

March 12, 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 12, 2009

SHAWN CLOUGHESY
Administrative Law Judge

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

Transcribed by: Leisa M. Miller

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1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: No. Telephone
2 witnesses is --

3 MR. MESSING: In spades.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: -- very often
5 done, actually. There is an exchange that goes that way.

6 MR. MESSING: Well, we have, you know, made every
7 effort to get everybody here. You know, out of 18 or 20
8 witnesses, this is 1 witness who is not available. So --

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. Sir,
10 raise your right hand.

11 (Witness sworn by the Judge.)

12 THE WITNESS: I do.

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

15 THE WITNESS: It's Bruce Donald Hotchkiss. Last name
16 is H-O-T-C-H-K-I-S-S.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.
18 Marking as Exclusive Representative Z what appears to be
19 a Declaration of this witness.

20 (Exclusive Representative's Exhibit Z marked
21 for identification.)

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I have a couple
23 preliminary questions, sir. First of all, did you
24 receive copies of transcripts of these prior proceedings
25 in this case? What I mean by transcripts is real

1 transcripts?

2 THE WITNESS: No.

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Something like
4 this.

5 THE WITNESS: I did not receive a copy of the
6 transcript, no.

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

9 THE WITNESS: No.

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sir, passing to
11 you. It looks like you already have it. Why don't you
12 take this one. And turn that one upside down.

13 THE WITNESS: Sure.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And go through
15 it quickly and let me know if you can identify what it
16 is.

17 THE WITNESS: It's a statement I prepared, I wrote
18 for this case describing my duties as a State employee,
19 my duties as the affiliate President, and other duties on
20 the CSLEA Board, as well as a copy of the Job
21 Description.

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. If
23 you'd turn to your signature page? And sir, is that your
24 signature?

25 THE WITNESS: Yes, it is.

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And did you sign
2 it on or about the date and at the location set forth?

3 THE WITNESS: Yes, I did.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And are the
5 contents of that Declaration true and correct to the best
6 of your knowledge?

7 THE WITNESS: Yes, they are.

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Messing,
9 pass the witness.

10 MR. MESSING: Thank you.

11 TESTIMONY OF

12 BRUCE D. HOTCHKISS,

13 Having been duly and regularly sworn, testified as
14 follows:

15 DIRECT EXAMINATION

16 BY MR. MESSING:

17 Q. So you have been employed in Bargaining Unit 7
18 positions since about what year?

19 A. 1991.

20 Q. Okay. And when did you become active -- well,
21 CARI -- you're a member of CARI?

22 A. That's correct.

23 Q. Okay. And CARI is an affiliate of CSLEA,
24 correct?

25 A. Correct.

1 Q. Okay. How long have you been active in CARI?

2 A. I believe I joined the CARI Board in either mid
3 '96 or early '97.

4 Q. Okay.

5 A. Became President in '98.

6 Q. And are you still the President?

7 A. Yes, I am.

8 Q. Okay. And CARI has both peace officers and non-
9 sworn?

10 A. That's correct.

11 Q. Okay. Now, you said in your Declaration that you
12 participated in the MOU negotiation process in 2001, 2003
13 and spring/summer of 2008. What is the nature of your
14 involvement in the negotiation process?

15 A. All three times I was one of the bargaining team
16 members.

17 Q. Okay. Now, were you -- were you familiar with
18 the split that occurred with Code Enforcement folks
19 between sworn and non-sworn positions?

20 A. You mean the Enforcement Rep? Yes.

21 Q. I'm sorry. What did I say?

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Code
23 Enforcement.

24 THE WITNESS: Code Enforcement.

25 /////

1 BY MR. MESSING:

2 Q. Enforcement Reps.

3 A. Yes.

4 Q. Yes. Okay. Would you please explain your
5 recollection of what occurred in that regard?

6 A. Yeah. Originally, I mean because there was
7 the -- when we got the multi-layered step increases, the
8 sworn people got more step increases and larger step
9 increases, I think, than -- and because the Enforcement
10 Reps at Contractors State License Board, there are three
11 sworn positions statutorily, but they all have the
12 same -- they shared a classification code with the non-
13 sworn. So there was no differentiation that way.

