

March 10, 2009

Page 1

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.)	
)	
_____)	

MARCH 10, 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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21
22
23
24
25

INDEX OF WITNESSES

--oOo--

Petitioner's Witnesses	Page
ROBERT A. ORANGE	
Direct Examination by Mr. Rose	15
Cross-Examination by Mr. Messing	78
Redirect Examination by Mr. Rose	141
Recross-Examination by Mr. Messing	160
MICHAEL LILLIE	
Direct Examination by Mr. Rose	169
Cross-Examination by Mr. Messing	178
Redirect Examination by Mr. Rose	202
Recross-Examination by Mr. Messing	215
ALAN BARCELONA (Per Evidence Code 776)	
Cross-Examination by Mr. Rose	230
Redirect Examination by Mr. Messing	284
Recross-Examination by Mr. Rose	290
Recross-Examination by Mr. Messing	159

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX OF EXHIBITS

--oOo--

Petitioner's Exhibits	Ident.	Evid.
Y Declaration of Gary Schales		78
Z Declaration of Bob Orange	13	78
AA Citation Summary, 2006	16	78
BB Citation Data, 1990	16	78
CC Decision of Executive Committee	29	
DD DVD, Fish and Game Wardens, 2009	50	78
EE CSLEA Article from website	65	78
FF Declaration of Michael Lillie	168	218
Exclusive Representative's Exhibits:		
N Document from Alan Barcelona	82	219
Re: SB 695, Support if Amended		

1 very much.

2 THE WITNESS: Okay. Thank you.

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: The items that
4 are marked in red are mine.

5 THE WITNESS: Okay.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I think the rest
7 are yours. And we'll be back let's just say in an hour.
8 Off the record.

9 (Off the record.)

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.
11 We're back on the record. And we do have Mr. Orange
12 here. I just wanted to admonish you not to discuss your
13 testimony with any other of the witnesses in this case.
14 Do you understand the admonishment, sir?

15 THE WITNESS: Yes, I do. Thank you.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. With
17 that, off the record.

18 (Lunch recess taken.)

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: We are back on
20 the record. We have another witness called by the
21 Petitioner. I'm going to ask this witness to raise your
22 right hand.

23 (Witness sworn by the Judge.)

24 THE WITNESS: I do.

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Please state

1 your name for the record, spelling your last name.

2 THE WITNESS: It's Michael Lillie. L-I-L-L-I-E.

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Thank you. I
4 got a couple preliminary questions for you, Mr. Lillie.
5 First of all, did you ever receive a transcript of the
6 first two days of this proceeding?

7 THE WITNESS: No.

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I'm not saying
9 that you should have.

10 THE WITNESS: No.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I'm just --

12 THE WITNESS: Yes.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. Some of
14 the questions that I ask doesn't mean I'm expecting a yes
15 answer or not.

16 THE WITNESS: Okay.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: So don't worry
18 about it. Have you ever met an individual by the name of
19 James Cline?

20 THE WITNESS: No.

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. That
22 answers two. Lastly, I'm going to be -- looks like you
23 have it already. You have that Declaration in front of
24 you. I'm going to go ahead and mark that as Petitioner's
25 Exhibit double F, what appears to be the Declaration of

1 Michael P. Lillie. And just mark that real quick.

2 (Petitioner's Exhibit FF marked for
3 identification.)

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And sir, you
5 have your own document there before you. Let me just
6 double-check the last page here. All right. Good
7 enough. Sir, that Declaration -- I'm going to turn that
8 last -- if you'd turn to the last page of that
9 Declaration. Is that your signature, sir, or a copy
10 thereof?

11 THE WITNESS: Yes, it is.

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And did you sign
13 it on or about February 23rd of '09?

14 THE WITNESS: Yes, I did.

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And you signed
16 it in the city of Folsom, California?

17 THE WITNESS: Yes, I did.

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

21 THE WITNESS: Yes.

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And is there any
23 corrections or anything in regards to that that you need
24 to make after reviewing it?

25 THE WITNESS: No.

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. Why don't
2 you take those documents. Let's just put them right up
3 here for now. And which is a nice little Google map on
4 how to get here. Other than that, further questions,
5 sir.

6 MR. ROSE: Yes.

7 TESTIMONY OF

8 MICHAEL LILLIE,

9 Having been duly and regularly sworn, testified as
10 follows:

11 DIRECT EXAMINATION

12 BY MR. ROSE:

13 Q. Mr. Lillie, we've got your Declaration. Let me
14 ask you specifically, turning to page eight of your
15 Declaration, paragraph 59, it says, "I directly supervise
16 a non-peace officer Criminal Intelligence Specialist, who
17 is a member of Bargaining Unit 7." Do you see that?

18 A. Yes.

19 Q. Do you directly supervise any other employees of
20 the State of California?

21 A. Yes.

22 Q. What other classifications of employees other
23 than Criminal Intelligence Specialist do you supervise?

24 A. Special Agent.

25 Q. How many Special Agents do you supervise?

1 A. Currently six.

2 Q. How many Criminal Intelligence Specialists do you
3 supervise?

4 A. One.

5 Q. Do you supervise any other classifications within
6 the State service?

7 A. No.

8 Q. How long have you been supervising the Special
9 Agents and the Criminal Intelligence Specialists?

10 A. Special Agents since my promotion May 1st, 2005,
11 and the CIS since, oh, maybe July or August of 2008.

12 Q. As a supervisor of those employees, would you
13 consider yourself familiar with the job duties of those
14 classifications?

15 A. Yes.

16 Q. Could you tell us based on your experience how do
17 the job duties of Criminal Intelligence Specialist
18 compare to the job duties of Special Agent?

19 A. Criminal Intelligence Specialist is analytical
20 work mostly done at a computer. Maybe use of the
21 telephone also confirming information. Special Agents'
22 duties include the type of work that the CIS does, as
23 well as peace officer duties.

24 Q. And if -- when you say the type of work the CIS
25 does as well as peace officer duties, can you allocate

1 for us approximately using percentages what percentage of
2 time is spent typically in your experience by Special
3 Agents doing CIS-type work and what percentage of time is
4 spent doing peace officer duties?

5 A. Again, this is depending on what type of case or
6 what type of assignment you have as a Special Agent. But
7 on my team I would say about 20 percent of the time they
8 do analytical work. And that can, again, vary case to
9 case. About 20 percent of the time doing analytical
10 work, and then 80 percent of the time is peace officer
11 type of work.

12 Q. Does analytical work involve going into the
13 field?

14 A. No.

15 Q. What other -- you mentioned use of computer and
16 use of telephone. What other job duties are involved in
17 analytical, or as you called it, CIS-type work?

18 A. They basically get all their information off
19 computer databases that are, you know, in their office,
20 or use the telephone to call and get information from
21 other law enforcement agencies or public agencies,
22 whoever it may be.

