

February 26, 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. |) | |
| |) | |
| _____ |) | |

FEBRUARY 26, 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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Administrative Law Judge

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1 THE WITNESS: Okay.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And we will go
3 off the record, take our break. Off the record.

4 (Lunch recess.)

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.
6 We're back on the record. We are marking as Petitioner's
7 Exhibit R what appears to be a Declaration of Joanna
8 Rykoff in lieu of direct testimony. The Declaration also
9 has appended to it the State Personnel Board Job
10 Specifications or Series Specifications for Criminal
11 Investigator, Department of Toxic Substances Control.

12 (Petitioner's Exhibit R marked for
13 identification.)

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And I'm going to
15 hand R to this witness and ask you to -- wait a minute.
16 I still need to wait for -- didn't see that. Let's go
17 off the record and I'll swear you in. Hold on a second.
18 Off the record.

19 (Off the record.)

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: We're back on
21 the record. I'm going to ask you to raise your right
22 hand.

23 (Witness sworn by the Judge.)

24 THE WITNESS: Yes, I do.

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Please state

1 your name for the record, and spell your last name.

2 THE WITNESS: Joanna Rykoff. R-Y-K-O-F-F. F like in
3 Frank.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. And
5 the witness has Petitioner's R before her. But I have a
6 couple preliminary questions.

7 One is that, did you receive an e-mail, did you
8 receive a copy of the transcript of the first two
9 proceedings of this matter?

10 THE WITNESS: No, I didn't.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Very good.
12 Petitioner R, you had a -- you had a chance to review
13 that?

14 THE WITNESS: Yes, I did.

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And what do you
16 recognize it as?

17 THE WITNESS: Yes. This is the Affidavit I provided.

18 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. And
19 if you could turn to your signature page? And is that
20 your signature?

21 THE WITNESS: Yes, it is.

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And did you sign
23 it on the date set forth there?

24 THE WITNESS: Yes, I did.

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. And

1 is the document set forth in that Declaration true and
2 correct to the best of your knowledge?

3 THE WITNESS: Yes, it is.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. Is
5 there any corrections that you -- did you have a chance
6 to review it and see if anything needed to be corrected?

7 THE WITNESS: I didn't -- I reviewed it and I did not
8 see anything that needed to be corrected.

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. Fair
10 enough. With that, Mr. Rose, any cleanup or follow-up?

11 MR. ROSE: No.

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Messing.

13 TESTIMONY OF

14 JOANNA RYKOFF,

15 Having been duly and regularly sworn, testified as
16 follows:

17 CROSS-EXAMINATION

18 BY MR. MESSING:

19 Q. Good afternoon. Okay. Aside from the
20 Declaration that you signed, were there any other
21 documents that you reviewed before coming to testify here
22 in this hearing?

23 A. No.

24 Q. Okay. And this Declaration that you signed, you
25 understand that that's a Declaration under penalty of

1 perjury?

2 A. Yes, I do.

3 Q. Okay. So you understand that that's the same as
4 testifying in the court of law?

5 A. Yes.

6 Q. Okay. Okay. It says that -- in your Declaration
7 that you have been a criminal investigator in Department
8 of Toxic Substances -- Substance Control since January
9 2002; is that correct?

10 A. Correct.

11 Q. But it says you've been employed as a Unit 7
12 peace officer since July of 1985.

13 A. That's correct.

14 Q. Okay. Could you just -- well, were you a peace
15 officer before 1985?

16 A. Yes, I -- oh, not before 1985.

17 Q. Okay. So just briefly, from 1985 to 2002, can
18 you tell us what positions you held?

19 A. I worked as a Special Investigator for the
20 Employment Development Department. Then I worked as a
21 Special Investigator for the Department of Consumer
22 Affairs Division of Investigation. And at that point I
23 became a Senior Investigator. And then I worked for the
24 Medical Board of California.

25 Q. As a Senior Investigator?

1 A. As a Senior Investigator.

2 Q. Okay. Did you carry a gun in all of those
3 positions?

4 A. Not with the Employment Development Department.

5 Q. Okay. But you were a peace officer?

6 A. I was not -- I actually wasn't a peace officer
7 with EDD. They sent me through the academy. But at that
8 time they were not -- they did not have peace officer
9 status.

10 Q. Okay. So approximately when were you at EDD?

11 A. That was -- I believe it was July 16th, 1985.
12 And I started at Consumer Affairs April 1st, '88.

13 Q. So if I direct your attention to paragraph three
14 of your Declaration, that's not a true statement that
15 you've been a Unit 7 peace officer since July of 1985?

16 A. You're right.

17 Q. Okay. All right. Now, you don't wear a uniform;
18 is that right?

19 A. That's correct.

20 Q. And will you look at paragraph 18 for a second?
21 Actually, let me take you back to paragraph 17, which
22 starts on the bottom of page three. Now, this paragraph
23 lists certain laws and codes that you -- it says you
24 enforce. Is that a correct statement?

