then November 10th again?

11 MR. KAMAR: We've got that. No objection.

12 MR. HUTCHENS: They're entered together as D-11.

13 (Department Exhibit 11 marked and received)

14 Q On August 17th, you sent a note to Mr. Robinson indicating
15 that Mr. Rutherford was requesting some reimbursements, but
16 you couldn't do that until the final inventory took place
17 and to provide a copy of the invoice by the end of the day.
18 Did he do that?

19 A No, he did not.

20 Q So from July 16th to August 17th, you asked him for
21 information and then again on August 17th you asked him
22 again; correct?

23 A Yes.

24 Q On November 3rd, there was an email from Constance that you
25 were cc'd on that spoke about a certified check. What was

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1 going on here with Mr. Rutherford and his inventory; do you
2 recall?

3 A It's my recollection that Mr. Beard had by November 3rd an
4 amount due for the inventory that he had taken and he had
5 delivered a certified check to our offices in Lansing in
6 order to pay off the difference for that amount due.

7 However, we were unable to receipt in this certified check
8 and actually clear Mr. Beard's account because we had not
9 yet received an invoice to know if the check was actually
10 for the amount that he actually owed the State of Michigan.

11 Q Okay. And how did this affect Mr. Beard?

12 A It would have affected him in two ways. First, if an
13 individual owes outstanding moneys to the State of Michigan,
14 they're out of compliance with program rules. Secondly, the
15 State of Michigan cannot process payments to an individual
16 who owes the State of Michigan money. Mr. Beard had lost
17 some product due to some equipment failures at his new
18 facility which is something that the Business Enterprise
19 Program reimburses for. However, we could not provide him
20 with that reimbursement until we had cleared his debt for
21 the inventory that he had purchased from the JRTC.

22 Q Okay. So this was affecting him from moving on from one
23 business to the other business?

24 A He had physically moved, but it was affecting his
25 business -- his new business; correct. That is correct;

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1 yes.

2 Q Okay. And this was all because of David not providing the
3 information?

4 A That's correct.

5 Q And was David again directed to provide that information by
6 a certain date?

7 A Yes. He was directed to provide that information to me by
8 close of business November 10th, I believe. He was
9 instructed to provide the documentation to me within 24
10 hours of the directive.

11 Q Okay. The memo indicates Wednesday, November the 4th.

12 A Okay.

13 Q Did he provide that information to you by November the 4th?

14 A No, he did not.

15 Q And you again sent him an email --

16 A Yes.

17 Q -- again directing him to provide that information to you?

18 A Yes.

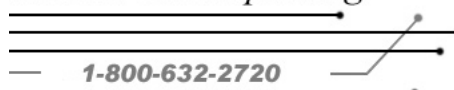
19 Q That was dated November the 5th. Was the information
20 provided to you on November the 5th?

21 A No.

22 Q What happened on November the 5th?

23 A On November the 5th, I was made aware that the information
24 was provided to the Business Enterprise Program bookkeeper
25 so that she could process the invoice.

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1 Q Was David instructed to provide that information to the
2 bookkeeper?

3 A No.

4 Q Who was he instructed to provide that information to?

5 A Me.

6 Q Do you know why David provided that information to the
7 bookkeeper as opposed to providing it to you?

8 A I do not.

9 Q The next issue that you speak to in the rating is the Ottawa
10 snack bar. What was happening with the Ottawa snack bar?

11 A Apparently, the operator at the Ottawa cafeteria who also
12 operated the snack bar on the first floor of the Ottawa
13 Building felt that the snack bar was not profitable, and it
14 was actually affecting his overall profit percentage in his
15 business and was making plans to close that part of the
16 business.

17 Q Did he communicate with you on the Ottawa snack bar or the
18 Ottawa store?

19 A "He" who?

20 Q Mr. Robinson.

21 A I don't recall us speaking on the issue.

22 Q Okay. Was he directed not to close the store?

23 A He was directed not to close the store until a meeting had
24 been set up between the operator of the facility, Mr.
25 Robinson, myself, and the program manager at the time, Ms.

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1 Zanger.

2 Q And did he have that meeting?

3 A No, he did not.

4 Q Do you know why that meeting did not occur?

5 A It was never scheduled.

6 Q Do you know if he had any communication with the operator of
7 the snack bar about it closing?

8 A I know that he had relayed the wish to have a meeting with
9 myself and Ms. Zanger to the operator.

10 Q But you know that he was directed not to close it?

11 A Yes.

12 Q The next item that you have in your interim rating is the
13 Hall of Justice store.

14 A Okay.

15 Q What happened at the Hall of Justice store?

16 A Approximately -- well, the winter of 2009, a temporary
17 operator -- a temporary sighted operator was placed into the
18 Hall of Justice facility, and he had been operating that
19 facility with some success according to the building
20 tenants. I suppose it would have been late August or early
21 September, that facility was awarded to a blind licensee.
22 The building enjoying the service of the sighted temporary
23 operator expressed through a variety of very hurtful emails
24 their desire not to have a blind individual operating their
25 food service establishment and a meeting was set up in order

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1 to work out the concerns of the building tenants. From the
2 Commission, the director of the agency, Pat Cannon, Cheryl
3 Heibeck, Constance Zanger, Dave Robinson, and myself
4 attended. From the Hall of Justice, they had several
5 individuals from their human relations committee including a
6 Ms. Lisa Kutas as well as Supreme Court Justice Cavanagh to
7 discuss the issues. At that meeting, the director of the
8 agency explained that under no circumstances would a
9 temporary sighted individual be allowed to stay as the
10 operator of a facility mandated for a blind individual in
11 our program and that we would be installing our blind
12 licensee in the building. We did agree that because of the
13 unique nature of that building, the Commission would pay to
14 have that temporary operator stay and work with the blind
15 licensee for a period of time in order to maintain
16 continuity of service. From there a training plan was
17 developed by Mr. Robinson and myself, and he provided that
18 training plan to the licensee who was coming into the Hall
19 of Justice where she met with Mr. Robinson, myself, and Ms.
20 Zanger and explained in no certain terms that she would work
21 with -- let me say this so that it's not to be confusing --
22 explained that in no way was she willing to work with the
23 temporary operator at that facility. Prior to that meeting,
24 a meeting had been set up with Ms. Lisa Kutas at the Hall of
25 Justice as well as Ms. Zanger, myself, Mr. Robinson, and the

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1 incoming operator to discuss the training plan and the
2 transition of that operator into the Hall of Justice. After
3 being told that she was not willing to -- that the incoming
4 operator was not willing to enter into any training plan
5 with the outgoing temporary operator, that meeting was
6 cancelled.

7 Q And did he meet with Andrea and anyone at the Hall of
8 Justice?

9 A We found out after -- Constance and I found out after the
10 fact that Mr. Robinson and Andrea Nelson; the incoming
11 operator; met with Ms. Kutas after the meeting had been
12 cancelled in order to discuss her transition into the Hall
13 of Justice.

14 Q Okay. But he was told not to meet; is that correct?

15 A Yes, that's correct.

16 Q And he did it anyway?

17 A Yes, he did.

18 Q Did he have any authority to made any decisions about the
19 transition without approval from you?

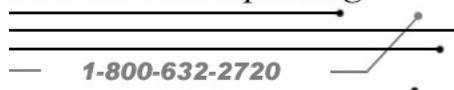
20 A No.

21 Q So at the Hall of Justice, what did he do that he wasn't
22 supposed to do?

23 A He had met with building management after the director of
24 the agency had committed to the building --

25 MR. KAMAR: Can I ask for some -- I know hearsay

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1 is rampant in these hearing, but can I ask for some
2 foundation as to how he knows this?

3 Q How do you know about the Hall of Justice meeting?

4 A Because after the meeting, Mr. Robinson came and told me.

5 MR. HUTCHENS: Go ahead, sir.

6 A I was told after the meeting that he had gone to the Hall of
7 Justice and after the director of the agency had committed
8 to the HR staff in our meeting with Justice Cavanagh that we
9 would be utilizing the temporary operator as a trainer, he
10 explained that he and Andrea Nelson; the incoming operator;
11 had met with Lisa Kutas and had decided that it was not
12 necessary to use any sort of trainer to assist the incoming
13 operator in maintaining continuity of service.

14 Q Okay. And did Andrea eventually take over the Hall of
15 Justice?

16 A No, she did not.

17 Q Okay. Where did she eventually end up at?

18 A She eventually was inventoried into the State library.

19 Q And were there any problems with the State library?

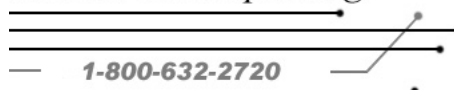
20 A There were some problems with the inventory from the
21 outgoing facility.

22 Q What kinds of problems with the inventory did you have?

23 A The inventory assigned to the Flint State Office Building
24 was approximately \$3300.

25 MR. KAMAR: Well, wait a minute. Let me place an

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1 objection here on the record. This is the first we've heard
2 about any problems with this particular building.

3 MS. SMITH: Speak up.

4 MR. KAMAR: This is the first we've heard about
5 any problems with this new particular building; the State
6 library. Unless we've missed it, I didn't see anything
7 about that in her documentation.

8 MS. SMITH: That documentation would be --

9 MR. KAMAR: No, initially in the --

10 MS. SMITH: It's regarding schedules. It's dated
11 November 2nd.

12 MR. CICHOCKI: It's not in the interim employee
13 rating at all, any mention of it.

14 MS. SMITH: Okay. Fine. I don't have to. We
15 have enough here. I don't have to mention it.

16 MR. HUTCHENS: Well, I was just going to say it
17 sounds like you've got plenty of issues to discuss without
18 getting into something that's not in the rating.

19 MS. SMITH: Yeah. I don't -- yes. Okay.

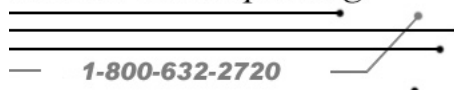
20 Q Were there any other issues on the Hall of Justice?

21 A Not that I can recall.

22 Q Okay. So Mr. Robinson was given a number of directives to
23 follow throughout the course of the interim rating period.
24 And did he follow those directives?

25 A Not all of them.

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1 Q When you say "all of them" --

2 A Not all of them.

3 Q Okay. He followed one or two or --

4 A He did conduct the annual evaluations by the due date that
5 had been established. He failed to provide the master plans
6 that go into those evaluations. He failed to follow the
7 directives regarding the removal of his email address. He
8 failed to enter the site visits as he was directed to do.
9 He failed to provide the invoice as he was directed to do.

10 Q And as a result of that, what happened?

11 A As a result of his failure to comply with the interim
12 rating, on December 18th the followup meeting was held on
13 the rating and he was separated from State government.

14 Q Okay. During the time that Mr. Robinson was under your
15 supervision, did he ever complain to you that he was being
16 treated differently because he was a member of the National
17 Federation of the Blind?

18 A On December 18th when he was separated from State
19 employment, he made that claim. Up until that point, he had
20 not made that claim to me whatsoever.

21 Q And was he separated because he was a member of the National
22 Federation of the Blind?

23 A No.

24 Q Did you treat him differently because he was a member?

25 A No.

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1 Q Was this a planned scheme of BEP to have him removed because
2 of his affiliation?

3 A No.

4 MS. SMITH: No further questions.

5 MR. HUTCHENS: Mr. Kamar, do you have any
6 questions for the witness?

7 MR. KAMAR: Sure. Thank you. All right. We're
8 going to go back.

9 MR. HUTCHENS: Let me just ask the parties. Would
10 you like a short recess before we begin your examination?

11 MR. KAMAR: That would probably be a good idea
12 because I have -- I would like to talk to Marilyn as to who
13 she's going to be calling because I may have some witnesses
14 here prematurely.

15 MR. HUTCHENS: Why don't we take about a five or
16 ten minute recess and then we'll come back.

17 (Off the record)

18 MR. HUTCHENS: We're go back on the record at this
19 point. Mr. Kamar, do you have any cross-examination for
20 this witness?

21 MR. KAMAR: Thank you, sir.

22 CROSS-EXAMINATION

23 BY MR. KAMAR:

24 Q Mr. Hull, this is Mark Kamar.

25 A Hello.

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1 Q We met several times before, and obviously I represent Mr.
2 Robinson. I'm going to ask you a series of questions.
3 Okay?

4 A Sure.

5 Q I'm not trying to trick you or anything else. Okay?

6 A Uh-huh (affirmative).

7 Q So if you don't understand a question, let me know.

8 A Not a problem.

9 Q Now, you've been employed with this agency for approximately
10 six years?

11 A Yes.

12 Q Okay. What is your formal position now?

13 A My formal position now --

14 Q That is correct.

15 A -- is the acting Business Enterprise Program manager.

16 Q And when did you get that position?

17 A I was appointed to that position on the 14th of June this
18 year.

19 Q Who appointed you to that position?

20 A Director Cannon.

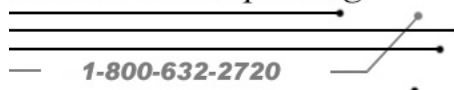
21 Q What did you do before that?

22 A I was the assistant Business Enterprise Program manager.

23 Q For how long?

24 A I received that appointment from the Civil Service
25 Department on June 1st, 2009.

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- 1 Q What did you do before that?
- 2 A I was a promotional agent.
- 3 Q And from what time period?
- 4 A From October of 2004 to June 1st of 2009.
- 5 Q So you hired in as a promotional agent?
- 6 A Yes, I did.
- 7 Q Okay. What is your education?
- 8 A I have a bachelor's degree from Michigan State University.
- 9 Q In what field?
- 10 A English literature.
- 11 Q And you're familiar with David Robinson?
- 12 A I have worked with him in the past, yes.
- 13 Q Okay. And how long has he been with this agency? How long
- 14 has he been a promotional agent?
- 15 A I don't know his exact start date. It is my understanding
- 16 that at the time of separation he had been with the State
- 17 for approximately 12 years.
- 18 Q 12 years. And did you look at his personnel file before you
- 19 came here today?
- 20 A No, I did not.
- 21 Q When did you first -- in your own mind chronologically --
- 22 first start receiving any complaints as it relates to Mr.
- 23 Robinson?
- 24 A It would have been June 2009.
- 25 Q So as far as you know, in the -- that would have been 11

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1 years previous to this complaint, he had no complaints?

2 A No, that's not correct.

3 Q Did your review his personnel file?

4 A Did I review his personnel file --

5 Q Yes.

6 A -- held by Civil Service? No.

7 Q How did you hear about these complaints?

8 A I received copies of formal counseling memos issued to him
9 from previous managers.

10 Q And who were those from?

11 A From Constance Zanger and Cheryl Heibeck.

12 Q From anybody else?

13 A No.

14 Q And do you recall -- and I think these have been already
15 marked as exhibits -- but the dates of these complaints?

16 A Not off the top of my head.

17 MR. KAMAR: Pull those exhibits out.

18 Q Does March 20th, 2008 ring a bell?

19 A If that is what has been entered in as evidence from the
20 Department, yes.

21 Q Counseling memos. And then July 22nd, 2008?

22 A Uh-huh (affirmative).

23 Q Was that a "yes"?

24 A Yes.

25 Q And then October 10th of 2008; is that correct?

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1 A That's my recollection, yes.

2 Q And these are all from Constance -- two from Constance
3 Zanger, one from Cheryl Heibeck; is that correct?

4 A That's my understanding.

5 Q Prior to 2008, isn't it true -- as far as you know -- he has
6 had no complaints?

7 A As far as I know.

8 Q All right. And when did Constance Zanger take her position
9 over?

10 A Oh, let me see. It would have had to have been in 2008.

11 Q 2008. Do you remember when in 2008?

12 A Approximately May, I imagine.

13 Q May of 2008?

14 A Somewhere in there, but you would have to ask her for the
15 specific date.

16 Q Okay. What about Cheryl Heibeck? Do you know when she
17 was -- had her position?

18 A Which position are you asking?

19 Q Well, in the counseling -- in the formal counseling memo
20 dated March 20th, 2008, it's from Cheryl Heibeck. Do you
21 know what her position was at the time?

22 A She was the acting Business Enterprise Program manager. I'm
23 not sure if that was the title, but that was the role as the
24 administrative services manager.

25 Q All right. Just as you are now?

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1 A No. Cheryl Heibeck was the administrative services manager
2 of the Commission. She supervised the Business Enterprise
3 Program manager. The Business Enterprise Program manager
4 retired and she assumed those responsibilities for that time
5 period until a new program manager could be identified. At
6 present, Constance Zanger is the acting administrative
7 services manager and she has relinquished her duties as the
8 program manager of the Business Enterprise Program, and I
9 have assumed on an interim acting basis those
10 responsibilities until the administrative services manager
11 position can be permanently filled, and Constance and I will
12 revert back to our permanent roles.

13 Q Now, I've looked at -- obviously, Mr. Robinson was in the --
14 you know, the program for a number of years. You indicated
15 12 years; is that correct?

16 A That's my recollection.

17 Q All right. And during the last year that he was there, do
18 you know how many operators he had?

19 A It would have fluctuated. It would have fluctuated from
20 somewhere in the mid 20's to the mid to upper 30's.

21 Q Okay. Do you know what his area is; his geographical area?

22 A That, too, would have fluctuated.

23 Q Okay. Give us an example.

24 A Well, from any time prior to my appointment as the assistant
25 program manager, his area would have been primarily the

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1 Greater Lansing Area. I believe it included part of
2 Jackson. It may have included part of Mount Pleasant, but I
3 also know that he split some of that area with the West
4 Region promotional agent. After my appointment to the
5 assistant program manager, he was given some additional
6 sites including sites in Flint as well as I do believe some
7 sites -- I do believe he picked up a couple of sites closer
8 to Detroit.

9 Q Okay. At the time he was released, do you know how many
10 operators he had underneath him?

11 A Not that I would testify under oath, but I believe it was
12 somewhere in the ballpark of 36 or 37.

13 Q Okay. So he had 36 or 37 operators?

14 A Uh-huh (affirmative).

15 Q He had several counties; correct?

16 A Uh-huh (affirmative).

17 Q Several facilities?

18 A Uh-huh (affirmative).

19 Q And his job was to -- for each one of these facilities as a
20 liaison, I think you said, is to procure equipment --
21 okay -- is that correct?

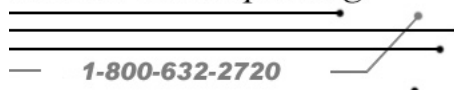
22 A Yes.

23 Q Work with operators; is that correct?

24 A Yes.

25 Q And then go to site visits; is that correct?

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1 A Document site visits is correct.

2 Q Okay. And what else was his job duties at the time?

3 A Well, he was to perform manual evaluations. He was to
4 provide master plans to the central office detailing
5 procurements for the coming year. He was also to work as a
6 liaison between building management and operators in their
7 businesses.

8 Q Okay. And you don't have any idea how many hours per day
9 that my client worked in order to complete his functions; is
10 that correct?

11 A Well, I'm expecting that he worked no less than eight
12 because that's what he turned in on his timesheets.

13 Q Okay. But you don't know how he worked at home; is that
14 correct? You have no idea.

15 A I would have no idea.

16 Q Okay. Let me ask you this: As a BEP employee, could you do
17 your work product when you had that job function in eight
18 hours a day?

19 A As a promotional agent?

20 Q Yes.

21 A Could I perform all the functions in eight hours a day?

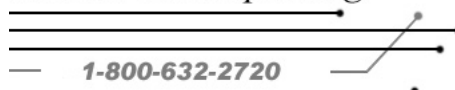
22 Q Yes; yes.

23 A No. Most days I chose to work more.

24 Q Okay. Did you ever work Saturdays?

25 A On occasion.

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- 1 Q Did you ever work Sundays?
- 2 A On occasion.
- 3 Q Okay. Did you ever get behind in your reports?
- 4 A On occasion.
- 5 Q Okay. And how often would you get behind on your reports?
- 6 A Oh, I would say that I could be as far back as two weeks.
- 7 Q Okay. And would you have to go in maybe on Saturday to get
- 8 them caught up?
- 9 A No, I didn't go in on Saturdays to do site visits.
- 10 Q Did you do them at home on Saturdays?
- 11 A No.
- 12 Q How about Sundays?
- 13 A No.
- 14 Q Okay. So you were consistently behind at least a couple
- 15 weeks; is that correct?
- 16 A No, I didn't say that I was consistently behind. I said I
- 17 was occasionally behind.
- 18 Q Okay. And then you've indicated that this is a problem in
- 19 this whole organization; is that correct? As it relates to
- 20 BEP, that all of these folks are behind; is that correct?
- 21 A No, I didn't say that. I said in June when I issued the
- 22 directive, each of the promotional agents were behind.
- 23 Q Okay. And so how many got caught up in June?
- 24 A Two out of the three promotional agents got caught up in
- 25 June.

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1 Q Okay. And so your testimony is Mr. Robinson is the only one
2 that didn't get caught up?

3 A In June, yes.

4 Q Okay. What about July?

5 A I don't recall checking the promotional agents in July.

6 Q Okay. What about August?

7 A In August, Mr. Pelle from the Detroit region was about ten
8 days behind, and Mr. Duthie was caught up with all of his
9 site visits. Mr. Robinson was still behind.

10 Q Okay. And let's go -- what is the first date you checked?
11 Did you say "June"?

12 A June 1st through June 30th.

13 Q Okay. What about May?

14 A In May, two of the promotional agents were behind by several
15 weeks.

16 Q What about April?

17 A I don't recall. I know that Mr. Robinson had not entered a
18 site visit since December 4th.

19 Q Okay. What about the other promotional agents?

20 A I don't recall.

21 Q You don't recall? Okay. You made it a point -- isn't it
22 true, sir -- to ensure that Mr. Robinson was behind, but not
23 the other promotional agents; is that correct?

24 A No.

25 Q Okay. Well, how did you come about that information?

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1 A Because when I checked to see how far behind Mr. Robinson
2 was, I was amazed to see that it went back to December 4th.
3 That's a date that's important to me because it's my
4 parents' anniversary so it stuck in my mind.

5 Q Okay. But isn't it true you didn't check the other
6 promotional agents?

7 A No, I didn't say that. I said I did check the other
8 promotional agents. I just don't recall what dates their
9 last site visits were entered from.

10 Q Did you at any point during this process interview for the
11 same positions that Mr. Robinson did?

12 A I believe that I interviewed for one position that Mr.
13 Robinson interviewed for.

14 Q And what was that position?

15 A The assistant program manager.

16 Q Okay. And at that time, how long had you been with the
17 agency?

18 A I believe it would have been approximately four and a half
19 years.

20 Q And at that time, how long would Mr. Robinson have been with
21 the agency?

22 A I believe it would have been a little over ten years. No,
23 it would have been about nine years; nine, nine and a half,
24 somewhere in there, I think.

25 Q Now, on his time cards, he was submitting eight hours a day?

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1 Is that -- how do you guys get paid? Is it salary or is it
2 hourly?

3 A Promotional agents are non-exclusively represented employees
4 and they're paid on a salary basis. That salary wage is
5 broken down into an hourly rate, that it is a salaried
6 position.

7 Q Okay. What's the hourly rate?

8 A I believe that it goes anywhere from about 16.23 to 29.32.

9 Q Do you know what Mr. Robinson was earning?

10 A I would have imagined that he would be at the top of the pay
11 scale.

12 Q Okay. The 29.32?

13 A I'm not sure if that's what it was when he was in State
14 service.

15 Q And that would have been eight hours a day, 40 hours a week?

16 A Yes.

17 Q And obviously, with the things at the State of Michigan, I
18 don't think anybody is getting any overtime.

19 A Non-exclusively represented employees are not generally
20 eligible for overtime.

21 Q Okay. So how many hours a week would you expect him to
22 work --

23 A How many hours a week would I expect him --

24 Q Let me finish the question.

25 A Oh, I'm sorry. I thought you were done. That's why --

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1 Q I understand. I've lost the train of thought. How many
2 hours would you expect him to work a week in order to
3 complete what you wanted him to complete?

4 A 40.

5 Q I wonder if this could not be humanly done within 40 hours.

6 A Well, I don't believe that's an accurate assessment.

7 Q Okay. I mean, you yourself got behind; is that correct?

8 A I also had a much larger geographic region.

9 Q Okay. How many operators did you have underneath you?

10 A When I was a promotional agent and we had four promotional
11 agents, I had 24 operators underneath me.

12 Q Okay. I thought you indicated that Mr. Robinson had over
13 30.

14 A When we only had three promotional agents, he did have over
15 30.

16 Q All right. So at one point he had more operators than you
17 did; is that correct?

18 A Excuse me. At the point when I was a promotional agent and
19 we only had three promotional agents, I also had well over
20 30 operators.

21 Q But I thought you said 20.

22 A I said when we had four promotional agents, I had about 24.

23 Q All right. And isn't it true when you had four promotional
24 agents, there were occasions where you were behind?

25 A I've already stipulated that.

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1 Q All right. Now, when in fact somebody calls with a problem,
2 is the promotional agent expected to go out there and take
3 care of the problem?

4 A Not necessarily.

5 Q And are there times when they do that?

6 A It depends on what the problem is.

7 Q All right. But there are times when they do that?

8 A There are times that they may decide to do that; yes.

9 Q And who has that decision-making process?

10 A The authority is given to the promotional agent.

11 Q So he has to pick and choose his battles -- is that
12 correct? -- his priorities?

13 A I don't follow the question.

14 Q Okay. Things come up.

15 A Uh-huh (affirmative).

16 Q And he has to put out fires as they say; correct?

17 A That is one of the responsibilities of a promotional agent,
18 yes.

19 Q So he has the discretion to pick and choose what he thinks
20 is the most important; correct?

21 A Yes and no. Yes, he has the discretion using certain
22 criteria. For instance, if there were an incident that
23 endangered the public health; that, I would hope, would take
24 priority over an instance where an operator had not received
25 a particular product from a supplier.

