Docket No. C061020

ORIGINAL

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOR THE THIRD APPELLATE DISTRICT

C061020

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1000,
Plaintiff and Appellant,
v.
JOHN CHIANG, as State Controller, etc.,
Defendant and Appellant;
ARNOLD SCHWARZENEGGER, as Governor, etc. et al.,
Defendants and Respondents.

Sacramento County
Judge: Patrick Marlette
Sacramento County No. 34200980000135CUWMGDS

JOINT APPENDIX
VOLUME X OF X [PAGES 1779 THROUGH 2073]

On Appeal of an Order and Judgment
by the Sacramento Superior Court
No. 34-2009-80000135-CU-WM-GDS
The Honorable Patrick Marlette

FILED

SEP - 3 2009

COURT OF APPEAL - THIRD DISTRICT
DEENA C. FAWCETT
BY _____ Deputy

PAUL HARRIS, Chief Counsel (SBN 180265)
ANNE M. GIESE, Sr. Staff Attorney (SBN 143934)
SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 1000
1808 14th Street
Sacramento, CA 95811
Telephone: (916) 554-1279
Facsimile: (916) 554-1292

Attorneys for Plaintiff and Appellant
SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 1000

EXHIBIT J

Agreement

between

State Of California

and

Service Employees International Union (SEIU) – Local 1000

covering

BARGAINING UNIT 21
EDUCATION CONSULTANTS
AND LIBRARY

Effective

July 1, 2005 through June 30, 2008

Final 02/05/07

BARGAINING UNIT 21
EDUCATION CONSULTANTS AND LIBRARY

Table of Contents

PREAMBLE

This MEMORANDUM OF UNDERSTANDING hereinafter referred to as the Contract, entered into by the STATE OF CALIFORNIA, hereinafter referred to as the State or the State employer pursuant to sections 19815.4 and 3517 of the Government Code, and the SERVICE EMPLOYEES' INTERNATIONAL UNION, Local 1000 (Union of California State Workers), hereinafter referred to as SEIU, Local 1000 or the Union, pursuant to the Ralph C. Dills Act (Dills Act) commencing with section 3512 of the Government Code, and has as its purpose the promotion of harmonious labor relations between the State and the Union; establishment of an equitable and peaceful procedure for the resolution of differences; and the establishment of rates of pay, hours of work, and other conditions of employment including health and safety. The term "Contract" as used herein means the written Contract provided under section 3517 5 of the Government Code.

The State further recognizes the professional nature of the duties and responsibilities of the Unit 21 employees in their contribution to the successful performance of the mission of State Government.

ARTICLE 1 – RECOGNITION

A. Pursuant to Public Employment Relations Board (PERB) Decision S-SA-SR-21, as amended by SA-AC-54-S, the State recognizes the Services Employees International Union, Local 1000 (Union of California State Workers), as the exclusive representative for the Education Consultants and Library Bargaining Unit, hereinafter referred to as Unit 21. Unit 21 consists of all employees in the job classifications listed by title in the Salary Schedule attached hereto and incorporated by reference as a part of this Contract. Any new classes established and assigned to Unit 21 shall be incorporated in the Contract.

B. Pursuant to Government Code sections 19815.4 and 3517, the Services Employees International Union, Local 1000 (Union of California State Workers), recognizes the Director of the Department of Personnel Administration (DPA) or his/her designee as the negotiating representative for the State and shall negotiate exclusively with the Director or his/her designee, except as otherwise specifically spelled out in this Contract.

C. The Services Employees International Union, Local 1000 (Union of California State Workers), agrees to hold the State harmless, defend and indemnify the State and its officers, agents, and employees for fees, costs, and damages resulting from a challenge, in any forum (administrative or judicial) by any person or entity, to the provisions of this Article.

ARTICLE 2 – UNION REPRESENTATION RIGHTS

2.1 Union Representatives

A. The State recognizes and agrees to deal with designated Union stewards, elected bargaining unit council representatives and/or Union staff on the following:

1. The enforcement of this Contract;
2. Employee discipline cases, including investigatory interviews of an employee who is the subject of a non-criminal investigation;
3. Informal settlement conferences or formal hearings conducted by the Public Employment Relations Board (PERB);
4. Matters scheduled for hearing by the Victims Compensation and Government Claims Board (VCGCB);
5. Matters pending before the State Personnel Board,
6. AWOLs and appeals to set aside resignations;
7. Discussions with management regarding denials of reasonable accommodation;
8. DPA statutory appeals hearings.

B. A written list of Union stewards, and elected bargaining unit council representatives broken down by department, unit, and designated area of representation, shall be furnished to each department and a copy sent to the State immediately after their designation. The Union shall notify the State promptly of any changes of such stewards. Union stewards shall not be recognized by the State until such lists or changes thereto are received.

C. Area of Representation:

Union stewards "area of primary representation" is defined as an institution, office or building However, the parties recognize that it may be necessary for the Union to assign a steward an area of representation for several small offices, departments, or buildings within close proximity. Disputes regarding this paragraph may be appealed directly to Step 3 of the Grievance Procedure, (section 6.9).

2.2 Access

Union stewards, Union staff, and/or elected bargaining unit council representatives may have access to employees to represent them pursuant to section 2.1.A above. Access shall not interfere with the work of the employees. Union stewards, Union staff or elected bargaining unit council representatives seeking access to employees must notify the department head or designee in advance of the visit.

Access to bargaining unit employees shall not be unreasonable withheld; however, it may be restricted for reasons of safety, security, or patient care including patient privacy. If access is restricted, other reasonable accommodations shall be made.

2.3 Use of State Equipment

A. Union stewards shall be permitted reasonable use of State phones to make calls for Union representation purposes; provided, however, that such use of State phones shall not incur additional charges to the State or interfere with the operation of the State.

B. Union Stewards shall be permitted minimal and incidental use of State equipment for representational activities as defined in section 2.1, if said equipment is available and utilized as a normal part of his/her duties. Such use of State equipment shall not result in additional costs to the State, nor shall it interfere with the conduct of State business.

C. Use of State equipment or the time used for activities permitted in this section shall be subject to prior notification and approval by the employee's immediate supervisor.

2.4 Distribution of Union Information

A. The Union may use existing employee organization bulletin boards to post materials related to Union business. Upon mutual agreement between an authorized Union representative and the department, Union bulletin boards will be where they are accessible to employees. When required in advance, the Union shall reimburse the State for additional costs incurred. A copy of all materials posted must be distributed to the facility or office supervisor at the time of posting.

B. The Union may, before or after work hours or during meal and rest periods, distribute Union literature. Distribution of Union information shall not be unreasonably denied or disrupt the work of others. However, if access for distribution of information is restricted for safety, security, or patient care including patient privacy, other reasonable accommodation will be made in accordance with department procedures.

C. The Union may continue to use existing employee mailboxes and in-baskets for distribution of literature. Such information will be distributed to departmental employees based on the department's policies and procedures in distributing other nonbusiness information.

D. The Union agrees that any literature posted or distributed on site will not be libelous, obscene, defamatory, or of a partisan political nature.

E. The Union shall be permitted incidental and minimal use of State electronic communication systems for communication of Union activities as the departments permit for other nonbusiness purposes.

F. The use of electronic communication systems (devices) are not considered private or secure information and are subject to being monitored by the department.

2.5 Use of State Facilities

The State will continue to permit use of certain facilities for Union meetings, subject to the operating needs of the State Requests for use of such State facilities shall be made in advance to the appropriate S tate official. When required in advance, the Uni on shall reimburse the State for additional expenses such as security, maintenance and facility management costs, or utilities, incurred as a result of the Union's use of such State facilities.

2.6 Steward Time Off

Upon request of an aggrieved employee, a Union steward shall be allowed reasonable time off during working hours, without loss of compensation, for representational purposes in accordance with section 2.1 A of this Contract, provided the employee represented is in the steward's designated area of representation. Release time for these purposes is subject to prior notification and approval by the steward's immediate supervisor. Upon mutual agreement of the parties, a reasonable number of additional stewards can also be granted reasonable time off under this section.

2.7 Employee Time Off

Employees shall be entitled to reasonable time off without loss of compensation to confer with a Union representative on representational matters at the work site in accordance with section 2.2 above during work hours, subject to the approval of the employee's supervisor.

2.8 Steward Protection

The State shall be prohibited from imposing or threatening to impose reprisals, from discriminating or threatening to discriminate against Union stewards, or otherwise interfering with, restraining, or coercing Union stewards because of the exercise of any rights given by this Contract.

2.9 Union Information Packets

Upon initial appointment to any position as a probationary or permanent employee, the employee shall be informed by the employer that the Union is the recognized employee organization for the employee in said classification. The State shall present the employee with a packet of Union information which has been supplied by the Union.

2.10 Orientation

A. During any regularly scheduled orientation session for new employees, a Union staff member or designee shall be given the opportunity to meet with bargaining unit employees for 15 minutes for orientation of the employees to the Contract and the Union.

B. In work locations not accessible to regularly scheduled departmental orientation, each new bargaining unit employee shall be given the opportunity to meet with a Union representative for fifteen (15) minutes during normal working hours for orientation to the Contract and the Union.

ARTICLE 3 – UNION SECURITY

3.1 Organizational Security

A. The State agrees to deduct and transmit to the Union all membership dues authorized on a form provided by the Union. Effective with the beginning of the first pay period following ratification of this agreement by the Legislature and the Union, the State agrees to calculate, deduct and transmit to the Union Fair Share fees from State employees who do not have membership dues deductions for SEIU, Local 1000, based upon an amount or formula furnished by the Union for Fair Share fees deductions. The State further agrees to recalculate, deduct and transmit Fair Share fees to the Union based upon a revised amount or formula furnished by the Union for Fair Share fees deductions during the term of this agreement. The State and The Union agrees that a system of authorized dues deductions and a system of Fair Share fee deductions shall be operated in accordance with Government Code sections 3513(h), 3513(j), 3515, 3515.6, 3515.7, and 3515.8, subject to the following provisions:

1. When Fair Share Fees are in effect, an employee may withdraw from membership in the Union by sending a signed withdrawal letter to the Union with a copy to the State Controller at any time. An employee who so withdraws his/her membership shall be subject to paying a Fair Share Fee, if such a fee is applicable.

2. The Union agrees to indemnify, defend and hold the State and its agents harmless against any claims made of any nature and against any suit instituted against the State arising from this Article and the deductions arising therefrom.

3. The Union agrees to annually notify all State employees in Unit 21 who pay Fair Share fees of their right to demand and receive from the Union a return of part of that fee pursuant to Government Code section 3515.8.

4. No provisions of this Article nor any disputes arising thereunder shall be subject to the grievance and arbitration procedure contained in this Contract.

5. Should a recession election be successful, the written authorization for payroll deductions for Union membership shall remain in full force and effect during the life of this Contract except that any employee may withdraw from the Union by sending a signed withdrawal letter to the Union with a copy of the State Controllers Office within thirty (30) calendar days prior to the expiration of this Contract.

3.2 Release of Home Addresses

A. Home Addresses – Generally

Consistent with PERB regulations and State law, the State shall continue to provide SEIU, Local 1000 with home addresses on a monthly basis for all non-law enforcement related employees covered by this Contract until it expires.

Notwithstanding any other provision of this agreement, any employee may have his/her home address withheld from SEIU, Local 1000 at any time by submitting a written request to his/her appointing power on a form provided by the State.

B. Home Address Withholding by Non-Law Enforcement Related Employees

The State will no longer use an Employee Action Request form that provides Unit 21 employees who perform non-law enforcement related functions with the option of having their home address withheld from SEIU, Local 1000. Instead, employees who perform non-law enforcement related functions will, upon request on their own initiative, be given a separate form by their appointing power that permits two choices: (1) withhold their address from SEIU, Local 1000, or (2) to cancel a previous withhold request thereby permitting release of their home address to SEIU, Local 1000.

C. Home Address Mailings by the State

The State will mail SEIU, Local 1000 information once per year to the home address of law enforcement-related employees, and non-law enforcement employees who have requested their home address be withheld from SEIU, Local 1000. Said material shall beprovided by SEIU, Local 1000. The cost of this mailing shall be paid for by SEIU, Local 1000. SEIU, Local 1000 agrees to hold the State harmless for any annual mail that does not reach Unit 21 employees.

D. Address Confidentiality

Employee work and home addresses shall be maintained as confidential by SEIU, Local 1000. SEIU, Local 1000 shall take all reasonable steps to ensure the security of work and home addresses, and shall not disclose or otherwise make them available to any person, entity or organization. Employee addresses shall only be used by SEIU, Local 1000 for representational purposes.

E. Nature of Material

SEIU, Local 1000 agrees that any of its literature mailed to employees by the State will not be libelous, obscene, defamatory or of a partisan political nature or constitute a solicitation of any produce or service unrelated to representation by SEIU, Local 1000.

F. Costs Reimbursable

SEIU, Local 1000 agrees to pay necessary and reasonable costs incurred by the State Controller's Office to produce the necessary name/home/work address tape file on a monthly basis.

G. Hold Harmless and Indemnification

Notwithstanding any other provision of this agreement, SEIU, Local 1000 agrees to jointly defend this section and to hold the State of California, its subdivisions, and agents harmless in defending challenges of any nature arising as a result of this section of the agreement.

ARTICLE 4 – STATE'S RIGHTS

A. Except for those rights which are expressly abridged or limited by this Contract, all rights are reserved to the State

B. Consistent with this Contract, the rights of the State shall include, but not be limited to, the right to determine the mission of its constituent departments, commissions and boards; to maintain efficiency of State operation; to set standards of service; to determine, consistent with Article VII of the Constitution, the Civil Service Act and rules pertaining thereto, the procedures and standards of selection for employment and promotion, lay off, assignment, scheduling and training of employees; to determine the methods, means and personnel by which State operations are to be conducted; to take all necessary action to carry out its mission in emergencies; to exercise control and discretion over the merits, necessity, or organization of any service or activity provided by law or executive order. The State has the right to make reasonable rules and regulations pertaining to employees consistent with this Contract, provided that any such rule shall be uniformly applied to all affected employees who are similarly situated.

C. This Article is not intended to, nor may it be construed to, contravene the spirit or intent of the merit principle in State employment nor limit the rights of State Civil Service employees provided by Article VII of the State Constitution or bylaws and rules enacted thereto. Any matters which concern the application of the merit principle to State employees are exclusively within the purview of those processes provided by Article VII of the State Constitution or bylaws and rules enacted thereto.

ARTICLE 5 – GENERAL PROVISIONS

5.1 No Strike

A. During the term of this Agreement, neither the Union nor its agents nor any Unit 21 employee, for any reason, will authorize, institute, aid, condone or engage in a work slowdown, work stoppage, strike, or any other interference with the work and statutory functions or obligations of the State.

B. The Union agrees to notify all of its officers, stewards, chief stewards and staff of their obligation and responsibility for maintaining compliance with this section, including the responsibility to remain at work during any activity which may be caused or initiated by others, and to encourage employees violating this section to return to work.

5.2 No Lockout

No lockout of employees shall be instituted by the State during the term of this Contract.

5.3 Individual Agreements Prohibited

The State shall not negotiate with or enter into memoranda of understanding or adjust grievances or grant rights or benefits not covered in this Contract to any employee unless such action is with Union concurrence.

5.4 Savings Clause

Should any provision of this Contract be found unlawful by a court of competent jurisdiction or be invalidated by subsequently enacted legislation, the remainder of the Contract shall continue in force. Upon occurrence of such an event, the parties shall meet and confer as soon as practical to renegotiate the invalidated provision(s).

5.5 Reprisals

The State and the Union shall be prohibited from imposing or threatening to impose reprisals by discriminating or threatening to discriminate against employees, or otherwise interfering with, restraining, or coercing employees because of the exercise of their rights under the Ralph C. Dills Act, the California Whistleblower Protection Act or any right given by this Contract. The principles of agency shall be liberally construed.

5.6 Supersession and Incorporation

The following enumerated Government Code sections and all existing rules, regulations, standards, practices and policies which implement the enumerated Government Code sections are hereby incorporated into this Contract. However, if any other provision of this Contract alters or is in conflict with any of the Government Code sections enumerated below, the Contract shall be controlling and supersede said Government Code sections or parts thereof and any rule, regulation, standard, practice or policy implementing such provisions. The Government Code sections listed below are cited in section 3517.6 of the Ralph C. Dills Act.

A. Government Code Sections

1. General

19824	Establishes monthly pay periods.
19838	Provides for methods of collecting overpayments and correcting payroll errors to employees.
19839	Provides lump sum payment for unused vacation accrued or compensating time off upon separation.
19888	Specifies that service during an emergency is to be credited for vacation, sick leave, and MSA.

2. Step Increases

19829	Requires DPA to establish minimum and maximum salaries with intermediate steps.
19832	Establishes annual Merit Salary Adjustments (MSA's) for employees who meet standards of efficiency.
19834	Requires MSA payments to qualifying employees when funds are available.
19835	Provides employees with the right to cumulative adjustments for a period not to exceed two years when MSA's are denied due to lack of funds.

19836	Provides for hiring at above the minimum salary limit in specified instances.
19837	Authorizes rates above the maximum of the salary range when a person's position is downgraded (Red Circle Rates).
19838	Provides for methods of collecting overpayments and correcting payroll errors to employees.

3 Holidays

19853	Establishes Holidays
19854	Adds Personal Holiday.

4. Vacation

19856	Requires DPA to establish rules regulating vacation accrual for part-time employees and those transferring from one State agency to another.
19856.1	Allows DPA to establish rules for vacation accrual for absences of ten days or less.
19858.1	Establishes vacation earning rate.
19863	Allows vacation use while on temporary disability (due to work-incurred injury) to augment paycheck.
19991.4	Provides that absence of an employee for a work-incurred compensable injury or disease is considered continuous service for the purpose of the right to vacation.

5. Sick Leave

19859	Defines amount earned and methods of accrual for full-time and part-time employees.
19861	Allows DPA to establish rules for sick leave accrual for absences of ten days or less.
19862	Allows for accumulation of sick leave.
19863	Allows sick leave use while on temporary disability (due to work-incurred injury) to augment paycheck.
19863.1	Provides sick leave credit while employee is on industrial disability leave and prescribes how it may be used.
19864	Allows the DPA to provide by rule for sick leave without pay for employees who have used up their sick leave with pay.
19866	Allows rules to allow sick leave accumulation for non-civil service employees.
19991.4	Provides that absence of an employee for a work-incurred compensable injury or disease is considered continuous service for the purpose of the right to sick leave.

6. Uniforms, Work Clothes, and Safety Equipment

19850	Definitions
19850.3	DPA to determine need for uniform replacement
19850.4	Provides for work clothes for purposes of sanitation or cleanliness to be maintained and owned by the State.
19850.5	Provides for initial issuance of required safety equipment at State expense.

7. Industrial Disability Leave (IDL)

19869	Defines who is covered.
19870	Defines "IDL" and "full pay".
19871	Provides terms of IDL coverage in lieu of workers' compensation temporary disability payment.
19871.1	Provides for continued benefits while on IDL.
19872	Prohibits payment of temporary disability or sick leave pay to employees on IDL.
19873	Inapplicability of retraining and rehabilitation provis ions of Labor Code to employees covered by IDL.
19874	Allows employees to receive Workers' Compensation benefits after exhaustion of IDL benefits.
19875	Requires three-day waiting period, unless hospitalized or disabled more than 14 days.
19876	Payments contingent on medical certification and vocational rehabilitation.
19877	Authorizes DPA to adopt rules governing IDL.
19877.1	Sets effective date.

8. State Industrial Disability Insurance (SDI)

19878	Definitions.
19879	Sets the amount of benefits and duration of payment.
19880	Sets standards and procedures.
19880.1	Allows employee option to exhaust vacation prior to SDI.
19881	Bans SDI coverage if employee is receiving unemployment compensation.
19882	Bans SDI coverage if employee is receiving other cash payment benefits.
19883	Provides for discretionary deductions from benefit check, including employer contributions; employees do not accrue sick leave or vacation credits or service credits for any other purpose.

19884 Filing procedures; determination and payment of benefits

19885 Authorizes DPA to establish rules governing SDI.

9. Life Insurance

21600 Establishes group term life insurance benefits.

21604 Provides for Death Benefit from PERS.

21605 Sets Death Benefit at $5,000 plus 50 percent of one year's salary.

10. Health Insurance

22808 Provides for continuation of health plan coverage during leave of absence without pay.

22870 Provides for employee and employer contribution.

22871 Sets employer contribution.

11. Workweek

19843 Establishes Work Week Groups

19851 Sets 40-hour workweek and 8-hour day.

12. Overtime

19844 Directs DPA to establish rules regarding cash compensation and compensating time off.

19848 Permits the granting of compensating time off in lieu of cash compensation within 12 calendar months after overtime worked.

19849 Requires DPA to adopt rules governing overtime and the appointing power to administer and enforce them.

13. Deferred Compensation

19993 Allows employees to deduct a portion of their salary to participate in a deferred compensation plan.

14. Relocation Expenses

19841 Provides relocation expenses for involuntary transfer or promotion requiring a change in residence.

15. Travel Expenses

19820 Provides reimbursement of travel expenses for officers and employees of the State on State business.

19822 Provides reimbursement to State for housing, maintenance and other services provided to employees.

16. Leaves of Absence

19991 Allows release time for civil service examinations

19991.1 Allows leave without pay, not to exceed one year, assures right of return.

19991.2 Allows the appointing power to grant a two-year leave for service in a technical cooperation program.

19991.4 Provides that absence of an employee for work-incurred compensable injury or disease is considered as continuous service for purposes of salary adjustments, sick leave, vacation or seniority.

19991.6 Provides one year of pregnancy leave or less as required by a permanent female employee.

17. Performance Reports

19992 Allows the establishment of performance standards.

19992.1 Requires performance reports to be accurate.

19992.2 Requires the appointing power to prepare performance reports and show them to the employee.

19992.3 Requires performance reports to be considered in salary increases and decreases, layoffs, transfers, demotions, dismissals, and promotional examinations as prescribed by DPA rule.

18. Involuntary Transfers

19841 Provides relocation expenses for involuntary transfer or promotion requiring a change in residence.

19994.1 Authorizes involuntary transfers. Requires 60-day prior written notice when transfer requires change in residence.

19994.2 Allows seniority to be considered when two or more employees are in a class affected by involuntary transfers which require a change in residence.

19. Demotion and Layoff

19997.2 Provides for subdivisional layoffs in a State agency subject to DPA approval. Subdivisional reemployment lists take priority over others.

19997.3 Requires layoffs according to seniority in a class, except for certain classes in which employee efficiency is combined with seniority to determine order of layoff.

19997.8 Allows demotion in lieu of layoff.

19997.9 Provides for salary at maximum step on displacement by another employee's demotion, provided such salary does not exceed salary received when demoted.

19997.10 An employee displaced by an employee with return rights may demote in lieu of layoff.

19997.11 Establishes reemployment lists for laid-off or demoted employees.

19997.12 Guarantees same step of salary range upon recertification after layoff or demotion.

19997.13 Requires 30-day written notice prior to layoff and not more than 60 days after seniority computed.

19998 Employees affected by layoff due to management initiated changes should receive assistance in finding other placement in State service.

19998.1 State restriction on appointments.

20. Incompatible Activities

19990 Requires each appointment power to determine activities which are incompatible in conflict with or inimical to their employees' duties; provides for identification of and prohibits such activities.

21. Training

19995.2 Provides for counseling and training programs for employees whose positions are to be eliminated by automation technological or management initiated change.

19995 3 Provides for the Department of Rehabilitation to retrain and refer disabled State employees to positions in State service.

5.7 Non-Discrimination

A. No State employee shall be discriminated against in State employment on the basis of race, color, religion, creed, age, sex, national origin, ancestry, marital status, sexual orientation, gender expression, gender identity, political affiliation, or physical or mental disability consistent with applicable State and Federal law.

B. At the employee's discretion, allegations of discrimination or failure to provide reasonable accommodation for physical or mental disability may be subject to the grievance procedure up to the third level, or may be appealed to the State Personnel Board through the existing State Equal Employment Opportunity (EEO) complaint process, and/or the Department of Fair Employment and Housing, and/or the Federal Equal Employment Opportunity Commission. The filing of a grievance is not mandatory and neither the filing nor non-filing of a grievance shall be construed as a waiver of an employee's right to maintain a separate, private cause of action.

C No employee shall be subject to retaliation or threats of retaliation, nor shall any employee be restrained, coerced or otherwise interfered with in the exercise of his/her rights under this section. Alleged retaliation may be subject to the grievance and arbitration procedure in Article 6.

5.8 Sexual Harassment

A. No State employee shall be subject to sexual harassment. The State agrees to take such actions as necessary to ensure that this purpose is achieved, and shall post a statement of its commitment to this principle at all work sites.

B. At the employee's discretion, allegations of sexual harassment may be subject to the grievance procedure up to the Director of the DPA, or, may be appealed to the State Personnel Board through the existing State Equal Employment Opportunity (EEO) complaint process, and/or the Department of Fair Employment and Housing, and/or the Federal Equal Employment Opportunity Commission. The filing of a grievance is not mandatory and neither the filing nor non-filing of a grievance shall be construed as a waiver of an employee's right to maintain a separate, private cause of action.

C. No employee shall be subject to retaliation or threats of retaliation, nor shall any employee be restrained, coerced or otherwise interfered with in the exercise of his/her rights under this section. Alleged retaliation may be subject to the grievance and arbitration procedure in Article 6.

5.9 Joint Labor Management Committee on Discrimination (JLMCD)

A. Upon the request of the State Personnel Board (SPB), the JLMCD will meet to discuss the committee recommendations from the December 2000 and November 2003 JLMCD Reports, submitted to the SPB, relating to maintaining a discrimination-free State workplace.

B. The committee will consist of five (5) Union representatives who will represent SEIU, Local 1000 and five (5) State representatives. Selected members shall be representative of groups protected by the Federal and State civil rights legislation.

C. Following a meeting convened by the SPB, the JLMCD shall meet to discuss requests made of the JLMCD by SPB. The State agrees that the Union representatives will be permitted eighty (80) hours of release time during the twelve (12) months following ratification of this Contract to serve and participate on the committee without a loss of compensation. The committee will be co-chaired by one of the Union's representatives, along with a co-chair representing the State.

5.10 Labor/Management Committees

Upon mutual agreement of the department head or designee and the Union, a Labor/Management Committee may be established to address specific or ongoing issues. Such committees may be established according to the following guidelines:

Such committees may be established according to the following guidelines:

1. The committees will consist of equal numbers of management representatives selected by the department head or designee and Union representatives selected by the Union

2. Committee recommendations, if any, will be advisory in nature.

3. Labor/Management Committee meetings shall not be considered Contract negotiations and shall not be considered a substitute for the grievance procedure.

4. Employees who participate on such a committee will suffer no loss in compensation for attending meetings of the Committee.

5.11 Dignity Clause

The State is committed to providing a workplace where all employees, regardless of their classification or pay status, are treated by supervisors and managers in a manner that maintains generally accepted standards of human dignity and courtesy. Employees alleging they have not been treated accordingly may process a complaint up to the department head or designee.

5.12 Upward Mobility Joint Labor/Management Committee

A. The State and the Union agree to continue the Joint Labor/Management Committee on Upward Mobility to assist departments in complying with their upward mobility requirements.

B. The Joint Labor/Management Committee on Upward Mobility will consist of at least eight (8) members, four (4) management members selected by DPA and four (4) Union members selected by the Union who will represent all SEIU Local 1000 bargaining units. The committee shall be co-chaired by one of the Union's representatives, along with a co-chair representing the State.

C. At the request of the Union, the committee will meet quarterly. Members of the committee will be granted State release time for all committee meetings.

D. The committee will develop a handbook identifying the following: Outside funding sources for educational opportunities, apprenticeship programs, internships, career counseling and other assistance for upward mobility. The committee may also include internal State sources for career training opportunities.

E. Each department shall establish and maintain an upward mobility program consistent with State Personnel Board Regulations. At the request of the Union, the department shall meet to discuss their upward mobility program. Recommendations for adding to or deleting from the upward mobility program shall be considered by the department. No change can be inconsistent with the State Personnel Board Regulations.

ARTICLE 6 – DISPUTE RESOLUTION PROCEDURE

6.1 Purpose

A. This grievance procedure shall be used to process and resolve grievances arising under this Contract and employment-related complaints,

B. The purposes of this procedure are:

1. To resolve grievances informally at the lowest possible level,

2. To provide an orderly procedure for reviewing and resolving grievances promptly.

6.2 Definitions

A. A grievance is a dispute of one or more employees, or a dispute between the State and the Union, involving the interpretation, application, or enforcement of the express terms of this Contract.

B. A complaint is a dispute of one or more employees involving the application or interpretation of a written rule or policy not covered by this Contract and not under the jurisdiction of the State Personnel Board. Complaints shall only be processed as far as the department head or designee.

C. As used in this procedure, the term "immediate supervisor" means the individual identified by the department head.

D. As used in this procedure, the term "party" means the Union, an employee, or the State.

E. A "Union representative" refers to an employee designated as a Union steward or a paid staff representative or a bargaining unit council member.

6.3 Time Limits

Each party involved in a grievance shall act quickly so that the grievance may be resolved promptly. Every effort should be made to complete action within the time limits contained in the grievance procedure. However, with the mutual consent of the parties, the time limitation for any step may be extended.

6.4 Waiver of Steps

The parties may mutually agree to waive any step of the grievance procedure.

6.5 Presentation

At any step of the grievance procedure, the State representative may determine it desirable to hold a grievance conference. If a grievance conference is scheduled, the grievant or a Union steward, or both may attend without loss of compensation. A Union representative or job steward may request a meeting at the first or second step providing it causes no additional cost to the State.

6.6 Informal Discussion

An employee's grievance initially shall be discussed with the employee's immediate supervisor. Within seven (7) calendar days the immediate supervisor shall give his/her decision or response.

6.7 Formal Grievance – Step 1 (Supervisor)

A. If an informal grievance is not resolved to the satisfaction of the grievant, a formal grievance may be filed no later than:

   1 Thirty (30) calendar days after the event or circumstances occasioning the grievance, or

   2. Within seven (7) calendar days after receipt of the decision rendered in the informal grievance procedure.

B. However, under no circumstances may the period in which to bring the grievance be extended beyond thirty (30) calendar days in (1) above.

C. A formal grievance shall be initiated on a form provided by the State and shall be filed with a designated supervisor or manager identified by each department head as the first level of appeal

D. Within fourteen (14) calendar days after receipt of the formal grievance, the person designated by the department head as the first level of appeal shall respond in writing to the grievant.

E. No Contract interpretation or grievance settlement made at this stage of the grievance procedure shall be considered precedential. All interpretations and settlements shall be consistent with the provisions of this Contract.

6.8 Formal Grievance – Step 2 (Department Head or Designee)

A. If the grievant is not satisfied with the decision rendered pursuant to Step 1, the grievant may appeal the decision within fourteen (14) calendar days after receipt to the Department Head or Designee as the second level of appeal. If the Department Head or Designee is the first level of appeal, the grievant may bypass Step 2.

B. Within twenty-one (21) calendar days after receipt of the appealed grievance, the Department Head or Designee shall respond in writing to the grievant.

C. No Contract interpretation or grievance settlement made at this stage of the grievance procedure shall be considered precedential. All interpretations and settlements shall be consistent with the provisions of this Contract.

6.9 Formal Grievance – Step 3 (DPA)

A. If the grievant is not satisfied with the decision rendered at Step 2, the grievant may appeal the decision within thirty (30) calendar days after receipt to the Director of DPA or designee.

B. Within thirty (30) calendar days after receipt of the appealed grievance, the Director of DPA or designee shall respond in writing to the grievance.

6.10 Response

If the State fails to respond to a grievance within the time limits specified for that step, the grievant shall have the right to appeal to the next step.

6.11 Formal Grievance - Step 4 (Arbitration)

A. If the grievance is not resolved at Step 3, within thirty (30) calendar days after receipt of the third level response, the Union shall have the right to submit the grievance to arbitration. If the grievance is not submitted to Arbitration within thirty (30) calendar days after receipt of the third level response, it shall be considered withdrawn.

B. Within fifteen (15) calendar days after the notice requesting arbitration has been served on the State, the Union shall contact the State to mutually select an arbitrator.

If the parties cannot mutually agree upon an arbitrator within thirty (30) calendar days after the request to select an arbitrator has been served, the Union may request the State Conciliation and Mediation Service or the Federal Mediation and Conciliation Service to submit to both parties a panel of nine (9) arbitrators.

Within fifteen (15) calendar days after receipt of the panel of arbitrators from the State Conciliation and Mediation Service or the Federal Mediation and Conciliation Service, the Union shall contact the State in writing and request to strike names from the panel. The parties shall have ten (10) business days to meet and alternately strike names until only one name remains and this person shall be the arbitrator.

C. The arbitration hearing shall be conducted in accordance with the Voluntary Labor Arbitration Rules of the American Arbitration Association. The cost of arbitration shall be borne equally between the parties, unless the parties mutually agree to a different arrangement.

D. An arbitrator may, upon request of the Union and the State, issue his/her decision, opinion, or award orally upon submission of the arbitration. Either party may request that the arbitrator put his/her decision, opinion, or award in writing and that a copy be provided.

E. The arbitrator shall not have the power to add to, subtract from, or modify this Contract. Only grievances as defined in section 6.2 A of this Article shall be subject to arbitration. In all arbitration cases, the award of the arbitrator shall be final and binding upon the parties.

6.12 Grievance Review

Upon request, the State shall meet monthly with the Union in an attempt to settle and resolve grievances. The parties shall agree at least two (2) weeks prior to each meeting on the agenda and who shall attend.

6.13 AWOL Hearing Back Pay

In any hearing of an automatic resignation (AWOL) pursuant to Government Code section 19996.2, the hearing officer shall have the discretion to award back pay. Once adopted by Department of Personnel Administration, the hearing officer's decision with respect to back pay shall be final and is neither grievable nor arbitrable under any provision of this Contract, nor may it otherwise be appealed to a court of competent jurisdiction. This provision does not alter or affect the right to bring a legal challenge or appeal of the other aspects of the hearing officer's decision as provided in law. This does not otherwise limit or expand any other authority of the hearing officer under Government Code section 19996.2.

6.14 Mini-Arbitration Procedure

The parties agree to participate in a pilot program of an expedited (mini) arbitration process. The pilot program shall begin ninety (90) days of reaching a tentative agreement and continue for one year, after which it shall terminate unless extended by mutual agreement. The parties shall meet after reaching a tentative agreement to determine the procedures necessary to implement this pilot program.

A. The grievances to be referred to this process shall be determined by mutual agreement only. The parties agree that this process shall be reserved for those cases of limited scope and limited impact. The parties agree that this process shall be used at least four (4) times during the pilot period.

B. The arbitrator shall be mutually selected by the parties; if the parties cannot agree upon an arbitrator, the parties shall request the State Mediation and Conciliation service to furnish a list of nine (9) arbitrators. The parties shall alternately strike names until one arbitrator remains.

C. The arbitration shall be conducted according to the following rules and the arbitrator shall be required to abide by them:

1. The arbitrator shall hear and decide as many grievances as can reasonably be presented in a normal work day.

2. Prior to the arbitration, the parties must mutually agree to the questions to be placed before the arbitrator or the case will not proceed through this section.

3. Only the grievant, his/her Union representative, appropriate steward, and one witness and no more than four (4) management representatives may appear at the hearing. Each party will designate no more than two (2) spokespeople per case to make an oral presentation.

4. The arbitrator shall make his/her decision solely on the written record in the grievance, the grievance response(s), and any oral or documentary presentation made at the arbitration proceeding. The presentations shall be time limited, consistent with the intent of this provision to hold multiple grievance reviews in a single day. Only the arbitrator may ask the other side questions and each side waives the right to cross-examine the other. There shall be no stenographic record or transcripts.

5 At the conclusion of the hearing, each party shall present an oral summation of its position. Post hearing briefs shall not be submitted.

6. The arbitrator will issue a bench decision on each grievance. The decision of the arbitrator is final and binding, but shall have no precedential value whatsoever.

7. The arbitrator shall have no authority to add to, delete, or alter any provisions of this Contract, or any agreements supplementary thereto, but shall limit the decision to the application of the Contract to the facts and circumstances at hand.

8. The parties are limited at the expedited arbitration to presenting only the facts, documents, and arguments presented during the lower levels of the grievance process and either party may also introduce new documents or facts provided that such materials are submitted to the other party at least ten (10) days prior to the hearing.

D. The arbitrator shall be paid a flat fee for each day of the hearing, without regard to the number of cases presented during that day's hearing. Each party shall pay one-half of the arbitrator's charges.

ARTICLE 7 – HOLIDAYS

A. Full-time and part-time employees shall be entitled to such observed holidays with pay as provided below, in addition to any official State holidays declared by the Governor.

B Holidays shall include January 1, the third Monday in January, February 12, the third Monday in February, March 31, the last Monday in May, July 4, the first Monday in September, the second Monday in October, November 11, Thanksgiving Day, the day after Thanksgiving, and December 25. The holidays are observed on the actual day they occur with the following exceptions:

1. When November 11 falls on a Saturday, full-time and part-time employees shall be entitled to the preceding Friday as a holiday with pay.

2. When a holiday falls on Sunday, full-time and part-time employees shall be entitled to the following Monday as a holiday with pay.

3. If an employee's work schedule encompasses four (4) or more hours on the holiday, the employee will be compensated in accordance with this Article. An employee shall receive compensation for only the observed or actual holiday, not both.

C. Upon completion of six (6) months of his/her initial probationary period in State service, a full-time or part-time employee shall be entitled to one personal holiday per fiscal year. The personal holiday shall be credited to each full-time and part-time employee on the first day of July.

D. The department head or designee may require five (5) days advance notice before a personal holiday is taken and may deny use subject to operational needs. When an employee is denied use of a personal holiday, the department head or designee may allow the employee to reschedule the personal holiday or shall, at the department's discretion, allow the employee to either carry the personal holiday to the next fiscal year or cash out the holiday on a straight time (hour-for-hour) basis.

E. The department head or designee shall make a reasonable effort to grant an employee use of his/her personal holiday on the day of his/her desire subject to operational need.

F. When an observed holiday falls on an employee's regularly scheduled day off, employees shall accrue up to eight (8) hours of holiday credit per said holiday. If an employee is required to work on an observed holiday, the employee shall be compensated at a premium rate in accordance with paragraph G, I or J below.

G. When a full-time employee in Work Week Group 2 is required to work on an observed holiday, the employee shall receive eight hours of holiday credit and one and one-half (1½) the hourly rate for all hours worked on the observed holiday, compensable by holiday credit, cash or compensatory time off (CTO). The method of compensation shall be at the State's discretion.

H. For the purpose of computing the number of hours worked, time during which an employee is excused from work because of a holiday shall be considered as time worked by the employee.

I. Work Week Group E or SE Employees: When an observed holiday falls on an employee's regularly scheduled day off, employees shall accrue up to eight (8) hours of holiday credit per said holiday If the employee is required to work on an observed holiday, the employee shall receive eight (8) hours of holiday credit and four (4) hours of informal time off.

J. Part-time employees in Work Week Group 2 who are required to work on an observed holiday shall be entitled to compensation as follows: a pro-rated amount of holiday credit as specified in paragraph K below, and one and one-half the hourly rate for all hours worked on the observed holiday, compensable by holiday credit, cash or CTO. The method of compensation shall be at the State's discretion.

K. Employees in Work Week Group 2 who are required to work overtime on a holiday shall be paid for all hours worked in excess of forty (40) hours in a regular workweek in accordance with the provisions of section 19.2, in addition to the premium rate described in paragraph G or J above.

L. Employees shall receive compensation for holidays in accordance with the following:

CHART FOR COMPUTING VACATION, SICK LEAVE, AND HOLIDAY CREDITS FOR ALL FRACTIONAL TIME BASE EMPLOYEES

SUPERCEDES ACCRUAL RATES IN MANAGEMENT MEMORANDUM 84-20-1

TIME BASE	HOURS OF MONTHLY VACATION CREDIT PER VACATION GROUP									HOURS OF MONTHLY SICK LEAVE AND HOLIDAY CREDIT
	7	10	11	12	13	14	16	17	18	SL/HOL 8
9/10	6.30	9.00	9.90	10.80	11.70	12.60	14.40	15.30	16.20	7.20
7/10	4.90	7.00	7.70	8.40	9.10	9.80	11.20	11.90	12.60	5.60
3/10	2.10	3.00	3.30	3.60	3.90	4.20	4.80	5.10	5.40	2.40
1/10	0.70	1.00	1.10	1.20	1.30	1.40	1.60	1.70	1.80	0.80
7/8	6.13	8.75	9.63	10.50	11.38	12.25	14.00	14.88	15.75	7.00
3/4	5.25	7.50	8.25	9.00	9.75	10.50	12.00	12.75	13.50	6.00
5/8	4.38	6.25	6.88	7.35	8 13	8.75	10.00	10 63	11.25	5 00
1/2	3.50	5.00	5.50	6.00	6.50	7.00	8.00	8.50	9 00	4 00
3/8	2.63	3.75	4.13	4.50	4.88	5.25	6.00	6.38	6.75	3.00
1/4	1.75	2.50	2.75	3.00	3.25	3.50	4.00	4.25	4.50	2.00
1/8	0.88	1.25	1.38	1.50	1.63	1.75	2.00	2.13	2.25	1.00
4/5	5 60	8.00	8.80	9.60	10.40	11.20	12.80	13.60	14.40	6.40
3/5	4.20	6.00	6.60	7.20	7.80	8.40	9.60	10.20	10.80	4.80
2/5	2.80	4.00	4.40	4.80	5.20	5.60	6.40	6.80	7.20	3.20
1/5	1.40	2.00	2.20	2.40	2.60	2.80	3.20	3.40	3.60	1.60

An employee can only earn up to a maximum of eight (8) hours holiday credit per holiday, regardless of the number of positions the employee holds within State service.

M. Holiday Credit may be requested and taken in fifteen (15) minute increments.

N An employee shall be allowed to carry over unused holiday credits or be paid for the unused holiday credits, at the discretion of the department head or designee.

O. Upon termination from State employment, an employee shall be paid for unused holiday credit.

P. In the event that traditional, but unofficial holidays (e.g., Mother's Day, Father's Day), or religious holidays (e.g , Easter or Yom Kippur) fall on an employee's scheduled workday, the employee shall have the option to request the use of annual leave, accrued vacation, holiday credits, personal leave or CTO time, in order to secure the day off. The department head or designee shall make a reasonable effort to grant an employee the day off subject to operational need.

Q. The parties will jointly develop a holiday compensation training program for departments.

ARTICLE 8 – LEAVES

8.1 Vacation/Annual Leave

A. Employees shall not be entitled to vacation leave credit for the first six (6) months of service. On the first day of the monthly pay period following completion of six (6) qualifying monthly pay periods of continuous service, all full-time employees covered by this section shall receive a one-time vacation bonus of forty-two (42) hours of vacation credit. Thereafter, for each additional qualifying monthly pay period, the employee shall be allowed credit for vacation with pay on the first day of the following month as follows:

7 months to 3 years	7 hours per month
37 months to 10 years	10 hours per month
121 months to 15 years	12 hours per month
181 months to 20 years	13 hours per month
241 months and over	14 hours per month

B. Employees may elect to enroll in the Annual Leave program to receive annual leave credit in lieu of vacation and sick leave credits. Enrollment into and out of the Annual Leave Program will occur annually during an open enrollment period during the month of April. All enrollments must be received by the employee's personnel office from April 1 to April 30. The effective date of the election shall be the first day of the June pay period.

C. Each full-time employee shall receive credit for annual leave in lieu of the vacation and sick leave credits of this agreement in accordance with the following schedule:

1 month to 3 years	11 hours per month
37 months to 10 years	14 hours per month
121 months to 15 years	16 hours per month
181 months to 20 years	17 hours per month
241 months and over	18 hours per month

D. Employees who elect to move to the vacation and sick leave programs will have their accrued annual leave balances converted to vacation. Employees shall have the continued use of any sick leave accrued as of the effective date of this agreement.

E. A full-time employee who has eleven (11) or more working days of service in a monthly pay period shall earn vacation/annual leave credits as set forth above under subsection A above or C respectively. Absences from State service resulting from a temporary or permanent separation for more than eleven (11) consecutive working days which fall into two consecutive qualifying pay periods shall disqualify the second pay period.

F. Part-time and hourly employees shall accrue proportional vacation/annual leave credits, in accordance with the chart shown in section 7 L of this Contract

G. Vacation/Annual Leave accrual for employees in multiple positions will be computed by combining all positions, provided the result does not exceed the amount earnable in full-time employment, and the rate of accrual shall be determined by the schedule which applies to the position or collective bargaining status under which the election was made.

H. Annual leave that is used for purposes of sick leave is subject to the requirements set forth in section 8.2, Sick Leave, of this Contract.

I. Workweek Group 2 employees may take vacation/annual leave credits in fifteen (15) minute increments.

J. Workweek Group 2 employees are authorized to use existing fractional vacation/annual leave hours that may have been accumulated.

K Subject to operational needs, the time when vacation/annual leave shall be taken by the employee shall not be unreasonably denied. Employee vacation/annual leave requests shall be submitted and granted or denied in writing in a timely manner. Vacations/annual leave can only be cancelled when unanticipated operational needs require it.

L. Vacation/Annual Leave requests must be submitted in accordance with departmental policies on this subject. However, when two (2) or more employees on the same shift (if applicable) in a work unit (as defined by each department head or designee) request the same vacation/annual leave time and approval cannot be given to all employees requesting it, employees shall be granted their preferred vacation/annual leave period in order of seniority (defined as total months of State service in the same manner as vacation/annual leave is accumulated). When two (2) or more employees have the same amount of State service, department seniority will be used to break the tie. Vacation/annual leave schedules, which have been established in a work unit, pursuant to the seniority provisions in this Article, shall not be affected by employee(s) entering the unit after the schedule has been established.

M. If an employee does not use all of the vacation/annual leave that the employee has accrued in a calendar year, the employee may carry over his/her accrued vacation/annual leave credits to the following calendar year to a maximum of six hundred forty (640) hours. A department head or designee may permit an employee to carry over more than six hundred forty (640) hours of accrued vacation/annual leave hours if an employee was unable to reduce his/her accrued hours because the employee: (1) was required to work as a result of fire, flood, or other extensive emergency; (2) was assigned work of a priority or critical nature over an extended period of time; (3) was absent on full salary for compensable injury; (4) was prevented by department regulations from taking vacation/annual leave until December 31 because of sick leave; or (5) was on jury duty.

N. By June 1 of each calendar year those employees whose vacation/annual leave balance exceeds, or could exceed by December 31, the vacation/annual leave cap of subsection M must submit to their supervisor for approval a plan to use vacation/annual leave to bring their balance below the cap. If the employee fails to submit a plan, or adhere to an approved plan, the department head or designee has the right to order an employee to take sufficient vacation/annual leave to reduce the employee's vacation/annual leave balance or potential balance on December 31 below the cap specified in subsection M.

O. Upon termination from State employment, the employee shall be paid for accrued vacation/annual leave credits for all accrued vacation/annual leave time.

P. An employee who returns to State service after an absence of six (6) months or longer, caused by a permanent separation, shall receive a one-time vacation credit on the first monthly pay period following completion of six (6) qualifying pay periods of continuous service in accordance with the employee's total State service before and after the absence.

8.2 Sick Leave

A. As used in this section, "sick leave" means the necessary absence from duty of an employee because of:

1. Illness or injury, including illness or injury relating to pregnancy.

2. Exposure to a contagious disease which is determined by a physician to require absence from work.

3. Dental, eye, and other physical or medical examination or treatment by a licensed practitioner.

4. Absence from duty for attendance upon the employee's ill or injured mother, father, husband, wife, domestic partner that has been defined and certified with the Secretary of State's office in accordance with Family Code section 297, son, daughter, brother, or sister, or any person residing in the immediate household. Such absence shall be limited to six (6) workdays per occurrence or, in extraordinary situations, to the time necessary for care until physician or other care can be arranged.

B. A full-time employee who has eleven (11) or more working days of service in a monthly pay period shall be eligible for up to eight (8) hours of sick leave credit. On the first day of the monthly pay period following completion of each qualifying pay period of service, each full-time employee shall earn eight (8) hours of credit for sick leave with pay.

C. Credit for less than full-time employees shall be computed as follows:

1. Part-time employees. On the first day of the monthly pay period following completion of each monthly pay period of continuous service, each part-time employee shall be allowed, on a pro rata basis, the fractional part of his/her appropriate accrual rate of credit for sick leave with pay in accordance with Appendix B.

2. Multiple positions under this rule:

a An employee holding a position in State service in addition to the primary full-time position with the State shall not receive credit for sick leave with pay for service in the additional position;

b. Where an employee holds two (2) or more "less than full-time positions," the time worked in each position shall be combined for purposes of computing credits for sick leave with pay, but such credits shall not exceed the amount earned for (8 hours per pay period) full-time employment credit.

D. The department head or designee shall approve sick leave only after having ascertained that the absence is for an authorized reason and may require the employee to submit substantiating evidence including, but not limited to, a physician's or licensed practitioner's verification. The State recognizes the confidential nature of the relationship between the health care provider and patient. However, such substantiation shall include, but not be limited to, the general nature of the employee's illness or injury and prognosis (i.e., the anticipated length of the absence, any restrictions upon return to work that prevent the employee from performing the full range of his/her normal work assignment and anticipated future absences). If the department head or designee does not consider the evidence adequate, the request for sick leave shall be disapproved. Upon request, a denial of sick leave shall be in writing stating the reason for denial.

E. An employee may be required to provide a physician's or licensed practitioner's verification of sick leave when:

1. The employee has a demonstrable pattern of sick leave abuse; or

2. The supervisor believes the absence was for an unauthorized reason.

F. Sick leave may be accumulated without limit.

G. Sick leave may be requested and taken in fifteen (15) minute increments.

H. A full-time employee whose continuity of employment is broken by a permanent separation of six (6) months or longer and is subsequently reemployed cannot be credited with any unused sick leave accumulated prior to the employee's separation and the full-time employee must complete one month of continuous service before being granted one day of sick leave credit. In addition, when a full-time employee has a break in the continuity of employment because of a permanent separation of less than six (6) months or because of a temporary separation, the full-time employee's prior unused sick leave balance is restored.

I. When an employee's sick leave balance is zero, other leave credits such as annual leave, vacation, CTO, PLP, personal holiday, or holiday leave may be substituted with the supervisor's approval, and shall not be unreasonably denied.

8.3 Bereavement Leave

A. A department head or designee shall authorize bereavement leave with pay for a permanent or probationary full-time State employee due to the death of his/her parent, stepparent, spouse, domestic partner that has been defined and certified with the Secretary of State's office in accordance with Family Code section 297, child, sister, brother, stepchild, grandchild, grandparent or death of any person residing in the immediate household of the employee at the time of death. An intervening period of absence for medical reasons shall not be disqualifying when, immediately prior to the absence, the person resided in the household of the employee. Such bereavement leave shall be authorized for up to three eight-hour days (24 hours) per occurrence. The employee shall give notice to his/her immediate supervisor as soon as possible and shall, if requested by the employee's supervisor, provide substantiation to support the request upon the employee's return to work.

B. A department head or designee shall authorize bereavement leave with pay for a permanent full-time or probationary full-time employee due to the death of his/her aunt, uncle, niece, nephew, mother-in-law, father-in-law, daughter-in-law, son-in-law, sister-in-law, or brother-in-law. Such bereavement leave shall be authorized for up to three (3) eight-hour days in a fiscal year. The employee shall give notice to his/her immediate supervisor as soon as possible and shall, if requested by the employee's supervisor, provide substantiation to support the request.

C. If the death of a person as described above requires the employee to travel over 400 miles one way from his/her home, additional time off with pay shall be granted for two (2) additional days which shall be deducted from accrued leave. Should additional leave be necessary, the department head or designee may authorize the use of existing leave credits or authorized leave without pay.

D. Employees may utilize their annual leave, vacation, CTO, or any other earned leave credits for additional time required in excess of time allowed in A or B above. Sick leave may be utilized for Bereavement Leave in accordance with the Sick Leave provision of this agreement.

E. Fractional time base (part-time) employees will be eligible for bereavement leave on pro rata basis, based on the employees' fractional time base.

8.4 Parental Leave

A. A female permanent employee shall be entitled, upon request, to an unpaid leave of absence for purposes of pregnancy, childbirth, recovery therefrom or care for the newborn child for a period not to exceed one year. The employee shall provide medical substantiation to support her request for pregnancy leave. The request must include the beginning and ending dates of the leave and must be requested no later than thirty (30) calendar days after the birth of the child. Any changes to the leave, once approved, are permissive and subject to the approval of the department head or designee.

B. A male spouse, male parent, or domestic partner that has been defined and certified with the Secretary of State's office in accordance Family Code section 297 who is a permanent employee, shall be entitled, upon request, to an unpaid leave of absence for a period not to exceed one year to care for the newborn child. The employee shall provide medical substantiation to support the request for parental leave. The request must include the beginning and ending dates of the leave and must be requested no later than thirty (30) calendar days after the birth of the child. Any changes to the leave, once approved, are per missive and subject to the approval of the department head or designee.

C. If the request for parental leave is made more than thirty (30) calendar days after the birth of the child, a permissive unpaid leave of absence may be considered by the department head or designee.

D. During the period of time an employee is on parental leave, he/she shall be allowed to continue their health, dental, and vision benefits. The cost of these benefits shall be paid by the employee and the rate that the employee will pay will be the group rate.

8.5 Adoption Leave

A. A department head or designee shall grant a permanent employee's request for an unpaid leave of absence for the adoption of a child for a period not to exceed one year. The employee may be required to provide substantiation to support the employee's request for adoption leave.

B. During the period of time an employee is on adoption leave, he/she shall be allowed to continue their health, dental and vision benefits. The cost of these benefits shall be paid by the employee and the rate that the employee will pay will be the group rate.

C. Existing leave credits may be used for the purpose of assuming custody of the adopted child.

8.6 Union Leave

A. The Union shall have the choice of requesting an unpaid leave of absence or a paid leave of absence (Union leave) for a Union bargaining council representative, steward, or chief job steward. An unpaid leave of absence may be granted by the State pursuant to the unpaid leave of absence provisions in this Contract. Union leave may also be granted during the terms of this Contract at the discretion of the affected department head or designee in accordance with the following:

1. The Union leave shall normally be requested on a State approved form fourteen (14) calendar days prior to the date of the leave.

2. The Union leave request form shall be signed by either the SEIU, Local 1000 President or designee and no other signature will be honored by the State. A written list of designee(s) shall be furnished to DPA.

3. A Union leave shall assure an employee the right to his/her former position upon termination of the leave. The term "former position" is defined in Government Code section 18522.

4. The Union agrees to reimburse the affected department(s) for the full amount of the affected employee's salary, plus an additional amount equal to thirty-five percent (35%) of the affected employee's salary, for all the time the employee is off on Union leave, within sixty (60) days of billing. Disputes regarding reimbursement shall be resolved through the arbitration process.

5. The affected employee shall have no right to return from a Union leave earlier than the agreed upon date without the approval of the employee's appointing power.

6. Except in emergencies or layoff situations, a Union leave shall not be terminated by the department head or designee prior to the expiration date.

7. Employees on a Union leave shall suffer no loss of compensation or benefits.

8. Employees on Union leave under this provision and the Union shall waive any and all claims against the State for Workers' Compensation and Industrial Disability Leave.

9. In the event an employee on a Union leave, as discussed above, files a Workers' Compensation claim against the State of California or any agency thereof, for an injury or injuries sustained while on a Union leave, the Union agrees to indemnify and hold harmless the State of California or agencies thereof, from both workers' compensation liability and any costs of legal defense incurred as a result of the filing of the claim.

8.7 Unpaid Leave of Absence

A. A department head or designee may grant an unpaid leave of absence for a period not to exceed one year. The employee shall provide substantiation to support the employee's request for an unpaid leave of absence.

B. Except as otherwise provided in subsection c below, an unpaid leave of absence shall not be granted to any employee who is accepting some other position in State employment, or who is leaving State employment to enter other outside employment; or does not intend to, nor can reasonably be expected to, return to State employment on or before the expiration of the unpaid leave of absence. A leave, so granted, shall assure an employee the right to his/her former position upon termination of the leave. The term "former position" is defined in Government Code section 18522.

C. An unpaid leave of absence may be granted for, but not limited to, the following reasons:

1. Union activity;
2. for temporary incapacity due to illness or injury;
3. to be loaned to another governmental agency for performance of a specific assignment;
4. to seek or accept other employment during a layoff situation or otherwise lessen the impact of an impending layoff;
5. education; or
6. research project.
7. personal or family matters, or
8. run for public office.

D. Extensions of an unpaid leave of absence may be requested by the employee and may be granted by the department head or designee.

E. A leave of absence shall be terminated by the department head or designee (1) at the expiration of the leave; or (2) prior to the expiration date with written notice at least thirty (30) workdays prior to the effective date of the revocation.

8.8 Transfer of Leave Credits, Work and Family Program

The parties agree with the importance of family members in the lives of State employees, as recognized by the Joint Labor/Management Work and Family Advisory Committee.

A. Upon request of an employee and upon approval of a department director or designee, leave credits (CTO, personal leave, annual leave, vacation, and/or holiday credit) shall be transferred between family members, in accordance with departmental procedures, for issues relating to Family Medical Leave, parental leave or adoption leave as indicated in the relevant articles of this agreement. Donations may be made by a child, parent, spouse, domestic partner that has been defined and certified with the Secretary of State's Office in accordance with Family Code section 297, brother, sister, or other person residing in the immediate household.

B. Upon request of an employee and upon approval of a department director or designee, leave credits (CTO, personal leave, annual leave, vacation, and/or holiday credit) shall be transferred from one or more employees to another employee, in accordance with the departmental policies, when the receiving employee faces financial hardship due to injury or the prolonged illness of the employee, employee's child, parent, spouse, domestic partner that has been defined and certified with the Secretary of State's Office in accordance with Family Code section 297spouse's or domestic partner's parent, brother, sister, or other person residing in the immediate household.

C. For the purposes of transferring leave credits the following definitions shall apply:

1. Sick leave credits cannot be transferred;
2. The receiving employee has exhausted all leave credits;
3. The donations must be a minimum of one hour; and thereafter, in whole hour increments and credited as vacation or annual leave.
4. Personal holiday must be transferred in one day increments (Personal holiday donations shall be made pursuant to the donating employee's time base);
5. Transfer of annual leave, personal leave, vacation, CTO, and holiday credits shall be allowed to cross departmental lines in accordance with the policies of the receiving department;
6. The total leave credits received by the employee shall normally not exceed three (3) months; however, if approved by the appointing authority, the total leave credits received may be six (6) months;
7. Donations shall be made on a form to be supplied by the State, signed by donating employee, and verified by the donating department When donations are used, they will be processed based on date and time received (first in, first used). Unused donations shall be returned to the appropriate donor;
8. This section is not subject to the Grievance and Arbitration Article of the Contract.

8.9 Catastrophic Leave: Natural Disaster

Upon request of an employee and upon approval of a department director or designee, leave credits (CTO, vacation, personal leave, annual leave, personal holiday and/or holiday credit) shall be transferred from one or more employees to another employee, in accordance with departmental policies, under the following conditions:

A. Sick leave credits cannot be transferred.

B. When the receiving employee faces financial hardship due to the effect of the natural disaster on the employee's principal residence.

C. The receiving employee has exhausted all vacation, annual leave, or CTO credits and resides in one of the counties where a State of Emergency exists as declared by the Governor.

D. The donations must be a minimum of 1 hour thereafter, in whole hour increments and credited as vacation.

E. Personal holiday must be transferred in one day increments. (Personal holiday donations shall be made pursuant to the donating employee's timebase.)

F. Transfer of annual leave, vacation, personal leave, CTO, personal holiday, and holiday credits shall be allowed to cross departmental lines in accordance with the policies of the receiving department.

G. The total leave credits received by the employee shall normally not exceed 3 months; however, if approved by the appointing authority, the total leave credits received may be 6 months.

H. Donations shall be made on a form to be supplied by the State, signed by the donating employee, and verified by the donating department. When donations are use, they will be processed based on date and time received (first in, first used). Unused donations shall be returned to the appropriate donor.

I This section is not subject to the Grievance and Arbitration Article of this Contract.

8.10 Release Time for State Civil Service Examinations

A. Employees who are participating in a State Civil Service examination shall be granted reasonable time off without loss of compensation to participate in an examination if the examination has been scheduled during his/her normal work hours and the employee has provided reasonable notice (normally two (2) working days) notice to his/her supervisor. For the purposes of this section, hiring interviews for individuals certified from employment lists, individuals on SROA lists seeking transfers, or individuals seeking transfers in departments where the department head or designee determines the department is in a layoff mode shall be considered part of the examination process. The State shall attempt to accommodate a shift change request from an employee who is scheduled to work a graveyard shift on the day of an SPB examination.

B. Authorized release time for reasonable travel time to and from the examination site may be granted by the Department.

8.11 Release Time for State Personnel Board Hearings

Upon two working days advance notice, the State shall provide reasonable time off without loss of compensation for a reasonable number of employees to attend hearings conducted by the California State Personnel Board during the employee's normal work hours provided that the employee is either (1) a party to the hearing proceedings, e.g., an appellant, or (2) is specifically affected by the results of the hearing and has been scheduled to appear or testify by the State Personnel Board. The State shall attempt to accommodate a shift change request from an employee involved in (1) or (2) above on the day of an SPB hearing.

8.12 Leave Credits Upon Transfer in State Service

All employees in Unit 21 shall, upon transfer between appointing powers in State service, transfer with all accumulated leave credits, except CTO credits, which shall be utilized or cashed out at the appointing power's discretion.

8.13 Intentionally Excluded

8.14 Jury Duty

A. An employee shall be allowed such time off without loss of compensation as is required in connection with mandatory jury duty. If payment is made for such time off, the employee is required to remit to the State jury fees received. When night jury service is required of an employee, the employee shall be allowed time off without loss of compensation for such portion of the required time that coincides with the employee's normal work schedule. This includes necessary travel time. The State may adjust the employee's work schedule to accommodate jury duty requirements.

B. An employee shall notify his/her supervisor immediately upon receiving notice of jury duty.

C. If an employee elects to use accrued vacation leave or compensating time off while on jury duty, the employee is not required to remit jury fees.

D. For purposes of this section, "jury fees" means fees received for jury duty excluding payment for mileage, parking, meals or other out of pocket expenses.

E. An employee may be allowed time off without loss of compensation if approved by the department head or designee for voluntary jury duty such as grand jury. If approved by the department, paragraphs C and D apply.

8.15 Personal Leave Program - Voluntary

The State shall continue a voluntary Personal Leave Program for bargaining unit employees. Employees may voluntarily participate in the personal leave program on a continuing basis.

A. Each full-time employee subject to paragraph B. shall be credited with eight (8) hours of Voluntary Personal Leave on the first day of the following monthly pay period for each month in the Voluntary Personal Leave Program.

B. Each full-time employee participating in the Voluntary PLP shall continue to work his/her assigned work schedule and shall have a reduction in pay equal to 5%. In exchange, 8 hours of leave will be credited to the employee's Voluntary Personal Leave Program monthly.

C. Personal leave shall be requested and used by the employee in the same manner as vacation or annual leave. Requests to use personal leave must be submitted in accordance with departmental policies on vacation and annual leave. Personal leave shall not be included in the calculation of vacation/annual leave balances pursuant to Article 8 (Leaves).

D An employee may accumulate no more than 240 hours of Voluntary Personal Leave. When an employee reaches 240 hours of Personal Leave or would exceed 240 hours of Personal Leave with further accumulation, he/she shall be removed from the Voluntary Personal Leave Program.

When an employee is removed from the Voluntary Personal Leave Program, he/she may not participate for a minimum of twelve (12) months and he/she is not eligible to re-enroll until his/her balance is reduced to a maximum of one hundred-twenty (120) hours.

E. At the discretion of the State, all or a portion of unused personal leave credits may be cashed out at the employee's salary rate at the time the personal leave payment is made. It is understood by both parties that the application of this cash out provision may differ from department to department and from employee to employee. Upon termination from State employment, the employee shall be paid for unused personal leave credits in the same manner as vacation or annual leave. Cash out or lump sum payment for any Personal Leave credits shall not be considered as "compensation" for purposes of retirement. If funds become available, as determined by the Department of Finance, for the Personal Leave Program, departments will offer employees the opportunity to cash out accrued personal leave. Upon retirement/separation, the cash value of the employee's personal leave balance may be transferred into a State of California, Department of Personnel Administration Deferred Compensation Program as permitted by Federal and State law.

F. An employee may not use any kind of paid leave such as sick leave, vacation, or holiday time to avoid a reduction in pay resulting from the Personal Leave Program.

G. A State employee in the Personal Leave Program shall be entitled to the same level of State employer contributions for health, vision, dental, flex-elect cash option, and enhanced survivor's benefits he or she would have received had the Personal Leave Program not occurred.

H. The Personal Leave Program shall not cause a break in State service, a reduction in the employee's accumulation of service credit for the purposes of seniority and retirement, leave accumulation, or a merit salary adjustment.

I The Personal Leave Program shall neither affect the employee's final compensation used in calculating State retirement benefits nor reduce the level of State death or disability benefits the employee would otherwise receive or be entitled to receive nor shall it affect the employee's ability to supplement those benefits with paid leave.

J. Part-time employees shall be subject to the same conditions as Stated above, on a prorated basis.

K. The Personal Leave Program for intermittent employees shall be prorated based upon the number of hours worked in the monthly pay period.

L. The Personal Leave Program shall be administered consistent with the existing payroll system and the policies and practices of the State Controller's Office.

M. Employees on SDI, IDL, or Worker's Compensation for the entire monthly pay period shall be excluded from the Personal Leave Program for that month.

8.16 Family Medical Leave Act (FMLA)

A. The State acknowledges its commitment to comply with the spirit and intent of the leave entitlement provided by the FMLA and the California Family Rights Act (CFRA) referred to collectively as "FMLA". The State and the Union recogniz e that on occasion it will be necessary for employees of the State to take job-protected leave for reasons consistent with the FMLA. As defined by the FMLA, reasons for an FMLA leave may include an employee's serious health condition, for the care of a child, spouse, domestic partner (as defined in Family Code section 297), or parent who has a serious heal th condition, and/or for the birth or adoption of a child.

B. For the purposes of providing the FMLA benefits the following definitions shall apply·

1. An eligible employee means an employee who meets the eligibility criteria set forth in the FMLA;

2. An employee's child means any child, regardless of age, who is affected by a serious health condition as defined by the FMLA and is incapable of self care. "Care" as provided in this section applies to the individual with the covered health condition;

3. An employee's parent means a parent or an individual standing in loco parentis as set forth in the FMLA;

4. Leave may include paid sick leave, vacation, annual leave, personal leave, catastrophic leave, holiday credit, excess hours, and unpaid leave. In accordance with the FMLA, an employee shall not be required to use CTO credits, unless otherwise specified by section 8.8 of this Contract.

   a. FMLA absences due to illness and/or injury of the employee or eligible family member may be covered with the employee's available sick leave credits and catastrophic leave donations. C atastrophic leave eligibility and sick leave credit usage for a FMLA leave will be administered in accordance w ith sections 8.8 and 8.2 of this Contract.

   b. Other leave may be substituted for the FMLA absence due to illness and/or injury, at the employee's discretion. An employee shall not be required to exhaust all paid leave, before choosing unpaid leave, unless otherw ise required by section 8.8 of this Contract.

   c. FMLA absences for reasons other than illness and/or injury (i.e., adoption or care of an eligible family member), may be covered with leave credits, other than sick leave, including unpaid leave, at the employee's discretion. Except in accordance with section 8.8 of this Contract, an employee shall not be required to exhaust all leave credits available before choosing unpaid leave to cover an FMLA absence.