23 Q. Okay. Let me ask you some specific things. Does
24 that work involve the arrest of subjects?

25 A. For a CIS?

1 Q. Correct.

2 A. No.

3 Q. How about for a Special Agent?

4 A. Yes.

5 Q. Does the work of a CIS involve use of any
6 firearm?

7 A. No.

8 MR. MESSING: I'm going to object. I mean this is
9 all going to be a series of leading questions.

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I have to agree.
11 It's an easy fix, Mr. Rose. He can describe the
12 difference between the duties of a CIS and the Special
13 Agent in regards to their peace officer duties and
14 analytical duties. I mean I think that --

15 MR. ROSE: I thought we went down that road, and now
16 I'm getting specific. He's exhausted his testimony with
17 regard to that. But I'll just move on.

18 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

19 BY MR. ROSE:

20 Q. Okay. Now, then, how long have you been in a
21 classification represented by CSLEA?

22 A. Since 1999 when they were CAUSE.

23 Q. I see. And when you first came into -- well,
24 have you -- do you currently have a belief as to the
25 adequacy of representation of CSLEA of you as a Special

1 Agent?

2 A. Yes, I have a belief.

3 Q. What is that belief?

4 A. I don't think they represent us in some areas the
5 way I would want to be represented.

6 Q. Have you always held that belief?

7 A. Shortly thereafter. Probably took about a year
8 into my being a member for CSLEA to notice things that I
9 wasn't happy with.

10 Q. What things did you notice that you were not
11 happy with?

12 A. Well, first and foremost was our pay. As well as
13 most of the areas I'm not happy with as far as their
14 representation have to do with pay or other type of pay
15 benefits.

16 Q. I see. Do you have any specific examples in
17 mind?

18 A. Yeah. Well, I -- one example is here's something
19 that I believe CSLEA or CAUSE should have -- should stand
20 up and represent us in is when we work overtime, and we
21 work a lot of overtime in our job, Department of Justice
22 allows -- has to compensate us, but they can compensate
23 us with time -- taking CTO time off, or in pay. We don't
24 have the choice of how much pay we want to receive, like
25 other police officers or law enforcement agencies.

1 If they say, hey, you know, Special Agent Supervisor
2 Lillie, you worked 80 hours of overtime this month, we
3 can only pay you 20, you'll have to take the rest in CTO,
4 that's what I have to take. And then they can turn
5 around and have me make up a plan to take that CTO off.
6 Not when I want to, but when they want it done.

7 Q. Now, with respect to that, let me ask a couple --
8 let me back up a couple minutes. Have you ever looked
9 into employment outside of the Department of Justice in
10 the State service?

11 A. Yes.

12 Q. What other departments of the State of California
13 have you inquired or looked into?

14 A. The California Department of Corrections and
15 Rehabilitation.

16 Q. I see. Are you familiar at all with -- well,
17 what specifically -- what job opportunity have you
18 specifically looked into in that Department?

19 A. Parole Agent, Parole Agent II, Special Agent,
20 Senior Special Agent, and Special Agent in Charge.

21 Q. Are those positions within Bargaining Unit 7, if
22 you know?

23 A. No.

24 Q. Are they -- what -- do you know which bargaining
25 unit they're in?

1 A. Yeah, I do actually. The Parole Agent I and
2 Parole Agent II are in CCPOA. The Special Agent Series
3 in the Department of Corrections is unrepresented.

4 Q. Now, then, did you have an opportunity to
5 investigate those positions with respect to how overtime
6 is compensated either by way of CTO or pay?

7 A. Yeah. I've spoken to the people who work those
8 positions.

9 Q. And what have you learned with respect to how
10 those employees in the other bargaining unit are
11 compensated with respect to overtime?

12 A. When they work overtime, they can -- they're
13 allowed to choose if they want to pay or comp time for
14 their hours that they worked.

15 Q. Are there any other areas that caused you to have
16 concern about CSLEA's representation?

17 A. Just the general pay raise areas. You see
18 contracts with other peace officer groups within the
19 State, their pay raises are much larger. Some of them
20 aren't even capable of being Special Agents at the
21 Department of Justice and they're making more money than
22 I am, including CCPOA members, or peace officers.

23 For example, I used to work on a HIDTA Task Force,
24 which is a federal drug task force when I worked
25 narcotics. We oftentimes went into methamphetamine labs.

1 My co -- sheriff deputy coworkers were making 15 percent
2 hazard pay every month for participating in those -- or
3 just having the actual ability to participate in it.
4 They didn't even have to go into a lab. They would get
5 15 percent lab pay. I didn't get any extra pay for doing
6 the same job. And those are the type of things that I'm
7 talking about when I'm unhappy with CSLEA's
8 representation as far as --

9 Q. Have you spoken to --

10 A. -- the salaries.

11 Q. -- to other Special Agents about CSLEA's
12 representation?

13 A. Yes.

14 Q. And could you estimate for us how many other
15 Special Agents you've spoken to concerning CSLEA's
16 representation?

17 MR. MESSING: Objection. Foundation.

18 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Number that he's
19 spoken to?

20 MR. MESSING: And what period of time? Are we
21 talking about since 1981, you know? And I would object
22 to relevance.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Well, he's been
24 employed since 2005, so I think that's a fair estimator.
25 So since your employment, can you answer the question?

1 THE WITNESS: I actually have been employed as a
2 Special Agent since 1999.

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Oh, I'm sorry.

4 THE WITNESS: No. It's supervisor since 2005.

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Oh, thank you.

6 THE WITNESS: Which that changes your --

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. All
8 right. So I mean -- well, that's a question -- I'm not
9 sure how much you talked to them as a supervisor. That
10 might be a different role. So let's just say since your
11 employment, '99. That's about the easiest way to put it.

12 THE WITNESS: At least 50 since 1999.

13 BY MR. ROSE:

14 Q. And in speaking to these Special Agents, at least
15 50 of them, regarding CSLEA's adequacy of representation,
16 what have you been told?

17 A. They're not happy with it.

18 Q. And have you been told reasons why those other
19 Special Agents are unhappy with it?

20 A. It's really the same reasons that I'm -- the
21 concerns that I'm bring up right now. As far as DOJ's
22 concern, that's as a Special Agent, and I'm speaking on
23 my behalf. But on those people that I've spoken to, we
24 all have the same concern. It comes to the -- we're
25 underpaid. Other peace officers in this state make more

1 money than us, and they can't even get -- they don't have
2 the qualifications to be a Special Agent at DOJ.

3 MR. ROSE: Okay. Nothing further at this time.
4 Thank you.

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Before we just
6 turn over to cross, is the Special Agent Supervisor an
7 excluded position?

8 THE WITNESS: No. I'm Bargaining Unit 7.

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Oh, no kidding.
10 Okay. All right. That's all I had. Mr. Messing.