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1 Q Okay. But you indicated he has the discretion; correct?

2 A Yes.

3 Q All right. And he's told he has the discretion; correct?

4 A Yes.

5 Q All right. And so, you know, if something comes up he may
6 feel is more important, then something may get put on the
7 back burner; correct?

8 A On occasion.

9 Q All right. Now, I've read your interim employee rating and
10 the departure report, and nowhere in there does it indicate
11 there's any complaints by any of the operators; correct?

12 A No.

13 Q Okay. So the operators in fact enjoyed working with him as
14 far as you know; correct?

15 A When are you asking me?

16 Q I'm asking you a question.

17 A Yes, but for what time frame.

18 Q Okay. I'm talking about the time frame that you knew him
19 that you were working in the same position that you -- not
20 what other people told you; what you understand, what you
21 saw. Okay?

22 A Uh-huh (affirmative).

23 Q He never got any unsatisfactory ratings or anything else as
24 it related to the operations folks; correct?

25 A Not that I'm aware of.

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1 Q All right. And he is a liaison. He is the -- isn't it true
2 he is to be in this position to make the operator
3 successful; is that correct?

4 A That's one of the responsibilities of a promotional agent;
5 yes.

6 Q All right. And he has done so; isn't that true? I mean,
7 you have no evidence or testimony indicating that he has not
8 done this from any promotional -- excuse me -- any operator;
9 correct?

10 A No, that's not correct.

11 Q Well, what competent evidence are you prepared to present
12 here today indicating any documentation indicating that
13 there has been complaints by the operators besides what
14 somebody may have told you? Do you have any memos; yes or
15 no?

16 A I would say that the documentation regarding the inability
17 to pay Mr. Beard for his reimbursements because we had not
18 settled his inventory that he was purchasing from the State
19 of Michigan did cause a hardship to Mr. Beard and he would
20 have -- he would constitute that as a complaint; yes.

21 Q Okay. If Mr. Beard were to come in here -- and he's listed
22 as a witness --

23 A I understand that.

24 Q -- come here and testify that it was not Mr. Robinson's
25 fault that this occurred; it's his fault. All right? Let's

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1 assume or give you a hypothetical that that's the case here.

2 Did you have any other complaints from the operators?

3 A During the time that Mr. Robinson worked for the State of
4 Michigan?

5 Q That is correct. Do you have any memos here today?

6 A No.

7 Q Okay. So the complaints basically come from three
8 individuals which is yourself, Ms. Heibeck, and Ms. Zanger;
9 correct?

10 A That's correct.

11 Q And what is your business relationship with Ms. Zanger?

12 A My business relationship?

13 Q Yes. Is she your boss?

14 A She was.

15 Q Okay. Is she going to be in the future?

16 A She may be.

17 Q Okay. What about Ms. Heibeck?

18 A Ms. Heibeck was my boss for a period of time.

19 Q What does she do now?

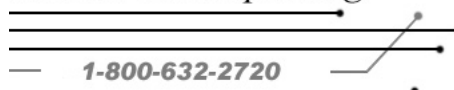
20 A She's now the director of the training center for the
21 Michigan Commission for the Blind.

22 Q Okay. So are they both your superiors?

23 A No.

24 Q But Ms. Zanger could be your superior when she gets a
25 permanent position. I heard some testimony about that.

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1 A Currently, she's the acting administrative services manager
2 who reports to the director of the agency.

3 Q Who's the director?

4 A Pat Cannon. Currently, I am the acting Business Enterprise
5 Program manager who reports directly to the director of the
6 agency. Once the administrative services manager position
7 gets filled on a permanent basis, if it is filled by anyone
8 other than Ms. Zanger, she will revert back to the program
9 manager and I will revert back to the assistant program
10 manager where once again she will be my supervisor.

11 Q Okay. Thank you for explaining it. Now, as it relates
12 to -- and I'm trying to go through in some sort of
13 chronological order here -- the different facilities that
14 you were talking about. Now, you've talked about his email
15 address. Do you recall talking about that?

16 A Yes.

17 Q Okay. And we're going to try to be more specific now and go
18 through each on of your complaints. Okay. Did he tell you
19 that it accidentally appeared on the site?

20 A I recall him telling me that he did not know how it appeared
21 on the site.

22 Q Did he indicate that he did not -- isn't it true he
23 indicated he did not cause this to happen?

24 A I believe he made that statement, yes.

25 Q Okay. And you indicated that you wanted that off that --

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1 off in 24 hours?

2 A Yes.

3 Q Okay. Why in 24 hours?

4 A Because that seemed like a reasonable timeline.

5 Q Why do you think that's reasonable?

6 A Because based on my understanding of the internet, web pages
7 can be updated in a matter of minutes. So the several phone
8 calls it would have taken to contact the webmaster who had
9 posted it and asking him to remove it didn't seem like it
10 should take more than 24 hours.

11 Q Okay. How long did it take?

12 A It's my recollection that it took several weeks.

13 Q Okay. As far as you know, do you have any proof or any
14 documents or anything that caused your agency any kind of
15 harm?

16 A No.

17 Q So there's no harm there whatsoever -- correct? -- as far as
18 you know, proof-wise because you've got the burden of proof
19 here today.

20 A Excuse me. I would love to answer your question if you'll
21 allow me.

22 Q Go ahead.

23 A As far as any harm, receiving emails like that and filling
24 up his email account, taking time away from the time that he
25 should be processing work for the State of Michigan would be

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1 harmful to the --

2 Q All right. That's pure speculation. Do you have any
3 evidence -- not hearsay or what you may believe -- that this
4 has caused any harm?

5 A Nothing that I can present to you.

6 Q All right. Nothing you can present; so there's no good
7 cause as it relates to his firing as it relates to that
8 portion of your interim employee rating; correct?

9 A No, I have no evidence today.

10 Q All right. And we're talking about the Rutherford Beard
11 incident -- which we talked about that; correct?

12 A Uh-huh (affirmative).

13 Q Okay. And you believe that somehow my client caused this
14 screw-up. Can you explain to the administrative law judge
15 what your -- what your opinion is and how you arrived at it?

16 A Absolutely.

17 Q Sure. Go ahead.

18 A Mr. Robinson was instructed to conduct an inventory of all
19 of the product at the JRTC and to assign a value for each of
20 that product. He conducted that inventory -- in his own
21 words. I know that because he provided me a copy of that
22 inventory and I had to go back out with Ms. Heibeck in order
23 to confirm that inventory, removed it from the location, and
24 dispose of it. As a part of that inventory, he inventoried
25 the product that was to be sold to Mr. Beard at the

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1 Secretary of State facility. Therefore, he had assigned a
2 value that the State of Michigan was assigning for that
3 product. This would have been done in the summer of 2009.

4 Q Wasn't that what --

5 A Excuse me. You wanted an answer to your question.

6 Q Yeah, I got my answer. Okay. I got my answer. And there's
7 cross-examination here. Okay? Isn't it true that's how you
8 knew the amount that was due is because he did his job. He
9 did the inventory; correct?

10 A No.

11 Q He didn't? How did you get the inventory if he didn't do
12 it?

13 A The document that I received from Mr. Robinson -- when Ms.
14 Heibeck and I went out later to dispose of the product that
15 he had been requested to dispose of -- checked it against
16 that document and found it to have many errors as far as
17 quantities, as far as item selection. There were many items
18 that were not listed on the inventory whatsoever that were
19 still at the facility and still the property of the State of
20 Michigan that needed to be accounted for. So, no, I would
21 not say that he did his job.

22 Q Okay. Who was supposed to pay for the inventory?

23 A Mr. Beard.

24 Q Mr. Beard, not Mr. Robinson; correct?

25 A That is correct.

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1 Q Is it possible that there was a mistake that was made as it
2 relates to the inventory?

3 A By whom?

4 Q By Mr. Robinson.

5 A I suppose.

6 Q Okay. But he did provide it to you.

7 A Four months later.

8 Q He provided the inventory or were you paid four months
9 later?

10 A No, he provided the invoice so that we knew how much we were
11 supposed to be paid four months later.

12 Q Okay. Was that four months later or were you paid four
13 months later?

14 A Both.

15 Q All right. Let's go to the Ottawa.

16 A Uh-huh (affirmative).

17 Q Okay. Now, that was originally a snack bar?

18 A No. It's my recollection that at one point, the Ottawa
19 housed two facilities; a cafeteria facility in the basement
20 and a snack bar on the first floor run by two different
21 blind licensees. This was before my time. It's my
22 understanding that at one point in time a decision was made
23 to combine the two facilities so that the snack bar could
24 help to supplement the income of the cafeteria.

25 Q Okay. And it's my understanding that the snack bar is right

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1 on the -- and I've been in the Ottawa. I've had hearings in
2 the Ottawa Building so I somewhat know where the snack bar
3 is.

4 A Uh-huh (affirmative).

5 Q That's on the first floor; is that correct?

6 A It was, yes.

7 Q And then the cafeteria is in the basement; is that correct?

8 A Yes.

9 Q Okay. And isn't it true there have been problems with
10 business in the cafeteria; correct?

11 A Explain what you mean by problems.

12 Q Well, I mean, I could go in the snack bar -- okay? -- but I
13 can't really go in anywhere else in the Ottawa Building
14 without some sort of security assisting me.

15 A That's partially correct.

16 Q Okay. All right. So the snack bar was making money; is
17 that correct?

18 A No, it's my understanding that it wasn't.

19 Q It wasn't making money?

20 A That's why the operator --

21 Q How did you have that understanding?

22 A From the email request to close the snack bar that David
23 passed on to Constance and myself from the operator.

24 Q Okay. All right. I'm sorry. The snack bar was not making
25 money; correct?

1 A That is my understanding.

2 Q Okay. But the vending -- the vending was making money;
3 correct?

4 A I don't recall being told that.

5 Q Okay. Do you recall seeing anything about that?

6 A I don't recall. That's not to say that it wasn't there.

7 Q All right. So we know the snack bar wasn't making any money
8 and the vending was possibly making some money.

9 A Excuse me. I don't know that the snack bar wasn't making
10 money. I know that the operator had told David that the
11 snack bar wasn't making money.

12 Q All right. So as far as you know -- because hearsay is
13 running all over the place -- from what you understand, the
14 snack bar -- from at least my client, the snack bar was not
15 making any money; correct?

16 A What I understand from your client is that the operator had
17 told him --

18 Q Well, that's a yes or no question.

19 A Well, from what I know what David knows --

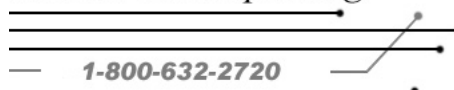
20 Q Did my client ever --

21 A Could you please restate the question?

22 Q Sure. Did Mr. Robinson indicate to you that he was told by
23 the operator that the snack bar wasn't making any money; yes
24 or no?

25 A Yes.

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1 Q All right. And that the -- did he indicate to you that the
2 operator told him he wanted to close the snack bar; correct?

3 A Yes.

4 Q Isn't it true he never told you that he advised this guy --
5 Mr. Austin -- to close the snack bar; correct?

6 A Could you restate that? I'm sorry. You're asking --

7 Q Did my client --

8 A Wait; wait. I'm sorry. Just for my own clarification,
9 you're asking "Isn't it true" and then "Correct" and
10 that's -- I'm getting confused as to what --

11 Q Well, isn't it true -- okay. Isn't it true -- I'll go very
12 slow. Isn't it true that Mr. Robinson never advised you
13 that he told Don Austin to close this site?

14 A That is correct.

15 Q All right. Isn't it true that the site right now as it
16 stands even though my client is gone and out of the program
17 has vended; correct?

18 A Yes, that's correct.

19 Q And isn't it true it no longer has a snack bar; correct?

20 A Yes.

21 Q And isn't it true this operator is making money; correct?

22 A I don't know.

23 Q Okay. Well, if he wasn't making money, you would ship him
24 out of the program, wouldn't you? I mean, don't they have
25 certain standards they have to go by?

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1 A Yes.

2 Q All right. So we know the snack bar is making money;
3 correct?

4 A No, the snack bar is closed.

5 Q I'm sorry. The snack bar is closed. All right. I won't
6 beat a dead horse. Let's move on. Let's go to the Hall of
7 Justice.

8 A All right.

9 Q Okay. Do the rules indicate that a blind operator has
10 priority over a sighted operator in these facilities?

11 A Yes.

12 Q Okay. You knew that; correct?

13 A Yes.

14 Q Okay. And you also knew that Mr. Robinson knew that;
15 correct?

16 A Yes.

17 Q All right. And the sighted person, what was that
18 individual's name?

19 A Sam Lopez.

20 Q Sam Lopez. Everybody seemed to like Sam is what I gather or
21 seemed to say he was doing an adequate job; correct?

22 A Yes.

23 Q All right. But really Sam had no right to be in that
24 facility; correct?

25 A No.

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1 Q Okay. If it came down to a blind operator and a sighted
2 operator, you would give the facility to a blind operator;
3 correct?

4 A Yes.

5 Q All things being equal; correct?

6 A Yes.

7 Q All right. So here Andrea -- I believe it's Andrea Nelson.
8 Andrea.

9 Q Andrea. She didn't want the sighted person; correct?
10 A She did not want the training.

11 Q Well, she has had -- do you know about her past? Do you
12 know about her history?

13 A I do.

14 Q Okay. Do you know she has been involved in the catering
15 business?

16 A I know that she has a family background in catering.

17 Q Okay. Did you interview her for her position?
18 A No.

19 Q All right. So you knew --
20 A We don't conduct interviews --
21 Q All right. So you knew this; correct?
22 A I knew it from what I had been told by our trainer.
23 Q All right. So the trainer indicated that in fact -- and I
24 don't know, you know -- that she doesn't need this help;
25 correct?

1 A No, he didn't.

2 Q All right. So you felt it was -- even though the rules
3 provide -- does not provide for the training; correct?

4 A No, that's not correct.

5 Q Okay. You tell me.

6 A What would you like me to tell you?

7 Q Okay. Do the rules provide that Andrea Nelson be trained by
8 a sighted person?

9 A The rules provide that the Commission shall allow for
10 training for operators to help them to be successful in
11 their facilities.

12 Q "Shall allow." Okay. It does not mandate them; correct?

13 A The rules state that the Commission shall provide all
14 training necessary for an operator to be successful in their
15 facility.

16 Q All right. Has Andrea Nelson been successful in her
17 facility?

18 A Has Andrea Nelson been successful in which facility?

19 Q The one she's operating. Well, she's not in the Ottawa --
20 correct? -- or not in the Hall of Justice; correct?

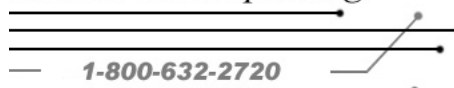
21 A No.

22 Q She's at the State library; correct?

23 A Yes.

24 Q All right. And was the sighted person able to keep that
25 position at the Hall of Justice?

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1 A For a time.

2 Q For a time? For how long?

3 A I believe it was the end of June this year and then Mr.
4 Lopez was removed for a blind temporary operator.

5 Q All right. So you guys got what you wanted as it relates to
6 the Hall of Justice; correct? Andrea Nelson did not take it
7 over; correct?

8 A No, I didn't get what I wanted. No, Andrea Nelson did not
9 take over the Hall of Justice.

10 Q And Sam was allowed to stay there; correct?

11 A Sam stayed there in lieu of any other temporary operator.

12 Q All right.

13 A But it's not a fair assessment to say that that's what I
14 wanted.

15 Q Well, I guess I can't speculate. And you have -- Mr.
16 Robinson was just a liaison; correct? It was not his --
17 just a liaison between your organization and the operators;
18 correct?

19 A That's one of his roles, yes.

20 Q All right. And so isn't it true he never told Ms. Nelson as
21 far as you know not to have Sam Tower (sic) involved in
22 this?

23 A I don't know what he told her.

24 Q All right. But that was Andrea Nelson's choice; correct?

25 A One of the stipulations that was placed on the bid

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1 announcement for the acceptance of the Hall of Justice --
2 forgive me. One of the stipulations that was requested for
3 her to assume responsibility for that facility was to
4 receive training in catering and menu planning for that
5 building from the sighted individual. I can't recall if it
6 was on the bid announcement or if it was just something that
7 was asked of her after the award.

8 Q But you can't recall one way or the other?

9 A I can't recall in which manner she was notified that that
10 was the stipulation that we wanted to have her follow.

11 Q Is that a reason to have Mr. Robinson fired?

12 A That wasn't one of the reasons that was listed for having
13 Mr. Robinson fired.

14 Q Why are we here today? What are the reasons why Mr.
15 Robinson is being fired -- because you indicate that in your
16 interim employee rating that that was one of the reasons.

17 A What I indicated was a failure to follow directives from his
18 supervisor in that having the meeting with the Hall of
19 Justice staff and Ms. Lisa Kutas and explaining or trying to
20 talk out of having the temporary operator provide a certain
21 degree of training was against the position of the agency
22 and against the agreement that the agency had made with the
23 Hall of Justice.

24 Q All right. Where did you get that information from?

25 A Mr. Robinson.

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1 Q Okay. Any other --

2 A Ms. Nelson and Ms. Kutas.

3 Q Okay. And any other reasons for firing him?

4 A Failure to enter site visits into the BEP database, failure
5 to catch up on outstanding site visits into the BEP
6 database, failure to provide documentation to his supervisor
7 upon request, failure to provide master plans by established
8 deadlines, failure to meet other deadlines.

9 Q So basically we're here because of -- as it relates to the
10 site visits and the issues that surround it.

11 A Basically we're here because Mr. Robinson failed to enter
12 site visits, failed to provide documentation to his
13 supervisor, failed to provide -- or failed to follow
14 directives from his supervisor, and failed to perform some
15 of the essential duties of a promotional agent as outlined
16 in the promulgated rules and the position description for
17 the Civil Service classification.

18 MR. KAMAR: Nothing else.

19 MR. HUTCHENS: Ms. Smith, do you have any further
20 questions for this witness?

21 MS. SMITH: Yes, I do. Just a couple.

22 REDIRECT EXAMINATION

23 BY MS. SMITH:

24 Q Was it Mr. Robinson's responsibility to make operators
25 happy?

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1 A No.

2 Q What was his responsibility to operators?

3 A To provide them with the tools, equipment, and guidance to
4 be successful.

5 Q Did you receive complaints from Lisa regarding the SECC
6 popcorn?

7 A From Lisa Moye?

8 Q Yes.

9 A Yes, I did.

10 Q Regarding Mr. Beard, Mr. Beard could not obtain inventories;
11 correct? He could not do the cash-in and cash-out of the
12 inventories; correct?

13 A He couldn't obtain reimbursements and he also couldn't pay
14 the inventory until the invoice had been provided.

15 Q And that was because of Mr. Robinson; correct?

16 A Yes.

17 Q And you asked Mr. Robinson on four different occasions to
18 provide that invoice to you?

19 A That's my recollection; yes.

20 Q Regarding the state email, you indicated that he didn't get
21 it removed until you asked for it. You had to ask for it to
22 be removed a second time; correct?

23 A That is correct.

24 Q He didn't initiate removal the first time that you asked; is
25 that correct?

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1 A I can't say if he did or not, but it was not removed the
2 first time that I asked him.

3 Q Okay. In terms of the Ottawa snack bar, was Mr. Robinson
4 directed not to close the Ottawa snack bar?

5 A He was directed to inform the operator that the snack bar
6 was not to be closed.

7 Q Did the operator have any authority to close the snack bar?

8 A No.

9 Q Who has the authority to close the snack bar?

10 A The program manager.

11 MS. SMITH: No further questions.

12 MR. HUTCHENS: Mr. Kamar, anything further?

13 MR. KAMAR: No, sir.

14 MR. HUTCHENS: Okay. Thank you very much, sir.

15 Who's going to be your next witness, ma'am?

16 MS. SMITH: Patty Gamin.

17 MR. KAMAR: Who is that?

18 MS. SMITH: Patty Gamin; Patricia Gamin.

19 (Off the record)

20 MR. HUTCHENS: We'll go back on the record now.

21 The Department's next witness, Ms. Gamin, has taken the
22 stand. Ma'am, we'll have the court reporter swear you in
23 and then Ms. Smith will have some questions for you.

24 REPORTER: Do you solemnly swear or affirm that
25 the testimony you give today will be the whole truth?

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1 MS. GAMIN: I do.

2 MR. HUTCHENS: Go ahead, Ms. Smith.

3 PATRICIA GAMIN

4 having been called by the Respondent and sworn:

5 DIRECT EXAMINATION

6 BY MS. SMITH:

7 Q Would you please state and spell your name for the record,
8 please?

9 A Patricia Gamin, G-a-m-i-n.

10 Q And how long have you been employed with the Department of
11 Labor & Economic Growth?

12 A I have been employed there since 1997.

13 Q And can you briefly describe your job duties for us?

14 A Currently, I am the director of the Office of Human
15 Resources, and that means that I manage all of the human
16 resource activities for DELEG.

17 Q And were you involved in the David Robinson dismissal?

18 A Yes, I was.

19 Q And what was your involvement?

20 A In I believe it was October or November of 2009, I received
21 a call from Mr. James Hull because Mr. Russell, our labor
22 relations director, was tied up on other issues and Mr. Hull
23 filled me in on some performance issues that he was having
24 with Mr. Robinson and then I continued to advise Mr. Hull on
25 the action that needed to be taken with regards to Mr.

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1 Robinson's performance.

2 Q And did you conduct an investigatory conference with Mr.
3 Robinson in November of 2009?

4 A Yes, I did.

5 Q And what did you find?

6 A In the conference we asked -- I asked Mr. Robinson numerous
7 questions about issues -- performance issues that Mr. Hull
8 had brought to Mr. Robinson's attention and the responses to
9 those questions indicated that in very many circumstances
10 Mr. Robinson did what he wanted to do rather than the
11 directions and instructions that Mr. Hull gave him with
12 regards to performing his job.

13 Q And do you recall any of the -- any of the incidents that
14 were talked about?

15 A Yes. One in particular that seems minor, but it was very
16 frustrating to Mr. Hull because he was just trying to get a
17 document from Mr. Robinson was where -- actually, it started
18 out with Ms. Zanger asking Mr. Robinson to provide a copy of
19 an invoice and he did not respond to Ms. Zanger's request
20 for that invoice. And then Mr. Hull asked him for copies of
21 an invoice and he failed to respond to those. And what we
22 found out in the investigatory conference was that Mr.
23 Robinson indicated that he had provided the invoice to
24 another individual yet he never told Mr. Hull that he had
25 done so. But in the investigatory conference, he claimed

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1 that he had given the invoice to Mr. Hull and put it in his
2 in-box, yet he never up to that point said anything. So his
3 responses in the investigatory conference tried to divert
4 responsibility from himself to other individuals.

5 Q And do you recall anything about a discussion about the SECC
6 popcorn giveaway?

7 A Again, it was another situation where Mr. Robinson became
8 involved in this State employees combined campaign popcorn
9 giveaway. He had -- he had contact with operators and with
10 the SECC individual, yet he did not follow through and make
11 sure that the SECC giveaway was successful. And so Mr. Hull
12 was -- and he didn't inform Mr. Hull as to what was going on
13 so Mr. Hull was in the position of having to clean up and
14 try to get the operators to not be so angry as a result of
15 what had occurred for the giveaway. And during the
16 investigatory conference, Mr. Robinson indicated that he had
17 no responsibility for the SECC popcorn giveaway.

18 Q What about the Ottawa Building? Do you recall any
19 discussion about that?

20 A There was a discussion about the closing of the store in the
21 Ottawa Building and there was an email that Mr. Robinson had
22 been sent and he had been instructed to set up a meeting
23 with the operator -- whose name was Don -- and with Ms.
24 Zanger and with himself and Mr. Hull, and he failed to do
25 that. And when he was asked about it, he said that he

1 thought Don would do it. I mean, that was his -- it was
2 kind of a -- just a flip response. He didn't have any
3 explanation as for why he didn't do what he was instructed.
4 He just said he thought somebody else would do it.

5 Q Why was Mr. Robinson terminated at the end of the rating
6 period?

7 A Mr. Robinson was terminated at the end of the rating period
8 because it was clear from all of the documentation and all
9 of the interactions between Mr. Hull and Mr. Robinson during
10 that three-month period that Mr. Robinson had no intention
11 of improving his performance or of following the directives
12 that Mr. Hull gave him as his supervisor. So that was the
13 appropriate action to take. The only time that we would do
14 something different is if the employee's performance
15 improved; and in this situation it did not.

16 Q Were you aware of Mr. Robinson using his email address for
17 the National Federation of the Blind?

18 A My recollection regarding that situation was that his email
19 address was placed on the National Federation for the Blind
20 website. Mr. Robinson indicated that it had been placed on
21 the website by Mr. Fred Wurtzel, and he -- Mr. Robinson was
22 told -- instructed by Mr. Hull that he needed to get his
23 state email address off of that website. Mr. Robinson
24 claimed that he contacted Mr. Wurtzel and asked him to do so
25 and yet he never followed up to determine whether or not his

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1 email had been taken out. And it was, I think, maybe even a
2 month later that James found that it was still there and he
3 had to instruct Mr. Robinson again to do it. Once again, it
4 was another situation of Mr. Hull instructing Mr. Robinson
5 to do something and Mr. Robinson either not doing it or not
6 following through to make sure that what he was instructed
7 to do was actually accomplished.

