

ORIGINAL

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

CALIFORNIA ATTORNEYS, etc.,

Plaintiff and Appellant,

v.

JOHN CHIANG, as State Controller, etc.,
Defendant and Appellant;
ARNOLD SCHWARZENEGGER, as
Governor, etc., et al.,

Defendants and Respondents.

C061009

FILED

AUG 28 2009

COURT OF APPEAL - THIRD DISTRICT
DEENA C. FAWCETT

BY [Signature] Deputy

Sacramento County Superior Court No. 34-2009-80000134 CUMCDS
Honorable Patrick Marlette, Judge

JOINT APPENDIX VOLUME II (pages 267-499)

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Judges, etc.*

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RECEIVED

AUG 28 2009

Clerk, Court of Appeal,
Third Appellate District

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

**CALIFORNIA ATTORNEYS,
ADMINISTRATIVE LAW JUDGES
AND HEARING OFFICERS IN
STATE EMPLOYMENT,**

Petitioner and Appellant,

v.

C061009

**ARNOLD SCHWARZENEGGER as
Governor of the State of California; DAVID
GILB as Director of the Department of
Personnel Administration; JOHN CHIANG,
Controller of the State of California; and
DOES 1 through 10,**

Defendants and Respondents.

Sacramento County Superior Court No. 34-2009-80000134
Honorable Patrick Marlette, Judge

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A	1/5/09	Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief	Vol. I, JA 1

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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 DIRECTOR OF
FINANCE MICHAEL C. GENEST**

Dept.: 19

Action Filed: December 22, 2008

Trial Date: None Set

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I, MICHAEL C. GENEST, declare as follows:

1. I was appointed by Governor Arnold Schwarzenegger on December 1, 2005, as Director of the California Department of Finance. The mission of the Department of Finance is to serve as the Governor's chief fiscal policy advisor, promote responsible resource allocation through the state's annual financial plan, and ensure the financial integrity of the state.

2. I make this declaration in support of this action.

3. The state is currently facing a massive fiscal crisis and is on the brink of financial disaster.

4. Baseline revenues are now expected to be \$14.5 billion below the estimate at the time the 2008-09 Budget was enacted.

5. There is a projected budget deficit of approximately \$14.8 billion for this fiscal year. Without immediate corrective action, it is projected that the budget deficit will grow to \$41.6 billion dollars by the end of June 2010.

6. Without corrective action, baseline General Fund revenues in 2009-10 are expected to decline to \$86.3 billion. This translates to the total budget gap being 48% of the projected baseline General Fund revenues.

7. The Department of Finance works with the State Controller's Office and the State Treasurer's Office every year to determine whether, on a monthly basis, the state will have sufficient cash attributable to the General Fund to meet the state's obligations, including its obligations to its bondholders.

8. In addition to the budget crisis, the state faces a cash-flow crisis. Without an immediate legislative solution, it is anticipated that the state will lack sufficient cash to pay all of its obligations as soon as February.

9. The state is anticipating that there will be a General Fund cash balance of negative \$11.8 billion by the end of January and without immediate corrective actions the General Fund balance at the end of the fiscal year will be negative \$18.4 billion. The forecast for the end of July anticipates a negative General Fund cash balance of \$26.3 billion.

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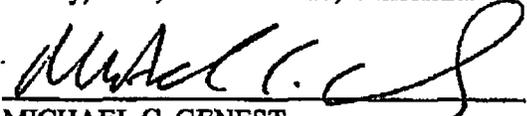
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10. I have personal knowledge of the facts stated in this declaration, and if called as a witness I could and would competently testify to them.

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.


MICHAEL C. GENEST

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KRISTIANNE T. SEARGEANT, State Bar No. 245489
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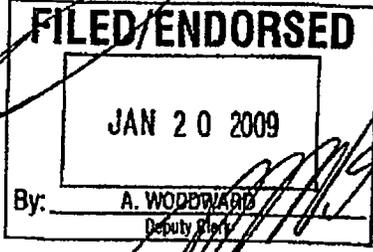
6 K. WILLIAM CURTIS
Chief Counsel, State Bar No. 095753
7 WARREN C. STRACENER
Deputy Chief Counsel, State Bar No. 127921
8 LINDA A. MAYHEW
Assistant Chief Counsel, State Bar No. 155049
9 WILL M. YAMADA
Labor Relations Counsel, State Bar No. 226669
10 DEPARTMENT OF PERSONNEL ADMINISTRATION
1515 S Street, North Building, Suite 400
11 Sacramento, CA 95811-7258
Telephone: (916) 324-0512
12 Facsimile: (916) 323-4723
E-mail: WillYamada@dpa.ca.gov

13 Attorneys for Defendants ARNOLD SCHWARZENEGGER,
14 Governor; STATE OF CALIFORNIA; DAVID GILB and
15 DEPARTMENT OF PERSONNEL ADMINISTRATION

16 SUPERIOR COURT OF CALIFORNIA
17 COUNTY OF SACRAMENTO

18 PROFESSIONAL ENGINEERS IN
19 CALIFORNIA GOVERNMENT;
20 CALIFORNIA ASSOCIATION OF
PROFESSIONAL SCIENTISTS,
21
Petitioners/Plaintiffs,
22
v.
23 ARNOLD SCHWARZENEGGER, Governor;
STATE OF CALIFORNIA; DEPARTMENT
24 OF PERSONNEL ADMINISTRATION;
STATE CONTROLLER JOHN CHIANG; and
25 DOES 1 through 20, inclusive,
26
Respondents/Defendants.

27
28 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.

Attorneys for Petitioners/Plaintiffs California Attorneys, Administrative Law Judges and Hearing Officers in State Employment

Brooks Ellison, Esq.
Patrick J. Whalen, Esq.
THE LAW OFFICE OF BROOKS ELLISON
1725 Capitol Avenue
Sacramento, CA 95814
Fax: (916) 448-5346
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Attorney for Respondent/Defendant State Controller John Chiang

Rick Chivaro, Esq.
Ronald V. Placet, Esq.
Shawn D. Silva, Esq.
Ana Maria Garza, Esq.
OFFICE OF THE STATE CONTROLLER
300 Capitol Mall, Suite 1850
Sacramento, CA 95814
Fax: (916) 322-1220
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Attorneys for Petitioner/Plaintiff SEIU, Local 1000
Paul E. Harris, III, Esq.
Anne Giese, Esq.
J. Felix De La Torre, Esq.
Brooke D. Pierman, Esq.
SERVICE EMPLOYEES INTERNATIONAL
UNION LOCAL 1000
1808 14th Street
Sacramento, CA 95814
Fax: (916) 554-1292
Email: bpierman@seiu1000.org

Attorneys for Petitioners/Plaintiffs Professional Engineers In California Government and California Association of Professional Scientists
Gerald James, Esq.
660 J Street, Suite 445
Sacramento, CA 95814
Fax: (916) 446-0489
Email: gjames@cwo.com

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on January 20, 2009, at Sacramento, California.



May Marlowe

1 DAVID W. TYRA, State Bar No. 116218
KRISTIANNE T. SEARGEANT, State Bar No. 245489
2 KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
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12 Facsimile: (916) 323-4723
E-mail: WillYamada@dpa.ca.gov

13 Attorneys for Defendants ARNOLD SCHWARZENEGGER,
14 Governor; STATE OF CALIFORNIA; and DEPARTMENT OF
PERSONNEL ADMINISTRATION

16 SUPERIOR COURT OF CALIFORNIA

17 COUNTY OF SACRAMENTO

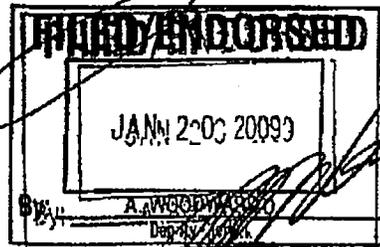
18 PROFESSIONAL ENGINEERS IN
19 CALIFORNIA GOVERNMENT;
CALIFORNIA ASSOCIATION OF
20 PROFESSIONAL SCIENTISTS,

21 Petitioners/Plaintiffs,

22 v.

23 ARNOLD SCHWARZENEGGER, Governor;
STATE OF CALIFORNIA; DEPARTMENT
24 OF PERSONNEL ADMINISTRATION;
STATE CONTROLLER JOHN CHIANG; and
25 DOES 1 through 20, inclusive,

26 Respondents/Defendants.



CASE NO. 34-2008-80000126-CU-WM-GDS

DECLARATION OF JULIE CHAPMAN

Dept.: 19

Action Filed: December 22, 2008

Trial Date: None Set

1 I, JULIE CHAPMAN, declare:

2 1. I am employed by the California Department of Administration (DPA) as
3 the Deputy Director of Labor Relations. I have been employed by DPA since October 16, 2000,
4 in progressively responsible positions, as an Assistant Labor Relations Officer, Senior Labor
5 Relations Officer, and Assistant Chief of Labor Relations. I have been involved in labor relations
6 with the State of California since 1994.

7 2. Part of my duties with DPA includes overseeing the collective bargaining
8 of Memoranda of Understanding (MOU) on behalf of the State with all of the State Bargaining
9 Unit Exclusive Representatives.

10 3. This declaration is being filed concurrently with the Respondent's
11 Opposition to Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief.
12 I am familiar with the facts stated in this declaration, and if called as a witness, I could, and
13 would, testify competently to these facts.

14 4. On or about December 19, 2008, a member of DPA staff arranged
15 telephone conferences with each State Bargaining Unit where I informed the exclusive
16 representatives for the Bargaining Units that Governor Schwarzenegger was going to sign an
17 Executive Order which declared a fiscal emergency in the State of California and ordered
18 furloughing state civil service employees two days a month commencing in February of 2009.

19 5. On December 19, 2008, DPA sent notices to the exclusive representative
20 for each State Bargaining Unit informing them Governor Schwarzenegger signed Executive
21 Order S-16-08. The Executive Order was attached to the notices. The notices informed the
22 unions to contact me if they wanted to meet and confer regarding the impacts of the
23 implementation of furloughs referenced in the Executive Order. Attached to this declaration as
24 Exhibit "A" are true and accurate copies of the notices that were sent to the Professional
25 Engineers in California Government (PECG), the Service Employees International Union, Local
26 1000 (SEIU), the California Attorneys, Administrative Law Judges, and Hearing Officers
27 (CASE), and the California Association of Professional Scientists (CAPS).

28 6. Since the issuance of the aforementioned notices, I have had meetings with

1 several unions to meet and confer over the impact of the Executive Order. I also instructed my
2 staff to contact the unions that have not arranged dates to meet, to arrange dates to meet and
3 confer over the Executive Order.

4 7. On January 6, 2009, I met with representatives of the Service Employees
5 International Union, Local 1000 (SEIU) to meet and confer regarding the impacts of the
6 Executive Order.

7 8. After my meeting with representatives of the Service Employees
8 International Union, Local 1000 (SEIU), I received a letter dated January 13, 2009, from SEIU
9 where they admit the nine MOU's between the State of California and SEIU covering the nine
10 Bargaining Units represented by SEIU currently remain in effect. Attached to this declaration as
11 Exhibit "B" is a true and accurate copy of the letter from SEIU dated January 13, 2009.

12 9. On January 13, 2009, I met with representatives of the Professional
13 Engineers in California Government (PECG) to meet and confer regarding the impacts of the
14 Executive Order.

15 10. I have a meeting scheduled for January 23, 2009, with representatives of
16 the California Attorneys, Administrative Law Judges, and Hearing Officers (CASE) to meet and
17 confer regarding the impacts of the Executive Order.

18 11. The California Association of Professional Scientists (CAPS) has not
19 requested a meeting to meet and confer regarding the impacts of the Executive Order. I was
20 informed by my staff that CAPS was not interested in meeting regarding the impacts of the
21 furloughs at this time.

22 12. The MOU between the State of California and Professional Engineers in
23 California Government (PECG) covering Bargaining Unit 9, effective July 1, 2006 through July
24 2, 2008, is currently in effect. A true and accurate copy of the cover page and table of contents of
25 this MOU is attached as Exhibit "A" to Respondents' Request for Judicial Notice dated January
26 9, 2009.

27 13. The MOU between the State of California and California Association of
28 Professional Scientists (CAPS) covering Bargaining Unit 10, effective July 1, 2006 through July

1 2, 2008, is currently in effect. A true and accurate copy of the cover page and table of contents of
2 this MOU is attached as Exhibit "B" to Respondents' Request for Judicial Notice dated January 9,
3 2009.

4 14. The MOU between the State of California and California Attorneys,
5 Administrative Law Judges and Hearing Officers in State Employment (CASE) covering
6 Bargaining Unit 2, effective July 1, 2005 through June 30, 2007, is currently in effect. A true and
7 accurate copy of the cover page and table of contents of this MOU is attached as Exhibit "A" to
8 Respondents' Request for Judicial Notice dated January 13, 2009.

9 15. The MOUs between the State of California and Service Employees
10 International Union, Local 1000 (SEIU) covering Bargaining Units 1, 3, 4, 11, 14, 15, 17, 20, and
11 21, effective July 1, 2005 through June 30, 2008, are currently in effect. A true and accurate copy
12 of the cover page and table of contents is attached as Exhibit "B" to Respondents' Request for
13 Judicial Notice dated January 13, 2009.

14 16. In implementing the furlough plan, it is DPA's intent to implement and
15 manage the plan in a manner fully consonant with the provisions of the Fair Labor Standards Act.

16 I declare under penalty of perjury under the laws of the State of California that the
17 foregoing is true and correct.

18 Executed on this 16th day of January, 2009, at Sacramento, California.

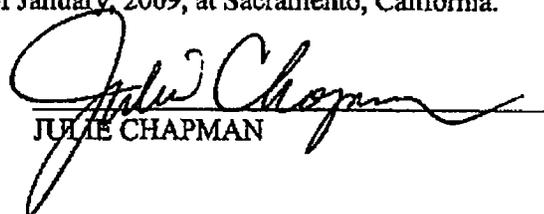
19 
20 JULIE CHAPMAN
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EXHIBIT A

DEPARTMENT OF PERSONNEL ADMINISTRATION

LABOR RELATIONS DIVISION

515 "S" STREET, NORTH BUILDING, SUITE 400
SACRAMENTO, CA 95811-7258



December 19, 2008

Bruce Blanning
Professional Engineers in California Government
660 "J" Street, Suite 445
Sacramento, CA 95814

Dear Mr. Blanning:

Today, Governor Schwarzenegger signed Executive Order S-16-08 which declared a fiscal emergency in the State of California.

In accordance with the Governor's constitutional and statutory authority and consistent with Government Code section 3516.5, the Department of Personnel Administration (DPA) will implement a furlough of State employees two days a month. This furlough plan will be implemented as of February 1, 2009 through June 30, 2010.

Attached for your review is the executed Executive Order. If you would like to meet and confer regarding this furlough, please contact me at (916) 324-0476.

Sincerely, .

A handwritten signature in black ink, appearing to read "Julie Chapman".

Julie Chapman
Deputy Director of Labor Relations



Office of the Governor

ARNOLD SCHWARZENEGGER
THE PEOPLE'S GOVERNOR

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

DEPARTMENT OF PERSONNEL ADMINISTRATION

LABOR RELATIONS DIVISION

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

December 19, 2008

Michael Baratz
SEIU, Local 1000, California State Employees Association
PO Box 160005
Sacramento, CA 95816

Dear Mr. Baratz:

Today, Governor Schwarzenegger signed Executive Order S-16-08 which declared a fiscal emergency in the State of California.

In accordance with the Governor's constitutional and statutory authority and consistent with Government Code section 3516.5, the Department of Personnel Administration (DPA) will implement a furlough of State employees two days a month. This furlough plan will be implemented as of February 1, 2009 through June 30, 2010

The Executive Order prohibits new personal services contracts to perform work as a result of the furloughs, layoffs or other position reduction measures. DPA will, as a result of pending layoffs to SEIU employees, meet to discuss any personal services contracts that the Union identifies as a concern.

Attached for your review is the executed Executive Order. If you would like to meet and confer regarding this furlough, please contact me at (916) 324-0476.

Sincerely,

A handwritten signature in black ink, appearing to read "Julie Chapman".

Julie Chapman
Deputy Director of Labor Relations



Office of the Governor

ARNOLD SCHWARZENEGGER
THE PEOPLE'S GOVERNOR

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

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



December 19, 2008

Brooks Ellison
California Attorneys, Admin Law Judges & Hearing Officers in State Employment
1725 Capital Avenue
Sacramento, CA 95811

Dear Mr. Ellison:

Today, Governor Schwarzenegger signed Executive Order S-16-08 which declared a fiscal emergency in the State of California.

In accordance with the Governor's constitutional and statutory authority and consistent with Government Code section 3516.5, the Department of Personnel Administration (DPA) will implement a furlough of State employees two days a month. This furlough plan will be implemented as of February 1, 2009 through June 30, 2010.

Attached for your review is the executed Executive Order. If you would like to meet and confer regarding this furlough, please contact me at (916) 324-0476.

Sincerely,

A handwritten signature in black ink, appearing to read "Julie Chapman".

Julie Chapman
Deputy Director of Labor Relations



Office of the Governor

ARNOLD SCHWARZENEGGER
THE PEOPLE'S GOVERNOR

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

DEPARTMENT OF PERSONNEL ADMINISTRATION

LABOR RELATIONS DIVISION

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



December 19, 2008

Christopher Voight
CA Assoc. of Professional Scientists
660 "J" Street, Suite 480
Sacramento, CA 95814

Dear Mr. Voight:

Today, Governor Schwarzenegger signed Executive Order S-16-08 which declared a fiscal emergency in the State of California.

In accordance with the Governor's constitutional and statutory authority and consistent with Government Code section 3516.5, the Department of Personnel Administration (DPA) will implement a furlough of State employees two days a month. This furlough plan will be implemented as of February 1, 2009 through June 30, 2010

Attached for your review is the executed Executive Order. If you would like to meet and confer regarding this furlough, please contact me at (916) 324-0476.

Sincerely,

A handwritten signature in black ink, appearing to read "Julie Chapman".

Julie Chapman
Deputy Director of Labor Relations



Office of the Governor

ARNOLD SCHWARZENEGGER
THE PEOPLE'S GOVERNOR

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:

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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.

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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

1 DAVID W. TYRA, State Bar No. 116218
2 KRISTIANNE T. SEARGEANT, State Bar No. 245489
3 KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
4 A Law Corporation
5 400 Capitol Mall, 27th Floor
6 Sacramento, California 95814
7 Telephone: (916) 321-4500
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9 E-mail: dtyra@kmtg.com

FILED/ENDORSED
JAN 20 2009
By: A. WOODBRIDGE
Deputy Clerk

6 K. WILLIAM CURTIS
7 Chief Counsel, State Bar No. 095753
8 WARREN C. STRACENER
9 Deputy Chief Counsel, State Bar No. 127921
10 LINDA A. MAYHEW
11 Assistant Chief Counsel, State Bar No. 155049
12 WILL M. YAMADA
13 Labor Relations Counsel, State Bar No. 226669
14 DEPARTMENT OF PERSONNEL ADMINISTRATION
15 1515 S Street, North Building, Suite 400
16 Sacramento, CA 95811-7258
17 Telephone: (916) 324-0512
18 Facsimile: (916) 323-4723
19 E-mail: Willyamada@dpa.ca.gov

20 Attorneys for Defendants ARNOLD SCHWARZENEGGER,
21 Governor; STATE OF CALIFORNIA; DAVID GILB and
22 DEPARTMENT OF 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.

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.

Attorneys for Petitioners/Plaintiffs California
Attorneys, Administrative Law Judges and
Hearing Officers in State Employment
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 Patrick J. Whalen, Esq.
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Attorney for Respondent/Defendant State
Controller John Chiang
 Rick Chivaro, Esq.
 Ronald V. Placet, Esq.
 Shawn D. Silva, Esq.
 Ana Maria Garza, Esq.
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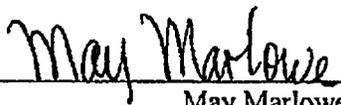
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6 Brooke D. Pierman, Esq.
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12 Email: bpierman@seiu1000.org

Attorneys for Petitioners/Plaintiffs
Professional Engineers In California
Government and California Association of
Professional Scientists
Gerald James, Esq.
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Email: gjames@cwo.com

13 I am readily familiar with the firm's practice of collection and processing correspondence
14 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same
15 day with postage thereon fully prepaid in the ordinary course of business. I am aware that on
16 motion of the party served, service is presumed invalid if postal cancellation date or postage
17 meter date is more than one day after date of deposit for mailing in affidavit.

18 I declare under penalty of perjury under the laws of the State of California that the above
19 is true and correct.

20 Executed on January 20, 2009, at Sacramento, California.

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24
25
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27
28


May Marlowe

1 DAVID W. TYRA, State Bar No. 116218
2 KRISTIANNE T. SEARGEANT, State Bar No. 245489
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18 Facsimile: (916) 323-4723
19 E-mail: WillYamada@dpa.ca.gov

20 Attorneys for Defendants ARNOLD SCHWARZENEGGER,
21 Governor, STATE OF CALIFORNIA; and DEPARTMENT OF
22 PERSONNEL ADMINISTRATION

23 SUPERIOR COURT OF CALIFORNIA
24 COUNTY OF SACRAMENTO

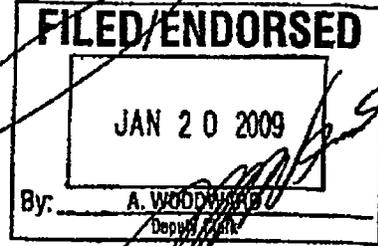
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STATE OF CALIFORNIA; DEPARTMENT
OF PERSONNEL ADMINISTRATION;
STATE CONTROLLER JOHN CHIANG; and
DOES 1 through 20, inclusive,

Respondents/Defendants.



CASE NO. 34-2008-80000126-CU-WM-GDS
DECLARATION OF BERNICE TORREY
Dept.: 19
Action Filed: December 22, 2008
Trial Date: None Set

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I, BERNICE TORREY, declare:

1. I am employed with the State of California, Department of Personnel Administration (DPA), Personnel Service Branch (PSB) as a Personnel Program Analyst. I have held this position since September, 2006.

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 a Personnel Program Analyst, I consult with statewide personnel offices on employee salary and leave administration, including pay history, alternate range criteria, and pay differentials. I am responsible for researching, analyzing, calculating, and developing the General Salary Programs, including publication of the State of California Civil Service Pay Scales. I am responsible for resolving complex salary problems within the statewide personnel transactions areas. I assist in planning, developing, and implementing statewide leave programs and provide interpretation of DPA's personnel rules and regulations, including salary rules and regulations. As part of my duties I interpret various provisions of the Fair Labor Standards Act (FLSA) as they apply to issues affecting state employees.

4. No state employee will be paid less than \$6.55 per hour (i.e., the federal minimum wage under the FLSA) for the duration of the furloughs.

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.


BERNICE TORREY

1 DAVID W. TYRA, State Bar No. 116218
 KRISTIANNE T. SEARGEANT, State Bar No. 245489
 2 KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
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 12 Facsimile: (916) 323-4723
 E-mail: Willyamada@dpa.ca.gov

FILED/ENDORSED
 JAN 20 2009
 By: A. WOODWARD
 Deputy Clerk

13 Attorneys for Defendants ARNOLD SCHWARZENEGGER,
 14 Governor; STATE OF CALIFORNIA; DAVID GILB and
 DEPARTMENT OF PERSONNEL ADMINISTRATION
 15

16 SUPERIOR COURT OF CALIFORNIA
 17 COUNTY OF SACRAMENTO

18 PROFESSIONAL ENGINEERS IN
 19 CALIFORNIA GOVERNMENT;
 CALIFORNIA ASSOCIATION OF
 20 PROFESSIONAL SCIENTISTS,
 21 Petitioners/Plaintiffs,
 22 v.
 23 ARNOLD SCHWARZENEGGER, Governor;
 STATE OF CALIFORNIA; DEPARTMENT
 24 OF PERSONNEL ADMINISTRATION;
 STATE CONTROLLER JOHN CHIANG; and
 25 DOES 1 through 20, inclusive,
 26 Respondents/Defendants.

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

27
 28 AND RELATED CASES

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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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DECLARATION OF DIRECTOR OF FINANCE MICHAEL C. GENEST;

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Attorneys, Administrative Law Judges and
Hearing Officers in State Employment
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 Patrick J. Whalen, Esq.
 THE LAW OFFICE OF BROOKS ELLISON
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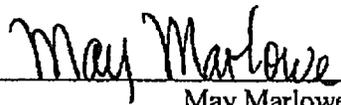
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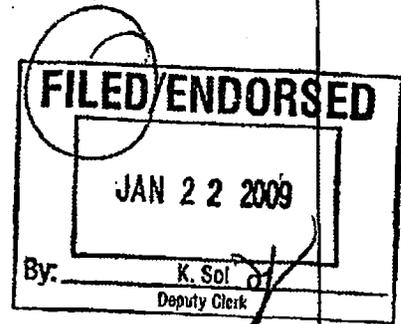
20 Executed on January 20, 2009, at Sacramento, California.

21
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25
26
27
28


May Marlowe

ORIGINAL

1 **BROOKS ELLISON**
State Bar No. 122705
2 **PATRICK J. WHALEN**
State Bar No. 173489
3 **THE LAW OFFICE OF BROOKS ELLISON**
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Telephone: (916) 448-2187
5 Facsimile: (916) 448-5346
E-mail: counsel@calattorneys.org



6 Attorneys for Plaintiff
7 California Attorneys, Administrative Law Judges,
And Hearing Officers in State Employment
8

9
10 **SUPERIOR COURT OF CALIFORNIA**
11 **COUNTY OF SACRAMENTO**

12 **CALIFORNIA ATTORNEYS,**
13 **ADMINISTRATIVE LAW JUDGES AND**
14 **HEARING OFFICERS IN STATE**
15 **EMPLOYMENT,**

16 Petitioner/Plaintiff,
vs.

17 **ARNOLD SCHWARZENEGGER** as, Governor
18 of the State of California; **DAVID GILB** as
19 Director of the Department of Personnel
Administration; **JOHN CHIANG**, Controller of
20 the State of California; and **DOES 1 through 10,**

21 Defendants/Respondents.
22

Case No. 34-2009-80000134
Related Cases: 34-2008-80000126
34-2009-80000135.

**AMENDED DECLARATION OF
PETER FLORES, JR. IN SUPPORT OF
VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

Date: January 29, 2009
Time: 9:00 a.m.
Dept.: 19

23
24 I, Peter Flores, Jr., declare as follows:

25
26 1. I am President of Petitioner/Plaintiff California Attorneys, Administrative Law
27 Judges and Hearing Officers in State Employment (CASE). CASE is the exclusive collective
28 bargaining representative of legal professionals in State Bargaining Unit 2 pursuant to

1 Government Code section 3520.5. CASE represents approximately 3400 legal professionals in
2 more than 80 different state departments, boards, and commissions. Approximately 3240
3 members are attorneys, administrative law judges, and hearing officers who are exempt from the
4 Fair Labor Standards Act (FLSA). All CASE members would be directly impacted if the
5 executive order were to be implemented.

6 2. CASE is currently in the process of negotiating a successor memorandum of
7 understanding (MOU) to the MOU which expired on June 30, 2007. Pursuant to Government
8 Code section 3517.8, the previous MOU remains in effect until a successor MOU is negotiated,
9 or until impasse is reached. I am familiar with the contents of the MOU which is presently in
10 effect.

11 3. On November 6, 2008, Defendant/Respondent Governor Arnold Schwarzenegger
12 sent a letter to state employees. (See Exh. A.) In that letter, Governor Schwarzenegger
13 announced that he was "proposing a combination of economic stimulus measures . . . revenue
14 increases, and spending reductions. . . ." (*Ibid.*) The letter then stated, "If approved by the
15 Legislature, these spending reductions will impact our state workers." (*Ibid.*, emphasis added.)
16 The Governor thereafter outlined his proposals that would impact state employees, including,
17 inter alia, a furlough of one day per month with a corresponding pay cut of approximately 5%.
18 (*Ibid.*) The Governor then stated in the same letter, "All the actions we're proposing must first
19 be approved by the Legislature." (*Ibid.*)

20 4. Also on November 6, 2008, the Governor issued a proclamation calling the
21 Legislature into special session to address the state's fiscal crisis. (See Exh. B.) The Governor
22 submitted proposed legislation to the Legislature in conjunction with that special session. (See
23 Exh. C.) In that proposed legislation, the Governor proposed to add section 19826.4 to the
24 Government Code, which read, in pertinent part:

25 Notwithstanding the Ralph C. Dills Act (Chapter 3 (commencing with section
26 3512) of Division 4 of Title 1) or any other provision of law, the Department of
27 Finance and the Department of Personnel Administration shall, commencing on
December 1, 2008 and ending on July 1, 2010, implement a program for the
furlough of state employees.

28 (*Ibid.*) The Legislature did not enact the Governor's proposals during the special session.

1 5. On December 1, 2008, the Governor issued two additional proclamations, each
2 calling for additional special sessions, one of which was convened pursuant to Proposition 58.
3 (See Exhs. D and E.) The proclamation under Proposition 58 recited that the Governor was
4 submitting proposed legislation to the Legislature to address the fiscal crisis. (See Exh. D.) The
5 Assembly Budget Committee analyzed the Governor's proposed legislation. (See Exh. F.) That
6 analysis revealed that the Governor's proposals included an identical plan to furlough state
7 employees for one day per month. (*Id.* at p. 14.) The Legislature did not enact the Governor's
8 proposals during the special sessions.

9 6. On December 19, 2008, Governor Arnold Schwarzenegger issued an executive
10 order (See Exh. G.) In that Order, the Governor directed the Department of Personnel
11 Administration to "implement a furlough of represented state employees and supervisors for two
12 days per month. . . ." (*Ibid.*) The furlough would be effective February 1, 2009, through June
13 30, 2010. Based on the number of workdays in a month, the furloughs would result in an
14 approximate 10 percent pay cut for all CASE members.

15 7. On January 9, 2009, Department of Personnel Administration (DPA) Director
16 David Gilb sent a memorandum to all state departments announcing that DPA had developed a
17 furlough plan as directed by the Governor in his executive order. (See Exh. H.) That
18 memorandum stated that general government operations would be closed on the first and third
19 Friday of each month, beginning on February 6, 2009. (*Ibid.*) Later that same day, Chief Deputy
20 Attorney General Jim Humes sent an email to all employees of the Attorney General's Office,
21 which stated, in pertinent part, "we are a separate constitutional office and we have decided to
22 decline to adopt Governor's approach [to implement furloughs]." (See Exh. I.) Also that same
23 day, California Treasurer (and former Attorney General) Bill Locker sent a letter to David Gilb.
24 In that letter, Treasurer Lockyer advised that "[b]ased on our legal review, we believe the
25 Governor has not established that he has the legal authority to impose furloughs and the related
26 salary cuts on state employees" and therefore elected not to comply with the furlough program.
27 (See Exh. J.) On January 12, 2009, I learned that four other independently elected statewide
28 constitutional officers also announced that they would decline to implement the furloughs,

1 including State Controller John Chiang, Lieutenant Governor John Garamendi, Secretary of State
2 Debra Bowen, and Superintendent Jack O'Connell.

3 8. The Fair Labor Standards Act (FLSA) appears in sections 201 through 219 of title
4 29 of the United States Code. As relevant to this action, the FLSA requires overtime to be paid
5 to employees who work more than 8 hours in a day or 40 hours in a workweek.¹ (29 U.S.C. §
6 207, subd. (a).) However, the FLSA also contains exemptions for certain professional
7 employees. (29 U.S.C. § 213.)

8 9. Pursuant to regulations promulgated by the Secretary of Labor, to be exempt from
9 the FLSA, employees must meet both the "salary test" and the "duties test." (29 C.F.R. §
10 541.300.) The salary basis test "is expressly applicable to public-sector employees." (*Auer v.*
11 *Robbins* (1997) 519 U.S. 452, 457.) Pursuant to section 6.2.B of the Memorandum of
12 Understanding (MOU) between the State and the legal professionals in State Bargaining Unit 2,
13 the exemption applicable to the approximately 600 administrative law judges and hearing
14 officers in Unit 2 is specifically conditioned upon satisfying both the "salary basis" and the
15 "duties" test.

16 10. Employers may not reduce the pay of exempt employees and still enjoy the
17 exemption, because "an employee is not paid on a salary basis if deductions from the employee's
18 predetermined compensation are made for absences occasioned by the employer or by the
19 operating requirements of the business." (29 C.F.R. § 541.602.) Any deduction in the pay of an
20 employee of a public agency for absences due to a budget-required furlough disqualifies the
21 employee from being paid on a salary basis in the workweek in which the furlough occurs." (29
22 C.F.R. § 541.710.)

23 11. Section 6.3 of the MOU between the State and the legal professionals in State
24 Bargaining Unit 2 provides that legal professionals who are exempt from the FLSA "are
25

26 ¹ As between state and federal law, California employers are required to satisfy whichever laws are more protective
27 to the employee. (See 29 U.S.C. § 218(a); 29 CFR § 778.5; *Aguilar v. Association for Retarded Citizens* (1991) 234
28 Cal.App.3d 21, 34-35; *Pacific Merchant Shipping Association v. Aubry* (9th Cir. 1990) 918 F.2d 1409, 1426-1427.)
Accordingly, California's overtime law for hours worked in excess of 8 hours per day applies, even though the
FLSA does not speak to daily overtime. (See Labor Code § 510.)

