

BEFORE ARBITRATOR PATRICK DUNN

IN THE MATTER OF ARBITRATION)

BETWEEN:)

AMERICAN FEDERATION OF)

GOVERNMENT EMPLOYEES,)

LOCAL 910,)

Union,)

) FMCS No.

and) 200424-06178

DEPARTMENT OF VETERANS)

AFFAIRS VETERANS CRISIS)

LINE,)

Agency.)

TRANSCRIPT OF PROCEEDINGS

KANSAS CITY, MISSOURI

DECEMBER 7, 2021

Job No. TDB4970676

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I N D E X

PAGE

1		
2		
3	Union opening statement.	8
4	Agency opening statement.	10
5		
6	UNION WITNESSES:	
7	JILL FOLSOM	
8	Direct Examination by Mr. Boyte.	14
9	KATHLEEN SIDEBOTTOM	
10	Direct Examination by Mr. Boyte.	19
11	Cross-Examination by Ms. Hunter.	26
12	Redirect Examination by Mr. Boyte.	27
13	MARY LOCKE	
14	Direct Examination by Mr. Boyte.	34
15	Cross-Examination by Ms. Hunter.	36
16	BRENDA PARSLEY	
17	Direct Examination by Mr. Boyte.	38
18	Cross-Examination by Ms. Hunter.	42
19	JOSHUA BARTON	
20	Direct Examination by Mr. Boyte.	46
21	Cross-Examination by Ms. Hunter.	51
22	GENE PARKER	
23	Direct Examination by Mr. Boyte.	54
24	Cross-Examination by Ms. Hunter.	57
25		

I N D E X (continued)

UNION WITNESSES: (continued)

KELLY GOUDREAU

Direct Examination by Mr. Boyte. 60

Cross-Examination by Ms. Hunter. 65

Redirect Examination by Mr. Boyte. 68

LYNEAL VANREED

Direct Examination by Mr. Boyte. 72

Cross-Examination by Ms. Hunter. 73

ANTHONY MCKENZIE

Direct Examination by Mr. Boyte. 76

Cross-Examination by Ms. Hunter. 78

JAMES MOORE

Direct Examination by Mr. Boyte. 79

Cross-Examination by Ms. Hunter. 80

ANN WYMORE

Direct Examination by Mr. Boyte. 84

Cross-Examination by Ms. Hunter. 88

DAVID ISAACKS (via videoconference)

Direct Examination by Mr. Boyte. 90

Cross-Examination by Ms. Hunter. 93

Redirect Examination by Mr. Boyte. 108

Recross-Examination by Ms. Hunter. 110

I N D E X (continued)

DAVID ISSACKS (continued)

Further Redirect Examination by Mr. Boyte. . . 113

Further Recross-Examination by Ms. Hunter. . . 114

Further Redirect Examination by Mr. Boyte. . . 115

Union rests. 116

AGENCY WITNESSES:

ZACHARIAH ROUNDS

Direct Examination by Ms. Hunter. 117

Cross-Examination by Mr. Boyte. 138

DANIEL KARR

Direct Examination by Ms. Hunter. 142

Cross-Examination by Mr. Boyte. 217

Redirect Examination by Ms. Hunter. 225

Recross-Examination by Mr. Boyte. 226

Agency rests. 227

E X H I B I T S

NUMBER	MARKED	OFFERED	ADMITTED
Joint 1 -	8	--	--
Joint 2 -	8	--	--
Joint 3 -	8	--	--

I N D E X (continued)

E X H I B I T S

	NUMBER		MARKED	OFFERED	ADMITTED
1	Union	1 -	15	15	16
2	Union	2 -	17	18	18
3	Union	3 -	19	21	22
4	Union	4 -	22	24	24
5	Union	5 -	25	26	26
6	Union	6 -	39	40	40
7	Union	7 -	41	42	42
8	Union	8 -	46	48	48
9	Union	9 -	48	49	49
10	Union	10 -	49	50	50
11	Agency	1 -	120	122	123
12	Agency	2 -	128	131	132
13	Agency	3 -	132	133	133
14	Agency	4 -	150	154	154
15	Agency	5 -	154	159	159
16	Agency	6 -	159	162	162
17	Agency	7 -	162	167	167
18	Agency	8 -	167	168	168
19	Agency	9 -	168	171	171
20	Agency	10 -	171	173	173
21	Agency	11 -	173	178	178

I N D E X (continued)

E X H I B I T S

NUMBER	MARKED	OFFERED	ADMITTED
Agency 12 -	178	180	180
Agency 13 -	180	182	182
Agency 14 -	182	184	184
Agency 15 -	184	186	186
Agency 16 -	187	189	189
Agency 17 -	190	192	192
Agency 18 -	192	195	195
Agency 19 -	195	197	197
Agency 20 -	197	199	199
Agency 21 -	199	203	203
Agency 22 -	204	206	207
Agency 23 -	133	136	136
Agency 24 -	136	138	138
Agency 25 -	157	158	159
Agency 26 -	157	158	158
Agency 27 -	211	211	212
Agency 28 -	212	212	213
Agency 29 -	212	213	213
Agency 30 -	214	214	214
Agency 31 -	214	215	215

Reporter's Note: Exhibits retained by parties.

1 (The hearing commenced at 9:00 a.m.)

2 (Joint Exhibits 1 - 3 were marked
3 for identification.)

4 ARBITRATOR DUNN: Are you ready to
5 proceed? Do you have an opening statement?

6 MS. HUNTER: Yes, sir.

7 ARBITRATOR DUNN: Ready, Donny.

8 MR. BOYTE: Today the Union will
9 show through evidence and testimony the Agency
10 violated the Master Collective Bargaining
11 Agreement by failing to give proper documentation
12 to the reason why an individual received incentive
13 pay, retention pay or monetary awards. The Agency
14 also failed to distribute incentive pay, retention
15 pay or monetary awards in a fair and equitable
16 manner. Select employees started receiving a 10
17 percent retention bonus due to COVID-19 virus on
18 April 17, 2020. The number of employees who are
19 receiving this retention pay is unknown. The
20 Union submitted a Request for Information asking
21 for this information to determine the number of
22 employees who did receive the extra pay and the
23 number who did not.

24 The Agency refused to provide the
25 information. Other select employees have received

1 an undocumented bonus without any indication as to
2 the reason for the bonus. Every employee that
3 enters the Kansas City VA Hospital or other Kansas
4 City VA Community-Based Outpatient Clinics have an
5 elevated risk of exposure. Every position is
6 unique in its duties of the position. Some
7 positions face greater risk of exposure than
8 others.

9 We will show in one position an employee
10 was awarded extra pay and had less risk of
11 exposure than an employee with the same job --
12 same job title working in a different clinic who
13 has not received any retention or incentive pay.
14 Employees receiving retention or incentive pay due
15 to COVID-19 and other employees not receiving
16 their retention or incentive doing the same job is
17 not fair or equitable and should be corrected.

18 The Union asks that you sustain the
19 grievance and order -- and in doing so order the
20 Agency to pay employees the same retention and
21 incentive pay across the board to all employees.
22 In doing so, the Agency should be ordered to
23 provide the Union with the necessary documentation
24 to ensure your award is carried out in a fair and
25 equitable manner.

1 ARBITRATOR DUNN: So in simple
2 terms, this is about the retention bonus that was
3 given for COVID, basically as a result of COVID?

4 MR. BOYTE: Yes, sir.

5 ARBITRATOR DUNN: Okay. And the
6 Union's argument is that it was not done -- the
7 giving was not done fairly and -- and --

8 MR. BOYTE: Equitably.

9 ARBITRATOR DUNN: -- equitably,
10 okay? Okay.

11 Kat.

12 MS. HUNTER: Good morning,
13 Arbitrator Dunn and Union representatives. My
14 name is Kathleen (Kat) Hunter and I'll be
15 representing the Agency, the United States
16 Department of Veterans Affairs in this arbitration
17 today.

18 AFGE Local 910 invoked arbitration after
19 filing a Step 3 grievance on behalf KCVA
20 bargaining unit employees that are allegedly not
21 receiving the additional 20 percent hourly
22 incentive pay during the COVID-19 pandemic. The
23 Union has not and did not grieve any information
24 request. In its grievance the Union cites to
25 various articles in the collective bargaining

1 agreement where awards are discussed.

2 We are not here today about awards. We
3 are here today about retention incentives that
4 were provided and are still being provided to
5 employees in positions where retention at the
6 Agency is crucial. Awards and retention
7 incentives are vastly different and must be
8 treated as the same -- or as such, excuse me. As
9 stated in VA Handbook 5007, a retention incentive
10 is an effective tool only when strategically and
11 prudently used to retain employees with high or
12 unique qualifications or whose service -- services
13 are essential to a special Agency need when such
14 employees are likely to leave Federal service
15 without an incentive. A retention incentive is
16 not appropriate when used primarily to compensate
17 high performing employees for their service or
18 essential employees who are not likely to leave
19 Federal service. Awards may be appropriate in
20 those circumstances.

21 Accordingly -- excuse me, according to 5
22 C.F.R. 308 and 306 -- and I can give you the
23 correct -- 5 C.F.R. 575.308 and 306, an Agency in
24 its sole and exclusive discretion, subject only to
25 OPM review and oversight, may approve a retention

1 incentive for an individual employee or a group of
2 employees. Bargaining unit status is not a
3 criteria that is considered.

4 Here at KCVA retention incentives were
5 given and are still being given to employees whose
6 positions are crucial to the mission of the Agency
7 and, without such incentive, may leave Federal
8 service. A blanket retention incentive for all
9 KCVA bargaining unit employees would be contrary
10 to Agency policy, the Office of Chief Human
11 Capital Officer Guidance and the Federal Code of
12 Regulations.

13 As such, the Agency will demonstrate that
14 a retention incentive is not an award but a tool
15 that has been used appropriately by the Agency to
16 assist in its critical mission.

17 ARBITRATOR DUNN: And you will,
18 I'm sure, in your brief direct me to those C.F.R.
19 sections and other sections that --

20 MS. HUNTER: Yes. They're marked
21 as exhibits as well.

22 ARBITRATOR DUNN: Okay, great.
23 Thank you.

24 MS. HUNTER: Uh-huh.

25 ARBITRATOR DUNN: I just didn't

1 know whether I needed to write them down.

2 MS. HUNTER: No, you're good.

3 MR. BOYTE: Okay. Do you have a
4 copy of your opening statement for me?

5 MS. HUNTER: No.

6 ARBITRATOR DUNN: So basically the
7 Agency's position is that blanket retentions are
8 inappropriate and harmful and not in accordance
9 with both the law and your policies or procedures?

10 MS. HUNTER: Correct.

11 ARBITRATOR DUNN: Okay. Are you
12 ready to -- excuse me.

13 MS. HUNTER: If I can add, I
14 apologize.

15 ARBITRATOR DUNN: Of course.

16 MS. HUNTER: I would also add that
17 they seem to be saying that they are also grieving
18 an information request that they have made to the
19 Agency. That is not part of this grievance and
20 that seems to be a point of their argument in
21 their opening statement which is why I addressed
22 it in mine as well.

23 ARBITRATOR DUNN: Okay. If
24 it's -- it's either part of the grievance or it
25 isn't. We'll look at that as it's presented.

1 MR. BOYTE: We're not grieving the
2 information request, it's just a fact of what led
3 up to the grievance.

4 ARBITRATOR DUNN: Thanks. That
5 helps. Are you ready to proceed then --

6 MR. BOYTE: Yes, sir.

7 ARBITRATOR DUNN: -- Donny?

8 You want to call your first witness.

9 MR. BOYTE: First witness is Jill
10 Folsom.

11 ARBITRATOR DUNN: Ms. Folsom,
12 would you allow the court reporter to swear you in
13 first.

14 (Off the record.)

15 JILL FOLSOM,
16 called on behalf of the Union, testified under
17 oath as follows:

18 DIRECT EXAMINATION

19 BY MR. BOYTE:

20 Q. Jill, I'm going to hand you a document.
21 I want you to review it for a second.

22 A. Okay.

23 Q. Do you recognize this document?

24 A. I do.

25 Q. And before we get into that, do you hold

1 a position with the Local 910?

2 A. Yes.

3 Q. What --

4 A. My name is Jill Folsom. I'm the
5 secretary/treasurer of AFGE Local 910 at the
6 Kansas City VA.

7 (Union Exhibit 1 was marked for
8 identification.)

9 Q. (By Mr. Boyte) And have you had a chance
10 to review that?

11 A. I have read this document, yes.

12 Q. Okay. And what is it?

13 A. So this document was sent to me via email
14 by Jeff Wrye. Jeff Wrye was our business agent at
15 the time. The email was sent on Monday, May 18th,
16 and Jeff Wrye sent me the document that he was
17 going to send to the Agency. It was going to be
18 sent to Keith and Daniel which were in leadership
19 positions at the Kansas City VA in HR. And it's a
20 Request for Information, very detailed Request for
21 Information about who is working at the Kansas
22 City VA, who received bonuses, incentive pay and
23 anything else that was paid out due to the
24 COVID-19 pandemic.

25 MR. BOYTE: Okay. I'd like to

1 enter Union Exhibit 1.

2 MS. HUNTER: Objection, lack of
3 foundation. I don't know what any of the notes
4 attached to the doc are and that was not something
5 received by the Agency.

6 MR. BOYTE: I sent it to her by
7 email several days ago.

8 ARBITRATOR DUNN: Well, let me
9 just ask the witness, what are these notes?

10 THE WITNESS: So this was Jeff
11 Wrye's research that he performed before he sent
12 the Request for Information. And this is his
13 research as to why the Request for Information was
14 needed. He researched the laws and the policies
15 and the regulations as to information needed to
16 make sure that no employees were treated unfairly
17 in giving out the awards.

18 MS. HUNTER: Jeff Wrye could
19 testify to it if that's his handwriting. I don't
20 have any way of knowing that. And it's not a
21 document that was received by the Agency before
22 Mr. Boyte sent it to me a day ago.

23 ARBITRATOR DUNN: I will just
24 state for the record I'm going to -- I'm going to
25 allow it, I'm going to accept it into the record.

1 Is it Union 1? What's the number?

2 MR. BOYTE: Yes, sir, Union 1.

3 ARBITRATOR DUNN: Union 1. With
4 the specific understanding that I know how to give
5 proper weight to documents, and without Jeff
6 Wrye's testimony regarding the notes, I'm not sure
7 what value they have, but please proceed.

8 MR. BOYTE: Okay.

9 Q. (By Mr. Boyte) Does Jeff Wrye still work
10 for the -- work for the Union?

11 A. Jeff Wrye was our past business agent and
12 he left the Union on July 28th of 2020 -- no,
13 2021, and took a new position with another
14 company.

15 (Union Exhibit 2 was marked for
16 identification.)

17 Q. (By Mr. Boyte) Okay. So can -- have you
18 had a chance to look at that second document? Let
19 me have that one back.

20 A. Yep, I'm familiar with the second
21 document.

22 Q. And what is this?

23 A. So this is the Agency's response to the
24 Request for Information dated June 11th from
25 Daniel Karr, head of HR at the time. He stated

1 that the Request for Information would not be
2 granted because of it not having any
3 particularized need. If you go to paragraph two,
4 the first sentence says: The information request
5 does not meet the particularized need requirement
6 set forth by the Federal Labor Relations
7 Authority. So it was denied.

8 MR. BOYTE: Okay. I'd like to
9 enter this as Union 2.

10 ARBITRATOR DUNN: Do you have a
11 copy for me?

12 MR. BOYTE: I thought I gave you a
13 copy, but I didn't, did I?

14 MS. HUNTER: The Agency objects on
15 two bases, lack of foundation and relevance. The
16 Union today has stated that this information
17 request is not at issue.

18 ARBITRATOR DUNN: I understand and
19 I'm going to rule as I did with the last document,
20 I'm going to allow it to be entered into the
21 record subject to weight -- appropriate weight to
22 be given.

23 MR. BOYTE: Okay. Thank you, sir.

24 Okay. I don't have any other questions
25 for her.

1 ARBITRATOR DUNN: Do you have any
2 cross?

3 MS. HUNTER: No, thank you.

4 ARBITRATOR DUNN: Okay. You are
5 excused, ma'am. Thank you.

6 THE WITNESS: Thank you.

7 MR. BOYTE: The next witness is
8 Kathleen Sidebottom.

9 MS. HUNTER: She just went to see
10 if she's here.

11 And I just got -- can we go off the
12 record for a moment?

13 ARBITRATOR DUNN: Yes.

14 (Off the record.)

15 KATHLEEN SIDEBOTTOM,
16 called on behalf of the Union, testified under
17 oath as follows:

18 ARBITRATOR DUNN: Please proceed.

19 (Union Exhibit 3 was marked for
20 identification.)

21 DIRECT EXAMINATION

22 BY MR. BOYTE:

23 Q. Morning, Kathy.

24 A. Good morning.

25 Q. And is it Kathy or Kathleen?

1 A. Kathy.

2 Q. Okay. I'm Donny Boyte. I'm national rep
3 presenting the case on behalf of Local -- AFGE
4 Local 910.

5 I'm going to show you some documents and
6 ask you a few questions, and then the Agency will
7 probably have some questions for you, okay?

8 A. Okay.

9 Q. So here's the first one --

10 ARBITRATOR DUNN: Could we
11 identify who she is?

12 THE WITNESS: I'm Kathleen
13 Sidebottom.

14 ARBITRATOR DUNN: No, but your
15 role.

16 THE WITNESS: Oh, I'm at LPN.

17 ARBITRATOR DUNN: An LPN?

18 THE WITNESS: I am.

19 ARBITRATOR DUNN: Okay. Thank
20 you.

21 Q. (By Mr. Boyte) Okay. Is that -- is LPN
22 Title 38?

23 A. No.

24 Q. Okay. I want to hand you this document.
25 Don't speak on it yet until...

1 MS. HUNTER: Is this Union 3?

2 MR. BOYTE: Yes, it will be, if so
3 allowed.

4 Q. (By Mr. Boyte) Do you recognize this?

5 A. I do.

6 Q. Okay. Is that you at the top that sent
7 the email?

8 A. That is me.

9 Q. Okay. And what is this email?

10 A. This was an email that I had received,
11 not just myself, but other co-workers had received
12 from Kelly Goudreau back on April 28 of '20,
13 regarding the clarification on incentives.

14 Q. Okay. And who is Kelly Goudreau?

15 A. She -- I know she works in -- I know
16 she's an RN, and I know she works up in upper
17 management, but I don't know her actual title.

18 Q. Okay, that's fine. I just -- so let me
19 have that back. I'm not going to have anymore
20 questions for you on that.

21 ARBITRATOR DUNN: Are you offering
22 it?

23 MR. BOYTE: Yes, please, Union 3.

24 MS. HUNTER: Lack of foundation.

25 ARBITRATOR DUNN: Yeah. I'm going

1 to allow it and enter it into the record so that
2 the objection and any weight -- any adjustments on
3 appropriate weight be given it based on that.

4 MR. BOYTE: Okay. So I've got a
5 question. I'm not -- I'm not a trained attorney.
6 Where is the lack of foundation, just for my own
7 education purposes?

8 MS. HUNTER: I would object to any
9 legal advice being provided to Mr. Boyte. Sorry.

10 ARBITRATOR DUNN: No, I
11 understand. I'm going to tell Mr. Boyte it means
12 the person who actually created the document is
13 not here testifying about it.

14 MR. BOYTE: But the person that
15 received the document testified to it.

16 ARBITRATOR DUNN: That's fine.

17 MR. BOYTE: Okay.

18 ARBITRATOR DUNN: You ask the
19 questions.

20 MR. BOYTE: All right. Thank you.

21 Q. (By Mr. Boyte) Okay. Again, as always,
22 don't speak until everybody has a chance to review
23 it.

24 (Union Exhibit 4 was marked for
25 identification.)

1 MR. BOYTE: This will be Union 4,
2 if allowed.

3 Q. (By Mr. Boyte) Do you recognize this
4 document?

5 A. I do.

6 Q. What is this?

7 A. This was in my EOPF file regarding an
8 action that was regarding myself.

9 Q. Okay.

10 A. A change in something.

11 Q. How did you come to find out you were
12 getting this retention pay?

13 A. From the email from Ms. Goudreau.

14 Q. So that email, did that -- did that make
15 you think that every LPN was going to get it?

16 A. It made me think that per the -- per the
17 letter from Ms. Goudreau, that inpatient nurses
18 only receive it.

19 Q. Okay. And at the time where were you
20 working in the facility?

21 A. I was inpatient on the 10th floor in
22 behavioral health.

23 Q. Okay. And the patients that come up to
24 see you, do you know if they have been tested for
25 COVID or not?

1 A. I do. They have to be negative to be up
2 on the -- at the time had to be -- had to have a
3 negative COVID test from the emergency room or
4 wherever they were being admitted from to be up on
5 the floor, on the 10th floor.

6 Q. Okay.

7 A. They had to be negative.

8 Q. Did your supervisor explain any other
9 reason as to why you're getting the retention pay?

10 A. She had made mention that it was to keep
11 us as employees so that we didn't go to another
12 facility that was offering bonuses.

13 MR. BOYTE: Okay. I'd like to
14 offer this as Union 4.

15 ARBITRATOR DUNN: Any objection?

16 MS. HUNTER: Only to the Social
17 Security number not being redacted, but that's
18 just for her protection. So no, not really.

19 ARBITRATOR DUNN: It's safe with
20 me and I'm going to enter it.

21 THE WITNESS: I'm confident that
22 it is safe in this room.

23 ARBITRATOR DUNN: Thank you.

24 Q. (By Mr. Boyte) Do you want me to hang on
25 to that one? Okay.

1 ARBITRATOR DUNN: I'm sorry, did
2 you have another document?

3 MR. BOYTE: Yes, Union 4, please.

4 ARBITRATOR DUNN: Did you have
5 another one or...

6 MR. BOYTE: Yes, I'm going to have
7 another one.

8 (Union Exhibit 5 marked for
9 identification.)

10 ARBITRATOR DUNN: Oh, okay. So
11 that will be Union 5?

12 MR. BOYTE: Yes, sir.

13 ARBITRATOR DUNN: Okay. You want
14 to give it to us?

15 MR. BOYTE: Yep.

16 ARBITRATOR DUNN: Thanks.

17 You can proceed when you're ready.

18 Q. (By Mr. Boyte) Okay. Take a look at
19 that and then I have some questions for you.

20 A. Okay.

21 Q. Do you recognize this?

22 A. I do.

23 Q. So at the bottom, does your copy say,
24 "Termination of retention incentive"?

25 A. It does.

1 Q. And have -- are you -- are you still no
2 longer getting retention pay?

3 A. I am no longer getting retention pay.

4 Q. Did it effectively end on this date?

5 A. Yes.

6 MR. BOYTE: Okay. I'd like to
7 enter this as Union 5.

8 MS. HUNTER: No objection.

9 ARBITRATOR DUNN: It's received.

10 MR. BOYTE: I'll pass the witness.

11 ARBITRATOR DUNN: Cross?

12 CROSS-EXAMINATION

13 BY MS. HUNTER:

14 Q. Hi, Ms. Sidebottom. My name is Kathleen
15 Hunter, and I'm representing the Agency today.
16 Thank you for being with us.

17 I do have one question for you. Between
18 April of 2020 and June of 2020, did you move from
19 inpatient services to outpatient services?

20 A. I'm sorry, repeat the dates again.

21 Q. Yes. Between April of 2020 and June of
22 2020, did you move positions?

23 A. I did not.

24 Q. Okay. When did you move positions?

25 A. I changed positions in November of 2020.

1 Q. Okay. And your supervisor said that you
2 were getting a retention incentive to retain you,
3 correct?

4 A. Correct.

5 Q. So retaining you had nothing to do with
6 the exposure levels that you were subject to,
7 correct?

8 A. From what I understood -- from what I
9 understood, it was retaining us at the Kansas City
10 VA.

11 Q. Okay. Did you ask anyone in HR about why
12 your retention bonus ended in June of 2020?

13 A. I had not because I'd gotten that in my
14 EOPF file saying that it was ending.

15 Q. And you didn't ask anybody about that?

16 A. No.

17 Q. Okay. Did you ask your supervisor about
18 that?

19 A. Did not.

20 MS. HUNTER: I have nothing
21 further.

22 MR. BOYTE: I have one.

23 REDIRECT EXAMINATION

24 BY MR. BOYTE:

25 Q. So when your incentive stopped, did you

1 leave the Behavioral Health Unit?

2 A. No, I was still in Behavioral Health
3 until November of 2020.

4 Q. Did your duties change?

5 A. No, nothing changed.

6 Q. Okay.

7 ARBITRATOR DUNN: Anything else,
8 Kat?

9 MS. HUNTER: Not right now, no.
10 Thank you.

11 ARBITRATOR DUNN: That means we're
12 finished with you as a witness. We thank you for
13 your time.

14 MR. BOYTE: Thank you for
15 participating.

16 THE WITNESS: Can I say one thing?

17 MR. BOYTE: No.

18 ARBITRATOR DUNN: Really
19 shouldn't.

20 THE WITNESS: Okay. That's fine.
21 I won't say anything. Thank you.

22 ARBITRATOR DUNN: Thanks very
23 much.

24 MR. BOYTE: All right. I hate to
25 do this, but there's a notepad out in my truck

1 that's important that I have to have for my
2 witnesses.

3 (Recess.)

4 ARBITRATOR DUNN: What's your
5 request?

6 MR. BOYTE: Kelly Goudreau, the
7 author of the email that she said there's a lack
8 of foundation, we've got some questions for her.

9 ARBITRATOR DUNN: Okay. And
10 you're for the record?

11 MS. HUNTER: May I have a moment?

12 ARBITRATOR DUNN: Yes.

13 MR. BOYTE: If you're looking for
14 arbitration, it's Article 43.

15 ARBITRATOR DUNN: Is she being
16 called just for the purpose of authenticating that
17 document?

18 MR. BOYTE: No, there's more
19 questions to it than that.

20 ARBITRATOR DUNN: Okay.

21 MR. BOYTE: And we want to add
22 Jeff Wrye by phone between 12 and 1.

23 MS. HUNTER: I have no objection
24 to Jeff Wrye.

25 ARBITRATOR DUNN: You what?

1 MS. HUNTER: I have no objection
2 to Jeff Wrye.

3 ARBITRATOR DUNN: Okay.

4 MS. HUNTER: But he will be
5 responsible for making him available.

6 Your Honor, I think that there is a part
7 in the master agreement, and it's not sticking out
8 to me at this moment, that says they have to
9 provide us witness names within a reasonable
10 amount of time. I have been bending over
11 backwards. They have provided me over 20 names
12 and I've been contacting, uncontacting,
13 contacting, uncontacting over and over. To spring
14 a brand new witness on me the day of the
15 arbitration is prejudicial to the Agency's case.
16 I have not had an opportunity. She's represented.
17 She's management. I have not had an opportunity
18 to speak with to her. And would not -- I mean, we
19 need to have time to prepare her. So I just
20 believe that it's inappropriate to add her as a
21 witness on the day of hearing.

22 ARBITRATOR DUNN: Well, I'm not
23 going to deny either party the right to present a
24 witness they think is appropriate. However, I --
25 I am sensitive to your arguments regarding

1 prejudice. And would ask you when you -- as you
2 have time today before she's called to -- to look
3 at that and decide exactly what you need. Because
4 as I told Donny before, if there's something going
5 on that was not predetermined and it's going to be
6 so prejudicial to you that -- that it might affect
7 the outcome of the case, then you have the right
8 to request that time that you need to prepare.
9 And I will liberally grant that time that you need
10 to prepare.

11 So I'm not going to -- I'm not going to
12 deny his right to call them, but I'm going to give
13 you whatever time you need to prepare, Kat.

14 MS. HUNTER: Okay.

15 ARBITRATOR DUNN: Okay?

16 MS. HUNTER: Yeah.

17 ARBITRATOR DUNN: So who is your
18 next witness?

19 MR. BOYTE: Mary Locke. And I
20 would like to say I gave the order of witnesses to
21 the Agency yesterday. And it was my
22 understanding -- and I don't normally give order
23 of witnesses, but there was quite a few. It seems
24 like the Agency could have them readily available
25 so we can roll them in and out.

1 ARBITRATOR DUNN: As I understand
2 it, from what we've talked about today, that was
3 the intention, but something happened today that
4 required that witness --

5 MR. BOYTE: For the bargaining
6 unit staff?

7 MS. HUNTER: Donny, I told them to
8 be here. I can't control everybody. I've done my
9 best. I've worked with your 20 witnesses.

10 MR. BOYTE: I'm not blaming you.
11 I'm blaming the supervisors because employees just
12 can't walk off the job. The supervisors should
13 know that they're a witness today and the
14 supervisors should be called and say, hey, send
15 Mary down here, send Brenda down here, send
16 Lyneal, send Josh, send Gene.

17 MS. HUNTER: I'm not having any
18 problem getting them here. It's just they didn't
19 show at 9:00 when I told them to show. Brenda
20 did, but the other witness -- your witnesses did
21 not show, your bargaining unit employees. I am
22 trying my best.

23 MR. BOYTE: Well, you sent an
24 email saying that you would be --

25 MS. HUNTER: I sent several.

1 MR. BOYTE: Well, the email we saw
2 said that you would notify them within 10 minutes
3 of testifying and they would come down here.

4 MS. HUNTER: Yes. And I did not
5 notify Mary or Kathleen because I told them to be
6 here at 9:00 a.m.

7 MS. TRUONG: They are here.

8 ARBITRATOR DUNN: Is that your
9 next witness?

10 MR. BOYTE: Yes, sir. And Brenda
11 is already out there. So if they could go ahead
12 and send Lyneal Vanreed down here, that would be
13 great.

14 MS. TRUONG: This is Ms. Mary
15 Locke.

16 ARBITRATOR DUNN: Good morning.

17 THE WITNESS: Good morning.

18 ARBITRATOR DUNN: I'm Pat Dunn.

19 I'm the arbitrator in this. The hearing officer,
20 if you will. And have you done this before? Have
21 you testified before?

22 THE WITNESS: Huh-uh.

23 ARBITRATOR DUNN: Okay. Just a
24 couple things about it. One of the most important
25 is, don't talk to anybody about your testimony

1 after you leave here. Until this is over with,
2 don't talk about your testimony with anyone.

3 The other is just to -- if while you're
4 testifying, whoever is asking you questions, if
5 the other representative objects, let them finish
6 all that before you start talking. And also, be
7 mindful of the court reporter, we need to make to
8 be able to get this down, if you would, please.

9 THE WITNESS: Okay.

10 ARBITRATOR DUNN: Other than that,
11 do you have any questions?

12 THE WITNESS: Huh-uh.

13 ARBITRATOR DUNN: Okay. Then if
14 you would raise your right hand to be sworn by the
15 court reporter.

16 MARY LOCKE,
17 called on behalf of the Union, testified under
18 oath as follows:

19 ARBITRATOR DUNN: Please proceed.

20 DIRECT EXAMINATION

21 BY MR. BOYTE:

22 Q. Morning, Mary.

23 A. Morning.

24 Q. I'm Donny Boyte. I'm representing the
25 local for this arbitration hearing.

1 What -- what is your -- how long have you
2 worked for the VA?

3 A. Eight years.

4 Q. Okay. And what is your -- what is
5 your -- what do you do here?

6 A. I'm an LPN here.

7 Q. For the whole eight years?

8 A. Yes.

9 Q. Okay. And in April of 2020, do you
10 remember where you were working?

11 A. I was in med subspecialty.

12 Q. For all of us --

13 A. Med subspecialty is the different
14 clinics, like cardiology, neurology, diabetes,
15 dermatology.

16 Q. Okay. And do you do direct patient care?

17 A. Yes.

18 Q. Okay. And back in 2020, when you were
19 doing direct patient care, did -- were those
20 patients tested for COVID before you were treating
21 them?

22 A. No.

23 Q. Okay. And at any point between April of
24 2020 and today, have you received any kind of
25 bonus or retention pay?

1 A. No.

2 MR. BOYTE: I pass the witness.

3 ARBITRATOR DUNN: Any questions?

4 MS. HUNTER: Yes.

5 CROSS-EXAMINATION

6 BY MS. HUNTER:

7 Q. Hey, Mary. My name is Kathleen Hunter.

8 I'm the Agency's attorney for this arbitration. I
9 do have a few questions for you today.

10 First, Mr. Boyte just asked you if you've
11 ever received any awards for your COVID -- related
12 to COVID. You have not received any special
13 contribution awards?

14 A. Huh-uh, no.

15 Q. Okay. Would you agree with me that a
16 retention incentive is different than an award?

17 A. Yes.

18 Q. Okay. And what's a retention incentive
19 used for?

20 A. To -- during -- to like keep patients
21 engaged to -- or to keep staff engaged to --
22 during a difficult time like the pandemic, to
23 award them.

24 Q. Okay. So you believe that a retention
25 incentive is used to award individuals?

1 A. I think it's different than an award. I
2 feel like it's to keep staff -- to keep staff
3 there. Staff was leaving, so that's why.

4 Q. Okay. So it's used to retain people?

5 A. Yes.

6 MS. HUNTER: Okay. I have nothing
7 further.

8 ARBITRATOR DUNN: Do you have
9 anything else?

10 MR. BOYTE: (Shakes head.)

11 ARBITRATOR DUNN: Thank you very
12 much for coming down.

13 MR. BOYTE: Told you it would be
14 short and sweet. Thank you.

15 ARBITRATOR DUNN: Who's next?

16 MR. BOYTE: It would have been Ann
17 Wymore. Then it's Lyneal Vanreed. Then it's
18 Joshua Barton.

19 (Off the record.)

20 ARBITRATOR DUNN: I'm Pat Dunn.
21 I'm the arbitrator in this matter.

22 THE WITNESS: Okay.

23 ARBITRATOR DUNN: And just a
24 couple things before we start. Have you ever
25 testified before?

1 THE WITNESS: No.

2 ARBITRATOR DUNN: Okay. Nothing
3 scary about it. Just listen to the questions
4 before you answer.

5 Don't talk over each other 'cause the
6 court reporter can't hear you if that's going on.

7 THE WITNESS: Okay.

8 ARBITRATOR DUNN: If you need a
9 break for some reason, all you've got to do is
10 ask. And the most important instruction is, is
11 that while this is all going on, don't talk to
12 anybody about your testimony, okay?

13 THE WITNESS: Right.

14 ARBITRATOR DUNN: Thank you. And
15 with that, I'll ask the court reporter to swear
16 you in.

17 BRENDA PARSLEY,
18 called on behalf of the Union, testified under
19 oath as follows:

20 ARBITRATOR DUNN: Please proceed.

21 DIRECT EXAMINATION

22 BY MR. BOYTE:

23 Q. Morning, Brenda.

24 A. Morning.

25 Q. So what do you do for the VA?

1 A. I am a health tech at the Nevada CBOC
2 clinic, work in the lab.

3 Q. Okay. And do you do direct patient care?

4 A. Yes.

5 Q. And when they come into the CBOC, can you
6 tell us what the CBOC stands for?

7 A. Community-based outpatient clinic.

8 Q. Okay. And do you -- are they tested for
9 COVID when they walk in?

10 A. No.

11 Q. So you don't know if they have it or not,
12 correct?

13 A. We do not.

14 (Union Exhibit 6 was marked for
15 identification.)

16 MR. BOYTE: All right. This will
17 be Union 6.

18 MS. HUNTER: Did you say 6, I'm
19 sorry?

20 MR. BOYTE: Union 6, yes.

21 MS. HUNTER: Okay.

22 Q. (By Mr. Boyte) Do you recognize this
23 document?

24 A. I do.

25 Q. What is it?

1 A. It is a form showing basically of our
2 bonus.

3 Q. Okay. And does yours show in block 20 a
4 \$50 --

5 A. Yes.

6 Q. Okay. And how did you find out you got
7 this bonus?

8 A. I think that we were notified by email
9 whenever something goes into our file.

10 Q. Right. Did it say the reason why you
11 were getting it?

12 A. No.

13 Q. Or what you did to get it?

14 A. No.

15 Q. Okay. Still to this day, do you know why
16 you got it?

17 A. No.

18 MR. BOYTE: Okay. I'd like to
19 enter this as Union 6.

20 ARBITRATOR DUNN: Any objections?

21 MS. HUNTER: Relevance. We're not
22 here on awards, we're here on retention incentive.

23 ARBITRATOR DUNN: It's received
24 into evidence.

25

1 (Union Exhibit 7 was marked for
2 identification.)

3 MR. BOYTE: Union 7. NSF 50.

4 Q. (By Mr. Boyte) Ask you to review that.
5 Do you recognize this?

6 A. I do.

7 Q. And what is this?

8 A. It is I found out later for our COVID
9 pay.

10 Q. Okay. So this -- does your block 20 say
11 200?

12 A. Yes.

13 Q. And so you just mentioned something about
14 COVID. What do you -- how did you come to find
15 out you got the \$200?

16 A. Again, they put something into our email
17 whenever they put something into EOPF file.

18 Q. Uh-huh.

19 A. We knew that our supervisors were trying
20 to work on something for us for COVID pay.

21 Q. Okay.

22 A. And so I think for me, I just assumed
23 that that's what that was for.

24 Q. Did it ever get confirmed that it was for
25 COVID?

1 A. It did a few days ago.

2 Q. Okay. And how did that get confirmed?

3 A. I asked.

4 Q. And who did you ask?

5 A. I asked my boss, Vivian Hansen.

6 Q. Okay.

7 A. Or supervisor.

8 MR. BOYTE: Okay. I'd like to
9 introduce Union 7.

10 MS. HUNTER: Same objections as to
11 6.

12 ARBITRATOR DUNN: And same
13 response, it's received into evidence and subject
14 to the weight that will be given to it.

15 MR. BOYTE: I pass the witness.

16 MS. HUNTER: I do have some
17 questions.

18 ARBITRATOR DUNN: That means she
19 gets to ask questions then.

20 CROSS-EXAMINATION

21 BY MS. HUNTER:

22 Q. Ms. Parsley, my name is Kathleen Hunter
23 and I'm the Agency attorney assigned to this case.
24 I do have a few questions for you today.

25 Do you know what the difference between

1 an award and a retention incentive are?

2 A. I think that an award is for us doing
3 well at our jobs.

4 Q. Okay. And a retention incentive is used
5 to retain you during a period where it might be
6 difficult to retain you; is that fair?

7 A. Yes.

8 Q. Okay. And you worked at a CBOC in
9 outpatient care, correct?

10 A. Yes.

11 Q. Did you ever ask why you didn't receive a
12 retention incentive from Vivian Hansen?

13 MR. BOYTE: I'm going to have to
14 object. She never testified on direct examination
15 of retention pay. She testified to two awards she
16 got.

17 ARBITRATOR DUNN: That is
18 absolutely correct, but I'm going to allow the
19 question.

20 Answer it if you can.

21 A. I'm sorry. So would you repeat it?

22 Q. (By Ms. Hunter) Yes. Did you ever ask
23 Ms. Vivian Hansen why you didn't receive a
24 retention incentive?

25 A. No, I did not.

1 Q. Did you know anyone that was receiving
2 retention incentives?

3 A. No, I did not.

4 MS. HUNTER: Nothing further.

5 ARBITRATOR DUNN: Any redirect?

6 MR. BOYTE: No.

7 ARBITRATOR DUNN: Then that means
8 you're done.

9 THE WITNESS: All right. Thank
10 you guys so much.

11 MR. BOYTE: Thank you, Brenda.

12 THE WITNESS: You're welcome.

13 MS. HUNTER: Donny, remind me who
14 -- Lyneal, I think that person should be here.

15 MR. BOYTE: I'm pretty sure I gave
16 you that list today. I will tell you this: Other
17 than Jeff Wrye, and Kelly Goudreau and Wymore,
18 we're going to stay within that -- Isaacks is at
19 the end of -- Isaacks is after Robin Elliott. But
20 I can always do my direct examination of Isaacks
21 when you call him so we don't have to call him
22 twice.

23 MS. HUNTER: I'll cross him on
24 your call with him.

25 MR. BOYTE: And be done?

1 MS. HUNTER: Yeah.

2 MR. BOYTE: Okay.

3 MS. HUNTER: Can we go off the
4 record for a minute?

5 ARBITRATOR DUNN: Yes.

6 (Off the record.)

7 ARBITRATOR DUNN: Mr. Barton, my
8 name is Pat Dunn. I'm the arbitrator in this
9 matter. That's essentially hearing officer.
10 That's my job.

11 Just a couple things. One, the main one
12 being that while this is all going on, don't talk
13 to anybody about your testimony or really about
14 the case. Just -- we just don't want any
15 confusion out there basically.

16 THE WITNESS: Roger that.

17 ARBITRATOR DUNN: Or, you know,
18 coloring of potential witnesses' testimony.

19 This is the court reporter. She needs to
20 hear what you say. And so don't -- even if you
21 know the answer already, don't talk over the
22 question, if you're -- if you're doing that. And
23 I guess that's about it.

24 Do you have any questions for me before
25 we begin?

1 THE WITNESS: No, sir.

2 ARBITRATOR DUNN: We had that
3 chair pushed back there by design because that way
4 the court reporter can hear you better and
5 everybody can see their face. So if you don't
6 mind before you start, would you push it on back.

7 THE WITNESS: That's fine. Yeah.

8 ARBITRATOR DUNN: Thanks very
9 much.

10 And with that, I'll ask the court
11 reporter to swear you in.

12 JOSHUA BARTON,
13 called on behalf of the Union, testified under
14 oath as follows:

15 ARBITRATOR DUNN: Please proceed.

16 (Union Exhibit 8 was marked for
17 identification.)

18 DIRECT EXAMINATION

19 BY MR. BOYTE:

20 Q. Morning, Josh.

21 A. Morning.

22 Q. I'm Donny Boyte. I know we talked on the
23 phone, but we never actually met with all my
24 proper English.

25 I'm going to hand you -- what do you

1 currently do for the VA?

2 A. I'm a corporal in the police department
3 for the Kansas City Veteran's Affairs Hospital.

4 Q. Okay. And how long have you been with
5 the VA Police Department?

6 A. September of 2017. So going on five
7 years.

8 Q. Okay.

9 MR. BOYTE: This will be Union 8.

10 Q. (By Mr. Boyte) Take a look at this
11 document. Do you recognize this?

12 A. Yes, sir.

13 Q. Okay. And for the record, what is this?

14 A. This is a SF 50 or a notice of personnel
15 action with my name on it.

16 Q. Okay. And is it for -- the remarks say
17 for a 10 percent retention?

18 A. Yeah. Retention incentive of 10%
19 authorized payment or payments will be made.
20 Incentive agreement expires on April 10th, 2021.

21 Q. Okay. And so if you look at the top
22 right, what is the effective date?

23 A. April 12th of 2020.

24 Q. Okay. And do you know why you were
25 getting this incentive?

1 A. So what I was told was it was due to the
2 COVID-19 pandemic so we could keep officers. And
3 we got a retention bonus is what they called it,
4 but it was in lieu of COVID-19.

5 Q. Okay. And so do you do direct patient
6 care?

7 A. So we do and we don't. When we respond
8 to calls, then we are direct patient. Or if we
9 respond to a disturbance, then we're a direct
10 patient. But we're not 24/7 direct patient as
11 like an ER nurse or nurse on the floor.

12 Q. Okay. And so are you considered an
13 inpatient employee?

14 A. No, we are considered administrative.

15 MR. BOYTE: Okay. I'd like to
16 enter this as Union 8.

17 ARBITRATOR DUNN: Any objections?

18 MS. HUNTER: No.

19 ARBITRATOR DUNN: It's received.

20 (Union Exhibit 9 was marked for
21 identification.)

22 Q. (By Mr. Boyte) Let me have that back.
23 The next one is going to be Union 9. It's another
24 document dated 4/11/2021.

25 MS. HUNTER: Thank you.

1 ARBITRATOR DUNN: Got one for me?

2 MR. BOYTE: I'm sorry. This is my
3 first hearing. I'm sorry.

4 MS. HUNTER: Most important
5 person.

6 Q. (By Mr. Boyte) Do you recognize this
7 document?

8 A. This is the same SF 50, just the second
9 one when our first one expired.

10 Q. Okay. And if you'll look at Box 5-E
11 Code --

12 A. Uh-huh.

13 Q. -- what does your say under Legal
14 Authority?

15 A. RRR COVID-19 reporting.

16 MR. BOYTE: I'd like to enter this
17 as Union 9.

18 MS. HUNTER: No objection.

19 ARBITRATOR DUNN: It's received.

20 MR. BOYTE: Okay. This next
21 document will be Union 10.

22 (Union Exhibit 10 was marked for
23 identification.)

24 ARBITRATOR DUNN: Only if you're
25 counting sequentially. Thank you.

1 MS. HUNTER: Thank you.

2 Q. (By Mr. Boyte) Recognize this?

3 A. Yeah, this is an email from our chief of
4 police that was sent to the entire police
5 department to include the PIV Office and I believe
6 a couple other -- the dispatchers.

7 Q. Okay. And it says -- does your document
8 say it's due to COVID, current COVID-19 situation?

9 A. The email reads: "Team, I recently
10 submitted all VA" --

11 MS. HUNTER: Objection. I think
12 the email speaks for itself. I don't need the
13 email read into the record.

14 ARBITRATOR DUNN: Well, if it's
15 easier for him to testify that way, go ahead, sir.

16 A. I can sum it up. Yes, it does mention
17 the COVID-19 situation. And then it mentions this
18 is not hazard duty pay.

