

BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD
ADMINISTRATIVE LAW JUDGE SHAWN CLOUGHESY
STATE OF CALIFORNIA

and Employee,
PEACE OFFICERS OF CALIFORNIA
and Petitioner,
CALIFORNIA STATEWIDE LAW
ENFORCEMENT ASSOCIATION

Case No.: SA-SV-171-S

Exclusive Representative.)
Transcription of Tapes from hearing conducted on
January 30, 2009

VOL. I
Transcription provided by
DIAMOND COURT REPORTING

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1 MR. MESSING: No.

2 ALJ CLOUGHESY: All right. With that --

3 MR. MESSING: Other than the --

4 ALJ CLOUGHESY: Standard global --

5 MR. MESSING: The standard. And may I simply,
6 you know, without having to state that each time --

7 ALJ CLOUGHESY: Yes.

8 MR. MESSING: -- reserve that for all of the
9 declarations. Thank you.

10 MS. TRUONG: Excuse me, Your Honor. What did
11 you label that as?

12 ALJ CLOUGHESY: Petitioner's E.

13 MS. TRUONG: Thank you.

14 MR. MESSING: Petitioner's 8?

15 ALJ CLOUGHESY: E.

16 MR. MESSING: E.

17 ALJ CLOUGHESY: All right. And we don't have
18 one for this witness, which is going to save me a little
19 bit of labeling. So I'll ask you to raise your right
20 hand. Do you swear or affirm that the testimony you'll
21 be giving is the truth, the whole truth, and nothing but
22 the truth?

23 THE WITNESS: I do.

24 ALJ CLOUGHESY: Please state your name for the
25 record, spell your last name.

1 THE WITNESS: John Miller, M-I-L-L-E-R.

2 ALJ CLOUGHESY: Mr. Rose.

3 EXAMINATION BY MR. ROSE:

4 Q. Good morning, Mr. Miller. My name is Joe
5 Rose. I'm an attorney representing peace officers of
6 California.

7 A. Good morning.

8 Q. We met yesterday, and I appreciate your
9 patience in coming back today. Thank you for
10 accommodating me.

11 A. Certainly.

12 Q. I just have a few questions specifically.
13 First of all, what is your -- what is your current
14 occupation?

15 A. I'm a senior criminalist with the California
16 Department of Justice at the state crime lab in
17 (inaudible.)

18 Q. How long have you been so employed?

19 A. I have been with DOJ since 1991.

20 Q. How long have you held that job?

21 A. Since 1991.

22 Q. The senior criminalist job?

23 A. Well, I started as a criminalist and promoted
24 to senior criminalist in 2000.

25 Q. And do you have any association with CSLEA

1 other than as a member?

2 A. Yes, I do.

3 Q. What is your association?

4 A. I'm a board member as president of the
5 association of criminalists, Department of Justice, and
6 I was the director of (inaudible) affairs, which means I
7 ran the PAC and the Ledge (ph) Committee for
8 approximately ten years.

9 Q. Are you a sworn peace officer?

10 A. No.

11 Q. In September of 2003, did you have any
12 association with CSLEA other than as a member?

13 A. Yes.

14 Q. What was your association with CSLEA then?

15 A. I was board member and director of
16 governmental affairs.

17 Q. Do you recall in September 2003 a piece of
18 legislation that was advanced on behalf of CSLEA, or
19 then CAUSE, that would have tied the pay for sworn peace
20 officers in Bargaining Unit 7 to the California
21 association of highway patrolmen?

22 A. Yes.

23 Q. Patrol officers, rather. You do?

24 A. Yes.

25 Q. Is that Senate Bill 348?

1 A. I don't recall the bill number, but it was
2 part of our -- our bargaining package.

3 Q. And do you recall that that was advanced, that
4 legislation was advanced to the legislature together
5 with Bargaining Unit 9's MOU for the professional
6 engineers?

