

March 25, 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 25, 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 PROCEEDINGS - MARCH 25, 2009

2 --oOo--

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Back on the
4 record. Date is March 25th, 2009. The time is
5 approximately 9:10 a.m.

6 This is day nine of the proceedings of PERB case
7 No. SA-SV-171-S, Bargaining Unit -- State Bargaining Unit
8 7 severance proceedings.

9 This is -- we're at the Public Employment Relations
10 Board, 1031 18th Street, Sacramento, California.

11 My name is Shawn Cloughesy. I'm the Administrative
12 Law Judge assigned to hear this case on behalf of the
13 Public Employment Relations Board in regards to the
14 Petitioner, Peace Officers of California, the Employer,
15 State of California, and the Exclusive Representative,
16 California Statewide Law Enforcement Association.

17 The Administrative Law Judge and the witness are on
18 channel one, the Exclusive Representative on channel two,
19 the Employer on channel three, and the Petitioner on
20 channel four.

21 If I can have the parties state their appearances for
22 the record?

23 MR. MESSING: On behalf of CSLEA Gary Messing. And
24 with me is CSLEA Chief Counsel Kasey Clark.

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: On behalf of the

1 Employer?

2 MS. TRUONG: Shannan Truong, Legal Counsel for
3 Department of Personnel Administration. With me is Linda
4 Mayhew with the DPA, Assistant Chief Counsel, and
5 Kristine Rodrigues, Labor Relations Officer with the DPA.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. On
7 behalf of Petitioner.

8 MR. ROSE: Joe Rose for Peace Officers of California.
9 Seated at counsel table with me is Diane Sabonis.

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.
11 Where we left off, we are still on the case in chief of
12 the Exclusive Rep. Any preliminary matters? Anything on
13 your behalf, Mr. Messing?

14 MR. MESSING: No, not at this time.

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Ms. Truong?

16 MS. TRUONG: No.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Rose?

18 MR. ROSE: No.

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Witness to my
20 left ready to be sworn. Sir, ask you to raise your right
21 hand.

22 (Witness sworn by the Judge.)

23 THE WITNESS: Yes.

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

1 THE WITNESS: Alan Barcelona. B-A-R-C-E-L-O-N-A.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. And
3 Mr. Messing, questions?

4 MR. MESSING: Yes. Just one thing, actually. You
5 submitted a Declaration. Do you have a copy of that,
6 Judge?

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yes, I do. Let
8 me dig that out here. Have we not marked that one yet,
9 or is that --

10 MR. MESSING: I don't believe we've marked that. In
11 fact, I'm sure we haven't.

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Off the record.
13 (Off the record.)

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Back on the
15 record. We're going to be marking as Exclusive
16 Representative LL what appears to be a Declaration of
17 Alan Barcelona, Opposition to Severance.

18 (Exclusive Representative's Exhibit LL marked
19 for identification.)

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I'm going to
21 show that to the witness. And you can look at it on the
22 table if you want. And ask you to review it. And tell
23 me what it is when you've made such determination.

24 THE WITNESS: It looks like my Declaration.

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. If

1 you could turn to the signature page? And is that your
2 signature, sir?

3 THE WITNESS: Yes.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And did you sign
5 it on the date and at the location set forth?

6 THE WITNESS: I believe so.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.
8 Mr. Messing.

9 TESTIMONY OF

10 ALAN BARCELONA,

11 Having been duly and regularly sworn, testified as
12 follows:

13 DIRECT EXAMINATION

14 BY MR. MESSING:

15 Q. Any corrections that you wish to make on this
16 Declaration?

17 A. Yes.

18 Q. Okay. Go ahead and explain.

19 A. Just line two. It says, "Prior to becoming
20 President of CSLEA I was a Special Agent." And it -- I
21 became a Special Agent while I was President of CSLEA.
22 So I think that it's just out of -- out of order here is
23 all. Because it talks about as a DMV Investigator, and
24 then -- and then Deputy Sheriff. So they just got the
25 order kind of reversed, I believe.

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Well, let's see
2 if we can look at a quick fix here.

3 THE WITNESS: It's all correct as far as the
4 employment goes. It's just the way they've ordered it
5 isn't right.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: If we're --

7 MR. MESSING: Okay. You know what it is? Is I think
8 the way to do that is, to begin with, I was a Special
9 Agent for the Department of Justice for approximately 10
10 years. And then put in prior to becoming President of
11 CSLEA and prior to becoming a Special Agent I was a DMV
12 Investigator. Does that --

13 THE WITNESS: That's fine.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Or you can just
15 do it by testimony.

16 MR. MESSING: Right.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I mean we can
18 just strike the prior to becoming the President of CSLEA
19 and then we can --

20 MR. MESSING: Why don't we just do this.

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: -- handle it by
22 testimony.

23 MR. MESSING: Yeah. Are we on the record?

24 ADMINISTRATIVE LAW JUDGE CLOUGHESY: We are indeed,
25 sir.

1 BY MR. MESSING:

2 Q. Oh. Can you just please explain the proper
3 sequence in paragraph two?

4 A. Yeah. Prior to -- I guess I can go I started out
5 as a Deputy Sheriff in 1981. In 1989 I became a DMV
6 Investigator. In 1999 I became a Special Agent,
7 Department of Justice, which I'm still employed as that.

8 Q. Okay. And when did you become President of
9 CSLEA?

10 A. 1994.

11 Q. Okay. I think that should cover it. Any other
12 corrections or changes?

13 A. I don't believe so.

14 MR. MESSING: Okay. I pass the witness to Joe Rose.

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Rose.

16 MR. ROSE: Yeah. Judge, actually, I have a
17 procedural matter on the Declaration. Just for
18 clarification, was it 10 court day requirement for
19 advanced service to me?

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I thought it was
21 two weeks, but -- I thought it was two weeks. I'm not
22 sure.

23 MR. ROSE: In any case, I think the Declaration was
24 untimely served. And we received it by e-mail on the
25 13th of March. By electronic mail only. And I don't

1 have an agreement with Mr. Messing's office to receive
2 the Declarations by e-mail. And also, even if it had
3 been served that date in person or by mail, it would have
4 been untimely on the 13th. That was only 6 or 7 business
5 days prior to today's hearing. So I object to the
6 admission of the Declaration in its entirety as being
7 untimely and not in accordance with the ruling of your --
8 with your ruling.

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. Any
10 response, Mr. Messing?

11 MR. MESSING: Well, first of all, he got a copy of it
12 on March 13th. That much I know. Today is the 25th, so
13 that is more than 10 days. I didn't know that there was
14 any problem with service of the Declaration. We knew --
15 we indicated that Mr. Barcelona would be testifying
16 today. If there was a problem with this, perhaps it
17 should have been raised at an earlier time. And I could
18 certainly find out, my understanding was that this was in
19 fact delivered to Mr. Rose's office, but I could find out
20 about that if you want to go off the record. But I think
21 the receipt of the documents 12 days before today should
22 have been sufficient. One second.

