

February 27, 2009

Page 1

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 27, 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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INDEX OF WITNESSES

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Petitioner's Witnesses	Page
CHRISTOPHER P. LEWIS	
Direct Examination by Mr. Rose	21
Cross-Examination by Mr. Messing	35
Redirect Examination by Mr. Rose	76
Recross-Examination by Mr. Messing	82
DIEGO BUSATTO	
Direct Examination by Mr. Rose	90
Cross-Examination by Mr. Messing	95
Redirect Examination by Mr. Rose	109
Recross-Examination by Mr. Messing	111
Further Redirect Examination by Mr. Rose	112
BRANDON SHOEMAKER	
Direct Examination by Mr. Rose	117
Cross-Examination by Mr. Messing	122
Redirect Examination by Mr. Rose	138
Recross-Examination by Mr. Messing	159
JESSE TOWNSEND	
Direct Examination by Mr. Rose	177
Cross-Examination by Mr. Messing	182

1 Index of Witnesses (Continued):

2 Petitioner's Witnesses Page

3 GARY SCHALES

4 Direct Examination by Mr. Rose 210

5 Cross-Examination by Mr. Messing 216

6 Redirect Examination by Mr. Rose 240

7 Recross-Examination by Mr. Messing 246

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1 (Off the record.)

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.
3 We're back on the record. Just as a couple of
4 housekeeping issues, I'm admitting Petitioner V, the
5 Declaration. And Petitioner T I think I've already
6 admitted. But in case I haven't, I'm admitting that
7 Declaration, and sealing from public inspection.

8 (Petitioner's Exhibits T and V received
9 in evidence.)

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I have a witness
11 to my left ready to be sworn in. Sir, raise your right
12 hand.

13 (Witness sworn by the Judge.)

14 THE WITNESS: I do.

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

17 THE WITNESS: Brandon Shoemaker. S-H-O-E-M-A-K-E-R.

18 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. And
19 Mr. --

20 MR. MESSING: Before the witness testifies, since
21 you're doing the housekeeping, do we have any outstanding
22 exhibits that have not been moved into evidence? Because
23 I'd ask that they all be --

24 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I think the
25 answer is yes.

1 MR. MESSING: Okay.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And hold on a
3 second here. I have -- you know, I just might not have
4 marked them. I have E, F and G, which I'm not sure makes
5 sense. Because some of them are just specs. Oh, that's
6 right. E is part of the salary survey. And I don't
7 remember having any objection on that. We had the whole
8 document.

9 MR. ROSE: Right. Correct. No objection.

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: So no objection
11 from the Employer on --

12 MS. TRUONG: No.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: -- on E? In
14 regards to F and G, which are both SPB Job Specs, any
15 objection?

16 MR. ROSE: None.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: None. And then
18 on the -- okay. Is there going to be --

19 MS. TRUONG: I'm sorry.

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Is there going
21 to be any objection to F or G, the Job Specs for --

22 MS. TRUONG: No.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

24 MS. TRUONG: I apologize. I didn't -- I didn't
25 realize you were looking at us.

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: F and G are also
2 admitted.

3 (Exclusive Representative Exhibits E, F
4 and G received in evidence.)

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: So now all
6 Exclusive Rep exhibits have been admitted, Mr. Messing.

7 MR. MESSING: Okay. Good.

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And I have --

9 MR. MESSING: So we're up to date.

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: -- sworn in
11 Mr. Shoemaker. And a couple preliminary questions, sir.
12 Have you -- have you been sent an e-mail containing the
13 transcripts our first two days of hearing?

14 THE WITNESS: No.

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And have you not
16 reviewed -- I guess that's a follow-up question which is
17 probably going to have the same answer. Have you
18 reviewed the transcripts of our first two days of
19 hearing?

20 THE WITNESS: I haven't seen any transcripts of the
21 hearing, no.

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Good enough.
23 You've already in our prior day of hearing in regards to
24 Petitioner's D, which I've provided to you,
25 authenticated. Is there going to be any questions for

1 this witness before he gets passed to Mr. Messing?

2 THE WITNESS: I just want to say, the only thing I
3 don't -- isn't mine is the --

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: The Job Specs.

5 THE WITNESS: -- the Specs, right.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. All
7 right. You know, why don't you have this before you in
8 case you get asked about those. So --

9 THE WITNESS: I think I have the same one in front of
10 me, Judge.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

12 THE WITNESS: Let me make sure, but I think they're
13 the same.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You mean as far
15 as the specs go, at least.

16 THE WITNESS: Okay. That's fine.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: In case you get
18 asked about that.

19 THE WITNESS: Right. Okay.

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Rose, any --

21 MR. ROSE: Yeah. Let me just clarify something here.

22 TESTIMONY OF

23 BRANDON SHOEMAKER,

24 Having been duly and regularly sworn, testified as

25 follows:

1 DIRECT EXAMINATION

2 BY MR. ROSE:

3 Q. Can you -- can you state your job title for us?

4 A. I'm an Agent with the California State Lottery.

5 MR. ROSE: Okay. One moment, please.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yes. Off the
7 record.

8 (Off the record.)

9 MR. MESSING: I'll tell you what. I'll make this a
10 really short cross.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.
12 We're back on the record.

13 MR. ROSE: Thank you.

14 MR. MESSING: But you have to make your direct short.

15 MR. ROSE: All right.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.
17 We're on the record. Mr. Rose.

18 MR. ROSE: Thank you.

19 BY MR. ROSE:

20 Q. Mr. Shoemaker, we've got your Declaration. Let
21 me ask you, how long have you been in the classification
22 represented by CSLEA?

23 A. In this classification or a classification?

24 Q. A classification.

25 A. July of 2006.

1 Q. And are you currently satisfied with the
2 representation of CSLEA?

3 A. No.

4 Q. How long have you been dissatisfied with CSLEA's
5 representation?

6 A. Probably about two years.

7 Q. And why are you dissatisfied with CSLEA's
8 representation?

9 A. When Lottery Agents make it's about \$280 a month
10 less than similar classifications, as an example, my
11 peers from Alcoholic Behavior Control, Department of
12 Motor Vehicles, State Medical Board, DCA's Division of
13 Investigation, Toxic Substance Control, Department of
14 Insurance, yet to become a Lottery Agent more specialized
15 experience and a longer length of specialized experience
16 is required.

17 What I mean by that is to work for the State Medical
18 Board you just need to have two years of college and two
19 years of investigative experience. To work for the
20 Lottery, you need two years of college plus three years
21 of specialized investigative experience in the areas of
22 robbery, burglary, extortion, forgery, fraud, vice and so
23 on. That experience in the law enforcement community is
24 very hard to come by unless you work for a very large
25 metropolitan agency.

1 MR. MESSING: Allow me to show you what we'll ask to
2 be marked for identification.

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Thank you, sir.
4 Marking as Petitioner Exhibit W what appears to be a
5 multi-page document, the first page being a printout from
6 the SPB website in regards to classifications of Chief
7 Lottery Agent, Lottery Agent, Supervising Lottery Agent.
8 Then we have also as part of the exhibit similar sort of
9 documents for Fraud Investigator, Department of Health
10 Services, and Criminal Investigator for Toxic Substance
11 Control, Corporations Investigator, and probably a few
12 others that I have missed.

13 (Petitioner Exhibit W marked for
14 identification.)

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Witness has W
16 before him.

17 MR. MESSING: For the record, so the record need be
18 overburdened, we're willing to stipulate that CSLEA
19 believes that Lottery Agents should get the same pay as
20 other investigators in the State.

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I don't know.
22 Do you want to stipulate to that, sir?

23 MR. ROSE: A stipulation that CSLEA believes that --

24 ADMINISTRATIVE LAW JUDGE CLOUGHESY: yes.

25 MR. ROSE: -- Lottery Agents should get the same --

1 I'll accept that stipulation.

2 MR. MESSING: Okay.

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. With
4 that stipulation, witness has W and is ready for your
5 questions, sir.