25 A. That's correct.

1 Q. Okay. Now, in paragraph 18 it refers to in
2 sections (a) through (e) the codes and laws that you may
3 be called upon to enforce; is that right?

4 A. That's correct.

5 Q. Okay. So do I take it that the difference is is
6 that you may not in the course of your duties be
7 enforcing all of the codes listed or laws listed in 18,
8 but that you do in fact enforce the -- all of the laws
9 listed in paragraph 17?

10 A. I'm sorry. Could you say that again?

11 Q. Well, do I take it that you may or may not
12 enforce -- actually enforce the laws listed in paragraph
13 18, but you do in fact enforce the laws listed in
14 paragraph 17?

15 A. Actually, I do enforce the laws that are in 18
16 also as well.

17 Q. Okay. All of them?

18 A. With the exception of the Vehicle Code. That's
19 just an occasional.

20 Q. Okay. Good. Now, although you're a criminal
21 investigator, you also, in addition to conducting or
22 supervising investigations of criminal matters, you also
23 deal with civil matters and administrative matters,
24 correct?

25 A. Not really. I can expand if you'd like.

1 Q. Well, what do you mean by not really?

2 A. Well, our agency does do administrative and
3 civil. The way my unit is set up, we do the criminal.
4 And if it's civil or administrative, it gets turned over
5 to someone else who does that.

6 Q. Is that someone also an investigator like you?

7 A. No.

8 Q. Okay. Well, I'm truly puzzled. Let's turn to
9 page five of your Declaration under penalty of perjury,
10 paragraph 22. It says, "I conduct or supervise
11 independent and diverse criminal, civil and
12 administrative investigations of violations of the
13 Resource Conservation and Recovery Act of 1976,
14 California hazardous waste control law, the Hazardous
15 Substances Account Act, and other related laws, codes and
16 regulations as authorized by the Health and Safety Code
17 and Title 22 of the California Code of Regulations."

18 Okay. Now, you signed this Declaration under penalty
19 of perjury.

20 MR. ROSE: Objection. Asked and answered.

21 Argumentative.

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Let's get to the
23 question.

24 BY MR. MESSING:

25 Q. You know, do you -- or this is a correct or an

1 incorrect statement in your Declaration?

2 A. Could I expand on that?

3 Q. Well, it's --

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Well, can you
5 answer whether it's correct or incorrect? If you can't
6 answer it that way, say you can't.

7 THE WITNESS: I can't really answer it yes or no.

8 BY MR. MESSING:

9 Q. Okay. Well, I asked you earlier if you supervise
10 or conduct civil or administrative investigations, and
11 you said no.

12 MR. ROSE: Objection. Misstates the witness' --

13 MR. MESSING: Okay.

14 MR. ROSE: -- prior testimony.

15 MR. MESSING: No. I --

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: That was my
17 understanding. Is that wrong, Ms. Rykoff?

18 THE WITNESS: It's --

19 MR. ROSE: Mr. Messing is now adding the word
20 supervise.

21 MR. MESSING: No. I said -- I used the term
22 supervise as well. Absolutely did. I was reading off of
23 the paragraph 22.

24 THE WITNESS: I no longer do that.

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You no longer do

1 that?

2 THE WITNESS: No longer do that.

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You no longer do
4 which part?

5 THE WITNESS: The civil and administrative.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. Do you
7 supervise?

8 THE WITNESS: No.

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Messing.

10 BY MR. MESSING:

11 Q. Well, when -- so when you say I conduct, it
12 should read I conducted or supervised, in the past tense?

13 A. Yes.

14 Q. Okay. Now, was the function of investigating
15 civil and administrative violations of those code
16 sections listed there --

17 A. Uh-hmm.

18 Q. -- has that been removed from the
19 responsibilities of criminal investigators for the
20 Department of Toxic Substance Control?

21 A. I don't know if I would say it's been removed.

22 Q. If it hasn't been removed and you don't do it, do
23 criminal investigators investigate civil and
24 administrative violations of these codes?

25 A. All I can testify to is what goes on in my office

1 under my supervisor.

2 Q. Well, how many people work in your office?

3 A. Investigators?

4 Q. Yes.

5 A. Me.

6 Q. Just one?

7 A. Just one.

8 Q. Okay. And you don't have any knowledge of
9 whether other people in the -- what other people in the
10 State are doing in your classification?

11 A. No, I don't.

12 Q. How many criminal investigators are there for the
13 Department of Toxic Substance Control?

14 A. I'm not sure, but approximately 15.

15 Q. Okay. Okay. And now, when you -- when was the
16 last time when this would have been an accurate statement
17 that you conducted or supervised civil and administrative
18 investigations?

