

BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD  
ADMINISTRATIVE LAW JUDGE SHAWN CLOUGHESY  
STATE OF CALIFORNIA

and Employee,  
PEACE OFFICERS OF CALIFORNIA  
and Petitioner,  
CALIFORNIA STATEWIDE LAW  
ENFORCEMENT ASSOCIATION

Case No.: SA-SV-171-S

Exclusive Representative.)  
Transcription of Tapes from hearing conducted on  
January 30, 2009

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DIAMOND COURT REPORTING

**DIAMOND COURT REPORTERS**

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1 Mr. Miller, and we don't have any problem with that. We  
2 support that.

3 ALJ CLOUGHESY: Okay. Anything on behalf of  
4 the employer?

5 MS. TRUONG: Not at this time.

6 ALJ CLOUGHESY: Mr. Rose?

7 MR. ROSE: Nothing.

8 ALJ CLOUGHESY: All right. We feel the AC  
9 coming on. If it gets too cold, let me know. All  
10 right. Mr. Brown is to my left ready to be sworn in.

11 Sir, raise your right hand. Do you swear or  
12 affirm the testimony you will be giving is the truth,  
13 the whole truth, and nothing but the truth?

14 THE WITNESS: I do.

15 ALJ CLOUGHESY: Please state your name for the  
16 record, spell your last name.

17 THE WITNESS: Craig L. Brown, B-R-O-W-N.

18 ALJ CLOUGHESY: Mr. Rose, your witness.

19 MR. ROSE: Thank you.

20 EXAMINATION BY MR. ROSE:

21 Q. Good morning, Mr. Brown.

22 A. Good morning.

23 Q. My name is Joe Rose. I'm an attorney  
24 representing an employee organization known as the Peace  
25 Officers of California, P-O-C. It's a pleasure to meet

1 you.

2           Could you please tell us what your occupation  
3 is.

4           A.    I am a principal with the government relations  
5 firm of Richard Robinson and Associates, Incorporated.

6           Q.    Is Richard Robinson and Associates,  
7 Incorporated a lobbying firm?

8           A.    It is a government relations firm. It is a  
9 registered lobbying firm.

10          Q.    How long have you been a principal with  
11 Richard Robinson and Associates, Incorporated?

12          A.    Since December 31 -- December 31st or January  
13 31st, 1999. Nine to ten years. A little under ten  
14 years.

15          Q.    Thank you. And prior to that time, how were  
16 you employed?

17          A.    State of California.

18          Q.    What was your job title with the State of  
19 California?

20          A.    The first? The last? They're all --

21          Q.    Well, immediately preceding your current  
22 position with Richard Robinson and Associates.

23          A.    I was director of finance for the State of  
24 California.

25          Q.    How long were you director of finance?

1 A. From sometime in March of '96 until December  
2 30th, 1998.

3 Q. While you were director of finance, was one of  
4 your bosses Governor Pete Wilson?

5 A. He was.

6 Q. Did you work for any other Governors?

7 A. In prior jobs. No, not as director of  
8 finance.

9 Q. Okay. Thank you. Let me ask you to -- and  
10 currently is one of your clients the California  
11 Statewide Law Enforcement Association?

12 A. Yes.

13 Q. Was one of your clients prior to that also  
14 CAUSE or the predecessor name of that organization?

15 A. Yes.

16 Q. Let me direct your attention to a time, August  
17 1998 while you were the director of finance under  
18 Governor Wilson, would you agree that at that time, that  
19 was Governor Wilson's last year in office?

20 A. Yes.

21 MR. ROSE: Oh, by the way, Judge, I request  
22 permission to conduct an examination pursuant to  
23 Evidence Code 776.

24 ALJ CLOUGHESY: Any objection on behalf of the  
25 exclusive representative?

1 MR. MESSING: No.

2 ALJ CLOUGHESY: Or the employer?

3 MS. TRUONG: No.

4 ALJ CLOUGHESY: So designated.

5 BY MR. ROSE:

6 Q. And would you agree, sir, that that -- August  
7 1998 would have been approximately the last month the  
8 legislature was meeting that year?