1 expected to work all hours necessary to accomplish their assignments and fulfill their
2 responsibilities.” That same section provides that all exempt legal professionals in CASE shall
3 work an average of 40 hours per week. Section 6.2 of the same MOU provides that “the regular
4 rate of pay is *full compensation* for all time that is required” to complete the duties. (Emphasis
5 added.)

6 12. The furlough contemplated by the Executive Order will not result in fewer hours
7 worked by the state’s legal professionals, but will result in a reduction in salary. CASE members
8 will still be obligated to work as many hours as are necessary to fulfill both their contractual
9 obligations to their employer and their ethical obligations to their clients. They also have state
10 and federal mandates that they must meet. The approximately 3200 exempt legal professionals
11 in CASE will necessarily have to work more than 8 hours on days other than their furlough days.
12 They will therefore be entitled to an as yet undetermined amount of overtime pay.

13 13. In my capacity of President of CASE, I have had an opportunity to meet hundreds
14 of CASE members, and I have discussed with them the impact the intended furlough will have
15 on their workplaces and their lives. I am familiar with the precarious financial situation many
16 CASE members are presently enduring. The salaries for legal professionals lag behind that of
17 other public sector legal employers by as much 50%. Many members have over \$100,000 in
18 educational debt including both undergraduate college and law school, and a salary reduction of
19 the magnitude contemplated will be financially ruinous.

20 14. If the furlough is imposed, all CASE members will suffer a reduction in pay of
21 approximately 10% per month for approximately 15 months. This pay reduction 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. Even if CASE members were later reimbursed their lost wages at
24 the conclusion of the furlough period, it would be too late to undo the damage done in the
25 interim to the financial interests of many CASE members.

26 15. Because CASE legal professionals have ethical obligations to their clients, as well
27 as contractual obligations to their employer, they will be required to work extra hours on non-
28 furlough days in order to competently perform their duties. The failure to complete their work

1 competently could expose them to discipline by both their employers and the State Bar.
2 Accordingly, many CASE members will be forced to change their work schedules, to their
3 detriment. CASE members may not be able to obtain childcare for their children, and at a
4 minimum will suffer incalculable harm in making alternative child care arrangements. The lives
5 of CASE members will be thrown into complete disarray due to the necessity of completely
6 altering their work schedules.

7 16. Respondent/Defendant Governor Arnold Schwarzenegger is the elected Governor
8 of the State of California. Pursuant to Government Code section 3513, subdivision (j), and
9 section 3517, the Governor is the employer of state employees in Bargaining Unit 2, for purposes
10 of bargaining or meeting and conferring in good faith under the Ralph C. Dills Act.

11 Respondent/Defendant David Gilb is the Director of DPA and is responsible for managing the
12 nonmerit aspects of the State's personnel system. DPA serves as the Governor's designated
13 representative for purposes of collective bargaining, and for purposes of meeting and conferring
14 with the exclusive representatives. (See Gov. Code § 19815.2; Gov. Code § 3517.)

15 Respondent/Defendant John Chiang is a constitutional officer and is the elected State Controller
16 of the State of California. (Cal. Const. Art. V, § 11.) Pursuant to Government Code section
17 12410, the State Controller shall superintend the fiscal concerns of the state. The Controller
18 shall audit all claims against the state, and may audit the disbursement of any state money, for
19 correctness, legality, and for sufficient provisions of law for payment. In addition, the Controller
20 shall draw warrants on the Treasurer for the payment of money directed by law to be paid out of
21 the State Treasury; but a warrant shall not be drawn unless authorized by law. (Gov. Code §
22 12440.)

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct and based on my personal knowledge, and if called to testify to
3 these facts, I would do so competently and truthfully.

4 Executed this 13th day of January, 2009, in San Francisco, California.

5 
6 _____
7 Peter Flores, Jr.

Exhibit A



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.



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 B



Office of the Governor

ARNOLD SCHWARZENEGGER
THE PEOPLE'S GOVERNOR

PROCLAMATION

11/06/2008

Special Session Proclamation 11/06/2008

PROCLAMATION

by the
Governor of the State of California

WHEREAS, an extraordinary occasion has arisen and now exists requiring that the Legislature of the State of California be convened in extraordinary session.

NOW, THEREFORE, I, ARNOLD SCHWARZENEGGER, Governor of the State of California, by virtue of the power and authority vested in me by Section 3(b) Article IV of the Constitution of the State of California, do hereby convene the Legislature of the State of California to meet in extraordinary session at Sacramento, California on the 6th day of November 2008, at a time to be determined, for the following purpose and to legislate upon the following subjects:

1. To consider and act upon legislation to address fiscal and budget-related matters.
2. To consider and act upon legislation to address the economy, including but not limited to efforts to stimulate California's economy and create and retain jobs.
3. To consider and act upon legislation to address the housing mortgage crisis.
4. To consider and act upon legislation to address the solvency of the Unemployment Insurance Fund.



IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed 6th day of November, 2008.

ARNOLD SCHWARZENEGGER
Governor of California

ATTEST:
DEBRA BOWEN
Secretary of State

Exhibit C

22, 23, 24 & 25 - Employee Compensation Changes

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An act to amend Section 19852 of, to amend, repeal, and add Section 19853 of, to add Section 19844.1 to, and to add and repeal Section 19826.4 of, the Government Code, relating to state employment, and declaring the urgency thereof, to take effect immediately.



THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 19826.4 is added to the Government Code, to read:

19826.4. (a) Notwithstanding the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1) or any other provision of law, the Department of Finance and the Department of Personnel Administration shall, commencing on December 1, 2008, and ending on July 1, 2010, implement a program for the furlough of state employees. The furloughs shall be for a period or periods not to exceed a total of 19 workdays, as defined in Section 19851, during the period the program is in effect.

(1) For purposes of this subdivision, "furlough" means the placement of employees on temporary, nonduty status to reduce payroll costs. An employee subject to furlough shall not receive compensation for any furlough period.

(2) The state may reduce employees' salaries, as defined in paragraph (1) of subdivision (c) of Section 19827.2, to accomplish the purposes of the furlough. A furlough 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 as described in Section 20960, 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.

(b) The Department of Personnel Administration and the Department of Finance shall jointly administer this section. The Department of Personnel Administration may adopt policies and procedures as needed to implement this section. The adoption,



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amendment, or repeal of those policies and procedures is hereby exempted from the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 commencing with Section 11340) of Part 1 of Division 3 of Title 2) and the Ralph C. Dills Act and shall become effective immediately upon that adoption, amendment, or repeal.

(c) For purposes of this section, "state employee" includes both of the following:

(1) All civil service employees of the state, including those persons exempted from the definition of "state employee" in subdivision (c) of Section 3513.

(2) Those persons exempted from the civil service pursuant to subdivisions (e) and (g) of Section 4 of Article VII of the California Constitution.

(d) This section shall not apply to employees subject to an operative memorandum of understanding, effective July 3, 2006, to July 2, 2010, inclusive, between the state and State Bargaining Unit 5.

(e) This section shall become inoperative on July 1, 2010, and, as of January 1, 2011, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2011, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 2. Section 19844.1 is added to the Government Code, to read:

19844.1. (a) Notwithstanding any other provision of law, personal leave, sick leave, annual leave, vacation, bereavement leave, holiday leave, and any other paid or unpaid leave, shall not be considered as time worked by the employee for the purpose of computing cash compensation for overtime or compensating time off for overtime.

(b) If subdivision (a) is in conflict with the provisions of a memorandum of understanding reached or amended on or after December 1, 2008, pursuant to Section



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3517.5, that memorandum of understanding shall be controlling without further legislative action, except that if those provisions of the memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 3. Section 19852 of the Government Code is amended to read:

19852. ~~When Notwithstanding any other provision of law, if the Governor~~ determines that the best interests of the state would be served thereby, the Governor may require that the 40-hour workweek established as the state policy in Section 19851 shall be worked in four days in any state agency or part thereof.

SEC. 4. Section 19853 of the Government Code is amended to read:

19853. (a) Except as provided in subdivision (c), all employees shall be entitled to the following holidays: 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, the day after Thanksgiving, December 25, the day chosen by an employee pursuant to Section 19854, and every day appointed by the Governor of this state for a public fast, thanksgiving, or holiday.

If a day listed in this subdivision falls on a Sunday, the following Monday shall be deemed to be the holiday in lieu of the day observed. If November 11th falls upon a Saturday, the preceding Friday shall be deemed to be the holiday in lieu of the day observed. Any employee who may be required to work on any of the holidays included in this subdivision, and who does work on any of these holidays, shall be entitled to be paid compensation or given compensating time off for that work in accordance with their classification's assigned workweek group. For the purpose of computing the



number of hours worked, time when an employee is excused from work because of holidays, sick leave, vacation, annual leave, or compensating time off, shall be considered as time worked by the employee.

(b) If the provisions of subdivision (a) are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

(c) Any employee, who is either excluded from the definition of state employee in subdivision (c) of Section 3513, or is a nonelected officer or employee of the executive branch of government who is not a member of the civil service, shall be entitled to the following holidays, with pay, in addition to any official state holiday appointed by the Governor:

(1) 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, December 25, and any personal holiday chosen pursuant to Section 19854. The department head or designee may require an employee to provide five working days' advance notice before a personal holiday is taken, and may deny use subject to operational needs.

(2) When November 11 falls on a Saturday, employees shall be entitled to the preceding Friday as a holiday with pay.



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(3) When a holiday, other than a personal holiday or November 11, falls on a Saturday, an employee shall, regardless of whether he or she works on the holiday, only accrue an additional eight hours of personal holiday credit per fiscal year for the holiday. The holiday credit shall be accrued on the actual date of the holiday and shall be used within the same fiscal year.

(4) When a holiday other than a personal holiday falls on Sunday, employees shall be entitled to the following Monday as a holiday with pay.

(5) Employees who are required to work on a holiday shall be entitled to pay or compensating time off for this work in accordance with their classification's assigned workweek group.

(6) Less than full-time employees shall receive holidays in accordance with Department of Personnel Administration rules.

(d) (1) Any employee, as defined in subdivision (c) of Section 3513, may elect to receive eight hours of holiday credit for the fourth Friday in September, known as "Native American Day," in lieu of receiving eight hours of personal holiday credit in accordance with Section 19854.

(2) It is not the intent of the Legislature, by the amendments to this subdivision that add this paragraph, to increase the personal holiday credit that an employee receives pursuant to Section 19854.

(e) This section shall become effective with regard to the March 31 holiday only when the Department of Personnel Administration notifies the Legislature that the language contained in this section has been agreed to by all exclusive representatives, and the Department of Personnel Administration authorizes this holiday to be applied



compensating time off, or any other leave shall not be considered as time worked by the employee for the purpose of computing cash compensation for overtime or compensating time off for overtime.

(e) Any state employee, as defined in subdivision (c) of Section 3513, may elect to receive eight hours of holiday credit for the fourth Friday in September, known as "Native American Day," in lieu of receiving eight hours of personal holiday credit in accordance with Section 19854.

(f) Persons employed on less than a full-time basis shall receive holidays in accordance with the Department of Personnel Administration rules.

(g) If subdivision (a) is in conflict with the provisions of a memorandum of understanding executed or amended on or after December 1, 2008, pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if those provisions of the memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

(h) This section shall become operative on December 1, 2008.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for the provisions of this act to be applicable as soon as possible in the 2008-09 fiscal year, and thereby facilitate the orderly administration of state government at the earliest possible time, it is necessary that this act take effect immediately.



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LEGISLATIVE COUNSEL'S DIGEST

Bill No.

as introduced, _____.

General Subject: State employment: furloughs: holidays.

The Ralph C. Dills Act permits state employees to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations, as specified. The act authorizes the Governor and a recognized employee organization to enter into a written memorandum of understanding for presentation to the Legislature. Existing law requires the Department of Personnel Administration to establish and adjust salary ranges for each class of position in the state civil service, subject to specified merit limits. The California Constitution exempts certain persons employed by the state from civil service, including specified deputies or employees selected by boards, commissions, or state officers appointed by the Governor.

This bill would require the Department of Finance and the Department of Personnel Administration, commencing December 1, 2008, and ending on July 1, 2010,



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to implement a furlough program for civil service employees of the state and the exempt employees described above, as specified.

Existing law requires the department to provide the extent to which, and establish the method by which, ordered overtime is compensated for state employees.

This bill would prohibit paid or unpaid leave from being considered as time worked by the employee for the purpose of computing cash compensation for overtime or compensating time off for overtime.

Existing law provides that state employees are entitled to specified holidays. Existing law provides that any employee who may be required to work on any of those holidays, and who does work on any of those holidays, shall be entitled to be paid compensation or given compensating time off for that work in accordance with the assigned workweek group of the employee's classification.

This bill, effective December 1, 2008, would reduce the number of holidays to which state employees are entitled by eliminating the holidays commonly known as Lincoln Day and Columbus Day. The bill would provide that any state employee who works on any of those remaining holidays shall be entitled to receive straight-time pay and 8 hours of holiday credit. The bill would add provisions regarding the use of holiday credit and the holidays to which persons employed less than full time are entitled.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.



22 - Employee Compensation Changes

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An act to add and repeal Section 19826.45 of the Government Code,
relating to state employment.



THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

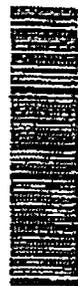
SECTION 1. Section 19826.45 is added to the Government Code, to read:

19826.45. (a) Notwithstanding the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1) or any other provision of law, the Department of Finance and the Department of Personnel Administration shall, commencing on December 1, 2008, and ending on July 1, 2010, implement a program for the furlough of exempt employees. The furloughs shall be for a period or periods not to exceed a total of 19 workdays, as defined in Section 19851, during the period the program is in effect.

(1) For purposes of this subdivision, "furlough" means the placement of exempt employees on temporary, nonduty status to reduce payroll costs. An employee subject to furlough shall not receive compensation for any furlough period.

(2) The state may reduce exempt employees' salaries, as defined in paragraph (1) of subdivision (c) of Section 19827.2, to accomplish the purposes of the furlough. A furlough 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 as described in Section 20960, 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.

(b) The Department of Personnel Administration and the Department of Finance shall jointly administer this section. The Department of Personnel Administration may adopt policies and procedures as needed to implement this section. The adoption,



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amendment, or repeal of those policies and procedures is hereby exempted from the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2) and the Ralph C. Dills Act and shall become effective immediately upon that adoption, amendment, or repeal.

(c) For purposes of this section, "exempt employee" means a person specified in subdivision (d) or (f) of Section 4 of Article VII of the California Constitution.

(d) This section shall become inoperative on July 1, 2010, and, as of January 1, 2011, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2011, deletes or extends the dates on which it becomes inoperative and is repealed.



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LEGISLATIVE COUNSEL'S DIGEST

Bill No.

as introduced, _____.

General Subject: Exempt employees of the state: furlough.

Existing law requires the Department of Personnel Administration to establish and adjust salary ranges for each class of position in the state civil service, subject to specified merit limits. The California Constitution exempts certain persons employed by the state from civil service, including members of boards and commissions, state officers directly appointed by the Governor, and employees of the Lieutenant Governor's office directly appointed or employed by the Lieutenant Governor.

This bill would require the Department of Finance and the Department of Personnel Administration, commencing on December 1, 2008, and ending on July 1, 2010, to implement a furlough program, as specified, for the exempt employees described above.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.



Exhibit D



Office of the Governor

ARNOLD SCHWARZENEGGER
THE PEOPLE'S GOVERNOR

PROCLAMATION

12/01/2008

Prop 58 Special Session Proclamation 12/01/2008

PROCLAMATION

by the
Governor of the State of California

WHEREAS on this date, pursuant to Section 10(f) of Article IV of the Constitution of the State of California, I have proclaimed a fiscal emergency; and

WHEREAS on this date, I am submitting to the Legislature proposed legislation to address that fiscal emergency; and

WHEREAS this extraordinary occasion having arisen and now existing, it requires that the Legislature of the State of California be convened in extraordinary session.

NOW, THEREFORE, I, ARNOLD SCHWARZENEGGER, Governor of the State of California, by virtue of the power and authority vested in me by in accordance with Section 10(f) of Article IV of the Constitution of the State of California, do hereby convene the Legislature of the State of California to meet in extraordinary session at Sacramento, California on the 1st day of December 2008, at a time to be determined, to consider and act upon legislation to address the fiscal emergency proclaimed by me this day.



IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the state of California to be affixed this 1st day of December, 2008.

ARNOLD SCHWARZENEGGER
Governor of California

ATTEST:
DEBRA BOWEN
Secretary of State

Exhibit E



Office of the Governor

ARNOLD SCHWARZENEGGER
THE PEOPLE'S GOVERNOR

PROCLAMATION

12/01/2008

Special Session Proclamation 12/01/2008

PROCLAMATION

by the
Governor of the State of California

WHEREAS, an extraordinary occasion has arisen and now exists requiring that the Legislature of the State of California be convened in extraordinary session.

NOW, THEREFORE, I, ARNOLD SCHWARZENEGGER, Governor of the State of California, by virtue of the power and authority vested in me by Section 3(b) Article IV of the Constitution of the State of California, do hereby convene the Legislature of the State of California to meet in extraordinary session at Sacramento, California on the 1st day of December 2008, at a time to be determined, for the following purpose and to legislate upon the following subjects:

1. To consider and act upon legislation to address the economy, including but not limited to efforts to stimulate California's economy, create and retain jobs, and streamline the operations of state and local governments.
2. To consider and act upon legislation to address the housing mortgage crisis.
3. To consider and act upon legislation to address the solvency of the Unemployment Insurance Fund.



IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed 1st day of December, 2008.

ARNOLD SCHWARZENEGGER
Governor of California

ATTEST:
DEBRA BOWEN
Secretary of State

Exhibit F



SUMMARY OF GOVERNOR'S PROPOSED DECEMBER 2008-09 BUDGET ADJUSTMENTS

DECEMBER 2, 2008

Noreen Evans

CHAIR, ASSEMBLY BUDGET COMMITTEE

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OVERVIEW

Due to the continuing downturn in the world, national, and state economies, General Fund revenue projections have fallen by \$11.2 billion in 2008-09 and \$13 billion for 2009-10.

The Governor has declared a fiscal emergency and called a "Proposition 58" Special Session to address the fiscal emergency and proposes a mix of solutions, including \$3.5 billion in revenue increases and \$3.8 billion in budget cuts. These solutions do not completely close the \$11.2 billion revenue shortfall, but together with various cash solutions would ensure the state is able to meet all its remaining spending obligations.

In addition, the Governor's proposals would result in \$9.3 billion in new revenues and \$5.1 billion in cuts for 2009-10.

The Governor's proposed changes are identical to those proposed in November for the 2007-08 4th Extraordinary Session. However, the Governor's proposal now assumes an implementation date of February 1, 2009, which results in less revenues/savings for the 2008-09 budget year than estimated in November.

The intent of this report is to provide a general understanding of the Governor's proposals.

Key points about a "Proposition 58" Special Session:

- ◆ Governor's proclamation must include solutions to address the fiscal emergency.
- ◆ The Legislature has 45 days to act to address the fiscal emergency.
- ◆ If the Legislature does not act within the 45 day period, then the Legislature cannot act on any other Legislation until it acts to address the fiscal emergency.
- ◆ Urgency measures and tax levies take effect immediately; majority vote measures generally take effect 90 days after the close of the Special Session.

SUMMARY OF BUDGET SOLUTIONS			
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(in millions)

Revenue Solutions	2008-09	2009-10	Total
1.5 cent Sales Tax Increase (for 3 years)	\$2,628	\$6,744	\$9,372
9.9% Oil Severance Tax	\$354	\$845	\$1,200
Expand sales tax to certain services	\$272	\$1,154	\$1,426
5 cent a drink Alcohol Tax Increase	\$195	\$585	\$780
Total Revenue Solutions	\$3,450	\$9,329	\$12,779
Expenditure Solutions			
Proposition 98 Cut	\$2,500	\$24	\$2,524
UC/CSU	\$132	\$132	\$264
Medi-Cal	\$95	\$655	\$750
Developmental Disabilities	\$26	\$60	\$86
SSI/SSP	\$195	\$1,078	\$1,273
CaWORKs	\$137	\$776	\$913
In-Home Supportive Services	\$50	\$327	\$377
Public Transit	\$153	\$306	\$690
Corrections	\$10	\$598	\$608
Local Public Safety	\$189	\$501	\$690
Williamson Act	\$35	\$35	\$70
State Employee Compensation	\$247	\$555	\$802
Total Expenditure Solutions	\$3,777	\$5,078	\$8,856

K-12 EDUCATION

2008-09 Budget Adjustment Proposals:

- ◆ **Total Proposition 98 for K-14 Education.** Reduces Proposition 98 funding in the current year by \$2.5 billion providing a total of \$55.6 billion to K-12 schools and community colleges.
- ◆ **K-12 Reductions:**
 - ◆ Eliminates the \$244.3 million or 0.68 percent COLA for K-12 district and county office revenue limits.
 - ◆ Reduces school district revenue limit funding by \$1.791 billion.
 - ◆ Proposes categorical program flexibility to allow districts to transfer funds from certain restricted prior year balances as well as current year balances from nearly all categorical programs to offset the reduction to revenue limits. Districts using this flexibility are required to adopt a transfer plan at a regularly scheduled school board meeting and agree to report the amounts transferred and the programs affected.
 - ◆ Captures \$71.2 million in prior year savings from several categorical programs due to underutilization. These reductions include: \$28.6 million for K-3 Class Size Reduction, \$2.6 million for Principal Training, \$3.3 million for Alternative Certification and \$1 million for the Pupil Retention Block Grant.
 - ◆ Reduces \$55 million by capping child care programs to reflect the amount of funding that has not been allocated for contracts with providers. This will not result in a reduction in services to families.
 - ◆ Reduces \$42 million from Stage 2 and Stage 3 child care programs based on revised estimates for lower than anticipated caseload. Stage 2 costs are revised down by \$27 million and Stage 3 costs are revised down by \$15 million.
 - ◆ Reappropriates \$108 million from prior year child care savings for CalWORKs Stage 2 and 3 costs in 2008-09. The 2008-09 budget used anticipated one-time savings from the After School Safety and Education (ASES) program to fund CalWORKs however the ASES savings did not materialize.

HIGHER EDUCATION

University of California (UC)

2008-09 Budget Adjustment Proposals:

- ◆ Reduces UC by \$65.5 million in unallocated reductions. Together with UC's \$33.1 million share of the \$190 million statewide savings requirement for state operations assumed in the enacted 2008 Budget, UC will approximately reflect a 10 percent reduction, consistent with the reduction level proposed in the January 2008-09 Governor's Budget.

California State University (CSU)

2008-09 Budget Adjustment Proposals:

- ◆ Reduces CSU by \$66.3 million in unallocated reductions. Together with CSU's \$31.1 million share of the \$190 million statewide savings requirement for state operations assumed in the enacted 2008 Budget, CSU will reflect approximately a 10 percent reduction, consistent with the reduction level proposed in the January 2008-09 Governor's Budget.

Hastings School of Law (HCL)

2008-09 Budget Adjustment Proposals:

- ◆ Reduces Hastings by \$402,000 in unallocated reductions. Together with HCL's \$114,000 share of the \$190 million statewide savings requirement for state operations assumed in the enacted 2008 Budget, HCL will reflect approximately a 10 percent reduction, consistent with the reduction level proposed in the January 2008-09 Governor's Budget.

California Community Colleges (CCC)

2008-09 Budget Adjustment Proposals:

- ◆ Reduces the 0.68 percent COLA, or \$39.8 million, for CCC apportionments that was enacted in the education trailer bill.
- ◆ Reduces \$292.4 million from the amount for general purpose apportionments and provides categorical flexibility similar to the proposal for K-12 LEAs.
- ◆ Provides community college districts the flexibility to transfer categorical allocations to the district's General Fund for any purpose up to the amount of their share of the \$290.1 million reduction. Districts that decide to use this flexibility must adopt plans in public meetings and agree to report the amounts and programs from which transfers were made and the purpose for which those funds were used.

TRANSPORTATION

Local Public Transit

2008-09 Budget Adjustment Proposals:

- ◆ Eliminates all Public Transportation Account (PTA) funding for the State Transit Assistance Program, thus eliminating all state support for local transit operations, which totals \$153 million in 2008-09 and \$306 million in 2009-10. This is on top of about \$1 billion in cuts to public transit approved in the Budget Act.

Vehicle Registration Fees

2008-09 Budget Adjustment Proposals:

- ◆ Increases vehicle registration fees by \$12 to generate \$92 million in 2008-09 and \$359 million in 2009-10 for the Motor Vehicle Account (MVA) which will be used to backfill funds that are proposed to be shifted from the Department of Motor Vehicles to local public safety programs. This fee increase is on top of the \$11 fee increase approved in the Budget Act.

HUMAN SERVICES

Department of Social Services

2008-09 Budget Adjustment Proposals:

Supplemental Security Income/State Supplementary Program (SSI/SSP)

- ◆ Reduces the SSI/SSP payment to the federal minimum effective May 1, 2009, reducing the grant for an aged/blind individual by \$40 and for a couple by \$117. The General Fund reduction generates \$176.5 million in 2008-09 and \$1.062 billion 2009-10. The proposal impacts 1.2 million families.
- ◆ Eliminates the Cash Assistance Program for Immigrants (CAPI) effective May 1, 2009, resulting in General Fund savings of \$18.9 million in 2008-09 and \$114.1 million in 2009-10. The CAPI program provides benefits to aged, blind, and disabled legal immigrants who successfully complete an application process. The proposal impacts approximately 11,000 families.

CalWORKs

- ◆ Reduces CalWORKs grants by 10 percent effective May 1, 2009, resulting in General Fund savings of \$46.6 million in 2008-09 and \$279.6 million in 2009-10. This proposal would reduce the maximum monthly grant for a family of three from \$723 to \$651.
- ◆ Proposes a modified CalWORKs Safety Net program to eliminate cash aid for children whose parents have exceeded their 60-month time limit and who are not meeting work participation requirements. This would result in General Fund savings of \$40.3 million in 2008-09 and \$242 million in 2009-10 and assumes a May 1, 2009 implementation. The proposal eliminates aid for 98,000 children.
- ◆ Eliminates cash aid for children whose parents are non-citizens or certain types of felons and if they have exceeded their 60-month time limit. This would result in General Fund savings of \$38.4 million in 2008-09 and \$230.3 million in 2009-10. This proposal eliminates aid for 82,000 children.
- ◆ Proposes a face-to-face self-sufficiency review every six months with a county worker for CalWORKs families not meeting work requirements, with failure to attend resulting in a full family sanction, or complete elimination of cash assistance. This results in General Fund savings of \$11.7 million in 2008-09 and \$94.8 million in 2009-10 assuming a May 1, 2009 start date.

In-Home Supportive Services (IHSS)

- ◆ Eliminates domestic and related services, including meal preparation, laundry, and cleaning services, for IHSS recipients with a functional index score below 4. This results in General Fund savings of \$11.6 million in 2008-09 and \$71.4 million in 2009-10 assuming a May 1, 2009 implementation.
- ◆ Eliminates the state buyout program for IHSS recipients with a functional index score below 4. This results in General Fund savings of \$6.2 million in 2008-09 and \$37 million in 2009-10 assuming a May 1, 2009 start date.
- ◆ Limits state participation in wages of IHSS workers to the state minimum wage plus \$0.60 per hour for health benefits and assumes a May 1, 2009 implementation. This results in General Fund savings of \$41.5 million in 2008-09 and \$248.8 million in 2009-10.

California Food Assistance Program (CFAP)

- ◆ Eliminates the CFAP effective July 1, 2009, resulting in General Fund savings of \$30.3 million in 2009-10. This state-only program provides food benefits to low-income legal non-citizens.

HEALTH CARE SERVICES

Department of Developmental Services

2008-09 Budget Adjustment Proposals:

- ◆ Proposes a three percent reduction to regional center service providers effective February 1, 2008. The reduction exempts certain types of providers and the department may consider other exemptions necessary to ensure the health and safety of consumers. Additionally, the proposal includes a suspension of the 1:66 coordinator-to-consumer ratio, but exempts from this suspension consumers on the federal Home and Community Based Services waiver, those three years of age or younger in the Early Start Program, and consumers moving from a developmental center into the community. These changes result in General Fund savings of \$25.5 million in 2008-09 and \$60.0 million in 2009-10.

Department of Health Care Services

2008-09 Budget Adjustment Proposals:

- ◆ Eliminates Medi-Cal "optional benefits," including: adult dental, chiropractic, incontinence creams and washes, acupuncture, audiology, speech therapy, optometry/optometrists, optician/optical lab services, podiatry, and psychology services. Results in General Fund savings of \$19.7 million in 2008-09 and \$129.4 million in 2009-10. The Governor proposed this in his 2008-09 budget and it was rejected by the Legislature. An estimated 3 million beneficiaries will lose access to these benefits.
- ◆ Reduces Medi-Cal benefits for newly qualified immigrants (in the U.S. for less than 5 years) and immigrants who Permanently Reside Under the Color of Law (PRUCOL) to the level currently provided to undocumented immigrants. Immigrants would retain emergency services, pregnancy-related services, long-term care in a nursing facility, and breast and cervical cancer treatment. Results in General Fund savings of \$9.4 million in 2008-09 and \$139.9 million in 2009-10. The Governor proposed this in his 2008-09 budget and it was rejected by the Legislature. 90,000 individuals will lose full scope Medi-Cal.
- ◆ Implements monthly eligibility determination for emergency services for undocumented immigrants. Currently, this population receives up to six months of health services after initial eligibility determination. Results in General Fund savings of \$4.8 million in 2008-09 and \$71.2 million in 2009-10. The Governor proposed this in his 2008-09 budget and it was rejected by the

Legislature. This would affect 3,700 individuals in 2008-09 and 22,000 individuals in 2009-10 and annually.

- ◆ Reduces the income level for new applicants to the Section 1931(b) program to the pre-March 2000 standard of an average of approximately 72 percent of the federal poverty level, and defines under-employment as the principal wage earner working less than 100 hours a month for persons applying for Section 1931(b) and for the medically needy program. Results in General Fund savings of \$2.6 million in 2008-09, \$88.2 million in 2009-10. The Governor proposed this in his 2008-09 budget and it was rejected by the Legislature. Twenty six thousand individuals in 2008-09, 182,000 individuals in 2009-10, and 429,000 individuals annually will no longer be eligible for no cost Medi-Cal.
- ◆ Shifts federal Safety Net Care Pool funding from designated public hospitals to the California Children's Services, Genetically Handicapped Persons, Medically Indigent Adult Long-Term Care, and Breast and Cervical Cancer Treatment programs, which are eligible for these funds. Results in no General Fund savings in 2008-09 and \$54.2 million in 2009-10. The Governor proposed this in his 2008-09 budget and it was rejected by the Legislature.
- ◆ Reinstates share of cost for Medi-Cal for aged, blind, and disabled individuals with incomes over the SSI/SSP limits. Eligibility for Medi-Cal without a share of cost was expanded in January of 2001 from 69 percent up to 127 percent of the federal poverty level. This proposal aligns eligibility with the SSI/SSP limits and results in General Fund savings of \$14.3 million in 2008-09 and \$185.8 million in 2009-10. Seventy three thousand individuals will no longer be eligible for no cost Medi-Cal.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION

Williamson Act

2008-09 Budget Adjustment Proposals:

- ◆ Eliminates an annual \$34.7 million General Fund payment to local governments that partially backfills a loss of property tax revenues from local landowners who enter into land protection contracts in exchange for lower property taxes under the Williamson Act.

While local governments can cancel contracts if state funding is eliminated, they cannot begin to collect taxes based on the property's full value until four years have elapsed. After four years, the property is annually taxed at an incrementally higher value over a five-year period. In the sixth year, the property is taxed at full value.

PUBLIC SAFETY

Department of Corrections and Rehabilitation

2008-09 Budget Adjustment Proposals:

- ◆ Reduces funding by \$15.8 million by eliminating parole supervision, after release from prison, for offenders without current or previous convictions for serious, violent, or sexual crimes. Savings from this change in state parole policy are projected to grow to \$456.6 million in 2009-10.
- ◆ Implements comprehensive credit reform that will authorize the California Department of Corrections and Rehabilitation to provide up to four months of earned credit for successful program completion by eligible inmates, authorize consistent day-for-day credit for all eligible inmates in state prison and those who are in jail pending transfer to state prison, and provide credits to inmates who are awaiting assignment to a conservation camp. These changes are similar to credit reforms included in the August Revise and will result in current year costs of \$6.1 million but will provide for ongoing savings of \$90.5 million beginning in 2009-10.
- ◆ Adjusts the statutory threshold values for property crimes to reflect inflation since 1982, which will result in ongoing savings of \$51.3 million beginning in 2009-10. This proposal was included in the August Revise.

Local Public Safety

2008-09 Budget Adjustment Proposals:

- ◆ Eliminates funding provided to counties that operate juvenile camps and ranches resulting in current year savings of \$12.3 million, which grows to \$29.4 million in 2009-10.
- ◆ Eliminates funding provided to county sheriffs of specified small and rural counties, which will result in ongoing savings of \$16.7 million beginning in 2009-10.
- ◆ Provides \$92 million in 2008-09 and \$359 million in 2009-10 in Vehicle License Fee (VLF) funding for specific law enforcement grant programs. This proposal will eliminate General Fund support of these programs resulting in savings of \$152.5 million in 2008-09 and \$397.5 million in 2009-10. There will be a \$12 increase in the annual vehicle registration fee to backfill Department of Motor Vehicle operations currently supported by the VLF funds.