19 A. Things just changed in the last several months.

20 Q. Okay. Okay. So tell me, then, in the last year,
21 give me some examples of some of the civil and -- civil
22 cases that you investigated.

23 A. I'm think -- I'm thinking.

24 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. All
25 right.

1 THE WITNESS: I'm not -- I'm not ignoring you.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: He wouldn't let
3 you anyway, so --

4 THE WITNESS: I didn't think so. I can't remember
5 any civil cases that I have conducted.

6 BY MR. MESSING:

7 Q. Okay. How about administrative? Well, when you
8 say -- let me -- I withdraw that for a second.

9 In the last year or ever?

10 A. In the last year.

11 Q. Okay. How about going back five years?

12 A. One that I can recall.

13 Q. What kind of case was that?

14 A. It was -- what do you mean what kind? What kind
15 of explanation?

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Can you
17 categorize criminal, civil, administrative, or you
18 want --

19 MR. MESSING: No.

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: -- ground field?
21 Do you want --

22 BY MR. MESSING:

23 Q. Just if you could describe what kind of conduct
24 you were investigating.

25 A. Oh, I was investigating falsification of

1 California uniform hazardous waste manifests.

2 Q. Okay. And that was done as a civil case?

3 A. Yes.

4 Q. Okay. In the last year have you done
5 administrative cases?

6 A. No.

7 Q. Okay. How about in the last five years?

8 A. No.

9 Q. Okay. I'm very confused. Hang on a second.

10 A. Okay.

11 Q. I'm not -- I'm not understanding your testimony.
12 Because you testified that things changed in the last two
13 months, or several months ago. Not two months. I'm
14 sorry. Several months ago. But you have not done
15 anything in the last year civil or administrative. So
16 what changed from about four or five months ago to a
17 couple months ago?

18 A. We've had a reorganization.

19 Q. No. What changed in terms of the balance of your
20 investigations between criminal, civil and
21 administrative?

22 A. Just none of my cases have gone criminal or
23 administrative in the past. Very few of them.

24 Q. Well, what changed in the last couple of months?

25 A. We've had a reorganization.

1 Q. And what changed in terms of the work that you're
2 doing. You said you haven't been doing administrative or
3 civil cases. So what --

4 A. That just -- that just had to do with the kind of
5 cases I was getting at the time.

6 Q. In the last year did you get any administrative
7 or civil cases?

8 A. No.

9 Q. Okay. So what changed from a year ago to a
10 couple of months ago in terms of the -- your portfolio of
11 investigations that you're investigating?

12 A. Nothing changed.

13 Q. Okay.

14 A. I can explain it if you'd let me.

15 Q. Be my guest.

16 A. Okay.

17 Q. I'm totally confused.

18 A. We had a -- we had a reorganization in the last
19 several months, and the cases -- now the criminal
20 investigators are supposed to stick to criminal cases,
21 and the scientists take over the administrative and the
22 civil cases.

23 Q. Okay. But when I asked you about your
24 caseload --

25 A. Yes.

1 Q. -- you said something changed a couple of months
2 ago.

3 A. Right. That's because the scientists are now
4 doing them. So if I'm working a case and it looks like
5 it's going to go civil or administrative, then it's
6 turned over to the scientists.

7 Q. Okay. So within the last year but not within the
8 last couple of months did you have cases that you were
9 working that became administrative that you turned over
10 to scientists or others?

11 A. Yes.

12 Q. Okay. And so did you -- and is the same true for
13 civil cases?

14 A. Yes.

15 Q. Okay. So you did something with those cases
16 before they were turned over to other folks?

17 A. Yes.

18 Q. Okay. So you did in fact within the last year
19 work on -- to some degree on civil and administrative
20 cases?

21 A. Yes.

22 Q. Okay. And that work included preliminary
23 investigations?

24 A. Yes.

25 Q. Okay. Did you file reports in those --

1 A. Yes. I completed a report, yes.

2 Q. In each of those cases?

3 A. Yes.

4 Q. Okay. And how many in the last year? How many
5 civil cases did you start that ended up getting
6 transferred to other individuals?

7 A. In the last year, I think there was two.

8 Q. Okay. And in the last year how many cases did
9 you begin to investigate that were administrative that
10 you turned -- ultimately turned over to somebody else to
11 complete?

12 A. It's actually the same two cases.

13 Q. Okay. And how many criminal cases did you work
14 in the last year?

15 A. You're talking about in progress working?

16 Q. In the last year, the same period of time that
17 you testified --

18 A. Okay.

19 Q. -- for civil and administrative cases, how many
20 criminal cases did you work on?

21 A. Probably 15.

22 Q. Fifteen. Okay. All right. Now, you say that
23 you have conducted or supervised cases under Title 22 of
24 the California Code of Regulations in your Declaration.

