

No. C061011

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

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

v.

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

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

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

**JOINT APPENDIX
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Superior Court Of California,
Sacramento
Dennis Jones, Executive
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12/22/2008
amacias
By _____, Deputy
Case Number:
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7
8
9 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **IN AND FOR THE COUNTY OF SACRAMENTO**
11

12 PROFESSIONAL ENGINEERS IN
13 CALIFORNIA GOVERNMENT;
14 CALIFORNIA ASSOCIATION OF
PROFESSIONAL SCIENTISTS

CASE NO.

15 Petitioners/Plaintiffs,

**VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
INJUNCTIVE AND DECLARATORY
RELIEF**

16 v.

17
18 ARNOLD SCHWARZENEGGER, Governor,
STATE OF CALIFORNIA; DEPARTMENT
19 OF PERSONNEL ADMINISTRATION;
STATE CONTROLLER JOHN CHIANG; and
20 DOES 1 THROUGH 20, INCLUSIVE

Date:
Time:
Dept: 33

21 Respondents/Defendants.
22
23

24 **I. Introduction**

25 This Court's intervention is required at this time to prevent the illegal implementation of
26 a Governor's Executive Order calling for a furlough and related pay cut to various state
27 employees, including the professional engineers and professional scientists employed by the
28 State of California.

1 Two months ago, the Governor announced he would bypass collective bargaining and
2 attempt to have the Legislature approve a furlough plan by statute. With the Legislature not
3 taking up the Governor's furlough plan, the Governor now seeks through an executive order to
4 bypass not just collective bargaining, but also to bypass the Legislature - the entity which
5 possesses the salary setting function for state employees - in implementing a unilateral furlough
6 and pay cut. The law is clear that the Governor and the Department of Personnel Administration
7 cannot unilaterally and by executive fiat reduce the salaries payable to state employees and
8 cannot reduce their hours. The Governor and DPA lack the authority to implement this furlough
9 plan by executive order.

10 By this verified petition and complaint, Petitioners/Plaintiffs PROFESSIONAL
11 ENGINEERS IN CALIFORNIA GOVERNMENT and CALIFORNIA ASSOCIATION OF
12 PROFESSIONAL SCIENTISTS petition this Court for the issuance of a writ of mandate
13 pursuant to Code of Civil Procedure section 1085 and file this action for declaratory relief
14 pursuant to Code of Civil Procedure section 1060 by alleging as follows:

15 **II. Parties**

16 1. Petitioner/Plaintiff PROFESSIONAL ENGINEERS IN CALIFORNIA
17 GOVERNMENT (PECG) is, and at all times herein mentioned was, a nonprofit corporation
18 organized and existing under the laws of the State of California, with its principal place of
19 business in the County of Sacramento, State of California. PECG is the duly certified exclusive
20 collective bargaining representative of employees in State Bargaining Unit 9, the Professional
21 Engineers unit pursuant, to Government Code section 3520.5. PECG also is a supervisory
22 employee organization under Government Code section 3527 subdivision (c) in that it represents
23 members who are supervisory employees under subdivision (g) of Government Code section
24 3513. PECG represents approximately 13,000 state employees who would be covered by
25 Executive Order S-16-08. PECG and the affected employees represented by PECG are therefore
26 beneficially interested in Respondents/Defendants faithful performance of the legal duties at
27 issue in this case.

28 2. Petitioner/Plaintiff CALIFORNIA ASSOCIATION OF PROFESSIONAL

1 SCIENTISTS (CAPS) is, and at all times herein mentioned was, a nonprofit corporation
2 organized and existing under the laws of the State of California, with its principal place of
3 business in the County of Sacramento, State of California. CAPS is the duly certified exclusive
4 collective bargaining representative of employees in State Bargaining Unit 10, the Professional
5 Scientific unit, pursuant to Government Code section 3520.5. CAPS also is a supervisory
6 employee organization under Government Code section 3527 subdivision (c) in that it represents
7 members who are supervisory employees under subdivision (g) of Government Code section
8 3513. CAPS represents approximately 3,000 state employees who would be covered by
9 Executive Order S-16-08. CAPS and the affected employees represented by CAPS are therefore
10 beneficially interested in Respondents/Defendants faithful performance of the legal duties at
11 issue in this case.

12 3. Respondent/Defendant Governor ARNOLD SCHWARZENEGGER is the elected
13 Governor of the State of California. The Governor is the employer of state employees in
14 Bargaining Units 9 and 10 for the purposes of bargaining or meeting and conferring in good faith
15 under the Ralph C. Dills Act. (Gov. Code § 3513 (j).) The Governor is the employer of state
16 employed engineers and scientists excluded from bargaining for the purposes of meeting and
17 conferring under the Excluded Employee Bill of Rights. (Gov. Code § 3527 (e).) GOVERNOR
18 SCHWARZENEGGER is sued in his official capacity only.

19 4. Respondent/Defendant CALIFORNIA DEPARTMENT OF PERSONNEL
20 ADMINISTRATION (DPA) is, and at all times herein mentioned was, a department of the State
21 of California with the responsibility of managing the nonmerit aspects of the state's personnel
22 system and as serving as the Governor's designated representative for purposes of collective
23 bargaining with the responsibility to conduct negotiations and enter into collective bargaining
24 agreements with the exclusive bargaining representatives for state bargaining units under the
25 Ralph C. Dills Act and to meet and confer on matters relating to supervisory employer-employee
26 relations. (Gov. Code § 19815.2; Gov. Code § 3517 and § 3527.)

27 5. Respondent/Defendant STATE CONTROLLER JOHN CHIANG is a state
28 constitutional officer as the duly elected Controller of the State of California. (Cal. Const., art.

1 V, §11.) Among various other duties, the Controller shall superintend the fiscal concerns of the
2 state. The Controller shall audit all claims against the state and may audit the disbursement of
3 any state money for correctness, legality, and for sufficient provisions of law for payment. (Gov.
4 Code § 12410.) The Controller shall draw warrants on the Treasurer for the payment of money
5 directed by law to be paid out of the State Treasury; but a warrant shall not be drawn unless
6 authorized by law, and unless unexhausted specific appropriations by law are available to meet it.
7 (Gov. Code § 12440.) The Controller is sued in his official capacity only.

8 6. The true names and capacities of Respondents/Defendants named herein as DOES 1
9 through 20, inclusive, are unknown to Petitioners/Plaintiffs who therefore sue such
10 Respondents/Defendants by such fictitious names, and Petitioners/Plaintiffs will amend this
11 complaint to show their true names and capacities when the same have been ascertained.
12 Petitioners/Plaintiffs are informed and believe and thereon allege that each of the
13 Respondents/Defendants are in some manner responsible for the acts complained of herein.

14 III. Venue

15 7. Respondents/Defendants engaged in all of the acts alleged herein within the County
16 of Sacramento. Accordingly, venue in this County is proper.

17 8. Furthermore, the California Attorney General has an office within the City of
18 Sacramento, making Sacramento Country an appropriate venue. (Code of Civil Procedure §
19 401(1).)

20 IV. The Governor's December 19, 2008 Executive Order

21 9. Article III, section 3 of the Constitution of the State of California states: "The
22 powers of state government are legislative, executive and judicial. Persons charged with the
23 exercise of one power may not exercise either of the others except as permitted by this
24 Constitution."

25 10. Article V, section 1 of the Constitution of the State of California states: "The
26 supreme executive power of this State is vested in the Governor. The Governor shall see that the
27 law is faithfully executed."

28 11. Government Code section 12010 states in relevant part, "[t]he Governor shall

1 supervise the official conduct of all executive and ministerial officers.”

2 12. The Governor is authorized to issue directives, communicated verbally or by formal
3 written order, to subordinate executive officers concerning the enforcement of law. An executive
4 order is a formal written directive of the Governor by which interpretation, or the specification of
5 detail, directs and guides subordinate officers in the enforcement of a particular law. (63
6 Ops.Cal.Atty.Gen. 583 (1980), 1980 WL 96881 (Cal.A.G.).)

7 13. The Governor may not invade the province of the Legislature and is not
8 empowered, by executive order or otherwise, to amend the effect of, or to qualify the operation of
9 existing legislation. (*Lukens v. Nye* (1909) 156 Cal. 498, 503-504.)

10 14. On December 19, 2008, the Governor issued Executive Order S-16-08 (Executive
11 Order). (A true and correct copy of the Executive Order is attached hereto as “Exhibit A” and
12 incorporated herein as though fully set forth.)

13 15. In the Executive Order, among other items, the Governor orders the DPA to adopt a
14 plan to implement a “furlough” of represented state employees and supervisors for two days per
15 month beginning February 1, 2009 and ending June 31, 2010. Through this furlough employees
16 would have their hours reduced by two days per month. This reduction in hours would be
17 accompanied by a cut in pay equal to approximately ten percent (10%) of each employees salary.
18 The Executive Order says “a furlough will reduce current spending and immediately improve the
19 State’s ability to meet its obligations to pay for essential services of the State so as to not
20 jeopardize its residents’ health and safety in the current and next fiscal year.”

21 16. Respondents/Defendants rely upon Government Code section 3516.5 as the
22 authority for the Executive Order and the salary and hour cut that they seek to implement through
23 the Executive Order. Government Code section 3516.5 states:

24 “Except in cases of emergency as provided in this section, the employer shall give
25 reasonable written notice to each recognized employee organization affected by
26 any law, rule, resolution, or regulation directly relating to matters within the scope
27 of representation proposed to be adopted by the employer, and shall give such
28 recognized employee organizations the opportunity to meet and confer with the
administrative officials or their designated representatives as may be properly
designated by law.

1 In cases of emergency when the employer determined that a law, rule, resolution,
2 or regulation must be adopted immediately without prior notice or a meeting with
3 the recognized employee organization, the administrative officials or their
4 designated representatives as may be properly designated by law shall provide
such notice and opportunity to meet and confer in good faith at the earliest
practical time following adoption of such law, rule, resolution, or regulation.”

5 17. Government Code section 3516.5 is merely a provision regarding the state
6 employer’s obligation to provide notice and opportunity to meet and confer under the state
7 collective bargaining law over the impact of a law, rule, resolution or regulation related to
8 matters within the scope of representation. Section 3516.5 does not provide any statutory
9 authority to “furlough” state employees or otherwise implement a cut to their salaries or hours of
10 work.

11 18. Setting compensation for state employees is a legislative function. The Legislature
12 has provided that salaries for rank-and-file state employees and other terms and conditions of
13 employment shall be set through collective bargaining. (*Lowe v. Resources Agency* (1991) 1
14 Cal.App.4th 1140.)

15 19. Government Code section 19826 in relevant part states:

16
17 “(a) The department shall establish and adjust salary ranges for each class of
18 position in the state civil service subject to any merit limits contained in Article
19 VII of the California Constitution. The salary range shall be based on the
20 principle that like salaries shall be paid for comparable duties and responsibilities.
21 In establishing or changing these ranges, consideration shall be given to the
prevailing rates for comparable service in other public employment and in private
business. The department shall make no adjustments that require expenditures in
excess of existing appropriations that may be used for salary increase purposes.
The department may make a change in salary range retroactive to the date of
application for these changes.

22 (b) Notwithstanding any other provision of law, the department shall not establish,
23 adjust, or recommend a salary range for any employees in an appropriate unit
24 where an employee organization has been chosen as the exclusive representative
pursuant to Section 3520.5.”

25 20. Under Section 19826 subdivision (b), where an exclusive representative has been
26 selected, the DPA has no authority to change the salary. Since the Legislature has chosen not to
27 delegate this salary setting function to the DPA with respect to represented employees under the
28 Dills Act, the Legislature necessarily retains that role for itself. Government Code section 19826

1 expressly and unambiguously precludes the reduction of represented employee wages.

2 (*Department of Personnel Administration v. Greene* (1992) 5 Cal.App.4th 155.)

3 21. Government Code section 19851 states in relevant part:

4 "It is the policy of the state that the workweek of the state employee shall be 40
5 hours, and the workday of state employees eight hours, except that workweeks
6 and workdays of a different number of hours may be established in order to meet
7 the varying needs of the different state agencies."

8 22. Government Code section 19852 states:

9 "When the Governor determines that the best interests of the state would be
10 served thereby, the Governor may require that the 40-hour workweek established
11 as the state policy in Section 19851 shall be worked in four days in any state
12 agency or part thereof."

13 23. The Professional Engineers in California Government is the exclusive
14 representative of state employees in Bargaining Unit 9. The California Association of
15 Professional Scientists is the exclusive representative of state employees in Bargaining Unit 10.
16 The pay of these represented employees and the hours of all employees may not be unilaterally
17 cut as proposed by the Governor and his DPA as proposed in the Governor's Executive Order.
18 For employees excluded from collective bargaining, the hours may not be reduced by the
19 Governor and his DPA as proposed in the Governor's Executive Order, therefore the salaries
20 may not be reduced.

21 24. Respondents/Defendants have violated and continue to violate provisions of the
22 Constitution of the State of California and the statutes of the state by enacting and enforcing
23 Executive Order S-16-08. This Executive Order violates the constitutional principles of the
24 separation of powers and is directly contrary to existing law by reducing the pay and by reducing
25 the hours of state employees.

26 **V. The Controller Has a Duty Not to Decrease Salaries as Called for in the
27 December 19, 2008 Executive Order**

28 25. The State Controller has the power and the duty to ensure that the decisions of an
agency that affect expenditures are within the fundamental jurisdiction of the agency. The

1 Legislature has specifically provided that “a warrant shall not be drawn unless authorized by
2 law...” (Gov. Code § 12440.) An attempt by an administrative agency to exercise control over
3 matters which the Legislature has not seen fit to delegate to it is not authorized by law and in
4 such case the agency’s actions can have no force or effect. (*Tirapelle v. Davis* (1993) 20
5 Cal.App.4th 1317, 1335.)

6 26. Here, the Governor and DPA’s proposed furlough conflicts with Government Code
7 section 19826 subdivision (b). Where an exclusive representative has been selected, the DPA
8 has no authority to change the salary. Since the Governor and the DPA have no authority to
9 implement the furlough, the furlough has no force or effect and the Controller has a duty to
10 ensure that salaries not be reduced as a result of the proposed furlough.

11
12 **FIRST CAUSE OF ACTION**
13 **(Petition for Writ of Mandate)**

14 27. Petitioners/Plaintiffs PEGC and CAPS hereby incorporate by reference all of the
15 foregoing paragraphs as if fully set forth herein.

16 28. On December 19, 2008 the Governor issued Executive Order S-16-08 which
17 instructs the DPA to implement a furlough and pay cut to state employees to reduce current
18 spending.

19 29. The Executive Order violates the Constitution of the State of California, Article III,
20 section 3 and Article V, section 1. The Executive Order violates the doctrine of separation of
21 powers and the Governor’s obligation to uphold the laws of the State by seeking to perform the
22 legislative function of salary setting in conflict with statute and by cutting the hours of state
23 employees in conflict with the statutes setting forth the hours of state employees. The Executive
24 Order is in conflict with existing statute and is unlawful.

25 30. Petitioners/Plaintiffs PEGC and CAPS and their members have an immediate and
26 direct interest affected by this proceeding in that employees have a right not to be illegally
27 furloughed and have a right not to have their pay cut as proposed by the Governor’s Executive
28 Order.

1 that they violate the separation of powers doctrine of the California Constitution and the salary
2 setting provisions of Government Code section 19826 and the hours of work provisions of
3 California law found at Government Code section 19851. Respondents/Defendants Governor
4 and DPA are without the authority to furlough state employed engineers and scientists by
5 reducing their hours and are without the authority to cut the pay of state employed engineers and
6 scientists.

7 40. As a result of this Executive Order, an actual controversy has arisen and now exists
8 between Petitioners/Plaintiffs and Respondents/Defendants regarding the furlough of state
9 employed engineers and scientists and the cut of their work hours and salary reduction.

10 41. Petitioners/Plaintiffs PEGC and CAPS desire a declaration of their rights and the
11 rights of their affected members with respect to the Governor and DPA's intent to furlough state
12 employed engineers and scientists through an unlawful executive order and the rights of their
13 members to not have their salaries reduced and the right to not have their hours worked reduced
14 by this unlawful Executive Order.

15 42. Such a declaration is necessary and appropriate at this time in order to avoid
16 implementation of these illegal provisions which would adversely impact the rights of
17 Petitioners/Plaintiffs. Respondents/Defendants actions will result in injury and harm to state
18 employees including the denial of the protection of the laws regarding their salaries and their
19 hours of work. The loss of such rights cannot be compensated fully by damages or other form of
20 legal relief.

21 43. Because the Executive Order is in direct conflict with existing statutes and is
22 therefore unlawful, Petitioners/Plaintiffs are entitled as a matter of law not to have their salaries
23 and hours cut, therefore Petitioners/Plaintiffs have a reasonable likelihood of success on the
24 merits regarding the petition for writ of mandamus and declaratory relief cause of action.

25 44. Therefore, Petitioners/Plaintiffs seek temporary, preliminary and permanent
26 injunctive relief directing Respondents/Defendants to cease and desist taking action to furlough
27 state employed engineers and scientists by reducing their hours and reducing their pay under an
28 unlawful Executive Order which conflicts with statute.

1 **PRAYER**

2 **WHEREFORE, Petitioners/Plaintiffs respectfully pray for judgment against**
3 **Respondents/Defendants, and each of them, as follows:**

4 **On Petitioners/Plaintiffs' First Cause of Action for Writ of Mandate:**

5 1. **That the Court issue a peremptory writ in the first instance commanding the**
6 **Governor and DPA to comply with their mandatory duties under Article III, section 3 and Article**
7 **V, section 1 of the California Constitution and Government Code sections 19826 and 19851 and**
8 **to set aside the portions of the Governor's Executive Order S-16-08 calling for a furlough and**
9 **salary reduction for state employed engineers and scientists in that the Executive Order is**
10 **unlawful and illegal.**

11 2. **That the Court issue a peremptory writ in the first instance commanding**
12 **Respondent/Defendant Controller Chiang to ensure that salaries not be reduced as a result of the**
13 **illegal furlough.**

14 3. **For costs of suit incurred in this action and for such other relief as the Court deems**
15 **proper.**

16 **On Petitioners/Plaintiffs' Second Cause of Action for Declaratory and Injunctive Relief:**

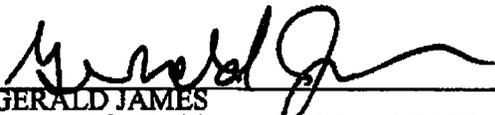
17 1. **That the Court issue a declaration that the portions of the Governor's Executive**
18 **Order S-16-08 calling for a furlough and salary reduction for state employed engineers and**
19 **scientists are unlawful and illegal in that the Governor and DPA have violated and continue to**
20 **violate with the provisions of Article III, section 3 and Article V, section 1 of the California**
21 **Constitution and Government Code sections 19826 and 19851 by calling for and implementing a**
22 **furlough and salary reduction for state employed engineers and scientists.**

23 2. **That the Court issues a preliminary and permanent injunction directing the**
24 **Governor, DPA and the Controller to cease and desist taking action to furlough state employed**
25 **engineers and scientists by reducing their hours and reducing their pay under an unlawful**
26 **Executive Order.**

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3. For costs of suit incurred in this action and for such other relief as the Court deems proper.

Dated: December 22, 2008


GERALD JAMES
Attorney for Petitioners PEGC and CAPS

VERIFICATION

1
2
3 I, Bruce J. Blanning, am the Executive Director to the Professional Engineers in
4 California Government, a Petitioner and Plaintiff in the instant action.

5 I have read the foregoing Petition for Writ of Mandate and Complaint for Injunctive
6 Declaratory Relief and know its contents. All facts alleged in the petition and complaint are true
7 of my own personal knowledge, except as to those matters which are alleged on information and
8 belief, and as to those matters, I believe them to be true.

9 I declare under penalty of perjury that the foregoing is true and correct and that this
10 affidavit was executed on this 22nd day of December, 2008 at Sacramento, California.

11
12 
13 BRUCE J. BLANNING
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VERIFICATION

I, Christopher J. Voight, am the Staff Director to the California Association of Professional Scientists, a Petitioner and Plaintiff in the instant action.

I have read the foregoing Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief and know its contents. All facts alleged in the petition and complaint are true of my own personal knowledge, except as to those matters which are alleged on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct and that this affidavit was executed on this 22nd day of December, 2008 at Sacramento, California.


CHRISTOPHER J. VOIGHT

RECYCLED PAPER MADE FROM 20% POST CONSUMER CONTENT



EXHIBIT A

PECG JA 000016



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

PECG JA 000017

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.



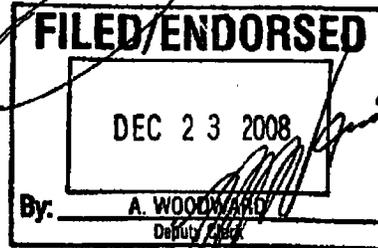
IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 19th day of December, 2008.

ARNOLD SCHWARZENEGGER
Governor of California

ATTEST:
DEBRA BOWEN
Secretary of State

1 GERALD JAMES - State Bar #179258
660 J Street, Suite 445
2 Sacramento, CA 95814
Telephone: (916) 446-0400
3 Facsimile: (916) 446-0489

4 Attorney for Petitioners/Plaintiffs
PROFESSIONAL ENGINEERS IN CALIFORNIA
5 GOVERNMENT and CALIFORNIA ASSOCIATION
OF PROFESSIONAL SCIENTISTS
6



7
8
9 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 IN AND FOR THE COUNTY OF SACRAMENTO
11

12 PROFESSIONAL ENGINEERS IN
13 CALIFORNIA GOVERNMENT;
CALIFORNIA ASSOCIATION OF
14 PROFESSIONAL SCIENTISTS

15 Petitioners/Plaintiffs,

16 v.

17
18 ARNOLD SCHWARZENEGGER, Governor,
STATE OF CALIFORNIA; DEPARTMENT
19 OF PERSONNEL ADMINISTRATION;
STATE CONTROLLER JOHN CHIANG; and
20 DOES 1 THROUGH 20, INCLUSIVE

21 Respondents/Defendants.
22
23

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

PROOF OF SERVICE BY PERSONAL DELIVERY

Date:
Time:
Dept: 33

24
25 I declare that I am employed in the County of Sacramento, California. I am over the age
26 of 18 years and not a party to the within entitled cause. The address of my business is 660 J
27 Street, Suite 445, Sacramento, California, 95814.
28

1 On December 23, 2008, I served the following documents:

2 **SUMMONS; VERIFIED PETITION FOR WRIT OF MANDATE AND**
3 **COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF; NOTICE OF**
4 **CASE ASSIGNMENT; SACRAMENTO SUPERIOR COURT GUIDE TO THE**
5 **PROCEDURES FOR PROSECUTING PETITIONS FOR PREROGATIVE**
6 **WRITS**

7 on the parties listed below by delivering a true copy thereof to the following persons:

8
9 Arnold Schwarzenegger
10 Governor, State of California
State Capitol
Sacramento, CA 95814

11
12 Edmund G. Brown
Attorney General
13 Legal Affairs
Department of Justice
14 1300 I Street
Sacramento, CA 95814

15
16 John Chiang
State Controller
300 Capitol Mall, Suite 1850
17 Sacramento, CA 95814

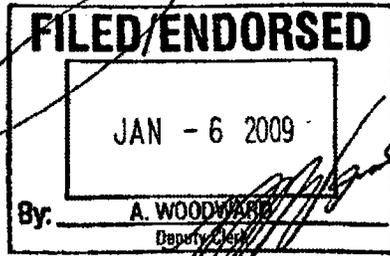
18
19 K. William Curtis
Chief Counsel
Department of Personnel Administration
20 1515 S Street, North Bldg., Ste. 400
Sacramento, CA 95811-7246

21
22 I declare under penalty of perjury under the laws of the State of California that the
23 foregoing is true and correct. Executed on December 23, 2008 at Sacramento, California.

24
25 
26 Elizabeth Cantu

1 GERALD JAMES - State Bar #179258
2 660 J Street, Suite 445
3 Sacramento, CA 95814
4 Telephone: (916) 446-0400
5 Facsimile: (916) 446-0489

6 Attorney for Petitioners/Plaintiffs
7 PROFESSIONAL ENGINEERS IN CALIFORNIA
8 GOVERNMENT and CALIFORNIA ASSOCIATION
9 OF PROFESSIONAL SCIENTISTS



10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 IN AND FOR THE COUNTY OF SACRAMENTO

12 PROFESSIONAL ENGINEERS IN
13 CALIFORNIA GOVERNMENT;
14 CALIFORNIA ASSOCIATION OF
15 PROFESSIONAL SCIENTISTS

16 Petitioners/Plaintiffs,

17 v.

18 ARNOLD SCHWARZENEGGER, Governor,
19 STATE OF CALIFORNIA; DEPARTMENT
20 OF PERSONNEL ADMINISTRATION;
21 STATE CONTROLLER JOHN CHIANG; and
22 DOES 1 THROUGH 20, INCLUSIVE

23 Respondents/Defendants.

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

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
INJUNCTIVE AND DECLARATORY
RELIEF**

Date:
Time:
Dept: 33

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12	1085	6
13	1086	6
14	California Government Code	
15	3513	3
16	3516.5	12
17	3517	3
18	3517.6	8
19	3520.5	2, 3
20	3527	2, 3
21	12010	11
22	12440	13
23	19815.2	3, 7
24	19816	7
25	19816.2	7
26	19825	7
27	19826	
28	19851	passim
	19852	1, 5, 6, 10, 18
		5, 10
	California Constitution	
	Article III, section 3	11
	Article V, section 1	11

1
2 **INTRODUCTION**

3 In this Petition, the Professional Engineers in California Government (PECG) and the
4 California Association of Professional Scientists (CAPS) seek a writ of mandate which will
5 prevent the Governor and his Department of Personnel Administration (DPA) from furloughing
6 and cutting the pay and the hours of work of their members, the professional engineers and the
7 professional scientists employed by the State of California. PECG and CAPS allege the
8 Governor has no authority to cut pay or to cut hours through an executive order as such an act
9 would directly conflict with existing statutes covering pay and hours of work.

10 On November 6, 2008, the Governor expressly stated in a letter to state workers that his
11 plan to furlough state workers required legislative approval. (Attached as Exhibit A to the
12 Declaration of Theodore E. Toppin.) As part of the special session of the Legislature called by
13 the Governor, the Governor sought to have specific legislation introduced to furlough state
14 employees and to reduce their salaries. (Attached as Exhibit B to the Declaration of Toppin.)
15 While the Legislature passed a series of bills as part of the December 2008 Extraordinary
16 Session, the Legislature did not pass a bill requiring state employees to be furloughed or
17 authorizing a reduction in state employee pay or the state employee workweek. (Declaration of
18 Toppin, para. 11.) With the Legislature not taking up the Governor's furlough plan, the
19 Governor now seeks to bypass the Legislature and implement a unilateral furlough, pay cut, and
20 reduction of hours of work through his DPA.

21 The courts have previously considered the DPA's efforts to reduce compensation for
22 represented employees during a serious budget deficit and found that DPA has no authority to
23 impose salary reductions upon represented employees under the Ralph C. Dills Act. Existing law
24 at Government Code section 19826 expressly and unambiguously precludes the reduction of
25 represented employee wages. (*Department of Personnel Administration v. Superior Court*
26 (1992) 5 Cal.App.4th 155.)