6 MR. ROSE: I suppose the Employer has no opposition
7 to that stipulation?

8 MS. MAYHEW: No.

9 MS. TRUONG: No.

10 MR. MESSING: Okay.

11 MS. MAYHEW: They can stipulate whatever they want.
12 That doesn't reflect the belief of the State necessarily
13 one way or the other.

14 MR. CLARK: That's the problem. Therein lies the
15 problem.

16 THE WITNESS: Therein lies the problem, exactly.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

18 THE WITNESS: You just hit the nail on the head.

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

20 BY MR. ROSE:

21 Q. Now, then, Mr. Shoemaker, what -- the document
22 I've just handed you, do you recognize it?

23 A. Yes.

24 Q. What is it?

25 A. It's the different pay levels and job

1 descriptions that are going from the State Personnel
2 Board website for those similar categories that we just
3 talked about.

4 Q. Have you seen this document before today?

5 A. Yes.

6 Q. How did -- and what -- explain how you've seen
7 it.

8 A. I've looked at it at the website many times, and
9 I was the one that produced it two days ago.

10 Q. You assembled this document?

11 A. Yes.

12 Q. And the source of the information was from the?

13 A. The State -- the California State Personnel Board
14 website.

15 MR. MESSING: If I may, the stipulation was intended
16 to forego having to painstakingly go through this
17 document. Can we get an offer of proof as to what POC
18 wants to prove beyond --

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: So you have no
20 objection to W being admitted, then?

21 MR. MESSING: No objection.

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: W -- and no
23 objection from the Employer?

24 MS. TRUONG: No.

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Thank you for

1 reminding me the last time, Mr. Rose. With that, W is
2 admitted.

3 (Petitioner's Exhibit W received in
4 evidence.)

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Further
6 questions for this witness?

7 MR. ROSE: Nothing further.

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Messing, you
9 saved me a couple minutes, so thank you.

10 MR. MESSING: Maybe more than that. Okay.

11 CROSS-EXAMINATION

12 BY MR. MESSING:

13 Q. Now, I notice in your Declaration that you say
14 that you provide mutual aid to other law enforcement
15 agencies.

16 A. Yes.

17 Q. Either by formal or informal means. Do you know
18 the -- or how would you define the difference between
19 formal mutual aid and informal mutual aid?

20 A. I would say informal could be any one of
21 countless investigators that I'm on a task force with or
22 know through professional and personal contacts on
23 saying, hey, can you check in -- check on this for me? I
24 need to know who owns this store. I need to know where
25 this ticket came from. I need to know where this ticket

1 was validated at. To a formal request through either my
2 office or our headquarters in Sacramento through our
3 chain of command asking for assistance on a task force,
4 whether it be a joint terrorism task force through the
5 FBI through one of the regional threat assessment centers
6 in the state, assistance with obtaining videos, getting
7 retailers to cooperate with law enforcement, other law
8 enforcement agencies during our investigations.

9 Q. So you don't understand that there's a different
10 between assistance to another agency and responding to
11 mutual aid for another -- to another agency?

12 A. Sure.

13 Q. Okay.

14 A. There's a huge difference.

15 Q. So what is -- what is the meaning of responding
16 to a request for mutual aid from another law enforcement
17 agency?

18 A. Mutual aid is I'm listening on a radio and I hear
19 a CHP officer on a freeway putting out a request for
20 assistance on a vehicle stop. Being in a high crime
21 area. Assisting other officers that my have seen a crime
22 that they, for lack of a better term, just literally
23 jumped in the middle of to break something up.

24 Q. Okay. So mutual aid, the formal definition of
25 mutual aid doesn't include somebody calling you up from

1 another agency and saying, hey, how do you interpret this
2 law, something like that? Mutual aid means a formal
3 request for assistance from one agency to another during
4 some kind of an emergency situation.

5 A. No. I think --

6 Q. Is that fair?

7 A. I don't think that is fair.

8 Q. Okay. Let's move on. You -- as a Lottery Agent
9 you don't work in uniform, correct?

10 A. Sure. I work in uniform when we serve search
11 warrants, when we're at the range, assisting other
12 agencies with search warrants.

13 Q. Okay. So how many times a year do you serve a
14 search warrant?

15 A. I would say at least on a monthly basis.

16 Q. Like once a month?

17 A. I would say ours are on a monthly basis, and
18 probably assist other agencies probably in the same
19 fashion, probably at least once a month.

20 Q. Okay. So the vast majority of the time you're
21 plainclothes?

22 A. That's correct.

23 Q. Okay. Under your job duties you say that you
24 conduct civil and criminal investigations on page six,
25 line seven.

1 A. Okay.

2 Q. Okay. I didn't notice in there a reference to
3 conducting administrative investigations. Is that an
4 oversight?

5 A. I'm pretty sure it says administrative
6 investigations somewhere in here. Give me just a moment.

7 Q. I'd love you to point it out to me.

8 A. I don't see where it says administrative
9 investigations by that title. But I would say that on
10 page six, line thirty-three, investigate backgrounds of
11 applicants for Lottery staff and retailers is an
12 administrative investigation. Instant ticket security at
13 printing plants would be an administrative investigation.
14 Planned and unplanned site inspections would be an
15 administrative investigation. Monitoring licensees who
16 are on probations would -- or on probation would be an
17 administrative investigation as well.

18 Q. Okay. So when you were characterizing the kind
19 of investigations that you conduct in paragraph 30, was
20 it an oversight to leave out administrative
21 investigations?

22 A. Yes.

23 Q. Okay. Your normal hours are from seven o'clock
24 in the morning to 1700. What days of the week do you
25 work? Do you have a regular schedule?

1 A. I would say before the furloughs it was Tuesday
2 through Friday.

3 Q. Okay. Tuesday through Friday. So that's 4/10/40
4 schedule?

5 A. Right. Right.

6 Q. Okay. You said, by the way, that you receive
7 differential pay for being on call and for POST
8 certifications. You get -- are you eligible for other
9 differentials?

10 A. Overtime, on call. We have an agent on call
11 every weekend, weekends and holidays. And then POST
12 differential physical fitness incentive.

13 Q. Bilingual pay?

14 A. I don't believe we participate in bilingual pay.

15 Q. You don't participate meaning you don't have
16 anybody who qualifies or --

17 A. No. I don't think the agency doesn't
18 participate. Just like the agency doesn't believe in
19 paying our investigators that live in high rent areas the
20 \$200-a-month stip that they're allowed under a contract.

21 Q. Okay. Now, you said that -- you talk about the
22 Lottery pay issues, the different -- the disparity
23 between Lottery Agents and other investigators. Are you
24 aware that CSLEA has raised this issue various times with
25 the Department of Personnel Administration?

1 MR. ROSE: Objection. Assumes facts not in evidence.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: It does. Are
3 you aware whether or not they raised that with Department
4 of Personnel Administration?

5 THE WITNESS: No.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

7 BY MR. MESSING:

8 Q. Did you ask anybody at CSLEA what steps have been
9 taken by CSLEA to -- if any, to increase the pay of
10 Lottery Agents to equalize it with investigators?

11 A. I think each year our field rep, Al Lewis, has
12 sent an e-mail out asking for suggestions when it came
13 time to negotiate, and I have e-mailed him those
14 suggestions.

15 Q. All right. Perhaps you didn't understand. My
16 question is, did you make inquiry to anybody at CSLEA as
17 to what steps, if any, have been taken to secure equal
18 pay with other investigators --

19 A. Yes.

20 Q. -- with Lottery Agents?

21 A. I've spoken with Al Lewis about it.

22 Q. Okay. And what steps did he say were taken?

23 A. Al said reduce it to writing and he would send it
24 to Sacramento.

25 Q. Did he inform you -- did you -- do you think Al

1 Lewis is a representative of CSLEA?

2 A. Yes.

3 Q. Okay. Did you ask Al Lewis to find out and to
4 communicate to you what steps, if any, CSLEA took to
5 equalize the pay between agents and investigators?

