

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
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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

1 hand. Do you swear or affirm the testimony you'll be
2 giving is the truth, the whole truth, and nothing but
3 the truth?

4 THE WITNESS: Yes.

5 ALJ CLOUGHESY: Please state your name for the
6 record, spelling your last name.

7 THE WITNESS: Brian Gates, G-A-T-E-S.

8 ALJ CLOUGHESY: All right. Mr. Gates, I'm
9 handing to you Petitioner's Exhibit F. Do you recognize
10 that document?

11 THE WITNESS: Yes.

12 ALJ CLOUGHESY: And what do you recognize it
13 as?

14 THE WITNESS: The -- my declaration.

15 ALJ CLOUGHESY: All right. And if you can
16 turn to the last page of that declaration, and do you
17 see a signature there?

18 THE WITNESS: Yes.

19 ALJ CLOUGHESY: And do you know who that
20 signature is?

21 THE WITNESS: Yes.

22 ALJ CLOUGHESY: Is that yours?

23 THE WITNESS: Yes.

24 ALJ CLOUGHESY: All right. Very good. And
25 did you sign it on the date set forth right next to the

1 signature block?

2 THE WITNESS: Yes.

3 ALJ CLOUGHESY: All right. And are all the
4 items in that declaration true and correct to the best
5 of your knowledge?

6 THE WITNESS: There is a correction as far as
7 my temporary upgrade I received over the summer.

8 ALJ CLOUGHESY: Why don't you just tell us
9 about it so we have --

10 MR. MESSING: Could we identify a paragraph?

11 ALJ CLOUGHESY: I have a feeling it's an
12 augmentation rather than a --

13 THE WITNESS: There's a part in here that says
14 I'm a lieutenant, and I'm not.

15 ALJ CLOUGHESY: Oh, okay.

16 MS. TRUONG: I'm sorry. What did he say?

17 THE WITNESS: There's a part in here that
18 describes me as a supervising lieutenant, and I'm not.
19 I'm rank and file peace officer.

20 ALJ CLOUGHESY: Okay. Let's get to that
21 paragraph then and clean it up right now.

22 MR. ROSE: (Inaudible.)

23 ALJ CLOUGHESY: Which one is it?

24 MR. ROSE: 38 on page 14.

25 ALJ CLOUGHESY: 38. Thank you. All right

1 then. What would you like to correct on that, sir?

2 THE WITNESS: I was, I guess, removed from the
3 -- from CSLEA in May 2008 because I was promoted, but it
4 was a temporary promotion. Every year we do that where
5 I work. It's called a limited term upgrade to lifeguard
6 supervisor I to manage the seasonal lifeguard program
7 because our staff goes from zero to 120.

8 ALJ CLOUGHESY: Okay.

9 THE WITNESS: And then I get downgraded in
10 October.

11 ALJ CLOUGHESY: All right. So you kind of
12 float in and out --

13 THE WITNESS: Right.

14 ALJ CLOUGHESY: (Inaudible.) Is that right?

15 THE WITNESS: Yes.

16 ALJ CLOUGHESY: Okay. With that, any other
17 questions (inaudible.)

18 THE WITNESS: There was one other one on page
19 3. Page 3, paragraph 16-D. This paragraph just needs
20 to read that a ranger is not required to go through the
21 lifeguard training. The way it reads it says, part of
22 the minimum qualifications for all classes in this
23 series, state park peace officer lifeguard, except cadet
24 and state park peace officer lifeguard again. That
25 should be ranger. And actually, that second lifeguard

1 should say ranger.

2 ALJ CLOUGHESY: All right. What I'm going to
3 do is I'm going to hand you this pen and I'm going to
4 ask you to cross out and substitute and initial where it
5 needs to happen, and I'll make a copy for all the
6 parties involved so that they have it. And what the
7 witness has done is on page 3, line 12, has lined out
8 lifeguard and substituted ranger instead. Any other
9 corrections?

10 THE WITNESS: The second lifeguard, because
11 there's two lifeguards in that line.

12 ALJ CLOUGHESY: All right. Very good. Any
13 other corrections you see that need to be made?

14 THE WITNESS: Not to my -- not to my
15 knowledge.

16 MR. MESSING: May I see the document, please.

17 ALJ CLOUGHESY: Yeah.

18 MR. MESSING: Thank you.

19 ALJ CLOUGHESY: That's it. Just the one?

20 THE WITNESS: Right.

21 ALJ CLOUGHESY: Thank you. All right. With
22 that clarification, any other qualifying --

23 MR. ROSE: I would just like to invite the
24 witness' attention to paragraph -- (inaudible.) On page
25 3, (inaudible.)

1 THE WITNESS: Paragraph 15. It appears to be

2 --

3 MR. ROSE: In particular, line 9.

4 THE WITNESS: I -- I think I see what you're
5 saying.

6 ALJ CLOUGHESY: Forget about what he's saying.
7 He's just trying to point out something. He's not
8 saying anything.

9 THE WITNESS: The way it reads, it -- it
10 sounds like the state park peace officer does not need
11 the post-certificate.

12 MR. MESSING: Well, let's just say it's
13 contradictory. There's something wrong with this.

14 ALJ CLOUGHESY: Let me -- here's the job
15 specs. You have seen those before, I take it?

16 THE WITNESS: A long time ago.

17 ALJ CLOUGHESY: All right.

18 THE WITNESS: Which I just assume they're
19 correct.

20 ALJ CLOUGHESY: Well I can tell you it's
21 printed out from the --

22 THE WITNESS: Right.

23 ALJ CLOUGHESY: -- the website and we've taken
24 official notice of it. Okay.

25 THE WITNESS: Then on page 3 -- well, the

1 cadet, the state park peace officer lifeguard cadet is a
2 cadet while he's earning his post basic certificate.

3 ALJ CLOUGHESY: Okay. That makes sense. All
4 right. Well, let me ask a question. Go ahead.

5 MR. ROSE: Let me read the line in paragraph
6 15. Part of the minimum qualifications for all classes
7 in the series state park peace officer (lifeguard)
8 except cadet and state park peace officer (lifeguard)
9 range A is possession of a peace officers standards and
10 training post basic certificate, which I possess.

11 THE WITNESS: Yeah. So there's some
12 redundancy in there that takes away, I guess, the post
13 that should be in there, correct?

14 (Multiple speakers.)

15 MR. MESSING: Hold it a second. You can't ask
16 him questions. You need to --

17 MR. ROSE: Objection. I object to Mr. Messing
18 instructing the witness.

19 MR. MESSING: No. I'm making an objection
20 without saying objection, and I think that my objection
21 is well taken.

22 ALJ CLOUGHESY: It is well taken. At this
23 part you can't ask questions, but -- so do you
24 understand the question?

25 THE WITNESS: No. I understand what I do and

1 what I have been trained to do, but this paragraph makes
2 it very confusing.

3 ALJ CLOUGHESY: Okay. What's confusing about
4 it? You tell us.

5 THE WITNESS: Okay. Parts of the minimum --
6 I'm going to start here. I'm going to read out loud
7 just to --

8 ALJ CLOUGHESY: Yeah.

9 THE WITNESS: Part of the minimum
10 qualifications for all classes in the series state park
11 peace officer (lifeguard), except cadet, is satisfactory
12 completion of the basic course in California
13 Commissioner (inaudible) which conform to requirements
14 set -- I'm sorry. I'm reading the wrong one. 15. Part
15 of the minimum qualifications for all classes in state
16 park series peace officer (lifeguard), except cadet and
17 state park -- okay. So the -- on line 9 then and state
18 park peace officer (lifeguard) range A should not be in
19 there because part of the minimum qualifications for all
20 classes in the state park peace officer (lifeguard)
21 except the cadet is the possession of the peace officer
22 basic certificate.

23 ALJ CLOUGHESY: Okay. I think I know what
24 you're saying. Here's the blue pen again.

25 THE WITNESS: Thank you.

1 ALJ CLOUGHESY: And I'm going to ask you to
2 line out what you need to line out because I think I
3 know what you're getting at now and then initial it.
4 And, Mr. Messing, are you going to need to see that too
5 or -- Mr. Messing, are you going to need to see it again
6 after he --

7 MR. MESSING: No. I think I know what he's
8 crossing out.

9 ALJ CLOUGHESY: All right. Why don't you just
10 put an initial and then put today's date, January 30th,
11 '09, and after that I think we're ready to go, unless
12 you have any other corrections.

13 THE WITNESS: I don't believe I do.

14 ALJ CLOUGHESY: Okay. Any other qualifying
15 questions on your part, Mr. Rose?

16 MR. ROSE: No.

17 ALJ CLOUGHESY: Mr. Messing -- you're going to
18 need this, sir, so you just keep that right in front of
19 you.

20 THE WITNESS: Thank you.

21 ALJ CLOUGHESY: And the witness is passed.

22 EXAMINATION BY MR. MESSING:

23 Q. So I take it from what you've stated, that
24 you reviewed this declaration to prepare for your
25 testimony here today?

1 A. Yes.

2 Q. What else did you review to prepare for your
3 testimony today?

4 A. Nothing particular.

5 Q. Anything in specific?

6 A. Not that I can think of.

7 Q. Okay. Now, I want to talk about your duties
8 as a lifeguard permanent. So first of all let's look at
9 page 5. Do you see the list of codes that you -- under
10 line -- paragraph 25, the list of codes that you
11 enforce?

12 A. Yes.

13 Q. Okay. What percentage of the time are you
14 actually enforcing those codes?

15 A. Are you talking actual vehicle stops?

16 ALJ CLOUGHESY: So do you understand the
17 question or --

18 THE WITNESS: I mean, I'm always doing
19 something related to these, but I'm not talking to
20 people, enforcing, writing tickets 100 percent of my
21 day.

22 ALJ CLOUGHESY: All right. I'll let you take
23 it from there, Mr. Messing.

24 MR. MESSING: Okay.

25 BY MR. MESSING:

1 Q. Is part of your job patrol?

2 A. Yes.

3 Q. Okay. And when I say your job, is that
4 through a typical permanent lifeguard?

5 A. Yes.

6 Q. While you're patrolling, you have functions
7 other than enforcing criminal law, correct?

8 A. Correct.

9 Q. You're looking for -- well, why don't you tell
10 me. What other things are you doing while you're out on
11 patrol?

12 A. Protecting cultural, biological, natural
13 resources, doing interpretation when needed. I'm also
14 maintaining the safety in the water by watching swimmers
15 and surfers and people recreating at the beach in
16 general.

17 Q. Okay. And isn't it true that when you're
18 patrolling, you may not be specifically engaged in doing
19 any specific task, but you're looking at both -- all of
20 the categories that you just mentioned, as well as any
21 crimes that might be occurring?

22 A. Correct.

23 Q. So those things are happening simultaneously
24 while you're on patrol?

25 A. Correct.

1 Q. Okay. And the list that you gave of the other
2 functions or duties that you said you perform, what
3 percentage of the time do you actually see something
4 that you have to act on as opposed to just patrolling
5 and generally looking at these issues?