19 MR. BOYTE: I'd like to enter this
20 as Union 10.

21 MS. HUNTER: No objection.

22 ARBITRATOR DUNN: Received.

23 MR. BOYTE: I pass the witness.
24
25

1 CROSS-EXAMINATION

2 BY MS. HUNTER:

3 Q. Good morning. My name is Kathleen
4 Hunter. I'm the Agency attorney representing the
5 Agency in this matter.

6 I do have some questions for you today.
7 You recently stated that you believe that the
8 retention incentive was in lieu of COVID-19. Can
9 you explain that one to me?

10 A. So when the pandemic started, we were
11 still working even though a lot of people had went
12 on remote working. And then it was mentioned that
13 we were getting a retention bonus due to the
14 COVID-19 pandemic.

15 Q. Okay. And who told you that?

16 A. I believe that was our chief.

17 Q. Okay. During the COVID-19 pandemic, has
18 the academy for police officers been closed?

19 A. It's been off and on, yes.

20 Q. Okay.

21 A. It's -- sorry, go ahead.

22 Q. And to be a uniform officer, does a
23 police officer have to go through the academy?

24 A. Yes.

25 Q. Okay. So if we can't send any officers

1 to the academy, we cannot fill the positions,
2 correct?

3 A. Correct. We can hire them and they stay
4 here plain clothes and can't do any police
5 authority business, yes.

6 Q. Okay. Would you agree with me that a
7 retention incentive is different than an award?

8 A. Different than a what?

9 Q. An award.

10 A. Yes, I agree.

11 Q. And a retention incentive is used to
12 retain you, not pay you for any specific
13 contribution you may have made?

14 A. In the wording, yes, retention means to
15 keep you, yes.

16 Q. Okay. And you were notified that this
17 was not hazard duty pay, correct?

18 A. Correct.

19 MS. HUNTER: I have nothing
20 further.

21 ARBITRATOR DUNN: Anything else?

22 MR. BOYTE: No, sir.

23 ARBITRATOR DUNN: It was short and
24 sweet as promised.

25 MR. BOYTE: Thank you for coming

1 in.

2 Gene Parker next.

3 MS. HUNTER: Your Honor, I do have
4 one objection that I need to make prior to this
5 witness starting.

6 MR. BOYTE: Can we do it with him
7 not in the room?

8 MS. HUNTER: No, I think he needs
9 to be in the room for it.

10 ARBITRATOR DUNN: Okay.

11 (Gene Parker enters the room.)

12 MS. HUNTER: On Monday,
13 November 29th, Jill from the Union contacted
14 Mr. Parker and had a conversation with him.
15 Mr. Parker represented the party. He's in
16 management. She should not have had any
17 discussion with him without notifying me, without
18 my presence or my permission. Despite that, they
19 had a conversation. I have no -- real no --
20 really no way of knowing what occurred. That
21 severely prejudices the Agency's case and is
22 against the federal law.

23 MR. BOYTE: What law?

24 MS. HUNTER: He's a represented
25 party. She should not have any discussions with

1 him.

2 ARBITRATOR DUNN: She's talking to
3 me at this point.

4 MR. BOYTE: Yes, sir.

5 ARBITRATOR DUNN: Have you had a
6 chance to talk to him since that conversation?

7 MS. HUNTER: I have. And I do
8 have proof that it occurred.

9 ARBITRATOR DUNN: Okay. Well,
10 it's noted in the record. I'm going to proceed
11 and certainly allow him to present him as a
12 witness. And I don't know if it will require any
13 remedy when the time comes or not, Kat. I'm not
14 sure. I want to see that brief before I make a
15 decision.

16 MS. HUNTER: Yeah.

17 ARBITRATOR DUNN: Okay. Please
18 proceed.

19 GENE PARKER,
20 called on behalf of the Union, testified under
21 oath as follows:

22 DIRECT EXAMINATION

23 BY MR. BOYTE:

24 Q. Morning. Can I call you chief --

25 A. Sure.

1 Q. -- or Mr. Parker?

2 A. Whatever.

3 Q. I'm Donny Boyte, AFGE national rep. I'm
4 presenting the case on behalf of AFGE Local 910.

5 I've got just a couple questions for you.
6 It's going to be short and sweet. I'd like for
7 you to look at this document that's been marked as
8 Union 10.

9 A. (Witness complies.)

10 Q. Do you recognize that document?

11 A. Yeah.

12 Q. Is that an email that you created?

13 A. Uh-huh.

14 Q. Okay. And so --

15 ARBITRATOR DUNN: Just one second.
16 I'm sorry. For the court reporter's benefit, if
17 you could say yes or no.

18 A. Yes.

19 Q. (By Mr. Boyte) Do you know if everybody,
20 including dispatchers and PIV officers, did they
21 get the retention as well?

22 A. It's my understanding, yes.

23 Q. Okay. And what was the criteria that you
24 were required to use to determine if they were
25 going to be able to get this?

1 MS. HUNTER: Objection, lack of
2 foundation.

3 ARBITRATOR DUNN: Please proceed.
4 It's overruled. Please proceed.

5 A. I wasn't provided criteria.

6 Q. (By Mr. Boyte) So to get the COVID
7 retention pay, as you stated in your email, what
8 did -- what steps did you take to get it?

9 A. I received an email from HR and asked who
10 of my staff I felt would be deserving of it. For
11 the dispatchers and for the PIV officers, I did
12 provide justification of they were essential to
13 the functioning of the medical center and their
14 ability to provide a safe and -- you know,
15 basically a safe environment for not only veterans
16 but for our clinical staff as well.

17 Q. Okay. And how long -- for the record,
18 what is your current position with the VA?

19 A. I'm the chief of police.

20 Q. Okay. And how long have you worked for
21 the VA?

22 A. Since 2008.

23 Q. 2008. And how long have you been chief?

24 A. Since September 2019.

25 Q. Okay.

1 MR. BOYTE: I pass the witness.

2 ARBITRATOR DUNN: Just one moment.

3 Just one quick question just so I'm clear. Was
4 your prior time with the VA in the police
5 department, you just weren't chief?

6 THE WITNESS: Correct.

7 ARBITRATOR DUNN: Thank you.

8 Please proceed.

9 CROSS-EXAMINATION

10 BY MS. HUNTER:

11 Q. Hi, Chief Parker. We previously spoke on
12 the phone. My name is Kathleen Hunter and I'm
13 representing the Agency today.

14 Can you please tell the parties if the
15 police academy was closed during the COVID-19
16 pandemic?

17 A. Yes, the academy did close.

18 Q. Okay. And to be in uniform, does an
19 officer have to go through the academy to fully
20 execute that position?

21 A. Yes, it is a requirement.

22 Q. Okay. And so if we can't send police
23 officers to the academy, you can't backfill any
24 positions you may lose?

25 A. Correct.

1 Q. Unless it comes from somewhere else in
2 the VA?

3 A. Correct.

4 Q. Are you aware of whose job it is to
5 determine who gets a retention incentive at the
6 VA?

7 A. It's my understanding it's the director.

8 Q. Okay. So you can make a request, but
9 ultimately it's the director's decision to
10 determine the criteria and who will get those
11 awards?

12 A. Correct.

13 Q. I mean, retention incentives, excuse me.
14 So at this time you would have no idea
15 about what the director took into consideration
16 when providing your police officers, security
17 assistants, security clerks the retention
18 incentives?

19 A. Correct, I have no idea.

20 Q. Are your police staff considered
21 emergency responders?

22 A. Yes.

23 Q. Okay. So can the operations or the
24 hospital's mission go forward without those
25 emergency responders on staff?

1 A. No.

2 Q. In Union's Exhibit 10, which was
3 previously shown to you, you did notify your staff
4 that this was -- they were going to be receiving a
5 retention incentive, correct?

6 A. Correct.

7 Q. Okay. But you did notify them that it
8 was not a hazard duty pay?

9 A. Correct.

10 Q. Did any of your staff also receive
11 COVID-19 special contribution awards?

12 A. I don't recall off the top of my head.

13 Q. Do you recall putting any of them in for
14 one?

15 A. No.

16 MS. HUNTER: Okay. I have nothing
17 further.

18 ARBITRATOR DUNN: Anything else?

19 MR. BOYTE: No. No, thank you.

20 ARBITRATOR DUNN: Chief, that
21 means you're done.

22 THE WITNESS: Thank you.

23 ARBITRATOR DUNN: The main thing
24 to remember is please don't talk to anybody about
25 the hearing or your testimony. We don't want to

1 influence anybody else's testimony. Thank you,
2 Chief.

3 THE WITNESS: Thank you.

4 ARBITRATOR DUNN: Appreciate you
5 coming.

6 MS. HUNTER: Can we take a break?

7 ARBITRATOR DUNN: We're about at a
8 normal break. Let's take 15 minutes. If you need
9 any longer, just let me know. You've got my phone
10 number.

11 MS. HUNTER: Yeah.

12 ARBITRATOR DUNN: Okay.

13 (Recess.)

14 ARBITRATOR DUNN: Please proceed.

15 KELLY GOUDREAU,
16 called on behalf of the Union, testified under
17 oath as follows:

18 DIRECT EXAMINATION

19 BY MR. BOYTE:

20 Q. Good morning. My name is Donny Boyte,
21 and I'm an AFGE representative presenting the case
22 for Local 910. Got a few questions for you and
23 then I'm sure Ms. Hunter will have some for you,
24 too.

25 Can you look at this document for a

1 second that's been noted or marked as Union 3?

2 A. Okay. Yes.

3 Q. Okay. And did you create that email?

4 A. Yes, I did. The part that has my name on
5 it, yes.

6 Q. Yes, ma'am.

7 A. Yes.

8 Q. So as we said before, the document speaks
9 for itself. What was the purpose of sending out
10 that email?

11 A. There were a number of questions that
12 were being asked by staff across the organization
13 as to whether or not they qualified for the
14 retention incentive.

15 Q. Okay. And was supervisors ever given a
16 criteria as to who is deserving of a retention or
17 a relocation or recruitment bonus?

18 A. The specifics of a relocation or a
19 retention -- or, sorry, recruitment bonus are
20 particular to somebody being recruited into a new
21 position.

22 Q. Okay.

23 A. I think this was in reference to the
24 retention bonus.

25 Q. Okay. And you -- if you look on the back

1 side of it, LPNs, was any direction given to
2 supervisors of LPNs or who was going to get
3 retention or who was going to get bonuses?

4 A. It's a retention, if you're referencing
5 this information, not -- not bonuses. Bonuses are
6 based on performance and a different aspect all
7 together. But when it comes to the retention, no,
8 it was a decision that was made at the executive
9 level based on retention needs for employees in
10 specific areas.

11 Q. Okay. And so let's go to LPNs. What
12 specific areas were LPNs eligible for the
13 retention bonus?

14 A. In the inpatient area. So it really --
15 it was just the inpatient area.

16 Q. Okay.

17 A. We were not having any issues or concerns
18 with retention of staff in the primary care
19 environment.

20 Q. Thank you. I'll take that back, please.
21 What is your current position with the
22 VA?

23 A. I'm the associate director of Patient
24 Care Services.

25 Q. Is that part of the executive leadership

1 team?

2 A. Yes.

3 Q. Do you know how many is on it?

4 A. How many are on the executive leadership
5 team?

6 Q. Yes, ma'am.

7 A. There are five of us.

8 Q. And do you routinely get direction by
9 email to your staff?

10 A. It seems to be the easiest way to get out
11 to all staff that need the information, yes.

12 Q. Okay. And who is your direct supervisor?

13 A. The director.

14 Q. And was -- in April of 2020, who was
15 that?

16 A. That was Isaacks, David Isaacks.

17 Q. Is it your understanding that the COVID
18 money was to be given to select employees?

19 MS. HUNTER: Objection to the form
20 of the question. I don't know what he means by
21 "COVID money."

22 Q. (By Mr. Boyte) Did the VA --

23 ARBITRATOR DUNN: Overruled.

24 Answer if you can, ma'am.

25 A. I'm also not clear what you mean.

1 Q. (By Mr. Boyte) Okay. Was there -- was
2 there money or funding due to COVID to be given
3 out to employees for retention?

4 A. No, not to my knowledge. There were
5 COVID dollars that were provided for us to be able
6 to hire staff. There were COVID dollars provided
7 for being able to buy supplies and materials, but
8 I don't recollect that there was specific COVID
9 money for bonuses, not -- not for the retention
10 incentives. We did get money for being able to
11 provide funding to employees that had been
12 recognized above and beyond for work they had
13 done.

14 Q. So that would be an award?

15 A. Yes.

16 Q. With COVID funding?

17 A. I believe so, yes. But I may be
18 incorrect on that. I believe so.

19 Q. Okay.

20 MR. BOYTE: I pass the witness.

21 ARBITRATOR DUNN: That means she
22 gets to ask you now.

23 THE WITNESS: Okay.

24 ARBITRATOR DUNN: Okay.

25

1 CROSS-EXAMINATION

2 BY MS. HUNTER:

3 Q. Dr. Goudreau, can you please tell the
4 parties what your duties are as the associate
5 director?

6 A. As the associate director for Patient
7 Care Services, I am responsible for either direct
8 or indirect processes for all nursing care across
9 the organization.

10 Q. Okay. Do you -- does your supervision
11 fall over LPNs and MSAs and other non-nursing or
12 non-Title 830 -- non-Title 38 employees?

13 A. LPNs, yes. MSAs fall under the business
14 office.

15 Q. Okay.

16 A. I believe police was listed there. They
17 fall under the associate director. So if it's a
18 nursing position. So nursing assistants, LPNs,
19 RNs and advanced practice nurses.

20 Q. Okay. So you can only speak to LPNs
21 and/or nursing assistants and then the Title 38
22 staff?

23 A. Correct.

24 Q. Okay. Is -- in your knowledge of how
25 retention incentives work, whose exclusive

1 authority is it to give a retention incentive?

2 A. It's the director's.

3 Q. Okay. So though you work under the
4 director, that would not have been a decision made
5 by you, or your staff?

6 A. No.

7 Q. However, you were made aware that
8 retention incentives were going out; is that
9 correct?

10 A. Yes.

11 Q. Okay. And in those discussions, was the
12 exposure to COVID a factor in any of those
13 retention incentives?

14 A. No.

15 Q. Okay. And can you explain to us why
16 exposure to COVID may not have been a
17 consideration?

18 A. What we were looking at was the ability
19 to retain staff within the critical care areas and
20 in the inpatient areas. There were a number of
21 community-based hospitals that were offering huge
22 bonus incentives for departure from your current
23 employment to go to them because they were
24 short-staffed. So we were looking at ways to be
25 able to retain our staff and make sure that they

1 understood that we did value them and we wanted
2 them to be a part of our processes and stay with
3 us in VA.

4 Q. Okay. And why are critical -- why were
5 critical care staff targeted and not, say,
6 outpatient staff?

7 A. As I mentioned previously, there was no
8 issue with retaining staff in the outpatient
9 areas. Many of them were on telework options.
10 They were doing VA video connect calls with
11 veterans from home rather than being here in the
12 facility itself. We did need to have our critical
13 care nursing staff and our inpatient nursing staff
14 present because they had to provide direct patient
15 care and we needed to make sure we retained them.

16 Q. How is a retention incentive different
17 than an award?

18 A. Retention incentive is built into the
19 salary. Typically, I believe, we looked at a
20 10 percent retention added on top of salary. An
21 award is a one-time cash award that provides
22 recognition for an employee.

23 Q. And retention incentives come with
24 certain criteria laid out by policy or federal
25 law, correct?

1 A. Yes.

2 Q. And awards might be given based on
3 performance or special duties outside of
4 their normal duties?

5 A. Yes. I know that we provided a number of
6 cash awards recognition for people who were doing
7 COVID screening, just because they were breaking
8 away from their regular routine duties to be able
9 to step into the screening process. And it was
10 recognized as being above and beyond.

11 Q. Why would it be inappropriate to give a
12 blanket retention incentive to all bargaining unit
13 employees?

14 A. We did not have issues with retaining all
15 bargaining unit employees, let alone the issues
16 around the legalities of that.

17 MS. HUNTER: I have nothing
18 further.

19 REDIRECT EXAMINATION

20 BY MR. BOYTE:

21 Q. So you testified that the COVID funding
22 or the retention was not based on exposure to
23 COVID?

24 A. Correct.

25 Q. Is it also your testimony that most of

1 the retention was given to inpatient employees?

2 A. Yes.

3 Q. So why would --

4 A. Nursing employees, yes.

5 Q. Okay. Why would inpatient employees be
6 more deserving of retention than outpatient?

7 A. As I stated, we did not have an issue
8 with retaining our outpatient nursing staff. They
9 were working from home. They were not here on the
10 facility grounds. Our nursing staff in the
11 inpatient areas were being potentially drawn away
12 by other community hospitals with large incentive
13 bonuses.

14 Q. Did the CBOCs remain open?

15 A. Yes, the CBOCs remained open.

16 Q. So are any of the LPNs from the CBOCs
17 teleworking?

18 A. I don't have an answer for that. I don't
19 know for sure, but I would assume, yes, they were.

20 Q. Are LPNs direct patient care employees?

21 A. Yes.

22 Q. So is it safe to say that they can't do
23 direct patient care teleworking?

24 A. No, because --

25 Q. Why is that?

1 A. Because when we're talking about direct
2 patient care, it comes from a couple of different
3 formats.

4 Q. Okay.

5 A. When we're talking about the LPNs, if
6 you're referring specifically to the outpatient
7 area, the LPNs in outpatient were able to do
8 check-ins with patients by VVC, VA video connect.

9 Q. Okay.

10 A. So they were able to do a face-to-face
11 encounter through technology to provide that
12 one-on-one direct patient care. So it's -- it's
13 how you define direct care. If you're talking
14 about direct care being you and I and me taking
15 care of you, that's one definition. Another
16 definition would be the VA video connect and being
17 able to provide you direct care through a video
18 technology position.

19 Q. I got a headache, take an aspirin.

20 A. If I'm an LPN, I can't tell you to take a
21 aspirin.

22 Q. Right.

23 A. But yes, same concept.

24 MR. BOYTE: So I have no other
25 questions.

1 ARBITRATOR DUNN: Anything else,
2 Kat?

3 MS. HUNTER: No.

4 ARBITRATOR DUNN: I really
5 appreciate you coming in. I know you're busy, but
6 that means your testimony is over with.

7 Just remember not to talk about it.
8 That's the only admonition I'd give you before you
9 leave. Thank you so much for your time.

10 THE WITNESS: Thank you.

11 MR. BOYTE: I'd like to take a
12 short recess. I've got an urgent call I've got to
13 make.

14 ARBITRATOR DUNN: How long?

15 MR. BOYTE: Five minutes.

16 (Recess.)

17 ARBITRATOR DUNN: Now, with that,
18 the court reporter is going to swear you to
19 testify and Mr. Boyte will start asking you
20 questions.

21 THE WITNESS: Okay.

22 LYNEAL VANREED,
23 called on behalf of the Union, testified under
24 oath as follows:

25 ARBITRATOR DUNN: Please proceed.

1 MR. BOYTE: Yes, sir.

2 DIRECT EXAMINATION

3 BY MR. BOYTE:

4 Q. Okay. What is your current position with
5 the VA?

6 A. Currently I'm an optometry tech.

7 Q. Okay. And what position did you hold in
8 April of 2020?

9 A. I was a nursing assistant in the surgical
10 intensive care unit.

11 Q. Is that considered a health tech?

12 A. Yes.

13 Q. Okay. And how long were you a health
14 tech?

15 A. I was a health tech for nearly two years.

16 Q. Okay. And when you were a health tech,
17 what consisted of your duties?

18 A. I would perform vitals. I take blood
19 sugars. Bed changes. Nutritional. I help feed
20 the patients. It's real patient direct care.

21 Q. Okay. And was this for inpatient in the
22 hospital?

23 A. Yes, sir.

24 Q. Okay. And have you ever received any
25 retention pay --

1 A. No.

2 Q. -- due to COVID?

3 A. No.

4 Q. All right. Have you ever received any
5 awards as COVID pay?

6 A. No.

7 MR. BOYTE: I pass the witness.

8 ARBITRATOR DUNN: That means she
9 gets to ask you a few questions now if she wants.

10 CROSS-EXAMINATION

11 BY MS. HUNTER:

12 Q. Hi, Mr. Vanreed. My name is Kathleen
13 Hunter. I'm the Agency attorney in this case.

14 It's your testimony today that you did
15 not receive retention pay for April 12th of 2020
16 through June 18th of 2020?

17 A. I have not.

18 Q. When did you move from being a nursing
19 assistant to an optometry tech?

20 A. November 22nd, 2021.

21 Q. And you were in the surgical ICU care
22 unit?

23 A. Yes.

24 MS. HUNTER: I have nothing
25 further.

1 ARBITRATOR DUNN: Anything else?

2 MR. BOYTE: No.

3 ARBITRATOR DUNN: Well, for all
4 the fuss to get you over here, sir, that means
5 you're done.

6 THE WITNESS: All right.

7 ARBITRATOR DUNN: Thanks very
8 much.

9 THE WITNESS: Thank you.

10 MR. BOYTE: Ms. Hunter, what did
11 you decide on proposed SF 50s?

12 MS. HUNTER: I have no objection
13 to the 50s coming in, but I do object to your
14 characterization of the statements.

15 MR. BOYTE: We're not going to
16 issue a statement.

17 MS. HUNTER: Okay.

18 ARBITRATOR DUNN: So you mean 11
19 and 12 are related to Mr. Defoe?

20 MR. BOYTE: Yes. So 11 -- 11 is
21 going to be the SF 50 dated 3/9/21.

22 ARBITRATOR DUNN: Good afternoon.

23 THE WITNESS: Hey, how you doing?

24 ARBITRATOR DUNN: Pretty good.

25 THE WITNESS: Is it afternoon or

1 still morning?

2 ARBITRATOR DUNN: Oh, it's still
3 morning. You're right. I'm sorry. These people
4 have gotten me up early today.

5 My name is Pat Dunn. I'm the arbitrator
6 in this matter. That means I'm the hearing
7 officer, you know, hired judge, whatever you want
8 to call it.

9 THE WITNESS: Okay.

10 ARBITRATOR DUNN: This is
11 conducted like a normal hearing and that means
12 it's a question-and-answer format. So just listen
13 carefully, speak up and verbalize your answers so
14 the court reporter can get them down.

15 THE WITNESS: Okay.

16 ARBITRATOR DUNN: And the -- but
17 the main thing for witnesses to remember is just
18 don't talk to anybody about your testimony or what
19 goes on here until this is all over with. We just
20 don't want to unduly influence anybody who might
21 also be testifying.

22 THE WITNESS: Understood.

23 ARBITRATOR DUNN: Okay. Thank
24 you, sir.

25 And with that, the court reporter will

1 swear you in.

2 ANTHONY MCKENZIE,
3 called on behalf of the Union, testified under
4 oath as follows:

5 DIRECT EXAMINATION

6 BY MR. BOYTE:

7 Q. For the integrity of your testimony, can
8 you take out your ear buds?

9 A. Oh, sorry.

10 Q. All right. All right, Anthony, what is
11 your current position with the VA right now?

12 A. I'm a maintenance worker in Facility
13 Management.

14 Q. Okay. And how long have you done that
15 job?

16 A. For going on 14 years.

17 Q. So what all positions consist of
18 maintenance -- facility maintenance?

19 A. Working with the different shops. I work
20 with the plumbing shop, with the electrical shop,
21 with the carpenter shop, with the AC shop, with
22 the micro tech shop. Currently for the past
23 almost seven years, I've been working in the micro
24 tech shop. The micro tech shop takes care of the
25 beds, the TVs --

1 Q. Uh-huh.

2 A. -- the nurse call, the patient lifts.
3 All that is in the patient rooms.

4 Q. Okay. And at any time during -- since
5 the COVID pandemic has been happening, have you
6 received any retention pay or award related to the
7 COVID pandemic?

8 A. No.

9 Q. And has anybody in your shop that you're
10 aware of personally knowledgeable of ever
11 receiving any?

12 A. No.

13 Q. Are the patients still in the room
14 sometimes when you have to work on the bed or the
15 TV?

16 A. Yes.

17 Q. And are you made aware of whether they're
18 COVID positive or negative?

19 A. Yes.

20 Q. Okay. And have some of them been COVID
21 positive that you have gone in to work in their
22 rooms?

23 A. Yes.

24 MR. BOYTE: I don't have any other
25 questions.

1 ARBITRATOR DUNN: That means she
2 gets to ask you now if she has some.

3 THE WITNESS: Okay.

4 CROSS-EXAMINATION

5 BY MS. HUNTER:

6 Q. Hi, my name is Kathleen Hunter. I'm the
7 attorney with the Agency representing the Agency
8 today. I do have a few questions for you.

9 One of my questions is, did you ever have
10 a bona fide job offer during COVID?

11 MR. BOYTE: Objection. That
12 wasn't in direct examination.

13 ARBITRATOR DUNN: That's true.
14 Please answer if you can, sir.

15 A. Can you repeat the question?

16 Q. (By Ms. Hunter) Yeah, did you have a
17 bona fide job offer from somewhere else during the
18 pandemic while you were working?

19 A. No.

20 MS. HUNTER: Nothing further.

21 ARBITRATOR DUNN: Anything else?

22 MR. BOYTE: No.

23 ARBITRATOR DUNN: That means
24 you're done, sir, believe it or not.

25 MR. BOYTE: Thank you.

1 THE WITNESS: Thank you.

2 MR. BOYTE: Told you it was going
3 to be short and sweet.

4 ARBITRATOR DUNN: Thanks for
5 coming in.

6 THE WITNESS: All right.

7 ARBITRATOR DUNN: We couldn't do
8 that if people didn't show up.

9 (Off the record.)

10 JAMES MOORE,
11 called on behalf of the Union, testified under
12 oath as follows:

13 ARBITRATOR DUNN: Please proceed.

14 DIRECT EXAMINATION

15 BY MR. BOYTE:

16 Q. What position do you currently hold with
17 the VA?

18 A. Carpenter.

19 Q. Okay. And how long have you been a
20 carpenter here?

21 A. Eight years.

22 Q. Eight years. And so you were a carpenter
23 back in April of 2020?

24 A. I've been a carpenter for 47 years.

25 Q. Okay. And do you recall receiving any

1 cash awards --

2 A. Yes.

3 Q. In the last year?

4 A. Yes.

5 Q. Do you know what those amounts were?

6 A. One was 500, one was 700. I don't know
7 what order. I don't remember what order, but
8 that's -- I'm pretty sure that's what they were.

9 Q. And were you given a reason what the
10 awards were for?

11 A. We weren't actually given a reason. We
12 were told that they had COVID money that they
13 could pass out.

14 MR. BOYTE: Okay. I pass the
15 witness.

16 ARBITRATOR DUNN: That means she
17 gets to ask you questions now.

18 THE WITNESS: All right.

19 CROSS-EXAMINATION

20 BY MS. HUNTER:

21 Q. Hi, Mr. Moore. My name is Kathleen
22 Hunter. I'm an attorney for the VA representing
23 the Agency in this case.

24 Are you aware of what the difference
25 between an award and a retention incentive are?

1 A. Yes, I believe I do.

2 Q. Okay.

3 A. I believe I'm smart enough to figure that
4 out.

5 Q. What's your understanding?

6 A. Yes.

7 Q. What's your understanding of the
8 difference?

9 A. Well, an award is you've done a good job
10 or they felt like you done a good job. And the
11 other is you were put in a position to do
12 something, so to keep you from leaving to go
13 somewhere else, they're going to give you this
14 money.

15 Q. Essentially retain you, correct?

16 A. Yeah. And if I had a chance to leave,
17 I'd have ran in a heartbeat.

18 Q. So I'll take that as you did not have a
19 bona fide job offer?

20 A. Well, at age 67 or 68, you don't get very
21 many job offers.

22 MS. HUNTER: I have nothing
23 further.

24 ARBITRATOR DUNN: Anything else?

25 MR. BOYTE: I don't have anymore.

1 ARBITRATOR DUNN: Thank you, sir.

2 MR. BOYTE: Thank you, James.

3 ARBITRATOR DUNN: By saying those
4 ages, you made me feel old.

5 THE WITNESS: You're as young as
6 you feel.

7 MS. HUNTER: We chatted briefly
8 while you were getting him. Mr. Elliott is on
9 leave this week.

10 MS. TRUONG: He is in Cancun.

11 MS. HUNTER: Out of the country,
12 so -- because you didn't give me more notice than
13 yesterday, I've not been able to produce him.

14 MR. BOYTE: Okay. We'll have to
15 depose him when I come back up here next week.

16 MS. HUNTER: Do whatever you've
17 got to do.

18 MR. BOYTE: So we're waiting on
19 Ann. You said she would be back in town by noon.

20 ARBITRATOR DUNN: I think she said
21 afternoon something, but I don't know.

22 MS. HUNTER: She sent me a new
23 email. She's going to be here by noon. And I
24 told her to report directly to this room.

25 ARBITRATOR DUNN: Wonderful.

1 MR. BOYTE: So we're just waiting
2 on Jeff Wrye at noon and --

3 MS. FOLSOM: 12 to 1 Jeff Wrye is
4 available.

5 MR. BOYTE: We're going to call
6 him right at noon if we can. Do we want to take a
7 lunch now?

8 ARBITRATOR DUNN: If you all want
9 lunch, let's take lunch now.

10 (Lunch recess.)

11 ARBITRATOR DUNN: My name is Pat
12 Dunn. I'm the arbitrator in this matter.

13 I don't know if you've ever testified
14 before. Just a couple of things to keep in mind.
15 The court reporter has to hear you, so please
16 verbalize your answers.

17 And the other most important one is
18 please don't talk about your testimony or what
19 went on in here until this is all over with. We
20 don't want to influence any other potential
21 witnesses, okay?

22 THE WITNESS: Okay.

23 ARBITRATOR DUNN: With that, the
24 court reporter will swear you in.

25

1 ANN WYMORE,
2 called on behalf of the Union, testified under
3 oath as follows:

4 DIRECT EXAMINATION

5 BY MR. BOYTE:

6 Q. Okay. Good afternoon.

7 A. Hi.

8 Q. I'm Donny Boyte, AFGE national rep
9 presenting the case for AFGE Local 910.

10 What is your current position with the
11 VA?

12 A. I'm the specialty clinic nurse manager.

13 Q. Okay. And how many years have you worked
14 for the VA?

15 A. Six.

16 Q. Okay. And how long have you been the
17 specialty nurse -- specialty clinic nurse manager?

18 A. Officially, three and a half.

19 Q. Okay. So you were in that position in
20 April of 2020?

21 A. Yes.

22 Q. Okay. And have you ever as a supervisor
23 put people in for retention pay?

24 A. No.

25 Q. Okay. Do you supervise Kathy Sidebottom?

1 A. I do, yes.

2 Q. And you've never put her in for any kind
3 of an incentive or retention pay?

4 A. Not that I recall, no.

5 Q. Okay. Have you --

6 A. She has not worked for me for that long.
7 I don't remember. Anyway...

8 Q. Have you given -- has management given
9 you any direction on how to use money for
10 retention or for awards?

11 A. We don't -- we don't -- we did not give
12 retention pay in my clinics.

13 Q. Okay. What are your clinics?

14 A. All of the outpatient specialty clinics,
15 many of them.

16 Q. All right. Is it possible that LPNs can
17 do inpatient and work at an outpatient clinic in
18 the same week?

19 A. Absolutely.

20 Q. They're interchangeable?

21 A. If they pick up overtime.

22 Q. Okay. And so --

23 A. Let me clarify. There are times that we
24 might float someone --

25 Q. Right.

1 A. -- that are short-staffed.

2 Q. Okay.

3 A. But typically, it's overtime.

4 Q. Okay. And retention, you understand it
5 as what? Retention pay, what do you understand
6 that as?

7 A. Well, my guess would be that it's in an
8 effort to encourage employees to stay or to work
9 or -- yeah.

10 Q. And so if an LPN works an outpatient
11 clinic, is she not qualified to work in a
12 community hospital?

13 A. I don't think I could answer that.

14 Q. Okay. If you're an LPN in an outpatient
15 clinic --

16 A. Uh-huh.

17 Q. -- do you have the same qualifications as
18 an LPN on inpatient?

19 A. Their functional statement may be
20 different. I'm not familiar with what it is in
21 inpatient, but under their license, every LPN has
22 the same license.

23 Q. Okay. And they all have to do the same
24 training to achieve that license?

25 A. To get the license, yes.

1 Q. Okay. And in any of your discussions,
2 it's your testimony you were given no guidance on
3 how to give out retention pay or incentive awards
4 using COVID funding?

5 A. We were not included on those.

6 Q. Okay.

7 A. When I say "we," I should say me.

8 Q. Would any of the outpatient clinics you
9 have have LPNs teleworking?

10 A. At times.

11 Q. And what function would they be doing
12 teleworking as an LPN?

13 A. It would depend on the clinic. I have
14 eight different specialties, so their role may be,
15 you know, a small -- a bit different.

16 Q. Okay.

17 A. But they do like virtual rooming for
18 patient visits with a provider.

19 Q. Okay.

20 A. They would do -- you know, maybe some
21 patient education over the phone, they would
22 answer phone calls, maybe do reminder calls.

23 Q. Are they doing that at home or --

24 A. Sometimes.

25 Q. -- are they doing it through video at the

1 clinic?

2 A. They do it at home sometimes.

3 Q. Okay. Now, are all LPNs given an
4 opportunity to telework?

5 A. It is definitely the goal. So it kind of
6 depends on where they work. We have staffing
7 shortages at times and we have not been able to in
8 some areas.

9 Q. Uh-huh.

10 A. There's been times when it's very
11 consistent and times when it's been a challenge to
12 do so.

13 MR. BOYTE: Pass the witness.

14 ARBITRATOR DUNN: That means she
15 gets to ask you questions.

16 CROSS-EXAMINATION

17 BY MS. HUNTER:

18 Q. Good morning, Ms. Wymore. My name is
19 Kathleen Hunter. You and I have spoken briefly.
20 I'm representing the Agency in this matter.

21 I just have one follow-up. Mr. Boyte
22 just asked you if all LPNs are given the
23 opportunity to telework. When you're responding,
24 are you only referring to the LPNs you supervise?

25 A. Oh, yes. I can't speak to anyone else.

1 MS. HUNTER: Nothing further.

2 ARBITRATOR DUNN: Anything else?

3 MR. BOYTE: (Shakes head.)

4 ARBITRATOR DUNN: Well, for all
5 that fuss and you're over that quickly. So thank
6 you very much for your time. Appreciate you
7 coming in.

8 THE WITNESS: Thank you.

9 (Off the record.)

10 ARBITRATOR DUNN: Okay.

11 Mr. Isaacks, my name is -- can you hear me?

12 THE WITNESS: Yes.

13 ARBITRATOR DUNN: Okay. My name
14 is Pat Dunn. I'm the arbitrator in this matter.
15 I think we met briefly on a phone call one time,
16 but I'm not sure. But anyway, I just want to make
17 sure you understand that while this matter is
18 going on, it's important that you not talk about
19 your testimony with anybody else. We don't want
20 to influence anyone else's testimony. Is that
21 clear?

22 THE WITNESS: Absolutely.

23 ARBITRATOR DUNN: Okay. And we
24 have agreed -- I think we've agreed -- have we
25 agreed, Mr. Boyte, that the -- and Ms. Hunter that

1 the court reporter can administer the oath via
2 teleconference or whatever this is?

3 MS. HUNTER: No objection.

4 MR. BOYTE: Yeah, no objection.

5 ARBITRATOR DUNN: Then the court
6 reporter will next administer the oath and then
7 Mr. Boyte will start asking you questions.

8 DAVID ISAACKS,
9 called on behalf of the Union, testified under
10 oath as follows via videoconference:

11 ARBITRATOR DUNN: Thank you.

12 MR. BOYTE: Please proceed,
13 Mr. Boyte.

14 DIRECT EXAMINATION

15 BY MR. BOYTE:

16 Q. Mr. Isaacks, we've met before, so I won't
17 give you any introductions. Do you remember --
18 you know why we're here today, correct?

19 A. Yes.

20 Q. Okay. And you remember answering a
21 grievance? Do you remember issuing a grievance
22 response?

23 A. Yes, I do.

24 Q. Okay. So my question is, is -- there was
25 retention pay given out for the COVID pandemic to

1 certain positions and not others. What criteria
2 did you pass down the chain of command on who was
3 to get retention pay and who was to get cash
4 awards using COVID funding?

5 A. Well, retention incentives are utilized
6 throughout the system as well as operations
7 throughout the year. So those are specific to the
8 needs of management or the Agency to retain
9 certain skills or abilities of a workforce when we
10 look at competition from the -- from the private
11 sector. So those criteria have always been in
12 place. They're established by the Office of
13 Personnel Management. They're the same criteria
14 that's used regardless of whatever the external
15 forces are that are competitive against hiring and
16 retaining for the federal workforce.

17 So we look at things such as the skills
18 that are being retained, the need for those
19 skills, whether that skill can be replaced in a
20 timely manner as well as things like vacancy rates
21 or turnover rates.

22 Q. So is it your testimony there was no
23 additional funding given at your facility here in
24 Kansas City due to COVID?

25 A. I did not say that. There was

1 substantial funding given to VHA through
2 Congressional legislation in response to the COVID
3 pandemic.

4 Q. Okay. And each facility was given a
5 certain amount?

6 A. For the most part.

7 Q. And so what -- did you give out any
8 guidance on how to use this funding that was for
9 the COVID pandemic?

10 A. We provided guidance on things like hours
11 of use, for things like overtime that were
12 specifically caused by pandemic response as well
13 as the purchase and procurement of supplies and
14 equipment.

15 Also, there were authorities given to
16 medical centers for awards to be funded from COVID
17 funding, although the award criteria did not
18 change from any criteria previously established by
19 the Office of Personnel Management. So that
20 criteria was the same criteria we would have given
21 any time when we were utilizing funds that
22 Congress approves for execution within a facility.

23 MR. BOYTE: I pass the witness.

24 ARBITRATOR DUNN: Please proceed,
25 Ms. Hunter.

1 CROSS-EXAMINATION

2 BY MS. HUNTER:

3 Q. Good afternoon, Director Isaacks. As you
4 know, my name is Kathleen Hunter. I represent the
5 Agency in this matter. I have a slew of questions
6 for you and I'm going to start and kind of go
7 backwards.

8 Can you tell me what your job title here
9 was at the KCVA until recently?

10 A. I was the executive director until July
11 of 2021.

12 Q. Okay. And where have you gone since
13 then?

14 A. I have taken a position as the executive
15 health systems director for the North Florida,
16 South Georgia Veteran's Health System in
17 Gainesville, Florida.

18 Q. So you received somewhat of a promotion?

19 A. Correct.

20 Q. How long were you at the KCVA before
21 leaving for Florida?

22 A. Almost two years exactly.

23 Q. Okay. So for the entirety of the
24 pandemic, you were the acting director at the
25 time? Well, not acting, but director?

1 A. Correct. Right, the executive director.

2 Q. And you briefly told us what retention
3 incentives are used for. Do you agree with me
4 that they're a tool used by management to retain
5 employees?

6 A. Correct.

7 Q. Okay. And can you kind of elaborate on
8 the purpose of a retention incentive?

9 A. So a retention incentive is a management
10 tool to compensate employees and -- on whether to
11 recruit, to retain them with an incentive.
12 Specifically to meet the business needs of the
13 organization, whether it's a specific skill, a
14 specific certification or ability that the Agency
15 deems important enough that if it were to lose
16 that employee or that skill, it would cause harm
17 to the operations.

18 Q. Okay. Are retention incentives
19 considered awards?

20 A. No, retention incentives are not awards.

21 Q. Okay. Why are they not awards?

22 A. So the -- the retention incentives, those
23 are an incentive to retain and compensate.

24 An award is -- and it is not related to a
25 specific accomplishment such as an award. So an

1 award would be specific to a specific
2 accomplishment or achievement, maybe a single
3 incident or a shorter period of time versus a
4 retention incentive would be to compensate and
5 retain in an effort to not lose an employee to
6 whether it's another federal agency or even to the
7 private sector.

8 Q. At the facility, whose sole discretion is
9 it to apply a retention incentive as necessary?

10 A. The executive director.

11 Q. And that goes to a certain percentage
12 point, and then you may have to go to the VISN
13 director for more authority, correct?

14 A. Correct.

15 Q. Are retention incentives monitored month
16 to month?

17 A. So -- yes, so retention incentives are --
18 they're implemented in -- in two fashions. The
19 most common ones, one is a lump sum and that's
20 more of an incentive with a recruitment to where
21 an employee signs a service agreement to retain.
22 But the most common fashion for a retention
23 incentive is to be paid out every paycheck. And
24 that way that they can be monitored and leveraged
25 by the Agency on an ongoing basis.

1 So they're monitored for the most part
2 monthly to determine whether that need still
3 exists to retain that skill or that profession or
4 that ability that the Agency had originally deemed
5 as a need for retention.

6 Q. So if there had been all of A sudden more
7 vacancies or a change in status of the position
8 that might be getting a retention incentive, that
9 retention incentive may end?

10 A. Correct. And it can end for -- it can
11 end with -- immediately. It can end with an end
12 date that management determines would be
13 sufficient to retain until other resources are in
14 place to ensure that the operation continues.

15 Q. What is the process to determine who
16 receives a retention incentive?

17 A. So the general process is -- starts
18 really with the front line leadership as they
19 determine staffing and they -- and they identify
20 really the turnover that happens within their
21 units, the impacts for recruitment, as well as
22 feedback from human resources. So, for instance,
23 if we are having a challenge recruiting a certain
24 skill or ability, then, you know, that supervisor
25 would, in consultation with HR, work with

1 identifying the impact to the organization as well
2 as identifying things like what is a turnover rate
3 or the vacancy rates to -- to determine whether
4 there's a justification to recommend a retention
5 incentive whether for an individual or for a
6 group. And then that would be elevated through
7 really that leadership's chain of command with HR
8 to the executive director for approval as long as
9 that approval was within, you know, my authority.
10 If it was outside of my authority, then I would,
11 of course, review that and determine the impact to
12 the Agency and then make a recommendation to the
13 approving official for whatever the incentive was
14 being requested to retain.

15 Q. So most of your work was in consultation
16 with HR, correct?

17 A. Correct.

18 Q. Are retention incentives an entitlement?

19 A. No.

20 Q. And they can end at any time for any
21 reason, correct?

22 A. Correct.

23 Q. Does the AFGE CBA speak to retention
24 incentives?

25 A. No, not that I'm aware of.

1 Q. Did the Kansas City -- sorry. Every once
2 in a while we get feedback, so I apologize.

3 Did KCVA utilize retention incentives
4 prior to March of 2020?

5 A. Yes. Retention incentives have been long
6 established by the Office of Personnel Management
7 as a management tool that's used prior to the
8 pandemic.

9 Q. Do you have any examples of one that was
10 used prior to the pandemic?

11 A. So I think -- so one -- one area I know
12 when I was the executive director at the Truman VA
13 in Columbia, Missouri, we did -- I recall we did a
14 group retention for LPNs in Sedalia. So we had a
15 clinic in Sedalia. There was a new private sector
16 nursing home being built so there was a lot of
17 competition for licensed professional nurses,
18 LPNs, at that time. So in an effort to -- as they
19 were starting to get contacted or recruiting and
20 job offers, we were -- we determined that was of
21 significant risk to the operations of the clinic,
22 that we would want to retain those employees as
23 best we could with the authorities that existed.

24 So that was probably one example of, for
25 instance, a group -- a retention that we placed on

1 somebody prior to the pandemic, I guess I would
2 say.

3 Q. Was anything different about your
4 assessment at that time than your assessment
5 during this time?

6 A. No. I mean, the assessment and criteria
7 is the same. It's -- it's the competitiveness of
8 the marketplace, the geographic marketplace that
9 has positions, skill -- skilled positions, ones
10 that are hard to recruit or hard to retain. So
11 regardless of the external forces that are on the
12 organization, the same criteria is applied for
13 retention and recruitment incentives regardless of
14 whether there's a pandemic or not.

15 Q. So a pandemic hits the United States in
16 about March of 2020, and at that time did you
17 consider providing retention incentives to certain
18 groups of employees at KCVVA?

19 A. Yes.

20 Q. Okay. And why did you do that?

21 A. So, as I recall, during that time there
22 was a lot of competition for certain professions
23 within the geographic market area, and the
24 feedback that was coming up from our front line
25 leadership was that there was a lot of competition

1 for certain jobs where employees were getting cold
2 calls and job offers, you know, both bonified as
3 well as just seeing the competitive market working
4 with HR when you see recruitments from private
5 sector hospitals.

6 So we determined and we looked across our
7 enterprise to determine where we could not afford
8 to have a loss as we also were planning on
9 obviously ensuring that operations continue. And
10 we worked on both individual and group retentions
11 that were recommended and vetted by HR and
12 approved those accordingly.

13 Q. Did critical care staff become
14 paramount -- I'm going to repeat that again.

15 MS. HUNTER: It only happens
16 sometimes.

17 ARBITRATOR DUNN: I know. I don't
18 get it.

19 Q. (By Ms. Hunter) Did critical care staff
20 become paramount in keeping at the KCVA?

21 A. Yes.

22 Q. Were any of the decisions you made based
23 on any one employee's exposure to COVID?

24 A. No.

25 Q. Why did exposure to COVID not play a

1 part?

