

TRANSCRIPT OF PROCEEDINGS

IN THE MATTER OF:)
)
ARBITRATION BETWEEN NOAA)
)
AND) No. FMCS-13-02465-A
)
NATIONAL WEATHER SERVICE)
EMPLOYEES ORGANIZATION)

Pages: 254 through 562
Place: Silver Spring, Maryland
Date: January 14, 2014

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BEFORE THE NATIONAL OCEANIC AND ATMOSPHERIC
ADMINISTRATION

ARBITRATION BETWEEN NOAA)
)
AND) No. FMCS-13-02465-A
)
NATIONAL WEATHER SERVICE)
EMPLOYEES ORGANIZATION)

Conference Room, 18th Floor
U.S. Department of Commerce
National Weather Service
1325 East-West Highway
Silver Spring, Maryland

Tuesday
January 14, 2014

The parties met, pursuant to the notice, at
9:41 a.m.

BEFORE: JOSEPH SHARNOFF
Arbitrator

APPEARANCES:

For the Union:

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Also Present For the Union:

WILLIAM HOPKINS
JOHN WERNER
STEVE PRITCHETT

C O N T E N T S

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
<u>For the Agency:</u>					
Laura Furgione	296	376	408	--	--
John Longenecker	415	466	470	--	--
Maureen Wylie	472	506	--	--	--
David Murray	517	547	--	--	--
	---	552	--	--	--

E X H I B I T S

<u>AGENCY'S EXHIBITS:</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>
1	277	294
2	413	415
3	297	331
4	326	344
5	332	338
6	332	338
7	364	414
8	480	497
9	496	498
10	498	499
11	499	502
12	502	505
13	521	522
14	540	541

E X H I B I T S

<u>UNION EXHIBITS:</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>
78	260	264
79	260	264
80	260	264
81	260	264
82	260	264
83	260	264
84	260	264
85	266	---
86	380	552

P R O C E E D I N G S

(9:41 a.m.)

1
2
3 ARBITRATOR SHARNOFF: Back on the record.

4 Okay. I want to just remind you that you're
5 back under oath from your previous testimony.

6 Whereupon,

7 DANIEL SOBIEN

8 having been previously duly sworn, was
9 recalled as a witness herein.

10 MS. CIOFFALO: Oh, we actually don't have
11 any cross-examination for this witness.

12 ARBITRATOR SHARNOFF: After that vigorous
13 non-cross-examination, do you have any questions?

14 MR. SOBIEN: And I didn't lie to anybody all
15 night long.

16 (Laughter.)

17 MS. CIOFFALO: I appreciate that.

18 ARBITRATOR SHARNOFF: Is there anything you
19 want to add?

20 (No response.)

21 ARBITRATOR SHARNOFF: Okay. You are
22 excused. Thank you very much.

23 (Witness excused.)

24 MR. HIRN: All right. So you can move over
25 here.

1 Okay. What I have now, Mr. Sharnoff, is I
2 have identified a number of additional -- I've marked
3 for identification a number of additional Union
4 exhibits, which were some of the Agency's responses to
5 our information request over the past number of
6 months. And they are before you there. They're
7 numbers 79 through 83.

8 ARBITRATOR SHARNOFF: What about 78?

9 MR. HIRN: 78 through 83.

10 (The documents referred to
11 were marked for
12 identification as Union
13 Exhibit Nos. 78 through 83.)

14 ARBITRATOR SHARNOFF: Okay.

15 MR. HIRN: And then No. 84 is a
16 demonstrative exhibit that I prepared extracting
17 information from two of those responses. It's
18 identified.

19 (The document referred to was
20 marked for identification as
21 Union Exhibit No. 84.)

22 MR. HIRN: And I could either offer this as
23 a demonstrative exhibit --

24 ARBITRATOR SHARNOFF: Is it like a summary
25 or a --

1 MR. HIRN: Well, if you look at it --

2 ARBITRATOR SHARNOFF: I want to get to it.

3 MR. HIRN: It's the very last page.

4 ARBITRATOR SHARNOFF: Okay. I got it.

5 MR. HIRN: If you recall, there was
6 testimony about that the hiring freeze directive said
7 to continue to fill positions for which job vacancy
8 announcements are closed by the date of the hiring
9 freeze. From the various RADS reports that the Agency
10 provided me specifically, what has been identified as
11 Union Exhibit 79E and 83, I extracted the positions
12 for which job vacancy announcements closed by the date
13 of the hiring freeze that were not filled.

14 Now I can either offer this as a Union
15 demonstrative exhibit, or I could just put it as a
16 table in my brief, whatever you prefer. I thought
17 that by giving it now, the Agency, if there's any
18 inaccuracies in it, the Agency would have an
19 opportunity to bring it to my attention or to your
20 attention. Or in the alternative, I'll just make a
21 table in the brief.

22 MS. CIOFFALO: So I won't know offhand if
23 there is any inaccuracies in these without cross-
24 checking with the documents.

25 MR. HIRN: Sure.

1 MS. CIOFFALO: Assuming that this is an
2 accurate summary of what the documents say, I have no
3 issue with it.

4 MR. HIRN: If you find anything wrong with
5 it, I'll gladly correct it.

6 MS. CIOFFALO: Yes. If this is in the
7 documents, then -- it's just without the cover.

8 ARBITRATOR SHARNOFF: Just so we can follow
9 the methodology, why don't you just go through how you
10 derived that first line, RADS No. 3194.

11 MR. HIRN: Okay. As I think Monique
12 explained yesterday, in these RADS reports, and we can
13 illustrate this by if you were to take a look at what
14 I have identified as Union Exhibit 79E.

15 Can I see the exhibit list?

16 This is a RADS report, June 13, 2013, that
17 Mr. Brooks had sent me. And the transmittal email is
18 marked as 79A. They didn't send me hard copies of
19 these. These were all electronic copies. And I have
20 included the transmittal emails with these exhibits.

21 Anyway, so you ask where does the RADS
22 number come from. As I recall Monique explaining
23 yesterday, if I have this right, when a vacancy is
24 sent to Workforce Management to be filled, it is
25 assigned a RADS number, and that number is found in

1 the left-hand column on Union Exhibit 79E, for
2 example. And they're sequential. And I provided it
3 so that one could by easily reference find it in order
4 and then find the information going across.

5 For example, if one were to find 3194, one
6 would see that it is a meteorologist intern/HMT
7 position at Paducah, Kentucky. And then if you follow
8 carefully across, and in fact, I used a carpenter's T-
9 square to follow it when I did this, you will see the
10 dates that recruitment was initiated.

11 ARBITRATOR SHARNOFF: And this if I'm
12 reading it correctly, it says R0003194 and then NWS-
13 CR-2013. Is that --

14 MR. HIRN: Yes.

15 ARBITRATOR SHARNOFF: Okay. And then just
16 continuing across.

17 MR. HIRN: Right.

18 ARBITRATOR SHARNOFF: Okay.

19 MR. HIRN: So I identified using this RADS
20 report and the most recent one that they sent me that
21 is Exhibit 83, I look to see identified the positions
22 for which vacancies were closed but for which were not
23 filled. If they were filled, there would be a date
24 for a job offer and an entrance on duty date or at
25 least a date for a job offer. No job offers were made

1 for any of these. And in fact, when examining this,
2 you can see through sequentially across the lines that
3 at some point recruitment action ceased for each one
4 of the positions that I have listed on Union Exhibit
5 84.

6 ARBITRATOR SHARNOFF: All right. Any
7 questions?

8 MS. CIOFFALO: No questions from me.

9 ARBITRATOR SHARNOFF: Okay. All right. I
10 think that, you know, covers the basic question that I
11 had in terms of how it got from hither to yon.

12 MR. HIRN: So I'll move the admission of
13 Union Exhibits 78 through 84 inclusive.

14 ARBITRATOR SHARNOFF: And subject to review,
15 and if you have any problems with any of them, let us
16 know.

17 MS. CIOFFALO: Yes.

18 ARBITRATOR SHARNOFF: They will be admitted.

19 (The documents referred to,
20 previously identified as
21 Union Exhibit Nos. 78 through
22 84, were received into
23 evidence.)

24 MR. HIRN: Now, at this point, if I could,
25 I'd like to address some of the outstanding unfilled

1 or only partially filled information requests for
2 information that we believe is necessary to include in
3 the record.

4 And I had sent Ms. Cioffalo and copied the
5 Arbitrator on December 18 a letter expressing in
6 detail why the information requests that were many
7 months outstanding were not fully responsive. And
8 some of it has been resolved since the date of the
9 letter, but there are a certain number of other issues
10 that I raised in the December 18 letter that the
11 Agency has not responded to.

12 And for ease of convenience, I have brought
13 hard copies of the December 18 letter.

14 ARBITRATOR SHARNOFF: Okay. I believe I
15 have mine somewhere. Thank you.

16 MR. HIRN: And if I could go issue by issue
17 and see if we can find some resolution to it. Two of
18 the issues arise out of Union Exhibit 79F.

19 ARBITRATOR SHARNOFF: Did you want to make
20 this an exhibit?

21 MR. HIRN: Why don't we do that, yes.

22 ARBITRATOR SHARNOFF: I guess that's what,

23 80 --

24 MR. HIRN: 85.

25 ARBITRATOR SHARNOFF: 85.

1 (The document referred to was
2 marked for identification as
3 Union Exhibit No. 85.)

4 MR. HIRN: The first two arise out of Union
5 Exhibit 79F. This is a chart that looks like this.

6 ARBITRATOR SHARNOFF: And I'm sorry. Where
7 in your letter are you referring to?

8 MR. HIRN: Okay. This is the first couple
9 pages.

10 ARBITRATOR SHARNOFF: Okay.

11 MR. HIRN: 79F was in response to a request
12 for a listing of all the outstanding senior
13 forecaster, journeyman forecaster, and HMT/intern and
14 ITO vacancies. And on July 19 -- and in that request
15 was just not a list of the request for the vacancies,
16 but what I asked was what date the position became
17 vacant, whether the Weather Service requested Office
18 of Workforce Management to initiate recruitment
19 efforts on it, and when that was, and then what is the
20 status of those recruitment efforts. That can be seen
21 in Union Exhibit 78, which are the copies of my
22 requests.

23 When the Union received in July Union
24 Exhibit 79F, we immediately noticed that there were
25 many, many vacancies which we knew that anecdotally

1 existed and were not on here. We also had if you
2 recall that there was some discussion yesterday about
3 the potential furloughs at the Weather Service that
4 did not take place. We had begun the process of
5 preparing for INI bargaining over the furloughs, made
6 different information requests there, and got a list
7 of forecaster, journeyman forecaster, lead forecaster,
8 HMT/intern vacancies, in fact all different kinds of
9 vacancies. And there were many vacancies listed in
10 that that were not on Union Exhibit 79.

11 So during the course of the summer and fall,
12 I wrote Mr. Brooks, explained the deficiencies in this
13 list. We corresponded back and forth. He
14 acknowledged that there was deficiencies and that the
15 Agency would be providing a corrected list. A
16 supposedly corrected list was provided in early
17 December, and that is Union Exhibit 82B. However,
18 there were very, very few corrections made, and there
19 still are substantial omissions.

20 I have listed those omissions, vacancies
21 that we were able to identify in other responses on
22 pages 2 through 3 of my December 18 letter, several
23 dozen vacancies that they have not included on this
24 supposedly corrected list.

25 While I was able to establish through the

1 other information responses that these vacancies
2 exist, what I am lacking and what the Union really
3 would like to have is the complete information that
4 appears in Chart 79F. Specifically, we want to know
5 when did those positions become vacant and whether
6 they ever requested Workforce Management to fill those
7 vacancies.

8 Now why that is important we believe for our
9 case, if the Agency persists in its claim that this is
10 not the Weather Service's fault, this is all Workforce
11 Management's fault, and we have no responsibility for
12 that, a claim that the Union does not accept either as
13 a matter of law or fact, but to the extent that they
14 are pursuing that argument, we would like to establish
15 that many of the vacancies exist not because of any
16 dilatory action at Workforce Management but because
17 the Weather Service never bothered to submit them for
18 recruitment.

19 And that also comes into play to the extent
20 that positions are held up by the hiring freeze -- if
21 you were to find, for example, that the hiring freeze
22 was legally permissible, but the Agency had violated
23 the other agreements by not filling the other
24 vacancies in a timely fashion before the freeze, we
25 need to show that the Weather Service had months to

1 fill the positions long before the freeze took place.

2 So basically I need to know for all the
3 positions listed on page 2 to 3 the vacancies, when
4 those positions became vacant, and whether and when
5 the Weather Service initiated recruitment actions.
6 That information, as I noted, has been provided for
7 some vacancies on Exhibits 79F and 82B, but there are
8 substantial numbers lacking. That's issue one.

9 Issue two. On 79F, you will note that for a
10 number of the positions, under status, there is an
11 entry "return to LO" or return to line office. Now,
12 to the extent that one parses the difference between
13 Workforce Management and the Weather Service, if one
14 were to accept that difference, which we of course
15 argue is immaterial, but even if one were to accept
16 that difference, then it becomes germane whether the
17 recruitment action was returned to the Weather Service
18 based on some decision or action of Workforce
19 Management or whether it was returned at the request
20 of the Weather Service.

21 With regard to five of these positions that
22 have returned to line office, specifically five
23 general forecaster positions in the Southern Region
24 that were returned to the line office on 2/13/13
25 according to Union Exhibit 82B, we note that they were

1 returned at the request of the Weather Service because
2 those are the five positions that were included in the
3 grievance about the general forecasters where they
4 decided after the position was already bid and people
5 applied for it to not pay PCS expenses. And that was
6 a Weather Service decision, and that was conceded in
7 the Grievant's response. So we know with regard to
8 those five general forecaster positions that it was
9 returned to the line office at the request of the
10 Weather Service.

11 There are several other positions, all of
12 which are in the Southern Region, all of which also
13 say "return to line office" on that date or a date
14 near it that appear on Union Exhibit 79F and 82B. I
15 wrote Mr. Brooks in July when I first got the first
16 iteration, 79F, I asked him, Allen, could you please
17 tell us whether this was returned to the line office
18 at the Weather Service's request or based on some
19 technical reason by Workforce Management. He assured
20 me repeatedly in writing and over the phone that we
21 would be given a substantive responsive answer. I
22 have never received it.

23 So the question remains for the positions on
24 79F and 82C where there's an entry under status,
25 "return to line office," other than the five

1 forecaster vacancies in the Southern Region that we
2 know that were returned at the request of the Weather
3 Service, were the others also returned at the request
4 of the Weather Service or based on some decision by
5 Workforce Management.

6 I'd like to have an answer to it. It's a
7 very simple question, and they've had six months to
8 give us an answer. And if they don't want to give us
9 an answer, I would ask that you draw an adverse
10 inference based on their refusal to answer and based
11 also on the fact that all the positions at issue are
12 in the Southern Region and were returned to the line
13 office about the same date as the five positions we
14 know that were returned at the Weather Service's
15 request. So that's issue two.

16 Issue three is we have requested a list of
17 all bargaining unit vacancies. The Weather Service
18 provided us a list of all bargaining unit vacancies in
19 the field office regions, and that is 82C. In fact,
20 they've shown us all the vacancies, but we can parse
21 by the job titles whether they're bargaining unit
22 positions or not.

23 With regard to the information they sent us
24 about headquarters, they sent us, and it's 82D, a list
25 of all vacancies, but no one can tell from looking at

1 this list which are bargaining unit vacancies and
2 which are not. You can't tell from job titles. Some
3 of them by the job title and greater are obviously
4 management. Some by the job title and greater are
5 obviously bargaining unit.

6 ARBITRATOR SHARNOFF: And I'm sorry, which
7 exhibit was that one?

8 MR. HIRN: 82D. And so, in an email
9 separately from my letter to Monique on the 12th, was
10 it -- the 18th --

11 MS. CIOFFALO: The 18th.

12 MR. HIRN: -- I also sent Monique an email
13 asking for a list of bargaining unit vacancies at
14 headquarters or a list like 82D that differentiated,
15 that had some designation as to bargaining unit
16 status.

17 Over the weekend, I received a number of
18 documents from the Agency. In fact, I got a document
19 dump Friday evening and Sunday afternoon. One of
20 those documents was an updated list of headquarters
21 vacancies that for some offices within headquarters
22 had bargaining unit designation, but not all of them.
23 Because they came in over the weekend, I've not been
24 able to copy that and bring that with us. But I would
25 like to be able to get from the Agency before maybe

1 the transcripts are received, before we start writing
2 a brief, a list of headquarters bargaining unit
3 vacancies, or alternatively, all headquarters
4 vacancies with a bargaining unit indicator.

5 So those are the three outstanding issues we
6 have with completing this record, information we've
7 been waiting for.

8 MS. CIOFFALO: All right. I'm going to
9 start with the most recent. We did send Mr. Hirn, I
10 believe it was on Sunday, the updated list of
11 headquarters vacancies. Ms. Young sent that to him
12 and indicated in the email that the list was complete
13 except for one office within headquarters, which is
14 OOS, the Office -- it's actually escaping me right now
15 what OOS stands for. And Ms. Young also indicated in
16 that email that she would provide to Mr. Hirn a new
17 complete listing when she gets it, so we have no
18 problem updating that document prior to briefs being
19 written.

20 MR. HIRN: Okay. And then we'll put it in
21 as an additional Union exhibit?

22 MS. CIOFFALO: That will be fine.

23 MR. HIRN: Okay. Resolved.

24 MS. CIOFFALO: So that issue is fine.

25 For issue number two, this is the return to

1 line office issue. Mr. Hirn had made an information
2 request. And as you know, information requests
3 entitle Mr. Hirn to data that is normally held in the
4 usual course of business, which the Agency was
5 attempting to find if there were any documents, if
6 there was any data that addressed this question, what
7 "return to LO" meant.

8 We did actually find that, and that's one of
9 the documents -- you didn't mention this, Mr. Hirn --
10 but that is one of the documents that you received on
11 Friday, the first page of the vacancy analysis
12 document, which we have copies of. And if you'd like
13 to put it in evidence, we can.

14 MR. HIRN: Okay. That was not responsive
15 to -- it said --

16 MS. CIOFFALO: If I can finish my sentence.

17 MR. HIRN: Okay.

18 ARBITRATOR SHARNOFF: Just make a note of
19 what you want to respond.

20 MS. CIOFFALO: Okay. I can pass the copies
21 around, but the first page of this document does say
22 Definitions. It's a definition section, and it states
23 "case returned to LO, WFMO," which means Workforce
24 Management returned the package to the line office.
25 This could be due in part to an incomplete recruitment

1 package.

2 So this is the document that we did find,
3 you know, at long last and did respond to the
4 information request that Mr. Hirn found. Mr. Hirn
5 appears to want a narrative response to his questions,
6 but there is no mechanism for discovery in
7 arbitration. He's simply not entitled to a narrative
8 explanation to his questions to the extent that that's
9 what he's asking for. But the Agency has in good
10 faith searched their documents and they did find this
11 and provided it to him. And I think that we have
12 therefore satisfied our obligation with respect to
13 that.

14 To the extent that there were any documents
15 that said why it was returned to the line office, we
16 would provide that, but we have not found documents
17 that address that part of his question. This is the
18 document that we found that was responsive.

19 ARBITRATOR SHARNOFF: Is there any agency
20 official that Mr. Hirn could question either on or off
21 the record to find out some at least closer to what
22 he's looking for?

23 MS. CIOFFALO: Yes. We'll actually have
24 three people that he can question about that. The
25 first is going to be David Murray, who, you know,

1 located the document. The second person is going to
2 be Stephen Cooper, who is the Acting Regional Director
3 of the Southern Region, and he will explain that the
4 Southern Region did have to take a number of the
5 actions back because they had to prioritize their
6 actions. They couldn't pay for all of them all at
7 once, everything that was in the system. But they'll
8 explain that the cases maintained their status in
9 RADS. In other words, they weren't going to have to
10 start over when they were able to put those vacancies
11 through based on their budget. So he'll explain that,
12 and Mr. Hirn can cross-examine him.

13 Also, the Acting --

14 ARBITRATOR SHARNOFF: I'm sorry. It was
15 Stephen?

16 MS. CIOFFALO: Stephen Cooper.

17 ARBITRATOR SHARNOFF: Cooper.

18 MS. CIOFFALO: He's the Acting Regional
19 Director of the Southern Region. Also the Acting
20 Deputy Director of the Southern Region will also
21 testify specifically because he was the one that
22 really worked on that issue, and his name is Mike
23 Coyne. And Mike Coyne will testify and explain in
24 detail what was going on with those positions at the
25 time, and Mr. Hirn will have the opportunity to cross-

1 examine Mr. Coyne as well.

2 MR. HIRN: If I were to respond to that, can
3 I? With regard to this document that was just handed
4 us --

5 ARBITRATOR SHARNOFF: Which at this point
6 doesn't have anything --

7 MS. CIOFFALO: We can mark it for
8 identification as Agency Exhibit 1.

9 MR. HIRN: Sure. Yeah. I would like to do
10 that.

11 ARBITRATOR SHARNOFF: Okay.

12 (The document referred to was
13 marked for identification as
14 Agency Exhibit No. 1.)

15 MR. HIRN: It says "case return could be,"
16 this could be due in part to an incomplete recruitment
17 package. It doesn't say that these particular
18 vacancies on 79F were that. We know it is not the
19 case for five of the positions that are identified in
20 79F, we know it is not because of an incomplete
21 recruitment package. We know it's because they
22 decided to cancel the recruitment action because they
23 had second thoughts about paying the PCS expenses. We
24 know that is a fact. So we know that this reason on
25 Agency Exhibit 1 does not apply to those cases.

1 Two, I dispute that their requirement under
2 7114(b)(4) is only to supply documents that they have
3 in hand. Yes, I think they are obligated to give a
4 narrative answer, but in this case, they did generate
5 this Exhibit 79F. They generated this.

6 MS. CIOFFALO: Not for you, though. I mean,
7 that was not something that was put together
8 specifically --

9 MR. HIRN: I understand it was.

10 MS. CIOFFALO: No, that's incorrect. Oh,
11 I'm sorry, 79F --

12 MR. HIRN: Yes.

13 MS. CIOFFALO: -- not the document that I
14 just handed you.

15 MR. HIRN: Yes. Yes. Yes.

16 MS. CIOFFALO: Which is --

17 MR. HIRN: And all I asked was a simple
18 explanation of what they wrote. Was the case returned
19 to line office? I simply asked what does that mean,
20 and simple professional courtesy would require an
21 answer. Plus the fact I can put into evidence if you
22 would like repeated assurances from Mr. Brooks that I
23 would be given a responsive answer. I do not like the
24 fact that it's six months later after receiving
25 repeated assurances both verbally and in writing that

1 I would be given an answer, Ms. Cioffalo is now taking
2 the position that I don't deserve the courtesy of an
3 answer to the simple question what does "return to
4 line office" mean. You know, that doesn't help
5 getting along. I don't like being jerked around for
6 six months and then stonewalled.

7 MS. CIOFFALO: Well, I mean, Mr. Hirn, if
8 that is the case, Mr. Hirn has been asking for six
9 months about information that he's not entitled to. I
10 was not privy to the conversations between him and Mr.
11 Brooks, but I can say that when I discussed this with
12 Mr. Hirn as early as November of 2012, I made very
13 clear to him that we were looking for any documents
14 responsive, which is what we understand our obligation
15 to be under the information request requirements.

16 And in terms of professional courtesy, the
17 Weather Service did create summarized charts based on
18 the vacancies based on Mr. Hirn's repeated insistence
19 that the Agency needs to consolidate these very large
20 documents, consolidate their data into a format that
21 is usable for the Union.

22 And, I mean, we could have argued that. We
23 could have taken that to the FLRA and argued over it.
24 We did not. We gave him the information that we had.
25 So, if you want to talk about being reasonable and

1 professional courtesy, I have a box of documents that
2 I could show you of all of the information that Mr.
3 Hirn has requested since March of 2013. And I'll
4 proffer that every single document in this box, which
5 is full, is the information that he's received. So,
6 you know, I very much resent the implication that the
7 Agency has not in good faith and with due diligence
8 responded to all of his requests.

9 So we did find data that was normally
10 maintained in the usual course of business that
11 addressed his question. Just because it didn't
12 address the question the way that he wanted it does
13 not mean that he's entitled to any kind of additional
14 information that is not normally maintained in the
15 usual course of business.

16 MR. HIRN: Mr. Sharnoff?

17 MS. CIOFFALO: And he can cross-examine the
18 witnesses about it.

19 MR. HIRN: Mr. Sharnoff, my objection is not
20 that they haven't sent a lot of information. My
21 objection is they haven't sent the correct and
22 accurate information. And while they went through the
23 trouble of developing this list, it is inaccurate and
24 incomplete, and its incompleteness was pointed out to
25 Mr. Brooks immediately upon its receipt.

1 The fact that they've sent over many
2 documents has only meant that I have had to work
3 through many, many, many days of reading those
4 documents and finding their own errors, their repeated
5 errors and omissions, and writing to them pointing it
6 out to them, and getting assurances back in writing
7 that they would be corrected, which it has not. And
8 now six months again, six months later after Mr.
9 Brooks assured me that I would get a corrected list
10 with the information, a complete list with the
11 information, I'm now being told I'm not entitled to
12 it. They've supplied half the information but not all
13 the information for all the vacancies.

14 And still, regardless of whatever format
15 it's in, and I'm not particular about the format, the
16 initial information request was tell us all the
17 forecaster, lead forecaster, HMT, and intern
18 vacancies, when they became vacant, and whether and if
19 you initiated recruitment actions. That information
20 is very germane. It is available in the Agency's
21 records because they supplied it for some of the
22 positions, so they can't say it's not reasonably
23 available because they answered it for some. They
24 just haven't answered it for all of them.

25 MS. CIOFFALO: And our response to that is

1 that Mr. Hirn is not asking for information that's
2 maintained in one system that you can get with, you
3 know, one keystroke or a couple of mouse clicks. The
4 Agency has had to seek that information from no less
5 than I would say at least a dozen people because the
6 information that he's requesting is partially
7 maintained by the Workforce Management Office and then
8 partially maintained by certainly the regional offices
9 that we've had to go to to cross-check all that
10 information and then even from there the local offices
11 that maintain their own data about the individual
12 vacancy dates and everything that he's asking for. So
13 the Agency in good faith put these documents together.

14 But this is not a perfect system. This is
15 not one system. RADS does not maintain the vacancy
16 date, so let's start there. That's not included in
17 RADS. So, to get that information, at some point you
18 had to go to all the individual offices to try to
19 figure out when that position became vacant. So, to
20 the extent that the Agency could, they did. They
21 really did.

22 So anyone going through these massive
23 spreadsheets can pick out, you know, a dozen or two
24 places where one, you know, was not listed on one
25 sheet and one wasn't listed on the other sheet. But

1 when you get right down to it, Mr. Hirn has all the
2 information that he needs to make his case. And to
3 the extent that he did clarify with us, well, you
4 know, we need more information about this position or
5 that position, the Agency has responded to all of
6 those requests with additional information.

7 And we kept trying to get back to him and
8 clarify the issues that he wants, but he wants the
9 impossible. He wants a government agency with
10 multiple different ways of maintaining the data to
11 somehow synthesize it for him in the midst of, what is
12 this now, maybe 30 different information requests that
13 were going back and forth in the spring and fall of
14 2013. At some point, this gets abusive. At some
15 point, this gets unwieldy for the Agency to even try
16 to manage.

17 And, you know, the suggestion that the
18 Agency was somehow trying not to give him the
19 information or intentionally omitting anything has
20 absolutely no basis in fact. And it's completely
21 contradicted by the amount and substance of the --
22 that's the same thing -- substance of the information
23 that we gave him.

24 So we are willing to look at the 35
25 positions that he listed in his letter and make sure

1 that the documents that he received most recently this
2 weekend cover all of that, and to the extent that it's
3 not covered, we'll give him that information.

4 MR. HIRN: Well, it's not covered. It's not
5 covered. And all I'm asking for, all I'm asking for
6 is really it boils down to these positions on pages 2
7 and 3. I just will need to know when did those
8 positions open up. When did they become vacant? And
9 you were able to provide it for about half the
10 vacancies. You got that, so it's there somewhere.
11 You can do it. I just want to know when did these
12 positions become open.

13 When you tell me when they can open, I can
14 find them in the RADS compared to when the initial
15 recruitment action was initiated and see, well, first,
16 I can find out, A, whether a recruitment action was
17 initiated and, B, whether the Weather Service sat on
18 it. So that's --

19 MS. CIOFFALO: Right, and we're happy to
20 provide that information for you. We're going to have
21 a management representative from every region testify
22 over the course of this week, and they will testify at
23 length about the vacancies that were at issue in their
24 regions. So they'll be competent to testify, you
25 know, to the extent that the documents that we

1 recently provided cover it about any of those on the
2 list and any others that they have the recollection
3 of. So Mr. Hirn will have the ability to question all
4 of these managers about when these positions became
5 vacant and if and when they were submitted.

6 I do want to make a point, though, one of
7 the questions Mr. Hirn asked in his information
8 request that he says he didn't get was, you know, when
9 it was submitted to Workforce Management, if it was
10 submitted to Workforce Management for recruitment.
11 And that's what the RADS report does show. If it
12 wasn't submitted for recruitment, it would not be on
13 the RADS report. So, to the extent that any of the
14 positions that he's asking for was not on the RADS
15 report, then it was not submitted to Workforce
16 Management.

17 So, you know, we're happy to provide that
18 information so you have the data for your brief, and
19 you can cross-examine the witnesses about those
20 specific vacancies during the course of this week. I
21 don't think that these issues are so insurmountable
22 that we need to be having this level of fight about it
23 right now.

24 MR. HIRN: Okay. But, Monique, they're not
25 going to know, the regional directors are not going to

1 know the dates these positions became available.

2 MS. CIOFFALO: How do you know? They're
3 well versed on what's going on in their region, and
4 you can cross-examine them. And like I said, we will
5 get the information for you if we have it, but it's a
6 very large agency with many people maintaining all of
7 this information. But they're trying.

8 MR. HIRN: All you have to do is send an
9 email to the MICs asking when they think it can be.

10 MS. CIOFFALO: So, like I said, we'll give
11 you the information if we can to the extent that it
12 was maintained, to the extent that we can find it in
13 the documents. You can't say that the Agency is not
14 trying to --

15 MR. HIRN: You don't have to find it in the
16 documents. You can ask somebody. Just because it's
17 not in a document somewhere doesn't mean you don't
18 have to supply the information. You can ask somebody.

19 MS. CIOFFALO: Right. If the data exists,
20 we will give it to you. I've said that now at least
21 four times. So you will get the information that
22 you're asking for, but, you know, you've got to be
23 reasonable about this. All of these information
24 requests, varying the agencies looked at, it's not
25 appropriate.

1 MR. HIRN: I'm sorry. I think it totally is
2 considered the scope and importance of this case, and
3 the resources the agency has versus my part-time
4 devotion to representing this client. I've taken
5 many, many, many days to parse through this stuff. I
6 didn't ask for it just for the heck of it. I read the
7 stuff, I parsed it, I analyzed it, and I identified
8 all the deficiencies that should have been found by
9 your side before it was sent over to me.

10 MS. CIOFFALO: And if the Agency was not --

11 MR. HIRN: And I wouldn't have had to do
12 that much work had the Agency done their job properly.

13 MS. CIOFFALO: The Agency is trying very
14 hard to in good faith comply with these requirements.
15 They also have their jobs to do to, you know, protect
16 life and property by forecasting the weather and
17 managing. And you'll hear from all the management
18 representatives that they're all actually, you know,
19 chipping in as much as they can for that.

20 So the Agency is trying. There is no
21 evidence of bad faith here. In fact, the Agency has
22 bent over backwards to try to get the information to
23 Mr. Hirn that he's asking for. So to the extent that
24 we still have a list of some positions to clarify with
25 you, like I said, I don't doubt that going through

1 these, you know, massive stacks of documents that
2 somebody who had the time to go through it like that
3 will find a few discrepancies. So we will assist you
4 with that. And that's what I discussed with you
5 directly at the December arbitration, the day after he
6 submitted this letter.

7 MR. HIRN: And then I never --

8 MS. CIOFFALO: December 19 we had an
9 arbitration on another matter where Mr. Hirn and I --

10 MR. HIRN: And that I never heard back from
11 you on it.

12 MS. CIOFFALO: Yes. Unfortunately, we were
13 quite busy during that time, and there was the
14 holidays and such. So we are working on that, and we
15 have submitted documents to you since that time
16 repeatedly.

17 ARBITRATOR SHARNOFF: All right. Well, I
18 think this is a good place to stop.

19 MS. CIOFFALO: Okay. We can probably talk
20 about this all day.

21 ARBITRATOR SHARNOFF: Yes. Now let's get
22 back to where are we. I hesitate to ask. Do you have
23 anything else that you want to --

24 MR. HIRN: Well, okay. So can we --

25 ARBITRATOR SHARNOFF: -- other than what

1 you've already gone through? I think --

2 MR. HIRN: No, no, but I can sum up where I
3 think we are, and, please, you know, this is like --

4 ARBITRATOR SHARNOFF: Give it a run.

5 MR. HIRN: -- maybe counseling with us.
6 What I think I heard was that they will be
7 supplementing the record with a list that will show
8 the vacancies in the headquarters which are bargaining
9 unit or which are not or a list of bargaining unit
10 vacancies.

11 MS. CIOFFALO: The complete list, yes.

12 MR. HIRN: Right. Two, with regard to what
13 does "return to line office" mean, Ms. Cioffalo
14 suggested that I might be able to elicit an answer to
15 that question from Steven Cooper in the Southern
16 Region. That might very well be the case, so maybe we
17 can just wait to see if that happens.

18 And then with regard to the last issue, I
19 think I heard that the Agency is going to try to find
20 with regard to the vacancies that I have listed on
21 page 2 and 3 the date they became open and whether
22 they were ever sent to RADS or not, the date they
23 became vacant.

24 MS. CIOFFALO: Well, again, if they were
25 sent to RADS, they'd be in the RADS report, and you

1 received the most recent one, but yes, the vacancy
2 dates.

3 MR. HIRN: Okay. But then I have to look
4 through 4,000 entries, 4,000 lines, to see if a
5 particular position is there. So, if there's some
6 other thing that you can point me to, that would be a
7 more expeditious way to see, like just giving me the
8 RADS number if there is a RADS number. And that's
9 all.

10 MS. CIOFFALO: Okay, yes. If there's a RADS
11 number associated with it, we'll put the RADS number
12 on it.

13 MR. HIRN: That's great. That's great.

14 MS. CIOFFALO: There may not be a RADS
15 number, as I said, if it wasn't submitted.

16 MR. HIRN: That's great. That's great. And
17 I think that would satisfy it.

18 And then now there were several other
19 documents you sent me this weekend that I have not had
20 the opportunity to either print out or analyze very
21 carefully. You've done one as Agency Exhibit 1. Do
22 you have copies of the others that we might be able to
23 put into the record? I don't know.

24 MS. CIOFFALO: Yes.

25 MR. HIRN: Just there may be some

1 information there that may be helpful to complete the
2 record. There may not. I just haven't had the time
3 to look at it.

4 MS. CIOFFALO: Sure, and let me clarify what
5 those -- I think you're referring to the documents of
6 the various regions and their vacancies, you know, at
7 the time of the grievances. The regional management
8 will be testifying based on those documents, so we'll
9 have ample opportunity to discuss them. And they
10 will, you know, be entered into the record as long as
11 there's no objection from Mr. Hirn.

12 MR. HIRN: Right. There was something on
13 Friday. What was that?

14 MS. CIOFFALO: Friday included the documents
15 that we had from the regions that described their
16 vacancies. So those are prepared for exhibits.

17 MR. HIRN: All right. And we've got that.

18 MS. CIOFFALO: Yes.

19 MR. HIRN: Okay. And then on Sunday there
20 was this.

21 MS. CIOFFALO: That and the --

22 MR. HIRN: A partial updated list on the
23 headquarters, but we don't need to put that in since
24 you're going to do a whole one.

25 MS. CIOFFALO: Right.

1 MR. HIRN: And then there was another
2 document.

3 MS. CIOFFALO: It was I believe the
4 spreadsheet version of what you've got in your hand
5 there of all the vacancies.

6 MR. HIRN: Would you have a copy of that?

7 MS. CIOFFALO: That I do not believe that we
8 have prepared for exhibits because we have that
9 prepared for exhibits.

10 MR. HIRN: Okay. Can we reserve a place in
11 the record for that?

12 MS. CIOFFALO: Sure.

13 MR. HIRN: And would you either print it out
14 or can we wait for the --

15 MS. CIOFFALO: We can print it.

16 MR. HIRN: You'll print it out.

17 MS. CIOFFALO: It was a spreadsheet. I
18 don't know if it's going to be one as wide as this
19 one, but if we have any difficulties printing it, we
20 may need to ask you for your computer capabilities to
21 do this.

22 MS. YOUNG: I don't think it's that wide.

23 MS. CIOFFALO: It's not that wide, so we
24 should be able to print it.

25 MR. HIRN: Hey, if I can do it, somebody in

1 this building can do it, I promise you.