14 And originally, if I remember correctly, all of them,
15 they were -- all the positions that were the sworn ones
16 were listed by classification code. So, which meant all
17 the Enforcement Reps would have got the 25 percent step
18 increases that the sworn got.

19 And then I gather DPA realized that they were
20 actually giving the sworn raises to a bunch of non-sworn
21 people, and they tried to make some changes. And we, you
22 know, argued that they were the ones that had listed the
23 classification codes. And so it stayed as it is up until
24 a certain date, and then it was -- I guess it was
25 basically that if DPA could do new classification codes

1 for the sworn positions before the next step increase
2 went in, then only the sworn ones would get the step
3 increase.

4 It happened. They -- DPA fast tracked it. And the
5 three sworn will get -- you know, have gotten the sworn
6 increases, and the rest of the Enforcement Reps got a
7 couple of the -- I think they got one more step increase
8 than the rest of the non-sworn people in CSLEA. But they
9 didn't get as many step increases as they had been
10 anticipating.

11 Q. Okay. Now, in your position as President of
12 CARII, do you have occasion to -- would you have occasion
13 to learn if people had complaints about individual
14 representation by CSLEA? And by individual
15 representation I mean grievances, disciplines, IAs, that
16 sort of thing.

17 A. Yes. I mean I've made it a point of my position
18 as President that if anybody, any of our members, the
19 CARII members, had problems, they would -- you know, they
20 could come to me. So --

21 Q. Okay.

22 A. I would say I have a pretty vocal membership. So
23 if there were problems, I would hear about them.

24 Q. Okay. Have you ever heard anybody complain about
25 the responsiveness of CSLEA? By that I mean how quickly

1 people respond to requests for service?

2 A. I'd say not recent. Not over the last five
3 years.

4 Q. Okay. And over the last five years have you had
5 anybody complain -- and I'm talking now about individual
6 representation -- about the quality of the service that
7 they obtained from CSLEA?

8 A. No, not at all.

9 Q. Okay. Now, the testimony that you gave regarding
10 the split of this sworn and the non-sworn
11 classifications, was there some consternation in the --
12 in your membership over that issue?

13 A. There was some. I don't think it was -- it
14 wasn't real bad. I mean, you know, obviously there was
15 some of the Enforcement Reps who weren't sworn that were
16 a little unhappy that they didn't get all the steps. You
17 know, it was explained to them that they lucked out and
18 got some that the rest of us didn't get. I didn't get.
19 So, you know, most of them were pretty understanding
20 about it.

21 Q. Okay. And how about the general bargaining
22 process? Since you've been involved in it since I
23 believe you said 2001, have you had input from your
24 membership in terms of how people feel about the quality
25 of their representation at the bargaining table?

1 A. Yes.

2 Q. Okay.

3 A. Because I'm the one that's there for them, yeah,
4 I hear from them. You know, obviously, I mean not
5 everybody's always, you know, excited about everything.
6 But I think generally they've been pretty happy. And
7 they -- as I say, I have tried to make sure that I'm open
8 to the membership. So, you know, that I think most of
9 them realize that they have a voice there.

10 It's been difficult to try to explain the bargaining
11 process sometimes. It's, you know -- the majority of my
12 members are ex-mechanics. I mean the people at the
13 Bureau of Automotive Repair. And a lot of those people
14 used to be in unions, you know, in auto repair shops.
15 And they can't quite sometimes grasp that State
16 negotiations are done differently than, you know, private
17 party. So --

18 MR. MESSING: I pass the witness to Mr. Rose.

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sir.