GENERAL GOVERNMENT

Employee Compensation

2008-09 Budget Adjustment Proposals:

- ◆ Requires state employees to take a one day furlough each month between February 1, 2009 and June 30, 2010. This would produce approximately \$203 million in General Fund savings in 2008-09 and \$451 million in 2009-10.
- ◆ Eliminates two state holidays (likely Lincoln and Columbus days) and premium pay for hours worked on all remaining holidays. This would produce approximately \$26.3 million in General Fund savings in 2008-09 and \$74.5 million in 2009-10.
- ◆ Changes overtime calculations to be based on actual time worked. This would produce approximately \$12.5 million in General Fund savings in 2008-09 and \$30 million in 2009-10.
- ◆ Allows establishment of "alternative work schedules" such as 10 hours per day, four days per week. Legislation may also be introduced regarding flexibility for meal and rest periods.

Office of Emergency Services

2008-09 Budget Adjustment Proposals:

- ◆ Eliminates funding for various local assistance programs administered by the Office of Emergency Services resulting in current year savings of \$23.9 million, which grows to \$57.4 million in 2009-10. Programs that will be eliminated as a result of this reduction include Vertical Prosecution Block Grants, Rural Crime Prevention, California Multi-jurisdictional Methamphetamine Enforcement Teams, High Technology Theft Apprehension Program, and Sexual Assault Felony Enforcement Teams.

REVENUE AND TAXATION PROPOSALS

Sales and Use Tax

2008-09 Budget Adjustment Proposals:

- ◆ Increases the total state sales and use tax (SUT) rate by 1.5 percent (to a total of 7.25 percent) effective for a three-year period starting on February 1, 2009 (assuming enactment in December). Existing local uniform tax rates total an additional 1.5 percent, and optional local add-on rates may add up to another 2 percent. Thus, the Governor's proposed increase would result in total combined SUT rates varying from 8.75 percent to 10.75 percent, depending on the locality. The Administration estimates that this rate increase will generate \$2.41 billion in 2008-09 and \$6.608 billion in 2009-10. These amounts include \$218 million in 2008-09 and \$713 million in 2009-10 that would be transferred to the Transportation Investment Fund under Proposition 42.
- ◆ Broadens the SUT to include appliance and furniture repair, vehicle repair, golf, and veterinary services, effective March 1, 2009, and to amusement parks and sporting events, effective April 1, 2009. The Administration estimates that this broadening will produce \$272 million in 2008-09 and \$1.154 billion in 2009-10.
- ◆ Imposes an oil severance tax of 9.9 percent of gross value of oil produced in California, effective February 1, 2009. Low-value stripper oil would be exempt, as would oil owned or produced by the state or local governments. The Administration estimates that this tax will generate \$354 million in 2008-09 and \$846 million in 2009-10.
- ◆ Increases excise taxes on alcoholic beverages by the equivalent of a nickel a drink (1.5 ounces of spirits, 12 ounces of beer, or 5 ounces of wine), effective March 1, 2009. The Administration estimates that this tax increase will generate \$195 million in 2008-09 and \$585 million in 2009-10. The Administration also proposes to use these revenues for drug and alcohol abuse treatment and prevention programs.
- ◆ Imposes an oil severance tax of 9.9 percent of gross value of oil produced in California, effective January 1, 2009. Low-value stripper oil would be exempt, as would oil owned or produced by the state or local governments. The Administration estimates that this tax will generate \$354 million in 2008-09 and \$1.201 billion in 2009-10.

Exhibit G



Office of the Governor

ARNOLD SCHWARZENEGGER
THE PEOPLE'S GOVERNOR

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

Exhibit H



MEMORANDUM



DATE: January 9, 2009

TO: Agency Secretaries
Undersecretaries
Directors

FROM: David A. Gilb
Director
Office of the Director
(916) 322-5193; FAX (916) 322-8376

SUBJECT: State Employee Furlough per Governor's Executive Order S-16-08

To reduce current spending to ensure that essential services of the State are not jeopardized and the public health and safety is preserved, the Department of Personnel Administration, under the Governor's authority and at the direction of the Governor, has developed a furlough plan that will result in the closing of general government operations on the first and third Fridays of each month, beginning this February. As such, these unpaid furlough days are not work days and employees shall not report to work. The first furlough day under this plan will be February 6, 2009.

DPA will post details on its website early next week and send a memo to personnel offices with additional information.

For operations that cannot close, Agency Secretaries (and Directors who do not report to an agency) may request approval from DPA to use a "self-directed" furlough for specific positions. There will be two types of self-directed furlough:

- Employees take two furlough days each month but on days chosen by the employee and approved by the supervisor. For example, revenue-generating positions may be considered for this type of furlough.
- Employees accrue two furlough days per month to be taken when feasible. Furlough days that cannot be used within the same month must be taken within two years following the end of the furlough program. Furlough days will not be cashed out. Posted positions in 24/7 facilities such as prisons and hospitals automatically qualify for this self-directed furlough and do not require prior approval from DPA.

Salaries will be adjusted to reflect the unpaid furlough days, but benefits will remain the same (i.e., the furlough will not affect payouts for unused leave, service credit, health and retirement benefits, etc.)

Please note: The state continues to meet with representatives for state employees about the impact of this program and will notify you of any further developments.

Exhibit I

Ellison Wilson Advocacy

From: James Humes [James.Humes@doj.ca.gov]
Sent: Friday, January 09, 2009 5:49 PM
To: All DOJ All DOJ
Subject: DOJ's Fiscal Mitigation Measures

Colleagues: The DOJ has been a leader in finding constructive solutions to the State's fiscal crisis. Last year, we announced fiscal austerity measures that included a soft hiring freeze, a process to more closely review contracts, and travel restrictions. These measures worked: at the end of the fiscal year we were able to return over \$17 million to the General Fund. This year, our budget was cut by \$51 million—more than 10% of our General Fund revenues, which has forced us to tighten our belts even further. But by exercising fiscal prudence, we have been able to meet our budget challenges without lay-offs and while still providing excellent service to the People of California.

As you know the State's fiscal troubles are getting worse, and the State now faces a projected \$40 billion deficit. To address the deficit, Governor Schwarzenegger recently issued an executive order ordering state employees under his control to be furloughed two days each month beginning February 1. He also ordered agencies under his authority to initiate the process to prepare for possible layoffs. While we in the DOJ will continue to do more than our part in finding budget solutions, we are a separate constitutional office and we have decided to decline to adopt Governor's approach. Instead, we are implementing alternative measures that will enable us to meet the same fiscal targets without furloughing or laying off employees.

These alternative measures will allow us to achieve our budgetary targets in a more constructive way that will better promote the State's interests. Still, these measures will impose yet additional burdens on us, and we ask your cooperation, understanding, and help as we deploy them.

Effective immediately, the following fiscal measures will be implemented:

- 1. Employees May and Are Encouraged to Voluntarily Participate in the Governor's Furlough Plan When it Becomes Effective.**
- 2. A More Stringent Hiring Freeze Is Being Implemented.** This hiring freeze will include the following terms:
 - ? All formal job offers made and accepted before today will be honored.
 - ? Vacancies can be filled only if filling the position is mission critical and it is approved by the division head and the Chief Deputy Attorney General through the exemption process.
- 3. Contract Review.** Except contracts for expert witnesses and contracts for outside counsel, all contracts under \$25,000 must be reviewed and approved by the Budget Office. Existing procedures will continue to apply to contracts over \$25,000.
- 4. Purchase Orders Over \$5,000 Must Be Reviewed and Approved by the Budget Office Before the Actual Purchase.**
- 5. Service Authorization Requests Over \$1,000 Must Be Reviewed and Approved by the Budget Office Before Obtaining the Service.**
- 6. Discretionary Travel and Conferences, and External Training Will Be Denied.**
- 7. Discretionary Overtime Is Prohibited for Those Employees Who Are Eligible to Earn It.** If a mission critical activity arises that would require overtime, overtime may be approved by the employee's division head or their designee (who must be no lower than the third management level within the division). Compensating time off (CTO) will be the method of paying approved overtime whenever possible.
- 8. Targeted Transfers of Personnel from General Fund to Reimbursable Positions Will Be Considered.**

Thank you. Jim

Exhibit J



BILL LOCKYER
TREASURER
STATE OF CALIFORNIA

January 9, 2009

David A. Gilb, Director
Department of Personnel Administration
1515 "S" Street, North Building, Suite 400
Sacramento, CA 95811-7243

RE: State Employee Furlough per Governor's Executive Order S-16-08

Dear Mr. Gilb:

As acknowledged by representatives of the Governor's Office during a telephone call today with representatives of the constitutional officers, the Governor's Executive Order S-16-08 may not be imposed on the constitutional officers. After careful consideration of the Governor's Executive Order and a thorough review of the issues by our legal office, the State Treasurer's Office will not comply with the furlough program provided for in the Executive Order, including the most recent announcement regarding closing State offices on the first and third Friday of each month. Based on our legal review, we believe that the Governor has not established that he has the legal authority to impose furloughs and the related salary cuts on state employees.

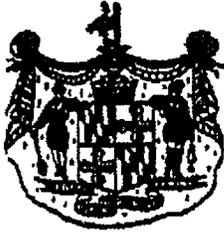
This office is acutely aware of the serious financial issues facing the State of California. We have committed our resources, personnel, and energies to identifying ways in which the Treasurer's Office can conduct its business in the most efficient, cost effective manner possible, in addition to assisting the State's decision-makers in identifying various options to resolve the crisis, and we have worked successfully with the Department of Finance throughout the year to reduce our costs and increase our revenues. We will continue to do so and will continue to implement changes in how the Treasurer's Office performs its work to both reduce expenditures and contribute savings to the General Fund. However, we will not comply with an Executive Order that we are convinced does not rest on solid legal grounds and which would impose such a hardship on the backs of our employees.

Sincerely,

A handwritten signature in black ink that reads "Bill Lockyer".

BILL LOCKYER
California State Treasurer

Exhibit K



The State of Maryland

Executive Department

EXECUTIVE ORDER 01.01.2008.20

State Employees' Furlough and Temporary Salary Reduction Plan

- WHEREAS, During fiscal year 2009, the State of Maryland, like other states in our nation, has experienced significant revenue shortfalls which have necessitated significant reductions in the fiscal year 2009 budget;
- WHEREAS, The State's fiscal crisis has been exacerbated by a national economic downturn that has become a recession, declines in sales tax revenue, and a forecast of a reduction in income tax collections associated with capital gains, all of which have contributed to a projected deficit for the fiscal year 2009 budget;
- WHEREAS, The budget for the State of Maryland for fiscal year 2009, as adopted during the 2008 Session of the General Assembly, was reduced by \$75,179,560 on June 25, 2008, \$347,786,298 on October 15, 2008, and \$1,696,212 on November 5, 2008, pursuant to action by the Governor, with the approval of the Board of Public Works, under the State Finance and Procurement Article ("SFP") §7-213;
- WHEREAS, The O'Malley-Brown Administration has reduced spending growth by more than \$2.2 billion since taking office and has eliminated 1,500 State positions, while avoiding significant layoffs;
- WHEREAS, The Board of Revenue Estimates in its report of December 16, 2008, is expected to announce hundreds of millions in further reductions in state revenues for fiscal years 2009 and 2010;
- WHEREAS, Despite the above specified reductions in the fiscal year 2009 of nearly \$425 million, in order to balance the fiscal year 2009 budget, it is again necessary to reduce appropriations;
- WHEREAS, It is impossible to achieve reductions in spending of this magnitude without some action affecting employees;

- WHEREAS, Substantial savings may be achieved without undue interruption of state services if state employees are required to participate in a carefully managed furlough and salary reduction plan;
- WHEREAS, A carefully managed furlough plan for state employees is preferable to layoffs during these difficult economic times;
- WHEREAS, Any cost containment plan ought to be progressive and place more of the financial burden on higher paid employees;
- WHEREAS, To mitigate the impact of any salary reduction it is in the interests of state employees that the required two days salary equivalent reduction be spread over the remainder of FY 2009;
- WHEREAS, In order to maximize operational savings outside of 24/7 health and public safety operations, state government operations should be significantly curtailed on the day after Christmas, Friday December 26, 2008 and the day after New Year's Day, Friday, January 2, 2009, but state employees should not also be asked to take those two days as unpaid furlough days;
- WHEREAS, The Second Budget Reconciliation Act for Fiscal Year 1992, Chapter 62 of the Laws of Maryland 1992, authorized the Governor to institute a furlough plan for state employees by executive order in any fiscal year in which appropriations are reduced pursuant to SFP §7-213; and
- WHEREAS, It is in the interest of the State to allow employees flexibility in the implementation of the furlough and salary reduction plan.

NOW, THEREFORE, I, MARTIN O'MALLEY, GOVERNOR OF THE STATE OF MARYLAND, BY VIRTUE OF THE AUTHORITY VESTED IN ME BY THE CONSTITUTION AND LAWS OF MARYLAND, HEREBY PROCLAIM THE FOLLOWING EXECUTIVE ORDER, EFFECTIVE IMMEDIATELY:

A. Except as provided in paragraph L, this Executive Order applies to all employees of the State of Maryland, including, but not limited to, employees of agencies with independent salary setting authority or independent personnel systems, employees of the Maryland Automobile Insurance Fund, the Maryland Food Center Authority, the Maryland Port Administration, the Maryland Stadium Authority, the Injured Workers Insurance Fund, and all contractual employees.

B. (1) All employees subject to this Executive Order shall be required to forego the equivalent of two days of pay, and employees making more than \$40,000 will also be required to take sixteen or twenty-four furlough hours on or after January 14, 2009 and before June 30, 2009.

(2) Employees earning salaries of less than \$40,000 will not be required to take furlough hours, although they will be included in the two days of pay equivalent salary reduction.

(3) Employees earning \$40,000 or more will also be included in the two days of pay equivalent salary reduction and those earning salaries of \$40,000-\$59,999 will be required to take 16 furlough hours, while those employees earning \$60,000 and over will be required to take 24 furlough hours.

(4) Salary or salaries means gross annual salary or salaries as of January 14, 2009, not including overtime, acting capacity, or shift differentials.

C. An employee may take furlough time in increments of four hours.

D. An employee may not receive pay for time during which the employee is furloughed.

E. An employee may take no more than eight furlough hours during any single work week.

F. An employee may not work during furlough time except that in the event of an emergency the appointing authority may revoke furlough time and the employee shall be paid for that time. An employee whose furlough time is revoked due to an emergency shall be required to take the furlough time on another day.

G. Unless authorized in writing by the employee's supervisor during a work week in which furlough time is scheduled, an employee may not work in excess of the employee's normal work week reduced by furlough time taken during such work week.

H. For all purposes other than salary or wages an employee on furlough time shall be deemed to be on paid leave.

I. The Secretary of Budget and Management, the heads of every other personnel system, and the appointing authorities shall

take all action as necessary or desirable to implement this furlough plan. The Secretary, the heads of every other personnel system, and the appointing authorities are authorized to designate certain time as furlough time for groups of employees, to allow employees to designate their own furlough time with approval of their supervisors, which approval may be withheld only in the event of an emergency, or otherwise to manage this program with the least possible disruption to the provision of state services.

J. In addition to furloughs the Secretary of Budget and Management shall implement a temporary salary reduction for state employees pursuant to the Secretary's authority under Title 8 of the State Personnel and Pensions Article.

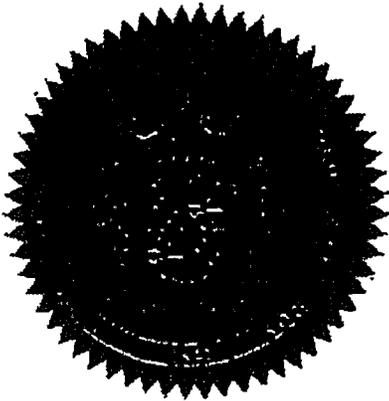
K. Routine state government operations shall be significantly curtailed for the day after Christmas, Friday December 26, 2008, and the day after New Year's Day, Friday, January 2, 2009, thus allowing the State to achieve additional savings due to reduced operating expenses over the long holiday weekends. The Secretary of Budget and Management shall authorize Administrative Leave for non-contractual state employees on those two days.

L. This Executive Order does not apply to:

- (1) The Legislative Branch;
- (2) The Judicial Branch;
- (3) Officers whose compensation is subject to Article III, § 35 of the Maryland Constitution;
- (4) Direct care employees in health, juvenile services, and correctional facilities; police officers employed by the State at the rank of first sergeant or below, except those in administrative or clerical positions; and other employees designated by the Secretary of Budget and Management who work on a shift schedule providing services as part of a 24-hour operation;
- (5) Employees who secure and maintain state facilities on a 24-hour per day basis; or
- (6) Employees of the University System of Maryland, St. Mary's College of Maryland, Morgan State University and Baltimore City Community College; however each university or

college's appropriation shall be reduced to reflect the amount of savings which would be achieved by implementing a furlough plan at each university in accordance with its rules and regulations and subject to approval of its governing board.

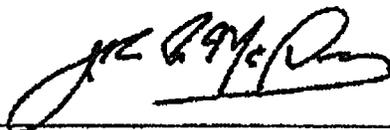
GIVEN Under My Hand and the Great Seal of the State of Maryland, in the City of Annapolis, this 16th day of December, 2008.





Martin O'Malley
Governor

ATTEST:

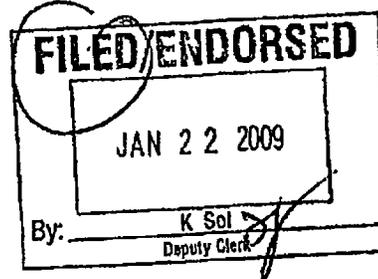


John P. McDonough
Secretary of State

ORIGINAL

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6 Attorneys for Plaintiff
7 California Attorneys, Administrative Law Judges,
And Hearing Officers in State Employment
8



9
10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF SACRAMENTO

12 CALIFORNIA ATTORNEYS,
13 ADMINISTRATIVE LAW JUDGES AND
14 HEARING OFFICERS IN STATE
EMPLOYMENT,

15
16 Petitioners,

17 vs.

18 ARNOLD SCHWARZENEGGER as Governor
of the State of California; DAVID GILB as
19 Director of the Department of Personnel
Administration; JOHN CHIANG, Controller of
20 the State of California; and DOES 1 through 10,

21 Respondents.

22 PROFESSIONAL ENGINEERS IN
23 CALIFORNIA GOVERNMENT;
24 CALIFORNIA ASSOCIATION OF
PROFESSIONAL SCIENTISTS,

25 Petitioners,

26 vs.

27 ARNOLD SCHWARZENEGGER, Governor,
State of California; DEPARTMENT OF
28 PERSONNEL ADMINISTRATION; STATE

Case No. 34-2008-80000134

**PROOF OF SERVICE BY
ELECTRONIC DELIVERY**

Date: January 29, 2009
Time: 9:00 a.m.
Dept.: 19

Case No. 34-2009-80000126 (Related Case)

Proof of Service

1 CONTROLLER JOHN CHIANG; and DOES 1
through 20 INCLUSIVE,

2 Respondents.

3
4 SERVICE EMPLOYEES INTERNATIONAL
5 UNION, LOCAL 1000,

Case No.34-2009-80000135 (Related Case)

6 Petitioners,

7 vs.

8 ARNOLD SCHWARZENEGGER, Governor,
9 State of California; DEPARTMENT OF
PERSONNEL ADMINISTRATION; STATE
10 CONTROLLER JOHN CHIANG; and DOES 1
through 20 INCLUSIVE,

11 Respondents.
12
13

14 I am a citizen of the United States and a resident of the County of Sacramento, California.

15 I am over the age of eighteen (18) years and not a party to the above-entitled action. My
16 business address is 1725 Capitol Avenue, Sacramento, CA 95814.

17 On January 21, 2009 I served the following documents:

18
19 **1. Amended Declaration of Peter Flores, Jr.**

20 I served the aforementioned document(s) by delivering a true copy of the above
21 documents to the electronic mail addresses listed below:

22
23 David Tyra
Koinick, Moskovitz, Tiedemann & Girard
24 400 Capitol Mall, 27th Floor
Sacramento, CA 95814
25 dtyra@kmtg.com

Attorney for Respondent Schwarzenegger
and Department of Personnel Administration

26
27
28
Proof of Service

CASE JA 000362

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Personnel Administration

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of Professional Scientists & Professional
Engineers in State Government

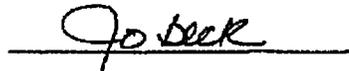
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International Union, Local 1000

25 J. Felix De La Torre
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Attorney for Petitioner Service Employees
International Union, Local 1000

29 I declare under penalty of perjury under the laws of the State of California that the
30 foregoing is true and correct and that this Declaration was executed on January 21, 2009.



Jo Beck

ORIGINAL

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FILED ENDORSED
JAN 22 2009
By: K. Sol Deputy Clerk

6 Attorneys for Plaintiff
7 California Attorneys, Administrative Law Judges,
And Hearing Officers in State Employment
8

9
10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF SACRAMENTO

12
13 CALIFORNIA ATTORNEYS,
ADMINISTRATIVE LAW JUDGES AND
14 HEARING OFFICERS IN STATE
EMPLOYMENT,

Case No. 34-200⁹-80000134

REPLY TO OPPOSITION TO
PETITION FOR WRIT OF
MANDATE

15
16 Petitioners,
vs.

Date: January 29, 2009
Time: 9:00 a.m.
Dept.: 19

17
18 ARNOLD SCHWARZENEGGER as Governor
of the State of California; DAVID GILB as
19 Director of the Department of Personnel
Administration; JOHN CHIANG, Controller of
20 the State of California; and DOES 1 through 10,

21 Respondents.

Case No. 34-200⁹-80000126 (Related Case)

22
23 PROFESSIONAL ENGINEERS IN
CALIFORNIA GOVERNMENT;
24 CALIFORNIA ASSOCIATION OF
PROFESSIONAL SCIENTISTS,

25
26 Petitioners,
vs.

27
28 ARNOLD SCHWARZENEGGER, Governor,
State of California; DEPARTMENT OF
PERSONNEL ADMINISTRATION; STATE

1 CONTROLLER JOHN CHIANG; and DOES 1
through 20 INCLUSIVE,

2 Respondents.

3
4 SERVICE EMPLOYEES INTERNATIONAL
5 UNION, LOCAL 1000,

6 Petitioners,

7 vs.

8 ARNOLD SCHWARZENEGGER, Governor,
9 State of California; DEPARTMENT OF
10 PERSONNEL ADMINISTRATION; STATE
11 CONTROLLER JOHN CHIANG; and DOES 1
through 20 INCLUSIVE,

12 Respondents.

Case No.34-2009-80000135 (Related Case)

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1 which discusses "emergencies" merely states that the Governor (as the employer) must provide
2 notice as soon as practical or as the emergency allows, but it does not otherwise authorize the
3 Governor to unilaterally impose a furlough.

4 More significantly, respondents' reading of the statute is entirely tautological. As the
5 argument goes, the Governor has the unilateral power to declare an emergency, take whatever
6 action desired (regardless of whether it is otherwise authorized by law) and thereby bypass any
7 and all laws relating to public employees, including the Dills Act, which contains the very
8 provision that purports to give such authority. It would truly be an extraordinary interpretation
9 of section 3516.5 to hold that it confers such awesome power, and does so not expressly, but by
10 implication.

11 Moreover, it must be remembered that this is an emergency of the Governor's own
12 making. On January 6, 2009, the Governor vetoed a comprehensive budget package passed by
13 the Legislature in special session.² While petitioner does not doubt that respondents have broad
14 executive powers to declare an emergency, they cannot exercise these powers in a manner that
15 violates the doctrine of separation of powers by infringing upon the legislature's fiscal and
16 budgetary responsibilities. Otherwise, every legislative act associated with enacting a budget ---
17 which is the core legislative function --- would be subject to the executive's claim of a fiscal
18 emergency. The judiciary, in turn, retains the power to evaluate whether the executive's
19 assertion of a budgetary emergency is really an emergency at all, or instead is simply the result
20 of political hardball.

21 Respondents rely on *Sonoma County Organization v. County of Sonoma* (1991) 1
22 Cal.App.4th 267. (Opposition at pp. 7-8.) That reliance is misplaced, however, because that
23 case was interpreting the Meyers-Milias-Brown Act (MMBA), and not the Ralph C. Dills Act
24 which governs state employees. California courts have already determined that "the Legislature

25
26 must be adopted immediately without prior notice or meeting with a recognized employee
27 organization, the administrative officials or their delegated representatives as may be properly
28 designated by law shall provide such notice and opportunity to meet and confer in good faith at the
earliest practical time following the adoption of such law, rule, resolution, or regulation.

² See <http://gov.ca.gov/index.php?/speech/11372/>

1 structured the Dills Act differently than the Meyers-Milias-Brown Act” and that the difference in
2 structure has significant implications to the interpretation of the Dills Act. (*Department of*
3 *Personnel Administration v. Superior Court (Greene)* (1992) 5 Cal.App.4th 155, 175-176.) In
4 particular, it is settled that “[t]he structure of the Dills Act demonstrates the Legislature’s
5 delegation to DPA of its authority over state employees’ wages, hours and working conditions
6 was not entire.” (*Id.* at p. 177.)

7 Thus, unlike the delegation to local agencies in the MMBA, the Legislature did not
8 delegate all of its power to DPA; it reserved some. As has been observed, the Legislature could
9 have simply repealed various provisions of the Government Code after enacting the Dills Act.
10 (*Ibid.*) But it did not. Rather, “the Legislature insured that in the absence of an agreement, those
11 aspects of state employment would continue to be determined by the Legislature.” (*Ibid.*)
12 Because the Legislature retained ultimate authority over certain issues relating to state
13 employees, respondent’s analogy to the MMBA governing local public employees is inapposite.

14 Respondents’ argument is that the Governor’s declaration of a fiscal emergency grants
15 him the power to take whatever action he deems appropriate. (See e.g., Opposition at p. 4, lines
16 18-27; p. 7 at lines 12-13.) Not only is there no constitutional or statutory basis for such an
17 expansive view of executive power, but in this case, the action taken is contradictory to the stated
18 basis for the emergency. According to respondents, the fiscal crisis involves deficits to the
19 general fund which may approach \$41.6 billion. (Declaration of Michael Genest, ¶¶5-9.)
20 Indeed, the first finding in the executive order refers exclusively to the looming General Fund
21 deficit. Respondents offer no evidence about the status of the many Special Fund agencies
22 which employ CASE members, and for which there is no looming deficit or fiscal emergency.³
23 Thus, the action taken by respondents is quite overbroad in light of the emergency which they
24 claim justifies the action. They are seeking to unilaterally impose furloughs on employees in
25

26 ³ As just one example, the State Compensation Insurance Fund is the second largest employer of CASE members,
27 and is not only entirely self-funded but, according to its latest Annual Report, is also so financially healthy and well-
28 reserved to have earned a top rating from Standard and Poor’s. (See <http://www.scif.com/news/111908-FinanciallySound.html>) Other agencies that are funded in whole or in part with non General Fund dollars include the Department of Insurance, the California Unemployment Insurance Appeals Board, and the State Energy Commission

1 agencies where there is no justification for their effort. Even if section 3516.5 could be read to
2 confer some power during emergencies, any power must be limited to the emergency presented.
3 Accordingly, to the extent respondents seek to justify their action on the basis of the emergency,
4 their justification demonstrates their lack of authority to act in the manner they have.

5
6 **II. GOVERNMENT CODE SECTION 19826 PROHIBITS RESPONDENTS**
7 **FROM IMPLEMENTING FURLOUGHS**

8 Because of the structure of the Dills Act, the first question to be answered is whether the
9 Governor (or DPA, his statutorily designated representative in state employee relations) has
10 authority to take the action in question. The only authority cited by respondents is Government
11 Code section 3516.5, but that only permits actions otherwise authorized. It certainly does not
12 permit actions that are expressly prohibited. It is well-settled that an action "cannot accomplish
13 indirectly that which the law or its clear policy prohibits directly." (*Foster v. Snyder* (1999) 76
14 Cal.App.4th 264, 267.) And, as fully explained in petitioner's Memorandum of Points and
15 Authorities, Government Code section 19826, subdivision (b), expressly prohibits respondents'
16 attempt to unilaterally implement furloughs to achieve salary savings.

17 Section 19826 has already been interpreted by California courts. The statute expressly
18 "preclud[es] DPA from unilaterally adjusting represented employees' wages." (*Department of*
19 *Personnel Administration v. Superior Court (Greene)*, *supra*, 5 Cal.App.4th at p. 178.)
20 Accordingly, "the question of represented employees' wages . . . must ultimately be resolved by
21 the Legislature itself." (*Ibid.*) Respondents' only counter to this is to argue that "furloughs are
22 not equivalent to reductions in salary ranges." (Opposition at p. 13.) Respondents reason that
23 "state employees' rate of pay will remain exactly the same; those employees will simply work
24 fewer hours." (Opposition at p. 20.) Although respondents nowhere directly state as much, there
25 is no dispute that the reduction in hours will lead directly to a reduction in pay.⁴ In fact, it is
26

27 ⁴ Respondents assert that the General Fund savings as a result of the furloughs would measure in the hundreds of
28 millions of dollars. (Opposition at pp. 4-5.) Respondents have not disputed petitioner's assertion that the two-days-
per-month furlough would result in an approximate 10% pay cut to state employees. (See Verified Petition at p. 4;
Decl. of Peter Flores, Jr. at ¶6.)

1 clear from the implementation plan developed by DPA that “[s]alaries will be adjusted to reflect
2 the unpaid furlough days. . . .” (See Exh. H to Declaration of Peter Flores, Jr.) Any argument
3 that the furloughs will not affect salaries is untenable.

4 The distinction respondents attempt to draw between the reduction in salaries due to
5 fewer hours worked, and a reduction in “salary ranges” is entirely artificial. By respondents’
6 reasoning, the Governor could impose furloughs not only for two days per month, but for *all*
7 *workdays in a month*, resulting in employee pay being reduced to zero, due to employees having
8 worked no hours. Yet, respondents would argue, the *salary ranges* would be unchanged. The
9 notion that the Legislature sought to reserve unto itself the power to regulate salary ranges, but
10 sought to delegate to respondents the power to manipulate salaries in any other conceivable
11 manner, is simply unsupported by the statutes and case law. It would mean that the Legislature
12 took great care to reserve to itself authority that was, in practice, meaningless, because it could
13 be circumvented by the Governor at any time.

14 The courts have recognized that the distinction respondents are attempting draw is
15 groundless. In *Tirapelle v. Davis* (1993) 20 Cal.App.4th 1317, 1342-1343, the court expressly
16 rejected the argument that the authority to adjust “salary ranges” under section 19826 does not
17 include the power to adjust salaries within those ranges. Quite the contrary, the court held that,
18 as to unrepresented employees, the power to do the former encompassed the power to do the
19 latter. Thus, a salary reduction under the guise of a furlough is precisely the type of action
20 governed by section 19826; and, subdivision (b) of that section expressly precludes a change for
21 represented employees.

22 Interestingly, in the course of their argument that section 19826 means something other
23 than what it plainly states, respondents cite a number of statutory provisions which give
24 respondents the power to take certain actions, including layoffs under Government Code section
25 19997. (See Opposition at p. 21, lines 11-14.) Absent from their opposition is any discussion of
26 why express statutory authority would be necessary for layoffs, but unnecessary for furloughs.
27 What emerges from a complete review of the statutory framework is that the Legislature has
28 already prescribed the manner in which the Governor may reduce state employee payroll to deal

1 with a fiscal emergency: he can institute layoffs. However, the Legislature has specifically
2 withheld unto itself the power to adjust salaries.

3 Curiously absent from respondents' opposition is any explanation as to why the Governor
4 repeatedly acknowledged in his communications to state employees that legislative approval was
5 necessary before implementation of the furloughs. Attached as Exhibit 6 to the Declaration of
6 David Tyra is the Governor's letter dated November 6, 2008. In that letter, the Governor twice
7 acknowledged that he needed legislative approval to impose his furlough plan. First, he outlined
8 his various proposals and stated, "If approved by the Legislature, these spending reductions will
9 impact our state workers." (Emphasis added.) Later in the same letter, after explaining his then-
10 one-day per month furlough plan, he stated, "All the actions we're proposing must first be
11 approved by the Legislature." (*Ibid.*) Then, after memorializing in writing his admission that he
12 needed legislative authority to impose furloughs, Governor Schwarzenegger submitted to the
13 Legislature, during special session, proposed legislation that would specifically authorize DPA to
14 implement furloughs. (See Exh. C to Declaration of Peter Flores, Jr.)

15 Having previously admitted, repeatedly and in various forums, that he lacks the very
16 authority he now claims to possess, and having failed to even address those prior admissions, the
17 Governor should be stopped from arguing that he has authority to unilaterally impose furloughs.

18 19 **III. SECTION 19826 IS NOT SUPERSEDED BY THE MOU**

20 In a repeat of arguments made in their demurrer, respondents argue that section 19826 is
21 superseded due to the existence of MOUs between the parties. (Opposition at pp.14-15.)
22 Respondents' initial premise is correct: Government Code section 3517.8 does operate to extend
23 the force and effect of the MOU between CASE and the State which expired on June 30, 2007.
24 (See Opposition at p. 14.) However, the conclusion that section 19826 is superseded does not
25 follow from this premise.

