

February 26, 2009

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BEFORE THE STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of:)	
)	
STATE OF CALIFORNIA, Employer,)	Unfair Practice
and PEACE OFFICERS OF CALIFORNIA,)	Charge No.
Petitioner, and CALIFORNIA)	SA-SV-171-S
STATEWIDE LAW ENFORCEMENT ASSOC.,)	
Exclusive Representative.)	
)	
_____)	

FEBRUARY 26, 2009

SHAWN CLOUGHESY
Administrative Law Judge

PUBLIC EMPLOYMENT RELATIONS BOARD
1031 18th Street, Room 214
Sacramento, CA

Transcribed by: Leisa M. Miller

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Administrative Law Judge

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1 to simply let them know that you were dissatisfied?

2 A. No.

3 MR. MESSING: Nothing further.

4 MS. TRUONG: Nothing, your Honor.

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. All
6 right. In regards to the Declaration for Ms. Rykoff is
7 admitted. And the Declaration of Tully is also admitted.

8 (Petitioner's Exhibits M and R received
9 in evidence.)

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Thank you very
11 much. We'll go off the record and take a quick break.
12 Off the record.

13 (Recess taken.)

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. We
15 are back on the record. We have another witness called
16 by the Petitioner. I'm going to ask the witness to raise
17 your right hand.

18 (Witness sworn.)

19 THE WITNESS: I do.

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Please state
21 your name for the record, spelling your last name.

22 THE WITNESS: **Mark Falcione**. My last name is spelled
23 F-A-L-C-I-O-N-E.

24 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.
25 Marking as Petitioner S what appears to be a Declaration

1 of Mr. Falcione. It includes a attached Job
2 Specification in regards to the series specification
3 Investigator, Department of Motor Vehicles.

4 (Petitioner's Exhibit S marked for
5 identification.)

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sir, it looks
7 like you might have one right next to you anyway, so why
8 don't you go ahead and use that. Do you recognize that
9 document, sir, and what is it?

10 THE WITNESS: Yes. It's my Declaration.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And let me just
12 double-check to make sure. All right, sir. And turning
13 to page 10, is that your signature on that page?

14 THE WITNESS: Yes.

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And you signed
16 it on or about the date set forth there?

17 THE WITNESS: Yes.

18 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And is all the
19 matters contained therein true and correct to the best of
20 your knowledge?

21 THE WITNESS: Yes.

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Is there any
23 corrections that you see need to be made in that document
24 after reviewing it?

25 THE WITNESS: No.

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

2 Anything further, Mr. Rose?

3 MR. ROSE: Yes.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. Go ahead.

5 MR. ROSE: Thank you.

6 TESTIMONY OF

7 MARK FALCIONE,

8 Having been duly and regularly sworn, testified as

9 follows:

10 DIRECT EXAMINATION

11 BY MR. ROSE:

12 Q. Is it Falcione or --

13 A. Falcione.

14 Q. Falcione. Mr. Falcione, have you reviewed any
15 other documents in preparation specifically for your
16 testimony here today?

17 A. No.

18 Q. Pardon me?

19 A. No.

20 Q. Okay. Did you review transcripts of --

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Thank you, sir.

22 BY MR. ROSE:

23 Q. -- any proceed -- any of these proceedings?

24 A. No.

25 Q. Meaning the proceedings we're seated -- the

1 earlier hearing days?

2 A. No, I have not.

3 Q. Have you received those at all, without reviewing
4 them?

5 A. If they're on my e-mail, I haven't seen them yet.

6 Q. All right. If they -- if you do receive them
7 somehow, we ask you to please delete them without reading
8 them. Okay?

9 A. Absolutely.

10 Q. Now, then, how long have you been a member of
11 CSLEA, or represented by CSLEA? Let me be more specific.

12 A. Approximately four and a half years.

13 Q. How would you characterize your level of
14 satisfaction with CSLEA's representation of you as a
15 State employee?

16 A. I'm completely dissatisfied.

17 Q. Why are you dissatisfied with CSLEA?

18 A. How many days do you have?

19 Q. Well, we only have a little -- we only have
20 today.

21 A. I have a lot of dissatisfaction, unfortunately.

22 Q. And we still would like to get another witness up
23 after you. So --

24 A. I was dissatisfied with their representation at
25 the bargaining table. I was dissatisfied with their

1 representation of field representatives for our area. I
2 was dissatisfied with their legal defense coverage.
3 Dissatisfied with the manner in which they conducted
4 themselves as police officers.

5 Q. Anything else?

6 A. I was dissatisfied with their lack of
7 communications with their members. They refused to show
8 any financial records. Refused to show any meeting
9 minutes.

10 Q. Okay. Let's take a few of these. Lack of
11 communication with members. Are you including yourself
12 in that?

13 A. Yes.

14 Q. Have you communicated your dissatisfaction
15 regarding CSLEA's lack of communication, or your
16 perceived lack of communication?

17 A. I tried to. The one time that I -- well, the
18 first time that I did that, it resulted in the union rep
19 for San Diego, who was supposed to be looking out for my
20 interest, complaining to my supervisor, without talking
21 to me about it first, and filing a complaint against me
22 for something that wasn't even a violation of anything,
23 that ended up in a write-up for a job evaluation by my
24 supervisor.

25 Q. When did this happen?

1 A. About a year and a half ago, two years ago. I
2 don't remember the exact date.

3 Q. And do you --

4 A. I can tell you that it was during the AMVIC
5 conference that took place in San Diego, whatever date
6 that was. It was in Old Town San Diego.

7 Q. Well, let's talk about this. So what did you
8 communicate to CSLEA regarding the AMVIC conference in
9 San Diego?

10 A. Well, the rep I'm referring to, his name is Andy
11 Shonely. And Mr. Shonely sent out an e-mail to the
12 people in San Diego County that were CSLEA members
13 announcing the successful completion of the AMVIC
14 conference that took place in San Diego.

15 And in the e-mail, which was on the DMV
16 Investigations State e-mail system, he included a video
17 clip, which is a violation of policy. And the video clip
18 was about 15 seconds long. And in the explanation in the
19 body of the e-mail it said, we want to show you -- we've
20 attached an e-mail to show you how successful the
21 conference was, and show some of the things that happened
22 at the event.

