

No. C061011

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT

PROFESSIONAL ENGINEERS IN CALIFORNIA GOVERNMENT, et al.,
Plaintiffs and Appellants,

v.

JOHN CHIANG, as State Controller, etc.,
Defendant and Appellant;

ARNOLD SCHWARZENEGGER, as Governor, etc., et al.,
Defendants and Respondents.

On Appeal of an Order and Judgment
by the Sacramento County Superior Court,
Case No. 34-2008-80000126-CU-WM-GDS,
The Honorable Patrick Marlette

FILED

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

**JOINT APPENDIX
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Exhibit B



Agreement

Between

State of California

And

California Association of Professional Scientists (CAPS)

covering

**BARGAINING UNIT 10
PROFESSIONAL SCIENTIFIC**

Effective

July 1, 2006 through June 30, 2008

BU 10

Final 02/13/07

PECG JA 000223

CALIFORNIA ASSOCIATION OF PROFESSIONAL SCIENTISTS

BARGAINING UNIT 10

PROFESSIONAL SCIENTIFIC

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PREAMBLE

This AGREEMENT, hereinafter referred to as the Agreement, 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 CALIFORNIA ASSOCIATION OF PROFESSIONAL SCIENTISTS, hereinafter referred to as CAPS, has as its purpose the promotion of harmonious labor relations between the State and CAPS; 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 "Agreement" as used herein means the written agreement provided under Section 3517.5 of the Government Code.

ARTICLE 1 – RECOGNITION

1.1 Recognition

- A. Pursuant to Public Employment Relations Board decision S-SR-10, the State recognizes CAPS as the exclusive negotiating agent for all employees in Bargaining Unit 10.
- B. Pursuant to Government Code Sections 19815.4 and 3517, CAPS recognizes the Director of the Department of Personnel Administration 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 the Agreement.
- C. At such time that the State employer designates a position as confidential pursuant to Government Code Section 3513(f), the State shall mail a notice to CAPS of the confidential designation. CAPS shall have fifteen (15) calendar days after the mailing of such notice to protest the State's action. If CAPS elects to protest, the State shall meet-and-confer with CAPS in an effort to reach agreement. If the parties are unable to agree, the confidential designation dispute shall be submitted to PERB for resolution. If CAPS does not protest within the 15-day notice period, the confidential designation of a position shall be deemed agreeable to the parties and PERB shall be so advised.

ARTICLE 2 – SALARIES

2.1 Salaries

Effective July 1, 2006, employees will receive a general salary increase of three and five-tenths percent (3.5%). 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.

Effective July 1, 2007, the State agrees to provide a general salary increase to all Unit 10 classifications, as follows:

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 this 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 CUUR0400SA0, United States).
2. The 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 adjustment shall be established at 2.0%. If the cost of living for the year is greater than 4.0% for the specified period, the adjustment shall be 4.0%. 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 of 2007	2.6%

2.2 Merit Salary Adjustments

Employees shall receive annual merit salary adjustments in accordance with Government Code Section 19832 and applicable Department of Personnel Administration rules.

2.3 Night Shift Differential

Unit 10 employees who regularly work shifts shall receive a night shift differential as set forth below:

- A. Employees shall qualify for the first night shift pay differential of 40 cents per hour where four (4) or more hours of the regularly scheduled work shift fall between 6:00 p.m. and 12:00 midnight.
- B. Employees shall qualify for the second night shift pay differential of 50 cents per hour where four (4) or more hours of the regularly scheduled work shift fall between 12:00 midnight and 6:00 a.m.

- C. A "regularly scheduled work shift" are those regularly assigned work hours established by the department director or designee.

2.4 Bilingual Differential Pay

Bilingual Differential Pay applies to those positions designated by the Department of Personnel Administration 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. In order to receive bilingual differential pay, the position/employee must be certified by the using department and approved by the Department of Personnel Administration. (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 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 monthly pay period would receive a maximum \$100.00 per monthly pay period, including holidays.
2. A monthly employee, meeting the bilingual differential pay criteria less than the entire pay period, would receive 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.
5. An employee paid by the day meeting the bilingual differential pay criteria would receive a differential of \$4.61 per day.
- 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 the Department of Personnel Administration 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 the Department of Personnel Administration may receive the appropriate pay during periods of paid time off and absences (e.g., sick leave, vacation, annual leave, holidays, etc.).
- F. Employees will be eligible to receive the bilingual differential payments on the date the Department of Personnel Administration approves the departmental pay request. The effective date shall be retroactive to the date of appointment, not to exceed one (1) year, and may be retroactive up to two (2) years, to a position requiring bilingual skills when the appointment documentation has been delayed. The effective date for bilingual pay differential shall coincide with the date qualified employees begin using their bilingual skills on a continuing basis averaging ten percent (10%) of the time, consistent with the other provisions of this section.
- 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. Employees will not receive bilingual salary compensation for overtime hours worked, except upon separation from State service, regardless of total hours during the pay period. Agencies may not include bilingual salary compensation when computing overtime rates.
- 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 shall be included in the rate used to calculate temporary disability; industrial disability and non-industrial disability leave benefits.

2.5 Timely Payment of Wages

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

- B. When a permanent full-time or probationary employee receives no pay warrant on payday, the State agrees to issue a salary advance, consistent with departmental policy and under the following conditions:
1. When there are errors or delays in processing the payroll documents and the delay is through no fault of the employee, a salary advance will normally be issued within two (2) work days after payday for an amount close to the actual net pay (gross salary less deductions) in accordance with departmental policy.
 2. When a regular paycheck is late for reasons other than Item (1) above (e.g., AWOL, late dock), a salary advance of no less than 50 percent of the employee's actual net pay will normally be issued within five (5) work days after payday. No more than two (2) salary advances per calendar year may be issued under these circumstances.
 3. The difference between the employee's net pay and the salary advance shall not be paid until after receipt of the Controller's warrant for the pay period.
 4. The circumstances listed in Items (1), (2), and (3) are not applicable in remote areas where difficulties in the payroll process would not allow these timelines to be met. In these areas the State agrees to attempt to expeditiously correct payroll errors and issue salary advances.
- C. It will be the responsibility of the employee to make sure voluntary deductions (e.g., credit union deductions, union dues, etc.) are paid.
- D. This provision does not apply to those employees who have direct deposit. This provision does not preclude advances if they are provided for under any other rules or policies where direct deposit is involved.
- E. For overtime checks, an advance for an amount close to the actual net pay shall be issued by the end of the pay period following the actual month in which the overtime is submitted if the overtime check is not available at that time.

2.6 Staff Specialist Compensation

A. Department of Food and Agriculture

1. Upon approval of the Director of the Department of Food and Agriculture or his designee, Unit 10 employees may be temporarily designated as primary State titled scientists in a specific scientific discipline or area of specialization.
2. An employee who is designated by the Director of the Department of Food and Agriculture as a primary State titled scientist shall receive a one step salary increase for the duration of the assigned designation as compensation for the increased duties and responsibilities and for maintaining the highest level of technical expertise within his/her specific discipline.
3. There shall be a limit of three (3) State titled scientists in the department at any one time. The scientific disciplines include, but are not limited to, Biology, Entomology, Plant Nematology, and Plant Pathology.

4. Each designation is temporary and is subject to re-evaluation by the department at least once a year and may be terminated at any time by the Director or designee. The Staff Specialist designation shall not be utilized in lieu of a promotion. Selection of the titled scientist and the selection of the science are not subject to the grievance and arbitration provision in Article 9.

B. Department of Pesticide Regulation

1. Upon approval of the Director of the Department of Pesticide Regulation or his designee, a Unit 10 employee may be temporarily designated as the primary State titled scientist in the discipline of Toxicology.
2. The employee so designated by the Director of the Department of Pesticide Regulation shall receive a one step salary increase for the duration of the assigned designation as compensation for maintaining the highest level of technical expertise within the scientific discipline of Toxicology.
3. The designation is temporary and is subject to re-evaluation by the department at least once a year and may be terminated at any time by the Director or designee. The Staff Specialist designation shall not be utilized in lieu of a promotion. Selection of the titled scientist is not subject to the grievance and arbitration provision in Article 9.

2.7 Diving/Climbing Pay

- A. Incumbents in classifications currently eligible to receive diving pay shall continue to receive the differential at the rate of \$12.00 per diving hour. Upon departmental approval, new classes may be added to the eligible list and employees meeting these diving pay criteria will be so compensated.
- B. Effective upon agreement, Department of Industrial Relations (DIR) employees who are required to climb a tower crane, or any other structure in which the employee is required to use climbing equipment, to a height of thirty (30) feet or more for the purpose of conducting an inspection or investigation shall receive an hourly differential of ten dollars (\$10) per actual climbing hour. Said employee may be required to successfully complete training prescribed by the Division of Occupational Safety and Health as a condition of employment in positions necessitating climbing.
- C. Employees who "climb" pursuant to above will receive a minimum of one hour of climbing pay for any amount of climbing during the first hour of each day. Additional times spent climbing after the first hour during the same day will be rounded to the nearest quarter hour.

2.8 Overpayments/Payroll Errors

Overpayments shall be administered according to Government Code Section 19838.

2.9 Alternate Range 40

- A. Effective the first pay period following ratification of this Agreement by the Legislature and CAPS, an employee who meets the below criteria shall be compensated with Alternate Range 40 pay (AR 40).

Alternate Range 40 Criteria:

Range B. This range shall apply to incumbents in positions approved by the Department of Personnel Administration staff as having regular, direct responsibility for work supervision, on-the-job training, and work performance evaluation of at least two (2) inmates, wards, or resident workers who substantially replace civil service employees for a total of at least 173 allocated hours of inmates', wards', or resident workers' time per pay period.

- B. Any Unit 10 classifications may be considered for AR 40 compensation.

2.10 Recruitment and Retention Differentials

- A. Avenal, Ironwood, Calipatria, Centinela and Chuckawalla Valley Prisons

1. Effective July 1, 1998, employees who are employed at Avenal, Ironwood, Calipatria, Centinela or Chuckawalla Valley State Prisons, Department of Corrections for twelve (12) consecutive qualifying pay periods, shall be eligible for a recruitment and retention bonus of \$2,400, payable thirty (30) days following the completion of the twelve (12) consecutive qualifying pay periods.
2. If an employee voluntarily terminates, transfers, or is discharged prior to completing twelve (12) consecutive pay periods at Avenal, Ironwood, Calipatria, Centinela or Chuckawalla Valley State Prisons, there will be no pro rata payment for those months at any facility.
3. If an employee is mandatorily transferred by the Department, he/she shall be eligible for a pro rata share for those months served.
4. If an employee promotes to a different facility, or department other than at Avenal, Ironwood, Calipatria, Centinela or Chuckawalla Valley State Prisons prior to completion of the twelve (12) consecutive qualifying pay periods, there shall be no pro rata to this recruitment and retention bonus. After completing the twelve (12) consecutive qualifying pay periods, an employee who promotes within the Department will be entitled to a pro rata share of the existing retention bonus.
5. Part-time and intermittent employees shall receive a pro rata share of the annual recruitment and retention differential based on the total number of hours worked excluding overtime during the twelve (12) consecutive qualifying pay periods.
6. Annual recruitment and retention payments shall not be considered as compensation for purposes of retirement contributions.
7. Employees on IDL shall continue to receive this stipend.

8. If an employee is granted a leave of absence, the employee will not accrue time towards the twelve (12) qualifying pay periods, but the employee shall not be required to start the calculation of the twelve (12) qualifying pay periods all over. For example, if an employee has worked four (4) months at a qualifying institution and then takes six (6) months' maternity leave, the employee will have only eight (8) additional qualifying pay periods before receiving the initial payment of \$2,400.

B. Recruitment and Retention Differentials

1. Upon approval by the Department of Personnel Administration, a department may provide a monthly recruitment and retention differential to employees.
2. This differential may be authorized for specific classifications in specific geographic locations or facilities.
3. A department will provide the Union with notice when a request to provide a monthly recruitment and retention differential is made to the Department of Personnel Administration.
4. Less than full-time permanent employees and permanent intermittent employees may receive a recruitment and retention differential on a pro rata basis.
5. The amount and location of such differentials is neither grievable nor arbitrable.

2.11 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 earnings 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.

2.12 Out-of-State Pay Differential

Employees in the following classes that are headquartered out-of-State, will receive a pay differential of \$346.00 per month:

Schematic Code Class title

AC05 Pest Prevention Assistant I

AC10 Pest Prevention Assistant II

AC15 Pest Prevention Assistant III

The pay differential is effective upon ratification of the contract.

2.13 Tax Deferral of Lump Sum Leave Cash Out Upon Separation

- A. To the extent permitted by federal and state law, effective January 1, 2002 (or no later than four months following ratification of this agreement by both parties) 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 401k plan offered through the State's Savings Plus Program (SPP).
- B. If an employee does not have an existing 457 and/or 401k 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.

2.14 Emergency Pay (Veterinary Medical Officers)

Subject to a certification of available funds and approval by the Department of Personnel Administration, Veterinary Medical Officers may be eligible for a 5% or 10% (of base salary) pay differential in accordance with the following conditions:

- A. Code II declaration: Incumbents who are assigned expanded management, supervisory or lead responsibility in a small, critical emergency project where immediate control and eradication of animal pests are required to avoid an agricultural disaster in California resulting in significant loss shall receive a pay differential of five (5) percent of base salary. A Code II declaration will be issued under the authority of the Agency Secretary of CDFA when the infestation requires resources outside of CDFA.
- B. Code III declaration: Incumbents who are assigned expanded management, supervisory or lead responsibility in a large, critical emergency project where immediate control and eradication of animal pests are required to avoid an agricultural disaster in California resulting in significant loss shall receive a pay differential of ten (10) percent of base salary. A Code III declaration may only be issued by the Governor's Office.

2.15 Canine Differential Pay

Agricultural Biologists (BB40) and Associate Agricultural Biologist (BB43) shall receive \$50.00 per month, who meet the following criteria:

1. Are assigned to canine duty on a regular basis where canine duty constitutes the main assignment and occupies a minimum of fifty percent (50%) of the employee's time, and
2. Successfully completed a canine handler training program involving agricultural canine inspections, or equivalent, and
3. Possesses a Canine Handler Certificate, and continues to meet program standards upon which the certification was issued.

2.16 Field Training Biologist (FTB) Program – Department of Fish and Game

- A. **Field Training Biologist Program.** The Department may adopt regulations and/or policy which establishes a Field Training Biologist Program. The purpose of this program is to provide work related mentoring activities to biologists as defined by the FTB Advisory Committee. It is envisioned that such mentoring will be provided by a variety of department employees, including Unit 10 employees represented by CAPS. The terms of this settlement agreement shall apply only to Unit 10 employees as Field Training Biologists.
- B. **Assignment.** The Department may assign a Unit 10 employee to perform the duties of Field Training Biologist from among those Unit 10 certified employees who volunteer and possess the appropriate expertise to perform this duty. The Department retains the discretion to make assignments from among any Unit 10 employees when not enough qualified volunteers are available. Selection shall be made by the Department based on criteria recommended by the FTB Advisory Committee and adopted by the Director of the Department.
- C. **Field Training Biologist Advisory Committee.** There shall be established a Field Training Biologist Advisory Committee which shall meet periodically as needed. At least one representative on this Committee shall be selected by CAPS with no loss of compensation for time served in the event that CAPS selects a departmental employee to serve on the Committee. Recommendations of the Committee shall be subject to the final approval of the Director. The Department agrees to meet and confer regarding the impact of any decision made by the Director concerning operation of the Field Training Biologist Program which impacts matters within the scope of negotiations of Unit 10 employees not covered by this agreement and the Memorandum of Understanding (MOU) between CAPS and the State of California.

- D. **FTB Assignments.** Assignments of any Unit 10 employee to serve as a Field Training Biologist shall be made in no less than daily increments. Formal assignments shall be made in writing and may be terminated at any time at the Department's discretion. Any Unit 10 employee performing leadworker responsibilities or required to impart his/her knowledge on an informal basis to another employee is not eligible for FTB compensation unless specifically assigned in writing to perform the duties of Field Training Biologist.
- E. **Compensation.** Any Unit 10 employee assigned to the duties of a Field Training Biologist shall receive the equivalent hourly salary rate of one-step differential above the equivalent hourly salary rate of the maximum step of the employee's classification for each hour that the employee performs the duties of a Filed Training Biologist. Any Unit 10 employee eligible to receive such compensation may waive it.

2.17 One-Time Payment

- A. Within 90 days following Legislature approval in 2005/2006 Legislative session, all permanent Unit 10 represented employees in classifications that are not scheduled to receive a labor market adjustment during the term of this agreement, shall receive a one-time payment of up to \$1000. Eligible bargaining unit employees shall receive the payment as follows:
 - 1. Full-time employees and part-time employees who were on payroll August 16, 2006 and who meet the above criteria shall receive \$1000;
 - 2. Intermittent employees who were scheduled to work and were paid for 519 or more hours during the 12 month period effective July 1, 2005 – June 30, 2006 shall receive \$1000;
- B. The one-time payment shall not be subject to PERS deductions.
- C. Any employee who holds multiple appointments within CAPS and/or any other bargaining unit which provides for this payment, shall receive no more than a total of \$1000.

2.18 Labor Market Adjustments

- A. Effective January 1, 2007, the salary range of the classifications listed below shall be expanded and the new maximum rate shall be set at ten percent (10.0%) above the current maximum step of the range. Employees who have received the current maximum step for twelve or more qualifying pay periods shall receive an increase of five percent effective January 1, 2007 and a new salary anniversary date. Employees at the old maximum salary rate for less than twelve (12) qualifying pay periods shall receive a new salary anniversary date based on qualifying service at the old maximum salary rate. Qualifying service toward the twelve (12) qualifying pay periods shall be in accordance with DPA Rules 599.682 (b) and 599.687.

- 3824 Junior Industrial Hygienist
- 3855 Assistant Industrial Hygienist

3856 Associate Industrial Hygienist
 6230 Junior Industrial Hygiene Specialist, SCIF
 9322 Assistant Industrial Hygiene Specialist, SCIF
 9321 Associate Industrial Hygiene Specialist, SCIF
 3824 Junior Ergonomic Specialist, SCIF
 9359 Assistant Ergonomic Specialist, SCIF
 9361 Associate Ergonomic Specialist, SCIF
 7954 Public Health Microbiologist I
 7948 Public Health Microbiologist II
 7950 Public Health Microbiologist II - Virology
 7940 Public Health Microbiologist Specialist
 7939 Public Health Microbiologist Specialist - Virology
 7949 Examiner I, Laboratory Field Services
 7910 Cytotechnologist, Laboratory Field Services

Effective January 1, 2007, the minimum salary of the Public Health Microbiologist (Range A) classification shall be set at ten percent (10.0%) above the current minimum step of the range. Employees below the new minimum rate shall receive the new minimum rate and shall retain their salary anniversary dates.

- B. Effective January 1, 2007, the salary range of the classifications listed below shall be expanded and the new maximum rate shall be set at five percent (5.0%) above the current maximum step of the range. Employees who have received the current maximum step for twelve or more qualifying pay periods shall receive an increase of five percent effective January 1, 2007. Employees at the old maximum salary rate for less than twelve (12) qualifying pay periods shall receive a new salary anniversary date based on qualifying service at the old maximum salary rate. Qualifying service toward the twelve (12) qualifying pay periods shall be in accordance with DPA Rules 599.682 (b) and 599.687.

3781 Junior Health Physicist
 3779 Assistant Health Physicist
 3803 Associate Health Physicist
 0565 Assistant Public Health Biologist
 0564 Associate Public Health Biologist
 0563 Senior Public Health Biologist

- 7946 Examiner II, Laboratory Field Services
- 0404 Veterinary Medical Officer (Animal Health)
- 0413 Veterinary Medical Officer (Meat Inspection)
- 0254 Veterinary Medical Officer III (Animal Health)
- 0274 Veterinary Medical Officer III (Meat Inspection)

C. Effective January 1, 2007, the salary range of the classifications listed below shall be expanded and the new maximum rate shall be set at two and one-half percent (2.5%) above the current maximum step of the range. Employees who have received the current maximum step for twelve or more qualifying pay periods shall receive an increase of two and one-half percent effective January 1, 2007. Employees at the old maximum salary rate for less than twelve (12) qualifying pay periods shall receive a new salary anniversary date based on qualifying service at the old maximum salary rate. Qualifying service toward the twelve (12) qualifying pay periods shall be in accordance with DPA Rules 599.682 (b) and 599.687.

- 8060 Chemist
- 8068 Staff Chemist
- 8067 Forensic Scientist-Toxicologist Trainee
- 8088 Forensic Scientist-Toxicologist I
- 8089 Forensic Scientist-Toxicologist II
- 8071 Forensic Scientist-Toxicologist III

D. As of implementation of the provisions of Side Letter #1 incorporating the \$300 per month recruitment and retention differential into the base salary for Public Health Microbiologist II, the maximum salary rate for Examiner II, Laboratory Field Services shall be set equal to the maximum salary rate for the Public Health Microbiologist II. Employees who have received the current maximum step for twelve or more qualifying pay periods shall move to the new maximum of the salary range. Employees at the old maximum salary rate for less than twelve (12) qualifying pay periods shall receive a new salary anniversary date based on qualifying service at the old maximum salary rate. Qualifying service toward the twelve (12) qualifying pay periods shall be in accordance with DPA Rules 599.682 (b) and 599.687.

ARTICLE 3 – LEAVES

3.1 Vacation 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 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 monthly pay period 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
 - 20 years and over... 14 hours per month
1. 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 bonus 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.
- B. Breaks in employment of eleven (11) work days or more, including unpaid leaves of absence, shall not be counted as qualifying service for vacation purposes set forth under Subsection A. above. Absences from State service resulting from a temporary or permanent separation for more than eleven (11) consecutive working days which fall into two (2) consecutive qualifying pay periods shall disqualify the second pay period.
- C. Employees working less than full-time accrue vacation in accordance with the applicable DPA rules.
- D. If an employee does not use all of the vacation that the employee has accrued in a calendar year, the employee may carry over his/her accrued vacation credits to the following calendar year to a maximum of 640 hours. A department head or designee may permit an employee to carry over more than 640 hours of accrued vacation leave hours if an employee was unable to reduce his 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 until December 31 because of sick leave;

5. Was on jury duty; or
6. Was prevented by the department head or designee from utilizing accrued vacation.

It is the employee's responsibility to utilize all vacation hours in excess of the 640 hours cap by the end of each calendar year unless otherwise prevented from doing so as enumerated in Items (1) through (6) above. Whenever an employee's vacation accumulation exceeds 640 hours, the department head or designee has the right to order the employee to submit a vacation request which will demonstrate how and when the employee plans to use any hours which will exceed the cap by the end of the calendar year. If the employee does not use the time as planned for reasons other than those listed above, the department head or designee may then order the employee to take the excess time at the convenience of the department.

- E. Upon termination from State employment, the employee shall be paid for accrued vacation credits for all accrued vacation time.
- F. The time when vacations shall be taken by the employee shall be determined by the department head or designee. If an employee's vacation accumulation will exceed the vacation cap in Subsection d. at any time during a calendar year, the department head or designee has the right to order the employee to take vacation during the calendar year.
- G. Vacation requests must be submitted in accordance with departmental policies on this subject. However, when two 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 time and approval cannot be given to all employees requesting it, employees shall be granted their preferred vacation period in order of seniority (defined as total months of State service in the same manner as vacation is accumulated). When two or more employees have the same amount of State service, department seniority will be used to break the tie. Vacation schedules which have been established in a work unit, pursuant to the seniority provisions in this Section, shall not be affected by employee(s) entering the unit after the schedule has been established.
- H. Each department head or designee will make every effort to act on vacation requests in a timely manner.
- I. Vacations will be canceled only when operational needs require it.

3.2 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.
 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.

3.3 Family Medical Leave Act (FMLA)

- A. An eligible employee, as defined by FMLA regulations, 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.
- B. Employees shall be entitled to leave up to a total of 12 weeks for the current calendar year in accordance with FMLA regulations.

3.4 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, stepchild, brother, sister 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 grandchild, grandparent, 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 sick 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.

3.5 Parental Leave

- A. A department head or designee shall grant a female permanent employee's request for an unpaid leave of absence for purposes of pregnancy, child birth, recovery there from or care for the newborn or adopted child for a period not to exceed one (1) year.

The employee shall provide medical substantiation to support her request for pregnancy leave.
- B. A male spouse or 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 to an unpaid leave of absence for a period not to exceed one (1) year to care for his/her newborn or adopted child.
- C. During the period of time an employee is on parental leave, he/she shall be allowed to continue their health and dental 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.

3.6 Union Leave

CAPS shall have the choice of requesting an unpaid leave of absence or a paid leave of absence (union leave) for a CAPS representative. An unpaid leave of absence may be granted by the State pursuant to the unpaid leave of absence provision in this CAPS Agreement. A union leave may also be granted at the discretion of the affected department head or designee in accordance with the following:

- A. 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.
- B. CAPS agrees to reimburse the affected department(s) for the full amount of the affected employee's salary, plus an additional amount equal to 31 percent of the affected employee's salary, for all the time the employee is off on a union leave. Billing shall be for actual time on leave.
- C. 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.
- D. Except in emergencies or lay off situations, a union leave shall not be terminated by the department head or designee prior to the expiration date.
- E. Employees on a union leave shall suffer no loss of compensation or benefits.

- F. Whether or not time for a union leave is counted for merit purposes shall be determined by the State Personnel Board and such determination shall not be grievable or arbitrable.
- G. Employees on union leave under this provision and CAPS shall waive any and all claims against the State for Workers' Compensation and Industrial Disability Leave.
- H. 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, CAPS 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.

3.7 Unpaid Leave of Absence

- A. A department head or designee may grant an unpaid leave of absence for a period not to exceed one (1) 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.
- 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) work days prior to the effective date of the revocation.

- F. Upon request by the employee, a leave of absence may be terminated by the department head or designee prior to the expiration date with written notice at least thirty (30) work days prior to the effective date of the termination.

3.8 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. 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.
- 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. If an employee is assigned an approved alternate work week schedule, the employee is not required to return to work after an eight (8) hour period of jury duty has been served.

3.9 Non-Industrial Disability Insurance

- A. Non-Industrial Disability Insurance (NDI) is a program for State employees who become disabled due to nonwork-related disabilities as defined by Section 2626 of the Unemployment Insurance Code.
- B. For periods of disability commencing on or after October 1, 1984, eligible employees shall receive NDI payments at 60 percent of their full pay, not to exceed \$135 per week, payable monthly for a period not exceeding 26 weeks for any one disability benefit period. An employee is not eligible for a second disability benefit due to the same or related cause or condition unless they have returned to their regular time base, and work for at least ten (10) consecutive work days. Paid leave shall not be used to cover the ten (10) work days.
- C. The employee shall serve a ten (10) consecutive calendar day waiting period before NDI payments commence for each disability. Accrued vacation or sick leave balances may be used to cover this waiting period. The waiting period may be waived commencing with the first full day of confinement in a hospital or nursing home for at least one full day. A full day is defined as a 24-hour period starting at midnight.
- D. If the employee elects to use vacation, annual leave, personal leave or sick leave credits prior to receiving NDI payments, he or she is not required to exhaust the accrued leave balance.

- E. Following the start of NDI payments, an employee may, at any time, switch from NDI to sick leave, or vacation leave, annual leave, personal leave, or catastrophic leave but may not return to NDI until that leave is exhausted.
- F. In accordance with the State's "return to work" policy, an employee who is eligible to receive NDI benefits and who is medically certified as unable to return to full-time work during the period of his or her disability, may upon the discretion of his or her appointing power work those hours (in hour increments) which, when combined with the NDI benefit, will not exceed 100 percent of regular "full pay." This does not qualify the employee for a new disability period under B of this article. The appointing power may require an employee to submit to a medical examination by a physician or physicians designated by the Director of the Employment Development Department for the purpose of evaluating the capacity of the employee to perform the work of his or her position.
- G. If an employee refuses to return to work in a position offered by the employer under the State's Injured State Worker Assistance Program, NDI benefits will be terminated effective the date of the offer.
- H. Where employment is intermittent or irregular, the payments shall be determined on the basis of the proportionate part of a monthly rate established by the total hours actually employed in the 18 monthly pay periods immediately preceding the pay period in which the disability begins as compared to the regular rate for a full-time employee in the same group or class. An employee will be eligible for NDI payments on the first day of the monthly pay period following completion of 960 hours of compensated work.
- I. All other applicable Department of Personnel Administration laws and regulations not superseded by these provisions will remain in effect.
- J. Upon approval of NDI benefits, the State may issue an employee a salary advance if the employee so requests.
- K. All appeals of a denial of an employee's NDI benefits shall only follow the procedures in the Unemployment Insurance Code and Title 22. 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 the denial of an individual's benefits.

3.10 Catastrophic Leave

Upon request of an employee and upon approval of a department director or designee, annual leave, CTO, personal leave, vacation and/or holiday leave credits may be transferred from one or more employees to another employee, in accordance with departmental policies and under certain conditions listed below. Sick leave credits cannot be transferred under this provision.

- A. When the receiving employee faces financial hardship due to injury or the prolonged illness of the employee, or the employee's spouse, child, or parent.
- B. The receiving employee has exhausted all leave credits.

- C. The donations must be in whole-hour increments and credited as vacation or annual leave.
- D. Transfer of annual leave, personal leave, vacation, CTO, and holiday credits shall be allowed across departmental lines in accordance with the policies of the receiving department.
- E. The total leave credits received by the employee shall normally not exceed three months; however, if approved by the appointing authority, the total leave credits received may be six months.
- F. Donations shall be made on a form to be developed by the State and signed by the donating employee and verified by the donating department. These donations are irrevocable.
- G. This Section is not subject to the grievance procedure contained in Article 9 of this Agreement.
- H. Any state employee who is eligible to accrue leave credits is eligible to contribute to an employee's catastrophic leave credits.

3.11 Work and Family Program – Transfer of Leave Credits Between Family Members

Upon request of an employee and upon approval of a department director or designee, leave credits (CTO, annual leave, personal leave, vacation, and/or holiday credit) may be transferred between family members [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] in accordance with departmental policies, under the following conditions:

- A. To care for the family member'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 297, brother, sister, or other person residing in the immediate household, who has a serious health condition, or a medical leave for the employee's own serious health condition as defined by the Family Medical Leave Act (FMLA) or the California Family Rights Act (CFRA), or for a parental leave to care for a newborn or adopted child.
- B. The employee shall give notice to his/her immediate supervisor as soon as possible and shall, if requested by the supervisor, provide medical certification from a physician to support this request. The department head or designee shall approve transfer of leave credits only after having ascertained that the leave is for an authorized reason. For family care leave for the 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 297), brother or sister, or other person residing in the immediate household, who has a serious health condition, this certification need not identify the serious health condition involved, but shall contain all of the following:

1. The date, if known, on which the serious health condition commenced;
 2. The probable duration of the condition;
 3. An estimate of the amount of time that the health provider believes the employee needs to care for the child, parent or spouse domestic partner that has been defined and certified with the Secretary of State's office in accordance with Family Code Section 297), brother or sister, or other person residing in the immediate household;
 4. A statement that the serious health condition warrants the participation of the employee to provide care during a period of treatment or supervision of the 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. For the employee's own serious health condition, the certification shall also contain a statement that, due to the serious health condition, the employee is unable to work at all or is unable to perform any one of more of the essential functions of his or her position.
- C. Sick leave credits cannot be transferred.
- D. The receiving employee has exhausted all leave credits.
- E. The donations must be a minimum of one (1) hour and in whole increments thereafter.
- F. The donating employee must maintain a minimum balance of 80 hours of paid leave time.
- G. Transfer of leave credits shall be allowed to cross-departmental lines in accordance with the policies of the receiving department.
- H. The donated hours may not exceed three (3) months. However, if approved by the appointing authority, the total leave credits received may be six (6) months.
- I. Donations shall be made on a form to be developed by the State, signed by the donating employee, and verified by the donating department. Once transferred, donations will not be returned to the donor.
- J. This section is not subject to the grievance and arbitration article of this Contract.

3.12 Catastrophic Leave - Natural Disaster

Upon request of an employee and upon approval of a department director or designee, leave credits (CTO, personal leave, vacation, annual and/or holiday) may 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 a 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 in whole-hour increments and credited as vacation or annual leave.
- E. 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.
- F. 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.
- G. Donations shall be made on a form to be developed by the State, signed by the donating employee, and verified by the donating department. These donations are irrevocable.
- H. This Section is not subject to the grievance procedure contained in Article 9 of this Agreement.
- I. Any state employee who is eligible to accrue leave credits is eligible to contribute to an employee's catastrophic leave credits.

3.13 Annual Leave

- A. Employees may elect to enroll in the annual leave program to receive annual leave credit in lieu of vacation and sick leave credits. Employees enrolled in the annual leave program may elect to enroll in the vacation and sick leave program at any time except that once an employee elects to enroll in either the annual leave program or vacation and sick leave program, the employee may not elect to enroll in the other program until 24 months has elapsed from date of enrollment.

- B. 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

20 years and over 18 hours per month

Part-time and hourly employees shall accrue proportional annual leave credits, in accordance with the applicable DPA rules. Employees shall have the continued use of any sick leave accrued as of the effective date of this Agreement, in accordance with applicable laws, rules or memorandum of understanding. All provisions necessary for the administration of this Section shall be provided by DPA rule or memorandum of understanding.

- C. A full-time employee who has eleven (11) or more working days of service in a monthly pay period shall earn annual leave credits as set forth in DPA Rules 599.608 and 599.609.

Absences from State service resulting from a temporary or permanent separation for more than eleven (11) consecutive days which fall into two (2) consecutive qualifying pay periods shall disqualify the second pay period.

- D. Employees who work in multiple positions may participate in annual leave, provided an election is made while employed in an eligible position subject to these provisions. Annual leave accrual for employees in multiple positions will be computed by combining all positions, as in vacation leave, 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.
- E. If an employee does not use all of the annual leave that the employee has accrued in a calendar year, the employee may carry over his/her accrued annual leave credits to the following calendar year to a maximum of 640 hours. A department head or designee may permit an employee to carry over more than 640 hours of 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 annual leave until December 31 because of sick leave; or (5) was on jury duty.
- F. Upon termination from State employment, the employee shall be paid for accrued annual leave credits for all accrued annual leave time.

- G. The time when annual leave shall be taken by the employee shall be determined by the department head or designee. If on January 1 of each year an employee's annual leave bank exceeds the cap in Subsection E., the department may order the employee to take annual leave.
- H. 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 annual leave time and approval cannot be given to all employees requesting it, employees shall be granted their preferred annual leave period in order of State seniority.
- I. Each department head or designee will make every effort to act on annual leave requests in a timely manner.
- J. Annual leave that is used for purposes of sick leave is subject to the requirements set forth in Section 3.2, Sick Leave, of this Agreement.
- K. The enhanced nonindustrial disability insurance (ENDI) in Section 3.12 applies only to those in the annual leave program described above in this Section.
- L. Employees who are currently subject to vacation and sick leave provisions may elect to enroll in the annual leave program at any time after 24 months has elapsed from date of last enrollment. The effective date of the election shall be the first day of the pay period in which the election is received by the appointing power. Once enrolled in annual leave, an employee shall become entitled to an enhanced ENDI benefit (50 percent of gross salary).

3.14 Enhanced Non-Industrial Disability Insurance - Annual Leave

- A. This ENDI provision is only applicable to employees participating in the annual leave program referenced in Section 3.13 above.
- B. Enhanced Non-Industrial Disability Insurance (ENDI) is a program for state employees who become disabled due to nonwork-related disabilities as defined by Section 2626 of the Unemployment Insurance Code.
- C. For periods of disability commencing on or after January 1, 1989, eligible employees shall receive ENDI payments at 50 percent of their gross salary, payable monthly for a period not exceeding 26 weeks for any one disability benefit period. An employee is not eligible for a second disability benefit due to the same or related cause or condition unless they have returned to their regular time base, and work for at least ten (10) consecutive work days. Paid leave shall not be used to cover the ten (10) work days. Disability payments may be supplemented with annual leave, sick leave or partial payment to provide for up to 100 percent income replacement. At the time of an ENDI claim, an employee may elect either the 50 percent ENDI benefit rate or a supplementation level of 75 percent or 100 percent at gross pay. Once a claim for ENDI has been filed and the employee has determined the rate of supplementation, the supplemental rate shall be maintained throughout the disability period.

- D. The employee shall serve a seven (7) consecutive calendar day waiting period before ENDI payments commence for each disability. Accrued paid leave or CTO leave balances may be used to cover this waiting period. The waiting period may be waived commencing with the first full day of confinement in a hospital, nursing home, or emergency clinic for at least one full day. A full day is defined as a 24-hour period starting at midnight.
- E. If the employee elects to use annual leave or sick leave credits prior to receiving ENDI payments, he or she is not required to exhaust the accrued leave balance.
- F. Following the start of ENDI payments an employee may at any time switch from ENDI to sick leave or annual leave, but may not return to ENDI until that leave is exhausted.
- G. In accordance with the State's "return to work" policy, an employee who is eligible to receive ENDI benefits and who is medically certified as unable to return to their fulltime work during the period of his or her disability, may upon the discretion of his or her appointing power, work those hours (in hour increments) which when combined with the ENDI benefit, will not exceed 100 percent their regular "full pay." This does not qualify the employee for a new disability period under c. of this article. The appointing power may require an employee to submit to a medical examination by a physician or physicians designated by the Director of the Employment Development Department for the purpose of evaluating the capacity of the employee to perform the work of his or her position.
- H. If an employee refuses to return to work in a position offered by the employer under the State's Injured State Worker Assistance Program, ENDI benefits will be terminated effective the date of the offer.
- I. Where employment is intermittent or irregular, the payments shall be determined on the basis of the proportionate part of a monthly rate established by the total hours actually employed in the 18 monthly pay periods immediately preceding the pay period in which the disability begins as compared to the regular rate for a full-time employee in the same group or class. An employee will be eligible for ENDI payments on the first day of the monthly pay period following completion of 960 hours of compensated work.
- J. All other applicable Department of Personnel Administration laws and regulations not superseded by these provisions will remain in effect.
- K. Upon approval of ENDI benefits, the State may issue an employee a salary advance if the employee so requests.
- L. All appeals of an employee's denial of ENDI benefits shall only follow the procedures in the Unemployment Insurance Code and Title 22. 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.
- M. Employees who become covered in the annual leave program while on an NDI claim shall continue to receive NDI pay at the old rate for the duration of the claim.

- N. Employees who do not elect the annual leave program will receive NDI benefits in accordance with the current program in section 3-B 3.9 and such benefits are limited to \$135.00 per week.

3.15 Blood Donation

It is the policy of the state to support the participation of Unit 10 employees in donating blood, plasma, platelets and other blood products to certified donation centers, including certified mobile facilities. Any Unit 10 employee may be allowed paid leave to make these donations.

3.16 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 in accordance with the California Governor's Mentoring Program, 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 in the California Department of Corrections and Rehabilitation; or
 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 pro rated amount of mentoring leave based upon their time base. 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 9 of this Contract.

3.17 Mentoring Leave Authorization

DPA shall authorize state departments to include mentoring leave in support of regional science fair judging statewide and the Sacramento Regional Science and Engineering Fair as an approved program under Section 3.14, Mentoring Leave.

3.18 Precinct Election - Paid Time Off

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 Voters for such service. Verification of service may be required.

3.19 Voluntary Personal Leave Program (VPLP)

The State shall continue a Voluntary Personal Leave Program (VPLP) for all 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 VPLP.
- B. Each full-time employee participating in the VPLP shall continue to work his/her assigned work schedule and shall have a reduction in pay equal to 5%. In exchange eight (8) hours of leave will be credited to the employee's VPLP 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 3 (Leaves).

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

When an employee is removed from the VPLP, he/she may not participate for a minimum of 12 months and he/she is not eligible to re-enroll until his/her balance is reduced to a maximum of 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 VPLP.
- G. A State employee in the VPLP 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 employee not participated in the VPLP.
- H. Participation in the VPLP 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. Participation in the VPLP 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 VPLP for intermittent employees shall be prorated based upon the number of hours worked in the monthly pay period.
- L. The VPLP shall be administered consistent with existing payroll system and the policies and practices of the State Controller's Office.
- M. Employees on EIDL, NDI, IDL, or Worker's Compensation for the entire monthly pay period shall be excluded from the VPLP for that month.

ARTICLE 4 – HOLIDAYS

4.1 Holidays

- A. All 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. Observed 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. For those employees who work schedules other than Monday through Friday, those holidays listed in Subsection B. above shall be observed on the day on which the holiday occurs. An employee shall receive compensation for only the observed or actual holiday, not both.
- C. Every full-time and part-time employee, upon completion of six (6) months of his/her initial probationary period in State service, shall be entitled to one (1) 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, full-time employees shall accrue eight (8) hours of holiday credit per said holiday. If the employee is required to work on the observed holiday, the employee shall be compensated in accordance with paragraph G or I below. An employee shall receive compensation for only the observed or actual holiday, not both.

- G. When a full-time employee in Work Week Group 2 is required to work on an observed holiday, such employee shall receive eight hours of holiday credit and one and one-half (1½) the hourly rate for all hours worked on the holiday. The method of compensation shall be at the State's discretion. If a full-time employee works eight hours on the holiday, the employee shall receive no more than 20 hours of total compensation (combination of holiday credit, CTO, and cash) for each holiday worked.
- 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 a permanent full-time employee is required to work on an observed holiday and the observed holiday falls on the employee's regularly scheduled day off, the employee shall receive up to eight hours of holiday credit and one hour Administrative Time Off (ATO) for every two hours worked. If an observed holiday falls on an employee's normal day off, and the employee does not work, the employee shall receive no more than eight hours of holiday credit.
- 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 compensation for all hours worked on the observed holiday, compensable by cash or holiday credit. The method of compensation shall be at the State's discretion.

K. Part-time employees shall receive 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 SL/HOL 8
	7	10	11	12	13	14	15	
1/5	1.40	2.00	2.20	2.40	2.60	2.80	3.00	1.60
2/5	2.80	4.00	4.40	4.80	5.20	5.60	6.00	3.20
3/5	4.20	6.00	6.60	7.20	7.80	8.40	9.00	4.80
4/5	5.60	8.00	8.80	9.60	10.40	11.20	12.00	6.40
1/8	0.88	1.25	1.38	1.50	1.63	1.75	1.88	1.00
1/4	1.75	2.50	2.75	3.00	3.25	3.50	3.75	2.00
3/8	2.63	3.75	4.13	4.50	4.88	5.25	5.63	3.00
1/2	3.50	5.00	5.50	6.00	6.50	7.00	7.50	4.00
5/8	4.38	6.25	6.88	7.50	8.13	8.75	9.38	5.00
3/4	5.25	7.50	8.25	9.00	9.75	10.50	11.25	6.00
7/8	6.13	8.75	9.63	10.50	11.38	12.25	13.13	7.00
1/10	0.70	1.00	1.10	1.20	1.30	1.40	1.50	0.80
3/10	2.10	3.00	3.30	3.60	3.90	4.20	4.50	2.40
7/10	4.90	7.00	7.70	8.40	9.10	9.80	10.50	5.60
9/10	6.30	9.00	9.90	10.80	11.70	12.60	13.50	7.20

A part-time 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.

L. Work Week Group 2 employees may request and take Holiday Credit in fifteen (15) minute increments.

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

ARTICLE 5 – HEALTH AND WELFARE

5.1 Health, Dental, Vision

A. Health Benefits Plans

1. Contribution Amounts CalPERS

- a. Effective July 1, 2006, the employer health benefits contribution for each employee shall continue to be an amount equal to 85 percent 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 80 percent 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 benefit year.

Effective January 1, 2007, the employer health benefits contribution for each employee shall be an amount equal to 80 percent 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 80 percent 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 benefit year.

To be eligible for these contributions, an employee must positively enroll in a health plan administered or approved by CalPERS.

- b. The parties agree to work cooperatively with CalPERS and the health plans to control premium increases.
2. Unit 10 employees who first become eligible for health benefit enrollment on or after January 1, 2007, shall be subject to a two-year vesting schedule for the employer health contribution for dependents as follows:
 - a. 50% of the normal employer dependent portion of the contribution upon initial enrollment;
 - b. 75% of the normal employer dependent portion of the contribution upon completion of 12 months of service; and
 - c. 100% of the normal employer dependent portion of the contribution upon completion of 24 months of service.

The employer dependent contribution amounts shall be established by DPA each year at the same time that the normal employer health contributions are established. At the option of the State, the effective date for this subsection may be delayed until July 1, 2007 to accommodate administrative or system changes which may be necessary to implement this section.

B. Health Benefits Eligibility

1. Employee Eligibility

- a. 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 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 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 480 paid hours in a control period or 960 paid hours in two 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).

C. Dental Benefit Plans

1. Contribution

- a. From July 1, 2006, the State agrees to pay the following contribution for dental benefits. To be eligible for this contribution, an employee must positively enroll in a dental plan administered by Department of Personnel Administration.
 - (1) The State shall pay up to \$35.04 per month for coverage of an eligible employee.
 - (2) The State shall pay up to \$61.73 per month for coverage of an eligible employee plus one dependent.
 - (3) The State shall pay up to \$89.55 per month for coverage of an eligible employee plus two or more dependents.
- b. 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 25 percent (25 %) of the total premium.

2. Employee Eligibility

Employee eligibility for dental benefits is the same as that prescribed for health benefits under Section 5.1.B.1 and 2 of this agreement.

3. Family Member Eligibility

Family member eligibility for dental benefits is the same as that prescribed for health benefits under Section 5.1.B.3 of this agreement.

