

February 27, 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 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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APPEARANCES

Administrative Law Judge

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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 THE WITNESS: No.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. Have
3 you reviewed any transcripts regarding the first two days
4 of this matter?

5 THE WITNESS: No.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. Handing
7 you Petitioner's Exhibit X, sir. If you can take a quick
8 look at that and then tell me what it is.

9 THE WITNESS: It's a Declaration and a Petition that
10 I had offered and sent to CSLEA representatives.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

12 And --

13 THE WITNESS: Regarding my job description and
14 duties.

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: If you would
16 turn to the -- your signature page?

17 THE WITNESS: I have the signature page.

18 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. And
19 is that your signature, sir?

20 THE WITNESS: Yes. Original.

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And did you sign
22 it on or about the date set forth in the Declaration and
23 at the place?

24 THE WITNESS: January 28th, 2009, in Sanger,
25 California.

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. Any
2 further issues for -- other than that, any further issues
3 for Mr. Townsend?

4 MR. ROSE: Yes.

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.
6 Proceed.

7 TESTIMONY OF

8 JESSE TOWNSEND,

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

11 DIRECT EXAMINATION

12 BY MR. ROSE:

13 Q. Mr. Townsend, good afternoon. Thank you for your
14 patience. How long have you been in a classification
15 that is represented by CSLEA?

16 A. Since January 2003. Although I've held two
17 different -- two different classifications with two
18 different departments. The classification I'm currently
19 in now was in February 2007.

20 Q. I see. Are you satisfied with CSLEA's adequacy
21 of representation?

22 A. No.

23 Q. When did you -- have you always been dissatisfied
24 with CSLEA's representation?

25 A. I've been dissatisfied with CSLEA's

1 representation since I've come to learn the manner in
2 which they represent the peace officers, and they try to
3 convolute or dilute the bargaining power of the peace
4 officers by trying to distribute the money in which I
5 believe that we're qualified to retain.

6 MR. MESSING: Object.

7 THE WITNESS: Or qualified to get.

8 MR. MESSING: This goes to the issue of internal --

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: No. I think
10 it --

11 MR. MESSING: -- financial issues.

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I disagree. I
13 think this is dealing with Karnow's --

14 MR. MESSING: Oh, is he -- is he talking about
15 bargaining?

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yes, sir.

17 MR. MESSING: Oh, I see. Okay. In that case I'll
18 withdraw the objection.

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I think this
20 goes to our very first day of hearing, but --

21 MR. MESSING: Withdraw the objection.

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. I'm
23 sorry, but you might have got cut off, sir. Did -- was
24 there anything else?

25 THE WITNESS: I've lost the thought. Sorry.

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. All
2 right.

3 MR. ROSE: Well, I'll ask you --

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: We're sorry.

5 MR. ROSE: -- as you some more questions about that.

6 THE WITNESS: Sure.

7 BY MR. ROSE:

8 Q. So when did you first become dissatisfied with
9 CSLEA's representation of you as a peace officer?

10 A. When I understand that moneys that were
11 entitled -- that moneys that were authored -- I said that
12 were authored -- authorized to be coming to peace
13 officers were rejected because they weren't distributed
14 amongst all the bargaining units within CSLEA.

15 Q. Well, when did you first -- I mean what time
16 period did you first acquire that information that you're
17 describing now?

18 A. 2005, I believe. 2006. Somewhere in that
19 neighborhood. It's real fuzzy. But it was specifically
20 ingrained and kind of confirmed in 2008.

21 Q. And how did you acquire that information?

22 A. It was attending a conference.

23 Q. What conference?

24 A. Or the informational conference.

25 Q. What conference did you attend?

1 A. It was in January 2008. There was a membership
2 informational meeting, and this information was
3 distributed to me, or I heard it. It was said to
4 everybody.

5 Q. Who said this information to you at the
6 conference?

7 A. Not to me specifically, but to the group. It was
8 Richard Carrillo.

9 Q. What did Mr. Carrillo say?

10 A. As I recall, he was -- Mr. Carrillo said that
11 there was money that we were supposed to get, or there
12 was money authorized -- that peace officers were
13 authorized to receive some sort of raise, and the reason
14 we rejected the raise was because the money was not --
15 none of the money was going to be evenly distributed
16 through all the bargaining units between sworn and non-
17 sworn.