23 And they didn't tell anybody in San Diego the
24 conference was happening in our hometown, so none of us
25 went to it because we didn't know. But he didn't offer

1 anything to anyone to appear except for reps. And then
2 they didn't tell us anything in the body of the e-mail
3 about what happened, what they discussed. There was no
4 agenda. There was no minutes. There was nothing except
5 the video.

6 So I clicked on the video and it was 15 seconds of
7 Richard Carrillo and Shonely and Juarez and a couple of
8 the other reps eating lunch. So I was little miffed, and
9 I sent back an e-mail and I hit reply all, and I said,
10 "Thank you very much, gentlemen, for your 15-second video
11 of you eating lunch. That doesn't exactly portray
12 anything that happened of any consequence at the -- at
13 the conference. And so I have some questions. Number
14 one, why weren't we told? Number two, why weren't we
15 invited? Number three, why aren't we being told anything
16 that happened and took place there?"

17 And I didn't get a response until my supervisor
18 called me in the office and said I had violated the DMV
19 e-mail policy. And I said, "No, I haven't." And he
20 said, "Well, the labor rep in Sacramento say you have."
21 I said, "You conducted an investigation into the
22 wrongdoing on my part in violation of my Peace Officer
23 Bill of Rights?" And he said, "Well, I talked to the
24 commander about it." And I said, "Well, that would be a
25 yes, then, wouldn't it?"

1 And so I asked him if he wanted to hire a lawyer, or
2 if he wanted to try and resolve this. And so we went all
3 the way up to Sacramento, and I talked to the labor rep
4 that gave him the advice based on faulty information that
5 he was given by my command. And they tried to resolve
6 it, but failed to.

7 Basically, what happened was the labor rep confirmed
8 that I did not violate policy. That the CSLEA rep did
9 violate policy by sending a video attachment in the State
10 e-mail. However, it did, like I said, appear in my eval,
11 and to this day is still there.

12 Q. Was it -- how did it appear in your evaluation?

13 A. Well, the way my supervisor wrote it was to say
14 that he would suggest that in the future I review the
15 department policy regarding the use of the DMV e-mail
16 system. And so in his mind that wasn't discipline. So I
17 explained to him why it was.

18 Q. Did you ever follow up with CSLEA about the
19 supervisor telling you that one of CSLEA's
20 representatives had complained about your use of the
21 e-mail system?

22 A. Oh, yeah. Yeah. I talked to Shonely right away.
23 Because I was obviously even more angry by that point.
24 And Shonely suggested, without blaming anyone, that he
25 was following instructions, and that, you know, I

1 embarrassed them.

2 Q. Did you ever learn from Shonely whose
3 instructions he was following?

4 A. Well, the only person it could have been would be
5 Carrillo, as far as I could tell.

6 Q. AMVIC is the Association of Motor Vehicle
7 Investigators of California, correct?

8 A. Correct.

9 Q. Were you formerly a member of that organization?

10 A. Yes, at that time I was.

11 Q. Are there any other circumstances involving lack
12 of communication with membership that you criticize or
13 charge CSLEA with?

14 A. Well, aside from what I already mentioned about
15 the lack of transparency and lack of access to any
16 records, it was -- the recent conference out in Cathedral
17 City, Palm Desert, the CSLEA conference, Alan Barcelona
18 opening day got up and made a big speech to everyone
19 about how honest he is and how transparent CSLEA is. And
20 if anyone has any questions about anything that's going
21 on with the severance, that they should approach a Board
22 director or Alan himself and discuss it, because, after
23 all, they are honest and transparent and they'd be more
24 than happy to answer anyone's questions.

25 So later that night I was approached by Ricardo

1 Sanchez and I said, "Hey, I heard Alan's speech. When do
2 you want to talk?" And he said, "Talk about what?" I
3 said, "Talk about the severance." He said, "Well, I
4 heard you're involved with POC." And I said, "Yeah, I am
5 involved with POC." I said, "I think that a police
6 officer only union is the way to go. I was the union
7 president for five years and I was the lead negotiator,
8 and that's how I feel about it. But let's talk about it.
9 I'd like to hear what your side of this and why you don't
10 think that that's a good idea." And he said, "Okay.
11 We'll get together as soon as dinner's over." And as
12 soon as dinner's over, he vanishes.

13 And the next thing I get is a letter in the mail
14 saying you're being disciplined for telling Ricardo
15 Sanchez that you support a peace officer only union. So
16 I feel like my attempt to follow the president's open
17 offer of honesty and honest communication and
18 transparency was nothing but a sucker trap. It was a --
19 it was bait that he was putting out to everyone to see
20 who that they -- who they could discipline for trying to
21 be honest and have an intelligent conversation.

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. Let
23 me just -- I can't get into the internal issues between
24 you and the union, but I can hear about what you say to
25 the union and whether there was a -- what was the

1 response on that stuff. So if I can kind of give you
2 that framework ahead of time so that you kind of know.

3 THE WITNESS: Okay.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: So that I don't
5 get into the blow and blow. And do you need to take a
6 break, sir? Are you okay?

7 THE WITNESS: No. I'm fine.

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Are you all
9 right? Okay. All right. Go ahead, Mr. Rose.

10 MR. ROSE: Thank you, Judge.

11 BY MR. ROSE:

12 Q. You mentioned as one of your categories of
13 dissatisfaction efforts at the bargaining table on your
14 behalf. Could you please explain what you mean by that?

15 A. Absolutely. Richard Carrillo is the
16 representative that sits in for bargaining group A. He
17 sits with DPA and negotiates with them. I've never had a
18 civil conversation with Mr. Carrillo in the entire time
19 I've known him. Tried to talk to him. Tried to reason
20 with him. Tried to explain things to him. Tried to help
21 him. Tried to do a newsletter for AMVIC when I was in
22 good standing with them. And I've never been able to
23 accomplish anything with him.

24 And keep in mind that I was a very successful
25 negotiator and president of a police association for five

1 years, and I'm not new at this. So I was rather
2 astounded at the way that he behaved to someone who was
3 trying to genuinely help.