25 A. Yes.

1 Q. Okay. Violations of the Code of Regulations,
2 those are typically not criminal; is that right?

3 A. That's correct.

4 MR. MESSING: Okay. I'd like to take a minute until
5 my client gets back.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yes.

7 MR. MESSING: If we can just go off the record a
8 minute?

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Let me --

10 MR. ROSE: Judge, I'd just like to make a note of the
11 time, and that I'm going to ask that there be an
12 accommodation made at the end of all five days.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You know what,
14 you'll have one, sir.

15 MR. ROSE: Thank you.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: But also I'm
17 going to turn -- see if I can get this heat down.

18 (Off the record.)

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: We're back on
20 the record.

21 BY MR. MESSING:

22 Q. All right. Let's go on to other job duties.
23 Now, you -- this is at page five. We established on
24 number 22 that it's not correct that you conduct. You
25 conducted. Now, I want to ask you to look at everything

1 from 23 down to 51 on the next page and tell me if
2 these -- if this Declaration accurately reflects what you
3 currently do.

4 A. Do you want me to specify on certain ones?

5 Q. Yeah.

6 A. Okay.

7 Q. If you can go down one by one and --

8 A. Okay.

9 Q. -- without passing any, whether there are things
10 that you don't currently do.

11 A. Okay. On Internal Affairs, I have assisted. I
12 do not work in Internal Affairs.

13 Q. Okay. What number -- that's number 23?

14 A. Oh, number 23.

15 Q. Okay. So number three is assist. Go ahead.

16 A. And number 24 I do.

17 Q. No. Just tell me the ones that you don't do.

18 A. Oh, okay. I have not done number 30.

19 Q. Okay.

20 A. And I have not yet appeared as a witness, number
21 33.

22 Q. Okay.

23 A. Number 38 I don't recall doing. And through 51
24 that's -- the rest of it's correct.

25 Q. Okay. So now let me ask you a couple questions

1 on a few these. How many arrests do you make in a year?
2 That's regarding number 28. And let's talk about the
3 last year.

4 A. Okay. Last year I believe there were three.

5 Q. Okay. Is that a typical year?

6 A. I think there were -- that was actually more last
7 year than there were the year before.

8 Q. Okay. Do you serve search warrants?

9 A. Yes.

10 Q. Okay. Thirty-four says you interpret and explain
11 the provisions of hazardous waste laws, rules or
12 regulations. To whom do you explain the provisions?

13 A. Generally to the D.A.s or city prosecutors.

14 Q. Okay. Now, when you wrote this Declaration, you
15 weren't -- let me rephrase that.

16 How carefully did you review this Declaration before
17 you signed it?

18 A. I reviewed it carefully.

19 Q. Okay. So how would you explain paragraph 37,
20 which is a question, "Would you do any of the following
21 in your peace officer capacity?" How would you explain
22 declaring that? Well, do you remember seeing that when
23 you signed the Declaration?

24 A. I don't remember -- I don't remember seeing it
25 back when I signed the Declaration. I just kind of

1 assumed it meant the following.

2 Q. Okay. And last year how many surveillances did
3 you do?

4 A. I would say approximately 10, 12.

5 Q. Okay. Did you write any search warrants?

6 A. In the last year?

7 Q. Yes.

8 A. No.

9 Q. Okay. How about in the last five years?

10 A. Yes.

11 Q. How many in five years?

12 A. I believe it was three.

13 Q. Okay. So less than one a year?

14 A. Yes.

15 Q. Okay. How many times have you written affidavits
16 in the last five years in support of search warrants?

17 A. The same amount.

18 Q. Okay. All right. Now, under work schedule, what
19 is your normal shift?

20 A. Eight to 5:00, Monday through Friday.

21 Q. Okay. It says here you have a separate seniority
22 from other State employees who are not peace officers.

23 Is there anybody else on the seniority list in your
24 office with whom you have to compete?

25 A. Not in my -- not in my direct office, no.

1 Q. You're a one-man list?

2 A. Yes.

3 Q. Okay. You say that you're in a separate
4 promotional system than non-peace officers. Do you think
5 that's a good thing?

6 A. I think so.

7 Q. Okay. All right. Now, let's talk about the
8 issue of non-peace officers. First of all, you report to
9 somebody who is not a peace officer, right?

10 A. No. My supervisor is a peace officer.

11 Q. Is a peace officer?

12 A. Yes.

13 Q. Oh, okay. But the -- but your supervisor reports
14 to a non-peace officer?

15 A. That's correct.

16 Q. Okay. What is the classification of your
17 supervisor?

18 A. Supervising Criminal Investigator I.

19 Q. Okay. And what is the supervisor of that
20 individual?

21 A. Deputy Director.

22 Q. Okay. Now, it says in your Declaration that you
23 work with non-peace officer personnel, but you say that
24 they are not part of bargaining Unit 7; is that correct?