18 Q. When you say all the bargaining units, are you
19 referring to employees outside of Bargaining Unit 7?

20 A. No. What I'm referring to is Bargaining Unit 7.
21 Bargaining Unit 7 is distributed into three different
22 subunits, A, B and C.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Oh, I see.
24 Okay.

25 THE WITNESS: The -- well, okay.

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: That helps. I
2 got a little bit confused on that, too.

3 THE WITNESS: Okay.

4 BY MR. ROSE:

5 Q. Okay. Do you know how many affiliates of CSLEA
6 there are?

7 A. I can only guess.

8 Q. Well, don't guess. These subunits A, B and C,
9 how do they -- how are they organized as far as you know?

10 A. As far -- as I understand it, Bargaining Unit A
11 is with peace officers, which has peace officer
12 affiliates. Bargaining Unit B and C is the other
13 classifications, which are not peace officers, and they
14 have those affiliates which are not peace officers just
15 as well.

16 Q. Okay. Are there any other reasons why you are
17 dissatisfied with CSLEA's adequacy of representation?

18 A. In talking to a labor representative from CSLEA,
19 he was unwilling or unmatched to engage in meaningful
20 conversation regarding a severance or a POC, or any type
21 of idea of a peace officer only union. The reasons he
22 would offer to me weren't substantiated, they weren't
23 articulated, and he would just -- generally just say it's
24 a bad idea because of the political outcomes and the lack
25 of political influence that a peace officer only union

1 would have with the State of California and the
2 Legislature.

3 MR. ROSE: All right. Nothing further.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.
5 Mr. Messing.

6 MR. MESSING: Sure.

7 CROSS-EXAMINATION

8 BY MR. MESSING:

9 Q. First of all, did you review any other documents
10 before coming to testify here, other than your
11 Declaration?

12 MR. ROSE: Vague as to time.

13 THE WITNESS: I don't understand the question. Other
14 documents --

15 BY MR. MESSING:

16 Q. Did you review any documents to help you prepare
17 for your testimony here other than the Declaration
18 sitting in front of you?

19 A. Prior to knowing to testify, the answer's no.

20 Q. Okay. On page four of your Declaration, could
21 you have a look at that for a moment?

22 A. Yes.

23 Q. I see the laws that you are called upon to
24 enforce. Okay. Now, it is true that -- is it not, that
25 you enforce -- you investigate -- you conduct and

1 supervise investigations of administrative and civil
2 matters as well as criminal?

3 A. Yes. Yes, that's correct.

4 Q. Okay.

5 A. Civil matters, yes.

6 Q. Civil matters. What about administrative
7 matters?

8 A. Yes.

9 Q. Okay. And out of these laws that are listed on
10 page four, is it fair to say that most of the provisions
11 that you deal with in the Business and Professions Code
12 deal with civil and administrative enforcement as opposed
13 to criminal?

14 A. No, that's not the approach I take,
15 interpretation of my position.

16 Q. That's -- I'm not asking you about the
17 interpretation of your -- of your position. I'm asking
18 you if most of the provisions that you actually enforce
19 in the Business and Professions Code deal with
20 administrative and civil violations as opposed to
21 criminal.

22 MR. ROSE: Objection. Asked and answered.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I disagree.

24 THE WITNESS: I take -- I take the approach
25 investigating my -- investigating any cases that I have

1 as looking for any violations of these codes, including
2 administrative and civil violations.

3 BY MR. MESSING:

4 Q. Okay. Specifically with respect to the Business
5 and Professions Code.

6 A. Okay. Business and Professions Code, yes.

7 Q. Yes, we're dealing with that.

8 A. Okay.

9 Q. You commence an investigation.

10 A. Uh-hmm.

11 Q. Most of those investigations dealing with B&P
12 Code violations end up as civil issues or administrative
13 issues and not criminal; isn't that true?

14 A. They may.

15 Q. Okay. What about the California Code of
16 Regulations, aren't those predominantly administrative
17 and civil violations that you're dealing with?

18 A. They may as well.

19 Q. Okay. The same with the Government Code?

20 A. No. The Government Code deals with criminal
21 violations that I've dealt with mostly.

22 Q. Mostly --

23 A. Yes.

24 Q. -- criminal violations? Okay. All right. Now,
25 let's talk about some of your duties as listed on page

1 five of your Declaration.

