

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 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.

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. But
2 I've given you what I've marked as Exclusive Rep double D
3 and its attachments, and Exclusive Rep double E with no
4 attachments. And I'm going to ask you if you can
5 identify both documents and their attachments for the
6 record.

7 THE WITNESS: Yeah. These are Declarations I
8 prepared for this proceeding.

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. And
10 then if I can get to the signature page on double D. And
11 is that your signature, sir?

12 THE WITNESS: Yes.

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

15 THE WITNESS: Yes.

16 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Moving to double
17 E, if you could turn to the signature page. And is that
18 your signature?

19 THE WITNESS: Yes.

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

22 THE WITNESS: Yes.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And is what's
24 contained in those documents true and correct to the best
25 of your knowledge?

1 THE WITNESS: Mr. Messing.

2 MR. MESSING: If I can have just one minute?

3 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Off the record.

4 (Off the record.)

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Back on the
6 record.

7 MR. MESSING: I have just a couple of questions.

8 TESTIMONY OF

9 KASEY CLARK,

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

12 DIRECT EXAMINATION

13 BY MR. MESSING:

14 Q. First, could you turn to page 26 in your
15 Declaration?

16 A. Yes.

17 Q. You referred to the attached surveys as Exhibit
18 G. Do you see that on line --

19 A. At the top? Okay.

20 Q. Yes, at the top. And does this represent all of
21 the surveys that were returned?

22 A. By Unit 7 peace officers, correct.

23 Q. Yes. Okay. Do -- are DOJ Security Officers in
24 CALEE? Do you know?

25 A. Yes, they are in the CALEE affiliate.

1 Q. Do you know whether Jerry Karnow was related to
2 Chris Lewis?

3 A. It's my understanding that he just married to the
4 other sister.

5 MR. MESSING: Okay. Just one other thing. I'd like
6 to mark this for identification as our next in order.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.
8 Marking as -- I'm going to go off the record and give you
9 some time to look at this, Mr. Rose. So --

10 MR. ROSE: Okay.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: But for -- just
12 so I'm marking it, marking as Exclusive Rep MM what
13 appears to be a single-page document in a table format
14 entitled Proposed Salary Adjustments for July 1, '05,
15 through June 30th of '08.

16 (Exclusive Representative's Exhibit MM marked
17 for identification.)

18 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And we'll go off
19 the record. Is there another document that -- just so
20 that I can have Mr. Rose review it before --

21 MR. MESSING: That's it. Is that Exhibit 00 did you
22 say?

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: MM.

24 MR. MESSING: MM.

25 ADMINISTRATIVE LAW JUDGE CLOUGHESY: So, with that,

1 we'll go off the record. And let me know when you're
2 ready, Mr. Rose. Off the record.

3 (Off the record.)

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Back on the
5 record. Witness has double M before him.

6 BY MR. MESSING:

7 Q. Okay. Could you explain what this document is?

8 A. Yeah. This document was prepared by CSLEA staff
9 in conjunction with the membership's ratification of the
10 2006 contract reopener. This was set out with material
11 describing what the content of the new tentative
12 agreement was.

13 Q. Okay. And did you review this for accuracy?

14 A. Yes. I've looked at this document a number of
15 times.

16 Q. Does this accurately reflect the increases and
17 adjustments that were made from July 1, 2005, through
18 June 30th of 2008?

19 A. The only clarification I would make is in the
20 upper echelon of increases there's a January 2008, it
21 says a 10 percent step.

22 Q. Uh-hmm.

23 A. It's technically accurate that two new steps were
24 added to the pay ranges of those classifications. But
25 employees are only eligible to receive step increases in

1 five percent increments. So technically employees didn't
2 get -- who were at the top step of the range didn't get
3 the final increase 'til January 2009.

4 MR. MESSING: Okay. I'd ask that this be moved into
5 evidence.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Any objection to
7 double M?