4. Coverage During First 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 24 month qualifying period. However, if no alternative plan or prepaid plan is available within a 50-mile radius of the employee's residence, the employee will be allowed to enroll in the indemnity or preferred provider option plan.

D. Vision Benefit Plan

1. 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.

2. Employee Eligibility

Employee eligibility for vision benefits is the same as that prescribed for health benefits under Section 5.1.B.1 and 2 of this agreement.

3. Family Member Eligibility

Family member eligibility for vision benefits is the same as that prescribed for health benefits under Section 5.1.B.3 of this agreement.

5.2 Employee Assistance Program

- A. The State recognizes that alcohol, 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, drug, and stress-related problems such as marital, family, emotional, financial, medical, legal, or other personal problems. The intent of this Section is to assist an employee's voluntary efforts to treat alcoholism or a drug-related or a stress-related problem so as to retain or recover his/her value as an employee.
- 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 to be referred to an Employee Assistance Program Coordinator will be referred by the appropriate management personnel. An employee undergoing alcohol, drug, or mental health treatment, upon approval, may use accrued compensating time off credits, sick, annual and vacation leave 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 compensating time off, sick, annual and vacation leave, have been exhausted, and the employee is not eligible to use Industrial Disability Leave or Nonindustrial Disability Insurance. A list of all Employee Assistance Program Coordinators shall be furnished to CAPS annually.
- C. In an effort to keep records concerning an employee's referral and/or treatment for alcoholism, drug- or stress-related problems confidential, such records shall not be included in the employee's personnel file.

5.3 Medical Monitoring

When required by California Division of Occupational Safety and Health (DOSH) provisions, the State shall provide medical examinations for employees working in occupations which expose them to health risks. Examinations shall be in accordance with DOSH regulations.

Upon request by CAPS, medical monitoring programs shall be discussed by the appropriate departmental Joint Labor/Management Health and Safety Committee.

Recommendations by the Committee will take into account the status of current technology, scientific recommendations for such programs and the need for a specified departmental program.

5.4 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. The employee's choice of physician shall be honored in accordance with applicable State law.
- 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.

5.5 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 his/her normal work assignments, 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.

5.6 Employee Injury or Disability

Employees shall be eligible for Industrial, Enhanced Industrial Disability Leave, and Nonindustrial Disability Leave as provided in Government Code Sections 19869 through 19885 and as described below.

- A. IDL
 - 1. Employees who suffer an industrial injury or illness and would otherwise be eligible for temporary disability benefits under the Labor Code will be entitled to Industrial Disability Leave as described in Article 4 of Government Code, beginning with section 19869. Industrial Disability Leave will be paid in lieu of temporary disability benefits.
 - 2. Eligible employees shall receive IDL payments equivalent to full net pay for the first 22 work days after the date of the reported injury.

3. In the event that the disability exceeds 22 work days, the employee will receive 66 and 2/3 percent of gross pay from the 23rd work day of disability until the end of the 52nd week of disability. No IDL or payments shall be allowed after two years from the first day (i.e., date) of disability.
 4. The employee may elect to supplement payment from the 23rd work day with accrued leave credits including annual leave, vacation, sick leave, or compensating time off (CTO) in the amount necessary to match, but not exceed, full net pay. Full net pay is defined as the net pay the employee would have received if he/she had been working and not on disability. Partial supplementation will be allowed, but fractions of less than one 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.
 5. Temporary Disability (TD) 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 retirement system during the first 52 weeks, after the first date of disability, within a two-year period.
 6. If the employee remains disabled after the IDL benefit is exhausted, then the employee will be eligible to receive Temporary Disability benefits as provided for in the Labor Code, except that no employee will be allowed to supplement Temporary Disability payments in an amount which exceeds the employee's full net pay as defined above.
 7. 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.
 8. 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.
- B. EIDL. The following classifications in Unit 10 shall be eligible for Enhanced Industrial Disability Leave (EIDL), as described below:

CODE CLASS NAME

BH70 Environmental Scientist

BH74 Staff Environmental Scientist

BH94 Hazardous Materials Specialist

BH93 Associate Hazardous Materials Specialist

BH92 Senior Hazardous Materials Specialist (Technical)

SW80 Examiner I, Laboratory Field Services

SW75 Examiner II, Laboratory Field Services

IC61 Assistant Industrial Hygienist

IC62 Associate Industrial Hygienist

1. An employee in the above enumerated classifications who loses the ability to work for more than 22 work days as the result of an injury incurred in the official performance of his/her duties, may be eligible for financial augmentation to the existing industrial disability leave benefits. Such injury must have been directly and specifically caused by an assault by an inmate, ward, or parolee under the jurisdiction of the California Department of Corrections and Rehabilitation, client of the Department of Developmental Services, patient of the Department of Mental Health or member of the Department of Veterans Affairs.
2. The EIDL benefits will be equivalent to the injured employee's net take home salary on the date of occurrence of the injury. EIDL eligibility and benefits may continue for no longer than one year after the date of occurrence of injury. For the purposes of this Section, "net salary" is defined as the amount of salary received after federal income tax, State income tax, and the employee's retirement contribution have been deducted from the employee's gross salary. The EIDL benefit will continue to be subject to miscellaneous payroll deductions.
3. EIDL will apply only to serious physical injuries and any complications directly related medically and attributable to the assault, as determined by the department director or designee. This benefit shall not be applied to either presumptive, stress-related disabilities, or physical disability having mental origin.
4. The final decision as to whether an employee is eligible for, or continues to be eligible for EIDL shall rest with the department director or designee. The department may periodically review the employee's condition by any means necessary to determine an employee's continued eligibility for EIDL.
5. Other existing rules regarding the administration of IDL will be followed in the administration of EIDL.
6. This Section relating to EIDL will not be subject to the arbitration procedure of this MOU.

5.7 Flex-Elect Program

A. Flexible Benefit Program

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 Flex-Elect Program shall be subject to all applicable Federal statute and related administrative provisions adopted by the Department of Personnel Administration (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 permanent position.

B. Permanent Intermittent Eligibility

Permanent Intermittent (PI) employees may only participate in the Pre-Tax Premium and/or the Cash Option for medical and/or dental insurance. PIs choosing the Pre-Tax Premium must qualify for State medical and/or dental benefits. PIs 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 480 paid hours within the six month control period of January 1 through June 30 of the plan year in which they are enrolled.

C. This Section is not grievable or arbitrable.

5.8 Pre-Tax of Health/Dental/Vision Premiums

Employees who are enrolled in any health, dental and/or vision 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 program.

5.9 Benefits Advisory Committee

The California Association of Professional Scientists (CAPS) agrees to participate in the Benefits Advisory Committee established by the Department of Personnel Administration.

5.10 Pre-Retirement Death Continuation of Benefits

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 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.

- A. Employees in this unit who are members of the Public Employees' Retirement System (PERS) will be covered under the Fifth Level of the 1959 Survivor's Benefit, pursuant to Government Code 21574.7, 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, pursuant to Government Code 21581.

5.11 Accidental Death/Dismemberment Benefits – Department of Fish and Game

- A. In addition to the benefits described in Government Code sections 4701 and 4702, effective July 1, 1999, the Department of Fish and Game (DFG) agrees to provide \$50,000 air travel insurance for Unit 10 employees in the classes listed below required to fly as a passenger in other than regularly scheduled passenger aircraft to fulfill his/her work duties.

BP14 Associate Biologist (General)

BP15 Associate Biologist (Botany)

BP16 Associate Biologist (Marine/Fisheries)

BP17 Associate Biologist (Wildlife)

BP10 Biologist (General)

BP11 Biologist (Botany)

BP12 Biologist (Marine/Fisheries)

BP13 Biologist (Wildlife)

BQ21 Senior Biologist Specialist (Botany)

BQ22 Senior Biologist Specialist (Marine/Fisheries)

BQ23 Senior Biologist Specialist (Wildlife)

BH70 Environmental Scientist

BH74 Staff Environmental Scientist

IC61 Assistant Industrial Hygienist

IC62 Associate Industrial Hygienist

- B. The benefit is payable to the employee, employee estate, or his or her designated beneficiary in the event of accidental death or dismemberment.
- C. In the event of a dispute regarding appropriate designated beneficiaries, the life insurance benefit shall not be paid until the disputants legally verify that they have settled the dispute or a court of competent jurisdiction resolves the matter for the parties.

5.12 Rural Health Care Equity Subsidy Program

Effective July 1, 2006, the State shall continue a Rural Health Care Equity Program for Bargaining Unit 10 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 Department of Personnel Administration shall administer any fund involving Bargaining Unit 10 members.

The program shall operate in the following fashion:

- A. 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.
 1. For Bargaining Unit 10 members, because a substantial number of them are seasonal employees, payment shall be on a monthly basis.
 2. 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.
- B. 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 or gains eligibility (e.g., promotion in mid-fiscal year).
- C. The money shall be available for use as defined in Government Code Section (GC) 22877.
- D. A Rural Health Care Equity Program will be established with a separate account for Bargaining Unit 10 members, as one of several similar accounts.
- E. Each Unit 10 employee shall be able to utilize up to \$1500 per fiscal year, pursuant to GC section 22877, but with the exceptions for greater utilization hereafter noted. The pro rata limitation pursuant to paragraph b. is applicable here.
- F. If an employee does not utilize the complete \$1500 pursuant to the procedures and limitations described in GC 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 GC section 22877. 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.

1. Any employee not in Bargaining Unit 10 all year shall receive credit under this paragraph utilizing the same pro rata formula as in paragraph 2. above.
2. 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 g hereafter.

- G. If monies still remain after a distribution to such employees (i.e., all employees who spent more than \$1500 as provided in GC 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 GC section 22877 and monies still remained in the pool.

5.13 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 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.

ARTICLE 6 – BUSINESS AND TRAVEL EXPENSES – ALLOWANCES AND REIMBURSEMENTS

6.1 Business and Travel Expenses

The State agrees to reimburse employees for actual, necessary and appropriate business expenses and travel expenses incurred 50 miles or more from home and headquarters, in accordance with existing DPA rules and 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, and make them available for audit upon request by their department, state control agencies and/or the Internal Revenue Service. Each State agency shall determine the necessity for and method of travel.

- A. Meal/Incidentals. Meal expenses for breakfast, lunch and dinner will be reimbursed in the amount of actual expenses up to the maximums. Receipts for meals must be maintained by the employee as substantiation that the amount claimed was not in excess of the amount of the actual expense. The term "incidentals" includes but is

not limited to, expenses for laundry, cleaning and pressing of clothing, and fees and tips for service, such as for porters and baggage carriers. It does not include taxi cab fares, lodging taxes or the costs 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. Timeframes. For continuous short-term travel of more than 24 hours but less than 31 days, the employee will be reimbursed for actual costs up to the maximum for each meal, incidental, and lodging expense for each complete 24 hours of travel, beginning with the traveler's time of departure and return as follows:

- a. On the fractional day of travel at the beginning of a trip of more than 24 hours:

Trip begins at or before 6 am breakfast may be claimed

Trip begins at or before 11 am lunch may be claimed

Trip begins at or before 5 pm dinner may be claimed

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

Trip ends at or after 8 am breakfast may be claimed

Trip ends at or after 2 pm lunch may be claimed

Trip ends at or after 7 pm 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 24-hour period.

For continuous travel of less than 24 hours, the employee will be reimbursed for actual expenses up to the maximum as follows:

Travel begins at or before 6 am and ends at or after 9 am:

breakfast may be claimed

Travel begins at or before 4 pm and ends at or after 7 pm:

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 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 commercial lodging establishment receipt.
1. Regular State Business Travel:
 - a. Statewide, in all California locations not listed in b or c below, for receipted lodging while on travel status to conduct state business, actual lodging up to \$84.00 plus applicable taxes.
 - b. 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.
 - c. 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.
 2. State Sponsored Conferences or Conventions:
 - a. 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.
 - b. Statewide, with a lodging receipt: Actual lodging up to \$110 plus applicable taxes.
 3. Non-State Sponsored Conferences or Conventions:
 - a. 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.
 - b. Statewide, with the lodging receipt: Actual lodging when approved in advance by the appointing authority.

Reimbursement of lodging expenses in excess of specified amounts, excluding taxes require advance written approval from DPA. DPA 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:

a. Reimbursement for actual individual expense, substantiated by receipts, for lodging, water, sewer, gas and electricity, up to a maximum of \$1130 per calendar month while on the long-term assignment, and actual expenses up to \$10.00 for meals and incidentals, for each period of 12 to 24 hours and up to \$5.00 for actual meals and incidentals for each period of less than 12 hours at the long-term location, or

b. Long-term subsistence rates of \$24.00 for actual meals and incidentals and \$24.00 for receipted lodging for travel of 12 hours up to 24 hours; either

\$24.00 for actual meals or \$24.00 for receipted lodging for travel less than 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 \$12.00 for actual meals and incidentals and \$12.00 for receipted lodging for travel of 12 hours up to 24 hours at the long-term location; either \$12.00 for actual meals or \$12.00 for receipted lodging for travel less than 12 hours at the long-term location.

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 DPA.

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, and 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 method of and necessity for travel.

Transportation will be accomplished and reimbursed in accordance with the best interest of the State. An employee who chooses and is approved to use an alternate method of transportation will be reimbursed only for the method that reflects the best interest of the State.

1. Mileage Reimbursement:

- a. 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). Mileage reimbursement includes all expenses related to the use, and maintenance of the vehicle, including but not limited to gasoline, up-keep, wear and tear, tires, and all insurance including liability, collision and comprehensive coverage; breakdowns, towing and any repairs, and any additional personal expenses that may be incurred by an individual as a result of mechanical breakdown or collision.
 - 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: 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 reimbursement at 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 DPA 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 hour or more before he normally leaves his home, or ends travel one hour or more after the end of the work day or travel occurs on a regularly scheduled day off, mileage may be computed from/to 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 \$25.00 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 \$10.00 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 \$5.00 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.
- H. Overtime Meal Allowance: An overtime meal allowance up to \$7.50 will only be provided when an employee is required to work two (2) consecutive hours prior to or two (2) consecutive hours after the regular work shift. To be eligible for an over-time meal allowance on a holiday or regular day off, employees must work the total number of hours of their regular work shift and work either two (2) consecutive hours prior to or two (2) consecutive hours after the start or end of their regular work shift.

6.2 Moving Expenses

Whenever an employee is reasonably required to change his/her place of residence, the State shall reimburse the employee in accordance with existing administrative regulations. All current rules and regulations applying to State reimbursement of moving and relocation expenses shall remain in effect for the life of this Agreement.

6.3 Business Equipment, Materials and Supplies

The State shall provide all business equipment, materials and supplies deemed necessary by the State. Business equipment, materials and supplies provided pursuant

to this Section are State-owned or leased property which will be maintained as the State deems necessary. Employees issued State-provided business equipment, materials and supplies shall be held responsible for loss of and/or damage to those items other than that incurred as the result of normal use, wear or through no fault of the employee.

It is the intent of the State to provide business equipment, materials and supplies to enable the employees to perform assigned duties and responsibilities.

6.4 Uniform Replacement

- 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 upon actual costs for an amount to be determined by the State but not to exceed \$450.00 per year for full-time employees, and not to exceed \$190.00 a year for part-time employees of the Department of Fish and Game, Department of Forestry and Fire Protection and Department of Parks and Recreation.
- B. Uniform means outer garments, excluding shoes, which are required to be worn exclusively while carrying out the duties and responsibilities of the position and which are different from 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.
- C. 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.
- D. In those cases where the State does not provide the uniform to be worn, Unit 10 employees shall be responsible for the purchase of the required uniform as a condition of employment. After a Unit 10 employee has been employed for 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 allowance. The uniform replacement allowance anniversary date for employees in the Department of Parks and Recreation shall continue to be February 1 of each year.
- E. All required uniform items substantiated with a receipt(s) for same will be reimbursed up to the maximum allowance for the respective allowances as listed in Subsection A. above.

6.5 Damage of Personal Items

- A. In accordance with established procedures, when requested by an employee and approved by the department, the State will replace, repair or reimburse for various articles of personal property necessarily worn by unit employees in the course of his/her employment when such property is damaged or destroyed, through no fault of the employee, while the employee is carrying out his/her job assignment. Coverage is limited to articles of clothing, eyeglasses, hearing aids, watches and dentures.

Depreciation will be considered in arriving at the reimbursement value of clothing and other articles. The repair or replacement cost for a watch shall not exceed fifty dollars (\$50.00).

- B. This provision does not apply to lost or stolen articles or when recovery is possible under Workers' Compensation laws.

6.6 License Renewal Fees

The State agrees to reimburse permanent full-time employees who are required by law to maintain a license or certification as a condition of employment for the actual cost of the license renewal fees in effect on July 1 of each year of this Agreement.

It is understood that if any additional classes of Unit 10 employees are required to maintain a license or certification during the term of the Agreement, any required fees shall be paid by the State.

6.7 Safety Footwear

- A. The purchase of specific safety or protective footwear, required to be worn, but not provided by the employer shall be eligible for a reimbursement of up to \$200 every two years.
- B. The employee shall provide the employer with a receipt of purchase upon request for reimbursement.
- C. Upon request to a department, by the Union, the department will provide a list of the assignments eligible to receive this reimbursement.

ARTICLE 7 – HOURS OF WORK AND OVERTIME

7.1 Meal Period

- A. Unit 10 employees will normally be allowed a meal period of not less than 30 minutes or more than 60 minutes which shall be determined by the employee's supervisor.

The meal period will normally be scheduled in the middle of the work shift. A supervisor shall consider employee requests for an earlier or later meal period. Meal periods shall not be counted as part of the total hours worked. For employees assigned to a straight eight (8) hour work shift, meal periods will be counted as part of the total hours worked.

- B. Upon request of a Unit 10 employee to modify his/her established meal period, a supervisor shall consider the needs of the employee, the needs of the State, and the nature of the work to be performed.

7.2 Alternative Work Schedule

Upon request of a Unit 10 employee or an authorized CAPS representative, a department designee shall meet with such employee or representative and consider requests for establishment of an alternative work schedule, flextime, telecommute schedule or reduced work time for a Unit 10 employee. The request shall not be unreasonably denied. This Section is only appealable to fourth level and is not arbitrable.

7.3 Overtime Scheduling

Where practicable, a department shall establish a system to request and utilize volunteers to perform overtime work from among Unit 10 employees who are qualified and available within the appropriate work area. If insufficient employees volunteer for the overtime opportunities, the State will decide who shall perform the overtime work.

Where sufficient Unit 10 employees volunteer for overtime opportunities, the overtime will be distributed fairly among employees insofar as circumstances permit. CAPS recognizes that work in progress may be completed by the employee performing the work at the time the determination was made that overtime was necessary.

7.4 Call Back Time

- A. An employee in Work week Group 2 who has completed a normal work shift, when ordered back to work, shall be credited with a minimum of four (4) 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 three (3) or more hours after the completion of the work shift.
- B. When such an employee is called back under these conditions within four (4) 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 (4) hours credit for the new call back.
- C. When such an employee is called back within four (4) 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, 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.

7.5 Fair Labor Standards Act

- A. Notwithstanding any other contract provision, departmental policy, or practice, the travel time of employees who are covered by FLSA shall only be considered as time worked if it meets the definitions and requirements of travel time in Sections 785.34 through 785.41 of Title 29 of the Code of Federal Regulations.

- B. No employee in a classification assigned to Work week Group E shall have his/her salary reduced (docked) for absences of less than an entire day.

7.6 Duty Officer - Department of Toxic Substances Control

- A. The after-hours Emergency Response Duty Officer (ERDO) Program is staffed by HSS, Range C volunteers from the Emergency Response Program, and if there are insufficient ER unit volunteers, other qualified DTSC volunteers based upon the volunteers' current job assignment, background, skills, experience, and training. The ERDO assignment involves responding to telephone calls received from the Governor's Office of Emergency Services or from other government agencies for the purpose of taking immediate corrective actions necessary to remedy or prevent an emergency resulting from fire, explosion, release, or potential release of hazardous substances that threaten human health or the environment. This activity includes, but is not limited to, approving expenditures of State funds, providing technical guidance, and coordinating emergency responses.

B. ASSIGNMENT:

1. On a seven consecutive day rotational basis, an ERDO volunteer will serve as primary contact during non-regular work hours and will be available by telephone or electronic pager at all times during the assignment as ERDO. A period of less than seven days may be assigned at the ERDO's request due to extreme and unusual conditions.
2. Those ERDO volunteers not acting as primary ERDO will act as backup contacts, if available, in the event the primary ERDO cannot be reached or is unable to carry out the duties of the assignment. The non-regular work hours that will be covered by the ERDO include weekdays from 5:00 pm to 8:00 am, with 24 hour coverage on weekends and days the office is closed during normal workdays, holidays, and/or emergencies.

C. COMPENSATION

1. Effective upon ratification of this Agreement, ERDO volunteers shall receive a baseline compensation of one (1) hour of overtime credit for each weekday period (5 pm to 8 am), and 3.5 hours of overtime credit for each day (24 hours) on the weekend for a total of 12 hours credit per week.
2. Any compensation for time spent acting as ERDO for less than a full weekday or weekend period shall be prorated on these baseline rates.
3. An after-hours ERDO working on a holiday shall receive an additional four (4) hours of overtime credit.
4. In addition to the baseline compensation of 12 hours per week, employees shall receive a minimum of two (2) hours overtime credit per incident handled. Time exceeding two hours will be compensated at time and one-half for each quarter hour increment. DTSC will reimburse overtime credits as pay unless management and the employee agree on compensating time off (CTO).

5. When an ERDO volunteer determines he/she needs rest during regular work hours, the ERDO volunteer may request up to four (4) hours administrative time off to be granted at the supervisor's discretion.

7.7 Work Week Group Definitions and Compensation

A. Work Week Group 2

1. Work Week Group 2 applies to those classifications in State service subject to the provisions of the Fair Labor Standards Act (FLSA).
2. Overtime for employees subject to the provisions of the FLSA is defined as all hours worked in excess of forty (40) hours in a period of 168 hours or seven consecutive 24-hour periods.
3. The State employer agrees to administer current rules and practices regarding work week groups and overtime.
4. Employees in Work week Group 2 required to work in excess of forty (40) hours per week shall be compensated for such ordered overtime either by cash payment or compensating time off (CTO) in the following manner:
 - a. Cash compensation shall be at one and one-half times the hourly rate.
 - b. Compensating time off for Work week Group 2 employees shall be given at one and one-half (1½) hour for each overtime hour worked.
5. Overtime may be compensated on a cash or CTO basis at the discretion of the department head or designee. Both parties agree and understand that a different type of overtime payment (cash or CTO) may be provided to employees at different times and may even be different for employees in the same or similar situations.
6. The Department of Food and Agriculture and CAPS agree that Unit 10 employees who are approved for Alternate Range Criteria 208 may be compensated for up to 20 hours of overtime at straight time per month for the period of the Alternate Range applicability.
7. The Department of Food and Agriculture and CAPS agree that Unit 10 employees who are assigned to Governor declared Emergency Projects will have their Work Week Group changed to 2 for the duration of the assignment. This provision does not apply to employees who are approved for Alternate Range Criteria 208 or 209.

B. Work Week Group E

1. State employees who are exempt from the FLSA are salaried, not hourly, workers.

2. To assure continued exemption from the FLSA, the following is the state's policy for all employees exempt from the FLSA:
 - a. Management determines, consistent with the current memorandum of understandings, the products, services, and standards which must be met by FLSA exempt employees.
 - b. The salary paid to FLSA exempt employees is full compensation for all hours worked.
 - c. FLSA exempt employees are not authorized to receive any form of overtime compensation, whether formal or informal.
 - d. FLSA exempt employees are expected to work the hours necessary to accomplish assignments and fulfill their responsibilities. The employee's workload will normally require 40 hours per week to accomplish. However, inherent in the job is the responsibility and expectation that work weeks of longer duration may be necessary for which there will be no additional compensation in any form.
 - e. Management can require FLSA exempt employees to work specified hours.

However, consistent with operational needs, and the services which management has determined must be provided, the FLSA exempt employee, subject to notifying and obtaining management concurrence, has the flexibility to alter his/her daily and weekly work schedules.

Employees are responsible for keeping management apprised of their schedules 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.

- f. Consistent with the salaried nature of FLSA exempt employees, these employees:
 - (1) Shall not be charged any paid leave for absences in less than whole day increments;
 - (2) Shall not be docked for absences of less than a day;
 - (3) Shall not be suspended in increments of less than one complete work week (one week, two weeks, three weeks, etc.) when facing discipline; suspensions, demotions, or discharge;
 - (4) Shall not have absences of less than a day recorded for attendance record keeping or compensation purposes.

C. Work Week Group SE

1. Work week Group SE applies to those positions that under the FLSA are statutorily exempted, (physicians, attorneys, teachers) from coverage.

7.8 On-Call Assignments

A. Department of Fish and Game

1. On-Call Program

- a. "On-call" is the requirement that an employee be available during specified off-duty hours to receive an order to work. An employee assigned to on-call duty shall at all times while on-call be prepared to respond in a fit and able condition. Employees not scheduled for on-call duty who are called back to work are not eligible for on-call compensation. Rather, appropriate call back provisions apply.
- b. The Office of Spill Prevention and Response (OSPR) and the Marine Region Spill Response (MRSR) programs require designated Unit 10 employees to be available during non-work hours to respond in accordance with program procedures to departmental emergencies and any other urgent, operational needs of the Department. The programs shall clearly specify in writing when any designated Unit 10 employee will be required to be available when not working, and what periods of non-working hours such employees shall be required to be available.

2. Selection of OSPR and MRSR Unit 10 Employees for On-call Duty

- a. The OSPR and MRSR will establish and publish on-call schedules for 6-month periods of time. On-call schedules shall be established with designated program Unit 10 employees bidding on weekly on-call shifts at their respective work locations based on program seniority within his/her classification. Each employee shall be given the opportunity to select one weekly on-call shift at a time in order of seniority until the schedule is complete.
- b. In order to allow employees to substitute for others, the schedules shall be published at least one month in advance. Substitution must be voluntary on the part of both employees and approved by the appropriate Response Supervisor at least 48 hours prior to the beginning of the on-call assignment.

A Response Supervisor is a manager or supervisor having the authority to call back and assign employees to an emergency incident.

- c. If an employee due to an emergency or illness is unable to fulfill his/her on-call duty responsibilities, he/she must notify the dispatch center. The program will first seek volunteers to cover the on-call shift. However, if no one volunteers or the program is under time constraints, management retains the discretion to make on-call assignments from among program Unit 10 employees.
- d. Management retains the right to place additional program Unit 10 employees on on-call duty during emergency situations.

- e. Employees assigned to on-call duty must respond within fifteen (15) minutes of being contacted by a program communication dispatcher. If the employee does not respond to the initial page, the dispatcher will contact the employee via the listed telephone number provided by the employee. "Respond" in this case means contacting the dispatcher and beginning the response assessment procedure, including fact finding via telephone and/or driving to a particular incident.
- f. Employees on-call who do not respond or cannot be located may forfeit their on-call compensation.

3. Telephonic Pagers

- a. The program will furnish telephonic pagers and cellular telephones and require employees assigned to on-call duty to carry these with them.

Assigned employees shall be required to keep the pager activated and available, and to respond in the event he/she is contacted by a departmental representative during such on-call time.

- b. The employee shall self-page at the beginning of each on-call shift to ascertain the pager is working, and when visiting an area where the paging system's capabilities are unknown.
- c. It is the responsibility of the employee to give the dispatcher a telephone number if the employee is in an area where the pager does not work, or during hours when the pager may not be heard by the employee.

- 4. Compensation. Any OSPR Unit 10 employee covered by the Fair Labor Standards Act (FLSA) and assigned to be available for on-call duty shall be credited with four (4) hours of compensating time off (CTO) for on-call time on a workday and six (6) hours of CTO for on-call time on an administrative day off (24 hour period) provided his/her on-call time is not interrupted by a call-back.

If during the workday the employee's on-call time is interrupted by a call-back, then the employee will only be compensated two (2) hours of CTO for eight (8) hours or less of on-call time or four (4) hours of CTO for more than eight (8) hours of on-call time. If this situation occurs during an administrative day off, the employee will receive only two (2) hours of CTO for eight (8) hours or less of on-call time, four (4) hours of CTO for more than eight (8) but less than sixteen (16) hours of on-call time or six (6) hours of CTO for more than sixteen (16) hours of on-call time. For purposes of this agreement, "On-call Time" does not include the employee's normal work hours, including the lunch period, and scheduled or unscheduled overtime.

On-call time and compensation shall not be considered as time worked for overtime purposes consistent with federal and state law.

An OSPR Unit 10 FLSA exempt employee assigned to be available for on-call duty shall be compensated with vacation or annual leave credits instead of CTO.

However, with regards to the employee's actual response time, such time is considered part of his/her regular duties for which he/she is fully compensated by his/her monthly salary.

5. Response While On-Call. If a program Unit 10 FLSA covered employee, while on-call duty, is required by the OSPR/MRSR to attend to the operational needs of the Department and to report to a particular site or work location, that employee shall be compensated in accordance with the call-back provisions in Article 7.4 of the Memorandum of Understanding (MOU) between CAPS and the State of California. If a response to a particular site or work location is not required, the employee will only be compensated for the actual time spent on the telephone and assessing the situation.
6. Dispute Resolution. Disputes concerning the interpretation or application of this Agreement shall be subject to the grievance and arbitration procedure in Article 9.

B. Department of Health Services

1. On-call assignment is defined as a work-shift of no less than one day in which the Unit 10 employee is: (1) available by telephone or electronic paging device at all times; and (2) normally immediately available to return to the facility for any emergency response deemed necessary by the employee or supervisor. On-call assignment shall be in addition to the employee's normal work schedule. If the State deems it necessary, the State shall issue a Unit 10 employee an electronic paging device during an on-call assignment.
2. Those employees completing an on-call assignment shall receive one (1) hour CTO for each eight (8) hours time period of each on-call assignment, to a maximum of three hours CTO for each 24 hour period on call. Payment for fractions of an hour shall be made in quarter hour increments.
3. On-call assignments shall not be rescheduled to be less than one full day solely to avoid payment under this Section.
4. Unit 10 employees who complete on call assignments of less than seven (7) consecutive days shall receive pro rata CTO or pro rata pay.
5. On call compensation can apply to all Unit 10 staff regardless of work week group.

7.9 Arduous Duty Differential for FLSA Exempt Employees

The State shall establish an "arduous pay" program to provide additional compensation to FLSA exempt employees assigned to WWGs E and SE 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 the Department of Personnel Administration on a case-by-case basis by the employing department. The Department of Personnel Administration shall evaluate said requests based on whether it satisfies all of the following.

A. 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.

B. Work Exceeds Normal Work Hours and Normal Productivity

The work must be extraordinarily demanding and time consuming, and of a nature that significantly exceeds the normal work week 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 work week 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.

C. Work is Unavoidable

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

D. 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 cause difficulty or hardship on others and would result in other critical work not being completed. Occasional heavy workload of less than 12 to 14 days in duration would not normally satisfy this requirement because time off can be arranged as compensation for this demand.

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

7.10 Telecommute/Telework Program

- A. Where operational considerations permit, a department may establish a telework program. If the telework arrangement conforms to telework criteria established in the department's telework policy and guidelines, no employee's request for telework shall be unreasonably denied. Such programs shall operate within the policies, procedures, and guidelines established by the Telework Advisory Group.
- B. 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.
- C. 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.

ARTICLE 8 - RETIREMENT

8.1 Retirement – Miscellaneous Members

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

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.

8.2 Retirement – Safety Members

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 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 consecutive months of employment.

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.

8.3 Second-Tier Retirement Plan

CAPS and the State agree to participate in the Second-Tier Retirement Plan as prescribed by law. Any Unit 10 employee mandatory enrolled in the Tier II plan shall be encouraged to participate in the Savings Plus Program administered by DPA.

8.4 Savings Plus Program

A. The Savings Plus Program is comprised of an IRC 457 plan, and IRC 401(k) plan.

All Unit 10 employees shall be eligible to participate in these program options.

Participation shall be voluntary.

B. The Savings Plus Program shall maintain a brokerage option available to all participants. The brokerage option offered shall provide the broadest array and number of investments practicable included in the program. All costs for the brokerage option shall be paid by participants enrolled in the brokerage program.

C. DPA agrees to continue the Savings Plus Advisory Committee. Members shall include DPA staff and interested management, legislative and employee organization representatives.

8.5 Items Excluded from Compensation for Retirement Purposes

The State and CAPS agree that the following items shall be excluded from compensation for the purposes of retirement contributions:

ARTICLE/SECTION TITLE

Article 6, Section 4 Uniform Replacement Allowance

Article 2, Section 7 Diving Pay

Article 19, Section 6 Transportation Incentives

8.6 Enhanced Industrial Retirement

The state agrees to provide enhanced industrial disability benefits as described in Government Code section 20047 when a Unit 10 scientist has been injured as a result of a violent act by a patient or client in a forensic facility.

8.7 First Tier Retirement Formula (2% @ 55)

- A. The table below describes the first Tier age benefit factors, provided pursuant to Government Code 21354.1. The Retirement Calculation Factors change on the quarter year.

AGE AT RETIREMENT	RETIREMENT CALCULATION 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

- B. The amount of member contributions required of employees who will be covered under these new factors will be five percent of monthly compensation in excess of \$513, pursuant to Government Code 20677.

8.8 First Tier Eligibility for Employees in Second Tier

- A. Employees currently in the Second Tier retirement plan may elect, pursuant to Government Code 21073.7, to be covered under the First Tier, as described in this article.
- B. Pursuant to Government Code 21073.1, an employee in the Second Tier may exercise the Tier 1 right of election at any time after January 1, 2000. An employee who makes this election is eligible to purchase past Second Tier service, over a period of time up to 180 months (15 years), and purchase partial amounts of service.

Employees who purchase past service are 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. As required by CalPERS law, the amount will then include interest at 6 percent, annually compounded.

- C. Pursuant to Government Code 21070.5, new employees who meet the criteria for CalPERS membership would be enrolled in the First Tier plan and have the right 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 shall remain in the First Tier plan.

ARTICLE 9 – GRIEVANCE AND ARBITRATION PROCEDURE

9.1 Purpose

- A. This grievance procedure shall be used to process and resolve grievances arising under this Agreement 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.

9.2 Definitions

- A. A grievance is a dispute of one or more employees, or a dispute between the State and CAPS, involving the interpretation, application, or enforcement of the express terms of this Agreement.
- 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 Agreement and not under the jurisdiction of SPB. Complaints may be appealed to the fourth level if the department head or designee does not timely answer at Step 3.
- 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 CAPS, an employee, or the State.
- E. A "CAPS representative" refers to an employee designated as a CAPS representative or a paid staff consultant.

9.3 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.

9.4 Waiver of Steps

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

9.5 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 CAPS representative, or both, may attend without loss of compensation. A CAPS representative may request a meeting at the first or second step providing it causes no additional cost to the State.

9.6 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.

9.7 Formal Grievance - Step 1

- A. If an informal grievance is not resolved to the satisfaction of the grievant, a formal grievance may be filed no later than:
 - 1. Twenty-one (21) calendar days after the event or circumstances occasioning the grievance, or
 - 2. Within fourteen (14) calendar days after receipt of the decision rendered in the informal grievance procedure.
- B. However, if the informal grievance procedure is not initiated within the period specified in Subsection A.1 above, the period in which to bring the grievance shall not be extended by Subsection A.2 above.
- C. A formal grievance shall be initiated in writing 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 twenty-one (21) 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 grievance.
- 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 Agreement.

9.8 Formal Grievance - Step 2

- A. If the grievant is not satisfied with the decision rendered pursuant to Step 1, the grievant may appeal the decision within twenty-one (21) calendar days after receipt to a designated supervisor or manager identified by each department head 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 person designated by the department head as the second level of appeal shall respond in writing to the grievance.

- 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 Agreement.

9.9 Formal Grievance - Step 3

- A. If the grievant is not satisfied with the decision rendered pursuant to Step 2, the grievant may appeal the decision within twenty-one (21) calendar days after receipt to a designated supervisor or manager identified by each department head as the third level of appeal. If the department head or designee is the second level of appeal, the grievant may bypass Step 3.
- B. Within twenty-one (21) calendar days after receipt of the appealed grievance, the person designated by the department head as the third level of appeal shall respond in writing to the grievance.

9.10 Formal Grievance - Step 4

- A. If the grievant is not satisfied with the decision rendered at Step 3, the grievant may appeal the decision within twenty-one (21) calendar days after receipt to the Director of the Department of Personnel Administration or designee.
- B. Within thirty (30) calendar days after receipt of the appealed grievance, the Director of the Department of Personnel Administration or designee shall respond in writing to the grievance.

9.11 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.

9.12 Formal Grievance - Step 5

- A. If the grievance is not resolved at Step 4, within thirty (30) calendar days after receipt of the fourth level response, CAPS shall have the right to submit the grievance to arbitration.
- B. Within seven (7) calendar days after the notice requesting arbitration has been served on the State or at a date mutually agreed to by the parties, the parties shall meet to select an impartial arbitrator. If no agreement is reached at this meeting, the parties shall, immediately and jointly, request the American Arbitration Association, State Conciliation and Mediation Service, or the Federal Mediation and Conciliation Service to submit to them a panel of seven (7) arbitrators from which the State and CAPS shall alternately strike names until one name remains and this person shall be the arbitrator. The State shall have forty (40) calendar days after a request to the American Arbitration Association, the State Conciliation and Mediation Service or the Federal Mediation and Conciliation Service prior to selecting an 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.
- D. An arbitrator may, upon request of CAPS 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 Agreement. Only grievances as defined in Section 9.2.A. shall be subject to arbitration. In all arbitration cases, the award of the arbitrator shall be final and binding upon the parties.

9.13 Health and Safety Grievances

All Health and Safety grievances deemed necessary for expedited processing shall first be appealed directly to the second level of the grievance procedure pursuant to the modified time limits set forth below:

A. Health and Safety Grievance - Step 2

- 1. If the grievant is not satisfied with the decision rendered by his/her supervisor pursuant to Section 9.6, the grievant may appeal the decision within fourteen (14) calendar days after receipt of the decision to a designated supervisor or manager identified by each department head as the second level of appeal.
- 2. Within five (5) calendar days after receipt of the appealed grievance, the person designated by the department head as the second level of appeal shall respond in writing to the grievance.

B. Health and Safety Grievance - Step 3

- 1. If the grievant is not satisfied with the decision rendered pursuant to Step 2, the grievant may appeal the decision within twenty-one (21) calendar days of receipt to a designated supervisor or manager identified by each department head as the third level of appeal. If the department head or designee is the second level of appeal, the grievant may bypass Step 3.
- 2. Within twenty-one (21) calendar days after receipt of the appealed grievance, the person designated by the department head as the third level of appeal shall respond in writing to the grievance.
- 3. If the grievance is not resolved at Step 3, within thirty (30) calendar days after receipt of the third step response, CAPS shall have the right to submit the grievance to arbitration.

- C. The selection of the arbitrator shall be in accordance with Section 9.12.B., and the case must be before an arbitrator within twenty (20) calendar days.

ARTICLE 10 – CAPS REPRESENTATIONAL RIGHTS

10.1 Representational Designation

- A. The State recognizes and agrees to deal with designated representatives, or CAPS staff on the following:
1. The administration of this contract;
 2. Employee discipline cases;
 3. Informal settlement conferences or formal hearings conducted by the Public Employment Relations Board;
 4. Matters scheduled for hearing by the Board of Control;
 5. Matters pending before the State Personnel Board.
- B. A written list of CAPS representatives, broken down by units within each individual department and designated area of primary responsibility, shall be furnished to each department and a copy sent to the State immediately after their designation, and CAPS shall notify the State promptly of any changes of such representatives. CAPS representatives shall not be recognized by the State until such lists or changes thereto are received. A CAPS representative's "area of primary responsibility" is meant to mean institution, office or building. However, the parties recognize that it may be necessary for CAPS to assign a representative to an area of primary responsibility for several small offices or buildings within close proximity.

10.2 Access

CAPS representatives or staff may have access to employees to represent them pursuant to Section 10.1.A. above. Access shall not interfere with the work of the employees. CAPS representatives or staff seeking access to employees must notify the department head or designee in advance of the visit. The department head or designee may restrict access to certain work sites or areas for reasons of safety, security, or patient care including patient privacy; however, where access is restricted, other reasonable accommodations shall be made.

10.3 Use of State Phones

CAPS representatives shall be permitted reasonable use of State phones to make calls for CAPS 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.

10.4 Distribution of Literature

- A. CAPS may use existing employee organization bulletin boards to post materials related to CAPS business. Upon mutual agreement between an authorized CAPS representative and the department, CAPS bulletin boards will be installed at reasonable locations. When required in advance, CAPS 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. CAPS may, before or after work hours and during meal or break periods, distribute CAPS literature in non-work areas.
- C. CAPS may continue to use existing employee mailboxes for distribution of literature.
- D. CAPS agrees that any literature posted or distributed on site will not be libelous, obscene, defamatory, or of a partisan political nature.

10.5 Use of State Facilities

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

10.6 Representative Time Off

Upon request of an aggrieved employee, a representative shall be allowed reasonable time off during working hours, without loss of compensation, for representational purposes in accordance with Section 10.1.A. of this Agreement, provided the employee represented is in the representative's department and designated area of primary responsibility. Release time for these purposes is subject to prior notification and approval by the representative's immediate supervisor.

10.7 Employee Time Off

Employees shall be entitled to reasonable time off without loss of compensation to confer with a CAPS representative on representational matters at the work site in accordance with Section 10.2 above during work hours, subject to approval of the employee's supervisor.

10.8 Representative Protection

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

10.9 Releases of Home Addresses

A. Home Addresses – Generally

Consistent with the PERB regulations and State law, the State shall continue to provide CAPS with home addresses on a monthly basis for all non-law enforcement related employees covered by this contract until it expires. A law enforcement employee is defined as someone with peace officer powers as provided by the California Penal Code.

Notwithstanding any other provision of this Agreement, any employee may have his/her home address withheld from the union 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

Effective one-month following ratification of this Agreement by both parties, the State will no longer use an Employee Action Request form that provides Unit 10 employees who perform non-law enforcement related functions with the option of having their home address withheld from CAPS. Instead, employees who perform non-law enforcement related functions will, upon request, be given a separate form by their appointing power that permits two choices: (1) withhold their address from CAPS, or (2) to cancel a previous withhold request thereby permitting release of their home address to CAPS.

C. Home Address Withhold Notification to Non-Law Enforcement Related Employees

Within one month following ratification of this Agreement by both parties, the State will send a letter to all existing Unit 10 employees who perform non-law enforcement related functions that have previously requested their home address remain confidential. The letter will provide said employees with the option of canceling their previous withhold request thereby permitting release of their home address to CAPS.

D. Release and Use of Addresses

The State Controller's Office will send CAPS a list of all Unit 10 employees who, pursuant to Subsection (C) above, either did not respond or responded by indicating they wanted to continue withholding their home address from CAPS. The State Controller's Office will also send CAPS a list of all Unit 10 employees who perform law enforcement-related functions (if any). Said list(s) will contain the employees' name, agency and reporting unit.

E. Home Address Mailings by the State

The State Controllers' Office will mail CAPS 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 CAPS. Said material shall be provided by CAPS. The cost of this mailing shall be paid for by CAPS. CAPS agrees to hold the State harmless for any annual mail that does not reach Unit 10 employees.

F. Address Confidentiality

Employee work and home addresses shall be maintained as confidential by CAPS. CAPS 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 CAPS for representational purposes.

G. Nature of Material

CAPS agrees that any CAPS 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 product or service unrelated to representation by the union.

CAPS 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.

H. Hold Harmless and Indemnification

Notwithstanding any other provision of this Agreement, CAPS 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 11 – ORGANIZATIONAL SECURITY

11.1 Organizational Security

- A. The State agrees to deduct and transmit to CAPS all membership dues authorized on a form provided by CAPS.
- B. Fair Share or "Agency Shop" (hereinafter known as "Fair Share") in Unit 10 shall be in effect from the beginning of the first pay period following ratification of this Agreement by the parties, through June 30, 2001.
- C. The State agrees to deduct and transmit to CAPS Fair Share fees from State employees in Unit 10 who do not become members of CAPS. The State and CAPS agree that a system of authorized dues deductions and a system of Fair Share deduction shall be operated in accordance with Government Code Sections 3513(h), 3513(j), 3515, 3515.6, 3515.7, 3515.8, subject to the following provisions:
 1. The State and CAPS agree that if a Fair Share rescission election is conducted in Unit 10 pursuant to Government Code Section 3515.7(d), a majority of those votes cast, rather than the majority of the members of the unit, shall determine whether the Fair Share deductions shall continue.
 2. An employee in Unit 10 may withdraw from membership in CAPS by sending a signed withdrawal letter to CAPS with a copy to the State Controller. An employee who so withdraws his/her membership shall be subject to paying Fair Share fees if such a fee is applicable to Unit 10.

3. CAPS 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.
 4. CAPS agrees to annually notify all State employees in Unit 10 who pay Fair Share fees of their right to demand and receive from CAPS a return of part of that fee pursuant to Government Code Section 3515.8.
- D. No provision of this Article nor any disputes arising thereunder shall be subject to the grievance procedure contained in Article 9 of this Agreement.

ARTICLE 12 – STATE RIGHTS

12.1 State Rights

- A. Except for those rights which are abridged or limited by this Agreement, all rights are reserved to the State.
- B. Consistent with this Agreement, 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, layoff, assignment, scheduling and training; 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 Agreement provided that any such rule shall be uniformly applied to all affected employees and those 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 entitlement of State Civil Service employees provided by Article VII of the State Constitution or by-laws and rules enacted thereto.

