

March 10, 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.)	
)	
_____)	

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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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.

1 Couple of preliminary questions just to get the Cline
2 stuff out of the way. Hold on a second, Mr. Messing.

3 Did you receive a transcript of the first two days of
4 these proceedings?

5 THE WITNESS: I did.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. And
7 did you review that transcript?

8 THE WITNESS: I looked at a portion of the second
9 one.

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And do you
11 remember what portion you read of the second one?

12 THE WITNESS: I looked briefly at Craig Brown and
13 John Miller's testimony.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: John Miller. I
15 don't think we've --

16 MR. CLARK: He testified.

17 MR. MESSING: Yeah.

18 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Oh, oh, jeepers.
19 All right. That's how we have five days. All right.

20 All right. And when you say a portion of theirs, did you
21 read the entire, or just part of it, or --

22 THE WITNESS: No. I just skimmed through, basically.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

24 Another question. Do you remember, did you discuss -- do
25 you know who James Cline is?

1 THE WITNESS: No.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. Fair
3 enough. That's two. Mr. Messing, I'm sorry.

4 MR. MESSING: Yeah. Actually, there's a matter I'd
5 like to bring up, but I would like the witness to be
6 excused while we discuss that.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. Fair
8 enough. So, Mr. Fries, you're welcome to our kitchen
9 area over there.

10 All right. Let the record reflect that the --
11 Mr. Clark, can you get that door?

12 Let the record reflect the witness has left the
13 hearing room. Mr. Messing.

14 MR. MESSING: Yeah. I actually just realized that
15 perhaps I should have brought this to Mr. Rose's
16 attention earlier. But Tim Fries has a confidentiality
17 agreement that he signed with what was then CAUSE. And
18 I'm not sure that Mr. Rose is aware of this. So I'm
19 going to give you a copy of it. And I think that this
20 issues needs to be vetted at this point because this --
21 we don't want this to devolve into a civil lawsuit for
22 damages.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Just a little
24 bit of a background, Mr. Messing. I mean I don't know.
25 What position did he hold at CAUSE?

1 MR. MESSING: He was a former employee of CAUSE.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And what type
3 of -- I mean Labor Rep?

4 MR. MESSING: Governmental Affairs, lobbying in-
5 house.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. That's
7 what I wanted to know.

8 MR. MESSING: Okay.

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: So as -- was he
10 a -- and I'm asking this in regards to ethical issues.

11 MR. MESSING: Uh-hmm.

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Was he a -- in
13 any way a registered lob --

14 MR. MESSING: Yes, he was a registered lobbyist. So
15 there are some significant issues that could arise as a
16 result of his testimony. And as I said, we don't -- we
17 have enough going on by way of adversarial hearings. We
18 don't want this also to devolve into a civil lawsuit
19 damages. I don't think that Mr. Fries will deny that
20 this is his agreement and his signature.

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Let me -- let me
22 ask this question: How do you differentiate -- and I
23 know what one part of the answer's going to be. But how
24 do you differentiate his testimony in regards to that of
25 Craig Brown, who probably is also a registered lobbyist?

1 MR. MESSING: In the -- in that case we are -- we're
2 waiving privilege by putting him on the stand. And he
3 doesn't have a confidentiality agreement. He wasn't --
4 he was a consultant. He wasn't an employee of CSLEA.
5 And just one second.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I'm sorry.
7 Anything else, Mr. Messing?

8 MR. MESSING: Well, I do. But --

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I mean if you
10 can give me kind of -- you say governmental affairs. You
11 say he's a registered lobbyist.

12 MR. MESSING: Yes. He was -- he was a --

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Can you just
14 give me an idea of what that meant he did on --

15 MR. MESSING: Okay. He --

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: -- a daily
17 basis?

18 MR. MESSING: He was a full paid, full time staff
19 person who was paid to lobby on behalf of what was then
20 CAUSE.

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.
22 Contacts with the Legislature?

23 MR. MESSING: Yes.

24 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I mean can you
25 kind of give me --

1 MR. MESSING: He was -- he was -- he was called the
2 in-house Chief Legislative Advocate, I believe; is that
3 correct?

4 MR. CLARK: Yes.

5 MR. MESSING: And so he would literally go lobby
6 Legislators, testify in committees, draft legislation,
7 and the like.