20 MR. ROSE: Thank you.

21 CROSS-EXAMINATION

22 BY MR. ROSE:

23 Q. Good afternoon, Mr. Hotchkiss. I'm Joe Rose,
24 attorney for Peace Officers of California. Did you ever
25 work in the Rancho Cordova office?

1 A. No.

2 Q. Oh, okay.

3 A. No.

4 Q. I thought maybe you had helped me with a matter,
5 but --

6 A. No.

7 Q. Your name sounds familiar. Nonetheless, so let's
8 go back to the composition of your affiliate
9 organization, California Association of Regulatory
10 Inspectors and Investigators, CARII.

11 A. Uh-hmm.

12 Q. That you said is consisting of both sworn and
13 non-sworn members?

14 A. Correct.

15 Q. There are three sworn members, correct?

16 A. Statutorily there are three, yes.

17 Q. Are there more allocated that are not filled?

18 A. No. I mean that's all that's allocated. We
19 have -- because there are two class codes for the sworn,
20 both Enforcement Rep I and Enforcement Rep II, and I
21 gather that someone at CSLB has assigned people into the
22 wrong classifications. Because when -- you know, we get
23 a monthly list from the Controller's Office. And the
24 last time I got it there were five people in sworn
25 positions. And when I checked, you know, with our -- the

1 Department of Consumer Affairs Personnel, they said,
2 well, no, that, you know, those aren't. So it's --
3 there's clerical errors, so that's why I'm hedging on it.

4 Q. Understood. Okay. So you think there's three
5 allocated. And do you think there's at least three
6 filled?

7 A. Right. There are -- statutorily there are three
8 positions. So that's -- there are only three real sworn
9 people.

10 Q. And of the -- how many other members do you --
11 oh, you said you have 600 members. No, no. Oh, is that
12 right, 600 members?

13 A. There's -- total within CARII there's
14 approximately 600 members.

15 Q. Okay. And three sworn?

16 A. Correct.

17 Q. Got it. Now, are you the representative for the
18 three sworn at the bargaining table in CARII?

19 A. Yes.

20 Q. What kinds of issues have you heard from the
21 sworn officers in your affiliate that concerns them?

22 A. I haven't heard anything specifically from the
23 three CSLB sworn people that would be any different than
24 the problems that any -- you know, the other CSLB people
25 have been having at bargaining. I mean they have not --

1 they haven't asked for anything special.

2 So, you know, and I'll say, I mean generally the
3 majority of things that -- you know, before we go into
4 bargaining, we ask for input from all the members. You
5 know, we do it all the time. But you have a push just
6 before bargaining. And most of the members, what they
7 want is money. So, you know, it's -- and that's what
8 they all ask for.

9 Q. How long -- setting aside -- now -- well, strike
10 that.

11 The class spec was revised in November of 2007. Does
12 that sound -- does that sound right?

13 A. I believe that's correct, yes.

14 Q. And prior to that time there were -- there were
15 nonetheless peace officers in the CSLB?

16 A. Correct.

17 Q. And how many years had there been peace officers
18 in that organization?

19 A. I don't know for sure. It's been longer -- as
20 far as I know, it's been -- it's longer than I've been
21 President of CARI, so more than, you know, 10 years, I
22 would think.

23 Q. And during that entire time was CAUSE then, or
24 CSLEA now, the Exclusive Representative for those
25 employees?

1 A. Yes.

2 Q. During that entire time were you aware whether
3 those peace officer employees received any differential
4 pay for the fact that they were peace officers?

5 A. I'm not aware. I mean I would imagine that they
6 were -- they might have gotten like longevity pay, things
7 like that. But there was nothing -- they never came
8 forward and said that they wanted anything special.

9 Q. But to your knowledge, this is the first instance
10 in which their pay salaries are higher than non-sworn in
11 your affiliate, correct?

12 A. Oh, yeah, that's --

13 Q. By two and a half percent?

14 A. I --

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Do you know?