2 A. So exposure to COVID was irrelevant
3 because it was about the impact to the Agency with
4 having the skills and abilities and the certain
5 professions that were required to operate an
6 environment that was responsive to the current
7 external forces. So whether -- I mean, again,
8 exposure would not have applied because of the
9 sense that it's the profession that's responding
10 within health care, and that's what we were
11 focusing on retaining. So regardless of where a
12 person may or may not have worked within the
13 health system, their retentions are based on
14 retaining that critical skill and ability.

15 Q. Would you agree with me that critical
16 care staff mostly came from inpatient care versus
17 outpatient care?

18 A. Correct. That's the only area we have
19 critical care staff.

20 Q. Did you follow VA policy and OSHA
21 guidance and the Federal Code of Regulations when
22 approving incentives?

23 A. Yes.

24 Q. Now, there were some people who didn't
25 get incentives, correct?

1 A. Correct.

2 Q. Okay. Why might a maintenance worker
3 might not have got a retention incentive?

4 A. Well, I mean, a maintenance worker may
5 not have gotten a retention incentive because
6 there wasn't a competitive need to retain an
7 employee or there wasn't a significant turnover or
8 loss or vacant -- or a hardness or there wasn't a
9 -- it was not a hard-to-recruit position.

10 So as I previously mentioned, one of the
11 things that you would consider with a retention
12 incentive, and that's why you monitor them,
13 sometimes the pay at the biweekly level or monthly
14 level is because, for instance, if you look at
15 something like a maintenance worker, yes, you
16 know, we don't want to have the turnover in
17 general, but yet, the position is one that we can
18 fill quickly or have a gap that is acceptable to
19 operations.

20 So that may be one of the -- that may be
21 reasons why that position wasn't specifically
22 offered a retention incentive.

23 Q. Were you provided any bona fide job
24 offers by any maintenance workers?

25 A. No, I was not.

1 Q. Same question for a carpenter, why might
2 a carpenter not have gotten a retention incentive?

3 A. Really the same criteria. They may not
4 have been -- first off, there may not have been
5 any turnover. Also, the position may not be hard
6 to recruit or fill. As well as looking at things
7 with HR around -- you know, if we do have an
8 announcement, are we getting an ample amount of
9 applicants versus only ones or twos that apply for
10 positions. So that may be reasons why a carpenter
11 may not have a retention incentive.

12 Q. Did you receive any bona fide job offers
13 from any carpenters?

14 A. No, I did not.

15 Q. Now, there's been a lot of discussion
16 today about LPNs that worked at CBOCs that didn't
17 get retention incentives. Why might the LPNs at
18 the CBOCs not have gotten a retention incentive?

19 A. I would -- I mean, I think along the same
20 lines. And often -- and from what I recall, from
21 my time in Kansas City, I mean, filling CBOC
22 positions is not hard at all. So that may have
23 been one of the primary drivers for that
24 leadership to not raise up a concern to retain or
25 have some type of retention for LPNs. Those are,

1 you know, five-day-a-week jobs, every holiday off,
2 no call. So -- and those are places out in the
3 community where people aren't commuting into
4 the -- you know, the metro.

5 So in those cases, I just often have
6 found there's never really a need to retain
7 because we are often the market leader in some of
8 those clinics. So we are -- we're really the
9 prized position that if we did announce something
10 like an LPN in one of our clinics, we'd get 40 or
11 50 applicants. So that would be a number one
12 reason, that it would be harder to justify giving
13 somebody a retention incentive.

14 Q. During the pandemic, did you also approve
15 awards to employees that were outside of the
16 retention incentive process?

17 A. Correct, there was -- there was several
18 awards --

19 Q. So where --

20 A. -- throughout the organization.

21 Q. So where an employee may not have gotten
22 a retention incentive because their position is
23 not hard to retain, they may have received a
24 COVID-19 special award for performance or
25 something similar, correct?

1 A. It would have been for special
2 contribution and not performance.

3 Q. Okay.

4 A. But yes, an award could have been --
5 could have been awarded for a specific act or
6 achievement or a project that they worked on
7 during -- during any part of the year whether it
8 was COVID-specific related or not.

9 Q. And those retention incentives versus
10 those special contribution awards are separate
11 things, correct?

12 A. Correct.

13 Q. And they're monitored or -- or driven by
14 different VA policies, government regulations and
15 things of that nature?

16 A. Correct.

17 Q. Did you ever approve or disapprove a
18 retention incentive based on BUE status?

19 A. No.

20 Q. Did you ever even consider a BUE status
21 when approving or disapproving a retention
22 incentive?

23 A. No, that would be irrelevant.

24 Q. And is it on any of the forms that you
25 filled out regarding retention incentives?

1 A. No, that's not a fill on any retention
2 incentive form.

3 Q. And I think we talked today multiple
4 times, the only real considerations you gave were
5 the job market, vacancy announcements in the
6 position that would need to be filled?

7 A. Correct.

8 Q. You received -- I'm going to start again.
9 You received the grievance in this matter,
10 correct?

11 A. Yes.

12 Q. Okay. I'm going to show you what's been
13 marked as Joint Exhibit 2.

14 MS. HUNTER: I'm going to unplug
15 for a second because I thought I had it up and I
16 don't.

17 ARBITRATOR DUNN: I think I've got
18 it.

19 MS. HUNTER: Bear with me.

20 Q. (By Ms. Hunter) Sorry, Director Isaacks,
21 hold on one second.

22 Can you see the document now?

23 A. Yes.

24 Q. Okay. Hold on one second.

25 All right. Is this the grievance that

1 we're here on today that you recall?

2 A. Yes, it looks like it.

3 Q. Okay. And what was the subject matter of
4 the grievance that you responded to?

5 A. The subject was the filing of a Step 3
6 grievance in relation to 20% hourly incentive pay.

7 Q. And when you read that, is it your
8 understanding that it's regarding the retention
9 incentive pay?

10 A. Yes.

11 Q. Okay. Is there -- are any awards given
12 out on a percentage of hourly pay?

13 A. No.

14 Q. I'm going to show you what's been marked
15 as Joint Exhibit -- this is your Joint Exhibit 3.
16 This is your response to the grievance. On the
17 second page of this exhibit is -- oh, I apologize,
18 wrong document, bear with me.

19 Okay. This is your grievance response to
20 this arbitration, correct, and that's your
21 signature?

22 A. It's my grievance response to the Step 3
23 grievance.

24 Q. What did I say? Did I say that wrong? I
25 apologize.

1 A. You said arbitration.

2 Q. Thank you.

3 When you responded to the grievance, was
4 it your understanding that the Union was asking
5 for all KCVA bargaining employees to receive a
6 retention incentive?

7 A. Yes, to receive a 20 percent incentive.

8 Q. Okay. And you responded as to such,
9 correct?

10 A. Correct.

11 Q. I don't have anything else but others
12 might.

13 MR. BOYTE: I do. Are you ready
14 for me?

15 MS. HUNTER: Yes.

16 ARBITRATOR DUNN: Yes, please
17 proceed.

18 REDIRECT EXAMINATION

19 BY MR. BOYTE:

20 Q. Mr. Isaacks, is it your testimony that
21 anybody that received an incentive retention had
22 to bring forth a bona fide job offer?

23 A. No.

24 Q. So is there a reason why some LPNs may
25 have gotten retention pay and they were inpatient

1 and other LPNs that were inpatient did not get
2 incentive pay?

3 A. Can you repeat the question, please?

4 Q. Is there a reason why, if it's true --
5 I'm just making speculation here. Would there be
6 a reason for an LPN working inpatient care inside
7 the facility, not getting retention pay when
8 others may be getting retention pay inside the
9 facility, an LPN?

10 A. Yes. There could be a reason, yes.

11 Q. And what would that reason be?

12 A. Well, an LPN working inpatient care in a
13 med/surg unit may not -- there may not be an
14 organizational business need to retain at the same
15 level or at all with an incentive versus an LPN
16 that's working in critical care or an emergency
17 area of the inpatient hospital setting.

18 Q. Now, you're responsible to ensure that
19 all employees are treated fairly and equitably?

20 A. Yes.

21 Q. And is it your testimony that some EMS
22 employees may have received some kind of
23 incentive?

24 A. I mean, I would have to confirm who all
25 got incentives, but that may be the case, yes.

1 Q. And what does EMS stand for for the
2 arbitrator?

3 A. Environmental Management Services.

4 Q. And that's the people who clean the rooms
5 and take out the trash and mow the yard and...

6 A. They don't mow the yard, but they provide
7 infection control and they maintain the
8 cleanliness of the hospital.

9 Q. Okay. Now, is the police department
10 considered critical care?

11 A. In the context of critical health care,
12 no.

13 MR. BOYTE: Okay. I have no other
14 questions.

15 MS. HUNTER: I have a couple of
16 redirect.

17 ARBITRATOR DUNN: Please.

18 RECROSS-EXAMINATION

19 BY MS. HUNTER:

20 Q. Director Isaacks, why were some police
21 officers and security -- security clerks and
22 security officers getting -- given retention
23 incentives, do you recall?

24 A. So as I recall, probably during that time
25 frame, I don't remember specific dates, but after

1 probably March time frame the only academy that
2 will license and recommend badging for federal VA
3 police officers closed. So based on that and the
4 fact that we had current VA police officer
5 vacancies within our own health care system in
6 Kansas City, the determination was made, after a
7 recommendation from the police chief as well as
8 consultation with HR, that a group retention would
9 be appropriate because losing a police officer
10 from our facility, we would not be able to -- we
11 would have a hard -- hard time filling that
12 position with a qualified and badged officer
13 because of the academy's closure.

14 MS. HUNTER: I don't have anything
15 further.

16 ARBITRATOR DUNN: Before you do
17 that, may I just ask a clarifying question,
18 Mr. Isaacks? I just wanted to make sure I
19 understood this correctly. Can -- can
20 incentive -- can incentives be given as either a
21 lump sum or a percentage of salary?

22 THE WITNESS: Yes.

23 ARBITRATOR DUNN: Okay.

24 THE WITNESS: So, for instance,
25 you know, whether it's a recruitment incentive or

1 a retention incentive, which I know we're talking
2 about more retention incentives, you could say
3 \$5,000. Or the more generally-accepted process
4 with OPM is a percentage, and that's where you --
5 it could be from -- it could be .5 percent up to
6 25 percent. Anything over that, OPM has to
7 approve at their level.

8 ARBITRATOR DUNN: But just because
9 it's a sum certain and not a percentage doesn't
10 mean it's a -- it's a contribution award, it may
11 be a retention incentive, but still be a lump sum?

12 THE WITNESS: Correct.

13 ARBITRATOR DUNN: I just wanted to
14 make sure --

15 THE WITNESS: And that's where --

16 ARBITRATOR DUNN: Please go ahead,
17 Donny.

18 Oh, I'm sorry, did you have something
19 based on that?

20 MS. HUNTER: Yeah, I did.

21 Q. (By Ms. Hunter) Director Isaacks, did
22 you give out any lump sums or did you only give
23 out percentages of pay?

24 A. As far as I can recall for retention
25 incentives -- and retention incentives are, again,

1 for current employees, they are always
2 percentages.

3 ARBITRATOR DUNN: Thank you.
4 Donny.

5 REDIRECT EXAMINATION

6 BY MR. BOYTE:

7 Q. So was there retention incentives given
8 out to every department that was short-staffed?

9 A. I do not believe so, no.

10 Q. And do you know how many departments were
11 short-staffed?

12 A. No, not specifically.

13 Q. And back to the -- do you recall having a
14 grievance meeting with Jeff Wrye?

15 A. Are you talking about specific to this?

16 Q. Yes, sir, to the grievance --

17 A. Yes.

18 Q. -- that you were testifying to earlier.

19 A. Yes, I do.

20 Q. Do you recall having a meeting with him?

21 A. Yes.

22 Q. And in that meeting, did you make the
23 statement that EMS employees were easy to hire?

24 A. No, I don't recall that.

25 Q. Okay. Thank you.

1 ARBITRATOR DUNN: Is that all?

2 MS. HUNTER: Yeah.

3 ARBITRATOR DUNN: Anything else?

4 MS. HUNTER: One follow-up. I
5 apologize.

6 RECROSS-EXAMINATION

7 BY MS. HUNTER:

8 Q. Why would it be inappropriate for the
9 KCVA to do a blanket retention incentive for all
10 bargaining unit employees?

11 A. The main reason is because not all
12 positions would -- are hard to fill. Not all
13 positions meet the criteria to where retention, I
14 think, would be appropriate based on skills and
15 abilities. And I think specifically because
16 that's really not how OPM designed the construct
17 of recruitment and retention incentives to be
18 blanket. That's what the salary is for, to be
19 blanket, and incentives are for management tools
20 to leverage the need on a case-by-case basis or a
21 period of time to recruit or retain highly skilled
22 or positions that are -- again, are hard to fill
23 or hard to replicate or cause harm to the
24 organization if they were to be vacant for a
25 period of time.

1 MS. HUNTER: Now I have nothing
2 further.

3 ARBITRATOR DUNN: Thank you.
4 Anything else?

5 MR. BOYTE: Well, he's mentioned
6 criteria.

7 REDIRECT EXAMINATION
8 BY MR. BOYTE:

9 Q. But what is the criteria?

10 ARBITRATOR DUNN: For what?

11 Q. (By Mr. Boyte) For retention incentives.

12 A. So I've said several times so far.
13 There's multiple criteria. Everything from
14 turnover rates to vacancies to the gap that it may
15 take to fill the position based on historic
16 experience with recruiting.

17 So that's where working with human
18 resources in consultation with them to identify --
19 for instance, if we tried to announce a position
20 three times and all three times we get one or two
21 applicants versus if we have a position like a
22 mechanic to where we announce it and every time we
23 announce it we have 24 or 25 applicants. So you
24 can see the difference between trying to justify a
25 retention or recruitment incentive based on that

1 type of criteria.

2 Q. Okay. Thank you.

3 ARBITRATOR DUNN: Anything else?

4 MS. HUNTER: Not right now.

5 ARBITRATOR DUNN: Mr. Isaacks, I
6 believe we're done with you for -- at least for
7 the moment. You'll be contacted if we have to
8 call you back for any reason, but I think we're
9 done for the moment. Thank you so much for your
10 time.

11 THE WITNESS: Okay. Thank you.

12 MS. HUNTER: Thanks, Director.

13 ARBITRATOR DUNN: He was your
14 witness.

15 MR. BOYTE: Union rests.

16 ARBITRATOR DUNN: Union rests.

17 MS. HUNTER: Okay.

18 MR. BOYTE: May I have a short
19 minute?

20 ARBITRATOR DUNN: Of course.

21 (Recess.)

22 ARBITRATOR DUNN: Good afternoon.
23 I'm the arbitrator in this case, and the only
24 instruction I want to make sure you understand is
25 don't talk to anybody else about this hearing or

1 your testimony until this is all over with, if you
2 would, please.

3 THE WITNESS: Understood.

4 ARBITRATOR DUNN: Thank you.
5 Please proceed.

6 THE COURT REPORTER: I'll need the
7 same agreement.

8 ARBITRATOR DUNN: Do both
9 representatives agree that our court reporter can
10 swear him virtually?

11 MS. HUNTER: Yes.

12 MR. BOYTE: Yes.

13 ARBITRATOR DUNN: Thank you.

14 MR. BOYTE: Any and all virtual
15 witnesses.

16 ZACHARIAH ROUNDS,
17 called on behalf of the Agency, testified under
18 oath as follows via videoconference:

19 ARBITRATOR DUNN: Please proceed.

20 MS. HUNTER: Thank you.

21 DIRECT EXAMINATION

22 BY MS. HUNTER:

23 Q. Can you please state and spell your name
24 for the record.

25 A. Yes, Zachariah Adam Rounds,

1 Z-a-c-h-a-r-i-a-h. Adam, A-d-a-m. Last name
2 Rounds, R-o-u-n-d-s.

3 Q. What is your current job title?

4 A. I'm a supervisor human resource
5 specialist for compensation and staffing within
6 the VISN 15 HRMS facilities.

7 Q. And how long have you been in that
8 position?

9 A. Roughly two years.

10 Q. So you've been in that position the
11 entire time COVID-19 has been going on?

12 A. Yes, ma'am.

13 Q. Okay. Prior to that, where did you work?

14 A. I worked in staffing and recruitment at
15 the Marion VA for about seven or eight years.

16 Q. And then did you also work as a
17 supervisor in the staffing and recruitment
18 department --

19 A. Yes, ma'am.

20 Q. -- and compensation at the VISN?

21 A. Yes.

22 Q. Because you work for the VISN, are you
23 familiar with the KCVA retention incentives?

24 A. Yes, ma'am.

25 Q. Okay. And who did you work with from

1 KCVA on the Kansas City VA retention incentives?

2 A. Kathi Nippert, SSU supervisor there. So
3 my equivalent in a staffing supervising role
4 specific to that area of assignment.

5 Q. Can you briefly tell us what experience
6 you have working with retention incentives?

7 A. And prior to the compensation role, I
8 worked on what we call the three Rs, recruitment,
9 retention, relocation, within the staffing and
10 recruitment section of the variant. And then
11 compensation 2018 forward has been specific to
12 incentives and compensation-related matters for
13 that matter. They're pretty heavy from network
14 directors all the way down to entry level
15 positions. All phases, so...

16 Q. And so at -- in your current position
17 you've worked with all the VISN staff who
18 implemented retention incentives during the
19 COVID-19 pandemic and before and will continue to
20 do so after?

21 A. Yes, ma'am.

22 Q. What is a retention incentive in your
23 words?

24 A. Retention incentive is a tool that
25 medical center directors or network directors,

1 depending on the approving official, can utilize
2 to maintain key staff or key functions within a
3 service mission of critical items. In essence,
4 it's a compensation flexibility, not an
5 entitlement, but the flexibility they may pursue
6 if they have the justification to put in place for
7 maintaining what they feel are core needs within
8 the mission, support unit specific areas within
9 their facility, so...

10 Q. Can you tell me if the Agency has a
11 retention incentive policy or handbook that
12 governs those?

13 A. Yes, retention incentives are 507 of the
14 instruction manual, Part VI specific to
15 recruitment location in one part and retention in
16 another.

17 (Off the record.)

18 Q. (By Ms. Hunter) I'm going to ask you the
19 question again. Can you tell me if the Agency has
20 a handbook that governs retention incentives?

21 A. Yes, the VA handbook 5047, Part VI covers
22 retention incentives.

23 (Agency Exhibit A-1 was marked for
24 identification.)

25 Q. (By Ms. Hunter) Okay. I'm going to show

1 you what's been marked as Agency Exhibit 1. Is
2 this the handbook that you were just referring to?

3 A. I don't see it on the screen.

4 Q. Oh, you know what, I might not have
5 shared my screen. Hold on. Apologies. There we
6 go.

7 A. Yes, that is correct.

8 Q. Okay. So prior to providing any advice
9 to any directors or, you know, staff at the Kansas
10 City VA, this is something that you would have
11 consulted or been familiar with, correct?

12 A. Yes.

13 Q. Okay. And I specifically want to draw
14 your attention to page 2 of Agency Exhibit A-1.
15 This paragraph explains that it's a tool used by
16 management to retain employees and whatnot,
17 correct?

18 A. That's correct.

19 Q. Okay. So it's not an award, it's just a
20 tool that can be used when retention may be
21 necessary for the critical mission of the VA?

22 A. That's correct. It is -- incentives are
23 not an award. Authorized specifically under this
24 guidance right here with the discretion of the
25 approving official, recommending official and

1 approving official.

2 Q. At the facility, whose sole discretion is
3 it to apply a retention incentive, as necessary?

4 A. Typically, it's going to be the medical
5 center director unless the range that's being
6 requested is in excess of his or her approval
7 limits, and then it would be the network director
8 fulfilling that role.

9 Q. And are those retention incentives
10 monitored by the facility on a month-to-month
11 basis?

12 A. Yes, maintaining eligibility for an
13 incentive once it's applied to an employee is key.
14 They follow what would be successful if they leave
15 the position for which the incentive was
16 authorized. If they leave the VA in general,
17 there are things that have to be monitored to make
18 sure, one, they're still entitled once it's been
19 approved; and then, two, if funds or another
20 matter comes up and a discretionary approving
21 official wants to terminate it, they have the
22 ability to do that. So HR typically monitors
23 those -- maintains that need.

24 MS. HUNTER: I would offer what's
25 been marked Agency Exhibit A-1.

1 ARBITRATOR DUNN: Any objections?

2 MR. BOYTE: No.

3 ARBITRATOR DUNN: It's received.

4 Q. (By Ms. Hunter) Is the process the same
5 for every facility on who receives a retention
6 incentive?

7 A. No, they would be unique to the
8 circumstances. Each time -- even within a
9 facility, it wouldn't be the same every time.

10 Q. And why is that?

11 A. Specifically the justifications on the
12 10017 form, the retention incentive form unique to
13 the unit, unique to the person, if it's an
14 individual or a group. It may differ from the
15 beginning of the year to the end of the year based
16 on the circumstances that are justifying the
17 request for an incentive. There are multiple
18 variables each time you look at it from that
19 standpoint.

20 Q. Might it also differ because of where --
21 the location of where the incentive is being given
22 there might be a shortage of LPNs in KCVA, but
23 there might not be a shortage in Marion, correct?

24 A. That's correct. Because the
25 justification that would be supplied is specific

1 to that location. Even within a larger facility,
2 you might justify it at a CBOC, but not meet the
3 same justification at the main facility or vice
4 versa. And that's why it's very targeted.

5 Q. Okay. Are retention incentives an
6 entitlement?

7 A. No. Even once a retention incentive is
8 approved, the service agreements and statement of
9 understanding let the employees receiving it know
10 they can be terminated at any time and the
11 criteria. So they receive it as they earn it. If
12 it's terminated early, there's no reprisal from
13 that standpoint. It just depends on whether a
14 debt is or isn't created based on the
15 circumstances, but it's not an entitlement.

16 Q. Are you aware if the AFGE CBA speaks
17 retention incentives?

18 A. The master agreement does not have a
19 piece about retention incentives in it. There
20 might be a mention on the bargain pay in a
21 position but that is not a form or the
22 justification or the process for it.

23 Q. So it's recommended by a supervisor or it
24 can come about in a different way, but the
25 director is the sole discretionary authority

1 regardless, correct?

2 A. Yes.

3 Q. So it's different from that of maybe an
4 award where there might be a committee which the
5 master agreement does speak to?

6 A. Correct. There are not award committees
7 or teams that meet on --

8 (PA interruption.)

9 Q. (By Ms. Hunter) I apologize. Can you
10 continue?

11 A. There aren't award committees or teams
12 that you might be for like performance of awards
13 or employee of the month-type criteria. The
14 justification comes from the recommending official
15 and then the review and determination on approval
16 comes from the approving official.

17 Q. Did the KCVA facility utilize retention
18 incentives prior to March of 2020?

19 A. Yes.

20 Q. Okay. Can you kind of explain why they
21 might have used them before the pandemic occurred?

22 A. Specific instances would have warranted
23 it. I don't know the history completely, but if
24 you had maybe a specific unit that was losing half
25 its staff, maybe 10 people in ICU, and I think

1 that's a good example, and you lost five staff,
2 you might request a retention incentive for the
3 current five you had on board while you recruited
4 to fill that gap and then you would terminate it
5 once those justification's no longer warranted it.

6 If you had a unique individual, one of
7 one or one of two position, sometimes you see that
8 in the physicians, specialty engineers, things of
9 that nature, you might use a retention incentive
10 if you're going to lose that candidate to the
11 outside federal agency or civilian equivalent.
12 There are lots of different variables, it just
13 depends.

14 Q. Why would it be inappropriate to do a
15 blanket retention incentive for all KCVA
16 bargaining unit employees?

17 A. No retention incentive is a blanket, in
18 essence, anywhere. Even a group retention
19 incentive, which would be the largest cascade you
20 could for an incentive, still have specific
21 criteria that's defining who is eligible and why
22 they're eligible.

23 An example would be within an HR team, we
24 have HR personnel that do compensation, some that
25 do ER, some that do staffing and recruitment. If

1 they were asking for retention in the staffing and
2 recruitment role, I would not be doing that
3 assignment or those duties at my primary
4 assignment so I wouldn't become eligible under
5 that.

6 Similar pieces play out, nurses and LPNs
7 is probably a good example where you have ward
8 and, you know, inpatient ones versus primary care
9 or outlying ones. So while the occupational
10 assignment may be the same, the duties they're
11 carrying out that are under the justification for
12 individual incentive are not.

13 Q. So that's why you might see two people in
14 the same position, not -- one may have an
15 incentive and one may not, correct?

16 A. Correct.

17 (PA interruption.)

18 Q. (By Ms. Hunter) Now, on -- I know you
19 spoke to briefly about VA Form 10017. For KCVA,
20 did you review all of those signed by the
21 director?

22 A. Yes.

23 Q. Okay. And so your signature appears on
24 all of those forms, correct?

25 A. That's correct. It was initial COVID,

1 especially as we were looking to make sure those
2 were justified correctly.

3 Q. Okay. And you would have been providing
4 guidance at that time to KCVA to make sure that
5 the appropriate individuals received awards -- or
6 I mean, excuse me, incentives?

7 A. Yes, that's correct.

8 Q. Was any of your guidance to the facility
9 that they should approve or disapprove a retention
10 incentive based on BUE status?

11 A. No, bargaining status does not come under
12 consideration. Order incentives, it's not
13 something we capture on the form. Position
14 specific, but we're talking about the duties and
15 the assignments in a facility, not whether
16 somebody is within or without the bargaining unit.

17 Q. So whether they're a bargaining unit or
18 not, all employees of the KCVA were treated the
19 same?

20 A. Correct.

21 Q. And it was based specifically on the
22 position that was in question?

23 A. Yes, ma'am.

24 (Exhibit A-2 was marked for
25 identification.)

1 Q. (By Ms. Hunter) I'm going to show you
2 what I've marked as Agency Exhibit A-2. Maybe.
3 One second.

4 Can you tell me what we're looking at?

5 A. This is an OCHCO bulletin from the Office
6 of the Chief Human Capital Officer penning which
7 is a main piece of exclusion of temporary
8 appointments. One of the memos that came out in
9 relation to the rapid COVID guidance.

10 Typically what this memo is referring to
11 is appointments of one year or less are not
12 eligible. This one was talking about utilizing
13 incentive flexibility on shorter appointments
14 specifically because during COVID they were
15 looking at employee renewants, temporary hires,
16 term appointments, things of that nature.

17 Q. Can you kind of tell us, you know, what
18 happened with -- from OCHCO when the pandemic hit
19 and kind of the slew of guidance that started
20 coming out regarding retention incentives.

21 A. Retention specifically captured within
22 compensation title. They talked about all -- they
23 offered a lot of flexibilities to medical center
24 directors simply because of the staffing
25 requirements that they may be facing, especially

1 with unplanned responses. They were just trying
2 to find as much flexibility within the law and the
3 guidance as they could to offer these facilities
4 the ability to attract and retain staff in key
5 positions.

6 Q. Did you -- go ahead, sorry.

7 A. Oh, sorry, I was just clearing my throat.

8 Q. Did you utilize and use the OCHCO
9 guidance when providing advice to Kansas City VA?

10 A. We shared all this information along with
11 the rest of the supervisory HR staff at all levels
12 just because it was so rapid. It was actually
13 COVID FAQs that were being sent to the field every
14 day. Specific on questions of this nature there
15 was a reference to an appointment or a temporary
16 appointment. That's the bulletin we would have
17 provided in the beginning of this.

18 Q. And this OCHCO bulletin also defined what
19 a relocation or retention incentive was to be used
20 for, correct?

21 A. Yes. I think on page 2, if you can
22 scroll up, I'm sure it's in there. There's the
23 piece, yes.

24 Q. Okay. And it basically says the same
25 thing that the handbook says but restates it in

1 broader terms essentially?

2 A. Correct. The guidance flexibility here
3 underlying the justification and the eligibility,
4 it just talks about the type of appointment you
5 may be eligible for. Still likely to believe
6 Federal service was a key to retain that key staff
7 so that you didn't lose your other staff while
8 you're trying to backfill those vacancies.
9 Bringing on temporary or making appointments to
10 support your full-time staff, that's what the
11 flexibility on this memo is about.

12 But the normal justifications for 507 are
13 still required and the use and approval didn't
14 change of that nature.

15 Q. Did KCVA, the director, follow all OCHCO
16 guidance when approving the retention incentives
17 during THE COVID-19 pandemic?

18 A. To my knowledge, yes. I mean, they did a
19 good job of separating them, not grouping LPNs and
20 RNs together even though they're commonly referred
21 to as nurses. They built justifications for each
22 specific occupational series for the targeted
23 areas that they want to use them in.

24 MS. HUNTER: At this time I'll
25 offer what's been marked as Agency's Exhibit A-2.

1 MR. BOYTE: No objection.

2 ARBITRATOR DUNN: It's admitted.

3 Q. (By Ms. Hunter) Bear with me, I have to
4 find the right document.

5 (Agency Exhibit A-3 was marked for
6 identification.)

7 Q. (By Ms. Hunter) I'm showing you now what
8 I've marked as Agency Exhibit A-3. So can you
9 tell me what we're looking at?

10 A. This is an email correspondence from Leah
11 Brady, workforce management and consulting
12 compensation side, just giving further definition
13 about COVID retention trying to expand upon the
14 information and put clarified terms. I'm sure
15 they got a lot of information requests and this is
16 really just defining that you've got your approval
17 ranges and then what's been delegated. And the
18 separation there with the VISN chief with Title 38
19 was simply that range was specific to Title 38
20 group retention incentives.

21 Q. Okay. But it further states who had the
22 retention incentive authority for what percentages
23 and whatnot as well?

24 A. Yes.

25 MS. HUNTER: Okay. At this time

1 I'll offer what's been marked as Agency Exhibit
2 A-3.

3 MR. BOYTE: How is he familiar
4 with this document? I mean, am I missing it? Is
5 he on this document?

6 Q. (By Ms. Hunter) Did you receive this
7 document in the normal scope of your duties?

8 A. Ms. Brady sent this out to the entire
9 field under compensation. She used the VISN 15
10 CCOE email group. So everybody on our team
11 received these notices. They share them with the
12 staffing supervisors within the SSU teams as well.
13 Thought the original email was forwarded to all us
14 from our original communication. They did this
15 quite frequently during COVID.

16 ARBITRATOR DUNN: Any objection?

17 MR. BOYTE: No.

18 ARBITRATOR DUNN: It's admitted.

19 (Agency Exhibit A-23 was marked
20 for identification.)

21 Q. (By Ms. Hunter) I'm going to show you
22 what's been marked as Agency Exhibit A-23.

23 MR. BOYTE: That escalated
24 quickly.

25 ARBITRATOR DUNN: Yeah, we skipped

1 20 exhibits.

2 MS. HUNTER: We'll come back.

3 Don't worry.

4 ARBITRATOR DUNN: I know you will.

5 MS. HUNTER: I decided to add them
6 later, so I went out of order.

7 Q. (By Ms. Hunter) Can you tell me what 5
8 CFR 575.308 is?

9 A. 5 CFR stands for Title 5 Code of Federal
10 Regulations. 575.308 specifically right there is
11 approval criteria. I think this is referenced in
12 507 as well, in the handbook.

13 MR. BOYTE: Can I have a copy?

14 MS. HUNTER: I had them out and
15 then I didn't hand them to you. Hold on. I
16 apologize.

17 A. All right.

18 Q. (By Ms. Hunter) Go ahead.

19 A. This section is the basic guidance that
20 the VA handles policies built from. Quite often
21 the CFR is the foundation and then the VA
22 handbooks either modify, enhance it or they
23 maintain it. This is what -- an incentive you
24 have to have the approval criteria and the written
25 determination and you can see this same language

1 transformed into the form.

2 So it's the basis for determining the
3 hiring qualifications as to what we consider the
4 justifications for. So you've got employee or
5 group, the special need of the agency. In our VA
6 form you're going to see the impact to the Agency
7 if you lose the individual. The basis for
8 determining likelihood to leave Federal service is
9 covered on our forms as well. And our guidance
10 and then the basis for establishing the amount of
11 the criteria of why we're establishing a specific
12 amount and give that individual or group
13 incentive.

14 Q. When you refer to VA form, you're
15 referring to a Form 10017?

16 A. Yes, ma'am.

17 Q. And that's the --

18 A. Specific to retention incentives.

19 Q. Yeah, Authorization and Review of
20 Retention Incentive form?

21 A. Correct.

22 Q. And would the Agency be -- Agency's
23 actions be governed by this part of the Code of
24 Federal Regulations?

25 A. They're the same basis of policy in

1 Handbook 5007. That's -- we just expanded upon 1,
2 2 and 3 there with further detail in our
3 handbooks.

4 Q. Okay. And when you provided guidance,
5 did you take into consideration this section of
6 the Code of Federal Regulations?

7 A. I didn't pull up 5 CFR specifically, but
8 yes, this would be considered because 1, 2 and 3
9 are covered in depth in our criteria eligibility
10 justifications and approval sections of Part 6 for
11 retention incentives as well as the information
12 that's maintained on the form that's actually
13 reviewed for approval.

14 MS. HUNTER: At this time I'd
15 offer what's been marked as Agency Exhibit A-23.

16 MR. BOYTE: No objection.

17 ARBITRATOR DUNN: Admitted.

18 (Agency Exhibit A-24 was marked
19 for identification.)

20 Q. (By Ms. Hunter) I'm going to show you
21 what I've marked as Agency Exhibit A-24. We're
22 looking at 5 CFR 575.306. Can you tell me what
23 this Code of Federal Regulations is used for?

24 A. This is the -- you've got the
25 justification, which would be the beginning of the

1 form, and the authorization, which is the
2 approving official, and review the justifications
3 and it's now making a determination. So the
4 approving official's responsible for this piece
5 right here. It's determining the qualifications
6 to see if they agree with the recommendation.
7 Determining whether it's a group or categories
8 that's going to specifically warrant using a group
9 incentive versus an individual incentive. And
10 then they've got that approval range depending
11 upon the percentage. And then establishing the
12 criteria for determining the amount of incentive
13 and length of service. That's all part of the
14 recommendations. So these items are all contained
15 within the actual form itself.

16 So this is the foundational information,
17 the CFR, that's built 507 which is the policy that
18 governs our use. And then RVA 10017 form is built
19 to mirror the criteria that's here as well as in
20 our own handbook.

21 Q. So again, we would have been bound by
22 this Code of Federal Regulations when making any
23 decisions that we made, correct?

24 A. Correct.

25 Q. And though our handbook, you know, kind

1 of emphasizes it, this still would have been a
2 governing body and any decisions we made as an
3 agency?

4 A. They're tied together, yes.

5 Q. Okay. And you would have consulted this
6 or been aware of it when providing your advice to
7 the facility?

8 A. Correct.

9 MS. HUNTER: At this time I'll
10 offer what's been marked as Agency Exhibit A-24.

11 MR. BOYTE: No objection.

12 ARBITRATOR DUNN: It's admitted.

13 Q. (By Ms. Hunter) Did KCVA follow all
14 Agency policies, OCHCO guidance and the Code of
15 Federal Regulations when providing retention
16 incentives from March of 2020 till now?

17 A. Yes.

18 MS. HUNTER: I have nothing
19 further.

20 ARBITRATOR DUNN: Any cross?

21 MR. BOYTE: Oh, a little tiny bit.

22 CROSS-EXAMINATION

23 BY MR. BOYTE:

24 Q. When these, specifically Agency 1, the VA
25 handbook that you testified to, does it address

1 retention and awards during a pandemic?

2 A. There is guidance on separating the two,
3 but yes, there's agency guidance on COVID awards
4 and specific for retention incentives.

5 Q. Is it in that hand -- is it in this
6 Agency 1?

7 A. I don't think the awards are in one of
8 the ones shown to me today, no.

9 Q. For COVID, correct?

10 A. Correct. But there are different memos
11 and pieces that came out with COVID.

12 Q. So is there a reason why COVID funding
13 was used for incentive awards?

14 A. Specifically the VA received funding that
15 could be targeted for COVID unique from their
16 normal budget. So when you provide those COVID
17 incentives or COVID awards, you have to ensure
18 that you identify them correctly so that the
19 funding lines are used appropriately.

20 Q. Okay. So the -- so is it your testimony
21 that the COVID funding was only for retention, but
22 it -- but it could be used for awards as well?

23 A. It's separate funding, sir.

24 Q. That's what I'm asking. Do you have
25 COVID awards and COVID retention, is that what

1 you're saying?

2 A. You're asking me a question that's a
3 payroll question. They received a large amount of
4 money and they had the funding lines. What we
5 have is the authority to justify incentives. And
6 if you use one, then you're using the appropriate
7 incentive justification and the appropriate nature
8 of action or marks within your incentive or award.
9 How the funding is separated is not something I'm
10 normally in. When we see a total amount of money,
11 that's a payroll/finance item.

12 MR. BOYTE: No questions.

13 ARBITRATOR DUNN: Anything else?

14 MS. HUNTER: I have no follow-up.

15 ARBITRATOR DUNN: Thank you, sir.

16 I hope you're feeling a hundred percent better
17 soon.

18 THE WITNESS: I had my chest x-ray
19 follow-up yesterday, so I'll know when I do my
20 follow-up tomorrow, sir. Thank you.

21 ARBITRATOR DUNN: Great.

22 MS. HUNTER: The next witness I
23 need to call to come down, but can we take a
24 five-minute break? I have to open up a ton of
25 exhibits. Or, actually, he's coming in person. I

1 don't need to do that. I apologize. But if I
2 could have 5 minutes just to reset.

3 ARBITRATOR DUNN: Let's do 10.

4 (Recess.)

5 ARBITRATOR DUNN: Mr. Karr, my
6 name is Pat Dunn. I'm the arbitrator in this
7 case, which means the hearing officer basically.
8 Have you testified before?

9 THE WITNESS: Yes.

10 ARBITRATOR DUNN: Okay. So I
11 won't tell you too much. I just want to remind
12 you that while this is all going on, it's very
13 important that you don't talk about your testimony
14 with anybody else. We don't want to influence any
15 other potential witnesses' testimony.

16 THE WITNESS: Yes, sir.

17 ARBITRATOR DUNN: Okay.

18 THE WITNESS: Yeah.

19 ARBITRATOR DUNN: And the only
20 other thing that's really important is we have a
21 court reporter. So you need to verbalize your
22 responses, which is not completely natural.

23 THE WITNESS: Yes, sir.

24 ARBITRATOR DUNN: With that, I
25 will ask the court reporter to swear you in.

1 DANIEL KARR,
2 called on behalf of the Agency, testified under
3 oath as follows:

4 DIRECT EXAMINATION

5 BY MS. HUNTER:

6 Q. Can you please state and spell your name
7 for the record.

8 A. This is Daniel, D-a-n-i-e-l. Last name
9 is Karr, K-a-r-r.

10 Q. What is your current job title?

11 A. I'm an assistant human resources officer
12 for VISN 15.

13 Q. Okay. And is that a recent promotion?

14 A. Yes. At the time of the original
15 grievance, I was a human resources officer here at
16 the Kansas City VA Medical Center.

17 Q. Okay. And what were your normal job
18 duties as the HRO for KCVA?

19 A. So, in essence, I was responsible for the
20 HR functions, human resource functions within the
21 medical center, to include the staffing and
22 recruitment, compensation, employee and labor
23 relations, security, meaning the background
24 investigations and the badging accesses.

25 Q. Would you have been the main HR person

1 providing advice to the director?

2 A. I was, yes, one of the key people that
3 would provide advice, yes.

4 Q. Okay. And how has your position changed
5 since you've been promoted?

6 A. Recently, VHA, which is the Veterans
7 Health Administration, has consolidated -- married
8 HR functions to the VISN level. And then VISN is
9 Veterans Integrated Services Network. It's the
10 region of VAs. So VISN 15 has nine medical
11 centers.

12 So rather than supervising a department
13 at this time, I'm basically a liaison between the
14 executive leadership team and the director, the
15 associate director, assistant director, and the HR
16 functions that are now consolidated at the VISN
17 level.

18 Q. And prior to those two positions, did you
19 work at or in HR at the VA?

20 A. Yeah, I've been at the VA for 12 years in
21 the human resources office in human resources.
22 Spent the first three years as an intern and
23 trainee. The second three years in staffing and
24 recruitment. And then three years in employee
25 labor relations. And then the last two and half

1 to three years in a leadership position.

2 Q. You'd agree with me that you're well
3 versed in most things HR related?

4 A. Yes.

5 Q. During the pandemic we -- strike that.
6 What is a retention incentive?

7 A. A retention incentive is a tool that is
8 used by the medical center to retain individuals,
9 employees that are in positions that are key to
10 the operation of the medical center. Or if
11 there's an expectation that that employee or group
12 of employees is going to leave federal service.

13 Q. And are retention incentives considered
14 awards?

15 A. They're not.

16 Q. Why not?

17 A. Because an award is something that's
18 given to individuals if they go above and beyond.
19 There's several categories of awards. There's
20 performance awards that are tied to your
21 performance appraisal. There are special
22 contribution awards that are given if you go above
23 and beyond to contribute to the mission of the VA
24 somehow. There's time off awards that are very
25 similar to special contribution awards only

1 instead of getting a monetary value, you get hours
2 of duty off.

3 A retention incentive, again, is a tool
4 that's used to retain employees. It's not
5 something that is used to reward employees.

6 Q. And it's not an entitlement, correct?

7 A. Correct.

8 Q. Prior to March of 2020, did the Kansas
9 City VA utilize retention incentives?

10 A. We did. So in most often -- in most
11 cases, retention incentives are going to focus
12 around your clinical staff, your physicians, your
13 nurses, folks where there's a lot of -- or
14 positions, rather, where there's a lot of
15 competition from the private sector.

16 So, yes, we did utilize those. Kansas
17 City is one of the top two users of retention
18 incentives in the VISN that I mentioned earlier.
19 It's between us and St. Louis.

20 Q. Okay. So there might have been an
21 opportunity to have a retention incentive paid out
22 at KCVVA more than there might have been at a
23 different VISN facility other than St. Louis?

24 A. Yes, one, due to the complexity of our
25 services because we offer specialties like, oh,

1 vascular surgery and some of those very
2 specialized occupations that are offered at other
3 facilities. But also, just because of the nature
4 of the environment we're at, we're a major
5 metropolitan area. We have maybe five, six, seven
6 medical centers, you know, within a 15-, 20-minute
7 commute. So there's a lot of competition for that
8 very limited talent pool.

9 Q. And are the retention incentives
10 monitored month to month?

11 A. Yes. So there's different ways that
12 retention incentives can be paid. They can be
13 paid on a biweekly basis as part of the employee's
14 paycheck or they can be paid in lump sums. With
15 that, there's a corresponding service agreement
16 that employees are required to sign saying that if
17 they leave before their service period obligation
18 is up, that they are required to pay back that
19 incentive. That's true if it's paid in a
20 non-bi-weekly installment. If it's a biweekly
21 installment with the paycheck, then it's paid and
22 then once the employee separates, the incentive
23 stops.

24 Q. During the most recent time from March of
25 2020 until now, did you, until your recent change

1 of positions, advise Director Isaacks and were
2 part of all of the discussions related to
3 retention incentives that were offered by KCVA?

4 A. Yes. Yeah. The majority of those
5 conversations, yes.

6 Q. After the grievance was filed, did the
7 Union reach out to you about an information
8 request?

9 A. Yes.

10 Q. Okay. And I'm handing you what's been
11 marked as Union Exhibit 1. Is this what you
12 received from the Union?

13 A. It is not. The only thing that I
14 received from the Union was the top portion where
15 it says from Jeff Wrye down to the bottom of the
16 signature block on page 1. None of these
17 handwritten notes were included in the original
18 information request.

19 Q. So you wouldn't have considered any of
20 those handwritten notes when making your decision?

21 A. No. I didn't have any of those at the
22 time.

23 Q. At that time was the Union's request as
24 particularized as it should be?

25 A. No, there wasn't any reference to any

1 particularized need for the information.

2 Q. Why do you have to have a particularized
3 need?

4 A. Well, I need to make sure that the
5 information they are requesting is going to be
6 used within the scope of their rights of
7 representation. They have to provide what they're
8 going to use the information for before I can
9 consider releasing that information.

10 Q. And you didn't have that in this case,
11 did you?

12 A. That's correct.

13 Q. At KCVA, how was it determined that a
14 retention incentive would be paid out?

15 A. So, again, a retention incentive is a
16 tool that is used to retain employees who we don't
17 want to lose, who are valuable to our operation,
18 valuable to our mission. In this case, the
19 positions were looked at and considered based on
20 their need for continued operations during the
21 COVID pandemic. Specifically, we had closed down
22 the majority of our services in the hospital. We
23 weren't seeing outpatient. We didn't have any
24 outpatients scheduled. We weren't doing
25 procedures. So no surgeries, no invasive tests,

1 i.e., colonoscopies, those types of things.

2 So the staff that were looked at in
3 particular were the ones that were in the
4 emergency room because we maintained emergency
5 operations. We looked at the inpatient units
6 because we were still receiving those folks that
7 were critically ill.

8 We looked at critical care. That's
9 obviously a very difficult area to retain even
10 when there's not a pandemic because those nurses
11 and staff are very highly specialized.

