

March 24, 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 24, 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 PROCEEDINGS - MARCH 24, 2009

2 --oOo--

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.
4 We're back on the record. The date is March 24th, 2009.
5 The time is approximately 9:15 a.m.

6 We are at the Public Employment Relations Board, day
7 eight of the proceedings of PERB case No. SA-SV-171-S, at
8 1031 18th Street, Sacramento, California.. It is the
9 Bargaining Unit 7 severance hearing.

10 Peace Officers of California is the Petitioner.
11 State of California is the Employer. California
12 Statewide Law Enforcement Association as the Exclusive
13 Representative.

14 My name is Shawn Cloughesy. I'm the Administrative
15 Law Judge assigned to hear this case on behalf of the
16 PERB.

17 On channel one and -- I'm sorry. Channel one is the
18 Administrative Law Judge and the witness. Channel two is
19 the Exclusive Representative. Channel three is the
20 Employer. And channel four is the Petitioner.

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: If I can have
22 the parties state their appearances for the record with
23 the Exclusive Rep first?

24 MR. MESSING: Gary Messing for CSLEA. And with me is
25 CSLEA Chief Counsel Kasey Clark.

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And on behalf of
2 the Employer.

3 MS. TRUONG: Shannan Truong, Legal Counsel for
4 Department of Personnel Administration. With me is Linda
5 Mayhew, Assistant Chief Counsel for Department of
6 Personnel Administration, and Labor Relation Officer
7 Kristine Rodrigues from the Department of Personnel
8 Administration.

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And on behalf
10 of the Exclusive Rep [sic]. I'm sorry. Petitioner, who
11 hopes to be the Exclusive Rep. Let me put it that way.

12 MR. ROSE: Good morning, Judge. Joe Rose
13 representing Peace Officers of California. Seated at
14 counsel table with me is attorney Diane Sabonis.

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. And
16 I have -- while we were off the record none of the
17 parties have stated there was any preliminary matters, at
18 least that would prevent us from taking this witness
19 next.

20 And sir, may I ask you to raise your right hand?

21 (Witness sworn by the Judge.)

22 THE WITNESS: Yes, I do.

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

25 THE WITNESS: David Johnson. J-O-H-N-S-O-N.

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. And
2 marking as Exclusive Representative BB what appears to be
3 a Declaration of David Johnson.

4 (Exclusive Representative Exhibit BB marked
5 for identification.)

6 MR. MESSING: What was the exhibit letter?

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Double B. BB.

8 MR. MESSING: Thank you.

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And I have a
10 couple preliminary questions for this witness. Sir, have
11 you reviewed any of the transcripts of these prior
12 proceedings?

13 THE WITNESS: No, I haven't.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. And do
15 you know who James Cline is?

16 THE WITNESS: No, I don't.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. Showing
18 you Exclusive Representative double B. And sir, why
19 don't you just take a quick look at that, and then tell
20 me what it is if you recognize it.

21 THE WITNESS: Yes. This is my Declaration.

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. And
23 you are on the signature page. So on page four -- if you
24 need to take a break, we can.

25 THE WITNESS: No, I'm fine.

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Is that your
2 signature on that signature page?

3 THE WITNESS: Yes, it is, sir.

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

7 THE WITNESS: Yes, I did.

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Messing, any
9 further questions?

10 MR. MESSING: Just a few.

11 TESTIMONY OF

12 DAVID JOHNSON,

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

15 DIRECT EXAMINATION

16 BY MR. MESSING:

17 Q. First of all, are there any corrections that you
18 want to make to your Declaration?

19 A. Not that I see here.

20 Q. Now, you're a Supervising Museum Security
21 Officer, correct?

22 A. Yes, sir.

23 Q. You've been a Supervisor for a decade. Were
24 you -- is that right?

25 A. Yes, sir.

1 Q. Okay. Were you a Museum Security Officer before
2 that?

3 A. Yes, I was.

4 Q. For how long?

5 A. For about nine years.

6 Q. Okay. So it's about 19 years total?

7 A. Yes.

8 Q. Okay. As a -- it says here that you're a
9 sworn -- you're not sworn peace officers, but you have
10 peace officer powers of arrest; is that right?

11 A. Yes, sir.

12 Q. Okay. Have you exercised the power of arrest as
13 a Museum Security Officer or Supervisor?

14 A. Yes, I have.

15 Q. Okay. What kind of arrests have you made?

16 A. Well, I've made numerous arrests in the park.
17 One that comes to mine, we were on patrol during a USC
18 scrimmage game and I seen a vehicle that was on our
19 play -- driving on our play field at a high rate of
20 speed. And it ran over a couple people that were
21 visiting in the park.

22 Q. Okay. When you say numerous arrests -- yeah.
23 Did you make an arrest in that case?

24 A. Yes, we did.

25 Q. Okay. And who did you -- I mean not the name,

1 but what was the arrest for?

2 A. For assault with a deadly weapon. ADW with a
3 vehicle.

4 Q. Okay. So in a given year how often would you
5 have to make an arrest?

6 A. Well, you know, it's whenever need be. Our
7 officers frequently make arrests. But me as a
8 supervisor, I review those arrests prior to taking the
9 individuals into custody. But myself arresting folks,
10 it's only when it happens right in front of me.

11 Q. Okay. How many Museum Security Officers do you
12 work with on a daily basis?

13 A. On my watch there's approximately 10.

14 Q. Okay. So how often would there be an arrest on
15 your watch by any Museum Security Officer?

16 A. Maybe twice or three or four times a month maybe.
17 It's on a case-by-case basis, you know.

18 Q. Okay. Now, you -- you're armed with a gun?

19 A. Yes, sir.

20 Q. Okay. And in the course of your duties as a
21 Museum Security Officer or Supervisor have you had to
22 unholster that gun?

23 A. Yes, I have.

24 Q. Okay. And what about the folks that you
25 supervise, do they -- are they folks who have typically

1 had to unholster their gun in the line of duty?

2 A. They have in the past.

3 Q. Okay. Have there been any shooting incidents
4 where an officer -- one of your officers or you have had
5 to utilize your duty weapon in the line of duty?

6 A. I can remember one instance where a shooting took
7 place on the grounds.

8 Q. Okay. And can you -- do you remember what
9 happened and approximately when?

10 A. I would say approximately -- I'd say about four
11 or five years ago one of our officers was checking an
12 area and he observed a vehicle occupied with two
13 individuals. He approached the vehicle. The vehicle, in
14 turn, backed up and tried to run him down, and the
15 officer discharged his weapon.

16 Q. Okay. Can you describe what your normal uniform
17 and safety equipment consists of?

18 A. Okay. I wear a tan shirt similar to the
19 Los Angeles County Sheriff's Department, and green pants.
20 I have a full Sam Brown belt, basket weave, with a
21 holster and cuffs, pepper spray, also a baton.

22 Q. Okay. Do you have a badge?

23 A. Yes, I do.

24 Q. Okay. And where is that located?

25 A. There's a area on my shirt that accepts the badge

1 and we wear the badge.

2 Q. Okay. Do you have a patch on your shirt?

3 A. Yes. Yes, we do.

4 Q. And where is that located?

5 A. On each shoulder.

6 Q. Okay. Do you carry any kind of a baton or
7 some -- an asp, or anything of that sort?

8 A. Yes, sir. The asp and occasionally the PR24.

9 Q. Okay. Do you get defensive tactics training in
10 your job?

11 A. Yes, we do. Matter of fact, I just went last
12 week for a refresher.

13 Q. Now, are Museum Security Officers members of the
14 peace officer/firefighter retirement?

15 A. Yes, they are, sir.

16 Q. Okay. What about Supervising Museum Security
17 Officers?

18 A. No, they're not.

19 Q. Okay. All right. The uniform that you described
20 and the equipment, is that standard for the folks who
21 work as Museum Security Officers and Supervisors?

22 A. Yes, sir.

23 Q. Okay. The officer who was involved in the
24 shooting that you described, was -- did he receive
25 representation from CSLEA?

1 A. Yes. Immediately.

2 Q. Okay. Are you -- have you ever had other
3 occasions where you or your people have had to call upon
4 CSLEA for assistance in grievances, discipline, or any
5 other type of representation?

6 A. Yes, sir.

7 Q. Okay. And how would you rate the responsiveness
8 of CSLEA to the request for assistance?

9 A. Well, on a scale from one to ten, I would make it
10 ten.

11 Q. Okay. Do you know if that opinion is shared by
12 other folks that you work with?

13 A. From the ones that I communicate with, yes.

14 Q. Okay. And those would be predominantly the
15 people who work with you on the same shift?

16 A. Yes, sir. And other shifts also.

17 Q. Let's see. Now, the people who you report to are
18 sworn peace officers, correct?

19 A. Yes, sir.

20 Q. Okay. And that's -- and there's -- is there an
21 Assistant Chief and a Chief position?

22 A. Yes, there are.

23 Q. Just give me one more minute here. Give me one
24 more second. What kind of POST training, if any, do your
25 people receive?

1 you were elevated from Museum Security Officer to
2 Supervising Museum Security Officer?

3 A. Okay, sir. As far as I can remember, when I
4 accepted the position of Supervisor, they did not have
5 the peace officer/firefighters retirement. Since that
6 time they've been working on it to try to get us that
7 retirement, but we haven't been successful yet with it.

8 Q. And that's been since December of 1990?

9 A. No. That's when I started at the museum in
10 December of 1990.

11 Q. Oh, I see.

12 A. In 19 --

13 Q. That's been for about 10 years?

14 A. Yes, sir.

15 Q. So for about 10 years CSLEA has tried to get
16 peace officer/firefighter retirement for you
17 unsuccessfully; is that correct?

18 A. Yes.

19 Q. Are you satisfied with the results of CSLEA's
20 efforts in connection with your retirement status?

21 A. Well, I feel that they're working on it. There's
22 a lot of stones that need to be turned to take and make
23 that work, legislation, and there's a lot of different
24 variables that have to take place to make it happen.
25 And, you know, they're working on it.

1 Q. Are you the only Supervising Museum Security
2 Officer?

3 A. No, I'm not.

4 Q. How many others are there, sir, if you know?

5 A. Currently there's three additional.

6 Q. Have you spoken to the other Supervising Museum
7 Security Officers about the fact that you do not have
8 peace officer/firefighter retirement?

9 A. They're aware of it.

10 Q. And have they expressed any opinion to you
11 regarding their satisfaction with CSLEA's representation
12 in that regard?

13 A. Well, they'd like to have it.

14 Q. Have they -- have they said they're unhappy with
15 CSLEA's representation?

16 A. I haven't heard that.

17 Q. Now, the people that you report to are an
18 Assistant Chief and a Chief?

19 A. Yes, sir.

20 Q. And they're peace officers?

21 A. Yes, they are.

22 Q. And they receive peace officer/firefighter
23 retirement?

24 A. Yes, they do. Well, sir, I can say the Assistant
25 Chief does. The Chief is on loan from the California

1 Highway Patrol, so I'm assuming that he does.

2 Q. I see. And you mention in your Declaration that
3 that's a Lieutenant who's in acting capacity?

4 A. Yes, sir.

5 Q. Okay. Now, interesting situation you're in
6 because of the fact that you have peace officer powers
7 but are not actually a full peace officer; would you
8 agree?

9 A. We have peace officer powers when we're getting
10 ready to effect an arrest.

11 Q. Are you -- has there been any effort or interest
12 in becoming full peace officers?

13 A. Yes, there has.

14 Q. How would you characterize the importance that
15 Museum Security Officers place on the concept of becoming
16 full peace officers?

17 A. Well, everybody in the classification would love
18 to be a full time peace officer.

19 Q. Are there any employees, either Museum Security
20 Officers or Supervising Museum Security Officers who
21 don't have at least the 832 level of training?

22 A. None that I know of.

23 Q. And that's the basic minimum requirement to have
24 the powers of arrest when you're on duty, correct?

25 A. Yes, sir.

1 Q. What efforts, if any, has CSLEA undertaken to
2 acquire full peace officer status for Museum Security
3 Officers?

4 A. Well, sir, I can remember back as far as possibly
5 1992 with then CAUSE being on board trying to achieve
6 peace officer status for the organization. We tried
7 several times and we were unsuccessful the last time with
8 legislation being introduced by Assemblyman Mark Ridley-
9 Thomas with CSLEA was on board with that also. So
10 they've been supportive with us trying to achieve that
11 status.

12 Q. And the legislation that was introduced that you
13 refer to with Assemblyman Thomas, was that in 1992?

14 A. No. That was way back when -- during the '92
15 era, that would have been Assemblywoman Theresa Hughes,
16 okay, that introduced that legislation. We had
17 legislation that was done at that time. Another time was
18 Assemblywoman Marguerite Archie-Hudson introduced
19 legislation, and with Assemblyman Mark Ridley-Thomas.

20 Q. And when was the most recent occasion in your
21 memory that legislation was introduced for the peace
22 officer status?

23 A. It would have been with Assemblyman Thomas.

24 Q. And what year was that approximately, if you
25 know?

1 A. Maybe five or -- five or six years. Four, five,
2 six years ago.

3 Q. Now, how many Memorandums of Understanding have
4 been ratified in Bargaining Unit 7 since you've been
5 Supervising Museum Security Officer, if you know?

6 A. You know, that's not within my scope, so I'm not
7 aware of any Memorandums of Understanding.

8 Q. Are you -- have you ever participated in
9 bargaining with CSLEA?

10 A. Yes, I have.

11 Q. What participation have you had personally in
12 bargaining with CSLEA?

13 A. Well, just this past year I was invited up and I
14 was able to talk about the things that happen within our
15 particular classification. So it was sometime last year.
16 The other times is that we've just given information to
17 representatives as to what we would like to see take
18 place in our negotiations. But this time, like I said,
19 last year I was actually invited to Sacramento to
20 participate in the negotiations.

21 Q. And when you were invited this past year, were
22 you actually seated at the bargaining table, or were you
23 in some other meeting?

24 A. Oh, no. I was at the table.

25 Q. What proposals were advanced by CSLEA on behalf

1 of Museum Security Officers and Supervising Museum
2 Security Officers this past year?

3 A. Well, the one that you talked about, getting the
4 Museum Security Officers and peace officer/firefighters.
5 That was one that was talked about. Because it was
6 dear -- it was near and dear, so we definitely talked
7 about that. And some other things, you know, as far as
8 pay increases and stuff like that, you know.

9 Q. Did the concept of -- well, strike that. Did DPA
10 have an opinion or position on the peace officer/
11 firefighter retirement for Supervising Museum Security
12 Officers?

13 A. They may have, but it's unknown to me what their
14 position was.

15 Q. When the proposal was communicated -- well, was
16 the proposal communicated to the State at the bargaining
17 table for peace officer/firefighter retirement?

18 A. Yes, it was.

19 Q. And who was it communicated by?

20 A. I was one of the people there at the table at the
21 time. I think there was representatives from CSLEA that
22 was also there.

23 Q. And who was it communicated to?

24 A. To the group that was at the table representing
25 the State.

1 Q. Did the State representatives reply in any way to
2 that suggestion or proposal?

3 A. Not at that time.

4 Q. Ultimately did you ever learn why State was not
5 in agreement with the peace officer/firefighter
6 retirement proposal for Supervising Museum Security
7 Officers?

8 A. No.

9 Q. Are you -- have you ever asked CSLEA to inquire
10 of the State why they are not willing to grant peace
11 officer/firefighter retirement to the Supervising Museum
12 Security Officers?

13 A. No, I haven't.

14 Q. Among the Museum Security Officers that you
15 interact with and Supervising Museum Security Officers,
16 have there been any complaints in the last three to four
17 years about CSLEA's representation?

18 A. None that I know of, sir.

19 Q. Were there any other representatives present at
20 the bargaining table other than yourself, sir, this past
21 year for your group?

22 A. No, there wasn't. But during that time period,
23 prior to going to the table, if I remember correctly, we
24 passed out information documents where if anybody had
25 anything that they would like to communicate to the

1 people at the table, they could submit these to the
2 representatives that we have in the Los Angeles area.
3 Where that if they had some desire trying to enhance the
4 contract of something that they'd like to take and see in
5 the contract as far as our organization was concerned,
6 they were given that opportunity to do that.

7 Q. Are you a member of an affiliate organization
8 within CSLEA?

9 A. Yes. Yes, I am. And it's CALEE.

10 Q. What does that stand for? C-A-L-I?

11 A. C-A-L-E-E, I think.

12 Q. C-A-L-E-E.

13 A. And we didn't have enough people in our
14 organization to form an actual affiliate, so they used to
15 be like called CAUSE only. But they have this group now
16 which -- small groups that are just out there by
17 themselves, and we're part of CALEE.

18 Q. Okay. Does CALEE involve any peace officers,
19 full sworn peace officers?

20 A. You know, I'm not sure.

21 Q. Are you an officer of CALEE?

22 A. No, I'm not.

23 Q. Other than your status as a member of CSLEA do
24 you have any official title with the organization?

25 A. Well, I'm a Job Steward.

1 Q. How long have you been a Job Steward?

2 A. I think probably since about 1992 or so.

3 Q. Are there any other Job Stewards in the Museum
4 Security Officer --

5 A. Yes, there -- yes, there are.

6 Q. Who are they?

7 A. Dorothy Vick. Kenneth Williams. Those are the
8 two that come to mind.

9 Q. And do those officers work with you at the
10 Science Center?

11 A. Yes, they do.

12 MR. ROSE: Thank you, sir. Nothing further.

13 MS. TRUONG: Nothing from us.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Messing?

15 MR. MESSING: Just one question, I think.

16 REDIRECT EXAMINATION

17 BY MR. MESSING:

18 Q. When you were at the bargaining table did the
19 issue of donning and doffing come up? The taking on --
20 putting on and taking off uniforms and getting paid for
21 that period of time of putting on the safety equipment?

22 A. It was mentioned. It was -- it was definitely
23 mentioned.

24 Q. Okay. Do you know whether DOJ Security Officers
25 are in CALEE?

1 MR. ROSE: Objection. Leading.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You know, I'm
3 actually going to allow that. It's not really going to
4 prejudice anybody. Go ahead.

5 THE WITNESS: You know, I'm not sure.

6 MR. MESSING: Okay. Nothing further.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Rose?

8 MR. ROSE: Nothing.

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sir, I need to
10 give you an admonishment not to discuss your testimony
11 with any of the other witnesses. You're free to discuss
12 it with anyone at this table right here. Do you
13 understand the admonishment?

14 THE WITNESS: Yes, sir.

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And with that,
16 double B is admitted.

17 (Exclusive Representative's Exhibit BB received
18 in evidence.)

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And I have --
20 didn't have double A checked yet, but that's also
21 admitted.

22 (Exclusive Representative's Exhibit AA received
23 in evidence.)

24 ADMINISTRATIVE LAW JUDGE CLOUGHESY: So thank you
25 very much. We'll go off the record.

1 (Off the record.)

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: We're back on
3 the record. We have another witness called by the
4 Exclusive Representative. I'm going to ask you to raise
5 your right hand.

6 (Witness sworn by the Judge.)

7 THE WITNESS: Yes.

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

10 THE WITNESS: Okay. My name is Steven Michael
11 Bradley. B-R-A-D-L-E-Y.

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.
13 Marking as Exclusive Representative double C what appears
14 to be a Declaration of Steven Bradley.

15 (Exclusive Representative's Exhibit CC marked
16 for identification.)

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I have a couple
18 of preliminary questions for you, Mr. Bradley. The first
19 one is, have you read a transcript of any prior
20 proceedings in this matter?

21 THE WITNESS: No.

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. And
23 do you know an individual by the name of James Cline?

24 THE WITNESS: No.

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Handing to you

1 Exclusive Representative double C, take a look at that.
2 And if you can tell me whether you recognize what it is,
3 that'd be great.

4 THE WITNESS: This is a copy of the statement that I
5 submitted.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I'm just going
7 to move this a little bit closer here just so that it'll
8 catch you.

9 All right. Why don't you turn to the signature page
10 of that document. And, sir, is that your signature?

11 THE WITNESS: That is in fact my signature.

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. Did
13 you sign it on or about the time and location set forth
14 in that Declaration?

15 THE WITNESS: Yes.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.
17 Mr. Messing?

18 TESTIMONY OF

19 STEVEN M. BRADLEY,

20 Having been duly and regularly sworn, testified as
21 follows:

22 DIRECT EXAMINATION

23 BY MR. MESSING:

24 Q. Any corrections that you'd like to make to this
25 Declaration?

1 A. Just one correction. The person that transcribed
2 it misspelled my first name here.

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Oh, that's not
4 good.

5 THE WITNESS: It's with P-H of a V.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

7 THE WITNESS: I spell my name with a V. Above it's
8 spelled correctly. Just at the beginning.

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Why don't you
10 make that change and date and initial it. And was that
11 the only correction?

12 THE WITNESS: That's the only correction.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: That's not too
14 bad at all. Okay. Mr. Messing.

15 BY MR. MESSING:

16 Q. Okay. Just a couple of things. Now, you work at
17 the Military Department, correct?

18 A. Correct.

19 Q. Okay. And you're a sworn peace officer?

20 A. Correct.

21 Q. Okay. And your classification, according to
22 this, is Firefighter Security Officer?

23 A. That's correct.

24 Q. Okay. Now, the Firefighter Security Officers of
25 Veterans Affairs are not peace officers?

1 A. That is correct.

2 Q. Okay. Now, at the Military you carry a weapon?

3 A. Yes.

4 Q. Okay. The peace officer -- the Security Officers
5 at Veterans Affairs do not carry firearms?

6 A. They do not carry firearms.

7 Q. Okay.

8 A. That's correct.

9 Q. But they can lateral into your positions at
10 Military?

11 A. That is correct, yes, they can.

12 Q. Okay. All right. Now, the -- what would you say
13 is the balance in your job between firefighter duties
14 versus law enforcement duties? You could give a
15 percentage for each.

