

March 25, 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 25, 2009

SHAWN CLOUGHESY
Administrative Law Judge

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

Transcribed by: Leisa M. Miller

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Administrative Law Judge

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1 Employer?

2 MS. TRUONG: Shannan Truong, Legal Counsel for
3 Department of Personnel Administration. With me is Linda
4 Mayhew with the DPA, Assistant Chief Counsel, and
5 Kristine Rodrigues, Labor Relations Officer with the DPA.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. On
7 behalf of Petitioner.

8 MR. ROSE: Joe Rose for Peace Officers of California.
9 Seated at counsel table with me is Diane Sabonis.

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.
11 Where we left off, we are still on the case in chief of
12 the Exclusive Rep. Any preliminary matters? Anything on
13 your behalf, Mr. Messing?

14 MR. MESSING: No, not at this time.

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Ms. Truong?

16 MS. TRUONG: No.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Rose?

18 MR. ROSE: No.

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Witness to my
20 left ready to be sworn. Sir, ask you to raise your right
21 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: Alan Barcelona. B-A-R-C-E-L-O-N-A.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. And

3 Mr. Messing, questions?

4 MR. MESSING: Yes. Just one thing, actually. You
5 submitted a Declaration. Do you have a copy of that,
6 Judge?

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yes, I do. Let
8 me dig that out here. Have we not marked that one yet,
9 or is that --

10 MR. MESSING: I don't believe we've marked that. In
11 fact, I'm sure we haven't.

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Off the record.

13 (Off the record.)

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Back on the
15 record. We're going to be marking as Exclusive
16 Representative LL what appears to be a Declaration of
17 Alan Barcelona, Opposition to Severance.

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

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I'm going to
21 show that to the witness. And you can look at it on the
22 table if you want. And ask you to review it. And tell
23 me what it is when you've made such determination.

24 THE WITNESS: It looks like my Declaration.

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. If

1 you could turn to the signature page? And is that your
2 signature, sir?

3 THE WITNESS: Yes.

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

6 THE WITNESS: I believe so.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.
8 Mr. Messing.

9 TESTIMONY OF

10 ALAN BARCELONA,

11 Having been duly and regularly sworn, testified as
12 follows:

13 DIRECT EXAMINATION

14 BY MR. MESSING:

15 Q. Any corrections that you wish to make on this
16 Declaration?

17 A. Yes.

18 Q. Okay. Go ahead and explain.

19 A. Just line two. It says, "Prior to becoming
20 President of CSLEA I was a Special Agent." And it -- I
21 became a Special Agent while I was President of CSLEA.
22 So I think that it's just out of -- out of order here is
23 all. Because it talks about as a DMV Investigator, and
24 then -- and then Deputy Sheriff. So they just got the
25 order kind of reversed, I believe.

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Well, let's see
2 if we can look at a quick fix here.

3 THE WITNESS: It's all correct as far as the
4 employment goes. It's just the way they've ordered it
5 isn't right.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: If we're --

7 MR. MESSING: Okay. You know what it is? Is I think
8 the way to do that is, to begin with, I was a Special
9 Agent for the Department of Justice for approximately 10
10 years. And then put in prior to becoming President of
11 CSLEA and prior to becoming a Special Agent I was a DMV
12 Investigator. Does that --

13 THE WITNESS: That's fine.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Or you can just
15 do it by testimony.

16 MR. MESSING: Right.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I mean we can
18 just strike the prior to becoming the President of CSLEA
19 and then we can --

20 MR. MESSING: Why don't we just do this.

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: -- handle it by
22 testimony.

23 MR. MESSING: Yeah. Are we on the record?

24 ADMINISTRATIVE LAW JUDGE CLOUGHESY: We are indeed,
25 sir.

1 BY MR. MESSING:

2 Q. Oh. Can you just please explain the proper
3 sequence in paragraph two?

4 A. Yeah. Prior to -- I guess I can go I started out
5 as a Deputy Sheriff in 1981. In 1989 I became a DMV
6 Investigator. In 1999 I became a Special Agent,
7 Department of Justice, which I'm still employed as that.