6 A. That is enforcement related or --

7 Q. No. The other. The other list that you gave.
8 Well, let's start with enforcement related. What
9 percentage of the time do you actually get active
10 dealing with an issue which could be criminal?

11 A. I guess it depends on the year. If it's
12 summer, it's 85 percent of the time.

13 Q. 85 percent of the time when you're on -- when
14 you're on patrol, you're out actually arresting people,
15 detaining them and enforcing criminal law?

16 A. Enforcing. Not always arresting.

17 Q. So during that time, you're not dealing with
18 resources and other issues?

19 A. Not as my priority purpose.

20 Q. No. I'm asking if you're actually dealing
21 with them?

22 A. Yeah, when they arise.

23 Q. When they arise. But 85 percent -- I'm not
24 talking about general patrol while you're doing both,
25 you're watching for both. I'm talking about actually

1 getting involved in enforcement issues --

2 MR. ROSE: Objection.

3 Q. -- you say 85 percent of the time?

4 ALJ CLOUGHESY: You know, I'm going to allow
5 it just because I think we do need a little definition,
6 and I think this witness is looking for some cues on
7 narrowing it for Mr. Messing. So overruled.

8 THE WITNESS: Can you repeat the question?

9 BY MR. MESSING:

10 Q. So in enforcement, let's make it easier.
11 We're talking about arresting, detaining --

12 A. Okay.

13 Q. -- investigating. By investigating I mean
14 talking to witnesses, taking witness' statements,
15 serving search warrants. That's what I would be talking
16 about in terms of enforcement.

17 A. Okay. I understand.

18 Q. Now, does that change your answer about 85
19 percent of the time you're on patrol?

20 A. Yes.

21 Q. Okay. So what percentage would be involved in
22 the actual active enforcement as I defined it?

23 A. Would you like me to average it over the year?

24 Q. Yeah, over a year.

25 A. Between 40 and 50 percent.

1 Q. Okay. And what -- and what percentage of the
2 time are you on patrol?

3 A. 75 percent.

4 Q. Okay. So the 40 to 50 percent is 40 to 50
5 percent of the time that you're on patrol?

6 A. No. Overall.

7 Q. Overall. All right. So let's talk about this
8 for a moment. On page 8 are your job duties, so let me
9 -- actually, let's start with that list. What -- what
10 -- how many times a year do you detain a suspect?

11 A. How many times a year?

12 Q. Yes. On the average.

13 A. 70, maybe.

14 Q. Okay.

15 A. Give or take.

16 Q. How many times in a year do you arrest
17 someone, on the average?

18 A. 10 to 20.

19 Q. Is that average for a permanent lifeguard or
20 is that above or below average?

21 A. It's probably about average.

22 Q. Okay. And what are those arrests for, if you
23 can characterize them?

24 A. Drunk in public, DUI, assault, battery,
25 domestic violence, outstanding warrants.

1 Q. Okay. Now, it says you issue citations for
2 infractions and misdemeanors. About how many citations
3 do you issue in a year?

4 A. Probably close to 100. About 100.

5 Q. And what kind of infractions and misdemeanors
6 are you dealing with?

7 A. Anything from dog on beach, which would be a
8 park California Code of Regulations, to vehicle code
9 infractions, seat belts, no insurance, rolling through
10 stop signs, speeding.

11 Q. Okay. I don't remember if I asked you, but
12 the 10 to 20 arrests, is that about average for criminal
13 lifeguard?

14 A. I think it is.

15 Q. And the -- I'm sorry.

16 A. It could be closer to the low end recently
17 because of my different assignments and stuff.

18 Q. Okay. Well, what assignments do you have in
19 mind when you say that?

20 A. Currently I'm helping to maintain our rescue
21 boat, our surf watch rescue boat, so I have been
22 spending time at the dock rather than patrolling in a
23 vehicle in the park.

24 Q. How much time do you spend maintaining the
25 rescue boat now in an average week? What percentage of

1 your time?

2 A. Last week was probably 60 percent.

3 Q. So that's not enforcing the law in any way,
4 correct? When you're talking about maintaining the
5 boat, are you talking about fixing it?

6 A. Right. General facility maintenance, unit
7 maintenance.

8 Q. Okay. I think you mentioned that you manage
9 the seasonal lifeguard program; is that right?

10 A. Well, I'm one of the supervisors, yes, for
11 that.

12 Q. Do you do that now?

13 A. No. They're all gone. It's not summer.

14 Q. As of when?

15 A. Did I stop doing that?

16 Q. Yes.

17 A. October 1st I was downgraded back to rank and
18 file.

19 Q. Okay. So during the period of time that you
20 were managing seasonal lifeguards, first of all what did
21 that entail?

22 A. I am writing and approving their schedules,
23 managing the budget, assisting on first aids, rescues,
24 backing them up if -- I mean the whole aquatic program
25 for one entire beach, basically.

1 Q. Okay. And by the way, you got additional
2 compensation for that, correct?

3 A. Correct.

4 Q. Okay. Do you know how much that was?

5 A. Whatever a LGS-1 is paid.

6 Q. Now, all the -- the duties that you just
7 described, what percentage of the time were you spending
8 on that in October or before October?

9 A. Before October?

10 Q. Yeah.

11 MR. ROSE: Objection. Relevance. He's
12 describing out of class work.

13 ALJ CLOUGHESY: You know, but I'm not sure
14 it's that -- let me ask this preliminary question, if
15 you know. If you don't know, that's fine. How many
16 lifeguard peace officers like you are going to have this
17 sort of shifting assignment, so to speak, where, you
18 know, you find yourself as a lifeguard supervisor and
19 falling back? In a sense, you're seasonal just -- I
20 mean, you have your own seasonal nature to the
21 supervisory job --

22 THE WITNESS: Right.

23 ALJ CLOUGHESY: -- just as seasonal lifeguards
24 do, but I mean, is this a common assignment or, I mean,
25 is this not unusual?

1 THE WITNESS: This year was my first ever
2 doing that, so it was uncommon for me, but there's guys
3 I work with who do it year after year.

4 ALJ CLOUGHESY: Okay.

5 THE WITNESS: Did that help you?

6 ALJ CLOUGHESY: And just -- in your area, I
7 mean, just how many lifeguards work -- is there a
8 certain division that you work out of or -- you're parks
9 and rec, right?

10 THE WITNESS: Correct.

11 ALJ CLOUGHESY: And you work out of a certain
12 headquarter area?

13 THE WITNESS: Right. (Inaudible) state beach
14 is our sector office.

15 ALJ CLOUGHESY: How many lifeguards are in
16 that area?

17 THE WITNESS: Seasonal or permanent?

18 ALJ CLOUGHESY: Peace officer.

19 THE WITNESS: Peace officer, we have -- I
20 think we have 13 with seven vacancies and two -- one or
21 two --

22 ALJ CLOUGHESY: And of those, does the 13
23 include -- those are people that are actively filling
24 those positions? They're not vacancies, correct?

25 THE WITNESS: Those are people that are --

1 ALJ CLOUGHESY: Those are people that are -- I
2 mean, you're talking about 13 -- you're not talking
3 about 13 positions; you're talking about 13 --

4 THE WITNESS: People.

5 ALJ CLOUGHESY: -- people. And of those 13
6 people, how many are doing this somewhat of a transition
7 work as you are with the supervisory duties?

8 THE WITNESS: It varies year to year based on
9 staffing, but I think this summer we had five. Five.

10 ALJ CLOUGHESY: Wow. All right. Proceed, Mr.
11 Messing.

12 BY MR. MESSING:

13 Q. Okay. Can I ask you how many months in the
14 year did you participate in managing the seasonal
15 lifeguards?

16 A. Five months.

17 Q. Okay. Five months. So during that five
18 months, you didn't have very many criminal enforcement
19 functions, correct?

20 A. No. I had a lot. It just wasn't -- I was the
21 second person usually to go in on enforcement contact
22 because the night shift or the day shift was not tasked
23 with managing 60 seasonal lifeguards would be the first
24 point of contact.

25 Q. But all the duties that you -- other than

1 being the second one in, all of the duties that you
2 outlined are non-criminal enforcement duties, the ones
3 that you outlined for what it takes to manage a seasonal
4 lifeguards program. Is that right?

5 A. Can you repeat the question?

6 Q. You listed the duties that you had in managing
7 the seasonal lifeguards program.

8 A. Okay.

9 Q. With the exception of going in as a second
10 person to assist, all the rest were non-criminal
11 enforcement items, correct?

12 A. No. I was still doing some enforcement, but
13 my -- I think it's -- it's a difficult position to
14 understand because besides being police officers and
15 managing a seasonal lifeguard program and doing the
16 patrol and all that stuff, it's a constant juggle and
17 some days I'm the only person at the beach and I have to
18 be the only guy taking a guy to jail or writing a ticket
19 or telling a lady she can't have her dog on the beach,
20 whatever, or I could be the backup officer for the day
21 shift who does not have those aquatic responsibilities
22 --

23 Q. All right. In any event --

24 A. -- than the seasonal lifeguards.

25 Q. I'm sorry. I didn't mean to interrupt the end

1 of your --

2 A. Did that help? I understand it's a confusing
3 juggle of duties.

4 Q. That's fine. It would be fair to say that
5 your criminal law enforcement duties were less when your
6 other duties concerning managing the seasonal lifeguards
7 increased?

8 A. Proportionately, yes.

9 Q. And let me talk about the seasonal lifeguards.
10 Why is it that a permanent lifeguard is placed in charge
11 of the managing the seasonal lifeguards? Will you
12 explain that to Mr. Cloughesy.

13 A. Every summer we have high visitation and we
14 staff -- between our two beaches we have 30 -- 30 to 31
15 lifeguard towers that are on the sand with guards in
16 each tower, and then from there we have trucks that
17 respond to rescues and first aids, and then we have
18 boats that do the same. And there's about 120 seasonal
19 lifeguards and we have divided those up into two groups
20 of 60. Of those, about -- of those 60, let's say, the
21 group that I manage, 50, 51 are entry level seasonal
22 lifeguards and nine -- eight or nine of them are
23 seasonal lifeguard II's. So they write -- they write
24 the schedules. They write the preliminary schedules.
25 They approve schedules, which is they basically

1 supervise and -- I won't say supervise. They guide the
2 seasonal lifeguard I's in the towers. The lifeguard
3 II's are usually the guys in the truck, on the boat,
4 working the dispatch, telling -- dispatching the
5 lifeguards where -- the resources where to go, and then
6 I'm the person that oversees those nine seasonal to II's
7 so that schedules get written fairly, that conflicts get
8 resolved, the II's show up on time and do what they're
9 supposed to do.

10 Q. So when you're -- assuming the function that
11 you describe, you're in the chain of command of the
12 seasonal lifeguards, correct?