25 A. That's correct.

1 Q. Okay. So have you never had occasion to work
2 with a lifeguard?

3 A. No, I haven't.

4 Q. Okay. How about a criminalist?

5 A. I'm not sure of the classification. I've worked
6 with handwriting analysis, and I don't know if that falls
7 under that.

8 Q. I would think so.

9 A. Okay.

10 Q. Have you ever had to work with -- and you know
11 that criminalists are in the bargaining unit that you are
12 presently in?

13 A. No, I didn't know that.

14 Q. Okay. What about marine terminal inspectors?

15 A. No.

16 Q. Okay. Have you ever had to work with an OES
17 coordinator?

18 A. No, I haven't.

19 Q. Okay. How about a motor carrier specialist?

20 A. No.

21 Q. Okay. All right. Do you know -- okay. So do
22 you do investigations of toxic spills on the freeway?

23 A. No.

24 Q. Okay. Toxic spills of -- concerning boats or
25 ships?

1 A. No.

2 Q. Okay. So what about the -- do you investigate
3 the illegal transport of toxic substances?

4 A. Yes, I do.

5 Q. Okay. And when you're doing such an
6 investigation, do you work with the folks from the
7 California Highway Patrol?

8 A. I have, but not for quite a long time.

9 Q. Okay. Do you currently do investigations
10 concerning the legal transport of toxic substances?

11 A. Yes, I do.

12 Q. Okay. But you don't work with anybody from
13 Highway Patrol on these?

14 A. No.

15 MR. ROSE: Objection. Asked and answered.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sustained.

17 BY MR. MESSING:

18 Q. All right. A couple more things. You say you're
19 represented by the California Association of Criminal
20 Investigators.

21 A. Yes.

22 Q. Okay. Do you believe that they meet and confer
23 on your behalf?

24 A. I have no idea.

25 Q. Okay. Do you believe they file grievances on

1 your behalf?

2 A. I don't know.

3 Q. Now, your Declaration says that you filed a
4 grievance in 2001 and you were assigned a representative,
5 correct?

6 A. That's correct.

7 Q. Okay. And you said nothing -- well, "noting" was
8 ever resolved. I assume you meant nothing?

9 A. Yes.

10 Q. Okay. Now, your representative attended meetings
11 with you to try and resolve the -- the problem that you
12 had?

13 A. Yes.

14 Q. Okay. Do you remember how many meetings?

15 A. I don't.

16 Q. Was it more than two?

17 MR. ROSE: Objection. Lacks foundation.

18 ADMINISTRATIVE LAW JUDGE CLOUGHESY: She may know
19 that. Do you know?

20 THE WITNESS: I honestly don't remember.

21 BY MR. MESSING:

22 Q. Okay. Now, you complain in here about a problem
23 that you had with your department making a determination
24 about your being on limited duty.

25 A. Correct.

1 Q. Okay. You say that on a Friday you called CSLEA
2 and you were told that everybody had gone for training.

3 A. Correct.

4 Q. Okay. You say to this day you never -- have not
5 received a call back.

6 A. That's correct.

7 Q. Okay. But you were able to resolve the matter on
8 your own?

9 A. Correct.

10 Q. Okay. Now, do you remember approximately when
11 this Friday was, approximate date?

12 A. I just remember it being kind of towards I want
13 to say like maybe September, October of last year.

14 Q. Okay. Okay. And it says you resolved the matter
15 on your own. How long did that take to get it resolved?

16 A. Took me probably a few days.

17 Q. A few days?

18 A. Few days.

19 Q. Okay. So is that why you never -- did you ever
20 call CSLEA back again after your initial call?

21 A. No, I didn't.

22 Q. Okay. Is that because the matter was resolved?

23 A. Yes.

24 Q. Okay. Did you ever -- nonetheless, did you ever
25 file a complaint with CSLEA?

1 A. I wasn't aware that I could, no.

2 Q. Did you ever call anybody at CSLEA to complain
3 about the lack of response?

4 A. No.

5 Q. Did you ever communicate with CSLEA just to let
6 them know that you hadn't had a response?

7 A. No.

8 Q. When you called CSLEA did you indicate that the
9 matter that you were calling on was an emergency or
10 urgent?

11 A. I explained it was urgent.

12 Q. You explained it was urgent?

13 A. Yes.

14 Q. But, nonetheless, you never called back?

15 A. No.

16 Q. Okay. Okay. Did you leave your message with a
17 receptionist?

18 A. I believe. It was the person who answered the
19 phone.

20 Q. Okay. Did the person who answered the phone
21 indicate that they would try and reach somebody for you?

22 A. Yes, she did.

23 Q. Did -- and you left a call back number?

24 A. Yes, I did.

25 Q. Okay. And I gather when you say you resolved the

1 matter in a few days that you believe it was resolved
2 satisfactorily?

