

March 11, 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.	)	
	)	
_____	)	

MARCH 11, 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

SHAWN CLOUGHESY

Representing Employer:

SHANNAN TRUONG  
Labor Relations Counsel

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Representing CSLEA:

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1 admonish you not to discuss your testimony with any of  
2 the other witnesses. Of course, you're free to discuss  
3 it with anyone at these counsel tables. Do you  
4 understand the admonishment?

5 THE WITNESS: Yes, I do.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And any  
7 questions regarding it?

8 THE WITNESS: No.

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. With  
10 that, off the record.

11 (Off the record.)

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

13 We're back on the record. And we have another witness  
14 called by the Exclusive Representative. I'm going to ask  
15 you to raise your right hand.

16 (Witness sworn by the Judge.)

17 THE WITNESS: I do.

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

20 THE WITNESS: My name is James Vitko. The last name  
21 is spelled V-I-T-K-O.

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.  
23 Marking as Exclusive Representative U what appears to be  
24 a Declaration of this witness.

25 (Exclusive Representative's Exhibit U marked

1 for identification.)

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I have a couple  
3 of preliminary questions. Sir, do you ever remember  
4 receiving any transcripts in regards to these  
5 proceedings?

6 THE WITNESS: Transcripts, no.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. Do  
8 you know who James Cline is?

9 THE WITNESS: No.

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.  
11 Handing to you Exclusive Representative U. And if you  
12 could review that and let me know what that is.

13 THE WITNESS: This appears to be the Declaration that  
14 I put together and signed on the 24th of February.

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. Why  
16 don't you turn back to your signature page there. And is  
17 that a copy of your signature, sir?

18 THE WITNESS: It is.

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And did you sign  
20 it on or about the date set forth there and the location  
21 set forth?

22 THE WITNESS: I did.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And is the  
24 contents of that Declaration true and correct to the best  
25 of your knowledge?

1 THE WITNESS: Yes.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

3 Mr. Messing.

4 TESTIMONY OF

5 JAMES VITKO,

6 Having been duly and regularly sworn, testified as

7 follows:

8 DIRECT EXAMINATION

9 BY MR. MESSING:

10 Q. Is there anything in this Declaration that you  
11 would like to change or correct?

12 A. Yes, I do have one correction on here.

13 Referencing page number 11, line number 1, where I  
14 referred to a case that I had worked as the JonBenet  
15 Ramsey case. That was incorrect. What I had intended to  
16 say was the Samantha Runyan case, which was the Orange  
17 County case back around the end of the '90s, beginning of  
18 the year 2000.

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. Why  
20 don't I have you line out that, and then put -- insert  
21 the name of the case that you wanted it instead, and then  
22 initial and date.

23 THE WITNESS: Do you want me to initial up top here  
24 or down here?

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: No. Right next

1 to where you're making the change.

2 THE WITNESS: All right.

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

4 Mr. Messing.

5 MR. MESSING: Okay. I want to -- give me one second.

6 One second.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Off the record.

8 (Off the record.)

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Back on the  
10 record.

11 BY MR. MESSING:

12 Q. Okay. This Declaration gives your background.  
13 Did you -- I don't recall. Do you mention in here what  
14 your current employment is?

15 A. I don't recall. Bear with me just one second.

16 Q. Well, let me just do this, and ask you, do you  
17 still work for the State of California?

18 A. No, sir, I do not.

19 Q. And when did that employment come to an end and  
20 how?

21 A. I retired as of December 30th of 2008.

22 Q. Okay. And are you currently employed?

23 A. I am.

24 Q. And will you state what the nature of that  
25 employment is?

1           A. I currently work as legal counsel for California  
2           Statewide Law Enforcement Association and I'm  
3           headquartered in Southern California.

4           Q. Okay. Now, I want to talk about your work with  
5           the Association of Special Agents for a minute. That is  
6           an affiliate with CSLEA?