8 Q How did his email address -- allowing NFB to use his email
9 address -- how did this harm the State of Michigan?

10 A Well, the National Federation for the Blind is an
11 organization that is outside of state government. It's not
12 a State -- it's not an organization -- it's not a State
13 organization. It's a private organization. And so using
14 your state email for a private organization means that
15 you're doing personal business on State time and using the
16 State's resources for personal business.

17 Q Now, you've indicated that you've been an employee with
18 DELEG since 1977.

19 A 1997.

20 Q I'm sorry. 1997, and you've worked in Human Resources. And
21 have you had any affiliation or anything to do with hiring
22 individuals or promoting individuals?

23 A Absolutely. I've been with DELEG since 1997, but I've been
24 with the State since 1988 and all in human resources
25 capacities. So I have been hiring State employees and

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1 involved in hiring State employees since 1988 with the
2 Department of Corrections and then with the Department of
3 Energy, Labor & Economic Growth.

4 Q Okay. I think there's a misconception between State
5 employees -- and not only State employees, but individuals
6 outside of the State. Sometimes individuals feel that if
7 they've been employed with an employer for some time and a
8 promotion becomes available, that they should get that
9 promotion. Is that how things always work?

10 A No.

11 Q How does it work in State government?

12 A In State government, we -- the majority of our positions --
13 because obviously there's exceptions to every rule, but the
14 way that we fill vacancies is that we post a vacancy and
15 individuals apply and we hold the selection process and an
16 individual that is determined by the selection team to be
17 the most -- the best candidate for the position is selected.
18 Individuals could receive promotions in situations where
19 they're in what's called a pattern class -- which means they
20 could go for instance from a department analyst level 9 to a
21 10 to an 11. That's a pattern class. But that's something
22 that is stated in the class specification. If it's an
23 actual promotion to another position, we hold an appointment
24 process.

25 MS. SMITH: No further questions.

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1 MR. HUTCHENS: Mr. Kamar, any questions for the
2 witness?

3 MR. KAMAR: Yes. sir.

4 CROSS-EXAMINATION

5 BY MR. KAMAR:

6 Q So are you involved in all the firings as it relates to the
7 BEP promotional agents?

8 A In all of the firings?

9 Q Yes.

10 A Not necessarily. I'm the human resources director, but we
11 also have a labor relations director and a labor relations
12 representative. So it depends on the workload.

13 Q All right. How did you get this particular case?

14 A As I stated, Mr. Hull contacted me because he was unable to
15 get ahold of Frank Russell who's our labor relations
16 director and he had been consulting with Mr. Russell. And
17 because we were short-staffed and Mr. Russell had so many
18 things to do and I had previously been the labor relations
19 director for DELEG, I then continued to help Mr. Hull in
20 this.

21 Q Have you ever been involved in firings for people similarly
22 situated to my client? I mean their position, not
23 necessarily maybe what they had done wrong. Do you
24 understand my question?

25 A No.

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1 Q Have you ever fired anybody that was in his position before?

2 A A promotional agent?

3 Q Yes; yes.

4 A Yes.

5 Q Okay. And do you recall how many times?

6 A Once.

7 Q Okay. What did that individual -- first of all, how many
8 years ago was that?

9 A I don't know. I would have to look at my records.

10 Q I know. You weren't expecting this question. By any
11 chance, was that person a member of the National Federation
12 of the Blind?

13 A I have no idea.

14 Q You have no idea? All right. Okay. And do you know why --
15 what the reasonings were why you fired the other individual?

16 A Performance reasons.

17 Q Okay. And when you talk about performance reasons, did that
18 have anything to do with the operators?

19 A In this particular situation? Well, because the individual
20 was a promotional agent, her work had to do with operators;
21 yes.

22 Q Okay. In this particular case, besides this popcorn
23 giveaway, there was no complaints by any operators; correct?

24 A That's not necessarily true; no.

25 Q Okay. Do you have any personal knowledge -- and I'm not

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1 talking about what Mr. Hull may have told you or what
2 anybody else may have told you. Do you have any personal
3 knowledge of any complaints by any operators?

4 A Any personal?

5 Q Yes.

6 A You mean, did they complain to me?

7 Q Yes.

8 A No.

9 Q All right. And so the complaints you received were from Mr.
10 Hull?

11 A The information that I received was from Mr. Hull. I
12 advised him --

13 Q I understand that.

14 A -- as his representative, his management representative.

15 Q I'm just trying to figure out, you know, some sort of
16 foundation as to where you got this information from.

17 A From Mr. Hull.

18 Q From Mr. Hull? Okay.

19 A And from Mr. Robinson in the investigatory conference.

20 Q Sure. And when you talk about the other individual was
21 because of performance, were they making enough money? Do
22 you recall what that lack of performance was?

23 A It was failure to carry out the responsibilities that our --
24 that a promotional agent is required to do.

25 Q Okay. And do you know what those responsibilities are?

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1 A I know what they are generally.

2 Q Okay. Do you know specifically what they are?

3 A Specifically, no. I only know generally.

4 Q Okay. And do you know how many operators my client had?

5 A No.

6 Q Okay. Do you know how big his territory was?

7 A No.

8 Q Do you know how many hours a week he was working?

9 A No.

10 Q Do you know if he was working Saturdays or Sundays to try to
11 get all this done?

12 A No.

13 Q All right. You just knew what Mr. Hull told you and what my
14 client told you?

15 A Yes.

16 Q Okay. Nothing more and nothing less.

17 A Correct.

18 MR. KAMAR: Nothing further.

19 MR. HUTCHENS: Ms. Smith, any further questions
20 for the witness?

21 MS. SMITH: Yes.

22 REDIRECT EXAMINATION

23 BY MS. SMITH:

24 Q Do you know if Mr. Robinson filed any complaints with the
25 Department that he was being treated differently or harassed

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1 because of his involvement with the National Federation of
2 the Blind?

3 A Other than this grievance?

4 Q Yes.

5 A I'm not aware of any.

6 Q In the disciplinary conference, did he make any allegations
7 of discrimination?

8 A No.

9 Q From your investigation, did you determine if Mr. Robinson
10 followed any of the directives that he was given by his
11 supervisor?

12 A He did not follow any of them to the extent to which he was
13 directed. He completed little bits and pieces here and
14 there.

15 MS. SMITH: No further questions.

16 MR. HUTCHENS: Mr. Kamar, anything further for the
17 witness?

18 MR. KAMAR: No, sir.

19 MR. HUTCHENS: All right. Thank you, ma'am. Ms.
20 Smith, who is your next witness?

21 (Off the record)

22 MR. HUTCHENS: We'll go back on the record at this
23 point. The Department's next witness, Ms. Zanger, has taken
24 the stand. Ma'am, we're going to have the court reporter
25 swear you in and Ms. Smith will have some questions for you.

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1 MS. ZANGER: Certainly.

2 REPORTER: Do you solemnly swear or affirm that
3 the testimony you give today will be the whole truth?

4 MS. ZANGER: Yes.

5 MR. HUTCHENS: Go ahead, Ms. Smith.

6 MS. SMITH: Okay.

7 CONSTANCE ZANGER

8 having been called by the Respondent and sworn:

9 DIRECT EXAMINATION

10 BY MS. SMITH:

11 Q Would you please state your name?

12 A Constance Zanger.

13 Q How long have you been employed with the State?

14 A I've been employed with the State of Michigan since 1973.

15 Q And what is your current position?

16 A Currently, I'm the administrative services acting manager
17 for the Commission for the Blind.

18 Q And how long have you been in that position?

19 A Since mid June of 2010.

20 Q And prior to that, did you supervise the grievant?

21 A Yes.

22 Q And when you supervised the grievant, when was that?

23 A From March 2007 through June 2009.

24 Q And what position were you in at that time?

25 A I was the manager of the Commission for the Blind's Business

1 Enterprise Program.

2 Q And in 2007 when you supervised the grievant, did you have
3 any concerns with his performance?

4 A Yes.

5 Q And did you take any corrective action?

6 A Yes.

7 Q I would like to refer you to Department Exhibit 5. I would
8 like to refer you to Department Exhibit 5 which are some
9 formal counseling memos.

10 (Witness reviews documents)

11 Q Did you issue any of those formal counseling memos?

12 A Yes, I did.

13 Q And can you tell me why did you issue those formal
14 counseling memos?

15 A The formal counseling memos were issued to draw attention to
16 business practices and activities that needed attention and
17 needed to be done in a different way.

18 Q Okay. What was it that he was not doing?

19 A Mr. Robinson was not entering site visits that documented
20 his visits with Business Enterprise Program operators. He
21 wasn't entering evaluations -- annual evaluations onto the
22 database promptly. He was not developing a summary --
23 monthly report summary spreadsheet and an inventory package
24 and discussing those with the manager before he conducted an
25 inventory. He wasn't completing the inventories, and he

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1 wasn't finalizing the inventory documentation on a timely
2 basis.

3 Q Did he make his deadlines?

4 A No.

5 Q And did this have an effect upon the operators; him not
6 making his site visits, not meeting deadlines, problems with
7 his inventories?

8 A Yes.

9 Q And how did this affect the operators?

10 A When inventories weren't finalized on a timely basis, it was
11 difficult to know the appropriate amount of inventory to
12 provide to a facility. If he wasn't discussing the
13 appropriate amount of inventory that should be assigned to a
14 facility, it could possibly violate the program rules and it
15 might put the operator in a difficult financial circumstance
16 when they went to leave that facility.

17 Q And you supervised him you said from '07 to '09 -- 2007 to
18 2009?

19 A Yes.

20 Q Okay. And those were some of the issues that you were
21 having with him?

22 A Those were some of the issues; yes.

23 Q Okay. And then he was supervised by Mr. Hull?

24 A Correct.

25 Q While he was under the supervision of Mr. Hull, was there a

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1 problem at the Hall of Justice?

2 A Yes.

3 Q I would like to -- I would like to show you an email that
4 you sent to Mr. Robinson and have it entered into the
5 Department's exhibit. It's dated October 16th. The subject
6 is "Progress with HOJ."

7 MR. KAMAR: Which number is that?

8 MS. SMITH: It's October 16th, Progress with HOJ.
9 It says, "Hello David."

10 MR. KAMAR: Oh, that's a new exhibit?

11 MR. HUTCHENS: It's one she's proposing, sir.

12 MR. KAMAR: Oh, okay.

13 MS. SMITH: It's a memo.

14 MR. KAMAR: I thought it was one she already
15 entered.

16 MR. HUTCHENS: No, she's proposing it as
17 Department Exhibit 12.

18 MR. KAMAR: We've got it.

19 MR. HUTCHENS: Is there any objection to the
20 document?

21 MR. KAMAR: No; no.

22 MR. HUTCHENS: It's entered as Department Exhibit
23 12.

24 (Department Exhibit 12 marked and received)

25 MS. SMITH: You said "12"?

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1 MR. HUTCHENS: Yes, ma'am.

2 Q I would like for you to take a look at this. Was one of his
3 assignments the Hall of Justice?

4 A Yes.

5 Q And what happened at the Hall of Justice?

6 A We had a temporary operator at the Hall of Justice for
7 several months because we didn't have a qualified blind
8 person who was interested in assuming responsibility for
9 that facility. So when a facility is available, it's on a
10 system called the bid line, and operators listen weekly and
11 call and let us know if they're interested in being
12 considered for that facility. After this facility at the
13 Hall of Justice had been on the bid line for seven months,
14 an operator expressed an interest and her bid was evaluated
15 and she was awarded the facility. When the Hall of Justice
16 employees learned that they were losing their temporary
17 operator, they were dismayed. They were unhappy. They had
18 been very happy with his service, and they didn't have any
19 confidence that the operator coming in could do the job that
20 the temporary operator had been doing. The employees in the
21 building sent emails to the Hall of Justice human resources
22 representative or our liaison there. There may have been as
23 many as 90 emails. They ran the gamut from "Absolutely not.
24 We don't want a blind person in this facility" to "Here are
25 some things that I think your new blind person needs to pay

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1 attention to. These are some customer service issues that
2 will need to be addressed." That was very concerning to us
3 that they had this attitude and that they weren't welcoming
4 to our blind operator. It was so concerning that we
5 arranged a meeting with Hall of Justice representatives and
6 Director Cannon and James Hull and myself, Cheryl Heibeck --
7 who at the time was the administrative services manager --
8 and David Robinson; and we met with Lisa Kutas -- who is the
9 human resources liaison -- representatives of their unions
10 of the employees in the building, and Justice Cavanagh was
11 at that meeting. And Director Cannon made it very clear
12 that by law we have a priority in this building. We will
13 provide the service and we confidently believe the blind
14 operator can provide the kind of food service that they need
15 in that building. At the end of the meeting, they agreed
16 that, yes, a blind person belongs in that facility and that
17 they can do the job. They did ask -- because they were so
18 happy with that temporary operator's service -- that our
19 blind operator use -- that the Commission use the temporary
20 operator as a job coach for the incoming blind operator, and
21 we agreed to that. That meeting happened and a few days
22 later, Mr. Robinson and Ms. Nelson -- unbeknownst to
23 Director Cannon or Mr. Hull or myself -- had a meeting with
24 Lisa Kutas, and apparently they also met with the temporary
25 operator. And on that day, Ms. Nelson -- who was the

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1 incoming blind operator -- decided that she would not work
2 in a training capacity with Mr. Lopez who was the temporary
3 operator. I had scheduled a meeting for Ms. Nelson and Mr.
4 Robinson and myself and Mr. Hull to meet with Ms. Kutas on a
5 Friday; and Mr. Robinson and Ms. Nelson had their meeting
6 with Lisa Kutas on the preceding Wednesday. Andrea said she
7 would not work with Sam and so I cancelled the Friday
8 meeting. Ultimately, Ms. Nelson decided that she did not
9 work at the Hall of Justice, and she bid on and was awarded
10 another Business Enterprise Program facility.

11 Q So it was requested for her to receive this coaching from
12 Sam?

13 A Yes.

14 Q In your email there to David -- okay -- what did you ask
15 David to do?

16 A I told David that he could -- that I needed to talk to him
17 about this situation. I needed to have a list of
18 transaction activities that would take place before Ms.
19 Nelson assumed responsibility for the Hall of Justice. And
20 while I said he could schedule an inventory for Ms. Nelson
21 to go into the facility, that he was not to proceed with the
22 inventory until I was satisfied with the transition plan.

23 Q And what did Mr. Robinson proceed to do?

24 A I believe -- I believe that Mr. Robinson did go ahead and
25 schedule the inventory, but the inventory never took place

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1 because Ms. Nelson decided that she did not want to work at
2 this facility.

3 Q Okay. He did that even after you told him not to do it? He
4 did that even after you told him not to schedule
5 inventories?

6 A I told him that he could schedule the inventory. I told him
7 that it could not take place until the transition plan was
8 approved.

9 Q All right. Did he attend a meeting with Andrea?

10 A Yes.

11 Q Even after you had told him that you had cancelled the
12 meeting?

13 A No. The meeting that he attended with Andrea was before I
14 cancelled the meeting, and I cancelled the meeting because
15 he had had that meeting with Andrea and Lisa Kutas.

16 Q Okay. So what did Mr. Robinson do that he should not have
17 did in that meeting?

18 A Mr. Robinson should not have attended the meeting with Lisa
19 Kutas and Andrea Nelson. I had expected that Mr. Robinson
20 and Ms. Nelson would attend the Friday meeting with me and
21 James Hull to talk with Lisa Kutas and introduce her to
22 Andrea.

23 Q Okay. And why was this -- I take it this Hall of Justice
24 situation was a very political or sensitive issue.

25

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1 A It was indeed a very sensitive issue. We have a very nice
2 facility there. It offers great services. The people in
3 that building are dependent on the services because
4 they're -- you know, the downtown Lansing facility is the
5 farthest away from the restaurants so they really want good
6 service there. They were so interested that they were
7 considering other ways to get that good service without us.
8 And we didn't -- first of all, we didn't believe that could
9 happen because of the law. And second of all, we didn't
10 want that to happen. We believed that the Business
11 Enterprise Program and our blind operator could provide the
12 kind of food service that they needed and wanted in that
13 facility.

14 Q Now, were you aware of an issue at the Ottawa Building?

15 A Yes.

16 Q I have an email here from you to Mr. Robinson. It's dated
17 October 28th. It's a two-page document ranging from
18 September the 18th, September 22nd, and October 28th. The
19 subject is "Close snack bar query."

20 MS. SMITH: I'd like to have that introduced.

21 MR. KAMAR: Can I see that, please?

22 (Counsel reviews document)

23 MR. KAMAR: No objection.

24 MR. HUTCHENS: This document -- at the very top
25 it's identified in bold letters. It says, "Patty Gamin,

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1 Patty DELEG, from Paul James DELEG, Tuesday, November 10th."
2 But I believe the subject matter that you're talking about
3 is down below, ma'am.

4 MS. SMITH: "Snack bar query."

5 MR. HUTCHENS: Yes. All right. This is entered
6 as Department Exhibit 13.

7 (Department Exhibit 13 marked and received)

8 Q What was the situation with the Ottawa store?

9 A I had a call from a customer at the Ottawa Building and the
10 customer advised me that the Ottawa snack bar was going to
11 be closed. As the manager of the Business Enterprise
12 Program, when those kinds of things happen, it shouldn't --
13 those decisions shouldn't be made in a vacuum. The
14 promotional agent responsible for the facility should be
15 discussing such things with the program manager. I
16 approached David because he was the promotional agent
17 responsible for this facility and asked him about it and he
18 said that the operator -- Don Austin -- was interested in
19 closing that facility because it wasn't generating enough
20 income for him to hire someone to work there. So I
21 responded by saying, "David, please give me some additional
22 information. I want to know what's selling well, what's
23 not." The snack bar is a convenience for the customers and
24 if we could make it productive, make more income for Don
25 Austin and better serve the customers in the building, that

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1 would be the best outcome, but I didn't have any information
2 to know whether that was a possibility or not. So I asked
3 David for that information. I asked him for that
4 information in late September and asked him to not make any
5 further move in this regard until we had had a conversation
6 about it. And then in late October, I learned that
7 equipment was being transferred out of the Ottawa store,
8 which meant to me that the store had been closed. The
9 decision had been made to close the Ottawa store without
10 advising me or consulting with me.

11 Q Okay. In that email, did you direct him not to close the
12 store?

13 A I did indeed. I directed him to keep the store open until
14 we had an opportunity to discuss the issue in detail.

15 Q Okay. And you had asked him for information. Did he supply
16 that information to you?

17 A No, he did not.

18 Q Did he discuss the Ottawa store closing with you?

19 A My only recollection of discussing the Ottawa store closing
20 with him was when I initially asked him if it -- you know,
21 what the situation was when I learned from the customer that
22 the store was going to be closed.

23 Q And that was your only discussion with him?

24 A To the best of my recollection.

25 Q Did he follow the directive that you gave him?

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1 A No.

2 Q Is it his job to make operators like him?

3 A No.

4 Q Was he doing things for operators he was not supposed to do?

5 A Yes.

6 Q What kinds of things?

7 A I can think of two instances. In the downtown Lansing
8 area -- partly due to parking, partly due to security
9 concerns -- it's very difficult for operators to get
10 delivery of fresh milk and to get delivery of fresh milk in
11 the quantities that they require. I learned that sometimes
12 David would go to the store and purchase dairy products on
13 behalf of the operators and bring it back to them and
14 distribute it to them; and that was not his job. It's the
15 operators' responsibility to get the product. Another
16 situation was David was interested in having operators try
17 new product. Always, customers are asking for health
18 products, and he found a product from a company called
19 Soyselect, and David made arrangements to sell those
20 products on a consignment basis, and he made an arrangement
21 for the product to be stored at an operator's facility. It
22 was not a facility for which he was responsible. David
23 collected the money and then paid the bill when he collected
24 the money for the product sold.

25 Q When you had David under your supervision, did you have any

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1 problems with him and inventory, late inventory, and money
2 issues?

3 A Yes, we did. The Business Enterprise Program rules specify
4 a particular amount of inventory that should be assigned to
5 a facility. And in order to calculate what that amount is,
6 generally a promotional agent generates a summary of monthly
7 reports and uses that information to calculate the assigned
8 inventory value. It was David's practice to assign an
9 inventory value above and beyond what the policy called for
10 and often did so without consulting with the Business
11 Enterprise Program manager. Also, when inventories were
12 conducted, an operator has two weeks to say whether or not
13 they agree with the inventory and the entire inventory
14 package should be submitted to the program manager after
15 about a month; in other words, about 30 days after the
16 inventory is conducted. David was not good about following
17 up and completing those inventories. One time I counted and
18 he had seven outstanding inventory documentation packages
19 that were outstanding for as little as six weeks or for as
20 long as ten months.

21 Q And those you had cited in the formal counseling?

22 A Yes.

23 Q At the time you supervised him, did he ever allege that he
24 was being treated differently because he was an NFB member?

25 A No.

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1 Q Does the Commission discriminate against individuals for
2 membership in this organization?

3 A No.

4 MS. SMITH: No further questions.

5 MR. HUTCHENS: Mr. Kamar, do you have any
6 questions for this witness?

7 MR. KAMAR: Yes.

8 CROSS-EXAMINATION

9 BY MR. KAMAR:

10 Q What is your position there now?

11 A I'm the administrative services acting manager at the
12 Commission for the Blind.

13 Q And Mr. Hull works for you?

14 A No, he does not.

15 Q And then you supervised my client in 2007 to 2009; is that
16 correct?

17 A Yes.

18 Q And before that, do you have any evidence that there was any
19 difficulties or any problems he had with your agency?

20 A The issue of timely entry of site visits has long been an
21 issue of concern in terms of David's performance.

22 Q And do you know how long he has been there?

23 A How long he has worked for the --

24 Q Yes.

25 A How long he worked for the Commission for the Blind?

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1 Q That's correct.

2 A More than ten years.

3 Q More than ten years. And with a lot of BEP members, isn't
4 it true there's problems with this documentation; not
5 only -- not only my client?

6 A I don't know what you mean when you talk about a BEP member.

7 Q Okay. When I'm talking about a promotional agent -- okay --
8 a lot of the promotional agents have difficulty timely
9 getting in what they're supposed to get in.

10 A Yes. In February of 2008, I ran a report to discuss with
11 all the promotional agents and at that time I think David
12 was assigned 24 facilities and his documentation for 19 of
13 those facilities was more than 180 days past due and was
14 past due for less than 180 days for four of his facilities.
15 In region one where there were about -- where the
16 promotional agent was assigned 21 facilities, they had seven
17 facilities for which the documentation was past due. Region
18 two had -- was assigned 22 facilities and had six facilities
19 for which the documentation was past due. And Region four
20 had 22 or 23 facilities and had documentation that was late
21 for 11 facilities.

22 Q Okay. So it's typical to be late in this program; correct?

23 A It happens.

24 Q It happens. Okay. And what is -- what was his
25 responsibilities as a promotional agent?

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1 A A promotional agent is responsible to visit their operators
2 about once every six weeks. When they have a contact with
3 the operators, they should document that, and it doesn't
4 necessarily have to be a physical visit. It could be a
5 telephone contact. They're there as a business consultant
6 to help them grow their business, to help them talk about
7 ways to grow their business. If there is a customer
8 complaint that the Commission gets, then the promotional
9 agent is a liaison between the customer and the Commission
10 and tries to help the operator resolve that issue. The
11 promotional agent does an annual evaluation. The
12 promotional agent is responsible for determining the
13 appropriate amount of equipment in a facility, and the
14 promotional agent facilitates repair of equipment.

15 Q Okay. So trying to help his operators succeed; correct?
16 That's the goal. That's why he's there.

17 A To give them the tools to succeed.

18 Q Okay. And you've never -- isn't it true besides this
19 popcorn giveaway, you've never had any complaints from any
20 of the operators about Mr. Robinson?

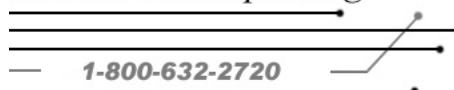
21 A No, that's not true.

22 Q Who have you had complaints from?

23 A At this moment, I couldn't tell you.

24 Q Okay. Fair enough. But you don't have any documentation
25 today?

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1 A Not with me.

2 Q Okay. And did you have any role in producing this interim
3 employee rating which is marked as Defendant -- Department's
4 Exhibit Number 8?

5 A No, I did not.

6 Q All right. Did you read it? Have you seen it before today?

7 A I don't recall if I've read it before.

8 Q All right. Fair enough. Now, let's talk about some of the
9 specifics that you talked about. Let's go back to the Hall
10 of Justice. You indicated that the process to finding a
11 blind operator is that you operate a bid line; correct?

12 A The program has a bid line; yes.

13 Q And in this particular place -- yeah, this particular place,
14 the Hall of Justice -- Andrea -- it's my understanding --
15 Nelson; she applied?

16 A She placed a bid on -- for the facility and was awarded the
17 facility; yes.

18 Q And isn't it true there was no strings attached to the bid?

19 A I cannot tell you at this moment what the bid announcement
20 itself said, but it was my expectation that the incoming
21 operator --

22 Q Okay. I don't want to know what your expectation was, but I
23 want you to know -- want I want to know is whether or not
24 you have any personal knowledge as to what was on the bid
25 line.

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1 A At this moment, I don't recall.

2 Q All right. Fair enough. So she placed a bid and obviously
3 the state law indicates that blind operators are supposed to
4 receive these sites; is that correct?