C. An eligible employee shall provide certification of the need for an FMLA leave. Additional certification may be requested if the department head or designee has reasonable cause to believe the employee's condition or eligibility for FMLA leave has changed. The reasons for the additional certification request shall be provided to the employee in writing.

D. An eligible employee shall be entitled to a maximum of twelve (12) workweeks (480 hours) FMLA leave per calendar year and all other rights set forth in the FMLA. This entitlement shall be administered in concert with the other leave provisions in Article 8 of this Contract. Nothing in this Contract should be construed to allow the State to provide less than that provided by the FMLA.

E. On January 1 of each year, FMLA leave shall be recorded in accordance with the calendar year. Each time an employee takes an FMLA leave, the remaining leave entitlement is any balance of the twelve (12) workweeks that has not been used during the current calendar year. Employees who have taken FMLA leave under the previous 12 month rolling period, shall be entitled to additional leave up to a total of 12 weeks for the current calendar year.

F. An employee on FMLA leave has a right to be restored to his/her same or "equivalent" position (FMLA) or to a "comparable" position (CFRA) with equivalent pay, benefits, and other terms and conditions of employment.

G. For the purposes of computing seniority, employees on paid FMLA leave will accrue seniority credit in accordance with the Department of Personnel Administration Rules 599.608 and 599.609.

H. Any appeals regarding an FMLA decision should be directed to the department head or designee. FMLA is a Federal law and administered and enforced by the Department of Labor, Employment Standards Administration, Wage and Hour Division. The State's CFRA is a State law which is administered and enforced by the Department of Fair Employment and Housing. FMLA/CFRA does not supersede any Article of this Contract which provides greater family and medical leave rights. This section is not subject to grievance or arbitration.

8.17 Mentoring Leave

A. Eligible employees may receive up to forty (40) hours of "mentoring leave" per calendar year to participate in mentoring activities once they have used an equal amount of their personal time for these activities. "Mentoring leave" is paid leave time, which may only be used by an employee to mentor. This leave does not count as time worked for purposes of overtime. "Mentoring leave" may not be used for travel to and from the mentoring location.

B. An employee must use an equal number of hours of his/her personal time (approved annual leave, vacation, personal leave, personal holiday, or CTO during the workday and/or personal time during non-working hours) prior to requesting "mentoring leave." For example, if an employee requests two (2) hours of "mentoring leave", he/she must have used two (2) verified hours of his/her personal time prior to receiving approval for the "mentoring leave". "Mentoring leave" does not have to be requested in the same week or month as the personal time was used. It does, however, have to be requested and used before the end of the calendar year.

C. Prior to requesting mentoring leave and in accordance with departmental policy, an employee shall provide his/her supervisor with verification of personal time spent mentoring from the mentoring organization.

D. Requests for approval of vacation, CTO, and/or annual leave for mentoring activities are subject to approval requirements in this Contract and in existing departmental policies. Requests for approval of mentoring leave are subject to operational needs of the State, budgetary limits, and any limitations imposed by law.

E. In order to be eligible for "mentoring leave," an employee must:

1. Have a permanent appointment;

2. Have successfully completed their initial probationary period; and

3. Have committed to mentor a child or youth through a mentoring organization that meets the quality assurance standards, for a minimum of one school year. (Most programs are aligned with the child's normal school year, however, there may be some that are less or more. Department management may make exceptions to the one school year commitment based on the mentor program that is selected.)

F. An employee is not eligible to receive mentoring leave if,

1. He/she is assigned to a "post" position or level of care position in the Departments of Corrections or Youth Authority;

2. He/she works in a level of care position in the Departments of Developmental Services, Mental Health, Education, and Veterans' Affairs.

G. Permanent part-time and permanent intermittent employees may receive a prorated amount of mentoring leave based upon their timebase. For example, a halftime employee is eligible for twenty (20) hours of "mentoring leave" per calendar year, whereas an intermittent employee must work a monthly equivalent of 160 hours to earn 3.33 hours of mentoring leave.

H. Any appeals and/or disputes regarding this section shall be handled in accordance with the Complaint procedure specified in Article 6 of this Contract.

8.18 Work and Family Programs-Family Activities Participation and Family Crisis Situations

A. Family Activity Participation

Subject to operational needs and reasonable notice to the employer, employees shall be permitted to use accrued leave credits (annual leave, vacation leave, personal holiday, holiday credits, CTO) for the purpose of attending school or non-school family-related activities such as sports events, recitals, 4-H, etc., in which the employee's child is participating.

If an employee has exhausted available leave credits, the employee may request unpaid leave, unless he/she is currently subject to attendance restrictions.

However, use of such leave shall not diminish an employee's entitlement under the Family School Partnership Act to, upon reasonable notice to the employer, use up to eight (8) hours per month but not to exceed forty (40) hours per calendar year of accrued leave credits (annual leave, vacation leave, personal holiday, holiday credits, CTO) for the purpose of attending school or pre-school related activities in which the employee's child is participating.

Family is defined as the employee's son, daughter, or any child the employee stands in loco parent is (to the child).

Employee leave requests for family activities shall be in accordance with the appropriate departmental procedures.

B. Family Crisis Situations

Subject to operational needs, and upon reasonable notice to the employee's immediate supervisor, employees shall be eligible to use accumulated leave credits for the purpose of dealing with family crisis situations (e.g., divorce counseling, family or parenting conflict management, family care urgent matters and/or emergencies). If the employee has exhausted available leave credits, the employee may request *unpaid leave.*

Family is defined as the parent, stepparent, spouse, domestic partner that has been defined and certified with the Secretary of State's office in accordance with Family Code section 297, child, grandchild, grandparent, brother, sister, stepchild, or any person residing in the immediate household.)

If eligible, any Family Crisis Leave that meets the definition of serious health condition will run concurrently with section 8.16 of this Contract, Family and Medical Leave Act

The State shall consider requests from employees to adjust work hours or schedules or consider other flexible arrangements consistent with a department's operational needs and the provisions of this Contract.

Employee requests related to family crisis or domestic violence shall be in accordance with departmental procedures and, except in emergencies, shall be made with reasonable notice to the employee's immediate supervisor.

The State shall maintain the confidentiality of any employee requesting accommodation under this section, but may require substantiation to support the employee's request.

8.19 Paid Time Off – Precinct Election Board

With prior approval of the employee's supervisor and under comparable conditions as provided for supervisors and managers in DPA Rule 599.930, an employee may be granted time off for public service as a member of a Precinct Election Board. The employee shall be eligible for both regular State compensation and any fee paid by the Registrar of Voter for such service. Verification of service may be required.

8.20 Blood Donation Program

Unit 21 employees who donate blood, plasma, platelets and other blood products to certified donation centers may be allowed reasonable release time without loss of compensation when donations are made either at or in close proximity to the work site. *Donation verification shall be provided upon request.*

8.21 10-12 Leave

A. A department head may, upon the request of an employee, grant a leave of absence not to exceed two consecutive pay periods during the period designated by the department head for release from performance of duties to full-time permanent or probationary employees.

B. Leaves of absence granted under the provisions of these rules shall be counted as qualifying service for merit and special in-grade salary adjustments, for seniority, and for computation of months of total State service to determine a change in the monthly credit for vacation leave. For all other purposes, leaves of absence granted pursuant to this section shall not be counted as qualifying service.

C. All Unit 21 employees may request to utilize the 10-12 plan.

D. Any denial of the 10-12 plan shall be accompanied by a reason in writing.

E. An employee returning from 10-12 leave shall have the right to return to his/her former position. The term "former position" is defined in Government Code section 18522.

8.22 through 8.27 Intentionally Excluded

8.28 Educational Leave

A. The department head or designee may approve educational leave with pay to attend or participate in educational or research programs at accredited schools, colleges, universities, or local educational agencies for the purposes of further instruction in subjects related to the employee's work assignments and/or achievement of departmental goals. Educational leave may also be used to attend workshops and seminars for career and professional development in subjects related to the employee's work assignment and/or achievement of departmental goals.

B. Only Unit 21 employees in classifications listed in the attachment entitled "Educational Leave" are eligible under this provision.

C. The department head or designee may, at any time, limit the number of persons on educational leave commensurate with departmental work requirements and availability of an appropriate substitute.

D. Eligible employees must have a State civil service appointment of ½ time or more and must complete at least one year of continuous service in a classification which accrues educational leave before being granted such leave. Intermittent employees shall not be eligible.

E. Eligible employees will be credited with educational leave at a rate of 10 hours per month for full time employees and on a pro rata basis for part time employees. Pro rata accrual rates are included in the attachment entitled Leave Hours for Reduced Time Bases. Portions of months of service shall not be counted or accumulated.

F. Tuition and all other expenses incurred as a result of educational leave will be the responsibility of the employee.

G. When an employee is granted time off for educational leave, such time off shall be deducted from his/her educational leave balance. Notwithstanding the Work Week Group E provisions in section 19.19 of this agreement, educational leave may be charged on a part-time basis in one-hour increments.

H. When on educational leave, employees shall continue to be eligible for salary adjustments, and shall receive credit for annual leave, vacation, sick leave, educational leave or any other benefit which would normally accrue during such work period.

I. An eligible employee who is appointed without a break in State service to a position ineligible to earn educational leave credits shall retain all accrued educational leave but shall not be permitted to take educational leave unless the employee returns to an eligible position. Employees who do not return to an eligible position shall, upon retirement, be eligible to convert any previously unused educational leave credits as provided in Government Code 20963.1.

J. An eligible employee who separates from State service and returns to an eligible position in less than six months shall be credited with any previously unused educational leave credit and shall commence to accrue and use educational leave on the first of the pay period following completion of one month of qualifying service. Eligible employees who separate from State service and return within six months to a non-eligible position shall lose any unused portion of previously accrued educational leave unless they return to an eligible position within six months of the date of separation.

K. An eligible employee who separates from State service for six months or longer loses any unused portion of previously accrued education leave.

L. Requests under this section shall not be unreasonably denied. A denial of educational leave may be appealed to the Department Head or Designee under the grievance procedure, which shall be the final level of appeal.

M. An employee returning from educational leave shall have the right to return to his/her former position. The term "former position" is defined in Government Code section 18522

8.29 and 8.30 Intentionally Excluded

8.31 Personal Leave Program: 1992 and 2003

A. Personal Leave shall be requested and used by the employee in the same manner as vacation or annual leave. Requests to use Personal Leave must be submitted in accordance with departmental policies on vacation or annual leave. Employees may not be required to use Personal Leave credits.

B. At the discretion of the State, all or a portion of unused Personal Leave credits may be cashed out at the employee's salary rate at the time the Personal Leave payment is made. It is understood by both parties that the application of this cash-out provision may differ from department to department and from employee to employee. Departments shall consider an employee's request to retain leave credits for future use rather than have the leave cashed out. Upon termination from State employment, the employee shall be paid for unused Personal Leave credits in the same manner as vacation or annual leave. Cash-out or lump-sum payment for any Personal Leave credits shall not be considered as "compensation" for purposes of retirement. If funds become available, as determined by the Department of Finance, for the Personal Leave Program , departments will offer employees the opportunity to cash out accrued Personal Leave. Upon retirement/separation, the cash value of the employee's personal leave balance may be transferred into a State of California, DPA Deferred Compensation Program as permitted by Federal and State law.

C. If any dispute arises about this Personal Leave section, an employee may file a grievance and the decision reached at Step 3 (DP A) of the grievance procedure shall be final and not subject to the arbitration clause of this agreement.

D. An employee may request, due to personal hardship, all or a portion of unused Personal Leave credits to be cashed out at the employee's salary rate at the time the Personal Leave payment is made. Upon termination from State employment, the employee shall be paid for unused Personal Leave credits in the same manner as vacation leave. Cash out or lump sum payment for any Personal Leave credits shall not be considered as "compensation" for purposes of retirement.

ARTICLE 9 – HEALTH AND WELFARE

9.1 Health Benefit Plans

A. The employer health benefits contribution for each employee shall be an amount equal to eighty percent (80%) of the weighted average of the Basic health benefit plan premiums for a State active civil service employee enrolled for self-alone, during the benefit year to which the formula is applied, for the four Basic health benefit plans that had the largest State active civil service enrollment, excluding family members, during the previous benefit year. For each employee with enrolled family members, the employer shall contribute an additional eighty percent (80%) of the weighted average of the additional premiums required for enrollment of those family members, during the benefit year to which the formula is applied, in the four Basic health benefit plans that had the largest State active civil service enrollment, excluding family members, during the previous year. To be eligible for this contribution, an employee must positively enroll in a health plan administered or approved by CalPERS.

B. Employees who first become eligible for health benefit enrollment on or after January 1, 2007, shall be subject to a vesting schedule for the employer health contribution for dependents as follows:

1. 50% of the normal employer dependent portion of the contribution upon initial enrollment;

2. 75% of the normal employer dependent portion of the contribution upon completion of twelve (12) months of service; and

3. 100% of the normal employer dependent portion of the contribution upon completion of twenty-four (24) months of service.

C. The parties agree to work cooperatively with CalPERS and the health plans to control premium increases.

D. Health Benefits Eligibility

1. Employee Eligibility - For purposes of this section, "eligible employee" shall be defined by the Public Employees' Medical and Hospital Care Act.

2. Permanent Intermittent (PI) Employees

a. Initial Eligibility – A Permanent Intermittent employee will be eligible to enroll in health benefits during each calendar year if the employee has been credited with a minimum of four hundred-eighty (480) paid hours in one of two PI control periods. For purposes of this section, the control periods are January 1 through June 30 and July 1 through December 31 of each calendar year. An eligible permanent intermittent employee must enroll in a health benefit plan within sixty (60) days from the end of the qualifying control period.

b. Continuing Eligibility – To continue health benefits, a permanent intermittent employee must be credited with a minimum of four hundred-eighty (480) paid hours in a control period or nine hundred-sixty (960) paid hours in two (2) consecutive control periods.

3. Family Member Eligibility - For purposes of this section, "eligible family member" shall be defined by the Public Employees' Medical and Hospital Care Act and includes domestic partners that have been certified with the Secretary of State's office in accordance with AB 26 (Chapter 588, Statutes of 1999).

9.2 Dental Benefit Plans

A. Contribution Amounts

1. Effective January 1, 2006, the State agrees to pay the following contributions for dental benefits. To be eligible for this contribution, an employee must positively enroll in a dental plan administered by the Department of Personnel Administration.

a. The State shall pay up to $35.04 per month for coverage of an eligible employee.

b. The State shall pay up to $61.73 per month for coverage of an eligible employee plus one dependent.

c. The State shall pay up to $89.55 per month for coverage of an eligible employee plus two or more dependents.

2. The employee will pay any premium amount for the dental plan in excess of the State's contribution, except that the employee's share of the cost shall not exceed twenty-five percent (25%) of the total premium.

B. Employee Eligibility

Employee eligibility for dental benefits is the same as that prescribed for health benefits under section 9.1 of this Contract.

C. Family Member Eligibility

Family member eligibility for dental benefits is the same as that prescribed for health benefits under section 9.1 of this Contract.

D. Coverage During First Twenty-Four (24) Months of Employment

Employees first appointed into State service who meet the above eligibility criteria, will not be eligible for enrollment in the State-sponsored indemnity or preferred provider option plan until they have completed twenty-four (24) months of employment without a permanent break in service during the twenty-four (24) month qualifying period. However, if no alternative plan or prepaid plan is available within a fifty (50)-mile radius of the employee's residence, the employee will be allowed to enroll in the indemnity or preferred provider option plan.

9.3 Vision Benefit Plan

A. Program Description

The employer agrees to provide a vision benefit to eligible employees and dependents. The vision benefit provided by the State shall have an employee co-payment of $10 for the comprehensive annual eye examination and $25 for materials.

B. Employee Eligibility

Employee eligibility for vision benefits will be the same as that prescribed for health benefits under section 9.1.

C. Family Member Eligibility

Family member eligibility for vision benefits will be the same as that prescribed for health benefits under section 9.1.

9.4 Rural Health Care Equity Program

Effective July 1, 2005, the State shall continue a Rural Health Care Equity Program for Bargaining Unit 21 members, which may be administered in conjunction with a similar program for State employees in other bargaining units, for excluded employees, and for annuitants. The DPA shall administer any fund involving Bargaining Unit 21 members.

The program shall operate in the following fashion:

1. The State shall contribute $1500 per year on behalf of each bargaining unit member (employee) who lives in a defined rural area, as more definitely described in Government Code section 22877.

   a. For Bargaining Unit 21 members, payments shall be on a monthly basis.

   b. For permanent employees, as in the "Medical Reimbursement Account" situation, the employee does not have to wait for reimbursement of covered medical expenses until the full amount has been deposited.

2. As to any employee who enters State service or leaves State service during a fiscal year, contributions for such employee shall be made on a pro rata basis. A similar computation shall be used for anyone entering or leaving the bargaining unit (e.g., promotion in mid-fiscal year).

3. The money shall be available for use as defined in Government Code section 22877.

4. A Rural Health Care Equity Program will be established with a separate account for Bargaining Unit 21 members, as one of several similar accounts.

5. Each Unit 21 employee shall be able to utilize up to $1500 per fiscal year, pursuant to Government Code section 22877, but with the exceptions for greater utilization hereafter noted. The pro rata limitation pursuant to paragraph 1(b) is applicable here.

6. If an employee does not utilize the complete $1500 pursuant to the procedures and limitations described in Government Code section 22877, then the unused monies shall be put in a "same year pool." That same year pool shall be utilized to pay those who have incurred eligible health care expenses in excess of the $1500, but again according to the procedures and limitations in the attached bill. The monies in the same year pool would be distributed at the end, or even soon after, each fiscal year to that group of employees who had expenses in excess of $1500 in the relevant fiscal year. Those monies shall be distributed on a pro tanto (pro rata) basis.

   a. Any employee not in Bargaining Unit 21 all year shall receive credit under this paragraph utilizing the same pro rata formula as in paragraph 2 above.

   b. If an employee is entitled to less than $25 under this paragraph, the money shall instead go into next year's fund pursuant to paragraph 7 hereafter.

7. If monies still remain after a distribution to such employees (i.e., all employees who spent more than $1500 as provided in Government Code section 22877 were completely reimbursed), then those surplus monies shall be rolled over into the next fiscal year's funds available for distribution to employees whose expenses pursuant to the statute exceed $1500 in such subsequent year. Similar "rollovers" would occur in any years where all employees were completely reimbursed (or had payments made on their behalf) pursuant to Government Code section 22877 and monies still remained in the pool.

9.5 Employee Assistance Program

A. The State recognizes that alcohol, nicotine, drug abuse, and stress may adversely affect job performance and are treatable conditions. As a means of correcting job performance problems, the State may offer referral to treatment for alcohol, nicotine, drug, and stress related problems such as marital, domestic partner, family, emotional, financial, medical, legal, gender transition or other personal problems. The intent of this section is to assist an employee's voluntary efforts to treat alcoholism, nicotine use, or a drug-related or a stress-related problem.

B. Each department head or designee shall designate an Employee Assistance Program Coordinator who shall arrange for programs to implement this section. Employees who are referred to an Employee Assistance Program Coordinator will be referred by the appropriate management personnel. An employee using the Employee Assistance Program, upon approval, may use accrued sick leave credits, CTO, vacation, and holiday credits for such a purpose. Leave of absences without pay may be granted by the department head or designee upon the recommendation of the Employee Assistance Program Coordinator if all sick leave, holiday credits, vacation, and compensating time off have been exhausted, and the employee is not eligible to use Industrial Disability Leave or State Industrial Disability Insurance. A list of all Employee Assistance Program Coordinators and a telephone number to contact the appropriate coordinator shall be furnished to the Union within a timely manner after the execution of this Contract. Changes to such lists and phone numbers shall be promptly furnished to the Union when such changes occur.

C. The records concerning an employee's referral and/or treatment shall be kept confidential. No manager, supervisor, department director, or coordinator shall disclose the nature of the employee's treatment or the reason for employee's leave of absence. Records of such referrals shall not be kept in the employee's personnel file.

D. Upon request by the Union, a department which has an internal Employee Assistance Program for its employees will meet to discuss concerns presented by the Union regarding the administration of the program.

9.6 Pre-Tax of Health/Dental Premium Costs

Employees who are enrolled in any health and/or dental plan which requires a portion of the premium to be paid by the employee, will automatically have their out-of-pocket premium costs taken out of their paycheck before Federal, State, and social security taxes are deducted. Employees who choose not to have their out-of-pocket costs pre-taxed, must make an election not to participate in this benefit.

9.7 Pre-Retirement Death Continuation of Benefits

Government Code section 19849.15 – notwithstanding any other provision of law, the State employer shall, upon the death of an employee while in State service, continue to pay employer contributions for health, dental and vision benefits for a period not to exceed one hundred-twenty (120) days beginning in the month of the employee's death. The surviving spouse, if any, shall be advised of all rights and obligations during this

period regarding the continuation of health and dental benefits as an annuitant by the California Public Employees' Retirement System. The surviving spouse shall also be notified by the department during this period regarding COBRA rights for the continuation of vision benefits.

9.8 Joint Union/Management Benefits Advisory Committee

A. The State and the Union agree to establish a Joint Union/Management Benefits Advisory Committee to review benefits and to make recommendations on cost containment. This Committee shall meet, as least, quarterly. Topics may include, but are not limited to, eligibility, cost containment, number and quality of benefits provided, competitiveness among providers, and standardization of benefit design, utilization, promotion, and cost, wellness and health promotion. This Committee shall be advisory in nature.

B. The Committee shall be comprised of an equal number of Union and management representatives, the total number to be determined by DPA. The Committee shall be co-chaired by a labor and management member.

C. Union members on the Committee shall serve without loss of compensation. All other expenses shall be the responsibility of each party participating on this Committee.

D. DPA will provide necessary staff to support the Committee.

9.9 Presumptive Illness

When required by Cal OSHA provisions, the State shall provide medical examinations for employees working in occupations which expose them to health risks. Examinations shall be in accordance with Cal OSHA regulations.

9.10 Employee Injury on the Job

A. In the event a disabling injury occurs to an employee while on the job, the State agrees to furnish prompt and appropriate transportation to the nearest physician or hospital. Employees may pre-designate a personal physician who would be utilized, if circumstances permit, in the event of a job related injury. The employee must obtain the physician's written consent for this designation; the designation must comply with the other requirements included in Labor Code section 4600; and, the form must be given to the State in advance of any work-related injury. Otherwise, the State will refer the injured employee for treatment to a physician of its choice.

B. An employee who is directed by his/her supervisor to accompany or transport an injured employee to a physician or medical facility shall suffer no loss of compensation for the time spent.

C. If the treating physician advises the injured employee to go home or the employee is admitted and remains in a hospital or clinic for treatment, the employee shall be paid for his/her full shift.

D. The State shall not use the Department of Industrial Relations Disability Evaluation Unit Advisory Rating form as the vehicle to justify removing a worker from his/her normal work assignments.

9.11 Intentionally Excluded

9.12 FlexElect Plan

The State agrees to provide a Flexible Benefits Program under section 125 and related sections 129, 213(d), and 105(b) of the Internal Revenue Code. All participants in the FlexElect Program shall be subject to all applicable Federal statutes and related administrative provisions adopted by DPA. All eligible employees must work one-half time, or more, and have permanent status or, if a limited-term or TAU appointment, must have mandatory return rights to a permanent position. Permanent Intermittent employees are eligible to participate in the FlexElect Program as described in Article 18 of this Contract.

9.13 Long-Term Care Insurance Plans

Employees in classes assigned to Bargaining Unit 21 are eligible to enroll in any long-term care insurance plan sponsored by the California Public Employees Retirement System (CalPERS). The employee's spouse, parents, and spouse's parents are also eligible to enroll in the plans, subject to the underwriting criteria specified in the plan.

The long-term care insurance premiums and the administrative cost to the CalPERS and the State Controller's Office shall be fully paid by the employee and are subject to payroll deductions.

9.14 Intentionally Excluded

9.15 Industrial Disability Leave (IDL)

A. Employees who suffer an industrial injury or illness and would otherwise be eligible for Temporary Disability (TD) benefits under the Labor Code will be entitled to IDL as described in Article 4 of the Government Code, beginning with section 19869. IDL will be paid in lieu of TD benefits.

B. Eligible employees shall receive IDL payments equivalent to full net pay for the first twenty-two (22) workdays after the date of the reported injury.

C. In the event that the disability exceeds twenty-two (22) workdays, the employee will receive 66 and 2/3 percent of gross pay from the twenty-third (23^{rd}) workday of disability until the end of the fifty-second (52^{nd}) week of disability. No IDL payments shall be allowed after two (2) years from the first day (i.e., date) of disability.

D. The employee may elect to supplement payment from the twenty-third (23^{rd}) workday with accrued leave credits including annual leave, vacation, sick leave, or compensating time off (CTO) in the amount necessary to approximate the employee's full net pay. Partial supplementation will be allowed, but fractions of less than one (1) hour will not be permitted. Once the level of supplementation is selected, it may be decreased to accommodate a declining leave balance but it may not be increased. Reductions to supplementation amounts will be made on a prospective basis only.

E. Temporary Disability with supplementation, as provided for in Government Code section 19863, will no longer be available to any State employee who is a member of either the PERS or STRS during the first fifty-two (52) weeks, after the first date of disability, within a two (2) year period

F. If the employee remains disabled after the IDL benefit is exhausted, then the employee will be eligible to receive TD benefits as provided for in the Labor Code and supplementation, as provided in Government Code section 19863.

G. For an employee injured prior to January 1, 2004, IDL may continue beyond the physician's statement that the employee's condition is "permanent and stationary" providing the employee has not exhausted his/her eligibility for IDL benefits, the employee has been declared a "qualified injured worker", and the employee would otherwise be entitled to Vocational Rehabilitation Maintenance Allowance (VRMA). IDL would be paid in lieu of VRMA.

H. All appeals of an employee's denial of IDL benefits shall only follow the procedures in the Government Code and Title 2. All disputes relating to an employee's denial of benefits are not grievable or arbitrable This does not change either party's contractual rights which are not related to an individual's denial of benefits.

9.16 Group Legal Services Plan

Employees in classes assigned to Unit 21 are eligible to enroll in any group legal service plan sponsored by the DPA. The plan shall be offered on a voluntary, after-tax, payroll deduction basis, and any costs associated with administering the plan shall be paid by the participating employees through a service charge.

9.17 State Disability Insurance (SDI)

A. Beginning April 1, 2006, all employees covered by this Contract will be covered under the State Disability Insurance (SDI) benefit in lieu of a Non-Industrial Disability Insurance (NDI) and Enhanced Non-Industrial Disability Insurance (ENDI) benefit as follows:

1. Employees eligible for SDI benefits are those who are defined by section 2601, et seq. of the California Unemployment Insurance Code; such as, an employee disabled due to a non-work related illness or injury of the employee, the employee's family member, domestic partner or the birth, adoption, or foster care placement of a new child.

   Eligible employees covered under the SDI program shall receive benefits pursuant to California Unemployment Insurance Code section 2655.

2. Effective July 1, 2006, the State will pay the full premiums for an employee and any applicable dependent coverage for health, dental and vision benefits for the length of the employee's disability up to a maximum of 26 weeks. The State shall recover the employee's portion of the premium paid through an accounts receivable consistent with Government Code section 19838(a)(2). Any reimbursements for overpayment shall be in monthly installments and the number of repayments shall be equal to the number of monthly overpayments. By mutual agreement, the overpayment may be satisfied by the use of leave credits, excluding sick leave. If an employee's SDI leave extends past 26 weeks, the employee shall remit the full health, dental and vision premiums directly to the healthcare providers.

3. Employees participating in the Rural Health Care Equity Program (section 9.4) shall continue eligibility as long as they are not remitting their health, dental and vision premiums directly to the healthcare providers.

4. If an employee is released by their physician to return to work on a part-time basis, an employee may use accrued vacation, annual leave, CTO, holiday credit, personal leave (PLP), or sick leave balances only for absences from work hours for reasons unrelated to the disability which rendered them eligible for SDI benefits.

5. The parties agree to meet within ninety (90) days following ratification of the Contract to explore alternatives in the area of leave supplementation or integration to the SDI benefit

6. This clause is subject to modification pursuant to subsection A 5 above.

   a. SDI does not cover the first seven (7) days of any disability, therefore, sick leave, vacation, CTO, holiday, PLP, or annual leave may be used to cover this period in its entirety.

   b. An employee may elect to supplement their SDI benefit with leave integration up to 40 hours per month. However, the employee combined SDI benefit and use of leave credits cannot exceed their regular monthly net pay. Within one week of being disabled from work, the employee or his/her representative must contact their departmental personnel office to provide the following information:

      (1) The date the disability/illness commenced;

      (2) The estimated duration of the disability;

      (3) A phone number where the employee can be reached;

      (4) The election of leave credits usage during the first week of disability;

      (5) The number of hours in a month to be charged to leave credits;

      (6) Whether or not the employee is planning to file for SDI;

      (7) The election to integrate leave credits with SDI benefits;

c. Once the SDI benefit amount has been determined, the employee must provide a copy of the SDI award letter and the SDI check stubs to the employee's personnel office in order to ensure proper integration of benefits and payment.

B. During the three (3) month period following ratification of this Contract by the SEIU, Local 1000 members and approval by the Legislature, there will be an open enrollment period where employees may opt out of the Annual Leave Program.

C. All appeals of a denial of an employee's SDI benefits shall only follow the procedures in the California Unemployment Insurance Code and Title 22 of the California Code of Regulations. All disputes relating to an employee's denial of benefits are not grievable or arbitrable. This limitation does not change either party's contractual rights which are not related to the denial of an individual employee's benefits.

9.18 Alternative Pre-Retirement Death Benefit

Unit employees are subject to the alternate death benefit, a death benefit payable to eligible family members when death occurs prior to age 50, provided by Government Code section 21547.

ARTICLE 10 – HEALTH AND SAFETY

10.1 Health and Safety Commitment

The State is committed to providing a safe and healthy work place for State employees. The Union supports a positive and strong health and safety program and shall cooperate with the State's efforts in this regard.

10.2 Health and Safety Committees

A. The parties agree that Joint Union/Management Health and Safety Committees are appropriate. At the Union's request, each department shall establish at least one Joint Union/Management Health and Safety Committee.

B. At the Union's request, the State may establish local work site Joint Union/Management Health and Safety Committees consisting of an equal number of Union and management representatives to address specific areas of concern.

These committees shall meet, at least, quarterly unless there is a mutual agreement between a department and the Union to meet on a different schedule. These committees shall meet for the purpose of discussing health and safety problems, recommending appropriate actions on health and safety issues such as, but not limited to, indoor air quality, safety promotion, cumulative trauma disorders, employees safety training, preventing neck and back injuries, record keeping, and how to encourage employees to be more conscious of safety.

C. Employees appointed to serve on the committee shall serve without loss of compensation.

D. To the extent permitted by law, and upon request, copies of employee occupation injury reports will be furnished to the appropriate Joint Union/Management Health and Safety Committee and shall remain confidential.

E. The parties agree that training on domestic violence, workplace security, rape prevention, and assaultive behavior are appropriate subjects for high priority consideration by the Joint Union/Management Health and Safety Committee.

10.3 Occupational Hazards

When an employee in good faith believes that he/she is being required to work where an immediate and recognizable threat to his/her health and safety exists, he/she will so notify his/her supervisor. The supervisor will immediately investigate the situation and either direct the employee to perform some other task away from the occupational hazard(s) or proclaim the area safe and direct the employee to proceed with his/her assigned duties. This direction shall normally be after consulting with higher level supervisory or management staff. If the Union or the employee still believes the unsafe condition(s) exist, the Union or the employee may file a grievance alleging a violation of this section in accordance with the Health and Safety grievance procedure.

10.4 Health Promotion Activities

A. The State, in an effort to increase morale and productivity, to reduce absenteeism, injuries and illness, and to contain rising health care costs, encourages departments and employees to participate in health promotion and injury prevention activities.

B. Departments may, based on operational needs, allow Work Week Group 2 employees up to one full-hour of administrative time-off (ATO) per month, to participate in State-sponsored on-site health promotion activities.

C. State-sponsored on-site health promotion activities may include but are not limited to the following activities held at the work site: seminars, demonstrations, exercise or physical fitness classes, educational forums, blood drives, and flu immunizations

10.5 and 10.6 Intentionally Excluded

10.7 Protective Clothing

A. When protective clothing is required by the employee's supervisor, the State shall either provide the protective clothing or reimbursement of actual substantiated amounts for initial or replacement cost as necessary. Employees must request reimbursement in accordance with department policy. Reimbursement shall only be provided when the employee substantiates the expense by providing a receipt(s) for the required item(s). "Protective clothing" means attire that is worn over, or in place of, regular clothing and is necessary to protect the employee's clothing from damage or stains which would be present in the normal performance of his/her duties and/or which is required for the employee to protect the employee's body from possible injury.

B. Protective clothing provided pursuant to this section is State owned or leased property which will be maintained as the State deems necessary.

C. Protective clothing damaged due to the negligence of the employee shall be replaced by the employee at his/her expense.

D. The employee shall comply with any instructions provided by the State in regards to protective clothing.

10.8 through 10.19 Intentionally Excluded

10.20 Training for Hostile and Threatening Behavior

Working within budgetary and work load constraints, each department through its annual training plan process, will provide training in handling hostile and threatening behavior where required for job performance.

10.21 Intentionally Excluded

10.22 Computer Work Stations

A. In order to provide a safe and healthy workplace for its employees, the State agrees to order computer equipment wherever possible in accordance with the recommendations made by the Joint Union/Management Video Display Terminal Committee Report.

B. The State shall provide instruction in the proper operation and adjustment of computers and workstation equipment. Both parties will encourage employees to properly use computer equipment. The State shall maintain the Computer User's Handbook which will be available to all departments for training purposes.

C. The State shall take action as it deems necessary to make the following equipment available to all employees that use computers:

1. Glare screens;
2. Document holders;
3 Adjustable chairs;
4. Adjustable keyboards, computer tables and supports;
5. Foot and wrist rests;
6. Wheeled carriers;
7. Ergonomic Keyboards;
8. Telephone Headsets;
9. Alternative pointing devices (rollerball, trackball, touch-pad, etc.) as necessary.

Additionally, the State shall take action as it deems necessary to mitigate glare from the workplace, such as, rearrangements of the work stations to avoid glare on terminal screens from windows and ceiling luminaries, or providing other measures to reduce the glare from light sources.

D. Upon request by the Union, the State agrees to meet to review any revisions or additions to the State's ergonomic guidelines for computer equipment.

10.23 Independent Medical Examinations

A. Whenever the State believes that an employee, due to an illness or injury, is unable to perform his/her normal work duties, the State may require the employee to submit to an independent medical examination at State expense. The medical examination will be separate of any medical services provided under the State's Workers' Compensation Program.

B. If the State, after the independent medical examination, determines that the employee cannot perform the essential functions of the job position, the State shall give the employee the opportunity to challenge the State's medical evaluation by supplying his/her personal medical evaluations to dispute the State's findings.

10.24 Intentionally Excluded

10.25 Training in Infectious Disease Control

The parties agree that training in infectious disease control is an appropriate subject for high priority consideration by the appropriate Joint Labor/Management Health and Safety Committee.

10.26 through 10.29 Intentionally Excluded

10.30 Health and Safety Grievances

A. It is the policy of the State employer to enforce safety and health, policies, procedures, and work practices and protect employees from harm in connection with State operations.

B. To this end, the parties agree that it is in their mutual best interest to endeavor to make the work site free from situations, circumstances, or conditions that constitute an immediate and recognizable threat to the health and safety of employees.

C. It is the intent of this Health and Safety Grievance Procedure to ensure a prompt response to employees who feel that a situation exists which constitutes an immediate and recognizable threat to their health and safety.

D. When an employee in good faith believes that he/she is being required to work where an immediate and recognizable threat to his/her health and safety exists, he/she will so notify his/her supervisor. The supervisor will immediately assess the situation, direct any necessary corrective action to eliminate any immediate and recognizable threat to the employee's health and safety, and either direct the employee to temporarily perform some other task or direct the employee to proceed with his/her assigned duties. If the Union or the employee still believe the immediate

and recognizable threat to his/her health and safety exists, the Union or the employee may file a grievance alleging a violation of this section at Step 2 of the grievance procedure as follows:

1. Health and Safety Grievance – Step 2

   a. If the grievant is not satisfied with the decision rendered by his/her supervisor, the grievant may appeal the decision in writing, within five (5) calendar days after receipt of the decision to the department head or designee as the second level of appeal.

   b. The person designated by the department head as the second level of appeal shall respond to the grievance in writing within fourteen (14) calendar days. A copy of the written response shall be sent concurrently to the SEIU, Local 1000, Headquarters, Sacramento, CA 95814.

2. Health and Safety Grievance – Step 3

   a. If the grievant is not satisfied with the decision rendered pursuant to Step 2, the grievant may appeal the decision in writing, within five (5) calendar days, after receipt of the decision to DPA as the third level of appeal. The Union shall concurrently send a copy of the appeal to the affected Department(s).

   b. The Director of DPA or designee shall respond to the grievance in writing within fourteen (14) calendar days.

   c. If the grievance is not resolved at Step 3 within twenty-four (24) hours after receipt of the third step response, the Union shall have the right to submit the grievance to arbitration.

   d. The arbitration shall take place no later than fourteen (14) days following the Union's request unless the parties mutually agree otherwise.

   e. Arbitration shall be in accordance with section 6.11 B of this Article unless otherwise provided.

ARTICLE 11 – SALARIES

11.1 Salaries

A. Within sixty (60) days following legislative approval, SEIU Local 1000 represented employees shall receive a one-time bonus of one thousand dollars ($1000) as follows:

   1. Permanent and limited term full time employees who were on payroll on June 30, 2006, shall receive $1000; or

   2. Permanent and limited term part time employees who were on payroll on June 30, 2006, shall receive $1000; or

3. Employees holding a TAU appointment who were on payroll June 30, 2006 and who were paid for 519 or more hours (intermittent appointment) or the equivalent of 519 hours (full-time and part-time appointment) during the twelve (12) month period of July 1, 2005, through June 30, 2006, shall receive $1000. An employee holding a TAU appointment with prior permanent status who accepts a TAU appointment without a break in service shall be entitled to the bonus under Criteria 1 and 2 above or

4. Permanent, limited -term and seasonal intermittent employees who were on payroll June 30, 2006 and were paid for 519 or more hours during the twelve (12) month period of July 1, 2005, through June 30, 2006, shall receive $1000.

5. Any employee who holds multiple appointments in classifications represented by SEIU Local 1000 and/or any other bargaining unit which agreed to this bonus shall receive $1000 if their combined time base is equal to or greater than one-quarter (1/4) time (For example, an employee holds two (2) appointments; both as one-quarter (1/4) time-base and in bargaining units eligible for this bonus, the employee shall receive the maximum amount, $1000.)

6. The bonus received by the employee shall not be considered as compensation for the purposes of retirement contributions.

B. Any employee who holds multiple appointments in classifications represented by SEIU, Local 1000 and/or any other bargaining unit which agreed to this bonus shall receive $1000 if their combined time base is equal to or greater than one-quarter (1/4) time. (For example, an employee holds two appointments; both as one-quarter (1/4) time-base and in bargaining units eligible for this bonus, the employee shall receive the maximum amount, $1000.)

C. The bonus received by the employee shall not be considered as compensation for the purposes of retirement contributions.

D. Effective July 1, 2006, all SEIU, Local 1000 represented classifications shall receive a general salary increase of three and one-half percent (3.5%), (Excluding classifications in CDCR, Juvenile programs that are included in the Farrell settlement). The increase shall be calculated by multiplying the base salary by 1.035 The parties recognize that the actual salary increase for each classification may vary slightly due to rounding.

   Classifications receiving the Plata/Plata Equity differentials (CDCR & DMH) shall have their differential adjusted downward by a dollar amount that will result in the incumbents receiving the same gross monthly salary as was received prior to the general salary increase.

E. Effective July 1, 2007, the State agrees to provide a cost of living adjustment, to all SEIU, Local 1000 classifications as follows; (Excluding classifications in CDCR, Juvenile programs that are included in the Farrell settlement)

1. The salary increase shall be equal to the total percentage change in the Consumer Price Index (CPI) for the twelve month period from April 2006 through March 2007. The specific amount of the cost of living adjustment shall be determined by the increase in the cost of living for the year using the Consumer Price Index, U.S. Department of Labor, Index CPI-W West Urban – All Urban Consumers (Not Seasonally Adjusted), Series CUUR0400SAO, United States.

2. The cost of living adjustment shall not be less than 2.0% or more than 4.0%.

   e.g: If the cost of living for the year, as determined in #1 above, is less than 2.0%, the Cost of living adjustment for the year shall be established at 2.0%. If the cost of living for the year is greater than 4.0%, for the specified period, the Cost of Living Adjustment for the year shall be established at 4%. If the cost of living for the year increases by an amount between 2.0% and 4.0%, employees shall receive the specific cost of living increase rounded to the nearest tenth.

3. The parties recognize that the actual salary increase for each classification may vary slightly due to rounding.

4 The following illustrates the specific method of computation to be used in calculating the salary increase, using fictional data for illustration purposes only.

EXAMPLE for 2007 Increase (as described in #1)

CPI for March 2007 (EXAMPLE ONLY)	202.4
Less CPI for March 2006	197.1
Index Point Change	5.2
Divided by Previous CPI (March 2006)	197.1
Equals	.02637
Result multiplied by 100 (100 X .02637)	2.6
Cost of Living adjustment for 2007	2.6%

Salary adjustment effective July 1, 2007 (EXAMPLE ONLY) 2.6%

11.2 Intentionally Excluded

11.3 Salary Definitions

For the purpose of salary actions affecting employees assigned to Unit 21, the following definitions shall apply.

A. "Salary range" is the minimum and maximum rate currently authorized for the class.

B. "Step" for employees compensated on a monthly basis is a five percent (5%) differential above or below a salary rate rounded to the nea rest dollar and for employees compensated on a daily or hourly basis is a 5% differential above or below a rate rounded to the dollar and cents amount.

C. "Rate" for employees compensated on a monthly basis is any one of the full dollar amounts found within the salary range and for employees compensated on a daily or hourly basis any one of the dollar and cents amounts found within the salary range.

D. "Range differential" is the difference between the maximum rate of two salary ranges of the Pay Plan.

E. "Substantially the same salary range" is a salary range with the maximum salary rate less than two steps higher or lower than the maximum salary rate of another salary range.

F. "Higher salary range" is a salary range with the maximum salary rate at least two steps higher than the maximum salary rate of another salary range.

G. "Lower salary range" is a salary range with the maximum salary rate at least two steps lower than the maximum salary rate of another salary range.

Under paragraph B., one step higher is calculated by multiplying the rate by 1 05. One step lower is calculated by dividing the rate by 1.05 (e.g., $2,300 x 1.05 =$2415, one step higher; $2415/1.05 = $2,300, one step lower).

Unless otherwise provided by the State Personnel Board, the lowest salary range currently authorized for the class is used to make salary comparisons between classes. Any rate falling within the salary range for a class may be used to accomplish appropriate step differentials in movements between classes and salary ranges.

H. "Top Step Rounding" the maximum step of each classification in Unit 21 shall be extended as follows:

1. Classes with a three (3) step range or ranges shall have a new maximum step established by multiplying the minimum by 1.1025 and rounding up to the nearest dollar.

2. Classes with a four (4) step range or ranges shall have a new maximum step established by multiplying the minimum step by 1.1575 and rounding to the nearest dollar.

3. Classes with a five (5) step range or ranges shall have a new maximum step established by multiplying the minimum step by 1.2150 and rounding to the nearest dollar.

4. Any classes with only 1 or 2 rates are not included in this provision. This provision does not apply to classes with over five (5) steps.

11.4 Timely Payment of Wages

The State agrees to provide timely payment of wages after an employee's discharge, layoff, or resignation consistent with applicable department and Controller's Office policies.

11.5 and 11.6 Intentionally Excluded

11.7 Merit Salary Adjustments (MSA)

A. Employees shall receive annual merit salary adjustments (MSA) in accordance with Government Code section 19832 and applicable DPA rules.

B The employee shall be informed in writing of denial ten (10) working days prior to the proposed effective date of the merit salary adjustment.

C. Denial of the MSA shall be subject to the grievance and arbitration procedure.

11.8 Intentionally Excluded

11.9 Bilingual Differential Pay

Bilingual Differential Pay applies to those positions designated by DPA as eligible to receive bilingual pay according to the following standards:

A. Definition of Bilingual Position for Bilingual Differential Pay:

1. A bilingual position for salary differential purposes requires the use of a bilingual skill on a continuing basis averaging ten percent (10%) of the time. Anyone using their bilingual skills ten percent (10%) or more of the time will be eligible whether they are using them in a conversational, interpretation, or translation setting. An employee may provide their supervisor with data supporting the use of their bilingual skills ten percent (10%) or more of the time. Management will evaluate this date in assigning bilingual designation to the position. In order to receive bilingual differential pay, the position/employee must be certified by the using department and approved by DPA. (Time should be an average of the time spent on bilingual activities during a given fiscal year.);

2. The position must be in a work setting that requires the use of bilingual skills to meet the needs of the public in either:

   a. A direct public contact position;

   b. A hospital or institutional setting dealing with patient, client, student, or inmate needs;

   c. A position utilized to perform interpretation, translation, or specialized bilingual activities for the department and its clients;

3. Position(s) must be in a setting where there is a demonstrated client or correspondence flow where bilingual skills are clearly needed;

4. Where organizationally feasible, departments should ensure that positions clearly meet the standards by centralizing the bilingual responsibility in as few positions as possible;

5. Actual time spent conversing or interpreting in a second language and closely related activities performed directly in conjunction with the specific bilingual transaction will count toward the ten percent (10%) standard.

B. Rate:

1. An employee meeting the bilingual differential pay criteria during the entire pay period would receive a maximum of $100 per pay period including holidays.

2. A monthly employee meeting the bilingual differential pay criteria less than the entire pay period would receive the differential on a pro rata basis.

3. A fractional-month employee meeting the bilingual differential pay criteria would receive the differential on a pro rata basis.

4. An employee paid by the hour meeting the bilingual differential pay criteria would receive a differential of $.58 cents per hour.

C. Employees, regardless of the time base or tenure, who use their bilingual skills more than ten percent (10%) of the time on a continuing basis and are approved by DPA will receive the bilingual differential pay on a regular basis.

D. Bilingual differential payments will become earnings and subject to contributions to the State Retirement System, OASDI, levies, garnishments, Federal and State taxes.

E. Employees working in positions which qualify for regular bilingual differential pay as authorized by DPA may receive the appropriate pay during periods of paid time off and absences (e.g., sick leave, vacation, holidays, etc.).

F. Employees will be eligible to receive the bilingual differential payments on the date DPA approves the departmental pay request. The effective date may be retroactive to the date of appointment to a position requiring bilingual skills when the appointment documentation has been delayed. The effective date may be retroactive up to sixty (60) days when the incumbent's duties are changed to include the use of bilingual skills.

G. Bilingual salary payments will be included in the calculation of lump-sum vacation, sick leave, and extra hour payments to employees terminating their State service appointment while on bilingual status.

H. Work Week Group 2 employees will receive bilingual salary compensation for overtime hours worked.

I. Employees receiving regular bilingual differential pay will have their transfer rights determined from the maximum step of the salary range for their class. Incumbents receiving bilingual pay will have the same transfer opportunities that other class incumbents are provided.

J. The bilingual differential pay should be included in the rate used to calculate temporary disability, Industrial Disability, and State Industrial Disability leave benefits.

11.10 Sustained Superior Accomplishment Awards

Sustained Superior Accomplishment Awards shall not be considered "compensation" for purposes of retirement.

11.11 Payroll System

The parties agree to establish a Union/Management Committee to advise the State Controller on planned and anticipated changes to the State's payroll system. Topics to be explored include, but are not limited to, accuracy and timeliness of the issuance of overtime warrants, changes in earning statements, and design of and transition to a biweekly pay system.

The committee shall be comprised of an equal number of management representatives and Union representatives. The Union may have one representative who shall serve without loss of compensation.

11.12 Deferred Compensation Program

Employees in Unit 21 are to be included in the State of California, DPA, Savings Plus Deferred Compensation Program (457 Deferred Compensation Plan and 401(k) Thrift Plan). Subject to State Controller's Office policies and procedures, employees in Unit 21 may participate in the State Controller's Office 403 (b) tax shelter annuity program.

Upon request of the Union, the State shall meet to discuss significant changes to the State Controller's Office 403 (b) tax shelter annuity program.

11.13 Tax Deferral of Lump Sum Leave Cash Out Upon Separation

A. To the extent permitted by Federal and State law, employees who separate from State service who are otherwise eligible to cash out their vacation and/or annual leave balance, may ask the State to tax defer and transfer a designated monthly amount from their cash payment into their existing 457 and/or 401(k) plan offered through the State's Savings Plus Program (SPP).

B. If an employee does not have an existing 457 and/or 401(k) plan account, he/she must enroll in the SPP and become a participant in one or both plans no less than 60 days prior to his/her date of separation.

C. Such transfers are subject to and contingent upon all statutes, laws, rules and regulations authorizing such transfers including those governing the amount of annual deferrals.

D. Employees electing to make such a transfer shall bear full tax liability, if any, for the leave transferred (e.g., "over-defers" exceeding the limitation on annual deferrals).

E. Implementation, continuation and administration of this section is expressly subject to and contingent upon compliance with the SPP's governing Plan document (which may at the State's discretion be amended from time to time), and applicable Federal and State laws, rules and regulations.

F. Disputes arising under this section of the MOU shall not be subject to the grievance and arbitration provision of this agreement.

11.14 through 11.16 Intentionally Excluded

11.17 Recruitment and Retention Differentials

A. Upon approval by DPA and certification of the availability of funding, the State may provide a monthly recruitment and retention differential to BU 21 employees.

B. Such differentials may be authorized for specific positions, classifications, facilities, or geographic locations.

C. The State agrees to notice BU 21 a minimum of thirty (30) days prior to establishment or discontinuance of a recruitment and retention differential.

D. Less than full-time permanent employees and permanent intermittent employees may receive a recruitment and retention differential on a pro rata basis.

E. Recruitment and retention shall not be considered compensation for purposes of retirement.

F. The amount and location of such differentials is neither grievable nor arbitrable

11.18 through 11.63 Intentionally Excluded

11.64 Professional Development Incentive

The State recognizes the importance of continuing professional development within the education community. To encourage employees to enhance their education expertise, Unit 21 employees shall be granted a Professional Development Incentive of $300. Employees are entitled to receive this incentive only once, and shall be subject to the following criteria:

A. Employees must have completed at least six (6) hours of education study and/or research in order to enhance their professional capabilities.

B. Eligibility must be verified and approved by the employee's departmental ERO/LRO. Verification will be submitted on a form provided by the State.

11.65 Arduous Pay Differential

The State shall establish an "arduous pay" program to provide additional compensation to FLSA exempt employees assigned to WWG E when there is no other way to recognize the performance of additional duties and responsibility which clearly exceed the normal demands of an employee's classification/position. Employees shall be eligible for this pay differential for up to four months per fiscal year (or per event for emergencies involving loss of life or property.)

Requests for arduous pay shall be made to DPA on a case-by-case basis by the employing department. The DPA shall evaluate said requests based on whether they satisfy all of the following

1. Nonnegotiable Deadline or Extreme Urgency

   The work must have a deadline or completion date that cannot be controlled by the employee or his/her supervisor, or must constitute an extreme urgency. The deadline or extreme urgency must impose upon the employee an immediate and urgent demand for his/her work that cannot be avoided or mitigated by planning, rescheduling, postponement or rearrangement of work, or modification of the deadline.

2. Work Exceeds Normal Work Hours and Normal Productivity

   The work must be extraordinarily demanding and time consuming, and of a nature that it significantly exceeds the normal workweek and work productivity expectations of the employee's work assignment.

   Employees who are excluded from FLSA are expected to work variable work schedules as necessary to meet the demands of the job. This pay differential is not intended for employees who regularly or occasionally work in excess of the normal workweek to meet normal workload demands. It is intended where in addition to working a significant number of hours in excess of the normal work week, there is a demand for and achievement of greater productivity or result.

3. Work is Unavoidable

   The work must be of a nature that it cannot be postponed, redistributed, modified, reassigned or otherwise changed in any way to provide relief.

4. Work involves Extremely Heavy Workload

   The work is of a nature that it cannot be organized or planned to enable time off in exchange for the extra hours worked. The absence from work would not normally satisfy this requirement because time off can be arranged as compensation for this demand.

5. No Other Compensation

   The employee who is receiving this pay differential is not eligible for any other additional compensation for the type and nature of the above described work.

Department decisions not to submit arduous pay requests to DPA, and DPA decisions to deny arduous pay, shall not be subject to the grievance or arbitration provisions of this agreement.

ARTICLE 12 – ALLOWANCES AND REIMBURSEMENTS

12.1 Business and Travel Expense

The State agrees to reimburse employees for actual, necessary and appropriate business expenses and travel expenses incurred fifty (50) miles or more from home and headquarters, in accordance with existing Department of Personnel Administration rules

and as set forth below. Lodging and/or meals provided by the State or included in hotel expenses or conference fees or in transportation costs such as airline tickets or otherwise provided shall not be claimed for reimbursement. Snacks and continental breakfasts such as rolls, juice, and coffee are not considered to be meals. Each item of expenses of $25 or more requires a receipt; receipts may be required for items of expense that are less than $25. When receipts are not required to be submitted with the claim, it is the employee's responsibility to maintain receipts and records of their actual expenses for tax purposes. Each State agency shall determine the necessity for travel and the mode of travel to be reimbursed.

A. Meals/Incidentals: Meal expenses for breakfast, lunch, and dinner will be reimbursed in the amount of actual expenses up to the maximums. The term "incidentals" includes, but is not limited to, expenses for laundry, cleaning and pressing of clothing, and fees and tips for services, such as for porters and baggage carriers. It does not include taxicab fares, lodging taxes or the cost of telegrams or telephone calls.

1. Rates - Actual meal/incidental expenses incurred will be reimbursed in accordance with the maximum rates and time frame requirements outlined below:

Breakfast	up to	$ 6.00	
Lunch	up to	$10.00	
Dinner	up to	$18.00	
Incidentals	up to	$ 6.00	
Total	up to	$40.00	(Every full 24 hours of travel)

2. Time Frames - For continuous short-term travel of more than twenty-four (24) hours but less than thirty-one (31) days, the employee will be reimbursed for actual costs up to the maximum for each meal, incidental, and lodging expense for each complete twenty-four (24) hours of travel, beginning with the traveler's time of departure and return as follows:

   a. On the first day of travel on a trip of more than twenty-four (24) hours:

Trip begins at or before 6 a.m.	Breakfast may be claimed
Trip begins at or before 11 a.m.	Lunch may be claimed
Trip begins at or before 5 p.m.	Dinner may be claimed

b. On the fractional day of travel at the end of a trip of more than twenty-four (24) hours:

Trip ends at or after 8 a.m.	Breakfast may be claimed
Trip ends at or after 2 p.m.	Lunch may be claimed
Trip ends at or after 7 p.m.	Dinner may be claimed

If the fractional day includes an overnight stay, receipted lodging may be claimed. No meal or lodging expenses may be claimed or reimbursed more than once on any given date or during any twenty-four (24)-hour period.

c. For continuous travel of less than twenty-four (24) hours, the employee will be reimbursed for actual expenses up to the maximum as follows:

Travel begins at or before 6 a.m. and ends at or after 9 a.m.: Breakfast may be claimed

Travel begins at or before 4 p.m. and ends at or after 7 p.m.: Dinner may be claimed

If the trip extends overnight, receipted lodging may be claimed.

No lunch or incidentals may be claimed on a trip of less than twenty-four (24) hours.

B. Lodging: All lodging reimbursement requires a receipt from a commercial lodging establishment such as a hotel, motel, bed and breakfast inn, or public campground that caters to the general public. No lodging will be reimbursed without a valid receipt.

1. Regular State Business Travel

a. Statewide, in all locations not listed in c. below, for receipted lodging while on travel status to conduct State business:

With a lodging receipt: Actual lodging up to $84 plus applicable taxes.

b. When employees are required to do business and obtain lodging in the counties of Alameda, San Francisco, San Mateo and Santa Clara, reimbursement will be for actual receipted lodging to a maximum of $140 plus applicable taxes. When employees are required to do business and obtain lodging in the counties of Los Angeles and San Diego, actual lodging up to $110 plus applicable taxes.

2. State Sponsored Conferences or Conventions

For receipted lodging while attending State Sponsored conferences and conventions, when the lodging is contracted by the State sponsor for the event, and the appointing authority has granted prior approval for attendance and lodging at the contracted rate and establishment: Actual lodging up to $110 plus applicable taxes.

3. Non-State Sponsored Conferences or Conventions

   For receipted lodging while attending non-State sponsored conferences and conventions, when the lodging is contracted by the sponsor for the event, and the appointing authority has granted prior approval for attendance and lodging at the contracted rate and establishment: Actual lodging when approved in advance by the appointing authority.

   Reimbursement of lodging expenses in excess of specified amounts, excluding taxes requires advance written approval from the Department of Personnel Administration. The Department of Personnel Administration may delegate approval authority to departmental appointing powers or increase the lodging maximum rate for the geographical area and period of time deemed necessary to meet the needs of the State. An employee may not claim lodging, meal, or incidental expenses within 50 miles of his/her home or headquarters.

C. Long-term Travel: Actual expenses for long term meals and receipted lodging will be reimbursed when the employee incurs expenses in one location comparable to those arising from the use of establishments catering to the long-term visitor.

   1. Full Long-term Travel - In order to qualify for full long-term travel reimbursement, the employee on long-term field assignment must meet the following criteria:

      - The employee continues to maintain a permanent residence at the primary headquarters, and
      - The permanent residence is occupied by the employee's dependents, or
      - The permanent residence is maintained at a net expense to the employee exceeding $200 per month.

      The employee on full long-term travel who is living at the long-term location may claim either:

      - Reimbursement for actual individual expense, substantiated by receipts, for lodging, water, sewer, gas and electricity, up to a maximum of $1,130 per calendar month while on the long-term assignment, and actual expenses up to $10 for meals and incidentals, for each period of twelve (12) to twenty-four (24) hours and up to $5 for actual meals and incidentals for each period of less than twelve (12) hours at the long-term location, or
      - Long-term subsistence rates of $24 for actual meals and incidentals and $24 for receipted lodging for travel of twelve (12) hours up to twenty-four (24) hours; either $24 for actual meals or $24 for receipted lodging for travel less than twelve (12) hours when the employee incurs expenses in one location comparable to those arising from the use of establishments catering to the long-term visitor.

2. An employee on long-term field assignment who does not maintain a separate residence in the headquarters area may claim long-term subsistence rates of up to $12 for actual meals and incidentals and $12 for receipted lodging for travel of twelve (12) hours up to twenty-four (24) hours at the long-term location; either $12 for actual meals or $12 for receipted lodging for travel less than twelve (12) hours at the long-term location.

3. Employees, with supervisor's approval, after completing the work shift remain at the job or LTA location past the Friday twelve (12)-hour clock will receive full per diem for Friday. Those staying overnight shall not receive any additional per diem regardless of the Saturday departure time. An employee returning to the temporary residence on Sunday will receive full per diem. This does not change Department of Personnel Administration policy regarding the per diem clock which starts at the beginning of the work shift on Monday. If the normal workweek is other than as stated above, the same principle applies.

   The following clarifies Department of Personnel Administration policy regarding an employee leaving the LTA location on personal business:

   The reference to leaving the LTA location for personal business and not claiming per diem or transportation expenses assumes that the employee stays overnight at a location other than the long-term accommodations.

D. Out-of-State Travel: For short-term out-of-State travel, State employees will be reimbursed actual lodging, supported by a receipt, and will be reimbursed for actual meal and incidental expenses in accordance with above. Failure to furnish lodging receipts will limit reimbursement to the meal/incidental rate above. Long-term out-of-State travel will be reimbursed in accordance with the provisions of long-term travel above.

E. Out of Country Travel: For short-term out of country travel, State employees will be reimbursed actual lodging, substantiated by a receipt, and will be reimbursed actual meals and incidentals up to the maximums published in column (B) of the Maximum

   Travel per Diem Allowances for Foreign Areas, section 925, U.S. Department of State Standardized Regulations and the meal/incidental breakdown in Federal Travel Regulation Chapter 301, Travel Allowances, Appendix B. Long-term out of country travel will be reimbursed in accordance with the provisions of long-term travel above, or as determined by the Department of Personnel Administration.

   Subsistence shall be paid in accordance with procedures prescribed by the Department of Personnel Administration. It is the responsibility of the individual employee to maintain receipts for their actual meal expenses.

F. Transportation: Transportation expenses include, but are not limited to, airplane, train, bus, taxi fares, rental cars, parking, mileage reimbursement, and tolls that are reasonably and necessarily incurred as a result of conducting State business. Each State agency shall determine the necessity for travel, and the mode of travel to be reimbursed.

1. Mileage Reimbursement

   a. Effective July 1, 2006, when an employee is authorized by his/her appointing authority or designee to operate a privately owned vehicle on State business the employee will be allowed to claim and be reimbursed at the Federal Standard Mileage Rate (FSMR).

   b. When an employee is required to report to an alternative work location, the employee may be reimbursed for the number of miles driven in excess of his/her normal commute.

2. Specialized Vehicles – Effective July 1, 2006, employees who must operate a motor vehicle on official State business and who, because of a physical disability, may operate only specially equipped or modified vehicles may claim the FSMR, with certification. Supervisors who approve claims pursuant to this subsection have the responsibility of determining the need for the use of such vehicles.

3. Private Aircraft Mileage – When an employee is authorized by his/her department, reimbursement for the use of the employee's privately owned aircraft on State business shall be made at the rate of 50 cents per statute mile. Pilot qualifications and insurance requirements will be maintained in accordance with the Department of Personnel Administration Rule 599.628.1 and the State Office of Risk and Insurance Management.

4. Mileage to/From a Common Carrier – When the employee's use of a privately owned vehicle is authorized for travel to or from a common carrier terminal, and the employee's vehicle is not parked at the terminal during the period of absence, the employee may claim double the number of miles between the terminal and the employee's headquarters or residence, whichever is less, while the employee occupies the vehicle. Exception to "whichever is less". If the employee begins travel one (1) hour or more before he normally leaves his home, or on a regularly scheduled day off, mileage may be computed from his/her residence.

G. Receipts: Receipts or vouchers shall be submitted for every item of expense of $25 or more. In addition, receipts are required for every item of transportation and business expense incurred as a result of conducting State business except for actual expenses as follows:

1. Railroad and bus fares of less than $25 when travel is wholly within the State of California.

2. Street car, ferry fares, bridge and road tolls, local rapid transit system, taxi, shuttle or hotel bus fares, and parking fees of $10 or less for each continuous period of parking or each separate transportation expense noted in this item.

3. Telephone, telegraph, tax, or other business charges related to State business of $5 or less.

4. In the absence of a receipt, reimbursement will be limited to the non-receipted amount above.

5. Reimbursement will be claimed only for the actual and necessary expenses noted above. Regardless of the above exceptions, the approving officer may require additional certification and/or explanation in order to determine that an expense was actually and reasonably incurred. In the absence of a satisfactory explanation, the expense shall not be allowed.

12.2 Moving and Relocation

Whenever a State employee is reasonably required by the State to change his/her place of residence, the State shall reimburse the employee for approved items in accordance with the lodging, meal and incidental rates and time frames established in section 12.1, and in accordance with the existing requirements, time frames and administrative rules and regulations for reimbursement of relocation expenses that apply to excluded employees. The State will provide the employee with a full disclosure of moving costs reimbursement and amounts to be withheld within a reasonable time frame, prior to the move.

12.3 Parking Rates

A. For the term of this agreement, the parties agree that the State may increase parking rates in existing owned or leased lots, in urban congested ar eas, no more than $20 per month above the current rate, charged to employees in specific locations where they park. Congested urban areas ar e areas such as Sacramento, San Francisco Bay, Fresno, Los Angeles, San Bernardino, Riverside, and San Diego areas. E very effort shall be made to provide employees sixty (60) days but no less than thirty (30) days notice of a parking rate increase. The State shall not increase rates for existing parking lots where employees do not currently pay parking fees. Rates at new lots administered or leased by the State will be set at a level comparable to rates charged for similar lots in the area of the new lot, e.g., rates for open lots shall be compared to rates for open lots, rates for covered parking shall be compared to rates for covered parking.

B. The State shall continue a system for employees where parking fees may be paid with pretax dollars.

12.4 Commute Programs

A. Employees working in areas served by mass transit, including rail, bus, or other commercial transportation licensed for public conveyance shall be eligible for a seventy-five percent (75%) discount on public transit passes sold by State agencies up to a maximum of $65 per month. Employees who purchase public transit passes on their own shall be eligible for a seventy-five percent (75%) reimbursement up to a maximum of $65 per month. This shall not be considered compensation for purpose of retirement. The State may establish and implement procedures and eligibility criteria for the administration of this benefit including required receipts and certification of expenses.

B. Employees riding in vanpools shall be eligible for a seventy-five percent (75%) reimbursement of the monthly fee up to a maximum of $65 per month. In lieu of the van pool rider reimbursement, the State shall provide $100 per month to each State employee who is the primary vanpool driver, meets the eligibility criteria, and complies with program procedures as developed by the State for primary vanpool drivers. This shall not be considered compensation for purposes of retirement. A vanpool is defined as a group of seven or more people who commute together in a vehicle (State or non-State) specifically designed to carry an appropriate number of passengers. The State may establish and implement procedures and eligibility criteria for the administration of this benefit.

C. Employees headquartered out of State shall receive reimbursement for qualified public transportation and vanpool expenses for seventy-five percent (75%) of the cost up to a maximum of $65 per month or in the case of the primary van pool driver, the $100 per month rate. The appointing power may establish and implement procedures regarding the certification of expenses.

12.5 Transportation Incentives

A. Both the State and Union agree that employees should be encouraged to use alternate means of transportation to reduce traffic congestion and improve air quality in the State.

B. No change related to these issues shall take place unless agreed upon by the parties.

12.6 Intentionally Excluded

12.7 State Owned Housing

A. Housing

Annually, current rental rates for all types of State owned employee housing, including trailers and/or trailer pads, may be increased by the State as follows:

1. Where employees are currently paying rent, the State may raise such rates up to twenty-five percent (25%) each year.

2. During the term of this Contract, where no rent is being charged, the State may raise rents up to $75 per month, or when an employee vacates State owned housing, including trailers and/or trailer pads, the State may raise rents for such housing up to the Fair Market value.

