

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

VOL. I
Transcription provided by
DIAMOND COURT REPORTING

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1 ALJ CLOUGHESY: Yes. Off the record.

2 (A brief recess transpired.)

3 ALJ CLOUGHESY: We are back on the record. We
4 have another witness called by the petitioner. I'm
5 going to ask you to raise your right hand. Do you swear
6 or affirm the testimony you give will be the truth, the
7 whole truth, and nothing but the truth?

8 THE WITNESS: Yes.

9 ALJ CLOUGHESY: Please state your name for the
10 record, spell your last name.

11 THE WITNESS: Daniel Gurule, G-U-R-U-L-E.

12 ALJ CLOUGHESY: All right. Mr. Gurule, you
13 have before you a document, Petitioner's E, which I have
14 identified as the declaration of Dan Gurule. You have
15 that before you. Do you recognize that document, sir?

16 THE WITNESS: Yes.

17 ALJ CLOUGHESY: And what do you recognize it
18 as?

19 THE WITNESS: It's a declaration, my
20 declaration regarding the hospital police officer
21 classification.

22 ALJ CLOUGHESY: All right. Can you turn to
23 the last page of -- it should have your signature on
24 that or a copy thereof. And so we're on the last page.
25 Is that your signature, sir?

1 THE WITNESS: Yes.

2 ALJ CLOUGHESY: Did you sign that on or about
3 the date that's set forth in that declaration, January
4 15th, 2009?

5 THE WITNESS: Yes.

6 ALJ CLOUGHESY: All right. And is what is
7 stated within that declaration true and correct to the
8 best of your knowledge?

9 THE WITNESS: Yes.

10 ALJ CLOUGHESY: All right. Anything further
11 before I pass the witness?

12 MR. ROSE: No.

13 ALJ CLOUGHESY: Mr. Messing, your witness on
14 cross.

15 EXAMINATION BY MR. MESSING:

16 Q. Could you look at page 4 of the declaration.

17 A. Okay.

18 Q. Now, you list the laws that you enforce. I
19 see the Business and Professions Code?

20 A. Correct.

21 Q. Okay. Is your enforcement of the Business and
22 Professions Code only with respect to criminal
23 enforcement, or is there also civil and administrative?

24 A. Criminal.

25 Q. Criminal only. The same question for the

1 Health and Safety Code?

2 A. Correct.

3 Q. And what about Welfare and Institutions Code?

4 A. Yes.

5 Q. Okay. And let's turn to page 5 of your
6 declaration, and I'm looking at safety equipment,
7 uniforms and identification.

8 A. Yes.

9 Q. I notice there's no gun or similar weapon to a
10 gun listed here; is that correct?

11 A. That's correct.

12 Q. You don't carry a gun?

13 A. We're not allowed to carry a gun on duty.

14 Q. Okay. And you have been with -- what facility
15 do you work at?

16 A. Metropolitan State Hospital in Norwalk.

17 Q. Okay. And you have been employed as a
18 hospital police officer since 1996?

19 A. That's correct. September 23rd.

20 Q. So you're aware of the extensive efforts that
21 CAUSE has gone through to try and get guns for hospital
22 police officers, correct?

23 A. I'm aware of some efforts, yes.

24 Q. Okay. Some efforts. All right. And those
25 efforts go back into the '90s when you were first

1 employed, correct?

2 A. I don't know if they go back to the '90s. I
3 know they go back to at least 2000. I think the last
4 one was 2005.

5 Q. 2005. Do you remember back in the '90s when a
6 gun was produced where you had to wear a ring in order
7 to be able to fire the weapon?

8 A. I don't understand what you're talking about,
9 sir.

10 Q. Okay. You don't recollect a gun being
11 produced where in order to discharge the weapon, you
12 have to have a special ring on your finger?

13 A. No.

14 Q. You're not aware of that?

15 A. I'm not aware of that.

16 Q. And you don't recollect CAUSE -- all right.
17 Let me withdraw that question. Now, down on page 5 on
18 number 34 you say you perform law enforcement and
19 correctional duties?

20 A. Yes.

21 Q. So the law enforcement, you don't equate law
22 enforcement duties with correctional duties? Those are
23 two different things, correct?

24 A. They -- they can be, yes.

25 Q. Would you describe what your correctional

1 duties are.

2 A. I can look at -- I looked at the -- reviewed
3 the correctional officer's specification and their
4 typical tasks, and a lot of their tasks, we do the same
5 thing as hospital police officers.

6 Q. Okay.

7 A. I can read from that.

8 Q. No. That's fine. What percentage of the time
9 do you perform what would be considered correctional
10 duties?

11 A. It depends where my assignment is. If I have
12 a -- if I'm on a transportation assignment for the
13 shift, it would be 100 percent of the time. If I'm on a
14 custodial assignment, it would be 100 percent of the
15 time. If I'm on patrol, a patrol assignment, it would
16 be very little. Maybe 10 percent if I was transporting
17 a prisoner. If I'm at a post assignment, stationary
18 post assignment, it would be 100 percent of the time.

19 Q. Okay. I'm sorry. You said transport, post --

20 A. Custody assignment.

21 Q. Custody are all 100 percent?

22 A. Correct.

23 Q. But patrol, is it patrol would be 10 percent?

24 A. Patrol, yeah. Very little.

25 Q. Okay. How many hospital police officers are

1 there at your institution?

2 A. We have approximately 50.

3 Q. And out of the 50, at any given time how many
4 are -- approximately how many are assigned to the duties
5 that are 100 percent custody, transportation -- 100
6 percent custodial?

7 A. 100 percent custodial?

8 Q. Yeah.

9 A. We have at least five to six officers that are
10 assigned to fixed stationary posts, so that would be 100
11 percent of the time. And if we have custody
12 assignments, it would be anywhere -- at this time I
13 think we have two, so they would be 100 percent of the
14 time. During the day shift we have transportation
15 assignments, and we have at least two officers five days
16 a week, so that would be 100 percent of the time.

17 Q. Okay.

18 A. So I would say at least half, if not more,
19 doing correctional or custody assignments.

20 Q. Okay. Because not all 50 are not on duty at
21 the same time?

22 A. Yeah. Correct.

23 Q. Because you work shifts?

24 A. Correct.

25 Q. And now you know that correctional officers

1 are not police sworn peace officers, right? Do you know
2 that?

3 A. I know they're peace officers, yes.

4 Q. Do you -- but you don't know that they're not
5 fully sworn peace officers?

6 MR. ROSE: Objection. Asked and answered.

7 BY MR. MESSING:

8 Q. Let me ask you this. Do you know that
9 correctional officers only are permitted to exercise
10 peace officers powers while on duty?

11 MR. ROSE: Objection. Assumes facts not in
12 evidence. Lacks foundation.

13 ALJ CLOUGHESY: Let's put it this way. Do you
14 know the extent of the peace officer status of a
15 correctional officer?

16 THE WITNESS: All I know is that they're peace
17 officers. That's what I know.

18 MR. MESSING: We would ask that notice be
19 taken of the penal code section that would be the 830
20 series. I think it's 830.36 perhaps.

21 THE WITNESS: 830.5 for correctional officer.

22 MR. MESSING: .5. Thank you.

23 ALJ CLOUGHESY: All right. Official notice
24 taken.

25 MR. MESSING: Thank you.

1 BY MR. MESSING:

2 Q. Let's talk about the patrol assignment and --
3 the patrol assignments.

4 A. Okay.

5 Q. Well actually, let's back up a bit. On page 6
6 of your declaration, it says you're vested with the
7 power to arrest. How often do you actually make
8 arrests?

9 A. Myself personally?

10 Q. Yes, personally.

11 A. Or the officers that --

12 Q. Let's start with you.

13 A. Personally, I have only made five or six
14 arrests in my 12 years there.

15 Q. Okay. And do you think that that's average?
16 Above average? Below average?

17 A. It's probably average.

18 Q. Okay. And it says here you issue citations
19 for infractions and misdemeanors?

20 A. Correct.

21 Q. What kind of infractions and misdemeanors do
22 you issue citations for?

23 A. Vehicle code violations, most of the time.

24 Q. And how many of those do you do in a year?

25 A. 12 to 20 a year.

1 Q. Is that about average?

2 A. It's about average, yes.

3 Q. So when it says in paragraph 54 that you
4 enforce traffic regulations, is that how you do it, by
5 issuing citations?