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. I don't
9 know if you have a response at this time or not,
10 Mr. Rose, or if the Employer has a --

11 MR. ROSE: I'm getting this for the first time right
12 now, so I can't respond. I've got to talk to the
13 witness. And I wish -- obviously, I accept Mr. Messing's
14 statement that, you know, this was the earliest he could
15 have gotten the paper, this agreement. Had we had it
16 earlier, we could have made arrangements for a different
17 witness to sit in his place.

18 But that being said, if indeed this prevents
19 Mr. Fries from testifying, then my expectation is we'll
20 need to call a different witness who's not bound by a
21 confidentiality agreement to cover the same facts, which
22 would require a modification of the hearing schedule.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Well --

24 MR. MESSING: And I don't have a problem with a
25 modification based on that. I really should have raised

1 this to you. I could have raised this to you earlier.
2 Therefore, I couldn't object to modifying the hearing
3 schedule.

4 MR. ROSE: But I need to talk to the witness.

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: That's fine.
6 And actually, what I was just going to -- and maybe -- I
7 mean I'm trying to figure out what sort of -- and I'm
8 going to use the -- I'm using the word extremely
9 loosely -- privilege, if any, a registered lobbyist owes
10 toward its -- and I don't know.

11 MR. ROSE: I have no idea. I mean it would require a
12 day of legal research.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Owes towards a
14 client in this matter.

15 MR. ROSE: I'm sure Mr. Messing will tell us.

16 MR. MESSING: Well, what I am sure of is is we have a
17 contract here that appears to be valid to me, and that
18 this contract requires confidentiality regarding the
19 matters set forth in here. And that would, I think,
20 cover anything that this witness is going to testify to
21 in this proceeding, frankly.

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Well, I
23 understand the issue in regards to the contract. But I
24 mean -- I mean I'm more interested in the privilege
25 issue. But you need to obviously discuss with Mr. Fries.

1 He may have some issues or reluctance or non-reluctance
2 after this. And so why don't we just take about a 10-
3 minute break.

4 MR. MESSING: Wait. Before you do --

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yes, sir.

6 MR. MESSING: -- just so we get everything -- you
7 know, actually, I'd like to ask that -- yeah. Assuming
8 that he's not reluctant, I'd actually like to clear the
9 room for a second, because I have something else I want
10 to discuss.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. I'm
12 going to ask if all the members of the public can exit
13 the hearing room.

14 MR. ROSE: No objection.

15 MS. MAYHEW: No objection. We're asking the
16 Department representative --

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

18 MS. MAYHEW: -- to leave. I'll let you know when you
19 can come back.

20 MR. MESSING: Thank you.

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

22 MR. MESSING: So if we can also --

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Let the record
24 reflect that all members of the public have now exited.
25 Sir.

1 MR. MESSING: Okay. Yeah. And so if we can reflect
2 the record closed on the next discussion. That this is a
3 sealed part of the record that I want to discuss.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Can you give me
5 an offer of proof before I make such a bold move?

6 MR. MESSING: It has to do with the personnel history
7 of Mr. Fries.

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Oh.

9 MR. MESSING: I think I should bring it up now if
10 we're talking about whether he has reluctance to testify.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You know, why
12 don't you discuss with him first.

13 MR. MESSING: Okay.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: That may take --
15 that may obviate the need to go the next step.

16 MR. MESSING: Fair enough.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And I don't want
18 to have to put too much on the table if it doesn't need
19 to be put on the table. And so we'll go off the record.

20 (Off the record.)

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: We're back on
22 the record. It's my understand that Mr. Fries may or may
23 not be returning as a witness. He needs to discuss that
24 further. And if he does come back in, he will be coming
25 in at another day of hearing. Is that my understanding,

1 Mr. Rose?

2 MR. ROSE: That's correct.

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

4 MR. ROSE: Either he will be, or a witness to
5 substitute for him.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: An alternative
7 witness.

8 MR. ROSE: Correct.

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. And
10 so we'll go ahead and go off the record 'til we can roll
11 on the next witness. With that, off the record.

12 (Off the record.)

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

17 (Witness sworn by the Judge.)

18 THE WITNESS: I do.

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

21 THE WITNESS: Alan Wayne Barcelona. B-A-R-C-E-L-O-N-
22 A.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. And
24 just a couple preliminary questions before I turn you
25 over to Mr. Rose. Did you -- did you receive the

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
13 foregoing pages 1 through 304 constitute a true, complete
14 and accurate transcription of the aforementioned
15 recording to the best of my ability.

16 Dated this 25th day of March, 2009, at Dixon,
17 California.

18
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