

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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Administrative Law Judge

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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

1 transcripts of the first two days of hearing?

2 THE WITNESS: I did.

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And did you
4 review those transcripts?

5 THE WITNESS: I reviewed Craig Brown, John Miller and
6 Jerry Karnow.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. And in
8 regards to -- and actually, let me ask this question.
9 I'm trying to remember. Because at some point in time
10 you were sitting back here in the public area, and at
11 another time -- those two days of hearing --

12 THE WITNESS: I didn't see -- I don't believe I saw
13 any testimony. I was told I couldn't be here.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. All
15 right.

16 THE WITNESS: I was here at the very beginning. And
17 as soon as counsel told me it was time to go, I left.
18 But I didn't hear any testimony.

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. So
20 you were here, then, at the first day of hearing when we
21 had the SPPOAC. Were you here during that time, or was
22 it --

23 THE WITNESS: No. I wasn't -- I wasn't here during
24 any --

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

1 THE WITNESS: I was here at the very, very beginning,
2 the very first day when it started. But when I sat in
3 the back, Kasey came over and told me that I couldn't be
4 here because I was going to be a witness. So I left.

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. All
6 right. Fair enough. And did you have any discussions
7 with James Cline regarding his testimony? I'm expecting
8 a negative, but --

9 THE WITNESS: No.

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.
11 Mr. Rose, ready to go.

12 MR. ROSE: Yes.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I take it you're
14 designating him as an adverse witness pursuant to
15 Evidence Code 776?

16 MR. ROSE: Correct.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. So
18 designated.

19 TESTIMONY OF
20 ALAN BARCELONA,
21 Having been duly and regularly sworn, testified as
22 follows pursuant to Evidence Code section 776:

23 CROSS-EXAMINATION

24 BY MR. ROSE:

25 Q. Good afternoon, Mr. Barcelona. My name is Joe

1 Rose. I'm the attorney representing Peace Officers of
2 California. Thank you for your patience. What is your
3 occupation?

4 A. I'm a Special Agent with Department of Justice
5 and President of California Statewide Law Enforcement
6 Association.

7 Q. How long have you been a Special Agent with the
8 Department of Justice?

9 A. Since 1999.

10 Q. And how long have you been President of the
11 California State Law Enforcement Association?

12 A. Since 1994.

13 Q. What was your occupation in State service prior
14 to your current job as Special Agent for the Department
15 of Justice?

16 A. I was a Senior Investigator with DMV from 1989 to
17 1999.

18 Q. A Senior Investigator with DMV. Is that a sworn
19 or non-sworn position?

20 A. It's sworn.

21 Q. Now, how did you first become President of CSLEA?

22 A. I became President of the Association of Motor
23 Vehicle Investigators with DMV. Those are the -- that's
24 the Association that -- the affiliate that represents the
25 DMV Investigators. In 1992 I had a seat on the Board.

1 At that time it was CAUSE.

2 Q. And at that time in 1992 do you recall how many
3 affiliates CAUSE had?

4 A. Well, we had the same affiliates. Some of
5 them -- some of them were coming back, or were in the
6 process of coming back. But I believe it's the same
7 affiliates.

8 Q. Same affiliates as you have now?

9 A. Yeah.

10 Q. And so you had a seat on the Board. And how did
11 you become President of the organization from your seat
12 on the Board as President of Association of DMV
13 Investigators?

14 A. I was elected Senior Vice President by the Board.
15 And right after -- well, at the end of my -- well, right
16 around 1994, right at that period, Cecil Riley had been
17 voted out and in the middle of his term. So I
18 automatically became President at that time. And then I
19 believe within 30 days they had an election, and then I
20 was actually elected to it.

21 Q. Who did you run against?

22 A. There's one person who ran. His name was Sam. I
23 believe Sam Williams was his name. He's retired now.

24 Q. I take it you're no longer a part of the
25 Association of DMV Investigators being that you're a

1 Special Agent?

2 A. Yes.

3 Q. Did you -- when you left the Department of Motor
4 Vehicles and went to the Department of Justice, did you
5 move to the Board of Directors for an affiliate over at
6 the Department of Justice?

7 A. No.

8 Q. I see. So how did -- how did you retain your
9 seat as President of the organization after leaving the
10 Association of DMV Investigators?

11 A. It doesn't matter what you are. As long as
12 you're a member in good standing with the Association in
13 general, you can move in between the affiliates at any
14 time. I became an affiliate member of the Association of
15 Special Agents.

16 Q. Don't you have to be on the Board to be elected
17 President?

18 A. No.

19 Q. Oh, you don't. So any member could be elected
20 President?

21 A. Yes.

22 Q. And what is your training as a Special Agent?

23 A. Can you be more specific?

24 Q. Well, did you receive training in becoming a
25 Special Agent for the Department of Justice?

1 A. I already had the training necessary to become a
2 Special Agent.

3 Q. What training did you have in terms of your peace
4 officer training when you acquired your position as a
5 Special Agent with the Department of Justice?

6 A. Well, I'd spent eight years as a Deputy Sheriff
7 in Stanislaus County. I'd worked patrol, special weapons
8 and tactics, special investigations. I spent 10 years at
9 DMV going through numerous courses. I'm certified as
10 a -- certified as a special firearms instructor through
11 the FBI, a defensive tactics instructor, a chemical
12 agents instructor, an impact weapons instructor. I can
13 go on I mean if you want to talk about that. I'm fully
14 certified through POST as a full peace officer. And DOJ
15 felt that I had enough training, the adequate training to
16 move in -- to lateral into the position, or transfer into
17 it.

18 Q. Is the position -- is the move from -- well, both
19 of those positions are in Bargaining Unit 7, obviously,
20 correct?

21 A. Yes.

22 Q. Is the move from DMV Senior Investigator to
23 Special Agent at the Department of Justice considered a
24 promotion?

25 A. No.

1 Q. Is the pay for Special Agent at the Department of
2 Justice higher than that of a Senior Investigator at the
3 Department of Motor Vehicles?

4 A. Yes.

5 Q. Are the minimum qualifications for Senior
6 Investigator at the DMV same, less or more than the
7 minimum qualifications for Special Agent at the
8 Department of Justice?

9 A. I don't recall. I don't have those in front of
10 me. I'm sure they're easily looked up.

11 Q. Now, being that you're the President of CSLEA,
12 you're on full time paid release time, correct?

13 A. Yes.

14 Q. And so is it a fair statement to say that it's
15 been many, many years since you've worked in the field as
16 a Special Agent?

17 A. Yes.

18 Q. When was the last time you actually worked a day
19 as a Special Agent for the Department of Justice?

20 A. I haven't.

21 Q. Never once?

22 A. Correct.

23 Q. So you've never worked a single case as a Special
24 Agent for the Department of Justice, true?

25 A. I believe I answered that. Yes.

1 Q. When was the last time you worked a day as a
2 Senior Investigator for the Department of Motor Vehicles?

3 A. I became President --

4 Q. By worked a day, I mean actually worked in that
5 capacity, not on full release time.

6 A. Okay. You ready?

7 MR. MESSING: Objection. He rephrased the question,
8 and that was compound.

9 THE WITNESS: Yeah. I'm not really --

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

11 MR. ROSE: I'll rephrase.

12 BY MR. ROSE:

13 Q. When was the last time you actually worked in a
14 DMV office as a Senior Investigator, not just held the
15 title?

16 A. You know, I -- well, I became President in '94.
17 But during the Wilson years I was ordered back to work on
18 two occasions during contract negotiations for several --
19 a couple of weeks to three weeks at a time. But I can't
20 tell you exactly when that was. So -- but if you want to
21 say from '94 on for your preferences, that's fine with
22 me. I can't remember the dates I went back.

23 Q. Approximately -- well, as the President of CSLEA
24 are you familiar with the composition of the employee
25 classifications represented by the organization?

1 A. Some.

2 Q. Could you estimate for us what percentage of
3 employee classifications in Bargaining Unit 7 are not
4 peace officers?

5 A. Sixty percent.

6 Q. And so is it fair to say that the remaining 40
7 percent are peace officers, sworn peace officers?

8 A. Approximately, yes.

9 Q. Approximately how many total employees filled
10 positions are there in Bargaining Unit 7 currently?

11 A. Approximately 7,000.

12 Q. Do you find it difficult to serve the interests
13 of the sworn employees that you represent while also
14 serving the interests of the non-sworn employees that you
15 represent?

16 A. No.

17 Q. Do you ever have instances where the interests of
18 the sworn employees are in conflict with the interests of
19 the non-sworn employees in Bargaining Unit 7?

20 A. I'm not aware of that.

21 Q. Have you ever had anyone bring to your attention,
22 and by anyone I mean anyone in Bargaining Unit 7, a
23 perception that there -- the interests of the non-sworn
24 employees are in conflict with the interests of the sworn
25 employees with --

1 A. I've seen it brought to attention by the POC
2 people that you represent.

3 Q. Okay. And who specifically do you consider to be
4 the POC people?

5 A. Bob Orange, Dick Bushey, Jerry Karnow, those
6 sorts.

7 Q. Do you consider anyone else to be POC people?

8 A. Tim Fries. A few others. I don't know.

9 Q. When you saw a few others, are they not coming to
10 mind or --

11 A. Not coming to mind.

12 Q. Okay.

13 A. There's a few other names I've seen on their
14 website, but I don't know. I can't regurgitate the names
15 for you right now.