12 And then we also looked at some
13 operational needs of the VA. So, for example, the
14 VA police department. In order for a VA police
15 officer to function in their job duties, they have
16 to go through the VA police academy in Little
17 Rock, Arkansas. It doesn't matter what their
18 background and experience is prior to coming to
19 the VA, they have to go through that academy to be
20 able to have a badge and carry a gun on VA
21 premises.

22 Since that training academy was closed
23 down, if there was any officers that had been
24 lost, there was no way we could have replaced them
25 for the foreseeable future because there wasn't

1 any communication given as to when that academy
2 was going to reopen.

3 (Agency Exhibit A-4 was marked for
4 identification.)

5 Q. (By Ms. Hunter) If you could turn for me
6 to Agency Exhibit A-4. Yeah, thank you.

7 Can you tell me what we're looking at?

8 A. Yeah. So this is a VA form labeled
9 10017. It's a form number. It is the document
10 that is used to authorize and outline the
11 requirements of a retention incentive.
12 Specifically the one that we're looking at is for
13 LPNs, licensed practical nurses.

14 Q. And this form speaks to the factors that
15 were used to determine the essential needs to
16 retain this employee that it's asking to retain
17 here?

18 A. Yeah. So in this case, we did incentives
19 based on the occupation itself and then attached a
20 list of employees to perform. So the first page
21 outlines the position that you're looking at, what
22 the appointing authorities are, and then what the
23 percentage that you're wanting to do the incentive
24 is at.

25 Then it also has that service obligation

1 period that I mentioned before. Has that date on
2 there as far as when it was reviewed, when it's up
3 for review again. You can see that this was a
4 review action. So this is what was used to
5 consider it.

6 Box 18-A gives you the payment method.
7 So you can see here that it was a biweekly basis.
8 So a service agreement would have been required
9 because we paid it on a biweekly basis.

10 And then Section C on page 2 goes into
11 why we felt that specific retention incentive was
12 necessary. So in this case, you know, obviously,
13 the pandemic is pretty heavy in here. And it's
14 not because of exposure to anything, but it's
15 because of the demand for those specialties of
16 health care workers.

17 So, I mean, during the pandemic they were
18 advertising very heavily to recruit those critical
19 care nurses away. There was -- traveling nursing
20 agencies were offering thousands and thousands and
21 thousands of dollars a week to pull those folks
22 away. And that's what we tried to do to address
23 here.

24 I won't go through the entire document
25 because you all can read that, but that's what we

1 used and that was what was considered as the
2 reason for the putting that incentive in place.

3 Q. Can you look at page 4 of this list. Is
4 this a list of all the people who were LPNs that
5 got a retention incentive?

6 A. So this is going to be all the LPNs that
7 were given for this specific authorization. There
8 could have been more of the original authorization
9 in 2020. This was reviewed in 2021. But yes,
10 this appears to be a comprehensive list.

11 Q. Okay. And if -- it appears they all got
12 it for a period of -- from April of 2020 through
13 June of 2020?

14 A. Not on this -- not on this form. This
15 form is 2021 to 2022.

16 Q. I'm talking about the spreadsheet, I
17 apologize, page 4. If you look at the effective
18 date, most of them got it --

19 A. Oh, yes, yes. That's -- so that's going
20 to be the original effective date, yes. So that's
21 going to be the date that it started. I'm sorry.

22 Q. Okay. And then when it says 6/18 -- so,
23 for example, let's look at Kali Bailey who is
24 first on the list.

25 A. Okay.

1 Q. She got it on April 12th of 2020. And
2 the next date listed is June 18th of 2020. That
3 would have been the end date, correct?

4 A. Yes, there would have been a separate
5 action to terminate that. So if you see an
6 individual who -- whose date is different, so
7 6/18/2020 would have been review and they would
8 have been all reviewed. But if you look at
9 somebody that's like -- I'm trying to see somebody
10 here if there's any difference.

11 Q. Like Eric Matthews in December?

12 A. Yeah, that December 6, 2020 date shows
13 that it was -- it was not on the cycle with
14 everybody else. So that would have been a
15 termination. But if you look at people that are
16 like 4/12 and then 6/18, that 6/18 means there was
17 a second action put in to continue that incentive.

18 Q. Let's look at Ms. Sidebottom. She
19 received a retention incentive from April until
20 June, correct?

21 A. Yes.

22 Q. Okay. And so that was consistent with
23 other mental health LPNs that received one on this
24 list, correct?

25 A. Correct. Yeah. Originally mental health

1 was approved only through 6/18.

2 Q. Okay.

3 MS. HUNTER: At this time I'll
4 offer what's marked as Agency Exhibit A-4.

5 ARBITRATOR DUNN: Any objections?

6 MR. BOYTE: No objections.

7 ARBITRATOR DUNN: It's admitted.

8 (Agency Exhibit A-5 was marked for
9 identification.)

10 Q. (By Ms. Hunter) Let's look to the next
11 one, A-5.

12 A. Okay.

13 Q. So I won't go through the whole form with
14 you again 'cause you kind of identified what all
15 the key boxes were, but what position is this
16 authorization for?

17 A. This is for a nursing assistant.

18 Q. Okay. And same kind of questions apply,
19 why did nursing assistants --

20 MR. BOYTE: Do I get a copy?

21 MS. HUNTER: Oh, apologies.

22 Q. (By Ms. Hunter) Okay. Why were nursing
23 assistants chosen as someone who you know should
24 have gotten a retention incentive at KCVVA?

25 A. So I would probably start off by saying

1 that all nursing assistants at the Kansas City VA
2 did not get a retention incentive. Again, it was
3 those key areas that I mentioned before, the
4 inpatient units, the critical care and the
5 emergency department, those same areas.

6 And again, it was because those were
7 areas that were operating on a continual open
8 basis. We never closed any of those areas down.
9 And that staff -- or those staff members were the
10 ones that, again, were key to the response that we
11 couldn't afford to lose. Contrary to what a lot
12 of people think, it's very difficult for us to
13 pull a nurse or nursing assistant or an LPN or
14 whatever from like, say, primary care and put them
15 into critical care without additional training.
16 Because they are -- although they're the same
17 position, they do two very different functions on
18 the support care team. So the people identified
19 in bold were providing that inpatient care that we
20 cannot afford to lose.

21 Q. And can you flip to the sheet with all
22 the names on it which is the fourth page. And I
23 know it's really tiny, so I apologize in advance,
24 but if you scroll down kind of towards the
25 bottom -- not scroll, but look towards the bottom.

1 Lyneal Vanreed received a retention incentive from
2 April of 2020 until June of 2020, correct?

3 A. Yes.

4 Q. Okay. And he received it consistently
5 with other nursing assistants that are on this
6 same list?

7 A. Yes. Yeah, you can see the same dates
8 match up. So those actions were all taken on the
9 same day.

10 Q. Why may it have been terminated in June
11 of 2020?

12 A. Again, the retention incentive is tied to
13 the need to retain those employees. The
14 initial -- I would say the initial shock of COVID,
15 the initial response had kind of ended. We
16 adjusted to how the operations were going to be
17 going forward. The immediate need for those
18 employees across the country kind of died down a
19 little bit, which meant our likelihood of losing
20 those employees had kind of died down a little
21 bit, and it was determined at that point that an
22 incentive was no longer warranted.

23 Q. So if Mr. Vanreed had testified that he
24 had never received a retention incentive, that
25 would be incorrect, right?

1 A. Yes, ma'am, that is incorrect. He did
2 receive an incentive.

3 (Agency Exhibit A-25 was marked
4 for identification.)

5 Q. (By Ms. Hunter) Okay. I'm going to hand
6 you what's been marked as Agency Exhibit 25. Oh,
7 excuse me, I need to hand you the other one first.
8 26.

9 MS. HUNTER: You can keep that.

10 MR. BOYTE: Okay.

11 (Agency Exhibit A-26 was marked
12 for identification.)

13 Q. (By Ms. Hunter) Let's look at Agency
14 Exhibit 26 first. Is that the initiation of
15 Mr. Vanreed's retention incentive?

16 A. Yes.

17 Q. Okay. And although it says, "Retention
18 incentive of 10% authorized payment(s) will be
19 made. Incentive agreement expires on 4/10/2021,"
20 they're reviewed monthly and can be ended at any
21 time?

22 A. Yes, that approval date was the maximum
23 amount of time that incentive could have been
24 authorized without a secondary review being
25 completed. Because COVID was ever changing and

1 our response was changing consistently, we
2 reviewed them more frequently.

3 Q. Okay. As an HRO at that time, would you
4 have had access to all of Mr. Vanreed's SF 50s?

5 A. Yes, ma'am.

6 MS. HUNTER: At this time I'll
7 offer what's been marked as Agency Exhibit 26.

8 MR. BOYTE: Did we do 25? Okay,
9 yeah, I don't have any objection to either one of
10 them.

11 ARBITRATOR DUNN: It's admitted.
12 That's to say Agency Exhibit 26 is admitted. I'll
13 wait until she offers it.

14 MR. BOYTE: Okay.

15 MS. HUNTER: I'll offer 25 and 26.

16 ARBITRATOR DUNN: Oh, you're
17 offering it now?

18 MS. HUNTER: Well, he said the
19 statement -- it sounds like he's not objecting to
20 either, so...

21 MR. BOYTE: You can give them all
22 right now. I'll accept all your documents right
23 now.

24 MS. HUNTER: I'm sure you would.

25 ARBITRATOR DUNN: Okay. So Agency

1 Exhibits 25 and 26 are admitted. Should I ask you
2 at this point about A-5? You haven't offered it.

3 MS. HUNTER: Yeah, I will offer it
4 in a second. I just wanted to finish up this
5 line.

6 ARBITRATOR DUNN: All right.

7 Q. (By Ms. Hunter) So Agency Exhibit 25 is
8 the expiration of that retention incentive,
9 correct?

10 A. Yes. When you're looking at these
11 documents, you need to look at what the remarks
12 are because the nature of action code and the
13 legal authority are the same. So if you look at
14 Box 45, that's what you use to differentiate what
15 the action is actually doing for incentives.

16 Q. Okay.

17 MS. HUNTER: I'll also offer
18 what's been marked as Agency Exhibit A-5 at this
19 time.

20 MR. BOYTE: No objection.

21 ARBITRATOR DUNN: Then it's
22 admitted.

23 (Agency Exhibit A-6 was marked for
24 identification.)

25 Q. (By Ms. Hunter) Let's flip to Agency

1 Exhibit A-6. Did --

2 MR. BOYTE: Do I get a copy?

3 MS. HUNTER: One of these days
4 I'll remember.

5 MR. BOYTE: Let's hope. Not one
6 of these days, maybe one of these occasions on
7 this day.

8 Q. (By Ms. Hunter) Same question. Another
9 Authorization and Review of Retention Incentive
10 form, correct?

11 A. Yes, ma'am.

12 Q. Okay. This is for a medical support
13 assistant, correct?

14 A. Correct.

15 Q. Did every medical support assistant at
16 the KCVA receive a retention incentive?

17 A. No, ma'am.

18 Q. Okay. Tell me how the limitation
19 occurred.

20 A. Sure. So medical support assistants
21 are -- is a position that we have a lot of those
22 in the medical center. We have over a hundred of
23 those folks. They're the primary clerks, ward
24 clerks, folks that the veterans see in that
25 clinical administrative position when they come on

1 -- or come in for care.

2 There's a variety of those folks, kind of
3 as I mentioned, anywhere from ward clerks to folks
4 that reach out and schedule appointments. There's
5 some that do telephone care. There's some that do
6 nothing but virtual scheduling. So, again, we
7 focused on those ward clerks and those MSAs that
8 were providing services that were critical at that
9 time for us to provide continuity of care.

10 Again, those that worked in primary care,
11 you know, wouldn't have been authorized because we
12 weren't authorizing any primary care clinics. We
13 weren't offering any.

14 Same thing with those specialty clinics
15 and those in surgery. We weren't doing any type
16 of operations or any type of procedures. So
17 again, if we lost those folks -- obviously, we
18 don't ever want to lose any employees, but it
19 wouldn't have been detrimental to our operations.

20 Q. On page 4 of that document, is that a
21 list of employees at KCVA who received the
22 incentive and the dates of those incentives?

23 A. Yeah. Again, this is going to be MSAs
24 that did receive that incentive.

25 Q. Okay. And most of those were between

1 April and June of 2020?

2 A. Yes, ma'am.

3 Q. And were any of these individuals treated
4 differently based on their bargaining unit status?

5 A. No, ma'am.

6 MS. HUNTER: I'll offer what's
7 been marked as Agency Exhibit A-6.

8 MR. BOYTE: No objection.

9 ARBITRATOR DUNN: Admitted.

10 (Agency Exhibit A-7 was marked for
11 identification.)

12 Q. (By Ms. Hunter) Can you flip to Agency
13 Exhibit A-7?

14 A. Yes, ma'am.

15 Q. Same question, this is another
16 Authorization and Review for Retention Incentive,
17 correct?

18 A. Yes, ma'am.

19 Q. And this is for a police officer?

20 A. Yes, ma'am.

21 Q. And I know you briefly touched on police
22 officers, but can you kind of reaffirm why police
23 officers received retention incentives?

24 A. Absolutely. So, again, the police
25 officers, kind of as the name implies, provide

1 security and assistance to our clinical staff. If
2 they have, you know, difficult patients or
3 patients that have behavioral issues, they also
4 support our clinical staff. If we have, you know,
5 somebody come in that needs to be potentially
6 watched until local law enforcement arrives,
7 whatever the case may be, they do that function.

8 And kind of -- as I mentioned earlier,
9 those folks require very specific VA training. We
10 have a lot of success in recruiting officers that
11 were either former law enforcement officers with
12 the city. So, for instance, we have a couple of
13 Kansas City police officers. We have a couple --
14 we have former New York police detectives that are
15 on site. But even with those credentials, they
16 still have to go to the specific academy in Little
17 Rock, Arkansas.

18 When the COVID pandemic started, they
19 actually stopped training and sent that class
20 home. And that was shut down for about a year.
21 Without that training and the academy open, we
22 couldn't get any new officers trained which means
23 our current officers would potentially experience
24 burnout. We wanted to be able to provide security
25 for the rest of our staff so we wanted to make

1 sure that we did not lose those people because
2 they might be irreplaceable.

3 Q. And emergency responders, are they
4 essential to the critical mission of the VA?

5 A. Absolutely.

6 Q. Police officers have been receiving COVID
7 retention pay throughout most of the pandemic,
8 correct?

9 A. Yes.

10 Q. And are continuing to receive it?

11 A. Yes. So police officers have actually
12 received a retention incentive for a long period
13 of time going back probably about 5, 10 years,
14 because they were grossly underpaid. We then went
15 in and did what they called a special salary rate,
16 meaning we were able to pay them above the
17 standard GS rate. And then we were able to do
18 away with the incentive. And that lasted for
19 about year and a half until this COVID started.
20 And then we had to do that again because we didn't
21 want to lose those folks.

22 Q. So why might have police officers
23 received a longer retention incentive than, say,
24 some of the people we already looked at today, the
25 LPNs who only received it for a few months?

1 A. Right. So it really goes back to that
2 academy. With it being shut down, there was
3 obviously a huge backlog of people that needed to
4 go to that academy. They had that one academy
5 that services all the VAs in the country. When it
6 opened up with the first class, I mentioned VISN
7 earlier, we got two spots for the entire VISN. So
8 we had nine medical centers competing for those
9 two spots.

10 So even if the academy is running fully
11 and there's no delays, no hiccups, it takes about
12 six months from the time we hire an officer, get
13 them to the academy, get them all trained up, get
14 them badged, get them their weapon and make sure
15 they qualify before they can hit the ground
16 running. So like I said...

17 Q. So the people on the ground level, the
18 police officers got the retention incentive. Did
19 the deputy chief of staff -- or the deputy or the
20 chief of police get the retention incentive, if
21 you recall?

22 A. So it looks like the deputy chief of
23 police did.

24 Q. Okay.

25 A. It does not look like the chief of police

1 did.

2 Q. Okay. And again, on page 4, that's a
3 list of retention incentives that were received by
4 each employee?

5 A. Yes. And if you look at the occupational
6 series, it's the fourth column from the right side
7 of the page. That's what designates them as
8 police officers, as a 0083.

9 Q. Okay.

10 A. The chief of police is actually a 0086
11 security officer. So he is not -- for these
12 purposes, he's not in the same occupational series
13 as the rest of the police officers are.

14 Q. And most of our police officers are in
15 the bargaining unit, correct?

16 A. Yes. So all of our police officers with
17 the exception of the chief, the deputy chief and
18 three or four lieutenants. I don't remember if
19 there's three or four. But those are the only
20 police officers who would not be in the bargaining
21 unit.

22 Q. Were any decisions about who received
23 retention incentives for police officers based on
24 their bargaining unit status?

25 A. No, ma'am.

1 MS. HUNTER: I'll offer what's
2 been marked as Agency Exhibit A-7.

3 MR. BOYTE: No objection.

4 ARBITRATOR DUNN: It's admitted.

5 (Agency Exhibit A-8 was marked for
6 identification.)

7 Q. (By Ms. Hunter) Handing you -- or can we
8 turn to Agency Exhibit A-8.

9 A. Sure.

10 Q. Another Authorization and Review of
11 Retention Incentive, correct?

12 A. Yes, ma'am.

13 Q. This is for a security assistant,
14 correct?

15 A. Yes, ma'am.

16 Q. What is a security assistant?

17 A. So a security assistant is an individual
18 that does the PIV badging and assists the HR
19 specialist who does the background investigations
20 with ensuring that all the employees have the
21 appropriate background investigations.

22 Q. Okay. Only one person received a COVID
23 retention incentive that fell under this
24 classification, correct?

25 A. That's correct.

1 Q. Why is that?

2 A. So with the exception of this employee,
3 the rest of the folks that work in the PIV office
4 belong to HR, which, again, you have the
5 consolidation I mentioned earlier, fall under VISN
6 15 as opposed to the medical center. Since the
7 medical center director has purview over the
8 employees at the office, the medical center, he
9 felt at that time it was necessary to give this
10 employee a retention incentive. The VISN director
11 and the supervisors in HR felt that it was not
12 necessary to give those other folks in the PIV
13 office an incentive.

14 Q. Okay. And was this employee a bargaining
15 unit employee?

16 A. Yes.

17 MS. HUNTER: At this time I'll
18 offer Exhibit A-8.

19 MR. BOYTE: No objection.

20 ARBITRATOR DUNN: Admitted.

21 (Agency Exhibit A-9 was marked for
22 identification.)

23 Q. (By Ms. Hunter) Let's flip to A-9.
24 Again, another Authorization and Review of
25 Retention Incentive, correct?

1 A. Yes, ma'am.

2 Q. And this is for security clerks?

3 A. Yes, ma'am.

4 Q. Can you tell me what a security clerk is?

5 A. Yes, a security clerk is -- we also refer
6 to them as police dispatchers. So they are the
7 folks that receive the calls for service
8 throughout the hospital. So if someone on a
9 computer were to push F9, F11, that's the
10 emergency response, they would receive that call,
11 dispatch officer is down. They're also the ones
12 that monitor some of the patient monitoring
13 systems. They monitor fire alarms. They monitor
14 carbon monoxide detectors. They monitor all those
15 things. They monitor security cameras and
16 dispatch officers as appropriate to those areas.

17 Q. So they're essential to the mission as in
18 they provide security and emergency services to
19 the facility?

20 A. Yes, without the security clerks our
21 police officers would be very limited in services
22 they were able to provide.

23 Q. Okay. What made them unique enough to
24 receive the retention incentive?

25 A. So one, they -- there's a significant

1 amount of training that goes into getting those
2 employees up to speed. It's not as intense as the
3 security -- as the police officers, but they do
4 have to, you know, know how to appropriately
5 dispatch those officers there. They have to be
6 able to interface with local law enforcement. If
7 we need assistance from Kansas City, Missouri
8 police or the fire department or whatever the case
9 may be, they're the ones that do the primary
10 initial interaction with those folks.

11 Initially that's an area that we have
12 difficulty retaining employees anyways. It's a
13 position that kind of acts as an entry level
14 position for the medical center. So they'll start
15 out there and then they'll move to a higher grade
16 of position. So even before the pandemic we had
17 trouble staffing that unit.

18 Q. Okay. And are most of the employees or
19 all of the employees that received the retention
20 incentive that's indicated on page 4 bargaining
21 unit employees?

22 A. Yes.

23 Q. Okay. But it wasn't the determination in
24 them getting the incentive?

25 A. No, it was based on the job duties that

1 they perform and the impact that that has on our
2 mission. Being 24/7, 365, that requires more
3 staff than some of the other occupations do.

4 (Agency Exhibit A-10 was marked
5 for identification.)

6 Q. (By Ms. Hunter) Let's flip to A-10.

7 ARBITRATOR DUNN: Uh-huh. Are you
8 going to offer A-9?

9 MS. HUNTER: Oh, yes, please.

10 MR. BOYTE: No objection.

11 ARBITRATOR DUNN: It's admitted.

12 MS. HUNTER: Thank you.

13 Q. (By Ms. Hunter) Again, another
14 Authorization and Review of Retention Incentive
15 that was done by KCVA, correct?

16 A. Yes, ma'am.

17 Q. Okay. And this is for a security
18 officer, correct?

19 A. Yes, ma'am.

20 Q. What is a security officer?

21 A. So, again, the security officer is going
22 to be the VA chief of police.

23 Q. Okay. And who is the VA chief of police
24 right now?

25 A. At the medical center, it is Gene Parker.

1 Q. Okay. And that's why he wasn't appearing
2 on the police officer one because he's a
3 different --

4 A. He's a different occupation series.

5 Q. Correct.

6 A. Yes, ma'am.

7 Q. So he received a retention incentive,
8 correct?

9 A. Yes.

10 Q. Why was it important for us to retain the
11 chief of police?

12 A. So really the same reasons as a police
13 officer, but compounded even more than that. In
14 addition to the training and law enforcement
15 experience he has at the VA, he's also the
16 leadership for that department. So he is
17 responsible for interfacing with VA central
18 office, our VISN chief of police, and ensuring
19 that the security policies, the responses,
20 everything that the police department does is up
21 to speed and where he needs to be to keep our
22 employees safe.

23 Q. Gene Parker was not the only chief of
24 police that received a retention incentive,
25 correct?

1 A. So he is the only chief of police. Chad
2 Martie on that list is the deputy chief of police.

3 Q. Oh, excuse me.

4 A. And Mr. Martie or Deputy Chief Martie on
5 both of the lists. A-7, which is the police
6 officer, and this one because during the last year
7 his position got reclassified. So he was
8 originally a 0083 police officer, but about
9 halfway through the year it was reclassified and
10 he changed occupational series. And that's why
11 he's on both lists.

12 Q. Thank you.

13 A. He only did receive one incentive, but
14 that's why he shows on both lists.

15 MS. HUNTER: At this time I'll
16 offer Exhibit A-10.

17 MR. BOYTE: No objection.

18 ARBITRATOR DUNN: It's admitted.

19 Before you ask another question, let me
20 just -- let's take 10 minutes.

21 (Recess.)

22 (Agency Exhibit A-11 was marked
23 for identification.)

24 Q. (By Ms. Hunter) Can we please turn to
25 Exhibit A-11.

1 A. Yes, ma'am.

2 Q. Okay. Again, looking at another
3 Authorization and Review of Retention Incentive,
4 correct?

5 A. Yes, ma'am.

6 Q. And this is for a housekeeping aide.

7 A. Yes, that's for a housekeeping aide, it's
8 for a housekeeping aide leader, and it's for
9 housekeeping supervisors, all three.

10 Q. Okay. Explain to me what housekeeping
11 aides, supervisor and forgot what the other one
12 was.

13 A. Yes. So housekeeping aides are, you
14 know, the entry level both in the housekeeping and
15 then actually a lot of our other staff come in
16 through housekeeping. They're the ones that are
17 responsible for the cleanliness of the medical
18 center. They do everything from the offices, the
19 room that we're sitting in now for this
20 arbitration, to cleaning up patient rooms, to
21 doing terminal cleaning, to cleaning up after
22 surgeries. They do the wide variety of
23 sanitation-type duties.

24 Wage leaders are work leaders. So they
25 don't have that full supervisory level. They

1 don't approve leave. They don't do performance
2 appraisals, but they do assist with the day-to-day
3 operations of the department, helping, you know,
4 maybe do quality checks on the housekeepers to
5 make sure that the areas are clean, directing
6 day-to-day work potentially in the absence of a
7 supervisor. Both those WG employees and those
8 wage leader positions are all members of the
9 bargaining unit.

10 The WS employees are the housekeeping
11 aide supervisor employees. So those are -- I
12 believe we have somewhere between six and eight
13 here at the medical center. And those folks are
14 the ones that are responsible for the shift
15 operations of the MS section and ensuring that the
16 hospital is cleaned.

17 Q. So the position/title on the chart that's
18 starts on page 4 designates, you know, when a
19 person might be a leader versus an officer,
20 correct, or just an aide?

21 A. So the way you're going to be able to
22 tell that is, if you look under where it says,
23 "Pay Plan." Pay Plan is the fifth column from the
24 right. That's going to be where the difference
25 is. You'll see some WSs, you'll see some WLs and

1 you'll see some WGs. And then there also are two
2 GS -- one GS employee, two GS employees that are
3 in the mailroom also, and they're also included in
4 that incentive.

5 Q. Now, there's three pages of shrunken text
6 worth of people who got retention incentives,
7 correct?

8 A. Yes, ma'am.

9 Q. Are most of these employees bargaining
10 unit employees?

11 A. Yes. So all of them with the exceptions
12 of the ones that say WS are going to be bargaining
13 unit employees.

14 Q. Okay. They received a retention
15 incentive because why?

16 A. They received the retention incentive
17 because it was necessary to retain the services of
18 housekeepers. You know, similar to the police,
19 they provided very critical support to our -- to
20 our clinical staff. If there's somebody not there
21 to clean up rooms, we can't turn over rooms. With
22 COVID, there were additional cleaning protocols
23 that they had to learn that were very specialized
24 in nature that took a -- you know, a significant
25 amount of time to learn.

1 So it was necessary for the continued
2 operation of the service that we retain those
3 housekeepers. Again, much like the security
4 clerks that I mentioned a few minutes ago, this is
5 a position that has a significant amount of
6 turnover normally because it's an industry level
7 position, it's a lower graded position. So we did
8 have a staffing issue of that before. Despite
9 issues with the recruitment center, we couldn't
10 afford to lose any more of those employees. And
11 again, those are 24/7 employees, so it takes a lot
12 of employees to support the mission.

13 Q. And other hospitals were seeking the same
14 employees due to the mass amount of patients that
15 were coming in and out of facilities and other
16 areas as well?

17 A. Yeah, absolutely. Housekeepers are vital
18 to any operation in any facility. We were seeing
19 some job announcements for 4, 5, 6 dollars an hour
20 above what we were paying our housekeeping aides.
21 Unfortunately, unlike GS employees, we cannot do a
22 special salary rate for wage rate employees. That
23 is dictated by -- actually by the Department of
24 Defense. They do the wage -- what they call the
25 wage survey for the area. So we weren't able to

1 adjust the pay that way, so we did the incentive
2 in order to keep them from going to those higher
3 paying jobs.

4 MS. HUNTER: I'll offer what's
5 been marked as Agency Exhibit A-11.

6 MR. BOYTE: No objection.

7 ARBITRATOR DUNN: Admitted.

8 (Agency Exhibit A-12 was marked
9 for identification.)

10 Q. (By Ms. Hunter) Let's turn to A-12.
11 This is another Authorization and Review of
12 Retention Incentive, correct?

13 A. Yes, ma'am.

14 Q. And this is for registered respiratory
15 therapists, correct?

16 A. Yes, ma'am.

17 Q. What are registered respiratory
18 therapists?

19 A. So registered respiratory therapists are
20 the ones that deliver respiratory treatments to
21 the veterans. Most oftentimes people associate
22 those and maybe with like breathing treatments.
23 But if the physician or the -- the nurse
24 practitioner, whomever the case may be, if a
25 provider orders that, they're going to be the ones

1 that actually work with that patient to deliver
2 that treatment.

3 Q. Was COVID-19 particularly hard on the
4 respiratory system?

5 A. Yeah, exactly. So COVID had a lot of
6 respiratory-type symptoms associated with it, and
7 it still does, which made these people
8 indispensable for us. They were potentially
9 working harder than they normally do because the
10 patients in the hospital needed to have more
11 respiratory care than they may normally. And they
12 were doing -- covering all the inpatient units.
13 They were covering the emergency room. They were
14 doing all those things.

15 Again, that's one of those positions that
16 was heavily recruited by the outside because with
17 the nature of COVID and the disease itself, all
18 hospitals were seeking for these talent pools.

19 Q. Are most registered respiratory
20 therapists bargaining unit employees?

21 A. Yes, all except for the supervisor would
22 be bargaining unit.

23 Q. But they didn't receive this retention
24 incentive due to bargaining status?

25 A. Bargaining unit status was not a

1 determination in providing the incentive.

2 Q. Okay. On page 4 of this document, those
3 are all the individuals that received it, correct,
4 that were registered respiratory therapists?

5 A. Yes, ma'am.

6 MS. HUNTER: Okay. I'll offer
7 what's been marked as Exhibit A-12.

8 MR. BOYTE: I thought you gave me
9 a copy. I don't know what happened. Oh, thank
10 you.

11 No objection.

12 ARBITRATOR DUNN: It's admitted.

13 (Agency Exhibit A-13 was marked
14 for identification.)

15 Q. (By Ms. Hunter) Let's turn to A-13.
16 Another Authorization and Review of Retention
17 Incentive, correct?

18 A. Yes, ma'am.

19 Q. This is for certified respiratory
20 therapists, correct?

21 A. Yes, ma'am.

22 Q. What's the difference between them and a
23 registered respiratory --

24 A. So a certified respiratory therapist does
25 essentially the same job functions as a registered

1 respiratory therapist. It is just an old and
2 outdated certification.

3 So VA policy now dictates that we're not
4 allowed to hire certified respiratory therapists,
5 we have to hire registered respiratory therapists,
6 but those folks that were previously hired and
7 still on our roles are grandfathered in and are
8 able to remain as such.

9 So there's virtually no difference
10 between A-13 and A-12 as far as the functions and
11 the reasons it was approved. It's just that one
12 individual is different because they don't have
13 the same registration level that the registered
14 therapists do.

15 Q. And you -- and it was thought that those
16 people should also receive a retention incentive
17 for similar reasons, as like you said, between
18 A-12 and A-13, they're providing the same
19 services?

20 A. Yeah, there's very minimal procedures.
21 There are a couple that a certified respiratory
22 therapist can't do that a registered can, but by
23 and large, they fulfill the same job function.

24 Q. And are -- is this one employee who's
25 grandfathered in a bargaining unit employee?

1 A. Yes, ma'am.

2 Q. And that's on page 4 of the document in
3 question?

4 A. Yes, ma'am.

5 MS. HUNTER: I'll offer what's
6 been marked A-13.

7 MR. BOYTE: No objection.

8 ARBITRATOR DUNN: It's admitted.

9 (Agency Exhibit A-14 was marked
10 for identification.)

11 Q. (By Ms. Hunter) Let's take a look at
12 A-14. This is another Authorization and Review of
13 Retention Incentive, correct?

14 A. Yes, ma'am.

15 Q. For a medical instrument technician
16 (Polysomn), correct?

17 A. Yes.

18 Q. Did I say that right?

19 A. Yes, ma'am.

20 Q. Okay. What do these medical instrument
21 technicians do?

22 A. So I would start off by saying there are
23 a variety of medical instrument technicians
24 throughout the hospital. And the things they're
25 doing differentiate them are that parenthetical

1 reference. So like, for example, someone in
2 radiology, let's say, a medical engineer tech,
3 sonography, and those are the ones that do the
4 ultrasounds, but that -- then that's just key to
5 know when comparing reports.

6 MIT is medical instrument techs or
7 polysomnography techs for polysomnography is what
8 the polysomn stands for. In normal circumstances
9 they're the ones that administer the sleeping
10 tests for like sleep apnea and those other things
11 that have to do with the airways and the
12 obstructions, etc. However, during COVID, we used
13 those individuals to help supplement the
14 registered respiratory therapists and they're
15 certified respiratory therapists because they have
16 the same training or very similar training to
17 those, and their clinical competencies allow them
18 to do those breathing treatments, to do those
19 respiratory treatments that the other folks would
20 do.

21 Q. So if I have it correctly, there's other
22 medical instrument technicians throughout the
23 hospital, not all receive retention incentives,
24 but this one was key to providing COVID services
25 so we would not lose this employee during that

1 time?

2 A. Correct.

3 Q. Or these employees?

4 A. Yeah, absolutely. You know, for example,
5 during that -- during COVID we were doing only
6 emergent radiology cases for inpatients and for
7 emergency room folks that presented in the
8 emergency room. We didn't have our full clinical
9 schedule. So if we lost one of those, for
10 example, one of those sonography techs, we
11 obviously don't want to lose them, but it's not
12 detrimental to our operations at that time.

13 Q. Are the individuals on page 4 bargaining
14 unit employees?

15 A. Yes.

16 MS. HUNTER: Okay. At this time
17 I'll offer what's been marked as Agency
18 Exhibit 14.

19 MR. BOYTE: No objection.

20 ARBITRATOR DUNN: It's admitted.

21 (Agency Exhibit A-15 was marked
22 for identification.)

23 Q. (By Ms. Hunter) Let's turn to Agency
24 Exhibit 15. This is another Authorization and
25 Review of Retention Incentive, correct?

1 A. Yes.

2 Q. And this one is another medical
3 instrument technician but for EEGs, correct?

4 A. Yes.

5 Q. Tell me what -- what an EEG performed
6 during COVID was that was essential.

7 A. So a medical instrument tech is a -- for
8 EEG is the electrocardio something gram. I don't
9 remember what it stands for. But in essence, they
10 deliver -- or they perform the test on the
11 cardiovascular system so that physicians and such
12 can interpret that and provide care.

13 Q. And why were those needed during
14 COVID-19?

15 A. Well, again, COVID-19 was and is a very
16 respiratory-focused disease in some instances. So
17 if folks were experiencing that abnormal breathing
18 or abnormal cardiovascular function, an EEG or an
19 EKG would be very important for the physician to
20 run that test to see if there was anything
21 identified on the treatment plan.

22 Q. Now, this was approved as a retention
23 incentive, but why were there none given to any of
24 the employees?

25 A. So we approved it thinking that there

1 would be a high demand like there were on the
2 outside for like the respiratory therapists and
3 the other -- the other medical instrument techs,
4 the polysonography. But we didn't see that same
5 demand so we didn't actually end up putting
6 anybody on that incentive.

7 Q. So you recognized the need that may
8 occur, but then circumstances changed?

9 A. Yes. And we were trying to be proactive
10 in ensuring that we didn't lose those employees,
11 but again, the demand that was there for other
12 occupations from the private sector and from other
13 hospitals was not there for the EEG techs.

14 Q. And that's part of the review process
15 that each position goes through?

16 A. Absolutely. And again, the likelihood of
17 losing them in Federal service or to the private
18 sector is the foundation for these incentives. We
19 couldn't afford to lose these employees.

20 Q. I can't -- or can you flip to A --

21 MS. HUNTER: I'll offer 15, I
22 apologize, A-15.

23 MR. BOYTE: No objection.

24 ARBITRATOR DUNN: It's admitted.

25

1 (Agency Exhibit A-16 was marked
2 for identification.)

3 Q. (By Ms. Hunter) Let's flip to A-16.
4 This is another Authorization and Review of
5 Retention Incentive, correct?

6 A. Yes.

7 Q. Okay. A health tech position, correct?

8 A. Yes, ma'am.

9 Q. Are health techs also called something
10 else at the facility?

11 A. So health techs are health techs but they
12 are very, very similar to a nursing assistant.
13 They, in essence, perform the same job duties.
14 Nursing assistants typically have a little more
15 education and they have a certification. Health
16 techs -- similar to kind of the certified
17 respiratory therapist, health technicians are kind
18 of a more antiquated version of the nursing
19 assistant. So while we still potentially do have
20 some, they don't necessarily perform the same wide
21 function of duties that a nursing assistant would.
22 But they do perform similar job duties in some
23 settings.

24 Q. So there's no -- page 4, which is a list
25 of employees that got it, can you kind of explain

1 like you did before what occurred in that
2 situation?

3 A. Correct. So kind of as I alluded to just
4 a few moments ago, the nursing assistants have
5 more education, they have more -- potentially more
6 clinical skills. So we tend to utilize those
7 folks in more complex areas. Being inpatient,
8 being critical care, being emergency room where
9 they maybe need that little more experience, more
10 abilities than maybe a health tech does.

11 So health technicians, we staff primarily
12 in like primary care where they may assist with
13 getting the weight, they may assist with getting
14 the blood pressure and they may room the patient,
15 but they're not necessarily providing the same
16 type, same exact things that a nursing assistant
17 would do. A nursing assistant could very well go
18 and do the job duties of the health tech, but a
19 health tech could not necessarily go do the job
20 duties of a nursing assistant.

21 Q. So you found that they were not being
22 sought out in the community as much as nursing
23 assistants, correct?

24 A. Correct. We found they weren't being
25 sought out because a lot of hospitals are going to

1 that nursing assistant role. So the vacancy
2 announcements and the competition we saw were all
3 specific to nursing assistants.

4 Moreover, we did this incentive because
5 it was identified as a potential group of
6 employees. And then when we went and pulled the
7 list, we saw that none of them were in those areas
8 that I identified earlier, the critical care, the
9 emergency room and the inpatient.

10 So it was determined since we didn't have
11 operations in primary care at that time where
12 these folks were at, whether it be here at Linwood
13 or one of the associated CBOCs, it wasn't
14 appropriate to put them on an incentive. Because
15 again, if they left -- we don't want them to
16 leave, but it wouldn't have been detrimental to
17 our COVID operations.

18 MS. HUNTER: I'll offer what's
19 been marked as Agency A-16.

20 MR. BOYTE: No objection.

21 ARBITRATOR DUNN: It's admitted.

22 I will just mention to both of you, I
23 know this is getting long, but don't speed up in
24 your talking, she needs to take every word. So
25 remember that as we're going through this, please.

1 (Agency Exhibit A-17 was marked
2 for identification.)

3 Q. (By Ms. Hunter) Okay. So we're looking
4 at another Authorization and Review of Retention
5 Incentive, correct?

6 A. Yes, ma'am.

7 Q. And this is for a hospital housekeeping
8 officer, correct?

9 A. Yes, ma'am.

10 Q. Okay. Can you explain to me -- I know
11 you briefly touched on it before when we were
12 talking about housekeeping, but can you tell me
13 who this is and kind of what they did?

14 A. Yes. So Mr. Henderson is our hospital
15 housekeeping officer, which is a fancy way of
16 saying that he's the head of our housekeeping and
17 the MS Sanitation Department.

18 So a few moments ago, I alluded to kind
19 of how the shift supervisor is responsible for the
20 day a.m. supervisory operations on the shift
21 making sure it's been completed. Mr. Henderson is
22 responsible for ensuring that the department
23 functions, making sure that the cleaning process
24 they have meets the standards, whether it be EPA
25 standards or Centers for Disease Control

1 Standards, Joint Commission standards. Whatever
2 the case may be, he's responsible for ensuring
3 that all of our procedures, policies related to
4 housekeeping comply with all those standards.

5 Q. And during COVID, some of those policies
6 and procedures changed and he had to kind of
7 trickle effect down the training of what the
8 changes were going to be that would be implemented
9 to ensure patient care and patient safety?

10 A. Absolutely. They were changing at the
11 time and they're still changing. As the
12 scientists and other folks learn more and more
13 than about this, the protocols are continually
14 changing. Mr. Henderson's responsible for looking
15 both at -- both at VA guidance as well as external
16 guidance to ensure that our staff and our veterans
17 stay safe.

18 Q. And losing him would have been
19 detrimental to the Agency, correct?

20 A. Yeah, Mr. Henderson does not have a solid
21 backup deputy at this time, so if we would have
22 lost him, we would have been in trouble.

23 Q. And unlike some of the other ones we've
24 discussed today, this isn't a group incentive for
25 this position, it's actually just for Henderson,

1 correct?

2 A. Correct. So, it's, you know, very --
3 kind of similar to look at the one for the chief
4 of police. He just happens to have a deputy
5 chief. At this point, Mr. Henderson doesn't. If
6 he did, that deputy chief would have been on the
7 same occupational series. But that's why he's an
8 individual.

9 MS. HUNTER: I'll offer what's
10 been marked A-17.

11 MR. BOYTE: No objection.

12 ARBITRATOR DUNN: It's admitted.

13 (Agency Exhibit A-18 was marked
14 for identification.)

15 Q. (By Ms. Hunter) I'll hand you what's
16 been marked as -- can we turn to A-18, excuse me.

17 A. Yes, ma'am.

18 Q. This is another Authorization and Review
19 of Retention Incentive, correct?

20 A. Yes, ma'am.

21 Q. And it's for a medical technician,
22 correct?

23 A. Yes, ma'am.

24 Q. What is a medical technician?

25 A. So a medical technician is a pathology

1 laboratory employee that assists with the
2 processing of collecting specimens. So the
3 phlebotomist, the LPN, whoever it is, collects the
4 specimen. They then send it to the lab and the
5 medical technologists -- or I'm sorry, the medical
6 technicians are the ones that are responsible for
7 processing those specimens.

8 Q. And in COVID-19, multiple specimens -- I
9 should say probably hundreds of specimens are
10 collected daily from patients --

11 A. Yes.

12 Q. -- or people that need emergency care?

13 A. Absolutely. So when COVID -- when the
14 VISN was initiating its COVID response, St. Louis
15 and Kansas City, the two medical centers that are
16 largest in VISN, received the equipment necessary
17 to process COVID tests. So for a period of time
18 we were receiving COVID tests for not only Kansas
19 City but also from Columbia, Topeka, Leavenworth
20 and Wichita to process all those COVID tests
21 in-house.

22 So these medical technicians that were
23 responsible for running it, not necessarily
24 interpreting, but actually running the tests,
25 their workload increased substantially just based

1 on the volume. And again, the specialty of a
2 medical technician is something that -- that was
3 very in demand because not only were we increasing
4 our tests, but everywhere else, CVS, Walgreens,
5 all these other hospitals now have all these
6 additional tests to run that they use in place to
7 do that as well. So the likelihood of them
8 leaving obviously increased.

9 Q. If you look at page 3 under Document, Box
10 21, it specifically states that: In the last year
11 11 Medical technicians have left the service line
12 for various reasons, six employees for higher pay
13 within the Federal government, 4 to outside
14 agencies for higher pay, and 1 to retirement.

15 This is exactly why a retention incentive
16 would be offered to these type of employees,
17 correct?

18 A. Absolutely. So medical technologists
19 are -- I'm going to use the word "expose," but I
20 don't mean it in the way it sounds. They are
21 noticed by a lot of people throughout the hospital
22 because they interact with a wide variety of
23 service lines. So folks in those other service
24 lines see how hard those potentially -- those
25 medical technicians are working and they pull them

1 away for those other departments, most of which
2 are higher paying. Again, just the locality of
3 where we're at in the competition with private
4 sector hospitals. Most private sector hospitals
5 have flexibility and can get that additional money
6 much easier than we can just based on the
7 regulations that we have to comply with.

8 So, yes, we were a little short and they
9 were detrimental -- it would have been detrimental
10 had we lost those folks.

11 Q. And on page 4, those are the individuals
12 who received the retention incentive?

13 A. Yes, ma'am.

14 Q. Are most, if not all, bargaining unit
15 employees?

16 A. Yes, there may be one that is not, but
17 the rest would be bargaining unit.

18 MS. HUNTER: Okay. I'll offer
19 what's been marked as A-18.

20 MR. BOYTE: No objection.

21 ARBITRATOR DUNN: It's admitted.

22 (Agency Exhibit A-19 was marked
23 for identification.)

24 Q. (By Ms. Hunter) Let's flip to A-19. I
25 am looking at another Authorization and Review of

1 Retention Incentives, correct?

2 A. Yes, ma'am.

3 Q. And the position on this one is
4 pharmacist correct?

5 A. Yes, ma'am.

6 Q. Can you tell me why Christina Mears
7 received a retention incentive for this -- based
8 on this form?

9 A. Yes, ma'am. Christina Mears is our chief
10 of pharmacy services. The pharmacy team was
11 instrumental not only to our initial response to
12 COVID but throughout our -- our vaccination
13 process. She was the one that was responsible for
14 ensuring that the COVID vaccine was handled
15 appropriately, was administered appropriately,
16 that our policies kept the vaccine at the
17 temperatures it was supposed to be.

18 Again, kind of with the testing
19 equipment, Kansas City and St. Louis again were
20 identified as the two sites within the VISN to
21 receive the equipment necessary to house the COVID
22 vaccine. Specifically, the most expensive thing I
23 believe was the freezer that kept it at that
24 subzero temperature. I think it was maybe at 40
25 or whatever it was.

1 But again, Ms. Mears was instrumental
2 because she not only had to distribute it to
3 Kansas City, but she also had to ensure that it
4 reached Wichita, that it reached Leavenworth,
5 Topeka and Columbia, all in a state that allowed
6 them to use it in a safe manner. So she has years
7 of experience as a pharmacist and it was
8 determined that she was being actively recruited
9 away from us, specifically more so than just the
10 general concern.

11 MS. HUNTER: I'll offer what's
12 been marked as A-19.

13 MR. BOYTE: No objection.

14 ARBITRATOR DUNN: It's admitted.

15 (Agency Exhibit A-20 was marked
16 for identification.)