8 Q. Okay. And when did you become President of
9 CSLEA?

10 A. 1994.

11 Q. Okay. I think that should cover it. Any other
12 corrections or changes?

13 A. I don't believe so.

14 MR. MESSING: Okay. I pass the witness to Joe Rose.

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Rose.

16 MR. ROSE: Yeah. Judge, actually, I have a
17 procedural matter on the Declaration. Just for
18 clarification, was it 10 court day requirement for
19 advanced service to me?

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I thought it was
21 two weeks, but -- I thought it was two weeks. I'm not
22 sure.

23 MR. ROSE: In any case, I think the Declaration was
24 untimely served. And we received it by e-mail on the
25 13th of March. By electronic mail only. And I don't

1 have an agreement with Mr. Messing's office to receive
2 the Declarations by e-mail. And also, even if it had
3 been served that date in person or by mail, it would have
4 been untimely on the 13th. That was only 6 or 7 business
5 days prior to today's hearing. So I object to the
6 admission of the Declaration in its entirety as being
7 untimely and not in accordance with the ruling of your --
8 with your ruling.

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. Any
10 response, Mr. Messing?

11 MR. MESSING: Well, first of all, he got a copy of it
12 on March 13th. That much I know. Today is the 25th, so
13 that is more than 10 days. I didn't know that there was
14 any problem with service of the Declaration. We knew --
15 we indicated that Mr. Barcelona would be testifying
16 today. If there was a problem with this, perhaps it
17 should have been raised at an earlier time. And I could
18 certainly find out, my understanding was that this was in
19 fact delivered to Mr. Rose's office, but I could find out
20 about that if you want to go off the record. But I think
21 the receipt of the documents 12 days before today should
22 have been sufficient. One second.

23 Additionally, I would say that submitting a
24 Declaration has not been a requirement for testimony. So
25 if he wishes to insist upon it, I could simply ask

1 Mr. Barcelona to testify to everything that's in the
2 Declaration, and we can spend the morning doing that.

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Any response,
4 Mr. Rose, or the Employer?

5 MR. ROSE: Yeah. I'm just looking, Judge, at your
6 ruling December 1. It reads, "Parties may be allowed to
7 present Declarations in lieu of direct testimony for
8 friendly witnesses. Such Declarations must be provided
9 to opposing counsel at least 10 days before that witness
10 is to testify." I suppose -- let me check my calendar.
11 Maybe that -- I thought that it -- "If a holiday or
12 weekend falls on the 10th day, the party propounding the
13 Declaration shall give an additional workday." So if
14 it's timely served by e-mail, then we may not -- let me
15 just check my calendar.

16 MS. TRUONG: Can I respond to that?

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Let me just --
18 we may not have an issue. Just hold on.

19 MR. ROSE: Okay. Well, in that case, even though we
20 didn't have an agreement, we only received -- the Proof
21 of Service shows that it was only served by e-mail. We
22 did not receive a paper copy. But if Mr. Messing is
23 willing to allow us 15 minutes to review the Declaration,
24 then I'll withdraw my objection.

25 MR. MESSING: No problem.

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Acceptable?

2 MS. TRUONG: That's acceptable.

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. And
4 with that, sir, you've got it.

5 MR. ROSE: All right.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I'm going to
7 review it myself since obviously it's on the -- my
8 internet also.

9 (Off the record.)

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.
11 We're back on the record. And I think now we're ready
12 for cross-exam, sir.

13 MR. ROSE: Yes. Oh, do we have -- did we identify
14 the Declaration on the record?

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yes, we did.
16 It's double L.

17 MR. ROSE: Thank you.

18 CROSS-EXAMINATION

19 BY MR. ROSE:

20 Q. Hello again, Mr. Barcelona. Your Declaration at
21 paragraph four, you speak of your duties when you were a
22 DMV Investigator, correct?