6 A. Yes.

7 Q. And it says that you serve arrest warrants?

8 A. Yes.

9 Q. How often do you do that?

10 A. Personally I have only done about five.

11 Q. About five. Okay. Have you, in addition to
12 those five, participated in the service of search
13 warrants obtained by other law enforcement agencies?

14 A. No. I have not personally, no.

15 Q. So I'm just wondering why under 56 you wrote,
16 I participate in the service of search warrants obtained
17 by other law enforcement agencies?

18 A. Well hospital police officers as a
19 classification do.

20 Q. Okay. But not you?

21 A. Personally, no, I haven't.

22 Q. So when you say I participate, that was
23 incorrect?

24 A. Yes. I have not.

25 Q. Okay. How many times have you testified in

1 court on an annual basis?

2 A. I have testified in court approximately 15
3 times in the 12 years.

4 Q. So maybe a little more than once a year?

5 A. Correct.

6 Q. Okay. Now, you say your shift is -- your
7 shift is eight and a half hours; is that right?

8 A. The shift I'm on is eight and a half hours,
9 correct.

10 Q. You don't have a paid lunch or do you?

11 A. No. Lunch is unpaid.

12 Q. Is that a half an hour?

13 A. That's correct.

14 Q. Do you get standby pay if you have to standby?

15 A. I don't understand what's standby. We have
16 on-call when we have callback. Is that what you're
17 referring to?

18 Q. Well, no. Let's move to -- well, yeah. Let's
19 talk about on-call. What do you get for on-call pay?

20 A. If we're -- if we're placed on-call, that
21 means that before the end of our shift we're told we
22 have to report back at a certain time, then the only pay
23 we'd get is once we returned, then we would get paid
24 overtime.

25 Q. All right. When you appear in court, is there

1 a minimum payment that you get for the appearance?

2 A. We get at least four hours.

3 Q. Four hour minimum. Okay. Do you know what
4 Enhanced Industrial Disability Leave is?

5 A. I've heard of it, but I'm not too familiar
6 with it.

7 Q. Are hospital police officers eligible for
8 bilingual pay?

9 A. Yes.

10 Q. Do you know how much that is?

11 A. I believe it's \$100 per month.

12 Q. What about educational incentives?

13 A. Yes, we're entitled to that.

14 Q. Do you get -- do you know about how much you
15 get for that?

16 A. You can get \$50 for a two-year degree. I
17 currently get that. I believe you get \$100 if you have
18 a four-year degree.

19 Q. Are you -- do you get any incentives for
20 post-certificates?

21 A. I believe it's \$50 for a basic, and I think
22 100 for an advanced.

23 Q. And you have longevity pay?

24 A. Yes.

25 Q. Okay. You wear uniforms?

1 A. Yes.

2 Q. And so do you get the full \$640 uniform
3 allowance?

4 A. I do, yes.

5 Q. Okay. Now, are you -- have you been active in
6 the hospital police officers' association?

7 A. I was the hospital police association rep for
8 one month.

9 Q. Are you familiar with what goes on in the
10 other institutions where hospital police officers are
11 employed?

12 A. Yes.

13 Q. And are you aware of whether hospital police
14 officers receive retention and recruitment bonuses?

15 A. Yes.

16 Q. Some of them are very substantial, correct?

17 A. Yes.

18 Q. Could you give us some examples?

19 A. I believe the officers at Coalinga State
20 Hospital get \$800 per month.

21 Q. \$800 per month?

22 A. Yes. And the officers at Atascadero State
23 Hospital get \$800 per month.

24 Q. Okay. And do you know when that was
25 negotiated?

1 A. Well Coalinga, I believe they opened about
2 two, three years ago, so I think it was about two or
3 three years ago. And Atascadero, I would say at least
4 ten years.

5 Q. Okay.

6 A. I'm not sure of the date.

7 Q. And the reason for these amounts is that it's
8 difficult to retain or recruit individuals into those
9 institutions?

10 A. That's what I have been told, yes.

11 Q. Do you believe that to be the case?

12 A. Yes.

13 Q. Do you believe that -- well CAUSE negotiated
14 these retention and recruitment bonuses, correct?

15 A. I believe so.

16 Q. Okay.

17 A. I wasn't involved in the negotiations.

18 Q. And you think that this --

19 ALJ CLOUGHESY: If you don't know, please just
20 say you don't know.

21 THE WITNESS: I don't know.

22 BY MR. MESSING:

23 Q. Do you know whether they were negotiated by
24 anyone?

25 A. I don't know.

1 Q. Okay. On page 7 of your declaration you say
2 you have a separate seniority from non-peace officers?

3 A. Yes.

4 Q. I assume you think that that's a good thing?

5 A. Yes.

6 Q. And you're in a separate promotional system
7 than non-peace officer employees?

8 A. Yes.

9 Q. And I assume that you agree with that as well?

10 A. Yes.

11 Q. Back to differentials for a second. You get
12 physical fitness pay?

13 A. We're entitled to it, yes.

14 Q. Okay.

15 A. I don't get it at this time.

16 Q. Because you're not qualified for that?

17 A. I attempted to go at August, August of 2008.

18 I showed up for the test. Nobody was there. I checked
19 the website and it said that the Governor, per executive

20 order, they had been cancelled. I was never notified

21 via e-mail, telephone, carrier pigeon, fax, anything.

22 And I contacted CPS -- I guess they're the organization

23 who gives the test -- and they said they would have one

24 in February of 2009, and I haven't received any

25 information that there's going to be a test.

1 So we have numerous officers who have now -- I
2 don't know if they get it anymore, but it hasn't been
3 offered again.

4 Q. Are you aware that the State was supposed to
5 continue paying that physical fitness pay when they
6 missed providing a testing for the pay?

7 A. I don't know.

8 Q. Did you file a grievance on this matter?

9 A. I mentioned it to our job steward at the -- at
10 our facility.

11 Q. And your job steward is a hospital police
12 officer?

13 A. Yes.

14 Q. Who's that?

15 A. Paul Vettner (ph).

16 Q. Did he tell you to file a grievance?

17 A. He told me to contact one of the CSLEA
18 attorneys.

19 Q. And did you?

20 A. No.

21 Q. Now, one more thing, by the way. You get a
22 night shift differential, or hospital police officers
23 are eligible for night shift differential?

24 A. Yes.

25 Q. Do you know how much that is?

1 A. It's approximately \$86 per month.

2 Q. Now, you know how to file a grievance,
3 correct?

4 A. Correct.

5 Q. In fact, you have filed dozens of grievances
6 at the institution; is that correct?

7 A. Correct.

8 Q. Maybe as many as 30?

9 A. Correct.

10 Q. But it says here you are currently represented
11 by the hospital police officers' association. They
12 don't process grievances for you, correct?

13 A. They never have.

14 Q. CAUSE does? I mean CSLEA, right?

15 A. They're supposed to.

16 Q. Yes. Okay. And you don't believe that the
17 hospital police officers' association negotiates for
18 you, correct?

19 A. I don't know.

20 Q. Now, you say you were the president of the
21 organization for a year. You were a job steward for
22 almost five years, right?

23 A. I'm sorry. Can you repeat that question?

24 Q. You were a job steward for five years?

25 A. No. I'm sorry. You mentioned something about

1 president?

2 Q. No. I -- didn't you say that you were -- you
3 held an office the H-PAC (ph) organization for a month?

4 A. I was an H-PAC rep for Metropolitan State
5 Hospital for a month.

6 Q. Okay.

7 A. Not the president of H-PAC.

8 Q. I misunderstood.

9 A. Okay.

10 Q. You were a job steward for five years?

11 A. Approximately five years, yes.

12 Q. And as a job steward, you took the job steward
13 training from CSLEA?

14 A. Yes.

15 Q. Okay. One of the -- in the conduct of your
16 job, hospital police officers need the assistance of
17 dispatchers, correct?