23 Additionally, I would say that submitting a
24 Declaration has not been a requirement for testimony. So
25 if he wishes to insist upon it, I could simply ask

1 Mr. Barcelona to testify to everything that's in the
2 Declaration, and we can spend the morning doing that.

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Any response,
4 Mr. Rose, or the Employer?

5 MR. ROSE: Yeah. I'm just looking, Judge, at your
6 ruling December 1. It reads, "Parties may be allowed to
7 present Declarations in lieu of direct testimony for
8 friendly witnesses. Such Declarations must be provided
9 to opposing counsel at least 10 days before that witness
10 is to testify." I suppose -- let me check my calendar.
11 Maybe that -- I thought that it -- "If a holiday or
12 weekend falls on the 10th day, the party propounding the
13 Declaration shall give an additional workday." So if
14 it's timely served by e-mail, then we may not -- let me
15 just check my calendar.

16 MS. TRUONG: Can I respond to that?

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Let me just --
18 we may not have an issue. Just hold on.

19 MR. ROSE: Okay. Well, in that case, even though we
20 didn't have an agreement, we only received -- the Proof
21 of Service shows that it was only served by e-mail. We
22 did not receive a paper copy. But if Mr. Messing is
23 willing to allow us 15 minutes to review the Declaration,
24 then I'll withdraw my objection.

25 MR. MESSING: No problem.

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Acceptable?

2 MS. TRUONG: That's acceptable.

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. And
4 with that, sir, you've got it.

5 MR. ROSE: All right.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I'm going to
7 review it myself since obviously it's on the -- my
8 internet also.

9 (Off the record.)

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.
11 We're back on the record. And I think now we're ready
12 for cross-exam, sir.

13 MR. ROSE: Yes. Oh, do we have -- did we identify
14 the Declaration on the record?

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yes, we did.
16 It's double L.

17 MR. ROSE: Thank you.

18 CROSS-EXAMINATION

19 BY MR. ROSE:

20 Q. Hello again, Mr. Barcelona. Your Declaration at
21 paragraph four, you speak of your duties when you were a
22 DMV Investigator, correct?

23 A. Yes.

24 Q. And that was more than 15 years ago, correct?

25 A. More than 15 years ago? I suppose so, yeah.

1 Q. Okay. You mentioned in your Declaration
2 beginning at about paragraph 11 efforts -- or direction
3 that you gave to Coby Pizzotti concerning the Insurance
4 Investigator position at the Department of Insurance,
5 correct?

6 A. Yes.

7 Q. What -- did CSLEA ever sponsor any legislation in
8 connection with that effort?

9 A. We supported legislation.

10 Q. You supported Assembly Bill 994 in 2005, correct?

11 A. Can you refresh my memory on what 994 was?

12 Q. It was a legislate -- it was authored by Sharon
13 Runner, and the topic was peace officers, and it was
14 concerning a -- concerning granting peace officer status
15 to the Insurance Investigator classification,
16 February 22, 2005. Does that refresh your memory?

17 A. A bit.

18 Q. Let me show you a Memorandum authored by
19 Mr. Pizzotti.

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I can show it to
21 him. Just --

22 MR. ROSE: Oh, thank you.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Do you know the
24 page that you're on or --

25 MR. ROSE: I don't. It's going to be in the 2005

1 year.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Got it. Okay.

3 And 994, is that what you said?

4 MR. ROSE: right.

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

6 MR. ROSE: February 22, 2005.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. On page

8 11 of Exhibit A of Exclusive Rep double K. Showing the

9 witness the summary digest.

10 THE WITNESS: Okay.

11 BY MR. ROSE:

12 Q. Now, having looked at that -- and you may want to
13 look at the first page of the document just to understand
14 the context of where that's coming from.

15 A. What is he talking about there.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yeah. Moving to
17 the initial memo.

18 THE WITNESS: Okay.

19 BY MR. ROSE:

20 Q. Now, have you seen that Memorandum that you're
21 looking at before today?

22 A. I think I have seen it.

23 Q. And having looked at the summary of Assembly Bill
24 994 in 2005, does that refresh your recollection as to
25 whether that was the legislation that was supported by

1 CSLEA in connection with the Insurance Investigator?

2 A. I don't -- I still don't remember it.

3 Q. Do you recall whether CSLEA -- well, you said you
4 recall that CSLEA did support legislation concerning
5 Investigator -- Insurance Investigator peace officer
6 status, correct?

7 A. Yes.

8 Q. And that legislation was vetoed by the Governor,
9 correct?

10 A. No. Not the one I'm talking about.

11 Q. Okay. Well, when did you first become involved
12 in the issue of investigate -- the Insurance Investigator
13 becoming a peace officer position?

14 A. I don't recall the dates.

15 Q. If you look at your Declaration, would that
16 refresh your memory?

17 A. It would.

18 Q. Okay. If you can take a look at page five of
19 your Declaration, paragraph eleven, does that refresh
20 your memory?

21 A. Yes.

22 Q. Having looked at that, tell me now if you can
23 answer my earlier question about when you first became
24 involved in the issue of peace officer status for
25 Insurance Investigator?

1 A. Around 2006.

2 Q. Are you aware whether or not there had already
3 been efforts by the Department to make that
4 classification peace officer status?

5 A. I'm only aware that there was discussions. I
6 don't have any further memory of it.

7 Q. Okay. Are you aware of what a POST study is in
8 connection with creating a peace officer classification?

9 A. Yes.

10 Q. Is it also called a POST feasibility study?

11 A. I believe so.

12 Q. And what is that?

13 A. My understanding is that they look at all
14 aspects, the type of job duties, whether they make
15 arrests, that sort of thing.

16 Q. All right. And is that a requirement before a
17 classification becomes a peace officer classification?

18 A. As far as I know it is.

19 Q. All right. Has CSLEA ever sought a POST
20 feasibility study for the Insurance Investigator
21 classification?

22 A. I don't remember whether we have or not.

23 Q. Has CSLEA ever sought a POST feasibility study
24 for Museum Security Officers?

25 A. I don't recall.

1 Q. Has CSLEA ever sought a POST feasibility study
2 for Supervising Museum Security Officers?

3 A. I don't recall.

4 Q. Has CSLEA ever sought a POST feasibility study
5 for the Firefighter Security Officers assigned to
6 Yountville?

7 A. I don't recall.

8 Q. Are you familiar with the Firefighter Security
9 Officer job duties for those assigned at Yountville?

10 A. No.

11 Q. Are you aware whether any Firefighter Security
12 Officer non-sworn employees drive a black-and-white State
13 vehicle with red-and-blue lights?

14 A. I'm not.

15 Q. Do you think if they perform those kinds of
16 functions that that would make them a peace officer?

17 A. I don't know.

18 Q. Are you aware that the Supervising Museum
19 Security Officers do not receive peace
20 officer/firefighter retirement?

21 MR. MESSING: Objection. Misstates the evidence.

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Are you aware
23 whether or not?