3 A. Yes.

4 Q. Just one moment.

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Off the record.

6 (Off the record.)

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Back on the
8 record. Go ahead, sir.

9 MR. MESSING: Just a couple more questions.

10 BY MR. MESSING:

11 Q. Do you know who Enrique Baeza is?

12 A. Yes, I do.

13 Q. Okay. Who is he?

14 A. He's a Supervising Criminal Investigator I at
15 Department of Toxic Substances Control.

16 Q. Okay.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Do you know how
18 to spell the last name?

19 THE WITNESS: I believe it's B-A-E-Z-A.

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

21 BY MR. MESSING:

22 Q. Okay. And was he a representative of CACI?

23 A. I believe he was.

24 Q. Okay. And do you -- are you aware that in --
25 back in around 2000 -- the end of 2005, beginning of 2006

1 he and Kasey Clark from CSLEA meeting with the department
2 regarding retention and recruitment issues?

3 A. I knew he was working on it. I don't know
4 anything about the meeting.

5 Q. Okay. Do you know who Kasey Clark is?

6 A. No.

7 MR. MESSING: Okay. Nothing further.

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Pass the
9 witness.

10 MS. TRUONG: We have nothing.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Rose?

12 MR. ROSE: Yes. Thank you. Do you need a break or
13 some water? You good?

14 THE WITNESS: No, no. I'm fine.

15 REDIRECT EXAMINATION

16 BY MR. ROSE:

17 Q. Going back to your Declaration.

18 A. Yes.

19 Q. Page two, paragraph three at line seven, it reads
20 as follows, "I have been employed as a Unit 7 peace
21 officer since July 1985." What year should that be?

22 A. That should be April 1st, 1988.

23 Q. Thank you. Okay. Now looking at page five of
24 your Declaration, paragraph twenty-two. In discussing
25 this paragraph on cross-examination, I believe you

1 mentioned that sometimes you're not sure if something
2 will go criminal. Does that sound familiar to you, that
3 testimony?

4 A. That's correct.

5 Q. Can you explain what you mean by that, go
6 criminal?

7 A. Well, sometimes I get assigned a case and in all
8 appearances on the surface it looks like it's going to be
9 a criminal case, and then often once I get into it I feel
10 that there isn't enough evidence to prove criminal, and
11 it's not filed as such.

12 Q. And under the current understanding of your
13 responsibility at work, what would you do in such a case
14 with that case that you originally received as a possible
15 criminal case, but then ultimately it looks as though it
16 won't be criminal?

17 A. I would turn it over to one of the scientists in
18 our group, and they would work it up as a either
19 administrative or civil case.

20 Q. Do you recall the last time you had such an
21 instance occur?

22 A. Not very long ago. I want to say a few months
23 ago.

24 Q. And are you assigned cases currently that appear
25 as though they may not be criminal but instead

1 administrative or civil?

2 MR. MESSING: Object. Leading.

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You know, I'm
4 actually just going to allow it. It doesn't suggest the
5 answer. Go ahead.

6 THE WITNESS: Right now all my cases are either
7 criminal or are not going anywhere.

8 BY MR. ROSE:

9 Q. Now, is that -- is the current -- your current
10 understanding of your responsibility with respect to
11 cases that start out as criminal and then you might
12 transfer to those a scientist if they -- if they
13 ultimately appear to be non-criminal, is that -- is that
14 the same thing you would do say a year ago?

15 A. No, it's not.

16 Q. How about five years ago?

17 A. No.

18 Q. How is it different today with respect to what I
19 just asked you, then, from a year ago?

20 A. Because we have scientists working in our own
21 unit now. So before I would have worked a case
22 administrative or civilly and referred it that way. Now
23 it gets turned over to the scientists.

24 Q. And what about five years ago, the same --

25 A. Five years ago is I would have worked it.

1 Q. Now, when you say you would have worked it, is it
2 your understanding whether or not you would have been
3 expected to work that non-criminal case a year ago?

4 A. I would have been expected to work it
5 administratively or civilly or criminally.

6 Q. Same question for five years ago.

7 A. Yeah. I'm talking about five years ago.

8 Q. I see.

9 A. Sorry.

10 Q. Are you expected to work that case now?

11 A. No.

12 Q. And why is that?

13 A. Because it's -- division of duty is different,
14 and it's now turned over to the scientists in our unit.

15 Q. And how recent has that been the case?

16 A. It's kind of been an ongoing change. It started
17 at least a year ago, but more recently now cases are now
18 being turned over to them. That's been more recent.