8 MR. ROSE: No objection.

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Double M is
10 admitted.

11 (Exclusive Representative's Exhibit MM received
12 in evidence.)

13 MR. MESSING: And I will pass the witness to
14 Mr. Rose.

15 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Before the
16 witness is passed, where it says on double M, "Two to
17 four percent COLA," what's that mean?

18 THE WITNESS: That was the -- at the time of the 2006
19 reopener, that was the negotiated agreed-upon adjustment
20 that would take effect July 2007, dependent upon what the
21 CPI stats came back as. They came back at 3.4 percent.
22 So those increases were actually 3.4.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. I just
24 want to get that clarification. I thought it would be a
25 CPI issue. But, Mr. Rose, your witness.

1 MR. ROSE: Thank you.

2 CROSS-EXAMINATION

3 BY MR. ROSE:

4 Q. Mr. Clark, with respect to your Exhibit double M,
5 has the staff prepared a comparison of Bargaining Unit 7
6 peace officer salaries to California Highway Patrol
7 officers?

8 A. Ever?

9 Q. Well, in the --

10 A. I don't know.

11 Q. Since you've been the General Counsel?

12 A. Not that I -- no, not that I'm aware of.

13 Q. How about the same question but for comparison of
14 Bargaining Unit 7 peace officers with CCPOA?

15 A. No.

16 Q. In your Declaration on paragraph 18 -- strike
17 that -- on paragraph 29, page 26, beginning on line 12,
18 or between lines 12 and 13 you say, "In contrast, CHP
19 does not have a Legal Defense Fund," and then you go on
20 to explain CHP's ability to provide financial assistance.
21 What's your understanding of how CAHP provides legal
22 defense to its members when a critical incident for a
23 peace officer occurs?

24 A. Well, I've actually had this specific
25 conversation with their General Counsel, Tony Santana, on

1 this issue because I was curious what they did in terms
2 of their legal defense. And I ask what happens in the
3 course of an officer-involved shooting. And he said,
4 "Well, if it was in the Sacramento area he would go out."
5 Which kind of just led me to be curious about what they
6 did with the rest of the state.

7 So my understanding is that they don't have a defined
8 benefit plan like CSLEA does, which has an ERISA trust
9 that establishes what participants are specifically
10 entitled to if they need the coverage requirements.

11 CAHP has discretionary resources that if they feel
12 that there should be legal resources expended because an
13 officer may be involved in a critical incident, they have
14 the ability to do so. But it's not structured in the
15 manner that CSLEA is.

16 Q. Do they hire private attorneys on a panel, for
17 example, to represent their officers?

18 A. Not that I'm aware of.

19 Q. If it's not -- based on your conversation with
20 their counsel, if there's a shooting, for example, in
21 Los Angeles, how do they respond to that?

22 A. I think I would have to -- I would have to
23 speculate. I don't know.

24 Q. All right.

25 A. I don't know specifically. But I do know from

1 speaking with Larry Friedman, who's one of our Senior
2 legal attorneys for CSLEA, he was the Legal Administrator
3 for the PORAC Legal Defense Fund for 23 years, I believe,
4 before joining us approximately a year and a half ago,
5 and he said oftentimes CHP piggybacked on the PORAC panel
6 attorneys that were sent out, where you had both local
7 law enforcement officers and CHP officers involved in the
8 same critical incident. So the PORAC LDF dispatched a
9 panel attorney to represent a local law enforcement
10 officer that was involved in the critical incident.
11 Sometimes, out of courtesy, that panel attorney would
12 also provide representation to the CHP officer who
13 happened to be involved in a similar incident.

14 Q. I see.

15 A. But I don't know any specific examples. I can't
16 cite specific examples where that occurred.

17 Q. Okay. On page 18 of your Declaration now,
18 paragraph 22, beginning at line -- between line 8 and 9,
19 you're speaking about in this paragraph the reopener in
20 2006, and you write, "DPA stated the proposal was
21 intended to limit the increase to only peace officers,
22 and DPA was planning on splitting classifications which
23 had previously contained both peace officers and non-
24 peace officers into separate classifications."