16 Q. Prior to the POC people bringing to your
17 attention this perception of a problem with the sworn and
18 non-sworn representation, have you ever before been told
19 by anyone in Bargaining Unit 7 --

20 MR. MESSING: Object.

21 MR. ROSE: -- of that type of problem?

22 MR. MESSING: Object. Mischaracterizes the witness'
23 testimony.

24 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Why don't we
25 just ask it as, did anyone else express an opinion to you

1 as to conflict between representing both sworn and non-
2 sworn in Bargaining Unit 7?

3 THE WITNESS: Yes.

4 BY MR. ROSE:

5 Q. Who else?

6 A. I can't tell you. I get -- we get complaints all
7 the time from people about almost everything under the
8 sun.

9 Q. Well, if you -- and I respect that being a union
10 lawyer myself. But the -- but if you could focus, I'd
11 like to have you estimate the complaints you receive
12 specifically on the question of the fact that your
13 bargaining unit is composed of a mixture of sworn and
14 non-sworn employees. Only with regard to those kinds of
15 complaints, how many times do you think you received
16 complaints like that in a month?

17 MR. MESSING: Object. Foundation.

18 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I mean only if
19 you know, sir.

20 MR. MESSING: Time period.

21 THE WITNESS: I -- I --

22 MR. MESSING: Wait.

23 THE WITNESS: I honestly can't tell you.

24 MR. MESSING: Wait. I have an objection.

25 THE WITNESS: I have no idea.

1 MR. MESSING: Objection. Time period. Are we
2 dealing with him as a DMV Investigator, President? I
3 mean --

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You know, I
5 actually think it's a fair question to ask him since his
6 presidency.

7 MR. MESSING: That's the question.

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And which is
9 still a pretty broad period of time. So since that
10 period of time, sir.

11 THE WITNESS: I don't have any way to estimate that.
12 I don't know. I mean there's always somebody complaining
13 about something, you know. I've had peace officers
14 complaining about the non-sworn's retirement until they
15 found out that it wasn't equal to theirs, and then they
16 were fine with that. After I explained it. They thought
17 they got the same thing as they did. And when I
18 explained that it was a half a percent less and five
19 years less, they were fine with it after that. So a lot
20 of it's been just educating. Once I educate them, they
21 seem to be okay with it.

22 BY MR. ROSE:

23 Q. Other than the non-sworn receiving the retirement
24 you're describing, what other types of complaints have
25 you heard from sworn employees in Bargaining Unit 7 about

1 the non-sworn in the bargaining unit?

2 A. That I've heard personally?

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yes.

4 BY MR. ROSE:

5 Q. Personally in your role as President of the
6 CSLEA. Either from the employee directly, or through
7 other channels of communication.

8 A. I've heard people say that I don't -- that they
9 don't have anything in common with them. They're not
10 sworn.

11 Q. You hear that a lot?

12 A. No, I don't hear it a lot. I've heard it.

13 Q. And how long -- is that a recent phenomenon
14 you're hearing this kind of complaint from certain
15 people?

16 A. Well, I've heard it off and on throughout the
17 years, depending on who you bump into. It's not
18 something that happens every day or every month, but I've
19 heard it.

20 Q. Have you ever -- has CSLEA ever rejected a
21 offered pay increase by the State employer that was more
22 generous to sworn peace officers than to non-sworn in the
23 bargaining unit while you were President?

24 A. Yes.

25 Q. When was the first time that happened?

1 A. To my knowledge, it's only happened once, and
2 that was in 1993 under Wilson.

3 Q. And you were directly involved in that, correct?

4 A. Yes.

5 Q. You were directly involved in the negotiating of
6 a -- of a -- of an agreement with the State Employer
7 regarding pay raises for sworn that was larger than the
8 non-sworn, true?

9 A. We -- what are we talking about? I'm starting to
10 get confused.

11 MR. MESSING: Yeah. I'm going to object.

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. Why don't
13 we -- that's all you need to say, you don't understand
14 the question. Go ahead, sir.

15 MR. MESSING: Vague and ambiguous.

16 BY MR. ROSE:

17 Q. Well, you mentioned 1993 under Wilson. That was
18 the one time you said you thought that the peace officers
19 were offered more generous pay raises than non-sworn. Is
20 that a fair characterization of your earlier testimony?

21 MR. MESSING: No. That mischaracterizes the witness'
22 testimony. Object.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. The
24 question had to do with rejecting an offer regards --
25 from the State in regards to sworn getting more than non-

1 sworn, and you answered in regards to the Wilson days one
2 time. Let's focus on that one time and let's take it
3 form there.

4 BY MR. ROSE:

5 Q. So how do you know that there was an offer
6 rejected by CSLEA in 1993 under Wilson, where there were
7 offers of more generous pay raises for peace officers in
8 the bargaining unit than for non-peace officers?

9 A. Well, it's not a simply yes or no, your Honor.
10 That all had to do with pay for performance under Wilson.
11 And when we learned of what the pay for performance was
12 going to entail, that it wasn't just going to entail
13 satisfactory performance evaluations from your
14 supervisor, and we found out that it actually was going
15 to go above and beyond that, that you had to be -- you
16 had to be exemplary before you would get a pay raise,
17 we -- everyone termed it pucker pay, for lack of a better
18 description.

19 The entire Board of Directors, including Park -- the
20 Park Rangers' President, Steve Johnson, and the Fish and
21 Game Wardens' President, Nick Okuziki [phonetic], I
22 believe, at the time, the entire Board rejected that pay
23 raise because they didn't want to accept those reforms.
24 They felt that those reforms were going to really hurt a
25 lot of the working class people, and so the entire Board

1 rejected it.

2 Q. Okay. I appreciate that. And we're going to
3 cover a lot of that. But my question was how did you
4 know. And by that I mean were you personally involved in
5 those discussions?

6 A. Yes.

7 Q. And who was involved other than you in those
8 discussions on behalf of CSLEA?

9 A. Well, it would have been myself, John Miller.
10 The Finance Director was Craig Brown. And then whoever
11 the negotiations team was at the time, and I can't
12 remember the names of the people who were on our
13 negotiations team.

14 Q. Those discussions occurred not with the
15 Department of Personnel Administration, but with the
16 Governor's Office; is that correct?

17 A. I don't believe so.

18 Q. Craig Brown at the time was working for the State
19 of California, correct?

20 A. Yes.

21 Q. And Craig Brown is not an employee in the
22 Department of Personnel Administration, correct?

23 A. He was Director of Finance.

24 Q. And is that a position within the Department of
25 Personnel Administration?

1 A. That's its own department.

2 Q. I see. And your discussions regarding that
3 rejected pay raise were with Mr. Brown, true?

4 A. Yes.

5 Q. Mr. Brown communicated to you the desire by the
6 Wilson administration to give a more favorable pay raise
7 to peace officers than to non-peace officers, in part,
8 true?

9 A. It was not presented in that fashion.

10 Q. Well, I'm going to go through the entire offer
11 and give you an opportunity to explain it. But one piece
12 of the offer was that cops would get more than non-cops,
13 true?

14 A. Yes.

15 Q. Two percent more, true?

16 A. I believe so, yes.

17 Q. In fact, the offer was five percent for police --
18 sworn peace officers in the bargaining unit, and three
19 percent for non-sworn, true?

20 A. Yes.

21 Q. And I believe I understand your testimony is it
22 was rejected because it was tied to pay for performance,
23 right?

24 A. Yes.

25 Q. Now, are you aware whether any other bargaining

1 units at that time received a similar offer?

2 A. Yes.

3 Q. Which bargaining unit or units received a similar
4 offer?

5 A. CCPOA.

6 Q. And accepted the offer, true?

7 A. Yes.

8 Q. Do you know whether CCPOA accepted the offer
9 before or after CSLEA rejected the offer?

10 A. I don't know.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You know, I'm
12 just going to -- I'm just backing off a little bit
13 because that Association doesn't have the membership,
14 doesn't have the same type of bifurcation. You said the
15 same offer, five and three.

16 MR. ROSE: Oh, I didn't mean --

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And --

18 MR. ROSE: When I -- just to clarify, when I asked
19 the question the same offer, I meant an offer of wage
20 increases tied to pay for performance, and not that there
21 would be a split of five and three.

22 BY MR. ROSE:

23 Q. Is that how you understood my question when you
24 answered yes?

25 A. Yes. Yeah, I understand that they accepted pay

1 for performance. I don't know what their economics were
2 at the time, but I know they accepted the pay for
3 performance in some fashion.

4 Q. Now, also involved in those discussions with
5 Mr. Brown on behalf of CSLEA was Tim Fries, F-R-I-E-S; is
6 that true?

7 A. Was he there? Is that what you're asking?

8 Q. No. My question is, also involved in those
9 discussions on behalf of CSLEA, those with Mr. Brown
10 concerning the five percent and three percent wage offers
11 plus pay for performance, Mr. Fries was also involved in
12 those discussions, true?

13 A. Not all of them.

14 Q. But some of them?

15 A. Some of them. He would have been in pieces. I
16 don't know which ones.

17 Q. And also involved -- oh, and Mr. Fries at the
18 time was not an employee of CAUSE, correct?

19 A. I'm not sure when we hired him, to tell you the
20 truth. I'm not sure whether we were -- he was on
21 contract at the time or not.