13 A. Yes.

14 Q. Okay. And you, obviously, work very closely
15 with the seasonal lifeguards?

16 A. Yes.

17 Q. And isn't it true that the relationship
18 between the seasonal lifeguards and the permanent
19 lifeguards is a close relationship?

20 A. Yeah.

21 Q. They work together closely?

22 A. During the summer, yeah.

23 Q. Okay. Well that's when the seasonals are
24 working, right?

25 A. Right.

1 Q. Okay. Then the seasonals are not peace
2 officers, correct?

3 A. Correct.

4 Q. Okay. Now, you mentioned a variety of things
5 that compose your duties, and one of them is aquatic
6 safety?

7 A. Correct.

8 Q. Okay. And do you consider that an important
9 part of your job?

10 A. Yes.

11 Q. That's obviously not related to criminal
12 enforcement, correct?

13 A. No.

14 Q. When you say no, are you agreeing with me?

15 A. I do agree with you.

16 Q. Okay.

17 A. It would be a rare case I guess that an
18 aquatic issue would arise out of an enforcement issue,
19 but it's happened.

20 Q. Okay. And is aquatic safety, when performed
21 by a permanent lifeguard, performed in the same way as
22 when it is performed by a seasonal lifeguard? Let me go
23 back. I'll withdraw the question. Let's do this.
24 Describe the role in aquatic safety as a permanent
25 lifeguard.

1 A. My role is, as a permanent lifeguard, is
2 year-round water safety aquatic -- aquatic response, and
3 if necessary, I have to take off all my vest and my duty
4 belt and my shoes and lock it in the car and go on a
5 rescue. If I have a seasonal lifeguard available,
6 they'll go first because they're only wearing a pair of
7 red shorts and sandals, but during the winter we don't
8 have that luxury. Due to budget, they don't work during
9 the winter and whatnot. But my -- I am trying to -- am
10 I painting an okay picture of --

11 Q. Let me be more specific.

12 A. Okay.

13 Q. So for example, part of your aquatic response
14 is to patrol and watch the water in case there are
15 people who are in need of assistance who are in the
16 water, right?

17 A. Correct.

18 Q. And a part of your role in aquatic safety
19 might be to demand people come out of the water when
20 there are dangerous conditions, correct?

21 A. Correct.

22 Q. And I would assume that part of your aquatic
23 duties may involving dealing with boaters who are having
24 problems and need assistance?

25 A. Right.

1 Q. Okay. And the way that you respond -- first
2 of all, the way that you observe and -- strike that. So
3 the way that you are performing your job in dealing with
4 those issues is really the same way that seasonal
5 lifeguards perform their job in responding to those
6 issues?

7 A. More or less, yeah.

8 Q. Okay. And did I ask you what percentage of
9 the time during, let's take the summer months, during
10 the summer months your job involves aquatic safety?

11 A. It's a majority of the time during the summer
12 when I'm assigned the seasonal lifeguard program.

13 Q. Okay.

14 A. But when I'm not assigned the seasonal
15 lifeguard program, which I have been the last three
16 years, it's far less.

17 Q. Okay. What about other permanent lifeguards,
18 how would their -- how would the breakdown occur for
19 them in terms of percentage of time during the summer
20 spent on aquatic safety?

21 A. The night shift guys are doing 95 percent
22 enforcement and 5 percent aquatic safety. They are
23 dealing with drunk people at the end of the day, they're
24 fighting over firings and trying to cram two cars in a
25 parking space.

1 Q. I asked you about aquatic safety, no
2 enforcement.

3 A. Okay.

4 Q. So the typical guy during the summer months,
5 what percentage -- is the percentage of time that you
6 spend typical --

7 A. No.

8 Q. -- during the summer months as others?

9 A. No.

10 Q. Is that greater or lesser?

11 A. Mine is greater.

12 Q. Okay. Okay. So what's the sort of the range
13 that we might find of people let's say working days?

14 A. Okay. A day shift, non-aquatic supervisor
15 would be probably 20 percent aquatics at the most.

16 Q. Okay. And at the other end of the range?

17 A. Would be me, I guess.

18 Q. (Inaudible.) Okay. All right. Let's see.

19 A. Do you want the night shift number too or did
20 I --

21 Q. Well you stated the night shift would be far
22 less.

23 A. Okay.

24 Q. We have that testimony. It says in your
25 declaration that you control riots. How many riots have

1 you been at to control?

2 A. Possibly one.

3 Q. Possibly one?

4 A. I don't know how much are -- I am trying to
5 think how many people would justify a riot I guess.

6 Q. Well, did the Department call it a riot
7 whenever the situation --

8 A. No.

9 Q. No. Okay. It says in your declaration that
10 you testify as an expert witness in state and federal
11 courts. Have you been qualified by a state or federal
12 court as an expert witness in a particular area?

13 A. No, but I thought it said I may -- what page
14 is this on?

15 Q. Page 9.

16 A. Page 9.

17 Q. It says, I testify as an expert witness in
18 state and federal courts.

19 A. I can be called upon as an expert witness, but
20 I have not been.

21 Q. Well it says you testified. So you haven't
22 ever been qualified as an expert witness?

23 A. No.

24 Q. Okay. So this declaration is incorrect in
25 that regard?

1 MR. ROSE: Objection. Asked and answered.
2 Argumentative.

3 ALJ CLOUGHESY: Overruled. Let me just take a
4 look at it real quick. What part are you looking at?

5 THE WITNESS: 11.

6 MR. MESSING: Y.

7 ALJ CLOUGHESY: Overruled. You agree that
8 that's incorrect?

9 THE WITNESS: I haven't -- asked to -- I
10 haven't been asked to testify as an expert witness, but
11 I can be. So I don't know --

12 ALJ CLOUGHESY: So the fact that it says, I
13 perform -- it says, I perform the following duties --
14 you haven't performed that duty?

15 THE WITNESS: Not yet.

16 ALJ CLOUGHESY: Okay. Next.

17 BY MR. MESSING:

18 Q. Now, how long did you spend as a non-peace
19 officer lifeguard?

20 A. Nine seasons.

21 Q. And in your experience as both a non-peace
22 officer seasonal and as peace officer permanent
23 lifeguard, how often do seasonal lifeguards work with
24 the permanent lifeguards with regard to the detention or
25 arrest of unruly civilians?

1 A. How often are, like, seasonals on-scene during
2 that?

3 Q. Yeah.

4 A. Zero to 5 percent of the time.

5 Q. So they don't -- you don't initiate some of
6 your activity by a call from a seasonal lifeguard who is
7 trying to deal with somebody who is a --

8 A. They'll call us, but they're not on-scene.
9 They may call us from a tower and say, hey, I saw a guy
10 drinking or I saw a guy doing this; he's over here. And
11 if we need more details, we'll call him later, but
12 otherwise, we go to it and we're the only point of
13 contact.

14 Q. Okay. So what percentage of the time when you
15 are responding to a situation with an unruly civilian is
16 that initiated by a call from a seasonal lifeguard?

17 A. Less than half. 35 percent. 30 percent.

18 Q. Now, when you perform aquatic rescues, most of
19 the time you're working with a seasonal lifeguard; is
20 that right?

21 A. When I'm making aquatic rescues?

22 Q. Yes, when you're performing aquatic rescues.

23 A. They're around, yes.

24 Q. And they're also assisting in the rescue?

25 A. They could be on separate rescues, yeah.

1 Q. Okay. Now, you, as a permanent lifeguard, you
2 have separate seniority status from other employees,
3 correct?

4 A. Correct.

5 Q. Okay. Including the fact that you're separate
6 from non-peace officer lifeguards, correct?

7 A. Correct.

8 Q. And that's something that you agree with,
9 right?

10 A. Yes.

11 Q. Okay. And you're in a separate promotional
12 system than the non-peace officer lifeguards?

13 A. Correct.

14 Q. Okay. In fact, you're in a promotional system
15 that only has lifeguards and park rangers; is that
16 right?

17 A. Yes.

18 Q. Okay. And you agree with that?

19 A. Yes.

20 Q. Is everybody in your chain of command a peace
21 officer within the meaning of the penal code?

22 A. Yes.

23 Q. But below you in the chain of command there
24 are non-peace officers?

25 MR. ROSE: Objection. Vague as to time.

1 ALJ CLOUGHESY: Well, there's only -- in a
2 chain of command as a peace officer, is there anybody
3 below you in the chain of command?

4 THE WITNESS: As a rank and file, no.

5 BY MR. MESSING:

6 Q. Well maybe I misunderstood. Didn't you
7 testify that you're a supervisor of seasonal lifeguards?

8 A. During the five months, yes.

9 Q. Okay. So that's a non-peace officer who's in
10 your chain of command below you?

11 MR. ROSE: Objection. Asked and answered.
12 Argumentative.

13 ALJ CLOUGHESY: Sustained. I mean, during the
14 period of time that you are a -- if you call it --

15 THE WITNESS: Supervisor.

16 ALJ CLOUGHESY: Yeah, TAU or temporary,
17 limited term --

18 THE WITNESS: Limited term. LT.

19 ALJ CLOUGHESY: You do supervise the
20 seasonals?

21 THE WITNESS: Correct.

22 ALJ CLOUGHESY: I and II?

23 THE WITNESS: Correct.

24 ALJ CLOUGHESY: Okay.

25 BY MR. MESSING:

1 Q. Okay. Now, let's see. You say in your
2 declaration, the non-peace officer personnel that you
3 work with who are in unit 7 are the seasonal lifeguards?

4 A. Correct.

5 Q. Okay. Is that all? Are there other unit 7
6 people that you work with?

7 A. As far as I know, it's the seasonal
8 lifeguards. Maybe our dispatchers too, but I'm not
9 sure.

10 Q. You're not sure if you work with them?

11 A. I'm not sure if they're unit 7.

12 Q. Okay.

13 A. I don't work with them. I talk -- I mean,
14 they're on the radio.

15 Q. Okay.

16 A. I've only met a couple of them.

17 Q. Do they perform an important function for you,
18 for example, if you need backup or something of that
19 sort?

20 A. Yes.

21 Q. Okay. Do you ever work -- the dispatchers, do
22 you know if they're employed by the Department of Parks
23 and Recreation?

24 A. They are.

25 Q. Do you know what they're called? What their

1 classification is called?

2 A. No. I don't know the proper name.

3 Dispatcher.

4 Q. How about com operators?

5 A. Com operators, correct.

6 Q. All right. Okay. And now, have you had
7 occasion to have to respond in any way to fires?

8 A. Yes.

9 Q. Okay. And when you do -- how about hazmat
10 spills?

11 A. No, I don't think I have.

12 Q. Or oil spills?

13 A. I don't think I have responded to an oil
14 spill.

15 Q. Well, let's talk about the fires. When you
16 have responded to fires, have you worked with OES
17 coordinators?

18 A. From the fire department?

19 Q. From the Office of Emergency Services.

20 A. I have not have direct contact with them.

21 Q. Okay. Have they been involved in the fires
22 that you responded to, to your knowledge?

23 A. No.

24 Q. By the way, you say that the non-sworn peace
25 officers that you work with work about two and a half

1 months during the summer months on the average?

