

March 11, 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 11, 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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APPEARANCES

Administrative Law Judge

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1 admonish you not to discuss your testimony with any of
2 the other witnesses. Of course, you're free to discuss
3 it with anyone at these counsel tables. Do you
4 understand the admonishment?

5 THE WITNESS: Yes, I do.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And any
7 questions regarding it?

8 THE WITNESS: No.

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. With
10 that, off the record.

11 (Off the record.)

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

13 We're back on the record. And we have another witness
14 called by the Exclusive Representative. I'm going to ask
15 you to raise your right hand.

16 (Witness sworn by the Judge.)

17 THE WITNESS: I do.

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

20 THE WITNESS: My name is James Vitko. The last name
21 is spelled V-I-T-K-O.

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.
23 Marking as Exclusive Representative U what appears to be
24 a Declaration of this witness.

25 (Exclusive Representative's Exhibit U marked

1 for identification.)

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I have a couple
3 of preliminary questions. Sir, do you ever remember
4 receiving any transcripts in regards to these
5 proceedings?

6 THE WITNESS: Transcripts, no.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. Do
8 you know who James Cline is?

9 THE WITNESS: No.

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.
11 Handing to you Exclusive Representative U. And if you
12 could review that and let me know what that is.

13 THE WITNESS: This appears to be the Declaration that
14 I put together and signed on the 24th of February.

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. Why
16 don't you turn back to your signature page there. And is
17 that a copy of your signature, sir?

18 THE WITNESS: It is.

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And did you sign
20 it on or about the date set forth there and the location
21 set forth?

22 THE WITNESS: I did.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And is the
24 contents of that Declaration true and correct to the best
25 of your knowledge?

1 THE WITNESS: Yes.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

3 Mr. Messing.

4 TESTIMONY OF

5 JAMES VITKO,

6 Having been duly and regularly sworn, testified as

7 follows:

8 DIRECT EXAMINATION

9 BY MR. MESSING:

10 Q. Is there anything in this Declaration that you
11 would like to change or correct?

12 A. Yes, I do have one correction on here.

13 Referencing page number 11, line number 1, where I
14 referred to a case that I had worked as the JonBenet
15 Ramsey case. That was incorrect. What I had intended to
16 say was the Samantha Runyan case, which was the Orange
17 County case back around the end of the '90s, beginning of
18 the year 2000.

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. Why
20 don't I have you line out that, and then put -- insert
21 the name of the case that you wanted it instead, and then
22 initial and date.

23 THE WITNESS: Do you want me to initial up top here
24 or down here?

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: No. Right next

1 to where you're making the change.

2 THE WITNESS: All right.

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

4 Mr. Messing.

5 MR. MESSING: Okay. I want to -- give me one second.

6 One second.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Off the record.

8 (Off the record.)

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Back on the
10 record.

11 BY MR. MESSING:

12 Q. Okay. This Declaration gives your background.
13 Did you -- I don't recall. Do you mention in here what
14 your current employment is?

15 A. I don't recall. Bear with me just one second.

16 Q. Well, let me just do this, and ask you, do you
17 still work for the State of California?

18 A. No, sir, I do not.

19 Q. And when did that employment come to an end and
20 how?

21 A. I retired as of December 30th of 2008.

22 Q. Okay. And are you currently employed?

23 A. I am.

24 Q. And will you state what the nature of that
25 employment is?

1 A. I currently work as legal counsel for California
2 Statewide Law Enforcement Association and I'm
3 headquartered in Southern California.

4 Q. Okay. Now, I want to talk about your work with
5 the Association of Special Agents for a minute. That is
6 an affiliate with CSLEA?