24 MR. MESSING: Oh.

25 MR. ROSE: Well --

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Wasn't that your
2 question?

3 MR. ROSE: Yeah. I said are you aware that
4 Supervising Museum Security Officers do not receive peace
5 officer/firefighter retirement.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: We do have the
7 testimony of a witness on --

8 MR. MESSING: Yeah. No. I withdraw the objection on
9 that.

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. Go
11 ahead, sir.

12 THE WITNESS: I'm not aware of it.

13 BY MR. ROSE:

14 Q. I'm sorry?

15 A. I'm not aware of it. I don't know.

16 Q. Are you aware whether or not Museum Security
17 Officers, not the Supervisors, receive peace officer/
18 firefighter retirement?

19 A. I don't know.

20 Q. Are you aware of the safety record or injury
21 record of employees in the classification LRE at the DMV,
22 License Registration Examiner?

23 A. I'm not aware of an official record. I know that
24 they have injuries.

25 Q. Okay. Do you -- are you aware whether or not

1 they have injuries on a more -- on an increased frequency
2 than other State employees?

3 A. It's my belief that they -- that they have quite
4 a few injuries.

5 Q. Are you aware --

6 A. Whether they -- whether or not it's to -- whether
7 I can compare it to other State employees, I don't know.

8 Q. Are you aware the nature of those injuries?

9 A. Some.

10 Q. Are they mostly vehicle accidents?

11 A. That's part of it. And they're also physical
12 assaults.

13 Q. Do you think that the rate of injury of License
14 Registration Examiners at the DMV makes them peace
15 officers?

16 A. No.

17 Q. Do you think that it makes them like peace
18 officers?

19 A. No.

20 Q. Turning to paragraph 20 on page 7 of your
21 Declaration. You mention beginning at line 16, "Lewis
22 also asked for my assistance in making arrangements for
23 him to speak to someone at the DOJ administration about a
24 Special Agent position. It was an unofficial interview."
25 And then you continue. Do you see where I am?

1 A. Yes.

2 Q. What influence might -- did you attempt to exert
3 on behalf of Mr. Lewis in his obtaining a Special Agent
4 position?

5 A. I considered Chris Lewis a friend. And he came
6 to me and he desperately wanted to be a full peace
7 officer. And he asked me if there was any way I could
8 get him a audience with somebody of -- in the
9 administration at DOJ that he could talk to about
10 transferring over to DOJ. And I -- and I arranged that
11 for him because I considered him a friend.

12 And I called Don Pressley, who works just under the
13 Attorney General over there and handles these types of
14 things, and I asked Don if he would be willing to speak
15 to him about what they might require, and whether or not
16 he had the abilities and the background necessary, and
17 Don said he would. And so I said, "Well, here's the
18 guy's name and number." And I assume that they -- and
19 they were going to get together.

20 Later on I got a call back from Don Pressley, and he
21 told me that he had spoke to Chris Lewis. He said that
22 he sounded like a great guy, but he didn't have full
23 peace officer academy and the necessary background to
24 become a DOJ Agent, and that he was sorry that he
25 couldn't, you know, do anything for him. And that's the

1 last I heard of it.

2 Q. Now, transferring into the DOJ as a Special
3 Agent, isn't there a formal civil service process for
4 transferring into that position?

5 A. I suppose, yes.

6 Q. Do you get -- why is it significant that
7 Mr. Lewis, you considered him a friend in connection with
8 your efforts on his behalf to acquire a Special Agent
9 position?

10 A. I don't understand your question.

11 Q. Well, you mentioned that you considered Mr. Lewis
12 a friend.

13 A. Yes.

14 Q. Do you still consider him a friend?

15 A. No.

16 Q. Why not?

17 A. Well, thank you for asking. Because Mr. Lewis
18 has done his best to try and tear our organization apart.
19 He's allowed Mr. Barty, who's sitting over there, to
20 write lie after lie about myself and other officials in
21 our organization, some that I find shameful. And to the
22 point to where, you know, anyone who used to come to my
23 office and talk to me as a friend on a regular basis -- I
24 just am very disappointed in him, and I don't consider
25 him a friend anymore.

1 Q. And also because he's attempting to create a
2 peace officer only bargaining unit, true?

3 A. True.

4 Q. Now, if someone wasn't your friend would you also
5 contact the Supervising Deputy Attorney General to
6 arrange for a unofficial interview for a position as a
7 Special Agent to the Department of Justice?

8 A. No.

9 Q. At paragraph 24 of your Declaration on page 8,
10 you mention that, "It was clear to me," meaning you and
11 the Executive Board, "that the leadership of the Fish and
12 Game Wardens affiliate was there for the benefit of the
13 Fish and Game Wardens only." Do you expect the Fish and
14 Game Wardens affiliate to -- strike that.

15 Do you find it surprising that the Fish and Game
16 Wardens affiliate would act in its own best interest?

17 A. I don't think that's a fair question in the
18 totality of the circumstances.

19 Q. Well, aren't -- isn't each affiliate of CSLEA
20 authorized to conduct their own advocacy?

21 A. Not on their own they're not.

22 Q. So each affiliate of CSLEA must receive advance
23 approval from CSLEA before they can advocate for their
24 own numbers?

25 A. We need to know what their plan is, what they're

1 saying over at the Capitol, and, you know, who they're
2 talking to, what the message is. Because CSLEA, the
3 entire org -- it's an entire organization. Every
4 organization has to -- has to have rules as far as how we
5 operate. And we need to know what all the affiliates are
6 doing over there.

7 If you have 18 affiliates all running their own
8 programs over there, it's going to be chaos. And even
9 any organization, even what I notice with the POAs and
10 the other organizations in the state, they don't go out
11 and advocate for themselves and try to cut -- you know,
12 cut everybody else out of the picture. They also have
13 the well meaning of the -- of the -- of everybody
14 involved, all the other POAs and DSAs as well when
15 they're out there working.

16 And that's something that the Fish and Game Wardens
17 didn't. They tried to go over there and get money
18 strictly for themselves at the expense of everyone else,
19 and that was harmful.

20 Q. So you believe that if an affiliate goes to the
21 Legislature and advocates for money to the Department,
22 for example, for recruitment and retention that affects
23 those members, that that is disadvantageous to the other
24 members of Bargaining Unit 7?

25 A. No, that's not what I said.

1 Q. Do you believe that the Fish and Game Wardens
2 have the right to go and advocate on their own behalf
3 with the Legislature?

4 A. No.

5 Q. Do you believe that any affiliate of CSLEA has
6 the right to go and advocate on its own behalf with the
7 Legislature?

8 A. That's not a yes or no question. I just
9 explained it to you.

10 Q. You can't answer the question that I just asked
11 you yes or no?

12 A. No. That's a -- that's a -- that's an unfair
13 question.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. Next
15 question.

16 BY MR. ROSE:

17 Q. Well, can the State Parks Peace Officers
18 Association of California advocate on their own behalf
19 with the Legislature?