7 A. I don't recall what happened to Bargaining
8 Unit 9, but ours moved forward to some degree, yes.

9 Q. Do you recall whether that piece of
10 legislation was adopted by the legislature?

11 A. No, it was not.

12 Q. Do you recall whether that piece of
13 legislation was brought to the legislature for an up or
14 down vote?

15 A. No.

16 Q. You do not recall --

17 A. Excuse me. I do recall. It was not brought
18 for an up and down vote, as I recall.

19 Q. It was not brought to the legislature for an
20 up and down vote because CSLEA prevented that from
21 happening, correct?

22 A. We did not -- yes, that's correct.

23 Q. In September of 2003 -- oh, by the way, are
24 you aware in September of 2003 whether California
25 Correctional Peace Officers' Association had a similar

1 pay parity piece of legislation advancing, meaning tying
2 their pay increase to that of the California Association
3 of Highway Patrol?

4 A. I believe they did.

5 Q. Are you aware whether that legislation was
6 approved by the legislature?

7 A. I believe it was.

8 Q. Do you know a gentleman by the name of Tim
9 Fries?

10 A. Yes, I do.

11 Q. F-R-I-E-S. In September of 2003, Mr. Fries
12 was working for CAUSE as a government relations person.
13 Is that an accurate statement?

14 A. Yes.

15 Q. Are you aware -- do you know a gentleman by
16 the name of Alan Barcelona?

17 A. Yes.

18 Q. B-A-R-C-E-L-O-N-A. Mr. Barcelona is currently
19 the president of CSLEA, correct?

20 A. That's correct.

21 Q. September of 2003 was the president of CAUSE,
22 correct?

23 A. Yes.

24 Q. Was Mr. Fries and Mr. Barcelona involved in
25 the piece of legislation you have just described

1 concerning pay parity or pay raise -- not pay parity but
2 time pay increases to CHP in September 2003?

3 A. I believe so, yes.

4 Q. Was Kasey Clark Chief Legal Counsel of CSLEA
5 or CAUSE in September 2003?

6 A. You know, I don't remember when Kasey came
7 onboard. He might have been. I don't remember.

8 Q. Do you recall whether Mr. Clark was involved
9 in those discussions regarding that piece of
10 legislation?

11 A. You know, I can't recall. If he was chief
12 legal counsel, he most likely was.

13 Q. Are you aware of a gentleman by the name of
14 Craig Brown?

15 A. Yes.

16 Q. Mr. Brown was -- worked for a government
17 relations firm on behalf of CAUSE in September 2003,
18 correct?

19 A. That's correct.

20 Q. Mr. Brown recommended that CAUSE accept the --
21 the legislation concerning -- the one that we were just
22 describing, September 2003, did he not?

23 A. You mean the tying CHP salaries to our -- or
24 our salaries to the CHP?

25 Q. Yes.

1 A. Well, there was no recommendation of accepting
2 that. That's an inaccurate way of portraying the
3 situation. Mr. Brown lobbied in our behalf.

4 Q. But he didn't have an opinion whether that
5 would be good or bad for CSLEA or CAUSE at the time or
6 expressed one to you?

7 A. He thought it was a great idea, just like we
8 all did.

9 MR. ROSE: Nothing further.

10 ALJ CLOUGHESY: Sir, Mr. Messing.

11 EXAMINATION BY MR. MESSING:

12 Q. Well you testified you all thought it was a
13 great idea. Why did CSLEA prevent it from coming to a
14 vote?

15 A. It was very close to the end of the
16 legislative session and the recall was advancing and we
17 did not want to have -- be in a situation where we
18 passed the bill. Gray Davis was dis-elected or
19 recalled, and then we had a new Governor who could
20 legitimately say, I don't want this, you're shoving it
21 down my throat. We thought it would be better to
22 bargain with the new Governor and get that legislation
23 passed.