16 A. My personal opinion is it's approximately 80
17 percent fire and emergency-type services, and about 20
18 percent for law enforcement-type duties.

19 Q. Okay. Now, and what about the non-sworn -- are
20 you familiar -- well, let me ask you this: Are you
21 familiar with the duties of the non-sworn Firefighter
22 Security Officers at Veterans Affairs?

23 A. In a -- in a general way I am.

24 Q. And how were -- how did you become familiar with
25 their duties?

1 A. I did a site visit as the Unit President, talked
2 to them about their specific duties and --

3 Q. Okay. So these -- the non-sworn folks at
4 Veterans Affairs, how would you characterize the balance
5 of what they do between firefighter duties versus law
6 enforcement duties?

7 A. As they currently stand now, they have no
8 firefighter duties left.

9 Q. Okay. So is the remainder --

10 A. It's all security/law enforcement-type duties.

11 Q. Okay. Okay. When you refer to yourself as
12 President, what are you President of?

13 A. Oh, I am currently the President of the State
14 Employee Firefighters Association, which is an affiliate
15 of CSLEA.

16 Q. Okay. Now, you also -- and so SEFFA contains
17 Firefighter Security Officers in both Military and
18 Veterans Administration, correct?

19 A. Yes. And also State Parks.

20 Q. And State Parks. Okay. Now, you also have -- do
21 you have Firefighters in your unit?

22 A. Yes.

23 Q. Okay.

24 A. I also have straight Firefighters that are
25 employed at the State's mental hospitals and

1 developmental centers.

2 Q. Okay. And what percentage of their work is law
3 enforcement as opposed to firefighting?

4 A. As far as I know, they have no law enforcement
5 duties.

6 Q. So it's all firefighting?

7 A. It's all firefighting, fire prevention.

8 Q. Okay.

9 A. That type stuff.

10 Q. Can Firefighters laterally transfer into
11 Firefighter Security Officer positions?

12 A. Yes, they can.

13 Q. And do you know what restrictions there are on
14 that, or what conditions they have to complete?

15 A. They can transfer over. They, of course, have to
16 pass the background check, and they have to complete PC
17 832 within one year when starting their job so that they
18 can take on the Security Officer duties.

19 Q. Okay. Now, the Firefighters -- the Firefighters
20 at Mental Health and -- where did you say the other place
21 was, DDS?

22 A. Development centers, yes.

23 Q. Okay. Do they get POFF retirement?

24 A. Yes, they do.

25 Q. Okay. But they're not within the unit proposed

1 by -- they're not included in the unit proposed by POC,
2 to your knowledge?

3 MR. ROSE: Objection. Leading.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sustained.

5 MR. ROSE: Lacks foundation.

6 BY MR. MESSING:

7 Q. Okay. Do you know whether they're included in
8 the POC proposed bargaining unit?

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: That's Peace
10 Officer of California. We have this --

11 MR. MESSING: I'm sorry. Peace Officers of
12 California.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

14 THE WITNESS: It is my understanding that they would
15 not be included.

16 BY MR. MESSING:

17 Q. Okay. Now, do you hold any other position in --
18 well, as a -- let me back up for a second.

19 As President of your affiliate, does that give you a
20 position in the structure of CSLEA?

21 A. Yeah. As the affiliate President I sit on
22 CSLEA's Board. I am also a member of CSLEA's LDF, which
23 I am the Chair.

24 Q. Okay.

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I'm sorry.

1 You're the -- you're part of what committee?

2 THE WITNESS: CSLEA's LDF.

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yes.

4 THE WITNESS: Legal Defense Fund.

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. That's
6 what it is. Got it.

7 BY MR. MESSING:

8 Q. Okay. You -- what was your position on the LDF?

9 A. I'm the Chair.

10 Q. The Chair.

11 A. Just became the Chair.

12 Q. Okay. Okay. And is that a Trustee position?

13 A. It is in fact a Trustee position.

14 Q. Okay. As Chair of the CSLEA Legal Defense Fund,
15 do you have occasion to become knowledgeable about either
16 complaints about representation, or people who are
17 praising CSLEA's representation?

18 A. In regards to the LDF, occasionally. The LDF is
19 more of -- more legal action against specific officers
20 and not so much specifically labor relations very often.

21 Q. Okay. When speaking about the legal defense of
22 officers that is performed by the Legal Defense Fund,
23 have there -- have you received the actions from members
24 as to the representation that they've been afforded?

25 A. Yes. I've talked to several members that have

1 been very pleased with the ultimate outcome of the Legal
2 Defense Fund.

3 Q. Okay. Any cases come to mind as you're sitting
4 here?

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Without giving
6 names, of course.

7 THE WITNESS: Right.

8 MR. MESSING: Right. If --

9 THE WITNESS: There was one specifically for -- it's
10 actually a non-sworn where a CHP dispatcher had some
11 problems. And after quite a long time, actually got her
12 dismissal overturned with the help of the LDF's defense.

13 MR. MESSING: All right. Okay. I'm going to pass
14 you to Mr. Rose for Peace Officers of California.

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You got it
16 right. Mr. Rose.

17 MR. MESSING: Thank you.

18 MR. ROSE: Thank you, Mr. Messing.

19 CROSS-EXAMINATION

20 BY MR. ROSE:

21 Q. Good morning, Mr. Bradley.

22 A. Good morning.

23 Q. Joe Rose, the attorney for Peace Officers of
24 California.

25 A. Nice to meet you, sir.

1 Q. POC. And thank you for appearing here. Let me
2 ask a few additional questions about what you just spoke
3 about.

4 A. Sure.

5 Q. You gave an estimate of your -- the balance of
6 your duties, fire protection and prevention duties, as
7 compared to the law enforcement duties. Would you say
8 that those duties, the balance of those duties have
9 changed over time since you've held the position that you
10 now hold?

11 A. Not since I've held the position. But from what
12 I understand from my previous coworkers of how things
13 were done previously, that our law enforcement
14 responsibilities have significantly increased since 9/11.

15 Q. And so Since September 11, 2001, you've actually
16 had more of an emphasis on your peace officer duties,
17 correct?

18 A. That is correct. And to clarify, sir, I'm
19 specifically talking about Camp Roberts, where I
20 specifically work.

21 Q. Okay. And would you say that your duties have
22 actually increased from about 80/20, 80 being the fire
23 protection side and 20 being peace officer, to about
24 60/40, with 60 being firefighting and 40 being peace
25 officer?

1 A. That's my personal guess as to what we're doing
2 right now, yes.

3 Q. Okay. So currently would you -- would you agree
4 with me that about 60 percent of your time is fire
5 protection related and 40 percent peace officer?

6 A. Okay. Yeah. Yes, that would be --

7 Q. Okay. Great. Now, you have required training as
8 a part of your peace officer obligations, correct?

9 A. Correct.

10 Q. And that includes quarterly training or annual
11 training on firearms, true?

12 A. We quarterly train and qualify with our firearms,
13 yes.

14 Q. And you also have either quarterly or annual
15 required training for defensive tactics?

16 A. Annual training for defensive tactics, yes,
17 that's correct.

18 Q. Do you have any other additional required
19 training for peace officer duties?

20 A. Once we pass the initial PC 832 with firearms, we
21 have to obtain a certificate with law enforcement baton,
22 and then law enforcement pepper spray. After that, other
23 than those, the firearms and the defensive training,
24 there's no required continuing law enforcement training.

25 Q. I'm sorry. Could you repeat the last part of

1 what you just said? I missed that part.

2 A. Okay.

3 Q. You said the baton and the pepper spray.

4 A. Correct.

5 Q. And we've already talked about defensive
6 tactics --

7 A. Right. And then --

8 Q. -- and firearms.

9 A. Right. And then other than the annual training,
10 there's no other required ongoing training.

11 Q. Okay. Are there any other training that you
12 participate in for law enforcement duties?

13 A. I have participated in other law enforcement
14 training, yes.

15 Q. And how would you -- again, speaking in terms of
16 balancing the percentages of the hours that you spend
17 training on required law enforcement training versus say
18 voluntary law enforcement training, how would you
19 allocate that?

20 A. I'm not sure exactly what you're asking, sir.

21 Q. Well, if you take a given year and you count up
22 the number of hours you spend on the required firearms,
23 required defensive tactics, the baton certification and
24 the pepper spray, and then you compare that against
25 whatever additional law enforcement training that you

1 might do on a voluntary basis, how would those equate to
2 one another or compare in terms of hours spent?

3 A. Well, I can give an example of last year I did
4 approximately 40 hours of extra law enforcement training.

5 Q. What did you do last year?

6 A. I took a radar enforcement class.

7 Q. Radar?

8 A. Radar.

9 Q. So like the speed gun?

10 A. Correct.

11 Q. Okay. And what else?

12 A. That was it.

13 Q. Oh. So that was a 40-hour class?

14 A. Correct.

15 Q. I see. Did you take any additional firefighting,
16 not mandatory but voluntary firefighting training last
17 year?

18 A. Not that I can recall at this time.

19 Q. Okay. Now, would it be fair to -- you mentioned
20 earlier and in your Declaration about the opportunity for
21 Firefighter Security Officers who are not peace officers
22 and also Firefighters to laterally transfer into your
23 position. Do you remember that?

24 A. Correct.

25 Q. Would it be fair to say that those employees who

1 laterally transfer into your position are not peace
2 officers until they fulfill the peace officer mandatory
3 training requirements?

4 A. I'm not sure I know the answer to that. I'm not
5 sure.

6 Q. Well, you mentioned that, for example, they have
7 one year to complete their PC 832, correct?

8 A. Correct.

9 Q. Following the lateral transfer, right?

10 A. Correct.

11 Q. So is it -- would you agree with me that the
12 employee who laterally transfers would not be given a
13 firearm prior to completion of PC 832?

14 A. That is correct.

15 Q. And would not be able to arrest anybody?

16 A. That is correct.

17 Q. And would not be able to use a radar gun to issue
18 a speeding citation?

19 A. Correct.

20 Q. And would not be able to participate in any of
21 the peace officer duties until they complete the PC 832,
22 correct?

23 A. Correct.

24 Q. Now, have you actually had anyone who was a peace
25 officer, security officer, non-sworn, later into your

1 position, a sworn position, since you've been there?

2 A. We have had Firefighters lateral from other
3 firefighting State units into our unit.

4 Q. And were those -- and how many times has that
5 happened since you've been there?

6 A. I can specifically think of three employees that
7 I currently work with that lateraled from Unit 8, CAL
8 FIRE.

9 Q. How many?

10 A. Three that I can think of.

11 Q. Oh, but they lateraled from another bargaining
12 unit?

13 A. From another bargaining unit, fire unit.

14 Q. How many since January 2nd, 2002, when you were
15 first employed by the State Military Department through
16 present have -- how many other Bargaining Unit 7
17 employees have lateraled into your position, peace
18 officer sworn Firefighter Security Officer?

19 A. From another Bargaining Unit 7 position? None
20 that I am aware of.

21 Q. All right. Are you aware of any sworn
22 Firefighter Security Officers who have lateraled to a
23 non-sworn Firefighter Security Officer position?

24 A. Not that I am aware of.

25 Q. Are you aware of any sworn Firefighter Security

1 Officers who have lateraled to a non-sworn Firefighter
2 position, say at the Mental Health or DDS?

3 A. Not that I'm aware of.

4 Q. How do you know that the lateral opportunities
5 are possible if you've never seen it happen?

6 A. I've specifically tested for other places. I've
7 been on lists to be able to transfer. I've been given
8 conditional offers to be able to move, but I've not
9 accepted.

10 Q. And that was within State service?

11 A. Uh-hmm.

12 Q. Was that within --

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I'm sorry.
14 That's a yes?

15 THE WITNESS: Yes.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

17 BY MR. ROSE:

18 Q. Was that the Bargaining Unit 8, CAL FIRE?

19 A. No.

20 Q. Oh, okay. All right. Now, as the President of
21 your affiliate, S-E-F-F-A --

22 A. Yeah. S-E-F-F-A, SEFFA.

23 Q. SEFFA, S-E-F-F-A. As President of your
24 affiliate, have you had occasion to hear whether the
25 peace officer employees that you represent at express any

1 opinion about the concept of a peace officer only
2 bargaining unit?

3 A. Yes.

4 Q. Would you say that there's -- well, how would you
5 characterize the degree of support for that concept in
6 your working group among the peace officers?

7 A. Just through what has been expressed to me, I
8 have some members that are for it, and I have a lot of
9 members that are against it.

10 Q. Are you -- have you had any employees complain to
11 you about CSLEA's representation of them as peace
12 officers?

13 A. Not that I recall, no.

14 Q. How -- you said you just became chair of the LDF?

15 A. Correct.

16 Q. How long ago was that?

17 A. Last month.

18 Q. Have you had any meetings of the LDS board -- LDF
19 Board of Trustees?

20 A. Yes. Last month.

21 Q. So one meeting?

22 A. One meeting since I became Chair.

23 Q. So earlier you were asked whether you had an
24 opportunity to understand whether people were satisfied
25 with LDF representation. Do you remember that line of

1 questioning?

2 A. Yes, I think so.

3 Q. Were you basing your answers on the one meeting
4 that you attended last month?

5 A. No. Prior to being Chair I was on the Board as a
6 regular Trustee.

7 Q. Oh, I see. And how long were you a Trustee on
8 the Board prior to being Chair?

9 A. I've been on the Trustee -- I've been a Trustee
10 just over -- just over a year.

11 Q. And you have monthly meetings?

12 A. Quarterly meetings.

13 Q. Quarterly. So you've attended a total of four
14 LDF meetings?

15 A. Maybe it's actually probably I've gone to about
16 six LDF meetings I think total. So I guess it's been
17 about a year and a half. Time flies.

18 Q. When you go to your LDF meetings, are you given
19 reports by the staff as to the LDF cases outstanding?

20 A. Yes.

21 Q. Let me ask you to take a look at something and
22 tell me if you recognize it. One second. Excuse me for
23 one second. I have a few -- here we go. I'm looking at
24 your Exhibit -- Kasey, Exhibit H.

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yeah. Why don't

1 I just do this. I'm just going to mark as -- I might
2 just do it this way. I'm going to be marking as
3 Exclusive Rep double D the Declaration of Kasey
4 Christopher Clark in Opposition to Severance. And just
5 for purposes of identification, marking as Exclusive Rep
6 double E the Supplemental Declaration of Kasey
7 Christopher Clark. Attached to double D is a number of
8 exhibits to that.

9 (Exclusive Representative's Exhibits DD and
10 EE marked for identification.)

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And do you want
12 me to show him H? Is that the one you --

13 MR. ROSE: Yes.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

15 MR. ROSE: Please, Judge. Thank you.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: With --

17 MR. ROSE: Also, we may want to make a record -- a
18 note of the fact that the Supplemental Declaration is a
19 part of the sealed portion relating to --

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yeah.

21 Absolutely. I'll -- I -- let me just make a note that
22 the double E is going to be sealed from public
23 inspection.

24 Witness has -- I'm just going to try to make
25 something easy on me here. Hold on a second, sir. Just

1 so that we don't get confused. So Exclusive Rep double D
2 and H of that.

3 BY MR. ROSE:

4 Q. All right. Go ahead, please, sir, and take a
5 look at the document that you have in front of you. And
6 peruse it and let me know when you're done. I'll ask you
7 some questions about it.

8 A. All right, sir.

9 Q. Thank you. Now, do you recognize this document?

10 A. It is similar to documents that I received during
11 LDF meetings that report on ongoing and closed cases from
12 previous quarter for their (inaudible).

13 Q. I see. Now, if we turn to the very last page and
14 work our way backward, how many pages would we have to go
15 backward in this document to arrive at a place where you
16 are no longer familiar with the cases that are being
17 listed based on your status as an LDF Trustee?

18 MR. MESSING: Well, I'm going to object that there's
19 no foundation as to what -- whether he may be familiar
20 with cases as a Trustee. That he may be familiar with
21 cases that occurred prior to his becoming Trustee by
22 virtue of his being a Trustee. So it's vague and
23 ambiguous.

24 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. I -- we
25 can fix that easy. But in regards to -- do you see that

1 document before you, that H? And you said you're
2 familiar with these sort of printouts?

3 THE WITNESS: It's similar to the printouts that I
4 receive.

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

6 THE WITNESS: It's not identical.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

8 Well, okay. Let me ask you about that, then. What is
9 different in regards to what you see?

10 THE WITNESS: The case -- the sheets that I receive
11 do not usually have monetary amounts on them to the side.

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. Fair
13 enough. Anything else?

14 THE WITNESS: Other than that it's similar enough.
15 It's almost identical.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. Are
17 you familiar with the I'm going to use the word, you
18 know, enumeration system, or the way that it's
19 categorized by case number and that sort of a thing?

20 THE WITNESS: Yes.

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Are you -- are
22 you able to tell by that sort of case number, in a sense,
23 when Steven Bradley came on board as a Trustee in a case
24 that you I'll say reviewed or under your trusteeship?
25 Only if you're able to tell. But I mean --

1 THE WITNESS: It's hard for me to specifically say.
2 Because when I came on, some cases that are very old,
3 they're still active. You know, it's -- I can't say
4 specifically which cases I have.

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Can you say
6 which cases for sure you would have knowledge of when you
7 came on? I understand you came on board, you inherit the
8 oldies. But at some point you come on board with some
9 active cases or more current cases.

10 MR. MESSING: If I may?

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yes, sir.

12 MR. MESSING: Are you asking him if he can figure out
13 when the first active case occurred when he was -- or
14 started --

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yeah.

16 MR. MESSING: -- when he became Trustee?

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Just kind of get
18 around that ballpark where, okay, I'm familiar with this.
19 This kind of became current. It happened on my shift, so
20 to speak.

21 MR. MESSING: The initiation of the case?

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yes.

23 (Pause on the record.)

24 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I'm going to go
25 off the record while you do your analyst. Off the

1 record.

2 (Off the record.)

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.
4 We're back on the record. I numbered the pages of that
5 exhibit in the lower right-hand corner. So, sir, you
6 found the location?

7 THE WITNESS: I believe I have, your Honor.

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And what page
9 are you on?

10 THE WITNESS: I'm on page 23 that you marked.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

12 THE WITNESS: And this doesn't give a lot of
13 information. But if this is the case I believe it is,
14 it'd be CR07-186.

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. We'll
16 wait 'til we get there, everyone's there. All right. So
17 did you get the line where he was at, Mr. Rose, or --

18 MR. ROSE: CR07-0186?

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You're there,
20 sir. Ready to go.

21 MR. ROSE: Thank you.

22 BY MR. ROSE:

23 Q. Thank you for your patience, Mr. Bradley. So
24 let's look at the left column of this page 23. The top
25 line in the left column beginning with CR07 dash and then

1 a number, that would tell us that it's a criminal case.

2 CR means criminal, correct?

3 A. Okay. Correct.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Well, do you --

5 BY MR. ROSE:

6 Q. I'm asking.

7 A. I don't know. I don't know.

8 Q. Oh, you don't know. Okay. And then the 07 means
9 that it's 2007 when the case was originated, correct?

10 A. That's correct.

11 Q. And then the number after the dash is just a
12 sequential number, correct?

13 A. Correct.

14 Q. And then below that there's a date. For example,
15 the one we're looking at, CR07-0186, the date below that,
16 10-9-07, tells us that's when the case was opened,
17 correct?

18 A. Correct.

19 Q. And then below that we see closed and then a date
20 of November 15, 2007, right?

21 A. Correct.

22 Q. That tells us the date that the case was closed,
23 correct?

24 A. Correct.

25 Q. And to the right of that the incident tells us

1 the type of -- a summary and the type of case?

2 A. Correct.

3 Q. To the right of that we have the department in
4 which the member was involved?

5 A. Correct.

6 Q. And to the right of that we have the affiliate in
7 which the member is a member?

8 A. Correct.

9 Q. To the right of that we have whether or not
10 representation was approved or denied?

11 A. Correct.

12 Q. All right. And you're not familiar with the far
13 right column?

14 A. That's correct. My copies do not have that that
15 I receive.

16 Q. And so CR07-0186, this appears to be the first
17 case with which you have become familiar as an LDF
18 member, Trustee member?

19 MR. MESSING: Object. Mischaracterizes the
20 testimony.

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I'll let you
22 answer without assuming the fact. Go ahead, sir.

23 THE WITNESS: Could you please repeat the question?

24 MR. ROSE: CR07 --

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You just tell

1 us. What does that -- what case -- why did you pick that
2 case? What does it represent to you?

3 THE WITNESS: If -- like I said, this doesn't give --
4 if this is the case I believe it is, I believe my first
5 meeting I heard about the resolution of this case, which
6 was a Department of Fish and Game officer that was trying
7 to recover overtime from shooting a dog that was
8 attacking him. If this is correct. If that is the case
9 I believe it to be. And that he was successful in
10 getting his overtime for that.

11 BY MR. ROSE:

12 Q. And then would it be fair to say all the cases on
13 the remaining -- or the two cases on page 23 and all the
14 cases on page 24 and the only case on page 25 and the
15 only case -- the two cases on page 26, you're familiar
16 with all of those as well?