5 A The state law says that in any state-owned or occupied
6 building that the Business Enterprise Program provides the
7 food service.

8 Q And this was obviously the Supreme Court, the Court of
9 Appeals. It's obviously a State-owned building; is that
10 correct?

11 A It seems clear to me.

12 Q All right. Okay. So this was supposed to go to a blind
13 operator; correct?

14 A Yes.

15 Q All right. And it went to a blind operator; correct?

16 A Yes. It was --

17 Q Well, it didn't.

18 A It was awarded to --

19 Q It was supposed to go --

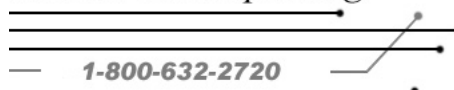
20 A Yes.

21 Q Okay. And the people there weren't very happy with a blind
22 operator for whatever reason is what your testimony is.

23 A Correct.

24 Q Okay. And then obviously you discovered this after the bid
25 line was accepted because then once that happened you

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1 started getting all these emails; correct?

2 A The emails came to Lisa Kutas. Lisa Kutas forwarded them
3 all to me.

4 Q Yeah, but that's after the bid line was accepted; correct?

5 A Correct.

6 Q All right. So you go, "Lo and behold. We got a problem
7 now." They don't want a blind person for whatever reason.
8 And obviously your job is to ensure that the blind person
9 succeeds; correct? Is that a "yes"?

10 A I'm sorry. Yes.

11 Q Because she's taking all this down.

12 A I know. I know.

13 Q So we're trying to make a record here.

14 A I know that.

15 Q All right. And then you sort of did an about-face and say,
16 "Well, wait a minute here. They're not happy so maybe we
17 need to have Sam Top or Sam -- what's his last name?

18 A Lopez.

19 Q Lopez -- train her; correct?

20 A No.

21 Q Okay. You're saying you thought of this before all the
22 emails came in?

23 A Yes.

24 Q All right. How do you recall that?

25 A I recall that because I was the person who inventoried Sam

1 Lopez in. I kept in close compact with him and Lisa Kutas.
2 And Sam was providing services that the Hall of Justice had
3 never before offered our operator. Obviously, Sam Lopez was
4 doing something right that we weren't doing right and I
5 wanted to take advantage of that experience.

6 Q Did you tell Andrea Nelson this before she accepted the bid?

7 A Yes.

8 Q Okay. When did you tell her?

9 A When I called Andrea to offer the facility to her, I told
10 her.

11 Q You told her.

12 A I told her.

13 Q Did you send her an email?

14 A I don't recall.

15 Q Did you send her a memo?

16 A I don't recall.

17 Q Why do you send emails and why do you send memos?

18 A Sometimes you can't get ahold of a person by telephone and
19 you want to --

20 Q Do you ever send emails and memos to document what you're
21 doing?

22 A Certainly.

23 Q To have a paper trail.

24 A Certainly.

25 Q So some of these areas you decided you needed a paper trail,

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1 but your conversation with Andrea you didn't need a paper
2 trail; correct?

3 A I didn't say that. I said I don't recall if I did that.
4 Another way that the Business Enterprise documents
5 information or activities is by entering site visits or case
6 notes, and I have may chosen to do that rather than send
7 Andrea an email.

8 Q In any event, you don't have them with you today?

9 A No, I don't.

10 Q So you're just saying that you sent -- you told Andrea that
11 she's going to have to work with Sam Tower before -- Sam --
12 I'm sorry -- Lopez before she got this job as a condition of
13 her receiving this site -- is what you're saying?

14 A I don't know that I used the words "condition of her
15 receiving this site."

16 Q Well, what did you say?

17 A I don't recall the specific words, but I --

18 Q To the best of your recollection.

19 A I'm trying.

20 Q Okay.

21 A Thank you. I told her that he had been very successful;
22 that -- as I said to you a little earlier that he was
23 garnering business that we had never been offered before. I
24 thought that we could benefit from learning what his
25 business practices were and meeting and becoming acquainted

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1 with his contacts and I would like for her to work with him;
2 that he would be her job coach for a period.

3 Q You would like. But it wasn't a requirement of her
4 receiving this Hall of Justice; correct?

5 A Yes.

6 Q All right. And so how come she never received the Hall of
7 Justice? What happened?

8 A It was Ms. Nelson's choice to rescind her bid on the Hall of
9 Justice and she bid on a different facility.

10 Q Was she given that facility?

11 A Yes, she was.

12 Q Did anybody else bid on that facility?

13 A I don't recall.

14 Q Was she ever told in advance if she gave up the Hall of
15 Justice, she would definitely get this facility?

16 A No.

17 Q And so did you know there was a meeting between my client,
18 Ms. Nelson, and Kutas? Did you know about that meeting?

19 A Not until after it happened.

20 Q Was there any directive from you in writing to my client
21 indicating that he can't meet with any representative of the
22 Hall of Justice?

23 A No.

24 Q Did you ever tell him that he can't meet with anybody from
25 the Hall of Justice?

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1 A Not that I recall.

2 Q Okay. And you don't know what the conversation was with
3 this individual at the Hall of Justice; correct?

4 A I only know what David told me.

5 Q All right. What did David tell you?

6 A I don't recall that David told me anything about the meeting
7 with Lisa Kutas. What David did tell me was that Andrea
8 met -- he and Andrea met with Sam Lopez. Andrea didn't like
9 the way Sam treated her and Andrea refused to work with Sam
10 Lopez.

11 Q And this isn't true; Mr. Robinson never told you that it was
12 his idea for her to do this?

13 A I don't recall that Mr. Robinson said that to me.

14 Q So this was Ms. Nelson's idea as far as you know?

15 A Ms. Nelson's idea for what?

16 Q Not to work with Sam Tower (sic).

17 A To the best of my knowledge. Sam Lopez.

18 Q Sam Lopez. I don't know why I keep saying that. And then
19 lastly, I think you talked about the Ottawa Building. Let's
20 go back. Do you know if Kutas requested that meeting?

21 A No.

22 Q If you know.

23 A I do not know.

24 Q All right. Now, the Ottawa Building; there was a vending
25 operation on the first floor; is that right?

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1 A There was a small snack bar and several vending machines
2 located on the first floor of the Ottawa Building.

3 Q Okay. Where was the snack bar?

4 A On the first floor of the Ottawa Building.

5 Q Okay. Was there a snack bar at the same location or
6 different locations?

7 A They're in the same room.

8 Q Okay. Was there any operation downstairs in the basement?

9 A Yes.

10 Q What was that operation?

11 A A cafeteria.

12 Q All right. And who was running that?

13 A Don Austin was the BEP operator.

14 Q Was Don Austin complaining that he wasn't making any money
15 in the cafeteria?

16 A Don Austin didn't complain to me about that.

17 Q Who complained to you about that or who made any statements
18 about that?

19 A No one.

20 Q Do you know why he wanted to do that?

21 A David told me that Don wanted to close the store because it
22 wasn't making enough money to support the employee needed to
23 keep it open.

24 Q Did Dave ever tell you he advised him to close the store?

25 A Not that I recall.

1 Q Did Dave ever tell you that he tried to set up a meeting
2 between you and Mr. Austin?

3 A No.

4 Q Do you know what facilities are open now at that particular
5 place?

6 A No.

7 MR. KAMAR: Nothing further.

8 MR. HUTCHENS: Ms. Smith, any further questions
9 for the witness?

10 MS. SMITH: Just a couple.

11 REDIRECT EXAMINATION

12 BY MS. SMITH:

13 Q Mr. Robinson; he was behind in his site visits at a much
14 higher rate than other promotional agents. Is that what you
15 testified to?

16 A Yes.

17 Q And was this typical of him to be behind?

18 A Yes.

19 Q Did he know it was inappropriate for the meeting to occur at
20 the Hall of Justice?

21 A I don't know.

22 MS. SMITH: No further questions.

23 MR. HUTCHENS: Mr. Kamar, anything further?

24 MR. KAMAR: Let me ask one question. Oh, never
25 mind. Strike it.

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1 MR. HUTCHENS: Okay. Thank you very much, ma'am.

2 MS. ZANGER: You're welcome.

3 MR. HUTCHENS: Ms. Smith, who is your next witness
4 going to be?

5 MS. SMITH: Our next witness is Pat Cannon.

6 (Off the record)

7 MR. HUTCHENS: We're going to go back on the
8 record. The Department's next witness, Mr. Cannon, has
9 taken the stand. Sir, we're going to have the court
10 reporter swear you in and then Ms. Smith will have some
11 questions for you.

12 MR. COOPER: Okay. Thank you.

13 REPORTER: Sir, could you raise your right hand?
14 Do you solemnly swear or affirm that the testimony you give
15 today will be the whole truth?

16 MR. CANNON: Yes.

17 MR. HUTCHENS: Go ahead, Ms. Smith.

18 PATRICK CANNON

19 having been called by the Respondent and sworn:

20 DIRECT EXAMINATION

21 BY MS. SMITH:

22 Q Good afternoon, Pat. This is Marilyn.

23 A Good afternoon.

24 Q Okay. Would you state your name for the record, please?

25 A Patrick Cannon.

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1 Q And how long have you been employed with the State?

2 A It will be 34 years in February.

3 Q And what is your current position?

4 A I'm the state director of the Michigan Commission for the
5 Blind.

6 Q And how long have you been in this position?

7 A It will be 13 years this December.

8 Q And can you briefly describe your job duties for us?

9 A As the administrator of the agency, I have seven people that
10 report to me directly that are division or section managers.
11 Those managers include the manager of our Business
12 Enterprise Program, the director of our residential training
13 center in Kalamazoo, the director of our Consumer Services
14 Division, also a gentleman that works in coordinating for
15 training and case reviews and organizational development.
16 We also have a communications coordinator that reports to me
17 as well as my management assistant, and the agency has about
18 108 staff around the state. We have a central office in
19 Lansing. We have a regional field services office in
20 Lansing. The Library for the Blind and Physically
21 Handicapped is also part of the Commission. That came with
22 the transfer last October. That's also located in Lansing
23 as well. Additionally, we have offices in Detroit,
24 Kalamazoo, Grand Rapids, Flint, Gaylord, Saginaw and
25 Escanaba.

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1 Q Okay. Thank you. What is the function of the Commission of
2 the Blind?

3 A The Michigan Commission for the Blind is one of two state
4 public rehabilitation agencies. Every state in the country
5 has a public vocational rehabilitation agency that is funded
6 in a federal/state partnership between the federal
7 government and state government. About half of the states
8 have one vocational and rehabilitation agency that serves
9 all people with disabilities, and the other half of the
10 states as is the case in Michigan, there's a general
11 rehabilitation agency and another agency that is specific to
12 providing rehabilitation services for individuals who are
13 blind, and that's the case in Michigan. Our sister agency
14 is Michigan Rehabilitation Services. We serve only clients
15 who are legally blind. The other rehab agency -- Michigan
16 Rehab Services -- serves all other people with disabilities.

17 Q Okay. Are you familiar with the organization, the National
18 Federation of the Blind?

19 A Very well. Thank you.

20 Q And what is the National Federation of the Blind?

21 A The National Federation of the Blind is a consumer
22 organization. The preposition in its title is important.
23 It's the National Federation of the Blind. It is comprised
24 of blind individuals, and I believe in their literature they
25 state clearly that it's an organization of the blind

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1 speaking for the blind; or in other words speaking for
2 themselves. There are two major national blind consumer
3 organization. The other is the American Council of the
4 Blind. Both of those organizations have strong and active
5 affiliates in the state of Michigan, and Michigan is the
6 National Federation of the Blind of Michigan and the
7 Michigan Council of the Blind and Visually Impaired is
8 affiliated with ACB.

9 Q Okay. What is the relationship between the Commission For
10 the Blind and the National Federation for the Blind?

11 A As a consumer organization, it's the function of the
12 National Federation of the Blind to be an organization of
13 blind people speaking out on behalf of the blind for the
14 kinds of services and supports that are important to blind
15 people. They advocate for legislation to improve lives for
16 blind people. They also provide some important functions to
17 benefit blind people. Probably their most well known
18 program over the last ten years is a service called Newsline
19 for the Blind which is technology that allows a blind person
20 to read newspapers over the telephone and that's called
21 NFB-Newsline. The relationship between the two
22 organizations has been good for a long, long time. I can
23 say that over 25 years ago I became aware of both consumer
24 organizations. And since I became the director of the
25 Commission for the Blind 13 years ago, I thought it was

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1 important -- very important that the Commission for the
2 Blind have good constructive working relationships with both
3 of the two consumer organizations. It was my conscious
4 decision to not join or belong to either organization, but
5 to rather work cooperatively and collegiately with both
6 organizations. And over the years, the Commission has a
7 good relationship with both organizations. We have done
8 many things over the last 13 years to improve the
9 relationship between the National Federation of the Blind of
10 Michigan and the Commission for the Blind. We do that in
11 several ways. One of the things we've done is going back to
12 the late 90's we began inviting NFB representatives to come
13 speak to our students at our residential training center in
14 Kalamazoo on a regular basis. We have encouraged and
15 promoted staff participation in the NFB state convention
16 each fall; and on a regular basis, I have been meeting with
17 the leaders of both organizations over the past 13 years.

18 Q Do you know the grievant, Mr. Robinson?

19 A I do.

20 Q And do you have a personal bias against him because he's a
21 member of the National Federation of the Blind?

22 A Absolutely not. As a matter of fact, I have as I said
23 promoted the importance of having good relationships with
24 both organizations and over the years since I've been the
25 director of the agency I have encouraged our staff to become

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1 familiar with both consumer organizations. And as I've
2 said, I've encouraged our staff to attend the state
3 conventions of both organizations. While I've never
4 required any staff member to join one organization or the
5 other, if any staff person chooses to associate or become a
6 member of one of the two organizations, we absolutely
7 support that, and I think that's a good thing.

8 Q Okay. Was Mr. Robinson separated because he was a member of
9 the National Federation of the Blind?

10 A Absolutely not.

11 MS. SMITH: No further questions.

12 MR. HUTCHENS: Mr. Kamar, do --

13 MR. KAMAR: Do you know -- I'm sorry.

14 CROSS-EXAMINATION

15 BY MR. KAMAR:

16 Q Do you know if there was any ongoing litigation between the
17 National Federation of the Blind and the Michigan Commission
18 for the Blind?

19 A Yes. Just within the last couple of weeks, I believe, we
20 received notice that the National Federation of the Blind of
21 Michigan has filed suit claiming that the Commission for the
22 Blind violated the state Open Meetings Act with a closed
23 session that was held on May 3rd.

24 Q And isn't it true recently some individuals who have been
25 members of the National --

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1 MS. SMITH: I object. That has no bearing upon
2 the case that's here dealing with Mr. Robinson.

3 MR. KAMAR: I'm just cross-examining the same area
4 that she was talking about.

5 MR. HUTCHENS: I just would advise you that we
6 would be talking about anything that has taken place prior
7 to the discharge of the grievant; things that would have led
8 up to that possibly could have formed a basis for his
9 discharge. This sounds like it's a lot more recent than
10 that.

11 MR. KAMAR: Okay.

12 Q Has there been any other litigation over the years?

13 A Not that I'm aware of.

14 Q Not that you're aware of?

15 A No.

16 Q Has there been employees or BEP operators that have been
17 fired that have been members of the National Federation of
18 the Blind?

19 A Other than Mr. Robinson, none that I can be aware of. In
20 the 13 years that I've been director of the agency, there
21 have been six individuals who have been terminated or chosen
22 to resign in lieu of termination. Of those six individuals,
23 there have been individuals who have belonged to neither
24 organization. There has been an individual who was a member
25 of the Michigan Council of the Blind and Visually Impaired.

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1 And there have been also -- as is the case in Mr.
2 Robinson -- someone who is a member of the National
3 Federation of the Blind of Michigan.

4 Q Do you know Hazell Brooks?

5 A Yes, I know who she is.

6 Q Do you know she was fired?

7 A No. No, she's not an employee of the agency.

8 Q All right. Maybe the better question would have been, do
9 you know of any operators that were fired that --

10 MS. SMITH: Can you speak up, please?

11 Q Do you know of any operators that have been fired who have
12 been members of the National Federation of the Blind?

13 A No, sir. The operators in our Business Enterprise Program
14 are not employees of the agency.

15 Q All right. Do you know of any operators that have been
16 terminated from employment as operators that were members of
17 the National Federation of the Blind?

18 A No.

19 Q Do you know Hazell Brooks?

20 A Yes.

21 Q Was she terminated?

22 A No.

23 Q Do you know Larry Ball?

24 A Yes.

25 Q Was he terminated?

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1 A No.

2 Q Do you know Christine Boone?

3 A Yes.

4 Q Was he -- or she terminated?

5 A Yes, she was.

6 Q Was she a member?

7 A She was a member, but she was not a BEP operator.

8 Q And was Hazell Brooks a BEP operator?

9 A Yes, she was.

10 Q Okay. And was Larry Ball a BEP operator?

11 A Yes, he was.

12 Q And your testimony -- she was never fired --

13 A Christy?

14 Q -- Mr. Robinson has been fired?

15 A No. Sir, they are not employees of the agency.

16 Q I didn't say that.

17 A Pardon?

18 Q Mr. Robinson is not an employee of the agency.

19 A Not now. He was.

20 Q He was.

21 A Yeah. But --

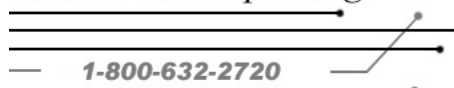
22 Q Okay. All right. Well, let's back up. How do operators --

23 because I don't want to beat around the bush here. How do

24 operators get terminated?

25 A The role of the Michigan Commission for the Blind is -- and

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1 the Business Enterprise Program is the state licensing
2 agency referred to as the SLA. The program operates under
3 the Federal Randolph-Sheppard Act as well as under a state
4 statute. They created the Commission Public Act 260. When
5 a blind person comes to our agency as a blind person looking
6 for rehabilitation services and careers to get on with a
7 life to be productive, independent, employed, contributing
8 members of our society, they work with our counselors to
9 identify a career path for them.

10 Q Okay. Eventually, some of them become operators?

11 A Yes. If they choose a career in food service, they can
12 choose to go into a training program that --

13 Q I don't mean to cut you off, but I'm just trying to have you
14 answer my questions do not try to beat around the bush here.

15 A I was trying to explain why they're not employees.

16 Q I'm not asking. How do they operate -- how do you get rid
17 of an operator you don't like?

18 MS. SMITH: I object. The operators are not here.
19 We're not here because operators were terminated or resigned
20 or were not operators. We're here because Mr. Robinson was
21 terminated. Mr. Robinson was an employee of the State of
22 Michigan. Operators are not employees of the State of
23 Michigan.

24 MR. HUTCHENS: Yeah, I understand that, but I
25 believe I know where Mr. Kamar is going with this. I just

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1 want to get this issue resolved; the difference between
2 operators and employees. I understand employees. Let's
3 deal with the operators and how -- just go ahead with your
4 question, sir. I'm overruling the objection.

5 MR. KAMAR: Thank you.

6 Q How do operators get terminated?

7 A They can have their license suspended if they don't operate
8 their businesses consistent with the promulgated rules that
9 they're supposed to operate under. They can appeal that
10 suspension. They can go through the administrative review
11 process, wind up before an administrative law judge. They
12 can also have their license revoked for cause; and their
13 time to operate it of course can voluntarily leave the
14 program.

15 Q Did that happen to Hazell Brooks?

16 A Yes, it did.

17 Q And was she a member of the National Federation of the
18 Blind?

19 A Not that I know of.

20 Q Okay. Did that happen to Larry Ball?

21 A Yes.

22 Q Was he a member of the National Federation of the Blind?

23 A I believe he was, but I'm not positive.

24 Q Christine Boon; did that happen to her?

25 A She was not an operator. She was the director of our

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1 residential training center in Kalamazoo, and she was
2 terminated for cause in February.

3 Q Was she a member of the National Federation of the Blind?

4 A Yes.

5 Q As far as you know, is there any operators that remain that
6 are involved in the National Federation of the Blind?

7 A I don't know that one way or another. We generally don't
8 necessarily know when our operators choose to affiliate with
9 one organization or the other; similar with our people who
10 are employees of the agency. We currently I believe have
11 several employees of the agency who are members of one or
12 the other organization, but that's not the kind of thing we
13 keep track of.

14 Q Okay. And do you know of any promotional agents that are
15 still employed that are members of the National Federation
16 of the Blind?

17 A Not that I'm aware of.

18 MR. KAMAR: Nothing further. Thank you.

19 MR. HUTCHENS: Ms. Smith, any further questions
20 for the witness?

21 MS. SMITH: Yes.

22 REDIRECT EXAMINATION

23 BY MS. SMITH:

24 Q Of the individuals that Mr. Kamar has named; Hazell Brooks,
25 Christine Boone, and the other individuals; were their

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1 licenses suspended? Or if they were an employee, were they
2 terminated because of their membership in the National
3 Federation of the Blind?

4 A Absolutely not. I highly value the good relationship we've
5 had with both consumer organizations. In fact, we turn to
6 both consumer organizations when we're looking to fill a
7 vacant staff position. I believe that one of the things our
8 agency does as well or better than any blind rehabilitation
9 agency in the country is practice what we preach to
10 employers by employing qualified individuals who are blind.
11 So when there is a vacancy, we reach out to the National
12 Federation of the Blind, the American Council of the Blind,
13 and several other organizations nationally and in the state;
14 and it's because of that that close to a third of our staff
15 members are individuals who are blind. And part of that
16 success we've had in employing blind people is because we
17 reach out to the blind consumer organizations when we have
18 vacancies.

19 MS. SMITH: Thank you. No further questions.

20 MR. HUTCHENS: Mr. Kamar, anything further for the
21 witness?

22 MR. KAMAR: No. Thank you.

23 MR. HUTCHENS: All right. Thank you very much,
24 sir.

25 MS. SMITH: That concludes the Department's

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1 witness.

2 MR. HUTCHENS: All right. We'll take a short
3 recess and then we'll come back and take the grievant's case
4 presentation.

5 (Off the record)

6 MR. HUTCHENS: We'll go back on the record at this
7 point. Mr. Kamar, you had reserved your opening statement.

8 MR. KAMAR: To save time -- and this gentleman has
9 got to be out of here in about 15 minutes -- I'll go ahead
10 and waive it and I'll address what's going on obviously in
11 the closing argument.

12 MR. HUTCHENS: That's fine. That's fine. So your
13 first witness -- can I get your name for the record, sir?

14 MR. AUSTIN: Donald Austin.

15 MR. HUTCHENS: Mr. Austin, we're going to have the
16 court reporter swear you in and then Mr. Kamar will have
17 some questions for you.

18 MR. AUSTIN: Okay.

19 REPORTER: Sir, if you can raise your right hand?
20 Do you solemnly swear or affirm that the testimony you give
21 today will be the whole truth?

22 MR. AUSTIN: Yes.

23 MR. HUTCHENS: Go ahead, Mr. Kamar.

24 MR. KAMAR: Thank you.

25

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DONALD AUSTIN

having been called by the Grievant and sworn:

DIRECT EXAMINATION

BY MR. KAMAR:

Q Where are you employed?

A I run the cafeteria at the Ottawa Building downtown.

Q What is your position?

A I manage the cafeteria.

Q So you're an operator?

A Yes.

Q How long have you been an operator at that location?

A Almost five years.

Q Were you an operator before that?

A Yes.

Q At what location?

A The Lewis Cass Building.

Q How long at Lewis Cass?

A Altogether about seven years.

Q Were you an operator before that?

A Yes.

Q Where were you at?

A The Victor Building, the Secretary of State, the Secondary Complex and the downtown Federal Building.

Q Okay. How many years have you been an operator?

A 19 and a half -- 18 and a half, something like that.

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- 1 Q Okay. And do you know David Robinson?
- 2 A Yes.
- 3 Q What was his relationship as it relates to you?
- 4 A He was my PA.
- 5 Q What is PA, for the record? Your promotional agent?
- 6 A Promotional agent; yes.
- 7 Q How long has he been your promotional agent?
- 8 A I think it was three years at least.
- 9 Q That's prior to his demise?
- 10 A Yes -- or two years; two to three years.
- 11 Q All right.
- 12 A Mary Jenkins was the one before that.
- 13 Q All right. And you indicated you have been at Ottawa for
14 five years.
- 15 A Yes.
- 16 Q Okay. Now, did there come a time -- well, please describe
17 the -- what the operation was at Ottawa before the cafeteria
18 was closed down -- the snack bar. I'm sorry.
- 19 A I had a snack bar upstairs with an employee with snack
20 machines and an open C-store and a cafeteria with eight
21 employees downstairs.
- 22 Q How was business?
- 23 A The cafeteria was doing fairly well. The C-store was
24 breaking even.
- 25 Q Okay. And what was the vending like?

- 1 A The vending was anywhere from 30 to 40 percent profit.
- 2 Q All right. What profit line are you expected to have?
- 3 A Overall 17 percent.
- 4 Q So your vending was doing pretty well?
- 5 A Yes. I had three different -- three different locations. I
- 6 call it vending, C-store, and cafeteria.
- 7 Q Did you want to close up any of these different locations?
- 8 A The C-store.
- 9 Q Why did you want to close the C-store?
- 10 A It was breaking even. There wasn't no profit. I was paying
- 11 all my profits for wages.
- 12 Q And how many employees did you have?
- 13 A One employee up there.
- 14 Q And you're supposed to have what kind of a percentage out of
- 15 that store?
- 16 A That -- combined between the cafeteria and the C-store was
- 17 supposed to be at least 17 percent. I think it was -- I
- 18 believe it's 11 percent for cafeteria. I can't answer that.
- 19 Q All right. So you weren't making any money at the C-store?
- 20 A No. It was less than -- it was either a negative or less
- 21 than one percent. In most cases, it was negative.
- 22 Q You were working for your employee. Your employee wasn't
- 23 working for you, I assume.
- 24 A That's correct.
- 25 Q Okay. And so during that time frame, did you make any

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1 decisions or were you contemplating any decisions to improve
2 your profit?