7 A. Yes, sir.

8 Q. Okay. How long have you been active? You are --
9 you are a member of ASA-DOJ, correct?

10 A. Correct.

11 Q. Okay. And how long were you active in that
12 organization?

13 A. I was a member of ASA-DOJ effective with my
14 assignment with the Department of Justice, which was
15 right around 1996. And I was -- I became a Site Rep or
16 an Office Rep on or about 1999 when I was assigned to the
17 Bureau of Investigation in Los Angeles. And I ran for
18 the Board of Directors in 2005. I was elected to a
19 position on the Board of Directors and asked to take
20 presidency at that time.

21 Q. Okay.

22 A. I worked as the President of the Association
23 through the date of my retirement.

24 Q. So as a Board member -- well, let's start with
25 1999. You say you became a Site Rep. Will you explain

1 what a Site Rep is?

2 A. I was a Representative back to the Association
3 Board. My job at that time was to interact with my
4 fellow employees to bring issues of concern back to the
5 Board of Directors, to the president at that time, who
6 was George Lowe. I also attended the quarterly Board
7 meetings of the Association of Special Agents, passed
8 information back, made sure that things were posted. On
9 occasion I would interact with management to take care of
10 local issues as well.

11 Q. Okay. I'm just trying to streamline this. From
12 let's say 1999 through your retirement, was it part of
13 your normal routine and business to find out what sorts
14 of complaints and issues were occurring in the State with
15 Special Agents?

16 A. Yes.

17 Q. Okay. And particularly let's say from the time
18 that you became a Site Rep on, did -- were you -- did you
19 become familiar -- without stating names of people, but
20 with issues where individual representation was requested
21 of CAUSE and then later CSLEA?

22 A. Yes.

23 Q. Okay. Do any particular cases come to mind? And
24 let's actually focus on from the time you became
25 President in 2005 to the present, start with that

1 timeframe. Any cases come to mind that you could relate?
2 And I'd also say, without stating the name of the
3 individual unless it was a public matter, or without
4 giving us too many details about the particular issue.
5 If you can just sort of summarize them?

6 A. Certainly. Sort of as a preface, you have to
7 understand that the nature of what Agents do oftentimes
8 subjects them to situations where they may be involved in
9 critical incidents, shootings, various use of force types
10 of incidents, and also they are oftentimes subject of
11 Internal Affairs complaints and investigations, again,
12 just based on the type of things they do, the interaction
13 with the public.

14 During -- during the time period that I was the
15 President of the Association of Special Agents I got a
16 number of these calls requesting representation. And
17 there were situations, for instance, where individuals
18 were involved in shootings where I would get that call in
19 the middle of the night and be asked to activate LDF,
20 whereby I would go ahead and I would contact usually
21 Kasey by cell phone, or in rare instances we would
22 contact the LDF directly, making sure that we had an
23 attorney out there at the time to be able to become
24 involved to make sure that legal rights were upheld.

25 We had three LDF incidents that I can recall between

1 '07 and '09, well, the time I retired at the end of '08,
2 where those types of issues came up. We also had an
3 incident where one of my Special Agent Supervisors was
4 accused by an individual that was on a task force with
5 him of inappropriate sexual advances that could have
6 possibly turned into a sexual assault. I can recall
7 activating LDF for that and having representation
8 provided.

9 There were also incidents where I can recall at least
10 one agent that had been arrested, and we went ahead and
11 activated LDF for that.

12 Q. Okay. You talk about LDF. That stands for?

13 A. The Legal Defense Fund. And that is a CSLEA
14 program whereby an individual would be provided with
15 legal counsel in the case of incidents like these.

16 Q. And when you say incidents like these, you're
17 talking about critical incidents and --

18 A. Critical incidents, arrests that may be related
19 back to the performance of their duties, things like
20 that.

21 Q. Okay. Would it cover, for example,
22 interrogations in the course of Internal Affairs
23 investigations?

24 A. Absolutely. In fact, we had a situation that
25 occurred during -- I believe it began in '06 or '07

1 involving one of my Special Agent Supervisors that was
2 involved in an altercation with a fellow task force
3 member, and subsequent to that ended up being
4 interrogated outside of POBOR. Statements were elicited,
5 and that was used as a means of adverse action against
6 him.