17 A. In a general sort of way. Determination,
18 according to our plan document, is done by the Legal
19 Administrator. The Legal Administrator will bring up to
20 the Trustees specific cases of note that are important.
21 If the Legal Administrator denies coverage, the member
22 always has the option to appeal to the Board. And then
23 we would get a more complete brief on the specifics of
24 the case, and so on and so forth. No one has ever
25 appeared to the Board since I've been on the Board. So

1 we do not get a very complete specific details. We get a
2 general overview of the ongoing cases.

3 Q. I see. And so when you were asked by counsel for
4 CSLEA about whether you had an occasion to learn of
5 complaints about representation in connection with LDF,
6 the basis for your answer was the briefs that you receive
7 from the Legal Administrator; is that correct?

8 A. That's correct.

9 Q. All right. Now let's talk about the difference
10 between your job duties and the job duties of a non-sworn
11 Firefighter Security Officer.

12 A. Okay.

13 Q. You said you were familiar with the job duties of
14 the non-sworn Firefighter Security Officer based on a
15 site visit; is that true?

16 A. That's correct.

17 Q. And now, was it more than one site visit or just
18 one?

19 A. Just one site visit.

20 Q. And how long was the site visit?

21 A. I was there for approximately three hours.

22 Q. And when would -- when did you make the site
23 visit?

24 A. I'm trying to recall the exact date. It was
25 approximately -- it was about four months ago.

1 Q. Pardon me? Repeat that.

2 A. About four months ago. I don't have my calendar
3 with me to recall exactly.

4 Q. Did you make that site visit in preparation for
5 your testimony here today?

6 A. No. Had nothing to do with this.

7 Q. How many people were present at the site visit?

8 A. Two.

9 Q. Does that include you, or are you not including
10 yourself?

11 A. Not including myself.

12 Q. So a total of three people --

13 A. Correct.

14 Q. -- including yourself? And the other two were
15 non-sworn peace officer -- or non-sworn Firefighter
16 Security Officers?

17 A. Correct.

18 Q. And based on your three-hour visit with those
19 employees, what is your understanding of the difference
20 between your job duties as a sworn Firefighter Security
21 Officer and the job duties of those non-sworn Firefighter
22 Security Officers?

23 A. In relation to the law enforcement duties, there
24 is not a whole lot of different in what they do day in
25 and day out as to what I do. They generally patrol.

1 They protect -- they protect the public. They -- there's
2 not a whole lot of difference in their job duties as far
3 as the law enforcement side of my job.

4 Q. Do they wear a uniform?

5 A. They do.

6 Q. Do they wear the same uniform you wear?

7 A. No.

8 Q. What -- how did the uniforms that you wear differ
9 from the uniform they wear?

10 A. We work for different departments; therefore, we
11 have different uniform standards, different
12 identification, different patches.

13 Q. Were those employees in uniform when you met with
14 them at the site visit?

15 A. Yes.

16 Q. What did -- what was their uniform looking like?
17 What did it look like when you saw them?

18 A. They have a tan-type uniform shirt, dark green
19 pants.

20 Q. And did they wear a belt?

21 A. Yes.

22 Q. Was it -- it was not a Sam Brown belt, was it?

23 A. Yes.

24 Q. It was a Sam Brown belt?

25 A. Uh-hmm.

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You got to give
2 me a yes on that.

3 THE WITNESS: I'm sorry. Yes.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

5 BY MR. ROSE:

6 Q. And by Sam Brown I'm referring to the larger belt
7 that a peace officer would wear to carry equipment.

8 A. Correct.

9 Q. And did the -- did they carry a baton?

10 A. They did not -- I did not see them carrying a
11 baton at that time. I do know that there are employees
12 there that do -- are certified to carry a baton.

13 Q. The two employees you met with did not carry a
14 baton?

15 A. At the time I was with them they were not
16 carrying their batons.

17 Q. And do you know whether either of those employees
18 are certified to carry a baton?

19 A. I do not know that information.

20 Q. And were either of them carrying a firearm?

21 A. No.

22 Q. Were either of them carrying pepper spray?

23 A. Yes.

24 Q. Were they both carrying pepper spray, or just
25 one?

1 A. I don't specifically recall with one, but I do
2 remember the Firefighter Security Officer, Captain
3 Firefighter Security Officer was carrying pepper spray.

4 Q. And did they carry handcuffs?

5 A. I don't specifically remember that.

6 Q. Are you aware whether those non-sworn Firefighter
7 Security Officers are required to pass a pre-employment
8 psychological evaluation?

9 A. I believe they have to pass the exact same job
10 qualifications as I do as a Firefighter Security Officer,
11 which includes a psychological evaluation.

12 Q. Are you aware whether those employees -- strike
13 that.

14 What type of vehicles do those employees drive around
15 the facility in, if at all?

16 A. They have a -- one, a black-and-white patrol car
17 with red and blue lights, and they had a all dark green
18 SUV-type vehicle with one forward facing red emergency
19 light.

20 Q. Do you know whether non-peace officer, non-sworn
21 Firefighter Security Officers actually drive the black-
22 and-white patrol car with the red and blue lights on top?

23 A. I do know that.

24 Q. And they do or don't?

25 A. They do.

1 Q. Do they drive them on the streets of the state of
2 California?

3 A. Yes, they do.

4 Q. Do you know whether those non-sworn Firefighter
5 Security Officers operate those lights on public ways on
6 a code three basis?

7 A. I don't have personal knowledge of that. I've
8 been told that when I was briefed on my visit.

9 Q. Were you able to discern during your site visit
10 whether the job duties of Firefighter Security Officers
11 there had changed at all in the last three or four years
12 or longer?

13 A. Prior to my tenure with -- at one time the
14 Firefighter Security Officers at that time did have a
15 full service fire department, as well as the law
16 enforcement. They no longer have the full service fire
17 department portion of their job. Specifically when that
18 took place, I don't have personal knowledge of that.

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Where are you
20 talk -- what facility?

21 THE WITNESS: Yountville (inaudible).

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Oh, you're
23 talking about Yountville.

24 BY MR. ROSE:

25 Q. Did those -- did those employees, the two that

1 you met, express any desire that or opinion as to whether
2 or not they should be classified as peace officers in
3 view of their job duties and so forth?

4 A. Yes.

5 Q. And what did they say?

6 A. They're constantly -- we're constantly working
7 with CSLEA working on they want -- they'd like to become
8 full peace officers. They'd like to become armed. The
9 Veterans Affairs, as far as I know, is adamantly opposed
10 to that.

11 Q. Were those -- are those employees -- or did they
12 express any opinion about their satisfaction with CSLEA's
13 representation of them in connection with their desire to
14 become full peace officers and armed?

15 A. Could you ask that question again?

16 Q. Yeah. Did they express any opinion to you about
17 how happy they are, or unhappy, with CSLEA's
18 representation in connection with becoming peace officers
19 and becoming armed?

20 A. The general sentiment I got from them is they are
21 happy with what CSLEA is trying to do. They're not happy
22 because Veterans Affairs is not going to allow them to do
23 it at this time.

24 Q. How long has this desire existed by these
25 employees, if you know, to become peace officers and

1 armed.

2 A. It's -- as far as I know, it's prior to my tenure
3 as the President.

4 Q. So many years?

5 A. I don't have any personal knowledge of that, but
6 that is the impression that I have from them.

7 Q. And when did you first become President?

8 A. Approximately two years ago.

9 Q. And so have you -- you're the representative for
10 their affiliate, correct?

11 A. Correct.

12 Q. What specific efforts have you made to assist
13 these employees who -- out at Yountville in becoming
14 armed and peace officers as in your -- wearing your CSLEA
15 hat?

16 A. I've worked with our lawyer who is specifically
17 assigned to my unit on those issues. We've talked
18 about -- with some of the other representatives at CSLEA,
19 other legislative-type ideas of ways to figure out and
20 just meeting with Veterans Affairs, trying to hammer
21 those out.

22 Q. All right. Let me make sure I get all this.
23 One, you worked with your lawyer, who is assigned to your
24 affiliate.

25 A. Correct.

1 Q. Two, you talked about legislative ideas. And
2 three, you -- did you meet with Veterans Affairs?

3 A. I have not met with Veterans Affairs.

4 Q. Are you aware whether anyone from CSLEA has met
5 with Veterans Affairs?

6 A. I don't have personal knowledge of that, no.

7 Q. Have you ever asked whether anyone from CSLEA has
8 met with Veterans Affairs on this issue?

9 A. Not that I recall.

10 Q. Okay. Who's the lawyer assigned to your
11 affiliate?

12 A. Christiana Dominguez is my north -- who is the
13 one that I'm referring to.

14 Q. And how many conversations have you had with
15 Christiana Dominguez about this issue, the one we're
16 talking about now?

17 A. I'm not sure I could quantitate it out. I mean
18 I've talked to her about all the issues constantly, you
19 know.

20 Q. Well, let's -- let me ask you this question: How
21 many times have you spoken to Christiana Dominguez in the
22 last two or so years since you've been President of the
23 affiliate?

24 A. Oh, probably 300 times or more. Sometimes I'll
25 call her four or five times a week. She's very

1 receptive.

2 Q. And of those 300 times or more that you've spoken
3 to her, how many times did the subject come up between
4 you and her of the fact that the employees at Yountville
5 would like to be peace officers and armed?

6 A. I'd say a fair estimate of probably at least 10
7 or 15 times we've discussed that.

8 Q. Are you aware what the plan is? Has there been a
9 game plan established with CSLEA and your affiliate as to
10 how to achieve this objective?

11 A. Not that I'm specifically aware.

12 Q. Are you satisfied with the strategy being
13 employed by CSLEA to get these employees at Yountville
14 peace officer status?

15 A. Yes.

16 Q. What is it that satisfies you about the strategy
17 being employed by CSLEA in that regard?

18 A. I'm trying to figure out how to specifically
19 explain this. CSLEA has made overtures to try to start
20 the conversation with Veterans Affairs. This is my
21 understanding. Veterans Affairs does not even want to
22 discuss that. Therefore, you can't have a conversation
23 with them if they are not going to be receptive to any
24 conversation. That is my understanding of how the
25 situation lasted.

1 Q. All right. So are you aware of, if they're not
2 interested in meeting, that there was ever actually any
3 meetings with Veterans Affairs on this issue and CSLEA?

4 A. I don't have any personal knowledge of that.

5 Q. Okay. And then the other thing you mentioned was
6 legislative ideas. What kind of legislative ideas have
7 you discussed with the attorney concerning this issue
8 specifically?

9 A. Like specifically whether they could be added to
10 the Penal Code section which the Military Department
11 Firefighter Security Officers are mentioned in.

12 Q. And has there been any legislative advanced by
13 CSLEA on this issue?

14 A. Not that I'm aware of.

15 Q. Are you satisfied with that fact?

16 A. Yes.

17 MR. ROSE: Nothing further.

18 MS. TRUONG: I just have a couple quick questions for
19 you.

20 CROSS-EXAMINATION

21 BY MS. TRUONG:

22 Q. You mentioned earlier that you did a site visit
23 at Yountville. Is that where you went?

24 A. Correct.

25 Q. And did you do a ride-along with a non-sworn?

1 A. Yes, I did.

2 Q. And what kind of facility is at Yountville?

3 A. It's a large veterans home facility. There's
4 hospital facilities. There's neighborhoods and living
5 areas. There's camping areas.

6 Q. Is it similar to a retirement-type home?

7 A. It would be similar to a very large retirement-
8 type community with multiple facets from full care to
9 just slightly supervised care to kind of living on their
10 own-type care --

11 Q. Okay.

12 A. -- of veterans.

13 Q. So the people -- the residents that live at
14 Yountville, they're not criminals?

15 A. No.

16 Q. And they may receive treatment from doctors and
17 nurses, but they're not committed there, so to speak?

18 A. Correct.

19 MS. TRUONG: No further questions.

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Messing.

21 MR. MESSING: Just a couple.

22 REDIRECT EXAMINATION

23 BY MR. MESSING:

24 Q. What are the -- what's the total number of
25 Firefighter Security Officers at Yountville? Do you

1 know?

2 A. There are six.

3 Q. Okay.

4 A. One of them being a Captain Firefighter Security
5 Officer.

6 Q. So five plus one?

7 A. Correct.

8 Q. Okay. And just one other thing. Have you ever
9 discussed with folks at CSLEA what the chances would be
10 of getting peace officer status for those Firefighter
11 Security Officers if the Veterans Affairs is opposed to
12 it?

13 A. There's -- it's been relayed to me on multiple
14 occasions that there's absolutely no chance of them ever
15 getting the peace officer status if the Veterans Affairs
16 are opposed to that.

17 MR. MESSING: Okay. I have nothing further.

18 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Rose?

19 RE CROSS-EXAMINATION

20 BY MR. ROSE:

21 Q. Just to clarify, when you were asked if you did a
22 ride-along with an armed sworn, and your answer was yes?

23 A. That is not what she --

24 MS. TRUONG: Objection. That's not what I --
25 that's -- you misstate the question.

1 MR. ROSE: I'm sorry.

2 MS. TRUONG: Misstated his answer.

3 MR. ROSE: I misunderstood what --

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You got the
5 ride-along right. Let's just take it from there.

6 BY MR. ROSE:

7 Q. What did you -- when you said yes to the question
8 about a ride-along, what did you understand the question
9 to be?

10 A. She asked if I had done a ride-along with one of
11 the Firefighter Security Officers at Yountville.

12 Q. Oh, okay. My hearing must be going today. Thank
13 you very much. But that -- well, that -- one question.
14 That was not a sworn person, sworn peace officer,
15 correct?

16 A. Correct. They're not sworn.

17 MR. MESSING: Okay. Thank you.

18 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Ms. Truong?

19 MS. TRUONG: No further questions.

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Messing?

21 MR. MESSING: That's all.

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. With
23 that, Exhibit double C is admitted.

24 (Exclusive Representative's Exhibit CC received
25 in evidence.)

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And I'll take
2 both of those documents. And thank you very much, sir.

3 THE WITNESS: Thank you.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: We'll go off the
5 record.

6 (Off the record.)

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.
8 We're back on the record. And Mr. Bradley has re-entered
9 the hearing room. I admonish you not to discuss your
10 testimony with any of the other witnesses. You're free
11 to discuss your testimony with anyone at these counsel
12 tables. Do you have any questions regarding that
13 admonishment?

14 THE WITNESS: I do not, sir.

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Thank you very
16 much. Off the record.

17 (Off the record.)

18 ADMINISTRATIVE LAW JUDGE CLOUGHESY: We're back on
19 the record. We have another witness called by the
20 Exclusive Representative. Sir, ask you to raise your
21 right hand.

22 (Witness sworn by the Judge.)

23 THE WITNESS: Yes.

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

1 THE WITNESS: William H. Bondshu. B-O-N-D-S-H-U.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. I
3 got a couple preliminary questions. First of all, have
4 you received or read the transcripts of any prior
5 proceedings in this matter?

6 THE WITNESS: No.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.
8 Secondly, do you know an individual by the name of James
9 Cline?

10 THE WITNESS: No.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Marking as
12 Exclusive Representative double F what appears to be a
13 Declaration of William Bondshu, last name B-O-N-D-S-H-U.

14 (Exclusive Representative's Exhibit FF marked
15 for identification.)

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And sir, if you
17 could take a look at that and let us know what that is.

18 THE WITNESS: This is my Declaration. There is a
19 correction I need to make on that. Is this the time to
20 do that?

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: It is, sir.

22 THE WITNESS: On line 28 it shows that my position is
23 sworn, and it is non-sworn.

24 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

25 THE WITNESS: So should I mark that on here?

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You should
2 insert it and then initial and date it. And any other
3 corrections?

4 THE WITNESS: No.

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. All
6 right. But you do recognize that document; is that
7 correct?

8 THE WITNESS: Yes.

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And could you
10 turn to the signature page? And is that -- on page
11 three, is that your signature?

12 THE WITNESS: Yes, it is.

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

15 THE WITNESS: Yes, I did.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.
17 Mr. Messing.

18 TESTIMONY OF

19 WILLIAM H. BONDSHU,

20 Having been duly and regularly sworn, testified as
21 follows:

22 BY MR. MESSING:

23 Q. Okay. In your Declaration you say you work with
24 the Law Enforcement Branch of OES; is that right?

25 A. That's correct.

1 Q. And that's on a frequent basis, or infrequent?

2 A. That's on a frequent basis.

3 Q. Okay. Now, in your Declaration on line 15 -- 14
4 and 15 you say, "All the Unit 7 members of the OES Law
5 Enforcement Branch share duty officer week with those of
6 us in Fire Branch on a rotational basis." Could you
7 explain that, please?

8 A. Sure. Each of the disciplines within OES, Fire,
9 Law, Recovery, Public Information, IT, share a weekly
10 duty officer rotation that starts on Thursday and
11 concludes on the following Thursday. And the purpose of
12 the duty officer is to provide the single point of
13 contact for in my case any fire emergency that were to
14 occur where mutual aid assets might be needed. In Law's
15 case, for example, any law enforcement mutual aid or a
16 search request or something would be handled by the
17 respective duty officer.

18 Q. Okay. Now, in that paragraph you say you "also
19 work side by side in incidents where the Law Enforcement
20 Manual Aid Plan has been put into effect to assist local
21 law enforcement of evacuations." When you say "we work
22 side by side," who are you referring to?

23 A. That would be the Law Enforcement Coordinators
24 with OES.

25 Q. Okay. And the Law Enforcement Coordinators with

1 OES, are they sworn or non-sworn?

2 A. I believe they're sworn.

3 Q. Okay. And let's see here. It says on line 18,
4 "It is not uncommon to have Unit 7 OES Law Enforcement
5 employee at the incident with me doing his job and
6 working the same hours." First of all, when you say the
7 same hours, what sort of hours are you referring to?

8 A. We would typically be together at an incident
9 briefing on a fire, for example. And, you know, those
10 usually are at six o'clock in the morning. And we would
11 attend planning meetings together, which are usually
12 around ten o'clock in the morning. And then we would
13 have an afternoon briefing at 6:00 p.m. And then we
14 would have an afternoon planning meeting at usually
15 around eight, nine o'clock in the afternoon.

16 Q. Okay. And --

17 A. And then that day just repeats itself.

18 Q. Okay. And these planning meetings, can you
19 describe briefly what goes on and how you work together
20 with a Law Enforcement employee?

21 A. Well, they basically -- the planning meetings are
22 to set the strategy and objectives for the work period
23 for the next day. So for fires, they would discuss the
24 fire's progression, where evacuations may need to occur,
25 where people are going to be on the line. And then

1 everybody has a chance for input as to recommendations,
2 or something they feel that they can't do. And then
3 that's built into the incident action plan. And then the
4 people are briefed on that at either the day shift or the
5 night shift briefing.

6 Q. Okay. So when you're meeting with the Law
7 Enforcement people at these meetings, in between the
8 meetings do you have occasion to communicate with the Law
9 Enforcement Coordinators?

10 A. Yeah. I mean we eat together. Sometimes we'll
11 get in the vehicle and travel and view the incident
12 together to -- you know, to see what they're talking
13 about. Look at a subdivision. See where the people are
14 actually working. Or it may be necessary to go around
15 and, you know, take care of issues that may come up. You
16 know, people that, you know, didn't get a lunch, or
17 didn't get their supplies, or if someone is sick or
18 injured.

19 Q. Okay.

20 A. But we're typically out in the field together. I
21 mean I do that very occasionally.

22 Q. In situations where somebody needs, for example,
23 medical attention you -- is one of the things you listed,
24 how does a decision get made between yourself and the Law
25 Enforcement Coordinator? Is there a chain of command

1 between you?

2 A. There's the incident command system that we use,
3 and any medical emergency would be vetted first through
4 the Safety Officer. And then it would end up eventually
5 at the Medical Unit Leader, and they're the ones that
6 arrange transportation or medical care on scene.

7 Q. Okay. So, for example, if you are out with the
8 Law Enforcement Coordinator and there's a question as to
9 whether people should be evacuated, is that something
10 that you would deal with?

11 A. That's something that he would deal with. He's
12 responsible for evacuations.

13 Q. Okay.

14 A. But he would certainly provide input back to the
15 incident command team as to whether an area may need to
16 be evacuated that was omitted. Or in some cases we will
17 go out into areas where we can allow the evacuees to come
18 back in and reoccupy their homes, you know, after the
19 fire's passed.

20 Q. Would you weigh in on those kind of decisions?

21 A. Sure. Yeah.

22 Q. Okay.

23 A. There's a lot of times where he relies on my
24 judgment in the fire field and, you know, he -- you know,
25 I'll take him out there and he can look at the area to

1 determine whether we need to move people out of there or
2 not.

3 Q. Okay. So the evacuation is an example of where
4 the Law Enforcement Coordinator has the ultimate
5 decision-making. What would be an area where you would
6 have the ultimate decision-making, but a Law Enforcement
7 Coordinator would weigh in on a decision?

8 A. The only thing I could think of would be maybe
9 perhaps if we didn't think a fire was going to move into
10 the area where he had concern, or the flip side, is it
11 safe enough around to move people back in and let them
12 repopulate their homes. So it's a -- it's a give and
13 take.

14 Q. Okay. All right. Now, there -- according to
15 your Declaration, there are other non-sworn folks in the
16 bargaining unit who work with OES Coordinators; is that
17 right?

18 A. Yes.

19 Q. Okay. So you refer here to a situation where you
20 responded to assist a Fish and Game Oil Spill Prevention
21 employee at the Costco Busson incident.

22 A. Yes.

23 Q. Okay. Now, are there sworn OES Coordinators who
24 also work with OSPR employees, to your knowledge?

25 A. The Law Enforcement Branch.

1 Q. Okay. So the type of things that you refer to in
2 your Declaration at the -- for example, the Costco Busson
3 incident, would those be incidents where a Law
4 Enforcement employee might be also involved?