9 A. Correct.

10 Q. At that time were you aware of a gentleman by  
11 the name of Tim Fries, F-R-I-E-S?

12 A. Yes.

13 Q. What was Mr. Fries' connection or -- how did  
14 you identify Mr. Fries at that time, August 1998?

15 A. I believe he was the in-house lobbyist for  
16 CAUSE.

17 Q. Are you familiar with a firm known as the  
18 Flannery Group?

19 A. Yes.

20 Q. What was the Flannery Group in August of 1998,  
21 if you know?

22 A. I believe it was a government relations firm.

23 Q. Are you familiar with a lady by the name of  
24 Patricia Hunter, H-U-N-T-E-R?

25 A. Yes.

1 Q. And in August of 1998, what was Ms. Hunter's  
2 occupation, if you know?

3 A. I do not know.

4 Q. Did you have any contact with Ms. Hunter at  
5 all in August of 1998?

6 A. I don't recall any.

7 Q. And are you familiar with a gentleman by the  
8 name of Alan Barcelona, B-A-R-C-E-L-O-N-A?

9 A. Yes.

10 Q. Mr. Barcelona is the president of the CSLEA,  
11 correct?

12 A. Yes.

13 Q. And in August of 1998, Mr. Barcelona was the  
14 president of CAUSE, the predecessor organization?

15 A. I believe so.

16 Q. And are you familiar with a gentleman by the  
17 name of John Miller, M-I-L-L-E-R?

18 A. Yes.

19 Q. What was Mr. Miller's occupation, if you know,  
20 in August 1998?

21 A. I think he's a criminalist for the State of  
22 California functioning -- he was in a union position as  
23 a government -- he was basically number two. I don't  
24 know what his title was.

25 Q. You were about to say he was in a government

1 relations position?

2 A. It may have been government relations. It may  
3 have been some broader title than that with  
4 responsibility for government relations.

5 Q. And when you say he was number two, you mean  
6 second in command under Alan Barcelona for the  
7 organization, the Union?

8 A. Yes.

9 Q. For CAUSE?

10 A. Yes.

11 Q. Did you in August 1998 have communication with  
12 any of the those people, Tim Fries, Alan Barcelona, John  
13 Miller -- although I suspect your answer will be I don't  
14 know with respect to Patricia Hunter since you couldn't  
15 recall -- but any of those four people concerning pay  
16 increases for the CSLEA (inaudible)?

17 A. I had a brief conversation with, I am certain,  
18 John Miller was there. I believe Alan Barcelona was  
19 present and Tim Fries was present, although I'm not as  
20 certain about the latter two.

21 Q. Do you recall where the conversation took  
22 place?

23 A. In the lobby of the director of finance's  
24 office.

25 Q. Did you speak at that meeting?

1           A.    Yes.  It wasn't a meeting -- well it was a  
2 meeting.  It was a very informal meeting.

3           Q.    A brief conversation?

4           A.    Yeah.

5           Q.    I don't mean to mischaracterize what you have  
6 described it as.  How long did it last?

7           A.    A few minutes.  I don't know.  Five, seven,  
8 ten minutes.  It wasn't long.

9           Q.    Did you speak at that meeting?

10          A.    Yes.

11          Q.    Or that brief conversation?

12          A.    Yes.

13          Q.    Did Mr. Barcelona speak?

14          A.    I can't recall that.  I know Mr. Miller spoke.

15          Q.    Did Mr. Fries speak?

16          A.    I don't recall that either.

17          Q.    Do you recall what you said during that brief  
18 conversation?

19          A.    Yes.

20          Q.    What did you say?

21          A.    I basically told them that if they accepted  
22 the civil service reforms that Governor Wilson had  
23 proposed to the Unions, that we were -- that I was  
24 authorized to offer them 5 percent increase for their  
25 peace officers and 3 percent for their non-peace

1 officers.