2 A. Okay.

3 Q. Okay. Now, you say that you conduct and
4 supervise complex investigations that are administrative,
5 civil and criminal related to alleged violations against
6 vocational and professional licensees of the Department
7 of Consumer Affairs. You say as well as criminal
8 unlicensed activity. So the portion dealing with
9 vocational professional licensees, is that part
10 predominantly administrative as opposed to the criminal
11 unlicensed activity?

12 A. No. I believe they're a nexus.

13 Q. Okay. But the administrative and civil issues
14 arise when you're dealing with vocational or professional
15 licensees; is that correct?

16 A. Yes.

17 Q. Okay. And it says in here that -- you understand
18 that the job -- the job duties that are listed here are
19 representative of -- representative that duties that you
20 actually engage in; is that right?

21 A. I may, yes.

22 Q. Okay. Are there some items here that you may
23 engage in, but you haven't actually engaged in?

24 A. Are you asking me there's something listed that I
25 may engage in that I have not?

1 Q. Yes.

2 A. No.

3 Q. No? Okay. So, for example, felony arrests, how
4 many felony arrests have you made since assuming the
5 classification that you're now in?

6 A. Oh, the classification I'm currently in?

7 Q. Yes. What is your current classification?

8 A. A Senior Investigator, Department of Consumer
9 Affairs.

10 Q. Okay. How many felony arrests have you made as a
11 Senior Investigator?

12 A. None yet.

13 Q. Okay. Well, I was asking you, how many of these
14 have you actually -- have you actually not performed in
15 your current classification? Do you want to look at the
16 list and give me another answer?

17 A. Oh, I see what you're saying now. I understand
18 the question. Oh, there may be several. But I'm
19 authorized and obligated and trained to conduct all of
20 them.

21 Q. I said that as a premise --

22 A. Okay.

23 Q. -- that you're authorized to do it. What I'm
24 asking you is, which of these items have you not done --

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yet.

1 MR. MESSING: -- in your current classification.

2 THE WITNESS: Oh, yet?

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yeah. What
4 haven't you done yet that's on that list.

5 THE WITNESS: Well, I haven't made a felony vehicle
6 stop in my current classification. Felony arrest, not
7 yet. Is there any other questions as far as what --

8 BY MR. MESSING:

9 Q. Well, you have the whole list here that goes all
10 the way down to number 59.

11 A. Well, for brevity --

12 Q. I'd like you to go through them one by one and
13 tell us which of these items you do not -- you have not
14 actually performed --

15 A. Okay.

16 Q. -- in your current classification.

17 A. I supervise -- I've conducted and supervised --

18 Q. No. Hold on.

19 A. Okay.

20 Q. I'm not asking you which ones you did perform.

21 I'm asking you which ones you haven't performed.

22 A. Okay. I haven't taken a deposition. And in this
23 department I have not yet testified as an expert witness
24 in a state or federal court.

25 Q. Okay. Is that it?

1 A. Yes.

2 Q. Okay. I just want to go back over this list for
3 a moment and talk about some of the things on this list.
4 In particular, for example, investigating the financial
5 moral character of applicants for licenses. That's
6 number 30.

7 A. Okay.

8 Q. For licenses. Now, isn't it true that that would
9 be administrative -- an administrative function as
10 opposed to a criminal investigation?

11 A. It may. The reason I say that is because they
12 have a probation monitor in order to do that. But in
13 case there's a criminal violation that is detected and
14 needs to be investigated, they have an officer do it.

15 Q. Okay. How many investigations have you done of
16 the financial moral character of applicants for licenses?

17 A. One.

18 Q. One? Okay. Did that one result in a criminal
19 investigation or criminal action?

20 A. No, no criminal action.

21 Q. Okay. You said that you haven't made any felony
22 arrests. How many misdemeanor arrests have you made?

23 A. My department -- my agency prohibits me from
24 doing that.

25 Q. So the answer is none?

1 A. None.

2 Q. Okay. You investigate --

3 A. Can I clarify that -- can I clarify that answer
4 just as well?

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I'm sorry. You
6 can't.

7 THE WITNESS: Okay.

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: We've got to
9 just -- we've go to --

10 THE WITNESS: Answer the question they ask, fine.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yep.

12 BY MR. MESSING:

13 Q. You investigate suspected misuse of license
14 privileges. Okay. Now, that can be administrative?

15 A. That can be administrative or both.

16 Q. Okay. And the remedy often for a misuse of a
17 license privilege is the revocation of the license?

18 A. I'm not part of that.

19 Q. Okay. Is the same true of violations
20 probationary licensees, is that generally administrative?

21 A. It's both. It can be administrative and --

22 Q. It's both?

23 A. Right.

24 Q. Okay. It says in 37 that you interpret and
25 explain the laws, rules and regulations of the boards and

1 bureaus. To whom do you explain them?