3 A Last October or thereabouts -- September, the latter part of
4 September of last year, I asked David Robinson. I says I
5 wanted to close the C-store.

6 Q What did he tell you?

7 A He says, "Well, that is entirely up to you. It's your
8 operation." And I says, "Okay," and a week later I decided
9 to close it. I laid the person off that was working for me
10 and I then asked for machines to replace the C-store.

11 Q Did he ever ask you to report this to Constance Zanger?

12 A No.

13 Q Now, since you closed the store, have you had any
14 conversations with Mr. Hull about this? Do you know who Mr.
15 Hull is?

16 A Yeah; James Hull.

17 Q James Hull. Do you see him here today?

18 A Yes.

19 Q All right. Did you have any conversations about this with
20 him?

21 A Yes. He asked me for my spreadsheets for --

22 MS. SMITH: I object. This is after Mr. Robinson
23 was separated.

24 THE WITNESS: Yes.

25 MS. SMITH: The conversation was after.

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1 MR. KAMAR: It's still relevant.

2 MR. HUTCHENS: What's the purpose of the question?

3 MR. KAMAR: The purpose of the question is that
4 everybody was happy with what had occurred unlike what --

5 MR. HUTCHENS: I'm going to allow the question.

6 Q Did you have conversations with Mr. Hull?

7 A Yes. I don't remember the exact words, but I told him the
8 reason I had closed it and he asked me for spreadsheets. I
9 gave him spreadsheets for the previous year.

10 Q Was he in agreement with what you did?

11 A Eventually, yes.

12 Q After he saw the evidence?

13 A It took awhile, but I finally got the word back that it was
14 okay because --

15 Q And who gave you that word?

16 A It was -- I don't know if it was James Hull or -- but I was
17 under the recollection that -- I was under the assumption
18 that it was up to me whether I wanted the C-store open or
19 not. I was trying to make profit. With it closed and new
20 machines or -- other machines to replace the goods that was
21 in the C-store, I would make a profit.

22 Q Okay. And so that's what happened?

23 A And that's what happened. And I told him that and I gave
24 him the spreadsheets and showed it to him and he went over
25 them. And sometime later they finally gave the spreadsheets

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1 back and -- I don't remember them okaying it first, you
2 know, or just saying anything about it. They just -- you
3 know, I just proceeded to ask them for machines and they
4 said they would try and get them in there as soon as
5 possible.

6 Q Okay. And did you get machines?

7 A No.

8 Q How long did it take you to get machines?

9 A Nine months.

10 Q Okay. Who got you the new machines?

11 A The new PA; promotional agent, Josh. I don't recall his
12 last name now, but my new PA.

13 Q Okay. Who was acting as the PA after Mr. Robinson was let
14 go?

15 A James Hull. He is acting PA.

16 Q All right. And how long did you request those machines of
17 him?

18 A From the time that he took over for Dave Robinson.

19 Q And it took him nine months to get the machines?

20 A Yes.

21 Q So what operation do you have now?

22 A I have a cafeteria and the vending.

23 Q And the C-store is still closed?

24 A Yes. I use that -- we're trying to get tables in there and
25 chairs. I've got two more machines since then -- since

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1 July, and it's in the C-store.

2 Q All right. And so whatever you did was in your best
3 interest?

4 A Yes.

5 Q It made you more profitable?

6 A Yes.

7 MR. KAMAR: I have nothing further.

8 MR. HUTCHENS: Ms. Smith, do you have any
9 questions for this witness?

10 MS. SMITH: Yes, I do.

11 CROSS-EXAMINATION

12 BY MS. SMITH:

13 Q Did you sign an agreement to work as a license?

14 A Yes.

15 Q And you testified earlier that David told you that it was up
16 to you if you wanted to close the store?

17 A Yes.

18 Q In that agreement, did it state that operators cannot make
19 altercations without written permission?

20 A Not as far as I know.

21 Q You don't recall that?

22 A No.

23 Q Did you transfer the equipment from the facility?

24 A Yes, I did.

25 Q And who was responsible for transferring the equipment?

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1 A My PA.

2 Q Pardon?

3 A My PA.

4 Q Your PA. So why did you transfer it?

5 A That's who transferred it. My PA transferred it. The
6 equipment that was in there was shelving and two coolers.
7 They were transferred out and put into the warehouse.

8 Q Okay. Why didn't your PA do it? You said that you did it.

9 A I don't understand your question. What are you --

10 MR. HUTCHENS: He just said that his PA did it.

11 A It has to go through the Commission for the Blind for them
12 to transfer the equipment. It's their equipment, not ours;
13 not mine.

14 MS. SMITH: All right. No further questions.

15 MR. HUTCHENS: Mr. Kamar, anything further for the
16 witness?

17 MR. KAMAR: One second here.

18 (Counsel reviews file)

19 MR. KAMAR: Nothing further.

20 MR. HUTCHENS: Thank you very much, sir.

21 MR. KAMAR: Thanks for coming. Sorry to
22 inconvenience you today.

23 THE WITNESS: Oh, that's all right.

24 MR. HUTCHENS: Who's your next witness, sir?

25 MR. KAMAR: Ms. Nelson.

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1 (Off the record)

2 MR. HUTCHENS: We're back on the record, and we're
3 going to have the court reporter -- who's to your right,
4 ma'am -- swear you in and Mr. Kamar will have some questions
5 for you.

6 MS. NELSON: Okay.

7 REPORTER: Can you raise your right hand? Do you
8 solemnly swear or affirm that the testimony you give today
9 will be the whole truth?

10 MS. NELSON: Yes.

11 MR. HUTCHENS: Go ahead, Mr. Kamar.

12 MR. KAMAR: Thank you.

13 ANDREA NELSON

14 having been called by the Grievant and sworn:

15 DIRECT EXAMINATION

16 BY MR. KAMAR:

17 Q Ms. Nelson --

18 MR. HUTCHENS: First, could we get her name for
19 the record?

20 MR. KAMAR: Yeah.

21 Q What's your name for the record?

22 A Andrea Nelson.

23 Q Could you spell your last name?

24 A N-e-l-s-o-n.

25 Q And are you currently an operator?

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1 A Yes, sir.

2 Q Okay. How long have you been an operator?

3 A About a year and a half.

4 Q 18 months?

5 A Yes.

6 Q From today?

7 A I -- yeah.

8 Q All right. And where is your location?

9 A Right now I have the license at the State Library and Museum
10 here in Lansing.

11 Q And what is your background?

12 A I work in the food industry. I have since I was able to
13 legally work -- so between catering and fast food.

14 Q Does your family have a catering business?

15 A My father worked for a catering company for many, many years
16 and did food service in the Army as well.

17 Q Okay. And how old are you now? I don't mean to ask your
18 age, but you said you've been doing this since you can
19 legally work.

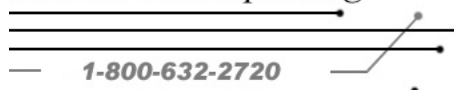
20 A I'm 23.

21 Q All right. And what time could you start legally working?

22 A 15 I started working.

23 Q So you've been in the food industry eight years and
24 approximately six years before you got that location you're
25 at now?

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1 A Yes.

2 Q All right. Now, did there come a time where you got on the
3 bid line and bid for the Hall of Justice café?

4 A Yes.

5 Q Do you recall approximately when that was?

6 A I believe it was in September of last year.

7 Q September of 2009?

8 A Yes.

9 Q And do you recall what type of bid you placed on the Hall of
10 Justice?

11 A I'm sorry. I don't understand the question.

12 Q All right. You bid on the Hall of Justice?

13 A Correct.

14 Q Tell us how you bid.

15 A Well, I made a verbal phone call to Lucy Edmonds and placed
16 my bid in there, and then I believe we had to have it in
17 writing so I had sent it in writing in an email.

18 Q Okay. And what was the bid that you gave them; do you
19 recall?

20 A Just that I was putting my name in for the Hall of Justice.

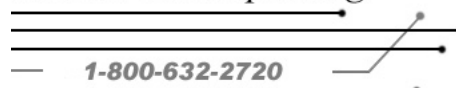
21 Q All right. So when you're bidding, you don't actually bid
22 an amount of money or anything else?

23 A No.

24 Q And isn't it true there was no strings attached to that bid?

25 A No.

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1 Q There was not any strings attached?

2 A Whatever was on -- placed on the bid line. What is on that
3 bid line is what I would have agreed to -- to my bid.

4 Q And you don't recall agreeing to work with Mr. Lopez for 30
5 days?

6 A No.

7 Q All right. Did you ever have a conversation with Ms. Zanger
8 about working with Mr. Lopez for 30 days?

9 A Yes.

10 Q Okay. Was that before or after you got the bid?

11 A It was after I had bid on it.

12 Q All right. And tell us about your conversation with Ms.
13 Zanger.

14 A She brought up the fact that Sam was looking to stay and
15 help out the next operator who was in there and was -- had
16 asked me if I was interested in keeping him there, and I had
17 explained to her that I would like to be able to meet him,
18 but I didn't have any sort of -- necessarily intentions on
19 doing so, but I wouldn't necessarily say "no" without
20 meeting him and knowing what -- you know, what all went
21 along with it.

22 Q Okay. Did you in fact meet with him?

23 A After the -- yeah. I went to visit the location, yes.

24 Q All right. And did you have a discussion with Mr. Lopez?

25 A Yes.

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1 Q Was there anybody else present?

2 A Dave Robinson was present with me as well as my husband.

3 Q All right. And what was your discussion like with Mr.
4 Lopez?

5 A We discussed day-to-day -- his regular routine within the
6 location and his history and how our experience would be
7 working with each other, and it didn't go as well and as
8 comfortable as I had hoped. So I had made the decision at
9 that point not to use him.

10 Q That was your decision?

11 A Absolutely.

12 Q That was not Mr. Robinson's decision?

13 A No.

14 Q And did you communicate this to anybody?

15 A Anybody that asked.

16 Q All right. Did you communicate this with Ms. Zanger?

17 A Yes.

18 Q What happened? Can you tell us about that discussion?

19 A It didn't go over well. She gave me a moment to tell me
20 that I should think about it and that -- you know, telling
21 me that that's what I needed to do. He needed to be there,
22 gave me that impression like I almost didn't have any sort
23 of choice.

24 Q Okay. Well, tell us exactly what you she told you to the
25 best of your recollection. What makes you say she made

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1 it like you didn't have a choice?

2 A That I was not able to be inventoried in and sign an
3 agreement until I had agreed upon keeping him there.

4 Q And this was told after the bid line?

5 A I'm sorry?

6 Q After you received the location, you were told that?

7 A I was never awarded or never signed an agreement. I was
8 awarded the bid, but not -- I never signed an agreement.

9 Q Why didn't you sign the agreement?

10 A Because they were trying to change the stipulations to the
11 agreement and have me keep Sam there, and I wasn't going to
12 sign that agreement.

13 Q Were you told that you could get another location?

14 A Later on I did get an email.

15 Q From who?

16 A Constance.

17 Q What did she indicate in her email?

18 A That I could rescind my bid on the Hall of Justice and bid
19 on the State library and museum.

20 Q Did you do that?

21 A Yes.

22 Q Okay. Did she indicate to you that you would be getting
23 that position?

24 A She did not guarantee me; no.

25 Q All right. What did she say?

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1 A She said that I could -- she said that I was able to rescind
2 my bid and I could wait as of -- I believe it was 11:59 when
3 the bids close at 12:00 -- and I could put my bid in on the
4 State library and museum at that same time.

5 Q So she gave you the strategy of how to get that location at
6 the State museum?

7 A Yes.

8 Q All right. What did she tell you as it related to strategy?

9 A She said that I was able to call up until the time of the
10 closing bid to see who else had bid on that location and
11 find out where my standing would be before I was to rescind
12 my bid on the Hall of Justice.

13 Q Okay. So she ensured or told you to ensure that you got
14 that location before you rescinded your bid?

15 A Within minutes. I wouldn't be guaranteed it, but within
16 minutes that's what -- that's what the time frame she gave
17 me; yes.

18 Q So somebody else would have to sneak in after you did it --

19 MS. SMITH: I object. What's the relevance?

20 MR. KAMAR: Well, Ms. Zanger indicated that -- the
21 complete opposite; opposite testimony that she didn't assist
22 her in any way of getting this location.

23 MS. SMITH: No, that wasn't her testimony.

24 MR. KAMAR: That was her testimony.

25 MR. HUTCHENS: I don't recall that, but I'm going

1 to allow it. You're moving through relatively quickly.

2 Let's just proceed.

3 MR. KAMAR: All right. Thank you.

4 Q So you were informed on how to get this location?

5 A Correct.

6 Q And you got the location?

7 A Correct.

8 Q Then you rescinded your Hall of Justice?

9 A I rescinded the bid on the Hall of Justice before I placed
10 my bid on the State library.

11 Q All right. And then Mr. Robinson did not advise you not to
12 bring on Mr. Lopez?

13 A No.

14 Q Was that your unilateral decision?

15 A Absolutely.

16 Q Was that your right you felt under the rules?

17 A Absolutely.

18 Q Can you explain that?

19 A What I agreed upon, what I bid on was what was placed on the
20 bid line, and Mr. Lopez was not mentioned anywhere in that
21 bid; and so that's what I agreed upon. I had nowhere in
22 writing agreed on keeping Mr. Lopez. So I felt like I had
23 no responsibility to do so.

24 Q Nor did you feel comfortable with it?

25 A No, absolutely not.

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1 Q Then you didn't forego the idea. You actually met with him
2 to see if you could get along?

3 A Correct; absolutely.

4 Q And what was Mr. Robinson's role at that meeting?

5 A Well, he brought me over there because I had wanted to get
6 some information about the building and get the layout. And
7 so he came to help me get access into the building and to,
8 you know, be there for support because he would be -- he
9 would be at that time my promotional agent at that location.

10 Q Okay. And did he assist you as a promotional agent?

11 A Every day.

12 Q Every day. Did you have any complaints as it related to Mr.
13 Robinson?

14 A No; no.

15 Q Give us an example of how he assisted you on a daily basis.

16 A The location that I was at prior to the State library and
17 museum was at the Flint State Office Building, and we had
18 multiple issues with billing management and catering issues.
19 And he was a phone call away in Lansing and would be there
20 within hours to come and speak with building management if
21 they wouldn't speak to me and, you know, started to open up
22 doors there that weren't open before that I wasn't able to
23 do myself. So he was there quite a bit when I was in Flint.

24 Q Did he ever get there after 5:00 o'clock?

25 A No.

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1 Q Okay.

2 MR. KAMAR: Nothing further.

3 MR. HUTCHENS: Ms. Smith, any questions for the
4 witness?

5 MS. SMITH: No questions.

6 MR. HUTCHENS: All right. Thank you, ma'am.

7 THE WITNESS: Thank you.

8 (Off the record)

9 MR. HUTCHENS: We'll go back on the record at this
10 point.

11 REPORTER: Sir, I'm going to swear you in if
12 you'll raise your right hand. Do you solemnly swear or
13 affirm that the testimony you give today will be the whole
14 truth?

15 MR. WURTZEL: Absolutely; yes.

16 MR. HUTCHENS: Go ahead, Mr. Kamar.

17 FREDERICK WURTZEL

18 having been called by the Grievant and sworn:

19 DIRECT EXAMINATION

20 BY MR. KAMAR:

21 Q Could you give your full name and spell your last name for
22 the record?

23 A Well, my full name is Frederick J. Wurtzel, W-u-r-t-z-e-l.

24 Q And are you retired?

25 A Yes, sir.

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1 Q Where are you retired from?

2 A The State of Michigan.

3 Q Give us your employment history starting with the most
4 recent job and how long you were there, working back.

5 A Okay. Most recently before retirement I was the
6 administrator of the Michigan Commission for the Blind
7 Business Enterprise Program. I did that -- had that role
8 for about ten years. It could have been nine years. It
9 could have been 11 years, something like that. Before that
10 I was assistant administrator beginning in 1985. 1985 --
11 1983 to '85 I was the district supervisor in Lincoln,
12 Nebraska for the Nebraska Services for the Visually
13 Impaired. I supervised counselors and teachers out there.
14 Before that I worked for a placed called Alternatives for
15 the Blind and Living Employment from about '80 to '83,
16 something like that, and I was in charge of public relations
17 and fund raising for that organization. I also did some
18 counseling and worked with students. Before that I -- from
19 probably '78 to '80 or '81 when I went to St. Louis, I was
20 the planner for the Northwest Michigan Manpower Consortium.
21 I did -- I planned employment and training programs for the
22 CETA Administration; Comprehensive Employment and Training
23 Administration. Before that I worked for the Michigan
24 Transportation Research Program in the Highway Safety
25 Research Institute at the University of Michigan where I did

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1 research on accessible transportation -- accessible public
2 transportation. That was the first job I had after --

3 Q All right. What is your education?

4 A That's what I was going to say. I graduated from Eastern
5 Michigan University with a bachelor's degree in 1978, and I
6 have a master's degree from Western Michigan University
7 which I received in the 90's, both in public administration.

8 Q And do you know David Robinson?

9 A I know him very well.

10 Q How long have you known Mr. Robinson?

11 A I knew Mr. Robinson when I worked in Nebraska.

12 Q Okay. I want to focus on here in Michigan with the State of
13 Michigan. Okay?

14 A Uh-huh (affirmative).

15 Q At any time, was he a subordinate of yours?

16 A His entire time that he worked here at the Commission for
17 the Blind.

18 Q Okay. And what was his position when you were the
19 administrator of the BEP?

20 A His Civil Service classification was promotional agent.

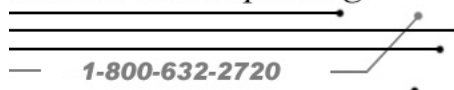
21 Q So you were his direct supervisor?

22 A Yes.

23 Q For how long?

24 A However long he worked for the agency. I always lose track
25 of these days.

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1 Q Approximately ten years?

2 A Yeah, I would say so.

3 Q What type of employee of yours was he?

4 A Dave was a good employee. He performed his job
5 satisfactorily to my satisfaction.

6 Q Did you have any major complaints over that ten-year period?

7 A From who?

8 Q Major complaints for -- against Mr. Robinson, I should say.

9 A I don't know what you would call "major." But, no, the most
10 problem I had -- complaints I had was from my boss, Pat
11 Cannon.

12 Q Okay. And what kind of complaints did you get from Mr.
13 Cannon?

14 A Well, Pat Cannon is -- serves on the governor's cabinet --

15 MS. SMITH: I object.

16 A -- and he goes to --

17 MS. SMITH: I object.

18 MR. HUTCHENS: Just a minute, sir. What's the
19 objection? What's the objection?

20 MS. SMITH: Okay. He has complaints against Pat
21 Robinson? We're here on David Robinson.

22 MR. KAMAR: Who's Pat Robinson?

23 MS. SMITH: I'm sorry. Pat Cannon.

24 MR. KAMAR: No. Complaints -- I'm sorry. The
25 question should have been, did he have complaints about

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1 David Robinson.

2 A Yeah.

3 Q Okay. Can you give us those complaints?

4 A That's what I was starting to do.

5 Q Okay. I wasn't very clear on the question.

6 MS. SMITH: Did who have complaints?

7 MR. KAMAR: Pat Cannon.

8 A Yeah. That's what --

9 MR. HUTCHENS: The question just so that
10 we're all clear as I understood it is whether Mr.
11 Wurtzel had any complaints against the grievant. And I
12 wasn't clear as to whether they were complaints that
13 Mr. Wurtzel had himself about the grievant or whether
14 he had received any complaints about the grievant. But
15 I believe the road he is going down is whether he had
16 ever received any complaints about the grievant, and I
17 believe that he is indicating that he had received some
18 from Pat Cannon and he is explaining how he had
19 received those.

20 THE WITNESS: That's exactly right.

21 MR. HUTCHENS: Go ahead, sir.

22 A Mr. Kamar, is that what you're asking me?

23 Q That's correct.

24 A Okay. Director Cannon serves on the governor's cabinet so
25 he comes in contact with most of the department heads on a

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1 regular basis. And as you probably understand about food
2 service, there are times when people aren't satisfied with
3 everything they get, whether it's a sandwich or a bag of
4 chips or a cup of coffee or whatever it happens to be. And
5 so those things tend to filter up and sometimes they gain
6 importance in magnitude as they filter up. And so with
7 David having all of his facilities in the downtown Lansing
8 area, he was subject to more -- he was under a more powerful
9 magnifier than most of the rest of the people who had their
10 facilities in out-state areas. We would -- I would discuss
11 the issues with David, and David would go out and resolve
12 the issues to my satisfaction. Now, it's not a simple thing
13 when you're working with people and you have all kinds of
14 pressures. We have -- in the Business Enterprise Program,
15 we were subject to pressures from the administrators, from
16 the Department of Management and Budget. It could be
17 federal; it could be state, all kinds of places. And
18 anybody who walked in the building and bought a cup of
19 coffee could potentially be dissatisfied with something.
20 And so not that we had -- I don't think -- an excessive
21 amount of problems, but when they come and they're discussed
22 at a high level meeting such as a governor's cabinet
23 meeting, they take on added significance. So I think that's
24 why there was additional pressure on David Robinson from
25 Director Cannon.

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1 Q All right. And so you would get the complaints from Mr.
2 Cannon and you would take them to Mr. Robinson and he would
3 remedy the situation?

4 A Yes. We would discuss -- David and I would discuss things
5 that we thought could be done to resolve things. Normally,
6 David would have a solution and a lot of times the solution
7 was already underway by the time we even had talked about
8 them.

9 Q So the complaints that you had against Mr. Robinson came
10 from Mr. Cannon?

11 A Yeah, probably 90 percent of them.

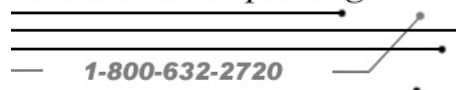
12 Q All right. And the other ten percent were complaints you
13 had?

14 A Yeah, complaints that I would get from maybe an operator who
15 wasn't getting a piece of equipment as quickly as they
16 thought they should or an evaluation that they didn't think
17 was scored the way they liked. Those were routine. All the
18 promotional agents got pretty much the same kind of
19 complaints from time to time, and they would come and they
20 would go.

21 Q Okay. At the time he was released, do you know how many
22 operators were working underneath him?

23 A No. I would -- the Lansing area had -- usually had the most
24 number of operators; probably in the range of 30 or more.
25 I'm not sure exactly, but it was usually the heaviest

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1 caseload was on the Lansing promotional agent because
2 there's such a concentration of facilities in the downtown
3 Lansing area with State government being housed here.

4 Q Sure. I mean, you've got a bunch of State buildings.

5 A Uh-huh (affirmative).

6 Q All right.

7 A And they all have directors working in them almost.

8 Q Okay. And how many promotional agents were working
9 underneath you at the time you retired?

10 A Well, there was Joe Pelle, Mary Jenkins, David; probably
11 four or five -- five probably.

12 Q Okay. And there's --

13 A James Hull.

14 Q It seems like there's a lot of paperwork that goes along
15 with this job as being a promotional agent; a lot of
16 documentation. Is that a fair statement?

17 A Well, you know, when you work in state government, most
18 people consider that they have a lot of paperwork. I think
19 that our paperwork was pretty reasonable. We asked our
20 promotional agents to do a field activity report each time
21 they visited a place to document their whereabouts for one
22 thing because they were out on the road in the field; also
23 to document any issues that might be coming up; and document
24 the kinds of things that were being done to resolve those
25 issues; and to do planning for future budgeting purposes and

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1 things. So there was paperwork to do, but I would say that
2 it wasn't overly burdensome. It was -- you know, everybody
3 has their own tolerance for that sort of thing.

4 Q Okay. And was there times when the promotional agents would
5 get behind in their paperwork?

6 A Yes; yes.

7 Q Would that happen to all of them?

8 A Yes.

9 Q Now, do you recall as it relates to Mr. Robinson, would he
10 get behind from time to time?

11 A Yes.

12 Q Was it any different in your mind than any of the other
13 agents?

14 A No.

15 Q Okay. Do you know what he would do to get caught up, if you
16 have any idea -- because obviously you weren't around 24/7?

17 A I noticed that Dave sometimes worked late to catch up on his
18 field visits and things like that to make sure they get
19 entered in the computer. But, you know, like you said, all
20 I wanted -- we had staff meetings on a regular basis. We
21 would go around and we would monitor each promotional agent
22 as far as number of behind promotional visits that they
23 had -- field visits that they had. So we tried to keep
24 track of everyone at the same time. So, you know, at any
25 given meeting, you know, it could be anybody that was out of

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1 compliance or behind their expectations.

2 Q Okay. Now, I want to speed up here a little bit into the
3 recent past. Do you recall a situation where Mr. Robinson's
4 email was someplace where it shouldn't have been?

5 A I guess I don't understand your question.

6 Q All right. Did his email pop up on the Michigan National
7 Federation of the Blind flyer -- did that pop up or anything
8 pop up on his state email?