11 CROSS-EXAMINATION

12 BY MR. MESSING:

13 Q. Okay. First of all, have you -- are you familiar
14 with the duties that other Investigators in the State
15 have in their normal job duties?

16 A. Depends on what type of Investigator. Yes, some.

17 Q. Yes? Which ones are you familiar with?

18 A. Are you talking about sworn peace officer
19 Investigators? Are we on the right track?

20 Q. Sure, sworn peace officer Investigators.

21 A. Special Agents, Department of Corrections, Parole
22 Agents to their --

23 Q. Okay. Let me narrow it down. How about other
24 Investigators in the bargaining unit represented by
25 CSLEA?

1 A. Somewhat familiar.

2 Q. Somewhat?

3 A. Not intimately.

4 Q. Can you tell us some of the Unit 7
5 classifications that you're familiar with?

6 A. Outside of the Special Agent range --

7 Q. Yeah.

8 A. -- I'm familiar with what Fish and Game Wardens
9 do. Again, not intimately familiar.

10 Q. Anybody else?

11 A. No. Just hearsay. Some insurance Investigators,
12 what not. AB -- oh, I think ABC people. We've worked
13 with them. That's right. ABC Investigators. DMV
14 Investigators.

15 Q. Okay. Do you think that Fish and Game Wardens do
16 a similar job as Special Agents of the Department of
17 Justice?

18 A. From what I know, yes. But it's in a different
19 area.

20 Q. Okay. Do you think that Insurance Investigators
21 do a similar job as do Special Agents with the Department
22 of Justice?

23 A. I couldn't tell you that because I don't know.

24 Q. How about ABC Investigators?

25 A. They do a similar job, yes.

1 Q. And DMV Investigators?

2 A. Yeah, similar.

3 Q. Similar. Okay. Are you familiar with hospital
4 police officers?

5 A. No.

6 Q. Now, Special Agents -- the classifications we
7 just talked about, you are aware that Special Agents of
8 the Department of Justice make more money than those
9 classifications, right?

10 A. Yes, I am.

11 Q. Okay. If these other classifications do a
12 similar job as Special Agents of the Department of
13 Justice, do you think that they should get paid the same
14 amount as Special Agents?

15 A. If they did the exact job we did, yes.

16 Q. Okay. But you don't believe they do the exact
17 job you do?

18 A. We have different duties. We have different
19 goals. You know, their leaders have them doing one
20 thing. Ours has us doing another, which takes us in
21 different directions.

22 Q. Okay. But you think that the duties that Special
23 Agents perform entitle them to more compensation than
24 what Fish and Game Wardens do, for example, or ABC
25 Investigators, correct?

1 A. Well, as far as Fish and Game Wardens, no. I
2 don't -- to me, you know, when I look at a Fish and Game
3 Warden, they're a police officer, just like anybody else.
4 Again, I've never been out with a Fish and Game Warden.
5 It's not my area that I would want -- it's not the
6 choice -- type of police officer that I would want to be.

7 Q. So you're saying that they should make the same
8 as Special Agents in the Department of Justice?

9 A. You know what? I really don't know.

10 Q. Okay. And same question for Insurance
11 Investigators.

12 A. Again, I don't know their jobs intimately enough
13 to say they should make X, Y or Z.

14 Q. Okay. Now, let's turn to the job of Special
15 Agents. There are lots of different jobs that Special
16 Agents do as well, right?

17 MR. ROSE: Objection. Vague.

18 ADMINISTRATIVE LAW JUDGE CLOUGHESY: We're talking
19 about DOJ Special Agents?

20 MR. MESSING: Yes.

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: There's a lot of
22 different assignments that they have. Do you agree?

23 THE WITNESS: Yes.

24 BY MR. MESSING:

25 Q. Okay. And your area of responsibility seems to

1 be heavily criminal enforcement. But there are Special
2 Agents who do less criminal enforcement; isn't that
3 correct?

4 A. It's all criminal enforcement.

5 Q. Well, how about how many Special Agents are
6 there? Do you know?

7 A. No.

8 Q. Okay. Do you know how many Supervisors there
9 are?

10 A. No.

11 Q. Okay. Isn't it true that there is a Bureau of
12 Narcotic Enforcement?

13 A. Yes.

14 Q. Okay. There's a Bureau of Investigations?

15 A. It's called Bureau of Investigation and
16 Intelligence, yes.

17 Q. Okay. And those are manned by Special Agents in
18 the Department of Justice?

19 A. Yes.

20 Q. Okay. In conjunction with other employees they
21 work with, correct?

22 A. Yes.

23 Q. Okay. And most of the Special Agents in those
24 bureaus would be involved in criminal enforcement,
25 correct?

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Only if you
2 know.

3 THE WITNESS: Yes.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

5 BY MR. MESSING:

6 Q. For the most part, correct?

7 A. For the most part, yes.

8 Q. Okay. There's also a gaming division, correct?

9 A. It's actually Bureau of Gaming now.

10 Q. Bureau of Gaming.

11 A. Gaming Bureau.

12 Q. Okay. Bureau of Gaming. And isn't it true that
13 the folks dealing with the Bureau of Gaming, they do some
14 criminal enforcement?

15 A. It's my understanding that the Agents do the
16 criminal enforcement. The non-sworn do the
17 administrative --

18 Q. Okay.

19 A. -- regulatory issues.

20 Q. Okay. Well, what about -- but it says here that
21 you conduct investigations of alleged civil law
22 violations, paragraph 27. Okay. Civil law.

23 Investigations of civil law violations are not criminal
24 enforcement, correct?

25 A. They can have a criminal nexus. But sometimes

1 the Attorney General pursued them civilly.

2 Q. Okay. But you also perform civil law
3 investigations, correct?

4 A. We --

5 MR. ROSE: Objection. Asked and answered.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You know, I
7 think it's different. Go ahead, sir.

8 THE WITNESS: We do do that, yes.

9 BY MR. MESSING:

10 Q. Okay. And would you say that that's something
11 that's uniform throughout the ranks of Special Agents, or
12 some have to do more than others?

13 A. Actually, it's a very small part. And the only
14 Agents most likely to do it within the Department of
15 Justice are the Bureau of Investigation, Intelligence
16 Investigative Support Team Agents.

17 Q. Okay. Special Agents also are responsible for
18 administrative investigations; isn't that true?

19 A. Some, yes.

20 Q. Okay. And that may deal with regulations, rules
21 and regulations as opposed to criminal laws?

22 A. The ones that conduct administrative
23 investigations work for the Professional Standards Group.
24 That's commonly known as Internal Affairs.

25 Q. Uh-hmm.

1 A. And they conduct administrative investigations
2 against employees at DOJ.

3 Q. Okay. Are you familiar with Special Agents
4 performing Medi-Cal fraud investigations?

5 A. I'm familiar with them, yes.

6 Q. Okay. And some of their investigations are not
7 related to criminal enforcement; isn't that correct?

8 A. I don't know. The ones I know about do criminal
9 enforcement.

10 Q. Are you familiar with investigations concerning
11 restraint of trade, monopolistic and unfair trade
12 practices?

13 A. Maybe through the Attorney General's Office.

14 Q. Well, are you familiar with that being -- do you
15 believe that that's a part of your -- of the job
16 description of a Special Agent?