2 A. Local agencies, local district attorneys,
3 local -- specific drug enforcement units with the local
4 police departments or sheriffs.

5 Q. Okay. So you certainly wouldn't characterize
6 that as participating in a criminal investigation or law
7 enforcement action?

8 A. It would -- it would be a law enforcement action
9 because it deals with specific law enforcement and
10 specific criminal codes and how to deal with a case in a
11 criminal aspect.

12 Q. Would you call this pertaining to criminal
13 investigation?

14 A. Yes.

15 Q. Oh, okay. Participating in community forums, how
16 often do you do that?

17 A. I've done it twice.

18 Q. Okay. Was there any criminal investigation
19 involved in those activities?

20 A. No. But there's technical questions regarding
21 criminal investigative matters.

22 Q. But no criminal enforcement action taken?

23 A. Not necessary in a community forum.

24 Q. Okay. It says under 41 you prepare, author and
25 serve search warrants, subpoenas, et cetera. Let's start

1 with search warrants. How many search warrants have you
2 served?

3 A. With this department?

4 Q. In your current classification.

5 A. No, I haven't served any. I've assisted in
6 serving search warrants.

7 Q. It says you prepare, author and serve. So that's
8 not a correct statement?

9 A. I've assisted. It's a correct statement inasmuch
10 as I've assisted, but I wasn't the primary.

11 Q. Okay. How about subpoenas, have you prepared,
12 authored and served subpoenas?

13 A. Yes.

14 Q. Okay. How many?

15 A. I don't -- I don't -- I don't have a tally sheet.
16 I can't give you an accurate count. But it's more than
17 one.

18 Q. More than one, less than ten?

19 A. No. More than ten.

20 Q. Okay. What kind of proceedings were those for?

21 A. A criminal matter and administrative matters.

22 Q. Okay. You said a criminal matter and
23 administrative matters. So there were -- there was one
24 criminal matter?

25 A. Yes.

1 Q. And all the other subpoenas -- how many subpoenas
2 were involved in the criminal matter?

3 A. The one I'm thinking about is two.

4 Q. Okay. And how many subpoenas -- you said
5 administrative matters. How many administrative matters?

6 A. I couldn't give you an accurate number.

7 Q. More than 10?

8 A. More than 10.

9 Q. Okay. And were there at least one subpoena
10 issued for each of those administrative actions?

11 A. No. Ask the question again.

12 Q. Well, you said you've served them in
13 administrative matters. You said there were more than
14 administrative -- 10 administrative matters, correct?

15 A. Yes.

16 Q. Were there more than one subpoenas issued in
17 those administrative matters, or were they only one per
18 matter?

19 A. No. There's multiples.

20 Q. Multiples. Okay. You say here that you serve
21 temporary restraining orders, prepare, author and serve
22 them. How many temporary restraining orders have you
23 prepared?

24 A. I missed that one. I didn't serve -- I haven't
25 served one yet with this department.

1 Q. Okay. So that would be an incorrect statement
2 that you prepare, author and serve them; is that correct?

3 A. It's a matter of semantics, but yes. I
4 wouldn't -- it's a matter of semantics.

5 Q. It's a matter of seman -- is there some semantic
6 way that you can tell me --

7 A. The way I read it, I prepare, meaning that if an
8 occasion arrived as necessary in order to prepare a
9 restraining order, I would then go ahead and author it
10 and serve it.

11 Q. Okay. What about civil injunctions, how many of
12 those have you prepared, authored and served?

13 A. Again, I prepare -- again, the manner in which
14 the statement is written, I prepare meaning if the
15 situation would arise, I would need to go ahead and
16 perform those functions because there's nobody else to
17 call.

18 Q. So you mean it's more correct to say you might
19 prepare and author and serve a civil injunction, but you
20 haven't done one?

21 A. Again, matter of semantics, yes.

22 Q. Well, am I correct?

23 A. No, I haven't done one yet.

24 Q. Okay. What about asset forfeiture documents,
25 have you done those?

1 A. Current investigation, yes.

2 Q. Current investigation? Okay. Now, can you tell
3 me what a drug audit is?

4 A. A drug audit? The way I interpret it is I go
5 into a pharmacy and then I run a specific audit on a
6 specific prescription.

