

March 12, 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 12, 2009

SHAWN CLOUGHESY
Administrative Law Judge

PUBLIC EMPLOYMENT RELATIONS BOARD
1031 18th Street, Room 214
Sacramento, CA

Transcribed by: Leisa M. Miller

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Administrative Law Judge

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1 witnesses. You're free to discuss your testimony with
2 anyone at these three tables. Do you understand the
3 admonishment?

4 THE WITNESS: Yes, I do.

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And thank you
6 very much. With that, Exclusive Rep X is admitted.

7 (Exclusive Representative's Exhibit X received
8 in evidence.)

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Off the record.

10 (Off the record.)

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

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

15 (Witness sworn.)

16 THE WITNESS: I do.

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

19 THE WITNESS: John Knight. K-N-I-G-H-T.

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

21 Mr. Knight, have you reviewed any transcripts of these
22 proceedings?

23 THE WITNESS: Just what was on the internet. I
24 mean --

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: So we're talking

1 about on a -- on a website?

2 THE WITNESS: Yeah. Yeah.

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. But are
4 we talking about a transcript like this?

5 THE WITNESS: No, not at all.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Or are we
7 talking --

8 THE WITNESS: No. Just it was like just a short
9 little announcement that was posted on our Union website.

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: CSLEA's?

11 THE WITNESS: Yes.

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. And then,
13 secondly, do you know James Cline?

14 THE WITNESS: No.

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. Next
16 I'm marking as Exclusive Representative Y what appears to
17 be a Declaration of John Knight.

18 (Exclusive Representative's Exhibit Y marked for
19 identification.)

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And I'm going to
21 pass Y to you and, sir, have you take a look at that and
22 see if you can identify what that is.

23 THE WITNESS: Yes. This is what I wrote.

24 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. And
25 turn -- why don't you turn to that signature page there.

1 One page left. Opposite way. There you go. Is that
2 your signature, sir?

3 THE WITNESS: Yes, it is.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Did you sign it
5 on or about the date and location set forth therein?

6 THE WITNESS: I did.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. And
8 is the contents of that Declaration true and correct to
9 the best of your knowledge?

10 THE WITNESS: Yes.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Messing.

12 TESTIMONY OF

13 JOHN KNIGHT,

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

16 DIRECT EXAMINATION

17 BY MR. MESSING:

18 Q. Is there any part of your Declaration that you
19 would like to change?

20 A. No.

21 Q. Okay. Now, you've been employed as a Lifeguard,
22 a seasonal Lifeguard, with the State of California since
23 1982?

24 A. That's correct.

25 Q. Okay. And you indicate in your Declaration that

1 you've been an active member of CSLEA since 1999.

2 A. Correct.

3 Q. Okay. Which used to be called CAUSE.

4 A. CAUSE.

5 Q. Okay. Now, it says here that you were
6 participating in the negotiation process in 2002 through
7 the last contract; is that right?

8 A. Yes.

9 Q. Okay. What was your participation? In what way
10 did you participate?

11 A. I would develop ideas for contract changes,
12 present them to the CSLEA, and then make demonstration --
13 or presentations to -- at the negotiations table.

14 Q. Okay. Now, from 1999 through 2002 did you have
15 any other activities on behalf of CSLEA? For example,
16 were you a Site Rep or anything like that?

17 A. Yeah, I've been a Site Rep.

18 Q. How long have you been a Site Rep?

19 A. I'm not exactly sure, but probably around 10
20 years or 8 years. I'm not exactly sure.

21 Q. Okay. So it says here that you work on a day --
22 you have a lot of paragraphs dealing with your daily work
23 with State Park peace officers. But what I want to know
24 is do the -- are you somebody who Lifeguards, seasonal or
25 permanent Lifeguards, State Park peace officers, whether

1 they would be likely to bring complaints to you if they
2 had problems with CSLEA?

3 A. Oh, yeah, certainly.

4 Q. Okay. Now, in the area of what I would call
5 individual representation, meaning Internal Affairs
6 investigations, grievances, disciplinary matters, have
7 you had feedback from either Lifeguards, either seasonals
8 or permanent Lifeguards, as to the responsiveness of
9 CSLEA to their issues?