17 Q. (By Ms. Hunter) Let's flip to A-20. Is
18 this another Authorization and Review of Retention
19 Incentive?

20 A. Yes, ma'am.

21 Q. And it's for medical supply technicians,
22 correct?

23 A. Yes, ma'am.

24 Q. Now, were there a lot of medical supply
25 technicians in the hospital? Or did they all fall

1 under one service line?

2 A. So all the medical supply technicians
3 fall under one service line. There are a few but
4 not enough.

5 Q. Okay. And why did they feel -- or why
6 did the facility feel it was essential to provide
7 them a retention incentive?

8 A. So medical supply technicians are the
9 ones that work in our sterile processing service.

10 ARBITRATOR DUNN: On what, I'm
11 sorry?

12 THE WITNESS: Sorry. They work in
13 what they call SPS, which is sterile processing
14 service.

15 ARBITRATOR DUNN: Okay.

16 A. So those folks take reusable medical
17 equipment, whether it be scopes or surgical
18 equipment or -- those are the most common. Any
19 other thing that we reuse on more than one
20 veteran, and they decontaminate it, clean it up
21 and then sterilize it for the next use.

22 So much like housekeeping, they're one of
23 those underappreciated departments within the
24 facility that are key to continued operation. I'm
25 sorry, I'm getting tied tongue -- tongue tied.

1 Yeah. So similar to EMS, there was a lot
2 of changing policies related to the
3 decontamination of this medical equipment with
4 COVID. The processes changed. The department --
5 we have issues, generally speaking, retaining
6 sterile processing techs or medical supply techs
7 anyways because it is a lower graded position.
8 Again, that's an entry level position that a lot
9 of people come into and then move on.

10 I don't want to get into the weeds too
11 much, but this is what they call a direct hire
12 position, meaning that you don't have to have any
13 type of veterans preference or anything to get
14 into the system. So a lot of the non-vets that
15 want to work for the government will apply for
16 this position, work in it the required amount of
17 time and then move on to something else. But it
18 just allows them to come in if they don't have
19 that preference.

20 MS. HUNTER: I'll offer what's
21 been marked as Exhibit A-20.

22 MR. BOYTE: No objection.

23 ARBITRATOR DUNN: Submitted.

24 (Agency Exhibit A-21 was marked
25 for identification.)

1 Q. (By Ms. Hunter) Okay. Let's flip to
2 A-21. Is this another Authorization and Review of
3 Retention Incentive?

4 A. It is.

5 Q. And this is for a maintenance mechanic,
6 correct?

7 A. It is.

8 Q. What is a maintenance mechanic?

9 A. So we have a variety of different levels
10 of maintenance mechanics within the hospital. So
11 when we're looking at this, this is not going to
12 be all encompassing of maintenance mechanics.
13 This incentive is specifically tied to those that
14 operate what we call the central plants.

15 So the central plant is the one that is
16 responsible for 24/7 operation and provides the
17 steam, the hot water, and the cold water primarily
18 to the medical center. Really, a lot of those
19 utilities. They don't do power, but gas, water,
20 and then steam. And when I say gas, I don't mean
21 just natural gas like a lot of us think of, but
22 they provide that piped oxygen into the patient
23 rooms. They provide the specialty gases in the
24 lab. They provide the specialty gases in the
25 operating suites. So those folks are responsible

1 really for those utilities that all of our
2 clinicians use.

3 Q. Why were they given a retention incentive
4 at that time?

5 A. Those maintenance mechanics are, I would
6 say, the most highly specialized facilities
7 workers that we have in the facility. It takes
8 years and years for them to get up to training on
9 that. And literally, if we're not able to staff
10 that central plant, we can't function as a
11 hospital. It seems kind of outdated for -- for
12 most businesses, but pretty much every hospital
13 that you're going to run into has that central
14 plant and they're all pretty similar to one
15 another. So there was potentially a huge risk of
16 losing those folks.

17 The other thing specific to wage grade
18 position, there's only five steps. So the way the
19 Federal compensation works, you have grades based
20 on kind of the complexity of what the position
21 does, then you have steps going across based on
22 how long they have been in that position.

23 So once that specific -- that maintenance
24 mechanic has been in the position about seven
25 years, they're not going to receive any salary

1 increase beyond the yearly cost of living
2 increase. So they're kind of, quote/unquote,
3 stuck, which is a dissatisfier. And again,
4 because it was so important to keep those folks
5 employed by the VA so that we can continue our
6 operations, those were the decisions we used.

7 Q. And if we flip to page 3 of the document,
8 in Box 21, it says that multiple employees in that
9 department notified HR of the intent to retire or
10 resign in December of '20 through March of '21.
11 So that would have been a motivating factor,
12 correct?

13 A. Yes. So our central plant does have a
14 lot of retirement eligible folks in it. And we
15 have been taking proactive measures since this was
16 done to try to alleviate that. The VA actually
17 has a specific intern program or position, I
18 guess, maybe because it's a wage grade position
19 that is specific to developing those folks
20 because, again, it is highly specialized.

21 Q. And Box 21 also states that there was
22 significantly higher rates of compensation in the
23 local market, correct?

24 A. Yes.

25 Q. So it would have been a motivating factor

1 in trying to incentivize these employees?

2 A. Yeah. And if you look at page 2 of 3
3 under G, that's going to be the 2019 salary survey
4 data. It says, "Stationary Engineer," but it's
5 the same type of work. We don't always use the
6 same -- same job titles for the same type of work.

7 MS. HUNTER: Okay. I'll offer
8 what's been marked as Agency -- oh, well, I'll
9 offer it, Agency Exhibit 21.

10 MR. BOYTE: No objection.

11 ARBITRATOR DUNN: Admitted.

12 Q. (By Ms. Hunter) On page 4 of that
13 document, are those the individuals that received
14 that incentive?

15 A. They are.

16 Q. Why might a maintenance mechanic have
17 received an incentive versus a maintenance worker?

18 A. So they do two very different job
19 functions, kind of like I said before. So in
20 addition to these wage grade 11 maintenance
21 mechanics, you also have wage grade 9 maintenance
22 mechanics. And it's all based on the type of work
23 they do and where they work in the hospital. So
24 maintenance workers generally assist a journeyman.
25 Journeyman level carpenter or electrician or

1 plumber, one of those other skill trades. They're
2 not doing the work in the central plant like the
3 GS 11 maintenance mechanics we just referenced to.

4 Q. To the best of your recollection, is
5 Anthony McKenzie one of those workers?

6 A. He is.

7 Q. And those are easier to fill or find than
8 those --

9 A. Those are very easy for us to find. A
10 lot of folks that end up being our journeyman
11 level, whether, again, painter, plumber,
12 electrician, whatever, start out as maintenance
13 workers. And I would say on average every time we
14 put out an announcement, we have 20 to 25
15 qualified applicants that could potentially take
16 that job.

17 (Agency Exhibit A-22 was marked
18 for identification.)

19 Q. (By Ms. Hunter) Let's look at Agency
20 Exhibit 22.

21 ARBITRATOR DUNN: Did you offer
22 21?

23 MS. HUNTER: Oh, I'll offer it. I
24 apologize.

25 MR. BOYTE: No objection.

1 ARBITRATOR DUNN: It's admitted.

2 Q. (By Ms. Hunter) Now, this is for another
3 Authorize and Review of Retention Incentive,
4 correct?

5 A. Yes.

6 Q. Okay. And this is for OIT employees,
7 correct?

8 A. Yes, ma'am.

9 Q. Okay. Kind of explain to the parties
10 what happened with OIT employees semi-recently and
11 how they're kind of restructured.

12 A. Sure. So OIT is an acronym that stands
13 for the Office of Information Technology. So much
14 like the name implies, they're responsible for all
15 of our computer systems, our networks, our
16 telecommunications, whether it be cell phones,
17 desk phones. They do all that stuff that a normal
18 IT department would do.

19 Much like the human resources department,
20 consolidating to the VISN, the Office of
21 Information and Technology consolidated into
22 regions. So they don't report to anyone here at
23 the medical center. They have what they call
24 areas of operations. So it's very, very similar
25 to a VISN being that we have a chief information

1 officer here at the facility that all of the
2 employees that work here that are stationed here
3 report to and then he reports up to an area
4 supervisor for Office of Information and
5 Technology. But much like HR, they're not
6 accountable, and that's a bad word, but they don't
7 report to anybody here at the medical center.
8 They have their own separate chain of command.

9 Q. So Director Isaacks did not make any
10 decisions related to OIT employees, correct?

11 A. Correct. He doesn't have the authority
12 to.

13 Q. Okay. But regardless, all of the OIT
14 employees at KCVA got a retention incentive?

15 A. Yes, so we were -- "we" being HR, were
16 mailed this 10017 form and instructed on what to
17 do with it, which was coding it for the OIT
18 workers.

19 Q. Okay. And the form speaks for itself on
20 why the deciding official decided to give the
21 retention incentive?

22 A. It did, yeah. I wasn't involved in the
23 decision making, I just know that we did receive
24 this form and we processed it accordingly.

25 MS. HUNTER: I will offer what's

1 marked as Agency Exhibit 22.

2 MR. BOYTE: No objection.

3 ARBITRATOR DUNN: It's admitted.

4 Q. (By Ms. Hunter) Throughout all of these
5 Authorization and Review of Retention Incentives
6 and ultimate approving of those incentives for all
7 these employees we've just talked about, do you
8 believe that the Agency followed Handbook 5007?

9 A. Yes, ma'am.

10 Q. Okay. Do you believe that they followed
11 the OCHCO guidelines?

12 A. Yes, ma'am.

13 Q. And do you believe that they followed the
14 Federal Code of Regulations?

15 A. Yes, ma'am.

16 Q. Did the risk for COVID-19 exposure drive
17 who got a retention incentive at KCVA?

18 A. No.

19 Q. If we look back at one of the exhibits --
20 let's just start with A-4, for example.

21 A. Okay.

22 Q. On page 4, so the chart, it says the
23 legal authority description to RR COVID-19
24 reporting. Can you tell the parties what that
25 means?

1 A. Sure. So with COVID, the medical center
2 was given supplemental funds to our normal
3 operating budget to respond to COVID. And that
4 was used in a variety of factors. One being some
5 of these incentives, one being overtime. And what
6 that did was help us determine administratively
7 what pool of money, so to speak, we should cost
8 those expenses to.

9 So it's kind confusing when you look at
10 these reports, but if you look at Legal Authority
11 Description Number 1, that's the true legal
12 authority that the retention incentive was
13 authorized under. Legal Authority Description 2
14 was put in so that we could pull reports and
15 charge that money back to the COVID fund rather
16 than a general purpose fund.

17 So for example, normally in a normal year
18 we get around 3 to \$400,000 for incentives total.
19 This year, again, we had that -- that -- that
20 COVID money that we called it. So we were able to
21 offer all those incentives to those folks. But
22 again, it was for continuity of operations. It
23 had nothing to do with the exposure of COVID, it
24 was just what pool of money were we using that to
25 pull from.

1 Q. I'm handing you what's been marked as
2 Union Exhibit 9. When you're talking about the
3 Legal Authority 1 versus the Legal Authority 2 --

4 A. Uh-huh.

5 Q. -- can you -- it shows on the SF 50 --

6 A. Correct.

7 Q. -- correct?

8 A. So 5-A -- for arbitration purposes, 5-A,
9 5-C and 5-E are not really that important.
10 They're just a reference within our automated
11 system that helps us pull those authorities.

12 5-B tells you what type of interaction
13 code. In this case it's retention incentive.

14 5-E shows that we authorized it under 5
15 U.S.C. 5474(D)(3)(A) being an authorization of a
16 retention incentive.

17 And then 5-F is showing that RRR, which
18 is relocation, recruitment or retention incentive
19 of COVID-19. And if you notice, it's reporting.
20 So it specifically says reporting on -- in that
21 document to show that it's used for reporting
22 purposes. It's not a separate legal authority,
23 but would authorize it's under COVID. It's just
24 how we used to track that and cost it
25 appropriately.

1 Q. And it can be used for retention,
2 relocation or what was the last R?

3 A. Relocation, retention or recruitment.

4 Q. Okay. So the funds could be used
5 multiple ways. It was -- or the Agency's
6 discretion as to how it used it?

7 A. Correct. If we needed to recruit an
8 additional infectious disease doctor, and we need
9 to pay him money to come here, it's basically a
10 bonus for private sector. Hey, we'll give you
11 \$50,000 if you start working for us, that would be
12 a recruitment incentive.

13 Q. Okay.

14 A. We could have used money that way. We
15 just didn't have the need. We had the need to
16 retain employees.

17 Q. Okay. Today there was some testimony
18 about Mary Locke and if she had received any
19 special contribution awards. Her testimony was
20 that she didn't receive any awards. Based on your
21 review of her record, is that a true statement?

22 A. No. My review --

23 MR. BOYTE: I'm going to object.
24 They were able to provide proof of Lyneal Vanreed.
25 Are they going to prove on this one?

1 MS. HUNTER: Your Honor, I'm
2 laying a foundation.

3 ARBITRATOR DUNN: Yeah, please
4 proceed.

5 A. Yes. My review indicated that she
6 received multiple awards from the time COVID
7 started.

8 (Agency Exhibit A-27 was marked
9 for identification.)

10 Q. (By Ms. Hunter) Okay. I'm handing you
11 what I've marked as Agency Exhibit 27. Is this a
12 COVID award that she received on January 2nd of
13 2020?

14 A. So this is not a COVID award.

15 Q. Or excuse me, a cash award?

16 A. This is a cash award. So what this tells
17 us is that is an individual cash award and then
18 the RB stands for rating based, which means this
19 was a performance award.

20 Q. Okay.

21 A. Box Number 20 shows that the amount of
22 the award was \$1,000, and as documented, indicates
23 it was effective January 2nd of 2020.

24 MS. HUNTER: I'll offer what's
25 been marked as Agency Exhibit 27.

1 MR. BOYTE: No objection.

2 ARBITRATOR DUNN: It's admitted.

3 (Agency Exhibit A-28 was marked
4 for identification.)

5 Q. (By Ms. Hunter) I'll hand you what's
6 been marked as Agency Exhibit 28. Is this a cash
7 award that was given to Ms. Locke?

8 A. Yes. So this is an 849 action code. It
9 says individual cash award, non-rating based,
10 which means that this was not tied to a
11 performance award. This was a special
12 contribution award for something she specifically
13 did to go above and beyond her normal job duties.
14 Much like the other award, if you reference
15 Box 20, you'll see that this award was for \$363.

16 Q. And it was provided on July 16th of 2020?

17 A. That is correct.

18 (Agency Exhibit A-29 was marked
19 for identification.)

20 Q. (By Ms. Hunter) I'll hand you what's
21 been marked Agency Exhibit 29.

22 ARBITRATOR DUNN: Are you going to
23 offer 28?

24 MS. HUNTER: Yes, please.

25 MR. BOYTE: No objection.

1 ARBITRATOR DUNN: It's admitted.

2 Q. (By Ms. Hunter) Can you tell what we
3 were looking at?

4 A. This is another SF 50. I don't know
5 what -- if I laid the foundation for what an SF 50
6 is, if I need to do that.

7 Q. Yeah, go ahead.

8 A. So an SF 50 stands for Standard Form 50.
9 It's just a form number. This is the action that
10 we process that goes into an employee's official
11 personnel file. So when we go in and enter this
12 action, it then triggers a payout through the
13 payroll system.

14 So at any time an employee is promoted,
15 receives an award, changes positions, whatever,
16 it's going to be documented on this SF 50.

17 The SF 50 that I'm looking at now is
18 another individual cash award NRB. Again, that's
19 not rating based. So that would be an additional
20 above and beyond special contribution award. This
21 one is for \$200 effective November 17th of 2020.

22 MS. HUNTER: I'll offer what's
23 been marked as Agency Exhibit 29.

24 MR. BOYTE: No objection.

25 ARBITRATOR DUNN: It's admitted.

1 (Agency Exhibit A-30 was marked
2 for identification.)

3 Q. (By Ms. Hunter) I'm handing you what's
4 been marked as Agency Exhibit 30. What are we
5 looking at?

6 A. So again, we're looking at another SF 50.
7 Again, for Ms. Locke. This one is dated 11/29 of
8 2020. This one is an individual cash award,
9 rating based. So this would have been the next
10 year's performance award. And she received \$850.

11 MS. HUNTER: I'll offer what's
12 been marked Agency Exhibit 30.

13 ARBITRATOR DUNN: Donny?

14 MR. BOYTE: No objection.

15 ARBITRATOR DUNN: It's admitted.

16 (Agency Exhibit A-31 was marked
17 for identification.)

18 Q. (By Ms. Hunter) Handing you what's been
19 marked as Agency Exhibit 31. Can you tell me what
20 we're looking at?

21 A. Yes, we are looking at another SF 50 for
22 Ms. Locke. This one is dated December 18th of
23 2020. Looking at the legal authority, it shows
24 that this was an individual cash award, not rating
25 based. So again, this was a special contribution

1 award. And it looks like it was for the amount of
2 \$300.

3 Q. And what was the effective date?

4 A. December 18 of 2020.

5 Q. And you may have said that. I apologize
6 if you did.

7 A. It's okay.

8 MS. HUNTER: I'll offer what's
9 been marked as Agency Exhibit 31.

10 MR. BOYTE: No objection.

11 ARBITRATOR DUNN: It's admitted.

12 Q. (By Ms. Hunter) Now, why is it -- would
13 it be inappropriate for the Agency to give a
14 blanket retention incentive to all bargaining unit
15 employees?

16 A. Because it comes down to the very
17 foundation of why retention incentives are
18 offered. If the position is not critical to the
19 operation of the medical center or if we don't
20 believe there's a high likelihood for employees to
21 leave, then a retention incentive is not
22 appropriate. As everyone knows, we're funding
23 through taxpayer dollars so we're fiscally
24 responsible for ensuring we use those resources
25 appropriately. And as much as we like to give

1 money to everybody, that's just not the way we can
2 operate because we are, you know, constrained
3 through a budget.

4 Q. We're also constrained by Agency policy,
5 federal law and OCHCO guidelines, correct?

6 A. Correct. So if you review the 5007, the
7 applicable CFR, it tells you when the retention
8 incentive is not appropriate. In this case, it
9 was determined that those individuals that we
10 referenced, it was appropriate for them to receive
11 a retention incentive but in this case it was not
12 appropriate for everyone to.

13 Q. And when the Union filed its grievance,
14 did you get a copy of that?

15 A. I did.

16 Q. Okay. And what did the Union grieve?
17 It's in the grievance. Do you need to review it?

18 A. I do need to review it. I'm sorry, it's
19 been --

20 Q. You're good. If you flip to Joint
21 Exhibit 2, you can refresh your recollection.

22 A. Thank you.

23 Q. What was the subject of that grievance?

24 A. The subject is 20 percent hourly
25 incentive pay during this time of COVID-19.

1 Q. Okay. And so the Agency would have
2 responded to the incentive pay as that was what
3 was raised by the Union, correct?

4 A. Correct.

5 Q. Did the Union ever file a grievance about
6 the information request that was made to you and
7 you denied for lack of particularized need?

8 A. They did not.

9 Q. Did they ever file a ULP?

10 A. They did not.

11 MS. HUNTER: I have nothing
12 further at this time.

13 ARBITRATOR DUNN: He gets to ask
14 you some questions now.

15 CROSS-EXAMINATION

16 BY MR. BOYTE:

17 Q. I've got a few. The person in the PIV
18 office, what training do they take?

19 A. So they have a significant amount of
20 computerized training they take. They have to
21 do -- well, now it's switched to USA access, but
22 at the time they had to do training modules to be
23 an issuer, a sponsor, a registrar, and an issuer.

24 With the PIV office, they do have to have
25 a higher level of background investigation, and

1 that's what takes the time to replace those PIV
2 office employees. It's not necessarily the
3 training like it is for those other employees, but
4 they have to have what they call a moderate
5 background investigation instead of a NACI. And
6 we can't give them access to the systems until
7 they have that background.

8 Q. So is this training done at the academy?

9 A. No, that training is done locally.

10 Q. Okay. What training do the dispatchers
11 have?

12 A. I'm not sure what the specific training
13 is.

14 Q. Do they go to the academy?

15 A. They go to the academy for some classes.
16 I'm not sure if they do from an appointment or if
17 all the training is done locally.

18 Q. Are you the one that provided all this
19 information that you just testified to?

20 A. The majority of it, yes.

21 Q. Would this have been a majority of the
22 information that would have been provided in the
23 Request for Information?

24 MS. HUNTER: Objection, relevance.

25 ARBITRATOR DUNN: Please answer if

1 you can, sir.

2 A. If the information request was filed
3 appropriately and had the correct requirements,
4 then yes, the majority of this information would
5 have been provided.

6 Q. (By Mr. Boyte) So you testified earlier
7 that housekeepers were a vital EMS. How many --
8 are you aware of how many current vacancies there
9 are?

10 A. It's usually around 20 to 30. I don't
11 know what the exact number is right now.

12 Q. Are they hard to hire?

13 A. They're difficult, yeah.

14 Q. How difficult?

15 A. So for housekeepers, there's a
16 requirement that they are preference eligible
17 veterans. So we can't go, you know, down to the
18 community college and recruit a bunch of folks.
19 They have to have preference eligible unless a
20 specific waiver is approved by the Office of
21 Personnel Management. So it's a struggle to find
22 a pool of applicants that we are legally allowed
23 to hire.

24 Q. What is the CWT?

25 A. CWT is compensated work therapy program

1 that's administered by the mental health
2 department.

3 Q. Now, are those veterans that come here to
4 get treatment?

5 A. Yes.

6 Q. Now, you testified that the chief of
7 pharmacy got a retention bonus?

8 A. Yes.

9 Q. That she was taken -- or she was
10 disbursing the vaccine. She was in charge or she
11 was the one that was making sure it was negative
12 40. So none of her support staff helped her with
13 that?

14 A. I'm sure they helped her, but they do not
15 administer the program.

16 Q. Okay. Is the pharmacy short of staff?

17 A. I believe they're short on pharmacy
18 technicians, but not pharmacists.

19 Q. Okay. Did you give incentive awards
20 to -- or retention pay to pharmacy techs?

21 A. No.

22 Q. Why is that?

23 A. Because they were not critical at the
24 time. Our response was focused on providing care
25 to those folks that needed inpatient services. A

1 lot of our pharmacy techs, not all of them, but a
2 lot of them do outpatient, and that was not the
3 focus at the time.

4 Q. So if you had several pharmacists that
5 announced they were going to retire, would they
6 have gotten a retention bonus?

7 A. Most likely not.

8 Q. How easy is it to hire a pharmacist?

9 A. Pretty easy.

10 Q. They have to have a high level of
11 education, right?

12 A. They have to have a doctorate degree in
13 pharmacy most of the time, yes. We don't have
14 difficulty in recruiting them by and large because
15 our work environment is very different to retail
16 pharmacy. The majority of outpatient pharmacists
17 only periodically work weekends, not every other
18 Saturday or Sunday. They also don't -- unless
19 they're on the second shift, they don't work those
20 same hours. So we're actually a very desirable
21 place of employment for a lot of outpatient
22 pharmacists.

23 Q. So back to the LPNs. You said there was
24 recruiting of nurses, RNs and LPNs. How are you
25 aware of that?

1 A. So part of my role in the position I'm in
2 is I review the staffing report. I review the --
3 what we call gains and losses report that
4 indicates who's leaving, who's coming. I look at
5 the overall vacancy rates at the hospital through
6 Power BI apps. So although I'm not involved in
7 the day-to-day recruiting, I receive updates from
8 my -- formally my staffing supervisor, now the
9 staffing supervisor under VISN, to keep a gauge on
10 where we're at.

11 Q. Okay. So how many employees are you
12 aware of that took a bona fide offer to their boss
13 and said, I need some more money or I'm taking
14 this job, this offer?

15 A. I don't know if there were any.

16 Q. Okay. So it's your testimony that med
17 techs, respiratory therapists, house cleaners, are
18 critical to the continuity of the facility,
19 correct?

20 A. Absolutely.

21 Q. But pharmacy techs and pharmacists are
22 not?

23 A. I didn't say that. I said that they're
24 not difficult to recruit.

25 Q. Are they critical to the continuity of

1 the facility?

2 A. They're critical, but they're not
3 difficult to recruit.

4 Q. Okay. So does exposure to COVID mean
5 that continuity of the workforce could be
6 impaired?

7 A. Exposure to COVID is not related to this
8 at all.

9 Q. That's not what I asked you, sir. Does
10 COVID -- exposure to COVID mean the continuity of
11 the workforce could be impaired?

12 A. If someone was exposed to COVID, you
13 would have to take preventative measures to ensure
14 they were quarantined for the appropriate amount
15 of time.

16 Q. Okay. Would that affect the continuity
17 of the workforce?

18 A. Maybe.

19 Q. What about employees in the tent of the
20 COVID testing?

21 A. So, again, we're focusing on the critical
22 need to retain employees, not their exposure. So
23 the folks that were in the tent are not critical
24 care nurses, they are primary care nurses that
25 were giving the tests. We can very easily train

1 any nurse to come in and do that nasal swab.

2 Q. Okay.

3 A. They do not have the same training if we
4 lost it and it wasn't essential because we could
5 easily replace them.

6 Q. Okay. But was the testing critical to
7 the continuity of the workforce?

8 MS. HUNTER: Your Honor, I'm going
9 to object here. We bifurcated the Title 38s out
10 that he's talking about nursing staff, and it's
11 not relevant here.

12 MR. BOYTE: He just said any
13 nurse. That could be an LPN.

14 ARBITRATOR DUNN: This would be a
15 lot easier if we just go ahead and let him ask the
16 questions. Please answer the question if you can,
17 sir.

18 A. Sure. Would you repeat your question,
19 sir?

20 Q. (By Mr. Boyte) What about the people
21 that were doing the tests in the tent?

22 A. What about them?

23 Q. Does that affect the continuity of the
24 workforce? Is it important to have the continuity
25 of the workforce?

1 A. It's important we have people there
2 providing the tests, yes.

3 Q. Could LPNs be out there testing?

4 A. Sure.

5 Q. Okay. Could med techs?

6 A. No.

7 Q. Why?

8 A. Because med techs -- that's not their
9 duties. A med tech is responsible for processing
10 the specimen, not collecting it.

11 MR. BOYTE: Pass the witness.

12 ARBITRATOR DUNN: Do you have any
13 redirect?

14 MS. HUNTER: Yeah, briefly.

15 REDIRECT EXAMINATION

16 BY MS. HUNTER:

17 Q. There was a lot of discussion about
18 pharmacy techs or staff that worked under the
19 chief --

20 A. Uh-huh.

21 Q. -- and I just want to make sure that I
22 got this clear. They may be important to the
23 mission of the hospital but they are not hard to
24 retain?

25 A. They're not hard to recruit, correct.

1 Q. Okay. Okay. So if there was a vacancy
2 announcement, it would be easy for us to get a
3 position filled?

4 A. Correct.

5 Q. While exposure to COVID may affect the
6 continuity of the workforce, the point of a
7 retention incentive is to retain the employees
8 that we need to retain so that the workforce is
9 not disrupted, correct?

10 A. Correct. If I give somebody additional
11 money, it's not going to keep them from getting
12 COVID.

13 Q. Correct.

14 MS. HUNTER: Nothing further.

15 ARBITRATOR DUNN: Anything else?

16 MR. BOYTE: I have one.

17 RECROSS-EXAMINATION

18 BY MR. BOYTE:

19 Q. Is your testimony that the retention
20 incentive was based solely on how hard it was to
21 fill the position?

22 A. No. My testimony was that it is -- the
23 retention incentives were decided based on what
24 positions were critical to continued care and
25 operations during COVID, which was a combination

1 of the likelihood of those people leaving as well
2 as how easy it would be to replace those specific
3 individuals if they did leave.

4 Q. So if you look -- if you looked at all
5 the positions, there's like a list of five or six
6 different things that's criteria for retention
7 incentive, correct?

8 A. Uh-huh, yeah.

9 MR. BOYTE: All right. I can just
10 argue that in a brief. I have no other questions.

11 ARBITRATOR DUNN: Anything else?

12 MS. HUNTER: No, sir.

13 ARBITRATOR DUNN: That means
14 you're done, sir. Thank you very much. And I'll
15 just tell you I appreciate your clear
16 explanations. They were very helpful.

17 Any other witnesses?

18 MS. HUNTER: No, Agency rests.

19 ARBITRATOR DUNN: Any rebuttal
20 witnesses?

21 MR. BOYTE: Nope.

22 ARBITRATOR DUNN: Well, then we
23 are at the point of talking about briefs and
24 briefing schedule. My suggestion at the beginning
25 was that we wait till we get the transcript and

1 then you either talk to each other or both tell me
2 how much time you think you need to submit your
3 briefs. I have told you both that I'm very
4 liberal in giving whatever time is necessary.

5 MR. BOYTE: Okay.

6 ARBITRATOR DUNN: So I prefer that
7 you talk to each other if you need additional
8 time, but if you don't, I'm going to give it as
9 long as it's a reasonable request.

10 MR. BOYTE: Okay.

11 ARBITRATOR DUNN: Okay.

12 MS. HUNTER: I will proffer that
13 I'm going out of the country from January 27
14 through February 4th and then I'm in an all-week
15 arbitration with you the 7th through the 11th.

16 ARBITRATOR DUNN: Oh, man.

17 MS. HUNTER: So that may impact my
18 schedule to write a brief.

19 MR. BOYTE: That isn't going to be
20 an issue for us. If you want to talk, we can do
21 it after you get back from all that stuff.

22 MS. HUNTER: Okay.

23 ARBITRATOR DUNN: We can go off
24 the record.

25 (The hearing concluded at 3:20 p.m.)

CERTIFICATE

I, Lea Ann Martin, Certified Shorthand Reporter No. 913 in the State of Kansas and Certified Court Reporter No. 688 in Missouri, do hereby certify that I appeared at the time and place first hereinbefore set forth, that I took down in shorthand the entire proceedings had at said time and place, and that the foregoing constitutes a true, correct, and complete transcript of my said shorthand notes.



LEA ANN MARTIN, CSR, RPR, CCR

&	11th 17:24 228:15	173 6:24,24,25	197:15,17 199:21
& 2:8	12 7:4 29:22 74:19	178 6:25,25 7:4	202:10 204:14
0	83:3 143:20 178:8	17th 213:21	211:21 212:15
0083 166:8 173:8	178:10 180:7	18 6:6,6 7:10	216:24 219:10
0086 166:10	181:10,18	151:6 192:13,16	200 41:11,15
1	120 6:15	195:19 215:4	213:21
1 5:23 6:5,15 8:2	122 6:15	180 7:4,4,5	200424-06178 1:7
15:7 16:1 17:1,2,3	123 6:15	182 7:5,5,6	2008 56:22,23
29:22 83:3 120:23	128 6:16	184 7:6,6,7	2017 47:6
121:1,14 122:25	12th 47:23 73:15	186 7:7,7	2018 119:11
136:1,8 138:24	153:1	187 7:8	2019 56:24 203:3
139:6 147:11,16	13 7:5 180:13,15	189 7:8,8	2020 8:18 17:12
194:14 208:11	181:10,18 182:6	18th 15:15 73:16	26:18,18,21,22,25
209:3	131 6:16	153:2 214:22	27:12 28:3 35:9
1,000 211:22	132 6:16,17	19 3:10 6:7 7:11	35:18,24 47:23
10 3:4 6:14,24	133 6:17,17 7:15	8:17 9:15 10:22	63:14 72:8 73:15
8:16 33:2 47:17	136 7:15,15,16	15:24 48:2,4	73:16 79:23 84:20
47:18 49:21,22	138 5:12 7:16,16	49:15 50:8,17	98:4 99:16 125:18
50:20 55:8 59:2	14 3:8 7:6 76:16	51:8,14,17 57:15	138:16 145:8
67:20 125:25	182:9,12 184:18	59:11 104:24	146:25 152:9,12
141:3 157:18	142 5:14	118:11 119:19	152:13 153:1,2,12
164:13 171:4,6	15 6:5,5 7:7 60:8	131:17 179:3	156:2,2,11 162:1
173:16,20	118:6 133:9	185:14,15 193:8	211:13,23 212:16
10017 123:12	142:12 143:10	195:22,24 197:12	213:21 214:8,23
127:19 135:15	146:6 168:6	207:16,23 209:19	215:4
137:18 150:9	184:21,24 186:21	216:25	2021 1:16 17:13
206:16	186:22	190 7:9	47:20 73:20 93:11
108 4:23	150 6:18	192 7:9,9,10	152:9,15
10th 23:21 24:5	154 6:18,18,19	195 7:10,10,11	2022 152:15
47:20	157 7:17,18	197 7:11,11,12	203 7:13,13
11 6:25 74:18,20	158 7:17,18,18	199 7:12,12,13	204 7:14
74:20 173:22,25	159 6:19,19,20	2	206 7:14
178:5 194:11	7:17	2 5:24 6:6,16	207 7:14
203:20 204:3	16 6:5 7:8 187:1,3	17:15 18:9 106:13	21 6:7 7:13 194:10
11/29 214:7	189:19	121:14 128:24	199:24 200:2
110 4:24	162 6:20,20,21	129:2 130:21	202:8,10,21 203:9
113 5:4	167 6:21,21,22	131:25 136:2,8	204:22
114 5:5	168 6:22,22,23	151:10 203:2	211 7:19,19
115 5:6	16962 229:15	208:13 209:3	212 7:19,20,20,21
11542 2:10	16th 212:16	216:21	213 7:20,21,21
116 5:8	17 6:6 7:9 8:18	20 7:12 10:21	214 7:22,22,22,23
117 5:11	190:1 192:10	21:12 30:11 32:9	215 7:23,23
	171 6:23,23,24	40:3 41:10 107:6	217 5:15
		108:7 134:1 146:6	

22 6:7,8 7:14 204:17,20 207:1 225 5:16 226 5:17 227 5:19 22nd 73:20 23 7:15 133:19,22 136:15 24 6:8,8 7:16 115:23 136:18,21 138:10 24/7 48:10 171:2 177:11 200:16 249 2:9 25 6:9 7:17 112:6 115:23 157:3,6 158:8,15 159:1,7 204:14 26 3:11 6:9,9 7:18 157:8,11,14 158:7 158:12,15 159:1 27 3:12 7:19 211:8 211:11,25 228:13 28 7:20 21:12 212:3,6,23 28th 17:12 29 7:21 212:18,21 213:23 29th 53:13 2nd 211:12,23 3 3 5:25 6:7,17 8:2 10:19 19:19 21:1 21:23 61:1 107:5 107:15,22 132:5,8 133:2 136:2,8 194:9 202:7 203:2 208:18 209:15 3/9/21 74:21 30 7:22 214:1,4,12 219:10 300 215:2 306 11:22,23	308 11:22 31 7:23 214:16,19 215:9 312 2:6 34 3:14 36 3:15 363 212:15 365 171:2 38 3:17 20:22 65:12,21 132:18 132:19 38s 224:9 39 6:10 3:20 228:25 4 4 6:8,18 22:24 23:1 24:14 25:3 150:3,6 152:3,17 154:4 161:20 166:2 170:20 175:18 177:19 180:2 182:2 184:13 187:24 194:13 195:11 203:12 207:20,22 4/10/2021 157:19 4/11/2021 48:24 4/12 153:16 40 6:10,10 104:10 196:24 220:12 400,000 208:18 41 6:11 42 3:18 6:11,11 43 29:14 45 159:14 46 3:20 6:12 47 79:24 48 6:12,12,13 49 6:13,13,14 4th 228:14 5 5 6:9,19 11:21,23 25:8,11 26:7	49:10 112:5 134:7 134:9,9 136:7,22 141:2 154:8,11 159:2,18 164:13 177:19 209:8,8,9 209:9,12,14,14,17 5,000 112:3 50 6:14,14 40:4 41:3 47:14 49:8 74:21 104:11 209:5 213:4,5,8,8 213:16,17 214:6 214:21 50,000 210:11 500 80:6 5007 11:9 136:1 207:8 216:6 5047 120:21 507 120:13 131:12 134:12 137:17 50s 74:11,13 158:4 51 3:21 516 2:10 54 3:23 5474 209:15 57 3:24 575.306. 136:22 575.308 11:23 134:8,10 6 6 6:10,20 39:14,17 39:18,20 40:19 42:11 136:10 153:12 159:23 160:1 162:7 177:19 6/18 152:22 153:16,16 154:1 6/18/2020 153:7 60 4:5 60607 2:5 610 2:4 617-4083 2:6	65 4:6 67 81:20 671-2688 2:10 68 4:7 81:20 688 229:5 7 7 1:16 6:11,21 41:1,3 42:9 162:10,13 167:2 173:5 70 2:9 700 2:5 80:6 72 4:9 73 4:10 76 4:12 78 4:13 79 4:15 7th 228:15 8 8 3:3 5:23,24,25 6:12,22 46:16 47:9 48:16 167:5 167:8 168:18 80 4:16 830 65:12 84 4:18 849 212:8 850 214:10 88 4:19 9 9 6:13,23 48:20,23 49:17 168:21,23 171:8 203:21 209:2 90 4:21 910 1:5 10:18 15:1 15:5 20:4 55:4 60:22 84:9 913 229:4 93 4:22 9:00 8:1 32:19 33:6
--	--	---	---

a	access 158:4 217:21 218:6	administered 196:15 220:1	124:16
a.m. 8:1 33:6 190:20	accesses 142:24	administration 143:7	afternoon 74:22 74:25 82:21 84:6 93:3 116:22
abilities 91:9 101:4 114:15 188:10	accomplishment 94:25 95:2	administrative 48:14 160:25	age 81:20
ability 56:14 66:18 94:14 96:4 96:24 101:14 122:22 130:4	accountable 206:6	administratively 208:6	agencies 151:20 194:14
able 34:8 55:25 64:5,7,10 66:25 68:8 70:7,10,17 82:13 88:7 111:10 149:20 163:24 164:16,17 169:22 170:6 175:21 177:25 181:8 201:9 208:20 210:24	achieve 86:24	admitted 5:22 6:4 7:3 24:4 132:2 133:18 136:17 138:12 154:7 158:11,12 159:1 159:22 162:9 167:4 168:20 171:11 173:18 178:7 180:12 182:8 184:20 186:24 189:21 192:12 195:21 197:14 203:11 205:1 207:3 212:2 213:1,25 214:15 215:11	agency 1:10 2:7 3:4 5:9,19 6:15,16 6:17,18,19,20,21 6:22,23,24,25 7:4 7:5,6,7,8,9,10,11 7:12,13,14,15,16 7:17,18,19,20,21 7:22,23 8:9,13,24 9:20,22 10:15 11:6,13,23 12:6 12:10,13,15 13:19 15:17 16:5,21 18:14 20:6 26:15 31:21,24 42:23 51:4,5 57:13 73:13 78:7,7 80:23 88:20 91:8 93:5 94:14 95:6 95:25 96:4 97:12 101:3 117:17 120:10,19,23 121:1,14 122:25 126:11 129:2 132:5,8 133:1,19 133:22 135:5,6,22 136:15,18,21 138:3,10,14,24 139:3,6 142:2 150:3,6 154:4,8 157:3,6,11,13 158:7,12,25 159:7 159:18,23,25 162:7,10,12 167:2 167:5,8 168:21 171:4 173:22 178:5,8 180:13 182:9 184:17,21
abnormal 185:17 185:18	achievement 95:2 105:6		
absence 175:6	acronym 205:12		
absolutely 43:18 85:19 89:22 162:24 164:5 177:17 184:4 186:16 191:10 193:13 194:18 222:20	act 105:5		
ac 76:21	acting 93:24,25		
academy 51:18,23 52:1 57:15,17,19 57:23 111:1 149:16,19,22 150:1 163:16,21 165:2,4,4,10,13 218:8,14,15	action 23:8 47:15 140:8 151:4 153:5 153:17 159:12,15 212:8 213:9,12		
academy's 111:13	actions 135:23 156:8		
accept 16:25 158:22	actively 197:8		
acceptable 102:18	acts 170:13		
accepted 112:3	actual 21:17 137:15		
	adam 117:25 118:1		
	add 13:13,16 29:21 30:20 134:5		
	added 67:20		
	addition 172:14 203:20		
	additional 10:21 91:23 155:15 176:22 194:6 195:5 210:8 213:19 226:10 228:7		
	address 138:25 151:22		
	addressed 13:21		
	adjust 178:1		
	adjusted 156:16		
	adjustments 22:2		
	administer 90:1,6 183:9 220:15		
		admonition 71:8	
		advance 155:23	
		advanced 65:19	
		advertising 151:18	
		advice 22:9 121:8 130:9 138:6 143:1 143:3	
		advise 147:1	
		advisor 2:4	
		affairs 1:9 10:16 47:3	
		affect 31:6 223:16 224:23 226:5	
		afford 100:7 155:11,20 177:10 186:19	
		afge 10:18 15:5 20:3 55:3,4 60:21 84:8,9 97:23	

184:23 187:1 189:19 190:1 191:19 192:13 195:22 197:15 199:24 203:8,9 204:17,19 207:1,8 211:8,11,25 212:3 212:6,18,21 213:23 214:1,4,12 214:16,19 215:9 215:13 216:4 217:1 227:18 agency's 13:7 17:23 30:15 36:8 53:21 131:25 135:22 210:5 agent 15:14 17:11 ages 82:4 ago 16:7,22 42:1 177:4 188:4 190:18 agree 36:15 52:6 52:10 94:3 101:15 117:9 137:6 144:2 agreed 89:24,24 89:25 agreement 8:11 11:1 30:7 47:20 95:21 117:7 124:18 125:5 146:15 151:8 157:19 agreements 124:8 ahead 33:11 50:15 51:21 112:16 130:6 134:18 213:7 224:15 aide 174:6,7,8 175:11,20 aides 174:11,13 177:20 airways 183:11 alarms 169:13	allegedly 10:20 alleviate 202:16 allow 14:12 16:25 18:20 22:1 43:18 54:11 183:17 allowed 21:3 23:2 181:4 197:5 219:22 allows 199:18 alluded 188:3 190:18 american 1:4 amount 30:10 92:5 103:8 135:10 135:12 137:12 140:3,10 157:23 170:1 176:25 177:5,14 199:16 211:21 215:1 217:19 223:14 amounts 80:5 ample 103:8 ann 2:13 4:17 37:16 82:19 84:1 229:3,16 announce 104:9 115:19,22,23 announced 221:5 announcement 103:8 204:14 226:2 announcements 106:5 177:19 189:2 answer 38:4 43:20 45:21 63:24 69:18 75:12 78:14 86:13 87:22 218:25 224:16 answering 90:20 answers 75:13 83:16 anthony 4:11 76:2 76:10 204:5	antiquated 187:18 anybody 27:15 33:25 38:12 45:13 59:24 60:1 75:18 75:20 77:9 89:19 108:21 116:25 141:14 186:6 206:7 anymore 21:19 81:25 anyway 85:7 89:16 anyways 170:12 199:7 apnea 183:10 apologies 121:5 154:21 apologize 13:14 98:2 107:17,25 114:5 125:9 134:16 141:1 152:17 155:23 186:22 204:24 215:5 appeared 229:6 appearing 172:1 appears 127:23 152:10,11 applicable 216:7 applicants 103:9 104:11 115:21,23 204:15 219:22 applied 99:12 101:8 122:13 apply 95:9 103:9 122:3 154:18 199:15 appointing 150:22 appointment 130:15,16 131:4 218:16 appointments 129:8,11,13,16 131:9 161:4	appraisal 144:21 appraisals 175:2 appreciate 60:4 71:5 89:6 227:15 appropriate 11:16 11:19 18:21 22:3 30:24 111:9 114:14 128:5 140:6,7 167:21 169:16 189:14 215:22 216:8,10 216:12 223:14 appropriately 12:15 139:19 170:4 196:15,15 209:25 215:25 219:3 approval 97:8,9 122:6 125:15 131:13 132:16 134:11,24 136:10 136:13 137:10 157:22 approve 11:25 104:14 105:17 112:7 128:9 175:1 approved 100:12 122:19 124:8 154:1 181:11 185:22,25 219:20 approves 92:22 approving 97:13 101:22 105:21 120:1 121:25 122:1,20 125:16 131:16 137:2,4 207:6 apps 222:6 april 8:18 21:12 26:18,21 35:9,23 47:20,23 63:14 72:8 73:15 79:23 84:20 152:12 153:1,19 156:2
--	--	--	---