18 A. Correct.

19 Q. Okay. Can you tell me what role the
20 dispatchers play for the police officers at the
21 institution?

22 A. The dispatcher, the one dispatcher we have, is
23 supposed to answer the telephone and dispatch officers
24 for calls for assistance.

25 Q. And these calls for assistance, this can be a

1 very important function for a dispatcher, correct?

2 A. It is (inaudible.)

3 Q. But it's important to the police officer that
4 somebody qualified and effective is in that position,
5 correct?

6 A. That's correct.

7 Q. Because the dispatcher is your lifeline if
8 you're in a difficult situation, for example, and need
9 backup. The dispatcher is the one that provides it,
10 correct?

11 A. Correct.

12 Q. By contacting other officers or other law
13 enforcement agencies to assist an officer, correct?

14 A. Correct.

15 Q. Okay. And these sorts of emergencies may not
16 happen frequently, but they are vital to the survival of
17 a police officer, correct?

18 A. Emergencies do happen frequently and, yes,
19 they are vital.

20 Q. So they happen frequently. So it's important
21 to work closely with the dispatchers so that they
22 understand the needs of the officers during emergency
23 situations?

24 A. Yes.

25 Q. Okay. And, in fact, the institution has been

1 having problems filling the dispatcher position and they
2 have been using telephone operators instead, correct?

3 A. I --

4 ALJ CLOUGHESY: Only if you know.

5 THE WITNESS: I only know of one dispatcher
6 position, and that position is currently filled. Now
7 the telephone operators act as dispatchers, but they are
8 not. Hospital police officers act as dispatchers, but
9 they are not.

10 BY MR. MESSING:

11 Q. Okay. So isn't it true that you have been
12 concerned about the lack of additional dispatchers and
13 the fact that telephone operators and hospital police
14 officers are having to fill that role?

15 A. Yes.

16 Q. Okay. And isn't it true that CAUSE has been
17 fighting this issue on behalf of the hospital police
18 officers to get dispatchers who are qualified to work
19 with the officers, particularly in emergency situations?

20 A. I'm aware of an arbitration hearing that took
21 place -- I believe it was in 2005 -- regarding that
22 issue.

23 Q. And did you have any part in that hearing?

24 A. I was not in the hearing, no. I had -- the
25 part I had was securing witnesses for the hearing.

1 Q. And was there a decision from that hearing?

2 A. I believe so, yes.

3 Q. And how did that decision turn out?

4 A. That the telephone operators would remain
5 dispatchers. The chief of police on an annual basis
6 would review that and see if they needed additional
7 training.

8 Q. But CAUSE -- somebody from CAUSE handled that
9 hearing for the officers?

10 A. Yes. I believe it was Dave Delareeva (ph).

11 Q. And he is a lawyer for CSLEA?

12 A. Correct.

13 Q. Okay. The result of that arbitration that
14 CAUSE handled, are you aware that there's a health and
15 safety grievance that has been filed on behalf of the
16 officers to make the institution comply with the result
17 of the arbitration?

18 A. No.

19 Q. Now due to the nature of the work the hospital
20 police officers do, there can be a lot of internal
21 affairs investigations conducted against the officers;
22 is that right?

23 A. Yes.

24 Q. Okay. And if I told you that over the last
25 three years there were 25 internal affairs

1 investigations at your work location alone, would that
2 surprise you?

3 A. No.

4 MR. ROSE: Objection. Assumes facts not in
5 evidence.

6 ALJ CLOUGHESY: Sustained.

7 BY MR. MESSING:

8 Q. Do you know that there were at least 25
9 internal affairs investigations over the past three
10 years at your work location?

11 A. I know there's quite a few, yes.

12 Q. Okay. Do you think 25 would be a good
13 estimate?

14 A. Yes.

15 Q. And isn't it true that CSLEA represented the
16 officers in those internal affairs investigations?

17 A. No.

18 Q. No. How many of the investigations were --
19 was there representation provided by other than CSLEA?

20 A. I'm not sure of the exact number, but I am
21 aware of internal affairs investigations where hospital
22 police officers were represented by attorneys from the
23 California organization of police and sheriffs or they
24 were represented by other officers who were not job
25 stewards or representatives of CSLEA.

1 Q. You're aware that CSLEA represented at least
2 some of the officers?

3 A. Yes.

4 Q. And they represented any officer who requested
5 assistant in the internal affairs process, correct?

6 ALJ CLOUGHESY: Only if you know.

7 THE WITNESS: I don't know.

8 BY MR. MESSING:

9 Q. Are you aware of anybody who was turned down
10 for representation in an IA by CSLEA?

11 A. In an IA?

12 Q. Internal affairs investigation.

13 A. Not at an IA, no.

14 Q. Okay. And are you aware of a situation in
15 2005 where a hospital police officer who was a fair
16 share payer contacted COPS (ph) for representation but
17 they were unavailable to respond?

18 A. No.

19 Q. Okay. So you're not aware -- okay.

20 A. I --

21 Q. Yeah. Go ahead. You were going to say
22 something?

23 A. I am aware of an incident where -- I don't
24 know if it was 2005, but I'm aware of an incident where
25 a hospital police officer called COPS and they faxed a

1 schedule the day where they were interviewed, and that's
2 the same with CSLEA. I'm aware of an incident going on
3 now at the facility where the CSLEA attorney was not
4 available this week, but they had to schedule something
5 for the next week. It happens all the time. But COPS
6 was criticized because that particular day the attorney
7 could not show up.

8 Q. Okay. Are you -- okay. Now, hospital police
9 officers are permitted to carry guns off duty, correct?

10 A. Yes.

11 Q. And at some point it became -- well, isn't it
12 true that for a period of time, your employer failed to
13 provide a space or gun lockers for the storage of those
14 weapons?

15 A. Yes.

16 Q. And CSLEA demanded that the Department provide
17 those gun lockers, correct?

18 A. I contacted Kasey Clark and notified him of
19 the situation.

20 Q. Okay. And in fact, CSLEA retained a law firm
21 to file a lawsuit on that matter, correct?

22 A. Correct.

23 Q. And the result of that lawsuit was that gun
24 lockers had to be installed at the institution, correct?

25 A. Correct.

1 Q. And that actually happened; you now have gun
2 lockers, correct?

3 A. We have gun lockers and a policy that are not
4 followed.

5 Q. Did you file a grievance on the policy that
6 was not followed?

7 A. No.

8 Q. Okay.

9 A. But I notified Kasey Clark that the result of
10 the lawsuit, we did not agree with the (inaudible) at
11 the facility.

12 Q. Okay. You have gun lockers, but you disagree
13 with parts of a policy that was adopted?

14 A. We have gun lockers, and the Department made a
15 policy, but the Department does not follow their policy.

16 Q. Are officers using the gun lockers now for
17 their off-duty weapons?

18 A. I'm only aware of one investigator that is.

19 Q. Now -- hang on one second, please. Was there
20 a grievance filed over -- that you're aware of filed
21 over the -- the provision of vehicles for hospital
22 police officers?

23 A. Yes. More than once.

24 Q. More than once. Okay. And as a result of
25 those grievances, additional vehicles were provided to

1 police officers at your facility?

2 A. Yes.

3 Q. Do you know how many vehicles were added to
4 the fleet?

5 A. It depends. Which grievance are you talking
6 about?

7 Q. All of the grievances regarding vehicles.

8 A. I would say at least eight.

9 Q. And do you consider these vehicles to be
10 important for the performance of the duties of the
11 hospital police officers?

12 A. Yes.

13 Q. Now, let's go back to the section on your
14 equipment. I see that part of your equipment -- this is
15 on page 5, if that helps you.

16 A. Okay.

17 Q. You carry an expandable baton?

18 A. Yes.

19 Q. And you, in fact, do carry a baton, right?

20 A. Yes.

21 Q. But there was a time when that was not
22 permitted for hospital police officers, correct?

23 A. There was a time, a month, when we were not
24 permitted to carry batons on the units occupied by
25 patients/prisoners, yes.

1 Q. Because the Department said that you were not
2 permitted to do that?

3 A. Correct.

4 Q. That was -- now, batons are an important part
5 of your safety equipment, correct?

6 A. Yes.

7 Q. You're in contact with people who can be
8 violent and dangerous when you are on hospital police --
9 at a hospital police facility?