2 A. Correct.

3 Q. Okay. Are you aware that that is not -- would
4 not be an accurate figure for example of the San Diego
5 area?

6 A. It's different district to district, yes.

7 Q. And then San Diego, they work longer?

8 A. Yes. They have more money.

9 Q. Okay.

10 A. More seasonal money to fund that program.

11 Q. Now, do permanent lifeguards during the two
12 and a half months that you work with the seasonal
13 lifeguards, do they work the same shifts?

14 A. As me? What do you mean do they work --

15 Q. Do seasonal lifeguards work the same shifts as
16 permanent lifeguards?

17 A. No.

18 Q. What shifts do they work?

19 A. They work tower shifts --

20 Q. No, no, no. I'm talking about the time of the
21 shifts.

22 A. They're roughly days, and we have day shifts
23 and night shifts.

24 Q. Is the day shift the same shift by hours for
25 the seasonals as they are for the permanents?

1 A. The starting times are different, but the
2 shifts overlap. Is that what you're asking?

3 Q. Well how many hours a day do they work and how
4 many days a week?

5 A. They work 40 hours a week.

6 Q. How many days?

7 A. Four to five days a week.

8 Q. So are they working four tens or five eights?

9 A. It depends on their availability and their
10 schedules.

11 Q. So they may work both types of shift?

12 A. Correct.

13 Q. And what kind of shift do you work?

14 A. I work -- I was assigned to four ten shifts
15 this summer.

16 Q. Are there permanent lifeguards who work a five
17 eight?

18 A. No.

19 Q. So they all work a four ten?

20 A. Yes.

21 Q. Okay.

22 A. Currently, yes.

23 Q. Is it true that most of the permanent
24 lifeguards started out as seasonals?

25 A. Yes.

1 Q. When a seasonal lifeguard sees a violation and
2 an arrest is made, does the seasonal sign the citation?

3 A. No.

4 Q. The permanent lifeguard does?

5 A. Yes.

6 MR. ROSE: Objection. It assumes facts not in
7 evidence.

8 ALJ CLOUGHESY: That they see it or --

9 MR. ROSE: About a seasonal lifeguard signing
10 or issuing a citation.

11 ALJ CLOUGHESY: This witness is saying it
12 doesn't happen, right?

13 THE WITNESS: No.

14 MR. ROSE: And then Mr. Messing asked him a
15 follow-up question in regard to the same citation issued
16 by a seasonal, I thought is what I heard.

17 MR. MESSING: No. Does the permanent sign it
18 and he said yes. All right. Let's move on.

19 ALJ CLOUGHESY: That wasn't the way I heard
20 it, Mr. Rose.

21 MR. ROSE: Okay.

22 BY MR. MESSING:

23 Q. At times seasonals physically assist
24 permanent lifeguards in making arrests?

25 A. Very, very rarely.

1 Q. But it happens?

2 A. It may be from a report, but I have never seen
3 a seasonal go hands-on or read a suspect his rights or
4 put him in the back of a car. It's usually, hey, that
5 guy's naked over there, go deal with it. And then we'll
6 use that seasonal's statement in our report.

7 Q. Let's talk about your equipment for a moment.
8 Let's see. I think you said that as a -- as a seasonal
9 lifeguard you didn't have a radio. Is that true?

10 A. That I -- what page are you looking at?

11 Q. Hang on a second. Okay. No. I misspoke. As
12 a seasonal lifeguard, you did have a law enforcement
13 radio, correct?

14 A. I didn't have one assigned to me.

15 Q. But did you carry one?

16 A. When I was on duty, it was a park radio, yes.

17 Q. Okay. Same as the radio used by permanent
18 lifeguards?

19 A. At that time, yeah, they were the same.

20 Q. And the seasonal lifeguards monitor the same
21 frequencies that the permanent lifeguards do?

22 A. Some do and some do not.

23 Q. Are they supposed to?

24 A. No. I think they only do it just to get -- I
25 used to do it just to get a jump on 911 calls for

1 medical emergencies.

2 Q. Okay. So if -- as a seasonal, if you were
3 monitoring the calls, you said to get a jump on
4 emergencies, would that be to respond, for example, to
5 give emergency medical care to someone?

6 A. Right. Like if we got word of a possible
7 heart attack or something, we would get the word sooner
8 through the SURCOM -- the -- the com operators would see
9 it first rather than the seasonal dispatcher.

10 Q. Okay. And seasonals have vehicles, as do
11 permanent lifeguards, correct?

12 A. Correct.

13 Q. The vehicles are basically the same?

14 A. No.

15 Q. They're not very similar?

16 A. Not really. The seasonal lifeguard trucks are
17 usually trucks with an open bed and have a rack on top
18 of them with a backboard and a rescue board, whereas the
19 enforcement patrol vehicles are usually SUVs. At my
20 beach we don't have any cars because the -- because of
21 the sand patrol. So we have trucks and SUVs, but those
22 have a blue and a red light and a star, a badge star on
23 the door.

24 Q. And there's no star on the vehicle of the
25 non-sworn?

1 A. Correct. It's just the Department round
2 circle logo that says lifeguard on the side.

3 Q. Are the uniforms similar between the seasonals
4 and the permanents?

5 A. No.

6 Q. They're not? Well there are three types of
7 uniforms, isn't that true?

8 A. Three types of lifeguard uniforms?

9 Q. Yes.

10 A. For me, yeah. I guess there's class As and
11 then class Bs and a field uniform.

12 Q. Well, let's try this. Is there such a thing
13 as a full uniform as opposed to an aquatic uniform?

14 A. Not really. I mean, I'm always wearing --
15 when I wear my full uniform with my Stetson hat and
16 class A jacket, I have -- I'm supposed to have my red
17 trunks underneath.

18 Q. And the red trunks is the aquatic uniform?

19 A. For the seasonal lifeguards. They wear the
20 red trunks and the blue shirt, blue T-shirt.

21 Q. And for the permanent lifeguards?

22 A. That's the -- what you're supposed to wear
23 underneath.

24 Q. The same -- same stuff?

25 A. Right. But on top of that, the permanent

1 lifeguard wears blue pants and a gun belt and a
2 bulletproof vest.

3 Q. Aside from the protective equipment, let's
4 talk about the rest of the uniform. Does the permanent
5 uniform have a patch on it?

6 A. Yes.

7 Q. Okay. And it says Department of Parks and
8 Recreation?

9 A. California State Parks.

10 Q. Okay. California State Parks. And the -- the
11 seasonals also have the same kind of uniform which they
12 may use at times?

13 A. Yes.

14 Q. And it has the same patch?

15 A. Their -- only their jackets have patches.
16 Their T-shirts are the screen print of the logo.

17 Q. Okay. In fact, let me just get to the bottom
18 of this without going through each part of it.

19 A. Yeah. This could take a while.

20 Q. Isn't it true that the uniforms are similar
21 enough -- we're talking about the dress uniforms with
22 the pants and the jacket -- they're similar enough that
23 people actually confuse the peace officer lifeguard with
24 the non-peace officers?

25 A. Sometimes, yes.

1 Q. Okay. One of the functions of lifeguards is
2 to educate the students at school regarding hazards,
3 right?

4 A. At school?

5 Q. Yes.

6 A. It could happen. It's rare.

7 Q. Does it happen in other locations as well?

8 A. Probably. I'm not aware.

9 Q. Okay. Do seasonals or permanent lifeguards
10 perform that function?

11 A. I think both have in the past.

12 Q. What training do you get on interpretive and
13 resource management?

14 A. In the academy we spend four months on all of
15 the law enforcement posts and then two months on
16 resource management and park operations.

17 Q. Is there any continuing training regarding
18 interpretive and resource management once you're on the
19 job?

20 A. Not so much at my beach, at my work location.

21 Q. Well then it sounds like there are other
22 places where that is trained?

23 A. I would -- I think there is.

24 Q. Okay. What about -- do you know where?

25 A. No.

1 Q. How about training on community relations?

2 Did you get that?

3 A. I think we do a community-oriented policing
4 video every couple of years.

5 Q. Okay.

6 A. I don't know what the interval is.

7 Q. What percentage of the time do you think
8 you're involved in community relations?

9 A. Hopefully a lot.

10 MR. ROSE: Objection as to community
11 relations.

12 ALJ CLOUGHESY: What's your understanding of
13 community relations?

14 THE WITNESS: Waving at the public and being
15 friendly while patrolling.

16 ALJ CLOUGHESY: All right.

17 THE WITNESS: Maintaining relations with the
18 community.

19 BY MR. MESSING:

20 Q. Now, let's go to the last page of your
21 declaration -- it's page 15 -- for a moment. In the
22 first paragraph, 93, you say that in here that you
23 participate in the hearing in front of the state
24 personnel board regarding the creation of an
25 intermittent position for seasonal lifeguards.

1 A. Correct.

2 Q. Okay. Now, so as a result of that hearing,
3 the permanent intermittent position was created for a
4 six month trial period?

5 A. It was my understanding it was a year trial
6 period.

7 Q. Okay. Were you aware that there was a
8 subsequent hearing on this matter where the position
9 became permanent?

10 MR. ROSE: Objection. Assumes facts not in
11 evidence.

12 ALJ CLOUGHESY: Just were you aware of any
13 subsequent hearing on this matter?

14 THE WITNESS: No.

15 ALJ CLOUGHESY: Next.

16 BY MR. MESSING:

17 Q. Were you aware by any means that the position
18 became permanent?

19 A. I knew they had filled a couple of positions,
20 but I assume they were on a temporary -- they were part
21 of the year trial period. I did not know that they were
22 -- until now that they're permanent positions.

23 Q. Now, we spoke about the fact that aquatic
24 functions are basically non-criminal enforcement
25 functions and that you feel that that's an important

1 part of the job. So in your declaration, is it true
2 that you're complaining about the possibility of
3 decreasing the aquatic functions of your job?

4 A. In this complaint or in my complaint against
5 the --

6 Q. In your --

7 A. (Inaudible.)

8 Q. In your declaration are you complaining about
9 the possibility of losing that function?

10 A. I was concerned about it at -- a year and a
11 half ago when all this -- this non-badge permanent
12 intermittent lifeguard position came up.

13 Q. Okay. So at that time, though, you were
14 concerned about losing those functions because you felt
15 that they were so important to the job?

16 A. Correct.

17 Q. And these are non-peace officer functions?

18 A. Correct.

19 Q. Okay. And back in 2005 or 2006, there was
20 language created to give up to ten seasonals health
21 insurance. Do you remember that?

22 A. Yeah.

23 Q. Okay. And CSLEA attempted to get some
24 seasonal lifeguards health benefits through other means
25 before agreeing to the creation of the permanent

1 intermittent lifeguard classification, right?