24 MR. MESSING: Nothing further.

25 ALJ CLOUGHESY: Ms. Truong.

1 MR. MESSING: Wait one second. Hang on.

2 ALJ CLOUGHESY: All right.

3 BY MR. MESSING:

4 Q. Just one other thing. I'm sorry. You
5 mentioned the concern about the new Governor. Aside
6 from that was there any indication as to whether or not
7 the bill was going to be able to get out of committee?

8 A. Yeah. There was a lot of --

9 MR. ROSE: Objection. Leading.

10 ALJ CLOUGHESY: Sustained.

11 BY MR. MESSING:

12 Q. Was there any indication as to what result
13 might have occurred as a result of the bill being
14 considered by a committee?

15 A. Yes. But during the -- you have to understand
16 at the end of the year -- if I may explain, at the end
17 of the year in the last days of session when the lobby
18 -- the halls of that capitol are filled with thousands
19 of people lobbying different issues, the fur is flying
20 fast and furious. And when we went to -- and when you
21 take a bill to a committee, anything can happen to it.
22 We had already had legislators trying to get us to give
23 up pieces of the legislation, and we didn't want to do
24 that. So we were a little nervous about putting it
25 through the legislative -- the legislative committee and

1 getting a down vote before we had a chance to talk with
2 potentially what was a new Governor.

3 Q. Okay. So was it the legislative committee?
4 Is that where it ended up?

5 A. Yeah. I don't remember which committee it
6 stayed in, but it ended up in a committee and was never
7 moved from there. It might have been ready for a floor
8 vote in the Senate. I don't recall specifically.

9 Q. Okay. So where would -- which legislative
10 committee? Which branch was it pending in?

11 A. The Senate, I believe.

12 Q. In the Senate. Okay.

13 MR. MESSING: Nothing further at this time.

14 ALJ CLOUGHESY: Ms. Truong.

15 EXAMINATION BY MS. TRUONG:

16 Q. You stated that you all thought it was a great
17 idea regarding pay parity or the pay being tied with
18 CHP?

19 A. Yes.

20 Q. Can you tell us who all you -- who the all is
21 you're referring to --

22 A. The entire board. The entire board of CSLEA.

23 MS. TRUONG: Thank you.

24 ALJ CLOUGHESY: Mr. Rose.

25 EXAMINATION BY MR. ROSE:

1 Q. Yes, Mr. Miller. When you said, also we
2 thought it would be better to take it forward to the new
3 Governor, who's now Governor Schwarznegger, correct?

4 A. Uh-huh.

5 Q. Who was it that thought that, other than
6 yourself?

7 A. I can't think of specifically who. I think it
8 was a consensus opinion. I don't know who specifically
9 said it first.

10 Q. Was it brought to the board of directors of
11 CSLEA for a determination that it would be better to
12 bring it to a new Governor after a potential recall?

13 A. I don't think so. I think this all occurred
14 in the last days of legislature. So there was no -- I
15 don't recall if we had any emergency board meetings or
16 phone conferences. I don't remember.

17 Q. Was the board of directors at any time
18 informed of the sequence of events concerning that piece
19 of legislation --

20 A. Uh-huh.

21 Q. -- (inaudible) made by CSLEA?

22 A. Yes.

23 Q. When was that (inaudible) the information
24 communicated to you?

25 A. Probably after the fact.

1 Q. Probably. You're not sure when?

2 A. I don't remember when exactly.

3 Q. But you're certain that it was communicated --

4 A. I'm pretty sure, yeah. They wanted to know
5 what happened to our MOU. We told them.

6 Q. And would those communications have been in
7 writing or orally?

8 A. I don't remember. Probably orally.

9 Q. Would those communications have been reflected
10 in the minutes of the meeting of the board?

11 A. It's possible.

12 Q. Is it also possible they're not in any
13 minutes?

14 A. I don't know.

15 Q. Ultimately did you -- did CSLEA or CAUSE
16 attempt to negotiate the same deal after Schwarznegger
17 took office as Governor?