10 A. Yes.

11 Q. Particularly your facility, correct?

12 A. Yes.

13 Q. Okay. So the batons are an important part of
14 the spectrum of force that can used against an
15 individual who is resisting your detention or arrest,
16 correct?

17 A. Yes.

18 Q. All right. It's an important piece of
19 equipment for controlling individuals without having to
20 use greater force, correct?

21 A. The baton would be the greatest force we have.
22 We don't have a firearm.

23 Q. Oh, okay. So in that case, what would be the
24 -- I'll withdraw that. The baton is an essential part
25 of your array of equipment that you need to control

1 individuals in the most dangerous situations, correct?

2 A. And to protect ourselves and others, yes.

3 Q. Okay. Now, when the Department -- now another
4 important piece of equipment that you carry is -- it's
5 in paragraph 28-E (inaudible) and capsicum spray, or
6 sometimes known as pepper spray?

7 A. Yes.

8 Q. Or sometimes known as OC?

9 A. Yes.

10 Q. And would you consider that to be an important
11 tool in the spectrum of the use of force in control --
12 for the purposes of controlling inmates or -- well
13 they're called patients or --

14 A. Individuals.

15 Q. Individuals?

16 A. Yes.

17 Q. Okay. And isn't it true that the Department
18 tried to prevent you from using OC?

19 A. Yes.

20 Q. Now, as to the OC, and they take away batons,
21 CAUSE filed a grievance on behalf of the officers in
22 your institution, correct?

23 A. Correct.

24 Q. And that -- and the result of that arbitration
25 -- no. That case went to arbitration, correct?

1 A. Yes.

2 Q. You were involved in that arbitration?

3 A. Yes.

4 Q. And you thought this was a pretty important
5 set of issues that needed to be resolved, correct?

6 A. Yes. That's why I was involved.

7 Q. Did Kasey Clark represent you in that -- in
8 that arbitration?

9 A. He represented the hospital police officers at
10 Metropolitan State Hospital, yes.

11 Q. Yes. By you, thank you, that's what I meant.
12 And the result of that arbitration was that the batons
13 and the OC spray were restored to the officers?

14 A. Yes.

15 Q. Okay. Do you remember approximately when that
16 happened?

17 A. I believe the case or the grievance was filed
18 in 2004 and it dragged on. I think it dragged on into
19 2005 because the State kept delaying.

20 Q. Okay. But before the arbitration, CSLEA went
21 to court over this matter, correct?

22 A. CSLEA went to court to get some type of legal
23 motion that we could carry it. The initial motion was
24 denied, so there was a month period where hospital
25 police officers were not allowed to carry OC and batons

1 onto the units.

2 Q. Right.

3 A. Kasey Clark and I got together. We -- I got
4 information regarding -- the State said that a sergeant
5 or a lieutenant were to respond to these calls with us.
6 I looked at the logs for maybe a four- or five-week
7 period and I gathered information where a supervisor did
8 not respond to calls. CSLEA went back to court and a
9 motion -- I don't know if a motion was granted, but I
10 think the State said, okay, we'll go back to the
11 original policy allowing officers to carry the equipment
12 until the arbitration hearing is settled.

13 Q. Okay. So when you said the arbitration
14 dragged on, during the period that it was dragging on,
15 with the exception of one month, you were able to carry
16 and use batons and OC spray?

17 A. Yes.

18 Q. And that was as a result of the action that
19 CSLEA took going to court?

20 A. And my action also in getting this
21 information.

22 Q. Okay.

23 MR. MESSING: I would like a minute off the
24 record to see if we have anything else.

25 ALJ CLOUGHESY: Off the record.

1 (A brief recess transpired.)

2 ALJ CLOUGHESY: Back on the record. No
3 further questions on cross, going to the employer.

4 EXAMINATION BY MS. TRUONG:

5 Q. You stated earlier you were talking about
6 correctional duties that you perform. I believe it was
7 line -- or excuse me, paragraph 34 of your declaration?

8 A. Yes.

9 Q. You stated that you, when you are assigned
10 transportation duties, it's -- your correctional duties
11 are 100 percent at that time?

12 A. Yes.

13 Q. Are you transporting inmates?

14 A. We --

15 ALJ CLOUGHESY: They don't call them inmates,
16 but I'll let the witness --

17 THE WITNESS: Yes. When they come to our
18 facility, we call them patients or individuals. When
19 corrections or the sheriff's department picks them up,
20 they're automatically, mysteriously, magically called
21 inmates again.

22 BY MS. TRUONG:

23 Q. So are these individuals convicted inmates?

24 A. They're either convicted or they're there by
25 not guilty by reason of insanity, incompetent to stand

1 trial. They come from county jails, state prison.

2 Q. So they're not necessarily mentally ill
3 patients that haven't been convicted yet?

4 A. They're there because they have some type of
5 mental health issue. That's why they're there at our
6 facility.

7 Q. Okay. Looking at your declaration again,
8 turning your attention to paragraph 10.

9 A. Okay.

10 Q. You discuss where your authority extends to
11 and for purposes of performing your primary duty. What
12 do you mean by your primary duty?

13 A. Our primary duty is enforcing hospital rules
14 and regulations and laws on the grounds of the
15 Metropolitan State Hospital.

16 Q. And then turning your attention to page 7,
17 paragraph 67, you state you receive separate seniority
18 from other state employees who are not peace officers.

19 A. I'm sorry. What paragraph?

20 Q. I'm sorry. 67.

21 A. Okay.

22 Q. You state that you receive separate seniority
23 from other state employees who are not peace officers?

24 A. Yes.

25 Q. What exactly did you mean by that?

1 A. Hospital police officers, we have about 50.
2 My seniority is now mixed up with the hospital police
3 sergeant or the hospital police lieutenant or the chief
4 or the dispatcher or the office technician or the office
5 assistant. It's separate.

6 Q. Okay. As a hospital police, is your seniority
7 system just within the hospital police rank and file?

8 A. If there is a layoff tomorrow, we have 50
9 officers at Metropolitan State Hospital. My seniority
10 ranking would be approximately seven or eight, so they
11 would have to layoff the majority of the folks before
12 they got to me.

13 If they, you know, lay off a certain
14 percentage also of sergeants, they would be different
15 than the officers. We have six sergeants, so they
16 wouldn't intermix the sergeants and officers as far as
17 layoffs.

18 Q. And then looking at line -- excuse me,
19 paragraph 68.

20 A. Okay.

21 Q. Can you explain what you mean by separate
22 promotional system than non-peace officer?

23 A. Well if there's a promotion, an (inaudible)
24 for sergeant, office techs can't apply for that, office
25 assistants can't apply for that, a lieutenant wouldn't

1 demote, or if they demoted, they demote; but they
2 wouldn't go to the interview to demote. So that's
3 basically for hospital police officers or somebody from
4 the outside, outside agency could apply if they qualify.
5 But we have a different promotional system.

6 Q. Okay. Is that in the same way that you would
7 not be able to promote within, say, the dispatcher
8 classification?

9 A. Yeah. Correct.

10 MS. TRUONG: Can I have one moment, please?

11 ALJ CLOUGHESY: Yes. Off the record.

12 (A brief pause transpired.)

13 ALJ CLOUGHESY: Back on the record.

14 CONTINUED EXAMINATION BY MS. TRUONG:

15 Q. Back to line -- or excuse me, paragraph 67.
16 When you're talking about the separate seniority, is
17 your -- the separate seniority refer to different than
18 any other classification?

19 A. I don't understand the question.

20 Q. As far as -- for instance, I brought up
21 dispatchers. They have a seniority system as well. Is
22 your seniority system any different than, for instance,
23 the dispatchers' seniority system?

24 A. In our facility, yes. We only have one
25 dispatcher.

1 Q. Okay. You mentioned, I believe, another --
2 another classification --

3 A. Well there was possible police sergeant.
4 There's six of them.

5 Q. And would they be under a separate seniority
6 system as well?

7 A. Yes. For purposes of -- by seniority, we go
8 by seniority for when we request annual vacations, time
9 off. We go by seniority. The officers are separate
10 from the sergeants.