3. Employee rental of State owned housing shall not ordinarily be a condition of employment. In any instance after July 1, 1989 and annually thereafter, where rental of State housing is made a condition of employment, the State may charge the employee ten percent (10%) less than the regular rate of rent.

4. Employees renting State owned housing occupy them at the discretion of the State employer. If the State decides to vacate a State owned housing unit currently occupied by a State employee, it shall give the employee a minimum of thirty (30) days advance notice.

B. Utilities

Annually, current utility charges for all types of State owned employee housing, including trailers and/or trailer pads, may be increased by the State as follows.

1. Where employees are currently paying utility rates to the State, the State may raise such rates up to eight percent (8%) each year.

2. Where no utilities are being charged, the State may impose such charges consistent with its costs.

3. Where utilities are individually metered to State owned housing units, the employee shall assume all responsibility for payment of such utility rates, and any increases imposed by the utility company.

C. Notwithstanding any of the above, the Department of Fish and Game will meet and confer with Union representatives prior to the implementation of rental increases. The department will meet and confer over any amount of necessary increases, the implementation dates, and the necessity for the increase.

D. The Department of Fish and Game is committed to improving the quality of State owned housing under its jurisdiction. To that end, the department will seek funding authority for maintenance and improvement of department-owned housing.

This subsection is not subject to the provisions of Article 6 of this Contract.

E. Possessory Interest Taxes

The parties agree to seek a determination from the Internal Revenue Service about whether State reimbursement of employee paid possessory interest taxes constitutes a taxable reimbursement for employees who live in State owned housing as a condition of employment. The parties shall abide by this determination.

12.8 Overtime Meals - Work Week Group 2

When a BU 21, Work Week Group 2 employee is required to work overtime, the employee may be furnished with a meal or provided an overtime meal allowance of up to $8. Receipts may be required. To be eligible for the meal or the allowance, the employee must be required to report to work at least two (2) hours prior to or be required to remain at least two (2) hours past their regularly scheduled work day. No more than three (3) overtime meal allowances may be claimed during any twenty-four (24)-hour period.

12.9 Intentionally Excluded

12.10 Damaged or Destroyed Personal Property

In accordance with established procedures, when requested by an employee, a department may pay, upon receipt, the cost of replacing or repairing eyeglasses, hearing aids, dentures, watches, or articles of clothing necessarily worn or carried when damaged in the line of duty without fault of the employee. If the eyeglasses, hearing

aids, dentures, watches, or clothes are damaged beyond repair, the department may pay, upon receipt, the actual value of such eyeglasses, hearing aids, dentures, watches, or clothing. The value of such eyeglasses, hearing aids, dentures, watches, or clothing shall be determined as of the time of the damage hereto.

12.11 Uniform Replacement Allowance

A. When the State requires a uniform to be worn as a condition of employment and does not provide such a uniform, the State shall authorize a uniform replacement allowance based on actual costs substantiated with a receipt for an amount not to exceed $450 per year. Claims for such reimbursement shall be paid in full to the employee within ninety (90) days of the submission of the receipt.

1. Uniform means outer garments, which are required to be worn exclusively while carrying out the duties and responsibilities of the position and which are different from the design or fashion of the general population. This definition includes items that serve to identify the person, agency, function performed, rank, or time in service.

2. In those cases where the State provides the uniform to be worn, the uniform items provided pursuant to this section are State owned or leased property which will be maintained as the State deems necessary. Employees issued State-provided uniform items shall be responsible for loss of or damage to the uniform items other than that incurred as the result of normal wear or through no fault of the employee.

3. In those cases where the State does not provide the uniform to be worn, employees shall be responsible for the purchase of the required uniform as a condition of employment After an employee has the equivalent of one full year in a permanent position, which requires a uniform, he/she must submit a request in accordance with existing departmental practice in order to receive a uniform replacement allowance.

4. Employees shall wear their required uniforms only in an official capacity except that employees may wear such uniforms on the grounds of their facility and to and from their work location including associated incidental travel.

5. The Uniform Replacement Allowance shall not be considered compensation for retirement purposes.

B. Single Source Vendor

1. During the life of this Contract, departments may establish a single source vendor system to replace the current uniform replacement allowance program. If a single source vendor system is established, employees shall use the system to obtain department authorization uniform replacement items. Departments that participate in a single source vendor system may establish an anniversary date for the uniform replacement credit with the vendor. Employees will receive their credit on that date based on the number of qualifying pay periods in the uniformed classification and in accordance with existing State laws, rules, and regulations.

2. Employees newly appointed (new hire to State service, promotion, transfer, or demotion from a non-uniformed classification) shall be required to purchase the uniform as a condition of employment and such purchase shall be through the single source vendor. Such employees will be eligible for a prorated uniform replacement credit on the established anniversary date, and a uniform replacement credit on each subsequent anniversary date.

12.12 and 12.13 Intentionally Excluded

12.14 Professional Organizations

In recognition of the professional nature of Unit 21 employees, each department, commission, board, or agency shall reimburse a Unit 21 employee for up to $75 per year for membership dues in job-related professional societies or associations.

12.15 Reimbursement of Credential/License Fees

The State agrees to reimburse Unit 21 employees up to a maximum of $200 per year for credential and/or license renewal fees for one job related credential and/or license where such credential and/or license is issued by a State agency.

12.16 through 12.23 Intentionally Excluded

12.24 Class A and/or Class B Commercial Driver's License

Fee Reimbursements

A Each department will reimburse a permanent employee for filing and examination fees associated with obtaining the appropriate commercial driver's license and endorsement(s) if the employee is: (1) in a classification that requires the operation of equipment which requires either a Class A or Class B commercial driver's license and any endorsement(s), or (2) the classification designated by the department requires the employee to upgrade his/her driver's license to a Class A and/or Class B commercial driver's license and any endorsement(s), or (3) in a classification where a Class A and/or Class B commercial driver's license is an additional desirable qualification, provided:

1. The employee is authorized at least 10 work days in advance by his/her supervisor to take the examination;

2. The employee has a valid, current medical certification acceptable to the Department of Motor Vehicles (DMV).

3. The employee successfully passes the required examination and is issued the license and appropriate endorsement(s).

B. Employees applying for renewal or reinstatement of a license due to an illegal violation will not be reimbursed for any costs associated with obtaining a license as required by DMV.

C. The State will not pay any additional cost incurred as a result of an employee's failure to pass the written and/or performance test within the opportunities allowed by the original application fee.

D. Reimbursement for commercial driver's license fees paid by an employee will be for that portion of the commercial driver's license fee (including the cost of endorsement(s) required by the appointing power) which exceeds the cost of the regular noncommercial Class C driver's license, provided the employee applies for the required license and any required endorsement(s) simultaneously. If an employee fails to take all required extras simultaneously, reimbursement will not exceed the cost that would have been incurred had the tests been taken simultaneously.

12.25 Class A and/or Class B Commercial Driver's License Medical Examinations

The State agrees to pay the cost of medical examinations for employees required to have either a Class A or Class B driver's license, provided the employees either receive their exams from a contractor physician or clinic, or are specifically authorized in advance to be examined by their personal physician, and to be reimbursed for the cost upon presenting a voucher from the examining physician.

The State will pay the cost of a second medical examination and/or referrals by the examining physician, not to exceed the cost of the first medical examination provided that:

A. The employee fails the first medical examination, or the certification submitted is not accepted by DMV;

B. A second medical examination is authorized and conducted; and

C. The second medical certification is accepted by DMV.

The State will not reimburse the employee for a second medical that sustains the results of the first. Costs for additional medical reexamination shall be the responsibility of the affected employee.

ARTICLE 13 – PROFESSIONAL DEVELOPMENT

13.1 Personnel and Evaluation Material

There will be only one official personnel file and normally one supervisory work file regarding each employee and these files will be maintained as follows:

A. An employee's official departmental personnel file shall be maintained at a location identified by each department head or designee. Upon request, the State shall identify any supervisory files kept on the employee and shall identify the location of each file.

B. Information in an employee's official departmental personnel file and supervisory work file shall be confidential and available for inspection only to the employee's department head or designee in conjunction with the proper administration of the department's affairs and the supervision of the employee; except, however, that information in an employee's official departmental personnel file and supervisory work file may be released pursuant to court order or subpoena. An affected employee will be notified of the existence of such a court order or subpoena.

C. Evaluation material or material relating to an employee's conduct, attitude, or service shall not be included in his/her official personnel file without being signed and dated by the author of such material. Before the material is placed in the employee's file, the department head or designee, shall provide the affected employee an opportunity to review the material, and sign and date it. A copy of the evaluation material relating to an employee's conduct shall be given to the employee.

D. An employee or his/her authorized representative may review his/her official personnel file during regular office hours. Where the official personnel file is in a location remote from the employee's work location, arrangements shall be made to accommodate the employee or his/her authorized representative at the employee's work location. Upon request, the employee shall be allowed a copy of the material in his/her personnel file.

E. The employee shall have a right to insert in his/her file reasonable supplementary material and a written response to any items in the file. Such response shall remain attached to the material it supplements for as long as the material remains in the file.

F. Any performance evaluation conducted of an employee who is a participant in the Union/State Collective Bargaining negotiations shall recognize the employee's frequent absence from his/her State job and the impact of such absences on the employee's performance. This is not intended to abrogate the right of the State to take disciplinary action against any employee who happens to be involved in such representational activities.

G. Material relating to an employee's performance included in the employee's departmental personnel file shall be retained for a period of time specified by each department, except that at the request of the employee, materials of a negative nature may either be purged after one year or at the time such material is used in a written performance evaluation. This provision, however, does not apply to formal adverse actions except as defined in applicable Government Code sections. By mutual agreement between a department head or designee and an employee, adverse action material may be removed. When an employee receives written documentation of a negative nature, the supervisor shall note in writing on the documentation the time frame it will remain in the file.

H. Supervisors may keep working supervisory files on the performance and conduct of employees to provide documentation for matters such as, but not limited to, probation reports, performance appraisals, training needs, MSA reviews, bonus programs, adverse actions, employee development appraisals, or examination evaluations. An employee and/or his/her authorized representative may, upon request, review the contents of his/her file with his/her supervisor. Upon request, the employee shall be allowed a copy of the material in his/her supervisory file.

13.2 through 13.5 Intentionally Excluded

13.6 Performance Appraisal of Permanent Employees

A. The performance appraisal system of each department may include an annual written performance appraisal and an individual development plan for permanent employees. Such performance appraisals may be completed at least once each 12 calendar months after an employee completes the probationary period for the class in which he/she is serving.

B. When a Unit 21 civil service employee receives substandard ratings in a majority of the performance factors, the employee may grieve the content of his/her performance appraisal through the third step of the grievance procedure which shall be the final step of appeal.

C. When a department intends to establish a new performance appraisal system or make major modifications in their existing performance appraisal system, the Union will be notified and given the opportunity to meet and confer over the impact of the change(s) pursuant to section 24.1 (Entire Agreement).

13.7 through 13.9 Intentionally Excluded

13.10 Education and Training Required by Department

A. The State agrees to reimburse Unit 21 employees for expenses incurred as a result of satisfactorily completing training or education courses required by a department to assure adequate performance. Such reimbursement shall be limited to

1. Tuition and/or registration fees;
2. Cost of course-required books
3. Transportation or mileage expenses;
4. Toll and parking fees;
5. Lodging and subsistence expenses.

Where applicable, reimbursement rates for the above expenses shall be in accordance with Article 12, section 12.1 of this Contract.

B. Advance Application – An employee may receive reimbursement for tuition or other necessary expenses only if application is made prior to enrollment in an out-service training program or when the employer has requested the employee attend.

C. Incomplete Assignment – (1) General. An employee who does not satisfactorily complete an out-service training assignment shall not be eligible for reimbursement of tuition and other necessary expenses and shall agree to return any advance payment received. (2) Exceptions. The employee or his/ her estate shall receive reimbursement for tuition and other necessary expenses: (a) at the convenience of the State, provided that the training facility reports satisfactory performance by the employee during the assignment; or (b) because of death, prolonged illness, disability or other event beyond the control of the employee.

D. No deduction from education leave balances. Training mandated by the department head or designee shall not be deducted from educational leave balances unless as a result of section e. below. However, it is the employee's responsibility to maintain a valid credential as a condition of employment.

E. Required new or revised credential. When a Unit 21 employee is required to obtain an additional, new or modified credential, the affected department will meet in good faith upon request of the Union, to explore procedures and methods of obtaining such new or revised credentials.

13.11 Intentionally Excluded

13.12 Employment Opportunities

Departments shall upon request make available employment opportunity information to Unit 21 employees. Such information shall be posted on a bulletin board selected by each department.

13.13 through 13.17 Intentionally Excluded

13.18 Professional Development Committees

The purpose of Professional Development Committees is to enhance professional development of Unit 21 employees through continuing education and training and improve professional standards through the review and revision of classification specifications.

Upon request of the Union and with the concurrence of the department head or designee, a Professional Development Committee may be established according to the following guidelines:

1. The Committee will consist of equal numbers of management and Union representatives However, there shall not be more than three (3) management representatives and three (3) Union representatives, unless increased by mutual agreement.
2. Committee recommendations, if any, will be advisory in nature.
3. Professional Development Committee meetings shall not be considered Contract negotiations and shall not be considered a substitute for the grievance procedure.

ARTICLE 14 – CLASSIFICATION

14.1 Classification Changes

A. When DPA proposes establishment of a new classification or modification of an existing one, it shall inform the Union in writing of the proposal. The Union may request to meet and confer with DPA regarding the classification proposals. Failure to respond in writing within thirty (30) calendar days of receipt of the notice shall constitute a waiver of the Union's right to meet and confer over the classification proposal prior to submittal to the State Personnel Board (SPB) for consideration.

B. The first negotiations meeting shall take place within twenty (20) calendar days of the Union's request unless the parties agree to a different date. The purpose of the negotiations shall be the classification specifications and the compensation

C. If the parties reach an agreement, they shall jointly recommend, in writing, that the classification proposal be submitted to SPB for the non-hearing calendar.

D. If the parties do not reach an agreement, the classification proposal may be submitted to SPB.

E. In the event SPB renders a decision that was not mutually agreed to by the parties, the Union and the State shall meet and confer over the impact, including compensation, of the Board's decision. No classification shall be established without a salary structure.

14.2 Out-of-Classification Grievances and Position Allocation Hearing Process

1. DEFINITIONS

   a. "Working out-of-class" (a.k.a. "out-of-class work") is defined as performing, more than fifty percent (50%) of the time, for two or more weeks, the full range of duties and responsibilities allocated to an existing class and not allocated to the class in which an employee has a current, legal appointment.

   b. A "pre-arranged out-of-class assignment" is defined as the intentional assignment of out of class work to an employee by the employee's appointing power, department head or designee for a defined period of time of up to one hundred-twenty (120) days or, if approved by DPA, up to one year.

   c. "On-going out-of-class work" is defined as "out-of-class work" (as defined above) that results from the evolution of an employee's duties and responsibilities into those allocated to another existing class and not allocated to the class associated with the position in which the employee has a current legal appointment.

   d. "Terminated out-of-class work or assignment" is defined as "working out of class" (as defined above) and the out-of-class work or assignment has ceased either because the duties and responsibilities that created the out-of-class situation were removed, or the percentage of time spent performing the full range of duties and responsibilities fell below 50 percent, or the employee is no longer working in the position alleged to have created the out-of-class situation.

2. Pre-arranged Out-of-Class Assignments: Notwithstanding Government Code sections 905.2, 19818.6, 19818.8, 19818.16, and 19823 an employee may be required to perform work other than that described in the specification for his/her classification for up to 120 consecutive calendar days during any 12-month period. An employee may be assigned to work out-of-class for more than 120 consecutive days only with the approval of DPA. Out-of-class assignments shall not exceed one year.

3. Rate of Pay: If an appointing power, department head or designee requires an employee to work "out-of-class" in a higher classification for more than two (2) consecutive weeks, the employee shall receive the rate of pay, pursuant to DPA Regulation 599.673, 599.674, or 559.676 that the employee would have received if appointed to the higher class for the entire duration of the assignment. The out-of-class compensation shall not be considered as part of the base pay in computing the rate due upon promotion to a higher level class.

4. Rotation to Avoid Out of Class Pay: The State shall not rotate employees in and out of out-of-class assignments for the sole purpose of avoiding payment of out-of-class compensation.

5. Duty to File Timely Grievance: If an employee believes that he/she has been assigned out-of-class duties and responsibilities, he/she must file an out-of-class grievance no later than 60 days after the conclusion of the out-of-class duties/work. Any claim for back pay concerning the out-of-class work is waived if the employee fails to timely file the grievance as provided by this section.

6. Back Pay Limited to One Year: A timely filed grievance concerning out-of-class work which is granted under this Article shall not be compensated retroactively for a period greater than one year before the filing of the grievance.

7. Out-of-Class Grievance Procedure:

   a. Disputes about working out-of-class or other allegations of performing duties not appropriate to an employee's current class shall be reviewed exclusively by filing a Contract grievance. Notwithstanding Government Code section 19815.4(e), employees shall not be entitled to a separate hearing on their claim of working out-of-class.

   b. An employee's grievance shall initially be discussed with the employee's supervisor.

   c. Out-of-class grievances shall be filed with a department head or designee who shall respond to the grievance in writing within forty-five (45) calendar days after receipt of the grievance.

   d. If the grievant is not satisfied with the decision rendered by the person designated by the department head or designee, he/she may appeal the decision in writing within twenty-one (21) calendar days after receipt to the Director of DPA.

   e. The Director of DPA or his/her designee shall respond to the grievance in writing within sixty (60) calendar days after receipt of the appealed grievance.

f. If the grievance is not resolved by DPA, the Union shall have the right to submit the grievance to arbitration in accordance with Article 6 of this agreement.

g. The arbitrator's decision regarding out-of-class grievances shall be final and binding on the parties. Said awards shall not be subject to challenge or review in any forum, administrative or judicial, except as provided in Code of Civil Procedure section 1286.2 et seq.

h. Arbitrators shall not have the authority to order reclassification (reallocation) of a grievant's position or discontinuance of out-of-class work assignments. The only remedy that shall be available is retroactive pay for out of class work.

14.3 Intentionally Excluded

14.4 Duty Statement

Departments shall provide each Unit 21 employee with a current duty statement. Duty statements must comply with SPB job classification specifications. Upon request, an employee who is transferred or reassigned on a permanent basis shall be provided a revised duty statement.

14.5 through 14.7 Intentionally Excluded

14.8 Contracting Out

A. Purpose

The purpose of this section is to guarantee that the State does not incur unnecessary, additional costs by contracting out work appropriately performed at less expense to the State by bargaining unit employees, consistent with the terms of this section. In achieving this purpose the parties do not intend this section to expand the State's ability to contract out for personal services. The parties agree that this section shall not be interpreted or applied in a manner which results in a disruption of services provided by State departments.

B. Policy Regarding Personal Services Contracts and Cost Savings

Except in extremely unusual or urgent, time-limited circumstances, or under other circumstances where contracting out is recognized or required by law, Federal mandate, or court decisions/orders, the State must make every effort to hire, utilize and retain bargaining unit employees before resorting to the use of private contractors. Contracting may also occur for reasons other than cost savings as recognized or required by law, Federal mandate, or court decisions/orders

C. Information Regarding Contracts To Be Let

1. Departments will provide the Union's designated representative with copies of Requests for Proposals (RFPs) and Invitations for Bid (IFBs) for personal services contracts when released for publication if they call for services found in bargaining unit class specifications.

2. To the extent that a department is preparing to enter into a contract (or amend a contract) and it does not require an RFP or IFB, the department shall provide the Union's designated representative with a copy of the Standard Form 215 (or its departmental equivalent) if and when the Form 215 is completed but no less than five (5) business days thereafter provided the contract is/will be for services found in bargaining unit class specifications. If the Form 215 contains confidential or proprietary information, it shall be redacted as discussed below in subsection D (1).

3. The purpose of this subsection C is to provide the Union with notice and an opportunity to present alternatives which mitigate or avoid the need for contracting out, while still satisfying the needs of the State to provide services. Directors (or their designee) shall therefore meet with the Union for this purpose, if requested by the Union.

D. Review of Personal Services Contracts In Existence

1. Upon request of the Union each department shall submit copies of any or all personal services contracts that call for services found in bargaining unit class specifications. For each contract, departments shall provide additional documents establishing the number, scope, duration, justification, total costs of all such contracts, and payment of all overhead and administrative costs paid through each contract, provided it does not disclose confidential or proprietary information, in which case it shall be redacted as discussed below. The requested contract and related information shall be provided as soon as reasonably possible. The parties expect that this shall be provided no more than twenty-one (21) calendar days following the request by the Union, or longer if approved by the Union and the Department. This shall include contracts that may otherwise be protected from public disclosure, if they provide for services found in bargaining unit class specifications. However, the State may redact those portions of protected contract(s) that are proprietary, necessary to protect the competitive nature of the bid process, and that which does not pertain to the costing of personnel services found in bargaining unit classifications. The goal shall be to protect against disclosure of information which should remain confidential, while at the same time providing the Union with sufficient information to determine whether unnecessary, additional costs are being incurred by contracting out work found in bargaining unit class specifications. Costing information provided to the Union for protected contracts shall include total personnel costs for personnel services found in bargaining unit classifications plus any overhead charges paid to the contractor for these services, provided such disclosure does not breach confidentiality requirements or include proprietary information.

2. Within ten (10) workdays after receipt of the personal services contracts and associated documents as provided for in paragraph D (1) above, the Union and the department shall begin reviewing the contracts. The Union and the Department shall examine the contracts based on the purpose of this section, the terms of the contracts, all applicable laws, Federal mandates and court decisions/orders. In this regard, the Union and the Department will consider which contracts should and can be terminated immediately, which contracts will take additional time to terminate, which contracts may continue (for how long and under what conditions) and how (if necessary and cost effective) to transition contract employees or positions into civil service. All determinations shall be through express mutual agreement of the Union and the Department.

3. The Union and the Department will continue to meet as necessary to examine personal services contracts which have been let.

4. If savings are generated by the termination of personal services contracts under this provision, it is the intent of the State to implement agreements of the Union and the Department for utilization of said savings. Such agreements may include:

   a. Contributing toward position reductions which would otherwise be accomplished by the layoff, salary reduction or displacement of bargaining unit employees.

   b. Enabling the employment of bargaining unit employees for services currently performed by contractors;

   c. Enabling of the conversion to bargaining unit civil service employment of qualified contract employees who wish to become State employees, as otherwise permitted by law, regulations, provisions of the contracts and resolutions by the State Personnel Board.

   d. Providing timely, adequate and necessary recruitment efforts. These efforts may include focused recruitment, publicizing in professional journals, use of the media, job fairs, expedited hiring, expedited background checks, spot testing authorized by the SPB, State employee registries, and recruitment and retention incentives.

   e. Such other purposes as may be mutually agreed upon.

E. Displacement Avoidance

1. The objective of this subsection is to ensure that bargaining unit employees have preference over contract employees consistent with, but not limited to the following principles.

   a. The duties at issue are consistent with the bargaining unit employee's classification;

   b. The bargaining unit employee is qualified to perform the job, and,

   c. There is no disruption in services.

2. To avoid or mitigate bargaining unit employee displacement for lack of work, the appointing power shall review all existing personal services contracts to determine if work consistent with the affected employee's classification is being performed by a contractor. Displacement includes layoff, involuntary demotion, involuntary transfer to a new class, involuntary transfer to a new location requiring a change of residence, and time base reductions. If the Union and the Department that review personal services contracts determine that the terms and purpose of the contract permit the State to assign the work to a bargaining unit employee who would otherwise be displaced, this shall be implemented, consistent with the other terms of this section. The State and the Union shall meet and confer for purposes of entering into an agreement about the means by which qualified employees are notified and provided with such assignments. This shall include developing a process that ensures that savings realized by terminating the contract and reassigning the work to a bargaining unit employee to avoid displacement, are utilized to offset that employee's moving and relocation costs, the amount of which shall be consistent with the Moving/Relocation section of the parties' collective bargaining agreement.

F. Nothing in this section shall be interpreted or applied in such a manner as to interfere with the State or Federal court orders, the authority of the State or Federal courts or the authority of the special masters or receiver.

G. Relationship Between This Section and Related Statutes

The State is mindful of the constitutional and statutory obligations (e.g., Government Code § 19130) as it pertains to restriction on contracting out. Thus, nothing in this section is intended to interfere with pursuit of remedies for violation of these obligations as provided by law (e.g., Public Contract Code § 10337).

14.9 through 14.21 Intentionally Excluded

14.22 Joint Union/Management Committee (Community Colleges)

During the first twelve (12) months of this agreement, the California Community College Chancellor's Office agrees to meet with representatives of the Union to determine if changes to the class specifications for the Community Colleges Program Assts I and II are needed. If changes to the specifications are determined to be appropriate the California Community College Chancellor's Office agrees to pursue revisions to the class specifications in accordance with section 14.1 of this agreement.

14.23 Bus Driver Training Specialist Classification

During the term of this agreement, the Department of Education agrees to meet with representatives of the Union to determine if changes to the class specifications for the Bus Driver Training Specialist classification are needed. If changes to the specifications are determined to be appropriate, the Department of Education agrees to pursue revisions to the class specifications in accordance with section 14.1 of this agreement.

ARTICLE 15 – EMPLOYEE OPPORTUNITY TRANSFER

15.1 Appeal of Involuntary Transfer

A. The State shall make reasonable efforts to avoid involuntary transfers. An involuntary transfer which reasonably requires an employee to change his/her residence may be grieved under Article 6 only if the employee believes it was made for the purpose of harassing or disciplining the employee. If the appointing authority or DPA disapproves the transfer, the employee shall be returned to his or her former position; shall be paid the regular travel allowance for the period of time he/she was away from his/her original headquarters; and his/her moving costs both from and back to the original headquarters shall be paid in accordance with DPA laws and rules.

B. An appeal of an involuntary transfer which does not reasonably require an employee to change his/her residence shall not be subject to the grievance and arbitration procedure. It shall be subject to the complaint procedure if the employee believes it was made for the purpose of harassing or disciplining the employee.

C. The State shall provide a minimum of sixty (60) days written notice for an involuntary transfer which reasonably requires an employee to change his/her residence.

D. Employees who are unwilling to accept the geographical transfer required by their current department, may pursue other options, such as but not limited to voluntary transfer, voluntary demotion, reduced work-time program, authorized partial service retirement, or voluntary retirement or resignation. Such employees who meet DPA, State Restriction of Appointments (SROA) definition, shall be considered surplus. The department head or designee shall make job opportunity bulletins and materials available to all eligible surplus employees Eligible surplus employees shall be permitted to apply and compete for vacant positions of their current class or other classes to which he/she can transfer, pursuant to the SROA process. Article 16 shall govern employee rights and appeals under these conditions.

E. With prior supervisory approval, employees shall be allowed a reasonable amount of State paid time to participate in employment interviews associated with the efforts described in paragraph D above.

F. When a department has two (2) or more employees in a class who are subject to an involuntary transfer which reasonably requires an employee to change his/her residence, consideration shall be given for the affected employee's seniority in accordance with Government Code 19994.2.

15.2 and 15.3 Intentionally Excluded

15.4 Employee Opportunity Transfer

A. The parties recognize that when the State deems it necessary to fill a vacant position, the needs of the State must be given first priority. The needs of the State include the right to fill vacant positions using existing eligible or promotional lists, involuntary transfers, reassignments, or other selection methods for reasons such as affirmative action, special skills, abilities or aptitudes.

B. The parties also recognize the desirability of permitting a permanent employee to transfer within his/her department and classification to another location which the employee deems to be more desirable. To this end, permanent full-time employees may apply for an Employee Opportunity Transfer to a position at another location within his/her department in accordance with the following procedure:

1. Employees desiring an Employee Opportunity Transfer shall apply in writing to his/her department head or designee in a manner prescribed by the department.

2. Such transfer requests shall be to permanent positions in the same department within his/her current classification.

C. Whenever a department head or designee elects to fill a vacancy through an Employee Opportunity Transfer, a permanent full-time employee who already has an Employee Opportunity Transfer application to that location on file with the department shall be selected. If there is more than one employee with an Employee Opportunity Transfer application to the same location on file, one of the top three (3) employees with the greatest amount of department service by class shall be selected. When an employee is formally interviewed, the department head or designee will notify the employee of the non-selection.

D. Permanent employees who wish to submit Employee Opportunity Transfer applications may do so during a 30 calendar day open period, to be scheduled once every six (6) months by each department. No employee shall submit more than four (4) Employee Opportunity Transfer applications during an open period.

ARTICLE 16 – LAYOFF

16.1 Layoff and Reemployment

A. Application. Whenever it is necessary because of a lack of work or funds, or whenever it is advisable in the interest of economy to reduce the number of permanent and/or probationary employees (hereinafter known as "Employees") in any State agency, the State may lay off employees pursuant to this section.

B. Order of Layoff. Employees shall be laid off in order of seniority pursuant to Government Code sections 19997.2 through 19997.7 and applicable State Personnel Board and Department of Personnel Administration rules.

C. Notice. Employees compensated on a monthly basis shall be notified thirty (30) calendar days in advance of the effective date of layoff. Where notices are mailed, the thirty (30) calendar day time period will begin to run on the date of the mailing of the notice. The State agrees to notify the Union no later than sixty (60) calendar days prior to the actual date of layoff. The notice to the Union shall also include the reason for the layoff, the area of the layoff, the anticipated classifications affected, the total number of employees in each affected classification, the estimated number of surplus employees in each classification and the proposed effective date of the layoff.

D. Grievance and Arbitration. Any dispute regarding the interpretation or application of any portion of this layoff provision shall be resolved solely through the grievance and arbitration procedure.

E. Transfer or Demotion in Lieu of Layoff. The State may offer affected employees a transfer or a demotion in lieu of layoff pursuant to Government Code sections 19997.8 through 19997.10 and ap plicable Department of Personnel Administration rules. If an employee refuses a transfer or demotion, the employee shall be laid off.

F. Reemployment. In accordance with Government Code sections 19997.11 and 19997.12, the State shall establish a reemployment list by class for all employees who are laid off. Such lists shall take precedence over all other ty pes of employment lists for the classes in which employees were laid off. Employees shall be certified from department or sub-divisional reemployment lists in accordance with section 19056 of the Government Code.

G. State Service Credit for Layoff Purposes. In determining seniority scores, one point shall be allowed for each qualifying monthly pay period of full-time State service regardless of when such service occurred. A pay period in which a full time employee works eleven (11) or more days will be considered a qualifying pay period except that when an absence from State service resulting from a temporary or permanent separation for more than eleven (11) consecutive working days falls into two (2) consecutive qualifying pay periods, the second pay period shall be disqualified. Veterans will receive additional credits in accordance w ith Government Code section 19997.6.

H. Departmental Vacancies. Departments filling vacancies shall offer positions to employees facing layoff, demotion in lieu of layoff or geographic transfer in accordance with current State Restriction of Appointment procedures.

I. Employees who are affected by layoff, reduction in time-base or other similar circumstances under this Article will be entitled to continuation of health, dental, and vision benefits pursuant to Public Law 99-272, Title X, Consolidation Omnibus Reconciliation Act (COBRA).

16.2 Reducing the Adverse Effects of Layoff

Whenever the State determines it necessary to lay off employees, the State and the Union shall meet in good faith to explore alternatives to laying off employees such as, but not limited to, voluntary reduced work time, retraining, early retirement and unpaid leaves of absence.

16.3 Alternative to Layoff

The State may propose to reduce the number of hours an employee works as an alternative to layoff. Prior to the implementation of this alternative to a layoff, the State will notice and meet and confer with the Union to seek con currence of the usage of this alternative.

16.4 Intentionally Excluded

16.5 Layoff Employee Assistance Program

Employees laid off shall be provided services in accordance with the Employee Assistance Program. Such services are term limited for six (6) months from the actual date of layoff.

ARTICLE 17 – RETIREMENT

17.1 First Tier Retirement Formula (2% @ 55)

A. The Union and the State agree to participate in the First-Tier retirement plan as prescribed by law.

B. The table below lists the current First Tier age/benefit factors.

AGE AT RETIREMENT	CURRENT FACTORS
50	1.100
51	1.280
52	1.460
53	1.640
54	1.820
55	2.000
56	2.063
57	2.125
58	2.188
59	2.250
60	2.313
61	2.375
62	2.438
63 and over	2.500

C. There are factors for attained quarter ages, such as 52 ¾. These improved age/benefit factors apply for service rendered on and after the effective date of the 1999-2001 Memorandum of Understanding between the State and the Union. The improved factors also apply to past service that is credited under the First Tier and the Modified First Tier.

D. The amount of member contributions required of employees covered under these factors continues to be five percent (5%) of monthly compensation in excess of $513.

E. Miscellaneous and industrial members in the First Tier retirement or the Alternate Retirement Plan (ARP) subject to social security shall contribute five percent (5%) of monthly compensation in excess of $513 for retirement. Miscellaneous and industrial members in the First Tier retirement or the ARP not subject to social security shall contribute six percent (6%) of monthly compensation in excess of $317 for retirement.

F. New employees hired on or after January 1, 2007, will, after completion of participation in the ARP, be subject to the 2% at 55-retirement formula with benefits based on the highest average monthly pay rate during thirty-six (36) consecutive months of employment. Employees in employment prior to January 1, 2007, will remain subject to the 2% at 55 retirement formula with benefits based on the highest average monthly pay rate during twelve (12) consecutive months of employment.

G. The State and Union agree to support legislation that changes the method of computing the average annual compensation earnable for new Miscellaneous and Industrial Members hired on or after January 1, 2007, inclusive of those in the ARP.

17.2 Second-Tier Retirement Plan

The Union and the State agree to participate in the Second-Tier retirement plan as prescribed by law.

17.3 First Tier Eligibility For Employees In Second Tier

A. The Union and the State agree to the current implementation to allow employees who are currently in the Second Tier retirement plan to elect to be covered under the First Tier, as described in this article.

B. The employees in Second Tier may exercise the Tier 1 right of election at any time after the effective date of 1/1/2000. An employee who makes this election would then be eligible to purchase past Second Tier service.

C. Pursuant to Government Code section 21070.5, new employees who meet the criteria for CalPERS membership would be enrolled in the First Tier plan and have the right to elect to be covered under the Second Tier plan within 180 days of the date of their appointment. If a new employee does not make an election for Second Tier coverage during this period, he/she would remain in the First Tier plan.

D. Pursuant to Government Code section 21073.1, employees who elect to purchase their past service would be required to pay the amount of contributions they would have paid had they been First Tier members during the period of service that they are purchasing. The amount will include interest at six percent (6%) annually compounded.

17.4 State Safety Retirement

A. The Union and the State agree to participate in the State safety retirement formula as prescribed by law

B. The table below lists the current State safety age/benefit factors.

AGE AT RETIREMENT	CURRENT FACTORS
50	1.700
51	1.800
52	1.900
53	2.000
54	2.225
55 and over	2.500

C. There are factors for attained quarter ages, such as 52 ¾. These improved age/benefit factors apply for service rendered on and after the effective date of the 1999-2001 Memorandum of Understanding between the State and the Union. The improved factors also apply to past service that is credited under the State Safety retirement category.

D. The amount of member contributions required of employees covered under these factors continues to be six percent (6 %) of monthly compensation in excess of $317.

E. State safety members shall contribute six percent (6%) of monthly compensation in excess of $317 for retirement.

F. New employees hired on or after January 1, 2007, will, be subject to the 2.5% @ 55 retirement formula with retirement benefits based on the highest average monthly pay rate during thirty-six (36) consecutive months of employment. Employees in employment prior to January 1, 2007, will remain subject to the 2.5% @ 55 retirement formula with benefits based on the highest average monthly pay rate during twelve (12) consecutive months of employment.

G. The State and Union agree to support legislation that changes the method of computing the average annual compensation earnable for new State safety members hired on or after January 1, 2007.

17.5 through 17.7 Intentionally Excluded

17.8 Employer-Paid Employee Retirement Contributions

The State and the Union agree to continue the January 28, 1985, agreement regarding the Internal Revenue Service ruling permitting CalPERS contributions to be excluded from taxable salary for the duration of this Contract, as explained in Addendum 1.

17.9 Intentionally Excluded

17.10 1959 Survivor's Benefits - Fifth Level

A. Employees who are members of the Public Employee's Retirement System (PERS) will be covered under the Fifth Level of the 1959 Survivor's Benefit, which provides a death benefit in the form of a monthly allowance to the eligible survivor in the event

of death before retirement. This benefit will be payable to eligible survivors of current employees who are not covered by Social Security and whose death occurs on or after the effective date of the memorandum of understanding for this section.

B. Pursuant to Government Code section 21581 (c) the contribution for employees covered under this new level of benefits will be $2 per month as long as the combined employee and employer cost for this program is $4 per month or less per covered member. If the total cost of this program exceeds $4 per month per member, the employee and employer shall share equally the cost of the program. The rate of contribution for the State will be determined by the PERS board.

C. The survivor's benefits are detailed in the following schedule:

1.	A spouse who has care of two or more eligible children, or three or more eligible children not in the care of spouse:	$1,800
2.	A spouse with one eligible child, or two eligible children not in the care of the spouse:	$1,500
3.	One eligible child not in the care of the spouse; or the spouse, who had no eligible children at the time of the employee's death, upon reaching age 60:	$ 750

17.11 Education Leave: Conversion at Retirement

The State and the Union agree to the implementation that would allow the conversion of educational leave into retirement service credit under the California Public Employees' Retirement System (CalPERS). Upon the retirement of an employee whose educational leave balance was not limited, as specified in Article 8, all of the accrued hours of educational leave will be converted to CalPERS service. This conversion shall be at the same rate of conversion as is presently done with sick leave

Unused Education Leave for State Members.

Pursuant to Government Code section 20963.1, a Unit 21 employee whose effective date of retirement is within four months of separation from employment of the State, shall be credited at his or her retirement with 0.004 year of service for each unused day of educational leave credit, as certified to the board by the employer. The provisions of this section shall be effective for eligible State members who retire directly from State employment on and after January 1, 2000, provided a memorandum of understanding has been agreed on by the State employer and the recognized employee organization to become subject to this section.

17.12 Retirement Systems: State Teachers' Retirement System (STRS) and Public Employees' Retirement System (PERS)

The State and the Union agree to expansion of the provisions of Chapter 838, statutes of 1997 to include all State employees who are eligible for membership in both STRS and PERS.

ARTICLE 18 – PERMANENT INTERMITTENT APPOINTMENTS

18.1 Permanent Intermittents

A. Except as otherwise provided in this agreement (e.g. Bargaining Unit 3 Article 22, Article 23, etc), a permanent intermittent position or appointment is a position or appointment in which the employee is to work periodically or for a fluctuating portion of the full-time work schedule. A permanent intermittent employee may work up to 1,500 hours in any calendar year based upon Government Code section 19100 et seq. The number of hours and schedule of work shall be determined based upon the operational needs of each department.

B. State Personnel Board Rule 277 is one of the many employment alternatives the appointing power may use to fill vacant positions within a competitive selection process. When filling permanent full-time vacancies, a department shall consider eligible permanent intermittent employees within the classification.

C. Each department may establish an exclusive pool of permanent intermittent employees based upon operational need.

D. Each department shall endeavor to provide a permanent intermittent employee with seven (7) calendar days but in no case less than seventy-two (72) hours notice of their work schedule, except when they are called in to fill in for unscheduled absences or for unanticipated operational needs.

E. Upon mutual agreement, a department head or designee may grant a permanent intermittent employee a period of non-availability not to exceed twelve (12) months during which the employee may not be given a waiver. The period of non-availability may be revoked based on operational needs. An employee on non-available status who files for unemployment insurance benefits shall be immediately removed from such status.

F. A permanent intermittent employee will become eligible for leave credits in the following manner:

1. **Sick Leave** - A permanent intermittent employee who has completed 160 hours of paid employment will be eligible for up to eight (8) hours of sick leave credit with pay. The hours in excess of 160 hours in a qualifying monthly pay period shall not be counted or accumulated. On the first day of the qualifying monthly pay period following the completion of each period of paid employment, the permanent intermittent employee shall earn eight (8) hours of credit for sick leave with pay subject to the following provisions:

   a. Sick leave may be requested and taken in fifteen (15) minute increments.

   b. A permanent intermittent employee shall not be removed from scheduled work hours because he/she is on sick leave.

   c. The administration of sick leave for permanent intermittent employees shall be in accordance with Article 8, section 8.2, Sick Leave.

2. **Vacation Leave** - A permanent intermittent employee will be eligible for vacation leave credit with pay on the first day of the following qualifying monthly pay period following completion of nine hundred-sixty (960) hours of compensated work. Thereafter, a permanent intermittent employee will be eligible for vacation credit with pay in accordance with the schedule in Article 8, subsection 8.1A, on the first day of the qualifying monthly pay period following completion of each period of one hundred-sixty (160) hours of paid employment. The hours in excess of one hundred-sixty (160) hours in a qualifying monthly pay period shall not be counted or accumulated. When it is determined that there is a lack of work, a department head or designee may:

   a. Pay the permanent intermittent employee in a lump-sum payment for accumulated vacation leave credits; or

   b. By mutual agreement, schedule the permanent intermittent employee for vacation leave; or

   c. Allow the permanent intermittent employee to retain his/her vacation credits; or

   d. Effect a combination of a, b, or c above.

   e. A permanent intermittent employee will be subject to the provisions of section 8.1, Vacation Annual/Leave.

3. **Annual Leave** - A permanent intermittent employee will be eligible for annual leave credit with pay, on the first day of the following qualifying monthly pay period following completion of nine hundred-sixty (960) hours of compensated work. Thereafter, a permanent intermittent employee will be eligible for annual leave credit with pay in accordance with the schedule in subsection 8.1 C, on the first day of the qualifying monthly pay period following completion of each period of one hundred-sixty (160) hours of paid employment. The hours in excess of one hundred-sixty (160) hours in a qualifying monthly pay period shall not be counted or accumulated. When it is determined that there is a lack of work, a department head or designee may:

   a. Pay the permanent intermittent employee in a lump-sum payment for accumulated annual leave credits; or

   b. By mutual agreement, schedule the permanent intermittent employee for annual leave; or

   c. Allow the permanent intermittent employee to retain his/her annual leave credits; or

   d. Effect a combination of a, b, or c above.

   e. A permanent intermittent employee will be subject to the provisions of section 8.1, Vacation/Annual Leave.

4. **Holidays**

   a. A permanent intermittent employee will be eligible for holiday pay on a pro rata basis, based on hours worked during the pay period for observed holidays specified in Article 7 of this Contract in accordance with the following chart. If a permanent intermittent employee works on the holiday, the employee shall also receive his/her hourly rate of pay for each hour worked unless the provisions of section 19.2, B apply.

Hours on Pay Status During Pay Period	Holiday Compensation in Hours for Each Holiday
0-10.9	0
11-30.9	1
31-50.9	2
51-70.9	3
71-90.9	4
91-110.9	5
111-130.9	6
131-150.9	7
151 or over	8*

   *Notwithstanding any other provision, an employee can only accrue up to eight (8) hours of holiday credit per holiday.

   b. When a permanent intermittent (PI) employee in work week group 2 is required to work on an observed holiday, and the employee works one hundred-fifty-one (151) or more hours in that pay period, the employee shall receive holiday compensation in accordance with Article 7 G.

5. **Bereavement Leave** – A permanent intermittent employee may only be granted bereavement leave in accordance with Article 8, section 8.3, if scheduled to work on the day(s) for which the leave is requested and only for the number of hours the employee is scheduled to work on the day or days. A permanent intermittent employee shall not be removed from scheduled work hours because he/she is on bereavement leave

6. **Jury Duty** – A permanent intermittent employee shall only be granted jury duty leave in accordance with section 8.14 if the employee is scheduled to work on the day(s) in which the service occurs and only for the number of hours the employee is scheduled to work on the day or days. If payment is made for such time off, the employee is required to remit to the State the fee(s) received. A permanent intermittent employee shall not be removed from scheduled work hours because he/she is on jury duty. When night jury duty is required of a permanent intermittent employee, the employee shall be released without loss of compensation for such portion of required time that coincides with the permanent intermittent employee's work schedule. This includes any necessary travel time.

7. **State Disability Insurance (SDI)** – Permanent intermittent employees shall be covered under the State Disability Insurance (SDI) benefit in accordance with section 9.17.

8. **Mentoring Leave** – A permanent intermittent employee shall be eligible for Mentoring Leave in accordance with Article 8, section 8.17, Mentoring Leave.

G. Monthly paid permanent intermittent employees shall be paid by the 15th of each month.

H. **Dental Benefits** – A permanent intermittent employee will be eligible for dental benefits during each calendar year if the employee has been credited with a minimum of four hundred-eighty (480) paid hours in one of two control periods. To continue benefits, a permanent intermittent employee must be credited with a minimum of four hundred-eighty (480) paid hours in a control period or nine hundred-sixty (960) paid hours in two consecutive control periods. For the purposes of this section, the control periods are January 1 through June 30 and July 1 through December 31 of each calendar year. An eligible permanent intermittent employee must enroll in a dental benefit plan within sixty (60) days from the end of the qualifying control period.

I. **Health Benefits** – A permanent intermittent employee will be eligible for health benefits during each calendar year if the employee has been credited with a minimum of four hundred-eighty (480) paid hours in one of two control periods. To continue benefits, a permanent intermittent employee must be credited with a minimum of four hundred-eighty (480) paid hours in a control period or nine hundred-sixty (960) paid hours in two consecutive control periods. For the purposes of this section, the control periods are January 1 through June 30 and July 1 through December 31 of each calendar year. An eligible permanent intermittent employee must enroll in a health benefit plan within sixty (60) days from the end of the qualifying control period.

J. **Vision Service Plan** – A permanent intermittent employee will be eligible for the State's vision services plan during each calendar year if the employee has been credited with a minimum of four hundred-eighty (480) paid hours in one of two control periods. To continue benefits, a permanent intermittent employee must be credited with a minimum of four hundred-eighty (480) paid hours in a control period or nine hundred-sixty (960) paid hours in two consecutive control periods. For the purposes of this section, the control periods are January 1 through June 30 and July 1 through December 31 of each calendar year. An eligible permanent intermittent employee must enroll in the vision service plan within sixty (60) days from the end of the qualifying control period.

K. Permanent intermittent employees will be entitled to continuation of health, dental, and vision benefits pursuant to Public Law 99-272, Title X, Consolidated Omnibus Reconciliation Act (COBRA).

L. **Flex Elect Program** – Permanent Intermittent employees may only participate in the Pre-Tax Premium and/or the Cash Option for medical and/or dental insurance. Permanent intermittent employees choosing the Pre-Tax Premium must qualify for State medical and/or dental benefits. Permanent intermittent employees choosing the Cash Option will qualify if they work at least one-half time, have an appointment for more than six months, and receive credit for a minimum of four hundred-eighty (480) paid hours within the six-month control period of January 1 through June 30 of the plan year in which they are enrolled.

M. The call-in/scheduling of a permanent intermittent employee and the hours of work an individual permanent intermittent employee may receive shall be applied without prejudice or personal favoritism. Each work site shall post the permanent intermittent schedule and record of permanent intermittent hours worked per week on an ongoing and weekly basis.

N. A permanent intermittent employee that is offered a permanent full-time or part-time job within a department shall not be denied release from their permanent intermittent employee position by management.

O. All remaining conditions of employment that relate to the permanent intermittent employee shall be administered in accordance with existing rules and regulations, unless modified by this Contract.

ARTICLE 19 – HOURS OF WORK AND OVERTIME

19.1 Hours of Work

A. Unless otherwise specified herein, the regular workweek of full-time employees shall be forty (40) hours, Monday through Friday, and the regular work shift shall be eight (8) hours.

B. Workweeks and work shifts of different numbers of hours may be established by the employer in order to meet varying needs of the State agencies.

C. Employees' workweeks and/or work shifts shall not be permanently changed by the State without adequate prior notice. The State shall endeavor to give thirty (30) calendar days but in no case less than fifteen (15) calendar days notice.

D. The State shall endeavor to provide employees with at least five (5) working days advance notice of a temporary change in their workweek hours and workday. This advance notice is not required if:

1. The change is due to an unforeseen operational need; or

2. The change is made at the request of the employee.

E. Classifications are assigned to the workweek groups as shown in the Lists of Classifications attached to this Contract

F. Workweek group policy for FLSA - Exempt/Excluded Employees:

State employees who are exempt/excluded from the FLSA are not hourly workers. The compensation they receive from the State is based on the premise that they are expected to work as many hours as is necessary to provide the public services for which they were hired. Consistent with the professional status of these employees, they are accountable for their work product, and for meeting the objectives of the agency for which they work.

Following is the State's policy for all employees exempt/excluded from the FLSA:

1. Management determines, consistent with the current Contract the products, services, and standards which must be met by FLSA - exempt/excluded employees;

2. The salary paid to FLSA - exempt/excluded employees is full compensation for all hours worked in providing the product or service;

3. FLSA - exempt/excluded employees are not authorized to receive any form of overtime compensation, whether formal or informal;

4. FLSA - exempt/excluded employees are expected to work, within reason, as many hours as necessary to accomplish their assignments or fulfill their responsibilities and must respond to directions from management to complete work assignments by specific deadlines. FLSA exempt/excluded employees may be required to work specific hours to provide services when deemed necessary by management;

5. FLSA - exempt/excluded employees shall not be charged paid leave or docked for absences in less than whole-day increments. Less than full-time employees shall be charged time proportionate to their scheduled hours of work. Record keeping for accounting, reimbursements, or documentation relative to other applicable statutes, such as the Family Medical Leave Act, is permitted.

6. FLSA - exempt/excluded employees shall not be suspended for less than five (5) days when facing discipline;

7. With the approval of the appointing power, FLSA - exempt/excluded employees may be allowed absences with pay for one or more whole days due to excessive work load or other special circumstances without charging leave credits;

8. Subject to prior notification and management concurrence, FLSA exempt/excluded employees may alter their work hours. Employees are responsible for keeping management apprised of their schedule and whereabouts. Prior approval from management for the use of formal leave (e.g., vacation, sick leave, personal leave, personal day) for absences of an entire day or more is required.

19.2 through 19.10 Intentionally Excluded

19.11 Call Back Time

A. An employee in Workweek Group 2 who has completed a normal work shift, when ordered back to work, shall be credited with a minimum of four hours work time provided the call back to work is without having been notified prior to completion of the work shift, or the notification is prior to completion of the work shift and the work begins more than three hours after the completion of the work shift just completed. This does not include prescheduled overtim e.

B. When such an employee is called back under these conditions within four hours of the beginning of a previous call or an additional call is received while still working on an earlier call back, the employee shall not receive an additional four hours credit for the new call back.

C. When such an employee is called back within four hours of the beginning of the employee's next shift, call back credit shall be received only for the hours remaining before the beginning of the employee's next shift.

D. When staff meetings, training sessions, or work assignments are regularly scheduled on an employee's authorized day off, and the employee is required to attend, the employee shall receive call back compensation. When staff meetings and training sessions are regularly scheduled on an employee's normal work day and outside the employee's normal work shift, overtime compensation shall be received in accordance with the rules governing overtime.

E. For all pay and reporting purposes, compensating time begins when the employee reports to the job site.

19.12 through 19.15 Intentionally Excluded

19.16 Shift Change

A. Except in emergencies, the State shall provide 14 calendar days advance notice of permanent shift changes so that the employee has an opportunity to reschedule his/her obligations.

B. When a department has approved an educat ional program for an employee and subsequently requires the employee to change his/her shift, as defined above, the department will support the employee's claim for reimbursement of the nonrecoverable cost of tuition for the educational program , if the shift change requires the employee to discontinue the educational program.

19.17 and 19.18 Intentionally Excluded

19.19 Work Week Group E - Policy (FLSA-Exempt)

State employees who are exempt from the FLSA are not hourly workers. The compensation they receive from the State is based on the premise that they are expected to work as many hours as is necessary to provide the public services for which they were hired. Consistent with the professional status of these employees, they are accountable for their work product, and for meeting the objectives of the agency for which they work.

Following is the State's policy for all employees exempt from the FLSA:

1. Management determines, consistent with the current MOU's, the products, services, and standards which must be met by FLSA-exempt employees.
2. The salary paid to FLSA-exempt employees is full compensation for all hours worked in providing the product of service.
3. FLSA-exempt employees are not authorized to receive any form of overtime compensation, whether formal or informal.
4. FLSA-exempt employees are expected to work within reason as many hours as necessary to accomplish their assignments or fulfill their responsibilities.
5. Consistent with the services which management has determined must be provided, FLSA-exempt employees are to be given discretion in establishing their work hours. Employees are responsible for keeping management apprised of their schedule and whereabouts, must receive approval from management for the use of formal leave (e.g., vacation, sick leave, personal leave) and for absences of one day or more, and must respond to directions from management to complete work assignments by specific deadlines.
6. Consistent with the salaried nature of FLSA-exempt employees, these employees:
    a. Shall not be charged any paid leave for absences in less than whole day increments.
    b. Shall not be docked for absences of less than a day.
    c. Shall not be suspended for five days or less when facing discipline.
    d. Shall not have absences of less than a day recorded for attendance, record keeping, or compensation purposes.
    e. May be allowed, with approval of appointing power, absences with pay for one or more whole days due to excessive work load or other special circumstances.

19.19(a) Guidelines for Applying Work Week Group (WWG) E Policy

The purpose of this document is to provide additional guidelines for both supervisor and the employee to assist them in applying the WWG E work week group policy as implemented on January 24, 1994.

Not discussed fully in the WWG E policy is the essential need for ongoing communication between supervisor and employee. This is, of course, two way communication not merely one way. While no one can lay down absolute rules for how often supervisors and employees need to have dialogue, they must do so frequently enough so that both are provided with information they need for each to fulfill their roles in completing work and achieving the mission and goals of the organization.

WWG E employees are not paid for time spent per se, but for work performed. It is therefore appropriate that the focus of the dialogue between supervisors and employees be primarily on what work is to be done, when it is to be completed, and perhaps, how it is to be completed. This includes, not only, specific work and products that have definite deadlines, but also ongoing functions such as interaction with or providing consultation to other employees. Generally, prescribing specific hours should not be necessary. The needs of those receiving consultation or advice and their availability, coupled with the other work requirements an employee has should indicate how these important needs can be met. This may be by a variety of methods and it may employ time frames that change from week to week, in some cases, while in others the time spent in providing consultation to colleagues, etc, may be fairly fixed and consistent.

As much as possible, the employee should be given flexibility in determining how and when this is done, provided that this function is being adequately taken care of. If an employee fails to fulfill this function, it may indicate the need for a more fixed schedule in terms of being available. It is important, also, that if work requirements and/or deadlines or other situations change, that the supervisor continue to inform the employee on a timely basis of such factors so that the employee is able to make whatever adjustments are necessary in terms of effort, time, and/or changing priorities to meet the changing expectations of the supervisor.

From the supervisor's point of view, it is important that the employee not only be diligent in working towards completion of various assignments, but also be diligent concerning providing the ongoing assistance and/or performance of his/her duties that may be necessary for the effective operation of the particular work unit. This means that as situations change or as work progresses, the supervisor needs to receive feedback from the employee on a fairly frequent basis, especially when any problems or change takes place that might require some adjustment in work, product, methodology, etc. It is also important in case changes occur that a supervisor must be able to communicate with an employee if needed. This makes it essential that employees are diligent in keeping their office informed of their whereabouts and their schedules. While it is not always possible, it should be done probably at least on a weekly basis. Where changes occur, these should be reported and the schedule adjusted accordingly. This does not necessarily mean the filling out of long detailed written schedules, in practically all cases, these are unnecessary. What is necessary is whatever it takes so that if a supervisor on Tuesday morning at 10 a.m. finds it essential to discuss an issue with an employee, that the employee's secretary or colleagues know the employee's schedule and how, if possible, he/she may be reached.

In the case of an employee's being at a doctor's appointment or in court or in a variety of other situations, the employee may not be reachable at a given time, but information should have been provided so that the supervisor knows when the employee will next either call in or be available for discussion. In some cases, arrangements which for example provide that the employee will be available during specific hours a given day may be useful in providing opportunities for either discussions with the supervisor and/or

colleagues needing or providing assistance. These matters, of course, should all be discussed thoroughly by both supervisor and employee so there is a clear understanding of the expectations both have with regard to availability, completion of work assignments, etc.

You will note that in the paragraphs above, while times for consultation, etc. were discussed, there was little mention made of any sort of fixed hours or work schedule, except in the one hypothetical example in the last paragraph. This approach is in keeping with the WWG E concept since it avoids the notion that the employee is required to work a fixed work schedule. This is, in fact, the basic concept of the WWG E work week group policy and is what distinguishes it from work week group 2. Fixed work schedules that are not based on actual operational needs are not appropriate to the WWG E policy. While it is true that the typical business hours of most State agencies and offices is from 8 to 5, Monday through Friday, this does not translate into requiring an 8 to 5 or other fixed schedule for all employees. While it may, in fact, be necessary for a particular WWG E employee to generally work a schedule that appears to follow the 8 to 5 regime, this should only occur because the work being performed dictates such a schedule. If in fact the work need not be performed during those specific hours, there is no operational need to require those specific hours, or any other specific hours for that matter. Counting hours is antithetical to the WWG E concept. Supervisors should be aware that it is not the time spent in the office, or even the time spent in the actual performance of duties that should be the subject of evaluation of an employee. Rather, the quality of work performed, the work product itself and the fulfillment of professional duties should be the focus of evaluation. If there are deficiencies in these areas, the corrective action/adverse action procedures should be followed.

If an employee is not available for consultation with other employees and is therefore not fulfilling that responsibility, that must be the focus of attention, not whether the employee is available during specific hours in the office. Employees need to be aware, however, that if they are not fulfilling their obligations in terms of consultation with other employees, etc. management does have the right to temporarily impose a more fixed work schedule in order to insure that these duties are being performed. If this becomes a matter of dispute, then outside help should be sought so that the difference of opinion can be resolved. Where this does not occur, the expedited dispute procedure which has been negotiated should be followed.

19.20 through 19.27 Intentionally Excluded

19.28 Reduced Work Time

Employees who voluntarily reduce their work time pursuant to the Reduced Worktime Act, shall have right of return to full-time employment pursuant to Government Code section 19996.24 and DPA Rule 599.836.

19.29 Release Time for Commercial Driver's License Examination

A. Upon ten (10) work days advance notice to the department head or designee, the department shall provide reasonable time off without loss of compensation for an incumbent permanent employee to take the Class A and/or Class B commercial driver's license examination, provided:

1. The employee is required to have the designated commercial driver's license and endorsement(s);

2. The examination is scheduled during the employee's scheduled work hours;

3. The examination does not interfere with operational needs of the department; and

4. The employee has a valid current medical certification, acceptable to DMV.

   If medical certification provided by a department designated contractor physician or clinic is rejected by DMV on the date scheduled for examination that requires an employee to schedule an additional medical examination date, the employee shall be granted reasonable release time for the subsequent date, in accordance with the requirements specified above.

B. Upon ten (10) work days notice, the department will allow the employee to use a State vehicle or equipment appropriate for the license examination. It is understood by the parties, that use of the equipment or vehicle may be delayed for operational reasons.

C. Each department, at the request of an employee required to upgrade their current driver's license to a Class A or Class B commercial driver's license and appropriate endorsements will make available to the employee any information prepared by the Department of Motor Vehicles covering the commercial driver's license examination and any video training programs, relating to the obtaining of a commercial driver's license, which become available to the State.

ARTICLE 20 – INTENTIONALLY EXCLUDED

ARTICLE 21 – MISCELLANEOUS

21.1 Telecommute/Telework Program

A. Telework is defined as performing work one or more days per pay period away from the work site to which the employee is normally assigned. Such locations must be within a preapproved work space and during preapproved work hours inside the teleworker's residence, telework centers, or other offices of the State, as approved pursuant to the department's telework policy and guideline.

B. Where operational considerations permit, a department may establish a telework program. If the telework arrangement conforms to telework criteria established in the departrment's telework policy and guidelines, no employee's request for telework shall be unreasonably denied. Upon request by the employee, the denial and the reason for denial shall be in writing. Such programs shall operate within the policies,

procedures, and guidelines established by the Telework Advisory Group, as described in the Telecommuting Work Option: Information Guidelines and Model Policy, June 1992

C. Formal written telework or telecommuting policies and programs already adopted by departments before the date of this Contract will remain in effect during the term of this Contract. Upon the request of the Union, the departments will provide a copy of their formal written telework policy.

D. Departments that desire to establish a telework or telecommuting policy and/or program or departments desiring to change an existing policy and/or program shall first notify the Union. Within thirty (30) calendar days of the date of such notification, the Union may request to meet and confer over the impact of a telework or telecommuting policy and/or program or change in an existing telework or telecommuting policy and/or program. Items of discussion may include concerns of layoff as a result of a telecommuting/telework program, performance or productivity expectations or standard changes; access to necessary office space in the State work sites on non-telecommuting days; and equipment, supplies, phone lines, furniture, etc.

E. Upon written request, no more than once each fiscal year, representatives of the DPA will meet with three (3) representatives of SEIU, Local 1000 to discuss improvements to the Telecommuting Work Option: Information Guidelines and Model Policy, June 1992. Union representatives shall serve without loss of State compensation for this meeting.

21.2 Electronic Monitoring

If an employee believes that the State's use of current or future technology is being used for the purpose of harassment he/she may grieve such action under Article 6.

21.3 through 21.15 Intentionally Excluded

21.16 Professional Responsibility

A. It is the State's policy to allow Unit 21 employees the exercise of professional judgment in their work including work methods, objectives, and hours.

B. Unit 21 employees shall exercise their professional judgment in their work including scheduling of work hours consistent with the fulfillment of professional responsibilities.

C. Both parties recognize that ultimate responsibility rests with management.

21.17 Recognition of Authorship

The State employer shall recognize authorship of Unit 21 civil service employees involved in the writing of publications and preparation of electronic media presentations by identifying principal contributors and/or authors in said publications and presentations. In the event of disputes involving the identity of principal contributors or principal authorship, the department head or designee shall resolve such disputes.

21.18 through 21.23 Intentionally Excluded

21.24 Job Related Conferences and Conventions

The State and the Union recognize that certain benefits accrue to the State and Unit 21 employees through participation in job-related conferences and conventions. The State, working within the framework of budgetary and workload constraints, will support such activities as are of value to the State.

ARTICLE 22 AND ARTICLE 23 INTENTIONALLY EXCLUDED

ARTICLE 24 – ENTIRE AGREEMENT AND DURATION

24.1 Entire Agreement

A. The parties acknowledge that during the negotiations which resulted in this Contract, each had unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining, and that the understanding and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Contract. Any other prior or existing understanding or agreement by the parties, whether formal or informal, regarding any such matters is hereby superseded. Except as provided in this Contract, it is agreed and understood that each party to this Contract voluntarily waives its right to negotiate with respect to any matter raised in negotiations or covered in this Contract. With respect to other matters within the scope of negotiations, negotiations may be required as provided in subsection B below.

B. The parties agree that the provisions of this subsection shall apply only to matters which are not covered in this Contract. The parties recognize that it may be necessary for the State to make changes in areas within the scope of negotiations. Where the State finds it necessary to make such changes, the State shall notify the Union of the proposed change thirty (30) days prior to its proposed implementation.

   The parties shall undertake negotiations regarding the impact of such changes on the employees when all three of the following exists:

   1. Where such changes would affect the working conditions of a significant number of employees.

   2. Where the subject matter of change is within the scope of representation pursuant to Ralph C. Dills Act.

   3. Where the Union requests to negotiate with the State.

   An agreement resulting from such negotiations shall be executed in writing and shall become an addendum to this Contract. If the parties are in disagreement as to whether a proposed change is subject to this subsection, such disagreement may be submitted to the arbitration procedure for resolution.

   The arbitrator's decision shall be binding. In the event negotiations on the proposed change are undertaken, any impasse which arises may be submitted to mediation pursuant to section 3518 of the Ralph C. Dills Act.

C The DPA will meet with representatives of the Union monthly, upon request, to review the notices to meet and confer under the provisions of B above received by the Union to determine if the issues to be discussed can be consol idated to reduce the number of meetings required.

24.2 Duration

A. The terms of this Contract shall be July 1, 2005 to June 30, 2008.

B. In the six-month period prior to the expiration date of this Contract, the complete Contract will be subject to renegotiation.

ADDENDUM AND APPENDICES

ADDENDUM 1 - Employer-Paid Employee Retirement Contributions

The purpose of this Article is to implement the provisions contained in section 414(h)(2) of the Internal Revenue Code concerning the tax treatment of employee retirement contributions paid by the State of California on behalf of employees in Bargaining Unit 21. Pursuant to section 414(h)(2) contributions to a pension plan, although designated under the plan as employee contributions, when paid by the employer in lieu of contributions by the employee, under circumstances in which the employee does not have the option of choosing to receive the contributed amounts directly instead of having them paid by the employer, may be excluded from the gross income of the employee until these amounts are distributed or made available to the employee.

Implementation of section 414(h)(2) is accomplished through reduction in wages pursuant to the provisions of this Article.

1. Definitions. Unless the context otherwise requires, the definitions in this Article govern the construction of this Article.

   a. "Employees." The term "employees" shall mean those employees of the State of California in Bargaining Unit 21 who make contributions to the State Teachers' Retirement System (STRS).

   b. "Employee Contributions " The term "employee contributions" shall mean those contributions to the STRS which are deducted from the salary of employees and credited to individual employee's accounts.

   c. "Employer." The term "employer" shall mean the State of California.

   d. "Gross Income." The term "gross income" shall mean the total compensation paid to employees in Bargaining Unit 21 by the State of California as defined in the Internal Revenue Code and rules and regu lation established by the Internal Revenue Service.

   e. "Retirement System." The term "retirement system" shall mean the State Teachers' Retirement System as made applicable to the State of California under the provisions of the State Teachers' Retirement Law (California Education Code section 2200, et seq.).

   f. "Wages." The term "wages" shall mean the compensation prescribed in this Agreement.

2. PICK UP TO EMPLOYEE CONTRIBUTIONS

   a. Pursuant to the provisions of this Agreement, the Employer shall make employee contributions on behalf of employees, and such contributions shall be treated as employer contribution in determining tax treatment under the Internal Revenue Code of the United States. Such contributions are being made by the employer in lieu of employee contributions

b. Employee contributions made under Paragraph A of this Article shall be paid from the same source of funds as used in paying the wages of affected employees.

c. Employee contributions made by the Employer under Paragraph A of this Article shall be treated for all purposes other than taxation in the same manner and to the same extent as employee contributions made prior to the effective date of this Agreement.

d. "The employee does not have the option to receive the employer contributed amounts paid pursuant to this Agreement directly instead of having them paid to the retirement system."

3. WAGE ADJUSTMENT

Notwithstanding any provision in this Agreement on the contrary, the wages of employees shall be reduced by the amount of employee contributions made by the employer pursuant to the provisions thereof.

4. LIMITATIONS TO OPERABILITY

This article shall be operative only as long as the State of California pick up of employee retirement contributions continues to be excludable from gross income of the employee under the provisions of the Internal Revenue Code.

5 NON-ARBITRABILITY

The parties agree that no provisions of this Article shall be deemed to be arbitrable under the grievance and arbitration procedure contained in this Agreement.