10 A. Yeah. People are generally happy with the way
11 that CSLEA has represented them.

12 Q. Okay. Have you heard of any -- has anybody
13 brought to you any specific complaint about a particular
14 case that they feel was mishandled?

15 A. No.

16 Q. And that includes both peace officers and the
17 non-peace officers?

18 A. That's correct.

19 Q. Okay. Now, given your role in bargaining, were
20 you likely to receive -- are you someone who was likely
21 to receive input from your members, both seasonals and
22 permanents, regarding the bargaining process?

23 A. Yes. Yeah.

24 Q. Okay. So let's focus on 2002 through the present
25 when you were involved in the bargaining process. Can

1 you characterize how people felt about the adequacy of
2 the representation by CSLEA?

3 A. Well, I think it -- one of the big jobs is just
4 to educate the members as far as the difficulties
5 involved in negotiating a contract. And so once they can
6 understand the process, they can understand a little bit
7 better as far as what steps it takes to try to attempt to
8 change the contract. So it's kind of a continuing
9 process, an educational process that you have to go
10 through.

11 Q. Okay. Now, were you aware of any issues that
12 were raised regarding getting health benefits for
13 permanent intermittent Lifeguards?

14 A. Yeah. I was involved in that.

15 Q. Okay. Did the peace officers have any complaints
16 about the actions of CSLEA with respect to that benefit?

17 A. Some did.

18 Q. Okay. Okay. What about general pay increases?
19 Have you heard any specific complaints about that?

20 A. Never enough. I mean that's the complaint.

21 MR. MESSING: All right. I have nothing further. I
22 pass the witness to Joe Rose.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sir.

24 MR. ROSE: Thank you.

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CROSS-EXAMINATION

BY MR. ROSE:

Q. Good afternoon, Mr. Knight. My name is Joe Rose. I'm the attorney for Peace Officers of California. And I'm going to ask you about what you just testified to concerning the complaints you've heard from employees in Bargaining Unit 7.

But first let me ask, are you a member of an affiliate organization?

A. Yes.

Q. Perhaps I missed that. What affiliate organization are you a member of?

A. Of CALEE, I think.

Q. CA?

A. CALEE. I believe that's what it is.

Q. And could you -- could you extrapolate that out? What does that stand for?

A. Yeah.

Q. California Association of?

A. California Association of Law Enforcement, I believe is what it is.

Q. Okay. Is that a -- do all, to your knowledge, seasonal Lifeguards participate in membership of that organization?

A. Can you repeat the question? I'm sorry. I

1 didn't understand it.

2 Q. Is it typical for seasonal Lifeguards to be
3 members of that affiliate organization?

4 A. Yeah, definitely.

5 Q. Okay. And is that also the organization in which
6 the Lifeguard peace officers are a member?

7 A. No. They're in a different affiliate.

8 Q. Okay. Are there any sworn employees in that
9 affiliate, the one that you belong to?

10 A. Yes.

11 Q. Which are those?

12 A. I don't know.

13 Q. Okay. Now, are the State Parks peace officers in
14 that affiliate, the one that you're in?

15 A. No.

16 Q. Do you work with any of the sworn employees that
17 are in the affiliate you're in?

18 A. No.

19 Q. Okay. So earlier when you were asked about
20 whether you had heard complaints from peace officers,
21 specific complaints, when your first answer was no, are
22 you referring to peace officers in the affiliate CALEE?

23 A. No.

24 Q. You're referring to peace officers that you work
25 with?

1 A. Correct.

2 Q. And do the peace officers that you work with seek
3 you out as a source of assistance with respect to Union
4 matters?

5 A. I think they seek me out for a source of
6 information.

7 Q. Don't they have their own representation?

8 A. Yes.

9 Q. So you're not an official line of communication
10 for the peace officers you work with, are you?

11 A. No.

12 Q. Okay. But you have heard complaints from peace
13 officers you work with about the effort you were involved
14 in to get health benefits for permanent intermittent
15 Lifeguards, correct?