11 Q. Okay.

12 A. I have been there since 1996, and if there's a
13 sergeant that's been there since 1985, well we -- they
14 wouldn't intermix us. We would be separate as far as
15 requesting vacation and time off.

16 Q. Okay. So you also mentioned, for instance,
17 office technicians?

18 A. Correct.

19 Q. Are they in their own separate seniority
20 system?

21 A. Yes.

22 MS. TRUONG: Nothing further, Your Honor.

23 ALJ CLOUGHESY: Mr. Rose.

24 EXAMINATION BY MR. ROSE:

25 Q. Mr. Gurule, do you need a break for some

1 water?

2 A. Yeah, I could use some water.

3 ALJ CLOUGHESY: Off the record.

4 (A brief pause transpired.)

5 ALJ CLOUGHESY: We are back on the record.

6 Mr. Rose.

7 MR. ROSE: Thank you.

8 CONTINUED EXAMINATION BY MR. ROSE:

9 Q. Mr. Gurule, you testified that the people that
10 you deal with, you call them individuals. Do you
11 remember that answer?

12 A. Yes.

13 Q. And then you also said something to the effect
14 that they magically become inmates at some point in
15 time. Do you remember that --

16 A. Yes.

17 Q. -- answer. When the individuals that you deal
18 with arrive at the facility at -- at the Metropolitan
19 State Hospital where you work, how do they usually
20 arrive?

21 A. They arrive by transportation from Department
22 of Corrections or any one of the 58 county sheriff's
23 departments throughout the state.

24 Q. And when the -- either the law enforcement
25 officers from one of the 58 law enforcement agencies, or

1 county sheriff's rather, or the California Department of
2 Corrections, when those officers arrive, can you
3 describe for us whether or not they're armed and how are
4 they dealing with the inmates prior to their arrival at
5 Metropolitan State Hospital?

6 A. The -- the correctional officers or the deputy
7 sheriff's, they're armed with handguns, sometimes
8 shotguns. They arrive in leg, wrist, ankle restraints,
9 and then they're transported to a receiving unit where
10 we take custody of them. The medical personnel do what
11 they need to do and then we transport them unarmed to
12 their appropriate unit. And we -- they also arrive by
13 -- sometimes by private contract firms. And in many
14 times these private security officers are armed as well.

15 Q. When the individuals, when they're with you or
16 the inmates when they're not with you and leave the
17 Metropolitan State Hospital, how do they leave, usually?

18 A. They're picked up either by the correctional
19 officers, one of the 58 county sheriff's departments, or
20 these private entities, and they're picked up by armed
21 -- armed officers or deputy sheriffs.

22 Q. The individuals/inmates at that point, how are
23 they attired? Do they have restraints or not?

24 A. Yeah. They have the same restraints that we
25 use. We use metal chains and handcuffs, and these

1 agencies use the same -- same restraints. They're taken
2 out -- we dress our individuals in khaki colored
3 clothing, and many times they take them out in the same
4 clothing or they bring their own, you know, jail
5 uniforms.

6 Q. When -- when the -- when the inmate, prior to
7 arrival at Metropolitan State Hospital, arrives and
8 becomes an individual, does that individual -- could you
9 describe for us whether or not that individual is in
10 your -- in your view nonviolent?

11 A. No. The individual is the same. The inmate
12 is the same. We respond to calls -- many calls for
13 service where they've attacked other individuals or
14 they've attacked staff or they attack officers.

15 Q. You mentioned private security. Are there any
16 private security guards at Metropolitan State Hospital
17 assigned there?

18 A. No.

19 Q. When you're -- do you ever transport
20 individuals outside of Metropolitan State Hospital
21 yourself?

22 A. Yes.

23 Q. And when doing so, are you armed?

24 A. No. I've transported these individuals as far
25 as Santa Barbara unarmed, no radio communication,

1 nothing.

2 Q. Earlier there was questioning about efforts by
3 CSLEA to obtain guns for hospital police officers. Do
4 you remember that line of questioning?

5 A. Yes.

6 Q. I believe one of your answers was that you
7 were aware that there were some efforts to get guns by
8 CSLEA. Do you remember that answer?

9 A. Yes.

10 Q. Could you describe for us what efforts you
11 believe CSLEA has made on your behalf, or with respect
12 to that issue.

13 A. Regarding getting firearms on duty?

14 Q. Yes.

15 A. The last effort I'm aware of was I think the
16 2005. There was some type of legislation that was
17 introduced regarding specifically deleting part of the
18 language in 830.38 which said that we could be -- we're
19 allowed to be armed but only with authorization. It was
20 going to delete that sentence. And I don't know what
21 happened to the legislation. Either it was -- it died,
22 it was changed into something else, but we're not armed.
23 That's what I know was the result. We're still not
24 armed.

25 Q. You said you had compared your job duties or

1 your class specification to that of a correctional
2 officer in the California Department of Corrections. Am
3 I correct?

4 A. Yes.

5 Q. And have you also -- have you compared any
6 other aspects of California Department of Corrections
7 officers against your -- against hospital police
8 officers?

9 A. The pay.

10 Q. Oh. What have you learned about in your
11 comparison of the pay between California Department of
12 Corrections officers and hospital police officers to
13 Bargaining Unit 7?

14 A. Hospital police officers top salary is \$4,360
15 per month. Correctional officers top salary is \$6,144
16 per month.

17 MR. MESSING: I'm going to ask that the
18 witness not -- be directed not to look at documents --

19 ALJ CLOUGHESY: I have --

20 MR. MESSING: -- before answering.

21 ALJ CLOUGHESY: Since he has looked at
22 something, do you want to take a look at it,
23 Mr. Messing?

24 MR. MESSING: No. I just would like him to
25 testify from his recollection, if he --

1 ALJ CLOUGHESY: If you can't remember the
2 amount, just say I need to --

3 THE WITNESS: Okay. No problem.

4 MR. MESSING: Okay. And just let the record
5 reflect that he had to consult a document in order to
6 make that answer.

7 ALJ CLOUGHESY: So reflected.

8 MR. MESSING: Thank you.

9 BY MR. ROSE:

10 Q. Mr. Gurule, what document did you just refer
11 to in making that answer?

12 A. It was a class specification for correctional
13 officer. But on that class specification it doesn't say
14 the salary. I wrote that down myself.

15 Q. So for the record, since this is part of the
16 objection, you wrote it down on that document that you
17 just looked at before you testified, right?

18 MR. MESSING: Objection. Are we going back on
19 cross or --

20 ALJ CLOUGHESY: Just for purposes of
21 clarification --

22 MR. ROSE: Well I can ask that question.

23 ALJ CLOUGHESY: Go ahead, sir.

24 BY MR. ROSE:

25 Q. When did you write that down?

1 A. Several days ago.

2 Q. What source did you use to write that
3 information down?

4 A. I looked on the state personnel board's
5 website.

6 Q. There was a line of questioning about
7 retention bonuses for Atascadero and another facility.
8 Do you remember that?

9 A. Coalinga State Hospital.

10 Q. Is there a retention bonus for Metropolitan
11 State Hospital?

12 A. No.

13 Q. Could you describe for us your view of the
14 retention and recruitment of officers for Metropolitan
15 State Hospital.

16 A. There is a problem with recruitment and
17 retention. Like I said, our base salary is 4,360 per
18 month. That's approximately 52, 53,000 per year. I
19 have been there for 12 years. The last two or three
20 years my salary has either topped or been close to
21 \$100,000 a year. That means I'm making -- you know,
22 because we're short regarding overtime, recruitment
23 problems, I have more than doubled my salary. And
24 that's just -- that's not me. That's numerous officers
25 at the facility.

1 Q. You've doubled it because that's -- your base
2 salary? Is that what you're saying?

3 A. Well, my base salary is 4,360 per month. So
4 that comes out to about 52, 53,000 per year. The last
5 several years I have made over \$100,000 because of short
6 staffing, recruitment --

7 ALJ CLOUGHESY: Overtime pay?

8 THE WITNESS: Overtime pay, correct.

9 BY MR. ROSE:

10 Q. Can you state for us how many hours of
11 overtime you're working in a given week in the last
12 three years?

13 A. I average 32 to 40 hours per week overtime.

14 Q. Now, there was a line of questioning about
15 your interaction with the dispatchers, and there was
16 also a line of questioning about (inaudible) involving
17 dispatchers and telephone operators. Do you remember
18 that series of questions?