162:1	82:25 83:8,11,12	areas 62:10,12	188:16,17,20
arbitration 1:3	83:23 88:14 89:2	66:19,20 67:9	189:1
10:16,18 29:14	89:4,10,13,14,23	69:11 88:8 120:8	assistants 58:17
30:15 34:25 36:8	90:5,11 92:24	131:23 155:3,5,7	65:18,21 154:19
107:20 108:1	100:17 106:17	155:8 169:16	154:23 155:1
174:20 209:8	108:16 110:2,17	175:5 177:16	156:5 160:20
228:15	111:16,23 112:8	188:7 189:7	187:14 188:4,23
arbitrator 1:1 8:4	112:13,16 113:3	205:24	189:3
8:7 10:1,5,9,13	114:1,3 115:3,10	argue 227:10	assists 167:18
12:17,22,25 13:6	116:3,5,13,16,20	argument 10:6	193:1
13:11,15,23 14:4	116:22,23 117:4,8	13:20	associate 62:23
14:7,11 16:8,23	117:13,19 123:1,3	arguments 30:25	65:4,6,17 143:15
17:3 18:10,18	132:2 133:16,18	arkansas 149:17	178:21
19:1,4,13,18	133:25 134:4	163:17	associated 179:6
20:10,14,17,19	136:17 138:12,20	arrives 163:6	189:13
21:21,25 22:10,16	140:13,15,21	article 29:14	assume 69:19
22:18 24:15,19,23	141:3,5,6,10,17	articles 10:25	assumed 41:22
25:1,4,10,13,16	141:19,24 154:5,7	asked 36:10 42:3	attached 16:4
26:9,11 28:7,11	158:11,16,25	42:5 56:9 61:12	150:19
28:18,22 29:4,9	159:6,21 162:9	88:22 223:9	attention 121:14
29:12,15,20,25	167:4 168:20	asking 8:20 34:4	attorney 2:3 22:5
30:3,22 31:15,17	171:7,11 173:18	71:19 90:7 108:4	36:8 42:23 51:4
32:1 33:8,16,18	178:7 180:12	127:1 139:24	73:13 78:7 80:22
33:19,23 34:10,13	182:8 184:20	140:2 150:16	attract 130:4
34:19 36:3 37:8	186:24 189:21	asks 9:18	authenticating
37:11,15,20,21,23	192:12 195:21	aspect 62:6	29:16
38:2,8,14,20	197:14 198:10,15	aspirin 70:19,21	author 29:7
40:20,23 42:12,18	199:23 203:11	assessment 99:4,4	authorities 92:15
43:17 44:5,7 45:5	204:21 205:1	99:6	98:23 150:22
45:7,8,17 46:2,8	207:3 211:3 212:2	assigned 42:23	209:11
46:15 48:17,19	212:22 213:1,25	assignment 119:4	authority 18:7
49:1,19,24 50:14	214:13,15 215:11	127:3,4,10	49:14 52:5 66:1
50:22 52:21,23	217:13 218:25	assignments	95:13 97:9,10
53:10 54:2,5,9,17	224:14 225:12	128:15	124:25 132:22
55:15 56:3 57:2,7	226:15 227:11,13	assist 12:16 175:2	140:5 159:13
59:18,20,23 60:4	227:19,22 228:6	188:12,13 203:24	206:11 207:23
60:7,12,14 63:23	228:11,16,23	assistance 163:1	208:10,12,13
64:21,24 71:1,4	area 62:14,15 70:7	170:7	209:3,3,22 214:23
71:14,17,25 73:8	98:11 99:23	assistant 72:9	authorization
74:1,3,7,18,22,24	101:18 109:17	73:19 142:11	135:19 137:1
75:2,5,10,16,23	119:4 146:5 149:9	143:15 154:17	152:7,8 154:16
78:1,13,21,23	170:11 177:25	155:13 160:13,15	160:9 162:16
79:4,7,13 80:16	206:3	167:13,16,17	167:10 168:24
81:24 82:1,3,20		187:12,19,21	171:14 174:3

178:11 180:16 182:12 184:24 187:4 190:4 192:18 195:25 197:18 200:2 207:5 209:15 authorize 150:10 205:3 209:23 authorized 47:19 121:23 122:16 157:18,24 161:11 208:13 209:14 authorizing 161:12 automated 209:10 available 30:5 31:24 83:4 average 204:13 award 9:24 12:14 36:16,23,25 37:1 43:1,2 52:7,9 64:14 67:17,21,21 77:6 80:25 81:9 92:17 94:24,25 95:1 104:24 105:4 112:10 121:19,23 125:4,6,11 140:8 144:17 211:12,14 211:15,16,17,19 211:22 212:7,9,11 212:12,14,15 213:15,18,20 214:8,10,24 215:1 awarded 9:10 105:5 awards 8:13,15 11:1,2,6,19 16:17 36:11,13 40:22 43:15 58:11 59:11 68:2,6 73:5 80:1 80:10 85:10 87:3 91:4 92:16 94:19 94:20,21 104:15 104:18 105:10	107:11 125:12 128:5 139:1,3,7 139:13,17,22,25 144:14,19,20,22 144:24,25 210:19 210:20 211:6 220:19 aware 58:4 66:7 77:10,17 80:24 97:25 124:16 138:6 219:8 221:25 222:12 b b 5:21 6:3 7:2 209:12 back 17:19 21:12 21:19 35:18 46:3 46:6 48:22 61:25 62:20 79:23 82:15 82:19 113:13 116:8 134:2 146:18 164:13 165:1 207:19 208:15 221:23 228:21 backfill 57:23 131:8 background 142:23 149:18 167:19,21 217:25 218:5,7 backlog 165:3 backup 191:21 backwards 30:11 93:7 bad 206:6 badge 149:20 badged 111:12 165:14 badging 111:2 142:24 167:18 bailey 152:23 bargain 124:20	bargaining 8:10 10:20,25 12:2,9 32:5,21 68:12,15 108:5 114:10 126:16 128:11,16 128:17 162:4 166:15,20,24 168:14 170:20 175:9 176:9,12 179:20,22,24,25 181:25 184:13 195:14,17 215:14 barton 3:19 37:18 45:7 46:12 based 9:4 22:3 39:7 62:6,9 66:21 68:2,22 100:22 101:13 105:18 111:3 112:19 114:14 115:15,25 123:15 124:14 128:10,21 148:19 150:19 162:4 166:23 170:25 193:25 195:6 196:7 201:19,21 203:22 210:20 211:18 212:9 213:19 214:9,25 226:20,23 bases 18:15 basic 134:19 basically 10:3 13:6 40:1 45:15 56:15 130:24 141:7 143:13 210:9 basis 95:25 114:20 122:11 135:2,7,10 135:25 146:13 151:7,9 155:8 bear 106:19 107:18 132:3	bed 72:19 77:14 beds 76:25 beginning 123:15 130:17 136:25 227:24 behalf 10:19 14:16 19:16 20:3 34:17 38:18 46:13 54:20 55:4 60:16 71:23 76:3 79:11 84:2 90:9 117:17 142:2 behavioral 23:22 28:1,2 163:3 believe 30:20 36:24 50:5 51:7 51:16 64:17,18 65:16 67:19 78:24 81:1,3 113:9 116:6 131:5 175:12 196:23 207:8,10,13 215:20 220:17 belong 168:4 bending 30:10 benefit 55:16 berger 2:8,8 best 32:9,22 98:23 204:4 better 46:4 140:16 beyond 64:12 68:10 144:18,23 202:1 212:13 213:20 bi 146:20 222:6 bifurcated 224:9 bit 87:15 138:21 156:19,21 biweekly 102:13 146:13,20 151:7,9 blaming 32:10,11 blanket 12:8 13:7 68:12 114:9,18,19 126:15,17 215:14
--	--	---	---

block 40:3 41:10 147:16	28:14,17,24 29:6 29:13,18,21 31:19	195:20 197:13 199:22 203:10	bunch 219:18
blood 72:18 188:14	32:5,10,23 33:1 33:10 34:21,24	204:25 207:2 210:23 212:1,25	burnout 163:24
board 9:21 126:3	36:2,10 37:10,13 37:16 38:22 39:16	213:24 214:14 215:10 217:16	business 15:14 17:11 52:5 65:13
body 138:2	39:20,22 40:18 41:3,4 42:8,15	219:6 224:12,20 225:11 226:16,18	94:12 109:14
bold 155:19	43:13 44:6,11,15 44:25 45:2 46:19	227:9,21 228:5,10 228:19	businesses 201:12
bona 78:10,17 81:19 102:23	46:22 47:9,10 48:15,22 49:2,6	brady 132:11 133:8	busy 71:5
103:12 108:22 222:12	49:16,20 50:2,19 50:23 52:22,25	brand 30:14 break 38:9 60:6,8	buy 64:7
bonified 100:2	53:6,23 54:4,23 55:3,19 56:6 57:1	140:24 breaking 68:7	c
bonus 8:17 9:1,2 10:2 27:12 35:25	59:19 60:19,20 63:22 64:1,20	breathing 178:22 183:18 185:17	c 2:1,15 118:1 151:10 209:9
40:2,7 48:3 51:13 61:17,19,24 62:13	68:20 70:24 71:11 71:15,19 72:1,3	brenda 3:16 32:15 32:19 33:10 38:17	c.f.r. 11:22,23 12:18
66:22 210:10 220:7 221:6	73:7 74:2,10,15 74:20 76:6 77:24	38:23 44:11 brief 12:18 54:14	call 14:8 31:12 44:21,21,24 54:24
bonuses 15:22 24:12 62:3,5,5	78:11,22,25 79:2 79:15 80:14 81:25	227:10 228:18 briefing 227:24	71:12 75:8 77:2 83:5 89:15 104:2
64:9 69:13	82:2,14,18 83:1,5 84:5,8 88:13,21	briefly 82:7 88:19 89:15 94:2 119:5	116:8 119:8 140:23 169:10
boss 42:5 222:12	89:3,25 90:4,7,12 90:13,15 92:23	127:19 162:21 190:11 225:14	177:24 198:13 199:11 200:14
bottom 25:23 147:15 155:25,25	108:13,19 110:13 113:6 115:5,8,11	227:23 228:3	205:23 218:4 222:3
bound 137:21	116:15,18 117:12 117:14 123:2	briefs 227:23 228:3	called 14:16 19:16 29:16 31:2 32:14
box 49:10 151:6 159:14 194:9	132:1 133:3,17,23 134:13 136:16	bring 108:22 bringing 131:9	34:17 38:18 46:13 48:3 54:20 60:16
202:8,21 211:21 212:15	138:11,21,23 140:12 154:6,20	broad 131:1 budget 139:16	71:23 76:3 79:11 84:2 90:9 117:17
boxes 154:15	157:10 158:8,14 158:21 159:20	208:3 216:3 buds 76:8	142:2 164:15 187:9 208:20
boyte 3:8,10,12,14 3:17,20,23 4:5,7,9	160:2,5 162:8 167:3 168:19	bue 105:18,20 128:10	calls 48:8 67:10 87:22,22 100:2
4:12,15,18,21,23 5:4,6,12,15,17 8:8	171:10 173:17 178:6 180:8 182:7	built 67:18 98:16 131:21 134:20	169:7 cameras 169:15
10:4,8 13:3 14:1,6 14:9,19 15:9,25	184:19 186:23 189:20 192:11	137:17,18 bulletin 129:5	canal 2:4 cancun 82:10
16:6,22 17:2,8,9 17:17 18:8,12,23		130:16,18	candidate 126:10
19:7,22 20:2,21 21:2,4,23 22:4,9			capital 12:11 129:6
22:11,14,17,20,21 23:1,3 24:13,24			capture 128:13 captured 129:21
25:3,6,12,15,18 26:6,10 27:22,24			carbon 169:14

cardiology 35:14	cases 104:5 145:11	certification 94:14	129:6 132:18
cardiovascular	184:6	181:2 187:15	165:19,20,22,25
185:11,18	cash 67:21 68:6	certified 180:19	166:10,17,17
care 35:16,19 39:3	80:1 91:3 211:15	180:24 181:4,21	171:22,23 172:11
43:9 48:6 62:18	211:16,17 212:6,9	183:15 187:16	172:18,23 173:1,2
62:24 65:7,8	213:18 214:8,24	229:3,5	173:4 192:3,5,6
66:19 67:5,13,15	categories 137:7	certify 229:6	196:9 205:25
69:20,23 70:2,12	144:19	cfr 134:8,9,21	220:6 225:19
70:13,14,15,17	cause 38:5 94:16	136:7,22 137:17	chosen 154:23
72:10,20 73:21	114:23 154:14	216:7	christina 196:6,9
76:24 100:13,19	caused 92:12	chad 173:1	circumstances
101:10,16,16,17	cba 97:23 124:16	chain 91:2 97:7	11:20 123:8,16
101:19 109:6,12	cboc 39:1,5,6 43:8	206:8	124:15 183:8
109:16 110:10,11	103:21 124:2	chair 46:3	186:8
111:5 127:8 149:8	cbocs 69:14,15,16	challenge 88:11	cites 10:24
151:16,19 155:4	103:16,18 189:13	96:23	city 1:15 9:3,4
155:14,15,18,19	ccoe 133:10	chance 15:9 17:18	15:6,19,22 27:9
161:1,5,9,10,12	ccr 2:13 229:16	22:22 54:6 81:16	47:3 91:24 98:1
179:11 185:12	cell 205:16	change 23:10 28:4	103:21 111:6
188:8,12 189:8,11	center 56:13	92:18 96:7 131:14	119:1 121:10
191:9 193:12	119:25 122:5	146:25	130:9 142:16
220:24 223:24,24	129:23 142:16,21	changed 26:25	145:9,17 155:1
226:24	144:8,10 160:22	28:5 143:4 173:10	163:12,13 170:7
carefully 75:13	168:6,7,8 170:14	186:8 191:6 199:4	193:15,19 196:19
carpenter 76:21	171:25 174:18	changes 72:19	197:3
79:18,20,22,24	175:13 177:9	191:8 213:15	civilian 126:11
103:1,2,10 203:25	200:18 205:23	changing 157:25	clarification 21:13
carpenters 103:13	206:7 208:1	158:1 191:10,11	clarified 132:14
carried 9:24	215:19	191:14 199:2	clarify 85:23
carry 149:20	centers 92:16	characterization	clarifying 111:17
carrying 127:11	143:11 146:6	74:14	class 163:19 165:6
cascade 126:19	165:8 190:25	charge 208:15	classes 218:15
case 20:3 30:15	193:15	220:10	classification
31:7 42:23 45:14	central 172:17	chart 175:17	167:24
53:21 55:4 60:21	200:14,15 201:10	207:22	clean 110:4 175:5
73:13 80:23 84:9	201:13 202:13	chatted 82:7	176:21 198:20
109:25 114:20,20	204:2	check 70:8	cleaned 175:16
116:23 141:7	certain 67:24 91:1	checks 175:4	cleaners 222:17
148:10,18 150:18	91:9 92:5 95:11	chest 140:18	cleaning 174:20
151:12 163:7	96:23 99:17,22	chicago 2:4,5	174:21,21 176:22
170:8 178:24	100:1 101:4 112:9	chief 12:10 50:3	190:23
191:2 209:13	certainly 54:11	51:16 54:24 56:19	cleanliness 110:8
216:8,11	certificate 229:1	56:23 57:5,11	174:17
		59:20 60:2 111:7	

clear 57:3 63:25 89:21 225:22 227:15 clearing 130:7 clerk 169:4,5 clerks 58:17 110:21 160:23,24 161:3,7 169:2,20 177:4 clinic 9:12 39:2,7 84:12,17 85:17 86:11,15 87:13 88:1 98:15,21 clinical 56:16 145:12 160:25 163:1,4 176:20 183:17 184:8 188:6 clinicians 201:2 clinics 9:4 35:14 85:12,13,14 87:8 104:8,10 161:12 161:14 close 57:17 closed 51:18 57:15 111:3 148:21 149:22 155:8 closure 111:13 clothes 52:4 code 12:11 49:11 101:21 134:9 135:23 136:6,23 137:22 138:14 159:12 207:14 209:13 212:8 coding 206:17 cold 100:1 200:17 collected 193:10 collecting 193:2 225:10 collective 8:10 10:25 collects 193:3	college 219:18 colonoscopies 149:1 coloring 45:18 columbia 98:13 193:19 197:5 column 166:6 175:23 combination 226:25 come 23:11,23 33:3 39:5 41:14 67:23 82:15 124:24 128:11 134:2 140:23 160:25 161:1 163:5 174:15 199:9,18 210:9 220:3 224:1 comes 54:13 58:1 62:7 70:2 122:20 125:14,16 215:16 coming 37:12 52:25 60:5 71:5 74:13 79:5 89:7 99:24 129:20 140:25 149:18 177:15 222:4 command 91:2 97:7 206:8 commenced 8:1 commission 191:1 committee 125:4 committees 125:6 125:11 common 95:19,22 198:18 commonly 131:20 communication 133:14 150:1 community 9:4 39:7 66:21 69:12 86:12 104:3 188:22 219:18	commute 146:7 commuting 104:3 company 17:14 comparing 183:5 compensate 11:16 94:10,23 95:4 compensated 219:25 compensation 118:5,20 119:7,11 119:12 120:4 126:24 129:22 132:12 133:9 142:22 201:19 202:22 competencies 183:17 competing 165:8 competition 91:10 98:17 99:22,25 145:15 146:7 189:2 195:3 competitive 91:15 100:3 102:6 competitiveness 99:7 complete 229:10 completed 157:25 190:21 completely 125:23 141:22 complex 188:7 complexity 145:24 201:20 complies 55:9 comply 191:4 195:7 compounded 172:13 comprehensive 152:10 computer 169:9 205:15	computerized 217:20 concept 70:23 concern 103:24 197:10 concerns 62:17 concluded 228:25 conducted 75:11 confident 24:21 confirm 109:24 confirmed 41:24 42:2 confusing 208:9 confusion 45:15 congress 92:22 congressional 92:2 connect 67:10 70:8,16 consider 99:17 102:11 105:20 135:3 148:9 151:5 consideration 58:15 66:17 128:12 136:5 considerations 106:4 considered 12:3 48:12,14 58:20 72:11 94:19 110:10 136:8 144:13 147:19 148:19 152:1 consist 76:17 consisted 72:17 consistent 88:11 153:22 consistently 156:4 158:1 consolidated 143:7,16 205:21 consolidating 205:20
--	---	--	--

consolidation 168:5	control 32:8 110:7 190:25	178:12,15 180:3 180:17,20 182:13	90:1,5 117:6,9 141:21,25 229:5
constitutes 229:10	conversation 53:14,19 54:6	182:16 184:2,25	cove 2:10
constrained 216:2 216:4	conversations 147:5	185:3 187:5,7	covered 135:9 136:9
construct 114:16	copy 13:4 18:11	188:3,23,24 190:5	covering 179:12 179:13
consultation 96:25 97:15 111:8 115:18	18:13 25:23 134:13 154:20	190:8 191:19	covers 120:21
consulted 121:11 138:5	160:2 180:9 216:14	192:1,2,19,22	covid 8:17 9:15 10:3,3,22 15:24
consulting 132:11	core 120:7	194:17 196:1,4	23:25 24:3 35:20 36:11,12 39:9
contacted 53:13 98:19 116:7	corporal 47:2	197:22 200:6	41:8,14,20,25
contacting 30:12 30:13	correct 11:23 13:10 27:3,4,7	202:12,23 205:4,7	48:2,4 49:15 50:8
contained 137:14	39:12 43:9,18	206:10,11 209:6,7	50:8,17 51:8,14
context 110:11	52:2,3,17,18 57:6	210:7 212:17	51:17 56:6 57:15
continual 155:7	57:25 58:3,12,19	216:5,6 217:3,4	59:11 63:17,21
continually 191:13	59:5,6,9 65:23	219:3 222:19	64:2,5,6,8,16
continue 100:9 119:19 125:10 153:17 202:5	66:9 67:25 68:24	225:25 226:4,9,10	66:12,16 68:7,21
continued 4:1,3 5:1,3 6:1 7:1 148:20 177:1 198:24 226:24	81:15 90:18 93:19	226:13 227:7 229:10	68:23 73:2,5 77:5
continues 96:14	94:1,6 95:13,14	corrected 9:17	77:7,18,20 78:10
continuing 164:10	96:10 97:16,17,21	correctly 111:19 128:2 139:18	80:12 87:4 90:25
continuity 161:9 208:22 222:18,25 223:5,10,16 224:7 224:23,24 226:6	97:22 101:18,25	183:21	91:4,24 92:2,9,16
contrary 12:9 155:11	102:1 104:17,25	correspondence 132:10	100:23,25 101:2 104:24 105:8
contribute 144:23	105:11,12,16	corresponding 146:15	118:11 119:19
contribution 36:13 52:13 59:11 105:2,10 112:10 144:22,25 210:19 212:12 213:20 214:25	106:7,10 107:20	corrin 2:15	127:25 129:9,14
	108:9,10 112:12	cost 202:1 208:7 209:24	130:13 131:17
	121:7,11,17,18,22	counting 49:25	132:13 133:15
	123:23,24 125:1,6	country 82:11 156:18 165:5	139:3,9,11,12,15
	127:15,16,24,25	228:13	139:16,17,21,25
	128:7,20 130:20	couple 33:24 37:24 45:11 50:6	139:25 148:21
	131:2 135:21	55:5 70:2 83:14	156:14 157:25
	137:23,24 138:8	110:15 163:12,13	163:18 164:6,19
	139:9,10 145:6,7	181:21	167:22 176:22
	148:12 153:3,20	course 13:15 97:11 116:20	179:3,5,17 183:12
	153:24,25 156:2	court 14:12 34:7 34:15 38:6,15	183:24 184:5
	159:9 160:10,13	45:19 46:4,10	185:6,14,15
	160:14 162:17	55:16 71:18 75:14	189:17 191:5
	164:8 166:15	75:25 83:15,24	193:8,13,14,17,18
	167:11,14,24,25		193:20 196:12,14
	168:25 171:15,18		196:21 199:4
	172:5,8,25 174:4		207:16,23 208:1,3
	175:20 176:7		208:15,20,23

209:19,23 211:6 211:12,14 216:25 223:4,7,10,10,12 223:20 226:5,12 226:25 create 61:3 created 22:12 55:12 124:14 credentials 163:15 crisis 1:9 criteria 12:3 55:23 56:5 58:10 61:16 67:24 91:1,11,13 92:17,18,20,20 99:6,12 103:3 114:13 115:6,9,13 116:1 124:11 125:13 126:21 134:11,24 135:11 136:9 137:12,19 227:6 critical 12:16 66:19 67:4,5,12 100:13,19 101:14 101:15,19 109:16 110:10,11 120:3 121:21 149:8 151:18 155:4,15 161:8 164:4 176:19 188:8 189:8 215:18 220:23 222:18,25 223:2,21,23 224:6 226:24 critically 149:7 cross 3:11,15,18 3:21,24 4:6,10,13 4:16,19,22 5:12 5:15 19:2 26:11 26:12 36:5 42:20 44:23 51:1 57:9 65:1 73:10 78:4 80:19 88:16 93:1 138:20,22 217:15	crucial 11:6 12:6 csr 2:13 229:16 current 50:8 56:18 62:21 66:22 72:4 76:11 84:10 101:6 111:4 113:1 118:3 119:16 126:3 142:10 163:23 219:8 currently 47:1 72:6 76:22 79:16 cvs 194:4 cwt 219:24,25 cycle 153:13 d d 3:1 4:1 5:1 6:1 7:1 118:1,2 142:8 209:15 daily 193:10 daniel 5:13 15:18 17:25 142:1,8 data 203:4 date 26:4 47:22 96:12 151:1 152:18,20,21 153:2,3,6,12 157:22 215:3 dated 17:24 48:24 74:21 214:7,22 dates 26:20 110:25 156:7 161:22 david 4:20 5:3 63:16 90:8 day 16:22 30:14 30:21 40:15 104:1 130:14 156:9 160:7 175:2,2,6,6 190:20 222:7,7 days 16:7 42:1 160:3,6 debt 124:14 december 1:16 153:11,12 202:10	214:22 215:4 decide 31:3 74:11 decided 134:5 206:20 226:23 deciding 206:20 decision 54:15 58:9 62:8 66:4 147:20 206:23 decisions 100:22 137:23 138:2 166:22 202:6 206:10 decontaminate 198:20 decontamination 199:3 deemed 96:4 deems 94:15 defense 177:24 define 70:13 defined 130:18 defining 126:21 132:16 definitely 88:5 definition 70:15 70:16 132:12 defoe 74:19 degree 221:12 delays 165:11 delegated 132:17 deliver 178:20 179:1 185:10 demand 151:15 186:1,5,11 194:3 demonstrate 12:13 denied 18:7 217:7 deny 30:23 31:12 department 1:8 10:16 47:2,5 50:5 57:5 110:9 113:8 118:18 143:12 149:14 155:5 170:8 172:16,20	175:3 177:23 190:17,22 199:4 202:9 205:18,19 220:2 departments 113:10 195:1 198:23 departure 66:22 depend 87:13 depending 120:1 137:10 depends 88:6 124:13 126:13 depose 82:15 depth 136:9 deputy 165:19,19 165:22 166:17 173:2,4 191:21 192:4,6 dermatology 35:15 description 207:23 208:11,13 deserving 56:10 61:16 69:6 design 46:3 designates 166:7 175:18 designed 114:16 desirable 221:20 desk 205:17 despite 53:18 177:8 detail 136:2 detailed 15:20 detectives 163:14 detectors 169:14 determination 111:6 125:15 134:25 137:3 170:23 180:1 determine 8:21 55:24 58:5,10 96:2,15,19 97:3
--	---	---	--

97:11 100:7 150:15 208:6 determined 98:20 100:6 148:13 156:21 189:10 197:8 216:9 determines 96:12 determining 135:2 135:8 137:5,7,12 detrimental 161:19 184:12 189:16 191:19 195:9,9 developing 202:19 diabetes 35:14 dictated 177:23 dictates 181:3 died 156:18,20 differ 123:14,20 difference 42:25 80:24 81:8 115:24 153:10 175:24 180:22 181:9 different 9:12 11:7 35:13 36:16 37:1 52:7,8 62:6 67:16 70:2 76:19 86:20 87:14,15 99:3 105:14 124:24 125:3 126:12 139:10 145:23 146:11 153:6 155:17 172:3,4 181:12 200:9 203:18 221:15 227:6 differentiate 159:14 182:25 differently 162:4 difficult 36:22 43:6 149:9 155:12 163:2 219:13,14 222:24 223:3	difficulty 170:12 221:14 direct 3:8,10,14 3:17,20,23 4:5,9 4:12,15,18,21 5:11,14 12:18 14:18 19:21 34:20 35:16,19 38:21 39:3 43:14 44:20 46:18 48:5,8,9,10 54:22 60:18 63:12 65:7 67:14 69:20 69:23 70:1,12,13 70:14,17 72:2,20 76:5 78:12 79:14 84:4 90:14 117:21 142:4 199:11 directing 175:5 direction 62:1 63:8 85:9 directly 82:24 director 58:7,15 62:23 63:13 65:5 65:6,17 66:4 93:3 93:10,15,24,25 94:1 95:10,13 97:8 98:12 106:20 110:20 112:21 116:12 122:5,7 124:25 127:21 131:15 143:1,14 143:15,15 147:1 168:7,10 206:9 director's 58:9 66:2 directors 119:14 119:25,25 121:9 129:24 disapprove 105:17 128:9 disapproving 105:21 disbursing 220:10	discretion 11:24 95:8 121:24 122:2 210:6 discretionary 122:20 124:25 discussed 11:1 191:24 discussion 53:17 103:15 225:17 discussions 53:25 66:11 87:1 147:2 disease 179:17 185:16 190:25 210:8 dispatch 169:11 169:16 170:5 dispatchers 50:6 55:20 56:11 169:6 218:10 disrupted 226:9 dissatisfier 202:3 distribute 8:14 197:2 disturbance 48:9 doc 16:4 doctor 210:8 doctorate 221:12 document 14:20 14:23 15:11,13,16 16:21 17:18,21 18:19 20:24 22:12 22:15 23:4 25:2 29:17 39:23 47:11 48:24 49:7,21 50:7 55:7,10 60:25 61:8 106:22 107:18 132:4 133:4,5,7 150:9 151:24 161:20 180:2 182:2 194:9 202:7 203:13 209:21 documentation 8:11 9:23	documented 211:22 213:16 documents 17:5 20:5 158:22 159:11 doing 9:16,19,22 35:19 43:2 45:22 67:10 68:6 74:23 87:11,23,25 127:2 148:24 159:15 161:15 174:21 179:12,14 182:25 184:5 204:2 224:21 dollars 64:5,6 151:21 177:19 215:23 donny 8:7 14:7 20:2 31:4 32:7 34:24 44:13 46:22 55:3 60:20 84:8 112:17 113:4 214:13 dr 65:3 draw 121:13 drawn 69:11 drive 207:16 driven 105:13 drivers 103:23 due 8:17 9:14 15:23 48:1 50:8 51:13 64:2 73:2 91:24 145:24 177:14 179:24 dunn 1:1 8:4,7 10:1,5,9,13 12:17 12:22,25 13:6,11 13:15,23 14:4,7 14:11 16:8,23 17:3 18:10,18 19:1,4,13,18 20:10,14,17,19 21:21,25 22:10,16 22:18 24:15,19,23
--	--	---	--

25:1,4,10,13,16 26:9,11 28:7,11 28:18,22 29:4,9 29:12,15,20,25 30:3,22 31:15,17 32:1 33:8,16,18 33:18,23 34:10,13 34:19 36:3 37:8 37:11,15,20,20,23 38:2,8,14,20 40:20,23 42:12,18 43:17 44:5,7 45:5 45:7,8,17 46:2,8 46:15 48:17,19 49:1,19,24 50:14 50:22 52:21,23 53:10 54:2,5,9,17 55:15 56:3 57:2,7 59:18,20,23 60:4 60:7,12,14 63:23 64:21,24 71:1,4 71:14,17,25 73:8 74:1,3,7,18,22,24 75:2,5,10,16,23 78:1,13,21,23 79:4,7,13 80:16 81:24 82:1,3,20 82:25 83:8,11,12 83:23 88:14 89:2 89:4,10,13,14,23 90:5,11 92:24 100:17 106:17 108:16 110:17 111:16,23 112:8 112:13,16 113:3 114:1,3 115:3,10 116:3,5,13,16,20 116:22 117:4,8,13 117:19 123:1,3 132:2 133:16,18 133:25 134:4 136:17 138:12,20 140:13,15,21 141:3,5,6,10,17	141:19,24 154:5,7 158:11,16,25 159:6,21 162:9 167:4 168:20 171:7,11 173:18 178:7 180:12 182:8 184:20 186:24 189:21 192:12 195:21 197:14 198:10,15 199:23 203:11 204:21 205:1 207:3 211:3 212:2 212:22 213:1,25 214:13,15 215:11 217:13 218:25 224:14 225:12 226:15 227:11,13 227:19,22 228:6 228:11,16,23 duties 9:6 28:4 65:4 68:3,4,8 72:17 127:3,10 128:14 133:7 142:18 149:15 170:25 174:23 187:13,21,22 188:18,20 212:13 225:9 duty 50:18 52:17 59:8 145:2	easier 50:15 195:6 204:7 224:15 easiest 63:10 easily 223:25 224:5 easy 113:23 204:9 221:8,9 226:2 227:2 education 22:7 87:21 187:15 188:5 221:11 eeg 185:5,8,18 186:13 eegs 185:3 effect 191:7 effective 11:10 47:22 152:17,20 211:23 213:21 215:3 effectively 26:4 effort 86:8 95:5 98:18 eight 35:3,7 79:21 79:22 87:14 118:15 175:12 either 13:24 30:23 65:7 111:20 134:22 158:9,20 163:11 228:1 ekg 185:19 elaborate 94:7 electrical 76:20 electrician 203:25 204:12 electrocardio 185:8 elevated 9:5 97:6 eligibility 122:12 131:3 136:9 eligible 62:12 126:21,22 127:4 129:12 131:5 202:14 219:16,19	elliott 44:19 82:8 else's 60:1 89:20 email 15:13,15 16:7 21:7,9,10 23:13,14 29:7 32:24 33:1 40:8 41:16 50:3,9,12 50:13 55:12 56:7 56:9 61:3,10 63:9 82:23 132:10 133:10,13 emergency 24:3 58:21,25 109:16 149:4,4 155:5 164:3 169:10,18 179:13 184:7,8 188:8 189:9 193:12 emergent 184:6 emphasizes 138:1 employed 202:5 employee 9:2,9,11 12:1 48:13 67:22 94:16 95:5,21 102:7 104:21 122:13 125:13 129:15 135:4 142:22 143:24 144:11 146:22 150:16 166:4 168:2,10,14,15 176:2 181:24,25 183:25 193:1 213:14 employee's 100:23 146:13 213:10 employees 1:5 8:16,18,22,25 9:14,15,20,21 10:20 11:5,11,14 11:17,18 12:2,5,9 16:16 24:11 32:11 32:21 62:9 63:18 64:3,11 65:12
	e 2:1,1 3:1 4:1 5:1 5:21 6:1,3 7:1,2 49:10 142:8 209:9 209:14 ear 76:8 earlier 113:18 145:18 163:8 165:7 168:5 189:8 219:6 early 75:4 124:12 earn 124:11		

68:13,15 69:1,4,5 69:20 86:8 94:5 94:10 98:22 99:18 100:1 104:15 108:5 109:19,22 113:1,23 114:10 121:16 124:9 126:16 128:18 144:9,12 145:4,5 146:16 148:16 150:20 156:13,18 156:20 161:18,21 167:20 168:8 170:2,12,18,19,21 172:22 175:7,10 175:11 176:2,9,10 176:13 177:10,11 177:12,14,21,22 179:20 184:3,14 185:24 186:10,19 187:25 189:6 194:12,16 195:15 202:8 203:1 205:6 205:10 206:2,10 206:14 207:7 210:16 215:15,20 218:2,3 222:11 223:19,22 226:7 employment 66:23 221:21 ems 109:21 110:1 113:23 199:1 219:7 encompassing 200:12 encounter 70:11 encourage 86:8 ended 27:12 156:15 157:20 enforcement 163:6,11 170:6 172:14 engaged 36:21,21	engineer 183:2 203:4 engineers 126:8 english 46:24 enhance 134:22 ensure 9:24 96:14 109:18 139:17 191:9,16 197:3 223:13 ensuring 100:9 167:20 172:18 175:15 186:10 190:22 191:2 196:14 215:24 enter 16:1 18:9 22:1 24:20 26:7 40:19 48:16 49:16 50:19 213:11 entered 18:20 enterprise 100:7 enters 9:3 53:11 entire 50:4 118:11 133:8 151:24 165:7 229:8 entirety 93:23 entitled 122:18 entitlement 97:18 120:5 124:6,15 145:6 entry 119:14 170:13 174:14 199:8 environment 56:15 62:19 101:6 146:4 221:15 environmental 110:3 eopf 23:7 27:14 41:17 epa 190:24 equipment 92:14 193:16 196:19,21 198:17,18 199:3	equitable 8:15 9:17,25 equitably 10:8,9 109:19 equivalent 119:3 126:11 er 48:11 126:25 eric 153:11 escalated 133:23 especially 128:1 129:25 esqs 2:8 essence 120:3 126:18 142:19 185:9 187:13 essential 11:13,18 56:12 150:15 164:4 169:17 185:6 198:6 224:4 essentially 45:9 81:15 131:1 180:25 established 91:12 92:18 98:6 establishing 135:10,11 137:11 everybody 22:22 32:8 46:5 55:19 133:10 153:14 216:1 evidence 8:9 40:24 42:13 exact 188:16 219:11 exactly 31:3 93:22 179:5 194:15 examination 3:8 3:10,11,12,14,15 3:17,18,20,21,23 3:24 4:5,6,7,9,10 4:12,13,15,16,18 4:19,21,22,23,24 5:4,5,6,11,12,14 5:15,16,17 14:18	19:21 26:12 27:23 34:20 36:5 38:21 42:20 43:14 44:20 46:18 51:1 54:22 57:9 60:18 65:1 68:19 72:2 73:10 76:5 78:4,12 79:14 80:19 84:4 88:16 90:14 93:1 108:18 110:18 113:5 114:6 115:7 117:21 138:22 142:4 217:15 225:15 226:17 example 98:24 126:1,23 127:7 149:13 152:23 183:1 184:4,10 207:20 208:17 examples 98:9 exception 166:17 168:2 exceptions 176:11 excess 122:6 exclusion 129:7 exclusive 11:24 65:25 excuse 11:8,21 13:12 58:13 128:6 157:7 173:3 192:16 211:15 excused 19:5 execute 57:20 execution 92:22 executive 62:8,25 63:4 93:10,14 94:1 95:10 97:8 98:12 143:14 exhibit 15:7 16:1 17:15 19:19 22:24 25:8 39:14 41:1 46:16 48:20 49:22 59:2 106:13 107:15,15,17
--	--	---	--

120:23 121:1,14 122:25 128:24 129:2 131:25 132:5,8 133:1,19 133:22 136:15,18 136:21 138:10 147:11 150:3,6 154:4,8 157:3,6 157:11,14 158:7 158:12 159:7,18 159:23 160:1 162:7,10,13 167:2 167:5,8 168:18,21 171:4 173:16,22 173:25 178:5,8 180:7,13 182:9 184:18,21,24 187:1 190:1 192:13 195:22 197:15 199:21,24 203:9 204:17,20 207:1 209:2 211:8 211:11,25 212:3,6 212:18,21 213:23 214:1,4,12,16,19 215:9 216:21 exhibits 7:25 8:2 12:21 134:1 140:25 159:1 207:19 existed 98:23 exists 96:3 expand 132:13 expanded 136:1 expectation 144:11 expenses 208:8 expensive 196:22 experience 115:16 119:5 149:18 163:23 172:15 188:9 197:7 experiencing 185:17	expiration 159:8 expired 49:9 expires 47:20 157:19 explain 24:8 51:9 66:15 125:20 174:10 187:25 190:10 205:9 explains 121:15 explanations 227:16 expose 194:19 exposed 223:12 exposure 9:5,7,11 27:6 66:12,16 68:22 100:23,25 101:2,8 151:14 207:16 208:23 223:4,7,10,22 226:5 external 91:14 99:11 101:7 191:15 extra 8:22 9:10 f f 209:17 f11 169:9 f9 169:9 face 9:7 46:5 70:10,10 facilities 118:6 130:3 146:3 177:15 201:6 facility 23:20 24:12 67:12 69:10 76:12,18 91:23 92:4,22 95:8 109:7,9 111:10 120:9 122:2,10 123:5,9 124:1,3 125:17 128:8,15 138:7 145:23 169:19 177:18 187:10 198:6,24	201:7 206:1 222:18 223:1 facing 129:25 fact 14:2 111:4 factor 66:12 202:11,25 factors 150:14 208:4 failed 8:14 failing 8:11 fair 8:15 9:17,24 43:6 fairly 10:7 109:19 fall 65:11,13,17 168:5 197:25 198:3 familiar 17:20 86:20 118:23 121:11 133:3 fancy 190:15 faqs 130:13 far 112:24 115:12 151:2 181:10 fashion 95:22 fashions 95:18 february 228:14 federal 11:14,19 12:7,11 18:6 53:22 67:24 91:16 95:6 101:21 111:2 126:11 131:6 134:9 135:8,24 136:6,23 137:22 138:15 144:12 186:17 194:13 201:19 207:14 216:5 federation 1:4 feed 72:19 feedback 96:22 98:2 99:24 feel 37:2 82:4,6 120:7 198:5,6	feeling 140:16 felicia 2:16 fell 167:23 felt 56:10 81:10 151:11 168:9,11 fide 78:10,17 81:19 102:23 103:12 108:22 222:12 field 130:13 133:9 fifth 175:23 figure 81:3 file 23:7 27:14 40:9 41:17 213:11 217:5,9 filed 147:6 216:13 219:2 filing 10:19 107:5 fill 52:1 102:18 103:6 106:1 114:12,22 115:15 126:4 204:7 226:21 filled 105:25 106:6 226:3 filling 103:21 111:11 finance 140:11 find 23:11 40:6 41:14 130:2 132:4 204:7,9 219:21 fine 21:18 22:16 28:20 46:7 finish 34:5 159:4 finished 28:12 fire 169:13 170:8 first 14:8,9,13 18:4 20:9 36:10 49:3,9 103:4 143:22 150:20 152:24 157:7,14 165:6 229:7 fiscally 215:23
---	--	---	---

five 47:6 63:7 71:15 104:1 126:1 126:3 140:24 146:5 201:18 227:5 flexibilities 129:23 flexibility 120:4,5 129:13 130:2 131:2,11 195:5 flip 155:21 159:25 162:12 168:23 171:6 186:20 187:3 195:24 197:17 200:1 202:7 216:20 float 85:24 floor 23:21 24:5,5 48:11 florida 93:15,17 93:21 fmcs 1:7 focus 145:11 221:3 focused 161:7 185:16 220:24 focusing 101:11 223:21 folks 145:13 149:6 151:21 160:23,24 161:2,3,17 163:9 164:21 168:3,12 169:7 170:10 175:13 181:6 183:19 184:7 185:17 188:7 189:12 191:12 194:23 195:10 198:16 200:25 201:16 202:4,14 202:19 204:10 208:21 219:18 220:25 223:23 follow 88:21 101:20 114:4	122:14 131:15 138:13 140:14,19 140:20 followed 207:8,10 207:13 follows 14:17 19:17 34:18 38:19 46:14 54:21 60:17 71:24 76:4 79:12 84:3 90:10 117:18 142:3 folsom 2:16 3:7 14:10,11,15 15:4 83:3 forces 91:15 99:11 101:7 foregoing 229:9 foreseeable 149:25 forgot 174:11 form 40:1 63:19 106:2 123:12,12 124:21 127:19 128:13 135:1,6,14 135:15,20 136:12 137:1,15,18 150:8 150:9,14 152:14 152:15 154:13 160:10 196:8 206:16,19,24 213:8,9 formally 222:8 format 75:12 formats 70:3 former 163:11,14 forms 105:24 127:24 135:9 forth 18:6 108:22 229:7 forward 58:24 119:11 156:17 forwarded 133:13 found 41:8 104:6 188:21,24	foundation 16:3 18:15 21:24 22:6 29:8 56:2 134:21 186:18 211:2 213:5 215:17 foundational 137:16 four 166:18,19 fourth 155:22 166:6 frame 110:25 111:1 freezer 196:23 frequently 133:15 158:2 front 96:18 99:24 fulfill 181:23 fulfilling 122:8 full 131:10 174:25 184:8 fully 57:19 165:10 function 87:11 149:15 163:7 181:23 185:18 187:21 201:10 functional 86:19 functioning 56:13 functions 120:2 142:20,20 143:8 143:16 155:17 180:25 181:10 190:23 203:19 fund 208:15,16 funded 92:16 funding 64:2,11 64:16 68:21 87:4 91:4,23 92:1,8,17 139:12,14,19,21 139:23 140:4,9 215:22 funds 92:21 122:19 208:2 210:4	further 5:4,5,6 27:21 37:7 44:4 52:20 59:17 68:18 73:25 78:20 81:23 89:1 111:15 115:2 132:12,21 136:2 138:19 217:12 226:14 fuss 74:4 89:5 future 149:25
			g
			g 203:3 gainesville 93:17 gains 222:3 gap 102:18 115:14 126:4 gas 200:19,20,21 gases 200:23,24 gauge 222:9 gene 3:22 32:16 53:2,11 54:19 171:25 172:23 general 96:17 102:17 122:16 197:10 208:16 generally 112:3 199:5 203:24 geographic 99:8 99:23 georgia 93:16 getting 23:12 24:9 26:2,3 27:2 32:18 40:11 47:25 51:13 82:8 96:8 100:1 103:8 109:7,8 110:22 145:1 170:1,24 188:13 188:13 189:23 198:25 226:11 give 8:11 11:22 17:4 25:14 31:12 31:22 66:1 68:11 71:8 81:13 82:12 85:11 87:3 90:17

<p>92:7 112:22,22 135:12 158:21 168:9,12 206:20 210:10 215:13,25 218:6 220:19 226:10 228:8 given 10:3 12:5,5 18:22 22:3 42:14 61:15 62:1 63:18 64:2 68:2 69:1 80:9,11 85:8,8 87:2 88:3,22 90:25 91:23 92:1 92:4,15,20 107:11 110:22 111:20 113:7 123:21 144:18,22 150:1 152:7 185:23 201:3 208:2 212:7 gives 151:6 giving 10:7 16:17 104:12 132:12 223:25 228:4 glen 2:9,10 go 18:3 19:11 24:11 33:11 45:3 50:15 51:21,23 57:19 58:24 62:11 66:23 81:12 93:6 95:12 112:16 121:6 130:6 134:18 144:18,22 149:16,19 151:24 154:13 163:16 165:4 188:17,19 212:13 213:7,11 218:14,15 219:17 224:15 228:23 goal 88:5 goes 40:9 75:19 95:11 151:10 165:1 170:1 186:15 213:10</p>	<p>going 14:20 15:17 15:17 16:24,24,25 18:19,20 20:5 21:19,25 22:11 23:15 24:20 25:6 30:23 31:4,5,11 31:11,12 38:6,11 43:13,18 44:18 45:12 46:25 47:6 48:23 54:10 55:6 55:25 59:4 62:2,3 66:8 71:18 74:15 74:21 76:16 79:2 81:13 82:23 83:5 89:18 93:6 100:14 106:8,12,14 107:14 118:11 120:18,25 122:4 126:10 129:1 133:21 135:6 136:20 137:8 141:12 144:12 145:11 148:5,8 150:2 152:6,19,21 156:16,17 157:5 161:23 164:13 171:8,21 175:21 175:24 176:12 178:2,25 188:25 189:25 191:8 194:19 200:11 201:13,21,25 203:3 210:23,25 212:22 213:16 221:5 224:8 226:11 228:8,13 228:19 gonsalves 2:3 good 10:12 13:2 19:24 33:16,17 51:3 60:20 74:22 74:24 81:9,10 84:6 88:18 93:3 116:22 126:1</p>	<p>127:7 131:19 216:20 gotten 27:13 75:4 102:5 103:2,18 104:21 108:25 154:24 221:6 goudreau 4:4 21:12,14 23:13,17 29:6 44:17 60:15 65:3 governed 135:23 governing 138:2 government 1:5 105:14 194:13 199:15 governs 120:12,20 137:18 grade 170:15 201:17 202:18 203:20,21 graded 177:7 199:7 grades 201:19 gram 185:8 grandfathered 181:7,25 grant 31:9 granted 18:2 great 12:22 33:13 140:21 greater 9:7 grievance 9:19 10:19,24 13:19,24 14:3 90:21,21 106:9,25 107:4,6 107:16,19,22,23 108:3 113:14,16 142:15 147:6 216:13,17,23 217:5 grieve 10:23 216:16 grieving 13:17 14:1</p>	<p>grossly 164:14 ground 165:15,17 grounds 69:10 group 12:1 97:6 98:14,25 100:10 111:8 123:14 126:18 132:20 133:10 135:5,12 137:7,8 144:11 189:5 191:24 grouping 131:19 groups 99:18 gs 164:17 176:2,2 176:2 177:21 204:3 guess 45:23 86:7 99:1 202:18 guidance 12:11 87:2 92:8,10 101:21 121:24 128:4,8 129:9,19 130:3,9 131:2,16 134:19 135:9 136:4 138:14 139:2,3 191:15,16 guidelines 207:11 216:5 gun 149:20 guys 44:10</p>
			<p>h</p>
			<p>h 5:21 6:3 7:2 118:1,1 half 84:18 125:24 143:25 164:19 halfway 173:9 hand 14:20 20:24 34:14 46:25 134:15 139:5 157:5,7 192:15 212:5,20 handbook 11:9 120:11,20,21 121:2 130:25 134:12 136:1</p>