5 A. From OES, yes, there would be. And then that
6 incident was pretty much headed up by Fish and Game, so
7 there were both sworn and non-sworn Fish and Game people
8 there.

9 Q. Okay. Now, as a non-sworn employee, you
10 reference other sworn employees that you might work with.
11 So, for example, the Basin Complex fire, which non-
12 sworn -- which sworn employees did you work with there?

13 A. There were primarily State Parks.

14 Q. Okay. Would those be Park Rangers or --

15 A. Yes.

16 Q. Okay. When did that fire take place,
17 approximately?

18 A. Jeez. I want to say I think that started in
19 July.

20 Q. Of what year?

21 A. Of last -- it was last summer.

22 Q. Okay. Okay. Now, in your Declaration you
23 mention the Alaska 269 crash off of Ventura County. Do
24 you recall approximately when that occurred?

25 A. I want to say it was either '99 or 2000.

1 Q. Okay. And is this an incident -- you
2 mentioned -- strike that.

3 Regarding the sworn employees that you work with, you
4 mentioned OES Law Enforcement people; is that right?

5 A. That's correct.

6 Q. Okay. You say here Fish and Game. Can you tell
7 me what classifications you were working with who were in
8 Fish and Game during that incident?

9 A. I believe they were both sworn and the OSPR
10 folks, because it was a off-shore event that they had,
11 you know, some jurisdiction or responsibilities in. But
12 they were all involved in the incident command structure
13 that we had there.

14 Q. Okay. The sworn folks were what classification?

15 A. Bargaining Unit 7.

16 Q. Okay. But what was their title?

17 A. Oh, I don't know.

18 Q. Were they -- were there Fish and Game Wardens at
19 the -- at this crash?

20 A. I believe so.

21 Q. Okay. Do you know if there are both sworn and
22 non-sworn OSPR employees?

23 A. I couldn't tell you. I don't know.

24 Q. Okay. Now, the OES Law Enforcement folks who
25 were at the scene, were they -- you mentioned also

1 Conservation Corps folks. Are those Conservationists?

2 A. Yeah. Those are the California Conservation
3 Corps.

4 Q. Okay. So are they working with OES Law
5 Enforcement people as well?

6 A. Yes.

7 Q. Okay. Now, you -- have you had any position
8 within CSLEA since you've been employed with the State?

9 A. Yes.

10 Q. Okay. What position have you had?

11 A. Currently right now I'm the President of our
12 affiliate FMESA.

13 Q. Okay. How long have you been President of FMESA?

14 A. For about five months.

15 Q. Okay. Prior to that did you have any -- so,
16 wait. As President of FMESA, that puts you on the Board
17 of Directors of --

18 A. CSLEA.

19 Q. -- CSLEA; is that right?

20 A. Correct.

21 Q. Okay. Prior to becoming President of FMESA, did
22 you have any other positions in either FMESA or CSLEA?

23 A. I was the Vice President prior to that.

24 Q. For how long?

25 A. Two years.

1 Q. Okay. Any other positions?

2 A. No.

3 Q. Okay. So between being President and Vice
4 President, it goes back two and a half years or so?

5 A. Approximately, yes.

6 Q. Now, in your capacity as Vice President or
7 President of FMESA, if there are people who have
8 complaints about CSLEA, would they be apt to bring them
9 to you, or would you be apt to learn about them?

10 A. In most cases.

11 Q. Okay. Can you characterize how people in FMESA
12 have -- well, wait. Let me go back for a second.

13 Who are -- what are the classifications in FMESA?

14 A. The Bargaining Unit 7 employees of OES, which is
15 now CALEMA, the State Fire Marshal's Office, and the
16 Comm. Operators with CAL FIRE.

17 Q. So you have both sworn and non-sworn employees in
18 FMESA?

19 A. Yeah. The Law Enforcement Branch, those would be
20 sworn employees, yes.

21 Q. Okay. About how many members are there in FMESA,
22 approximately?

23 A. Approximately, boy, I think we're in the 200, 220
24 range.

25 Q. Okay. Do you know about what percentage are

1 sworn and what percentage are non-sworn?

2 A. I could only speak to what's in the OES side, and
3 the Law Enforcement Branch I believe there's about eight.

4 Q. Okay. And how about in the non-sworn?

5 A. That would be the remainder.

6 Q. Which is how many?

7 A. Two hundred and something, I think.

8 Q. Okay. And the Comm. Operators that you
9 mentioned, how long have they been in the FMESA?

10 A. They just recently joined our affiliate about six
11 months ago.

12 Q. Okay. Now, how were they brought into the
13 affiliate?

14 A. I believe it was just because their discipline
15 shared, you know, our similar disciplines within the fire
16 service community as being dispatchers.

17 Q. Okay. so when you're involved in incidents, like
18 the ones that you've outlined in your Declaration, are
19 Comm. Operators involved as well?

20 A. Yes.

21 Q. Okay. And do the Law Enforcement Coordinators
22 deal with the -- or work with the Comm. Operators during
23 incidents?

24 A. Yes. They would have to.

25 Q. Okay. Now, during fire season are the Comm.

1 Operators ever put on scene with the incident command
2 post?

3 A. Yes.

4 Q. Okay. And can you just describe that briefly,
5 how that would work?

6 A. Typically they're used as incident dispatchers.
7 When we have an incident occur, we typically bring those
8 folks in to set up our own intra-communications for the
9 incident. And they're response to make sure that that's
10 all up and functioning and everybody has radios and
11 talking on the right frequencies and doing those kinds of
12 things.

13 Q. Okay. So they would be -- would they be
14 communicating with both the sworn and the non-sworn OES
15 Coordinators?

16 A. Yes.

17 Q. Okay. Would they be communicating with the sworn
18 and non-sworn other Bargaining Unit 7 personnel who are
19 involved in the incident?

20 A. Yes.

21 MR. ROSE: Objection. Leading.

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sustained.

23 BY MR. MESSING:

24 Q. Who else -- well, who else would they be involved
25 with in Bargaining Unit 7 classifications?

1 A. GIS people. If we have an incident that has any
2 hazardous material problems, there would be hazmat folks
3 that are there. T-comm. Operators that help bring in
4 dial tone or satellite connections.

5 Q. Okay. I'm talking about Unit 7 positions.

6 A. Those are Unit 7 positions --

7 Q. They all are?

8 A. -- I'm talking about. Yeah.

9 Q. Okay. Thank you. Now, you indicated that you
10 would be in a position to hear complaints. First of all,
11 what have you heard, if anything, from your members about
12 the receptiveness and responsiveness of CSLEA folks to
13 problems of your members?

14 A. Generally I believe it's positive. There are
15 people that complain, and that just, you know, is
16 natural. But I think it's more positive than negative.
17 They've been very receptive to handling any of our issues
18 that we've brought forward so far.

19 Q. Speaking of issues, any issues that come to mind
20 that CSLEA has done a good job for your members?

21 A. We just recently are kind of in the process of
22 settling a grievance that we had with DPA over some
23 payment of overtime that is coming to an end that was
24 approximately a three-year life, I guess, that went along
25 with that.

1 The other thing that's been good for us is just last
2 year, effective January the 1st, we received cancer
3 presumption for us, which had been omitted in the past.
4 And CSLEA went to bat for us downtown and were successful
5 in getting that.

6 MR. MESSING: Well, I don't have anything further at
7 this time, but --

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: We'll
9 interrupt -- yeah. We'll go ahead. And let me admonish
10 you first. We're going to be interrupting your
11 examination because we need to take a telephone call.

12 THE WITNESS: Okay.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Not take a
14 telephone call. Telephone witness.

15 THE WITNESS: Okay.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: So I'm going to
17 admonish you not to discuss your testimony with any of
18 the witnesses in this case. You're free to discuss it
19 with anyone at these three counsel tables here. And so
20 as soon as we're done with this teleconference call,
21 we'll probably bring you back in --

22 THE WITNESS: Okay.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: -- and finish
24 you up.

25 THE WITNESS: Very good.

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: So, with that,
2 we'll --

3 THE WITNESS: Do you want this back or --

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yes, sir.

5 THE WITNESS: Okay.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

7 (Off the record.)

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

9 We're now back on the record. We are taking a witness,
10 Tina Brazil, via telephonically pursuant to the section
11 of the Administrative Procedure Act as set forth in the
12 Temple City precedential decision case. This is going to
13 be a witness on behalf of the Exclusive Representative.

14 Mr. Rose, is there going to be any objection to
15 taking it by telephone?

16 MR. ROSE: No objection.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And on behalf of
18 the Employer?

19 MS. TRUONG: No objection.

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. So,
21 Ms. Brazil, I'm going to ask you to raise your right
22 hand.

23 (Witness sworn by the Judge.)

24 THE WITNESS: Yes, I do.

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

1 Please state your name for the record, spelling your last
2 name.

3 THE WITNESS: Tina Suzanne Brazil. B-R-A-Z-I-L.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. And
5 Ms. Brazil, I have a couple of preliminary questions.
6 And first of all, if you don't hear us when we ask a
7 question, please say so.

8 THE WITNESS: Okay.

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And I'll have
10 people come forward or go backwards, or which way it
11 works. But first question I have is, did you read any
12 transcripts in regards to the prior proceedings in this
13 matter?

14 THE WITNESS: No, sir.

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. And
16 secondly, do you know an individual by the name of James
17 Cline?

18 THE WITNESS: James Cline?

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Right.

20 THE WITNESS: No, sir.

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. I'm
22 marking as Exclusive Representative double G appears to
23 be a Declaration of Tina Brazil. That document goes four
24 pages in length.

25 (Exclusive Representative's Exhibit GG marked

1 for identification.)

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And Ms. Brazil,
3 if you could turn to that fourth page?

4 THE WITNESS: Okay.

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And does your
6 fourth page have a signature on yours?

7 THE WITNESS: Yes.

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. And
9 do you remember when or about you signed that?

10 THE WITNESS: You know, I signed it and I didn't -- I
11 do not. I'm sorry.

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.
13 Well, I -- you're obviously testifying truthfully because
14 mine doesn't have a date on it either, or a location.
15 But you did sign it; is that correct?

16 THE WITNESS: Yes.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And do you
18 remember after you signed it who you sent it to?

19 THE WITNESS: I sent it to Jason Jasmine.

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

21 THE WITNESS: Mr. Messing's office.

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. Very
23 good. Mr. Messing, any questions?

24 MR. MESSING: I have just a few questions.

25 TESTIMONY OF

1 TINA S. BRAZIL,
2 Having been duly and regularly sworn, testified as
3 follows:

4 /////

5 DIRECT EXAMINATION

6 BY MR. MESSING:

7 Q. Can you hear me, Tina?

8 A. Yeah, I can hear you.

9 Q. Okay. First of all, you say in your Declaration
10 you were elected President of CHP PSDA in about 2005.

11 A. Uh-huh.

12 Q. Okay. Prior to 2005 did you have any position in
13 either CSLEA or the CHP PSDA?

14 A. I was the Secretary for PSDA prior to that, and
15 the Division rep for Central Division for CHP
16 Dispatchers.

17 Q. Okay. And when did that first begin?

18 A. Two thousand -- it started in like June of 2003.

19 Q. Okay. Now, as an active officer in the CHP PSDA,
20 would you be in a position to know if people had
21 complaints about representation that was being rendered
22 by CSLEA?

23 A. Yes, I would.

24 Q. Okay. First of all, can you characterize how
25 people feel about the responsiveness of CSLEA when they

1 have an issue or a problem?

2 A. My membership, actually they either contact
3 either me or their Division Reps or even into our Vice
4 President. We're all open for anyone to call us at any
5 time. We do refer them to our legal counsel at CSLEA.
6 We have not had any complaints from any of our membership
7 with regards on how any of our legal counsel have handled
8 any of their issues at this point in time. And I have
9 not received any complaint since I've been in the
10 President spot.

11 Q. Okay. Now, it also says in your Declaration that
12 you are Chair of the Legal Review Committee.

13 A. Yes.

14 Q. How long have you held that position?

15 A. I've had that position for about a year.

16 Q. Okay. Now, in the position of -- well, would you
17 describe briefly what your duties are as Chair of the
18 Legal Review Committee?

19 A. The Legal Review Committee is a committee that
20 comes together every few months on issues where
21 grievances have been filed and they've now gone to the
22 last level, and now the case is being looked at, whether
23 it -- to see whether it will go to arbitration or not.
24 And then we have -- the Committee members on there look
25 at the file. They vote -- you know, they make the

1 motions to decide what goes forward and what does not.

2 As the chairperson on that Committee, I cannot vote on
3 any of those issues. It's done by the Committee members.

4 Q. Do you keep track of cases that are approved for
5 further representation?

6 A. We do have a legal secretary in the room that
7 keeps track everything. We sign off on everything that
8 we vote on, and initial. And then the Legal Department
9 there at CSLEA handles then all of that.

10 Q. Okay. And once the Legal Department gets the
11 case, do you get reports or summaries or anything further
12 after you have approved a case for representation?

13 A. Yeah. We'll get -- we'll get notice that the
14 letter has gone out advising that they're going to go
15 ahead and syndicate the arbitration or the letter that's
16 denying that the case that's going to arbitration.

17 Q. Okay. But if a case settles or goes to hearing
18 and is won or lost, are you notified as to the results?

19 A. No, we're not notified as of the results.

20 Q. Okay. Now, in your position of Chair of the
21 Legal Review Committee are you in a position where you
22 would receive -- be apt to receive complaints about
23 representation by members of CSLEA other than your
24 Dispatchers?

25 A. With my position, I'm not quite sure I understand

1 that.

2 Q. Okay. As the Chair of the Legal Review
3 Committee.

4 A. Uh-huh.

5 Q. Okay. I'm not talking about problems of
6 Dispatchers, but problems --

7 A. Right.

8 Q. -- that other CSLEA members would have, would
9 they -- are you in a position where they would be apt to
10 bring these kinds of issues to your attention?

11 A. As Chair of the Legal Review Committee, no.

12 Q. Okay.

13 A. They would not bring that to my attention and
14 not -- and any kind of normal they should not or would
15 not be bringing that to my attention.

16 Q. Okay. Just one last question, I think. Do you
17 know whether Department of Parks and Rec Comm. Operators
18 are POST certified?

19 A. Yes, they are.

20 Q. They are. Okay. Do you know at all what's
21 involved with that certification?

22 A. It's just a schedule of training that the State
23 puts out that they have to have certain blocks of
24 training, whether it be for domestic violence, critical
25 incident. They have certain blocks and certain

1 timeframes for those blocks and then to get the POST
2 certification. It's usually a two-week course that POST
3 puts on for that.

4 Q. Okay. And just one more thing is, what are
5 the -- well, do you represent -- well, can you briefly
6 indicate how many members your affiliate has, number one?
7 About how many people are in your affiliate?

8 A. My affiliate, we have right around 600 people.

9 Q. Okay. And out of those 600 can you just quickly
10 break down the different classifications that you have
11 and where they work?

12 A. Well, out of 600 of them, we have about 180
13 Dispatchers out of LA. You have 130 out of Golden Gate.
14 And then anywhere -- you have anywhere from 15 up to 50
15 something Dispatchers at the other smaller centers
16 throughout the State. And we have what we call Public
17 Safety Dispatcher I's that are call takers only. They
18 only work the phones. They do not work the radios. So
19 we have Public Safety Dispatcher II's that do both, work
20 the phones and the radio positions.

21 Q. Okay. And out of the 600, how many work for CHP?

22 A. They all work for CHP.

23 Q. Okay. Okay. So what affiliate are the
24 Department of Parks and Rec Comm. Operators in?

25 A. The Comm. Operators are under what we call CALEE.

1 Q. Okay.

2 A. Which means they're not a big enough entity to
3 have their own board of directors.

4 MR. MESSING: Okay. Okay. I'm going to pass you on
5 for questioning to Joe Rose.

6 THE WITNESS: Okay.

7 MR. MESSING: Thank you.

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You're free to
9 come forward, Mr. Rose.

10 CROSS-EXAMINATION

11 BY MR. ROSE:

12 Q. Good afternoon. Or good morning, Ms. Brazil.
13 This is Joe Rose, attorney for Peace Officers of
14 California. How are you?

15 A. Good. How are you?

16 Q. I'm fine. Thank you. Are you -- thanks for
17 interrupting your morning to appear for us this morning.
18 Can you hear me okay?

19 A. Yeah. I can hear you fine.

20 Q. Okay. Great. Let me ask you a few additional
21 questions about the things that you testified to both
22 orally this morning and in your declaration. Okay?

23 A. Uh-huh.

24 Q. The 600 members approximately of your affiliate,
25 how many of those are sworn peace officers?

1 A. None of them.

2 Q. Okay. So your earlier answer with respect to the
3 satisfaction of the members of your affiliate or the
4 members of CSLEA, that was in reference to non-sworn
5 employees, true?

6 A. Right. On the first question regarding any
7 complaints?

8 Q. Correct.

9 A. Yeah. That would -- he asked strictly my
10 affiliate, yes.

11 Q. Okay. Now, are you aware of any complaints by
12 CSLEA members who are sworn peace officers?

13 A. Complaints about?

14 MR. MESSING: Yeah. I'm going to object. Vague and
15 ambiguous.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You know, I
17 don't know whether -- complaints about representation?
18 Complaints -- is that what you mean, Mr. Rose?

19 MR. ROSE: Yeah. I can restate the question.

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yeah.

21 BY MR. ROSE:

22 Q. Just to clarify, Ms. Brazil, are you aware of any
23 complaints about representation by CSLEA by sworn peace
24 officers within the bargaining unit?

25 A. Have I heard of complaints? Yes.

1 Q. What complaints have you heard?

2 A. Just complaints that they're unhappy with being
3 in the same group that the non-sworn are in.

4 Q. Okay. Now, are the employees that you represent,
5 do they share that view that there should be separate
6 bargaining units for peace officers and non-peace
7 officers?

8 A. I'm sorry. They're talking overhead. I'm sorry.
9 I missed your question.

10 Q. Certainly. Do the employees that you represent
11 in your affiliate, the approximately 600 dispatchers, do
12 they -- have they expressed whether they share the view of
13 those sworn officers that you've heard from that wish to
14 be in a separate bargaining unit?

15 A. I have not heard anything from any of my people
16 that they have an opinion on it whatsoever.

17 Q. Okay. The employees that you represent in your
18 affiliate, you said they all work for CHP, right?

19 A. Yes.

20 Q. Would you agree that most of the time you spend
21 each day is interacting with traffic officers in the
22 Highway Patrol?

23 A. Yes.

24 Q. Would you say that it would be in excess of 99
25 percent of the time that you're on the radio you're

1 actually communicating with a traffic officer from the
2 Highway Patrol?

3 A. Pretty close.

4 Q. All right. So less than one percent of the time
5 you're actually communicating with someone who is not a
6 CHP officer, true?

7 A. That depends on the center. You'll have centers
8 that directly do not talk to them, but you'll have
9 centers in some of our more out locations that actually
10 will talk to those officers on the air.

11 Q. Which -- when you -- when you say "those
12 officers," are you referring to CHP officers?

13 A. No. I'm referring to like I know I have centers
14 that work in the mountain areas, you know, Redding
15 through that that actually do talk to Fish and Game
16 officers. And not State Parks, but they will talk to
17 Fish and Game officers. They will talk to Department of
18 Justice officers. And I know Department of Motor Vehicle
19 Investigators do come on the air down in the southern
20 part of California.

21 Q. Do you know -- do you know whether any of the 600
22 or so employees in your affiliate ever communicate with
23 non-sworn lifeguards on the radio?

24 A. That I would not know. Nobody's ever said that
25 they have.

1 Q. Do you know whether any of the employees that you
2 represent have ever communicated with people from OSPR,
3 O-S-P-R?

4 A. I don't know who they would be.

5 Q. You're not familiar with OSPR?

6 A. No.

7 Q. All right. Now, you mentioned POST certification
8 for Comm. Operators in Parks and Rec, right?

9 A. True.

10 Q. That POST certification you're referring to is
11 for Dispatchers, right?

12 A. Yes.

13 Q. That's not a POST certification for arrest,
14 search or seizure, right?

15 A. Correct.

16 Q. All right. And the POST certification, you must
17 have a POST certification for Dispatchers as well, right?

18 A. I happen to have one, but it is not required by
19 CHP for their Dispatchers to have one.

20 Q. Okay. Now, in the year or so that you've been on
21 the Legal Review Committee, how many grievances has your
22 Committee reviewed, or prospective grievances?

23 Grievances that are being contemplated to advance to
24 arbitration.

25 A. In a year's time, I don't know. Maybe we've

1 looked at maybe 25 to 30. And I'm trying to recall in a
2 year's time.

3 Q. How often does your Committee meet?

4 A. It just depends on the amount of cases.

5 Usually -- it's usually on a quarterly basis. It depends
6 on the amount of cases.

7 Q. So no less than quarterly, but sometimes more
8 often; is that true?

9 A. About that, yeah.

10 Q. All right. Of the 25 or 30 grievances in the
11 last year that your Committee has reviewed, can you tell
12 us how many of those were authorized to proceed to
13 arbitration?

14 A. I could not tell you that offhand. I'm sorry.

15 Q. Do you have any way of making an estimate at all,
16 or would it be a total guess?

17 A. It would be a total guess. And I wouldn't want
18 to do that.

19 Q. Okay. Of the 25 to 30 grievances in the last
20 year that you've reviewed on the Committee, how many of
21 those grievances involve matters for sworn peace officers
22 in Bargaining Unit 7?

23 A. They're probably -- I know we've had several of
24 them come in front of us. I couldn't tell you
25 specifically what they all were.