16 A. Correct.

17 Q. Quite a loud series of complaints from many peace
18 officers, true?

19 A. I wouldn't characterize it that way. I would say
20 it was loud from a minority of peace officer Lifeguards.

21 Q. And the complaint was what?

22 A. The complaint was that by giving health benefits
23 to non-peace officer Lifeguards, it might jeopardize the
24 peace officers' work. Because the State could then look
25 at them and replace them with somebody that doesn't have

1 peace officer powers.

2 Q. Was part of that complaint that they felt that
3 the interests of non-sworn seasonal Lifeguards were not
4 aligned with the interests of the peace officers that
5 were complaining?

6 A. No, I don't think that that was -- no.

7 Q. Did you communicate that concern to CSLEA?

8 A. Certainly.

9 Q. Who did you speak to about it?

10 A. Everybody. I've talked to Kasey about it.

11 Ricardo Sanchez.

12 Q. Did you agree with that concern?

13 A. What -- I'm not sure what concern you're --

14 Q. The concern voiced by the peace officers who were
15 concerned that if health benefits were conferred upon
16 permanent intermittent Lifeguards that that would
17 jeopardize the functions of the peace officer Lifeguards.

18 A. No, I don't agree with that.

19 Q. And did you tell the people who complained to you
20 about it that you didn't agree?

21 A. Yes.

22 Q. And did you take any steps to address their
23 concerns in connection with your relationship with
24 CSLEA's leadership?

25 A. Just by communicating their concerns.

1 Q. Were you actually at the bargaining table to
2 negotiate the provisions of the Memorandum of
3 Understanding relating to health benefits for permanent
4 intermittent Lifeguards?

5 A. No.

6 Q. Did you have any influence on the language
7 contained in the Collective Bargaining Agreement?

8 MR. MESSING: Object. Calls for speculation.

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You know, if
10 some of his proposals ended up going up the chain and
11 getting through -- I mean you said you presented ideas?

12 THE WITNESS: You bet, yes.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Do you know
14 whether any of those got presented at the table by CSLEA?

15 THE WITNESS: Yes. I presented some.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

17 BY MR. ROSE:

18 Q. You presented some proposals in what manner?
19 What method did you use to get the proposals before -- at
20 the barg -- to the bargaining table?

21 A. Sure. Well, you know, you have an idea of a
22 contract change, and you develop it. You run it by the
23 Union. And then you make a presentation of why you think
24 it's a good idea.

25 Q. Did you submit that in writing?

1 A. Yes.

2 Q. Did you include in your written proposal the
3 converse view that you didn't agree with about from the
4 peace officers' point of view that you worked on?

5 A. No.

6 Q. And let me ask you -- did we mark Bargaining Unit
7 MOU as anything?

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yes. I know we
9 did.

10 MR. ROSE: Maybe a --

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Did we mark it
12 as --

13 MR. ROSE: -- judicially or officially noticed
14 document, perhaps?

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I know I took
16 official notice of Units 5, 6 and 7. But --

17 MR. ROSE: And we didn't -- we didn't have a
18 designation.

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Hold on a
20 second. I do think I might have -- well, I have this
21 binder right --

22 MR. ROSE: I have one as well, Judge.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Hold on a
24 second, sir. All right. Digging deep here for seven.
25 All right. Witness has seven in front of him.

1 BY MR. ROSE:

2 Q. Okay. Sir, do you recognize that as being the
3 most recent Memorandum of Understanding for your
4 bargaining unit?

5 A. Yes.

6 Q. Are you familiar with that document?

7 A. Fairly.

8 Q. It's voluminous, so I wouldn't --

9 A. Yes.

10 Q. -- expect you to know it intimately. But please
11 turn to page 76. Now, then, at the top of the page
12 there's -- above the section 10.2, Counseling Services,
13 there are two paragraphs. The first paragraph begins,
14 "After ratification of the agreement." Do you see that?

15 A. Yes.

16 Q. Is that the language that applies to -- or that
17 was ultimately incorporated into the MOU flowing from
18 your proposals?

19 A. Yes.

20 Q. And is that the language of the MOU that the
21 peace officers you spoke with were in disagreement with?

22 A. The peace officers that -- it wasn't necessarily
23 the language that they had the problem with. They just
24 had the problem with the concept. So --

25 Q. Is the concept that they had a problem with

1 contained in the language that we just referred to in the
2 MOU on page 76?