7           A. Yes, sir.

8           Q. Okay. How long have you been active? You are --  
9           you are a member of ASA-DOJ, correct?

10          A. Correct.

11          Q. Okay. And how long were you active in that  
12          organization?

13          A. I was a member of ASA-DOJ effective with my  
14          assignment with the Department of Justice, which was  
15          right around 1996. And I was -- I became a Site Rep or  
16          an Office Rep on or about 1999 when I was assigned to the  
17          Bureau of Investigation in Los Angeles. And I ran for  
18          the Board of Directors in 2005. I was elected to a  
19          position on the Board of Directors and asked to take  
20          presidency at that time.

21          Q. Okay.

22          A. I worked as the President of the Association  
23          through the date of my retirement.

24          Q. So as a Board member -- well, let's start with  
25          1999. You say you became a Site Rep. Will you explain

1 what a Site Rep is?

2 A. I was a Representative back to the Association  
3 Board. My job at that time was to interact with my  
4 fellow employees to bring issues of concern back to the  
5 Board of Directors, to the president at that time, who  
6 was George Lowe. I also attended the quarterly Board  
7 meetings of the Association of Special Agents, passed  
8 information back, made sure that things were posted. On  
9 occasion I would interact with management to take care of  
10 local issues as well.

11 Q. Okay. I'm just trying to streamline this. From  
12 let's say 1999 through your retirement, was it part of  
13 your normal routine and business to find out what sorts  
14 of complaints and issues were occurring in the State with  
15 Special Agents?

16 A. Yes.

17 Q. Okay. And particularly let's say from the time  
18 that you became a Site Rep on, did -- were you -- did you  
19 become familiar -- without stating names of people, but  
20 with issues where individual representation was requested  
21 of CAUSE and then later CSLEA?

22 A. Yes.

23 Q. Okay. Do any particular cases come to mind? And  
24 let's actually focus on from the time you became  
25 President in 2005 to the present, start with that

1     timeframe. Any cases come to mind that you could relate?  
2     And I'd also say, without stating the name of the  
3     individual unless it was a public matter, or without  
4     giving us too many details about the particular issue.  
5     If you can just sort of summarize them?

6           A. Certainly. Sort of as a preface, you have to  
7     understand that the nature of what Agents do oftentimes  
8     subjects them to situations where they may be involved in  
9     critical incidents, shootings, various use of force types  
10    of incidents, and also they are oftentimes subject of  
11    Internal Affairs complaints and investigations, again,  
12    just based on the type of things they do, the interaction  
13    with the public.

14           During -- during the time period that I was the  
15    President of the Association of Special Agents I got a  
16    number of these calls requesting representation. And  
17    there were situations, for instance, where individuals  
18    were involved in shootings where I would get that call in  
19    the middle of the night and be asked to activate LDF,  
20    whereby I would go ahead and I would contact usually  
21    Kasey by cell phone, or in rare instances we would  
22    contact the LDF directly, making sure that we had an  
23    attorney out there at the time to be able to become  
24    involved to make sure that legal rights were upheld.

25           We had three LDF incidents that I can recall between

1 '07 and '09, well, the time I retired at the end of '08,  
2 where those types of issues came up. We also had an  
3 incident where one of my Special Agent Supervisors was  
4 accused by an individual that was on a task force with  
5 him of inappropriate sexual advances that could have  
6 possibly turned into a sexual assault. I can recall  
7 activating LDF for that and having representation  
8 provided.

9 There were also incidents where I can recall at least  
10 one agent that had been arrested, and we went ahead and  
11 activated LDF for that.

12 Q. Okay. You talk about LDF. That stands for?

13 A. The Legal Defense Fund. And that is a CSLEA  
14 program whereby an individual would be provided with  
15 legal counsel in the case of incidents like these.

16 Q. And when you say incidents like these, you're  
17 talking about critical incidents and --

18 A. Critical incidents, arrests that may be related  
19 back to the performance of their duties, things like  
20 that.

21 Q. Okay. Would it cover, for example,  
22 interrogations in the course of Internal Affairs  
23 investigations?

24 A. Absolutely. In fact, we had a situation that  
25 occurred during -- I believe it began in '06 or '07

1 involving one of my Special Agent Supervisors that was  
2 involved in an altercation with a fellow task force  
3 member, and subsequent to that ended up being  
4 interrogated outside of POBOR. Statements were elicited,  
5 and that was used as a means of adverse action against  
6 him.