1 Q. Can you -- would it also be a total guess to
2 estimate the number of those grievances involving sworn
3 peace officers?

4 A. No, I wouldn't be able to give you the amount. I
5 could you get the amount, but I don't have it in front of
6 me now.

7 Q. Okay. How many times in your career have you
8 communicated on the radio with a Park Ranger?

9 A. I have never in my career.

10 Q. And how many times in your career have you
11 communicated with someone from the Office of Emergency
12 Services on the radio?

13 A. Office of Emergency Services? Other than when
14 they do -- from their dispatch center when they used to
15 do the test calls, probably four or five times.

16 Q. Okay. Your center is -- which center are you in?

17 A. It's called Merced CHP, but it actually sits in
18 Atwater, California.

19 Q. All right. How about other employees that work
20 in your center, same questions with respect to Park
21 Rangers and Office of Emergency Services?

22 A. Usually in our center we do not get them. We've
23 had Department of Motor Vehicle Investigators call on the
24 phone. And like usually if we get them through our
25 center, they usually call on the phone.

1 Q. And how often does that happen, does a Department
2 of Motor Vehicle Investigator call on the phone?

3 A. Not too often. We may get one every couple of
4 months.

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

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Ms. Truong?

7 MS. TRUONG: Nothing from us.

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Messing?

9 MR. MESSING: Nothing further.

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Ms. Brazil,
11 thank you very much. And we're going to be going off the
12 record.

13 (Off the record.)

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Back on the
15 record. With that, moving in double G, the Declaration
16 of Tina Brazil.

17 (Exclusive Representative's Exhibit GG received
18 in evidence.)

19 MR. MESSING: Oh, you didn't admonish her.

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Oh. We can call
21 her back.

22 MR. MESSING: You have a real block on this.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: At least I can
24 because she's not going anywhere. Hold on a second.

25 Mr. Messing, I got to do the redial, because I gave you

1 back the phone number.

2 MR. MESSING: Oh, you know, I crumpled it up. Let me
3 just see if I have it here. (Number given.)

4 (Judge dialing telephone. Telephone ringing.)

5 THE WITNESS: Hello?

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yeah.

7 Ms. Brazil? Tina?

8 THE WITNESS: Yes.

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yeah. Shawn
10 Cloughesy again with PERB. We're back on the record. I
11 just needed to admonish you not to discuss your testimony
12 with any other witnesses.

13 THE WITNESS: Oh, no problem, sir.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. With
15 that, thank you very much.

16 THE WITNESS: Okay. Thank you.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Bye.

18 THE WITNESS: Bye-bye.

19 (Off the record.)

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: We're back on
21 the record. And the record will reflect, Mr. Bondshu,
22 you've reentered the hearing room. I want to remind you
23 you're still under oath as having been previously sworn
24 in.

25 (William H. Bondshu retakes witness stand.)

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Ready for cross-
2 examination, Mr. Rose?

3 /////

4 /////

5 CROSS-EXAMINATION

6 BY MR. ROSE:

7 Q. Hello, Mr. Bondshu. Joe Rose, attorney for Peace
8 Officers of California.

9 A. Hi.

10 Q. Hi. Now, then, let me ask you. You mention in
11 your Declaration you have some prior local government
12 fire department work --

13 A. Yes.

14 Q. -- before you came to OES.

15 A. Correct.

16 Q. Is that typical of the Coordinators, OES
17 Coordinators, in the Fire and Rescue Branch to have prior
18 fire service experience?

19 A. Yes.

20 Q. All right. And let's talk about the law
21 enforcement branch of OES, the Coordinators in that
22 branch, is it typical for those Coordinators to have
23 prior law enforcement experience?

24 A. Most of them that are in OES Law Branch have come
25 from either county or city or other form of law

1 enforcement, yes.

2 Q. I see. So most of those employees are peace
3 officers from local agencies who are now working for OES
4 in a law enforcement capacity, true?

5 A. Correct.

6 Q. And then the same with respect to you, the fire
7 service folks tend to come under the Fire and Rescue
8 Branch?

9 A. Correct.

10 Q. All right. Now, when you perform your duties as
11 a Coordinator, you're primarily dealing with local law --
12 or excuse me, local fire agencies, true?

13 A. Correct.

14 Q. And then the Law Enforcement Coordinators are
15 primarily dealing with local law enforcement agencies?

16 A. Correct.

17 Q. Now, the organizational structure of OES, not
18 when you're in the incident command system on an
19 incident, but in your day-to-day operations, who do the --
20 who do you report to under the Fire and Rescue Branch as
21 a Coordinator?

22 A. The Branch Chief. The Branch Fire Chief.

23 Q. Okay. Is that his title, or her title, Fire
24 Chief?

25 A. I believe so. I think it's called the Fire

1 Branch Chief is the official position.

2 Q. And is that Chief a peace officer?

3 A. No.

4 Q. All right. And then the Law Enforcement Branch,
5 who do they report to, the Coordinators there?

6 A. That would be the Law Enforcement Branch Chief.

7 Q. Is that person a peace officer, the Branch
8 Chief --

9 A. I believe so.

10 Q. -- for the Law Enforcement side?

11 A. Yes.

12 Q. Yes? Okay. And then who do the Branch Chiefs
13 report to?

14 A. Currently right now they report to a -- I guess
15 they're called undersecretaries. Or I'm not sure.
16 Because we just reorganized from OES. Now we're all part
17 of CALEMA. So we've had kind of a complete restructuring
18 at the top. But there's several layers of command that
19 they, you know, report to all the way up to the Secretary
20 of the agency.

21 Q. I see. Do you -- do the Coordinators in the Law
22 Enforcement Branch wear a firearm?

23 A. Yes.

24 Q. Do they wear the same uniform you wear?

25 A. No. Typically they're in a suit and kind of

1 undercover, I guess, is what I always call them.

2 Q. Do they wear a badge?

3 A. Yes.

4 Q. Does the badge look the same as the badge you're
5 wearing now?

6 A. I believe it's a star-type badge.

7 Q. I see. Okay. Now, there are emergencies other
8 than fires at which -- with which OES would become
9 involved, correct?

10 A. Correct.

11 Q. Are there ever any law enforcement emergencies
12 that don't involve fire, but that would involve
13 deployment of OES?

14 A. OES Law Enforcement folks or --

15 Q. Well, I guess what I mean is, is there an
16 occasion for a local law enforcement agency to involve
17 OES in a multi-jurisdictional incident?

18 A. Yes.

19 Q. And that incident being strictly law enforcement?

20 A. Yes.

21 Q. Could you give me an example of what that kind of
22 incident would be?

23 A. The last largest deployment I can think of was
24 the LA riots.

25 Q. Now, do Fire and Rescue Branch Coordinators

1 deploy to a law enforcement incident such as the riots?

2 A. It would -- in the riots did. But it would just
3 depend on whether there's a fire issue at that particular
4 incident or not. I mean because I've been to the -- I
5 mean we've gone to floods, earthquakes, and usually all
6 those involve some form of deployment of both the fire
7 and rescue mutual aid system and the law enforcement
8 mutual aid system.

9 Q. Are there two separate systems for mutual aid,
10 one being law enforcement, one being fire?

11 A. Yes.

12 Q. Can you explain the differences?

13 A. Just the basic difference is just the different
14 disciplines. They all work on the premise that once a
15 local jurisdiction becomes overwhelmed because of an
16 incident, it's a process where they can ask for help from
17 their neighbors. Only in California it's on a statewide
18 scale. So if additional law enforcement people are
19 needed to come into a community to provide for security
20 or evacuation through the law enforcement mutual aid
21 plan, the various cities and counties that have peace
22 officers that they could send to assist those agencies do
23 that under the mutual aid plan.

24 Q. Does the activation of the mutual aid plan under
25 either the fire plan or the law enforcement tend to

1 dictate who will be the incident commander?

2 A. The incident commander is always the jurisdiction
3 that has the incident. That never changes.

4 Q. So, for example, in a fire would the local fire
5 agency be the incident commander?

6 A. Yes.

7 Q. And in the Los Angeles riots, would the
8 Los Angeles Police Department be the incident commander?

9 A. Yes.

10 Q. All right. And when you deploy or respond to
11 these multi-agency incidents, you work side by side not
12 only with Bargaining Unit 7 employees but other State
13 employees in other bargaining units, correct?

14 A. Correct.

15 Q. You work quite extensively, for example, with
16 employees of the California Highway Patrol?

17 A. Yes.

18 Q. Would you say that you more frequently work with
19 California Highway Patrol Officers than you do with Park
20 Rangers?

21 A. Yes.

22 Q. Would you say that if you were to allocate your
23 time, the amount of interaction you have with Park
24 Rangers versus CHP Officers, it would be about 10 percent
25 Park Rangers and 90 percent CHP Officers?

1 A. I don't know if I could characterize it in terms
2 of numbers, because each incident, you know, depending
3 upon where it's located, dictates who is going to be
4 there. But certainly CHP has a bigger involvement
5 statewide with road closures and things like that. It
6 just happened to be on the basis of my involvement with
7 State Parks, for example, because we were using a State
8 Park as our base camp, so they were there.

9 Q. And you're referring to one of the incidents in
10 your Declaration, the Basin Complex fire in Big Sur?

11 A. Yes.

12 Q. Now, other than that incident, what other
13 incidents have you had where you were working side by
14 side with State Park Rangers?

15 A. I can't think of any offhand, although I've been
16 to a lot of incidences with a lot of different, you know,
17 jurisdictions that are involved there. I'm trying to
18 recall whether they were at the Alaska 269 incident. I
19 don't believe so. I think that's -- I can't recall.

20 Q. Okay. You mentioned you were asked about your
21 interaction at work with the Law Enforcement Branch
22 Coordinators. And you mentioned several activities that
23 you might do together while a part of the incident
24 command system. You mentioned that you eat together,
25 drive around and view the incident together, in the field

1 together. Do you remember that kind of question and
2 answer?

3 A. Yes.

4 Q. All right. But you also do that with local
5 agency personnel as well, don't you?

6 A. Yes.

7 Q. Both -- well, primarily in the fire service,
8 correct?

9 A. It can be both.

10 Q. When you -- you mentioned in your Declaration
11 that personnel from the California Conservation Corps
12 were present at the Alaska 269 crash in County of
13 Ventura.

14 A. Uh-hmm.

15 Q. What classifications from the California
16 Conservation Corps were present, if you know?

17 A. It would be the Supervisors that are in charge of
18 the crews that are deployed. I typically work with them
19 just about on every fire incident in the state during the
20 summer. They're --

21 Q. Are you aware whether those employees are in
22 Bargaining Unit 7 or not?

23 A. Yes, they're in Bargaining Unit 7.

24 Q. You mentioned in your Declaration that you openly
25 discussed the fact that you were in Bargaining Unit 7 on

1 the Basin Complex fire in Big Sur in summer of '08.

2 A. Yes.

3 Q. And you did -- who did you discuss that with?

4 A. The two individuals that were assigned the
5 responsibility for the parks down there in the Big Sur
6 area. I think there were a Supervisor and then basically
7 a Line Officer, I guess is their title.

8 Q. Do you know whether those employees were sworn
9 peace officers?

10 A. Yes, they were.

11 Q. And who brought up the subject of being in
12 Bargaining Unit 7?

13 A. I did.

14 Q. And what did you say?

15 A. Just kind of welcomed them to the incident, and
16 let them know that they're a fellow Unit 7 employee, and
17 just kind of, you know, like an ice breaker.

18 Q. Oh, I see. Was there anything else discussed
19 about being in Bargaining Unit 7?

20 A. No. Uh-uh.

21 Q. Did they say anything to you about being in
22 Bargaining Unit 7 with you?

23 A. No.

24 Q. Could you tell me what FMESA stands for, the full
25 name?

1 A. Fire Marshal and Emergency Services Association.

2 Q. And you mentioned that you also represent
3 employees in the State Fire Marshal's Office?

4 A. Yes, that's part of our affiliate.

5 Q. The affiliate includes Deputy State Fire
6 Marshals, correct?

7 A. Correct.

8 Q. And the Deputy State Fire Marshal III
9 Specialists?

10 A. I believe so.

11 Q. Those are sworn peace officers, right?

12 A. I'm not sure.

13 Q. Have you ever had a conversation with anyone in
14 the State Fire Marshal's Office about peace officer
15 issues wearing your hat as the affiliate President?

16 A. No.

17 Q. Have you ever had anyone bring to your attention
18 peace officer concerns while wearing your hat as a -- as
19 a affiliate President?

20 A. From the OES Law Enforcement Branch I have.

21 Q. What have you heard from them?

22 A. Just issues regarding the current status of the
23 furloughs and the new change in the overtime computation
24 and how that's all going to be handled.

25 Q. Are they -- have the -- have any of the Law

1 Enforcement Coordinators expressed an opinion at all
2 about the concept of a bargaining unit composed solely of
3 peace officers?

4 A. No.

5 Q. You mentioned in response to whether you hear
6 complaints about the receptiveness and responsiveness of
7 CSLEA's representation that you -- it's generally
8 positive, but there are people that complain. Do you
9 remember that?

10 A. Yes.

11 Q. All right. And so what complaints have you
12 heard?

13 A. Lately the complaints, again, have been regarding
14 the furlough situation that's going on, where we're at
15 with our contract because it's expired, and, you know,
16 questions regarding, you know, when is that going to get
17 resolved, the pressure that's been put on because some
18 other units have settled their contracts and have gotten
19 things. And, you know, we kind of have -- there's talk
20 in the office of we got this, and you didn't get that,
21 typical, you know, discussion along that line.

22 MR. ROSE: Thank you, sir.

23 THE WITNESS: Okay.

24 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Ms. Truong?

25 MS. TRUONG: Nothing from us.

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Messing?

2 MR. MESSING: Yeah, just one thing.

3 /////

4 /////

5 REDIRECT EXAMINATION

6 BY MR. MESSING:

7 Q. Do you ever work with Deputy Fire Marshals who do
8 arson and bomb investigations?

9 A. Occasionally.

10 Q. Okay. And they're in Unit 7?

11 A. Yes.

12 Q. Okay. And they are sworn?

13 A. I believe -- I believe so. From what I
14 understand.

15 MR. MESSING: Okay. Nothing further.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Rose?

17 MR. ROSE: Nothing further.

18 MS. TRUONG: Nothing.

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Give you an
20 admonishment one more time not to discuss your testimony
21 with any of the other witnesses, except for anyone at
22 these counsel tables. And with that, double F is
23 admitted.

24 (Exclusive Representative's Exhibit FF received
25 in evidence.)

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And thank you
2 very much, sir.

3 THE WITNESS: Okay. Thank you.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Off the record.
5 (Off the record.)

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: We're back on
7 the record. We have another witness called by the
8 Exclusive Representative. I'm going to ask you to raise
9 your right hand.

10 (Witness sworn by the Judge.)

11 THE WITNESS: Yes.

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

14 THE WITNESS: Lillian Hayek. H-A-Y-E-K.

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. And
16 I have a couple of preliminary questions. First of all,
17 have you read any of the transcripts of the previous days
18 of hearing in this case?

19 THE WITNESS: No.

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And do you know
21 an individual by the name of James Cline?

22 THE WITNESS: No.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Marking as
24 Exclusive Representative double H what appears to be the
25 Declaration of this witness.

1 (Exclusive Representative's Exhibit HH marked
2 for identification.)

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Which I'm
4 passing on to her. If you could take a quick review of
5 that and then let me know what it is?

6 THE WITNESS: It's the Declaration that I wrote.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. If
8 you can turn to the last -- the signature page of that
9 document? And is that your signature?

10 THE WITNESS: Yes.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. And
12 did you sign it on or about that date and that location
13 set forth in there?

14 THE WITNESS: Yes.

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.
16 Mr. Messing.

17 TESTIMONY OF

18 LILLIAN HAYEK,

19 Having been duly and regularly sworn, testified as
20 follows:

21 DIRECT EXAMINATION

22 BY MR. MESSING:

23 Q. A couple of preliminary things. You mentioned on
24 page two of your Declaration that you are currently
25 serving as a Vice President of CARI.

1 A. Yes.

2 Q. Okay. First of all, about how many members does
3 CARI have?

4 A. I think approximately 400 to 450.

5 Q. Okay. And as affiliate -- does your affiliate
6 have a President who sits on the Board of CSLEA?

7 A. Yes.

8 Q. Okay. And is your unit composed of sworn or non-
9 sworn employees, or both?

10 A. Both.

11 Q. Okay. Do you have any idea what the relative
12 numbers would be of the sworn versus the non-sworn?

13 A. I couldn't give you an exact number, no.

14 Q. How about an estimation?

15 A. I think less than 10.

16 Q. Less than 10 are?

17 A. Are sworn.

18 Q. Okay.

19 A. I'm sorry.

20 Q. And what classifications are the sworn in?

21 A. State Contractors, I believe, Licensing Board.

22 Q. Okay. By the way, I forgot to ask you, is there
23 anything that you wanted to change in your Declaration
24 or --

25 A. No. It looks fine.

1 Q. Okay. All right. Let's see. You used to be a
2 non-sworn DMV Inspector; is that right?

3 A. Correct.

4 Q. One more thing before I go to this. Before
5 becoming a Vice President -- well, when did you first
6 become Vice President of CARI?

7 A. I believe it was approximately four or five years
8 ago.

9 Q. Okay. Before that did you have any position
10 within CARI or CSLEA?

11 A. I think I became a Job Steward at the same time.

12 Q. Okay. Are you still a Job Steward?

13 A. Yes.

14 Q. Okay. Do you have any other position within
15 CSLEA since you first became involved?

16 A. Not a position, per se, but I've worked on
17 various committees organizing things for the Union or its
18 functions.

19 Q. Okay. Back to the DMV Inspector position. You
20 say that when -- that when you were a non-sworn, this is
21 back in the late '90s; is that right?

22 A. Yes.

23 Q. Okay. You worked closely with DMV Investigators?

24 A. Yes.

25 Q. Can you explain briefly how you would work

1 together with the Investigators in that capacity?

2 A. As an Inspector we were licensing and preliminary
3 regulating the dealer, dismantler, driving school,
4 traffic violator school industries. And in doing those
5 processes, we would come across evidence of unlicensed
6 activity or evidence of other code sections that were
7 being violated and pass that information on to
8 Investigators in one form or another to be pursued.

9 Q. Okay. Now, on page two of your Declaration,
10 paragraph six, you make reference to something happening
11 in 1997 where occupational licensing portion of
12 Investigations Division was moved to a new division. So
13 what are you saying with reference to the duties that you
14 were performing as a DMV Investigator? Inspector.
15 Pardon me. What happened to those duties?

16 A. Well, the Inspectors were directly supervised by
17 the Supervising Investigator and in the same division
18 office, et cetera, as the Investigators. And then they
19 split the Inspectors away from the Investigations
20 Division to a new division. So the Supervising
21 Investigator was no longer the Supervisor over the
22 inspectors. And therefore, having a separate division
23 and making things sort of separate.

24 Q. And did that affect how much you were working --
25 Inspectors were working with the Investigators?

1 A. I would say in some cases it did. Because the
2 Supervisor for the Inspectors would be in a different
3 physical location than the Supervising Investigator,
4 which was near the Inspector's physical location. So you
5 were having to go to a Supervisor who was no longer there
6 with you physically and let the two divisions has it out
7 sometimes.

8 Q. Okay. Now, before the split, if you discovered a
9 forgery --

10 A. Uh-hmm.

11 Q. -- what would -- what would you do with that
12 information?

13 A. Bring it to my Supervisor's attention, who was
14 the Supervising Investigator.

15 Q. And what would happen?

16 A. The Investigator would work with us as far as
17 what evidence we have or knowledge of what was going on
18 to build a case.

19 Q. Would the same be true of false information or
20 false identities?

21 A. Correct. Yes.

22 Q. Okay. Now, after the split, if you had
23 information about discrepancies and forgeries, false
24 information or false identities, would -- what role, if
25 any, would DMV Investigators have upon your reporting

1 that?

2 A. Again, it could vary from office to office. But
3 since I was physically still in the same office as the
4 Investigators, I would still have the same relationship
5 with them, but I would have to keep my Supervising
6 Inspector posted on what information I was giving them.

7 Q. Okay. Are there situations -- would you know if
8 there were situations where Inspectors would find a
9 forgery and not end up having that go to an Investigator?

10 A. Yes. Where an Inspector didn't work in the same
11 physical location as an -- as an Investigator, they would
12 be giving that information to the Supervising Inspector.
13 And what they did with it may not be our knowledge.

14 Q. Okay. But if it would -- after a Supervisor got
15 that information, would they turn that over to an
16 Investigator somewhere?

17 A. Normally it would go up the chain and back over
18 to Investigations and down the chain.

19 Q. Okay. And when it went back to an Investigator
20 down the chain somewhere else --

21 A. Yes.

22 Q. -- would the Inspector have occasion to talk to
23 the Investigator about what had occurred?

24 A. Yes.

25 Q. Okay. So you would still end up working with an

1 Investigator?

2 A. Yes.

3 Q. Okay. And the Inspectors, did they work in the
4 field or the office, or both?

5 A. The Inspectors?

6 Q. Inspectors.

7 A. Both. Mostly in the field.

8 Q. Mostly in the field. Okay. And the field
9 activities, would that include questioning witnesses?

10 MR. ROSE: Objection. Leading.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sustained.

12 BY MR. MESSING:

13 Q. What would be included in the activities that you
14 would have in the field?

15 A. And we're talking about DMV Inspectors, right?

16 Q. DMV Inspectors.

17 A. The activity could range. We had -- we had 10
18 different licensees that we dealt with. So any from
19 licensing the actual business to shutting down the
20 business to completing inspections to make sure that a
21 business met the requirements to hold the license,
22 performing audits on traffic violator schools and driving
23 schools, and then formulating administrative action cases
24 to take appropriate action against those schools.