25 With respect to the first part of that statement, did

1 DPA representatives explain to you why the proposal was
2 intended to limit the increase only to peace officers?

3 A. Well, I think that the summary of the reopener
4 kind of is explanatory on this issue. Is that, in
5 addition to those peace officer classifications at the
6 upper echelon who did extremely well, the peace officers,
7 the all other POFF, if you look in the fourth row down,
8 did substantially better than the general non-sworn or
9 non-peace officer Unit 7 employees. So I think from
10 DPA's perspective, they felt it was generally more
11 important in terms of this reopener to treat peace
12 officers better because of recruitment and retention
13 issues in those classifications that didn't exist at the
14 same extent in most of the non-sworn classifications.

15 Q. And then with respect to the second part of that
16 statement, did DPA explain why the -- they were planning
17 on splitting classifications which had previously
18 contained both peace officer and non-peace officers into
19 separate classifications?

20 A. Yes. It was in order to insure that only the
21 peace officers in those hybrid classifications received
22 the increases.

23 Q. And you write that at line -- between lines 14
24 and 15, "CSLEA objected to the proposal on the basis that
25 the language which identified peace officers by

1 classification code had been ratified by the membership
2 when it was voted on in 2005, and non-peace officer
3 employees in the specified classifications were relying
4 on the increase effective January 1, 2007." So by that
5 do you mean -- or did it ultimately come to pass that the
6 hybrid classifications were not split?

7 A. Well, you have to bear in mind, this was a
8 reopener. And the agreement that existed previously I
9 believe ran from 2005 to 2007 and had been previously
10 ratified by the CSLEA membership. At that time there
11 were increases, five percent step increases, that were
12 provided to classifications -- peace officer
13 classifications, including those that were the hybrid
14 classifications that contained both peace officers and
15 non-peace officers. That contract had been voted on and
16 ratified. And in the existing MOU, those classifications
17 were specifically enumerated in the agreement. So people
18 who had voted on that contract anticipated that they were
19 going to be entitled to those increases.

20 DPA during the 2006 reopener proposed just striking
21 out -- because the increase hadn't occurred yet, striking
22 that language and then just limiting it to peace officers
23 in a general sense in anticipation that they could beat
24 that scheduled increase and split the classes before it
25 occurred.

1 We objected. And they said, okay, we'll leave
2 the -- those increases in effect. The hybrid classes
3 will be entitled to the increase. However, for the
4 January '08 step, we're going to -- if we're able to
5 bifurcate those classifications, the understanding is
6 that the non-peace officers that were formerly in the
7 single classification are not going to get the increase.
8 And we agreed to that.

9 Q. How many hybrid classifications existed at that
10 time, if you recall?

11 A. I mean you have ones and twos. You know, the
12 examples I've given in here, and I don't know that that
13 list is exhausted, is the Enforcement Reps for
14 Contractors State Licensing Board, I think those are ones
15 and -- were ones and twos, have now been split into two
16 separate -- two classes. You have the Special
17 Investigator classifications. You have the Housing
18 Community Development District Representative
19 classification. I don't know if there was also an
20 Investigative Assistant classifications that were part of
21 that split. I'm not certain of that. And I can't give
22 you an estimate. I know that there were substantial --
23 just in talking about the CSLB folk and the District Reps
24 for HCD, there were substantially more non-peace officers
25 than peace officers in those classifications.

1 MR. ROSE: Nothing further.

2 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Ms. Truong?