27 In *DPA v. Superior Court*, the court found that in the absence of agreement between DPA
28 and state unions regarding wages, the Legislature intended through Section 19826 subdivision (b)
to retain authority over salaries. "Given that this statute denies DPA the power unilaterally to set

1 salaries, the Legislature must have intended that unresolved wage disputes return to the
2 Legislature for final determination.” (*Id.* at 181 - 182.)

3 Similarly, existing law at Government Code section 19851 expressly establishes in statute
4 that the workweek of state employees shall be 40 hours. This workweek may not be altered
5 unilaterally by the Governor or his DPA. Given the statutory establishment of a 40 hour
6 workweek and in the absence of a memorandum of understanding which might alter the
7 workweek, the Legislature clearly retains the authority to set the workweek of state employees.

8 The Governor may not invade the province of the Legislature and is not empowered, by
9 executive order or otherwise, to amend the effect of, or to qualify the operation of existing
10 legislation. (*Lukens v. Nye* (1909) 156 Cal. 498, 503-504.)

11 It is clear that the Governor and the DPA lack the authority to reduce the salaries payable
12 to represented state employees and lack the authority to reduce the hours of represented and
13 excluded state employees by executive order. Petitioners respectfully request that this Court
14 issue a writ of mandate and a declaration that the Governor lacks the authority by executive order
15 or otherwise to cut the pay and to cut the hours of state employees through a furlough and for a
16 writ of mandate directing the State Controller to pay the full salaries to all state employed
17 engineers and scientists. Petitioners seek injunctive relief to prevent the implementation of this
18 illegal furlough beginning in February 2009.

19
20 **STATEMENT OF FACTS**

21 Petitioner/Plaintiff PEGC is the duly certified exclusive collective bargaining
22 representative of employees in State Bargaining Unit 9, the Professional Engineers unit, pursuant
23 to Government Code section 3520.5. (Declaration of Toppin, para. 2.) PEGC also is a verified
24 supervisory employee organization under Government Code section 3527 subdivision (c). PEGC
25 represents approximately 13,000 Unit 9 and supervisory state employees who would be covered
26 by Executive Order S-16-08. (Declaration of Toppin, para. 2.)

27 Petitioner/Plaintiff CAPS is the duly certified exclusive collective bargaining
28 representative of employees in State Bargaining Unit 10, the Professional Scientific unit,

1 pursuant to Government Code section 3520.5. (Declaration of Toppin, para. 3.) CAPS also is a
2 verified supervisory employee organization under Government Code section 3527 subdivision
3 (c). CAPS represents approximately 3,000 Unit 10 and supervisory state employees who would
4 be covered by Executive Order S-16-08. (Declaration of Toppin, para. 3.)

5 Respondent/Defendant Governor Schwarzenegger is the employer of state employees in
6 Bargaining Units 9 and 10 for the purposes of bargaining under the Ralph C. Dills Act (Gov.
7 Code § 3513 (j)) and is the employer of supervisory engineers and scientists excluded from
8 bargaining (Gov. Code § 3527 (e).) Respondent/Defendant DPA is a department of the State of
9 California with the responsibility of managing the nonmerit aspects of the state's personnel
10 system and serves as the Governor's designated representative for purposes of collective
11 bargaining with rank-and-file engineers and scientists and meeting and conferring on matters
12 relating to supervisory engineers and scientists employer-employee relations. (Gov. Code §
13 19815.2; Gov. Code § 3517 and § 3527.)

14 On November 6, 2008, the Governor sent a letter to all state workers regarding his plan to
15 achieve budgetary cost savings. (Exhibit A to the Declaration of Toppin.) Included in this letter
16 was a proposal that "all state employees be furloughed for one day per month for the next year
17 and a half, a total of 19 days. This will result in a pay cut of about 5 percent." The letter also
18 proposed elimination of two holidays, proposed amending the law to make it easier to allow
19 employees to work four days a week/ten hours per day, and proposed changes to overtime
20 provisions by not including sick and vacation time as time worked for overtime purposes.
21 Significantly, the Governor's letter to state workers acknowledged "All the actions we're
22 proposing must first be approved by the Legislature." (Exhibit A to the Declaration of Toppin.)

23 Also on November 6, 2008, the Governor called a Fourth Extraordinary Session of the
24 Legislature to address the budget shortfall. (Governor's November 6, 2008 Proclamation
25 attached as Exhibit B to the Declaration of Toppin.) In this special session of the Legislature, the
26 Governor sought legislation to require state employees to take a one day furlough each month
27 between February 1, 2009 and June 30, 2010 and seeking statutory authority to reduce salaries to
28 accomplish the purposes of the furlough. (Exhibit C to the Declaration of Toppin.)

1 The proposed legislation sought to set aside the bargaining law and any other provision of
2 law and add statutory authority to "furlough" state employees. In the proposed legislation,
3 furlough "means the placement of employees on temporary, nonduty status to reduce payroll
4 costs. An employee subject to furlough shall not receive compensation for any furlough period."
5 Also in the proposed legislation, the state would be given power to "reduce employees' salaries,
6 as defined in paragraph (1) of subdivision (c) of Section 19827.2, to accomplish the purposes of
7 the furlough." According to an Assembly Budget Committee analysis, the legislation to allow
8 the furloughs and salary reductions sought by the Governor would produce approximately \$203
9 million in General Fund savings in 2008-2009 and \$451 million in General Fund savings in
10 2009-2010. (Declaration of Toppin, para. 10; See Assembly Budget Committee's December 2,
11 2008 Summary of the Governor's Proposed December 2008-09 Budget Adjustments at Exhibit F
12 to the Declaration of Toppin.) The Legislature did not pass the Governor's proposed statutory
13 changes during the fourth extraordinary session which ended in November 2008. (Declaration of
14 Toppin, para. 7.)

15 Following the expiration of the legislative session and the swearing in of two dozen new
16 legislators, on December 1, 2008 the Governor issued two proclamations calling the new
17 Legislature into a Proposition 58 Special Session and a Second Special Session to address the
18 state's economy. (Declaration of Toppin, para. 8; Governor's Proclamations are Attached as
19 Exhibit D and Exhibit E to the Declaration of Toppin.) In the Special Sessions which began on
20 December 1, 2008, the Governor's proposed statutory changes are identical to those proposed in
21 November 2008 for the 2007 - 2008 Fourth Extraordinary Session. (Declaration of Toppin, para.
22 9; See Assembly Budget Committee's December 2, 2008 Summary of the Governor's Proposed
23 December 2008-09 Budget Adjustments at Exhibit F to the Declaration of Toppin.)

24 While the Legislature passed a series of bills as part of this Extraordinary Session, the
25 Legislature did not pass a bill requiring state employees to be furloughed or a bill allowing salary
26 reductions or a reduction in the hours of state employees. (Declaration of Toppin, para. 11.)
27 With the Legislature not adopting the Governor's furlough plan, the Governor now seeks in
28 violation of the law to bypass the Legislature and implement a unilateral furlough and pay cut

1 through his DPA.

2 On December 19, 2008, the Governor issued Executive Order S-16-08 (Executive Order).
3 (A true and correct copy of the Executive Order is attached as "Exhibit A" to the Petition for
4 Writ of Mandate and Complaint for Injunctive and Declaratory Relief.) In the Executive Order,
5 among other items, the Governor orders the DPA to adopt a plan to implement a "furlough" of
6 represented state employees and supervisors for two days per month beginning February 1, 2009
7 and ending June 31, 2010. Through this furlough employees would have their hours reduced by
8 two days per month. This reduction in hours would be accompanied by a cut in pay equal to
9 approximately ten percent (10%) of each employees salary. The Executive Order says "a
10 furlough will reduce current spending... ."

11 Setting compensation for state employees is a legislative function. (*Lowe v. Resources*
12 *Agency* (1991) 1 Cal.App.4th 1140.) The Legislature has provided that salaries for rank-and-file
13 state employees and other terms and conditions of employment shall be set through collective
14 bargaining. In Government Code section 19826, the Legislature has delegated a portion of the
15 salary setting function to the DPA. Under Section 19826 subdivision (b), where an exclusive
16 representative has been selected, the DPA has no authority to change the salary. Since the
17 Legislature has chosen not to delegate this salary setting function to the DPA with respect to
18 represented employees under the Dills Act, the Legislature necessarily retains that role for itself.
19 Government Code section 19826 expressly and unambiguously precludes the reduction of
20 represented employee wages. (*Department of Personnel Administration v. Superior Court*
21 (1992) 5 Cal.App.4th 155.)

22 Existing statute also sets the workweek of state employees. Government Code section
23 19851 provides that "the workweek of the state employee shall be 40 hours, and the workday of
24 state employees eight hours, except that workweeks and workdays of a different number of hours
25 may be established in order to meet the varying needs of the different state agencies." In
26 Government Code section 19852, the Legislature provides the Governor limited discretion in
27 determining whether the 40 hour workweek should be worked in four or five days. That section
28 provides that when the Governor determines it is in the best interests of the state, "the Governor

1 may require that the 40-hour workweek established as the state policy in Section 19851 shall be
2 worked in four days in any state agency or part thereof.”

3 Thousands of Unit 9 and Unit 10 and related supervisory employees work for appointing
4 authorities under the umbrella of the California Environmental Protection Agency (Cal/EPA).
5 (Declaration of Toppin, para 12.) On January 5, 2009, the Cal/EPA announced that it was
6 planning to shut its offices for two days each month to comply with the Governor’s furlough
7 executive order, beginning in February 2009. (Declaration of Toppin, para 13.) If the Cal/EPA
8 shuts state offices for two days per month, Unit 9 and Unit 10 and related supervisory employees
9 will be deprived of the opportunity to work on those days and the public will be deprived of the
10 work that Unit 9 and Unit 10 and related supervisory employees would perform on those days.
11 (Declaration of Toppin, para 14.)

12 PEEG is the exclusive representative of state employees in Bargaining Unit 9. CAPS is
13 the exclusive representative of state employees in Bargaining Unit 10. The pay of these
14 represented employees may not be unilaterally cut as sought by the Governor in his executive
15 order. For employees excluded from collective bargaining, the hours may not be reduced by the
16 Governor and his DPA as proposed in the Governor’s Executive Order, therefore the salaries
17 may not be reduced pursuant to the furlough plan.

18
19 **ARGUMENT**
20

21 **I. A WRIT OF MANDATE MUST ISSUE TO COMPEL THE GOVERNOR AND**
22 **THE DPA TO REFRAIN FROM VIOLATING THE LAW**

23 This action is brought under Code of Civil Procedure section 1085 which provides that
24 “A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or
25 person, to compel the performance of an act which the law specifically enjoins, as a duty
26 resulting from an office, trust, or station...” Code of Civil Procedure section 1086 provides that
27 “The writ must be issued in all cases where there is not a plain, speedy, and adequate remedy, in
28 the ordinary course of law.”

1 A writ of mandate lies to compel a public official to perform an official act required by
2 law. (*Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 442.) An official's
3 affirmative obligation to perform also encompasses the corollary obligation not to perform the
4 duty in violation of the law. (*Horwath v. City of E. Palo Alto* (1989) 212 Cal.App.3d 766, 773.)

5 A writ of mandate must issue when there is no plain, speedy, and adequate alternative
6 remedy; the respondent has a duty to perform, and the petitioner has a clear and beneficial right
7 to performance. (*Payne v. Superior Court* (1976) 17 Cal.3d 908, 925.) Here, Petitioners have a
8 beneficial right to the Governor and the DPA refraining from violating the law and have no other
9 adequate remedy to prevent the illegal cutting of their pay and hours. Petitioners also have a
10 right to the State Controller ensuring that salaries are not reduced as a result of the unlawful
11 furlough.

12 **A. The DPA Has a Legal Duty to Refrain From Violating the Law**
13 **By Attempting to Reduce Salaries and Reduce Hours of State**
14 **Employees**

15 The Legislature created the DPA in 1981 for the purpose of managing the nonmerit aspect
16 of the state's personnel system. (Gov. Code § 19815.2.) In general, the DPA has administers
17 matters of salary, layoffs and nondisciplinary demotions. (Gov. Code § 19816, 19816.2, 19825,
18 19826; *Tirapelle v. Davis* (1993) 20 Cal.App.4th 1317, 1322.) An administrative agency has
19 only such authority as has been conferred on it. Administrative action that is not authorized by,
20 or is inconsistent with, acts of the Legislature is void. (*Association for Retarded Citizens-*
21 *California v. Department of Departmental Services* (1985) 38 Cal.3d 384, 391 - 392.) As a
22 statutorily created administrative agency, DPA may act only to the extent and in the manner
23 consistent with the legislative delegation of authority. (*Tirapelle v. Davis* (1993) 20 Cal.App.4th
24 1317, 1323, footnote 8.)

25 In passing the Ralph C. Dills Act, the Legislature's delegation to DPA over state
26 employees' wages, hours and working conditions was expressly limited. DPA and state
27 employee unions are given the power to negotiate numerous aspects of state employment in a
28 collective bargaining agreement which conflict with existing statutory provisions. Section

1 3517.6 of the Dills Act allows the parties to supercede certain statutory provisions when agreed
2 to in a memorandum of understanding. In passing the Dills Act, the Legislature had a choice in
3 the process for allowing the parties to negotiate in these areas which, prior to collective
4 bargaining, were set in statute. The Legislature could have allowed the state employer and the
5 state employee unions to bargain in these areas by simply repealing the provisions designated for
6 supersession in Section 3517.6, but did not do so. "By instead allowing the parties to supersede
7 those provisions by negotiated agreements, the Legislature insured that in the absence of an
8 agreement, those aspects of state employment would continue to be determined by the
9 Legislature." (*Department of Personnel Administration v. Superior Court* (1992) 5 Cal.App.4th
10 155, 177.)

11 Setting compensation for state employees is a legislative function. (*Lowe v. Resources*
12 *Agency* (1991) 1 Cal.App.4th 1140.) The Legislature has provided that salaries for rank-and-file
13 state employees and other terms and conditions of employment may be set through collective
14 bargaining. Government Code section 19826 in relevant part states:

15
16 "(a) The department shall establish and adjust salary ranges for each class of
17 position in the state civil service subject to any merit limits contained in Article
18 VII of the California Constitution. The salary range shall be based on the
19 principle that like salaries shall be paid for comparable duties and responsibilities.
20 In establishing or changing these ranges, consideration shall be given to the
21 prevailing rates for comparable service in other public employment and in private
22 business. The department shall make no adjustments that require expenditures in
23 excess of existing appropriations that may be used for salary increase purposes.
24 The department may make a change in salary range retroactive to the date of
25 application for these changes.

26 (b) Notwithstanding any other provision of law, the department shall not establish,
27 adjust, or recommend a salary range for any employees in an appropriate unit
28 where an employee organization has been chosen as the exclusive representative
pursuant to Section 3520.5."

29 The California Court of Appeal has previously rejected DPA's efforts to reduce employee
30 compensation items during a budget crisis on the basis that Government Code section 19826 (b)
31 precludes such a pay reduction for represented employees. (*Department of Personnel*
32 *Administration v. Superior Court* (1992) 5 Cal.App.4th 155.)

33 During the 1991-1992 fiscal year, the DPA attempted to reduce the salaries of rank-and-

1 file scientists and rank-and-file highway patrol officers. The DPA, as the Governor's designated
2 representative, and various employee unions had negotiated, but reached impasse in those
3 negotiations. (*Department of Personnel Administration v. Superior Court* (1992) 5 Cal.App.4th
4 155, 163.) The DPA attempted to impose its "last, best, and final offer" upon the employees
5 which included a five percent salary reduction. The employee organizations successfully
6 petitioned the superior court for relief precluding implementation of the pay cut. (*Department of*
7 *Personnel Administration v. Superior Court* (1992) 5 Cal.App.4th 155, 164.)

8 *DPA v. Superior Court* and *Tirapelle v. Davis* were each decided by the Third District
9 Court of Appeal. The court in *Tirapelle v. Davis* provides the following concise summary of the
10 *DPA v. Superior Court* analysis of DPA's salary setting authority as follows:

11 In considering the issues presented this court noted that the Ralph C. Dills Act is a
12 "supersession statute"; that is, the parties are permitted to override otherwise
13 applicable statutory provisions in a memorandum of understanding (MOU), but in
14 the absence of an existing MOU, those statutory provisions apply. (*Department of*
15 *Personnel Administration v. Superior Court, supra*, 5 Cal.App.4th at pp. 174-175,
16 6 Cal.Rptr.2d 714.) The DPA's salary setting function, set forth in Section 19826,
17 is one of those statutory provisions which may be overridden in an MOU. (§
18 19826, subd. (d).) However, with respect to represented employees under the
19 Ralph C. Dills Act, section 19826, subdivision (b), specifically provides that the
20 DPA "shall not establish, adjust, or recommend a salary range." Since the parties'
21 MOU had expired and they were at an impasse, section 19826 was applicable, but
22 that section prohibited the DPA from imposing salary reductions. [FN10]
23 Accordingly, the DPA had no authority to impose salary reductions upon
24 represented employees at impasse during collective bargaining. (*Department of*
25 *Personnel Administration v. Superior Court, supra*, 5 Cal.App.4th at pp. 174-175,
26 6 Cal.Rptr.2d 714.)

27 (*Tirapelle v. Davis* (1993) 20 Cal.App.4th 1317, 1325.)

28 Footnote 10 referenced in the above quote states that although DPA lacks the authority to impose
salary reductions, employees do not have a vested right to existing salary levels. "Salary setting
is a legislative function and since the Legislature chose not to delegate this function to the DPA
with respect to represented employees under the Ralph C. Dills Act, it necessarily retained that
role for itself." (*Tirapelle v. Davis* (1993) 20 Cal.App.4th 1317, 1325.)

Under Section 19826 subdivision (b), where an exclusive representative has been
selected, the DPA has no authority to change the salary for represented employees. Here, PECG
and CAPS have been selected as exclusive representatives. Since the Legislature has chosen not

1 to delegate this salary setting function to the DPA with respect to represented employees under
2 the Dills Act, in the absence of a negotiated agreement, the Legislature would retain that role for
3 itself. Government Code section 19826 expressly and unambiguously precludes the reduction of
4 represented employee wages by DPA. (*Department of Personnel Administration v. Superior*
5 *Court* (1992) 5 Cal.App.4th 155.)

6 If DPA wants to reduce wages of represented employees, it needs to either reach
7 agreement to do so in a memorandum of understanding which may need to be presented to the
8 Legislature for approval, or proceed to impasse in collective bargaining and then have the
9 Legislature approve the salary reduction.

10 The 40 hour workweek of state employees is similarly protected by statute.
11 Government Code section 19851 states in relevant part:

12 "It is the policy of the state that the workweek of the state employee shall be 40
13 hours, and the workday of state employees eight hours, except that workweeks
14 and workdays of a different number of hours may be established in order to meet
the varying needs of the different state agencies."

15 Government Code section 19852 states:

16 "When the Governor determines that the best interests of the state would be
17 served thereby, the Governor may require that the 40-hour workweek established
18 as the state policy in Section 19851 shall be worked in four days in any state
agency or part thereof."

19 Just like Government Code section 19826, Section 19851 is also listed in the Dills Act as a
20 "supersedable" statute, meaning that the parties may agree to a provision for represented
21 employees which conflicts with the statute through a memorandum of understanding. In the
22 absence of an agreement, to impose an hour reduction in hours for represented state employees
23 the DPA would need to proceed to impasse in collective bargaining and then have the Legislature
24 approve the hour reduction.

25 With regard to excluded employees, for the DPA to alter the 40-hour workweek, the
26 Legislature would have to act by statute to allow such a reduction. As DPA lacks the authority to
27 cut hours for excluded employees, DPA lacks the authority under the furlough plan to cut the pay
28 of excluded employees.

1 An attempt by an administrative agency to exercise control over matters which the
2 Legislature has not seen fit to delegate to it is not authorized by law and in such case the agency's
3 actions can have no force or effect. (*Tirapelle v. Davis* (1993) 20 Cal.App.4th 1317, 1335.)
4 As the proposed furlough and reduction in pay and reduction in hours are inconsistent with
5 current statute, DPA lacks the authority to reduce pay or hours and its actions in doing so are
6 unlawful. (*Association for Retarded Citizens-California v. Department of Departmental Services*
7 (1985) 38 Cal.3d 384, 391 - 392.)
8

9 **B. The Governor Has a Legal Duty to Refrain From Violating the**
10 **Law By Attempting to Reduce Salaries and Reduce Hours of**
11 **State Employees**

11 The Governor is authorized to issue directives, communicated verbally or by formal
12 written order, to subordinate executive officers concerning the enforcement of law. An executive
13 order is a formal written directive of the Governor by which interpretation, or the specification of
14 detail, directs and guides subordinate officers in the enforcement of a particular law. (63
15 Ops.Cal.Atty.Gen. 583 (1980), 1980 WL 96881 (Cal.A.G.))

16 Article III, section 3 of the Constitution of the State of California states: "The powers of
17 state government are legislative, executive and judicial. Persons charged with the exercise of one
18 power may not exercise either of the others except as permitted by this Constitution."

19 Article V, section 1 of the Constitution of the State of California states: "The supreme
20 executive power of this State is vested in the Governor. The Governor shall see that the law is
21 faithfully executed." Government Code section 12010 states in relevant part, "[t]he Governor
22 shall supervise the official conduct of all executive and ministerial officers."

23 The Governor may not invade the province of the Legislature and is not empowered, by
24 executive order or otherwise, to amend the effect of, or to qualify the operation of existing
25 legislation. (*Lukens v. Nye* (1909) 156 Cal. 498, 503-504.) As discussed above, the proposed
26 furlough and salary reduction are inconsistent with current statutes. On that basis, the portions of
27 the executive order which call for a furlough and pay cut exceed the Governor's authority and are
28 unlawful.

1 Respondents/Defendants rely upon Government Code section 3516.5 as the authority for
2 the Executive Order. Government Code section 3516.5 states:

3
4 "Except in cases of emergency as provided in this section, the employer shall give
5 reasonable written notice to each recognized employee organization affected by
6 any law, rule, resolution, or regulation directly relating to matters within the scope
7 of representation proposed to be adopted by the employer, and shall give such
8 recognized employee organizations the opportunity to meet and confer with the
9 administrative officials or their designated representatives as may be properly
10 designated by law.

11 In cases of emergency when the employer determined that a law, rule, resolution,
12 or regulation must be adopted immediately without prior notice or a meeting with
13 the recognized employee organization, the administrative officials or their
14 designated representatives as may be properly designated by law shall provide
15 such notice and opportunity to meet and confer in good faith at the earliest
16 practical time following adoption of such law, rule, resolution, or regulation."

17 Government Code section 3516.5 is merely a provision regarding the state employer's
18 obligation to provide notice and opportunity to meet and confer under the state collective
19 bargaining law over the impact of a law, rule, resolution or regulation related to matters within
20 the scope of representation. Section 3516.5 does not provide any statutory authority to
21 "furlough" state employees or otherwise implement a cut to their salaries or hours of work.

22 In 1991, then Governor Pete Wilson sought to address the state's budget deficit with
23 various proposals including pay reductions, furloughs, deletion of one of two tiers of the
24 retirement system, caps on employer contributions to health insurance, discontinuance of
25 employee and retiree system trustees, and removal of funds from employee contributions to the
26 retirement system. Governor Wilson proposed these items to the Legislature as proposed
27 statutory changes in May and June of 1991. (*Public Employment Relations Board v. Superior*
28 *Court* (1993) 13 Cal.App.4th 1816, 1819.) Disputes then arose over the impact of Section
3516.5, but those disputes concerned only whether the Governor was required to provide notice
to employee organizations prior to proposing statutory changes impacting terms and conditions
of employment. (*Ibid.*)

Section 3516.5 does not allow an unlawful rule, or executive order. Clearly, this section
merely addresses when the employer shall meet with state employee unions. As the proposed
furlough, pay cut and reduction in hours proposed by the Governor in his executive order directly

1 conflict with statute, there is nothing in Section 3516.5, nor any other authority, which can be
2 construed to allow the Governor or the DPA to implement these proposed actions in violation of
3 state law.

4 **C. The Controller Has a Duty Not to Decrease Salaries as Called for in the**
5 **December 19, 2008 Executive Order**

6 The State Controller has the power and the duty to ensure that the decisions of an agency
7 that affect expenditures are within the fundamental jurisdiction of the agency. The Legislature
8 has specifically provided that “a warrant shall not be drawn unless authorized by law...” (Gov.
9 Code § 12440.) The Controller has the “duty to ensure that expenditures are authorized by law.”
10 An attempt by an administrative agency to exercise control over matters which the Legislature
11 has not seen fit to delegate to it is not authorized by law and in such case the agency’s actions can
12 have no force or effect. (*Tirapelle v. Davis* (1993) 20 Cal.App.4th 1317, 1335.)

13 Here, the Governor and DPA’s proposed furlough conflicts with Government Code
14 section 19826 subdivision (b). Where an exclusive representative has been selected, the DPA
15 has no authority to change the salary. Since the Governor and the DPA have no authority to
16 implement the furlough, the furlough has no force or effect and the Controller has a duty to
17 ensure that salaries not be reduced as a result of the proposed furlough.

18
19 **II. PETITIONERS ARE ENTITLED TO DECLARATORY RELIEF UNDER CODE**
20 **OF CIVIL PROCEDURE SECTION 1060**

21 Under Code of Civil Procedure section 1060,

22 Any person interested under a written instrument, ... or under a contract, or who desires a
23 declaration of his or her rights or duties with respect to another, ... may, in cases of actual
24 controversy relating to the legal rights and duties of the respective parties, bring an
25 original action ... for a declaration of his or her rights and duties in the premises,
including a determination of any question of construction or validity arising under the
instrument or contract.

26 An action for declaratory relief lies when the parties are in fundamental disagreement over
27 construction of particular legislation, or they dispute whether a public entity has engaged in
28 conduct or established policies in violation of applicable law. (*Alameda County Land Use Assn.*

1 v. *City of Hayward* (1995) 38 Cal.App. 4th 1716, 1721-1723.) Declaratory relief is an available
2 remedy against the state or its agencies. (*Bess v. Park* (1955) 132 Cal.App.2d 49, 53.) The fact
3 that a party has another remedy does not deprive the court of the power to grant relief under the
4 law. (*Ibid.*)

5 In the instant case, an actual controversy exists. PECG and CAPS contend that the law is
6 clear that the Governor and the DPA lack the authority to reduce the pay and reduce the hours of
7 state employed engineers and scientists. In passing Executive Order S-16-08 and calling for his
8 DPA to implement a furlough cutting the hours and wages of state employees, the Governor
9 contends he has the authority to implement a furlough and salary reduction through an executive
10 order. The Governor and the DPA intend to implement the Governor's Executive Order and
11 furlough state employees, including professional engineers represented by PECG and
12 professional scientists represented by CAPS, beginning in the February 2009 pay period.

13
14 **III. PETITIONERS ARE ENTITLED TO INJUNCTIVE RELIEF TO PREVENT THE**
15 **GOVERNOR AND THE DPA FROM VIOLATING THE LAW BEGINNING IN**
16 **FEBRUARY 2009**

Code of Civil Procedure section 526(a) provides:

(a) An injunction may be granted in the following cases:

(1) When it appears by the complaint that the plaintiff is entitled to the relief
18 demanded, and the relief, or any part thereof, consists in restraining the
19 commission or continuance of the act complained of, either for a limited period or
perpetually.

(2) When it appears by the complaint or affidavits that the commission or
20 continuance of some act during the litigation would produce waste, or great or
irreparable injury, to a party to the action.

(3) When it appears, during the litigation, that a party to the action is doing, or
21 threatens, or is about to do, or is procuring or suffering to be done, some act in
22 violation of the rights of another party to the action respecting the subject of the
action, and tending to render the judgment ineffectual.