19 Q. Looking now at paragraph -- excuse me, page five,
20 paragraph thirty-four, "Interpret and explain the
21 provisions of hazardous waste laws," and it goes on. Do
22 you see that?

23 A. Yes.

24 Q. And I believe in response to questioning about
25 that paragraph, you mentioned that you speak with D.A.s

1 or city prosecutors?

2 A. Correct.

3 Q. D.A.s meaning what?

4 A. District attorneys.

5 Q. Are district attorneys peace officers?

6 A. No. No, they're not.

7 Q. Okay. When you -- when you talk to the district
8 attorneys or the city prosecutors, what is your -- what
9 are you discussing?

10 A. Explaining how the law was broken and the
11 evidence that I have to -- what I consider to be able to
12 support the charges.

13 Q. How recently have you done that?

14 A. Actually, in the last few months.

15 Q. When you have such a conversation with the
16 district attorney or city prosecutor, have you -- or do
17 they -- does that attorney ever ask you to identify
18 potential witnesses in a case?

19 A. Yes, they do.

20 Q. Have you ever been asked by one of those
21 attorneys, prosecuting attorneys, to testify as a witness
22 yourself?

23 A. I have not testified.

24 Q. Would you consider such a request to be outside
25 of your job duties?

1 A. No. I would expect to.

2 Q. Would you expect it to be outside of your job
3 duties to be called upon to testify in an administrative
4 proceeding?

5 MR. MESSING: Object. This is like leading question
6 after leading question.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sustained.

8 BY MR. ROSE:

9 Q. Well, what type of -- with respect to your job
10 duties appearing as a witness, what type of hearings
11 might you expect -- not surprised to be called upon to
12 testify?

13 A. I would expect to be called at a criminal case, a
14 civil case, or an administrative case.

15 Q. Going to page seven of your Declaration, you were
16 asked about some interactions you had with CSLEA on two
17 separate occasions. Do you remember that line of
18 questioning?

19 A. Yes.

20 Q. The grievance that you filed in 2001, what was
21 the nature of the grievance?

22 A. The grievance was that I felt I was being
23 retaliated against by my supervisor.

24 Q. I see. And did you communicate that information
25 to anyone from CSLEA?

1 A. Yes, I did.

2 Q. Do you recall who?

3 A. I remember his first name is James, and I can't
4 remember his last name.

5 Q. Were you satisfied with the result of CSLEA's
6 representation in that grievance?

7 A. Not really, no.

8 Q. How would you characterize your -- how would you
9 characterize CSLEA's representation of you during that
10 grievance in 2001?

11 A. Well, I felt that I continued to be harassed and
12 retaliated against, and I was advised that I'd probably
13 be better off if I changed jobs.

14 Q. Who advised you that you'd be better off if you
15 changed jobs?

16 A. James.

17 Q. The CSLEA rep advised you of that?

18 A. Yes.

19 Q. What was your reaction to that recommendation by
20 CSLEA's representative?

21 A. I was looking into changing departments anyway at
22 the time.

23 Q. With respect to -- well, let me back up.

24 Do you recall -- other than meetings, do you recall
25 whether CSLEA ever wrote any letters on your behalf in

1 connection with that grievance?

2 A. I don't remember.

3 Q. Moving forward to the paragraph 67 regarding the
4 limited duty and the Dr. Clarence issue, that -- did you
5 say that was last year?

6 A. I believe it was last year.

7 Q. How would you --

8 A. I take it back. It had to have been the year
9 before.

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. So
11 '07?

12 THE WITNESS: '07.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: September,
14 October --

15 THE WITNESS: Yes, '07.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: -- '07?

17 THE WITNESS: '07, yes.

18 BY MR. ROSE:

19 Q. Well, how would you describe your level of
20 satisfaction with CSLEA's assistance of you with respect
21 to that issue?

22 A. Well, I was not happy.

23 Q. Why not?

24 A. Because I never got a call back.

25 Q. Were you a member of CSLEA at the time that you

1 made the phone call?

2 A. Yes, I was.

3 Q. Did you identify yourself as such?

4 A. Yes, I did.

5 Q. Do you -- and you testified that you're a member
6 of C-A-C-I or CACI, correct?

7 A. Yes.

8 Q. Do you have any interface with other members of
9 that organization?

10 A. Never.

11 MR. ROSE: Nothing further.

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Messing?

13 MR. MESSING: Sure.

14 RE-CROSS-EXAMINATION

15 BY MR. MESSING:

16 Q. So it's your testimony that non-peace officers
17 are now performing work that you used to perform?

18 MR. ROSE: Objection. Vague.

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Overruled.

20 We're talking about since the re-org the scientists are
21 performing the duties you used to.

22 MR. MESSING: Yeah. I don't know what's so difficult
23 about that.

24 THE WITNESS: Well, what's difficult is they
25 performed it also before.

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Oh, all right.