22 Q. Mr. Fries worked for the Flannery Group at the
23 time, correct?

24 A. I just told you, I don't recall whether he was on
25 contract at that time or not.

1 Q. Are you -- and also involved in those discussions
2 was Trisha Hunter, correct?

3 A. I don't believe Trisha Hunter was involved. I
4 don't recall her being part of any of the conversations
5 that I've had.

6 Q. Do you know who Trisha Hunter is?

7 A. Yes, I do.

8 Q. Who is Trisha Hunter?

9 A. She's a former Assemblywoman, and she used -- I
10 think she still is a lobbyist.

11 Q. Do you know whether or not Trisha Hunter ever
12 worked for the Flannery Group?

13 A. Yes, I do know.

14 Q. You know that she did, or does?

15 A. Well, you asked me -- I'm answering your
16 question. You asked me if I knew whether she worked
17 there, and I said, yes, I do know she used to work and
18 still does.

19 Q. Okay.

20 A. Yeah.

21 Q. Thank you.

22 A. You're welcome.

23 Q. And she also did work for CAUSE, lobbying work,
24 true?

25 A. It's possible, but I thought we'd hired Tim

1 mostly to do that at the time. I thought that's who she
2 assigned to us. But she may have done something for us.

3 Q. And she was working on behalf of CAUSE around
4 that time as a lobbyist, true?

5 A. I don't recall her being involved in that deal.

6 Q. I'm not referring specifically to that deal, but
7 I'm saying generally she was involved in legislative
8 advocacy on behalf of CAUSE around that time.

9 A. I don't recall.

10 Q. And CAUSE made a counteroffer to Mr. Brown's
11 offer of five and three, didn't CAUSE?

12 A. That doesn't make sense.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Well, listen,
14 did CAUSE make a counteroffer?

15 THE WITNESS: Well, I think that there was a
16 tremendous amount of discussion going back and forth. I
17 think the counteroffer was was that we would take it, but
18 we couldn't live with the pay for performance. There was
19 no way we could do that.

20 BY MR. ROSE:

21 Q. Actually, your counteroffer was that you would
22 take it as long as all the sworn and non-sworn employees
23 received the same raise; isn't that true?

24 MR. MESSING: Object.

25 THE WITNESS: I don't recall that.

1 MR. MESSING: Object.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: What's your
3 objection?

4 MR. MESSING: There's no foundation and assumes facts
5 not in evidence.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I mean he was
7 there. I don't see what the found -- did you make that
8 offer, sir?

9 THE WITNESS: I don't recall. I don't recall that
10 being part of it. I recall trying our best to get -- to
11 convince the administration to weaken or somehow make the
12 pay for performance livable. That's what I recall.

13 BY MR. ROSE:

14 Q. And the Wilson administration stated to you and
15 other CAUSE negotiators that it was critical that the
16 peace officers and sworn officers in your bargaining unit
17 received more pay raises than the non-sworn at that time;
18 isn't that true?

19 A. No. I don't recall that.

20 Q. That it --

21 A. I don't recall anyone saying it was critical.

22 Q. Well, did Mr. Brown not communicate to you that
23 the Wilson administration's policy was they wanted to
24 treat sworn peace officers more favorably with respect to
25 pay raises than non-sworn employees at that time?

1 A. No.

2 Q. And let me move on to a different occasion. Oh,
3 by the way, did you ever finalize a deal with -- under
4 the Wilson administration involving pay raises for
5 your --

6 A. I don't believe so.

7 Q. Pardon me?

8 A. I don't believe so.

9 Q. Oh, and you said the entire Board rejected it.

10 A. Yes.

11 Q. And how was that information communicated to the
12 Board of CSLEA?

13 A. I think we went back and we had a Board meeting.
14 We talked about it. There were lots of conversations
15 about this stuff and it went on constantly.

16 Q. Were there minutes maintained at the Board
17 meeting?

18 A. There may have been.

19 Q. Well, is it the business practice of CSLEA to
20 maintain minutes at Board meetings?

21 A. At some of them. But I can remember back at that
22 time things were very disjointed and very -- there was a
23 lot of chaos going on, and everyone was communicating
24 just by, you know, making phone calls and those sorts of
25 things. And there very well may not have been minutes

1 kept at a meeting in something like that. People were
2 pretty -- were very angry about the pay for performance
3 issues, and so we would -- everyone would meet and talk,
4 you know, rapidly and discuss it and move forward on
5 whatever decision was made. So there may not have been
6 any meeting minutes.

7 Q. The Board meeting that you had, was it all --
8 excuse me. Was everyone in person face to face in the
9 same room?

10 A. When we had Board meetings.

11 Q. But with respect to the Board meeting that you're
12 describing at which the entire Board rejected the offer
13 of a five and three tied to pay for performance, was that
14 an in-person meeting?

15 A. As far as I know.

16 Q. Where did that meeting take place?

17 A. Somewhere here in Sacramento.

18 Q. Can you narrow it down any further than that?

19 A. I can't, because they -- we picked hotels at
20 different locations to have a meeting in a room probably
21 about twice this size. So it would be whoever had it
22 open. I couldn't tell you which hotel it was.

23 Q. Did you have Board members from remote parts of
24 California at that time serving on your Board?

25 A. Yes.

1 Q. Did you have Board members from San Diego?

2 A. It's possible.

3 Q. How about Trinity County?

4 A. I don't know.

5 Q. Did you fly those Board members in to meet about
6 this matter?

7 A. I didn't -- I don't fly anybody in.

8 Q. Did those Board members fly in to meet in person
9 somewhere in Sacramento?

10 A. I have no idea how they get here.

11 Q. But you recall that they were there?

12 A. Yes.

13 Q. The entire Board?

14 A. Yes.

15 Q. Do you maintain records of the minutes of your
16 Board meetings at CSLEA?

17 A. Yes.

18 Q. Do you make the minutes of your Board meetings
19 available to members of your organization?

20 A. We make them available to the affiliate
21 directors, and it's up to them to make the minutes
22 available to their membership.

23 Q. If a member of CSLEA calls your office and
24 requests minutes of a Board meeting, would that request
25 be granted?

1 A. We ask -- no. We ask them to call their
2 affiliate president and have them request that through
3 their affiliate president.

4 Q. If the affiliate president contacts your office
5 and requests the minutes of a Board meeting, would that
6 request be granted?

7 A. Yes.

8 Q. How far back do you maintain minutes?

9 A. I don't know. I would imagine we would have them
10 all the way back to when I became President.

11 Q. Are they in paper format?

12 A. I believe they are.

13 Q. Let's talk about September 2003 timeframe. To
14 orient you, would you agree with me that that date
15 comports with when Gray Davis was the Governor of
16 California?

17 A. Yes.

18 Q. And do you recall reaching an agreement for a pay
19 parity agreement with the State Employer based on a
20 Highway patrol calculation at that time?

21 A. Yes.

22 Q. Can you explain what that agreement was?

23 A. It was an agreement to catch up our peace
24 officers, bring them within around 700 and something
25 dollars within CHP. And my recollection of it was is

1 that would have been the lowest paid -- the lowest paid
2 group of our people would have been within \$777. It
3 would have obviously brought the higher paid people
4 probably above CHP, like the Special Agents and some of
5 the Investigator classes, depending on where the pay
6 raise was.

7 Q. Was that ultimately implemented?

8 A. No.

9 Q. That proposal for a new Memorandum of
10 Understanding was placed into Senate Bill 348 along with
11 Bargaining Unit 9's MOU at that time, September of 2003.
12 Does that sound right to you?

13 A. Yes.

14 Q. And during the legislative process the MOU was
15 rejected by the Legislature, both Bargaining Unit 9's and
16 your bargaining units, correct?

17 A. I'm not sure what you're -- I'm not sure how to
18 proceed the rejected. I'm not sure what you mean by
19 that.

20 Q. Well, the Legislature failed to enact Senate Bill
21 348 to pass the MOU's for both Bargaining Unit 9 and
22 Bargaining Unit 7 in September 2003?

23 A. Again, I can't agree with that they failed to do
24 it. You're making it sound as though it was sitting
25 there for them to vote yes or no on, and it wasn't.

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: What happened to
2 that Senate Bill?

3 THE WITNESS: It ultimately did not go for an up or
4 down vote. I remember sitting on the second floor
5 outside Senate chambers. I was waiting for Senator
6 Burton, who was the Pro Tem. And I -- we were -- this is
7 at a time when chaos was going on. I think Gray Davis'
8 numbers were falling by the hour. And Legislators were
9 dropping off support almost by the hour. A lot of them
10 didn't want to be associated with anything that had Gray
11 Davis' name on it or had -- or spent money. And so
12 things were going all pretty fast.

13 And I asked Senator Burton when he was going into the
14 Senate chamber -- they were going to discuss that bill.
15 I said, "I'm standing right outside the door, sir, and,
16 you know, let me know what you think our chances are."
17 And I must have sat out there for at least two hours.
18 And he opened the door and looked right at me and he went
19 like -- he put his thumb down. And when the Pro Tem of
20 the Senate gives you the thumbs down, the chances of your
21 bill are done. They're absolutely done. And so we knew
22 then that that bill wasn't going to go anywhere once the
23 Pro Tem does that.

