ITEM 3D

Dedicated to Outstanding Customer Service for a Better Community

SERVICE SOLUTIONS SUCCESS

TO: **Civil Service Commission, CSC**

FROM: **Linda Ball Thomas, CSC Secretary & HR Director**

DATE: **December 5, 2012**

SUBJECT: **Marta Calderon – Seniority Complaint**

Ms. Calderon filed a grievance on the City of El Paso Employee Grievance Form alleging that his rights under Rule 2, a. 19, "Seniority", set forth below, were violated.

Rule 2, Definitions and Rules of Construction

A.19. ***"Seniority":*** *As used in the Rules, the term seniority refers to the calculation used in ranking candidates. A point value is provided for each complete year of continuous service an employee has served in a regular Civil Service position.*

Nothing in this Rule shall prevent Departments from using an internal seniority system in determining vacation requests or scheduling; Sections utilizing an internal seniority system must promulgate such a rule as outlined in Rule 11.

In the event of a lay-off, seniority refers to the length of service with the City and is not dependent upon the amount of time in a position or Department. (Added 3/6/12)

I have carefully reviewed Ms. Calderon's grievance and have made the determination that it should be denied. Not only does the rule alleged to have been violated not fall into a category for which this Commission may grant relief, but the investigation of Ms. Calderon's complaint by the Sun Metro and Human Resources departments concluded that the application of Sun Metro's seniority system did not result in any violations during the current transition of Lift coach operators to fixed route coach operators.

The position of Coach Operator exists only in the Mass Transit department and is assigned to both the "Fixed Route" and "Lift" divisions. Seniority for the Coach Operator classification is by *department* rather than by division; thus, as the City was moving towards outsourcing the "Lift" operations, the City was proactive in

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sending a communication entitled "LIFT / MV TRANSPORTATION TRANSISTION UPDATE" (attached), dated July 31, 2012, to employees, wherein questions about seniority were addressed. Lloyd Williams, Assistant Director of Operations, addressed the same concern in a letter (attached) addressed to Ms. Calderon, dated August 7, 2012. In addition, Jay Banasiak, Sun Metro Director, addressed the same concern in a letter (attached), dated August 27, 2012, addressed to Ms. Calderon. Additionally, the HR Director addressed Ms. Calderon's concerns in a memorandum dated October 16, 2012 (attached).

The portion of the Rule that Ms. Calderon cites in his grievance is outside the jurisdiction of the Civil Service Commission. Specifically, paragraph two above gives total discretion and authority to the Department Head when scheduling an employee's work. Furthermore, pursuant to Rule 14, a grievance must raise a violation of a Rule or Charter provision where the employee has a remedy to be granted by the CSC. Here, the CSC has no authority to direct an action or grant a remedy to Ms. Calderon relating to a complaint under Rule 2.A.19.

In conclusion, there is no item being presented to the CSC for review. The Rule cited as being violated in Ms. Calderon's grievance does not fall into a category that can be acted upon by the CSC. There is no jurisdiction or action that the CSC can take under Rule 2.

LINDA BALL THOMAS, HUMAN RESOURCES DIRECTOR
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MISCELLANEOUS APPEAL

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Date: 11-01-12

Linda Ball Thomas, Secretary
Civil Service Commission
#2 Civic Center Plaza, 3rd Floor
El Paso, Texas 79901

To the Honorable Civil Service Commission:

Name: MARTA CALDERON

Appeal of: - Seniority Grievance

Comments:

Are you a current City of El Paso employee? ✓Yes ____No

Have you ever been employed by the City? ____Yes ____No

Signature: Marta Calderon

(Please Print)

Name: MARTA CALDERON

Address:

City/State/Zip:

Telephone:

Social Security:

Revised 3/22/12

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SUN METRO

CITY OF EL PASO
EMPLOYEE GRIEVANCE FORM

Employee's Name: MARTA G. CALDERON Last 4 of SS #: ....