9 A There was one time when we had put out a flyer for --
10 announcing our upcoming convention and the person who was
11 drafting the flyer inadvertently put his state email address
12 on there and --

13 Q Who was "his"?

14 A David Robinson's email address was inadvertently placed on
15 there. David called me and asked me to have it removed. By
16 then, of course, the flyers were gone and it's kind of hard
17 to undo something like that. But we did work to get it done
18 as quickly as we could and try to correct the problem, but
19 the mailing had gone and -- but it wasn't -- it was an
20 accident that happened because of somebody not
21 understanding.

22 Q Who didn't understand?

23 A The person who was doing the convention mailing, and I'll
24 take responsibility for it. I have to. I was president of
25 the NFB at the time, and I was supposed to review all that

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1 stuff, and I overlooked that problem. So I'll take
2 responsibility for the fact that it happened, but it wasn't
3 intentional.

4 Q How did you assist -- okay. How did you assist Mr. Robinson
5 in having it removed?

6 A Well, I had -- we just took it off all of our electronic
7 notifications. But as I said, this stuff was already
8 printed and mailed. By then there wasn't much could be done
9 about it.

10 Q Okay. Do you know how long it took to take it off?

11 A No, I don't really know. We took care of it right as soon
12 as we could, but once the cat was out of the bag there
13 wasn't anything to do to --

14 Q I understand. And so you're a -- you're the president of
15 the National Federation of the Blind?

16 A I was president of the National Federation of the Blind in
17 Michigan up until November of last year.

18 Q And then what happened in November?

19 A I resigned. I had been doing it for ten years, and I
20 thought somebody else ought to have a chance for awhile.

21 Q Okay. And has your organization been in litigation with the
22 Commission for the Blind?

23 MS. SMITH: Objection.

24 A We're presently in litigation with the Commission for the
25 Blind.

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1 Q I understand that. We've discussed that. Has there been
2 litigation prior to that that you're aware of?

3 A Not that I can think of right off the top of my head. There
4 could have been something. Sometimes that's the only way
5 you can resolve disputes.

6 Q Do you know Hazell Brooks?

7 A I do.

8 Q Who is she?

9 A Hazell Brooks is an operator -- a licensed operator in the
10 Michigan Commission for the Blind.

11 Q Is she a member of the National Federation of the Blind?

12 A Yes, she is.

13 Q Was her license terminated with the --

14 A Well, it was -- now, remember this happened after I retired.
15 Her license -- there was action to terminate her license,
16 but finally at the end it was not terminated. It was -- her
17 license revocation was overturned by the Commission for the
18 Blind board.

19 Q Okay. So it was revoked and then it was reinstated?

20 A No, it was never revoked.

21 Q Okay. And she was a member of the National Federation of
22 the Blind?

23 A Still is.

24 Q Still is. And do you know Larry Ball?

25 A I do know Larry Ball.

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1 Q Okay. Was he terminated?

2 A Yes.

3 Q Was he a member of the Lansing -- excuse me -- National
4 Federation of the Blind?

5 A Yes; yes.

6 Q Okay. How about Ms. Brooks -- Ms. Boone -- I'm sorry -- if
7 you know?

8 A I know Mrs. Boone very well. What has happened to her is
9 just horrific -- a grievous thing.

10 Q Was she terminated?

11 A Yes, she was. She was not in the Business Enterprise
12 Program however. She was director of the Michigan
13 Commission for the Blind Training Center.

14 Q And she was fired?

15 A Yes.

16 Q Do you know why she was fired?

17 A Well, she allegedly had --

18 MS. SMITH: Object.

19 MR. KAMAR: That's going a little bit -- I agree.

20 MR. HUTCHENS: The question has been withdrawn.

21 MR. KAMAR: Yeah.

22 Q She's a member of the Federation of the Blind?

23 A Yes, she is.

24 Q Now, were you familiar with the hiring of James Hull?

25 A Yeah. I hired James Hull.

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1 Q Were you pressured by anybody to hire Mr. Hull?

2 A I was encouraged strongly by Pat Cannon to hire James Hull.

3 Q What do you mean "encouraged strongly"?

4 A He invited me in his office and talked to me about it and
5 suggested to me that I hire James Hull.

6 Q Okay. Was Mr. Robinson up for the same position?

7 A I don't recall who all was being considered.

8 Q What exactly did he tell you about hiring Mr. Hull?

9 A He referred to his knowledge of James and feeling that James
10 was a quality person that would be a good employer for the
11 Commission for the Blind.

12 Q Is there any existing PA members that are members of the
13 National Federation for the Blind?

14 A No.

15 MR. KAMAR: Just let me look at my notes.

16 THE WITNESS: I don't know --

17 MR. HUTCHENS: You don't have question in front of
18 you right now, sir.

19 A Well, on a question I was asked a moment ago about the
20 promotional agent position; I don't see how it could have
21 been that David Robinson would have been on that list since
22 he already had the same job.

23 Q Okay. Fair enough.

24 A I'm trying to rack my brain here.

25 Q No, that's okay. I didn't know which question you were

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1 answering. All right. There was some testimony earlier
2 about the relationship between the Federation and the
3 Commission for the Blind. Can you give us your opinion as
4 to what that relationship is?

5 A Today?

6 Q Today. And then we'll --

7 MS. SMITH: I object.

8 Q Today and then we'll go back.

9 MS. SMITH: I object. What's the relevance of his
10 opinion to --

11 MR. KAMAR: I mean, she brought it up through Mr.
12 Cannon as -- and he testified to the great relationship
13 between the two.

14 MS. SMITH: Mr. Cannon is the director of the
15 Michigan Commission for the Blind.

16 MR. KAMAR: I understand.

17 MS. SMITH: He was describing the relationship
18 between the Commission for the Blind and the NFB.

19 MR. HUTCHENS: And he is asking him about his
20 opinion of that relationship, and he is the ten-year
21 president of the Michigan Chapter of the NFB.

22 MS. SMITH: Are you presently the Michigan Chapter
23 president?

24 MR. KAMAR: That has nothing to do. It's
25 irrelevant.

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1 MR. HUTCHENS: He just said that, no, he's not,
2 but he has been president for -- if I'm correct, sir -- for
3 the last ten years.

4 THE WITNESS: That's correct.

5 MR. HUTCHENS: So I think he would have knowledge
6 of that.

7 MS. SMITH: Okay.

8 Q What is your opinion?

9 A My opinion is I've never seen such a horrible malfunctioning
10 relationship between a consumer organization and an agency
11 for the blind in recent history.

12 Q What is the basis of that opinion?

13 A Well, there's an out-and-out attack by Director Cannon on
14 the National Federation of the Blind right now. He's firing
15 our people. He's removing blind operators from their
16 positions without cause, violating the Randolph-Sheppard
17 Act. He personally went out and removed Hazell Brooks
18 against the law and wasn't -- didn't do it under the rules
19 and regulations. He has fired David; he has fired
20 Christine; and he has gotten rid of other federationists.
21 And so I couldn't imagine how things could be worse than
22 they are right at the moment.

23 Q Okay. Well, let me -- I understand that. But in your
24 opinion -- obviously, you have worked with all these people.
25 What type of employees were they?

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1 A Fine employees. Fine employees. You know, there isn't one
2 employee that I know of who does everything perfectly,
3 but -- and I did not supervise Christine Boone at the
4 Commission for the Blind. So I -- all I know about her and
5 certainly my personal relationship with Dave Robinson over
6 the years -- they were fine employees, and the operators who
7 were let go were good operators. They had passed training,
8 and they were qualified for what they were doing.

9 MR. KAMAR: Nothing further.

10 MR. HUTCHENS: Ms. Smith, do you have any
11 questions for the witness?

12 MS. SMITH: Just a couple.

13 CROSS-EXAMINATION

14 BY MS. SMITH:

15 Q When did you say that you retired?

16 A June of 2006, as I recall.

17 Q Did you supervise David in 2009?

18 A No, sir -- no, ma'am.

19 MS. SMITH: No further questions.

20 REDIRECT EXAMINATION

21 BY MR. KAMAR:

22 Q When did you stop supervising David?

23 A The day I retired.

24 MR. KAMAR: Nothing further.

25 MR. HUTCHENS: Anything further, Ms. Smith?

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1 MS. SMITH: No.

2 MR. HUTCHENS: All right. Thank you very much,
3 sir.

4 (Off the record)

5 MR. HUTCHENS: We'll go back on the record at this
6 point. The grievant's next witness, Mr. Beard, has taken
7 the stand. Sir, we have the court reporter to your right,
8 and she's going to swear you in and then Mr. Kamar will have
9 some questions for you.

10 REPORTER: Sir, could you raise your right hand.
11 Do you solemnly swear or affirm that the testimony you give
12 today will be the whole truth?

13 MR. BEARD: I do.

14 MR. HUTCHENS: Go ahead, Mr. Kamar.

15 MR. KAMAR: Thank you.

16 RUTHERFORD T. BEARD

17 having been called by the Grievant and sworn:

18 DIRECT EXAMINATION

19 BY MR. KAMAR:

20 Q Could you give your full name and spell your last name for
21 the record?

22 A Rutherford T. Beard, B-e-a-r-d.

23 Q Sir, where are you employed?

24 A I actually operate a cafeteria out in Dimondale at the SOS
25 Building; the Secretary of State Office.

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1 Q How long have you operated that?

2 A I've been there for about almost a year and a half.

3 Q For 18 months?

4 A Give or take; yeah. I started in -- I'm sorry -- May 1st of
5 2009.

6 Q What did you do before that?

7 A I operated the cafeteria on Martin Luther King Boulevard.

8 Q And how long did you do that?

9 A I did that for 12 months.

10 Q And do you know David Robinson?

11 A Yes, I do.

12 Q How do you know Mr. Robinson?

13 A He used to be my PA at the MLK.

14 Q Do you know how long he was your PA?

15 A He was my -- he was my PA for that year.

16 MR. HUTCHENS: We'll go off the record for just a
17 moment.

18 (Off the record)

19 MR. HUTCHENS: We'll go back on the record now.

20 Please continue with your questions, sir.

21 MR. KAMAR: Thank you.

22 Q You indicated that Mr. Robinson was your promotional agent
23 when you were at MLK.

24 A Correct.

25 Q And that was for about a year?

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1 A Yes, sir.

2 Q Okay. And as his -- as a promotional agent, did you
3 basically have any complaints with your promotional agent?

4 A No.

5 Q Okay. And did he assist you in the operation of your
6 business?

7 A Yes.

8 Q Okay. How did he assist you?

9 A Well, when business was slow he came out to figure out what
10 do I need. He was actually instrumental in getting that
11 cafeteria open, did everything that he possibly can to make
12 sure that the business was running successfully -- which at
13 that time that building was doing very poorly because of the
14 clientele -- I mean, the customers that we was dealing with.
15 It wasn't a viable business. So at one point we actually
16 had to close that. The Commission for the Blind decided to
17 close that facility down because of -- not David Robinson.
18 It was just because of the customer base that was at that
19 facility wasn't catering to the cafeteria.

20 Q Okay. But he assisted you with whatever you asked?

21 A Correct.

22 Q And do you recall how often approximately he would come to
23 your place of employment -- your business?

24 A Well, when it first opened up, he was like there maybe every
25 week, sometimes twice a week, then every six weeks, and then

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1 after that pretty much at the end he was there back again
2 every week or every two weeks. You know, whenever I called
3 him, he was -- he came out. He was there, I would say, at
4 least every other week or more.

5 Q You and I over the telephone had a lengthy discussion about
6 an invoice. Do you recall that?

7 A Yes.

8 Q Okay. And can you tell us about this invoice; what the
9 invoice was for?

10 A When the cafeteria at the MLK closed down and I bid it out,
11 there was some product that was left over and instead of it
12 going to waste, I asked, "Can I actually purchase that
13 product?" There was a couple of times that we found out
14 there were several products that I needed and David Robinson
15 brought the product to me that I could purchase. And then
16 there was some other product. There was more product that
17 instead of going to waste -- that it wouldn't sit in the
18 warehouse or go to waste that were put on the bid line and
19 might not be able to sell -- I bought. And the invoice
20 came -- after he totaled everything up, the invoice came
21 about two weeks later.

22 Q Okay. Who did the invoice come from?

23 A It came from David Robinson. He brought it out to me.

24 Q Okay. And what did you do with the invoice?

25 A At that time I had it and I had it in my -- where I keep all

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1 my receipts in my drawer to be able to pay on it. At that
2 time I didn't have all the funds to pay on it and -- because
3 the business was very slow when I took over the SOS
4 Building. So it sat in my drawer until I had enough money
5 to pay for it. After I'd say a month or two, the Commission
6 for the Blind called me and say, well, I had this
7 outdated -- that I bought some product from the Commission
8 from the other building and when will the -- when should I
9 pay for it.

10 Q How did the Commission for the Blind know you had this
11 invoice?

12 A Because they already knew that Dave Robinson gave me the
13 product and I actually told them I had the product. I told
14 them the truth. I had the project. You know, David brought
15 it out to me; he brought me the invoice; and I told them
16 that I had it. And so I figured they got a copy of the
17 invoice.

18 Q All right. Would somebody have to take that to the
19 Commission for the Blind for them to have a copy of the
20 invoice?

21 A To be honest with you, I don't know how they work in their
22 office.

23 Q Okay. But they did have a copy?

24 A As far as I know, I was told about the invoice. I was told
25 that it -- that I owe money for the product. I had a copy

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1 of the invoice, and I made sure after a little while that it
2 did get paid.

3 Q Okay. Who called you from the Commission for the Blind; do
4 you recall?

5 A Constance Zanger called me. David actually told me. He
6 said, "Do you remember, you know, that you have this product
7 due." And then -- I mean, "Yeah this invoice that needs to
8 be paid," and then Constance Zanger called me and she also
9 came by the office -- came by the job and told me that I had
10 an outstanding balance that I need to pay.

11 Q All right. So do you recall how long after you received
12 that invoice that Constance Zanger called you?

13 A At this time I can't recall.

14 Q Fair enough. Do you recall how long after you received the
15 invoice that she actually came to your office?

16 A It was about three, four months maybe.

17 Q All right. And do you recall how long after David Robinson
18 gave you the invoice -- how soon did he give you the invoice
19 after you received the product?

20 A It was two weeks later.

21 Q All right. And do you recall when in fact he asked for
22 payment?

23 A I would say maybe a month later. He was like, "RB, don't
24 forget about the payment that you owe the Commission for the
25 Blind; that you got product from us and you need to pay it."

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1 Q Okay. Did Mr. Hull ever contact you about that payment?

2 A To be honest with you, I don't remember Mr. Hull calling me.

3 Q All right. You remember my client -- or our client, I
4 should say, and you also remember Constance Zanger?

5 A Yes.

6 Q And it eventually was paid?

7 A Yes, it was paid.

8 Q And it was your responsibility to pay it?

9 A Yes.

10 Q It wasn't Mr. Robinson's responsibility?

11 A No, it was my invoice. I bought the product.

12 Q How was Mr. Robinson involved in this transaction with the
13 invoice?

14 A Well, because the RFTC building -- the business on MLK, he
15 was the PA. So the product was still -- it was belonging to
16 the Commission for the Blind, but because he was the PA, he
17 was handling that building as my PA so he knew what product
18 was there. And that's how he was involved in it because he
19 knew the product was there and instead of product going to
20 waste, I asked him, "Can I buy the product?"

21 Q And what do you mean the product "going to waste"?

22 A Well, there was some perishable items. There was some dry
23 items that I purchased. I can't remember all the stuff that
24 I bought offhand.

25 Q Sure.

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1 A I know there was salt packets. There was some canned goods.
2 There was some pop. Like I say, I don't remember all the
3 product that I purchased, but I know it came up to about
4 170-and-some dollars.

5 Q All right. And eventually you paid it?

6 A Yes, it was paid.

7 Q All right. Is that a typical scenario; when you want to buy
8 product you go to your PA?

9 A No; no. Normally, I get product from Sysco, Gordon's, or
10 Sam's, and I just -- and then once in awhile they -- the
11 Commission for the Blind -- if a site is being -- how can I
12 say -- is being discontinued or that business -- or product
13 is left over, some people might put the thing on the bid
14 line for people to purchase. So you can call the bid line
15 and if you hear that this person might have some extra
16 product they might want to get rid of, you can actually
17 purchase it.

18 Q Okay. So the rules don't prohibit that?

19 A Huh?

20 Q The rules don't prohibit that?

21 A No. There's a guideline, but I -- you know, to be honest
22 with you, what their guidelines are, I don't know. I just
23 knew about the product at MLK. Because I operated that
24 business, I knew there was product --

25 Q And rather than throwing it out, you figured you might as

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1 well buy it?

2 A Right.

3 Q And so you went through Mr. Robinson?

4 A I went through Mr. Robinson.

5 MR. KAMAR: Nothing further.

6 MR. HUTCHENS: Ms. Smith, do you have any
7 questions for the witness?

8 MS. SMITH: No questions; no.

9 MR. HUTCHENS: All right. Thank you very much,
10 sir.

11 MR. KAMAR: Thanks for coming.

12 THE WITNESS: No problem.

13 (Off the record)

14 MR. HUTCHENS: We'll go back on the record. We'll
15 have the grievant sworn in at this point.

16 REPORTER: Do you solemnly swear or affirm that
17 the testimony you give today will be the whole truth?

18 MR. ROBINSON: Yes.

19 DAVID E. ROBINSON

20 having been called on his own behalf and sworn:

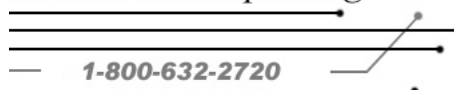
21 DIRECT EXAMINATION

22 BY MR. KAMAR:

23 Q Could you give your full name and spell your last name for
24 the record?

25 A David E. Robinson, R-o-b-i-n-s-o-n.

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1 Q What is your education?

2 A My education is I have a bachelor's degree in business
3 administration.

4 Q And when did you receive that?

5 A 1974.

6 Q You've got a bachelor's in business. Do you have any
7 graduate work?

8 A I have some graduate work, but never finished all of it.

9 Q All right. What type of classes did you take in graduate
10 school?

11 A Public administration, finance, business planning and also
12 some governmental type of classes like government funding
13 and purchasing, that kind of thing.

14 Q All right.

15 A I planned to get a master's in public administration.

16 Q Okay. And at some point in time, did you start working with
17 the State of Michigan?

18 A I started in February of 1998.

19 Q And what was your position then?

20 A Promotional agent.

21 Q So you've been a PA since February of 1998?

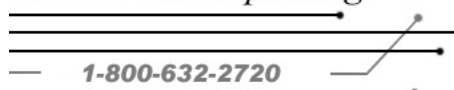
22 A That's correct.

23 Q And then you were released?

24 A December 18th, 2010 -- 2009, I mean.

25 Q So you for approximately 11 years -- 12 years, you were a --

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1 actually, approximately almost 12 years you were a
2 promotional agent?

3 A Yes, sir.

4 Q All right. Let's go back to 1998. Do you recall how many
5 operators and what your area was back in 1998?

6 A My area back that I was assigned to was the Greater Lansing
7 area, and I had approximately 32 operators at the time.

8 Q And your area from 1998 to '09 has always been the Lansing
9 area?

10 A Well, the core of my area has always been the mid Michigan
11 area. As we -- and that was under the -- when we had four
12 promotional agents. From time to time when we were down
13 promotional agents because of staffing, we would -- you
14 know, we would take on additional assignments and oftentimes
15 then I would -- depending on the situation and how it was
16 divided up, generally the Flint, Mount Pleasant, Secondary
17 Complex, Battle Creek, Marshall, Jackson, those areas and
18 all became -- were all part of my region from time to time.

19 Q All right. So that would have been from time to time from
20 1998 to when you were released in '09?

21 A That's correct.

22 Q Do you recall in December of '09 how many operators you had
23 underneath you?

24 A 36.

25 Q In the area you just described?

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1 A Jackson, Flint, mid Michigan area, Mount Pleasant, buildings
2 and highways.

3 Q You're talking about rest areas?

4 A Rest areas, yes.

5 Q And how often would you go onsite?

6 A Well, I would try to get to an operator at least every six
7 weeks or if they didn't really -- if there was nothing
8 really going on, I could call them and find out. But it
9 varied from time to time because of whatever the situation
10 was going on with the operator. Sometimes I would be at an
11 operator's location every day. Sometimes it would be six
12 weeks before I would see them. Sometimes it would be, you
13 know, every other day. It depends on -- new operators I
14 always saw quite extensively more often at their initial --
15 when they initially started a location -- or if they were
16 running into problems, I always would spend more time with
17 them; and depending on what their situation is to help them
18 to build their business.

19 Q All right. So your goal was to help assist the operators to
20 be successful; to make money, in a nutshell?

21 A Well, the Business Enterprise Program is an employment
22 program, and it was designed to train people to run food
23 services and to have income -- a viable income. That is
24 what Social Security calls SGE -- substantial gainful
25 employment -- so that eventually those individuals would not

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1 be subject to, you know, public support or Social Security
2 support. So it was a job. Yes, it was a job and to
3 succeed; yes.

4 Q All right. And do you know what your required hours of
5 employment were?

6 A The required hours were -- in a pay period, it was 80 hours.
7 So that was every two weeks we got paid. So 40 hours a week
8 was the required -- was what they paid us for.

9 Q Typically, how many hours a week would you work?

10 A 60 to 70.

11 Q Why did you work so much?

12 A Why did I work? Because it was my responsibility. I
13 accepted that position. As part of that -- part of the
14 supporting the operators; and when operators need you and
15 when they need situations or equipment and a situation is
16 completed or equipment ordered or something, it just takes
17 time. It just takes a lot of time.

18 Q Now, you heard through the testimony of a couple individuals
19 indicating that your job satisfaction was basically not very
20 satisfactory -- your job performance. As a promotional
21 agent, what were your job functions?

22 A My job function was to be a liaison and a supporter of the
23 operators that were licensed operators in my region; to
24 monitor their progress through evaluations and through other
25 means, whether it be corrective action or support,

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1 supporting them in certain activities; to advise them on
2 what possibilities for improving their business or
3 complaints that we may have heard about their business from
4 someone in the building or the building manager; and acting
5 as a liaison for those situations as well. I also was to
6 help to organize and monitor and oversee new locations or
7 the building of new locations and remodeling of locations.
8 I oversaw a number of new construction; worked with
9 architects and electricians and all those types of people --
10 the tradespeople to build that facility through weekly
11 construction meetings and those kinds of things. And I have
12 several buildings -- several facilities in the Lansing area
13 that I was the key liaison or the key BEP person in terms of
14 that construction and remodeling, and we've had substantial
15 numbers of them over the last several years in the Lansing
16 area.

17 Q Okay. What about record keeping, filing reports, things of
18 that nature?

19 A Well, one of the things that -- well, record keeping is
20 certainly a necessary part of what I had to do. I did keep
21 records of what I did and where I went to, and then I was
22 supposed to -- and then -- and whether it be in notes or
23 through my notes and other documents in my notetaker. Where
24 I ran out of time was in terms of transferring those from my
25 notes in my notetaker into the computer system.

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1 Q Well, first of all, you had a notetaker. Can you explain
2 that?

3 A Notetaker is like a personal device like a BlackBerry or
4 something that you could -- you could take. It was very
5 portable and you could take notes on it. It was
6 specifically designed for the blind. It had Braille output
7 and it seemed like a little mini computer, but not quite
8 that --

9 Q All right. Go ahead.

10 A And so I would take notes on that when I went out to visit
11 with an operator making note of what we did and what we
12 talked about and what they might have needed, those kinds of
13 things. And then I had a file on each operator, then work
14 at getting those notes into the computer system. But one of
15 the most -- one of the difficult parts of dealing with the
16 computer system over the years has been the fact that often
17 the Commission for the Blind -- the Commission for the
18 Blind -- and I know it's not technically they're totally
19 under their control, but they tweaked and changed the
20 software program in our BEP system from time to time.
21 Especially in the last two or three years, they've changed
22 it quite a bit. And I use a speech access program and so a
23 lot of it, I have to do it all by key strokes and not by --
24 and not by amounts or whatever, those kinds of things.
25 So -- and one of the things I had requested in one of my

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1 counseling memos -- and I don't even know if it's in there,
2 but I asked -- I requested of Zanger to try to get me some
3 additional training on the computer because of the changes.
4 She said she would do that, but it never happened.

5 Q Who is she?

6 A Zanger. Constance Zanger said that she would, but it never
7 happened. So any question that I might have regarding
8 the -- regarding access into the system in an efficient
9 manner was always piecemeal and most of the time I just had
10 to go to Lucy Edmonds who was the BEP secretary and was also
11 blind and used speech access to determine -- and she was in
12 the same office I was.

13 Q Would she help you with the technology?

14 A Yeah, she would help when she could -- when she could advise
15 me on that.

16 Q All right. And so did you -- you didn't receive that
17 equipment?

18 A I didn't receive --

19 Q And you requested it?

20 A I received the equipment, but I didn't receive training on
21 the equipment.

22 Q All right. Did you request training?

23 A Yes, I did.

24 Q Okay. You heard Mr. Hull testify as to some sort of
25 electronic card.

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1 A A wireless card.

2 Q A wireless card.

3 A Air card, yeah.

4 Q Did you receive that?

5 A Yes. In our discussion as far as trying to catch up with
6 the site visits, he suggested that I get -- that maybe an
7 air card would help. And I says, "Well, I didn't know
8 anything about that." He says, "Well, you get one of these
9 and you can access the system from home or, you know,
10 wherever you could do so you could do site visits from the
11 operator's location or wherever." And so then I found out
12 also that the other two PA's had had those wireless or air
13 cards for sometime, and I had never received any.