2 BY MR. MESSING:

3 Q. Okay. But you performed that work, and the work
4 that you are performing is now being performed by --

5 A. Yes.

6 Q. -- scientists?

7 A. Yes.

8 Q. Okay. All right. And I think you testified that
9 you're knowledgeable about what happens only in your
10 office. You don't know the mix of work that is performed
11 by people in your classification in the other offices?

12 A. I'm familiar with our Cypress office.

13 Q. Okay.

14 A. But that's not --

15 Q. Where you're the only person?

16 A. No. Cypress is -- I'm sorry. I'm Chatsworth.

17 Q. Okay.

18 A. There's a Cypress office.

19 Q. How many people in the Cypress office?

20 A. One.

21 Q. One. Okay. So you're familiar with the work
22 that that person does?

23 A. Yes.

24 Q. Okay. Does that person do administrative and
25 civil work as well?

1 A. That person just graduated from the academy,
2 so --

3 Q. Okay.

4 A. -- no.

5 Q. All right. So you said there were what, 16 other
6 in your classification?

7 A. Approximately.

8 Q. Okay. Now, attached to your Declaration is a Job
9 Description. And it looks like it's dated at the bottom
10 corner and that's October 1st, 2008. Okay. When you
11 signed this Declaration did you consider this to be an
12 accurate Job Description?

13 A. Yes.

14 Q. Do you think it still is?

15 A. Yes.

16 Q. Okay. So where on page four of seven, let's say,
17 knowledge and abilities, it says, "Knowledge of
18 administrative, civil and criminal investigative
19 techniques," and it goes on and says, "Administrative,
20 civil and criminal procedures." On the next page under
21 ability, "Ability to develop techniques, methods and
22 skills required in the conducting of administrative,
23 civil and criminal investigations." Do you think that
24 this is all still accurate?

25 A. Yes.

1 Q. Okay. On the issue of this retaliation, what
2 department was that with?

3 A. With the Medical Board of California.

4 Q. Okay. And you said that when you talked to
5 some -- this person James, you were already looking into
6 changing your department?

7 A. Yes.

8 Q. Okay. Did you share that with James?

9 A. Yes.

10 Q. Okay. So he was aware of that when he told you
11 maybe you should change departments?

12 A. Yes.

13 Q. Okay. And when you -- and, in fact, he filed a
14 grievance on your behalf?

15 A. Yes.

16 Q. Okay. And, in fact, with respect to the call
17 that didn't get returned, isn't it true that that -- do
18 you believe that that could have been simply an oversight
19 on the part of the receptionist?

20 MR. ROSE: Objection. Calls for speculation.

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sustained.

22 BY MR. MESSING:

23 Q. Okay. You have no knowledge as to whether or not
24 that call from the receptionist was passed on to anybody
25 else at CSLEA, correct?

1 MR. ROSE: Objection. Relevance.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Do you know one
3 way or another? I'm going to overrule the objection.

4 THE WITNESS: I have no idea.

5 BY MR. MESSING:

6 Q. Okay. And as to the issue with the grievance
7 that was filed for you when you changed departments, you
8 said that you weren't fully satisfied by your
9 representation. Did you make a written complaint to
10 anybody at CSLEA about the representation you had
11 received?

12 A. No, I didn't.

13 Q. Did you -- do you know who James' supervisor is?

14 A. No, I don't.

15 Q. Did you make any effort to contact whoever James'
16 supervisor was?

17 A. No.

18 Q. Did you make any effort to contact the Chief
19 counsel of CSLEA to let him know that there was a
20 problem?

21 A. No.

22 Q. Did you contact anybody in any fashion at CSLEA
23 to complain?

24 A. No.

25 Q. Did you contact anybody at CSLEA in any position

1 to simply let them know that you were dissatisfied?

2 A. No.

3 MR. MESSING: Nothing further.

4 MS. TRUONG: Nothing, your Honor.

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. All
6 right. In regards to the Declaration for Ms. Rykoff is
7 admitted. And the Declaration of Tully is also admitted.

8 (Petitioner's Exhibits M and R received
9 in evidence.)

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Thank you very
11 much. We'll go off the record and take a quick break.
12 Off the record.

13 (Recess taken.)

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. We
15 are back on the record. We have another witness called
16 by the Petitioner. I'm going to ask the witness to raise
17 your right hand.

18 (Witness sworn.)

19 THE WITNESS: I do.

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

22 THE WITNESS: Mark Falcione. My last name is spelled
23 F-A-L-C-I-O-N-E.

24 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.
25 Marking as Petitioner S what appears to be a Declaration

CERTIFICATION AND
DECLARATION OF TRANSCRIBER

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13 and that the foregoing pages 1 through 271 constitute a
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