3 MS. TRUONG: Nothing from us.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Messing?

5 MR. MESSING: Okay. I have just one more question.

6 REDIRECT EXAMINATION

7 BY MR. MESSING:

8 Q. Exhibit MM, you mentioned recruitment and
9 retention issues as being a driving force in the creation
10 of this schedule. Now, I notice that one of the higher
11 tiers here is CHP Public Safety Dispatcher/Comm. Op. Can
12 you explain why they ended up getting these substantial
13 increases?

14 A. Well, the -- since I've been with CSLEA, which is
15 2004, there was serious problems in terms of staffing CHP
16 Dispatchers. And the phenomena was that CHP would train
17 them, they would put them through their -- you know,
18 their training program, satisfy probation, and then they
19 would go work for local agencies that paid more. So CHP
20 was bleeding.

21 If you -- if you note the July 2005 increase, there
22 was already even a 10 percent step built into the 2005-
23 2007 contract. So there was even recognition during the
24 original contract that CHP Dispatchers needed to be dealt
25 with. But the fact that they got 30 percent is

1 indicative of the serious problems that CHP was having in
2 terms of recruitment and retention in those
3 classifications.

4 Q. Okay. And then under the January 2007 box that
5 refers to LMA, I see below it labor market adjustment,
6 can you explain what that is?

7 A. To the best of my recollection, there was -- for
8 the LMA adjustments, they were based on a salary study
9 that DPA had conducted. So the fact that they ere
10 getting a special adjustment which was reflected as an
11 LMA was because there was some market study that
12 supported the increase.

13 MR. MESSING: Nothing further.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Rose?

15 MR. ROSE: Nothing.

16 MS. TRUONG: Nothing.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. I do
18 have some questions, but I need that -- I think I've
19 gotten kind of an inadequate description of how this
20 works. One, he -- and you do mention the Legal Defense
21 Fund services in your -- as far as -- but if you can just
22 give me a thumbnail in regards to legal defense, you
23 know, how that works and what type of cases come before
24 it. I do have some description on page eight in regards
25 to that. But LDF at one association is different than

1 LDF at another. And so if you can just kind of give me a
2 thumbnail description?

3 THE WITNESS: Right. Well, I mean the CSLEA Legal
4 Defense Fund plan is basically patterned after PORAC's
5 plan. We use a large number of the same panel attorneys
6 in law firms that PORAC uses on its panel. And, you
7 know, my function as Legal Administrator is similar to
8 the function that their Legal Administrator serves, which
9 is they're generally the first point of contact when
10 there is a potential claim.

11 That was one of the wonderful things about coming
12 over to CSLEA was because I used to be a PORAC panel
13 attorney, and I would get calls from Larry Friedman at
14 three or four o'clock in the morning for officer-involved
15 shootings that I had to go out and represent officers on.
16 And when I became CSLEA LDF Legal Administrator, I got
17 those calls at three or four o'clock in the morning, but
18 I called some other panel attorney and told them they had
19 to get out of bed and go out on the shooting, instead of
20 having to go myself.

21 So those are -- those are typical claims that arise
22 under the plan. If you look through the case reports, a
23 large number of the claims that are covered are critical
24 incident claims. That's principally what it is there
25 for.

1 In addition to that, there is civil course and scope
2 coverage if an employee, a participant, as they're
3 referred to under the plan, happens to be sued for
4 conduct which arises from the course and scope of their
5 employment, there is defense coverage under the plan.

6 It doesn't get used that much because generally if it
7 is a course and scope event, it is something that the
8 State is going to defend and indemnify on. And so in
9 many instances we will just monitor those claims, if
10 necessary. The only time that that would be beneficial
11 to a participant would be if we believe it's course and
12 scope and the State doesn't. And if the trustees and
13 myself agree that it's a course and scope event, we could
14 provide an attorney where the State would be declining to
15 do so.