ARTICLE 13 – GENERAL PROVISIONS

13.1 No Strike

- A. During the term of this Agreement, neither CAPS nor its agents nor any Bargaining Unit 10 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. CAPS agrees to notify all of its officers, 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.

13.2 No Lockout

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

13.3 Individual Agreements

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

13.4 Savings Clause

Should any provision of this Agreement be found unlawful by a court of competent jurisdiction or invalidated by subsequently enacted legislation, the remainder of the Agreement 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).

13.5 Reprisals

The State and CAPS 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 Dills Act or any right given by this Agreement. The principles of agency shall be liberally construed.

13.6 Supersession

The following enumerated Government Code Sections and Education Code Sections and all existing rules, regulations, standards, practices and policies which implement the enumerated Government Code Sections and Education Code Sections are hereby incorporated into this Agreement. However, if any other provision of this Agreement alters or is in conflict with any of the Government Code Sections or Education Code Sections enumerated below, the Agreement shall be controlling and supersede said Government Code Sections or Education 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 Dills Act.

A. Government Code Sections

1. General

19824	Establishes monthly pay periods.
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 Merit Salary Adjustments (MSA).

2. Step Increases

- 19829 Requires DPA to establish minimum and maximum salaries with intermediate steps.
- 19832 Establishes annual MSAs 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 MSAs 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)

3. Holidays

- 19853 Establishes legal holidays.
- 19854 Provides for personal holiday.

4. Vacations

- 19858.1 Defines amount earned and methods of accrual by full-time employees.
- 19856 Requires DPA to establish rules regulating vacation accrual for part-time employees and those transferring from one State agency to another.
- 19856.1 Requires DPA to define the effect of absence of 10 days or less on vacation accrual.
- 19863 Allows vacation use while on temporary disability (due to work-incurred injury) to augment paycheck.
- 19143 Requires DPA to establish rules regarding vacation credit when employees have a break in service over six months.
- 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 define the effect on sick leave credits of absences of 10 days or less in any calendar month.
- 19862 Permits sick leave to be accumulated.
- 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 DPA to provide by rule for sick leave without pay for employees who have used up their sick leave with pay.
- 19866 Provides 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. Paid Leaves of Absence

- 19991.3 Jury duty.
- 19991.5 30-day educational leave for the medical staff and medical technicians of the Veterans Home.
- 19991.7 Teachers' educational leave and earned credits subject to DPA rule.

7. Uniforms, Work Clothes and Safety Equipment

- 19850 Definitions.
- 19850.1 Provides for uniform allowances.
- 19850.3 Requires DPA to establish procedures to determine need for uniforms and the amount and frequency of uniform allowances.
- 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.

8. 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 provisions 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 disability 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.

9. Non-industrial Disability Insurance (NDI)

- 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 NDI.
- 19881 Bans NDI coverage if employee is receiving unemployment compensation.
- 19882 Bans NDI coverage if employee is receiving other cash payment benefits.
- 19883 Provides for discretionary deductions from benefit check, including employer contributions; employee does 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 NDI.

10. 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.

11. 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.

12. Work week

- 19851 Sets 40-hour work week and 8-hour day.
- 19843 Directs DPA to establish and adjust work week groups.

13. 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.
- 19863 Allows use of accumulated compensable overtime while on temporary disability (due to work-incurred injury) to augment paycheck.

14. Callback Time

- 19849.1 Allows DPA to set rules and standards for callback time based on prevailing practices and the needs of State service.

15. Deferred Compensation

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

16. Relocation Expenses

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

17. 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.

18. Unpaid Leaves of Absence

- 19991.1 Allows the appointing power to grant a one-year leave of absence; assures the employee a 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.

19. Performance Reports

- 19992 Provides for establishment of performance standards by State agencies.
- 19992.1 Provides for a system of performance reports and allows DPA to enforce adherence to appropriate standards.
- 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.
- 19992.4 Allows DPA to establish rules leading to reduction in class and compensation or dismissal for unsatisfactory service.

20. 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.

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

22. 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.

23. Use of State Time

- 19991 Provides State time for taking civil service examinations including employment interviews for eligibles on employment lists, or attending a meeting of DPA or SPB on certain matters.

24. Training

- 19995.2 Provides for counseling and training programs for employees whose positions are to be eliminated by automation, technological or management-initiated changes.
- 19995.3 Provides for Department of Rehabilitation to retrain and refer disabled State employees to positions in State service.

B. Applicable Education Codes

Part 43, Section 70000, et al.

Part 32, Section 59000, et al.

13.7 Non-Discrimination

- A. The State and CAPS agree that neither party will discriminate against any employee on the basis of age, sex, race, religious creed, color, national origin, ancestry, marital status, physical handicap, or sexual orientation, and agree to take such action as necessary to assure that this purpose is achieved.
- B. Alleged violations of this Section shall not be grievable under the grievance procedure contained in Article 9 of this Agreement.

13.8 Sexual Harassment

- A. The State and CAPS agree that no employee shall be subject to sexual harassment and agree to take such actions as necessary to assure that this purpose is achieved.

In this spirit, the State agrees to post a statement of this commitment to this principle in all work sites.
- B. Complaints alleging harassment shall not be grievable under the grievance procedure contained in Article 9 of this Agreement.
- C. If the complaint is resolved in favor of the employee and the employee feels he/she is unable to return to his/her current job assignment, the State shall give consideration to transferring the employee to an equivalent position at the same salary and class, in the same location if a vacancy exists.

13.9 State-Owned Housing Rental and Utility Rates

A. Rent

Effective July 1, 1992 and annually thereafter for the duration of this contract, current rental rates for all types of State-owned employee housing, including trailers and/or trailer pads, may be increased by the State with 60-day notice as follows:

- 1. Where employees are currently occupying State-owned housing, the State may raise such rates paid by employees up to 25 percent each year, not to exceed fair market value.
- 2. During the term of this contract, where no rent is being charged, the State may raise rents up to \$75.00 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 housing shall not ordinarily be a condition of employment. In any instance after July 1, 1992, and annually thereafter, when the rental of State housing is made a condition of employment, the State may charge the employee 10 percent 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 30 days' advance notice.

B. Utilities

Effective July 1, 1992, and annually thereafter, 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 (8) percent 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.

ARTICLE 14 – HEALTH AND SAFETY

14.1 Health and Safety Committees

- A. The parties agree that Joint CAPS/Management Health and Safety Committees are appropriate in many areas of State employment. At CAPS request, each department shall establish at least one Joint CAPS/Management Health and Safety Committee.

Additional Joint CAPS/Management Health and Safety Committees may be established as appropriate for the larger departments.

- B. Joint CAPS/Management Health and Safety Committees may consist of no more than one representative in the area served by each Joint CAPS/Management Health and Safety Committee. The State may appoint an equal number of State representatives.
- C. The Committee shall meet at least quarterly for the purpose of discussing safety problems and recommending appropriate actions, making recommendations from time to time on the subjects of safety, safety promotion, and how to encourage employees to be more conscious of safety.
- D. Employees appointed to serve on the Committee shall serve without loss of compensation.

- E. When an employee in good faith believes that he/she is being required to work where a clear and present danger exists, he/she will so notify his/her supervisor.

The supervisor will immediately investigate the situation and either direct the employee to temporarily perform some other task or proclaim the situation safe and direct the employee to proceed with his/her assigned duties. If CAPS or the employee still believes the unsafe condition exists, CAPS or the employee may file a grievance alleging a violation of this Section at Step 2 of the grievance procedure contained in Article 9.

- F. To the extent permitted by law, all copies of employee occupation injury reports will be furnished to the appropriate Joint CAPS/Management Health and Safety Committee and remain confidential.

ARTICLE 15 – CAREER DEVELOPMENT

15.1 Release Time for State Civil Service Examinations

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 (normally two working days) notice to his/her supervisor. For the purposes of this Section, hiring interviews for individuals certified from employment lists 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.

15.2 Performance Appraisal

The performance appraisal system of each department shall include annual written performance appraisals for permanent employees. Such performance appraisals shall 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. The department shall notify CAPS when performance standards are implemented or changed.

15.3 Training

- A. The State agrees to reimburse Unit 10 employees for expenses incurred as a result of attending departmentally approved and authorized job-required training.

Attendance shall be without loss of compensation. Departmentally approved and authorized training attended during off-duty hours shall be considered work time.

This includes in-service training courses offered by the department. Such reimbursement shall be limited to:

1. Tuition and/or registration fees,
2. Cost of course-required books and materials,
3. Transportation or mileage expenses,

4. Toll and parking fees, and
 5. Lodging and subsistence expenses.
- B. Reimbursement for the above expenses shall be in accordance with Section 6.1 of this Agreement.
- C. The State shall not seek reimbursement for tuition and other necessary expenses if the training assignment is terminated prior to completion of either: (1) the convenience of the State; or (2) because of death, prolonged illness, disability or other similar eventuality.
- D. As authorized and approved by a department, a Unit 10 employee may attend, without loss of compensation, and may be reimbursed, in full or in part, for training designed to increase the employee's job proficiency or professional career development and growth, and/or to maintain or obtain required professional licensure, certification or registration.
- E. All training requests, approvals, and disapprovals, shall be in accordance with departmental procedures. Management shall respond to all training requests within twenty-one (21) calendar days from the date the request was received. The parties may mutually agree to extend this response period. Employee training requests must be compatible with his/her approved individual development plan where such plans are utilized. When an employee training request is denied, the department will give consideration to this fact when reviewing the employee's next request for training.
- F. This Section is only appealable to the third step of the grievance procedure and is not arbitrable.

15.4 Certification or Registration

A Bargaining Unit 10 employee may be provided up to eight (8) hours CTO upon successful completion of a certification or registration examination taken during off-duty hours. The certification or registration must be directly related to an employee's scientific specialty and assigned duties and be approved by the department head or designee.

15.5 Departmental Orientation

The State recognizes the value of having Unit 10 employees knowledgeable of programs and activities carried out by the departments. Each department shall periodically conduct a departmental orientation program for new permanent, full-time Unit 10 employees. Upon approval, existing employees may participate in the orientation.

15.6 Professional Papers

- A. Upon prior approval of the department head or designee, the State may provide a Unit 10 employee up to 40 hours per year and/or necessary travel expenses for the purpose of research, preparation, and presentation of professional papers, provided that the professional papers are directly related to the employee's job assignment and the department head or designee has determined that the presentation of the research paper will benefit the State's operational needs.

- B. The department head or designee may deny the employee's request for presentation for reasons related to training, employee supervision, job performance and operational needs. If the employee's request is denied, the reason for denial shall be stated in writing.
- C. Upon request by the employee, the department will review professional papers for publication. Upon approval by the department head or designee, a copy of the paper may be provided to appropriate departmental and State libraries. This Section is not grievable under the grievance provisions.
- D. Signature credit shall be given employees who author or co-author any scientific research document.
- E. The department head or designee shall respond to the employee's request for research, preparation and presentation of professional papers within thirty (30) days from the date the request was received.

15.7 Volunteer Training

Any Unit 10 Fish and Game employee who has approval to serve as a volunteer deputized Fish and Game Warden must complete the appropriate training required by Penal Code Section 832. If a volunteer, deputized warden has approval to carry a firearm, the employee must complete firearms training required by Penal Code Section 832.

15.8 Professional Society Dues

In recognition of the professional nature of Unit 10 employees, each department, commission, board, or agency may reimburse a Unit 10 employee a total of up to \$100.00 per year. This is for membership dues in one or more job-related professional societies or associations of the employee's choice. Both parties agree and understand that a different amount of reimbursement, if any, may be provided to employees in the same or similar situation.

ARTICLE 16 – TRANSFER AND 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 layoff 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 a applicable State Personnel Board rules.

- C. Notice. Employees compensated on a monthly basis shall be notified 30 calendar days in advance of the effective date of layoff. Where notices are mailed, the 30 calendar day time period will begin to run on date of mailing of the notice. Notice of the layoff shall be sent to CAPS.
- D. 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 applicable State Personnel Board rules. If an employee refuses a transfer or demotion, the employee shall be laid off.
- E. 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 types of employment lists for the classes in which employees were laid off. Employees shall be certified from department or subdivisional reemployment lists in accordance with Section 19056 of the Government Code.
- F. 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.
- G. An appeal of any portion of this layoff provision shall solely be through the procedures established in Government Code Section 19997.14.

16.2 Reducing the Adverse Effects of Layoff

Whenever the State determines it necessary to layoff employees, the State and CAPS 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 Change in Work Location

The State, CAPS, and Bargaining Unit 10 employees recognize that the nature of the work performed by Unit 10 employees may require the State to make temporary reassignments of employees on short notice.

The State will normally provide Unit 10 employees with at least seven (7) working days advance notice of a change in their work location which would not reasonably require the employee to change his/her place of residence. This advance notice is not required if: (1) the new work location is within the general vicinity of the employee's current regular street business address, (2) the change is due to an unforeseen emergency, or (3) the change is made at the request of the employee.

16.4 Appeal of Involuntary Transfer

- A. An involuntary transfer which reasonably requires an employee to change his/her residence may be grieved under Article 9 only if the employee believes it was made for the purpose of harassing or disciplining the employee. If the appointing authority or the Department of Personnel Administration disapproves the transfer, the employee: (1) shall be returned to his/her former position; (2) shall be paid the regular travel allowance for the period of time he/she was away from his/her original headquarters; and (3) shall be paid his/her moving costs both from and back to the original headquarters, in accordance with the Department of Personnel Administration 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.

ARTICLE 17 - CLASSIFICATION

17.1 Classification Changes

- A. When the Department of Personnel Administration (DPA) desires to establish a new classification and assigns it to Bargaining Unit 10 or intends to modify an existing one that is in Bargaining Unit 10, DPA shall inform CAPS of the proposal during DPA's preparatory stages of the proposal. CAPS may request to meet with DPA regarding these classification proposals. Such meetings shall be for the purpose of informally discussing the classification proposal and for CAPS to provide input.

Upon request, DPA may furnish CAPS with drafts of the proposed classification specifications.
- B. DPA shall notify and submit to CAPS the final classification proposal at least 20 work days prior to the date State Personnel Board (SPB) is scheduled to adopt it.
- C. If CAPS requests in writing within ten (10) work days of receipt of the notice, DPA shall meet with CAPS to discuss the final proposal. If CAPS does not respond to the notice, or if CAPS does not meet within five (5) work days from the date of request, the classification proposal shall be deemed agreeable to CAPS and be placed on SPB's consent calendar.
- D. DPA shall meet-and-confer, if requested in writing within five (5) work days from the date SPB approved the classification change, regarding only the compensation provisions of the classification. DPA shall respond to CAPS within ten (10) days of CAPS' written request to meet regarding the compensation provisions of any new classification. DPA shall not implement the proposed or revised classification until DPA and CAPS meet-and-confer regarding the compensation.
- E. Neither the classification nor the compensation provisions shall be subject to the grievance and arbitration procedure in Article 9.

17.2 Out-of-Class Grievance Process

A. Definitions

1. "Working out-of-class" (a.k.a. "out-of-class work") is defined as performing, more than 50 percent of the time, the full range of duties and responsibilities allocated to an existing class and not allocated to the class in which the employee has a current, legal appointment.
2. 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 120 days or, if approved by the Department of Personnel Administration, up to one year.
3. "Terminated out-of-class work or assignment" is defined as "working out-of-class" (as defined above) in which 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.

B. Pre-arranged Out-of-Class Assignments

Notwithstanding Government Code Sections 905.2, 19818.8, 19818.6, 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 calendar days only with the approval of the Department of Personnel Administration (DPA). Out-of-class assignments shall not exceed one year.

Authorization and Rate of Pay

1. 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 consecutive weeks, the employee shall receive the rate of pay, pursuant to DPA Regulation 599.673, 599.674, or 599.676 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 promotional step in the higher class.
2. 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 an out-of-class compensation.

C. Out-of-Class Grievances

1. **Exclusive Appeal Process:** The grievance and arbitration procedure described in subsection (E) below shall be the exclusive means by which alleged out-of-class assignments shall be remedied, including requests for review by the Department of Personnel Administration referenced in Government Code Section 19818.16.

Out-of-class grievances shall not be filed with the State Board of Control.

2. **Out-of-Class Remedy:** The grievance and arbitration procedure described in subsection (E) shall be the exclusive means by which alleged out-of-class appeals shall be remedied, including those referenced in Government Code Sections 19818.6 and 19818.20.
3. **Retroactive Pay:** The only remedy that shall be available to grievants is retroactive pay for out-of-class work.
4. **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 (1) year before the filing of the grievance.
5. **Arbitrator Limitations:** Arbitrators shall not have the authority to order reclassification (reallocation) of a grievant's position or discontinuance of out-of-class work assignments.

D. Grievance Procedure and Time Limits

1. **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.
2. **Third Level Appeal:** Out-of-class grievances shall be filed with a designated supervisor or manager identified by each department head as the third level of appeal in the usual grievance procedure found in Article 9.
3. **Third Level Response:** The person designated by the department head as the third level of appeal shall respond to the grievance in writing within 45 calendar days after receipt of the grievance.
4. **Fourth Level Appeal:** If the grievant is not satisfied with the decision rendered by the person designated by the department head at the third level of appeal, he/she may appeal the decision in writing within 21 calendar days after receipt to the Director of the Department of Personnel Administration.
5. **Fourth Level Response:** The Director of the Department of Personnel Administration or designee shall respond to the grievance in writing within 60 calendar days after receipt of the appealed grievance.

6. Arbitration Request: If the grievance is not resolved by the Department of Personnel Administration, the union shall have the right to submit the grievance to arbitration within 30 calendar days following receipt of the Department of Personnel Administration's decision.
 7. Arbitration Process: Article 9.12 "Formal grievance - Step 5" shall apply to out-of-class grievances except as otherwise provided in this section.
- E. Arbitrator Award. The arbitrator's award 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.

17.3 Salary Survey

In the six months prior to the expiration of this contract, DPA and CAPS will jointly survey the salaries for the comparable classes listed and take into consideration the information contained in these reports, prior to making salary recommendations to DPA for these employees.

This labor/management committee will have three members from CAPS and DPA. These members will serve on this committee with no loss in compensation. This committee will agree on the methodology, benchmark classes in California cities and counties, UC, CSU, the federal government, and the private sector for the classes of:

Environmental Scientist/Biologist

Chemist

Geologist

Research Scientist

Industrial Hygienist

Health Physicist

ARTICLE 18 - PERMANENT INTERMITTENT APPOINTMENTS

18.1 Permanent Intermittent Appointments

- A. An "intermittent" position or appointment is a position or appointment in which the employee is to work periodically or for a fluctuating portion of the fulltime work schedule. An intermittent employee may work up to 1,500 hours in any calendar year based upon SPB rule. The number of hours and schedule of work shall be determined based upon the operational needs of each department.
- B. Each department may establish an exclusive pool of intermittent employees based upon operational need.
- C. Each department will endeavor to provide intermittent employees reasonable advance notice of their work schedule.

- D. Upon mutual agreement, a department head or designee may grant an intermittent employee a period of nonavailability not to exceed twelve (12) months during which the employee may not be given a waiver. The period of nonavailability may be revoked based on operational needs. An employee on nonavailable status who files for unemployment insurance benefits shall be immediately removed from such status.
- E. An intermittent employee will become eligible for leave credits in the following manner:
1. Sick Leave. An intermittent employee in Bargaining Unit 10 will be eligible for eight (8) hours of sick leave credit with pay on the first day of the qualifying monthly pay period following completion of each period of 160 hours of paid employment. The hours in excess of 160 hours in a qualifying monthly pay period shall not be counted or accumulated. An intermittent employee shall not be removed from scheduled work hours because he/she is on sick leave.
 2. Vacation Leave. An intermittent employee will be eligible for vacation leave credit with pay as defined in Section 3.1, on the first day of the following qualifying monthly pay period following completion of 960 hours of compensated work. Thereafter, an employee will be eligible for vacation credit with pay in accordance with the schedule in Section 3.1, on the first day of the qualifying monthly pay period following completion of each period of 160 hours of paid employment. The hours in excess of 160 hours in a qualifying monthly pay period shall not be counted or accumulated. When it is determined that there is lack of work, a department head or designee may:
 - a. pay the employee in a lump sum payment for accumulated vacation leave credits; or
 - b. schedule the employee for vacation leave; or
 - c. allow the employee to retain his/her vacation credits; or
 - d. effect a combination of a, b or c above.
 3. Annual Leave. A permanent intermittent employee will be eligible for annual leave credit with pay on the first day of the qualifying monthly pay period following completion of each period of 160 hours of paid employment. The hours in excess of 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.

A permanent intermittent employee will be subject to the provisions of Article 3.13 (Annual Leave).

4. **Holidays.** An intermittent employee will be eligible for holiday pay on a pro rata basis, based on hours worked during the pay period when the holiday occurred in accordance with DPA rules.
5. **Bereavement Leave.** An intermittent employee may only be granted bereavement leave 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.
6. **Jury Duty.** An intermittent employee may only be granted jury duty leave 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. An intermittent employee shall not be removed from scheduled work hours because he/she is on jury duty.
7. **Non-industrial Disability Leave.** Where employment is intermittent, the payments shall be determined on the basis of the proportionate part of a monthly rate established by the total hours actually employed in the 18 monthly pay periods immediately preceding the pay period in which the disability begins as compared to the regular rate for a fulltime employee in the same group or class. An employee will be eligible for NDI payments on the first day of the monthly pay period following completion of 960 hours of compensated work.
8. **Pay Day.** Each department will establish a date by which its PI employees shall receive their regular pay.
9. **Dental Benefits.** An intermittent employee will be eligible during each calendar year for dental benefits if the employee works at least half time, has an appointment for more than six (6) months, and must have been credited with a minimum of 480 paid hours within one of the two designated six (6) month periods in a calendar year. To continue benefits, an employee must be credited with a minimum of 480 paid hours in a designated six (6) month period or 960 paid hours in two consecutive designated six (6) month periods. For the purposes of this Section, the designated six (6) month periods are January 1 through June 30 and July 1 through December 31 of each calendar year. An eligible intermittent employee must enroll in a dental benefit plan within 60 calendar days from his/her date of qualification.
10. **Health Benefits.** An intermittent employee eligibility for health benefits is consistent with Item (8) above.
11. All remaining conditions of employment that relate to the employee shall be administered in accordance with existing rules and regulations, unless modified by this Agreement.

ARTICLE 19 - MISCELLANEOUS

19.1 Request for Reinstatement after AWOL Separation

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 the 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 otherwise limit or expand any other authority of the hearing officer under Government Code section 19996.2.

19.2 Incompatible Activities

Each department shall have a formal incompatible activities policy. Copies of the policy shall be provided to employees upon request. Unit 10 members who wish to engage in outside activities may request, in writing, a formal departmental review. The department shall provide a determination, in writing, within 30 calendar days. Departmental determinations of incompatibility shall be grievable but not arbitrable.

19.3 Personnel and Evaluation Materials

- A. An employee's official departmental personnel file shall be maintained at a location identified by each department head or designee.
- B. Information in an employee's official departmental personnel file shall be confidential and available for inspection only to the employee's department head or designee in connection 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 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 the document acknowledging receipt. 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, reasonable arrangements will be made to accommodate the employee.
- 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 CAPS/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.
- G. Materials relating to an employee's performance included in the employee's official 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 shall be purged after three years. This provision, however, does not apply to formal adverse actions as defined in applicable Government Code Sections or to material of a negative nature for which actions have occurred during the intervening three-year period. Except that, by mutual agreement between a department head or designee and an employee, an adverse action material may be removed.

19.4 Release Time for State Personnel Board

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 Item (1) or (2) above who is scheduled to work a graveyard shift on the day of an SPB hearing.

19.5 Peer Review

The State and CAPS recognize that peer review can be advantageous to maintaining the quality of laboratory research in scientific disciplines. Upon request, the departments will within thirty (30) calendar days, meet-and-confer regarding the use of peer review where appropriate. Up to two (2) CAPS employee representatives may be given release time to meet-and-confer without loss of compensation. Article 9 does not apply to this Section.

19.6 Transportation Incentives

- A. The State and Union agree that the State shall encourage employees to use alternate means of transportation to commute to and from work in order to reduce traffic congestion and improve air quality.
- B. Employees working in areas served by mass transit, including rail, bus, or other commercial transportation licensed for public conveyance shall be eligible for a 75 percent 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 75 percent (75%) reimbursement up to a maximum of \$65 per month. This shall not be considered compensation for purpose of retirement contributions. The State may establish and implement procedures and eligibility criteria for the administration of this benefit including required receipts and certification of expenses.

- C. Employees riding in vanpools shall be eligible for a 75 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 van pool drivers. This shall not be considered compensation for purposes of retirement contributions. A vanpool is defined as a group of seven or more people who commute together in a vehicle (State or non-State) specially designed to carry an appropriate number of passengers. The State may establish and implement procedures and eligibility criteria for the administration of this benefit.
- D. Employees headquartered out of State shall receive reimbursement for qualified public transportation and vanpool expenses for 75 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.
- E. 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 areas, no more than twenty dollars (\$20) per month above the current rate charged to employees in specific locations where they park. Congested urban areas are such as Sacramento, San Francisco Bay, Fresno, Los Angeles, San Bernardino, Riverside and San Diego areas. Every effort shall be made to provide employees 60 days but no less than 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 with rates for covered parking.
- F. The State shall continue a system for employees where parking fees may be paid with pre-tax dollars.
- G. Notwithstanding any other provision of this Contract, the Union agrees that the State may implement new policies or change existing ones in such as transit subsidies, vanpool/carpool incentives, walking/biking incentives, parking, parking fees, hours of work, and other actions to meet the goals of transportation incentives. The State agrees to notify and meet-and-confer regarding the impact of such new or changed policies.

19.7 Group Legal Services

The State of California agrees to contract for an employee-paid group legal services plan. The plan will emphasize a choice of providers and access to legal services. 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.

19.8 Workplace Violence Prevention

Each department shall establish, implement, and maintain a Workplace Violence Prevention Program. The program shall be in writing and distributed and/or made available to all employees.

19.9 CalEPA Relocation and Transportation Agreement

Except as otherwise specified, this section shall apply to those employees headquartered in the CalEPA Building located at 1001 I Street in Sacramento, California.

A. Telecommute Policy

The CalEPA Telecommute Policy shall be implemented and available to all scientists throughout the State employed by the CalEPA.

B. Commute Mitigation

1. Alternate Transportation Support – The State and CAPS agree that the State shall encourage employees to use alternate means of transportation to commute to and from work in order to reduce traffic congestion and improve air quality.
2. Incidental Use Parking – CalEPA shall develop an "Incidental Use Parking Program" for employees who use alternate means of transportation to commute to and from work. Upon 24 hours notice, employees who self-certify that they are using alternate transportation to commute to and from work at least three times per week, shall be eligible to park for up to two days per pay period in a CalEPA paid parking space set aside for this purpose.
3. Guaranteed Ride Home Program – This program exists through the Sacramento Transportation Management Association. This program allows employees who use alternative transportation at least three times per week to obtain transportation in the case of emergency or unanticipated approved overtime that precludes the use of their regular ride home. Eligible employees may use the program up to six times in a 12-month period. All CalEPA boards, departments and offices will maintain membership in this organization in order to provide this benefit to all qualifying employees.

C. Parking

1. Parking Lot Waiting List – For purposes of allocating available parking spaces to CalEPA employees who were not assigned a lottery number on August 3, 2000, the following priority order shall be used after September 1, 2000: 1) handicapped, 2) car/vanpools and shared permits with at least two CalEPA employees, and 3) all others, on a first come first served basis, without exceptions.
2. Waiting List Status Reports – Upon request of the exclusive representative for any of its affected bargaining units, CalEPA shall provide reports describing: 1) the number of parking permits available by lot, 2) the number of permits issued, and 3) the number of employees on the waiting list of each lot.

3. Parking – It is understood that the State will not subsidize employee parking.

D. Bicycle Transportation

1. Bicycle Storage Fee Reimbursement – Employees charged a bicycle storage fee shall be eligible for reimbursement of \$15.00 per month from when the employee relocates to the CalEPA building. This shall not be considered compensation for purposes of retirement contributions. The State may establish and implement procedures for the administration of this benefit.
2. Bicycle Storage Assignment – Bicycle storage shall be assigned based on commute days, by lottery numbers, and in accordance with the following priority: 1) five days per week, 2) four days per week, and 3) three days per week. CalEPA shall notify each bicyclist of storage arrangements beginning October 1, 2000. Advance acceptance of the storage assignment may be submitted to appropriate administrative officials. After assignments are final at each bicycle storage area, each employee may then request to be placed on a waiting list for specific bicycle storage areas. Placement on a waiting list shall be based on a first come, first served basis. Upon satisfactory proof of the need for such accommodation, bicycle commuters who require special needs accommodations shall have priority over all others commuting the same number of days per week.

The CalEPA Bicycle Storage Area is not scheduled to be available for parking until December 2000. Employees with permits may either park bicycles in general work areas of a CalEPA sponsored Pilot Project, or use available bicycle storage facilities located at 901 P Street, or any other state building.

3. City Storage Fee Reimbursement – Employees who commute to and from work by bicycle at least three days per week shall be eligible for reimbursement of the fee charged by the City for bicycle parking until the bicycle storage facilities in the new building are available for use, and afterwards, if the facilities in the new building are fully utilized.

E. Clothing Lockers

Priority assignment shall be given to employees who commute by bicycle or on foot by lottery number and in accordance with the following priority: 1) five days per week, 2) four days per week, 3) three days per week. Employees who commute to and from work by bicycle or on foot who were not assigned a lottery number, shall be assigned available clothing lockers in accordance with the same priority and on a first-come, first-served basis. Employees requiring a clothes locker to meet special needs accommodations shall be assigned a clothes locker upon satisfactory proof of the need for such accommodation. All other clothing lockers shall be utilized on a first-come first-served basis.

F. Safety Committee

CalEPA agrees to establish a Safety Committee to review and discuss safety issues and concerns applicable to the employees of CalEPA and its Boards, Departments and Offices (BDO) located at the new CalEPA Headquarters building at 1 001 I Street in Sacramento. The Committee shall meet quarterly and participants shall include the safety officer from each BDO and one representative from each bargaining unit willing to participate. The Committee shall establish Bylaws that may or may not be based on any such existing committees, so long as they are not in conflict with the Memoranda of Understanding for each participating bargaining unit.

G. Building Card Key Costs

Employees are responsible for their building card keys. Except in cases of loss and/or damage due to negligence, building card keys will be replaced at no cost to employees up to two times per year.

H. Implementation

Where necessary, CalEPA shall develop procedures to implement any of the above programs.

19.10 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 Unit 10 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 Unit 10 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 CAPS' 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 Unit 10 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 CAPS' designated representatives with a copy of the Standard Form 215 (or its departmental equivalent) if and when the Form 215 is completed, provided the contract is/will be for services found in Unit 10 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 subsection C is to provide CAPS 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 CAPS for this purpose, if requested by CAPS.

D. Personal Service 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 Unit 10 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 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 Unit 10 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 Unit 10 classes. 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 Unit 10 class specifications. Costing information provided to the committee for protected contracts shall include total personnel costs for personnel services found in Unit 10 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 10 workdays after receipt of the personal service contracts and associated documents as provided for in subsection 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 terminations of personal service 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 Unit 10 employees.
 - b. Enabling the employment of Unit 10 employees for services currently performed by contractors.
 - c. Enabling of the conversion to Unit 10 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 back ground 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 Unit 10 employees have preference over contract employees consistent with, but not limited to the following principles:
 - a. The duties at issue are consistent with the Unit 10 employee's classification;
 - b. The Unit 10 employee is qualified to perform the job; and
 - c. There is no disruption in services.

2. To avoid or mitigate Unit 10 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 reviews personal services contracts determines that the terms and purpose of the contract permit the State to assign the work to a Unit 10 employee who would otherwise be displaced, this shall be implemented consistent with the other terms of this section. The State and CAPS 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 Unit 10 employee to avoid displacement, are utilized to offset that employee's moving and relocation costs, the amount for which shall be consistent with Section 6.2 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 the state or Federal court 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 Section 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 Contracts Code Section 10337).

ARTICLE 20 – ENTIRE AGREEMENT AND DURATION

20.1 Entire Agreement

- A. This Agreement sets forth the full and entire understanding of the parties regarding the matters contained herein, and any other prior or existing understanding or agreement by the parties, whether formal or informal, regarding any such matters are hereby superseded. Except as provided in this Agreement, it is agreed and understood that each party to this Agreement voluntarily waives its right to negotiate with respect to any matter raised in negotiations or covered in this Agreement, for the duration of the Agreement.

With respect to other matters within the scope of negotiations, negotiations may be required during the term of this Agreement 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 Agreement.

The parties recognize that during the term of this Agreement 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 CAPS of the proposed change 30 days prior to its proposed implementation.

The parties shall undertake negotiations regarding the impact of such changes on the employees in Unit 10, when all three of the following exist:

1. Where such changes would affect the working conditions of a significant number of employees in Unit 10.
2. Where the subject matter of the change is within the scope of representation pursuant to the Dills Act.
3. Where CAPS requests to negotiate with the State.

Any agreement resulting from such negotiations shall be executed in writing and shall become an addendum to this Agreement. 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 Dills Act.

20.2 Duration

The terms of this agreement shall go into effect on July 1, 2006, or upon ratification by both the Legislature and CAPS, whichever is later, and shall remain in full-force and effect through June 30, 2008.

SIDE LETTERS

Side Letter 1

The \$300 per month recruitment and retention differentials for the Public Health Microbiologists (Pay Differential #217) and Health Physicists (Pay Differential #144) that are in effect on July 1, 2006 shall continue until the 2007 General Salary Increase (GSI) is implemented.

After the 2007 GSI, is implemented, the \$300 per month shall be incorporated into the base salaries of the eligible classes.

It is understood by the parties that if the existing recruitment and retention differential is increased prior to July 1, 2007, only \$300 shall be added to the base salary of the eligible class.

It is further understood by the parties that, subject only to the provisions of Section 2.10 of this agreement, after the \$300 has been included in base salary, DPA may abolish or modify Pay Differential #217 and Pay Differential #144 as it deems necessary and appropriate.

This Side Letter shall expire once the \$300 has been incorporated into base salary.

SALARY SCHEDULE

10 - Professional Scientific

Class Title	SCHEM CD	CLASS CD	ALT RG	MIN SAL	MAX SAL	WWG
AGRICULTURAL BIOLOGIST	BB40	0500	A	\$2,724.00	\$3,088.00	2
AGRICULTURAL BIOLOGIST	BB40	0500	B	\$3,362.00	\$4,045.00	2
AGRICULTURAL BIOLOGIST	BB40	0500	C	\$2,888.00	\$3,304.00	2
AGRICULTURAL BIOLOGIST	BB40	0500	D	\$3,016.00	\$3,458.00	2
AGRICULTURAL BIOLOGIST	BB40	0500	E	\$3,520.00	\$4,237.00	2
AGRICULTURAL BIOLOGIST	BB40	0500	F	\$3,691.00	\$4,439.00	2
ASSISTANT ERGONOMIC SPECIALIST, STATE COMPENSATION INSURANCE FUND	WH75	9360		\$3,968.00	\$4,785.00	2
ASSISTANT GEOLOGIST	HR60	3722	A	\$3,316.00	\$3,804.00	2
ASSISTANT GEOLOGIST	HR60	3722	B	\$3,793.00	\$4,568.00	2
ASSISTANT HEALTH PHYSICIST	HX34	3779		\$3,968.00	\$4,785.00	2
ASSISTANT INDUSTRIAL HYGIENE SPECIALIST, STATE COMPENSATION INSURANCE FUND	WH56	9322		\$3,968.00	\$4,785.00	2
ASSISTANT INDUSTRIAL HYGIENIST	IC61	3855		\$3,968.00	\$4,785.00	2
ASSISTANT METEOROLOGIST	GD40	3059		\$3,700.00	\$4,459.00	2
ASSISTANT PUBLIC HEALTH BIOLOGIST	SX80	0565	A	\$2,724.00	\$3,088.00	2
ASSISTANT PUBLIC HEALTH BIOLOGIST	SX80	0565	B	\$3,362.00	\$4,045.00	2
ASSISTANT STATE ARCHEOLOGIST	BU74	2714	A	\$2,724.00	\$3,088.00	2
ASSISTANT STATE ARCHEOLOGIST	BU74	2714	B	\$3,380.00	\$4,061.00	2
ASSISTANT STATE PARK RESOURCE ECOLOGIST	BV74	2831	A	\$2,724.00	\$3,088.00	2
ASSISTANT STATE PARK RESOURCE ECOLOGIST	BV74	2831	B	\$3,362.00	\$4,045.00	2
ASSOCIATE AGRICULTURAL BIOLOGIST	BB43	0751	A	\$4,481.00	\$5,400.00	2
ASSOCIATE AGRICULTURAL BIOLOGIST	BB43	0751	B	\$4,467.00	\$5,390.00	2
ASSOCIATE AGRICULTURAL BIOLOGIST	BB43	0751	C	\$4,684.00	\$5,645.00	2
ASSOCIATE BIOLOGIST (BOTANY)	BP15	6374		\$4,481.00	\$5,400.00	2
ASSOCIATE BIOLOGIST (GENERAL)	BP14	6373		\$4,481.00	\$5,400.00	2
ASSOCIATE BIOLOGIST (MARINE/FISHERIES)	BP16	6375		\$4,481.00	\$5,400.00	2
ASSOCIATE BIOLOGIST (WILDLIFE)	BP17	0897		\$4,481.00	\$5,400.00	2
ASSOCIATE ECONOMIC ENTOMOLOGIST	BG20	0549	A	\$4,266.00	\$5,143.00	2
ASSOCIATE ECONOMIC ENTOMOLOGIST	BG20	0549	B	\$4,467.00	\$5,390.00	2

Class Title	SCHEM CD	CLASS CD	ALT RG	MIN SAL	MAX SAL	WWG
ASSOCIATE ECONOMIC ENTOMOLOGIST	BG20	0549	C	\$4,684.00	\$5,645.00	2
ASSOCIATE ENERGY SPECIALIST (EFFICIENCY)	BJ80	4938		\$4,255.00	\$5,134.00	2
ASSOCIATE ENERGY SPECIALIST (FORECASTING)	BJ84	4598		\$4,255.00	\$5,134.00	2
ASSOCIATE ENERGY SPECIALIST (TECHNOLOGY EVALUATION AND DEVELOPMENT)	BJ82	4056		\$4,255.00	\$5,134.00	2
ASSOCIATE ENVIRONMENTAL RESEARCH SCIENTIST	BG87	6169		\$4,467.00	\$5,390.00	E
ASSOCIATE ERGONOMIC SPECIALIST, STATE COMPENSATION INSURANCE FUND	WH76	9361		\$4,797.00	\$5,783.00	2
ASSOCIATE FISH PATHOLOGIST	BP85	0840		\$4,266.00	\$5,143.00	2
ASSOCIATE GEOCHEMIST	HR90	3743		\$4,797.00	\$5,783.00	2
ASSOCIATE GEOLOGIST	HR50	3719		\$4,797.00	\$5,783.00	2
ASSOCIATE GEOPHYSICIST	HS10	3744		\$4,797.00	\$5,783.00	2
ASSOCIATE HAZARDOUS MATERIALS SPECIALIST	BH93	3528	A	\$4,355.00	\$5,260.00	2
ASSOCIATE HAZARDOUS MATERIALS SPECIALIST	BH93	3528	B	\$4,773.00	\$5,798.00	2
ASSOCIATE HEALTH PHYSICIST	HX30	3803		\$4,797.00	\$5,783.00	2
ASSOCIATE INDUSTRIAL HYGIENE SPECIALIST, STATE COMPENSATION INSURANCE FUND	WH55	9321		\$4,797.00	\$5,783.00	2
ASSOCIATE INDUSTRIAL HYGIENIST	IC62	3856	A	\$4,797.00	\$5,783.00	2
ASSOCIATE INDUSTRIAL HYGIENIST	IC62	3856	L	\$4,797.00	\$5,783.00	2
ASSOCIATE INSECT BIOSYSTEMATIST	BF50	0534	A	\$4,467.00	\$5,390.00	E
ASSOCIATE INSECT BIOSYSTEMATIST	BF50	0534	B	\$4,684.00	\$5,645.00	E
ASSOCIATE INSECT BIOSYSTEMATIST	BF50	0534	C	\$4,907.00	\$5,920.00	E
ASSOCIATE LAND AND WATER USE SCIENTIST	GF10	3083		\$4,574.00	\$5,523.00	2
ASSOCIATE METEOROLOGIST	GD30	3058		\$4,624.00	\$5,578.00	2
ASSOCIATE PLANT NEMATOLOGIST	BE40	0512	A	\$4,467.00	\$5,390.00	E
ASSOCIATE PLANT NEMATOLOGIST	BE40	0512	B	\$4,684.00	\$5,645.00	E
ASSOCIATE PLANT NEMATOLOGIST	BE40	0512	C	\$4,907.00	\$5,920.00	E
ASSOCIATE PLANT PATHOLOGIST (DIAGNOSTICIAN)	BE45	1273	A	\$4,467.00	\$5,390.00	E
ASSOCIATE PLANT PATHOLOGIST (DIAGNOSTICIAN)	BE45	1273	B	\$4,684.00	\$5,645.00	E
ASSOCIATE PLANT PATHOLOGIST (DIAGNOSTICIAN)	BE45	1273	C	\$4,907.00	\$5,920.00	E
ASSOCIATE PLANT PATHOLOGIST (FIELD)	BE35	1090	A	\$4,266.00	\$5,143.00	2
ASSOCIATE PLANT PATHOLOGIST (FIELD)	BE35	1090	B	\$4,467.00	\$5,390.00	2
ASSOCIATE PLANT PATHOLOGIST (FIELD)	BE35	1090	C	\$4,684.00	\$5,645.00	2
ASSOCIATE PUBLIC HEALTH BIOLOGIST	SX70	0564		\$4,372.00	\$5,266.00	2

Class Title	SCHEM CD	CLASS CD	ALT RG	MIN SAL	MAX SAL	WWG
ASSOCIATE SEED BOTANIST	BC41	0493	A	\$4,481.00	\$5,399.00	E
ASSOCIATE SEED BOTANIST	BC41	0493	B	\$4,691.00	\$5,660.00	E
ASSOCIATE SEED BOTANIST	BC41	0493	C	\$4,917.00	\$5,930.00	E
ASSOCIATE SEISMOLOGIST	HT25	3755		\$4,797.00	\$5,783.00	2
ASSOCIATE STATE ARCHEOLOGIST	BU75	2809		\$4,264.00	\$5,143.00	2
ASSOCIATE STATE PARK RESOURCE ECOLOGIST	BU77	2815		\$4,266.00	\$5,143.00	2
ASSOCIATE TOXICOLOGIST	TC56	7941	A	\$4,674.00	\$5,639.00	E
ASSOCIATE TOXICOLOGIST	TC56	7941	B	\$5,134.00	\$6,193.00	E
ASSOCIATE WATER QUALITY BIOLOGIST	BQ05	0834		\$4,266.00	\$5,143.00	2
ASSOCIATE WILDLIFE VETERINARIAN	AT78	2053		\$5,017.00	\$6,056.00	E
BIOLOGIST (BOTANY)	BP11	6371	A	\$2,724.00	\$3,088.00	2
BIOLOGIST (BOTANY)	BP11	6371	B	\$3,362.00	\$4,045.00	2
BIOLOGIST (GENERAL)	BP10	6366	A	\$2,724.00	\$3,088.00	2
BIOLOGIST (GENERAL)	BP10	6366	B	\$3,362.00	\$4,045.00	2
BIOLOGIST (MARINE/FISHERIES)	BP12	6372	A	\$2,724.00	\$3,088.00	2
BIOLOGIST (MARINE/FISHERIES)	BP12	6372	B	\$3,362.00	\$4,045.00	2
BIOLOGIST (WILDLIFE)	BP13	0898	A	\$2,724.00	\$3,088.00	2
BIOLOGIST (WILDLIFE)	BP13	0898	B	\$3,362.00	\$4,045.00	2
CHEMIST	TG05	8060	A	\$3,185.00	\$3,630.00	2
CHEMIST	TG05	8060	B	\$3,855.00	\$4,614.00	2
CHEMIST	TG05	8060	C	\$4,410.00	\$5,289.00	2
CHIEF CHEMIST, PESTICIDE EVALUATION	BG40	6176		\$5,506.00	\$6,658.00	E
CYTOTECHNOLOGIST, LABORATORY FIELD SERVICES	SV80	7910	A	\$4,164.00	\$5,017.00	2
CYTOTECHNOLOGIST, LABORATORY FIELD SERVICES	SV80	7910	B	\$4,372.00	\$5,266.00	2
ECONOMIC ENTOMOLOGIST	BG05	0530	A	\$2,724.00	\$3,088.00	2
ECONOMIC ENTOMOLOGIST	BG05	0530	B	\$3,362.00	\$4,045.00	2
ECONOMIC ENTOMOLOGIST	BG05	0530	C	\$2,888.00	\$3,304.00	2
ECONOMIC ENTOMOLOGIST	BG05	0530	D	\$3,016.00	\$3,458.00	2
ECONOMIC ENTOMOLOGIST	BG05	0530	E	\$3,520.00	\$4,237.00	2
ECONOMIC ENTOMOLOGIST	BG05	0530	F	\$3,691.00	\$4,439.00	2
ENERGY ANALYST	BJ95	5837	A	\$2,724.00	\$3,239.00	2
ENERGY ANALYST	BJ95	5837	B	\$2,950.00	\$3,538.00	2