23 A. Yes.

24 Q. And that was more than 15 years ago, correct?

25 A. More than 15 years ago? I suppose so, yeah.

1 Q. Okay. You mentioned in your Declaration
2 beginning at about paragraph 11 efforts -- or direction
3 that you gave to Coby Pizzotti concerning the Insurance
4 Investigator position at the Department of Insurance,
5 correct?

6 A. Yes.

7 Q. What -- did CSLEA ever sponsor any legislation in
8 connection with that effort?

9 A. We supported legislation.

10 Q. You supported Assembly Bill 994 in 2005, correct?

11 A. Can you refresh my memory on what 994 was?

12 Q. It was a legislate -- it was authored by Sharon
13 Runner, and the topic was peace officers, and it was
14 concerning a -- concerning granting peace officer status
15 to the Insurance Investigator classification,
16 February 22, 2005. Does that refresh your memory?

17 A. A bit.

18 Q. Let me show you a Memorandum authored by
19 Mr. Pizzotti.

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I can show it to
21 him. Just --

22 MR. ROSE: Oh, thank you.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Do you know the
24 page that you're on or --

25 MR. ROSE: I don't. It's going to be in the 2005

1 year.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Got it. Okay.

3 And 994, is that what you said?

4 MR. ROSE: right.

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

6 MR. ROSE: February 22, 2005.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. On page

8 11 of Exhibit A of Exclusive Rep double K. Showing the

9 witness the summary digest.

10 THE WITNESS: Okay.

11 BY MR. ROSE:

12 Q. Now, having looked at that -- and you may want to
13 look at the first page of the document just to understand
14 the context of where that's coming from.

15 A. What is he talking about there.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yeah. Moving to
17 the initial memo.

18 THE WITNESS: Okay.

19 BY MR. ROSE:

20 Q. Now, have you seen that Memorandum that you're
21 looking at before today?

22 A. I think I have seen it.

23 Q. And having looked at the summary of Assembly Bill
24 994 in 2005, does that refresh your recollection as to
25 whether that was the legislation that was supported by

1 CSLEA in connection with the Insurance Investigator?

2 A. I don't -- I still don't remember it.

3 Q. Do you recall whether CSLEA -- well, you said you
4 recall that CSLEA did support legislation concerning
5 Investigator -- Insurance Investigator peace officer
6 status, correct?

7 A. Yes.

8 Q. And that legislation was vetoed by the Governor,
9 correct?

10 A. No. Not the one I'm talking about.

11 Q. Okay. Well, when did you first become involved
12 in the issue of investigate -- the Insurance Investigator
13 becoming a peace officer position?

14 A. I don't recall the dates.

15 Q. If you look at your Declaration, would that
16 refresh your memory?

17 A. It would.

18 Q. Okay. If you can take a look at page five of
19 your Declaration, paragraph eleven, does that refresh
20 your memory?

21 A. Yes.

22 Q. Having looked at that, tell me now if you can
23 answer my earlier question about when you first became
24 involved in the issue of peace officer status for
25 Insurance Investigator?

1 A. Around 2006.

2 Q. Are you aware whether or not there had already
3 been efforts by the Department to make that
4 classification peace officer status?

5 A. I'm only aware that there was discussions. I
6 don't have any further memory of it.

7 Q. Okay. Are you aware of what a POST study is in
8 connection with creating a peace officer classification?

9 A. Yes.

10 Q. Is it also called a POST feasibility study?

11 A. I believe so.

12 Q. And what is that?

13 A. My understanding is that they look at all
14 aspects, the type of job duties, whether they make
15 arrests, that sort of thing.