7 We went ahead and moved the case forward to the LDF  
8 Board. It was accepted because of the nature of the  
9 violations. And just recently they had a victory whereby  
10 the courts declared that it was in fact a POBOR  
11 violation.

12 Q. Okay. Now, aside from referring cases -- during  
13 the same timeframe, aside from referring cases to the  
14 LDF, do you have any other special knowledge of the Legal  
15 Defense Fund program?

16 A. I actually chaired the Legal Defense Fund for a  
17 short period of time I believe the last four or five  
18 months that I worked -- excuse me just a second. Yeah,  
19 the last four or five months prior to my retiring.

20 Q. Okay. Do you -- do you have any sense of the  
21 numbers of cases that routinely come into the Legal  
22 Defense Fund? I mean like in a given year how many cases  
23 are reported to the Legal Defense Fund, or where  
24 something is requested? All right. Well, I'll withdraw  
25 that question. Let me -- let me ask you this:

1 Do you know if many -- can you characterize the  
2 percentage or approximate percentage of cases that go  
3 before the LDF that originate with Special Agents?

4 A. There were approximately I believe seven cases  
5 that had gone before LDF involving Special Agents between  
6 the years 2007 and 2009. I believe if you take a look at  
7 a historical basis going back to the history of LDF, I  
8 believe it's well over 50 cases that were submitted for  
9 consideration.

10 Q. Okay. And do you know what percentage that is of  
11 the total? Do you know approximately how many -- for  
12 example, you said seven cases from 2007 and 2009. Do you  
13 - do you know how many cases were taken in total and  
14 considered by LDF --

15 A. Before --

16 Q. -- during that time period?

17 A. No, sir, I don't.

18 Q. Okay. Now, out of the cases that you're familiar  
19 with that went before the LDF, can you characterize any  
20 feedback or reaction by the Agents in terms of the  
21 adequacy of their representation?

22 A. The cases that went before LDF almost without a  
23 doubt were very positive. There was a very high  
24 percentage of cases that were submitted that were settled  
25 in favor of the -- of the Agents. I don't think I've

1 ever heard a complaint about the representation of the  
2 LDF panel attorneys.

3 Q. Okay. Now, if, for example, an Agent has a  
4 grievance, is that handled through LDF?

5 A. No, sir.

6 Q. Okay. And how is that handled through -- by  
7 CSLEA?

8 A. Generally speaking, grievances and Internal  
9 Affairs interrogations and cases that spring from that  
10 are handled by the in-house counsel or the labor rep.

11 Q. Okay. And let's take the same period of time  
12 from 2005 to 2009 when you retired, or the end of 2008.  
13 Were -- can you characterize how many cases came in?  
14 Were there a few, many from the Special Agents  
15 Association that were grievances or IAs not covered by  
16 LDF?

17 A. Yeah. And as I had prefaced this discussion with  
18 based on the nature of what we do, it's not unusual for  
19 Internal Affairs to open cases and to notify people. I  
20 do know for a fact that between 2007 and 2009, for  
21 instance, that the Department of Justice initiated  
22 approximately 76 Internal Affairs investigations, more  
23 than half of which were involving Special Agents or  
24 Special Agent Supervisors.

25 Q. Okay. And through your experience when Special

1 Agents were involved, where did they find their  
2 representation?

3 A. Almost entirely from the in-house counsel and the  
4 later rep at CSLEA.

5 Q. Okay. From those cases did you receive  
6 complaints about representation by CSLEA?

7 A. Not that I can recall. Most -- it's well known  
8 that in a number of bargaining units what you -- what you  
9 generally have for representation is usually a Site Rep  
10 or --

11 MR. ROSE: Objection. Move to strike as  
12 nonresponsive after I don't recall.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: No. I'm going  
14 to overrule the objection. Go ahead and continue the  
15 answer, Mr. Vitko.

16 THE WITNESS: Thank you. Generally speaking, a  
17 number of bargaining units will use Site Reps or various  
18 other non-attorneys to represent individuals at Internal  
19 Affairs hearings, investigations, Skellys, et cetera.  
20 CSLEA has almost universally used attorneys. And as a  
21 result, most of the results that we have have been -- or  
22 most of the feedback that I've had has been very positive  
23 about the professional nature of the organization.