19 A. Yes.

20 Q. And there was discussion about 2005
21 arbitration regarding dispatchers?

22 A. Yes.

23 Q. Could you describe for us your view of the
24 outcome of that arbitration?

25 A. Well, the outcome of the arbitration was we

1 didn't get any dispatchers. I notified Kasey Clark via
2 e-mail several times. This was not acceptable because
3 dispatching is not one of the duties of a hospital
4 police officer, and nothing was done until I just heard
5 recently in the questioning from CSLEA that there is a
6 health and safety grievance.

7 Q. Have you ever received any out of class pay
8 for performing duties as a health -- as a dispatcher?

9 A. No.

10 ALJ CLOUGHESY: Not something you would get
11 out of class pay for.

12 THE WITNESS: No.

13 ALJ CLOUGHESY: Since it's probably a lower
14 classification.

15 THE WITNESS: Right. And so the recent -- the
16 setup we have now at Metropolitan State Hospital is we
17 have -- like I said, we have one dispatcher, and he is
18 assigned to the day shift, which is 0730 to 1600 hours
19 or 4 p.m. The other two shifts, the dispatcher is an
20 officer or the telephone operator.

21 So during the day shift, we have a dispatcher
22 at the station; we have an officer also acting as a
23 dispatcher at the sally port; and we also have a
24 telephone operator acting as a dispatcher. So during
25 the day shift we have -- we have to run things through

1 three different people. And I expressed that -- those
2 concerns also to CSLEA.

3 That's not how departments are run. You have
4 one dispatcher. You can't be talking to three different
5 people and have them stepping on each other on the air
6 when you're responding to calls for emergency, officer
7 needs assistance, et cetera. So that's the current
8 situation at Metropolitan State Hospital, and it's not
9 like that at other facilities.

10 BY MR. ROSE:

11 Q. Have you ever compared your job classification
12 against that of a dispatcher?

13 A. No.

14 Q. Having worked with dispatchers, do you
15 consider your job duties to be somewhat of that of a
16 dispatcher?

17 MR. MESSING: Object. Leading.

18 ALJ CLOUGHESY: I'll allow that question. Go
19 ahead.

20 THE WITNESS: No, they're not similar. A
21 dispatcher sits by a desk; they answer a telephone and
22 they get on the radio and dispatch calls for assistance.
23 Hospital police officers respond to the calls for
24 assistance. We have to deal with the individuals that
25 are armed that are attacking each other, attacking

1 staff. That's why we're issued safety equipment.
2 That's why CSLEA went to arbitration to get us the right
3 to carry a baton and pepper spray. They didn't go to
4 arbitration for the dispatchers to have that type of
5 equipment. They don't need it. They're not put in
6 harms way. We are.

7 BY MR. ROSE:

8 Q. Have you ever compared your job classification
9 as a hospital police officer as that of a back country
10 trails camp supervisor?

11 A. No.

12 Q. Are you aware that that's a classification
13 within your bargaining unit?

14 A. No.

15 Q. Have you ever encountered a back country
16 trails camp supervisor in your job?

17 A. No.

18 Q. Have you ever compared your classification
19 against that of a representative for board of funeral
20 directors and embalmers?

21 A. No.

22 Q. Are you aware that's a classification within
23 your bargaining unit?

24 A. No.

25 Q. Have you ever encountered one of these

1 employees in your job?

2 A. No.

3 Q. Have you ever compared your classification
4 against a licensing and registration examiner?

5 A. No.

6 Q. Are you aware that that's a classification in
7 your bargaining unit?

8 A. I'm aware of that.

9 Q. Ever encounter one of those in your job as
10 hospital police officer?

11 A. No. The only time I encountered them is at
12 DMV, you know, as a -- taking a driving test.

13 Q. Is that what a licensing and registration
14 examiner is, a person who administers a driving test?

15 A. Yes. I get in the car and they sit in the
16 passenger seat and they see if I know how to drive a
17 vehicle. And they score me and if I get a high enough
18 score, I get a driver's license.

19 Q. In your experience having done that, did you
20 ever witness any of the type of protective equipment or
21 gear that you carry as a hospital police officer being
22 carried by the drive tester, the licensing and
23 registration examiner?

24 MR. MESSING: We'll stipulate that they do not
25 carry the same equipment. This is all pretty obvious.

1 ALJ CLOUGHESY: Next question.

2 BY MR. ROSE:

3 Q. Well, I don't accept the --

4 A. No, I've never seen them carry the equipment

5 --

6 MR. MESSING: Object. It's not a question.

7 You know, if I'm stipulating, what more can you get?

8 MR. ROSE: He offered a stipulation and we're

9 not accepting it, so --

10 MR. MESSING: I'm stipulating to --

11 ALJ CLOUGHESY: A stipulation and admission is

12 different. So what is it?

13 MR. MESSING: We'll call it an admission that

14 LREs don't carry the equipment, the safety equipment

15 that hospital police officers do.

16 ALJ CLOUGHESY: Next question.

17 BY MR. ROSE:

18 Q. Have you ever -- are you -- have you ever

19 compared your classification against that of a milk and

20 dairy food inspector?

21 A. No.

22 Q. Are you aware that that's a classification

23 within your bargaining unit?

24 A. No.

25 Q. Have you ever encountered one of those

1 employees in your job duties as a hospital police
2 officer?

3 A. No.

4 Q. Have you ever compared your classification
5 against oil spill prevention?

6 A. No.

7 Q. Are you aware that's a classification within
8 your bargaining unit?

9 A. No.

10 Q. Have you ever encountered one of those in your
11 job duties as a hospital police officer?

12 A. No.

13 MR. MESSING: I would like to ask the Judge is
14 this on my time or is this on the time of -- of POC?

15 ALJ CLOUGHESY: I just -- I think we're just
16 getting into a 352. If you're going to go down the
17 whole list, we're just going to 352 this thing. So next
18 question.

19 MR. MESSING: Evidence Code 352.

20 MR. ROSE: I know --

21 ALJ CLOUGHESY: Unduly probative and unduly
22 prejudice. Not so much (inaudible) but an undue
23 consumption of time. Next.

24 BY MR. ROSE:

25 Q. All right. There was a line of questioning

1 concerning lockers for your guns --

2 A. Correct.

3 Q. -- that are carried by off duty -- do you
4 remember that line of questioning?

5 A. Yes.

6 Q. Can you describe your knowledge of CSLEA's
7 efforts on your behalf regarding resolving concerns by
8 hospital police officers over those lockers?

9 A. Yes. The Department -- the administration at
10 Metropolitan State Hospital, they claimed that we were
11 not allowed to carry off duty firearms on property, and
12 so I tried telling them, well, we're peace officers,
13 other peace officers carry their firearms on grounds.
14 They secure a box for their weapon and they do whatever
15 they have to do and then they leave and they pick up
16 their firearm and they leave.

17 The administration says, well, we're not
18 allowing you, a hospital police officer to do that, but
19 they didn't say that hospital police sergeants couldn't
20 do that; they didn't say that hospital police
21 lieutenants could not bring their firearm, or the chief.
22 They just singled out hospital police officers.

23 So I contacted CSLEA and they did hire an
24 outside law firm and that -- I can't remember the name
25 of the firm but the attorney did call me several times

1 getting information regarding the court case. And
2 initially CSLEA and the state were going to agree to
3 install gun lockers at the front gate. The front gate
4 is the only -- it's a vehicle entrance for the public
5 employees. The public and employees come in and out.
6 They wanted to put a -- a lockbox behind the post five
7 kiosk. I told them, well, wait a second. There's
8 nowhere to park. It's out in the weather. It's just
9 not -- it's not a proper place to put -- to put a
10 lockbox.