Job Title: COACH OPERATOR

Department/Division or Section: SUN METRO Work Phone # 533-3333

Immediate Supervisor's Name: TONY MOLINA

STEP ONE

I discussed the following problem with my immediate supervisor on [redacted] Seniority Abuse and wish to go on to Step Two of the grievance procedure, Civil Service Rule 14. (Complete the boxes below, sign and date form and give it to your supervisor's supervisor) 8-1-12 TONY MOLINA

I believe that the following rights allowed me under the City Charter and/or Civil Service Commission Rules have been violated: (You must cite the rule or provision.)

Explanation of how my rights have been violated including date of occurrence: (Attach additional sheets if needed)

See ATTACHMENT

Requested Remedy:

See ATTACHMENT

Employee's Signature: Marta Calderon Date: 8-1-12

STEP TWO - (Give form to your supervisor's supervisor)

Immediate Supervisor's Statement:
I reviewed this document and elevated it to my supervisor for a response.

Immediate Supervisor's Signature: [signature] Date: 8/2/2012

Next Level Supervisor's Statement: (Return form to the employee and a copy to Department Head)
Grievance: Upheld ☐ Denied ☒ Explain the reason for your decision below:

See Attached

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Next Level Supervisor's Signature: [signature] Date: 8/2/12

Employee's Initials (indicating receipt of form: MC Date: 8-7-12

N-Grivance Form.dot

INSTRUCTIONS ATTACHED

 Revised 3/22/12

STEP THREE

I am not satisfied with the next level supervisor's response and ask to go on to the Department Head.

Employee's Signature: Marta Calderon Date: 8-10-12 **(Give form to Department Head)**

Department Head or Designated Manager's Statement: (Required only if not resolved at supervisory level; return completed form to the employee, and copy to Personnel Director) Rcvd 8/10/12 @ 2pm

Grievance: Upheld ☐ Denied ☒ Explain the reason for your decision below:

Response Memo Attached

Department Head's Signature: _____ Date: 8/27/12

Employee's Initials (indicating receipt of form): Marta Calderon Date: 8-27-12

STEP FOUR

I am not satisfied with the decision of the Department Head and ask to go on to the Human Resources Director.

Employee's Signature: Marta Calderon Date: 9-12-12 **(Give form to HR Director)**

Human Resources Director's Recommendation: (Required only if not resolved at department head level; return completed form to the employee, and a copy to department head.)

Human Resources Director's Signature: _____ Date: _____

Employee's Initials (indicating receipt of form): Marta Calderon Date: 10-18-12

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STEP FIVE

I am not satisfied with the findings and recommendations of the Human Resources Director and ask to appeal to the Civil Service Commission for final disposition of my grievance. **(Give to Secretary of Civil Service Commission)**

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Employee's signature: Marta Calderon Date: 11-1-12

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HUMAN RESOURCES ADMINISTRATION

CITY OF EL PASO EMPLOYEE GRIEVANCE FORM ATTACHMENT

Name: MARTA CAIOcron

SS:

I believe that the following rights allowed me under the City charter and/or civil Service Commission Rules have been violated:

RULE # 2: 19 "Seniority" As used in the rules, the term seniority refers to the calculation used in ranking candidates. A point value is provided for each complete year of continuous service an employee has served in a regular Civil Service position.

Nothing in this Rule shall prevent departments from using an internal seniority system in determining vacation requests or scheduling; Departments utilizing an internal seniority system must promulgate such a rule as outlined in Rule 11.

My rights have been violated by being moved back on the seniority list from number 65 to number 86 by bringing over the LIFT OPERATORS who have been with the Civil Service 10 or less years. I have 15 years with the Civil Service.