2 MS. CIOFFALO: Well, we'll figure out.

3 We'll figure it out.

4 MR. HIRN: If I'm actually capable of doing
5 it --

6 MS. CIOFFALO: We should be able to print
7 it, and we can submit it as an exhibit for the Agency
8 as needed.

9 MR. HIRN: I mean, even if we need to tape
10 together the pages as I've done here, we can do that
11 later on.

12 MS. CIOFFALO: Oh, you taped it. Okay. I
13 was wondering how you did that. Never mind, we can do
14 that too.

15 MR. HIRN: I used two 11 by 17 sheets and
16 then taped it.

17 MS. CIOFFALO: Okay. All right, and we can
18 do that too then. No problem.

19 MR. HIRN: Okay. Now that we've got all
20 that out of our system.

21 MS. CIOFFALO: Yes. So we'll reserve that
22 as Exhibit 2, that spreadsheet, if that's all right.

23 MR. HIRN: Okay. And mark that as Agency
24 Exhibit 1.

25 ARBITRATOR SHARNOFF: And I don't think I've

1 formally asked, there's no objection to Agency Exhibit
2 1?

3 MR. HIRN: No.

4 ARBITRATOR SHARNOFF: Okay. So that is
5 admitted.

6 (The document referred to,
7 previously identified as
8 Agency Exhibit No. 1, was
9 received into evidence.)

10 MR. HIRN: Are you still making that
11 handwritten list? I'm trying to identify it in some
12 way. Do you want a Google pad?

13 MS. CIOFFALO: If you don't mind. I'm just
14 going to check with Mr. Murray and see if he's aware
15 of the AC in here.

16 MS. LUCIANI: Just of any additional
17 exhibits?

18 MR. HIRN: Yes. Okay. With that, Mr.
19 Sharnoff, the Union rests.

20 ARBITRATOR SHARNOFF: Reserving of course a
21 rebuttal and summary of some sort. All right. The
22 baton has been passed over to you.

23 MS. CIOFFALO: All right.

24 ARBITRATOR SHARNOFF: Where are we in?

25 MS. CIOFFALO: The Agency's first witness is

1 going to be Laura Furgione. She's the Deputy
2 Assistant Administrator for the Weather Service.

3 ARBITRATOR SHARNOFF: Okay.

4 MS. CIOFFALO: She's right across the hall.
5 Do you want to -- and actually if we can just take a
6 quick five-minute break before we start?

7 ARBITRATOR SHARNOFF: Sure.

8 MR. HIRN: Sure. And if there's anybody to
9 call about the ventilation in this room.

10 MS. CIOFFALO: Yes, I just texted Mr.
11 Murray.

12 (Whereupon, a short recess was taken.)

13 ARBITRATOR SHARNOFF: On the record.

14 MS. CIOFFALO: All right. Ms. Furgione, can
15 you state and spell your name for the record?

16 MS. FURGIONE: Sure. Laura K. Furgione, L-
17 A-U-R-A, F-U-R-G-I-O-N-E.

18 ARBITRATOR SHARNOFF: Okay.

19 Whereupon,

20 LAURA FURGIONE

21 having been duly sworn, was called as a
22 witness and was examined and testified as follows:

23 ARBITRATOR SHARNOFF: Okay.

24 //

25 //

1 DIRECT EXAMINATION

2 BY MS. CIOFFALO:

3 Q Ms. Furgione, you're currently employed by
4 the Weather Service, correct?

5 A Yes.

6 Q How long have you been with the Weather
7 Service?

8 A Almost 20 -- well, 18 years. Twenty years
9 at NOAA.

10 Q Okay. And what is your current position at
11 the Weather Service?

12 A I'm the Deputy Assistant Administrator for
13 NOAA. The other title is Deputy Director of the
14 Weather Service.

15 Q Okay. And where is that in the organization
16 of the Weather Service?

17 A So the Director is the head of the Weather
18 Service, so I would be second in charge.

19 MS. CIOFFALO: Okay. And I'm going to pass
20 around an exhibit. We'll mark this for identification
21 as Agency Exhibit 3. And I'll pass around some
22 copies.

23 ARBITRATOR SHARNOFF: It will all be done by
24 magic. You don't have to touch anything. Thank you.

25 //

1 (The document referred to was
2 marked for identification as
3 Agency Exhibit No. 3.)

4 BY MS. CIOFFALO:

5 Q All right. Ms. Furgione, is this an
6 accurate representation of the Weather Service
7 corporate structure?

8 A Yes.

9 ARBITRATOR SHARNOFF: And this is going to
10 be?

11 MS. CIOFFALO: Agency Exhibit 3.

12 ARBITRATOR SHARNOFF: Is there a 2?

13 MS. CIOFFALO: Two we were reserving for the
14 spreadsheet that we had submitted to Mr. Hirn.

15 ARBITRATOR SHARNOFF: Oh, okay. That's
16 fine.

17 BY MS. CIOFFALO:

18 Q What are your duties as the Deputy Assistant
19 Administrator?

20 A So I'm basically the Chief Operating Officer
21 for the Agency, making sure that we meet our mission,
22 the protection of life and property.

23 Q And in that capacity, do you act as the
24 Assistant Administrator on occasion?

25 A Yes, in the Director's absence. I act in

1 his absence.

2 Q And when does that usually happen?

3 A If he goes on travel or if there's an
4 illness or if the Director retires, then I can be
5 asked to step in.

6 Q Okay. And have you spent any significant
7 blocks of time as the Acting Assistant Administrator?

8 A I was the Acting Assistant Administrator
9 from May 24, 2012 through February 2013.

10 Q Okay. And how long have you been the Deputy
11 Assistant Administrator?

12 A Since July 2010.

13 Q So let's talk about the Weather Service.
14 What is the mission of the Weather Service? You
15 mentioned to protect life and property. What does
16 that mean?

17 A So we issue forecasts, warnings, predictions
18 for the weather for climate, for hydrological
19 purposes, again, giving information to our core
20 partners so they can take the appropriate action in
21 protection of life and property. That could be
22 evacuations for hurricanes or tsunamis or what have
23 you.

24 Q And who are your core partners? What does
25 that mean?

1 A Emergency managers. So the individuals who
2 would receive our information and utilize it. And I
3 say core partners. When I say emergency managers,
4 that could be like FEMA. FEMA is the national
5 emergency manager, and then there are county emergency
6 managers, state emergency managers, local city
7 officials. And again, they use that information and
8 we give them decision support services, so a little
9 bit of hand-holding if you will so they understand
10 specifically what our forecasts mean and what actions
11 they should take.

12 Other core partners would be the media so
13 we're giving out consistent information and the
14 general public.

15 Q Okay. So who does these forecasts?

16 A Primarily the forecasts are issued by our
17 weather forecast offices, and there are 122 of them
18 across the country.

19 Q Okay. I'm going to show you the second and
20 third pages of Agency Exhibit 3. And this is from the
21 Weather Service website. Is this --

22 ARBITRATOR SHARNOFF: This is all one
23 exhibit?

24 MS. CIOFFALO: Yes.

25 ARBITRATOR SHARNOFF: Okay.

1 MS. CIOFFALO: I'm sorry. I meant to staple
2 it all together.

3 ARBITRATOR SHARNOFF: That's okay. In my
4 arbitrator kit, I have my own stapler which a
5 different court reporting service provided actually.
6 I shouldn't point that out.

7 BY MS. CIOFFALO:

8 Q Are these pages 2 and 3 here an accurate
9 representation of the offices that you've got in your
10 field?

11 A Yes.

12 Q Okay. Now this chart here refers to
13 national support centers. What are your national
14 support centers?

15 A So primarily, if you want to focus on the
16 National Center for Environmental Prediction, NCEP, so
17 NCEP is out at College Park, and they have nine
18 centers, these nine centers that are listed under
19 there. Hopefully there's nine. One, two, three,
20 four, five, six, eight, nine. And they are spread
21 across the country.

22 For example, the Aviation Weather Center
23 issues national guidance for aviation products, not
24 only guidance, but they put out forecasts as well.
25 The Climate Prediction Center of course puts out

1 climate forecasts. So they not only issue guidance
2 products but also forecasts that then our weather
3 forecast offices can utilize that information, again
4 trying to have the most consistent product.

5 Q Okay. Now this also refers to regional
6 support centers. What are regional support centers?

7 A We have six regions, and you can see the
8 regional headquarters. The Alaska Region is in
9 Anchorage. The Central Region is in Kansas City,
10 Missouri. Eastern Region is in Islip, New York, Long
11 Island. Pacific Region is in Honolulu. Southern
12 Region, Dallas-Fort Worth. And Western Region is in
13 Salt Lake City. So those six regions take a more
14 regional focus on the weather forecast offices. They
15 provide the direct line support and supervision for
16 those forecast offices within their region.

17 They're also financial management centers,
18 so they are allotted budgets and they manage those
19 budgets as well.

20 Q Okay. And who works in these regional
21 offices?

22 A There's typically a regional director.
23 Years ago I was the Alaska Region Director. There's
24 deputy directors, and then they have division chiefs
25 as well. So, within administrative division chief,

1 there's typically a scientific support division, a
2 meteorological services division. There can be a
3 hydrologic services division and then a systems
4 operation division. That's pretty much how we're
5 functionally aligned with services, science, and our
6 maintenance and support of our equipment.

7 Q Okay. Now you also mentioned an
8 administrative division. What does that division do?

9 A So that would include the budget officers
10 and the administrative chiefs, so they take care of
11 more of the logistics for time and attendance, for
12 travel, for budgets and those kind of things, and
13 hiring.

14 Q Okay. So they also have responsibilities
15 with respect to personnel?

16 A Managing the personnel hires.

17 Q Okay. So now you mentioned that they are
18 providing direct support to your local field offices
19 in that region. How are the field offices staffed?
20 Who works in a field office?

21 A So almost similar functionality that I
22 described the regions, so a forecast office will have
23 a meteorologist in charge. So we'll have a management
24 unit, and that includes the meteorologist in charge,
25 the warning coordination meteorologist, the scientific

1 support officer, and then our electronics system
2 analyst as well. And then there's a public service
3 unit.

4 Q Well, let's delve into management for a
5 second.

6 A Okay.

7 Q You mentioned there's a meteorologist in
8 charge, and that's otherwise known as the MIC, right?

9 A Right.

10 Q And then the warning coordination
11 meteorologist.

12 A That's a WCM.

13 Q WCM. And the scientific --

14 A SOO, scientific operations officer.

15 Q Okay. So what do each of those positions
16 do?

17 A The WCM is the best position in the Weather
18 Service I always say. I was a WCM as well. And that
19 provides that decision support, that liaison with our
20 emergency managers. Also goes out and works with the
21 public doing outreach and training, so our spotter
22 training and those kind of things.

23 The meteorologist in charge is obviously in
24 charge of the whole office, so provides that guidance
25 and direction. And they do have small budgets, but

1 it's basically for supplies and those kind of things.

2 Our scientific operations officer, the SOO,
3 they will provide the training and a lot of the
4 keeping the station duty manual up to date and those
5 kind of things. And it varies by office of course.

6 The ESA, the electronic systems analyst -- I
7 think that's what ESA stands for -- they supervise the
8 electronic technicians. So there's usually two to
9 three electronic technicians on station, and they
10 maintain all the equipment, keep our observations, be
11 it the aviation observations or our cooperative
12 observer observations and even the radars. And the
13 upper air units, keep those maintained and
14 operational.

15 Q Okay. Now you said there were other units
16 in the office. You mentioned the decision support
17 unit. What is that?

18 A The public service unit.

19 Q The public service unit. Sorry.

20 A So that's primarily staffed by our interns
21 and our hydrometeorological technicians, the HMTs.
22 And then there will be the forecasters. There's usually
23 about nine to 10 forecasters on station. Again, this
24 varies by office. And that will have about half of
25 them lead forecasters and half general forecasters,

1 GS-13s and 12s.

2 Q Okay. So you mentioned HMTs and interns.
3 What are those positions? What do they do?

4 A So an intern is typically -- so an intern is
5 a 1340 series. That's a professional series degree-
6 holding meteorologist. The hydrometeorological
7 technicians, often a lot of them come from the
8 military, so they are non-degree holding
9 meteorologists. And they launch upper air balloons if
10 they have upper air at the site. They'll do some of
11 our now casts, the short-term warnings, answer the
12 phone for public service inquiries, and those kind of
13 things.

14 Q Okay. And then the forecasters obviously,
15 what is their main --

16 A Issue the forecasts and warnings.

17 Q Okay. And what goes into issuing forecasts
18 and warnings?

19 A So again, we've been looking at headquarters
20 restructuring and a budget restructuring, and so we've
21 been looking at it in a functional way. So the whole
22 forecast process, you have to have your observations
23 from the start, and from those observations, those
24 observations are put into our models. They initialize
25 the model data. So that provides the central forecast

1 guidance.

2 That then goes to the forecast offices. The
3 forecast offices analyze that data. They disseminate
4 the data, the information, to our customers. And the
5 last thing is in regards to science and technology
6 integration, so making sure that we are -- Dr.
7 Lubchenco and others always like to say that we're a
8 science-based service organization. So we have to
9 sure that the workforce is properly trained. And so
10 that's the last component, putting a nice bow on it.

11 Q Okay. These field offices, how are they
12 staffed on any given day?

13 A So we have a shift schedule. Pretty much
14 there's a six-month planning schedule, but you have to
15 have a two-week set schedule. And the schedules are
16 negotiated with typically the union steward that's on
17 station and whoever the scheduler might be. That
18 could be a forecaster. That could be the WCM. It
19 could be the MIC, whoever is the master of scheduling.
20 Some people just have a knack for doing that.

21 And so that schedule includes, we're staffed
22 all day, 24 hours a day every day, and so we have to
23 ensure that there's always two people on shift around
24 the clock.

25 Q Okay. And what two people could be on shift

1 around the clock?

2 A You could have at least two people. You
3 could have a lead forecaster, a general forecaster.
4 They could be the two. It could be a lead forecaster
5 and an intern. So it varies by shift.

6 Q Okay. What are the tours of duty? What are
7 the shifts that have to be worked during the day?

8 A That varies by office as well, but in
9 general, 24 hours a day, three shifts a day, eight
10 hours a shift. There are alternative work schedules,
11 but basically three shifts a day.

12 Q Okay. And are those tours of duty fixed?
13 Are they always at the same time?

14 A If you have an eight-hour shift rotation,
15 the particular shift you are working typically is
16 midnight to 8, 8 to 4, 4 to midnight. But again, that
17 varies per office as well.

18 ARBITRATOR SHARNOFF: When you say "it
19 varies"?

20 THE WITNESS: So some offices may do 11 to
21 7. When I was at the Aviation Weather Unit, it
22 depends on the customer demand or when you need to
23 launch the weather balloons, those kind of things.
24 So, if you have the three units that I talked about,
25 they don't necessarily have to start at midnight and

1 end at 8, which is a lot of times preferred so you
2 don't have a whole new crew all the time. You have
3 some overlap with the historical perspective and your
4 situational awareness on what's going on with the
5 weather.

6 ARBITRATOR SHARNOFF: Are they always
7 rotating?

8 THE WITNESS: Yes, you're always rotating.
9 Sometimes there's folks who like to work the midnight
10 shift and they will work continual mids and say
11 horrible day shifts. But often you are on a
12 rotational basis. So there's forward rotations,
13 backward rotations.

14 BY MS. CIOFFALO:

15 Q What does that mean?

16 A So a forward rotation would be you go
17 midnights. You'd work some midnight shifts and then
18 day shifts and then evening shifts. The backward
19 rotation is what I started in Kodiak, so then it's
20 days, midnights, evening. There's papers both ways
21 saying it's better for the body and your biological
22 clock, but shift work is pretty tough on you
23 regardless.

24 Q Okay. And the shifts, do those rotations
25 change, or are they pretty set?

1 A Meaning the backwards and forward?

2 Q Yes.

3 A So the shifts are pretty well set. Again,
4 we have the planning schedule and the offices again
5 work together on what best meets the employees. So
6 you may have an employee again on station that likes
7 to work midnight shift, so will cover, continually
8 cover the midnight shift. But if that person leaves,
9 then you'd have to modify the whole schedule. And if
10 one person on shift, you know, again, working with all
11 of the folks, if one person deems that -- on the
12 midnight shift you get night differential, so if
13 someone believes that's taking away from their premium
14 pay, then everyone has to agree.

15 Q Okay. And is that discussed with the Union
16 as well?

17 A Yes.

18 Q At what level?

19 A Continually, and particularly when you're
20 doing that two-week set planning schedule.

21 Q Okay. Is it unusual for a forecaster or an
22 HMT or an intern to work overtime?

23 A No.

24 Q You were talking about these different
25 shifts. I want to jump back for a second. Who in the

1 office is available to work the three shifts that you
2 were referring to?

3 A So the folks that I mentioned, so there are
4 a set of nine to 10 forecasters, your HMTs and
5 interns. But then even in the position descriptions
6 for the WCM, the SOOs, and the MIC, it has shift work
7 as well as some offices have service hydrologists.
8 And at times the ITO on shift also wants to maintain
9 their proficiency in working the shift as well. So
10 there's a number of people in the office that can
11 actually cover a shift.

12 And during a significant weather event, you
13 know, you may have to bring in the whole office to
14 make sure, you know, bring in all forces depending if
15 it's a severe weather outbreak or what have you.

16 Q Okay. Have you held positions in local and
17 regional Weather Service offices in addition to
18 headquarters?

19 A Yes.

20 Q What positions have you held in the Weather
21 Service? I guess start from the beginning.

22 A So I was a volunteer in Missouri when I was
23 going to college at a little bitty Weather Service
24 office in Columbia, Missouri.

25 Q When was that if you don't mind me asking?

1 A I think that was in '91 and '92.

2 Q Okay.

3 A And so then the summer of '92, I went out to
4 Honolulu as a GS-4 summer hire, so I worked at the
5 WSFO-Honolulu it was at the time. In '93, I was hired
6 full time at Kodiak, which is a Weather Service
7 office, a WSO, and from Kodiak, then so I was an
8 intern. I went to WFO-Fairbanks. Then '95 I moved to
9 the Alaska Aviation Weather Unit as a general
10 forecaster. '98, I went to Morehead City, North
11 Carolina as the Warning Coordination Meteorologist.

12 Q And how long were you in that position?

13 A Fifteen months, and then I went back to
14 Juneau. While I was in Morehead City, Dennis, Floyd,
15 and Irene came, and so devastation, that's always good
16 on a weather person's résumé. So I quickly went back
17 to Alaska as the MIC in WFO-Juneau, Deputy Director in
18 Alaska Region. That was in 2000. And then in --

19 Q So how long were you an MIC in Juneau?

20 A I was an MIC from 2000 to 2002, the Regional
21 Deputy Director from 2002 to 2004, and the Regional
22 Director from 2004 to 2008.

23 Q Okay. So you've held pretty much the gamut
24 of positions in the Weather Service since the early
25 '90s.

1 A Yes.

2 Q Okay. Let's talk a little bit about your
3 duties as a regional person. As a Deputy Regional
4 Director, what were your responsibilities?

5 A The Deputy Regional Director handles -- I
6 did do a lot of the budget formulation for the
7 offices, so again they get small budgets to cover
8 their travel and their support to the offices. I also
9 worked on prioritizing our vacancies and hiring. The
10 Deputy Regional Director is responsible for the
11 interactions on the regional labor councils, so you
12 are the primary go-to person in regards to interacting
13 with the regional chairs for the Union. On personnel
14 issues. Always the things that other people don't
15 want to do is what the deputies get to do.

16 Q Got it. "Personnel issues," what does that
17 mean? Just like disciplinary actions, that sort of
18 thing?

19 A Disciplinary actions, yes.

20 Q Okay. So, as a Regional Director, what was
21 the focus of your duties?

22 A So the Regional Director, you are
23 responsible for the gamut of the forecast operations
24 in your region, but it's also more of a strategic
25 position that you're in as a Regional Director. So

1 similar to how we're organized here at headquarters.
2 The Director should be more strategic and outward
3 looking. The Deputy is more inward looking on the
4 tactical side of things. So, if a significant event
5 happens, I'm usually the one as the Deputy that's
6 handling again the operations, making sure that we
7 have the staffing and support in place and all the
8 resources to handle that situation.

9 Q Okay. You mentioned that at one time you
10 were an employee in a WSFO, right? Is that correct?

11 A Right.

12 Q What was a WSFO?

13 A So that was prior to modernization. We had
14 WSFOs, and in fact, I even at Fairbanks was a WSFO,
15 and so was Juneau. But while I was in Juneau, that's
16 right when the modernization was ending, and so we
17 transitioned over to a WFO. So once you had a radar
18 in place and everyone was proficient on the radar, you
19 had your AWIP system in place. That's the Advanced
20 Weather Interactive Processing System. Once that was
21 in place and you had reached final operating
22 capability, you then had a checklist you went through,
23 and you were then signed off and became a weather
24 forecast office. So that was how you became
25 modernized.

1 Q Okay. You've got a binder there in front of
2 you, a black binder that contains the joint exhibits
3 for this case, and I want to point you to Joint
4 Exhibit 6 and ask if you recognize that document.

5 A So this is the Human Resources and Position
6 Management --

7 ARBITRATOR SHARNOFF: I'm sorry. Joint 6?

8 MS. CIOFFALO: Joint Exhibit 6.

9 ARBITRATOR SHARNOFF: 6, okay. You can go
10 ahead.

11 THE WITNESS: Okay.

12 BY MS. CIOFFALO:

13 Q Now you were saying this is the --

14 A The Human Resources and Position Management
15 Plan for the Weather Service Modernization and
16 Associated Restructuring.

17 Q All right. And that's what you were
18 referring to when you said the modernization?

19 A Yes.

20 Q So had you ever seen this document before?

21 A Yes.

22 Q And what did you understand what the
23 modernization I guess was?

24 A So the modernization determined that we
25 would have 122 weather forecast offices, and that was

1 determined primarily because of the radars, so again,
2 it was not only a reorganization of our staffing and
3 where the offices would be located but also the
4 science and technology infusion that went into it with
5 our new radar systems, new observation systems, new
6 processing system, the AWIP system that allows us to
7 put out the forecasts. And so this document pretty
8 much covered that as well as the general staffing that
9 would be associated with those offices, those 122
10 offices.

11 Q Okay. Now you mentioned earlier that WFO-
12 Juneau was completed toward the end of the MAR. Has
13 the MAR in fact been completed? The modernization is
14 done?

15 A Yes.

16 Q When was the modernization completed?

17 A Juneau was one of the last offices, if not
18 the last office, to transition to a WFO.

19 Q And when was that if you recall?

20 A So that was 2001 I believe.

21 Q And you were the MIC of Juneau at that time?

22 A Right.

23 Q Okay. So has NEXRAD, the new radar, and
24 AWIPs been deployed at all NWS WFOs?

25 A Yes. They're all done. And in fact, we

1 just completed -- one of our good things we did in
2 2013 was an upgrade of the radar as we went to dual
3 pol technology and we were able to get that out ahead
4 of schedule, and so that worked out well. So we are
5 continually updating our technology as well, and right
6 now we're in the process of deploying an AWIPs II
7 system, so another version.

8 Q So there are no more WSFOs in the National
9 Weather Service.

10 A Right.

11 Q Now you mentioned earlier that this HR and
12 position management plan discussed the general
13 staffing for these new field offices in the Weather
14 Service, correct?

15 A Uh-huh.

16 Q Are you familiar with any modifications to
17 those staffing plans, otherwise known as the floater
18 plan in 2000?

19 A Yes.

20 Q You heard about that before. If you can
21 flip to Joint Exhibit 8. And do you know what this
22 document is?

23 A Yes. So this basically, anytime there was a
24 vacancy in the DAPM, the HMT or MI, Meteorological
25 Intern Unit, then that first vacancy would create the

1 ITO, the information technology officer in the office.
2 So that was one modification in 2000 that took place.

3 Q Okay. Now are you familiar with the
4 floaters that were created by that plan as well?

5 A So I think the floaters were basically,
6 there were six people associated with this, the DAPM a
7 combination of the DAPMs, the HMTs, and the interns.
8 And so that's where the floaters were.

9 Q Okay. Are you familiar with another
10 revision in 2004?

11 A Yes. I think that's when the OPLs, the
12 Observation Program Leaders, were established.

13 Q Okay. And if you can flip to Joint Exhibit
14 9. And I'll ask if you've ever -- page 2 of Joint
15 Exhibit 9. Have you ever seen that management plan
16 before?

17 A Yes.

18 Q And this is what you're referring to, the
19 OPL position?

20 A Right. OPLs we call them.

21 Q OPLs. Other than these amendments, are you
22 aware if the Weather Service has abolished any of the
23 positions that were established by the modernization?

24 A Not that I know of.

25 Q And to your knowledge, has the Weather

1 Service filled vacancies in those positions that were
2 created by modernization?

3 A Yes.

4 Q Who had the authority for filling vacancies?

5 A So it was the FMC directors, the financial
6 management centers, so that would be the regional
7 directors or the office directors that could state
8 that they had the budget to cover those positions.

9 Q So why was that important, the budget to
10 cover the positions?

11 A We have to obviously have money to cover the
12 labor for the positions and also other costs that go
13 along when you put out job opportunity announcements,
14 like the PCS, the permanent change of station, so when
15 we pay to move the individuals from office to office.

16 Q Okay. So, when you said the FMCs, the
17 financial management centers, had to certify that they
18 had the funds to fill a vacancy, you mean including
19 that PCS cost as well?

20 A Right.

21 Q Or potential PCS cost.

22 A Right.

23 Q Okay. How much money does it cost to fill a
24 vacancy?

25 A Well, you have to take into account the

1 labor, which varies by the grade level of the
2 position, and then the PCS.

3 Q So how much does PCS cost?

4 A So, on average per person, it's \$100,000 per
5 person. We've had some that are up to over \$215,000
6 for an individual to move. So across our staff then,
7 across the Weather Service, historically the average
8 is around \$10 million. It's been as much as
9 \$13 million per year.

10 Q Do you mean -- oh, per year. Okay.

11 A Per year.

12 Q Okay. So is PCS always the same? Well, no,
13 you said that the average is about \$100,000, but it's
14 been up to 215.

15 A Right.

16 Q Why does it fluctuate?

17 A So, with the PCS, we have one of the
18 sweetest PCS packages, and I have benefitted from this
19 myself with all those moves I talked about before.
20 But not only do we cover the movement of your personal
21 household goods, potentially the temporary storage of
22 those household goods, the flights and the travel for
23 one vehicle, and you can move up to 18,000 pounds, but
24 also if you do not have -- well, the real estate
25 costs. So, when you sell, the seller usually has the

1 greatest burden on the real estate costs, but we'll
2 also pay to buy then. And so the associated --

3 Q To buy what?

4 A To buy a new house. Sell a house, buy a
5 house.

6 Q So the Weather Service pays for that.

7 A Right.

8 Q Okay.

9 A And then if you don't have a contract,
10 though, within 90 days, then the third-party
11 relocation company contract can kick in. And so you
12 get three estimates on your house, and they will pay
13 you 75 percent of your equity so you can then go on to
14 buy the next home at your new duty station.

15 Q And who ultimately covers that 75 percent?

16 A The Weather Service as part of the
17 relocation. And then once the house does sell, you
18 can get the rest of your equity.

19 Q Got it. So can the Weather Service fill
20 vacancies if it does not have the funds to cover these
21 potential costs?

22 A So, if I'm going to advertise a general
23 forecaster vacancy, that would include a PCS with it.
24 And if I can't cover the PCS, then I'm not following
25 the merit system. If I advertise a position that

1 includes a PCS and then I don't provide the PCS, that
2 wouldn't be right.

3 Q Okay. So you've got to know ahead of time
4 that you've got it.

5 A Right. That's part of the obligations in
6 filling a position.

7 Q Okay. So, to your knowledge, do you --

8 ARBITRATOR SHARNOFF: You said that it
9 varies from move to move. Do you have to fund the
10 average? Do you have to be able to fund the exact?

11 THE WITNESS: You have to fund everything in
12 advance. So you get an estimate prior to the move,
13 and so that's where RD obligations would come into
14 play. So you obligate the funds for that move.

15 So every time I've moved, after my move is
16 finalized, they'll say are you completely done with
17 your move, so then they can go in and they can
18 deobligate whatever funds were not used. So there is
19 some deobligation. But you have to up front the
20 entire cost for that move.

21 ARBITRATOR SHARNOFF: But do they have to
22 know which individual is going to be the one moving
23 before they can determine --

24 THE WITNESS: Well, so that's where you have
25 to have an estimate of \$100,000. Some regions cost

1 more than others. Alaska Region costs more and big
2 cities. New York City was where our biggest one was.
3 So they're typically wherever the higher real estate
4 costs are.

5 ARBITRATOR SHARNOFF: So it would be just a
6 rough estimate -- not a rough estimate, but an
7 estimate.

8 THE WITNESS: In the beginning, yeah.

9 BY MS. CIOFFALO:

10 Q And do the regions maintain those estimates,
11 what they --

12 A Oh, sure, they have to. They have an
13 estimate of how many PCS they typically do on an
14 annual basis so they can understand what their PCS
15 costs are. If they know there's going to be 12 PCS
16 coming up, then that's going to be \$1.2 million that
17 you can assume you have to have the funds for in order
18 to fill those positions.

19 Q Okay. All right. So, to your knowledge,
20 did the HR Position Management Plan, the floater plan,
21 or this 2004 Management Plan, did any of these
22 staffing plans require the Weather Service to fill
23 vacancies in the positions at any particular time?

24 A No.

25 Q And are you aware of any other requirement

1 that would require you to fill vacancies in a position
2 at any particular time?

3 A No.

4 Q What do offices do if they don't have the
5 funds to fill a vacancy? How do they manage that?

6 A Well, there's a number of ways. Obviously
7 you asked earlier about overtime. You can cover a
8 position with overtime. When I was in Kodiak, I think
9 I worked 90 days straight or something, so that was
10 great for an intern to make extra money.

11 Q And when was that?

12 A That was in '93, the fall of '93. Everyone
13 else wanted to go out hunting, so that was the prime
14 time to get some moose. So it's covered by premium
15 pay, overtime, and you could also TDY someone in. So,
16 in Alaska Region, again, one prime example is we have
17 people who that's their specific job is to go in and
18 cover, because we have a lot of vacancies in the
19 Alaska Region, particularly out of the WSOs. That's a
20 Weather Service office, a smaller office than a
21 forecast office.

22 Q So what is a TDY?

23 A Oh, temporary duty. And so you would send
24 someone to that office to cover the shifts until we
25 were able to fill the vacancy permanently.

1 ARBITRATOR SHARNOFF: And those individuals
2 would come from where predominantly?

3 THE WITNESS: So, in the Alaska Region, we
4 had them and they would come from the region. I guess
5 their permanent duty station was in Anchorage, but we
6 would send them out to all the remote stations. But
7 in the CONUS, it can vary. It can come from another
8 office or it can come from here in headquarters,
9 wherever the person may be located.

10 BY MS. CIOFFALO:

11 Q And when you say CONUS, what do you mean by
12 that?

13 A The continental U.S. versus Alaska and
14 Pacific.

15 Q All right. Was there any other ways that
16 management could deal with covering any vacancies in
17 the office?

18 A Overtime, TDY.

19 Q Are you familiar with issues of financial
20 mismanagement in the Weather Service over the last
21 couple of years?

22 A Yes.

23 Q And what do you know about that?

24 A So August 2011, one of the duties of the
25 Deputy Director is and the regional directors, but it

1 depends on the case, if an inquiry through the OIG is
2 sent forward, then I find the people to then begin
3 that inquiry, a nonbiased individual to investigate
4 and see what's going on. So August 2011, an OIG
5 inquiry came across my desk in regards to financial
6 mismanagement for the Weather Service, so I initiated
7 an investigation at that time.

8 Q Okay. And what were the results of that
9 investigation? Well, let me ask you this. What was
10 the allegation that was brought to your desk?

11 A The allegation was mismanagement of funds,
12 inappropriate use of the Appropriations Law.

13 Q And what kind of mismanagement?

14 A Moving funds from one PPA it's called.
15 That's Program Projects or Activities. That's
16 basically the budget lines that we have. Right now
17 the Weather Service has 17 PPAs, one being our local
18 warnings and forecasts, another being central forecast
19 guidance, so your basic budget lines that you have in
20 the budget.

21 Q And I'm going to put in front of you what
22 we'll marked for identification as Agency Exhibit 4
23 just to help out with that.

24 ARBITRATOR SHARNOFF: I think it's 5.

25 MS. CIOFFALO: Is it 5?

1 ARBITRATOR SHARNOFF: Didn't you have 3 and
2 4 as the two --

3 MS. CIOFFALO: Oh, the two were just one
4 exhibit.

5 ARBITRATOR SHARNOFF: Oh, okay.

6 (The document referred to was
7 marked for identification as
8 Agency Exhibit No. 4.)

9 BY MS. CIOFFALO:

10 Q Do you recognize this document?

11 A Yes.

12 Q And what is this document?

13 A It's a spreadsheet. So I was talking about
14 the local warnings and forecasts. That top one is one
15 of our PPAs. It gives a breakdown of our
16 appropriations.

17 Q Okay. So, when you say PPA, what are
18 examples of PPAs?

19 A So again, this top one, local warnings and
20 forecasts base, air quality forecasting, Alaska data
21 buoys. Those are three PPAs there.

22 Q So all of these are different PPAs, this
23 list.

24 A Correct.

25 Q Okay. So now let's go back to what we were

1 talking about before. You received an allegation that
2 the Weather Service was or somebody in the Weather
3 Service was moving money between these PPAs?

4 A Uh-huh.

5 Q And is that why --

6 ARBITRATOR SHARNOFF: If you could say yes,
7 no.

8 THE WITNESS: Oh, sorry.

9 ARBITRATOR SHARNOFF: That's okay.

10 THE WITNESS: Rather than grunting and
11 moaning. I apologize.

12 ARBITRATOR SHARNOFF: That will come later,
13 but if we want it picked up as an actual answer, you
14 have to say yes or no.

15 THE WITNESS: Thank you.

16 BY MS. CIOFFALO:

17 Q So why did you have to initiate an inquiry
18 on that?

19 A So, according to appropriations law, you
20 cannot move money in between PPAs if it exceeds
21 \$500,000 or 10 percent of the PPA.

22 Q Okay. So you received this inquiry and you
23 said you initiated an investigation? And what did
24 that investigation -- what happened to that
25 investigation?

1 A So the investigation, the results came back
2 in November of 2011, and they did support the
3 mismanagement of funds. So, at that point in time, I
4 made sure that NOAA's CFO and the head of NOAA -- that
5 was Dr. Lubchenco at the time -- that they were aware
6 of this, and we immediately put the CFO on indefinite
7 administrative leave.

8 Q The Weather Service CFO or the NOAA CFO?

9 A Yes, the Weather Service CFO.

10 Q The Weather Service CFO, okay. And what in
11 particular did the inquiry find that the Weather
12 Service CFO had done with respect to moving funds?

13 A Again, inappropriately moved these funds
14 from one PPA to another.

15 Q Which PPA? Do you remember which ones were
16 involved?

17 A So what was actually happening I believe was
18 they were doing summary level transfers, which is an
19 SLT, from the local warnings and forecast base into
20 another. So they were moving funds out of LWF to
21 allow for additional funds to be spent in that
22 particular PPA.

23 Q So were they taking money out of LWF or
24 putting money into LWF?

25 A So it looked as though they were taking

1 money out of LWF, but what was actually happening was
2 that they were putting a little bit more ceiling if
3 you will on that PPA, so allowing additional funds to
4 be spent against that PPA. So, in the end, it was
5 additional funds for local warnings and forecasts
6 against other PPAs, like AWIPs and NEXRAD that we
7 talked about before.

8 Q Okay. So what happened after the results
9 came out of the initial inquiry?

10 A So again, the CFO was put on administrative
11 leave, and the inquiry was then elevated. The
12 Department of Commerce actually took over the
13 investigation, so it was out of my hands at that point
14 in time.

15 Q Okay. And what happened after it was
16 elevated to the Department of Commerce level?

17 A The results came back in the May timeframe
18 from theirs, and again, they did support the
19 allegations and supported the initial investigation.
20 And at that point in time, Dr. Lubchenco and the
21 Deputy Secretary of the Department both issued
22 memorandums with corrective actions that needed to
23 take place.

24 Q Okay. So I'll put these -- I'm sorry.

25 MS. CIOFFALO: Oh, Mr. Arbitrator, if I can

1 offer Agency Exhibit A-4 into the record.

2 ARBITRATOR SHARNOFF: Okay. I'm not sure we
3 have officially put in -- A-1 may have --

4 MS. CIOFFALO: Oh, I'm sorry, 3 and 4 need
5 to be admitted.

6 ARBITRATOR SHARNOFF: Yeah, 3 and 4.

7 MS. CIOFFALO: If there's any objection.

8 ARBITRATOR SHARNOFF: Any objection?

9 MR. HIRN: Well, I'm not quite sure what A-4
10 is purported to be.

11 ARBITRATOR SHARNOFF: Okay. Do you want to
12 voir dire at this point? Do you want to reserve for
13 cross-examination? Do you want further explanation?

14 MR. HIRN: Well, just perhaps some
15 explanation of what it is.

16 MS. CIOFFALO: This is the Agency's budget.
17 I believe this was as of the end of March in 2013.
18 And if it helps, Mr. Longenecker was the Acting CFO at
19 the time, and he's going to testify at length about
20 this document. So if you want to wait to admit it
21 into evidence at that time.