7 We went ahead and moved the case forward to the LDF
8 Board. It was accepted because of the nature of the
9 violations. And just recently they had a victory whereby
10 the courts declared that it was in fact a POBOR
11 violation.

12 Q. Okay. Now, aside from referring cases -- during
13 the same timeframe, aside from referring cases to the
14 LDF, do you have any other special knowledge of the Legal
15 Defense Fund program?

16 A. I actually chaired the Legal Defense Fund for a
17 short period of time I believe the last four or five
18 months that I worked -- excuse me just a second. Yeah,
19 the last four or five months prior to my retiring.

20 Q. Okay. Do you -- do you have any sense of the
21 numbers of cases that routinely come into the Legal
22 Defense Fund? I mean like in a given year how many cases
23 are reported to the Legal Defense Fund, or where
24 something is requested? All right. Well, I'll withdraw
25 that question. Let me -- let me ask you this:

1 Do you know if many -- can you characterize the
2 percentage or approximate percentage of cases that go
3 before the LDF that originate with Special Agents?

4 A. There were approximately I believe seven cases
5 that had gone before LDF involving Special Agents between
6 the years 2007 and 2009. I believe if you take a look at
7 a historical basis going back to the history of LDF, I
8 believe it's well over 50 cases that were submitted for
9 consideration.

10 Q. Okay. And do you know what percentage that is of
11 the total? Do you know approximately how many -- for
12 example, you said seven cases from 2007 and 2009. Do you
13 - do you know how many cases were taken in total and
14 considered by LDF --

15 A. Before --

16 Q. -- during that time period?

17 A. No, sir, I don't.

18 Q. Okay. Now, out of the cases that you're familiar
19 with that went before the LDF, can you characterize any
20 feedback or reaction by the Agents in terms of the
21 adequacy of their representation?

22 A. The cases that went before LDF almost without a
23 doubt were very positive. There was a very high
24 percentage of cases that were submitted that were settled
25 in favor of the -- of the Agents. I don't think I've

1 ever heard a complaint about the representation of the
2 LDF panel attorneys.

3 Q. Okay. Now, if, for example, an Agent has a
4 grievance, is that handled through LDF?

5 A. No, sir.

6 Q. Okay. And how is that handled through -- by
7 CSLEA?

8 A. Generally speaking, grievances and Internal
9 Affairs interrogations and cases that spring from that
10 are handled by the in-house counsel or the labor rep.

11 Q. Okay. And let's take the same period of time
12 from 2005 to 2009 when you retired, or the end of 2008.
13 Were -- can you characterize how many cases came in?
14 Were there a few, many from the Special Agents
15 Association that were grievances or IAs not covered by
16 LDF?

17 A. Yeah. And as I had prefaced this discussion with
18 based on the nature of what we do, it's not unusual for
19 Internal Affairs to open cases and to notify people. I
20 do know for a fact that between 2007 and 2009, for
21 instance, that the Department of Justice initiated
22 approximately 76 Internal Affairs investigations, more
23 than half of which were involving Special Agents or
24 Special Agent Supervisors.

25 Q. Okay. And through your experience when Special

1 Agents were involved, where did they find their
2 representation?

3 A. Almost entirely from the in-house counsel and the
4 later rep at CSLEA.

5 Q. Okay. From those cases did you receive
6 complaints about representation by CSLEA?

7 A. Not that I can recall. Most -- it's well known
8 that in a number of bargaining units what you -- what you
9 generally have for representation is usually a Site Rep
10 or --

11 MR. ROSE: Objection. Move to strike as
12 nonresponsive after I don't recall.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: No. I'm going
14 to overrule the objection. Go ahead and continue the
15 answer, Mr. Vitko.

16 THE WITNESS: Thank you. Generally speaking, a
17 number of bargaining units will use Site Reps or various
18 other non-attorneys to represent individuals at Internal
19 Affairs hearings, investigations, Skellys, et cetera.
20 CSLEA has almost universally used attorneys. And as a
21 result, most of the results that we have have been -- or
22 most of the feedback that I've had has been very positive
23 about the professional nature of the organization.