26 Contrary to respondents' interpretation, merely because a statute *may* be superseded by
27 an MOU, does not mean it *must* be. Courts recognize that supersession is permissive, not
28 mandatory: "It is significant also that the Legislature included section 19826 within the

1 numerous Government Code sections specified in section 3517.6, which *may* be superseded by a
2 MOU." (*Department of Personnel Administration v. Superior Court (Greene)*, *supra*, 5
3 Cal.App.4th at pp. 177-178, emphasis added.)

4 Respondents rely upon Government Code section 3517.6 (see Opposition at pp. 15, 19)
5 which sets forth the various statutes that are capable of being superseded. But, as respondents
6 acknowledge later in their own opposition, "the parties *are permitted* to override otherwise
7 applicable statutory provisions in a memorandum of understanding. . . ." (Opposition at p. 22,
8 lines 11-12, quoting *Tirapelle v. Davis*, *supra*, 20 Cal.App.4th at p. 1325, emphasis added.)
9 Moreover, respondents acknowledge "section 19826[] is one of the statutory provisions which
10 *may be overridden* in a MOU." (Opposition at p. 22, lines 13-14, quoting *Tirapelle v. Davis*,
11 *supra*, 20 Cal.App.4th at p. 1325, emphasis added.)

12 Respondents never explain how the fact that section 19826 *may* be overridden by an
13 MOU necessarily means it is superseded by any and every MOU. Respondents completely fail
14 to address the fact that section 3517.6, which governs supersession, is conditioned upon the
15 existence of a conflict between the MOU and statute to be superseded. It is telling that
16 respondents fail to include the text of section 3517.6 anywhere in their opposition. Subdivision
17 (a)(1) of that section contains a long list of statutes that are subject to supersession, and, as
18 applicable to this case, reads as follows:

19 In any case where the provisions of [section 19826] *are in conflict* with a
20 memorandum of understanding, the memorandum of understanding shall be
controlling without further legislative action.

21 Emphasis added. In addition to not addressing the plain language of the statute on which they
22 purport to rely, respondents nowhere identify any conflict between section 19826 and any
23 provision of the CASE MOU. Their failure is understandable, because no such conflict exists.
24 Nothing in the MOU gives respondents the power to unilaterally reduce salaries, adjust salary
25 ranges, or impose furloughs to accomplish those reductions.

26 In the absence of a conflict, section 3517.6 simply has no application; there is no
27 supersession, and therefore, section 19826 remains in effect, regardless of the status of the MOU.
28 Pursuant to the decision in *Department of Personnel Administration v. Superior Court (Greene)*,

1 *supra*, 5 Cal.App.4th at p. 178, section 19826 expressly “preclud[es] DPA from unilaterally
2 adjusting represented employees’ wages.”

3
4 **IV. THE FLSA MAKES FURLOUGHS IMPOSSIBLE**

5
6 Respondents have admitted in their opposition that exempt employees will lose their
7 exemption under the Fair Labor Standards Act (FLSA) during those two weeks each month that
8 the furlough is in effect. (Opposition at p. 28, lines 6-9.)⁵ As previously argued by petitioner,
9 the loss of the exemption creates the obligation to pay overtime where none previously existed.
10 (See Memorandum of Points and Authorities, p. 17.) And, as explained in the opposition to the
11 demurrer, the Controller is already on record as stating that those kinds of week-to-week changes
12 in salary and overtime payments cannot be accomplished by the state’s present payroll system.
13 (See Opp. To Demurrer at p. 9, citing Exhibit A to the opposition to demurrer, a Declaration of
14 Don Scheppman.) Thus, for any previously exempt employee who works overtime during a
15 furlough week, the state will have the obligation, but not the ability, to pay overtime in order to
16 comply with federal law.

17 Having admitted the central argument of petitioners, respondents seek to avoid the
18 implication of the admission by arguing that it is “hypothetical and speculative” to assume that
19 CASE members will work overtime. (Opposition at p. 28, lines 13-14.) But this argument fails
20 to address the fact that the CASE MOU expressly provides that employees will regularly work in
21 excess of 40 hours per week. (See CASE MOU, section 6.3.A.) And, given the fact that the
22 furloughs will occur two weeks every month (or roughly half of the weeks in any given month),
23 and will continue for 17 months, it takes no speculation at all to believe that among the hundreds
24 of employees who often work more than 40 hours per week, some percentage of them will
25 inevitably do so during a furlough week, thus incurring overtime.

26
27
28 ⁵ Respondents argue that attorneys will not lose their exemption (see Opposition at pp. 29-30) but they fail to address the hundreds of non-attorneys in CASE who are expressly subject to the salary basis test. (See CASE MOU section 6.2.B.)

1 Respondents argue that the FLSA will be complied with (see Opposition at p. 28, lines
2 18-19) but the declaration cited in support of that assertion fails to support the argument.
3 Paragraph 16 of the Chapman Declaration merely states that “it is DPA’s intent to implement
4 and manage the plan in a manner fully consonant with the provisions of the Fair Labor Standards
5 Act.” However, respondents have failed to address the fact that agents of the State Controller
6 have already declared under oath that the state cannot implement such changes to the payroll
7 system. Respondents’ argument thus devolves to the following: “we intend to comply with the
8 law, but even though we know we will be unable to, we should be permitted to proceed.” But
9 good intentions cannot excuse noncompliance with the law. (*Planning and Conservation League*
10 *v. Department of Water Resources* (1998) 17 Cal4th 264, 274.)

11 Respondents’ admission that overtime will be due to employees who lose their exempt
12 status, combined with the demonstrated lack of respondents’ ability to comply with federal law,
13 demonstrate that the furloughs may not be imposed. At a minimum, as petitioner requested in
14 the complaint, this Court should issue a clear declaration of the rights and obligations of the
15 parties with respect to the payment of overtime during the furlough period, such that if
16 respondents are unable to honor those obligations, the furlough should be precluded.

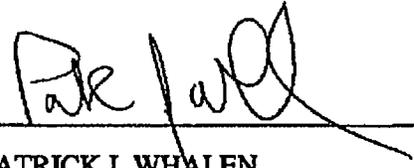
17 18 CONCLUSION

19
20 Respondents have failed to demonstrate that they have the power to unilaterally impose
21 furloughs, and have failed to distinguish the case law interpreting Government Code section
22 19826, subdivision (b), which compels granting relief in this case. Accordingly, petitioner
23 respectfully requests that this Court issue a peremptory writ of mandate and declaratory relief
24 commanding respondents to comply with their mandatory duties and to refrain from violating the
25 law. Petitioner also respectfully requests this Court declare that both that portion of Executive
26 Order S-16-08 that calls for furloughs, as well as David Gilb’s January 9 memorandum to state
27 departments directing implementation of the furlough plan, are void, illegal, and without effect.
28 Petitioner additionally requests an order commanding Controller Chiang to ensure that CASE

1 members' salaries are not unlawfully reduced pursuant to the unlawful furlough plan. Petitioners
2 also request this Court issue a preliminary and permanent injunction prohibiting the Governor
3 and Director David Gilb from implementing the furlough upon, or otherwise illegally reducing
4 the salaries of, CASE members. Finally, Petitioner requests a declaration that any
5 implementation of a furlough on the exempt members of CASE will result in an obligation upon
6 the state to pay overtime for any hours worked in excess of 8 hours per day or 40 hours per
7 week.

11 THE LAW OFFICE OF BROOKS ELLISON

13 Dated: 1-22-09

14 

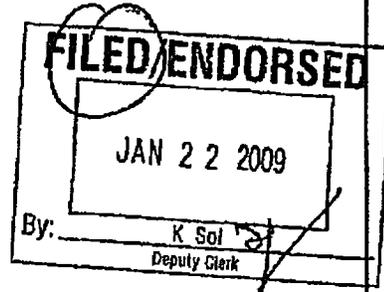
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20 EMPLOYMENT

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9
10 **SUPERIOR COURT OF CALIFORNIA**
11 **COUNTY OF SACRAMENTO**

12
13 **CALIFORNIA ATTORNEYS,**
14 **ADMINISTRATIVE LAW JUDGES AND**
15 **HEARING OFFICERS IN STATE**
16 **EMPLOYMENT,**

17 **Petitioners,**

18 vs.

19 **ARNOLD SCHWARZENEGGER** as Governor
of the State of California; **DAVID GILB** as
Director of the Department of Personnel
Administration; **JOHN CHIANG**, Controller of
20 the State of California; and **DOES 1 through 10,**

21 **Respondents.**

22 **PROFESSIONAL ENGINEERS IN**
23 **CALIFORNIA GOVERNMENT;**
24 **CALIFORNIA ASSOCIATION OF**
25 **PROFESSIONAL SCIENTISTS,**

26 **Petitioners,**

27 vs.

28 **ARNOLD SCHWARZENEGGER**, Governor,
State of California; **DEPARTMENT OF**
PERSONNEL ADMINISTRATION; STATE

Case No.34-2008-80000134

**PROOF OF SERVICE BY
ELECTRONIC DELIVERY**

Date: January 29, 2009
Time: 9:00 a.m.
Dept.: 19.

Case No.34-2009-80000126 (Related Case)

Proof of Service

1 CONTROLLER JOHN CHIANG; and DOES 1
through 20 INCLUSIVE,

2 Respondents.

3
4 SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 1000,

Case No.34-2009-80000135 (Related Case)

5 Petitioners,

6 vs.

7 ARNOLD SCHWARZENEGGER, Governor,
8 State of California; DEPARTMENT OF
PERSONNEL ADMINISTRATION; STATE
9 CONTROLLER JOHN CHIANG; and DOES 1
10 through 20 INCLUSIVE,

11 Respondents.
12
13

14 I am a citizen of the United States and a resident of the County of Sacramento, California.
15 I am over the age of eighteen (18) years and not a party to the above-entitled action. My
16 business address is 1725 Capitol Avenue, Sacramento, CA 95814.

17 On January 22, 2009 I served the following documents:

- 18
19 1. Reply to Opposition to Petition for Writ of Mandate
20 2. Declaration of Patrick Whalen
21 3. Response to Evidentiary Objection

22 I served the aforementioned document(s) by delivering a true copy of the above
documents to the electronic mail addresses listed below:

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Proof of Service

CASE JA 000377

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29 I declare under penalty of perjury under the laws of the State of California that the
30 foregoing is true and correct and that this Declaration was executed on January 22, 2009.



Jo Beck

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

Date: 01/23/2009

Time: 03:18:43 PM

Dept: 19

Judicial Officer Presiding: Judge Patrick Marlette
Clerk: J. Zraggen

Bailiff/Court Attendant: None
ERM: None

Case Init. Date: 01/05/2009

Case No: 34-2009-80000134-CU-WM-GDS Case Title: California Attorneys Adminmistrative Law
Judges and Hearing Offices In State Employment vs. Arnold

Case Category: Civil - Unlimited

Causal Document & Date Filed:

Appearances:

In reviewing the reply papers filed by the parties on January 22, 2009, the Court notes citations therein to specific provisions of the Memoranda of Understanding of the various petitioners in these actions. Respondent has made two separate requests for judicial notice of the Memoranda of Understanding; however, the request made with regard to the PEGC and CAPS MOUs attaches complete copies of the MOUs, while the request made with regard to the CASE and SEIU MOUs only attaches the cover pages and tables of contents of those MOUs. In the interest of having a complete record of the cited provisions of all of the MOUs, the Court directs respondent to file, no later than Monday, January 26, 2009, an amended request for judicial notice that attaches as exhibits, at a minimum, the complete text of all provisions of the CASE and SEIU MOUs that are cited in the briefs previously filed with the Court by any party.

Declaration of Mailing

I hereby certify that I am not a party to the within action and that I deposited a copy of this document in sealed envelopes with first class postage prepaid, addressed to each party or the attorney of record in the U.S. Mail at 720 Ninth Street, Sacramento, California.

And by FAX

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Date: 01/23/2009

MINUTE ORDER

Page: 1

Dept: 19

Calendar No.:

CASE JA 000379

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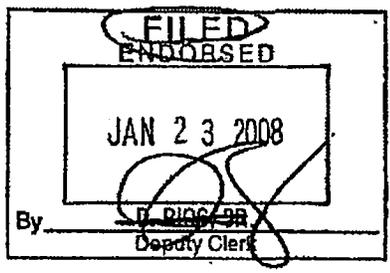
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Dated: January 26, 2009
J. Zraggen, Deputy Clerk

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22 DAVID GILB, and DEPT. OF PERSONNEL ADMINISTRATION

Exempted from Fees
(Gov. Code § 6103)

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.

AND RELATED CASES

CASE NO 34-2008-80000126-CU-WM-GDS

Assigned For All Purposes To The Honorable
Patrick Marlette

AMENDED REQUEST FOR JUDICIAL
NOTICE

Date: January 29, 2009
Time: 9:00 a.m.
Dept.: 19

Action Filed: December 22, 2008
Trial Date: None Set

1 As per the Court's January 23, 2009 order, attached are true, correct and complete
2 copies of the following:

3 **Exhibit A:** Agreement Between State of California and California Attorneys,
4 Administrative Law Judges and Hearing Officers in State
5 Employment ("CASE") covering Bargaining Unit 2, effective July
6 1, 2005 through June 30, 2007.

7 **Exhibit B:** Agreement Between State of California and Service Employees
8 International Union, Local 1000 ("SEIU") covering Bargaining
9 Unit 1, effective July 1, 2005 through June 30, 2008.

10 **Exhibit C:** Agreement Between State of California and Service Employees
11 International Union, Local 1000 ("SEIU") covering Bargaining
12 Unit 3, effective July 1, 2005 through June 30, 2008.

13 **Exhibit D:** Agreement Between State of California and Service Employees
14 International Union, Local 1000 ("SEIU") covering Bargaining
15 Unit 4, effective July 1, 2005 through June 30, 2008.

16 **Exhibit E:** Agreement Between State of California and Service Employees
17 International Union, Local 1000 ("SEIU") covering Bargaining
18 Unit 11, effective July 1, 2005 through June 30, 2008.

19 **Exhibit F:** Agreement Between State of California and Service Employees
20 International Union, Local 1000 ("SEIU") covering Bargaining
21 Unit 14, effective July 1, 2005 through June 30, 2008.

22 **Exhibit G:** Agreement Between State of California and Service Employees
23 International Union, Local 1000 ("SEIU") covering Bargaining
24 Unit 15, effective July 1, 2005 through June 30, 2008.

25 **Exhibit H:** Agreement Between State of California and Service Employees
26 International Union, Local 1000 ("SEIU") covering Bargaining
27 Unit 17, effective July 1, 2005 through June 30, 2008.
28

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Exhibit I: Agreement Between State of California and Service Employees International Union, Local 1000 ("SEIU") covering Bargaining Unit 20, effective July 1, 2005 through June 30, 2008.

Exhibit J: Agreement Between State of California and Service Employees International Union, Local 1000 ("SEIU") covering Bargaining Unit 21, effective July 1, 2005 through June 30, 2008.

Dated: January 23, 2009

KRONICK, MOSKOVITZ, TIEDEMANN &
GIRARD
A Law Corporation

By: Meredith Rankin FOK
David W. Tyra
Attorneys for Defendants/Respondents
ARNOLD SCHWARZENEGGER, Governor;
STATE OF CALIFORNIA; DAVID GILB and
DEPARTMENT OF PERSONNEL
ADMINISTRATION

1 **PROOF OF SERVICE**

2 I, May Marlowe, declare:

3 I am a citizen of the United States and employed in Sacramento County, California. I am
4 over the age of eighteen years and not a party to the within-entitled action. My business address
5 is 400 Capitol Mall, 27th Floor, Sacramento, California 95814. On January 23, 2009, I served a
6 copy of the following document(s):

6 **AMENDED REQUEST FOR JUDICIAL NOTICE**

- 7 by transmitting via facsimile the document(s) listed above to the fax number(s) set
8 forth below on this date before 5:00 p.m.
- 9 by placing the document(s) listed above in a sealed Federal Express envelope and
10 affixing a pre-paid air bill, and causing the envelope to be delivered to a Federal
11 Express agent for delivery.
- 12 by transmitting via e-mail or electronic transmission the document(s) listed above
13 to the person(s) at the e-mail address(es) set forth below.

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15 **Hearing Officers in State Employment**

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22 **Government and California Association of**
23 **Professional Scientists**

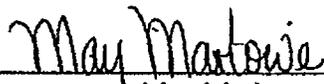
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I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on January 23, 2009, at Sacramento, California.



May Marlowe

EXHIBIT A



**Agreement between
State of California**

and

**California Attorneys, Administrative Law Judges and Hearing Officers
In State Employment (CASE)**

covering

**BARGAINING UNIT 2
ATTORNEYS AND HEARING
OFFICERS**

Effective

July 1, 2005, through June 30, 2007

**CALIFORNIA ATTORNEYS, ADMINISTRATIVE LAW JUDGES
AND HEARING OFFICERS IN STATE EMPLOYMENT (CASE)**

BARGAINING UNIT 2

ATTORNEYS AND HEARING OFFICERS

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ARTICLE 1 – RECOGNITION AND PURPOSE

1.1 Recognition and Purpose

- A. This Memorandum of Understanding (hereinafter "MOU" or "Agreement") is entered into by and between the State of California (hereinafter "State" or "State employer") and the California Association of Administrative Law Judges, Attorneys, and Hearing Officers in State employment, (hereinafter "CASE"), pursuant to the Ralph C. Dills Act, Government Code Section 3512 et seq.
- B. Its purpose is to improve employer-employee relations between the parties by establishing wages, hours, and other terms and conditions of employment.
- C. Pursuant to the Dills Act and PERB certification No. S-SR-2, the State recognizes CASE as the exclusive representative of all employees in the Attorney and Hearing Officer Unit, Unit 2 (hereinafter "bargaining unit").
- D. Pursuant to Government Code section 3517, CASE recognizes the Director of the Department of Personnel Administration (DPA) or his/her designee, as the designated representative of the Governor for the purposes of negotiating this MOU.

ARTICLE 2 – CASE RIGHTS

2.1 CASE Representation

A. Representational Activity

The State recognizes and agrees to deal with CASE representatives on all matters relating to bargaining unit grievances and claims and appeals to the State Personnel Board (SPB). An employee and a CASE representative shall be authorized a reasonable amount of time off during work hours without loss of compensation (consistent with workload requirements) to prepare and present grievances and claims and appeals before SPB. CASE employee representatives may be required to notify their immediate supervisors and obtain approval regarding the time of day for conducting such activities.

B. CASE Representatives

A written list of CASE representatives at each work location shall be furnished to the State immediately after their designation, and CASE shall notify the State promptly of any changes of such representatives. CASE officers or representatives shall not be recognized by the State until such lists or changes thereto are received.

C. Organizational Activity Release Time

1. Nine (9) CASE Board members shall each be released without loss of compensation from work for up to and including one (1) day per month for organizational (board-level) activity, subject to the following:
 - a. Release time will be dependent on departmental operational needs.

- b. Appointing authorities need not release more than one (1) Board member at a time who works in the same geographic location within a department, agency, board or commission.
 - c. Board members may be required to notify their immediate supervisor in advance and obtain approval for use of release time.
2. Six (6) Executive Board Members shall each be released without loss of compensation from work for up to and including two (2) days per month for organizational (board-level) activity, subject to the conditions as stated in a, b, and c above.
 3. Organizational activity is that which is performed on behalf of CASE and generally affects its membership at-large.
- D. Employee Donated Release Time Bank
1. Each department with Unit 2 employees shall establish a release time bank. The purpose of the release time bank is to allow Unit 2 employees to voluntarily contribute CTO, holiday credit, personal leave time, annual leave, or vacation for use by other Unit 2 employees identified by CASE who work for the same department.
 2. Time donated to the release time bank shall be for engaging in organizational activity as defined in section 2.1 (C)(3) above. CASE shall provide verification that employees withdrawing from the bank were engaging in organizational activity.
 3. Time shall be donated in one (1) hour increments. Time shall be used in eight (8) hour increments. Donations are irrevocable.
 4. For purposes of this section, the value of each hour donated and each hour used shall be considered the same.
 5. Employees who will be absent using donated time must provide their immediate supervisor or his/her designee with reasonable advance notice. Absences due to the use of donated release time shall be granted unless it interferes with operating needs.
 6. Each department shall establish and publish the procedures for donating and using time. Departments may limit the number of times each year that employees may donate to the release time bank.
 7. Departments shall permit CASE to review release time bank donation and use records upon reasonable notice from CASE. CASE review will not occur more than one time every four (4) months in each department.

2.2 Access

- A. With prior notification to the official in charge of the area to be visited, CASE representatives shall have access to bargaining unit employees at the work site for representation purposes. Access shall not be disruptive.

- B. The department head or designee may restrict access to certain work sites or areas for reasons of safety, security, or other legitimate business necessities. Access shall not be unreasonably withheld.

2.3 Bulletin Boards

- A. CASE shall have access to existing State-furnished CASE bulletin board space at each work site where Unit 2 employees are located to post material related to CASE business. Alternatively, CASE may at its option and expense, provide (at one or more facilities) a bulletin board not to exceed 36" X 48" in size to be placed in a location, and at a time of day, determined by the facility manager. Any materials posted shall be dated and initialed by the CASE representative responsible for the posting. A copy of all materials posted shall be distributed to the designated management representative at the time of posting.
- B. CASE agrees not to post any material of an illegal, libelous, obscene, defamatory, or solely non-educational partisan political nature on bulletin boards.

2.4 Distribution of Literature

CASE representatives may distribute CASE material during nonwork time and shall not disrupt the work of others. CASE shall not distribute material of an illegal, libelous, obscene, or of a solely noneducational partisan political nature.

2.5 Bargaining Unit Information

- A. The State employer shall continue to provide CASE with a list of bargaining unit employees. The list shall be arranged in alphabetical order according to surname and shall include each employee's name, classification, agency, work location, home address, and information regarding CASE payroll deductions.
- B. On a monthly basis, the State employer shall continue to provide CASE with any changes to the list, including information contained therein, which occurred subsequent to the previous list of changes.
- C. CASE agrees to reimburse the State Controller for all reasonable costs to produce these lists.

2.6 Use of State Rooms, Phones, and Electronic Communication Equipment

- A. The State will permit use of its rooms for CASE meetings subject to the operating needs of the State. Requests for use of such State rooms shall be made in advance to the designated State official. CASE agrees to leave such rooms in the condition in which they were found.
- B. CASE representatives shall be permitted reasonable use of State phones to make calls for CASE representation purposes provided, however, that such use of State phones shall not mean additional charges to the State or interfere with the operation of the State.

- C. CASE shall be permitted incidental and minimal use of State electronic communication equipment ordinarily available to the user-employee during the regular course of business if (1) as permitted by the employee's department for other non-business purposes; and (2) for representational purposes only; and (3) provided it results in no additional cost to the State; and, (4) provided it does not interfere with the operations of the State.
- D. The State can not guarantee privacy when using State rooms, phones and electronic communication equipment.

2.7 Fair Share Fees/Dues Deduction

- A. The State agrees to deduct and transmit to CASE all membership dues authorized on a form provided by CASE. Effective with the beginning of the first pay period following ratification of this agreement by the Legislature and the Union, the State agrees to deduct and transmit to CASE Fair Share fees from employees who do not become members of CASE.
- B. The State and CASE agree that a system of authorized dues deductions and a system of Fair Share deductions shall be operated in accordance with Government Code sections 3513(h), 3513(j), 3515, 3515.6, 3515.7, and 3515.8, subject to the following provisions:
 - 1. The State and CASE agree that if a Fair Share rescission election is conducted in Unit 2 pursuant to Government Code section 3515.7(d), a majority of the members of the Unit shall determine whether the Fair Share deductions shall be rescinded.
 - 2. The written authorization for CASE membership deductions shall remain in full force and effect during the life of this agreement; provided that any employee may withdraw from CASE by sending a signed withdrawal letter to CASE at any time. A withdrawal under this paragraph does not then relieve an employee from the Agency Shop provision of this agreement. An employee who so withdraws his or her membership shall be subject to paying a Fair Share fee if such a fee is applicable to Unit 2.
 - 3. The amount of dues and fees deducted from CASE members' and fee payers' pay warrants shall be set by CASE and changed by the State upon written request of CASE.
 - 4. CASE 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 Section and the deductions arising therefrom.
 - 5. CASE agrees to annually notify all employees who pay Fair Share fees of their right to demand and receive from CASE a return of part of that fee pursuant to Government Code section 3515.8.
 - 6. No provision of this Section, nor any disputes arising thereunder, shall be subject to the grievance and arbitration procedure contained in this Agreement.

2.8 Safety Committee

Upon request by CASE, appointing authorities for Unit 2 employees shall establish at least one safety committee, with at least one (1) Unit 2 employee representative and at least one (1) representative from management. Where safety committees (or like forums) already exist or are established for purposes of addressing safety matters of concern to more than just Unit 2 employees, then at least one (1) Unit 2 employee representative may instead be permitted to join that committee. The safety committee(s) may be constituted for purposes of addressing issues at one, or more than one work site.

2.9 New Employee Orientation

Upon initial appointment of an employee in a Bargaining Unit 2 classification, the appointing authority shall, within a reasonable period of time, inform the employee that CASE is the exclusive representative for his/her bargaining unit. The appointing authority shall also present the employee with a copy of this memorandum of understanding and a packet of information pertaining to representation by CASE, if supplied to that appointing authority in advance by CASE.

ARTICLE 3 – STATE RIGHTS

3.1 State Rights

- A. All State rights and functions, except those which are expressly abridged by this MOU, shall remain vested with the State.
- B. To the extent consistent with law and this MOU, the rights of the State include, but are not limited to, the exclusive right to determine the mission of its constituent departments, commissions, and boards; set standards of service; train, direct, schedule, assign, promote, and transfer its employees; initiate disciplinary action; relieve its employees from duty because of lack of work, lack of funds, or for other legitimate reasons; maintain the efficiency of State operations; determine the methods, means and personnel by which State operations are to be conducted; take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion over its organization and the technology of performing its work. The State has the right to make reasonable rules and regulations pertaining to employees consistent with this MOU provided that any such rule shall be uniformly applied to all affected employees who are similarly situated.
- C. This MOU is not intended to, nor may it be construed to, contravene the spirit or intent of the merit principle in State employment, nor to limit the entitlements of State civil service employees provided by Article VII of the State Constitution or by-laws and rules enacted thereto.

ARTICLE 4 – GENERAL PROVISIONS

4.1 No-Strike/No Lockout Clause

- A. During the term of this MOU, neither CASE nor its agents nor any Bargaining Unit 2 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.

CASE agrees to notify all of its officers, stewards, representatives, agents, and staff of their obligation and responsibility for maintaining compliance with this Section, including the responsibility to remain at work during any interference which may be caused or initiated by others and to encourage employees violating this Section to return to work.

- B. No lockout of Unit 2 employees shall be instituted by the State during the term of this Agreement.

4.2 Savings Clause

Should any provision of this MOU be found unlawful by a court of competent jurisdiction, the remainder of the MOU 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).

4.3 Entire Agreement

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

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

The parties recognize that during the term of this MOU, 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 CASE of the proposed change thirty (30) days prior to its proposed implementation.

The parties shall undertake negotiations regarding the impact of such changes on the employees in Unit 2, when all three (3) of the following exist:

1. Where such changes would have an impact on working conditions of a significant number of employees in Unit 2;

2. Where the subject matter of the change is within the scope of representation pursuant to the Dills Act;
3. Where CASE requests to negotiate with the State.

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

4.4 Supersession

- A. The following Government Code sections and all DPA regulations related thereto are hereby incorporated into this MOU. However, if any other provision of this MOU is in conflict with any of the Government Code sections listed below or the DPA regulations related thereto, such MOU provision shall be controlling. The Government Code Sections listed below are cited in Section 3517.6 of the Dills Act.

1. General

- | | |
|-------|---|
| 19824 | Establishes monthly pay periods. |
| 19839 | Provides lump sum payment for unused vacation accrued or compensating time off upon separation. |

2. Step Increases

- | | |
|-------|--|
| 19829 | Requires DPA to establish minimum and maximum salaries with intermediate steps. |
| 19832 | Establishes annual Merit Salary Adjustments (MSA's) for employees who meet standards of efficiency. |
| 19834 | Requires MSA payments to qualifying employees when funds are available. |
| 19835 | Provides employees with the right to cumulative adjustments for a period not to exceed two years when MSA's are denied due to lack of funds. |
| 19836 | Provides for hiring at above the minimum salary limit in specified instances. |
| 19837 | 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 absences of 10 days or less on vacation accrual.
- 19863 Allows vacation use while on temporary disability (due to work-incurred injury) to augment paycheck.
- 19991.4 Provides that absences 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.
- 19862.1 Allows employees who enter civil service from an exempt position within six months to carry unused sick leave credits.
- 19863 Allows sick leave use while on temporary disability (due to work-incurred injury) to augment paycheck.
- 19863.1 Provides sick leave credits for IDL.
- 19864 Allows the DPA to provide by rule for sick leave without pay for employees who have used up their sick leave with pay.
- 19866 Provides sick leave accumulation for non-civil service employees.
- 19991.4 Provides that absences 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 Thirty (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 disabled more than 14 days.
19876 Payments contingent on medical certification and vocational rehabilitation.
19877 Authorizes DPA to adopt rules governing IDL.
19877.1 Sets effective date.

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
- 22816 Provides for continuation of health plan coverage during leave of absence.
 - 22825.1 Sets employer contribution.
12. Workweek
- 19851 Sets 40-hour workweek and 8-hour day.
 - 19843 Directs the DPA to establish and adjust workweek 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 salaries 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.

19991.3 Jury duty.

19991.4 Provides that absences 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 computed.
- 19998 Employees affected by layoff due to management-initiated changes should receive assistance in finding other placement in State service.
- 19998.1 State Restriction on Appointments.

22. Incompatible Activities

19990 Requires each appointing 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.

ARTICLE 5 – SALARIES

5.1 Salaries

- A. Upon ratification of the agreement by the union and approval by the Legislature, all Unit 2 classifications shall receive a general salary increase of two and one half percent (2.5%) retroactive to July 1, 2005. The increase shall be calculated by multiplying the base salary by 1.025. The parties recognize that the actual salary increase for each classification may vary slightly due to rounding.
- B. Effective July 1, 2006 the State agrees to provide a cost of living adjustment, to all Unit 2 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 2005 through March 2006. The specific amount of the cost of living adjustment shall be determined by the increase in the cost of living for the year using the Consumer Price Index, U.S. Department of Labor, Index CPI-W West Urban – All Urban Consumers (Not Seasonally Adjusted), Series CUUR0400SA0, United States.
 2. The cost of living adjustment shall not be less than 2.0% or more than 4.0%.

eg: If the cost of living for the year, as determined in #1 above, is less than 2.0%, the cost of living adjustment for the year shall be established at 2.0%. If the cost of living for the year is greater than 4.0%, for the specified period, the cost of living adjustment for the year shall be established at 4.0%. 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 2006 Increase (as described in #1)

CPI for March 2006 (EXAMPLE ONLY)	202.4	
Less CPI for March 2005	197.1	
Index Point Change	5.2	
Divided by Previous CPI (March 2005)	197.1	
Equals	.02637	
Result multiplied by 100 (100 x .02637)	2.6	
Cost of Living Adjustment for 2006	2.6%	
Salary adjustment effective July 1, 2006 (EXAMPLE ONLY)		2.6%

5.2 Salary Range Changes

A. Entry Level Attorney Classes – New Salary Rate for Range A

Effective July 1, 2005, Range A of the following classes shall be changed to the rate of \$4410.

Schem Code	Class Code	Classification
0A93	5539	Real Estate Counsel I
0C65	5730	Deputy Attorney General
0A72	5778	Staff Counsel
0047	5779	Deputy Attorney, CalTrans
0A70	5798	Legal Counsel
0I65	6110	Fair Employment and Housing Counsel
0N60	6185	Fair Political Practices Commission Counsel
0N65	6186	Fair Political Practices Commission Counsel-Enforcement

0K70	6187	Corporations Counsel
0A94	6272	Board Counsel I, ALRB
0A75	6728	Tax Counsel

B. 5% Minimum and Maximum Increase – Attorney III Level Classes

Effective July 1, 2006, the following classes shall be adjusted by increasing the minimum and the maximum of the salary range by 5%. Employees whose salary rate is less than the minimum of the new salary range shall move to the new minimum and retain their salary anniversary date (MSA).

Employees who have been at the old maximum salary rate for a minimum of twelve (12) qualifying pay periods shall receive a 5% increase. 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 towards the twelve (12) qualifying pay periods shall be in accordance with DPA Rules 599.682 (b) and 599.687.

All other employees shall retain their salary and their salary anniversary date (MSA).

Schem Code	Class Code	Classification
0A91	5537	Real Estate Counsel III (Specialist)
0C60	5706	Deputy Attorney General III
0D50	5763	Deputy State Public Defender
0040	5789	Deputy Attorney III, CalTrans
0A82	5795	Staff Counsel III (Specialist)
0J20	5812	Public Utilities Counsel III, PUC
0I55	6115	Senior Fair Employment and Housing Counsel (Specialist)
0I15	6180	Industrial Relations Counsel III (Specialist)
0K80	6188	Senior Corporations Counsel (Specialist)
0A97	6204	Senior Commission Counsel (Specialist), FPPC
0A96	6274	Senior Board Counsel, ALRB
0A76	6733	Tax Counsel III (Specialist)

C. 5% Minimum and Maximum Increase – Attorney IV Level Classes

Effective July 1, 2006, the following classes shall be adjusted by increasing the minimum and the maximum of the salary range by 5%. Employees whose salary rate is less than the minimum of the new salary range shall move to the new minimum and retain their salary anniversary date (MSA).