16 Q. All right. And is that a requirement before a
17 classification becomes a peace officer classification?

18 A. As far as I know it is.

19 Q. All right. Has CSLEA ever sought a POST
20 feasibility study for the Insurance Investigator
21 classification?

22 A. I don't remember whether we have or not.

23 Q. Has CSLEA ever sought a POST feasibility study
24 for Museum Security Officers?

25 A. I don't recall.

1 Q. Has CSLEA ever sought a POST feasibility study
2 for Supervising Museum Security Officers?

3 A. I don't recall.

4 Q. Has CSLEA ever sought a POST feasibility study
5 for the Firefighter Security Officers assigned to
6 Yountville?

7 A. I don't recall.

8 Q. Are you familiar with the Firefighter Security
9 Officer job duties for those assigned at Yountville?

10 A. No.

11 Q. Are you aware whether any Firefighter Security
12 Officer non-sworn employees drive a black-and-white State
13 vehicle with red-and-blue lights?

14 A. I'm not.

15 Q. Do you think if they perform those kinds of
16 functions that that would make them a peace officer?

17 A. I don't know.

18 Q. Are you aware that the Supervising Museum
19 Security Officers do not receive peace
20 officer/firefighter retirement?

21 MR. MESSING: Objection. Misstates the evidence.

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Are you aware
23 whether or not?

24 MR. MESSING: Oh.

25 MR. ROSE: Well --

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Wasn't that your
2 question?

3 MR. ROSE: Yeah. I said are you aware that
4 Supervising Museum Security Officers do not receive peace
5 officer/firefighter retirement.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: We do have the
7 testimony of a witness on --

8 MR. MESSING: Yeah. No. I withdraw the objection on
9 that.

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. Go
11 ahead, sir.

12 THE WITNESS: I'm not aware of it.

13 BY MR. ROSE:

14 Q. I'm sorry?

15 A. I'm not aware of it. I don't know.

16 Q. Are you aware whether or not Museum Security
17 Officers, not the Supervisors, receive peace officer/
18 firefighter retirement?

19 A. I don't know.

20 Q. Are you aware of the safety record or injury
21 record of employees in the classification LRE at the DMV,
22 License Registration Examiner?

23 A. I'm not aware of an official record. I know that
24 they have injuries.

25 Q. Okay. Do you -- are you aware whether or not

1 they have injuries on a more -- on an increased frequency
2 than other State employees?

3 A. It's my belief that they -- that they have quite
4 a few injuries.

5 Q. Are you aware --

6 A. Whether they -- whether or not it's to -- whether
7 I can compare it to other State employees, I don't know.

8 Q. Are you aware the nature of those injuries?

9 A. Some.

10 Q. Are they mostly vehicle accidents?

11 A. That's part of it. And they're also physical
12 assaults.

13 Q. Do you think that the rate of injury of License
14 Registration Examiners at the DMV makes them peace
15 officers?

16 A. No.

17 Q. Do you think that it makes them like peace
18 officers?

19 A. No.

20 Q. Turning to paragraph 20 on page 7 of your
21 Declaration. You mention beginning at line 16, "Lewis
22 also asked for my assistance in making arrangements for
23 him to speak to someone at the DOJ administration about a
24 Special Agent position. It was an unofficial interview."
25 And then you continue. Do you see where I am?

1 A. Yes.

2 Q. What influence might -- did you attempt to exert
3 on behalf of Mr. Lewis in his obtaining a Special Agent
4 position?

5 A. I considered Chris Lewis a friend. And he came
6 to me and he desperately wanted to be a full peace
7 officer. And he asked me if there was any way I could
8 get him a audience with somebody of -- in the
9 administration at DOJ that he could talk to about
10 transferring over to DOJ. And I -- and I arranged that
11 for him because I considered him a friend.

12 And I called Don Pressley, who works just under the
13 Attorney General over there and handles these types of
14 things, and I asked Don if he would be willing to speak
15 to him about what they might require, and whether or not
16 he had the abilities and the background necessary, and
17 Don said he would. And so I said, "Well, here's the
18 guy's name and number." And I assume that they -- and
19 they were going to get together.

20 Later on I got a call back from Don Pressley, and he
21 told me that he had spoke to Chris Lewis. He said that
22 he sounded like a great guy, but he didn't have full
23 peace officer academy and the necessary background to
24 become a DOJ Agent, and that he was sorry that he
25 couldn't, you know, do anything for him. And that's the

1 last I heard of it.