3 A. I would -- I would gather so, sure.

4 Q. All right. Now, during your -- what are the --
5 I've been told this before and I've -- it's escaped me.
6 The season for you as a seasonal Lifeguard runs from what
7 period to what period?

8 A. I'm limited to 1500 hours. And so what happens
9 is I will work my 1500 hours, and then they will lay me
10 off, and somebody else will take my place. So there is
11 year-round lifeguarding going on. It's just that, due to
12 my classification, I can only work 1500 hours a year.

13 Q. Do you have a typical range of months that you
14 work during the year?

15 A. Me personally or the --

16 Q. yes, sir.

17 A. Yeah. I usually work from February for about
18 eight or nine months, depending on how much -- how many
19 hours I can cram in that time period.

20 Q. Do you do any work outside of your employment as
21 a seasonal Lifeguard?

22 A. No.

23 Q. Now, did -- are you a recipient of the provision
24 or the benefit that's contained at page 76 in the MOU?

25 A. No.

1 Q. Why not?

2 A. Well, it's been through -- it's not for trying,
3 you know. There's a -- there's been an interview
4 process, and I haven't been selected.

5 Q. Have not been selected as a permanent
6 intermittent?

7 A. That's correct.

8 Q. I see. Now, do you have any desire to be a peace
9 officer Lifeguard?

10 A. None.

11 Q. Have you ever applied for that job?

12 A. I think I did. Yes, I did probably 15 years ago.

13 Q. How many times --

14 A. Twenty years ago.

15 Q. I'm sorry. I didn't mean to interrupt. Go
16 ahead.

17 A. I'm done. Fifteen years ago or something like
18 that.

19 Q. Now, did you apply just once, or multiple times?

20 A. Just once.

21 Q. And you were not selected?

22 A. No. I opted out.

23 Q. What is it about the peace officer Lifeguard
24 position that you find -- well, I don't know if you find
25 it undesirable, but I'll say undesirable. You can

1 correct me. Since you don't want that job.

2 MR. MESSING: Object. Assumes facts not in evidence.
3 He applied 15 years ago, and he's asking him why he
4 doesn't find it desirable now?

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I agree. But I
6 think it can be straightened out. You also testified
7 that you're not interested in becoming a Lifeguard peace
8 officer currently.

9 THE WITNESS: That's true.

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Why not?

11 THE WITNESS: I don't like guns.

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Next question.

13 BY MR. ROSE:

14 Q. And what is it about guns you don't like?

15 A. I think they're dangerous.

16 Q. Do you believe guns are dangerous even in the
17 hands of peace officers?

18 A. They can be.

19 Q. Do you -- you work alongside of peace officers
20 who carry guns?

21 A. I do.

22 Q. In your Declaration you state that you back them
23 up.

24 A. I do.

25 Q. Are you concerned about your safety in the

1 presence of a peace officer armed with a gun?

2 A. Not particularly. I mean there's times when I'm
3 involved in a situation that can be scary.

4 Q. Do you --

5 A. And it's not necessarily because of the peace
6 officer's weapon. It's because of the situation that
7 we're in, like a riot or something.

8 Q. Have you been involved in many riots in your
9 career as a seasonal Lifeguard?

10 A. Close to riots, you know. We're able to quell
11 them before they get out of control.

12 Q. And how many close to riots have you been
13 involved in?

14 A. Two or three.

15 Q. And when you say that those were close to riots,
16 could you estimate for us in each of the two or three
17 occasions how many human beings were involved that were
18 not State employees?

19 A. Twenty, thirty.

20 Q. Now, because you don't like guns, do you avoid
21 situations where there might be a gun present other than
22 with an armed -- one of your coworkers being armed with a
23 gun?

24 A. I don't understand the question.

25 Q. Well, you don't like guns. Does that cause you

1 to avoid, for example, situations where you suspect maybe
2 a citizen has a gun?