Employees who have been at the old maximum salary rate for a minimum of twelve (12) qualifying pay periods shall receive a 5% increase. 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 towards the twelve (12) qualifying pay periods shall be in accordance with DPA Rules 599.682 (b) and 599.687.

All other employees shall retain their salary and their salary anniversary date (MSA).

Schem Code	Class Code	Classification
0J50	5699	Public Utilities Counsel IV, PUC
0C50	5705	Deputy Attorney General IV
0D10	5772	Sr. Deputy State Public Defender (Range A only)
0A80	5780	Staff Counsel IV
0035	5788	Deputy Attorney IV, CalTrans
0I10	5981	Industrial Relations Counsel IV
0A78	6722	Tax Counsel IV, Franchise Tax Board

5.3 Merit Salary Adjustments

- A. Employees shall receive annual merit salary adjustments (MSA) in accordance with Government Code Section 19832 and applicable Department of Personnel Administration rules.
- B. The employee shall be informed in writing of denial ten (10) working days prior to the proposed effective date of the merit salary adjustment.
- C. Denial of the MSA shall be subject to the grievance and arbitration procedure.

5.4 Range Changes

Employees shall receive upon movement to an alternate range the salary and MSA provided in the Alternate Range Criteria for the class. If there are no specific salary regulations provided in the Alternate Range Criteria, the employee shall receive the salary and MSA as provided in DPA Rule 599.681. Employees, at their discretion, who are eligible for a range change may defer their range change up to six (6) qualifying pay periods in order to coincide the range change with the effective date of their MSA. Said request by employee shall be in writing and submitted no less than thirty (30) days prior to the employee's anniversary date for purposes of the range change.

5.5 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 positions 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 one hundred dollars (\$100) per monthly pay period, including holidays.
2. A monthly employee meeting the bilingual differential pay criteria less than the entire pay period would receive the differential on a pro rata basis.
3. A fractional month employee meeting the bilingual differential pay criteria would receive the differential on a pro rata basis.
4. An employee paid by the hour meeting the bilingual differential pay criteria would receive a differential of fifty-eight cents (\$.58) per hour.
5. An employee paid by the day meeting the bilingual differential pay criteria would receive a differential of four dollars and sixty-one cents (\$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 California Public Employees' Retirement System (CalPERS), 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, 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. Qualifying employees in Work Week Group 2 shall receive bilingual salary compensation for overtime hours worked.
- I. Employees receiving regular bilingual differential pay will have their transfer rights determined from the maximum step of the salary range for their class. Incumbents receiving bilingual pay will have the same transfer opportunities that other class incumbents are provided.
- J. The bilingual differential pay shall be included in the rate used to calculate temporary disability, industrial disability and non-industrial disability leave benefits.

5.6 Overpayments/Payroll Errors

Overpayments/payroll errors shall be administered in accordance with Government Code Section 19838.

5.7 Late Docks

- A. Notwithstanding Section 5.5 (Overpayments and Payroll Errors) and Section 5.7 (Timely Payment of Wages), departments may elect to proceed as follows as it pertains to "late docks".
 - 1. Whenever an employee is charged with a "late dock" as defined by the State Controller's Office (SCO) for the purpose of issuing salary through the negative payroll system, departments may issue the employee's paycheck for that period as if no late dock occurred. This means that:

- a. The employee will receive a regular pay warrant on pay day (unless it would have been withheld for purposes other than the late dock);
 - b. The employee will be overpaid, since the dock time will not have been deducted from the employee's pay check; and,
 - c. The employee's pay will be adjusted for any dock time occurring before the SCO cut off date, since late docks occur on or after the cut off date established by SCO.
2. Employees who are overpaid because of paragraph 1 above, will repay the State for their overpayment by an automatic payroll deduction of the total amount from their next month's pay check/warrant (or successive warrants where needed to satisfy the debt). Departments shall notify employees about the overpayment and the automatic payroll deduction in writing at the time the determination is made. The absence of said notification will not preclude the department from automatically deducting overpayments as otherwise permitted by this section.
 3. Departments that elect to proceed under this section may do so on an employee-by-employee basis thereby reserving the right to issue salary advances in lieu of a regular paycheck in order to avoid an overpayment due to a late dock as the department deems prudent.
 4. If an employee separates or retires from State service before satisfying late dock overpayments as a result of this section, the State shall deduct the total amount due from any other pay owing the employee at the time of his/her separation or retirement.

5.8 Timely Payment of Wages

- A. 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 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 (1) above (e.g., AWOL, late dock), a salary advance of no less than fifty percent (50%) 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 (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.

- B. It will be the responsibility of the employee to make sure voluntary deductions (e.g., credit union deductions, union dues, etc.) are paid. Nothing in this subsection shall be construed as a waiver of any individual right an employee may have apart from this agreement, to bring a personal action against the State as the result of payroll errors or delays. Said actions shall not be the subject of the grievance and arbitration procedure contained in this agreement.
- C. 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.

5.9 Recruitment and Retention, State Prisons

- A. Effective July 1, 1998, Unit 2 employees who are employed at Avenal, Ironwood, Calipatria 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.
- B. If an employee voluntarily terminates, transfers, or is discharged prior to completing twelve (12) consecutive pay periods at Avenal, Ironwood, Calipatria or Chuckawalla Valley State Prisons, there will be no pro rata payment for those months at either facility.
- C. If an employee is mandatorily transferred by the Department, he/she shall be eligible for a pro rata share for those months served.
- D. If an employee promotes to a different facility, or department other than Avenal, Ironwood, Calipatria or Chuckawalla Valley State Prisons prior to completion of the twelve (12) consecutive qualifying pay periods, there shall be no pro rata of 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.
- E. 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.
- F. Annual recruitment and retention payments shall not be considered as compensation for purposes of retirement contributions.
- G. Employees on IDL shall continue to receive this stipend.
- H. 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 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.

5.10 Out-of-State Differential Pay

Unit 2 employees who are headquartered out-of-State or who are on permanent assignment to travel at least fifty percent (50%) of the time out-of-State shall receive a pay differential of three hundred and fifty dollars (\$350) per month.

5.11 National Judicial College Differential

- A. Employees in classes enumerated in Section E (below) who complete an equivalent judicial education curriculum shall receive a monthly differential of five percent (5%) of their salary. The differential shall be considered compensation for purposes of retirement.
- B. "Equivalent judicial education curriculum" means either a certificate issued by the National Judicial College (NJC) in courses related to administrative law adjudication or twenty (20) hours of judicial education or certification as approved by the department. Equivalency shall be determined by the Department of Personnel Administration based on recommendations from the employee's department.
- C. Employees already receiving the differential at the time this agreement is ratified by the Legislature and CASE's membership shall continue to receive the differential.
- D. Employees not receiving the differential at the time this agreement is ratified by the Legislature and CASE's membership who complete a qualified judicial education curriculum after July 1, 2000, may begin receiving the differential no earlier than the beginning of the pay period following the month in which the curriculum was completed and not later than the month following ratification of this agreement by both CASE and the Legislature.

CASE recognizes that attendance at department provided training may be postponed for a reasonable period of time to coincide with training offered for other employees.

- E. The State agrees to reimburse employees in Administrative Law Judge and Hearing Officer classifications; including Fair Hearing Specialists; Office of Administrative Hearings, Hearing Advisers (OAH); California Energy Commission, Hearing Advisers (CEC); and Workers' Compensation Conference Judges for necessary and reasonable expenses incurred (e.g., tuition and travel expenses) and to provide time off during normal work hours without loss of compensation, upon request, consistent with operational needs, to attend a qualified judicial education curriculum as defined above.
- F. Reimbursement for the above expenses shall be in accordance with the Business and Travel Expense provision of this MOU.

5.12 Recruitment and Retention Differential

- A. Upon approval by the Department of Personnel Administration, departments may provide Unit 2 employees a recruitment and retention differential for specific positions, classifications, facilities, or geographic locations.
- B. Less than full-time permanent employees shall receive the recruitment and retention differential on a pro rata basis.

- C. Permanent intermittents shall receive a pro rated recruitment and retention differential based on the hours worked in the pay period.
- D. Recruitment and retention payments shall not be considered as compensation for purposes of retirement contributions.
- E. The department may withdraw any recruitment and retention differential for a specific position(s), classifications, facilities or geographic locations for new hires with a 30-day notice to CASE.
- F. It is understood by CASE that the decision to implement or not implement recruitment and retention payments or to withdraw authorization for such payments or differential, and the amount of such payments or differentials rest solely with the State and that such decision is not grievable or arbitrable.

ARTICLE 6 -- HOURS OF WORK

6.1 Overtime

A. Travel Time

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. Paid Leave Counted As Time Worked -- WWG 2

Time during which a Unit 2 employee assigned to Work Week Group (WWG) 2 is excused from work on paid leave (e.g., sick leave, vacation, annual leave) shall be counted as hours worked within the workweek for purposes of determining if overtime has been earned.

C. Overtime Compensation -- WWG 2

Employees in classes assigned to Work Week Group 2 shall be compensated at time and one-half in cash or compensating time off at the discretion of each department head or his/her designee for ordered/authorized overtime of at least one-quarter (1/4) hour at any one time.

Employees shall obtain authorization to work overtime. Employees will only be compensated for overtime ordered or authorized by a supervisor.

The employee's preference will be considered when determining whether overtime will be compensated by cash or CTO except as otherwise provided by this agreement.

Overtime will be credited on a one-quarter (1/4) hour basis with a full quarter of an hour credit granted if half or more of the period is worked. Smaller fractional units will not be accumulated.

6.2 Work Week Groups

A. Work Week Group "2" – Graduate Legal Assistants and Deputy Labor Commissioners I

Work Week Group "2" applies to those classifications in State service subject to the provisions of the Fair Labor Standards Act (FLSA). 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 one hundred sixty-eight (168) hours or seven consecutive twenty-four (24) hour periods. Employees in Work Week Group 2 may accrue up to two hundred forty (240) hours of compensating time off. All hours in excess of the two hundred forty (240) hour maximum accrual will be compensated in cash.

All Unit 2 employees/classifications assigned to Work Week Group 1, 4A (e.g., Graduate Legal Assistants) and 4B Deputy Labor Commissioners I shall be moved to Work Week Group 2.

B. Work Week Group "E" - Hearing Advisers, Hearing Officers, Judges, Referees

Work Week Group "E" includes classes that are exempted from coverage under the FLSA because of the "white-collar" (administrative, executive, professional) exemptions. To be eligible for this exemption a position must meet both the "salary basis" and the "duties" test.

Exempt (WWG E) employees are paid on a "salaried" basis and the regular rate of pay is full compensation for all hours worked to perform assigned duties. However, these employees shall receive up to eight (8) hours holiday credit when authorized to work on a holiday. Work Week Group E employees shall not receive any form of additional compensation, whether formal or informal, unless otherwise provided by this agreement.

All employees/classifications presently assigned to Work Week 4C who are not in an attorney/counsel classification shall be moved to Work Week Group E (e.g., hearing advisers, hearing officers, judges, referees, Deputy Labor Commissioner II, Deputy Commissioner-Board of Prison Terms).

C. Work Week Group "SE" – Attorneys

Work Week Group "SE" applies to those positions/employees that under Federal law are statutorily exempt from coverage under the Fair Labor Standards Act. To be eligible for this exemption a person must hold a valid license or certificate permitting the practice of law and be engaged in the practice of law.

The regular rate of pay is full compensation for all time that is required for the WWG SE employees to perform assigned duties. However, WWG SE employees shall receive up to eight (8) hours holiday credit when authorized to work on a holiday. Work Week Group SE employees shall not receive any form of additional compensation, whether formal or informal, unless otherwise provided by this agreement.

All attorney-counsel employees/classifications presently assigned to Work Week Group 4C shall be moved to Work Week Group SE.

6.3 Hours of Work and Work Schedules – WWGs E and SE – Effective September 1, 1999

The following shall apply to employees/classifications assigned to Work Week Groups E and SE.

- A. Employees are expected to work all hours necessary to accomplish their assignments and fulfill their responsibilities. Employees will normally average forty (40) hours of work per week including paid leave; however, work weeks of a longer duration may occasionally be necessary.
- B. Employees shall not be denied either flexible working hours or reduced work time except for operational needs which shall be in writing. Employees with flexible work schedules shall comply with reasonable procedures established by their department. This section concerning flexible working hours and reduced work time is subject to the grievance procedure up to and including the third level of review. It shall not be subject to arbitration.
- C. Employees are responsible for keeping management reasonably apprised of their schedule and whereabouts; and, must respond to directions from management to complete work assignments. Employees may be required to record time for purposes such as client billing, budgeting, case or project tracking.
- D. Employees shall not:
 - 1. Be charged any paid leave for absences in less than whole day increments.
 - 2. Be docked or have their salary reduced for absences of less than an entire day.
 - 3. Be suspended in increments of less than one (1) complete work week (i.e., one week, two weeks, three weeks, etc.)
 - 4. Have their pay reduced as a result of a disciplinary (adverse) action pursuant to Government Code section 19572.
 - 5. Have absences of less than one (1) day recorded for attendance record keeping or compensation purposes.

6.4 Telework

- A. The State and CASE recognize that telework has been proven to improve employee morale, reduce traffic congestion and improve productivity.
- B. Employee requests to telework shall not be denied except for operational needs. When teleworking requests are denied, the reason shall be put in writing, if requested by the employee. Employees who believe their request to telework was denied in violation of this subsection, may file a grievance that can be appealed to the fourth level of the grievance procedure.

6.5 Real Time Hearing Support (WCAB)

- A. The Department of Industrial Relations Division of Workers' Compensation shall investigate and study appropriate equipment and technology that may enable Workers' Compensation Administrative Law Judges to comply with the summary of evidence requirements of Labor Code Section 5313 without the necessity of their taking handwritten notes during the course of trial.
- B. Such investigations and study of equipment and technology may include a pilot program utilizing real time capable reporters, computers and software and other appropriate technology.
- C. The parties recognize that any future changes that occur as a result of this study may require new legislation or modifications to Workers' Compensations Appeals Board regulations prior to their implementation.
- D. Upon written request, but in no event more than once annually, the Division agrees to meet and discuss with the Union the progress of its investigation and study. Upon completion of the study the State agrees to notify and meet and discuss with the Union the results and recommendations proposed by the study.
- E. If new legislation or modifications to Workers' Compensation Appeals Board regulations are recommended, the State agrees to notify the Union pursuant to Article 4.3, prior to their implementation.

6.6 Rest Periods

- A. An employee in WWG 2 may be granted a rest period on State time not to exceed fifteen (15) minutes each four (4) hours of his/her work shift, not to exceed thirty (30) minutes each workday. A rest period will not normally be granted during the first or last hour of the work shift. An employee shall be permitted to leave his/her work area during the rest period.
- B. Rest periods may not be accumulated nor may they be used to "make-up" time.

6.7 Meal Periods (Work Week Group 2 – WWG2)

- A. Except for employees on a straight eight (8) hour shift, full-time employees shall normally be allowed a meal period of not less than thirty (30) minutes or not more than sixty (60) minutes which shall be scheduled near the middle of the work shift. Meal periods taken shall not be counted as part of total hours worked.
- B. Employees working more than five (5) hours per day, but less than eight (8) hours per day shall be entitled to a meal period of at least thirty (30) minutes. Meal periods shall not be counted as part of total hours worked.

ARTICLE 7 – GRIEVANCE AND ARBITRATION

7.1 Purpose

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

7.2 Definitions

- A. A grievance is a dispute between the State and CASE, or between the State and one or more employees, involving the interpretation, application, or enforcement of the express terms of this MOU.
- B. A complaint is a dispute between the State and CASE, or between the State and one or more employees, involving the application or interpretation of a written rule or policy not covered by this MOU and not under the jurisdiction of the SPB. Complaints shall only be processed as far as the department head or designee.
- C. As used in this procedure, the term "immediate supervisor" means the individual identified by the department head.
- D. As used in this procedure, the term "party" means CASE, an employee, or the State.
- E. A "CASE representative" refers to an employee designated as a CASE local representative or a paid staff representative.

7.3 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.

7.4 Waiver of Steps

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

7.5 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 CASE steward, or both, may attend without loss of compensation.

7.6 Informal Discussion

An employee 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.

7.7 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 employee can reasonably be expected to have known of the event occasioning the grievance;
 - 2. 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 Item (1) above, the period in which to bring the grievance shall not be extended by Item (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 fourteen (14) calendar days after receipt of the formal grievance, the person designated by the department head as the first level of appeal shall respond in writing to the grievance.
- E. No contract interpretation or grievance settlement made at this stage of the grievance procedure shall be considered precedential.

7.8 Formal Grievance - Step 2

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 the department head or his/her designee.

Within thirty (30) 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. A copy of the written response shall be sent concurrently to CASE.

7.9 Formal Grievance - Step 3

- A. If the grievant is not satisfied with the decision rendered at Step 2, 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.

7.10 Response

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

7.11 Formal Grievance - Step 4

- A. If the grievance is not resolved at Step 3, within thirty (30) calendar days after receipt of the fourth level response, CASE shall have the right to submit the grievance to arbitration.
- B. Within fourteen (14) 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 arbitrator. If no agreement is reached on the selection of an arbitrator the parties shall, immediately and jointly, request the State Mediation and Conciliation Service or the American Arbitration Association to submit to them a panel of nine (9) arbitrators from which the State and CASE shall alternately strike names until one name remains and this person shall be the arbitrator. If the parties cannot agree from which service to obtain the list of arbitrators, the party requesting arbitration shall pay all costs, if any, of obtaining the list of arbitrators.
- C. The arbitration hearing, itself, 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 CASE and the State, issue his/her decision, opinion, or award orally upon submission of the arbitration. Upon the request of either party, the arbitrator will be required to put his/her decision, opinion, or award in writing, with copies to each party.
- E. The arbitrator shall not have the power to add to, subtract from, or modify this MOU. Only grievances as defined in Section 7.2(a) of this Article shall be subject to arbitration. In all arbitration cases, the award of the arbitrator shall be final and binding upon the parties.

7.12 Health and Safety Grievances

- A. It is the policy of the state employer to provide reasonable safeguards for the protection of the health and safety of all employees.
- B. To this end, the parties agree that it is in their mutual best interest to endeavor to make the worksite as free from danger to the life, safety or health of employees as the nature of the work permits.
- C. It is understood that references to safety and health conditions of work are not intended to include those hazards and risks which are an ordinary characteristic of the work or are reasonably associated with the performance of an employee's responsibilities and duties.
- D. Nothing in this procedure shall be interpreted as an authorization to fail to follow orders or instructions. Departmental orders and state policy require that orders be obeyed promptly even where inherent risk is involved or where the employee does not personally agree with the order unless the order constitutes what a reasonable person under similar circumstances would perceive as an immediate risk of death or serious injury.

- E. It is the intent of this Health and Safety Grievance Procedure to ensure a prompt response to employees who feel that a situation exists which constitutes a danger to their safety and health.
- F. When the Union feels that there exists a clear and present danger of an imminent and severe threat to the health and safety of the employees, the union may invoke the Immediate Dispute Resolution-Health and Safety provision in Article 7.14 of this contract. When an employee in good faith believes that an otherwise unsafe condition exists, he/she will so notify his/her supervisor. The supervisor will immediately assess the situation, direct any necessary corrective action, and either direct the employee to temporarily perform some other task or direct the employee to proceed with his/her assigned duties. If the Union or the employee still believe the unsafe conditions exist, the Union or the employee may file a grievance alleging a violation of this Section at Step 2 of the grievance procedure as follows:
1. Health and Safety Grievance – Step 2
 - a. If the grievant is not satisfied with the decision rendered by his/her supervisor pursuant to Section 7.7 of this article, 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 as the second level of appeal.
 - b. 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.
 2. Health and Safety Grievance – Step 3
 - a. If the grievant is not satisfied with the decision rendered pursuant to Step 2, the grievant may appeal the decision within fourteen (14) 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.
 - b. Within fourteen (14) 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.
 - c. If the grievance is not resolved at Step 3 within thirty (30) calendar days after the receipt of the third step response, the Union shall have the right to appeal to the Department of Personnel Administration.
- G. If the grievance cannot be resolved at Step 4, within thirty (30) calendar days after receipt of the fourth step response the Union may submit the grievance to arbitration pursuant to Step 5 of the grievance section of this contract. The selection of the arbitrator shall be in accordance with the grievance and arbitration section of this contract.

7.13 Immediate Dispute Resolution - Health and Safety

- A. When the union believes that there exists a clear and present danger of an imminent and severe threat to the health and safety of Unit 2 employees and the elimination of that danger cannot be accomplished at the local level, CASE may invoke the provisions of this section as follows:
1. Within forty-eight (48) Monday through Friday hours of becoming aware of the alleged threat CASE may contact the department's Labor Relations Officer with specific information regarding the alleged threat to the health and/or safety of the employees.
 2. The Labor Relations Officer may resolve the dispute or may refer the matter down to a lower management level.
 3. If the dispute is referred to a lower management level, CASE will commence informal discussions at the designated level within twenty-four (24) Monday through Friday hours.
 4. The Labor Relations Officer may also participate in any informal discussion at any time.
 5. If a mutual resolution is not achieved within forty-eight (48) Monday through Friday hours from the time the dispute was referred to the lower management level CASE may request informal talks with level 3 of the grievance and arbitration procedure.
 6. If a mutual resolution is not achieved within twenty-four (24) Monday through Friday hours of the dispute being presented at level 3, CASE may present the dispute to the Department of Personnel Administration.
 7. If a mutual resolution is not achieved within twenty-four (24) Monday through Friday hours of the dispute being presented at that level, CASE may request the dispute be submitted to immediate arbitration.
 8. The State shall request the American Arbitration Association, the State Conciliation and Mediation Service or the Federal Mediation and Conciliation Service to submit to the parties a panel of five (5) names. The first arbitrator, mutually agreeable who can be available for arbitration within ten (10) calendar days of the date the list is provided, or on a date mutually agreed to by the parties, shall be selected. In the event that the parties do not agree on an arbitrator, names from the list shall be stricken as follows: CASE shall make the first selection, and the parties shall thereafter alternately make selections until an arbitrator is available or the panel is exhausted, a second panel shall be requested.
 9. The arbitrator shall have no authority to add to, delete or otherwise alter any provision of the contract, but shall limit the decision to the facts and circumstances as provided at arbitration.

10. The arbitrator shall make a decision solely on any written record previously submitted by the parties, with each party also providing a copy to the other party, on any oral presentation, and on any documentation submitted at arbitration. Only the arbitrator may ask questions of the other party. Statements of witnesses may be submitted in the form of an affidavit.
 11. The Arbitrator shall make a bench decision which is binding on the parties.
 12. The costs of the arbitration shall be borne equally by the parties.
- B. It is understood that references to health and safety conditions of work are not intended to include those hazards and risks which are an ordinary characteristic of the work or are reasonably associated with the performance of an employee's responsibilities and duties.
 - C. Time limits may be extended at any step by mutual agreement of the parties.
 - D. The parties agree that the intent of this procedure is to provide an avenue for urgent communications between the parties at the appropriate level in order to timely clear up misunderstandings that may seriously affect employees.

7.14 Grievance Review

Upon request, the Department of Personnel Administration shall meet monthly with the Union in an attempt to settle and resolve grievances pending at the third level. The parties shall agree at least two weeks prior to each meeting on the agenda and who shall attend.

ARTICLE 8 – HOLIDAYS

8.1 Holidays

- A. All full-time and part time employees shall be entitled to such observed holidays with pay as provided herein, 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 personal 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 one and one-half (1-½) 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 (8) hours on the holiday, the employee shall receive no more than twenty (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 the 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 (8) hours of holiday credit and four (4) hours of informal time off. If an observed holiday falls on an employee's normal day off, and the employee does not work, the employees shall receive no more than eight (8) hours of holiday credit.
- J. Part time employees in workweek 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:

L. CHART FOR COMPUTING VACATION, SICK LEAVE, AND HOLIDAY CREDITS FOR ALL FRACTIONAL TIME BASE EMPLOYEES SUPERCEDES ACCRUAL RATES IN MANAGEMENT MEMORANDUM 84-20-1

TIME BASE	HOURS OF MONTHLY VACATION CREDIT PER VACATION GROUP							HOURS OF MONTHLY SICK LEAVE AND HOLIDAY CREDIT
	7	10	11	12	13	14	15	SL/HOL 8
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.

- M. Holiday Credit may be requested and taken in fifteen (15) minute increments.
- N. An employee shall be allowed to carry over unused holiday credits or be paid for the unused holiday credits, at the discretion of the department head or designee.
- O. Upon termination from State employment, an employee shall be paid for unused holiday credit.

- P. In the event that traditional, but unofficial holidays (e.g., Mother's Day, Father's Day), or religious holidays (e.g., Easter or Yom Kippur) fall on an employee's scheduled workday, the employee shall have the option to request the use of annual leave, accrued vacation, holiday credits, personal leave or CTO time, in order to secure the day off. The department head or designee shall make a reasonable effort to grant an employee the day off subject to operational need.
- Q. Upon the agreement of all bargaining units, the Union agrees to the elimination of one holiday, February 12.

ARTICLE 9 – LEAVES

9.1 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 forty-two (42) hours of vacation credit. Thereafter, for each additional qualifying monthly pay period, the employee shall be allowed credit for vacation with pay on the first day of the following monthly pay periods 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

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. A full-time employee who has eleven (11) or more working days of service in a monthly pay period shall receive vacation leave credits as 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 following schedule.

**CHART FOR COMPUTING VACATION, SICK LEAVE, AND HOLIDAY CREDITS FOR ALL
FRACTIONAL TIME BASE EMPLOYEES SUPERCEDES ACCRUAL RATES IN MANAGEMENT
MEMORANDUM 84-20-1**

TIME BASE	HOURS OF MONTHLY VACATION CREDIT PER VACATION GROUP							HOURS OF MONTHLY SICK LEAVE AND HOLIDAY CREDIT
	7	10	11	12	13	14	15	SL/HOL
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

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 six hundred forty (640) hours. A department head or designee may permit an employee to carry over more than six hundred forty (640) hours of accrued vacation leave hours if an employee was unable to reduce his/her accrued hours because the employee was:

1. Required to work as a result of fire, flood, or other extensive emergency;
2. Assigned work of a priority or critical nature over an extended period of time;
3. Absent on full salary for compensable injury;
4. Prevented by department regulations from taking vacation until December 31 because of sick leave; or

5. On jury duty; or,
 6. Prevented by the department head or designee from utilizing accrued vacation.
- E. It is the employee's responsibility to utilize all vacation hours in excess of the six hundred forty (640) hour cap by the end of each calendar year unless otherwise prevented from doing so as enumerated in subsection D (1-6) above. Whenever an employee's vacation accumulation exceeds six hundred forty (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.
 - F. Upon termination from State employment, the employee shall be paid for accrued vacation credits for all accrued vacation time.
 - G. Vacation requests must be submitted in accordance with departmental policies on this subject. Vacation shall be taken as agreed by the employee and the department head or designee. Requests for vacation may be denied for operational needs.
 - H. If an employee's failure to take a vacation for an extended period of time adversely affects his/her work performance, the employee may be required to take vacation leave.
 - I. Each department head or designee will make every effort to act on vacation requests in a timely manner.
 - J. Vacations will be cancelled only when operational needs require it.
 - K. Vacation leave credits may be used in thirty (30) minute increments, except that fractional vacation leave credits may be used where/when accumulated.

9.2 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, when required by the State.

F. Employees denied an unpaid leave of absence or whose leave is terminated prior to the expiration date shall be provided specific business reasons, in writing, for the denial or termination.

9.3 Sick Leave

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

1. illness or injury;
2. Exposure to a contagious disease;
3. Dental, eye, and other physical or medical examination or treatment by a licensed practitioner;
4. Absence from duty for attendance upon employee's ill or injured mother, father, husband, wife, domestic partner as certified with the Secretary of State's Office in accordance with AB 26 (Chapter 588, Statutes of 1999), son, daughter, brother, sister, or any person residing in the immediate household, or to transport any of the above to an examination or treatment listed in Item (3) above. Such absence shall be limited by the department head or designee to the time reasonably required for such attendance.

- B. Credit for Full-Time Employment.** On the first day of the monthly pay period following completion of each qualifying pay period of continuous service, each full-time employee in the State civil service shall earn eight (8) hours of credit for sick leave with pay. A full-time employee who has eleven (11) or more working days of service in a monthly pay period shall earn full sick-leave credit. Absences from State service resulting from a temporary or permanent separation for more than eleven (11) consecutive working days which fall into two consecutive qualifying pay periods shall disqualify the second pay period.
1. **Intermittent Employees.** On the first day of the monthly pay period following completion of each period of one hundred sixty (160) hours or twenty (20) days of paid employment, each intermittent employee in the State civil service shall be allowed one (1) day of credit for sick leave with pay. The hours or days worked in excess of one hundred sixty (160) hours or twenty (20) days in a monthly pay period shall not be counted or accumulated.
 2. **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 in the State civil service shall be allowed, on a pro rata basis, the fractional part of one (1) day of credit for sick leave with pay.
 3. **Multiple Positions.** Under this rule:
 - a. An employee holding a position in addition to other full-time employment 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 full-time employment credit.
- C. Sick Leave Usage.** The department head or designee may require the employee to submit a physician's or licensed practitioner's certificate if:
1. The employee is absent on sick leave for more than two (2) consecutive work days; or
 2. Where the supervisor has good cause to believe the employee's use of sick leave is improper.
- D.** The department head or designee may deny the request for sick leave if the required certificate is not provided or sick leave was taken under false pretenses.
- E.** Employees not in Work Week Group E or SE may request and use sick leave in fifteen (15) minute increments.

9.4 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, sister, brother, stepchild, 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 (3) 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 a 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, or immediate family members of domestic partners as defined in paragraph A above. Such bereavement leave shall be authorized for up to three (3) eight-hour days in a fiscal year and shall, if requested by the supervisor, provide substantiation. The employee shall give notice to his/her immediate supervisor as soon as possible and shall, if requested by the employees supervisor, provide substantiation to support the request.
- C. If the death of a person as described above requires the employee to travel over four hundred (400) miles one way from his/her home, additional time off with pay shall be granted for two (2) additional days which shall be deducted from accrued leave. Should additional leave be necessary, the department head or designee may authorize the use of existing leave credits or authorized leave without pay.
- D. Employees may utilize their annual leave, vacation, CTO, or any other earned leave credits for additional time required in excess of time allowed in A or B above. Sick leave may be utilized for Bereavement Leave in accordance with the Sick Leave provision of this agreement.
- E. Fractional time base (part-time) employees will be eligible for bereavement leave on pro-rata basis, based on the employee's fractional time base.

9.5 Parental Leave

- A. A female permanent employee shall be entitled, upon request, to an unpaid leave of absence for purposes of pregnancy, childbirth, recovery therefrom or care for the newborn child for a period not to exceed one (1) year. The employee shall provide medical substantiation to support her request for pregnancy leave. The request must include the beginning and ending dates of the leave and must be requested no later than thirty (30) calendar days after the birth of the child. Any changes to the leave, once approved, are permissive and subject to the approval of the department head or designee.

- B. A male spouse or male parent, domestic partner that has been defined and certified with the Secretary of State's office in accordance with Family Code Section 297 who is a permanent employee, shall be entitled, upon request, to an unpaid leave of absence for a period not to exceed one (1) year to care for his newborn child. The employee shall provide medical substantiation to support his request for parental leave. The request must include the beginning and ending dates of the leave and must be requested no later than thirty (30) calendar days after the birth of the child. Any changes to the leave, once approved, are permissive and subject to the approval of the department head or designee.
- C. If the request for parental leave is made more than thirty (30) calendar days after the birth of the child, a permissive unpaid leave of absence may be considered by the department head or designee.
- D. During the period of time an employee is on parental leave, he/she shall be allowed to continue their health, dental and vision benefits. The cost of these benefits shall be paid by the employee and the rate the employee will pay will be the group rate.

9.6 Adoption Leave

- A. A department head or designee shall grant a permanent employee's request for an unpaid leave of absence for the adoption of a child for a period not to exceed one (1) year. The employee shall provide substantiation to support the employee's request for adoption leave.
- B. During the period of time an employee is on adoption leave, he/she shall be allowed to continue their health 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.

9.7 Catastrophic Leave (Work and Family Transfer of Leave Credits)

- A. The parties agree with the importance of family members in the lives of State employees, as recognized by the Joint Labor/Management Committee on Work and Family. The parties agree that the transfer of leave credits between State employees and family members, who are also State employees, is appropriate for issues relating to approved catastrophic leave, Family Medical Leave, parental leave and adoption leave.
- B. 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) shall be transferred from one or more employees to another employee, or between family members (donations may be made by a child, parent, spouse, brother, sister or other person residing in immediate household) in accordance with departmental procedures under the following conditions:
 1. To care for the family member's mother, father, spouse, spouse's parent's, child, brother, sister, domestic partner that has been certified with the Secretary of State's office in accordance with AB 26 (Chapter 588, Statutes of 1999) or 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 for a parental leave to care for a newborn or adopted child.

- C. 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, 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, 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, brother, sister, or other person residing in the immediate household.
 5. For the employee's own serious health condition, this 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 or more of the essential functions of his/her position. Certification shall also be provided for parental or adoption leaves.
- D. Sick leave credits cannot be transferred.
- E. The receiving employee has exhausted all leave credits.
- F. The donations must be a minimum of one (1) hour, and in whole increments thereafter.
- 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 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.