17 A. We may be called to do something like that, yes.

18 Q. Okay. All right. Now, you were complaining
19 about your pay increases.

20 A. Excuse me. I don't think I was complaining about
21 my pay increases.

22 Q. Okay. Well, let me rephrase it. You were -- you
23 were indicating that you felt that there was inadequate
24 representation and part of it had to do with your lack of
25 a pay level that was satisfactory to you; is that fair to

1 say?

2 A. Yes.

3 Q. Okay. Special Agents, aside from being the
4 highest paid investigators in the -- in the Bargaining
5 Unit 7, also since 2007 got a 25 percent bump. Are you
6 familiar with that fact?

7 MR. ROSE: Objection. Compound question. Assumes
8 facts not in evidence.

9 BY MR. MESSING:

10 Q. Do you know whether or not Special Agents since
11 2007 got a bump of a combination of pay and salary step
12 increases that took them up 25 percent?

13 A. I'm familiar with it.

14 Q. Okay. Now, you're talking about all of these
15 positions within the State that seem like they get paid
16 more money than you. I think you said Parole Agents,
17 Parole Agent I's and II's, for example. Did you apply to
18 become a Parole Agent with the Department of Corrections?

19 A. Parole Agent II, yes, I have applied to do that.

20 Q. You did? And when did you apply?

21 A. Jeez. Several times.

22 Q. Okay. Have you been offered a job?

23 MR. ROSE: Objection. Relevance. Three fifty-two.

24 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sustained.

25 MR. MESSING: Well, you know, I think it's relevant.

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I mean if you
2 want to make an offer of proof, go ahead.

3 MR. MESSING: Yeah. I think it's -- yeah. Yeah.
4 That there are -- when you're comparing one job to
5 another, there are other factors other than money.
6 There's the desirability of the job. And we think that
7 this individual who's testifying, although he's concerned
8 about his pay level as a Special Agent, has opted to
9 remain as a Special Agent because of other factors and
10 working conditions.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You know, if you
12 want to ask those type of questions. But as far as
13 whether he got the job or not, sustained.

14 BY MR. MESSING:

15 Q. Have you opted -- have you had opportunities to
16 take positions in any of the other agencies that you --
17 that you mentioned?

18 A. Yes, I have.

19 Q. Okay. And you've opted not to.

20 MR. ROSE: Objection.

21 MR. MESSING: Is that correct?

22 MR. ROSE: Same objection.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I just said --

24 MR. ROSE: I thought you sustained the objection as
25 to whether he --

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: No. This is --
2 the sustained objection had to do whether he got the job.
3 Whether he applied and whether he got the job. Now we're
4 talking about the desirability of the job and --

5 MR. ROSE: Oh, I didn't hear that. I heard him if he
6 turned it down or accepted it.

7 MR. MESSING: I said, you've opted not to leave the
8 Department of Justice; is that correct?

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Right. Go
10 ahead, sir.

11 THE WITNESS: Yes.

12 BY MR. MESSING:

13 Q. And that is because of the type of work that you
14 get to do as a Special Agent of the Department of
15 Justice, in part?

16 A. Mostly because of pay.

17 Q. Because you get paid well as compared to other
18 positions in -- that you compare to; is that what you're
19 saying?

20 A. No, that's not what I'm saying. Just timing of
21 positions.

22 Q. Timing of positions. So -- but it's -- you're
23 saying pay is a factor that kept you in the Department of
24 Justice?

25 A. Mostly timing of the pay. So I guess for one

1 time, yes, it did.

2 Q. Okay.

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Can you explain
4 that? I don't know what you're talking about when you
5 say timing of the pay.

6 THE WITNESS: I was offered a job to go to CDC as a
7 Special Agent.

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

9 THE WITNESS: They wanted to hire me before a pay
10 raise was implemented.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I remember this.
12 Okay.

13 THE WITNESS: I did not take the job because I would
14 have been taking a cut in pay.

15 MR. MESSING: Okay.

16 THE WITNESS: Had it been a different time, I would
17 have taken the job.

18 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yeah. Okay.

19 THE WITNESS: Timing.

20 BY MR. MESSING:

21 Q. Okay. Then let's move on to another area
22 similar. You talk about your -- the overtime provisions
23 under the Bargaining Unit 7 agreement. Now, isn't it
24 true that you get to manage up to 80 hours of your
25 overtime? Do you know what I mean by that?

1 A. No, I don't.

2 Q. You get the option of determining whether to take
3 cash or compensatory time off until you get up to 80
4 hours.

5 A. Yeah. I believe if you have under 80 hours of
6 comp time --

7 Q. Uh-hmm.

8 A. -- you can demand to be paid.

9 Q. Okay. Are you -- do you know whether or not
10 Special Agents are the only group in Bargaining Unit 7
11 that has the ability to manage their overtime in that
12 fashion?

13 A. No. I don't know anything about overtime in the
14 other Bargaining Unit 7 groups.

15 Q. Okay. Let me just go back for a second to --
16 okay. To the -- you testified about who you supervise.
17 Now, talking about the CISes, you said that they compile
18 and analyze data; is that right?

19 A. Compile data, yeah. They do some analysis, yes.

20 Q. Okay. And isn't it true that Special Agents rely
21 on data analyzed and used -- compiled and analyzed by
22 CISes in order to perform and conduct investigations and
23 enforcement actions?

24 A. Yes.

25 Q. Okay. And so it's your testimony that Special

1 Agents work together with the CISes in that regard?

2 A. If you have access to a CIS. My team happens to
3 have one on our team, which is nice. It's the first time
4 I've ever had a CIS on my team since 1999.

5 Q. Okay. Now, I notice you didn't put -- so you --
6 so it appears that you view it as an asset to have a CIS
7 available to assist you with your team's investigations?

8 A. The one I have is. It all depends who you have
9 working for you.

10 Q. Okay. I would say that's probably true of any
11 job.

12 A. Right.

13 Q. All right. Now, I notice that you didn't mention
14 other Bargaining Unit 7 folk that you might work with,
15 other classifications. Are there other classifications
16 that you -- that Special Agents work with, in your
17 experience?