APPENDIX A - BU 21 Classifications Eligible to Receive Educational Leave

CLASS CODE	SCHEM CODE	CLASS TITLE
2718	FG66	American Indian Education Assistant
2719	FG65	American Indian Education Consultant
2750	FG83	Bilingual/Migrant Education Assistant
2758	FG80	Bilingual/Migrant Education Consultant (Retitled 10/6/87 from Bilingual/Bicultural Education Consultant)
2715	EQ61	Career-Vocational Education Assistant
2722	EQ58	Career-Vocational Education Consultant (Revised 10/4/94 from Vocational Education Consultant)
2513	EN50	Agricultural Education Consultant
2517	EN90	Business Education Consultant
2514	EO20	Health Careers Education Consultant
2520	EO50	Home Economics Education Consultant (Retitled from Homemaking Education Consultant 10/4/94)
2524	EO90	Industrial and Technology Education Consultant (Retitled from Industrial Education Consultant 10/4/94)
2837	FB65	Child Development Assistant
2834	FB64	Child Development Consultant
2634	EW20	Consultant in Intergroup Relations
2616	EU20	Consultant in Mathematics Education
2769	FG30	Consultant in Physical Education
2774	FG60	Consultant in Pupil Personnel Services
2620	EQ70	Vocational Education., Gender Equity Consultant
2655	ER95	Education Programs Assistant
2656	ER90	Education Programs Consultant (Retitled from Education Administration Consultant 7/29/86)

CLASS CODE	SCHEM CODE	CLASS TITLE
2589	ER76	Assistant Field Representative, School Administration
2573	ER80	Field Representative, School Administration (Specialist)
2585	ER79	Field Representative, School Administration (Supervisory)
2260	FG45	Nutrition Education Assistant (Retitled from Nutrition Education & Training Assistant 2/19/97)
2261	FG50	Nutrition Education Consultant (Retitled from Nutrition Education & Training Consultant (Nonsupervisory) 2/19/97)
2773	FG41	School Health Education Assistant
2772	FG40	School Health Education Consultant
2754	FF59	Special Education Assistant
2764	FF60	Special Education Consultant
*2642	EX10	Education Research and Evaluation Assistant
*2643	EX20	Education Research and Evaluation Consultant
*2549	EM25	Community Colleges Program Assistant I
*2550	EM30	Community Colleges Program Assistant II
*2539	EM51	Specialist in Academic Planning & Development, CCC
*2530	EM85	Specialist in Agricultural Education, CCC
*2531	EM87	Specialist in Business Education, CCC
*2540	EM89	Specialist in Criminal Justice Education, CCC
*2544	EM54	Specialist in Employment & Certification, CCC
*2508	EM70	Specialist in Facilities Planning & Utilization, CCC
*2525	EM82	Specialist in Fiscal Planning & Administration, CCC
*2458	EM91	Specialist in General Vocational Education, CCC
*2535	EM93	Specialist in Health Education, CCC
*2465	EM95	Specialist in Homemaking Education, CCC

CLASS CODE	SCHEM CODE	CLASS TITLE
*2534	EM97	Specialist in Industrial Education, CCC
*2551	EM55	Specialist in Information Systems & Analysis, CCC
*2547	EM99	Specialist in Public Service Occupations, CCC
*2565	EM63	Specialist in Student Services Planning & Development, CCC
*2617	EU70	Assistant Consultant in Teacher Preparation
*2618	EU75	Consultant in Teacher Preparation (Examinations & Research)
*2635	EU80	Consultant in Teacher Preparation (Program Evaluation & Research)
*2566	EL68	Associate in Postsecondary Education Studies (Class established with Ranges A & B and positions reallocated from Postsecondary Education Specialist I and II on 11/14/89)
*2506	EL70	Senior Associate in Postsecondary Education Studies (Retitled from Postsecondary Education Specialist III 11/14/89)
**2958	FM65	Library Programs Consultant
**8250	TN20	Nursing Education Consultant
**2742	EK10	Private Postsecondary Education Specialist
**2743	EK20	Private Postsecondary Education Senior Specialist
**2560	EM71	Specialist in Library Planning & Development, CA Community Colleges

* Eligible only after 1/1/1988

** Eligible only after 1/1/2002

Abolished BU 21 Classes Eligible For Education Leave Credit

CLASS CODE	SCHEM CODE	CLASS TITLE
2730	FD30	Adult Education Assistant I
2731	FD25	Adult Education Assistant II
2732	FD20	Adult Education Consultant
2588	ER74	Assistant Field Representative I, School Administration
2589	ER76	Assistant Field Representative II, School Administration (Specialist)
2765	FG90	Bilingual/Bicultural Education Assistant I
2759	FG85	Bilingual/Bicultural Education Assistant II
2832	FB68	Child Development Assistant I
2833	FB66	Child Development Assistant II
2770	FH86	Compensatory Education Assistant I
2776	FH88	Compensatory Education Assistant II
2782	FH90	Compensatory Education Consultant (On Footnote 24)
2701	FA60	Consultant in Gifted & Talented Education
2705	FB15	Consultant in Reading
2767	FG35	Consultant in School Nursing & Health Services
2622	EU60	Consultant in Traffic Safety Education
2594	ES60	Textbook Consultant
2608	FB50	Early Childhood Education Assistant I
2610	FB40	Early Childhood Education Assistant II
2607	FB30	Early Childhood Education Consultant
2662	ER96	Education Administration Assistant I
2663	ER93	Education Administration Assistant II

CLASS CODE	SCHEM CODE	CLASS TITLE
2483	EK86	Education Program Planning & Development Assistant
2484	EK87	Education Program Planning & Development Consultant
2793	FI17	Migrant Education Assistant I
2798	FI15	Migrant Education Assistant II
2783	FI10	Migrant Education Consultant
2612	ES98	School Approvals Assistant I
2613	ES95	School Approvals Assistant II
2609	ES90	School Approvals Consultant
2747	FG38	School Health Education Assistant I
2748	FG39	School Health Education Assistant II
2692	EZ15	Secondary Education Assistant II
2686	EZ20	Secondary Education Consultant
2694	EZ30	Secondary Education Administrator I (Nonsupervisorial)
2761	FF40	Special Education Assistant I
2762	FF50	Special Education Assistant II
2583	EQ60	Vocational Education Assistant I
2721	EQ59	Vocational Education Assistant II

APPENDIX B – Chart for Computing Leave Hours for Reduced Time Bases

(Supercedes Accrual Rates In Management Memorandum 84-20-1)

Time Base	Hours of Monthly Vacation Leave							Hours of Monthly Annual Leave					Hours of Monthly Educational Leave	Hours of Monthly Sick Leave, Bereavement Leave and Holiday Credit
	7	10	11	12	13	14	15	11	14	16	17	18	10	8
1/5	1 40	2.00	2 20	2.40	2.60	2 80	3.00	2.20	2.80	3.20	3 40	3.60	N/A	1.60
2/5	2 80	4.00	4.40	4 80	5.20	5 60	6 00	4.40	5 60	6.40	6.80	7 20	N/A	3 20
3/5	4 20	6.00	6.60	7 20	7.80	8.40	9 00	6.60	8.40	9 60	10 20	10.80	6.00	4 80
4/5	5.60	8 00	8.80	9.60	10 40	11.20	12.00	8 80	11.20	12 80	13.60	14 40	8.00	6.40
1/8	0.88	1.25	1.38	1.50	1.63	1.75	1.88	1.38	1.75	2.00	2.13	2.25	N/A	1.00
1/4	1 75	2.50	2.75	3.00	3.25	3.50	3 75	2.75	3 50	4.00	4.25	4.50	N/A	2.00
3/8	2.63	3 75	4.13	4.50	4 88	5 25	5 63	4 13	5.25	6.00	6.38	6 75	N/A	3.00
1/2	3 50	5.00	5.50	6 00	6.50	7.00	7 50	5.50	7.00	8.00	8 50	9.00	5.00	4.00
5/8	4 38	6.25	6 88	7 50	8.13	8.75	9 38	6 88	8 75	10 00	10 63	11 25	6 25	5.00
3/4	5.25	7.50	8.25	9.00	9.75	10.50	11.25	8.25	10 50	12 00	12.75	13.50	7.50	6 00
7/8	6.13	8 75	9.63	10 50	11.38	12 25	13.13	9.63	12.25	14.00	14 88	15 75	8 75	7 00
1/10	0 70	1 00	1.10	1.20	1.30	1.40	1 50	1.10	1 40	1.60	1 70	1 80	N/A	0 80
3/10	2 10	3.00	3 30	3.60	3.90	4.20	4.50	3.30	4 20	4.80	5.10	5 40	N/A	2 40
7/10	4.90	7 00	7.70	8.40	9 10	9 80	10.50	7.70	9.80	11.20	11.90	12 60	7.00	5 60
9/10	6 30	9.00	9.90	10.80	11.70	12.60	13 50	9.90	12 60	14.40	15 30	16.20	9.00	7 20

SALARY SCHEDULE

Class Title	Schem Cd	Class Cd	ALT RG	MIN SAL	MAX SAL	WWG
ADAPTIVE DRIVER EVALUATION SPECIALIST, DEPARTMENT OF REHABILITATION	EJ20	2681	A	$3,877.00	$4,711.00	2
ADAPTIVE DRIVER EVALUATION SPECIALIST, DEPARTMENT OF REHABILITATION	EJ20	2681	F	$3,230.83	$3,925.83	2
AGRICULTURAL EDUCATION CONSULTANT	EN50	2513	A	$5,536.00	$6,725.00	E
AGRICULTURAL EDUCATION CONSULTANT	EN50	2513	F	$4,613.33	$5,604.17	E
AMERICAN INDIAN EDUCATION ASSISTANT	FG66	2718	A	$4,172.00	$5,067.00	E
AMERICAN INDIAN EDUCATION ASSISTANT	FG66	2718	B	$5,037.00	$6,121.00	E
AMERICAN INDIAN EDUCATION ASSISTANT	FG66	2718	F	$3,476.67	$4,222.50	E
AMERICAN INDIAN EDUCATION ASSISTANT	FG66	2718	G	$4,197.50	$5,100.83	E
AMERICAN INDIAN EDUCATION CONSULTANT	FG65	2719	A	$5,536.00	$6,725.00	E
AMERICAN INDIAN EDUCATION CONSULTANT	FG65	2719	F	$4,613.33	$5,604 17	E
ARCHIVIST I	BU30	2805	A	$3,737.00	$4,542 00	E
ARCHIVIST I	BU30	2805	F	$3,114.17	$3,785 00	E
ARCHIVIST II	BU40	2804	A	$4,289.00	$5,210.00	E
ARCHIVIST II	BU40	2804	F	$3,574.17	$4,341.67	E
ASSISTANT CONSULTANT IN TEACHER PREPARATION	EU70	2617	A	$4,172.00	$5,067 00	E
ASSISTANT CONSULTANT IN TEACHER PREPARATION	EU70	2617	B	$5,037.00	$6,121.00	E
ASSISTANT CONSULTANT IN TEACHER PREPARATION	EU70	2617	F	$3,476.67	$4,222.50	E
ASSISTANT CONSULTANT IN TEACHER PREPARATION	EU70	2617	G	$4,197.50	$5,100.83	E
ASSISTANT FIELD REPRESENTATIVE, SCHOOL ADMINISTRATION	ER76	2589	A	$4,172.00	$5,067.00	E
ASSISTANT FIELD REPRESENTATIVE, SCHOOL ADMINISTRATION	ER76	2589	B	$5,037.00	$6,121.00	E
ASSISTANT FIELD REPRESENTATIVE, SCHOOL ADMINISTRATION	ER76	2589	F	$3,476.67	$4,222.50	E
ASSISTANT FIELD REPRESENTATIVE, SCHOOL ADMINISTRATION	ER76	2589	G	$4,197.50	$5,100.83	E
ASSOCIATE IN POSTSECONDARY EDUCATION STUDIES	EL68	2566	A	$4,172.00	$5,067.00	E
ASSOCIATE IN POSTSECONDARY EDUCATION STUDIES	EL68	2566	B	$5,037.00	$6,121.00	E
ASSOCIATE IN POSTSECONDARY EDUCATION STUDIES	EL68	2566	F	$3,476.67	$4,222.50	E
ASSOCIATE IN POSTSECONDARY EDUCATION STUDIES	EL68	2566	G	$4,197.50	$5,100.83	E
ASSOCIATE VOCATIONAL EDUCATION ANALYST, CALIFORNIA ADMISORYCOUNCIL FOR VOCATIONAL EDUCATION	EX51	2689	A	$4,164.00	$5,059.00	E

Class Title	Schem Cd	Class Cd	ALT RG	MIN SAL	MAX SAL	WWG
ASSOCIATE VOCATIONAL EDUCATION ANALYST, CALIFORNIA ADIVISORYCOUNCIL FOR VOCATIONAL EDUCATION	EX51	2689	F	$3,470.00	$4,215.83	E
AUDIO-VISUAL TECHNICIAN, CALIFORNIA MUSEUM OF SCIENCE AND INDUSTRY	FJ90	2821	A	$2,712.00	$3,295.00	2
AUDIO-VISUAL TECHNICIAN, CALIFORNIA MUSEUM OF SCIENCE AND INDUSTRY	FJ90	2821	F	$2,260.00	$2,745.83	2
BILINGUAL/MIGRANT EDUCATION ASSISTANT	FG83	2750	A	$4,172.00	$5,067.00	E
BILINGUAL/MIGRANT EDUCATION ASSISTANT	FG83	2750	B	$5,037.00	$6,121.00	E
BILINGUAL/MIGRANT EDUCATION ASSISTANT	FG83	2750	F	$3,476.67	$4,222.50	E
BILINGUAL/MIGRANT EDUCATION ASSISTANT	FG83	2750	G	$4,197.50	$5,100.83	E
BILINGUAL/MIGRANT EDUCATION CONSULTANT	FG80	2758	A	$5,536.00	$6,725.00	E
BILINGUAL/MIGRANT EDUCATION CONSULTANT	FG80	2758	F	$4,613.33	$5,604.17	E
BUS DRIVER TRAINING PROGRAMS SPECIALIST	ET10	2683	A	$4,613.00	$5,605.00	E
BUS DRIVER TRAINING PROGRAMS SPECIALIST	ET10	2683	F	$3,844.17	$4,670.83	E
BUSINESS EDUCATION CONSULTANT	EN90	2517	A	$5,536 00	$6,725.00	E
BUSINESS EDUCATION CONSULTANT	EN90	2517	F	$4,613 33	$5,604.17	E
CAREER-VOCATIONAL EDUCATION ASSISTANT	EQ61	2715	A	$4,172.00	$5,067.00	E
CAREER-VOCATIONAL EDUCATION ASSISTANT	EQ61	2715	B	$5,037.00	$6,121.00	E
CAREER-VOCATIONAL EDUCATION ASSISTANT	EQ61	2715	F	$3,476.67	$4,222.50	E
CAREER-VOCATIONAL EDUCATION ASSISTANT	EQ61	2715	G	$4,197.50	$5,100.83	E
CAREER-VOCATIONAL EDUCATION CONSULTANT	EQ58	2722	A	$5,536.00	$6,725.00	E
CAREER-VOCATIONAL EDUCATION CONSULTANT	EQ58	2722	F	$4,613.33	$5,604.17	E
CHILD DEVELOPMENT ASSISTANT	FB65	2837	A	$4,172.00	$5,067 00	E
CHILD DEVELOPMENT ASSISTANT	FB65	2837	B	$5,037.00	$6,121.00	E
CHILD DEVELOPMENT ASSISTANT	FB65	2837	F	$3,476.67	$4,222.50	E
CHILD DEVELOPMENT ASSISTANT	FB65	2837	G	$4,197.50	$5,100.83	E
CHILD DEVELOPMENT CONSULTANT	FB64	2834	A	$5,536.00	$6,725.00	E
CHILD DEVELOPMENT CONSULTANT	FB64	2834	F	$4,613.33	$5,604.17	E
COMMUNITY COLLEGE PROGRAM ASSISTANT I	EM25	2549	A	$4,172.00	$5,067.00	2
COMMUNITY COLLEGE PROGRAM ASSISTANT I	EM25	2549	F	$3,476.67	$4,222.50	2
COMMUNITY COLLEGE PROGRAM ASSISTANT II	EM30	2550	A	$5,037.00	$6,121.00	E
COMMUNITY COLLEGE PROGRAM ASSISTANT II	EM30	2550	F	$4,197.50	$5,100.83	E
CONSULTANT IN MATHEMATICS EDUCATION	EU20	2616	A	$5,536.00	$6,725.00	E
CONSULTANT IN MATHEMATICS EDUCATION	EU20	2616	F	$4,613.33	$5,604.17	E
CONSULTANT IN PHYSICAL EDUCATION	FG30	2769	A	$5,536.00	$6,725.00	E
CONSULTANT IN PHYSICAL EDUCATION	FG30	2769	F	$4,613.33	$5,604.17	E

Class Title	Schem Cd	Class Cd	ALT RG	MIN SAL	MAX SAL	WWG
CONSULTANT IN PUPIL PERSONNEL SERVICES	FG60	2774	A	$5,536.00	$6,725.00	E
CONSULTANT IN PUPIL PERSONNEL SERVICES	FG60	2774	F	$4,613.33	$5,604.17	E
CONSULTANT IN TEACHER PREPARATION (EXAMINATIONS AND RESEARCH)	EU75	2618	A	$5,536.00	$6,725.00	E
CONSULTANT IN TEACHER PREPARATION (EXAMINATIONS AND RESEARCH)	EU75	2618	F	$4,613.33	$5,604.17	E
CONSULTANT IN TEACHER PREPARATION (PROGRAM EVALUATION AND RESEARCH)	EU80	2635	A	$5,536.00	$6,725.00	E
CONSULTANT IN TEACHER PREPARATION (PROGRAM EVALUATION AND RESEARCH)	EU80	2635	F	$4,613.33	$5,604.17	E
EDUCATION FISCAL SERVICES ASSISTANT	ER50	2897	A	$4,172.00	$5,067.00	E
EDUCATION FISCAL SERVICES ASSISTANT	ER50	2897	B	$5,037.00	$6,121.00	E
EDUCATION FISCAL SERVICES ASSISTANT	ER50	2897	F	$3,476.67	$4,222.50	E
EDUCATION FISCAL SERVICES ASSISTANT	ER50	2897	G	$4,197.50	$5,100.83	E
EDUCATION FISCAL SERVICES CONSULTANT	ER51	2898	A	$5,536.00	$6,725.00	E
EDUCATION FISCAL SERVICES CONSULTANT	ER51	2898	F	$4,613.33	$5,604.17	E
EDUCATION PROGRAMS ASSISTANT	ER95	2655	A	$4,172.00	$5,067.00	E
EDUCATION PROGRAMS ASSISTANT	ER95	2655	B	$5,037.00	$6,121.00	E
EDUCATION PROGRAMS ASSISTANT	ER95	2655	F	$3,476.67	$4,222.50	E
EDUCATION PROGRAMS ASSISTANT	ER95	2655	G	$4,197.50	$5,100.83	E
EDUCATION PROGRAMS CONSULTANT	ER90	2656	A	$5,536.00	$6,725.00	E
EDUCATION PROGRAMS CONSULTANT	ER90	2656	F	$4,613.33	$5,604.17	E
EDUCATION PROJECT ASSISTANT I -VARIOUS PROJECTS-	EY30	2654	A	$3,804.00	$4,622.00	2
EDUCATION PROJECT ASSISTANT I -VARIOUS PROJECTS-	EY30	2654	F	$3,170.00	$3,851.67	2
EDUCATION PROJECT ASSISTANT II -VARIOUS PROJECTS-	EY20	2653	A	$4,589.00	$5,577.00	2
EDUCATION PROJECT ASSISTANT II -VARIOUS PROJECTS-	EY20	2653	F	$3,824.17	$4,647.50	2
EDUCATION PROJECT SPECIALIST I -VARIOUS PROJECTS-	EY10	2652	A	$5,536.00	$6,725.00	E
EDUCATION PROJECT SPECIALIST I -VARIOUS PROJECTS-	EY10	2652	F	$4,613.33	$5,604.17	E
EDUCATION RESEARCH AND EVALUATION ASSISTANT	EX10	2642	A	$4,172.00	$5,067.00	E
EDUCATION RESEARCH AND EVALUATION ASSISTANT	EX10	2642	B	$5,037.00	$6,121.00	E
EDUCATION RESEARCH AND EVALUATION ASSISTANT	EX10	2642	F	$3,476.67	$4,222.50	E
EDUCATION RESEARCH AND EVALUATION ASSISTANT	EX10	2642	G	$4,197.50	$5,100.83	E
EDUCATION RESEARCH AND EVALUATION CONSULTANT	EX20	2643	A	$5,536.00	$6,725.00	E
EDUCATION RESEARCH AND EVALUATION CONSULTANT	EX20	2643	F	$4,613.33	$5,604.17	E
FIELD REPRESENTATIVE, SCHOOL ADMINISTRATION (SPECIALIST)	ER80	2573	A	$5,536.00	$6,725.00	E

Class Title	Schem Cd	Class Cd	ALT RG	MIN SAL	MAX SAL	WWG
FIELD REPRESENTATIVE, SCHOOL ADMINISTRATION (SPECIALIST)	ER80	2573	F	$4,613.33	$5,604.17	E
HEALTH CAREERS EDUCATION CONSULTANT	EO20	2514	A	$5,536.00	$6,725.00	E
HEALTH CAREERS EDUCATION CONSULTANT	EO20	2514	F	$4,613.33	$5,604.17	E
HOME ECONOMICS EDUCATION CONSULTANT	EO50	2520	A	$5,536.00	$6,725.00	E
HOME ECONOMICS EDUCATION CONSULTANT	EO50	2520	F	$4,613.33	$5,604.17	E
INDUSTRIAL AND TECHNOLOGY EDUCATION CONSULTANT	EO90	2524	A	$5,536.00	$6,725.00	E
INDUSTRIAL AND TECHNOLOGY EDUCATION CONSULTANT	EO90	2524	F	$4,613.33	$5,604.17	E
LIBRARIAN	FM50	2951	A	$4,057.00	$4,929.00	E
LIBRARIAN	FM50	2951	F	$3,380.83	$4,107.50	E
LIBRARY PROGRAMS CONSULTANT	FM65	2958	A	$5,536.00	$6,725.00	E
LIBRARY PROGRAMS CONSULTANT	FM65	2958	F	$4,613.33	$5,594.17	E
MARITIME VOCATIONAL INSTRUCTOR I	QU10	6976	A	$3,087.00	$3,752.00	2
MARITIME VOCATIONAL INSTRUCTOR I	QU10	6976	B	$3,523.00	$4,282.00	2
MARITIME VOCATIONAL INSTRUCTOR I	QU10	6976	C	$3,609.00	$4,384.00	2
MARITIME VOCATIONAL INSTRUCTOR I	QU10	6976	F	$3,007.50	$3,653.33	2
MARITIME VOCATIONAL INSTRUCTOR II	QU20	6978	A	$3,226.00	$3,920.00	2
MARITIME VOCATIONAL INSTRUCTOR II	QU20	6978	B	$3,680.00	$4,472.00	2
MARITIME VOCATIONAL INSTRUCTOR II	QU20	6978	C	$3,769.00	$4,581.00	2
MARITIME VOCATIONAL INSTRUCTOR II	QU20	6978	F	$3,140.83	$3,817.50	2
MARITIME VOCATIONAL INSTRUCTOR III	QU30	6979	A	$3,763.00	$4,573.00	2
MARITIME VOCATIONAL INSTRUCTOR III	QU30	6979	B	$4,294.00	$5,218.00	2
MARITIME VOCATIONAL INSTRUCTOR III	QU30	6979	C	$4,399.00	$5,345.00	2
MARITIME VOCATIONAL INSTRUCTOR III	QU30	6979	F	$3,665.83	$4,454.17	2
NURSING EDUCATION CONSULTANT	TN20	8250	A	$5,536.00	$6,725.00	E
NURSING EDUCATION CONSULTANT	TN20	8250	F	$4,613.33	$5,604.17	E
NUTRITION EDUCATION ASSISTANT	FG45	2260	A	$4,172.00	$5,067.00	E
NUTRITION EDUCATION ASSISTANT	FG45	2260	B	$5,037.00	$6,121 00	E
NUTRITION EDUCATION ASSISTANT	FG45	2260	F	$3,476.67	$4,222.50	E
NUTRITION EDUCATION ASSISTANT	FG45	2260	G	$4,197.50	$5,100.83	E
NUTRITION EDUCATION CONSULTANT	FG50	2261	A	$5,536.00	$6,725.00	E
NUTRITION EDUCATION CONSULTANT	FG50	2261	F	$4,613.33	$5,604.17	E
PRIVATE POSTSECONDARY EDUCATION SENIOR SPECIALIST	EK20	2743	A	$5,536.00	$6,725 00	E
PRIVATE POSTSECONDARY EDUCATION SENIOR SPECIALIST	EK20	2743	F	$4,613.33	$5,604.17	E
PRIVATE POSTSECONDARY EDUCATION SPECIALIST	EK10	2742	A	$4,172.00	$5,067.00	E
PRIVATE POSTSECONDARY EDUCATION SPECIALIST	EK10	2742	B	$5,037.00	$6,121.00	E

Class Title	Schem Cd	Class Cd	ALT RG	MIN SAL	MAX SAL	WWG
PRIVATE POSTSECONDARY EDUCATION SPECIALIST	EK10	2742	F	$3,476.67	$4,222.50	E
PRIVATE POSTSECONDARY EDUCATION SPECIALIST	EK10	2742	G	$4,197.50	$5,100.83	E
SCHOOL HEALTH EDUCATION ASSISTANT	FG41	2773	A	$4,172.00	$5,067.00	E
SCHOOL HEALTH EDUCATION ASSISTANT	FG41	2773	B	$5,037.00	$6,121 00	E
SCHOOL HEALTH EDUCATION ASSISTANT	FG41	2773	F	$3,476.67	$4,222.50	E
SCHOOL HEALTH EDUCATION ASSISTANT	FG41	2773	G	$4,197.50	$5,100.83	E
SCHOOL HEALTH EDUCATION CONSULTANT	FG40	2772	A	$5,536.00	$6,725.00	E
SCHOOL HEALTH EDUCATION CONSULTANT	FG40	2772	F	$4,613.33	$5,604.17	E
SENIOR ASSOCIATE IN POSTSECONDARY EDUCATION STUDIES	EL70	2506		$5,536 00	$6,725.00	E
SENIOR LIBRARIAN	FM41	2943	A	$4,411.00	$5,359.00	E
SENIOR LIBRARIAN	FM41	2943	F	$3,675.83	$4,465.83	E
SPECIAL EDUCATION ASSISTANT	FF59	2754	A	$4,172.00	$5,067 00	E
SPECIAL EDUCATION ASSISTANT	FF59	2754	B	$5,037.00	$6,121.00	E
SPECIAL EDUCATION ASSISTANT	FF59	2754	F	$3,476.67	$4,222.50	E
SPECIAL EDUCATION ASSISTANT	FF59	2754	G	$4,197.50	$5,100.83	E
SPECIAL EDUCATION CONSULTANT	FF60	2764	A	$5,536.00	$6,725.00	E
SPECIAL EDUCATION CONSULTANT	FF60	2764	F	$4,613.33	$5,604.17	E
SPECIALIST IN ACADEMIC PLANNING AND DEVELOPMENT, CALIFORNIA COMMUNITY COLLEGES	EM51	2539	A	$5,536.00	$6,725.00	E
SPECIALIST IN ACADEMIC PLANNING AND DEVELOPMENT, CALIFORNIA COMMUNITY COLLEGES	EM51	2539	F	$4,613.33	$5,604.17	E
SPECIALIST IN AGRICULTURAL EDUCATION CALIFORNIA COMMUNITY COLLEGES	EM85	2530	A	$5,536.00	$6,725.00	E
SPECIALIST IN AGRICULTURAL EDUCATION CALIFORNIA COMMUNITY COLLEGES	EM85	2530	F	$4,613.33	$5,604.17	E
SPECIALIST IN BUSINESS EDUCATION CALIFORNIA COMMUNITY COLLEGES	EM87	2531	A	$5,536.00	$6,725.00	E
SPECIALIST IN BUSINESS EDUCATION CALIFORNIA COMMUNITY COLLEGES	EM87	2531	F	$4,613.33	$5,604.17	E
SPECIALIST IN CRIMINAL JUSTICE EDUCATION CALIFORNIA COMMUNITY COLLEGES	EM89	2540	A	$5,536.00	$6,725.00	E
SPECIALIST IN CRIMINAL JUSTICE EDUCATION CALIFORNIA COMMUNITY COLLEGES	EM89	2540	F	$4,613.33	$5,604.17	E
SPECIALIST IN EMPLOYMENT AND CERTIFICATION, CALIFORNIA COMMUNITY COLLEGES	EM54	2544		$5,536.00	$6,725.00	E

Class Title	Schem Cd	Class Cd	ALT RG	MIN SAL	MAX SAL	WWG
SPECIALIST IN FACILITIES PLANNING AND UTILIZATION CALIFORNIACOMMUNITY COLLEGES	EM70	2508	A	$5,536.00	$6,725.00	E
SPECIALIST IN FACILITIES PLANNING AND UTILIZATION CALIFORNIACOMMUNITY COLLEGES	EM70	2508	F	$4,613.33	$5,604.17	E
SPECIALIST IN FISCAL PLANNING AND ADMINISTRATION, CALIFORNIACOMMUNITY COLLEGES	EM82	2525	A	$5,536.00	$6,725.00	E
SPECIALIST IN FISCAL PLANNING AND ADMINISTRATION, CALIFORNIACOMMUNITY COLLEGES	EM82	2525	F	$4,613.33	$5,604.17	E
SPECIALIST IN GENERAL VOCATIONAL EDUCATION CALIFORNIA COMMUNITY COLLEGES	EM91	2458	A	$5,536.00	$6,725.00	E
SPECIALIST IN GENERAL VOCATIONAL EDUCATION CALIFORNIA COMMUNITY COLLEGES	EM91	2458	F	$4,613.33	$5,604.17	E
SPECIALIST IN HEALTH OCCUPATIONS CALIFORNIA COMMUNITY COLLEGES	EM93	2535	A	$5,536.00	$6,725.00	E
SPECIALIST IN HEALTH OCCUPATIONS CALIFORNIA COMMUNITY COLLEGES	EM93	2535	F	$4,613.33	$5,604.17	E
SPECIALIST IN HOMEMAKING EDUCATION CALIFORNIA COMMUNITY COLLEGES	EM95	2465	A	$5,536.00	$6,725.00	E
SPECIALIST IN HOMEMAKING EDUCATION CALIFORNIA COMMUNITY COLLEGES	EM95	2465	F	$4,613.33	$5,604.17	E
SPECIALIST IN INDUSTRIAL EDUCATION CALIFORNIA COMMUNITY COLLEGES	EM97	2534	A	$5,536.00	$6,725.00	E
SPECIALIST IN INDUSTRIAL EDUCATION CALIFORNIA COMMUNITY COLLEGES	EM97	2534	F	$4,613.33	$5,604.17	E
SPECIALIST IN INFORMATION SYSTEMS AND ANALYSIS, CALIFORNIA COMMUNITY COLLEGES	EM55	2551	A	$5,536.00	$6,725.00	E
SPECIALIST IN INFORMATION SYSTEMS AND ANALYSIS, CALIFORNIA COMMUNITY COLLEGES	EM55	2551	F	$4,613.33	$5,604.17	E
SPECIALIST IN LIBRARY PLANNING AND DEVELOPMENT, CALIFORNIA COMMUNITY COLLEGES	EM71	2560	A	$5,536 00	$6,725.00	E
SPECIALIST IN LIBRARY PLANNING AND DEVELOPMENT, CALIFORNIA COMMUNITY COLLEGES	EM71	2560	F	$4,613 33	$5,604.17	E
SPECIALIST IN PUBLIC SERVICE OCCUPATIONS CALIFORNIA COMMUNITY COLLEGES	EM99	2547	A	$5,536.00	$6,725.00	E
SPECIALIST IN PUBLIC SERVICE OCCUPATIONS CALIFORNIA COMMUNITY COLLEGES	EM99	2547	F	$4,613 33	$5,604.17	E

Class Title	Schem Cd	Class Cd	ALT RG	MIN SAL	MAX SAL	WWG
SPECIALIST IN STUDENT SERVICES PLANNING AND DEVELOPMENT, CALIFORNIA COMMUNITY COLLEGES	EM63	2565	A	$5,536.00	$6,725.00	E
SPECIALIST IN STUDENT SERVICES PLANNING AND DEVELOPMENT, CALIFORNIA COMMUNITY COLLEGES	EM63	2565	F	$4,613.33	$5,604.17	E
VOCATIONAL EDUCATION GENDER EQUITY CONSULTANT	EQ70	2620	A	$5,536.00	$6,725.00	E
VOCATIONAL EDUCATION GENDER EQUITY CONSULTANT	EQ70	2620	F	$4,613.33	$5,604.17	E

UNIT 21 SIGNATURE PAGE

FOR THE STATE OF CALIFORNIA

Terri Henson
Department of Education

Angela Acker
Department of Education

Barbara Farley
California Community Colleges Chancellor's Office

Renee Luchini
California State Library

Jeannette Williams Gipson, Chief Negotiator
Department of Personnel Administration

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SACRAMENTO
GORDON D SCHABER COURTHOUSE

MINUTE ORDER

Date: 01/29/2009 Time: 09:00:00 AM Dept: 19

Judicial Officer Presiding: Judge Patrick Marlette
Clerk: Ramos, A.

Bailiff/Court Attendant: Munoz, O.
ERM:
Reporter: K Nowack #6987,

Case Init. Date: 01/08/2009

Case No: 34-2009-80000135-CU-WM-GDS Case Title: Service Employees International Union Local 1000 vs. Arnold Schwarzenegger as Governor State Of

Case Category: Civil - Unlimited

Event Type: Petition for Writ of Mandate - Writ of Mandate

Causal Document & Date Filed:

Appearances:

Brooke Pierman, attorney for Petitioner
Felix De La Torre, attorney for Petitioner
Will Yamada, attorney for Respondent
David Tyra, attorney for Respondent
Shawn Silva, attorney for Respondent

The following cases were heard in conjunction with one another:

VV

PROFESSIONAL ENGINEERS IN CALIFORNIA GOVERNMENT, et al., v. GOVERNOR ARNOLD SCHWARZENEGGER, et al., Case No. 2008-80000126;

CALIFORNIA ATTORNEYS, ADMINISTRATIVE LAW JUDGES AND HEARING OFFICERS IN STATE EMPLOYMENT, v. GOVERNOR ARNOLD SCHWARZENEGGER, et al., Case No. 2009-80000134;

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1000, v. GOVERNOR ARNOLD SCHWARZENEGGER, et al., Case No. 2009-80000135.

The following shall constitute the Court's final rulings on the demurrers and petitions for writ of mandate and complaints for declaratory relief in the above-captioned matters:

Introduction and Background:

On December 19, 2008, in a response to the current State budget crisis, Governor Arnold Schwarzenegger issued Executive Order S-16-08. As relevant to this action, the Executive Order directed the Department of Personnel Administration, effective February 1, 2009 through June 30, 2010, to adopt a plan to implement a furlough of represented state employees and supervisors for two days per month, and to adopt a plan to implement an equivalent furlough or salary reduction for all state

managers, including exempt state employees.

Several organizations representing state employees affected by the Executive Order have filed three separate petitions for writ of mandate and complaints for declaratory relief challenging the provisions of the Order imposing the furloughs, and seeking to overturn them.

The first such action, Case No. 2008-80000126, was filed by petitioners Professional Engineers in California Government ("PECG") and California Association of Professional Scientists ("CAPS") on December 22, 2008. That action initially was assigned to Department 33 of this Court, Judge Lloyd Connelly, presiding; it was reassigned to this Department after respondents filed a peremptory challenge to Judge Connelly pursuant to Code of Civil Procedure section 170.6 on January 7, 2009.

The second such action, Case No. 2009-80000134, was filed by petitioner California Attorneys, Administrative Law Judges and Hearing Officers in State Employment ("CASE") on January 5, 2009. That action was assigned to Department 33 of this Court, Judge Lloyd Connelly, presiding. Petitioner simultaneously filed a Notice of Related Case in that action, stating that it was related to Case No. 2008-80000126.

The third such action, Case No. 2009-80000135, was filed by petitioner Service Employees International Union, Local 1000 ("SEIU"), on January 7, 2009. The action was assigned to Department 29 of this Court, Judge Timothy M. Frawley, presiding. Petitioner simultaneously filed a Notice of Related Case in that action, stating that it was related to Cases Nos. 2008-80000126 and 2008-80000134

On January 9, 2009, the Court heard simultaneous ex parte applications by the petitioners and respondents in Case No. 2008-80000126 for orders shortening time that would have the effect of setting a hearing on respondents' demurrer to the petition and the hearing on the merits of the petition itself for a date prior to February 1, 2009, when the furloughs would go into effect.

At the hearing on January 9, 2009, counsel for the petitioners in Cases Nos. 2009-80000134 and 2009-80000135 appeared and stipulated on the record that those cases would be treated as related to Case No. 2008-80000126, and that those cases would be transferred to this Department for hearing pursuant to Rule of Court 3.300(h)(1)(a). Counsel for respondents in Case No. 2008-80000126 also stated on the record that he represented the respondents in one of the other two cases, and most likely would represent the respondents in the other (although at that time, the petition had not formally been served on the respondents), and also stipulated on the record that the three cases would be heard in this Department as provided above. The parties further agreed to a briefing schedule and to a combined hearing on the respondents' demurrers to, and the merits of, the three petitions. The parties to all three actions have filed their briefs and other papers according to the agreed-upon schedule and the Court heard oral argument on the matter on Thursday, January 29, 2009.

On January 12, 2009, a fourth action was filed challenging the Governor's Executive Order, entitled California Correctional Peace Officers Association v. Governor Arnold Schwarzenegger, et al., Case No. 2008-80000137. The Court issued an order finding that case to be related to the three cases captioned above and further ordered that case assigned to this Department. That case has been set for hearing on Friday, February 5, 2009.

Ruling on Preliminary Evidentiary Issues:

Respondents have made two requests for judicial notice, filed January 9, 2009 and January 13, 2009, along with an Amended Request for Judicial Notice on January 23, 2009 in response to the Court's order directing them to submit complete copies of the Memoranda of Understanding ("MOUs") involved in these actions. No objections to the requests have been filed. The Court has reviewed the requests and the documents attached thereto and finds that all such documents are proper subjects for judicial notice. Respondents' requests for judicial notice are therefore granted.

Respondents' evidentiary objection to the Declaration of Peter Flores, Jr. is overruled on the ground that the lack of a signature on the declaration has been remedied by the filing of an amended declaration, unchanged in substance, which bears Mr. Flores' signature.

Ruling on Respondents' Demurrers to the Petitions:

Respondents' demurrers are overruled on the following basis:

The petitions and complaints allege generally that the provisions of the Governor's Executive Order S-16-08 that implement a furlough of represented state employees and supervisors for two days per month, and an equivalent furlough or salary reduction for state managers, effective February 1, 2009 through June 30, 2010, are invalid in that such action on the part of the Governor is not authorized by law, and moreover is forbidden by certain provisions of law, in particular, Government Code section 19826(b).

The Court finds that such allegations are sufficient to state a cause of action for issuance of a writ of mandate or for declaratory relief, regardless of whether Government Code section 19826(b) is superseded by the terms of the MOUs petitioners have entered into with the State (as respondents argue), because the petitions and complaints allege, in essence, that the Governor lacks the positive authority to make the challenged order in the first instance, irrespective of any statutory prohibition that may or may not apply. The allegation that the Governor lacks any authority to make the challenged order is sufficient to state a cause of action on its own.

The Court further finds that the issue of the Governor's authority to make the challenged order is not an issue within the exclusive initial jurisdiction of the Public Employment Relations Board, because it involves issues of statutory interpretation and separation of powers between the Governor and the Legislature, which are matters properly within the jurisdiction of the courts, and not issues of unfair practices under the Ralph C. Dills Act, which are matters properly within the jurisdiction of the Board. (See, e.g., California School Employees Association v. Azusa Unified School District (1984) 152 Cal. App. 3rd 580, 592-593; California Teachers' Association v. Livingston School District (1990) 219 Cal. App. 3rd 1503, 1519.) Moreover, the petitions and complaints in effect allege that the Governor's Executive Order regarding an employee furlough violates the provisions of the petitioners' MOUs with the State governing wages and hours. The Board does not have the authority to enforce agreements between the parties. (Government Code section 3514.5(b); see also, San Lorenzo Education Association v. Wilson (1982) 32 Cal. 3rd 841.)

Moreover, even if this Court were to conclude that the Board did have jurisdiction over this matter, it would conclude that the normal policy reasons requiring parties to exhaust available administrative remedies do not apply in this case for many of the reasons stated by the Third District Court of Appeal in a case arising out of an earlier state budget crisis: namely, that the facts are undisputed, so there is no need for administrative development of the record; judicial intervention will not interfere with the expertise of the agency or create problems of judicial economy, given that the underlying issues are within the expertise of the courts and undoubtedly would be resolved ultimately by the courts even if initial jurisdiction were found in the Board; and, given that this case raises questions of first impression which most likely are bound for ultimate determination in the appellate courts, there is little concern of conflicting decisions between the Board and the courts. (See, Department of Personnel Administration v. Superior Court (Greene) (1992) 5 Cal. App. 4th 155, 168-169.)

In using the terms "respondents" or "defendants" in this ruling, the Court is referring to Governor Arnold Schwarzenegger and the Department of Personnel Administration. Although State Controller John Chiang also has been named as a respondent in these actions, the Controller has filed an Opposition to the Respondents'/Defendants' Demurrer stating that his interests are actually aligned with the petitioners and that, but for the short time frame, he would have filed a formal motion to realign the parties, seeking to be redesignated as a petitioner/plaintiff. The Controller's position in these actions will be discussed further below. In this ruling, the Court also has treated the terms "the Governor", "the Department of Personnel Administration" (or "the department" or "DPA") and "the State" as being essentially interchangeable.

In addition, even if this Court were to conclude that the Board did have jurisdiction over this matter, it

would conclude that exhaustion of administrative remedies by resort to the Board should be excused on the ground that requiring exhaustion under the particular circumstances of this case would cause both the State and its employees to suffer irreparable injury, again, for many of the reasons stated in the 1992 Greene case: specifically, that the extremely grave nature of the fiscal crisis faced by the state, and the urgent need for resolution of these issues in as expeditious a manner as possible, create a great potential for irreparable harm in the nature of layoffs of state employees, with a concomitant reduction in the nature of state services, all of which are amply demonstrated by the declarations and documents that have been filed by parties in this matter (many of them by respondents). Even if, as the Court of Appeal stated in the Greene case, there is a possibility that the Board could order the same relief that petitioners seek here, it is extremely unlikely that the entire process of Board adjudication followed by judicial review as provided by law would be completed in a sufficiently timely manner to address the immediate crisis. (See, Department of Personnel Administration v. Superior Court (Greene) (1992) 5 Cal. App. 4th 155, 170-171.)

Petitioners SEIU and CASE raise additional claims for declaratory relief regarding the effect of the furlough on the exempt status of employees under the federal Fair Labor Standards Act ("FLSA"). The SEIU complaint alleges that a significant number of its employees will be required to work in excess of 40 hours during furlough weeks, that such employees will no longer be considered exempt employees as a matter of law during those weeks, that such workers will be entitled to overtime pay during such weeks, and that respondents lack any mechanism or systems in place to move employees from exempt to non-exempt status from week-to-week, with the result being that such employees will not receive the overtime pay to which they are entitled under the FLSA. Such facts are sufficient to state a cause of action in declaratory relief based on the theory that respondents are not willing and able to comply with their obligations under the FLSA, at least for the purpose of withstanding a demurrer. Respondents' contention that the complaint on its face shows that petitioner's FLSA claim is not ripe for review, and seeks only an advisory opinion, because there is no allegation that respondents actually have failed to pay any overtime that is due, is unpersuasive.

The CASE complaint alleges the same facts regarding the effect of the furloughs on its employees' exempt status under the FLSA. The complaint lacks the specific allegations present in the SEIU complaint regarding respondents' lack of willingness and ability to comply with the FLSA, but alleges in general terms that respondents' actions will result in denial of the protection of the laws regarding overtime compensation. In essence, this complaint is identical in substance to the SEIU complaint; the Court concludes that it also states a cause of action for declaratory relief.

Respondents' demurrers are therefore overruled.

Ruling on the Petitions and Complaints: **VV**

The petitions for writ of mandate and complaints for declaratory relief challenging the provisions of the Governor's Executive Order imposing furloughs on state employees are based on twin contentions: that the Governor lacks any authority, statutory or otherwise, to take such action; and that applicable statutory law expressly forbids him from taking such action. For the reasons stated below, the Court finds that these contentions are unpersuasive.

The facts regarding the implementation of the furlough are essentially undisputed, as is the fact that the State faces an extremely urgent fiscal crisis. According to documents submitted to the Court, the Governor, through the Department of Personnel Administration, has developed a furlough plan that will result in the closing of general government operations on the first and third Fridays of each month, beginning on Friday, February 6, 2009. The unpaid furlough days are not work days and employees shall not report to work. For state operations that cannot close, a "self-directed" furlough will be used that will result in state employees either taking two furlough days each month on days chosen by the employees and approved by their supervisors, or accruing two furlough days per month to be taken when feasible. Salaries will be adjusted to reflect the unpaid furlough days, but benefits will remain the same.

This is, of course, distinct from the issue of whether there is any proof tending to demonstrate that FLSA violations actually will occur. This issue is dealt with in the Court's ruling on the merits, below.

There do appear to be disputes of fact over whether the implementation of the furlough will result in violations of the federal FLSA. This issue will be discussed separately below.

The Governor's Executive Order thus reduces the normal work hours of state employees for a temporary period due to the state's current fiscal crisis. The emergency measure will result in an accompanying deduction from pay for the hours not worked, but the order does not change established salary ranges. The Governor's authority for this action is found in statutes in the Government Code and in the employment contracts of the unions challenging the order.

The Governor has the statutory authority to reduce the hours of state employees pursuant to Government Code section 19851 and 19849.

Section 19851(a) provides: "It is the policy of the state that the workweek of the state employee shall be 40 hours, and the workday of the state employee eight hours, except that workweeks and workdays of a different number of hours may be established in order to meet the varying needs of the different state agencies."

Section 19849(a) provides that the Department of Personnel Administration "...shall adopt rules governing hours of work and overtime compensation and the keeping of records related thereto, including time and attendance records. Each appointing power shall administer and enforce such rules."

The Court finds that these two statutes, taken together, provide the Governor with authority to reduce the workweek of state employees to meet the needs of state agencies, and to do so by adopting a rule. The provisions of the Executive Order regarding the furlough are a rule in that they establish a standard of general application to state employees. Under the circumstances of the current fiscal crisis, the reduction in the workweek of state employees under the furlough order is indisputably related to the needs of the various state agencies, which, from the evidence respondents have submitted to the Court, run the imminent risk of running out of money and thus being unable to carry out their missions, if immediate action is not taken to reduce expenditures.

The Court further finds, on two separate bases, that the Governor has authority to reduce the work hours of the state employees represented by the petitioners in these actions pursuant to the terms of the MOUs the State entered into with the petitioner employee organizations, which remain in effect, although technically expired, pursuant to Government Code section 3517.8(a).

See, Memorandum dated January 9, 2009 from David A. Gilb, Director of the Department of Personnel Administration, to Agency Secretaries, et al., regarding "State Employee Furlough per Governor's Executive Order S-16-08", attached to the Amended Declaration of Peter Flores, Jr. as Exhibit H.

See, Respondents' Request for Judicial Notice, filed January 9, 2009, Exhibit A, p. 80 (PECG MOU); Exhibit B, p. 75 (CAPS MOU); Respondents' Amended Request for Judicial Notice, filed January 23, 2009, Exhibit A, p. 16 (CASE MOU); Exhibit B, p. 20 (SEIU MOU for Bargaining Unit 1); Exhibit C, p. 22 (SEIU MOU for Bargaining Unit 3); Exhibit D, p. 21 (SEIU MOU for Bargaining Unit 4); Exhibit E, p. 21 (SEIU MOU for Bargaining Unit 11); Exhibit F, pp. 22-23 (SEIU MOU for Bargaining Unit 14); Exhibit G, p. 21 (SEIU MOU for Bargaining Unit 15); Exhibit H, p. 21 (SEIU MOU for Bargaining Unit 17); Exhibit I, p. 21 (SEIU MOU for Bargaining Unit 20); Exhibit J, p. 19 (SEIU MOU for Bargaining Unit 21). In addition, the PECG MOU provides, in Article 17.1, which appears under the heading "State Rights", that: "All the functions, rights, powers and authority not specifically abridged by this MOU are retained by the employer." (See, Respondents' Request for Judicial Notice, filed January 9, 2009, Exhibit A, p. 72.)

See, respondents' Amended Request for Judicial Notice, filed January 23, 2009, Exhibit A, p. 11.

See, Respondents' Amended Request for Judicial Notice, filed January 23, 2009, Exhibit A, p. 59.

See, Respondents' Request for Judicial Notice, filed January 9, 2009, Exhibit B, p. 71.

See, Respondents' Amended Request for Judicial Notice, filed January 23, 2009, Exhibit B, p. 16 (Bargaining Unit 1); Exhibit C, p. 17 (Bargaining Unit 3); Exhibit D, p. 17 (Bargaining Unit 4); Exhibit E, p. 17 (Bargaining Unit 11); Exhibit F, p. 18 (Bargaining Unit 14); Exhibit G, p. 17 (Bargaining Unit 15); Exhibit H, p. 17 (Bargaining Unit 17); Exhibit I, p. 16 (Bargaining Unit 20); Exhibit J, p. 15 (Bargaining Unit 21).

At oral argument on these matters, counsel for CASE and PECG argued that many of their members work in so-called "special fund" agencies, and that the Governor's order, which was designed to deal with a looming General Fund deficit, was not reasonably related to the fiscal emergency insofar as it orders furloughs for those employees. (CASE also raised this issue in its reply brief.) This contention was not raised in any of the petitions or complaints for declaratory relief, and petitioners did not submit any evidence to support it. The Court therefore makes no findings on it.

First, each of the petitioners' MOUs expressly incorporates the terms of sections 18949 and 19851 into the agreement between the parties , and the terms of the MOU do not conflict with these statutes, notwithstanding that the MOUs call for a normal work week of 40 hours. Thus, these provisions of law are not superseded by the MOUs, and the Governor retains the authority, pursuant to law and contract, to take any actions he would be permitted to take pursuant to Government Code sections 19849 and 19851 as described above.

Second, the specific terms of certain of the petitioners' MOUs expressly permit the State either to reduce hours in case of lack of funds or to take all necessary action to carry out its mission in emergencies.

For example, Article 3.1.B of the MOU between the State and petitioner CASE, which appears under the heading "State Rights", provides that "[t]o the extent consistent with law and this MOU, the rights of the State include, but are not limited to, the exclusive right to...relieve its employees from duty because of lack of work, lack of funds, or for other legitimate reasons...[and to] take all necessary actions to carry out its mission in emergencies."

Article 10.3 of the CASE MOU, which appears under the heading "Layoff", further provides: "The State may propose to reduce the number of hours an employee works as an alternative to layoff. Prior to implementation of this alternative to a layoff, the State will notify and meet and confer with the Union to seek concurrence of the usage of this alternative."

Article 12.1.B of the CAPS MOU, which appears under the heading "State Rights", provides that: "Consistent with this Agreement, the rights of the State shall include, but not be limited to, the right...to take all necessary action to carry out its mission in emergencies."

Article 4.B of each of the SEIU MOUs similarly provides that: "Consistent with this Contract, the rights of the State shall include, but not be limited to, the right...to take all necessary action to carry out its mission in emergencies."

The Court finds that the current fiscal emergency, which is amply documented in the evidence respondents have submitted, authorizes the Governor to reduce the work hours of state employees under these cited terms of the various MOUs. The nature of the fiscal emergency is such that the state employee furloughs imposed by the Governor's Executive Order are both necessary and reasonable under the circumstances.

The existence of the current emergency also authorized the Governor to make his order without first meeting and conferring with state employee organizations pursuant to Government Code section 3516.5.

The Court accordingly finds that both statutory law and the provisions of the petitioners' MOUs authorized the Governor to reduce the work hours of state employees through a furlough in the current fiscal emergency.

The Court finds that Government Code section 19826(b) does not preclude the Governor from taking such action.

Section 19826(b) states that the Department of Personnel Administration shall not establish, adjust or recommend a salary range for any employees in an appropriate unit where an employee organization has been chosen as the exclusive representative pursuant to Government Code section 3520.5, which is the case for all of the petitioners in these actions.

This case, however, does not involve the establishment, adjustment or recommendation of a salary range for represented state employees. This case involves a temporary reduction in the hours worked by certain state employees, which will result in a loss of pay for the hours not worked. The order does not change established salary ranges at all: state employees will continue to receive their normal pay according to established ranges in weeks that do not include a furlough day. In essence, state employees are subject to a temporary deduction from their total pay under the established ranges, and not to being paid under a new or adjusted salary range.

The present case is therefore distinguishable from Department of Personnel Administration v. Superior Court (Greene) (1992) 5 Cal. App. 4th 155, which involved an across-the-board salary cut of 5% with no furlough or reduction in work hours. Greene also involved the issue of what the State was entitled to do in the bargaining process under the Ralph C. Dills Act, specifically, whether the State could unilaterally impose the salary cut as part of its "last, best and final offer" when it was officially at impasse with the state employee organizations. The present case does not involve bargaining issues in that the parties are not at impasse, and petitioners' pleadings have raised issues regarding the Governor's positive authority to make the challenged order rather than issues regarding any failure to comply with his collective bargaining obligations under the Dills Act.

Moreover, the Greene case did not address any provisions of the employee organizations' MOUs that might have authorized the salary reduction in that case, on the basis of an emergency or otherwise, because the case technically involved a situation in which there was an absence of a MOU, as is the case when an existing MOU has expired and the parties have bargained to impasse. (See, Department of Personnel Administration v. Superior Court (Greene) (1992) 5 Cal. App. 4th 155, 174.) As noted above, the petitioners' MOUs in this case remain in effect pursuant to Government Code section 3517.8(a), and contain provisions authorizing the Governor's order reducing work hours. The Greene case therefore is not controlling here.

The Court accordingly rules that, with regard to the issues raised by all petitioners regarding the Governor's authority to make the challenged order, the petitions for writ of mandate are denied and judgment shall be entered for the defendants (respondents) on the complaints for declaratory relief. This ruling applies to both state employees represented by all of the petitioners under the Dills Act and to those state employees represented by petitioners PECG and CAPS who are excluded from the Dills Act by law, as the authorities on which the Court has relied in finding that the Governor has the authority to take the challenged action apply to both classes of employees.

With regard to the causes of action for declaratory relief raised by SEIU and CASE raising issues involving possible non-compliance with the FLSA, the Court finds that as a matter of proof, as distinguished from a matter of pleading, petitioners' claims that implementation of the Governor's order will actually result in employees formerly considered to be exempt from the Act's provisions working overtime within the meaning of the Act during a furlough week, and that the State will not comply with the Act with regard to employees who do so, are entirely hypothetical and speculative prior to implementation of the furloughs, and thus not ripe for decision.

As respondents point out, under applicable federal regulations, employees may be furloughed for budget-related reasons without affecting their exempt status, except for the workweek in which the furlough occurs. The viability of petitioners' FLSA claims therefore depends upon proof that there will be, as a matter of fact, employees who work more than 40 hours during a furlough week. At this point, before the furlough actually has been implemented, there is no evidence before the Court regarding any employee actually doing this, let alone any evidence that this will be the case with large numbers of state employees. Petitioners' allegations that this will happen are merely hypothetical.

At oral argument, counsel for petitioner SEIU raised the contention that the Governor's order amounted to an unconstitutional impairment of contracts. This contention was not raised in any of the petitions, and was not briefed by the parties. Petitioner SEIU did cite several out-of-state cases in its reply brief in which government employee furloughs were challenged on this basis. Those cases were cited, however, for the proposition that a furlough is equivalent to a reduction in employee salary, and not in support of the contention that the Governor's action impaired the petitioner's contracts with the State. Because such contention was not raised by the petitions or briefed by the parties, the Court makes no finding on it.

See, Title 29, Code of Federal Regulations, section 541.710.

See, Declaration of Don Scheppmann, chief of Personnel/Payroll Services Division of the Office of the California State Controller, dated October 14, 2008 and filed in the case entitled David A. Gilb, California Department of Personnel Administration v. John Chiang, Office of State Controller, et al., which is pending in the United States District Court for the Eastern District of California, attached to CASE's opposition to respondents' demurrer as Exhibit A.

See, e.g., 29 U.S.C. Section 216.

Similarly, the evidence that petitioner CASE has submitted demonstrating that the State's payroll system is antiquated and lacks the flexibility and reliability to be able to cope with the kind of week-to-week changes in an employee's exempt status that will occur when furloughs are implemented , is not necessarily proof that the State will not be able to cope with paying overtime pay to those to whom it is entitled. Once again, petitioners' proposition that the FLSA will be violated depends upon proof that employees actually will be entitled to overtime, and that there will be sufficient numbers of them that the State will not be able to comply with the FLSA. Such proof is lacking at this point.

Finally, even if petitioners were able to prove that the State was likely to fail to comply with the FLSA with regard to some number of state employees, it would not necessarily follow that they would be entitled to the relief they seek, which is the invalidation of the furlough order itself. Any actual violation of the FLSA would give rise to remedies arising under the FLSA, i.e., for recovery of the unpaid overtime compensation , but the failure to comply with the FLSA in that situation would be a separate issue from the validity of the furlough. Notwithstanding this Court's ruling upholding the Governor's order, any affected employee retains his or her rights and remedies under FLSA, and the Court's ruling that petitioners have not proven an actual violation of the FLSA at this point does not preclude them, or their individual members, from exercising those remedies once an actual violation can be proven. Thus, FLSA compliance issues, hypothetical or otherwise, do not serve as a basis for overturning the Governor's Executive Order regarding furloughs.

The Court therefore finds in favor of defendants (respondents) on the SEIU and CASE complaints for declaratory relief regarding alleged non-compliance with the FLSA.

A final issue remains with regard to the State Controller. As noted in footnote 1 above, the Controller, although named as a respondent/defendant, has taken a position in these actions in alignment with the petitioners, specifically stating that his office "...has no intention of implementing the reduction in pay as contemplated in the Governor's Order, unless determined otherwise by a court of law." In Tirapelle v. Davis (1993) 20 Cal. App. 4th 1317, the Third District Court of Appeal held that the Controller may not refuse to implement an executive action affecting state employees' pay that is authorized by law. In this case, the Court has ruled that the provisions of the Governor's Executive Order reducing the work hours of state employees through a furlough, and thereby affecting their pay during the furlough weeks, is authorized by law. The Controller therefore lacks authority to refuse to implement the Governor's Executive Order. The Court's judgment in this matter therefore shall include an order directing the Controller to take all necessary and appropriate steps to implement the provisions of the Governor's Executive Order imposing furloughs on state employees, including the incidental reduction in such employees' pay.

VV

At the close of the hearing, counsel for CASE made an oral motion on the record that the Court stay its ruling pending appellate review. The Court denied the motion.

Counsel for respondents is directed to prepare the orders and judgments in accordance with this ruling under the procedures set forth in Rule of Court 3.1312.

See, Controller's Opposition to Respondents' Demurrer, p. 2:15-17.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

DATE/TIME	**: 01/30/09**	**DEPT. NO**	**: 19**
JUDGE	**: P. MARLETTE**	**CLERK**	**: D. RIOS, SR.**
REPORTER	**: none**	**BAILIFF**	**: none**
		PRESENT:	

Professional Engineers in California Government;\California Association of Professional Scientists,
Plaintiff,

VS. ***Case No.:*** **2008-80000126**

Arnold Schwarzenegger, Governor, State of California\Department of Personnel Administration\State Controller John Chiang\and Does 1 through 20 inclusive,
Defendant.

Nature of Proceedings: **Amended Minute Order**

The Court is issuing a revised version of its final ruling in these matters. The revision makes no substantive changes in the ruling, but corrects an editing error in the last sentence of the third paragraph from the end of the ruling, regarding the State Controller, by deleting the word "incidental". The revised final ruling which follows shall be the final ruling of the Court.

PROFESSIONAL ENGINEERS IN CALIFORNIA GOVERNMENT, et al., v. GOVERNOR ARNOLD SCHWARZENEGGER, et al., Case No. 2008-80000126;

CALIFORNIA ATTORNEYS, ADMINISTRATIVE LAW JUDGES AND HEARING OFFICERS IN STATE EMPLOYMENT, v. GOVERNOR ARNOLD SCHWARZENEGGER, et al., Case No. 2009-80000134;

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1000, v. GOVERNOR ARNOLD SCHWARZENEGGER, et al., Case No. 2009-80000135.

The following shall constitute the Court's final rulings on the demurrers and petitions for writ of mandate and complaints for declaratory relief in the above-captioned matters:

//

BOOK	**: 19**
PAGE	**: 2008-80000126-13009**
DATE	**: 01/30/09**
CASE NO.	**: 2008-80000126**
CASE TITLE	**: PECG; CAPS v. SCHWARZENEGGER**

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

BY: D. RIOS, SR.,
Deputy Clerk

Z1:2

Introduction and Background:

On December 19, 2008, in a response to the current State budget crisis, Governor Arnold Schwarzenegger issued Executive Order S-16-08. As relevant to this action, the Executive Order directed the Department of Personnel Administration, effective February 1, 2009 through June 30, 2010, to adopt a plan to implement a furlough of represented state employees and supervisors for two days per month, and to adopt a plan to implement an equivalent furlough or salary reduction for all state managers, including exempt state employees.

Several organizations representing state employees affected by the Executive Order have filed three separate petitions for writ of mandate and complaints for declaratory relief challenging the provisions of the Order imposing the furloughs, and seeking to overturn them.

The first such action, Case No. 2008-80000126, was filed by petitioners Professional Engineers in California Government ("PECG") and California Association of Professional Scientists ("CAPS") on December 22, 2008. That action initially was assigned to Department 33 of this Court, Judge Lloyd Connelly, presiding; it was reassigned to this Department after respondents filed a peremptory challenge to Judge Connelly pursuant to Code of Civil Procedure section 170.6 on January 7, 2009.

The second such action, Case No. 2009-80000134, was filed by petitioner California Attorneys, Administrative Law Judges and Hearing Officers in State Employment ("CASE") on January 5, 2009. That action was assigned to Department 33 of this Court, Judge Lloyd Connelly, presiding. Petitioner simultaneously filed a Notice of Related Case in that action, stating that it was related to Case No. 2008-80000126.

The third such action, Case No. 2009-80000135, was filed by petitioner Service Employees International Union, Local 1000 ("SEIU"), on January 7, 2009. The action was assigned to Department 29 of this Court, Judge Timothy M. Frawley, presiding. Petitioner simultaneously filed a Notice of Related Case in that action, stating that it was related to Cases Nos. 2008-80000126 and 2008-80000134

On January 9, 2009, the Court heard simultaneous ex parte applications by the petitioners and respondents in Case No. 2008-80000126 for orders shortening time that would have the effect of setting a hearing on respondents' demurrer to the petition and the hearing on the merits of the petition itself for a date prior to February 1, 2009, when the furloughs would go into effect.

At the hearing on January 9, 2009, counsel for the petitioners in Cases Nos. 2009-80000134 and 2009-80000135 appeared and stipulated on the record that those cases would be treated as related to Case No. 2008-

80000126, and that those cases would be transferred to this Department for hearing pursuant to Rule of Court 3.300(h)(1)(a). Counsel for respondents in Case No. 2008-80000126 also stated on the record that he represented the respondents in one of the other two cases, and most likely would represent the respondents in the other (although at that time, the petition had not formally been served on the respondents), and also stipulated on the record that the three cases would be heard in this Department as provided above. The parties further agreed to a briefing schedule and to a combined hearing on the respondents' demurrers to, and the merits of, the three petitions. The parties to all three actions have filed their briefs and other papers according to the agreed-upon schedule and the Court heard oral argument on the matter on Thursday, January 29, 2009.

On January 12, 2009, a fourth action was filed challenging the Governor's Executive Order, entitled *California Correctional Peace Officers Association v. Governor Arnold Schwarzenegger, et al.*, Case No. 2008-80000137. The Court issued an order finding that case to be related to the three cases captioned above and further ordered that case assigned to this Department. That case has been set for hearing on Friday, February 5, 2009.

Ruling on Preliminary Evidentiary Issues:

Respondents[1] have made two requests for judicial notice, filed January 9, 2009 and January 13, 2009, along with an Amended Request for Judicial Notice on January 23, 2009 in response to the Court's order directing them to submit complete copies of the Memoranda of Understanding ("MOUs") involved in these actions. No objections to the requests have been filed. The Court has reviewed the requests and the documents attached thereto and finds that all such documents are proper subjects for judicial notice. Respondents' requests for judicial notice are therefore granted.

Respondents' evidentiary objection to the Declaration of Peter Flores, Jr. is overruled on the ground that the lack of a signature on the declaration has been remedied by the filing of an amended declaration, unchanged in substance, which bears Mr. Flores' signature.

Ruling on Respondents' Demurrers to the Petitions:

[1] In using the terms "respondents" or "defendants" in this ruling, the Court is referring to Governor Arnold Schwarzenegger and the Department of Personnel Administration. Although State Controller John Chiang also has been named as a respondent in these actions, the Controller has filed an Opposition to the Respondents'/Defendants' Demurrer stating that his interests are actually aligned with the petitioners and that, but for the short time frame, he would have filed a formal motion to realign the parties, seeking to be redesignated as a petitioner/plaintiff. The Controller's position in these actions will be discussed further below. In this ruling, the Court also has treated the terms "the Governor", "the Department of Personnel Administration" (or "the department" or "DPA") and "the State" as being essentially interchangeable.

CASE NUMBER: 2008-80000126 **DEPARTMENT: 19**
CASE TITLE: PECG; CAPS v. SCHWARZENEGGER
PROCEEDINGS: Amended Minute Order

Respondents' demurrers are overruled on the following basis:

The petitions and complaints allege generally that the provisions of the Governor's Executive Order S-16-08 that implement a furlough of represented state employees and supervisors for two days per month, and an equivalent furlough or salary reduction for state managers, effective February 1, 2009 through June 30, 2010, are invalid in that such action on the part of the Governor is not authorized by law, and moreover is forbidden by certain provisions of law, in particular, Government Code section 19826(b).

The Court finds that such allegations are sufficient to state a cause of action for issuance of a writ of mandate or for declaratory relief, regardless of whether Government Code section 19826(b) is superseded by the terms of the MOUs petitioners have entered into with the State (as respondents argue), because the petitions and complaints allege, in essence, that the Governor lacks the positive authority to make the challenged order in the first instance, irrespective of any statutory prohibition that may or may not apply. The allegation that the Governor lacks any authority to make the challenged order is sufficient to state a cause of action on its own.