24 BY MR. ROSE:

25 Q. And the reason for that was because the

1 Legislature was concerned about ongoing pay increases, or
2 committing to ongoing pay increases over a multi-year
3 contract, correct?

4 A. Yes.

5 Q. and subsequent to that there was another offer
6 made to CAUSE to have that same proposal go forward as
7 long as it was approved on an annual basis with the
8 budget process, true?

9 A. I remember those discussions being part of
10 that -- of that, yes.

11 Q. And similarly, Bargaining Unit 9's
12 representative, the PECG, or Professional Engineers in
13 California Government, had a similar offer, correct?

14 A. I'm not familiar with their -- with their offer,
15 what they did.

16 Q. Well, do you recall that Assembly Bill 977
17 sponsored by Assembly Member Diaz was the location in
18 which the PECG contract ended up and was passed?

19 A. I do not recall that.

20 Q. Are you aware that PECG received the pay parity
21 formula that included -- well, let me strike that and ask
22 you this question:

23 You were offered the opportunity to move your MOU
24 into another legislative vehicle, weren't you?

25 A. Not that I'm aware of.

1 Q. So when was the moment that you knew that the
2 deal was dead? Was it when Mr. Burton put his thumbs
3 down?

4 A. Yes.

5 Q. Did you have any further discussion with anyone
6 in the Legislature about continuing to follow up on that
7 proposal?

8 A. No. It was in the session. When the Pro Tem
9 gives you the thumbs down, it's dead. It's not going
10 anywhere.

11 Q. And did you take it to your Board and explain --
12 but you said that there was another offer made to put it
13 into another legislative vehicle, or you can't recall?

14 MR. MESSING: Object. Mischaracterizes his
15 testimony. Asked and answered.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sustained.

17 BY MR. ROSE:

18 Q. What did you communicate to the Board about what
19 happened?

20 A. We had almost constant conversations via
21 telephone and with the Vice Presidents about this issue.
22 And we communicated to the Board exactly what I just told
23 you, that things were crumbling as we were there. They
24 were there late into the evening and people were dropping
25 off. And when Senator Burton went into Senate and they

1 were discussing that, when he opened that door and gave
2 me the thumbs down, and it's -- if it's the Pro Tem, you
3 know it's dead. It isn't going anywhere unless the Pro
4 Tem gives you the thumbs down.

5 Q. And the thumbs down applied to the Senate Bill
6 that carried both PECG's and CAUSE's MOU, right?

7 A. No.

8 Q. What did you understand the thumbs down to mean?

9 A. That our MOU, our proposed MOU, was thumbs down.
10 That it wasn't going to make it. That's what I had
11 discussed with him before he went in. I said, "You know,
12 what are our chances, you know, of getting this thing --
13 getting this through for a vote?" And he says, "Well,
14 we're going to go in and we're going to talk about it
15 right now, and it's going to be a very, you know, hot
16 conversation." And I waited out there for probably two
17 hours outside that door. And then when he opened it and
18 gave me the thumbs down, then that's all I needed to
19 know. It's done. We weren't -- we didn't have a chance
20 after that. Pro Tem has the power to -- basically to
21 cancel any vote from going on the Senate. It's not going
22 to happen. So --

23 Q. I just want to make sure I'm clear. Do you
24 recall any conversation about a compromise agreement that
25 would involve Bargaining Unit 7 re-upping, essentially,

1 the pay raises on an annualized basis over a multi-year
2 contract in 2003?

3 A. I don't recall it the way you're saying it. I
4 recall that part of our deal was was that every -- was
5 that the Legislature may have to revisit the funding
6 portions of our MOU on a yearly basis. But I don't
7 recall a separate deal or anything.

8 Q. Is it your recollection that the Legislature
9 revisiting the funding of your agreement was in the
10 original Senate Bill to which Mr. Burton gave the thumbs
11 down?

12 A. I don't know if it was in the original. But
13 somewhere in that -- the metamorphosis of when we started
14 and where it was going those talks came about if we -- if
15 we are -- if anyone's going to vote on it, they'll have
16 to vote on it almost by a year-by-year basis because of
17 the money. I don't know where it got written down or how
18 that -- how that manifested after that.

19 Q. Were you in agreement as President of CSLEA that
20 that would be acceptable to revisit it on a year-to-year
21 basis?

22 A. Yes, I would have been if the -- if the -- if
23 they would -- if Senator Burton would have walked out the
24 door and said, we can get this through for a vote if you
25 guys are willing to go year by year, I would have been

1 thrilled to do it because that would have meant money
2 into all of our members' pockets. But I wasn't given
3 that option.

4 Q. Did you report the -- well, did you fail to get a
5 contract that year as well?

6 A. Yeah. That contract did not go through.

7 Q. Did you direct Craig Brown not to discuss the
8 sequence of events that you just described with the CSLEA
9 Board of Directors?

10 A. No.

11 Q. Did you direct Timothy Fries not to discuss the
12 sequence of events you just described with the Board of
13 Directors?

14 A. No. Why would I?

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Forget about
16 asking him a question.

17 THE WITNESS: Oh, okay.

18 ADMINISTRATIVE LAW JUDGE CLOUGHESY: We'll just move
19 on to the next one.

20 BY MR. ROSE:

21 Q. Do you recall whether or not you had any
22 conversations with Timothy Fries about --

23 MR. MESSING: I'm going to object, and for the record
24 indicate that if this information is coming from
25 discussions that have been held with Mr. Fries, I thought

1 that we had determined that that was an area which --
2 with which you would tread lightly because you may be in
3 fact revealing confidences that Mr. Fries may not want
4 you to divulge based upon what you've represented to us
5 here.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Well, I can't
7 rule on that sort of objection as to --

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

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: -- what the
10 representation by Mr. Rose. But --

11 MR. ROSE: Well, I'm just asking Mr. Barcelona, I'm
12 not asking Mr. Fries, if he had a conversation with
13 Mr. Fries about this failed contract after the fact.

14 MR. MESSING: Well, I'm going to assert an objection
15 that the confidentiality agreement is being breached.
16 And I don't know if this is being done with -- willingly
17 by Mr. Fries or not. But it's clear the questions are
18 being asked that could only have come from information
19 obtained from Mr. Fries.

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You know, I
21 can't rule on the confident -- on a breach of a
22 confidentiality of the contract agreement between the
23 two. The only thing that I could deal with is if there's
24 some sort of privilege, and I don't know that as of yet,
25 in regards to -- and I haven't been shown the section

1 whether there's a privilege of a confidential
2 communication.

3 MR. MESSING: Let me -- let me put it this way.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

5 MR. MESSING: Is I want to go on the record as
6 indicating that Mr. Rose may be subjecting Mr. Fries and
7 himself to liability for breach of this agreement.
8 Mr. Fries, if the information came from Mr. Fries to
9 Mr. Rose, and Mr. Rose for utilizing the information
10 without permission from Mr. Fries. So with that on the
11 record, I guess, you know, we're clear to go forward and
12 then see where the questioning --

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. Fair
14 enough. But maybe we can get back for -- I'm going to
15 ask you to re-ask or ask another question, or whatever
16 question you were asking, go ahead and pitch it. Because
17 I think it probably got lost in the mix by now.

18 MR. ROSE: That's okay. I'll move on.

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Before you ask
20 your next question, in the '93 Wilson/Craig Brown
21 discussion, you didn't become President 'til '94,
22 correct?

23 THE WITNESS: Yeah, '94.

24 ADMINISTRATIVE LAW JUDGE CLOUGHESY: So were you
25 President when that happened or were you not President?

1 THE WITNESS: This had to have occurred when I was
2 President, because I remember being involved in it.

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Do you remember
4 being President when it happened?

5 THE WITNESS: I was -- I became President September
6 of '94, so it had to have occurred right around then.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

8 THE WITNESS: So maybe I have the date -- maybe the
9 date's a little wrong. But I remember being part of it
10 all.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. I'm
12 just trying to narrow the timeline here. Go ahead,
13 Mr. Rose.

14 MR. ROSE: Thank you.

15 BY MR. ROSE:

16 Q. Still in 2003, moving on to another subject,
17 there was a different Senate Bill 183 by Burton which
18 gave peace officers three percent at fifty retirement and
19 non-sworn employees two and a half percent at fifty-five.
20 Does that sound right to you?

21 A. Yes.

22 Q. Now, that bill made the benefits retroactive for
23 peace officers, correct?

24 A. Yes.

25 Q. And -- but failed to make any mention of

1 retroactivity for non-sworn employees, correct?

2 A. Yes.

3 Q. There was an agreement for retroactivity for the
4 non-sworn employees nonetheless, true?

5 A. I don't believe -- that's the reason why we got
6 into the lawsuit with the State, because there wasn't an
7 agreement --

8 Q. Okay.

9 A. -- for retroactivity.

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

11 BY MR. ROSE:

12 Q. Now, do you agree or disagree that CAUSE --

13 MR. MESSING: I'm going to -- I'm going to object and
14 ask for the relevance of the questioning regarding a
15 matter which is now in litigation and going to the Court
16 of Appeal regarding the retroactivity of safety
17 retirement for non-peace officers.

18 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You know, I'm
19 actually surprised you're objecting based on the answers
20 this witness gave, but --

21 MR. MESSING: Well, I just don't know what the
22 relevance is. You know, there's a matter. It's in
23 litigation. DPA took one position. We took another. So
24 I mean it's a matter of record.