22 MR. HIRN: Might that be more appropriate?

23 MS. CIOFFALO: That's fine. When she was
24 mentioning the PPAs, I wanted to, you know --

25 MR. HIRN: Yes, I understand.

1 MS. CIOFFALO: So A-3 is the structure
2 documents, if there's no objection to that one.

3 ARBITRATOR SHARNOFF: You have no objection
4 I take it to 3?

5 MR. HIRN: That's correct.

6 ARBITRATOR SHARNOFF: Okay. So 3 is
7 admitted, and 4 we'll hold off on.

8 (The document referred to,
9 previously identified as
10 Agency Exhibit No. 3, was
11 received into evidence.)

12 MS. CIOFFALO: Okay. So what I'd like to
13 show the witness now is what will be marked for
14 identification as Agency Exhibit 5.

15 BY MS. CIOFFALO:

16 Q And you mentioned that Deputy Secretary
17 Blank and the Under Secretary, Dr. Lubchenco, had
18 issued decision memoranda regarding the inquiry. Are
19 these the decision memoranda that you're referring to?

20 A Yes.

21 MS. CIOFFALO: Hang on one second.

22 MR. HIRN: There's a different one?

23 ARBITRATOR SHARNOFF: Yes. So the second
24 one is 6?

25 MS. CIOFFALO: Yes. Well, we can mark them

1 separately. The Deputy Secretary decision memoranda,
2 let's say that that will be Agency 5.

3 ARBITRATOR SHARNOFF: I'm sorry. The Deputy
4 Secretary decision memorandum will be 5.

5 MS. CIOFFALO: Right. That will be 5. And
6 then the Under Secretarial decision memoranda from
7 Jane Lubchenco, Ph.D., that will be A-6.

8 (The documents referred to
9 were marked for
10 identification as Agency
11 Exhibit Nos. 5 and 6.)

12 BY MS. CIOFFALO:

13 Q And did you receive these memoranda?

14 A Yes.

15 MS. CIOFFALO: Okay. I'd like to have these
16 admitted to the record.

17 MR. HIRN: I don't have any objection per se
18 other than the document sort of summarizes and
19 discusses and quotes the May 11, 2012 investigative
20 team report, which really explains the whole thing in
21 context. I wonder if perhaps we can add that to the
22 record as well.

23 MS. CIOFFALO: I don't believe that that
24 will be necessary. We are just putting this into the
25 record for the purposes of having the results of the

1 inquiry and what was directed because of those results
2 for the Weather Service. I don't think it's necessary
3 to put those types of documents in the record. It's a
4 lot of personal information with respect to the people
5 involved, and I don't think that that's necessary.

6 MR. HIRN: Well, I think this is not the
7 results of the inquiry. This is the action items that
8 they took.

9 MS. CIOFFALO: Yes. Yes.

10 MR. HIRN: But I think that if we're going
11 to have testimony about what went wrong and what
12 happened and who did what, you know, I think we really
13 should have the results of the inquiry.

14 MS. CIOFFALO: I highly disagree with that.
15 The decision memoranda talk in detail about what
16 occurred and why they're then placing action items on
17 the Weather Service, which is primarily what Ms.
18 Furgione is going to talk about as to what she was
19 charged with doing because of financial mismanagement.

20 You know, the Union would have no need for
21 the actual memoranda itself. That is not at issue in
22 this case at all as to what the substantial documents
23 were with respect to the financial information.

24 MR. HIRN: Well, it seems that you are
25 making it part of this case. I'm not sure how it is,

1 but you're making it part of this case that there was
2 some findings of financial mismanagement, that money
3 was moved around, presumably to say you don't have
4 enough money or whatever. So I think the more detail
5 we have about that the better. And if there was a
6 primary first source investigative report that
7 everybody is going to be talking about the findings
8 of, you know, you're talking about hearsay. And when
9 you've got hearsay when you've got really the best
10 evidence available, let's just get the best evidence
11 in the record.

12 MS. CIOFFALO: There's no hearsay involved
13 here or best evidence issues because the decision
14 memoranda is what the Weather Service received, what
15 everyone received, regarding what was going on. That
16 document is not public record, and I do not want to
17 make it part of this arbitration.

18 This is what's important. These documents
19 are what was provided to everyone in the Weather
20 Service to let them know what was going on so that,
21 you know, action could be taken, corrective action
22 should be taken. We're not going to get into
23 specifically who did what and how and why. We're
24 going to talk about what the Weather Service was
25 charged with doing after the fact to make sure it

1 didn't happen again.

2 So, you know, the Agency can present its
3 case the way that it wants to present its case. And I
4 highly object to, you know, any requirement that we
5 enter highly sensitive non-public documents into the
6 record.

7 ARBITRATOR SHARNOFF: Is there a -- I mean,
8 I haven't seen it obviously, so I don't know if it's,
9 you know, 20 pages long or 500 pages long.

10 MS. CIOFFALO: It's quite voluminous.

11 ARBITRATOR SHARNOFF: I would assume. Is
12 there some sort of a summary section that doesn't get
13 into the personal details of individuals?

14 MS. CIOFFALO: No. I mean, that's what
15 these documents do. It provides a summary of what
16 occurred and, you know, action items to correct and
17 going forward what the Weather Service needs to do.
18 And that's what we're looking at, the backdrop of, you
19 know, what the inquiry found, what Ms. Furgione has
20 just testified to based on her own personal knowledge,
21 and what's in these documents. So there is no need
22 for, you know, again what is a highly sensitive and
23 non-public document to be entered into this record.

24 MR. HIRN: I think they opened the door on
25 this, and I just want to look at the whole picture.

1 ARBITRATOR SHARNOFF: Well, I suppose we
2 could have an in camera inspection of the document,
3 just the three of us.

4 MS. CIOFFALO: I mean, I don't even have it.
5 Understand that I don't have it.

6 ARBITRATOR SHARNOFF: Okay. Well, that
7 makes that easier. Well, at this point, I don't see a
8 sufficient demonstrated need to have it added to the
9 record. However, we're accepting your representations
10 that it gets into these details that -- I don't know.

11 MS. CIOFFALO: I think the point should
12 fairly be made that the Union has given an entire data
13 worth of documents that nobody testified specifically
14 to. And I think signed decision memoranda from the
15 Deputy Secretary of Commerce and the Under Secretary
16 of NOAA should be given, you know, the weight to which
17 it's deserved.

18 These documents, you know, were public.
19 They were sent to everybody in the Weather Service.
20 And I do not think that this summary of the issues
21 that are set forth in these documents should be
22 impugned in any way. The only reason why you would
23 need an entire, you know, record of that is if you
24 were planning on impugning these documents, and I
25 don't think that that would be appropriate based on,

1 quite frankly, the what is it, four dozen
2 unsubstantiated documents that the Union entered into
3 the record yesterday. So, I mean, come on.

4 MR. HIRN: These are highly political
5 documents, and for that reason, since I basically
6 don't trust the government, regardless who the
7 government is, you know --

8 MS. CIOFFALO: Well, your irrational
9 distrust of the government should not be a reason for
10 the Agency to enter documents like that into the
11 record. I would request that these documents be given
12 the weight to which they deserve, which is quite a bit
13 of weight given that they are official documents that
14 have been, you know, disseminated as explaining what
15 happened with that.

16 And again, we're not getting into the
17 details of what happened with that investigation other
18 than this is generally what occurred and this is what
19 the Agency needs to do to correct themselves.

20 ARBITRATOR SHARNOFF: Okay. Well, at this
21 point, let's just leave it that we're not putting it
22 in the record. We will see if somewhere down the road
23 with whatever questioning comes up, if a demonstrated
24 need becomes apparent, we'll revisit it. At any rate,
25 I will put in or admit Agency 5 and 6.

1 (The documents referred to,
2 previously identified as
3 Agency Exhibit Nos. 5 and 6,
4 were received into evidence.)

5 MS. CIOFFALO: Thank you. I'm going to
6 remind myself of where we are.

7 THE WITNESS: We were talking about the
8 corrective actions that were outlined in these
9 documents.

10 BY MS. CIOFFALO:

11 Q Yes. So now you had mentioned that the
12 Under Secretary, Dr. Lubchenco, for NOAA and also the
13 Deputy Secretary of the Department of Commerce had,
14 you know, issued action items, decision action items.
15 What were those?

16 A So there's basically 12 decisions that came
17 out of this, and you can find it in Dr. Lubchenco's
18 decision memorandum.

19 Q And that would be Agency Exhibit 6.

20 A A-6 then. And it gives specifics. And not
21 to belabor what's all in here, but right in the
22 beginning we obviously had to have a new CFO, so you
23 can see on the front of this paper it talks about --
24 she makes sure that Dr. Blank was aware. We had a new
25 Acting CFO that came over from the National Marine

1 Fisheries Service.

2 Q And who was that?

3 A Gary Reisner was the Acting CFO at that
4 time. And there were other specific corrective
5 actions that they outlined. Again, the primary
6 mechanism that was used for the transfer of these
7 funds were the SLTs, the summary level transfers. So
8 there was an action on that to more oversight on the
9 SLTs. No more SLTs could be used as a financial
10 management tool for moving money without the Weather
11 Service CFO's approval and the NOAA CFO's approval.

12 They also wanted us to look at the Weather
13 Service structure of our corporate board and those
14 kind of things. Again, more financial controls and
15 training as well. So I did mandate that there was
16 training for all of the SES, mandated training for all
17 SES, and highly recommended for any others that had
18 any type of interaction with financial management or
19 the moving of funds.

20 Q Okay. So you mentioned that you mandated
21 training. Did you have any other responsibilities
22 with respect to implementing the decision action items
23 that were listed in these memoranda?

24 A So there were a number of -- all these 12
25 actions or corrective actions were put into a

1 spreadsheet, and there were subactions under those, so
2 I think it was more than 20 actions total. Some were
3 the head of the Weather Service's responsibility.
4 They were the accountable party. Some were the NOAA
5 CFO. And in regards to the CFO, in fact, there was a
6 change in the supervision of the CFO, so not only did
7 the CFO have to report to the head of the Weather
8 Service but also the head of NOAA. So more oversight
9 on the CFO as well.

10 Q Okay. So the CFO is now reporting directly
11 to the Director of the Weather Service?

12 A Matrix managed between the head of the
13 Weather Service and the NOAA CFO.

14 Q Got it. Got it. All right. How would you
15 characterize the priority of this, your
16 responsibilities with respect to this issue?

17 A This was our highest priority. In fact, not
18 only did we have these letters, the magnitude of this
19 Anti-Deficiency Act violation requires a letter to the
20 President as well. So Dr. Blank actually, the Deputy
21 Secretary for the Department actually had to send a
22 letter to the President as well, not only the
23 President, but then it goes to both Houses of
24 Congress.

25 Q Okay. And now you said this was an Anti-

1 Deficiency Act violation. What do you mean by that?

2 A So, when you don't have enough funds in one
3 PPA, which obviously was the case with Local Warnings
4 and Forecasts. So it's almost the Appropriations Law
5 Act and the Anti-Deficiency Law. They pretty much go
6 hand-in-hand. If you violate one, you often violate
7 the other. And so it was a violation not only of the
8 appropriations law but the Anti-Deficiency Act, which
9 can be a felony.

10 Q Okay. All right. Let's switch gears for a
11 minute. Now you're aware of the NOAA hiring freeze
12 guidance that was put out on March 27, 2013, correct?

13 A Yes.

14 Q Okay. And I'll ask you to turn to Joint
15 Exhibit 11 in the binder. All right. So Joint
16 Exhibit 11, do you recognize this document?

17 A Yes.

18 Q Have you read that guidance?

19 A Yes.

20 Q And what is this document?

21 A This is a memo from Dr. Sullivan to the NOAA
22 Executive Council and the NOAA Executive Council Panel
23 and the CFO Council in regards to a NOAA-wide hiring
24 freeze.

25 MS. CIOFFALO: And, Mr. Sharnoff, are we to

1 assume that the joint exhibits are already in
2 evidence, or do you want me to move their admission
3 already?

4 ARBITRATOR SHARNOFF: Yes. No, they're in.

5 MS. CIOFFALO: Okay, great.

6 ARBITRATOR SHARNOFF: They are in evidence.

7 BY MS. CIOFFALO:

8 Q All right. And if you can turn to Joint
9 Exhibit 10 as well.

10 A It's backwards then. Okay.

11 Q Have you seen this notice before?

12 A Yes.

13 Q What is this notice?

14 A So this is an email from Peggy Morris to --

15 ARBITRATOR SHARNOFF: I'm sorry. Where are
16 you now?

17 MS. CIOFFALO: Oh, I'm sorry. Joint Exhibit
18 10.

19 ARBITRATOR SHARNOFF: Joint Exhibit 10.

20 Okay. Continue. Sorry.

21 THE WITNESS: Again, an email from Peggy
22 Morris to Dan Sobien, Bill Hopkins, Dave Murray, and
23 Jim Faulkner in regards to the notice of
24 implementation of the hiring freeze.

25 //

1 BY MS. CIOFFALO:

2 Q Okay. Did you have any role in drafting
3 this notice?

4 A No.

5 Q Or did you review it before it went out?

6 A No.

7 Q Did you have any discretion over whether the
8 NOAA guidance had to be implemented immediately?

9 A Did I have any discretion?

10 Q Yes. Were you able to not follow the
11 guidance in Joint Exhibit 11?

12 A No.

13 Q Let's talk about your budget at that time.
14 Where was the Weather Service in its budget process in
15 March of 2013?

16 A Can we go back to this table we had before?

17 Q Sure. Had you seen this table before?

18 A We have various variations of this table,
19 and I'm sure it was likely generated by my CFO, so
20 whoever the CFO was at the time.

21 ARBITRATOR SHARNOFF: I'm sorry. You're
22 looking at Agency 4?

23 MS. CIOFFALO: Sorry. This is Agency
24 Exhibit 4, which has been marked for identification
25 but not yet admitted into evidence.

1 ARBITRATOR SHARNOFF: Right.

2 BY MS. CIOFFALO:

3 Q Do the numbers in this table, are these
4 numbers familiar to you?

5 A Yes.

6 Q Do they appear accurate?

7 A Yes.

8 MS. CIOFFALO: Okay. So I'd like to admit
9 it into evidence at this point.

10 MR. HIRN: I just would feel more
11 comfortable with some explanation of what it all was.

12 MS. CIOFFALO: It's very clear what it is.
13 It's a table, you know, entitled "National Weather
14 Service," and it's about the budget numbers. She's
15 saying that she received this. She's saying that the
16 numbers are accurate.

17 MR. HIRN: Fine.

18 ARBITRATOR SHARNOFF: Okay. It's admitted
19 at this point.

20 (The document referred to,
21 previously identified as
22 Agency Exhibit No. 4, was
23 admitted into evidence.)

24 MS. CIOFFALO: All right. Thank you.

25 //

1 BY MS. CIOFFALO:

2 Q So now you wanted to refer to this. What
3 was happening with the budget?

4 A Yes. Just because when you talked about
5 that, this number here, the second column from the
6 right, the FY '13 sequestration, Senate CR, that
7 number stuck out when you put this in front of me
8 before. The \$610 million under Local Warnings and
9 Forecasts. That is the position that we were in when
10 the hiring freeze was put in place. That's the budget
11 that we thought we had to implement, which is
12 significantly less than these other numbers to the far
13 left, the 655. So you can see we were dealing just in
14 comparison about \$45 million less.

15 Q And when did you learn that your budget went
16 from \$655 million to \$610 million?

17 A Not long before the hiring freeze was in
18 place, so the mid-March timeframe.

19 Q Okay. And why was it that much less?

20 A Sequestration was all over us, so we were
21 dealing with sequestration, and then there was an
22 Agency-wide rescission of 1 to 2 percent, so
23 additional funds taken off the top that we had to deal
24 with as well. So it was the lowest number that I had
25 ever seen in this particular PPA.

1 Q Okay. And now, understanding sequestration,
2 you had known about sequestration prior to March of
3 2013?

4 A Yes.

5 Q Did you know about that additional 2 percent
6 rescission that you discussed prior to March of 2013?

7 A No.

8 Q And how did the knowledge about additional
9 rescission affect you with respect to the Weather
10 Service's budget?

11 A So the sequestration was going to be
12 devastating alone, and then the additional rescission
13 that we had to take off the top was even, you know,
14 additional, put an additional financial burden on the
15 Agency.

16 Q And what, if any, action did you take in
17 response to that?

18 A That's when we had to start looking more
19 seriously at our Agency budget as a whole as to where
20 we could make cuts and where we had to prioritize.
21 And for me as the Chief Operating Officer, I had to
22 focus on my primary mission essential functions and
23 make sure that I was meeting my mission mandates.

24 Q Okay. And where does your most of your
25 personnel funding rest within this budget?

1 A In that LFW PPA. LWF.

2 Q And is that the -- okay. That's the Local
3 Warnings and Forecast base?

4 A Yes.

5 Q Okay. Did you have any idea as to what
6 effect this \$610 million number would have on your
7 budget or what you were going to have to do to get
8 there?

9 A So, at that time, we had to start getting a
10 handle on how we would handle a budget of this amount.
11 And not only were we looking at a hiring freeze,
12 because the hiring freeze, while it was going to
13 provide some funds, we were looking at at that point
14 in time 10 to 11 days of furlough as well.

15 Q And what is a furlough?

16 A A furlough is when people actually have to
17 take the day off without pay.

18 Q And who would have been furloughed?

19 A Agency-wide we would have had to have
20 furlough, and furlough for the National Weather
21 Service, if everyone is furloughed for a whole day, I
22 think it's around \$2 million. So, with an 11-day
23 furlough, we were looking at \$22 million savings,
24 which would have helped obviously with the situation
25 we were presented with in regards to the budget.

1 Q Okay. And what effect would furloughs have
2 had on the Agency's field operations?

3 A It's not something that you want to do, but
4 we were trying to make sure we could figure out how to
5 do that. There were obviously a number of ways that
6 you could do a furlough. We continuously have the
7 ability to go into service backup, so if a station
8 goes down, be it because of power outages,
9 communication outages, or if the systems in the office
10 aren't working, you can go into service backup even
11 for training or deploying a new system in the office.

12 So there was that possibility, but we were
13 trying to avoid that. We would then go into some type
14 of a rotation and figure out how that would impact the
15 schedule. But people that were not required to work
16 the schedule would then be furloughed for that day.

17 ARBITRATOR SHARNOFF: And I'm sorry, you may
18 have testified about it. When were you making these
19 or taking into account these considerations?

20 THE WITNESS: So again, when we received our
21 budget in the mid-March timeframe, March of 2013,
22 that's when we knew that sequestration was coming.
23 You're always having to have contingency plans in
24 place for any of your budgets. In fact, when I was
25 working at our Strategic Planning Office, part of our

1 budget planning includes contingency planning of minus
2 5 percent, minus 10 percent, those kind of drills on a
3 continual basis. But in this situation, it was
4 reality, so we had to figure out how to do this, how
5 to take this big of a cut in our budget while still
6 again maintaining our mission essential functions.

7 ARBITRATOR SHARNOFF: And that was happening
8 all in mid-March, mid-March to somewhere in --

9 THE WITNESS: It didn't become reality until
10 we actually received the budget, saw how bad the
11 budget was with sequestration.

12 ARBITRATOR SHARNOFF: And when was that?

13 THE WITNESS: And again, that was mid-March
14 timeframe, so March 15. The hiring freeze went into
15 place on March 27, and I think then in the April
16 timeframe is when we really started cranking on trying
17 to determine how we were going to take 11 days of
18 furlough, which ended up being reduced to three to
19 four days of furlough we were going to have to take
20 because we were taking it NOAA-wide.

21 Other line offices within NOAA that didn't
22 have to take furloughs were going to furlough for the
23 Weather Service if you will, which doesn't make good
24 friends across the other line offices. But in the end
25 we didn't have to furlough at all.

1 BY MS. CIOFFALO:

2 Q Now, during this time period, you said the
3 hiring freeze went into effect, and then that was
4 going to help some. That guidance in Joint Exhibit 11
5 created a NOAA Hiring Freeze Board, correct?

6 A Correct.

7 Q All right. And what was the function of
8 that Board?

9 A So I had to submit the CFO of the line
10 offices and the DAA of the line offices as well as the
11 hiring officials, all three had to sign these
12 documents that were called PFARs.

13 Q And when you say "line office," are you
14 referring to the --

15 A So Weather Service is one of the six line
16 offices within NOAA. National Marine Fisheries is
17 another. National Ocean Service is a third.

18 Q Okay. So you said now that the CFO, the
19 hiring manager, and you would have to --

20 A Sign the PFARs, position funding requests.

21 Q And if you turn to the last page of Joint
22 Exhibit 11 --

23 A Oh, there's a sample of a PFAR right there,
24 position funding approval request.

25 MS. CIOFFALO: And we're at Joint Exhibit

1 11, Mr. Sharnoff, and I would just refer you to the
2 last page of that.

3 BY MS. CIOFFALO:

4 Q Now you said you all had to sign off on this
5 document. What was this document meant to do?

6 A So this provided the justification. It
7 described what the position would be doing. If we had
8 funding for the position, current funding, what the
9 accounting codes would be. If there was future fiscal
10 funding available as well, because anytime you receive
11 a budget you're always worried about what your next
12 budget is going to be. With sequestration still
13 looming and with sequestration at that time, you're
14 dealing with the troubles we were with the 610 in LWF
15 and another sequestration on top of that.

16 Q So you could have had another sequestration
17 on top of this 610 number?

18 A Right.

19 Q And that would have been in FY '14?

20 A Correct.

21 Q Okay. So why were you worried about that
22 now in March of 2013?

23 A Because if I hire someone now, you have to
24 assume that they're going to be around for a while, so
25 you would have to pay for their salaries in the out-

1 years. It also questioned if there was relocation
2 expenses paid, recruitment or bonus retention paid,
3 and I think that pretty much covers it.

4 Q Now who would send this document to the
5 Hiring Freeze Board for consideration?

6 A So myself or David Murray, who is the CFO
7 III. He's a member of my CFO staff that would send
8 this.

9 Q Okay. And he's also the Acting Chief
10 Negotiator of the Weather Service right now, right?

11 A Correct.

12 Q Okay. So how did you determine whether to
13 send, you know, a vacancy to be filled to the Board
14 for consideration? What was -- yeah, go ahead.

15 A Sure. So I had to determine if, for
16 instance, in a forecast office, if they had enough
17 people in the office to cover, that two people were
18 going to be on shift at all times. So that was one of
19 the first criteria that I put in place.

20 Q So what were some options that you had for
21 meeting that criteria to make sure that two people
22 would be on shift at all times?

23 A So again, you can cover the shifts with the
24 people who are on station just with their normal
25 salary working five shifts a week. You could cover it

1 with overtime, so more than five shifts a week. Or
2 you could bring somebody in on TDY.

3 Q Okay. And so what did you decide to do in
4 order to meet that criteria that you had?

5 A So because I had to have a justification
6 associated with this PFAR, I put a basic minimum
7 staffing criteria in place. So I knew that we had to
8 have two people on shift at all times. My basic
9 mission essential function is ensuring that we're
10 issuing forecasts and warnings. Only meteorologists
11 can issue forecasts and warnings, so I ensured that
12 there were two meteorologists on shift at all times.

13 Q Now do you know if there were two
14 meteorologists on shift at all times or --

15 A That didn't require that two meteorologists
16 needed to be on shift at all times, but I wanted to
17 make sure that there were enough people in the office
18 in the event that we needed two people on shift at all
19 times.

20 Q I see.

21 A So it was a conservative formula if you will
22 to determine how many people I needed in a forecast
23 office.

24 Q Okay. So go on. If you can explain how did
25 you decide or how did you work that to make sure that

1 there would be enough people to put two forecasters on
2 a shift at a time?

3 A So it's kind of a complicated -- do you want
4 me to explain the whole thing?

5 Q Yes.

6 A So, in any forecast office, we talked about
7 the rotating shift and everything. So, if we need two
8 METs on station according to my conservative criteria
9 that I was using, then you have three shifts a day.
10 So that's six shifts that have to be covered per day.

11 Q And when you say "METs," what did you refer
12 to? What does "MET" mean?

13 A Oh, meteorologist, so that's the 1340s
14 versus the 1341s. Those are the series that I'm
15 talking about. So you need two people on shift. You
16 need three shifts a day, so that's six shifts per day
17 that had to be filled seven days a week. I needed to
18 make sure I had enough people to fill 42 shifts per
19 week.

20 Q Okay. And that was your basic minimum that
21 you were trying to go for, 42 shifts per week to meet
22 the two-person per shift minimum.

23 A Right.

24 Q Okay. So how did you decide to do that?

25 A So, in general, a forecaster, like myself, I

1 could work five shifts a week. So five times nine
2 forecasters is 45, so that right there gives you a
3 basic that you need at least nine people at a station
4 to cover those shifts.

5 Q Okay. And who is a meteorologist on
6 station? Who has that series?

7 A So you have a cadre of lead forecasters,
8 general forecasters, interns. Some offices have a
9 service hydrologist.

10 Q Okay. And are they 1340s?

11 A Yes.

12 Q Okay.

13 A You have the WCM, the SOO, the MIC.

14 Q They're 1340s as well?

15 A Yes.

16 Q Okay. Any other 1340s on station?

17 A Sometimes. Well, the ITOs, their series is
18 now 2210. Some ITOs are again qualified to work the
19 shifts and they want to maintain their proficiencies,
20 some ITOs. But I didn't use them as a part of my
21 formula.

22 Q Okay. So ITOs, some of them do have
23 meteorologist degrees?

24 A Yes.

25 Q They would qualify for the 1340 position?

1 A Yes.

2 Q Okay. All right. Sorry to interrupt. Now
3 go ahead.

4 A But that wasn't enough because obviously
5 people have annual leave that they're accruing, so the
6 maximum amount of annual leave that someone can accrue
7 is eight hours per pay period. So, if they took all
8 the leave that they accrued, that would reduce the
9 number of shifts that any one person could work to
10 4.5.

11 Q Okay.

12 A So 4.5 times 10 people. So that took me up
13 to I needed at least 10 METs on shift to cover those
14 shifts that I was considering. If you take --

15 Q Ten METs on shift?

16 A Ten METs in the office that could
17 potentially cover the shifts.

18 Q Okay.

19 A Sick leave as well. So the maximum sick
20 leave that is accrued is four hours per pay period,
21 two hours per week. And so that took that formula
22 down to each person could work 4.25 shifts per week.
23 And so that added an 11th person onto my formula, so I
24 said you needed 11.

25 At that point in time when I came up with

1 this criteria, we were also looking at furloughs, so
2 at that point in time I had it at 12. But once
3 furloughs were off the table, I was back to my core
4 set of meteorologists that I wanted to ensure were at
5 the station to work shift at 11.

6 Q Okay. And so, when you say "forecasters on
7 station," you were including the lead forecasters,
8 general forecasters, those members of management that
9 are 1340s as well, and if they had a service
10 hydrologist as well?

11 A When I looked at the office, I didn't
12 include the service hydrologist. I really only looked
13 at the forecasters, so the leads, the generals, and
14 then the WCM, the SOO, and the MIC.

15 Q And those people do --

16 A They're required to work shift. It's part
17 of their position description.

18 Q Okay. Now it sounds like this accounted for
19 employees having two days off per week. You're
20 including them as working five shifts per week in this
21 calculus?

22 A Right. This is no overtime, right.

23 Q Okay. All right. Why did you do that?

24 A So, when we're looking at a budget, again,
25 this 610 number, I could probably cover this up and

1 make myself feel better. But this 610 number kept
2 flashing. And so I wanted to make sure again that I
3 was meeting my primary mission essential functions the
4 most efficient way possible. So, if I included
5 overtime, that would defeat any of the savings that I
6 had accrued along the way. And even TDY would defeat
7 that as well because that includes per diem and other.
8 So the premium pay, the per diem, I wanted to make
9 sure I had enough people at those offices to cover the
10 shifts.

11 Q And then if for whatever reason those
12 people, you know, couldn't cover shifts, like if
13 somebody took more leave than just what they accrued
14 in that one pay period, how would the office have
15 managed at that point?

16 A Again, I could do the overtime, or I could
17 TDY someone, send someone to the office.

18 Q Okay. So was this the only criteria that
19 you used to determined whether to fill vacancies?

20 A No. We called it the basic minimum staffing
21 criteria, but obviously with 122 offices, there are
22 other things going on potentially in the office. And
23 so there were some offices that had some personnel
24 issues, and so we did even working with the Union on
25 some of those cases to make sure that we advertised a

1 management position as well above the minimum
2 criteria.

3 Q And you said you worked with the Union on
4 that?

5 A Yeah. I believe Bill Hawkins was working
6 with Central Region on that particular case.

7 Q So what else did you take into
8 consideration? You said there were some personnel
9 issues. Anything else that you considered in deciding
10 what to send to the Board?

11 A So obviously we had to be forward looking
12 and strategic as well. So if an office, even if they
13 had the basic number today, were people going to
14 retire? Did they expect someone to go on maternity
15 leave/paternity leave? Anything that could possibly
16 come up and modify the number of people available to
17 cover our responsibilities.

18 Q So you planned in advance for that.

19 A Right.

20 Q Now I want to draw your attention back to
21 Joint Exhibit 11, the guidance itself. That guidance,
22 I believe it is toward the end of the first paragraph,
23 talked about job opportunity announcements that have
24 been advertised and closed by the date of the memo
25 will continue to be processed to completion of hire.

1 If you could just unpack that for us for a minute.

2 What is a JOA, job opportunity announcement?

3 A So that's basically when we advertise a
4 vacancy, there's many steps that a vacancy
5 announcement has to go through in order to be
6 advertised.

7 Q I see. And so what did that sentence mean
8 to you when you saw this guidance?

9 A When I saw this, this was the hiring freeze,
10 the NOAA-wide hiring freeze memo from Dr. Sullivan
11 saying that those positions that had been advertised
12 and closed by the date of the memo would continue to
13 be processed to completion of hire.

14 Q And did you in fact hire from each of those
15 announcements that had already closed?

16 A Some we did not.

17 Q Okay. And why not?

18 A So we had a number of announcements that
19 were already in process or had been advertised and
20 some had even closed. But at that point in time, with
21 the emergency that I was dealing with -- in fact, I
22 said I was the only line office that was dealing with
23 the potential for 11 furlough days. So the magnitude
24 of this emergency on my line office, I had to
25 prioritize the vacancies that would be filled in order

1 to meet my bottom line so I wouldn't be anti-
2 deficient.

3 Q Okay. And are you aware if your actions --
4 so did you cancel vacancies that had been closed?

5 A I think some -- I didn't necessarily cancel
6 any. I think some just expired at that point in time.
7 So once cert opens, there's a period of time that it's
8 available to be used.

9 Q Did you believe that you were being
10 consistent with the policy or not consistent with the
11 policy that had come down?

12 A I was trying to make sure that I met my
13 mission mandate and that I was not going to become
14 anti-deficient. So again, I wanted to make sure that
15 every single one of those offices, so just because say
16 New York had already had a vacancy in the hopper, New
17 York may have had enough meteorologists on station
18 that they could cover the shifts and meet our basic
19 staffing criteria, where another office was either
20 planning or had vacancies that were of greater
21 magnitude and would have jeopardized the ability to
22 meet our mission or required me to cover those shifts
23 with overtime or premium pay. So either way it wasn't
24 going to help out with the emergency situation that we
25 were in.

1 Q And did you seek guidance from anybody about
2 that, the new guidance?

3 A We did talk about it.

4 Q Who talked about it?

5 A The Human Capital Committee, so that's
6 basically all the DAAs meeting with Workforce
7 Management.

8 Q When you say "all the DAAs," what do you
9 mean by that?

10 A So the deputies of the line offices, so I'm
11 a DAA, so my counterparts at other line offices, in
12 regards to that. And the basic information that I was
13 given was I had to focus on my line office. This was
14 a NOAA-wide hiring freeze, and it may vary per line
15 office how we had to handle and implement the hiring
16 freeze.

17 Q So were you able to cancel those vacancies
18 or let the certs expire on positions that had already
19 closed?

20 A Yes.

21 Q Are you aware that NOAA sought an approved
22 authorization to announce jobs internally, otherwise
23 known as NOAA only?

24 A Yes, I knew NOAA was doing that. In fact,
25 we talked about that at the Human Capital Council

1 meeting as well.

2 Q Okay. And would announcing any of your
3 positions as NOAA only have helped the overall
4 staffing issue that you were facing at this time in
5 light of your budget?

6 A No, that wouldn't have had any impact on
7 which positions -- so what's your specific question?

8 Q Well, would it have helped you to fill more
9 positions, for example?

10 A So, when my hiring officials and the CFO and
11 myself signed off on the PFARs, I had to ensure that I
12 had funds available, and that included the PCS costs
13 and everything else associated with filling a vacancy.
14 By making it NOAA-wide or government-wide or even NWS-
15 wide, that wouldn't necessarily impact the -- that's
16 not going to have any effect on the cost of how much
17 it is to fill a vacancy.

18 Q Okay. And when you make selections for, for
19 example, your forecaster positions, is there a
20 particular place where most of the selectees come
21 from?

22 A Internal, just like all those moves that I
23 made. Yeah, most of the hires. So, if it's a status
24 position, once you come to the Weather Service, you
25 never leave. It's kind of like prison. I'm sorry.

1 Often you're filling a vacancy, but you're creating a
2 vacancy somewhere else. So it's kind of this moving
3 hole if you will.

4 Q Okay. I see. So did you send any action to
5 the NOAA Hiring Freeze Board for an exception?

6 A Yes.

7 Q And as of today, are you aware of how many
8 positions that you sent?

9 A I think it's 73 or something like that.

10 MS. CIOFFALO: Okay. I am going to pass a
11 document that I'd like to mark for identification as
12 Agency Exhibit 7.

13 ARBITRATOR SHARNOFF: Thank you.

14 (The document referred to was
15 marked for identification as
16 Agency Exhibit No. 7.)

17 BY MS. CIOFFALO:

18 Q Do you recognize this document?

19 A Yes.

20 Q And what is this document?

21 A So this is just the list of all of the
22 vacancies that we sent to the NOAA Hiring Freeze
23 Board.

24 Q Okay. And when is this document updated as
25 of?

1 A So this was as of January 10.

2 Q Okay. And so how many positions -- and I
3 don't remember if you answered earlier. How many
4 positions have you sent to the Hiring Freeze Board as
5 of January 10?

6 A Seventy-three.

7 Q And how many of those were approved?

8 A All but one.

9 Q And what happened with that other one?

10 A The one, it was an interesting situation --
11 not interesting, but a little odd because we sent in
12 eight, and they were all in regards to our Radar
13 Operations Center, because we're preparing for the
14 next technology infusion -- not technology infusion,
15 but our radars are rather old. The WSR88D stands for
16 1988. So our radars are old, and we need to go
17 through a Service Life Extension Program, and in order
18 to do that, the ROC had vacancies, and they needed
19 these folks to prepare for that Service Life Extension
20 Program.

21 So we had eight positions. They're probably
22 in the middle here somewhere. These OOS, Position 28
23 through 35 that we submitted to the Hiring Freeze
24 Board in association with the Radar Operations Center.
25 And it was the program support assistant number 35

1 that they didn't reject it. They just asked for more
2 details, if this was the right position or not.

3 Q So are they still working on that?

4 A Still working on it, and what I sent back to
5 Rich Boat was maybe if we made it a program analyst or
6 something directly in support of the program, that it
7 might receive approval then.

8 Q All right. But other than that, all of the
9 72 other positions that you submitted have been
10 approved by the Board?

11 A Yes.

12 Q Okay. Do you know how many of these
13 positions are management positions that have been
14 approved?

15 A I think about a third of them are management
16 positions.

17 Q So the nonmanagement positions, are those
18 generally speaking bargaining unit positions?

19 A So then the bargaining unit would be about
20 two-thirds.

21 Q Okay. Did you have any particular regions
22 or offices at headquarters that had, you know, more
23 vacancies filled during this time than others?

24 A Yes.

25 Q And what regions or offices would that be?

1 A Alaska region.

2 Q And what was going on in the Alaska region?

3 A So Alaska is always a unique case in
4 anything we do. So Alaska has three forecast offices
5 and then 12 Weather Service offices, so it's a smaller
6 office. And that's typically folks again that come in
7 from the military to get their foot in the door in the
8 government, and so it has a very high turnover rate in
9 Alaska, not only for that reason, but folks come to
10 Alaska and they either love it or they hate it. And
11 so a lot of times they don't stay very long. Again,
12 get their foot in the door and apply for other
13 positions often.

14 Q Okay. And were there any other issues going
15 on in Alaska, you know, around the time of the freeze
16 that contributed to that vacancy problem?

17 A So Alaska region, years ago they had what
18 was called COLA, cost of living allowance, and that
19 was a nontaxable allowance for living in Alaska. I
20 think Hawaii was 25 percent and Alaska was 22 percent
21 or something like that on top of your salary, again
22 tax-free. But the tax-free portion did not contribute
23 to your retirement.

24 So, when they began transitioning over a
25 three- to five-year period going from COLA to locality

1 pay like the rest of the country, their retirement
2 percentage or equation got bigger. And so basically
3 come December 2012, many folks had their high three,
4 and they were at the high three, the calculation for
5 their retirement. They were eligible to retire, and
6 they went ahead and retired. So we did have a slug if
7 you will or a large group of individuals that retired
8 in December of 2012 in the Alaska region.

9 Q So do you know how many people retired when
10 you say "slug"?

11 A The number of a slug? I think it was like I
12 want to say 25 people or so, and that's about 10
13 percent of their workforce because they only have 250
14 or less.