The Court further finds that the issue of the Governor's authority to make the challenged order is not an issue within the exclusive initial jurisdiction of the Public Employment Relations Board, because it involves issues of statutory interpretation and separation of powers between the Governor and the Legislature, which are matters properly within the jurisdiction of the courts, and not issues of unfair practices under the Ralph C. Dills Act, which are matters properly within the jurisdiction of the Board. (See, e.g., *California School Employees Association v. Azusa Unified School District* (1984) 152 Cal. App. 3rd 580, 592-593; *California Teachers' Association v. Livingston School District* (1990) 219 Cal. App. 3rd 1503, 1519.) Moreover, the petitions and complaints in effect allege that the Governor's Executive Order regarding an employee furlough violates the provisions of the petitioners' MOUs with the State governing wages and hours. The Board does not have the authority to enforce agreements between the parties. (Government Code section 3514.5(b); see also, *San Lorenzo Education Association v. Wilson* (1982) 32 Cal. 3rd 841.)

Moreover, even if this Court were to conclude that the Board did have jurisdiction over this matter, it would conclude that the normal policy reasons requiring parties to exhaust available administrative remedies do not apply in this case for many of the reasons stated by the Third District Court of Appeal in a case arising out of an earlier state budget crisis: namely, that the facts are undisputed, so there is no need for administrative development of the record; judicial intervention will not interfere with the expertise of the agency or create problems of judicial economy, given that the underlying issues are within the expertise of the courts and undoubtedly would be resolved ultimately by the courts even if initial jurisdiction were found in the Board; and, given that this case raises questions of first impression which most likely are bound for ultimate determination in the appellate courts, there is little concern of conflicting decisions between the Board and the courts. (See, *Department of Personnel Administration v. Superior Court (Greene)* (1992) 5 Cal. App. 4th 155, 168-169.)

BOOK : 19
PAGE : 2008-80000126-13009
DATE : 01/30/09
CASE NO. : 2008-80000126
CASE TITLE : PECG; CAPS v. SCHWARZENEGGER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

BY: D. RIOS, SR.,
Deputy Clerk

Z1z2

In addition, even if this Court were to conclude that the Board did have jurisdiction over this matter, it would conclude that exhaustion of administrative remedies by resort to the Board should be excused on the ground that requiring exhaustion under the particular circumstances of this case would cause both the State and its employees to suffer irreparable injury, again, for many of the reasons stated in the 1992 *Greene* case: specifically, that the extremely grave nature of the fiscal crisis faced by the state, and the urgent need for resolution of these issues in as expeditious a manner as possible, create a great potential for irreparable harm in the nature of layoffs of state employees, with a concomitant reduction in the nature of state services, all of which are amply demonstrated by the declarations and documents that have been filed by parties in this matter (many of them by respondents). Even if, as the Court of Appeal stated in the *Greene* case, there is a possibility that the Board could order the same relief that petitioners seek here, it is extremely unlikely that the entire process of Board adjudication followed by judicial review as provided by law would be completed in a sufficiently timely manner to address the immediate crisis. (See, *Department of Personnel Administration v. Superior Court (Greene)* (1992) 5 Cal. App. 4th 155, 170-171.)

Petitioners SEIU and CASE raise additional claims for declaratory relief regarding the effect of the furlough on the exempt status of employees under the federal Fair Labor Standards Act ("FLSA"). The SEIU complaint alleges that a significant number of its employees will be required to work in excess of 40 hours during furlough weeks, that such employees will no longer be considered exempt employees as a matter of law during those weeks, that such workers will be entitled to overtime pay during such weeks, and that respondents lack any mechanism or systems in place to move employees from exempt to non-exempt status from week-to-week, with the result being that such employees will not receive the overtime pay to which they are entitled under the FLSA. Such facts are sufficient to state a cause of action in declaratory relief based on the theory that respondents are not willing and able to comply with their obligations under the FLSA, at least for the purpose of withstanding a demurrer. Respondents' contention that the complaint on its face shows that petitioner's FLSA claim is not ripe for review, and seeks only an advisory opinion, because there is no allegation that respondents actually have failed to pay any overtime that is due, is unpersuasive.[2]

The CASE complaint alleges the same facts regarding the effect of the furloughs on its employees' exempt status under the FLSA. The complaint lacks the specific allegations present in the SEIU complaint regarding respondents' lack of willingness and ability to comply with the FLSA, but alleges in general terms that respondents' actions will result in denial of the protection of the laws regarding overtime compensation. In essence, this complaint is identical in substance to the SEIU complaint; the Court concludes that it also states a cause of action for declaratory relief.

---

[2] This is, of course, distinct from the issue of whether there is any proof tending to demonstrate that FLSA violations actually will occur. This issue is dealt with in the Court's ruling on the merits, below.

Respondents' demurrers are therefore overruled.

Ruling on the Petitions and Complaints:

The petitions for writ of mandate and complaints for declaratory relief challenging the provisions of the Governor's Executive Order imposing furloughs on state employees are based on twin contentions: that the Governor lacks any authority, statutory or otherwise, to take such action; and that applicable statutory law expressly forbids him from taking such action. For the reasons stated below, the Court finds that these contentions are unpersuasive.

The facts regarding the implementation of the furlough are essentially undisputed, as is the fact that the State faces an extremely urgent fiscal crisis.[3] According to documents submitted to the Court, the Governor, through the Department of Personnel Administration, has developed a furlough plan that will result in the closing of general government operations on the first and third Fridays of each month, beginning on Friday, February 6, 2009. The unpaid furlough days are not work days and employees shall not report to work. For state operations that cannot close, a "self-directed" furlough will be used that will result in state employees either taking two furlough days each month on days chosen by the employees and approved by their supervisors, or accruing two furlough days per month to be taken when feasible. Salaries will be adjusted to reflect the unpaid furlough days, but benefits will remain the same.[4]

The Governor's Executive Order thus reduces the normal work hours of state employees for a temporary period due to the state's current fiscal crisis. The emergency measure will result in an accompanying deduction from pay for the hours not worked, but the order does not change established salary ranges. The Governor's authority for this action is found in statutes in the Government Code and in the employment contracts of the unions challenging the order.

The Governor has the statutory authority to reduce the hours of state employees pursuant to Government Code section 19851 and 19849.

[3] There do appear to be disputes of fact over whether the implementation of the furlough will result in violations of the federal FLSA. This issue will be discussed separately below.

[4] See, Memorandum dated January 9, 2009 from David A. Gilb, Director of the Department of Personnel Administration, to Agency Secretaries, et al., regarding "State Employee Furlough per Governor's Executive Order S-16-08", attached to the Amended Declaration of Peter Flores, Jr. as Exhibit H.

BOOK : 19
PAGE : 2008-80000126-13009
DATE : 01/30/09
CASE NO. : 2008-80000126
CASE TITLE : PECG; CAPS v. SCHWARZENEGGER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

BY: D. RIOS, SR.,
Deputy Clerk

Section 19851(a) provides: "It is the policy of the state that the workweek of the state employee shall be 40 hours, and the workday of the state employee eight hours, except that workweeks and workdays of a different number of hours may be established in order to meet the varying needs of the different state agencies."

Section 19849(a) provides that the Department of Personnel Administration "...shall adopt rules governing hours of work and overtime compensation and the keeping of records related thereto, including time and attendance records. Each appointing power shall administer and enforce such rules."

The Court finds that these two statutes, taken together, provide the Governor with authority to reduce the workweek of state employees to meet the needs of state agencies, and to do so by adopting a rule. The provisions of the Executive Order regarding the furlough are a rule in that they establish a standard of general application to state employees. Under the circumstances of the current fiscal crisis, the reduction in the workweek of state employees under the furlough order is indisputably related to the needs of the various state agencies, which, from the evidence respondents have submitted to the Court, run the imminent risk of running out of money and thus being unable to carry out their missions, if immediate action is not taken to reduce expenditures.

The Court further finds, on two separate bases, that the Governor has authority to reduce the work hours of the state employees represented by the petitioners in these actions pursuant to the terms of the MOUs the State entered into with the petitioner employee organizations, which remain in effect, although technically expired, pursuant to Government Code section 3517.8(a).

First, each of the petitioners' MOUs expressly incorporates the terms of sections 18949 and 19851 into the agreement between the parties[5], and the terms of the MOU do not conflict with these statutes, notwithstanding that the MOUs call for a normal work week of 40 hours. Thus, these provisions of law are not superseded by the MOUs, and the Governor retains the authority, pursuant to law and contract, to take any actions he would be permitted to take pursuant to Government Code sections 19849 and 19851 as described above.

[5] See, Respondents' Request for Judicial Notice, filed January 9, 2009, Exhibit A, p. 80 (PECG MOU); Exhibit B, p. 75 (CAPS MOU); Respondents' Amended Request for Judicial Notice, filed January 23, 2009, Exhibit A, p. 16 (CASE MOU); Exhibit B, p. 20 (SEIU MOU for Bargaining Unit 1); Exhibit C, p. 22 (SEIU MOU for Bargaining Unit 3); Exhibit D, p. 21 (SEIU MOU for Bargaining Unit 4); Exhibit E, p. 21 (SEIU MOU for Bargaining Unit 11); Exhibit F, pp 22-23 (SEIU MOU for Bargaining Unit 14); Exhibit G, p. 21 (SEIU MOU for Bargaining Unit 15); Exhibit H, p. 21 (SEIU MOU for Bargaining Unit 17); Exhibit I, p. 21 (SEIU MOU for Bargaining Unit 20); Exhibit J, p. 19 (SEIU MOU for Bargaining Unit 21). In addition, the PECG MOU provides, in Article 17.1, which appears under the heading "State Rights", that: "All the functions, rights, powers and authority not specifically abridged by this MOU are retained by the employer." (See, Respondents' Request for Judicial Notice, filed January 9, 2009, Exhibit A, p. 72.)

BOOK : 19
PAGE : 2008-80000126-13009
DATE : 01/30/09
CASE NO. : 2008-80000126
CASE TITLE : PECG; CAPS v. SCHWARZENEGGER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

BY: D. RIOS, SR.,
Deputy Clerk

Second, the specific terms of certain of the petitioners' MOUs expressly permit the State either to reduce hours in case of lack of funds or to take all necessary action to carry out its mission in emergencies.

For example, Article 3.1.B of the MOU between the State and petitioner CASE, which appears under the heading "State Rights", provides that "[t]o the extent consistent with law and this MOU, the rights of the State include, but are not limited to, the exclusive right to...relieve its employees from duty because of lack of work, lack of funds, or for other legitimate reasons...[and to] take all necessary actions to carry out its mission in emergencies."[6]

Article 10.3 of the CASE MOU, which appears under the heading "Layoff", further provides: "The State may propose to reduce the number of hours an employee works as an alternative to layoff. Prior to implementation of this alternative to a layoff, the State will notify and meet and confer with the Union to seek concurrence of the usage of this alternative."[7]

Article 12.1.B of the CAPS MOU, which appears under the heading "State Rights", provides that: "Consistent with this Agreement, the rights of the State shall include, but not be limited to, the right...to take all necessary action to carry out its mission in emergencies."[8]

Article 4.B of each of the SEIU MOUs similarly provides that: "Consistent with this Contract, the rights of the State shall include, but not be limited to, the right...to take all necessary action to carry out its mission in emergencies."[9]

The Court finds that the current fiscal emergency, which is amply documented in the evidence respondents have submitted, authorizes the Governor to reduce the work hours of state employees under these

VV

---

[6] See, respondents' Amended Request for Judicial Notice, filed January 23, 2009, Exhibit A, p. 11.
[7] See, Respondents' Amended Request for Judicial Notice, filed January 23, 2009, Exhibit A, p. 59.
[8] See, Respondents' Request for Judicial Notice, filed January 9, 2009, Exhibit B, p. 71.
[9] See, Respondents' Amended Request for Judicial Notice, filed January 23, 2009, Exhibit B, p. 16 (Bargaining Unit 1); Exhibit C, p. 17 (Bargaining Unit 3); Exhibit D, p. 17 (Bargaining Unit 4); Exhibit E, p. 17 (Bargaining Unit 11); Exhibit F, p. 18 (Bargaining Unit 14); Exhibit G, p. 17 (Bargaining Unit 15); Exhibit H, p. 17 (Bargaining Unit 17); Exhibit I, p. 16 (Bargaining Unit 20); Exhibit J, p. 15 (Bargaining Unit 21).

cited terms of the various MOUs. The nature of the fiscal emergency is such that the state employee furloughs imposed by the Governor's Executive Order are both necessary and reasonable under the circumstances.[10]

The existence of the current emergency also authorized the Governor to make his order without first meeting and conferring with state employee organizations pursuant to Government Code section 3516.5.

The Court accordingly finds that both statutory law and the provisions of the petitioners' MOUs authorized the Governor to reduce the work hours of state employees through a furlough in the current fiscal emergency.

The Court finds that Government Code section 19826(b) does not preclude the Governor from taking such action.

Section 19826(b) states that the Department of Personnel Administration shall not establish, adjust or recommend a salary range for any employees in an appropriate unit where an employee organization has been chosen as the exclusive representative pursuant to Government Code section 3520.5, which is the case for all of the petitioners in these actions.

This case, however, does not involve the establishment, adjustment or recommendation of a salary range for represented state employees. This case involves a temporary reduction in the hours worked by certain state employees, which will result in a loss of pay for the hours not worked. The order does not change established salary ranges at all: state employees will continue to receive their normal pay according to established ranges in weeks that do not include a furlough day. In essence, state employees are subject to a temporary deduction from their total pay under the established ranges, and not to being paid under a new or adjusted salary range.

The present case is therefore distinguishable from *Department of Personnel Administration v. Superior Court (Greene)* (1992) 5 Cal. App. 4th 155, which involved an across-the-board salary cut of 5% with no furlough or reduction in work hours. *Greene* also involved the issue of what the State was entitled to do in the bargaining process under the Ralph C. Dills Act, specifically, whether the State could unilaterally impose the salary cut as part of its "last, best and final offer" when it was officially at impasse with the state employee organizations. The present case does not involve bargaining issues in that the parties are not at impasse, and petitioners' pleadings have raised issues regarding the Governor's positive authority to make the challenged

[10] At oral argument on these matters, counsel for CASE and PECG argued that many of their members work in so-called "special fund" agencies, and that the Governor's order, which was designed to deal with a looming General Fund deficit, was not reasonably related to the fiscal emergency insofar as it orders furloughs for those employees. (CASE also raised this issue in its reply brief.) This contention was not raised in any of the petitions or complaints for declaratory relief, and petitioners did not submit any evidence to support it. The Court therefore makes no findings on it.

order rather than issues regarding any failure to comply with his collective bargaining obligations under the Dills Act.

Moreover, the *Greene* case did not address any provisions of the employee organizations' MOUs that might have authorized the salary reduction in that case, on the basis of an emergency or otherwise, because the case technically involved a situation in which there was an absence of a MOU, as is the case when an existing MOU has expired and the parties have bargained to impasse. (See, *Department of Personnel Administration v. Superior Court (Greene)* (1992) 5 Cal. App. 4th 155, 174.) As noted above, the petitioners' MOUs in this case remain in effect pursuant to Government Code section 3517.8(a), and contain provisions authorizing the Governor's order reducing work hours. The *Greene* case therefore is not controlling here.

The Court accordingly rules that, with regard to the issues raised by all petitioners regarding the Governor's authority to make the challenged order, the petitions for writ of mandate are denied and judgment shall be entered for the defendants (respondents) on the complaints for declaratory relief. This ruling applies to both state employees represented by all of the petitioners under the Dills Act and to those state employees represented by petitioners PECG and CAPS who are excluded from the Dills Act by law, as the authorities on which the Court has relied in finding that the Governor has the authority to take the challenged action apply to both classes of employees.[11]

With regard to the causes of action for declaratory relief raised by SEIU and CASE raising issues involving possible non-compliance with the FLSA, the Court finds that as a matter of proof, as distinguished from a matter of pleading, petitioners' claims that implementation of the Governor's order will actually result in employees formerly considered to be exempt from the Act's provisions working overtime within the meaning of the Act during a furlough week, and that the State will not comply with the Act with regard to employees who do so, are entirely hypothetical and speculative prior to implementation of the furloughs, and thus not ripe for decision.

As respondents point out, under applicable federal regulations, employees may be furloughed for budget-related reasons without affecting their exempt status, except for the workweek in which the furlough occurs.[12] The viability of petitioners' FLSA claims therefore depends upon proof that there will be, as a matter of fact,

---

[11] At oral argument, counsel for petitioner SEIU raised the contention that the Governor's order amounted to an unconstitutional impairment of contracts. This contention was not raised in any of the petitions, and was not briefed by the parties. Petitioner SEIU did cite several out-of-state cases in its reply brief in which government employee furloughs were challenged on this basis. Those cases were cited, however, for the proposition that a furlough is equivalent to a reduction in employee salary, and not in support of the contention that the Governor's action impaired the petitioner's contracts with the State. Because such contention was not raised by the petitions or briefed by the parties, the Court makes no finding on it.

[12] See, Title 29, Code of Federal Regulations, section 541.710.

employees who work more than 40 hours during a furlough week. At this point, before the furlough actually has been implemented, there is no evidence before the Court regarding any employee actually doing this, let alone any evidence that this will be the case with large numbers of state employees. Petitioners' allegations that this will happen are merely hypothetical.

Similarly, the evidence that petitioner CASE has submitted demonstrating that the State's payroll system is antiquated and lacks the flexibility and reliability to be able to cope with the kind of week-to-week changes in an employee's exempt status that will occur when furloughs are implemented[13], is not necessarily proof that the State will not be able to cope with paying overtime pay to those to whom it is entitled. Once again, petitioners' proposition that the FLSA will be violated depends upon proof that employees actually will be entitled to overtime, and that there will be sufficient numbers of them that the State will not be able to comply with the FLSA. Such proof is lacking at this point.

Finally, even if petitioners were able to prove that the State was likely to fail to comply with the FLSA with regard to some number of state employees, it would not necessarily follow that they would be entitled to the relief they seek, which is the invalidation of the furlough order itself. Any actual violation of the FLSA would give rise to remedies arising under the FLSA, i.e., for recovery of the unpaid overtime compensation[14], but the failure to comply with the FLSA in that situation would be a separate issue from the validity of the furlough. Notwithstanding this Court's ruling upholding the Governor's order, any affected employee retains his or her rights and remedies under FLSA, and the Court's ruling that petitioners have not proven an actual violation of the FLSA at this point does not preclude them, or their individual members, from exercising those remedies once an actual violation can be proven. Thus, FLSA compliance issues, hypothetical or otherwise, do not serve as a basis for overturning the Governor's Executive Order regarding furloughs.

The Court therefore finds in favor of defendants (respondents) on the SEIU and CASE complaints for declaratory relief regarding alleged non-compliance with the FLSA.

A final issue remains with regard to the State Controller. As noted in footnote 1 above, the Controller, although named as a respondent/defendant, has taken a position in these actions in alignment with the petitioners, specifically stating that his office "...has no intention of implementing the reduction in pay as contemplated in the Governor's Order, unless determined otherwise by a court of law."[15] In *Tirapelle v. Davis*

[13] See, Declaration of Don Scheppmann, chief of Personnel/Payroll Services Division of the Office of the California State Controller, dated October 14, 2008 and filed in the case entitled *David A. Gilb, California Department of Personnel Administration v. John Chiang, Office of State Controller, et al.*, which is pending in the United States District Court for the Eastern District of California, attached to CASE's opposition to respondents' demurrer as Exhibit A.
[14] See, e.g., 29 U.S.C. Section 216.
[15] See, Controller's Opposition to Respondents' Demurrer, p. 2:15-17.

(1993) 20 Cal. App. 4th 1317, the Third District Court of Appeal held that the Controller may not refuse to implement an executive action affecting state employees' pay that is authorized by law. In this case, the Court has ruled that the provisions of the Governor's Executive Order reducing the work hours of state employees through a furlough, and thereby affecting their pay during the furlough weeks, is authorized by law. The Controller therefore lacks authority to refuse to implement the Governor's Executive Order. The Court's judgment in this matter therefore shall include an order directing the Controller to take all necessary and appropriate steps to implement the provisions of the Governor's Executive Order imposing furloughs on state employees, including the reduction in such employees' pay.

At the close of the hearing, counsel for CASE made an oral motion on the record that the Court stay its ruling pending appellate review. The Court denied the motion.

//

Counsel for respondents is directed to prepare the orders and judgments in accordance with this ruling under the procedures set forth in Rule of Court 3.1312.

Certificate of Service by Mailing attached.

VV

BOOK : 19
PAGE : 2008-80000126-13009
DATE : 01/30/09
CASE NO. : 2008-80000126
CASE TITLE : PECG; CAPS v. SCHWARZENEGGER

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SACRAMENTO

BY: D. RIOS, SR.,
Deputy Clerk

CASE NUMBER: 2008-80000126 **DEPARTMENT: 19**
CASE TITLE: PECG; CAPS v. SCHWARZENEGGER
PROCEEDINGS: Amended Minute Order

CERTIFICATE OF SERVICE BY MAILING
C.C.P. Sec. 1013a(4))

I, the undersigned deputy clerk of the Superior Court of California, County of Sacramento, do declare under penalty of perjury that I did this date place a copy of the above entitled notice in envelopes addressed to each of the parties, or their counsel of record as stated below, with sufficient postage affixed thereto and deposited the same in the United States Post Office at Sacramento, California.

Gerald James
Attorney at Law
660 J Street, Suite 445
Sacramento, CA 95814

David W. Tyra
KRONICK, MOSKOVITZ, TIEDEMANN
& GIRARD
400 Capitol Mall, 7th Floor
Sacramento, CA 95814

Patrick Whalen
ELLISON WILSON ADVOCACY, LLC
1725 Capitol Avenue
Sacramento, CA 95814
Brooke D. Pierman, Staff Attorney
S.E.I.U.
1808 -14th Street
Sacramento, CA 95811

J. Felix DeLa Torre, Staff Attorney
S.E.I.U.
1808 -14th Street
Sacramento, CA 95811
Will M. Yamada
Department of Personnel Administration
Legal Office
1515 S Street, No. Bldg., Ste. 400
Sacramento, CA 95811

RICHARD CHIVARO, Chief Counsel
Ronald V. Placet,
Sr. Staff Counsel
Office of the State Controller
300 Capitol Mall, Ste 1850
Sacramento, CA 95814

VV

Dated: 1/30/09

Superior Court of California,
County of Sacramento

By: D. RIOS, SR.,
Deputy Clerk

BOOK : 19
PAGE : 2008-80000126-13809
DATE : 01/30/09
CASE NO. : 2008-80000126
CASE TITLE : PECG; CAPS v. SCHWARZENEGGER

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SACRAMENTO

BY: D. RIOS, SR.,
Deputy Clerk

Z1z2

JOHN CHIANG
California State Controller

February 3, 2009

The Honorable Patrick Marlette
Superior Court of California
County of Sacramento
Gordon D. Schaber Courthouse
Department 19
720 Ninth Street
Sacramento, CA 95814

Re: *Professional Engineers in California Government, et al. v. Governor Arnold Schwarzenegger, et al.*, Case No. 2008-80000126

California Attorneys, Administrative Law Judges and Hearing Officers in State Employment v. Governor Arnold Schwarzenegger, et al., Case No. 2009-80000134

Service Employees International Union, Local 1000 v. Governor Arnold Schwarzenegger, et al., Case No. 2009-80000135

VV

Dear Judge Marlette:

This office has received the enclosed letters from the independently elected Constitutional Officers and other elected state-wide officials including the Lieutenant Governor, Office of the Attorney General, Secretary of State, State Treasurer, Superintendent of Public Instruction, and Insurance Commissioner regarding the applicability of the recent ruling in the above-referenced cases to employees of those offices.

Prior to the ruling, the Governor and his staff contacted the constitutional officers and informed them that their offices were not affected by the executive order inasmuch as those officers were not under the direct authority of the Governor. Based on this contact, none of the constitutional officers sought to challenge the executive order. The specific terms of the executive order state that it only applies to state employees under the Governor's direct authority. However, since your decision was issued, the Governor's office has construed the ruling in its broadest possible sense to apply to all state employees and, basing its decision on this reading, has now notified the independent constitutional officers and state-wide officials that their employees are impacted by the ruling.

300 Capitol Mall, Suite 1850, Sacramento, CA 95814 ♦ P.O. Box 942850, Sacramento, CA 94250
Phone: (916) 445-2636 ♦ Fax: (916) 322-1220

The issue of whether independently elected constitutional and state-wide officers are subject to a Governor's executive order and/or whether the Governor's executive order applies to constitutional and state-wide officers, their agencies and staff was not an issue before the court and, therefore, was never pled, briefed, litigated or argued by any of the parties. Therefore, the State Controller's Office respectfully requests clarification of the breadth of the court's ruling. Specifically, we ask that the court clarify whether the ruling was intended to confer broad authority in the Governor to cover issues that were not properly before the court. Given the fact that the Governor intends to implement his order on February 6, 2009, your prompt response would be appreciated.

Sincerely,

RICHARD J. CHIVARO
Chief Counsel

RONALD V. PLACET
Senior Staff Counsel

RJC/RVP/ac

Enclosures

VV

Letter from Lieutenant Governor John Garamendi
Letter from Secretary of State Debra Bowen
Letter from California State Treasurer Bill Lockyer
Letter from Superintendent of Public Instruction Jack O'Connell
Letter from Insurance Commissioner Steve Poizner
Letter from Chief Deputy Attorney General James M. Humes

cc: David W. Tyra, Kronick, Moskovitz, Tiedemann & Girard

Will M. Yamada, Personnel Relations Counsel,
Department of Personnel Administration

J. Felix De La Torre and Brook Pierman, SEIU Local 1000

Patrick Whalen, California Attorneys, Administrative Law Judges and
Hearing Officers in State Employment

Gerald James, Professional Engineers in California Government and
California Association of Professional Scientists

Gregg McLean Adam, Carroll, Burdick & McDonough

Professional Engineers in California Government, et al. v. Governor Arnold Schwarzenegger, et al.
Sacramento County Superior Court Case No. 2008-80000126

California Attorneys, Administrative Law Judges and Hearing Officers in State Employment v. Governor Arnold Schwarzenegger, et al.
Sacramento County Superior Court Case No. 2009-80000134

Service Employees International Union, Local 1000 v. Governor Arnold Schwarzenegger, et al.
Sacramento County Superior Court Case No. 2009-80000135

PROOF OF SERVICE

I am employed in the County of Sacramento, State of California. At the time of service, I was at least 18 years of age, a United States citizen employed in the county where the mailing occurred, and not a party to the within action. My business address is 300 Capitol Mall, Suite 1850, Sacramento, CA 95814.

On February 3, 2009, I served the foregoing document entitled:

CONTROLLER'S LETTER TO JUDGE MARLETTE DATED FEBRUARY 3, 2009

on all interested parties in this action by placing a true and correct copy thereof enclosed in a sealed envelope, addressed as follows:

David W. Tyra
Kronick, Moskovitz, Tiedemann & Girard
400 Capitol Mall, 27th Floor
Sacramento, CA 95814

Will M. Yamada, Personnel Relations Counsel
Department of Personnel Administration
1515 S Street, North Building, Suite 400
Sacramento, CA 95814

J. Felix De La Torre
Brook Pierman
SEIU Local 1000
1808 14th Street
Sacramento, CA 95814

Patrick Whalen
California Attorneys, Administrative Law Judges and Hearing Officers in State Employment
Law Office of Brooks Allison
1725 Capitol Avenue
Sacramento, CA 95814

Gerald James
Professional Engineers in California Government and California Association of Professional Scientists
660 J Street, Suite 445
Sacramento, CA 95814

Gregg McLean Adam
Carroll, Burdick & Mcdonough LLP
44 Montgomery Street, Suite 400
San Francisco, CA 94104

[X] BY MAIL
I placed the envelope for collection and processing for mailing following this business's ordinary practice with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on February 3, 2009, at Sacramento, California.

Amber A. Camarena

LIEUTENANT GOVERNOR JOHN GARAMENDI

February 2, 2008

The Honorable John Chiang
State Controller
P.O. Box 942850
Sacramento, CA 94250-5872

Dear Controller Chiang:

I am writing to clarify my position with regard to employee furloughs affecting state constitutional offices, and to request that you not implement a furlough applying to employees under my direction. I respectfully maintain that the Governor does not have the power to mandate a furlough.

I understand these are extraordinary times. We are facing unprecedented economic challenges and there is no question that all state offices must share in making hard choices to cut costs and preserve cash. I have agreed to substantial cuts in my operating budget, including two consecutive 10% reductions this fiscal year, which more than offset savings from a furlough.

It is my responsibility to structure cost savings that preserve the integrity of my office.

Nothing in Judge Marlette's ruling could be construed to modify historical precedent which requires Constitutional officers to manage their budget and operations in a manner which will allow for the most effective discharge of their duties. This includes decisions relating to effective staffing requirements.

I appreciate your cooperation in this request, and will await the Court's direction.

Sincerely,

JOHN GARAMENDI
Lieutenant Governor

STATE CAPITOL, ROOM 1114, SACRAMENTO, CALIFORNIA 95814 • PHONE (916) 445-8994

Secretary of State
DEBRA BOWEN
State of California

February 2, 2009

The Honorable John Chiang
California State Controller
P.O. Box 942850
Sacramento, CA 94250-5872

Dear Mr. Chiang:

I write regarding Governor Schwarzenegger's direction to you following the January 29, 2009, Superior Court ruling concerning the Governor's ability to furlough certain state employees. I do not believe this ruling can legally be applied to state employees working at the Secretary of State's office, nor do I believe it is in California's best interests. I respectfully ask that you not apply the ruling to the employees under my control and direction.

I am committed to doing my part to address California's unprecedented budget situation. However, implementation of the Governor's Executive Order as written will interfere with my ability to provide services, such as filing corporate documents and accepting Uniform Commercial Code filings, that are critical to business and commercial activity in the state.

Moreover, reducing the number of employee hours spent now will result in overtime hours being spent later, thus costing taxpayers money rather than saving it. I support the Governor's overall goal of reducing state spending, which is why I reduced my 2008-09 General Fund budget by 10%. For 2009-10, I am committed to achieving savings equal to or greater than the amount of money the Governor seeks to achieve by furloughing people who work for the Secretary of State's office.

As you are aware, California's Constitutional officers were not a party to the Superior Court litigation because they were repeatedly told that the Governor believed he lacked authority over their employees.

Executive Order S-09-08, issued on July 31, 2008, recognized that Governor Schwarzenegger did not have the authority to impose the requirements on the state's Constitutional officers because they are not under his direct executive authority:

> "IT IS FURTHER REQUESTED that other entities of State government not under my direct executive authority, including the California Public Utilities Commission, the University of California, the California State University, California Community Colleges, constitutional officers, the legislative branch

1500 11th Street, 6th Floor, Sacramento, CA 95814 (916) 653-7244 www.sos.ca.gov

> (including the Legislative Counsel Bureau), and judicial branch, assist in the implementation of this Order and implement similar mitigation measures that will help to preserve the State's cash supply during this budget impasse."

Similarly, Executive Order S-16-08, issued on December 19, 2008, explicitly omitted agencies not under the Governor's direct executive authority:

> "IT IS REQUESTED that other entities of State government not under my direct executive authority, including the California Public Utilities Commission, the University of California, the California State University, California Community Colleges, the legislative branch (including the Legislative Counsel Bureau), and judicial branch, implement similar or other mitigation measures to achieve budget and cash savings for the current and next fiscal year."

As recently as January 9, 2009, the Governor's own staff conceded in a telephone conference, that the Governor had no authority to apply Executive Order S-16-08 to the agencies of other Constitutional officers. They requested that the Constitutional officers implement the order voluntarily.

While the Superior Court's ruling upholds Executive Order S-16-08, it does not address the employees of California's other Constitutional officers because that issue was never raised during the litigation. I did not join the lawsuit filed against the Governor because I am not under his direct executive authority and his staff assured me and the other Constitutional officers that we were not subject to his order. Having thus ensured that I would have had no standing to challenge the order in court, the Governor cannot now use the decision of the Superior Court to require my staff to take unpaid furlough days.

If you have any questions about my position in this matter, or if you need further information, please contact me at (916) 653-7244.

Sincerely,

Debra Bowen
Secretary of State

DB:elg:pg

BILL LOCKYER
TREASURER
STATE OF CALIFORNIA

January 30, 2009

John Chiang
State Controller
P.O. Box 942850
Sacramento, CA 94250-5872

RE: State Employee Furlough per Governor's Executive Order S-16-08

Dear Mr. Chiang:

In light of the ruling issued by Judge Marlette yesterday, I am requesting that the State Controller's Office not implement the furlough order in connection with employees under my control and direction. It is my position that the Governor does not have the authority to unilaterally impose a furlough on the employees of the other constitutional officers without their consent and that there is nothing in Judge Marlette's ruling that deals with these issues, which were neither argued nor pled in his court. His order cannot be interpreted to authorize furloughs in the departments under the control and management of constitutional officers other than the Governor.

Government Code section 12302 provides the Treasurer with the exclusive authority, subject to the Civil Service Act, to appoint and fix the salaries of the employees necessary to carry out the duties of the office. In addition, as the office of a separately elected constitutional official, this office has been granted inherent powers and responsibilities and the authority to act independently within certain constraints. For instance, the Treasurer must act within the constraints of budget appropriations and legislative enactments. However, the Treasurer retains the authority to determine how best to carry out his duties without interference from other executive branch elected officials.

I would note that both in private conversations and in statements to the press, representatives of the Governor's Office have previously acknowledged and assured our offices that constitutional officers are not required to comply with Executive Order S-16-08. I do not see anything in Judge Marlette's ruling that would suggest that generally accepted principle to be overturned.

915 CAPITOL MALL, ROOM 110, SACRAMENTO, CALIFORNIA 95814 • (916) 653-2995 • FAX (916) 653-3125

As this matter progresses, we would certainly comply with an appellate court order upholding the Governor's Executive Order and applying it to the constitutional offices; any legislative action taken to impose furloughs on state employees; or agreements reached with state employee bargaining units that are subsequently ratified by the Legislature. However, at this time and as noted above, I am asking that the Controller's Office not implement the Executive Order with respect to employees under my control and direction.

Sincerely,

BILL LOCKYER
California State Treasurer

VV

CALIFORNIA
DEPARTMENT OF
EDUCATION

JACK O'CONNELL
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

February 2, 2008

The Honorable John Chiang
State Controller
P.O. Box 942850
Sacramento, CA 94250-5872

Dear Controller Chiang:

I write in response to the Sacramento Superior Court's ruling upholding Governor Arnold Schwarzenegger's employee furlough plan, specifically, the Governor's recent directive to apply his plan to departments not under his auspices. I request that you not apply the furlough to employees under my control and direction, based on my belief that the Governor lacks the authority to unilaterally impose a furlough on state employees who work for an elected constitutional officer other than the Governor. The court proceedings did not address this issue, and the court's order cannot be read to allow or require that my employees be subjected to a furlough at the Governor's directive.

There is good reason why the court's order cannot be given such sweeping application. Until the court's ruling, representatives of the Governor's Office and the Department of Personnel Administration explicitly advised the various constitutional offices that they were not required to comply with Executive Order S-16-08. Instead, the Governor's representatives sought our commitment to achieving the Executive Order's primary objective of a ten percent reduction in General Fund expenditures. This approach is consistent with the position of elected constitutional officers as separately elected leaders charged with the duty to fulfill the obligations of their offices. The State Superintendent of Public Instruction (SSPI) must act within budgetary limitations and legislative enactments, but as an elected official, the SSPI retains inherent powers to determine the manner in which the duties of the office are carried out.

Under my direction, the California Department of Education will do its part to address the state's dire financial situation and achieve General Fund savings. My Department has frozen hiring and contracting, and substantially limited travel and other expenditures. All expenditures are being closely monitored and trimmed. However, reductions will be made by me in a thoughtful manner that preserves, where ever possible, our capacity to carry out vital programs. As an example, it makes no sense to drastically cut federally funded programs that provide meals to needy children, when the goal is a reduction in General Fund spending. In addition, the needs of students at

California's State Special Schools, which operate on a 24-hour basis, must be given careful consideration.

I remain hopeful that these difficult circumstances can be resolved without the imposition of unilateral furloughs for any state employee, and will follow the progress of further judicial proceedings, collective bargaining efforts, and legislative action. But at this time, for the reasons described above, I ask that the Controller's Office not implement Executive Order S-16-08 for the Department under my control and direction.

Sincerely,

JACK O'CONNELL

JO:gp

VV

STEVE POIZNER
Insurance Commissioner

February 2, 2009

Honorable John Chiang
State Controller
300 Capitol Mall
Sacramento, CA 95814

Dear Controller Chiang:

The Governor's office has informed me that they intend to apply Judge Marlette's court ruling to the Department of Insurance as well as to the offices of the other independently-elected statewide officers. There is legal uncertainty as to the Governor's authority in this matter.

The court's ruling did not specifically address the question of whether the Governor's executive authority to order furloughs extends to other statewide offices. Therefore, I ask you to withhold implementation the ordered furloughs at the Department of Insurance until this matter is resolved.

Thank you for your immediate attention to this request.

Sincerely,

STEVE POIZNER
Insurance Commissioner

300 Capitol Mall, Suite 1700
Sacramento, California 95814
Phone (916) 492-3500 • Fax (916) 445-5280

STATE OF CALIFORNIA
OFFICE OF THE ATTORNEY GENERAL
JAMES M. HUMES
CHIEF DEPUTY ATTORNEY GENERAL

February 2, 2009

Honorable John Chiang
California State Controller
300 Capitol Mall, Suite 1850
Sacramento, CA 95814

RE: *Professional Engineers in California Government v. Schwarzenegger*
Sacramento Superior Court Case No. 34-2008-80000126-CU-WM-GDS

California Attorneys, Administrative Law Judges, etc. v. Schwarzenegger
Sacramento Superior Court Case No. 34-2009-800000134-CU-WM-GDS

Service Employees International Union, Local 1000 v. Schwarzenegger
Sacramento Superior Court Case No. 34-2009-80000135-CU-WM-GDS

Dear Mr. Chiang:

VV

I understand that the Governor's Office has changed its position regarding the applicability of the Governor's furlough order on other constitutional officers. Before Judge Marlette's January 29, 2009 minute order, the Governor's Office encouraged, but did not require, other constitutional officers to comply with the furlough order. Accordingly, this office did not intervene in these cases. But emboldened by the minute order, the Governor's Office now informs us that it wants to apply the furlough order to other constitutional officers after all. Because we believe that the Governor's interpretation of the minute order is incorrect, and because we believe that the furlough order cannot be forced on other constitutional officers under these circumstances, we ask the Controller's Office to refrain from implementing the furloughs called for in Executive Order S-16-08 on our employees.

It appears that the Governor's Office is attempting to use the *absence* of any ruling addressing whether the Governor has authority to furlough employees of constitutional officers like the Attorney General as a ground to assert that authority. This tactic is improper for several reasons.

1300 I STREET • SUITE 1730 • SACRAMENTO, CALIFORNIA 95814 • PHONE (916) 324-5435 • FAX (916) 445-6749

To begin with, the question of whether the Governor has authority to furlough employees of the other constitutional officers was not before the court. As you know, the writ actions were each brought by unions asking the court for an order holding that the Governor's executive order requiring the furloughs is illegal. Thus, unions were trying to prove that you had a ministerial duty not to follow the Executive Order for the reasons set forth in their writ petitions. (*Sacramento County Fire Protection Dist. v. Sacramento County Assessment Appeals Bd. II* (1999) 75 Cal.App.4th 327, 331 [describing the requirements for a writ as "a clear, present (and usually ministerial) duty on the part of the respondent; [and] (2) a clear, present and beneficial right in the petitioner in the performance of that duty." (citation omitted)].) The court rejected the unions' position and intends to render a judgment denying the writ petitions. But that judgment, whenever it is signed, cannot be interpreted to address issues that were not before the court, much less to grant affirmative relief in favor of the Governor on those issues as if he had prosecuted his own petition for writ of mandate against you.

Nor can the Governor's authority to unilaterally impose a furlough on employees of the other constitutional officers be lightly implied from his more general authority. While a full briefing regarding the Governor's authority to issue executive orders is beyond the limited scope of this letter, our Supreme Court has noted, "[u]nlike the federal Constitution, the California Constitution . . . embodies a structure of divided executive power." (*Marine Forests Soc. v. California Coastal Com'n* (2005) 36 Cal.4th 1, 31; see also Cal. Const., art. V, § 11 [providing for the election of the Lieutenant Governor, Attorney General, Controller, Secretary of State, and Treasurer]; Zasloff, *Taking Politics Seriously: A Theory of California's Separation of Powers* (2004) 51 UCLA L. Rev. 1079, 1113 ["the California Constitution explicitly and repeatedly creates a multiple executive. The Lieutenant Governor, Attorney General, Secretary of State, Treasurer, and Controller all are directly elected and do not answer to the Governor."] The Attorney General has a constitutional duty to ensure that the laws are uniformly and adequately enforced in California (Cal. Const., art. V, § 13) and statutory control over the Department of Justice. (Gov't Code, § 15000.) Dozens of statutes impose various duties on the Attorney General and DOJ. Thus, there can be no question that the Attorney General, like the other constitutional officers, wields executive authority as surely as the Governor does. For this reason, we do not believe that an executive order, which has been defined as "a formal written directive of the Governor which by interpretation, or the specification of detail, directs and guides *subordinate officers* in the enforcement of a particular law" (63 Ops.Cal.Atty.Gen. 583, 584 (1980), emphasis added), applies to the Attorney General. Accordingly, the Governor lacks the authority to compel the Attorney General to comply with the executive order mandating furloughs.

The Attorney General would have intervened in these writ actions had he believed that the Governor intended to apply mandatory furloughs to DOJ employees. He did not do so only because the Governor's Office previously took the position, both in private conversations and

publicly, that the constitutional officers were not required to participate in the furlough program. (See Goldmacher, *Statewide Dems Say No to Furloughs For Own Staff*, Sacramento Bee (January 12, 2009) [article notes that Governor's Office "has said the furloughs can't be mandated on other constitutional offices" and quotes Governor's spokesman stating that with respect to constitutional officers, furloughs are "their decision"] <available at http://www.sacbee.com/static/weblogs/capitolalertlatest/018524.html>.) For the Governor presently to take the position, based on Judge Marlette's order, that he is entitled to require furloughs for the constitutional officers' employees, is tantamount to a bait-and-switch.

We urge the Controller not to implement the furlough order against DOJ employees.

Sincerely,

JAMES M. HUMES
Chief Deputy Attorney General

VV

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

DATE/TIME	: 2/04/09	DEPT. NO	: 19
JUDGE	: P. MARLETTE	CLERK	: D. RIOS, SR.
REPORTER	: NONE	BAILIFF	: NONE
		PRESENT:	

Professional Engineers in California Government; California Association of Professional Scientists,
Petitioners,

VS. Case No.: 34-2008-80000126

Arnold Schwarzenegger, Governor, State of California; Department of Personnel Administration; State Controller John Chiang; and Does 1 through 20 inclusive,
Respondents.

California Attorneys, Administrative Law Judges and Hearing Officers in State Employment,
Petitioners,

VS. Case No.: 34-2009-80000134

Arnold Schwarzenegger, Governor, State of California; David Gilb as Director of the Department of Personnel Administration; John Chiang Controller of the State of California; and Does 1 through 10,
Respondents.

VV

BOOK : 19
PAGE : 2008-80000126-1909
DATE : 2/04/09
CASE NO. : 2008-80000126, et al
CASE TITLE : PECG; CAPS v. SCHWARZENEGGER, et al

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SACRAMENTO

BY: D. RIOS, SR.,
Deputy Clerk

Z1z2--2008-80000126 et seq - MO - 20409

Service Employees International Union, Local 1000,
Petitioners,

VS. **Case No.: 34-2009-80000135**

Arnold Schwarzenegger, Governor, State of California; Department of Personnel Administration; State Controller John Chiang; and Does 1 through 20 inclusive,
Respondents.

Nature of Proceedings: **MINUTE ORDER ON STATE CONTROLLER'S REQUEST FOR CLARIFICATION OF COURT'S RULING**

The Court has received and reviewed a letter dated February 3, 2009 from Richard J. Chivaro, Chief Counsel of the California State Controller's Office, requesting clarification of the Court's ruling in these matters, specifically, on the issue of whether the ruling is applicable to employees of independently elected Constitutional Officers and other elected state-wide officials, including the Lieutenant Governor, Office of the Attorney General, Secretary of State, State Treasurer, Superintendent of Public Instruction and Insurance Commissioner. The letter to the Court attaches copies of letters to the State Controller from those officers or their representatives raising issues regarding the Governor's authority to order furloughs of their employees.

The Court's ruling in the above-captioned matters addressed petitions for writ of mandate and complaints for declaratory relief brought by four recognized employee organizations, raising issues regarding the Governor's authority to order furloughs of their members, as employees of executive branch agencies. The independently elected Constitutional Officers and other elected state-wide officials referenced above were not parties to these matters. The petitions and complaints upon which the Court ruled did not raise any issues regarding the Governor's authority to order furloughs for the employees of those officers and officials. The Court's ruling therefore did not address, or make any ruling regarding, the Governor's authority to order furloughs for the employees of those officers and officials. Accordingly, the Court expresses no views regarding that issue.

Certificate of Service by Mailing attached.

CERTIFICATE OF SERVICE BY MAILING
C.C.P. Sec. 1013a(4))

I, the undersigned deputy clerk of the Superior Court of California, County of Sacramento, do declare under penalty of perjury that I did this date place a copy of the above entitled Minute Order in envelopes addressed to each of the parties, or their counsel of record as stated below, with sufficient postage affixed thereto and deposited the same in the United States Post Office at Sacramento, California.

Gerald James
Attorney at Law
660 J Street, Suite 445
Sacramento, CA 95814

David W. Tyra
KRONICK, MOSKOVITZ, TIEDEMANN
& GIRARD
400 Capitol Mall, 7th Floor
Sacramento, CA 95814

Patrick Whalen
ELLISON WILSON ADVOCACY, LLC
1725 Capitol Avenue
Sacramento, CA 95814

J. Felix DeLa Torre, Staff Attorney
S.E.I.U.
1808 -14th Street
Sacramento, CA 95811

Brooke D. Pierman, Staff Attorney
S.E.I.U.
1808 -14th Street
Sacramento, CA 95811

Will M. Yamada
Department of Personnel Administration
Legal Office
1515 S Street, No. Bldg., Ste. 400
Sacramento, CA 95811

RICHARD CHIVARO, Chief Counsel
Ronald V. Placet,
Sr. Staff Counsel
Office of the State Controller
300 Capitol Mall, Ste 1850
Sacramento, CA 95814

Gregg McLean Adam
CARROLL, BURDICK & McDONOUGH
44 Montgomery Street, Ste. 400
San Francisco, CA 94104

Dated: February 4, 2009

Superior Court of California
County of Sacramento

By: D. RIOS, SR.,
Deputy Clerk

ORIGINAL

PAUL E. HARRIS, III, Counsel (SBN 180265)
ANNE M. GIESE, Counsel (SBN 143934)
SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 1000
1808 14th Street
Sacramento, CA 95814
Telephone: (916) 554-1279
Facsimile: (916) 554-1292

Attorneys for Petitioner/Plaintiff
SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 1000

FILED
ENDORSED
FEB - 5 2009
By N WALLACE
Deputy Clerk

SEIU LOCAL 1000
1808 14th Street, Bldg. 1
Sacramento, California 95814
Telephone: (916) 554-1279

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1000,

Petitioners/Plaintiffs,

v.

ARNOLD SCHWARZENEGGER, as Governor, State of California; DEPARTMENT OF PERSONNEL ADMINISTRATION; JOHN CHIANG, as State Controller, and DOES 1 THROUGH 20, INCLUSIVE,

Respondents/Defendants.

CASE No. 34-2009-80000135

NOTICE OF APPEAL

Dept: 19
Judge: Hon. Patrick Marlette

VV

TO THE CLERK OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF SACRAMENTO:

NOTICE IS HEREBY GIVEN THAT Petitioner and Appellant SEIU Local 1000 appeals to the Court of Appeals of the State of California, Third Appellate District, from the court's final ruling denying writs of mandate/complaints for declaratory relief and Petitioner's oral request for stay entered on or about January 29, 2009, from the whole of such ruling and order.

///

///

///

The Court issued the final ruling denying the writ of mandate/complaint for declaratory relief on January 30, 2009.

Dated: February 4, 2009

SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 1000

By _____
ANNE M. GIESE
Attorneys for SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1000

SEIU Local 1000
1808 14th Street, Bldg. 1
Sacramento, California 95814
Telephone: (916) 554-1279

VV

DECLARATION OF SERVICE

CASE NAME: *SEIU LOCAL 1000 v. ARNOLD SCHWARZENEGGER, et al.*
COURT NAME: Sacramento County Superior Court
CASE NUMBER: 34-2009-80000135

I am a citizen of the United States and a resident of the County of Yolo. I am over the age of eighteen (18) years and not a party to the above-entitled action. My business address is 1808 14th Street, Sacramento, California 95811.

I am familiar with SEIU Local 1000's practice whereby the mail is sealed, given the appropriate postage and placed in a designated mail collection area. Each day's mail is collected and deposited in a United States mailbox after the close of each day's business.

On February 5, 2009, I served the following:

NOTICE OF APPEAL

[X] (BY ELECTRONIC SERVICE) Based upon a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

VV

[SEE ATTACHED]

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Declaration was executed on February 5, 2009, at Sacramento, California.

MARY A. MEDINA

SEIU Local 1000
1808 14th Street
Sacramento, California 95811
Telephone: (916) 554-1279

ATTACHMENT TO DECLARATION OF SERVICE

GERALD JAMES
660 J Street, Ste. 445
Sacramento, CA 95814
Tel: (916) 446-0400 Fax: (916) 446-0489
e-mail: *gjames@blanningandbaker.com*

Attorneys for Petitioners/Plaintiffs, *PROFESSIONAL ENGINEERS IN CALIFORNIA GOVERNMENT and CALIFORNIA ASSOCIATION OF PROFESSIONAL SCIENTISTS*

PATRICK J. WHALEN, General Counsel
Law Offices of Brooks Ellison
1725 Capitol Avenue
Sacramento, CA 95814
Tel: (916) 448-2187 Fax: (916) 448-5346
e-mail: counsel@calattorneys.org

Attorneys for Petitioner/Plaintiff, *California Attorneys, Administrative Law Judges, And Hearing Officers in State Employment*

DAVID W. TYRA
KRONICK, MOSKOVITZ, TIEDMAN & GIRARD
400 Capitol Mall, 27th Floor
Sacramento, CA 95814-4407
Tel: (916) 321-4500 Fax: (916) 321-4555
e-mail: dyra@kmtg.com

Attorneys for Defendants/Respondents, *ARNOLD SCHWARZENEGGER, Governor; STATE OF CALIFORNIA; and DEPARTMENT OF PERSONNEL ADMINISTRATION*

VV

WILL M. YAMADA
Department of Personnel Administration
1515 S Street, North Building, Ste. 400
Sacramento, CA 95814
Tel: (916) 324-0512 Fax: (916) 323-4723
e-mail: willyamada@dpa.ca.gov

Attorneys for Defendants/Respondents, *ARNOLD SCHWARZENEGGER, Governor; STATE OF CALIFORNIA; and DEPARTMENT OF PERSONNEL ADMINISTRATION*

RICK CHIVARO, Chief Counsel
RONALD V. PLACET
Office of the State Controller
300 Capitol Mall, Ste. 1850
Sacramento, CA 95814
Tel: (916) 445-3028 Fax: (916) 322-1220
e-mail: rchivaro@sco.ca.gov

Attorneys for Respondents/Defendants, *John Chiang, Office of the State Controller*

SUPERIOR COURT OF CALIFORNIA
County of Sacramento
720 Ninth Street ~ Room 101
Sacramento, CA 95814-1380
(916) 874-5403—Website www.saccourt.com

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1000
Petitioner/Appellant

VS.

ARNOLD SCHWARZENEGGER, as Governor, State of California; DEPARTMENT OF PERSONNEL ADMINISTRATION; JOHN CHIANG, as State Controller, and DOES 1 through 20, inclusive
Respondent

No. 34-2009-80000135-CU-WM-GDS

NOTICE OF FILING NOTICE OF APPEAL

Please be advised that on February 5, 2009 a NOTICE OF APPEAL was filed in the above entitled cause.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

DATED: February 5, 2009

F. CHEN

By: FEN-RU CHEN, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA)
COUNTY OF SACRAMENTO)

DECLARATION OF MAILING

As Deputy Clerk of the Superior Court of California, County of Sacramento, I hereby declare under penalty of perjury, that I have this day mailed, by first class mail, postage fully prepaid, a true and correct copy of the above notice to each of the persons hereinafter set forth, addressed as follows:

Paul E. Harris, SBN 180265
SERVICE EMPLOYEES
INTERNATIONAL UNION, LOCAL 1000
1808 14th Street
Sacramento, CA 95814
(916) 554-1279
#
Representing: Petitioner/Appellant

David W. Tyra, SBN 116218
KRONICK, MOSCOVITZ,
TIEDEMANN & GIRARD
400 Capitol Mall, 7th Floor
Sacramento, CA 95814
(916) 321-4500
#
Representing: Defendant/Respondent
ARNOLD SCHWARZENEGGER and
DEPARTMENT OF PERSONNEL
ADMINISTRATION

William M. Yamada SBN
UNKNOWN
DEPARTMENT OF PERSONNEL
ADMINISTRATION
1515 S Street, North Bldg., STE 400
Sacramento, CA 95814
(916) 446-4692
Representing:
DEPARTMENT OF PERSONNEL
ADMINIATRATION

Richard Chivaro, SBN 124391
OFFICE OF THE STATE
CONTROLLER
300 Captiol Mall, STE 1850
Sacramento, CA 95814
(916) 445-6854
Representing:
STATE CONTROLLER JOHN
CHIANG

Gerald James, SBN 179258
660 J Street, STE 445
Sacramento, CA 95814
(916) 446-0400

Representing:
Professional Engineers in California
Government and California
Association of Professional Scientists

Court of Appeal
Third Appellate District
900 N Street Room 400
Sacramento Ca 95814

Executed at Sacramento, California, on February 6, 2009.

F. CHEN

FEN-RU CHEN, DEPUTY
CLERK

DEPARTMENT 19

DAVID W. TYRA, State Bar No. 116218
KRISTIANNE T. SEARGEANT, State Bar No. 245489
KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Law Corporation
400 Capitol Mall, 27th Floor
Sacramento, California 95814
Telephone: (916) 321-4500
Facsimile: (916) 321-4555
E-mail: dtyra@kmtg.com

RECEIVED
FEB -5 2009
36
CIVIL

ENTERED
FEB 13 2009

K. WILLIAM CURTIS
Chief Counsel, State Bar No. 095753
WARREN C. STRACENER
Deputy Chief Counsel, State Bar No. 127921
LINDA A. MAYHEW
Assistant Chief Counsel, State Bar No. 155049
WILL M. YAMADA
Labor Relations Counsel, State Bar No. 226669
DEPARTMENT OF PERSONNEL ADMINISTRATION
1515 S Street, North Building, Suite 400
Sacramento, CA 95811-7258
Telephone: (916) 324-0512
Facsimile: (916) 323-4723
E-mail: WillYamada@dpa.ca.gov

Attorneys for Defendants/Respondents
ARNOLD SCHWARZENEGGER, as Governor, Stare of California; and DEPARTMENT OF PERSONNEL ADMINISTRATION

FILED
ENDORSED
FEB 13 2009
By D. BIGS, SR.
Deputy Clerk

Exempted from Fees (Gov. Code § 6103)

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO VV

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1000,

Petitioner/Plaintiff,

v.

ARNOLD SCHWARZENEGGER, as Governor, State of California; DEPARTMENT OF PERSONNEL ADMINISTRATION; JOHN CHIANG, as State Controller; and DOES 1 through 20, inclusive,

Respondents/Defendants.

Case No. 34-2009-80000135-CU-WM-GDS

Assigned For All Purposes To The Honorable Patrick Marlette

JUDGMENT RE: VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Date: January 29, 2009
Time: 9:00 a.m.
Dept.: 19

Based upon the Ruling of this Court and Order Thereon attached hereto as Exhibit A and incorporated herein by reference,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Judgment be entered forthwith in favor of Respondents and against Petitioners with respect to Petitioners Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief.

DATED: FEB 13 2009

JUDGE OF THE SUPERIOR COURT

APPROVED AS TO FORM:

Dated: _____, 2009

OFFICE OF STATE CONTROLLER

By: _____
Shawn D. Silva, Attorneys for
Respondent/Defendant
STATE CONTROLLER JOHN CHIANG

Dated: _____, 2009

LAW OFFICE OF BROOKS ELLISON

By: _____
Patrick J. Whalen, Attorneys for
Petitioners/Plaintiffs
CALIFORNIA ATTORNEYS,
ADMINISTRATIVE LAW JUDGES and
HEARING OFFICERS IN STATE
EMPLOYMENT

Dated: _____, 2009

By: _____
Gerald A. James, Attorneys for
Petitioners/Plaintiffs
PROFESSIONAL ENGINEERS IN
CALIFORNIA GOVERNMENT and
CALIFORNIA ASSOCIATION OF
PROFESSIONAL SCIENTISTS

Dated: _____, 2009

SEIU LOCAL 1000

By: _____
J. Felix De La Torre, Attorneys for
Petitioner/Plaintiff
SERVICE EMPLOYEES
INTERNATIONAL LOCAL 1000

VV

EXHIBIT A

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

DATE/TIME	**: 01/30/09**	**DEPT. NO**	**: 19**
JUDGE	**: P. MARLETTE**	**CLERK**	**: D. RIOS, SR.**
REPORTER	**: none**	**BAILIFF**	**: none**
		PRESENT:	

Professional Engineers in California Government;\California Association of Professional Scientists,
Plaintiff,

VS. ***Case No.: 2008-80000126***

Arnold Schwarzenegger, Governor, State of California\Department of Personnel Administration\State Controller John Chiang\and Does 1 through 20 inclusive,
Defendant.

Nature of Proceedings: **Amended Minute Order**

The Court is issuing a revised version of its final ruling in these matters. The revision makes no substantive changes in the ruling, but corrects an editing error in the last sentence of the third paragraph from the end of the ruling, regarding the State Controller, by deleting the word "incidental". The revised final ruling which follows shall be the final ruling of the Court.

PROFESSIONAL ENGINEERS IN CALIFORNIA GOVERNMENT, et al., v. GOVERNOR ARNOLD SCHWARZENEGGER, et al., Case No. 2008-80000126;

VV

CALIFORNIA ATTORNEYS, ADMINISTRATIVE LAW JUDGES AND HEARING OFFICERS IN STATE EMPLOYMENT, v. GOVERNOR ARNOLD SCHWARZENEGGER, et al., Case No. 2009-80000134;

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1000, v. GOVERNOR ARNOLD SCHWARZENEGGER, et al., Case No. 2009-80000135.

The following shall constitute the Court's final rulings on the demurrers and petitions for writ of mandate and complaints for declaratory relief in the above-captioned matters:

//

BOOK	**: 19**
PAGE	**: 2008-80000126-13009**
DATE	**: 01/30/09**
CASE NO.	**: 2008-80000126**
CASE TITLE	**: PECG; CAPS v. SCHWARZENEGGER**

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

BY: D. RIOS, SR.,
Deputy Clerk

Z1t2

CASE NUMBER: 2008-80000126 **DEPARTMENT: 19**
CASE TITLE: PECG; CAPS v. SCHWARZENEGGER
PROCEEDINGS: Amended Minute Order

Introduction and Background:

On December 19, 2008, in a response to the current State budget crisis, Governor Arnold Schwarzenegger issued Executive Order S-16-08. As relevant to this action, the Executive Order directed the Department of Personnel Administration, effective February 1, 2009 through June 30, 2010, to adopt a plan to implement a furlough of represented state employees and supervisors for two days per month, and to adopt a plan to implement an equivalent furlough or salary reduction for all state managers, including exempt state employees.

Several organizations representing state employees affected by the Executive Order have filed three separate petitions for writ of mandate and complaints for declaratory relief challenging the provisions of the Order imposing the furloughs, and seeking to overturn them.

The first such action, Case No. 2008-80000126, was filed by petitioners Professional Engineers in California Government ("PECG") and California Association of Professional Scientists ("CAPS") on December 22, 2008. That action initially was assigned to Department 33 of this Court, Judge Lloyd Connelly, presiding; it was reassigned to this Department after respondents filed a peremptory challenge to Judge Connelly pursuant to Code of Civil Procedure section 170.6 on January 7, 2009.

The second such action, Case No. 2009-80000134, was filed by petitioner California Attorneys, Administrative Law Judges and Hearing Officers in State Employment ("CASE") on January 5, 2009. That action was assigned to Department 33 of this Court, Judge Lloyd Connelly, presiding. Petitioner simultaneously filed a Notice of Related Case in that action, stating that it was related to Case No. 2008-80000126.

The third such action, Case No. 2009-80000135, was filed by petitioner Service Employees International Union, Local 1000 ("SEIU"), on January 7, 2009. The action was assigned to Department 29 of this Court, Judge Timothy M. Frawley, presiding. Petitioner simultaneously filed a Notice of Related Case in that action, stating that it was related to Cases Nos. 2008-80000126 and 2008-80000134

On January 9, 2009, the Court heard simultaneous ex parte applications by the petitioners and respondents in Case No. 2008-80000126 for orders shortening time that would have the effect of setting a hearing on respondents' demurrer to the petition and the hearing on the merits of the petition itself for a date prior to February 1, 2009, when the furloughs would go into effect.

At the hearing on January 9, 2009, counsel for the petitioners in Cases Nos. 2009-80000134 and 2009-80000135 appeared and stipulated on the record that those cases would be treated as related to Case No. 2008-

BOOK : 19
PAGE : 2008-80000126-13009
DATE : 01/30/09
CASE NO. : 2008-80000126
CASE TITLE : PECG; CAPS v. SCHWARZENEGGER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

BY: D. RIOS, SR.,
Deputy Clerk

Z1z2

80000126, and that those cases would be transferred to this Department for hearing pursuant to Rule of Court 3.300(h)(1)(a). Counsel for respondents in Case No. 2008-80000126 also stated on the record that he represented the respondents in one of the other two cases, and most likely would represent the respondents in the other (although at that time, the petition had not formally been served on the respondents), and also stipulated on the record that the three cases would be heard in this Department as provided above. The parties further agreed to a briefing schedule and to a combined hearing on the respondents' demurrers to, and the merits of, the three petitions. The parties to all three actions have filed their briefs and other papers according to the agreed-upon schedule and the Court heard oral argument on the matter on Thursday, January 29, 2009.

On January 12, 2009, a fourth action was filed challenging the Governor's Executive Order, entitled *California Correctional Peace Officers Association v. Governor Arnold Schwarzenegger, et al.*, Case No. 2008-80000137. The Court issued an order finding that case to be related to the three cases captioned above and further ordered that case assigned to this Department. That case has been set for hearing on Friday, February 5, 2009.

Ruling on Preliminary Evidentiary Issues:

Respondents[1] have made two requests for judicial notice, filed January 9, 2009 and January 13, 2009, along with an Amended Request for Judicial Notice on January 23, 2009 in response to the Court's order directing them to submit complete copies of the Memoranda of Understanding ("MOUs") involved in these actions. No objections to the requests have been filed. The Court has reviewed the requests and the documents attached thereto and finds that all such documents are proper subjects for judicial notice. Respondents' requests for judicial notice are therefore granted.

Respondents' evidentiary objection to the Declaration of Peter Flores, Jr. is overruled on the ground that the lack of a signature on the declaration has been remedied by the filing of an amended declaration, unchanged in substance, which bears Mr. Flores' signature.

Ruling on Respondents' Demurrers to the Petitions:

[1] In using the terms "respondents" or "defendants" in this ruling, the Court is referring to Governor Arnold Schwarzenegger and the Department of Personnel Administration. Although State Controller John Chiang also has been named as a respondent in these actions, the Controller has filed an Opposition to the Respondents'/Defendants' Demurrer stating that his interests are actually aligned with the petitioners and that, but for the short time frame, he would have filed a formal motion to realign the parties, seeking to be redesignated as a petitioner/plaintiff. The Controller's position in these actions will be discussed further below. In this ruling, the Court also has treated the terms "the Governor", "the Department of Personnel Administration" (or "the department" or "DPA") and "the State" as being essentially interchangeable.

CASE NUMBER: 2008-80000126 **DEPARTMENT: 19**
CASE TITLE: PECG; CAPS v. SCHWARZENEGGER
PROCEEDINGS: Amended Minute Order

Respondents' demurrers are overruled on the following basis:

The petitions and complaints allege generally that the provisions of the Governor's Executive Order S-16-08 that implement a furlough of represented state employees and supervisors for two days per month, and an equivalent furlough or salary reduction for state managers, effective February 1, 2009 through June 30, 2010, are invalid in that such action on the part of the Governor is not authorized by law, and moreover is forbidden by certain provisions of law, in particular, Government Code section 19826(b).

The Court finds that such allegations are sufficient to state a cause of action for issuance of a writ of mandate or for declaratory relief, regardless of whether Government Code section 19826(b) is superseded by the terms of the MOUs petitioners have entered into with the State (as respondents argue), because the petitions and complaints allege, in essence, that the Governor lacks the positive authority to make the challenged order in the first instance, irrespective of any statutory prohibition that may or may not apply. The allegation that the Governor lacks any authority to make the challenged order is sufficient to state a cause of action on its own.

The Court further finds that the issue of the Governor's authority to make the challenged order is not an issue within the exclusive initial jurisdiction of the Public Employment Relations Board, because it involves issues of statutory interpretation and separation of powers between the Governor and the Legislature, which are matters properly within the jurisdiction of the courts, and not issues of unfair practices under the Ralph C. Dills Act, which are matters properly within the jurisdiction of the Board. (See, e.g., *California School Employees Association v. Azusa Unified School District* (1984) 152 Cal. App. 3rd 580, 592-593; *California Teachers' Association v. Livingston School District* (1990) 219 Cal. App. 3rd 1503, 1519.) Moreover, the petitions and complaints in effect allege that the Governor's Executive Order regarding an employee furlough violates the provisions of the petitioners' MOUs with the State governing wages and hours. The Board does not have the authority to enforce agreements between the parties. (Government Code section 3514.5(b); see also, *San Lorenzo Education Association v. Wilson* (1982) 32 Cal. 3rd 841.)

VV

Moreover, even if this Court were to conclude that the Board did have jurisdiction over this matter, it would conclude that the normal policy reasons requiring parties to exhaust available administrative remedies do not apply in this case for many of the reasons stated by the Third District Court of Appeal in a case arising out of an earlier state budget crisis: namely, that the facts are undisputed, so there is no need for administrative development of the record; judicial intervention will not interfere with the expertise of the agency or create problems of judicial economy, given that the underlying issues are within the expertise of the courts and undoubtedly would be resolved ultimately by the courts even if initial jurisdiction were found in the Board; and, given that this case raises questions of first impression which most likely are bound for ultimate determination in the appellate courts, there is little concern of conflicting decisions between the Board and the courts. (See, *Department of Personnel Administration v. Superior Court (Greene)* (1992) 5 Cal. App. 4th 155, 168-169.)