16 And then the other two types of coverage are for
17 affirmative relief cases, or cases of major importance
18 where it's not a defense in the strict sense. It's where
19 the plan is going on the offensive. An example of that
20 is the Cardwood decision that has been mentioned in the
21 proceeding earlier where the trustees believe that a
22 Special Agent Supervisor's rights under the Public Safety
23 Officers Procedural Bill of Rights Act had been violated,
24 and authorized the affirmative suit on behalf of that
25 participant to challenge DPA legally as to whether that

1 in fact was a violation, which the Superior Court
2 ultimately determined.

3 So that's -- is there --

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And then --

5 THE WITNESS: -- more questions that you have or --

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yeah. Well, I'm
7 going to go another Committee that Lillian Hayek, if I'm
8 pronouncing it right, talked about Legal Review
9 Committee. What's that?

10 THE WITNESS: I think that came up during Tina
11 Brazil's --

12 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Tina Brazil.
13 Thank you.

14 THE WITNESS: -- testimony. Because she is Chair.
15 And it's actually called the Legal Representation
16 Committee.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

18 THE WITNESS: The principal role of that Committee is
19 to evaluate grievances to determine whether or not the
20 merits in light of what the potential costs of -- are
21 relative to arbitration, whether cases should go forward
22 or grievances should go forward to arbitration. And so
23 that Committee is comprised of I think five members and
24 myself as Legal Advisor. And they review grievances
25 along with the analysis of whoever the assigned attorney

1 or representative was that handled the grievance on
2 behalf of the member. And they will consider the merits
3 and decide whether to give it the green light or not.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And so would
5 you -- would you say that it's basically a grievance
6 arbitration review for purposes of proceeding to
7 arbitration?

8 THE WITNESS: Correct.

9 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay.

10 THE WITNESS: And the other function that they serve
11 is that there's -- if the Legal Division makes the
12 determination to deny coverage, our policy for, for
13 example, discipline cases is to terminate coverage for
14 non-course and scope misconduct at the Kelly -- at the
15 completion of the Kelly stage. And if we notify the
16 member that we've made a determination that it's non-
17 course and scope, and therefore they would be on their
18 own in terms of taking the case up on appeal to the State
19 Personnel Board, they have a right to appeal that
20 determination to the LRC to review whether or not the
21 coverage determination made by the Legal Division was
22 appropriate or not.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And when you're
24 saying non-course and scope, I think I know what you
25 mean. But you're referring to, let's say, a peace

1 officer gets convicted off duty of a DUI, are you talking
2 about that sort of thing?

3 THE WITNESS: Exactly.

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Where they're on
5 their own time and it's an offense that happens off of
6 duty time?

7 THE WITNESS: Domestic violence.

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Domestic
9 violence.

10 THE WITNESS: DUIs. That sort of stuff.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. And
12 one last matter that was actually raised by I think it
13 was Michael Lilly, I don't know if that's the first name,
14 but the Special Agent Supervisor who was one of the
15 witnesses, that I haven't heard addressed at all, which
16 was an issue of parity -- I'm using that term really
17 loosely -- between Special Agents Justice, Special Agents
18 CDR, and there was -- you real carefully talked about,
19 you know, at a certain time you decided it wouldn't -- it
20 wasn't advantageous, at a certain time it was. And --
21 but the issue as far as CSLEA addressing issues of this
22 parity between Special Agent CDCR, Special Agent DOJ.
23 And I don't know if that's an area that's -- I'm just
24 going to ask it more open-ended. Has that area been put
25 forth to CSLEA to address?

1 THE WITNESS: I know that it's been looked at on
2 occasion and there's been some analysis. And, you know,
3 sometimes it looks like you're looking at apples to
4 apples. And then you look at it in more detail and it
5 doesn't -- you know, the job specs look kind of similar,
6 but then you find out more about what they actually do
7 and they -- and they don't.

8 It has been looked at, but I -- but I think, you
9 know, relative to this contract that was negotiated,
10 given the current administration and their approach to
11 bargaining, it is recruitment and retention. What is the
12 vacancy rate of the classifications? Has the agency been
13 attempting to do its part in actually actively recruiting
14 for vacant positions? And if there is a true recruitment
15 and retention problem, then the other question might be,
16 well, where are they going.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You mean
18 recruitment and retention for a Special Agent DOJ?