15 Q Okay. So what did you do in response to all
16 of that?

17 A Again, I had to go back to my
18 prioritization. I wasn't going to fill all those
19 positions immediately, some of them management, some
20 of them bargaining unit. But I had to focus again on
21 the mission, meeting our mission responsibilities. So
22 I know that, for example, in the Juneau Office, the
23 SOO retired, the ITO retired, a number of their lead
24 forecasters and general forecasters retired. And so
25 some of those positions are reflected here, and it's

1 just now we sent the SOO to the Board as well.

2 Q Okay. At the time that the hiring freeze
3 guidance came out and really anytime around that point
4 in the year, did you know how many vacancies you were
5 going to be able to fill between then and the end of
6 the year?

7 A I didn't have an exact number at that point
8 in time.

9 Q Why not?

10 A Because there's a lot of uncertainties when
11 you're dealing with how many vacancies, how many
12 people are going to retire. We have a lot of people
13 that are eligible to retire but haven't retired. And
14 then again folks moving from office to office. So
15 there's just a lot of uncertainties.

16 In regards to our vacancy rate, I think in
17 any given period of time we have about 150 vacancies
18 across the Agency. But how many I could fill, again,
19 I wanted to -- it wasn't how many could I fill. It
20 was how many did I need in order to meet that minimum
21 staffing criteria.

22 Q Okay. Once you received your budget at the
23 mid to end of March, this 610 number that keeps
24 flashing here, was the budget pretty much settled at
25 that time? I mean, did you know what you had?

1 A We didn't because when I talked about 11
2 days of furlough and then down to three days of
3 furlough and then no furlough, that was all based on
4 reprogramming that was happening.

5 Q And where was that reprogramming happening?

6 A So it was coming from other line offices,
7 but it still needed congressional approval for those
8 reprogrammings.

9 Q And was that something that the Weather
10 Service was doing internally?

11 A This was NOAA-wide, the reprogramming. So
12 it wasn't just Weather Service.

13 Q Okay. And do you know if that reprogramming
14 did happen?

15 A It did. The problem was we didn't receive
16 that funding until the August timeframe. So, when
17 you're receiving money in the August timeframe, then
18 you have a limited amount of time. In fact, you're
19 beyond many of the timeframes or deadlines for your
20 acquisitions and grants and other contracts to get
21 things moving forward. And obviously, at that point
22 in time in the August timeframe, for me to fill a
23 position with the funding, I was out of time.

24 Q Okay. And when does your fiscal year end?

25 A October. Well, September 30.

1 Q Okay. Are you familiar with what's been
2 known, what's been referred to as the Sandy
3 supplemental package?

4 A Yes.

5 Q What is the Sandy supplemental package?

6 A So that was an additional appropriation that
7 NOAA received funding for, and that's two-year funds.
8 So even though we didn't get that money until I think
9 the June or July timeframe, and then we have until
10 September 30 of this year, of 2014, to spend those
11 funds.

12 Q Okay. And when did you know that you were
13 going to -- well, let me strike that.

14 A One other thing with the Sandy supplemental
15 is that I couldn't use that for my labor dollars. You
16 can't use that for FTEs because it's just a one-time
17 funding.

18 Q Oh, I see.

19 A And so for labor dollars you need continual
20 funds to pay for those employees. You could pay for
21 potentially a contractor that you could easily get rid
22 of once the -- "easily get rid of," that doesn't sound
23 very nice. But it's easier to have the contractor
24 come in for a specific type of work, accomplish that
25 job, and then go on.

1 Q I see. Okay. During this time through the
2 end of FY '13 and even to today, do you believe that
3 the Weather Service has met its mission? Are you
4 aware of any offices that have not been able to put
5 two people on shift 24/7, you know, because of vacancy
6 problems?

7 A No. We have met our mission, and two people
8 have always been on shift.

9 Q And did the Weather Service violate any
10 appropriations laws that you're aware of during this
11 time?

12 A No.

13 Q Did you exceed your authorization at all?

14 A No. Appropriation.

15 Q Appropriation, thank you. You're aware of
16 the grievances at issue in this case in addition to
17 the hiring freeze, correct?

18 A Yes.

19 Q Those grievances allege that the Weather
20 Service essentially had a de facto freeze on filling
21 of vacancies even before that hiring freeze was
22 implemented. Do you agree with that allegation?

23 A I do not.

24 Q Why not?

25 A Well, even when we had the hiring freeze in

1 place, I was still hiring positions. So, with a
2 hiring freeze, you would think a freeze would be no
3 filling of positions at all. But again, I've got to
4 make sure I have enough forecasters and folks on
5 station to cover my shifts.

6 Q And before the NOAA hiring freeze guidance
7 came out, had you told your FMCs, the regional office
8 directors, that they could not hire positions?

9 A No.

10 Q Are you aware of any issues that the Agency
11 was having with respect to getting hiring actions
12 processed?

13 A Oh, obviously. Workforce Management.

14 Q Obviously. What does that mean? What about
15 Workforce Management?

16 A So over the years, I mean, I wouldn't say
17 even when I first joined the Weather Service, but
18 particularly over the last 10 years, Workforce
19 Management has gone through a number of
20 reorganizations, and I think their billet count is
21 around 200 positions, and they were less than 100
22 positions.

23 Q When was that?

24 A Even today. Their staffing, they're so
25 short on staff, people retiring, people leaving,

1 associated with the reorganization. So they don't
2 have the resources in place to meet their customer
3 demands, we being the customer, the line offices being
4 the customer. And so they tried to implement an 80-
5 day hiring model, which I think was government-wide.

6 Q How did they do with that?

7 A Last year I think it was 170 days.

8 Q Okay. Did you take any action to address
9 that issue on behalf of the Weather Service?

10 A I continually interacted with the Director
11 of Workforce Management through my role on the Human
12 Capital Committee. But also I would have one-on-one
13 meetings with the Director of Workforce Management
14 trying to help her through the problems that she was
15 having with her staffing but also again prioritize the
16 positions because obviously they had too much work to
17 do with too little people to do it.

18 MS. CIOFFALO: Okay. That's all I have.

19 ARBITRATOR SHARNOFF: Okay. What is your
20 pleasure?

21 MR. HIRN: Well, I don't need a break to do
22 this cross-examination. If you do, we can break, but
23 I'm slightly inclined to say I'd rather do it now when
24 my questions are fresh in my mind.

25 ARBITRATOR SHARNOFF: Do you have any idea?

1 I mean, she's been on the stand for a couple hours.

2 MR. HIRN: Whatever anybody else wants.

3 ARBITRATOR SHARNOFF: Well, I'm just --

4 MR. HIRN: I don't need a break to do this.

5 But if anybody else does --

6 ARBITRATOR SHARNOFF: Well, obviously
7 everybody gets a vote, because people have medical
8 conditions, et cetera.

9 MR. HIRN: Right. Right.

10 ARBITRATOR SHARNOFF: But in addition to
11 that, it may be that you want to start, go through
12 those issues that are burning a hole in your brain
13 right now and then take a break and then come back and
14 finish or go through it all. You know, it's one thing
15 if it's an hour. It's another thing if it's three
16 hours.

17 MR. HIRN: Oh, it's only 12:15. No, it's
18 not going to be three hours, but it depends in large
19 part on the witness's recollection and the --

20 ARBITRATOR SHARNOFF: Yes. Why don't we go
21 off the record.

22 (Whereupon, a short recess was taken.)

23 ARBITRATOR SHARNOFF: Back on the record.

24 MR. HIRN: Okay.

25 //

1 CROSS-EXAMINATION

2 BY MR. HIRN:

3 Q Laura, can we start by looking at Agency
4 Exhibit 4?

5 A Okay.

6 Q And I'd like to ask you about the meaning of
7 certain column headings, but first of all, could you
8 tell us when this document was prepared?

9 A I don't actually know when the document was
10 prepared, but --

11 Q Do you know whether it was prepared for the
12 purposes of this hearing, or was it something that you
13 have a specific recollection was prepared during the
14 normal course of operations?

15 A This would be for normal operations. And so
16 the way I was going to determine the date of it was
17 based on when we had markups and such coming back from
18 the Senate. So you can see this only has Senate
19 numbers on there. Typically we'll have Senate and
20 House numbers if we have a markup back from the House
21 as well. So this only has Senate numbers on there, so
22 I would assume it would be after a Senate markup of
23 our FY '13 budget.

24 Q Well, directing your attention to the third
25 column --

1 ARBITRATOR SHARNOFF: Third column being?

2 BY MR. HIRN:

3 Q FY 2013 Senate full-year CR without
4 rescission, and there's one with rescission. What is
5 next to it? What is that column to your
6 understanding?

7 A So one would be with this rescission that we
8 found out about in the March timeframe. So that would
9 be, I would then calculate it to March 2013 timeframe,
10 right around the same time that we had the hiring
11 freeze. So you can see the impacts of the rescission
12 and then the impacts of the sequestration and how it
13 continued to whittle away our spend plan that we had
14 in 2012.

15 Q Okay. So the 655 number, isn't that the
16 number that appears in the final FY '13 Department of
17 Commerce Appropriations Act enacted on March 21, 2013?

18 A I would assume so, but I don't have those
19 numbers in front of me.

20 Q Is that supposed to indicate the full
21 amount, the amount appropriated for Local Warnings and
22 Forecast in the 2013 final Commerce Appropriations Act
23 that's Public Law 113-6 enacted on March 21?

24 A Okay.

25 Q Yes?

1 MS. CIOFFALO: I'm going to object to this
2 line of questioning. I think it's -- well, no, go
3 ahead. Never mind.

4 ARBITRATOR SHARNOFF: Well, if you know.

5 MS. CIOFFALO: If you know.

6 ARBITRATOR SHARNOFF: Don't assume. Don't
7 guess. Just if you know.

8 THE WITNESS: I can't assume anything, so I
9 don't --

10 BY MR. HIRN:

11 Q You don't know what that column is.

12 A Well, I know that that column is the full-
13 year CR without a rescission, exactly what it states
14 that it is.

15 Q When you say "full year," what does that
16 mean? Is that the 2013 final Department of Commerce
17 Appropriations Act?

18 A So that would be what our full-year omnibus
19 appropriation would be under a CR in 2013.

20 Q But you didn't have a CR at the end of 2013.
21 You had a final appropriations bill. You had a CR
22 earlier that year, correct?

23 A You have to have a CR in order to have
24 funding, so --

25 Q You had a CR at the beginning of the fiscal

1 year.

2 A Just like we have right now.

3 Q Right, but then on March 21, 2013, in Public
4 Law 113-6, Congress enacted the Department of Commerce
5 final appropriations bill for FY '13, correct?

6 A Okay. Yes.

7 Q Okay. And in the report accompanying that
8 bill, it had a line for Local Warnings and Forecasts,
9 correct?

10 A Yes.

11 Q Okay. And that number was 655.

12 A Okay. I don't have that documentation in
13 front of me, so I can't do a comparison as to --

14 Q All right. Well, does this or does this not
15 chart show anywhere how much Congress appropriated for
16 Local Warnings and Forecasts?

17 A Sure. That's what this document is trying
18 to state, that you have the 655 and then you have a
19 rescission on top of that, which would take it 642.

20 Q Right.

21 A And then you have sequestration on top of
22 that, which is another \$31 million reduction, which
23 takes you down to 610. That's the progression right
24 there. Six fifty-five with the rescission with
25 sequestration takes you to 610.

1 Q Okay. How much did of the Local Warnings
2 and Forecasts number -- well, no. I'm going to show
3 you what would be marked for identification as Union's
4 Exhibit --

5 MS. LUCIANI: 86.

6 (The document referred to was
7 marked for identification as
8 Union Exhibit No. 86.)

9 BY MR. HIRN:

10 Q -- 86.

11 ARBITRATOR SHARNOFF: Thank you.

12 (Discussion held off the record.)

13 BY MR. HIRN:

14 Q Okay. Who is John Potts?

15 A John Potts is my CFO now.

16 Q Okay. Looking at --

17 MR. HIRN: This is what, 80 --

18 MS. LUCIANI: 86.

19 MR. HIRN: Exhibit 86.

20 BY MR. HIRN:

21 Q Looking at the last of these three pages --

22 ARBITRATOR SHARNOFF: I'm sorry. When you

23 say "my CFO," is he National Weather Service, NOAA?

24 THE WITNESS: Yes. John Potts is the

25 National Weather Service CFO.

1 ARBITRATOR SHARNOFF: Okay.

2 BY MR. HIRN:

3 Q Looking at the last page, have you seen this
4 before?

5 A I have not seen this particular spreadsheet,
6 no.

7 Q But would you agree with me that John Potts
8 has the final funding for FY '13 Local Warnings and
9 Forecasts, 625590, Local Warnings and Forecasts base?

10 A Yes, that's what this says through
11 August 17.

12 Q And it only spent \$501 million of that 625
13 through August, correct?

14 A That's what this shows, reading those three
15 columns.

16 MR. HIRN: Okay. Monique, will John be
17 testifying?

18 MS. CIOFFALO: Yes.

19 MR. HIRN: Is Bill still here?

20 (Discussion held off the record.)

21 ARBITRATOR SHARNOFF: Do you want to wait at
22 this point?

23 MR. HIRN: No, no. I didn't want to talk to
24 him. It's just that if I need to have this
25 authenticated, this was an email that was sent from

1 the CFO to our Vice President. But I have another
2 way. It's okay. I have another way.

3 BY MR. HIRN:

4 Q Okay. So let's go back to the Local
5 Warnings and Forecasts base. What percentage of that
6 is labor?

7 A What percentage of that is what?

8 Q What percentage of that is labor, Local
9 Warnings and Forecasts base?

10 A I do not have the exact percentage, but we
11 usually use percentages around 70 percent or so.

12 Q So that is not all labor costs, correct?

13 A Correct.

14 Q So you could have taken, or perhaps you did,
15 reductions in non-labor costs because you would have
16 had about close to \$200 million non-labor in that
17 number, correct?

18 MS. CIOFFALO: Objection. I don't
19 understand that, and I think it's speculative that she
20 would have --

21 MR. HIRN: Yes.

22 ARBITRATOR SHARNOFF: Well, the question is
23 did the witness understand it? Speculative, we can
24 deal with that.

25 MS. CIOFFALO: Right, speculative. Are you

1 asking her if she would have done something or --

2 MR. HIRN: Yes, because I'm asking her
3 whether she would have done. I'm going to ask whether
4 she did. Yes, I'm going to ask her whether she would
5 have done something.

6 MS. CIOFFALO: I think that that's
7 speculative and not probative. I mean, if you want to
8 ask her what she did do.

9 MR. HIRN: Well, I will tell you why it's
10 not speculative, is because if you're going to persist
11 claiming this was an emergency, you have to
12 demonstrate there was no alternative, and I'm
13 exploring what other alternatives were available.

14 MS. CIOFFALO: I mean, as long as it's
15 understood it's speculative.

16 ARBITRATOR SHARNOFF: Okay. Well, if you
17 can rephrase it, I think you can get there.

18 MS. CIOFFALO: Right.

19 MR. HIRN: Okay.

20 BY MR. HIRN:

21 Q So of the either 610 or 625 or whatever the
22 number is, there were nearly \$200 million in non-labor
23 costs, correct?

24 A Where's the \$200 million coming from?

25 Q Thirty percent of 610 or 625.

1 A Oh, okay.

2 Q Correct?

3 A Yeah, using my nonstatistical percentage of
4 70 percent that I gave you, okay.

5 Q Right. Okay. Then let's explore this. So
6 then you made those decisions without really knowing
7 what percentage of the budget was available for labor.

8 MS. CIOFFALO: Objection. That's not what
9 she stated. She said she can't tell you today what
10 percentage was available for labor.

11 THE WITNESS: I just said based on the
12 nonexact number that I gave you of 70 percent.

13 BY MR. HIRN:

14 Q Well, so you're assuming it's 70 percent,
15 but it might be more or less.

16 A When we look at the budget, the basics of
17 our budget is that 80 percent of the budget goes
18 towards meeting the mission mandate. Another 5
19 percent goes towards policy development, strategic
20 planning, that sort of thing. And 15 percent is the
21 only discretionary spending that we have.

22 Q Okay. That's not what I asked you. I asked
23 you about what percentage of Local Warnings and
24 Forecasts is labor, and you said you think it's about
25 70 percent, but you're not sure. Is that your

1 testimony?

2 A I will say it's 70. I will estimate that
3 it's 70 percent.

4 Q Okay. So then 30 percent is non-labor,
5 correct?

6 A Okay.

7 Q And that's about \$200 million of a number
8 that is slightly more, \$600 million, correct?

9 A Correct.

10 Q In FY '13, how much did you pay contractors?
11 You've got any number of contractors here in the
12 building and working for the Weather Service and NOAA,
13 correct?

14 A Correct. We have contractors.

15 Q And do you know how many you had in FY '13?

16 A I do not.

17 Q At the time you were making these decisions,
18 were you aware of how many contractors you had?

19 A I didn't have the exact number. We were
20 looking into the entire cost of operating the Weather
21 Service, and we're still trying to get a handle on
22 that today. That's why we're going through an entire
23 budget restructuring and headquarters reorganization.

24 Q Did you at the time know how much your
25 personnel costs were?

1 A Personnel costs?

2 Q Yes.

3 A So we could easily calculate our labor
4 dollars if that's what you're asking. There are a
5 number of other things that go into operating the
6 Weather Service as I went through the functional
7 analysis. You've got to have your observation sites.
8 You have to have the models, the centers for --

9 Q That's not what I've asked you. I asked you
10 did you know what your personnel costs were at the
11 time you were making these decisions in March.

12 A The answer was yes.

13 Q But you did not know how many contractors
14 you had.

15 A I did not have an exact number on the number
16 of contractors.

17 Q Did you know how much you were spending on
18 contractors?

19 A I don't have that number either.

20 Q Did you at the time know how much you were
21 spending on contractors?

22 A No.

23 Q Did you make an inquiry as to how many
24 contractors you had or how much you were spending on
25 contractors?

1 A Yes.

2 Q And did you get an answer?

3 A I did, but I can't recall what the answer
4 was.

5 Q So you did know at the time. Did you or did
6 you not know at the time?

7 A When we were first presented with the
8 budget, again, we were trying to get a calculation of
9 all of the costs and trying to determine what
10 discretionary spending, where we could make potential
11 cuts in order to meet this bottom line of \$610
12 million. And that did include cuts of contractors. I
13 know we had a percentage of a target goal of the
14 number of contractors that we were trying to reduce.

15 Q How could you have a target goal of the
16 number of contractors you're trying to reduce when you
17 said you didn't even know how many contractors you
18 had?

19 A I don't have that number off the top of my
20 head.

21 Q I asked you if you had at the time, and you
22 said no. Wasn't that your testimony?

23 A Yes.

24 Q Okay.

25 A And when I answered that question --

1 Q So if you did not know at the time how many
2 contractors you had, can you explain to me how then
3 you can establish a target goal of how many to cut? I
4 don't understand that.

5 MS. CIOFFALO: I think you're
6 mischaracterizing her testimony. She said she did get
7 the information after she requested it.

8 MR. HIRN: I just asked her again if she
9 knew at the time how many contractors she had, and she
10 said she didn't.

11 MS. CIOFFALO: No. You asked her whether or
12 not that's what she said before. Why don't you just
13 ask her the question clearly one more time.

14 MR. HIRN: I think I did.

15 ARBITRATOR SHARNOFF: Okay. Do you
16 understand the question?

17 THE WITNESS: So he wants to know if I knew
18 at the time --

19 ARBITRATOR SHARNOFF: You don't have to
20 explain.

21 THE WITNESS: Okay.

22 ARBITRATOR SHARNOFF: If you understand it,
23 answer it. If you don't understand it, we'll have it
24 repeated or restructured.

25 THE WITNESS: So based on my understanding

1 of the question that he asked, he asked at the time of
2 receiving the budget if I knew how many contractors I
3 had. I said no. And then I went in and tried to give
4 you additional information about the number of
5 contractors and how we were looking at our entire
6 budget to try to meet our mission mandate and our
7 bottom line so we weren't anti-deficient.

8 BY MR. HIRN:

9 Q Okay.

10 A So then I went out and we started asking all
11 kinds of questions, including the number of
12 contractors that we had. And based on that, in fact,
13 NOAA mandated that we set reductions in travel. We
14 had to reduce the number of contractors. We had to
15 reduce the amount of costs for shipping items,
16 shipping parts, even ideally a reduction in PCS. We
17 had to do that in order to meet our bottom line.

18 Q Okay. So how much did you cut your
19 contractor costs?

20 A I don't have that exact number.

21 Q Do you have a good faith best recollection
22 of how much you cut your contractor costs by?

23 MS. CIOFFALO: Objection. She said she
24 didn't know.

25 MR. HIRN: No, she said she didn't have an

1 exact number.

2 THE WITNESS: I don't want to assume on the
3 number, but in the end at the end of the fiscal year
4 we reduced our number of contractors.

5 MR. HIRN: Okay.

6 ARBITRATOR SHARNOFF: Just so I understand,
7 do you have or did you have at that time, even if you
8 don't know what those numbers were, did you know the
9 total amount of money going to all the contractors and
10 then the total amount that you reduced it by?

11 THE WITNESS: No, I did not because those
12 contractors are spread out across all of these PPAs
13 and embedded within the programs. So those
14 contractors are in our ORF, the operations and
15 research dollars. And they're also in the PAC
16 dollars. That's the -- I forgot what PAC stands for.
17 PAC isn't even on here I guess. So those contractors,
18 you can pull out the labor number rather easy in the
19 budget, but to pull out a contractor cost within a
20 program is much more difficult.

21 BY MR. HIRN:

22 Q Do you recall in FY '13 how much the Weather
23 Service spent in grants?

24 A Not very. I do not know the exact number.
25 We're not a granting agency, so the percentage would

1 be less than 1 percent of our budget that would be
2 spent on grants. The other line offices within NOAA
3 have many more grants than we have. In fact, we would
4 have more friends if we had more grants, and I would
5 like to do that. But right now we're not a granting
6 agency.

7 Q You're not a granting agency. Okay. Then
8 let me ask you to look at Union Exhibits 73 and 74.

9 MS. CIOFFALO: Do you have copies for the
10 witness of all these so that I don't have to --

11 MR. HIRN: No, I don't.

12 ARBITRATOR SHARNOFF: You want to --

13 MS. CIOFFALO: No, no, you hang onto that.
14 I'll just --

15 THE WITNESS: So was it 73 or 74?

16 BY MR. HIRN:

17 Q 73 and 74.

18 A Okay.

19 Q Are you at all familiar with these
20 printouts?

21 A So these, it looks like it starts with 2011.
22 I mean, this is a lot of information to --

23 Q Yes, and it's a lot of information about the
24 thousands of grants that the Weather Service has given
25 since 2010, isn't it?

1 ARBITRATOR SHARNOFF: Well, first, are you
2 familiar with the document?

3 MS. CIOFFALO: Right.

4 THE WITNESS: I have never seen this
5 document before, no.

6 ARBITRATOR SHARNOFF: This document being?

7 THE WITNESS: Union Exhibit 74.

8 ARBITRATOR SHARNOFF: Okay. And what about
9 73?

10 THE WITNESS: I have never seen Union
11 Exhibit 73 either.

12 BY MR. HIRN:

13 Q So looking at this, does it surprise you
14 that the Weather Service gives out this much in grants
15 and this many grants?

16 A Well, I was trying to see a bottom line. So
17 is this the 2013 grand total of --

18 Q It's the 2013 year-to-date cumulative year
19 up top. Mr. Sobien explained he got this partial way
20 through the fiscal year last year from you folks.

21 A Okay. So, in 2010, this is \$31 million?

22 Q Right. That's well over 1 percent of your
23 budget, isn't it?

24 A One percent. So that would be 3 percent of
25 the budget.

1 Q Okay. So, when you say the Weather Service
2 is not a granting agency, were you unaware of these
3 hundreds, if not thousands, of grants that the Weather
4 Service has given since 2010?

5 A I know that we send grants. Sometimes money
6 comes to Weather Service and then out the door, for
7 example, through the World Meteorological
8 Organization. Some money is sent to the Weather
9 Service and then sent on to UCAR for the COMET program
10 as a grant. I don't know if these funds are base
11 dollars or if these are money that we have received
12 from other entities and then passed on to
13 universities. So I have no idea where these funds
14 were originated.

15 Q Directing your attention to the fourth page
16 of Union Exhibit 73, doesn't it show that the funds
17 you received from the World Meteorological
18 Organization were netted out in the totals here?

19 A So that would be the case in 2010, and if
20 that's the case, then I would say that this document
21 isn't -- I'm not sure where this document came from or
22 the validity of it because typically we send I think
23 about \$3 million to COMET for grants. The other big
24 grant that I'm familiar with -- I guess it's not a
25 grant, it's an appropriation on the Mesonet funds that

1 come in from Congress.

2 Q Okay. Well, let's go back to the first
3 principles, though. Back in March then when you were
4 looking at these financial issues, how to make ends
5 meet, did you make any conscious decision to cut
6 grants and, if so, by how much?

7 A The grants and contracts were all part of
8 one of the three things that NOAA mandated that we
9 reduce our costs and go back to the I think it was
10 2010 models.

11 Q Okay. Now I'm glad you said that because
12 you said NOAA mandated you to do something, but I
13 asked you whether you actually did and by how much.

14 A So I don't know that exact amount.

15 Q Do you know whether you actually cut grants?

16 A I could not state in all honesty if we did
17 cut grants or not.

18 ARBITRATOR SHARNOFF: Just so I understand
19 whatever your understanding is, when you say "cut
20 grants," do you terminate a grant in the middle of the
21 grant, or do you not renew it? If it's a three-year
22 grant, do you just give it the first year? How does
23 that work?

24 THE WITNESS: There's a number of ways to do
25 that. If the money is out the door already, it's

1 difficult to pull the money back. You can reduce by a
2 percentage of the grant, or you can just not renew the
3 grant all together. So there are a number of ways to
4 do that. I think in these categories that NOAA
5 mandated, our reduction in these, they had an actual
6 term for these reductions, but the contracts and
7 grants were lumped together in one particular
8 category. Travel was another category, and transfer
9 of goods was a third category.

10 BY MR. HIRN:

11 Q Isn't it true, Laura, that although Weather
12 Service's final appropriation was subject to
13 rescission and sequestration, Congress increased Local
14 Warnings and Forecasts by \$17 million last year above
15 the President's request?

16 A I don't know the exact number.

17 Q Okay. Now you testified that in the Sandy
18 supplemental you were prohibited from using those
19 funds to pay for labor, correct?

20 A Yes.

21 Q Was there anything in the Sandy supplemental
22 that said that?

23 A The Sandy supplemental funds could not
24 include a tail, so that was anything that would
25 require funding beyond that time period. So it was a

1 one lump game changer if you will, a one-time payment
2 for a program or a project, and it could not include a
3 tail.

4 Q Okay.

5 A And a tail would mean additional
6 expenditures after the time or period when you can
7 obligate those funds.

8 Q Okay. Why don't you answer my question now.
9 My question was, was there anything in the Sandy
10 supplemental which actually said that you cannot use
11 it for labor?

12 MS. CIOFFALO: I'm going to object. He's
13 being quite rude to the witness. I think that she
14 understood it and answered the question in the way
15 that she believed it should be answered.

16 MR. HIRN: Yes, which was not the answer to
17 the question that I asked. And I think the witness is
18 being rude because she's perpetually answering
19 different questions than the direct, clear ones posed
20 to her.

21 ARBITRATOR SHARNOFF: Let's not get into
22 rude. If you understand the question, please answer
23 it.

24 THE WITNESS: So I do not know and I cannot
25 quote anything out of the Sandy supplemental for you

1 in exactness as to what it says. All I know is when
2 we were preparing the spend plan for the Sandy
3 supplemental dollars, specifically the Deputy Under
4 Secretary of NOAA, David Kennedy, stated that the
5 projects included in that plan could not include a
6 tail. There was no expenditures. Again, it was all
7 about you cannot have any activities that include a
8 tail.

9 BY MR. HIRN:

10 Q But the money in the Sandy supplemental went
11 into Local Warnings and Forecasts, did it not?

12 A The funds went for various projects, such
13 as -- yes, into Local Warnings and Forecasts.

14 Q And even if you couldn't use those dollars
15 for labor, would you agree with me that that therefore
16 frees up other fungible dollars, Local Warnings and
17 Forecasts, that are used for labor?

18 A The Sandy supplemental dollars that we
19 received are being specifically tracked towards given
20 projects. One project in particular that I was going
21 to explain was the repair of some of our WFOs that
22 were damaged during the hurricane, and the repair of
23 those WFOs would be Local Warning and Forecast
24 dollars.

25 Q Okay. Let me ask the question again. Even

1 if the \$25 million that Congress appropriated in the
2 Sandy supplemental that said to increase forecasting
3 capabilities, even if that was not used directly for
4 labor but for other expenses, would that not free up
5 an equal amount of money in the Local Warnings and
6 Forecasts pot to use for labor?

7 A I would say no because it has to be for a
8 specific project that were being tracked. Again, a
9 specific project like repairing a WFO that was damaged
10 during a hurricane or storm surge dollars. It's a
11 project that we're trying to infuse dollars and
12 science and technology into those programs to improve
13 our forecasts.

14 Q But you would have paid for those out of
15 Local Warnings and Forecasts if you did not have the
16 Sandy supplemental, correct?

17 A We wouldn't have done it. We wouldn't have
18 been able to do that program investment.

19 Q Okay. Isn't it true that between the period
20 of about 2010 and last March the Weather Service had
21 already reduced its workforce by about 5 percent or
22 more?

23 MS. CIOFFALO: It's outside the scope of
24 direct.

25 MR. HIRN: Pardon?

1 MS. CIOFFALO: It's outside the --

2 ARBITRATOR SHARNOFF: Well, to the extent
3 that it's relevant, you may inquire. Do you
4 understand the question?

5 THE WITNESS: I do understand the question.
6 I don't know the exact numbers that we had on our FTEs
7 or our billet count in 2010 compared to March 2013.
8 So I could not state that it was or was not reduced by
9 5 percent.

10 BY MR. HIRN:

11 Q Would you agree that you had several hundred
12 less people on board last March than you did three
13 years prior?

14 A I don't know what those numbers were, the
15 comparison between the two numbers. I do know that I
16 can verify specifically that we had more people on
17 board in March of 2013 than we had during the
18 modernization. The modernization took us up to 4,700
19 employees, and we had more than that in March of 2013.

20 Q But vis-à-vis 2010, you don't know.

21 A I don't know the exact number of people I
22 had in a said date in March of 2010.

23 Q So then would it not be correct to say that
24 you did not take into consideration in your decision-
25 making last March that you may already have had a 5

1 percent or more labor savings through a reduction in
2 the workforce over the previous three years?

3 A When this hiring freeze went into place,
4 again, knowing the magnitude of the budget that we
5 were presented with, we had to ask many questions.
6 And again, it came down to calculating what does it
7 actually cost to run the National Weather Service.

8 Our financial management issues obviously
9 showed that we didn't have a good idea of our labor
10 costs, our discretionary spending, nondiscretionary
11 spending. We were in serious financial trouble. We
12 were using multiple different financial management
13 systems. That was one of the first things that Gary
14 Reisner did when he came over here as Acting CFO from
15 National Marine Fisheries was to transition us over to
16 one financial management system that NOAA could see
17 had more transparency into our budget as well.

18 In regards to the number of FTEs or the
19 number of billets that we had in place, we could not
20 even calculate that at that time because, again, we
21 were using multiple management systems. The old RIMS
22 system, our Table of Organization was not even
23 straight, so I couldn't go and ask how many people did
24 we have on board at any given time. So we had a
25 detailee from NOAA come over last summer and look at

1 our billet count and try to determine how many actual
2 people we had on board at the National Weather
3 Service.

4 Q Okay. So is it correct to say you really
5 didn't know how deep a hole you were in at the time?

6 A Yeah.

7 Q Okay. Did you calculate how much money you
8 expected to save through the hiring freeze?

9 A So we had a target number obviously with the
10 budget numbers that were given to us, and the CFO was
11 calculating that, was in the process of calculating
12 that, how much we would potentially save if we had a
13 hiring freeze.

14 Q And how much was that?

15 A I think it was around \$20 million. The \$20
16 million, that was for the 11 days of furlough because
17 \$2 million per day, 11 days, \$22 million. I don't
18 think we actually knew. The problem with the hiring
19 freeze was we didn't actually know -- we couldn't get
20 a specific amount because we never knew how many
21 vacancies we were going to have. And putting the
22 hiring freeze in place, again, people would not have
23 the ability to move as often, and so you likely
24 weren't going to have as many vacancies as you
25 expected. So you were still going to see obvious

1 savings from people retiring or people quitting the
2 Weather Service, but in regards to the moving hole
3 that I talked about before, you weren't going to have
4 that.

5 You were going to have savings, though, in
6 PCS costs, and we did see a savings in the PCS costs.
7 That was one of the biggest dollar items. I was
8 trying to focus on the biggest dollar items, and with
9 an average historical expenditure of \$10 million on
10 PCS, I believe in 2013 it was reduced down to only
11 \$5 million that we spent on PCS. So there was a
12 \$5 million savings towards the hiring freeze right
13 there.

14 Q What percentage of the Weather Service
15 employees are in the bargaining unit versus
16 management?

17 A I think there's about 60 percent that are in
18 the bargaining unit versus 40 percent of managers.

19 Q Moving back to the financial mismanagement
20 matters you testified to, did you ever read the
21 May 11, 2012 investigative report?

22 A I did not read the report that the
23 Department did because that was not public, so I did
24 not have an actual copy of that report. There was a
25 copy I believe that was -- what's the terminology with

1 the Privacy Act --

2 Q Redacted?

3 A Yes. There was a redacted copy I believe
4 that was shared with the Hill.

5 Q Okay. Did you have any prior knowledge of
6 the matters that were being investigated and found to
7 be improper?

8 A Prior to?

9 Q Prior to receiving the complaints from the
10 Office of Inspector General?

11 A Yes.

12 Q You did?

13 A Yes.

14 Q Were you the person who initiated one of the
15 complaints of the Department to the Inspector General?

16 A No.

17 Q And in summary, your prior knowledge, what
18 was that prior knowledge? What did you know about it?

19 A So I had an individual come to me and state
20 that he thought there was the potential for
21 mismanagement of funds, and so I made sure that the
22 NOAA CFO was aware of that.

23 Q And that's Maureen Wylie?

24 A Yes.

25 Q Did you report that to Maureen Wylie?

1 A I did, and I reported it to Jack Hayes as
2 well.

3 Q And what was that timeframe?

4 A So I think that was in the spring of 2011.

5 Q Okay. And when was it that you got the OIG
6 complaint?

7 A In August of 2011.

8 Q Did you know, the person who brought it to
9 your attention, is he or she the one that initiated
10 the OIG complaint?

11 A The OIG complaint was anonymous.

12 Q You testified about the meaning and intent
13 of the 1993 Human Relations Plan I believe. Please
14 remind us again what was your position with the
15 Weather Service at the time that was negotiated.

16 A In 1993?

17 Q Yes.

18 A What was the actual date?

19 Q December 1993.

20 A I was in WSO-Kodiak.

21 Q And what was your grade then?

22 A A GS-5.

23 Q And what was your job title?

24 A I was a meteorologist intern.

25 Q So is it correct to say that you had no

1 involvement in either developing or negotiating that
2 plan?

3 A I did not.

4 Q With regard to the 2000 floater plan, could
5 you remind us what your position was at the time with
6 the Weather Service?

7 A I was the meteorologist in charge at WFO-
8 Juneau.

9 Q Did you have any involvement in developing
10 that plan or participating in the implementation teams
11 that developed the details of that plan?

12 A Only implementing the plan.

13 Q As every meteorologist in charge did,
14 correct?

15 A Yes.

16 Q So what was the basis of your testimony
17 about the meaning and intent of those two plans or
18 agreements?

19 A I don't understand the question.

20 Q Okay. I recall some testimony that you gave
21 about what the meaning and intent of the '93 plan and
22 the 2000 floater plan were. What was the basis of
23 your knowledge, of your opinion about that?

24 A I knew the plans existed, the '93 plan
25 existed. Again, I was in the Weather Service, and

1 everyone was talking about the super bid at that time,
2 applying for the general forecaster vacancies. I was
3 knowledgeable of the 2004 plan because that was
4 basically the end of the modernization as we went to
5 WFOs, and that would be with AWIPs, and in the 2004
6 plan with the OPLs. I implemented that plan as well.

7 Q But you weren't involved in negotiating that
8 plan, were you?

9 A No.

10 Q Do you know whether at the end of last
11 fiscal year, September 30, 2013, there was any money
12 left in Local Warnings and Forecasts' lines, or was it
13 totally obligated?

14 A Of the Local Warnings and Forecasts, we
15 allocated more than 98 percent of those funds.

16 Q So there was 5 or \$10 million left?

17 A I think so.

18 Q Might there have been more than \$10 million
19 left?

20 A In Local Warnings and Forecasts?

21 Q Yes.

22 A I don't believe so.

23 Q But might there have been? I mean, how
24 certain are you of that 98 percent number?

25 A I know that at my end of the year execution

1 briefing to the NOAA Executive Panel, I stated that
2 there was 98.5 percent of our funds obligated at the
3 end of the fiscal year --

4 Q Of the Local --

5 A -- of Local Warnings and Forecasts.

6 Q Okay. Has there been any discussion
7 recently about terminating the hiring freeze?

8 A Well, we're just starting to get some action
9 on our appropriations bill obviously, and so we will
10 have to reengage with NOAA on what we will do with the
11 hiring freeze. I have had no discussions at the Human
12 Capital Committee or with Dr. Sullivan or any of the
13 other AAs or headquarters staff on that topic.