20 A. I've already answered that question for you.

21 MR. ROSE: Judge, can you instruct the witness to
22 answer the question?

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: The State Parks
24 is not part of the Declaration for cross-examination as
25 far as -- as far as -- I'm allowing you to get into the

1 area that's in the Declaration. And if you want to give
2 an example of advocacy, please do it. That's kind of
3 similar to what we have here. I'm all for it. And
4 there's a considerable amount of open leeway you have
5 here.

6 BY MR. ROSE:

7 Q. All right. Turn to page 10 of your Declaration,
8 paragraph 31. You say in that paragraph at line 12, "The
9 Fish and Game Wardens were disingenuous because they were
10 aware of the Appellate Court decision that said that Fish
11 and Game Wardens do not perform like or similar work as
12 CHP officers." What Appellate Court decision are you
13 referring to?

14 A. There was a -- there's an Appellate Court
15 decision. I don't have the name of it or the cite. But
16 counsel can get it for you. I found out later that the
17 Supervisors had ran and lost in Appellate Court that said
18 Fish and Game Wardens do not do similar or like work as
19 CHP. I believe DPA has a copy of it as well. I did not
20 know that, nor did they tell me that when they showed me
21 that.

22 MR. ROSE: Objection. Move to strike. I asked the
23 question which Appellate Court decision.

24 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I mean --

25 MR. ROSE: He said he didn't know.

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

2 MR. ROSE: I move to strike everything after the
3 words "I don't know."

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Fair enough.
5 All right. So struck. Next.

6 BY MR. ROSE:

7 Q. All right. So was -- if you don't know the name
8 of the Appellate Court decision, do you know whether it
9 was a federal or state Appellate Court decision?

10 A. I don't.

11 MR. MESSING: Okay. Your Honor, the -- I believe
12 that that decision is in the record, and so could it be
13 shown to the witness --

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I don't --

15 MR. MESSING: -- to refresh his recollection?

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I don't think
17 it's in the record yet, but --

18 MS. MAYHEW: I don't know that it's in the record. I
19 know we've talked about it.

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: It's an un -- it
21 is an unpublished decision. I looked it up.

22 MS. MAYHEW: We would be --

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: But I mean I
24 probably have it in one of these boxes back here, but --

25 MS. MAYHEW: DPA would be willing to provide a copy

1 of that decision tomorrow morning.

2 MR. ROSE: That's fine. I'm not -- it's not critical
3 that we have it at this moment.

4 BY MR. ROSE:

5 Q. Are you aware of whether or not that decision is
6 published or unpublished?

7 A. I'm aware of it now that apparently it wasn't
8 published.

9 Q. Do you know the significance of a decision being
10 unpublished?

11 A. No, I don't.

12 Q. All right. Now, do you believe that the State
13 Parks, excuse me, that the Fish and Game Wardens
14 affiliate is prohibited for advocating for themselves
15 politically because of -- to compare themselves, rather,
16 to CHP officers in a pamphlet because of an Appellate
17 Court decision that's unpublished?

18 A. Is that a yes or no answer again?

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

20 THE WITNESS: Because I can't --

21 MR. MESSING: Wait. I'm going to --

22 THE WITNESS: I can't answer that with a yes or no.

23 MR. MESSING: I'm going to object. Vague and
24 ambiguous.

25 MR. ROSE: Well --

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Can you answer
2 the -- ask the question one more time, Mr. Rose?

3 BY MR. ROSE:

4 Q. Do you believe -- you say that the Fish and Game
5 Wardens were disingenuous because they were aware of this
6 Appellate Court decision, right?

7 A. Yes.

8 Q. And you make that in reference to the fact that
9 they put a two-page foldout called Tale of Two Officers,
10 right?

11 A. Yes.

12 Q. And you say that had you known that the Appellate
13 Court decision existed, you would not have authorized
14 them to publish this Tale of Two Officers expose,
15 correct?

16 A. Yes.

17 Q. Now, I'm asking you, do you think that the Fish
18 and Game Wardens are prohibited from publishing this two-
19 page pamphlet because of the existence of the Appellate
20 Court decision?

21 A. I would have advised them not to do it because of
22 that decision. Whether it's prohibited, I don't know if
23 there's a law that says you can't do it. But I would
24 have said, guys, you can't -- you shouldn't do this if
25 there's an Appellate Court decision that says that you

1 don't do similar or like work. I would have said you
2 shouldn't do it.

3 Q. And you would have said that as CSLEA President?

4 A. Yeah.

5 Q. And you would have exerted your authority as
6 President of CSLEA to prohibit that publication from
7 being made public?

8 A. Well, I don't think that I could have prohibited
9 it. I could have told them not to do it. I don't know
10 whether they would have went ahead and done it anyway.

11 Q. Well, if they had, would they have been
12 disciplined by the organization?

13 A. We may have.

14 Q. In fact, you have disciplined members of the --
15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I'm going to --
16 that's where I'm going to stop you. Stay in the
17 Declaration, sir. You've got plenty of ground to plow in
18 it.

19 MR. ROSE: Actually, I have no further questions.

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

21 Employer?

22 MS. TRUONG: No questions from us.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Messing?

24 MR. MESSING: Just a couple.

25 //

1 REDIRECT EXAMINATION

2 BY MR. MESSING:

3 Q. Under what circumstances can affiliate lobby on
4 behalf of an affiliate's members?

5 MR. ROSE: Objection. Beyond the scope of cross-
6 examination and outside the scope of the Declaration.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Hold on,
8 Mr. Messing. You know, maybe you can rephrase the
9 question. I'm going to --

10 MR. MESSING: Okay.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: -- sustain the
12 objection as it was asked.

13 MR. MESSING: I'll rephrase the question.

14 BY MR. MESSING:

15 Q. Under what circumstances could the Fish and Game
16 Wardens' Association lobby on behalf of its members?

17 A. We would let -- we wanted them to lobby with our
18 lobbyist, which at the time was Craig Brown, and we
19 wanted them to notify him of who they wanted to see, what
20 the message was, and that sort of thing. And we wanted
21 him to -- them to attend that with him. And the whole --
22 the whole -- the whole meaning of that is is that we need
23 to make sure that things are being said appropriately to
24 the Legislature over there so that they don't get
25 mixed -- you know, mixed messages across to people.

1 Q. Okay. Just one other thing. You were -- you
2 gave some testimony regarding a 2005 bill, I think it was
3 994. And I'm going to ask you to look at your
4 Declaration, paragraph 19.

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: What page?

6 MR. MESSING: Page seven.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Thank you.

8 BY MR. MESSING:

9 Q. Okay. This paragraph refers to being thanked for
10 support and help with the passage of AB 1401, Aghazarian.
11 Do you recollect what that bill -- what that bill
12 pertained to?

13 A. Yes.

14 Q. What was it?

15 A. This is a bill that Commissioner Poizner had
16 spoke with the Governor about running to increase funding
17 for the Fraud Investigators. And his whole intention was
18 was to start moving the Insurance Investigators over to
19 Fraud and that he would have the funding to do that.