16 THE WITNESS: I don't know for sure.

17 BY MR. ROSE:

18 Q. Okay.

19 A. It was an extra step increase they got. That's
20 all I know. And so it could have been up to -- up to
21 five percent, I guess, but --

22 Q. You mentioned that most of your affiliate members
23 are ex-mechanics and are used to working in unions in
24 auto repair shops. Is that the same -- is that also true
25 with respect to the peace officers?

1 A. No. Because I represent that work in -- well,
2 most of the people I represent work at Consumer Affairs,
3 but they work in different -- the Bureau of Automotive
4 Repair, Contractors State License Board. Those are the
5 two largest. But I have -- the majority of the members
6 work at the Bureau of Automotive Repair. And in order to
7 work at the Bureau of Automotive Repair as a Program
8 Representative, you have to have journey level auto
9 repair experience.

10 Q. And what kind of backgrounds do the CSLB Program
11 Representatives typically have, if you could summarize?

12 A. It depends on basically how long they've been
13 there. It used to be that they had to have been a
14 contract -- a licensed contractor. And that was changed
15 I'm not sure how many years ago. But still, the majority
16 of them have experience in some contracting field.

17 Q. Is the same true for the peace officers in -- at
18 the CSLB?

19 A. I mean the minimum requirements were the same.
20 And I believe that most of the peace officers -- I've
21 been there for a long time, so I would think that they
22 fell under the prerequisite of having to have been a
23 contractor before they came on.

24 Q. Who are the peace officers by name at the CSLB?

25 A. The only name that I can remember is Carl Vega.

1 Q. Okay. And which office does he work at?

2 A. I'm not sure.

3 Q. You mentioned in your Declaration that you were
4 elected as Unit B Vice President of CSLEA in October
5 2007. I'm looking at page two, paragraph four of your
6 Declaration, at lines fifteen through sixteen. And you
7 mention in that Declaration that Unit B represents five
8 affiliates. Are there other units in CSLEA?

9 A. Yes. There's A, B and C.

10 Q. And what are the Unit A affiliates? Do you know?

11 A. They're -- I think those are primarily sworn
12 units, sworn affiliates. I can't remember them off the
13 top of my head.

14 Q. Okay. and then do you know whether Unit C is
15 primarily non-sworn?

16 A. I believe are.

17 Q. And would you say Unit B is primarily non-sworn?

18 A. Primarily, yes. But there are sworn -- you know,
19 there are some sworn Fire Marshals, so --

20 Q. When you -- you mention in your Declaration at
21 paragraph six at the bottom of page two that the majority
22 of cases are accepted by -- excuse me, "The majority of
23 cases accepted by LDF are from the sworn side of CSLEA."
24 How do you know that?

25 A. Well, both as a member of the Legal Defense Fund

1 and as a Board member, we get to review -- at every Board
2 meeting we get a list of the ongoing cases, so -- and
3 it's done by affiliate. You know, it doesn't always say
4 the name of the person, but it says affiliate. And I
5 mean you can tell by the affiliate which ones are sworn
6 and which ones aren't. And you look down and if there's
7 20 active cases and 19 of them are from a sworn
8 affiliate, it's pretty clear that, you know, they get the
9 majority. You know, I've been -- I've been reviewing
10 these -- you know, I've been on the Board since '98, so,
11 you know, I've reviewed a fair number of them. And --

12 Q. Do you have any impression, based on your
13 experience having been on the Board since 1998, as to why
14 the sworn affiliates are substantially higher uses of the
15 LDF?

16 A. Well, I would -- it's not necessarily that they
17 get in trouble more often, but they are -- you know,
18 they're -- I think they're held to a higher standard,
19 one. If you're sworn and if you -- you know, if you fire
20 your weapon, you have to be defended. So I mean there
21 is -- it's the nature of the job, I believe, that -- at
22 least partly.