(4) When pecuniary compensation would not afford adequate relief.

(5) Where it would be extremely difficult to ascertain the amount of compensation
24 which would afford adequate relief.

(6) Where the restraint is necessary to prevent a multiplicity of judicial
25 proceedings.

(7) Where the obligation arises from a trust.

26

27 Injunction is an appropriate remedy in this case. Petitioners seek to enjoin the Governor
28 and the DPA, a public official and a public entity, from furloughing state employed engineers and

1 scientists, cutting their pay and cutting their hours unlawfully beginning in February 2009 and
2 continuing through June 2010. A public entity can be enjoined from taking official action in
3 violation of the law. (*Environmental Protection Information Center, Inc. v. Maxxam Corp.*
4 (1992) 4 Cal.App.4th 1373, 1381.)

5
6 **A. A Preliminary Injunction Must Issue to Prevent the Governor and the DPA
From Implementing The Unlawful Furlough**

7 In deciding whether to issue a preliminary injunction, a court must weigh two
8 “interrelated” factors: (1) the likelihood that the moving party will ultimately prevail on the
9 merits and (2) the relative interim harm to the parties from issuance or non issuance of the
10 injunction. (*Butt v. State of California* (1992) 4 Cal.4th 668, 677-678.) The trial court’s
11 determination must be guided by a “mix” of the potential-merit and interim-harm factors; the
12 greater plaintiff’s showing on one, the less must be shown on the other to support an injunction.”
13 (*Id.* at 678.) If the party seeking the injunction can make a sufficiently strong showing of
14 likelihood of success on the merits, the trial court has discretion to issue the injunction
15 notwithstanding that party’s inability to show that the balance of harm tips in its favor. (*Common*
16 *Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 447.)

17
18 **1. There is a high probability that PEEG and CAPS will ultimately prevail on
19 the merits of this case.**

20 The courts have already ruled that DPA cannot cut the pay of represented state
21 employees. Government Code section 19826 expressly and unambiguously precludes the
22 reduction of represented employee wages by DPA. (*Department of Personnel Administration v.*
23 *Superior Court* (1992) 5 Cal.App.4th 155.) Similarly, the 40 hour workweek is found in statute,
24 meaning the Legislature would have to act before the 40 hour workweek could be altered. An
25 attempt by an administrative agency to exercise control over matters which the Legislature has
26 not seen fit to delegate to it is not authorized by law, especially of such attempts violate and
27 conflict with current law. In such case the agency’s actions can have no force or effect.
28 (*Tirapelle v. Davis* (1993) 20 Cal.App.4th 1317, 1335.)

1 Additionally, it is clear that the Governor lacks the authority to cut pay or hours as he
2 “may not invade the province of the Legislature and is not empowered, by executive order or
3 otherwise, to amend the effect of, or to qualify the operation of existing legislation.” (*Lukens v.*
4 *Nye* (1909) 156 Cal. 498, 503-504.) The proposed furlough and salary reduction is inconsistent
5 with and violates current statutes. On that basis, the portions of the executive order which call
6 for a furlough and pay cut exceed the Governor’s authority and are unlawful.

7 As the Governor and his DPA lack the authority to cut pay or hours, it is highly likely
8 PECG and CAPS will succeed on the merits.

9 Injunctive relief may be granted in a declaratory relief action. (*Los Angeles County v.*
10 *State Dept. Of Public Health* (1958) 158 Cal.App.2d 425, 445.) Injunctive relief provides an
11 equitable remedy similar to that provided through a writ proceeding. Both actions may be
12 brought concurrently. (Code of Civ. Proc. §1060.)

13 Petitioners are seeking a writ of mandate and declaratory relief. Petitioners have
14 demonstrated that the requirements for a writ of mandate have been met in this case. There is no
15 speedy alternative remedy at law to prevent the Governor and DPA from furloughing state
16 employed engineers and scientists by reducing their hours and are without the authority to cut the
17 pay of state employed engineers and scientists. Petitioners PECG and CAPS represent 13,000
18 and 3000 employees respectively covered by the Governor’s executive order and planned
19 furlough. Those employees, and their representatives, have a beneficial interest in this matter.

20 **B. The Balancing of Hardships in this Case Supports the Granting of the**
21 **Preliminary Injunction.**

22 The Governor and DPA intend to reduce state employees’ salaries by ten percent and
23 reduce the hours worked by state employees by two workdays per month beginning February 1,
24 2009. In addition to the individual hardships that will accompany an unlawful ten percent salary
25 reduction, employees and the public will never be able to retrieve the lost hours of work.

26 The courts have variously defined the degree of harm or hardship required to justify
27 issuing a preliminary injunction. The California Supreme Court has stated that “[t]he term
28 ‘irreparable injury’...means that species of damages, whether great or small, which ought not to

1 be submitted on the one hand or inflicted on the other.” (*Anderson v. Souza* (1952) 32 Cal.2d
2 825, 834.) Additionally, courts have since held that “the word ‘irreparable’ is ... used in
3 expressing the rule that an injunction may issue to prevent wrongs of a repeated and continuing
4 character.” (*Christopher v. Jones* (1964) 231 Cal.App.2d 408, 416.)

5 The harm threatened by the Governor and the DPA’s actions in this case is sufficient to
6 meet the standards set out above because it would result in injuries that defy precise calculation
7 and is of a continuing or repeated nature.

8 **1. The Burden on the Petitioners is Low.**

9 As discussed above, Petitioners are likely to prevail on the merits. The courts have
10 already ruled that the Governor, through his DPA, lacks the authority to cut the pay of
11 represented employees. (*Department of Personnel Administration v. Superior Court* (1992) 5
12 Cal.App.4th 155.) Similarly, hours of work for all state employees are covered by statute. The
13 Governor and his DPA lack the authority, by executive order or otherwise, to take an action in
14 conflict with these statutes. If the party seeking the injunction shows a strong likelihood of
15 success on the merits, the trial court has discretion to issue the injunction notwithstanding the
16 deficiency of the harm. (*Right Site Coalition v. Los Angeles Unified School Dist.* (2008) 160
17 Cal.App.4th 336.) Petitioners’ legal burden with respect to the harm suffered is therefore
18 diminished.

19 **2. The Harm to Petitioners is Irreparable.**

20 Cutting the pay of state workers by ten percent will inevitably lead to a hardship for
21 individual employees. While this money can be retrieved when Petitioners prevail, it would be
22 difficult to ascertain the harm to individuals denied, albeit temporarily, the right to their earned
23 salaries as state employees. It is therefore difficult to ascertain the harm Petitioners will suffer if
24 the Governor and the DPA are allowed to violate the law by reducing salaries.

25 Illegally reducing the hours of state employees is also an action that creates an irreparable
26 injury. Once state employees are sent home, there is no way to recoup the lost hours of work.
27 Thousands of Unit 9 and Unit 10 and related supervisory employees work for appointing
28 authorities under the umbrella of the California Environmental Protection Agency (Cal/EPA).

1 (Declaration of Toppin, para 12.) On January 5, 2009, the Cal/EPA announced that it was
2 planning to shut its offices for two days each month to comply with the Governor's furlough
3 executive order, beginning in February 2009. (Declaration of Toppin, para 13.) If the Cal/EPA
4 shuts state offices for two days per month, Unit 9 and Unit 10 and related supervisory employees
5 will be deprived of the opportunity to work on those days and the public will be deprived of the
6 work that Unit 9 and Unit 10 and related supervisory employees would perform on those days.
7 (Declaration of Toppin, para 14.) The state employees who are sent home and the public will be
8 forever deprived of the work that would be done by those employees but for the Governor and
9 DPA's illegal action.

10
11 **3. The Harm is of a Continuing Nature.**

12 In *Wind v. Herbert* (1960) 186 Cal.App.2d 276, the court noted that wrongs of a repeated
13 and continuing character may also be sufficient grounds for issuing a preliminary injunction.
14 (*Id.*, at 285.) Here, the Governor and the DPA intend to reduce the pay of state employees every
15 month for 19 months and to reduce the hours of state employees every month for 19 months.
16 This unlawful action will be repeated in each pay period unless restrained.

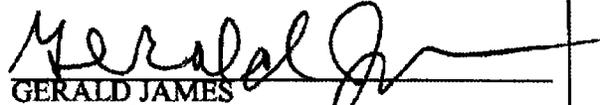
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18
19 **CONCLUSION**

20 Petitioners respectfully request that the Court issue a peremptory writ of mandate and
21 declaratory relief commanding the Governor and DPA to comply with their mandatory duties
22 under Article III, section 3 and Article V, section 1 of the California Constitution and
23 Government Code sections 19826 and 19851 and to set aside the portions of the Governor's
24 Executive Order S-16-08 calling for a furlough and salary reduction for state employed engineers
25 and scientists in that the Executive Order is unlawful and illegal. Petitioners further request an
26 order commanding State Controller Chiang to ensure that salaries not be reduced as a result of
27 the illegal furlough. Petitioners also request that the Court issue a preliminary and permanent
28 injunction directing the Governor, DPA and the Controller to cease and desist taking action to

1 furlough state employed engineers and scientists by reducing their hours and reducing their pay
2 under an unlawful executive order.

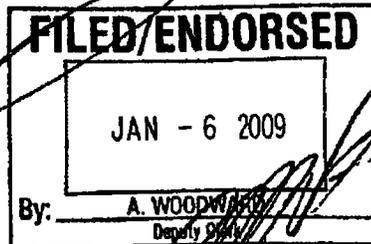
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Dated: January 6, 2009


GERALD JAMES
Attorney for Petitioners/Plaintiffs
PECG and CAPS

1 GERALD JAMES - State Bar #179258
660 J Street, Suite 445
2 Sacramento, CA 95814
Telephone: (916) 446-0400
3 Facsimile: (916) 446-0489

4 Attorney for Petitioners/Plaintiffs
PROFESSIONAL ENGINEERS IN CALIFORNIA
5 GOVERNMENT and CALIFORNIA ASSOCIATION
OF PROFESSIONAL SCIENTISTS
6



7
8
9 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 IN AND FOR THE COUNTY OF SACRAMENTO
11

12 PROFESSIONAL ENGINEERS IN
13 CALIFORNIA GOVERNMENT;
CALIFORNIA ASSOCIATION OF
14 PROFESSIONAL SCIENTISTS

15 Petitioners/Plaintiffs,

16 v.

17
18 ARNOLD SCHWARZENEGGER, Governor,
STATE OF CALIFORNIA; DEPARTMENT
19 OF PERSONNEL ADMINISTRATION;
STATE CONTROLLER JOHN CHIANG; and
20 DOES 1 THROUGH 20, INCLUSIVE

21 Respondents/Defendants.
22
23

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

PROOF OF SERVICE BY PERSONAL DELIVERY

Date:
Time:
Dept: 33

24
25 I declare that I am employed in the County of Sacramento, California. I am over the age
26 of 18 years and not a party to the within entitled cause. The address of my business is 660 J
27 Street, Suite 445, Sacramento, California, 95814.
28

1 On January 6, 2009, I served the following documents:

2 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**
3 **VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR**
4 **INJUNCTIVE AND DECLARATORY RELIEF; DECLARATION OF**
5 **THEODORE TOPPIN IN SUPPORT OF VERIFIED PETITION FOR WRIT OF**
6 **MANDATE AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY**
7 **RELIEF; EX PARTE APPLICATION FOR AN ORDER SHORTENING TIME**
8 **TO HEAR PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR**
9 **INJUNCTIVE AND DECLARATORY RELIEF; DECLARATION OF GERALD**
10 **JAMES IN SUPPORT OF EX PARTE APPLICATION; [Proposed] ORDER**
11 **SHORTENING NOTICE OF HEARING ON PETITION FOR WRIT OF**
12 **MANDATE AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY**
13 **RELIEF**

14 on the parties listed below by delivering a true copy thereof to the following persons:

15 David Tyra
16 Kronick, Moskovitz, Tiedemann & Girard
17 400 Capitol Mall, 27th Floor
18 Sacramento, CA 95814-4407
19 *Attorney for Respondents/Defendants Governor Arnold Schwarzenegger and Department
20 of Personnel Administration*

21 Richard Chivaro
22 Chief Counsel
23 State Controller
24 300 Capitol Mall, Suite 1850
25 Sacramento, CA 95814
26 *Attorney for Respondent/Defendant State Controller John Chiang*

27 K. William Curtis
28 Chief Counsel
Department of Personnel Administration
1515 S Street, North Bldg., Ste. 400
Sacramento, CA 95811-7246
(Courtesy Copy)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on January 6, 2009 at Sacramento, California.


Lisa Marie Burcar

1 GERALD JAMES - State Bar #179258
2 660 J Street, Suite 445
3 Sacramento, CA 95814
4 Telephone: (916) 446-0400
5 Facsimile: (916) 446-0489

6 Attorney for Petitioners/Plaintiffs
7 PROFESSIONAL ENGINEERS IN CALIFORNIA
8 GOVERNMENT and CALIFORNIA ASSOCIATION
9 OF PROFESSIONAL SCIENTISTS

FILED/ENDORSED

JAN -6 2009

By: A. WOODWARD
Deputy Clerk

10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 IN AND FOR THE COUNTY OF SACRAMENTO

12 PROFESSIONAL ENGINEERS IN
13 CALIFORNIA GOVERNMENT;
14 CALIFORNIA ASSOCIATION OF
15 PROFESSIONAL SCIENTISTS

16 Petitioners/Plaintiffs,

17 v.

18 ARNOLD SCHWARZENEGGER, Governor,
19 STATE OF CALIFORNIA; DEPARTMENT
20 OF PERSONNEL ADMINISTRATION;
21 STATE CONTROLLER JOHN CHIANG; and
22 DOES 1 THROUGH 20, INCLUSIVE

23 Respondents/Defendants.

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

**DECLARATION OF THEODORE
TOPPIN IN SUPPORT OF VERIFIED
PETITION FOR WRIT OF MANDATE
AND COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF**

Date:
Time:
Dept: 33

24 I, THEODORE TOPPIN, declare as follows:

25 1. I am a consultant to and legislative advocate for the Professional Engineers in
26 California Government (PECG) and for the California Association of Professional Scientists
27 (CAPS) the Petitioners/Plaintiffs in this action. I have served in this capacity for the past 9 years.

28 2. PECG is the duly certified exclusive collective bargaining representative of

1 employees in State Bargaining Unit 9, the Professional Engineers unit, pursuant to Government
2 Code section 3520.5. PECG also is a verified supervisory organization under Government Code
3 section 3527 subdivision (c). PECG represents approximately 13,000 Unit 9 and supervisory
4 state employees who would be covered by Executive Order S-16-08.

5 3. CAPS is the duly certified exclusive collective bargaining representative of
6 employees in State Bargaining Unit 10, the Professional Scientific unit, pursuant to Government
7 Code section 3520.5. CAPS also is a verified supervisory organization under Government Code
8 section 3527 subdivision (c). CAPS represents approximately 3,000 Unit 10 and supervisory
9 state employees who would be covered by Executive Order S-16-08.

10 4. On November 6, 2008, Governor Schwarzenegger sent a letter to all state workers
11 regarding his plan to achieve cost savings. The letter proposed a number of items, including the
12 furlough of state employees resulting in a salary decrease. In this letter the Governor announced
13 that all of the proposals, which includes the furlough, would need legislative approval. Attached
14 as Exhibit A to this Declaration is a true and correct copy of the Governor's November 6, 2008
15 letter to state workers.

16 5. On November 6, 2008, Governor Schwarzenegger issued a proclamation calling a
17 fourth extraordinary session of the Legislature to act on a number of items, including considering
18 and acting upon legislation to address fiscal and budget related matters. Attached as Exhibit B to
19 this Declaration is a true and correct copy of the Governor's November 6, 2008 Special Session
20 Proclamation.

21 6. In this fourth extraordinary session of the Legislature, the Governor sought
22 legislation to require state employees to take a one day furlough each month between February 1,
23 2009 and June 30, 2010 and seeking statutory authority to reduce salaries to accomplish the
24 purposes of the furlough. Attached as Exhibit C to this Declaration is a true and correct copy of
25 the statutory changes proposed by the Governor.

26 7. The Legislature did not pass the Governor's proposed statutory changes during the
27 fourth extraordinary session which ended in November, 2008.

28 8. Following the expiration of the legislative session and the swearing in of two dozen

1 new legislators, on December 1, 2008, the Governor issued two proclamations calling the new
2 Legislature into a Proposition 58 Special Session and called a Second Special Session to address
3 the state's economy. Attached as Exhibits D and E to this Declaration are true and correct copies
4 of the Governor's December 1, 2008 Proposition 58 Special Session Proclamation and a Special
5 Session Proclamation.

6 9. In the Special Sessions which began on December 1, 2008, the Governor's proposed
7 changes are identical to those proposed in November 2008 for the 2007-2008 Fourth
8 Extraordinary Session. Attached as Exhibit F to this Declaration is a true and correct copy of the
9 Assembly Budget Committee's December 2, 2008 summary of the Governor's Proposed
10 December 2008-2009 Budget Adjustments.

11 10. According to the Assembly Budget Committee's analysis, the legislation to allow
12 furloughs and salary reductions sought by the Governor would produce approximately \$203
13 million in General Fund savings in 2008 - 2009 and \$451 in General Fund savings in 2009 -2010.

14 11. The Legislature passed a series of bills as part of this extraordinary session but did
15 not pass a bill requiring state employees to be furloughed or a bill allowing salary reductions or a
16 reduction in hours of state employees.

17 12. Thousands of Unit 9 and Unit 10 and related supervisory employees work for
18 appointing authorities under the umbrella of the California Environmental Protection Agency
19 (Cal/EPA)

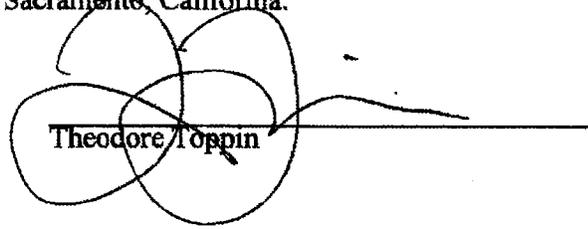
20 13. On January 5, 2009, the Cal/EPA announced that it was planning to shut its offices
21 for two days each month, beginning in February 2009.

22 14. If the Cal/EPA shuts state offices for two days per month, Unit 9 and Unit 10 and
23 related supervisory employees will be deprived of the opportunity to work on those days and the
24 public will be deprived of the work that Unit 9 and Unit 10 and related supervisory employees
25 would perform on those days.

26
27 I declare under penalty of perjury under the laws of the State of California that the
28 foregoing is true and correct and based on my personal knowledge, and if called to testify to these

1 facts, I would do so competently and truthfully.

2 Executed this 6th day of January, 2009 in Sacramento, California.

3
4  Theodore Toppin

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EXHIBIT A

PECG JA 000050



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,

A handwritten signature in black ink, appearing to read "Arnold Schwarzenegger", written in a cursive style. The signature is positioned above the printed name.

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

PECG JA 000055

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.



08291456815311

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



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



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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



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to employees designated as excluded from the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512), Division 4, Title 1), and the necessary statutes are amended to reflect this change.

(f) This section shall become inoperative on December 1, 2008, and, as of January 1, 2009, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 5. Section 19853 is added to the Government Code, to read:

19853. (a) All state employees shall be entitled to the following holidays: January 1, the third Monday in January, the third Monday in February, March 31, the last Monday in May, July 4, the first Monday in September, November 11, Thanksgiving Day, 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.

(b) 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.

(c) Any state employee who may be required to work on any of the holidays included in this section, and who does work on any of these holidays, shall be entitled to receive straight-time pay and eight hours of holiday credit.

(d) 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,



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.



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.



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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.



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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.



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.



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[Redacted content]



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

PECG JA 000072



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

PECG JA 000074



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

(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
CalWORKs	\$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

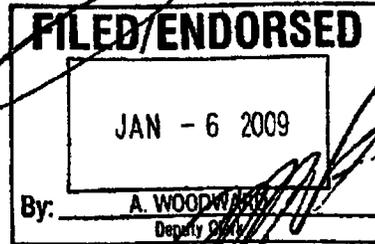
Sales and Use Tax

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.

1 GERALD JAMES - State Bar #179258
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Telephone: (916) 446-0400
3 Facsimile: (916) 446-0489

4 Attorney for Petitioners/Plaintiffs
PROFESSIONAL ENGINEERS IN CALIFORNIA
5 GOVERNMENT and CALIFORNIA ASSOCIATION
OF PROFESSIONAL SCIENTISTS
6



7
8
9 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 IN AND FOR THE COUNTY OF SACRAMENTO
11

12 PROFESSIONAL ENGINEERS IN
13 CALIFORNIA GOVERNMENT;
14 CALIFORNIA ASSOCIATION OF
PROFESSIONAL SCIENTISTS

15 Petitioners/Plaintiffs,

16 v.

17
18 ARNOLD SCHWARZENEGGER, Governor,
STATE OF CALIFORNIA; DEPARTMENT
19 OF PERSONNEL ADMINISTRATION;
STATE CONTROLLER JOHN CHIANG; and
20 DOES 1 THROUGH 20, INCLUSIVE

21 Respondents/Defendants.
22
23

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

**PROOF OF SERVICE BY PERSONAL
DELIVERY**

Date:
Time:
Dept: 33

24
25 I declare that I am employed in the County of Sacramento, California. I am over the age
26 of 18 years and not a party to the within entitled cause. The address of my business is 660 J
27 Street, Suite 445, Sacramento, California, 95814.
28

1 On January 6, 2009, I served the following documents:

2 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**
3 **VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR**
4 **INJUNCTIVE AND DECLARATORY RELIEF; DECLARATION OF**
5 **THEODORE TOPPIN IN SUPPORT OF VERIFIED PETITION FOR WRIT OF**
6 **MANDATE AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY**
7 **RELIEF; EX PARTE APPLICATION FOR AN ORDER SHORTENING TIME**
8 **TO HEAR PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR**
9 **INJUNCTIVE AND DECLARATORY RELIEF; DECLARATION OF GERALD**
10 **JAMES IN SUPPORT OF EX PARTE APPLICATION; [Proposed] ORDER**
11 **SHORTENING NOTICE OF HEARING ON PETITION FOR WRIT OF**
12 **MANDATE AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY**
13 **RELIEF**

14 on the parties listed below by delivering a true copy thereof to the following persons:

15 David Tyra
16 Kronick, Moskovitz, Tiedemann & Girard
17 400 Capitol Mall, 27th Floor
18 Sacramento, CA 95814-4407
19 *Attorney for Respondents/Defendants Governor Arnold Schwarzenegger and Department
20 of Personnel Administration*

21 Richard Chivaro
22 Chief Counsel
23 State Controller
24 300 Capitol Mall, Suite 1850
25 Sacramento, CA 95814
26 *Attorney for Respondent/Defendant State Controller John Chiang*

27 K. William Curtis
28 Chief Counsel
Department of Personnel Administration
1515 S Street, North Bldg., Ste. 400
Sacramento, CA 95811-7246
(Courtesy Copy)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on January 6, 2009 at Sacramento, California.


Lisa Marie Burcar

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

DATE/TIME : 01/09/09 9:30 a.m. DEPT. NO : 19
JUDGE : P. MARLETTE CLERK : D. RIOS, SR.
REPORTER : L. RICCI (7614) BAILIFF : O. MUNOZ

PRESENT:

Professional Engineers in California
Government; California Association of
Professional Scientists,
Petitioners,

Gerald James

VS. Case No.: 34-2008-80000126

Arnold Schwarzenegger, Governor,
State of California; Department of
Personnel Administration; State
Controller John Chiang; and Does 1
through 20 inclusive,
Respondents.

David W. Tyra, for Respondent
Schwarzenegger and Dept of Personnel
Administration
Ronald V. Placet for Respondent State
Controller John Chiang

Patrick J. Whalen

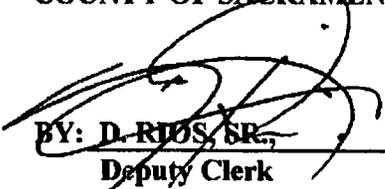
California Attorneys, Administrative
Law Judges and Hearing Officers in
State Employment

VS. Case No.: 34-2009-80000134

Arnold Schwarzenegger, Governor,
State of California; David Gilb as
Director of the Department of
Personnel Administration; John Chiang
Controller of the State of
California; and Does 1 through 10,
Respondents.

BOOK : 19
PAGE : 2008-80000126-1909
DATE : 01/09/09 9:30 a.m.
CASE NO. : 2008-80000126
CASE TITLE : PECG; CAPS v.
SCHWARZENEGGER

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SACRAMENTO


BY: D. RIOS, SR.,
Deputy Clerk

CASE NUMBER: 2008-80000126

DEPARTMENT: 19

CASE TITLE: PEGG; CAPS v. SCHWARZENEGGER

PROCEEDINGS: Hearing on Petitioner's Ex Parte Request for Order Shortening Time on the Petition for Writ of Mandate and Hearing on Respondent's Ex Parte Request for Order Shortening Time to Demurrer the Petition for Writ of Mandate

**Service Employees International
Union, Local 1000,**

**Brooke D. Pierman and
J. Felix de la Torre**

VS. Case No.: 34-2009-80000135

**Arnold Schwarzenegger, Governor,
State of California; Department of
Personnel Administration; State
Controller John Chiang; and Does 1
through 20 inclusive,
Respondents.**

Nature of Proceedings:

**Hearing on Petitioner's Ex Parte
Request for Order Shortening Time
for the Hearing on the Merits for
the Petition for Writ of Mandate;
and Hearing on Respondent's Ex Parte
Request for Order Shortening Time to
file Demurrer to the Petition for
Writ of Mandate**

This matter came on this date for hearing on Petitioner's Ex Parte Request for Order Shortening Time on the Hearing on the Merits on the Petition for Writ of Mandate and Hearing on Respondent's Ex Parte Request for Order Shortening Time on the Demurrer to the Petition for Writ of Mandate, with the above named counsel present before the Court. Also appearing before the Court were Patrick J. Whalen on behalf of California Attorneys, Administrative Law Judges and Hearing Officers in State Employment, who are the Petitioners in case 34-2009-80000134; Brooke D. Pierman and J. Felix de la Torre on behalf of Service Employees International Union, Local 1000, who are Peititioners in case 34-2009-80000135.

Mr. Tyra and Mr. Placet indicated they would appear, for the purposes of these proceedings, on behalf of the Respondents in the above referenced cases.

Pursuant to stipulation of all counsel present, this matter and the cases 34-2009-80000134 and 34-2009-80000135 are deemed to be Related Cases. The Court ordered those matters re-assigned to Department 19 for all purposes and joined with the matter now before this Court.

The Ex Parte Requests of counsel for an Order Shortening Time are GRANTED by the Court. The Hearing on the Merits of the Petitions for Writ of Mandate is scheduled for January 29, 2009 at 9:00 a.m., in this Department.

PEGG JA 000093

CASE NUMBER: 2008-80000126

DEPARTMENT: 19

CASE TITLE: PEGG; CAPS v. SCHWARZENEGGER

PROCEEDINGS: Hearing on Petitioner's Ex Parte Request for Order Shortening Time on the Petition for Writ of Mandate and Hearing on Respondent's Ex Parte Request for Order Shortening Time to Demurrer the Petition for Writ of Mandate

The Demurrer to the Petition for Writ of Mandate, filed today, is scheduled for the same date and time, to be heard prior to the Hearing on the Merits.