2 Q. Did any one of -- did either Mr. Miller,  
3 Mr. Barcelona, or Mr. Fries respond to that offer?

4 A. I don't know if they responded right then off  
5 the top of their heads or later they recommunicated with  
6 me. I don't recall that detail.

7 Q. Do you recall what the rationale was for  
8 offering additional 5 percent or 2 percent salary  
9 differential to sworn Bargaining Unit 7 employees as  
10 compared to the non-sworn?

11 A. I think that was the offer that we had  
12 discussed. I don't know that there was a particular  
13 rationale. Governor Wilson was -- liked peace officers a  
14 lot.

15 Q. Would you agree that Governor Wilson wanted to  
16 treat sworn peace officers more favorably in terms of  
17 the salary benefits than the non-sworn police at that  
18 time?

19 A. That's what I -- I could read that into that  
20 offer that I was authorized to make, yes.

21 Q. Do you recall what -- can you explain in  
22 summary fashion what the civil service reforms were that  
23 were connected to that offer?

24 A. Actually there were several of them. The one  
25 that I recall the best was pay for performance. He was

1 demanding that we replace the merit pay steps with a pay  
2 performance system.

3 Q. Did that mean that salary increases would be  
4 based on performance evaluations?

5 A. Correct. Individual step increases would be  
6 based on that, not general salary increases.

7 Q. That's what I meant. So a step in rate would  
8 increase if you received a satisfactory or better  
9 evaluation on -- performance evaluation?

10 A. That's the summary of the concept, yes.

11 Q. At some point after that, an offer was made in  
12 August of 1998. Did you ever receive a counter-offer or  
13 acceptance or rejection?

14 A. A rejection. It was rejected.

15 Q. Who communicated the rejection?

16 A. I believe John Miller.

17 Q. How soon after you made the offer in August of  
18 1998 did Mr. Miller notify you of the rejection?

19 A. It was -- I don't know exactly. 24, 48 hours,  
20 something in that range at most. We were at the end of  
21 the legislative session. If we didn't cut a deal in,  
22 you know, 48 hours, there was no deal. But to honestly  
23 say whether it was in, you know, an hour later or 48  
24 hours later, I simply can't recall that from ten years  
25 ago.

1 Q. Do you recall whether the rejection was in  
2 writing or orally?

3 A. Verbal, I believe.

4 Q. Do you recall whether Mr. Miller explained why  
5 the Union was rejecting the offer?

6 A. He did not.

7 Q. Do you recall whether Mr. Miller made any  
8 counter-offer?

9 A. I don't believe so. I don't -- no.

10 Q. Thank you. Now let's move forward in time to  
11 September 2003. By this time, correct me if I'm wrong,  
12 you're working for Richard Robinson and Associates,  
13 Incorporated; is that correct?

14 A. Correct.

15 Q. And by this time you are working as a  
16 government relations professional for CAUSE. True?

17 A. They are one of the clients of the firm,  
18 correct.

19 Q. In September of 2003, if you can recall, do  
20 you recall being involved on behalf of CAUSE and Senate  
21 Bill 348, Senator Alarcon, A-L-A-R-C-O-N, that connected  
22 CSLEA or CAUSE pay raises to -- pay raises of other  
23 bargaining units?

24 A. I do not recall that.

25 Q. Does it refresh your memory if I say that

1 there were two bargaining units. One involved PEEG,  
2 which is the Professional Engineers Bargaining Unit 9  
3 and CAUSE, and it related to connecting pay increases to  
4 CCPOA -- excuse me, CAHP, the California --

5 A. I do not recall that, no.

6 Q. Was Tim Fries in the picture in September  
7 2008, if you recall?

8 A. During the early part of my tenure with CAUSE,  
9 he was there. I don't remember the exact time he left.  
10 That was pretty early in my tenure, so he was probably  
11 involved.