BOOK : 19
PAGE : 2008-80000126-13009
DATE : 01/30/09
CASE NO. : 2008-80000126
CASE TITLE : PECG; CAPS v. SCHWARZENEGGER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

BY: D. RIOS, SR.,
Deputy Clerk

Z1z2

In addition, even if this Court were to conclude that the Board did have jurisdiction over this matter, it would conclude that exhaustion of administrative remedies by resort to the Board should be excused on the ground that requiring exhaustion under the particular circumstances of this case would cause both the State and its employees to suffer irreparable injury, again, for many of the reasons stated in the 1992 *Greene* case: specifically, that the extremely grave nature of the fiscal crisis faced by the state, and the urgent need for resolution of these issues in as expeditious a manner as possible, create a great potential for irreparable harm in the nature of layoffs of state employees, with a concomitant reduction in the nature of state services, all of which are amply demonstrated by the declarations and documents that have been filed by parties in this matter (many of them by respondents). Even if, as the Court of Appeal stated in the *Greene* case, there is a possibility that the Board could order the same relief that petitioners seek here, it is extremely unlikely that the entire process of Board adjudication followed by judicial review as provided by law would be completed in a sufficiently timely manner to address the immediate crisis. (See, *Department of Personnel Administration v. Superior Court (Greene)* (1992) 5 Cal. App. 4th 155, 170-171.)

Petitioners SEIU and CASE raise additional claims for declaratory relief regarding the effect of the furlough on the exempt status of employees under the federal Fair Labor Standards Act ("FLSA"). The SEIU complaint alleges that a significant number of its employees will be required to work in excess of 40 hours during furlough weeks, that such employees will no longer be considered exempt employees as a matter of law during those weeks, that such workers will be entitled to overtime pay during such weeks, and that respondents lack any mechanism or systems in place to move employees from exempt to non-exempt status from week-to-week, with the result being that such employees will not receive the overtime pay to which they are entitled under the FLSA. Such facts are sufficient to state a cause of action in declaratory relief based on the theory that respondents are not willing and able to comply with their obligations under the FLSA, at least for the purpose of withstanding a demurrer. Respondents' contention that the complaint on its face shows that petitioner's FLSA claim is not ripe for review, and seeks only an advisory opinion, because there is no allegation that respondents actually have failed to pay any overtime that is due, is unpersuasive.[2]

The CASE complaint alleges the same facts regarding the effect of the furloughs on its employees' exempt status under the FLSA. The complaint lacks the specific allegations present in the SEIU complaint regarding respondents' lack of willingness and ability to comply with the FLSA, but alleges in general terms that respondents' actions will result in denial of the protection of the laws regarding overtime compensation. In essence, this complaint is identical in substance to the SEIU complaint; the Court concludes that it also states a cause of action for declaratory relief.

---

[2] This is, of course, distinct from the issue of whether there is any proof tending to demonstrate that FLSA violations actually will occur. This issue is dealt with in the Court's ruling on the merits, below.

Respondents' demurrers are therefore overruled.

Ruling on the Petitions and Complaints:

The petitions for writ of mandate and complaints for declaratory relief challenging the provisions of the Governor's Executive Order imposing furloughs on state employees are based on twin contentions: that the Governor lacks any authority, statutory or otherwise, to take such action; and that applicable statutory law expressly forbids him from taking such action. For the reasons stated below, the Court finds that these contentions are unpersuasive.

The facts regarding the implementation of the furlough are essentially undisputed, as is the fact that the State faces an extremely urgent fiscal crisis.[3] According to documents submitted to the Court, the Governor, through the Department of Personnel Administration, has developed a furlough plan that will result in the closing of general government operations on the first and third Fridays of each month, beginning on Friday, February 6, 2009. The unpaid furlough days are not work days and employees shall not report to work. For state operations that cannot close, a "self-directed" furlough will be used that will result in state employees either taking two furlough days each month on days chosen by the employees and approved by their supervisors, or accruing two furlough days per month to be taken when feasible. Salaries will be adjusted to reflect the unpaid furlough days, but benefits will remain the same.[4]

The Governor's Executive Order thus reduces the normal work hours of state employees for a temporary period due to the state's current fiscal crisis. The emergency measure will result in an accompanying deduction from pay for the hours not worked, but the order does not change established salary ranges. The Governor's authority for this action is found in statutes in the Government Code and in the employment contracts of the unions challenging the order.

VV

The Governor has the statutory authority to reduce the hours of state employees pursuant to Government Code section 19851 and 19849.

---

[3] There do appear to be disputes of fact over whether the implementation of the furlough will result in violations of the federal FLSA. This issue will be discussed separately below.

[4] See, Memorandum dated January 9, 2009 from David A. Gilb, Director of the Department of Personnel Administration, to Agency Secretaries, et al., regarding "State Employee Furlough per Governor's Executive Order S-16-08", attached to the Amended Declaration of Peter Flores, Jr. as Exhibit H.

Section 19851(a) provides: "It is the policy of the state that the workweek of the state employee shall be 40 hours, and the workday of the state employee eight hours, except that workweeks and workdays of a different number of hours may be established in order to meet the varying needs of the different state agencies."

Section 19849(a) provides that the Department of Personnel Administration "...shall adopt rules governing hours of work and overtime compensation and the keeping of records related thereto, including time and attendance records. Each appointing power shall administer and enforce such rules."

The Court finds that these two statutes, taken together, provide the Governor with authority to reduce the workweek of state employees to meet the needs of state agencies, and to do so by adopting a rule. The provisions of the Executive Order regarding the furlough are a rule in that they establish a standard of general application to state employees. Under the circumstances of the current fiscal crisis, the reduction in the workweek of state employees under the furlough order is indisputably related to the needs of the various state agencies, which, from the evidence respondents have submitted to the Court, run the imminent risk of running out of money and thus being unable to carry out their missions, if immediate action is not taken to reduce expenditures.

The Court further finds, on two separate bases, that the Governor has authority to reduce the work hours of the state employees represented by the petitioners in these actions pursuant to the terms of the MOUs the State entered into with the petitioner employee organizations, which remain in effect, although technically expired, pursuant to Government Code section 3517.8(a).

First, each of the petitioners' MOUs expressly incorporates the terms of sections 18949 and 19851 into the agreement between the parties[5], and the terms of the MOU do not conflict with these statutes, notwithstanding that the MOUs call for a normal work week of 40 hours. Thus, these provisions of law are not superseded by the MOUs, and the Governor retains the authority, pursuant to law and contract, to take any actions he would be permitted to take pursuant to Government Code sections 19849 and 19851 as described above.

[5] See, Respondents' Request for Judicial Notice, filed January 9, 2009, Exhibit A, p. 80 (PECG MOU); Exhibit B, p. 75 (CAPS MOU); Respondents' Amended Request for Judicial Notice, filed January 23, 2009, Exhibit A, p. 16 (CASE MOU); Exhibit B, p. 20 (SEIU MOU for Bargaining Unit 1); Exhibit C, p. 22 (SEIU MOU for Bargaining Unit 3); Exhibit D, p. 21 (SEIU MOU for Bargaining Unit 4); Exhibit E, p. 21 (SEIU MOU for Bargaining Unit 11); Exhibit F, pp 22-23 (SEIU MOU for Bargaining Unit 14); Exhibit G, p. 21 (SEIU MOU for Bargaining Unit 15); Exhibit H, p. 21 (SEIU MOU for Bargaining Unit 17); Exhibit I, p. 21 (SEIU MOU for Bargaining Unit 20); Exhibit J, p. 19 (SEIU MOU for Bargaining Unit 21). In addition, the PECG MOU provides, in Article 17.1, which appears under the heading "State Rights", that: "All the functions, rights, powers and authority not specifically abridged by this MOU are retained by the employer." (See, Respondents' Request for Judicial Notice, filed January 9, 2009, Exhibit A, p. 72.)

BOOK : 19
PAGE : 2008-80000126-13009
DATE : 01/30/09
CASE NO. : 2008-80000126
CASE TITLE : PECG; CAPS v. SCHWARZENEGGER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

BY: D. RIOS, SR.,
Deputy Clerk

Second, the specific terms of certain of the petitioners' MOUs expressly permit the State either to reduce hours in case of lack of funds or to take all necessary action to carry out its mission in emergencies.

For example, Article 3.1.B of the MOU between the State and petitioner CASE, which appears under the heading "State Rights", provides that "[t]o the extent consistent with law and this MOU, the rights of the State include, but are not limited to, the exclusive right to...relieve its employees from duty because of lack of work, lack of funds, or for other legitimate reasons...[and to] take all necessary actions to carry out its mission in emergencies."[6]

Article 10.3 of the CASE MOU, which appears under the heading "Layoff", further provides: "The State may propose to reduce the number of hours an employee works as an alternative to layoff. Prior to implementation of this alternative to a layoff, the State will notify and meet and confer with the Union to seek concurrence of the usage of this alternative."[7]

Article 12.1.B of the CAPS MOU, which appears under the heading "State Rights", provides that: "Consistent with this Agreement, the rights of the State shall include, but not be limited to, the right...to take all necessary action to carry out its mission in emergencies."[8]

Article 4.B of each of the SEIU MOUs similarly provides that: "Consistent with this Contract, the rights of the State shall include, but not be limited to, the right...to take all necessary action to carry out its mission in emergencies."[9]

The Court finds that the current fiscal emergency, which is amply documented in the evidence respondents have submitted, authorizes the Governor to reduce the work hours of state employees under these

VV

---

[6] See, respondents' Amended Request for Judicial Notice, filed January 23, 2009, Exhibit A, p. 11.
[7] See, Respondents' Amended Request for Judicial Notice, filed January 23, 2009, Exhibit A, p. 59.
[8] See, Respondents' Request for Judicial Notice, filed January 9, 2009, Exhibit B, p. 71.
[9] See, Respondents' Amended Request for Judicial Notice, filed January 23, 2009, Exhibit B, p. 16 (Bargaining Unit 1); Exhibit C, p. 17 (Bargaining Unit 3); Exhibit D, p. 17 (Bargaining Unit 4); Exhibit E, p. 17 (Bargaining Unit 11); Exhibit F, p. 18 (Bargaining Unit 14); Exhibit G, p. 17 (Bargaining Unit 15); Exhibit H, p. 17 (Bargaining Unit 17); Exhibit I, p. 16 (Bargaining Unit 20); Exhibit J, p. 15 (Bargaining Unit 21).

BOOK : 19
PAGE : 2008-80000126-13009
DATE : 01/30/09
CASE NO. : 2008-80000126
CASE TITLE : PECG; CAPS v. SCHWARZENEGGER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

BY: D. RIOS, SR.,
Deputy Clerk

cited terms of the various MOUs. The nature of the fiscal emergency is such that the state employee furloughs imposed by the Governor's Executive Order are both necessary and reasonable under the circumstances.[10]

The existence of the current emergency also authorized the Governor to make his order without first meeting and conferring with state employee organizations pursuant to Government Code section 3516.5.

The Court accordingly finds that both statutory law and the provisions of the petitioners' MOUs authorized the Governor to reduce the work hours of state employees through a furlough in the current fiscal emergency.

The Court finds that Government Code section 19826(b) does not preclude the Governor from taking such action.

Section 19826(b) states that the Department of Personnel Administration shall not establish, adjust or recommend a salary range for any employees in an appropriate unit where an employee organization has been chosen as the exclusive representative pursuant to Government Code section 3520.5, which is the case for all of the petitioners in these actions.

This case, however, does not involve the establishment, adjustment or recommendation of a salary range for represented state employees. This case involves a temporary reduction in the hours worked by certain state employees, which will result in a loss of pay for the hours not worked. The order does not change established salary ranges at all: state employees will continue to receive their normal pay according to established ranges in weeks that do not include a furlough day. In essence, state employees are subject to a temporary deduction from their total pay under the established ranges, and not to being paid under a new or adjusted salary range.

The present case is therefore distinguishable from *Department of Personnel Administration v. Superior Court (Greene)* (1992) 5 Cal. App. 4th 155, which involved an across-the-board salary cut of 5% with no furlough or reduction in work hours. *Greene* also involved the issue of what the State was entitled to do in the bargaining process under the Ralph C. Dills Act, specifically, whether the State could unilaterally impose the salary cut as part of its "last, best and final offer" when it was officially at impasse with the state employee organizations. The present case does not involve bargaining issues in that the parties are not at impasse, and petitioners' pleadings have raised issues regarding the Governor's positive authority to make the challenged

[10] At oral argument on these matters, counsel for CASE and PECG argued that many of their members work in so-called "special fund" agencies, and that the Governor's order, which was designed to deal with a looming General Fund deficit, was not reasonably related to the fiscal emergency insofar as it orders furloughs for those employees. (CASE also raised this issue in its reply brief.) This contention was not raised in any of the petitions or complaints for declaratory relief, and petitioners did not submit any evidence to support it. The Court therefore makes no findings on it.

order rather than issues regarding any failure to comply with his collective bargaining obligations under the Dills Act.

Moreover, the *Greene* case did not address any provisions of the employee organizations' MOUs that might have authorized the salary reduction in that case, on the basis of an emergency or otherwise, because the case technically involved a situation in which there was an absence of a MOU, as is the case when an existing MOU has expired and the parties have bargained to impasse. (See, *Department of Personnel Administration v. Superior Court (Greene)* (1992) 5 Cal. App. 4th 155, 174.) As noted above, the petitioners' MOUs in this case remain in effect pursuant to Government Code section 3517.8(a), and contain provisions authorizing the Governor's order reducing work hours. The *Greene* case therefore is not controlling here.

The Court accordingly rules that, with regard to the issues raised by all petitioners regarding the Governor's authority to make the challenged order, the petitions for writ of mandate are denied and judgment shall be entered for the defendants (respondents) on the complaints for declaratory relief. This ruling applies to both state employees represented by all of the petitioners under the Dills Act and to those state employees represented by petitioners PECG and CAPS who are excluded from the Dills Act by law, as the authorities on which the Court has relied in finding that the Governor has the authority to take the challenged action apply to both classes of employees.[11]

With regard to the causes of action for declaratory relief raised by SEIU and CASE raising issues involving possible non-compliance with the FLSA, the Court finds that as a matter of proof, as distinguished from a matter of pleading, petitioners' claims that implementation of the Governor's order will actually result in employees formerly considered to be exempt from the Act's provisions working overtime within the meaning of the Act during a furlough week, and that the State will not comply with the Act with regard to employees who do so, are entirely hypothetical and speculative prior to implementation of the furloughs, and thus not ripe for decision.

VV

As respondents point out, under applicable federal regulations, employees may be furloughed for budget-related reasons without affecting their exempt status, except for the workweek in which the furlough occurs.[12] The viability of petitioners' FLSA claims therefore depends upon proof that there will be, as a matter of fact,

---

[11] At oral argument, counsel for petitioner SEIU raised the contention that the Governor's order amounted to an unconstitutional impairment of contracts. This contention was not raised in any of the petitions, and was not briefed by the parties. Petitioner SEIU did cite several out-of-state cases in its reply brief in which government employee furloughs were challenged on this basis. Those cases were cited, however, for the proposition that a furlough is equivalent to a reduction in employee salary, and not in support of the contention that the Governor's action impaired the petitioner's contracts with the State. Because such contention was not raised by the petitions or briefed by the parties, the Court makes no finding on it.

[12] See, Title 29, Code of Federal Regulations, section 541.710.

employees who work more than 40 hours during a furlough week. At this point, before the furlough actually has been implemented, there is no evidence before the Court regarding any employee actually doing this, let alone any evidence that this will be the case with large numbers of state employees. Petitioners' allegations that this will happen are merely hypothetical.

Similarly, the evidence that petitioner CASE has submitted demonstrating that the State's payroll system is antiquated and lacks the flexibility and reliability to be able to cope with the kind of week-to-week changes in an employee's exempt status that will occur when furloughs are implemented[13], is not necessarily proof that the State will not be able to cope with paying overtime pay to those to whom it is entitled. Once again, petitioners' proposition that the FLSA will be violated depends upon proof that employees actually will be entitled to overtime, and that there will be sufficient numbers of them that the State will not be able to comply with the FLSA. Such proof is lacking at this point.

Finally, even if petitioners were able to prove that the State was likely to fail to comply with the FLSA with regard to some number of state employees, it would not necessarily follow that they would be entitled to the relief they seek, which is the invalidation of the furlough order itself. Any actual violation of the FLSA would give rise to remedies arising under the FLSA, i.e., for recovery of the unpaid overtime compensation[14], but the failure to comply with the FLSA in that situation would be a separate issue from the validity of the furlough. Notwithstanding this Court's ruling upholding the Governor's order, any affected employee retains his or her rights and remedies under FLSA, and the Court's ruling that petitioners have not proven an actual violation of the FLSA at this point does not preclude them, or their individual members, from exercising those remedies once an actual violation can be proven. Thus, FLSA compliance issues, hypothetical or otherwise, do not serve as a basis for overturning the Governor's Executive Order regarding furloughs.

The Court therefore finds in favor of defendants (respondents) on the SEIU and CASE complaints for declaratory relief regarding alleged non-compliance with the FLSA. **VV**

A final issue remains with regard to the State Controller. As noted in footnote 1 above, the Controller, although named as a respondent/defendant, has taken a position in these actions in alignment with the petitioners, specifically stating that his office "...has no intention of implementing the reduction in pay as contemplated in the Governor's Order, unless determined otherwise by a court of law."[15] In *Tirapelle v. Davis*

---

[13] See, Declaration of Don Scheppmann, chief of Personnel/Payroll Services Division of the Office of the California State Controller, dated October 14, 2008 and filed in the case entitled *David A. Gilb, California Department of Personnel Administration v. John Chiang, Office of State Controller, et al.*, which is pending in the United States District Court for the Eastern District of California, attached to CASE's opposition to respondents' demurrer as Exhibit A.
[14] See, e.g., 29 U.S.C. Section 216.
[15] See, Controller's Opposition to Respondents' Demurrer, p. 2:15-17.

(1993) 20 Cal. App. 4th 1317, the Third District Court of Appeal held that the Controller may not refuse to implement an executive action affecting state employees' pay that is authorized by law. In this case, the Court has ruled that the provisions of the Governor's Executive Order reducing the work hours of state employees through a furlough, and thereby affecting their pay during the furlough weeks, is authorized by law. The Controller therefore lacks authority to refuse to implement the Governor's Executive Order. The Court's judgment in this matter therefore shall include an order directing the Controller to take all necessary and appropriate steps to implement the provisions of the Governor's Executive Order imposing furloughs on state employees, including the reduction in such employees' pay.

At the close of the hearing, counsel for CASE made an oral motion on the record that the Court stay its ruling pending appellate review. The Court denied the motion.

//

Counsel for respondents is directed to prepare the orders and judgments in accordance with this ruling under the procedures set forth in Rule of Court 3.1312.

Certificate of Service by Mailing attached.

VV

BOOK : 19
PAGE : 2008-80000126-13009
DATE : 01/30/09
CASE NO. : 2008-80000126
CASE TITLE : PECG; CAPS v. SCHWARZENEGGER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

BY: D. RIOS, SR.,
Deputy Clerk

CASE NUMBER: 2008-80000126 **DEPARTMENT: 19**
CASE TITLE: PECG; CAPS v. SCHWARZENEGGER
PROCEEDINGS: Amended Minute Order

CERTIFICATE OF SERVICE BY MAILING
C.C.P. Sec. 1013a(4))

I, the undersigned deputy clerk of the Superior Court of California, County of Sacramento, do declare under penalty of perjury that I did this date place a copy of the above entitled notice in envelopes addressed to each of the parties, or their counsel of record as stated below, with sufficient postage affixed thereto and deposited the same in the United States Post Office at Sacramento, California.

Gerald James
Attorney at Law
660 J Street, Suite 445
Sacramento, CA 95814

David W. Tyra
KRONICK, MOSKOVITZ, TIEDEMANN
& GIRARD
400 Capitol Mall, 7th Floor
Sacramento, CA 95814

Patrick Whalen
ELLISON WILSON ADVOCACY, LLC
1725 Capitol Avenue
Sacramento, CA 95814
Brooke D. Pierman, Staff Attorney
S.E.I.U.
1808 -14th Street
Sacramento, CA 95811

J. Felix DeLa Torre, Staff Attorney
S.E.I.U.
1808 -14th Street
Sacramento, CA 95811
Will M. Yamada
Department of Personnel Administration
Legal Office
1515 S Street, No. Bldg., Ste. 400
Sacramento, CA 95811

RICHARD CHIVARO, Chief Counsel
Ronald V. Placet,
Sr. Staff Counsel
Office of the State Controller
300 Capitol Mall, Ste 1850
Sacramento, CA 95814

VV

Dated: 1/30/09

Superior Court of California,
County of Sacramento

By: D. RIOS, SR.,
Deputy Clerk

BOOK : 19
PAGE : 2008-80000126-13009
DATE : 01/30/09
CASE NO. : 2008-80000126
CASE TITLE : PECG; CAPS v. SCHWARZENEGGER

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SACRAMENTO

BY: D. RIOS, SR.,
Deputy Clerk

Z1z2

DEPARTMENT 19

DAVID W. TYRA, State Bar No. 116218
KRISTIANNE T. SEARGEANT, State Bar No. 245489
KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Law Corporation
400 Capitol Mall, 27th Floor
Sacramento, California 95814
Telephone: (916) 321-4500
Facsimile: (916) 321-4555
E-mail: dtyra@kmtg.com

K. WILLIAM CURTIS
Chief Counsel, State Bar No. 095753
WARREN C. STRACENER
Deputy Chief Counsel, State Bar No. 127921
LINDA A. MAYHEW
Assistant Chief Counsel, State Bar No. 155049
WILL M. YAMADA
Labor Relations Counsel, State Bar No. 226669
DEPARTMENT OF PERSONNEL ADMINISTRATION
1515 S Street, North Building, Suite 400
Sacramento, CA 95811-7258
Telephone: (916) 324-0512
Facsimile: (916) 323-4723
E-mail: WillYamada@dpa.ca.gov

Attorneys for Defendants/Respondents
ARNOLD SCHWARZENEGGER, as Governor, Stare of California; and DEPARTMENT OF PERSONNEL ADMINISTRATION

Exempted from Fees (Gov. Code § 6103)

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1000,

Petitioner/Plaintiff,

v.

ARNOLD SCHWARZENEGGER, as Governor, State of California; DEPARTMENT OF PERSONNEL ADMINISTRATION; JOHN CHIANG, as State Controller; and DOES 1 through 20, inclusive,

Respondents/Defendants.

Case No. 34-2009-80000135-CU-WM-GDS

Assigned For All Purposes To The Honorable Patrick Marlette

ORDER AFTER HEARING

Date: **January 29, 2009**
Time: **9:00 a.m.**
Dept.: **19**

TO PETITIONERS AND TO THEIR ATTORNEYS OF RECORD:

On or about January 29, 2009, Respondents' Demurrer to Petitioner's Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief came on regularly for hearing. At that same time and place, the Court conducted a hearing on the merits of the aforementioned petition and complaint per the parties' agreement and the Court's Minute Order of January 9, 2009.

Respondents/Defendants Governor Arnold Schwarzenegger, State of California, David Gilb, and Department of Personnel Administration were represented by David W. Tyra of Kronick, Moskovitz, Tiedemann & Girard and Will M. Yamada, Senior Labor Relations Counsel, Department of Personnel Administration.

Respondent/Defendant State Controller John Chiang was represented by Shawn D. Silva of the State Controller's Office.

Petitioners/Plaintiffs Professional Engineers in California Government and California Association of Professional Scientists were represented by Gerald A. James.

Petitioner/Plaintiff California Attorneys, Administrative Law Judges and Hearing Officers in State Employment was represented by Patrick J. Whalen, Law Offices of Brooks Ellison.

VV

Petitioner/Plaintiff SEIU Local 1000 was represented by J. Felix De La Torre and Brooke Pierman.

///

///

///

///

///

///

///

///

///

The Court, after considering the various brief submitted by the parties, the exhibits submitted therewith, and having heard the oral argument of counsel renders the decision attached hereto as Exhibit A and incorporated herein by reference.

DATED: FEB 13 2009

JUDGE OF THE SUPERIOR COURT

APPROVED AS TO FORM:

Dated: _____, 2009

OFFICE OF STATE CONTROLLER

By: _____
Shawn D. Silva, Attorneys for
Respondent/Defendant
STATE CONTROLLER JOHN CHIANG

Dated: _____, 2009

LAW OFFICE OF BROOKS ELLISON

By: _____
Patrick J. Whalen, Attorneys for
Petitioners/Plaintiffs
CALIFORNIA ATTORNEYS,
ADMINISTRATIVE LAW JUDGES and
HEARING OFFICERS IN STATE
EMPLOYMENT

Dated: _____, 2009

By: _____
Gerald A. James, Attorneys for
Petitioners/Plaintiffs
PROFESSIONAL ENGINEERS IN
CALIFORNIA GOVERNMENT and
CALIFORNIA ASSOCIATION OF
PROFESSIONAL SCIENTISTS

Dated: _____, 2009

SEIU LOCAL 1000

By: _____
J. Felix De La Torre, Attorneys for
Petitioner/Plaintiff
SERVICE EMPLOYEES
INTERNATIONAL LOCAL 1000

VV

EXHIBIT A

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

DATE/TIME	**: 01/30/09**	**DEPT. NO**	**: 19**
JUDGE	**: P. MARLETTE**	**CLERK**	**: D. RIOS, SR.**
REPORTER	**: none**	**BAILIFF**	**: none**
		PRESENT:	

Professional Engineers in California Government;\California Association of Professional Scientists,
Plaintiff,

VS. **Case No.: 2008-80000126**

Arnold Schwarzenegger, Governor, State of California\Department of Personnel Administration\State Controller John Chiang\and Does 1 through 20 inclusive,
Defendant.

Nature of Proceedings: **Amended Minute Order**

The Court is issuing a revised version of its final ruling in these matters. The revision makes no substantive changes in the ruling, but corrects an editing error in the last sentence of the third paragraph from the end of the ruling, regarding the State Controller, by deleting the word "incidental". The revised final ruling which follows shall be the final ruling of the Court.

PROFESSIONAL ENGINEERS IN CALIFORNIA GOVERNMENT, et al., v. GOVERNOR ARNOLD SCHWARZENEGGER, et al., Case No. 2008-80000126;

VV

CALIFORNIA ATTORNEYS, ADMINISTRATIVE LAW JUDGES AND HEARING OFFICERS IN STATE EMPLOYMENT, v. GOVERNOR ARNOLD SCHWARZENEGGER, et al., Case No. 2009-80000134;

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1000, v. GOVERNOR ARNOLD SCHWARZENEGGER, et al., Case No. 2009-80000135.

The following shall constitute the Court's final rulings on the demurrers and petitions for writ of mandate and complaints for declaratory relief in the above-captioned matters:

//

BOOK	**: 19**
PAGE	**: 2008-80000126-13009**
DATE	**: 01/30/09**
CASE NO.	**: 2008-80000126**
CASE TITLE	**: PECG; CAPS v. SCHWARZENEGGER**

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

BY: D. RIOS, SR.,
Deputy Clerk

Z1z2

Introduction and Background:

On December 19, 2008, in a response to the current State budget crisis, Governor Arnold Schwarzenegger issued Executive Order S-16-08. As relevant to this action, the Executive Order directed the Department of Personnel Administration, effective February 1, 2009 through June 30, 2010, to adopt a plan to implement a furlough of represented state employees and supervisors for two days per month, and to adopt a plan to implement an equivalent furlough or salary reduction for all state managers, including exempt state employees.

Several organizations representing state employees affected by the Executive Order have filed three separate petitions for writ of mandate and complaints for declaratory relief challenging the provisions of the Order imposing the furloughs, and seeking to overturn them.

The first such action, Case No. 2008-80000126, was filed by petitioners Professional Engineers in California Government ("PECG") and California Association of Professional Scientists ("CAPS") on December 22, 2008. That action initially was assigned to Department 33 of this Court, Judge Lloyd Connelly, presiding; it was reassigned to this Department after respondents filed a peremptory challenge to Judge Connelly pursuant to Code of Civil Procedure section 170.6 on January 7, 2009.

The second such action, Case No. 2009-80000134, was filed by petitioner California Attorneys, Administrative Law Judges and Hearing Officers in State Employment ("CASE") on January 5, 2009. That action was assigned to Department 33 of this Court, Judge Lloyd Connelly, presiding. Petitioner simultaneously filed a Notice of Related Case in that action, stating that it was related to Case No. 2008-80000126.

The third such action, Case No. 2009-80000135, was filed by petitioner Service Employees International Union, Local 1000 ("SEIU"), on January 7, 2009. The action was assigned to Department 29 of this Court, Judge Timothy M. Frawley, presiding. Petitioner simultaneously filed a Notice of Related Case in that action, stating that it was related to Cases Nos. 2008-80000126 and 2008-80000134

On January 9, 2009, the Court heard simultaneous ex parte applications by the petitioners and respondents in Case No. 2008-80000126 for orders shortening time that would have the effect of setting a hearing on respondents' demurrer to the petition and the hearing on the merits of the petition itself for a date prior to February 1, 2009, when the furloughs would go into effect.

At the hearing on January 9, 2009, counsel for the petitioners in Cases Nos. 2009-80000134 and 2009-80000135 appeared and stipulated on the record that those cases would be treated as related to Case No. 2008-

80000126, and that those cases would be transferred to this Department for hearing pursuant to Rule of Court 3.300(h)(1)(a). Counsel for respondents in Case No. 2008-80000126 also stated on the record that he represented the respondents in one of the other two cases, and most likely would represent the respondents in the other (although at that time, the petition had not formally been served on the respondents), and also stipulated on the record that the three cases would be heard in this Department as provided above. The parties further agreed to a briefing schedule and to a combined hearing on the respondents' demurrers to, and the merits of, the three petitions. The parties to all three actions have filed their briefs and other papers according to the agreed-upon schedule and the Court heard oral argument on the matter on Thursday, January 29, 2009.

On January 12, 2009, a fourth action was filed challenging the Governor's Executive Order, entitled *California Correctional Peace Officers Association v. Governor Arnold Schwarzenegger, et al.*, Case No. 2008-80000137. The Court issued an order finding that case to be related to the three cases captioned above and further ordered that case assigned to this Department. That case has been set for hearing on Friday, February 5, 2009.

Ruling on Preliminary Evidentiary Issues:

Respondents[1] have made two requests for judicial notice, filed January 9, 2009 and January 13, 2009, along with an Amended Request for Judicial Notice on January 23, 2009 in response to the Court's order directing them to submit complete copies of the Memoranda of Understanding ("MOUs") involved in these actions. No objections to the requests have been filed. The Court has reviewed the requests and the documents attached thereto and finds that all such documents are proper subjects for judicial notice. Respondents' requests for judicial notice are therefore granted.

Respondents' evidentiary objection to the Declaration of Peter Flores, Jr. is overruled on the ground that the lack of a signature on the declaration has been remedied by the filing of an amended declaration, unchanged in substance, which bears Mr. Flores' signature.

Ruling on Respondents' Demurrers to the Petitions:

[1] In using the terms "respondents" or "defendants" in this ruling, the Court is referring to Governor Arnold Schwarzenegger and the Department of Personnel Administration. Although State Controller John Chiang also has been named as a respondent in these actions, the Controller has filed an Opposition to the Respondents'/Defendants' Demurrer stating that his interests are actually aligned with the petitioners and that, but for the short time frame, he would have filed a formal motion to realign the parties, seeking to be redesignated as a petitioner/plaintiff. The Controller's position in these actions will be discussed further below. In this ruling, the Court also has treated the terms "the Governor", "the Department of Personnel Administration" (or "the department" or "DPA") and "the State" as being essentially interchangeable.

CASE NUMBER: 2008-80000126 **DEPARTMENT: 19**
CASE TITLE: PECG; CAPS v. SCHWARZENEGGER
PROCEEDINGS: Amended Minute Order

Respondents' demurrers are overruled on the following basis:

The petitions and complaints allege generally that the provisions of the Governor's Executive Order S-16-08 that implement a furlough of represented state employees and supervisors for two days per month, and an equivalent furlough or salary reduction for state managers, effective February 1, 2009 through June 30, 2010, are invalid in that such action on the part of the Governor is not authorized by law, and moreover is forbidden by certain provisions of law, in particular, Government Code section 19826(b).

The Court finds that such allegations are sufficient to state a cause of action for issuance of a writ of mandate or for declaratory relief, regardless of whether Government Code section 19826(b) is superseded by the terms of the MOUs petitioners have entered into with the State (as respondents argue), because the petitions and complaints allege, in essence, that the Governor lacks the positive authority to make the challenged order in the first instance, irrespective of any statutory prohibition that may or may not apply. The allegation that the Governor lacks any authority to make the challenged order is sufficient to state a cause of action on its own.

The Court further finds that the issue of the Governor's authority to make the challenged order is not an issue within the exclusive initial jurisdiction of the Public Employment Relations Board, because it involves issues of statutory interpretation and separation of powers between the Governor and the Legislature, which are matters properly within the jurisdiction of the courts, and not issues of unfair practices under the Ralph C. Dills Act, which are matters properly within the jurisdiction of the Board. (See, e.g., *California School Employees Association v. Azusa Unified School District* (1984) 152 Cal. App. 3rd 580, 592-593; *California Teachers' Association v. Livingston School District* (1990) 219 Cal. App. 3rd 1503, 1519.) Moreover, the petitions and complaints in effect allege that the Governor's Executive Order regarding an employee furlough violates the provisions of the petitioners' MOUs with the State governing wages and hours. The Board does not have the authority to enforce agreements between the parties. (Government Code section 3514.5(b); see also, *San Lorenzo Education Association v. Wilson* (1982) 32 Cal. 3rd 841.)

Moreover, even if this Court were to conclude that the Board did have jurisdiction over this matter, it would conclude that the normal policy reasons requiring parties to exhaust available administrative remedies do not apply in this case for many of the reasons stated by the Third District Court of Appeal in a case arising out of an earlier state budget crisis: namely, that the facts are undisputed, so there is no need for administrative development of the record; judicial intervention will not interfere with the expertise of the agency or create problems of judicial economy, given that the underlying issues are within the expertise of the courts and undoubtedly would be resolved ultimately by the courts even if initial jurisdiction were found in the Board; and, given that this case raises questions of first impression which most likely are bound for ultimate determination in the appellate courts, there is little concern of conflicting decisions between the Board and the courts. (See, *Department of Personnel Administration v. Superior Court (Greene)* (1992) 5 Cal. App. 4th 155, 168-169.)

BOOK : 19
PAGE : 2008-80000126-13009
DATE : 01/30/09
CASE NO. : 2008-80000126
CASE TITLE : PECG; CAPS v. SCHWARZENEGGER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

BY: D. RIOS, SR.,
Deputy Clerk

Z1z2

In addition, even if this Court were to conclude that the Board did have jurisdiction over this matter, it would conclude that exhaustion of administrative remedies by resort to the Board should be excused on the ground that requiring exhaustion under the particular circumstances of this case would cause both the State and its employees to suffer irreparable injury, again, for many of the reasons stated in the 1992 *Greene* case: specifically, that the extremely grave nature of the fiscal crisis faced by the state, and the urgent need for resolution of these issues in as expeditious a manner as possible, create a great potential for irreparable harm in the nature of layoffs of state employees, with a concomitant reduction in the nature of state services, all of which are amply demonstrated by the declarations and documents that have been filed by parties in this matter (many of them by respondents). Even if, as the Court of Appeal stated in the *Greene* case, there is a possibility that the Board could order the same relief that petitioners seek here, it is extremely unlikely that the entire process of Board adjudication followed by judicial review as provided by law would be completed in a sufficiently timely manner to address the immediate crisis. (See, *Department of Personnel Administration v. Superior Court (Greene)* (1992) 5 Cal. App. 4th 155, 170-171.)

Petitioners SEIU and CASE raise additional claims for declaratory relief regarding the effect of the furlough on the exempt status of employees under the federal Fair Labor Standards Act ("FLSA"). The SEIU complaint alleges that a significant number of its employees will be required to work in excess of 40 hours during furlough weeks, that such employees will no longer be considered exempt employees as a matter of law during those weeks, that such workers will be entitled to overtime pay during such weeks, and that respondents lack any mechanism or systems in place to move employees from exempt to non-exempt status from week-to-week, with the result being that such employees will not receive the overtime pay to which they are entitled under the FLSA. Such facts are sufficient to state a cause of action in declaratory relief based on the theory that respondents are not willing and able to comply with their obligations under the FLSA, at least for the purpose of withstanding a demurrer. Respondents' contention that the complaint on its face shows that petitioner's FLSA claim is not ripe for review, and seeks only an advisory opinion, because there is no allegation that respondents actually have failed to pay any overtime that is due, is unpersuasive.[2]

The CASE complaint alleges the same facts regarding the effect of the furloughs on its employees' exempt status under the FLSA. The complaint lacks the specific allegations present in the SEIU complaint regarding respondents' lack of willingness and ability to comply with the FLSA, but alleges in general terms that respondents' actions will result in denial of the protection of the laws regarding overtime compensation. In essence, this complaint is identical in substance to the SEIU complaint; the Court concludes that it also states a cause of action for declaratory relief.

---

[2] This is, of course, distinct from the issue of whether there is any proof tending to demonstrate that FLSA violations actually will occur. This issue is dealt with in the Court's ruling on the merits, below.

Respondents' demurrers are therefore overruled.

Ruling on the Petitions and Complaints:

The petitions for writ of mandate and complaints for declaratory relief challenging the provisions of the Governor's Executive Order imposing furloughs on state employees are based on twin contentions: that the Governor lacks any authority, statutory or otherwise, to take such action; and that applicable statutory law expressly forbids him from taking such action. For the reasons stated below, the Court finds that these contentions are unpersuasive.

The facts regarding the implementation of the furlough are essentially undisputed, as is the fact that the State faces an extremely urgent fiscal crisis.[3] According to documents submitted to the Court, the Governor, through the Department of Personnel Administration, has developed a furlough plan that will result in the closing of general government operations on the first and third Fridays of each month, beginning on Friday, February 6, 2009. The unpaid furlough days are not work days and employees shall not report to work. For state operations that cannot close, a "self-directed" furlough will be used that will result in state employees either taking two furlough days each month on days chosen by the employees and approved by their supervisors, or accruing two furlough days per month to be taken when feasible. Salaries will be adjusted to reflect the unpaid furlough days, but benefits will remain the same.[4]

The Governor's Executive Order thus reduces the normal work hours of state employees for a temporary period due to the state's current fiscal crisis. The emergency measure will result in an accompanying deduction from pay for the hours not worked, but the order does not change established salary ranges. The Governor's authority for this action is found in statutes in the Government Code and in the employment contracts of the unions challenging the order.

The Governor has the statutory authority to reduce the hours of state employees pursuant to Government Code section 19851 and 19849.

---

[3] There do appear to be disputes of fact over whether the implementation of the furlough will result in violations of the federal FLSA. This issue will be discussed separately below.

[4] See, Memorandum dated January 9, 2009 from David A. Gilb, Director of the Department of Personnel Administration, to Agency Secretaries, et al., regarding "State Employee Furlough per Governor's Executive Order S-16-08", attached to the Amended Declaration of Peter Flores, Jr. as Exhibit H.

Section 19851(a) provides: "It is the policy of the state that the workweek of the state employee shall be 40 hours, and the workday of the state employee eight hours, except that workweeks and workdays of a different number of hours may be established in order to meet the varying needs of the different state agencies."

Section 19849(a) provides that the Department of Personnel Administration "...shall adopt rules governing hours of work and overtime compensation and the keeping of records related thereto, including time and attendance records. Each appointing power shall administer and enforce such rules."

The Court finds that these two statutes, taken together, provide the Governor with authority to reduce the workweek of state employees to meet the needs of state agencies, and to do so by adopting a rule. The provisions of the Executive Order regarding the furlough are a rule in that they establish a standard of general application to state employees. Under the circumstances of the current fiscal crisis, the reduction in the workweek of state employees under the furlough order is indisputably related to the needs of the various state agencies, which, from the evidence respondents have submitted to the Court, run the imminent risk of running out of money and thus being unable to carry out their missions, if immediate action is not taken to reduce expenditures.

The Court further finds, on two separate bases, that the Governor has authority to reduce the work hours of the state employees represented by the petitioners in these actions pursuant to the terms of the MOUs the State entered into with the petitioner employee organizations, which remain in effect, although technically expired, pursuant to Government Code section 3517.8(a).

First, each of the petitioners' MOUs expressly incorporates the terms of sections 18949 and 19851 into the agreement between the parties[5], and the terms of the MOU do not conflict with these statutes, notwithstanding that the MOUs call for a normal work week of 40 hours. Thus, these provisions of law are not superseded by the MOUs, and the Governor retains the authority, pursuant to law and contract, to take any actions he would be permitted to take pursuant to Government Code sections 19849 and 19851 as described above.

[5] See, Respondents' Request for Judicial Notice, filed January 9, 2009, Exhibit A, p. 80 (PECG MOU); Exhibit B, p. 75 (CAPS MOU); Respondents' Amended Request for Judicial Notice, filed January 23, 2009, Exhibit A, p. 16 (CASE MOU), Exhibit B, p. 20 (SEIU MOU for Bargaining Unit 1); Exhibit C, p. 22 (SEIU MOU for Bargaining Unit 3); Exhibit D, p 21 (SEIU MOU for Bargaining Unit 4); Exhibit E, p. 21 (SEIU MOU for Bargaining Unit 11); Exhibit F, pp. 22-23 (SEIU MOU for Bargaining Unit 14); Exhibit G, p. 21 (SEIU MOU for Bargaining Unit 15); Exhibit H, p. 21 (SEIU MOU for Bargaining Unit 17); Exhibit I, p. 21 (SEIU MOU for Bargaining Unit 20); Exhibit J, p. 19 (SEIU MOU for Bargaining Unit 21). In addition, the PECG MOU provides, in Article 17.1, which appears under the heading "State Rights", that: "All the functions, rights, powers and authority not specifically abridged by this MOU are retained by the employer." (See, Respondents' Request for Judicial Notice, filed January 9, 2009, Exhibit A, p. 72.)

BOOK : 19
PAGE : 2008-80000126-13009
DATE : 01/30/09
CASE NO. : 2008-80000126
CASE TITLE : PECG; CAPS v. SCHWARZENEGGER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

BY: D. RIOS, SR.,
Deputy Clerk

Second, the specific terms of certain of the petitioners' MOUs expressly permit the State either to reduce hours in case of lack of funds or to take all necessary action to carry out its mission in emergencies.

For example, Article 3.1.B of the MOU between the State and petitioner CASE, which appears under the heading "State Rights", provides that "[t]o the extent consistent with law and this MOU, the rights of the State include, but are not limited to, the exclusive right to...relieve its employees from duty because of lack of work, lack of funds, or for other legitimate reasons...[and to] take all necessary actions to carry out its mission in emergencies."[6]

Article 10.3 of the CASE MOU, which appears under the heading "Layoff", further provides: "The State may propose to reduce the number of hours an employee works as an alternative to layoff. Prior to implementation of this alternative to a layoff, the State will notify and meet and confer with the Union to seek concurrence of the usage of this alternative."[7]

Article 12.1.B of the CAPS MOU, which appears under the heading "State Rights", provides that: "Consistent with this Agreement, the rights of the State shall include, but not be limited to, the right...to take all necessary action to carry out its mission in emergencies."[8]

Article 4.B of each of the SEIU MOUs similarly provides that: "Consistent with this Contract, the rights of the State shall include, but not be limited to, the right...to take all necessary action to carry out its mission in emergencies."[9]

The Court finds that the current fiscal emergency, which is amply documented in the evidence respondents have submitted, authorizes the Governor to reduce the work hours of state employees under these

VV

---

[6] See, respondents' Amended Request for Judicial Notice, filed January 23, 2009, Exhibit A, p. 11.
[7] See, Respondents' Amended Request for Judicial Notice, filed January 23, 2009, Exhibit A, p. 59.
[8] See, Respondents' Request for Judicial Notice, filed January 9, 2009, Exhibit B, p. 71.
[9] See, Respondents' Amended Request for Judicial Notice, filed January 23, 2009, Exhibit B, p. 16 (Bargaining Unit 1); Exhibit C, p. 17 (Bargaining Unit 3); Exhibit D, p. 17 (Bargaining Unit 4); Exhibit E, p. 17 (Bargaining Unit 11); Exhibit F, p. 18 (Bargaining Unit 14); Exhibit G, p. 17 (Bargaining Unit 15); Exhibit H, p. 17 (Bargaining Unit 17); Exhibit I, p. 16 (Bargaining Unit 20); Exhibit J, p. 15 (Bargaining Unit 21).

BOOK : 19
PAGE : 2008-80000126-13009
DATE : 01/30/09
CASE NO. : 2008-80000126
CASE TITLE : PECG; CAPS v. SCHWARZENEGGER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

BY: D. RIOS, SR.,
Deputy Clerk

cited terms of the various MOUs. The nature of the fiscal emergency is such that the state employee furloughs imposed by the Governor's Executive Order are both necessary and reasonable under the circumstances.[10]

The existence of the current emergency also authorized the Governor to make his order without first meeting and conferring with state employee organizations pursuant to Government Code section 3516.5.

The Court accordingly finds that both statutory law and the provisions of the petitioners' MOUs authorized the Governor to reduce the work hours of state employees through a furlough in the current fiscal emergency.

The Court finds that Government Code section 19826(b) does not preclude the Governor from taking such action.

Section 19826(b) states that the Department of Personnel Administration shall not establish, adjust or recommend a salary range for any employees in an appropriate unit where an employee organization has been chosen as the exclusive representative pursuant to Government Code section 3520.5, which is the case for all of the petitioners in these actions.

This case, however, does not involve the establishment, adjustment or recommendation of a salary range for represented state employees. This case involves a temporary reduction in the hours worked by certain state employees, which will result in a loss of pay for the hours not worked. The order does not change established salary ranges at all: state employees will continue to receive their normal pay according to established ranges in weeks that do not include a furlough day. In essence, state employees are subject to a temporary deduction from their total pay under the established ranges, and not to being paid under a new or adjusted salary range.

The present case is therefore distinguishable from *Department of Personnel Administration v. Superior Court (Greene)* (1992) 5 Cal. App. 4th 155, which involved an across-the-board salary cut of 5% with no furlough or reduction in work hours. *Greene* also involved the issue of what the State was entitled to do in the bargaining process under the Ralph C. Dills Act, specifically, whether the State could unilaterally impose the salary cut as part of its "last, best and final offer" when it was officially at impasse with the state employee organizations. The present case does not involve bargaining issues in that the parties are not at impasse, and petitioners' pleadings have raised issues regarding the Governor's positive authority to make the challenged

[10] At oral argument on these matters, counsel for CASE and PECG argued that many of their members work in so-called "special fund" agencies, and that the Governor's order, which was designed to deal with a looming General Fund deficit, was not reasonably related to the fiscal emergency insofar as it orders furloughs for those employees. (CASE also raised this issue in its reply brief.) This contention was not raised in any of the petitions or complaints for declaratory relief, and petitioners did not submit any evidence to support it. The Court therefore makes no findings on it.

order rather than issues regarding any failure to comply with his collective bargaining obligations under the Dills Act.

Moreover, the *Greene* case did not address any provisions of the employee organizations' MOUs that might have authorized the salary reduction in that case, on the basis of an emergency or otherwise, because the case technically involved a situation in which there was an absence of a MOU, as is the case when an existing MOU has expired and the parties have bargained to impasse. (See, *Department of Personnel Administration v. Superior Court (Greene)* (1992) 5 Cal. App. 4th 155, 174.) As noted above, the petitioners' MOUs in this case remain in effect pursuant to Government Code section 3517.8(a), and contain provisions authorizing the Governor's order reducing work hours. The *Greene* case therefore is not controlling here.

The Court accordingly rules that, with regard to the issues raised by all petitioners regarding the Governor's authority to make the challenged order, the petitions for writ of mandate are denied and judgment shall be entered for the defendants (respondents) on the complaints for declaratory relief. This ruling applies to both state employees represented by all of the petitioners under the Dills Act and to those state employees represented by petitioners PECG and CAPS who are excluded from the Dills Act by law, as the authorities on which the Court has relied in finding that the Governor has the authority to take the challenged action apply to both classes of employees.[11]

With regard to the causes of action for declaratory relief raised by SEIU and CASE raising issues involving possible non-compliance with the FLSA, the Court finds that as a matter of proof, as distinguished from a matter of pleading, petitioners' claims that implementation of the Governor's order will actually result in employees formerly considered to be exempt from the Act's provisions working overtime within the meaning of the Act during a furlough week, and that the State will not comply with the Act with regard to employees who do so, are entirely hypothetical and speculative prior to implementation of the furloughs, and thus not ripe for decision.

As respondents point out, under applicable federal regulations, employees may be furloughed for budget-related reasons without affecting their exempt status, except for the workweek in which the furlough occurs.[12] The viability of petitioners' FLSA claims therefore depends upon proof that there will be, as a matter of fact,

[11] At oral argument, counsel for petitioner SEIU raised the contention that the Governor's order amounted to an unconstitutional impairment of contracts. This contention was not raised in any of the petitions, and was not briefed by the parties. Petitioner SEIU did cite several out-of-state cases in its reply brief in which government employee furloughs were challenged on this basis. Those cases were cited, however, for the proposition that a furlough is equivalent to a reduction in employee salary, and not in support of the contention that the Governor's action impaired the petitioner's contracts with the State. Because such contention was not raised by the petitions or briefed by the parties, the Court makes no finding on it.

[12] See, Title 29, Code of Federal Regulations, section 541.710.

BOOK : 19
PAGE : 2008-80000126-13009
DATE : 01/30/09
CASE NO. : 2008-80000126
CASE TITLE : PECG; CAPS v. SCHWARZENEGGER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

BY: D. RIOS, SR.,
Deputy Clerk

employees who work more than 40 hours during a furlough week. At this point, before the furlough actually has been implemented, there is no evidence before the Court regarding any employee actually doing this, let alone any evidence that this will be the case with large numbers of state employees. Petitioners' allegations that this will happen are merely hypothetical.

Similarly, the evidence that petitioner CASE has submitted demonstrating that the State's payroll system is antiquated and lacks the flexibility and reliability to be able to cope with the kind of week-to-week changes in an employee's exempt status that will occur when furloughs are implemented[13], is not necessarily proof that the State will not be able to cope with paying overtime pay to those to whom it is entitled. Once again, petitioners' proposition that the FLSA will be violated depends upon proof that employees actually will be entitled to overtime, and that there will be sufficient numbers of them that the State will not be able to comply with the FLSA. Such proof is lacking at this point.

Finally, even if petitioners were able to prove that the State was likely to fail to comply with the FLSA with regard to some number of state employees, it would not necessarily follow that they would be entitled to the relief they seek, which is the invalidation of the furlough order itself. Any actual violation of the FLSA would give rise to remedies arising under the FLSA, i.e., for recovery of the unpaid overtime compensation[14], but the failure to comply with the FLSA in that situation would be a separate issue from the validity of the furlough. Notwithstanding this Court's ruling upholding the Governor's order, any affected employee retains his or her rights and remedies under FLSA, and the Court's ruling that petitioners have not proven an actual violation of the FLSA at this point does not preclude them, or their individual members, from exercising those remedies once an actual violation can be proven. Thus, FLSA compliance issues, hypothetical or otherwise, do not serve as a basis for overturning the Governor's Executive Order regarding furloughs.

The Court therefore finds in favor of defendants (respondents) on the SEIU and CASE complaints for declaratory relief regarding alleged non-compliance with the FLSA. VV

A final issue remains with regard to the State Controller. As noted in footnote 1 above, the Controller, although named as a respondent/defendant, has taken a position in these actions in alignment with the petitioners, specifically stating that his office "...has no intention of implementing the reduction in pay as contemplated in the Governor's Order, unless determined otherwise by a court of law."[15] In *Tirapelle v. Davis*

[13] See, Declaration of Don Scheppmann, chief of Personnel/Payroll Services Division of the Office of the California State Controller, dated October 14, 2008 and filed in the case entitled *David A Gilb, California Department of Personnel Administration v John Chiang, Office of State Controller, et al*, which is pending in the United States District Court for the Eastern District of California, attached to CASE's opposition to respondents' demurrer as Exhibit A.
[14] See, e.g., 29 U.S.C. Section 216.
[15] See, Controller's Opposition to Respondents' Demurrer, p. 2:15-17.

BOOK : 19
PAGE : 2008-80000126-13009
DATE : 01/30/09
CASE NO. : 2008-80000126
CASE TITLE : PECG; CAPS v. SCHWARZENEGGER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

BY: D. RIOS, SR.,
Deputy Clerk

(1993) 20 Cal. App. 4th 1317, the Third District Court of Appeal held that the Controller may not refuse to implement an executive action affecting state employees' pay that is authorized by law. In this case, the Court has ruled that the provisions of the Governor's Executive Order reducing the work hours of state employees through a furlough, and thereby affecting their pay during the furlough weeks, is authorized by law. The Controller therefore lacks authority to refuse to implement the Governor's Executive Order. The Court's judgment in this matter therefore shall include an order directing the Controller to take all necessary and appropriate steps to implement the provisions of the Governor's Executive Order imposing furloughs on state employees, including the reduction in such employees' pay.

At the close of the hearing, counsel for CASE made an oral motion on the record that the Court stay its ruling pending appellate review. The Court denied the motion.

//

Counsel for respondents is directed to prepare the orders and judgments in accordance with this ruling under the procedures set forth in Rule of Court 3.1312.

Certificate of Service by Mailing attached.

VV

BOOK : 19
PAGE : 2008-80000126-13009
DATE : 01/30/09
CASE NO. : 2008-80000126
CASE TITLE : PECG; CAPS v. SCHWARZENEGGER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

BY: D. RIOS, SR.,
Deputy Clerk

Z1z2

CASE NUMBER: 2008-80000126 **DEPARTMENT: 19**
CASE TITLE: PECG; CAPS v. SCHWARZENEGGER
PROCEEDINGS: Amended Minute Order

CERTIFICATE OF SERVICE BY MAILING
C.C.P. Sec. 1013a(4))

I, the undersigned deputy clerk of the Superior Court of California, County of Sacramento, do declare under penalty of perjury that I did this date place a copy of the above entitled notice in envelopes addressed to each of the parties, or their counsel of record as stated below, with sufficient postage affixed thereto and deposited the same in the United States Post Office at Sacramento, California.

Gerald James
Attorney at Law
660 J Street, Suite 445
Sacramento, CA 95814

David W. Tyra
KRONICK, MOSKOVITZ, TIEDEMANN
& GIRARD
400 Capitol Mall, 7th Floor
Sacramento, CA 95814

Patrick Whalen
ELLISON WILSON ADVOCACY, LLC
1725 Capitol Avenue
Sacramento, CA 95814
Brooke D. Pierman, Staff Attorney
S.E.I.U.
1808 -14th Street
Sacramento, CA 95811

J. Felix DeLa Torre, Staff Attorney
S.E.I.U.
1808 -14th Street
Sacramento, CA 95811
Will M. Yamada
Department of Personnel Administration
Legal Office
1515 S Street, No. Bldg., Ste. 400
Sacramento, CA 95811

RICHARD CHIVARO, Chief Counsel
Ronald V. Placet,
Sr. Staff Counsel
Office of the State Controller
300 Capitol Mall, Ste 1850
Sacramento, CA 95814

VV

Dated: 1/30/09

Superior Court of California,
County of Sacramento

By: D. RIOS, SR.,
Deputy Clerk

BOOK : 19
PAGE : 2008-80000126-13009
DATE : 01/30/09
CASE NO. : 2008-80000126
CASE TITLE : PECG; CAPS v. SCHWARZENEGGER

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SACRAMENTO

BY: D. RIOS, SR.,
Deputy Clerk

Z1z2

KRONICK MOSKOVITZ TIEDEMANN & GIRARD
A LAW CORPORATION

DAVID W. TYRA

(916) 321-4500
dtyra@kmtg.com

February 5, 2009

BY HAND DELIVERY

DEPARTMENT 19

Honorable Patrick Marlette
Judge of the Superior Court
Sacramento County Superior Court
Department 19
720 Ninth Street
Sacramento, CA 95814

Re: *Professional Engineers in California Government and California Association of Professional Scientists v. Schwarzenegger, et al.*,
Case No. 34-2008-80000126
California Attorneys, Administrative Law Judges and Hearing Officers in State Employment v. Schwarzenegger, et al.,
Case No. 34-2009-80000134
Service Employees International Union, Local 1000 v. Schwarzenegger, et al.,
Case No. 34-2009-80000135

Dear Judge Marlette:

VV

Please find the enclosed orders after hearing and judgments re: verified petition for writ of mandate in the above-captioned matters. Pursuant to Rule of Court 3.1312(a), on January 30, 2009, I submitted copies of the orders after hearing and judgments regarding the demurrer to counsel for all petitioners, along with counsel for the respondent Controller for review. Gerald James, counsel for both the Professional Engineers in California Government (PECG) and California Association of Professional Scientists (CAPS) has approved the documents as to form. Patrick Whalen, counsel for California Attorneys, Administrative Law Judges and Hearing Officers in State Employment (CASE) has also approved the documents as to form.

Counsel for Service Employees International Union, Local 1000 (SEIU) has provided no response to the State within the five (5) days provided by Rule 3.1312(a). Respondent Controller has objected to the order.

The orders and judgments, along with attached exhibits, the signed documents from PECG, CAPS and CASE counsel approving the documents as to form, and the Controller's objections are all enclosed for your consideration.

Respondents respectfully request that you execute the orders and judgments as presented.

Sincerely,

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Law Corporation

David W. Tyra

Enclosures
cc: See Proof of Service Attached

909632 1

VV

JOHN CHIANG
California State Controller

February 4, 2009

David W. Tyra
Kronick, Moskovitz, Tiedemann & Girard
400 Capitol mall, 27th Floor
Sacramento, CA 95814

Re: *Professional Engineers in California Government, et al. v. Governor Arnold Schwarzenegger, et al.*, Case No. 2008-80000126

California Attorneys, Administrative Law Judges and Hearing Officers in State Employment v. Governor Arnold Schwarzenegger, et al., Case No. 2009-80000134

Service Employees International Union, Local 1000 v. Governor Arnold Schwarzenegger, et al, Case No. 2009-80000135

Dear Mr. Tyra:

The Respondent State Controller hereby objects to the proposed orders and judgments in the above-referenced actions and, based on that objection, cannot approve as to form.

In its final ruling on the demurrers and petitions for writ of mandate and complaints for declaratory relief, the court directed counsel for the respondent, Department of Personnel Administration to prepare the orders and judgments in accordance with the ruling. While the draft orders and judgments purport to incorporate by reference "attachment A" no such attachment was forwarded or otherwise included with the drafts received by electronic mail. Presumably, the reference is to the court's ruling however, since the court has posted an amended ruling, it is unclear as to which was intended to be incorporated.

Notwithstanding the failure to include the referenced "attachment A", we would object to the incorporation by reference of the amended court ruling. As you are aware, the Petitioner's writ was denied. The amended ruling you seek to incorporate, went beyond the issues pled in the case inasmuch as Petitioners did not seek a writ compelling the Controller to implement the Executive Order. Rather, Petitioner's Writ of Mandate

300 Capitol Mall, Suite 1850, Sacramento, CA 95814 ♦ P.O Box 942850, Sacramento, CA 94250
Phone (916) 445-2636 ♦ Fax (916) 322-1220

action sought to prohibit the Controller from implementing the Respondents' Executive Order.

Consequently, to the extent that the proposed orders and judgment attempt to wholly incorporate the amended ruling, the proposed orders and judgments clearly go beyond the scope of the petitions and complaints filed in these actions. Therefore, for all the reasons stated herein we object to the form of these orders and judgments and cannot approve the documents as to form.

Sincerely,

RONALD V. PLACET
Senior Staff Counsel

RVP/jw

cc: Will M. Yamada, Personnel Relations Counsel
Department of Personnel Administration

J. Felix De La Torre and Brooke Pierman, SEIU Local 1000

Patrick Whalen, California Attorneys, Administrative Law Judges and Hearing Officers in State Employment

Gerald James, Professional Engineers in California Government and California Association of Professional Scientists

DAVID W. TYRA, State Bar No. 116218
KRISTIANNE T. SEARGEANT, State Bar No. 245489
KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Law Corporation
400 Capitol Mall, 27th Floor
Sacramento, California 95814
Telephone: (916) 321-4500
Facsimile: (916) 321-4555
E-mail: dtyra@kmtg.com

K. WILLIAM CURTIS
Chief Counsel, State Bar No. 095753
WARREN C. STRACENER
Deputy Chief Counsel, State Bar No. 127921
LINDA A. MAYHEW
Assistant Chief Counsel, State Bar No. 155049
WILL M. YAMADA
Labor Relations Counsel, State Bar No. 226669
DEPARTMENT OF PERSONNEL ADMINISTRATION
1515 S Street, North Building, Suite 400
Sacramento, CA 95811-7258
Telephone: (916) 324-0512
Facsimile: (916) 323-4723
E-mail: WillYamada@dpa.ca.gov

Attorneys for Defendants/Respondents ARNOLD SCHWARZENEGGER, as Governor, Stare of California; and DEPARTMENT OF PERSONNEL ADMINISTRATION

Exempted from Fees (Gov. Code § 6103)

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1000,

Petitioner/Plaintiff,

v.

ARNOLD SCHWARZENEGGER, as Governor, State of California; DEPARTMENT OF PERSONNEL ADMINISTRATION; JOHN CHIANG, as State Controller; and DOES 1 through 20, inclusive,

Respondents/Defendants.

Case No. 34-2009-80000135-CU-WM-GDS

Assigned For All Purposes To The Honorable Patrick Marlette

NOTICE OF ENTRY OF ORDER AFTER HEARING AND JUDGMENT RE: VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Date: **January 29, 2009**
Time: **9:00 a.m.**
Dept.: **19**

TO: PETITIONER/PLAINTIFF SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1000, AND ITS ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on February 13, 2009, an Order After Hearing and a Judgment regarding Petitioner's verified petition for writ of mandate and complaint for declaratory and injunctive relief were entered in the above-entitled matter in favor of Respondents/Defendants GOVERNOR ARNOLD SCHWARZENEGGER and DEPARTMENT OF PERSONNEL ADMINISTRATION. True and correct copies of said Order and Judgment are attached hereto as Exhibits 1 and 2, respectively.

Dated: February 19, 2009

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Law Corporation

By: _____
David W. Tyra
Attorneys for Defendants/Respondents ARNOLD SCHWARZENEGGER as Governor of the State of California; and DEPARTMENT OF PERSONNEL ADMINISTRATION

VV

PROOF OF SERVICE

I, Bao Xiong, declare:

I am a citizen of the United States and employed in Sacramento County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 400 Capitol Mall, 27th Floor, Sacramento, California 95814. On February 20, 2009, I served a copy of the within document(s):

NOTICE OF ENTRY OF ORDER AFTER HEARING AND JUDGMENT RE: VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.

☒ by transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

Attorneys for Petitioner/Plaintiff SEIU, Local 1000
Paul E. Harris, III, Esq.
Anne Giese, Esq.
J. Felix De La Torre, Esq.
Brooke D. Pierman, Esq.
SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 1000
1808 14th Street
Sacramento, CA 95814
Fax: (916) 554-1292
Email: jfelix.delatorre@gmail.com

Attorney for Respondent/Defendant State Controller John Chiang
Richard J. Chivaro, Esq.
Ronald V. Placet, Esq.
Shawn D. Silva, Esq.
Ana Maria Garza, Esq.
OFFICE OF THE STATE CONTROLLER
300 Capitol Mall, Suite 1850
Sacramento, CA 95814
Fax: (916) 322-1220
Email: rchivaro@sco.ca.gov

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on February 20, 2009, at Sacramento, California.

Bao Xiong

VV

EXHIBIT 1

DEPARTMENT 19

DAVID W. TYRA, State Bar No. 116218
KRISTIANNE T. SEARGEANT, State Bar No. 245489
KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Law Corporation
400 Capitol Mall, 27th Floor
Sacramento, California 95814
Telephone: (916) 321-4500
Facsimile: (916) 321-4555
E-mail: dtyra@kmtg.com

K. WILLIAM CURTIS
Chief Counsel, State Bar No. 095753
WARREN C. STRACENER
Deputy Chief Counsel, State Bar No. 127921
LINDA A. MAYHEW
Assistant Chief Counsel, State Bar No. 155049
WILL M. YAMADA
Labor Relations Counsel, State Bar No. 226669
DEPARTMENT OF PERSONNEL ADMINISTRATION
1515 S Street, North Building, Suite 400
Sacramento, CA 95811-7258
Telephone: (916) 324-0512
Facsimile: (916) 323-4723
E-mail: WillYamada@dpa.ca.gov

Attorneys for Defendants/Respondents
ARNOLD SCHWARZENEGGER, as Governor, Stare of California; and DEPARTMENT OF PERSONNEL ADMINISTRATION

RECEIVED
FEB - 5 2009
36
CIVIL

FILED
ENDORSED
FEB 13 2009
By D. GIDS, SR.
Deputy Clerk

Exempted from Fees (Gov. Code § 6103)

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1000,

Petitioner/Plaintiff,

v.

ARNOLD SCHWARZENEGGER, as Governor, State of California; DEPARTMENT OF PERSONNEL ADMINISTRATION; JOHN CHIANG, as State Controller; and DOES 1 through 20, inclusive,

Respondents/Defendants.

Case No. 34-2009-80000135-CU-WM-GDS

Assigned For All Purposes To The Honorable Patrick Marlette

ORDER AFTER HEARING

Date: January 29, 2009
Time: 9:00 a.m.
Dept.: 19

TO PETITIONERS AND TO THEIR ATTORNEYS OF RECORD:

On or about January 29, 2009, Respondents' Demurrer to Petitioner's Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief came on regularly for hearing. At that same time and place, the Court conducted a hearing on the merits of the aforementioned petition and complaint per the parties' agreement and the Court's Minute Order of January 9, 2009.

Respondents/Defendants Governor Arnold Schwarzenegger, State of California, David Gilb, and Department of Personnel Administration were represented by David W. Tyra of Kronick, Moskovitz, Tiedemann & Girard and Will M. Yamada, Senior Labor Relations Counsel, Department of Personnel Administration.

Respondent/Defendant State Controller John Chiang was represented by Shawn D. Silva of the State Controller's Office.

Petitioners/Plaintiffs Professional Engineers in California Government and California Association of Professional Scientists were represented by Gerald A. James.

Petitioner/Plaintiff California Attorneys, Administrative Law Judges and Hearing Officers in State Employment was represented by Patrick J. Whalen, Law Offices of Brooks Ellison.

VV

Petitioner/Plaintiff SEIU Local 1000 was represented by J. Felix De La Torre and Brooke Pierman.

///

///

///

///

///

///

///

///

The Court, after considering the various brief submitted by the parties, the exhibits submitted therewith, and having heard the oral argument of counsel renders the decision attached hereto as Exhibit A and incorporated herein by reference.