25 Q. Okay. Now, after you were a DMV Inspector, you

1 ended up at the Department of Consumer Affairs?

2 A. Yes.

3 Q. Okay. As a Barber and Cosmetology Inspector
4 II --

5 A. Yes.

6 Q. -- is that correct? Okay. And can you briefly
7 characterize what your responsibilities were or are as
8 a -- you're still an Inspector II, right?

9 A. Yes.

10 Q. So characterize your activities now and your
11 responsibilities.

12 A. Now the responsibilities focus on an
13 investigative-type inspection as opposed to a licensing
14 inspection. So we can investigate salons, spas,
15 barbershops, electrolysis, places of business, either at
16 a point of a complaint from the public, routine
17 inspections, initial inspections. I think that's it.

18 Q. Okay. Now, in the -- are any of the activities
19 that you investigate, do they result in criminal charges
20 against the people you're investigating?

21 A. They can, yes.

22 Q. Okay. And which of the categories that you
23 listed could end up with a criminal charge?

24 A. Okay. Investing -- well, investigating an
25 initial routine or a complaint could end up with a

1 criminal charge as far as public harm, drugs, illegal
2 prostitution, identity theft. Those are just a few ways
3 I can think of.

4 Q. Okay. Now, do you have power of arrest?

5 A. No, we do not.

6 Q. Okay. So in the event that you uncover criminal
7 activity, what do you do?

8 A. Well, you would -- if they -- if they're in
9 immediate danger, you would call for law enforcement
10 backup. And if there's no immediate physical danger,
11 then it would be a matter of gathering evidence, taking
12 witnesses' statements. Photos are part of our evidence
13 chain, and completing reports.

14 Q. Okay. So what are the -- what different law
15 enforcement agencies will you work with in enforcing
16 criminal violations?

17 A. Depends on the nature of the violation. But, for
18 instance, if it was fraud ID, I would work with the DMV
19 Investigators, because they have expertise knowledge in
20 that area. It might be a local sheriff or police
21 department as far as drugs or prostitution. And it might
22 be Immigration.

23 Q. Okay. Now, I think you mentioned you're -- that
24 you do audits.

25 A. I did audits at DMV.

1 Q. Okay. So how about periodic inspections, do you
2 do those?

3 A. At which?

4 Q. In your current job.

5 A. Current job? Yes.

6 Q. Okay. And can you explain what a periodic
7 inspection is?

8 A. Well, my --

9 Q. Go ahead.

10 A. -- interpretation of a periodic inspection would
11 be routine inspections, if that's what you're talking
12 about.

13 Q. I think that's what I'm talking about.

14 A. Okay. The Board of Barbering and Cosmetology had
15 less than 15 Inspectors for the last 20 years that I know
16 of. So routine inspections occurred maybe in a 4-to-8-
17 year span. But now the new goal, since they've hired
18 more Inspectors, is that they want routine inspections to
19 happen once a year. I don't know that we can meet those
20 goals right away, but that is the goal of the Department.

21 Q. Okay. Would you explain to the ALJ what a
22 routine inspection is?

23 A. A routine inspection would be going out to the
24 facility and looking for violations of the Health and
25 Safety Codes and Title 13 regulations that we enforce or

1 cite for.

2 Q. Are the licensees notified in advance of these
3 inspections?

4 A. No. We pop in unannounced.

5 Q. Okay. Now, are you -- can you explain what an
6 inspection consists of? What are you looking for?

7 A. Without being specific, we go in and look for
8 requirements of the establishment itself as far as, you
9 know, restroom facilities, cleanliness. Then we look at
10 each station for Health and Safety Code violations as far
11 as sanitization processes and public health and safety on
12 foot spa/pedicure issues, illegal instruments.

13 Q. Okay.

14 A. I think that's it.

15 Q. Do you need a search warrant to conduct these
16 inspections?

17 A. No, we do not.

18 Q. Okay. Now, how, if at all, can a law enforcement
19 officer, sworn officer, utilize this information to
20 proceed against the licensee, let's say if there's a
21 criminal violation?

22 A. I'm not sure I understand your question.

23 Q. Okay. If there's a criminal violation you --

24 A. Yes.

25 Q. -- you turn that over to a law enforcement

1 agency?

2 A. Yes. I would turn over my evidence and probably
3 a copy of my report.

4 Q. Okay. And the question is can they use that
5 evidence since it's been obtained without a search
6 warrant?

7 A. To my knowledge, yes.

8 Q. Okay. Now, I think you mentioned that some of
9 the results that could occur from your inspections and
10 investigations are that the licenses can be revoked?

11 A. They could be.

12 Q. Okay. Have you -- have you heard of anyone ever
13 being threatened by licensees when they may have had a
14 situation where their license could be revoked?

15 A. That is a huge issue right now, yes.

16 Q. Okay. Can you elaborate that -- these for the
17 Law Judge?

18 A. You may have heard recently of a case down south
19 where an aesthetician was refusing to let the Inspector
20 inspect a room because she claimed that her next client
21 was J-Lo. And when the Inspector tried to open the door
22 and go in the room, she had a physical altercation with
23 that aesthetician.

24 Q. How long ago did that happen?

25 A. I'm guessing within six months, I think.

1 Q. Is this something that's come up -- how often
2 does this come up?

3 A. I would say it probably comes up around the state
4 maybe four to ten times a year.

5 Q. Okay. Now, you said that you have sworn
6 individuals in CARI.

7 A. Yes.

8 Q. Okay. Have those individuals -- now I'm
9 referring to the sworn folks. Have they talked to you
10 about wanting to split off of CSLEA and have a bargaining
11 unit only of peace officers?

12 A. Not at all.

13 Q. Okay. In your position as a Vice President of
14 CARI, if people had complaints about CSLEA, are you
15 somebody that they'd be apt to come to, or are you
16 somebody that would hear about that?

17 A. Yes, I am.

18 Q. Okay. So since you've been a Job Steward, so
19 that goes back what, about five years now?

20 A. Yes.

21 Q. Okay. Can you characterize the -- how your
22 members view the responsiveness of CSLEA when they call
23 in for help?

24 A. Characterize the members' responsiveness?

25 Q. Yes. Do they think -- no.

1 A. Or --

2 Q. When the members call in, okay, do they -- how
3 would you characterize their view of whether CSLEA has
4 been responsive to their requests?

5 A. I would say that they all think that we respond
6 in a timely manner.

7 Q. Okay. And then in dealing with staff, have you
8 dealt with staff over the past four or five years?

9 A. Yes.

10 Q. Okay. And how would you characterize the staff's
11 responsiveness to your inquiries?

12 A. Always helpful.

13 Q. Okay. Do you deal with the staff frequently?

14 A. Yes.

15 MR. MESSING: Okay. Okay. I have nothing further at
16 this time. I'm going to pass you over to Mr. Rose, who
17 has some questions for you no doubt.

18 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. Sir?

19 CROSS-EXAMINATION

20 BY MR. ROSE:

21 Q. Hello, Ms. Hayek. How are you?

22 A. Fine, thank you.

23 Q. Good. My name is Joe Rose. I'm the attorney for
24 Peace Officers of California.

25 A. Uh-hmm.

1 Q. I'm going to ask you a few questions about what
2 you just spoke about, and also what's in your
3 Declaration.

4 A. Okay.

5 Q. Let me first start with the incident that you
6 described involving the aesthetician who refused to allow
7 the Inspector to go into the room and then there was a
8 physical altercation. You remember that testimony?

9 A. Yes.

10 Q. When you go to an inspection, do you -- is it
11 common practice for you to announce yourself to the
12 business owner as soon as you --

13 A. You mean as I come in?

14 Q. When you arrive, do you locate the business
15 owner?

16 A. We always ask if the owner's present --

17 Q. And then --

18 A. -- to let them know we're there. And if they're
19 not, then whoever is at the front desk or greeting us, we
20 let them know we're with State Board and we're here to do
21 an inspection.

22 Q. Now, if someone who's in a -- either the owner or
23 someone who appears to be responsible for the business
24 tells you that you're not permitted to conduct the
25 inspection, would that be a violation of the licensing

1 requirements for that establishment?

2 A. Yes, it would.

3 Q. Would you nonetheless be authorized to by force
4 conduct the inspection?

5 A. Well, I wouldn't do anything by force, but I
6 would conduct an inspection.

7 Q. Even if the owner asked you to leave the
8 premises?

9 A. Yeah.

10 Q. Have you ever done that?

11 A. No. I haven't had that happen.

12 Q. Okay. Have you ever heard of an inspection
13 warrant?

14 A. No.

15 Q. Okay. So you've never used an inspection
16 warrant, I would imagine?

17 A. No.

18 MR. MESSING: Object.

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sustained. We
20 don't know whether --

21 MR. ROSE: Okay.

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: -- she would or
23 not.

24 BY MR. ROSE:

25 Q. Have you ever involved anyone in a legal sense to

1 comply -- compel the licensee to allow an inspection to
2 happen?

3 A. Can you repeat that?

4 Q. Yes. Have you ever used -- employed legal
5 mechanisms to compel a licensee to allow an inspection to
6 happen?

7 A. If I think I understand the question, I would
8 provide them with a code section that says we're allowed
9 to do an inspection.

10 Q. I guess what I'm saying is, have you ever gone
11 and -- gone to court, for example, to get a judge to
12 order the licensee to allow you on the premises to
13 inspect it?

14 A. No, I've never done that.

15 Q. You mentioned that you have about 10 sworn peace
16 officers in your affiliate.

17 A. I said less than 10 --

18 Q. Okay.

19 A. -- I believe.

20 Q. Who are those?

21 A. I don't know them individually.

22 Q. Do you know any of them?

23 A. I know that they work for the State Contractor's
24 Board.

25 Q. Do you know any of them by name?

1 A. No, I don't know them personally.

2 Q. Have you ever spoken to any one of them?

3 A. I probably have. I spoke to a lot of people in
4 our affiliate and don't recall all of them.

5 Q. When do you believe that you probably spoke to
6 one of the sworn members of your affiliate?

7 A. At a membership meeting probably in 2007. We had
8 some State Contractors Board people there.

9 Q. And you were certain they were sworn peace
10 officers?

11 A. I'm pretty certain one of them was at least.

12 Q. Did they say anything at the meeting?

13 A. No. Other than the usual concerns with all of
14 our members. You know, what's happening with
15 negotiations.

16 Q. Did they identify themselves as peace officers?

17 A. I don't remember.

18 Q. So when you say you haven't heard anything, any
19 complaints about or any expression of a desire to spin
20 off from CSLEA by the peace officers, are you basing it
21 on the interaction that you just described?

22 A. Partly.

23 Q. What other bases are you answering that question
24 with?

25 A. One of our other Board members is also a State

1 Contractors Licensing Board employee.

2 Q. Is that person a sworn peace officer?

3 A. No, he's not.

4 Q. and so what is it about that other person on your
5 Board who's not a peace officer that informs your answer
6 regarding whether peace officers in your affiliate have
7 concerns?

8 A. Because he interacts with his members quite
9 extensively.

10 Q. And you've discussed with him the peace officers
11 in his -- at the Contractors State License Board?

12 A. He's discussed it with us as a Board.

13 Q. Oh. And what has he said?

14 A. Can't give you exact.

15 Q. Well, did he raise specifically the issue of
16 peace officers at the Contractors State License Board?

17 A. No.

18 Q. How many -- you mentioned that your -- all of
19 your members in the affiliate are satisfied with CSLEA's
20 representation. Do you remember that?

21 MR. MESSING: Object. I think that mischaracterizes
22 the witness' testimony.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I don't know
24 whether it does or not. But is that what you stated?

25 THE WITNESS: No, I don't think I stated that

1 exactly.

2 BY MR. ROSE:

3 Q. Well, let me -- let me ask you again. You were
4 asked since you've been a Job Steward can you
5 characterize how your members view the responsiveness
6 when you call CSLEA for help. And I believe your answer
7 was they all think we respond in a timely manner.

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You're right. I
9 have the same notes.

10 THE WITNESS: Right. On responsiveness, yes.

11 BY MR. ROSE:

12 Q. And so when you all, you're referring to all 400
13 to 450 members believe that?

14 A. All of the ones that I've talked to have never
15 had a complaint with responsiveness.

16 Q. All right. Have you ever had any complaints from
17 any members about anything related to CSLEA's
18 representation?

19 A. I would say no. Not about representation
20 specifically, no.

21 Q. What about representation generally?

22 A. Well, generally every member always wants things
23 that they're not going to get.

24 Q. What kind of things do the members want -- you've
25 heard them say they want that you don't believe they'll

1 get?

2 A. Money.

3 Q. All right. Would say that -- you were asked
4 about paragraph six, page two, of your Declaration. And
5 this paragraphs speaks to the separate divisions,
6 Investigations and Inspections, at the DMV, right?

7 A. Yes.

8 Q. Would you say that there's been a change over
9 time in the separateness of the Investigations and
10 Inspection Divisions of the DMV?

11 A. I'm sorry. Can you say that again?

12 Q. Sure. Would you say that there has been a change
13 over time in the separateness of the Inspect --
14 Investigations and Inspections functions of the DMV?

15 A. Yes. A change in the --

16 Q. Separateness.

17 A. To make it different divisions, yes.

18 Q. And they're more separate now?

19 A. Yeah.

20 Q. All right. And the --

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Well, whatever
22 answer you have. Next question.

23 BY MR. ROSE:

24 Q. So you agree with that statement, correct?

25 A. It's separate in that there are separate managers

1 in each division instead of one management team over both
2 positions.

3 Q. And would you also agree that the functions of
4 the Inspections -- excuse me, the Investigations Division
5 has become more focused on investigations?

6 A. That's asking for my opinion?

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Well, do you
8 know the answer without giving an opinion?

9 THE WITNESS: Well, I have an opinion.

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I'm not going to
11 have you give an opinion.

12 MR. ROSE: I'm asking -- I'm sorry, sir.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You can -- you
14 can give an answer based on your observations.

15 THE WITNESS: On my observations, the Investigations
16 Division of DMV still has the same functions.

17 BY MR. ROSE:

18 Q. All right. Now, you mentioned -- oh, how many
19 criminal cases have you been involved in the prosecution
20 of in the last year while working for the Cosmetology
21 Board?

22 A. None.

23 Q. And how long have you been with the Cosmetology
24 Board?

25 A. I transferred September of last year.

1 Q. All right. How about in your office how many
2 criminal cases are you aware of since coming to the
3 Cosmetology Board, if any?

4 A. I don't have an office.

5 Q. Oh, you work at home?

6 A. I'm a home office and I work three counties by
7 myself.

8 Q. Based on your experience as a CSLEA official, or
9 the President -- Vice President, rather of your
10 affiliate --

11 A. Yeah.

12 Q. -- how many criminal cases, if you know, have
13 Cosmetology Board Inspectors been involved in the
14 prosecution of?

15 A. I don't know.

16 Q. Now, you mentioned, for example, that fraud
17 identifi -- or fraud ID would be one of the instances
18 where your inspection could turn into a crime. Do you
19 remember that?

20 A. Yes.

21 Q. When you get a fraud ID case, you turn that over
22 to the DMV Investigator, correct?

23 A. Not exactly. I would work with the DMV
24 Investigator. I would turn over the evidence or reports
25 that an Investigator would need to pursue that case.

1 Q. And then from that point you would continue with
2 your inspections?

3 A. Yes.

4 Q. Your other caseload, right?

5 A. Yes.

6 Q. Your complaint inspections, your routine
7 inspections, and your initial inspections, right?

8 A. Right.

9 Q. And especially considering you are trying to move
10 from a four-to-eight-year span for routine inspections to
11 a once-per-year span for routine inspections, right?

12 A. We're trying to do that, yes.

13 Q. So the Department's mission is to have you
14 focusing on inspections, not doing fraud ID cases, true?

15 A. True.

16 Q. And let me ask you this: When you have a case
17 involving Immigration, do you enforce immigration law?

18 A. No.

19 Q. Have you -- you would make that referral to the
20 federal government, true?

21 A. True.

22 Q. And then they would take the case from that
23 point, right?

24 A. True.

25 Q. And when you have -- you mentioned some other

1 things. You said public harm.

2 A. Yes.

3 Q. What did you mean when you said public harm would
4 be one thing that might be a criminal case?

5 A. Disease, infestation, a client dying.

6 Q. Okay. And if there were those circumstances?

7 A. Our Department would pursue it.

8 Q. Your Department would pursue that, then?

9 A. Yes.

10 Q. How many cases have you done involving disease,
11 infestation, or a client dying in the last year that were
12 criminal?

13 A. Personally, I have done none.

14 Q. You mentioned also drugs as a possible criminal
15 violation that you might observe.

16 A. yes.

17 Q. That would be something that you would refer to
18 the local law enforcement agency, correct?

19 A. Yes.

20 Q. And then they would investigate that and
21 prosecute that, true?

22 A. True. But our Department may choose to pursue it
23 also.

24 Q. Okay. Under what circumstances would the
25 Cosmetology Board pursue a crime involving drugs?

1 A. I don't know. That decision is made in
2 headquarters. I'm not privy to that information.

3 Q. Have you done any cases involving drugs that were
4 criminally related in the last year?

5 A. No, I have not.

6 Q. And you mentioned illegal prostitution as a
7 possible criminal violation that you might observe while
8 conducting your inspections.

9 A. Yes.

10 Q. And if that was an observation you made, you
11 would report that observation to local police
12 authorities, true?

13 A. As well as report it to my own Department.

14 Q. And your Department would view the prostitution
15 from an aspect of whether that licensee should continue
16 to operate under its license, correct?

17 A. Correct. But it also may pursue criminal.

18 Q. The Board of Cosmetology pursues criminal cases
19 for prostitution?

20 A. You know, I don't know, to tell you the truth.
21 But I know that those -- if it involves our licensee,
22 then they have access to criminal, civil and
23 administrative.

24 Q. Who's they?

25 A. Our Department, DC.

1 Q. What do you mean they have access to criminal,
2 civil and administrative?

3 A. They have access to pursue it.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: When you say DC,
5 do you mean Consumer Affairs?

6 THE WITNESS: Yes. DCA, Consumer Affairs. I'm
7 sorry.

8 BY MR. ROSE:

9 Q. All right. Okay. Now looking at your
10 Declaration, page three --

11 A. Uh-hmm.

12 Q. -- and paragraph eight, you speak to the
13 application process for an occupational license at the
14 DMV. Now we're moving back in your earlier career,
15 right?

16 A. Yes.

17 Q. And you say in your -- in your Declaration, "When
18 we discover discrepancies such as forgeries, false
19 information or false identities, we worked with the DMV
20 Investigators for further administrative, criminal and/or
21 civil actions." When you make that statement, are --
22 what position are you referring to that you held at the
23 time?

24 A. Occupational Licensing Inspector with DMV.

25 Q. Okay. And having held that position, when you

1 came across those, you would refer that information to
2 the Investigator, true?

3 A. I would gather as much evidence as possible and
4 refer that to Investigations and/or my Supervisor.

5 Q. And then the Investigator would carry the case
6 forward from that point, right?

7 A. If there was substantial evidence to do so, yes.

8 Q. But your responsibility as an Occupational
9 License Inspector was not to conduct a criminal
10 investigation regarding any of those things, true?

11 A. True.

12 Q. In fact, you performed initial and routine
13 inspections rather than criminal investigations, correct?

14 A. At DMV they weren't really initial and routine
15 inspections like at BBC. It was -- it was a licensing
16 inspection and a -- what did we call it? Well, I guess
17 you would say a routine inspection for dealers to have
18 all their necessarily paperwork and be completing
19 transactions in a timely manner, et cetera.

20 Q. Okay. And then what do you mean at paragraph
21 nine, line nine of page three when you write, "We
22 performed initial and routine inspections of the
23 occupational licenses to identify," and it continues? Do
24 you see that?

25 A. Yes.

1 Q. Should the word "initial" be something different?

2 A. No. I'm sorry. I'm trying to keep two jobs
3 separate. But initial means initially licensing a
4 licensee.

5 Q. And when you were conducting those inspections,
6 you came across a criminal violation, those too were
7 referred to the DMV Investigator for further
8 investigation?

9 A. And/or Supervisor, yes.

10 MR. ROSE: Okay. Thank you. Nothing further.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Ms. Truong?

12 MS. TRUONG: Nothing from us.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Messing.

14 MR. MESSING: Just a few things.

15 REDIRECT EXAMINATION

16 BY MR. MESSING:

17 Q. So you were just asked if you came across a
18 criminal violation you'd refer it to an Investigator. So
19 if you saw something that was a potential criminal
20 violation, wouldn't you simply drop it there and call an
21 Investigator, or was there something that you had to do
22 at that point?

23 A. I believe that would fall under the gathering
24 evidence rules. Depending on the nature of the act, what
25 evidence that I could find that correlates that

1 violation, and making copies, documenting dates and times
2 and people, et cetera.

3 Q. And would you say that the more routine
4 investigations that can be conducted, that that would
5 have some -- would effect would that have on how many
6 referrals there would be made to Investigators?

7 A. We're talking DMV now?

8 Q. Now we're talking DCA.

9 A. The DC?

10 Q. Yeah.

11 A. Okay. I'm sorry. Say that again.

12 Q. Yeah. So if you -- if you're conducting more
13 routine investigation -- routine inspections --

14 A. Yes.

15 Q. -- what impact would that have on the number of
16 referrals that you would have to law enforcement
17 agencies?

18 A. Well, routine is where you find a lot of the
19 violations because we haven't been out there in a long
20 time in the routine capacity. It's been five or more
21 years. So you're going to have more evidence of
22 unlicensed persons working, and Health and Safety Code
23 violations, et cetera.