The Points and Authorities already on file are deemed to be the Opening Brief of Petitioners, Professional Engineers in California Government and California Association of Professional Scientists.

The Demurrer to the Petition in case 34-2008-80000126 is ordered filed forthwith. The Supplemental Demurrer for case 34-2009-80000134 and 34-2009-80000135 shall be filed by or before January 13, 2009.

The Petitioners in cases 34-2009-80000134 and 34-2009-80000135 shall file their respective Opening Briefs by or before January 13, 2009.

All Oppositions shall be filed by or before January 20, 2009 and all Reply Briefs shall be filed by or before January 22, 2009.

The parties further stipulated that all services of the pleadings will either be served personally or electronically.

FURTHER, it has been arranged that the filings in these matters, shall be filed through Victor Davis, Court Supervisor in the Civil Support Unit, located in room 104 of the Main Courthouse, at 720 -9th Street, Sacramento, California.

Certificate of Service by Mailing attached.

PEGG JA 000094

CASE NUMBER: 2008-80000126

DEPARTMENT: 19

CASE TITLE: PECG; CAPS v. SCHWARZENEGGER

PROCEEDINGS: Hearing on Petitioner's Ex Parte Request for Order Shortening Time on the Petition for Writ of Mandate and Hearing on Respondent's Ex Parte Request for Order Shortening Time to Demurrer the Petition for Writ of Mandate

CERTIFICATE OF SERVICE BY MAILING
C.C.P. Sec. 1013a(4))

I, the undersigned deputy clerk of the Superior Court of California, County of Sacramento, do declare under penalty of perjury that I did this date place a copy of the above entitled notice in envelopes addressed to each of the parties, or their counsel of record as stated below, with sufficient postage affixed thereto and deposited the same in the United States Post Office at Sacramento, California.

Gerald James
Attorney at Law
660 J Street, Suite 445
Sacramento, CA 95814

David W. Tyra
KRONICK, MOSKOVITZ, TIEDEMANN
& GIRARD
400 Capitol Mall, 7th Floor
Sacramento, CA 95814

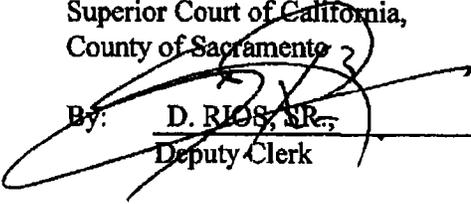
RICHARD CHIVARO, Chief Counsel
Ronald V. Placet,
Sr. Staff Counsel
Office of the State Controller
300 Capitol Mall, Ste 1850
Sacramento, CA 95814
J. Felix DeLa Torre, Staff Attorney
S.E.I.U.
1808 -14th Street
Sacramento, CA 95811
Will M. Yamada
Department of Personnel Administration
Legal Office
1515 S Street, No. Bldg., Ste. 400
Sacramento, CA 95811

Patrick Whalen
ELLISON WILSON ADVOCACY, LLC
1725 Capitol Avenue
Sacramento, CA 95814

Brooke D. Pierman, Staff Attorney
S.E.I.U.
1808 -14th Street
Sacramento, CA 95811

Dated: January 9, 2009

Superior Court of California,
County of Sacramento

By: 
D. RIOS, SR.,
Deputy Clerk

PECG JA 000095

1 DAVID W. TYRA, State Bar No. 116218
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6 K. WILLIAM CURTIS
Chief Counsel, State Bar No. 095753
7 LINDA A. MAYHEW
Assistant Chief Counsel, State Bar No. 155049
8 WILL M. YAMADA
Labor Relations Counsel, State Bar No. 226669
9 DEPARTMENT OF PERSONNEL ADMINISTRATION
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11 Facsimile: (916) 323-4723
E-mail: WillYamada@dpa.ca.gov

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

Exempted from Fees
(Gov. Code § 6103)

15 SUPERIOR COURT OF CALIFORNIA
16 COUNTY OF SACRAMENTO

17
18 PROFESSIONAL ENGINEERS IN
CALIFORNIA GOVERNMENT;
19 CALIFORNIA ASSOCIATION OF
PROFESSIONAL SCIENTISTS,

20 Petitioners/Plaintiffs,

21 v.

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

26 Respondents/Defendants.

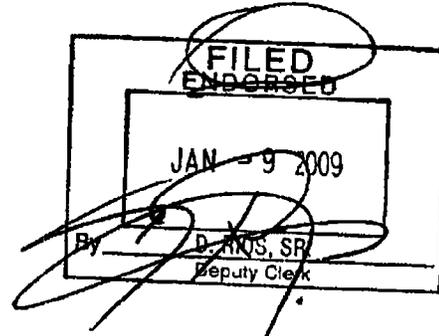
CASE NO. 34-2008-80000126-CU-WM-GDS

Assigned For All Purposes To
The Honorable Patrick Marlette

NOTICE OF HEARING AND
DEMURRER TO VERIFIED PETITION
FOR WRIT OF MANDATE AND
COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF BY ARNOLD
SCHWARZENEGGER, STATE OF
CALIFORNIA AND DEPARTMENT OF
PERSONNEL ADMINISTRATION

Date:
Time:
Dept.: 19

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



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TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on January _____, 2009, at _____ a.m. or as soon hereafter as the matter may be heard in Department 19 of the above-entitled court, located at 720 Ninth Street, Sacramento, California, Respondents/Defendants GOVERNOR ARNOLD SCHWARZENEGGER, STATE OF CALIFORNIA and DEPARTMENT OF PERSONNEL ADMINISTRATION ("Respondents") will demur to the petition for writ of mandate and complaint for injunctive and declaratory relief filed by Petitioners/Plaintiffs PROFESSIONAL ENGINEERS IN CALIFORNIA GOVERNMENT and CALIFORNIA ASSOCIATION OF PROFESSIONAL SCIENTISTS' ("Petitioners") on the following grounds:

1. That this Court, the Superior Court of California, County of Sacramento, has no jurisdiction over the subject of the cause of action alleged in the petition for writ of mandate and complaint for injunctive and declaratory relief because exclusive jurisdiction in the subject matter of the claims raised in the petition/complaint is vested in the California Public Employment Relations Board ("PERB").

2. The Petitioners have failed to exhaust their administrative remedies.

The demurrer will be based on this notice of hearing and demurrer; the memorandum of points and authorities and request for judicial notice served and filed herewith; the papers, records, and documents already on file herein; and on such further oral or documentary evidence as may be submitted at the hearing in this matter.

Dated: January 9, 2009

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Law Corporation

By: 

David W. Tyra
Attorneys for Defendants/Respondents
ARNOLD SCHWARZENEGGER,
Governor; STATE OF CALIFORNIA; and
DEPARTMENT OF PERSONNEL
ADMINISTRATION

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PROOF OF SERVICE

I, Meredith Packer, 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 9, 2009, I served a copy of the within document(s):

NOTICE OF HEARING AND DEMURRER TO VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF BY ARNOLD SCHWARZENEGGER, STATE OF CALIFORNIA AND DEPARTMENT OF PERSONNEL ADMINISTRATION

- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- by placing the document(s) listed above in a sealed _____ envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a _____ agent for delivery.
- by causing personal delivery by Messenger of the document(s) listed above to the person(s) at the address(es) set forth below.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

Attorney for Petitioners/Plaintiffs

Gerald James, Esq.
660 J Street, Suite 445
Sacramento, CA 95814
Fax: (916) 446-0489

Attorney for Respondent/Defendant

State Controller John Chiang
Rick Chivaro, Esq.
State of California Controller's Office
300 Capitol Mall, Suite 1850
Sacramento, CA 95814
Fax: (916) 322-1220

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.

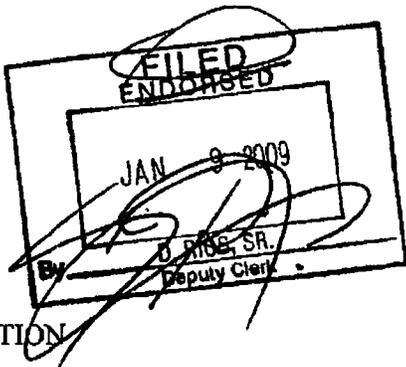
I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on January 9, 2009, at Sacramento, California.



Meredith Packer

1 DAVID W. TYRA, State Bar No. 116218
2 KRISTIANNE T. SEARGEANT, State Bar No. 245489
3 KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
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7 Chief Counsel, State Bar No. 095753
8 LINDA A. MAYHEW
9 Assistant Chief Counsel, State Bar No. 155049
10 WILL M. YAMADA
11 Labor Relations Counsel, State Bar No. 226669
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16 Facsimile: (916) 323-4723
17 E-mail: WillYamada@dpa.ca.gov



18 Attorneys for Defendants/Respondents
19 ARNOLD SCHWARZENEGGER, Governor; STATE OF
20 CALIFORNIA; and DEPARTMENT OF PERSONNEL
21 ADMINISTRATION

**Exempted from Fees
(Gov. Code § 6103)**

15 SUPERIOR COURT OF CALIFORNIA
16 COUNTY OF SACRAMENTO

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

Petitioners/Plaintiffs,

v.

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

Respondents/Defendants.

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

**Assigned For All Purposes To
The Honorable Patrick Marlette**

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEMURRER TO VERIFIED PETITION FOR
WRIT OF MANDATE AND COMPLAINT
FOR INJUNCTIVE AND DECLARATORY
RELIEF BY
ARNOLD SCHWARZENEGGER, STATE OF
CALIFORNIA AND DEPARTMENT OF
PERSONNEL ADMINISTRATION**

Date:
Time:
Dept.: 19

I.

INTRODUCTION AND RELEVANT HISTORY

Respondents/Defendants GOVERNOR ARNOLD SCHWARZENEGGER, STATE OF CALIFORNIA, and DEPARTMENT OF PERSONNEL ADMINISTRATION (hereinafter referred to as "Respondents") demur to Plaintiffs/Petitioners PROFESSIONAL ENGINEERS IN CALIFORNIA GOVERNMENT and CALIFORNIA ASSOCIATION OF PROFESSIONAL SCIENTISTS' (hereinafter "Petitioners") Verified Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief on the basis that this court has no jurisdiction over the claims raised in the in the petition and complaint.

Petitioners' sole claim in this case is that the Governor's Executive Order, dated December 19, 2008 ("the Executive Order"), establishing two-day a month furloughs for state employees beginning February 1, 2009, violates Government Code section 19826(b). That code section provides as follows:

Notwithstanding any other provision of law, the department shall not establish, adjust, or recommend a salary range for any employees in an appropriate unit where an employee organization has been chosen as the exclusive representative pursuant to Section 3520.5.

Labor relations between the State and Petitioners' members are governed by the Ralph C. Dills Act ("Dills Act"), Government Code section 3512, *et seq.* As the discussion to follow will amply demonstrate, Government Code section 19826 is inoperative here because the Petitioners and Respondents are parties to a Memorandum of Understanding ("MOU") which, by operation of law, continues to control the terms and conditions of Petitioners' members' employment with the State. (See Gov. Code, § 3517.8(a).) As a result, section 19826 is superseded and, therefore, inoperable here. (See Gov. Code, § 3517.6). Because of this fact, the Public Employment Relations Board ("PERB") possesses exclusive, initial jurisdiction over any dispute involving the Executive Order because the only cognizable legal theories for challenging the Executive Order fall squarely within the ambit of the Dills Act. (Gov. Code, § 3514.5)

Moreover, Petitioners have failed to exhaust their administrative remedies in that they have failed to pursue those remedies available to them to challenge the Executive Order –

1 either as an alleged violation of the parties' MOU or as an alleged unfair labor practice – before
2 PERB. Petitioners' argument that they are at risk of irreparable harm does not excuse them from
3 their failure to exhaust administrative remedies prior to filing this petition.

4 For these reasons, Respondents respectfully submit that their demurrer to
5 Petitioners' Petition and Complaint should be granted without leave to amend and this matter
6 should be dismissed.

7 **II.**

8 **SUMMARY OF MATERIAL FACTS AND PETITIONERS' ALLEGATIONS**

9 On December 19, 2008, Governor Arnold Schwarzenegger issued the Executive
10 Order. (Petitioners' Verified Petition for Writ of Mandate and Complaint for Injunctive and
11 Declaratory Relief, ¶ 14.) In the Executive Order, Governor Schwarzenegger declared that due to
12 the State of California's worsening fiscal crisis, "immediate and comprehensive" action to reduce
13 current spending must be taken. (Petitioners' Verified Petition for Writ of Mandate and
14 Complaint for Injunctive and Declaratory Relief, ¶ 14, and Exhibit A thereto.) The Governor
15 stated that the State of California was in a state of fiscal emergency and, as a result, the State must
16 institute employee furloughs as a cost-saving measure. (*Id.*) The furloughs ordered by the
17 Governor are set to begin on February 1, 2008 and will last through June 30, 2010. (*Id.*)

18 On December 22, 2008, Petitioners filed their Verified Petition for Writ of
19 Mandate and Complaint for Injunctive and Declaratory Relief seeking this Court to intervene and
20 enjoin implementation of the furloughs. The claims alleged in the petition are entirely dependent
21 on the theory that the Executive Order is precluded by Government Code section 19826.
22 Petitioners allege that where an exclusive representative has been selected for an employee
23 organization, section 19826 deprives the Department of Personnel Administration ("DPA") of
24 authority to adjust salary ranges of represented employees. (Petitioners' Verified Petition for
25 Writ of Mandate and Complaint for Injunctive and Declaratory Relief, ¶¶ 25-26.) Petitioners
26 contend that Government Code section 19826 "expressly and unambiguously precludes the
27 reduction of represented employee wages." (Petitioners' Verified Petition for Writ of Mandate
28 and Complaint for Injunctive and Declaratory Relief, ¶ 20.)

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- 2 -

1 Petitioners further contend that the Governor is precluded from overriding the
2 statutory prohibition on salary range reduction contained in section 19826 based on a declaration
3 of fiscal emergency. In the Executive Order, the Governor relies on the emergency powers
4 granted him by Government Code section 3516.5¹, a part of the Dills Act, as authority for
5 ordering employee furloughs. Petitioners allege that section 3516.5 does not provide the
6 Governor with the statutory authority to furlough state employees or otherwise cut salary or hours
7 of work. Petitioners allege that the Executive Order "violates the constitutional principles of the
8 separation of powers and is directly contrary to existing law by reducing the pay and by reducing
9 the hours of state employees." (Petitioners' Verified Petition for Writ of Mandate and Complaint
10 for Injunctive and Declaratory Relief, ¶ 24.)

11 Petitioners' contend that this Court's intervention is required to prevent the
12 implementation of the furloughs. (Petitioners' Verified Petition for Writ of Mandate and
13 Complaint for Injunctive and Declaratory Relief, pg. 1, lines 25- 28.) Petitioners erroneously
14 allege that they have no administrative remedy that will allow them to prevent the furlough.
15 (Petitioners' Verified Petition for Writ of Mandate and Complaint for Injunctive and Declaratory
16 Relief, ¶ 34.)

17 ///

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19 ///

20 ¹ Government Code section 3516.5 provides as follows:

21 Except in cases of emergency as provided in this section, the employer
22 shall give reasonable written notice to each recognized employee organization
23 affected by any law, rule, resolution, or regulation directly relating to matters
24 within the scope of representation proposed to be adopted by the employer, and
25 shall give such recognized employee organizations the opportunity to meet and
26 confer with the administrative officials or their delegated representatives as may
27 be properly designated by law

28 In cases of emergency when the employer determines that a law, rule,
resolution, or regulation must be adopted immediately without prior notice or
meeting with a recognized employee organization, the administrative officials or
their delegated representatives as may be properly 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.

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- 3 -

1 III.

2 LEGAL ARGUMENT

3 A. Standard for Demurrer.

4 A demurrer tests the sufficiency of a complaint. Under California Code of Civil
5 Procedure section 430.10(a), a defendant may demur to a complaint if the court has no
6 jurisdiction over the subject matter of the cause of action alleged in the petition or pleading. A
7 challenge to the jurisdiction of the court, when the jurisdictional defense is apparent from the
8 complaint or petition, or based upon facts that can be properly judicially noticed, is properly and
9 appropriately addressed via demurrer. (*Satten v. Webb* (2002) 99 Cal.App.4th 365, 374.)

10 B. PERB Has Exclusive, Initial Jurisdiction Over This Labor Dispute.

11 1. Government Code section 19826 is Superseded By the MOU Between the
12 Parties and By Operation of the Dills Act.

13 As stated above, Petitioners base their petition and complaint on the theory that
14 under Government Code section 19826(b) neither the Governor nor DPA has the authority to alter
15 salary ranges of state employees if an exclusive representative has been selected for the employee
16 organization.² Petitioners argue that Government Code section 19826 and *Department of*
17 *Personnel Administration v. Superior Court (Greene)* (1992) 5 Cal.App.4th 155 (applying
18 Government Code section 19826) “expressly and unambiguously precludes the reduction of
19 represented employee wages.” (Petitioners’ Verified Petition for Writ of Mandate and Complaint
20 for Injunctive and Declaratory Relief, ¶ 20.)

21 However, Government Code section 19826 is inapplicable to the case at hand
22 because it is superseded by existing MOUs between the parties. The Dills Act governs the labor
23 relations between the State and its employees: Pursuant to Government Code section 3517.8(a)
24 contained in the Dills Act,

25 _____
26 ² In addition to the jurisdictional infirmities in the petition that warrant sustaining the present demurrer, it also
27 is important to note that nowhere in the petition do Petitioners allege how furloughs are synonymous with the phrase
28 “salary ranges” as used in section 19826. In fact, the Executive Order attached to the petition (and which thereby
becomes a part of the pleading) makes no mention of reducing salary ranges. Thus, the Executive Order on its face
does not alter salary ranges but only acts to reduce the hours state employees work. The petition fails to offer any
theory demonstrating the Governor’s lack of authority to reduce the hours worked by state employees.

1 If a memorandum of understanding has expired, and the Governor
2 and the recognized employee organization have not agreed to a new
3 memorandum of understanding and have not reached an impasse in
4 negotiations, subject to subdivision (b), *the parties to the agreement*
5 *shall continue to give effect to the provisions of the expired*
6 *memorandum of understanding, including, but not limited to, all*
7 *provisions that supersede existing law, any arbitration provisions,*
8 *any no strike provisions, any agreements regarding matters covered*
9 *in the Fair Labor Standards Act of 1938.”*

6 (Emphasis added.) (Gov. Code, § 3517.8(a))

7 In this case, both the Professional Engineers in California Government and the
8 California Association of Professional Scientists are parties to expired MOUs with the State of
9 California.³ Petitioners have not alleged that new MOUs have been agreed upon by Petitioners
10 and the State or that the parties have reached a labor impasse in negotiations for a new MOU.
11 Accordingly, pursuant to Government Code section 3517.8(a), the parties must continue to give
12 effect to the expired MOUs, *including all provisions which supersede existing law.*

13 As stated in *Department of Personnel Administration v. Superior Court (Greene)*
14 (1992) 5 Cal.App.4th 155, 174-175, a case heavily relied upon by Petitioners,

15 The Dills Act is a ‘supersession statute’, designed so that, *in the*
16 *absence of a MOU*, as is the case when an existing MOU has
17 expired and the parties have bargained to impasse, numerous
18 Government Code provisions concerning state employees’ wages,
19 hours and working conditions take effect. One of the provisions
20 which is effective *in the absence of an MOU* is section 19826.”

19 (Emphasis added.) Thus, the present case is exactly the opposite situation of that in *Greene*. In
20 that case, the State and two of its employee bargaining units (one of which was CAPS, one of the
21 petitioners here), had reached impasse in their labor negotiations and, therefore, numerous
22 provisions of the Government Code, including section 19826, had taken effect. Here, in contrast,

23 ³ This court can take judicial notice of the memoranda of understanding between the Petitioners and the State
24 of California. Evidence Code section 452(c) authorizes the Court to take judicial notice of “official acts of
25 legislative, executive, and judicial departments . . . of any state of the United States.” In this case, the MOUs
26 between Petitioners and the State are an “official act” of the executive department because DPA, on behalf of the
27 Governor, negotiated the MOU pursuant to the statutory mandate set forth in the Ralph C. Dills Act (Gov. Code §
28 3512 et seq; *Pacific Lumber Co v State Water Resources Control Bd.* (2006) 37 Cal.4th 921, 936 fn. 5 [MOU
between Regional Water Quality Control Boards, the Department of Forestry and the State Water Resources Control
Board is proper subject for a court’s judicial notice because it is an official act by executive agencies, citing *Brown v.*
City of Los Angeles (2002) 102 Cal.App.4th 155, 172, fn. 10; *Dunn-Edwards Corp v South Coast Air Quality*
Management Dist. (1993) 19 Cal.App.4th 536, 543, fn. 3].)

1 the parties' labor relations continue to be governed by a valid and enforceable MOU and,
2 therefore, pursuant to section 3517.8, the parties must continue to give effect to that MOU,
3 *including all provisions which supersede existing law.*

4 California Government Code section 3517.6(a) sets forth those code sections
5 which are superseded by a valid MOU. Among the superseded code sections identified in section
6 3517.6(a) is section 19826. There is no allegation in the petition that the MOUs between the
7 parties are no longer controlling. Therefore, section 19826 is superseded by the Dills Act and the
8 terms of the expired MOUs. In other words, section 19826 has no legal force and effect between
9 these parties in the face of a valid, operative MOU because that code section has been superseded
10 by the MOUs as specified in the Dills Act. As section 19826 is superseded, it is inapplicable to
11 the matter at hand and does not control the dispute.

12 2. **PERB Has Exclusive, Initial Jurisdiction Over Disputes Covered By The Dills**
13 **Act.**

14 As a result of the continuing suppression of section 19826, the only potential
15 existing dispute between the parties is whether the Executive Order violates the terms of the
16 existing MOUs or whether the Governor committed an unfair labor practice by declaring a fiscal
17 emergency, thereby bypassing bargaining with the employee organizations over the
18 implementation of employee furloughs as a cost saving measure. The dispute as to whether the
19 Governor failed to meet and confer in good faith is governed exclusively by the Dills Act. (Gov.
20 Code, §§ 3516.5, 3517.)

21 PERB possesses exclusive, initial jurisdiction over the administration of the Dills
22 Act. (Gov. Code, § 3514.5 ["The initial determination as to whether the charges of unfair
23 practices are justified, and, if so, what remedy is necessary to effectuate the purposes of this
24 chapter, shall be a matter within the exclusive jurisdiction of the board"]; *California Association*
25 *of Professional Scientists v. Schwarzenegger* (2006) 137 Cal.App.4th 371, 381 ["The assignment
26 of exclusive initial jurisdiction in section 3514.5 to the Board means that the only forum to pursue
27 a cause of action for violation of the statutory rights conferred in the Dills Act is before the
28 Board".])

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1 The scope of PERB's exclusive jurisdiction is construed broadly in favor of
2 allowing the Board to exercise its expertise over public sector labor relations in this state. (*El*
3 *Rancho Unified School District v. National Education Association* (1983) 33 Cal.3d 946, 953;
4 *San Diego Teachers Association v. Superior Court* (1979) 24 Cal.3d 1, 12-14.) PERB's
5 jurisdiction is broadly construed because "PERB is an expert, quasi-judicial administrative
6 agency" specially entrusted "to protect both employees and the state employer from violations of
7 the organizational and collective bargaining rights" guaranteed by the statutes it administers.
8 (*Banning Teachers Association v. Public Employment Relations Board* (1988) 44 Cal.3d 799,
9 804; *City and County of San Francisco v. International Union of Operating Engineers, Local 39*
10 (2007) 151 Cal.App.4th 938, 943.) It has long been settled that PERB's "findings within that
11 field carry the authority of an expertness which courts do not possess and therefore must respect."
12 (*Banning Teachers Association, supra*, 44 Cal.3d at p. 804.)

13 Judicial deference to PERB's administrative process is both necessary and
14 appropriate to fulfill PERB's legislatively assigned mission "to help bring expertise and
15 uniformity to the delicate task of stabilizing labor relations." (*San Diego Teachers Association,*
16 *supra*, 24 Cal.3d at p. 12; *Local 21, International Federation of Professional and Technical*
17 *Engineers, AFL-CIO v. Bunch* (1995) 40 Cal.App.4th 670, 676-679 [discussing the broad scope
18 of PERB's exclusive, initial jurisdiction]; *City and County of San Francisco, supra*, 151
19 Cal.App.4th at p. 945 [finding that a party may not evade PERB's jurisdiction through artful
20 pleading]; *El Rancho Unified School District, supra*, 33 Cal.3d at p. 954, fn. 13 [stating that a
21 court must defer to PERB when the underlying conduct alleged "may fall within PERB's
22 exclusive jurisdiction"].)

23 The only potential disputes in this matter fall squarely under PERB's exclusive,
24 initial jurisdiction over Dills Act disputes. The Executive Order cites to Government Code
25 section 3516.5 from the Dills Act as the basis for the furloughs. Despite this, Petitioners have
26 improperly attempted to bring their dispute before this Court on the basis of section 19826(b), a
27 statute that is superseded by the provisions of the existing MOU between the parties. Thus, this
28 Court lacks subject matter jurisdiction over this dispute and, therefore, this demurrer should be

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1 sustained without leave to amend and the matter dismissed.

2 **C. PERB Possesses The Authority To Furnish The Relief Requested By Petitioners**

3 In addition to possessing exclusive jurisdiction of the dispute presented in the
4 petition, PERB possesses the authority to furnish the relief requested by Petitioners. PERB
5 enjoys wide “discretion *to withhold as well as pursue*, the various remedies at its disposal.” (*San*
6 *Diego Teachers Association, supra*, 24 Cal.3d at p. 13, emphasis added.) The Legislature
7 invested PERB with broad discretion to exercise its remedial powers in order to achieve peace
8 and stability in labor relations. (*San Diego Teachers Association, supra*, 24 Cal.3d at p. 13.) As
9 the court in *San Diego Teachers Association* found, PERB may conclude it is best to maintain the
10 status quo, and preserve stability in labor relations, by withholding injunctive relief. (*Id.*) Or, to
11 the contrary, seek injunctive relief when necessary. In such cases, it is not appropriate for a court
12 to intervene and prevent PERB from providing relief it best sees fit “to implement the broader
13 objectives” of California’s public sector labor laws. (*Id.*; Gov. Code, § 3514.5.) Therefore, if
14 PERB is somehow unable to offer the relief necessary, PERB has the authority to seek injunctive
15 relief from the courts on behalf of Petitioners.

16 **D. Because PERB Has Exclusive, Initial Jurisdiction Over This Labor Dispute, This**
17 **Court Does Not Have Authority to Issue a Writ.**

18 As PERB has exclusive, initial jurisdiction, this Court does not have authority to
19 issue the writ requested or rule on the merits of the complaint. “Mandate may not issue to compel
20 action which is not within the court’s jurisdiction.” (*Daniels v. Superior Court* (1955) 132
21 Cal.App.2d 700, 701.) Petitioners seek this Court’s intervention in a labor matter centering on the
22 terms and conditions of employment. Issuance of a writ and ruling on the merits of the complaint
23 will cause a significant and continuing divestment of PERB’s exclusive jurisdiction over the Dills
24 Act as it applies to this labor dispute and to these parties. A ruling from this Court will effect a
25 special exemption to the Dills Act applicable only to these parties whereby this Court will
26 supplant PERB and establish itself as arbiter over the parties’ bargaining relationship. Such a
27 ruling will directly frustrate “the Legislature’s purpose in creating an expert administrative body
28 whose responsibility it is to develop and apply a comprehensive, consistent scheme regulating

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- 8 -

1 public employer-employee relations.” (*Link v. Antioch Unified School District* (1983) 142
2 Cal.App.3d 765, 769.) The issuance of a writ and retention of jurisdiction in this case would be
3 unwarranted judicial intervention into PERB’s legislatively delegated duty to administer the Dills
4 Act as it applies to the parties’ bargaining relationship. (Gov. Code, §§ 3512, 3514.5.)