6 A. No, I have not specifically said what steps has
7 CSLEA taken.

8 Q. Okay. Do you know whether DPA has resisted
9 equalizing pay for Lottery Agents with other
10 investigators?

11 A. Well, since we don't have equal pay, I would
12 assume somebody has resisted. But I don't specifically
13 know about -- if DPA said, no, we're not doing that for
14 you.

15 Q. Okay. So your complaint about CSLEA's
16 representations is that they haven't done enough to
17 secure equal pay for Lottery Agents, but you don't know
18 what steps that they've taken; is that true?

19 MR. ROSE: Objection. Argumentative. Asked and
20 answered.

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Do you
22 understand the question, sir?

23 THE WITNESS: Yes.

24 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. Go
25 ahead. I'm going to overrule the objection.

1 THE WITNESS: I would -- I would say that would not
2 be my only complaint with CSLEA as being.

3 BY MR. MESSING:

4 Q. Okay. But that doesn't answer the question. The
5 question is whether or not you would agree that your
6 complaint with CSLEA is that it hasn't done enough to
7 equalize pay with investigators if you don't know what
8 steps they've taken.

9 MR. ROSE: Objection. Asked and answered. Compound
10 question. Argumentative.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Last objection
12 sustained.

13 MR. MESSING: Which? I'm sorry. Argumentative?

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And you don't
15 know what steps they've taken. You've done this and you
16 don't know --

17 BY MR. MESSING:

18 Q. Do you know what steps they have taken to
19 equalize pay with other investigators in light of your
20 complaint that CSLEA has not done enough to represent you
21 in that regard?

22 A. No.

23 Q. Okay. And you have dealt with CSLEA on some
24 other issues that have come up for Lottery Agents,
25 correct? Well, let me withdraw the question. I'll be

1 more specific.

2 Did you contact Kasey Clark with a problem regarding
3 some pay issues that CSLEA was having regarding either
4 fitness pay or uniform allowance?

5 A. I think Kasey and I communicated via e-mail.
6 There was an issue with physical fitness incentive that
7 the Cooperative Personnel Services has canceled all of
8 the physical agilities over budget, and they did not
9 inform anybody that the testing had been canceled. So I
10 think I either called or e-mailed Kasey. And there was
11 an issue where the agency was saying they were not going
12 to pay physical fitness. And Kasey I think left me a
13 voicemail back saying, oh, you know, the contract says
14 they will still have to pay it until this gets resolved.

15 Q. Okay.

16 A. And that's what happened.

17 Q. And that's what happened. And when did that
18 occur, that interchange?

19 A. Sometime last I think August of '08.

20 Q. Last August. And would you say that Kasey Clark
21 was very responsive to your request for assistance?

22 A. Very responsive. We e-mailed or called and
23 that's how it was -- I mean, yeah, I was perfectly happy
24 with what he said.

25 Q. And he got right back to you when you had the

1 problems?

2 A. I think it may have been a week or so.

3 Q. Okay. Are you aware that the Lottery was going
4 to change the work weeks or proposed to change the work
5 weeks of Lottery Agents from four/tens to five/eights
6 because of the furlough situation?

7 A. Actually, what I'm aware of is a single
8 supervisor that supervises the East Bay area that decided
9 on his own he was going to change his employees from a
10 four/ten to a five/eight system recently.

11 Q. Okay. And this is very recent, right?

12 A. I think within the last week.

13 Q. Okay. And you're aware -- are you aware that
14 actions taken by Kasey Clark in response to that issue?

15 A. I am aware that the same supervisor sent an
16 e-mail out saying the administration decided not to do
17 that. And then Kasey and I had a conversation when I
18 came into the PERB and he let me know that he was able to
19 intervene in it and get it changed. So there is some
20 discrepancy with what -- not to say anybody's telling the
21 truth, anybody's lying. But internally, the e-mail,
22 we're being told one thing, and then Kasey obviously
23 having dealt directly with it is telling me what his
24 actions were.

25 Q. Do you have any reason to disbelieve what Kasey

1 Clark told you?

2 A. No.

3 Q. Okay. Would you agree that less than half of the
4 job of a Lottery Agent is to conduct criminal
5 investigations and other criminal enforcement actions?

6 A. No. I would disagree with that. It's more than
7 50 percent.

8 Q. More than 50 percent? How much more than 50
9 percent?

10 A. Probably, I would say, 75 percent is criminal.

11 Q. Seventy-percent? Okay. And you think that
12 that's true of all Lottery Agents? How many Lottery
13 Agents are there?

14 A. I think we're slated from our Chief down, and
15 there's current nine vacancies.

16 Q. There are nine vacancies? Okay.

17 A. So there's 21. The area I cover geographically
18 is from San Joaquin County, about Manteca, down to Lebec
19 on the Grapevine in Los Angeles County, the coastal
20 mountains to the west, and the Nevada border to the east.
21 So it's -- I always tell people it's pretty much the
22 middle third of California that me and my partner cover.

23 Q. Okay. Would you say that 75 percent reflects
24 your understanding of what other Lottery Agents do in
25 terms of performance of criminal investigations and other

1 enforcement?

2 A. I can't vouch for the other geographic areas
3 because we don't -- we don't work that close normally
4 because we're so few and spread out so far.

5 Q. How many in your area?

6 A. There's myself, and I have one partner and that's
7 it.

8 Q. Okay. And does your partner have about the same
9 range of responsibilities as you do?

10 A. I would say he has the exact same range of job
11 responsibilities that I do. I mean I have a couple
12 collateral duties. Like I say, I'm the terrorism liaison
13 officer coordinator for the State. I'm the statewide
14 senior range master, the equipment officer. So he
15 doesn't have those collateral duties. But other than
16 that.

17 Q. Okay. You investigate complaints and allegations
18 of administrative misconduct of retailers?

19 A. Sure.

20 Q. Okay. The same question as to claimants.

21 A. You're saying do we investigate claimants or --

22 Q. Claimants --

23 A. -- misconduct by claimants or --

24 Q. Complaints or allegations of administrative
25 misconduct of claimants.

1 A. I don't know how a claimant could commit a
2 violation of administrative misconduct. That kind of
3 mis-phrases what we do with claimants.

4 Q. Would you say that you investigate complaints
5 and/or allegations of administrative misconduct of
6 distributors, suppliers and contractors --

7 A. Sure.

8 Q. -- for the Lottery?

9 A. Sure.

10 Q. Okay. Do you conduct retailer onsite complaints
11 checks?

12 A. Yes.

13 Q. Okay. So those are all administrative duties,
14 not criminal, correct?

15 A. Well, I would say when I go in and do a random --
16 we call it a loss prevention inspection, administrative
17 inspection of the business, and we find they're selling
18 dirks and daggers that are felonies in violation of 12020
19 of the Penal Code. We find they're selling illegal
20 smoking pipes, things like that. It may -- it
21 potentially did start as administrative inquiry that then
22 became criminal.

23 Q. Okay. Would you say that 20 percent of your time
24 is spent investigating complaints and/or allegations of
25 administrative misconduct?

1 A. I would say probably 15 or 20.

2 Q. Fifteen or 20. Okay. Is it true that Lottery
3 Agents provide physical building access for Lottery
4 district offices and other security-related Lottery
5 operations?

6 A. I don't know what that phrase means. We do a
7 once-a-month after hour on overtime physical inspection
8 of the district office, which takes about 30 minutes. In
9 which case I have to set off and reset all the alarms and
10 the cameras at the office.

11 Q. So you wouldn't agree that 10 percent of your
12 time is spent --

13 A. Yeah. I would -- I would disagree with that.

14 Q. Okay. And you'd say the same -- but you don't
15 know whether that's true of other Lottery Agents in other
16 areas of the state?