24 BY MR. MESSING:

25 Q. Okay. As President have you been familiar with

1 the bargaining process in CSLEA?

2 A. Yes.

3 Q. Okay. And have there been -- can you  
4 characterize reaction of let's say at the same time  
5 period, 2005 through 2008, can you characterize the  
6 feedback from your membership on how CSLEA has done in  
7 collective bargaining?

8 A. Well, at the time that we had received the last  
9 contract which involved the 25 percent raise, there was a  
10 lot of very positive feedback. I have on occasion  
11 received comments usually having to do with the parity  
12 issues involving Special Agents and CDC-IA. I'm sorry.  
13 California Department of Corrections Internal Affairs, or  
14 the Office of the Inspector General. However, generally  
15 speaking, there's some issues that crept up that don't  
16 necessarily follow parity.

17 Q. Well, can you explain that?

18 A. Yeah. I mean in some cases comparisons aren't  
19 appropriate because, for instance, the CDC-IA people are  
20 non-represented. They are -- they're management outside  
21 the bargaining process because of the nature of what they  
22 do. Jobs are generally different than what we do. I  
23 believe it's the same for the Office of Inspector General  
24 as well. I don't believe they are represented. Theirs  
25 is primarily Internal Affairs related.

1 Q. When you're talking about the CDC people, you  
2 said their jobs are different. And how does that  
3 difference play into the view of Special Agents of the  
4 comparison between them, if you know?

5 A. Well, I do know that there have been a number of  
6 Agents that have gone over to the Department of  
7 Corrections. I also know the feedback that I get from  
8 there is not very positive about the type of environment  
9 they have to work under. I've been told about large  
10 workloads. I've been told about driving out to prisons  
11 in the middle of nowhere. And generally speaking,  
12 there's not a whole lot of satisfaction with the  
13 position.

14 Q. Is there a difference in the type of work that is  
15 performed at the -- by the CDC-IA people and Special  
16 Agents?

17 A. Yes. Special Agent Supervisors for DOJ can be  
18 asked to do some Internal Affairs work. But by and  
19 large, the types of cases that we do for the Department  
20 of Justice are much wider in scope. You could be asked  
21 to be doing a narcotics case, a terrorism case. You can  
22 be doing a Medi-Cal fraud case. Just about anything the  
23 Attorney General would choose to mandate for you. As  
24 opposed to the Department of Corrections where your scope  
25 would be very narrow.

1 Q. Do you know if Special Agents consider the  
2 Special Agent work as opposed to the CDC work more or  
3 less interesting?

4 A. As a general rule, based on those that I've  
5 spoken to, they enjoy the job very much. So I would  
6 think that they would find that probably more interesting  
7 to do.

8 Q. Which job are you referring to?

9 A. The Department of Justice Special Agent position.  
10 I'm sorry.

11 MR. MESSING: Okay. Nothing further at this time.

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Rose.

13 MR. ROSE: Should we continue in view of  
14 Mr. Messing's request that we leave early, and use this  
15 as a natural breaking point?

16 MR. MESSING: That'd be fine with me.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. Sir,  
18 I still need to do an admonition. I forgot about that.  
19 I need to admonish you not to discuss your testimony with  
20 any other witnesses. You're free to discuss your  
21 testimony with anybody from these counsel tables. Do you  
22 understand the admonition?

23 THE WITNESS: I do, sir.

24 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And with that,  
25 day six of these proceedings is concluded. We're off the

1 record.

2 (Proceedings concluded.)

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CERTIFICATION AND  
DECLARATION OF TRANSCRIBER

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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 March 11, 2009, and that the  
13 foregoing pages 1 through 294 constitute a true, complete  
14 and accurate transcription of the aforementioned  
15 recording to the best of my ability.

16 Dated this 27th day of March, 2009, at Dixon,  
17 California.

18  
19  
20 \_\_\_\_\_  
21 Leisa M. Miller, Transcriber  
22 VINE, MCKINNON & HALL  
23 Certified Shorthand Reporters  
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25