2 MR. ROSE: Objection. (Inaudible.)

3 ALJ CLOUGHESY: I agree. You're stating it as
4 if it's fact.

5 MR. MESSING: This is cross-examination. It's
6 yes or no.

7 ALJ CLOUGHESY: No. You're stating something
8 as if you're testifying --

9 BY MR. MESSING:

10 Q. Do you agree that -- do you -- I'll put it
11 this way. Do you recollect that CSLEA attempted to get
12 some seasonal lifeguards health benefits through other
13 means before agreeing to create the permanent
14 intermittent lifeguard classification?

15 A. No.

16 Q. You don't remember that?

17 MR. ROSE: Objection. Asked and answered.

18 ALJ CLOUGHESY: Sustained.

19 MR. MESSING: Okay.

20 BY MR. MESSING:

21 Q. Do you remember CSLEA represent -- hang on
22 one second.

23 ALJ CLOUGHESY: We're still on the record. So
24 we're ready when you are, Mr. Messing.

25 BY MR. MESSING:

1 Q. Okay. Did you at any time object to seasonals
2 getting health benefits?

3 A. No.

4 Q. Were there people who you work with who were
5 permanent lifeguards who were concerned about seasonals
6 getting health benefits?

7 A. No. I think most of the guys I worked with
8 wanted the best for our staff.

9 Q. So was there an objection to the -- to the
10 seasonals getting health benefits by becoming -- by
11 allowing them to become permanent intermittents?

12 A. The objection was with the creation of the
13 position, not the health benefits.

14 Q. What was the objection then to the
15 establishment of the permanent intermittent positions?

16 A. The objection was that we, the permanent
17 lifeguards, the badged permanent lifeguards, felt that
18 if the Department were to adopt this new position or
19 create this new position, that our -- the badged
20 permanent lifeguards would be forced out of the aquatic
21 function of their job, which we all love. If I wanted
22 to be just a police officer, I would have done that, but
23 I wanted to be a lifeguard, so that's why I became a
24 permanent lifeguard.

25 Q. Okay. So CSLEA -- isn't it so that CSLEA

1 tried to address the concerns of the lifeguards about
2 the loss of the aquatic functions?

3 MR. ROSE: Objection. Vague as to lifeguard.

4 MR. MESSING: Permanent lifeguards.

5 ALJ CLOUGHESY: Sustained. Okay.

6 THE WITNESS: Can you rephrase that?

7 BY MR. MESSING:

8 Q. Isn't it true that CSLEA tried to address the
9 concerns of the permanent lifeguards about the removal
10 of the aquatic functions as a result of the
11 establishment of a PI class?

12 A. They met with us once, but they did not seem
13 to be too concerned about -- I think they understood our
14 objections, but they did not agree and decided to
15 support the seasonal lifeguards.

16 Q. So isn't it true that the chief counsel of
17 CSLEA flew down to Huntington Beach to meet with you
18 personally regarding this issue and to address your
19 concerns?

20 A. Who is the chief counsel?

21 Q. Kasey Clark.

22 A. Oh, yeah, he was there.

23 Q. He was there. Okay. And isn't it true that
24 the aquatic functions of your job were not diminished as
25 a result of the actions of creating the PI position?

1 A. I can't answer that because we don't have one
2 where I work.

3 Q. Are you aware of anywhere in the state -- well
4 first of all let me go back for a moment. You are a --
5 are you familiar with the issues concerning lifeguards
6 throughout the state?

7 A. Am I aware of the issues?

8 Q. Labor issues that are raised by the
9 lifeguards, permanent lifeguards throughout the state?

10 A. I know a heck of a lot of guys that don't like
11 the position, that don't want it.

12 Q. My question is are you generally aware of
13 issues that arise throughout the state that are of labor
14 concerns about wages, hours and other terms of
15 conditions of employment in other parts of the state
16 other than the one in which you work?

17 A. A little bit.

18 Q. Have you ever heard anyone say that the
19 aquatic functions of their positions were reduced as a
20 result of the creation of the PI positions?

21 A. Not -- no.

22 Q. Oh, and in fact in your case, when you became
23 the supervisor of the seasonal lifeguards, your aquatic
24 functions actually increased. Isn't that true?

25 A. Yeah, because I was in charge of seasonal

1 lifeguards. But that had nothing to do -- I mean, can I
2 clarify --

3 Q. No. There's no question pending at this
4 point.

5 MR. ROSE: Objection. I would ask that the
6 witness be allowed to answer the question --

7 ALJ CLOUGHESY: Negative, sir. Next question.

8 BY MR. MESSING:

9 Q. Are you aware anywhere in the state of a
10 reduction in positions of permanent lifeguards due to
11 the creation of permanent intermittent lifeguards?

12 A. Not that I know of, but I believe -- I think
13 there's only two of these positions that exist. I think
14 there's one in -- there might be one in Santa Barbara
15 and there might be one in Los Angeles, and I think
16 they're assigned to junior lifeguard coordinator duties.
17 So I don't --

18 ALJ CLOUGHESY: Only answer the way you know.
19 If you don't know, I mean, you can say that. That's not
20 a problem.

21 THE WITNESS: Okay.

22 BY MR. MESSING:

23 Q. So let me put it this way. So is the answer
24 no, that you're not aware of anyplace where there's been
25 a reduction based on the creation of these positions?

1 Yes or no?

2 A. I guess not.

3 Q. Okay. Thank you. Just one other -- a couple
4 of other things and then I'll be done. Let's see here.
5 Since 2007, are you aware that permanent lifeguards have
6 gotten up to a 25 percent pay increase?

7 A. I have heard about it.

8 Q. So you haven't received any pay increases in
9 that period of time?

10 A. I guess I have.

11 Q. And would it be the 25 percent that CAUSE
12 negotiated between January of 2007 and 2009?

13 A. I don't believe my personal paycheck has gone
14 up 25 percent. I think it's a bunch of steps or
15 something.

16 Q. Okay. Are you mid range or are you at the top
17 of the range?

18 A. I'm mid range, I believe.

19 Q. So do you know that there are steps that have
20 been added?

21 A. Yeah. I heard something about that. I don't
22 really understand --

23 Q. Okay.

24 A. -- how many steps that is.

25 Q. Okay.

1 MR. MESSING: No further questions at this
2 time.

3 ALJ CLOUGHESY: Ms. Truong.

4 EXAMINATION BY MS. TRUONG:

5 Q. Directing your attention to page 2 of your
6 declaration, paragraph 10. You state that you perform
7 -- excuse me. Your authority as a peace officer extends
8 anyplace in the state for purposes of performing my
9 primary duty. Can you explain what you mean by primary
10 duty?

11 A. My primary duty is public safety, which could
12 include enforcement activities as well as -- well in
13 this case, in paragraph 10, it's enforcement of
14 activities.

15 Q. And do you also perform aquatic functions? Is
16 that what you stated previously?

17 A. Yes.

18 Q. You stated earlier that seasonal lifeguards
19 are assigned towers. Are seasonal --

20 ALJ CLOUGHESY: I'm sorry. You nodded, but
21 that's a yes?

22 THE WITNESS: Yes.

23 ALJ CLOUGHESY: Okay. This is all I have
24 here.

25 THE WITNESS: Okay.

1 BY MS. TRUONG:

2 Q. So seasonal lifeguards are only assigned to
3 towers. They do not do patrol on the beach?

4 A. Some of them do do patrol.

5 Q. Okay. And while they're up in their tower,
6 I'm assuming they're looking for people in distress in
7 the water?

8 A. Correct.

9 Q. Okay. If -- do they also patrol or do they
10 also keep eyes on, so to speak, the beach area as well?

11 A. Yeah.

12 Q. When they see criminal activity taking place,
13 do they leave the towers?

14 A. No. They call it in.

15 Q. So for instance as an example, if a fight was
16 taking place, they would simply stay in the tower and
17 watch until you guys arrived?

18 A. Correct.

19 Q. Is that because that's what they have been
20 told to do or --

21 A. Yeah. They're -- I mean, they're just wearing
22 a pair of red shorts and --

23 Q. So they don't do any intervening?

24 A. No. No. I mean, it's for their own safety.

25 I mean, they know it and we tell them that -- with any

1 situation, if you're not safe doing anything -- if
2 you're not safe, it's your safety first. You don't
3 proceed whether it's a rescue or a simple, hey, you
4 can't have your dog on the beach.

5 Q. Okay. So then also when they're doing -- you
6 said some of them patrol on the beach?

7 A. Some patrol in aquatic vehicles.

8 Q. So when they're on the aquatic vehicles or --
9 excuse me. Would that be jet skis or?

10 A. No. It's just a normal 4X4 truck.

11 Q. Excuse me. I'm sorry. So it's an actual
12 vehicle on the beach?

13 A. It's a vehicle on the beach.

14 Q. Okay.

15 A. And they respond to rescues. Whenever a tower
16 guard leaves his tower to go on a rescue and pull people
17 in from a rip current, we have to backfill that tower
18 immediately because there's so many people and so many
19 danger spots that we need his eyes essentially replaced
20 on that tower, so a vehicle filled by a seasonal
21 lifeguard will pull up to that tower, get out of the
22 truck, walk up the tower and maintain watching the water
23 while he's -- while the tower guard is performing his
24 rescue or finishing his rescue.

25 Q. Okay. You stated your time as a supervisor

1 during the seasonal months, it ended October 1st?

2 A. Uh-huh.

3 Q. When did it begin?

4 A. May 1st.

5 Q. May 1st. Directing your attention to --
6 directing your attention to page 11, paragraph -- yeah,
7 paragraph 54. And I believe your testimony you have
8 stated here today is that the seasonals only work about
9 two and a half months out of the year; is that correct?

10 A. Yeah. It may be on -- it may be two and three
11 quarters. We have some guys that come a little bit
12 preseason and leave a bit post-season, but a majority of
13 our staff is just between June 15th and Labor Day.

14 Q. So what do you do as a supervisor between that
15 time before your seasonals come on, say between May 1st,
16 2008 to June 15th?

17 A. Prepping the beach for summer, ordering
18 supplies, stocking towers. Everything aquatic oriented
19 that needs to be done so when these guys do come to
20 work, they have everything they need and all the
21 supplies are ready and the trucks work.

22 Q. Okay. How about then after you said Labor Day
23 and they're done, the seasonals, that's basically when
24 their shifts end?

25 A. Yeah. Most of them go back to school and we

1 run out of all our money, basically.

2 Q. Okay. So then what do you do from the day
3 after Labor Day until October 1st as a supervisor?

4 A. I'm usually removing, helping to remove the
5 stuff from the towers. It's like a massive cleanup. We
6 inventory all our supplies and it's a -- the garage
7 looks like a war zone so we're trying to organize and
8 get ready, and then I try to go on vacation.

9 MS. TRUONG: Can we go off the record for a
10 moment?

11 ALJ CLOUGHESY: Yes. Off the record.

12 (A brief pause transpired.)