24 BY MR. MESSING:

25 Q. Okay. As President have you been familiar with

1 the bargaining process in CSLEA?

2 A. Yes.

3 Q. Okay. And have there been -- can you
4 characterize reaction of let's say at the same time
5 period, 2005 through 2008, can you characterize the
6 feedback from your membership on how CSLEA has done in
7 collective bargaining?

8 A. Well, at the time that we had received the last
9 contract which involved the 25 percent raise, there was a
10 lot of very positive feedback. I have on occasion
11 received comments usually having to do with the parity
12 issues involving Special Agents and CDC-IA. I'm sorry.
13 California Department of Corrections Internal Affairs, or
14 the Office of the Inspector General. However, generally
15 speaking, there's some issues that crept up that don't
16 necessarily follow parity.

17 Q. Well, can you explain that?

18 A. Yeah. I mean in some cases comparisons aren't
19 appropriate because, for instance, the CDC-IA people are
20 non-represented. They are -- they're management outside
21 the bargaining process because of the nature of what they
22 do. Jobs are generally different than what we do. I
23 believe it's the same for the Office of Inspector General
24 as well. I don't believe they are represented. Theirs
25 is primarily Internal Affairs related.

1 Q. When you're talking about the CDC people, you
2 said their jobs are different. And how does that
3 difference play into the view of Special Agents of the
4 comparison between them, if you know?

5 A. Well, I do know that there have been a number of
6 Agents that have gone over to the Department of
7 Corrections. I also know the feedback that I get from
8 there is not very positive about the type of environment
9 they have to work under. I've been told about large
10 workloads. I've been told about driving out to prisons
11 in the middle of nowhere. And generally speaking,
12 there's not a whole lot of satisfaction with the
13 position.

14 Q. Is there a difference in the type of work that is
15 performed at the -- by the CDC-IA people and Special
16 Agents?

17 A. Yes. Special Agent Supervisors for DOJ can be
18 asked to do some Internal Affairs work. But by and
19 large, the types of cases that we do for the Department
20 of Justice are much wider in scope. You could be asked
21 to be doing a narcotics case, a terrorism case. You can
22 be doing a Medi-Cal fraud case. Just about anything the
23 Attorney General would choose to mandate for you. As
24 opposed to the Department of Corrections where your scope
25 would be very narrow.

1 Q. Do you know if Special Agents consider the
2 Special Agent work as opposed to the CDC work more or
3 less interesting?

4 A. As a general rule, based on those that I've
5 spoken to, they enjoy the job very much. So I would
6 think that they would find that probably more interesting
7 to do.

8 Q. Which job are you referring to?

9 A. The Department of Justice Special Agent position.
10 I'm sorry.

11 MR. MESSING: Okay. Nothing further at this time.

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Rose.

13 MR. ROSE: Should we continue in view of
14 Mr. Messing's request that we leave early, and use this
15 as a natural breaking point?

16 MR. MESSING: That'd be fine with me.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. Sir,
18 I still need to do an admonition. I forgot about that.
19 I need to admonish you not to discuss your testimony with
20 any other witnesses. You're free to discuss your
21 testimony with anybody from these counsel tables. Do you
22 understand the admonition?

23 THE WITNESS: I do, sir.

24 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And with that,
25 day six of these proceedings is concluded. We're off the

1 record.

2 (Proceedings concluded.)

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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 11, 2009, and that the
13 foregoing pages 1 through 294 constitute a true, complete
14 and accurate transcription of the aforementioned
15 recording to the best of my ability.

16 Dated this 27th day of March, 2009, at Dixon,
17 California.

18
19
20 _____
21 Leisa M. Miller, Transcriber
22 VINE, MCKINNON & HALL
23 Certified Shorthand Reporters
24
25