18 A. We made inquiries into the Governor's office,
19 yes.

20 Q. Who made inquiries?

21 A. Our lobbyists, our president.

22 Q. Which lobbyist?

23 A. Craig Brown.

24 Q. And Mr. Barcelona did?

25 A. I believe so. I can't say for certain on how

1 personally, but if he didn't do it personally, we
2 instructed, he or I, instructed Craig Brown to do so.

3 Q. How many inquiries were made?

4 A. I don't know.

5 Q. When were the inquiries made?

6 A. Probably before Arnold took office. Maybe
7 after he took office in January. I don't recall.

8 Q. How were the inquiries made?

9 A. I don't know.

10 Q. You're not sure if there were any inquiries,
11 correct?

12 A. There were inquiries. When I -- we hired a
13 lobbyist to do a job and we let him do his job as a
14 professional. We said, please find out. And he did.

15 Q. And you know that because --

16 A. Because I dealt with Craig Brown.

17 Q. Did you have conversations yourself with
18 Mr. Brown in which you instructed him to do that?

19 A. I don't recall who specifically told Craig to
20 do this. It might have been the president of CAUSE,
21 Alan Barcelona. I don't remember.

22 Q. Did you have any conversations with Mr. Brown
23 in which you personally instructed Mr. Brown to make
24 inquiries about that piece of legislation?

25 A. It could have been. It might have been in a

1 three-way conversation standing there and we all thought
2 it was a good idea. There were no specific formal
3 instructions handed down like from a soldier, from a
4 general to a soldier. It's conversations between
5 adults.

6 Q. But you're not sure one way or the other,
7 right?

8 A. No.

9 MR. ROSE: Nothing further.

10 EXAMINATION BY MR. MESSING:

11 Q. When you say you're not sure one way or the
12 other, what -- what aspect are you referring to?

13 A. I am not sure who exactly said to Craig,
14 please find out, but somebody said to Craig, go find out
15 what the new Governor feels about this legislation.

16 Q. Did you find out where the Governor stood?

17 A. Yes.

18 Q. And where was that?

19 A. Totally opposed.

20 MR. ROSE: Objection. Lacks foundation.

21 ALJ CLOUGHESY: Did you ask him whether he --
22 an order was given and whether an order was given --
23 some evidence that an order was given at (inaudible.)
24 So even if it's not offered for the truth of the matter
25 asserted, it still goes to things that are outside that.

1 So overruled.

2 BY MR. MESSING:

3 Q. Just one other area here. Before the bill
4 died, do you know what the status of negotiations were
5 just before that bill died?

6 A. Are you talking about in January or in the
7 legislative session?

8 Q. In the legislation session.

9 A. We had come to a deal with the Governor.

10 Q. Okay. And what kind of deal was that? Can
11 you characterize it?

12 A. The pay -- "pay parity" issue. Basically
13 there was a -- there were five groups of employees,
14 CSLEA employees. I believe that it included -- it might
15 have had special agents, fish and game. I don't
16 remember the five groups, but there were five groups and
17 they were going to take some kind of weighted average of
18 those salaries. And whatever that came out, whatever
19 the difference between that was and what the total
20 compensation for CHP officers was, that dollar figure
21 would not change. It's very similar to the deal that
22 CCPOA cut.

23 Q. Okay. Do you know what the estimated
24 increases were for the five year period in that deal?

25 A. Oh, I don't recall. The bottom line -- if I

1 remember correctly, it was a \$777 difference between the
2 two figures, the CHP figure and the CSLEA figure, CAHP
3 figure I guess. And the whole goal was to make that
4 number never change.

5 Q. Do you recollect how the higher paying
6 classifications made out on -- would have made out on
7 this deal as opposed to lower paying classifications?

8 A. Everybody would have done quite well.

9 Q. Were there classifications that would have
10 actually exceeded the salary of CHP officers based on
11 the formula?

12 A. I believe we had those classifications already
13 in CAUSE, and they would have stayed where they were.

14 Q. You were on the board of directors, you said.
15 Was the Board ever briefed on the details of the
16 tentative agreement?