5 **E. Petitioners Have Not Exhausted Their Administrative Remedies Before PERB.**

6 In general, a party must be forced to exhaust its administrative remedies before
7 resorting to intervention from the courts. (*Coachella Valley Mosquito & Vector Control District*
8 *v. Public Employment Relations Board* (2005) 35 Cal.4th 1072, 1080 (*Coachella Valley*)). The
9 rule of exhaustion “is not a matter of judicial discretion” but rather a fundamental rule
10 establishing “a jurisdictional prerequisite to resort to the courts.” (*Sierra Club v. San Joaquin*
11 *Local Agency Formation Commission* (1999) 21 Cal.4th 489, 496.)

12 Petitioners have failed to even attempt to exhaust their administrative remedies
13 with PERB before seeking relief from this Court. However, four other employee organizations
14 have filed unfair practice charges with PERB on the same issues on which Petitioners filed their
15 petition and complaint with this Court. (See Request for Judicial Notice in Support of Demurrer,
16 Exhibits C, D, E, and F.) These four employee organizations, the American Federation of State,
17 County, and Municipal Employees, the Service Employees International Union, Local 1000, the
18 Union of American Physicians and Dentists, and the Stationary Engineers, Local 39, International
19 Union of Operating Engineers, AFL-CIO all correctly filed their challenges to Executive Order S-
20 16-08 with the administrative agency with exclusive, initial jurisdiction over this matter, PERB.
21 (*Id.*) No exceptions to the exhaustion rule apply to excuse Petitioners’ failure to exhaust their
22 administrative remedies with PERB. Petitioners’ failure to exhaust their administrative remedies
23 bars this Court from exercising jurisdiction over this petition.

24 1. **Petitioners Cannot Show Any Exception to the Exhaustion Rule.**

25 Petitioners have made no showing as to why they should be afforded relief from
26 the exhaustion doctrine. Courts have recognized several limited exceptions to the exhaustion
27 rule, such as “[1] situations where the agency indulges in unreasonable delay, ... [2] when pursuit
28 of an administrative remedy would result in irreparable harm, [3] when the agency is incapable of

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PROOF OF SERVICE

I, Meredith Packer, 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 9, 2009, I served a copy of the within document(s):

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEMURRER TO VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF BY ARNOLD SCHWARZENEGGER, STATE OF CALIFORNIA AND DEPARTMENT OF PERSONNEL ADMINISTRATION

- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- by placing the document(s) listed above in a sealed _____ envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a _____ agent for delivery.
- by causing personal delivery by Messenger of the document(s) listed above to the person(s) at the address(es) set forth below.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

Attorney for Petitioners/Plaintiffs

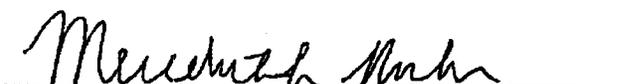
Gerald James, Esq.
660 J Street, Suite 445
Sacramento, CA 95814
Fax: (916) 446-0489

Attorney for Respondent/Defendant

State Controller John Chiang
Rick Chivaro, Esq.
State of California Controller's Office
300 Capitol Mall, Suite 1850
Sacramento, CA 95814
Fax: (916) 322-1220

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 9, 2009, at Sacramento, California.


Meredith Packer

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

Exempted from Fees
(Gov. Code § 6103)

15 SUPERIOR COURT OF CALIFORNIA
16 COUNTY OF SACRAMENTO

17
18 PROFESSIONAL ENGINEERS IN
CALIFORNIA GOVERNMENT;
19 CALIFORNIA ASSOCIATION OF
PROFESSIONAL SCIENTISTS,

20 Petitioners/Plaintiffs,

21 v.

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

26 Respondents/Defendants.
27
28

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

Assigned For All Purposes To
The Honorable Patrick Marlette

REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF DEMURRER TO
VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
INJUNCTIVE AND DECLARATORY
RELIEF BY ARNOLD
SCHWARZENEGGER, STATE OF
CALIFORNIA AND DEPARTMENT OF
PERSONNEL ADMINISTRATION

Date:
Time:
Dept.: 19

1 In support of the demurrer filed in this action by Respondents/Defendants
2 GOVERNOR ARNOLD SCHWARZENEGGER, STATE OF CALIFORNIA and
3 DEPARTMENT OF PERSONNEL ADMINISTRATION's ("Respondents") to the verified
4 petition for writ of mandate and complaint for injunctive and declaratory relief filed by
5 Petitioners/Plaintiffs PROFESSIONAL ENGINEERS IN CALIFORNIA GOVERNMENT and
6 CALIFORNIA ASSOCIATION OF PROFESSIONAL SCIENTISTS, Respondents hereby
7 request that this Court take judicial notice under California Evidence Code sections 452 and 453
8 of the following documents:

9 **Exhibit A:** Agreement Between State of California and Professional Engineers
10 in California Government (PECG) covering Bargaining Unit 9
11 Professional Engineers, Effective July 2, 2003 through July 2, 2008

12 **Exhibit B:** Agreement Between State of California and California Association
13 of Professional Scientists (CAPS) covering Bargaining Unit 10
14 Professional Scientific, Effective July 1, 2006 through
15 June 20, 2008

16 **Exhibit C:** Unfair Practice Charge filed by Service Employees International
17 Union, Local 1000 against Department of Personnel Administration
18 and Arnold Schwarzenegger, December 22, 2008.

19 **Exhibit D:** Unfair Practice Charge filed by Stationary Engineers, Local 39,
20 International Union of Operating Engineers, AFL-CIO, December
21 24, 2008.

22 **Exhibit E:** Unfair Practice Charge filed by Union of American Physicians and
23 Dentists against State of California, Department of Personnel
24 Administration, December 23, 2008.

25 **Exhibit F:** Unfair Practice Charge filed by American Federation of State,
26 County and Municipal Employees against Department of Personnel
27 Administration, December 30, 2008.

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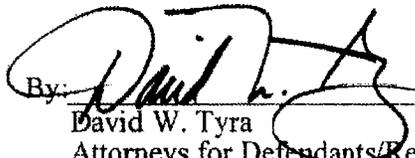
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This Court can take judicial notice of the memoranda of understanding between the Petitioners and the State of California. Evidence Code section 452(c) authorizes the Court to take judicial notice of "official acts of legislative, executive, and judicial departments . . . of any state of the United States." In this case, the MOU between Petitioners and the State was an "official act" of the executive department because DPA, on behalf of the Governor, negotiated the MOU pursuant to the statutory mandate set forth in the Ralph C. Dills Act (Gov. Code § 3512 *et seq.*; *Pacific Lumber Co. v. State Water Resources Control Bd.* (2006) 37 Cal.4th 921, 936 fn. 5 [MOU between Regional Water Quality Control Boards, the Department of Forestry and the State Water Resources Control Board is proper subject for a court's judicial notice because it is an official act by executive agencies, citing *Brown v. City of Los Angeles* (2002) 102 Cal.App.4th 155, 172, fn. 10; *Dunn-Edwards Corp. v. South Coast Air Quality Management Dist.* (1993) 19 Cal.App.4th 536, 543, fn. 3].)

In addition, this Court can take judicial notice of the public filings made by other public employee unions with the Public Employment Relations Board ("PERB").

Dated: January 9, 2009

KRONICK, MOSKOVITZ, TIEDEMANN &
GIRARD
A Law Corporation

By: 

David W. Tyra
Attorneys for Defendants/Respondents
ARNOLD SCHWARZENEGGER,
Governor; STATE OF CALIFORNIA; and
DEPARTMENT OF PERSONNEL
ADMINISTRATION

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PROOF OF SERVICE

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- 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 causing personal delivery by Messenger of the document(s) listed above to the person(s) at the address(es) set forth below.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, the United States mail at Sacramento, California addressed as set forth below.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

Attorney for Petitioners/Plaintiffs

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Attorney for Respondent/Defendant

State Controller John Chiang
Rick Chivaro, Esq.
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300 Capitol Mall, Suite 1850
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I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on January 9, 2009, at Sacramento, California.


Meredith Packer

Exhibit A



AGREEMENT

Between

STATE OF CALIFORNIA

and

**PROFESSIONAL ENGINEERS IN CALIFORNIA
GOVERNMENT (PECG)**

covering

**BARGAINING UNIT 9
PROFESSIONAL ENGINEERS**

Effective

July 2, 2003 through July 2, 2008

PROFESSIONAL ENGINEERS IN CALIFORNIA GOVERNMENT (PECG)

BARGAINING UNIT 9

PROFESSIONAL ENGINEERS

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ARTICLE 1 RECOGNITION AND PURPOSE

1.1 Recognition and Purpose

This Memorandum of Understanding (hereinafter "MOU" or "Agreement") is entered into by and between the State of California (hereinafter "State" or "State employer") and Professional Engineers in California Government (hereinafter "PECG"), pursuant to the Ralph C. Dills Act, Government Code Sections 3512 et seq.

Its purpose is to improve employer-employee relations between the parties by establishing wages, hours, other terms and conditions of employment, and other subjects contained herein.

Pursuant to the Dills Act and PERB Certification #S-SR-9, the State recognizes PECG as the exclusive representative of all employees in the Professional Engineer Unit, Unit 9 (hereinafter "Bargaining Unit"). Pursuant to Government Code Section 3517, the State employer shall be represented by the Director of the Department of Personnel Administration (hereinafter "DPA") or his/her designee.

ARTICLE 2 TERM

2.1 Term

- A. The terms of this contract shall go into effect on July 2, 2003 and shall remain in full force and effect through and including July 2, 2008.
- B. PECG reserves the right to reopen negotiations after March 1, 2008, by giving the State written notice.
- C. Effective 2006, PECG may reopen up to four (4) items in the MOU or other items within the scope of representation.
- D. If other Bargaining Units receive increases in items in these sections of the MOU, the same increases shall be provided to Unit 9 employees:
 - 3.4 Bilingual Differential
 - 4.3 NDI
 - 4.4 Enhanced NDI
 - 4.12 Rural Subsidy Program
 - 7.1 Business and Travel Expense
 - 7.2 Commute Program
 - 7.6 Overtime Meals

ARTICLE 3 SALARIES AND COMPENSATION

3.1 Salary Parity for Unit 9

All employees in classifications in Unit 9 shall receive salaries no less than salaries received by their counterparts in California's larger local agencies and the University of California. The determination of those salaries shall be based on DPA's survey of Professional Engineer Benchmarks, utilizing the California public agencies and the University of California included in the department's survey dated December 2002, updated annually, and the local agency classifications and salary range matches contained therein. The salary survey for those classifications and agencies shall be updated no less than once per year. The agencies and classifications included in the survey shall only be changed upon agreement between DPA and PEGC.

The calculation of the salary lead or lag for Unit 9 employees shall be based on weighted average salaries of employees in the classifications in those surveyed agencies.

All steps in each salary range shall be increased by the same percentage. The salary for intermediate classifications in ranges between the Entry and Supervisory levels shall be based on prorating or interpolating the salaries.

All salary increases shall be rounded to the nearest dollar. In no event shall salaries be reduced as a result of this provision. DPA and PEGC may negotiate salaries above the minimum level on any general, regional, specialty, classification, department, or other basis they choose to agree upon.

Salaries for Unit 9 employees shall be increased as appropriate to correspond to the timing of the salaries received by local agency employees included in the survey, with adjustments in the Unit 9 salaries occurring no less than once every 12 months, as follows:

Effective July 1, 2005, the salary increase for all Unit 9 employees shall be no less than 25% of the lag calculated from the December 2004 survey or later.

Effective July 1, 2006, the salary increase for all Unit 9 employees shall be no less than 50% of the lag calculated from the survey dated December 2005 or later.

Effective July 1, 2007, the salary increase for all Unit 9 employees shall be no less than 75% of the lag calculated from the survey dated December 2006 or later.

Effective July 1, 2008, and thereafter, the salaries for all Unit 9 employees shall be such that any lag calculated from the December 2007 or later DPA survey shall be entirely eliminated.

State of California – Governmental Salary Report – December 2002

Benchmark Title: Civil Engineer/Civil Engineer Registered						
State Comparisons						
(1) Entry/Non-Registered Journey Level: Transportation Engineer (Civil) (Range A-B)						
(2) Journey Level: Transportation Engineer (Registered Civil) (Range D)						
(3) Senior Level: Senior Transportation Engineer, Caltrans						
Government Data	(1) Entry/Non-Registered Journey		(2) Registered Journey		(3) Supervisory Level	
	Salary Minimum	Salary Maximum	Salary Minimum	Salary Maximum	Salary Minimum	Salary Maximum
State of California	\$3,273	\$4,550	\$4,635	\$5,632	\$5,087	\$6,181
Alameda County	\$4,710	\$5,442	\$6,013	\$7,307	\$7,284	\$8,859
Contra Costa County	\$4,726	\$5,618	\$5,750	\$7,733	\$6,667	\$8,104
Fresno County	\$4,454	\$5,414	\$4,329	\$7,180	\$4,961	\$8,160
Los Angeles County	\$4,096	\$5,088	\$5,139	\$6,385	\$6,385	\$7,932
Orange County	\$4,656	\$5,327	\$5,765	\$6,606	\$6,431	\$7,367
Riverside County	\$3,556	\$5,322	\$4,419	\$5,917	\$5,323	\$6,758
Sacramento County	\$4,152	\$5,046	\$5,290	\$6,125	\$6,421	\$7,080
San Bernardino County	\$3,831	\$4,890	\$4,434	\$5,665	\$5,801	\$7,429
San Diego County	\$3,821	\$5,086	\$4,926	\$5,989	\$5,817	\$7,070
Santa Clara County	\$4,893	\$5,950	\$5,836	\$7,093	\$6,834	\$8,327
SF City/County	\$4,483	\$6,036	\$5,891	\$8,290	\$7,893	\$9,594

City of Fresno	\$3,427	\$4,158	\$5,121	\$6,228	\$5,828	\$7,088
City of Los Angeles	\$4,256	\$5,286	\$5,566	\$6,915	\$6,543	\$8,131
City of Oakland	\$3,883	\$4,767	\$5,243	\$6,438	\$6,445	\$7,914
City of Riverside	\$4,414	\$5,365	\$5,110	\$6,212	\$6,751	\$8,202
City of Sacramento	\$3,053	\$5,240	\$4,520	\$6,360	\$5,000	\$7,502
City of San Diego	\$3,644	\$5,079	\$4,853	\$5,861	\$5,595	\$6,764
City of San Jose	\$4,953	\$6,034	\$6,017	\$7,334	\$7,317	\$8,914
California State University	---	---	---	---	---	---
University of California	\$3,417	\$6,150	\$4,133	\$7,442	\$4,550	\$7,775
Federal Government	\$3,315	\$4,309	\$4,807	\$6,249	\$5,716	\$7,431
Average Private Salary	\$4,936		\$6,080		\$6,958	
Average State Salary	\$4,494		\$5,406		\$6,108	
<p>Civil Engineer/Civil Engineer (Registered) - This is a working-level professional engineer. Incumbents perform a wide variety of professional engineering work in either an office or field setting. As incumbents progress they are assigned more difficult work and may function as a lead person over the activities of engineering and technical personnel. The entry level requires graduation from a four-year curriculum in civil engineering accredited by the Accreditation Board for Engineering Technology or possession of a valid certificate as an Engineer-in-Training issued by the California State Board of Registration for Professional Engineers and Land Surveyors. At the journey level with registration, the engineer may be in a responsible charge capacity. Incumbents at the supervisory level are distinguished from lead engineers in that their role is predominately directing the work of subordinate professional engineers and registration is mandatory for these positions. Some positions may be titled supervising engineer.</p>						

3.2 Merit Salary Adjustments

- A. Unit 9 employees shall receive annual merit salary adjustments in accordance with Government Code Section 19832 and applicable DPA rules.
- B. Notwithstanding 2 Cal. Code Reg. § 599.684, an employee whose merit salary adjustment is denied may appeal pursuant to Article 12 (Grievance and Arbitration) of this agreement.

3.3 Professional Qualification Compensation

A. Licensing Examinations – Fees and Time Off

1. Upon successful completion of the examination for the licenses listed below, the State shall reimburse Unit 9 employees for their application fee for the following professional licenses: Engineer, Architect, Landscape Architect, Engineering Geologist, Land Surveyor, Engineer-in-Training, LSIT and Geologist. The State shall also reimburse Unit 9 employees for their renewal fees for the above licenses provided, however, the State shall not reimburse employees for late fees (or penalties) due to untimely renewal.
2. The State shall credit eight (8) hours of compensating time off upon successful completion of the examination needed to obtain one of the licenses listed in 1. above to compensate for that portion of the exam taken on the employee's normal day off.
3. If an employee is scheduled to take an examination for one of the licenses listed in 1. above during his/her work day, the employee will be granted State release time to take the examination upon presentation of proof that the employee is scheduled for the examination. Such release time is limited to the time required for the exam and includes reasonable travel time to and from the nearest examination site, not to exceed the normal work shift on the exam day.

B. Professional Society and Organization Dues

Unit 9 employees who have an active license in the field in which they are employed shall, regardless of whether the license is required as a condition of employment for their classification (or range within a classification), be reimbursed for dues paid to one job-related professional society or organization. Said reimbursement shall not exceed one hundred dollars (\$100) per fiscal year provided, however, the State shall not reimburse employees for late fees or penalties due to untimely renewal of their membership.

3.4 Bilingual Differential Pay

Bilingual Differential Pay applies to those positions designated by the Department of Personnel Administration as eligible to receive bilingual pay according to the following standards:

A. Definition of bilingual 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 \$100.00 per monthly pay period, including holidays.
2. A monthly employee meeting the bilingual differential pay criteria less than the entire pay period would receive the differential on a pro rata basis.
3. A fractional month employee meeting the bilingual differential pay criteria would receive the differential on a pro rata basis.
4. An employee paid by the hour meeting the bilingual differential pay criteria would receive a differential of \$.58 per hour.
5. An employee paid by the day meeting the bilingual differential pay criteria would receive a differential of \$4.61 per day.

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

- D. Bilingual differential payments will become earnings and subject to contributions to the State Retirement System, OASDI, levies, garnishments, Federal and State taxes.
- E. Employees working in positions which qualify for regular bilingual differential pay as authorized by the Department of Personnel Administration may receive the appropriate pay during periods of paid time off and absences (e.g., sick leave, vacation, 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 differential 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. Effective October 31, 2002, qualifying employees in Work Week Group 2 shall receive bilingual 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.

3.5 Overpayments/Payroll Errors

Overpayments/Payroll errors shall be administered in accordance with Government Code Section 19838 except as otherwise provided in Section 3.12 entitled Late Docks.

3.6 Timely Payment of Wages

- A. When a permanent full-time or probationary employee receives no pay warrant on payday, the State agrees to issue a salary advance, consistent with departmental policy and under the following conditions:
 - 1. When there are errors or delays in processing the payroll documents and the delay is through no fault of the employee, a salary advance will normally be issued within two (2) work days after payday for an amount close to the actual net pay (gross salary less deductions) in accordance with departmental policy.
 - 2. When a regular paycheck is late for reasons other than (1) above (e.g., AWOL, late dock), a salary advance of no less than 50% of the employee's actual net pay will normally be issued within five work days after payday except as otherwise provided in Section 3.12 entitled Late Docks. No more than two 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.
 - 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.
 - D. For overtime checks, an advance for an amount close to the actual net pay shall be issued by the end of the pay period following the actual month for which the overtime is submitted if the overtime check is not available at that time.

3.7 Long Term Differential

- A. This section applies to Caltrans employees who otherwise qualify for long term per diem pursuant to Section 7.1, Business and Travel Expenses. Employees receiving the differential provided for in this section shall not receive long term per diem.
- B. Caltrans employees who are assigned in writing to Long Term Assignments (LTA) for more than one year (365 days) at the outset of their assignment letter and who otherwise qualify for long term per diem shall receive a monthly pay differential in lieu of long term per diem for meals and receipted lodging.
- C. To qualify for the LTA monthly differential, affected employees shall be required to submit receipts as proof that actual lodging expenses were incurred.
- D. The LTA monthly differential will be paid for a period starting the first day of the actual assignment and will end the last day of the assignment. The monthly differential shall be pro-rated for months in which the LTA begins or ends in the middle of the month.
- E. The LTA monthly differential shall be \$1,800.00. Effective October 31, 2002, this rate shall be the same for employees who maintain (and employees who do not maintain) a separate permanent residence at their headquarters location as otherwise described for purposes of long term travel reimbursement in subsection 7.1 of this agreement.
- F. Long Term Differential Pay shall not be added to base pay for purposes of calculating such things as overtime.
- G. Long Term Differential Pay shall not be considered compensation for purposes of retirement contributions.
- H. Departments other than Caltrans may provide the Long Term Assignments differential provided in this section at the department's discretion.

3.8 Prison Recruitment and Retention Bonus

- A. Effective July 1, 1998, Unit 9 employees who are employed at Avenal, Ironwood, Calipatria, Centinella 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, Centinella 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, Centinella 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 a qualifying institution and then takes six (6) months' maternity leave, the employee will have only eight (8) additional qualifying pay periods before receiving the initial payment of \$2,400.

3.9 Shift Differential

Unit 9 employees who regularly work shifts shall receive a night shift differential as set forth below:

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

3.10 Diving Pay

- A. Incumbents in classifications currently eligible to receive diving pay shall continue to receive the differential at the rate of \$12.00 per diving hour.
- B. Upon Department of Personnel Administration approval, new classes may be added to the eligible list and employees meeting these diving pay criteria will be so compensated.

3.11 Range Changes

- A. 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.
- B. 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 requests by employees shall be in writing and submitted no less than 30-days prior to the employee's anniversary date for purposes of the range change.

3.12 Late Docks

Notwithstanding Section 3.5 (Overpayments/Payroll Errors) and Section 3.6 (Timely Payment of Wages), departments may elect to proceed as follows as it pertains to "late docks".

- A. 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:
 - 1. The employee will receive a regular pay warrant on pay day (unless it would have been withheld for purposes other than the late dock);
 - 2. The employee will be overpaid, since the dock time will not have been deducted from the employee's pay check; and,
 - 3. 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.
- B. Employees who are overpaid because of paragraph a. 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. The absence of said notification before the overpayment is made will not preclude the department from automatically deducting overpayments as otherwise permitted by this section.

- C. 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 under such circumstances as when an employee has previous "late dock" situations or if there is reason to expect the employee to leave state service prior to the end of the next pay period.
- D. 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.

3.13 ICBO/OSHPD Certificates – Department of General Services

Full-time Unit 9 employees employed by the Department of General Services (DGS) in the following classifications who successfully complete the examination for the International Conference of Building Officials (ICBO) or the Office of Statewide Health Planning and Development (OSHPD) certificates may be reimbursed for application and/or examination fees. Full-time Unit 9 employees in DGS may also be reimbursed for renewal fees once every three years.

- Construction Inspector II
- Construction Supervisor I
- Construction Supervisor II

3.14 Safety Professional Certificates – Department of Industrial Relations

Full-time Unit 9 employees employed by the Department of Industrial Relations (DIR) in the following classifications who successfully complete the examination for Certified Safety Professional administered by the Board of Certified Safety Professionals may be reimbursed for application and/or examination fees. Full-time Unit 9 employees in DIR may also be reimbursed for renewal fees once per calendar year.

- Junior Safety Engineer
- Assistant Safety Engineer
- Associate Safety Engineer
- Associate Safety Engineer (Amusement Rides)
- Associate Safety Engineer (Elevators)
- Associate Safety Engineer (M/T)
- Associate Safety Engineer (Pressure Vessels)
- Senior Safety Engineer (Construction)
- Senior Safety Engineer (Electrical)
- Senior Safety Engineer (Industrial)

3.15 Climbing Pay

A. Air Resources Board

Air Resources Board (ARB) employees who are required to climb to the sampling point of smoke stacks or storage tanks at a height of 30 feet or more shall receive an hourly differential of \$10.00 per actual climbing hour. Said employees may be required to successfully complete training prescribed by ARB as a condition of employment in positions requiring climbing. Effective April 1, 2002, "climbing" smoke stacks and storage tanks requires the use of hands and feet for thirty (30) feet upward to sampling points. "Climbing" does not include such things as taking an elevator or climbing the stairs in a building upon which a smoke stack is located.

B. Caltrans and Water Resources

Caltrans and Department of Water Resources employees who are required to climb using climbing equipment, and employees of the same departments who are required to hold backup safety lines for climbers, shall receive an hourly differential of \$10.00 per actual climbing hour using climbing equipment or holding backup safety lines. Said employees may be required to successfully complete training prescribed by their respective departments as a condition of employment in positions requiring climbing or securing backup safety lines.

C. Department of Industrial Relations

Effective April 1, 2002, Department of Industrial Relations (DIR) employees who are required to climb a tower crane, or any other structure in which the employee is required to use climbing equipment, to a height of thirty (30) feet or more for the purpose of conducting an inspection or investigation shall receive an hourly differential of ten dollars (\$10) per actual climbing hour. Said employee may be required to successfully complete training prescribed by the Division of Occupational Safety and Health as a condition of employment in positions necessitating climbing.

D. Department of General Services

Effective April 1, 2002, Department of General Services (DGS) employees who are required to climb Telecommunications tower antenna structures and employees of the same department who are required to hold backup safety lines for climbers at a height of thirty feet or more, shall receive an hourly differential of ten dollars (\$10) per actual climbing hour using climbing equipment or holding backup safety lines. Climbing requires the use of hands and feet and shall not include such things as taking an elevator or climbing stairs contained in a building upon which a tower antenna structure is located. Employees are required to complete training prescribed by DGS in positions requiring climbing.

E. Compensation Terms

Effective April 1, 2002, employees who "climb" pursuant to a., b., c., and d. will receive a minimum of one hour of climbing pay for any amount of climbing during the first hour of each day. Additional times spent climbing after the first hour during the same day will be rounded to the nearest quarter hour.

3.16 Non-licensed Classification Bonus

Employees in non-deep classifications at the associate level which do not require a license as a condition of appointment or promotion who currently have or during the term of this agreement obtain a license related to their field of work, shall receive a one-time \$500 bonus and (effective October 31, 2002) shall not receive multiple boni.

3.17 Traffic Engineer Differential

Ten (10) licensed Traffic Engineers in Range C of the Transportation Engineer, Caltrans, classification who spend a majority of their time performing Traffic Engineer related duties, shall receive a salary differential effective July 1, 1999, of \$225 per month. If there are more than ten (10) qualifying engineers, those ten (10) with the most state seniority shall receive the differential. The differential shall be considered compensation for purposes of retirement and overtime.