14 Q What do you mean "sometime"?

15 A Well, I don't know how long it had been, but I know they
16 already had them and they were already using them.

17 Q All right. So describe to the administrative law judge here
18 what a typical day would be for you. Let's say Monday
19 through Friday.

20 A Well, first of all you've got to understand there is no
21 particular typical day in the life of a promotional agent in
22 the Business Enterprise Program. It could be where I would
23 get in there about 7:00 o'clock in the morning. I would
24 check my emails and maybe enter a few site visits, and then
25 the phone calls would start. Our operators generally open

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1 their locations at 7:00 a.m. in State buildings and run
2 until about 4:00. That varies slightly depending on what
3 type of facility it is. So I would start getting calls way
4 before 8:00 o'clock or I'm calling people as a followup from
5 the day before on calls that I might have received after
6 hours or didn't get to the day before. So I would do that,
7 and then I would head out. A lot of times I would head out
8 to do whatever I had to do. You know, I went to see
9 Rutherford at the SOS or I went to see -- you know, I had a
10 schedule of operators that I needed to see. Some of them
11 were just routine visits. Some of them were for specific
12 issues or problems that they were having. And so it varied
13 every day, every day. And I generally would eat. The
14 Commission for the Blind provided me a van and a driver.
15 And so we would go from place to place, and generally I
16 would -- you know, I would eat lunch on the run -- that's
17 how you do it -- and then just -- and then go to different
18 places; or I would meet with -- or I would meet with, you
19 know, construction people; or I would have to go over to one
20 of the equipment places, restaurant equipment places to
21 check out getting a microwave for somebody or those kinds of
22 things. It varies every day. And then -- and then also
23 just the different kinds of places that I would have to
24 go -- not necessarily would be just an operator. It may
25 have to be I would have to go over to Lansing Popcorn or I

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1 would have to go over to like I said the equipment -- food
2 service equipment supplier. I would have to run out to
3 Gordon's or something like that because of looking for
4 things that would help operators. And so it varied day in
5 and day out. I also conducted a monthly meeting of the DOG
6 meeting. I had a DOG meeting. It's called the Downtown
7 Operators Group, and it was -- it was a chance -- it was a
8 chance for operators to get together to visit with each
9 other and share ideas, and I would always bring in -- try to
10 bring in, you know, sales reps from different companies or
11 if somebody called me and they said, "Hey, I have this new
12 product. I would like to show it to your operators" -- I
13 would schedule them to come and participate in the -- you
14 know, present it at the meeting. Sometimes I would go to
15 food shows a couple times a year to see what -- on the
16 latest thing that's going on with food and food service and
17 equipment.

18 Q So you had a pretty full day?

19 A Oh, yeah. Yeah, every day was full.

20 Q All right.

21 A And then there was these meetings; staff meetings and other
22 things I would have to go to as well.

23 Q All right. And then typically how many hours would you
24 work, let's say, on a -- during the week, Monday through
25 Friday?

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1 A Monday through Friday? 60; 60 hours or more.

2 Q Okay. And did you ever work weekends?

3 A Yes, sir.

4 Q What would you do on the weekends?

5 A I'd come in. I live about a mile from the Victor Building.
6 So I would come in -- I'd take the bus in on Saturday and go
7 in. Everybody that worked in the Victor Building had a key.
8 So I could get into the building and get into the office
9 area, fire up the computer and start working on the site
10 visits and other things like that, inventories or whatever
11 else I had to do.

12 Q All right. Was it your understanding that other promotional
13 agents were behind in their site visits?

14 A Yes. It was my understanding that it's pretty typical for
15 promotional agents to be behind in their site visits
16 especially prior to getting these remote cards because it
17 was very difficult to be on the road, but also -- and you
18 couldn't access the BEP system other than in your office.
19 So you would have to go to your office, but you were
20 supposed to be out on the road visiting operators and taking
21 care of business and those kinds of things. So it was
22 typical. It was very typical that the promotional agents
23 were behind on their field visits.

24 Q All right. Let me ask you this. When did you receive this
25 card; do you recall?

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1 A I guess in August. I guess, August or September of '09 --
2 of 2009.

3 Q And when were you released?

4 A December 18th of 2009.

5 Q Now, they indicate that you failed to provide weekly reports
6 to the program manager. Okay? Did you in fact do that?

7 A I did supply weekly reports to the program manager. When
8 Constance Zanger became the program manager -- let's see. I
9 can't remember when she did. March of '07, I guess. She
10 had requested that PA's send her a weekly report schedule.
11 The weeks -- like, for example, if we did the report on
12 Monday and we put in the schedule what we had; at least what
13 we knew we had at that point in time on Monday and then --
14 on the schedule for the week as well as any things that
15 needed to be followed up with or situations that are
16 occurring in your region that she might need to be aware of
17 or those kinds of things like that. That was -- that was
18 every week, every week, every week for those times that she
19 was involved or was the program manager. After James Hull
20 got hired as the assistant program manager, the supervision
21 of the PA's was turned over to the assistant program
22 manager -- which in the time that I was there had never
23 happened before. So I continued to do reports on a weekly
24 basis and I actually said to Hull, "If there is anything
25 more -- if there's other things you need me to put in there,

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1 just let me know and I will. I mean, these are what I sent
2 to Constance so if you want something else, let me know."
3 So he gave me a few suggestions on things to add. I did add
4 it. I didn't miss any weeks. If there was any week that I
5 missed, it was because I was either on vacation or -- as far
6 as I know, there was no extensive time that I missed the
7 weekly report, you know, and that's -- a lot of times that's
8 what I would do first thing come Monday morning when I went
9 in was do that report -- that update report; schedule.

10 Q Now, there's some testimony as it relates to the SECC
11 popcorn giveaway. Do you recall that?

12 A Yes.

13 Q Could you tell us about that?

14 A Let's see. I guess it was '08. In '08, whoever the program
15 coordinator was for that in '08, I was -- the person was
16 located at the Romney Building. At the time in '08, Ben
17 Plouch was the operator in the Romney Building, and it was
18 mentioned -- his name was mentioned in previous testimony --
19 that it worked -- he worked -- it worked well for him and
20 they worked well at the Romney Building. However, the
21 actual promotion even though it was Ben Plouch that did the
22 free popcorn giveaway, it never -- it didn't occur in the
23 Romney Building. It occurred on the mall next to the
24 Treasury Building. As a result of that, I guess, the
25 committee thought that they should -- they wanted to expand

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1 that activity to all the operators in the BEP program to
2 expand that campaign. So this Lisa called me and asked me
3 about it. And I don't know if she called me directly or --
4 she probably got my name from Constance or Lucy or somebody.
5 But anyway I talked to her and I says, "Well, I certainly
6 can do this. I can supply you the list of operators. I
7 can -- when I see the operators, I can let them know that
8 somebody will be calling on them and, you know, they can
9 work out whatever situation they can with you or your person
10 that's representing you" -- because Lisa told me that there
11 was supposed to be a campaign liaison in every building and
12 that that liaison would be connecting with the operator. So
13 I had no -- I had no responsibility to connect with any of
14 the operators to tell them anything of what was going on. I
15 did send an email to our two promotional agents at the
16 time -- Joe Kelly in Detroit and Patrick Duthie in the
17 western part of Michigan -- to let them know that they've
18 approached us. "These are the names of your operators that
19 I gave to Lisa" and that they might be contacted by somebody
20 in the building as the campaign liaison. And when she asked
21 me about the cost of popcorn, I simply said, "Each operator
22 is their own business person. They can -- I can't" -- I
23 told Lisa, "I can't tell you that they will participate or
24 not participate because they are their own business person.
25 I can't order them to do it or not do it and they buy

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1 popcorn from different suppliers." It could range all the
2 way from three cents for raw popcorn all the way up to ten
3 or 15 cents for the packets. I don't know what they buy and
4 it varies all over the place, and I don't -- I as a
5 promotional agent don't keep track of current prices. So I
6 would never have quoted her a price specifically that was --
7 that was for their particular business because I wouldn't
8 have a clue of what that operator spends for popcorn. So
9 that was where -- that's what I did. That's what I felt my
10 responsibility was as a contributor to the campaign, and
11 that's where it ended. I had no responsibility to contact
12 those operators and let them know what was going on. That
13 was -- that was supposed to be the responsibility of the
14 campaign committee and the liaisons in the different
15 buildings.

16 Q And so you did your responsibility?

17 A I did that. I did exactly just that, and that's all I did.

18 Q Before you received the documents here -- the interim
19 employee rating -- did you ever hear of any complaints about
20 this popcorn giveaway?

21 A Oh, some of the operators said, "Oh, they don't want to pay
22 for the -- they don't want to pay what it costs me to give
23 it away" and that type of thing. I says, "Well, you don't
24 have to do it, you know, and I don't -- you know, you can do
25 whatever you want to do. You can give it away or you don't

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1 have to give it away. You're the business owner. You don't
2 have to participate in it if you don't want to, you know."
3 And I couldn't order -- I couldn't tell them to or not to.

4 Q Nobody could tell them.

5 A Well, no, not really. No; no, because they had the right to
6 say yes or no on it.

7 Q All right. Before you received this interim employee
8 rating, did you receive any feedback from the Commission?
9 Did they tell you to do anything different?

10 A No; nope.

11 Q Nothing whatsoever?

12 A Nothing whatsoever.

13 Q All right. Tell us about what happened with this email.

14 A Well, I think -- well, I can testify what happened. When
15 James told me that there was -- my work email was on this
16 flyer -- and I guess he must have saw it on the web page
17 electronically. I don't know that for sure. But anyway, so
18 I says, "Oh, my gosh." So I went and called Fred
19 immediately that day. In fact, I did it right then -- right
20 then. And I said, "Fred, my work email is on there and we
21 got to get it off. I can't -- it's not supposed to be on
22 there." And he said, "Oh, my gosh. I apologize for it."
23 He say, "I apologize for it." He says, "I'll take care of
24 it right away." I says, "Well, as soon as you can," you
25 know. So then he explained the story about how -- you know,

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1 because we don't have a web master in our organization. We
2 just have people that volunteer to take care of the web page
3 from time to time, you know. So I guess it took awhile for
4 Fred to get ahold of the guy that actually was doing it at
5 the time -- and periodically it changes. It depends on
6 who's willing to do it. And then so -- and then I called
7 him again after James pointed out that it wasn't done and he
8 says -- and he says, "Oh, my gosh. I'll make sure that JJ
9 gets on it and takes care of it right away."

10 Q How come you didn't take care of it yourself?

11 A I don't know how to do that. I don't know -- I don't know
12 anything about monitoring the web.

13 Q All right. So it wasn't a matter that you could have gone
14 on the internet and taken it off.

15 A No; no. I didn't even know how. I wouldn't know how to do
16 that.

17 Q And you didn't put it on?

18 A No, I did not. I did the best I could do with the resources
19 I had available to me to do that, and I didn't ask somebody
20 to put it on and I didn't request somebody to put it on. I
21 just requested it to be taken off.

22 Q As soon as you learned about it?

23 A As soon as I learned about it; yes.

24 Q And then you heard the testimony of Rutherford Beard. Tell
25 us about this invoice.

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1 A Okay. That's all very confusing because the testimony
2 earlier today -- I think there was a lot of confusion about
3 that. But if you could give me a moment to sort of set the
4 background on all this, we will do that.

5 Q Sure.

6 A When we open up a facility, whether it be a snack bar,
7 cafeteria, vending operation or whatever, along with the
8 facility we assign operators a starting inventory. That --
9 and depending on the location -- will depend on the product
10 that's bought for that location. So when the operator signs
11 an agreement, they are -- they are agreeing to run the
12 facility, operate the facility, take care of all their
13 bills, and hire their own employees, and pay their own
14 taxes, and get their own insurance, and those kinds of
15 things just like a business owner would -- and that they
16 would, when they left the location, they would leave the
17 same value of inventory that they started with. So say if
18 somebody gets \$5,000 worth of starting inventory, they would
19 have to leave \$5,000 worth of inventory when they left that
20 facility. It doesn't mean that it has to be the same
21 product. It just has to have the same value that was given
22 to them. And that is the product -- that is the property of
23 the State of Michigan; that starting inventory. Okay. So
24 then we ran that location for awhile and as Rutherford
25 stated, we decided that -- and the Commission decided that

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1 we would -- it wasn't viable as an operation. So we closed
2 it and we -- as, you know, as we could probably think that
3 we had inventory left over when we closed that facility.
4 That is, we had inventory that was there while it was open
5 and then we had -- it was there. So that belonged to the
6 State of Michigan. There are several practices that we try
7 to do when that occurs, and it has occurred other times.
8 This is not unique to this -- to our program. What we try
9 to do is take an inventory and assign a cost value to that
10 product -- those products, and we try to do it in a very
11 timely fashion because of deteriorating product or dates on
12 products -- expiration dates on products and things like
13 that. So we have an inventory company that comes in and
14 inventories a person into a location and then they come back
15 and they inventory the person out of that location. That
16 inventory was conducted at that facility and we knew what
17 the amount of value was of that inventory when that
18 inventory was taken on the very last day that Rutherford
19 was the -- before we closed it. So then we closed it and we
20 had this inventory left over. We were requested that we
21 need to move that inventory to a storage closet until we
22 could dispense of it because they were cleaning the facility
23 and doing some other things at the -- the National Guard was
24 taking over and doing some things in that location. So we
25 did that and then we moved everything down there, and then

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1 we inventoried everything that we had. We went back and we
2 researched the cost by old invoices; you know, what did it
3 actually cost Rutherford -- what did it actually cost for
4 the -- that product. And so we got all that information
5 together and Rutherford had requested that he would be
6 allowed to purchase some of that inventory. We put it on
7 the bid line for other operators to purchase. It was
8 announced that, "This inventory is available and that if
9 anybody wants any of it, you know, contact me" -- because I
10 had the list of everything and what the prices would be on
11 it. Rutherford asked for some product. He knew the product
12 well because he had been the operator there. So I collected
13 up what he wanted, took it out to his new location, gave it
14 to him, and then I prepared an invoice and took that out the
15 very first part of June of 2008 or whatever it was. I don't
16 know -- '09, whatever it was. It must have been '09; yeah.
17 So I took that out to him and he -- I said, "Here's your
18 invoice for the product. You know, go ahead and take care
19 of it." And then I went back. I gave Judy Wallace, our
20 bookkeeper, a copy of it. Then once I found out that James
21 wanted the invoice, I took -- I took a copy of that invoice
22 and put it in his "in" box. Now, what he did with it after
23 that, I have no idea. But I asked Judy -- I said, "Well,
24 why does James want this invoice? What's the -- what's
25 going on?" And she says, "Well, I don't know. I don't know

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1 why he wants it." She says -- she says, "But I'll take care
2 of it. I'll give it to him if you want me to." And I says,
3 "No. I'll go ahead and stick it -- stick it -- give it to
4 him." But he wasn't there so I stuck it in the "in" box.
5 So then that was it, you know, and I reminded Rutherford to
6 pay for it from time to time when I saw him, and so that's
7 what happened.

8 Q Okay. And so how long after Mr. Hull requested it did you
9 give him a copy?

10 A Right away.

11 Q Immediately?

12 A Yeah. Well, it was either -- it might have been the next
13 day.

14 Q Okay. So a reasonable time frame?

15 A Yeah.

16 Q All right. Now, you indicated that in fact James Hull
17 closed that site?

18 A Well, the Commission for the Blind closed it. At the time,
19 Constance Zanger was still the program manager, and we had
20 met several times with the building people. That is,
21 Constance and I had met with the building man from time to
22 time trying to get different things worked out, but I think
23 she was still the program manager. Yeah, she was program
24 manager when the decision to close it was made.

25 Q Who ultimately made that decision?

1 A Constance Zanger did.

2 Q Okay. And you didn't influence that one way or the other?

3 A Well, I mean, sure. I mean, I gave her my opinion.

4 Q Okay. What was your opinion as it related to that site?

5 A My opinion was it wasn't viable and that we should think
6 of -- if we were going to keep it open, to think of some
7 other strategy and if we weren't, then we needed to close it
8 because Rutherford wasn't making any money. He was losing
9 money every month.

10 Q Okay. And so you all came to the conclusion -- all three of
11 you -- that this was the best thing to do?

12 A I don't know who the three is, but Zanger and I did; yes.

13 Q Okay. But Mr. Beard didn't have any opinion on it?

14 A Oh, well, yeah. Mr. Beard did -- yeah. If we would have
15 decided to keep it open, I guess he would have hung in there
16 until he could bid out. And he did -- he was -- he did --
17 Mr. Beard did request a profit percentage exception because
18 of the difficulties with the -- so that he could stay in
19 compliance and be able to bid out if he needed to.

20 Q What was the problem with that site?

21 A I believe that there was -- there was -- the building --
22 well, there was another building on the complex which had
23 most of the population in it, and it had vending in it which
24 was run by some other -- by another operator. But that was
25 because that building had been in there -- had been at that

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1 location for three or four years prior to the building of
2 this new building and that I think that the -- this wasn't
3 the population in the building and we weren't getting the
4 people from the other buildings on the complex, and I think
5 a lot of it was because simply the people had formed habits
6 of eating. You know, they went out. They could just walk
7 out -- right out to the parking lot and get in their car and
8 drive to Wendy's or something because their parking was
9 right there by their building. So it made it difficult for
10 that facility to gain customer ground at least -- at least
11 for some substantial amount of time. And we didn't have
12 time to take losses like we were in order to achieve success
13 in it. And we had -- we had provided some promotional money
14 to promote in the building and a number of other things.
15 And we certainly -- the Commission for the Blind Business
16 Enterprise certainly did a -- I think a -- job in terms of
17 supporting that and trying to get that effort off the ground
18 financially and otherwise.

19 Q But it just didn't work out so you moved locations?

20 A Yes.

21 Q Now, let's talk about the Ottawa facility.

22 A Okay.

23 Q And that would be Mr. Austin, and he was one of your
24 operators; correct?

25 A Uh-huh; yes, that's correct.

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1 Q During what time frame was he an operator?

2 A Well, I was a promotional agent for Don when we were --
3 let's see -- probably three years, I guess.

4 Q All right. Until you were released?

5 A Right; that's correct.

6 Q All right. Tell us about his facility.

7 A Well, his facility is -- he has a cafeteria on the upper
8 parking level of the Ottawa Building, and it's a full
9 service cafeteria. It has been there a long time. And then
10 he -- then there's a snack bar -- snack shop upstairs on the
11 first floor adjacent to the lobby. It had counter sales as
12 well as vending machines in the seating area. That was
13 basically what his facility consisted of.

14 Q All right. Was he having difficulties?

15 A Well, he came to me and was looking at his books. He was
16 looking at his books over the past few months and said, "I'd
17 like to get -- I'd like to close the snack bar and turn it
18 into vending." And he says, "'Cause look, here's" -- you
19 know, he showed me the books -- his books and, you know, on
20 one month it was -- you know, it was a negative because he
21 kept all his sales separate -- sales and costs separate; his
22 vending separate, his snack bar separate, and his cafeteria
23 separate on his records so he could track what he was doing
24 at each area. So -- and he says, "Look. I'm losing money.
25 I can't -- I'm paying this guy to stand up there all day

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1 than I'm making -- so I'm not making any money. It's
2 drawing down my profit percentage. And as an operator, I'm
3 required to maintain 17 percent profit percentage or if I
4 don't, I'm out of compliance and they could come after me
5 for being out of compliance." So his suggestion was, "I've
6 looked at it and looked at it, and I feel that vending would
7 do better up there. And after all, anything that I have in
8 the snack bar, they can get in the cafeteria" -- which is
9 just one floor below the snack shop. I says, "Well, Don,
10 why don't you do this? Why don't you just -- why don't you
11 just for about a month or two, you know, talk to some of the
12 people in the building and see if they would care one way or
13 the other about the snack shop being closed. Talk to people
14 that are in the building and otherwise and just think about
15 it" -- and so he did that. And then a couple months later,
16 he came back to me and said, "It's still not" -- and I
17 talked -- "It's still not making any money, and I've talked
18 to a lot of people and everybody said they don't -- 'that's
19 fine. Do whatever you want to do.' They don't care." And
20 there has been no --

21 Q Was this reported to Constance Zanger?

22 A Yes. I told her in my conversation with her regarding when
23 I talked to her about the cafeteria -- or Don wanting to
24 close the snack shop.

25 Q Okay. What was your conversation -- to the best of your

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1 recollection -- with her?

2 A I says, "Don has come to me with a proposal to close the
3 snack shop. He showed me his records. It shows he's not
4 making any money, and he's worried about staying in
5 compliance with his profit percentage," and that I -- and,
6 you know, "He has talked it around the building and people
7 don't seem to have any problem with it. So it would
8 probably be a good idea for him to do that."

9 Q What did she say?

10 A She wanted to think about it. She says, "Well, I'm not
11 sure. Let me think about it. Let me think about it."

12 Q Did she get back with you?

13 A No, she never got back with me other than -- other than the
14 memo that said that she wanted to meet with Don. So when I
15 visited with Don, I says, "Constance has some issues with
16 closing the snack bar so you better talk to her before you
17 do anything." So I left it in his hands to talk to her. I
18 was convinced that it was viable, but I'm not sure if, you
19 know, she was convinced that it was viable.

20 Q So you said, "Before you do anything, talk to her"?

21 A I says -- yeah. I said -- I says, "You know, we ought to,
22 you know, because" -- and I said, "But ultimately, I mean,
23 you can close if it's going to be better for your business
24 and make you a better profit and keep you in compliance.
25 You're the owner of the business and it's not going to

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1 affect the business, and I would -- but let's get the okay.
2 Let's get the clearance, you know. So he -- you know, and
3 he -- how much he tried to call Constance, I have no idea;
4 or what the communication was between them, I don't know --
5 because then the next thing I heard was that from the agency
6 Don had closed the facility. So from the time I saw him
7 last 'til I saw him next, he had closed it. But he didn't
8 say -- he says, "On Tuesday I'm going to close it." You
9 know, he didn't tell me that.

10 Q But you advised him to at least speak with Ms. Zanger?

11 A Yes, I did. But I can't force him to either.

12 Q And do you remember when it was closed?

13 A I do not. I don't know. I knew he was looking at the
14 beginning of the month or something and I don't know if he
15 did -- actually did that or not; you know, the beginning of
16 a month, and I don't --

17 Q Is that facility still in the same position, at least as far
18 as you know --

19 A Well, I understand from Don that it has been converted into
20 vending now. I guess the rest -- the agency finally saw the
21 light and like you said finally got machines in there after
22 nine months of delay. But I guess it's -- from what I
23 understand from Don, it is -- it's currently -- the upstairs
24 is no counter sales, just vending machines.

25 Q All right. Tell us about the Hall of Justice.

1 A Well, the Hall of Justice -- I've been the promotional agent
2 for the Hall of Justice ever since the building has been
3 built and the facility was open. I was involved in
4 monitoring the construction of that facility that we have
5 there. So I've been -- I've been involved with all the
6 operators that have ever worked in that location. We've had
7 a couple of operators that didn't do very well in there for
8 a variety of reasons. We've had a couple that has done very
9 well in there. So we've always had some issues with the
10 building though. Let me say this. It's what we call a
11 "café" and so it doesn't have a full-line cafeteria service.
12 It's mostly self-serve, but it does serve hot lunches and
13 soups and entrees and things like that. So we -- ao anyway,
14 we've always -- that building has had a history of demands
15 that we can't meet. For example, they wanted a salad bar so
16 we got a salad bar in there. And the operator had that
17 salad bar for a long time until she kept losing money on it
18 and losing money and losing money because they wanted the
19 salad bar, but they didn't buy from it. So when you a salad
20 bar and you don't sell it, you dump a lot of product and you
21 lose a lot of money. So just -- that's just an example. We
22 brought in -- they requested a fountain pop machine. We
23 brought in a fountain pop machine -- 'cause initially they
24 didn't want a fountain pop machine in there because it's a
25 nice building and they didn't want pop spilled. So then

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1 they -- we got a fountain pop in there, and they didn't buy
2 it, and the syrup went -- the syrup went bad. So we've
3 tried to accommodate their needs and those kinds of things
4 so -- over the years. Now, when the last operator left,
5 we've had this facility on the bid line, and then we had to
6 get a temporary operator to keep it going. Apparently, one
7 of the people that worked in the building is Sam Lopez's
8 mother.

9 Q All right. Let's speed up a little bit.

10 A Okay. I will, but I got to get -- so Sam Lopez -- so anyway
11 so then Constance arranged to -- I was the promotional
12 agent, but Constance had arranged to put Sam Lopez in there,
13 and so we did that, and I was the PA for Sam Lopez. Yeah,
14 he did an okay job. His health inspections weren't always
15 the best, but he did an okay job. But if you looked at his
16 report, he wasn't making -- he wasn't -- he wasn't making a
17 whole lot of money. He wasn't -- he didn't pay -- he didn't
18 pay his insurance and there was other things that I had to
19 call him up about the things like that. He had a worker in
20 there, and he didn't have workers' compensation and those
21 kinds of things. He didn't have a sales tax license and so
22 on and so forth. But anyways so we -- and then when Andrea
23 bid on the location, she was at the Flint State Office
24 Building and she had finished six months at that location.
25 And after six months, you're allowed to bid on a new

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1 location. So she did that, and that was her motivation for
2 bidding on the Hall of Justice. It had been on the bid
3 line. She thought that there was some good possibilities of
4 catering. She loved catering and food prep so she thought
5 that would be a good promotion in the program. Flint was
6 just a little snack bar in the lobby so she didn't have a
7 whole lot of food prep in that area in Flint. So she wanted
8 something with more challenge so she did that.