4 But specifically, here again, Andy Shonely approached
5 everyone and said, "We would like your feedback on items,
6 agenda items, to the contract, the opening offer." And,
7 here again, done over the DMV e-mail system. Tried to
8 talk to him about that, the foolishness and complete
9 idiocy of that, and just doesn't register. So they're
10 still doing that.

11 But the disturbing thing about was this, aside from
12 the total incompetence of the whole framework. They
13 asked us to give them some suggestions on what we wanted
14 for contract items. And I was specifically asked because
15 I ran the physical agility program at La Mesa Police
16 Department. They specifically asked if I would write
17 something up for a physical fitness program. Basically,
18 you could work out during work hours for a set period of
19 time. And depending on your fitness levels that you
20 maintain throughout the year, would be able to receive
21 some compensation time. It's basically a physical
22 fitness incentive program to keep people fit and keep
23 insurance rates down for the State.

24 So I wrote it up and I submitted it. Andy Shonely
25 took it to our Deputy Chief, Doug Brenn, and negotiated

1 with Doug Brenn on the physical fitness program. Which,
2 as everyone in this room should know, is unlawful.

3 Doug Brenn said, "I don't like it. I think people
4 can do a workout in 30 minutes, so I'm shooting it down."
5 And so it never made it to the table.

6 MR. MESSING: I'm going to at this point pose an
7 objection. This narrative responses of the witness goes
8 far beyond the questions that are being asked. They're
9 characterizations of things that are lawful, unlawful,
10 stupidity. All of these things are opinions,
11 speculation, legal conclusions, and the like. And the
12 witness should have to contain himself to testifying to
13 the facts.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I agree in
15 regards to the issue unlawful and lawful. I mean that's
16 inappropriate opinion testimony.

17 MR. MESSING: Also, whatever everybody in this room
18 should know and things of that sort. It's all
19 editorializing.

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. I
21 agree. All right. But -- so maybe a little bit more
22 Q&A. And I think we're at the point where he said Brenn
23 said, "I don't like it." And I'll let you take it over
24 from there, Mr. Rose.

25 /////

1 BY MR. ROSE:

2 Q. And you also said that it didn't make it to the
3 bargaining table?

4 A. Correct.

5 Q. And how do you know that?

6 A. We haven't had a contract TA since.

7 Q. The -- one of the categories of -- were there any
8 other things regarding the bargaining table that you
9 would list as one of the reasons you were dissatisfied?

10 A. There are, but I don't want to upset counsel
11 anymore. I think you got the idea.

12 Q. All right, then. With respect to the legal
13 defense coverage, you mentioned that as one area of
14 concern.

15 A. Yes.

16 Q. Could you explain why you're concerned about
17 that?

18 A. Absolutely. To keep it factual, the assignment
19 of legal defense coverage appears to the involved people
20 who have requested it to be arbitrary. And I asked CSLEA
21 representatives at the conference, because this whole
22 thing came up with a conflict of interest over when a rep
23 complains to management, and the rep from CSLEA has
24 actually caused the discipline, what CSLEA's position
25 would be in providing legal defense coverage in which

1 their representatives created. And the answer was, hmm,
2 that's a conflict of interest, so we'll have to do that
3 on a case-by-case basis.

4 And I said, "I'm sorry. I thought we had an LDF
5 contract in which you provide legal coverage to me."
6 "Yeah. Well, it would have to be case by case in a
7 situation like that." And so that was the one time that
8 they answered me directly that they would decide whether
9 or not they would abide by the coverage depending on the
10 circumstances.

11 I am also privy to confidential representations on
12 other persons' behalf that I've been personally involved
13 in where they have been refused as well.

14 MR. MESSING: I'm going to object and move to strike.
15 If it's confidential, then it shouldn't be raised here
16 and because we can't rebut it.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Well, let me put
18 it this way, is that just because you say it's
19 confidential doesn't mean you can't be asked questions
20 about it. So I think that's the point that Mr. Messing
21 is saying. So if you are not prepared --

22 THE WITNESS: Let me try and save us some time.
23 You'll be talking to Margaret Sklueff next, and that's
24 who I'm referring to.

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. Fair

1 enough. We'll see. What else?

2 MR. MESSING: Yeah. Well, as to the witness that is
3 upcoming, there are still --

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I understand.

5 MR. MESSING: -- all the outstanding issues
6 regarding --

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: But --

8 MR. MESSING: Yeah.

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: It's not in the
10 control of this witness.

11 MR. MESSING: Okay.

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: So, fair enough.
13 All right. Further questions, Mr. Rose? I think --
14 unless it was -- I think we just covered legal defense
15 coverage.

16 MR. ROSE: Correct.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Anything
18 further?

19 MR. ROSE: Yes.

20 BY MR. ROSE:

21 Q. Have you ever communicated -- you mentioned
22 conducting selves as police officers is one of your areas
23 of concern.

24 A. I did.

25 Q. What do you mean by that?

1 MR. MESSING: I'm going to object. This goes to the
2 issue that was struck in paragraph 71.

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I don't --

4 MR. MESSING: I see where this is going.

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I don't know.
6 You might be right, but --

7 MR. MESSING: If it is, then I would ask --

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You can make a
9 motion to strike afterwards.

10 MR. MESSING: Thank you.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: We can get into
12 it. But I don't know yet.

13 MR. MESSING: Okay.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: It could be a
15 myriad of things with that sort of header, so --

16 MR. MESSING: Well, I would bet against it, but let's
17 go forward.

18 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You may -- you
19 may win that bet. But conducting self as a peace
20 officer, sir, what did you mean by that?

21 THE WITNESS: Well, there's been -- my experience as
22 a police officer specifically, a police officer as on a
23 board of directors of a police association, the reason
24 why police unions exist and directors exist is for the
25 welfare of the officers they represent. I've not seen

1 any of that in CSLEA. I've seen the opposite.

2 I've seen \$1400, \$1500 checks written for meetings
3 that there's no valid explanation for. I've seen police
4 officers lie when they're explaining why things were
5 done, what documents they had in their hand at a certain
6 time in the middle of a meeting. Where immediately after
7 the meeting you ask them, "Can I see the document you
8 said you just have," and they're not there.