Requested solution:

I request that all LIFT OPERATORS' personnel files be REVIEWED for the following reasons:

1. To determine the date they became full-time CIVIL SERVICE EMPLOYEES.
2. To determine the date they were PROMOTED TO COACH OPERATORS.
3. To determine if we are one department. My claim is that we are one Mass Transit Department with three different sub-departments: 1. Fixed Route Coach Operator 2. Lift Operator 3. And Maintenance

I am requesting the sign-up be POSTPONED until the Seniority List is corrected according to Civil Service Rule #2

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S E R V I C E S O L U T I O N S S U C C E S S

TO: Sun Metro Employees

FROM: Jane K. Shang, Deputy City Manager for Mobility Services

RE: LIFT / MV Transportation Transition Update

CC: Joyce A. Wilson, City Manager
Jay Banasiak, Sun Metro Director
Linda Ball Thomas, Human Resources Director

DATE: July 31, 2012

LIFT / MV TRANSPORTATION TRANSITION UPDATE

Two weeks ago I provided employees with additional information in the form of Frequently Asked Questions (FAQs). Following that, I met with employees at Fixed Route and previously with employees at the LIFT. City staff and I continue to work on a transition plan to ensure a smooth transition of paratransit services to MV Transportation but I want to continue to highlight to employees that our main goal as it relates to employees is to ensure that no employees are without comparable employment as a result of this change to our labor structure. To that end, we have now progressed into a different stage of the transition process whereby personnel from Sun Metro's Human Resources Division and the City's Human Resources Department are working on placing affected employees in other City Departments. Sun Metro's Human Resources Manager has met with all potentially affected employees and we will continue to work individually with employees until all employees have been placed in comparable employment.

I also want to continue to clarify to all employees a question that has been asked at every employee meeting - there are no plans to outsource Fixed Route service. The Mass Transit Board chose not to pursue this option. In fact, with the addition of Rapid Transit Service (RTS) in 2014, we will have an expansion of service in the very near future.

Finally, I want to address the issue of Coach Operator seniority for Sign-Up purposes. In meeting with Fixed Route Coach Operators, I fully recognize that this is an item of great anxiety and concern for all involved. The City Manager's Office is well aware of the various historical changes that have transpired for Coach Operators since the early 1990's – from the contract with American Transit Corporation (ATC) for paratransit services, the reverting of these services back to Sun Metro, to the period where paratransit Coach Operators were contract City employees, followed by the City Charter amendment of 2001 and most recently the merger of Coach Operator classifications in 2006.

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However, throughout this period, a seniority listing for Sign-Up purposes has existed at both Fixed Route and the LIFT and each individual employee at each division of Sun Metro has exercised a specific seniority date. We will not change any employee's seniority date for Sign-Up purposes - each individual employee's seniority date will continue to be whatever it was before this latest change in labor structure. As employees are placed from LIFT to Fixed Route, the employee reassigned from LIFT to Fixed Route will maintain the same date of seniority for Sign-Up purposes that they had prior to the reassignment.

We understand that this decision has created some dissatisfaction and resentment for some of our Fixed Route Coach Operators. We are all aware that for Coach Operators working their way up through the seniority ranks is not just a matter of pride for all of your years of work and effort, it is also a reward of sorts in that the Sign-Up dictates what schedule you will have, what days you will be off to spend time with your family, what route you will have, what area of town you will be driving at, what type of unit you will be assigned, etc. However, LIFT Coach Operators are also Civil Service employees and we cannot penalize an employee that has been reassigned to Fixed Route by moving them to the bottom of the seniority list for Sign-Up purposes or altering their seniority date for Sign-Up purposes as this could result in a legitimate grievable item under Civil Service Commission Rules.

Many employees have understood the reason behind this decision early on and are prepared to sign-up wherever they may rank and for that we thank them but we also know that for others this decision will be more difficult. In the short term, we will make every effort to have as many schedules as possible that have evenings and weekends off while still maintaining appropriate service during all service hours. Additionally by 2014, the addition of RTS service will allow for additional "prime" schedules as the express service will be primarily during week days.

A lot of work still remains in order to ensure a smooth transition of services on November 11, and Sun Metro and City staff continue to work in that endeavor. Although I do not anticipate that we will have another update for employees until later on this fall as we get closer to the transition date, we will continue to update employees as the need arises. For now, below are responses to previously provided FAQ's. I am providing these answers again as these questions are being asked again and I want to make sure you have the information being requested. Once again and on behalf of the City of El Paso, I want to thank you for your flexibility and understanding as we work together through this difficult and complicated process.