3 A. Absolutely.

4 Q. Have you been trained to deal with citizens with
5 guns?

6 A. No.

7 Q. have you been trained to deal with citizens with
8 edged weapons?

9 A. No.

10 Q. Have you been trained to deal with citizens in
11 fistfights?

12 A. No.

13 Q. Have you received any training in the use of
14 pepper spray?

15 A. No.

16 Q. In the use of batons?

17 A. No.

18 Q. In the use of handcuffs?

19 A. No.

20 Q. And so if, for example, you are, as you mentioned
21 in your Declaration, backing up a peace officer and that
22 peace officer becomes involved in a altercation with a
23 citizen, what would you do?

24 A. Well, I can -- I have my radio, so I can
25 certainly make sure that the Dispatcher is -- knows

1 what's going on in that situation. A lot of times just
2 the presence of somebody else there. Because the public
3 isn't aware that, you know, I'm not a peace officer. And
4 I have my vehicle, so I can get on the PA and be very
5 loud and hopefully distract them. But you're right,
6 there's not a whole lot I can do.

7 Q. And you wear as a -- at work you wear shorts,
8 correct?

9 A. That's part of my uniform, yeah. I mean I have
10 long pants, too.

11 Q. Most of the time, though, I think I heard you
12 before we went on the record, you want to get out of your
13 shoes, so you're --

14 A. I do.

15 Q. -- you're typically wearing flip-flops or you're
16 barefoot?

17 A. Typically.

18 Q. And -- lucky you. And you're also wearing a tee
19 shirt?

20 A. No. A collared shirt.

21 Q. Okay. And that collared shirt, does it have a
22 badge on it?

23 A. No. It has the State Parks logo on it.

24 Q. I see. Now, the Lifeguard peace officers
25 typically wear long pants, right? Unless they're

1 performing an aquatics function.

2 A. They have short pants that they wear also.

3 Q. But they also wear -- their uniform is distinctly
4 different from yours, true?

5 A. True.

6 Q. It looks much more like a patrol police officer?

7 A. But they don't -- they're not wearing their
8 uniform all the time. I mean many times they'll go down
9 to their reds is what they call it, which is the exact
10 same uniform that I have.

11 Q. Now, in your Declaration you gave us a couple of
12 helpful examples. On page three at paragraph eleven
13 where you said -- and I'm looking -- go ahead and let me
14 know when you're there so that I can have you --

15 A. I'm there.

16 Q. I'm looking at page three, paragraph eleven,
17 beginning at line seven.

18 A. Uh-hmm.

19 Q. You write, "For example, just a few days prior to
20 writing this Declaration I alerted a peace officer of a
21 car break-in, allowed her to use my portable radio to
22 communicate with our common dispatch," and so on. Do you
23 see that?

24 A. Yes.

25 Q. In that instance, was the peace officer that you

1 worked with wearing a different uniform than you were?

2 A. Yes.

3 Q. And the radio that you allowed her to use was
4 your aquatics radio?

5 A. They're the same radio. It's identical radio to
6 hers. It's just that hers died. The battery died.

7 Q. Oh, I see. So I was under the impression that
8 there were two systems of radios, one for aquatics
9 functions and also peace officer radio. Am I correct in
10 that thinking?

11 A. Yes, you are correct. But that's only during the
12 summer months. So the only time that we will be on an
13 aquatics frequency is when we have an aquatics
14 dispatcher. And that occurs, you know, June, July,
15 August.

16 Q. Do you have an aquatics dispatcher -- strike
17 that. Do you have peace officer -- do you have the
18 capability of speaking to other law enforcement agencies
19 on your radio?

20 A. Yes.

21 Q. And do you do that often?

22 A. On occasion.

23 Q. Which agencies have you spoken to?

24 A. You know what? I don't -- well, I'll speak to
25 other lifeguarding agencies certainly. City of San

1 Diego, City of Solana Beach, City of Encinitas, City of
2 Oceanside.

3 Q. You speak to the lifeguards in those agencies?

4 A. Yes.

5 Q. Do you -- have you --

6 A. And fire.

7 Q. Fire department?

8 A. Yeah.

9 Q. Have you had occasion to speak to deputy sheriffs
10 on your radio?

11 A. No.

12 Q. City police officers?

13 A. No.

14 Q. Federal agents?

15 A. No.

16 Q. Have you had occasion to speak to Highway Patrol
17 officers?

18 A. No.

19 Q. Based on your experience in working with peace
20 officer Lifeguards, would you say that they have had
21 experiences speaking to those law enforcement agencies I
22 just listed on their radios?