23 Q. So would you agree with me that the sworn
24 employees are -- their jobs are different with respect to
25 the expectations of their work performance in that regard

1 than non-sworn?

2 A. I'm not sure I follow exactly the question.

3 Q. All right. Would you say that the complexity of
4 the sworn employees' jobs is greater than that of the
5 non-sworn?

6 A. No, I wouldn't.

7 Q. Would you say that the opportunity for the sworn
8 employees to get into a unsafe situation is greater than
9 that of a non-sworn?

10 A. No, not at all.

11 Q. Would you say that the likelihood of a sworn
12 employee being involved in a use of force situation is
13 greater than that of a non-sworn?

14 A. You know, I really couldn't say. I mean I know a
15 lot of my non-sworn people who end up in situations like
16 that. And not necessarily where they have to use force,
17 but where force is used against them. So I don't know.
18 I mean I'm not out there, you know, counting the number
19 of times.

20 And I know that a lot -- a lot of the sworn people
21 don't necessarily do jobs where they are -- you know,
22 they're Investigators, not necessarily beat cops, or
23 whatever, you know. So they're not -- they're not out
24 there using force to do the job. They're investigating
25 things. And in that aspect, I don't -- there's not much

1 difference between them and what a lot of the people in
2 my affiliate do.

3 Q. Do you know whether the CSLB peace officers
4 Program Representatives that you represent through your
5 affiliate have been trained in the use of force?

6 A. I do not know for sure.

7 Q. Do you know whether they've been trained in
8 defensive tactics?

9 A. Not 100 percent. I believe they have been, but I
10 couldn't say definitely.

11 Q. Do you know whether there are additional minimum
12 requirements for those employees than a non-sworn Program
13 Representative, minimum requirements for either --

14 A. There are different minimum requirements, yes.

15 Q. There are additional minimum requirements?

16 A. Right.

17 Q. You wrote in your Declaration beginning on page
18 two at the last line this sentence. I'll read it and
19 then I'll ask you what you meant by it. "In some
20 instances, sworn cases are referred to outside counsel,
21 even though they do not meet the normal criteria." And
22 then let me read the next sentence because I think they
23 go together. You can tell me whether you agree. "This
24 is sometimes done for internal political reasons." So
25 what did you mean by those two sentences?

1 A. Well, the legal defense, we have turned down
2 cases that -- and if we deny a case when it comes before
3 the Legal, and if we deny the case, the person who wanted
4 representation then has a right to appeal to the
5 Executive Committee. And if the Executive Committee
6 turns it down, they have a right to appeal to the Board,
7 the full Board of Directors.

8 And at some point sometimes, even though the LDF may
9 feel that the case didn't merit us spending the money on
10 it, for whatever reason, whether it was -- it might not
11 have been really in the course and scope of the person's
12 job, or there might not, you know, have been an
13 expectation of winning, or whatever, I mean there's a
14 whole variety of things that we look at, if the -- if the
15 Board or the Exec feels that there is internal political
16 reasons to go ahead, i.e., that somebody feels that it's
17 a -- one affiliate feels that they're not getting -- you
18 know, that their member is being hung out to dry, the
19 Board may overrule us and say, you know, for -- to keep
20 this other affiliate happy, we have to defend this
21 person. And it has happened.

22 Q. But you mentioned it in your Declaration with
23 respect to sworn cases in particular, right?

24 A. Right. And it's -- those are the only times I've
25 seen it happen.

1 Q. What -- you mentioned two things you look at, and
2 you said you look at a variety of things. One thing you
3 said you look at was whether it's not in the scope of the
4 job, and whether the likelihood of success, I guess is
5 how I've written down, I don't know if those were your
6 words, but those two criteria are -- are those two among
7 many that you look at in determining whether to approve
8 LDF coverage for individual --

9 A. Yeah. I mean I think, you know, within the
10 course and scope of a job is primary. I mean if somebody
11 has done something off in their personal life, that has
12 absolutely nothing to do with the job, you know, we have
13 a -- we have an obligation, you know, we are -- we're
14 looking at we not only have to, you know, make sure our
15 members are defended, but we also have to make sure that
16 we properly manage the finances of the LDF. And if
17 somebody has done something stupid in their private life,
18 you know, do we have an obligation to defend them. And
19 that's what we have to decide. You know, was it -- was
20 it in an area that we can -- we can say, yes, that is --
21 it's reasonable that we defend this person, or not. And
22 I mean that is something we decide for everybody, whether
23 it's sworn or non-sworn.