7 Q. Okay. Why would you be interpreting this?
8 Didn't you write, "I conduct drug audits"?

9 A. Well, I conduct drug audits, that's the way I
10 handle that drug audit is I will go to a pharmacy and I
11 look in there as far as --

12 Q. I'm not asking you how you handle it. I'm asking
13 you what do you -- what does this mean, I conduct drug
14 audits?

15 A. That's what it means.

16 MR. ROSE: Objection.

17 MR. MESSING: Okay.

18 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sustained.

19 MR. ROSE: Argumentative.

20 BY MR. MESSING:

21 Q. All right. It says you issue administrative
22 citations, referral to licensee citations, and enforce
23 levied fines. Do you do all of those things?

24 A. I would if the situation arise that I needed to
25 take action.

1 Q. Have you done them?

2 A. I've issued administrative citations. I've
3 referred -- referred licensees to citations. I have
4 not yet to enforce a levied fine.

5 Q. Okay. And as to the administrative citations and
6 the licensee citations, those are all administrative
7 actions, correct?

8 A. Yes.

9 Q. Okay. In 44 you say you develop program
10 investigation policies and procedures which require
11 investigative or law enforcement expertise.

12 A. Uh-hmm.

13 Q. Okay. How many procedures -- programs, I'm
14 sorry, have you developed since you've been in the
15 current classification?

16 A. One. It has not specifically been adopted by the
17 complete department, but adopted by my specific office.

18 Q. Okay. And what kind of program was that?

19 A. Medical marijuana.

20 Q. Okay. What kind of program regarding medical
21 marijuana?

22 A. The manner in which the investigation should be
23 conducted.

24 Q. Okay. It says on number 54 that you make high-
25 risk entry. Okay. How many high-risk entry did you

1 make --

2 A. I overlooked that because I saw felony car stops.

3 Q. So you don't make any?

4 A. I could.

5 Q. You may, but you haven't made any?

6 A. Not necessary. But I would be the one when the
7 situation arises to make that entry.

8 Q. Okay. It's not true to say that you make high-
9 risk entry. You may, but you don't -- you haven't done
10 it, correct?

11 MR. ROSE: Objection. Argumentative. Compound.
12 Asked and answered.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Well, we just
14 have the question of have you made it yet?

15 THE WITNESS: No.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Have you made
17 one? Next.

18 BY MR. MESSING:

19 Q. Okay. Do you have -- currently have any
20 confidential informants?

21 A. Yes.

22 Q. Okay. Now -- oh, I need a second. In your
23 position of Senior Investigator at DCA, has your job
24 changed very much in the last two years?

25 A. I think it has.

1 Q. Okay. In what regard?

2 A. The manner in which the department has directed
3 me.

4 Q. Okay. In terms of your performance of your job
5 functions, have your job functions changed in the last
6 two years?

7 A. No.

8 MR. MESSING: Okay. I'd like to mark for
9 identification -- and I can't tell you what our next
10 exhibit number is.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Hang on.

12 MR. MESSING: Or not a number. It's a letter, I
13 think.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yes, it is. All
15 right. Marking -- let me grab this for a second.
16 Marking as Exclusive Rep L what appears to be a single-
17 page document, specifically a Position Duty Statement for
18 Senior Investigator, DCA, Medical Board of California,
19 Enforcement, Fresno.

20 (Exclusive Representative's Exhibit L
21 marked for identification.)

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I'm going to
23 show that to the witness. And if you can just start
24 reviewing that? And when you're done reviewing it, just
25 let us know when you're ready to respond to questions.

1 THE WITNESS: Okay.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

3 Mr. Messing.

4 THE WITNESS: I'm done -- I'm done reviewing it.

5 BY MR. MESSING:

6 Q. Okay. Does this look familiar to you?

7 A. Yes.

8 Q. Okay. Is this a Duty Statement for your
9 position?

10 A. It looks like it, yes.

11 Q. Okay. Does this generally represent what you
12 believe to be the range of duties that you have with the
13 percentages listed on the left-hand side of the document?

14 A. It's a -- it's a specific general -- it's a
15 general format is what it is. It's a matrix.

16 Q. Well, I know what it is. I'm asking you if the
17 percentages on the left-hand side generally represent the
18 range of duties that you now perform.