13 ALJ CLOUGHESY: Back on the record. Further
14 questions for the employer?

15 MS. TRUONG: I just have a couple more
16 questions.

17 CONTINUED EXAMINATION BY MS. TRUONG:

18 Q. Looking at page 7 of your declaration, you
19 state that you operate a DMV (inaudible) marked
20 motorcycle. How often are you called to operate a
21 marked motorcycle?

22 A. I have not been.

23 Q. But you do use an all-terrain vehicle?

24 A. Sometimes, yes.

25 Q. And you also state in paragraph 37 that you

1 patrol on horseback. Have you ever patrolled on
2 horseback?

3 A. No.

4 Q. Have you ever patrolled on a bicycle?

5 A. Yes.

6 Q. How often do you do that?

7 A. I have done that probably four times.

8 Q. Throughout your career as a lifeguard, as a
9 peace officer lifeguard?

10 A. Correct. And that was within the first two
11 years because we had a full staff and we couldn't afford
12 that. I'm sorry. There was enough -- we had so many
13 people working that there weren't enough vehicles to
14 patrol, so the low guys got the bike.

15 Q. And then you also state that you may be called
16 upon to patrol on skis?

17 A. I have not done that.

18 Q. Is that in reference to water skis or jet
19 skis?

20 A. I believe the state park peace officers in
21 like the Tahoe area patrol on skis sometimes like back
22 country, cross-country.

23 Q. But you yourself have not?

24 A. No, I have not.

25 Q. And have you ever been on patrol in a

1 helicopter?

2 A. Yes.

3 Q. How often have you done that?

4 A. Once patrol and once training.

5 Q. And have you ever patrolled with a trained
6 canine?

7 A. Yes.

8 Q. Were you the handler?

9 A. No.

10 Q. And how often did you patrol with a trained
11 canine?

12 A. That was just one time. Twice. I'm sorry.

13 MS. TRUONG: No further questions, Your Honor.

14 ALJ CLOUGHESY: Mr. Rose.

15 EXAMINATION BY MR. ROSE:

16 Q. I'm looking again at page 7 of your
17 declaration. Mr. Gates, when you were a seasonal
18 lifeguard, did you ever patrol by bicycle?

19 A. No.

20 Q. When you were a seasonal lifeguard, did you
21 ever patrol via helicopter?

22 A. No.

23 Q. Were you ever trained to patrol via helicopter
24 while a seasonal lifeguard?

25 A. No.

1 Q. While a seasonal lifeguard, did you ever
2 patrol or become involved with -- excuse me. Did you
3 ever patrol with a canine?

4 A. No.

5 Q. Were you ever a canine handler as a seasonal
6 lifeguard?

7 A. No.

8 Q. As a seasonal lifeguard were you ever trained
9 in the use of force?

10 A. No.

11 Q. You mentioned you received training as a peace
12 officer lifeguard and interpretive -- what is it called?
13 I'm sorry.

14 A. Resource management. Is that what we were
15 talking about?

16 Q. Temporary resource management?

17 A. Yeah.

18 Q. Did you train in that as a seasonal lifeguard?

19 A. No.

20 Q. Is that one of your duties as a seasonal
21 lifeguard?

22 A. I believe by the Mission it is, but we don't
23 do a lot of it in Huntington Beach.

24 Q. Did you ever do it as a seasonal lifeguard
25 though?

1 A. I think I -- I think I did once by throwing an
2 orange into the ocean to watch the way the current
3 carried the ocean (ph) because we were having pollution
4 problems, beach closure due to high bacteria, so the
5 scientists that were doing the study asked the
6 lifeguards to throw an orange every day at certain tides
7 to monitor the current.

8 ALJ CLOUGHESY: We learn new things every day
9 about state service. Okay.

10 BY MR. ROSE:

11 Q. We spoke of patrolling by seasonal
12 lifeguards. What percentage of the time do seasonal
13 lifeguards patrol in a vehicle?

14 A. The seasonal lifeguards that are the II's, the
15 seasonal lifeguard II's, they patrol -- they usually are
16 patrolling in the truck. That's mostly their function.
17 So they're in there 75 percent of the time. The
18 seasonal lifeguard I's are 95 percent in a tower
19 stationary, sitting there watching the water for eight
20 to ten hours.

21 Q. So as a peace officer lifeguard during the
22 summer months, what -- and not as a supervisor by the
23 way, what percentage of time are you in a tower
24 stationary watching the water?

25 A. Zero.

1 Q. As a seasonal -- excuse me. As a peace
2 officer lifeguard not during the summer months, not as a
3 supervisor, what percentage of the time are you in a
4 tower stationary watching the water?

5 A. Zero.

6 Q. There was a series of questions about your job
7 duties as a -- managing the aquatics program for
8 seasonal lifeguards. Do you remember all those
9 questions? Not specifically, but do you remember we
10 talked about that?

11 A. Right.

12 Q. And I believe you used the term aquatic
13 supervisor?

14 A. Right.

15 Q. As a -- as an aquatic supervisor, are you
16 functioning as a state park peace officer lifeguard?

17 A. Yes.

18 Q. Let me ask you to turn to your declaration.
19 At page 14, paragraph 88, lines 24 and 25.

20 A. Okay.

21 Q. It reads, I am not currently represented
22 because I was promoted in May 2008 to lifeguard
23 supervisor I lieutenant. Do you see that?

24 A. Yes.

25 Q. Can you explain why you would not be

1 represented by CSLEA because you were promoted in May
2 2008 to lifeguard supervisor I lieutenant?

3 A. In -- I think May 1st, 2008 I was promoted as
4 a lifeguard supervisor I. We call them LTs where I
5 work. And once you promote out of the rank and file
6 classification, you're no longer represented by CSLEA.
7 So I had to call and tell them that I was being upgraded
8 and I was -- from May 1st until October 1st I was not
9 paying CSLEA dues.

10 Q. And did that time coincide with your role as
11 aquatic supervisor?

12 A. Yes. From May 1st to October 1st.

13 Q. And how many times did you say you served in
14 that upgraded role?

15 A. This was my first summer ever doing that. My
16 first time ever doing that.

17 Q. You said that there were five others in your
18 working area that have had a similar experience per
19 year?

20 A. Correct.

21 Q. Are those five others, to your knowledge, also
22 upgraded to LT or to lifeguard supervisor I lieutenant?

23 A. Yes.

24 Q. Is it -- so are state park peace officer
25 lifeguards who are not upgraded to lifeguard supervisor

1 I lieutenant, do they serve as aquatics supervisors?

2 A. No. They're just regular rank and file
3 enforcement patrol at that point.

4 Q. Do you work with other law enforcement
5 agencies as a state park peace officer lifeguard?

6 A. Yes.

7 Q. What other law enforcement agencies?

8 A. I work -- I work in the City of Huntington
9 Beach or within the City of Huntington Beach, so we
10 respond often with the Huntington Beach Police
11 Department and Orange County Sheriffs to manage -- do
12 the enforcement for the county beach right next to us,
13 so we often go on calls all together.

14 Q. When was the last time you went on a call with
15 either Orange County Sheriff or Huntington Beach Police
16 Department?

17 A. On Friday we had a call about suicide bomb
18 threat. A guy wanted to blow up his motor home using
19 the propane tanks inside with him inside also.

20 Q. If it was summertime and you received such a
21 call, would you have invited some seasonal lifeguards to
22 come with you on that call?

23 A. No. Maybe to hold a perimeter on the bike
24 path or something, but we wouldn't have let them be
25 anywhere near.

1 Q. What would they have been wearing holding the
2 perimeter on the bike path?

3 A. A pair of red shorts.

4 Q. What about footwear?

5 A. Hopefully sandals.

6 Q. Would they have been confused with you as a
7 peace officer by the public?

8 MR. MESSING: Objection. Leading.

9 ALJ CLOUGHESY: Overruled. Go ahead.

10 THE WITNESS: The public would -- at that
11 point the public would be able to tell the difference
12 between the seasonal lifeguard and the permanent
13 lifeguard because during the summer, the permanent
14 lifeguard -- well, year-round we're all wearing our duty
15 belt and vest and a blue out -- a blue uniform with
16 patches and a hard badge, whereas the seasonal lifeguard
17 is usually just wearing a -- maybe a T-shirt, but
18 they're always wearing their red shorts and footwear
19 sandals. So it would be pretty hard to confuse us.

20 BY MR. ROSE:

21 Q. What percentage of the time do seasonal
22 lifeguards wear a full uniform, long pants and a shirt,
23 as compared to red shorts and flip-flops?

24 A. They're only required to wear blue during the
25 two meetings we have every year. And so I think that's

1 16 hours. And if each of them work full time for two
2 and a half months, I mean, that's maybe 5 percent of
3 their total summer time -- maybe less than that they're
4 wearing shoes and pants.

5 Q. Going back to the lifeguard supervisor I
6 lieutenant period time from May to October '08, you
7 received -- you were asked if you received additional
8 compensation -- or maybe you weren't. Did you receive
9 additional compensation during that period?

10 A. Yes.

11 Q. Why?

12 A. Because I am now in a managerial position and
13 a supervisor overlooking the 60 seasonal lifeguards that
14 are aged 16 to 40, I guess.

15 Q. Is there a name for the kind of pay that you
16 receive while serving in that capacity?

17 ALJ CLOUGHESY: You know, he's testified he's
18 a limited term appointed, so he gets paid the
19 classification.

20 THE WITNESS: Right. The lifeguard
21 supervisor.

22 ALJ CLOUGHESY: (Inaudible.) It's an
23 appointment.

24 BY MR. ROSE:

25 Q. You were asked about whether or not you

1 control riots, and you said possibly one but you weren't
2 sure whether it would justify a riot. Do you remember
3 that?

4 A. Yes.

5 Q. How many people were involved in that
6 circumstance?

7 MR. MESSING: Object. Lack of foundation,
8 that circumstance.

9 ALJ CLOUGHESY: Try not to lead, but do you
10 remember when you said possibly --

11 THE WITNESS: Yes.

12 ALJ CLOUGHESY: -- in regards to the riot.
13 What were you referring to?

14 THE WITNESS: We had a call of a large fight
15 by a restroom at night, and when we got there, you could
16 tell something had happened because the -- the group had
17 gone hollow. I mean, there were probably 70 or 80 kids
18 and they were obviously fighting, but they had created a
19 hole in the middle and they were slowly backing away,
20 especially when our lights came on to them and we
21 started PAing that this is an unlawful assembly, you
22 guys need to disburse, police are on their way, more
23 units are coming, you will be arrested or cited. And
24 you could tell that they didn't want to go, but they --
25 I mean, it wasn't a riot where cars were being lit on

1 fire and overturned, but there was definitely a fight
2 with a lot of people involved.

3 BY MR. ROSE:

4 Q. You said police were on the way. Why did you
5 say that?

6 A. Because at night they can't see -- I mean, all
7 they see is headlights, and so we were -- I think I
8 actually turned on my overhead red and blues to
9 basically give the impression there were more of us
10 working than there were. There was only, I think, two
11 or three permanent lifeguards on that night, and so we
12 also showed up right at that time and made it look like
13 we were on it and more people were coming so that they
14 wouldn't think about pulling anything on us; that they
15 would be encouraged to leave, I guess.