11 So I guess CSLEA and the State went back to
12 negotiations and then they agreed upon putting lockboxes
13 in one of the rooms in the police station, but hospital
14 police officers would not have access to it. We had to
15 hunt down a sergeant or lieutenant and say, hey, can you
16 open the room for me so I can secure my weapon. So --
17 and they would open the room. I would go to an
18 individual lockbox, take the key, open the box, put my
19 weapon in there, lock the box. They in turn would lock
20 the safe where those individual lockboxes are in. They
21 would secure that and then secure the room.

22 And then at the end of my shift I would have
23 to hunt down a sergeant again, you know, and say, hey,
24 can you open the room for me now. And we'd have to go
25 through the same procedure. Now, if my shift starts at

1 1530 and if I can't find a sergeant or a lieutenant,
2 what happens? Am I going to be docked because I'm late
3 to start my shift at 1530.

4 So I told CSLEA, this is not -- this is not
5 industry standards. There's a room there. Everybody --
6 all the peace officers have access to and you go in
7 there, you go to the individual lockbox, you take the
8 key out, you put your weapon in there, you lock the box
9 and you leave. That was never done. So our facility
10 came up with a policy and it identified a particular
11 room and said this safe and lockbox will be in this
12 room. They'll be locked at all times. The room will be
13 locked at all times.

14 Well the room was not locked at all times. It
15 was used by investigators. It was open all the time. I
16 would walk by and the door was open. And now they've
17 moved this safe and lockbox to the radio room. Now that
18 room is locked, you know, on an intermittent basis.
19 Half the time it's locked, half the time it's not.

20 And I told CSLEA this is -- this is not going
21 to work for the officers. Nobody's going to use this
22 box. And only one investigator uses that -- that safe
23 and lockbox to put their firearm because we don't have
24 access to it.

25 Q. Who did you tell at CSLEA that -- your

1 concerns that you just described?

2 A. Kasey Clark.

3 Q. What efforts did CSLEA undertake in response
4 to your expression of concern?

5 A. I'm not aware of any because the situation
6 didn't change. And I tried to -- I went to the chief of
7 police about this and all he could tell me was, well,
8 CSLEA and hospital police association are aware of that
9 and we met and conferred with them. I said, well, you
10 didn't meet and confer with the officers here that have
11 to live with these rules. The H-PAC, the hospital
12 police association official, he identified a Karen
13 Meredith. She works at Patton State Hospital. She
14 doesn't work at our facility. She's not aware of what's
15 involved there. But nothing changed.

16 Q. You were asked a series of questions about
17 internal affairs investigations at your facility. Do
18 you remember that line of questioning?

19 A. Yes.

20 Q. I believe you said 25 IA interviews would be a
21 good estimate of a number. Do you remember that?

22 A. Yes.

23 Q. You mentioned that some of the officers did
24 not engage these services of CSLEA and representation
25 concerning those IAs. Do you remember that?

1 A. Yes.

2 Q. Did you ever speak with any of the officers
3 who did not engage CSLEA as a representative in the IAs?

4 A. Yes.

5 Q. How many of those officers did you speak to?

6 A. A handful. And this has to go back -- this
7 goes back to the late 1990s. When I first became a
8 hospital police officer in 1996 and we would request
9 assistance from CAUSE -- they were called CAUSE at the
10 time -- they would send down a labor representative who
11 was not an attorney. I don't think -- Mr. Clark was not
12 chief legal counsel at the time.

13 And around -- in 1999 we had an officer who
14 was terminated from his position and he requested
15 assistance from CAUSE and they assigned him a gentleman
16 who I later found out -- I looked on the state bar
17 website -- who was not -- who was not authored to
18 practice law anymore. So the officer said, well, no
19 thank you. And he went out and hired his own attorney
20 and it cost him \$20,000. And after two and a half
21 years, he got his job back.

22 And I contacted Mr. Clark regarding, you know,
23 hey, is there any way we can get this officer, you know,
24 some money back for, you know, all the money he had to
25 put out.

1 Now, Mr. Clark did say, yeah, you know, deal
2 with the officer and have him write, you know, up some
3 expenses and get back to me. I went to the officer and
4 he didn't want to do that because he was just fed up
5 with CSLEA. So they did offer to do that, but the
6 officer was, nay, forget it. They didn't want to
7 represent me; they gave me a gentleman who was not -- no
8 longer allowed to practice law, so I don't want anything
9 to do with them.

10 And there was another incident with a
11 hospital police officer who had promoted to an
12 investigator with the California Department of Motor
13 Vehicles, and he was let go on probation from that
14 position, so he returned as a hospital police officer.
15 He told me he went to CAUSE, and the chief legal counsel
16 at that time told him, well, I don't think we can win
17 your case; we're not going to represent you.

18 So that officer had to (inaudible) or got the
19 assistance of a retired DMV investigator who assisted
20 him with his case, and he won his job back as a DMV
21 investigator.

22 Q. What year was that?

23 A. That was around, I would say, 2000, 2001. And
24 I think CAUSE did reimburse them some of their expenses
25 after that. But -- and then we move forward to around

1 2002, every time we asked for assistance from CSLEA for,
2 you know, internal affairs investigations, they would
3 send a labor rep. Well, we'd say, why can't we have an
4 attorney. So myself and a lot of the officers, we
5 started paying the California Organization of Police and
6 Sheriff's monthly dues because they send out an
7 attorney. So myself and other officers requested COPS
8 assistance and they would send down attorneys.

9 Shortly after that, I think that was end of
10 2002, 2003, I think that's when Mr. Clark came onboard
11 with CSLEA. He told me that they were hiring an
12 attorney for the southern office, which covers us. He
13 says, we're going to be hiring an attorney for the
14 southern office and they'll be assisting hospital police
15 specifically. So we had to -- I guess we had to pay
16 extra dues over and above our dues to CSLEA to hire
17 COPS, and now CSLEA has two attorneys at the southern
18 office.

19 Q. Are you aware of whether any -- are you still
20 a member of COPS?

21 A. I resigned my membership in COPS effective
22 February 1st, 2009 because I now have another law firm
23 that's representing me.

24 Q. Is that CSLEA's lawyer?

25 A. No. I am not a member of CSLEA. I am what

1 they call a fair share. I pay \$33.17. So the only
2 thing I'm entitled to for that is if I have a problem
3 regarding something in the contract. For example, if I
4 didn't get my paycheck in a timely manner -- anything
5 that's in the contract, CSLEA would represent me. If I
6 had a grievance, something like that. But if I need an
7 attorney for internal affairs, they would not represent
8 me. So I am a member of Peace Officers of California,
9 and I pay \$30 a month dues and I have legal
10 representation through our law firm.

11 Q. Are you aware of whether any of your -- strike
12 that. Are you -- have you ever discussed grievances
13 with any of your coworkers at the Metropolitan State
14 Hospital or at any other facility, the hospital police
15 officers?

16 A. Yes.

17 Q. How many times?

18 A. Couldn't even count. Lots of times. Like I
19 said, I have written at least 30 grievances and I was a
20 job steward at Metropolitan State Hospital from about
21 November of '99, I would say, until about May of 2004.
22 And after that time I was -- the officers still asked me
23 for assistance because they knew I had experience doing
24 that. CSLEA, Mr. Clark, I sat with him at that
25 arbitration hearing for the baton and pepper spray.

1 That was after I had resigned being a job steward. He
2 requested my assistance for that. And I volunteered
3 also. And at the arbitration hearing for the
4 dispatchers -- I think that was 2005, 2006 -- Dave
5 Delruba (ph) has requested my assistance also.

6 Q. So when you -- when you speak of 30 grievances
7 that you have written, are those all for you personally?

8 A. Some were for me and some were for officers,
9 the -- all the officers at Metropolitan State Hospital.

10 Q. Can you describe for us the frequency with
11 which CSLEA would grant or deny the prosecution of the
12 grievances going forward that you have been involved
13 with?

14 A. They granted the grievance going forward for
15 the baton and pepper spray. They granted the grievance
16 going forward for vehicles. They granted the grievance
17 going forward for overtime meal allowance. Those are
18 the times I'm aware that they -- you know, we went to
19 arbitration regarding issues. I'm sure there's other
20 times where things have been settled, you know, where we
21 didn't have to go to the arbitration level.

22 Q. Are you aware of any instances where they've
23 denied grievances going forward?

24 A. Yes.

25 Q. How many of those, that you can recall or that

1 you're aware of?