2 Q. Now, transferring into the DOJ as a Special
3 Agent, isn't there a formal civil service process for
4 transferring into that position?

5 A. I suppose, yes.

6 Q. Do you get -- why is it significant that
7 Mr. Lewis, you considered him a friend in connection with
8 your efforts on his behalf to acquire a Special Agent
9 position?

10 A. I don't understand your question.

11 Q. Well, you mentioned that you considered Mr. Lewis
12 a friend.

13 A. Yes.

14 Q. Do you still consider him a friend?

15 A. No.

16 Q. Why not?

17 A. Well, thank you for asking. Because Mr. Lewis
18 has done his best to try and tear our organization apart.
19 He's allowed Mr. Barty, who's sitting over there, to
20 write lie after lie about myself and other officials in
21 our organization, some that I find shameful. And to the
22 point to where, you know, anyone who used to come to my
23 office and talk to me as a friend on a regular basis -- I
24 just am very disappointed in him, and I don't consider
25 him a friend anymore.

1 Q. And also because he's attempting to create a
2 peace officer only bargaining unit, true?

3 A. True.

4 Q. Now, if someone wasn't your friend would you also
5 contact the Supervising Deputy Attorney General to
6 arrange for a unofficial interview for a position as a
7 Special Agent to the Department of Justice?

8 A. No.

9 Q. At paragraph 24 of your Declaration on page 8,
10 you mention that, "It was clear to me," meaning you and
11 the Executive Board, "that the leadership of the Fish and
12 Game Wardens affiliate was there for the benefit of the
13 Fish and Game Wardens only." Do you expect the Fish and
14 Game Wardens affiliate to -- strike that.

15 Do you find it surprising that the Fish and Game
16 Wardens affiliate would act in its own best interest?

17 A. I don't think that's a fair question in the
18 totality of the circumstances.

19 Q. Well, aren't -- isn't each affiliate of CSLEA
20 authorized to conduct their own advocacy?

21 A. Not on their own they're not.

22 Q. So each affiliate of CSLEA must receive advance
23 approval from CSLEA before they can advocate for their
24 own numbers?

25 A. We need to know what their plan is, what they're

1 saying over at the Capitol, and, you know, who they're
2 talking to, what the message is. Because CSLEA, the
3 entire org -- it's an entire organization. Every
4 organization has to -- has to have rules as far as how we
5 operate. And we need to know what all the affiliates are
6 doing over there.

7 If you have 18 affiliates all running their own
8 programs over there, it's going to be chaos. And even
9 any organization, even what I notice with the POAs and
10 the other organizations in the state, they don't go out
11 and advocate for themselves and try to cut -- you know,
12 cut everybody else out of the picture. They also have
13 the well meaning of the -- of the -- of everybody
14 involved, all the other POAs and DSAs as well when
15 they're out there working.

16 And that's something that the Fish and Game Wardens
17 didn't. They tried to go over there and get money
18 strictly for themselves at the expense of everyone else,
19 and that was harmful.

20 Q. So you believe that if an affiliate goes to the
21 Legislature and advocates for money to the Department,
22 for example, for recruitment and retention that affects
23 those members, that that is disadvantageous to the other
24 members of Bargaining Unit 7?

25 A. No, that's not what I said.

1 Q. Do you believe that the Fish and Game Wardens
2 have the right to go and advocate on their own behalf
3 with the Legislature?

4 A. No.

5 Q. Do you believe that any affiliate of CSLEA has
6 the right to go and advocate on its own behalf with the
7 Legislature?

8 A. That's not a yes or no question. I just
9 explained it to you.

10 Q. You can't answer the question that I just asked
11 you yes or no?

12 A. No. That's a -- that's a -- that's an unfair
13 question.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. Next
15 question.

16 BY MR. ROSE:

17 Q. Well, can the State Parks Peace Officers
18 Association of California advocate on their own behalf
19 with the Legislature?