14 Q How about here amongst yourselves at the
15 Weather Service?

16 A No.

17 Q Have you got a handle yet on how many
18 employees there are in the Weather Service?

19 A Yes.

20 MR. HIRN: Okay. I have no more questions
21 now. Thank you, Laura.

22 MS. CIOFFALO: May I have just a quick
23 redirect, so maybe we can finish up?

24 ARBITRATOR SHARNOFF: Okay. I'm sure she
25 would prefer to be finished.

1 REDIRECT EXAMINATION

2 BY MS. CIOFFALO:

3 Q You just talked with Mr. Hirn here a bit
4 about the percentage of funds that you were able to
5 execute in FY '13, by the end of FY '13. Why didn't
6 you execute 100 percent of your funds?

7 A The reprogramming dollars that allowed us to
8 cancel the furlough of employees, those reprogramming
9 funds did not arrive, as I stated earlier, until the
10 mid-August timeframe, so that left less than six weeks
11 to allocate those funds.

12 Q Is there any reason why you wouldn't
13 necessarily even want to execute all of your funds in
14 advance, all 100 percent of it?

15 A You can carry funds over and that can help
16 you in the next fiscal year. So that would help if
17 you feel as though you're going to again have another
18 bad year or a CR. So the CR for FY '14 was going to
19 be on FY '13 numbers and then potentially minus
20 another sequestration.

21 Q Okay. What does the Weather Service
22 typically spend funds on toward the end of the fiscal
23 year? I mean, is there anything that the Weather
24 Service spends funds on at the end of the fiscal year
25 more so than earlier in the fiscal year?

1 A Well, we can replenish some of our upper air
2 supplies for the upper air balloons, so we'll buy the
3 radio sons and the weather balloons because those are
4 funds that we know we're going to need,
5 nondiscretionary expenses that we will need for the
6 next year in order to meet our requirements.

7 Q Okay. And are your labor costs, the actual
8 dollars that you pay employees, are they steady over
9 the course of a year?

10 A No. You're often given a budget by quarter.
11 You're allocated by quarter. And the amount that we
12 spend in the summertime, quarters three and four at
13 the end of the year, typically we spend more money in
14 the summer months than we do in the winter months
15 because that's the time when you can get out and
16 maintain your equipment. And severe weather season
17 starts the beginning of quarter three, so you have
18 severe weather season. You also have hurricane
19 season, which could require more funds as well.

20 Q So how do you plan for that?

21 A You have to have reserves in place. You
22 have to have contingency funds prepared for the
23 season. We try to be, what we say, customers of our
24 own expertise to know if we're going to have a more
25 active hurricane season or not. But we don't have the

1 expertise to determine if we're going to have more
2 severe weather or not.

3 Q Okay. So I think you said you've got to
4 have reserves for that. Did you have reserves for
5 that in FY '13 for the severe weather season?

6 A Yes.

7 Q And how does the severe weather season in FY
8 '13 compare to other years?

9 A It was one of the more quieter seasons in
10 severe weather and particularly in hurricanes. We had
11 a very quiet hurricane season, so we didn't have to
12 obligate the funds for that overtime, premium pay,
13 emergency travel, and repairs on our offices.

14 Q Okay. Mr. Hirn gave you a lot of questions
15 during his cross-examination about particular budget
16 numbers. He was asking you a lot about budget
17 numbers. Do you have primary responsibility over
18 formulating or maintaining what the budget numbers are
19 in the Weather Service?

20 A No.

21 Q Who has primary responsibility?

22 A The CFO.

23 Q So your knowledge of the budget numbers,
24 what is that based on?

25 A I have a high-level knowledge of the budget

1 numbers, and I rely on the CFO to give me guidance on
2 the amount of funds that we have to spend in
3 particular areas. But I don't have the numbers
4 running through my head like a CFO does and know exact
5 amounts in particular PPAs or areas.

6 Q Okay. And so following up on that, Mr. Hirn
7 asked you a number of questions about grants and how
8 much money you were spending on grants and contracts.
9 Do you know what PPAs those grants and contracts fall
10 under and what percentage and which PPA they fall
11 under?

12 A No idea. And in fact, that spreadsheet,
13 there were so many. You can see it's -- excuse me.
14 You can see it's across so many different accounts and
15 PPAs that again it's down to the program manager level
16 in regards to managing their programs.

17 Q So are there other PPAs other than the Local
18 Warnings and Forecasts PPA that would house some of
19 those projects and grants?

20 A Oh, yes. And I think the central forecast
21 guidance, a lot of our contractors support our
22 modeling efforts. And so that would come under the
23 central forecast guidance.

24 Q Okay. And that would be a PPA?

25 A Yes.

1 Q And, I mean, do you need contractors to
2 perform the mission of the Weather Service?

3 A Yes.

4 MS. CIOFFALO: Nothing else.

5 MR. HIRN: No, thank you.

6 ARBITRATOR SHARNOFF: Okay. You're excused.
7 Thank you very much for your cooperation and patience.

8 (Witness excused.)

9 ARBITRATOR SHARNOFF: And I guess we'll go
10 off the record.

11 (Whereupon, at 1:17 p.m., the hearing in the
12 above-entitled matter was recessed, to reconvene at
13 2:30 p.m. this same day, Tuesday, January 14, 2014.)

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A F T E R N O O N S E S S I O N

(2:34 p.m.)

1
2
3 ARBITRATOR SHARNOFF: Okay.

4 MS. CIOFFALO: The Union's attorney asked me
5 to clarify a document that we entered into evidence as
6 Agency Exhibit 2, which was discussed earlier today,
7 and we had reserved that exhibit for when we could
8 make some copies.

9 (The document referred to was
10 marked for identification as
11 Agency Exhibit No. 2.)

12 MS. CIOFFALO: Agency Exhibit 2 is a
13 spreadsheet detailing all of the vacancies in the
14 National Weather Service, and I believe the date of
15 the document is sometime in March of 2013, mid to late
16 March of 2013. And it includes both headquarters,
17 national centers, and field positions. The numbers at
18 the bottom of the page go to page 18, but we've
19 included only through page 9 because, as I stated
20 earlier, the rest of the document was mostly blank
21 pages, nothing with any data on it.

22 Mr. Hirn, is that sufficient?

23 MR. HIRN: Yes, great. Thank you.

24 MS. CIOFFALO: Sure. Just two more
25 housekeeping issues. I'm not sure if we had offered

1 into evidence the vacancy exemption list that Ms.
2 Furgione was testifying off of earlier today with
3 respect to the number of positions that she had sent
4 through to the Hiring Board.

5 MS. YOUNG: It was Agency 7.

6 MS. CIOFFALO: Agency 7. We didn't have it
7 marked down that it was admitted. I just don't know
8 if I neglected to request that on the record.

9 ARBITRATOR SHARNOFF: I don't see it, but
10 that doesn't mean it isn't here. I do have it, yes.

11 MS. CIOFFALO: Okay.

12 ARBITRATOR SHARNOFF: I don't have it as
13 being admitted, but is there any objection?

14 MR. HIRN: No.

15 ARBITRATOR SHARNOFF: Okay. It's admitted
16 at this point if it hasn't already been.

17 (The document referred to,
18 previously identified as
19 Agency Exhibit No. 7, was
20 received into evidence.)

21 MS. CIOFFALO: And then Agency Exhibit 2 is
22 what we just gave and ask it be in the record.

23 ARBITRATOR SHARNOFF: And that's admitted.

24 //

25 //

1 (The document referred to,
2 previously identified as
3 Agency Exhibit No. 2, was
4 received into evidence.)

5 MS. CIOFFALO: Yes. Thanks. Are we ready?

6 ARBITRATOR SHARNOFF: Okay. If you'll
7 identify the witness, and then I'll swear him in.

8 MS. CIOFFALO: Okay. Mr. Longenecker, can
9 you state and spell your name for the record, please?

10 MR. LONGENECKER: My name is John
11 Longenecker, J-O-H-N, L-O-N-G-E-N-E-C-K-E-R.

12 Whereupon,

13 JOHN LONGENECKER

14 having been duly sworn, was called as a
15 witness and was examined and testified as follows:

16 ARBITRATOR SHARNOFF: Okay.

17 DIRECT EXAMINATION

18 BY MS. CIOFFALO:

19 Q Okay. Mr. Longenecker, who do you currently
20 work for?

21 A I currently work for the Department of
22 Commerce, National Oceanic Atmospheric Administration,
23 National Marine Fisheries Service, Office of Law
24 Enforcement.

25 Q And what is your position with the Office of

1 Law Enforcement?

2 A I am the Assistant Director for Operations.

3 Q And what does that mean?

4 A It means I'm responsible for the Office of
5 Law Enforcement's budget and all personnel-related
6 activities associated with the Agency.

7 Q Okay. And did you work for NOAA prior to
8 being the Fisheries Office of Law Enforcement --

9 A Yes, I did.

10 Q And what line office did you work for prior
11 to Fisheries?

12 A I worked for the National Weather Service, I
13 worked for Program, Planning, and Integration, and I
14 worked for the Office of Marine and Aviation
15 Operations.

16 Q Okay. And let's start at the beginning,
17 Office of Marine and Aviation Operations?

18 A Yes.

19 Q And that's OMAO?

20 A That's correct.

21 Q And what did you with OMAO?

22 A I was a corps officer, which is a
23 commissioned officer within the Uniformed Services of
24 the United States, and that is part of the Office of
25 Marine and Aviation Operations.

1 Q Okay. And how long were you with that
2 organization?

3 A I was with them for just over 20 years, 20
4 years and one month.

5 Q You were a NOAA corps officer during that
6 entire time?

7 A That's correct, yes.

8 ARBITRATOR SHARNOFF: And excuse me. Can
9 everybody hear okay? Okay.

10 MS. CIOFFALO: He's got a very soft voice.

11 THE WITNESS: I'm sorry.

12 ARBITRATOR SHARNOFF: I just want to make
13 sure. Even though the individual asking you the
14 questions is sitting next to you, be aware that you're
15 speaking so that everybody on the other side of the
16 room can hear you.

17 THE WITNESS: Yes, sir.

18 BY MS. CIOFFALO:

19 Q So now did you retire from the NOAA Corps?

20 A Yes, I did.

21 Q And then what did you do after that?

22 A After that I was the Chief of Staff for the
23 Office of Program, Planning, and Integration for NOAA
24 as well.

25 Q Okay. And what did that entail?

1 A The Office of Program, Planning, and
2 Integration is responsible for formulating and
3 consolidating all of NOAA's \$5 plus billion budget,
4 and the Chief of Staff was, you know, responsible for
5 ensuring that that action was accomplished and passed
6 through the NOAA budget.

7 Q Okay. And how long did you hold that
8 position?

9 A I was with them from 2009 through 2012, so
10 just over two years.

11 Q Okay. And in 2012 where did you go?

12 A From then I went on to the National Weather
13 Service on detail initially from May of 2012 until
14 September 2012, when I became full-time.

15 Q Okay. And when you became full-time, what
16 was your position?

17 A I was actually the Deputy Chief Financial
18 Officer but assumed the duties as Acting Chief
19 Financial Officer at the same time.

20 Q Okay. And how long were you in the position
21 of Deputy Chief Financial Officer position?

22 A I was in that billet for over a year, from
23 basically September of 2012 through November of 2013.

24 Q Okay. And how long were you the acting CFO
25 during that time period?

1 A I was the acting CFO from September 9, 2012
2 until May of 2013 when the replacement came in.

3 Q Okay. And who was that replacement?

4 A John Potts, the current CFO for the Weather
5 Service.

6 Q All right. And then you remained as his
7 deputy through November, correct?

8 A I remained as his deputy until I was
9 reassigned as Acting Chief of Office of Operational
10 Systems.

11 Q And when was that?

12 A That was the beginning of August of 2013.

13 Q Okay. So let's talk about the Agency's
14 budget. I am going to put a document in front of you
15 that has been marked as Agency Exhibit 4. Do you
16 recognize this document?

17 A Yes, I do. It's a version of the control
18 table.

19 Q Okay. Now, when you say "version of," what
20 version is it?

21 A This would have been the version that was
22 completed following the sequestration enactment and
23 the final appropriation of FY '13, which would have
24 been roughly the end of March of 2013.

25 Q Okay. So looking at this document, if you

1 need to refer to it, if you can tell me how the
2 Weather Service's budget is organized.

3 A So the Weather Service has what's referred
4 to as programs, projects, and activities.

5 Q And what is that?

6 A Or PPAs.

7 Q Yeah, what is a PPA?

8 A These are essentially the lines of funding.
9 The descriptions start with Local Warnings and
10 Forecasts base and go down from there. There's a
11 total of roughly 17 of them within the National
12 Weather Service currently. And those are ways which
13 Congress can fund certain programs to the level to
14 which is requested by the Administration or directed
15 by Congress.

16 Q So why does Congress do that? Why do they
17 apportion money by PPA?

18 A It basically allows for more control and
19 assurance that the taxpayers' dollars are being spent
20 appropriately.

21 Q Okay. Can money designated for one PPA be
22 used for expenses that fall under another PPA?

23 A They can, but only through a reprogramming
24 action.

25 Q What is a reprogramming action?

1 A Well, in Section 505 of the appropriation
2 bill, there's a clause that allows for an agency to
3 move up to \$500,000 or 10 percent of a program,
4 project, or activity without congressional
5 notification. Anything over that requires
6 congressional notification, and that is essentially
7 what a reprogramming is within the same appropriation.

8 So essentially you have two appropriations
9 that the Weather Service commonly operates under. One
10 is the ORF, which is the operations, research, and
11 facilities account, and the other is the PAC account,
12 which is really your construction and, you know,
13 acquisition accounts. If you do any kind of movement
14 between those two appropriations, it's called a
15 transfer, and NOAA does those as well. That's
16 reprogramming.

17 Q Okay. So anytime you use money in one PPA
18 for another purpose is a reprogramming, but if you
19 reprogram more than a certain threshold, in most cases
20 \$500,000, out of a particular PPA, that's when you
21 have to give notification to Congress about it?

22 A Correct, and let me just be clear, though.
23 You're actually not using the funding in the PPA for a
24 different purpose. You're actually moving it to the
25 other PPA to use it.

1 Q I see. Okay. And that's the technical
2 definition of reprogramming?

3 A Correct.

4 Q Okay, great. So what happens if money is
5 moved between PPAs over that extent and no
6 notification to Congress happens?

7 A Then you have basically violated the Anti-
8 Deficiency Act, which is under Title 31 of the U.S.
9 Code, and I believe it's 1341 was the subpart, which
10 basically states that you cannot obligate any funds in
11 excess of the authority to which you were given by
12 Congress. And if Congress has given us the authority
13 up to a certain limit without the ability to
14 reprogram, without notification, then you have
15 exceeded that authority.

16 Q Okay. And so is that the only to violate
17 the appropriations laws?

18 A No. There's quite a lot of ways to violate
19 the appropriation laws, and actually there's the
20 purpose doctrine so to speak where you have -- I
21 believe that's 1301 of the Code or Title 31, which
22 basically says that you're only entitled or authorized
23 to spend money for which Congress has authorized you
24 to spend that money.

25 Q And that is the purpose of the reprogramming

1 requirement?

2 A Correct.

3 Q Okay. So now, when you send notice to
4 Congress for a reprogramming, are you aware of any
5 Agency policies with respect to that notification?

6 A Yes. Actually Department of Commerce does
7 require more than just a 15-day notification. It
8 requires acknowledgment and essentially approval from
9 Congress before any reprogramming action can take
10 place.

11 Q Okay. All right. Let's talk about the
12 duties that you performed while working in the Weather
13 Service. You said that you first came to the Weather
14 Service in 2012 on detail. What was that detail for?
15 What were your duties for that?

16 A So the Weather Service had just gotten the
17 results back from an internal investigation that was
18 conducted due to alleged mismanagement of funds within
19 the National Weather Service. At that point, the
20 Weather Service then knew that there was going to be
21 corrective actions and required internal controls
22 established in order to ensure that the mismanagement
23 did not occur in the future.

24 They wanted somebody to come over here and
25 at least start to establish an action plan to address

1 the corrective action plan that they knew was going to
2 be coming out from Dr. Lubchenco, and that was my
3 primary function at that time was to develop the
4 action plan.

5 Q Okay. And I'm going to show you what was
6 marked as Agency Exhibit 6 and ask if you recognize
7 that document. You have to wait one second until our
8 paralegal gets a chance to grab it.

9 A Yes, I do. This is basically the corrective
10 action recommendations that Dr. Lubchenco put forth
11 following the investigation.

12 Q So based on this document, that's what you
13 were creating an action item plan for?

14 A This one and the Dr. Blank memo as well.

15 Q Okay. I'll show you what is marked as
16 Agency Exhibit 5. Is that the memo that you're
17 referring to from Dr. Blank?

18 A I believe this is the one that's signed by
19 her, yes. Yes.

20 Q Okay. So when did you become the Deputy
21 CFO, Acting CFO in the midst of this?

22 A September 9 when the current Acting CFO,
23 Gary Reisner, returned to the Fisheries Service.

24 Q Okay. So what was going on with the Weather
25 Service budget at the time, you know, that you first

1 came on for your detail and then took over as the CFO?

2 A So the Weather Service was being faced with
3 basically a declining budget per the look at what '13
4 was really in the President's budget versus what we
5 had actually reprogrammed into for FY '12. So we
6 were --

7 Q Well, let's hold on.

8 A Okay. So let me explain --

9 Q Reprogramming in 2012, what does that mean?

10 A Well, as we found from the investigation,
11 that there were funds being used that were essentially
12 reprogrammed without authorization. So there were --

13 Q Do you know what PPAs were involved in that
14 unauthorized reprogramming?

15 A Essentially it was the AWIPs and a couple of
16 the other program funds that were actually being used
17 for operational purposes. So because of that, there
18 was a need to reestablish the baseline essentially for
19 the PPAs themselves so that the Weather Service would
20 be able to spend the funds appropriately within the
21 authority which they were given.

22 Q All right. Let me ask you this. The
23 Weather Service PPAs here, you mentioned AWIPs and
24 other program PPAs. Where are they in this document,
25 Agency Exhibit A-4? If you can point those out.

1 A So NEXRAD was one of them. That's at the
2 bottom of the page, the second one up, which is an
3 operations and maintenance account that was used to
4 fund other purposes. And AWIPs, there's one at the
5 top of the second page. And I believe there was also
6 some action with regards to the PAC account, which is
7 actually not on here.

8 Q Okay. So AWIPs and NEXRAD, those are the
9 Agency's radar and computer system, the PPAs?

10 A That's correct.

11 Q Now where was that money going?

12 A Most of it was going into the Local Warnings
13 and Forecasts base account.

14 Q And what is the Local Warnings and Forecasts
15 base account?

16 A Local Warnings and Forecasts base account is
17 essentially for day-to-day operations of putting out a
18 forecast for the Weather Service, and that includes,
19 you know, the majority of our employees if you will
20 and includes the facilities which house those
21 employees, it includes things like the weather radios,
22 the buoy systems. There's the, you know, upper air
23 launch capabilities. All those essentially come out
24 of the Local Warnings and Forecasts base.

25 Q So money was being put into that PPA in

1 order to pay for those things?

2 A That's correct.

3 Q All right. So now you were starting to talk
4 about a reprogramming because of this. Explain to me
5 what happened there.

6 A So the Weather Service, knowing that they
7 were actually moving money in the past, and they
8 approved that it happened all the way back through
9 2008, knew that they were actually in need of funds in
10 different accounts than what we were actually getting
11 appropriated from Congress.

12 Q Okay.

13 A So knowing what we needed based on the way
14 we were working or actually the operations of the
15 Weather Service, the Weather Service then requested a
16 reprogramming to move money from accounts that were
17 essentially either overappropriated or could delay
18 some of the improvements that were in those accounts
19 to ensure that the personnel and other actions -- to
20 minimize the mission impact or being funded.

21 Q All right. And when was that happening?

22 A That actually started prior to me coming
23 over here in May. The actual final approval was not
24 until later in the summer, probably around July of
25 2012.

1 Q Okay. And do you know how much the
2 reprogramming entailed, how many dollars?

3 A I believe it was \$26 million into the LWF
4 account itself.

5 Q Okay. And why was it necessary to put that
6 much money into LWF at that point in the year?

7 A So, at that point, after they determined
8 that they needed to obviously live within the
9 appropriation law, if they would have continued
10 without putting any money into that account, it would
11 have required furloughs of employees because there was
12 no other way to restrict costs.

13 Q Okay. And were you involved in that
14 reprogramming at all?

15 A At that point, the reprogram was already to
16 Congress when I got there. The only thing I was doing
17 was actually answering the QFRs, which are questions
18 for the record to Congress to help ensure they
19 understood why we were reprogramming and what needed
20 to be done to move forward.

21 Q Okay. And so was anything else done along
22 with that reprogramming in terms of requests to the
23 Hill?

24 A We actually did then a realignment so to
25 speak, which is they took the President's budget for

1 FY '13 since it was already past the cycle and went
2 through and we actually request a realignment instead
3 of a reprogramming because we did not have any
4 appropriation at that time. So it was essentially
5 just telling them we just need to move money between
6 accounts. That was approved through OMB and submitted
7 to the Hill prior to the start of fiscal year '13.

8 Q Okay. So, when fiscal year '13 started,
9 which was when again? When does the fiscal year
10 start?

11 A October 1, 2013.

12 Q October 1, 2013.

13 A 2012, sorry.

14 Q 2012, yes. Sorry. So did Congress
15 appropriate funds in FY '13 based on that requested
16 alignment that was submitted earlier in the summer?

17 A No, they did not. They actually based it on
18 the FY '12 appropriation with the final spend plan
19 being that of the reprogramming which the Weather
20 Service submitted.

21 Q Okay. So, in layman's terms, there was a
22 lot of budget terms in there.

23 A Sure.

24 Q So what exactly did Congress do?

25 A So Congress then gave NOAA the authority

1 through the appropriation or the continuing
2 resolution, which is an appropriation, to essentially
3 fund the Weather Service at the FY '12 levels in all
4 programs.

5 Q And that was the FY '12 levels after the
6 reprogramming?

7 A After the reprogramming, so that was at the
8 \$655 million level essentially or 655.8 according to
9 this NLWF.

10 Q And you said that that was a continuing
11 resolution, which is a type of appropriation.

12 A Right.

13 Q So what exactly is a continuing resolution?
14 What does that mean?

15 A A continuing resolution is basically a bill
16 that Congress passes to say we're going to keep the
17 government functioning at a level to which, you know,
18 could be based on FY '12, which is the case they did
19 here, or something else. But in this case, like I
20 said, it was the fiscal year '12 appropriated levels,
21 for a period of time not to exceed one year. We have
22 had full-year continuing resolutions.

23 Q How long was this continuing resolution that
24 started in October of 2012?

25 A This was a six-month continuing resolution.

1 Q Okay. So that six-month continuing
2 resolution was based on the level of funding as the
3 reprogramming in June of 2012 reflected. Did I get
4 that correct?

5 A That's correct.

6 Q Okay. So does that mean that the Weather
7 Service had the money that they needed in the right
8 pots starting out at, you know, in the right PPAs,
9 starting out in FY '13?

10 A So what happens with a continuing resolution
11 and the way that OMB apportions the funds, they
12 actually have two methodologies which they are allowed
13 to use. One is called a seasonal rate; one is called
14 a fixed rate. And OMB chose the seasonal rate through
15 their guidance that came out I believe September 28.
16 And that then restricted the Weather Service to -- the
17 seasonal rate for all of NOAA was 34.8 percent.

18 And at that time when we actually did the
19 calculations to determine what that was, that was not
20 enough to operate the Weather Service for a six-month
21 period. We then had to notify -- I'm sorry.

22 Q Well, I'm sorry. Let me ask you --

23 A Sure.

24 Q -- why wasn't it enough to operate the
25 Weather Service for that six months? What was the

1 problem?

2 A So essentially the Weather Service's total
3 ORF or operations research facilities account was in
4 FY '12 \$905 million dollars; 34.8 percent of that, 35
5 percent roughly, was about \$315 million. The waiver
6 alone within the Weather Service is about 61 percent
7 of our overall budget. So that really only left about
8 5 percent for paying rent, utilities, and those kind
9 of things, and that was not enough to make it to the
10 end of the six months without other drastic actions,
11 such as furloughs or other things.

12 Q Okay. Now you said OMB did this. OMB is
13 the entity that ultimately tells you how much you can
14 spend based on what Congress gave you?

15 A So Congress appropriates the money. OMB
16 apportions it. So we cannot spend more than what
17 we're apportioned even though Congress may have
18 appropriated more. So, yes, OMB dictates how much you
19 actually get in the apportionment.

20 Q Okay. So why would OMB only apportion the
21 Weather Service and the rest of NOAA I'm assuming 35
22 percent of, you know, last year, of FY '12's money,
23 when the CR was going to extend for six months? Why
24 would they do that?

25 A So the thought at that point was that they

1 wanted to restrict spending across all agencies in
2 anticipation of what is referred to as sequestration
3 or other potential budget cuts coming down the road.
4 And they didn't want agencies overspending initially
5 into the first six months so that they would not be
6 able to recover in the last six months. So your --

7 Q So -- I'm sorry.

8 A I'm sorry. I was just going to say the
9 seasonal rate itself is based on a five-year average
10 of your obligations within the period of time to which
11 you're given a CR. And therefore, you always would
12 expect that to be lower than a fixed rate, and that's
13 why OMB was chosen or chose the seasonal rate.

14 Q Okay. And why is the seasonal rate for the
15 first six months of the year -- oh, no, I'm sorry.
16 That's not what you said.

17 Okay. So you were the Deputy CFO at this
18 time, an Acting CFO?

19 A Acting CFO, correct.

20 Q So what, if anything, did you do when you
21 saw, you know, what you had to work with for that six
22 months? And do you remember how much that was, by the
23 way?

24 A Yeah. Overall for all ORF accounts was
25 \$315 million. And at that point, as soon as we got

1 that number, that was October 3 I believe, October 4,
2 I sent out an email to all of the office directors and
3 regional directors essentially telling them to limit
4 all expenditures until we were able to work with NOAA
5 and the Department to get a number where we were able
6 to manage to or execute on.

7 Q Let me ask you this --

8 A Sure.

9 Q -- just to get an idea of where all these
10 numbers, because I know numbers are flying around
11 everywhere. Did you have an idea of what the entire
12 year appropriation was for the Weather Service at that
13 time?

14 A So the entire year appropriation was based
15 on the FY '12, which in reality it was \$905 million
16 plus the .612 percent that Congress increased based on
17 the FY '11 Budget Control Act, allowed them to
18 increase by .612. NOAA and OMB elected not to
19 apportion the extra amount with the anticipation that
20 there could be a reduction coming later. So we had
21 \$905 million total in all --

22 Q Wait. Let me just clarify for a second. So
23 you said Congress appropriated you extra money above
24 what the President requested, but OMB did not
25 apportion it to you?

1 A The continuing resolution is not what the
2 President requested.

3 Q Oh, I see. Okay, got it.

4 A It's based on the FY '12 spend plan.

5 Q Okay.

6 A Yes, and then Congress said, well, based on
7 this FY '12 spend plan, looking at what your actual
8 numbers would be this year for the Budget Control Act
9 limitation, you can have an increase of .612 percent.
10 At that point, that would have taken us up to I think
11 \$907 million versus 905. NOAA elected not to actually
12 increase that amount. Well, it was actually more than
13 that, but anyway.

14 Q Okay. So what was the number for the entire
15 year that you were working on? And that was based on
16 FY '12 you said?

17 A That's correct. So it was based on the
18 \$655 million in LWF or the total 905 for all of ORF.

19 Q So, in LWF, it was \$655 million for all of
20 FY '13?

21 A Based on the authorization which Congress
22 gave us at that time, yes.

23 Q Okay. Now, after OMB apportioned you the
24 seasonal rate, how much were you working with for that
25 first six months?

1 A So initially it was \$315 million, and like I
2 said, that was not a number that the Weather Service
3 could actually execute on, so we had to request an
4 exception to that amount.

5 Q Okay. And when you said "request an
6 exception," what does that mean? Is that like a
7 reprogramming too?

8 A In a sense, yes. So NOAA as a whole put
9 forth a request for an increased amount above the
10 seasonal rate for NOAA at the tune of about
11 \$56 million. The Weather Service itself got increased
12 over \$70-some million. So we did actually pull some
13 of the ceiling from other line offices in order to
14 make that delta.

15 Q Okay. And when you said "pulled some of the
16 ceiling from other line offices," what does that mean?

17 A Well, the total NOAA ceiling that you're
18 dealing with at a seasonal rate is, like I said, based
19 on the 34.8 percent. So that could mean that one line
20 office would be down to 20 percent and another up at
21 50 percent.

22 Q I see. Okay.

23 A And that's essentially what happened. The
24 Weather Service went up to 43 percent versus the 34.8.

25 Q So Congress did not give you extra money.

1 NOAA reappropriated what it had.

2 A OMB reappropriated.

3 Q OMB reappropriated.

4 A Within the authority to which Congress had
5 already appropriated.

6 Q All right. So how much did the Weather
7 Service get reappropriated into its Local Warnings and
8 Forecasts base since that's the number we're going to
9 focus on today?

10 A So basically we had put in about \$14 million
11 from what the original money was.

12 Q Okay. And when did that occur?

13 A We actually submitted the letter to
14 Congressman Wolf December 20, and I think we finally
15 got approval sometime in January of 2013.

16 Q Okay. And so what number did you have for
17 your LWF for that first six months after that
18 adjustment was made?

19 A So after we finally got approval from
20 Congress, we got \$314 million in the Local Warnings
21 and Forecasts.

22 Q Okay. That was after the adjustment you had
23 \$314 million.

24 A That's correct.

25 Q So before the adjustment, you had about

1 \$300 million?

2 A Correct.

3 Q And you said that that wasn't enough to run
4 for that six months?

5 A Correct.

6 Q What was it enough to do for that six
7 months?

8 A At that point, we were looking at again, you
9 know, furloughs would have been required, other type
10 of drastic actions in order to ensure we would not be
11 anti-deficient going into the end of the six months.

12 Q So with the \$14 million that was repurposed
13 -- and so I guess we can use that word -- repurposed
14 into LWF, you know, did you suggest that number?
15 Where did that number come from, \$14 million?

16 A So we had actually gone out to all the
17 office directors and regional directors and said we
18 don't know if we can get extra money, but I need to
19 know what your bare minimum must pays are to make it
20 to the end of the continuing resolution.

21 Q What do you mean by "bare minimum must
22 pays"?

23 A Well, we basically sent out an email
24 defining what we considered a must pay, and that was
25 labor costs for all those personnel that are currently

1 employed, you know, the required utility bills for
2 facilities, the rents, the leases, payments that are
3 going to be required, any kind of, you know, contract
4 action that is required to be performed at that point,
5 those kind of things.

6 We got a number back that was I think
7 \$321 million as far as the total requirement for LWF.
8 And we worked with the Department and NOAA to try and
9 raise that as high as we could, and 314 was the
10 highest we could. And we did have carryover
11 authority, which allowed us to essentially get up to
12 the 320, so we figured that we'd be able to operate at
13 a bare minimum.

14 Q All right. Did you consider any potential
15 hiring actions in deciding what that bare minimum, you
16 know, would be?

17 A We did have discussions with the office
18 directors and regional directors as far as what kind
19 of actions would be required to ensure that they would
20 be able to limit themselves to the funding we had.
21 Several of the regional directors did recommend, you
22 know, things such as hiring freezes, no awards. All
23 kinds of things were thrown on the table, yes.

24 Q Okay. So now you said you got this in late
25 December, early January I think you said?

1 A Correct.

2 Q Okay. So was everything okay after that? I
3 mean, could you just kind of relax and --

4 A No, because at that point we had already
5 started the sequestration planning.

6 Q Okay. What do you mean by that, planning
7 for sequestration?

8 A Well, OMB required every agency or every
9 Department really to submit a sequestration plan, and
10 starting after January when the President signed the
11 extension of the actual sequestration cuts, at that
12 point, they came to the realization that it's probably
13 going to be real and therefore, we had to --

14 Q What's going to be real?

15 A The cuts that the agencies would be faced
16 with.

17 Q Okay. And what were those cuts that they
18 were faced with?

19 A So it was a 5 percent reduction in the total
20 budget authority essentially. So for the \$655 million
21 in the LWF account, when we looked at that one, that
22 took us down to about \$626 million.

23 Q Six twenty-six. Okay. And that's with
24 sequestration. Now we were referring to Exhibit A-4
25 here before. Is that what these numbers reflect? Can

1 you show us on Exhibit A-4?

2 A Yeah. In Exhibit A-4, the second column is
3 essentially what NOAA was planning on based on the
4 known 5 percent reduction in FY '13.

5 Q And when were these plans being discussed,
6 the 5 percent sequestration reduction?

7 A We started really getting serious about it I
8 guess the end of January.

9 Q Okay. And that \$626 million, that was for
10 the entire year?

11 A That's correct.

12 Q Okay. When was sequestration going to take
13 effect?

14 A Sequestration, after the President signed
15 the extension, I think he signed it January 1, then it
16 would take effect March 27 I think is when the final
17 appropriation took effect.

18 Q And where is that in the fiscal year?

19 A That is basically at your six-month point,
20 so halfway through the fiscal year.

21 Q So by March, halfway through the fiscal
22 year, how much money roughly was the Weather Service
23 planning on spending?

24 A By March, the Weather Service was planning
25 on spending up to the 626 for the fiscal year.

1 Q And there was, what number did you say
2 earlier? You had how much to live with for the six-
3 month CR after the reprogramming?

4 A So, in the LWF account, we had \$314 million.

5 Q Three hundred and fourteen, okay. So, if
6 you had already spent 314, then were you going to get
7 the rest of the 655 number, or you were going to get
8 626 less 314? What were you going to end up with for
9 the last six months?

10 A So 626 less 314, so essentially 312.

11 Q Okay. Do the math for us. Yeah, thanks.
12 Lawyers, not mathematicians. All right. So you were
13 looking at \$312 million for the second half of the
14 year for LWF to make that clear.

15 A Right.

16 Q Okay. So based on the current level of
17 operations, could the Weather Service have made it to
18 the end of the year on that?

19 A Not based on the current operations. We had
20 already made basic communication with downtown saying
21 that we would have to restrict balloon launches up to
22 one a day, those kind of things.

23 Q Okay. Well, let's talk about that.

24 A Sure.

25 Q I mean, so you got half the number, right?

1 So, if you could make it through half of the year on
2 \$314 million, why couldn't you make it on the second
3 half with \$312 million?

4 A So your expenditures typically in the second
5 half of the year are increased above what you have in
6 the first half of the year, and a lot of it is due to,
7 you know, when you're doing contract actions, they
8 take time to actually get through the Acquisition and
9 Grants Office. Depending on the dollar amount, your
10 lead time could be six, nine months. So a lot of the
11 awards tend to happen between July, August, September.
12 For that reason, you know, your anticipated obligation
13 rate is going to be higher in the second half of the
14 year.

15 Q Okay. So I think you were starting to say
16 you were considering things to manage that number.
17 What was being considered at that time?

18 A So, you know, we had discussed what would be
19 the minimal impact not only on the employees but on
20 the mission, and one of them was reducing the actual
21 upper air launches to one a day. When we proposed
22 that, NOAA had actually worked with us and actually
23 worked with Congress to actually get money put into
24 the Sandy supplemental to give us money for upper air
25 launches, so therefore, it replaced the need to

1 restrict it down to one, which, you know, a
2 supplemental appropriation is a means of making up the
3 difference when you are faced with cuts like this.
4 And that's how we did it.

5 Q Okay. And the Sandy supplemental, what does
6 that refer to?

7 A I'm sorry. Hurricane Sandy was a hurricane
8 that actually hit on the East Coast which required
9 extra expenditures in several areas within NOAA, and
10 the Weather Service was not excluded. We did actually
11 increase our upper air launches to four a day, which
12 is, you know, unprecedented, never before done, and
13 therefore, because we had used up a lot of our supply,
14 we had a projection that we were going to need to buy
15 quite a bit more than we had anticipated. And that's
16 why we were able to get it justified through the Sandy
17 supplemental.

18 Q All right. So these upper air launches that
19 you referred to a couple times, what does that mean?

20 A Yes. So I think it's 98 sites across the
21 country we have launch facilities which take balloons
22 with weather instruments attached to them, and they're
23 launched from the ground and go up until the balloon
24 essentially explodes.

25 Q The balloon explodes.

1 A Yeah.

2 Q Okay. And then what happens to what was
3 attached to the balloon?

4 A Then it comes down, and it has a little tag
5 on it that says "If found, please return to the
6 nearest Weather bureau."

7 Q Oh, you're joking.

8 A No, it does have something on there that
9 says "Mail To" or, you know --

10 Q Oh, okay.

11 A I don't remember exactly what it says, but
12 it is --

13 Q Oh, okay. So it's to be returned.

14 A Yes. I mean, if we do get them back, we can
15 get them reconditioned or something.

16 Q I see. So we try to recycle those.

17 A Yes.

18 Q Okay. So, you know, what is the purpose of
19 these upper air launches? What do the balloons do
20 when they go up in the air?