Class Title	SCHEM CD	CLASS CD	ALT RG	MIN SAL	MAX SAL	WWG
ENERGY ANALYST	BJ95	5837	C	\$3,538.00	\$4,255.00	2
ENERGY COMMISSION SPECIALIST I (EFFICIENCY)	BJ50	4935		\$4,674.00	\$5,639.00	E
ENERGY COMMISSION SPECIALIST I (FORECASTING)	BJ52	4947		\$4,674.00	\$5,639.00	E
ENERGY COMMISSION SPECIALIST I (TECHNOLOGY EVALUATION AND DEVELOPMENT)	BJ54	4184		\$4,674.00	\$5,639.00	E
ENERGY COMMISSION SPECIALIST II (EFFICIENCY)	BJ40	4936		\$5,134.00	\$6,193.00	E
ENERGY COMMISSION SPECIALIST II (FORECASTING)	BJ42	4948		\$5,134.00	\$6,193.00	E
ENERGY COMMISSION SPECIALIST II (TECHNOLOGY EVALUATION AND DEVELOPMENT)	BJ44	4185		\$5,134.00	\$6,193.00	E
ENERGY COMMISSION SPECIALIST III (EFFICIENCY)	BJ30	4937		\$5,639.00	\$6,810.00	E
ENERGY COMMISSION SPECIALIST III (FORECASTING)	BJ32	4949		\$5,639.00	\$6,810.00	E
ENERGY COMMISSION SPECIALIST III (TECHNOLOGY EVALUATION AND DEVELOPMENT)	BJ34	4186		\$5,639.00	\$6,810.00	E
ENERGY RESOURCES SPECIALIST I	BI76	4807		\$4,255.00	\$5,134.00	2
ENERGY RESOURCES SPECIALIST II	BI74	4806		\$4,674.00	\$5,639.00	E
ENVIRONMENTAL RESEARCH ASSISTANT	BG53	7413		\$2,724.00	\$3,088.00	2
ENVIRONMENTAL RESEARCH SCIENTIST	BG85	6170	A	\$2,868.00	\$3,388.00	2
ENVIRONMENTAL RESEARCH SCIENTIST	BG85	6170	B	\$3,615.00	\$4,355.00	2
ENVIRONMENTAL SCIENTIST	BH70	0762	A	\$2,976.00	\$3,576.00	2
ENVIRONMENTAL SCIENTIST	BH70	0762	B	\$3,615.00	\$4,355.00	2
ENVIRONMENTAL SCIENTIST	BH70	0762	C	\$4,574.00	\$5,523.00	2
EXAMINER I LABORATORY FIELD SERVICES	SW80	7949		\$4,164.00	\$5,017.00	2
EXAMINER II LABORATORY FIELD SERVICES	SW75	7946		\$4,568.00	\$5,506.00	2
FISH AND WILDLIFE INTERPRETER I	BP25	1917	A	\$2,724.00	\$3,088.00	2
FISH AND WILDLIFE INTERPRETER I	BP25	1917	B	\$3,362.00	\$4,045.00	2
FISH AND WILDLIFE INTERPRETER II	BP30	1918		\$4,266.00	\$5,143.00	2
FISH VIROLOGIST	BP75	0837		\$4,785.00	\$5,775.00	E
FORENSIC SCIENTIST-TOXICOLOGIST I	TF68	8088		\$3,793.00	\$4,568.00	2
FORENSIC SCIENTIST-TOXICOLOGIST II	TF69	8089		\$4,355.00	\$5,260.00	2
FORENSIC SCIENTIST-TOXICOLOGIST III	TF70	8071		\$4,785.00	\$5,775.00	2
FORENSIC SCIENTIST-TOXICOLOGIST TRAINEE	TF67	8067		\$2,782.00	\$3,165.00	2
FOREST GENETICIST	BY55	1048		\$5,017.00	\$6,056.00	E
HAZARDOUS MATERIALS SPECIALIST	BH94	3529	A	\$2,976.00	\$3,576.00	2

Class Title	SCHEM CD	CLASS CD	ALT RG	MIN SAL	MAX SAL	WWG
HAZARDOUS MATERIALS SPECIALIST	BH94	3529	B	\$3,615.00	\$4,355.00	2
HAZARDOUS MATERIALS SPECIALIST	BH94	3529	C	\$3,243.00	\$3,840.00	2
HAZARDOUS MATERIALS SPECIALIST	BH94	3529	D	\$3,954.00	\$4,803.00	2
HAZARDOUS SUBSTANCES SCIENTIST	BH65	3584	A	\$2,976.00	\$3,576.00	2
HAZARDOUS SUBSTANCES SCIENTIST	BH65	3564	B	\$3,615.00	\$4,355.00	2
HAZARDOUS SUBSTANCES SCIENTIST	BH65	3584	C	\$4,574.00	\$5,523.00	2
HEALTH AND SAFETY PROGRAM SPECIALIST I	B166	4875		\$4,674.00	\$5,639.00	E
HEALTH AND SAFETY PROGRAM SPECIALIST II	B163	4876		\$5,134.00	\$6,193.00	E
HEALTH AND SAFETY PROGRAM SPECIALIST III	B160	4877		\$5,639.00	\$6,810.00	E
INSECT BIOSYSTEMATIST	BF60	0537	A	\$3,615.00	\$4,355.00	2
INSECT BIOSYSTEMATIST	BF60	0537	B	\$3,793.00	\$4,568.00	2
INSECT BIOSYSTEMATIST	BF60	0537	C	\$3,968.00	\$4,785.00	2
INTEGRATED WASTE MANAGEMENT SPECIALIST	BH89	0757	A	\$2,976.00	\$3,576.00	2
INTEGRATED WASTE MANAGEMENT SPECIALIST	BH89	0757	B	\$3,615.00	\$4,355.00	2
INTEGRATED WASTE MANAGEMENT SPECIALIST	BH89	0757	C	\$4,574.00	\$5,523.00	2
JUNIOR ERGONOMIC SPECIALIST, STATE COMPENSATION INSURANCE FUND	WH74	9359		\$3,388.00	\$3,892.00	2
JUNIOR HEALTH PHYSICIST	HX38	3781		\$3,388.00	\$3,892.00	2
JUNIOR INDUSTRIAL HYGIENE SPECIALIST, STATE COMPENSATION INSURANCE FUND	WH57	6230		\$3,388.00	\$3,892.00	2
JUNIOR INDUSTRIAL HYGIENIST	IC60	3824		\$3,388.00	\$3,892.00	2
LAND AND WATER USE SCIENTIST	GF25	3084	A	\$3,088.00	\$3,552.00	2
LAND AND WATER USE SCIENTIST	GF25	3084	B	\$3,615.00	\$4,355.00	2
MICROBIOLOGIST INTERN	SW70	7956		\$2,842.00	\$3,088.00	2
OCEANOGRAPHER	HC94	3121		\$5,523.00	\$6,664.00	E
PEST PREVENTION ASSISTANT I (VARIOUS PROJECTS)	AC05	0490		\$2,236.00	\$2,505.00	2
PEST PREVENTION ASSISTANT II (VARIOUS PROJECTS)	AC10	0491		\$2,322.00	\$2,608.00	2
PEST PREVENTION ASSISTANT III (VARIOUS PROJECTS)	AC15	0494		\$2,505.00	\$2,724.00	2
PETROLEUM GEOLOGIST	HW20	3800		\$6,347.00	\$7,675.00	2
PLANT ECOLOGIST	BV75	1078		\$4,568.00	\$5,506.00	2
PLANT PATHOLOGIST (DIAGNOSTICIAN)	BE55	1272	A	\$3,615.00	\$4,355.00	2

Class Title	SCHEM CD	CLASS CD	ALT RG	MIN SAL	MAX SAL	WWG
PLANT PATHOLOGIST (DIAGNOSTICIAN)	BE55	1272	B	\$3,793.00	\$4,568.00	2
PLANT PATHOLOGIST (DIAGNOSTICIAN)	BE55	1272	C	\$3,868.00	\$4,785.00	2
PLANT PATHOLOGIST (FIELD)	BE65	1075	A	\$2,724.00	\$3,088.00	2
PLANT PATHOLOGIST (FIELD)	BE65	1075	B	\$3,362.00	\$4,045.00	2
PLANT PATHOLOGIST (FIELD)	BE65	1075	C	\$3,520.00	\$4,237.00	2
PLANT PATHOLOGIST (FIELD)	BE65	1075	D	\$3,681.00	\$4,439.00	2
PUBLIC HEALTH MICROBIOLOGIST I	SW50	7954	A	\$3,380.00	\$3,877.00	2
PUBLIC HEALTH MICROBIOLOGIST I	SW50	7954	B	\$3,700.00	\$4,459.00	2
PUBLIC HEALTH MICROBIOLOGIST II	SW40	7948	A	\$4,255.00	\$5,134.00	2
PUBLIC HEALTH MICROBIOLOGIST II-VIROLOGY-	SW90	7950		\$4,255.00	\$5,134.00	2
PUBLIC HEALTH MICROBIOLOGIST SPECIALIST	SW36	7940		\$4,674.00	\$5,639.00	2
PUBLIC HEALTH MICROBIOLOGIST SPECIALIST (VIROLOGY)	SW34	7939		\$4,674.00	\$5,639.00	2
RESEARCH CHEMIST	TF10	8058	A	\$5,909.00	\$7,144.00	E
RESEARCH CLINICAL CHEMIST	TF15	8061		\$5,909.00	\$7,144.00	E
RESEARCH PROGRAM SPECIALIST I (RANGE MANAGEMENT/WILDLIFE ECOLOGY)	LQ85	5600		\$4,674.00	\$5,639.00	2
RESEARCH PROGRAM SPECIALIST I, (REMOTE SENSING/WATERSHED)	LQ81	7855		\$4,674.00	\$5,639.00	E
RESEARCH RADIOCHEMIST	TE60	8049		\$5,909.00	\$7,144.00	E
RESEARCH SCIENTIST I (CHEMICAL SCIENCES)	LR01	5576		\$4,674.00	\$5,639.00	E
RESEARCH SCIENTIST I (EPIDEMIOLOGY/BIOSTATISTICS)	LR02	5577		\$4,674.00	\$5,639.00	E
RESEARCH SCIENTIST I (MICROBIOLOGICAL SCIENCES)	LR03	5578		\$4,674.00	\$5,639.00	E
RESEARCH SCIENTIST I (PHYSICAL/ENGINEERING SCIENCES)	LR04	5579		\$4,674.00	\$5,639.00	E
RESEARCH SCIENTIST I (SOCIAL/BEHAVIORAL SCIENCES)	LR05	5580		\$4,674.00	\$5,639.00	E
RESEARCH SCIENTIST II (CHEMICAL SCIENCES)	LR06	5581		\$5,134.00	\$6,193.00	E
RESEARCH SCIENTIST II (EPIDEMIOLOGY/BIOSTATISTICS)	LR07	5582		\$5,134.00	\$6,193.00	E
RESEARCH SCIENTIST II (FOOD AND DRUG SCIENCES)	LR08	5585		\$5,134.00	\$6,193.00	E

Class Title	SCHEM CD	CLASS CD	ALT RG	MIN SAL	MAX SAL	WWG
RESEARCH SCIENTIST II (MICROBIOLOGICAL SCIENCES)	LR09	5587		\$5,134.00	\$6,193.00	E
RESEARCH SCIENTIST II (PHYSICAL/ENGINEERING SCIENCES)	LR10	5588		\$5,134.00	\$6,193.00	E
RESEARCH SCIENTIST II (SOCIAL/BEHAVIORAL SCIENCES)	LR11	5590		\$5,134.00	\$6,193.00	E
RESEARCH SCIENTIST III (CHEMICAL SCIENCES)	LR12	5591		\$5,605.00	\$6,812.00	E
RESEARCH SCIENTIST III (EPIDEMIOLOGY/BIOSTATISTICS)	LR13	5594		\$5,605.00	\$6,812.00	E
RESEARCH SCIENTIST III (FOOD AND DRUG SCIENCES)	LR14	5596		\$5,605.00	\$6,812.00	E
RESEARCH SCIENTIST III (MICROBIOLOGICAL SCIENCES)	LR15	5599		\$5,605.00	\$6,812.00	E
RESEARCH SCIENTIST III (PHYSICAL/ENGINEERING SCIENCES)	LR16	5604		\$5,605.00	\$6,812.00	E
RESEARCH SCIENTIST III (SOCIAL/BEHAVIORAL SCIENCES)	LR17	5605		\$5,605.00	\$6,812.00	E
RESEARCH SCIENTIST III (VETERINARY SCIENCES)	LR18	5606		\$5,605.00	\$6,812.00	E
RESEARCH SCIENTIST IV (CHEMICAL SCIENCES)	LR19	5608		\$6,446.00	\$7,834.00	E
RESEARCH SCIENTIST IV (EPIDEMIOLOGY/BIOSTATISTICS)	LR20	5609		\$6,446.00	\$7,834.00	E
RESEARCH SCIENTIST IV (FOOD AND DRUG SCIENCES)	LR21	5611		\$6,446.00	\$7,834.00	E
RESEARCH SCIENTIST IV (MICROBIOLOGICAL SCIENCES)	LR22	5612		\$6,446.00	\$7,834.00	E
RESEARCH SCIENTIST IV (PHYSICAL/ENGINEERING SCIENCES)	LR23	5613		\$6,446.00	\$7,834.00	E
RESEARCH SCIENTIST IV (SOCIAL/BEHAVIORAL SCIENCES)	LR24	5622		\$6,446.00	\$7,834.00	E
RESEARCH SCIENTIST IV (VETERINARY SCIENCES)	LR25	5625		\$6,446.00	\$7,834.00	E
RESEARCH SCIENTIST V (CHEMICAL SCIENCE)	LR26	5627		\$7,090.00	\$8,618.00	E
RESEARCH SCIENTIST V (EPIDEMIOLOGY/BIOSTATISTICS)	LR27	5629		\$7,090.00	\$8,618.00	E
RESEARCH SCIENTIST V (FOOD AND DRUG SCIENCES)	LR28	5631		\$7,090.00	\$8,618.00	E

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Class Title	SCHEM CD	CLASS CD	ALT RG	MIN SAL	MAX SAL	WWG
RESEARCH SCIENTIST V (MICROBIOLOGICAL SCIENCES)	LR29	5634		\$7,090.00	\$8,618.00	E
RESEARCH SCIENTIST V (PHYSICAL/ENGINEERING SCIENCE)	LR30	5635		\$7,090.00	\$8,618.00	E
RESEARCH SCIENTIST V (SOCIAL/BEHAVIORAL SCIENCES)	LR31	5636		\$7,090.00	\$8,618.00	E
RESEARCH SCIENTIST V (VETERINARY SCIENCES)	LR32	5637		\$7,090.00	\$8,618.00	E
RESEARCH SPECIALIST I -VARIOUS STUDIES-	SS40	7861		\$4,897.00	\$5,909.00	E
RESEARCH SPECIALIST II -VARIOUS STUDIES-	SS30	7860	A	\$5,378.00	\$6,500.00	E
RESEARCH SPECIALIST III -VARIOUS STUDIES-	SS25	7867	A	\$6,193.00	\$7,492.00	E
RESEARCH SPECIALIST V -VARIOUS STUDIES-	SS10	7858	A	\$7,892.00	\$9,554.00	E
RESEARCH SPECIALIST V -VARIOUS STUDIES-	SS10	7858	B	\$9,286.00	\$10,763.00	E
RESEARCH SPECIALIST V -VARIOUS STUDIES-	SS10	7858	C	\$8,686.00	\$9,370.00	E
RESEARCH SPECIALIST V -VARIOUS STUDIES-	SS10	7858	D	\$9,107.00	\$9,604.00	E
SEED BOTANIST	BC51	0495	A	\$3,807.00	\$4,374.00	2
SEED BOTANIST	BC51	0495	B	\$3,891.00	\$4,583.00	2
SEED BOTANIST	BC51	0495	C	\$4,175.00	\$4,800.00	2
SENIOR BIOLOGIST SPECIALIST (BOTANY)	BQ21	6321		\$5,025.00	\$6,065.00	E
SENIOR BIOLOGIST SPECIALIST (MARINE/FISHERIES)	BQ22	6322		\$5,025.00	\$6,065.00	E
SENIOR BIOLOGIST SPECIALIST (WILDLIFE)	BQ23	6323		\$5,025.00	\$6,065.00	E
SENIOR ECONOMIC ENTOMOLOGIST (SPECIALIST)	BG15	0545	A	\$4,785.00	\$5,775.00	E
SENIOR ECONOMIC ENTOMOLOGIST (SPECIALIST)	BG15	0545	B	\$5,017.00	\$6,056.00	E
SENIOR ECONOMIC ENTOMOLOGIST (SPECIALIST)	BG15	0545	C	\$5,260.00	\$6,347.00	E
SENIOR ENVIRONMENTAL RESEARCH SCIENTIST (SPECIALIST)	BG93	6167		\$5,017.00	\$6,056.00	E
SENIOR GEOLOGIST (SPECIALIST)	HR70	3931		\$5,434.00	\$6,556.00	E
SENIOR HAZARDOUS MATERIALS SPECIALIST (TECHNICAL)	BH92	3527	A	\$5,017.00	\$6,056.00	E
SENIOR HAZARDOUS MATERIALS SPECIALIST (TECHNICAL)	BH92	3527	B	\$5,495.00	\$6,676.00	E
SENIOR HAZARDOUS SUBSTANCES SCIENTIST	BH66	3565		\$5,266.00	\$6,359.00	E
SENIOR INSECT BIOSYSTEMATIST (SPECIALIST)	BF40	0531	A	\$5,017.00	\$6,056.00	E
SENIOR INSECT BIOSYSTEMATIST (SPECIALIST)	BF40	0531	B	\$5,260.00	\$6,347.00	E

Class Title	SCHEM CD	CLASS CD	ALT RG	MIN SAL	MAX SAL	WWG
SENIOR INSECT BIOSYSTEMATIST (SPECIALIST)	BF40	0531	C	\$5,506.00	\$6,658.00	E
SENIOR INTEGRATED WASTE MANAGEMENT SPECIALIST	BH60	1989		\$5,266.00	\$6,359.00	E
SENIOR METEOROLOGIST WATER RESOURCES	GD20	3057		\$5,184.00	\$6,258.00	E
SENIOR PESTICIDE EVALUATION SCIENTIST (BIOLOGY)	BG50	6171		\$5,017.00	\$6,056.00	E
SENIOR PESTICIDE EVALUATION SCIENTIST (CHEMISTRY)	BG48	6172		\$5,017.00	\$6,056.00	E
SENIOR PESTICIDE EVALUATION SCIENTIST (ENTOMOLOGY)	BG46	6173		\$5,017.00	\$6,056.00	E
SENIOR PESTICIDE EVALUATION SCIENTIST (MICROBIOLOGY)	BG44	6174		\$5,017.00	\$6,056.00	E
SENIOR PESTICIDE EVALUATION SCIENTIST (PLANT PHYSIOLOGY)	BG42	6175		\$5,017.00	\$6,056.00	E
SENIOR PLANT NEMATOLOGIST (SPECIALIST)	BE12	0501	A	\$5,017.00	\$6,056.00	E
SENIOR PLANT NEMATOLOGIST (SPECIALIST)	BE12	0501	B	\$5,260.00	\$6,347.00	E
SENIOR PLANT NEMATOLOGIST (SPECIALIST)	BE12	0501	C	\$5,506.00	\$6,658.00	E
SENIOR PLANT PATHOLOGIST (DIAGNOSTICIAN) (SPECIALIST)	BE15	1274	A	\$5,017.00	\$6,056.00	E
SENIOR PLANT PATHOLOGIST (DIAGNOSTICIAN) (SPECIALIST)	BE15	1274	B	\$5,260.00	\$6,347.00	E
SENIOR PLANT PATHOLOGIST (DIAGNOSTICIAN) (SPECIALIST)	BE15	1274	C	\$5,506.00	\$6,658.00	E
SENIOR PUBLIC HEALTH BIOLOGIST	SX60	0563		\$4,797.00	\$5,783.00	E
SENIOR SEED BOTANIST (SPECIALIST)	BC31	0492	A	\$5,025.00	\$6,063.00	E
SENIOR SEED BOTANIST (SPECIALIST)	BC31	0492	B	\$5,266.00	\$6,358.00	E
SENIOR SEED BOTANIST (SPECIALIST)	BC31	0492	C	\$5,523.00	\$6,665.00	E
SENIOR WILDLIFE FORENSIC SPECIALIST	BQ12	0841		\$5,025.00	\$6,065.00	2
SENIOR WILDLIFE VETERINARIAN SPECIALIST	AT77	2052		\$5,775.00	\$6,972.00	E
SPECTROSCOPIST	TE90	8057		\$5,909.00	\$7,144.00	E
STAFF CHEMIST	TG10	8068		\$4,829.00	\$5,794.00	E
STAFF ENVIRONMENTAL SCIENTIST	BH74	0765		\$5,266.00	\$6,359.00	2
STAFF LAND AND WATER USE SCIENTIST	GE70	3085		\$5,266.00	\$6,359.00	2
STAFF TOXICOLOGIST (SPECIALIST)	TC10	7978		\$6,193.00	\$7,492.00	E

Class Title	SCHEM CD	CLASS CD	ALT RG	MIN SAL	MAX SAL	WWG
VETERINARY MEDICAL OFFICER (ANIMAL HEALTH)	AT75	0404	A	\$4,355.00	\$5,260.00	E
VETERINARY MEDICAL OFFICER (ANIMAL HEALTH)	AT75	0404	B	\$4,568.00	\$5,506.00	E
VETERINARY MEDICAL OFFICER (MEAT INSPECTION)	AV51	0413	A	\$4,355.00	\$5,260.00	E
VETERINARY MEDICAL OFFICER (MEAT INSPECTION)	AV51	0413	B	\$4,568.00	\$5,506.00	E
VETERINARY MEDICAL OFFICER III -ANIMAL HEALTH-INSPECTION-	AT50	0254		\$5,017.00	\$6,056.00	E
VETERINARY MEDICAL OFFICER III -MEAT INSPECTION-	AV30	0274		\$5,017.00	\$6,056.00	E
WATER QUALITY BIOLOGIST	BP03	0836	A	\$2,724.00	\$3,088.00	2
WATER QUALITY BIOLOGIST	BP03	0836	B	\$3,362.00	\$4,045.00	2
WILDLIFE FORENSIC SPECIALIST	BQ14	0842	A	\$2,724.00	\$3,088.00	2
WILDLIFE FORENSIC SPECIALIST	BQ14	0842	B	\$3,362.00	\$4,045.00	2
WILDLIFE FORENSIC SPECIALIST	BQ14	0842	C	\$4,481.00	\$5,400.00	2
WILDLIFE VETERINARIAN	AT79	2054	A	\$4,355.00	\$5,260.00	E
WILDLIFE VETERINARIAN	AT79	2054	B	\$4,568.00	\$5,506.00	E

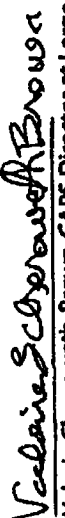
SIGNATURE PAGE


CALIFORNIA ASSOCIATION OF PROFESSIONAL SCIENTISTS:


STATE OF CALIFORNIA:



Patricia Velez, CAPS Bargaining Chairperson
Department of Fish and Game



Wes Carr, CAPS Treasurer
Department of Pesticide Regulation



Valerie Chenoweth-Brown, CAPS Director at Large
Department of Health Services


Ryan Kinsella, CAPS District I Director
Department of Toxic Substances Control



David Miller, CAPS President
Department of Toxic Substances Control



Christopher J. Voight
Chief Spokesperson, CAPS



Kristen P. Haynie
Co-Spokesperson, CAPS



Franklin C. Marr, Chief Negotiator
Department of Personnel Administration



Susie Cano-Guzman
Department of Water Resources


Linda Crough
Department of Pesticide Regulation


Lisa Dougherty
Department of Industrial Relations



Patrick Gage
Department of Health Services


Robert E. Highhill
Department of Water Resources


Jangle Hillier
Department of Toxic Substances Control



Dee Anne Holloway
Department of Parks and Recreation


Teresa Navarrete
Department of Fish and Game

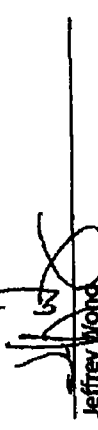

Margie A. Popoff
Department of Parks and Recreation


Teri Pyse
Energy Commission


Felicia Rico
Department of Food and Agriculture


Susan Serrano
Integrated Waste Management Board


Terri Shaffer
State Water Resources Control Board


Jeffrey Wong
Department of Toxic Substances Control



Karen Wroten
Department of Fish and Game

EXHIBIT C



**STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD
UNFAIR PRACTICE CHARGE**

DO NOT WRITE IN THIS SPACE: Case No: _____ Date Filed: _____

INSTRUCTIONS: File the original and one copy of this charge form in the appropriate PERB regional office (see PERB Regulation 32075), with proof of service attached to each copy. Proper filing includes concurrent service and proof of service of the charge as required by PERB Regulation 32615(c). All forms are available from the regional offices or PERB's website at www.perb.ca.gov. If more space is needed for any item on this form, attach additional sheets and number items.

IS THIS AN AMENDED CHARGE? YES NO

1. CHARGING PARTY: EMPLOYEE EMPLOYEE ORGANIZATION EMPLOYER PUBLIC¹

a. Full name: Service Employees International Union, Local 1000
 b. Mailing address: 1808 14th Street, Sacramento, CA 95811
 c. Telephone number: (916) 554-1279
 d. Name, title and telephone number of person filing charge: Paul E. Harris, III, Chief Counsel. (916) 554-1279
 e. Bargaining unit(s) involved: 1, 3, 4, 11, 14, 15, 17, 20 and 21

RECEIVED
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PERSONNEL ADMINISTRATION
LEGAL DIVISION
2000 DEC 22 PM 1:19

2. CHARGE FILED AGAINST: (mark one only) EMPLOYEE ORGANIZATION EMPLOYER

a. Full name: Department of Personnel Administration / Governor Arnold Schwarzenegger
 b. Mailing address: 1515 "S" Street, North Building, Suite 400, Sacramento, California 95811-7258
 c. Telephone number: (916) 324-0512
 d. Name, title and telephone number of agent to contact: K. William Curtis, Chief Counsel, DPA (916) 324-0512

3. NAME OF EMPLOYER (Complete this section only if the charge is filed against an employee organization.)

a. Full name:
 b. Mailing address:

4. APPOINTING POWER: (Complete this section only if the employer is the State of California. See Government Code section 18524.)

a. Full name: State of California, Department of Personnel Administration
 b. Mailing address: 1515 "S" Street, North Building, Suite 400, Sacramento, California 95811-7258
 c. Agent: K. William Curtis, Chief Counsel, DPA (916) 324-0512

¹ An affected member of the public may only file a charge relating to an alleged public notice violation, pursuant to Government Code section 3523, 3547, 3547.5, or 3595, or Public Utilities Code section 99569.

5. GRIEVANCE PROCEDURE

Are the parties covered by an agreement containing a grievance procedure which ends in binding arbitration?

Yes No

6. STATEMENT OF CHARGE

a. The charging party hereby alleges that the above-named respondent is under the jurisdiction of: (check one)

- Educational Employment Relations Act (EERA) (Gov. Code sec. 3540 et seq.)
- Ralph C. Dills Act (Gov. Code sec. 3512 et seq.)
- Higher Education Employer-Employee Relations Act (HEERA) (Gov. Code sec. 3560 et seq.)
- Meyers-Milias-Brown Act (MMBA) (Gov. Code sec. 3500 et seq.)
- Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (TEERA) (Pub. Utilities Code sec. 99560 et seq.)
- Trial Court Employment Protection and Governance Act (Trial Court Act) (Article 3; Gov. Code sec. 71630 -- 71639.5)
- Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act) (Gov. Code sec. 71800 et seq.)

b. The specific Government or Public Utilities Code section(s), or PERB regulation section(s) alleged to have been violated is/are:
Government Code, sections 3512, 3515, 3515.5, 3516.5, 3517 and 3519

c. For MMBA, Trial Court Act and Court Interpreter Act cases, if applicable, the specific local rule(s) alleged to have been violated is/are (a copy of the applicable local rule(s) MUST be attached to the charge):

d. Provide a clear and concise statement of the conduct alleged to constitute an unfair practice including, where known, the time and place of each instance of respondent's conduct, and the name and capacity of each person involved. This must be a statement of the facts that support your claim and *not conclusions of law*. A statement of the remedy sought must also be provided. (Use and attach additional sheets of paper if necessary.)

See Attachment d.

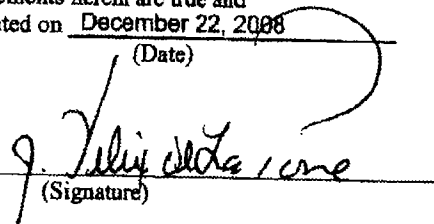
DECLARATION

I declare under penalty of perjury that I have read the above charge and that the statements herein are true and complete to the best of my knowledge and belief and that this declaration was executed on December 22, 2008

at Sacramento, California
(City and State)

(Date)

J. Felix De La Torre
(Type or Print Name)


(Signature)

Title, if any: Staff Attorney, SEIU Local 1000

Mailing address: 1808 14th Street, Sacramento, CA 95811

Telephone Number: (916) 554-1279

ATTACHMENT d.

STATEMENT OF THE CHARGE

The Service Employees International Union, Local 1000 (hereafter "Union") is the exclusive bargaining representative pursuant to the Ralph C. Dills Act ("Dills Act") for State employees in Bargaining Units 1, 3, 4, 11, 14, 15, 17, 20, and 21. This charge alleges that the Department of Personnel Administration ("DPA") violated sections 3512, 3515, 3515.5, 3516.5, 3517 and 3519 of the Dills Act by failing and refusing to provide necessary and relevant information to the Union, by unilaterally cancelling bargaining sessions, by regressive bargaining, and by unilaterally implementing regressive bargaining proposals without negotiating with the Union. It is evident the State's plan was to surface bargain with Local 1000 until the crisis became so dire that it believed it could declare an emergency to justify its decision to ignore California laws. In short, the plan was to ultimately implement draconian measures to resolve the budget crisis on the backs of state workers.

At all times relevant, the State of California, through its agent, DPA, and SEIU Local 1000 have been, and are presently engaged in contract negotiations. Before the parties began their negotiations, DPA insisted on establishing ground rules to govern various aspects of the bargaining process. Consequently, the parties spent several months preparing the ground rules. [Exhibit 1] Within the ground rules, the parties established a "Master Table" and "Unit Tables" for each bargaining unit represented by Local 1000. The parties also agreed that only specified contract proposals would be negotiated at the Unit Tables and others only at the Master Table. [Id.] The parties approved this latter rule on August 22, 2008. [Id.]

On or about November 6, 2008, Governor Arnold Schwarzenegger released a letter to "Valued State Workers." [Exhibit 2] In this letter, the Governor addressed the projected revenue shortfall confronting the State, and the need for spending reductions. The Governor also acknowledged that "spending reductions will impact our state workers". [Id.] In doing so, the Governor pointed out that State workers "deliver important services every day." Nonetheless, his letter proposed the following detrimental action, among others, toward state workers:

"Furloughs: All state employees will be furloughed one day each month for the next year and half, a total of 19 days. This will result in a pay cut of about 5 percent. The pay cut will not affect retirement and other benefits for which you are eligible."

[Id.](Emphasis added)

Finally, the Governor assured the state workers that he was "working closely with union leadership to achieve results in the least painful way possible." [Id.] This pledge, as detailed below, was nothing more than lip service to give the illusion that the State intended to bargain in good faith over the proposals.

On November 9, 2008, SEIU Local 1000 and DPA held a scheduled bargaining session. After many months of bargaining where the parties passed and exchanged hundreds of proposals, DPA passed a set of proposals which included the Governor's unpaid, one day per month furloughs, the elimination of two paid holidays, and a significant change in the manner in which overtime is calculated. [Exhibit 3] In essence, DPA initiated bargaining over the Governor's proposals as set forth in his November 6, 2008, letter. This further confirmed that DPA and the Governor understood that the furlough plans and other detrimental proposals had a significant impact on the wages, hours and working conditions of state workers and it was obligated to negotiate in good faith with Local 1000.

Local 1000 responded to the proposals by hand delivering a formal information request on November 10, 2008, to Julie Chapman, Deputy Director of DPA. [Exhibit 4] The Union's information request asked DPA to provide detailed information to allow the Union to understand and measure the impact of the Governor's proposed spending restrictions—as outlined in DPA's November 9, 2008, bargaining proposals. [Id.] SEIU Local 1000 also sought the requested information to determine if there were alternatives to the furloughs (and other proposals) that would allow the State to "achieve results in the least painful way" to State workers, as the Governor committed to in his November 6, 2008, letter.

On or about November 17, 2008, DPA responded to the Union's information request by producing a one-page document that showed nothing but raw figures without any reference to establish the source of the calculations or supporting data. [Exhibit 5] In addition, DPA declared other certain Union requests to be "hypothetical" or "questions" and refused to provide any information because it took the erroneous position that a public entity is not obligated to respond where an information request seeks information rather than a specific document. [Id.]

On November 20, 2008, Paul E. Harris, III, SEIU Local 1000 Chief Counsel, sent DPA a detailed three page letter whereby Local 1000 objected to DPA's defective responses to the Union's information request. [Exhibit 6] In that letter, Mr. Harris confirmed DPA's untenable position that it was not obligated to provide information that was not contained in a single document. As authority, Mr. Harris cited to *Stockton Unified School District* (1980) PERB Dec. No. 143, which held that a public entity's duty to provide information to a union extended well beyond its duty to provide documents. Mr. Harris requested that DPA comply with the information request no later than November 26, 2008. To date, DPA has not responded to Local 1000's letter or provided any additional information. By failing and refusing to respond to the Union's information request, DPA has interfered with the Union's ability to represent its members and engaged in bad faith bargaining in violation of the Dills Act.

On November 18, 2008, the parties met to continue bargaining. Despite the fact that the parties had been bargaining specified proposals at the individual Unit Tables, DPA passed a "Package Offer" at the Master Table that included unit-specific proposals. [Exhibit 7] In other words, DPA violated the ground rules specifying that certain contract articles and sections would be addressed at the Master Table. DPA did not seek or receive a waiver of the ground rules. DPA's violation of the ground rules and attempt to negotiate proposals at the Master Table while the parties continued to negotiate the same issues at Unit Tables is another indicia of bad faith bargaining.

On November 20, 2008, the parties again met to resume Unit Table negotiations. To be specific, the Unit 1, 11, and 15 tables were scheduled to meet at the Holiday Inn in Sacramento. Based on the ground rules, Local 1000 paid and arranged for space to accommodate the negotiations. That day, Local 1000 was prepared to proceed and continue bargaining. When DPA arrived and saw that the Union bargaining team included a staff attorney, it walked out, stating it would not negotiate with the Union if a staff attorney was present. As a courtesy, Margarita Maldonado, the Bargaining Unit 1 Chair, made it clear that the attorney's role was as Union staff; and not as an expert witness or as a "member" observer. DPA maintained its objection to the presence of the attorney claiming the attorney's presence was prohibited by the ground rules. DPA then unilaterally cancelled that bargaining session in violation of Rule 12 of the ground rules. [Exhibits 1 and 8] DPA also cancelled the Unit 15 table bargaining session. [Exhibit 9] DPA, however, continued to bargain at the Unit 11 table despite the fact that SEIU staff attorney Anne Giese was present. It is also worth noting that Paul E. Harris, Chief Counsel for Local 1000, has been present in prior bargaining sessions without objection from DPA.

Moreover, DPA's claim that the ground rules prohibit staff attorneys attending bargaining sessions is without merit. The ground rules place no conditions whatsoever on the presence of Union staff at bargaining sessions. The only individuals referenced in the ground rules are "observers" and "expert witnesses." [Exhibit 1] The ground rules define an observer as a "SEIU Local 1000 bargaining unit member." Maldonado reiterated to DPA that staff counsel is not an SEIU Local 1000 bargaining unit member (observer) or an "expert witness." As such, the ground rules did not prohibit the presence of staff attorneys and DPA had no grounds to unilaterally cancel the bargaining session. SEIU Local 1000 alleges that DPA's refusal to meet as scheduled, and its intentional misapplication of the ground rules is in bad faith. Moreover, it is well established that DPA cannot dictate to the Local 1000 who the union assigns to its negotiating teams. See *Gilroy Unified School District* (1984) 9 PERC ¶ 16042, p. 3; citing *American Radiator and Standard Sanitary Corp.* (1965) 155 NLRB 736 (the NLRB concluded that the composition of the employees' bargaining committee is the internal business of the union over which the employer has no control and that the employer was not relieved of its duty to bargain by the presence of "outsiders" on the employees' negotiating team. See also *Carlsbad Unified School District* (1985) PERB Dec. No. 529, p. 40, citing *San Ramon Valley Unified School District* (1982) PERB Dec. No. 230. There is no question that DPA's unilateral cancellation of the Unit 1 and 15 bargaining sessions was in bad faith, and its reliance on the ground rules was pretextual.

The parties are presently scheduled to resume bargaining, which would include discussions involving the proposed one-day per month furloughs, on January 5, 2009. Despite the Governor's statement that he would work with SEIU Local 1000 to find ways to "achieve results in the least painful way" to State workers, on December 19, 2008—less than one week before the Holidays—the Governor unilaterally implemented a *two-day* per month furlough on State workers. While the parties were in the midst of addressing the impact and alternatives to a one-day per month furlough, the State of California, through its agents, unilaterally implemented a two-day per month furlough without any notice or opportunity for Local 1000 to bargain on behalf of its members. The two-day per month furlough is regressive and another indicator of bad faith bargaining. The December 19, 2008, letter to "State Workers (as opposed to his November 6, 2008, letter addressing them as "Valued State Workers"), made it evident the Governor's earlier pledge to work with union

leadership was pure lip service, and he had no intent to actually negotiate his furlough plan or any other proposal with Local 1000. [Exhibit 10]

It is also notable that, in his original one-day-per-month furlough proposal, the Governor estimated that each state worker would suffer about a five (5) percent pay cut. Despite the fact that the two-day-per-month furlough doubles the pay cut for each State Worker, the Governor made no mention of that impact in his December 19, 2008, letter. And in the Governor's December 19, 2008, letter, the furloughs were no longer a "proposed" measure, but the Governor made clear he was "compelled to take" the steps outlined in his letter. Also missing from the December 19, 2008, letter, was the Governor's prior commitment to "working closely with union leadership to achieve results in the least painful way."

On December 19, 2008, the Governor issued Executive Order S-16-08. [Exhibit 11] The Order formalized the Governor's plan to implement those steps outlined in his December 19, 2008, letter. The Governor ordered furloughs as follows:

IT IS ORDERED that effective February 1, 2009, through June 30, 2010, the Department of Personnel Administration shall adopt a plan to implement a furlough of represented state employees and supervisors for two days per month, regardless of funding source. This plan shall include a limited exemption process.

The Governor does not dispute that he is disregarding California laws by unilaterally implementing layoffs and furloughs without prior notice to the Union and an opportunity to bargain. In justifying the decision to circumvent State law, the Governor relies on California Government Code, section 3516.5, which allows the suspension of laws during an emergency under specific conditions. In short, the Governor unilaterally declared the budget deficit an emergency so that he could forgo negotiating with Local 1000. The problem with the Governor's reliance on Section 3516.5 is that the extent and severity of the budget crisis has been well known since at least August 2008—six months before the two-day per month furloughs are to be implemented. In fact, it is evident the Governor has been aware of the extent and severity of the crisis since July 2008 when he Executive Order S-09-08 in July 2008. [Exhibit 12] In the earlier Order, the Governor laid off thousands of state workers as one measure to address the budget shortfall. Without question, the State has been fully aware of its fiscal crisis since for many months. But instead of meeting and conferring with the Union to find creative solutions, the Governor and DPA engaged in bad faith bargaining for several months, aware that the State's ultimate plan was to rely on Section 3516.5 to implement drastic measures by executive fiat.

To the extent that the budget crisis is now an emergency, DPA and the Governor intentionally squandered multiple opportunities between July 2008 and the present to find creative solutions to lessen the impact on state workers. As detailed above, DPA engaged in bad faith bargaining throughout that period. PERB has even issued a complaint against DPA for its failure to respond to information about other proposals, such as layoffs, the State was using to address the crisis. (See PERB Complaint in SA-CE-1714-S). The Governor and DPA cannot be rewarded for this intentional and illegal circumvention of California laws.

The Governor's decision to double the furloughs without any notice to the Union or opportunity to bargain, coupled with DPA's various acts of bad faith bargaining (refusing to provide information, violating the ground rules, unilaterally cancelling bargaining sessions, making obviously flawed objections to information requests, and passing regressive proposals), makes it unmistakable that DPA and the Governor were merely going through the steps with no real intent to bargain in good faith. Nevertheless, the State of California acknowledges that furloughs have a significant impact on the wages, hours and working conditions of employees and is a mandatory subject of bargaining. Without question, DPA and the Governor have violated California law and SEIU Local 1000 is entitled to appropriate remedies.

REMEDIES REQUESTED

1. An order that DPA cease and desist from failing and refusing to meet and bargain in good faith;
2. An order that DPA cease and desist from refusing to comply with information requests;
3. An order that DPA cease and desist from interfering with the Union's right to represent its members on matters concerning wages, hours and working conditions;
4. An order that DPA immediately meet and confer in good faith with the Union regarding the proposed furloughs and other proposals that are detrimental to the wages, hours and working conditions of employment;
5. An order maintaining the status quo until such time as the parties can complete the meet and confer (bargaining) process in good faith;
6. A declaratory order that DPA violated the Dills Act;
7. A posting in the manner of the National Labor Relations Board;
8. Attorneys' fees at the lodestar rate; and
9. Any other appropriate remedies that would effectuate the purposes of the Dills Act.

EXHIBIT 1

HOLIDAY W
20 MAY 08
2005

2nd Union Proposal of May 20, 2008
2008 NEGOTIATIONS
Ground Rules for SEIU Local 1000 and the State of California
Master and Unit Tables

1. The parties will agree to the list of articles and /or sections that shall be discussed at the Master Table representing Bargaining Units 1, 3, 4, 11, 14, 15, 17, 20 & 21. The agreed upon list of articles/sections shall not be discussed at bargaining unit tables.
2. ~~The parties agree that Master Table negotiating sessions will be held in Sacramento. The Union shall select meeting locations/facilities for scheduled Master Table negotiations. The State shall select meeting locations/facilities for scheduled unit table negotiations. Where facilities require payment for use, such costs shall be paid by the party responsible for securing the location. By mutual agreement different arrangements may be made.~~ Negotiations shall take place in Sacramento on mutually agreed upon dates, times and locations. The Union shall be responsible for securing meeting locations/facilities for scheduled negotiations. There shall be no fees charged to the State for negotiating or caucus rooms.
3. The parties shall limit the number of representatives for the Master Table to 18 each.
4. On May 9, 2008, the Union shall provide the State with the names, classification titles, and work locations of each Union team member. Those employees will be released on State Release Time to participate in scheduled preparations/negotiations. The list of Union team members may be amended with at least seventy-two (72) hours notice to the state's chief negotiator. If the number of employees to be released exceeds the number of employees on the current listing, the parties will discuss whether Union Leave or State Release Time is appropriate. If bargaining should continue beyond July 1, 2008, the State shall release an additional fifteen (15) Union team members on State Release Time.
5. Individual bargaining unit members identified on a list provided by the Union will compose the unit table representatives.
- 5.6. If requested, the State agrees to grant reasonable travel time for bargaining team members who are on State release time for negotiations and who must travel from out of the way locations such as but not limited to: Eureka, Porterville, Blythe, Bakersfield, Soledad, San Luis Obispo, Crescent City, Tehachapi and El Centro or other mutually agreed location to participate in negotiations. The State agrees, when requested, to grant reasonable travel time to bargaining team members for negotiations who must travel from out of the way locations, such as Eureka, Porterville, Blythe, Bakersfield, Soledad, San Luis Obispo, Crescent City, Tehachapi, El Centro, Victorville or other mutually agreed upon locations. Time spent during travel shall not result in overtime compensation.
- 6.7. Expert witnesses and observers may attend negotiations. Time granted for witnesses will be granted as State Release Time. Observers may use Union Leave, vacation or other leave credits, subject to advance notice. The approval of vacation or other leave credits is also subject to available vacation or other leave balances of the affected employee. SEIU Local 1000 Bargaining unit members may observe bargaining sessions with advance notice. Observers may be granted Union Leave, Compensable Time Off (CTO) vacation leave or an authorized leave of

absence without pay for negotiations subject to advance notice and operational need. Observers will not cause disruptions.

7.8. The State shall not pay travel expenses that may be incurred by employees participating as Union bargaining team members, expert witnesses or observers.

8.9. ~~The State agrees to place bargaining team members on weekly work schedules of Monday through Friday and daytime shifts (between the hours of 8:00 AM and 5:00 PM), while the employee is participating in the 2008 Contract Negotiations. Such schedule changes shall be allowed from the first day of mutually scheduled negotiations until the parties have reached tentative agreement on the entire contract or a PERB declared impasse. All negotiations shall be scheduled for seven (7) day blocks from Monday through Sunday. When employees are released for negotiations any alternate work schedule or non-standard work shifts will be converted to Monday through Friday, 8:00 AM to 5:00 PM schedules with Saturdays and Sundays as their regular days off. During those periods when the parties are not scheduled to meet or prepare (usually in excess of seven (7) days), bargaining team members will be returned to the shift/workweeks they were assigned prior to the commencement of the 2008 Contract Negotiations. Bargaining team members will be returned to the assignment they had prior to this agreement. Supervisors will be notified that bargaining unit team members in posted positions will be allowed to bid in absentia during any bid period. No bargaining team member shall be subject to any mandatory overtime. No bargaining team member shall suffer any loss of compensation because of this altered schedule.~~

TC
2042
20MAYO

TC
2042
20MAYO

9.10. Time spent for negotiation/preparation purposes by Union team members will not result in overtime compensation. However, this does not preclude members from working voluntary overtime.