9 That is completely unacceptable behavior for police
10 officers. Dishonesty is not part of this for us. But
11 there are certain members of AMVIC and CSLEA who seem to
12 have no problem lying. And that is completely
13 unacceptable. And I know that the 146(c) thing has been
14 struck, so we'll leave that to rest.

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Very good.

16 BY MR. ROSE:

17 Q. Without -- did you ever communicate to CSLEA your
18 belief that the name of the organization was problematic?

19 A. Yes.

20 MR. MESSING: Object.

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sustained. So
22 struck. Next question.

23 BY MR. ROSE:

24 Q. The refusal to show financial records, do you
25 remember --

1 MR. MESSING: Object. This is an internal matter.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: It doesn't go to
3 the issue of representation.

4 MR. ROSE: Judge, I'm only -- as to both that and the
5 name, I'm only inquiring as to the interactions when he
6 complained about those things and what the response was,
7 not the underlying issue.

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Any response,
9 Mr. Messing?

10 MR. MESSING: I'm sorry. Would you repeat that? I
11 didn't hear that.

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Your only --
13 your concern is what the response was to Mr. Messing?

14 MR. ROSE: I'm trying to just elicit testimony about
15 his interactions with respect to his concerns as they
16 were expressed and what those responses to his concerns,
17 how they were addressed.

18 MR. MESSING: Well, if it's as to an internal matter,
19 then I don't think it's relevant. It doesn't go to any
20 of the prongs of representation, you know, history, all
21 of those factors that are being considered.

22 MR. ROSE: It does because they have an agency shop
23 arrangement. They have an obligation to provide
24 financial records. The chargeable and non-chargeable
25 expenditures is standard. It's legitimate for a State

1 employee who is an agency shop to ask about financial
2 records. And I think it's a legitimate area of inquiry
3 with respect to the adequacy of representation.

4 MR. MESSING: I think it would be a legitimate issue
5 to raise in an unfair labor practice charge. This is not
6 what the -- is at issue here.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You know, I am
8 concerned about the agency shop issue as being, you know,
9 folded into a severance thing. So I'm actually going to
10 sustain the objection. So next question.

11 MR. ROSE: Nothing further at this time.

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Messing?

13 MR. MESSING: Okay.

14 CROSS-EXAMINATION

15 BY MR. MESSING:

16 Q. Now, let's see here. Since 2004, you say you've
17 been employed as an Investigator at the Department of
18 Motor Vehicles?

19 A. Correct.

20 Q. Okay. Between then and the present have you held
21 any other position?

22 A. Outside of the agency or inside the agency?

23 Q. Outside of the agency.

24 A. No.

25 Q. Okay. At some point did you apply for a position

1 at the Department of Justice?

2 A. I did.

3 Q. When was that?

4 A. Let me see. 2006.

5 Q. Okay. 2006. And in 2006 did you go to work for
6 the Department of Justice?

7 A. No. I withdrew my application.

8 Q. Okay. All right. Now, since you were with DMV
9 since February of 2004, were you aware of the three
10 percent at fifty plan going into effect in January of
11 2004 before you took the position?

12 A. Yes.

13 Q. Okay. Were you aware that CSLEA had negotiated
14 that benefit?

15 A. I assume so, yes.

16 Q. Okay. Were you aware that at the time that CSLEA
17 got the three percent at fifty plan that the Correctional
18 Officers Association, CCPOA, did not have it?

19 MR. ROSE: Objection. Assumes facts not in evidence.

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Well, do you --

21 MR. MESSING: I'm asking him if he knows.

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Do you know one
23 way or another whether they had it or not?

24 THE WITNESS: No.

25 /////

1 BY MR. MESSING:

2 Q. Okay. Do you know whether CF firefighters had
3 the three percent at fifty plan at that point?

4 A. No.

5 Q. Okay. Are you now at the top step on the salary
6 range?

7 A. Yes.

8 Q. Okay. so you were a beneficiary of nearly 17
9 percent pay increase that went into effect in -- starting
10 in January of 2007 that added steps to the investigator
11 classifications pay ranges?

12 A. That's a little misleading. I did not get a 17
13 percent raise, no.

14 Q. Okay. So you don't believe that you got 17
15 percent between COLAs and step increases?

16 A. I don't think it was that much, no. If it was,
17 I'm unaware of that.

18 Q. Well, you're complaining about CSLEA not doing
19 very much, but you don't know what the --

20 A. That would be the communication issue.

21 MR. ROSE: Objection. Argumentative.

22 MR. MESSING: I didn't finish the --

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sustained.

24 MR. MESSING: I didn't finish the question.

25 MR. ROSE: Well, but he's starting to answer.

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: It's the way it
2 started, it was a giveaway. Next question.

3 BY MR. MESSING:

4 Q. Now, your -- one of your own investigators is a
5 vice president at the bargaining table for CSLEA,
6 correct?

7 A. Yes.

8 Q. Okay. And that's Richard Carrillo?

9 A. Yes. Carrillo.

10 Q. Carrillo. And you indicated that CSLEA asked for
11 input on the -- on the contract before negotiations
12 began?

13 A. No. Andrew Shonely from AMVIC did. And at the
14 time he was not the junior vice president of CSLEA. He
15 was just an AMVIC rep.

16 Q. Well, do you know what he did -- did you provide
17 him input?

18 A. Yes.

19 Q. Okay. Do you know what he did with that input?

20 A. I know what he did with the physical fitness
21 program, because he came back and discussed it with me.

22 Q. Do you -- do you know if he passed on to CSLEA
23 input on things that the investigators would like at DMV?

24 A. I do not know.

25 Q. Okay. At the time that these -- can you give me

1 an approximate timeframe for these discussions with
2 Shonely?

3 A. This would have been about a year ago.

4 Q. Okay. About a year ago DMV investigators got
5 this physical fitness pay, correct?

6 A. You're talking about the State program?

7 Q. Yes.

8 A. It's not -- it's a different program that I'm
9 referring to. It's not what the suggested program that
10 was written up and submitted was.