DATED: FEB 13 2009

JUDGE OF THE SUPERIOR COURT

APPROVED AS TO FORM:

Dated: _____, 2009

OFFICE OF STATE CONTROLLER

By: _____
Shawn D. Silva, Attorneys for
Respondent/Defendant
STATE CONTROLLER JOHN CHIANG

Dated: _____, 2009

LAW OFFICE OF BROOKS ELLISON

By: _____
Patrick J. Whalen, Attorneys for
Petitioners/Plaintiffs
CALIFORNIA ATTORNEYS,
ADMINISTRATIVE LAW JUDGES and
HEARING OFFICERS IN STATE
EMPLOYMENT

Dated: _____, 2009

By: _____
Gerald A. James, Attorneys for
Petitioners/Plaintiffs
PROFESSIONAL ENGINEERS IN
CALIFORNIA GOVERNMENT and
CALIFORNIA ASSOCIATION OF
PROFESSIONAL SCIENTISTS

Dated: _____, 2009

SEIU LOCAL 1000

By: _____
J. Felix De La Torre, Attorneys for
Petitioner/Plaintiff
SERVICE EMPLOYEES
INTERNATIONAL LOCAL 1000

VV

EXHIBIT A

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

DATE/TIME	**: 01/30/09**	**DEPT. NO**	**: 19**
JUDGE	**: P. MARLETTE**	**CLERK**	**: D. RIOS, SR.**
REPORTER	**: none**	**BAILIFF**	**: none**
		PRESENT:	

Professional Engineers in California Government;\California Association of Professional Scientists,
Plaintiff,

VS. **Case No.: 2008-80000126**

Arnold Schwarzenegger, Governor, State of California\Department of Personnel Administration\State Controller John Chiang\and Does 1 through 20 inclusive,
Defendant.

Nature of Proceedings: **Amended Minute Order**

The Court is issuing a revised version of its final ruling in these matters. The revision makes no substantive changes in the ruling, but corrects an editing error in the last sentence of the third paragraph from the end of the ruling, regarding the State Controller, by deleting the word "incidental". The revised final ruling which follows shall be the final ruling of the Court.

PROFESSIONAL ENGINEERS IN CALIFORNIA GOVERNMENT, et al., v. GOVERNOR ARNOLD SCHWARZENEGGER, et al., Case No. 2008-80000126;

CALIFORNIA ATTORNEYS, ADMINISTRATIVE LAW JUDGES AND HEARING OFFICERS IN STATE EMPLOYMENT, v. GOVERNOR ARNOLD SCHWARZENEGGER, et al., Case No. 2009-80000134;

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1000, v. GOVERNOR ARNOLD SCHWARZENEGGER, et al., Case No. 2009-80000135.

The following shall constitute the Court's final rulings on the demurrers and petitions for writ of mandate and complaints for declaratory relief in the above-captioned matters:

//

BOOK	**: 19**
PAGE	**: 2008-80000126-13009**
DATE	**: 01/30/09**
CASE NO.	**: 2008-80000126**
CASE TITLE	**: PECG; CAPS v. SCHWARZENEGGER**

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

BY: D. RIOS, SR.,
Deputy Clerk

2 1 2

Introduction and Background:

On December 19, 2008, in a response to the current State budget crisis, Governor Arnold Schwarzenegger issued Executive Order S-16-08. As relevant to this action, the Executive Order directed the Department of Personnel Administration, effective February 1, 2009 through June 30, 2010, to adopt a plan to implement a furlough of represented state employees and supervisors for two days per month, and to adopt a plan to implement an equivalent furlough or salary reduction for all state managers, including exempt state employees.

Several organizations representing state employees affected by the Executive Order have filed three separate petitions for writ of mandate and complaints for declaratory relief challenging the provisions of the Order imposing the furloughs, and seeking to overturn them.

The first such action, Case No. 2008-80000126, was filed by petitioners Professional Engineers in California Government ("PECG") and California Association of Professional Scientists ("CAPS") on December 22, 2008. That action initially was assigned to Department 33 of this Court, Judge Lloyd Connelly, presiding; it was reassigned to this Department after respondents filed a peremptory challenge to Judge Connelly pursuant to Code of Civil Procedure section 170.6 on January 7, 2009.

The second such action, Case No. 2009-80000134, was filed by petitioner California Attorneys, Administrative Law Judges and Hearing Officers in State Employment ("CASE") on January 5, 2009. That action was assigned to Department 33 of this Court, Judge Lloyd Connelly, presiding. Petitioner simultaneously filed a Notice of Related Case in that action, stating that it was related to Case No. 2008-80000126.

The third such action, Case No. 2009-80000135, was filed by petitioner Service Employees International Union, Local 1000 ("SEIU"), on January 7, 2009. The action was assigned to Department 29 of this Court, Judge Timothy M. Frawley, presiding. Petitioner simultaneously filed a Notice of Related Case in that action, stating that it was related to Cases Nos. 2008-80000126 and 2008-80000134

On January 9, 2009, the Court heard simultaneous ex parte applications by the petitioners and respondents in Case No. 2008-80000126 for orders shortening time that would have the effect of setting a hearing on respondents' demurrer to the petition and the hearing on the merits of the petition itself for a date prior to February 1, 2009, when the furloughs would go into effect.

At the hearing on January 9, 2009, counsel for the petitioners in Cases Nos. 2009-80000134 and 2009-80000135 appeared and stipulated on the record that those cases would be treated as related to Case No. 2008-

80000126, and that those cases would be transferred to this Department for hearing pursuant to Rule of Court 3.300(h)(1)(a). Counsel for respondents in Case No. 2008-80000126 also stated on the record that he represented the respondents in one of the other two cases, and most likely would represent the respondents in the other (although at that time, the petition had not formally been served on the respondents), and also stipulated on the record that the three cases would be heard in this Department as provided above. The parties further agreed to a briefing schedule and to a combined hearing on the respondents' demurrers to, and the merits of, the three petitions. The parties to all three actions have filed their briefs and other papers according to the agreed-upon schedule and the Court heard oral argument on the matter on Thursday, January 29, 2009.

On January 12, 2009, a fourth action was filed challenging the Governor's Executive Order, entitled *California Correctional Peace Officers Association v. Governor Arnold Schwarzenegger, et al.*, Case No. 2008-80000137. The Court issued an order finding that case to be related to the three cases captioned above and further ordered that case assigned to this Department. That case has been set for hearing on Friday, February 5, 2009.

Ruling on Preliminary Evidentiary Issues:

Respondents[1] have made two requests for judicial notice, filed January 9, 2009 and January 13, 2009, along with an Amended Request for Judicial Notice on January 23, 2009 in response to the Court's order directing them to submit complete copies of the Memoranda of Understanding ("MOUs") involved in these actions. No objections to the requests have been filed. The Court has reviewed the requests and the documents attached thereto and finds that all such documents are proper subjects for judicial notice. Respondents' requests for judicial notice are therefore granted.

Respondents' evidentiary objection to the Declaration of Peter Flores, Jr. is overruled on the ground that the lack of a signature on the declaration has been remedied by the filing of an amended declaration, unchanged in substance, which bears Mr. Flores' signature.

Ruling on Respondents' Demurrers to the Petitions:

[1] In using the terms "respondents" or "defendants" in this ruling, the Court is referring to Governor Arnold Schwarzenegger and the Department of Personnel Administration. Although State Controller John Chiang also has been named as a respondent in these actions, the Controller has filed an Opposition to the Respondents'/Defendants' Demurrer stating that his interests are actually aligned with the petitioners and that, but for the short time frame, he would have filed a formal motion to realign the parties, seeking to be redesignated as a petitioner/plaintiff. The Controller's position in these actions will be discussed further below. In this ruling, the Court also has treated the terms "the Governor", "the Department of Personnel Administration" (or "the department" or "DPA") and "the State" as being essentially interchangeable.

CASE NUMBER: 2008-80000126 **DEPARTMENT: 19**
CASE TITLE: PECG; CAPS v. SCHWARZENEGGER
PROCEEDINGS: Amended Minute Order

Respondents' demurrers are overruled on the following basis:

The petitions and complaints allege generally that the provisions of the Governor's Executive Order S-16-08 that implement a furlough of represented state employees and supervisors for two days per month, and an equivalent furlough or salary reduction for state managers, effective February 1, 2009 through June 30, 2010, are invalid in that such action on the part of the Governor is not authorized by law, and moreover is forbidden by certain provisions of law, in particular, Government Code section 19826(b).

The Court finds that such allegations are sufficient to state a cause of action for issuance of a writ of mandate or for declaratory relief, regardless of whether Government Code section 19826(b) is superseded by the terms of the MOUs petitioners have entered into with the State (as respondents argue), because the petitions and complaints allege, in essence, that the Governor lacks the positive authority to make the challenged order in the first instance, irrespective of any statutory prohibition that may or may not apply. The allegation that the Governor lacks any authority to make the challenged order is sufficient to state a cause of action on its own.

The Court further finds that the issue of the Governor's authority to make the challenged order is not an issue within the exclusive initial jurisdiction of the Public Employment Relations Board, because it involves issues of statutory interpretation and separation of powers between the Governor and the Legislature, which are matters properly within the jurisdiction of the courts, and not issues of unfair practices under the Ralph C. Dills Act, which are matters properly within the jurisdiction of the Board. (See, e.g., *California School Employees Association v. Azusa Unified School District* (1984) 152 Cal. App. 3rd 580, 592-593; *California Teachers' Association v. Livingston School District* (1990) 219 Cal. App. 3rd 1503, 1519.) Moreover, the petitions and complaints in effect allege that the Governor's Executive Order regarding an employee furlough violates the provisions of the petitioners' MOUs with the State governing wages and hours. The Board does not have the authority to enforce agreements between the parties. (Government Code section 3514.5(b); see also, *San Lorenzo Education Association v. Wilson* (1982) 32 Cal. 3rd 841.)

Moreover, even if this Court were to conclude that the Board did have jurisdiction over this matter, it would conclude that the normal policy reasons requiring parties to exhaust available administrative remedies do not apply in this case for many of the reasons stated by the Third District Court of Appeal in a case arising out of an earlier state budget crisis: namely, that the facts are undisputed, so there is no need for administrative development of the record; judicial intervention will not interfere with the expertise of the agency or create problems of judicial economy, given that the underlying issues are within the expertise of the courts and undoubtedly would be resolved ultimately by the courts even if initial jurisdiction were found in the Board; and, given that this case raises questions of first impression which most likely are bound for ultimate determination in the appellate courts, there is little concern of conflicting decisions between the Board and the courts. (See, *Department of Personnel Administration v. Superior Court (Greene)* (1992) 5 Cal. App. 4th 155, 168-169.)

BOOK : 19
PAGE : 2008-80000126-13009
DATE : 01/30/09
CASE NO. : 2008-80000126
CASE TITLE : PECG; CAPS v. SCHWARZENEGGER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

BY: D. RIOS, SR.,
Deputy Clerk

Z1z2

In addition, even if this Court were to conclude that the Board did have jurisdiction over this matter, it would conclude that exhaustion of administrative remedies by resort to the Board should be excused on the ground that requiring exhaustion under the particular circumstances of this case would cause both the State and its employees to suffer irreparable injury, again, for many of the reasons stated in the 1992 *Greene* case: specifically, that the extremely grave nature of the fiscal crisis faced by the state, and the urgent need for resolution of these issues in as expeditious a manner as possible, create a great potential for irreparable harm in the nature of layoffs of state employees, with a concomitant reduction in the nature of state services, all of which are amply demonstrated by the declarations and documents that have been filed by parties in this matter (many of them by respondents). Even if, as the Court of Appeal stated in the *Greene* case, there is a possibility that the Board could order the same relief that petitioners seek here, it is extremely unlikely that the entire process of Board adjudication followed by judicial review as provided by law would be completed in a sufficiently timely manner to address the immediate crisis. (See, *Department of Personnel Administration v. Superior Court (Greene)* (1992) 5 Cal. App. 4th 155, 170-171.)

Petitioners SEIU and CASE raise additional claims for declaratory relief regarding the effect of the furlough on the exempt status of employees under the federal Fair Labor Standards Act ("FLSA"). The SEIU complaint alleges that a significant number of its employees will be required to work in excess of 40 hours during furlough weeks, that such employees will no longer be considered exempt employees as a matter of law during those weeks, that such workers will be entitled to overtime pay during such weeks, and that respondents lack any mechanism or systems in place to move employees from exempt to non-exempt status from week-to-week, with the result being that such employees will not receive the overtime pay to which they are entitled under the FLSA. Such facts are sufficient to state a cause of action in declaratory relief based on the theory that respondents are not willing and able to comply with their obligations under the FLSA, at least for the purpose of withstanding a demurrer. Respondents' contention that the complaint on its face shows that petitioner's FLSA claim is not ripe for review, and seeks only an advisory opinion, because there is no allegation that respondents actually have failed to pay any overtime that is due, is unpersuasive.[2]

The CASE complaint alleges the same facts regarding the effect of the furloughs on its employees' exempt status under the FLSA. The complaint lacks the specific allegations present in the SEIU complaint regarding respondents' lack of willingness and ability to comply with the FLSA, but alleges in general terms that respondents' actions will result in denial of the protection of the laws regarding overtime compensation. In essence, this complaint is identical in substance to the SEIU complaint; the Court concludes that it also states a cause of action for declaratory relief.

---

[2] This is, of course, distinct from the issue of whether there is any proof tending to demonstrate that FLSA violations actually will occur. This issue is dealt with in the Court's ruling on the merits, below.

Respondents' demurrers are therefore overruled..

Ruling on the Petitions and Complaints:

The petitions for writ of mandate and complaints for declaratory relief challenging the provisions of the Governor's Executive Order imposing furloughs on state employees are based on twin contentions: that the Governor lacks any authority, statutory or otherwise, to take such action; and that applicable statutory law expressly forbids him from taking such action. For the reasons stated below, the Court finds that these contentions are unpersuasive.

The facts regarding the implementation of the furlough are essentially undisputed, as is the fact that the State faces an extremely urgent fiscal crisis.[3] According to documents submitted to the Court, the Governor, through the Department of Personnel Administration, has developed a furlough plan that will result in the closing of general government operations on the first and third Fridays of each month, beginning on Friday, February 6, 2009. The unpaid furlough days are not work days and employees shall not report to work. For state operations that cannot close, a "self-directed" furlough will be used that will result in state employees either taking two furlough days each month on days chosen by the employees and approved by their supervisors, or accruing two furlough days per month to be taken when feasible. Salaries will be adjusted to reflect the unpaid furlough days, but benefits will remain the same.[4]

The Governor's Executive Order thus reduces the normal work hours of state employees for a temporary period due to the state's current fiscal crisis. The emergency measure will result in an accompanying deduction from pay for the hours not worked, but the order does not change established salary ranges. The Governor's authority for this action is found in statutes in the Government Code and in the employment contracts of the unions challenging the order.

The Governor has the statutory authority to reduce the hours of state employees pursuant to Government Code section 19851 and 19849.

---

[3] There do appear to be disputes of fact over whether the implementation of the furlough will result in violations of the federal FLSA. This issue will be discussed separately below.

[4] See, Memorandum dated January 9, 2009 from David A. Gilb, Director of the Department of Personnel Administration, to Agency Secretaries, et al., regarding "State Employee Furlough per Governor's Executive Order S-16-08", attached to the Amended Declaration of Peter Flores, Jr. as Exhibit H.

Section 19851(a) provides: "It is the policy of the state that the workweek of the state employee shall be 40 hours, and the workday of the state employee eight hours, except that workweeks and workdays of a different number of hours may be established in order to meet the varying needs of the different state agencies."

Section 19849(a) provides that the Department of Personnel Administration "...shall adopt rules governing hours of work and overtime compensation and the keeping of records related thereto, including time and attendance records. Each appointing power shall administer and enforce such rules."

The Court finds that these two statutes, taken together, provide the Governor with authority to reduce the workweek of state employees to meet the needs of state agencies, and to do so by adopting a rule. The provisions of the Executive Order regarding the furlough are a rule in that they establish a standard of general application to state employees. Under the circumstances of the current fiscal crisis, the reduction in the workweek of state employees under the furlough order is indisputably related to the needs of the various state agencies, which, from the evidence respondents have submitted to the Court, run the imminent risk of running out of money and thus being unable to carry out their missions, if immediate action is not taken to reduce expenditures.

The Court further finds, on two separate bases, that the Governor has authority to reduce the work hours of the state employees represented by the petitioners in these actions pursuant to the terms of the MOUs the State entered into with the petitioner employee organizations, which remain in effect, although technically expired, pursuant to Government Code section 3517.8(a).

First, each of the petitioners' MOUs expressly incorporates the terms of sections 18949 and 19851 into the agreement between the parties[5], and the terms of the MOU do not conflict with these statutes, notwithstanding that the MOUs call for a normal work week of 40 hours. Thus, these provisions of law are not superseded by the MOUs, and the Governor retains the authority, pursuant to law and contract, to take any actions he would be permitted to take pursuant to Government Code sections 19849 and 19851 as described above.

[5] See, Respondents' Request for Judicial Notice, filed January 9, 2009, Exhibit A, p. 80 (PECG MOU); Exhibit B, p. 75 (CAPS MOU); Respondents' Amended Request for Judicial Notice, filed January 23, 2009, Exhibit A, p. 16 (CASE MOU); Exhibit B, p. 20 (SEIU MOU for Bargaining Unit 1); Exhibit C, p. 22 (SEIU MOU for Bargaining Unit 3); Exhibit D, p. 21 (SEIU MOU for Bargaining Unit 4); Exhibit E, p. 21 (SEIU MOU for Bargaining Unit 11); Exhibit F, pp 22-23 (SEIU MOU for Bargaining Unit 14); Exhibit G, p. 21 (SEIU MOU for Bargaining Unit 15); Exhibit H, p. 21 (SEIU MOU for Bargaining Unit 17); Exhibit I, p. 21 (SEIU MOU for Bargaining Unit 20); Exhibit J, p. 19 (SEIU MOU for Bargaining Unit 21). In addition, the PECG MOU provides, in Article 17.1, which appears under the heading "State Rights", that: "All the functions, rights, powers and authority not specifically abridged by this MOU are retained by the employer." (See, Respondents' Request for Judicial Notice, filed January 9, 2009, Exhibit A, p. 72.)

BOOK : 19
PAGE : 2008-80000126-13009
DATE : 01/30/09
CASE NO. : 2008-80000126
CASE TITLE : PECG; CAPS v. SCHWARZENEGGER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

BY: D. RIOS, SR.,
Deputy Clerk

Z1r2

Second, the specific terms of certain of the petitioners' MOUs expressly permit the State either to reduce hours in case of lack of funds or to take all necessary action to carry out its mission in emergencies.

For example, Article 3.1.B of the MOU between the State and petitioner CASE, which appears under the heading "State Rights", provides that "[t]o the extent consistent with law and this MOU, the rights of the State include, but are not limited to, the exclusive right to...relieve its employees from duty because of lack of work, lack of funds, or for other legitimate reasons...[and to] take all necessary actions to carry out its mission in emergencies."[6]

Article 10.3 of the CASE MOU, which appears under the heading "Layoff", further provides: "The State may propose to reduce the number of hours an employee works as an alternative to layoff. Prior to implementation of this alternative to a layoff, the State will notify and meet and confer with the Union to seek concurrence of the usage of this alternative."[7]

Article 12.1.B of the CAPS MOU, which appears under the heading "State Rights", provides that: "Consistent with this Agreement, the rights of the State shall include, but not be limited to, the right...to take all necessary action to carry out its mission in emergencies."[8]

Article 4.B of each of the SEIU MOUs similarly provides that: "Consistent with this Contract, the rights of the State shall include, but not be limited to, the right...to take all necessary action to carry out its mission in emergencies."[9]

The Court finds that the current fiscal emergency, which is amply documented in the evidence respondents have submitted, authorizes the Governor to reduce the work hours of state employees under these

VV

---

[6] See, respondents' Amended Request for Judicial Notice, filed January 23, 2009, Exhibit A, p. 11.
[7] See, Respondents' Amended Request for Judicial Notice, filed January 23, 2009, Exhibit A, p. 59.
[8] See, Respondents' Request for Judicial Notice, filed January 9, 2009, Exhibit B, p. 71.
[9] See, Respondents' Amended Request for Judicial Notice, filed January 23, 2009, Exhibit B, p. 16 (Bargaining Unit 1); Exhibit C, p. 17 (Bargaining Unit 3); Exhibit D, p. 17 (Bargaining Unit 4); Exhibit E, p. 17 (Bargaining Unit 11); Exhibit F, p. 18 (Bargaining Unit 14); Exhibit G, p. 17 (Bargaining Unit 15); Exhibit H, p. 17 (Bargaining Unit 17); Exhibit I, p. 16 (Bargaining Unit 20); Exhibit J, p. 15 (Bargaining Unit 21).

cited terms of the various MOUs. The nature of the fiscal emergency is such that the state employee furloughs imposed by the Governor's Executive Order are both necessary and reasonable under the circumstances.[10]

The existence of the current emergency also authorized the Governor to make his order without first meeting and conferring with state employee organizations pursuant to Government Code section 3516.5.

The Court accordingly finds that both statutory law and the provisions of the petitioners' MOUs authorized the Governor to reduce the work hours of state employees through a furlough in the current fiscal emergency.

The Court finds that Government Code section 19826(b) does not preclude the Governor from taking such action.

Section 19826(b) states that the Department of Personnel Administration shall not establish, adjust or recommend a salary range for any employees in an appropriate unit where an employee organization has been chosen as the exclusive representative pursuant to Government Code section 3520.5, which is the case for all of the petitioners in these actions.

This case, however, does not involve the establishment, adjustment or recommendation of a salary range for represented state employees. This case involves a temporary reduction in the hours worked by certain state employees, which will result in a loss of pay for the hours not worked. The order does not change established salary ranges at all: state employees will continue to receive their normal pay according to established ranges in weeks that do not include a furlough day. In essence, state employees are subject to a temporary deduction from their total pay under the established ranges, and not to being paid under a new or adjusted salary range.

The present case is therefore distinguishable from *Department of Personnel Administration v. Superior Court (Greene)* (1992) 5 Cal. App. 4th 155, which involved an across-the-board salary cut of 5% with no furlough or reduction in work hours. *Greene* also involved the issue of what the State was entitled to do in the bargaining process under the Ralph C. Dills Act, specifically, whether the State could unilaterally impose the salary cut as part of its "last, best and final offer" when it was officially at impasse with the state employee organizations. The present case does not involve bargaining issues in that the parties are not at impasse, and petitioners' pleadings have raised issues regarding the Governor's positive authority to make the challenged

[10] At oral argument on these matters, counsel for CASE and PECG argued that many of their members work in so-called "special fund" agencies, and that the Governor's order, which was designed to deal with a looming General Fund deficit, was not reasonably related to the fiscal emergency insofar as it orders furloughs for those employees. (CASE also raised this issue in its reply brief.) This contention was not raised in any of the petitions or complaints for declaratory relief, and petitioners did not submit any evidence to support it. The Court therefore makes no findings on it.

BOOK : 19
PAGE : 2008-80000126-13009
DATE : 01/30/09
CASE NO. : 2008-80000126
CASE TITLE : PECG; CAPS v. SCHWARZENEGGER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

BY: D. RIOS, SR.,
Deputy Clerk

order rather than issues regarding any failure to comply with his collective bargaining obligations under the Dills Act.

Moreover, the *Greene* case did not address any provisions of the employee organizations' MOUs that might have authorized the salary reduction in that case, on the basis of an emergency or otherwise, because the case technically involved a situation in which there was an absence of a MOU, as is the case when an existing MOU has expired and the parties have bargained to impasse. (See, *Department of Personnel Administration v. Superior Court (Greene)* (1992) 5 Cal. App. 4th 155, 174.) As noted above, the petitioners' MOUs in this case remain in effect pursuant to Government Code section 3517.8(a), and contain provisions authorizing the Governor's order reducing work hours. The *Greene* case therefore is not controlling here.

The Court accordingly rules that, with regard to the issues raised by all petitioners regarding the Governor's authority to make the challenged order, the petitions for writ of mandate are denied and judgment shall be entered for the defendants (respondents) on the complaints for declaratory relief. This ruling applies to both state employees represented by all of the petitioners under the Dills Act and to those state employees represented by petitioners PECG and CAPS who are excluded from the Dills Act by law, as the authorities on which the Court has relied in finding that the Governor has the authority to take the challenged action apply to both classes of employees.[11]

With regard to the causes of action for declaratory relief raised by SEIU and CASE raising issues involving possible non-compliance with the FLSA, the Court finds that as a matter of proof, as distinguished from a matter of pleading, petitioners' claims that implementation of the Governor's order will actually result in employees formerly considered to be exempt from the Act's provisions working overtime within the meaning of the Act during a furlough week, and that the State will not comply with the Act with regard to employees who do so, are entirely hypothetical and speculative prior to implementation of the furloughs, and thus not ripe for decision.

As respondents point out, under applicable federal regulations, employees may be furloughed for budget-related reasons without affecting their exempt status, except for the workweek in which the furlough occurs.[12] The viability of petitioners' FLSA claims therefore depends upon proof that there will be, as a matter of fact,

[11] At oral argument, counsel for petitioner SEIU raised the contention that the Governor's order amounted to an unconstitutional impairment of contracts. This contention was not raised in any of the petitions, and was not briefed by the parties. Petitioner SEIU did cite several out-of-state cases in its reply brief in which government employee furloughs were challenged on this basis. Those cases were cited, however, for the proposition that a furlough is equivalent to a reduction in employee salary, and not in support of the contention that the Governor's action impaired the petitioner's contracts with the State. Because such contention was not raised by the petitions or briefed by the parties, the Court makes no finding on it.

[12] See, Title 29, Code of Federal Regulations, section 541.710.

employees who work more than 40 hours during a furlough week. At this point, before the furlough actually has been implemented, there is no evidence before the Court regarding any employee actually doing this, let alone any evidence that this will be the case with large numbers of state employees. Petitioners' allegations that this will happen are merely hypothetical.

Similarly, the evidence that petitioner CASE has submitted demonstrating that the State's payroll system is antiquated and lacks the flexibility and reliability to be able to cope with the kind of week-to-week changes in an employee's exempt status that will occur when furloughs are implemented[13], is not necessarily proof that the State will not be able to cope with paying overtime pay to those to whom it is entitled. Once again, petitioners' proposition that the FLSA will be violated depends upon proof that employees actually will be entitled to overtime, and that there will be sufficient numbers of them that the State will not be able to comply with the FLSA. Such proof is lacking at this point.

Finally, even if petitioners were able to prove that the State was likely to fail to comply with the FLSA with regard to some number of state employees, it would not necessarily follow that they would be entitled to the relief they seek, which is the invalidation of the furlough order itself. Any actual violation of the FLSA would give rise to remedies arising under the FLSA, i.e., for recovery of the unpaid overtime compensation[14], but the failure to comply with the FLSA in that situation would be a separate issue from the validity of the furlough. Notwithstanding this Court's ruling upholding the Governor's order, any affected employee retains his or her rights and remedies under FLSA, and the Court's ruling that petitioners have not proven an actual violation of the FLSA at this point does not preclude them, or their individual members, from exercising those remedies once an actual violation can be proven. Thus, FLSA compliance issues, hypothetical or otherwise, do not serve as a basis for overturning the Governor's Executive Order regarding furloughs.

The Court therefore finds in favor of defendants (respondents) on the SEIU and CASE complaints for declaratory relief regarding alleged non-compliance with the FLSA. VV

A final issue remains with regard to the State Controller. As noted in footnote 1 above, the Controller, although named as a respondent/defendant, has taken a position in these actions in alignment with the petitioners, specifically stating that his office "...has no intention of implementing the reduction in pay as contemplated in the Governor's Order, unless determined otherwise by a court of law."[15] In *Tirapelle v. Davis*

[13] See, Declaration of Don Scheppmann, chief of Personnel/Payroll Services Division of the Office of the California State Controller, dated October 14, 2008 and filed in the case entitled *David A. Gilb, California Department of Personnel Administration v. John Chiang, Office of State Controller, et al.*, which is pending in the United States District Court for the Eastern District of California, attached to CASE's opposition to respondents' demurrer as Exhibit A.
[14] See, e.g., 29 U.S.C. Section 216.
[15] See, Controller's Opposition to Respondents' Demurrer, p. 2:15-17.

BOOK : 19
PAGE : 2008-80000126-13009
DATE : 01/30/09
CASE NO. : 2008-80000126
CASE TITLE : PECG; CAPS v. SCHWARZENEGGER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

BY: D. RIOS, SR.,
Deputy Clerk

(1993) 20 Cal. App. 4th 1317, the Third District Court of Appeal held that the Controller may not refuse to implement an executive action affecting state employees' pay that is authorized by law. In this case, the Court has ruled that the provisions of the Governor's Executive Order reducing the work hours of state employees through a furlough, and thereby affecting their pay during the furlough weeks, is authorized by law. The Controller therefore lacks authority to refuse to implement the Governor's Executive Order. The Court's judgment in this matter therefore shall include an order directing the Controller to take all necessary and appropriate steps to implement the provisions of the Governor's Executive Order imposing furloughs on state employees, including the reduction in such employees' pay.

At the close of the hearing, counsel for CASE made an oral motion on the record that the Court stay its ruling pending appellate review. The Court denied the motion.

//

Counsel for respondents is directed to prepare the orders and judgments in accordance with this ruling under the procedures set forth in Rule of Court 3.1312.

Certificate of Service by Mailing attached.

VV

BOOK : 19
PAGE : 2008-80000126-13009
DATE : 01/30/09
CASE NO. : 2008-80000126
CASE TITLE : PECG; CAPS v. SCHWARZENEGGER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

BY: D. RIOS, SR.,
Deputy Clerk

CASE NUMBER: 2008-80000126 **DEPARTMENT: 19**
CASE TITLE: PECG; CAPS v. SCHWARZENEGGER
PROCEEDINGS: Amended Minute Order

CERTIFICATE OF SERVICE BY MAILING
C.C.P. Sec. 1013a(4))

I, the undersigned deputy clerk of the Superior Court of California, County of Sacramento, do declare under penalty of perjury that I did this date place a copy of the above entitled notice in envelopes addressed to each of the parties, or their counsel of record as stated below, with sufficient postage affixed thereto and deposited the same in the United States Post Office at Sacramento, California.

Gerald James
Attorney at Law
660 J Street, Suite 445
Sacramento, CA 95814

David W. Tyra
KRONICK, MOSKOVITZ, TIEDEMANN
& GIRARD
400 Capitol Mall, 7th Floor
Sacramento, CA 95814

Patrick Whalen
ELLISON WILSON ADVOCACY, LLC
1725 Capitol Avenue
Sacramento, CA 95814

Brooke D. Pierman, Staff Attorney
S.E.I.U.
1808 -14th Street
Sacramento, CA 95811

J. Felix DeLa Torre, Staff Attorney
S.E.I.U.
1808 -14th Street
Sacramento, CA 95811

Will M. Yamada
Department of Personnel Administration
Legal Office
1515 S Street, No. Bldg., Ste. 400
Sacramento, CA 95811

RICHARD CHIVARO, Chief Counsel
Ronald V. Placet,
Sr. Staff Counsel
Office of the State Controller
300 Capitol Mall, Ste 1850
Sacramento, CA 95814

VV

Dated: 1/30/09

Superior Court of California,
County of Sacramento

By: D. RIOS, SR.,
Deputy Clerk

BOOK : 19
PAGE : 2008-80000126-13009
DATE : 01/30/09
CASE NO. : 2008-80000126
CASE TITLE : PECG; CAPS v. SCHWARZENEGGER

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SACRAMENTO

BY: D. RIOS, SR.,
Deputy Clerk

Z1x2

KRONICK MOSKOVITZ TIEDEMANN & GIRARD
A LAW CORPORATION

DAVID W. TYRA

(916) 321-4500
dtyra@kmtg.com

February 5, 2009

BY HAND DELIVERY

DEPARTMENT 19

Honorable Patrick Marlette
Judge of the Superior Court
Sacramento County Superior Court
Department 19
720 Ninth Street
Sacramento, CA 95814

Re: *Professional Engineers in California Government and California Association of Professional Scientists v. Schwarzenegger, et al.*,
Case No. 34-2008-80000126
California Attorneys, Administrative Law Judges and Hearing Officers in State Employment v. Schwarzenegger, et al.,
Case No. 34-2009-80000134
Service Employees International Union, Local 1000 v. Schwarzenegger, et al.,
Case No. 34-2009-80000135

Dear Judge Marlette:

VV

Please find the enclosed orders after hearing and judgments re: verified petition for writ of mandate in the above-captioned matters. Pursuant to Rule of Court 3.1312(a), on January 30, 2009, I submitted copies of the orders after hearing and judgments regarding the demurrer to counsel for all petitioners, along with counsel for the respondent Controller for review. Gerald James, counsel for both the Professional Engineers in California Government (PECG) and California Association of Professional Scientists (CAPS) has approved the documents as to form. Patrick Whalen, counsel for California Attorneys, Administrative Law Judges and Hearing Officers in State Employment (CASE) has also approved the documents as to form.

Counsel for Service Employees International Union, Local 1000 (SEIU) has provided no response to the State within the five (5) days provided by Rule 3.1312(a). Respondent Controller has objected to the order.

The orders and judgments, along with attached exhibits, the signed documents from PECG, CAPS and CASE counsel approving the documents as to form, and the Controller's objections are all enclosed for your consideration.

Respondents respectfully request that you execute the orders and judgments as presented.

Sincerely,

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Law Corporation

David W. Tyra

Enclosures
cc: See Proof of Service Attached

909632 1

VV

KRONICK
OSKOVITZ
TIEDEMANN
GIRARD
A LAW CORPORATION
CAPITOL MALL,
27TH FLOOR
SACRAMENTO, CA
95814
(916) 321-4500
(916) 321-4555
www.kmtg.com

JOHN CHIANG
California State Controller

February 4, 2009

David W. Tyra
Kronick, Moskovitz, Tiedemann & Girard
400 Capitol mall, 27th Floor
Sacramento, CA 95814

Re: *Professional Engineers in California Government, et al. v. Governor Arnold Schwarzenegger, et al.*, Case No. 2008-80000126

California Attorneys, Administrative Law Judges and Hearing Officers in State Employment v. Governor Arnold Schwarzenegger, et al., Case No. 2009-80000134

Service Employees International Union, Local 1000 v. Governor Arnold Schwarzenegger, et al, Case No. 2009-80000135

Dear Mr. Tyra:

The Respondent State Controller hereby objects to the proposed orders and judgments in the above-referenced actions and, based on that objection, cannot approve as to form.

In its final ruling on the demurrers and petitions for writ of mandate and complaints for declaratory relief, the court directed counsel for the respondent, Department of Personnel Administration to prepare the orders and judgments in accordance with the ruling. While the draft orders and judgments purport to incorporate by reference "attachment A" no such attachment was forwarded or otherwise included with the drafts received by electronic mail. Presumably, the reference is to the court's ruling however, since the court has posted an amended ruling, it is unclear as to which was intended to be incorporated.

Notwithstanding the failure to include the referenced "attachment A", we would object to the incorporation by reference of the amended court ruling. As you are aware, the Petitioner's writ was denied. The amended ruling you seek to incorporate, went beyond the issues pled in the case inasmuch as Petitioners did not seek a writ compelling the Controller to implement the Executive Order. Rather, Petitioner's Writ of Mandate

300 Capitol Mall, Suite 1850, Sacramento, CA 95814 • P.O Box 942850, Sacramento, CA 94250
Phone: (916) 445-2636 • Fax (916) 322-1220

action sought to prohibit the Controller from implementing the Respondents' Executive Order.

Consequently, to the extent that the proposed orders and judgment attempt to wholly incorporate the amended ruling, the proposed orders and judgments clearly go beyond the scope of the petitions and complaints filed in these actions. Therefore, for all the reasons stated herein we object to the form of these orders and judgments and cannot approve the documents as to form.

Sincerely,

RONALD V. PLACET
Senior Staff Counsel

RVP/jw

cc: Will M. Yamada, Personnel Relations Counsel
Department of Personnel Administration

J. Felix De La Torre and Brooke Pierman, SEIU Local 1000

Patrick Whalen, California Attorneys, Administrative Law Judges and Hearing Officers in State Employment

Gerald James, Professional Engineers in California Government and California Association of Professional Scientists

VV

EXHIBIT 2

DEPARTMENT 19

DAVID W. TYRA, State Bar No. 116218
KRISTIANNE T. SEARGEANT, State Bar No. 245489
KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Law Corporation
400 Capitol Mall, 27th Floor
Sacramento, California 95814
Telephone: (916) 321-4500
Facsimile: (916) 321-4555
E-mail: dtyra@kmtg.com

RECEIVED
FEB -5 2009
36
CIVIL

ENTERED
FEB 13 2009

K. WILLIAM CURTIS
Chief Counsel, State Bar No. 095753
WARREN C. STRACENER
Deputy Chief Counsel, State Bar No. 127921
LINDA A. MAYHEW
Assistant Chief Counsel, State Bar No. 155049
WILL M. YAMADA
Labor Relations Counsel, State Bar No. 226669
DEPARTMENT OF PERSONNEL ADMINISTRATION
1515 S Street, North Building, Suite 400
Sacramento, CA 95811-7258
Telephone: (916) 324-0512
Facsimile: (916) 323-4723
E-mail: WillYamada@dpa.ca.gov

Attorneys for Defendants/Respondents
ARNOLD SCHWARZENEGGER, as Governor, Stare of California; and DEPARTMENT OF PERSONNEL ADMINISTRATION

FILED
ENDORSED
FEB 13 2009
By D. BIGS/SR
Deputy Clerk

Exempted from Fees (Gov. Code § 6103)

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1000,

Petitioner/Plaintiff,

v.

ARNOLD SCHWARZENEGGER, as Governor, State of California; DEPARTMENT OF PERSONNEL ADMINISTRATION; JOHN CHIANG, as State Controller; and DOES 1 through 20, inclusive,

Respondents/Defendants.

Case No. 34-2009-80000135-CU-WM-GDS

Assigned For All Purposes To The Honorable Patrick Marlette

JUDGMENT RE: VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Date: January 29, 2009
Time: 9:00 a.m.
Dept.: 19

Based upon the Ruling of this Court and Order Thereon attached hereto as Exhibit A and incorporated herein by reference,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Judgment be entered forthwith in favor of Respondents and against Petitioners with respect to Petitioners Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief.

DATED: FEB 13 2009

JUDGE OF THE SUPERIOR COURT

APPROVED AS TO FORM:

Dated: _____, 2009

OFFICE OF STATE CONTROLLER

By: _____
Shawn D. Silva, Attorneys for
Respondent/Defendant
STATE CONTROLLER JOHN CHIANG

Dated: _____, 2009

LAW OFFICE OF BROOKS ELLISON

By: _____
Patrick J. Whalen, Attorneys for
Petitioners/Plaintiffs
CALIFORNIA ATTORNEYS, ADMINISTRATIVE LAW JUDGES and HEARING OFFICERS IN STATE EMPLOYMENT

Dated: _____, 2009

By: _____
Gerald A. James, Attorneys for
Petitioners/Plaintiffs
PROFESSIONAL ENGINEERS IN CALIFORNIA GOVERNMENT and CALIFORNIA ASSOCIATION OF PROFESSIONAL SCIENTISTS

Dated: _____, 2009

SEIU LOCAL 1000

By: _____
J. Felix De La Torre, Attorneys for
Petitioner/Plaintiff
SERVICE EMPLOYEES INTERNATIONAL LOCAL 1000

VV

EXHIBIT A

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

DATE/TIME	**: 01/30/09**	**DEPT. NO**	**: 19**
JUDGE	**: P. MARLETTE**	**CLERK**	**: D. RIOS, SR.**
REPORTER	**: none**	**BAILIFF**	**: none**
		PRESENT:	

Professional Engineers in California Government;\California Association of Professional Scientists,
Plaintiff,

VS. **Case No.: 2008-80000126**

Arnold Schwarzenegger, Governor, State of California\Department of Personnel Administration\State Controller John Chiang\and Does 1 through 20 inclusive,
Defendant.

Nature of Proceedings: **Amended Minute Order**

The Court is issuing a revised version of its final ruling in these matters. The revision makes no substantive changes in the ruling, but corrects an editing error in the last sentence of the third paragraph from the end of the ruling, regarding the State Controller, by deleting the word "incidental". The revised final ruling which follows shall be the final ruling of the Court.

PROFESSIONAL ENGINEERS IN CALIFORNIA GOVERNMENT, et al., v. GOVERNOR ARNOLD SCHWARZENEGGER, et al., Case No. 2008-80000126;

VV

CALIFORNIA ATTORNEYS, ADMINISTRATIVE LAW JUDGES AND HEARING OFFICERS IN STATE EMPLOYMENT, v. GOVERNOR ARNOLD SCHWARZENEGGER, et al., Case No. 2009-80000134;

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1000, v. GOVERNOR ARNOLD SCHWARZENEGGER, et al., Case No. 2009-80000135.

The following shall constitute the Court's final rulings on the demurrers and petitions for writ of mandate and complaints for declaratory relief in the above-captioned matters:

//

BOOK	**: 19**
PAGE	**: 2008-80000126-13009**
DATE	**: 01/30/09**
CASE NO.	**: 2008-80000126**
CASE TITLE	**: PECG; CAPS v. SCHWARZENEGGER**

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

BY: D. RIOS, SR.,
Deputy Clerk

212

CASE NUMBER: 2008-80000126 **DEPARTMENT: 19**
CASE TITLE: PECG; CAPS v. SCHWARZENEGGER
PROCEEDINGS: Amended Minute Order

Introduction and Background:

On December 19, 2008, in a response to the current State budget crisis, Governor Arnold Schwarzenegger issued Executive Order S-16-08. As relevant to this action, the Executive Order directed the Department of Personnel Administration, effective February 1, 2009 through June 30, 2010, to adopt a plan to implement a furlough of represented state employees and supervisors for two days per month, and to adopt a plan to implement an equivalent furlough or salary reduction for all state managers, including exempt state employees.

Several organizations representing state employees affected by the Executive Order have filed three separate petitions for writ of mandate and complaints for declaratory relief challenging the provisions of the Order imposing the furloughs, and seeking to overturn them.

The first such action, Case No. 2008-80000126, was filed by petitioners Professional Engineers in California Government ("PECG") and California Association of Professional Scientists ("CAPS") on December 22, 2008. That action initially was assigned to Department 33 of this Court, Judge Lloyd Connelly, presiding; it was reassigned to this Department after respondents filed a peremptory challenge to Judge Connelly pursuant to Code of Civil Procedure section 170.6 on January 7, 2009.

The second such action, Case No. 2009-80000134, was filed by petitioner California Attorneys, Administrative Law Judges and Hearing Officers in State Employment ("CASE") on January 5, 2009. That action was assigned to Department 33 of this Court, Judge Lloyd Connelly, presiding. Petitioner simultaneously filed a Notice of Related Case in that action, stating that it was related to Case No. 2008-80000126.

The third such action, Case No. 2009-80000135, was filed by petitioner Service Employees International Union, Local 1000 ("SEIU"), on January 7, 2009. The action was assigned to Department 29 of this Court, Judge Timothy M. Frawley, presiding. Petitioner simultaneously filed a Notice of Related Case in that action, stating that it was related to Cases Nos. 2008-80000126 and 2008-80000134

On January 9, 2009, the Court heard simultaneous ex parte applications by the petitioners and respondents in Case No. 2008-80000126 for orders shortening time that would have the effect of setting a hearing on respondents' demurrer to the petition and the hearing on the merits of the petition itself for a date prior to February 1, 2009, when the furloughs would go into effect.

At the hearing on January 9, 2009, counsel for the petitioners in Cases Nos. 2009-80000134 and 2009-80000135 appeared and stipulated on the record that those cases would be treated as related to Case No. 2008-

BOOK : 19
PAGE : 2008-80000126-13009
DATE : 01/30/09
CASE NO. : 2008-80000126
CASE TITLE : PECG; CAPS v. SCHWARZENEGGER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

BY: D. RIOS, SR.,
Deputy Clerk

Z1z2

80000126, and that those cases would be transferred to this Department for hearing pursuant to Rule of Court 3.300(h)(1)(a). Counsel for respondents in Case No. 2008-80000126 also stated on the record that he represented the respondents in one of the other two cases, and most likely would represent the respondents in the other (although at that time, the petition had not formally been served on the respondents), and also stipulated on the record that the three cases would be heard in this Department as provided above. The parties further agreed to a briefing schedule and to a combined hearing on the respondents' demurrers to, and the merits of, the three petitions. The parties to all three actions have filed their briefs and other papers according to the agreed-upon schedule and the Court heard oral argument on the matter on Thursday, January 29, 2009.

On January 12, 2009, a fourth action was filed challenging the Governor's Executive Order, entitled *California Correctional Peace Officers Association v. Governor Arnold Schwarzenegger, et al.*, Case No. 2008-80000137. The Court issued an order finding that case to be related to the three cases captioned above and further ordered that case assigned to this Department. That case has been set for hearing on Friday, February 5, 2009.

Ruling on Preliminary Evidentiary Issues:

Respondents[1] have made two requests for judicial notice, filed January 9, 2009 and January 13, 2009, along with an Amended Request for Judicial Notice on January 23, 2009 in response to the Court's order directing them to submit complete copies of the Memoranda of Understanding ("MOUs") involved in these actions. No objections to the requests have been filed. The Court has reviewed the requests and the documents attached thereto and finds that all such documents are proper subjects for judicial notice. Respondents' requests for judicial notice are therefore granted.

Respondents' evidentiary objection to the Declaration of Peter Flores, Jr. is overruled on the ground that the lack of a signature on the declaration has been remedied by the filing of an amended declaration, unchanged in substance, which bears Mr. Flores' signature.

Ruling on Respondents' Demurrers to the Petitions:

[1] In using the terms "respondents" or "defendants" in this ruling, the Court is referring to Governor Arnold Schwarzenegger and the Department of Personnel Administration. Although State Controller John Chiang also has been named as a respondent in these actions, the Controller has filed an Opposition to the Respondents'/Defendants' Demurrer stating that his interests are actually aligned with the petitioners and that, but for the short time frame, he would have filed a formal motion to realign the parties, seeking to be redesignated as a petitioner/plaintiff. The Controller's position in these actions will be discussed further below. In this ruling, the Court also has treated the terms "the Governor", "the Department of Personnel Administration" (or "the department" or "DPA") and "the State" as being essentially interchangeable.

CASE NUMBER: 2008-80000126 **DEPARTMENT: 19**
CASE TITLE: PECG; CAPS v. SCHWARZENEGGER
PROCEEDINGS: Amended Minute Order

Respondents' demurrers are overruled on the following basis:

The petitions and complaints allege generally that the provisions of the Governor's Executive Order S-16-08 that implement a furlough of represented state employees and supervisors for two days per month, and an equivalent furlough or salary reduction for state managers, effective February 1, 2009 through June 30, 2010, are invalid in that such action on the part of the Governor is not authorized by law, and moreover is forbidden by certain provisions of law, in particular, Government Code section 19826(b).

The Court finds that such allegations are sufficient to state a cause of action for issuance of a writ of mandate or for declaratory relief, regardless of whether Government Code section 19826(b) is superseded by the terms of the MOUs petitioners have entered into with the State (as respondents argue), because the petitions and complaints allege, in essence, that the Governor lacks the positive authority to make the challenged order in the first instance, irrespective of any statutory prohibition that may or may not apply. The allegation that the Governor lacks any authority to make the challenged order is sufficient to state a cause of action on its own.

The Court further finds that the issue of the Governor's authority to make the challenged order is not an issue within the exclusive initial jurisdiction of the Public Employment Relations Board, because it involves issues of statutory interpretation and separation of powers between the Governor and the Legislature, which are matters properly within the jurisdiction of the courts, and not issues of unfair practices under the Ralph C. Dills Act, which are matters properly within the jurisdiction of the Board. (See, e.g., *California School Employees Association v. Azusa Unified School District* (1984) 152 Cal. App. 3rd 580, 592-593; *California Teachers' Association v. Livingston School District* (1990) 219 Cal. App. 3rd 1503, 1519.) Moreover, the petitions and complaints in effect allege that the Governor's Executive Order regarding an employee furlough violates the provisions of the petitioners' MOUs with the State governing wages and hours. The Board does not have the authority to enforce agreements between the parties. (Government Code section 3514.5(b); see also, *San Lorenzo Education Association v. Wilson* (1982) 32 Cal. 3rd 841.)

Moreover, even if this Court were to conclude that the Board did have jurisdiction over this matter, it would conclude that the normal policy reasons requiring parties to exhaust available administrative remedies do not apply in this case for many of the reasons stated by the Third District Court of Appeal in a case arising out of an earlier state budget crisis: namely, that the facts are undisputed, so there is no need for administrative development of the record; judicial intervention will not interfere with the expertise of the agency or create problems of judicial economy, given that the underlying issues are within the expertise of the courts and undoubtedly would be resolved ultimately by the courts even if initial jurisdiction were found in the Board; and, given that this case raises questions of first impression which most likely are bound for ultimate determination in the appellate courts, there is little concern of conflicting decisions between the Board and the courts. (See, *Department of Personnel Administration v. Superior Court (Greene)* (1992) 5 Cal. App. 4th 155, 168-169.)

BOOK : 19
PAGE : 2008-80000126-13009
DATE : 01/30/09
CASE NO. : 2008-80000126
CASE TITLE : PECG; CAPS v. SCHWARZENEGGER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

BY: D. RIOS, SR.,
Deputy Clerk

Z1x2

In addition, even if this Court were to conclude that the Board did have jurisdiction over this matter, it would conclude that exhaustion of administrative remedies by resort to the Board should be excused on the ground that requiring exhaustion under the particular circumstances of this case would cause both the State and its employees to suffer irreparable injury, again, for many of the reasons stated in the 1992 *Greene* case: specifically, that the extremely grave nature of the fiscal crisis faced by the state, and the urgent need for resolution of these issues in as expeditious a manner as possible, create a great potential for irreparable harm in the nature of layoffs of state employees, with a concomitant reduction in the nature of state services, all of which are amply demonstrated by the declarations and documents that have been filed by parties in this matter (many of them by respondents). Even if, as the Court of Appeal stated in the *Greene* case, there is a possibility that the Board could order the same relief that petitioners seek here, it is extremely unlikely that the entire process of Board adjudication followed by judicial review as provided by law would be completed in a sufficiently timely manner to address the immediate crisis. (See, *Department of Personnel Administration v. Superior Court (Greene)* (1992) 5 Cal. App. 4th 155, 170-171.)

Petitioners SEIU and CASE raise additional claims for declaratory relief regarding the effect of the furlough on the exempt status of employees under the federal Fair Labor Standards Act ("FLSA"). The SEIU complaint alleges that a significant number of its employees will be required to work in excess of 40 hours during furlough weeks, that such employees will no longer be considered exempt employees as a matter of law during those weeks, that such workers will be entitled to overtime pay during such weeks, and that respondents lack any mechanism or systems in place to move employees from exempt to non-exempt status from week-to-week, with the result being that such employees will not receive the overtime pay to which they are entitled under the FLSA. Such facts are sufficient to state a cause of action in declaratory relief based on the theory that respondents are not willing and able to comply with their obligations under the FLSA, at least for the purpose of withstanding a demurrer. Respondents' contention that the complaint on its face shows that petitioner's FLSA claim is not ripe for review, and seeks only an advisory opinion, because there is no allegation that respondents actually have failed to pay any overtime that is due, is unpersuasive.[2]

The CASE complaint alleges the same facts regarding the effect of the furloughs on its employees' exempt status under the FLSA. The complaint lacks the specific allegations present in the SEIU complaint regarding respondents' lack of willingness and ability to comply with the FLSA, but alleges in general terms that respondents' actions will result in denial of the protection of the laws regarding overtime compensation. In essence, this complaint is identical in substance to the SEIU complaint; the Court concludes that it also states a cause of action for declaratory relief.

---

[2] This is, of course, distinct from the issue of whether there is any proof tending to demonstrate that FLSA violations actually will occur. This issue is dealt with in the Court's ruling on the merits, below.

Respondents' demurrers are therefore overruled.

Ruling on the Petitions and Complaints:

The petitions for writ of mandate and complaints for declaratory relief challenging the provisions of the Governor's Executive Order imposing furloughs on state employees are based on twin contentions: that the Governor lacks any authority, statutory or otherwise, to take such action; and that applicable statutory law expressly forbids him from taking such action. For the reasons stated below, the Court finds that these contentions are unpersuasive.

The facts regarding the implementation of the furlough are essentially undisputed, as is the fact that the State faces an extremely urgent fiscal crisis.[3] According to documents submitted to the Court, the Governor, through the Department of Personnel Administration, has developed a furlough plan that will result in the closing of general government operations on the first and third Fridays of each month, beginning on Friday, February 6, 2009. The unpaid furlough days are not work days and employees shall not report to work. For state operations that cannot close, a "self-directed" furlough will be used that will result in state employees either taking two furlough days each month on days chosen by the employees and approved by their supervisors, or accruing two furlough days per month to be taken when feasible. Salaries will be adjusted to reflect the unpaid furlough days, but benefits will remain the same.[4]

The Governor's Executive Order thus reduces the normal work hours of state employees for a temporary period due to the state's current fiscal crisis. The emergency measure will result in an accompanying deduction from pay for the hours not worked, but the order does not change established salary ranges. The Governor's authority for this action is found in statutes in the Government Code and in the employment contracts of the unions challenging the order.

The Governor has the statutory authority to reduce the hours of state employees pursuant to Government Code section 19851 and 19849.

---

[3] There do appear to be disputes of fact over whether the implementation of the furlough will result in violations of the federal FLSA. This issue will be discussed separately below.

[4] See, Memorandum dated January 9, 2009 from David A. Gilb, Director of the Department of Personnel Administration, to Agency Secretaries, et al., regarding "State Employee Furlough per Governor's Executive Order S-16-08", attached to the Amended Declaration of Peter Flores, Jr. as Exhibit H.

Section 19851(a) provides: "It is the policy of the state that the workweek of the state employee shall be 40 hours, and the workday of the state employee eight hours, except that workweeks and workdays of a different number of hours may be established in order to meet the varying needs of the different state agencies."

Section 19849(a) provides that the Department of Personnel Administration "...shall adopt rules governing hours of work and overtime compensation and the keeping of records related thereto, including time and attendance records. Each appointing power shall administer and enforce such rules."

The Court finds that these two statutes, taken together, provide the Governor with authority to reduce the workweek of state employees to meet the needs of state agencies, and to do so by adopting a rule. The provisions of the Executive Order regarding the furlough are a rule in that they establish a standard of general application to state employees. Under the circumstances of the current fiscal crisis, the reduction in the workweek of state employees under the furlough order is indisputably related to the needs of the various state agencies, which, from the evidence respondents have submitted to the Court, run the imminent risk of running out of money and thus being unable to carry out their missions, if immediate action is not taken to reduce expenditures.

The Court further finds, on two separate bases, that the Governor has authority to reduce the work hours of the state employees represented by the petitioners in these actions pursuant to the terms of the MOUs the State entered into with the petitioner employee organizations, which remain in effect, although technically expired, pursuant to Government Code section 3517.8(a).

First, each of the petitioners' MOUs expressly incorporates the terms of sections 18949 and 19851 into the agreement between the parties[5], and the terms of the MOU do not conflict with these statutes, notwithstanding that the MOUs call for a normal work week of 40 hours. Thus, these provisions of law are not superseded by the MOUs, and the Governor retains the authority, pursuant to law and contract, to take any actions he would be permitted to take pursuant to Government Code sections 19849 and 19851 as described above.

---

[5] See, Respondents' Request for Judicial Notice, filed January 9, 2009, Exhibit A, p. 80 (PECG MOU); Exhibit B, p. 75 (CAPS MOU); Respondents' Amended Request for Judicial Notice, filed January 23, 2009, Exhibit A, p. 16 (CASE MOU); Exhibit B, p. 20 (SEIU MOU for Bargaining Unit 1); Exhibit C, p. 22 (SEIU MOU for Bargaining Unit 3); Exhibit D, p. 21 (SEIU MOU for Bargaining Unit 4); Exhibit E, p. 21 (SEIU MOU for Bargaining Unit 11); Exhibit F, pp 22-23 (SEIU MOU for Bargaining Unit 14); Exhibit G, p. 21 (SEIU MOU for Bargaining Unit 15); Exhibit H, p. 21 (SEIU MOU for Bargaining Unit 17); Exhibit I, p. 21 (SEIU MOU for Bargaining Unit 20); Exhibit J, p. 19 (SEIU MOU for Bargaining Unit 21). In addition, the PECG MOU provides, in Article 17.1, which appears under the heading "State Rights", that: "All the functions, rights, powers and authority not specifically abridged by this MOU are retained by the employer." (See, Respondents' Request for Judicial Notice, filed January 9, 2009, Exhibit A, p. 72.)

BOOK : 19
PAGE : 2008-80000126-13009
DATE : 01/30/09
CASE NO. : 2008-80000126
CASE TITLE : PECG; CAPS v. SCHWARZENEGGER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

BY: D. RIOS, SR.,
Deputy Clerk

Z1x2

Second, the specific terms of certain of the petitioners' MOUs expressly permit the State either to reduce hours in case of lack of funds or to take all necessary action to carry out its mission in emergencies.

For example, Article 3.1.B of the MOU between the State and petitioner CASE, which appears under the heading "State Rights", provides that "[t]o the extent consistent with law and this MOU, the rights of the State include, but are not limited to, the exclusive right to...relieve its employees from duty because of lack of work, lack of funds, or for other legitimate reasons...[and to] take all necessary actions to carry out its mission in emergencies."[6]

Article 10.3 of the CASE MOU, which appears under the heading "Layoff", further provides: "The State may propose to reduce the number of hours an employee works as an alternative to layoff. Prior to implementation of this alternative to a layoff, the State will notify and meet and confer with the Union to seek concurrence of the usage of this alternative."[7]

Article 12.1.B of the CAPS MOU, which appears under the heading "State Rights", provides that: "Consistent with this Agreement, the rights of the State shall include, but not be limited to, the right...to take all necessary action to carry out its mission in emergencies."[8]

Article 4.B of each of the SEIU MOUs similarly provides that: "Consistent with this Contract, the rights of the State shall include, but not be limited to, the right...to take all necessary action to carry out its mission in emergencies."[9]

The Court finds that the current fiscal emergency, which is amply documented in the evidence respondents have submitted, authorizes the Governor to reduce the work hours of state employees under these

VV

---

[6] See, respondents' Amended Request for Judicial Notice, filed January 23, 2009, Exhibit A, p. 11.

[7] See, Respondents' Amended Request for Judicial Notice, filed January 23, 2009, Exhibit A, p. 59.

[8] See, Respondents' Request for Judicial Notice, filed January 9, 2009, Exhibit B, p. 71.

[9] See, Respondents' Amended Request for Judicial Notice, filed January 23, 2009, Exhibit B, p. 16 (Bargaining Unit 1); Exhibit C, p. 17 (Bargaining Unit 3); Exhibit D, p. 17 (Bargaining Unit 4); Exhibit E, p. 17 (Bargaining Unit 11); Exhibit F, p. 18 (Bargaining Unit 14); Exhibit G, p. 17 (Bargaining Unit 15); Exhibit H, p. 17 (Bargaining Unit 17); Exhibit I, p. 16 (Bargaining Unit 20); Exhibit J, p. 15 (Bargaining Unit 21).

BOOK : 19
PAGE : 2008-80000126-13009
DATE : 01/30/09
CASE NO. : 2008-80000126
CASE TITLE : PECG; CAPS v. SCHWARZENEGGER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

BY: D. RIOS, SR.,
Deputy Clerk

Zh2

cited terms of the various MOUs. The nature of the fiscal emergency is such that the state employee furloughs imposed by the Governor's Executive Order are both necessary and reasonable under the circumstances.[10]

The existence of the current emergency also authorized the Governor to make his order without first meeting and conferring with state employee organizations pursuant to Government Code section 3516.5.

The Court accordingly finds that both statutory law and the provisions of the petitioners' MOUs authorized the Governor to reduce the work hours of state employees through a furlough in the current fiscal emergency.

The Court finds that Government Code section 19826(b) does not preclude the Governor from taking such action.

Section 19826(b) states that the Department of Personnel Administration shall not establish, adjust or recommend a salary range for any employees in an appropriate unit where an employee organization has been chosen as the exclusive representative pursuant to Government Code section 3520.5, which is the case for all of the petitioners in these actions.

This case, however, does not involve the establishment, adjustment or recommendation of a salary range for represented state employees. This case involves a temporary reduction in the hours worked by certain state employees, which will result in a loss of pay for the hours not worked. The order does not change established salary ranges at all: state employees will continue to receive their normal pay according to established ranges in weeks that do not include a furlough day. In essence, state employees are subject to a temporary deduction from their total pay under the established ranges, and not to being paid under a new or adjusted salary range.

The present case is therefore distinguishable from *Department of Personnel Administration v. Superior Court (Greene)* (1992) 5 Cal. App. 4th 155, which involved an across-the-board salary cut of 5% with no furlough or reduction in work hours. *Greene* also involved the issue of what the State was entitled to do in the bargaining process under the Ralph C. Dills Act, specifically, whether the State could unilaterally impose the salary cut as part of its "last, best and final offer" when it was officially at impasse with the state employee organizations. The present case does not involve bargaining issues in that the parties are not at impasse, and petitioners' pleadings have raised issues regarding the Governor's positive authority to make the challenged

[10] At oral argument on these matters, counsel for CASE and PECG argued that many of their members work in so-called "special fund" agencies, and that the Governor's order, which was designed to deal with a looming General Fund deficit, was not reasonably related to the fiscal emergency insofar as it orders furloughs for those employees. (CASE also raised this issue in its reply brief.) This contention was not raised in any of the petitions or complaints for declaratory relief, and petitioners did not submit any evidence to support it. The Court therefore makes no findings on it.

order rather than issues regarding any failure to comply with his collective bargaining obligations under the Dills Act.

Moreover, the *Greene* case did not address any provisions of the employee organizations' MOUs that might have authorized the salary reduction in that case, on the basis of an emergency or otherwise, because the case technically involved a situation in which there was an absence of a MOU, as is the case when an existing MOU has expired and the parties have bargained to impasse. (See, *Department of Personnel Administration v. Superior Court (Greene)* (1992) 5 Cal. App. 4th 155, 174.) As noted above, the petitioners' MOUs in this case remain in effect pursuant to Government Code section 3517.8(a), and contain provisions authorizing the Governor's order reducing work hours. The *Greene* case therefore is not controlling here.

The Court accordingly rules that, with regard to the issues raised by all petitioners regarding the Governor's authority to make the challenged order, the petitions for writ of mandate are denied and judgment shall be entered for the defendants (respondents) on the complaints for declaratory relief. This ruling applies to both state employees represented by all of the petitioners under the Dills Act and to those state employees represented by petitioners PECG and CAPS who are excluded from the Dills Act by law, as the authorities on which the Court has relied in finding that the Governor has the authority to take the challenged action apply to both classes of employees.[11]

With regard to the causes of action for declaratory relief raised by SEIU and CASE raising issues involving possible non-compliance with the FLSA, the Court finds that as a matter of proof, as distinguished from a matter of pleading, petitioners' claims that implementation of the Governor's order will actually result in employees formerly considered to be exempt from the Act's provisions working overtime within the meaning of the Act during a furlough week, and that the State will not comply with the Act with regard to employees who do so, are entirely hypothetical and speculative prior to implementation of the furloughs, and thus not ripe for decision.

VV

As respondents point out, under applicable federal regulations, employees may be furloughed for budget-related reasons without affecting their exempt status, except for the workweek in which the furlough occurs.[12] The viability of petitioners' FLSA claims therefore depends upon proof that there will be, as a matter of fact,

---

[11] At oral argument, counsel for petitioner SEIU raised the contention that the Governor's order amounted to an unconstitutional impairment of contracts. This contention was not raised in any of the petitions, and was not briefed by the parties. Petitioner SEIU did cite several out-of-state cases in its reply brief in which government employee furloughs were challenged on this basis. Those cases were cited, however, for the proposition that a furlough is equivalent to a reduction in employee salary, and not in support of the contention that the Governor's action impaired the petitioner's contracts with the State. Because such contention was not raised by the petitions or briefed by the parties, the Court makes no finding on it.

[12] See, Title 29, Code of Federal Regulations, section 541.710.

BOOK : 19
PAGE : 2008-80000126-13009
DATE : 01/30/09
CASE NO. : 2008-80000126
CASE TITLE : PECG; CAPS v. SCHWARZENEGGER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

BY: D. RIOS, SR.,
Deputy Clerk

Z1:2

employees who work more than 40 hours during a furlough week. At this point, before the furlough actually has been implemented, there is no evidence before the Court regarding any employee actually doing this, let alone any evidence that this will be the case with large numbers of state employees. Petitioners' allegations that this will happen are merely hypothetical.

Similarly, the evidence that petitioner CASE has submitted demonstrating that the State's payroll system is antiquated and lacks the flexibility and reliability to be able to cope with the kind of week-to-week changes in an employee's exempt status that will occur when furloughs are implemented[13], is not necessarily proof that the State will not be able to cope with paying overtime pay to those to whom it is entitled. Once again, petitioners' proposition that the FLSA will be violated depends upon proof that employees actually will be entitled to overtime, and that there will be sufficient numbers of them that the State will not be able to comply with the FLSA. Such proof is lacking at this point.

Finally, even if petitioners were able to prove that the State was likely to fail to comply with the FLSA with regard to some number of state employees, it would not necessarily follow that they would be entitled to the relief they seek, which is the invalidation of the furlough order itself. Any actual violation of the FLSA would give rise to remedies arising under the FLSA, i.e., for recovery of the unpaid overtime compensation[14], but the failure to comply with the FLSA in that situation would be a separate issue from the validity of the furlough. Notwithstanding this Court's ruling upholding the Governor's order, any affected employee retains his or her rights and remedies under FLSA, and the Court's ruling that petitioners have not proven an actual violation of the FLSA at this point does not preclude them, or their individual members, from exercising those remedies once an actual violation can be proven. Thus, FLSA compliance issues, hypothetical or otherwise, do not serve as a basis for overturning the Governor's Executive Order regarding furloughs.

The Court therefore finds in favor of defendants (respondents) on the SEIU and CASE complaints for declaratory relief regarding alleged non-compliance with the FLSA. VV

A final issue remains with regard to the State Controller. As noted in footnote 1 above, the Controller, although named as a respondent/defendant, has taken a position in these actions in alignment with the petitioners, specifically stating that his office "...has no intention of implementing the reduction in pay as contemplated in the Governor's Order, unless determined otherwise by a court of law."[15] In *Tirapelle v. Davis*

---

[13] See, Declaration of Don Scheppmann, chief of Personnel/Payroll Services Division of the Office of the California State Controller, dated October 14, 2008 and filed in the case entitled *David A. Gitb, California Department of Personnel Administration v. John Chiang, Office of State Controller, et al.*, which is pending in the United States District Court for the Eastern District of California, attached to CASE's opposition to respondents' demurrer as Exhibit A.
[14] See, e.g., 29 U.S.C. Section 216.
[15] See, Controller's Opposition to Respondents' Demurrer, p. 2:15-17.

(1993) 20 Cal. App. 4th 1317, the Third District Court of Appeal held that the Controller may not refuse to implement an executive action affecting state employees' pay that is authorized by law. In this case, the Court has ruled that the provisions of the Governor's Executive Order reducing the work hours of state employees through a furlough, and thereby affecting their pay during the furlough weeks, is authorized by law. The Controller therefore lacks authority to refuse to implement the Governor's Executive Order. The Court's judgment in this matter therefore shall include an order directing the Controller to take all necessary and appropriate steps to implement the provisions of the Governor's Executive Order imposing furloughs on state employees, including the reduction in such employees' pay.