12 Q. Do you recall what Mr. Fries' connection or  
13 his role in the -- in 2003 was or how you were  
14 connecting it? Was he still working for CAUSE?

15 A. I believe -- yeah, I believe he was still  
16 working for CAUSE as their lobbyist, their in-house  
17 lobbyist.

18 MR. ROSE: Nothing further. Thank you.

19 ALJ CLOUGHESY: Ready for cross?

20 MR. MESSING: Give me one moment.

21 ALJ CLOUGHESY: I shouldn't say cross. I  
22 should say your direct.

23 MR. MESSING: Could I have one minute?

24 ALJ CLOUGHESY: Yes. Absolutely. We'll go  
25 off the record.

1 (A brief pause transpired.)

2 ALJ CLOUGHESY: Back on the record, sir.

3 Ready to go.

4 MR. MESSING: I have just a few questions.

5 EXAMINATION BY MR. MESSING:

6 Q. Mr. Brown, the pay for performance that was on  
7 the table differed from the system that was then in  
8 place in what ways?

9 A. Was it different -- was your question is was  
10 it different --

11 Q. Yes. Exactly. If you would just explain that  
12 for the record.

13 A. Again, I didn't do all the details of it, but  
14 it was essentially a proposal that said employees --  
15 there was going to be an attempt to identify the  
16 critical job tasks of each task and measure an  
17 employee's success in achieving those objectives or they  
18 would not get what used to be called a merit adjustment  
19 which is now being called a pay per performance  
20 adjustment.

21 Q. But what I'm asking is please explain your  
22 understanding of how the prior system worked.

23 A. The prior system --

24 Q. By the prior system I mean --

25 A. The merit pay system?

1 Q. Correct.

2 A. The merit pay system essentially was if  
3 somebody didn't take it away from you, you got it. It  
4 just kind of rolled over. Your anniversary came and  
5 happy birthday.

6 Q. Okay. Did you at some point come to learn why  
7 CSLEA rejected the offer?

8 A. In later discussions I have heard that they  
9 did not like the civil service reforms, but that was  
10 later.

11 Q. Okay. And was CSLEA alone in not liking the  
12 civil service reforms --

13 A. No.

14 Q. -- to your knowledge?

15 A. To my knowledge, only one union accepted them.  
16 They were rejected by 20.

17 Q. 20 unions?

18 A. Well, there are 21 bargaining units, and one  
19 accepted them, so 20 by --

20 Q. Not 20 unions?

21 A. 20 units.

22 Q. CSLEA was representing more than one unit?

23 A. Right. 20 units.

24 Q. So your understanding is that only one unit  
25 accepted it?

1 A. Correct.

2 Q. And which unit is that?

3 A. CCPOA.

4 Q. Okay. And were you aware of the reason why  
5 other -- well, what sort of offer was on the table for  
6 SCIU economically at that point?

7 A. I did not -- I was -- I was the informal part  
8 of the bargaining process. I was director of finance.  
9 DPA did the bargaining. The legislature appropriates  
10 money to facilitate those agreements, and I was in  
11 charge of the money so I was a secondary role. I do not  
12 know -- there was only -- actually there was only two  
13 units I was directly involved in and that was units 6  
14 and 7.

15 Q. Do you have any information as you sit here  
16 today -- let me rephrase this. Did you ever learn up  
17 until today that a reason why CSLEA rejected the offer  
18 was because the peace officers received a greater  
19 increase than the non-peace officers?

20 MR. ROSE: Objection. Leading.

21 ALJ CLOUGHESY: Sustained.

22 BY MR. MESSING:

23 Q. Did you ever learn of any other reason why  
24 CSLEA may have rejected the proposed offer?

25 MR. ROSE: Objection. Asked and answered.

1 ALJ CLOUGHESY: You know, on examination I'm  
2 going to -- go ahead. Go ahead, sir. Overruled.

3 MR. MESSING: Wait a minute. Excuse me. Let  
4 me go back to my original question. He's on  
5 cross-examination. I'm entitled to lead the witness.