21 A Well, they basically feed data to the
22 models, and I can't tell you exactly what improvements
23 they make, but I do know that it was important enough
24 for NOAA and everybody to continue to support the two
25 launches a day.

1 Q Okay. So you said two launches a day, and
2 you also said four launches a day at some point. What
3 were the four launches a day?

4 A So, when we looked into Hurricane Sandy,
5 there was a lot of disparity between what was
6 considered the European model and the American model,
7 so we felt that if we had more data in our models we
8 might be able to help refine the model and determine
9 which is more accurate, whether it be the European or
10 the U.S.

11 Q Okay. So these balloons collect data.

12 A They do.

13 Q Okay. And so there were more being sent up,
14 and that's what had to be replaced using Sandy
15 supplemental funds?

16 A Correct.

17 Q Okay. All right. So that was one of the
18 things that you were talking about in terms of trying
19 to reduce spending. Were there any other things that
20 were discussed in the January or early 2013 timeframe?

21 A Yes. I mean, we looked at possibly going
22 into different types of modes of operation within
23 Weather Forecast Offices where we transfer some of the
24 responsibility of certain forecasts between offices to
25 help where staffs were reduced. We did look at, you

1 know, what would be within our purview immediately,
2 which was, you know, restricting all awards and travel
3 and those kind of things for non-bargaining unit
4 employees, and the Director did send out an email
5 prior to the appropriation being approved that did
6 restrict those.

7 Q Okay. And how long were discussions like
8 this going on?

9 A I mean, we were back and forth with NOAA for
10 well over a month I think.

11 Q Okay. And that was when?

12 A That would have been February, beginning of
13 March.

14 Q Okay. And did you have any discussions with
15 the Union over these ideas?

16 A We did have a little bit of discussion with
17 the Union I believe it was February 28.

18 Q Okay. And what did you discuss?

19 A Well, at that point, we, you know, let them
20 know that we were going to have a final number of what
21 our plan number was, which was the \$626 million, and
22 that would require some actions. And we were looking
23 to them to, you know, give us ideas, but we proposed
24 certain things like stopping hiring on certain
25 positions that at the time it was presented may not be

1 as critical as others.

2 Q So these discussions were based on getting
3 the \$626 million over the entire year, that 312 for
4 the last six months?

5 A Correct.

6 Q Okay. All right, continue. Anything else
7 you discussed at that meeting?

8 A We talked about changes to possible PCS
9 entitlements to employees, which is permanent change
10 of station money, which tends to be around \$7 million.

11 Q Okay. And did you discuss any particular
12 budget numbers with them at that meeting?

13 A Like I said, we did present them with the
14 NOAA numbers, which was the 626 LWF number.

15 Q Okay. All right. Did you provide the Union
16 with any information on budget issues during that
17 meeting?

18 A I don't know that we actually presented them
19 exhibits or any kind of paperwork, but we did talk
20 about a lot of different things.

21 Q Okay. So what happened in March? Did you
22 get your final appropriation in March?

23 A We did get our final appropriation in March,
24 and unfortunately it was not what we expected.

25 Q What happened, and when in March did you get

1 this?

2 A So March 26 I guess is when the actual
3 appropriation bill was sent through to the President
4 for signature. And in it, it had two different what
5 was considered rescissions or reductions above and
6 beyond the actual sequestration reduction, which
7 totaled about a 2.1 percent additional cut for NOAA.

8 Q And 2.1 percent, what does that mean in
9 dollars?

10 A Well, it was an additional \$16 million just
11 in LWF itself.

12 Q In LWF?

13 A Right.

14 Q So what did that take you down to for LWF
15 for the rest of the year?

16 A It took us down to \$610 million.

17 Q Six hundred and 10 million for the whole
18 year?

19 A Correct.

20 Q And then you had already spent roughly how
21 much again, \$314 million for the first six months?

22 A Correct.

23 Q So do the math for me again. How much are
24 we left with for the last six months of the year?

25 A So for the last six months would have been

1 \$296 million. Is that right?

2 Q Okay. So when did you first learn that that
3 number was going to be less than what you had been
4 planning?

5 A Really we didn't learn about the rescission
6 part until seven days prior to, possibly a week ahead
7 of time.

8 Q So I know you said before unfortunately that
9 that's what happened. Were you not expecting that?

10 A No. I would say we were not.

11 Q Why weren't you expecting that?

12 A It's not an annual thing that Congress does
13 within appropriation bills. It's not that it hasn't
14 been done before. It's just that it's not an annual
15 thing. And I guess everybody kind of thought that the
16 sequestration cut would be enough.

17 Q So the total number that you're now working
18 with, what was your reaction to that number that you
19 said was in LWF, 296, 294, something like that?

20 A So I guess it was about the same reaction I
21 had to our initial CR number in the sense of the
22 continuing resolution number in the sense that we're
23 not going to make it without --

24 Q "Make it," what do you mean?

25 A Make it to the end of the year without going

1 anti-deficient or requiring things like furloughs.
2 That's immediately what we came to the conclusion on,
3 that there would be required furloughs to make it to
4 the end of the year. We at that point sent a letter
5 down to the CFO notifying them that we would be
6 required to have essentially a 10-day furlough.

7 Q Ten days of furlough.

8 A And we would start planning accordingly.

9 Q And who would have been furloughed?

10 A That would have been every employee within
11 the Weather Service.

12 Q Every single one of them?

13 A Yes.

14 Q All right. So did the Weather Service
15 furlough for 10 days all of its employees?

16 A No, they did not. When we notified NOAA,
17 NOAA then decided that they would see if they couldn't
18 help mitigate the problems within the Weather Service,
19 and they looked at what could be done across all of
20 NOAA to basically reprogram or transfer funds or
21 whatever to basically, you know, like I said, mitigate
22 the problems with the Weather Service. At that point,
23 they came up with the solution that would have only
24 required four days of furlough, but it would have
25 required four days of furlough across all of NOAA. So

1 every employee would be furloughed.

2 Q Okay. And do you know if they submitted a
3 request about that?

4 A They actually did. It was submitted on
5 May 17 I believe is when the reprogramming request
6 went through to Senator Mikulski, and that was
7 actually when they defined the four-day furlough.

8 Q Okay. And what happened with that
9 reprogramming request?

10 A So, at that point, I believe the Hill
11 starting talking with OMB and the Department to try
12 and figure out whether or not there was a way to look
13 at funding across the Department, across other
14 entities to even limit the furloughs further,
15 preferably not have them at all, and also looked at
16 whether or not the supplemental appropriation, which
17 we had, would be available to fund some of the
18 furlough days as well.

19 Q That's the Sandy supplemental?

20 A That's correct.

21 Q Okay. So you still had not gotten the Sandy
22 supplemental funds at that time?

23 A We had gotten the approval for the Sandy
24 supplementals by that time, yes.

25 Q Okay. And did you have the allocations in

1 your I guess bank accounts for lack of a better word?

2 A I don't believe we had all the Sandy
3 supplemental funds at that point, no.

4 Q Okay. So what happened with the
5 reprogramming ultimately? Did you receive a final
6 number?

7 A Yes. You know, when it was all said and
8 done, the Local Warnings and Forecasts account was
9 actually funded at the 630 level.

10 Q Six hundred and thirty million for the year?

11 A That's correct.

12 Q Okay. And then, so remind me again what
13 would that mean for the last six months of the year
14 after the reprogramming, the NOAA reprogramming?

15 A So that would have been \$316 million.

16 Q Three sixteen. So that was pretty close to
17 what we were talking about before.

18 A Correct. It was essentially \$4 million more
19 than what we originally planned.

20 Q Okay. And when did you find out what your
21 final number was going to be?

22 A I believe we were notified that they were
23 approving the number based on the use of the
24 supplemental and other things in July of 2013, but we
25 did not get the funding until August 15 I believe is

1 the date that the funding actually came through.

2 Q So between the end of March and whenever in
3 July you learned of the likelihood of that, you know,
4 what did you base your numbers on? What did you base
5 your decisions on?

6 A The decisions were based on what we were
7 actually appropriated and approved to spend through
8 the apportionment, which was \$610 million.

9 Q And for LWF, again, that was, what did you
10 say, 296?

11 A Well, yeah.

12 Q Okay. And then, so again you said in
13 July/August, that's when you got the final number,
14 which took you up to 316 for the six-month period.

15 A Correct.

16 Q Okay. You know, couldn't you have just said
17 we know NOAA is going to fix this, we can spend, you
18 know, more?

19 A No. Actually it is written in the
20 appropriation law, I don't know if it's 1301 or 1315,
21 that states that you cannot spend any money until the
22 actual apportionments are made. So you cannot make
23 plans to spend until approved and given to you.

24 Q Okay. And what would have happened if you
25 went over the amount of money that eventually was

1 allocated to you?

2 A So, if you started spending with the
3 assumption that you were going to get paid back so to
4 speak or some form of, you know, fix at the end, that
5 would have been a violation of the Anti-Deficiency
6 Act. But if we did not get the funding, I guess what
7 you're asking, we still had the furlough plan. But
8 unfortunately, as we got closer to the end of the
9 fiscal year, that would have required a complete
10 shutdown of the Weather Service, and we would not have
11 been able to mitigate the mission impacts because
12 there was no way to do a rolling furlough or anything
13 else if you're down to the last few days of the fiscal
14 year.

15 Q Okay. So let's talk about the budget in a
16 little bit more detail. We've been talking about the
17 Local Warnings and Forecasts base number a lot.

18 A Correct.

19 Q Why is that particular PPA so important?
20 What comes out of the LWF base PPA?

21 A Well, it is the largest PPA that the Weather
22 Service has, and it has essentially 89 percent of our
23 labor in there. So it is really a big portion of our
24 personnel expenses. And like I said, it's the day-to-
25 day operation of getting a forecast out, which is what

1 the American people really depend on.

2 Q So other than the labor costs, what else is
3 paid using Local Warnings and Forecasts base?

4 A So, as we discussed, the Upper Air Program
5 is out of there, a lot of the expenses associated with
6 that. You know, the buoy, in order to obtain marine
7 data, we use funding out of the Local Warnings
8 Forecasts base. The Weather Radio Program, a lot of
9 it comes out of the Local Warnings and Forecasts base.
10 The facilities, like I said, the rents, the comms,
11 utilities, those kind of things are --

12 Q "Comms," what do you mean by that?

13 A Comms. Those are your like T1 lines for
14 data going to and from or T3 lines depending on which
15 communication you need.

16 Q Okay. Is that the internet?

17 A That is the internet. Sorry.

18 Q All right. So are these the types of
19 expenses that, are they static, do they fluctuate?
20 What types of expenses are these, the non-labor
21 expenses?

22 A So non-labor expenses actually have been
23 going up a lot greater than what we've seen increases
24 in our budget over the past several years.

25 Q Any particular --

1 A Yeah, there are a lot of reasons why that
2 is. You know, for example, the NOAA Weather Radio
3 Program, there's a lot of facilities that we used to
4 have free leases. Communities thought there was a
5 benefit to the community to have a NOAA weather radio
6 broadcast in their community, so they put us on their
7 community tower so to speak. But since, you know,
8 cell phones and the cost of tower space became more
9 prime, they looked at us as being a cash cow and
10 decided to start charging the government, and it's
11 actually increased our expenses in that regard.

12 Leases, the same thing. As we, you know,
13 renew leases at our weather forecast offices and other
14 facilities, we've seen increases of 6 percent,
15 sometimes more depending on locations. You know,
16 everything from the cost of gasoline when you're
17 looking at filling a ship to do marine buoy type
18 operations, even, you know, the cars at every WFO.
19 The price of gas goes up. It's been going up more
20 than the standard.

21 Q Okay. What about the Upper Air Program?
22 Any additional costs associated with that?

23 A So the Upper Air Program, yes. The helium
24 associated with Upper Air, actually we've seen a
25 doubling of costs in FY '13 for the cost of helium.

1 Q What is the helium used for?

2 A That's actually to inflate the balloon to
3 start with so that it actually can rise. Not all
4 facilities use helium. We have been starting to
5 convert over to open generators. But for those that
6 do still use helium, the costs have doubled in fiscal
7 year '13.

8 Q Okay. Are there any costs associated with
9 filling vacancies that come out of the Local Warnings
10 and Forecasts base other than, of course, the actual
11 salary and benefit dollars?

12 A Right. So, as discussed before, you know,
13 the permanent change of station costs, if the employee
14 is actually funded, if their position is actually
15 funded out of the Local Warnings and Forecasts, then
16 the permanent change of station costs associated with
17 that position will be funded out of there. And, you
18 know, for the Weather Service, historically we were
19 spending over \$10 million a year in permanent change
20 of station costs. So that is a substantial amount
21 we're looking at it.

22 Q Okay. When you're looking at what?

23 A The overall costs associated with, you know,
24 the non-labor portion of the LWF account.

25 Q Okay. And does the Weather Service or

1 hiring manager know ahead of time how much money in
2 PCS they would have to spend to fill a particular
3 vacancy?

4 A They would not know exactly, no. They do
5 have projections based on prior hirings. However,
6 there's a lot of variables associated with the hiring
7 action, you know, for example, the distance to which a
8 person is coming from, whether or not the individual
9 has a house, you know, a family. Those kind of things
10 increase costs of a permanent change of station.

11 Q Okay. Can the Weather Service fill
12 vacancies if there's not enough money in the LWF PPA
13 to cover potential, you know, labor and PCS costs?

14 A No.

15 Q And what would happen if they did?

16 A Well, then you would violate the Anti-
17 Deficiency Act because you would exceed the authority
18 to which Congress has given you.

19 Q Okay. Now you're aware of the NOAA-wide
20 hiring freeze guidance that came out in March of 2013,
21 right?

22 A Yes.

23 Q All right. And I'll point you to Joint
24 Exhibit 11, which you've got open in front of you.

25 A Right.

1 Q Did you have any role in implementing that
2 policy?

3 A As far as implementing?

4 Q Uh-huh.

5 A Well, yes. I mean, the Chief Financial
6 Officer is required to sign all the PFARs, which is
7 the position funding approval forms. So I did have a
8 role in implementing this, yes.

9 Q Okay. So how did you decide whether to
10 authorize an exception to the PFAR? How did you
11 decide whether or not to authorize PFARs?

12 A So my analysis was only based on the
13 financial side of the house, and that was whether or
14 not I felt -- well, there was really several things I
15 was looking at. Number one was ensure that the
16 position was in the appropriate program, project, or
17 activity. You know, if somebody is requesting a
18 position in the tsunami program, but we're going to
19 charge it to LWF or whatever the case may be, you
20 know, I was looking at the accounting side of it.

21 Q Okay.

22 A And then other thing was looking to see
23 whether or not they actually had the funding to pay
24 for that. And I would call --

25 Q When you say "they," who do you mean "they"?

1 A Well, within the Weather Service, we have
2 what are called financial management centers, and it's
3 a way to basically give money to entities. And
4 financial management centers are essentially our
5 regional offices, our offices internal to
6 headquarters, and those kind of things.

7 So you give them a portion of the overall
8 Weather Service budget to manage. So, you know, they
9 then would come back with requests based on their
10 allocation, and then it was my job to then evaluate,
11 okay, well, you may have it in your allocation, but
12 somebody else over here is already short. And then I
13 would make decisions, you know, based on whether or
14 not I could move money between FMCs, financial
15 management centers, to cover this or whether I just
16 needed to recommend to the Deputy Director that this
17 was not something that we could afford at this point.

18 Q So you could move money between FMCs? That
19 was okay?

20 A Yes.

21 Q Okay. So you were looking at that picture?

22 A Yeah, kind of like, you know, I look at this
23 hiring freeze thing as NOAA's way of managing all the
24 line offices, and it was my way of managing all the
25 FMCs.

1 Q Okay. And again, why was that necessary?

2 A Well, because each FMC, you know, was given
3 an allocation based on either historical obligations
4 or personnel that they had onsite at the time at the
5 beginning of the allocation process. But as personnel
6 left or things changed within their FMCs, then they
7 could have had either additional funding or, you know,
8 require additional funding because of things they
9 needed to fund that they did not anticipate or were
10 not funded for initially because the prior year they
11 didn't have that obligation.

12 So it was my job to ensure that, you know,
13 as a whole the Weather Service did not go anti-
14 deficient and ensure that we were making management
15 decisions appropriately to keep that in total.

16 Q And how long did you do that? When were you
17 doing that?

18 A Well, we started that back as early as, you
19 know, October when we had limited funding in all
20 offices.

21 Q October of what year?

22 A In 2012. We were looking at, you know, how
23 we were going to make it through the first CR. Then
24 we were looking at how we're going to make it through
25 the final pull. So, I mean, the need to manage to our

1 appropriation was something that was my job from day
2 one.

3 Q Okay. So did the hiring freeze change the
4 way that you assessed, you know, whether or not
5 vacancies could be filled in the Weather Service?

6 A It did not change my assessment.

7 Q Did the Agency violate the Anti-Deficiency
8 Act under your watch in FY '13?

9 A Not that I'm aware of, no.

10 Q And was the Agency able to reduce hiring-
11 related spending in FY '13?

12 A I'm sorry, what was the question?

13 Q Was the Agency able to reduce hiring-related
14 spending in FY '13?

15 A Yes.

16 Q And what did it reduce it by, if you know?

17 A So I do know that we reduced essentially the
18 expenditures on FTEs by, it was just over, I think it
19 was about 120-some FTE reduction, and a reduction in
20 permanent change of station costs by about half from
21 the previous year.

22 Q Okay. And do you know in terms of numbers
23 how much that was? I don't know if you can recall.

24 A Well, I think the FTE count at the end of
25 the year was 4,458 I believe was the final number.

1 And that really was essentially what the budget or
2 appropriated amount was from Congress at the end of
3 the year.

4 Q So how much money did you end up saving or
5 did you end up reducing by?

6 A So I think we actually reduced the total
7 expenditures within it was just over \$20 million I
8 believe from the previous year in labor alone. And
9 then the permanent change of station was just over or
10 just under \$5 million, I'm sorry.

11 Q Okay. Did you also take any action to
12 reduce the amount of money that the Weather Service
13 spent in contracts and grants in the LWF's base?

14 A Yes, we did.

15 Q And what types of action did you take with
16 respect to that?

17 A Well, first of all, we put out guidance to
18 everybody saying, you know, do not do any contract
19 actions unless it's absolutely necessary. A lot of
20 folks were looking at, you know, canceling everything
21 from snow plows to, you know, cleaning, whether or not
22 they had trash removal every day to once a week kind
23 of thing. So there was a lot of different types of
24 ideas that were thrown out there and ways to look at,
25 you know, reducing our contract totals.

1 But from a hard and fast what I can do is,
2 you know, I went to the Bowie Center. Essentially
3 they were reduced by 40 percent. Most of their
4 operations were all contract, and that of course
5 raised some flags with the Congress. We got a couple
6 QFRs or questions for the record as to why their
7 budget was reduced so much.

8 Q Okay. And the Buoy Program, which PPA is
9 that in?

10 A That's an LWF.

11 Q Okay. Is there a separate buoy PPA?

12 A So there are smaller buoy PPAs is the Alaska
13 data buoy, which in this case it ended up being
14 \$1.6 million essentially at the final. And then, of
15 course, there is some money in the tsunami program for
16 the DART Buoy Program.

17 Q Okay. Not those buoys. It's the buoys that
18 are funded out of the LWF?

19 A So there are weather buoys that are actually
20 out there, the sea manned stations and other things
21 that are out of LWF, yes.

22 MS. CIOFFALO: Okay. I think I've covered
23 everything.

24 ARBITRATOR SHARNOFF: Okay. Let me just
25 ask, do you need a break of any kind before we start

1 cross-examination?

2 MS. CIOFFALO: Water?

3 THE WITNESS: I think I'm fine.

4 ARBITRATOR SHARNOFF: Okay. And do you need
5 a break?

6 MR. HIRN: No, I'm good. I'm good.

7 CROSS-EXAMINATION

8 BY MR. HIRN:

9 Q Hi, John. John, Agency Exhibit 4, the 610
10 in Local Warnings and Forecasts, that wasn't the
11 ultimate number that you landed up with by the end of
12 the fiscal year, correct?

13 A No. As I stated, we ended up with 630.

14 Q Six hundred thirty.

15 A Correct.

16 Q Okay. Then you talked about a meeting on
17 February 28. Were you referring to the discussions,
18 the predecisional discussions you and David had with
19 Dan and myself at my office?

20 A We anticipated they were predecisional.
21 However --

22 Q What do you mean by that?

23 A Well, Dan told us anytime we meet, they're
24 negotiations, so, you know, depending on how you
25 define it.

1 Q Okay. And you said it was February 28 and
2 not March 5?

3 A I recalled it was --

4 Q Somewhere around there?

5 A It was very close to that, yes.

6 Q Okay. And do you recall any discussion of a
7 hiring freeze during that meeting?

8 A We did propose at that point or at least
9 discuss freezing certain positions, yes.

10 Q And what positions did you suggest might be
11 frozen?

12 A I don't have the list in front of me, and I
13 honestly don't remember. I know HMTs were one, OPL, I
14 mean, there were quite a few, yes.

15 Q Was it correct that you didn't include
16 forecasters and hydrologists in that?

17 A That is correct.

18 Q Okay. Now it does take some time to fill a
19 position from the time it becomes vacant and you start
20 a recruitment action and somebody actually comes on
21 board, correct?

22 A Correct.

23 Q So do you recall any discussions where Dan
24 may have explained to you that he didn't see how you
25 could achieve any savings from a hiring freeze even to

1 the positions we were talking about this fiscal year
2 because by the time something actually ends up, it'll
3 be the end of the fiscal year anyway? Do you recall
4 him making that point to you?

5 A I do, but as you recall, we also discussed
6 that it was not a true -- the only positions we were
7 actually proposing a hiring freeze on were the actual
8 positions which we discussed, the HMTs and others.

9 Q Right, but we talked about did not Dan
10 suggest to you that with regard to those positions,
11 saying if you freeze those, you're really not going to
12 achieve any savings before the end of the fiscal year
13 anyway because it'll take that long to get them on
14 board before they actually make the move anyway?

15 A Yes.

16 Q Okay. And didn't Dan also suggest to you
17 that if there was a problem that perhaps we could talk
18 about maybe just continuing with recruitment actions
19 and just don't give people a reporting date until
20 October 1 after the end of the fiscal year?

21 A We did discuss that, and we talked that over
22 with Workforce Management, and they said that was not
23 going to be an option. And I think we reported back
24 to you and said we could not do that.

25 ARBITRATOR SHARNOFF: And did they indicate

1 why it was not an option?

2 THE WITNESS: Yeah. Essentially it's like a
3 contract action. If you're going to put out an
4 announcement, you have to have the funding capable of
5 doing it. And if we were saying we didn't have the
6 funding until October 1, you're leading somebody on
7 saying that you want to hire them, but yet we don't
8 know. Come October 1, we may not have the funding and
9 then have to cancel it anyway.

10 BY MR. HIRN:

11 Q You could always cancel it, can't you? And
12 in fact, you did cancel it. You did cancel these out,
13 a bunch of actions.

14 A I don't know what actions got canceled.

15 Q Okay. I guess the only other thing I want
16 to ask you about is you just testified that you
17 reduced your total labor costs by \$20 million and your
18 PCS costs by \$5 million. Do you have documentation
19 that proves those numbers?

20 A I don't know that she has them here as
21 exhibits, but, yes. They're in the finance system,
22 and they're actually on the control table with NOAA
23 budget, the actual FTE reduction which --

24 Q It shows about how much you saved? Do you
25 have any evidence here today to substantiate your

1 claim that you saved these estimated numbers? They
2 seem just like very round numbers.

3 A I mean, like I said, I could run the reports
4 out of the finance system. I do not have them here
5 that I know of in her stack of stuff.

6 MR. HIRN: Okay. That's all I have, Mr.
7 Sharnoff.

8 MS. CIOFFALO: I just have a couple followup
9 if that's okay.

10 REDIRECT EXAMINATION

11 BY MS. CIOFFALO:

12 Q When you were discussing in your
13 predecisional discussions with the Union February 28
14 or whatever date it was when you talked about a
15 potential freeze and what positions it would cover,
16 was that before you became aware of the additional 2
17 percent rescission in the budget?

18 A Yes, it was.

19 Q Okay. And you testified that you recall
20 that Dan said -- excuse me -- Dan Sobien thought that
21 you would not achieve any savings through a hiring
22 freeze because it was just too late in the year. Was
23 he right?

24 A Well, I mean, we never froze any position,
25 that was the point. We discussed with the Union about

1 freezing certain positions, but then they were not
2 willing to do that. We did not freeze any particular
3 position. We continued to hire those that we felt
4 were critical and necessary.

5 Q Okay. So you did save money in labor costs
6 before FY '13?

7 A We had a reduction in labor expenditures
8 from FY '12 to FY '13, yes.

9 Q Okay. And in terms of the documents that
10 Mr. Hirn is asking you about, do you recall running
11 reports at any time to see how much money NOAA was
12 able to reduce its labor spending?

13 A Well, the control table was given to us, and
14 I have noticed it in the actual running of the control
15 table, which comes out, you know, periodically from
16 NOAA budget. And, yes, I have run the financial,
17 what's called the NOAA 118 report out of the finance
18 system which actually gives you the FTE count at the
19 end of the year.

20 MS. CIOFFALO: Okay. That's it.

21 MR. HIRN: Nothing more. Thank you, Mr.
22 Sharnoff. Thank you, John.

23 ARBITRATOR SHARNOFF: Okay. You're excused
24 as a witness. Thank you very much.

25 THE WITNESS: Thank you.

1 (Witness excused.)

2 MS. CIOFFALO: If we can just take a five-
3 minute break? Our next witness is in the next
4 building.

5 ARBITRATOR SHARNOFF: Okay.

6 (Whereupon, a short recess was taken.)

7 MS. CIOFFALO: All right. Could you state
8 and spell your name for the record, please?

9 MS. WYLIE: Sure. My name is Maureen E.
10 Wylie. M-A as in Alpha, U-R-E-E-N, E. Wylie, W-Y as
11 in Yankee, L-I-E.

12 ARBITRATOR SHARNOFF: Okay.

13 Whereupon,

14 MAUREEN WYLIE

15 having been duly sworn, was called as a
16 witness and was examined and testified as follows:

17 ARBITRATOR SHARNOFF: Okay.

18 DIRECT EXAMINATION

19 BY MS. CIOFFALO:

20 Q Okay, Ms. Wylie, could you tell me, you
21 currently work for NOAA, right?

22 A I do.

23 Q Okay. And can you tell me what your
24 position is with NOAA?

25 A I'm the Chief of Resource and Operations

1 Management, and I have held that position since
2 January of 2012.

3 Q Okay. And that's otherwise known as the
4 CROM, right?

5 A The CROM, yes.

6 Q C-R-O-M. What does that entail? What do
7 you do as the CROM?

8 A I provide supervision and directional
9 oversight of our corporate services functions, the
10 Chief Information Officer, the Chief Financial
11 Officer, the Chief Administrative Officer, the
12 Director of Acquisition and Grants, the Risk Manager,
13 and the Workforce Management Office.

14 Q Okay. So organizationally where does your
15 position fall?

16 A I sit in the Office of the Deputy Under
17 Secretary for Operations, which is a part of the Under
18 Secretary and associated offices.

19 Q Okay. I know you mentioned that you've got
20 responsibilities over these various parts of NOAA.
21 What does that entail?

22 A So I provide day-to-day supervision. I also
23 provide strategic leadership and oversight of the
24 directors as they execute their responsibilities. I
25 provide advice and counsel to NOAA management, to

1 Department leadership as required.

2 Q Okay. And do you have particular
3 responsibilities with respect to the NOAA budget?

4 A I do.

5 Q And what responsibilities?

6 A I'm the second line supervisor of the
7 Director of Budget, one of the two functions in the
8 Office of the Chief Financial Officer, who reports to
9 me.

10 Q Okay. And what was your position before
11 being the CROM?

12 A I came to NOAA in February of 2004, and I
13 was the Chief Financial Officer until January of 2012.

14 Q The NOAA Chief Financial Officer?

15 A Yes, I was.

16 Q And what were your duties as the NOAA Chief
17 Financial Officer?

18 A I was responsible for budget activity, again
19 oversight of line office activities and strategic
20 advice to NOAA leadership and Department leadership.

21 Q Okay. And prior to holding the position as
22 the NOAA CFO, what position did you hold or where were
23 you?

24 A I was at the National Guard Bureau. I was
25 the G-8 of the Army National Guard and the J-8 of the

1 National Guard Bureau. I was dual headed for the last
2 six months of my time there. Under that nomenclature,
3 I was the Chief Financial Officer of those entities.

4 Q Okay. Both of them at the same time?

5 A Yes.

6 Q So let's talk about NOAA a little bit. What
7 is NOAA's mission?

8 A We have mission responsibilities from the
9 surface of the sun to the bottom of the ocean. We
10 observe, predict, manage, conserve living marine
11 resources. We provide services such as navigation and
12 height services like Geo-Odyssey so that we can do
13 mapping of the United States as well as the coastal
14 areas of the United States. We do oceanic and
15 atmospheric research and just about anything else that
16 fits into those parameters. It's quite an extensive
17 and diverse mission portfolio.

18 Q Okay. What are the different pieces of
19 NOAA, the line and staff offices of NOAA?

20 A Okay. There are five traditional line
21 offices. The NESDIS, which is the National
22 Environmental Satellite and Information Data Service.
23 There is the Weather Service. Oceanic and Atmospheric
24 Research, the National Ocean Service, and the National
25 Marine Fisheries Service. OMAO, the Office for Marine

1 and Aviation Operations, is not a line office but is
2 treated so for most administrative purposes. So
3 that's the set.

4 Q Okay. Why don't we just go through and
5 explain a little bit. So you have NESDIS. What does
6 NESDIS primarily do?

7 A NESDIS procures, develops, operates
8 satellites for largely weather and climate operations
9 but now for a growing number of ecosystem forecasting
10 requirements, including harmful algal blooms. They
11 also are our satellite and system data conservator.
12 They operate our largest data systems.

13 Q Okay. Ocean Service. For example, what do
14 they do?

15 A They are the ones with responsibility for
16 navigation services. They also provide a range of
17 products and services to our coastal communities.
18 They also run our regulatory program for coastal zone
19 management. And they have marine sanctuary programs.

20 Q Okay. And you said there's also the
21 Fisheries Service as well?

22 A Fisheries Service has both a conservation
23 and regulatory mandate. They enforce a series of
24 statutes: the Endangered Species Act, Marine Mammal
25 Protection Act, Sustainable Fisheries Act, Magnuson-

1 Stevens. So they not only regulate the nation's
2 fisheries, they ensure that endangered species are
3 properly conserved. They maintain essential fish
4 habitat and habit for these types of species as well.

5 Q Okay. And then I believe just the Weather
6 Service is left, right?

7 A Well, I suspect you've had a lot of
8 testimony here about the forecast responsibilities of
9 the Weather Service. They are a 24/7 operational
10 entity. They provide critical information to protect
11 the nation in terms of the safety of its citizens and
12 their property.

13 Q Okay. All right. Well, let's jump right
14 in. I'm going to point you to Joint Exhibit 11 and
15 ask if you recognize that document.

16 A Is it this one?

17 Q Oh, yes.

18 A Okay. Yes, I recognize that document.

19 Q And what is that?

20 A That is Dr. Sullivan's letter enacting the
21 NOAA-wide hiring freeze and setting up the Freeze
22 Board.

23 Q Okay. And were you involved in formulating
24 that?

25 A Yes, I was.

1 Q Why were you involved in it?

2 A Because as the CROM, I have oversight
3 responsibility of two critical components of this
4 activity, the first being the Chief Financial Officer,
5 providing oversight to how budgeting is being done at
6 this point, and also the Workforce Management Office.

7 Q And what was going on with the NOAA budget
8 at the time that this was issued?

9 A So, as of March 26 of last year, the
10 President had finally signed a year-long CR for part
11 of the federal government. There are several parts of
12 the government that are also included as
13 appropriations in that Act. The commerce, justice,
14 science appropriation was included as a regular
15 appropriation in that extension.

16 Q Okay. So prior to the hiring freeze being
17 issued, you know, where was NOAA with respect to its
18 budget process?

19 A So, at that point, nearly six months of the
20 12 months of the fiscal year had already been expired.
21 We had undergone a series of budget activities
22 depending upon the numerous short-term CRs that we saw
23 in the first quarter. We were particularly concerned
24 that being on this series of short-term CRs, it was
25 very difficult for us to do any sort of long-range

1 budget planning through the rest of the fiscal year.

2 In December of that year, we began to see a
3 lot of media attention and we began to see information
4 from our contacts in the defense agencies that some
5 parts of the government were doing detailed planning
6 in order to go through the process of dealing with the
7 5 percent reduction associated with sequestration and
8 the Budget Control Act.

9 Q And when was that to take effect?

10 A That was to take place in January.

11 Q Okay.

12 A We did receive guidance finally from the
13 Administration to begin planning for sequestration.
14 The Administration's position was that sequestration
15 was bad law, that it was not intended to be
16 implemented, and that the President was confident that
17 the Congress would get together and figure it out.
18 And so we were enjoined from specific sequestration
19 planning until very late in this process.

20 Q And what guidance are you referring to?

21 A We received a memorandum from Jeff Zients,
22 who was at the time the Director for Management at the
23 Office of Management and Budget in January.

24 MS. CIOFFALO: All right. So I will pass
25 this around. And I believe it could be in the record

1 already. I think the Union may have put it in, but
2 we'll just mark it for convenience as Agency Exhibit
3 8.

4 (The document referred to was
5 marked for identification as
6 Agency Exhibit No. 8.)

7 BY MS. CIOFFALO:

8 Q And is that the January 2013 memo from
9 Jeffrey Zients that you were referring to?

10 A Yes, it is.

11 Q And what did that memorandum entail?

12 A It essentially directs us to begin planning
13 for fiscal uncertainty. So we had already been
14 talking about doing some back of the envelope
15 calculations, but we'd not done detailed planning. It
16 actually directs us to go forward and be prepared to
17 deal with that uncertainty through the rest of the
18 fiscal year.

19 Q So sequestration was a 5 percent reduction
20 to the Agency's budget, correct?

21 A It's actually a much more insidious problem
22 than a 5 percent off-the-top reduction. So the NOAA
23 budget is comprised of a series of program, project,
24 and activities grouped by line office but not always
25 executed in a fairly simple way. So the way that the

1 Budget Control Act was written, the 5 percent
2 reduction was to be taken off of each item in the
3 budget, and for NOAA's budget purposes, that includes
4 each PPA, program, project, or activity in each of its
5 line offices.

6 Q Okay. And how much money overall did that
7 equate to you?

8 A So that reduction is well over \$300 million.
9 And so the challenge is not that it's just that very
10 large amount of money but in fact that it is this
11 indiscriminate reduction. It doesn't really allow you
12 to balance across your mission portfolios. It just
13 says you'll take your cuts where they are.

14 Q Okay. Well, so you were directed by OMB to
15 start planning for that. What did NOAA do to start
16 planning for that reduction?

17 A Well, as I'm sure it's been explained, we're
18 a part of the Department of Commerce. We're a bureau,
19 a subordinate entity in the Department of Commerce.
20 And so, as a part of that organization, we went
21 through a process of doing detailed sequestration
22 planning, which eventually was briefed up through and
23 adjusted by first the Under Secretary and then the
24 Acting Under Secretary, up through to Dr. Rebecca
25 Blank, who was the Deputy Secretary of the Department

1 and also the Acting Secretary at the time.

2 Q Okay. And when was this planning taking
3 place?

4 A In January and early February.

5 Q Okay. And what was the plan?

6 A Well, the plan was to determine what the
7 impacts were at each of these individual PPAs and to
8 try to determine how much of our mission that that
9 line funded we would actually be able to continue to
10 do and then, more importantly, what the impact would
11 be upon our people. NOAA is an agency that's
12 completely dependent upon the availability and the
13 quality of the people. They are our most precious
14 asset. As a science and technology organization, you
15 can do a lot with hardware and contracts, but you
16 can't really replace that intellectual capital that is
17 required across the board.

18 So because we have each of these PPAs which
19 are all varying in size and scope, it was a very
20 detailed effort to try to determine where, if
21 anywhere, there were impacts to the actual pay of
22 people, whether we had sufficient resources to cover
23 their costs, pay our rent, pay our utilities, and
24 whatever other activities were funded by that line.
25 And that varied widely from budget line to budget line

1 and from part of the Agency to part of the Agency.

2 Q Okay. And so what did you have to do with
3 all of that?

4 A So we assembled that impact, and we provided
5 that to Dr. Blank. She gave us feedback about areas
6 to sharpen our pencil. But essentially we had
7 determined that there were some parts of the Agency
8 that would require furloughs of employees of up to 22
9 days. Twenty-two days is the maximum number of
10 administrative furlough days that you can assign to an
11 employee without it becoming a RIF action, reduction
12 in force action. So we had some places where we had
13 RIFs of up to 22 days. We had some areas where we had
14 RIFs of --

15 ARBITRATOR SHARNOFF: You're saying RIFs.

16 THE WITNESS: I'm sorry. I meant furlough
17 days. I apologize.

18 ARBITRATOR SHARNOFF: I know you meant it.

19 THE WITNESS: Thank you.

20 ARBITRATOR SHARNOFF: I just want to be
21 clear.

22 THE WITNESS: Thank you for clarifying that
23 for me.

24 ARBITRATOR SHARNOFF: Because the transcript
25 will know.

1 THE WITNESS: You know, we were worried
2 about RIFs a lot. That we would have furlough days in
3 some entities as low as four days. There were also
4 areas where we thought there might be between 10 and
5 18 days of furlough.