24 Q. Okay. And a similar question that I asked about
25 your duties as an Inspector at DMV. When you're at DCA,

1 when you uncover a possible violation, do you drop it
2 there and call up a law enforcement officer, or do you
3 have other duties expected of you at that point?

4 A. Again, it depends on the nature. As long as
5 there's no potential physical harm, you continue with the
6 evidence gathering methods that we use, and write the
7 report, and then call in somebody if it's necessary. I
8 mean if there's a drug deal going down there and you see
9 that you may be in harm's way, you're going to go out of
10 the shop and call law enforcement right away.

11 Q. Do you get any training in evidence gathering?

12 A. Minimal.

13 Q. Do you have policies on evidence gathering?
14 Policies or procedures?

15 A. We have procedures, departmental procedures.

16 Q. Okay. Now, still dealing with DCA, if you
17 uncover something that gets referred to an Investigator,
18 is that the end of it, or is it possible that you might
19 be involved at a later time?

20 A. It's possible that I might be involved at a later
21 time.

22 Q. Okay. And what sort of involvement could you
23 have at a later point in an investigation?

24 A. I believe that I would have to testify to my
25 evidence and the gathering of that evidence, how and

1 where it was taken.

2 Q. Okay. Is there ever -- are there ever times
3 where you're asked to do further evidence gathering once
4 a matter has been turned over to an Investigator?

5 MR. ROSE: Objection. Leading.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Overruled. Go
7 ahead.

8 THE WITNESS: Yes. In the cases where it was extreme
9 violations or repeat violations, we will get another
10 inspection sent to us to perform another inspection.

11 BY MR. MESSING:

12 Q. Okay. Now, you were asked a series of questions
13 about your last -- the last year that you -- or the year
14 that you've been working at DCA. But when did you say
15 that you were first hired by DCA?

16 A. September 15th of last year.

17 Q. September 15th of 2008?

18 A. Yes.

19 Q. So you've only been there some six months?

20 A. Yes.

21 Q. So some of the things that you were asked about,
22 whether you had personally been involved in, like
23 criminal investigations, contamination issues or that,
24 you said that you had not been involved with. Are you
25 aware of other folks in your affiliate who have been

1 involved in such matters?

2 A. Yes, I am.

3 MR. MESSING: Okay. Nothing further.

4 /////

5 RE-CROSS-EXAMINATION

6 BY MR. ROSE:

7 Q. Who's been involved in those other matters?

8 A. Other Inspectors in BBC.

9 Q. Who specifically?

10 A. Are you wanting names?

11 Q. Yes.

12 A. I'm blanking. I can't give you names right now.

13 I'm sorry.

14 Q. Can you give an event?

15 A. Yeah. I can give an event where a gal down in LA
16 right now is involved with another physical altercation
17 case. Actually, two girls. One a black girl and one a
18 Hispanic girl that are down south that are both involved
19 in physical altercation cases.

20 Q. And how are they involved in those cases? Are
21 they --

22 A. They were physically attacked by the licensees.

23 Q. So they were involved as victims --

24 A. Yes.

25 Q. -- in those cases?

1 A. Yes.

2 Q. Okay. Any cases other that you were referring
3 to?

4 A. There was another one with a gal down south
5 that -- where she photographed rock cocaine in the drawer
6 of a manicurist.

7 Q. And when did that happen?

8 A. Again, sometime in the last six months, but I
9 don't know the date.

10 Q. And who is prosecuting -- which law enforcement
11 agency is handling that investigation?

12 A. I don't know. It's in the LA area somewhere.

13 Q. Are you aware whether they've asked her to go
14 back out and gather further evidence for a criminal
15 prosecution?

16 A. I'm aware that our Department would send her back
17 out, but I don't know about the other agency.

18 Q. Your Department would send her back out?

19 A. Yes.

20 Q. Or has?

21 A. Yes. Whenever there's -- I don't know what the
22 criteria they use, but when there's substantial
23 violations or serious violations, they send us out for
24 two -- a second and sometimes a third inspection.

25 Q. Okay. But I want to make sure I understand your

1 answer. You're saying that she did go back out there?
2 You're aware of that?

3 A. I don't know if she's went yet.

4 Q. Okay. And the purpose of that revisit would be
5 to evaluate her compliance with the licensing
6 requirements, correct?

7 A. Yes.

8 Q. Not to investigate the crime of rock cocaine?

9 A. No.

10 Q. All right.

11 A. But there were also needles present, and that's
12 an illegal instrument.

13 Q. Under the regulations?

14 A. Yes.

15 Q. Okay. And that would affect the license for --

16 A. Yes.

17 Q. -- the Barbering and Cosmetology Board. Okay.
18 How many times have you testified in your entire career
19 in a criminal case?

20 A. None. Only administratively.

21 Q. How many times in your entire career have you
22 been asked to gather evidence in a criminal case by a
23 peace officer?

24 A. In my career with Investigations as an Inspector,
25 that was -- the Inspectors were used as a gathering tool

1 without the licensee knowing that they were being
2 investigated. So I don't know. An answer, over 10, but
3 less than 50.

4 Q. So the peace officer after the criminal
5 investigation was open would then ask you to go back out
6 and further gather evidence from the subject of the
7 investigation?

8 MR. MESSING: Object. Mischaracterizes the witness'
9 testimony.

10 MR. ROSE: I'm asking the question on cross.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I do not --
12 seems a fair question to me. But is that --

13 THE WITNESS: Okay. Say it again?

14 BY MR. ROSE:

15 Q. Are you saying -- are you -- are you testifying
16 or not that the peace officer, after the criminal
17 investigation is open, would send you as an Inspector out
18 to gather further evidence for their criminal
19 investigation?

20 A. The way it worked is that if they had an ongoing
21 criminal investigation and my job duties would cross over
22 into a licensee, then they would let me know what the
23 specifics of their case were. So that if I found
24 evidence or information that was relevant to that case,
25 then I could bring it back for them.

1 Q. And so is that what you mean when you say you've
2 done that more than 10 but less than 50 times?

3 A. Yes.

4 MR. ROSE: One minute, please.

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Certainly.

6 MR. ROSE: Oh, yes. Are we on the record?

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: We're on.

8 BY MR. ROSE:

9 Q. You mentioned that you have procedures on
10 evidence gathering. Are those procedures --

11 A. Policies, I believe was the word that -- or
12 procedures.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Well, you said
14 procedures.

15 THE WITNESS: Procedures, yeah.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: So, regardless.

17 THE WITNESS: He had asked policies and procedures,
18 yes.

19 BY MR. ROSE:

20 Q. Do you see a distinction between the two,
21 policies versus procedures?

22 A. Procedures I see as a written training for the
23 classification. Policies I see as something that
24 changes.

25 Q. And do you believe you have one or the other or

1 both with respect to evidence gathering in your current
2 position?

3 A. Yes.

4 Q. Which of those do you have?

5 A. Probably both.

6 Q. All right. So there are written -- where would I
7 go to find the written policies or procedures on evidence
8 gathering for your -- for your classification?

9 A. In the DCA's BBC Inspector Manual.

10 Q. And are you generally familiar with the policy or
11 procedure for evidence gathering that's in the manual?

12 A. Generally, yes.

13 Q. What's your understanding of -- based on your
14 general understanding of the policy or procedure in the
15 manual regarding evidence gathering?

16 A. My understanding is that you take a picture of
17 everything that you can that's a violation.

18 Q. Any other aspects of the procedure or policy that
19 you're familiar with other than take a picture?

20 A. Noting dates and times and people's names.

21 Q. Any others?

22 A. The chain of evidence as far as our photos,
23 reports and evidence.

24 Q. What about the chain of evidence do you -- are
25 you aware of?

1 A. The documentation process of how we complete our
2 paperwork and forward it to headquarters for further
3 review.

4 Q. Okay. So let's talk about that. Is there an
5 evidence locker somewhere that you can turn your evidence
6 into?

7 A. Not that I would use, no.

8 Q. Is there an evidence locker that anyone would use
9 that is in your job classification?

10 A. I don't know. I don't work in headquarters, so I
11 don't know how that works. I know how I gather my stuff
12 and send it to them. I don't know what happens after
13 that.

14 Q. Tell me what -- how do you send your evidence to
15 headquarters?

16 A. We fill out an evidence log and we put it in a
17 sealed envelope and we overnight mail it to our
18 Headquarters Division.

19 Q. I see. And the evidence log in the sealed
20 envelope, what kind of sealed envelope do you use?

21 A. What do you mean?

22 Q. Well, do you have evidence envelopes?

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Can you describe
24 what the envelope looks like?

25 THE WITNESS: Yeah. It looks like a mailing envelope

1 with a log sheet stuck on it with a clip and glue and
2 tape.

3 BY MR. ROSE:

4 Q. Does it say evidence on the outside?

5 A. Yes.

6 Q. And is that visible from the outside of the
7 package when it's being transmitted overnight?

8 A. No.

9 Q. So does that evidence go inside of another --

10 A. Yes.

11 Q. That envelope goes inside of another envelope?

12 A. Yes, it does.

13 MR. ROSE: All right. I get it. All right. Thank
14 you. Nothing further.

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Ms. Truong?

16 MS. TRUONG: Nothing from us.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Messing?

18 MR. MESSING: Nothing further.

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Thank you very
20 much. I need to admonish you not to discuss your
21 testimony with any other witnesses except those that are
22 at these counsel tables. And with that, Exhibit
23 Exclusive Rep HH is admitted.

24 (Exclusive Representative's Exhibit HH received
25 in evidence.)

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And thank you
2 very much.

3 THE WITNESS: Thank you.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Off the record.
5 (Off the record.)

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: We're back on
7 the record. WE have another witness called by the
8 Exclusive Representative. I'm going to ask this witness
9 to raise your right hand.

10 (Witness sworn by the Judge.)

11 THE WITNESS: Yes, I do.

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

14 THE WITNESS: Lyle Curry. C-U-R-R-Y.

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. A
16 couple preliminary questions. First, have you reviewed
17 any of the transcripts of the previous proceedings in
18 this matter?

19 THE WITNESS: No.

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Second, do you
21 know an individual by the name of James Cline?

22 THE WITNESS: No.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Marking as
24 Exclusive Representative II what appears to be a
25 Declaration of this witness.

1 (Exclusive Representative's Exhibit II marked
2 for identification.)

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sir, if you
4 could review that and let me know what that is?

5 THE WITNESS: That's my Declaration and that's my --

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.
7 You're on the signature page. That's your signature,
8 sir?

9 THE WITNESS: Yes, it is.

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And you signed
11 it on the date and location set forth?

12 THE WITNESS: Correct.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.
14 Mr. Messing.

15 MR. MESSING: Just a few things.

16 TESTIMONY OF
17 LYLE CURRY,

18 Having been duly and regularly sworn, testified as
19 follows:

20 DIRECT EXAMINATION

21 BY MR. MESSING:

22 Q. Now, you've been in a sworn position since 1987?

23 A. Yes, I have.

24 Q. Okay. Before that you spent three years in a
25 non-sworn position?

1 A. Yes.

2 Q. Okay. But they were all positions with the
3 Department of Housing and Community Development?

4 A. Yes.

5 Q. Okay. Now, as a sworn peace officer, when you
6 execute your duties for the can we call it HCD?

7 A. Yes.

8 Q. Okay. Do you carry a gun?

9 A. No.

10 Q. Okay. Do you have the power to arrest someone?

11 A. No.

12 Q. Okay. How about the power to search?

13 A. Yes.

14 Q. Okay. Now, you say on the bottom of page two
15 that you participate -- or you appear as departmental
16 prosecution witness in criminal, civil and administrative
17 actions. Let's start with administrative actions. How
18 often do you appear in administrative actions?

19 A. Three or four times a year.

20 Q. Okay. And what kind of actions would those be?

21 A. License disciplinary actions.

22 Q. Okay. Now, it says here that -- let's turn to
23 civil actions. How often would you appear in a civil
24 action?

25 A. Once a year.

1 Q. Okay. And what kind of case would that tend to
2 be?

3 A. A dispute that a consumer may have with a
4 licensee or a developer.

5 Q. Okay. All right. And what about criminal cases,
6 how often have you appeared in criminal cases?

7 A. I haven't.

8 Q. Okay. But it says here that you appear as a
9 departmental prosecution witness in a criminal case.
10 What do you mean by that?

11 A. We -- if we discover a criminal activity, we
12 share that information with the local sheriff's
13 department or the district attorney's office.

14 Q. Okay. Is it -- so do you under -- do you
15 understand your duties such that -- well, let me rephrase
16 that.

17 Do you believe that as part of your duties you may
18 have to appear as a witness in a criminal case?

19 A. Yes.

20 Q. Okay. Now, you are in the affiliate ADC?

21 A. That's correct.

22 Q. And will you tell the Law Judge what ADC stands
23 for?

24 A. It stands for Association of Deputy
25 Commissioners. It's --

1 Q. Okay. And that has approximately how many
2 members?

3 A. Approximately 120.

4 Q. Okay. And out of those 120 do you know how many
5 sworn individuals there are such as yourself?

6 A. Seven.

7 Q. Okay. Is that in addition to you or including
8 you?

9 A. Seven including me.

10 Q. Okay. And the balance is non-sworn?

11 A. Correct.

12 Q. Okay. Now, have you held a position in ADC?

13 A. Yes, I have.

14 Q. Okay. What position is that?

15 A. I've held Secretary, Treasurer and Vice
16 President.

17 Q. Okay. Those offices, can you tell us what time
18 span that covers approximately?

19 A. Over the last nine years.

20 Q. Okay. Now, have you had any other positions in
21 CSLEA?

22 A. No.

23 Q. Okay. Now, okay. Have you ever been a Site Rep
24 or a Job Steward?

25 A. No, I haven't.

1 Q. Okay. Now, in your capacity as an officer in
2 ADC, are you someone who would be apt to either have
3 someone complain to you if they had issues with CSLEA, or
4 are you in a position where you would hear about
5 complaints?

6 A. Yes.

7 Q. Okay. So let's start with this: Over the nine
8 years that you've been an officer, how would you
9 characterize the reaction of the members to the
10 responsiveness of CSLEA; that is, when they have a
11 problem and they go to CSLEA, how quickly and -- how
12 quickly they will get a response?

13 A. It's my understanding they get a response the
14 same day or within a day or two.

15 Q. Okay. Have you ever had occasion to talk to
16 people in the CSLEA main office?

17 A. Yes.

18 Q. Who do you normally talk to?

19 A. Well, I've e-mailed and had phone conversations
20 with Kasey Clark, with other Board members, and front
21 office staff.

22 Q. Okay. And how is the -- what is your observation
23 of the responsiveness of CSLEA?

24 A. I'm very pleased to have direct contact and
25 immediate or near immediate responses to questions and

1 inquiries.

2 Q. Okay. Have you had people come to you with
3 complaints about the representation of CSLEA?

4 A. Yes.

5 Q. Okay. Can you characterize the complaints?

6 A. Folks have been dissatisfied with various
7 portions of the contract.

8 Q. Okay. Money issues?

9 A. Yes.

10 Q. Okay. Did anybody come to you and say that
11 they'd been represented poorly in an individual
12 representation case?

13 A. No.

14 Q. Okay. Have you heard any people praise CSLEA for
15 any of its accomplishments on behalf of the people in
16 ADC?

17 A. Yes, I have.

18 Q. Can you give a couple of examples?

19 A. The increase in retirement of two and a half
20 percent at fifty-five, and the three percent at fifty.

21 Q. Okay.

22 A. They're very pleased with that, and longevity.

23 Q. By longevity you mean longevity pay?

24 A. Longevity pay for -- yes.

25 Q. Okay. For?

1 A. Salary increases for length of time in service.

2 Q. Okay. And I'm going to take you to I think it's
3 January of 2008. Okay. Do you -- hang on one second.

4 Were you familiar with the -- in the late -- probably
5 late 2007 splitting of the class of the -- of the
6 District Representatives?

7 A. Yes.

8 Q. Okay. Would you just briefly tell the Law Judge
9 what that entailed?

10 A. We -- well, some of -- all District
11 Representatives are Code Enforcement Officers by -- as
12 defined in the Penal Code. Approximately six or seven of
13 us are peace officers as pursuant to 830.3. There was --
14 there were some people hired in 2006 and 2007 that were
15 working as peace officers, although they were not getting
16 the peace officer retirement and benefits afforded in the
17 Unit 7 contract.

18 These individuals came to me and complained. And I,
19 in turn, contacted Kasey. And eventually I think Kasey
20 made some contacts with DPA, and eventually they were
21 included into the Unit 7 POFF retirement and receiving
22 the full benefits that are afforded in the Unit 7
23 contract.

24 Q. Now, also, at one time were all of the District
25 Representatives in one group? In other words -- well,

1 let me rephrase that.

2 Was there a time when peace officers were split off
3 from non-sworn District Reps?

4 A. I've been with Codes of Standard since 1984 and
5 there have always been a group of peace officers and a
6 group of non-peace officer District Representatives. I'm
7 not sure I under --

8 Q. Well, let me -- let me put it this way. Did you
9 get a step increase in 2008?

10 A. I believe so, yes.

11 Q. Okay. Are you aware of whether non-peace
12 officers got the same step increase?

13 A. They did not.

14 MR. MESSING: All right. Nothing further.

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Rose.

16 MR. ROSE: Yes.

17 CROSS-EXAMINATION

18 BY MR. ROSE:

19 Q. Good afternoon, Mr. Curry. Joe Rose, attorney
20 for Peace Officers of California. You a moment ago said
21 that there's six or seven of you District Representatives
22 who are peace officers, right?

23 A. Yes.

24 Q. And then you said that in 2006 or 2007 there were
25 employees who were working as peace officers, but not

1 receiving the POFF retirement, correct?

2 A. Correct.

3 Q. Are you -- are those the same group of employees,
4 the six or seven employees that are peace officers now,
5 were the same employees in 2006 and 2007 that were
6 working as peace officers?

7 A. That's correct.

8 Q. What do you mean when you say were working as
9 peace officers? Help me understand that.

10 A. They were hired as Investigators in the
11 Occupational Licensing Program. They took training
12 pursuant to PC 832. They received the same assignments,
13 duties, and performed the same work. So they -- but
14 their complaint was that they were not -- their time was
15 not being -- initially was not being counted in the POFF
16 retirement system.

17 Q. Do you understand -- do you have any
18 understanding why the Department hired them as
19 Investigators but -- and required the PC 832, but then
20 gave them the same assignments?

21 A. Well, they fully intended to give them the full
22 benefit package of a peace officer.

23 Q. Okay. I guess what I'm asking, though, is what
24 business function would it serve to have peace officers
25 performing work identical to this -- to non-peace

1 officers, if you know?

2 A. I don't know.

3 Q. So is your work essentially identical to that of
4 a District Representative who's non-sworn?

5 A. No.

6 Q. It's different?

7 A. Yes.

8 Q. How is it different?

9 A. The non-sworn conduct construction inspections of
10 manufactured homes, commercial modules. They also
11 conduct inspections of alterations to these residential
12 structures, underground improvements, improvements in a
13 manufactured home community. So they're more in a
14 construction and inspection verification job duty, job
15 description.

16 My job is to gather facts, interview people, write
17 citations, write subpoenas, and take administrative
18 action against those that we license and regulate.

19 Q. Okay. Is there a typical background that one
20 comes from prior to becoming a District Representative
21 with your agency? And by that I mean do most of these
22 folks come from the trades or the construction field, or
23 is that not fair to say?

24 A. No. The District Representatives, non-sworn,
25 generally come from the construction industry, from a

1 city or county building department as an inspector, for
2 example. They come from the manufactured housing
3 industry as -- working as a quality control manager or
4 service manager from someone in the manufactured, you
5 know, statewide.

6 Historically management has selected people from that
7 area to hire into the peace officer designated area
8 because they felt that it was beneficial to take someone
9 that was already trained with a construction background
10 and regulatory knowledge and exposure to work in the
11 investigative field.

12 Q. I see. Now, is that also your background, the
13 kind of background that you just described either from
14 city -- what is your prior employment background with --
15 in summary before working for the State?

16 A. Well, let me say from '84 to '87 I worked as an
17 Inspector, as I just described. Prior to '84 I worked
18 for two municipalities as a Building Inspector.

19 Q. Now, do the non-sworn District Representatives
20 write citations?

21 A. No.

22 Q. Do they give Notices of Correction?

23 A. Yes, they do.

24 Q. Are those different?

25 A. Yes. The citations come with a monetary penalty

1 that can -- failure to pay the monetary penalty, failure
2 to pay the citation, can result in a non-renewal of the
3 license for the companies that we regulate. The
4 Inspectors that are looking at construction in progress
5 will write a correction order or directive to a
6 contractor, but we don't regulate.

7 Q. And in order to get the final inspection the
8 corrections must be made, correct?

9 A. Correct.

10 Q. Now, do non-sworn District Representatives write
11 subpoenas?

12 A. No.

13 Q. Do non-sworn District Representatives initiate
14 administrative actions other than the Notice of
15 Correction you just described, if we can call it an
16 administrative action?

17 A. They would gather -- they would keep a supervisor
18 advised of what's going on. Now, generally, they would
19 be attempting to pull a permit to operate a manufactured
20 home community for a variety of substandard conditions,
21 and that would be -- they would first of all notify their
22 administrator, who would in turn notify our Legal Affairs
23 Division.