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S E R V I C E S O L U T I O N S S U C C E S S

LIFT / MV TRANSPORTATION TRANSITION UPDATE

FREQUENTLY ASKED QUESTIONS
July 31, 2012

Will any employee be asked to resign their Sun Metro job?
No. Employees will not be asked to resign their Sun Metro job.

I work at the LIFT. Is my job being eliminated?
As part of the action City Council took on May 15th, all positions at the LIFT are being eliminated effective November 11, 2012. However, this does not mean that LIFT employees will not be offered a job with the City. Most employees will continue to work at Sun Metro's Fixed Route, some may be reassigned to identical vacant jobs within the City at other City departments and others may be reassigned to other non-identical vacant jobs within the City at other City departments through the layoff process.

How will I know if I am going to be laid off, or reassigned to Fixed Route or to another City department?
Personnel from Sun Metro Human Resources will be meeting individually with all employees that may be affected as a result of this change in labor structure. During these individual meetings with employees that may be affected as a result of this change in labor structure, Sun Metro Human Resources personnel will be explaining the reassignment process, lay-off process, and will be answering any questions employees may have.

Is MV Transportation required to offer me the same pay and benefits that I currently have with the City?
MV Transportation is only required to offer comparable wages and benefits for employees that are displaced from City service - in other words - employees that the City was not able to place at Fixed Route or in a comparable City position.

During this process, can I request to work in a different department?
An employee can always request a transfer through the City's transfer process whereby an employee can request to transfer to a vacant position in the exact same position they currently hold but in a different department. Other than for medical reasons, an employee can not request to work in a different department in a different position. The City has no obligation to offer the employee a different position in a different department. For example, a coach operator at the LIFT must accept a coach operator position in Fixed Route.

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When are LIFT Coach Operators scheduled to start moving over to Fixed Route?
LIFT Coach Operators have already started moving over to Fixed Route. Sun Metro requested volunteers to start moving over to Fixed Route to fill vacant Coach Operator positions. Employees with the most seniority will be moved over to Fixed Route first. All employees moved to Fixed Route will be fully trained in Fixed Route procedures in order to assure success in their new assignment. In order to limit disruptions to Fixed Route's current sign-up, employees moved to Fixed Route will be assigned to the Extra Board until a new sign-up is created, at which point employees moved over from the LIFT will be able to bid based on their seniority date.

As a Coach Operator at the LIFT, do I have to move over to Fixed Route and be a Coach Operator there?
Yes. It is an identical position and all employees moved to Fixed Route will be fully trained before taking on their new assignment.

I'm not familiar with Fixed Route's Extra Board. How does it work?
Extra Board personnel cover open rosters created by resignations, extended leave, vacations, sick leave, etc. Operators on the Extra Board will be assigned the open rosters based on seniority within the Extra Board personnel.

How will placing employees from the LIFT into Fixed Route affect bidding for runs and schedules?
At Sun Metro, bidding for runs and schedules is done by seniority where the seniority date is the date the employee began their full-time employment with the department. In fact, all three divisions of Sun Metro - Fixed Route, LIFT and Maintenance - maintain their own seniority list that most employees are familiar with. An employee's seniority date for bids and schedules will not be changed - each individual employee's seniority date will continue to be whatever it was before this change in labor structure.

As employees are placed from LIFT to Fixed Route, the employee reassigned from LIFT to Fixed Route will maintain the same date of seniority for bids and schedules that they had prior to the reassignment. We do not want to penalize an employee that has been reassigned to Fixed Route by moving them to the bottom of the seniority list. Going forward there will be only one list once employees from the LIFT have been fully reassigned into Fixed Route.