17 A. Yes, I believe so.

18 MR. MESSING: Nothing further.

19 ALJ CLOUGHESY: All right. From the employer?

20 MS. TRUONG: Nothing from the State.

21 ALJ CLOUGHESY: Mr. Rose?

22 MR. ROSE: Yes.

23 EXAMINATION BY MR. ROSE:

24 Q. Mr. Miller, you said that you learned that
25 Governor Schwarznegger was not in favor of the pay

1 parity concept, correct?

2 A. Yes.

3 Q. How did you learn that?

4 A. From our lobbyist.

5 Q. Mr. Brown?

6 A. Uh-huh.

7 Q. He informed you of that?

8 A. I believe so.

9 Q. When did he inform you?

10 A. Sometime in 2000 -- late 2003 or I guess early
11 2004, whenever the Governor took office.

12 Q. Mr. Brown testified here today. Are you aware
13 of that?

14 A. Yes.

15 Q. Would it surprise you to learn that Mr. Brown
16 has no memory of this series of discussions or at least
17 this piece of legislation in September 2003?

18 A. No.

19 MR. MESSING: I'm going to object. There's no
20 foundation. Misstates the witness' testimony.

21 ALJ CLOUGHESY: I don't remember Brown
22 testifying in regards to a conversation with the
23 Governor and this sort of thing, so sustained.

24 MR. MESSING: Thank you.

25 BY MR. ROSE:

1 Q. Would it surprise you to learn Mr. Brown has
2 no memory of the piece of legislation in September 2003
3 concerning pay parity?

4 MR. MESSING: I'm going to object. Same
5 objection.

6 ALJ CLOUGHESY: You know, I do remember some
7 fog in regards to the bill, on regards to that, but
8 regardless of that would he be surprised is a
9 non-probative question.

10 BY MR. ROSE:

11 Q. You mentioned there were -- you -- you --

12 MR. ROSE: May I proceed?

13 ALJ CLOUGHESY: Please.

14 BY MR. ROSE:

15 Q. You mentioned there were classifications in
16 CAUSE at that time in September 2003 that exceeded CHP.
17 Is that a fair characterization of your testimony?

18 A. Yeah.

19 Q. Which classifications were those?

20 A. I believe the special agents exceeded them in
21 salary. Criminalists, base salary is higher.

22 Q. Criminalists are non-sworn, correct?

23 A. That's right.

24 Q. Special agents are sworn?

25 A. That's right.

1 Q. Any others --

2 A. I can't recall. I don't remember what the
3 whole constellation of salaries looked like.

4 Q. As of today are there any classifications in
5 Bargaining Unit 7 that you're aware of that exceed the
6 pay for CHP?

7 A. I have no clue.

8 MR. ROSE: Nothing further.

9 ALJ CLOUGHESY: Mr. Messing, anything further
10 on those limited issues?

11 MR. MESSING: No, nothing further at this
12 time.

13 ALJ CLOUGHESY: Ms. Truong?

14 MS. TRUONG: No, Your Honor.

15 ALJ CLOUGHESY: Mr. Miller, thank you very
16 much.

17 THE WITNESS: Thank you, Your Honor.

18 ALJ CLOUGHESY: And we are off the record.

19 (A brief pause transpired.)

20 ALJ CLOUGHESY: We are back on the record,
21 marking as Petitioner's Exhibit F what appears to be a
22 declaration of Brian Gates with an attachment on it of
23 the state personnel board job specifications for state
24 park peace officer (lifeguard) series specification.

25 Sir, I'm going to ask you to raise your right

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CERTIFICATE OF SHORTHAND REPORTER

I, TERRIE CULP-SMITH, a Shorthand Reporter, do hereby certify that I am a disinterested person herein; that I reported the preceding in shorthand writing from the tapes that were provided to me; that I thereafter caused my shorthand writing to be transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said proceeding, or in any way interested in the outcome of said proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand this 23rd day of February 2009.

Terrie Culp-Smith
Shorthand Reporter