19 A. No. I disagree with them.

20 Q. Okay. What part do you disagree with?

21 A. Seventy-five percent of driving, sitting,
22 balance, carrying required. I mean --

23 Q. So you don't believe that you do 75 percent of
24 your time with investigations?

25 A. I do -- I do a lot -- I do a lot of time with

1 investigations.

2 Q. Okay. I'm asking you about the percentages on
3 the left-hand side.

4 A. Okay.

5 Q. Which one of those percentages do you disagree
6 with, and what do you think it should be?

7 A. I disagree with them specifically as it pertains
8 to me.

9 Q. I'm asking you which ones of these percentages do
10 you disagree with, and what percentage would you put in
11 place of the one that was there?

12 A. I would do 80 percent investigations. That
13 includes -- that includes 25 percent of local -- locates
14 and interviews people. Okay. I see now. I understand
15 now. It's the bold types, right?

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Right.

17 THE WITNESS: Okay. I'm going to say 80 percent
18 investigations, and it would be 15 percent investigative
19 reports, and then 5 percent training administrative.

20 BY MR. MESSING:

21 Q. Okay. And do you agree that your investigations
22 include a good deal of administrative and civil
23 investigations as well as criminal?

24 A. Both, yes.

25 Q. Okay. And down in the portion that now says 20

1 percent --

2 A. Uh-hmm.

3 Q. -- the investigative reports, you would agree
4 that a good deal of your time is spent with
5 administrative disciplinary action?

6 A. Okay. Explain that to me, a good deal of
7 disciplinary action.

8 Q. Okay. It says administrative disciplinary action
9 in the second line under E, investigative reports.

10 MR. ROSE: Object. Vague as to "good deal of time."

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I agree with
12 that, so sustained. But in regards to the question, what
13 are you asking him in regards to the investigative report
14 section?

15 BY MR. MESSING:

16 Q. What percentage of the 20 percent that -- well,
17 you now say that that should be 15 percent, correct?

18 A. Right.

19 Q. What percentage of the 15 percent would you say
20 is involved in dealing with administrative disciplinary
21 actions?

22 A. A small percentage in my -- in my case.

23 Q. I'm going to ask the question again. What
24 percentage of the 15 percent would you say is involved
25 with administrative disciplinary actions?

1 A. Seven point five percent.

2 Q. Okay. Thank you. In the -- under A there's a
3 reference to complex issues involving the standard of
4 medical care.

5 A. Uh-hmm.

6 Q. Of your 80 percent, what portion of your -- of
7 your time is spent dealing with the standard of medical
8 care?

9 A. Twenty-five percent.

10 Q. Okay. And out of that 25 percent, what
11 percentage would be spent in regards to administrative or
12 civil investigation and action?

13 A. Probably all 25 percent. It's --

14 Q. Thank you. Okay. Now I'm going to move on to
15 the area of representation. You referred to a contract
16 that Richard Carrillo spoke about at a conference. Okay.
17 You remember that testimony?

18 A. Yes.

19 Q. Okay. What contract was this in reference to?
20 Do you know the years or the timeframe that covered the
21 time of that contract?

22 A. No.

23 Q. Okay. Did Richard Carrillo indicate what
24 percentages of salary were allocated under the contract
25 that he was referring to for peace officers as opposed to

1 non-peace officers?

2 A. As far as the distribution?

3 Q. Yes.

4 A. I don't remember him saying anything about
5 distribution.

6 Q. Okay. Did anybody else at that time tell you
7 what percentages there were distributed between peace
8 officers and non-peace officers for the contract that
9 Mr. Carrillo was referring to?

10 A. No, nobody else told me about the distribution
11 rate.

12 Q. Nobody told you at any time?

13 A. Well, there was no reason for me to ask, no. I
14 didn't -- no, no one told me.

15 Q. So you actually have no knowledge as to whether
16 or not percentages were actually different between peace
17 officers and non-peace officers and pay increases under
18 whatever contract Mr. Carrillo was referring to?

19 A. Well, it's going to be a percentage distribution.

20 Q. And you don't know as you sit here today --

21 A. No, I don't.

22 Q. -- whether -- let me finish the question.

23 A. Okay.

24 Q. Whether a percentage of salary was moved from
25 peace officer to non-peace officer in the contract that

1 Mr. Carrillo was supposedly discussing?

2 A. No, I don't -- I can't answer your question. I
3 do not know the percentage distribution.

4 Q. Okay. Oh, give me one second. Okay. Did you --
5 you indicate in your Declaration that during the regular
6 performance of your duties you work with non-peace
7 officer personnel such as administrative staff and
8 probation monitor employees.