9 Q So you were a promotional agent for Mr. Lopez?

10 A I was the -- yup, and for Andrea also at the Flint State
11 Office Building.

12 Q All right. And so there came a time when Andrea bid on it;
13 correct?

14 A That's correct.

15 Q Okay. And at that time were you aware of any rule or of any
16 exception indicating that Sam Lopez had to be there for 30
17 days?

18 A No. There was no condition on the bid announcement that
19 required the operator to comply with that.

20 Q All right. And so were you -- did you facilitate a meeting
21 between Andrea and anybody else?

22 A No. Andrea had asked me to go with her to visit with Same
23 because she had been presented with this possibility, and I
24 went with her to that meeting. She expressed her concerns
25 later on. Then at some point she told counsel in Saginaw

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1 that she would not want to work with him because of his
2 condescending remarks and so -- and there was no condition
3 on the bid that he had to. It was -- she was at the Flint
4 State Office Building and she reported to me that James Hull
5 went over to the Flint State Office Building and told her
6 directly that if she didn't take Sam Lopez's trainer, she
7 would fail at the Hall of Justice. And she told -- and so
8 she told -- she says, "Well, maybe you think that, but I'm
9 not going to take them anyway because I'm not required to.
10 So that's -- then apparently the meeting got cancelled. It
11 was then at that point that Andrea -- the meeting that
12 Constance had set up with Lisa Kutas had been cancelled. It
13 was at that point Andrea called me and said, "I'm calling
14 Lisa. Constance has cancelled the meeting. I'm calling --
15 I'm calling Lisa to see if I can meet with her and try to
16 bridge the gap because I want these people to like that and
17 I don't want them to have false impressions." She said,
18 "Would you go with me?"

19 Q Was there anything improper with you going with her --

20 A No. I was her promotional agent.

21 Q Weren't you supposed to go with her?

22 A Yes. I felt that it was my job to go with her; yeah.

23 Q All right. Tell us about the discussions at that meeting
24 with Mr. Lopez.

25 A Andrea presented her catering menu and talked about some of

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1 the things she has done in her past and they talked about --
2 they talked about babies and things like that and different
3 things 'cause she was expecting and so on and so forth. And
4 I didn't say anything at all to Lisa regarding the program
5 or what we could do or couldn't do other than saying that we
6 would support Andrea all the way and as much as we could to
7 make her transition a success. We've heard the building say
8 what they would like to have and we want to work with them
9 to do that.

10 Q What happened with that location?

11 A At the last -- well, because of the fact that she did not
12 want to take Sam Lopez as the trainer, Constance Zanger was
13 willing to bend the rules and allow her to rescind her bid
14 because under BEP rules you are not allowed to rescind your
15 bid once you've accepted that location because it has been
16 awarded to you. And that was the only -- never in the ten,
17 12 years that I've been there that that's ever happened
18 until then.

19 Q Isn't there a time limit when you rescind a bid that you
20 have to wait to bid on a new location?

21 A Six months. Once you get a location -- once you're awarded
22 a location, you're supposed to wait six months before you
23 can bid on another location. Usually, people take their it
24 and operate it, but she was allowed to rescind her bid. And
25 never in the history that I know of prior to that has that

1 ever happened.

2 Q Okay. And then you were the promotional agent for Ms. --
3 continued to be for Mr. Lopez?

4 A Yes; yeah, absolutely.

5 Q And for her at the other location?

6 A Yes, that's correct; at the State library, yeah.

7 Q And then how long was -- were you his promotional agent?

8 A Let's see. Well, let's see. Until I was terminated. I
9 mean, he was still there.

10 Q He was still there?

11 A Well, he was still there. He's not now.

12 Q I understand. But he was there when you were terminated?

13 A Yes, sir.

14 Q He had his own issues?

15 A Well, yeah. You know, I mean, he was -- you know, he had
16 his own issues; yeah. But don't we all?

17 Q I understand that. But he had his own problems there?

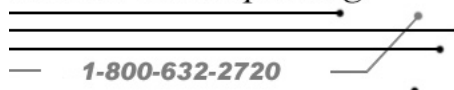
18 A Well, yeah, he had his problems there. I mean, he wasn't
19 running based upon the rules.

20 MS. SMITH: I object. Where are we going here
21 with this?

22 A Based upon the rules of the program, he wasn't running an
23 efficient operation.

24 Q All right. And then you had a meeting with several
25 individuals. Were you there when Justice Cavanagh was

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1 there?

2 A Yes, I was at that meeting; uh-huh. That was -- that was
3 prior to Andrea -- that was when Andrea first bid and was
4 awarded the facility and we got those emails. Now, that was
5 prior to -- prior to her meeting with Sam and also prior to
6 her meeting with Lisa Kutas.

7 Q Okay. Could you tell us -- I don't want to know what
8 everybody said. But what was the discussion about?

9 A It was about the blind operator coming in and I think of the
10 previous testimony, pretty much was said exactly what
11 happened as far as -- and Mr. Cannon expressed -- told what
12 the law was and what was required and that we would
13 certainly support the operator in whatever way that we
14 could. At that meeting though, there was no particular
15 problem. It's that Sam would be the -- Sam would be a
16 trainer for the operation. It was proposed as a
17 possibility, but there was no -- I don't remember it being
18 any promise.

19 Q Okay. All right.

20 A But they said it to Justice Cavanagh so I guess that's a
21 guarantee.

22 Q Well, you know, it's just sort of unusual, I guess. That's
23 what I was sort of wondering.

24 A Well, it's a touchy very important building.

25 Q I can understand that.

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1 A And there's only 200 people --

2 MS. SMITH: Is there a question here?

3 MR. HUTCHENS: Sir, please, just wait until -- I'm
4 sorry, ma'am. Please wait until you've got a question in
5 front of you, sir.

6 THE WITNESS: Okay.

7 Q There's a number of exhibits that we're going to go through
8 that were introduced here today, and we'll start with D-1 --
9 okay? -- where it says your position description. It says
10 you're a liaison between the blind vendors and the
11 Commission for the Blind management staff; is that correct?

12 A That's correct.

13 Q Okay. Do you feel that in any way you did not act properly
14 in that function?

15 A No, I -- no. I always acted very properly in that function.

16 Q Okay. And it also says in your position description that
17 the employee -- which I assume is you -- is responsible for
18 the following geographical areas; Ingham, Eaton, Kalamazoo,
19 Branch, Clinton, Shiawassee, Genesee, Livingston, Jackson,
20 Calhoun Counties. Do you recall that?

21 A Yeah, that's -- yeah, those were all counties that were in
22 my area most of the time; yeah.

23 Q And you took care of those obviously; all those facilities?

24 A Yes.

25 Q D-2 is the Commission for the Blind vending facility program

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1 which is just simply the rules. Okay?

2 A Uh-huh (affirmative).

3 Q Do you feel that you were asked to do everything that --
4 excuse me. When you were asked to do something, you did it
5 to the best of your ability?

6 A Yes, sir. I sure did.

7 Q All right. You received an Exhibit 3, a memorandum. And I
8 want you to discuss this about this one-day suspension.

9 A Yes, sir.

10 Q Can you tell us what happened?

11 A Yes. I had been requested to go along to a meeting with
12 some DELEG officials regarding some issues that the National
13 Federation of the Blind of Michigan had regarding the -- and
14 I don't even know what the issues were at the time. But I
15 am the -- as the National Federation of the Blind of
16 Michigan state affiliate, I am on the board of directors and
17 I'm also the chairman of the resolutions committee. And all
18 of these -- all of these issues were relevant to resolutions
19 that we had passed at our state convention by our
20 membership. So we -- I had -- I think the meeting -- I went
21 to the meeting in lieu of doing any lunch, but I had come in
22 early specifically to make sure that I covered eight hours
23 of that day because I had -- I had things to do that day,
24 too.

25 Q All right. Well, let me ask you specifically. What time do

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1 you recall coming in that morning?

2 A Around 6:00 o'clock; 6:00 a.m.

3 Q All right. And what time did you leave for the meeting?

4 A I think it was at 11:00.

5 Q Okay. Did you come back? Did you work after the meeting?

6 A Yes, sir.

7 Q Okay. How many hours? What was the meeting; from 11:00 to
8 what?

9 A 12:00 or around there.

10 Q Okay. And so you come back. And then you came back and you
11 worked after the meeting?

12 A Yes, sir.

13 Q Okay. How many hours did you work that particular day?

14 A 'Til 5:00.

15 Q All right. And so this says, "This disciplinary action
16 shall consist of a one-day suspension"; is that correct?

17 A Yes.

18 Q It says, "You have the right to appeal this action through
19 the grievance procedure." My next question is why didn't
20 you appeal it?

21 A Because I felt that it -- well, first of all it wouldn't do
22 me any good anyway, and it would be a waste of time, and I
23 had more important things to do, and I couldn't -- and it
24 was just a one-day suspension and, you know, so I didn't --
25 I didn't -- I didn't appeal it because it was a waste of my

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1 time.

2 Q All right. And was it with pay or without pay?

3 A Without pay.

4 Q All right. So you just took the one-day suspension rather
5 than filing a grievance procedure?

6 A Yes, sir.

7 Q Okay. Then we go to D-4, and I'll just read what we have
8 underlined here. It says --

9 A Could I mention something about that?

10 Q No. Just try to answer my questions -- okay -- so we can
11 get through this.

12 A All right.

13 Q It says, "For some time promotional agents have been asked
14 to submit a tentative itinerary and a summary of weekly
15 activities." Did you do that?

16 A Yes, sir.

17 Q Okay. When you received these memos from James Hull or
18 anybody else, did you comply?

19 A Yes, sir.

20 Q How long would it take you to comply?

21 A Well, the next report. Whatever the next report is or the
22 next week when I did my report. I added those, whatever he
23 asked to put in the report.

24 Q Then you got -- when they talked about this Number 5 which
25 is a followup to formal counseling memo. Do you recall

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1 that?

2 A I don't recall that particular counseling memo.

3 Q All right. There's three of them. I don't want to have
4 to -- obviously, they don't have these in Braille and I
5 don't want to have to read these all to you. Okay? And so
6 do you recall receiving the formal counseling memos?

7 A Yes, I recall receiving them; yes.

8 Q All right. How would you receive them?

9 A I would get them in print and Braille.

10 Q All right. Okay. And let me give you an example. On one
11 of the -- the first counseling memo dated October 10th,
12 2008, it says, "Resolve entirely the ending inventory for
13 the Victor Building within one week of receipt of the
14 counseling memo. If there's extenuating circumstances that
15 result in the inability to complete this directive in a
16 timely manner, you must provide that information to me in
17 writing within one week of this memo and set up a meeting
18 time to discuss this issue with me." Did you do any of
19 that?

20 A Yes, I resolved it.

21 Q How did you resolve it?

22 A There was a dispute between the two operators; the incoming
23 operator and the outgoing operator; of pop that was found in
24 the vending machine to be out of date and also pop in the
25 storage room that was also found by the operator to be out

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1 of date. Sometimes these products -- the products -- the
2 date on these products aren't found out to be out of date
3 until, you know, after the operators come in there even
4 after the two weeks. And if the two weeks of review had
5 passed, so -- and the incoming operator didn't want to
6 accept the product that the outgoing operator had said was
7 there as part of their inventory. So I had to resolve that
8 issue as far as --

9 Q Okay. You resolved the issue.

10 A Yes, sir.

11 Q Did you let these folks know at the Michigan Commission for
12 the Blind that you had resolved it?

13 A Yeah, I don't recall that, but we processed the agreement
14 with the new numbers on it so I assume that that was --

15 Q Okay. How do you process the agreement?

16 A We put a final number on starting inventory and other
17 conditions relevant to the agreement and --

18 Q So there's a record for that?

19 A Yeah; sure, absolutely.

20 Q All right. Then it says on Number 2, "Update all site
21 visits outlined in this memo no later than two weeks after
22 the receipt of this document and provide copies of the site
23 visits to me." Did you do that?

24 A No, for the same reason that I couldn't do it within two
25 weeks --

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1 Q Did you do this eventually?

2 A Eventually I got caught up with those; yes.

3 Q Okay. How long did it take you to get caught up?

4 A Months, I'm sure.

5 Q Months? All right. And why? Because of the nature of your
6 schedule?

7 A Yeah. It's more just -- what do you put -- what do you do
8 after those 60 hours a week -- you know, a week of work?
9 You know, I just ran out of time, and I told Constance that.
10 I told Constance Zanger that in counseling memos; "I just --
11 I just run out of time. I can't get it all in there and
12 whatever you can do to help me." That's when we talked
13 about more training.

14 Q All right. And what was the resolution as it related to
15 more training?

16 A I never got any.

17 Q Okay. Then it goes on to say in Number 4, "All missing
18 inventories listed in this item above must be in the BEP
19 system within three weeks of receiving this memo." Do you
20 recall that?

21 A Yes, I recall that.

22 Q Okay. And does it suffice to say that you recall the
23 directions on this particular memo?

24 A Yes; yeah.

25 Q All right. And would you comply with them?

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1 A Yes, I did that.

2 Q And did you comply with them?

3 A I did that.

4 Q Okay.

5 MS. SMITH: Can I interject with a question here?

6 MR. KAMAR: Sure.

7 MS. SMITH: Is it your intention to go through
8 each one of these counseling memos? Because these were
9 issued in -- I'm sorry -- in 2008.

10 MR. KAMAR: Well, I think he has a right. You're
11 using this to try to have him terminated or to upkeep his
12 termination, and I think he has got a right to address each
13 one of these issues.

14 MS. SMITH: Okay. But this was a 2008 issue.

15 MR. KAMAR: I understand that.

16 MS. SMITH: Okay.

17 MR. HUTCHENS: These were -- if I can just
18 interject. These were 2008 issues. These were not used to
19 justify his termination if I'm correct, ma'am.

20 MS. SMITH: Uh-huh (affirmative).

21 MR. HUTCHENS: These were given solely as examples
22 of prior problems with the grievant's work.

23 MS. SMITH: Uh-huh; yes. It shows a pattern of
24 progressive discipline.

25 MR. HUTCHENS: These are not -- these are not

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1 issues -- these are not current issues.

2 MS. SMITH: Right.

3 MR. KAMAR: Well, as long as you're not
4 considering these for the record.

5 MR. HUTCHENS: No; no.

6 MR. KAMAR: No disrespect. As long as you're not
7 considering these, I won't go through them.

8 MR. HUTCHENS: No.

9 MR. KAMAR: All right. Thank you.

10 MR. HUTCHENS: No, that would be the only
11 consideration that I would give them is that to the extent
12 that there would be an argument that he had no prior
13 problems, these would be some indication that there may have
14 been some prior issues.

15 MR. KAMAR: As long as you can tell me you're not
16 considering them, then I'll leave them alone.

17 MS. SMITH: Well, they were prior issues, but they
18 were 19- -- I'm sorry -- 2008, and it shows a pattern.

19 MR. KAMAR: Well, I mean, she -- you know, I
20 didn't raise these issues.

21 MR. HUTCHENS: This is -- I understand that, sir.
22 I understand that you didn't raise the issue. He was
23 discharged based upon a 2009 service rating --

24 MS. SMITH: Yes.

25 MR. HUTCHENS: -- not based upon these 2008

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1 counseling memos.

2 MR. KAMAR: Again, I mean, I understand where
3 you're coming from.

4 MR. HUTCHENS: The counseling memos themselves are
5 not being litigated here. Why they've been entered into the
6 record -- I'm not the one presenting the cases.

7 MR. KAMAR: All right. Then I think we can skip
8 this.

9 Q I'm going to ask you specifically on D-7 where they tried to
10 submit to you the instructions to cut and paste into the
11 site visits. Do you remember that memo?

12 A Yeah. I didn't recall it until it was presented in
13 testimony, but I do remember it.

14 Q All right. Did anybody convert these notes in Braille?

15 A No.

16 Q So were you able to do this?

17 A No; no, I was not able to do that because the way the system
18 was set up, I didn't have the training that would allow me
19 to know exactly what key strokes to use in order to do what
20 I had to do on the computer based upon that -- those
21 instructions. And I started to work with Lucy Edmonds on
22 that to determine, you know, what we could do, but then
23 that's when -- that didn't get very far because she's busy
24 and I was busy.

25

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1 Q All right. But you asked for help?

2 A Sure. I asked Lucy from time to time, "What's this process"
3 or "What's the sequence on keystrokes for this particular
4 thing," you know, and then she would tell me.

5 Q All right. Number 9, I believe we already talked about
6 which is the popcorn state email. We did that. We
7 discussed that. That's Number 10, the state email. We
8 discussed Number 10. Number 11 -- okay. I'm going to have
9 to ask you this on Number 11. This is an email from James
10 Hull to you. It says:

11 "There are some unresolved issues with the RFTC
12 facility when it was closed. Please advise me as to
13 what happened to the computer that was assigned to the
14 facility. Additionally, please provide me with a copy
15 of the invoice that you gave to Rutherford for the
16 inventory they took from the facility."

17 Okay. Did you do that?

18 A Yes, sir.

19 Q Okay. How did you do that? Call?

20 A Call Rutherford?

21 Q No.

22 A Call James?

23 Q Did you call James -- told him you did?

24 A I explained to James that -- I think it was a personal
25 conversation face to face -- that the computer -- Rutherford

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1 took the computer to his new location and that -- was this
2 computer going to fall under the new policy that the BEP had
3 regarding the purchase of a computer -- laptop computer for
4 each operator -- because I think the purchase had occurred
5 just prior to that. But then there was a new policy that
6 there would be a computer bought for each operator and would
7 that fall under that particular -- and we just -- that
8 probably would go under that new policy that he had his new
9 computer and that would be okay. We wouldn't have to buy
10 him another one.

11 Q All right. So you addressed the issue?

12 A Yes, sir.

13 Q Okay. And you said -- on the same exhibit, do you recall
14 sending an email to James Hull indicating you in fact did
15 give the invoice to David?

16 A To Rutherford?

17 Q No; to Judy. I'm sorry. To Judy.

18 A Oh, to Judy?

19 Q Yes.

20 A No, I don't think I sent him an email. I just gave him the
21 invoice once I heard that he wanted it.

22 Q All right. But if there was an email there, you wouldn't
23 deny it?

24 A No, I wouldn't. No, I wouldn't do that.

25 Q And then eventually you learned that the invoice was paid;

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1 is that correct?

2 A Yeah, eventually. Yeah; eventually, yeah. I think it was
3 in November; early November. However, by that time --
4 sorry.

5 Q That's okay.

6 MR. KAMAR: I don't have anything further.

7 MR. HUTCHENS: Ms. Smith, do you have any
8 questions for the witness?

9 MS. SMITH: Yes, I do; but due to the lateness of
10 the hour, I was wondering if we could get another date for a
11 continuation?

12 MR. HUTCHENS: I would like to finish today. Do
13 you have any other witnesses to call besides the grievant?

14 MR. KAMAR: No, but in all fairness to her, she
15 said she had someplace to go and I said I wouldn't object to
16 it.

17 MR. HUTCHENS: Oh, I'm sorry. Well, I didn't
18 realize you had a scheduling issue, ma'am.

19 MR. KAMAR: But I would just like the right to
20 reserve to call him --

21 MR. HUTCHENS: I can certainly continue this to
22 another day if you believe you can't wrap up your
23 cross-examination today or if you have someplace you need to
24 be.

25 MS. SMITH: Could I make a short phone call?

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1 MR. HUTCHENS: Sure. Well, we'll go off the
2 record.

3 (Off the record)

4 MR. HUTCHENS: Let's go back on the record. Ms.
5 Smith, you have some questions for the grievant at this
6 point, I take it?

7 MS. SMITH: Yes, I do.

8 CROSS-EXAMINATION

9 BY MS. SMITH:

10 Q Mr. Robinson, did you meet the October 17th deadline to
11 enter all site visits within the 12 months?

12 A No.

13 Q Did you comply with all of the records given to you by your
14 supervisor in the interim ratings?

15 A As many as I could.

16 Q And do you know how many you complied with?

17 A No, I do not.

18 Q Did you negotiate with the SECC to set up a popcorn
19 giveaway?

20 A No.

21 Q Did you negotiate a price?

22 A No, I did not.

23 Q There was a memo that the Department presented, Department
24 Exhibit 9, and it was an email from a Lisa, and she states
25 in the email that she had discussions with you about the

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1 amount being budgeted and compensating the vendors. Did you
2 have that conversation with Lisa?

3 A I had a conversation with Lisa regarding --

4 Q Was it about that issue?

5 A She talked -- yeah. She said that she was --

6 Q Was it about that issue?

7 A Yes. It was about she had --

8 Q So did you negotiate a price?

9 A No, I did not. I don't have any power to negotiate a price.

10 Q That was the only question I asked you. The Rutherford
11 invoices, you were directed by those -- you were directed by
12 your supervisor, Mr. Hull, on four different occasions to
13 give that information to him. Did you give that information
14 to him?

15 A I did give it to him.

16 Q Did you give it to Mr. Hull?

17 A I gave it to his "in" box.

18 Q You were directed to give it to him. Did you give it to
19 him?

20 A I gave it to his "in" box.

21 Q Was that giving it to him?

22 MR. KAMAR: That has been asked and answered three
23 times.

24 MS. SMITH: No.

25 MR. HUTCHENS: Sustained. I'll sustain that

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1 objection. He has indicated what he did with it -- put it
2 in his "in" box. Whether you want to argue that that's
3 giving it to him or not giving it to him, being cooperative
4 or not; that's a matter for argument.

5 Q You were directed by your supervisors -- supervisor, rather,
6 not to conduct any inventories without first providing your
7 supervisor with the outgoing and inventory amounts. Did you
8 do that?

9 A After I received that directive, I certainly did comply with
10 that.

11 Q Did you discuss the Ottawa closing with Connie?

12 A I discussed the desire of Don Austin to close the facility;
13 yes.

14 Q I'm sorry. What?

15 A I discussed the desire of Don Austin, the operator, to close
16 the snack bar; yes.

17 Q Were you directed to keep the store open?

18 A I don't have any power to keep it open.

19 Q Were you directed by Connie to keep the store open?

20 A She had questions about it and I did receive that memo
21 regarding that; setting up that meeting.

22 Q In Department Exhibit 13, which is a memo to you -- an email
23 to you from Connie regarding the Ottawa store, she says, "I
24 am directing you to keep the store open until we have an
25 opportunity to discuss this in detail." Did you keep the

1 store open?

2 A I kept it open --

3 Q Yes or no?

4 A I kept it open, but I didn't have any power to keep it open.

5 Q Did you communicate with Mr. Hull and Connie on the
6 transition of operators at the Hall of Justice?

7 A Yeah; yeah. I communicated with both of them about it.

8 Q How did you do so?

9 A I was in different meetings with them when that was
10 discussed; the big meeting and other meetings.

11 Q Did you complete the master plans?

12 A I completed every master plan for the year ending in 2009.
13 In fact, I had -- I was the only promotional agent to have
14 all my master plans and all my evaluations in on the
15 deadline of September 1st. The other PA's did not.

16 Q In your testimony you said that for the Ottawa store, you
17 said, "Everybody said that it's fine to do what I wanted;
18 that they didn't care." Who was "everybody"?

19 A Don Austin reported to me that once he talked to people in
20 the building, that people were okay with the closing of the
21 facility as a snack bar. They didn't care because they
22 could get their stuff downstairs.

23 Q You also testify that you told him that he could close the
24 store.

25 A He was --

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1 Q Was that within your authority to tell him that he could
2 close the store?

3 A It's not within my authority to tell him not to close it or
4 to close it.

5 Q So is it your position that you complied with everything
6 that was in the interim rating?

7 A Since I don't have the interim rating in front of me, I
8 can't say yes or no. If you've got it in Braille, I would
9 be glad to look at it.

10 MS. SMITH: No further questions.

11 MR. KAMAR: No questions.

12 MR. HUTCHENS: All right. Thank you very much,
13 sir.

14 MR. HUTCHENS: Mr. Kamar, does the grievant have
15 any other witnesses to call?

16 MR. KAMAR: We rest, Your Honor.

17 MR. HUTCHENS: All right. Is there any rebuttal
18 case presentation from the Department or are the parties
19 ready for closing arguments?

20 MS. SMITH: Pardon?

21 MR. HUTCHENS: Is there any rebuttal case
22 presentation from the Department or are the parties ready
23 for closing arguments?

24 MS. SMITH: No.

25 MR. HUTCHENS: All right. As I indicated when we

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1 were off the record, the parties would have the opportunity
2 to either close orally or in writing. We finished a little
3 bit earlier than I thought that we would. Would the parties
4 prefer oral closings or written?

5 MR. KAMAR: I think we -- go ahead.

6 MS. SMITH: I would do a written closing.

7 MR. KAMAR: Yeah, I think that's -- in light of
8 all the testimony that was taken today, I think to do the
9 case justice we probably should do --

10 MR. HUTCHENS: That's fine. We will -- I'm
11 assuming that we have both of your email addresses.

12 MR. KAMAR: I believe so.

13 MR. HUTCHENS: Okay. Then we will notify you by
14 email. We'll send you a copy of the transcript by email and
15 at that point we will notify you of the deadline for your
16 submission of your written closing. You'll submit those
17 directly to this office, but you will supply each other
18 directly to each other with a copy of your written closing
19 argument.

20 MR. KAMAR: I know you've got it. You've sent us
21 correspondence so I know you've got our email.

22 MR. HUTCHENS: Well, they would have at the front
23 desk. So I just wanted to make sure that we have it before
24 you left.

25 MR. KAMAR: I shouldn't say "you."

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