6 ALJ CLOUGHESY: He's an adverse witness, sir.

7 MR. MESSING: Even if he is, you're still  
8 entitled to cross --

9 ALJ CLOUGHESY: Negative, sir.

10 MR. MESSING: You don't believe so?

11 ALJ CLOUGHESY: No, I do not.

12 MR. MESSING: Well I will look into that.

13 Thank you.

14 ALJ CLOUGHESY: You're certainly welcome.

15 BY MR. MESSING:

16 Q. Did you learn if there was any other reason  
17 other than civil service reform for -- that CAUSE  
18 rejected the contract?

19 A. I have not ever been told any other reason.

20 Q. Okay.

21 MR. MESSING: Nothing further at this time.

22 ALJ CLOUGHESY: (Inaudible.) Mr. Rose,  
23 anything further?

24 MR. ROSE: Just a little bit.

25 ALJ CLOUGHESY: Okay.

1 EXAMINATION BY MR. ROSE:

2 Q. Mr. Brown, you mentioned that you were the  
3 informal part of the bargaining process at that time?

4 A. Correct.

5 Q. And that DPA was a formal party?

6 A. They are the legal -- yes, they are the legal  
7 authority.

8 Q. Was it your experience -- has it been your  
9 experience in your dealings with CSLEA and the State of  
10 California on either side of the table that that's not  
11 an uncommon practice; that there's the informal part of  
12 the bargaining process involving the legislature and an  
13 informal part involving DPA?

14 A. Bargaining -- the legislature is not involved  
15 in bargaining until there is an agreement. There are  
16 informal processes, yes. They typically don't involve  
17 the legislature.

18 Q. Would the Union be involved in persuading the  
19 executive branch of the Governor's office of the wisdom  
20 of a particular course of action to give direction to  
21 DPA as part of the formal bargaining process?

22 A. As part of the formal or informal? I'm sorry.

23 Q. Well, would the Union be involved in an  
24 informal process, not bargaining but an informal  
25 process, to persuade the Governor's office to give

1 direction to DPA to go in a particular direction during  
2 formal bargaining?

3 A. That happens.

4 Q. That's very common, isn't it?

5 A. I don't have an experience to say whether it's  
6 very common, but certainly in my experience it's a very  
7 common -- in my own experience dealing with a couple of  
8 units, yes, it's very common.

9 Q. Thank you.

10 MR. ROSE: Nothing further.

11 ALJ CLOUGHESY: Mr. Messing.

12 MR. MESSING: Nothing further.

13 ALJ CLOUGHESY: I just have one question. So  
14 in regards to you're saying CCPOA accepted the pay for  
15 performance?

16 THE WITNESS: Correct.

17 ALJ CLOUGHESY: So if I look in the CCPOA MOU  
18 around the 2003 time period or whatever, I should find a  
19 pay for performance section?

20 THE WITNESS: You should find a pay -- in the  
21 1998. Whatever the agreement -- '98, whatever the  
22 agreement to whatever the period was.

23 ALJ CLOUGHESY: All right. Thank you, sir.

24 THE WITNESS: You're welcome.

25 MR. MESSING: Can we have a five-minute break?

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CERTIFICATE OF SHORTHAND REPORTER

I, TERRIE CULP-SMITH, a Shorthand Reporter, do hereby certify that I am a disinterested person herein; that I reported the preceding in shorthand writing from the tapes that were provided to me; that I thereafter caused my shorthand writing to be transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said proceeding, or in any way interested in the outcome of said proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand this 23rd day of February 2009.

\_\_\_\_\_  
Terrie Culp-Smith  
Shorthand Reporter