24 Q. Okay. Now, other than those two things, what
25 other criteria are the normal criteria that you use to

1 evaluate a case for LDF coverage?

2 MR. MESSING: Okay. I'm going to object. It
3 mischaracterizes the witness' testimony. He just
4 discussed other criteria other than the two that he
5 referenced. So --

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Well, okay.
7 Other than you've testified already, is there -- is there
8 anything else?

9 THE WITNESS: I don't think so. I think those really
10 are the criteria we look at, and the primary one being
11 course and scope.

12 BY MR. ROSE:

13 Q. Okay. Now, what about peace officers that are
14 engaged in some sort of use of force situation off duty,
15 how would that -- how would you evaluate that
16 circumstance and LDF coverage?

17 A. Again, well, one, I mean you have to look at each
18 individual case. We had a case where --

19 Q. Don't mention any names, but --

20 A. No, I won't mention any names. I mean it was
21 probably a couple years ago that it came to the LDF.
22 But, excuse me, where the LDF didn't feel that it should
23 have been handled. It was appealed. And I think it was
24 the executive that overruled the LDF, which was kind of
25 strange because I was on the Executive. But I vote -- I

1 voted against, you know, taking it. But the -- there
2 were four of us on the Exec, the President and all three
3 Vice Presidents, and it was -- it was overturned, and we
4 defended the person. I didn't --

5 Q. You didn't agree with that decision?

6 A. No. I -- well, I voted against it. Once we --
7 it was decided to go ahead, I agreed with -- you know,
8 it's a democracy and, you know, majority rules. So there
9 was a vote. I was on the losing side. And you say,
10 okay, fine, let's move forward.

11 Q. How many -- was that a use of force situation
12 involving a peace officer away from work?

13 A. Yes.

14 Q. What about when you mention in your -- in your
15 Declaration on page three that -- line twenty-four, "Non-
16 sworn classifications cause to be taken" is part of what
17 you wrote, what do you mean by "cause to be taken actions
18 again alleged criminals"?

19 A. Well, as non-sworn we can't arrest people. I
20 mean I can give you an example. I mean I am deskbound
21 right now in my job. But before I got to this position,
22 I worked in the field. I did undercover operations on a
23 smog check program. The last one I worked on, there were
24 four people arrested. Obviously I didn't arrest them. I
25 don't have that power. I caused them to be arrested

1 because did the investigation, I filed the reports, I
2 took it to the district attorney, and I went out with the
3 district attorney's lead investigator, who arrested the
4 people. That's what I mean.

5 Q. You need the district attorney's lead
6 investigator because of the peace officer status to make
7 the arrest?

8 A. I need somebody who was sworn, and that was -- we
9 use -- it depends on -- it would depend on the case how
10 we did it at Bureau of Automotive Repair. I mean there
11 was some that would go administratively, in which case
12 you would -- you might use the Consumer Affairs Division
13 of Investigation. Or if you're going criminally or
14 civilly, you use the District Attorney.

15 Q. All right. And if you go to page four of your
16 Declaration, paragraph eleven, line eight, you mention
17 that you instigated investigation of a smog station in
18 Palo Alto. What do you mean by instigated the
19 investigation?

20 A. Okay. I caused the investigation to be started.

21 Q. Who did the investigation after you instigated
22 it?

23 A. I did part of the investigation, and another
24 Program Representative did another part of it.

25 Q. Was the other Program Representative a peace

1 officer?