11 Q. Okay. But the question is is at the time that
12 you were suggesting a program, DMV investigators were
13 getting physical fitness pay from the State of
14 California, correct?

15 A. Yes.

16 Q. Okay. Do you know how many proposals were passed
17 across the table by CSLEA on behalf of or pertaining to
18 DMV investigators?

19 A. No.

20 Q. Now, I'm going to take you to the issue of laws
21 enforced on page four of your Declaration. And let's see
22 here. This is paragraph 21(a) through (e), if you want
23 to have a look at it. Okay. And is it fair to say that
24 not all of the laws that you may enforce are simply
25 involving criminal penalties? There may be

1 administrative and civil penalties as well?

2 A. Sure.

3 Q. Okay. You say that as a DMV investigator you
4 routinely provide mutual aid to other law enforcement
5 agencies. Do you know the meaning of the word mutual aid
6 when it comes to law enforcement?

7 A. Yes.

8 Q. Okay. What do you think mutual aid means?

9 A. Well, it depends on the reference in which it's
10 being used. Generally it means that you are responding
11 as a request from another agency to help them in a mutual
12 mission.

13 Q. Okay. Is there a difference between mutual aid
14 and simply helping or assisting somebody from another
15 agency?

16 A. Yes.

17 Q. Okay. And is it your testimony that you have
18 performed -- or provided mutual aid to other agencies?

19 A. Yes.

20 Q. On how many occasions since 2002? 2004. Pardon
21 me.

22 A. Well, what I'm referring to there specifically
23 started in November of 2007 when I was assigned to the
24 Homeland Security Task Force. So I provided -- do you
25 want me to continue or --

1 Q. Well, has -- have there been formal requests for
2 mutual aid --

3 A. Yes.

4 Q. -- where you have responded to particular
5 incidents or emergencies?

6 A. Yes.

7 Q. How many since 2004?

8 A. I couldn't -- I couldn't give you a specific
9 number. Sometimes once a week. Sometimes a couple times
10 a month.

11 Q. Okay. Now, as to civil -- well, let's turn to
12 page six of your Declaration. Okay. Now, as I
13 understand paragraph 31, paragraph 31 sets forth the
14 duties that you actually perform, not that you're
15 empowered to perform. Do you understand it that way?

16 A. No.

17 Q. Okay. So do you -- do you read this that -- to
18 read that -- or are you intending to state here the
19 things that you may perform, but you may not have
20 actually performed the duties?

21 A. These are duties that I may perform, or have
22 performed, or are performing on a routine basis. It's a
23 mixed list.

24 Q. Okay. So when you say, "I conduct civil,
25 criminal and administrative investigations involving the

1 following crimes," looking from A to P, are there any
2 items on here that you actually have not conducted?

3 A. I've not done an employee fraud.

4 Q. Okay. That's --

5 A. -- involving --

6 Q. -- subsection (i).

7 A. And involving -- right, letter I, involving
8 embezzlement.

9 Q. Okay. Anything else?

10 A. That's it.

11 Q. Okay. Let's look at item 32 on page 7. Now,
12 this speaks, as I read it, in terms of things that you
13 actually do. Do you read it that way?

14 A. Yes.

15 Q. Okay. Do you -- you make felony car stops?

16 A. Yes.

17 Q. Okay. How many felony car stops have you made in
18 the past -- since you've been employed with DMV?

19 A. I couldn't tell you an exact number.

20 Q. Okay. Do you have -- is your vehicle equipped
21 with a light bar?

22 A. Yes.

23 Q. All right. What about depositions? Do you know
24 what it means to take a deposition?

25 A. Yes.

1 Q. Okay. Do you understand a deposition to be a
2 sworn statement taken with questions and answers with a
3 court reporter taking down all of the testimony?

4 A. Except for the court reporter part.

5 Q. Okay. So if I were to tell you that that's the
6 definition of a deposition, where there is a court
7 reporter and there is questions and answers, would that
8 change your response in this Declaration that you take
9 depositions?

10 A. If that's your definition of a deposition, then I
11 do not take those types of depositions.

12 Q. It says on number 40, "I file administrative
13 cases for fines and licensing actions."

14 A. Yes.

15 Q. Okay. Is that -- how often do you do that?

16 A. Not very. I think I've maybe sent up, I don't
17 know, two or three since I've been employed with DMV.

18 Q. Okay. How many -- how many felony arrests have
19 you made since you've been with DMV?

20 A. Since I've been with DMV?

21 Q. Uh-hmm.

22 A. I don't know the exact number. More than 50.

23 Q. Okay. More than 50. When you refer to civil
24 actions, civil investigations, what kind of
25 investigations come to mind?

1 A. Normally dealership stuff. I haven't done that
2 in a while because I'm on the task force.

3 Q. Okay. When you were doing it, what years would
4 that cover?

5 A. '04 to '07.

6 Q. Okay. And how much of your work is involved with
7 that?

8 A. Not very much. Like I said, I mostly did felony
9 arrests, identity theft stuff and fraud doc stuff.

10 Q. Okay. You say that everybody in your chain of
11 command is a peace officer within the meaning of section
12 830.3?

13 A. Yes.

14 Q. So who is -- what is the rank of your supervisor?

15 A. My direct supervisor?

16 Q. Yes.

17 A. He's a District Supervisor or Supervising
18 Investigator. They go by either title.

19 Q. Okay. And who is the supervisor of the
20 Supervising Investigator?

21 A. The Area Commander.

22 Q. Okay. And the Area Commander is a peace officer,
23 right?

24 A. Correct.

25 Q. Okay. Who does the Area Commander report to?

1 A. The Deputy Chief.

2 Q. The Deputy Chief. And the Deputy Chief is a
3 peace officer?

4 A. Yes.

5 Q. Okay. And the Deputy Chief, who does he report
6 to?

7 A. The Chief.

8 Q. And the Chief is a peace officer?

9 A. Yes.

10 Q. Okay. Does the Chief report to anybody?

11 A. Of course.

12 Q. Okay. Who is that?

13 A. The Director of DMV.

14 Q. Okay. Is the Director of DMV a peace officer?

15 A. No.

16 Q. Okay. Now, you talk about the non-peace officer
17 personnel that you work with, that some of them are
18 members of Unit 7 and some are not; is that correct?