2 A. A handful.

3 MR. ROSE: Nothing (inaudible.)

4 ALJ CLOUGHESY: Recross.

5 MR. MESSING: Certainly.

6 EXAMINATION BY MR. MESSING:

7 Q. You talked about retention and recruitment.

8 What is the vacancy rate at your institution right now?

9 A. We're short about eight officers.

10 Q. Okay. Is that out of 50 or is that out of 58?

11 A. That's out of 58.

12 Q. Okay. Okay. Now, talking about pay issues,

13 you are aware that since January of 2007, hospital

14 police officers have received 17.9 percent increase in

15 the -- in their pay?

16 A. Yes.

17 Q. Now, back to the arbitration on the

18 dispatchers that you disagreed with. Are you aware that

19 there were other things that were provided as a result

20 of that arbitration?

21 A. Yes.

22 Q. And would you please tell us what those things

23 were?

24 A. I initially had filed a grievance regarding

25 dispatchers, vehicles, and emergency vehicle operation

1 training. So we were granted new vehicles and --

2 Q. How many?

3 A. At least five.

4 Q. Okay.

5 A. And the State agreed to send officers to an
6 emergency vehicle operations course.

7 Q. Which officers?

8 A. Initially they were going to choose. I don't
9 know what criteria they were going to use to choose, but
10 I guess in the end they decided to send everybody, all
11 the officers. Now, whether all the officers have been
12 sent, I don't know.

13 Q. All right. Now, do you bring your weapon to
14 work, your gun?

15 A. Yes.

16 Q. Okay. But you don't utilize the locker?

17 A. No.

18 Q. But -- so you leave it in your car?

19 MR. ROSE: Objection. Relevance.

20 ALJ CLOUGHESY: You know, I'm going to
21 overrule this. I mean, part of this is some of my
22 corrections background, but go ahead Mr. Messing.

23 BY MR. MESSING:

24 Q. So do you leave it in your car?

25 A. No.

1 Q. Well, where do you leave it?

2 A. It's secured in my locker.

3 Q. Secured in your locker. I see. Is that
4 permitted under the Department policy?

5 A. No.

6 MR. ROSE: Objection. Relevance.

7 MR. MESSING: It's already been answered.

8 MR. ROSE: Move to strike.

9 ALJ CLOUGHESY: So struck.

10 MR. MESSING: I'd like to address the ruling.
11 Doesn't this issue go to the credibility of the witness
12 if he's violating department rules?

13 ALJ CLOUGHESY: The real issue is adequacy of
14 representation of CSLEA. Whether this person is not
15 following something because something wasn't provided or
16 was provided, I'm sorry, sir.

17 MR. MESSING: But there are disputes,
18 obviously, as to what was provided or the degree of
19 representation. This -- the issue goes to the witness'
20 credibility.

21 MR. ROSE: I would like to respond to that.

22 ALJ CLOUGHESY: Go ahead, sir.

23 MR. ROSE: This is not credibility. Whether
24 or not a person follows policy is not a question of
25 honesty. Furthermore, it's a question of -- and

1 furthermore, CSLEA's counsel is asking questions adverse
2 to their own agency (inaudible.)

3 ALJ CLOUGHESY: Well, regardless of that, the
4 fact is that the issue is not going as to whether he
5 lied about something, which is the issue as to
6 credibility. So objection remains -- the ruling remains
7 the same.

8 BY MR. MESSING:

9 Q. Well you talked about different options that
10 you -- that the Department went through for storing the
11 weapons. Is it -- is the Department aware of the fact
12 that you have your weapon stored in your locker?

13 MR. ROSE: Objection. Relevance.

14 ALJ CLOUGHESY: Sustained.

15 (Multiple speakers.)

16 THE WITNESS: I know that --

17 ALJ CLOUGHESY: Don't answer, sir.

18 MR. ROSE: I was just moving to strike the
19 answer about to be given.

20 THE WITNESS: I would like to answer.

21 ALJ CLOUGHESY: Sir, you don't get that
22 choice. I'm sorry. As much as would like to, you might
23 be able to do it outside.

24 THE WITNESS: All right.

25 ALJ CLOUGHESY: But regardless of that, I want

1 to stay on the adequacy of representation issue, so I'm
2 -- I'm going to prohibit the question. Plus, the last
3 thing I want is another IA investigation over at Metro.

4 BY MR. MESSING:

5 Q. Okay. I'll just move on. Now you were
6 talking about some of the representation that was and
7 was not provided by CSLEA. Are you aware of the fact
8 that CSLEA just represented one of the officers at your
9 institution who was charged with felony assault?

10 A. Yes.

11 Q. Okay. Are you aware that CSLEA hired outside
12 counsel to represent this individual?

13 A. Yes.

14 Q. Okay. And are you aware that the result of
15 that case was a reduction to a -- of the -- the penalty
16 to an infraction?

17 A. Yes.

18 Q. Now, you had testified, I think in response to
19 DPA's questioning, that you enforce laws, rules, and
20 regulations. I would like to know what are the rules
21 and regulations that you enforce?

22 A. Well, for example, we have rules regarding
23 visiting and what hours they are. We enforce that.

24 Q. Can you give me other examples?

25 A. There's a rule on if you enter the facility

1 and exit, you have to show proper ID.

2 Q. Okay. Is that it?

3 A. No. There's -- there's lots of rules and
4 regulations.

5 Q. Okay. The examples that you just gave me are
6 not -- don't have anything to do with enforcement of a
7 criminal stature, correct?

8 A. No.

9 Q. Okay. But there are other things that -- in
10 the rules and regulations that you have to do then that
11 are also not involved with the enforcement of criminal
12 law?

13 A. Correct.

14 Q. Okay. And as to the enforcement of rules and
15 regulations, if there is an issue as to how -- or
16 (inaudible) laws, rules and regulations, any of them, if
17 there's an issue as to the interpretation of how one of
18 those is to be applied, who is the ultimate
19 decision-maker in your department?

20 A. The chief of police or the hospital
21 administrator, who is the chief peace officer of the
22 facility.

23 Q. The hospital administrator, is that the
24 executive director of the department?

25 A. No.

1 Q. So is it your testimony that the executive
2 director is not the ultimate person on top of the chain
3 of command for your operations?

4 A. The executive director is in charge of the
5 whole hospital.

6 Q. Okay. So is he the -- the ultimate person in
7 the chain of command?

8 A. Of hospital police?

9 Q. Yes.

10 A. No. I would say the hospital administrator.

11 Q. You say the hospital administrator is a peace
12 officer?

13 A. For the Welfare and Institution Code, yes.

14 Q. Okay. Now, are there occasions where the
15 chief makes a decision and the hospital administrator
16 disagrees with that decision?

17 A. I'm not involved in those conversations.

18 Q. You're not aware of them?

19 ALJ CLOUGHESY: So you don't know?

20 THE WITNESS: I don't know.

21 BY MR. MESSING:

22 Q. Are you qualified -- do you possess the
23 qualifications to be a correctional officer in the State
24 of California?

25 A. I don't know.

1 Q. You don't know. So you -- is there a
2 correctional facility near your facility?

3 A. No.

4 Q. No. Okay. Have you ever applied to be a
5 correctional officer for the State of California?

6 A. I'm sorry. There's a correctional facility.

7 Q. Which one is it?

8 A. It's -- I'm not -- I'm not aware of the exact
9 name, but it's within a mile of the facility.

10 Q. Okay. Have you ever applied to be a
11 correctional officer?

12 A. No.

13 MR. MESSING: Nothing further at this time.

14 ALJ CLOUGHESY: Ms. Truong?

15 MS. TRUONG: Nothing.

16 ALJ CLOUGHESY: Mr. Rose?

17 MR. ROSE: Nothing.

18 ALJ CLOUGHESY: Sir, thank you very much. We
19 are off the record.

20 (A brief pause transpired.)

21 ALJ CLOUGHESY: All right. We're back on the
22 record. Before I swear in this next witness, is there
23 going to be any objection to Petitioner's Exhibit E, the
24 declaration of Officer Gurule? Any objection on your
25 part, Mr. Messing?

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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