6 BY MS. CIOFFALO:

7 Q And so these plans were all occurring in you
8 said the January -- I'm sorry -- January and February
9 timeframe?

10 A January and February.

11 Q So what happened in March when you learned
12 what the final number was going to be?

13 A So there's a process associated with all of
14 this. I mentioned that we work on a series of short-
15 term continuing resolutions. By the time we get to
16 January when sequestration takes effect, we're on a
17 longer-term CR, but we are still planning against what
18 in budget speak is called an annualized CR. So we
19 really only get money for the period of performance,
20 30 days, 45 days, whatever it is. But for our budget
21 assumptions, we were using the ending amount in 2012,
22 which is both the activity as well as the amount of
23 money. So the Congress essentially says to you, you
24 can only do what we agreed for you to do last year and
25 you have to continue it at the same rate. So we were

1 assuming for purposes of our plans that that would be
2 the amount we would receive over the whole year.

3 In mid-March, 16, 17, 18 March, we began to
4 see bills posted by the House and the Senate which
5 make a change in our baseline for our financial
6 management. Essentially the good news for us was that
7 there was sufficient comity between the House and the
8 Senate, Democrats and Republicans, that we could
9 actually get an appropriation for our business line.
10 That's always better than operating under a continuing
11 resolution. So good news from an overall perspective.

12 Unfortunately, within that bill, there were
13 certain challenges. The first was that not all lines
14 were funded at the rate that they had been funded in
15 2012. Some were more; many were less. Just like any
16 other budgeting exercise, the congressional committees
17 had amounts they were trying to reach so that they
18 would essentially balance. They were unable to do
19 that, and so they not only included sequestration, but
20 they also included a 2 percent rescission on top of
21 the 5 percent sequestration reduction.

22 So instead of having the amount of money
23 that we had at the end of 2012 minus 5 percent, we had
24 a high degree of variability within our lines, and
25 then we had 7 percent in reductions. And that was, as

1 passed by the House and the Senate and signed by the
2 President on the 26th, statutory for us and on every
3 line item.

4 Q So what did that do to the sequestration
5 planning that you had already done?

6 A Well, it made it less useful than it had
7 been the day before. So we essentially had to go
8 through a relatively rapid reassessment of where our
9 baseline had gone and then what the reductions would
10 be. So we ended up with parts of the budget that had
11 more than a 7 percent reduction when compared to their
12 FY '12 level and some that had less.

13 The advantage to us was that we knew that
14 since we had been given an appropriation instead of a
15 continuing resolution, we would be allowed to do a
16 reprogramming to request a rebalancing of our funds so
17 that we could balance across our missions and so that
18 we could reduce the impact to parts of the
19 organization and to the employees that were associated
20 with that.

21 Q And what were the impacts of this ultimately
22 7 percent reduction on the NOAA budget? What were you
23 looking at at that time?

24 A So \$250 million alone is associated with the
25 sequestration reduction. We were looking at

1 \$5.1 billion, which was about a billion less than we
2 had seen in 2012, and then we had the additional
3 rescission. So we were looking at about a
4 \$350 million reduction. Not all of that is associated
5 with our operating costs. As you might be aware,
6 since we acquire satellites, we have big chunks of our
7 funds that are capital, and so large chunks of this 7
8 percent reduction were associated with our satellite
9 programs.

10 We didn't actually try to fix those
11 problems. We were focused on trying to figure out how
12 we could maintain the pay of our people and how we
13 could keep our missions, our operational missions
14 going.

15 Q Okay. So ultimately what did you have to do
16 in order to achieve that goal?

17 A So we recognized pretty quickly that we
18 needed time to determine what the rate of
19 reprogramming needed to be and what our sources of
20 funding would be.

21 Q What do you mean by that, rate of
22 reprogramming and sources of the funding?

23 A So, when you get a budget, you get a budget
24 that has a number of line items in it. It's not
25 all --

1 Q Are those PPAs?

2 A Yes, those are PPAs. So they're not all in
3 a pot or a bag. And each are all funding a relatively
4 small subset of whatever you're trying to accomplish.
5 Some of our lines have many PPAs; some have fewer.
6 But generally speaking, the funds come in these lines
7 and you have to determine whether or not --
8 essentially all of the work that we did in January and
9 February had to be redone so that we would be sure of
10 where we had funds with some flexibility and where we
11 had real shortfalls.

12 Q And if you hadn't done this, I mean, what
13 would the impact to the mission have been?

14 A So we were going to see at least in some
15 parts of the budget substantial furloughs. And that
16 was of particular concern. But we also had a larger
17 issue of having control over the funds and having
18 certainty as to where our reprogramming bill payers
19 would come from. So, as I mentioned earlier, we're
20 talking about three days before mid-year, so we have
21 six months to go. We've already in chunks of 30 days
22 and 45 days spent money associated with all of our
23 fixed costs, critical that you have to pay your
24 utilities, you have to pay your rent, you have to pay
25 your people. But we also had to do certain contracts

1 to keep trash picked up at our facilities, security
2 guards at our locations, certain must fund activities.

3 So we then had to figure out how with the
4 six months remaining we were going to end the year
5 before we ran out of money.

6 Q What would have happened if you ran out of
7 money?

8 A Well, then we would have been in violation
9 of the Anti-Deficiency Act, which requires us not to
10 spend more money than is made available to us by
11 Congress.

12 Q Okay. And so you were talking about the
13 reprogramming that you were going to do. What did
14 that entail? What was the task at the end there?

15 A So we believed that we had certain mission
16 areas that had significant risk of furlough and
17 degraded mission performance. Corporate services was
18 a particular area of trouble. We were looking again
19 at 22 days of furloughs. The Fisheries Service was
20 looking at four days at least of furloughs in their
21 largest PPA, which is where their regulatory people
22 and their science people sit. The Weather Service was
23 looking at a large number of furlough days. I think
24 they were thinking it was 10.

25 So we were very concerned that we had to

1 figure out how to balance this so that we could
2 continue to execute our missions and functions without
3 spending more money than we actually had.

4 Q Okay. And what was the plan to do that?

5 A Well, we developed a reprogramming request.
6 It took us about a month. There was a process of
7 analysis and review and re-analysis. Some of the
8 alternatives were not acceptable because they would
9 have affected critical observing systems in the
10 Weather Service, for example, or might have left us
11 without security guards at NOAA-owned facilities or at
12 leased facilities. So those are just examples of some
13 of the impacts.

14 But we continued to work on what would be a
15 set of bill payers that would allow us to keep all of
16 our missions whole with the least impact on our
17 employees as possible.

18 Q What do you mean by "bill payers"? Who does
19 that refer to?

20 A So it's a shorthand slang for sources of
21 revenue, essentially sources of funds that could be
22 reprogrammed through permission of the Congress from
23 the purpose for which they were appropriated to other
24 purposes.

25 Q Okay. And what did you need to have happen

1 in order to be able to figure that out?

2 A So we needed there to be certainty about the
3 amount of resources that we had from day to day. We
4 needed to be able to project what our salary costs
5 would be, what our other fixed costs, like rent and
6 utilities, would be, and what other activities needed
7 to be done by a grant. For example, the Fisheries
8 Councils, which are a key part of our regulatory
9 scheme, are funded by financial assistance agreements.

10 So we had to do all that work, and then we
11 had to be sure that given the timeline that it
12 typically takes to get a reprogramming approved, those
13 funds would be available for reprogramming when they
14 finally had gotten approved.

15 Over the last three fiscal years, we've gone
16 through the greatest period of fiscal uncertainty in
17 the federal government in a generation. There are
18 people who remember the '90s where things were
19 particularly difficult, but we've never had a period
20 where there was so much uncertainty about how much
21 money you would have by the end of the year.

22 So for 2011, we ended the year in a full-
23 year CR, and we didn't get final appropriations
24 approval of our spending plan until mid-September on a
25 fiscal year that ends on 30 September. In 2012, we

1 did get an appropriation late, but it took a long time
2 to get the spending plan approved, and we were still
3 getting apportionments approved in September.

4 So we were very concerned that in this
5 process of reasonable delay and review and re-
6 analysis, autopilot spending, we'd end up with funds
7 not being available to reprogram when we were finally
8 approved to do so.

9 Q What do you mean by "autopilot spending"?

10 A Well, every minute that a government
11 employee is on the job they're getting paid. And it's
12 best if you can direct them on the work they need to
13 do, or if you're going to have to furlough them, it's
14 better to figure out how to do it early enough in a
15 year to give those employees maximum flexibility about
16 how they would take that furlough, that we could give
17 them maximum notice, and that we could do the work
18 within Workforce Management to actually furlough all
19 of those people appropriately, ensuring that their
20 rights were maintained and the rights of the
21 government were maintained.

22 Q Okay. So ultimately did you submit a
23 reprogramming request to Congress?

24 A We did. We did.

25 Q And what did that reprogramming entail?

1 A It entailed movement of resources within the
2 Weather Service, within corporate services, from other
3 donor PPAs, so parts of the budget that had additional
4 resources. Our reprogramming assumed there would be
5 four days of furlough, and that would be part of how
6 we would pay for the whole budget being balanced
7 across its mission areas.

8 Q Who was getting furloughed for four days?

9 A Everyone.

10 Q Every single NOAA employee?

11 A Yes. The only employees who were not to be
12 furloughed under this scenario at this point I think
13 was Dr. Sullivan, and that's because she's a
14 presidentially appointed, Senate confirmed official,
15 and under OPM regulations, they can't be furloughed.
16 The NOAA Corps was also not furloughed. They're
17 exempt. Everyone else.

18 ARBITRATOR SHARNOFF: I'm sorry, the NOAA?

19 THE WITNESS: We have the NOAA Commissioned
20 Corps. So a minor digression. There are actually
21 seven uniformed services. The ones that people really
22 don't think about very often are the Public Health
23 Service and the NOAA Commissioned Corps. There are
24 about 320 of them, and they fly our airplanes and
25 captain our ships, and they are uniformed, but not

1 military. But many of the personnel rules covering
2 the military also apply to them, and so they're not
3 subject to furlough.

4 BY MS. CIOFFALO:

5 Q Understood. So ultimately this plan that
6 involved the four-day furloughs, what happened with
7 that?

8 A Over the period of the spring and into June,
9 we worked to try to get approval at the various
10 levels. It has to go through the Department of
11 Commerce review. It has to go through OMB review. It
12 was finally submitted to the Hill. I'm sorry, I need
13 to be refreshed on the date, but there is a process by
14 which things come out of the Administration and go up
15 to the Hill.

16 We were working on the plan, which under our
17 notional timelines would have had us starting to
18 furlough our employees in July. And our strategy was
19 as an option to allow people to take four-day
20 weekends. So we were looking for time during the
21 summer months where people could do that.

22 Q So what ultimately happened with that
23 reprogramming request?

24 A There were negotiations at the highest
25 levels. OMB worked with Senator Mikulski and

1 Congressman Wolf and others on the Hill. And our
2 reprogramming proposal was revised in such a way that
3 allowed additional flexibilities in how we approached
4 the use of the Sandy supplemental funds. And so, as a
5 result, there was no requirement for us to have
6 furloughs.

7 Q And when ultimately was the reprogramming
8 request approved by the Hill, Congress?

9 A That reprogramming request was approved in
10 June, in late June. Throughout the rest of the fiscal
11 year and throughout the summer, we went through the
12 process of receiving apportionments from OMB,
13 including our apportionment, which is essentially the
14 money coming into our checkbook. We received
15 apportionments from OMB for both our post-change and
16 for the Sandy supplemental funds, and so that process
17 went on through September.

18 Q Okay. All right. Let me switch gears here
19 a little bit. Are you familiar with the phrase
20 "national consultation rights"?

21 A Yes, I am.

22 Q And that phrase, what do you understand that
23 mean?

24 A We are required on a predecisional basis to
25 inform the NWSEO of proposed management actions and to

1 receive their feedback about that proposal.

2 Q When you say "we" --

3 A As management. And so --

4 Q At what level?

5 A Well, even though this was a NOAA policy
6 that went out from our central labor relations folks,
7 but through the management representatives.

8 Q Okay. So did NOAA give NWSEO national
9 consultation rights regarding the hiring freeze that
10 you see here in Joint Exhibit 11?

11 A Yes. Yes, they did.

12 Q All right. And I will show you what we'll
13 mark as Agency Exhibit 9 and ask if you're familiar
14 with that document.

15 A I am.

16 Q All right. One second. Let me pass it
17 around so everybody else has it.

18 (The document referred to was
19 marked for identification as
20 Agency Exhibit No. 9.)

21 ARBITRATOR SHARNOFF: Are we going to seek
22 admission of Agency 8?

23 MS. CIOFFALO: Yes, I'm sorry. I'd like to
24 admit Agency 8.

25 ARBITRATOR SHARNOFF: Any objection to 8?

1 MR. HIRN: No.

2 ARBITRATOR SHARNOFF: Okay. It's admitted.

3 (The document referred to,
4 previously identified as
5 Agency Exhibit No. 8, was
6 received into evidence.)

7 BY MS. CIOFFALO:

8 Q What is this document?

9 A This is essentially a draft proposal on how
10 we would propose to implement a hiring freeze.

11 Q Okay. And where did this proposal go?

12 A It was provided to NWSEO.

13 Q Okay. And this is the NCR notice that they
14 received?

15 A Yes.

16 Q Okay. Did the Union give any consultation
17 to NOAA regarding the freeze?

18 A Yes, they did. Yes, they did.

19 Q And I'll show you what --

20 MS. CIOFFALO: Oh, I'd like to admit Agency
21 9 into evidence.

22 MR. HIRN: My concern is its relevance.

23 There was not an allegation made. Well, the issue
24 before you is whether the Weather Service fulfilled
25 the predecisional obligations under Article 8, Section

1 1. So I guess my question is, as a proffer of
2 relevance, is the Agency suggesting that our
3 consultation with NOAA satisfied that requirement?

4 MS. CIOFFALO: No. I just think because
5 these issues are all wrapped up in each other that we
6 would put in a process that was leading up to the
7 hiring freeze.

8 ARBITRATOR SHARNOFF: Okay. Well, as
9 background if nothing else, it'll be admitted.

10 (The document referred to,
11 previously identified as
12 Agency Exhibit No. 9, was
13 received into evidence.)

14 BY MS. CIOFFALO:

15 Q And now I'll give you what I'd like to mark
16 for identification as Agency Exhibit 10 and pass that
17 around.

18 (The document referred to was
19 marked for identification as
20 Agency Exhibit No. 10.)

21 ARBITRATOR SHARNOFF: Thank you.

22 BY MS. CIOFFALO:

23 Q And do you recognize this document?

24 A I do.

25 Q And what is this?

1 A This is Mr. Hirn's response to our
2 consultation.

3 Q And had you received this response?

4 A I was not the addressee, but I did see it in
5 the process of working on this issue.

6 Q Okay. And do you know if NOAA responded to
7 the Union's input on this issue?

8 A Yes, we did.

9 MS. CIOFFALO: And I'd like to mark for
10 identification -- oh, I'd like to move into evidence
11 Agency Exhibit 10. Same reason.

12 MR. HIRN: Sure.

13 ARBITRATOR SHARNOFF: Okay, admitted.

14 (The document referred to,
15 previously identified as
16 Agency Exhibit 10, was
17 received into evidence.)

18 MS. CIOFFALO: So I'd like to mark for
19 identification Agency Exhibit 11, and I'll pass it
20 around.

21 (The document referred to was
22 marked for identification as
23 Agency Exhibit No. 11.)

24 BY MS. CIOFFALO:

25 Q Is this NOAA's response to that input?

1 A Yes, it is.

2 Q Were you involved in drafting that response?

3 A I reviewed it and provided minor edits
4 before it was submitted.

5 Q Okay. Did NOAA or their staff offices have
6 discretion, you know, whether they could implement
7 immediately, whether they had to implement immediately
8 the guidance that was issued by Dr. Sullivan on
9 March 27?

10 A No, they did not.

11 Q Could any NOAA unit have filled vacancies
12 without going through the procedures set forth in that
13 memo?

14 A No.

15 Q There's been some discussion. The guidance
16 states that job opportunity announcements that have
17 been addressed or JOAs for short that have been
18 advertised and closed by the date of this memo,
19 March 27, will continue to be processed to the
20 completion of hire. What did that mean?

21 A What it means is that they don't have to
22 come back through the Board in order to continue
23 processing.

24 Q Okay. And did this guidance require line
25 and staff offices to fill every vacancy that had

1 already announced and closed?

2 A No, it did not.

3 Q How would the DAAs or office directors have
4 known that?

5 A Well, additionally, as someone who
6 participated in the drafting, it's very common that
7 all hiring actions don't progress all the way through
8 to hiring. There are a number of reasons why you
9 wouldn't have to do that. You might not get the
10 candidate that you want. They might not be willing to
11 come for the salary you're going to offer. There are
12 all of those issues.

13 But also there isn't any requirement that
14 any hiring action that started by our action at the
15 NOAA level must be finished. And certainly AAs and
16 DAAs could easily ask for clarification if they felt
17 that they didn't understand the guidance that they
18 received.

19 Q Did any office directors or DAAs ask for
20 clarification of that?

21 A I believe there were people who asked for
22 clarification.

23 Q And do you know what, if any, guidance was
24 given?

25 A We didn't issue another memorandum, but we

1 told people they didn't have to hire, but that if
2 their jobs were in a certain point in the hiring
3 process, they did not have to come back to the Board
4 to be reapproved. The goal was to then to allow them
5 to set their priorities appropriately and determine
6 whether or not they had the resources under our
7 reprogramming guidance that they would have to fund.

8 MS. CIOFFALO: Okay. I'd like to enter into
9 evidence Agency Exhibit 11.

10 MR. HIRN: No objection.

11 ARBITRATOR SHARNOFF: Okay. It's admitted.

12 (The document referred to,
13 previously identified as
14 Agency Exhibit No. 11, was
15 received into evidence.)

16 BY MS. CIOFFALO:

17 Q I'm going to show you what I'd like to mark
18 for identification as Agency Exhibit 12.

19 (The document referred to was
20 marked for identification as
21 Agency Exhibit No. 12.)

22 BY MS. CIOFFALO:

23 Q And I'll ask you a couple questions about
24 this in just a second. How did the steps you took
25 compare to other steps that were taken by NOAA, the

1 hiring freeze included, compare to other government
2 agencies during this time, if you know?

3 A At several levels we did some outreach to
4 talk to colleagues and other federal agencies both on
5 how they were doing their planning and how they were
6 actually preparing to do furloughs if they felt they
7 needed to do so. You might recall that Defense was
8 out early talking in the December timeframe about the
9 need for 30 days of furloughs, which we thought was a
10 little odd, but that was eventually revised to 22 days
11 once OPM guidance came out.

12 So the Deputy Under Secretary for Operations
13 at the time, Admiral David Titley, retired, was in
14 contact with his former colleagues at the Navy. I was
15 talking to people in the Army staff about how they
16 were doing their planning because, of course, one of
17 our big concerns was that we still needed to be able to
18 provide either mission operations across the 50 states
19 and territories or support operations on a 24/7 basis.
20 So how do you actually do that planning and how do you
21 ensure that you have the right primarily human
22 resources process to make sure that you protect the
23 Agency's ability to exercise its rights and protect
24 your employees.

25 So we consulted with the Army, the Navy, and

1 FAA in particular. The head of the Workforce
2 Management Office talked to quite a few people at FAA.
3 So we were trying to reach out and get whatever best
4 practices we could about how to execute furloughs
5 should they be necessary.

6 Q Okay. And those agencies, are they
7 comparable at all to NOAA?

8 A Well, they certainly do have 24/7
9 operations. The national defense mission is
10 substantially different than the public safety mission
11 that we have in the Weather Service or in the
12 navigation services areas as examples. But we wanted
13 to make sure that we gained whatever information we
14 could because NOAA had not done any work on a furlough
15 since the early '90s.

16 Q Okay. So I'm going to direct your attention
17 to what I've marked here as Agency Exhibit 12 and ask
18 if you recognize that document.

19 A I do.

20 Q Have you ever seen this before?

21 A Yes. I was a recipient of this memorandum,
22 and I read it on the day it was released.

23 MS. CIOFFALO: Okay. I'd like to enter this
24 into the record.

25 MR. HIRN: No objection.

1 ARBITRATOR SHARNOFF: Okay. It's admitted.

2 (The document referred to,
3 previously identified as
4 Agency Exhibit No. 12, was
5 received into evidence.)

6 BY MS. CIOFFALO:

7 Q Does this memo discuss hiring controls like
8 what NOAA had done in March of 2013?

9 A It does have a particular emphasis on
10 controls in a wide range of areas. Danny Werfel as
11 the Controller is essentially the pivot point for
12 internal controls within the federal government. We
13 get guidance from his organization frequently. So a
14 different part of OMB than we'd gotten earlier for the
15 planning data. And so, for me, an important segment
16 is on page 3, and it's in the area headed "Increased
17 Scrutiny of Certain Activities," a very neutral
18 heading for a fairly directed activity.

19 Q And what does it say about the hiring
20 controls?

21 A It certainly says we have to make sure that
22 we have risk management strategies and internal
23 controls in place. So we operate in a statutory and
24 regulatory environment. That's obvious. It's the
25 federal government. But it also includes statutory

1 and regulatory guidance around the utilization of
2 funds and the rights of employees under Title 5. And
3 so it enjoins the agencies to have internal controls
4 in place to ensure heightened scrutiny of certain
5 types of activities.

6 Q And was hiring one of those activities?

7 A That's the first one on the list.

8 Q Did NOAA have any controls like that in
9 place before the freeze guidance was issued?

10 A No, not for hiring.

11 MS. CIOFFALO: Okay. That's all that I
12 have.

13 CROSS-EXAMINATION

14 BY MR. HIRN:

15 Q Ms. Wylie, going back to the last document
16 you looked at, Agency Exhibit 12, directing your
17 attention to the second page, under Communications,
18 the second paragraph, could you read that for a
19 moment?

20 A Yes, I'm familiar with the paragraph.

21 Q Okay. This reminds agencies of their
22 obligation to bargain over the impact and
23 implementation of furloughs, for example, prior to
24 their implementation, does it not?

25 A It does. Also it requires us to be fully

1 aware and in compliance with any and all collective
2 bargaining requirements. And it requires us to
3 consult with our general counsel, which we did.

4 Q Okay. And you're aware, of course, that the
5 Weather Service implemented the hiring freeze without
6 engaging in bargaining with NWSEO, are you not?

7 A What we intended was that we would implement
8 postimplementation bargaining, and the reason that we
9 implemented the hiring freeze when we did was that we
10 had a signed appropriation as of March 26 that we
11 weren't sure we wouldn't be able to end the fiscal
12 year before we ran out of money.

13 Q Okay. In your outreach to other
14 departments, did you learn of any other department
15 that implemented a hiring freeze or a furlough or some
16 other action impacting Union represented employees
17 without engaging in bargaining, claiming that it was
18 an emergency?

19 A There were agencies that executed activities
20 before bargaining had come to a close because of the
21 emergency nature.

22 Q And what were those?

23 A In the Department.

24 Q And what actions were taken?

25 A I can't tell you in detail, but I know from

1 reading the newspaper that there were activities that
2 took place before collective bargaining.

3 Q You mean from the newspaper, not from any
4 direct conversations with --

5 A The conversations that we had were on the
6 hiring freeze processes that they were going to
7 undergo. We did not engage in consultation on Union
8 activities.

9 Q Okay. Going back to Union Exhibit -- excuse
10 me -- Agency Exhibit 11, this is the letter to me that
11 you helped draft?

12 A Uh-huh.

13 Q Directing your attention to the first
14 page --

15 A I'm sorry. It's in my stack here.

16 Q Okay.

17 A Okay. Got it.

18 Q Agency Exhibit 11, first page, bolded,
19 italicized response to recommendation B.

20 A Yes.

21 Q Did Workforce Management ever provide any
22 such lists to NWSEO?

23 A I don't know the answer to that.

24 Q Okay. Directing your attention to the
25 second page, NOAA's response after recommendation E,

1 could you tell us what you meant by the second
2 sentence there?

3 A So I'll read it out loud if that would be
4 helpful to you.

5 Q No, I think we can all read it.

6 A Okay.

7 Q But just tell us what it means. To this
8 day, I don't know what it means.

9 A Essentially it means that we're not
10 affecting through the hiring freeze activity any of
11 the open positions that have already been advertised.

12 Q Okay.

13 A The Hiring Freeze Board had no effect on
14 those positions.

15 Q Had no effect on positions that had been
16 advertised and closed, is that correct?

17 A Yes.

18 Q Okay, good. You're responsible for
19 Workforce Management as a second line --

20 A Actually I'm the direct supervisor.

21 Q Okay, good. And are you aware of any
22 restriction that would prohibit an agency from
23 advertising a position during let's say the spring or
24 summer and establishing a reporting date at the end of
25 the fiscal year or the first day of the following

1 fiscal year?

2 A It would depend on whether or not the
3 position either fit into the first category, whether
4 it had been announced before the hiring freeze came
5 into effect, or whether it had actually been approved
6 by the Hiring Freeze Board and then had gone to
7 Workforce Management for processing.

8 Q Right. Well, let's forget about the hiring
9 freeze. Let's make believe that there's no hiring
10 freeze. Just in the normal course of personnel
11 practice and personnel law, OPM regulations, is there
12 anything to preclude an Agency from advertising a
13 position in April or May and going through the
14 process, and if a selection is made before the end of
15 the fiscal year, say, wait, we're establishing a
16 reporting date or delaying a reporting date until
17 October 1?

18 A You can set a report date that is mutually
19 agreed upon, but I think that one of the important
20 things that I would point out to you is that the first
21 quarter of a fiscal year is actually one of the most
22 challenging times in a continuing resolution
23 environment. So sometimes it's actually more
24 advantageous from a budgetary perspective to have
25 people come on board before a fiscal year ends so that

1 they can be a part of the calculations for essentially
2 your allotments and apportionments in that fiscal
3 year. So certainly you can do it, but I don't know
4 that there's any financial management or human
5 resources advantage to doing it one way or the other.
6 There are pros and cons each way.

7 Q So it's not prohibited, though.

8 A Not to my knowledge.

9 Q Okay. The NOAA budget is about \$5 billion
10 plus, correct?

11 A It's 5.1. In 2013, the year that we're
12 arguing about --

13 Q Just in rough numbers, about 5.1.

14 A Well, it varies highly.

15 Q Yeah, okay.

16 A It's varied highly over the last five years,
17 so it's actually relevant.

18 Q Okay, 5.1. About how much of that is grants
19 going to third parties?

20 A Oh, it's probably, financial assistance, it
21 depends on whether or not we've had some sort of
22 supplemental, so it can run between \$700 million and a
23 billion.

24 Q Okay. Do you know how much went out the
25 door in FY '13 in that matter?

1 A It was closer to \$700 million.

2 Q When you were preparing the reprogramming
3 request, first of all, to equalize the number of days
4 of furlough and then, secondly, you revised one to
5 eliminate the furlough, did you give any consideration
6 to requesting a reprogramming of funds necessary to
7 fill vacant operational positions at the Weather
8 Service?

9 A We looked to the Weather Service to tell us
10 what the funding requirement would be in order to keep
11 their agency operating appropriately and to have the
12 appropriate number of forecasters in each office. We
13 expected the Weather Service to be able to manage the
14 availability of those forecasters. We didn't give
15 them a target, and we didn't separately discuss any
16 particular type of manpower that would need to be
17 hired operationally or otherwise.

18 Q Okay. So I think your answer is no?

19 A No, we didn't. We told the Weather Service
20 and the Weather Service agreed that the number of
21 people that they needed to be able to support with
22 their budget would be sufficient to maintain their
23 operations. We did not direct them to do a separate
24 component of their reprogramming to do that.

25 Q Okay. Did you give consideration to doing

1 that?

2 A We did not. So it's not our position to
3 tell the Weather Service the types of manpower that
4 they need to do their business practice. What's
5 critically important to us is that they are able to do
6 their business within the constraints of the funding
7 that they have.

8 Q If there was some legal obligation to fill
9 all operational positions at the National Weather
10 Service, assuming hypothetically there was a legal
11 obligation to fill those operational positions at the
12 Weather Service, presumably you could have included
13 that in the reprogramming request?

14 MS. CIOFFALO: I'm going to object to the
15 hypothetical nature of this. It's totally irrelevant.
16 If the sky were green, what would have happened that
17 day?

18 MR. HIRN: No, it is relevant because
19 assuming that this meets the legal definition of an
20 emergency, which it does not, assuming it does, you
21 would have to establish that there was no
22 alternatives, and the burden is on the Agency to
23 establish that there's no alternatives.

24 MS. CIOFFALO: You're asking her to assume
25 that there's a legal requirement to fill every single

1 vacancy, which, I mean, rainbows and unicorns. What
2 are we --

3 MR. HIRN: Okay. Well --

4 MS. CIOFFALO: It's a useless hypothetical
5 is what you're saying because it's not relevant.

6 MR. HIRN: No. Well, it's not a useless
7 hypothetical. It's not a unicorn because you know
8 that it's clearly our position that our agreements
9 require you to do so and that the federal labor law
10 requires you to do so. So, I mean, this is not a
11 hypothetical out of nowhere. That's our position, and
12 Mr. Sharnoff may well find that our agreements require
13 that these positions to be filled.

14 BY MR. HIRN:

15 Q My question is, if there was a legal
16 requirement to fill the operational positions, could
17 it not have been possible to include in your
18 reprogramming request sufficient funds to do so?

19 A I'm not actually sure that I would be able
20 to do that. I'm not sure.

21 Q Why not?

22 A Well, because, first of all, we developed a
23 reprogramming that had four days of furlough Agency-
24 wide. That's not our desire. We also have a wide
25 variety of statutory requirements that we need to

1 meet, including the Anti-Deficiency Act.

2 Q Sure.

3 A So I don't know that I can project a
4 hypothetical situation as you're describing because
5 there are many statutes that also have to be
6 supported. And I just, I don't know how I can answer
7 the question.

8 MR. HIRN: Okay. Well, I guess if she says
9 she doesn't know how to answer the question, I guess I
10 have to live with that, right?

11 ARBITRATOR SHARNOFF: I'm sure you'll have
12 an answer to give us as to how she could have done it.
13 We'll have to wait for the brief.

14 MS. CIOFFALO: With bated breath.

15 MR. HIRN: I have no more questions. Thank
16 you.

17 ARBITRATOR SHARNOFF: Okay. Did you have
18 any -- do you want a minute to think? We do have
19 that.

20 MS. CIOFFALO: No, I don't have any
21 followup.

22 ARBITRATOR SHARNOFF: Any last thoughts?

23 MR. HIRN: No.

24 ARBITRATOR SHARNOFF: Okay. You're excused.

25 THE WITNESS: Thank you.

1 ARBITRATOR SHARNOFF: Thank you very much
2 for your cooperation.

3 THE WITNESS: I appreciate the opportunity.
4 (Witness excused.)

5 MS. CIOFFALO: And if it's okay with
6 everyone, I think if we get one more witness in today,
7 that would be best for our timing. It should not take
8 a long time. It's David Murray, and he'll mostly just
9 testify to, you know, procedures that occurred. And
10 then we can just get started in terms of a rational
11 grouping of witnesses. The regional folks are going
12 to start after Mr. Murray, so it might be a good idea
13 to separate that. I'm happy to do him tomorrow,
14 though, if everyone --

15 MR. HIRN: No, I'm game. I'll leave it up
16 to --

17 ARBITRATOR SHARNOFF: I serve the parties.

18 MS. CIOFFALO: All right. Well, let's --

19 MALE VOICE: I'll go get him.

20 (Whereupon, a short recess was taken.)

21 MS. CIOFFALO: Okay. Mr. Murray, can you
22 state and spell your name for the record, please?

23 MR. MURRAY: It's David Murray, D-A-V-I-D,
24 M-U-R-R-A-Y.

25 ARBITRATOR SHARNOFF: Okay.

1 Whereupon,

2 DAVID MURRAY

3 having been duly sworn, was called as a
4 witness and was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MS. CIOFFALO:

7 Q Okay. Mr. Murray, who do you currently work
8 for, what organization?

9 A I currently work for the National Weather
10 Service.

11 Q And what is your current position?

12 A Current position is the Director for the
13 Management and Organization Division. That's part of
14 the Chief Financial Officer.

15 Q Okay. And what do you do in that role?

16 A Primarily I serve as the human resources
17 liaison for the Weather Service with Workforce
18 Management organization, which is the NOAA HR office.
19 In addition to that, I manage and oversee FOIA, which
20 is Freedom of Information Act, GAO and OIG activity,
21 our directors. What else do I do? Other
22 administrative things that are non-budget-related.

23 ARBITRATOR SHARNOFF: And if you could keep
24 your voice up to make sure that everybody over there
25 can hear you.

1 THE WITNESS: Okay. Gotcha, on the other
2 side.

3 BY MS. CIOFFALO:

4 Q And how long have you held this position?

5 A I believe I started this position in I
6 believe 2006 when I got into this position.

7 Q Okay. And you are also currently the Acting
8 Chief Negotiator for the National Weather Service,
9 correct?

10 A That's correct.

11 Q How long have you been the Acting Chief
12 Negotiator?

13 A Since December of 2012 I believe.

14 Q All right. And what are your duties as the
15 Chief Negotiator?

16 A My duties as Chief Negotiator is to engage
17 NWSEO in discussions with regard to implementing
18 certain things for management, address and respond to
19 national level grievances and step three grievances,
20 and any national labor activity that I would engage
21 the President or Vice President, senior leadership in
22 NWSEO with.

23 Q And you mentioned that your duties were to
24 respond to grievances, correct?

25 A That's correct.

1 Q Okay. And are you aware of the grievances
2 at issue in this case?

3 A Yes.

4 Q I'll ask you to just take a quick look at
5 them. They are in the binder in front of you. If you
6 flip to Joint Exhibits 2A through 2D.

7 A 2A.

8 Q In 2A, what was that grievance about just
9 briefly? The document speaks for itself, but just to
10 put it in context.

11 A It was a grievance about our not hiring lead
12 forecaster positions.

13 Q Okay. And what about Joint Exhibit 2B?
14 Which one is that?

15 A This one was in regards to HMT, hydro MET
16 tech intern positions.

17 Q Okay. And what about JX-2C? Which one was
18 that?

19 A JX-2C. And this one was with regard to
20 journeyman forecaster positions.

21 Q All right. And then finally Joint Exhibit
22 2D. What is that?

23 A This one was in regard to the hiring freeze
24 that was implemented by NOAA.

25 Q And did you respond on behalf of the Weather

1 Service to all of these grievances?

2 A Yes.

3 Q Okay. So I'll just ask you to flip to Joint
4 Exhibit 3A. What response is this associated with?

5 A This one is in response to the lead
6 forecaster vacancies.

7 Q All right. And then 3B?

8 A The HMT intern vacancies.

9 Q And 3C?

10 A The journeyman forecaster.

11 Q I'm sorry?

12 A Journeyman forecaster vacancies.

13 Q And 3D?

14 A The hiring freeze grievance.

15 Q And you signed all these responses?

16 A Yes.

17 Q Okay. You discuss in your responses to
18 these grievances that the Weather Service has little
19 control over several stages of the vacancy process,
20 talking about procedures followed by NOAA Workforce
21 Management. I want to show you an exhibit here.

22 MS. CIOFFALO: Again, I think this might
23 have been in the Union's packet, but for ease, if I
24 can mark this as Agency Exhibit 13. We've got color
25 on ours.

1 (The document referred to was
2 marked for identification as
3 Agency Exhibit No. 13.)

4 ARBITRATOR SHARNOFF: We get into the war of
5 the color and print.

6 MS. CIOFFALO: I didn't even know we had a
7 color printer.

8 BY MS. CIOFFALO:

9 Q Okay. Do you recognize this document, Mr.
10 Murray?

11 A Yes.

12 Q And what is this document?

13 A This is a process flow of the NOAA 80-
14 calendar day hiring model.

15 Q And had you seen this before?

16 A Yes.

17 MS. CIOFFALO: I'd like to enter this into
18 the record as Agency Exhibit 13.

19 MR. HIRN: Sure. It's just funny because
20 it's the one that you objected to mine as being
21 outdated.

22 MS. CIOFFALO: I don't remember objecting to
23 that.

24 MR. HIRN: Yeah, that's okay.

25 MS. CIOFFALO: I'm sorry if I did.

1 ARBITRATOR SHARNOFF: Okay.

2 MS. CIOFFALO: Oh, no, the one I objected to
3 as outdated was the printout that you had from
4 Workforce Management that had 2007 on it.

5 MR. HIRN: Okay.

6 MS. CIOFFALO: Yes.

7 ARBITRATOR SHARNOFF: All right. Well,
8 anyway --

9 MS. CIOFFALO: All right, now that we've
10 cleared that up.

11 ARBITRATOR SHARNOFF: Agency Exhibit 13 is
12 admitted --

13 MS. CIOFFALO: Okay.

14 ARBITRATOR SHARNOFF: -- even if it's
15 duplicated.

16 (The document referred to,
17 previously identified as
18 Agency Exhibit No. 13, was
19 received into evidence.)

20 BY MS. CIOFFALO:

21 Q Generally speaking, so do you have
22 experience with the vacancy process in your capacity
23 as the HR liaison?

24 A Yes.

25 Q All right. So, if you can describe to me

1 generally speaking what are the stages for filling a
2 vacancy?