17 A. Again, I couldn't -- not having worked at any of
18 the other offices, I couldn't tell you.

19 Q. Do you advise and assist Lottery retailers and
20 contractors regarding Lottery-related security matters?

21 A. I would say retailers, yes, when we do the loss
22 prevention inspections. But not with contractors, no.

23 Q. Okay. Would you say --

24 A. A lot of the functions you're referring to -- I'm
25 a field agent. We have what we call operations agents

1 that only work in our headquarters. They don't set foot
2 out of the building on cases. And I would say the
3 responsibilities you're -- the majority of the
4 responsibilities you're talking about are those of our
5 operations investigators. Which there's, I think, right
6 now two or three possibly.

7 Q. Okay. Are they Lottery Agents?

8 A. Sure.

9 Q. Okay. Would you say that they spend 45 percent
10 to 50 percent of their time doing criminal
11 investigations?

12 A. You'd have to talk to them. I have no idea.

13 Q. Okay. Okay. I think you earlier testified that
14 you assist in doing background investigations.

15 A. Yes.

16 Q. What percentage of the time do you think that you
17 spend with that?

18 A. In the almost two years I've been with the
19 Lottery, I think I've done one.

20 Q. Okay.

21 A. Then again, these are not on retailers. These
22 are on civilian employees that take a very short amount
23 of time.

24 MR. MESSING: I'm going to mark as -- for
25 identification a Duty Statement for Lottery Agent.

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.
2 Thank you. Marking as Petitioner's Exhibit X what
3 appears to be a two-page document, specifically a --

4 MR. MESSING: No, it's not Petitioner's.

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I'm sorry about
6 that. Thank you. Exclusive Representative. Let me get
7 that sheet out.

8 MR. ROSE: K.

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yes. Thank you.
10 K.

11 MR. MESSING: No objection to admission of this
12 document. It's authentic.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. K is
14 admitted. Anyway, Exclusive Representative K is a Duty
15 Statement of Lottery Agent.

16 (Exclusive Representative Exhibit K
17 marked for identification.)

18 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And is there any
19 objection on behalf of the Employer also?

20 MS. TRUONG: No.

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. With
22 that, K is admitted.

23 (Exclusive Representative Exhibit K
24 received in evidence.)

25 MR. MESSING: Okay. Then I have no further

1 questions.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Ms. Truong?

3 MR. ROSE: Take a look at Exhibit K. Oops, I'm
4 sorry. Go ahead.

5 MS. TRUONG: That's okay. No questions.

6 MR. ROSE: I got into the --

7 MS. TRUONG: That's okay.

8 MR. ROSE: -- habit of expecting a no to ask
9 questions.

10 THE WITNESS: Thank you.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: That's K.

12 REDIRECT EXAMINATION

13 BY MR. ROSE:

14 Q. Looking at Exhibit K that's just been placed in
15 front of you, scan it and tell me whether you think that
16 accurately reflects your actual job duties in terms of
17 the percentages allocated there.

18 A. I would say it doesn't. Plus, this says it's for
19 the San Francisco District Office, and I don't work in
20 San Francisco. So I don't know what they do. Should say
21 I don't know what they do. I don't know what the
22 percentages of times that they spend doing these
23 different things. Right now San Francisco is down one
24 investigator and another one that's in bad health. So I
25 don't have any clue what happens there.

1 Q. Well, if you look at the essential functions, how
2 would it -- how would you disagree with the percentages
3 if this was applicable to your office? Which it's not.

4 A. Can I write on this, Gary, or just --

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I tell you what,
6 write on this one and --

7 THE WITNESS: Give me just a minute. These add up to
8 100, right?

9 BY MR. ROSE:

10 Q. Make sure they do, or Mr. Messing will surely
11 point it out.

12 A. I'm a graduate of public school, so you have to
13 bear with me for a minute. Can I add another category
14 that says other? Is that okay?

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You're just
16 asking if it's consistent, right?

17 MR. ROSE: Well, I asked him to reallocate the
18 percentages for the categories. There's a marginal
19 functions category at the bottom.

20 THE WITNESS: Oh, marginal functions. I'm sorry.
21 Okay. That's where I can put it. That's fine. See, I
22 don't have my glasses either, so okay. I would -- the
23 first thing I would do is the last two lines on A where
24 it talks about key information into the case management
25 computer system. We don't have a case management

1 computer system any longer. Maintain investigative files
2 and reports in storage boxes.

3 BY MR. ROSE:

4 Q. Let me just stop you. We're looking at the 45
5 percent?

6 A. That's correct.

7 Q. Okay.

8 A. So where --

9 Q. Continue.

10 A. Where it says, "Maintain investigative files and
11 reports in storage boxes, we don't do that."

12 MR. MESSING: Well, I'm going to object. I think the
13 witness is not responding to the question. The question
14 was how would these percentages differ.

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I'm not sure.
16 And I actually think the witness is correct. I mean I
17 think that was the question. But can you just jiggle the
18 percentages?

19 THE WITNESS: Oh, sure.

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Then it would be
21 accurate.

22 THE WITNESS: Sure.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I'm saying would
24 it correctly reflect it if you just change percentages?

25 THE WITNESS: I don't -- a good portion of it, yes.

1 But some things, no. I think this is probably -- this
2 may have been written some time ago. And some of the
3 things on here we just don't do anymore.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.
5 Well --

6 THE WITNESS: I mean I can leave it like it is and
7 juggle the percentages and give you 100 percent. But
8 these as they're listed, I don't believe they're
9 accurate.

10 MR. ROSE: Let me ask --

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I'll let you
12 take it from there, Mr. Rose.

13 BY MR. ROSE:

14 Q. All right. Looking at the 45 percent under the
15 first -- the first major paragraph under A.

16 A. Right.

17 Q. Any of those duties that you currently do not do?

18 A. Key information into the case management computer
19 system. Maintain investigative files and reports in
20 storage boxes we do not do.

21 Q. Do you -- the remaining description in that
22 paragraph, would you -- would you allocate that to 45
23 percent of your time?

24 A. No.

25 Q. What would you allocate it to?

1 A. Seventy-five.

2 Q. Looking down to the next paragraph.

3 A. I would -- I would --

4 Q. Of the 20 percent, anything in that paragraph
5 that you currently do not perform?

6 A. Yes. I would -- I would have to delete the
7 second line, the words "distributors, suppliers and
8 contractors to the Lottery."

9 Q. And having made that deletion, would you leave
10 the same or change the 20 percent number?

11 A. No. I'd change it to five.

12 Q. Looking now to the 10 percent paragraph
13 immediately below that, any deletions from there in terms
14 of what you actually do?

15 A. I think that one's probably okay.

16 Q. Is it okay with respect to the percentage as well
17 or not?

18 A. No. I would change it to two and a half.

19 Q. Looking to the next 10 percent beginning with
20 "advise and assist Lottery," do you see that?

21 A. Yes.

22 Q. Any deletions with respect to that paragraph from
23 what you -- as compared to what you actually do?

24 A. I would delete the words "and contractors," and
25 the percentage is incorrect.

1 Q. What is the percentage correct?

2 A. Two and a half.

3 Q. Looking now to five percent below that, "Assist
4 with internal and new employee background," and so on, do
5 you see that?

6 A. Yes.

7 Q. Any deletions from that paragraph with respect to
8 what you actually do?

9 A. There would be several changes. I would delete
10 in the first line internal -- the words "internal and."
11 The second line I would delete "schedule and conduct
12 fingerprinting on new Lottery retailers, contractors and
13 employees."

14 Q. With those deletions what would the -- would the
15 percentage remain five percent or would it --

16 A. No. I would change it to one.

17 Q. Looking to the next five percent category
18 beginning with, "Properly maintain issued," do you see
19 that?

20 A. Yes.

21 Q. Would you leave the same or change in any way
22 that paragraph with respect to your actual job duties?

23 A. The paragraph -- or the sentence is okay. The
24 percentage would be incorrect. I would change that to
25 one percent.

1 Q. And finally, the last paragraph under essential
2 functions, section A, testify accurately, with a three
3 percent number, do you see that?