9.8 Catastrophic Leave - Natural Disaster

- A. Upon request of an employee and upon approval of a department director or designee, leave credits (CTO, vacation and/or holiday) may be transferred from one or more employees to another employee, in accordance with departmental policies, under the following conditions:
1. Sick leave credits cannot be transferred.
 2. When the receiving employee faces financial hardship due to the effect of a natural disaster on the employee's principal residence.
 3. 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.
 4. The donations must be in whole hour increments and credited as vacation or annual leave.
 5. Transfer of annual leave, vacation, CTO and holiday credits shall be allowed to cross departmental lines in accordance with the policies of the receiving department.
 6. The total leave credits received by the employee shall normally not exceed three (3) months; however, if approved by the appointing authority, the total leave credits received may be six (6) months.
 7. Donations shall be made on a form to be developed by the State, signed by the donating employee, and verified by the donating department. These donations are irrevocable.
- B. This section is not subject to the grievance and arbitration article of this contract.

9.9 Jury Duty

- A. An employee shall be allowed such time off without loss of compensation as is required in connection with mandatory jury duty. If payment is made for such time off, the employee is required to remit to the State, jury fees received. When night jury service is required of an employee, the employee shall be allowed time off without loss of compensation for such portion of the required time that coincides with the employee's normal work schedule. This includes any necessary travel time.
- B. An employee shall notify his/her supervisor immediately upon receiving notice of jury duty.
- C. If an employee elects to use accrued vacation leave or compensating time off while on jury duty, the employee is not required to remit jury fees.
- D. For purposes of this Section, "jury fees" means fees received for jury duty excluding payment for mileage, parking, meals or other out-of-pocket expenses.

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

9.10 Personal Leave

- A. Accrued personal leave shall be requested/used by the employee in the same manner as vacation or annual leave. Requests to use personal leave must be submitted in accordance with departmental policies on vacation or annual leave.
- B. At the discretion of the State, all or a portion of unused personal leave credits may be cashed out at the employee's salary rate at the time the personal leave payment is made. It is understood by both parties that the application of this cash out provision may differ from department-to-department and from employee-to-employee. 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 "compensation" for purposes of retirement.

9.11 Annual Leave Program

- 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 twenty four (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
241 months 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 six hundred forty (640) hours. A department head or designee may permit an employee to carry over more than six hundred forty (640) hours of accrued 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 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 9.3, Sick Leave, of this agreement.
- K. The Enhanced Non-Industrial Disability Insurance (ENDI) in Section 11.11 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 twenty four (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 NDI benefit (50 percent of gross salary).

9.12 Mentoring Leave

- A. Eligible employees may receive up to forty (40) hours of "mentoring leave" per calendar year to participate in mentoring activities once they have used an equal amount of their personal time for these activities. "Mentoring leave" is paid leave time, which may only be used by an employee to mentor. This leave does not count as time worked for purposes of overtime. "Mentoring leave" may not be used for travel to and from the mentoring location.
- B. An employee must use an equal number of hours of his/her personal time (approved annual leave, vacation, personal leave, personal holiday, or CTO during the workday and/or personal time during non-working hours) prior to requesting "mentoring leave." For example, if an employee requests two (2) hours of "mentoring leave", he/she must have used two (2) verified hours of his/her personal time prior to receiving approval for the "mentoring leave". "Mentoring leave" does not have to be requested in the same week or month as the personal time was used. It does, however, have to be requested and used before the end of the calendar year.
- C. Prior to requesting mentoring leave and in accordance with departmental policy, an employee shall provide his/her supervisor with verification of personal time spent mentoring from the mentoring organization.
- D. Requests for approval of vacation, CTO, and/or annual leave for mentoring activities are subject to approval requirements in this contract and in existing departmental policies. Requests for approval of mentoring leave are subject to operational needs of the State, budgetary limits, and any limitations imposed by law.
- E. In order to be eligible for "mentoring leave," an employee must:
 - 1. Have a permanent appointment;
 - 2. Have successfully completed their initial probationary period; and
 - 3. Have committed to mentor a child or youth through a mentoring organization that meets the quality assurance standards, for a minimum of one (1) 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 Department of Corrections, Youth Authority; 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 prorated amount of mentoring leave based upon their timebase. For example, a halftime employee is eligible for twenty (20) hours of "mentoring leave" per calendar year, whereas an intermittent employee must work a monthly equivalent of one hundred sixty (160) hours to earn 3.33 hours of mentoring leave.

9.13 Union Leave

- A. The Union shall have the choice of requesting an unpaid leave of absence or a paid leave of absence (Union leave) for CASE Officers or Representatives. An unpaid leave of absence may be granted by the State pursuant to the unpaid leave of absence provisions in this contract. A Union leave may also be granted during the term of this contract at the discretion of the affected department head or designee in accordance with the following:
1. The Union leave shall normally be requested on a State approved form fourteen (14) calendar days prior to the date of the leave;
 2. 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;
 3. The Union agrees to reimburse the affected department(s) for the full amount of the affected employee's salary, plus an additional amount equal to thirty-five (35%) percent of the affected employee's salary, for all the time the employee is off on a Union leave, within sixty (60) days of billing. Disputes regarding reimbursement shall be resolved through the arbitration process;
 4. 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;
 5. Except in emergencies or layoff situations, a Union leave shall not be terminated by the department head or designee prior to the expiration date;
 6. Employees on Union leave shall suffer no loss of compensation or benefits;
 7. 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;
 8. Employees on Union leave under this provision and the Union shall waive any and all claims against the State for Workers' Compensation and Industrial Disability Leave;

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

9.14 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 who has been certified with the Secretary of State's office in accordance with AB 26 (Chapter 588, Statutes of 1999), 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 who has been certified with the Secretary of State's office in accordance with AB 26 (Chapter 588, Statutes of 1999), 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 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 who has been certified with the Secretary of State's office in accordance with AB 26 (Chapter 588, Statutes of 1999), 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 who has been certified with the Secretary of State's office in accordance with AB 26 (Chapter 588, Statutes of 1999), 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 who has been certified with the Secretary of State's office in accordance with AB 26 (Chapter 588, Statutes of 1999), brother, sister, or other person residing in the immediate household.

For the employee's own serious health condition, this 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 one (1) or more of the essential functions of his/her position. Certification shall also be provided for parental or adoption leaves.

- 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 eighty (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.

9.15 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 (4) 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 sixty (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.

9.16 Family Medical Leave Act (FMLA)

- A. The State acknowledges its commitment to comply with the spirit and intent of the leave entitlement provided by the FMLA and the California Family Rights Act (CFRA) referred to collectively as "FMLA". The State and the Union recognize that on occasion it will be necessary for employees of the State to take job-related leave for reasons consistent with the FMLA. As defined by the FMLA, reasons for an FMLA leave may include an employee's serious health condition, for the care of a child, parent, spouse or domestic partner that has been defined and certified with the Secretary of State's office in accordance with Family Code Section 297 who has a serious health condition, and/or the birth or adoption of a child.
- B. For the purposes of providing the FMLA benefits the following definitions shall apply:
1. An eligible employee means an employee who meets the eligibility criteria set forth in the FMLA;
 2. An employee's child means any child, regardless of age, who is affected by a serious health condition as defined by the FMLA and is incapable of self care. "Care" as provided in this section applies to the individual with the covered health condition;
 3. An employee's parent means a parent or an individual standing in loco parentis as set forth in the FMLA;
 4. Leave may include paid sick leave, vacation, annual leave, personal leave, catastrophic leave, holiday credit, excess hours, and unpaid leave. In accordance with the FMLA, an employee shall not be required to use CTO credits, unless otherwise specified by Section 9.7 (Catastrophic Leave-Work and Family Transfer of Leave Credits) of this contract.
 - a. FMLA absences due to illness and/or injury of the employee or eligible family member may be covered with the employee's available sick leave credits and catastrophic leave donations. Catastrophic leave eligibility and leave credit usage for a FMLA leave will be administered in accordance with Section 9.3 (Sick Leave) and 9.7 (Catastrophic Leave-Work and Family Transfer of Leave Credits) of this contract.
 - b. Other leave may be substituted for the FMLA absence due to illness and/or injury, at the employee's discretion. An employee shall not be required to exhaust paid leave, before choosing unpaid leave, unless otherwise required by Section 9.7 (Catastrophic Leave-Work and Family Transfer of Leave Credits) of this contract.

- c. FMLA absences for reason other than illness and/or injury (i.e. adoption or care of an eligible family member), may be covered with leave credits, other than sick leave, including unpaid leave, at the employee's discretion. Except in accordance with Section 9.7 (Catastrophic Leave-Work and Family Transfer of Leave Credits) of this contract, an employee shall not be required to exhaust all leave credits available before choosing unpaid leave to cover an FMLA absence.
- C. An eligible employee shall provide certification of the need for an FMLA leave. Additional certification may be requested if the department head or designee has reasonable cause to believe the employee's condition or eligibility for FMLA leave has changed. The reasons for the additional certification request shall be provided to the employee in writing.
- D. An eligible employee shall be entitled to a maximum of twelve (12) workweeks (480 hours) FMLA leave per calendar year and all other rights set forth in the FMLA. This entitlement shall be administered in concert with the other leave provisions in article 9 (Leaves) of this contract. Nothing in this contract should be construed to allow the State to provide less than that provided by the FMLA.
- E. Within ninety (90) days of the ratification date of this contract, and on January 1 of each year thereafter, FMLA leave shall be recorded in accordance with the calendar year. Each time an employee takes an FMLA leave, the remaining leave entitlement is any balance of the twelve (12) workweeks that has not been used during the current calendar year. Employees who have taken FMLA leave under the previous twelve (12) month rolling period, shall be entitled to additional leave up to a total of twelve (12) weeks for the current calendar year.
- F. An employee on FMLA leave has a right to be restored to his/her same or "equivalent" position (FMLA) or to a "comparable" position (CFRA) with equivalent pay, benefits, and other terms and conditions of employment.
- G. For the purpose of computing seniority, employees on paid FMLA leave will accrue seniority credit in accordance with Department of Personnel Administration Rules 599.608 – 599.609.
- H. Any appeals regarding an FMLA decision should be directed to the department head or designee. FMLA is a Federal law and is administered and enforced by the Department of Labor, Employment Standards Administration, Wage and Hour Division. The State's CFRA is a state law which is administered and enforced by Department of Fair Employment and Housing. FMLA/CFRA does not supersede any article of this Contract which provides greater family and medical leave rights. This section is not subject to grievance or arbitration.

9.17 Organ Donor Leave

Organ Donor Leave shall be administered in accordance with Government Code Section 19991.11. (a) Subject to subdivision (b), an appointing power shall grant to an employee, who has exhausted all available sick leave, the following leaves of absence with pay:

(1) A leave of absence not exceeding 30 days to any employee who is an organ donor in any one-year period, for the purpose of donating his or her organ to another person.

(2) A leave of absence not exceeding five days to any employee who is a bone marrow donor in any one-year period, for the purpose of donating his or her bone marrow to another person.

(b) In order to receive a leave of absence pursuant to subdivision (a), an employee shall provide written verification to the appointing power that he or she is an organ or bone marrow donor and that there is a medical necessity for the donation of the organ or bone marrow.

(c) Any period of time during which an employee is required to be absent from his or her position by reason of being an organ or bone marrow donor is not a break in his or her continuous service for the purpose of his or her right to salary adjustments, sick leave, vacation, annual leave, or seniority.

(d) If an employee is unable to return to work beyond the time or period that he or she is granted leave pursuant to this section, he or she shall be paid any vacation balance, annual leave balance, or accumulated compensable overtime. The payment shall be computed by projecting the accumulated time on a calendar basis as though the employee was taking time off. If, during the period of projection, the employee is able to return to work, he or she shall be returned to his or her former position as defined in Section 18522.

(e) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that, if those provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

9.18 Precinct Election Board

With prior approval of the employee's supervisor and under comparable conditions as provided for supervisors and managers in DPA rule 599.930, an employee in Bargaining Unit 2 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.

ARTICLE 10 -- LAYOFF

10.1 Layoff and Reemployment

A. Application

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

B. Order of Layoff

Employees shall be laid off in order of seniority pursuant to Government Code Sections 19997.2 through 19997.7 and applicable State Personnel Board and Department of Personnel Administration rules:

C. Notice

Employees compensated on a monthly basis shall be notified thirty (30) calendar days in advance of the effective date of layoff. Where notices are mailed, the thirty (30) calendar day time period will begin to run on date of mailing of the notice. The State agrees to notify CASE no later than (thirty (30) calendar days prior to the actual date of layoff.

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 Department of Personnel Administration 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 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 consecutive working days falls into two (2) consecutive qualifying pay periods, the second pay period shall be disqualified.

G. Any dispute regarding the interpretation or application of any portion of this layoff provision shall be resolved solely through the procedures established in Government Code section 19997.14. The hearing officer's decision shall be final and upon its issuance the Department of Personnel Administration (DPA) shall adopt the hearing officer's decision as its own. In the event that either the employee(s) or appointing power seeks judicial review of the decision pursuant to Government Code section 19815.8, DPA, in responding thereto, shall not be precluded from making arguments of fact or law that are contrary to those set forth in the decision.

H. Departments filling vacancies shall offer positions to current employees facing layoff, demotion in lieu of layoff or mandatory geographic transfer who meet the minimum qualifications for the vacancy being filled, provided that the vacancy is equivalent in salary and responsibility and in the same geographic area and bargaining unit.

10.2 Reducing the Adverse Effects of Layoff

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

10.3 Alternative to Layoff

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

10.4 Layoff Employee Assistance Program

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

ARTICLE 11 – HEALTH AND WELFARE

11.1 Consolidated Benefits (CoBen) Program Description

A. Consolidated Benefits (CoBen) Program Description

1. CoBen Allowance

Effective January 1, 2006, the employer health benefits contribution for each employee shall be a flat dollar 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 flat dollar amount equal to 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.

(a) The State shall contribute \$365 per month for coverage of an eligible employee. (Party code one)

(b) The State shall contribute \$696 per month for coverage of an eligible employee plus one dependent. (Party code two)

(c) The State shall contribute \$906 per month for coverage of an eligible employee plus two or more dependents. (Party code three)

To be eligible for this contribution, an employee must positively enroll in a health plan administered or approved by CalPERS. The established dollar amount(s) shall not be increased in subsequent years without a negotiated agreement by both parties.

2. Unit 2 employees who first become eligible for health benefit enrollment on or after July 1, 2006 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 January 1, 2007, to accommodate administrative or system changes which may be necessary to implement this section.

When an employee is appointed to a new position or class that results in a change in eligibility for the composite rate, the effective date of the change shall be the first of the month following the date the notification is received by the State Controller's Office if the notice is received by the tenth of the month.

3. Description of the Consolidated Benefit (CoBen) Program

Employees will be permitted to choose a different level of benefit coverage according to their personal needs, and the State's allowance amount will depend on an employee's selection of coverage and number of enrolled dependents. The State agrees to provide the following CoBen benefits:

- a. If the employee is enrolled in both a health plan administered or approved by CalPERS and a dental plan administered or approved by DPA, the health benefit enrollment party code will determine the allowance amount.
- b. If the employee declines a health benefit plan which is administered or approved by CalPERS and certifies health coverage from another source, the employee's dental benefit enrollment party code will determine the amount of the contribution.
- c. If the employee elects not to enroll in a health plan administered or approved by CalPERS and in a dental plan administered or approved by DPA and certifies health and dental coverage from other sources the employee will receive \$155 in taxable cash per month. Cash will not be paid in lieu of vision benefits and employees may not disenroll from vision coverage. Employees do not pay an administrative fee.

- d. Permanent Intermittent (PI) employees shall only be eligible to participate in the CoBen Cash Option and receive a six-month cash payment for the first control period of each plan year.
- e. If the employee elects not to enroll in a health plan administered or approved by CalPERS and certifies health coverage from another source, but enrolls in a dental plan administered or approved by DPA, the employee may receive the difference between the applicable composite contribution and the cost of the dental plan selected and vision benefits, not to exceed \$130 per month. (The State will pay the premium cost of the dental plan and vision plan.) Cash will not be paid in lieu of vision benefits, and employees may not disenroll from vision coverage. Employees do not pay an administrative fee.
- f. If the monthly cost of any of the State's benefit plans (health, dental and vision) in which an employee elects to enroll exceeds the State's maximum allowance amount as set forth in Subsection A.1.a., b. or c. or A.2.a., b. or c., above, the employee shall pay the difference on a pre-tax basis. If there is money left over after the cost of these benefits is deducted, the remaining amount will be paid to the employee as taxable cash.

B. Health Benefits

1. Employee Eligibility

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

2. Permanent Intermittent (PI) Employees

- a. Initial Eligibility – A permanent intermittent employee will be eligible to enroll in health benefits during each calendar year if the employee has been credited with a minimum of 480 paid hours in a PI control period. 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).

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

C. Dental Benefits

1. Contribution

The employer contribution for dental benefits shall be included in the Consolidated Benefits Allowance as specified in Section A.1 and A.2 of this agreement.

2. Employee Eligibility

Employee eligibility for dental benefits will be the same as that prescribed for health benefits under subsection B.1. and B.2 of this agreement.

3. Family Member Eligibility

Family member eligibility for dental benefits is the same as that prescribed for health benefits under subsection A.2 and B.3 of this agreement.

D. Vision Benefit

1. Program Description

The employer agrees to provide a vision benefit to eligible employees and dependents. The employer contribution rates for the vision benefit shall be included in the Consolidated Benefits Allowance as specified in Section A.1 and A.2. The vision benefit provided by the State shall have an employee copayment 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 Subsection B.1 and B.2 of this agreement.

3 Family Member Eligibility

Family member eligibility for vision benefits is the same as that prescribed for health benefits under Subsection A.2 and B.3 of this agreement.

E. FlexElect Program

1. Program Description

- a. The State agrees to provide a flexible benefits program (FlexElect) under Internal Revenue Code Section 125 and related Sections 105(b), 129, and 213(d). All participants in the FlexElect Program shall be subject to all applicable Federal statutes and related administrative provisions adopted by DPA. The administrative fee paid by the participants will be determined each year by the Director of the Department of Personnel Administration.
- b. Employees who meet the eligibility criteria stated in subsection 2.a., below, will also be eligible to enroll into a Medical Reimbursement and/or Dependent Care Reimbursement Account.

2. Employee Eligibility

- a. All eligible employees must have a permanent appointment with a time-base of half time or more and have permanent status, or if a limited term or a temporary authorized (TAU) position, must have mandatory return rights to a permanent position.
- b. Permanent Intermittent (PI) employees shall only participate in the CoBen Cash Option and will be eligible to receive a six (6) month Cash payment for the first control period of each plan year. PI's choosing the CoBen Cash Option will qualify if they meet all of the following criteria:
 - (1) must be eligible to enroll in health and/or dental coverage as of January 1 of the Plan Year for which they are enrolling and;
 - (2) must have a PI appointment which is effective from January 1 through June 30 of the Plan Year for which they are enrolling and;
 - (3) must be paid for at least four hundred eighty (480) hours during the January through June control period for the Plan Year in which they are enrolling and;
 - (4) must have completed an enrollment authorization during the CoBen Open Enrollment Period or as newly eligible.

3. Subsection 2.b. is not grievable or arbitrable.

11.2 Rural Health Care Equity Program

- A. Effective July 1, 2001, the State shall continue a Rural Health Care Equity Program for Bargaining Unit 2 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 (DPA) shall administer any fund involving Bargaining Unit 2 members.

B. The program shall operate in the following fashion:

1. The State shall contribute \$1500 per year on behalf of each bargaining unit member (employee) who lives in a defined rural area, as more definitely described in Government Code Section 22825.01.
 - a. Payments shall be on a monthly basis.
 - b. For permanent employees, as in the "Medical Reimbursement Account" situation, the employee does not have to wait for reimbursement of covered medical expenses until the full amount has been deposited.
2. As to any employee who enters State service or leaves State service during a fiscal year, contributions for such employee shall be made on a pro rata basis. A similar computation shall be used for anyone entering or leaving the bargaining unit (e.g., promotion in mid-fiscal year).
3. The money shall be available for use as defined in Government Code Section (GC) 22825.01.
4. A Rural Healthcare Equity Program will be established with a separate account for Bargaining Unit 2 members, as one of several similar accounts.
5. Each Unit 2 employee shall be able to utilize up to \$1500 per year, pursuant to GC section 22825.01, but with the exceptions for greater utilization hereafter noted. The pro rata limitation pursuant to paragraph 11.6(B)(2) is applicable here.
6. If an employee does not utilize the complete \$1500 pursuant to the procedures and limitations described in GC section 22825.01, 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 22825.01. The monies in the same year pool would be distributed at the end, or even soon after, each fiscal year to that group of employees who had expenses in excess of \$1500 in the relevant fiscal year. Those monies shall be distributed on a pro tanto (pro rata) basis.
 - a. Any employee not in Bargaining Unit 2 all year shall receive credit under this paragraph utilizing the same pro rata formula as in paragraph 11.6(B)(2). above.
 - b. If an employee is entitled to less than twenty five dollars (\$25) under Section 11.6(B)(6), the money shall instead go into next year's fund pursuant to Section 11.6(B)(7) hereafter.

7. If monies still remain after a distribution to such employees (i.e., all employees who spent more than \$1500 as provided in GC section 22825.01 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 22825.01 and monies still remained in the pool.

11.3 Group Legal Services Plan

The State of California agrees to contract for an employee-paid group legal services plan, effective on or after March 1, 1992. 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.

11.4 Long-Term Care Insurance Plans

Employees in classes assigned to Bargaining Unit 2 are eligible to enroll in any long-term care insurance plan sponsored by the Public Employees Retirement System. The employee's spouse, parents, siblings, and the spouse's parents are also eligible to enroll in the plans, subject to the underwriting criteria specified in the plan.

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

11.5 Pre-Tax of Health/Dental Premiums Costs

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

11.6 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% 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, 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% of their regular "full pay". This does not qualify the employee for a new disability period under subsection (B) of this section. 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.

11.7 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 9.11.
- 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% 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% income replacement. At the time of an ENDI claim, an employee may elect either the 50% ENDI benefit rate or a supplementation level of 75% or 100% 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 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 ENDI benefit will not exceed 100% of 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 11.6 and such benefits are limited to \$135.00 per week.

11.8 Industrial Disability Leave

- A. For periods of disability commencing on or after January 1, 1993, subject to Government Code Section 19875, eligible employees shall receive IDL payments equivalent to full net pay for the first 22 work days after the date of the reported injury.
- B. In the event that the disability exceeds 22 work days, the employee will receive 66 and 2/3% 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.
- C. 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 approximate the employee's full net pay. 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.

- D. 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. Any employee who is already receiving disability payments on the effective date of this provision will be notified and given 30 days to make a voluntary, but irrevocable, change to the new benefit for the remainder of his/her eligibility for IDL.
- E. 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 Government Code Section 19863.
- F. In the event that an employee is determined to be "permanent and stationary" by his/her physician before the IDL benefit is exhausted, but is unable to return to work, he/she must agree to participate in a vocational rehabilitation program. Refusing to participate will result in immediate suspension of the IDL benefit.
- G. An employee may elect to supplement Vocational Rehabilitation Maintenance Allowance, which is provided pursuant to Section 10125.1, Title 8, California Code of Regulations, with leave credits.
- H. The State and Union agree to support legislation to amend Government Code Section 19863.1, to allow an employee to supplement Vocational Rehabilitation Maintenance Allowance with leave credits.
- I. 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.

11.9 1959 Survivors' Benefits - Fifth Level

- 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 Survivors' Benefit, which provides a death benefit in the form of a monthly allowance to the eligible survivor in the event of death before retirement. This benefit will be payable to eligible survivors of current employees who are not covered by Social Security and whose death occurs on or after the effective date of the memorandum of understanding for this section.
- B. The contribution for employees covered under this new level of benefits will be \$2 per month. The rate of contribution for the State will be determined by the PERS board.
- C. The survivors' benefits are detailed in the following schedule:
 - 1. A spouse who has care of two or more eligible children, or three or more eligible children not in the care of spouse.....\$1,800
 - 2. A spouse with one eligible child, or two eligible children not in the care of the spouse.....\$1,500

3. One eligible child not in the care of the spouse; or the spouse, who had no eligible children at the time of the employee's death, upon reaching age 62.....\$750

ARTICLE 12 – ALLOWANCES AND REIMBURSEMENTS

12.1 Business and Travel Expense

The State agrees to reimburse employees for actual, necessary and appropriate business expenses and travel expenses incurred fifty (50) miles or more from home and headquarters, in accordance with existing Department of Personnel Administration rules and as set forth below. Lodging and/or meals provided by the State or included in hotel expenses or conference fees or in transportation costs such as airline tickets or otherwise provided shall not be claimed for reimbursement. Snacks and continental breakfasts such as rolls, juice, and coffee are not considered to be meals. Each item of expenses of twenty five dollars (\$25) or more requires a receipt; receipts may be required for items of expense that are less than twenty five dollars (\$25). When receipts are not required to be submitted with the claim, it is the employee's responsibility to maintain receipts and records of their actual expenses for tax purposes. Each State agency shall determine the necessity for travel and the mode of travel to be reimbursed.

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

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

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

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

Trip begins at or before 6 a.m.	Breakfast may be claimed
Trip begins at or before 11 a.m.	Lunch may be claimed
Trip begins at or before 5 p.m.	Dinner may be claimed
 - b. On the fractional day of travel at the end of a trip of more than twenty four (24) hours:

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

If the fractional day includes an overnight stay, receipted lodging may be claimed. No meal or lodging expenses may be claimed or reimbursed more than once on any given date or during any twenty four (24) hour period.
 - c. For continuous travel of less than twenty four (24) hours, the employee will be reimbursed for actual expenses up to the maximum as follows:

Travel begins at or before 6 a.m. and ends at or after 9 a.m.:	Breakfast may be claimed.
Travel begins at or before 4 p.m. and ends at or after 7 p.m.:	Dinner may be claimed.

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

No lunch or incidentals may be claimed on a trip of less than twenty four (24) hours.
3. A meal allowance of up to eight dollars (\$8) 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 a meal allowance on a holiday or the regular day off, the employee 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 and end of their regular work shift.

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

1. Regular State Business Travel

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

With a lodging receipt: Actual lodging up to eighty four dollars (\$84) plus applicable taxes.

- b. When employees are required to do business and obtain lodging in the counties of Alameda, San Francisco, San Mateo and Santa Clara, reimbursement will be for actual receipted lodging to a maximum of one hundred forty dollars (\$140) plus applicable taxes. When employees are required to do business and obtain lodging in the counties of Los Angeles and San Diego, actual lodging up to one hundred ten dollars (\$110) 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 one hundred ten dollars (\$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 a lodging receipt: Actual lodging when approved in advance by the appointing authority.

- c. Reimbursement of lodging expenses in excess of specified amounts, excluding taxes requires advance written approval from the Department of Personnel Administration. The Department of Personnel Administration may delegate approval authority to departmental appointing powers or increase the lodging maximum rate for the geographical area and period of time deemed necessary to meet the needs of the State. An employee may not claim lodging, meal, or incidental expenses within fifty (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:
 - a. The employee continues to maintain a permanent residence at the primary headquarters, and
 - b. The permanent residence is occupied by the employee's dependents, or
 - c. 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:
 - (1) Reimbursement for actual individual expense, substantiated by receipts, for lodging, water, sewer, gas and electricity, up to a maximum of \$1,130 per calendar month while on the long-term assignment, and actual expenses up to ten dollars (\$10) for meals and incidentals, for each period of twelve (12) to twenty-four (24) hours and up to \$5 for actual meals and incidentals for each period of less than twelve (12) hours at the long-term location, or
 - (2) Long-term subsistence rates of twenty four dollars (\$24) for actual meals and incidentals and \$24 for receipted lodging for travel of twelve (12) hours up to twenty four (24) hours; either twenty four dollars (\$24) for actual meals or twenty four dollars (\$24) for receipted lodging for travel less than twelve (12) hours when the employee incurs expenses in one location comparable to those arising from the use of establishments catering to the long-term visitor.
2. An employee on long-term field assignment who does not maintain a separate residence in the headquarters area may claim long-term subsistence rates of up to twelve dollars (\$12) for actual meals and incidentals and twelve dollars (\$12) for receipted lodging for travel of twelve (12) hours up to twenty-four (24) hours at the long-term location; either twelve dollars (\$12) for actual meals or twelve dollars (\$12) for receipted lodging for travel less than twelve (12) hours at the long-term location.
3. Employees, with supervisor's approval, after completing the work shift remain at the job or LTA location past the Friday twelve (12) hour clock will receive full per diem for Friday. Those staying overnight shall not receive any additional per diem regardless of the Saturday departure time. An employee returning to the temporary residence on Sunday will receive full per diem. This does not change Department of Personnel Administration policy regarding the per diem clock which starts at the beginning of the work shift on Monday. If the normal workweek is other than as stated above, the same principle applies.

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

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

- D. **Out-of-State Travel:** For short-term out-of-State travel, State employees will be reimbursed actual lodging, supported by a receipt, and will be reimbursed for actual meal and incidental expenses in accordance with above. Failure to furnish lodging receipts will limit reimbursement to the meal/incidental rate above. Long-term out-of-State travel will be reimbursed in accordance with the provisions of long-term travel above.
- E. **Out-of-Country Travel:** For short-term out of country travel, State employees will be reimbursed actual lodging, substantiated by a receipt, and will be reimbursed actual meals and incidentals up to the maximums published in column (B) of the Maximum Travel per Diem Allowances for Foreign Areas, Section 925, U.S. Department of State Standardized Regulations and the meal/incidental breakdown in Federal Travel Regulation Chapter 301, Travel Allowances, Appendix B. Long-term out of country travel will be reimbursed in accordance with the provisions of long-term travel above, or as determined by the Department of Personnel Administration.

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

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

1. Mileage Reimbursement

- a. 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 thirty four (\$.34) cents per mile.
- 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 from thirty four (\$.34) cents up to thirty seven (\$.37) cents per mile, 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 fifty (\$.50) cents per statute mile. Pilot qualifications and insurance requirements will be maintained in accordance with the Department of Personnel Administration Rule 599.628.1 and the State Office of Risk and Insurance Management.
 4. **Mileage to/from a Common Carrier** – When the employee's use of a privately owned vehicle is authorized for travel to or from a common carrier terminal, and the employee's vehicle is not parked at the terminal during the period of absence, the employee may claim double the number of miles between the terminal and the employee's headquarters or residence, whichever is less, while the employee occupies the vehicle. Exception to "whichever is less:" If the employee begins travel one (1) hour or more before he normally leaves his home, or on a regularly scheduled day off, mileage may be computed from his/her residence.
- G. **Receipts:** Receipts or vouchers shall be submitted for every item of expense of twenty five dollars (\$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 twenty five dollars (\$25) when travel is wholly within the State of California.
 2. Street car, ferry fares, bridge and road tolls, local rapid transit system, taxi, shuttle or hotel bus fares, and parking fees of ten dollars (\$10) or less for each continuous period of parking or each separate transportation expense noted in this item.
 3. Telephone, telegraph, tax, or other business charges related to State business of five dollars (\$5) or less.
 4. In the absence of a receipt, reimbursement will be limited to the non-receipted amount above.
 5. Reimbursement will be claimed only for the actual and necessary expenses noted above. Regardless of the above exceptions, the approving officer may require additional certification and/or explanation in order to determine that an expense was actually and reasonably incurred. In the absence of a satisfactory explanation, the expense shall not be allowed.

12.2 Lodging – Orange and Marin Counties

The Department of Personnel Administration (DPA) and CASE agree that lodging in Orange, and Marin Counties shall be reimbursed up to one hundred ten dollars (\$110) plus tax with receipts if the employee calls three (3) moderately priced hotels in a geographic area, chooses the lowest cost of the three (3), and obtains advance supervisory approval, which shall not be unreasonably denied.

12.3 Commute Program

- A. Employees working in areas served by mass transit, including rail, bus, or other commercial transportation licensed for public conveyance shall be eligible for a seventy five percent (75%) discount on public transit passes sold by State agencies up to a maximum of sixty five dollars (\$65) per month. Employees who purchase public transit passes on their own shall be eligible for a seventy five percent (75%) reimbursement up to a maximum of sixty five dollars (\$65) per month. This shall not be considered compensation for purposes 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.
- B. Employees riding in vanpools shall be eligible for a seventy five percent (75%) reimbursement of the monthly fee up to a maximum of sixty five dollars (\$65) per month. In lieu of the van pool rider reimbursement, the State shall provide one hundred dollars (\$100) per month to each State employee who is the primary vanpool driver and meets the eligibility criteria and complies with program procedures as developed by the State for primary vanpool drivers. This shall not be considered compensation for purposes of retirement contributions. A vanpool is defined as a group of five (5) or more people who commute together in a vehicle (State or non-State) specifically designed to carry an appropriate number of passengers. The State may establish and implement procedures and eligibility criteria for the administration of this benefit.
- C. Employees headquartered out of State shall receive reimbursement for qualified public transportation and vanpool expenses for seventy five percent (75%) of the cost up to a maximum of sixty five dollars (\$65) per month or in the case of the primary vanpool driver, the one hundred dollars (\$100) per month rate. The appointing power may establish and implement procedures regarding the certification of expenses.

12.4 Cell Phones

- A. The Attorney General's Office, Caltrans, Department of Industrial Relations, and Social Services will make cell phones available to their Unit 2 attorneys for official business use while traveling or away from the office on State business, on a check-out basis.
- B. Other departments may at their discretion make cell phones available for official business use while traveling or away from the office on State business.