10.11. The parties shall will endeavor to agree upon an agenda, location, date, and time for the next negotiating session at the completion of each session. Whenever possible, the agenda will include the specific sections of the MOU to be discussed.

11.12. The parties agree to be prepared to bargain at the agreed upon starting time. Failure of either party to appear within one (1) hour of a scheduled starting time, without prior notification, shall be considered a cancellation of the meeting. The parties shall exercise all efforts to keep each other apprised of the time frame of caucuses. If either Party must cancel a negotiating session that Party will endeavor to provide forty-eight (48) hours advance notice to the Chief Negotiator(s).

12.13. Each party shall identify the authorized agent(s) to reach agreement at the initial bargaining session and notify the other party prior to any changes in the authorized agent(s).

13.14. All proposals and counterproposals shall be in writing on three (3) hole punched paper and shall show additions to the current contract with underlining and deletions to the current contract with strikethrough. The party passing the proposal or counter proposal shall provide enough copies for every member of the other team.

14.15. Tentative agreements will be reduced to writing and initialed by each party at the time the tentative agreement is reached. All such tentative agreements are tentative subject to a final agreement being reached by the parties.

15.16. After tentative agreement on the entire contract, the parties shall meet on a mutually agreed upon date to review the final contract draft prior to it being submitted to the Union's membership for ratification.

16.17. Upon request by the Union, the State shall grant State paid release time for bargaining team members of each bargaining unit for ratification purposes. The granting of such request is subject to advance notice, in writing, to the State.

17.18. All tentative agreements reached at the Master Table shall be binding on each individual bargaining unit. The parties shall continue negotiations at the unit table for each bargaining unit and all additional matters within scope shall be addressed there.

18.19. Neither party shall use a court reporter to take notes, and neither party shall use any type of video, audio or broadcasting devices during negotiating sessions, except by mutual agreement.

20. These Ground Rules are effective upon signatures of both Parties. These Ground Rules shall expire upon ratification of the total agreement by both Parties or when impasse is declared by PERB.

W. Wacker
SEIU Local 1000
For Bargaining Units 1, 3, 4, 17, 14, 15, 17, 20 & 21

J. Sanders
Department of Personnel Administration
For State of California

Michael Medina Unit Chair
Doreen BUI3 Chair

Larry Lawhead BU 21 Chair

Rodrigue BU 20 Chair

W. J. J. BU 14 Chair

L. P. # 4

John BU 15 Chair

Connie Koberly BU 11 Chair

Nancy L. Lyeila BU 17 Chair



Union Proposal of August 22, 2008
2008 NEGOTIATIONS
Ground Rules for SEIU Local 1000 and the State of California

*3:00pm
8/22/08
Holiday Inn-
California
Room*

Master Table Articles/Sections

- PREAMBLE
- 2.1 Union Representatives
- 2.2 Access
- 2.3 Use of State Equipment
- 2.5 Use of State Facilities
- 2.6 Steward Time Off
- 2.7 Employee Time Off
- 2.8 Union Steward Protection
- 2.9 Union Information Packets
- 2.10 Orientation
- 2.11 Bargaining Unit Chair Time Off
- 3.1 Union Security
- 3.2 Release of Home Addresses: Non-Law Enforcement Employees
- 4.1 State's Rights
- 5.1 No Strike
- 5.2 No Lockout
- 5.3 Individual Agreements Prohibited
- 5.4 Savings Clause
- 5.5 Reprisals
- 5.7 Non-Discrimination
- 5.8 Sexual Harassment
- 5.9 Joint Labor/Management Committee on Discrimination (JLMCD)
- 5.10 Labor/Management Committees
- 5.11 Dignity Clause
- 5.12 Upward Mobility Joint Labor/Management Committee
- 6.1 Purpose
- 6.2 Definitions
- 6.3 Time Limits
- 6.4 Waiver of Steps
- 6.5 Presentation
- 6.6 Informal Discussion
- 6.7 Formal Grievance – Step 1
- 6.8 Formal Grievance – Step 2
- 6.9 Formal Grievance – Step 3
- 6.10 Response
- 6.11 Formal Grievance – Step 4
- 6.12 Grievance Review
- 6.13 AWOL Hearing Back Pay
- 6.14 Mini-Arbitration Procedure
- 7.1 Holidays

- 8.1 Vacation/Annual Leave
- 8.2 Sick Leave
- 8.4 Parental Leave
- 8.5 Adoption Leave
- 8.6 Union Leave
- 8.7 Unpaid Leave of Absence
- 8.8 Transfer of Leave Credits, Work and Family Program (Catastrophic Leave)
- 8.9 Catastrophic Leave - Natural Disaster
- 8.10 Release Time for State Civil Service Examinations
- 8.11 Release Time for State Personnel Board Hearings
- 8.12 Leave Credits Upon Transfer in State Service
- 8.14 Jury Duty
- 8.16 Family Medical Leave Act (FMLA)
- 8.18 Work and Family Participation
- 8.19 Paid Time Off-- Precinct Election Board
- 8.20 Blood Donation Programs
- 9.1 Health Benefit Plans
- 9.2 Dental Benefit Plans
- 9.3 Vision Benefit Plans
- 9.4 Rural Health Care Equity Program
- 9.5 Employee Assistance Program (EAP)
- 9.6 Pre-Tax of Health and Dental Premiums Costs
- 9.7 Pre-Retirement Death Continuation of Benefits
- 9.8 Joint Union/Management Benefits Advisory Committee
- 9.9 Presumptive Illness
- 9.10 Employee Injury on the Job
- 9.12 Flex/Elect Program
- 9.13 Long-Term Care Insurance Plan
- 9.15 Industrial Disability Leave (IDL)
- 9.16 Group Legal Service Plan
- 9.17 State Disability Insurance (SDI)
- 10.1 Health and Safety Commitment
- 10.2 Health and Safety Committees
- 10.3 Occupational Hazards
- 10.4 Injury and Illness Prevention Programs (IIPP)
- 10.6 Emergency Evacuation Procedures
- 10.12 Employee Restroom Facilities
- 10.21 Workplace Violence Prevention
- 10.22 Computer Work Stations
- 10.23 Independent Medical Examinations
- 10.27 Remodeling/Renovations and Repairs
- 10.28 Pest Control
- 10.29 Smoking Cessation
- 10.30 Health and Safety Grievances
- 10.X Health Promotion Activities
- 11.1 Salaries
- 11.4 Timely Payment of Wages
- 11.7 Merit Salary Adjustments (MSA)

- 11.10 Sustained Superior Accomplishment Awards
- 11.11 Union-Management Committee on State Payroll System
- 11.13 Tax Deferral of Lump Sum Leave Cash Out Upon Separation
- 12.1 Business and Travel Expense
- 12.2 Moving and Relocation Expenses
- 12.3 Parking Rates
- 12.4 Commute Program
- 12.5 Transportation Incentives
- 12.7 State Owned Housing
- 13.1 Personnel and Evaluation Materials
- 14.1 Classification Changes
- 14.2 Out-of-Classification Grievances and Position Allocation Hearing Process
- 14.3 Classification/Pay Data
- 14.6 Job Announcements
- 14.8 Contracting Out
- 15.3 Hardship Transfer
- 16.1 Layoff and Reemployment
- 16.2 Reducing the Adverse Effects of Layoff
- 16.3 Alternative to Layoff
- 16.4 Military Installations
- 16.5 Layoff Employee Assistance Program
- 17.1 First Tier Retirement Formula (2% @ 55)
- 17.2 Second Tier Retirement Plan
- 17.4 State Safety Retirement
- 17.7 Enhanced Industrial Retirement
- 17.8 Employer-Paid Employee Retirement Contributions
- 17.10 1959 Survivor's Benefits – Fifth Level
- 18.1 Permanent Intermittents (PI)
- 19.5 Set Up/Shut Down Time
- 19.10 Work In Multiple Time Zones
- 19.11 Call Back Time
- 19.12 Standby Time
- 24.1 Entire Agreement
- 24.2 Duration
- Side Letter #1 – Golden Handshake
- Side Letter #3 – Domestic Partner
- Side Letter #4 – Access Agreement
- Addendum I – Time Off for Victims of Domestic Violence

Unit Table Articles/Sections

- 1.1 Recognition
- 2.4 Distribution of Union Information
- 5.6 Supersession - we owe
- 8.3 Bereavement Leave
- 8.13 Court Appearance and/or Subpoenas - today
- 8.15 Personal Leave Program
- 8.17 Mentoring Leave - today
- 9.11 Enhanced Industrial Disability Leave (EIDL) - today
- ~~Temporary Disability~~ - Pam
- 10.7 Protective Clothing - Taid
- 10.9 Safety Equipment - Taid
- 10.10 Medical Monitoring - talk abt briefly
- 10.11 Hazardous Materials - today
- ~~Access to Work Areas 24 Hours~~ - Jim
- 10.14 Personal Alarms - they owe
- 10.18 Referral of Assault/Battery - U4 issue
- 10.19 Assaultive Behavior - Big GMP
- 10.25 Infectious Disease Control - Taid
- ~~Precautions Against~~ - John
- 11.3 Salary Definitions - state over
- 11.8 Night Shift Differential - Taid
- 11.9 Bilingual Differential Pay - state neg
- ~~Referral~~ - Pam
- 11.17 Recruitment and Retention Differentials - SO
- 11.20 Recruitment and Retention - Avenal, Ironwood, Calipatria, Chuckawalla Valley and Centinela Prisons - SO
- 12.8 Overtime Meal Benefits and Allowances - CDCR } DISCUSSION
- 12.9 Overtime Meal Allowance
- 12.10 Damaged or Destroyed Personal Property - Hrd
- 12.11 Uniform Replacement Allowance - Hrd
- 12.13 Tools, Business Equipment, Materials and Supplies - TIM
- 12.14 Professional Dues - Taid
- ~~Reimbursement~~ - Jim
- 13.2 Personal Performance Session - ?
- 13.3 Joint Apprenticeship Committee - SO
- 13.6 Performance Appraisal of Permanent Employees - Taid
- 14.4 Duty Statements, Post Orders, and Work Instructions - (conversation?)
- ~~Assignment of Duties~~ - John
- ~~Assignment of Duties~~ - Kathy
- 15.1 Appeal of Involuntary Transfer - Centre
- 19.1 Hours of Work - still working
- 19.2 Overtime -
- 19.3 Rest Periods - U15
- 19.4 Meal Periods - Taid
- 19.8 Flexible Work Hours - talk to Randy

Taid
Taid
Taid

- 19.9 Exchange of Time Off - Multi-Shift Operations
- ~~21.1 Electronic Monitoring~~ - Kathy
- 21.2 Electronic Monitoring
- 21.3 Class A & B Commercial Driver's License
- Side Letter #2 - Streamlining the State Safety Retirement Process

EXHIBIT 2



GOVERNOR ARNOLD SCHWARZENEGGER

November 6, 2008

Dear Valued State Worker,

During the six weeks since I signed our state budget, the mortgage crisis has deepened, unemployment has increased and the stock market has dropped significantly. As a result, we are facing a projected \$11 billion revenue shortfall this fiscal year.

These dramatic developments require us to work together and respond immediately. I have called the Legislature into special session to address our fiscal emergency, and I am proposing a combination of economic stimulus measures, programs to keep Californians in their homes, revenue increases and spending reductions to address the real, immediate financial problems facing the state.

If approved by the Legislature, these spending reductions will impact our state workers. Californians rely on you to deliver important services every day, and I am proud of your hard work and dedication to the state. That's why I want you to hear about these impacts from me directly.

To achieve cost savings and protect vital state services, I am proposing the following measures:

- **Furloughs:** All state employees will be furloughed one day each month for the next year and half, a total of 19 days. This will result in a pay cut of about 5 percent. The pay cut will not affect retirement and other benefits for which you are eligible.
- **Holidays:** The Columbus Day holiday will be eliminated, and Lincoln's Birthday and Washington's Birthday will be observed together on Presidents Day. In addition, we will no longer pay time-and-a-half to employees working on holidays. Instead, employees required to work on holidays will receive holiday credit for use at another time, as they do now.
- **Four-day week:** The law will be amended to make it easier for departments to allow employees to work ten hours a day, four days a week.
- **Overtime:** The state will no longer count leave time (including sick leave and vacation time) as time worked for overtime purposes. Instead, employees will only become eligible for overtime pay once actual time worked exceeds the required threshold.

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PECG JA 000360

November 6, 2008

Page two

These changes will save the state roughly \$1.4 billion over two years. I know these are not easy proposals, and I assure you we are working closely with union leadership to achieve results in the least painful way possible. All the actions we're proposing must first be approved by the Legislature.

I've always said that California has the most talented and most diligent state employees, and I am confident we will make it through this tough time by working together. Thank you for your cooperation and hard work on behalf of the State of California.

Sincerely,



Arnold Schwarzenegger

EXHIBIT 3

Management Proposal

passed 1.16pm

Bargaining Unit: All Units

Date: 11/9/08

Exclusive Representative: SEIU

Subject: Furlough

ARTICLE New

Effective with the December 2008 pay period and ending June 30, 2010, the State of California will implement a furlough program for all bargaining unit employees. The furlough program shall be one day (8 hours) of furlough per month for a 19 month period and will place employees in temporary, non-duty status on these days. No employee subject to furlough shall receive compensation for any furlough period.

Furloughs shall not adversely affect an employee's retirement service credit or service anniversary date; create a break in service or constitute an absence from state service; impact the accrual of leave credits or payment of health, dental, or vision benefits; impact the calculation of final compensation; impact the calculation of death, disability, or survivor benefits; or adversely affect any other benefit or payment an employee would otherwise receive or be entitled to receive.

The State intends to implement the furlough program as follows:

- In general government operations (Monday through Friday) the State intends to close operations one day per month. Employees will be excused from work without pay on the furlough day.
- In facilities where it is not operationally feasible to close down one day per month (24/7 facilities) employee's pay will be reduced by one day and the employer may schedule employees furlough day off as operationally feasible. Furlough days must be taken as they have no cash value.

State Packaged Proposal
November 18, 2008
2:18 p.m.

EXHIBIT 4



Hand Delivered

November 10, 2008

Ms. Julie Chapman, Deputy Director
Department of Personnel Administration
1515 S Street, North Building
Sacramento, CA 95814

Dear Ms. Chapman,

SEIU Local 1000 is making the following information request to determine the impact on State employees represented by the Union, of the recently announced proposals to deal with the projected 2008-2009 and 2009-2010 budget deficit:

1. What is the breakdown of the anticipated savings from each of the Governor's three Employee Compensation proposals passed to the SEIU Local 1000 on November 9, 2008, for each of Local 1000's nine Bargaining Units, for each State department/agency/commission, and for each classification in Local 1000's Bargaining Units?
2. Will there be exemptions from the Governor's three Employee Compensation proposals for individual Bargaining Units, departments/agencies/commissions, or classifications? If there will be exemptions, what process and criteria will be used to grant them?
3. If exemptions in #2 above have already been determined, what Bargaining Unit, department/agency/commission or classification are being exempted?
4. In State operated schools for juveniles, how will mandated instructional minutes in a school year be met, if Teachers and Vocational Instructors are subject to a 5% Furlough?
5. What is the anticipated impact on staffing (necessitating additional or fewer allocated positions) on SEIU Local 1000 represented classifications, based on each of the following programs proposed by the Governor:
 - Mortgage loan modification
 - Broadening of Sales and Use Tax
 - Increasing the Oil Severance Tax
 - Increasing the Alcohol and Excise Tax
 - Increasing the Vehicle Registration fee
 - Employment Development Department reform
 - Changes in Proposition 98
 - Parole reform

YVONNE R. WALKER
President

M. CORA OKUMURA
Vice President
and Secretary-Treasurer

JIM HARD
Vice President
for Organizing/Representation

KATHLEEN B. COLLINS
Vice President for Bargaining

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- Enhanced Inmate credit earning
- Property crime threshold revisions

6. Will any of the proposed program changes in #4 above, result in an increase in allocated State Information Technology employees? Does the State anticipate having to contract out any of the additional information technology work which may result from the programs in #4?

7. Since the Governor's Executive Order has gone into effect, how much money has the State saved by canceling or reducing the use of outside contractors? How much money is projected to be saved for all of fiscal year 2008-2009, from the canceled or reduced outside contracts?

8. How much money has the State saved from all other components of the Governor's Executive Order (excluding the canceling or reduction of outside contracts)? How much money does the State project saving during all of fiscal year 2008-2009 from these other components of the Governor's Executive Order?

9. Please also breakout the two grouping of components in #7 and #8 above, by the savings in each of SEIU Local 1000's nine Bargaining Units.

10. How many Permanent Intermittents and Retired Annuitants represented by SEIU Local 1000, has the State rehired (exempted) from the Governor's Executive Order? Please break this out by Bargaining Unit, department/agency/commission and classification.

11. How many hiring/promotion exemptions have been granted or denied since the executive order has been in effect, by Bargaining Unit, Classification, and Department.

The Union requests a response no later than Monday, November 24, 2008. Thank you for your response to this information request, which will enable the Union to formulate a response to the Governor's proposals.

Yours truly,


Art Grubel
Contract Department Director

Cc. Ms. Yvonne Walker, President
Mr. Michael Baratz, Chief of Staff
Ms. Cindie Fonseca, Chair Unit #3
Mr. David Gilb, DPA Director

Issues around the Executive Order will have

EXHIBIT 5

DEPARTMENT OF PERSONNEL ADMINISTRATION

LABOR RELATIONS DIVISION
1515 "S" STREET, NORTH BUILDING, SUITE 400
SACRAMENTO, CA 95811-7258



November 17, 2008

Mr. Art Grubel
SEIU Local 1000
1808 14th Street
Sacramento, CA 95811

RE: SEIU Information Request (Common Table)

Mr. Grubel:

This is in response to the information request regarding common table bargaining, dated November 10, 2008.

The State is responding to these requests without conceding whether the information requested is relevant and necessary to SEIU's ability to develop bargaining proposals as provided under the Dills Act. In addition, in light of the litigation filed against the State by SEIU, these responses do not constitute a waiver of the State's litigation privilege.

1. What is the breakdown of the anticipated savings from each of the Governor's three Employee Compensation proposals passed to SEIU Local 1000 on November 9, 2008, for each of Local 1000's nine Bargaining Units, for each State department/agency/commission, and for each classification in Local 1000's Bargaining Units?

We have enclosed the information available with respect to this request broken down by each of the bargaining units represented by SEIU. Additional breakdowns are not available.

2. Will there be exemptions from the Governor's three Employee Compensation proposals for individual Bargaining Units, departments/agencies/commissions, or classifications? If there will be exemptions, what process and criteria will be used to grant them?

This is not a request for information, rather a hypothetical question. There has been no indication that there will be exemptions to the Employee Compensation proposals.

3. If exemptions in #2 above have already been determined, what Bargaining Unit, department/agency/commission or classification are being exempted?

There has been no indication that there will be exemptions to the Employee Compensation proposals.

Mr. Art Grubel
November 17, 2008
Page 2

4. In State operated schools for juveniles, how will mandated instructional minutes in a school year be met, if Teachers and Vocational Instructors are subject to a 5% Furlough?

This is a question, not an information request. CDCR is responsible for ensuring that an appropriate amount of instructional minutes is provided to its students.

5. What is the anticipated impact on staffing (necessitating additional or fewer allocated positions) on SEIU Local 1000 represented classifications, based on each of the following programs proposed by the Governor:

- a. Mortgage loan modification
- b. Broadening of Sales and Use Tax
- c. Increasing the Oil Severance Tax
- d. Increasing the Alcohol and Excise Tax
- e. Increasing the Vehicle Registration fee
- f. Employment Development Department reform
- g. Changes in Proposition 98
- h. Parole Reform
- i. Enhanced inmate credit earning
- j. Property crime threshold revisions

This is a question, not an information request. As such, there are no responsive documents available.

6. Will any of the proposed program changes in #4 above, result in an increase in allocated State Information Technology employees? Does the State anticipate having to contract out any of the additional information technology work which may result from the programs in #4?

This is a question, not a request for specific information. There has been no indication the issue of instructional minutes in State operated schools for juveniles (question #4) will result in increased Information Technology employees.

7. Since the Governor's Executive Order has gone into effect, how much money has the State saved by canceling or reducing the use of outside contractors? How much money is projected to be saved for all of fiscal year 2008-2009, from the canceled or reduced outside contracts?

Responsive documents to this request for information are not available.

Mr. Art Grubel
November 17, 2008
Page 3

8. How much money has the State saved from all other components of the Governor's Executive Order (excluding the canceling or reduction of outside contracts)? How much money does the State project saving during all of fiscal year 2008-2009 from these other components of the Governor's Executive Order?

Responsive documents to this request for information are not available.

9. Please also breakout the two grouping of components in #7 and #8 above, by the savings in each of SEIU Local 1000's nine Bargaining Units.

Responsive documents to this request for information are not available.

10. How many Permanent Intermittents and Retired Annuitants represented by SEIU Local 1000, has the State rehired (exempted) from the Governor's Executive Order? Please break this out by Bargaining Unit, department/agency/commission and classification.

Responsive documents to this request for information are not available.

11. How many hiring/promotion exemptions have been granted or denied since the executive order has been in effect, by Bargaining Unit, Classification, and Department.

Responsive documents to this request for information are not available.

If you have any questions, please contact me at (916) 324-0505.

Sincerely,



Randy Fisher
Senior Labor Relations Officer

cc: Michael Baratz, Chief of Staff
Cindi Fonseca, Bargaining Unit 3 Chair

Department of Personnel Administration
 Cost Savings for BEU Units
 Effective 12/1/2008

R01	1 day of Furlough	\$30,818,888	\$38,540,887	\$67,368,886	\$62,834,388	\$98,827,388	\$148,761,838	\$83,844,281	\$183,488,512	\$237,122,884
R01	2 days of Holidays	00	00	00	00	00	00	00	00	00
R01	Eliminate PP for time worked on holidays	00	00	00	00	00	00	00	00	00
R01	Leave time not counted as hours worked for overtime	\$1,138,830	00	\$1,138,830	\$1,851,830	00	\$1,851,830	\$3,088,848	00	\$3,088,848
R03	1 day of Furlough	\$8,708,881	\$812,832	\$8,213,124	\$8,772,488	\$878,837	\$10,881,887	\$18,478,881	\$1,381,188	\$18,884,220
R03	2 days of Holidays	00	00	00	00	00	00	00	00	00
R03	Eliminate PP for time worked on holidays	\$788,888	00	\$788,888	\$1,388,888	00	\$1,388,888	\$2,183,888	00	\$2,183,888
R03	Leave time not counted as hours worked for overtime	00	00	00	\$1,448	00	\$1,448	22,288	00	22,288
R04	1 day of Furlough	\$14,741,787	\$18,781,288	\$34,882,842	\$38,271,487	\$33,878,484	\$88,147,881	\$48,818,284	\$83,837,848	\$88,888,842
R04	2 days of Holidays	00	00	00	00	00	00	00	00	00
R04	Eliminate PP for time worked on holidays	00	00	00	00	00	00	00	00	00
R04	Leave time not counted as hours worked for overtime	\$884,881	00	\$884,881	\$1,188,878	00	\$1,188,878	\$1,883,881	00	\$1,883,881
R11	1 day of Furlough	\$812,282	\$3,782,844	\$4,314,848	\$1,848,488	\$4,347,388	\$7,388,878	\$1,881,888	\$10,888,238	\$11,711,728
R11	2 days of Holidays	00	00	00	00	00	00	00	00	00
R11	Eliminate PP for time worked on holidays	00	00	00	00	00	00	00	00	00
R11	Leave time not counted as hours worked for overtime	\$188,874	00	\$188,874	\$324,884	00	\$324,884	\$814,887	00	\$814,887
R14	1 day of Furlough	\$143,838	\$818,822	\$783,888	\$244,888	\$1,848,781	\$1,281,288	\$387,138	\$1,887,488	\$2,844,842
R14	2 days of Holidays	00	00	00	00	00	00	00	00	00
R14	Eliminate PP for time worked on holidays	00	00	00	00	00	00	00	00	00
R14	Leave time not counted as hours worked for overtime	\$12,838	00	\$12,838	\$21,888	00	\$21,888	\$34,811	00	\$34,811
R18	1 day of Furlough	\$3,387,887	\$1,281,881	\$4,888,888	\$8,721,448	\$2,111,248	\$7,832,888	\$8,888,847	\$3,342,888	\$12,481,788
R18	2 days of Holidays	00	00	00	00	00	00	00	00	00
R18	Eliminate PP for time worked on holidays	\$888,888	\$8,888	\$878,888	\$1,227,888	\$18,888	\$1,243,888	\$1,888,888	\$12,888	\$1,821,888
R18	Leave time not counted as hours worked for overtime	\$238,887	00	\$238,887	\$484,327	00	\$484,327	\$848,184	00	\$848,184
R17	1 day of Furlough	\$11,174,888	\$1,838,788	\$12,788,728	\$18,188,482	\$2,788,878	\$21,842,888	\$38,338,482	\$4,412,828	\$34,742,188
R17	2 days of Holidays	\$1,844,888	\$7,888	\$1,841,888	\$3,888,888	\$14,888	\$2,188,888	\$3,132,888	\$81,888	\$8,188,888
R17	Eliminate PP for time worked on holidays	\$2,888,888	\$18,888	\$2,188,888	\$3,838,888	\$24,888	\$3,884,888	\$8,818,888	\$37,888	\$8,888,888
R17	Leave time not counted as hours worked for overtime	\$1,788,884	00	\$1,788,884	\$2,838,888	00	\$2,838,888	\$4,884,818	00	\$4,884,818
R20	1 day of Furlough	\$4,388,887	\$284,838	\$4,888,788	\$7,488,841	\$381,288	\$7,881,348	\$11,788,888	\$388,238	\$12,388,121
R20	2 days of Holidays	\$441,888	\$12,888	\$488,888	\$888,888	\$34,888	\$888,888	\$1,328,888	\$38,888	\$1,388,888
R20	Eliminate PP for time worked on holidays	\$882,888	\$24,888	\$888,888	\$1,818,888	\$42,888	\$1,881,888	\$2,888,888	\$87,888	\$2,888,888
R20	Leave time not counted as hours worked for overtime	\$848,247	00	\$848,247	\$831,281	00	\$831,281	\$1,474,838	00	\$1,474,838
R21	1 day of Furlough	\$778,818	\$828,882	\$1,788,847	\$1,338,812	\$1,287,488	\$2,828,788	\$2,118,827	\$2,818,814	\$4,828,342
R21	2 days of Holidays	00	00	00	00	00	00	00	00	00
R21	Eliminate PP for time worked on holidays	00	00	00	00	00	00	00	00	00
R21	Leave time not counted as hours worked for overtime	00	00	00	\$1,884	00	\$1,884	\$2,848	00	\$2,848

1 day Furlough Footnote:
 Cost of 1 day is 4.82% (8 Hours/173.33).
 Cost 7 days for FY 2008/08 and 12 days for FY 2008/10

Elimination of 2 Holidays Footnote:
 Savings of eliminating 2 holidays based on data of overtime of departments required to maintain mandatory and essential programs on State holidays (e.g., 24-hour operations, 24-hour care facilities and departments with posted positions).
 2 holidays that are being eliminated are Lincoln Birthday (2/12) and Columbus Day (October 2008).

Elimination of Premium Pay for Holidays Footnote:
 Savings of eliminating premium pay for holidays based on data of overtime of departments required to maintain mandatory and essential programs on State holidays (e.g., 24-hour operations, 24-hour care facilities and departments with posted positions).
 Costing based 11 holidays during the fiscal year with elimination of Lincoln & Columbus.
 With the elimination of 12/25/08, only 1 holiday remaining for CY. (COMPRESS, New York, MILK, Washington, CO, Minnesota) L/1628/18 eliminated.

Leave time not counted as hours worked for overtime Footnote:
 The numbers are per DOF estimate.
 Allocation by bargaining unit of the DOF estimate was based on the same ratios as the May 2007 SCO unit profile report for overtime - BUPFP20.

EXHIBIT 6



Tele: (916) 326-4222
Fax: (916) 326-4215

November 20, 2008

Via Facsimile Only
(916) 322-0765

YVONNE R. WALKER
President

M. CORA OKUMURA
Vice President
and Secretary-Treasurer

JIM HARD
Vice President
for Organizing/Representation

KATHLEEN B. COLLINS
Vice President for Bargaining

Randy Fisher
Department of Personnel Administration
Labor Relations Division
1515 S Street, North Building, Suite 400
Sacramento, CA 95811-7258

Re: **SEIU Local 1000 Information Request Dated November 10, 2008**

Dear Mr. Fisher:

On November 10, 2008, SEIU Local 1000's Contract Department Director Arthur Grubel sent an information request to DPA Deputy Director Julie Chapman requesting information relating to the Governor's proposal to furlough state workers one day a month, to eliminate two paid holidays and change the manner in which overtime is calculated. On November 17, 2008, you sent a letter to Grubel purporting to respond to the Union's information request. Your response included a single page of figures and refused to respond in any substantive manner to 10 of the 11 information requests.

On Monday November 17, 2008, during a lull in a negotiating session, I questioned you regarding your refusal to provide substantive responses to the Union's information request. At the conclusion of the conversation, I agreed to confirm the Union's position in writing. This is that correspondence.

The Department of Personnel Administration's response to the Union's information request refuses to provide information on three grounds. First, you assert that the one page breakdown of cost savings anticipated from the compensation proposals is the only information available because, "Additional breakdowns are not available." Second, in response to several of the requests, you assert that the requests are "questions" or "hypothetical questions not information requests." Finally, you assert in response to six of the 11 information requests that "Responsive documents to this request for information are not available." As set

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forth in more detail below, none of these three claims relieve the State from its obligation to provide the requested information and bargain in good faith with the Union.

It is well established under PERB decisional law that an employer has an obligation to provide employee organizations with requested information necessary and relevant to bargaining and that failure to do so constitutes a failure to bargain in good faith. *State of California (Departments of Personnel and Transportation)* (1997) PERB Dec. No. 1227-S, pp. 36-37. Where a union properly requests relevant and necessary information, the employer must provide the information in a timely fashion in order to afford the union ample time to evaluate the information prior to bargaining. *Chula Vista City School District* (1990) PERB Dec. No. 834.

In this case, after months of bargaining in which hundreds of proposals were made and exchanged, on November 9, 2008, DPA passed a set of proposals to the Union which can only be described as punitive and regressive. These proposals included unpaid furloughs resulting in significant pay reductions, the elimination of two paid holidays and a significant change in the manner in which overtime will be calculated and earned. One day later, the Union served DPA with its information request seeking information directly related to the operation, intent and impact of the new proposals. Rather than responding fully, accurately and in good faith to the request, DPA elected instead to provide only a single page of information and raised the spurious objections to the requests described above.

DPA's rationale for refusing to provide the requested information, your November 17, 2008, response and our conversation at the bargaining table made clear that DPA takes the position that where an information request seeks information rather than a specific document, the employer need not respond to the request. This interpretation is incorrect as a matter of law.

In *Stockton Unified School District* (1980) PERB Dec. No. 143, the Board determined that the employer violated its duty to bargain in good faith when it refused to provide information to the Union based on its contention that the information requested did not exist in a document in the employer's possession. The Union requested information relating to health plan contribution rates for employees represented by the Union. The employer refused to provide the information claiming that the only document it had in its possession included data on non-represented employees. On that basis, the employer refused to provide any document in response to the Union's information request. PERB held that the failure to provide the information violated the obligation to bargain in good faith.

In this case, DPA has refused to provide information to the Union based on the rather incredible claim that the requests are "questions" or "hypothetical questions, not an information request." As our discussion made clear, you asserted this

position on DPA's behalf based on your belief that if an information request seeks information not contained in a specific, existing document, the employer need not comply or provide information in response to the request. As set forth more fully above, this position is clearly erroneous as a matter of law.

Please provide full, accurate and complete responses to the Union's information request dated November 10, 2008, no later than Wednesday, November 26, 2008. Should the State fail to provide full, accurate and complete responses to the Union's information request by that date, the Union will take appropriate legal action.

Thank you for your prompt attention to this matter.

Sincerely,



PAUL E. HARRIS, III
Chief Counsel
SEIU Local 1000

cc: Michael Baratz, Chief of Staff, SEIU Local 1000
Julie Chapman, Deputy Director, Department of Personnel Administration
David Gilb, Director, Department of Personnel Administration
Yvonne Walker, President, SEIU Local 1000
BUNC Chairs, SEIU Local 1000

EXHIBIT 7

2008 NEGOTIATIONS
STATE OF CALIFORNIA'S CONCEPTUAL PROPOSAL
TO
SERVICE EMPLOYEES INTERNATIONAL UNION (SEIU), LOCAL 1000
BARGAINING UNITS 1, 3, 4, 11, 14, 15, 17, 20, AND 21

Package Offer
November 18, 2008

The State of California (State) hereby proposes its Conceptual Proposal for the period of December 1, 2008 through June 30, 2010.

All Units (Common Table)

Term of MOU

Effective December 1, 2008 upon ratification of the parties and expires on June 30, 2010.

Compensation (Salaries 11.1 & 11.2)

Due to the severe nature of the fiscal difficulties within California, the state proposes a 19 month furlough program. The furlough program shall be one day (8 hours) of furlough per month for a 19 month period and will place employees in temporary, non-duty status on these days. Employees shall not receive compensation for the 19 furlough days.

Holidays (Article 7)

The State proposes to ~~increase~~ the number of holidays in this article from 13 to 11. Specifically the State proposes to eliminate February 12 and the second Monday in October from the list of observed holidays. February 12 will be combined with the third Monday in February to observe presidents day.

The State proposes to ~~eliminate~~ the premium pay for hours worked on a holiday from this section. Employees working on a holiday will receive hour for hour pay for all hours worked on a holiday and up to 8 hours of holiday credit on the leave books

Time Counted for Overtime (Article 19)

The State proposes a change consistent with the federal Fair Labor Standards Act (FLSA). FLSA provides that only actual time spent performing work be counted as hours worked in a work period. Leave time shall no longer count as hours worked for the purpose of calculating premium (1 ½ time) overtime compensation.

2.8 Union Steward Protection

The proposed language allows stewards who are experiencing reprisal or discrimination to file a grievance at the level a level beyond the first level if the allegations are against their immediate supervisor.

2.10 New Employee Orientation

The proposed language would ~~increase~~ the union's time to meet with new employees from 15 to 20 minutes exclusive of travel time.

5.7 Non Discrimination

The proposed language would add grievance and arbitration procedures for Bargaining Unit 17 employees.

5.8 Sexual Harassment

The proposed language would add grievance and arbitration procedures for Bargaining Unit 17 employees.

5.9 JLMC on Discrimination

This language allows the Committee to meet with SPB upon their request.

5.12 Upward Mobility JLMC

The State can ~~accept the Union's proposal~~ of November 17, 2008. This proposal maintains the Union's ability to request and meet with Departments regarding their upward mobility program. (This proposal is tied to 13X Institute for Quality Public Services.)

9.17 State Disability Insurance

This provides for the State and Union to explore the feasibility of leave integration upon the full implementation of the 21st Century Project and deletes provisions which have been acted on by both parties.

11.4 Timely Payment of Wages

This eliminates the reference to GC 19838 as this code is already in the Supersession provisions. This is tied to 11X Recovery of Overpayments and gives the State a mechanism for recovering overpayments. The employee is entitled to be given the necessary information to verify that they have received an overpayment. It does not allow employees to receive a full paycheck when they have not worked or accounted for absences with leave credits for the hours required in a pay period.

12.7 State Owned Housing

This addresses concerns identified in the Bureau of State Audits review of the State's program.

13.1 Personnel and Evaluation Materials

This addresses the Union's concerns and limits rank and file shift lead employees access to review an employee's personnel file without written authorization and provides an inspection log.

13X Institute for Quality Public Services

The State and Union both have an interest to provide continuing education and professional development to employees. This would establish a JLMC to develop a process to provide training.

Unit 1

14.12 Personnel Specialist (PSS) Classification: Workload Factors and Weights

The State and Union have discussed concern over the outdated contents of this section. The State proposes delete the current language and replace it with the establishment of a Personnel and Payroll Joint Labor Management Workload Committee to review workload, overtime, and employee development.

Side Letter 17 Investment Officer Series (CalPERS, STRS)

The State ~~accepts the union's proposal~~ to delete Side Letter 17 and our counter to the union package is contained on the last two pages. The State proposes to add the language that incorporates the Incentive Award Program as established in the agreement of 2007. The State also agrees to add the Chartered Financial Analyst Pay Differential into the contract and has attached the proposed language to complete the package.

Class Studies (Section 14.9 & 14.11)

The State proposes deletion because these studies have been completed. Any changes resulting from these studies would be made consistent with Article 14.1 of the Bargaining Unit 1 MOU.

Side Letter 8 Extended Travel, Department of Insurance

This revised language brings this side letter into conformance with all State and Federal tax laws.

Unit 3

8.21 - 9-12, 10-12 and 11-12 Leave

The implementation of the 220 day work year for teachers in the CDCR makes the utilization of these play plans overly burdensome and can no longer be offered to these employees.

8.26 Educational Leave

The State accepts the Union's 11/12/08 proposal which clarifies how educational leave is converted at retirement.

21.xxx Work Assignment Notification

This would address the Union's concern that CDCR make reasonable effort to inform teachers of their next year's work assignment prior to the completion of the Academic Calendar.

The following sections are intended to revise outdated language, increase the flexibility for Personal Necessity Leave and reflect the current process for DJJ Academic Calendar: 23.1, 23.2, 23.8, 23.8, 23.9, 23.10 and 23.12.

The following sections are intended to transition the side letter agreement of the Adult 220 Day Academic Schedule into the MOU and increase the flexibility for Personal Necessity Leave: 24.1, 24.3, 24.4, 24.5, 24.6, 24.7, 24.8, 24.9, 24.10, 24.11, 24.12, 24.13, 24.14.

Unit 4

1.1 Recognition

New language would allow a new classification established by the SPB to automatically be incorporated into the agreement without bargaining each provision unless new classification is a Seasonal or Temporary type position.

8.17 Mentoring Leave

New language would allow unit 4 employee not in a post position in CDCR to receive matching time off to participate in mentoring leave. It also allows unit 4 employees in level of care facilities to participate.

10.25 Infectious Disease Control

The State accepts the Union's proposed new language to add Department of Veterans Affairs and Department of Health Care Services and the Department of Public Health.

13.11 Upward Mobility and Training

This language would require departments provide written reasons for training being denied. Also allows employees to request a copy of the upward mobility program and departmental posting of plan on the internal website.

14.4 Duty Statements, Post Orders, and Work Instructions

This language would maintain the non-grievability of Post orders but would allow grievances if the Bargaining unit 4 employees were not in a post position whether or not the document was called "Post Order"

14.14 Library Technical Assistant Classification

This would mandate that the department of Correction review the use of this classification in its institutions to ensure that they are being used properly.

19.9 Exchange of Time Off - Multi-shift

This would allow shift exchanges within the pay period instead of limiting them to a work week.

Side Letter 8

This would allow a joint labor/management group to study the Program Technician series.

Article New: Seasonal Clerks

State proposes a new section that would be similar to the Permanent Intermittent Section and would outline holidays, sick leave, vacation, annual leave and shift differential.

Class Studies (Section 14.15 & 14.16)

The State proposes deletion because these studies have been completed. Any changes resulting from these studies would be made consistent with Article 14.1 of the Bargaining Unit 4 MOU.

Unit 11

10.31 Health and Safety Inspections

Allows union representatives to accompany Health and Safety Officers during inspections except where there are safety, security or patient care concerns.

19.9 Exchange of Time Off – Multi-shift Operations

This would extend the time period for exchanges to within the pay period (rather than within the same week) and allows double shifts consistent with departmental policies.

20.3 Post and Bid (Unit 11)

The State accepts the Union's proposal to remove the class of Materials and Research Engineering Associate (MREA) from the post and bid process.

Side Letter 4 – Fish and Wildlife Specialist (Lead)

This provides that the State will meet with the Union over a new classification if the Union provides the reasons a new class is needed.

Unit 14

2.4 Distribution of Union Information

The State is proposing the deletion of this article and would propose to include Bargaining Unit 14 employees in article 2.12.

2.12 Distribution of Literature

The State has agreed to add language which would allow the distribution of literature in employee in-baskets.

21.2 Electronic Monitoring

The State agrees that technology should not be used to harass employees and have provided language to address this issue. The State is not interested in limiting its ability to utilize technology.

Unit 15

12.11 Uniform Replacement Allowance

The State ~~accepts~~ the Union's request to add hats and patches into the uniform section for CDCR food service employees and incorporates other definition changes.

Unit 17

9.14 Temporary Disabled Employees

The State ~~accepts~~ the union's proposal of June 17, 2008. This extends this provision to Bargaining Unit 17 employees.

11.16 Alternate Ranges (A, and 231

The State proposes to delete alternate range for employees supervising inmates (AR 40). The State established an increased salary level for all positions eligible for AR 40 as a result of a court order and in accordance with the equity agreement with SEIU.

13.7 Performance Appraisal of Nursing Practices

This addresses the Union's concerns for appropriate nurse practices review. This provides a nurse supervisor review when an employee receives a "needs improvement" rating related to nursing practices on a performance appraisal.

19.2 Overtime

State proposes to delete counting of sick leave as hours worked for determining overtime to be consistent with federal law. This is consistent with the new proposal presented at the common table.

19.14 Overtime Scheduling CDCR

Limits the number of overtime hours in a week and changes procedure for filling overtime needs.

20.8 Post and Bid Procedure CDCR – DJJ

Proposes to incorporate the DJJ agreement on Post and Bid into the MOU.

20.9 Preferred Watch/Regular Days Off by Seniority – CDCR

New language providing bidding on RDO and shift, deletes current post and bid language.

Appendix 4 (F) Alternate Ranges (AR) 40 and 231

Propose delete, these alternate ranges were incorporated into base salary, see 11.16.

Unit 20

8.3 Bereavement Leave

State seeking language clarification of "3 regular work days" to "3 eight-hour days (24 hours)" per occurrence. This change would be consistent with all other State employees.

11.20 Recruitment and Retention – CDCR

These R&Rs were eliminated because the new salary ranges compensate them (effective September 1, 2006) per direction from the Receiver's Office. In addition, this also applies to the Perez salaries effective April 1, 2007.

11.60 Licensed Vocation Nurse (LVN) Recruitment and Retention

This was eliminated with new Receiver's salaries and Plata equity salary increases.

11.62 – Dental Assistant Registration Differential

Need to modify this provision eliminating \$100 per month differential for obtaining their Registered Dental Assistant Certification. Based on new Perez and Perez Equity Agreements, employees are placed in higher salary range with the Certification.

19.14 (New Proposal) CDCR LVN Overtime Process

Receiver's Office seeking new language for Overtime Process for LVNs.

Unit 21

8.28 Educational Leave

This expands the use of educational leave for the purpose of completing degrees and credentials, and provides for any denials in writing to include the reason for any denial.

12.14 Professional Organiz.

This incorporates language that as technology becomes available, Bargaining Unit 21 employees will be provided access to publications provided through the State Library.

14.4 Statement

The State agrees that when a classification specification is revised, a new duty statement will be provided to the employee.

19.8 Flexible Work Hours

This revision allows hourly employees to request and utilize flexible work hours. Salaries employees already have flexibility in this area subject to supervisor's approval. The State is holding on its 7/23/08 proposal.

Appendix A Ed Leave Classes

The State accepts that this information item be updated and attached to the MOU.

Appendix B Leave Hours for Reduced Time Bases

The State accepts that this information item be updated and attached to the MOU.

Any tentative agreement reached by the State and Union is incorporated into this package proposal.

Any current contract provision not specifically addressed in this conceptual proposal will be considered to continue without modification (i.e. rollover) unless specifically noted above.

Except as detailed above, any State proposal that has been presented and not agreed upon as a tentative agreement is hereby withdrawn by the State.

Except as detailed above, any Union proposal that has been presented and not agreed upon as a tentative agreement is hereby rejected by the State.

EXHIBIT 8



Tele: (916) 554-1279
Fax: (916) 554-1292

November 20, 2008

Via Facsimile and U.S. Mail
(916) 322-0765

YVONNE R. WALKER
President

M. CORA OKUMURA
Vice President
and Secretary-Treasurer

JIM HARD
Vice President
for Organizing/Representation

KATHLEEN B. COLLINS
Vice President for Bargaining

Deborah True
Department of Personnel Administration
Labor Relations Division
1515 S Street, North Building, Suite 400
Sacramento, CA 95811-7258

Re: **Refusal to Bargain at Unit 1 Table**

Dear Ms. True:

This letter confirms that, earlier today, you refused to bargain with the Unit 1 Bargaining Team because you learned I would be present during the negotiations.

As you know, the Department of Personnel Administration previously agreed to negotiate today with SEIU Local 1000 at the Unit 1 table. Based on this agreement, Local 1000 arranged and paid for space at the Holiday Inn to accommodate these negotiations. Consequently, Local 1000 was prepared to proceed and continue bargaining. As a courtesy to you, Margarita Maldonado, the Bargaining Unit 1 Chair, notified you I would be present at the bargaining session. Ms. Maldonado made it clear that my role was as Union staff, and not as a witness or as an observer. In response, you cited to the ground rules as a basis to object to my presence and as a justification to unilaterally cancel the scheduled bargaining session.