18 A. Yeah. I thought we talked about -- remember ABC,
19 DMV?

20 Q. No. I'm talking about non-sworn.

21 A. Oh, oh, sorry. Criminalists.

22 Q. Okay.

23 A. Trying to think who else is in the bargaining
24 unit.

25 Q. Okay. Let's talk about Criminalists.

1 A. Okay.

2 Q. Okay. Will you explain how Special Agents work
3 together with Criminalists?

4 A. You know, to be honest with you, we rarely work
5 with the Criminalists. When you're in Narcotics back in
6 the heyday of methamphetamine labs in California, we'd
7 see them at meth labs on the BII side, meaning Bureau of
8 Investigation Intelligence. Every now and then we'll
9 ship some evidence off to them. Or with the new DNA
10 stuff, we'll submit DNA samples for them to analyze.
11 But --

12 Q. Okay. When you say we, are you speaking for --

13 A. We, Special Agents.

14 Q. All of the Special Agents, or your particular
15 group?

16 A. Well, at least my particular group.

17 Q. Okay.

18 A. I don't know what all of them do.

19 Q. Okay. Do Criminalists participate as part of the
20 prosecution team when there are prosecutions let's say
21 for narcotics violations?

22 A. They testify, yes.

23 Q. They testify. Okay. Some of the knowledges that
24 are listed in your Job Description attached to the -- to
25 your Declaration talk about technique -- knowledge of

1 techniques for securing, preserving and handling
2 evidence. Do you work with --

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I'm not sure
4 he's at the right spot.

5 MR. MESSING: This would be page --

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Six of nine.

7 MR. MESSING: -- six of nine, almost dead in the
8 middle of the page.

9 THE WITNESS: Got it.

10 BY MR. MESSING:

11 Q. Okay. Do you work with Criminalists in securing,
12 preserving and handling evidence?

13 A. I have.

14 Q. Okay. What about -- and when I -- when I say
15 you, I'm -- now I'm talking about Special Agents in
16 general.

17 A. Yeah. Not on a regular basis.

18 Q. Okay. It says, "Use of relational database
19 software to analyze and evaluate fiscal data from various
20 sources, and to analyze seized and computerized data."

21 Okay. Do you work with CISes or Criminalists in
22 performing those functions?

23 A. Have. But Agents are -- we have Agents that are
24 trained at a level beyond CIS to analyze and do forensic
25 analysis of computers. So --

1 Q. Okay.

2 A. -- it's not a CIS's job.

3 Q. Do Special Agents and CISEs or Criminalists
4 occasionally train together?

5 A. Unless it was like sexual harassment training,
6 which is statewide.

7 Q. Okay. What about on securing the chain of
8 evidence --

9 A. No, they don't book --

10 Q. -- fingerprints, things of that sort?

11 A. CISEs don't book evidence. Again, all they do is
12 analyze data and hand us a sheet of paper, or a stack of
13 paper.

14 Q. Let's talk about Criminalists.

15 A. Criminalists?

16 Q. Yeah.

17 A. I don't know what they do. They work in a
18 different area. Again, I'm only in contact with them
19 when they came out and processed some of the labs that we
20 called them out on. Submit specific evidence to them.
21 It just goes to them in their -- in their laboratory.

22 Q. Okay.

23 A. And then they give us a report back that we
24 attach to our report.

25 Q. When you say our, is there some way of

1 identifying the unit that you're working in?

2 A. I work for the Major Crimes Team.

3 Q. Okay. What do -- what does Major Crimes Team
4 deal with?

5 A. Everything.

6 Q. Okay. Do you -- are you in the Bureau of
7 Investigation or --

8 A. And Intelligence, yeah.

9 Q. And Intelligence. Okay. So would you say that
10 those Special Agents working in B&E would have much more
11 occasion to work with Criminalists?

12 A. I've worked there. Depends on what you're
13 working. Give you an example. You're -- say you're
14 working for BII and you're working old homicides. You
15 might see a Criminalist a lot more than a Major Crimes
16 Team who's working fugitive, regular homicide
17 investigation, or any other crime, robbery, rape. So
18 somebody working an old cold, you're going to have more
19 contact with them. Not even on a daily basis, but you're
20 going to have more contact with them, because you're
21 going to need their DNA analysis skills.

22 B&E, depends what kind of team you're working on. If
23 you're working straight dope, buying finished product,
24 you're not going to see them. You're going to send the
25 dope to the crime lab, or you're going to send it to the

1 federal crime lab, whatever kind of case it is.

2 You work on the lab team, you'll see them when you
3 hit the lab. B&E Agents are trained to take samples
4 without the Criminalist there. But on large labs,
5 especially after we've been up for three or four days,
6 we're going to call a Criminalist in and let them do it.
7 So that -- if that gives you an idea of the frequency
8 that we see Criminalists, it's pretty infrequent all the
9 way across the board.

10 Q. Now, you testified that there are like --
11 something like 50 Special Agents that you spoke to who
12 are not happy with their representation. Correct me if
13 I'm wrong. What I heard you say by way of specifics are
14 just the same gripe that you have about the pay level.
15 Is that --

16 A. The things that I brought up are all topics that
17 come up when we talk about our unhappiness with CAUSE,
18 CSLEA, or just our bargaining unit. Not the group, per
19 se. Our predicament that we're in.

20 Q. Okay. By the predicament you're in, you mean
21 Special Agents being in a bargaining unit with all of
22 these diverse other classifications?

23 A. Diverse yet not equal.

24 Q. Okay.

25 A. That's our biggest complaint.

1 Q. And by not equal, you're -- that refers to both
2 sworn and non-sworn classifications?

3 A. Not so much the sworn. It's the complaint of the
4 non-sworn.

5 Q. You say not so much. That means to some degree,
6 though, the sworn.

7 A. No. Actually, I've never had another Agent
8 complain about any of those other being in with those
9 peace officers in our bargaining unit. It's always the
10 things that come up are -- and, you know, I don't know
11 what they do, but it's the Lifeguards, the CHP
12 Dispatchers, the -- I think the people who give the DMV
13 driving tests are in with us, which it's night and day.
14 Their job versus ours is night and day.

15 Q. Okay. You're aware that some Lifeguards are
16 peace officers?

17 A. I've heard some of them are.

18 Q. Okay.

19 A. Yeah.

20 Q. But you lump them in there with --

21 A. No, no. I just said Lifeguard. I didn't say
22 sworn Lifeguards.

23 Q. Oh, I see.

24 A. I don't even know enough of what they do. All I
25 know is that a regular Lifeguard who's not a peace

1 officer couldn't do my job. We're completely different.

2 Q. And do you think that a Lifeguard who's sworn can
3 do your job?

4 A. I wouldn't even know, you know.

5 Q. You wouldn't know.

6 A. I'm thinking Bay Watch right now, so --

7 Q. Okay.

8 A. I mean truly, I don't know what they do. It
9 could be -- I can't swim in the ocean, so they can do
10 something I can't do, I'll tell you that.

11 Q. All right. Now, you said that you -- you
12 indicated that CSLEA has not provided adequate
13 representation in some areas. So I presume there are
14 some areas that you think CSLEA has provided adequate
15 representation; is that right?