4 A. Yes.

5 Q. Would you change or leave the same that sentence
6 with respect to your actual job duties?

7 A. I would leave it the same, but I would change the
8 percentage to 10.

9 Q. Looking at section B, marginal functions,
10 underneath that there's a two percent percentage and then
11 a sentence that begins with the words "other special
12 assignments." Do you see that?

13 A. Yes.

14 Q. Would you change that sentence or leave it the
15 same with respect to your actual job duties?

16 A. The Lottery has changed the titles of a lot of
17 these positions, but -- like our Chief -- or the Deputy
18 Director uses the title Chief. The Chief Lottery Agent
19 now uses the title Deputy Chief. And the Supervising
20 Lottery Agents now use the title Lieutenant.

21 Q. How long ago were those changes made, if you
22 know?

23 A. When I started they were that way. My badge says
24 Investigator. It doesn't say agent. My credentials say
25 Investigator. My business cards say Investigator. The

1 sign hanging on my office door says investigator. We
2 write our reports and sign them as Investigator.

3 Q. And what percentage would you ascribe to that
4 if -- would it be two or something different?

5 A. I would say it's three. So it would bring it to
6 a hundred percent.

7 Q. Looking at the second page of Exclusive
8 Representative's Exhibit K, do you see the date at the
9 top right corner, February 19th, 2009?

10 A. Yes.

11 Q. Having examined this document and its contents,
12 do you -- would you agree or disagree that this document
13 was current as of six days ago, February 19th --

14 MR. MESSING: Object.

15 MR. ROSE: -- 2009?

16 MR. MESSING: Object.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I just don't
18 know how he --

19 MR. MESSING: Lack of foundation.

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: -- could say for
21 San Francisco District Office.

22 MR. MESSING: Correct.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: But could you
24 say, sir? Based on your prior testimony, I doubt it.

25 THE WITNESS: I don't think I can.

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yeah.

2 THE WITNESS: I mean I would say the information
3 contained that we've gone through that I've deleted is
4 old.

5 BY MR. ROSE:

6 Q. Well, with respect to the marginal functions and
7 the job title changes that you mentioned --

8 A. That's correct.

9 Q. -- were those only made in your area or were
10 they --

11 A. No. They were made statewide.

12 Q. So having that information in mind, would you
13 agree or disagree that February 19th, 2009, is a current
14 date for this document?

15 A. No. And there's issues with it, too.
16 Supervision. I am not directly supervised by anybody.
17 My supervisor is in San Francisco and she was -- or I'm
18 sorry.

19 MR. MESSING: I'm going to object. This is --
20 there's no question pending.

21 THE WITNESS: I thought we were talking about the
22 whole document. I'm sorry.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yeah. But I
24 mean -- but I don't follow how who you're supervised by
25 would be in here.

1 THE WITNESS: Well, this says direct -- a
2 supervising -- I'm reading from C where it says
3 "supervision received" on the second page. "A
4 Supervising Lottery Agent directly supervises the Lottery
5 Agent." My supervisor was promoted about six, seven
6 months ago. She has been to my office about three times
7 since that promotion.

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Oh, I see.

9 THE WITNESS: Promotion is via cell phone and e-mail.

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I can see -- you
11 mean supervision is via cell phone and e-mail?

12 THE WITNESS: That's correct.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

14 THE WITNESS: So to say --

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I see what
16 you're saying.

17 THE WITNESS: As a prior supervisor, if I'm
18 supervising you, I'm involved in your daily operations
19 and see you.

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: As far as
21 directly supervising.

22 THE WITNESS: Exactly.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. Fair
24 enough. Mr. Rose?

25 /////

1 BY MR. ROSE:

2 Q. Page two under section E, administrative
3 responsibility, none, do you see that?

4 A. Yes.

5 Q. With respect to that category, is that accurate
6 or inaccurate as to your current job duties?

7 A. I would say it's inaccurate. As well as D.

8 Q. D is inaccurate?

9 A. I would say it's inaccurate because I have --
10 being the agency's terrorism liaison officer coordinator,
11 I coordinate with three other what we call TLOs in
12 various regions in the state through the JTTFs and the
13 ARTACs. I'm the senior range master in the State of
14 California for the Lottery. I'm responsible for all in
15 service and tactical firearms training, the scheduling of
16 the training, the development of the courses of fire, the
17 approval of those, making sure the appropriate
18 documentation is maintained to meet POST standards,
19 making sure it gets to the appropriate people, all the
20 way up to our chief and our training coordinator.

21 So I would say when I'm on the range and I say it's
22 time to shoot and people shoot, and when I say it's time
23 for them not to shoot and they don't, or if there's --
24 somebody is -- needs remedial training. I had to write a
25 memo recently on one of our investigators who is just not

1 meeting the standards. So I would say that involves
2 supervision, because the management has put that -- given
3 that to me as a collateral duty and asked me to report
4 those issues back to them.

5 Q. You testified that there was not just the \$280
6 pay deficit that you're suffering that causes you to be
7 unhappy with CSLEA. Do you remember that answer?

8 A. Yes.

9 Q. What other issues cause you to be unhappy with
10 CSLEA's representation?

11 A. There's a lack of, I think, information from the
12 union. In the three years I've been with the State there
13 has been one actual union meeting in the central valley.
14 I know there's been a barbecue or two at the state
15 hospital in Coalinga, but I don't consider that a union
16 meeting.

17 Very little input is solicited from the membership
18 over issues. I have several friends who are in State
19 service that as recently a couple weeks ago have
20 expressed concerns over how issues were handled -- how
21 issues were handled by the -- I'll say the union for lack
22 of a better term.

23 I don't like the lack of transparency when it comes
24 to finances involving the union. I've never -- in the
25 almost three years I've worked for the State, I've never

1 been able to vote for -- I know I can't vote for a
2 president because that's not allowed by the general
3 membership, which I don't agree with. I've never been
4 afforded the opportunity to vote for -- when I was a
5 member of CSLEA and an affiliate of CACI --

6 MR. MESSING: I'm going to object. He's going into
7 the internal union issues and that's --

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: He is, but he
9 doesn't know that. That's --

10 MR. MESSING: True.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: That's
12 prohibition. So I mean that's nothing on your part. I
13 can't go into -- I have to deal with representation
14 issues more than your --

15 THE WITNESS: Okay.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: -- internal
17 conflicts, your --

18 THE WITNESS: That's all I --

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: -- transparency
20 sort of --

21 THE WITNESS: Right.

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: -- issues
23 that -- some of the transparency issues you're bringing
24 up.

25 THE WITNESS: I've never been able to -- is voting

1 one of those issues?

2 MR. MESSING: yes.

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: As far as the
4 way that the -- we already have the rules or the
5 Constitution in the record as far as how --

6 THE WITNESS: Okay.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: -- the president
8 is voted for.

9 THE WITNESS: Well, I'm not worried -- okay. Even
10 the CACI affiliate, which I was a member of for years,
11 I've never been afforded the opportunity to vote for a
12 president or to --

13 MR. MESSING: Object.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

15 MR. MESSING: Move to strike.

16 THE WITNESS: Sorry.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. So
18 struck. Next question.

19 BY MR. ROSE:

20 Q. You said you had several friends in State service
21 who were unhappy with how issues were handled. How many
22 friends do you have that are in Bargaining Unit 7?

23 MR. MESSING: Object. Relevance.

24 ADMINISTRATIVE LAW JUDGE CLOUGHESY: How many friends
25 do you have in Bargaining Unit 7? That one I got to

1 sustain.

2 MR. ROSE: How many -- well, obviously I was
3 referring to the people that are unhappy.

4 BY MR. ROSE:

5 Q. So how many friends do you have who have
6 expressed dissatisfaction to you about CSLEA who are in
7 Bargaining Unit 7?

8 A. I would say probably eight or ten.

9 Q. Of the eight or ten people in Bargaining Unit 7
10 who have expressed dissatisfaction to you about CSLEA,
11 how many of those are non-sworn non-peace officers?