3.19 Recruitment and Retention Pay Differential

- A. Effective April 1, 2002, the State shall provide a Recruitment and Retention Pay Differential of three hundred dollars (\$300) per month to all employees in the classes listed below:

Class Code	Schem Code	Classification
3345	GV80	Structural Engineering Associate
3336	GV50	Senior Structural Engineer
3359	GW10	Lead Senior Structural Engineer - Emergency
3362	GW20	Senior Structural Engineer - Emergency
3163	GK20	Senior Transportation Electrical Engineer (Specialist)
3166	GK30	Associate Transportation Electrical Engineer (Specialist)
3600	HJ30	Senior Electrical Engineer
3603	HJ40	Associate Electrical Engineer
3000	GM15	Associate Electrical Engineer, Caltrans
3611	HK10	Associate Electrical Engineer Hydraulic Structures
3613	HJ55	Electrical Engineer
3825	HY70	Associate Sanitary Engineer
3640	HK85	Associate Telecommunications Engineer
2177	GM30	Senior Electrical Engineer, Caltrans (Specialist)
3377	GX60	Associate Electronics Engineer

3609	HJ54	Transportation Engineer (Elect)
4841	BI07	Elect Gen Systems Specialist I
4847	BI26	Elect Gen Systems Program Specialist I
4848	BI23	Elect Gen Systems Program Specialist II
4860	BI36	Elect Transmission Systems Program Specialist I
4861	BI33	Elect Transmission Systems Program Specialist II

B.

1. Effective April 1, 2002, the State shall provide a Recruitment and Retention Pay Differential of \$200 per month to all employees in the classes listed below:

Class Code	Schem Code	Classification
3406	GZ30	Assistant Chemical Testing Engineer
3607	HJ70	Assistant Engineering Specialist - Electrical
3899	IF55	Assistant Safety Engineer
3643	HK95	Assistant Telecommunications Engineer
3649	HN25	Automotive Equipment Standards Engineer
3409	GZ40	Junior Chemical Testing Engineer
3132	GH60	Junior Civil Engineer
3890	IF35	Junior Safety Engineer
3848	HZ15	Sanitary Engineer

2. The above Recruitment and Retention differential payments shall not be considered as compensation for purposes of retirement contributions.
3. If an employee transfers to an ineligible classification, DPA may rescind the differential.

C.

1. Effective April 1, 2002, upon approval by the Department of Personnel Administration and PECG, departments may provide Unit 9 employees a recruitment and retention differential for specific positions, classifications, facilities, or geographic locations.

2. Less than full-time permanent employees shall receive the recruitment and retention differential on a pro rata basis.
 3. Permanent intermittent employees shall receive a pro rated recruitment and retention differential based on the hours worked in the pay period.
 4. Recruitment and retention payments shall not be considered as compensation for purposes of retirement contributions.
 5. The department may withdraw any recruitment and retention differential established pursuant to this section for a specific position(s), classifications, facilities, geographic locations for new hires with a thirty (30) day notice to PEGC.
 6. It is understood by PEGC that the decision to implement or not implement recruitment and retention payments established pursuant to this section, 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.
- D. Effective April 1, 2002, Air Resources Engineer, Range C shall receive a 5% recruitment and retention differential. For the purpose of calculating transfer eligibility upon movement to another class in State service, the 5% Recruitment and Retention Differential shall be included in the base salary.

3.21 Lead Person Differential

- A. Effective October 31, 2002, Transportation Surveyors (Class code 3029) employed by Caltrans who are designated as Lead persons in writing over a field survey party shall receive a lead person differential of \$253.00 per month.
- B. Employees who receive the differential waive the right to seek out-of-class compensation based on, or as consideration for, lead person duties.
- C. This differential shall be considered compensation for purposes of calculating retirement. The differential shall also be considered part of the base for purposes of calculating overtime.

3.25 Personal Expense Differential

- A. This section applies to Unit 9 employees who are required to be on State business more than 50 miles from their home and headquarters and incur personal, non-receipted expenses as the result of said travel which are not reimbursed under statutes, regulations, policies or MOU provisions pertaining to business and travel expenses.
- B. Employees receiving reimbursement for business and travel expenses by other means (e.g., statutes, rules or MOU provisions such as the Long Term Differential in Section 3.7 or Business and Travel Expenses in Section 7.1) shall not be eligible for the personal expense differential.
- C. Eligible employees may request (and shall thereafter receive) a personal expense differential rate of:

1. \$67 for personal, non-receipted expenses associated with travel of 12 to 24 hours if expenses are incurred; and,
 2. \$33.00 for personal, non-receipted expenses associated with travel of less than 12 hours if expenses are not incurred.
- D. The personal expense differential may only be requested (and shall only be approved) when the employee used facilities such as, but not limited to, house trailers and camping equipment. Staying with friends, relative or at one's own second residence is not qualifying.
- E. Departments may adopt differing procedures for purposes of implementing this section (e.g., the form used to request the differential, cutoff dates for submission of the form). Advances will not be approved.
- F. The personal expense differential shall not be considered compensation for purposes of calculating overtime.
- G. The personal expense differential shall not be considered compensation for purposes of retirement contributions.

ARTICLE 4 HEALTH AND WELFARE

4.1 Health Benefit Plan

A. Health Contribution Amounts

1. Through December 31, 2003, the State agrees to pay the following contribution for health benefits. To be eligible for this contribution, an employee must positively enroll in a health plan administered or approved by CalPERS.
 - a. The State shall pay up to \$226 per month for coverage on an eligible employee.
 - b. The State shall pay up to \$450 per month for coverage of an eligible employee plus one dependent.
 - c. The State shall pay up to \$589 per month for coverage of an employee plus two or more dependents.
2. Effective January 1, 2004 through December 31, 2005, the employer health benefits contribution for each employee shall be an amount equal to 80 percent of the weighted average of the Basic health benefit plan premiums for a State active civil service employee enrolled for self-alone, during the benefit year to which the formula is applied, for the four Basic health benefit plans that had the largest State active civil service enrollment, excluding family members, during the previous benefit year. For each employee with enrolled family members, the employer shall contribute an additional 80 percent of the weighted average of the additional premiums required for enrollment of those family members, during the benefit year to which the formula is applied, in the four Basic health benefit plans that had the largest State active civil service enrollment, excluding family members, during the previous benefit year.

Effective January 1, 2006, the employer health benefits contribution for each employee shall be an amount equal to 85 percent of the weighted average of the Basic health benefit plan premiums for a State active civil service employee enrolled for self-alone, during the benefit year to which the formula is applied, for the four Basic health benefit plans that had the largest State active civil service enrollment, excluding family members, during the previous benefit year. For each employee with enrolled family members, the employer shall contribute an additional 80 percent of the weighted average of the additional premiums required for enrollment of those family members, during the benefit year to which the formula is applied, in the four Basic health benefit plans that had the largest State active civil service enrollment, excluding family members, during the previous benefit year.

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

B. Dental Benefits Plans

1. Contribution Amounts

- a. Effective July 1, 2001, the State agrees to pay the following contributions for dental benefits. To be eligible for this contribution, an employee must positively enroll in a dental plan administered by the Department of Personnel Administration.

- (1) The State shall pay up to \$30.70 per month for coverage of an eligible employee.

- (2) The State shall pay up to \$55.60 per month for coverage of an eligible employee plus one dependent.

- (3) The State shall pay up to \$81.38 per month for coverage of an eligible employee plus two or more dependents.

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

2. Coverage During First 24 Months of Employment

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

C. Vision Benefit Plan

Program Description

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

4.2 Health Benefit Plan – Eligibility for Benefits

A. Health Benefits - Eligibility for 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 one of two PI control periods. For purposes of this section, the control periods are January 1 through June 30 and July 1 through December 31 of each calendar year. An eligible permanent intermittent employee must enroll in a health benefit plan within sixty (60) days from the end of the qualifying control period.

b. Continuing Eligibility

To continue health benefits, a permanent intermittent employee must be credited with a minimum of 480 paid hours in a control period or nine hundred sixty (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).

B. Dental Benefits - Eligibility for Benefits

1. Employee Eligibility

Employee eligibility for dental benefits is the same as that prescribed for health benefits under Section 4.2 A.1 and 2 of this agreement.

2. Family Member Eligibility

Family member eligibility for dental benefits is the same as that prescribed for health benefits under Section 4.2 A.3 of this agreement.

C. Vision Benefit - Eligibility for Benefits

1. Employee Eligibility

Employee eligibility for vision benefits is the same as that prescribed for health benefits under Section 4.2 A.1. and 2. of this agreement.

2. Family Member Eligibility

Family member eligibility for vision benefits is the same as that prescribed for health benefits under Section 4.2. A.3 of this agreement.

4.3 Non-Industrial Disability Insurance

- A. Non-Industrial Disability Insurance (NDI) is a program for State employees who become disabled due to non-work 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.

4.4 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 5.12.
- B. Enhanced Non-Industrial Disability Insurance (ENDI) is a program for State employees who become disabled due to non-work 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 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.
- 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 4.3 and such benefits are limited to \$135.00 per week.

4.5 Cost Containment Committee

The State and PEGC agree to continue the Joint Labor/Management Benefits Committee. The committee shall consist of an equal number of labor and management

representatives. The committee shall be advisory in nature. The purpose of the committee shall be to provide policy advice and recommendations on the health benefits program to the Public Employees' Retirement System (PERS) and on the dental, vision, employee assistance, and legal services benefits to the Department of Personnel Administration (DPA). This committee will not provide advice on the Worksite Health Promotion or Savings Plus Deferred Compensation programs.

PECG shall be entitled to one (1) representative who is qualified to provide policy advice and to commit his/her organization to a course of action decided by the committee. An appropriate number of management representatives shall be appointed by DPA.

Meetings shall be scheduled at least quarterly, and a specific agenda of issues to be discussed will be developed and distributed in advance of each meeting. Additional meetings may be scheduled on an as-needed basis.

The committee shall be co-chaired by a Labor representative selected by union committee members and a Management representative appointed by DPA.

PECG representatives shall serve without loss of compensation. All other expenses shall be the responsibility of each party participating on this committee.

4.6 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, or may refer themselves on a voluntary basis. 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.

4.7 FlexElect Program

A. Program Description

1. 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 subjected 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.
2. Employees who meet the eligibility criteria stated in Section 4.7 (B)(1) will be eligible to enroll into a Cash Option Program (a monthly cash payment) in lieu of health and/or dental coverage under the FlexElect Program.
3. Employees who meet the eligibility criteria stated in Section 4.7 (B)(1) will be eligible to enroll into a Medical Reimbursement Account and/or a Dependent Care Reimbursement Account.

B. Employee Eligibility

1. 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.
2. Permanent Intermittent (PI) employees shall only participate in the Cash Option and will be eligible to receive a six month cash payment for the first control period of each plan year. PI's choosing the Cash Option will qualify for the cash if they meet all of the following criteria:
 - a. 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,
 - b. Must have a PI appointment which is effective from January 1 through June 30 of the Plan Year for which they are enrolling; and,
 - c. 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,
 - d. Must have completed an enrollment authorization during the FlexElect Open Enrollment Period or as newly eligible.
3. Section 4.7 (B)(2) is not grievable or arbitrable.

4.8 Long-Term Care Insurance Plans

Employees in classes assigned to Bargaining Unit 9 are eligible to enroll in any long-term care insurance plan sponsored by the Public Employees Retirement Board. The employee's spouse, parents, 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.

4.9 Pre-Tax of Health/Dental Premiums

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.

4.10 Group Legal Services Plan

Bargaining Unit 9 employees shall be eligible to enroll in the State-sponsored Group Legal Services Plan. This plan is available on a voluntary, after-tax, payroll deduction basis, with all costs being paid by the employee, including a service charge for the costs of administering the plan.

4.11 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.

4.12 Rural Subsidy Program

- A. The State shall continue a Rural Health Care Equity Program for Bargaining Unit 9 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 9 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 9 members, as one of several similar accounts.
5. Each Unit 9 employee shall be able to utilize up to \$1500 per fiscal year, pursuant to GC section 22825.01, but with the exceptions for greater utilization hereafter noted. The pro rata limitation pursuant to Section 4.12.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 9 all year shall receive credit under this paragraph utilizing the same pro rata formula as in Section 4.12.B.2 above.
 - b. If an employee is entitled to less than twenty five dollars (\$25) under Section 4.12.B.6, the money shall instead go into next year's fund pursuant to Section 4.12.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 section 22825.01 and monies still remained in the pool.

ARTICLE 5 LEAVES

5.1 Sick Leave

- A. DPA Rule 599.745 (a) through (d) regarding the definition of "sick leave" is superseded by the following:

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

1. Illness or injury, including illness or injury relating to pregnancy.
 2. Exposure to a contagious disease.
 3. Dental, eye, and other physical or medical examination or treatment by a licensed practitioner.
 4. Absence from duty for attendance upon the employee's ill or injured parent, spouse, (effective April 1, 2002, domestic partner as certified with the Secretary of State's Office in accordance with AB 26 (Chapter 588, Statutes of 1999)), child, brother, sister, grandparent, mother-in-law, father-in-law, grandchild, foster parent, foster child, guardian, daughter-in-law, son-in-law, brother-in-law, sister-in-law, stepchild, adopted child, or any person residing in the immediate household, or to transport any of the above for the purpose listed in 3. above. Such absence shall not exceed eight (8) days per year.
- B. DPA Rule 599.749 regarding sick leave usage is superseded by the following:
1. The department head or designee may require the employee to submit a physician's or licensed practitioner's certificate if:
 - a. The employee is absent on sick leave for more than two consecutive work days; or
 - b. The supervisor has good cause to believe the employee's use of sick leave is improper and the employee is notified in advance (at the beginning of the work day for which sick leave is requested or sooner) that the physician's or licensed practitioner's certificate may be required.
 2. The department head or designee may deny sick leave if the certificate is not provided or sick leave was taken under false pretenses.

5.2 Bereavement Leave

- A. Effective July 1, 2002, 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 who has been certified with the Secretary of State's Office in accordance with AB 26 (Chapter 588, Statutes of 1999), child, adopted child, stepchild, sister, brother, or death of any person residing in the immediate household of the employee at the time of death. An intervening period of absence for medical reasons shall not be disqualifying when, immediately prior to the absence, the person resided in the household of the employee. Such bereavement leave shall be authorized for up to three eight-hour days (24 hours) per occurrence. The employee shall give notice to his/her immediate supervisor as soon as possible and shall, if requested by the employee's supervisor, provide substantiation to support the request upon the employee's return to work.
- B. A department head or designee shall authorize bereavement leave with pay for a permanent full-time or probationary full-time employee due to the death of grandchild, grandparent, aunt, uncle, niece, nephew, mother-in-law, father-in-law, daughter-in-law, son-in-law, sister-in-law, or brother-in-law. Such bereavement leave shall be authorized for up to three (3) eight-hour days (24 hours) in a fiscal year. The employee shall give notice to his/her immediate supervisor as soon as possible and shall, if requested by the employee's supervisor, provide substantiation to support the request.
- C. If the death of a person as described above requires the employee to travel over 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 other existing leave credits or authorized leave without pay.
- D. Employees may utilize their annual leave, vacation, CTO, or any other earned leave credits for additional time required in excess of time allowed in A or B above. Sick leave may be utilized for Bereavement Leave in accordance with the Sick Leave provision of this agreement.
- E. Fractional time base (part-time) employees will be eligible for bereavement leave on pro rata basis, based on the employees' fractional time base.

5.3 Catastrophic Leave

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

1. When the receiving employee faces financial hardship due to injury or the prolonged illness of the employee, employee's spouse or child.
2. The receiving employee has exhausted all leave credits.
3. The donations must be in whole-hour increments and credited as vacation or annual leave.

4. Transfer of annual leave, vacation, CTO and holiday credits shall be allowed across departmental lines in accordance with the policies of the receiving department.
5. The total leave credits received by the employee shall normally not exceed three months; however, if approved by the appointing authority, the total leave credits received may be six months.
6. Donations shall be made on a form to be developed by the State and signed by the donating employee and verified by the donating department. These donations are irrevocable.
7. This section is not subject to the grievance and arbitration article of this Contract.

5.4 Vacation Leave

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

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

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

HOURS OF MONTHLY SICK LEAVE AND HOLIDAY CREDIT

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

6. Was prevented by the department head or designee from utilizing accrued vacation.

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

- E. Upon termination from State employment, the employee shall be paid for accrued vacation credits for all accrued vacation time.
- F. Employees shall request to take vacation. The department head or designee shall approve the request unless there is an operational need to deny the request.
- G. Vacation requests must be submitted in accordance with departmental policies on this subject. When two or more employees ask for the same vacation time and the department head or designee cannot approve all the employees' requests, approval shall be granted in chronological order of legitimate request, consistent with equity for all affected bargaining unit employees.
- H. Each department head or designee will make every effort to act on vacation requests in a timely manner.
- I. Vacations will be canceled only when operational needs require it.
- J. Unit 9 employees are authorized to use existing fractional vacation hours that may have been accumulated.
- K. Vacation leave credits may be used in thirty (30) (effective October 31, 2002, fifteen (15) minute increments.

5.5 Adoption Leave

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

5.6 Parental Leave

- A. A female permanent employee shall be entitled, upon request, to an unpaid leave of absence for purposes of pregnancy, child birth, recovery therefrom or care for the newborn child for a period not to exceed one (1) year, including any leave granted under the FMLA. 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 30 calendar days after the birth of the child. Any changes to the leave, once approved, are permissive and subject to approval of the department head or designee.

If the initial request for parental leave is less than the maximum period allowed, subsequent requests to extend the leave to the maximum one-year time frame are permissive and may be considered by the department head or designee. If the request for parental leave is made more than 30 calendar days after the birth of the child, a permissive unpaid leave of absence may be considered by the department head or designee, in accordance with existing laws and rules.

- B. A male spouse, male parent, or effective April 1, 2002, domestic partner as 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 30 calendar days after the birth of the child. Any changes to the leave, once approved, are permissive and subject to approval of the department head or designee.

If the initial request for parental leave is less than the maximum period allowed, subsequent requests to extend the leave to the maximum one year time frame are permissive and may be considered by the department head or designee.

If the request for parental leave is made more than thirty (30) days after the birth of the child, a permissive unpaid leave of absence may be considered by the department head or designee in accordance with existing laws and rules.

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

5.7 Jury Duty/Subpoena

- 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. For an employee summoned to jury duty during hours other than the employee's regular and customary shift, management will endeavor to temporarily reassign the employee to a work shift that more closely coincides with the hours the employee is required to serve on jury duty, including any necessary travel time, subject to the operational needs of the department permitting such a reassignment.
- F. 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, paragraphs c and d apply.
- G. Whenever an employee is served with a subpoena which compels his/her presence, unless he/she is party to an action unrelated to his/her employment, such employee shall be allowed the required time off without loss of compensation if the employee remits to the employer witness fees received.

5.8 Catastrophic Leave - Natural Disaster

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:

- A. Sick leave credits cannot be transferred.
- B. When the receiving employee faces financial hardship due to the effect of a natural disaster on the employee's principal residence.
- C. The receiving employee has exhausted all vacation, annual leave, or CTO credits and resides in one of the counties where a State of Emergency exists as declared by the governor.
- D. The donations must be in whole hour increments and credited as vacation or annual leave.
- E. Transfer of annual leave, vacation, CTO and holiday credits shall be allowed to cross departmental lines in accordance with the policies of the receiving department.
- F. The total leave credits received by the employee shall normally not exceed three (3) months; however, if approved by the appointing authority, the total leave credits received may be six (6) months.
- G. Donations shall be made on a form to be developed by the State, signed by the donating employee, and verified by the donating department. These donations are irrevocable.
- H. This section is not subject to the Grievance and Arbitration article of this contract.

5.9 Personal Leave Program

Effective October 1, 2003, the State shall implement a mandatory personal leave program for all unit employees. This program shall remain in effect for 12 months. Employees may voluntarily participate in the personal leave program on a continuing basis.

- A. Each full-time employee subject to paragraph b. shall be credited with eight (8) hours of Personal Leave on the first day of the following monthly pay period for each month in the Personal Leave Program (PLP).
- B. Salary ranges and rates shall be changed to reflect the July 1, 2003 general salary increase; however, each full-time employee shall continue to work his/her assigned work schedule and shall have a reduction in pay equal to 5%. In exchange 8 hours of leave will be credited to the employee's PLP monthly.
- C. Personal leave shall be requested and used by the employee in the same manner as vacation or annual leave. Requests to use personal leave must be submitted in accordance with departmental policies on vacation and annual leave balances pursuant to Article 5 (Leaves) and Sections 5.4 (Vacation Leave) and 5.12 (Annual Leave).
- D. At the discretion of the State, all or a portion of unused personal leave credits may be cashed out at the employee's salary rate at the time the personal leave payment is made. It is understood by both parties that the application of this cash out provision may differ from department to department and from employee to employee. Upon termination from State employment, the employee shall be paid for unused personal leave credits in the same manner as vacation or annual leave. Cash out or lump sum payment for any Personal Leave credits shall not be considered as "compensation" for purposes of retirement. If funds become available, as determined by the Department of Finance, for the Personal Leave program, departments will offer employees the opportunity to cash out accrued personal leave. Upon retirement/separation, the cash value of the employee's personal leave balance may be transferred into a State of California, Department of Personnel Administration Deferred Compensation Program as permitted.
- E. An employee may not use any kind of paid leave such as sick leave, vacation, or holiday time to avoid a reduction in pay resulting from the Personal Leave Program.
- F. A State employee in the Personal Leave Program shall be entitled to the same level of State employer contributions for health, vision, dental, flex-elect cash option, and enhanced survivor's benefits he or she would have received had the Personal Leave program not occurred.
- G. The Personal Leave Program shall not cause a break in State service, a reduction in the employee's accumulation of service credit for the purposes of seniority and retirement, leave accumulation, or a merit salary adjustment.
- H. The Personal Leave Program shall neither affect the employee's final compensation used in calculating State retirement benefits nor reduce the level of State death or disability benefits the employee would otherwise receive or be entitled to receive nor shall it affect the employee's ability to supplement those benefits with paid leave.

- I. Part-time employees shall be subject to the same conditions as stated above, on a prorated basis.
- J. The Personal Leave Program for intermittent employees shall be prorated based upon the number of hours worked in the monthly pay period.
- K. The Personal Leave Program shall be administered consistent with the existing payroll system and the policies and practices of the State Controller's Office.
- L. Employees on EIDL, NDI, IDL, or Worker's Compensation for the entire monthly pay period shall be excluded from the Personal Leave Program for that month.

5.10 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 PEGC 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.

5.11 Mentoring Leave

- A. Eligible Unit 9 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 or her personal time (approved annual leave, vacation, personal leave, personal holiday, or CTO during the work day 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 agreement and in existing departmental policies. Requests for approval of mentoring leave are subject to operational needs of the State, budgetary limits, and any limitations imposed by law.
- E. In order to be eligible for "mentoring leave," an employee must:
 - 1. Have a permanent appointment;
 - 2. Have successfully completed their initial probationary period; and
 - 3. Have committed to mentor a child or youth through a mentoring organization that meets the quality assurance standards, for a minimum of one school year. (Most programs are aligned with the child's normal school year; however, there may be some that are less or more. Department management may make exceptions to the one school year commitment based on the mentor program that is selected.)
- F. An employee is not eligible to receive "mentoring leave" if:
 - 1. He/she is assigned to a "post" position 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. Effective October 31, 2002, permanent part-time and permanent intermittent employees may receive a prorated amount of mentoring leave based upon the ir timebase. For example, a halftime employee is eligible for twenty (20) hours of "mentoring leave" per calendar year, whereas an intermittent employee must work a monthly equivalent of 160 hours to earn 3.33 hours of mentoring leave.
- H. DPA shall authorize state departments to include mentoring leave in support of Habitat for Humanity, regional engineering fair judging statewide and the Sacramento Regional Science and Engineering Fair as an approved program under Section 5.11, Mentoring Leave.
- I. Any appeals and/or disputes regarding this section s hall be handled in accordance with the Complaint procedure specified in Section 12.2.b of this Contract.

5.12 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 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

- C. 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.
- D. All provisions necessary for the administration of this Section shall be provided by DPA rule or Memorandum of Understanding.

- E. A full-time employee who has 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 11 consecutive days which fall into two consecutive qualifying pay periods shall disqualify the second pay period.
- F. 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.
- G. If an employee does not use all of the annual leave that the employee has accrued in a calendar year, the employee may carry over his/her accrued annual leave credits to the following calendar year to a maximum of 640 hours. A department head or designee may permit an employee to carry over more than 640 hours of accrued hours because the employee: (1) was required to work as a result of fire, flood, or other extensive emergency; (2) was assigned work of a priority or critical nature over an extended period of time; (3) was absent on full salary for compensable injury; (4) was prevented by department regulations from taking annual leave until December 31 because of sick leave; or (5) was on jury duty.
- H. Upon termination from State employment, the employee shall be paid for accrued annual leave credits for all accrued annual leave time.
- I. 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 (g), the department may order the employee to take annual leave.
- J. Annual leave request 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.
- K. Each department head or designee will make every effort to act on annual leave requests in a timely manner.
- L. Annual leave that is used for purposes of sick leave is subject to the requirements set forth in section 5.1, Sick Leave, of this Agreement.
- M. The Enhanced Non-Industrial Disability Insurance (ENDI) in Section 4.4, applies only to those in the annual leave program described above in this Section.

- N. Employees who are currently subject to vacation and sick leave provisions may elect to enroll in the annual leave program at any time after 24 months has elapsed from date of last enrollment. The effective date of the election shall be the first day of the pay period in which the election is received by the appointing power. Once enrolled in annual leave, an employee shall become entitled to an enhanced NDI benefit (50 percent of gross salary).

5.13 Precinct Election Board Member

Effective October 31, 2002, 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 9 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 6 CLASSIFICATIONS

6.1 Out-of-Classification Assignments

- A. If a department head or designee requires an employee in writing to work in a higher classification for more than 15 consecutive calendar days, the employee shall receive a pay differential of 5% over his/her normal daily rate of the class to which he/she is appointed for that period in excess of 15 calendar days. If a department head or designee requires an employee in writing to work in a higher classification for 30 consecutive calendar days or more, the employee shall receive a pay differential of 5% over his/her normal daily rate of the class to which he/she is appointed from the first day of the assignment. If the assignment to a higher classification is not terminated before it exceeds 120 consecutive calendar days, the employee shall be entitled to receive the difference between his/her salary and the salary of the higher class at the same step the employee would receive if the employee were to be promoted to that class, for that period in excess of 120 consecutive calendar days. The 5% differential shall not be considered as part of the base pay in computing the promotional step in the higher class. In accordance with the provisions of this subsection, no employee may be compensated for more than one (1) year of out-of-class work for any one assignment.
- B. The State shall not rotate employees in and out of out-of-class assignments for the sole purpose of avoiding payment of an out-of-class differential.
- C. It is not the State's intent to select employees for out-of-class assignments based on favoritism. Furthermore, whenever possible, the appointing power shall choose employees for out-of-class appointment from the current hiring list for the particular job classification for which the employee is to be hired on an acting basis. If there is no appropriate current hiring list at the local facility or office complex, the State shall assign the out-of-class duty whenever possible only to those employees who are qualified to take the examination for entry into that classification.

- D. If any dispute arises regarding out-of-class assignments and compensation, an employee may file a grievance and the decision reached at Step 4 (DPA) of the grievance procedure shall be final. Approved out-of-class grievances may be compensated retroactively for a period no greater than one (1) year preceding the filing of the grievance.

6.2 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 9, or (2) modifies an existing Bargaining Unit 9 classification, DPA shall inform PEGC of the proposal during the preparatory stages of the proposals. PEGC 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 PEGC to provide input. Upon request, DPA shall furnish PEGC with drafts of the proposed classification specifications.
- B. The DPA shall notify and submit to PEGC the final classification proposal at least 20 work days prior to the date the SPB is scheduled to adopt it.
- C. If PEGC requests in writing within 10 workdays of receipt of the notice, DPA shall meet with PEGC to discuss the final proposal. If PEGC does not respond to the notice, or if PEGC does not meet with DPA within five (5) workdays from their date of request, the classification proposal shall be deemed agreeable to PEGC and be placed on SPB's consent calendar.
- D. The DPA shall meet and confer, if requested in writing by PEGC, within ten (10) working days from the date the SPB approved the classification change, regarding the compensation of the classification. To the extent that a classification change necessitates other change which falls within the scope of negotiations, the State shall notify PEGC and the parties shall bargain the impact upon request by PEGC.