19 THE WITNESS: Correct. So I think the fact here is
20 there was a recognition by DPA that there was a
21 recruitment and retention problem as of 2006 that merited
22 making 25 percent adjustments to their pay. Because you
23 had ongoing vacancies and Agents were leaving. And some
24 were likely leaving to CDC or CDCR, if that's how it's
25 related to. But, you know, I think throwing -- you know,

1 trying to throw 25 percent at that and see whether or not
2 over the term of this contract mitigated against the
3 problem of R&R is what this contract is designed to do.
4 And I think that's a huge step. Just as it was for
5 Wardens.

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. So I
7 mean you're talking about the percentages here, at least
8 in regards to what DPA is (unintelligible), having to do
9 with addressing recruitment and retention issues?

10 THE WITNESS: Right.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. That's
12 the questions I have. And I'm going to make the circle
13 here. But first, Mr. Messing, anything on your part?

14 MR. MESSING: Yeah. Actually, you spurred a thought.

15 FURTHER REDIRECT EXAMINATION

16 BY MR. MESSING:

17 Q. Now, you were talking about the Legal Defense
18 Fund course and scope and the criterion -- the criteria
19 to -- that is applied. Now, are there cases where
20 whether something is course and scope or not ambiguous?

21 A. Certainly.

22 Q. Okay. For example, is excessive force or sexual
23 harassment always course and scope, or can those be
24 other -- deemed otherwise?

25 A. They can be other.

1 Q. Okay. Is one of the functions of the Legal
2 Defense Fund to take any action to try and get the State
3 to defend actions that might be ambiguous where the State
4 has declined coverage?

5 A. That would be one of its functions certainly.

6 MR. MESSING: Okay. Nothing further.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Mr. Rose?

8 MR. ROSE: Yes.

9 RE CROSS-EXAMINATION

10 BY MR. ROSE:

11 Q. With respect to the Special Agents DOJ 25 percent
12 over the contract, and I'm looking again at MM, tell me,
13 if you know, what was the -- what were the amount of
14 increases for Special Agents at CDCR over the same
15 period?

16 A. I don't know.

17 Q. And you mentioned that it's been looked at. It
18 being the comparison of job duties and salaries of the
19 Special Agents at DOJ versus the Special Agents at CDCR.
20 When was it last looked at?

21 A. I know that there was -- I had a Labor Rep on
22 staff in 2004-2005 that worked for Corrections
23 previously, and he did kind of a historical perspective
24 on the evolution of some of those positions at CDCR. And
25 I think that's probably the reason it's been -- I mean

1 it's -- as far as us looking at it, as far as people
2 raising the issue, as Mr. Lilly has and others do, I mean
3 like the Wardens talking about CHP, they raise -- you
4 know, members raise that issue from time to time all the
5 time. But as far as analyzing it from CSLEA's
6 perspective, I think that's the last time we really took
7 a look at Corrections.

8 Q. And 2004 was the first year you were General
9 Counsel?

10 A. Correct.

11 Q. Are you aware of any other times prior to 2004
12 that CSLEA evaluated that issue?

13 A. No.

14 MR. ROSE: Nothing further.

15 MS. TRUONG: Nothing from us.

16 MR. MESSING: Give me one second.

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yes.

18 MR. MESSING: No, nothing further.

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: With that,
20 double D and double E is admitted, and their attachments.

21 (Exclusive Representative's Exhibits DD and EE
22 received in evidence.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Double E, as
24 reminded to me by Mr. Rose yesterday, is going to be
25 under seal. The same sort of justification as

1 Petitioner's T, Exclusive Rep I and J, and the transcript
2 of the testimony of the witness who testified in regards
3 to those matters.