3 A What you have in the beginning is that you
4 have when a hiring official wants to recruit for a
5 position, they will put together what is called a
6 recruitment package. In that recruitment package, you
7 have the position description, which basically
8 outlines the duties of the job. You have a
9 performance plan, which is how the position will be
10 evaluated in terms of performance. You would have a
11 job analysis that goes through the knowledge, skills,
12 and abilities. You would also have questions. These
13 are the questions that will be asked on the
14 application. And you would have what is called a
15 specialized experience statement. And what the
16 specialized experience statement basically is, a
17 statement where there is a specialized skill needed to
18 perform that particular job.

19 Once that package is put --

20 Q Well, let me ask you a question about the
21 recruitment package. You stated earlier that once a
22 manager wants to fill a vacancy, is there anything
23 requiring step one of this model putting together this
24 recruitment package, which is I believe step two,
25 anything requiring that to happen?

1 A Other than the vacancy, no.

2 Q Okay. And to your knowledge, does
3 management have to fill a vacancy at any particular
4 time by law?

5 MR. HIRN: I think that's what Mr. Sharnoff
6 is going to decide, is it not?

7 MS. CIOFFALO: Well, in general.

8 ARBITRATOR SHARNOFF: He can give his
9 opinion.

10 MS. CIOFFALO: Right.

11 ARBITRATOR SHARNOFF: Again, you'll each --
12 the control over the destiny of that question as your
13 side makes it.

14 MS. CIOFFALO: We're talking in general
15 here. I think the point was made perhaps by the Union
16 at some point that this 80-day hiring model, you know,
17 requires any agency to fill a position in 80 days.
18 And that's what that was in response to.

19 BY MS. CIOFFALO:

20 Q So, okay. Now you were starting with
21 preparing the recruitment package. And then what
22 happens with that recruitment package that's prepared?

23 A Well, the recruitment package, after you've
24 obtained the signatures by the hiring official, it's
25 submitted to WFMO in what is called in this particular

1 process the intake. And the intake, which is manned
2 by WFMO personnel, they will review the package for
3 correctness, accuracy, and whether or not it meets OPM
4 requirements, things of that nature.

5 Once it goes through that, it's submitted to
6 the HR specialist and the HR specialist will prepare
7 the vacancy announcement to be posted on USAJobs.
8 Before it officially goes on USAJobs, it goes to the
9 manager as a draft JOA, which is called a job
10 announcement, for them to have one final look to say
11 is this what we want to put out on USAJobs. Once
12 that's approved by the hiring official, the HR
13 specialist will then post it on USAJobs where you will
14 see it on OPM's website.

15 It will be open for a period of time,
16 usually 10 days, 10 to 15 days depending upon, you
17 know, what that entails. During that time period, the
18 applicants will apply to the position. Once the
19 position closes, the HR specialist will review all the
20 applicants who have applied to that position and they
21 will review them to ensure that they meet the minimum
22 standard qualifications for that position.

23 Once they've gone through that process, they
24 will develop what is called a certificate of
25 eligibles. And what a certificate of eligibles is, a

1 list of names of the best qualified applicants for
2 that particular job. That certificate of eligibles is
3 disseminated back to the hiring official. That hiring
4 official will review or look at that certificate of
5 eligibles to interview, rate, rank, make selection.

6 After the hiring specialist interviews the
7 candidates, they will make a selection. They will
8 submit that selection back to the HR specialist. The
9 HR specialist will make an official offer to the
10 selected applicant. The applicant either accepts or
11 not accepts. If they accept, then they go process on
12 for what is called an entry on duty date.

13 Q Okay. And is that what is reflected in this
14 Agency Exhibit 13 here?

15 A Yes, uh-huh.

16 Q Now you said something earlier. You said
17 that the selecting official will make a selection.
18 Does the selecting official have to make a selection
19 from the certificate of eligibles that he or she
20 receives?

21 A No.

22 Q And what could happen if they don't make a
23 selection?

24 A Well, what they'll do is they'll return the
25 certificate of eligibles back to the HR specialist

1 indicating that they did not make a selection. They
2 will state a reason why.

3 Q Okay. So what are the stages in this
4 process the Weather Service did not -- well, actually
5 let me ask you this one question. There's a picture
6 here in this document on page 1 of the document where
7 it says "clock starts," with a hand holding a
8 stopwatch.

9 A Uh-huh.

10 Q What does that refer to?

11 A Where the clock starts is where the 80-day
12 time clock starts.

13 Q I see. So all the activity prior to that 80
14 days, that's the preparing of the recruitment package
15 and the back and forth between the intake and HR
16 specialist and the hiring manager?

17 A That's correct.

18 Q And is there any requirement as to how long
19 that will take?

20 A No, there's no requirement to how long that
21 will take.

22 Q Okay. Do you know about how long it usually
23 takes, or is that --

24 A It varies. It depends upon the position. I
25 mean, if it's a rather routine position, it could be a

1 couple days, couple weeks. If it's something where
2 you have to classify a position or it needs extensive
3 work, it could take many more weeks.

4 Q Okay. All right. So what are the stages
5 during this process that the Weather Service does not
6 have control over?

7 A Well, part of it is in the beginning with
8 the back and forth where, you know, if the position
9 doesn't meet the classification standards, you know,
10 you're kind of at the mercy of the specialist who is
11 classifying the position. The other piece is when the
12 position closes and the HR specialist will have to
13 review and develop the certificate of eligibles.

14 Q Okay. So you said earlier making sure the
15 position is classified correctly. What goes into all
16 that?

17 A Well, OPM, it has to meet certain
18 classification things, and that will determine whether
19 it meets out at a grade or occupational series.

20 Q Okay. What about the content of the
21 recruitment package? Are there any requirements with
22 respect to that?

23 A When you say the "requirements" --

24 Q Well, let me ask you this. Did Workforce
25 Management stick to the timeline that's depicted in

1 this model in Agency Exhibit 13?

2 A No.

3 Q Where did the wheels fall off that bus?

4 A Well, the wheels fell off at the beginning
5 in the pre-work stage. The wheels fell off at the
6 point where even after it was assigned to an HRA,
7 there still could be some additional back and forth.
8 Another point is when the position closed, generating
9 a cert list, that could be a delay. Those are the
10 primary areas where they do it.

11 Q And why was there a delay in those areas,
12 for example, the initial recruitment package back and
13 forth? What was the problem?

14 A Well, initially I think it was probably just
15 a learning curve when it was first implemented. WFMO
16 has gone through steady resource challenges where they
17 haven't been able to keep personnel on staff for a
18 long period of time. There was a lot of turnover
19 there. So you had --

20 Q How do you know that?

21 A We get feedback from the regions. Part of
22 my role is to represent the Weather Service in
23 speaking with WFMO. So I would get feedback from the
24 administrative officers in the regions.

25 Q Were you aware specifically that Workforce

1 Management had resource problems, staffing problems?

2 A Yes, uh-huh.

3 Q And how were you aware of that?

4 A Well, I was aware from feedback, and then in
5 December of last year I served on a Workforce
6 Management assessment team where NOAA line offices had
7 representatives where we reviewed and analyzed or
8 assessed Workforce Management's process and
9 organization. And one of the glaring things that came
10 out was that they had an extremely high turnover rate.
11 They had extreme staff shortages.

12 Q What was their turnover rate?

13 A It was roughly about 50 percent.

14 Q And what does that mean, a 50 percent
15 turnover rate?

16 A Well, typically what that means, if you
17 started off with a staff of 100 in January, by the end
18 of the year, 50 of that staff wouldn't have started
19 with the organization. You have 50 new faces.

20 Q Okay.

21 ARBITRATOR SHARNOFF: When you said you
22 served in December of last year, did you mean this
23 immediately past December 2013 or --

24 THE WITNESS: I'm sorry, 2012.

25 ARBITRATOR SHARNOFF: 2012, okay. I had a

1 feeling that was it.

2 THE WITNESS: Yes.

3 MS. CIOFFALO: Thank you.

4 ARBITRATOR SHARNOFF: We've moved on.

5 BY MS. CIOFFALO:

6 Q So where was the time suck? I mean, what
7 was causing the delay in processing the packages?

8 A Well, partly, I mean, when you have the
9 staff shortages, you would start off with a particular
10 human resource specialist. And sometimes during the
11 course of that engagement, that HR specialist would
12 have moved on to another position. And so, with the
13 back and forth or with the engagement, the WFMO was
14 not always silent in communicating changes. In terms
15 of when the HR specialist left, you would not know. A
16 lot of times you would know by sending an email and
17 you'd get an auto response saying, oh, I've left the
18 organization, and then there was no follow-through as
19 to where your action or where your package was
20 assigned to next. So you were on a fact-finding
21 mission to find out which HR specialist that it was
22 assigned to.

23 And, you know, and times when the new HR
24 specialist that was assigned, they would look at it
25 with different eyes, so they would have different

1 things they would want to revise or correct or
2 whatever, which would create further delays.

3 Q So, in terms of revising or correcting, I
4 mean, what types of things were they revising and
5 correcting?

6 A They may look at the job analysis in terms
7 of the job analysis, it may have language in there
8 that we couldn't put in there in terms of, for
9 example, they had one knowledge skill where you
10 couldn't combine oral skills and written
11 communications. You had to break that out. In the
12 past, we've always combined them. But then this HR
13 specialist would say we have to separate them.

14 Q Okay. Any other examples about, you know,
15 what the hangups would be at that stage?

16 A It could be labeling, titling of the
17 position. It could be something with the position
18 description.

19 Q Was there a problem with the position
20 description?

21 A In our opinion, we didn't feel as though it
22 was, but, you know, they came back and said, well,
23 yeah, this --

24 Q Who is "they"?

25 A The HR specialist would come back and say,

1 well, you know, there is a problem with this. We did
2 a lot of bouncing back and forth because a lot of the
3 positions that we did process were what we've always
4 processed.

5 Q So, if I'm understanding you correctly,
6 Workforce Management started questioning the PDs that
7 you had been using?

8 A Some of them, yes.

9 Q Some of them, okay. And what effect would
10 this have? What kind of delay would this have on the
11 recruitment process?

12 A Well, it would delay it in getting it
13 posted. You know, that's the main thing because we'd
14 have to get the package approved in order for it to be
15 posted on the street.

16 Q And what kind of delays were you looking at
17 with respect to that issue?

18 A It varied. It could be again a couple
19 weeks. It could be a month. It could be longer.

20 Q Okay. And this was all before the 80-day
21 clock started at all?

22 A Yeah, uh-huh.

23 Q Okay. Did you ever discuss -- oh, I'm
24 sorry. You said that there were also delays later in
25 the process. What were those delays?

1 A In getting the cert. When the position
2 would close, the timeframe in which a cert is supposed
3 to be sent back to the hiring official is roughly 10
4 days after the position closes. They didn't always
5 meet that cycle time period.

6 Q And have you ever discussed these issues
7 with Workforce Management on behalf of the Weather
8 Service?

9 A Yes.

10 Q And what kinds of discussions did you have
11 with them?

12 A Essentially giving them feedback as to where
13 in our opinion they had breakdowns in terms of cycle
14 time delays. And we looked at ways in which we could
15 try to expedite some of those things to make the
16 process more efficient.

17 Q Okay. And what kinds of ideas were thrown
18 around?

19 A One of the things we looked at was coming up
20 with standardized recruitment packages. Most of our
21 field organizations, field units, you know, were
22 comprised of, you know, similar positions, and so we
23 figured if we can come up with preapproved packages
24 that would be approved or agreed upon by both sides,
25 then it would make the process more efficient.

1 Q And when were you having these discussions
2 with Workforce Management?

3 A Like the end of 2011, 2012.

4 Q Okay. And throughout 2012?

5 A Yes, uh-huh.

6 Q So did you try this idea of the standardized
7 packages?

8 A Yes, we did. We did. We put together
9 several packages that were preapproved.

10 Q How long did it take to do that?

11 A It took, you know, several months, and it's
12 still ongoing, you know, again, because, you know,
13 we're looking at getting everything vetted and, you
14 know, agreed to by the Weather Service and WFMO.

15 Q So you said it's still ongoing. When you
16 said earlier that you were having discussions in 2011,
17 2012, are you still discussing that in 2013 and
18 beyond?

19 A No, we're not discussing it, not with WFMO,
20 because the packages that we have in the hopper right
21 now cover the field unit positions.

22 Q Okay. And has the creation of these
23 packages helped any with the delay?

24 A Not in all cases, no. I haven't noticed any
25 improvements.

1 Q In any case since then?

2 A Not consistently, no.

3 Q Okay. To your knowledge and during all this
4 back and forth with Workforce Management, did the
5 Weather Service direct at any time that bargaining
6 unit positions cease, that FMCs cease hiring
7 bargaining unit positions?

8 A No.

9 Q I'm going to ask you to flip to Joint
10 Exhibit 10 in the binder that's in front of you here,
11 and then I think we moved this into evidence already.

12 ARBITRATOR SHARNOFF: Yes.

13 THE WITNESS: You said 10?

14 BY MS. CIOFFALO:

15 Q Yes, turn to Exhibit 10, and I'll ask you if
16 you recognize that.

17 A Yes, I recognize that.

18 Q Okay.

19 ARBITRATOR SHARNOFF: I'm sorry, where are
20 we?

21 MS. CIOFFALO: Joint Exhibit 10.

22 ARBITRATOR SHARNOFF: Okay. Go ahead.

23 MS. CIOFFALO: Okay.

24 BY MS. CIOFFALO:

25 Q What is that document?

1 A This is a document from a Workforce
2 Management employee to Mr. Sobien notifying him that
3 NOAA is implementing a hiring freeze.

4 Q Okay. And did you discuss this notice with
5 Mr. Sobien?

6 A I discussed it about 10 or 15 minutes after
7 I received it.

8 Q Okay. What did you say?

9 A I just mentioned to Mr. Sobien that we had
10 intended to follow this directive from NOAA.

11 Q "We" as in?

12 A The Weather Service.

13 Q Okay. And did he respond at all?

14 A Yes.

15 Q And what did he say?

16 A He said, okay, fine, and we hung up.

17 Q Okay. Had you raised the issue of budget
18 problems with the Union prior to this notification?

19 A Yes.

20 Q And when did you first do that?

21 A I would say probably starting around mid-
22 January.

23 Q Okay. And what occurred in January?

24 A Met briefly with Mr. Sobien, just had a, you
25 know, verbal conversation. I think he was up visiting

1 for the Labor Management Forum, so we took advantage
2 of that time and just, you know, started trying to
3 have a conversation about ways in which the Weather
4 Service can try to save some money.

5 Q When you say he was "up" for that meeting,
6 what do you mean by that?

7 A The DoC Labor Forum.

8 Q Is Mr. Sobien not generally in the
9 Washington, D.C. area?

10 A No. I mean, he's located in Tampa. He
11 comes up for the Labor Forums, and that's something
12 that's monthly.

13 Q And who participated in that meeting?

14 A Myself, Stan Kinski of my staff, Mr. Sobien,
15 and I believe Mr. Hopkins was in the room and Mr.
16 Solano.

17 Q Okay. And what did you discuss at that
18 meeting?

19 A Just looked to try to have a discussion
20 about generating some ideas on how we could save money
21 for the Weather Service.

22 Q And why did you need to talk about that?

23 A Because we were looking at budget
24 uncertainty. Our current CR was going to run out on
25 March 27, and there was a threat that we were going to

1 go to a full CR. So we didn't know how that was going
2 to look, so we wanted to try to get out in front of it
3 and, you know, try to generate some ideas.

4 Q Okay. And what kind of ideas did you
5 discuss at that particular meeting?

6 A Not many. Mr. Sobien brought up an idea
7 about extending the METs, extending their career
8 ladder to a GS-12.

9 Q The METs?

10 A Metereologists, meteorologist interns, to a
11 GS-12. Currently they are a career ladder to a GS-11.

12 Q Okay. Anything else you discussed?

13 A No, that was roughly it. It really isn't a
14 response. I think there was no other place to cut.
15 We've cut every place, so there's really nothing left.

16 Q Whose response was that?

17 A That was Mr. Sobien's.

18 Q Okay. Did you raise the budget issues with
19 the Union again after that initial January meeting?

20 A Yes. I sent Mr. Sobien an email following
21 up on our conversation that we had around the middle
22 of January.

23 MS. CIOFFALO: Okay. I'll pass around what
24 I'll mark for identification as Agency Exhibit 14.
25 And I believe again this might have been in the packet

1 that the Union originally submitted. For ease of
2 reference.

3 (The document referred to was
4 marked for identification as
5 Agency Exhibit No. 14.)

6 MR. HIRN: Thank you. Is it really so easy
7 to have so many duplicative exhibits considering --

8 MS. CIOFFALO: Well, I just said I don't
9 remember what the number is of yours, and I don't have
10 it handy. If you'd like, afterwards, John, we can
11 kind of coordinate the exhibits to make sure there's
12 just one.

13 ARBITRATOR SHARNOFF: We can make them all
14 joint exhibits and completely confuse the record.

15 MS. CIOFFALO: Whatever the arbitrator wants
16 with respect to that, but for the purposes of
17 providing it to the witness, I thought this would be
18 easier.

19 BY MS. CIOFFALO:

20 Q Okay. You know, you said you had sent an
21 email to Mr. Sobien about the budget issues?

22 A Yes.

23 Q Is this that email that you sent?

24 A Yes.

25 MS. CIOFFALO: I'd like to move for

1 admission of Agency Exhibit 14.

2 MR. HIRN: Since I made it the same exhibit,
3 I obviously have no objection.

4 ARBITRATOR SHARNOFF: Except that it's being
5 put in a second time. Other than that --

6 MS. CIOFFALO: Extra photocopy.

7 ARBITRATOR SHARNOFF: Okay. It's admitted
8 as an Agency exhibit as well as a Union exhibit.

9 MS. CIOFFALO: All right. I honestly don't
10 know which Union exhibit is.

11 (The document referred to,
12 previously identified as
13 Agency Exhibit No. 14, was
14 received into evidence.)

15 BY MS. CIOFFALO:

16 Q All right. Okay. So what is this email
17 talking about here?

18 A It's essentially following up on our
19 conversation that we had, like I said, in mid-January.
20 And then, you know, we offered some ideas that we
21 could possibly talk about, some things to kind of get
22 the ideas flowing. So we listed some ideas out, you
23 know, just to kind of start the conversation.

24 Q Okay. And did the Union respond to this
25 email?

1 A Yeah, I believe so.

2 Q Okay. And what was that response?

3 A Basically that we need to sit down face-to-
4 face, and it also requested some information to help,
5 you know, when we did get together face-to-face.

6 Q What kind of information did they request?

7 A They requested a list of our contractors,
8 what we were paying for those contractors, and a list
9 of grants.

10 Q Okay. And did you provide that information
11 to the Union?

12 A Yes.

13 Q When did you provide that?

14 A I believe I provided it probably about maybe
15 like the 30th of January, which was probably a couple
16 days after I got the response.

17 Q Okay. And did you have a face-to-face
18 meeting about these issues after your email here?

19 A Yes.

20 Q And when did you meet with the Union about
21 that?

22 A That was around the end of February.

23 Q Okay. Why did you wait so long in between
24 the email and the meeting to talk about it again?

25 A Well, scheduling conflicts. Our CFO at the

1 time was traveling to different regions, and I think
2 that was the earliest that we could get together.

3 Q Okay.

4 ARBITRATOR SHARNOFF: I'm sorry. When was
5 that?

6 THE WITNESS: It was around the end of
7 February.

8 ARBITRATOR SHARNOFF: Okay.

9 BY MS. CIOFFALO:

10 Q Okay. And what did you discuss? Oh, who
11 took part in that meeting?

12 A Myself, John Longenecker, Mr. Sobien, Mr.
13 Solano, Mr. Hirn, and Mr. Hopkins was on the phone.
14 He was snowed in in Texas.

15 Q Okay. There was snow in Texas?

16 A Well, that particular day it was. He
17 couldn't get out.

18 Q And what did you discuss at that meeting in
19 February?

20 A Essentially Mr. Longenecker, we talked about
21 our budget. We again expounded upon the idea about
22 expanding the MET intern career ladder to the GS-12.
23 Then we went through the list of documents that we had
24 provided, the contract list and the grant list.

25 Q And what do you mean you went through them?

1 What was discussed with respect to those documents?

2 A Mr. Hirn and Mr. Sobien, you know, pointed
3 out some things in the grants or even in the contracts
4 that they wanted some clarification on.

5 Q Okay. And what kind of clarification were
6 they looking for?

7 A Just, you know, kind of questioning us, like
8 why are we paying for this or this particular
9 contractor, this is a retired employee coming back as
10 a contractor, why are we still paying that? Those
11 kind of questions.

12 Q Okay. And were you or Mr. Longenecker able
13 to respond to that?

14 A Mr. Longenecker responded to the questions.

15 Q And how did he respond, if you recall?

16 A For the grants, at least in one particular
17 one, there was a question about whether or not the
18 Weather Service didn't even benefit from it. And, you
19 know, Mr. Longenecker responded some grants are
20 assessed by NOAA. We don't have any control over us
21 paying it. It's just a portion which line office has
22 to pay.

23 On the contract side, he had mentioned that
24 Mr. Longenecker was doing his due diligence as
25 contracts came up for renewal, that he was not

1 renewing many of those contracts because they weren't
2 worth continuing. So he was doing his due diligence.

3 Q Okay. Back to Joint Exhibit 10 in the
4 binder in front of you, the document refers to you as
5 the point of contact for receiving postimplementation
6 bargaining requests. Had you received any
7 postimplementation bargaining requests from the Union?

8 A No.

9 Q Did the Union respond at all to the hiring
10 freeze notice?

11 A Yes, they did respond. They sent I think it
12 was the following day their response to the hiring
13 freeze as well as some questions.

14 MS. CIOFFALO: Okay. And I believe Union's
15 Exhibit 12 is the Union's response.

16 MR. HIRN: Monique, we took some pains to
17 prepare that identified exhibit list that would help
18 facilitate this.

19 MS. CIOFFALO: Yes, I'm looking. So
20 actually it's already in the record, so I don't need
21 to identify it from you.

22 BY MS. CIOFFALO:

23 Q So you said that Mr. Sobien requested some
24 information in that response.

25 A Yes.

1 Q And did you respond to those requests for
2 information?

3 A I thought I had responded to it or prepared
4 responses for it, but apparently I could not find any
5 documentation to prove that I actually sent something
6 to Mr. Sobien.

7 Q You said you did prepare something, though?

8 A Yes, uh-huh.

9 Q And when did you realize that you did not
10 respond to those requests for information?

11 A In preparing for this arbitration.

12 Q And how long ago, how recently was that, do
13 you think?

14 A In the last two weeks I think when we were
15 just going through the information.

16 Q All right. Were you responding to other
17 requests for information from the Union at that time?

18 A Yes.

19 Q How many requests for information would you
20 say you responded to after this March 20 request from
21 the Union?

22 A About 20 or so.

23 Q Do you have an overall idea of how many
24 actual questions you responded to within those 20
25 requests for information that you received?

1 A It would range from five or six to 50 plus.

2 Q Okay. And did you respond to all of those
3 requests for information?

4 A Yes.

5 MS. CIOFFALO: Okay. I don't have anything
6 else.

7 CROSS-EXAMINATION

8 BY MR. HIRN:

9 Q David, during the February 28 meeting, you
10 said that the Union proposed a -- excuse me -- the MET
11 intern career ladder to step 12. Did the Union
12 explain how that would save money?

13 A Essentially they would say if the career
14 ladder was extended to the GS-12 level that the MET
15 interns would be more likely to be on station longer,
16 which would reduce PCS costs because typically the way
17 it currently operates now, the career ladder is only
18 up to the GS-11. So, when the forecaster or the MET
19 intern is eligible for the GS-12 position, they have
20 to apply it. And many times when they apply for it,
21 they'll take a job at another WFO, which we will incur
22 PCS costs.

23 And the other thing, it would give the MIC
24 more flexibility to work shift, so you would have more
25 options for scheduling shifts.

1 Q And management did not accept that proposal,
2 did they?

3 A No, because we were looking for some
4 immediate savings. That would probably be more of a
5 longer-term savings. So, at that time, Mr.
6 Longenecker was looking to try to achieve some more
7 immediate savings.

8 Q Looking at Agency Exhibit 14, one of your
9 suggestions there is "Delay hiring actions non-mission
10 critical positions only." What did you mean by "non-
11 mission critical positions only"?

12 A Those are primarily like headquarters-based.

13 Q Do you remember a telephone conference call
14 in which you participated with Monique, John Potts,
15 Dan, and myself sometime in the fall to discuss some
16 information that John Potts had supplied us about
17 spending through the end of the fiscal year?

18 A Yes.

19 MS. CIOFFALO: Fall of what year just for
20 clarity?

21 MR. HIRN: Of the fiscal year '13.

22 BY MS. CIOFFALO:

23 Q Just this past fall we had this.

24 A Yes, uh-huh.

25 Q Okay. Did you --

1 MR. HIRN: Monique, do you have Union
2 Exhibit 86 that was marked for identification earlier?

3 MS. CIOFFALO: I found it.

4 MR. HIRN: This was something that I think
5 we had shown Laura.

6 ARBITRATOR SHARNOFF: I have it right here
7 if you want to use this one as long as he promises to
8 return it.

9 MS. CIOFFALO: Oh, okay. Yes, sorry.

10 ARBITRATOR SHARNOFF: All these trees.

11 MS. CIOFFALO: 86. I only have up to 84
12 here.

13 MR. HIRN: The front page is an email, and
14 it has "Bill Hopkins" at the top. It's three pages,
15 and there's a chart attached at the end.

16 MS. CIOFFALO: I don't see it anywhere.

17 ARBITRATOR SHARNOFF: Here, use this one so
18 we can --

19 MS. CIOFFALO: Okay, sure. We'll sort it
20 out.

21 MR. HIRN: No, I have some more.

22 MS. CIOFFALO: Oh, great. I'm sure it's in
23 here somewhere.

24 MR. HIRN: No, that's not it. Sorry.

25 THE WITNESS: This is not it?

1 MR. HIRN: No.

2 THE WITNESS: Okay.

3 ARBITRATOR SHARNOFF: No, no, no, that is
4 it, what he's looking at.

5 MS. CIOFFALO: No, this is it, but he
6 doesn't have another copy.

7 MR. HIRN: I circulated all the copies that
8 I had.

9 MS. CIOFFALO: Yes, I'm sure we have it.

10 ARBITRATOR SHARNOFF: And I may have the
11 only copy.

12 THE WITNESS: You may have the only one.

13 MR. HIRN: So, if you have a copy of this,
14 there's two other copies over there.

15 THE WITNESS: It's probably just mixed in
16 all of this.

17 MS. CIOFFALO: I'm sure we have it. We'll
18 find it. Don't worry about it. And if for whatever
19 reason we can't, then we'll ask you for another copy
20 when it comes to briefing.

21 ARBITRATOR SHARNOFF: But the witness has
22 one in front of him.

23 THE WITNESS: Yes.

24 MR. HIRN: Okay.

25 //

1 BY MR. HIRN:

2 Q This is Union Exhibit 86 marked for
3 identification. And do you recall discussing this
4 chart at the end of this exhibit during that telephone
5 conference call?

6 A Yes.

7 Q And based on your recollection from that
8 phone call, what do you understand this chart to be?

9 A It looks to be the funding targets that we
10 had in the particular Local Warnings and Forecasts,
11 and then the last column indicates what our
12 obligations had been through August 17 of that fiscal
13 year.

14 Q Do you remember the Union pointing out or
15 questioning that the Agency still had \$125 million or
16 \$124 million still in the kitty for Local Warnings and
17 Forecasts even though you were less than six weeks
18 away from the end of the fiscal year?

19 A Yes, I remember that.

20 Q And that's what this chart shows, does it
21 not?

22 A Yes, uh-huh.

23 MR. HIRN: Okay. I'll move the admission of
24 Union Exhibit 86.

25 MS. CIOFFALO: No objection.

1 ARBITRATOR SHARNOFF: Okay. It's admitted.

2 (The document referred to,
3 previously identified as
4 Union Exhibit No. 86, was
5 received into evidence.)

6 THE WITNESS: I'll give that back. You
7 don't want to lose that one.

8 ARBITRATOR SHARNOFF: From now on I'm
9 renting it out.

10 THE WITNESS: There you go.

11 MR. HIRN: Okay. Thank you, David. That's
12 it.

13 THE WITNESS: Okay.

14 MS. CIOFFALO: I don't think I have any
15 followup. I don't have any followup.

16 ARBITRATOR SHARNOFF: Okay. You are excused
17 as a witness. Thank you for --

18 MR. HIRN: Oh, wait a minute. Can I ask --
19 I'm sorry.

20 ARBITRATOR SHARNOFF: No, he's gone. He's
21 not even here.

22 MS. CIOFFALO: Sorry.

23 FURTHER CROSS-EXAMINATION

24 BY MR. HIRN:

25 Q David, do you remember also during that

1 conference call the Union asking the Weather Service
2 to supply us copies or a list, you know, of any of the
3 exemptions that the Weather Service is sending on to
4 the Hiring Board?

5 A Yes, I remember.

6 Q And have we ever been sent any of those?

7 A We did send you some in the recent past,
8 yes.

9 Q When was that?

10 A I think it was November.

11 Q Could you get a copy for us? Because we
12 have never seen a copy.

13 A Sure, uh-huh.

14 Q Could you double-check and --

15 A I can send you the email. Well, you
16 requested it of Allen. I sent it through Allen.

17 Q Oh, as far as for an information request
18 response for this hearing, right? That was the only
19 thing you --

20 A No. You had I think it was in response to I
21 think Dr. Uccellini sent out an email broadcast.

22 Q Yes. Okay. Yes.

23 A And I responded, and those were the PFARs at
24 that time, which is the position funding acquisition
25 requests.

1 Q Okay. But that was the only ones that we
2 were sent, right?

3 A Yes.

4 MR. HIRN: Okay. Okay.

5 ARBITRATOR SHARNOFF: Anything additional?

6 MR. HIRN: No, thanks.

7 ARBITRATOR SHARNOFF: Okay, nothing to ask
8 the witness. Okay. This time you're excused.

9 THE WITNESS: I'm free to go.

10 MR. HIRN: Thank you.

11 MS. CIOFFALO: You're free to go.

12 ARBITRATOR SHARNOFF: Thank you very much.

13 MS. CIOFFALO: See you later.

14 (Witness excused.)

15 ARBITRATOR SHARNOFF: All right. Anybody
16 have anything else?

17 MR. HIRN: Oh, wait a minute. Wait, wait,
18 wait. John, wait. Wait, please.

19 MALE VOICE: Run next time.

20 MR. HIRN: Please. Oh, my god. Yes,
21 please. Please. I'm sorry. If you answer this
22 question incorrectly, you can leave immediately.

23 MR. MURRAY: This is a second strike, Mr.
24 Hirn.

25 ARBITRATOR SHARNOFF: Uh-oh. This looks

1 like the big one.

2 BY MR. HIRN:

3 Q It sounds like you or your office assisted
4 in the preparation of the answers to the information
5 requests the Union submitted in preparing for this
6 hearing, correct?

7 A Correct.

8 Q Okay. Could you look at Union Exhibit 79?

9 MS. CIOFFALO: It's going to be in the
10 package, yeah. Let me see if I can find it.

11 MR. HIRN: 79 and 82B. I'm sorry, 79F and
12 82B.

13 ARBITRATOR SHARNOFF: There's more than one
14 part to 79.

15 MR. HIRN: Yes. It was like four pages.

16 ARBITRATOR SHARNOFF: I mean, you want us to
17 look at all of them.

18 MR. HIRN: No, 79F and 82B.

19 MS. CIOFFALO: 79F and 82B.

20 THE WITNESS: 82B. Okay.

21 BY MR. HIRN:

22 Q Now these are like a couple of spreadsheets
23 and they've got like a yellow line across the top,
24 right?

25 A Correct.

1 Q Were you or your office involved in
2 preparing these charts?

3 A Yes.

4 Q Okay. Directing your attention to 82B --

5 A Okay.

6 Q -- the page of the general forecaster
7 vacancies.

8 A Okay.

9 Q And you see under the Southern Region there
10 was one, two, three, four, five, six general
11 forecaster vacancies returned to, it says "returned to
12 the line offices 2/13/13."

13 A Uh-huh.

14 Q Now do you remember in the grievance we
15 filed over the failure to fill general forecasters? I
16 believe that was the third one we filed.

17 A Yes, uh-huh.

18 Q And then we filed an amended version of
19 that, and we complained about the cancellation of five
20 Southern Region forecaster vacancies due to a decision
21 of the Southern Region, didn't want to pay --

22 A PCS, uh-huh.

23 Q -- PCS costs. Those five are among those
24 six listed here, correct?

25 A Yes, I would say so.

1 Q Okay. Was the "return to line office" on
2 the sixth one also as a result, was that an additional
3 one where the Southern Region decided they didn't want
4 to pay PCS expenses and canceled the vacancy, canceled
5 the recruitment action?

6 A I don't know. It could be, but I don't
7 know. There could be other reasons too.

8 Q Okay. Well, your office prepared these
9 return to line office, but you do not know other than
10 those five what "return to line office" meant?

11 A "Return to line office" is a term that is
12 used in the RADS, which is the system that they use to
13 track the position. Typically what happens in a
14 "return to line office," what that could mean, it
15 could be there may be something wrong with the
16 recruitment package itself and it may be sent back to
17 the line office to fix. It could be something where
18 management has decided to do something differently.
19 Let's just say they found someone who wanted to
20 voluntarily get into that position at their same grade
21 and everything. So it could be returned for that.

22 Q Okay. But would it be safe to assume that
23 since we know that five of those six were returned to
24 the line office on February 13 at the request of the
25 Southern Region because they changed their mind about

1 paying PCS expenses, would it be fair to assume that
2 that is also the case for the sixth similar vacancy in
3 the Southern Region that was returned on the same
4 date?

5 MS. CIOFFALO: Objection. I mean, he hasn't
6 established that the witness would have any knowledge
7 of that. And in fact, the witness has said he doesn't
8 have knowledge of that.

9 ARBITRATOR SHARNOFF: It's my understanding
10 that somebody from the Southern Region will be
11 testifying?

12 MS. CIOFFALO: Yes.

13 ARBITRATOR SHARNOFF: So maybe they would be
14 a better entity to ask.

15 BY MR. HIRN:

16 Q And when you prepared this chart, you don't
17 know what "return to line office" meant. You do not
18 know whether it was at the request of the Weather
19 Service or at the initiative of the --

20 A No. I mean, I go by what unit I work with,
21 the offices, for them to comply with or fill out the
22 form or fill out the chart or give me the information.
23 And so, no, I don't.

24 Q All right. Where did this information come
25 from?

1 A Did a data call with the field.

2 Q Okay. So it wasn't off the RADS report.
3 This was a data call with the field.

4 A It was based in part with the RADS report,
5 but also it's just verified and validated by the
6 field.

7 Q Okay. Can you provide us a copy of the
8 response to this data call for the Southern Region?

9 MS. CIOFFALO: Objection. That's not a
10 question for the witness on direct or cross.

11 MR. HIRN: All right. I'll ask you can you
12 and then I'll ask --

13 MS. CIOFFALO: If you want to go off the
14 record and discuss document issues that you're having,
15 again, we can do that. But if you can just finish
16 your cross-examination first, that would be great.

17 BY MR. HIRN:

18 Q Do you still retain the responses to that
19 data call?

20 A Yes.

21 MR. HIRN: Monique, can you provide us with
22 it?

23 MS. CIOFFALO: Can we discuss that after the
24 questioning is over? Because I want to understand
25 what you're asking for and the relevancy and all that.

1 So why don't we just do that after cross is over.

2 MR. HIRN: Well, we're beating the relevancy
3 to a pulp as far as discussion of that I think, but --

4 MS. CIOFFALO: I'm not saying I'm going to
5 make objections. I'm saying I want to discuss it
6 after you're done questioning him.

7 MR. HIRN: Okay.

8 ARBITRATOR SHARNOFF: Do you have any
9 additional questions?

10 MR. HIRN: No. No. I just thought since he
11 was here --

12 ARBITRATOR SHARNOFF: You're sure?

13 MR. HIRN: Yes.

14 THE WITNESS: I'm running. I'm running.

15 (Witness excused.)

16 ARBITRATOR SHARNOFF: Okay. You either have
17 to be very patient or you have to be so fast that he
18 can't get another question out.

19 MS. CIOFFALO: Bye, Dave. Thank you.

20 ARBITRATOR SHARNOFF: All right. Now --

21 MS. CIOFFALO: Now what exactly is it --

22 ARBITRATOR SHARNOFF: I ask hesitatingly is
23 there anything else that we want to do on the record?

24 MS. CIOFFALO: No. We can discuss the
25 document issues off the record.

1 ARBITRATOR SHARNOFF: Okay. So then at this
2 point, we are adjourned.

3 (Whereupon, at 5:50 p.m., the hearing in the
4 above-entitled matter was adjourned, to reconvene at
5 9:30 a.m. the following day, Wednesday, January 15,
6 2014.)

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REPORTER'S CERTIFICATE

DOCKET NO.: FMCS-13-02465-A
CASE TITLE: Arbitration Between NOAA and NWSEO
HEARING DATE: January 14, 2014
LOCATION: Silver Spring, Maryland

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the National Oceanic and Atmospheric Administration.

Date: January 14, 2014

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