12 A. Zero.

13 Q. Explain to me, please, the kinds of things you
14 hear from the eight or ten people in Bargaining Unit 7
15 who are peace officers, what they've told you about their
16 unhappiness with CSLEA?

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Well, I got to
18 frame you a little bit. I can't deal with the PAC
19 choices.

20 THE WITNESS: Let me get my -- let me get my --

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I can't deal
22 with financial disclosures and things of that nature.
23 But I'm talking about representational issues. Such as
24 the one that you brought up about, you know, the pay
25 parity for Lottery Agent and things that have to deal

1 with representing the membership.

2 THE WITNESS: I've only ever heard, I would say, of
3 the two issues you're discussing from one person. So I
4 would say probably whatever number we agree upon minus
5 one. So of those eight or ten, I would say it's seven or
6 nine.

7 BY MR. ROSE:

8 Q. Seven or nine that what? I didn't follow that.

9 MR. MESSING: I didn't either.

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Seven or nine
11 that had complaints concerning these representational
12 issues or these --

13 THE WITNESS: The ones that you're not talking about.
14 So I would say of the things that I can't talk about, of
15 the -- if it were eight or ten, I would say only one
16 pertains to one of the protected issues that I can't
17 discuss. So the majority would be not of these two
18 issues. Either --

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

20 THE WITNESS: Either PAC or financial.

21 BY MR. ROSE:

22 Q. The majority would not be of those issues?

23 A. That's correct.

24 Q. Okay. So what are those issues? Setting aside
25 the PAC, setting aside the manner in which you elect

1 officers, and setting aside financial transparency. And
2 I think it's -- just for the purposes of eliciting an
3 objection from opposing counsel, number one, but number
4 two, to help frame the discussion, I think it's fair game
5 to say that trans -- lack of information from the union
6 regarding bargaining, dissipation in the bargaining
7 process, and effectiveness at the bargaining table are
8 representational issues. Those kinds of things. Is
9 that --

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Fair game.

11 BY MR. ROSE:

12 Q. Okay. Based on that framework, tell us what
13 you've heard.

14 A. Lack of representation I would say. A friend of
15 mine recently approached me who actually I had no clue is
16 working for the State and he is -- we played football
17 together in high school. Described an incident to me
18 where he asked for representation on an overtime issue
19 involving travel, and the agency refused to pay the
20 travel. It was after his normal work hours. CSLEA took
21 a grievance, provided representation to him. It was -- I
22 was told it was a no-brainer when they went into the
23 meeting to resolve it. And when he came out, that the
24 representative from CSLEA had taken the side of the union
25 [sic] and said, yeah, they don't have to pay you the

1 overtime under those circumstances.

2 Q. CSLEA had taken -- representative had taken the
3 side of the union?

4 A. Yeah, exactly. Instead of the -- or not taken
5 the side of the union, but taken the side of the agency
6 in agreeing with them that they did not have to pay the
7 employee, or compensate him in any manner for the
8 overtime.

9 Q. What else?

10 A. People have complained about the lack of being
11 notified of the widow to drop from fair share to objector
12 status.

13 MR. MESSING: Okay. I'm going to object to this.
14 This goes into the internal union --

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I have to agree.

16 MR. MESSING: -- issue of that, so that doesn't --

17 THE WITNESS: I didn't see that as one of them.
18 Nonetheless --

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sorry. We don't
20 have something up on the --

21 THE WITNESS: There's not a list on the wall?

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: -- on the white
23 board there, yeah.

24 THE WITNESS: Okay.

25 /////

1 BY MR. ROSE:

2 Q. Keep going. What else? Gary will tell you when
3 you're out of line.

4 A. Okay. I'll keep -- I'll keep an eye on him. A
5 lack --

6 MR. MESSING: You're out of line.

7 THE WITNESS: Okay. A lack of information coming out
8 to the membership. That if -- for updates with the
9 bargaining process. Another friend, who is a retired
10 annuitant, being treated very discourteously when he
11 called CSLEA asking why as a retired annuitant he was
12 going to have to pay dues, and then potentially full
13 membership. And what he was told was -- his question
14 was, if you want to know what --

15 MR. MESSING: Object. This is again in the same
16 issue.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: What he -- what
18 he was told is PERB told them that they got to do it. So
19 let's get on to the next question.

20 THE WITNESS: No, that's not what he was told.

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Well,
22 regardless.

23 THE WITNESS: Okay.

24 MR. MESSING: Well, setting --

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: We just had a

1 decision --

2 THE WITNESS: Okay.

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: -- come down
4 that said that, so --

5 BY MR. ROSE:

6 Q. Well, setting aside what the -- he made an
7 inquiry about something, and the response was -- the tone
8 of response was what?

9 A. The response from CSLEA, what he told me, was the
10 person at CSLEA said, "If you want to know what you're
11 going to get, read your fucking contract." And this is
12 a -- this is a --

13 Q. Is that a quote?

14 A. Yeah. This is a guy who's been in State service
15 32 years whose wife just recently passed away, so it was
16 not received --

17 MR. MESSING: Object. Relevance.

18 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. Well,
19 regardless of the wife --

20 THE WITNESS: Okay. Sorry.

21 MR. ROSE: What else?

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: -- anything
23 else?

24 THE WITNESS: Another guy that I know voiced some
25 concerns in writing -- well, I don't even know if I can

1 bring this up -- over something that was posted on the
2 CSLEA website in reference to the severance.

3 MR. MESSING: Object.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yeah.

5 THE WITNESS: Okay.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Let's please go
7 past that one.

8 THE WITNESS: Sorry. Sorry.

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Anything else?

10 THE WITNESS: It wasn't on my list.

11 MR. ROSE: Okay.

12 THE WITNESS: It seems like everything I say is going
13 to come up on the list, so --

14 BY MR. ROSE:

15 Q. All right. By the way, in assembling these
16 documents, just so that we're clear, what -- how did
17 you -- what filter did you use, so to speak, in
18 determining which documents to compile?

19 A. I used the -- I did a title search for the title
20 of, quote, "investigator," unquote, and then did a second
21 search with the -- just using the single word of agent in
22 quotes.

23 MR. ROSE: And for the record, I said these
24 documents, and I was holding up --

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Petitioner W.

1 MR. ROSE: -- Petitioner's W.

2 THE WITNESS: W, right.

3 MR. ROSE: Nothing further.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Messing.

5 MR. MESSING: Yes.

6 THE WITNESS: Do I need the list again?

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: No.

8 THE WITNESS: Okay.

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Alls you got to
10 do is answer his questions.

11 RE CROSS-EXAMINATION

12 BY MR. MESSING:

13 Q. Starting with this. Regarding the percentages
14 that are listed here -- well, first of all, this appears
15 to be to you a current document from the San Francisco
16 office, correct?

17 A. It's dated I think -- well, it says page two of
18 three. I don't see a page three on here. But it says
19 February 19th, 2009.

20 Q. Okay.

21 A. I've never seen it before that.

22 Q. So that appears to be a current document to you?

23 A. Okay.

24 Q. All right. And you don't know -- you don't have
25 any reason to believe that these percentages as they're

1 listed here are incorrect for people working in the
2 San Francisco office?

3 A. Again, I don't work in the San Francisco office.
4 I mean this is something we did, I think, once a year for
5 some reason. I have no clue really why. The last one I
6 got was from -- it had somebody else's name on it. I
7 think it was from our office in Santa Ana.

8 Q. The question, though, is is you don't have any
9 reason to believe that these percentages are not
10 reflective of what Lottery Agents do in the San Francisco
11 office, do you?

12 A. Yeah. Again, I think I've answered that. I
13 don't know what the percentages would be for them.

14 Q. Okay. Do you have reason to believe that
15 San Francisco Lottery Agents perform different job
16 functions than their counterparts in the Fresno office?