At the close of the hearing, counsel for CASE made an oral motion on the record that the Court stay its ruling pending appellate review. The Court denied the motion.

//

Counsel for respondents is directed to prepare the orders and judgments in accordance with this ruling under the procedures set forth in Rule of Court 3.1312.

Certificate of Service by Mailing attached.

VV

BOOK : 19
PAGE : 2008-80000126-13009
DATE : 01/30/09
CASE NO. : 2008-80000126
CASE TITLE : PECG; CAPS v. SCHWARZENEGGER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

BY: D. RIOS, SR.,
Deputy Clerk

CASE NUMBER: 2008-80000126 **DEPARTMENT: 19**
CASE TITLE: PECG; CAPS v. SCHWARZENEGGER
PROCEEDINGS: Amended Minute Order

CERTIFICATE OF SERVICE BY MAILING
C.C.P. Sec. 1013a(4))

I, the undersigned deputy clerk of the Superior Court of California, County of Sacramento, do declare under penalty of perjury that I did this date place a copy of the above entitled notice in envelopes addressed to each of the parties, or their counsel of record as stated below, with sufficient postage affixed thereto and deposited the same in the United States Post Office at Sacramento, California.

Gerald James
Attorney at Law
660 J Street, Suite 445
Sacramento, CA 95814

Patrick Whalen
ELLISON WILSON ADVOCACY, LLC
1725 Capitol Avenue
Sacramento, CA 95814
Brooke D. Pierman, Staff Attorney
S.E.I.U.
1808 -14th Street
Sacramento, CA 95811

RICHARD CHIVARO, Chief Counsel
Ronald V. Placet,
Sr. Staff Counsel
Office of the State Controller
300 Capitol Mall, Ste 1850
Sacramento, CA 95814

David W. Tyra
KRONICK, MOSKOVITZ, TIEDEMANN
& GIRARD
400 Capitol Mall, 7th Floor
Sacramento, CA 95814

J. Felix DeLa Torre, Staff Attorney
S.E.I.U.
1808 -14th Street
Sacramento, CA 95811
Will M. Yamada
Department of Personnel Administration
Legal Office
1515 S Street, No. Bldg., Ste. 400
Sacramento, CA 95811

VV

Dated: 1/30/09

Superior Court of California,
County of Sacramento

By: D. RIOS, SR.,
Deputy Clerk

BOOK : 19
PAGE : 2008-80000126-13809
DATE : 01/30/09
CASE NO. : 2008-80000126
CASE TITLE : PECG; CAPS v. SCHWARZENEGGER

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SACRAMENTO

BY: D. RIOS, SR.,
Deputy Clerk

Z1z2

ORIGINAL

PAUL E. HARRIS, III, Chief Counsel (State Bar No. 180265)
ANNE GIESE (State Bar No. 143934)
J. FELIX DE LA TORRE (State Bar No. 204282)
BROOKE D. PIERMAN (State Bar No. 222630)
SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 1000
1808 14th Street
Sacramento, CA 95811
Telephone: (916) 554-1279
Facsimile: (916) 554-1292

Attorneys for Petitioner/Plaintiff
SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 1000

FILED
ENDORSED
MAR 26 2009
By [illegible] GUZMAN
Deputy Clerk

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

PROFESSIONAL ENGINEERS IN CALIFORNIA GOVERNMENT; CALIFORNIA ASSOCIATION OF PROFESSIONAL SCIENTISTS,

Petitioners/Plaintiffs,

v.

ARNOLD SCHWARZENEGGER, Governor, STATE OF CALIFORNIA; DEPARTMENT OF PERSONNEL ADMINISTRATION; STATE CONTROLLER JOHN CHIANG; and DOES 1 through 20, inclusive,

Respondents/Defendants.

/

CALIFORNIA ATTORNEYS, ADMINISTRATIVE LAW JUDGES AND HEARING OFFICERS IN STATE EMPLOYMENT,

Petitioners/Plaintiffs,

v.

ARNOLD SCHWARZENEGGER as, Governor of the State of California; DAVID GILB as Director of the Department of Personnel Administration; JOHN CHIANG,

Third District Court of Appeal
Case No. C061020

CASE No. **34-2009-80000135**

Related Cases

No. 34-2008-[illegible]0126

Assigned for All Purposes To the Honorable Patrick Marlette

SEIU LOCAL 1000's DESIGNATION OF RECORD/NOTICE TO PREPARE REPORTER'S AND CLERK'S TRANSCRIPTS ON APPEAL

[Calif. Rules of Court, Rules 8.122 and 8.130]

Case No. 34-2008-80000134

Controller of the State of California; and DOES 1 through 10,

Defendants/Respondents.

/

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1000,

Case No. 34-2008-80000135

Petitioners/Plaintiffs,

v.

ARNOLD SCHWARZENEGGER, as Governor, State of California; DEPARTMENT OF PERSONNEL ADMINISTRATION; JOHN CHIANG, as State Controller, and DOES 1 THROUGH 20, INCLUSIVE,

Respondents/Defendants.

/

1808 14th Street
Sacramento, California 95811
Telephone (916) 554-1279

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that Petitioner and Appellant SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1000 ("SEIU") requests that the following items be prepared for inclusion in the Reporter's and Clerk's Transcripts on Appeal in the above referenced case, and designate the following papers and documents to be incorporated in the Reporter's and Clerk's Transcripts on Appeal.

A. Reporter's Transcript

1. All oral proceedings at the hearing on Petitioner/Plaintiff SEIU's Petition for Writ of Mandate re: Case No. 34-2009-80000135, which took place on January 29, 2009 at or about 9:00 a.m. in Department 19 of this Court. The court reporter at the hearing was N. Nowack, CSR 6987.

2. All oral proceedings at the court's Hearing on Petitioners/Plaintiffs Professional Engineers in California Government and California Association of Professional Scientists' ("PECG") Ex Parte Request for Order Shortening Time for the Hearing on the Merits for the Petition for Writ of Mandate; and Hearing on Respondent's Ex Parte Request for Order Shortening Time to File Demurrer to the Petition for Writ of Mandate re: Case Nos. 34-2008-80000126; 34-

2009-80000134 and 34-2009-80000135 filed on or about January 9, 2009. The court reporter at the hearing was L. Ricci, CSR 7614.

B. Clerk's Transcript

The following documents filed or lodged with the Court in this case:

1. Register of Actions, prepared by the court.

2. Petitioners/Plaintiffs PECG's Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief re: Case No. 34-2008-80000126 filed with this Court on or about December 22, 2008.

3. SEIU's Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief re: Case No. 34-2009-80000135 filed with this Court on or about January 7, 2009.

4. SEIU's Notice of Related Cases re: 34-2009-80000135 Case No. filed with this Court on or about January 7, 2009.

5. Court's Minute Order re: Reassignment of Case Following Peremptory Challenge Case No. 34-2008-80000126 filed on or about January 7, 2009.

6. Court's Minute Order re: Ex Parte Application - Other - Writ of Mandate re: Case No. 34-2008-80000126 filed on or about January 9, 2009. VV

7. SEIU 's Memorandum of Points and Authorities in Support of Verified Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief filed with this Court on or about January 13, 2009.

8. SEIU's Declaration of J. Felix De La Torre in Support of Verified Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief filed with this Court on or about January 13, 2009.

9. Defendants/Respondents Arnold Schwarzenegger's ("Schwarzenegger) Notice of Hearing and Demurrer to Verified Petitions for Writ of Mandate and Complaints for Declaratory and Injunctive Relief filed with this Court on or about January 13, 2009.

10. Defendants/Respondents Schwarzenegger's Memorandum of Points and Authorities in Support of Demurrer to Verified Petitions for Writ of Mandate and Complaints for

1808 14th Street
Sacramento, California 95811
Telephone (916) 554-1279

Declaratory and Injunctive Relief filed with this Court on or about January 13, 2009.

11. Defendants/Respondents Schwarzenegger's Request for Judicial Notice in Support of Demurrer to Verified Petitions for Writ of Mandate and Complaints for Declaratory and Injunctive Relief filed with this Court on or about January 13, 2009.

12. Petitioner/Plaintiff California Attorneys, Administrative Law Judges and Hearing Officers in State Employment's ("CASE") Memorandum of Points and Authorities in Support of Verified Petition for Writ of Mandate and Complaints for Declaratory and Injunctive Relief filed with this Court on or about January 13, 2009.

13. Petitioner/Plaintiff CASE's Declaration of Peter Flores, Jr. in Support of Verified Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief filed with this Court on or about January 13, 2009.

14. Court's Minute Order re: Motion - Other - Writ of Mandate re: Case Nos. 34-2008-80000126; 34-2009-80000134; 34-2009-80000135; and 34-2009-80000137 filed on or about January 16, 2009.

15. SEIU's Opposition to Demurrer to Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief filed with this Court on or about January 20, 2009.

VV

16. Respondent/Defendant California State Controller John Chiang's ("Contoller") Answer to Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief filed with this Court on or about January 20, 2009.

17. Petitioner/Plaintiff SEIU's Reply in Support of Verified Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief filed with this Court on or about January 22, 2009.

18. Petitioner/Plaintiff SEIU's Lodgement of Foreign Authorities in Support of Reply Brief filed with this Court on or about January 23, 2009.

19. Court's Minute Order re: Case Nos. 34-2008-80000126; 34-2009-80000134 and 34-2009-80000135 filed on or about January 23, 2009.

///

1808 14th Street
Sacramento, California 95811
Telephone (916) 554-1279

20. Court's Minute Order re: Petition for Writ of Mandate re: Case No. 34-2008-80000126 filed on or about January 29, 2009.

21. Court's Minute Order re: Petition for Writ of Mandate re: Case No. 34-2009-80000134 filed on or about January 29, 2009.

22. Court's Minute Order re: Petition for Writ of Mandate re: Case No. 34-2009-80000135 filed on or about January 29, 2009.

23. Court's January 30, 2009, Amended Minute Order regarding the ruling of the hearing which took place on or about January 29, 2009 in Department 19.

24. Respondent/Defendant Controller John Chiang's letter of Request for Clarification of Court's Ruling received by this Court on or about February 3, 2009.

25. Court's Minute Order re: State Controller's Request for Clarification of Courts Ruling.

DATED: March 24, 2009

SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 1000

By _____
ANNE M. GIESE
Attorney for Petitioner/Plaintiff
SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 1000

1808 14th Street
Sacramento, California 95811
Telephone (916) 554-1279

DECLARATION OF SERVICE

CASE NAME: *SEIU LOCAL 1000 v. ARNOLD SCHWARZENEGGER, et al.*
COURT NAME: Sacramento County Superior Court / Third District Court of Appeal
CASE NUMBER: 34-2009-80000135 / C061020

I am a citizen of the United States and a resident of the County of Yolo. I am over the age of eighteen (18) years and not a party to the above-entitled action. My business address is 1808 14th Street, Sacramento, California 95811.

I am familiar with SEIU Local 1000's practice whereby the mail is sealed, given the appropriate postage and placed in a designated mail collection area. Each day's mail is collected and deposited in a United States mailbox after the close of each day's business.

On March 26, 2009, I served the following:

SEIU LOCAL 1000's DESIGNATION OF RECORD/NOTICE TO PREPARE REPORTER'S AND CLERK'S TRANSCRIPTS ON APPEAL

[ ] (BY FACSIMILE) placing a true copy thereof into a facsimile machine addressed to the person and address shown below, which transmission receipt is attached hereto.

[ ] (BY OVERNIGHT DELIVERY) on the following party(ies) in said action, by placing a true copy thereof enclosed in a sealed envelope, with delivery fees paid or provided, and placed in the designated recepitcle for such overnight mail, addressed as set forth below. In the ordinary course of business, mail placed in that recepticle is picked up that same day for delivery the following business day.

[ ] (BY PERSONAL SERVICE) by delivering by hand and leaving a true and correct copy with the person at the address shown below:

[X] (BY MAIL) placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail at Sacramento, California, addressed as follows:

[X] (BY ELECTRONIC SERVICE) Via TRO mandating electronic service. The document was served electronically and the transmission was reported as complete and without error.

SEE ATTACHMENT

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Declaration was executed on March 26, 2009, at Sacramento, California.

MARY A. MEDINA

SEIU Local 1000
1808 14th Street
Sacramento, California 95811
Telephone: (916) 554-1279

ATTACHMENT TO DECLARATION OF SERVICE

DAVID W. TYRA
KRONICK, MOSKOVITZ, TIEDMAN
& GIRARD
400 Capitol Mall, 27th Floor
Sacramento, CA 95814-4407
Tel: (916) 321-4500 Fax: (916) 321-4555
e-mail: dyra@kmtg.com
Attorney Defendant/Respondent, *Arnold Schwarzenegger, Governor State of California; and Department of Personnel Administration*

WILL M. YAMADA
Department of Personnel Administration
1515 S Street, North Building, Ste. 400
Sacramento, CA 95814
Tel: (916) 324-0512 Fax: (916) 323-4723
e-mail: willyamada@dpa.ca.gov
Attorney for Defendant/Respondent, *Department of Personnel Administration*

RICK CHIVARO, Chief Counsel
RONALD V. PLACET
Office of the State Controller
300 Capitol Mall, Ste. 1850
Sacramento, CA 95814
Tel: (916) 445-3028 Fax: (916) 322-1220
e-mail: rchivaro@sco.ca.gov
Attorneys for Defendant/Respondent, *John Chiang, Office of the State Controller*

ROBIN B. JOHANSEN
REMCHO, JOHANSEN & PRUCELL, LLP
201 Dolores Avenue
San Leandro, CA 94577
Tel: (510) 346-6200 Fax: (510) 346-6201
e-mail: rjohansen@rjp.com
Attorneys for Defendant/Respondent, *John Chiang, Office of the State Controller*

SEIU Local 1000
1808 14th Street
Sacramento, California 95811
Telephone: (916) 554-1279

DAVID W. TYRA, State Bar No. 116218
KRISTIANNE T. SEARGEANT, State Bar No. 245489
MEREDITH H. PACKER, State Bar No. 253701
KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Law Corporation
400 Capitol Mall, 27th Floor
Sacramento, California 95814
Telephone: (916) 321-4500
Facsimile: (916) 321-4555
E-mail: dtyra@kmtg.com

K. WILLIAM CURTIS
Chief Counsel, State Bar No. 095753
WARREN C. STRACENER
Deputy Chief Counsel, State Bar No. 127921
LINDA A. MAYHEW
Assistant Chief Counsel, State Bar No. 155049
WILL M. YAMADA
Labor Relations Counsel, State Bar No. 226669
DEPARTMENT OF PERSONNEL ADMINISTRATION
1515 S Street, North Building, Suite 400
Sacramento, CA 95811-7258
Telephone: (916) 324-0512
Facsimile: (916) 323-4723
E-mail: WillYamada@dpa.ca.gov

Attorneys for Defendants/Respondents ARNOLD SCHWARZENEGGER, as Governor of the State of California; and DEPARTMENT OF PERSONNEL ADMINISTRATION

Exempted from Fees (Gov. Code § 6103)

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1000,

Petitioner/Plaintiff,

v.

ARNOLD SCHWARZENEGGER, as Governor, State of California; DEPARTMENT OF PERSONNEL ADMINISTRATION; JOHN CHIANG, as State Controller; and DOES 1 through 20, inclusive,

Respondents/Defendants.

Third District Court of Appeal
Case No.: C061020

Case No. 34-2009-80000135-CU-WM-GDS

Assigned For All Purposes To The Honorable Patrick Marlette

NOTICE OF ELECTION TO PROCEED WITH APPENDIX ON APPEAL

(California Rule of Court 8.124)

NOTICE IS HEREBY GIVEN that Respondents, Arnold Schwarzenegger, as Governor of the State of California; and Department of Personnel Administration, elect to proceed under the provisions of California Rules of Court, Rule 8.124(a)(1), providing for submission of a joint appendix or individual appendices in lieu of a clerk's transcript.

Dated: March 27, 2009

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Law Corporation

By: _____
David W. Tyra
Meredith H. Packer
Attorneys for Defendants/Respondents
ARNOLD SCHWARZENEGGER, as Governor of the State of California; and DEPARTMENT OF PERSONNEL ADMINISTRATION

VV

PROOF OF SERVICE

I, Cindy Harrell, declare:

I am a citizen of the United States and employed in Sacramento County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 400 Capitol Mall, 27th Floor, Sacramento, California 95814. On March 27, 2009, I served a copy of the within document(s):

- **NOTICE OF ELECTION TO PROCEED WITH APPENDIX ON APPEAL.**

☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.

☐ by placing the document(s) listed above in a sealed _____ envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a _____ agent for delivery.

☐ by causing personal delivery by Messenger of the document(s) listed above to the person(s) at the address(es) set forth below.

☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, the United States mail at Sacramento, California addressed as set forth below.

☒ by transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

Attorneys for Petitioner/Plaintiff SEIU, Local 1000
Paul E. Harris, III, Esq.
Anne Giese, Esq.
J. Felix De La Torre, Esq.
Brooke D. Pierman, Esq.
SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 1000
1808 14th Street
Sacramento, CA 95814
Fax: (916) 554-1292
Email: jfelix.delatorre@gmail.com

Attorney for Respondent/Defendant State Controller John Chiang
Richard J. Chivaro, Esq.
Ronald V. Placet, Esq.
Shawn D. Silva, Esq.
Ana Maria Garza, Esq.
OFFICE OF THE STATE CONTROLLER
300 Capitol Mall, Suite 1850
Sacramento, CA 95814
Fax: (916) 322-1220
Email: rchivaro@sco.ca.gov

Attorney for Respondent/Defendant
State Controller John Chiang
Robin B. Johansen
Remcho, Johansen & Prucell, LLP
201 Dolores Avenue
San Leandro, CA 94577
Fax: (510) 346-6201
Email: rjohansen@rjp.com

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on March 27, 2009, at Sacramento, California.

Cindy Harrell

VV

SUPERIOR COURT OF CALIFORNIA
County of Sacramento
720 Ninth Street ~ Room 101
Sacramento, CA 95814-1380
(916) 874-5403—Website www.saccourt.ca.gov

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1000 Petitioner/Appellant VS. ARNOLD SCHWARZENEGGER, as Governor, State of California; DEPARTMENT OF PERSONNEL ADMINISTRATION; JOHN CHIANG, as State Controller, and DOES 1 through 20, inclusive Respondent	COURT OF APPEAL NUMBER: C061020 SUPERIOR COURT NUMBER: 34-2009-80000135-CU-WM-GDS **NOTICE OF NON-AVAILABILITY OF REGISTER OF ACTIONS**

PLEASE BE ADVISED:

A designation has been filed to proceed by appendix instead of by clerk's transcript. Pursuant to rule 8.124(a)(2) of the California Rules of Court, the superior court clerk must promptly send a copy of the register of action, if any. Sacramento Superior Court does not keep a register of actions or a docket. Therefore, nothing will be sent.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

DATED: March 27, 2009

F. CHEN

By: FEN-RU CHEN, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA)
COUNTY OF SACRAMENTO)

DECLARATION OF MAILING

As Deputy Clerk of the Superior Court of California, County of Sacramento, I hereby declare under penalty of perjury, that I have this day mailed, by first class mail, postage fully prepaid, a true and correct copy of the above notice to each of the persons hereinafter set forth, addressed as follows:

Paul E. Harris, SBN 180265
SERVICE EMPLOYEES
INTERNATIONAL UNION, LOCAL 1000
1808 14th Street
Sacramento, CA 95814
(916) 554-1279
#
Representing: Petitioner/Appellant

David W. Tyra, SBN 116218
KRONICK, MOSCOVITZ,
TIEDEMANN & GIRARD
400 Capitol Mall, 27th Floor
Sacramento, CA 95814
(916) 321-4500
#
Representing: Defendant/Respondent
ARNOLD SCHWARZENEGGER and
DEPARTMENT OF PERSONNEL
ADMINISTRATION

William M. Yamada SBN UNKNOWN
DEPARTMENT OF PERSONNEL
ADMINISTRATION
1515 S Street, North Bldg., STE 400
Sacramento, CA 95814
(916) 446-4692
Representing:
DEPARTMENT OF PERSONNEL
ADMINIATRATION

Richard Chivaro, SBN 124391
OFFICE OF THE STATE
CONTROLLER
300 Captiol Mall, STE 1850
Sacramento, CA 95814
(916) 445-6854
Representing:
STATE CONTROLLER JOHN
CHIANG

#
Representing: Respondent

VV

Court of Appeal
Third Appellate District
621 Capitol Mall, 10th Floor
Sacramento, CA 95814

Executed at Sacramento, California, on March 30, 2009.

F. CHEN
DEPUTY CLERK

SUPERIOR COURT OF CALIFORNIA
County of Sacramento
720 Ninth Street ~ Room 101
Sacramento, CA 95814-1380
(916) 874-5403—Website www.saccourt.ca.gov

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1000
Petitioner/Appellant
vs.
ARNOLD SCHWARZENEGGER, as Governor, State of California; DEPARTMENT OF PERSONNEL ADMINISTRATION; JOHN CHIANG, as State Controller, and DOES 1 through 20, inclusive
Respondent

COURT OF APPEAL NO: C061020
SUPERIOR COURT NO: 34-2009-80000135-CU-WM-GDS

NOTICE OF FILING OF DESIGNATION AND NOTICE TO REPORTERS TO PREPARE TRANSCRIPTS

Appeal from the Honorable Judge PATRICK MARLETTE

PLEASE TAKE NOTICE that you and each of you are hereby directed to commence preparation of the REPORTER'S TRANSCRIPT on Appeal in the above-entitled action. The Appeal is to the THIRD DISTRICT COURT OF APPEAL and the transcript is to contain the following dates, as designated by the APPELLANT/RESPONDENT: W

COURT DATES	*(CSR) NUMBER*	*COURT REPORTER'S NAME*
01/09/09	7614	*L. RICCI*
01/29/09	6987	*K. NOWACK*

TRANSCRIPTS ARE DUE: APRIL 30, 2009

Please notify the Appeals Unit in writing before the due date if no transcript will be filed. Requests for an extension of time from the Third District Court of Appeal should be filed prior to the due date.

Unless otherwise notified, please prepare 1original and 1 copy of your transcript.

I declare under penalty of perjury that this notice was sent to the aforementioned reporters and the Court Reporter Supervisor via interoffice mail.

Executed on: March 30, 2009 BY: F. CHEN, 874-6475
Deputy Clerk

Counsel for Petitioner/Appellant	Counsel for Respondent
Paul E. Harris, SBN 180265 SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1000 1808 14th Street Sacramento, CA 95814 (916) 554-1279	David W. Tyra, SBN 116218 KRONICK, MOSCOVITZ, TIEDEMANN & GIRARD 400 Capitol Mall, 27th Floor Sacramento, CA 95814 (916) 321-4500 # Representing: Defendant/Respondent ARNOLD SCHWARZENEGGER and DEPARTMENT OF PERSONNEL ADMINISTRATION William M. Yamada SBN UNKNOWN DEPARTMENT OF PERSONNEL ADMINISTRATION 1515 S Street, North Bldg., STE 400 Sacramento, CA 95814 (916) 446-4692 Representing: DEPARTMENT OF PERSONNEL ADMINIATRATION Richard Chivaro, SBN 124391 OFFICE OF THE STATE CONTROLLER 300 Captiol Mall, STE 1850 Sacramento, CA 95814 (916) 445-6854 Representing: STATE CONTROLLER JOHN CHIANG

ROBIN B. JOHANSEN, State Bar No 79084
REMCHO, JOHANSEN & PURCELL, LLP
201 Dolores Avenue
San Leandro, CA 94577
Phone: (510) 346-6200
Fax: (510) 346-6201
Email: rjohansen@rjp.com

Attorneys for Respondent/Defendant
State Controller John Chiang

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1000,

Petitioner/Plaintiff,

vs.

ARNOLD SCHWARZENEGGER, as Governor, State of California; DEPARTMENT OF PERSONNEL ADMINISTRATION; JOHN CHIANG, as State Controller, and DOES 1 through 20, inclusive,

Respondents/Defendants.

No.: 34-2009-80000135-CU-WM-GDS

Assigned for All Purposes to the Honorable Patrick Marlette

RESPONDENT/DEFENDANT JOHN CHIANG'S NOTICE OF APPEAL; NOTICE OF ELECTION TO PROCEED BY WAY OF APPENDIX IN LIEU OF CLERK'S TRANSCRIPT; NOTICE OF DESIGNATION OF REPORTER'S TRANSCRIPT

NO FILING FEE PURSUANT TO GOVERNMENT CODE SECTION 6103

TO: THE CLERK OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF SACRAMENTO

PLEASE TAKE NOTICE that respondent/defendant John Chiang ("respondent") hereby appeals the Court's January 29, 2009 final ruling on the petition for writ of mandate and complaint for declaratory relief, as amended by the Court on January 30, 2009, in the above entitled case.

This Notice of Appeal is filed simultaneously with the Notice of Election to Proceed by Way of Appendix in Lieu of Clerk's Transcript and the Notice Designating Reporter's Transcript. Respondent elects to proceed by an appendix in lieu of a Clerk's Transcript under Rule 8.124 of the California Rules of Court. Respondent designates the transcript of the hearing on demurrers and petitions for writ of mandate, which were reported by Karen Nowack, CSR, for inclusion in the Reporter's Transcript, under Rule 8.130 of the California Rules of Court.

Dated: March 26, 2009

Respectfully submitted,

REMCHO, JOHANSEN & PURCELL, LLP

By: Robin B. Johansen
Robin B. Johansen

Attorneys for Respondent/Defendant
State Controller John Chiang

(00077767)

PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury that:

I am a citizen of the United States, over the age of 18, and not a party to the within cause or action. My business address is 201 Dolores Avenue, San Leandro, CA 94577.

On March 30, 2009, I served a true copy of the following document(s):

Respondent/Defendant John Chiang's Notice of Appeal; Notice of Election to Proceed By Way of Appendix in Lieu of Clerk's Transcript; Notice of Designation of Reporter's Transcript

on the following party(ies) in said action:

Ann M. Giese Service Employees International Union, Local 1000 Legal Department 1808 – 14th Street Sacramento, CA 95811	*Attorneys for Petitioner/Plaintiff Service Employees International Union, Local 1000*
David W. Tyra Kronick, Moskovitz, Tiedemann & Girard 400 Capitol Mall, 27th Floor Sacramento, CA 95814	*Attorneys for Respondent/Defendant Arnold Schwarzenegger*
Will M. Yamada Chief Counsel Department of Personnel Administration 1515 "S" Street, Suite 400 Sacramento, CA 95811-7246	*Attorneys for Respondent/Defendant Department of Personnel Administration*
Richard Chivaro State Controller's Office Chief Counsel 300 Capitol Mall, Suite 1850 Sacramento, CA 95814	*Respondent/Defendant*
Karen Nowack, CSR Sacramento County Superior Court Department 19 720 – 9th Street Sacramento, CA 95814	

☒ **BY UNITED STATES MAIL:** By enclosing the document(s) in a sealed envelope or package addressed to the person(s) at the address above and

☐ depositing the sealed envelope with the United States Postal Service, with the postage fully prepaid.

☒ placing the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the businesses' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, located in San Leandro, California, in a sealed envelope with postage fully prepaid.

☐ **BY OVERNIGHT DELIVERY:** By enclosing the document(s) in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

☐ **BY MESSENGER SERVICE:** By placing the document(s) in an envelope or package addressed to the persons at the addresses listed and providing them to a professional messenger service for service.

☐ **BY FACSIMILE TRANSMISSION:** By faxing the document(s) to the persons at the fax numbers listed based on an agreement of the parties to accept service by fax transmission. No error was reported by the fax machine used. A copy of the fax transmission is maintained in our files.

☐ **BY EMAIL TRANSMISSION**: By emailing the document(s) to the persons at the email addresses listed based on a court order or an agreement of the parties to accept service by email. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.

I declare, under penalty of perjury, that the foregoing is true and correct. Executed on March 30, 2009, in San Leandro, California.

VV

Maria Mora

Maria E. Mora

ROBIN B. JOHANSEN, State Bar No 79084
MARGARET R. PRINZING, State Bar No 209482
REMCHO, JOHANSEN & PURCELL, LLP
201 Dolores Avenue
San Leandro, CA 94577
Phone: (510) 346-6200
Fax: (510) 346-6201
Email: rjohansen@rjp.com

Attorneys for Respondent/Defendant
State Controller John Chiang

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1000, Petitioner/Plaintiff, vs. ARNOLD SCHWARZENEGGER, as Governor, State of California; DEPARTMENT OF PERSONNEL ADMINISTRATION; JOHN CHIANG, as State Controller, and DOES 1 through 20, inclusive, Respondents/Defendants.	No.: 34-2009-80000135-CU-WM-GDS Assigned for All Purposes to the Honorable Patrick Marlette **RESPONDENT/DEFENDANT JOHN CHIANG'S AMENDED NOTICE OF APPEAL; NOTICE OF ELECTION TO PROCEED BY WAY OF APPENDIX IN LIEU OF CLERK'S TRANSCRIPT; NOTICE OF DESIGNATION OF REPORTER'S TRANSCRIPT** **NO FILING FEE PURSUANT TO GOVERNMENT CODE SECTION 6103**

TO: THE CLERK OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF SACRAMENTO

PLEASE TAKE NOTICE that respondent/defendant John Chiang ("respondent") hereby appeals the Court's January 29, 2009 final ruling on the petition for writ of mandate and complaint for declaratory relief, as amended by the Court on January 30, 2009, in the above entitled case.

PLEASE TAKE FURTHER NOTICE that respondent elects to proceed by an appendix in lieu of a Clerk's Transcript under Rule 8.124 of the California Rules of Court.

PLEASE TAKE FURTHER NOTICE that respondent designates the transcript of the January 29, 2009 hearing on the demurrers and the petitions for writ of mandate, which were reported by Karen Nowack, CSR, for inclusion in the Reporter's Transcript, under Rule 8.130 of the California Rules of Court. Included with this Notice is a deposit in the amount of $325.00 for the transcript of these proceedings pursuant to Rule 8.130(b) of the California Rules of Court.

Dated: April 8, 2009

Respectfully submitted,

REMCHO, JOHANSEN & PURCELL, LLP

By: 
Robin B. Johansen

Attorneys for Respondent/Defendant
State Controller John Chiang

(00078810)

PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury that:

I am a citizen of the United States, over the age of 18, and not a party to the within cause or action. My business address is 201 Dolores Avenue, San Leandro, CA 94577.

On April 8, 2009, I served a true copy of the following document(s):

Respondent/Defendant John Chiang's Amended Notice of Appeal; Notice of Election to Proceed By Way of Appendix in Lieu of Clerk's Transcript; Notice of Designation of Reporter's Transcript

on the following party(ies) in said action:

Ann M. Giese Service Employees International Union, Local 1000 Legal Department 1808 – 14th Street Sacramento, CA 95811	*Attorneys for Petitioner/Plaintiff Service Employees International Union, Local 1000*
David W. Tyra Kronick, Moskovitz, Tiedemann & Girard 400 Capitol Mall, 27th Floor Sacramento, CA 95814	*Attorneys for Respondent/Defendant Arnold Schwarzenegger*
Will M. Yamada Chief Counsel Department of Personnel Administration 1515 "S" Street, Suite 400 Sacramento, CA 95811-7246	*Attorneys for Respondent/Defendant Department of Personnel Administration*
Richard Chivaro State Controller's Office Chief Counsel 300 Capitol Mall, Suite 1850 Sacramento, CA 95814	*Respondent/Defendant*
Karen Nowack, CSR Sacramento County Superior Court Department 19 720 – 9th Street Sacramento, CA 95814	

☒ **BY UNITED STATES MAIL:** By enclosing the document(s) in a sealed envelope or package addressed to the person(s) at the address above and

☐ depositing the sealed envelope with the United States Postal Service, with the postage fully prepaid.

☒ placing the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the businesses' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, located in San Leandro, California, in a sealed envelope with postage fully prepaid.

☐ **BY OVERNIGHT DELIVERY:** By enclosing the document(s) in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

☐ **BY MESSENGER SERVICE:** By placing the document(s) in an envelope or package addressed to the persons at the addresses listed and providing them to a professional messenger service for service.

☐ **BY FACSIMILE TRANSMISSION:** By faxing the document(s) to the persons at the fax numbers listed based on an agreement of the parties to accept service by fax transmission. No error was reported by the fax machine used. A copy of the fax transmission is maintained in our files.

☐ **BY EMAIL TRANSMISSION**: By emailing the document(s) to the persons at the email addresses listed based on a court order or an agreement of the parties to accept service by email. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.

I declare, under penalty of perjury, that the foregoing is true and correct. Executed on April 8, 2009, in San Leandro, California.

VV

Maria Mora

Maria E. Mora

SUPERIOR COURT OF CALIFORNIA
County of Sacramento
720 Ninth Street ~ Room 101
Sacramento, CA 95814-1380
(916) 874-5403—Website www.saccourt.ca.gov

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1000
Petitioner/Appellant
vs.

ARNOLD SCHWARZENEGGER, as Governor, State of California; DEPARTMENT OF PERSONNEL ADMINISTRATION; JOHN CHIANG, as State Controller, and DOES 1 through 20, inclusive
Respondent

COURT OF APPEAL NO: C061020
SUPERIOR COURT NO: 34-2009-80000135-CU-WM-GDS

AMENDED
NOTICE OF FILING OF DESIGNATION AND NOTICE TO REPORTERS TO PREPARE TRANSCRIPTS

Appeal from the Honorable Judge PATRICK MARLETTE

PLEASE TAKE NOTICE that you and each of you are hereby directed to commence preparation of the REPORTER'S TRANSCRIPT on Appeal in the above-entitled action. The Appeal is to the THIRD DISTRICT COURT OF APPEAL and the transcript is to contain the following dates, as designated by the APPELLANT/RESPONDENT: W

COURT DATES	*(CSR) NUMBER*	*COURT REPORTER'S NAME*
01/09/09	7614	*L. RICCI*
01/29/09	6987	*K. NOWACK*

TRANSCRIPTS ARE DUE: JUNE 1, 2009

Please notify the Appeals Unit in writing before the due date if no transcript will be filed. Requests for an extension of time from the Third District Court of Appeal should be filed prior to the due date.

Please prepare 1original and 2 copy of your transcript.

I declare under penalty of perjury that this notice was sent to the aforementioned reporters and the Court Reporter Supervisor via interoffice mail.

Executed on: MAY 1, 2009 BY: F. CHEN, 874-6475
Deputy Clerk

Counsel for Petitioner/Appellant	Counsel for Respondent
Paul E. Harris, SBN 180265 SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1000 1808 14th Street Sacramento, CA 95814 (916) 554-1279	David W. Tyra, SBN 116218 KRONICK, MOSCOVITZ, TIEDEMANN & GIRARD 400 Capitol Mall, 27th Floor Sacramento, CA 95814 (916) 321-4500 # Representing: Defendant/Respondent ARNOLD SCHWARZENEGGER and DEPARTMENT OF PERSONNEL ADMINISTRATION William M. Yamada SBN UNKNOWN DEPARTMENT OF PERSONNEL ADMINISTRATION 1515 S Street, North Bldg., STE 400 Sacramento, CA 95814 (916) 446-4692 Representing: DEPARTMENT OF PERSONNEL ADMINIATRATION Richard Chivaro, SBN 124391 OFFICE OF THE STATE CONTROLLER 300 Captiol Mall, STE 1850 Sacramento, CA 95814 (916) 445-6854 Representing: STATE CONTROLLER JOHN CHIANG

SUPERIOR COURT OF CALIFORNIA
County of Sacramento
720 Ninth Street ~ Room 101
Sacramento, CA 95814-1380
(916) 874-5403—Website www.saccourt.ca.gov

Service Employees International Union, Local 1000 **Petitioner/Appellant** **VS.** **SCHWARZENEGGER et al.** **Respondent**	COURT OF APPEAL NUMBER: C061020 SUPERIOR COURT NUMBER: 34-2009-80000135-CU-WM-GDS **NOTICE OF NON-AVAILABILITY OF REGISTER OF ACTIONS**

PLEASE BE ADVISED:

A designation has been filed to proceed by appendix instead of by clerk's transcript. Pursuant to rule 8.124(a)(2) of the California Rules of Court, the superior court clerk must promptly send a copy of the register of action, if any. Sacramento Superior Court does not keep a register of actions or a docket. Therefore, nothing will be sent.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

DATED: June 9, 2009

F. CHEN
By: FEN-RU CHEN, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA)
COUNTY OF SACRAMENTO)

DECLARATION OF MAILING

As Deputy Clerk of the Superior Court of California, County of Sacramento, I hereby declare under penalty of perjury, that I have this day mailed, by first class mail, postage fully prepaid, a true and correct copy of the above notice to each of the persons hereinafter set forth, addressed as follows:

Ann M. Giese, SBN 143934
SERVICE EMPLOYEES
INTERNATIONAL UNION, LOCAL 1000
1808 14th Street
Sacramento, CA 95814
(916) 554-1279
#
Representing: Petitioner/Appellant

David W. Tyra, SBN 116218
KRONICK, MOSCOVITZ,
TIEDEMANN & GIRARD
400 Capitol Mall, 27th Floor
Sacramento, CA 95814
(916) 321-4500
#
Representing: Defendant/Respondent
ARNOLD SCHWARZENEGGER and
DEPARTMENT OF PERSONNEL
ADMINISTRATION

William M. Yamada SBN UNKNOWN
DEPARTMENT OF PERSONNEL
ADMINISTRATION
1515 S Street, North Bldg., STE 400
Sacramento, CA 95814
(916) 446-4692
Representing:
DEPARTMENT OF PERSONNEL
ADMINIATRATION

Richard Chivaro, SBN 124391
OFFICE OF THE STATE
CONTROLLER
300 Captiol Mall, STE 1850
Sacramento, CA 95814
(916) 445-6854
ROBIN JOHANSEN, SBN 79084
REMCHO, JOHANSEN & PURCELL,
LLP
201 DOLORES AVENUE
SAN LEANDRO, CA 94577
(510) 346-6200

Representing: VV
STATE CONTROLLER JOHN
CHIANG

#
Representing: Respondent

Court of Appeal
Third Appellate District
621 Capitol Mall, 10th Floor
Sacramento, CA 95814

Executed at Sacramento, California, on June 10, 2009.

F. CHEN

DEPUTY CLERK

No. C061020

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1000,

Plaintiff and Appellant,

v.

ARNOLD SCHWARZENEGGER, et al.,

Defendants and Respondents.

On Appeal of an Order and Judgment
by the Sacramento County Superior Court,
Case No. 34-2009-80000135-CU-WM-GDS,
The Honorable Patrick Marlette

STIPULATION DESIGNATING CONTENTS OF JOINT APPENDIX

Robin B. Johansen, State Bar No. 79084
Margaret R. Prinzing, State Bar No. 209482
REMCHO, JOHANSEN & PURCELL, LLP
201 Dolores Avenue
San Leandro, CA 94577
Phone: (510) 346-6200
Fax: (510) 346-6201
Email: mprinzing@rjp.com

Attorneys for Defendant and Appellant
State Controller John Chiang

The parties, through their respective counsel, hereby designate that the Joint Appendix in Lieu of Clerk's Transcript shall be indexed as required by Rule 8.144(b) and shall contain the documents described in Exhibit A and which are incorporated herein by reference.

Respectfully submitted,

Dated: July 15, 2009

REMCHO, JOHANSEN & PURCELL, LLP

By: _____
Margaret R. Prinzing
Attorneys for Defendant and Appellant
State Controller John Chiang

Dated: July 16, 2009

SERVICE EMPLOYEES
INTERNATIONAL UNION,
LOCAL 1000

By: _____
Anne M. Giese
Attorneys for Plaintiff and Appellant
Service Employees International
Union, Local 1000

Dated: July 16, 2009

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD

By: _____
David W. Tyra
Attorneys for Defendants and Respondents Governor Schwarzenegger and Department of Personnel Administration

(00084944)

EXHIBIT A

CHRONOLOGICAL INDEX TO JOINT APPENDIX			
Tab	**Date Filed/Signed**	**Document**	**Volume/Page**
A	1/7/09	SEIU Verified Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief	Vol. I, JA I
B	1/7/09	Notice of Related Case	Vol. I, JA 18
C	1/9/09	Minute Order [Petitioner's Ex Parte Application for an Order Shortening Time to Hear Petition for Writ of Mandate and Respondents' Ex Parte Request for an Order Shortening Time for Filing Demurrer]	Vol. I, JA 20
D	1/13/09	Notice of Hearing and Demurrer to Verified Petitions for Writ of Mandate and Complaint for Declaratory and Injunctive Relief [by Governor Arnold Schwarzenegger, David Gilb and Department of Personnel Administration ("DPA")]	Vol. I, JA 24
E	1/13/09	Memorandum of Points and Authorities in Support of Demurrer to Verified Petitions for Writ of Mandate and Complaints for Declaratory and Injunctive Relief by Schwarzenegger, David Gilb and DPA	Vol. I, JA 29
F	1/13/09	Request for Judicial Notice in Support of Demurrer to Verified Petitions for Writ of Mandate and Complaint for Declaratory and Injunctive Relief [by Schwarzenegger, Gilb and DPA]	Vol. I, JA 52
G	1/13/09	Request for Judicial Notice, Exh. C: Dec. 22, 2008 Unfair Practice Charge filed by SEIU, Local 1000	Vol. I, JA 56
H	1/13/09	SEIU Local 1000's Memorandum of Points and Authorities in Support of Verified Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief	Vol. I, JA 101
I	1/13/09	Declaration of J. Felix De La Torre in Support of Verified Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief	Vol. I, JA 120

CHRONOLOGICAL INDEX TO JOINT APPENDIX			
Tab	**Date Filed/Signed**	**Document**	**Volume/Page**
J	1/13/09	Declaration of J. Felix De La Torre, Exh. A: Nov. 6, 2008 Letter from Arnold Schwarzenegger to State Workers	Vol. I, JA 123
K	1/13/09	Declaration of J. Felix De La Torre, Exh. B: Jan. 9, 2009 Memo from David Gilb re State Employee Furloughs	Vol. I, JA 126
L	1/13/09	Declaration of J. Felix De La Torre, Exh. C: Article 19.1 of the Agreement between State and SEIU Local 1000	Vol. I, JA 129
M	1/16/09	Minute Order [relating PECG, CASE, SEIU and CCPOA cases]	Vol. I, JA 133
N	1/20/09	SEIU Local 1000's Opposition to Demurrer to Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief	Vol. I, JA 135
O	1/20/09	Respondents' Schwarzenegger and DPA's Opposition to Petitioners' Petitions for Writ of Mandate in Consolidated Actions	Vol. I, JA 155
P	1/20/09	Declaration of Alene Shimazu in Support of Opposition to Merits of Petitioners' Petition for Writ of Mandate	Vol. I, JA 199
Q	1/20/09	Declaration of David W. Tyra in Support of Opposition to Merits of Petitioners' Petitions for Writ of Mandate	Vol. I, JA 205
R	1/20/09	Declaration of David W. Tyra, Exh. 1: Jul. 31, 2008 Executive Order S-09-08	Vol. I, JA 210
S	1/20/09	Declaration of David W. Tyra, Exh. 2: Governor's Sept. 23, 2008 Press Release regarding adoption of budget	Vol. I, JA 214
T	1/20/09	Declaration of David W. Tyra, Exh. 3: Governor's Budget, Special Session 2008-2009	Vol. I, JA 218
U	1/20/09	Declaration of David W. Tyra, Exh. 4: Oct. 2008 Finance Bulletin issued by Department of Finance	Vol. I, JA 243

CHRONOLOGICAL INDEX TO JOINT APPENDIX			
Tab	**Date Filed/Signed**	**Document**	**Volume/Page**
V	1/20/09	Declaration of David W. Tyra, Exh. 5: Nov. 6, 2008 Special Session Proclamation	Vol. I, JA 246
W	1/20/09	Declaration of David W. Tyra, Exh. 6: Nov. 6, 2008 letter from Governor to state workers	Vol. I, JA 248
X	1/20/09	Declaration of David W. Tyra, Exh. 7: CASE Public Information and Announcements	Vol. I, JA 251
Y	1/20/09	Declaration of David W. Tyra, Exh. 8: Dec. 17, 2008 Update from SEIU Local 1000	Vol. I, JA 253
Z	1/20/09	Declaration of David W. Tyra, Exh. 9: Jan. 9, 2009 PECG Weekly Update	Vol. I, JA 256
AA	1/20/09	Declaration of David W. Tyra, Exh. 10: Dec. 1, 2008 Fiscal Emergency Proclamation	Vol. I, JA 258
BB	1/20/09	Declaration of David W. Tyra, Exh. 11: Dec. 19, 2008 Executive Order S-16-08	Vol. I, JA 261
CC	1/20/09	Declaration of David W. Tyra, Exh. 12: Controller's Dec. 19, 2008 Press Release	Vol. I, JA 264
DD	1/20/09	Declaration of David W. Tyra, Exh. 13: Dec. 12, 2008 letter from Controller to Governor and Legislators	Vol. I, JA 266
EE	1/20/09	Declaration of David W. Tyra, Exh. 14: Department of Finance Financial Presentation	Vol. I, JA 270
FF	1/20/09	Declaration of Director of Finance Michael C. Genest in Support of Opposition to Merits of Petitioners' Petitions for Writ of Mandate	Vol. II, JA 285
GG	1/20/09	Declaration of Julie Chapman in Support of Opposition to Merits of Petitioners' Petitions for Writ of Mandate	Vol. II, JA 291

CHRONOLOGICAL INDEX TO JOINT APPENDIX			
Tab	**Date Filed/Signed**	**Document**	**Volume/Page**
HH	1/20/09	Declaration of Julie Chapman, Exh. A: Notices sent by DPA to PECG, SEIU Local 1000, CASE and CAPS	Vol. II, JA 295
II	1/20/09	Declaration of Bernice Torrey in Support of Opposition to Merits of Petitioners' Petitions for Writ of Mandate	Vol. II, JA 311
JJ	1/22/09	SEIU Local 1000's Reply in Support of Verified Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief	Vol. II, JA 316
KK	1/23/09	Minute Order [directing respondents to file notice that attaches complete text of all provisions of the MOUs cited in briefs]	Vol. II, JA 340
LL	1/23/09	Excerpts from Amended Request for Judicial Notice filed in *PECG v. Schwarzenegger* and Related Cases	Vol. II, JA 342
MM	1/23/09	Amended Request for Judicial Notice, Exh. B: Agreement between State and SEIU, Local 1000, Bargaining Unit 1	Vol. II, JA 347
NN	1/23/09	Amended Request for Judicial Notice, Exh. C: Agreement between State and SEIU, Local 1000, Bargaining Unit 3	Vol. III, JA 542
OO	1/23/09	Amended Request for Judicial Notice, Exh. D: Agreement between State and SEIU, Local 1000, Bargaining Unit 4	Vol. IV, JA 782
PP	1/23/09	Amended Request for Judicial Notice, Exh. E: Agreement between State and SEIU, Local 1000, Bargaining Unit 11	Vol. V, JA 926
QQ	1/23/09	Amended Request for Judicial Notice, Exh. F: Agreement between State and SEIU, Local 1000, Bargaining Unit 14	Vol. VI, JA 1092
RR	1/23/09	Amended Request for Judicial Notice, Exh. G: Agreement between State and SEIU, Local 1000, Bargaining Unit 15	Vol. VII, JA 1234

CHRONOLOGICAL INDEX TO JOINT APPENDIX			
Tab	**Date Filed/Signed**	**Document**	**Volume/Page**
SS	1/23/09	Amended Request for Judicial Notice, Exh. H: Agreement between State and SEIU, Local 1000, Bargaining Unit 17	Vol. VIII, JA 1413
TT	1/23/09	Amended Request for Judicial Notice, Exh. I: Agreement between State and SEIU, Local 1000, Bargaining Unit 20	Vol. IX, JA 1619
UU	1/23/09	Amended Request for Judicial Notice, Exh. J: Agreement between State and SEIU, Local 1000, Bargaining Unit 21	Vol. X, JA 1779
VV	1/29/09	Minute Order [Ruling on Petitions for Writ of Mandate, Complaints and Demurrers]	Vol. X, JA 1907
WW	1/30/09	Amended Minute Order – Ruling on Petitions for Writ of Mandate, Complaints and Demurrers	Vol. X, JA 1915
XX	2/3/09	Letter from Respondent/Defendant Controller to Judge Marlette seeking clarification of ruling	Vol. X, JA 1928
YY	2/4/09	Minute Order [re Controller's request for clarification of Court's order]	Vol. X, JA 1942
ZZ	2/5/09	Notice of Appeal by SEIU	Vol. X, JA 1945
AAA	2/5/09	Notice of Filing Notice of Appeal	Vol. X, JA 1949
BBB	2/13/09	Judgment Re: Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief	Vol. X, JA 1951
CCC	2/13/09	Order After Hearing [re Writ of Mandate]	Vol. X, JA 1967
DDD	2/20/09	Notice of Entry of Order After Hearing and Judgment Re: Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief	Vol. X, JA 1988
EEE	3/26/09	SEIU Local 1000's Designation of Record/Notice to Prepare Reporter's and Clerk's Transcripts on Appeal	Vol. X, JA 2030
FFF	3/27/09	Notice of Election to Proceed With Appendix on Appeal	Vol. X, JA 2037

CHRONOLOGICAL INDEX TO JOINT APPENDIX			
Tab	**Date Filed/Signed**	**Document**	**Volume/Page**
GGG	3/27/09	Notice of Non-Availability of Register of Actions	Vol. X, JA 2041
HHH	3/30/09	Notice of Filing of Designation and Notice to Reporters to Prepare Transcripts	Vol. X, JA 2043
III	4/1/09	Respondent/Defendant John Chiang's Notice of Appeal; Notice of Election to Proceed by Way of Appendix in Lieu of Clerk's Transcript; Notice of Designation of Reporter's Transcript	Vol. X, JA 2045
JJJ	4/9/09	Respondent/Defendant John Chiang's Amended Notice of Appeal; Notice of Election to Proceed by Way of Appendix in Lieu of Clerk's Transcript; Notice of Designation of Reporter's Transcript	Vol. X, JA 2049
KKK	5/1/09	Amended Notice of Filing of Designation and Notice to Reporters to Prepare Transcripts	Vol. X, JA 2053
LLL	6/9/09	Notice of Non-Availability of Register of Actions	Vol. X, JA 2055
MMM	7/16/09	Stipulation Designating Contents of Joint Appendix	Vol. X, JA 2057

ALPHABETICAL INDEX TO JOINT APPENDIX			
Tab	**Date Filed/Signed**	**Document**	**Volume/Page**
WW	1/30/09	Amended Minute Order – Ruling On petitions for Writ of Mandate, Complaints and Demurrers	Vol. X, JA 1915
KKK	5/1/09	Amended Notice of Filing of Designation and Notice to Reporters to Prepare Transcripts	Vol. X, JA 2053
MM	1/23/09	Amended Request for Judicial Notice, Exh. B: Agreement between State and SEIU, Local 1000, Bargaining Unit 1	Vol. II, JA 347
NN	1/23/09	Amended Request for Judicial Notice, Exh. C: Agreement between State and SEIU, Local 1000, Bargaining Unit 3	Vol. III, JA 542
OO	1/23/09	Amended Request for Judicial Notice, Exh. D: Agreement between State and SEIU, Local 1000, Bargaining Unit 4	Vol. IV, JA 782
PP	1/23/09	Amended Request for Judicial Notice, Exh. E: Agreement between State and SEIU, Local 1000, Bargaining Unit 11	Vol. V, JA 926
QQ	1/23/09	Amended Request for Judicial Notice, Exh. F: Agreement between State and SEIU, Local 1000, Bargaining Unit 14	Vol. VI, JA 1092
RR	1/23/09	Amended Request for Judicial Notice, Exh. G: Agreement between State and SEIU, Local 1000, Bargaining Unit 15	Vol. VII, JA 1234
SS	1/23/09	Amended Request for Judicial Notice, Exh. H: Agreement between State and SEIU, Local 1000, Bargaining Unit 17	Vol. VIII, JA 1413
TT	1/23/09	Amended Request for Judicial Notice, Exh. I: Agreement between State and SEIU, Local 1000, Bargaining Unit 20	Vol. IX, JA 1619
UU	1/23/09	Amended Request for Judicial Notice, Exh. J: Agreement between State and SEIU, Local 1000, bargaining Unit 21	Vol. X, JA 1779

ALPHABETICAL INDEX TO JOINT APPENDIX			
Tab	**Date Filed/Signed**	**Document**	**Volume/Page**
P	1/20/09	Declaration of Alene Shimazu in Support of Opposition to Merits of Petitioners' Petition for Writ of Mandate	Vol. I, JA 199
II	1/20/09	Declaration of Bernice Torrey in Support of Opposition to Merits of Petitioners' Petitions for Writ of Mandate	Vol. II, JA 311
Q	1/20/09	Declaration of David W. Tyra in Support of Opposition to Merits of Petitioners' Petitions for Writ of Mandate	Vol. I, JA 205
R	1/20/09	Declaration of David W. Tyra, Exh. 1: Jul. 31, 208 Executive Order S-09-08	Vol. I, JA 210
S	1/20/09	Declaration of David W. Tyra, Exh. 2: Governor's Sept. 23, 2008 Press Release regarding adoption of budget	Vol. I, JA 214
T	1/20/09	Declaration of David W. Tyra, Exh. 3: Governor's Budget, Special Session 2008-2009	Vol. I, JA 218
U	1/20/09	Declaration of David W. Tyra, Exh. 4: Oct. 2008 Finance Bulletin issued by Department of Finance	Vol. I, JA 243
V	1/20/09	Declaration of David W. Tyra, Exh. 5: Nov. 6, 2008 Special Session Proclamation	Vol. I, JA 246
W	1/20/09	Declaration of David W. Tyra, Exh. 6: Nov. 6, 2008 letter from Governor to state workers	Vol. I, JA 248
X	1/20/09	Declaration of David W. Tyra, Exh. 7: CASE Public Information and Announcements	Vol. I, JA 251
Y	1/20/09	Declaration of David W. Tyra, Exh. 8: Dec. 17, 2008 Update from SEIU Local 1000	Vol. I, JA 253
Z	1/20/09	Declaration of David W. Tyra, Exh. 9: Jan. 9, 2009 PECG Weekly Update	Vol. I, JA 256

ALPHABETICAL INDEX TO JOINT APPENDIX			
Tab	**Date Filed/Signed**	**Document**	**Volume/Page**
AA	1/20/09	Declaration of David W. Tyra, Exh. 10: Dec. 1, 2008 Fiscal Emergency Proclamation	Vol. I, JA 258
BB	1/20/09	Declaration of David W. Tyra, Exh. 11: Dec. 19, 2008 Executive Order S-16-08	Vol. I, JA 261
CC	1/20/09	Declaration of David W. Tyra, Exh. 12: Controller's Dec. 19, 2008 Press Release	Vol. I, JA 264
DD	1/20/09	Declaration of David W. Tyra, Exh. 13: Dec. 12, 2008 letter from Controller to Governor and Legislators	Vol. I, JA 266
EE	1/20/09	Declaration of David W. Tyra, Exh. 14: Department of Finance Financial Presentation	Vol. I, JA 270
FF	1/20/09	Declaration of Director of Finance Michael C. Genest in Support of Opposition to Merits of Petitioners' Petitions for Writ of Mandate	Vol. II, JA 285
J	1/13/09	Declaration of J. Felix De La Torre, Exh. A: Nov. 6, 2008 Letter from Arnold Schwarzenegger to state Workers	Vol. I, JA 123
K	1/13/09	Declaration of J. Felix De La Torre, Exh. B: Jan. 9, 2009 Memo from David Gilb re State Employee Furloughs	Vol. I, JA 126
L	1/13/09	Declaration of J. Felix De La Torre, Exh. C: Article 19.1 of the Agreement between State and SEIU Local 1000	Vol. I, JA 129
I	1/13/09	Declaration of J. Felix De La Torre in Support of Verified Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief	Vol. I, JA 120
HH	1/20/09	Declaration of Julie Chapman, Exh. A: Notices sent by DPA to PECG, SEIU Local 1000, CASE and CAPS	Vol. II, JA 295
GG	1/20/09	Declaration of Julie Chapman in Support of Opposition to Merits of Petitioners' Petitions for Writ of Mandate	Vol. II, JA 291

ALPHABETICAL INDEX TO JOINT APPENDIX			
Tab	**Date Filed/Signed**	**Document**	**Volume/Page**
LL	1/23/09	Excerpts from Amended Request for Judicial Notice filed in *PECG v. Schwarzenegger* and Related Cases	Vol. II, JA 342
BBB	2/13/09	Judgment Re: Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief	Vol. X, JA 1951
XX	2/3/09	Letter from Respondent/Defendant Controller to Judge Marlette seeking clarification of ruling	Vol. X, JA 1928
E	1/13/09	Memorandum of Points and Authorities in Support of Demurrer to Verified Petitions for Writ of Mandate and Complaints for Declaratory and Injunctive Relief by Schwarzenegger, David Gilb and DPA	Vol. I, JA 29
KK	1/23/09	Minute Order [directing respondents to file notice that attaches complete text of all provisions of the MOUs cited in briefs]	Vol. II, JA 340
C	1/9/09	Minute Order [Petitioner's Ex Parte Application for an Order Shortening Time to Hear Petition for Writ of Mandate and Respondents' Ex Parte Request for an Order Shortening Time for Filing Demurrer]	Vol. I, JA 20
YY	2/4/09	Minute Order [re Controller's request for clarification of Court's order]	Vol. X, JA 1942
M	1/16/09	Minute Order [relating to PECG, CASE, SEIU and CCPOA cases]	Vol. I, JA 133
VV	1/29/09	Minute Order [Ruling on Petitions for Writ of Mandate, Complaints and Demurrers]	Vol. X, JA 1907
ZZ	2/5/09	Notice of Appeal by SEIU	Vol. X, JA 1945
FFF	3/27/09	Notice of Election to Proceed With Appendix on Appeal	Vol. X, JA 2037
DDD	2/20/09	Notice of Entry of Order After Hearing and Judgment Re: Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief	Vol. X, JA 1988

ALPHABETICAL INDEX TO JOINT APPENDIX			
Tab	**Date Filed/Signed**	**Document**	**Volume/Page**
AAA	2/5/09	Notice of Filing Notice of Appeal	Vol. X, JA 1949
HHH	3/30/09	Notice of Filing of Designation and Notice to Reporters to Prepare Transcripts	Vol. X, JA 2043
D	1/13/09	Notice of Hearing and Demurrer to Verified Petitions for Writ of Mandate and Complaint for Declaratory and Injunctive Relief [by Governor Arnold Schwarzenegger, David Gilb and Department of Personnel Administration ("DPA")]	Vol. I, JA 24
GGG	3/27/09	Notice of Non-Availability of Register of Actions	Vol. X, JA 2041
LLL	6/9/09	Notice of Non-Availability of Register of Actions	Vol. X, JA 2055
B	1/7/09	Notice of Related Case	Vol. I, JA 18
CCC	2/13/09	Order After Hearing [re Writ of Mandate]	Vol. X, JA 1967
III	4/1/09	Respondent/Defendant John Chiang's Notice of Appeal; Notice of Election to Proceed by Way of Appendix in Lieu of Clerk's Transcript; Notice of Designation of Reporter's Transcript	Vol. X, JA 2045
O	1/20/09	Respondents' Schwarzenegger and DPA's Opposition to Petitioners' Petitions for Writ of Mandate in Consolidated Actions	Vol. I, JA 155
G	1/13/09	Request for Judicial Notice, Exh. C: Dec. 22, 2008 Unfair Practice Charge filed by SEIU, Local 1000	Vol. I, JA 56
F	1/13/09	Request for Judicial Notice in Support of Demurrer to Verified Petitions for Writ of Mandate and Complaint for Declaratory and Injunctive Relief [by Schwarzenegger, Gilb and DPA]	Vol. I, JA 52
EEE	3/26/09	SEIU Local 1000's Designation of Record/Notice to Prepare Reporter's and Clerk's Transcripts on Appeal	Vol. X, JA 2030

ALPHABETICAL INDEX TO JOINT APPENDIX			
Tab	**Date Filed/Signed**	**Document**	**Volume/Page**
H	1/13/09	SEIU Local 1000's Memorandum of Points and Authorities in Support of Verified Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief	Vol. I, JA 101
N	1/20/09	SEIU Local 1000's Opposition to Demurrer to Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief	Vol. I, JA 135
JJ	1/22/09	SEIU Local 1000's Reply in Support of Verified Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief	Vol. II, JA 316
A	1/7/09	SEIU Verified Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief	Vol. I, JA 1
MMM	7/16/09	Stipulation Designating Contents of Joint Appendix	Vol. X, JA 2057

PROOF OF SERVICE

CASE NAME: *SEIU LOCAL 1000 v. ARNOLD SCHWARZENEGGER, et al.*
COURT NAME: Sacramento County Superior Court / Third District Court of Appeal
CASE NUMBER: 34-2009-80000135 / C061020

I am a citizen of the United States and a resident of the County of Yolo. I am over the age of eighteen (18) years and not a party to the above-entitled action. My business address is 1808 14th Street, Sacramento, California 95811.

I am familiar with SEIU Local 1000's practice whereby the mail is sealed, given the appropriate postage and placed in a designated mail collection area. Each day's mail is collected and deposited in a United States mailbox after the close of each day's business.

On September 2, 2009, I served the following:

JOINT APPENDIX
(Volumes I through X)

[ ] (BY FACSIMILE) placing a true copy thereof into a facsimile machine addressed to the person and address shown below, which transmission receipt is attached hereto.

[ ] (BY OVERNIGHT DELIVERY) on the following party(ies) in said action, by placing a true copy thereof enclosed in a sealed envelope, with delivery fees paid or provided, and placed in the designated recepitcle for such overnight mail, addressed as set forth below. In the ordinary course of business, mail placed in that recepticle is picked up that same day for delivery the following business day.

[ ] (BY PERSONAL SERVICE) by delivering by hand and leaving a true and correct copy with the person at the address shown below:

[ ] (BY ELECTRONIC SERVICE) Via TRO mandating electronic service. The document was served electronically and the transmission was reported as complete and without error.

[X] (BY MAIL) by placing a true copy thereof enclosed in a sealed envelope addressed to the person(s) at the address as follows:

[ ] depositing the sealed envelope with the United States Postal Service, with the postage fully prepaid.

[X] placing the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the businesses' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the Unties States Postal Service, located in Sacramento, California, in a sealed envelope with postage fully prepaid.

SEE ATTACHED LIST

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Declaration was executed on September 2, 2009, at Sacramento, California.

Mary A. Medina

MARY A. MEDINA

SERVICE LIST

DAVID W. TYRA
KRONICK, MOSKOVITZ, TIEDEMANN
& GIRARD
400 Capitol Mall, 27th Floor
Sacramento, CA 95814-4407
Tel: (916) 321-4500 Fax: (916) 321-4555
e-mail: dyra@kmtg.com
Attorneys for Defendant and Respondent, *Arnold Schwarzenegger, Governor State of California*

WILL M. YAMADA
Department of Personnel Administration
1515 S Street, North Building, Ste. 400
Sacramento, CA 95811-7246
Tel: (916) 324-0512 Fax: (916) 323-4723
e-mail: willyamada@dpa.ca.gov
Attorney for Defendant and Respondent, *Department of Personnel Administration*

ROBIN B. JOHANSEN
REMCHO, JOHANSEN & PRUCELL, LLP
201 Dolores Avenue
San Leandro, CA 94577
Tel: (510) 346-6200 Fax: (510) 346-6201
e-mail: rjohansen@rjp.com
Attorneys for Defendant and Appellant, *John Chiang, Office of the State Controller*

THE HONORABLE PATRICK MARLETTE
Sacramento County Superior Court
Gordon D. Schaber Courthouse
720 Ninth Street, - Dep7t. 19
Sacramento, CA 95814

AMENDED PROOF OF SERVICE

CASE NAME: *SEIU LOCAL 1000 v. ARNOLD SCHWARZENEGGER, et al.*
COURT NAME: Sacramento County Superior Court / Third District Court of Appeal
CASE NUMBER: 34-2009-80000135 / C061020

I am a citizen of the United States and a resident of the County of Yolo. I am over the age of eighteen (18) years and not a party to the above-entitled action. My business address is 1808 14th Street, Sacramento, California 95811.

I am familiar with SEIU Local 1000's practice whereby the mail is sealed, given the appropriate postage and placed in a designated mail collection area. Each day's mail is collected and deposited in a United States mailbox after the close of each day's business.

On September 3, 2009, I served the following:

JOINT APPENDIX
(VOLUMES I through X)

[ ] (BY FACSIMILE) placing a true copy thereof into a facsimile machine addressed to the person and address shown below, which transmission receipt is attached hereto.

[ ] (BY OVERNIGHT DELIVERY) on the following party(ies) in said action, by placing a true copy thereof enclosed in a sealed envelope, with delivery fees paid or provided, and placed in the designated recepitcle for such overnight mail, addressed as set forth below. In the ordinary course of business, mail placed in that recepticle is picked up that same day for delivery the following business day.

[ ] (BY ELECTRONIC SERVICE) Via TRO mandating electronic service. The document was served electronically and the transmission was reported as complete and without error.

[X] **(BY MAIL)** by placing a true copy thereof enclosed in a sealed envelope addressed to the person(s) at the address as follows:

[ ] depositing the sealed envelope with the United States Postal Service, with the postage fully prepaid.

[X] placing the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the businesses' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the Unties States Postal Service, located in Sacramento, California, in a sealed envelope with postage fully prepaid.

ROBIN B. JOHANSEN
REMCHO, JOHANSEN & PRUCELL, LLP
201 Dolores Avenue
San Leandro, CA 94577
Tel: (510) 346-6200 Fax: (510) 346-6201
e-mail: rjohansen@rjp.com
Attorneys for Defendant and Appellant, *John Chiang, Office of the State Controller*

[X] **(BY PERSONAL DELIVERY)** by delivering by hand and leaving a true and correct copy via messenger to the person at the address shown below:

DAVID W. TYRA
KRONICK, MOSKOVITZ, TIEDEMANN
& GIRARD
400 Capitol Mall, 27th Floor
Sacramento, CA 95814-4407
Tel: (916) 321-4500 Fax: (916) 321-4555
e-mail: dyra@kmtg.com
Attorneys for Defendant and Respondent, *Arnold Schwarzenegger, Governor State of California*

WILL M. YAMADA
Department of Personnel Administration
1515 S Street, North Building, Ste. 400
Sacramento, CA 95811-7246
Tel: (916) 324-0512 Fax: (916) 323-4723
e-mail: willyamada@dpa.ca.gov
Attorney for Defendant and Respondent, *Department of Personnel Administration*

RICHARD CHIVARO, Chief Counsel
State Controller's Office
300 Capitol Mall, Ste. 1850
Sacramento, CA 95814
Attorneys for Defendant and Appellant, *John Chiang, Office of the State Controller*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Declaration was executed on September 3, 2009, at Sacramento, California.

MARY A. MEDINA