16 Q. What time of year was that?

17 A. It was summer.

18 Q. Did you request any additional assistance at
19 that call?

20 A. No. They -- they ended up -- they went
21 slowly, but they moved. They left.

22 Q. When you were a seasonal lifeguard, did you
23 ever issue any citations?

24 A. No.

25 Q. There was some questions about radios. Do you

1 remember that?

2 A. Yes.

3 Q. Is the radio that you carry now the same or
4 different than radios carried by seasonal lifeguards?

5 A. They are different.

6 Q. How are they different?

7 A. Mine is a county law enforcement -- Orange
8 County programmed law enforcement trunk and encrypted
9 900 or 800 mega hertz radio that only law enforcement
10 personnel are allowed to carry. Our seasonal lifeguards
11 just carry the basic Motorola that's non-encrypted.
12 It's non-trunked. It's just a simple radio frequency
13 that they use to talk from the boat, the truck, and our
14 little dispatcher tower within just the park unit about
15 aquatic and medical stuff. And when I -- I work on
16 monitoring all kinds of channels, but my radio on my hip
17 is a county law enforcement radio.

18 Q. What other law -- well, strike that. Are you
19 able to reach anyone other than seasonal lifeguards on
20 your -- the radio that's issued to you?

21 A. I can reach anyone in Orange County, whether
22 it's the sheriffs or fire or Huntington Beach PD or
23 Newport Beach. I can talk to anybody in the county.

24 Q. Who can seasonal lifeguards reach on their --
25 can the seasonal lifeguards reach those folks on their

1 radios?

2 A. No.

3 Q. Would the seasonal lifeguards be authorized to
4 use your radio to contact those -- the agencies you just
5 listed?

6 MR. MESSING: Object. Vague and ambiguous.

7 ALJ CLOUGHESY: I don't see how that's vague
8 or ambiguous.

9 MR. MESSING: Well, he's asking if seasonal
10 lifeguards can use his radio. Is he saying do they come
11 and take his radio from him? I'm not -- I don't
12 understand that at all. Lacks foundation I guess.

13 ALJ CLOUGHESY: All right. Have you ever -- I
14 mean, have you ever lent your radio to a seasonal to
15 use?

16 THE WITNESS: Yes, but I wasn't supposed to, I
17 guess.

18 ALJ CLOUGHESY: Okay. All right. We won't
19 get into another (inaudible) issue. Let's move on.

20 THE WITNESS: We were running -- we ran out of
21 radios and one of my most senior seasonal II's, the guy
22 who was going through the process to become a permanent
23 lifeguard, needed a radio and I lent him mine for -- I
24 lent him mine for about an hour of the day.

25 ALJ CLOUGHESY: All right.

1 THE WITNESS: Sorry.

2 BY MR. ROSE:

3 Q. How did you learn you weren't supposed to?

4 A. When we were issued the radios, we were told
5 this is only law enforcement purposes. So when I lent
6 this guy the radio, I said, do not change the channel;
7 you're supposed to be on this park frequency only; I
8 know you won't change it.

9 Q. You said you have a Stetson hat?

10 A. Yes.

11 Q. Did you have one of those when you were
12 seasonal?

13 A. No.

14 Q. Do the seasonals have those now?

15 A. No.

16 Q. At one point you were asked a question by
17 counsel for CSLEA. I would like to clarify it, but you
18 were not permitted to. I would like you to clarify now
19 what you were trying to say.

20 MR. MESSING: Well. Object. What was the
21 question?

22 ALJ CLOUGHESY: Sustained. I need a question.

23 BY MR. ROSE:

24 Q. Well, there was a series of questions
25 concerning the intermittent -- permanent intermittent

1 position. Do you remember those line -- that line of
2 questioning?

3 A. Yes.

4 ALJ CLOUGHESY: The question would be, what
5 were you going to say. I mean, that's a question. What
6 were you going to say, sir.

7 BY MR. ROSE:

8 Q. During that series of questioning, you were
9 going to say something further and were not permitted
10 to. What were you going to say?

11 A. If you remember the question --

12 ALJ CLOUGHESY: Okay. You don't remember that
13 one?

14 THE WITNESS: I don't know if I -- if that --
15 what I wanted to get out came out later or not. I can't
16 remember --

17 ALJ CLOUGHESY: Fair enough.

18 THE WITNESS: -- if I scratched that issue or
19 not. I can't remember. If it comes up, I'll --

20 BY MR. ROSE:

21 Q. Well, let's go that issue, the issue of
22 permanent intermittent, which you talked about earlier
23 already. I'm looking at page 15 of your declaration.
24 Paragraph 90. Paragraph 90 says -- and I'm reading --
25 CSLEA represented the non-sworn seasonal lifeguards in

1 obtaining permanent intermittent employee status with
2 the State of California (inaudible.) Do you see that?

3 A. Yes.

4 Q. How did you learn that that was so?

5 A. At the meeting we had at Huntington State
6 Beach with CSLEA's personnel and a bunch of permanent
7 lifeguards, they -- at the end of the meeting, it was
8 determined that they were going to support and go
9 through with pushing the Department for the creation of
10 this new position which would enable the seasonal
11 lifeguards to get health benefits.

12 And after we spent some time talking about the
13 issues and the threat to our job as permanent
14 lifeguards. We all left the room knowing that CSLEA was
15 essentially siding with the seasonal lifeguards rather
16 than me, so I -- I -- we all felt, and we talked about
17 it extensively, that CSLEA didn't have our best interest
18 in mind or they weren't, at least, representing us
19 fairly or it wasn't possible to represent us fairly, I
20 guess, because they had two separate affiliates that
21 wanted two separate things and they were unable to make
22 both of us happy.

23 Q. When you say we all felt, who are you
24 referring to?

25 A. The permanent lifeguards that I work with.

1 The badged permanent lifeguards that I work with.

2 Q. At the time of the meeting, are you aware of
3 whether there was already any agreement in place or not?

4 A. With --

5 Q. Between CSLEA and the State, for example,
6 concerning the permanent intermittent employee status.

7 A. There was -- I think at that point there was
8 the object in the contract that said the Department
9 shall give up to ten seasonal employees health benefits,
10 but it wasn't determined that they -- I guess it wasn't
11 discovered yet that they were going to have to create
12 this new permanent intermittent position to get health
13 benefits to them.

14 Q. Did the meeting take place before or after
15 CSLEA reached an agreement with the DPA?

16 ALJ CLOUGHESY: If you know.

17 THE WITNESS: Well, it was already in the
18 contract, so it was -- I had never even -- I didn't know
19 this was in the contract until this issue came up, and
20 then the issue came up, we fought it, we tried to fight
21 it, and then it went to the state personnel board down
22 in San Diego. And I went to a meeting and voiced my
23 concerns, along with another (inaudible.) We went down
24 there and voiced our concerns, and that's when it was my
25 understanding that the state personnel board understood

1 that it was a contractual issue that the Department had
2 to follow through on and was something that the
3 permanent lifeguards didn't want. The Department didn't
4 even want. It was kind of a seasonal lifeguard's goal
5 to get health benefits without becoming a cop.

6 BY MR. ROSE:

7 Q. In speaking with anyone else, any of the peace
8 officer lifeguards, did you learn whether or not CSLEA
9 contacted anyone in your group for (inaudible) provision
10 of the contract?

11 A. No. I didn't talk to anyone that was aware of
12 it until I -- there were a lot of guys that I was
13 breaking the news to. I had to educate myself quickly
14 as to what this was about, what the origin of it was
15 because I had so many people saying what -- I have never
16 heard of it, is this possible, where did it come from.

17 Q. You gave an estimate I believe -- and correct
18 me if I'm wrong. I'm just trying to refresh your
19 memory, not to put words in your mouth. You were asked
20 about active enforcement. That was the term that was
21 used by the attorney for CSLEA, and then there was a
22 list of things such as witness statements and so on.
23 And I believe your estimate was 40 to 50 percent active
24 enforcement overall. Is that -- does that refresh your
25 memory? Is that correct or incorrect?

1 A. I think it's -- it's probably pretty close to
2 correct because throughout the year we have our seasons,
3 whereas the summer is really busy --

4 Q. Well I didn't mean -- I mean whether that was
5 correct that that was your answer?

6 A. Oh, yes.

7 Q. What other job duties do you have in your job
8 as a seasonal -- excuse me -- as a peace officer
9 lifeguard that comprise 40 to 50 percent of your -- you
10 know, of your job? Is there a single duty? For
11 example, you said active enforcement, 40 to 50 percent.
12 Is there another duty that consumes 40 to 50 percent of
13 your time that you can --

14 A. Like the remaining percentage of my time?

15 Q. Well, no. Just another large duty.

16 A. No. That's the biggest duty I have, I guess.

17 Q. Okay.

18 MR. ROSE: One moment.

19 ALJ CLOUGHESY: Off the record.

20 (A brief pause transpired.)

21 MR. ROSE: Nothing further.

22 ALJ CLOUGHESY: All right. We're back on the
23 record. Nothing further on redirect. Mr. Messing?

24 MR. MESSING: Just a few things.

25 EXAMINATION BY MR. MESSING:

1 Q. First, on the issue of the radios, does
2 dispatch keep track of the location of seasonal and
3 permanent lifeguards to see how they're deployed in case
4 of an emergency?

5 A. No.

6 Q. They don't. Okay. So --

7 A. Are you talking -- I'm sorry. Are you talking
8 like through, like, GPS where they can see on a map
9 where the trucks are?

10 Q. Either GPS or, you know, through verbal
11 contact through radios.

12 A. They do -- dispatch will do status checks once
13 in a while and ask.

14 Q. Okay. So that will help them know who can be
15 deployed to a particular location if there's a need?

16 A. Yeah.

17 Q. Okay.

18 A. We're always within the zone we say or the
19 area we say we are.

20 Q. Okay. And so the seasonals, you say, may be
21 in the tower or on the beach recognize or identify a
22 problem or an emergency which may need the assistance of
23 permanent lifeguards, correct?

24 A. Sometimes, yes.

25 Q. Okay. Can they -- do they communicate

1 directly to the permanent lifeguards through the radio,
2 or do they communicate with dispatch?

3 A. It depends on who sees it because if it's a
4 tower guard, the tower guard only has a telephone which
5 is a direct line up to the lifeguard dispatch, not the
6 com op center that's in Riverside known as SURCOM for
7 parks. The seasonal lifeguard, say, sees a fight or
8 whatever, he picks up the phone and says, Gates, tower
9 15, there's a fight behind my tower, three people by the
10 bike path.