137:20,25 138:25 207:8 handbooks 134:22 136:3 handing 147:10 167:7 209:1 211:10 214:3,18 handled 196:14 handles 134:20 handwriting 16:19 handwritten 147:17,20 hang 24:24 hansen 42:5 43:12 43:23 happened 32:3 129:18 180:9 205:10 happening 77:5 happens 96:20 100:15 192:4 hard 99:10,10 102:9 103:5,22 104:23 111:11,11 114:12,22,23 179:3 194:24 219:12 225:23,25 226:20 harder 104:12 179:9 hardness 102:8 harm 94:16 114:23 harmful 13:8 hate 28:24 hazard 50:18 52:17 59:8 head 17:25 37:10 59:12 89:3 190:16 headache 70:19 health 23:22 28:1 28:2 39:1 72:11 72:13,15,16 93:15	93:16 101:10,13 110:11 111:5 143:7 151:16 153:23,25 187:7,9 187:11,11,15,17 188:10,11,18,19 220:1 hear 38:6 45:20 46:4 83:15 89:11 hearing 8:1 30:21 33:19 34:25 45:9 49:3 59:25 75:6 75:11 116:25 141:7 228:25 heartbeat 81:17 heavily 151:18 179:16 heavy 119:13 151:13 heesch 2:15 help 72:19 183:13 208:6 helped 220:12,14 helpful 227:16 helping 175:3 helps 14:5 209:11 henderson 190:14 190:21 191:20,25 192:5 henderson's 191:14 hereinbefore 229:7 hey 32:14 36:7 74:23 210:10 hi 26:14 57:11 73:12 78:6 80:21 84:7 hiccups 165:11 high 11:11,17 186:1 215:20 221:10 higher 170:15 178:2 194:12,14	195:2 202:22 217:25 highly 114:21 149:11 201:6 202:20 hire 52:3 64:6 113:23 165:12 181:4,5 199:11 219:12,23 221:8 hired 75:7 181:6 hires 129:15 hiring 91:15 135:3 historic 115:15 history 125:23 hit 129:18 165:15 hits 99:15 hold 14:25 72:7 79:16 106:21,24 121:5 134:15 holiday 104:1 home 67:11 69:9 87:23 88:2 98:16 163:20 honor 30:6 53:3 211:1 224:8 hope 140:16 160:5 hospital 9:3 47:3 72:22 86:12 109:17 110:8 148:22 169:8 175:16 179:10 182:24 183:23 190:7,14 194:21 197:25 200:10 201:11,12 203:23 222:5 225:23 hospital's 58:24 hospitals 66:21 69:12 100:5 177:13 179:18 186:13 188:25 194:5 195:4,4 hot 200:17	hour 177:19 hourly 10:21 107:6,12 216:24 hours 92:10 145:1 221:20 house 193:21 196:21 222:17 housekeepers 175:4 176:18 177:3,17 219:7,15 housekeeping 174:6,7,8,9,10,13 174:14,16 175:10 177:20 190:7,12 190:15,16 191:4 198:22 hr 15:19 17:25 27:11 56:9 96:25 97:7,16 100:4,11 103:7 111:8 122:22 126:23,24 130:11 142:20,25 143:8,15,19 144:3 167:18 168:4,11 202:9 206:5,15 hrms 118:6 hro 142:18 158:3 huge 66:21 165:3 201:15 huh 12:24 33:22 34:12 36:14 41:18 49:12 55:13 77:1 86:16 88:9 171:7 209:4 225:20 227:8 human 12:10 96:22 115:17 118:4 129:6 142:11,15,20 143:21,21 205:19 hundred 140:16 160:22 hundreds 193:9
--	---	---	--

hunter 3:11,15,18 3:21,24 4:6,10,13 4:16,19,22,24 5:5 5:11,14,16 8:6 10:12,14 12:20,24 13:2,5,10,13,16 16:2,18 18:14 19:3,9 21:1,24 22:8 24:16 26:8 26:13,15 27:20 28:9 29:11,23 30:1,4 31:14,16 32:7,17,25 33:4 36:4,6,7 37:6 39:18,21 40:21 42:10,16,21,22 43:22 44:4,13,23 45:1,3 48:18,25 49:4,18 50:1,11 50:21 51:2,4 52:19 53:3,8,12 53:24 54:7,16 56:1 57:10,12 59:16 60:6,11,23 63:19 65:2 68:17 71:3 73:11,13,24 74:10,12,17 78:5 78:6,16,20 80:20 80:22 81:22 82:7 82:11,16,22 88:17 88:19 89:1,25 90:3 92:25 93:2,4 100:15,19 106:14 106:19,20 108:15 110:15,19 111:14 112:20,21 114:2,4 114:7 115:1 116:4 116:12,17 117:11 117:20,22 120:18 120:25 122:24 123:4 125:9 127:18 129:1 131:24 132:3,7,25 133:6,21 134:2,5	134:7,14,18 136:14,20 138:9 138:13,18 140:14 140:22 142:5 150:5 154:3,10,21 154:22 157:5,9,13 158:6,15,18,24 159:3,7,17,25 160:3,8 162:6,12 167:1,7 168:17,23 171:6,9,12,13 173:15,24 178:4 178:10 180:6,15 182:5,11 184:16 184:23 186:21 187:3 189:18 190:3 192:9,15 195:18,24 197:11 197:17 199:20 200:1 203:7,12 204:19,23 205:2 206:25 207:4 211:1,10,24 212:5 212:20,24 213:2 213:22 214:3,11 214:18 215:8,12 217:11 218:24 224:8 225:14,16 226:14 227:12,18 228:12,17,22	168:22 171:5 173:23 178:9 180:14 182:10 184:22 187:2 190:2 192:14 195:23 197:16 199:25 204:18 211:9 212:4,19 214:2,17 identified 154:14 155:18 185:21 189:5,8 196:20 identify 20:11 96:19 115:18 139:18 identifying 97:1,2 il 2:5 immediate 156:17 immediately 96:11 impact 97:1,11 101:3 135:6 171:1 228:17 impacts 96:21 impaired 223:6,11 implemented 95:18 119:18 191:8 implies 162:25 205:14 important 29:1 33:24 38:10 49:4 83:17 89:18 94:15 141:13,20 172:10 185:19 202:4 209:9 224:24 225:1,22 inappropriate 13:8 30:20 68:11 114:8 126:14 215:13 incentive 8:12,14 9:13,14,16,21 10:22 11:9,15,15	12:1,7,8,14 15:22 25:24 27:2,25 36:16,18,25 40:22 43:1,4,12,24 47:18,20,25 51:8 52:7,11 58:5 59:5 61:14 66:1 67:16 67:18 68:12 69:12 80:25 85:3 87:3 94:8,9,11,23 95:4 95:9,20,23 96:8,9 96:16 97:5,13 102:3,5,12,22 103:2,11,18 104:13,16,22 105:18,22 106:2 107:6,9 108:6,7 108:21 109:2,15 109:23 111:20,25 112:1,11 114:9 115:25 119:22,24 120:11 122:3,13 122:15 123:6,12 123:17,21 124:7 126:2,9,15,17,19 126:20 127:12,15 128:10 129:13 130:19 132:22 134:23 135:13,20 137:9,9,12 139:13 140:7,8 144:6,7 145:3,21 146:19 146:22 148:14,15 150:11,23 151:11 152:2,5 153:17,19 154:24 155:2 156:1,12,22,24 157:2,15,18,19,23 159:8 160:9,16 161:22,24 162:16 164:12,18,23 165:18,20 167:11 167:23 168:10,13 168:25 169:24
	i		
	i.e. 149:1 icu 73:21 125:25 idea 58:14,19 identification 8:3 15:8 17:16 19:20 22:25 25:9 39:15 41:2 46:17 48:21 49:23 120:24 128:25 132:6 133:20 136:19 150:4 154:9 157:4 157:12 159:24 162:11 167:6		

170:20,24 171:14 172:7,24 173:13 174:3 176:4,15,16 178:1,12 179:24 180:1,17 181:16 182:13 184:25 185:23 186:6 187:5 189:4,14 190:5 191:24 192:19 194:15 195:12 196:7 197:19 198:7 200:3,13 201:3 203:14,17 205:3 206:14,21 207:17 208:12 209:13,16 209:18 210:12 215:14,21 216:8 216:11,25 217:2 220:19 226:7,20 227:7 incentives 11:3,7 12:4 21:13 44:2 58:13,18 64:10 65:25 66:8,13,22 67:23 91:5 94:3 94:18,20,22 95:15 95:17 97:18,24 98:3,5 99:13,17 101:22,25 103:17 105:9,25 109:25 110:23 111:20 112:2,25,25 113:7 114:17,19 115:11 118:23 119:1,6,12 119:18 120:13,20 120:22 121:22 122:9 124:5,17,19 125:18 128:6,12 129:20 131:16 132:20 135:18 136:11 138:16 139:4,17 140:5 144:13 145:9,11	145:18 146:9,12 147:3 150:18 159:15 161:22 162:23 166:3,23 176:6 183:23 186:18 196:1 207:5,6 208:5,18 208:21 215:17 226:23 incentivize 203:1 incident 95:3 include 50:5 142:21 included 87:5 147:17 176:3 including 55:20 incorrect 64:18 156:25 157:1 increase 202:1,2 increased 193:25 194:8 increasing 194:3 indicated 170:20 211:5 indicates 211:22 222:4 indication 9:1 indirect 65:8 indispensable 179:8 individual 8:12 12:1 97:5 100:10 123:14 126:6 127:12 135:7,12 137:9 153:6 167:17 181:12 192:8 211:17 212:9 213:18 214:8,24 individuals 36:25 128:5 144:8,18 162:3 180:3 183:13 184:13 195:11 203:13	216:9 227:3 industry 177:6 infection 110:7 infectious 210:8 influenza 60:1 75:20 83:20 89:20 141:14 information 8:20 8:21,25 10:23 13:18 14:2 15:20 15:21 16:12,13,15 17:24 18:1,4,16 62:5 63:11 130:10 132:14,15 136:11 137:16 147:7,18 148:1,5,8,9 205:13,21,25 206:4 217:6 218:19,22,23 219:2,4 initial 127:25 156:14,14,15 170:10 196:11 initially 170:11 initiating 193:14 initiation 157:14 inpatient 23:17,21 26:19 48:13 62:14 62:15 66:20 67:13 69:1,5,11 72:21 85:17 86:18,21 101:16 108:25 109:1,6,12,17 127:8 149:5 155:4 155:19 179:12 188:7 189:9 220:25 inpatients 184:6 ins 70:8 inside 109:6,8 installment 146:20,21 instance 96:22 98:25 102:14	111:24 115:19 163:12 instances 125:22 185:16 instructed 206:16 instruction 38:10 116:24 120:14 instrument 182:15 182:20,23 183:6 183:22 185:3,7 186:3 instrumental 196:11 197:1 integrated 143:9 integrity 76:7 intense 170:2 intensive 72:10 intent 202:9 intention 32:3 interact 194:22 interaction 170:10 209:12 interchangeable 85:20 interface 170:6 interfacing 172:17 intern 143:22 202:17 interpret 185:12 interpreting 193:24 interruption 125:8 127:17 introduce 42:9 introductions 90:17 invasive 148:25 investigation 217:25 218:5 investigations 142:24 167:19,21 invoked 10:18 involved 206:22 222:6
---	---	---	--

irrelevant 101:2 105:23 irreplaceable 164:2 isaacks 4:20 44:18 44:19,20 63:16,16 89:11 90:8,16 93:3 106:20 108:20 110:20 111:18 112:21 116:5 147:1 206:9 issacks 5:3 issue 18:17 67:8 69:7 74:16 177:8 228:20 issuer 217:23,23 issues 62:17 68:14 68:15 163:3 177:9 199:5 issuing 90:21 item 140:11 items 120:3 137:14	131:19 142:10,17 149:15 170:25 177:19 180:25 181:23 187:13,22 188:18,19 203:6 203:18 204:16 212:13 222:14 jobs 43:3 100:1 104:1 178:3 joint 5:23,24,25 8:2 106:13 107:15 107:15 191:1 216:20 josh 32:16 46:20 joshua 3:19 37:18 46:12 journeyman 203:24,25 204:10 judge 75:7 july 17:12 93:10 212:16 june 17:24 26:18 26:21 27:12 73:16 152:13 153:2,20 156:2,10 162:1 justification 56:12 97:4 120:6 123:25 124:3,22 125:14 127:11 131:3 136:25 140:7 justification's 126:5 justifications 123:11 131:12,21 135:4 136:10 137:2 justified 128:2 justify 104:12 115:24 124:2 140:5 justifying 123:16	k k 142:9 kali 152:23 kansas 1:15 9:3,3 15:6,19,21 27:9 47:3 91:24 98:1 103:21 111:6 119:1 121:9 130:9 142:16 145:8,16 155:1 163:13 170:7 193:15,18 196:19 197:3 229:4 karr 5:13 17:25 141:5 142:1,9 kat 10:11,14 28:8 31:13 54:13 71:2 kathi 119:2 kathleen 3:9 10:14 19:8,15,25 20:12 26:14 33:5 36:7 42:22 51:3 57:12 73:12 78:6 80:21 88:19 93:4 kathy 19:23,25 20:1 84:25 kcva 10:19 12:4,9 93:9,20 98:3 99:18 100:20 108:5 114:9 118:23 119:1 123:22 125:17 126:15 127:19 128:4,18 131:15 138:13 142:18 145:22 147:3 148:13 154:24 160:16 161:21 171:15 206:14 207:17 keep 24:10 36:20 36:21 37:2,2 48:2 52:15 81:12 83:14 157:9 172:21	178:2 202:4 222:9 226:11 keeping 100:20 keith 15:18 kelly 4:4 21:12,14 29:6 44:17 60:15 kept 196:16,23 key 120:2,2 122:13 130:4 131:6,6 143:2 144:9 154:15 155:3,10 183:4,24 198:24 kind 35:24 85:2 88:5 93:6 94:7 109:22 125:20 129:17,19 137:25 154:14,18 155:24 156:15,18,20 161:2 162:22,25 163:8 170:13 187:16,17,25 188:3 190:13,18 191:6 192:3 196:18 201:11,20 202:2 203:19 205:9,11 208:9 knew 41:19 know 13:1 16:3 17:4 21:15,15,16 21:17 23:24 32:13 39:11 40:15 42:25 44:1 45:17,21 46:22 47:24 54:12 55:19 56:14 60:9 63:3,20 68:5 69:19 71:5 75:7 80:5,6 82:21 83:13 87:15,20 90:18 93:4 96:24 97:9 98:11 100:2 100:17 102:16 103:7 104:1,4 111:25 112:1
j james 4:14 79:10 82:2 january 211:12,23 228:13 jeff 15:14,14,16 16:10,18 17:5,9 17:11 29:22,24 30:2 44:17 83:2,3 113:14 147:15 jill 2:16 3:7 14:9 14:15,20 15:4 53:13 job 1:25 9:11,12 9:16 32:12 45:10 58:4 76:15 78:10 78:17 81:9,10,19 81:21 93:8 98:20 100:2 102:23 103:12 106:5 108:22 118:3			

113:10 121:4,9 124:9 125:23 127:8,18 129:17 134:4 137:25 140:19 146:6 151:12 154:23 155:23 161:11 162:21 163:2,4 170:4,4 174:14 175:3,18 176:18 176:24 180:9 183:5 184:4 189:23 190:10 192:2 206:23 213:4 216:2 219:11,17 222:15 knowing 16:20 53:20 knowledge 64:4 65:24 131:18 knowledgeable 77:10 knows 215:22 ks 2:13	law 13:9 53:22,23 67:25 130:2 163:6 163:11 170:6 172:14 216:5 lawrence 2:8 laws 16:14 laying 211:2 lberger 2:11 lbfedlaw.com 2:11 lea 2:13 229:3,16 leader 104:7 174:8 175:8,19 leaders 174:24,24 leadership 15:18 62:25 63:4 96:18 99:25 103:24 143:14 144:1 172:16 leadership's 97:7 leah 132:10 learn 176:23,25 191:12 leave 11:14,18 12:7 28:1 34:1 71:9 81:16 82:9 122:14,16 135:8 144:12 146:17 175:1 189:16 215:21 227:3 leavenworth 193:19 197:4 leaving 37:3 81:12 93:21 194:8 222:4 227:1 led 14:2 left 17:12 189:15 194:11 legal 2:4 22:9 49:13 159:13 207:23 208:10,11 208:13 209:3,3,22 214:23 legalities 68:16	legally 219:22 legislation 92:2 length 137:13 letter 23:17 level 62:9 102:13 102:14 109:15 112:7 119:14 143:8,17 165:17 170:13 174:14,25 177:6 181:13 199:8 203:25 204:11 217:25 221:10 levels 27:6 130:11 200:9 leverage 114:20 leveraged 95:24 liaison 143:13 liberal 228:4 liberally 31:9 license 86:21,22 86:24,25 111:2 licensed 98:17 150:13 lieu 48:4 51:8 lieutenants 166:18 lifts 77:2 likelihood 135:8 156:19 186:16 194:7 215:20 227:1 limitation 160:18 limited 146:8 169:21 limits 122:7 line 1:9 96:18 99:24 159:5 194:11 198:1,3 lines 103:20 139:19 140:4 194:23,24 linwood 189:12 list 44:16 150:20 152:3,4,10,24	153:24 156:6 161:21 166:3 173:2 187:24 189:7 227:5 listed 65:16 153:2 listen 38:3 75:12 lists 173:5,11,14 literally 201:9 little 138:21 149:16 156:19,20 163:16 187:14 188:9 195:8 living 202:1 local 1:5 10:18 15:1,5 20:3,4 34:25 55:4 60:22 84:9 163:6 170:6 202:23 locality 195:2 locally 218:9,17 location 120:15 123:21 124:1 locke 3:13 31:19 33:15 34:16 210:18 212:7 214:7,22 long 35:1 47:4 56:17,20,23 71:14 72:13 76:14 79:19 84:16 85:6 93:20 97:8 98:5 118:7 164:12 189:23 201:22 228:9 longer 26:2,3 60:9 126:5 156:22 164:23 look 13:25 17:18 25:18 31:2 47:10 47:21 49:10 55:7 60:25 61:25 91:10 91:17 102:14 123:18 152:3,17 152:23 153:8,15 153:18 154:10
l			
l 2:16 142:8 lab 39:2 193:4 200:24 labeled 150:8 labor 18:6 142:22 143:25 laboratory 193:1 lack 16:2 18:15 21:24 22:6 29:7 56:1 217:7 laid 67:24 213:5 language 134:25 large 69:12 140:3 181:23 221:14 larger 124:1 largest 126:19 193:16 lasted 164:18			

155:25 157:13 159:11,13 165:25 166:5 175:22 182:11 192:3 194:9 203:2 204:19 207:19 208:9,10 222:4 227:4 looked 67:19 100:6 148:19 149:2,5,8,12 164:24 227:4 looking 29:13 66:18,24 103:6 128:1 129:4,15 132:9 136:22 150:7,12,21 159:10 174:2 190:3 191:14 195:25 200:11 213:3,17 214:5,6 214:20,21,23 looks 107:2 165:22 215:1 lose 57:24 94:15 95:5 126:10 131:7 135:7 148:17 155:11,20 161:18 164:1,21 177:10 183:25 184:11 186:10,19 losing 111:9 125:24 156:19 186:17 191:18 201:16 loss 100:8 102:8 losses 222:3 lost 126:1 149:24 161:17 184:9 191:22 195:10 224:4 lot 51:11 98:16 99:22,25 103:15 129:23 132:15	145:13,14 146:7 155:11 160:21 163:10 174:15 177:11 179:5 188:25 194:21 197:24 199:1,8,14 200:18,21 202:14 204:10 221:1,2,21 224:15 225:17 lots 126:12 louis 145:19,23 193:14 196:19 lower 177:7 199:7 lpn 20:16,17,21 23:15 35:6 70:20 86:10,14,18,21 87:12 104:10 109:6,9,12,15 155:13 193:3 224:13 lpns 62:1,2,11,12 65:11,13,18,20 69:16,20 70:5,7 85:16 87:9 88:3 88:22,24 98:14,18 103:16,17,25 108:24 109:1 123:22 127:6 131:19 150:13 152:4,6 153:23 164:25 221:23,24 225:3 lump 95:19 111:21 112:11,22 146:14 lunch 83:7,9,9,10 lyneal 4:8 32:16 33:12 37:17 44:14 71:22 156:1 210:24 m m 118:1 ma'am 19:5 61:6 63:6,24 118:12,19	118:24 119:21 128:23 135:16 157:1 158:5 160:11,17 162:2,5 162:14,18,20 166:25 167:12,15 169:1,3 171:16,19 172:6 174:1,5 176:8 178:13,16 180:5,18,21 182:1 182:4,14,19 187:8 190:6,9 192:17,20 192:23 195:13 196:2,5,9 197:20 197:23 205:8 207:9,12,15 mahon 2:8 mailed 206:16 mailroom 176:3 main 45:11 59:23 75:17 114:11 124:3 129:7 142:25 maintain 110:7 120:2 134:23 maintained 136:12 149:4 maintaining 120:7 122:12 maintains 122:23 maintenance 76:12,18,18 102:2 102:4,15,24 200:5 200:8,10,12 201:5 201:23 203:16,17 203:20,21,24 204:3,12 major 146:4 majority 147:4 148:22 218:20,21 219:4 221:16 making 30:5 109:5 131:9 137:3 137:22 147:20	190:21,23 206:23 220:11 man 228:16 management 21:17 30:17 53:16 76:13 85:8 91:8 91:13 92:19 94:4 94:9 96:12 98:6,7 110:3 114:19 121:16 132:11 219:21 manager 84:12,17 manner 8:16 9:25 91:20 197:6 manual 120:14 march 98:4 99:16 111:1 125:18 138:16 145:8 146:24 202:10 marion 118:15 123:23 marked 5:22 6:4 7:3 8:2 12:20 15:7 17:15 19:19 22:24 25:8 39:14 41:1 46:16 48:20 49:22 55:7 61:1 106:13 107:14 120:23 121:1 122:25 128:24 129:2 131:25 132:5,8 133:1,19,22 136:15,18,21 138:10 147:11 150:3 154:4,8 157:3,6,11 158:7 159:18,23 162:7 162:10 167:2,5 168:21 171:4 173:22 178:5,8 180:7,13 182:6,9 184:17,21 187:1 189:19 190:1 192:10,13,16
---	---	--	--

195:19,22 197:12 197:15 199:21,24 203:8 204:17 207:1 209:1 211:8 211:11,25 212:3,6 212:18,21 213:23 214:1,4,12,16,19 215:9 market 99:23 100:3 104:7 106:5 202:23 marketplace 99:8 99:8 marks 140:8 married 143:7 martie 173:2,4,4 martin 2:13 229:3 229:16 mary 3:13 31:19 32:15 33:5,14 34:16,22 36:7 210:18 mass 177:14 master 8:10 30:7 124:18 125:5 match 156:8 materials 64:7 matter 1:3 37:21 45:9 51:5 75:6 83:12 88:20 89:14 89:17 93:5 106:9 107:3 119:13 122:20 149:17 matters 119:12 matthews 153:11 maximum 157:22 mckenzie 4:11 76:2 204:5 mean 30:18 58:13 63:25 74:18 99:6 101:7 102:4 103:19,21 109:24 112:10 128:6 131:18 133:4	151:17 194:20 200:20 223:4,10 meaning 142:23 164:16 199:12 means 22:11 28:11 42:18 44:7 52:14 59:21 63:20 64:21 71:6 73:8 74:4 75:6,11 78:1 78:23 80:16 88:14 141:7 153:16 163:22 207:25 211:18 212:10 227:13 meant 156:19 mears 196:6,9 197:1 measures 202:15 223:13 mechanic 115:22 200:5,8 201:24 203:16 mechanics 200:10 200:12 201:5 203:21,22 204:3 med 35:11,13 109:13 222:16 225:5,8,9 medical 56:13 92:16 119:25 122:4 129:23 142:16,21 143:10 144:8,10 146:6 160:12,15,20,22 165:8 168:6,7,8 170:14 171:25 174:17 175:13 182:15,20,23 183:2,6,22 185:2 185:7 186:3 192:21,24,25 193:5,5,15,22 194:2,11,18,25 197:21,24 198:2,8	198:16 199:3,6 200:18 205:23 206:7 208:1 215:19 meet 18:5 94:12 114:13 124:2 125:7 meeting 113:14,20 113:22 meets 190:24 members 155:9 175:8 memo 129:10 131:11 memos 129:8 139:10 mental 153:23,25 220:1 mention 24:10 50:16 124:20 189:22 mentioned 41:13 51:12 67:7 102:10 115:5 145:18 151:1 155:3 161:3 163:8 165:6 168:5 177:4 mentions 50:17 met 46:23 89:15 90:16 method 151:6 metro 104:4 metropolitan 146:5 micro 76:22,23,24 mind 46:6 83:14 mindful 34:7 mine 13:22 minimal 181:20 minute 45:4 116:19 140:24 146:6 minutes 33:2 60:8 71:15 141:2	173:20 177:4 mirror 137:19 missing 133:4 mission 12:6,16 58:24 120:3,8 121:21 144:23 148:18 164:4 169:17 171:2 177:12 225:23 missouri 1:15 98:13 170:7 229:5 mit 183:6 mo 2:13 moderate 218:4 modify 134:22 modules 217:22 moment 19:12 29:11 30:8 57:2 116:7,9 moments 188:4 190:18 monday 15:15 53:12 monetary 8:13,15 145:1 money 63:18,21 64:2,9,10 80:12 81:14 85:9 140:4 140:10 195:5 208:7,15,20,24 210:9,14 216:1 222:13 226:11 monitor 102:12 169:12,13,13,14 169:15 monitored 95:15 95:24 96:1 105:13 122:10,17 146:10 monitoring 169:12 monitors 122:22 monoxide 169:14 month 95:15,16 122:10,10 125:13
--	--	--	---

146:10,10 monthly 96:2 102:13 157:20 months 164:25 165:12 moore 4:14 79:10 80:21 morning 10:12 19:23,24 33:16,17 34:22,23 38:23,24 46:20,21 51:3 54:24 60:20 75:1 75:3 88:18 motivating 202:11 202:25 move 26:18,22,24 73:18 170:15 199:9,17 mow 110:5,6 msas 65:11,13 161:7,23 multiple 106:3 115:13 123:17 193:8 202:8 210:5 211:6	national 20:2 55:3 84:8 natural 141:22 200:21 nature 105:15 126:9 129:16 130:14 131:14 140:7 146:3 159:12 176:24 179:17 nearly 72:15 necessarily 187:20 188:15,19 193:23 218:2 necessary 9:23 95:9 121:21 122:3 151:12 168:9,12 176:17 177:1 193:16 196:21 228:4 need 11:13 18:3,5 30:19 31:3,8,9,13 34:7 38:8 50:12 53:4 60:8 63:11 67:12 91:18 96:2 96:5 102:6 104:6 106:6 109:14 114:20 117:6 122:23 135:5 140:23 141:1,21 148:1,3,4,20 156:13,17 157:7 159:11 170:7 186:7 188:9 193:12 210:8,15 210:15 213:6 216:17,18 217:7 222:13 223:22 226:8 228:2,7 needed 13:1 16:14 16:15 67:15 165:3 179:10 185:13 210:7 220:25	needs 45:19 53:8 62:9 91:8 94:12 120:7 149:13 150:15 163:5 172:21 189:24 negative 24:1,3,7 77:18 220:11 network 119:13 119:25 122:7 143:9 networks 205:15 neurology 35:14 nevada 39:1 never 43:14 46:23 85:2 104:6 155:8 156:24 new 17:13 30:14 61:20 82:22 98:15 163:14,22 nine 143:10 165:8 nippert 119:2 non 65:11,12,12 146:20 199:14 212:9 noon 82:19,23 83:2,6 nope 227:21 normal 60:8 68:4 75:11 131:12 133:7 139:16 142:17 183:8 205:17 208:2,17 212:13 normally 31:22 140:10 177:6 179:9,11 208:17 north 93:15 note 7:25 noted 54:10 61:1 notepad 28:25 notes 16:3,9 17:6 147:17,20 229:11 notice 47:14 82:12 209:19	noticed 194:21 notices 133:11 notified 40:8 52:16 202:9 notify 33:2,5 59:3 59:7 notifying 53:17 november 26:25 28:3 53:13 73:20 213:21 nrb 213:18 nsf 41:3 number 5:22 6:4 7:3 8:18,21,23 17:1 24:17 60:10 61:11 66:20 68:5 104:11 150:9 208:11 211:21 213:9 219:11 nurse 48:11,11 77:2 84:12,17,17 155:13 178:23 224:1,13 nurses 23:17 65:19 98:17 127:6 131:21 145:13 149:10 150:13 151:19 221:24 223:24,24 nursing 65:8,11 65:18,18,21 67:13 67:13 69:4,8,10 72:9 73:18 98:16 151:19 154:17,19 154:22 155:1,13 156:5 187:12,14 187:18,21 188:4 188:16,17,20,22 189:1,3 224:10 nutritional 72:19 ny 2:10
n			
n 2:1,15 3:1 4:1 5:1 6:1 7:1 118:2 142:8 naci 218:5 name 10:14 15:4 26:14 36:7 42:22 45:8 47:15 51:3 57:12 60:20 61:4 73:12 75:5 78:6 80:21 83:11 88:18 89:11,13 93:4 117:23 118:1 141:6 142:6,8 162:25 205:14 names 30:9,11 155:22 nasal 224:1			

o	184:11 194:8	151:20 158:17	oh 20:16 25:10
o 118:2	occasions 160:6	161:13	75:2 76:9 88:25
oath 14:17 19:17	occupation 150:19	offers 81:21 98:20	107:17 112:18
34:18 38:19 46:14	172:4	100:2 102:24	121:4 130:7
54:21 60:17 71:24	occupational	103:12 158:13	138:21 145:25
76:4 79:12 84:3	127:9 131:22	office 2:4 12:10	152:19 154:21
90:1,6,10 117:18	166:5,12 173:10	50:5 65:14 91:12	157:6 158:16
142:3	192:7	92:19 98:6 129:5	171:9 173:3 180:9
object 22:8 43:14	occupations 146:2	143:21 168:3,8,13	203:8 204:23
74:13 210:23	171:3 186:12	172:18 205:13,20	228:16
224:9	occur 186:8	206:4 217:18,24	oit 205:6,10,12
objecting 158:19	occurred 53:20	218:2 219:20	206:10,13,17
objection 16:2	54:8 125:21	officer 12:11	okay 10:5,10,10
22:2 24:15 26:8	160:19 188:1	33:19 45:9 51:22	12:22 13:3,11,23
29:23 30:1 49:18	ochco 129:5,18	51:23 57:19 75:7	14:22 15:12,25
50:11,21 53:4	130:8,18 131:15	111:4,9,12 129:6	17:8,17 18:8,23
56:1 63:19 74:12	138:14 207:11	141:7 142:11,15	18:24 19:4 20:2,7
78:11 90:3,4	216:5	149:15 162:19	20:8,19,21,24
132:1 133:16	offer 24:14 78:10	165:12 166:11	21:6,9,14,18 22:4
136:16 138:11	78:17 81:19	169:11 171:18,20	22:17,21 23:9,19
158:9 159:20	108:22 122:24	171:21 172:2,13	23:23 24:6,13,25
162:8 167:3	130:3 131:25	173:6,8 175:19	25:10,13,18,20
168:19 171:10	133:1 136:15	190:8,15 206:1	26:6,24 27:1,11
173:17 178:6	138:10 145:25	officers 48:2 51:18	27:17 28:6,20
180:11 182:7	154:4 158:7,15	51:25 55:20 56:11	29:9,20 30:3
184:19 186:23	159:3,17 162:6	57:23 58:16	31:14,15 33:23
189:20 192:11	167:1 168:18	110:21,22 111:3	34:9,13 35:4,9,16
195:20 197:13	171:8 173:16	149:23 162:22,23	35:18,23 36:15,18
199:22 203:10	178:4 180:6 182:5	162:25 163:10,11	36:24 37:4,6,22
204:25 207:2	184:17 186:21	163:13,22,23	38:2,7,12 39:3,8
212:1,25 213:24	189:18 192:9	164:6,11,22	39:21 40:3,6,15
214:14 215:10	195:18 197:11	165:18 166:8,13	40:18 41:10,21
218:24	199:20 203:7,9	166:14,16,20,23	42:2,6,8 43:4,8
objections 40:20	204:21,23 206:25	169:16,21 170:3,5	45:2 47:4,8,13,16
42:10 48:17 123:1	208:21 211:24	offices 174:18	47:21,24 48:5,12
154:5,6	212:23 213:22	official 97:13	48:15 49:10,20
objects 18:14 34:5	214:11 215:8	120:1 121:25,25	50:7 51:15,17,20
obligation 146:17	222:12,14	122:1,21 125:14	51:25 52:6,16
150:25	offered 5:22 6:4	125:16 137:2	53:10 54:9,17
obstructions	7:3 102:22 129:23	206:20 213:10	55:14,23 56:17,20
183:12	146:2 147:3 159:2	official's 137:4	56:25 57:18,22
obviously 100:9	194:16 215:18	officially 84:18	58:8,23 59:7,16
149:9 151:12	offering 21:21	oftentimes 178:21	60:12 61:2,3,15
161:17 165:3	24:12 66:21		61:22,25 62:11,16

63:12 64:1,19,23 64:24 65:10,15,20 65:24 66:3,11,15 67:4 69:5 70:4,9 71:21 72:4,7,13 72:16,21,24 74:17 75:9,15,23 76:14 77:4,20 78:3 79:19,25 80:14 81:2 82:14 83:21 83:22 84:6,13,16 84:19,22,25 85:5 85:13,22 86:2,4 86:14,23 87:1,6 87:16,19 88:3 89:10,13,23 90:20 90:24 92:4 93:12 93:23 94:7,18,21 99:20 102:2 105:3 106:12,24 107:3 107:11,19 108:8 110:9,13 111:23 113:25 116:2,11 116:17 118:13,25 120:25 121:8,13 121:19 124:5 125:20 127:23 128:3 130:24 132:21,25 136:4 138:5 139:20 141:10,17 142:13 142:17 143:4 145:20 147:10 152:11,22,25 153:22 154:2,12 154:18,22 156:4 157:5,10,17 158:3 158:8,14,25 159:16 160:12,18 161:25 165:24 166:2,9 167:22 168:14 169:23 170:18,23 171:17 171:23 172:1	174:2,10 176:14 180:2,6 182:20 184:16 187:7 190:3,10 195:18 198:5,15 200:1 203:7 205:6,9 206:13,19 207:10 207:21 210:4,13 210:17 211:10,20 215:7 216:16 217:1 218:10 220:16,19 222:11 222:16 223:4,16 224:2,6 225:5 226:1,1 228:5,10 228:11,22 old 82:4 181:1 once 98:1 122:13 122:18 124:7 126:5 146:22 201:23 ones 95:19 99:9 103:9 127:8,9 139:8 149:3 155:10 169:11 170:9 174:16 175:14 176:12 178:20,25 183:3,9 191:23 193:6 198:9 ongoing 95:25 open 69:14,15 140:24 155:7 163:21 opened 165:6 opening 3:3,4 8:5 13:4,21 operate 101:5 200:14 216:2 operating 155:7 200:25 208:3 operation 96:14 144:10 148:17 177:2,18 198:24	200:16 215:19 operational 149:13 operations 58:23 91:6 94:17 98:21 100:9 102:19 148:20 149:5 156:16 161:16,19 175:3,15 184:12 189:11,17 190:20 202:6 205:24 208:22 226:25 opm 11:25 112:4,6 114:16 opportunity 30:16 30:17 88:4,23 145:21 opposed 168:6 options 67:9 optometry 72:6 73:19 order 9:19,19 31:20,22 80:7,7 128:12 134:6 149:14 178:2 ordered 9:22 orders 178:25 organization 61:12 65:9 94:13 97:1 99:12 104:20 114:24 organizational 109:14 original 133:13,14 142:14 147:17 152:8,20 originally 96:4 153:25 173:8 osha 101:20 outcome 31:7 outdated 181:2 201:11 outline 150:10	outlines 150:21 outlying 127:9 outpatient 9:4 26:19 39:7 43:9 67:6,8 69:6,8 70:6 70:7 85:14,17 86:10,14 87:8 101:17 148:23 221:2,16,21 outpatients 148:24 outside 68:3 97:10 104:15 126:11 179:16 186:2 194:13 overall 222:5 overruled 56:4 63:23 oversight 11:25 overtime 85:21 86:3 92:11 208:5 oxygen 200:22
p			
p 2:1,1 p.m. 228:25 pa 125:8 127:17 page 3:2 107:17 121:14 130:21 147:16 150:20 151:10 152:3,17 155:22 161:20 166:2,7 170:20 175:18 180:2 182:2 184:13 187:24 194:9 195:11 202:7 203:2,12 207:22 pages 176:5 paid 15:23 95:23 145:21 146:12,13 146:14,19,21 148:14 151:9 painter 204:11			

<p>pandemic 10:22 15:24 36:22 48:2 51:10,14,17 57:16 77:5,7 78:18 90:25 92:3,9,12 93:24 98:8,10 99:1,14,15 104:14 119:19 125:21 129:18 131:17 139:1 144:5 148:21 149:10 151:13,17 163:18 164:7 170:16</p> <p>paragraph 18:3 121:15</p> <p>paramount 100:14,20</p> <p>parenthetical 182:25</p> <p>parker 3:22 53:2 53:11,14,15 54:19 55:1 57:11 171:25 172:23</p> <p>parsley 3:16 38:17 42:22</p> <p>part 13:19,24 30:6 61:4 62:25 67:2 92:6 96:1 101:1 105:7 120:14,15 120:21 135:23 136:10 137:13 146:13 147:2 186:14 222:1</p> <p>participating 28:15</p> <p>particular 61:20 149:3</p> <p>particularized 18:3,5 147:24 148:1,2 217:7</p> <p>particularly 179:3</p> <p>parties 7:25 57:14 65:4 205:9 207:24</p>	<p>party 30:23 53:15 53:25</p> <p>pass 26:10 36:2 42:15 50:23 57:1 64:20 73:7 80:13 80:14 88:13 91:2 92:23 225:11</p> <p>pat 33:18 37:20 45:8 75:5 83:11 89:14 141:6</p> <p>pathology 192:25</p> <p>patient 35:16,19 39:3 48:5,8,10,10 62:23 65:6 67:14 69:20,23 70:2,12 72:20 77:2,3 87:18,21 169:12 174:20 179:1 188:14 191:9,9 200:22</p> <p>patients 23:23 35:20 36:20 70:8 72:20 77:13 163:2 163:3 177:14 179:10 193:10</p> <p>patrick 1:1</p> <p>pay 8:13,13,14,15 8:19,22 9:10,13 9:14,20,21 10:22 15:22 23:12 24:9 26:2,3 35:25 41:9 41:20 43:15 50:18 52:12,17 56:7 59:8 72:25 73:5 73:15 77:6 84:23 85:3,12 86:5 87:3 90:25 91:3 102:13 107:6,9,12 108:25 109:2,7,8 112:23 124:20 146:18 164:7,16 175:23 175:23 178:1 194:12,14 210:9 216:25 217:2</p>	<p>220:20</p> <p>paycheck 95:23 146:14,21</p> <p>paying 177:20 178:3 195:2</p> <p>payment 47:19 151:6 157:18</p> <p>payments 47:19</p> <p>payout 213:12</p> <p>payroll 140:3,11 213:13</p> <p>penning 129:6</p> <p>people 37:4 51:11 68:6 75:3 79:8 84:23 101:24 104:3 110:4 125:25 127:13 143:2 152:4 153:15 155:12,18 164:1,24 165:3,17 176:6 178:21 179:7 181:16 193:12 194:21 199:9 224:20 225:1 227:1</p> <p>percent 8:17 10:21 47:17 67:20 108:7 112:5,6 140:16 216:24</p> <p>percentage 95:11 107:12 111:21 112:4,9 137:11 150:23</p> <p>percentages 112:23 113:2 132:22</p> <p>perform 72:18 150:20 171:1 185:10 187:13,20 187:22</p> <p>performance 62:6 68:3 104:24 105:2 125:12 144:20,21 175:1 211:19</p>	<p>212:11 214:10</p> <p>performed 16:11 185:5</p> <p>performing 11:17</p> <p>period 43:5 95:3 114:21,25 146:17 151:1 152:12 164:12 193:17</p> <p>periodically 221:17</p> <p>permission 53:18</p> <p>person 22:12,14 44:14 49:5 101:12 123:13 140:25 142:25 167:22 175:19 217:17</p> <p>personally 77:10</p> <p>personnel 47:14 91:13 92:19 98:6 126:24 213:11 219:21</p> <p>pharmacist 196:4 197:7 221:8</p> <p>pharmacists 220:18 221:4,16 221:22 222:21</p> <p>pharmacy 196:10 196:10 220:7,16 220:17,20 221:1 221:13,16 222:21 225:18</p> <p>phases 119:15</p> <p>phlebotomist 193:3</p> <p>phone 29:22 46:23 57:12 60:9 87:21 87:22 89:15</p> <p>phones 205:16,17</p> <p>physician 178:23 185:19</p> <p>physicians 126:8 145:12 185:11</p> <p>pick 85:21</p>
---	--	--	--

<p>piece 124:19 129:7 130:23 137:4</p> <p>pieces 127:6 139:11</p> <p>piped 200:22</p> <p>piv 50:5 55:20 56:11 167:18 168:3,12 217:17 217:24 218:1</p> <p>place 91:12 96:14 120:6 152:2 194:6 221:21 229:7,9</p> <p>placed 98:25</p> <p>places 104:2</p> <p>plain 52:4</p> <p>plan 175:23,23 185:21</p> <p>planning 100:8</p> <p>plant 200:15 201:10,14 202:13 204:2</p> <p>plants 200:14</p> <p>play 100:25 127:6</p> <p>please 17:7 19:18 21:23 25:3 34:8 34:19 38:20 46:15 54:17 56:3,4 57:8 57:14 59:24 60:14 62:20 65:3 71:25 78:14 79:13 83:15 83:18 90:12 92:24 108:16 109:3 110:17 112:16 117:2,5,19,23 142:6 171:9 173:24 189:25 211:3 212:24 218:25 224:16</p> <p>plumber 204:1,11</p> <p>plumbing 76:20</p> <p>point 13:20 35:23 54:3 95:12 156:21 159:2 192:5 226:6 227:23</p>	<p>police 47:2,5 50:4 50:4 51:18,23 52:4 56:19 57:4 57:15,22 58:16,20 65:16 110:9,20 111:3,4,7,9 149:14,14,16 162:19,21,22,24 163:13,14 164:6 164:11,22 165:18 165:20,23,25 166:8,10,13,14,16 166:20,23 169:6 169:21 170:3,8 171:22,23 172:2 172:11,12,18,20 172:24 173:1,2,5 173:8 176:18 192:4</p> <p>policies 13:9 16:14 105:14 134:20 138:14 172:19 191:3,5 196:16 199:2</p> <p>policy 12:10 67:24 101:20 120:11 135:25 137:17 181:3 216:4</p> <p>polysomn 182:16 183:8</p> <p>polysonography 183:7,7 186:4</p> <p>pool 146:8 208:7 208:24 219:22</p> <p>pools 179:18</p> <p>portion 147:14</p> <p>position 9:5,6,9 13:7 15:1 17:13 56:18 57:20 61:21 62:21 65:18 70:18 72:4,7 76:11 79:16 81:11 84:10 84:19 93:14 96:7 102:9,17,21 103:5</p>	<p>104:9,22 106:6 111:12 115:15,19 115:21 118:8,10 119:16 122:15 124:21 126:7 127:14 128:13,22 143:4 144:1 150:21 154:15 155:17 160:21,25 170:13,14,16 173:7 175:17 177:5,7,7 186:15 187:7 191:25 196:3 199:7,8,12 199:16 201:18,20 201:22,24 202:17 202:18 215:18 222:1 226:3,21</p> <p>positions 9:7 11:5 12:6 15:19 26:22 26:24,25 52:1 57:24 76:17 91:1 99:9,9 103:10,22 114:12,13,22 119:15 130:5 143:18 144:9 145:14 147:1 148:19 175:8 179:15 213:15 226:24 227:5</p> <p>positive 77:18,21</p> <p>possible 85:16</p> <p>potential 45:18 83:20 141:15 189:5</p> <p>potentially 69:11 163:5,23 175:6 179:8 187:19 188:5 194:24 201:15 204:15</p> <p>power 200:19 222:6</p> <p>practical 150:13</p>	<p>practice 65:19</p> <p>practitioner 178:24</p> <p>predetermined 31:5</p> <p>prefer 228:6</p> <p>preference 199:13 199:19 219:16,19</p> <p>prejudice 31:1</p> <p>prejudices 53:21</p> <p>prejudicial 30:15 31:6</p> <p>premises 149:21</p> <p>prepare 30:19 31:8,10,13</p> <p>presence 53:18</p> <p>present 2:14 30:23 54:11 67:14</p> <p>presented 13:25 184:7</p> <p>presenting 20:3 55:4 60:21 84:9</p> <p>pressure 188:14</p> <p>pretty 44:15 74:24 80:8 119:13 151:13 201:12,14 221:9</p> <p>preventative 223:13</p> <p>previously 57:11 59:3 67:7 92:18 102:10 181:6</p> <p>primarily 11:16 188:11 200:17</p> <p>primary 62:18 103:23 127:3,8 155:14 160:23 161:10,12 170:9 188:12 189:11 223:24</p> <p>principal 2:4</p> <p>prior 53:4 57:4 98:4,7,10 99:1 118:13 119:7</p>
--	--	--	---