ARTICLE 7 ALLOWANCES AND REIMBURSEMENTS

7.1 Business and Travel Expense

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

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

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

Breakfast	up to	\$6.00
Lunch	up to	\$10.00
Dinner	up to	\$18.00
Incidentals	up to	\$6.00
<hr/>		
Total	up to	\$40.00 (every full 24 hours of travel)

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

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

Trip begins at or before 6 am	breakfast may be claimed
Trip begins at or before 11 am	lunch may be claimed
Trip begins at or before 5 pm	dinner may be claimed

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

Trip ends at or after 8 am	breakfast may be claimed
Trip ends at or after 2 pm	lunch may be claimed
Trip ends at or after 7 pm	dinner may be claimed

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

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

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

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

If the trip extends overnight, receipted lodging may be claimed

No lunch or incidentals may be claimed on a trip of less than 24 hours.

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

1. Regular State Business Travel:

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

With a lodging receipt: Actual lodging up to \$84.00 plus applicable taxes.

- b. When employees are required to do business and obtain lodging in the counties of Los Angeles and San Diego, actual lodging up to one hundred ten dollars (\$110) plus applicable taxes.

- c. When employees are required to do business and obtain lodging in the counties of Alameda, San Francisco, San Mateo and Santa Clara, reimbursement will be for actual receipted lodging to a maximum of \$140 plus applicable taxes.

2. State Sponsored Conferences or Conventions: 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. Statewide, with a lodging receipt: Actual lodging up to \$110 plus applicable taxes.

3. Non-State Sponsored Conferences or Conventions: for receipted lodging while attending Non-State sponsored conferences and conventions, when the lodging is contracted by the sponsor for the event, and the appointing authority has granted prior approval for attendance and lodging at the contracted rate and establishment. Statewide, with a lodging receipt: Actual lodging when approved in advance by the appointing authority.

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

- C. Long-Term Travel: Actual expenses for long-term meals and receipted lodging will be reimbursed when the employee incurs expenses in one location comparable to those arising from the use of establishments catering to the long-term visitor.
1. Full Long-Term Travel: In order to qualify for full long-term travel reimbursement, the employee on long-term field assignment must meet the following criteria:
 - 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 \$1130 per calendar month while on the long-term assignment, and actual expenses up to \$10.00 for meals and incidentals, for each period of 12 to 24 hours and up to \$5.00 for actual meals and incidentals for each period of less than 12 hours at the long-term location, or
 - (2) Long-term subsistence rates of \$24.00 for actual meals and incidentals and \$24.00 for receipted lodging for travel of 12 hours up to 24 hours; either \$24.00 for actual meals or \$24.00 for receipted lodging for travel less than 12 hours when the employee incurs expenses in one location comparable to those arising from the use of establishments catering to the long-term visitor.
 2. An employee on long-term field assignment who does not maintain a separate residence in the headquarters area may claim long-term subsistence rates of up to \$12.00 for actual meals and incidentals and \$12.00 for receipted lodging for travel of 12 hours up to 24 hours at the long-term location; either \$12.00 for actual meals or \$12.00 for receipted lodging for travel less than 12 hours at the long-term location.
 3. Employees, with supervisor's approval, after completing the workshift remain at the job or LTA location past the Friday 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 DPA 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 DPA 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 DPA.

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

- F. **Transportation.** Transportation expenses include, but are not limited to airplane, train, bus, and taxi fares, rental cars, parking, mileage reimbursement and tolls that are reasonably and necessarily incurred as a result of conducting State business. Each State agency shall determine the 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 34 cents per mile. Mileage reimbursement includes all expenses related to the use, and maintenance of the vehicle, including but not limited to gasoline, up-keep, wear and tear, tires, and all insurance including liability, collision and comprehensive coverage, breakdowns, towing and any repairs, and any additional personal expenses that may be incurred by an individual as a result of mechanical breakdown or collision.
- b. When an employee is required to report to an alternative work location, the employee may be reimbursed for the number of miles driven in excess of his/her normal commute.

2. **Specialized Vehicles:** Employees who must operate a motor vehicle on official State business and who, because of a physical disability, may operate only specially equipped or modified vehicles may claim from 34 up to 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 50 cents per statute mile. Pilot qualifications and insurance requirements will be maintained in accordance with DPA rule 599.628.1 and the State Office of Risk and Insurance Management.
 4. **Mileage to/from a common carrier:** When the employee's use of a privately owned vehicle is authorized for travel to or from a common carrier terminal, and the employee's vehicle is not parked at the terminal during the period of absence, the employee may claim double the number of miles between the terminal and the employee's headquarters or residence, whichever is less, while the employee occupies the vehicle. Exception to "whichever is less": If the employee begins travel one hour or more before he normally leaves his home, or on a regularly scheduled day off, mileage may be computed from his/her residence.
- G. **Receipts.** Receipts or vouchers shall be submitted for every item of expense of \$25 or more. In addition, receipts are required for every item of transportation and business expense incurred as a result of conducting State business except for actual expenses as follows:
1. Railroad and bus fares of less than \$25 when travel is wholly within the State of California
 2. Street car, ferry fares, bridge and road tolls, local rapid transit system, taxi, shuttle or hotel bus fares, and parking fees of \$10.00 or less for each continuous period of parking or each separate transportation expense noted in this item .
 3. Telephone, telegraph, tax or other business charges related to State business of \$5.00 or less.
 4. In the absence of a receipt, reimbursement will be limited to the non-receipted amount above.
 5. Reimbursement will be claimed only for the actual and necessary expenses noted above. Regardless of the above exceptions, the approving officer may require additional certification and/or explanation in order to determine that an expense was actually and reasonably incurred. In the absence of a satisfactory explanation, the expense shall not be allowed.

7.2 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 purpose of retirement contributions. The State may establish and implement procedures and eligibility criteria for the administration of this benefit including required receipts and certification of expenses.
- 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, meets the eligibility criteria, and complies with program procedures as developed by the State for primary vanpool drivers. This shall not be considered compensation for purposes of retirement. A vanpool is defined as a group of seven or more people who commute together in a vehicle (State or non-State) specifically designed to carry an appropriate number of passengers. The State may establish and implement procedures and eligibility criteria for the administration of this benefit.
- C. Employees headquartered out of State shall receive reimbursement for qualified public transportation and vanpool expenses for seventy-five percent (75%) of the cost up to a maximum of sixty-five dollars (\$65) per month or in the case of the primary van pool driver, the one hundred dollars (\$100) per month rate. The appointing power may establish and implement procedures regarding the certification of expenses.

7.3 Safety Footwear

- A. Unit 9 "field" employees assigned to "field positions" shall be responsible for purchasing safety footwear if required (and not provided) by the department for which they work. For the purposes of this section, "field employees" are defined as: full-time Unit 9 employees assigned to work outside of an office for an average of 25 percent of the time during the eighteen month reimbursement period. "Field position" is defined as a position that encompasses work tasks that are performed outside of an office setting on more than an occasional basis. Typically, this includes on-site tasks such as reviewing a contractor's operation, inspecting field conditions or work performed by contractors, field surveying, landscape review, materials testing, construction layout and staking, and maintenance.
- B. For the purposes of this section, safety footwear is defined as steel-toed boots/shoes, or a serviceable leather work shoe or boot that complies with the department's written policy, if any, and which the department requires to be worn while carrying out the duties of the employee's position.
- C. The State shall reimburse full-time employees for the actual cost of safety footwear, not to exceed \$100.00 once every 18 months. Reimbursement will be made upon attainment of eligibility as defined above.
- D. Receipts may be required to verify the actual cost of safety footwear.

7.4 Class A and/or Class B Commercial Driver's License and Medical Fees

A. Eligibility

Each department will pay the cost of a permanent employee's medical examination(s) and filing and license examination fees associated with obtaining the appropriate commercial driver's license and endorsement(s) if the employee:

1. Is in a classification that requires the operation of equipment which requires either a Class A and/or Class B commercial driver's license and any endorsement(s); or
2. Is in a classification designated by the department which requires the employee to upgrade his/her driver's license to a Class A and/or Class B commercial driver's license and any endorsement(s); or
3. Is in a classification where a Class A and/or Class B commercial driver's license is an additional desirable qualification; or
4. Voluntarily and regularly drives, with authorization of the department, a vehicle for which either a Class A or Class B commercial driver's license including required endorsement(s) is required, provided as follows.

B. Medical Examinations

1. When authorized by his/her supervisor, the State will pay the cost of an eligible employee's (see subsection a. above) medical examination from a contractor physician or clinic or when specifically authorized in advance, a medical examination by the employee's personal physician. The State will also pay the cost of a referral as determined necessary by the examining physician or clinic. The costs of the examination and the examination resulting from the referral will be considered as one.
2. The State will pay the cost of a second medical examination and necessary referral, not to exceed the cost of the first medical examination, provided that:
 - a. The employee fails the first medical examination, or the certification submitted is not accepted by the DMV; and
 - b. A second medical examination is authorized by the employee's supervisor and conducted; and
 - c. The second medical certification is accepted by the DMV.

C. Class A and/or B Commercial Driver's License

1. The State will pay the cost of an eligible employee's (see subsection a. above) filing and examination fees associated with obtaining the appropriate Class A and/or Class B commercial driver's license and endorsement(s) provided that:
 - a. The employee requests and is authorized at least 10 work days in advance by his/her supervisor to take the examination; and
 - b. The employee has a valid, current medical certification acceptable to the DMV; and

- c. The employee successfully passes the required examination and is issued the license and appropriate endorsement(s).
2. The State will pay the cost of that portion of the commercial driver's license fee (including the cost of endorsement(s) required by the appointing power) which exceeds the cost of the regular non-commercial Class C driver's license, provided the employee applies for the required license and any required endorsement(s) simultaneously. If an employee fails to take all required extras simultaneously, the State will not be responsible for any costs which exceed the cost that would have been incurred had the tests been taken simultaneously.
3. The State will not pay for any costs associated with the renewal or reinstatement of a license due to any vehicle code violation incurred by the employee.
4. The State will not pay any additional costs incurred as a result of an employee's failure to pass the written and/or performance test within the opportunities allowed by the original application fee.

D. Compensation

Compensation paid toward medical examinations and filing and license examination fees associated with obtaining a Class A or Class B commercial driver's license shall not be considered compensation for purposes of retirement.

E. Release Time for Commercial Driver's License Examination

1. Upon ten (10) work days advance notice to the department head or designee, the department shall provide reasonable time off without loss of compensation for an eligible employee, in accordance with a. above, to take the Class A and/or Class B commercial driver's license examination, provided:
 - a. The examination is scheduled during the employee's scheduled work hours; and
 - b. The examination does not interfere with operational needs of the department; and
 - c. The employee has a valid current medical certification acceptable to DMV.

If the DMV rejects the medical certification provided by a department designated contractor physician or clinic on the day the DMV commercial driver's license examination is scheduled, the employee shall be granted reasonable release time for the subsequently scheduled DMV examination subject to the requirements specified above.
2. Upon thirty (30) calendar days notice, the department will allow the employee to use a State owned or leased vehicle or equipment appropriate for the license examination. It is understood by the parties that use of the equipment or vehicle may be delayed for operational reasons.

7.5 Uniform Replacement Allowance - Department of Parks and Recreation (DPR) and Department of Forestry and Fire Protection (CDF)

- A. The anniversary date for the uniform replacement credit is February 1 of each year. All employees will receive their credit on that date based on qualifying pay periods in the uniformed classification and in accordance with existing State laws, rules and regulations. Permanent full-time employees shall receive a yearly uniform replacement credit not to exceed \$350.00 in DPR and \$380 in CDF. The uniform replacement credit for permanent part-time employees will be calculated annually based upon the previous year's time base. The uniform replacement credit for permanent intermittent employees will be calculated annually based upon the number of hours worked in the previous year.
- B. Employees newly appointed (new hire to State service, promotion, transfer, or demotion from a non-uniformed DPR or CDF class) to a uniformed classification shall be required to purchase the uniform as a condition of employment, and such purchase shall be through the single source vendor. Such employees will be eligible for a pro-rated uniform replacement credit on February 1 of the following year, and a uniform replacement credit on each subsequent February 1 in accordance with the above.

7.6 Overtime Meals

An overtime meal allowance of up to \$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 an overtime meal allowance on a holiday or regular day off, employees must work the total number of hours of their regular work shift and work either two consecutive hours prior to or two consecutive hours after the start or end of their regular work shift.

7.7 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 \$20 per month above the current rate, charged to employees in specific locations where they park. 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.

7.8 Moving and Relocation

Whenever a Unit 9 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 found in Section 7.1 (Business and Travel Expenses), and in accordance with the existing requirements, time frames and administrative rules and regulations for reimbursement of relocation expenses that apply to excluded employees.

ARTICLE 8 HOURS OF WORK AND OVERTIME

8.1 Overtime

A. All State laws and DPA regulations regarding overtime not modified by this agreement shall remain in effect.

B. 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.

C. Paid Leave Counted As Time Worked – WWG 2

Time during which a Unit 9 employee assigned to Work Week Group (WWG) 2 is excused from work on paid leave (e.g., sick leave, vacation or annual leave) shall be counted as hours worked within the workweek for purposes of determining if overtime has been earned.

D. Overtime Compensation – WWG 2

1. Employees in classes assigned to Work Week Group 2 shall be compensated in cash or compensating time off at time and one-half at the discretion of each department head or his or her designee for ordered/authorized overtime of at least one-quarter hour at any one time.
2. Employees shall obtain authorization to work overtime. Employees will only be compensated for overtime ordered or authorized by a supervisor.
3. The employees preference will be considered when determining whether overtime will be compensated by cash or CTO except as otherwise provided by this agreement.
4. Overtime will be credited on a one-quarter hour basis with a full quarter of an hour credit granted if five (5) minutes or more of the period is worked. Smaller fractional units will not be accumulated.

E. Callback Compensation – WWG 2

Employees assigned to Work Week Group 2 shall be credited with a minimum of four hours work time as provided in 2 Cal. Code Regs. § 599.708.

F. Overtime Scheduling – WWG 2

When routine overtime is scheduled at least 48-hours in advance, departments shall request volunteers from within the work area or unit who may thereafter be selected to perform the overtime work, except as provided herein. Nothing in this section shall be construed to (a) require management to seek volunteers during an emergency; (b) require selection of an employee who does not possess the requisite skills to perform the job; (c) require solicitation of volunteers when a specific expertise or project familiarity is required; (d) require solicitation of volunteers who it reasonably believes are not available to respond in the time required; or, (e) limit management's ability to require an employee to work overtime.

8.2 Work Week Groups

A. Work Week Group "2"

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 40 hours in a period of 168 hours or seven consecutive 24-hour periods. Employees in Work Week Group 2 may accrue up to 240 hours of compensating time off. All hours in excess of the 240 hour maximum accrual will be compensated in cash.

B. Work Week Group "E"

1. 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.
2. 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 8 hours holiday credit when ordered to work on a holiday. Work Week Group Employee shall not receive any form of additional compensation, whether formal or informal, unless otherwise provided by this agreement.
3. All Unit 9 employees/classifications presently assigned to Work Weeks Group 4A and 4C shall be moved to Work Week Group E.
4. The following shall apply to employees/classifications assigned to Work Week Group E.
 - a. Employees are expected to work the hours necessary to accomplish their assignments and fulfill their responsibilities. Employee workload will normally require 40 hours per week to accomplish; however, inherent in their job is the responsibility and expectation that work weeks of a longer duration may be necessary.

- b. Management may require employees to work specified hours; however, subject to operational needs as determined by the department, management may permit altered or flexible work schedules when requested by employees. Employees who alter their daily or weekly work schedules shall comply with reasonable procedures established by their department.
- c. Employees are responsible for keeping management apprised of their schedule and whereabouts; and, must respond to directions from management to complete work assignments by specific deadlines.
- 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 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 day recorded for attendance record keeping or compensation purposes. Employees may, however, be required to record time for other purposes (e.g., budgeting, project tracking, etc.).

8.4 Work Shift Schedules

- A. Unless otherwise specified herein, the regular work week of full-time Unit 9 employees shall be forty (40) hours.
- B. Varying work shifts (swing shift, night shift or any work shift other than a traditional day shift) may be established by the employer in order to meet the needs of the State agencies.
- C. Employees' work shifts shall not be permanently changed by the State without adequate prior notice. The State shall endeavor to give thirty (30) calendar days but in no case less than fifteen (15) calendar days notice.

8.5 Telecommuting and Alternate Work Schedules

- A. Telecommuting and alternate work schedules (e.g., 4/10/40) may be permitted where:
 - 1. They enhance productivity, improve facility utilization, reduce traffic congestion, improve air quality; and,
 - 2. Do not jeopardize safety or impact office or employee efficiency, necessary or valuable on-site interaction with others, or service to other departmental units, governmental agencies, clients, or members of the public.

- B. Telecommuting and/or alternate work schedules shall be permitted at the discretion of the appointing department. Departments that permit telecommuting and/or alternate work schedules may establish reasonable procedures and requirements (e.g., pertaining to the number of days and hours employees telecommute, what type of alternate work schedules are available, safety, equipment, availability, amount of notice to affected employee prior to discontinuing telecommuting or alternate work schedules) which employees must satisfy.
- C. Alternate work schedules that result in overtime for employees in WWG 2 because of the requirements of the FLSA shall not be permitted.
- D. This telecommuting section shall not be subject to the grievance and arbitration procedure contained in Article 12, except that employees who believe their request to telecommute (or have an alternate work schedule) was denied for purposes of discrimination, harassment, reprisal or retaliation may file a grievance that can be appealed up to the second level of the grievance procedure.

ARTICLE 9 HOLIDAYS

9.1 Holidays

- A. All full-time and part-time employees, shall be entitled to such observed holidays with pay as provided below, in addition to any official State holidays declared by the Governor.
- B. Observed holidays shall include January 1, the third Monday in January, February 12, the third Monday in February, March 31, the last Monday in May, July 4, the first Monday in September, the second Monday in October, November 11, Thanksgiving Day, the day after Thanksgiving, and December 25. The holidays are observed on the actual day they occur with the following exceptions:
 - 1. When November 11 falls on a Saturday, full-time and part-time employees shall be entitled to the preceding Friday as a holiday with pay.
 - 2. When a holiday falls on Sunday, full-time and part-time employees shall be entitled to the following Monday as a holiday with pay.
 - 3. For those employees who work schedules other than Monday through Friday, those holidays listed in Subsection b. above shall be observed on the day on which the holiday occurs. An employee shall receive compensation for only the observed or actual holiday, not both.
- C. Every full-time and part-time employee, upon completion of six (6) months of his/her initial probationary period in State service, shall be entitled to one (1) personal holiday per fiscal year. The personal holiday shall be credited to each full-time and part-time employee on the first day of July.
- D. The department head or designee may require five (5) days advance notice before a personal holiday is taken and may deny use subject to operational needs. When an employee is denied use of a personal holiday, the department head or designee may allow the employee to reschedule the personal holiday or shall, at the department's discretion allow the employee to either carry the personal holiday to the next fiscal year, or, cash out the holiday on a straight time (hour-for-hour) basis.

- E. The department head or designee shall make a reasonable effort to grant an employee use of his/her personal holiday on the day of his/her desire subject to operational needs.
- 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 (1-1/2) the hourly rate for all hours worked on the holiday. The method of compensation shall be at the State's discretion. If a full-time employee works eight hours on the holiday, the employees shall receive no more than 20 hours of total compensation (combination of holiday credit, CTO, and cash) for each holiday worked.
- H. For the purpose of computing the number of hours worked, time during which an employee is excused from work because of a holiday shall be considered as time worked by the employee.
- I. Work Week Group E or SE Employees: When a permanent full-time employee is required to work on an observed holiday and the observed holiday falls on the employee's regularly scheduled day off, the employee shall receive up to eight hours of holiday credit and 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 employee shall receive no more than eight hours of holiday credit.
- J. Part-time employees in Work Week Group 2 who are required to work on 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 (1-1/2) compensation for all hours worked on the observed holiday, compensable by cash or holiday credit. The method of compensation shall be at the State's discretion.

K. Part-time employees shall receive holidays in accordance with the following:

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

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

HOURS OF MONTHLY SICK LEAVE AND HOLIDAY CREDIT

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

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

ARTICLE 10 INSURANCE

10.1 Life Insurance

1. In addition to the benefit amounts provided by Labor Code Section 4701 and 4702, and the approximate \$15,000 State death benefit provided Unit 9 employees, Caltrans agrees to provide a \$50,000 death benefit effective November 1, 1987, payable to the designated beneficiary, as specified on PERS Form 241, of any Caltrans Unit 9 employee who is killed while performing assigned State duties provided:
 - a. The employee was hit by a motor vehicle, by any part of the vehicle, any object carried in or on the vehicle, or any object dislodged from or by the movement of any vehicle being operated in the State highway right-of-way or public street; and
 - b. Payment of the Workers' Compensation job-related death benefit is not denied because of an affirmative defense by the employer as specified in Labor Code Section 5705.
 - c. The insurance carrier determines if it is a covered accident.
2. Caltrans will investigate each work-related death and determine if the qualifying conditions were satisfied before paying the \$50,000 to the deceased employee's designated beneficiary. Payment shall only be made if all of the qualifying criteria contained in this section are satisfied. In accordance with existing law, a copy of the investigation report will be provided to PEGC upon request.
3. In the event of a dispute regarding appropriate designated beneficiaries, the Caltrans Unit 9 insurance benefit will not be paid until the disputants legally verify that they have settled their dispute or a court of competent jurisdiction resolves the matter for them.

10.2 Accidental Death/Dismemberment Benefits

- A. In addition to the benefit provisions of Labor Code Section 4702, and the approximate \$15,000 State death benefit provided Unit 9 employees, the State agrees to provide at least \$50,000 air travel insurance for Unit 9 employees. The benefit is payable to the employee, employee estate or his/her designated beneficiary in the case of accidental death or dismemberment, provided the employee is required to fly as a passenger in other than regularly scheduled passenger aircraft to fulfill his/her work requirement.
- B. In the event of a dispute regarding appropriate designated beneficiaries, the life insurance benefit will not be paid until the disputants legally verify that they have settled their dispute or a court of competent jurisdiction resolves the matter for them.

ARTICLE 11 - RETIREMENT

11.1 First Tier Eligibility for Employees in Second Tier

An employee in the Second Tier may exercise the Tier 1 right of election at any time. 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.

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

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. If required by CalPERS law, the amount will include interest.

11.2 401(k) Deferred Compensation Program

Employees in Unit 9 may participate in the State of California, Department of Personnel Administration, existing 401(k) Deferred Compensation Program.

11.3 457 Deferred Compensation Program

Employees in Unit 9 may participate in the current State of California, Department of Personnel Administration, 457 Deferred Compensation Program.

11.4 Tax Deferral of Lump Sum Leave Cash Out Upon Separation

- A. Effective October 31, 2002, to the extent permitted by federal and state law, employees who separate from State service who are otherwise eligible to cash out their vacation and/or annual leave balance, may ask the State to tax defer and transfer a designated monthly amount from their cash payment into their existing 457 and/or 401k plan offered through the State's Savings Plus Program (SPP).
- B. If an employee does not have an existing 457 and/or 401k plan account, he/she must enroll in the SPP and become a participant in one or both plans no less than 60 days prior to his/her date of separation.
- C. Such transfers are subject to and contingent upon all statutes, laws, rules and regulations authorizing such transfers including those governing the amount of annual deferrals.
- D. Employees electing to make such a transfer shall bear full tax liability, if any, for the leave transferred (e.g., "over-defers" exceeding the limitation on annual deferrals).
- E. Implementation, continuation and administration of this section is expressly subject to and contingent upon compliance with the SPP's governing Plan document (which may at the State's discretion be amended from time to time), and applicable federal and state laws, rules and regulations.
- F. Disputes arising under this section of the MOU shall not be subject to the grievance and arbitration provision of this agreement.

11.5 Determination of Safety Retirement Eligibility

The provisions of Government Code sections 19816.20 and 20405.1 shall apply to Unit 9.

11.8 Employee Retirement Contribution Reduction For Safety Members

If the Board of Administration of the California Public Employees Retirement System (CalPERS) informs the parties in writing that it has determined that the recent temporary arrangement whereby state employees were relieved of paying into their retirement fund may be extended for 12 months and that such an extension would be fiducially sound and meet the Board's established actuarial standards, which in turn provides temporary cash flow relief to the State, the parties will agree to the following:

1. Effective the first of the pay period following approval by the CalPERS Board and ratification of the Legislature and continuing for 12 monthly pay periods thereafter, the State agrees to the following:

Employees who are safety members (2.5% at 55) under the Public Employees' Retirement System (CalPERS), shall have their employee retirement contribution rate reduced from 6% of monthly compensation in excess of three hundred seventeen (\$317) dollars each month to 1.0% of compensation in excess of three hundred seventeen (\$317) dollars each month.

2. After 12 months, the employee's retirement contribution rate shall be restored to levels in effect on August 30, 2001.
3. The State employer will continue to ensure that pension benefits are properly funded in accordance with generally accepted actuarial practices. In accordance with the provisions of the June 20, 2001 communication to DPA from CalPERS' Actuarial & Employer Services Division, effective the date referenced in paragraph 1 above, the State Employers' CalPERS retirement contribution rate shall incorporate the impact resulting from the temporary reduction in the employee retirement contribution rate. As indicated in the above referenced letter, "10% of the net unamortized actuarial loss shall be amortized each year." However, if the CalPERS Board of Administration alters the amortization schedule referenced above in a manner that accelerates the employer payment obligation, either party to this agreement may declare this section of the Contract, and all obligations set forth herein, to be null and void. In the event this Contract becomes null and void, the employee retirement contribution rate shall be restored to levels in effect on August 30, 2001, and the parties shall be obligated to immediately meet and confer in good faith to discuss alternative provisions.

11.9 Employee Retirement Contribution Reduction For Miscellaneous Members

If the Board of Administration of the California Public Employees Retirement Systems (CalPERS) informs the parties in writing that it has determined that the recent temporary arrangement whereby state employees were relieved of paying into their retirement fund may be extended for 12 months and that such an extension would be fiducially sound and meet the Board's established actuarial standards, which in turn provides temporary cash flow relief to the State, the parties will agree to the following:

1. Effective the first of the pay period following approval by the CalPERS Board and ratification of the Legislature and continuing for 12 monthly pay periods thereafter, the State agrees to the following:

Employees who are miscellaneous and/or industrial members of the first tier plan, and who are subject to Social Security under the Public Employees' Retirement System (CalPERS), shall have their employee retirement contribution rate reduced to zero.

Employees who are miscellaneous and/or industrial members of the first tier plan, and who are not subject to Social Security under the Public Employees' Retirement System (CalPERS), shall have their employee retirement contribution rate reduced from 6% of compensation in excess of three hundred seventeen (\$317) dollars each month to 1.0% of compensation in excess of three hundred seventeen (\$317) dollars each month.