23 A. Not that I can recall. I don't ever recall them
24 speaking -- using their radios to speak to other police
25 agencies. I'm sure it's happened, but I don't really

1 recall it.

2 Q. What's your -- which beach are you assigned to?

3 A. I work in San Diego, so there's three or four
4 beaches there that I work at.

5 Q. Do you work in any State beaches that are
6 either -- that are adjoined by a city?

7 A. Yes.

8 Q. Which cities?

9 A. City of San Diego and City of Del Mar, City of
10 Solana Beach, City of Encinitas, City of Oceanside.

11 Q. Now, do any of the police departments from those
12 cities provide backup assistance to the peace officer
13 Lifeguards that work at the beaches you work at?

14 A. Yes.

15 Q. That happens quite often, correct?

16 A. Yes.

17 Q. And similarly, the peace officer Lifeguards
18 provide backup to those agencies on occasion as well,
19 don't they?

20 A. I would imagine so. I'm trying to think. You
21 know, because normally what happens is that something
22 will happen inside the park and the sheriffs or another
23 outside agency will come in to assist. And it's not that
24 the State Park peace officer is going to go outside of
25 the park and assist.

1 Q. Okay. Now, have you ever provided backup -- you
2 mentioned you provided backup to Lifeguard peace
3 officers. Have you provided backup to any of the city
4 police officers?

5 A. No.

6 Q. Is it expected of you to provide backup to peace
7 officer Lifeguards as part of your job duties?

8 A. I think that that's a gray area. I don't know.
9 We do it because they're our friends.

10 Q. Now, you mention on page four of your Declaration
11 that you know Brian Haskins, Ken Harvey and Leonard Ortiz
12 as being peace officers who changed and became non-sworn
13 Lifeguards, yes?

14 A. That's correct.

15 Q. Are those retired annuitants?

16 A. One of them is.

17 Q. Which one?

18 A. Leonard Ortiz.

19 Q. So Mr. Ortiz became a seasonal Lifeguard because
20 he retired?

21 A. That's correct.

22 Q. And wanted to continue the aquatics function?

23 A. That's correct.

24 Q. Do you know the circumstances under which
25 Mr. Haskins became a Lifeguard generally, if you know? A

1 non-sworn Lifeguard?

2 A. No, I don't. No, I don't know.

3 Q. Would you -- is that -- is that considered to be
4 a lateral transfer to go from peace officer Lifeguard to
5 non-sworn Lifeguard?

6 A. No.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: He's a retired
8 annuitant. I mean it's not a lateral anywhere.

9 MR. ROSE: No. Ortiz is a retired annuitant.
10 Haskins is not.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Ah, thank you.

12 BY MR. ROSE:

13 Q. Right?

14 A. Correct.

15 Q. That's a demotion, isn't it?

16 A. I wouldn't characterize it that way.

17 Q. It's less pay?

18 A. Yes.

19 Q. Was Mr. Haskins a Lifeguard peace officer, or
20 peace officer somewhere else?

21 A. He was a permanent intermittent Lifeguard.

22 Q. And so when he became a non-sworn Lifeguard, did
23 he remain a permanent intermittent?

24 A. No.

25 Q. He went to seasonal status?

1 A. Yes. Yes.

2 Q. Did he get another job as well?

3 A. He had another job before.

4 Q. What was that job?

5 A. He's a M.D.

6 Q. He's a medical doctor?

7 A. Yes.

8 Q. So is it fair to say that Mr. Haskins' medical
9 practice was interfering with his ability to work as a
10 permanent intermittent Lifeguard and that's why he became
11 a seasonal Lifeguard?

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Only if you
13 know.