17 A. I would say it could be different percentages.

18 Q. Okay. Is there a Duty Statement that you're
19 aware for the Lottery Agents in the Fresno office?

20 A. I think there is. I think there's one that is
21 titled Operations Investigator, as this one is titled
22 Field Investigations at the top. As an example, I would
23 say an Operations Investigator does zero criminal. And
24 then, again, I've seen them, like I say, for Fresno, for
25 Santa Ana, and now this one. So I think there is one

1 specific to each office.

2 Q. Okay. So your -- let me understand this. Your
3 recollection is that there are Lottery Agents in the
4 Fresno -- in the Fresno office who do zero criminal
5 investigations?

6 A. No, I don't think that's what I said at all. I
7 said I think in --

8 Q. I thought -- I thought so.

9 A. I'm sorry. If I said that I meant Sacramento.
10 An Operations Agent.

11 Q. Oh, I'm sorry.

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Thank you. You
13 did say the wrong thing.

14 THE WITNESS: Okay. An Operations Agent in
15 Sacramento who does not leave the building, I would say
16 is not out knocking on doors and hunting people down.

17 BY MR. MESSING:

18 Q. Okay. And when you say an Operations Agent,
19 there may be more than one?

20 A. I believe there is more than one.

21 Q. Okay. Now, you were concerned about the lack of
22 information about activities in CSLEA. How often do you
23 visit the CSLEA website?

24 A. Do I or did I?

25 Q. How often do you?

1 A. Oh, maybe once a week.

2 Q. Once a week?

3 A. You're aware I've been expelled from CSLEA,
4 right?

5 Q. Does that --

6 A. Well, that's not really my --

7 Q. -- interfere with your ability to go visit the
8 website?

9 A. No. But I would say --

10 Q. Okay. So --

11 A. -- as a union member, if you'll let me finish,
12 that would be my primary point of information for union
13 issues would be the website. But I'm not a member of the
14 union anymore, so that's not --

15 Q. Okay.

16 A. -- a good source of information.

17 Q. Okay. And in the past how often did you visit
18 the website?

19 A. When I was a member I'd say probably a couple
20 times a week --

21 Q. Okay.

22 A. -- looking at that and grievance status and some
23 other things.

24 Q. And you are aware that the website posts
25 information about bargaining with the State?

1 A. Yes.

2 Q. Okay. And -- okay. Are you aware of a process
3 to log onto the CSLEA website if you're a member that
4 allows you to track grievances filed by CSLEA against the
5 State?

6 A. I wouldn't say it allows you to track. I mean it
7 says what grievances are out there and at what point
8 they're at. And so I guess if that's tracking, that's
9 tracking. They'll say there was a hearing this day.
10 Here's what was said. Here's our next hearing. It's
11 just kind of so and so, Joe Blow, ABC, overtime, and
12 who's doing the representation.

13 Q. Okay. And it informs you what step of the
14 grievance process the grievance is at, correct?

15 A. It does. And my experience would be is a lot of
16 times it is not up to date.

17 Q. Okay. And by the way, this allows any member to
18 view the status of any of the grievances filed by CSLEA,
19 correct?

20 A. I don't think I could say yes or no, because I
21 think that depends on if CSLEA is posting 100 percent of
22 the grievances on that site.

23 Q. My point is is that the site doesn't restrict you
24 solely to, let's say, grievances by Lottery Agents?

25 A. That's correct.

1 Q. Okay.

2 A. That's correct.

3 Q. You can find out the progress of grievances filed
4 by park rangers, Fish and --

5 A. Department of Justice agency.

6 Q. DOJ.

7 A. Everybody and their brother.

8 Q. Okay. Now, the people who have complained to you
9 about CSLEA that you referred to, is the timeframe of
10 that from 2006 to the present?

11 A. Yes.

12 Q. Okay. So that's almost three years, correct?

13 A. Yes.

14 Q. Okay. The -- so let's deal with the ones that
15 had specific complaints. Now, you indicated that there
16 was one individual who was concerned about representation
17 on an overtime issue.

18 A. Yes.

19 Q. Was that Mr. Cline?

20 A. I don't know anybody named Cline.

21 Q. Okay. Who was that individual?

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sorry. You
23 brought it up, you got to say. They got to be able to
24 rebut it if it's true.

25 THE WITNESS: Eric Maddox.

1 BY MR. MESSING:

2 Q. Maddox? Okay. Who does he work for?

3 A. Sorry. He's a Food and Drug Investigator.

4 Q. Okay. And you said that he had an issue with a
5 grievance about overtime issues?

6 A. Yes.

7 Q. Okay. Can you tell me specifically what the
8 issues were that he raised?

9 A. His issue was that Food and Drug Investigators
10 primarily --

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Don't worry
12 about them. Just keep going.

13 THE WITNESS: Okay. Food and Drug Investigators work
14 primarily from their home. He was assigned to range in
15 Sacramento. They got done by I think a half hour, he
16 said, before the end of his shift, so he had a three and
17 a half hour drive home, because the agency would not
18 authorize an overnight stay, even though he was within
19 the mileage requirements.

20 He put in for the overtime. It was denied. He was
21 told by the agency that they did not have any
22 responsibility to pay him for the overtime. He filed a
23 grievance. Was represented by a female from CSLEA. I
24 didn't bother to ask a name. He didn't tell me. She
25 came down and met with him before they went into the

1 meeting to try and resolve it. And he said when he came
2 out of the meeting, that she agreed and sided with
3 management. And says that since then he's been under
4 pressure from management over that.

5 BY MR. MESSING:

6 Q. Okay. Do you know who John Spencer is?

7 A. Not a clue.

8 Q. Okay. So you wouldn't -- you wouldn't know
9 whether he was the president of the affiliate that
10 Mr. Maddox was in at the time of this grievance?

11 A. Again, I don't --

12 MR. ROSE: Objection. Lacks foundation.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sustained.

14 BY MR. MESSING:

15 Q. Okay. Did Mr. Maddox tell you that his affiliate
16 president requested that a grievance not be filed after
17 attempts to resolve this issue?

18 A. No.

19 Q. He didn't. Okay. Did he tell you -- did he tell
20 you why the grievance did not proceed?

21 A. I -- he told me that he did have a grievance, and
22 I remember seeing it listed on the CSLEA website. So the
23 grievance was on there.

24 Q. I said why it didn't go forward. Did he tell you
25 the reason why?

1 A. Okay. My assumption is when you say why the
2 grievance didn't go forward that there was not a
3 grievance on there.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: That was a fair
5 assumption.

6 BY MR. MESSING:

7 Q. Wasn't pursued.

8 A. I think if CSLEA is sending -- or take CSLEA out.
9 Any union is sending somebody to represent you and
10 there's meetings going on and dialog, that obviously a
11 grievance is proceeding at some speed to some degree of
12 finality.

13 Q. At some point the grievance stopped progressing
14 before there was a resolution, correct?

15 A. I don't know. My -- his --

16 Q. Okay. You don't know. Okay.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: If you don't
18 know, that's fine.

19 THE WITNESS: Yeah.

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: He'll go on to
21 the next one.

22 THE WITNESS: I'm just going -- you asked me what
23 Eric told me and --

24 MR. MESSING: I'm moving --

25 THE WITNESS: -- I'm telling you I don't know.

1 MR. MESSING: I'm moving on the question.

2 THE WITNESS: Okay.

3 BY MR. MESSING:

4 Q. That's fine if you don't know what happened to
5 it.

6 A. I mean I know what happened to it. He told me he
7 wasn't paid for the overtime.

8 Q. Okay. But you don't know exactly what steps
9 CSLEA took with respect to processing and -- processing
10 and pursuing that grievance, do you?

11 A. Right. That's correct.

12 Q. Okay. All right. Now, you said that there were
13 people who had problems -- actually, let me go back for a
14 second.

15 Do you know what proposals were made for Lottery
16 Agents at the bargaining table in the last round of
17 bargaining?