20 A. I've already answered that question for you.

21 MR. ROSE: Judge, can you instruct the witness to
22 answer the question?

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: The State Parks
24 is not part of the Declaration for cross-examination as
25 far as -- as far as -- I'm allowing you to get into the

1 area that's in the Declaration. And if you want to give
2 an example of advocacy, please do it. That's kind of
3 similar to what we have here. I'm all for it. And
4 there's a considerable amount of open leeway you have
5 here.

6 BY MR. ROSE:

7 Q. All right. Turn to page 10 of your Declaration,
8 paragraph 31. You say in that paragraph at line 12, "The
9 Fish and Game Wardens were disingenuous because they were
10 aware of the Appellate Court decision that said that Fish
11 and Game Wardens do not perform like or similar work as
12 CHP officers." What Appellate Court decision are you
13 referring to?

14 A. There was a -- there's an Appellate Court
15 decision. I don't have the name of it or the cite. But
16 counsel can get it for you. I found out later that the
17 Supervisors had ran and lost in Appellate Court that said
18 Fish and Game Wardens do not do similar or like work as
19 CHP. I believe DPA has a copy of it as well. I did not
20 know that, nor did they tell me that when they showed me
21 that.

22 MR. ROSE: Objection. Move to strike. I asked the
23 question which Appellate Court decision.

24 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I mean --

25 MR. ROSE: He said he didn't know.

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

2 MR. ROSE: I move to strike everything after the
3 words "I don't know."

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Fair enough.
5 All right. So struck. Next.

6 BY MR. ROSE:

7 Q. All right. So was -- if you don't know the name
8 of the Appellate Court decision, do you know whether it
9 was a federal or state Appellate Court decision?

10 A. I don't.

11 MR. MESSING: Okay. Your Honor, the -- I believe
12 that that decision is in the record, and so could it be
13 shown to the witness --

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I don't --

15 MR. MESSING: -- to refresh his recollection?

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I don't think
17 it's in the record yet, but --

18 MS. MAYHEW: I don't know that it's in the record. I
19 know we've talked about it.

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: It's an un -- it
21 is an unpublished decision. I looked it up.

22 MS. MAYHEW: We would be --

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: But I mean I
24 probably have it in one of these boxes back here, but --

25 MS. MAYHEW: DPA would be willing to provide a copy

1 of that decision tomorrow morning.

2 MR. ROSE: That's fine. I'm not -- it's not critical
3 that we have it at this moment.

4 BY MR. ROSE:

5 Q. Are you aware of whether or not that decision is
6 published or unpublished?

7 A. I'm aware of it now that apparently it wasn't
8 published.

9 Q. Do you know the significance of a decision being
10 unpublished?

11 A. No, I don't.

12 Q. All right. Now, do you believe that the State
13 Parks, excuse me, that the Fish and Game Wardens
14 affiliate is prohibited for advocating for themselves
15 politically because of -- to compare themselves, rather,
16 to CHP officers in a pamphlet because of an Appellate
17 Court decision that's unpublished?

18 A. Is that a yes or no answer again?

19 MR. MESSING: I'm going to object.

20 THE WITNESS: Because I can't --

21 MR. MESSING: Wait. I'm going to --

22 THE WITNESS: I can't answer that with a yes or no.

23 MR. MESSING: I'm going to object. Vague and
24 ambiguous.

25 MR. ROSE: Well --

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Can you answer
2 the -- ask the question one more time, Mr. Rose?

3 BY MR. ROSE:

4 Q. Do you believe -- you say that the Fish and Game
5 Wardens were disingenuous because they were aware of this
6 Appellate Court decision, right?

7 A. Yes.

8 Q. And you make that in reference to the fact that
9 they put a two-page foldout called Tale of Two Officers,
10 right?

11 A. Yes.

12 Q. And you say that had you known that the Appellate
13 Court decision existed, you would not have authorized
14 them to publish this Tale of Two Officers expose,
15 correct?