9 A. Yes.

10 Q. Do you work with any non-peace officers in Unit
11 7?

12 A. Yes. Probation monitor.

13 Q. Okay. Probation monitors are in Unit 7. Okay.
14 Now, is that -- do you know what an investigative
15 assistant is?

16 A. They've been -- I know what it is, but they're no
17 longer existing.

18 Q. Okay. Is that currently what they call a
19 probation monitor?

20 A. It's been reclassified. Yeah, it's been reclassified
21 or whatever.

22 Q. But those two are the same thing?

23 A. No.

24 Q. No?

25 A. No.

1 Q. Okay. Did the class that used to be
2 investigative assistant get reclassified into probation
3 monitor, to your knowledge?

4 A. Those that were in the classification, yes.

5 Q. Okay. Now, let's see. When you -- okay. One
6 second. Okay. Can you just briefly state what is --
7 what is entailed in probation monitoring?

8 A. Probation monitors monitor those physicians who
9 are close to -- they've already been convicted of their
10 violation, and they're being monitored by the department.

11 Q. Okay. And is it -- is it true that previously
12 those duties used to be performed by investigators?

13 A. Yes.

14 Q. Okay. And so they were reallocated to the
15 probation monitors?

16 MR. ROSE: Objection. Asked and answered.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You know, I'm
18 still not completely clear on how this happened, but is
19 that your understanding?

20 THE WITNESS: That Investigator I's supervise the
21 probationers. That responsibility shifted to a probation
22 monitor.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

24 BY MR. MESSING:

25 Q. And so what used to be an investigative assistant

1 now took on probation monitoring duties and became known
2 as probation monitor?

3 A. Yes.

4 MR. ROSE: Objection. Asked, asked and answered.

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I'm going to
6 overrule the objection. Next question.

7 BY MR. MESSING:

8 Q. Okay. All right. Now, give me one second here.
9 We're almost done. So what did you do -- what was your
10 job before February of 2007?

11 A. State Park Ranger.

12 Q. And how long were you a State Park Ranger?

13 A. Four years.

14 Q. Okay. So you were there -- you were a park
15 ranger when CSLEA secured the three percent at fifty plan
16 for peace officers in the bargaining unit?

17 A. Yes.

18 Q. Okay. And did you know one way or the other
19 whether that three percent at fifty plan was conferred on
20 Unit 7 employees before --

21 A. No, I --

22 Q. -- correctional officers or firefighters in the
23 state?

24 A. I don't know when it was conferred.

25 Q. Okay. Were you aware that starting in January of

1 2007 all peace officers in the bargaining unit attained
2 nearly -- at least 17 percent increase between COLAs and
3 additional steps added on to the pay ranges?

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

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Do you know
7 whether that -- did you see that, sir?

8 THE WITNESS: Did I see it?

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: See it in your
10 paycheck.

11 THE WITNESS: Relative -- yes.

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

13 MR. MESSING: Nothing further at this time.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Ms. Truong?

15 MS. TRUONG: Nothing for us.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Rose?

17 MR. ROSE: Nothing further.

18 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. Any
19 objection to Exclusive Rep L on behalf of Petitioner or
20 the Employer?

21 MR. ROSE: No.

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. On
23 behalf of the Employer?

24 MS. TRUONG: No.

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: L is admitted.

CERTIFICATION AND
DECLARATION OF TRANSCRIBER

1
2
3
4 I, Leisa M. Miller, a duly designated transcriber of
5 Vine, McKinnon & Hall, do hereby declare and certify
6 under penalty of perjury that I have transcribed from a
7 CD recording the proceedings in the matter of STATE OF
8 CALIFORNIA, Employer, and PEACE OFFICERS OF CALIFORNIA,
9 Petitioner, and CALIFORNIA STATEWIDE LAW ENFORCEMENT
10 ASSOCIATION, Exclusive Representative, Unfair Practice
11 Charge No. SA-SV-171-S, which recording was duly recorded
12 at Sacramento, California on February 27, 2009, and that
13 the foregoing pages 1 through 249 constitute a true,
14 complete and accurate transcription of the aforementioned
15 recording to the best of my ability.

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

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