12.5 Moving and Relocation

Whenever a Unit 2 employee is reasonably required by the State to change his/her place of residence, the State shall reimburse the employee for approved items in accordance with the lodging, meal and incidental rates and time frames established in Section 12.1 and in accordance with the existing requirements, time frames and administrative rules and regulations for reimbursement of relocation expenses that apply to excluded employees.

12.6 Parking Rates

- A. For the term of this agreement, the parties agree that the State may increase parking rates in existing owned or leased lots, in urban congested areas, no more than twenty dollars (\$20) per month above the current rate charged to employees in specific locations where they park. An increase in parking rates imposed after July 1, 2001, but prior to ratification of this contract, will be counted towards the twenty dollars (\$20) per month increase. Congested urban areas are areas such as Sacramento, San Francisco Bay, Fresno, Los Angeles, San Bernardino, Riverside, and San Diego areas. Every effort shall be made to provide employees sixty (60) days, but no less than thirty (30) days, notice of a parking rate increase. The State shall not increase rates for existing parking lots where employees do not currently pay parking fees. Rates at new lots administered or leased by the State will be set at a level comparable to rates charged for similar lots in the area of the new lot, e.g., rates for open lots shall be compared to rates for open lots, rates for covered parking shall be compared to rates for covered parking.
- B. The State shall continue a system for employees where parking fees may be paid with pretax dollars.

12.7 Responsibility for Litigation Costs

The state, not the employee, is financially responsible for all litigation costs and expenses associated with representing the state in any legal forum.

ARTICLE 13 – MISCELLANEOUS

13.1 Temporary Employee Loans and Exchanges

A. Inter-Jurisdictional Employee Exchange Assignment or Loan

State agencies may with concurrence of the affected employee assign or loan the employee to another State agency or another jurisdiction which is governmental in character as otherwise provided in Government Code section 19050.8 and 2 Cal. Code Regulations Section 427.

B. Inter-Departmental Temporary Employee Exchange Program

1. The purpose of this subsection is to permit Unit 2 employees in attorney classifications employed by different departments, agencies, boards and commissions to temporarily exchange duties and responsibilities as the result of two-way employee loans.
2. This subsection shall apply to Unit 2 employees in attorney classifications who (a) have permanent status in their present classification or (b) are on probationary status and who previously had permanent status and, since such permanent status, have had no break in service due to a permanent separation.
3. Temporary employee exchanges (loans) may only be made with the approval of the State Personnel Board's (SPB) executive officer pursuant to 2 Cal. Code Regulations Section 426. The SPB executive officer's decision shall be final and shall not be subject to the grievance or arbitration provision of this agreement.

4. Temporary employee loans and exchanges occur when one employee is loaned to another appointing authority in exchange for the loan of another employee and shall be subject to the following:
 - a. Both employees and both appointing powers must agree that the loan exchange is to (1) provide employee with training and experience; and (2) that it will serve a management need.
 - b. The loan exchanges shall be documented by a written agreement signed by all parties that addresses the requirements of 2 Cal. Code Regulations Section 426.
 - c. The loan exchanges shall be deemed to be in accordance with all laws and regulations limiting employees to duties consistent with their classification and may be used to meet minimum requirements for promotional as well as open examinations, subject to the laws and regulations established by the SPB.
 - d. Loaned employees shall have the absolute right to return to their former positions as defined in the Government Code.
 - e. Loaned employees shall remain in a position assigned to their home departments and shall be paid by their home departments consistent with their existing classifications.
 - f. For purposes of administering State civil service laws and regulations, the employees shall be considered an employee of their home department, except that the employee's work activities and performance evaluations shall be subject to the jurisdiction of the receiving department. Should it become necessary to discipline a participating employee, the receiving department shall be deemed the "authorizing representative" of the employee's (home) appointing power for purposes of Government Code Section 19574.
 - g. Loaned employees who accept an exchange shall be deemed to have automatically waived any and all claims in any forum for additional or out-of-class compensation.
 - h. Exchanges shall be for a period of not less than six (6) months and not longer than two (2) years. Exchanges may, however, be terminated early by either appointing authority or either employee. Employees may, however, be required to complete any assignments (e.g., cases) that the receiving department determines will be compromised or unduly complicated by early termination. If an exchange is going to be terminated early, it shall be preceded with a written notice to all parties at least thirty (30) calendar days in advance.

5. Exchange requests shall be coordinated in the following manner:

- a. CASE shall establish a list of interested employees, where they work, where they would like to be loaned to, and what type of assignment they would like in the receiving department, agency, board or commission. Upon determining that two employees have a compatible desire to exchange positions, CASE will submit a formal request to the two (2) appointing powers.
- b. Each appointing power shall approve or deny requests within thirty (30) calendar days of receipt. Should both agree to the exchange, a reasonable period of time will be allowed to prepare and process the necessary documents.
- c. Should either the receiving or home agency, department, board or commission deny the request, the denial will not be subject to the grievance or arbitration provision of this agreement.

13.2 Outside Employment

- A. The State shall not prohibit outside employment that does not conflict with the applicable incompatible activity statement.
- B. An employee may request that the department grant an exception to the prohibitions on outside employment contained in the applicable Incompatible Activity statement. If the exception is denied, upon request by the employee, it shall be reviewed by a committee composed of two (2) representatives of the department and two (2) representatives of CASE. The committee will issue a recommendation to the department head or designee for decision.
- C. DPA or its designee agrees to meet and confer with CASE subsequent to such time as CASE presents the department or agency with a list of proposed changes to its Incompatible Activity statement.
- D. In the event of a mandatory reduced worktime program, department heads or their designees shall, upon request, meet and confer with CASE regarding potential changes in the Incompatible Activity Statements necessary to mitigate the effect of the reduced worktime.

13.3 Office Space

- A. The State agrees to make a reasonable effort to provide private enclosed office space to each permanent full-time attorney who has confidentiality needs.
- B. Upon request, the State employer agrees to discuss with CASE those situations where attorneys do not currently have private office space.
- C. Where a major move to other than enclosed private offices for attorneys is planned, CASE shall be notified at the earliest feasible time.

13.4 Work and Family Committee

- A. The parties agree to establish one statewide permanent joint labor/management committee on work and family. The committee shall serve in an advisory capacity to the Department of Personnel Administration's Work and Family Program. Work and family related activities that the committee will engage in include sponsoring research, reviewing existing programs and policies, recommending new programs and policies, initiating marketing efforts, and evaluating the effectiveness of initiatives implemented by the Work and Family Program. Such work and family programs and policies may include, but are not limited to childcare, elder care, family leave, flexibility in the workplace, and a variety of other family-friendly programs and policies.
- B. The committee shall be comprised of an equal number of management and union representatives. The Union recognizes that membership on the committee may also include any or all other unions representing State employees. The committee shall have co-chairpersons, one representing management and one representing labor. CASE shall have one (1) representative.
- C. The parties agree the CASE representative shall attend committee meetings without loss of compensation. The co-chairpersons may determine that subcommittees are necessary or preparatory work other than at committee meetings is necessary. If this occurs, the management co-chairperson may request that additional release time be granted for this purpose. Approval of release time is subject to operational need.
- D. The committee shall meet regularly and shall begin meeting after the ratification of this contract.
- E. The \$5 million dollars already established in the Work and Family Fund shall be administered by the Department of Personnel Administration. Amounts to be allocated and expended annually from the fund shall be determined by the Department of Personnel Administration and the committee.

13.5 Personnel Files

- A. Official Personnel Files
 - 1. Upon reasonable notice to the Personnel Office, bargaining unit employees shall have access to all of the materials in their official personnel file during normal Personnel Office business hours. In addition, with written authority from the employee or in the company of the employee, a designated CASE representative may review the employee's personnel file. Said written authorization shall be valid for the period of time specified by the employee. Access to the file shall be during regular personnel office hours. The file shall not be removed from the personnel office. The employee and the CASE representative, with written authorization from the employee, shall each be allowed a copy of the material in the personnel file.

2. Materials included in the personnel file shall be retained for a period of time specified by each department, except that material in the file of a negative nature that is older than three (3) years shall be removed by personnel office employees who discover it upon accessing the file for any purpose. The act of removing dated negative material shall be accomplished in a manner which is not apparent to anyone but other employees of the personnel office.
3. Material of a negative nature that is older than three (3) years shall not be the basis of an adverse action against any employee.
4. Each employee shall have the right to prepare a written rebuttal to any negative material in his/her personnel file. Such rebuttal shall be included in his/her personnel file until such time as that which it serves to rebut is removed from the file.
5. Evaluation material or material relating to an employee's conduct, attitude, or service shall not be included in his/her official personnel file without being signed and dated by the author of such material. Before the material is placed in the employee's file, the department head or designee shall provide the affected employee an opportunity to review the material, and sign and date it. A copy of the evaluation material relating to an employee's conduct shall be given to the employee.

B. Unofficial Personnel Files Containing Employment-Related Information

1. This subsection applies to all written or electronic files maintained in the employee's name by his/her department (other than the employee's official personnel file) which contains employment-related documents. It includes but is not limited to supervisor's files, and files containing medical information or performance evaluations.
2. Notwithstanding subsection (B)(1) above, employees and their representatives or designees shall not have access to files maintained as part of an ongoing internal affairs investigation.
3. Upon reasonable notice to the person responsible for maintaining the file, bargaining unit employees shall have access to all material in the file which pertains to them. In addition, with written authority from the employee or in the company of the employee, a designated CASE representative may review the employee's file. Said written authorization shall be valid for the period of time specified by the employee. Access to the file shall be during regular business hours for the person responsible for maintaining the file. The file shall not be removed from the office of the person responsible for maintaining it unless approved by that person in advance. The employee and the CASE representative, with written authorization from the employee, shall each be allowed a copy of the material in the file that pertains to the employee.

C. Access To Files

1. Official and unofficial files shall be considered confidential. They shall only be available to the employee and his/her designee, the department head and his/her designee, those in the employee's direct supervisory chain of command, and others specified by statute.

2. The employee shall be informed in a timely manner of the service of a subpoena or a request pursuant to the California Public Records Act when such documents request release of information from the employee's official or unofficial file(s), or of a court order affecting the same.

13.6 Education and Training

- A. It is the policy of the State to ensure quality legal service to the public by developing the skills and abilities of Unit 2 employees through training activities. The State agrees to reimburse Unit 2 employees for expenses incurred and provide time off during normal work hours without loss of compensation as a result of completed training or education courses required by the State employer or the Legislature.
- B. Job-Required Training
 1. Job-required training is training required by the employee's appointing authority that is designed to assure adequate performance in the employee's current assignment.
 2. Unit 2 employees shall be fully reimbursed for tuition, course-required materials, and travel costs consistent with Article 12 (Business and Travel) for job-required training.
 3. Employees shall be provided time off during their normal work hours without loss of compensation to participate in job-required training.
 4. Employees in Work Week Group 2 will be credited with time worked for participation in job-required training which falls outside their usual work hours. Whether or not this results in overtime compensation shall be determined by the provisions of Section 6.1 and 6.2.
 5. Time spent in job-required training by employees in Work Week Groups E and SE shall be taken into consideration for purposes of Section 6.3.
- C. Job-Related Training
 1. Job-related training is training designed to increase efficiency or effectiveness and improve performance above the acceptable level of competency established for a specific job assignment.
 2. Unit 2 employees may be reimbursed for up to one hundred percent (100%) of the cost of tuition or registration fees, course-required materials, and travel costs consistent with Article 12 (Business and Travel) for job-related training.
- D. Career-Related Training
 1. Career-related training is training designed to assist in the development of career potential. Career-related training may be unrelated to a current job assignment.
 2. When an employee's appointing authority approves career-related training, the employee may be reimbursed for up to fifty percent (50%) of the cost for tuition or registration fees, and course-required materials.

- E. Reimbursement for the above expenses shall be in accordance with the Business and Travel Expense provision of this MOU.

13.7 Bar Dues/Professional leave

A. Bar Membership Required As Condition Of Appointment

The State shall reimburse or pay directly to the State Bar, the cost of bar dues for each employee for whom bar membership is required as a condition of employment. In the event a department elects to pay directly, each affected employee must provide the original remittance portion of their bar dues statement to the person designated by the department at least four (4) weeks before the last day upon which the dues become delinquent. If an employee's bar statement is not received four (4) weeks in advance, then the department may (1) make an exception and still directly pay the employee's dues; or at its option, (2) reimburse the employee for paying the dues him/herself. Under no circumstances, however, shall the State be liable for penalties/fines added to, or accumulated because of late payment of dues, except where the State employer is responsible for the late payment.

B. Bar Membership Not Required As Condition Of Appointment

For all other employees in the unit, the State shall either provide reimbursement for bar dues or two (2) days per calendar year of professional leave without loss of compensation, at the option of the Department, which must be requested and approved in the same manner as vacation leave.

C. Proration Of Bar Dues And Professional Leave

Bar dues reimbursement/payment and professional leave may be prorated for employees who work less than full-time and for employees who work less than a full year. Professional leave credit shall not carry over from year to year.

D. Local and Specialty Bar Dues

Each department shall reimburse employees (or pay directly subject to the conditions contained in section (a) above) for memberships in job-related bar associations, or for job-related specialty sections of the State or a local bar, if State bar membership is required as a condition of employment. The total amount for which employees shall be reimbursed shall not exceed one hundred dollars (\$100) annually for all job-related bar associations, specialty sections, and local bar memberships. Local or specialty bar dues for employees who work less than full-time and for employees who work less than a full year preceding when bar dues must be paid may be prorated. Departments that do not directly pay local or specialty bar dues may require proof of payment by employees requesting reimbursement.

13.8 Smoking Cessation

Departments with "no smoking" policies shall provide for voluntary smoking cessation counseling for employees within their work locale where budgets allow such expenditures. Employees may use either vacation or sick leave credits, upon approval of their supervisor, to attend cessation counseling.

13.9 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 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 sick leave, compensating time off credits and vacation leave credits for such a purpose. Leaves of absence without pay may be granted by the department head or designee upon the recommendation of the Employee Assistance Program Coordinator if all sick leave, vacation and compensating time off have been exhausted and the employee is not eligible to use Industrial Disability Leave or Non-Industrial Disability Insurance.
- C. Medical records concerning an employee's treatment for alcoholism, drug or stress-related problems shall remain confidential and shall remain separate from other personnel materials.

13.10 Judicial Attire

- A. The Administrative Law Judge classification within the Office of Administrative Hearings shall be required to wear a judicial robe as follows:

Judicial Functions - Administrative Law Judges are required to wear judicial robes when conducting pre-hearing conferences or formal hearings in formal hearing rooms in the Office of Administrative Hearings' facilities. When conducting pre-hearing conferences or formal hearings at other than Office of Administrative Hearings' facilities, Administrative Law Judges may use discretion as to whether it is necessary to wear a judicial robe. In addition, individual discretion shall be used regarding wearing judicial robes when conducting informal settlement conferences and other judicial functions (e.g., chamber meetings, site visits, etc.) not mentioned above. In either case, the appropriate attire to be worn underneath the judicial robes is referenced below:

MEN	WOMEN
dress shirt	dress
tie	blouse and dress slacks/skirt
slacks	dress shoes
dress shoes	

B. Cost and Care of Judicial Robes

The parties agree that the entire cost and care of such judicial robes may be borne by each Administrative Law Judge. In addition, it is the responsibility of the Administrative Law Judges to keep their judicial robes well maintained (e.g., clean, washed, ironed, etc.) and to replace the robes as necessary. The parties recognize that in order to maintain consistency and uniformity, the robes must be black in color and be of the judicial style.

13.11 Case and Hearing Workload – Board of Prison Terms

The date, time and number of hearings and cases assigned to Unit 2 Deputy Commissioners working for the Board of Prison Terms shall be determined, and may be changed from time-to-time, by the State.

13.12 State-Owned Housing Rental and Utility Rates

A. Rent

Current rental rates for all types of State-owned employee housing, including trailers and/or trailer pads, may be increased annually by the State with sixty (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 twenty five (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 seventy five dollars (\$75) per month or when an employee vacates State-owned housing, including trailers and/or trailer pads, the State may raise rents for such housing up to the Fair Market value.
3. Employee rental of State housing shall not ordinarily be a condition of employment. In any instance where the rental of State housing is made a condition of employment, the State may charge the employee ten (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 thirty (30) days advance notice.

B. Utilities

Current utility charges for all types of State-owned employee housing, including trailers and/or trailer pads, may be increased annually 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.

13.13 Labor-Management Committee on State Payroll System

- A. The parties agree the State may establish a labor-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, direct deposit of employee pay, and design of and transition to a bi-weekly pay system.
- B. The committee shall be comprised of an equal number of management representatives and labor representatives. In addition, the Department of Personnel Administration shall designate a chairperson of the committee. The CASE may send one representative who shall serve without loss of compensation.

13.14 Appeal of Involuntary Transfer

- A. An involuntary transfer which reasonably requires an employee to change his/her residence may be grieved under Article 7 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 shall be returned to his/her former position; shall be paid the regular travel allowance for the period of time he/she was away from his/her original headquarters; and his/her moving costs both from and back to the original headquarters shall be paid in accordance with the Department of Personnel Administration law 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.

13.15 No Reprisals

The state shall not impose or threaten to impose reprisals; discriminate or threaten to discriminate against an employee; or take any other action against an employee because of his/her exercise of any rights provided under the Dills Act or this MOU.

13.16 Case and Hearing Workload – Unemployment Insurance Appeals Board

The date, time and number of hearings and cases assigned to employees in Unit 2 working for the Unemployment Insurance Appeals Board shall be determined, and may be changed from time-to-time, by the State (See Side Letter 2).

13.17 Computer Work Stations

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

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

1. Glare screens;
2. Document holders;
3. Adjustable chairs;
4. Adjustable keyboards, computer tables and supports;
5. Foot and wrist rests;
6. Telephone headset.

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

C. Upon request by the Union, the State agrees to meet to review any suggested revisions or additions to the State's Computer User's Handbook.

13.18 Remodeling, Renovations, and Repairs

A. Whenever a State owned or managed building is remodeled or renovated, the agency/tenant whose space is being remodeled/renovated, will provide at least thirty (30) days prior written notice to employees impacted by the construction. A copy of this notice shall be provided to CASE.

B. Except in emergency situations, the State shall give not less than twenty four (24) hours prior notice whenever repair work in State owned or managed buildings is done which may result in employee health concerns for the work environment.

C. Prior to undertaking any remodeling, renovation, or repair, that requires removal of any material, the materials will be tested for lead and asbestos. If such materials are present, they will be removed in accordance with State regulations to assure the safety of employees/tenants.

D. For leased buildings not managed by the State, the State will include the following language in all new leases entered into after January 1, 2002:

"Except in emergency situations, the Lessor shall give not less than 24 hour prior notice to State tenants, when any pest control, remodeling, renovation, or repair work affecting the State occupied space may result in employee health concerns for the work environment."

E. The State will take actions to accommodate employees who suffer from chemical hypersensitivity as it pertains to Article 13.18 (Remodeling/Renovations and Repairs).

13.19 Clerical Support

The State recognizes the need to provide clerical support to Bargaining Unit 2 employees and, where operationally feasible and subject to budget constraints, the State will provide such support.

13.20 Undercover Vehicle Equipment, Board of Prison Terms

Each Deputy Commissioner who is assigned a State-owned undercover vehicle by the Board of Prison Terms (BPT), shall also be assigned the following emergency equipment by BPT unless it is already included in the car: a flashlight, first-aid kit, blanket, fire extinguisher and jumper cables. The equipment shall be considered the property of the State.

13.21 Badges

The State shall provide a badge for each Deputy Attorney General, Deputy Labor Commissioner Field Enforcement and Administrative Law Judge with California Unemployment Insurance Appeals Board. Badge size, design and circumstances specifying badge use and purchase will be determined by the State.

13.22 Intra-Departmental Transfers

- A. The parties recognize the value of allowing permanent full-time employees to voluntarily transfer between positions within their respective departments. The parties agree that when a vacancy occurs, management may consider intra-department in-class transfers, among other methods of filling the position, and must post notice of the position to current employees.
- B. Notice Posting
 1. Appointing authorities shall post a notice inviting intra-department, in-class transfers (unless there are no incumbents in the classification that will be used to fill the vacancy).
 2. Notices shall be posted in the same place where job announcements are customarily posted.
 3. Notices shall be posted for a period of no less than seven (7) calendar days before the final date the application must be submitted.
 4. Notices shall at a minimum include:
 - a. The classification of the vacancy;
 - b. A brief description of the duties;
 - c. Desirable qualifications including any special education, training, experience, skills, abilities and/or aptitudes;
 - d. The final date by which applications must be postmarked;
 - e. The place to submit the applications; and

- f. The name and telephone number of a person to contact for additional information.

13.23 Labor Management Program

Upon mutual agreement of the department head or designee and the Union a Labor/Management Committee may be established to address specific or ongoing issues.

Such committees may be established according to the following guidelines:

1. The committees will consist of equal numbers of management representatives selected by the department head or designee and Union representatives selected by the Union.
2. Committee recommendations, if any, will be advisory in nature.
3. Labor/Management Committee meetings shall not be considered contract negotiations and shall not be considered a substitute for the grievance procedure.
4. Employees who participate on such a committee will suffer no loss in compensation for attending meetings of the Committee.
5. Department of Personnel Administration shall encourage departments to establish Labor/Management Committees.

13.24 Professional Development Activities

The State and CASE agree that membership in State Bar committees, local Bar committees and similar professional organizations enhances the knowledge, skills, and abilities which the state's legal professionals provide to their employer as well as enhancing the employee's own career development opportunities. With advance approval, Unit 2 employees shall be permitted up to twenty four (24) hours of professional leave each calendar year without loss of compensation to engage in such professional activities. Professional leave credit shall not carry over from year to year.

13.25 Independent Medical Examinations

- A. Whenever the State believes that an employee, due to illness or injury is unable to perform his/her normal work duties, the State, pursuant to Government Code 19253.5, 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. Such examination shall be conducted by a licensed physician or under his/her direction and the cost of the examination shall be paid by the employer.
- C. The purpose of such independent medical evaluations are not to determine the degree of disability the employee has suffered, but rather as to whether illness or injuries sustained restrict the employee from performing the full range of his/her normal work assignment.

- D. 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.

13.26 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, individuals on SROA lists seeking transfers, or individuals seeking transfers in departments where the department head or designee determines the department is in a layoff mode shall be considered part of the examination process.

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

13.27 Hardship Transfer

The State and the Union recognize the importance of hardship transfers as a way of dealing with Work and Family issues. An employee experiencing a verifiable hardship, e.g., domestic violence, mandatory job transfer of a spouse or domestic partner as defined in Family Code Section 297, family illness, serious health condition, injury or death of family members, may request a transfer to another geographic area to mitigate the hardship.

The State shall endeavor to reassign the employee to a comparable or lesser (if comparable is not available) position in the requested geographic area. If the employee accepts a position in a lower paid classification, the State shall endeavor to reinstate the employee to their former classification and comparable salary level. Transfers under this section shall be considered voluntary and any associated relocation costs shall be subject to the applicable Department of Personnel Administration laws and rules.

This section is not subject to the grievance and arbitration procedure of this Contract.

13.28 Card Key Replacements

Employees will not be required to pay for an initial key card or to replace inoperable key cards that are necessary to gain access to their workplace when the card is rendered inoperable through no negligence by the employee.

13.29 Performance Appraisal of Permanent Employees

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

B. Each employee shall have the right to prepare a written rebuttal to his/her performance appraisal and such rebuttal shall be included in his/her personnel file.

13.30 Confidential Designations

The state and CASE agree to maintain the current level of confidential designations.

ARTICLE 14 – RETIREMENT

14.1 401(K) Deferred Compensation Program

Employees in Unit 2 may participate in the State of California, Department of Personnel Administration, existing 401(K) Deferred Compensation Program.

14.2 457 Deferred Compensation Program

Employees in Bargaining Unit 2 may participate in the current State of California, Department of Personnel Administration, 457 Deferred Compensation Program.

14.3 First Tier Retirement Formula (2% @ 55)

- A. The Union and the State (parties) agree that the legislation implementing this agreement shall contain language to enhance the current age benefit factors on which service retirement benefits are based for Miscellaneous and Industrial members of the First Tier plan under the Public Employees' Retirement System (CalPERS). The parties further agree that the provisions of this article will be effective only upon the CalPERS board adopting a Resolution that will employ, for the June 30, 1998 valuation and thereafter, 95% of the market value of CalPERS' assets as the actuarial value of the assets, and to amortize the June 30, 1998 excess assets over a 20 year period, beginning July 1, 1999. The parties agree to jointly request the CalPERS board to extend the 20 year amortization period in the event the cost of these benefits or unfavorable returns on investments results in an increased employer contribution by the State.
- B. The legislative language would provide the enhanced benefit factors to State employees who retire directly from State employment on and after January 1, 2000.
- C. The table below compares the current First Tier age benefit factors to the improved factors that the proposed legislation would place in the part of the Government Code administered by CalPERS.

AGE AT RETIREMENT	CURRENT FACTORS	PROPOSED FACTORS
50	1.092	1.100
51	1.156	1.280
52	1.224	1.460
53	1.296	1.640
54	1.376	1.820

AGE AT RETIREMENT	CURRENT FACTORS	PROPOSED FACTORS
55	1.460	2.000
56	1.552	2.063
57	1.650	2.125
58	1.758	2.188
59	1.874	2.250
60	2.000	2.313
61	2.134	2.375
62	2.272	2.438
63 and over	2.418	2.500

There would be factors for attained quarter ages, such as 52 $\frac{3}{4}$, that will be included in the proposed legislation. These improved age benefit factors will apply for service rendered on and after the effective date of the memorandum of understanding between the State and the Union. The improved factors will also apply to past service that is credited under the First Tier and the Modified First Tier.

The amount of member contributions required of employees who will be covered under these new factors will continue to be 5 percent of monthly compensation in excess of \$513.

14.4 First Tier Eligibility For Employees In Second Tier

- A. The Union and the State (parties) agree that the legislation implementing this agreement shall contain language to allow employees who are currently in the Second Tier retirement plan to elect to be covered under the First Tier, as described in this article. The parties further agree that the provisions of this article will be effective only upon the CalPERS board adopting a Resolution that will employ, for the June 30, 1998 valuation and thereafter, 95% of the market value of CalPERS' assets as the actuarial value of the assets, and to amortize the June 30, 1998 excess assets over a 20 year period beginning July 1, 1999. The parties agree to jointly request the CalPERS board to extend the 20 year amortization period in the event the cost of these benefits or unfavorable returns on investments results in an increased employer contribution by the State.
- B. The legislative language would allow an employee in Second Tier to exercise the Tier 1 right of election at any time after the effective date of this legislation. An employee who makes this election would then be eligible to purchase past Second Tier service. The parties will work with CalPERS to establish more flexible purchase provisions for employees. These include, but are not limited to, increasing the installment period from 96 months (8 years) to 144 months (12 years) or up to 180 months (15 years) and allowing employees to purchase partial amounts of service.

- C. 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 one hundred eighty (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 or she would remain in the First Tier plan.
- D. Employees who purchase their past service would be required to pay the amount of contributions they would have paid had they been First Tier members during the period of service that they are purchasing. As required by CalPERS law, the amount will then include interest at 6 percent, annually compounded.

14.5 Determination of Safety Retirement Eligibility

The parties agree that the provisions of Government Code sections 19816.20 and 20405.1 shall apply to Unit 2.

14.6 Safety Retirement – Deputy Commissioner, Board of Prison Terms

The Department of Personnel Administration shall notify the Public Employees Retirement System that employees in the new Deputy Commissioner, Board of Prison Terms, classification satisfy the criteria for safety membership, provided that: (a) Government Code sections 19816.20 and 20405.1 are amended to include Unit 2 as provided in Section 14.5 of this agreement; and, (b) the State Personnel Board adopts the new Deputy Commissioner, Board of Prison Terms, classification as provided for in Section 15.5 of this agreement.

14.7 Retirement Contributions for Miscellaneous and Safety Members

- A. The State and the Union agree to increase the employees' retirement contribution rate effective with the beginning of the July 2006 pay period to the following:
 - 1. Employees who are miscellaneous or industrial members of the first tier plan who are subject to Social Security under the Public Employees' Retirement System (CalPERS) shall contribute six (6%) percent in excess of five hundred thirteen (\$513) dollars each month.
 - 2. Employees who are miscellaneous or industrial members of the first tier plan who are not subject to Social Security under the Public Employees' Retirement System (CalPERS) shall contribute seven percent (7%) of compensation in excess of three hundred seventeen (\$317) dollars each month.
 - 3. Employees who are Safety members of the first tier plan who are not subject to Social Security under the Public Employees' Retirement System (CalPERS) shall contribute seven percent (7%) of compensation in excess of three hundred seventeen (\$317) dollars each month.
- B. The State and the Union agree that retirement benefits will be calculated based on the average of the three highest years' compensation for new employees hired on or after July 1, 2006.

- C. The Union understands that the implementing legislation for the Unit 2 MOU will include the statutory modifications necessary for implementing increased retirement contribution (1%) and the retirement benefit calculations (3 highest years).

14.8 Alternative Preretirement Death Benefit

The Union and the State agree that the Alternative Preretirement Death Benefit as set out in Government Code sections 21547, 21574.5 and 22754 shall remain in effect for Unit 2 employees.

ARTICLE 15 – CLASSIFICATION

15.1 Classification Level

A. Departments with Attorney IV Level Classifications

Departments that have obtained approval from the State employer to use Attorney IV level classifications may allocate up to fifty five percent (55%) of its attorneys to the IV salary level classification. The base figure for calculating this ceiling shall include all attorney positions in the unit allocated to attorney classes at or below the maximum salary level of the IV classification.

B. Departments with Senior or Attorney III Level Classifications

Any department in this category may allocate up to sixty five percent (65%) of its attorneys to the Senior or III salary level classification. The base figure for calculating this ceiling shall include all attorney positions in the unit allocated to attorney classes at the Senior or III level and below.

- C. Upon request by appointing authorities, DPA may allow appointments in excess of the above percentages or to higher levels.

- D. If DPA authorizes a department a position on an exception basis to the Attorney IV level such allocation allows the department to allocate additional Attorney positions to the Senior or Attorney III level in excess of the 65% cap in Paragraph B above.

15.2 Classification Changes

- A. When the Department of Personnel Administration (DPA) or another department seeks (1) to establish a new classification and assigns it to Bargaining Unit 2, or (2) modifies an existing Bargaining Unit 2 classification, DPA shall inform CASE of the proposal during DPA's preparatory stages of the proposals. CASE 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 CASE to provide input. Upon request, DPA shall furnish CASE with drafts of the proposed classification specifications.

- B. The DPA shall notify and submit to CASE the final classification proposal at least twenty (20) work days prior to the date the SPB is scheduled to adopt it.

- C. If CASE requests in writing within ten (10) work days of receipt of the notice, DPA shall meet with CASE to discuss the final proposal. If CASE does not respond to the notice, or if CASE does not meet with DPA within five (5) workdays from their date of request, the classification proposal shall be deemed agreeable to CASE and be placed on SPB's consent calendar.
- D. The DPA shall meet and confer, if requested in writing by CASE, within ten (10) working days from the date the SPB approved the classification change, regarding compensation of the classification. To the extent that a classification change necessitates other change which fall within the scope of negotiations, the State shall notify CASE and the parties shall bargain the impact upon request by CASE.

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

- A. Employees in Attorney III level classifications, claiming they are working out-of-class and/or that a position should be allocated to the IV level, shall use the procedures described in Side Letter #3.

B. Definitions

- 1. An employee is working "out of class" when he/she spends a majority (i.e., more than 50 percent [50%]) of his/her time over the course of at least two (2) consecutive work weeks performing duties and responsibilities associated with a higher level existing classification that do not overlap with the classification in which said employee holds an appointment.

Duties that are appropriately assigned to incumbents in the employee's current classification are not out of class. Duties appropriately assigned are based on the definition and typical tasks enumerated in the California State Personnel Board specification.

- 2. Training and Development assignments are not out-of-class work.
- 3. For purposes of this section, a classification is at a "higher level" if the maximum salary of the highest salary range (excluding alternate range criteria other than deep class criteria) is any amount more than the maximum salary of the highest range of the class in which the employee holds an appointment.
- 4. When an employee is performing the duties of a vacant position properly assigned to a higher class or the duties of an absent employee whose position is properly assigned to a higher classification, the employee shall be considered to be working out of class.

C. Authorization and Rate of Pay

- 1. Notwithstanding Government Code Sections 905.2, 19818.8, and 19818.16, an employee may be temporarily required to perform out-of-class work by his/her department for up to one hundred twenty (120) calendar days in any twelve (12) consecutive calendar months when it determines that such an assignment:
 - a. Is of unusual urgency, nature, volume, location, duration, or other special characteristics; and,
 - b. Cannot feasibly be met through use of other civil service or administrative alternatives.

2. Departments may not use out-of-class assignments to avoid giving civil service examinations or to avoid using existing eligibility lists created as the result of a civil service examination.
3. When an employee is assigned out-of-class work, he/she shall receive the rate of pay he/she would have received pursuant to Title 2 Cal. Code Regulations Section 599.673, 599.674, or 599.676 if appointed to the higher classification.
4. Out-of-class work may be discontinued by departments at any time; however, departments may not rotate employees in and out of out-of-class assignments to avoid payment of out-of-class compensation.
5. Out-of-class pay shall not be considered as part of the employee's base pay when computing the rate due upon promotion to a higher level.