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Well, the fact

1 that the peace officers got retroactivity and the non-
2 peace officers didn't, I don't see how that hurts your
3 case. So I mean I --

4 MR. MESSING: I'm saying further questioning as to
5 the agreements seems to be cumulative and then not
6 relevant, but all right.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I'm not going to
8 strike it. Go ahead, Mr. Rose.

9 MR. ROSE: Okay. Now --

10 MR. MESSING: I didn't ask you to strike it. I only
11 asked for further questioning to be curtailed. But
12 anyway --

13 BY MR. ROSE:

14 Q. At the risk of being curtailed, let me ask you
15 further questioning on that subject. Are you currently
16 fighting to get retroactivity for non-sworn employees
17 with respect to enhanced retirement?

18 A. Yes.

19 Q. And would you agree or disagree that CAUSE
20 received the three percent at fifty retirement before
21 other State employee unions?

22 A. I would disagree.

23 Q. Okay. Would you agree or disagree that other
24 unions negotiated the three percent at fifty retirement
25 before CAUSE?

1 A. Would I agree that somebody else did it before
2 us? Is that what you're saying?

3 Q. Well, yes, that's what I'm saying.

4 A. CHP did before we did.

5 Q. Are you familiar with Assembly Bill sponsored by
6 Jerome Horton in 2004 dealing with firearms for peace
7 officers?

8 A. Yes.

9 Q. And what was the substance of that bill?

10 A. To arm the hospital police officers while they
11 were on outside duty on patrol.

12 Q. I'm sorry. I didn't -- I missed what you said
13 before they were on outside duty on patrol.

14 A. To arm the hospital police officers while they
15 were outside of the facility on patrol.

16 Q. Was that legislation enacted?

17 A. No.

18 Q. Was there opposition that you remember to that
19 legislation by anyone?

20 A. There's been tremendous opposition to guns for
21 anybody by the Democratic party in general. From the
22 speaker all the way from the Pro Tem they've made it
23 clear that they don't want to see anybody else with a
24 gun, even if it's a cop. They think there's enough guns
25 in the state and enough people toting them. I've been

1 told that numerous times by various leaderships.

2 Q. But with respect to this piece of legislation
3 specifically was there opposition that you recall?

4 A. Well, the Speaker, I think, was Fabio Nunez at
5 the time, who had said that he didn't -- he didn't
6 believe -- he and others philosophically had a problem
7 with granting anyone with more guns. Loves our people,
8 loves what they do, but doesn't want to give anybody else
9 a gun.

10 And Craig Brown had told me that he had talked --
11 we'd had him talk with people at the administration at
12 the time, and he came back and told me that the
13 administration, which is the Governor, feels that his
14 appointees who run the Department of Mental Health and
15 other -- the doctors up there, he wants them to have the
16 ability to continue to make decisions and run those
17 departments, and that he wouldn't sign the bill if it
18 came to his desk.

19 Q. And another person that was opposed to it was
20 Assembly Member Judy Chu, C-H-U, correct?

21 A. I don't recall her being on record as opposed to
22 it.

23 Q. Do you recall whether she had responsibility for
24 killing that bill?

25 A. She didn't kill it.

1 Q. She did or did not?

2 A. Did not.

3 Q. Didn't she put the bill in a suspense file?

4 A. Yes. But to my knowledge, that's not -- that
5 doesn't -- that's not a no vote that kills the bill.

6 Q. Well, it went there so that it wouldn't be heard,
7 true?

8 A. I don't know that. I'm not on that committee.

9 Q. Well, it wasn't heard, right?

10 A. Correct. Yes.

11 Q. And it died in suspense, correct?

12 A. Yes.

13 Q. And Judy Chu was responsible for that, correct?

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Only if you
15 know.

16 THE WITNESS: I don't know whether she's responsible
17 for it dying or anything. I don't know about that.

18 BY MR. ROSE:

19 Q. But you do agree that she was responsible for
20 seeing that it went into the suspense file?

21 MR. MESSING: Object. Asked and answered.

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I don't believe
23 this witness knows, but I mean --

24 THE WITNESS: I -- it's -- my understand of that
25 committee is that it isn't just the chair that makes that

1 decision. It's the committee that makes that decision in
2 general. And if the committee voted for it to go to a
3 suspense, then that's where it would have went. But I
4 don't know what the votes were, or what her decision --
5 what any of them's decision was. I don't know how it
6 occurred. My understanding of it was was that it went to
7 suspense by the committee, but I don't believe that Judy
8 Chu voted no on it, or said anything to kill it.

9 BY MR. ROSE:

10 Q. Do you recall whether Judy Chu had any
11 involvement at that time with a bill by Tom McClintock
12 that would have revoked safety retirement from the non-
13 sworn employees?

14 A. Yes.

15 Q. She was helpful in that matter, was she not?

16 A. Yes.

17 Q. And CSLEA endorsed her candidacy for the State
18 Board of Equalization, true?

19 A. Yes.

20 Q. Because she was helpful in opposing the
21 McClintock legislation that would have revoked safety
22 retirement from the non-sworn employees?

23 A. No.

24 Q. Prior to endorsing Judy Chu, did you investigate
25 the extent to which she was responsible, or could have

1 been responsible for making sure the hospital police
2 officers' weapons bill by Horton went to suspense?

3 A. No.

4 Q. Making endorsements of candidates, setting aside
5 the consideration of whether you make monetary
6 contributions, but just making an endorsement by your
7 organization is one form of advocacy on behalf of your
8 members, correct?

9 A. Will you rephrase that? I'm not --

10 Q. Well, in addition to negotiating with DPA at the
11 bargaining table, another form of advocating on behalf of
12 your membership is making endorsement of political
13 candidates, true?

14 A. Yes.

15 Q. And you tend to want to make endorsements of
16 candidates that favor positions that advance the causes
17 of your membership, correct?

18 A. Yes.

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I'm just really
20 afraid to go down this line too far in regards to betting
21 on horses.

22 MR. ROSE: Well, I'm not talking about PAC money.
23 I'm just talking about an endorsement.

24 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I don't care if
25 you're talking about PAC money or just it's -- well, I

1 don't know how -- who does the endorsement, but usually
2 the PAC makes the endorsements. But, again, I -- as far
3 as adequacy of representation, I'm really concerned about
4 horse betting. I know that's a crude way of putting it,
5 but sometimes the Legislature is, too. So I'll let you
6 take it from there.

7 MR. ROSE: Okay. One second.

8 BY MR. ROSE:

9 Q. Would you agree or disagree with the following
10 statement: That there is little difference between the
11 sworn employees of Bargaining Unit 7 and the non-sworn
12 employees of Bargaining Unit 7 in terms of their work
13 duties.

14 A. There's little difference?

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Is there little
16 difference?

17 THE WITNESS: Well, there is a difference between
18 sworn and non-sworn, of course.

19 BY MR. ROSE:

20 Q. Okay. What differences are you -- do you see
21 between sworn and non-sworn.

22 MR. MESSING: I'm going to object. That's vague and
23 ambiguous. I mean we have how many classifications here.
24 Is he talking about individual ones, all of them
25 collectively? I mean --

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: As long as we --
2 and right now I understand it's a collective Bargaining
3 Unit 7 question. But as long as we get to the question
4 of representation as a build-up, I don't have any problem
5 with it.

6 So do you see a difference between the two? What
7 difference do you see? Your unit.

8 THE WITNESS: Well, peace officers obviously make
9 arrests. They move into a more -- more of a dangerous,
10 you know, situations than some of the non-peace officers.
11 The non-peace officers that we have obviously work in
12 dangerous area. But the peace officers are the ones that
13 have the guns and go into that, you know, dangerous area
14 and make the physical arrests. And that's the difference
15 with our folks.

16 BY MR. ROSE:

17 Q. Do you see any other differences other than what
18 you've just described between the peace officer employees
19 in your bargaining unit and non-peace officer employees?

20 A. Well, obviously the benefits are much greater for
21 the peace officers. Peace officers are paid more. Peace
22 officers retire five years earlier with a half a percent
23 more in retirement, which I believe is platinum. I thank
24 God for it every day. Peace officers enjoy physical
25 fitness pay, longevity pay and others. Peace officers,

1 you know, are rewarded much more than the non-peace
2 officers.

3 Q. And the penalties for people who attack or
4 assault peace officers are greater under the law than
5 non-peace officers generally, true?

6 A. Well, it depends. Well, I can't -- I'd say --
7 I'd say in general. But it hasn't always worked out in
8 the case as being a cop. They are on paper.

9 Q. And also, peace officers provide mutual aid to --
10 in your bargaining unit provide mutual aid to other law
11 enforcement agencies, don't they?

12 A. I believe they do.

13 Q. And, of course, peace officers possess the rights
14 of a peace officer under the Penal Code, and non-sworn
15 employees do not, true?

16 A. Yes.

17 Q. And in order to become a peace officer employee
18 in the State service in your bargaining unit, they must
19 pass a pre-employment physical examination, correct?

20 A. Yes.

21 Q. And that's not true for most of your non-sworn
22 employees in the bargaining unit?

23 A. I -- well, I thought everybody had to get a pre-
24 employment physical.

25 Q. What about a pre-employment psychological, would

1 you agree with me that peace officers are required to
2 pass a pre-employment psychological?