You maintained the position that the ground rules prohibited my presence despite the fact the ground rules place no conditions whatsoever on the presence of Union staff at bargaining sessions. In fact, the only individuals referenced in the ground rules are "observers" and "expert witnesses." The ground rules define an observer as a "SEIU Local 1000 bargaining unit member." Ms. Maldonado reiterated to you that I am not an SEIU Local 1000 bargaining unit member (observer) or an "expert witness." As such, the ground rules do not prohibit my presence and you had no grounds to unilaterally cancel the bargaining session.

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INTERNATIONAL UNION

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www.seiu1000.org



Moreover, it is evident that other DPA negotiators disagree with your interpretation of the ground rules. This is evident by the fact that Anne Giese, Local 1000 Staff Attorney, was present in the Unit 11 bargaining session without objection. Ms. Giese participated in the bargaining session only a short time after you canceled the Unit 1 bargaining session because of my presence. It is also worth noting that Paul Harris, Chief Counsel for Local 1000, has been present in other bargaining sessions without objection from DPA.

The Union believes that your refusal to meet as scheduled, and your misapplication of the ground rules is in bad faith. Moreover, it is well established that DPA cannot dictate to the Local 1000 who the union assigns to its negotiating teams. *See Gilroy Unified School District* (1984) 9 PERC ¶ 16042, p. 3; *citing American Radiator and Standard Sanitary Corp.* (1965) 155 NLRB 736 (the NLRB concluded that the composition of the employees' bargaining committee is the internal business of the union over which the employer has no control and that the employer was not relieved of its duty to bargain by the presence of "outsiders" on the employees' negotiating team. *See also Carlsbad Unified School District* (1985) PERB Dec. No. 529, p. 40, *citing San Ramon Valley Unified School District* (1982) PERB Dec. No. 230. Unless you refrain from these unfair practices, Local 1000 will have no option but to pursue legal action.

Sincerely,



J. Felix de la Torre

J. FELIX DE LA TORRE

Staff Counsel

SEIU Local 1000

cc: Yvonne Walker, President, SEIU Local 1000
Margarita Maldonado, Chair Bargaining Unit 1
BUNC Chairs, SEIU Local 1000
Michael Baratz, Chief of Staff, SEIU Local 1000
Governor Arnold Schwarzenegger
David Gilb, Director, Department of Personnel Administration
Julie Chapman, Deputy Director, Department of Personnel Administration

LOCAL 1000



SEIU
Stronger Together

Legal Services
1108 O Street, Suite 327
Sacramento, CA 95814
(916) 326-4208

DATE: November 20, 2008

TO: Deborah True
Department of Personnel Administration (Labor Relations)

RE: SEIU Local 1000 Information Request

FAX: (916) 322-0765

PHONE: (916) 324-0476

FROM: J. Felix De La Torre, Counsel

FAX: (916) 554-1292

PHONE: (916) 554-1279

NUMBER OF PAGES (Including Cover Sheet): 3

COMMENTS:

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Legal Services
1180 O Street, Suite 202
Sacramento, CA 95814
(916) 322-4288

DATE: November 20, 2008
TO: Deborah True
Department of Personnel Administration (Labor Relations)
RE: SEIU Local 1000 Information Request
FAX: (916) 322-0765
PHONE: (916) 324-0476
FROM: J. Peña De La Torre, Counsel
FAX: (916) 554-1292
PHONE: (916) 554-1279
NUMBER OF PAGES (including Cover Sheet): 3

COMMENTS:

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Abbreviations:

HS: Host send	PL: Polled local	MP: Mailbox print	TU: Terminated by user
HR: Host receive	PR: Polled remote	CP: Completed	TS: Terminated by system
WS: Waiting send	M8: Mailbox save	FA: Fail	RP: Report
			G3: Group 3
			EC: Error Correct

EXHIBIT 9



Tele: (916) 554-1279
Fax: (916) 554-1292

November 20, 2008

Via Facsimile and U.S. Mail
(916) 322-0765

JIM HARD
President

CATHY HACKETT
Vice President
and Secretary-Treasurer

MARC BAUTISTA
Vice President
for Organizing/Representation

WYONNE WALKER
Vice President for Bargaining

Patrick Gage
Department of Personnel Administration
Labor Relations Division
1515 S Street, North Building, Suite 400
Sacramento, CA 95811-7258

Re: Refusal to Bargain at Unit 15 Table

Dear Mr. Gage:

This letter confirms the events of today, November 20, 2008.

On Thursday, November 13, 2008, on behalf of the Department of Personnel Administration, you agreed to negotiate with SEIU Local 1000 at the Unit 15 table. According to text messages in my possession, you and Bargaining Unit 15 Chair Robyn Sherles agreed to negotiate at the Sacramento Holiday Inn, the same location where DPA and Unit 15 have negotiated for several days over the past several months. After a series of text message exchanges, you and Sherles agreed to commence negotiations at 9:00 a.m. on Thursday, November 20, 2008.

At approximately 9:00 a.m. this morning, you entered the agreed meeting room at the Holiday Inn. SEIU Local 1000 staff attorney Felix De La Torre was present. Upon noticing De La Torre, you stated that you refused to negotiate "with an attorney in the room." After a brief exchange, you left the hotel without commencing negotiations. Nothing in the parties' ground rules permits the State to determine the make-up of the Union's negotiating team.

After leaving the Holiday Inn, you contacted Sherles by telephone and informed her that DPA would not agree to meet at the Holiday Inn as previously agreed and instead insisted that the Union's negotiating team travel across town to meet at DPA headquarters. Sherles asked you if you were refusing to bargain with the

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www.seiu1000.org

PECG JA 000389

Union. You confirmed that you would not agree to meet at the Holiday Inn under any circumstances.

It is significant to note that your justification for refusing to meet as scheduled concerned your complaints about the caucus room paid for by the Union and provided by the Holiday Inn. Your DPA counterpart, Franklin Marr used the exact same facility today in connection with bargaining with another bargaining unit represented by SEIU Local 1000, Bargaining Unit 11.

Your refusal to meet as scheduled and your unilateral attempt to dictate to the Union the constituency of its bargaining team is contrary to the ground rules negotiated several months ago and is contrary to well established PERB precedent. *See Gilroy Unified School District* (1984) 9 PERC ¶ 16042, p. 3; *citing American Radiator and Standard Sanitary Corp.* (1965) 155 NLRB 736 (the NLRB concluded that the composition of the employees' bargaining committee is the internal business of the union over which the employer has no control and that the employer was not relieved of its duty to bargain by the presence of "outsiders" on the employees' negotiating team.) *See also Carlsbad Unified School District* (1985) PERB Dec. No. 529, p. 40, *citing San Ramon Valley Unified School District* (1982) PERB Dec. No. 230.

Should you persist in committing these unfair labor practices, SEIU Local 1000 will take appropriate legal action.

Sincerely,



PAUL E. HARRIS, III
Chief Counsel
SEIU Local 1000

cc: Yvonne Walker, President, SEIU Local 1000
Robyn Sherles, Chair Bargaining Unit 15
BUNC Chairs, SEIU Local 1000
Michael Baratz, Chief of Staff, SEIU Local 1000
Governor Arnold Schwarzenegger
David Gilb, Director, Department of Personnel Administration
Julie Chapman, Depury Director, Department of Personnel Administration

LOCAL 1000



SEIU

Stronger Together

Legal Services
1108 O Street, Suite 327
Sacramento, CA 95814
(916) 328-4208

DATE: November 20, 2008

TO: Patrick Gage, (Labor Relations)
Department of Personnel Administration

RE: SEIU Local 1000 Information Request

FAX: (916) 322-0765

PHONE: (916) 324-0476

FROM: Paul E. Harris, III, Chief Counsel

FAX: (916) 554-1292

PHONE: (916) 554-1279

NUMBER OF PAGES (Including Cover Sheet): 3

COMMENTS:

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Legal Services
 1100 O Street, Suite 327
 Sacramento, CA 95814
 (916) 328-4308

DATE: November 20, 2008
 TO: Patrick Gage, (Labor Relations)
Department of Personnel Administration
 RE: SEIU Local 1000 Information Request
 FAX: (916) 322-0765
 PHONE: (916) 324-0476
 FROM: Paul E. Harris, III, Chief Counsel
 FAX: (916) 554-1292
 PHONE: (916) 554-1279
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Abbreviations:

HS: Host send	PL: Pooled local	MP: Mailbox print	TU: Terminated by user
HR: Host receive	PR: Pooled remote	CP: Completed	TS: Terminated by system
WS: Waiting send	MS: Mailbox save	FA: Fail	RP: Report
			G3: Group 3
			EC: Error Correct

EXHIBIT 10



GOVERNOR ARNOLD SCHWARZENEGGER

December 19, 2008

Dear State Worker,

Our state's fiscal crisis has worsened dramatically in the past few weeks without legislative action to address our budget crisis. We face an approximately \$15 billion General Fund deficit this fiscal year, and that number is estimated to grow to \$42 billion over the next 18 months. Without immediate action, the state will not have enough cash to meet its obligations starting in February.

Californians can be proud of the services you provide day in and day out, and I appreciate your dedication and work. But it is imperative that state government look inside itself and be part of the solution. We simply have no other choice. The emergency steps I am announcing will require sacrifices from everyone, including those in my own office. As difficult as these measures are, I know you will maintain your high standards of public service.

Please bear in mind that the actions outlined below are just part of a larger response we're initiating to address the state's imminent cash and budget crisis. I have made many difficult proposals to cut government services and raise revenues to resolve our financial problems beyond those impacting state workers. I am now compelled to take the following steps beginning next year:

- **Furloughs:** Beginning February 1, 2009, and lasting through June 30, 2010, rank-and-file employees will be furloughed two days per month. For employees who are not part of a bargaining unit (*i.e.*, exempt appointees, career executive assignment employees, supervisors and managers), we will implement an equivalent furlough or salary reduction plan effective February 1, 2009. We intend to implement these measures in a way that does not affect your retirement.
- **Layoffs:** I have instructed the Department of Personnel Administration to work with state agencies to initiate layoffs, reductions and other efficiencies to achieve General Fund savings of up to 10 percent starting February 1, 2009. This is in addition to reductions that I have already ordered for the current fiscal year. Employees in General Fund positions in the bottom 20 percent of seniority will receive "surplus" notices within the next month. Employees who receive these notices will not necessarily be laid off, and they will have hiring preference for non-General Fund positions for which they qualify.

Furloughs and the issuance of surplus notices are intended to minimize the impacts of layoffs to be phased in next year. I regret having to take these steps, but I wanted you to hear directly from me about them so you know what to expect.

STATE CAPITOL • SACRAMENTO, CALIFORNIA 95814 • (916) 445-2841

PECG JA 000394

December 19, 2008

Page two

The nation's economy has left many families vulnerable and worried. The last thing we wanted was to compound these worries for our own employees. Nevertheless, we have an obligation to the people we serve to make whatever sacrifices are necessary to maintain essential services and programs.

Sincerely,

A handwritten signature in black ink, appearing to read "Arnold Schwarzenegger". The signature is stylized and cursive, with a large initial "A".

Arnold Schwarzenegger

EXHIBIT 11



EXECUTIVE ORDER S-09-08

07/31/2008

WHEREAS the constitutional deadline for enacting a state budget for Fiscal Year 2008-09 has passed without the enactment of a budget; and

WHEREAS in the absence of a budget, State government is constitutionally prohibited from making payments that are not compelled by either the State Constitution or federal law; and

WHEREAS until there is a state budget, the State has no authority to pay the following payments: (1) Vendors and Contractors for goods and services chargeable to Fiscal Year 2008-09; (2) Payroll for legislative staff, appointees, and exempt employees; (3) Payroll for other state employees beyond that required by federal labor law; (4) Highway User Taxes that are apportioned to the state, cities and counties for highway and road improvement projects; (5) Cal Grants to students in higher education; (6) Transfers to the Trial Courts; (7) Transfers to University of California, California State University, and Community Colleges; (8) Transportation Revolving Fund disbursements; (9) Non-revenue limit school payments; and (10) Payments for non-federally mandated social services programs such as Community Care Licensing, Adult Protective Services, State Only Foster Care; State Only Adoptions Assistance, and Cash Assistance Program for Immigrants; and (11) tax relief payments to low income seniors and disabled persons; and

WHEREAS on May 1, 2003, the California Supreme Court, in *White v. Davis*, issued a decision that, in conjunction with other pre-existing court orders, clarified that during a period that there is no state budget in place, federal labor laws require the State to pay its nonexempt FLSA employees either federal minimum wage or, for those employees that work overtime, their full salaries plus overtime; and

WHEREAS it is not known when a budget will be adopted for Fiscal Year 2008-09; and

WHEREAS as a result of the late budget, there is a real and substantial risk that the State will have insufficient cash to pay for state expenditures; and

WHEREAS since June 2008, the unprecedented number and size of fires in California has created states of emergency that have required additional and substantial expenditures of cash to ensure that there are sufficient resources to effectively fight these fires and save lives and homes; and

WHEREAS it is critical that the State be able to meet any unforeseen emergency such as fire, flood or public health emergency and to continue to make timely payments on constitutionally and federally-mandated obligations and existing obligations to pay holders of state bonds; and

WHEREAS due to the impending cash crisis and budget delay, the State may be forced to consider a Revenue Anticipation Warrant (RAW) at an exorbitant cost to the State, including hundreds of millions of dollars in credit enhancements, in order to make sure there is sufficient cash to pay for state expenditures; and

WHEREAS after the late adoption of a budget, there will be additional cash demands because all of the deferred payments that were not permitted to be made during the budget impasse will become due and payable; and

WHEREAS the late budget has resulted in loss of savings to the State in the amount of \$164 million for July, and failure to enact a budget in August will result in additional loss of savings in the amount of \$323 million; and

WHEREAS as a result of the late budget, additional mitigation measures must be implemented to offset the loss of savings and to ensure that there is sufficient cash to make the State's payments; and

WHEREAS the State employs nearly 22,000 retired annuitants, permanent intermittent employees, and seasonal employees and the State hires new employees at the rate of approximately 1,700 per month; and

WHEREAS except for services and functions of state government deemed critical by this Order, additional mitigation measures need to be taken to immediately reduce expenditures and preserve cash, including the following: (1) halting all hiring, transfers and promotions of employees, and contracting for individuals to perform services; (2) prohibition of overtime; (3) termination of the services of retired annuitants, permanent intermittent employees, seasonal employees, temporary help workers and, student assistants; and (4) suspension of personal services contracts.

NOW, THEREFORE, I, ARNOLD SCHWARZENEGGER, Governor of the State of California, in accordance with the authority vested in me by the Constitution and the statutes of the State of California, do hereby issue the following orders to become effective immediately:

IT IS ORDERED that the services and functions of state government directly related to the preservation and protection of human life and safety, including but not limited to emergency and disaster response activities and the provision of 24-hour medical care, shall be deemed critical and exempt from this Order.

IT IS FURTHER ORDERED that except for services and functions of state government deemed critical and exempt by this Order, all State agencies and departments under my direct executive authority take immediate action effective July 31, 2008 to cease and desist hiring of employees (except in instances in which there is a bona fide offer and acceptance prior to the effective date of this Order), transferring employees between State agencies and departments, promoting employees, and contracting for individuals to perform services.

IT IS FURTHER ORDERED that except for services and functions of state government deemed critical and exempt by this Order and emergent situations to preserve and protect human life and safety, all State agencies and departments under my direct executive authority take immediate action to cease and desist authorization of all overtime for employees effective July 31, 2008.

IT IS FURTHER ORDERED that except for services and functions of state government deemed critical and exempt by this Order, all State agencies and departments under my direct executive authority take immediate action to terminate the services of the following five categories of employees and individuals effective July 31, 2008: (1) Retired Annuitants; (2) Permanent Intermittent Employees; (3) Seasonal Employees; (4) Temporary Help Workers; and (5) Student Assistants.

IT IS FURTHER ORDERED that except for services and functions of state government deemed critical and exempt by this Order and except for services provided pursuant to multi-year contracts for Information Technology systems and services, all State agencies and departments under my direct executive authority take immediate action to suspend all personal services contracts effective July 31, 2008.

IT IS FURTHER ORDERED that all Agency Secretaries and Department Directors shall take immediate action to implement this Order, and any other action that will reduce state expenditures.

IT IS FURTHER ORDERED that the Director of the Department of Finance shall establish an exemption process that Agency Secretaries shall utilize to determine if an exemption is justified based on critical services and functions, which may include either cost-reducing or revenue-producing services and functions that will help ensure that there is sufficient cash for the State to make its payments.

IT IS FURTHER ORDERED that Agency Secretaries and Cabinet-level Directors shall report their exemptions to the Cabinet Secretary and the Director of the Department of Finance within 24 hours of approving an exemption.

IT IS FURTHER ORDERED that the Director of the Department of Finance and Director of the Department of Personnel Administration shall work with the State Controller to develop and implement the necessary mechanisms, including but not limited to pay letters and computer programs, to comply with the California Supreme Court's *White v. Davis* opinion to pay federal minimum wage to those nonexempt FLSA employees who did not work any overtime.

IT IS FURTHER ORDERED that the necessary mechanisms to ensure compliance with the *White v. Davis* opinion must be in place to be effective for the August 2008 payroll.

IT IS HEREBY REQUESTED that during this budget impasse, the State Treasurer shall take all actions necessary to maintain the State's ability to pay its bond obligations, including payment of principal and interest with funds in the State Treasury, and shall take all actions that are necessary to protect the State's funds and investments.

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 (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.

IT IS FURTHER ORDERED that this Order shall remain in effect until such time as both a Fiscal Year 2008-09 Budget is adopted and the Director of the Department of Finance confirms an adequate cash balance exists to meet the State's fiscal obligations.

I FURTHER DIRECT that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given to this Order.



IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 31st day of July 2008.

ARNOLD SCHWARZENEGGER
Governor of California

ATTEST:

DEBRA BOWEN
Secretary of State

EXHIBIT 12



EXECUTIVE ORDER S-16-08

12/19/2008

WHEREAS, due to developments in the worldwide and national financial markets, and continuing weak performance in the California economy, there is an approximately \$15 billion General Fund deficit for the 2008-09 fiscal year, which without effective action, is estimated to grow to a \$42 billion General Fund budget shortfall over the next 18 months; and

WHEREAS the cash reserve in the State Treasury is below the amount established by the State Controller to ensure that the cash balance does not reach zero on any day in the month; and

WHEREAS without effective action to address the fiscal and cash crisis, the cash reserve in the State Treasury is estimated to be a negative \$5 billion in March 2009; and

WHEREAS on November 6, 2008, due to concerns regarding dramatically declining revenues, I issued a Special Session Proclamation and convened the Legislature of the State of California to meet in extraordinary session to address the fiscal crisis that California faces; and

WHEREAS the Legislature failed during that Special Session to enact any bills to address the State's significant economic problems; and

WHEREAS on December 1, 2008, due to the worsening fiscal crisis, I declared that a fiscal emergency exists and convened the Legislature to meet in extraordinary session to address the fiscal crisis that California faces; and

WHEREAS on December 1, 2008, due to the fiscal emergency and the nationwide economic recession, I also issued a Special Session Proclamation and convened the Legislature of the State of California to meet in extraordinary session to address the economic crisis; and

WHEREAS on December 17, 2008, the California Pooled Money Investment Board took the unprecedented action to halt lending money for an estimated 2,000 infrastructure projects as a result of the cash crisis, including the substantial risk that California will have insufficient cash to meet its obligations starting in February 2009; and

WHEREAS in the December 1, 2008 fiscal emergency extraordinary session, the Legislature failed to effectively address the unprecedented statewide fiscal crisis; and

WHEREAS immediate and comprehensive action is needed to address the fiscal and cash crisis facing the State of California; and

WHEREAS failure to substantially reduce the deficit carried forward from the current fiscal year into the next fiscal year will likely prevent the State from being able to finance the cashflow shortages of billions of dollars, thus making it likely that the State will miss payroll and other essential services payments at the beginning of 2009; and

WHEREAS immediate and comprehensive action to reduce current spending must be taken to ensure, to the maximum extent possible, that the essential services of the State are not jeopardized and the public health and safety is preserved; and

WHEREAS State agencies and departments under my direct executive authority have already taken steps to reduce their expenses to achieve budget and cash savings for the current fiscal year; and

WHEREAS a furlough will reduce current spending and immediately improve the State's ability to meet its

obligations to pay for essential services of the State so as not to jeopardize its residents' health and safety in the current and next fiscal year.

NOW, THEREFORE, I, ARNOLD SCHWARZENEGGER, Governor of the State of California, by virtue of the power and authority vested in me by the Constitution and statutes of the State of California, do hereby determine that an emergency pursuant to Government Code section 3516.5 exists and issue this Order to become effective immediately:

IT IS ORDERED that effective February 1, 2009 through June 30, 2010, the Department of Personnel Administration shall adopt a plan to implement a furlough of represented state employees and supervisors for two days per month, regardless of funding source. This plan shall include a limited exemption process.

IT IS FURTHER ORDERED that effective February 1, 2009 through June 30, 2010, the Department of Personnel Administration shall adopt a plan to implement an equivalent furlough or salary reduction for all state managers, including exempt state employees, regardless of funding source.

IT IS FURTHER ORDERED that effective January 1, 2009 through June 30, 2010, the Department of Personnel Administration shall work with all State agencies and departments to initiate layoffs and other position reduction and program efficiency measures to achieve a reduction in General Fund payroll of up to ten percent. A limited exemption process shall be included.

IT IS FURTHER ORDERED effective January 1, 2009, the Department of Personnel Administration shall place the least senior twenty percent of state employees funded in any amount by General Fund resources on the State Restriction of Appointment (SROA) list.

IT IS FURTHER ORDERED that effective January 1, 2009 through June 30, 2010, all State agencies and departments under my direct executive authority, regardless of funding source, are prohibited from entering into any new personal services or consulting contracts to perform work as a result of the furloughs, layoffs or other position reduction measures implemented as a result of this Order.

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.

This Order is not intended to create, and does not create, any rights or benefits, whether substantive or procedural, or enforceable at law or in equity, against the State of California or its agencies, departments, entities, officers, employees, or any other person.

I FURTHER ORDER that, as soon as hereafter possible, this Order shall be filed in the Office of the Secretary of State and that widespread publicity and notice be given to this Order.



IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 19th day of December, 2008.

ARNOLD SCHWARZENEGGER
Governor of California

ATTEST:
DEBRA BOWEN
Secretary of State

SEIU Local 1000
P.O. Box 160005
Sacramento, California 95816-0005
Telephone: (916) 554-1279

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PROOF OF SERVICE

Case Name: *Service Employees International Union, Local 1000 v. State of California*
(Department of Personnel Administration/Governor Arnold Schwarzenegger)
Court: Public Employment Relations Board
Case No.: N/A

I am a citizen of the United States and a resident of the County of Placer. I am over the age of eighteen (18) years and not a party to the above-entitled action. My business address is P.O. Box 160005, Sacramento, California 95816-0005.

I am familiar with the 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.

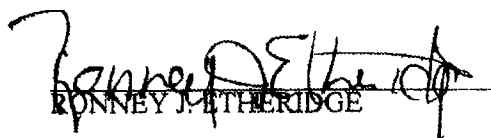
On December 22, 2008, I served the following:

UNFAIR PRACTICE CHARGE

(BY PERSONAL SERVICE) by delivering by hand and leaving a true and correct copy with the person at the address shown below:

K. WILLIAM CURTIS, Chief Counsel
Department of Personnel Administration
Legal Division
1515 "S" Street, North Bldg., Suite 400
Sacramento, CA 95811-7243

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 December 22, 2008, at Sacramento, California.


RONNEY J. ETHERIDGE

S:\SEIU1000\Legs\Headquarters\Sacramento\De La Torre\PERB\Charges Filed by SEIU\SEIU v. DPA State of California [Bad Faith Bargaining Furlough]\Proof.wpd

EXHIBIT D



STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD
UNFAIR PRACTICE CHARGE

RECEIVED
DEPT. OF
PERSONNEL ADMINISTRATION
LEGAL DIVISION

2008 DEC 30 PM 1:33

DO NOT WRITE IN THIS SPACE: Case No: SA-CE-1755-S Date Filed:

INSTRUCTIONS: File the original and one copy of this charge form in the appropriate PERB regional office (see PERB Regulation 32075), with proof of service attached to each copy. Proper filing includes concurrent service and proof of service of the charge as required by PERB Regulation 32615(c). All forms are available from the regional offices or PERB's website at www.perb.ca.gov. If more space is needed for any item on this form, attach additional sheets and number items.

IS THIS AN AMENDED CHARGE? YES NO

1. CHARGING PARTY: EMPLOYEE EMPLOYEE ORGANIZATION EMPLOYER PUBLIC¹

a. Full name: Stationary Engineers, Local 39, International Union of Operating Engineers, AFL-CIO
 b. Mailing address: 1620 North Market Blvd., Sacramento CA 95834
 c. Telephone number: (916) 928-0399
 d. Name, title and telephone number of person filing charge: Stewart Weinberg, Attorney 510 337-1001
 e. Bargaining unit(s) involved: Unit 13

2. CHARGE FILED AGAINST: (mark one only) EMPLOYEE ORGANIZATION EMPLOYER

a. Full name: Office of the Governor of the State of California, Dept. of Personnel Administration
 b. Mailing address: 1515 S. Street, North Building, Suite 400, Sacramento CA 95811
 c. Telephone number: (916) 324-0512
 d. Name, title and telephone number of agent to contact: K. William Curtis, Chief Counsel (916) 324-0512

3. NAME OF EMPLOYER (Complete this section only if the charge is filed against an employee organization.)

a. Full name:
 b. Mailing address:

4. APPOINTING POWER: (Complete this section only if the employer is the State of California. See Government Code section 18524.)

a. Full name: Office of the Governor of the State of California, Dept. of Personnel Administration
 b. Mailing address: 1515 S Street Sacramento CA 95811
 c. Agent: K. William Curtis

¹ An affected member of the public may only file a charge relating to an alleged public notice violation, pursuant to Government Code section 3523, 3547, 3547.5, or 3595, or Public Utilities Code section 99569

5. GRIEVANCE PROCEDURE

Are the parties covered by an agreement containing a grievance procedure which ends in binding arbitration?

Yes No

6. STATEMENT OF CHARGE

a. The charging party hereby alleges that the above-named respondent is under the jurisdiction of: (check one)

- Educational Employment Relations Act (EERA) (Gov. Code sec 3540 et seq.)
- Ralph C Dills Act (Gov Code sec. 3512 et seq.)
- Higher Education Employer-Employee Relations Act (HEERA) (Gov. Code sec. 3560 et seq)
- Meyers-Milias-Brown Act (MMBA) (Gov Code sec 3500 et seq.)
- Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (TEERA) (Pub Utilities Code sec. 99560 et seq)
- Trial Court Employment Protection and Governance Act (Trial Court Act) (Article 3; Gov Code sec 71630 - 71639.5)
- Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act) (Gov Code sec. 71800 et seq)

b. The specific Government or Public Utilities Code section(s), or PERB regulation section(s) alleged to have been violated is/are: 3512, 3515, 3515.5, 3516.5, 3517, 3519

c. For MMBA, Trial Court Act and Court Interpreter Act cases, if applicable, the specific local rule(s) alleged to have been violated is/are (a copy of the applicable local rule(s) MUST be attached to the charge):

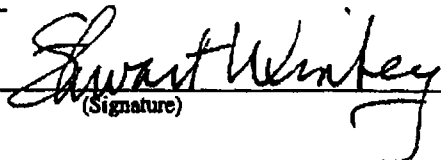
d. Provide a clear and concise statement of the conduct alleged to constitute an unfair practice including, where known, the time and place of each instance of respondent's conduct, and the name and capacity of each person involved. This must be a statement of the facts that support your claim and *not conclusions of law*. A statement of the remedy sought must also be provided. (Use and attach additional sheets of paper if necessary)
see attached

DECLARATION

I declare under penalty of perjury that I have read the above charge and that the statements herein are true and complete to the best of my knowledge and belief and that this declaration was executed on December 24 2008
(Date)

at Alameda, California
(City and State)

Stewart Weinberg
(Type or Print Name)


(Signature)

Title, if any: Attorney

Mailing address: 1001 Marina Village Parkway
Alameda, CA 94501

Telephone Number: (510) 337 1001

Attachment to Unfair Practice Charge

Stationary Engineers Local 39 represents employees of the State of California in State bargaining unit 13. Stationary Engineers Local 39 and the State of California were parties to a collective bargaining agreement that expired on June 30, 2008. The parties are currently engaged in bargaining a successor agreement. On November 14, 2008, Stationary Engineers Local 39 filed an unfair practice charge against the Governor of the State of California and the Department of Personnel Administration for various unfair practices occurring during the course of bargaining. That charge is currently pending and is numbered SA-CE-1747-S.

On or about December 5, 2008, the Governor's office and the Dept. of Personnel Administration proposed a one day per month unpaid furlough for employees in bargaining unit 13. A copy of the proposal is attached hereto as Exhibit 1. On December 19, 2008, the Governor issued a statement announcing the promulgation of an executive order declaring an emergency and ordering employees in unit 13 to take a two day a month unpaid furlough beginning in February 2009 and continuing through June 2010. A copy of the statement is attached hereto as exhibit 2. A copy of the executive order is attached hereto as exhibit 3.

The Governor's action is in bad faith in that it unilaterally changes existing working conditions which are not only within the scope of bargaining but as to which the parties are currently bargaining. In addition it is in bad faith in that there is no genuine emergency. It is in bad faith in that even if there were an emergency the duration of the emergency is unknown and there is no evidentiary or factual support to continue the furloughs to June 2010, and therefore the action of declaring a duration of the emergency is arbitrary. The Governor's action is in bad faith in that his office proposed only a one day furlough, which he then regressively compounded to 2 days. The Governor's action is in bad faith since he reached agreement with the union on August 13, 2008 for timely payment of regular wages due on payday. A copy of the tentative agreement is attached as exhibit 4.

PROOF OF SERVICE

RECEIVED
DEPT. OF
PERSONNEL ADMINISTRATION
LEGAL DIVISION

2008 DEC 30 PM 1:33

I declare that I am a resident of or employed in the County of Alameda
State of California. I am over the age of 18 years and not a party to the within entitled
cause. The name and address of my residence or business is Weinberg, Roger & Rosenfeld,
1001 Marina Village Parkway, Alameda, California 94501-1091

On December 29, 2008, I served the Unfair Practice Charge
(Date) (describe document(s))

on the parties listed below (include name, address and, where applicable, fax number) by (check
the applicable method or methods):

placing a true copy thereof enclosed in a sealed envelope for collection and delivery
by the United States Postal Service or private delivery service following ordinary business
practices with postage or other costs prepaid;

personal delivery;

facsimile transmission in accordance with the requirements of PERB Regulations
32090 and 32135(d)

Governor of the State of California, Department of
Personnel Administration
1515 S Street North Building Suite 400
Sacramento, CA 95811

I declare under penalty of perjury that the foregoing is true and correct and that this
declaration was executed on December 29, 2008, at Alameda, California

Linda Dobbins
(Type or print name)

Linda Dobbins
(Signature)

passed 12-1-04 11-

Management Proposal

Bargaining Unit: 13

Exclusive Representative: IUOE

Subject: Furlough

ARTICLE NEW

Effective with the December 2008 pay period and ending June 30, 2010, the State of California will implement a furlough program for all bargaining unit employees. The furlough program shall be one day (8 hours) of furlough per month for a 19 month period and will place employees in temporary, non-duty status on these days. No employee subject to furlough shall receive compensation for any furlough period.

Furloughs shall not adversely affect an employee's retirement service credit or service anniversary date; create a break in service or constitute an absence from state service; impact the accrual of leave credits or payment of health, dental, or vision benefits; impact the calculation of final compensation; impact the calculation of death, disability, or survivor benefits; or adversely affect any other benefit or payment an employee would otherwise receive or be entitled to receive.

The State intends to implement the furlough program as follows:

In general government operations (Monday through Friday) the State intends to close operations one day per month. Employees will be excused from work without pay on the furlough day.

In facilities where it is not operationally feasible to close down one day per month (24/7 facilities) employee's pay will be reduced by one day and the employer may schedule employees furlough day off as operationally feasible. Furlough days must be taken as they have no cash value.

EXHIBIT 1

PECG JA 000409



Office of the Governor

ARNOLD SCHWARZENEGGER
THE PEOPLE'S GOVERNOR



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Press Release

12/19/2006 GAAS:842:06 FOR IMMEDIATE RELEASE [Print Version](#) | [Email/Subscribe](#)

Gov. Schwarzenegger Issues Executive Order to Address Worsening Budget Crisis through State's Payroll

Governor Arnold Schwarzenegger today issued an executive order to prepare state government and its employees for the worsening state budget crisis. Without action to address the fiscal crisis, the Controller, Treasurer and Department of Finance expect the state to run out of cash in February. In order to prepare for this potential scenario, the Governor directed the Department of Personnel Administration to adopt a plan that would go into effect in February to implement a furlough of state employees and supervisors for two days per month and to work with state agencies and departments to initiate layoffs and other position reduction and program efficiency measures to achieve General Fund savings of up to 10 percent.

Every California family and business has been forced to cut back during these difficult economic times and state government cannot be exempt from similar belt tightening. In the state's 2008-2009 budget, we achieved reductions of \$9.7 billion, but as a result of the national economic downturn, the deficit for this fiscal year has since grown to \$15 billion. A mix of real revenues balanced with real long term cuts, along with economic stimulus and mortgage relief, is necessary to address the state's rising deficit, which without effective action is estimated to grow to a \$42 billion General Fund budget shortfall over the next 18 months.

As a result of the executive order the Governor issued in July of this year, the Governor has cut \$66 million in costs from his administration, which includes the reduction of thousands of positions.

Earlier today the Governor sent a letter to all state employees explaining the state's worsening budget situation and the need for this EO.

Full text of executive order:

EXECUTIVE ORDER 8-16-06 BY THE GOVERNOR OF THE STATE OF CALIFORNIA

WHEREAS, due to developments in the worldwide and national financial markets, and continuing weak performance in the California economy, there is an approximately \$15 billion General Fund deficit for the 2008-09 fiscal year, which without effective action, is estimated to grow to a \$42 billion General Fund budget shortfall over the next 18 months; and

WHEREAS the cash reserve in the State Treasury is below the amount established by the State Controller to ensure that the cash balance does not reach zero on any day in the month; and

WHEREAS without effective action to address the fiscal and cash crisis, the cash reserve in the State Treasury is estimated to be a negative \$5 billion in March 2008; and

WHEREAS on November 6, 2006, due to concerns regarding dramatically declining revenues, I issued a Special Session Proclamation and convened the Legislature of the State of California to meet in extraordinary session to address the fiscal crisis that California faces; and

WHEREAS the Legislature failed during that Special Session to enact any bills to address the State's significant economic problems; and

WHEREAS on December 1, 2006, due to the worsening fiscal crisis, I declared that a fiscal emergency exists and convened the Legislature to meet in extraordinary session to address the fiscal crisis that California faces; and

WHEREAS on December 1, 2006, due to the fiscal emergency and the nationwide economic recession, I also issued a Special Session Proclamation and convened the Legislature of the State of California to meet in extraordinary session to address the economic crisis; and

WHEREAS on December 17, 2006, the California Pooled Money Investment Board took the unprecedented action to halt lending money for an estimated 2,000 infrastructure projects as a result

Executive Order

MORE RELATED PRESS RELEASES

12/22/06 - Gov. Schwarzenegger Highlights Halt of I-405 Concession Relief in L.A. Other Economic Ramifications of Legislature's Failure to Pass Real & Comprehensive Budget Solution

12/19/06 - Gov. Schwarzenegger Calls Legislature Into Second Pro-ER Special Session

12/19/06 - Governor Schwarzenegger Highlights Job Loss, Economic Ramifications of Legislature's Failure to Pass a Real and Comprehensive Budget Solution

EXHIBIT 2

of the cash crisis, including the substantial risk that California will have insufficient cash to meet its obligations starting in February 2009; and

WHEREAS in the December 1, 2008 fiscal emergency extraordinary session, the Legislature failed to effectively address the unprecedented statewide fiscal crisis, and

WHEREAS immediate and comprehensive action is needed to address the fiscal and cash crisis facing the State of California; and

WHEREAS failure to substantially reduce the deficit carried forward from the current fiscal year into the next fiscal year will likely prevent the State from being able to finance the cashflow shortages of billions of dollars, thus making it likely that the State will miss payroll and other essential services payments at the beginning of 2009; and

WHEREAS immediate and comprehensive action to reduce current spending must be taken to ensure, to the maximum extent possible, that the essential services of the State are not jeopardized and the public health and safety is preserved; and

WHEREAS State agencies and departments under my direct executive authority have already taken steps to reduce their expenses to achieve budget and cash savings for the current fiscal year; and

WHEREAS a furlough will reduce current spending and immediately improve the State's ability to meet its obligations to pay for essential services of the State so as not to jeopardize its residents' health and safety in the current and next fiscal year

NOW, THEREFORE, I, ARNOLD SCHWARZENEGGER, Governor of the State of California, by virtue of the power and authority vested in me by the Constitution and statutes of the State of California, do hereby determine that an emergency pursuant to Government Code section 3518.5 exists and issue this Order to become effective immediately:

IT IS ORDERED that effective February 1, 2009 through June 30, 2010, the Department of Personnel Administration shall adopt a plan to implement a furlough of represented state employees and supervisors for two days per month, regardless of funding source. This plan shall include a limited exemption process.

IT IS FURTHER ORDERED that effective February 1, 2009 through June 30, 2010, the Department of Personnel Administration shall adopt a plan to implement an equivalent furlough or salary reduction for all state managers, including exempt state employees, regardless of funding source.

IT IS FURTHER ORDERED that effective January 1, 2009 through June 30, 2010, the Department of Personnel Administration shall work with all State agencies and departments to mitigate layoffs and other position reduction and program efficiency measures to achieve a reduction in General Fund payroll of up to ten percent. A limited exemption process shall be included.

IT IS FURTHER ORDERED effective January 1, 2009, the Department of Personnel Administration shall place the least senior twenty percent of state employees funded in any amount by General Fund resources on the State Restriction of Appointment (SROA) list.

IT IS FURTHER ORDERED that effective January 1, 2009 through June 30, 2010, all State agencies and departments under my direct executive authority, regardless of funding source, are prohibited from entering into any new personal services or consulting contracts to perform work as a result of the furloughs, layoffs or other position reduction measures implemented as a result of this Order.

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.

This Order is not intended to create, and does not create, any rights or benefits, whether substantive or procedural, or enforceable at law or in equity, against the State of California or its agencies, departments, entities, officers, employees, or any other person.

I FURTHER ORDER that, as soon as hereafter possible, this Order shall be filed in the Office of the Secretary of State and that widespread publicity and notice be given to this Order.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 19th day of December, 2008.

ARNOLD SCHWARZENEGGER
Governor of California

ATTEST:
DEBRA BOWEN
Secretary of State

[Text Version](#) | [Email the Governor](#) | [Email Alerts](#) | [Internship Program](#) | [Technical Contact](#) |

EXHIBIT 3

[BSS Feeds](#) | [Site Map](#) | [Privacy Policy](#) | [Conditions of Use](#)

[CA State Homepage](#)

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EXHIBIT 4


passed 8/13/08
2:20

Management Proposal

Bargaining Unit: 13

Exclusive Representative: IUOE

Subject: Timely Payment of Wages

T.A. 8-13-08
class 3:10
T.A'd 8-13-08 

ARTICLE 16.2

16.2 Timely Payment of Wages

A. The State agrees to provide for all active employees, timely payment of regular wages due on payday. In addition, following an employee's discharge, layoff, or resignation the employee shall be compensated for wages due consistent with applicable department and Controller's Office policies

B. Effective upon ratification of this Agreement by the Legislature, when a permanent full-time employee receives no pay warrant on payday, the State agrees to issue a salary advance, consistent with departmental policy and under the following conditions:

1. When there are errors or delays in processing the payroll documents and the employee does not receive a check on payday, a salary advance will normally be issued within three (3) work days after payday for an amount close to the actual net pay (gross salary less deductions) in accordance with departmental policy.
2. In the event that a revolving fund check is not issued within three (3) workdays as specified above, the employer will pay to the employee, five percent (5%) of the employee's base pay for that pay period, for each work day beyond the three (3) day grace period described in 1. above.
3. The differences between the employee's net pay and the salary advance shall not be reconciled until after the Department receives the Controller's warrant for the pay period.

C. Those employees on voluntary payroll deduction who experience extended problems receiving payroll warrants may request that an explanation be provided to payroll deduction creditor(s) by their departmental personnel office.

D. This provision does not apply to those employees who are on non-industrial disability insurance leave, industrial disability leave, or who are receiving worker's compensation payments.

E. Upon specific request of IUOE, the State will meet with IUOE regarding specific departmental issues of timely issuance of overtime payments, shift differentials, premium pay, or allowances.

F. Upon request of the Union, any State agency shall meet with IUOE to evaluate its distribution of regular salary warrants. Any alternative method of distribution will be in accordance with State Administrative manual sections 8580.1 and 8580.2. Any lawful alternative method of salary warrant distribution may be discussed with IUOE

EXHIBIT E



STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD
UNFAIR PRACTICE CHARGE

RECEIVED
DEPT OF
PERSONNEL ADMINISTRATION
LEGAL DIVISION

2008 DEC 24 PM 1:03

DO NOT WRITE IN THIS SPACE:

Case No:

Date Filed:

INSTRUCTIONS: File the original and one copy of this charge form in the appropriate PERB regional office (see PERB Regulation 32075), with proof of service attached to each copy. Proper filing includes concurrent service and proof of service of the charge as required by PERB Regulation 32615(c). All forms are available from the regional offices or PERB's website at www.perb.ca.gov. If more space is needed for any item on this form, attach additional sheets and number them.

IS THIS AN AMENDED CHARGE?

YES

NO

1. CHARGING PARTY:

EMPLOYEE

EMPLOYEE ORGANIZATION

EMPLOYER

PUBLIC

a. Full name: Union of American Physicians & Dentists

b. Mailing address: 180 Grand Ave., Suite 1380, Oakland CA 94612-3741

c. Telephone number: (510) 839-0193

d. Name, title and telephone number of person filing charge: Andrew Kahn, Attorney, tel. (415) 597-7200

e. Bargaining unit(s) involved: Unit 16

2. CHARGE FILED AGAINST: (mark one only)

EMPLOYEE ORGANIZATION

EMPLOYER

a. Full name: State of California, Department of Personnel Administration

b. Mailing address: 1515 S St., North Bldg, Suite 400

c. Telephone number: (916) 324-0976

d. Name, title and telephone number of agent to contact: Julie Chapman, Deputy Director of Labor Relations, (916) 324-0976

3. NAME OF EMPLOYER (Complete this section only if the charge is filed against an employee organization.)

a. Full name:

b. Mailing address:

4. APPOINTING POWER: (Complete this section only if the employer is the State of California. See Government Code section 18524.)

a. Full name: All departments

b. Mailing address:

c. Agent:

An affected member of the public may only file a charge relating to an alleged public notice violation, pursuant to Government Code section 3523, 3547, 3547.5, or 3595, or Public Utilities Code section 99569.

5. GRIEVANCE PROCEDURE

Are the parties covered by an agreement containing a grievance procedure which ends in binding arbitration?

Yes No

6. STATEMENT OF CHARGE

a. The charging party hereby alleges that the above-named respondent is under the jurisdiction of: (check one)

- Educational Employment Relations Act (EERA) (Gov. Code sec. 3540 et seq.)
- Ralph C. Dills Act (Gov. Code sec. 3512 et seq.)
- Higher Education Employer-Employee Relations Act (HEERA) (Gov. Code sec. 3560 et seq.)
- Meyers-Millias-Brown Act (MMBA) (Gov. Code sec. 3500 et seq.)
- Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (TEERA) (Pub. Utilities Code sec. 99560 et seq.)
- Trial Court Employment Protection and Governance Act (Trial Court Act) (Article 3; Gov. Code sec. 71630 - 71639.5)
- Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act) (Gov. Code sec. 71800 et seq.)

b. The specific Government or Public Utilities Code section(s), or PERB regulation section(s) alleged to have been violated is/are: Gov. Code sections 3515.5, 3516, 3516.5, and 3517.

c. For MMBA, Trial Court Act and Court Interpreter Act cases, if applicable, the specific local rule(s) alleged to have been violated is/are (a copy of the applicable local rule(s) MUST be attached to the charge):

d. Provide a clear and concise statement of the conduct alleged to constitute an unfair practice including, where known, the time and place of each instance of respondent's conduct, and the name and capacity of each person involved. This must be a statement of the facts that support your claim and not conclusions of law. A statement of the remedy sought must also be provided. (Use and attach additional sheets of paper if necessary.)

The Governor has unilaterally decided to furlough UAPD's members two days a month, without prior notice and bargaining. The State has known of its financial problems for years now and hence has had an ample opportunity to bargain over whether the proper response to such problems is furloughing everyone versus other remedies, such as laying off by seniority, which has been the past practice instead.


DECLARATION

I declare under penalty of perjury that I have read the above charge and that the statements herein are true and complete to the best of my knowledge and belief and that this declaration was executed on 12-23-08

(Date)

at San Francisco CA
(City and State)

Andrew Kahn
(Type or Print Name)


(Signature)

Title, if any: Attorney

Mailing address: Davis Cowell & Bove, 595 Market St. #1400, San Francisco CA 94105

Telephone Number: (415) 597-7200

**PROOF OF SERVICE BY MAIL
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2008 DEC 24 PM 1:03

I declare that I am a resident of or employed in the County of San Francisco,
California. I am over the age of 18 years and not a party to the within entitled cause. The name
and address of my residence or business is 595 Market St. #1400, San Francisco CA 94105

I am readily familiar with the ordinary practice of the business of collecting, processing and
depositing correspondence in the United States Postal Service and that the correspondence will
be deposited the same day with postage thereon fully prepaid.