16 A. Boy, that's -- you see, you know, I really -- I
17 don't pay attention to much except for the pay issues as
18 it pertains to DOJ Special Agents. And let's talk about
19 those 50 people. That's their biggest concern. I don't
20 hear much about other things. It comes down to we do not
21 get paid the industry standard for what we do, and it's
22 because we're in a unit that the majority of the unit is
23 made up of people that don't even do the same job we do.
24 I mean to me it's black and white. It's common sense why
25 we don't make as much as a CDC Special Agent, who could

1 not even apply to be a DOJ Special Agent because they're
2 not qualified.

3 Q. And can you give me a specific example that shows
4 that being in a bargaining unit -- something that
5 happened in time that shows -- that demonstrates to you
6 and to us that being in a bargaining unit with non-sworn
7 has impacted the pay that Special Agents get?

8 A. Well, I don't have personal knowledge of that,
9 no.

10 Q. So --

11 A. I have hearsay knowledge of and understand the
12 concept that a majority -- to get something passed, the
13 majority of the people have to vote for it. So if you
14 take that idea, you got to please the non-sworn before
15 you please the sworn in CSLEA or it's not going to get
16 passed.

17 Q. So you don't know -- you're not aware of any
18 specific time when an increase for peace officers was
19 redistributed and given to non-sworn so that a contract
20 could pass?

21 A. I've heard of them, yes.

22 Q. But you don't have any personal knowledge? You
23 can't give me an example?

24 A. No. I'm not involved in the bargaining process.
25 I'm not privy to your information, no.

1 Q. Okay. Now, in 2006 you were familiar with a deal
2 that went down that gave substantial increases to peace
3 officers and investigators in the bargaining unit?

4 A. Is that the contract we have, or the last one we
5 just had? The 25 percent you were talking about?

6 Q. Yeah. Okay.

7 A. Yeah, I'm familiar with it.

8 Q. So you're familiar with that. Were you familiar
9 with how much the non-sworn members of the bargaining
10 unit got at that time?

11 A. Yeah, I've read it.

12 Q. It was way less than that, wasn't it?

13 A. Yeah.

14 Q. Yeah. Okay.

15 A. I don't know if I'd term it way less, but it was
16 less. I don't know the numbers. I'd have to see it.

17 Q. Okay. And you're familiar with the fact that
18 CSLEA has taken various cases on for Special Agents who
19 have been involved in shootings and other critical
20 incidents, correct?

21 A. Yeah, I'm familiar with that.

22 Q. Are you familiar with the Cardwood case that was
23 just published?

24 A. Yes, I am.

25 Q. Okay. And CSLEA went to court and got a writ

1 against the State dealing with Cardwood's personnel
2 action. Are you familiar with that?

3 A. I read that entire article.

4 Q. Okay. And you're -- do you happen to know who
5 Mike Hudson is?

6 A. Yeah, I do.

7 Q. Okay. And you're familiar with the fact that
8 Mike Hudson was facing a demotion and he and two other
9 Special Agents were represented by CSLEA? Are you
10 familiar with that? This is a public record.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Oh, okay. All
12 right.

13 THE WITNESS: I testified in front of you in front of
14 the hearing.

15 MR. MESSING: Yes.

16 THE WITNESS: Do you remember that?

17 BY MR. MESSING:

18 Q. Yes, you do. And due to CSLEA's efforts -- I
19 believe at that time it may have been called CAUSE -- the
20 demotion and the suspensions were entirely overturned.
21 You knew that?

22 A. Yeah. I read the article.

23 Q. Okay. Have you ever heard of -- can you give me
24 an example of a grievance that somebody wanted to bring
25 through CSLEA and they were denied the right to bring a

1 grievance? Do you have anything in mind? No?

2 A. No.

3 MR. MESSING: Okay. I think that's it for now.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Ms. Truong?

5 MS. TRUONG: Nothing from us.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Rose?

7 MR. ROSE: Yes.

8 REDIRECT EXAMINATION

9 BY MR. ROSE:

10 Q. What -- are there other employees not in
11 Bargaining Unit 7 that you work with?

12 A. I guess there are. I just don't know what
13 bargaining unit they belong to.

14 Q. Why don't you tell us what --

15 A. We have --

16 Q. I'm sorry.

17 A. I'm sorry.

18 Q. Continue.

19 A. We have Property Controllers, Office Technicians.
20 I'm trying to think who else is that we work with. Just
21 really our offices is Agents, the whole series, CIS,
22 Property Controller, and Office Technician. I don't
23 think the Property Controller or the Office Technician
24 are in Bargaining Unit 7.

25 Q. How would you compare the extent of work

1 interaction you have with a Property Controller to the
2 extent of work interaction you have with a Criminalist?

3 A. Probably more with the Criminalist because she's
4 attached to my team. Prior to that, it was probably the
5 exact same. Prior -- before me supervising her and her
6 being on my team.

7 Q. What do Property Controllers -- what functions do
8 Property Controllers perform?

9 A. They -- when an Agent goes to book evidence, we
10 give it to the Property Controller. We go into the
11 vault. He or she puts it in the vault and makes sure --
12 she double-checks the Agent that all -- everything's
13 filled out correctly on the piece of paper for chain of
14 custody of evidence.

15 And actually, prior to doing that, she does a
16 computerized entry of the items of evidence so it can be
17 retrieved. You know, somebody needs a piece of evidence,
18 she can go on her computer and tell you where it's at,
19 whatnot.

20 And that's -- they do that. And then they inventory
21 the vault along with a Special Agent when there's an
22 inspection, or Special Agent Supervisor. Somebody in
23 that series.

24 Q. To what extent do you rely on the functions of
25 Property Controllers in your job duties as a Special

1 Agent?

2 A. Really just to take us into the vault. They have
3 access to the vault. They -- that's it.

4 Q. Do you -- have you observed Property Controllers
5 have interactions with Criminalists?

6 A. No. Because Criminalists don't book. It's just
7 social, hi, how are you type of thing. Yeah. You know,
8 they don't --

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Other than that.

10 THE WITNESS: Their jobs don't go together. Because
11 CIS does not book evidence. They don't get around
12 evidence. They don't handle evidence.

13 BY MR. ROSE:

14 Q. What about the duties of Office Technicians in
15 your work area, what kind of duties are they performing?

16 A. They do -- they assist with the payroll. They
17 assist the Special Agent in Charge a lot with
18 administrative duties, sending correspondence, sending,
19 you know, anything -- kind of secretarial-type work. But
20 I don't -- you know, I'm not saying it's the most basic
21 job. Trying to get paid in the State system is pretty
22 difficult when you do your end-of-the-month work, so you
23 have to know all the ways to get the pay off to
24 headquarters. It can be trying. So they do that type
25 stuff.

1 Q. How would you compare the extent of involvement
2 you have as a Special Agent with Office Technicians to
3 Criminalists?

4 A. Well, actually, I deal with the Office Technician
5 a lot more than I deal with the Criminalist.

6 Q. How would you describe the extent to which you
7 rely on the work of Office Technicians to perform your
8 job functions as a Special Agent in Charge?