11 Q. Who's on the other end of the line?

12 A. The other end is a seasonal lifeguard up top
13 in a lifeguard headquarters building.

14 Q. Okay.

15 A. He's -- the seasonal lifeguard dispatcher --
16 he's the dispatcher that day -- says, okay, I will send
17 in enforcement unit, hangs up the phone, he gets on --
18 he has a choice of two radios. He has his aquatic radio
19 and his park radio, and he gets on the park -- I'm
20 sorry, the enforcement radio and says, available
21 (inaudible) enforcement unit, there's a report of a
22 fight behind tower 15 at the bike path, three subjects,
23 no further details. And then one of us permanent
24 lifeguards will get on and say -- like my badge number,
25 1325, I'll say (inaudible) 1325, I copy, I'm in route

1 from tower 13.

2 Q. Okay. So let me understand this. If it's
3 reported from the tower, it goes from a seasonal
4 lifeguard to a seasonal lifeguard to a permanent
5 lifeguard?

6 A. Right.

7 Q. Okay. And so all of those links are necessary
8 to get the personnel out to the situation that needs
9 attention?

10 A. Correct.

11 Q. Okay. Now, that's -- that's if somebody sees
12 something from a tower. Now there are other reports
13 that -- of disruptions, emergencies and the like, that
14 all get reported other ways?

15 A. There -- if the seasonal lifeguard II in the
16 patrol truck sees the same thing, he's able to take his
17 park radio and switch it from the aquatic channel over
18 to the enforcement channel and say the same thing,
19 available, (inaudible) enforcement, there's a fight
20 going on right now, tower 15, three subjects.

21 Q. Now does that go to dispatch?

22 A. No. He -- when he says available (inaudible)
23 enforcement, he's basically calling whoever's closest to
24 tower 15, I need some help here.

25 Q. Okay. So what kind of calls go through the

1 com operators?

2 A. The com operators receive 911 calls. Whether
3 they're -- they're usually transferred. Nowadays
4 they're going to cell phones. So the com operators
5 that's out in Riverside, SURCOM, they answer 911 calls
6 that come from cell phones.

7 Q. From citizens directly?

8 A. Right. From citizens. So a citizen gets CHP,
9 I think, and they say, hey, I'm at state park in
10 Huntington Beach, and they transfer to state park
11 dispatch, SURCOM.

12 Q. Okay. And state park dispatch, if there is an
13 emergency that needs a peace officer, contacts whom and
14 how?

15 A. They contact one of the officers at that
16 beach.

17 Q. By radio?

18 A. By radio. And they'll say something like,
19 enforcement unit (inaudible) closest to tower 15,
20 identify for a fight in progress.

21 Q. Okay. And if there's an aquatic emergency, is
22 it the same -- if there's somebody in the tower, it's
23 the same process or is it a different process?

24 A. Same process, but the permanent lifeguard
25 isn't called for that.

1 Q. Now, if there is -- so how would -- are you
2 saying that permanent lifeguards are not dispatched to
3 aquatic emergencies?

4 A. Not as the primary responder. I mean, we have
5 weekends where we have 350, 400 rescues in a weekend.
6 This is happening so fast, we don't have enough people
7 to --

8 Q. Well how about as a secondary responder?

9 A. The boat is usually the secondary responder,
10 and then possibly the other seasonal lifeguard unit, and
11 then possibly one of the ATVs which has a seasonal
12 breakart (ph) on it. I'm kind of the last guy because
13 I'm the incident commander that shouldn't --

14 Q. I'm talking about --

15 A. I'm sorry. It's --

16 (Multiple speakers.)

17 BY MR. MESSING:

18 Q. I'm talking about generally you said that
19 typically 35 percent of a peace officer's position is
20 dealing with aquatic safety. And your testimony was
21 that you respond to emergencies. Okay. So is that all
22 self-initiated or does somebody call you and send you to
23 those emergencies?

24 A. Both.

25 Q. Both. Okay. And for the most part are you

1 being dispatched or called by someone, or are you just
2 responding to what you see?

3 A. Usually it's being called, but the times we
4 get called are after most of the other aquatic functions
5 have been deployed.

6 Q. Okay. But that aside -- so who's calling you,
7 is what I'm asking?

8 A. The seasonal lifeguard dispatcher in the
9 tower.

10 Q. Okay. All right. And is that on the same
11 channel or a different channel than you would receive a
12 call of a law enforcement issue, criminal enforcement
13 issue?

14 A. From who? It depends on from who.

15 Q. From the lifeguard in the situation you just
16 described.

17 A. A different channel.

18 Q. A different channel. Okay. So the only
19 difference is it comes in --

20 A. It -- we use -- I'm sorry. It's really
21 confusing, but there's two channels we use. One's
22 mostly for enforcement and one's mostly for aquatics.
23 And a good dispatcher will know if he needs a permanent
24 lifeguard, he uses the enforcement channel first. If
25 it's only aquatic related, he can -- and a seasonal

1 lifeguard II can solve it, he uses just the aquatic
2 channel.

3 Q. Okay.

4 A. But different information does go on --
5 aquatic information leaks onto the enforcement radio and
6 enforcement information sometimes leaks onto the aquatic
7 radio.

8 Q. So --

9 A. By mistake.

10 Q. So the same process however occurs. It could
11 be a telephone call from a tower to a lifeguard
12 dispatcher to a permanent lifeguard, or it could be a
13 radio call from a seasonal lifeguard to a lifeguard
14 dispatcher to a permanent lifeguard. The only
15 difference being what channel it's on, if it's aquatic
16 as opposed to a criminal enforcement. Is that right?

17 A. Correct. There's all kinds of different
18 scenarios that could happen here.

19 Q. Okay. By the way, as a lieutenant, you were
20 not required to drop your membership with CAUSE, were
21 you?

22 A. I don't know.

23 Q. Do you know that you could have opted to
24 remain a member of CAUSE?

25 MR. ROSE: Objection. Asked and answered.

1 ALJ CLOUGHESY: It's irrelevant, so next
2 question.

3 BY MR. MESSING:

4 Q. Now, regarding the issue of giving seasonals
5 health benefits, okay. Isn't it true that you didn't
6 find anything objectionable in the contract, correct, in
7 the contract language?

8 ALJ CLOUGHESY: Do you want me to show it to
9 him?

10 MR. MESSING: Yes. Sure.

11 ALJ CLOUGHESY: I'm showing the witness, I
12 think it's page 75, and -- all right. I'm showing the
13 witness 75, which is section -- article 10.1, benefits,
14 subdivision G, lifeguard II, seasonal health benefits,
15 and going on to page 76.

16 THE WITNESS: Do you want me to read that
17 section?

18 ALJ CLOUGHESY: Now, was the question whether
19 or not he found that objectionable?

20 BY MR. MESSING:

21 Q. What part of the language did you find
22 objectionable, if any?

23 A. I guess I thought it was all right. I don't
24 mind seasonal II's getting health benefits.

25 Q. Okay. Now --

1 ALJ CLOUGHESY: I'll just leave it right here
2 in case there's any more questions.

3 BY MR. MESSING:

4 Q. But permanent lifeguards do not want the
5 seasonals to become PAs to get them health benefits
6 because of their -- the concerns about losing the
7 aquatic functions of the permanent lifeguards, correct?

8 A. Correct. As to our understanding -- the way
9 it's written here, you can't -- no more than ten
10 employees in the seasonal -- in the lifeguard II
11 seasonal classification, obtain health benefits. And
12 what we understood was that it's impossible to give
13 health benefits to a seasonal employee. So by nature --
14 the contract was written poorly, and so to make -- I
15 guess to fulfill this request they needed to make the
16 position, create this new permanent intermittent,
17 non-badged lifeguard position.

18 Q. So I take that answer as a yes; that --

19 A. We objected to the non-badged PI position
20 because it was going to threaten our aquatic --

21 Q. Functions and not because seasonals would get
22 health benefits?

23 A. Correct.

24 Q. Okay. That concern that you had, Kasey Clark
25 went down to Huntington Beach to address that very

1 concern, correct?

2 MR. ROSE: Objection. Asked and answered.

3 ALJ CLOUGHESY: Sustained. To address it, I
4 haven't got whether to address it yet so I'm actually
5 going to allow that one. I got another sort of verb
6 that was used, but was it your understanding that he was
7 going down there to address the concern?

8 THE WITNESS: We -- there was a group of
9 permanent badged lifeguards that were very concerned
10 with this, and members from CSLEA did come down to meet
11 with us.

12 ALJ CLOUGHESY: Okay.

13 THE WITNESS: Did that answer your --

14 ALJ CLOUGHESY: No, but you may not know the
15 answer. Did you know whether he was coming down to
16 address it or not?

17 THE WITNESS: Yeah. He knew we were going to
18 come and talk about it.

19 ALJ CLOUGHESY: Okay. All right. Next
20 question.

21 BY MR. MESSING:

22 Q. And at the meeting, did Kasey Clark say that
23 he appreciated the concerns of the permanent lifeguards?

24 A. Probably at some point.

25 Q. Okay. And at the meeting, did Kasey Clark

1 indicate that CSLEA would monitor the situation to
2 preclude the reduction in aquatic duties for the
3 permanent lifeguards?

4 A. I remember it being discussed. I don't
5 remember the actual verbiage but I think that was --
6 that was probably pretty close to some part of the
7 conversation.

8 Q. And in fact the fear that you had about the
9 aquatic functions diminishing, never materialized?

10 A. I don't know that because that position does
11 not exist where I work, so it's not my -- my exact --
12 that conflict does not present itself to my work
13 location, but where it has -- like I said, I think
14 there's only a couple positions like that in the state,
15 and they have been assigned to junior lifeguard
16 coordinator duties.

17 Q. As you sit here today, are you aware of
18 anybody who has expressed their opinion that aquatic
19 functions have diminished anywhere in the state for
20 permanent lifeguards?

21 ALJ CLOUGHESY: He's already answered that
22 one. Not that he was aware.

23 MR. MESSING: Okay. That's fine. Okay.
24 Nothing further.

25 THE WITNESS: Can I answer that?

1 ALJ CLOUGHESY: Go ahead, sir. You deserve
2 it after being on the stand so long. Go ahead.

3 THE WITNESS: I'm sorry. I guess part of the
4 reason why -- I guess I just don't know the answer to
5 that question also because I don't talk to the permanent
6 lifeguards in Los Angeles regularly or have gotten their
7 opinion on it.

8 MR. MESSING: So the answer is you don't know
9 of anybody who believes or contends that aquatic
10 functions have diminished?

11 MR. ROSE: Objection. Asked and answered.

12 ALJ CLOUGHESY: Sustained.

13 MR. MESSING: Okay. Nothing further.

14 MS. TRUONG: Nothing further.

15 ALJ CLOUGHESY: Mr. Rose?

16 MR. ROSE: No.

17 ALJ CLOUGHESY: Sir, you have been a
18 gentleman. Can you pass that declaration right over to
19 me? And any objection to F, other than already stated,
20 Mr. Messing, on behalf of exclusive rep?

21 MR. MESSING: No.

22 ALJ CLOUGHESY: F is admitted, and we're going
23 to take a break. Thank you, sir, very much. Off the
24 record.

25 (A brief pause transpired.)

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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