20 Q. Okay. And did in fact CSLEA support or assist
21 with the passage of that bill?

22 A. Yes.

23 MR. MESSING: Nothing further.

24 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Rose?

25 MR. ROSE: Yes.

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RECROSS-EXAMINATION

BY MR. ROSE:

Q. Mr. Barcelona, you mentioned in reference to Chris Lewis' friendship, or no longer friendship with you, Paul Barty. Who's Paul Barty?

A. It's my understanding that he's the General Manager of POC.

Q. Have you ever met Mr. Barty?

A. I have.

Q. When?

A. I don't know. A few weeks ago.

Q. What was the occasion?

MR. MESSING: I'm going to object. Actually, this goes beyond the scope of redirect.

ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sustained.

MR. ROSE: Okay. Nothing further.

MS. TRUONG: Nothing from us.

ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Messing?

MR. MESSING: Nothing further.

ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. With that double L is admitted.

(Exclusive Representative's Exhibit LL received in evidence.)

ADMINISTRATIVE LAW JUDGE CLOUGHESY: And Mr. Barcelona, don't move yet.

1 THE WITNESS: Oh.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I still --
3 you're under the same admonishment not to discuss your
4 testimony with any of the witnesses.

5 THE WITNESS: Okay.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You're free to
7 discuss it with anyone at these counsel tables.

8 THE WITNESS: All right.

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

11 (Off the record.)

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: We're back on
13 the record. And we have another witness called by the
14 Exclusive Representative. I'm going to ask you to raise
15 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 and spell your last name.

20 THE WITNESS: It's Kasey Clark. C-L-A-R-K.

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. And
22 just for identification purposes -- let me just do it
23 this way.

24 THE WITNESS: Do you have the other half? Just
25 kidding.

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. But
2 I've given you what I've marked as Exclusive Rep double D
3 and its attachments, and Exclusive Rep double E with no
4 attachments. And I'm going to ask you if you can
5 identify both documents and their attachments for the
6 record.

7 THE WITNESS: Yeah. These are Declarations I
8 prepared for this proceeding.

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. And
10 then if I can get to the signature page on double D. And
11 is that your signature, sir?

12 THE WITNESS: Yes.

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

15 THE WITNESS: Yes.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Moving to double
17 E, if you could turn to the signature page. And is that
18 your signature?

19 THE WITNESS: Yes.

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

22 THE WITNESS: Yes.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And is what's
24 contained in those documents true and correct to the best
25 of your knowledge?

1 THE WITNESS: Mr. Messing.

2 MR. MESSING: If I can have just one minute?

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Off the record.

4 (Off the record.)

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Back on the
6 record.

7 MR. MESSING: I have just a couple of questions.

8 TESTIMONY OF

9 KASEY CLARK,

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

12 DIRECT EXAMINATION

13 BY MR. MESSING:

14 Q. First, could you turn to page 26 in your
15 Declaration?

16 A. Yes.

17 Q. You referred to the attached surveys as Exhibit
18 G. Do you see that on line --

19 A. At the top? Okay.

20 Q. Yes, at the top. And does this represent all of
21 the surveys that were returned?

22 A. By Unit 7 peace officers, correct.

23 Q. Yes. Okay. Do -- are DOJ Security Officers in
24 CALEE? Do you know?

25 A. Yes, they are in the CALEE affiliate.

1 Q. Do you know whether Jerry Karnow was related to
2 Chris Lewis?

3 A. It's my understanding that he just married to the
4 other sister.

5 MR. MESSING: Okay. Just one other thing. I'd like
6 to mark this for identification as our next in order.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.
8 Marking as -- I'm going to go off the record and give you
9 some time to look at this, Mr. Rose. So --

10 MR. ROSE: Okay.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: But for -- just
12 so I'm marking it, marking as Exclusive Rep MM what
13 appears to be a single-page document in a table format
14 entitled Proposed Salary Adjustments for July 1, '05,
15 through June 30th of '08.

16 (Exclusive Representative's Exhibit MM marked
17 for identification.)

18 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And we'll go off
19 the record. Is there another document that -- just so
20 that I can have Mr. Rose review it before --

21 MR. MESSING: That's it. Is that Exhibit 00 did you
22 say?

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: MM.

24 MR. MESSING: MM.

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: So, with that,

1 we'll go off the record. And let me know when you're
2 ready, Mr. Rose. Off the record.

3 (Off the record.)

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Back on the
5 record. Witness has double M before him.

6 BY MR. MESSING:

7 Q. Okay. Could you explain what this document is?

8 A. Yeah. This document was prepared by CSLEA staff
9 in conjunction with the membership's ratification of the
10 2006 contract reopener. This was set out with material
11 describing what the content of the new tentative
12 agreement was.

13 Q. Okay. And did you review this for accuracy?

14 A. Yes. I've looked at this document a number of
15 times.

16 Q. Does this accurately reflect the increases and
17 adjustments that were made from July 1, 2005, through
18 June 30th of 2008?

19 A. The only clarification I would make is in the
20 upper echelon of increases there's a January 2008, it
21 says a 10 percent step.

22 Q. Uh-hmm.

23 A. It's technically accurate that two new steps were
24 added to the pay ranges of those classifications. But
25 employees are only eligible to receive step increases in

1 five percent increments. So technically employees didn't
2 get -- who were at the top step of the range didn't get
3 the final increase 'til January 2009.

4 MR. MESSING: Okay. I'd ask that this be moved into
5 evidence.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Any objection to
7 double M?

8 MR. ROSE: No objection.

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Double M is
10 admitted.

11 (Exclusive Representative's Exhibit MM received
12 in evidence.)

13 MR. MESSING: And I will pass the witness to
14 Mr. Rose.

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Before the
16 witness is passed, where it says on double M, "Two to
17 four percent COLA," what's that mean?

18 THE WITNESS: That was the -- at the time of the 2006
19 reopener, that was the negotiated agreed-upon adjustment
20 that would take effect July 2007, dependent upon what the
21 CPI stats came back as. They came back at 3.4 percent.
22 So those increases were actually 3.4.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. I just
24 want to get that clarification. I thought it would be a
25 CPI issue. But, Mr. Rose, your witness.

1 MR. ROSE: Thank you.

2 CROSS-EXAMINATION

3 BY MR. ROSE:

4 Q. Mr. Clark, with respect to your Exhibit double M,
5 has the staff prepared a comparison of Bargaining Unit 7
6 peace officer salaries to California Highway Patrol
7 officers?

8 A. Ever?

9 Q. Well, in the --

10 A. I don't know.

11 Q. Since you've been the General Counsel?

12 A. Not that I -- no, not that I'm aware of.

13 Q. How about the same question but for comparison of
14 Bargaining Unit 7 peace officers with CCPOA?

15 A. No.

16 Q. In your Declaration on paragraph 18 -- strike
17 that -- on paragraph 29, page 26, beginning on line 12,
18 or between lines 12 and 13 you say, "In contrast, CHP
19 does not have a Legal Defense Fund," and then you go on
20 to explain CHP's ability to provide financial assistance.
21 What's your understanding of how CAHP provides legal
22 defense to its members when a critical incident for a
23 peace officer occurs?