14 THE WITNESS: I don't know.

15 BY MR. ROSE:

16 Q. Did Mr. Haskins tell you why he made that choice?

17 A. No.

18 Q. Mr. Harvey, what were the circumstances under
19 which he became a non-sworn Lifeguard?

20 A. He was able to get one of the permanent
21 intermittent non-peace officer positions.

22 Q. And previously he was a seasonal?

23 A. Previously he was a -- I believe he was a
24 permanent intermittent peace officer Lifeguard.

25 Q. Did he explain why he made that change?

1 A. No.

2 Q. How do you know that happened? Do you work with
3 him?

4 A. Yeah.

5 Q. Well, not closely. He's up in Ventura. But I've
6 chatted with him.

7 Q. Okay. You mention in paragraph 15 on page 4 that
8 you testified in court on a lewd conduct charge, correct?

9 A. Correct.

10 Q. Is that the only time you've ever testified in
11 court as a seasonal Lifeguard for the State of
12 California?

13 A. Yes.

14 Q. And you said that also the arresting office [sic]
15 of State Park peace officer, and you met with the
16 prosecutor, correct?

17 A. That's correct.

18 Q. What was the substance of your testimony that day
19 without -- I don't need facts, but what were you there to
20 testify about?

21 A. What I witnessed.

22 Q. Did you write a report in that case?

23 A. Yes, I did.

24 Q. How long was your report?

25 A. I don't recall.

1 Q. Did you put your hands on the suspect that was
2 arrested for lewd conduct?

3 A. No.

4 Q. Do you enforce any laws in your job as a seasonal
5 Lifeguard?

6 A. I advise. I don't enforce.

7 Q. All right. What laws do you advise about?

8 A. Any, you know, State Park rule and regulation. I
9 mean --

10 Q. And if you -- if you come up -- excuse me. Let
11 me rephrase.

12 Do you ever report to peace officers situations where
13 your advisement of a break -- a violation of law has not
14 resulted in compliance?

15 A. Yes.

16 Q. And then they do the law enforcement, correct?

17 A. Correct.

18 Q. Now, you mention in paragraph 12 of your
19 Declaration at page 3 that there are similar training
20 obligations for both sworn and non-sworn. Do you see
21 that?

22 A. Yes.

23 Q. Those similar training obligations have to do
24 with your aquatics function, correct?

25 A. And first aid.

1 Q. But they do not have to do with the law
2 enforcement function, correct?

3 A. Correct.

4 Q. Because the law enforcement training obligations
5 for peace officer Lifeguards are different than or much
6 different than seasonal Lifeguards, right?

7 A. I wouldn't know.

8 MR. ROSE: All right. Nothing further. Thank you.

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Ms. Truong?

10 MS. TRUONG: Nothing from us.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Messing.

12 MR. MESSING: Yes, just one thing.

13 REDIRECT EXAMINATION

14 BY MR. MESSING:

15 Q. You say on page three, line twenty, you taught
16 several classes to the sworn with non-sworn in
17 attendance. What kind of classes were those?

18 A. Emergency medical responder classes, so first
19 aid.

20 MR. MESSING: Very good. Nothing further.

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Rose?

22 MR. ROSE: No, thank you.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Ms. Truong?

24 MS. TRUONG: Nothing.

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Thank you very

1 much, sir. And let me give you a quick admonishment not
2 to discuss your testimony with any other witnesses.
3 You're free to discuss your testimony with anyone at
4 these three tables here. Do you understand the
5 admonishment?

6 THE WITNESS: I do.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. With
8 that Y is admitted.

9 (Exclusive Representative's Exhibit Y received
10 in evidence.)

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And thank you
12 very much.

13 THE WITNESS: Okay.

14 (Off the record.)

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Back on the
16 record. We have a -- well, I don't know if it's called a
17 preliminary matter, extraneous matter. And Mr. Messing,
18 why don't -- why don't you go ahead and just restate it
19 on the record.

20 MR. MESSING: Yes. We have a witness, Tina Brazil,
21 who has been out of state and will continue to be out of
22 state through the next hearing dates, through the end of
23 March. We would like her to be taken as a witness by
24 telephone. And we have a date and time that she would be
25 available to call in if we can have that courtesy.

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DECLARATION OF TRANSCRIBER

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