On Dec. 23, 2008, I served the Unfair Practice Charge

on the parties listed below by placing a true copy thereof enclosed in a sealed envelope for
collection and mailing in the United States Postal Service following ordinary business practices
at San Francisco, California addressed as follows:

Chief Counsel
Department of Personnel Administration
1515 S. Street, North Bldg, Suite 400
Sacramento CA 95814-7243

I declare under penalty of perjury that the foregoing is true and correct and that this
declaration was executed on Dec. 23, 2008, at San Francisco,
California.

Verna Owens
(Type or print name)


(Signature)

EXHIBIT F



STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD
UNFAIR PRACTICE CHARGE

RECEIVED
DEPT OF
PERSONNEL ADMINISTRATION
LEGAL DIVISION

2008 DEC 31 PM 1:17

DO NOT WRITE IN THIS SPACE:

Case No: 1756

Date Filed:

INSTRUCTIONS: File the original and one copy of this charge form in the appropriate PERB regional office (see PERB Regulation 32075), with proof of service attached to each copy. Proper filing includes concurrent service and proof of service of the charge as required by PERB Regulation 32615(e). All forms are available from the regional offices or PERB's website at www.perb.ca.gov. If more space is needed for any item on this form, attach additional sheets and number items.

IS THIS AN AMENDED CHARGE?

YES

NO

1. CHARGING PARTY: EMPLOYEE EMPLOYEE ORGANIZATION EMPLOYER PUBLIC¹

a. Full name: American Federation of State, County and Municipal Employees

b. Mailing address: 555 Capitol Mall, Suite 1225, Sacramento, CA 95814

c. Telephone number: 916 441-0833

d. Name, title and telephone number of person filing charge: Pam Manwiller, Director of State Programs, 916 441-0833 ex 12

e. Bargaining unit(s) involved: Bargaining Unit 19

2. CHARGE FILED AGAINST: (mark one only)

EMPLOYEE ORGANIZATION

EMPLOYER

a. Full name: Department of Personnel Administration

b. Mailing address: 1515 S Street, Suite 400, Sacramento, CA 95814

c. Telephone number: 916 324-0476

d. Name, title and telephone number of agent to contact

3. NAME OF EMPLOYER (Complete this section only if the charge is filed against an employee organization.)

a. Full name:

b. Mailing address:

4. APPOINTING POWER: (Complete this section only if the employer is the State of California. See Government Code section 18524.)

a. Full name: Department of Personnel Administration

b. Mailing address: 1515 S Street, Suite 400, Sacramento, CA 95814

c. Agent: William Curtis, Chief Counsel

¹ An affected member of the public may only file a charge relating to an alleged public notice violation, pursuant to Government Code section 3523, 3547, 3547.5, or 3595, or Public Utilities Code section 99569.

5. GRIEVANCE PROCEDURE

Are the parties covered by an agreement containing a grievance procedure which ends in binding arbitration?

Yes No

6. STATEMENT OF CHARGE

a. The charging party hereby alleges that the above-named respondent is under the jurisdiction of: (check one)

- Educational Employment Relations Act (EERA) (Gov. Code sec. 3540 et seq.)
- Ralph C. Dills Act (Gov. Code sec. 3512 et seq.)
- Higher Education Employer-Employee Relations Act (HEERA) (Gov. Code sec. 3560 et seq.)
- Meyers-Milias-Brown Act (MMBA) (Gov. Code sec. 3500 et seq.)
- Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (TEERA) (Pub. Utilities Code sec. 99560 et seq.)
- Trial Court Employment Protection and Governance Act (Trial Court Act) (Article 3; Gov. Code sec. 71630 - 71639.5)
- Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act) (Gov. Code sec. 71800 et seq.)

b. The specific Government or Public Utilities Code section(s), or PERB regulation section(s) alleged to have been violated is/are:
Government Code Section 3516.5

c. For MMBA, Trial Court Act and Court Interpreter Act cases, if applicable, the specific local rule(s) alleged to have been violated is/are (a copy of the applicable local rule(s) MUST be attached to the charge):

d. Provide a clear and concise statement of the conduct alleged to constitute an unfair practice including, where known, the time and place of each instance of respondent's conduct, and the name and capacity of each person involved. This must be a statement of the facts that support your claim and *not conclusions of law*. A statement of the remedy sought must also be provided. (Use and attach additional sheets of paper if necessary.)
Please see attached

DECLARATION

I declare under penalty of perjury that I have read the above charge and that the statements herein are true and complete to the best of my knowledge and belief and that this declaration was executed on December 30, 2008
(Date)

at Sacramento, California
(City and State)

Pamela Marwiller
(Type or Print Name)

Pam Marwiller
(Signature)

Title, if any: Director of State Programs

Mailing address: 555 Capitol Mall, Suite 1225, Sacramento, CA 95814

Telephone Number: (916) 441-0833 ex 12

Statement of the Conduct Alleged to Constitute an Unfair Practice

On December 19, 2008, the Governor issued Executive Order S16-08 by which he unilaterally imposed a furlough obligation on Bargaining Unit 19 employees. According to the Governor's edict, all Unit 19 employees will be subject to involuntary furlough two days per month effective February 1, 2009 through June 30, 2010. The Governor implemented this order without first having afforded AFSCME the opportunity to meet and confer about the proposed furlough, and prior to reaching a good faith impasse in the State's ongoing negotiations with AFSCME for a successor Memorandum of Understanding for Unit 19.

Bargaining Unit 19 commenced contract bargaining for a successor Memorandum of Understanding with the State Of California on June 11, 2008. We have met many times since the beginning of negotiations and to date the State has not passed an economic proposal. There has been no sense of emergency or urgency regarding economics at the negotiations table. As the parties have reached neither a tentative agreement nor impasse on all sections of the contract, the State is forbidden by the Dills Act to implement unilaterally a mandatory furlough policy.

Thus, Executive Order S16-08 was issued (a) without going through the meet and confer process; (b) in the middle of ongoing MOU negotiations; and (c) without completing MOU negotiations.

AFSCME disputes the legitimacy of the Governor's reliance on Section 3516.5 to declare an emergency to justify bypassing the bargaining process with respect to the furlough policy. Nothing about the legislature's delay in addressing a prospective budget shortfall creates the type of "emergency" contemplated in Section 3516.5.

Remedy Requested

AFSCME respectfully requests that Executive Order S16-08 be immediately rescinded.

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LEGAL DIVISION

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C.C.P. 1013a

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I declare that I am a resident of or employed in the County of Sacramento
California. I am over the age of 18 years and not a party to the within entitled cause. The name
and address of my residence or business is 555 Capitol Mall, Suite 1225, Sacramento, CA 95814

I am readily familiar with the ordinary practice of the business of collecting, processing and
depositing correspondence in the United States Postal Service and that the correspondence will
be deposited the same day with postage thereon fully prepaid.

On December 30, 2008, I served the Amended ULP charge SA-CE-1729S

on the parties listed below by placing a true copy thereof enclosed in a sealed envelope for
collection and mailing in the United States Postal Service following ordinary business practices
at Sacramento, California addressed as follows:

William Curtis, Chief Counsel
Department of Personnel Administration
1515 S Street, North Building, Suite 400
Sacramento CA 95814

Public Employment Relations Board
Sacramento Regional Office
1031 8th Street
Sacramento CA 95811-4124

I declare under penalty of perjury that the foregoing is true and correct and that this
declaration was executed on December 30, 2008, at Sacramento
California.

Judy Thomas Barnes
(Type or print name)

Judy Thomas Barnes
(Signature)

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SACRAMENTO
GORDON D SCHABER COURTHOUSE
MINUTE ORDER**

Date: 01/16/2009

Time: 01:35:00 PM

Dept: 19

Judicial Officer Presiding: Judge Patrick Marlette
Clerk: D. Rios

Bailiff/Court Attendant:
ERM:

Case Init. Date: 12/22/2008

Case No: 34-2008-80000126-CU-WM-GDS Case Title: Professional Engineers In California Government
vs. Arnold Schwarzenegger Governor State of California

Case Category: Civil - Unlimited

Event Type: Motion - Other - Writ of Mandate

Causal Document & Date Filed:

Appearances:

Date: January 16, 2009

Proceedings: Ruling, Notice and Certificate of Mailing of Court's Own Motion to Deem as Related the following Writ of Mandate cases: 34-2008-80000126, 2009-80000134, 2009-80000135 & 2009-8000137

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;

CALIFORNIA CORRECTIONAL PEACE OFFICERS ASSOCIATION v. GOVERNOR ARNOLD SCHWARZENEGGER, et al., Case No. 2009-80000137:

On December 19, 2008, in a response to the current State budget crisis, Governor Arnold Schwarzenegger issued Executive Order S-16-08. 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. Those three actions, specifically, Case No. 2008-80000126, Case No. 2009-80000134, and Case No. 2009-80000135, are now assigned to this Department and set for hearing on Thursday, January 29, 2009 on respondents' demurrers to the petitions and on the merits of the petitions, all of the parties having stipulated that the three cases should

Date: 01/16/2009

MINUTE ORDER

Page: 1

Dept: 19

Calendar No.:

PECG JA 000424

be treated as related matters and assigned to this Department pursuant to Rule of Court 3.300(h)(1), and further having stipulated to the hearing date and a briefing schedule.

On January 15, 2009, the Court became aware that a fourth action had been filed on January 12, 2009, entitled California Correctional Peace Officers Association v. Governor Arnold Schwarzenegger, et al., Case No. 2008-80000137. That case was assigned to Department 31, Judge Michael P. Kenny, presiding. As of the date of this order, the Court has not been informed that a Notice of Related Case has been filed in that action stating that it is related to the three cases already assigned to this Department. However, the Court has reviewed the petition filed in Case No. 2009-80000137 and finds that it is related to the three cases now assigned to this Department within the meaning of Rule of Court 3.300(a) in that it alleges that the Governor's executive order directing a furlough of state employees is unlawful under Government Code section 19826(b), which is one of the central issues of law in the other three cases.

Given the relationship between Case No. 2009-80000137 and the three cases currently assigned to this Department, and the fact that a hearing on shortened time has been ordered for those three cases, the Court finds good cause to make the following order:

This order shall serve as a Notice of Related Case based on the facts stated above. Case No. 2009-80000137 is hereby ordered to be related to the three cases currently assigned to this Department as listed above, and is re-assigned to this Department, unless any party in that case files a response opposing this notice within five days as provided in Rule of Court 3.300(g). If no response is filed within five days, this order shall take effect and Case No. 2009-8000137 will be transferred to this Department effective immediately. If a response opposing this notice is filed within five days, the Court will take the matter under submission without oral argument and will issue a minute order ruling on the objection.

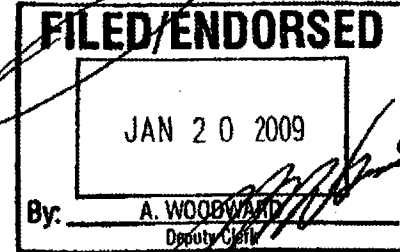
The Court also notes that, although the petition in Case No. 2009-80000137 raises legal issues that are identical to those in the cases currently before the Court, it does have different facts in that the furlough for correctional officers is "self-directed", i.e., the furlough days are to be taken "when feasible", so that it will not necessarily go into effect on the first Friday in February, as is the case with the furloughs for the state employees in the other three cases. In the event that Case No. 2009-80000137 is assigned to this Department pursuant to the terms of this order, counsel in that case are directed to meet and confer and determine whether it is necessary or feasible for that case to proceed on the same schedule for briefing and hearing as the other three cases, and to inform the Court in writing of their determination.

Attachment: Declarations of Mailing

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20 DAVID GILB, and DEPARTMENT OF PERSONNEL
21 ADMINISTRATION



22 Exempted from Fees
23 (Gov. Code § 6103)

24 SUPERIOR COURT OF CALIFORNIA
25 COUNTY OF SACRAMENTO

26 PROFESSIONAL ENGINEERS IN
27 CALIFORNIA GOVERNMENT;
28 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.

AND RELATED CASES

CASE NO. 34-2008-80000126-CU-WM-GDS

Assigned For All Purposes To The Honorable
Patrick Marlette

RESPONDENTS' OPPOSITION TO
PETITIONERS' PETITIONS FOR WRIT OF
MANDATE IN CONSOLIDATED ACTIONS

Date: January 29, 2009

Time: 9:00 a.m.

Dept.: 19

Action Filed: December 22, 2008

Trial Date: None Set

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I.

INTRODUCTION

The State of California is facing an unprecedented and growing financial disaster. Over the past six months, the State's fiscal crisis has escalated. Since the current State budget was enacted on September 23, 2008, the national economic recession has deepened driven largely by crises in the banking and housing industry. This national economic crisis has directly impacted California's budget. The budget was predicated on anticipated revenues that have fallen well below the estimates made at the time the budget was signed.

In response to this deepening economic crisis, the Governor called emergency legislative sessions to address the impact of the revenue shortfall on the State budget. However, no solution to the State budget crisis has yet to be achieved and the State is now on the brink of insolvency. The undisputed, irrefutable evidence demonstrates the State is running out of money and will, according to estimates by the State Controller, run out of cash in February. The Governor has determined that the furloughing of state employees two days a month is an unavoidable and necessary step to help alleviate the pending budget and solvency crisis.

The fundamental issue before this Court is whether the Governor of the State of California may exercise the executive power granted him in order to address a fiscal crisis of unprecedented dimension. Petitioners would have this Court believe that the Governor does not have the authority to act in the manner he has, i.e., ordering a two-day a month furlough for state employees. As the discussion to follow will amply demonstrate, the Governor does possess this authority and has exercised it in both a reasonable and responsible manner. Respondents have made every effort to avert the necessity of adopting furloughs. However, there are simply no other available options for immediate action. Petitioners fail to address the obvious: there is a serious emergency requiring immediate action and the Governor has taken one step within his authority, the furloughing of state employees two days a month, to respond to this situation. Petitioners' attempt to enjoin the State from adopting the furlough will only worsen the State's dire economic conditions and impose a far greater harm than the effect of furloughing state

1 employees. Accordingly, Respondents Governor Arnold Schwarzenegger, State of California,
2 David Gilb, and Department of Personnel Administration request that this Court deny the various
3 petitions for writ of mandate submitted by the petitioner public employee unions.

4
5 **II.**

6 **STATEMENT OF FACTS**

7 **A. Efforts to Address the State Budget Crisis Prior to Issuance of the Subject Executive**
8 **Order.**

9 On July 31, 2008, Governor Schwarzenegger issued Executive Order S-09-08
10 directing the State to take various emergency measures in light of the budget impasse. (7-31-08
11 Exec Order, Exhibit 1 to the Declaration of David W. Tyra ["Tyra Declaration"].) In the
12 Executive Order, the Governor directed state agencies and departments "to cease and desist
13 authorization of all overtime for employees effective July 31, 2008[.]" (Id.)

14 On September 23, 2008 the Governor signed into law a new budget for the 2008-
15 2009 fiscal year. (9-23-08 Gov Press Release, Exhibit 2 to Tyra Declaration.) Shortly after
16 signing the budget, the national economy took a serious downturn resulting in an unanticipated
17 and significant reduction in revenues forecast in the 2008-2009 budget. (Declaration of Michael
18 C. Genest ["Genest Declaration"], ¶ 4.) Besides the revenue shortfall, the State's Department of
19 Finance also determined by the end of the 2008 fiscal year the State would amass a budget deficit
20 of \$11.2 billion based solely on the impact of the budget compromise. (Governor's Budget for
21 Special Session 08-09, Exhibit 3 to Tyra Declaration.) The Department of Finance also initially
22 determined revenue for the 2009-2010 fiscal year would be \$13 billion lower than projected. (Id.)
23 Absent immediate action the conclusion was the "state will run out of cash in February and be
24 unable to meet all of its obligations for the rest of the year." (Id.)

25 In the Department of Finance's October 2008 Finance bulletin, the Department
26 determined the "Preliminary General Fund agency cash for October was \$923 million below the
27 2008-09 Budget Act forecast of \$10.667 billion." September's revenues included the third
28 estimated payments for personal income tax filers and calendar-year corporations. At that point

1 the Department concluded “year-to-date revenues are \$1.06 billion below the \$22.58 billion that
2 was expected.” (DOF, Oct 2008 Finance Bulletin, Exhibit 4 to Tyra Declaration.)

3 In response to the unanticipated budget deficit, the Governor, on November 6,
4 2008, issued a special session proclamation calling for an emergency session of the Legislature to
5 immediately address this looming crisis. (Governor’s 11-06-08 Special Session Proclamation,
6 Exhibit 5 to Tyra Declaration.) On the same day, the Governor also issued a letter to all state
7 workers informing them of some of the plans he was proposing in order to save state funds which
8 would impact state workers. (Governor’s 11-6-08 letter to state employees, Exhibit 6 to Tyra
9 Declaration.) In the letter, the Governor also informed State employees he would be convening
10 the Legislature to attempt to seek a comprehensive solution to the entire budget crisis.

11 In an effort to work with State bargaining unit representatives, the Department of
12 Personnel Administration (“DPA”) put forth proposals to the labor unions in early November of
13 2008 including, but not limited to, a proposed one-day furlough and elimination of two holidays
14 per year. Petitioners did not agree to either of these proposals. The state employee unions,
15 however, including Petitioners in this case, have all recognized and acknowledged the State of
16 California is facing a serious and immediate fiscal crisis. (CASE Public Information and
17 Announcements, Exhibit 7 to Tyra Declaration; SEIU Local 1000 Update, Exhibit 8 to Tyra
18 Declaration; PECG Weekly Update, Exhibit 9 to Tyra Declaration.)

19 The Legislature convened in special session in or about early November of 2008 in
20 an effort to resolve the pending budget crisis. No resolution was reached. On December 1, 2008,
21 the Governor issued a proclamation addressing the deepening financial crisis and the likelihood
22 that “this fiscal year’s deficit will cause the State to miss payroll and school payments at the
23 beginning of 2009.” (Governor’s 12-1-08 Proclamation, Exhibit 10 to Tyra Declaration.) In this
24 proclamation, the Governor also reconvened the Legislature for another special session to address
25 the fiscal emergency. The Legislature reconvened in special session but, to date, a solution to the
26 budget problem proves illusive. The Department of Finance also recalculated its estimates and
27 found revenues for the 2008-2009 fiscal year were expected to be \$14.8 billion below the
28 estimate at the time the 2008-2009 budget was enacted. (Genest Declaration, ¶ 4.) The deficit

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1 had increased by more than \$3 billion in the span of approximately two months. The State
2 Department of Finance also determined the State's inability to reach a solution on the State's
3 deficit had caused the deficit to increase and the State would now have a \$41.6 billion deficit by
4 the end of the 2009-2010 fiscal year. (Genest Declaration, ¶ 5.) As a result of the devastating
5 budget deficit, the conclusion reached was that the State will run out of funds by February 2009.
6 (Genest Declaration, ¶ 8.)

7
8 **B. The Subject Executive Order.**

9 Faced with a financial catastrophe of unprecedented proportions, and the fact that a
10 solution acceptable to both the Governor and the Legislature was proving illusive, the Governor
11 issued an Executive Order on December 19, 2008 declaring an emergency pursuant to
12 Government Code Section 3516.5. (12.19.06 Exec Order, Exhibit 11 to Tyra Declaration,
13 referred to hereafter as "the Executive Order.") In the Executive Order, the Governor reiterated
14 the fact that absent immediate action, the State will run out of cash in February of 2009 and will
15 not be able to meet its obligations. (Id.) The Executive Order directed the implementation of a
16 two-day a month furlough plan for all State employees commencing in February of 2009. (Id.)

17
18 **C. Cost Savings to the State Resulting from the Furloughs.**

19 For the 2008-2009 fiscal year, the two-day furlough would amount to an estimated
20 savings to the General Fund in the amount of \$298,541,141. (Declaration of Alene Shimazu
21 ["Shimazu Declaration"], ¶ 5.) The savings to the General Fund for excluded unrepresented
22 employees is estimated at \$76,837,793 for fiscal year 2008-2009. (Shimazu Declaration, ¶ 5.)
23 For the 2009-2010 fiscal year, the two-day furlough would amount to an estimated savings to the
24 General Fund in the amount of \$716,498,739. (Shimazu Declaration, ¶ 6.) The savings to the
25 General Fund for fiscal year 2009-2010 for excluded unrepresented employees is estimated at
26 \$184,410,703. (Shimazu Declaration, ¶ 6.) The savings to the General Fund is estimated at
27 \$75,075,787 per month by implementing a temporary two-day a month furlough for represented
28

1 and excluded unrepresented employees covering a seventeen-month period. (Shimazu
2 Declaration, ¶ 7.)

3
4 **D. Efforts to Meet and Confer with State Public Employee Unions Regarding the Furloughs.**

5 All Petitioners in this case are currently covered by Memoranda of Understandings
6 (MOU) that are currently in full force and effect. (Chapman Declaration, ¶¶ 12-15.)

7 On December 19, 2008, DPA telephoned and sent out letters to all of the state
8 public employee unions advising them of the furloughs and offering to bargain over the impacts
9 of their implementation. (Declaration of Julie Chapman ["Chapman Declaration"], ¶¶ 4, 5.)
10 Since sending out the letter, DPA has met with SEIU and PEGC to begin bargaining over the
11 impacts of the furloughs. (Chapman Declaration ¶¶ 6-9.) DPA has a meeting scheduled with
12 CASE on January 23, 2009 to bargain over the impacts of the furloughs. (Chapman Declaration,
13 ¶ 10.) CAPS has not yet requested to meet to bargain over the impacts of the furloughs.
14 (Chapman Declaration, ¶ 11.)

15 DPA currently is attempting to meet with all state employee unions regarding the
16 implementation of the furloughs. (Chapman Declaration, ¶ 6.) DPA is working to ensure the
17 furloughs will comply with the Fair Labor Standards Act. (Chapman Declaration, ¶ 16.) During
18 the 17-month furlough period, no state employee will be paid less than \$6.55 per hour (i.e., the
19 federal minimum wage under the FLSA) for the duration of the furloughs. (Declaration of
20 Bernice Torrey ["Torrey Declaration"], ¶ 4.)

21
22 **E. Confirmation of State Fiscal Crisis Since Issuance of the Executive Order.**

23 On December 19, 2008, the California State Controller, John Chiang, released a
24 statement urging the Governor and Legislature to reach a resolution in order to prevent the State
25 from running out of cash in late February. (12-19-08 Chiang Press Release, Exhibit 12 to Tyra
26 Declaration.) On December 22, 2008, Chiang sent a letter to the Governor and the Legislature,
27
28

1 reiterating the severity of the fiscal crisis the State was facing. (12-22-08 Letter from Chiang,
2 Exhibit 13 to Tyra Declaration.) In this letter, Chiang stated,

3
4 [I]f current projections hold true, the State is less than seventy days
5 from running out of cash. Worse, my office's analyses indicate
6 there will be no shelter from the storm as the State's cash position
7 will remain negative throughout the remainder of the fiscal year.
8 As I indicated during the recent Legislative Budget Session, the
9 failure of the Governor and the Legislature to quickly arrive at an
10 agreement to responsibly address the State's \$41 billion budget
11 crisis would begin a cascading series of regrettable actions
12 necessary to conserve the State's dwindling case reserves. (Id.)

13 On January 13, 2009, the Director of the Department of Finance Michael Genest
14 issued a special report titled "California at the Brink of Financial Disaster" detailing the State's
15 financial crisis and the immediate harm that will be caused when the State runs out of cash.
16 ("California at the Brink of Disaster, Exhibit 14 to Tyra Declaration.) He confirmed the State is
17 expected to run out of cash in February. (Genest Dec. ¶ 8.)

18 III.

19 ARGUMENT

20 A. The Governor Has the Executive Authority to Issue the Subject Executive Order and 21 Order Furloughs of State Employees.

22 1. **The Governor, as the State Employer, Is Authorized to Impose** 23 **Furloughs Pursuant to the Emergency Provision of the Dills Act,** 24 **Government Code Section 3516.5.**

25 Confronted with an unprecedented fiscal emergency, the Governor acted pursuant
26 to his constitutional authority, and in his capacity as the state employer, to preserve the State's
27 ability to meet its obligations by reducing the number of days employees work each month. The
28 Governor and DPA are statutorily "vested with the duties, purposes, responsibilities, and
jurisdiction ... with respect to the administration of salaries, hours, and other personnel related
matters...." (Gov. C. § 19816(a).) Furthermore, under the Dills Act, which governs labor
relations between the State and its employees (Gov. Code, § 3512, *et seq.*), the Governor, or his
representative, is specifically authorized to negotiate wages, hours, and other terms and

1 conditions of employment, with public employee exclusive bargaining representatives. (Gov.
2 Code, § 3517.) The labor relations between the State and Petitioners are indisputably governed
3 by MOUs, negotiated pursuant to the Dills Act, which contain provisions relating to hours of
4 work, as well as other terms and conditions of employment. (See generally, Request for Judicial
5 Notice submitted in support of Respondents' demurrers.)¹ Not only does the Dills Act thus
6 establish the legal framework for analyzing the labor relations between the State and Petitioners,
7 it also establishes the legal authority for the Governor's exercise of his executive authority in
8 issuing the subject Executive Order.

- 9
10 a. In the Event of an Emergency, Government Code Section 3516.5
11 Allows the Governor to Impose Terms and Conditions Without
12 First Bargaining.

12 Although furloughs may be subject to the meet and confer process under the Dills
13 Act, the State is authorized to unilaterally act because of the current extreme fiscal crisis. (Gov.
14 Code, § 3516.5, see also *Sonoma County Organization v. County of Sonoma (Sonoma County)*
15 (1991) 1 Cal.App.4th 267.) Government Code section 3516.5 provides, in relevant part:

16 *Except in cases of emergency as provided in this section, the*
17 *employer shall give reasonable written notice to each recognized*
18 *employee organization affected by any law, rule, resolution, or*
19 *regulation directly relating to matters within the scope of*
20 *representation proposed to be adopted by the employer, and shall*
21 *give such recognized employee organizations the opportunity to*
22 *meet and confer...*

20 In cases of emergency when the employer determines that a law,
21 rule, resolution, or regulation must be adopted immediately without
22 prior notice or meeting with a recognized employee organization,
23 the [employer] ... shall provide such notice and opportunity to meet
24 and confer in good faith at the earliest practical time following the
25 adoption of such law, rule, resolution, or regulation. (Emphasis
26 added.)

24 In *Sonoma County*, the court interpreted the same language contained in
25 Government Code section 3516.5, in the Meyers Miliias Brown Act (MMBA) (Gov. Code, §

26
27 ¹ As explained more fully below, the MOUs supersede various Government Code sections relied upon by
28 Petitioners, including sections 19826 and 19851. (See Gov. Code, § 3517.8, subd. (a), 3517.6, subd. (a).)
Therefore the MOUs control the terms and conditions of employment and Government Code sections
19826 and 19851 are inapplicable.

1 3504.5). The court held a municipal employer was not required to bargain with the union before
2 implementing a new work rule giving local supervisors authority to put employees on unpaid
3 leave of absence in the wake of job actions by union members. The court held that irrespective of
4 the county's possible managerial right to implement the new work rule, the county's *obligation to*
5 *meet and confer was excused by an emergency.* (Emphasis added; *Sonoma County, supra*, 1
6 Cal.App.4th at p. 274.)

7 The court further held that since the county had already determined there was an
8 emergency, as reflected in the emergency ordinance, the burden shifted to the union to
9 demonstrate there was not a bona fide emergency. (*Id.*, at p. 275-76, citing Evid. Code, § 663—
10 presumption that public officers have properly exercised their duties.) The California Supreme
11 Court, approving the holding in *Sonoma County*, has held that courts review public employer
12 declarations of an emergency under an abuse of discretion standard. (See *San Francisco Fire*
13 *Fighters Local 798 v. City and County of San Francisco* (2006) 38 Cal.4th 652, 669.)

14 Here, the State of California is facing an undeniable fiscal crisis of unprecedented
15 dimension. On December 1, 2008, the Governor declared a fiscal emergency pursuant to Article
16 VI, section 10, subdivision (f) of the California Constitution. (Executive Order, Exhibit 10 to
17 Tyra Declaration.). The Governor's declaration of fiscal emergency creates a rebuttable
18 presumption that an emergency in fact exists. (See *Sonoma County, supra*, 1 Cal.App.4th at p.
19 275-276 and Evid. Code, § 664.) The burden is shifted to the Petitioners to demonstrate there is
20 not an emergency justifying the Governor's action. Petitioners have failed to present any
21 evidence demonstrating the absence of an emergency. Furthermore, Petitioners do not present
22 any evidence to rebut the Governor's declaration of fiscal emergency.

23 In fact, the Petitioners concede the extreme magnitude of the fiscal crisis. (See
24 Exhibits 7-9 to Tyra Declaration.) PECG, in its "Weekly Update" of January 9, 2009, states "the
25 state is running out of cash. (Exhibit 9 to Tyra Declaration.) CASE's "Public Information &
26 Announcements" section of its website, in a post dated January 6, 2009, states that "CASE is
27 aware of the fact that California is facing an unprecedented financial crisis." (Exhibit 7 to Tyra
28 Declaration.) SEIU's December 17, 2008 "Update '08" quotes SEIU's President: "California is

1 headed over a cliff. The governor and the legislature need to work at this 24 hours a day until
2 they reach a resolution.” (Exhibit 8 to Tyra Declaration.) State Controller John Chiang has been
3 forced to stop payments to some construction contractors. He says the state will really run out of
4 money in February, which will make paying the State’s bills difficult if not impossible. (Exhibit
5 13 to Tyra Declaration.)

6 The Governor’s Executive Order made several findings specific to the extreme
7 fiscal crisis. Specifically, the Executive Order states, “due to developments in the worldwide and
8 national financial markets, and continuing weak performance in the California economy, there is
9 an approximately \$15 billion General Fund deficit for the 2008-09 fiscal year, which without
10 effective action, is estimated to grow to a \$42 billion General Fund budget shortfall over the next
11 18 months” and that “without effective action to address the fiscal and cash crisis, the cash
12 reserve in the State Treasury is estimated to be a negative \$5 billion in March 2009.” (Exhibit 10
13 to Tyra Declaration.) The Executive Order further states that “it [is] likely that the State will miss
14 payroll and other essential services payments at the beginning of 2009.” (*Id.*)

15 The Department of Finance and the State Controller’s Office agree an
16 unprecedented fiscal crisis exists. (Genest Dec. ¶ 3; 12-22-08 Chiang letter, Exhibit 13 to Tyra
17 Declaration.) In a statement on the Governor’s website, Michael Genest, Director of the
18 Department of Finance states “[i]n a matter of weeks, California, the world’s eighth largest
19 economy, will run out of cash and delay making refunds to our hard-working taxpayers.” (See
20 Exhibit 14 to Tyra Declaration.)

21 In a Statement at the Senate and Assembly Joint Convention on December 8, 2008,
22 Controller John Chiang stated, “[f]ailure to act threatens our ability to respond to natural
23 disasters, our ability to provide life preserving care to the elderly and the ill, and our ability to
24 protect our communities from crime.” (These conclusions are reiterated in Controller Chiang’s
25 December 22, 2008 letter, Exhibit 13 to Tyra Declaration.) Controller Chiang went on to state,
26 “[t]he size of the revenue shortfall for the remainder of the fiscal year was most recently
27 estimated at \$7.8 billion by the Legislative Analyst and at \$9.7 billion by the Department of
28 Finance. My office’s economists think even \$9.7 billion may be an understatement. My office

1 tested the latest cash flows associated with this \$9.7 billion deterioration, and what we found was
2 a clear threat to the State's ability to pay all of its bills starting this spring. By February, we will
3 only have \$882 million in cash on-hand. By March, we will have exhausted our general and
4 borrowable funds and run more than \$1.9 billion in the red. If revenues continue to deteriorate,
5 this number will only grow." (Id.) Thus, there can be no question that a fiscal crisis exists. The
6 Dills Act, specifically Government Code section 3516.5 grants the Governor the power to take
7 measures to address such emergencies, which is precisely what the Governor has done here.

8
9 b. The Governor's Executive Order Falls Within the Purview of
Government Code Section 3516.5

10
11 Petitioner SEIU specifically, and the other Petitioners generally, assert
12 Government Code section 3516.5 does not apply to executive orders, including the Executive
13 Order at issue here. (SEIU Ps and As, at p. 6.) SEIU erroneously claims the meet and confer
14 exemption applies only to changes in a "law, resolution or regulation" and alleges the
15 "Legislature did not exempt the state from bargaining over a proposed "rule," even during an
16 emergency, as it omits any reference to the term "rule" in subpart (b), which is the exemption to
17 bargaining." (SEIU Ps and As, at p. 6, fn. 1.) Contrary to SEIU's claim there are no subparts in
18 Government Code section 3516.5. Furthermore, SEIU has misstated the language of section
19 3516.5 by representing that the word "rule" was omitted from the second "section" of
20 Government Code section 3516.5. The emergency exception absolutely applies to rules, and
21 "rule" is specifically referenced in the second paragraph of the code section as quoted above.

22 The Governor's Executive Order constitutes a rule pursuant to this Government
23 Code section. A "rule" is "an established and authoritative standard or principle; a general norm
24 mandating or guiding conduct or action in a given type or situation." (Black's Law Dict. (8th ed.
25 2004) p. 1357, col. 1.) An Executive Order is defined as "a formal written directive of the
26 Governor which by interpretation, or the specification of detail, directs and guides subordinate
27 officers in the enforcement of a particular law. Such an order, however, need not be predicated
28 upon some express statutory provision, but may properly be employed to effectuate a right, duty,

1 or obligation which emanates or may be implied from the Constitution or to enforce public policy
2 embodied within the Constitution and laws.” (63 Ops.Cal.Atty.Gen. 583 (1980).) Accordingly,
3 executive orders generally, and this Executive Order specifically, fall within the ambit of
4 Government Code section 3516.5.

5
6 c. The Governor has exercised his emergency powers in a reasonable
and appropriate fashion.

7
8 The Governor has not utilized the emergency powers granted him under the Dills
9 Act in an arbitrary or capricious way. In fact, Respondents examined alternatives to furloughs
10 and have made every effort to avoid the furloughs.² On November 6, 2008, the Governor called a
11 special session of the Legislature. (11.6.08 Proclamation, Exhibit 5 to Tyra Declaration.) A
12 solution acceptable to all parties was not reached. (12-19-08 Executive Order, Exhibit 11 to Tyra
13 Declaration.) On December 1, 2008, in addition to the declaration of fiscal emergency, the
14 Governor called another special session, but, to date, a compromise solution has not been
15 reached. (*Id.*)

16 State agencies and departments under the Governor’s direct authority have already
17 reduced expenses to achieve budget and cash savings for the current fiscal year. (See Special
18 Session Budget, Exhibit 3 to Tyra Declaration; “California at the Brink of Financial Disaster,”
19 Exhibit 14 to Tyra Declaration.) However, there is still a \$15 billion General Fund deficit for the
20 2008-2009 fiscal year, estimated to grow to \$42 billion over the next 18 months if no action is
21 taken. The Governor acted to reduce current spending to ensure essential services of the State are
22 not jeopardized and the public health and safety are preserved. To that end, it is estimated the
23

24
25 ² In fact, furloughs constitute one of the less intrusive steps available to the Governor to address
26 California’s budget crisis. It is indisputable that the Governor has the authority to layoff state employees
27 to address budget issues (See Gov. C. § 19997.) Rather than ordering mass layoffs at this time, however,
28 the Governor took the measured approach of issuing the Executive Order at issue in this case and ordering
two-day a month furloughs. Nonetheless, in light of the depth of California’s fiscal crisis, the Governor’s
Executive Order also directs DPA to “work with all State agencies and departments to initiate layoffs and
other position reduction and program efficiency measures to achieve a reduction in General Fund payroll
of up to ten percent.”

1 furlough plan will result in General-Fund savings of approximately \$ 1,276,288,376 over the next
2 17 months. (Dec. Shimazu ¶ 5, 6.)

3 Government Code section 3516.5 requires the State Employer to provide notice
4 and an opportunity to meet and confer in good faith at the earliest practical time following the
5 adoption of a law, rule, resolution or regulation adopted in cases of emergency. (Gov. Code, §
6 3516.5.) Respondents have complied with this obligation. On December 19, 2008, Respondents
7 noticed the state employee unions of the Executive Order and the furloughs and offered to meet
8 and confer. (Chapman Declaration, ¶ 4-5.) DPA met with SEIU on January 6, 2009, and with
9 PEGC on January 13, 2009. (Chapman Declaration, ¶ 7, 9.) DPA is scheduled to meet with
10 CASE on January 23, 2009. (Chapman Declaration, ¶ 10.) CAPS has not requested to meet, but
11 DPA is following up with CAPS to schedule a meeting. (Chapman Declaration, ¶ 11.) Thus,
12 Respondents have satisfied the requirements of Government Code section 3516.5 and are
13 authorized to implement the furloughs.

14 In sum, therefore, the Governor acted in a constitutionally and statutorily
15 authorized manner in issuing the subject Executive Order. The Governor issued the Executive
16 Order to address a fiscal crisis the existence of which is admitted by all parties to this action. He
17 issued the Executive Order after making considerable effort to resolve the fiscal crisis through
18 other means. Following the issuance of the Executive Order, the state employer has continued to
19 fulfill its meet and confer obligations under the Dills Act. Petitioners' contention that
20 Respondents are without authority to issue and implement the Executive Order and the furlough
21 of state employees lacks merit. For this reason, their requested relief should not issue from this
22 Court.

23
24 **2. The Governor's Issuance of the Executive Order Does Not Implicate
Government Code Section 19826.**

- 25 a. Furloughs are not synonymous with "salary ranges" as that term in
26 used in section 19826.

27 One of Petitioners' principal claims is the two-day furloughs ordered by the
28 Governor in his Executive Order violate Government Code section 19826(b). That code section

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1 provides as follows:

2 Notwithstanding any other provision of law, the department shall
3 not establish, adjust, or recommend a *salary range* for any
4 employees in an appropriate unit where an employee organization
has been chosen as the exclusive representative pursuant to Section
3520.5. (Emphasis added.)

5 Contrary to Petitioners' claims, furloughs are not equivalent to reductions in salary
6 ranges. No employees' wage rate or salary range will be reduced as a result of the furlough. A
7 furlough only constitutes a reduction in hours worked, not a reduction in the wage rate paid for
8 that work. A furlough reduces an employee's total number of hours worked in a particular pay
9 period. The corresponding rate of pay is not affected and employees will be paid at their normal
10 rate for a reduced number of hours resulting from the two furlough days per month. There is no
11 evidence in this case that the State has any intention of paying state employees at a lesser rate, or
12 to impact state employee salary ranges, for the hours actually worked. The only evidence before
13 this Court is that the *hours worked* will be impacted by the furloughs, not the *rate of pay* for those
14 hours worked.

15 A change to the number of hours worked does not impact an employee's "salary
16 range" as that term is used in section 19826(b). For example, when an employee works overtime
17 his or her total compensation is increased due to the increased hours. If Petitioners' argument is
18 that a change in work hours is synonymous with a change in salary range, then Petitioners also
19 would have to agree that every time an employee was paid increased compensation resulting from
20 working overtime hours a violation of section 19826(b) had occurred. Obviously, Petitioners are
21 not making such a claim. A furlough is a reduction in hours resulting in a reduction in total
22 compensation in the same way that overtime is an increase in hours resulting in an increase in
23 total compensation. Neither one, however, constitutes a change in "salary range." A salary range
24 adjustment occurs where an employee's total work hours remain unchanged and their
25 corresponding pay either increases or decreases.

26 This conclusion is supported by applicable regulations adopted by DPA. The DPA
27 regulations define "salary range" as the "minimum and maximum rate currently authorized for the
28 class." (2 CCR § 599.666.1.) "Rate" for hourly employees is "any one of the dollar and cents

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1 amounts found within the salary range.” (*Id.*) In this respect, “[m]onthly or hourly rates of pay
2 may be converted from one to the other when the Director of [DPA] considers it advisable.” (2
3 CCR § 599.670.) In other words, “salary range” concerns the hourly rate an employee is paid.
4 “Salary range” does not refer to the employee’s “total compensation.” Accordingly, the
5 Governor’s Executive Order establishing two-day a month furloughs for state employees does not
6 fall within the ambit of section 19826(b). Because Petitioners largely rely on this code section in
7 support of their arguments in this case, their request for a writ of mandate should be denied.

8
9 b. Section 19826 is suppressed by operation of the Dills Act due to the
existence of the current MOUs between the parties.

10
11 Government Code section 19826 is inapplicable to the case at hand because it is
12 superseded by existing MOUs between the parties. The Dills Act governs the labor relations
13 between the State and its employees. Pursuant to Government Code section 3517.8(a) contained
14 in the Dills Act,

15 If a memorandum of understanding has expired, and the Governor
16 and the recognized employee organization have not agreed to a new
17 memorandum of understanding and have not reached an impasse in
18 negotiations, subject to subdivision (b), *the parties to the agreement
shall continue to give effect to the provisions of the expired
memorandum of understanding, including, but not limited to, all
provisions that supersede existing law, any arbitration provisions,
any no strike provisions, any agreements regarding matters covered
in the Fair Labor Standards Act of 1938.*

19 (Emphasis added.) (Gov. Code, § 3517.8(a).)

20 In this case, all Petitioners are parties to continuing, albeit expired, MOUs with the
21 State of California. Petitioners have alleged neither that successor MOUs have been agreed upon,
22 nor that the parties have reached a labor impasse in negotiations for a new MOU. Accordingly,
23 pursuant to Government Code section 3517.8(a), the parties must continue to give effect to the
24 expired MOUs, *including all provisions which supersede existing law*

25 As stated in *Department of Personnel Administration v. Superior Court (Greene)*
26 (1992) 5 Cal.App.4th 155, 174-175, a case heavily relied upon by Petitioners,
27 The Dills Act is a ‘supersession statute’, designed so that, *in the
28 absence of a MOU*, as is the case when an existing MOU has
expired and the parties have bargained to impasse, numerous

1 Government Code provisions concerning state employees' wages,
2 hours and working conditions take effect. One of the provisions
3 which is effective *in the absence of an MOU* is section 19826."

4 (Emphasis added.) Thus, the present case is exactly the opposite situation of that in *Greene*. In
5 that case, the State and two of its employee bargaining units (one of which was CAPS, one of the
6 petitioners here), had reached impasse in their labor negotiations and, therefore, numerous
7 provisions of the Government Code, including section 19826, had taken effect. Here, in contrast,
8 the parties' labor relations continue to be governed by valid and enforceable MOUs and,
9 therefore, pursuant to section 3517.8, the parties must continue to give effect to that MOU,
10 *including all provisions which supersede existing law.*

11 California Government Code section 3517.6(a) sets forth those code sections
12 which are superseded by a valid MOU. Among the superseded code sections identified in section
13 3517.6(a) is section 19826. Therefore, section 19826 is superseded by the Dills Act and the terms
14 of the expired MOUs. In other words, section 19826 has no legal force and effect between these
15 parties in the face of a valid, operative MOU because that code section has been superseded by
16 the MOUs as specified in the Dills Act. As section 19826 is superseded, it is inapplicable to the
17 matter at hand and has no role in consideration of the validity of the Executive Order.

18 **3. The Adoption of the Furloughs Also Does Not Violate Government**
19 **Code Section 19851.**

20 Government Code Section 19851 does not prohibit the Governor from imposing
21 furloughs for two reasons. First, Government Code section 19851 has been superseded by the
22 terms and conditions of MOUs between the state and each of the exclusive representatives
23 involved in this proceeding in the same fashion as section 19826 discussed above. Second, the
24 Governor and DPA are authorized to set the hours of work for state employees.

25 Government Code section 19851, like section 19826, is one of the statutes
26 identified in Government Code section 3517.6. It provides in pertinent part that where terms of
27 section 19851 "are in conflict with the provisions of a memorandum of understanding, the
28 memorandum of understanding shall be controlling without further legislative action." (See also

1 Gov. Code § 19851(b).) Section 19851 has been superseded by MOUs between the State and the
2 exclusive representatives for each bargaining unit at issue in these consolidated proceedings.
3 Accordingly, section 19851 is not applicable here because it is superseded as a matter of law.³

4 Contrary to Petitioners' argument here, section 19851 does not require the State
5 provide a 40-hour workweek. Rather, it is a statement of legislative intent or policy goals, and
6 the Courts of Appeal have repeatedly held such statements may not give rise to a mandatory duty.
7 (*Shamsian v. Department of Conservation* (2006) 136 Cal.App.4th 621, 634-635, citing *County of*
8 *Los Angeles v. Superior Ct.* (2002) 102 Cal.App.4th 627, 639; *MacDonald v. State of California*
9 (1991) 230 Cal.App.3d 319, 330; *Tirpak v. Los Angeles Unified School Dist* (1986) 187
10 Cal.App.3d 639, 642-643; and *Ibarra v. California Coastal Com.* (1986) 182 Cal.App.3d 687,
11 694.) A writ of mandate petition will not lie absent a clear and present duty on the part of
12 respondents, nor will it lie to control discretion conferred upon a public agency. (*Shamsian,*
13 *supra*, 136 Cal.App.4th at 639-640.)

14 Additional statutes support DPA's authority to establish workweeks of other than
15 40 hours. For example, Government Code section 19849(a) states: "The [DPA] shall adopt rules
16 governing hours of work and overtime compensation and the keeping of records related thereto,
17 including time and attendance records. Each appointing power will administer and enforce such
18 rules." Pursuant to this statute, the Governor and DPA are vested with broad authority to set
19 work hours. Implied within this authority is the right to reduce hours.