24 A. Well, I've actually had this specific
25 conversation with their General Counsel, Tony Santana, on

1 this issue because I was curious what they did in terms
2 of their legal defense. And I ask what happens in the
3 course of an officer-involved shooting. And he said,
4 "Well, if it was in the Sacramento area he would go out."
5 Which kind of just led me to be curious about what they
6 did with the rest of the state.

7 So my understanding is that they don't have a defined
8 benefit plan like CSLEA does, which has an ERISA trust
9 that establishes what participants are specifically
10 entitled to if they need the coverage requirements.

11 CAHP has discretionary resources that if they feel
12 that there should be legal resources expended because an
13 officer may be involved in a critical incident, they have
14 the ability to do so. But it's not structured in the
15 manner that CSLEA is.

16 Q. Do they hire private attorneys on a panel, for
17 example, to represent their officers?

18 A. Not that I'm aware of.

19 Q. If it's not -- based on your conversation with
20 their counsel, if there's a shooting, for example, in
21 Los Angeles, how do they respond to that?

22 A. I think I would have to -- I would have to
23 speculate. I don't know.

24 Q. All right.

25 A. I don't know specifically. But I do know from

1 speaking with Larry Friedman, who's one of our Senior
2 legal attorneys for CSLEA, he was the Legal Administrator
3 for the PORAC Legal Defense Fund for 23 years, I believe,
4 before joining us approximately a year and a half ago,
5 and he said oftentimes CHP piggybacked on the PORAC panel
6 attorneys that were sent out, where you had both local
7 law enforcement officers and CHP officers involved in the
8 same critical incident. So the PORAC LDF dispatched a
9 panel attorney to represent a local law enforcement
10 officer that was involved in the critical incident.
11 Sometimes, out of courtesy, that panel attorney would
12 also provide representation to the CHP officer who
13 happened to be involved in a similar incident.

14 Q. I see.

15 A. But I don't know any specific examples. I can't
16 cite specific examples where that occurred.

17 Q. Okay. On page 18 of your Declaration now,
18 paragraph 22, beginning at line -- between line 8 and 9,
19 you're speaking about in this paragraph the reopener in
20 2006, and you write, "DPA stated the proposal was
21 intended to limit the increase to only peace officers,
22 and DPA was planning on splitting classifications which
23 had previously contained both peace officers and non-
24 peace officers into separate classifications."

25 With respect to the first part of that statement, did

1 DPA representatives explain to you why the proposal was
2 intended to limit the increase only to peace officers?

3 A. Well, I think that the summary of the reopener
4 kind of is explanatory on this issue. Is that, in
5 addition to those peace officer classifications at the
6 upper echelon who did extremely well, the peace officers,
7 the all other POFF, if you look in the fourth row down,
8 did substantially better than the general non-sworn or
9 non-peace officer Unit 7 employees. So I think from
10 DPA's perspective, they felt it was generally more
11 important in terms of this reopener to treat peace
12 officers better because of recruitment and retention
13 issues in those classifications that didn't exist at the
14 same extent in most of the non-sworn classifications.

15 Q. And then with respect to the second part of that
16 statement, did DPA explain why the -- they were planning
17 on splitting classifications which had previously
18 contained both peace officer and non-peace officers into
19 separate classifications?

20 A. Yes. It was in order to insure that only the
21 peace officers in those hybrid classifications received
22 the increases.

23 Q. And you write that at line -- between lines 14
24 and 15, "CSLEA objected to the proposal on the basis that
25 the language which identified peace officers by

1 classification code had been ratified by the membership
2 when it was voted on in 2005, and non-peace officer
3 employees in the specified classifications were relying
4 on the increase effective January 1, 2007." So by that
5 do you mean -- or did it ultimately come to pass that the
6 hybrid classifications were not split?

7 A. Well, you have to bear in mind, this was a
8 reopener. And the agreement that existed previously I
9 believe ran from 2005 to 2007 and had been previously
10 ratified by the CSLEA membership. At that time there
11 were increases, five percent step increases, that were
12 provided to classifications -- peace officer
13 classifications, including those that were the hybrid
14 classifications that contained both peace officers and
15 non-peace officers. That contract had been voted on and
16 ratified. And in the existing MOU, those classifications
17 were specifically enumerated in the agreement. So people
18 who had voted on that contract anticipated that they were
19 going to be entitled to those increases.

20 DPA during the 2006 reopener proposed just striking
21 out -- because the increase hadn't occurred yet, striking
22 that language and then just limiting it to peace officers
23 in a general sense in anticipation that they could beat
24 that scheduled increase and split the classes before it
25 occurred.

1 We objected. And they said, okay, we'll leave
2 the -- those increases in effect. The hybrid classes
3 will be entitled to the increase. However, for the
4 January '08 step, we're going to -- if we're able to
5 bifurcate those classifications, the understanding is
6 that the non-peace officers that were formerly in the
7 single classification are not going to get the increase.
8 And we agreed to that.

9 Q. How many hybrid classifications existed at that
10 time, if you recall?

11 A. I mean you have ones and twos. You know, the
12 examples I've given in here, and I don't know that that
13 list is exhausted, is the Enforcement Reps for
14 Contractors State Licensing Board, I think those are ones
15 and -- were ones and twos, have now been split into two
16 separate -- two classes. You have the Special
17 Investigator classifications. You have the Housing
18 Community Development District Representative
19 classification. I don't know if there was also an
20 Investigative Assistant classifications that were part of
21 that split. I'm not certain of that. And I can't give
22 you an estimate. I know that there were substantial --
23 just in talking about the CSLB folk and the District Reps
24 for HCD, there were substantially more non-peace officers
25 than peace officers in those classifications.

1 MR. ROSE: Nothing further.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Ms. Truong?

3 MS. TRUONG: Nothing from us.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Messing?

5 MR. MESSING: Okay. I have just one more question.

6 REDIRECT EXAMINATION

7 BY MR. MESSING:

8 Q. Exhibit MM, you mentioned recruitment and
9 retention issues as being a driving force in the creation
10 of this schedule. Now, I notice that one of the higher
11 tiers here is CHP Public Safety Dispatcher/Comm. Op. Can
12 you explain why they ended up getting these substantial
13 increases?

14 A. Well, the -- since I've been with CSLEA, which is
15 2004, there was serious problems in terms of staffing CHP
16 Dispatchers. And the phenomena was that CHP would train
17 them, they would put them through their -- you know,
18 their training program, satisfy probation, and then they
19 would go work for local agencies that paid more. So CHP
20 was bleeding.

21 If you -- if you note the July 2005 increase, there
22 was already even a 10 percent step built into the 2005-
23 2007 contract. So there was even recognition during the
24 original contract that CHP Dispatchers needed to be dealt
25 with. But the fact that they got 30 percent is

1 indicative of the serious problems that CHP was having in
2 terms of recruitment and retention in those
3 classifications.