D. Out-of-Class Grievances and Allocation Appeals

1. 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 or the State Board of Control.
2. The grievance and arbitration procedure described in this section shall be the exclusive means for appealing position allocation or reallocation referenced in Government Code Sections 19818.16 and 19818.20.
3. Employees may not separately file out-of-class grievances and position allocation or reallocation grievances pertaining to the same duties and responsibilities.
4. The only remedy that shall be available (whether claiming out-of-class work or position misallocation) is retroactive pay for out-of-class work. Said pay shall be limited to out-of-class work performed (a) during the one (1) year calendar period before the employee's grievance was filed; and (b) the time between when the grievance was filed and finally decided by an arbitrator.
5. Arbitrators shall not have the authority to order reclassification (reallocation) of a grievant's position or discontinuance of out-of-class work assignments.

E. Grievance Procedure and Time Limits

1. An employee's grievance initially shall be discussed with the employee's supervisor.
2. If the grievance is not resolved to the satisfaction of the grievant a formal grievance may be filed on a form provided by the State within:
 - a. Fourteen (14) calendar days after receipt of the decision rendered by the supervisor; or
 - b. Twenty-one (21) calendar days after the date the employee's duties allegedly changed such that he/she stopped working out of classification or his/her position became misallocated.

- c. However, under no circumstances may the period in which to bring the grievance be extended beyond the twenty-one (21) calendar days in Item b. above.
3. Out-of-class and misallocation grievances shall be filed with a designated supervisor or manager identified by each department head as the department level of appeal in the usual grievance procedure found in Article 7.
 4. The person designated by the department head as the department level of appeal shall respond to the grievance in writing within forty-five (45) calendar days after receipt of the grievance.
 5. If the grievant is not satisfied with the decision rendered by the person designated by the department head at the department level of appeal, he/she may appeal the decision in writing within twenty-one (21) calendar days after receipt to the Director of the Department of Personnel Administration.
 6. The Director of the Department of Personnel Administration or designee shall respond to the grievance in writing within sixty (60) calendar days after receipt of the appealed grievance.
 7. If the grievance is not resolved by the Department of Personnel Administration, the union shall have the right to submit the grievance to arbitration in accordance with Article 7, Section 7.12.
 8. Article 7, Section 7.12, "Formal Grievance – Step 5" shall apply to out-of-class and misallocation grievances except as otherwise provided in this section.
- F. Arbitrators shall not have the authority to order reclassification (reallocation/upgrade) of a position or discontinuance of out-of-class work assignments. The arbitrator's decision regarding out-of-class and misallocation 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.

15.4 Department Request(s) for Attorney IV Level Position(s)

The Department of Personnel Administration (DPA) agrees to review departmental requests to establish Attorney IV Level positions using existing Attorney IV Allocation Standards in a timely manner. CASE at any time may request the status of such requests.

15.5 Judicial Clerkship

The State and CASE agree to mutually work toward the submission to the State Personnel Board, of an amended specification for the classification(s) of attorney that would allow service as a judicial clerk for a federal court, California state court, or another State's appellate court of last resort to constitute experience in the practice of law. The State and CASE further agree that any proposal submitted to the State Personnel Board will provide that, in order for an employee's judicial clerkship to qualify as experience in the practice of law, the experience must have been gained after receipt of a juris doctor or equivalent degree.

15.6 Classification Studies

The State and CASE agree to meet to discuss the appropriateness of a classification study for the following classes:

Deputy Commissioner, Board of Prison Terms

Deputy Labor Commissioner I/II

Workers Compensation Judge

If more than one study is deemed appropriate, it will be conducted one at a time and in the order determined by CASE.

15.7 Salary Survey

In order for the State to recruit and retain skilled Attorneys, Administrative Law Judges, Hearing Officers and Deputy Commissioners, it is the policy of the State to consider prevailing compensation in comparable public sector positions prior to negotiating salaries for a successor memorandum of understanding. Consistent with the above, the State shall conduct a salary survey of appropriate public sector jurisdictions and agrees to meet with CASE prior to the negotiations for a new agreement in order to share the results of the survey. At the request of CASE, the State agrees to meet with the Union periodically to provide the Union with the survey's progress.

15.8 - Classification

The Department of Personnel Administration and the Department of Industrial Relations (DIR) agree to prepare a classification proposal to revise the Industrial Relations Counsel (IRC) series specification to be submitted to the State Personnel Board for its review and approval. Specifically, the proposal shall serve to consolidate the classifications of Legal Counsel, Range A and B, IRC I and IRC II, into a deep class titled IRC with alternate range criteria and a probationary period of 12 months.

ARTICLE 16 – TERM

16.1 Contract Term

- A. Unless a specific provision provides for a different effective date, the terms of this agreement shall go into effect upon ratification by both the Legislature and the Union and remain in full force and effect through June 30, 2007.
- B. In the six-month period prior to the expiration date of the Agreement, the complete Agreement will be subject to renegotiation.

ATTACHMENTS AND ADDENDUMS

Attachment A -- Salary Schedule

02 - ATTORNEYS AND HEARING OFFICERS

CLASSIFICATION	SCHEMATIC	CLASS	A/R	MINIMUM	MAXIMUM	WWG
ADMINISTRATIVE LAW JUDGE I, AIR RESOURCES BOARD	OX31	7363		\$7,494.00	\$9,063.00	E
ADMINISTRATIVE LAW JUDGE I, ALCOHOLIC BEVERAGE CON	OX72	9711		\$7,494.00	\$9,063.00	E
ADMINISTRATIVE LAW JUDGE I, DEPARTMENT OF INSURANC	OX32	6134		\$7,494.00	\$9,063.00	E
ADMINISTRATIVE LAW JUDGE I, DEPARTMENT OF SOCIAL S	OU35	6177		\$7,494.00	\$9,063.00	E
ADMINISTRATIVE LAW JUDGE I, OFFICE OF ADMINISTRATI	OX90	6071		\$7,494.00	\$9,063.00	E
ADMINISTRATIVE LAW JUDGE I, PUBLIC UTILITIES COMMI	OX70	6103		\$7,494.00	\$9,063.00	E
ADMINISTRATIVE LAW JUDGE I, STATE PERSONNEL BOARD	OY18	6118		\$7,494.00	\$9,063.00	E
ADMINISTRATIVE LAW JUDGE I, UNEMPLOYMENT INSURANCE	OX30	6091		\$7,494.00	\$9,063.00	E
ADMINISTRATIVE LAW JUDGE II (SPECIALIST), ALCOHOLI	OX74	9710		\$7,858.00	\$9,509.00	E
ADMINISTRATIVE LAW JUDGE II (SPECIALIST), DEPARTME	OU45	6178		\$7,858.00	\$9,509.00	E
ADMINISTRATIVE LAW JUDGE II (SPECIALIST), OFFICE O	OX80	6068	A	\$7,858.00	\$9,509.00	E
ADMINISTRATIVE LAW JUDGE II (SPECIALIST), STATE PE	OY22	6124		\$7,858.00	\$9,509.00	E
ADMINISTRATIVE LAW JUDGE II, PUBLIC UTILITIES COMM	OX60	6102		\$7,858.00	\$9,509.00	E
ADMINISTRATIVE LAW JUDGE II, UNEMPLOYMENT INSURANC	OX25	6067	A	\$7,858.00	\$9,509.00	E
ADMINISTRATIVE LAW JUDGE II, UNEMPLOYMENT INSURANC	OY46	6130		\$7,494.00	\$9,063.00	E
ASSISTANT GENERAL COUNSEL I, DEPARTMENT OF HEALTH SER	OE20	4051		\$5,638.00	\$6,818.00	SE
ASSISTANT GENERAL COUNSEL I, AGRICULTURAL LABOR RE	OE25	4052		\$6,347.00	\$7,828.00	SE
ASSISTANT GENERAL COUNSEL II, AGRICULTURAL LABOR R	OA94	6272	A	\$4,674.00	\$4,674.00	SE
BOARD COUNSEL I, ALRB	OA94	6272	B	\$4,678.00	\$5,137.00	SE
BOARD COUNSEL I, ALRB	OA95	6273	A	\$5,638.00	\$6,818.00	SE
BOARD COUNSEL II, ALRB	OA95	6273	B	\$6,347.00	\$7,828.00	SE
BOARD COUNSEL II, ALRB	OK70	6187	A	\$4,674.00	\$4,674.00	SE
CORPORATIONS COUNSEL	OK70	6187	B	\$4,678.00	\$5,137.00	SE
CORPORATIONS COUNSEL	OK70	6187	C	\$5,638.00	\$6,818.00	SE
CORPORATIONS COUNSEL	OK70	6187	D	\$6,347.00	\$7,828.00	SE
DEPUTY ATTORNEY GENERAL	OC65	5730	A	\$4,674.00	\$4,674.00	SE

02 - ATTORNEYS AND HEARING OFFICERS

CLASSIFICATION	SCHEMATIC	CLASS	A/R	MINIMUM	MAXIMUM	WWG
DEPUTY ATTORNEY GENERAL	OC65	5730	B	\$4,678.00	\$5,137.00	SE
DEPUTY ATTORNEY GENERAL	OC65	5730	C	\$5,638.00	\$6,818.00	SE
DEPUTY ATTORNEY GENERAL	OC65	5730	D	\$6,347.00	\$7,828.00	SE
DEPUTY ATTORNEY GENERAL III	OC60	5706	A	\$7,682.00	\$9,478.00	SE
DEPUTY ATTORNEY GENERAL IV	OC50	5705	A	\$8,486.00	\$10,477.00	SE
DEPUTY ATTORNEY III, CALTRANS	OO40	5789		\$7,682.00	\$9,478.00	SE
DEPUTY ATTORNEY IV, CALTRANS	OO35	5788		\$8,486.00	\$10,477.00	SE
DEPUTY ATTORNEY, CALTRANS	OO47	5779	A	\$4,674.00	\$4,674.00	SE
DEPUTY ATTORNEY, CALTRANS	OO47	5779	B	\$4,678.00	\$5,137.00	SE
DEPUTY ATTORNEY, CALTRANS	OO47	5779	C	\$5,638.00	\$6,818.00	SE
DEPUTY ATTORNEY, CALTRANS	OO47	5779	D	\$6,347.00	\$7,828.00	SE
DEPUTY COMMISSIONER, BOARD OF PRISON TERMS	XE10	9743		\$7,024.00	\$8,486.00	E
DEPUTY LABOR COMMISSIONER I	WQ20	9502		\$4,357.00	\$5,351.00	2
DEPUTY LABOR COMMISSIONER II	WQ22	9536		\$5,027.00	\$6,186.00	E
DEPUTY STATE PUBLIC DEFENDER	OD50	5763	A	\$5,638.00	\$6,818.00	SE
DEPUTY STATE PUBLIC DEFENDER	OD60	5763	B	\$6,347.00	\$7,828.00	SE
DEPUTY STATE PUBLIC DEFENDER	OD50	5763	C	\$7,682.00	\$9,478.00	SE
FAIR EMPLOYMENT AND HOUSING COUNSEL	O165	6110	A	\$4,674.00	\$4,674.00	SE
FAIR EMPLOYMENT AND HOUSING COUNSEL	O165	6110	B	\$4,678.00	\$5,137.00	SE
FAIR EMPLOYMENT AND HOUSING COUNSEL	O165	6110	C	\$5,638.00	\$6,818.00	SE
FAIR EMPLOYMENT AND HOUSING COUNSEL	O165	6110	D	\$6,347.00	\$7,828.00	SE
FAIR POLITICAL PRACTICES COMMISSION COUNSEL	ON60	6185	A	\$4,674.00	\$4,674.00	SE
FAIR POLITICAL PRACTICES COMMISSION COUNSEL	ON60	6185	B	\$4,678.00	\$5,137.00	SE
FAIR POLITICAL PRACTICES COMMISSION COUNSEL	ON60	6185	C	\$5,638.00	\$6,818.00	SE
FAIR POLITICAL PRACTICES COMMISSION COUNSEL	ON60	6185	D	\$6,347.00	\$7,828.00	SE
FAIR POLITICAL PRACTICES COMMISSION COUNSEL	ON60	6185	E	\$8,486.00	\$10,477.00	SE
FAIR POLITICAL PRACTICES COMMISSION COUNSEL-ENFORC	ON65	6186	A	\$4,674.00	\$4,674.00	SE
FAIR POLITICAL PRACTICES COMMISSION COUNSEL-ENFORC	ON65	6186	B	\$4,678.00	\$5,137.00	SE
FAIR POLITICAL PRACTICES COMMISSION COUNSEL-ENFORC	ON65	6186	C	\$5,638.00	\$6,818.00	SE
FAIR POLITICAL PRACTICES COMMISSION COUNSEL-ENFORC	ON65	6186	D	\$6,347.00	\$7,828.00	SE
FAIR POLITICAL PRACTICES COMMISSION COUNSEL-ENFORC	ON65	6186	E	\$8,486.00	\$10,477.00	SE
GRADUATE LEGAL ASSISTANT	OA60	5797	A	\$3,702.00	\$4,064.00	2
GRADUATE LEGAL ASSISTANT, FAIR POLITICAL PRACTICES	ON55	6035		\$3,702.00	\$4,064.00	2

02 - ATTORNEYS AND HEARING OFFICERS

CLASSIFICATION	SCHEMATIC	CLASS	A/R	MINIMUM	MAXIMUM	WWG
HEARING ADVISER I, CALIFORNIA ENERGY COMMISSION	OY33	6048		\$6,499.00	\$7,858.00	E
HEARING ADVISER II, CALIFORNIA ENERGY COMMISSION	OY31	6051		\$7,494.00	\$9,063.00	E
HEARING OFFICER I, AGRICULTURAL LABOR RELATIONS BO	OY30	6120		\$7,484.00	\$9,063.00	E
HEARING OFFICER I, FAIR EMPLOYMENT AND HOUSING COM	OY60	6332		\$7,494.00	\$9,063.00	E
HEARING OFFICER I, NEW MOTOR VEHICLE BOARD	OY50	6125		\$7,494.00	\$9,063.00	E
HEARING OFFICER I, OCCUPATIONAL SAFETY AND HEALTH	OX91	8072		\$7,494.00	\$9,063.00	E
HEARING OFFICER II, NEW MOTOR VEHICLE BOARD	OY52	6126		\$7,858.00	\$9,509.00	E
INDUSTRIAL RELATIONS COUNSEL I	OI30	5978		\$5,638.00	\$6,818.00	SE
INDUSTRIAL RELATIONS COUNSEL II	OI20	5977		\$6,347.00	\$7,828.00	SE
INDUSTRIAL RELATIONS COUNSEL III (SPECIALIST)	OI15	6180		\$7,682.00	\$9,478.00	SE
INDUSTRIAL RELATIONS COUNSEL IV	OI10	5981		\$8,486.00	\$10,477.00	SE
LEGAL COUNSEL	OA70	5798	A	\$4,674.00	\$4,674.00	SE
LEGAL COUNSEL	OA70	5798	B	\$4,678.00	\$5,137.00	SE
PUBLIC UTILITIES COUNSEL I, PUBLIC UTILITIES COMMI	OJ40	5816		\$5,638.00	\$6,818.00	SE
PUBLIC UTILITIES COUNSEL II, PUBLIC UTILITIES COMM	OJ30	5813		\$6,347.00	\$7,828.00	SE
PUBLIC UTILITIES COUNSEL III, PUBLIC UTILITIES COM	OJ20	5812		\$7,682.00	\$9,478.00	SE
PUBLIC UTILITIES COUNSEL IV, PUBLIC UTILITIES COMM	OJ50	5699	A	\$8,486.00	\$10,477.00	SE
REAL ESTATE COUNSEL I	OA93	5539	A	\$4,674.00	\$4,674.00	SE
REAL ESTATE COUNSEL I	OA93	5639	B	\$4,678.00	\$5,137.00	SE
REAL ESTATE COUNSEL I	OA93	5539	C	\$5,638.00	\$6,818.00	SE
REAL ESTATE COUNSEL II	OA92	5538		\$6,347.00	\$7,828.00	SE
REAL ESTATE COUNSEL III (SPECIALIST)	OA91	5537		\$7,682.00	\$9,478.00	SE
SENIOR BOARD COUNSEL, ALRB	OA96	6274		\$7,682.00	\$9,478.00	SE
SENIOR COMMISSION COUNSEL (SPECIALIST), FAIR POLIT	OA97	6204		\$7,682.00	\$9,478.00	SE
SENIOR CORPORATIONS COUNSEL (SPECIALIST)	OK80	6188		\$7,682.00	\$9,478.00	SE
SENIOR DEPUTY STATE PUBLIC DEFENDER	OD10	5772	A	\$8,486.00	\$10,477.00	U
SENIOR FAIR EMPLOYMENT AND HOUSING COUNSEL (SPECIA	OI55	6115		\$7,682.00	\$9,478.00	SE
STAFF COUNSEL	OA72	5778	A	\$4,674.00	\$4,674.00	SE
STAFF COUNSEL	OA72	5778	B	\$4,678.00	\$5,137.00	SE
STAFF COUNSEL	OA72	5778	C	\$5,638.00	\$6,818.00	SE
STAFF COUNSEL	OA72	5778	D	\$6,347.00	\$7,828.00	SE
STAFF COUNSEL III (SPECIALIST)	OA82	5795	A	\$7,682.00	\$9,478.00	SE
STAFF COUNSEL IV	OA80	5780		\$8,486.00	\$10,477.00	SE

02 - ATTORNEYS AND HEARING OFFICERS

CLASSIFICATION	SCHEMATIC	CLASS	A/R	MINIMUM	MAXIMUM	WWG
TAX COUNSEL	OA75	6728	A	\$4,674.00	\$4,674.00	SE
TAX COUNSEL	OA75	6728	B	\$4,678.00	\$5,137.00	SE
TAX COUNSEL	OA75	6728	C	\$5,638.00	\$6,818.00	SE
TAX COUNSEL	OA75	6728	D	\$6,347.00	\$7,828.00	SE
TAX COUNSEL III (SPECIALIST)	OA76	6733	A	\$7,682.00	\$9,478.00	SE
TAX COUNSEL IV, FRANCHISE TAX BOARD	OA78	6722		\$8,486.00	\$10,477.00	SE
WORKERS' COMPENSATION JUDGE	OY10	6116		\$7,494.00	\$9,063.00	E
YOUTHFUL OFFENDER PAROLE BOARD REPRESENTATIVE	XD10	9739		\$7,554.00	\$8,332.00	E

Attachment B - IRS Agreement Employer-Paid Employee Retirement Contributions

- A. The purpose of this attachment is to implement the provisions contained in Section 414(h)(2) of the Internal Revenue Code concerning the tax treatment of employee retirement contributions paid by the State of California on behalf of employees in the bargaining unit. Pursuant to Section 414(h)(2) contributions to a pension plan, although designated under the plan as employee contributions, when paid by the employer in lieu of contributions by the employee, under circumstances in which the employee does not have the option of choosing to receive the contributed amounts directly instead of having them paid by the employer, may be excluded from the gross income of the employee until these amounts are distributed or made available to the employee.

Implementation of Section 414(h)(2) is accomplished through a reduction in wages pursuant to the provisions of this Article.

1. **DEFINITIONS.** Unless the context otherwise requires, the definitions in this Article govern the construction of this Article.
 - a. "Employees." The term "employees" shall mean those employees of the State of California in Bargaining Unit 2 who make employee contributions to the PERS retirement system.
 - b. "Employee Contributions." The term "employee contributions" shall mean those contributions to the PERS retirement system which are deducted from the salary of employees and credited to individual employee's accounts.
 - c. "Employer." The term "employer" shall mean the State of California.
 - d. "Gross Income." The term "gross income" shall mean the total compensation paid to employees in Bargaining Unit 2 by the State of California as defined in the Internal Revenue Code and rules and regulations established by the Internal Revenue Service.
 - e. "Retirement System." The term "retirement system" shall mean the PERS retirement system as made applicable to the State of California under the provisions of the Public Employees' Retirement Law (California Government Code Section 20000, et seq.).
 - f. "Wages." The term "wages" shall mean the compensation prescribed in this Agreement.
2. **PICK UP OF EMPLOYEE CONTRIBUTIONS.**
 - a. Pursuant to the provisions of this Agreement, the employer shall make employee contributions on behalf of employees, and such contributions shall be treated as employer contributions in determining tax treatment under the Internal Revenue Code of the United States. Such contributions are being made by the employer in lieu of employee contributions.

- b. Employee contributions made under Paragraph A. of this Article shall be paid from the same source of funds as used in paying the wages to affected employees.
- c. Employee contributions made by the employer under Paragraph A. of this Article shall be treated for all purposes other than taxation in the same manner and to the same extent as employee contributions made prior to the effective date of this Agreement.
- d. The employee does not have the option to receive the employer contributed amounts paid pursuant to this Agreement directly instead of having them paid to the retirement system.

3. WAGE ADJUSTMENT.

Notwithstanding any provision in this Agreement on the contrary, the wages of employees shall be reduced by the amount of employee contributions made by the employer pursuant to the provisions hereof.

4. LIMITATIONS TO OPERABILITY.

This Article shall be operative only as long as the State of California pick-up of employee retirement contributions continues to be excludable from gross income of the employee under the provisions of the Internal Revenue Code.

5. NON-ARBITRABILITY.

The parties agree that no provisions of this Article shall be deemed to be arbitrable under the grievance and arbitration procedure contained in this Agreement.

Attachment C - Domestic Partners

For the purpose of application to this Memorandum of Understanding a domestic partner shall be certified with the Secretary of State's office in accordance with Family Code Section 297.

SIDE LETTERS

Side Letter #1 – Attorney IV Allocation Standards

Original side letter typed on Carroll, Burdick & McConough LLP letterhead.

Dear Ms. Buzzini:

ASCA hereby acknowledges and agrees that the following reflects the parties intent as it relates to the attorney allocation standards concurrently negotiated and the related out-of-class grievance process.

- 1. Class specifications adopted by the State Personnel Board remain operative and unaffected by the Attorney IV allocations standards.

2. DOJ attorneys may not file (or base) out-of-class grievances or allocation claims based on duties performed because they are assigned Supervising Deputy Attorney General.
3. ASCA recognizes that it is the State's position that the "existing standard" for determining whether employees are working out-of-class (and whether positions should be allocated at a higher level) is *inter alia* whether the employee has continuously spent a majority (i.e., more than 50%) of his/her time (over the course of two consecutive weeks or more) performing the full range of duties in an existing higher level classification which do not overlap with the lower level classification.

The State recognizes that ACSA does not agree the above is the "existing standards".

Consequently, the parties have not included this definition in the attorney IV allocation standards and they have thereby reserved the ability to present the issue of what constituted "the existing standard" to an arbitrator as a threshold matter.

4. Out-of-class grievances and requests to reallocation of positions to the IV level that exceed the cap will receive strict scrutiny.

This description of the IV level cap is not intended to modify how the cap functions at the III level.

5. ACSA recognizes allocating positions to the IV level is contingent on the approval of funding by the Department of Finance (or designee).
6. Nothing in the Attorney IV allocations standards, or the Attorney IV Grievance and Position Allocations Claims process, or this letter shall be used as the basis for reducing any existing Attorney IV incumbent's classification level.

Very truly yours,

CARROLL, BURDICK & McDONOUGH LLP

Gary M. Messing

**Side Letter Agreement Between
The State of California and Association of
California State Attorneys and Administrative
Law Judges (Bargaining Unit 2)**

Pursuant to Section 15.4 of the current Memorandum of Understanding ("MOU") between the Association of California State Attorneys and Administrative Law Judges ("ACSA") and the State of California ("State"), the parties have met and developed criteria for the utilization of the Attorney IV Classification. The parties have agreed to the documents attached hereto as follows:

Exhibit "1" – Attorney IV Allocation Standards

Exhibit "2" – Attorney III Out-of-Class Grievances and Position Allocation Claims.

Dated: October 13, 2000

Originally signed by

RICK TULLIS, President ACSA

Dated: October 13, 2000

Originally signed by

MARK GINSBERG, Chairman, ACSA
Classification Committee

Dated: October 13, 2000

Originally signed by

ROBERTA WARD, Chairperson, ACSA
Bargaining Team

Dated: October 13, 2000

Originally signed by

GARY M. MESSING, Chief Negotiator
ACSA

Dated: October 24, 2000

Originally signed by

LINDA BUZZINI, DPA, State of California

Attorney IV Allocation Standards

These standards shall take effect upon execution of this agreement by both parties. These standards shall remain in effect until agreement is reached on a successor to the 1999-2001 Unit 2 collective bargaining agreement, or until they are changed as a result of the proper application of the State's impasse procedures.

The Department of Personnel Administration (DPA) will review allocation and reallocation requests made by departments using the following criteria. The criteria will also be used for purposes of deciding Attorney III Out-of-Class Grievances and Position Allocation Claims.

The following factors will be applied collectively realizing that the inability to satisfy one factor(s) (e.g., forum usually practiced in) can be offset by the strength of duties associated with another factor(s). When applying the following, the state shall determine which, if any, of its attorneys perform work that is substantially similar to the work of existing properly allocated Attorney IVs used as the benchmark. Application of the criteria shall be based upon an evaluation and weighing of the following factors. The depth, breadth and frequency of duties performed shall be evaluated based on existing standards.

Disputes over application of this criteria shall be resolved exclusively by the Attorney III Out of Class and Position Allocation Claims process. (see attached.)

Characteristics	Counsel IV Expert
	This classification is distinguished from the lower level Counsel III class in that persons in the Counsel IV class are the most experienced attorneys who are experts in a broad or specialized area of law within a legal program of exceptional difficulty and sensitivity. Attorneys at the Counsel IV level have demonstrated the ability to independently perform assignments consisting of the most complex and sensitive legal work within the department and to consistently produce favorable results in these proceedings.
Supervision Received	Independently performs the most complex and sensitive legal serviced with broad discretion.
Immediate Supervisor	Constitutional officer; exempt appointee of Governor
Interest Represented	Multiple agencies; governor; constitutional officers
Involvement of Other Agency Attorney in Case	No AG or outside counsel
Advice Routinely Given To One or More of the Following	State and non-State agencies; constitutional officers; legislative members; high level Governor appointees, district attorneys; county counsels; grand juries; department directors.
Size of Department	Medium (1001-4000) or Large (4001-8000+)

Size of Legal Office	Medium (11-45) or Large (46+)
Forum Usually Practiced In	Court
Nature of Practice Routinely Engaged In	Acts as hearing officer on behalf of agency ¹ Involves issues of first impressions; negotiations of compacts and/or agreements; cross filed cases. Involves issues of substantial/major impact on the health and safety, environment, or important public/civil rights and benefits of current and/or future California residents. Is highly specialized requiring special legal expertise
Complexity of Litigation	Greatest difficulty and sensitivity. For example, cases involving most highly complex or most highly technical fact patterns; cases involving pre- and post- hearing practice and procedures, including but not limited to motions, discovery and negotiation; case involving opposing counsel who have a high level of specialization.
Consequence of Law Practiced	Impacts a substantial/major number of current and/or future California residents; substantial/major impact on important federal and/or local financial, legal or policy issues; and, substantial/major impact on the State fiscally. Far reaching consequences
Interaction with Other Attorneys	Lead-person who assigns & directs work, and/or, an who routinely advises other attorneys
Interaction With Others	Frequent contact with Legislature, high level governor's appointees, constitutional officers, and general public. Involves reconciliation between state/federal/local entities and laws. Responds to inquiries from public agencies and private organizations.
Scope of Work	Involves novel theories and/or practice involving rapid evolution of law, legal area specialization, legal expert, precedential value; involves opposing counsel or representatives who have a high level of experience and specialization.
Difficulty of Agency's Legal Practice	Exceptionally difficult. On a complexity continuum, a department at the low end would have a legal

¹ So long as this person is not performing this function a majority of the time

	program involving a narrow range of legal or factual issues characterized by relatively settled points of law, whereas a department at the high end would have a legal program involving the broadest range of legal or factual issues which may be characterized by new or unsettled points of law.
--	--

Attorney III Out-of-Class Grievances and Position Allocation Claims

Notwithstanding sections 15.1(c) and 15.3 of the 1999-2001 Unit 2 collective bargaining agreement, the procedure described herein may be used by employees in III-level attorney classifications claiming they are working out-of-classifications and/or that a position should be allocated to the IV level.

This side letter shall take effect upon execution of this agreement by both parties. These standards shall remain in effect until agreement is reached on a successor to the 1999-2001 Unit 2 collective bargaining agreement, or until they are changed as a result of the proper application of the State's impasse procedures.

a. Definitions

1. Duties which are appropriately assigned to incumbents in the employee's current classification are not out-of-class. Duties appropriately assigned are based on the definition and typical tasks enumerated in the California State Personnel Board specification.

Assignments that do not substantially change the overall nature of an employee's work assignment shall not be considered out-of-class work.

Training and Development assignments are not out-of-class work.

2. For purposes of this article, a classification is at a "higher level" if maximum salary of the highest salary range (excluding alternate range criteria other than deep class criteria) is any amount more than the maximum salary of the highest range of the class in which the employee holds an appointment.

b. Authorization and Rate of Pay

1. Notwithstanding Government Code section 905.2, 19818.8 and 19818.16, an employee may be temporarily required to perform out-of-class work by his/her department for up to 120 calendar days in any 12 consecutive calendar months when it determines that such an assignment:
 - (a) Is of unusual urgency, nature, volume, location, duration or other special characteristics; and,
 - (b) Cannot be feasibly met through use of other civil service or administrative alternatives.
2. Departments may not use out-of-class assignments to avoid giving civil service examinations, or to avoid using existing eligible lists created as the result of a civil service examination.

3. When an employee is assigned out-of-class work, s/he shall receive the rate of pay s/he would have received pursuant to 2 Cal. Code Regs § 599.673, 599.674 or 599.676 if appointed to the higher classification.
 4. Out-of-class work may be discontinued by departments at any time; however, departments may not rotate employees in and out of out-of-class assignments to avoid payment of out-of-class compensation.
 5. Out-of-class pay shall not be considered as part of the employee's base pay when computing the rate due upon promotion to a higher level.
- c. Out-of-Class Grievances and Allocation Appeals
1. The grievance and arbitration procedure described in subsection (d) below shall be the exclusive means by which alleged out-of-class assignments/grievances shall be remedied, including requests for review by the Department of Personnel Administration referenced in Government Code section 19818.16 or the State Board of Control.
 2. The grievance and arbitration procedure described in subsection (d) below shall be the exclusive means by which alleged position allocation or reallocation appeals/claims shall be remedied, including those referenced in Section 15.4, Government Code sections 19818.6 and 19818.20.
 3. Employees may not separately file out-of-class grievances and position allocation or reallocation grievances pertaining to the same duties and responsibilities.
 4. The only remedy that shall be available to grievants (whether claiming out-of-class work or position misallocation) is retroactive pay for out-of-class work. Said pay shall be limited to out-of-class work performed (a) during the 120 calendar day period before the employee's grievance was filed; and (b) the time between when the grievance was filed and finally decided by an arbitrator.
 5. Arbitrators shall not have the authority to order reclassification (reallocation/upgrade) of a position or discontinuance of out-of-class work assignments.
- d. Grievance Procedure and Time Limits
1. Employees must file written grievances/claims on a form provided by the State.
 2. Out-of-class grievances and allocation claims shall be filed directly to the fourth level of review with the Department of Personnel Administration.
 3. The Director of the Department of Personnel Administration (DPA) or designee shall respond to the grievance in writing within 120 calendar days after receipt of the grievance/claim.
 4. 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 DPA's decision.
 5. Article VII, section 7.11, "Formal grievance – Step 4" shall apply to out-of-class grievances and allocation claims except as otherwise provided in this Section.

- e. The arbitrator's award regarding out-of-class grievances and allocation claims 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.

Side Letter # 2 – CUIAB Workload

This agreement is an addendum in the Memorandum of Understanding (MOU), effective July 1, 1999, reached between the State of California and the California Attorneys, Administrative Law Judges and Hearing Officers in State Employment (CASE), as exclusive representative for Bargaining Unit 2. The State of California, Unemployment Insurance Appeals Board (CUIAB), the Department of Personnel Administration (DPA) and CASE hereby agree as follows:

1. In order to assure that ongoing funding for the 5% pay differential would be available, workload flexibility language was added to the contract. The CUIAB will not use the flexibility provided to it by Article XIII, Section 16 (Case and Hearing Workload-Unemployment Insurance Appeals Board), to increase the number of cases or hearings assigned to Administrative Law Judges except where workload or budgetary needs so require.
2. The CUIAB agrees to pay qualifying ALJ's the 5% pay differential contained in Article V, Section 11 of the MOU, as amended by the November 10, 1999 agreement between CASE and the State, beginning with the October 1999 pay period.
3. The CUIAB will make an effort to obtain at least one rank and file ALJ II position in each field office and to make appointments to those positions.
4. The State and CASE agree pursuant to Title 8 Cal. Code of Regs, Section 32781 to modify Bargaining Unit 2 by designating four (4) Administrative Law Judge II, CUIAB positions as confidential positions in the Field Operations under the Ralph C. Dills Act. These positions are in addition to the thirty-six (36) Unit 2 positions CASE and the State previously stipulated to designate as confidential.

Juan J. Arcellana, Executive Director
CUIAB

1/22/02

Date

Wayne Heine, Labor Relations Officer
Department of Personnel Administration

1/22/02

Date

Scott Burns
California Attorneys, Administrative Law
Judges and Hearing Officers in State
Employment

1/22/02

Date

SIGNATURE PAGE