18 A. I don't know specifically. I remember getting an
19 e-mail from I think Al Lewis again at one point saying
20 that the salary, I think his term was a priority during
21 bargaining. Salary was not the only thing I put down on
22 my list of suggestions.

23 Q. The question is do you know -- let me put it a
24 different way -- what proposals were made by CSLEA to DPA
25 for bargaining on behalf of Lottery Agents in the last

1 round of bargaining?

2 A. Okay. Again, I think I already answered that.
3 And I said specific -- what specific things were asked
4 for on behalf of agents, no.

5 Q. Okay. You said that there were people who
6 complained about not getting information about
7 bargaining. That's the other specific complaint that I
8 believe you made other than the overtime situation.

9 A. Right.

10 Q. Okay. Who were the people who complained about
11 not getting information about bargaining?

12 A. Oh, at the State Medical Board Todd Baker, Norm
13 Jorgensen.

14 Q. Wait a minute. Let me write these down. Okay.
15 Go ahead.

16 A. Todd Baker, Norm Jorgensen, John Grayson, Jesse
17 Townsend. With the Lottery Jack Gregory. With DMV Roger
18 Wilbanks. Another guy at DMV in Fresno. His name
19 escapes me. Lars Okander [phonetic] with ABC. Laurie
20 Koman [phonetic] with ABC. Art Longoria with Department
21 of Justice.

22 Q. Okay. I'm really confused. Your prior testimony
23 was that there was seven to nine people who made
24 complaints, and we're already way past that.

25 A. You're way past seven to nine?

1 Q. Well, absolutely.

2 A. How many you got?

3 Q. Including Mr. Maddox.

4 A. Well, you --

5 Q. I'm aware we're --

6 A. Even with him how many you got right now?

7 Q. Okay. Let's see.

8 A. I don't know. You went to public school as well.

9 Q. Okay. How many -- are there any additional ones?

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yeah. Anymore?

11 THE WITNESS: Well, you know I --

12 MR. MESSING: Go ahead.

13 THE WITNESS: I need to go back. I think if you're
14 saying, you know, how many specifically --

15 MR. MESSING: Right.

16 THE WITNESS: -- those are the people I specifically
17 remember. So if it's --

18 MR. MESSING: Oh, I see. So --

19 THE WITNESS: How many -- how many do you have right
20 now?

21 MR. MESSING: Well, let me explain to you.

22 THE WITNESS: Well, wait a minute.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: No.

24 MR. MESSING: Just a moment.

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Is there --

1 THE WITNESS: Okay.

2 MR. MESSING: Are there any others?

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Are there any
4 others?

5 THE WITNESS: I'm sure there are. I would say right
6 now their names escape me.

7 BY MR. MESSING:

8 Q. Okay. Because, you know, your testimony was that
9 some of these people had complaints about internal
10 issues.

11 A. Well, just because somebody complains --

12 Q. So is it true that every single person who
13 complained to you complained about a lack of information
14 about bargaining?

15 A. Yeah, that's probably correct.

16 Q. Okay. Then that explains it. All right. Now,
17 of these people who complained about the lack of
18 information over bargaining, over what period of time did
19 you get these complaints? Was this over three years?

20 A. I think it probably came to a head usually close
21 to bargaining. When the -- probably right around the
22 time, you know, people were solicited for ideas for
23 bargaining.

24 Q. Okay. Do you know how many of these people
25 visited the CSLEA website?

1 A. You'd have to ask them. I have no idea.

2 Q. You didn't ask them?

3 A. Did I ask them if they visited --

4 Q. Yes.

5 A. No.

6 Q. Okay. Did you ask them what efforts they made to
7 get information about bargaining?

8 A. Yeah.

9 Q. Okay. What did they say, each one of them?
10 Obviously they didn't -- you didn't ask them about the
11 website, so what did you ask them?

12 A. I would say in the majority of cases they
13 would -- the answer would be that they talked to the
14 agency's union rep. So at the Medical Board it would
15 have been Al -- sorry, Alan Irish. With the Lottery it
16 would have been Al Lewis. The others, I can't -- I can't
17 tell you who their people were.

18 Q. Okay. But which ones of these people told you
19 specifically that they talked to their representative and
20 didn't get information about bargaining?

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: If you remember.

22 THE WITNESS: I couldn't tell you.

23 MR. MESSING: Okay.

24 THE WITNESS: I was -- go ahead.

25 /////

1 BY MR. MESSING:

2 Q. These people that they spoke to, were these job
3 stewards, or were they CSLEA paid representatives?

4 A. What is Alan Irish's title?

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. Do you
6 know? If you don't know, you don't know.

7 BY MR. MESSING:

8 Q. Do you know?

9 A. All I know is that when I started at the Medical
10 Board I was told with union issues you talk to Alan
11 Irish. So I don't know if he's a site rep, a job
12 steward, a union rep. Whatever title you want to put on
13 it. There is a designee at each agency.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: So is he an
15 employee?

16 THE WITNESS: Yes. Yes. Allen Irish is a Senior
17 Investigator with the Medical Board. Kasey I'm sure can
18 you tell his title.

19 BY MR. MESSING:

20 Q. And he's not employed by CSLEA?

21 A. I know if he gets a stipend. I know they go on
22 the trips. And so I don't know what financial position
23 they have with CSLEA, if any.

24 Q. Are you aware that Kasey Clark is currently
25 working with Joe -- and I don't know how to pronounce his

1 last name -- Ahula [phonetic] regarding various personnel
2 issues at the Lottery?

3 A. Ahuna [phonetic]?

4 Q. Ahuna.

5 MR. ROSE: Objection. Assumes facts not in --

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sustained. Are
7 you aware of whether or not he is working --

8 MR. MESSING: Whether or not.

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: -- with Joe
10 [sic]?

11 THE WITNESS: No, I don't know.

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

13 MR. MESSING: You don't know. Nothing further.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Ms. Truong?

15 MS. TRUONG: Nothing.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Rose,
17 anything further, or are you going to be merciful to
18 this --

19 THE WITNESS: Please.

20 MR. ROSE: I am being merciful.

21 THE WITNESS: Please be merciful.

22 MR. ROSE: I have nothing further.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

24 Mr. Shoemaker, thank you very much. And with that, I

25 think Exhibit D, the Declaration, is admitted. We'll go

1 off the record.

2 (Petitioner's Exhibit D received in
3 evidence.)

4 MR. ROSE: Oh, we move admission of Exhibit W. Oh,
5 did we already get that in? Yeah, we did.

6 (Off the record.)

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. We
8 are back on the record. We have another witness called
9 by the Petitioner. I'm going to ask this witness to
10 raise your right hand.

11 (Witness sworn by the Judge.)

12 THE WITNESS: Yes.

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

15 THE WITNESS: Jesse Townsend. T-O-W-N-S-E-N-D.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.
17 Marking as Petitioner's Exhibit X what appears to be a
18 Declaration of this witness.

19 (Petitioner's Exhibit X marked for
20 identification.)

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And I have a
22 couple of preliminary questions before handing this over
23 to you. Did you receive an e-mail containing the
24 transcripts of the first two days of hearing in this
25 matter?

1 CERTIFICATION AND
2 DECLARATION OF TRANSCRIBER

3 I, Leisa M. Miller, a duly designated transcriber of
4 Vine, McKinnon & Hall, do hereby declare and certify
5 under penalty of perjury that I have transcribed from a
6 CD recording the proceedings in the matter of STATE OF
7 CALIFORNIA, Employer, and PEACE OFFICERS OF CALIFORNIA,
8 Petitioner, and CALIFORNIA STATEWIDE LAW ENFORCEMENT
9 ASSOCIATION, Exclusive Representative, Unfair Practice
10 Charge No. SA-SV-171-S, which recording was duly recorded
11 at Sacramento, California on February 27, 2009, and that
12 the foregoing pages 1 through 249 constitute a true,
13 complete and accurate transcription of the aforementioned
14 recording to the best of my ability.

15
16 Dated this 16th day of March, 2009, at Dixon,
17 California.

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