4 Q. Okay. And then under the January 2007 box that
5 refers to LMA, I see below it labor market adjustment,
6 can you explain what that is?

7 A. To the best of my recollection, there was -- for
8 the LMA adjustments, they were based on a salary study
9 that DPA had conducted. So the fact that they ere
10 getting a special adjustment which was reflected as an
11 LMA was because there was some market study that
12 supported the increase.

13 MR. MESSING: Nothing further.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Rose?

15 MR. ROSE: Nothing.

16 MS. TRUONG: Nothing.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. I do
18 have some questions, but I need that -- I think I've
19 gotten kind of an inadequate description of how this
20 works. One, he -- and you do mention the Legal Defense
21 Fund services in your -- as far as -- but if you can just
22 give me a thumbnail in regards to legal defense, you
23 know, how that works and what type of cases come before
24 it. I do have some description on page eight in regards
25 to that. But LDF at one association is different than

1 LDF at another. And so if you can just kind of give me a
2 thumbnail description?

3 THE WITNESS: Right. Well, I mean the CSLEA Legal
4 Defense Fund plan is basically patterned after PORAC's
5 plan. We use a large number of the same panel attorneys
6 in law firms that PORAC uses on its panel. And, you
7 know, my function as Legal Administrator is similar to
8 the function that their Legal Administrator serves, which
9 is they're generally the first point of contact when
10 there is a potential claim.

11 That was one of the wonderful things about coming
12 over to CSLEA was because I used to be a PORAC panel
13 attorney, and I would get calls from Larry Friedman at
14 three or four o'clock in the morning for officer-involved
15 shootings that I had to go out and represent officers on.
16 And when I became CSLEA LDF Legal Administrator, I got
17 those calls at three or four o'clock in the morning, but
18 I called some other panel attorney and told them they had
19 to get out of bed and go out on the shooting, instead of
20 having to go myself.

21 So those are -- those are typical claims that arise
22 under the plan. If you look through the case reports, a
23 large number of the claims that are covered are critical
24 incident claims. That's principally what it is there
25 for.

1 In addition to that, there is civil course and scope
2 coverage if an employee, a participant, as they're
3 referred to under the plan, happens to be sued for
4 conduct which arises from the course and scope of their
5 employment, there is defense coverage under the plan.

6 It doesn't get used that much because generally if it
7 is a course and scope event, it is something that the
8 State is going to defend and indemnify on. And so in
9 many instances we will just monitor those claims, if
10 necessary. The only time that that would be beneficial
11 to a participant would be if we believe it's course and
12 scope and the State doesn't. And if the trustees and
13 myself agree that it's a course and scope event, we could
14 provide an attorney where the State would be declining to
15 do so.

16 And then the other two types of coverage are for
17 affirmative relief cases, or cases of major importance
18 where it's not a defense in the strict sense. It's where
19 the plan is going on the offensive. An example of that
20 is the Cardwood decision that has been mentioned in the
21 proceeding earlier where the trustees believe that a
22 Special Agent Supervisor's rights under the Public Safety
23 Officers Procedural Bill of Rights Act had been violated,
24 and authorized the affirmative suit on behalf of that
25 participant to challenge DPA legally as to whether that

1 in fact was a violation, which the Superior Court
2 ultimately determined.

3 So that's -- is there --

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And then --

5 THE WITNESS: -- more questions that you have or --

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yeah. Well, I'm
7 going to go another Committee that Lillian Hayek, if I'm
8 pronouncing it right, talked about Legal Review
9 Committee. What's that?

10 THE WITNESS: I think that came up during Tina
11 Brazil's --

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Tina Brazil.
13 Thank you.

14 THE WITNESS: -- testimony. Because she is Chair.
15 And it's actually called the Legal Representation
16 Committee.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

18 THE WITNESS: The principal role of that Committee is
19 to evaluate grievances to determine whether or not the
20 merits in light of what the potential costs of -- are
21 relative to arbitration, whether cases should go forward
22 or grievances should go forward to arbitration. And so
23 that Committee is comprised of I think five members and
24 myself as Legal Advisor. And they review grievances
25 along with the analysis of whoever the assigned attorney

1 or representative was that handled the grievance on
2 behalf of the member. And they will consider the merits
3 and decide whether to give it the green light or not.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And so would
5 you -- would you say that it's basically a grievance
6 arbitration review for purposes of proceeding to
7 arbitration?

8 THE WITNESS: Correct.

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

10 THE WITNESS: And the other function that they serve
11 is that there's -- if the Legal Division makes the
12 determination to deny coverage, our policy for, for
13 example, discipline cases is to terminate coverage for
14 non-course and scope misconduct at the Kelly -- at the
15 completion of the Kelly stage. And if we notify the
16 member that we've made a determination that it's non-
17 course and scope, and therefore they would be on their
18 own in terms of taking the case up on appeal to the State
19 Personnel Board, they have a right to appeal that
20 determination to the LRC to review whether or not the
21 coverage determination made by the Legal Division was
22 appropriate or not.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And when you're
24 saying non-course and scope, I think I know what you
25 mean. But you're referring to, let's say, a peace

1 officer gets convicted off duty of a DUI, are you talking
2 about that sort of thing?

3 THE WITNESS: Exactly.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Where they're on
5 their own time and it's an offense that happens off of
6 duty time?

7 THE WITNESS: Domestic violence.

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Domestic
9 violence.

10 THE WITNESS: DUIs. That sort of stuff.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. And
12 one last matter that was actually raised by I think it
13 was Michael Lilly, I don't know if that's the first name,
14 but the Special Agent Supervisor who was one of the
15 witnesses, that I haven't heard addressed at all, which
16 was an issue of parity -- I'm using that term really
17 loosely -- between Special Agents Justice, Special Agents
18 CDR, and there was -- you real carefully talked about,
19 you know, at a certain time you decided it wouldn't -- it
20 wasn't advantageous, at a certain time it was. And --
21 but the issue as far as CSLEA addressing issues of this
22 parity between Special Agent CDCR, Special Agent DOJ.
23 And I don't know if that's an area that's -- I'm just
24 going to ask it more open-ended. Has that area been put
25 forth to CSLEA to address?

1 THE WITNESS: I know that it's been looked at on
2 occasion and there's been some analysis. And, you know,
3 sometimes it looks like you're looking at apples to
4 apples. And then you look at it in more detail and it
5 doesn't -- you know, the job specs look kind of similar,
6 but then you find out more about what they actually do
7 and they -- and they don't.

8 It has been looked at, but I -- but I think, you
9 know, relative to this contract that was negotiated,
10 given the current administration and their approach to
11 bargaining, it is recruitment and retention. What is the
12 vacancy rate of the classifications? Has the agency been
13 attempting to do its part in actually actively recruiting
14 for vacant positions? And if there is a true recruitment
15 and retention problem, then the other question might be,
16 well, where are they going.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You mean
18 recruitment and retention for a Special Agent DOJ?

