

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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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

CERTIFICATION AND  
DECLARATION OF TRANSCRIBER

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3  
4 I, Leisa M. Miller, a duly designated transcriber of  
5 Vine, McKinnon & Hall, do hereby declare and certify  
6 under penalty of perjury that I have transcribed from a  
7 CD recording the proceedings in the matter of STATE OF  
8 CALIFORNIA, Employer, and PEACE OFFICERS OF CALIFORNIA,  
9 Petitioner, and CALIFORNIA STATEWIDE LAW ENFORCEMENT  
10 ASSOCIATION, Exclusive Representative, Unfair Practice  
11 Charge No. SA-SV-171-S, which recording was duly recorded  
12 at Sacramento, California on March 24, 2009, and that the  
13 foregoing pages 1 through 189 constitute a true, complete  
14 and accurate transcription of the aforementioned  
15 recording to the best of my ability.

16 Dated this 14th day of April, 2009, at Dixon,  
17 California.

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