3 A. Yes.

4 Q. Would you agree with me that most non-sworn
5 employees in your bargaining unit are not required to
6 pass a pre-employment psychological?

7 A. Yes.

8 Q. Would you agree with me that the peace officers
9 in your bargaining unit are governed by the standards set
10 forth by the Peace Officers Standards in Training, or
11 POST?

12 A. Yes.

13 Q. Would you agree with me that most of your -- of
14 your non-sworn employees that you represent are not
15 governed by those standards?

16 A. Yes.

17 Q. Would you agree with me that as a matter of law
18 the peace officers in your bargaining unit are covered by
19 the Public Safety Officers Procedural Bill of Rights?

20 A. Yes.

21 Q. And would you agree with me that, setting aside
22 any agreement you have with the State, that under the law
23 non-sworn employees do not have conferred rights under
24 the statute such as that?

25 A. Yes.

1 Q. Would you agree that peace officers in your
2 bargaining unit have a legal obligation to take action if
3 a crime occurs in their immediate presence?

4 A. On or off duty?

5 Q. On or off duty.

6 A. I don't think that I have a -- that I'm required
7 to take action when I'm off duty.

8 Q. Would you agree that that obligation exists when
9 you're on duty?

10 A. Yes.

11 Q. Would you agree that that obligation exists for
12 all the peace officers that you represent in Bargaining
13 Unit 7?

14 A. On or off -- on or off duty?

15 Q. On duty.

16 A. Yes.

17 Q. And would you agree that non-sworn employees have
18 no such similar legal obligation while on duty --

19 A. Yes.

20 Q. -- in your bargaining unit?

21 Okay. Would you agree that peace officer employees
22 in your bargaining unit are required to pass at least the
23 POST basic course or the POST basic investigator course,
24 or PIC?

25 A. I believe so.

1 Q. And that's not true for the non-sworn employees
2 in your bargaining unit, correct?

3 A. Yes.

4 Q. And you earlier mentioned your own qualifications
5 with respect to your status as a State peace officer.
6 For example, you mentioned defensive tactics and impact
7 weapons instructor, firearms instructor, and so forth.
8 Those are training opportunities and certifications that
9 are available just to peace officers in your bargaining
10 unit, true?

11 A. Yes.

12 Q. And the non-sworn employees in your bargaining
13 unit don't have access, at least officially, to those
14 types of training opportunities, correct?

15 A. Yes.

16 Q. Why are you opposed to a bargaining unit
17 consisting of -- or strike that.

18 Are you opposed to bargaining units consisting solely
19 of peace officers?

20 MR. MESSING: I'm going to object. Relevance.

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You know, if you
22 can put it in a more --

23 MR. ROSE: I'll withdraw the question and re-ask it.

24 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Thank you.

25 /////

1 BY MR. ROSE:

2 Q. In your status as President of CSLEA have you
3 ever previously opposed the formulation of a bargaining
4 unit consisting solely of peace officers?

5 MR. MESSING: Object. Relevance.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You know, I
7 disagree. Because I think reasons that --

8 MR. MESSING: Okay. Well, let me withdraw that and
9 say it assumes facts not in evidence that he previously
10 resists a bargaining unit consisting solely of peace
11 officers. There's no foundation. It assumes facts not
12 in evidence.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. Well,
14 regardless of that, I think questions to this witness in
15 regards to at least for purposes at the minimum of
16 adequacy of representation would -- could have an opinion
17 whether the present structure of the unit or a severed
18 structure of the unit would -- one would be more
19 opportune than the other. So I'm going to allow some
20 questioning, rather than necessarily -- you can go ahead
21 and ask the foundational question of whether he opposes
22 the severance. I think we know what the answers' going
23 to be. And then you can get into the whys and wherefores
24 from there.

25 /////

1 BY MR. ROSE:

2 Q. Okay. So my question was, if you recall, have
3 you -- we obviously know you oppose the severance.
4 But -- so I don't think that's a mystery, right?

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: But that's a
6 foundational questions, sir.

7 THE WITNESS: Yes, I oppose it.

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Next.

9 BY MR. ROSE:

10 Q. Okay. Have you posed in the past in your status
11 as President of CSLEA a bargaining unit consisting solely
12 of peace officers?

13 A. No.

14 Q. Do you currently oppose a bargaining unit
15 consisting solely of peace officers?

16 A. I thought I just answered that.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I think he just
18 did.

19 MR. ROSE: I'm -- so --

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: So that's a yes,
21 I take it?

22 THE WITNESS: Yes.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Just so we got
24 it. Next.

25 THE WITNESS: Okay. I'm just getting -- you're

1 confusing me, because I thought I answered it.

2 BY MR. ROSE:

3 Q. I'm sorry. But I'm opposing counsel, so I --

4 A. Okay.

5 Q. I'm just trying to make light, Mr. Barcelona.

6 A. All right.

7 Q. Why do you oppose a bargaining unit consisting
8 solely of peace officers?

9 A. Because the jobs that we do -- and I can take an
10 example of when I was a DMV Investigator. We worked hand
11 in hand with the Licensing people, the Inspectors that
12 went out and licensed. We would go out many times and
13 work with them on licensing issues, and they would bring
14 issues to us.

15 There were times, many times, when I was in Stockton
16 when Bureau of Automotive Repair would call and ask for
17 me to meet with them at various used car lots because
18 they couldn't get on the car lot to inspect the cars or
19 the files to make sure that the smog was working and all
20 those things, because they'd get physically run off by
21 the lot people and because they weren't peace officers.
22 And we did a lot of investigations that way. They'd call
23 us out. We'd go in together and work on those issues.
24 Because we both -- we both regulated the auto industry.

25 It's the same thing with Special Agents working with

1 the various folks, with the Criminalists and, you know,
2 the other folks. We have -- all of our folks at ABC and
3 the Licensing people, work in the same building together.
4 They work -- they both work with the same licensees.
5 They both work on regulating. I think that what we do is
6 hand in hand, and we even work for the same departments,
7 and we work better that way.

8 It's been clear that over the years we've negotiated
9 almost two separate deals in every contract. And the pay
10 and benefits has always been higher for the peace
11 officers than the non-peace officers. But because we
12 work for the same -- the same departments and we do --
13 and we regulate and enforce a lot of the same licensees
14 and same people, I think it's we naturally belong
15 together. I think we work out better that way.

16 Q. Do you -- a lot of what you just described, tell
17 me if you agree with me, seems to be a description of
18 efficiency of operations. Do you agree with that?

19 A. Yes.

20 Q. And the only thing I heard you say, correct me if
21 I'm wrong, that relates to actually bargaining wages and
22 benefits for your members was the two separate contracts
23 concept that you mentioned. Do you agree with that?

24 A. Yes.

25 Q. Wouldn't you agree with me that you would have a

1 greater ability to represent the peace officers in your
2 bargaining if CSLEA represented them in a bargaining unit
3 consisting solely of peace officers?

4 A. No.

5 Q. Wouldn't you agree with me that you would be able
6 to do a better job for the non-sworn employees in your
7 bargaining unit if CSLEA represented those employees in a
8 bargaining unit consisting solely of non-sworn employees?

9 A. No.

10 Q. Do you believe that CSLEA has done as good as
11 other bargaining units that are -- excuse me, as good as
12 other Exclusive Representatives that represent peace
13 officers in a exclusively peace officer bargaining unit
14 since you've been President?

15 MR. MESSING: Object. Are we talking about the State
16 bargaining units?

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yes, we are.

18 THE WITNESS: It depends who -- I don't know who
19 you're talking about.

20 BY MR. ROSE:

21 Q. Well, I'm asking you if you think, for example,
22 CSLEA has done as good for its sworn employees as CCPOA
23 has done since you've been president.

24 A. Yes.

25 Q. You believe that you have?

1 A. You're asking for my opinion?

2 Q. Yes, I am.

3 A. Yes.

4 Q. Would you say you've done equal to or better than
5 CCPOA?

6 A. I don't know.

7 Q. Definitely at least as good as them?

8 A. Yes.

9 Q. And would you say that you've done better than
10 the California Association of Highway Patrol Officers
11 during your time as President with respect to your peace
12 officer employees?

13 A. No.

14 Q. You think they've done better than you have?

15 A. Yes.

16 Q. One of the reasons they've done that is because
17 they're exclusively a peace officer bargaining unit,
18 true?

19 A. No.

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You're asking
21 his opinion.

22 MR. ROSE: Yeah, I know.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: So --

24 MR. ROSE: Nothing further at this time.

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Messing.

1 You know, I need to take a bathroom break, so let's take
2 a five-minute break. Off the record.

3 (Recess taken.)

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: We're back on
5 the record. Mr. Messing.

6 MR. MESSING: Okay. I just want to clarify a few
7 points. See if we can wrap up early today.

8 REDIRECT EXAMINATION

9 BY MR. MESSING:

10 Q. Mr. Rose asked you about the breakdown in the
11 bargaining unit by classifications, and I believe your
12 testimony was that it was classifications 60 percent non-
13 sworn, 40 percent sworn. Is that -- is your testimony as
14 to classifications or the numbers of people in those
15 positions?

16 A. I was thinking of numbers of people.

17 Q. Okay. Now, let me try and see if we can get the
18 timing of this right. You first became President of
19 CAUSE in what year?