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August 7, 2012

Ms. Calderon:

I received your grievance form on August 1st and want to first and foremost thank you for bringing your concerns to us. You stated on the form, "my rights have been violated by being moved back on the seniority list from number 65 to 86 by bringing over the lift operators who have been with the Civil Service 10 or less years. I have 15 years with the Civil Service". In my tenure as the Assistant Director of Operations (since Nov. 07), we have conducted the practice of transferring coach operators from the Lift to Fixed Route and vice versa all the while using the operator's seniority number that both sides have been assigned and enjoyed for many years. Seeing all operators as equal, regardless of division, was the reason coach operators were allowed to move from one division to another and benefit from that unilateral flexibility. These transfers never generated a grievance in the past (during my tenure). The City made the decision based on financial and operational benefits to outsource the LIFT operations starting on Nov. 2012 and to make every effort for the employees of that division to be the least affected as possible by finding them jobs either by transferring to another Sun Metro division or to another job within the City of El Paso. Sun Metro, whether it's the LIFT, Fixed Route, Maintenance, or Administration is seen as one unit and as such, the determination was made to honor the seniority held for years by employees of all sections. I do understand the importance of this item to you as a coach operator and will do everything operationally possible to lessen the impact. With the introduction of the new RTS service, new routes will be introduced to the system that will have some desired schedules (weekends off, AM's, etc.) and those will be available to the coach operator pool during signups. In addition, as Sun Metro expands service further, we will work with our Planning Section to ensure that more optimum schedules are created. With all that being said, your requested remedy is denied and you have the option to elevate the grievance to the Sun Metro Director for further consideration as per the City of El Paso's Civil Service Grievance procedures Rule 14.

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Lloyd J. Williams,
Assistant Director of Operations

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SERVICE SOLUTIONS SUCCESS

TO: Marta G. Calderon, Coach Operator
FROM: Jay Banasiak, Sun Metro Director Jay Banasiak
RE: Grievance Response (Seniority Ranking)
DATE: August 27, 2012

On August 10, 2012, we met to discuss your grievance regarding your seniority ranking following the re-assignment of LIFT Coach Operators to Fixed Route. As the City has indicated on several occasions in various employee meetings and in written communications to employees, we will not change any employee's seniority date for Sign-up purposes. As employees are placed from LIFT to Fixed Route, the employee reassigned will maintain the same date of seniority for Sign-up purposes. I am providing a copy of the most recent communication from the City Manager's Office that addresses in part the re-assignment of LIFT Coach Operators to Fixed Route (attached).

As I indicated to you during our conversation, it has been our department's practice that when a Coach Operator is re-assigned from one section to another within our department (LIFT to Fixed Route or Fixed Route to LIFT), that the Coach Operator maintains the same date of seniority that they had prior to the re-assignment. As you know, in 2006 the City implemented a city-wide reclassification that grouped Fixed Route Coach Operators and Paratransit Coach Operators into one classification – Coach Operator. Additionally, many of the Coach Operators that worked for the private company in the 1990's, have employment contracts with the City that specify their seniority date for Sign-up purposes will be honored.

Having said that, I recognize that reassigning a handful of people is considerably less impactful to the seniority list than reassigning several dozen employees. As I indicated to you during our meeting, in the near future additional services will create additional desirable schedules and rosters that will help mitigate some of the valid concerns that you brought to my attention during our meeting. The first phase of Rapid Transit Service (RTS) is scheduled to begin in January 2014 and that alone will create approximately an additional 20 weekday rosters, followed closely by more than 20 rosters in April 2014.

Finally, I want to express to you that as a transit industry professional with over 30 years of experience and as the son of a retired bus driver, transit has been a part of most of my life and I understand completely how this change may affect you. The decision made by the City was not made without careful thought and consideration as to how it would affect all Coach Operators, whether at the LIFT or Fixed Route.

Regrettably, I must deny your grievance at this time. Thank you for allowing me the opportunity to address your concerns.

Distribution
Original: Employee (as part of grievance packet)
Copies: Human Resources Director

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COMMISSION

TO: Marta G. Calderon, Coach Operator

FROM: Linda Ball Thomas, Human Resources Director

DATE: October 16, 2012

SUBJECT: Grievance/Complaint Response

I have completed my review of your grievance/complaint. In accordance with Civil Service Commission Rules, I have reviewed the available information and applicable rules. Although I do not believe your complaint involves a violation of rights granted to employees by the Charter and/or Civil Service Commission Rules, I will take the opportunity to respond to your concerns.