2 A. No. There are no peace officer Program
3 Representatives.

4 Q. All right. And the -- ultimately was there a
5 conviction in that case, or a criminal conviction?

6 A. Yes, there were.

7 Q. And which law enforcement agency handled that?

8 A. It was the Palo -- the Santa Clara District
9 Attorney's Office.

10 Q. Were there any arrests made in that case?

11 A. Yes.

12 Q. And the District Attorney's Office Investigator
13 made the arrest?

14 A. That's correct.

15 Q. If you could look at line 10 of the same page,
16 same paragraph? It says surveillance was performed on
17 the station. Do you see that?

18 A. Yes.

19 Q. Did you perform the surveillance?

20 A. No, I did not.

21 Q. Did the other Program Representative perform the
22 surveillance?

23 A. Yes, he did.

24 Q. All right. Now, when you go to line 13 in the
25 same paragraph, it says you participated in the arrest of

1 the smog technician. Were you physically present for the
2 arrest?

3 A. Yes.

4 Q. Did you lay hands on the smog technician?

5 A. No.

6 Q. Did you read that technician his or her Miranda
7 rights?

8 A. No.

9 Q. Have you ever read anyone their Miranda rights?

10 A. I've never read anyone their Miranda rights. I
11 have advised people when I've been questioning them that
12 they, you know, do have certain constitutional rights. I
13 have been advised both through training that I've taken
14 at Department of Justice and through district attorneys
15 that, you know, I'm not required to tell people that
16 because I'm not sworn. But I have always felt that it
17 would probably be wise for me to make sure that people
18 know, you know.

19 Q. You mention in paragraph 14 of your Declaration
20 on page 5 the composition of the -- or in part anyway you
21 describe the work of the SWIFT Unit, S-W-I-F-T. Have you
22 ever worked on the SWIFT Unit yourself?

23 A. No, I haven't.

24 Q. Are there any non-sworn Enforcement
25 Representatives on the SWIFT Unit?

1 A. Yes, there are.

2 Q. How many?

3 A. I don't know for sure.

4 Q. How do you know that there are non-sworn
5 Enforcement Representatives on the SWIFT Unit?

6 A. I've talked to them.

7 Q. Who are they?

8 A. Off the top of my head, I can't remember the
9 names of the people that -- but I mean the SWIFT is made
10 up of more than the three Enforcement Reps, so -- that
11 are sworn, so --

12 Q. Now, do you enforce any laws?

13 A. I would say I do. I mean I may not right now
14 because, like I say, I'm -- although I do review
15 paperwork. I don't -- I don't issue any citations or
16 anything. But I, you know, have to review documents from
17 automotive repair shops as, you know, to whether they're
18 legal or not. When I worked in the field, and a majority
19 of the Program Representatives do work in the field, I
20 would say we do enforce the laws. They do enforce the
21 laws.

22 MR. ROSE: All right. Nothing further at this time.
23 Thank you, Mr. Hotchkiss.

24 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Ms. Truong?

25 MS. TRUONG: No, nothing from us.

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Messing?

2 MR. MESSING: I don't have anything.

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sir, I need to
4 admonish you not to discuss your testimony with any of
5 the witnesses. You're free to discuss it with anybody at
6 these counsel tables.

7 And with that, Exhibit Z of Exclusive Rep is
8 admitted.

9 (Exclusive Representative's Exhibit Z received
10 in evidence.)

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I'll take that.
12 I think that's yours.

13 THE WITNESS: Okay.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And we are off
15 the record.

16 THE WITNESS: Thank you.

17 (Off the record.)

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

22 (Witness sworn by the Judge.)

23 THE WITNESS: I do.

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

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 12, 2009, and that the
13 foregoing pages 1 through 218 constitute a true, complete
14 and accurate transcription of the aforementioned
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