24 Q. What would the Legal Affairs -- or as a -- as a
25 matter of practice, what does the Legal Affairs Division

1 do with that referral from the District Representative
2 concerning the example you just described?

3 A. They would verify the facts. They would notify
4 the operator of the park so that they clearly understood
5 what was -- what may result from a failure to take
6 corrective action in a manufactured home community. The
7 Legal Affairs Division would also request the district
8 attorney's assistance in notifying the district attorney
9 that they may be in jeopardy of losing their permit to
10 operate the manufactured home community as a mobile home
11 park.

12 Q. Would that -- would Legal Affairs ever refer that
13 to a sworn Investigator?

14 A. No.

15 Q. You work out of your home?

16 A. Yes.

17 Q. And do you drive a State vehicle?

18 A. Yes.

19 Q. How do you communicate with your superiors?

20 A. Personal meetings, e-mail, telephone, writing.

21 Q. Do you have a scheduled office day that you go in
22 once a week, or is there --

23 A. No.

24 Q. How often are you meeting with your supervisors
25 face to face?

1 A. Generally a couple times a month, or as directed.

2 Q. And then other than the face-to-face meetings
3 with your supervisors, do you essentially work on your
4 own?

5 A. Yes.

6 Q. And then how much of that time that you're
7 working do you spend working in your home office as
8 compared to say in the field? And I guess I'm making an
9 unfair assumption. Part of what you do is not in the
10 office but in the field?

11 A. Correct.

12 Q. Okay. So allocate the portion of time for us, if
13 you will, either fractional or percentage or hours per
14 week.

15 A. I would say 33 percent is writing at home.

16 Q. And then the balance would be in the field?

17 A. In the field or in the office with the
18 supervisor.

19 Q. Well, let's try to break it down further. What
20 percentage of time would you say -- out of the hundred
21 would you say you're in the office with the supervisor?

22 A. Fifteen to twenty percent.

23 Q. All right. So that leaves us, if my math is
24 correct, at about 50 percent field work. Sound about
25 right?

1 A. Sure.

2 Q. All right. Now, your -- most of this time --
3 most of the time that you're writing at home or working
4 in the field are you encountering -- who are you
5 encountering out there in the field?

6 A. Folks that we regulate, other members of
7 industry, consumers, other law enforcement, other
8 governmental agencies, escrow companies.

9 Q. What other law enforcement agencies do you
10 interface with, for example? Well, let me ask that after
11 I ask this question. I'll withdraw that question.

12 Which section of California are you responsible for?

13 A. Currently 11 counties with Sacramento on the
14 north and south and to the west. South down the
15 Sacramento Valley, the west to Santa Clara.

16 Q. Okay. Now, with that in mind, that helps me
17 understand what local law -- or what other law
18 enforcement agencies are you working with?

19 A. Other state agencies, Contractors License Board,
20 on occasion local PDs and sheriff's departments, Board of
21 Equalization Tax Assessors.

22 Q. Do you ever work with peace officers from the
23 CSLB?

24 A. Yes.

25 Q. Now, one thing I didn't hear you list in your --

1 in your list of people that you encounter in the field
2 was District Representatives who are non-sworn. Do you
3 see them infrequently in the field?

4 A. Yes, I do.

5 Q. They're fairly autonomous as well, like you?

6 A. Yes.

7 Q. Okay. So if we were to take a look at your
8 Declaration, if you could look at page three, paragraph
9 9(b), which is at line 14, you write that sworn District
10 Representatives, like yourself, often team up with non-
11 sworn District Representatives to investigate the alleged
12 unlicensed sales of manufactured homes.

13 A. Correct.

14 Q. Do you still believe that you often team up with
15 non-sworn to do that?

16 A. We do team up. A lot of times they will refer an
17 issue going on in a park or a community, and we will team
18 up to gather the information, the evidence, meet in the
19 park, talk to residents in the park, park management.

20 Q. And when you say team up, are you -- are you
21 meaning the referral of the information to you?

22 A. Yes. Meet with the non-sworn District
23 Representatives to discuss what's going on and who the
24 individuals are and what are the circumstances.

25 Q. How often would you say you -- could you estimate

1 for us how many times you've done that in the last year?

2 A. Four.

3 Q. Did -- in the most recent occasion did it involve
4 more than one meeting at the park with a non-sworn?

5 A. Yes.

6 Q. The other six or seven sworn District
7 Representatives, have you spoken to them about the
8 concept of a -- wearing your CSLEA hat or your affiliate
9 hat, have you -- have you spoken to them about the
10 concept of a peace officer only bargaining unit?

11 A. No. I'm sorry. I think one of them -- one or
12 two in Southern California asked a question about what it
13 was about. I did the best I could to answer it.

14 Q. Do you -- when you met -- when you encounter
15 people in the field, all the people that you've
16 identified, do you identify yourself as a peace officer
17 for them?

18 A. I don't think I understand your question.

19 Q. Do the people that you -- that you are
20 encountering in the field know that you're a peace
21 officer?

22 A. We're talking about the folks that we regulate?

23 Q. Yes.

24 A. I don't introduce myself as a -- as a peace
25 officer. I introduce myself. I hand them a business

1 card and state, you know, what I'm here for.

2 Q. Do you wear a badge?

3 A. I do not wear a badge.

4 MR. ROSE: Okay. Nothing further.

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Ms. Truong?

6 MS. TRUONG: Nothing from us.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Messing?

8 MR. MESSING: Nothing further.

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Thank you very
10 much, sir. I'm going to give you an admonishment not to
11 discuss your testimony with any of the other witnesses.
12 You're free to discuss it with anyone at these counsel
13 tables here.

14 And with that, double I is admitted.

15 (Exclusive Representative's Exhibit II received
16 in evidence.)

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And any
18 questions in regards to the admonishment?

19 THE WITNESS: No.

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Thank you very
21 much. Off the record.

22 (Off the record.)

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. We are
24 back on the record. We have another witness called by
25 the Exclusive Representative. I'm going to ask you to

1 raise your right hand.

2 (Witness sworn by the Judge.)

3 THE WITNESS: I do.

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

6 THE WITNESS: Coby Pizzotti. P-I-Z-Z-O-T-T-I.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. A
8 couple questions, sir. And just so that we have it for
9 the record, have you reviewed any transcripts in regards
10 to the prior days of this hearing?

11 THE WITNESS: Well, I've seen transcripts. I haven't
12 reviewed them like --

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Did you read any
14 of them?

15 THE WITNESS: Yeah, I have.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: (Inaudible.)

17 THE WITNESS: Yeah.

18 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. What did
19 you read? What do you remember reading?

20 THE WITNESS: The CSLEA website --

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

22 THE WITNESS: -- information.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Do you remember
24 reading like actual transcript like --

25 THE WITNESS: No.

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: -- in a format
2 like this?

3 THE WITNESS: No.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. Do
5 you know James Cline?

6 THE WITNESS: James Cline. Personally or --

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I'll say have
8 you ever spoken with him? Let's make it easy.

9 THE WITNESS: Spoken. No, I don't believe so.

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.
11 Next, marking as Exclusive Representative double J what
12 appears to be a Declaration of Coby Pizzotti.

13 (Exclusive Representative's Exhibit JJ marked
14 for identification.)

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And is there
16 any -- and I'm speaking to the parties now. Is there any
17 change in regards to the tentative ruling that I made in
18 regards to this after people read the transcripts? Is
19 there any --

20 MR. MESSING: Well, as I understand it, paragraph one
21 through ten are in. And the rest of it is --

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: That was my
23 tentative. I'm just leaving it open if anyone else --

24 MR. MESSING: We're okay with that.

25 MR. ROSE: I still would like to maintain our

1 position, which is that Mr. Pizzotti should be excluded
2 as a witness. But you understand our position on that?

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yeah.

4 MR. ROSE: Okay.

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. So
6 I'm just -- I'm -- what I'm asking about is based upon
7 what was read in the transcript of Lewis. That's what
8 I'm referring to whether something's rebuttal or not.

9 All right. Nothing further. Witness has double J
10 before him. Anything further on one through ten matters?

11 MR. MESSING: No. I'm going to pass the witness
12 to --

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Rose, all
14 yours.

15 MR. MESSING: -- Mr. Rose.

16 MR. ROSE: Oh, thank you, Mr. Messing.

17 MR. MESSING: You're very welcome, Mr. Rose.

18 TESTIMONY OF

19 COBY PIZZOTTI,

20 Having been duly and regularly sworn, testified as
21 follows:

22 DIRECT EXAMINATION

23 BY MR. ROSE:

24 Q. Mr. Pizzotti --

25 A. Yes, sir.

1 Q. -- are you -- are you related to anyone employed
2 by CSLEA?

3 MR. MESSING: Object. Relevance.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You know, I'm
5 going to allow that. Go ahead.

6 THE WITNESS: Yes.

7 BY MR. ROSE:

8 Q. Who are you related to?

9 A. Kasey Clark.

10 Q. How are you related to Mr. Clark?

11 A. Cousin.

12 Q. All right. Now, in your Declaration you speak to
13 some circumstances surrounding the Fraud Investigator
14 classification in the Department of Insurance; is that
15 right?

16 A. Yes.

17 Q. And your involvement in the classification being
18 made a peace officer; is that right?

19 A. Could you be -- yes. To a certain extent, yes.

20 Q. Okay. Well, do you consider yourself having been
21 involved in the State's decision to make the -- that
22 Investigator position -- the Insurance Investigator
23 position a sworn position? And I said Fraud
24 Investigator.

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: If you want to

1 open the door, Mr. Rose, but I --

2 THE WITNESS: Yes.

3 MR. ROSE: Well, I didn't understand --

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: One through ten
5 is in. If you want to go beyond that, then Mr. Messing's
6 going to get his shot to kick the -- kick the door open,
7 so --

8 MR. ROSE: Well, there's items in one through ten
9 that include discussion --

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And feel free to
11 go on, then. I'm just warning you that your question was
12 really broad and covered an area that I could see you
13 might not want to go into. But that's your --

14 BY MR. ROSE:

15 Q. Okay. Well, look at paragraph four of your
16 Declaration.

17 A. Was there a question --

18 ADMINISTRATIVE LAW JUDGE CLOUGHESY: No.

19 THE WITNESS: Okay.

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Forget about the
21 other question.

22 MR. ROSE: I withdraw the question.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: We'll get the
24 new one.

25 THE WITNESS: Okay.

1 MR. MESSING: Well, there was a question and an
2 answer on the record, so --

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: It was a yes or
4 no question.

5 THE WITNESS: And I said yes.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

7 MR. MESSING: Yeah, there was an answer yes.

8 THE WITNESS: Yes. And I --

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.
10 Let's get the next one.

11 THE WITNESS: Paragraph four?

12 MR. ROSE: Give me -- give me one second.

13 THE WITNESS: Okay.

14 BY MR. ROSE:

15 Q. Let me ask you this question: You -- how many
16 days of hearing have you attended?

17 A. Two and a half to three.

18 Q. Which days were they? Do you know?

19 A. I don't recall which ones. I think I missed the
20 first day, second and third day, and then possibly part
21 of -- I really -- honestly, I can't remember which --
22 which exact days they were, but I believe it was second
23 or third day that I saw for sure.

24 Q. Which --

25 A. I saw -- go ahead.

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Let me just ask
2 you, were you hear when Karnow testified?

3 THE WITNESS: No.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. That's
5 the first day. Were you here when Craig Brown testified?

6 THE WITNESS: Yes.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. You were
8 here the second. What about that colorful character Mark
9 Falcione?

10 THE WITNESS: Yes.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. You were
12 here the third day. And then Chris Lewis?

13 THE WITNESS: Yes.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: That's the
15 fourth day. Were you here when Bob Orange was here?

16 THE WITNESS: No.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. All
18 right. And then you weren't here on the -- I don't think
19 you were here when Vitko was here on his first day
20 either, so --

21 THE WITNESS: I don't believe so.

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. So I
23 have second, third and fourth.

24 BY MR. ROSE:

25 Q. All right. Now, then, did you draft this

1 Declaration yourself?

2 A. Yes.

3 Q. Did you have any assistance?

4 A. No. I wrote it and then submitted it to be put
5 into the format, I guess.

6 Q. All right. When you wrote this Declaration, how
7 long did you take to write it? You signed it on -- well,
8 go to the last page. You signed it on 3rd of March,
9 right?

10 A. Last page? Okay. I believe so.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I mean that's
12 your signature?

13 THE WITNESS: Yes, that is my signature. I mean,
14 yeah, I believe so. If it's my signature on this day,
15 then, yeah.

16 BY MR. ROSE:

17 Q. All right. And did you begin writing this
18 Declaration on the 3rd of March?

19 MR. MESSING: Object. Relevance.

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: As far as when
21 the day of hearing was and that sort of thing?

22 Sustained. Go ahead.

23 MR. ROSE: Or overruled you mean?

24 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I mean
25 overruled. You're right.

1 THE WITNESS: Yeah, I believe so. I wrote it roughly
2 the same day, maybe a day after.

3 BY MR. ROSE:

4 Q. When did -- when did you first become aware that
5 you were going to be a witness in this case?

6 A. I don't know the date exactly, but right around
7 that date that I wrote it.

8 Q. What was the triggering event in your mind that
9 caused you to know that you would be a witness in this
10 case?

11 A. I heard the testimony of Chris Lewis.

12 Q. Okay. And all right. You provided a Memorandum
13 that was attached to a Declaration for Craig Brown. Are
14 you aware of that?

15 MR. MESSING: What? Excuse me. Could you --

16 THE WITNESS: I --

17 MR. MESSING: Wait a minute.

18 THE WITNESS: I'm sorry.

19 MR. MESSING: Could you repeat the question?

20 BY MR. ROSE:

21 Q. You provided a Memorandum --

22 MR. MESSING: Oh, I know. I'm sorry. Thank you.

23 BY MR. ROSE:

24 Q. -- that was attached to a Declaration of Craig
25 Brown. Are you aware of that?

1 A. I'm not sure.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Would you like
3 me to show it to him?

4 MR. ROSE: Yes, please.

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

6 THE WITNESS: Okay.

7 MR. ROSE: Let me show --

8 THE WITNESS: Okay.

9 BY MR. ROSE:

10 Q. Or the Judge is showing you --

11 A. Yes.

12 Q. -- what is attached as Exhibit A to as yet
13 unidentified Declaration of Craig Brown. It's a Memo
14 from you --

15 A. But it's from me to Kasey --

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. Wait.
17 Let him --

18 THE WITNESS: I'm sorry.

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Let him -- go
20 ahead, Mr. Rose.

21 BY MR. ROSE:

22 Q. Memo from you to Kasey Clark --

23 A. Right.

24 Q. -- dated March 12th, 2009. Do you see that?

25 A. Yes.

1 Q. Do you recognize that document?

2 A. Yes.

3 Q. That memo was produced specifically for these
4 proceedings, correct?

5 A. I don't know what it was produced for. I was
6 told to look into all the bills that we have supported,
7 opposed, been a part of for, you know, the last 16 years
8 or so.

9 Q. All right. Now let's --

10 A. I didn't know how it was going to be used. To
11 be --

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. Next
13 question.

14 BY MR. ROSE:

15 Q. Let's look at page nine of that Memorandum. Do
16 you see under 2005/2006 Assembly Bill 2936, Ridley-
17 Thomas?

18 A. Yes.

19 Q. And the descriptor here is, "The CAUSE sponsored
20 the introduced version of the bill. Asked for a POST
21 study for Museum Security Officer to be peace officers."
22 Do you see that?

23 A. Yes.

24 Q. Is that your -- did you write that?

25 A. Yes. That was a brief summary of what I saw.

1 Q. Now, were you employed by CAUSE -- excuse me,
2 CSLEA at the time that this legislation was introduced?

3 A. The time that it was introduced, no.

4 Q. Were you employed by CAUSE at the time that this
5 legislation was signed by the Governor?

6 A. I don't believe that this bill was that bill
7 anymore. I believe it was -- yeah. As you can see in
8 the summary, it says, "Approves provisions that require
9 the expenditure of funds of the Memorandum of
10 Understanding entered into between State Employer and
11 Bargaining Unit 5, and would provide that these
12 provisions will become effective even if these provisions
13 are approved by the Legislature in the legislation other
14 than the annual budget." So essentially saying the last
15 version of the bill is not the version that was
16 introduced by CAUSE/CSLEA.

17 Q. And was it -- was one of the differences that the
18 final version of the bill that was signed by the Governor
19 did not include provisions for a POST study for Museum
20 Security Officer?

21 A. I'm sorry.

22 Q. Was --

23 A. Say that again.

24 Q. Was the -- one of the differences in the final
25 bill signed by the Governor that the POST study for

1 Museum Security Officer to be peace officers was not
2 included?

3 A. I couldn't tell you. I couldn't speak to what is
4 in the final version of the bill. Because this is just a
5 summary, and I don't have the bill for me.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. So do you
7 know?

8 THE WITNESS: I don't know.

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Next.

10 BY MR. ROSE:

11 Q. Do you know whether CAUSE has ever or CSLEA has
12 ever successfully achieved legislation that created a
13 POST study for Museum Security Officer to be peace
14 officers?

15 A. I don't know.

16 Q. So what -- when you wrote, "The CAUSE sponsored
17 the introduced version of the bill asked for a POST study
18 for Museum Security Officer to be peace officers," what
19 did you mean?

20 A. That they introduced the bill. The bill at some
21 point failed and was gutted and amended into something
22 else.

23 Q. And you're aware that the something else doesn't
24 include a POST study for Museum Security Officers, right?

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You've already

1 asked that question. But do you know? When you say
2 gutted and amended, were you just speculating or what?

3 THE WITNESS: Oh, no. I mean you can see the
4 versions of the bill. If you looked in the legislative
5 history, you can see at this point it was this bill. At
6 this point it was this bill. At some point it changed
7 versions to where it no longer had anything to do with a
8 POST study for --

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Rose.

10 BY MR. ROSE:

11 Q. Thank you. That's what I was asking you. Now --

12 A. Yeah.

13 Q. Okay. Now, what is a POST study?

14 A. I don't know.

15 Q. One moment, please. I'm sorry for the delay.

16 Are you aware -- let me ask you to turn to page 11 of
17 that Memorandum that you authored.

18 A. This one?

19 Q. Yeah. And I'm looking now at the top of the page
20 AB 994, Runner, titled Peace Officers. Do you see that?

21 A. Uh-hmm.

22 Q. Are you familiar with that piece of legislation?

23 A. Only what's on here. This predated my employment
24 with CSLEA.

25 Q. Have you subsequently become aware of what that

1 legislation involves?

2 A. Only to the extent that I've added it to the list
3 in doing a search.

4 MR. ROSE: All right. Nothing further.

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Ms. Truong?

6 MS. TRUONG: Nothing from us.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Messing?

8 MR. MESSING: Nothing further.

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Sir, let me give
10 you an admonishment. That admonishment is not to discuss
11 your testimony with any of the other witnesses.

12 Other than that, Exclusive Rep double J is admitted.
13 (Exclusive Representative's Exhibit JJ received
14 in evidence.)

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And thank you
16 very much.

17 MR. ROSE: Oh, Judge, let me make the objection for
18 the record. We object to the admission of double J in
19 its entirety.

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You got it, sir.

21 MR. MESSING: And I'm going to ask that the entire
22 exhibit be entered based on the fact that the question
23 was asked and answered regarding -- related to paragraphs
24 11 to the end.

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You know,

1 that -- I'm not going to go that broad. If Mr. Rose
2 would have asked a couple of more questions, you probably
3 would be successful. But based on the vagueness of that
4 question, I'm not going to -- I'm only going to invoke
5 the previous ruling again. So both rulings are noted.
6 Double J, one through ten, is admitted. Off the record.

7 (Off the record.)

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.
9 We're back on the record.

10 MR. MESSING: Okay. One last thing. I'm sorry.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Go off the
12 record?

13 MR. MESSING: Yeah. There's another thing.

14 (Off the record.)

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.
16 We're back on the record. I'm going to be marking as
17 Exclusive Representative double K what appears to be a
18 Declaration of Craig Brown.

19 (Exclusive Representative's Exhibit KK marked
20 for identification.)

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And it's my
22 understand that there's going to be no cross-examination
23 of Mr. Brown; is that correct, Mr. Rose?

24 MR. ROSE: Correct.

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. And

1 on behalf of the Employer?

2 MS. TRUONG: That's correct.

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. So,
4 with that, any objection to the admission of double K on
5 behalf of the Petitioner?

6 MR. ROSE: No objection.

7 MS. TRUONG: No objection.

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Then double K is
9 admitted.

10 (Exclusive Representative's Exhibit KK received
11 in evidence.)

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Additionally, we
13 had discussed some of the future of this case. And some
14 of that future is going to include canceling the
15 April 21st hearing date. And by all intents, it seems
16 like April 22nd will most likely be the day that the
17 Employer starts their case in chief. Is that correct,
18 Ms. Truong?

19 MS. TRUONG: That is correct.

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.
21 Anything else on behalf of the Exclusive Rep for your
22 case in chief today?

23 MR. MESSING: I don't think so. Yes, we did indicate
24 that we were going to reserve our right to bring a
25 witness in response to --

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: To Ms. Hunter.

2 MR. MESSING: -- Ms. Hunter, yes.

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yeah. I mean
4 that's completely fair in taking a witness out of order.

5 MR. MESSING: Sure.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: So --

7 MR. MESSING: Okay. Otherwise I think we're good.

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. With
9 that, day eight, I believe, of this matter is concluded.
10 We're off the record.

11 (Proceedings concluded.)

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