121:8 125:18 143:18 145:8 149:18 private 91:10 95:7 98:15 100:4 145:15 186:12,17 195:3,4 210:10 prized 104:9 proactive 186:9 202:15 probably 20:7 98:24 110:24 111:1 127:7 154:25 164:13 193:9 problem 32:18 procedures 13:9 148:25 161:16 181:20 191:3,6 proceed 8:5 14:5 17:7 19:18 25:17 34:19 38:20 46:15 54:10,18 56:3,4 57:8 60:14 71:25 79:13 90:12 92:24 108:17 117:5,19 211:4 proceedings 1:14 229:8 process 68:9 96:15 96:17 104:16 112:3 123:4 124:22 186:14 190:23 193:17,20 196:13 213:10 processed 206:24 processes 65:8 67:2 199:4 processing 193:2 193:7 198:9,13 199:6 225:9 procurement 92:13	produce 82:13 profession 96:3 101:9 professional 98:17 professions 99:22 101:5 proffer 228:12 program 202:17 219:25 220:15 project 105:6 promised 52:24 promoted 143:5 213:14 promotion 93:18 142:13 proof 54:8 210:24 proper 8:11 17:5 46:24 proposed 74:11 protection 24:18 protocols 176:22 191:13 prove 210:25 provide 8:24 9:23 30:9 56:12,14 64:11 67:14 70:11 70:17 110:6 139:16 143:3 148:7 161:9 162:25 163:24 169:18,22 185:12 198:6 200:22,23 200:24 210:24 provided 11:4,4 22:9 30:11 56:5 64:5,6 68:5 92:10 102:23 130:17 136:4 176:19 212:16 218:18,22 219:5 provider 87:18 178:25 provides 67:21 200:16	providing 58:16 99:17 121:8 128:3 130:9 138:6,15 143:1 155:19 161:8 180:1 181:18 183:24 188:15 220:24 225:2 prudently 11:11 pull 136:7 151:21 155:13 194:25 208:14,25 209:11 pulled 189:6 purchase 92:13 purpose 29:16 61:9 94:8 208:16 purposes 22:7 166:12 209:8,22 pursue 120:5 purview 168:7 push 46:6 169:9 pushed 46:3 put 41:16,17 81:11 84:23 85:2 120:6 132:14 153:17 155:14 189:14 204:14 208:14 putting 59:13 152:2 186:5 q qualifications 11:12 86:17 135:3 137:5 qualified 61:13 86:11 111:12 204:15 qualify 165:15 quality 175:4 quarantined 223:14 question 22:5 26:17 43:19 45:22 57:3 63:20 75:12	78:15 90:24 103:1 109:3 111:17 120:19 128:22 140:2,3 160:8 162:15 173:19 182:3 224:16,18 questions 18:24 20:6,7 21:20 22:19 25:19 29:8 29:19 34:4,11 36:3,9 38:3 42:17 42:19,24 45:24 51:6 55:5 60:22 61:11 70:25 71:20 73:9 77:25 78:8,9 80:17 88:15 90:7 93:5 110:14 130:14 140:12 154:18 217:14 224:16 227:10 quick 57:3 quickly 89:5 102:18 133:24 quite 31:23 133:15 134:20 quote 202:2 r r 2:1 118:1,2 142:9,9 210:2 radiology 183:2 184:6 raise 34:14 103:24 raised 217:3 ran 81:17 range 122:5 132:19 137:10 ranges 132:17 rapid 129:9 130:12 rate 97:2 164:15 164:17 177:22,22 rates 91:20,21 97:3 115:14 202:22 222:5
--	---	---	--

rating 211:18 212:9 213:19 214:9,24 ray 140:18 rb 211:18 reach 147:7 161:4 reached 197:4,4 read 15:11 50:13 107:7 151:25 readily 31:24 reads 50:9 ready 8:4,7 13:12 14:5 25:17 108:13 reaffirm 162:22 real 53:19 72:20 106:4 really 24:18 28:18 45:13 53:20 62:14 71:4 96:18,20 97:7 103:3 104:6 104:8 114:16 132:16 141:20 155:23 165:1 172:12 200:18 201:1 209:9 reason 8:12 9:2 24:9 38:9 40:10 80:9,11 97:21 104:12 108:24 109:4,6,10,11 114:11 116:8 139:12 152:2 reasonable 30:9 228:9 reasons 102:21 103:10 172:12 181:11,17 194:12 rebuttal 227:19 recall 59:12,13 79:25 85:4 98:13 99:21 103:20 107:1 110:23,24 112:24 113:13,20 113:24 165:21	receive 8:22 23:18 43:11,23 59:10 73:15 103:12 108:5,7 124:11 133:6 157:2 160:16 161:24 164:10 169:7,10 169:24 173:13 179:23 181:16 183:23 196:21 201:25 206:23 210:20 216:10 222:7 received 8:12,25 9:13 15:22 16:5 16:21 21:10,11 22:15 26:9 35:24 36:11,12 40:23 42:13 48:19 49:19 50:22 56:9 72:24 73:4 77:6 93:18 104:23 106:8,9 108:21 109:22 123:3 128:5 133:11 139:14 140:3 147:12,14 153:19,23 156:1,4 156:24 161:21 162:23 164:12,23 164:25 166:3,22 167:22 170:19 172:7,24 176:14 176:16 180:3 193:16 195:12 196:7 203:13,17 210:18 211:6,12 214:10 receives 96:16 123:5 213:15 receiving 8:16,19 9:14,15 10:21 44:1 59:4 77:11 79:25 124:9 149:6 164:6 193:18	recess 29:3 60:13 71:12,16 83:10 116:21 141:4 173:21 reclassified 173:7 173:9 recognition 67:22 68:6 recognize 14:23 21:4 23:3 25:21 39:22 41:5 47:11 49:6 50:2 55:10 recognized 64:12 68:10 186:7 recollect 64:8 recollection 204:4 216:21 recommend 97:4 111:2 recommendation 97:12 111:7 137:6 recommendations 137:14 recommended 100:11 124:23 recommending 121:25 125:14 record 14:14 16:24,25 18:21 19:12,14 22:1 29:10 37:19 45:4 45:6 47:13 50:13 54:10 56:17 79:9 89:9 117:24 120:17 142:7 210:21 228:24 recross 4:24 5:5 5:17 110:18 114:6 226:17 recruit 94:11 99:10 102:9 103:6 114:21 151:18 210:7 219:18 222:24 223:3	225:25 recruited 61:20 126:3 179:16 197:8 recruiting 96:23 98:19 115:16 163:10 221:14,24 222:7 recruitment 61:17 61:19 95:20 96:21 99:13 111:25 114:17 115:25 118:14,17 119:8 119:10 120:15 126:25 127:2 142:22 143:24 177:9 209:18 210:3,12 recruitments 100:4 redacted 24:17 redirect 3:12 4:7 4:23 5:4,6,16 27:23 44:5 68:19 108:18 110:16 113:5 115:7 225:13,15 refer 135:14 169:5 reference 61:23 130:15 147:25 183:1 209:10 212:14 referenced 134:11 204:3 216:10 referencing 62:4 referred 131:20 referring 70:6 88:24 121:2 129:10 135:15 refresh 216:21 refused 8:24 regarding 17:6 21:13 23:7,8 30:25 105:25
---	--	---	--

107:8 129:20 regardless 91:14 99:11,13 101:11 125:1 206:13 region 143:10 regions 205:22 registered 178:14 178:17,19 179:19 180:4,23,25 181:5 181:13,22 183:14 registrar 217:23 registration 181:13 regular 68:8 regulations 12:12 16:15 101:21 105:14 134:10 135:24 136:6,23 137:22 138:15 195:7 207:14 related 36:11 74:19 77:6 94:24 105:8 119:12 144:3 147:2 191:3 199:2 206:10 223:7 relation 107:6 129:9 relations 18:6 142:23 143:25 releasing 148:9 relevance 18:15 40:21 218:24 relevant 224:11 relocation 61:17 61:18 119:9 130:19 209:18 210:2,3 remain 69:14 181:8 remained 69:15 remarks 47:16 159:11	remedy 54:13 remember 35:10 59:24 71:7 75:17 80:7 85:7 90:17 90:20,21 110:25 160:4 166:18 185:9 189:25 remind 44:13 141:11 reminder 87:22 remote 51:12 renewants 129:15 reopen 150:2 rep 20:2 55:3 84:8 repeat 26:20 43:21 78:15 100:14 109:3 224:18 replace 218:1 224:5 227:2 replaced 91:19 149:24 replicate 114:23 report 82:24 205:22 206:3,7 222:2,3 reported 2:12 reporter 14:12 34:7,15 38:6,15 45:19 46:4,11 71:18 75:14,25 83:15,24 90:1,6 117:6,9 141:21,25 229:4,5 reporter's 7:25 55:16 reporting 49:15 207:24 209:19,20 209:21 reports 183:5 206:3 208:10,14 represent 93:4 representation 148:7	representative 34:5 60:21 representatives 10:13 117:9 represented 30:16 53:15,24 representing 10:15 26:15 34:24 51:4 57:13 78:7 80:22 88:20 reprisal 124:12 request 8:20 10:24 13:18 14:2 15:20 15:20 16:12,13 17:24 18:1,4,17 29:5 31:8 58:8 123:17 126:2 147:8,18,23 217:6 218:23 219:2 228:9 requested 97:14 122:6 requesting 148:5 requests 132:15 require 54:12 163:9 required 32:4 55:24 101:5 131:13 146:16,18 151:8 199:16 requirement 18:5 57:21 219:16 requirements 129:25 150:11 219:3 requires 171:2 research 16:11,13 researched 16:14 reset 141:2 resign 202:10 resource 118:4 142:20 resources 96:13 96:22 115:18	142:11,15 143:21 143:21 205:19 215:24 respiratory 178:14,17,19,20 179:4,6,11,19 180:4,19,23,24 181:1,4,5,21 183:14,15,19 185:16 186:2 187:17 222:17 respond 48:7,9 208:3 responded 107:4 108:3,8 217:2 responders 58:21 58:25 164:3 responding 88:23 101:9 response 17:23 42:13 90:22 92:2 92:12 107:16,19 107:22 155:10 156:15 158:1 169:10 193:14 196:11 220:24 responses 130:1 141:22 172:19 responsible 30:5 65:7 109:18 137:4 142:19 172:17 174:17 175:14 190:19,22 191:2 191:14 193:6,23 196:13 200:16,25 205:14 215:24 225:9 responsive 101:6 rest 130:11 163:25 166:13 168:3 195:17 restates 130:25 restructured 205:11
---	--	---	--

rests 5:8,19 116:15,16 227:18	68:12,22 69:1,6 72:25 73:15 77:6	166:3,23 167:11 167:23 168:10,25	216:6,17,18 222:2 222:2
result 10:3	80:25 84:23 85:3	169:24 170:19	reviewed 136:13
retail 221:15	85:10,12 86:4,5	171:14 172:7,24	151:2 152:9 153:8
retain 11:11 27:2 37:4 43:5,6 52:12	87:3 90:25 91:3,5 94:2,8,9,18,20,22	174:3 176:6,14,16 178:12 179:23	157:20 158:2
66:19,25 81:15	95:4,9,15,17,22	180:16 181:16	reward 145:5
91:8 94:4,11,23	96:5,8,9,16 97:4	182:13 183:23	right 22:20 28:9
95:5,21 96:3,13	97:18,23 98:3,5	184:25 185:22	28:24 30:23 31:7
97:14 98:22 99:10	98:14,25 99:13,17	187:5 190:4	31:12 34:14 38:13
102:6 103:24	102:3,5,11,22	192:19 194:15	39:16 40:10 44:9
104:6,23 109:14	103:2,11,17,18,25	195:12 196:1,7	47:22 70:22 73:4
114:21 121:16	104:13,16,22	197:18 198:7	74:6 75:3 76:10
130:4 131:6 144:8	105:9,18,21,25	200:3 201:3 205:3	76:10,11 79:6
145:4 148:16	106:1 107:8 108:6	206:14,21 207:5	80:18 83:6 85:16
149:9 150:16,16	108:21,25 109:7,8	207:17 208:12	85:25 94:1 106:25
156:13 172:10	110:22 111:8	209:13,16,18	116:4 121:24
176:17 177:2	112:1,2,11,24,25	210:1,3 215:14,17	132:4 134:10,17
210:16 223:22	113:7 114:9,13,17	215:21 216:7,11	137:5 156:25
225:24 226:7,8	115:11,25 118:23	220:7,20 221:6	158:22,22 159:6
retained 7:25	119:1,6,9,18,22	226:7,19,23 227:6	165:1 166:6
67:15 91:18	119:24 120:11,13	retentions 13:7	171:24 175:24
retaining 27:5,9	120:15,20,22	100:10 101:13	182:18 219:11
67:8 68:14 69:8	121:20 122:3,9	retire 202:9 221:5	221:11 227:9
91:16 101:11,14	123:5,12 124:5,7	retirement 194:14	rights 148:6
170:12 199:5	124:17,19 125:17	202:14	risk 9:5,7,10 98:21
retention 8:13,14	126:2,9,15,17,18	reusable 198:16	201:15 207:16
8:17,19 9:13,14	127:1 128:9	reuse 198:19	rn 21:16
9:16,20 10:2 11:3	129:20,21 130:19	review 11:25	rns 65:19 131:20
11:5,6,9,15,25	131:16 132:13,20	14:21 15:10 22:22	221:24
12:4,8,14 23:12	132:22 135:18,20	41:4 97:11 125:15	robin 44:19
24:9 25:24 26:2,3	136:11 138:15	127:20 135:19	rock 149:17
27:2,12 35:25	139:1,4,21,25	137:2 151:3,4	163:17
36:16,18,24 40:22	144:6,7,13 145:3	153:7 157:24	roger 45:16
43:1,4,12,15,24	145:9,11,17,21	160:9 162:16	role 20:15 87:14
44:2 47:17,18	146:9,12 147:3	167:10 168:24	119:3,7 122:8
48:3 51:8,13 52:7	148:14,15 150:11	171:14 174:3	127:2 189:1 222:1
52:11,14 55:21	151:11 152:5	178:11 180:16	roles 181:7
56:7 58:5,13,17	153:19 154:24	182:12 184:25	roll 31:25
59:5 61:14,16,19	155:2 156:1,12,24	186:14 187:4	room 24:3,22 53:7
61:24 62:3,4,7,9	157:15,17 159:8	190:4 192:18	53:9,11 77:13
62:13,18 64:3,9	160:9,16 162:16	195:25 197:18	82:24 149:4
65:25 66:1,8,13	162:23 164:7,12	200:2 205:3 207:5	174:19 179:13
67:16,18,20,23	164:23 165:18,20	210:21,22 211:5	184:7,8 188:8,14
			189:9

rooming 87:17 rooms 77:3,22 110:4 174:20 176:21,21 200:23 roughly 118:9 rounds 5:10 117:16,25 118:2 routine 68:8 routinely 63:8 rpr 2:13 229:16 rr 207:23 rrr 49:15 209:17 rs 119:8 rule 18:19 run 185:20 194:6 201:13 running 165:10,16 193:23,24 rva 137:18	202:8 203:4 207:22 209:20 212:9 scary 38:3 schedule 161:4 184:9 227:24 228:18 scheduled 148:24 scheduling 161:6 scientists 191:12 scope 133:7 148:6 scopes 198:17 screen 121:3,5 screening 68:7,9 scroll 130:22 155:24,25 second 14:21 17:18,20 49:8 55:15 61:1 106:15 106:21,24 107:17 129:3 143:23 153:17 159:4 221:19 secondary 157:24 secretary 15:5 section 119:10 134:19 136:5 151:10 175:15 sections 12:19,19 136:10 sector 91:11 95:7 98:15 100:5 145:15 186:12,18 195:4,4 210:10 security 24:17 58:16,17 110:21 110:21,22 142:23 163:1,24 166:11 167:13,16,17 169:2,4,5,15,18 169:20 170:3 171:17,20,21 172:19 177:3	sedalia 98:14,15 see 19:9 23:24 46:5 54:14 100:4 106:22 115:24 121:3 126:7 127:13 134:25 135:6 137:6 140:10 151:3,7 153:5,9 156:7 160:24 175:25,25 176:1 185:20 186:4 194:24 212:15 seeing 100:3 148:23 177:18 seeking 177:13 179:18 select 8:16,25 63:18 semi 205:10 send 15:17 32:14 32:15,15,16,16 33:12 51:25 57:22 193:4 sending 61:9 senior 2:3 sense 101:9 sensitive 30:25 sent 15:13,15,16 15:18 16:6,11,22 21:6 32:23,25 50:4 82:22 130:13 133:8 163:19 sentence 18:4 separate 105:10 139:23 153:4 206:8 209:22 separated 140:9 separates 146:22 separating 131:19 139:2 separation 132:18 september 47:6 56:24	sequentially 49:25 series 131:22 166:6,12 172:4 173:10 192:7 service 11:12,14 11:17,19 12:8 95:21 120:3 124:8 131:6 135:8 137:13 144:12 146:15,17 150:25 151:8 169:7 177:2 186:17 194:11,23 194:23 198:1,3,9 198:14 services 11:12 26:19,19 62:24 65:7 110:3 143:9 145:25 148:22 161:8 165:5 169:18,21 176:17 181:19 183:24 196:10 220:25 set 18:6 229:7 setting 109:17 settings 187:23 seven 76:23 118:15 146:5 201:24 severely 53:21 sf 47:14 49:8 74:11,21 158:4 209:5 213:4,5,8 213:16,17 214:6 214:21 shakes 37:10 89:3 share 133:11 shared 121:5 130:10 sheet 155:21 shift 175:14 190:19,20 221:19 shock 156:14 shop 76:20,20,21 76:21,22,24,24
s			
s 2:1,4 5:21 6:3 7:2 118:2 157:18 safe 24:19,22 56:14,15 69:22 172:22 191:17 197:6 safety 191:9 salary 67:19,20 111:21 114:18 164:15 177:22 201:25 203:3 sanitation 174:23 190:17 saturday 221:18 saw 33:1 189:2,7 saying 13:17 27:14 32:24 82:3 140:1 146:16 154:25 182:22 190:16 says 18:4 30:8 50:7 130:24,25 147:15 152:22 157:17 175:22			

77:9 shops 76:19 short 37:14 52:23 55:6 66:24 71:12 79:3 86:1 113:8 113:11 116:18 195:8 220:16,17 shortage 123:22 123:23 shortages 88:7 shorter 95:3 129:13 shorthand 229:3,8 229:11 show 8:9 9:9 20:5 32:19,19,21 40:3 79:8 106:12 107:14 120:25 129:1 133:21 136:20 209:21 showing 40:1 132:7 209:17 shown 59:3 139:8 shows 153:12 173:14 209:5,14 211:21 214:23 shrunk 176:5 shut 163:20 165:2 side 62:1 132:12 166:6 sidebottom 3:9 19:8,15 20:13 26:14 84:25 153:18 sign 146:16 signature 107:21 127:23 147:16 229:15 signed 127:20 significant 98:21 102:7 169:25 176:24 177:5 217:19	significantly 202:22 signs 95:21 similar 104:25 127:6 144:25 176:18 181:17 183:16 187:12,16 187:22 192:3 199:1 201:14 205:24 simple 10:1 simply 129:24 132:19 single 95:2 sir 8:6 10:4 14:6 17:2 18:23 25:12 33:10 46:1 47:12 50:15 52:22 54:4 72:1,23 74:4 75:24 78:14,24 82:1 113:16 139:23 140:15,20 141:16,23 219:1 223:9 224:17,19 227:12,14 site 163:15 sites 196:20 sitting 174:19 situation 50:8,17 188:2 six 84:15 146:5 165:12 175:12 194:12 227:5 skill 91:19 94:13 94:16 96:3,24 99:9 101:14 204:1 skilled 99:9 114:21 skills 91:9,17,19 101:4 114:14 188:6 skipped 133:25 sleep 183:10	sleeping 183:9 slew 93:5 129:19 small 87:15 smart 81:3 smith 2:15 social 24:16 sole 11:24 95:8 122:2 124:25 solely 226:20 solid 191:20 somebody 61:20 99:1 104:13 128:16 153:9,9 163:5 176:20 226:10 somewhat 93:18 sonography 183:3 184:10 soon 140:17 sorry 22:9 25:1 26:20 39:19 43:21 49:2,3 51:21 55:16 61:19 75:3 76:9 98:1 106:20 112:18 130:6,7 152:21 193:5 198:11,12,25 216:18 sought 188:22,25 sounds 158:19 194:20 south 93:16 speak 20:25 22:22 30:18 65:20 75:13 88:25 97:23 125:5 208:7 speaking 199:5 speaks 50:12 61:8 124:16 150:14 206:19 special 11:13 36:12 59:11 68:3 104:24 105:1,10 135:5 144:21,25	164:15 177:22 210:19 212:11 213:20 214:25 specialist 118:5 167:19 specialized 146:2 149:11 176:23 201:6 202:20 specialties 87:14 145:25 151:15 specialty 84:12,17 84:17 85:14 126:8 161:14 194:1 200:23,24 specific 17:4 52:12 62:10,12 64:8 91:7 94:13,14,25 95:1,1 105:5,8 110:25 113:15 119:4,11 120:8,14 123:25 125:22,24 126:20 128:14 130:14 131:22 132:19 135:11,18 139:4 151:11 152:7 163:9,16 189:3 201:17,23 202:17,19 218:12 219:20 227:2 specifically 70:6 92:12 94:12 102:21 113:12 114:15 121:13,23 123:11 128:21 129:14,21 134:10 136:7 137:8 138:24 139:14 148:21 150:12 194:10 196:22 197:9 200:13 209:20 212:12 specifics 61:18 specimen 193:4 225:10
---	--	---	--

specimens 193:2,7 193:8,9	127:1 129:24	stationary 203:4	sudden 96:6
speculation 109:5	133:12 142:21	stationed 206:2	sufficient 96:13
speed 170:2	143:23 170:17	status 12:2 96:7	sugars 72:19
172:21 189:23	177:8 222:2,8,9	105:18,20 128:10	suggestion 227:24
spell 117:23 142:6	stand 110:1	128:11 162:4	suite 2:5,9
spent 143:22	standard 164:17	166:24 179:24,25	suites 200:25
spoke 57:11	213:8	stay 44:18 52:3	sum 50:16 95:19
127:19	standards 190:24	67:2 86:8 191:17	111:21 112:9,11
spoken 88:19	190:25 191:1,1,4	steam 200:17,20	sums 112:22
sponsor 217:23	standpoint 123:19	step 10:19 68:9	146:14
spots 165:7,9	124:13	107:5,22	sunday 221:18
spreadsheet	stands 39:6 134:9	steps 56:8 201:18	supervise 84:25
152:16	183:8 185:9	201:21	88:24
spring 30:13	205:12 211:18	sterile 198:9,13	supervising 119:3
sps 198:13	213:8	199:6	143:12
ssu 119:2 133:12	stanislaus 2:3	sterilize 198:21	supervision 65:10
st 145:19,23	start 34:6 37:24	steven 2:15	supervisor 24:8
193:14 196:19	46:6 71:19 90:7	sticking 30:7	27:1,17 42:7
staff 32:6 36:21	93:6 106:8 154:25	stopped 27:25	63:12 84:22 96:24
37:2,2,3 56:10,16	170:14 182:22	163:19	118:4,17 119:2
58:20,25 59:3,10	204:12 207:20	stops 146:23	124:23 174:11
61:12 62:18 63:9	210:11	strategically	175:7,11 179:21
63:11 64:6 65:22	started 8:16 51:10	11:10	190:19 206:4
66:5,19,25 67:5,6	129:19 152:21	street 2:4,9	222:8,9
67:8,13,13 69:8	163:18 164:19	strike 144:5	supervisors 32:11
69:10 100:13,19	211:7	struggle 219:21	32:12,14 41:19
101:16,19 119:17	starting 53:5	stuck 202:3	61:15 62:2 133:12
120:2 121:9	98:19	stuff 205:17	168:11 174:9
125:25 126:1	starts 96:17	228:21	supervisory
130:4,11 131:6,7	175:18	subject 11:24	130:11 174:25
131:10 145:12	state 16:24 117:23	18:21 27:6 42:13	190:20
149:2,11 155:9,9	142:6 197:5 229:4	107:3,5 216:23,24	supplement
163:1,4,25 165:19	stated 11:9 17:25	submit 228:2	183:13
171:3 174:15	18:16 51:7 56:7	submitted 8:20	supplemental
176:20 188:11	69:7	50:10 199:23	208:2
191:16 201:9	statement 3:3,4	subspecialty	supplied 123:25
220:12,16 224:10	8:5 13:4,21 74:16	35:11,13	supplies 64:7
225:18	86:19 113:23	substantial 92:1	92:13
staffed 66:24 86:1	124:8 158:19	substantially	supply 197:21,24
113:8,11	210:21	193:25	198:2,8 199:6
staffing 88:6	statements 74:14	subzero 196:24	support 120:8
96:19 118:5,14,17	states 10:15 99:15	success 163:10	131:10 155:18
119:3,9 126:25	132:21 194:10	successful 122:14	160:12,15,20
	202:21		163:4 176:19

177:12 220:12 supposed 196:17 sure 12:18 16:16 17:6 44:15 54:14 54:25 60:23 66:25 67:15 69:19 80:8 89:16,17 111:18 112:14 116:24 122:18 128:1,4 130:22 132:14 148:4 158:24 160:20 164:1 165:14 167:9 175:5 190:21,23 205:12 208:1 218:12,16 220:11 220:14 224:18 225:4,21 surg 109:13 surgeries 148:25 174:22 surgery 146:1 161:15 surgical 72:9 73:21 198:17 survey 177:25 203:3 sustain 9:18 swab 224:1 swear 14:12 38:15 46:11 71:18 76:1 83:24 117:10 141:25 sweet 37:14 52:24 55:6 79:3 switched 217:21 sworn 34:14 symptoms 179:6 system 91:6 93:16 101:13 111:5 179:4 185:11 199:14 209:11 213:13	systems 93:15 169:13 205:15 218:6 t t 5:21 6:3 7:2 take 25:18 47:10 56:8 60:6,8 62:20 70:19,20 71:11 72:18 76:8 81:18 83:6,9 110:5 115:15 136:5 140:23 173:20 182:11 189:24 198:16 204:15 217:18,20 223:13 taken 93:14 156:8 220:9 takes 76:24 165:11 177:11 201:7 218:1 talent 146:8 179:18 talk 33:25 34:2 38:5,11 45:12,21 54:6 59:24 71:7 75:18 83:18 89:18 116:25 141:13 228:1,7,20 talked 32:2 46:22 106:3 129:22 207:7 talking 34:6 54:2 70:1,5,13 112:1 113:15 128:14 129:12 152:16 189:24 190:12 209:2 224:10 227:23 talks 131:4 targeted 67:5 124:4 131:22 139:15 taxpayer 215:23	tdb4970676 1:25 team 50:9 63:1,5 126:23 133:10 143:14 155:18 196:10 teams 125:7,11 133:12 tech 39:1 72:6,11 72:14,15,16 73:19 76:22,24,24 183:2 185:7 187:7 188:10,18,19 225:9 technician 182:15 185:3 192:21,24 192:25 194:2 technicians 182:21,23 183:22 187:17 188:11 193:6,22 194:11 194:25 197:21,25 198:2,8 220:18 technologists 193:5 194:18 technology 70:11 70:18 205:13,21 206:5 techs 183:6,7 184:10 186:3,13 187:9,11,11,16 199:6,6 220:20 221:1 222:17,21 225:5,8,18 telecommunicat... 205:16 teleconference 90:2 telephone 161:5 telework 67:9 88:4,23 teleworking 69:17 69:23 87:9,12 tell 22:11 39:6 44:16 57:14 65:3	70:20 93:8 119:5 120:10,19 129:4 129:17 132:9 134:7 136:22 141:11 150:7 160:18 169:4 175:22 185:5 190:12 196:6 207:24 213:2 214:19 227:15 228:1 tells 209:12 211:16 216:7 temperature 196:24 temperatures 196:17 temporary 129:7 129:15 130:15 131:9 tend 188:6 tent 223:19,23 224:21 term 129:16 terminal 174:21 terminate 122:21 126:4 153:5 terminated 124:10 124:12 156:10 termination 25:24 153:15 terms 10:2 131:1 132:14 test 24:3 185:10 185:20 tested 23:24 35:20 39:8 testified 14:16 19:16 22:15 33:21 34:17 37:25 38:18 43:14,15 46:13 54:20 60:16 68:21 71:23 76:3 79:11 83:13 84:2 90:9
---	--	---	---

117:17 138:25 141:8 142:2 156:23 218:19 219:6 220:6 testify 16:19 50:15 71:19 testifying 22:13 33:3 34:4 75:21 113:18 testimony 8:9 17:6 33:25 34:2 38:12 45:13,18 59:25 60:1 68:25 71:6 73:14 75:18 76:7 83:18 87:2 89:19 89:20 91:22 108:20 109:21 117:1 139:20 141:13,15 210:17 210:19 222:16 226:19,22 testing 196:18 223:20 224:6 225:3 tests 148:25 183:10 193:17,18 193:20,24 194:4,6 223:25 224:21 225:2 text 176:5 thank 12:23 18:23 19:3,5,6 20:19 22:20 24:23 26:16 28:10,12,14,21 37:11,14 38:14 44:9,11 48:25 49:25 50:1 52:25 57:7 59:19,22 60:1,3 62:20 71:9 71:10 74:9 75:23 78:25 79:1 82:1,2 89:5,8 90:11 108:2 113:3,25 115:3 116:2,9,11	117:4,13,20 140:15,20 150:6 171:12 173:12 180:9 216:22 227:14 thanks 14:4 25:16 28:22 46:8 74:7 79:4 116:12 therapist 180:24 181:1,22 187:17 therapists 178:15 178:18,19 179:20 180:4,20 181:4,5 181:14 183:14,15 186:2 222:17 therapy 219:25 thing 28:16 59:23 75:17 130:25 141:20 147:13 161:14 196:22 198:19 201:17 things 33:24 37:24 45:11 83:14 91:17 91:20 92:10,11 97:2 102:11 103:6 105:11,15 122:17 126:8 129:16 144:3 149:1 169:15 179:14 182:24 183:10 188:16 227:6 think 23:15,16 30:6,24 37:1 40:8 41:22 43:2 44:14 50:11 53:8 61:23 82:20 86:13 89:15 89:24 98:11 103:19 106:3,17 114:14,15 116:8 125:25 130:21 134:11 139:7 155:12 196:24 200:21 228:2	thinking 185:25 thought 18:12 106:15 133:13 180:8 181:15 thousands 151:20 151:20,21 three 84:18 115:20,20 119:8 143:22,23,24 144:1 166:18,19 174:9 176:5 throat 130:7 tied 138:4 144:20 156:12 198:25,25 200:13 212:10 till 138:16 227:25 time 15:15 17:25 23:19 24:2 28:13 30:10,19 31:2,8,9 31:13 36:22 54:13 57:4 58:14 67:21 71:9 77:4 89:6,15 92:21 93:25 95:3 97:20 98:18 99:4 99:5,16,21 103:21 110:24 111:1,11 114:21,25 115:22 116:10 118:11 123:8,9,18 124:10 128:4 131:10,24 132:25 136:14 138:9 142:14 143:13 144:24 146:24 147:22,23 154:3 157:21,23 158:3,6 159:19 161:9 164:13 165:12 168:9,17 173:15 176:25 184:1,12,16 189:11 191:11,21 193:17 199:17 201:4 204:13 211:6 213:14	216:25 217:12,22 218:1 220:24 221:3,13 223:15 228:2,4,8 229:6,9 timely 91:20 times 85:23 87:10 88:7,10,11 106:4 115:12,20,20 tiny 138:21 155:23 title 9:12 20:22 21:17 65:12,12,21 93:8 118:3 129:22 132:18,19 134:9 142:10 175:17 224:9 titles 203:6 today 8:8 10:17 11:2,3 18:16 26:15 31:2 32:2,3 32:13 35:24 36:9 42:24 44:16 51:6 57:13 73:14 75:4 78:8 90:18 103:16 106:3 107:1 139:8 164:24 191:24 210:17 told 31:4 32:7,19 33:5 37:13 48:1 51:15 79:2 80:12 82:24 94:2 228:3 tomorrow 140:20 ton 140:24 tongue 198:25,25 tool 11:10 12:14 94:4,10 98:7 119:24 121:15,20 144:7 145:3 148:16 tools 114:19 top 21:6 47:21 59:12 67:20 145:17 147:14 topeka 193:19 197:5
---	---	---	---

total 140:10 208:18 touched 162:21 190:11 town 82:19 track 209:24 trades 204:1 train 223:25 trained 22:5 163:22 165:13 trainee 143:23 training 86:24 149:22 155:15 163:9,19,21 170:1 172:14 183:16,16 191:7 201:8 217:18,20,22 218:3,8,9,10,12 218:17 224:3 transcript 1:14 227:25 229:11 transformed 135:1 trash 110:5 traveling 151:19 treasurer 15:5 treated 11:8 16:16 109:19 128:18 162:3 treating 35:20 treatment 179:2 185:21 220:4 treatments 178:20 178:22 183:18,19 trickle 191:7 tried 115:19 151:22 triggers 213:12 trouble 170:17 191:22 truck 28:25 true 78:13 109:4 146:19 208:11 210:21 229:10	truman 98:12 truomy 2:16 truong 33:7,14 82:10 try 202:16 trying 32:22 41:19 115:24 130:1 131:8 132:13 153:9 186:9 203:1 turn 150:5 167:8 173:24 176:21 178:10 180:15 184:23 192:16 turnover 91:21 96:20 97:2 102:7 102:16 103:5 115:14 177:6 tv 77:15 tv s 76:25 twice 44:22 two 18:3,15 43:15 72:15 93:22 95:18 115:20 118:9 122:19 126:7 127:13 139:2 143:18,25 145:17 155:17 165:7,9 176:1,2 193:15 196:20 203:18 twos 103:9 type 103:25 116:1 125:13 131:4 161:15,16 174:23 179:6 188:16 194:16 199:13 203:5,6,22 209:12 types 149:1 typically 67:19 86:3 122:4,22 129:10 187:14	uh 12:24 33:22 34:12 36:14 41:18 49:12 55:13 77:1 86:16 88:9 171:7 209:4 225:20 227:8 ulp 217:9 ultimate 207:6 ultimately 58:9 ultrasounds 183:4 uncontacting 30:12,13 underappreciated 198:23 underlying 131:3 underpaid 164:14 understand 18:18 22:11 32:1 86:4,5 89:17 116:24 understanding 17:4 31:22 55:22 58:7 63:17 81:5,7 107:8 108:4 124:9 understood 27:8,9 67:1 75:22 111:19 117:3 undocumented 9:1 unduly 75:20 unfairly 16:16 unfortunately 177:21 uniform 51:22 57:18 union 1:6 2:2 3:3 3:6 4:3 5:8 6:5,6,7 6:8,9,10,11,12,13 6:14 8:8,20 9:18 9:23 10:13,23,24 14:16 15:7 16:1 17:1,2,3,10,12,15 18:9,16 19:16,19 21:1,23 22:24 23:1 24:14 25:3,8	25:11 26:7 34:17 38:18 39:14,17,20 40:19 41:1,3 42:9 46:13,16 47:9 48:16,20,23 49:17 49:21,22 50:20 53:13 54:20 55:8 60:16 61:1 71:23 76:3 79:11 84:2 90:9 108:4 116:15 116:16 147:7,11 147:12,14 209:2 216:13,16 217:3,5 union's 10:6 59:2 147:23 unique 9:6 11:12 123:7,12,13 126:6 139:15 169:23 unit 10:20 12:2,9 28:1 32:6,21 68:12,15 72:10 73:22 109:13 114:10 120:8 123:13 125:24 126:16 128:16,17 162:4 166:15,21 166:24 168:15 170:17,21 175:9 176:10,13 179:20 179:22,25 181:25 184:14 195:14,17 215:14 united 10:15 99:15 units 96:21 149:5 155:4 179:12 unknown 8:19 unplanned 130:1 unplug 106:14 unquote 202:2 updates 222:7 upper 21:16 urgent 71:12
	u		
	u 118:2 u.s.c. 209:15		

usa 217:21 use 55:24 85:9 92:8,11 126:9 130:8 131:13,23 137:18 140:6 148:8 159:14 194:6,19 197:6 198:21 201:2 203:5 215:24 users 145:17 usually 219:10 utilities 200:19 201:1 utilize 98:3 120:1 125:17 130:8 145:9,16 188:6 utilized 91:5 utilizing 92:21 129:12	vacancies 96:7 111:5 115:14 131:8 219:8 vacancy 91:20 97:3 106:5 189:1 222:5 226:1 vacant 102:8 114:24 vaccination 196:12 vaccine 196:14,16 196:22 220:10 valuable 148:17 148:18 value 17:7 67:1 145:1 vanreed 4:8 33:12 37:17 71:22 73:12 156:1,23 210:24 vanreed's 157:15 158:4 variables 123:18 126:12 variant 119:10 variety 161:2 174:22 182:23 194:22 200:9 208:4 various 10:25 194:12 vas 143:10 165:5 vascular 146:1 vastly 11:7 verbalize 75:13 83:16 141:21 versa 124:4 versed 144:3 version 187:18 versus 95:3 101:16 103:9 105:9 109:15 115:21 127:8 137:9 175:19 203:17 209:3	veteran 198:20 veteran's 47:3 93:16 veterans 1:8,9 10:16 56:15 67:11 143:6,9 160:24 178:21 191:16 199:13 219:17 220:3 vets 199:14 vetted 100:11 vha 92:1 143:6 vi 120:14,21 vice 124:3 video 67:10 70:8 70:16,17 87:25 videoconference 4:20 90:10 117:18 violated 8:10 virtual 87:17 117:14 161:6 virtually 117:10 181:9 virus 8:17 visits 87:18 visn 95:12 118:6 118:20,22 119:17 132:18 133:9 142:12 143:8,8,10 143:16 145:18,23 165:6,7 168:5,10 172:18 193:14,16 196:20 205:20,25 222:9 vital 177:17 219:7 vitals 72:18 vivian 42:5 43:12 43:23 volume 194:1 vvc 70:8	203:20,21 wait 158:13 227:25 waiting 82:18 83:1 waiver 219:20 walgreens 194:4 walk 32:12 39:9 want 14:8,21 20:24 24:24 25:13 29:21 45:14 54:14 59:25 75:7,20 83:6,8,20 89:16 89:19 98:22 102:16 116:24 121:13 131:23 141:11,14 148:17 161:18 164:21 184:11 189:15 199:10,15 225:21 228:20 wanted 67:1 111:18 112:13 159:4 163:24,25 wanting 150:23 wants 73:9 122:21 ward 127:7 160:23 161:3,7 warrant 137:8 warranted 125:22 126:5 156:22 watched 163:6 water 200:17,17 200:19 way 16:20 46:3 50:15 53:20 63:10 95:24 119:14 124:24 149:24 175:21 178:1 190:15 194:20 201:18 210:14 216:1 ways 66:24 146:11 210:5
v			
va 9:3,4 11:9 15:6 15:19,22 27:10 35:2 38:25 47:1,5 50:10 56:18,21 57:4 58:2,6 62:22 63:22 67:3,10 70:8,16 72:5 76:11 79:17 80:22 84:11,14 98:12 101:20 105:14 111:2,4 118:15 119:1 120:21 121:10,21 122:16 127:19 130:9 134:20,21 135:5 135:14 138:24 139:14 142:16 143:19,20 144:23 145:9 149:13,14 149:14,16,19,20 150:8 155:1 163:9 164:4 171:22,23 172:15,17 181:3 191:15 202:5,16			
		w	
		wage 174:24 175:8 177:22,24,25 201:17 202:18	

we've 29:8 32:2 89:24 90:16 191:23 207:7 weapon 165:14 weeds 199:10 week 82:9,15 85:18 104:1 151:21 228:14 weekends 221:17 weekly 146:20 weight 17:5 18:21 18:21 22:2,3 42:14 188:13 welcome 44:12 went 19:9 51:11 83:19 134:6 164:14 189:6 wg 175:7 wgs 176:1 whatnot 121:16 132:23 wichita 193:20 197:4 wide 174:22 187:20 194:22 witness 14:8,9 16:9,10 19:6,7 20:12,16,18 24:21 26:10 28:12,16,20 30:9,14,21,24 31:18 32:4,13,20 33:9,17,22 34:9 34:12 36:2 37:22 38:1,7,13 42:15 44:9,12 45:16 46:1,7 50:23 53:5 54:12 55:9 57:1,6 59:22 60:3 64:20 64:23 71:10,21 73:7 74:6,9,23,25 75:9,15,22 78:3 79:1,6 80:15,18 82:5 83:22 88:13 89:8,12,22 92:23	111:22,24 112:12 112:15 116:11,14 117:3 140:18,22 141:9,16,18,23 198:12 225:11 witnesses 3:6 4:3 5:9 29:2 31:20,23 32:9,20 45:18 75:17 83:21 117:15 141:15 227:17,20 wls 175:25 wonderful 82:25 word 189:24 194:19 206:6 wording 52:14 words 119:23 work 17:9,10 39:2 41:20 64:12 65:25 66:3 76:19 77:14 77:21 85:17 86:8 86:11 88:6 96:25 97:15 118:13,16 118:22,25 143:19 168:3 174:24 175:6 179:1 198:9 198:12 199:15,16 203:5,6,22,23 204:2 206:2 219:25 221:15,17 221:19 worked 32:9 35:2 43:8 56:20 84:13 85:6 100:10 101:12 103:16 105:6 118:14 119:8,17 161:10 225:18 worker 76:12 102:2,4,15 203:17 workers 21:11 102:24 151:16 201:7 203:24 204:5,13 206:18	workforce 91:9,16 132:11 223:5,11 223:17 224:7,24 224:25 226:6,8 working 9:12 15:21 23:20 35:10 51:11,12 69:9 76:19,23 78:18 100:3 109:6,12,16 115:17 119:6 179:9 194:25 210:11 workload 193:25 works 21:15,16 86:10 201:19 worry 134:3 worth 176:6 write 13:1 228:18 written 134:24 wrong 107:18,24 wrye 15:14,14,16 16:18 17:9,11 29:22,24 30:2 44:17 83:2,3 113:14 147:15 wrye's 16:11 17:6 ws 175:10 176:12 wss 175:25 wymore 4:17 37:17 44:17 84:1 88:18	143:20 147:4 150:6,8,18 153:12 153:25 156:7 158:9 159:3 161:23 177:17 179:5 181:20 184:4 191:20 199:1 203:2 206:22 211:3 213:7 219:13 225:14 227:8 year 80:3 91:7 105:7 123:15,15 129:11 163:20 164:19 173:6,9 194:10 208:17,19 year's 214:10 yearly 202:1 years 35:3,7 47:7 72:15 76:16,23 79:21,22,24 84:13 93:22 118:9,15 143:20,22,23,24 144:1 164:13 197:6 201:8,8,25 yep 17:20 25:15 yesterday 31:21 82:13 140:19 york 163:14 young 82:5
		x	z
		x 3:1 4:1 5:1,21 6:1,3 7:1,2 140:18	z 118:1 zachariah 5:10 117:16,25
		y	
		yard 110:5,6 yeah 21:25 31:16 45:1 46:7 47:18 50:3 54:16 55:11 60:11 78:16 81:16 86:9 90:4 112:20 114:2 133:25 135:19 141:18	