19 THE WITNESS: Correct. So I think the fact here is
20 there was a recognition by DPA that there was a
21 recruitment and retention problem as of 2006 that merited
22 making 25 percent adjustments to their pay. Because you
23 had ongoing vacancies and Agents were leaving. And some
24 were likely leaving to CDC or CDCR, if that's how it's
25 related to. But, you know, I think throwing -- you know,

1 trying to throw 25 percent at that and see whether or not
2 over the term of this contract mitigated against the
3 problem of R&R is what this contract is designed to do.
4 And I think that's a huge step. Just as it was for
5 Wardens.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. So I
7 mean you're talking about the percentages here, at least
8 in regards to what DPA is (unintelligible), having to do
9 with addressing recruitment and retention issues?

10 THE WITNESS: Right.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. That's
12 the questions I have. And I'm going to make the circle
13 here. But first, Mr. Messing, anything on your part?

14 MR. MESSING: Yeah. Actually, you spurred a thought.

15 FURTHER REDIRECT EXAMINATION

16 BY MR. MESSING:

17 Q. Now, you were talking about the Legal Defense
18 Fund course and scope and the criterion -- the criteria
19 to -- that is applied. Now, are there cases where
20 whether something is course and scope or not ambiguous?

21 A. Certainly.

22 Q. Okay. For example, is excessive force or sexual
23 harassment always course and scope, or can those be
24 other -- deemed otherwise?

25 A. They can be other.

1 Q. Okay. Is one of the functions of the Legal
2 Defense Fund to take any action to try and get the State
3 to defend actions that might be ambiguous where the State
4 has declined coverage?

5 A. That would be one of its functions certainly.

6 MR. MESSING: Okay. Nothing further.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Rose?

8 MR. ROSE: Yes.

9 RE CROSS-EXAMINATION

10 BY MR. ROSE:

11 Q. With respect to the Special Agents DOJ 25 percent
12 over the contract, and I'm looking again at MM, tell me,
13 if you know, what was the -- what were the amount of
14 increases for Special Agents at CDCR over the same
15 period?

16 A. I don't know.

17 Q. And you mentioned that it's been looked at. It
18 being the comparison of job duties and salaries of the
19 Special Agents at DOJ versus the Special Agents at CDCR.
20 When was it last looked at?

21 A. I know that there was -- I had a Labor Rep on
22 staff in 2004-2005 that worked for Corrections
23 previously, and he did kind of a historical perspective
24 on the evolution of some of those positions at CDCR. And
25 I think that's probably the reason it's been -- I mean

1 it's -- as far as us looking at it, as far as people
2 raising the issue, as Mr. Lilly has and others do, I mean
3 like the Wardens talking about CHP, they raise -- you
4 know, members raise that issue from time to time all the
5 time. But as far as analyzing it from CSLEA's
6 perspective, I think that's the last time we really took
7 a look at Corrections.

8 Q. And 2004 was the first year you were General
9 Counsel?

10 A. Correct.

11 Q. Are you aware of any other times prior to 2004
12 that CSLEA evaluated that issue?

13 A. No.

14 MR. ROSE: Nothing further.

15 MS. TRUONG: Nothing from us.

16 MR. MESSING: Give me one second.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yes.

18 MR. MESSING: No, nothing further.

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: With that,
20 double D and double E is admitted, and their attachments.

21 (Exclusive Representative's Exhibits DD and EE
22 received in evidence.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Double E, as
24 reminded to me by Mr. Rose yesterday, is going to be
25 under seal. The same sort of justification as

1 Petitioner's T, Exclusive Rep I and J, and the transcript
2 of the testimony of the witness who testified in regards
3 to those matters.

4 Anything else in regards to today? Or I'll turn to
5 you, Mr. Messing, because it's your day, I guess.

6 MR. MESSING: No.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.
8 Anything further? Any business that needs to get taken
9 care of?

10 MR. ROSE: No. We have our witness lined up for
11 tomorrow at 9:00 a.m. And that's -- we have the one
12 witness tomorrow.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. And then
14 whatever I'll call it rebuttal in a loose term to that
15 witness is going to -- can be called by the Exclusive
16 Rep.

17 MR. MESSING: Yeah. I doubt that we'd be prepared to
18 do that tomorrow, though, obviously.

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You never know.
20 But if you can, you can.

21 MR. MESSING: It's possible.

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: If you can't,
23 we'll deal with it. So, with that, day nine of these
24 proceedings is concluded. We're off the record.

25 (Off the record.)

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Back on the
2 record. I forgot to give an admonishment in regards to
3 Mr. Clark not to discuss your testimony with any I'm
4 going to use the word witnesses in this matter. I'll
5 just leave it like that.

6 THE WITNESS: I mean I under -- could I just raise a
7 point?

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yes. I'm trying
9 to gingerly since you are --

10 MR. MESSING: Yeah. But there's a problem. Let me
11 raise the issue.

12 THE WITNESS: Okay.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Go ahead,
14 Mr. Messing.

15 MR. MESSING: Yeah. There's a problem with he's our
16 representative and --

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I --

18 MR. MESSING: And he is -- should be available to
19 assist me in preparing witnesses for testimony. So --

20 THE WITNESS: I'm also counsel to the --

21 MR. MESSING: Yeah.

22 THE WITNESS: -- to the corporation and --

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: But still, I --
24 your witness testimony versus -- I mean you can prepare
25 witnesses without necessarily saying --

1 THE WITNESS: I guess my only point is is part of my
2 responsibility is to advise, you know, my principals of
3 how the proceedings are going, you know. And as -- in my
4 role as Legal Advisor to CSLEA and its President.

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Well, you've got
6 to measure whether those people are -- who's a witness
7 and who isn't a witness, and what your testimony is and
8 what your testimony isn't. But I think you still can
9 fulfill those roles.

10 THE WITNESS: Okay.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And you just
12 have to be careful how you do it.

13 THE WITNESS: All right.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: But I can't
15 see --

16 THE WITNESS: I will follow whatever admonishment you
17 give me.

18 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yeah. I can't
19 see how I can kick the barn door open and say, talk to
20 whoever you want about your testimony, because I think
21 that would be --

22 MR. MESSING: Well, there's another issue.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yes.

24 MR. MESSING: Do we have the Supplemental
25 Declaration? Has that been entered?

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yes, it has.

2 MR. MESSING: Okay. Also, what was the letter of the
3 Supplemental?

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Double E.

5 MR. MESSING: Double E?

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yes.

7 MR. MESSING: Double E?

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: EE.

9 MR. MESSING: I'm sorry? EE?

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: EE or double E
11 or --

12 MR. MESSING: All right. Thank you.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. With
14 that, day nine is concluded. Off the record.

15 (Proceedings concluded.)

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DECLARATION OF TRANSCRIBER

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8 CALIFORNIA, Employer, and PEACE OFFICERS OF CALIFORNIA,
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