16 A. Yes.

17 Q. Now, I'm asking you, do you think that the Fish
18 and Game Wardens are prohibited from publishing this two-
19 page pamphlet because of the existence of the Appellate
20 Court decision?

21 A. I would have advised them not to do it because of
22 that decision. Whether it's prohibited, I don't know if
23 there's a law that says you can't do it. But I would
24 have said, guys, you can't -- you shouldn't do this if
25 there's an Appellate Court decision that says that you

1 don't do similar or like work. I would have said you
2 shouldn't do it.

3 Q. And you would have said that as CSLEA President?

4 A. Yeah.

5 Q. And you would have exerted your authority as
6 President of CSLEA to prohibit that publication from
7 being made public?

8 A. Well, I don't think that I could have prohibited
9 it. I could have told them not to do it. I don't know
10 whether they would have went ahead and done it anyway.

11 Q. Well, if they had, would they have been
12 disciplined by the organization?

13 A. We may have.

14 Q. In fact, you have disciplined members of the --
15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I'm going to --
16 that's where I'm going to stop you. Stay in the
17 Declaration, sir. You've got plenty of ground to plow in
18 it.

19 MR. ROSE: Actually, I have no further questions.

20 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.

21 Employer?

22 MS. TRUONG: No questions from us.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Messing?

24 MR. MESSING: Just a couple.

25 /////

1 REDIRECT EXAMINATION

2 BY MR. MESSING:

3 Q. Under what circumstances can affiliate lobby on
4 behalf of an affiliate's members?

5 MR. ROSE: Objection. Beyond the scope of cross-
6 examination and outside the scope of the Declaration.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Hold on,
8 Mr. Messing. You know, maybe you can rephrase the
9 question. I'm going to --

10 MR. MESSING: Okay.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: -- sustain the
12 objection as it was asked.

13 MR. MESSING: I'll rephrase the question.

14 BY MR. MESSING:

15 Q. Under what circumstances could the Fish and Game
16 Wardens' Association lobby on behalf of its members?

17 A. We would let -- we wanted them to lobby with our
18 lobbyist, which at the time was Craig Brown, and we
19 wanted them to notify him of who they wanted to see, what
20 the message was, and that sort of thing. And we wanted
21 him to -- them to attend that with him. And the whole --
22 the whole -- the whole meaning of that is is that we need
23 to make sure that things are being said appropriately to
24 the Legislature over there so that they don't get
25 mixed -- you know, mixed messages across to people.

1 Q. Okay. Just one other thing. You were -- you
2 gave some testimony regarding a 2005 bill, I think it was
3 994. And I'm going to ask you to look at your
4 Declaration, paragraph 19.

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: What page?

6 MR. MESSING: Page seven.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Thank you.

8 BY MR. MESSING:

9 Q. Okay. This paragraph refers to being thanked for
10 support and help with the passage of AB 1401, Aghazarian.
11 Do you recollect what that bill -- what that bill
12 pertained to?

13 A. Yes.

14 Q. What was it?

15 A. This is a bill that Commissioner Poizner had
16 spoke with the Governor about running to increase funding
17 for the Fraud Investigators. And his whole intention was
18 was to start moving the Insurance Investigators over to
19 Fraud and that he would have the funding to do that.

20 Q. Okay. And did in fact CSLEA support or assist
21 with the passage of that bill?

22 A. Yes.

23 MR. MESSING: Nothing further.

24 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Rose?

25 MR. ROSE: Yes.

1 THE WITNESS: Oh.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I still --
3 you're under the same admonishment not to discuss your
4 testimony with any of the witnesses.

5 THE WITNESS: Okay.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You're free to
7 discuss it with anyone at these counsel tables.

8 THE WITNESS: All right.

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

11 (Off the record.)

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

16 (Witness sworn by the Judge.)

17 THE WITNESS: I do.

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

20 THE WITNESS: It's Kasey Clark. C-L-A-R-K.

21 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. And
22 just for identification purposes -- let me just do it
23 this way.

24 THE WITNESS: Do you have the other half? Just
25 kidding.

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