9 A. Well, I'm actually a Special Agent Supervisor.
10 Sorry.

11 Q. Okay.

12 A. Is that what you meant?

13 Q. Yes, that's what I meant.

14 A. You know, they -- I mean for me to perform my
15 job, I don't need the Office Technician. You know, they
16 just -- they do things like our interactions will be
17 there's a form saying all State employees need to be
18 signed, so the Office Technician will put the form in
19 your box, or she'll come into your office and say, you
20 know, hey, Mike, I need you to sign this form, it's due.
21 Confidentiality form, for example. We sign it.

22 But as far as it relates to my team and the
23 operational and outside of telling us how many hours of
24 overtime we can get paid for every month, or that we
25 might have messed up on our six -- you know, our pay

1 sheet, you know, that's how they assist us.

2 Q. Do you ever work with a Senior Photo Electronic
3 Specialist?

4 A. No.

5 Q. Are you aware whether or not a Senior Photo
6 Electronic Specialist is a classification within the
7 Department of Justice?

8 A. No.

9 Q. Have you ever heard of that classification?

10 A. No.

11 Q. Would it surprise you to learn that that's a
12 classification within Bargaining Unit 7?

13 A. No, it doesn't surprise me, actually.

14 Q. Would you say you work more with Property
15 Controllers --

16 A. I heard that.

17 Q. -- or Milk and Dairy Food Inspectors in your work
18 as a Special Agent?

19 A. I'm sorry. He distracted me by calling me a wise
20 ass.

21 MR. MESSING: No, I did not say that he was a wise
22 ass.

23 MR. ROSE: Let me re --

24 MR. MESSING: That's incorrect.

25 /////

1 BY MR. ROSE:

2 Q. Let me re-ask the question, sir. Would you
3 say --

4 MR. MESSING: Just a minute. For the record, what I
5 said was that he doesn't know what that classification
6 does. I did not call you --

7 THE WITNESS: You said, "He's a real wise ass."

8 MR. MESSING: I did not say that.

9 THE WITNESS: All right.

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Regardless of
11 that --

12 THE WITNESS: Doesn't matter.

13 MR. MESSING: It does. It matters to me.

14 THE WITNESS: It matters to you, then you shouldn't
15 have said it.

16 MR. CLARK: He didn't say it.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right, you
18 guys, next question.

19 BY MR. ROSE:

20 Q. All right. So my question was, would you say
21 work more, less or the same with Property Controllers
22 than Milk and Dairy Food Inspectors?

23 MR. MESSING: I'm going to object. This is
24 cumulative and of relatively little relevance.

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: If you can give

1 me a classification in DOJ versus something that's in
2 Consumer Affairs.

3 MR. ROSE: Well, Mr. Messing's been asking questions
4 about Office of Emergency Services in connection with
5 Fish and Game Wardens and Lifeguards and State Parks
6 peace officers.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I can actually
8 understand that connection. I -- have you ever dealt
9 with a Dairy Inspector?

10 THE WITNESS: No.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I mean I don't
12 make the connection. I did make the connection with the
13 emergency services.

14 BY MR. ROSE:

15 Q. How about with -- how much time do you spend
16 comparing the work that you do with Property Controllers
17 as against Field Representatives for the Board of Funeral
18 Directors and Embalmers?

19 MR. MESSING: I'm going to object. Same --

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sustained.

21 MR. MESSING: Same objection.

22 BY MR. ROSE:

23 Q. Are you familiar with the classification Criminal
24 Identification Specialist?

25 A. Yeah, I've heard of that before.

1 Q. Okay. Are you aware whether or not Criminal
2 Identification Specialist is in Bargaining Unit 7?

3 A. No, I'm not aware if they are.

4 Q. Could you describe for us the extent to which you
5 have interacted with Criminal Identification Specialists
6 at work as a Special Agent Supervisor?

7 A. I think they're the -- are they the people that
8 take the fingerprints down at DOJ Headquarters?

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Well, he
10 can't --

11 MR. MESSING: Object.

12 THE WITNESS: Okay.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: -- testify.

14 But --

15 THE WITNESS: Is that what they do? I think that's
16 who they are, and I've spoken to them one time. If
17 that's who they are, I spoke to them --

18 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

19 THE WITNESS: -- just the other day, two weeks ago.
20 They told me what they did. That's how I know them.

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Fair enough.

22 Next question.

23 THE WITNESS: If it's the same people.

24 BY MR. ROSE:

25 Q. And you did that -- have you done -- have you

1 ever interfaced, to your knowledge, with a Criminal
2 Identification Specialist while you were -- prior to your
3 advancement to the role of Supervisor, but as a Special
4 Agent?

5 A. No.

6 Q. Are you familiar with the classification
7 Emergency Management Coordinator?

8 A. No.

9 Q. Have you ever interfaced with an Emergency
10 Management Coordinator in your duties as a Special Agent?

11 A. No.

12 Q. Are you familiar with the classification
13 Emergency Notification Controller of the Officer of
14 Emergency Services?

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

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sustained.

17 BY MR. ROSE:

18 Q. Have you ever been involved with a Latent Print
19 Analyst?

20 A. Yes. They work at -- with the Criminalists.

21 Q. I see. And how often are you interfacing as a
22 Special Agent Supervisor with the Latent Print Analyst?

23 A. Never. I just know who they are.

24 Q. How about the same question but during the time
25 period that you were not a Supervisor, that you were a

1 Special Agent?

2 A. They -- I know they did work on fingerprints that
3 we would take off of lab equipment.

4 Q. Could you estimate for us in the entire time of
5 your career with the State as a Special Agent how many
6 hours or minutes or seconds you believe you've actually
7 interfaced with a Latent Print Analyst at work?

8 A. Maybe an hour. Because what happens is those
9 Criminalists that come out to the lab sites -- yeah,
10 yeah. Now I remember. They did have Latent Print people
11 come out. They were separate. That's right. But,
12 again, you know, truly, maybe about an hour. I would
13 point them in the right direction, and they would print
14 after obviously the Criminalist and everything was safe.
15 So, you know, just point them in the right direction.
16 We'd like to see that piece of glassware printed. Maybe
17 two -- maybe two hours --

18 Q. Are you aware whether or not --

19 A. -- the whole time.

20 Q. -- Latent Print Analyst is in Bargaining Unit 7?

21 A. No, I'm not aware. I don't know what bargaining
22 unit they're in.

23 Q. Have you ever interfaced with Polygraph Examiner?

24 A. Yes. Yes.

25 Q. Okay. And how frequently since you've been a

1 Supervising Special Agent have you interfaced with
2 Polygraph Examiner at work?

3 A. On business, or just talking to him when he's in
4 the office?

5 Q. Let's --

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Business.