20 A. In 1994.

21 Q. Okay. You were testifying to this five percent/
22 three percent deal as to a date of 1993. Does that sound
23 correct, or is it --

24 A. It couldn't have been correct. I wasn't
25 President then.

1 Q. Okay. When -- if that's the case, when do you
2 think it was?

3 A. It had to be '98.

4 Q. Okay.

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Oh.

6 THE WITNESS: Yeah. I think it had to be '98,
7 because that's when Craig Brown was in. But it couldn't
8 be '93.

9 BY MR. MESSING:

10 Q. Okay. Now, you were asked about CCPOA being
11 offered and taking the deal with the pay for performance.
12 Do you know if anybody else was offered a similar kind of
13 deal at that time?

14 A. Yes.

15 Q. Okay. Who else?

16 A. I think -- it's my understanding that all 21
17 bargaining units were offered it.

18 Q. Okay. Do you know of any bargaining unit other
19 than the one that CCPOA represents who took the pay for
20 performance and the pay raise?

21 A. No, I do not.

22 Q. Okay. No, you don't know, or --

23 A. I don't know that there are any -- it's my belief
24 that only CCPOA accepted that deal with pay for
25 performance.

1 Q. Thank you.

2 A. I don't know of any other bargaining unit that
3 did.

4 Q. Just a word about -- on this issue of the bill.
5 The bills. If a bill goes into suspension, does that
6 mean that the bill is killed? Is that the same?

7 A. Not to my knowledge.

8 Q. Okay. But a bill that's in suspension, can that
9 be killed?

10 A. I believe it can, but I don't -- I'm not familiar
11 with -- I don't know what happens to it when it goes
12 there. It always my belief that it could go there, and
13 then they could pull it back out and revisit it. But I
14 don't know what happens to it. I've never been involved
15 in that.

16 Q. Okay. You were asked about an endorsement of Chu
17 for was it BOE?

18 A. Yes.

19 Q. Okay. What factors were considered, if you
20 recall, for that endorsement?

21 A. Well, obviously you want to pick a candidate who
22 sees the world through the same lens as your members do.
23 But also you want to pick the one that's going to win.
24 And our consultants, who do a lot of polling and have
25 access to polling, had advised us to back Chu because the

1 polling had suggested that she was going to win that
2 election.

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And the only
4 reason why I'm allowing this testimony, because he got
5 Chu in. And I don't want to go to anyone else --

6 MR. MESSING: Okay.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: -- in regards
8 to --

9 MR. MESSING: I have just one more question on
10 this --

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: -- the fun world
12 of --

13 MR. MESSING: -- Judge.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: -- horse
15 betting.

16 BY MR. MESSING:

17 Q. One last question is, was anybody else endorsed
18 for the same position?

19 A. Yes.

20 Q. And who was that?

21 A. Jerome Hart [phonetic].

22 Q. Okay. So was -- is there some terminology for
23 that when you endorse two people?

24 A. We did a dual endorsement for both of them.

25 Q. Okay. Just one last thing, I think. You were

1 asked about -- several questions about peace officers in
2 a separate bargaining unit. If all of the -- I'd like
3 your opinion on this. If all of the peace officers in
4 Unit 7 were in a separate bargaining unit, do you think
5 that they would do as well as CHP?

6 A. I think it's problematic because of the small
7 organization -- the small groups that they are. That's
8 always been the problem with the -- with our unit of
9 peace officers.

10 Q. So if it was -- if all the peace officers were in
11 a separate unit, all the Unit 7 peace officers, do you
12 think that they would do as well as CHP?

13 A. No.

14 Q. And have you already given the reason, or --

15 A. I can --

16 Q. -- do you want to explain?

17 A. I can explain it.

18 Q. Yeah, please explain.

19 A. The reason why we have the prob -- why I say that
20 is because we have the -- the units of police officers,
21 we've got 150 of one class, 450 DOJ Agents, 175 -- these
22 are all approximates, but 175 DMV Investigators, 240 Fish
23 and Game Wardens. They're all small -- they're all small
24 affiliate groups, and they're all out there trying to
25 compete. And they're not like CHP or CCPOA. CHP is one

1 class, CHP officer, 7,000 of them. Correctional
2 officers, over 30,000 correctional officers.

3 We've had the problem with nobody knows who any of
4 these people are, these groups are. And they're smaller.
5 They're small organizations. And the only way, you know,
6 these other groups have been -- have been successful is
7 because there are so many.

8 CHP is the most visible law enforcement organization
9 in the state. There's not -- I don't think there's
10 hardly any person that you can bump into on the street,
11 if you ask them who CHP was, that they wouldn't know.
12 They've got their own -- how do you compete against
13 someone who has The Real Stories of the Highway Patrol on
14 television? They guard -- they live with the Governor.
15 They're -- they guard his family, his children.

16 I remember when Gray Davis was Governor, he would
17 ask -- he would ask for a protein bar, and somebody would
18 reach in their pocket and hand him a protein bar. He
19 would ask for a water, and another guy would pull a water
20 out of his jacket. So we and others, no one can compete
21 with that without being -- having the size.

22 In my opinion, CHP has had -- has been -- is very
23 fortunate that they're in the position they're in. And I
24 think they've been able to negotiate the contract because
25 of that close status, and the fact that there's 7,000 of

1 one classification, along with CCPOA.

2 We don't have that. We don't enjoy that. We've got
3 a lot of very, very small groups all competing for money
4 that do different types of peace officer jobs at various
5 levels.

6 MR. MESSING: Nothing further at this time.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Ms. Truong?

8 MS. TRUONG: No questions.

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Rose.

10 MR. ROSE: Yes.

11 RECROSS-EXAMINATION

12 BY MR. ROSE:

13 Q. How does having a bottle of water in your coat
14 for the Governor relate to the size of the bargaining
15 unit?

16 A. I was -- it doesn't relate to the size of the
17 bargaining unit.

18 Q. And the same would be true for a protein bar,
19 right, that doesn't have anything to do with size?

20 A. No.

21 Q. Are you opposed to the idea of allowing your
22 members to vote in secret as to whether or not they
23 should be represented separately in a separate bargaining
24 unit?

25 MR. MESSING: Objection. Relevance.

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sustained.

2 BY MR. ROSE:

3 Q. Are you opposed to the idea -- have you had
4 discussions -- strike that.

5 Did you give direction to the California Fish and
6 Game Wardens Association not to support Senate Bill 695,
7 which was a pay bill for the Game Wardens? Do you recall
8 that?

9 A. Did I give them direction not to support it?

10 Q. Correct.

11 A. I don't believe I did.

12 Q. Did you tell them that they would not be
13 permitted as an affiliate of CSLEA to lobby the
14 Legislature in support of Senate Bill 695?

15 A. Well, I can't -- you're -- I can't answer that
16 without further explanation. There's more to it than
17 that.

18 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Let me just --

19 MR. ROSE: My question --

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: If we can put it
21 pre-trusteeship. You're talking about before the
22 trusteeeship?

23 BY MR. ROSE:

24 Q. I'm asking in March 19 -- in March 2007, did you
25 direct the California Fish and Game Wardens Association

1 to refrain from lobbying the Legislature in support of
2 Senate Bill 695, which was a pay bill affecting the Game
3 Wardens?

4 MR. MESSING: I'm going to object. We're getting
5 into the issue of the trusteeship.

6 THE WITNESS: There's --

7 MR. ROSE: May I address that?

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yeah, please,
9 sir.

10 MR. ROSE: Mr. Messing asked questions about this on
11 his examination of the witnesses as well.

12 MR. MESSING: I did? I asked about six questions.

13 MR. ROSE: No, not this witness.

14 MR. MESSING: I didn't ask a thing about this.

15 MR. ROSE: Prior witnesses.

16 MR. MESSING: What?

17 MR. ROSE: Bob Orange.

18 MR. MESSING: Well, that doesn't open the door for
19 this witness. And I think we've clearly drawn a line
20 between the trusteeship -- pre-trusteeship and what
21 happened as a condition of trusteeship.

22 MR. ROSE: I'm not saying anything about a
23 trusteeship. I'm asking if the witness has directed the
24 Game Wardens not to lobby the Legislature in support of a
25 piece of legislation.

1 MR. MESSING: It was part of the --

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: If that is your
3 sole question like that, I'm sustaining the objection.
4 Put in that bare way that you just did, sustained.

5 BY MR. ROSE:

6 Q. Okay. Then after -- prior to the -- are you --
7 the Game Wardens Association is currently in trusteeship,
8 true?

9 A. Yes.

10 Q. As is the State Parks Peace Officers Association,
11 right?

12 A. Yes.

13 Q. And then while they're in trusteeship those two
14 organizations do not have a seat on the Board of
15 Directors for CSLEA, right?

16 A. Yes.

17 Q. And their affairs are handled entirely by a
18 trustee appointed by --

19 MR. MESSING: I'm going to object now to the
20 relevance.

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I actually am
22 going to allow questions in regards to this, how
23 representation is applied to those classifications that
24 were normally under those auspices. If you're going that
25 direction, you've got it, sir. So go ahead.

1 BY MR. ROSE:

2 Q. And so the trustee handles the affairs of the --
3 of the affiliate entirely, true?

4 A. No.

5 Q. Okay. Well, to what extent -- how do you seek
6 the input of an affiliate that's in trusteeship
7 concerning collective bargaining matters?