19 A. Yes.

20 Q. Okay. And the ones that you say that you work
21 with at DMV are Licensing Registrar Examiners; is that
22 right?

23 A. Yes. If I could, I'd like to clarify what work
24 with means.

25 Q. Well, I'm going to ask you. What --

1 A. Okay.

2 Q. What is the work that you do with Licensing
3 Registrar Examiners?

4 A. I work in the same building as them.

5 Q. Okay. Now, I'm going to -- I'm going to take you
6 back to 2004 to 2007 and not your current duties. From
7 2004 to 2007, did you have occasion to work with
8 Licensing Registrar Examiners?

9 A. No.

10 Q. Okay. Not one occasion?

11 A. Well, maybe one. One or two.

12 Q. Okay.

13 A. I was in a different office at that time. It
14 wasn't connected to a DMV field office, so --

15 Q. Do you -- do you have knowledge whether your
16 experience is the same as other DMV investigators?

17 A. To some degree.

18 Q. To some degree. But not entirely?

19 A. Not part of the, you know --

20 Q. Part of the?

21 A. -- universal consciousness.

22 Q. Okay. Do you -- do you have occasion to work
23 with Occupational Licensing Inspectors?

24 A. I did in the period you're talking about, yes.

25 Q. Yes. Okay. You don't know, though?

1 A. No.

2 Q. Okay. Because you're on a task force?

3 A. Yes.

4 Q. Would you say other DMV investigators work with
5 Occupational Licensing Inspectors?

6 A. Yes.

7 Q. Okay. And what do they do? What's the nature of
8 your work with them?

9 A. Basically, referral work. Because they're not
10 police officers, so they can't take enforcement action.
11 They can't write tickets or anything like that. So if
12 they find out that there's violations that a dealer or
13 reg service has done, they may refer something to us so
14 that we can take police action.

15 Q. Okay. All right. Now, you mentioned something
16 earlier about you would expect to have e-mail about this
17 hearing. Did I misunderstand you in your initial
18 testimony?

19 MR. ROSE: Objection. Misstates the witness' prior
20 testimony.

21 MR. MESSING: I'm asking him if he stated that. I'm
22 not -- I'm not stating his testimony.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

24 THE WITNESS: I'm not sure what you're -- are you
25 referring to the transcript thing?

1 MR. MESSING: yes.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. So
3 you have a clarification.

4 MR. MESSING: Okay.

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Did you say that
6 I would expect to receive something?

7 THE WITNESS: No.

8 MR. MESSING: Why -- yeah. Why --

9 THE WITNESS: That's not what I said.

10 BY MR. MESSING:

11 Q. Did you say you would suspect or expect that
12 there would be something on your e-mail, or words to that
13 effect?

14 A. The way you're phrasing it is misleading. What I
15 said was if I received it on my e-mail, I would delete
16 it. I don't know if it's there.

17 Q. All right. Now, let's move on. The union rep
18 for San Diego you said was Andy Shonely?

19 A. Yes.

20 Q. Okay. And you say that he complained about you
21 to your supervisor?

22 A. Gil Valencia.

23 Q. Okay. Okay. Now, apparently you didn't
24 appreciate this. Did you file a written complaint with
25 CSLEA about Andy Shonely's conduct?

1 A. No.

2 Q. Okay. Did you file a written complaint with
3 AMVIC about Andy Shonely's conduct?

4 A. No.

5 Q. Did you verbally complain to anybody in AMVIC
6 about Mr. Shonely's conduct? In other words, anybody --

7 A. Somebody besides Shonely?

8 Q. Yes.

9 A. Yeah. Benito Juarez.

10 Q. And what his position at the time?

11 A. Same as Shonely's.

12 Q. Okay.

13 A. Can't be embarrassing people for doing stupid
14 stuff.

15 Q. And did you ask him to take any action?

16 A. He didn't have any authority to take any action.

17 Q. Okay. Did you -- you know who Kasey Clark is?

18 A. Yeah.

19 Q. Okay. Did you know at the time that this
20 occurred who Kasey Clark was?

21 A. Yeah.

22 Q. Okay. Did you make any effort to contact Kasey
23 Clark to inform him of what happened?

24 A. No.

25 Q. Okay. Did you file any written explanation or

1 complaint of what happened with Kasey Clark?

2 A. No.

3 Q. Or anybody else at CAUSE?

4 A. No.

5 Q. Or CSLEA?

6 A. No.

7 Q. Okay. You mentioned an incident with a video
8 clip, and I -- and I believe you testified that there was
9 a labor rep who violated -- who was found to have
10 violated the policy.

11 A. Same incident.

12 Q. Same person?

13 A. Same incident that you're referring to.

14 Q. And the labor rep is this Andy Shonely?

15 A. Correct.

16 Q. Okay. When you say labor rep, is that -- do you
17 intend to mean job steward?

18 A. Okay.

19 Q. Okay. And Andy Shonely is not a paid staff
20 member of CSLEA, correct?

21 A. Well, he's getting \$1200 checks for something,
22 but nobody really knows what.

23 Q. Okay. Does CSLEA hold Andy Shonely out as a paid
24 labor representative for the organization?

25 A. I don't know.

1 Q. Okay. Have you -- did you file any -- you were
2 talking about -- well, no. I'm going to pass that by.

3 You had some testimony about the CSLEA conference.
4 So I just want to know, at the time that you attended the
5 conference, were you at that time a known advocate for
6 POC?

7 A. Can you define known advocate?

8 Q. Did people know that you were advocating on
9 behalf of POC?

10 A. I was not advocating on behalf of POC. I was
11 advocating for a peace officer only union.

12 Q. Okay. All right. Now, do you know the
13 difference between the legal representation program of
14 CSLEA and their LDF program?