4 Anything else in regards to today? Or I'll turn to
5 you, Mr. Messing, because it's your day, I guess.

6 MR. MESSING: No.

7 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right.
8 Anything further? Any business that needs to get taken
9 care of?

10 MR. ROSE: No. We have our witness lined up for
11 tomorrow at 9:00 a.m. And that's -- we have the one
12 witness tomorrow.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Okay. And then
14 whatever I'll call it rebuttal in a loose term to that
15 witness is going to -- can be called by the Exclusive
16 Rep.

17 MR. MESSING: Yeah. I doubt that we'd be prepared to
18 do that tomorrow, though, obviously.

19 ADMINISTRATIVE LAW JUDGE CLOUGHESY: You never know.
20 But if you can, you can.

21 MR. MESSING: It's possible.

22 ADMINISTRATIVE LAW JUDGE CLOUGHESY: If you can't,
23 we'll deal with it. So, with that, day nine of these
24 proceedings is concluded. We're off the record.

25 (Off the record.)

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Back on the
2 record. I forgot to give an admonishment in regards to
3 Mr. Clark not to discuss your testimony with any I'm
4 going to use the word witnesses in this matter. I'll
5 just leave it like that.

6 THE WITNESS: I mean I under -- could I just raise a
7 point?

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yes. I'm trying
9 to gingerly since you are --

10 MR. MESSING: Yeah. But there's a problem. Let me
11 raise the issue.

12 THE WITNESS: Okay.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Go ahead,
14 Mr. Messing.

15 MR. MESSING: Yeah. There's a problem with he's our
16 representative and --

17 ADMINISTRATIVE LAW JUDGE CLOUGHESY: I --

18 MR. MESSING: And he is -- should be available to
19 assist me in preparing witnesses for testimony. So --

20 THE WITNESS: I'm also counsel to the --

21 MR. MESSING: Yeah.

22 THE WITNESS: -- to the corporation and --

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: But still, I --
24 your witness testimony versus -- I mean you can prepare
25 witnesses without necessarily saying --

1 THE WITNESS: I guess my only point is is part of my
2 responsibility is to advise, you know, my principals of
3 how the proceedings are going, you know. And as -- in my
4 role as Legal Advisor to CSLEA and its President.

5 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Well, you've got
6 to measure whether those people are -- who's a witness
7 and who isn't a witness, and what your testimony is and
8 what your testimony isn't. But I think you still can
9 fulfill those roles.

10 THE WITNESS: Okay.

11 ADMINISTRATIVE LAW JUDGE CLOUGHESY: And you just
12 have to be careful how you do it.

13 THE WITNESS: All right.

14 ADMINISTRATIVE LAW JUDGE CLOUGHESY: But I can't
15 see --

16 THE WITNESS: I will follow whatever admonishment you
17 give me.

18 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yeah. I can't
19 see how I can kick the barn door open and say, talk to
20 whoever you want about your testimony, because I think
21 that would be --

22 MR. MESSING: Well, there's another issue.

23 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yes.

24 MR. MESSING: Do we have the Supplemental
25 Declaration? Has that been entered?

1 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yes, it has.

2 MR. MESSING: Okay. Also, what was the letter of the
3 Supplemental?

4 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Double E.

5 MR. MESSING: Double E?

6 ADMINISTRATIVE LAW JUDGE CLOUGHESY: Yes.

7 MR. MESSING: Double E?

8 ADMINISTRATIVE LAW JUDGE CLOUGHESY: EE.

9 MR. MESSING: I'm sorry? EE?

10 ADMINISTRATIVE LAW JUDGE CLOUGHESY: EE or double E
11 or --

12 MR. MESSING: All right. Thank you.

13 ADMINISTRATIVE LAW JUDGE CLOUGHESY: All right. With
14 that, day nine is concluded. Off the record.

15 (Proceedings concluded.)

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DECLARATION OF TRANSCRIBER

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