8 A. The trustee contacted both of those groups and
9 asked them to give him their request for negotiations.
10 And I know for sure that the Park Rangers did because
11 they came. And I think we even actually had their
12 President at the time, (unintelligible), came and met
13 with DPA during the bargaining session. I don't know
14 what happened with the Fish and Game Wardens, whether
15 they supplied him with information or not. I don't know
16 that.

17 Q. Who's the trustee?

18 A. Ricardo Sanchez.

19 Q. Is it the same trustee for both affiliates?

20 A. Yes.

21 Q. Does Mr. Sanchez sit at the bargaining table with
22 CSLEA to represent the interests of the affiliates under
23 his trusteeship?

24 A. He came in on those issues.

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: So is that a

1 yes?

2 THE WITNESS: Yes.

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Next.

4 BY MR. ROSE:

5 Q. And subsequent to -- prior to this placement of
6 CSLEA -- excuse me. Prior to the placement of the Game
7 Wardens Association in trusteeship, did you direct the
8 Game Wardens Association not to lobby in support of
9 Senate Bill 695, which is a pay bill concerning Game
10 Wardens?

11 A. I can't answer that unless I expand upon it.
12 There's a reason why I did that.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: If that's the
14 bare question, I'm going to sustain an objection on the
15 same reason on the other one.

16 MR. ROSE: All right.

17 BY MR. ROSE:

18 Q. Would you agree or disagree that in 2007 the Game
19 Wardens Association was instrumental in getting the
20 Legislature to appropriate \$30 million for the Game
21 Wardens and for the Department of Fish and Game?

22 A. No.

23 Q. Would you agree that during that same time period
24 the Game Wardens Association was instrumental in getting
25 a sizeable sum of money appropriated for the Department

1 of Fish and Game?

2 A. No.

3 Q. Do you believe that CSLEA was instrumental in
4 getting any money at all allocated for the benefit of the
5 Game Wardens in 2007?

6 A. Where? I don't know where you're talking about.
7 Can you -- I don't know where you're talking about.

8 Q. Okay. Well, did you in 2007 believe that there
9 was an erroneous perception that CAUSE had deprived Fish
10 and Game Wardens Association members of additional
11 compensation?

12 A. Can you -- I don't understand your question.

13 Q. Did you ever tell anyone in 2007 there is an
14 erroneous perception that the -- that CAUSE has deprived
15 the California Fish and Game Wardens Association members
16 of additional compensation?

17 A. I never said it in the way you've described it.

18 Q. If you could please look at Petitioner CC marked
19 for identification, page one? Tell me if you recognize
20 that document.

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Go ahead and
22 review it, and then --

23 THE WITNESS: I recognize it.

24 MR. ROSE: Actually, that's my copy. Do we have a
25 witness copy?

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yeah, we do.

2 MR. ROSE: Okay.

3 THE WITNESS: I'm sorry. You gave it to me. It's
4 mine.

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: No, it's not.

6 BY MR. ROSE:

7 Q. All right. You recognize the document --

8 A. Yes.

9 Q. -- as being what?

10 A. Petitioner's CC?

11 Q. Yes, sir.

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Actually, you're
13 just using it to refresh his recollection.

14 MR. ROSE: And for impeachment.

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Still, it's not
16 being used for purposes of admission.

17 MR. ROSE: Correct.

18 ADMINISTRATIVE LAW JUDGE CLOUGHESY: It's being used
19 for purpose of refreshing his recollection whether he
20 said something.

21 MR. ROSE: Right.

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: So --

23 THE WITNESS: Where is that sentence that you're
24 talking about?

25 /////

1 BY MR. ROSE:

2 Q. Well, first, if you could just tell me what you
3 recognize this document as being?

4 MR. MESSING: Well --

5 THE WITNESS: It's notifying the Fish and Game
6 Wardens of trusteeship.

7 BY MR. ROSE:

8 Q. It's a letter from you, right?

9 A. Yes.

10 Q. And it's a letter to Bob Orange, President of the
11 California Fish and Game Wardens Association, correct?

12 A. Yes.

13 Q. And you wrote this letter?

14 A. No.

15 Q. Somebody wrote this letter for you?

16 A. Yes.

17 Q. Who wrote it?

18 A. My attorney.

19 Q. Well, don't tell me anything further about that.
20 But it's dated March 19, 2007?

21 A. Yes.

22 Q. And that's about the time that it was signed by
23 you?

24 A. Yes.

25 Q. And in signing this letter, you adopted the

1 contents as your own, correct?

2 A. I agreed with it.

3 Q. Okay. And so when you look at paragraph one on
4 page one that says the following, "CFGWA will prepare a
5 letter signed by its Board of Directors correcting the
6 erroneous perception that CAUSE deprived CFGWA members of
7 additional compensation when the last collective
8 bargaining agreement was negotiated," when you adopted
9 that sentence by signing this letter, you agreed that
10 there was an erroneous perception to that effect, true?

11 A. Yes.

12 Q. And that's inconsistent with what you testified
13 to a moment ago, correct?

14 MR. MESSING: Object. It's argumentative and it
15 misstates the prior testimony.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.
17 Sustained. Let's get the next question.

18 BY MR. ROSE:

19 Q. All right. So having this in mind, does this
20 refresh your memory as to in 2007, March, you believed
21 that there was an erroneous perception that CAUSE
22 deprived CFGWA members of additional compensation when
23 the last collective bargaining agreement was negotiated?

24 MR. MESSING: Object. Misstates the prior testimony.
25 Yeah, misstates --

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You wrote
2 that -- I mean you adopted that sentence, right?

3 THE WITNESS: Well, I agreed to it when I -- when
4 counsel presented it to me and when I signed it. I just
5 didn't remember every word of it.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.
7 Let's get to the -- let's get to the real question.

8 BY MR. ROSE:

9 Q. So how was it that CAUSE -- how was it that the
10 perception that CAUSE deprived CFGWA members of
11 additional compensation, how was it that that perception
12 was erroneous when you signed this letter?

13 A. The -- I remember standing outside of the budget
14 hearings at one point, and Bob Orange and Jerry Karnow
15 and Jake Bushey, during a break they were in the hallway
16 and they were talking about the money, about they were
17 going to be able to get all this money for Fish and Game
18 Wardens. And I looked at them and I said, "It's all well
19 and fine, guys, but you can't -- you can't get a raise
20 through budget augmentation. It has to go to DPA and
21 Finance for collective bargaining. And at that point
22 it's all negotiable, which means that those moneys are
23 going to go to DPA, and DPA is going to use that money to
24 negotiate the contract how they believe it's fit. It's
25 not going to be your money."

1 And they looked at me like I was crazy. I told them,
2 "You cannot get a raise through budget augmentation.
3 They're going to take it and use it as best the
4 administrative feels." And they -- I could tell all
5 three of them looked at me like, no way, this is all
6 ours. And they turned and walked away.

7 So if you're asking what my perception was was
8 they -- I think they felt that they were going to get
9 whatever money was in there. But that's not how it
10 works. I've never seen anybody get a raise just through
11 budget augmentation alone.

12 Q. Were you aware whether or not the Legislature had
13 intended those -- that budget augmentation to go towards
14 salaries for wage for Game Wardens at that time?

15 A. I don't believe so.

16 Q. Did you inquire further as to the legislative
17 desire to -- with that -- strike that. One moment.

18 Let me show you what is tab 19 of the Karnow
19 Declaration, Petitioner's A, beginning at page 6.

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Tab 19?

21 MR. ROSE: Tab 19, page 6.

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

23 We're getting there. All right. Witness has the
24 May 30th, 2006, Cogdill letter.

25 /////

1 BY MR. ROSE:

2 Q. Now, this is a letter on Assembly -- California
3 Assembly letterhead, would you agree?

4 A. Yes.

5 Q. Have you seen this letter before?

6 A. I don't remember whether I have. I think I
7 saw -- this is the one that was passed around where
8 everybody signed it, I believe. A lot of people signed
9 it in the Legislature. I think I have seen it before.

10 Q. And this letter expresses the desire of the
11 signatories that the -- that a \$17.5 million budget
12 augmentation go to Department of Fish and Game for
13 compensation of Fish and Game Wardens, correct?

14 MR. MESSING: Object. The document speaks for
15 itself.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sustained.

17 MR. ROSE: When you see this -- okay. We're out of
18 time, so nothing further.

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Messing,
20 anything?

21 MR. MESSING: No.

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Ms. Truong?

23 MS. TRUONG: No.

24 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sir, thank you

25 very much.

1 THE WITNESS: Thank you.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: We are
3 concluding day five of these proceedings, and we are --
4 sir, I need to give you an admonishment. I'm sorry about
5 that.

6 MR. MESSING: I was just going to remind you.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Admonishing you
8 not to discuss your testimony with any other witnesses in
9 this case. Do you have any questions in regards to the
10 admonishment?

11 THE WITNESS: No.

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. With
13 that --

14 MR. ROSE: Judge, one more time, I move admission of
15 Petitioner's CC.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: So denied. With
17 that, day five is complete. Off the record.

18 (Proceedings concluded.)

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CERTIFICATION AND
DECLARATION OF TRANSCRIBER

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3
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.

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