7 THE WITNESS: Business? Couple hours maybe at most.
8 They work their own -- Polygraph Examiners kind of do
9 their own thing. They get call -- well, we don't have
10 anymore, actually. The last one just retired. He --
11 Doug Mansfield was his name, and he just retired. He's
12 the last one. We don't have a polygraph program anymore
13 at DOJ. And most of his work came from outside agencies.
14 They would call, and it would all be through Doug. And
15 Doug would travel throughout the state doing polygraph
16 examinations.

17 BY MR. ROSE:

18 Q. Prior to Mr. Mansfield's retirement and going
19 back in time prior to your advancement to Supervisor, how
20 often did you interface with Mr. Mansfield, or any other
21 Polygraph Examiner, for work purposes?

22 A. No, I've never used them.

23 Q. Do you ever interface with Public Safety
24 Dispatcher at work?

25 A. Yeah. We call in plates to them every now and

1 then. Because I think they work in the Command Center,
2 if I'm not mistaken. And we had one at our regional
3 office in Sacramento as well.

4 Q. How frequently since you've been a Special Agent
5 Supervisor have you interfaced with the Public Safety
6 Dispatcher?

7 A. Like total time, maybe a day's worth. And that's
8 just calling in, hey, could you run out this plate. They
9 give you the response and hang up.

10 Q. Same question for the time that you were Special
11 Agent, not a Supervisor.

12 A. I would say a day total through my whole career
13 at DOJ as a Special Agent.

14 Q. I see.

15 A. You know, if you added up the five-minute
16 conversations that I've had with them. We usually use
17 other people to do that type stuff.

18 Q. I see. You mentioned a predicament. Or I'm not
19 sure who mentioned it, but I heard the work predicament
20 on your cross-examination. Do you remember that series
21 of questions?

22 A. No, I'm sorry, I don't.

23 Q. The predicament that you're in as a Special Agent
24 in Bargaining Unit 7? Does that sound familiar?

25 MR. MESSING: Object. Mischaracterizes --

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I lost that.

2 MR. MESSING: -- the testimony.

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: But did you
4 remember anything about that?

5 THE WITNESS: I'm sorry, I just don't remember.

6 BY MR. ROSE:

7 Q. Okay. Well, you were asked a series of questions
8 about your being a peace officer in a bargaining unit
9 that's been predominantly of non-peace officers. Do you
10 remember that series of questions?

11 A. Yes, I do.

12 Q. Okay. And do you -- having discussed this with
13 all of your colleagues in the Department of Justice, or
14 many of them, you said at least 50, do you envision what
15 a solution might be to that concern?

16 A. Yes.

17 MR. MESSING: Calls for -- object. Calls for
18 speculation.

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Not unless it
20 was discussed. So is that your question or not?

21 MR. ROSE: Yes.

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

23 BY MR. ROSE:

24 Q. Based on those conversations, what solution is
25 envisioned?

1 Q. All right. According to your testimony, you're
2 not aware of even what all the peace officer jobs are in
3 the bargaining unit, correct?

4 A. No. I just know they're police officers and they
5 carry a gun and they put their lives on the line every
6 day.

7 Q. Not all of the police officers in the bargaining
8 unit carry a gun. Are you aware of that?

9 A. No, I'm not.

10 Q. Okay. And you're not aware of all of the non-
11 peace officers who are in the bargaining unit, what their
12 jobs are?

13 A. I do know that they don't carry guns, ones. I
14 don't know about peace officers that don't carry guns. I
15 know they do the same job and the risk factor is not in
16 their jobs as it is as a Special Agent.

17 Q. Do you think that the peace officers who don't
18 carry guns in the bargaining unit should be out of the
19 bargaining unit?

20 A. I don't know. I don't know what they do, and nor
21 was I even aware that peace officers -- if you're a peace
22 officer you don't carry a gun.

23 Q. Okay.

24 A. I'd have to research that. I don't even know it.

25 Q. Speaking of guns, do you know who Mike Walker is?

1 A. Yeah.

2 Q. Okay. And isn't it true that he was involved in
3 a shooting in the San Jose area; is that right?

4 A. Yeah.

5 Q. Okay. And he was investigated by the grand jury
6 and tried for his use of the weapon against a civilian?

7 A. I'm familiar with it.

8 Q. You're familiar with that?

9 A. Uh-huh.

10 Q. And are you aware of the fact that CSLEA provided
11 him his representation before the grand jury?

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Are you aware
13 whether or not they did?

14 THE WITNESS: Yeah. I know attorneys did. I don't
15 know if it was --

16 BY MR. MESSING:

17 Q. You don't know if it was --

18 A. -- CSLEA attorneys, but attorneys.

19 Q. Okay. And you didn't know what -- do you know
20 one way or the other what role CSLEA had in securing him
21 representation beyond that and for the trial?

22 A. No.

23 Q. Okay. He was acquitted.

24 A. I know. I'm aware of that.

25 MR. MESSING: Okay. Nothing further.

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Ms. Truong?

2 MS. TRUONG: Nothing from us.

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Rose,
4 anything further?

5 MR. ROSE: Nothing further.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sir, thank you
7 very much. And with that, double F is admitted.

8 (Petitioner's Exhibit FF received in evidence.)

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And while I'm at
10 double F, is there going to be, Mr. Rose, any objection
11 to Exclusive Rep N, which was the letter from Barcelona
12 to Cogdill and Wiggins?

13 MR. ROSE: Can I review it? And also, just a
14 reminder, Judge, about the admonition.

15 MR. MESSING: Yeah.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Oh, very good.

17 MR. MESSING: That's right.

18 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Thank you, sir.

19 MR. ROSE: You're welcome.

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You're very
21 familiar with witness admonition. I'm advising you,
22 admonishing you not to discuss your testimony with any of
23 the other witnesses in this case. Do you understand the
24 admonition?

25 THE WITNESS: Yes, I do.

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Of course,
2 you're free to discuss your testimony with anyone sitting
3 at these three tables right here. And with that, sir,
4 thank you.

5 THE WITNESS: Thanks. Thank you very much.

6 MR. ROSE: All right. No objection to Exclusive Rep
7 N from the --

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. With
9 that, it is --

10 MR. ROSE: -- from POC.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: -- admitted.
12 (Exclusive Representative's Exhibit N received
13 in evidence.)

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Off the record.
15 (Off the record.)

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

20 (Witness sworn by the Judge.)

21 THE WITNESS: I do.

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

24 THE WITNESS: Timothy Fries. F-R-I-E-S.

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

CERTIFICATION AND
DECLARATION OF TRANSCRIBER

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4 I, Leisa M. Miller, a duly designated transcriber of
5 Vine, McKinnon & Hall, do hereby declare and certify
6 under penalty of perjury that I have transcribed from a
7 CD 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, which recording was duly recorded
12 at Sacramento, California on March 10, 2009, and that the
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16 Dated this 25th day of March, 2009, at Dixon,
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