20 Section 19851 also clearly authorizes the Governor and DPA to reduce either
21 hours or workdays in this fiscal crisis. Government Code section 19851(a) states in pertinent
22 part: "It is the policy of the state that the workweek of the state employee shall be 40 hours, and
23 the workday of state employee eight hours, *except that workweeks and workdays of a different*
24 *number of hours may be established in order to meet the varying needs of the different state*
25

26 ³ Even though each of the MOUs between the state and the exclusive representatives in these proceedings
27 have expired, the terms of those MOUs continue in full force and effect until the parties reach impasse or
28 negotiate a successor agreement (Gov. Code § 3517.8.) As of the filing of this memorandum, the state
has not reached impasse or negotiated a successor agreement with any of the exclusive representatives
involved in these consolidated proceedings.

1 agencies” (Emphasis added.) Due to the extraordinarily dire fiscal circumstances facing the
2 State, the DPA’s reduction of state employees’ hours and workdays is justified “in order to meet
3 the varying needs of the different state agencies.”

4 PECG’s and CAPS’ reliance on *Lukens v. Nye* (1909) 156 Cal. 498, is misplaced
5 and out of context. The narrow issue addressed by the California Supreme Court in that case was
6 whether proposed legislation to appropriate money to pay an individual’s claim against the State,
7 which had been passed by both houses of the Legislature, could be changed by the Governor
8 when sent to him for consideration, *prior to being enacted into law*. The court held that except in
9 the sole instance of a bill containing several items of appropriation of money, the Governor was
10 without the power to amend such legislation, but rather was limited to either approving or
11 disapproving of the act as a whole. (*Lukens v Nye, supra*, 156 Cal. 498 at p. 503.) The *Lukens*
12 decision has no bearing on the scope of the Governor’s powers to act in cases of emergency
13 pursuant to Government Code section 3516.5, or the suppression of various statutes in light of a
14 valid and enforceable MOU.

15 PECG’s and CAPS’ reliance on *Association for Retired Citizens-California v.*
16 *Department of Developmental Services* (1985) 38 Cal.3d 384, 391-392 also is misplaced and
17 inapplicable here. The *Developmental Services* case held that an administrative action
18 inconsistent with the acts of the Legislature is void. The Executive Order directing two-day a
19 month furloughs is neither an administrative action,⁴ nor is it inconsistent with the authority
20 vested in the Governor, as the executive, to regulate the hours of work of state employees.

21 Ultimately, both sections 19826 and 19851 are inapplicable to the present situation
22 because they are both suppressed by operation of the Dills Act due to the existence of valid
23 MOUs between the parties. Thus, neither statute serves as an impediment to the Governor’s
24 issuance of the Executive Order in question.

25
26
27 ⁴ An “administrative action” is a quasi-legislative proceeding by any state agency. (See Gov. C. §
28 82002(a)) The term does not include the acts of the Governor in whom “the supreme executive power of
the State is vested.” (Cal. Const., Art. V, § 1.)

1 **4. The Governor's Executive Order Does Not Improperly Interfere with**
2 **the Legislature's Authority.**

3 Petitioners argue that the Governor's Executive Order violates the separation of
4 powers between the Executive and the Legislature because California law grants to the
5 Legislature exclusive authority to set the salaries of state employees. Separate and apart from the
6 fact that the furlough of state employees does not impact state employee salaries as pointed out in
7 the argument above, Petitioners have misapplied the concept of separation of powers to the matter
8 before the Court.

9 The California Constitution grants the Governor "supreme executive power" and
10 requires the Governor to see that the law is faithfully executed. (Cal. Const., Art. V § 1.) Article
11 V, section 1, of the California Constitution grants the Governor the authority to issue directives to
12 subordinate executive officers concerning the enforcement of the law. (63 Ops.Cal.Atty.Gen.
13 583, (1980) WL 96881 (Cal.A.G.)) The Governor is charged with supervising the official
14 conduct of all executive and ministerial officers. (Gov. Code, § 12010.) Here, the Governor
15 acted properly promulgating an executive order directing DPA to implement a two-day per month
16 furlough plan.

17 In addition to the executive powers granted him by the California Constitution, the
18 Governor also is vested with the sole authority to collectively bargain on behalf of the state
19 employer with the bargaining unit representatives. DPA is charged with representing the
20 Governor, as the State employer, in administering those aspects of the state personnel system
21 subject to collective bargaining under the Dills Act, Government Code section 3512, *et seq.* (See
22 Gov. Code 3513(j), 19815.4(g), 19816(a), 19816.4, 19816.8, 19816.17, 19819.5-19819.7.)
23 Included within these powers is the duty to bargain and meet and confer with the state bargaining
24 units' exclusive representatives over wages, hours, and terms and conditions of employment.
25 (Gov. Code §§ 3512, 3517; *CCPOA v. State of California* (2006) 142 Cal.App.4th 198, 202.)
26 DPA acts as the Governor's representative for purposes of meeting and conferring with all of the
27 state bargaining units. (*CCPOA v. State, supra*, 142 Cal.App.4th at 202.) The adoption of the
28 furloughs falls squarely within the scope of collective bargaining pursuant to the Dills Act.

1 Furthermore, as already noted, the statutes relied upon by Petitioners for claiming that
2 Respondents lack the authority to furlough state employees, namely section 19826(b) and others,
3 are superseded by the Dills Act due to the ongoing viability of the parties' MOUs. (Gov. Code §
4 3517.6.) Finally, as already noted, an additional authority granted the Governor by the Dills Act,
5 specifically Government Code section 3516.5, is the authority to adopt rules and regulations
6 affecting state employment without prior notice.

7 The constitutional and statutory provisions cited above establish the Governor's
8 authority to issue the Executive Order in question. Petitioners erroneously contend, however, that
9 the Executive Order violates the notion of separation of powers between the executive branch and
10 the legislative branch. The separation of powers doctrine places limits upon the actions of each
11 branch with respect to the other branches to prevent one branch from usurping authority of the
12 other branches. (*Superior Court v. County of Mendocino* (1996) 13 Cal.4th 45, 52-53.) However,
13 the separation of powers doctrine does not require a sharp demarcation between the operations of
14 the three branches of government. Rather, California courts have long recognized that, in reality,
15 the separation of powers doctrine allows the three departments of government to significantly
16 affect each other. (*Marine Forests Society v California Coastal Com.* (2005) 36 Cal.4th 1, 24-
17 25.)

18 The Executive Order in question was issued in order to alleviate part of the State's
19 catastrophic and ever-worsening fiscal crisis. In the absence of immediate action, the State will
20 run out of money by February 2009, which is literally in a matter of days. (12-22-08 Letter from
21 Chiang, Exhibit 13 to Tyra Declaration.) By issuing the Executive Order, the Governor is abiding
22 by his constitutional mandate to ensure the State's financial solvency. To that end, the Executive
23 Order directed the DPA to implement a two-day furlough in order to realize immediate necessary
24 savings to the General Fund. (Shimazu Declaration, ¶ 7.) Here, the Governor invoked the
25 authority granted to him pursuant to Government Code section 3516.5 in order to realize these
26 necessary savings via the furloughs. As such, the Executive Order in no way impairs, limits or
27 hinders the powers of the Legislature or Judiciary, but rather falls squarely within the authority
28 delegated to the Governor by the California Constitution and the Dills Act to address the fiscal

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1 crisis and solvency of the State and to administer the wages, hours, and terms and conditions of
2 state employment through the DPA. Therefore, the Executive Order is an entirely constitutional
3 exercise of the Governor's executive power.

4
5 **5. Petitioner's Reliance on *DPA v. Superior Court (Greene)* is Misplaced.**

6 In *Dept of Personnel Admin v. Superior Court (Greene)*, *supra*, 5 Cal. App. 155,
7 172, the Court held DPA could not implement a final wage proposal containing a salary reduction
8 after having bargained to impasse. In particular, the *Greene* court held the Legislature retains
9 "ultimate authority over state workers' employment conditions," and section 19826 was a specific
10 delegation of this authority to the DPA with respect to unrepresented employees but not with
11 respect to represented employees. (*Id.* at 177-8.) "As a consequence, the question of represented
12 employees' wages at impasse must ultimately be resolved by the Legislature itself." (*Id.* at 178.)

13 There are several key factual distinctions between the *Greene* case and this matter.
14 First and foremost, *Greene* dealt with an across the board 5% salary reduction for employees. In
15 *Greene*, employees were going to continue working their normal hours but receive 5% less pay,
16 an effective reduction in their rate of pay. Here, no such reduction in state employees' rate of pay
17 will occur. Rather, state employees' rate of pay will remain exactly the same; those employees
18 will simply work fewer hours.

19 Second, in *Greene* the parties had bargained to impasse on their MOUs when the
20 employer decided to adopt the pay reductions. Here, it is undisputed that the labor relations
21 between the parties are defined by their MOUs, which legally remain in force and effect. (See
22 Govt. C. §3517.8(a).) In fact, *Greene* was decided before the enactment of Government Code
23 Section 3517.8, which incorporated an "evergreen" provision into the Dills Act, *i.e.*, MOUs
24 between the state employer and its bargaining units remain in force and effect past the expiration
25 of the MOU as long as the parties remain in good faith bargaining for a successor MOU.
26 Pursuant to 3517.8(a), the current language in the MOUs remains in effect until the parties either
27 reach impasse or agree to a new MOU. Section 3517.8(a) provides:

1 If a memorandum of understanding has expired, and the Governor
2 and the recognized employee organization have not agreed to a new
3 memorandum of understanding and have not reached an impasse in
4 negotiations, subject to subdivision (b), *the parties to the agreement*
5 *shall continue to give effect to the provisions of the expired*
6 *memorandum of understanding, including, but not limited to, all*
7 *provisions that supersede existing law, any arbitration provisions,*
8 *any no strike provisions, any agreements regarding matters covered*
9 *in the Fair Labor Standards Act of 1938 (29 U.S.C. Sec. 201 et*
10 *seq.), and any provisions covering fair share fee deduction*
11 *consistent with Section 3515.7. (Emphasis added.)*

12 Third, it is important to note the *Greene* court held section 19826 only prohibited
13 the state employer from altering salary ranges. The *Greene* court was never asked to consider the
14 legality of furloughs. In fact, the *Greene* court held the state employer was authorized to reduce
15 and limit employee total compensation in other ways. (See *Greene, supra*, 5 Cal. App. 4th at
16 187.) For example DPA has the authority to layoff employees which reduces the work force.
17 (See Gov. Code § 19997.) DPA is also authorized to to reduce or eliminate overtime which
18 directly reduces employees' total compensation. (See Gov. Code § 19816.10) None of these
19 actions implicate Section 19826. Indeed, although the *Greene* court held DPA could not
20 unilaterally reduce employees' salaries, it nevertheless found DPA could unilaterally reduce an
21 employee's benefits, even though this would limit an employee's total compensation. (See
22 *Greene, supra*, 5 Cal. App. 4th at 187.)

23 Finally, *Greene* did not involve the Governor's exercise of the emergency
24 authority granted him by section 3516.5 to adopt a pre-impasse rule or regulation in an
25 emergency situation. In short, *Greene* is inapposite to the present situation and its holding does
26 not serve as a legal impediment to the Governor's exercise of his executive authority to issue the
27 Executive Order.

28 The Governor' Executive Order is not governed by section 19826 because it does
not involve a reduction in employee salary ranges. It does not violate the separation of powers
between the Governor and the Legislature. And, it is not prohibited by the holding in *Greene*.
Accordingly, the Executive Order directing a period of temporary furloughs is well within the

1 Governor's inherent executive power to address the State's current fiscal crisis. As a result,
2 Petitioners are not entitled to the issuance of the requested writs of mandate.

3
4 **B. This Court Does Not Have the Jurisdiction to Issue the Requested Relief.**

5
6 As previously noted, the court in *Dept. of Personnel Admin. v. Superior Court*
7 (*Greene*), *supra*, 5 Cal. App. 155 held that the Dills Act is a supersession statute that operates to
8 suppress certain statutory provisions when a valid MOU exists between the state employer and
9 one of its bargaining units. A year later, the court in *Tirapelle v Davis* (1993) 20 Cal.App.4th
10 1317, 1325), confirmed this:

11 The Ralph C. Dills Act is a 'supersession statute'; that is, the parties
12 are permitted to override otherwise applicable statutory provisions
13 in a memorandum of understanding (MOU), but in the absence of
14 an existing MOU, these statutory provisions apply... The DPA's
salary setting function, set forth in Section 19826, is one of those
statutory provisions which may be overridden in a MOU

15 Contrary to the situations in *Tirapelle* and *Greene*, all Petitioners are subject to MOUs still
16 currently in effect. None of the Petitioners are at impasse with DPA and as such the current
17 MOUs override a number of statutes including, but not limited to, section 19826. (See
18 Government Code Section 3517.6.) Although Respondents maintain that furloughs are not a
19 salary reduction and thus do not implicate section 19826, even if this section applied, it is moot
20 since the statute is superseded by the operative MOU's. As a result, the only conceivable claims
21 Petitioners can make here are that Respondents have either violated the provisions of the
22 applicable MOUs and/or engaged in unfair labor bargaining by not meeting and conferring with
23 the Petitioners over the furloughs prior to the issuance of the Executive Order. Either way, the
24 proper forum for adjudication of Petitioners' claims is before the Public Employment Relations
25 Board (PERB). In fact, SEIU initially filed a charge before PERB and that case is still pending.
26 This Court must defer to PERB's expertise and initial exclusive jurisdiction in resolving this
27
28

1 matter.

2 **1. Petitioners are Covered by MOUs Currently in Effect Thereby**
3 **Superseding Government Code Section 19826 and Other Statutes**
4 **Relied on by Petitioners.**

5 As already noted, the Dills Act operates to suppress section 19826 and the other
6 statutory provisions relied on by Petitioners. All Petitioners are parties to expired, but continuing,
7 MOUs with the State of California. Petitioner CASE not only admits that the terms of its MOU
8 are still controlling, it further states the provisions of its MOU supersede the Government Code.
9 (CASE Petition, fn. 4.) Respondents agree. Accordingly, pursuant to Government Code section
10 3517.8(a), the parties must continue to give effect to the expired MOUs, including all provisions
11 which supersede existing law.

12 **2. PERB has Initial Exclusive Jurisdiction Over this Matter.**

13 As a result of the continuing suppression of section 19826, and the other statutes
14 on which Petitioners rely, the only potential existing dispute between the parties is whether the
15 Executive Order violates the terms of the existing MOUs or whether the Governor committed an
16 unfair labor practice by declaring an emergency under section 3516.5, thereby bypassing
17 bargaining with the employee organizations over the implementation of employee furloughs as a
18 cost saving measure. Thus, the dispute as to whether the Governor failed to meet and confer in
19 good faith is governed exclusively by the Dills Act. (Gov. Code, §§ 3516.5, 3517.)

20 PERB possesses exclusive, initial jurisdiction over the administration of the Dills
21 Act. (Gov. Code, § 3514.5 [“The initial determination as to whether the charges of unfair
22 practices are justified, and, if so, what remedy is necessary to effectuate the purposes of this
23 chapter, shall be a matter within the exclusive jurisdiction of the board”]; *California Association*
24 *of Professional Scientists v Schwarzenegger* (2006) 137 Cal.App.4th 371, 381 [“The assignment
25 of exclusive initial jurisdiction in section 3514.5 to the Board means that the only forum to pursue
26 a cause of action for violation of the statutory rights conferred in the Dills Act is before the
27 Board”].)

28

1 The scope of PERB's exclusive, initial jurisdiction is construed broadly in favor of
2 allowing the Board to exercise its expertise over public sector labor relations in this state. (*El*
3 *Rancho Unified School District v. National Education Association* (1983) 33 Cal.3d 946, 953;
4 *San Diego Teachers Association v Superior Court* (1979) 24 Cal.3d 1, 12-14.) PERB's
5 jurisdiction is broadly construed because "PERB is an expert, quasi-judicial administrative
6 agency" specially entrusted "to protect both employees and the state employer from violations of
7 the organizational and collective bargaining rights" guaranteed by the statutes it administers.
8 (*Banning Teachers Association v. Public Employment Relations Board* (1988) 44 Cal.3d 799,
9 804; *City and County of San Francisco v. International Union of Operating Engineers, Local 39*
10 (2007) 151 Cal.App.4th 938, 943.) It has long been settled that PERB's "findings within that
11 field carry the authority of an expertness which courts do not possess and therefore must respect."
12 (*Banning Teachers Association, supra*, 44 Cal.3d at p. 804.)

13 Judicial deference to PERB's administrative process is both necessary and
14 appropriate to fulfill PERB's legislatively assigned mission "to help bring expertise and
15 uniformity to the delicate task of stabilizing labor relations." (*San Diego Teachers Association,*
16 *supra*, 24 Cal.3d at p. 12; *Local 21, International Federation of Professional and Technical*
17 *Engineers, AFL-CIO v. Bunch* (1995) 40 Cal.App.4th 670, 676-679 [discussing the broad scope
18 of PERB's exclusive, initial jurisdiction]; *City and County of San Francisco, supra*, 151
19 Cal.App.4th at p. 945 [finding that a party may not evade PERB's jurisdiction through artful
20 pleading]; *El Rancho Unified School District, supra*, 33 Cal.3d at p. 954, fn. 13 [stating that a
21 court must defer to PERB when the underlying conduct alleged "may fall within PERB's
22 exclusive jurisdiction"].)

23 3. **Petitioners Have Failed to Exhaust Their Administrative Remedies.**

24 In general, a party is required to exhaust its administrative remedies before
25 resorting to intervention from the courts. (*Coachella Valley Mosquito & Vector Control District*
26 *v. Public Employment Relations Board* (2005) 35 Cal.4th 1072, 1080 (*Coachella Valley*)). The
27 rule of exhaustion "is not a matter of judicial discretion" but rather a fundamental rule
28

1 establishing "a jurisdictional prerequisite to resort to the courts." (*Sierra Club v. San Joaquin*
2 *Local Agency Formation Commission* (1999) 21 Cal.4th 489, 496.)

3 Petitioners have not exhausted their available administrative remedies. Petitioners
4 PECG, CAPS, and CASE have failed to even seek, let alone exhaust, their administrative
5 remedies with PERB before seeking relief from this Court. No exceptions to the exhaustion rule
6 apply to excuse Petitioners' failure to exhaust their administrative remedies at PERB.

7 SEIU's conduct in initially filing an unfair practice charge before PERB
8 complaining of the same issues asserted here supports Respondents' contention that PERB has
9 initial exclusive jurisdiction. Petitioner SEIU, however, did not exhaust the administrative
10 remedies available to it before PERB. Instead, it prematurely and inappropriately abandoned the
11 governing administrative process in favor of seeking relief improperly before this Court. It is also
12 important to note the SEIU unfair practice charge is still pending before PERB.

13 Petitioner SEIU has squarely presented to PERB the exact claims it presents to this
14 Court (with the exception of the hypothetical FLSA allegations that are neither ripe nor justiciable
15 in any forum at this point). (See Request for Judicial Notice in support of Respondents'
16 demurrers.) In its charge filed with PERB, Petitioner SEIU complained Governor
17 Schwarzenegger and Department of Personnel Administration failed to meet and confer in good
18 faith before issuance of the Governor's Executive Order. (*Id.*) Furthermore, Petitioner SEIU
19 charged the furlough was unlawful and exceeded the Governor's authority pursuant to
20 Government Code section 3516.5.

21 To date, PERB has not rendered a determination on any of the unfair practice
22 charges challenging the Governor's Executive Order. By way of example, SEIU filed its unfair
23 practice charge with PERB on December 22, 2008. SEIU and the other Petitioners fail to explain
24 why they have not availed themselves of the available motion, pursuant to Title 8 of the
25 California Code of Regulations section 32147, to expedite PERB proceedings on the charge.
26 Petitioner SEIU has also not sought injunctive relief from the PERB Board on this issue, despite
27 being an available remedy. (8 Cal.Code of Regs., § 32450.) This Court has no authority to
28 review how PERB exercises its remedial discretion. This Court must defer to PERB's expertise

1 in exercising its legislatively delegated authority. (*Mt. San Antonio Community College District*
2 *v. Public Employment Relations Board* (1989) 210 Cal.App.3d 178, 190.)

3 Petitioners have made no showing as to why they should be afforded relief from
4 the exhaustion doctrine. Courts have recognized several limited exceptions to the exhaustion
5 rule, such as “[1] situations where the agency indulges in unreasonable delay, ... [2] when pursuit
6 of an administrative remedy would result in irreparable harm, [3] when the agency is incapable of
7 granting an adequate remedy, and [4] when resort to the administrative process would be futile
8” (*Greene, supra*, 5 Cal.App.4th 155, 169 [numbering added].) None of these exceptions
9 apply to excuse Petitioners’ failure to exhaust their administrative remedies before PERB, and
10 their petitions should therefore be dismissed.

11 Moreover, Petitioners will not be subject to irreparable harm if they pursue their
12 administrative remedies. The California Supreme Court addressed the “irreparable injury” issue
13 in *San Diego Teachers Association*. There, the school district argued it should not be required to
14 complete the PERB process because “completion of the administrative proceeding would result in
15 irreparable injury.” (*San Diego Teachers Association, supra*, 24 Cal.3d at p. 13.) The Court
16 rejected that argument and found PERB has broad discretion “to withhold as well as pursue”
17 whatever remedies it deems appropriate. (*Id.*) Accordingly, Petitioners can claim no “irreparable
18 injury” excusing their failure to exhaust their administrative remedies with PERB. Therefore, the
19 Petitioners’ failure to exhaust their administrative remedies bars this Court from exercising
20 jurisdiction over these petitions and complaints and they must, as a result, be dismissed.

21
22 **C. The Fair Labor Standards Act Does Not Preclude the Adoption of Furloughs**
23 **Pursuant to the Executive Order.**

24 The Fair Labor Standards Act (“FLSA”), 29 U.S.C. section 201, *et seq.*, requires
25 employers to pay overtime compensation for any hours worked over forty in a workweek.
26 However, certain executive, administrative and professional employees are exempt from the
27 overtime provisions of the FLSA. (29 U.S.C. § 213.) In order to maintain their exempt status, an
28 executive, administrative or professional employee must meet both a “duties test” and a “salary

1 basis test". (29 C.F.R. § 541.300.) Pursuant to the "salary basis test" an employee will be
2 considered to be paid on a "salary basis", and therefore exempt, if the employee regularly
3 receives a predetermined amount constituting all or part of the employee's compensation, which
4 amount is not subject to reduction because of variations in quality or quantity of work performed.
5 (29 C.F.R. § 541.602.)

6 SEIU and CASE argue the furlough is illegal under the FLSA with respect to
7 exempt employees, including attorneys, because the furlough results in impermissible deductions
8 from exempt employees' salaries, thereby defeating the "salary basis test" for these employees
9 and resulting in a permanent loss of their exempt status. SEIU further alleges the Executive
10 Order is illegal because it does not provide a mechanism for payment of overtime for the work
11 SEIU believes will be necessary to provide the public services for which these exempt employees
12 were hired. Both SEIU and CASE mischaracterize the applicable FLSA regulations and base
13 their allegations on pure speculation that exempt employees will work overtime during a
14 workweek in which they have been furloughed and these employees will not be properly
15 compensated.

16
17 **1. The FLSA Permits Budget-Related Furloughs of Exempt Employees of
Public Agencies.**

18
19 In 1992 the Department of Labor (DOL) issued FLSA regulations that modified
20 the "salary basis test" as it applied to state and local governments. Included in the new
21 regulations was Title 29 of the Code of Federal Regulations section 541.710⁵. Pursuant to section
22 541.710(b), exempt employees of a public agency "may be furloughed for budget-related reasons
23 without affecting their exempt status, except for the workweek in which the furlough occurs".
24 The intent of this new rule was to permit public sector employers facing financial difficulties
25 from budget shortfalls to be empowered to make appropriate decisions on how best to implement

26
27 ⁵ In 1992, this regulation was originally numbered Title 29 of the Code of Federal Regulations section
28 541.5d. The 1992 amendments were re-numbered in 2004, however the 1992 version of Title 29 of the
Code of Federal Regulations section 541.710 along with the DOL's reasons for its promulgation remains
consistent with the 2004 version.

1 furloughs without risking additional retroactive overtime liabilities and even higher potential
2 deficits because of the furloughs. (57 Fed.Reg. 37,674-37,675 (Aug. 19, 1992).)

3 The State of California is in an unprecedented fiscal crisis and in order to reduce
4 the number of layoffs necessary to continue operation of state services, the Governor lawfully
5 ordered the furlough of state employees two days per month, including those exempt under
6 FLSA. Although these employees will lose their exempt status for the workweeks in which a
7 furlough day occurs, these employees will continue to be exempt during the workweeks in which
8 a furlough day is not taken and will remain exempt once the furlough period is completed in June
9 of 2010. (29 C.F.R. § 541.710.)

10 Both SEIU and CASE argue the primary effect of the loss of the exemption will be
11 a significant amount of overtime compensation which might be owed to these otherwise exempt
12 employees. They allege these exempt employees will necessarily have to work overtime to
13 complete their assignments and fulfill their responsibilities. However, these claims are
14 hypothetical, speculative and lacking any actual factual support.

15 The potential for overtime liability only arises during the two workweeks per
16 month in which the furlough day occurs. During the remaining workweeks, these employees
17 continue to be exempt from the overtime provisions of the FLSA. Where an employee does in
18 fact work overtime, during a workweek in which he has been furloughed, he or she will be
19 compensated consistent with the FLSA. (See Chapman Declaration, ¶ 16.) Notwithstanding the
20 temporary loss of the FLSA exemption, section 541.710(b) makes it explicitly clear that FLSA
21 exempt employees may be furloughed by their state employer for budget-related reasons.

22
23 **2. The "Self Directed Furlough Plan" Does Not Run Afoul to the
24 Requirements of the FLSA.**

25 SEIU alleges the portion of the Order dealing with the "Self Directed Furlough
26 Plan" violates, Title 29 of the Code of Federal Regulations section 778.106 because it requires
27 certain employees to lose ten percent of their salary each month despite the fact the employee
28 worked each and every day without being furloughed. However, SEIU has grossly

1 mischaracterized section 778.106. Section 778.106 deals exclusively with the payment of
2 overtime compensation and establishes the general rule that overtime compensation earned in a
3 particular workweek must be paid on the regular pay day for the period in which such workweek
4 ends. However, when the correct amount of overtime cannot be determined until some time after
5 the regular pay day, the requirements of the Act will be satisfied if the employer pay the excess
6 overtime compensation as soon as is practicable. (29 C.F.R. § 778.106.)

7 SEIU cites *Biggs v. Wilson* (9th Cir. 1993) 1 F.3d 1537 for the proposition that late
8 payment of wages is the same as a failure to pay wages under the FLSA. This case is inapposite
9 as the State will continue to pay employees their wages consistent with federal and state law.
10 Even with a reduction in the number of hours worked, no state employee will be paid wages that
11 are inconsistent with the requirements of those laws. (See Torrey Declaration, ¶ 4.) Accordingly,
12 the "Self Directed Furlough Plan" does not run afoul to section 778.106 or any other provision
13 dealing with the minimum amount of wages required to be paid on an employee's regular pay
14 day.

15
16 **3. Attorneys Are Not Subject to the "Salary Basis Test" and Will Not
Lose Their Exempt Status During the Furlough.**

17 While the FLSA exempt status of most professional employees is conditioned on
18 the satisfaction of both a "duties test" and a "salary basis test," attorneys, by regulation, are
19 explicitly excluded from the salary requirements, including the "salary basis test," applicable to
20 other executive, administrative and professionally exempt employees. (29 C.F.R. § 541.304.)

21 CASE alleges attorneys will be owed significant amounts of overtime because they
22 will inevitably have to work more than the eight hours on their non-furlough days in order to meet
23 their ethical and contractual obligations.⁶ This claim is frivolous since attorneys are not subject to
24 the requirements of the "salary basis test," and therefore cannot lose their exemption because of a
25 furlough which has the effect of reducing their total compensation, even in the workweek when
26

27 ⁶ CASE originally made this argument in its Verified Petition For Writ Of Mandate And Complaint For
Declaratory And Injunctive Relief. It can be inferred from CASE's failure to address this issue in its
Memorandum Of Points And Authorities In Support Of Verified Petition For Writ Of Mandate And
28 Complaint For Declaratory And Injunctive Relief that it now realizes its original assertion was incorrect.

1 the furlough occurs. (29 C.F.R. § 541.304.) Since attorneys cannot lose their exemption, they are
2 not entitled to overtime compensation even if they must work more than eight hours in one day or
3 forty hours in a workweek in order to meet their contractual or ethical obligations.

4
5 **D. Petitioners' Request For Injunctive Relief Must Be Denied As They Have An**
6 **Adequate Remedy At Law, Have Failed To Demonstrate A Likelihood Of Success,**
7 **And Have Failed To Demonstrate Irreparable Harm.**

8 Injunction is an extraordinary power, to be exercised always with great caution and
9 in those cases only where it fairly appears that if an injunction is not granted that the petitioner
10 will suffer irreparable injury. An injunction should rarely, if ever, be used in a doubtful case.
11 (*City of Tiburon v. Northwestern Pacific Railroad Co.* (1970) 4 Cal.App.3d 160, 179.) In
12 deciding to issue an injunction, the court weighs two 'interrelated' factors: (1) the likelihood that
13 the moving party will ultimately prevail on the merits and (2) the relative interim harm to the
14 parties from issuance or non issuance of the injunction. (*O'Connell v Superior Court* (2006) 141
15 Cal. App. 4th 1452, 1463) "The trial court's determination must be guided by a 'mix' of the
16 potential-merit and interim-harm factors; the greater the plaintiff's showing on one, the less must
17 be shown on the other to support an injunction." (*Id.*)

18 **1. Petitioners Have An Adequate Remedy At Law.**

19 A prerequisite for granting equitable relief is an inadequate remedy at law. Code
20 of Civil Procedure section 526 provides that an injunction may be granted "[w]hen a pecuniary
21 compensation would not afford adequate relief" or "[w]here it would be extremely difficult to
22 ascertain the amount of compensation which would afford adequate relief." (Code of Civ. Proc.,
23 § 526, subd. (a)(4), (5).) The courts have recognized that a "party seeking injunctive relief must
24 show the absence of an adequate remedy at law" (*Department of Fish and Game v Anderson-*
25 *Cottonwood Irrigation Dist.* (1992) 8 Cal.App.4th 1554, 1564) and that "[w]hen an adequate
26 remedy exists at law, and if monetary damages afford adequate relief and are not extremely
27 difficult to ascertain, an injunction cannot be granted." (*Thayer Plymouth Center, Inc. v. Chrysler*
28 *Motors Corp* (1967) 255 Cal.App.2d 300, 306; see also *Tahoe Keys Property Owners'*

1 *Association v State Water Resources Control Board* (1994) 23 Cal.App.4th 1459, 1471.)

2 Here, Petitioners seek to enjoin the implementation of furloughs because the
3 resulting furloughs will result in a loss of compensation for their members. Even assuming
4 Petitioners have a meritorious argument on this point, the claims raised are strictly economic and,
5 therefore, monetary damages presumably would afford adequate relief. Accordingly, there is an
6 adequate remedy at law, and an injunction should not issue.

7
8 **2. Petitioners Are Not Likely To Succeed On The Merits.**

9 Petitioners fail to demonstrate they are likely to succeed on the merits. Petitioners
10 focus their Petitions on an alleged violation of Government Code section 19826, subdivision (b).
11 However, as set forth above and in Respondents' demurrer, section 19826 is superseded by the
12 parties' MOUs, and therefore is inapplicable here.

13 Furthermore, the Governor, as the state employer, is empowered to negotiate hours
14 and other terms and conditions with the Unions, but in cases of emergency, the State Employer
15 may implement a law, rule, regulation or resolution relating to wages, hours and other terms and
16 conditions of employment without first meeting and conferring with the Unions. (Gov. Code, §
17 3516.5, see also *Sonoma County Organization v. County of Sonoma (Sonoma County)* (1991) 1
18 Cal.App.4th 267.) Petitioners bear the burden of demonstrating an emergency does not exist.
19 None of the Petitioners refute the existence of an emergency or allege that Government Code
20 section 3517.6 was violated. Accordingly, since the implementation of furloughs is lawful, the
21 Petitioners cannot succeed on the merits and an injunction cannot issue.

22
23 **3. The Issuance Of An Injunction Will Result In Irreparable Harm To
The State.**

24 In deciding to issue a permanent injunction, the court "should consider the relative
25 hardship of the parties and balance the equities." (*Cota v. County of Los Angeles* (1980) 105 Cal.
26 App. 3d 282, 292.) "Where injury would result to the public, an additional reason arises for
27 refusal to grant injunctive relief." (*Id.*) A "significant" showing of irreparable injury is required
28

1 because there is a “general rule against enjoining public officers or agencies from performing
2 their duties.” (*Tahoe Keyes Prop. Owners Ass’n. v. State Water Resources Control Bd.*, *supra*, 23
3 Cal.App.4th at p. 1471.)

4 Furthermore, when an injunction is sought against a public agency or officer,
5 public policy considerations come into play. The public interest must be considered. “It is well
6 established that when injunctive relief is sought, consideration of public policy is not only
7 permissible but mandatory.” (*Teamsters Agricultural Workers Union v International*
8 *Brotherhood of Teamsters* (1983) 140 Cal. App. 3d 547, 555 citing *Loma Portal Civic Club v.*
9 *American Airlines, Inc* (1964) 61 Cal.2d 582, 588; see also *O’Connell v Superior Court* (2006)
10 141 Cal.App.4th 1452, 1471.)

11 The consideration of public policy is based upon the principle of separation of
12 powers. The California Supreme Court “emphasized that ‘principles of comity and separation of
13 powers place significant restraints on courts’ authority to order or ratify acts normally committed
14 to the discretion of other branches or officials. [Citations.] In particular, the separation of powers
15 doctrine (Cal. Const., art. III, § 3) obligates the judiciary to respect the separate constitutional
16 roles of the Executive and the Legislature.’” (*O’Connell v. Superior Court, supra*, 141
17 Cal.App.4th at p. 1464, citing to *Butt v State of California* (1992) 4 Cal.4th 668, 695.) The
18 Supreme Court has “stressed that ‘a judicial remedy must be tailored to the harm at issue
19 [citations],’ and that ‘[a] court should always strive for the least disruptive remedy adequate to its
20 legitimate task.’” (*O’Connell v. Superior Court, supra*, 141 Cal.App.4th at p. 1464, citing to *Butt*
21 *v. State of California, supra*, 4 Cal.4th at pp. 695-96.)

22 Here, the harm to Respondent far exceeds the harm to Petitioners and their
23 members. The State is facing an unprecedented, undisputed immediate fiscal disaster that is
24 affecting every citizen of this state. (See Genest Declaration, ¶ 3; Tyra Declaration, Exhibits 11,
25 13.)

26 There is an approximately \$15 billion General Fund deficit for the 2008-09 fiscal
27 year that is estimated to grow to a \$42 billion General Fund budget shortfall over the next 18
28 months. If no action is taken the cash reserve in the State Treasury is estimated to be a negative

1 \$5 billion in March 2009, which means it is likely the State will miss payroll and other essential
2 services payments at the beginning of 2009. (Tyra Declaration, Exhibit 11.) As stated by
3 Controller Chaing, “[f]ailure to act threatens our ability to respond to natural disasters, our ability
4 to provide life preserving care to the elderly and the ill, and our ability to protect our communities
5 from crime.” (Tyra Declaration, Exhibit 13.) Both Chiang and Genest have declared that if
6 nothing is done the State will run out of cash in February – in a matter of days.

7 In contrast to the severe repercussions to the State of California if the Governor is
8 prevented from ordering furloughs, Petitioners have failed to demonstrate the significant
9 irreparable harm that is required when an injunction is sought against a public officer or agency.
10 (*Tahoe Keyes Prop. Owners Ass’n. v. State Water Resources Control Bd.*, *supra*, 23 Cal.App.4th
11 at p. 1471.) Petitioner SEIU does not address its request for injunctive relief at all in its
12 memorandum of points and authorities. The only section that could be construed as addressing
13 “harm” is SEIU’s discussion that the Executive Order does not provide a system to compensate
14 FLSA-exempt employees. (See SEIU’s Ps and As, at p. 12.) The State intends to satisfy all of its
15 FLSA requirements. Yet, SEIU’s allegations that FLSA-exempt employees may not be properly
16 compensated is mere speculation. An injunction will not issue on speculative harm. “An
17 injunction cannot issue in a vacuum based on the proponents’ fears about something that may
18 happen in the future.” (*Korean Philadelphia Presbyterian Church v. California Presbytery*
19 (2000) 77 Cal.App.4th 1069, 1084.)

20 Likewise, Petitioner CASE’s allegations of irreparable harm are also unfounded
21 and speculative. (See CASE’s Ps and As, at p. 14.) CASE alleges the furlough will “put certain
22 CASE members at risk of losing their homes, defaulting on auto loans, and suffering negative
23 reports on their credit ratings.” (*Id.*) In support of this statement, CASE cites to the declaration
24 of Peter Flores. First, the “declaration” of Peter Flores served on Respondent was not signed, and
25 therefore, should be disregarded in its entirety. Second, neither “declaration” nor the points and
26 authorities state that CASE members will suffer such risks as losing their homes as a result of the
27 furlough. Also, CASE submits no declarations from any of its members that will be furloughed
28 to testify as to their harm. As stated above, such speculative harm does not justify the issuance of

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1 an injunction. (*Korean Philadelphia Presbyterian Church v. California Presbytery, supra*, 77
2 Cal.App.4th at p. 1084.)

3 Petitioners PEGC and CAPS also fail to establish irreparable harm. (PEGC/CAPS
4 Ps and As, at p. 17.) The only harm alleged by PEGC and CAPS to its members is a loss of
5 money. (*Id.*) As stated above, a loss of money does not justify an injunction because there is an
6 adequate remedy at law (i.e., money damages). PEGC and CAPS also do not establish a
7 significant showing of irreparable harm (i.e., how a furlough and commensurate reduction in
8 wages significantly harms its members.)

9 All of the evidence demonstrates the direness of the State's fiscal crisis. The
10 Governor, the Controller and the Finance Director have all made it clear the State will run out of
11 money in February. The furlough will assist the State in realizing immediate savings to help
12 ensure the State can satisfy its monetary obligations. Accordingly, the balancing of the relative
13 equities at stake in this case warrants a denial of the requested injunctive relief.

14
15 **IV.**

16 **CONCLUSION**

17 This State is in a dire fiscal crisis and is only weeks away from insolvency. The
18 Petitioners do not dispute the existence of this fiscal crisis and the fact that immediate action must
19 be taken. The emergency provision of the Dills Act was created specifically to permit the
20 Governor to address emergency situations in the manner he has in the Executive Order. The
21 Governor's Executive Order is a reasonable, measured, appropriate, and authorized use of his
22 constitutional and statutory executive powers. Accordingly, Respondents respectfully requests
23 this Court deny Petitioners' writs of mandate and requests for injunctive relief.

24 Dated: January 20, 2009

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Law Corporation

25 By: 

26 David W. Tyra
27 Attorneys for Defendants/Respondents
28 ARNOLD SCHWARZENEGGER, Governor;
STATE OF CALIFORNIA; and DEPARTMENT
OF PERSONNEL ADMINISTRATION

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28 SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

PROFESSIONAL ENGINEERS IN
CALIFORNIA GOVERNMENT;
CALIFORNIA ASSOCIATION OF
PROFESSIONAL SCIENTISTS,

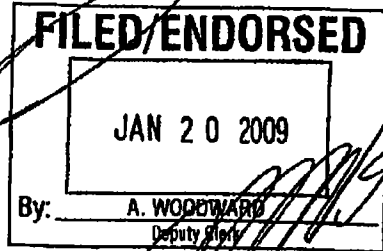
Petitioners/Plaintiffs,

v.

ARNOLD SCHWARZENEGGER, Governor;
STATE OF CALIFORNIA; DEPARTMENT
OF PERSONNEL ADMINISTRATION;
STATE CONTROLLER JOHN CHIANG; and
DOES 1 through 20, inclusive,

Respondents/Defendants.

AND RELATED CASES



CASE NO. 34-2008-80000126-CU-WM-GDS

Assigned For All Purposes To The Honorable
Patrick Marlette

PROOF OF SERVICE

Date January 29, 2009
Time: 9:00 a.m.
Dept.: 19

Action Filed: December 22, 2008

Trial Date: None Set

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I, May Marlowe, 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 January 20, 2009, I served a copy of the following document(s):

RESPONDENTS' OPPOSITION TO PETITIONERS' PETITIONS FOR WRIT OF MANDATE IN CONSOLIDATED ACTIONS;

DECLARATION OF DAVID W. TYRA;

DECLARATION OF JULIE CHAPMAN;

DECLARATION OF ALENE SHAMAZU;

DECLARATION OF BERNICE TORREY;

DECLARATION OF DIRECTOR OF FINANCE MICHAEL C. GENEST;

EVIDENTIARY OBJECTION TO DECLARATION OF PETER FLORES, JR.

- 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 with postage thereon fully prepaid, the United States mail at Sacramento, California addressed as set forth below.
- by placing the document(s) listed above in a sealed Federal Express envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a Federal Express agent for delivery.
- 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.

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on January 20, 2009, at Sacramento, California.



May Marlowe

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21 Governor; STATE OF CALIFORNIA; and DEPARTMENT OF
22 PERSONNEL ADMINISTRATION

23 SUPERIOR COURT OF CALIFORNIA
24 COUNTY OF SACRAMENTO

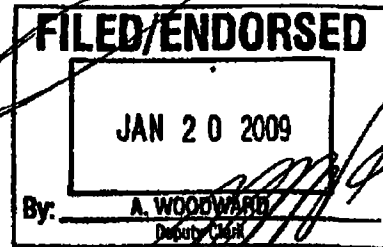
25 PROFESSIONAL ENGINEERS IN
26 CALIFORNIA GOVERNMENT;
27 CALIFORNIA ASSOCIATION OF
28 PROFESSIONAL SCIENTISTS,

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.



CASE NO. 34-2008-80000126-CU-WM-GDS
DECLARATION OF ALENE SHIMAZU

Dept.: 19

Action Filed: December 22, 2008

Trial Date: None Set

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I, ALENE SHIMAZU, declare:

1. I am employed with the State of California, Department of Personnel Administration (DPA) as the Chief of the Office of Financial Management and Economic Research since approximately 2003.

2. This declaration is being filed concurrently with the Respondent's Opposition to Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief. I am familiar with the facts stated in this declaration, and if called as a witness, I could, and would, testify competently to these facts.

3. As the Chief of the Office of Financial Management and Economic Research (OFMER), I provide cost and fiscal impact information to the Director of DPA. As part of my duties, I direct and oversee the completion of financial analyses of sensitive and complex collective bargaining and other compensation proposals and provide subsequent oversight and control to ensure compensation commitments remain within budgetary limits. I oversee the determination of the most efficient and accurate methods to estimate costs associated with those proposals and analyze the fiscal impact of compensation policies on the State of California. I provide this information to the Department of Personnel Administration Director, Chief Deputy Director, and Deputy Director of Labor in order for the Executive Branch of State Government to make budgetary and financial decisions relating to employee compensation.

4. OFMER was directed to calculate the savings to the State by implementing a temporary 2-day a month furlough for represented and excluded unrepresented employees covering a seventeen month period.

5. OFMER calculated that the savings to the General Fund for represented employees subject to the furloughs to be estimated at \$298,541,141 for fiscal year 2008-2009. The savings to the General Fund for excluded unrepresented employees is estimated at \$76,837,793 for fiscal year 2008-2009.

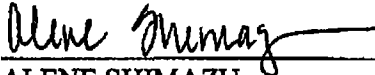
6. The savings to the General Fund for fiscal year 2009-2010 for represented employees subject to the furloughs is estimated at \$716,498,739, and the savings to the General Fund for fiscal year 2009-2010 for excluded unrepresented employees is estimated at \$184,410,703.

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7. The savings to the General Fund per month is estimated at \$75,075,787 by implementing a temporary 2-day a month furlough for represented and excluded unrepresented employees covering a seventeen month period.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 16th day of January, 2009, at Sacramento, California.



ALENE SHIMAZU

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FILED/ENDORSED
JAN 20 2009
By: A. WOODWARD
Deputy Clerk

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22 DEPARTMENT OF PERSONNEL ADMINISTRATION

23 SUPERIOR COURT OF CALIFORNIA
24 COUNTY OF SACRAMENTO

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Respondents/Defendants.

AND RELATED CASES

CASE NO. 34-2008-80000126-CU-WM-GDS

Assigned For All Purposes To The Honorable
Patrick Marlette

PROOF OF SERVICE

Date January 29, 2009
Time: 9:00 a.m.
Dept.: 19

Action Filed: December 22, 2008

Trial Date: None Set

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I, May Marlowe, 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 January 20, 2009, I served a copy of the following document(s):

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on January 20, 2009, at Sacramento, California.



May Marlowe

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 August 31, 2009, I served a true copy of the following document(s):

**Joint Appendix
Volume II of IV [Pages 222 Through 475]**

on the following party(ies) in said action:

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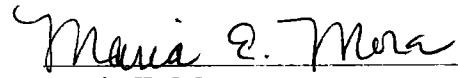
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- BY UNITED STATES MAIL:** By enclosing the document(s) in a sealed envelope or package addressed to the person(s) at the address above and
- depositing the sealed envelope with the United States Postal Service, with the postage fully prepaid.
 - placing 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.
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- 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 August 31, 2009, in San Leandro, California.



Maria E. Mora