15 A. I don't have any specific facts as to either one
16 of those programs.

17 Q. Okay. Now, you were complaining about -- by the
18 way, what is Andy Shonely's job classification?

19 A. He's a DMV Investigator.

20 Q. Okay. And you said Carrillo is as well?

21 A. Correct.

22 Q. Okay. Now, and you've made a lot of complaints
23 in your testimony about people lying and --

24 A. I'm very unhappy, yeah.

25 Q. -- mistreating you and the like. Your complaints

1 are against other peace officers from your testimony; is
2 that right?

3 A. That's right.

4 Q. Okay. So forming a separate bargaining unit for
5 peace officers only will not do anything to take away
6 your complaints about these individuals; isn't that true?

7 A. No, that's not true.

8 Q. Oh, if you have a separate bargaining unit you
9 think that these people will now start telling the truth
10 or --

11 A. No, of course not.

12 Q. -- treating you differently?

13 A. I don't think a tiger is going to change his
14 stripes by any stretch, but they won't be representing me
15 anymore.

16 Q. Well, is POC supposed to be a democratically run
17 organization?

18 A. Yes.

19 Q. So you have no idea who will be elected to
20 represent the individuals within --

21 A. I got a pretty good idea it won't be any of those
22 people.

23 Q. It's -- but it's speculation. You don't know
24 who's going to be elected.

25 A. Pretty good speculation.

1 Q. Okay. Well, in talking about representation, you
2 were the five time president of the La Mesa Police
3 Officers Association?

4 A. Yes, sir.

5 Q. Okay. So, tell me, isn't it true that police --
6 that that association includes police dispatchers?

7 A. That is true.

8 Q. And they're non-sworn?

9 A. That is true.

10 Q. That organization represents community service
11 officers?

12 A. I think one of them.

13 Q. The classification of community service officer
14 is in the bargaining unit, correct?

15 A. Correct.

16 Q. Okay. And also animal control officers?

17 A. There's one of them.

18 Q. The Association represents the classification,
19 correct?

20 A. Sure. I just don't want you to mischaracterize
21 it like there's a big group of people there when it's one
22 person.

23 Q. It doesn't matter if it's big or small.

24 A. It's all about truth, remember?

25 Q. I'm just establishing that the --

1 A. Yeah, no problem.

2 Q. -- that the Association has --

3 MR. ROSE: Objection, your Honor. Badgering the
4 witness.

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I think you
6 don't need to worry. The issue is classification.

7 THE WITNESS: (Inaudible.)

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

9 So --

10 BY MR. MESSING:

11 Q. Okay. Now, peace officers at the -- at the local
12 level have the right to form an organization of peace
13 officers only. Do you know that?

14 MR. ROSE: Objection. Relevance.

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I don't know if
16 he knows that or doesn't know that, or if he knows that
17 that's an issue or not an issue. But you were governed
18 by MMBA, right, during that time in La Mesa?

19 THE WITNESS: Yes.

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. And
21 what knowledge do you have, if any, in regards to peace
22 officers being allowed to have an exclusive unit without
23 any of the non-sworn people?

24 THE WITNESS: I know that they're entitled to that if
25 they want to have one.

1 BY MR. MESSING:

2 Q. Okay. But during the time you were president of
3 the Association, the Association did not assert its right
4 to be peace officers only; is that correct?

5 MR. ROSE: Objection. Relevance.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Overruled. Go
7 ahead.

8 THE WITNESS: That's correct. Everybody was happy.

9 MR. MESSING: Okay. I have nothing further at this
10 time.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: On behalf of the
12 Employer?

13 MS. TRUONG: We have nothing.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Rose?

15 REDIRECT EXAMINATION

16 BY MR. ROSE:

17 Q. In La Mesa did you have any dairy inspectors in
18 your bargaining unit?

19 A. No.

20 Q. Did you have any conservationists in your
21 bargaining unit?

22 A. No.

23 MR. MESSING: We'll stipulate to that all of the
24 classifications that Mr. Rose, if he wants to go through
25 them all, are not in the bargaining unit. And that the

1 ones that I mentioned are the non-sworn classifications
2 in the La Mesa POA.

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: In municipality
4 you have kind of a little bit smaller non-sworn circle to
5 deal with, at least in my MMBA experience.

6 MR. ROSE: I appreciate Mr. Messing's offer of a
7 stipulation, but I reject it.

8 BY MR. ROSE:

9 Q. Now, the La Mesa Police Officers Association, did
10 you -- how would you characterize the harmony of that
11 organization when you were president and its members and
12 compare it against the harmony of the CSLEA membership,
13 in your view, currently?

14 A. About 180 degrees. Everybody was happy at
15 La Mesa with the job that was being done because the job
16 that was being done was the job that was supposed to be
17 done. We were looking out for people's welfare. We held
18 face-to-face meetings, which I know in the State is
19 difficult to do. However, we held face-to-face meetings
20 where people were allowed to express themselves without
21 any fear of reprisal. We took the information that
22 people gave us directly to the city council or to the
23 chief's office and we fought for people's rights, like
24 we're supposed to do.

25 Q. Approximately what percentage of the La Mesa

1 Peace Officers Association were -- was non-sworn
2 employees?

3 A. Probably eight to ten percent maybe.

4 Q. Approximately --

5 A. Maybe a little bit less than that. I'd have to
6 do the numbers. There was about 58 sworn, and I think
7 there was about 8 -- I'm trying to think how many
8 dispatchers. We had about 8. And there was 1 or 2 CSOs,
9 depending on what time of the year it was. They came and
10 went. And there was one animal control officer, if we
11 were lucky. We didn't even have animal control officer
12 at the time. We'd borrow one from Chula Vista PD
13 sometimes.

14 Q. Approximately what percentage of CSLEA's
15 Bargaining Unit 7 is non-sworn currently, if you know?

16 A. I know that it's a minimum of 60 percent non-
17 sworn.

18 Q. Earlier you were asked about whether you had
19 complained to anyone at CSLEA, including, without
20 limitation, Kasey Clark regarding the concern you had
21 with your job steward. Remember that question?

22 A. Yes.

23 Q. Why did you not complain to Kasey Clark?

24 A. They were the ones initiating the behavior. It's
25 kind of like if they send you a disciplinary letter and

1 say, you can come and have a disciplinary hearing with
2 the people who are disciplining you. It's like saying
3 you can argue your traffic ticket with the cop that wrote
4 it. What's the point?