BACKGROUND

In your grievance, you state that your seniority for sign-up purposes has been affected by the movement of LIFT Coach Operators to the Fixed Route. You claim that you were #65 for sign-up and you are now #75. Your work days remain Monday through Friday with an early morning start and an end in the early afternoon.

You have requested that the department's sign-up be postponed until a correction has been made to the seniority list in accordance with Civil Service Commission Rule 2. You asked that all LIFT Coach Operators' personnel files be reviewed for the following reasons:

1. Determine the date LIFT Coach Operators became full time Civil Service employees.
2. Determine the date LIFT Coach Operators were promoted to Coach Operators
3. Determine if LIFT and Fixed Route are sub-departments or one department.

Departmental seniority dates have been used to determine the order in which employees could bid for shifts/routes. The Mass Transit Department does not have a written policy on how seniority is determined for shift bidding (or sign-up); however it has been the past practice of the Mass Transit Department to honor the seniority dates of employees moving between the LIFT and Fixed Route and vice versa for several years. Our records indicate that on or about September 3, 2006 LIFT employees were reclassified to Coach Operators and have remained in that same classification since that time. The Mass Transit Department has operated under a single department head for several years and has policies and procedures that are applicable to all employees of the department.

The City of El Paso made a decision to outsource the work of the LIFT on May 15, 2012 with an effective date of November 11, 2012. You provided copies of memos dated July 31, 2012 along with a FAQ, also dated July 31, 2012, in which Deputy City Manager Jane Shang described the department's seniority and sign-up procedure. Your department head, Mr. J. Banasiak reiterated the departmental practice and denied your grievance and advised you of plans for expanding service for Fixed Route in the future and communicated this planned

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growth as an opportunity to mitigate the effects of the change in seniority standing.

FINDINGS

You asked that Rule 2 be used in your department, wherein the length of City service is used rather than department seniority when a lay-off occurs. While your department did not promulgate a written policy as defined in rule relating to seniority for sign-up, a clear practice is in place. As you have not been provided with a notice of lay-off as defined in Rule 12, your request to have length of City service applied in this question of seniority is not appropriate and is therefore denied.

It is a long standing practice within the department to honor seniority among Coach Operators moving between the LIFT and Fixed Route. While the number of employees moving between LIFT and Fixed Route were small in number, the current outsourcing arrangement has affected Fixed Route Coach Operators like no other time in the past. Because of the past practice of honoring seniority among LIFT Coach Operators moving to Fixed Route, I find the date LIFT Coach Operators became full time Civil Service employees to be inconsequential to the decision at hand.

Your request to review the promotion dates for Coach Operators moving to Fixed Route from the LIFT has been completed by your department. Unless you have information to the contrary, I am going to accept the reclassification dates determined by the Mass Transit Department and the appropriate order that has been determined for seniority and sign-up. Further, individual personal contracts contained in several LIFT Coach Operators' personnel files were reviewed and only those individuals with contractual language promising seniority were given such.

The issue at hand is whether or not Deputy City Manager Jane Shang and the Director of the Mass Transit Department can make a decision concerning seniority for the entire organization. Given the choice between honoring individual personal contract or any type of past practice, I find that the City's obligation is to the individual personal contract. To the extent that the past practice has been to honor seniority for Coach Operators moving from the LIFT to Fixed Route or vice versa, this practice has served to reinforce this provision that is included in several of the Coach Operators' personal contracts with the City that have worked at the LIFT for so many years.

I find that Mass Transit Department did not violate any employee right to which you are entitled. Not only did the Deputy City Manager and the Mass Transit Department Head have the management right to make a decision about departmental seniority in the absence of a formal policy, the recognition of the individual personal contracts with the City had to be honored, along with the established past practice.

DECISION

Based on the foregoing background and findings this grievance is denied.

Please contact me at 541-4509, if you have any additional questions or concerns.

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