5 Q. When you look at page six of your Declaration,
6 paragraph 31, sub (i) as in Ida, employee fraud involving
7 embezzlement, you ever --

8 A. Yes.

9 Q. -- have you ever investigated any employee fraud
10 involving anything other than embezzlement?

11 A. Yes.

12 Q. How often have you done that in your career as a
13 DMV --

14 A. Before the task force, there were a couple
15 instances. And since I was on the task force, there was
16 two.

17 Q. Going back to La Mesa, did the police dispatch --
18 did the non-sworn employees, are they part of the same
19 Memorandum of Understanding as the sworn police?

20 A. At La Mesa?

21 Q. Yes.

22 A. Yes.

23 Q. Do you have any familiarity with the Sacramento
24 County Deputy Sheriffs Association?

25 A. I do not.

1 MR. ROSE: Nothing further.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Messing?

3 MR. MESSING: Yeah, just a couple more things.

4 RE-CROSS-EXAMINATION

5 BY MR. MESSING:

6 Q. So if -- from your testimony about how things
7 were harmonious at your former police department, if
8 CSLEA were harmonious, then you would -- you'd have no
9 problem with the -- with the organization of the
10 bargaining unit; is that right?

11 A. That's wrong.

12 Q. Okay. Well, you compared CSLEA to La Mesa, and
13 you said the difference is is that La Mesa is harmonious.

14 A. Right.

15 Q. Okay. So your problem is is that there's no
16 harmony in CSLEA, correct?

17 A. Incorrect.

18 Q. Well --

19 A. You're drawing a conclusion that's incorrect,
20 counsel.

21 Q. You don't like the leadership of CSLEA; isn't
22 that true?

23 A. No. I don't like the performance of the
24 leadership in CSLEA.

25 Q. Okay.

1 A. Personally I don't have any issues.

2 Q. Okay. So --

3 A. Yet.

4 Q. -- if you were leading CSLEA things would be
5 different, right?

6 MR. ROSE: Objection. Calls for speculation.
7 Relevance.

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I don't see how
9 that would be speculation since he's already ran a police
10 officer association for five years. I think he's got
11 enough to draw on. So, go ahead, sir.

12 THE WITNESS: To use the technical term, it would be
13 way different.

14 BY MR. MESSING:

15 Q. And I presume that because of what you would do
16 if you were president of CSLEA, there would be more
17 harmony in the organization?

18 A. Well, I can't guarantee that. I don't know if
19 you've met some of our officers. But I can guarantee
20 that their rights would be protected, that the books
21 would be open, that they'd get honest, open elections.

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Go ahead and
23 finish your answer. I mean don't worry about them. Is
24 there anything else, Mr. Falcione?

25 MR. MESSING: Well, yeah.

1 THE WITNESS: Yeah, there's a lot more, but --

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

3 THE WITNESS: -- Kasey evidently has a question.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

5 BY MR. MESSING:

6 Q. Okay. Yeah. Just one question on this aspect.

7 Do you understand that you have a right under the Dills

8 Act, and let's start with that, to get an audited

9 statement of the expenses and income of CSLEA?

10 MR. ROSE: Objection. This is the same line of

11 questioning --

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You're right,

13 Mr. -- you're right.

14 MR. MESSING: Well, I'm just following up on what he

15 said.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: No.

17 MR. MESSING: All right. I'll --

18 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I'm going to

19 sustain the objection. You're right, Mr. Rose.

20 MR. MESSING: I'll pass over that.

21 BY MR. MESSING:

22 Q. Now, you said something about you didn't talk to

23 Kasey because they initiated the action against you. Do

24 you believe that Kasey Clark initiated an action against

25 you?

1 A. No. They is plural.

2 Q. Okay. But you didn't make an effort to talk to
3 him. Okay. Just one last thing. One last area. You're
4 exceptionally proud of the fact that you're a peace
5 officer; isn't that true?

6 A. Exceptionally proud?

7 Q. Yes.

8 A. I think it's a good thing.

9 Q. You think it's a good thing? Do you think that
10 most -- isn't it true that you have a tattoo of a badge
11 on your chest?

12 MR. ROSE: Objection.

13 MR. MESSING: Peace officer badge.

14 MR. ROSE: Objective. Invades the witness' privacy.

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sustained.

16 MR. ROSE: It lacks relevance. Three fifty-two.

17 MR. MESSING: Well, how -- if it invades his privacy,
18 how would I know that?

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I -- well,
20 regardless of that --

21 MR. ROSE: Three fifty-two.

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: -- I'm not going
23 to make him prove it. So let's get another questions.

24 MR. MESSING: Okay. You think you'd be proud of it.

25 THE WITNESS: I like the second question better.

1 MR. MESSING: You think he'd be proud of it if he put
2 it -- if he put it on his chest.

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And you don't
4 have to ask him about marine corps tattoos either. So
5 let's move on.

6 MR. MESSING: No, I'm not going to ask him about
7 marine corps tattoos. That's beyond the relevance of
8 this proceeding. Nothing further.

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

10 MS. TRUONG: Nothing, your Honor.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Rose?

12 MR. ROSE: Nothing.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Falcione,
14 thank you very much.

15 THE WITNESS: Thank you, sir.

16 MR. MESSING: Thank you.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And we'll go off
18 the record. Take a break. Off the record.

19 (Off the record.)

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: We're back on
21 the record. And I am admitting the Declaration of
22 Mr. Falcione, Petitioner's Exhibit S.

23 (Petitioner's Exhibit S received in
24 evidence.)

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: The next

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7 recording the proceedings in the matter of STATE OF
8 CALIFORNIA, Employer, and PEACE OFFICERS OF CALIFORNIA,
9 Petitioner, and CALIFORNIA STATEWIDE LAW ENFORCEMENT
10 ASSOCIATION, Exclusive Representative, Unfair Practice
11 Charge No. SA-SV-171-S, and which recording was duly
12 recorded at Sacramento, California on February 26, 2009,
13 and that the foregoing pages 1 through 271 constitute a
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Dated this 14th day of March, 2009, at Dixon,
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