2. After 12 months, the employee's retirement contribution rate shall be restored to levels in effect on August 30, 2001.
3. The State employer will continue to ensure that pension benefits are properly funded in accordance with generally accepted actuarial practices. In accordance with the provisions of the June 20, 2001 communication to DPA from CalPERS' Actuarial & Employer Services Division, effective the date referenced in paragraph 1 above, the State Employers' CalPERS retirement contribution rate shall incorporate the impact resulting from the temporary reduction in the employee retirement contribution rate. As indicated in the above referenced letter, "10% of the net unamortized actuarial loss shall be amortized each year." However, if the CalPERS Board of Administration alters the amortization schedule referenced above in a manner that accelerates the employer payment obligation, either party to this agreement may declare this section of the Contract, and all obligations set forth herein, to be null and void. In the event this Contract becomes null and void, the employee retirement contribution rate shall be restored to levels in effect on August 30, 2001, and the parties shall be obligated to immediately meet and confer in good faith to discuss alternative provisions.

ARTICLE 12 GRIEVANCE PROCEDURE

12.1 Purpose

- A. This grievance procedure shall be used to process and resolve grievances arising under this Agreement and employment-related complaints.
- B. The purposes of this procedure are:
 1. To resolve grievances informally at the lowest possible level;
 2. To provide an orderly procedure for reviewing and resolving grievances and complaints promptly.

12.2 Definitions

- A. A grievance is a dispute of one or more employees, or a dispute between the State and PEGG, involving the interpretation, application, or enforcement of the express terms of this Agreement.
- B. A complaint is a dispute of one or more employees or PEGG involving the application or interpretation of a written rule or policy not covered by this Agreement 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 PEGG or employee, or the State.
- E. A "PEGG representative" refers to an employee designated as a PEGG steward or a paid staff representative.

12.3 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.

12.4 Waiver of Steps

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

12.5 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 PEGG representative, or both, may attend without loss of compensation.

12.6 Informal Discussion

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

12.7 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. Within fourteen (14) calendar days after receipt of the decision rendered in the informal grievance procedure.

- B. However, if the informal grievance procedure is not initiated within the period specified in 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.

12.8 Formal Grievance - Step 2

- A. If the grievant is not satisfied with the decision rendered pursuant to Step 1, the grievant may appeal the decision within twenty-one (21) calendar days after receipt to a designated supervisor or manager identified by each department head as the second level of appeal. If the department head or designee is the first level of appeal, the grievant may bypass Step 2.
- B. Within twenty-one (21) calendar days after receipt of the appealed grievance, the person designated by the department head as the second level of appeal shall respond in writing to the grievance.
- C. No contract interpretation or grievance settlement made at this stage of the grievance procedure shall be considered precedential.

12.9 Formal Grievance - Step 3

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

12.10 Formal Grievance - Step 4

- A. If the grievant is not satisfied with the decision rendered at Step 3, the grievant may appeal the decision within fourteen (14) 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.

12.11 Response

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

12.12 Formal Grievance - Step 5

- A. If the grievance is not resolved at Step 4, within thirty (30) calendar days after the 4th-level response, PEGC 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 PEGC shall alternately strike names until one name remains and this person shall be the arbitrator. If the parties can not 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 PEGC and the State, issue his/her decision, opinion, or award orally upon submission of the arbitration. Either party may request that the arbitrator put his/her decision, opinion, or award in writing and that a copy be provided.
- E. The arbitrator shall not have the power to add to, subtract from, or modify this contract. Only grievances as defined in subsection 12.2a 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.

ARTICLE 13 LAYOFF AND REEMPLOYMENT

13.1 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 30 calendar days in advance of the effective date of layoff. Where notices are mailed, the 30-calendar-day time period will begin to run on date of mailing of the notice. The State agrees to notify the PEGC no later than 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 consecutive qualifying pay periods, the second pay period shall be disqualified.

G. Departments filling vacancies shall offer positions to 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.

H. 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.

13.2 Mitigation

Section 4.10 of the Budget Act recognizes that the Budget Bill approved by the Senate does not provide funds for employee compensation increases that may become effective during the 2003-04 fiscal year, and grants the Director of Finance authority to reduce

and reallocate appropriations in the Budget Act in order to ensure the integrity of the 2003 Budget.

The savings achieved in employee compensation for fiscal year (FY) 03/04 that have been agreed to by the parties shall first be applied to mitigate layoffs during FY 03/04 for Bargaining Unit 9, consistent with the provisions of Section 4.10 of the Budget Act of 2003.

In applying these savings, the following principles will govern: (a.) It is understood that these savings will not be applied to any program reductions beyond the requirements of Section 4.10 and (b.) PEGC understands that this provision does not obligate the employer to retain any position that is not supported by the work to be done or the organizational structure of the affected State agency.

ARTICLE 14 HOME ADDRESSES

14.1 Home Addresses

A. Home Addresses – Generally

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

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

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

Effective one-month following ratification of this agreement by both parties, the State will no longer use an Employee Action Request form that provides Unit 9 employees who perform non-law enforcement related functions with the option of having their home address withheld from PEGC. Instead, employees who perform non-law enforcement related functions will, upon request on their own initiative, be given a separate form by their appointing power that permits two choices: (1) withhold their address from PEGC, or (2) to cancel a previous withhold request thereby permitting release of their home address to PEGC.

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

Within one month following ratification of this agreement by both parties, the State will send a letter to all existing Unit 9 employees who perform non-law enforcement related functions that have previously requested their home address remain confidential. The letter will provide said employees with the option of canceling their previous withhold request thereby permitting release of their home address to PEGC.

D. Release and Use of Addresses

The State Controller's Office will send PEGC a list of all Unit 9 employees who, pursuant to subsection c. above, either did not respond or responded by indicating they wanted to continue withholding their home address from PEGC. The State Controller's Office will also send PEGC a list of all Unit 9 employees who perform law enforcement-related functions (if any). Said list(s) will contain the employees' name, agency and reporting unit.

E. Home Address Mailings By The State

The State will mail PEGC information once per year to the home address of law enforcement-related employees, and non-law enforcement employees who have requested their home address be withheld from PEGC. Said material shall be provided by PEGC. The cost of this mailing shall be paid for by PEGC. PEGC agrees to hold the State harmless for any annual mail that does not reach Unit 9 employees.

F. Address Confidentiality

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

G. Nature of Material

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

H. Costs Reimbursable

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

I. Hold Harmless and Indemnification

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

14.2 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. PEGC 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. PEGC shall have one representative on the committee.
- C. The parties agree that the PEGC 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 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.

ARTICLE 15 PERSONNEL ACTIVITIES

15.1 Personnel Files

All bargaining unit employees shall have access to the material in their official personnel files. Such access shall be during normal personnel office work hours and shall not be unreasonably denied. The employee may be required to obtain from the supervisor approval of the specific time for such access. The employee's PEGC representative shall have access to the personnel file either by accompanying the employee or by presenting a written authorization from the employee. The authorization shall cover only the period of time specified by the employee. Files shall not be removed from the personnel office without management approval. The employee or his/her PEGC representative shall be allowed a copy of the material in the personnel file. Materials relating to an employee's performance included in the personnel file shall be retained for a period of time specified by each department, except all materials of a negative nature shall be purged after three years by personnel office employees accessing the file for any reason. 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.

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

15.2 Appeal of Involuntary Transfer

1. An involuntary transfer which reasonably requires an employee to change his/her residence may be grieved under Section 12.2.a 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 or her former position; shall be paid the regular travel allowance for the period of time he/she was away from his/her original headquarters; and his/her moving costs both from and back to the original headquarters shall be paid in accordance with the Department of Personnel Administration law and rules.
2. An appeal of an involuntary transfer which does not reasonably require an employee to change his/her residence shall not be subject to the grievance and arbitration procedure. It shall be subject to the complaint procedure if the employee believes it was made for the purpose of harassing or disciplining the employee.

ARTICLE 16 HEALTH AND SAFETY

16.1 Health and Safety

The State and PECG shall, upon request by PECG, develop a Health and Safety Committee. The committee shall consist of up to five (5) PECG representatives (selected by PECG) and five (5) management representatives. The chairperson shall be selected by management. The committee may meet on a quarterly basis, unless mutually agreed otherwise. PECG representatives shall serve without loss of compensation not to exceed eight (8) hours each quarter unless authorized by the chair.

The affected department(s) shall attempt to remedy any Health and Safety problems identified through recommendations of the committee.

ARTICLE 17 STATE RIGHTS

17.1 State Rights

All the functions, rights, powers and authority not specifically abridged by this MOU are retained by the employer.

ARTICLE 18 REPRESENTATION

18.1 Representatives

The State recognizes and agrees to deal with PECG-designated representatives on matters related to employer-employee relations.

PECG shall provide the State with a written list of PECG employee representatives at each work location and shall notify the State promptly of any changes of such representatives. PECG representatives shall not be recognized by the State until the list or changes have been received by DPA and the department head or designee.

Upon prior notification to and approval of the appropriate time by the representatives' supervisors, PECG representatives will be allowed a reasonable amount of time off without loss of compensation for the purposes of representing employees. Unless otherwise authorized by the department head or designee, the representative will limit representational activities to his/her general geographical area.

18.2 Employees

With prior notification to and approval of the appropriate time by the supervisor, bargaining unit employees will be granted reasonable time off without loss of compensation (a) to prepare and present their own grievances, SPB and BOC claims and appeals, (b) to respond to disciplinary actions taken against them, (c) with five working days' notice (when feasible) to attend hearings conducted by the State Personnel Board and Board of Control provided the employee is either a party to the proceedings or specifically affected by the results of the hearing and has been scheduled to appear or testify, (d) to participate in State civil service examinations that have been scheduled during the employees' normal working hours, and (e) to participate in hiring interviews when certified from an employment list. Except for time off without loss of compensation, the State will not be responsible for other expenses associated with any of the activities listed in this Section.

18.3 Information

Each quarter, the State shall furnish PECG, at cost, with a magnetic tape and printout of all bargaining unit employees containing their full names, home addresses (if permitted by PERB regulation and as otherwise consistent with Section 14 (Home addresses)), employee organization-sponsored deduction codes, agencies, reporting units, and class and schematic codes. The list will be arranged in alphabetical order by last name.

Each month, the State shall furnish PECG, at cost, with a magnetic tape and printout (alphabetical by last name) of all employees from whose salaries deductions were made for PECG dues.

Each month, the State shall furnish PECG, at cost, with a magnetic tape and printout of names and work locations of employees new to the bargaining unit and all employees who left the bargaining unit during the previous month.

PECG may obtain, at cost, any other printouts or information legally available from the State Controller.

The magnetic tapes referred to in the above paragraph shall be loaned to PECG and returned to the State Controller.

18.4 Access

PECG representatives shall be allowed access to bargaining unit employees at the work site during working hours for representational purposes. The department head or

designee may require notification by the PEGC representatives prior to permitting access.

Subject to availability of a facility and notification of the department head or designee, PEGC representatives shall have access to State facilities during non-working hours to meet with employees regarding PEGC activities and business provided PEGC shall reimburse the State if the State incurs significant additional costs as a result of this use.

Access to bargaining unit employees or use of State facilities shall not be unreasonably withheld; however, it may be restricted for reasons of safety, security, employee requested privacy, emergency, or the accomplishment of the State's mission.

18.5 Bulletin Boards

PEGC shall be provided adequate space to post material on State-furnished bulletin boards which are located at easily accessible locations at each work site of employees in the bargaining unit.

Any materials posted must be dated and initialed by the PEGC representative responsible for the posting and a copy of all materials posted must be given to the department head or designee. PEGC shall not post any material of an illegal, obscene, libelous, defamatory or a solely partisan political nature on PEGC bulletin board space.

Each party accepts responsibility and liability for its actions which may bring about claims or suits as a result of the use of State-furnished bulletin boards.

18.6 Distribution of Literature

PEGC representatives may distribute PEGC literature at the worksite during non-working hours (before or after their working hours or during the meal or coffee breaks). PEGC shall not distribute literature of an illegal, libelous, obscene, defamatory or of a solely partisan political nature.

Each party agrees to accept responsibility and liability for its actions which may bring about claims or suits as a result of the distribution of PEGC literature at State work sites.

18.7 Employee Orientation

Each employee new to the bargaining unit and a PEGC employee representative shall be given the opportunity to meet, consistent with Subsection 18.4, Access, for 15 minutes during normal working hours for orientation of the employee to the MOU and PEGC.

18.8 State Phones

PEGC representatives shall be permitted reasonable access to State telephones to make calls for PEGC representation purposes; provided, however, that such access to State telephones shall not result in any additional costs to the State, nor shall it interfere with the conduct of State business.

18.9 Organizational Security

The State agrees to deduct and transmit to PEGC all membership dues authorized on a form provided by PEGC. The State agrees to deduct and transmit to PEGC fees from State employees in Unit 9 who do not become members of PEGC. The State and PEGC agree that a system of authorized dues deductions and a system of fee payer 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:

- A. The amount of dues and fees deducted from PEGC members' and fee payers' pay warrants shall be set by PEGC and changed by the State upon written request of PEGC.
- B. The State and PEGC agree that if a fee payer rescission election is held in Unit 9 pursuant to Government Code Section 3515.7(d), a majority of those votes cast, rather than a majority of the members of the Unit, shall determine whether the fee payer deductions shall continue.
- C. Any employee may withdraw from PEGC fee by sending a signed withdrawal letter to PEGC at any time. A withdrawal under this paragraph does not then relieve an employee from the fee payer provisions of this Agreement. An employee who so withdraws his or her membership shall be subject to paying a fee if such a fee is applicable to Unit 9.
- D. PEGC agrees to indemnify, defend and hold the State and its agents harmless against any claims made of any nature and against any suit instituted against the State arising from this Article and the deductions arising therefrom.
- E. PEGC agrees to attempt to annually notify all State employees in Unit 9 who pay fair share fees of their right to demand and receive from PEGC a return of part of that fee pursuant to Government Code Section 3518.8.
- F. No provisions of this section nor any disputes arising thereunder shall be subject to the grievance and arbitration procedure contained in this Agreement.

18.10 No Reprisal

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 by the Dills Act or this MOU.

18.11 Information to Employees

Annually, the State will provide all bargaining unit employees with information relating to their vacation, sick leave, CTO balances, and their retirement contributions and interest. The State agrees to determine if the Controller can produce statements on other benefits; however, the actual production and distribution of such reports is dependent on the developmental cost and the Controller's priorities.

18.12 Payroll Deduction

1. It is the intent of this Section to provide for payroll deductions, except for deductions defined in Section 18.9, Organizational Security, of PEGC members to be deducted from their warrants insofar as permitted by law. The State agrees to deduct and transmit to PEGC all authorized deductions from all PEGC members who have signed an approved authorization card for such deductions on a form provided by PEGC, less necessary administrative costs incurred by the State Controller.
2. PEGC agrees to indemnify, defend and hold the State harmless against any claims made of any nature and against any suit instituted against the State arising from its check off for PEGC deductions.

ARTICLE 19 ENTIRE AGREEMENT AND SUPERSESSION

19.1 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 PEGC of the proposed change 30 days prior to its proposed implementation.

The parties shall undertake negotiations regarding the impact of such changes on the employees in Unit 9, when all three of the following exist:

1. Where such changes would have an impact on working conditions of a significant number of employees in Unit 9;
2. Where the subject matter of the change is within the scope of representation pursuant to the Dills Act;
3. Where PEGC 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.

19.2 Supersession

The following Government Code Sections and all DPA regulations and/or rules 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 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.

A. Government Code

1. General

19824 Establishes monthly pay periods.

19839 Provides lump-sum payment for unused vacation accrued or compensating time off upon separation.

19888 Specifies that service during an emergency is to be credited for vacation, sick leave, and MSA.

2. Step Increases

19829 Requires DPA to establish minimum and maximum salaries with intermediate steps.

19832 Establishes annual merit salary adjustments (MSA's) for employees who meet standards of efficiency.

19834 Requires MSA payments to qualifying employees when funds are available.

19835 Provides employees with the right to cumulative adjustments for a period not to exceed two years when MSA's are denied due to lack of funds.

19836 Provides for hiring at above the minimum salary limit in specified instances.

19837 Authorizes rates above the maximum of the salary range when a person's position is downgraded. (Red Circle Rates.)

3. Holidays

19853 Establishes legal holidays.

19854 Provides for personal holiday.

4. Vacations

19858.1 Defines amount earned and methods of accrual by full-time employees.

19856 Requires DPA to establish rules regulating vacation accrual for part-time employees and those transferring from one State agency to another.

19856.1 Requires DPA to define the effect of absence of 10 days or less on vacation accrual.

19863 Allows vacation use while on temporary disability (due to work-incurred injury) to augment paycheck.

19143 Requires DPA to establish rules regarding vacation credit when employees have a break in service over six months.

19991.4 Provides that absence of an employee for a work-incurred compensable injury or disease is considered continuous service for the purpose of the right to vacation.

5. Sick Leave

19859 Defines amount earned and methods of accrual for full-time and part-time employees.

19861 Allows DPA to define the effect on sick leave credits of absences of 10 days or less in any calendar month.

19862 Permits sick leave to be accumulated.

19863 Allows sick leave use while on temporary disability (due to work-incurred injury) to augment paycheck.

19863.1 Provides sick leave credit while employee is on industrial disability leave and prescribes how it may be used.

19864 Allows 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 absence of an employee for a work-incurred compensable injury or disease is considered continuous service for the purpose of the right to sick leave.

6. Paid Leaves of Absence

19991.3 Jury duty.

19991.5 30-day educational leave for the medical staff and medical technicians of the Veterans' Home.

19991.7 Teachers' educational leave and earned credits subject to DPA rule.

7. Uniforms, Work Clothes, and Safety Equipment

19850 Definitions.

19850.1 Provides for uniform allowances.

19850.3 Requires DPA to establish procedures to determine need for uniforms and the amount and frequency of uniform allowances.

19850.4 Provides for work clothes for purposes of sanitation or cleanliness to be maintained and owned by the State.

19850.5 Provides for initial issuance of required safety equipment at State expense.

8. Industrial Disability Leave (IDL)

19869 Defines who is covered.

19870 Defines "IDL" and "full pay".

19871 Provides terms of IDL coverage in lieu of workers' compensation temporary disability payment.

19871.1 Provides for continued benefits while on IDL.

19872 Prohibits payment of temporary disability or sick leave pay to employees on IDL.

19873 Inapplicability of retraining and rehabilitation provisions of Labor Code to employees covered by IDL.

19874 Allows employees to receive Workers' Compensation benefits after exhaustion of IDL benefits.

19875 Requires three-day waiting period, unless hospitalized or disability more than 14 days.

19876 Payments contingent on medical certification and vocational rehabilitation.

19877 Authorizes DPA to adopt rules governing IDL.

19877.1 Sets effective date.

9. Non-Industrial Disability Insurance (NDI)

19878 Definitions.

19879 Sets the amount of benefits and duration of payment.

19880 Sets standards and procedures.

19880.1 Allows employee option to exhaust vacation prior to NDI.

19881 Bans NDI coverage if employee is receiving unemployment compensation.

19882 Bans NDI coverage if employee is receiving other cash payment benefits.

19883 Provides for discretionary deductions from benefit check, including employer contributions; employee does not accrue sick leave or vacation credits or service credits for any other purpose.

19884 Filing procedures; determination and payment of benefits.

19885 Authorizes DPA to establish rules governing NDI.

10. Life Insurance

20750.11 Provides for employer contributions.

21400 Establishes group term life insurance benefits.

21404 Provides for Death Benefit from PERS.

21405 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 without pay.

22825 Provides for employee and employer contribution.

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 salary to participate in a deferred compensation plan.

16. Relocation Expenses

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

17. Travel Expenses

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

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

18. Unpaid Leaves of Absence

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

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

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

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

19. Performance Reports

19992 Provides for establishment of performance standards by State agencies.

19992.1 Provides for a system of performance reports and allows DPA to enforce adherence to appropriate standards.

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

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

19992.4 Allows DPA to establish rules leading to reduction in class and compensation or dismissal for unsatisfactory service.

20. Involuntary Transfers

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

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

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

21. Demotion and Layoff

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

19997.3 Requires lay offs 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 re-employment 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.

22. Incompatible Activities

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

23. Use of State Time

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

24. Training

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

19995.3 Provides for Department of Rehabilitation to retrain and refer disabled State employees to positions in State service.

B. Applicable Education Codes

Part 43, Section 70000, et al.

Part 32, Section 59000, et al.

ARTICLE 20 SAVINGS CLAUSE

20.1 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).

ARTICLE 21 NO-STRIKE CLAUSE

21.1 No-Strike Clause

1. During the term of this Agreement, neither PEGC nor its agents nor any Bargaining Unit 9 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.
2. PEGC 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.

ARTICLE 22 TRAINING

22.1 Training

The State agrees to reimburse bargaining unit employees for expenses incurred as a result of attending job-required courses as authorized by the department. Such reimbursement shall be limited to tuition and/or registration fees, cost of course-required books, transportation or mileage expenses, toll and parking fees, and lodging and subsistence expenses.

Reimbursement for the above expenses shall be in accordance with existing Administrative Code sections except as otherwise provided in this MOU. When training occurs during normal working hours, the employee shall receive his/her regular salary.

The State shall reimburse bargaining unit employees for departmentally-approved expenses incurred as a result of attending authorized job-related or career-related training or education in accordance with DPA rules.

Each department, at the request of an employee required to upgrade their current driver's license to a Class A or Class B commercial driver's license and appropriate endorsements because of the new State Law effective January 1, 1989, will make available to the employee any information prepared by the Department of Motor Vehicles covering the commercial driver's license examination.

ARTICLE 23 STATE-OWNED HOUSING RENTAL AND UTILITY RATES

23.1 State-Owned Housing Rental and Utility Rates

A. Rent

Effective July 1, 1989, and annually thereafter for the duration of this contract, current rental rates for all types of State-owned employee housing, including trailers and/or trailer pads, may with 60-day notice be increased by the State as follows:

1. Where employees are currently occupying State-owned housing, the State may raise such rates paid by employees up to 25 percent each year, not to exceed Fair Market value.
2. During the term of this contract, where no rent is being charged, the State may raise rents up to \$75 per month or when an employee vacates State-owned housing, including trailers and/or trailer pads, the State may raise rents for such housing up to the Fair Market value.
3. Employee rental of State housing shall not ordinarily be a condition of employment. In any instance after July 1, 1989 and annually thereafter, when the rental of State housing is made a condition of employment, the State may charge the employee 10 percent less than the regular rate of rent.
4. Employees renting State-owned housing occupy them at the discretion of the State employer. If the State decides to vacate a State-owned housing unit currently occupied by a State employee, it shall give the employee a minimum of 30 days' advance notice.

B. Utilities

Effective July 1, 1989 and annually thereafter, current utility charges for all types of State-owned employee housing, including trailers and/or trailer pads, may be increased by the State as follows:

1. Where employees are currently paying utility rates to the State, the State may raise such rates up to 8 percent each year.
2. Where no utilities are being charged, the State may impose such charges consistent with its costs.
3. Where utilities are individually metered to State-owned housing units, the employee shall assume all responsibility for payment of such utility rates, and any increases imposed by the utility company.

ARTICLE 24 CONTRACTING OUT

A. Purpose

PECG has presented evidence that State departments are presently contracting out work appropriately done by Unit 9 employees, and that said contracting results in unnecessary additional costs to the State. Thus, the purpose of this section is to guarantee that the State does not incur unnecessary, additional costs by contracting out work appropriately performed at less expense to the State by Unit 9 employees, consistent with the terms of this section. In achieving this purpose the parties do not intend this section to expand the State's ability to contract out for personal services. The parties agree that this section shall not be interpreted or applied in a manner which results in a disruption of services provided by State departments.

B. Policy Regarding Personal Services Contracts and Cost Savings

Except in extremely unusual or urgent, time-limited circumstances, or under other circumstances where contracting out is recognized or required by law, Federal mandate, or court decisions/orders, the State must make every effort to hire, utilize and retain Unit 9 employees before resorting to the use of private contractors. Contracting may also occur for reasons other than cost savings as recognized or required by law, Federal mandate, or court decisions/orders.

C. Information Regarding Contracts To Be Let

Departments will provide PECG's designated representative with copies of Requests for Proposals (RFPs) and Invitations for Bid (IFBs) for personal services contracts when released for publication if they call for services found in Unit 9 class specifications. The purpose of this subsection C. is to provide PECG with notice and an opportunity to present alternatives which mitigate or avoid the need for contracting out, while still satisfying the needs of the State to provide services. Directors (or their designee) shall therefore meet with PECG for this purpose, if requested by PECG.

D. Labor/Management Committee To Review Personal Service Contracts In Existence

1. A State joint Labor/Management Committee shall be established. It shall consist of representatives of PECG, the Department of Personnel Administration, the Department of Finance and affected departments. Half of the Committee members shall be PECG representatives. The first meeting of this Committee shall occur no later than 10 working days from ratification of the MOU, and shall be for purposes of determining the procedures by which the Committee will operate. An initial review of all currently existing contracts as requested by the Committee shall be completed within six (6) months from ratification of this agreement. However, if this deadline cannot be met due to the number or complexity of existing contracts for review, the Committee may mutually agree to extend this deadline.

2. Upon request of the Committee (or either party on the committee) each department shall submit copies of any or all personal services contracts that call for services found in Unit 9 class specifications. For each contract, departments shall provide additional documents establishing the number, scope, duration, justification, total costs of all such contracts, and payment of all overhead and administrative costs paid through each contract, provided it does not disclose confidential or proprietary information, in which case it shall be redacted as discussed below. The requested contract and related information shall be provided as soon as reasonably possible. The parties expect that this shall be provided no more than 21 calendar days following the request by the joint Labor/Management Committee, or longer if approved by the Committee. This shall include contracts that may otherwise be protected from public disclosure, if they provide for services found in Unit 9 class specifications. However, the State may redact those portions of protected contract(s) that are proprietary, necessary to protect the competitive nature of the bid process, and that which does not pertain to the costing of personnel services found in Unit 9 classes. The goal shall be to protect against disclosure of information which should remain confidential, while at the same time providing the Committee with sufficient information to determine whether unnecessary, additional costs are being incurred by contracting out work found in Unit 9 class specifications. Costing information provided to the Committee for protected contracts shall include total personnel costs for personnel services found in Unit 9 classifications plus any overhead charges paid to the contractor for these services, provided such disclosure does not breach confidentiality requirements or include proprietary information.
3. Within 10 workdays after receipt of the personal service contracts and associated documents as provided for in paragraph D.2. above, the Committee shall begin reviewing the contracts. The Committee shall examine the contracts based on the purpose of this section, the terms of the contracts, all applicable laws, Federal mandates and court decisions/orders. In this regard, the Committee will consider which contracts should and can be terminated immediately, which contracts will take additional time to terminate, which contracts may continue (for how long and under what conditions) and how (if necessary and cost effective) to transition contract employees or positions into civil service. All determinations shall be through express mutual agreement of the Committee. Committee determinations regarding contracts let by the Department of Corrections shall be subject to the restrictions set forth in subsection F below.
4. The Committee will continue to meet as necessary to examine personal services contracts which have been let.
5. If savings are generated by the termination of personal service contracts under this provision, it is the intent of the State to implement findings of the Committee for utilization of said savings. Such findings may include:
 - (a) Contributing toward position reductions which would otherwise be accomplished by the layoff, salary reduction or displacement of Unit 9 employees.
 - (b) Enabling the employment of Unit 9 employees for services currently performed by contractors.

- (c) Enabling the conversion to Unit 9 civil service employment of qualified contract employees who wish to become State employees, as otherwise permitted by law, regulations, provisions of the contracts and resolutions by the State Personnel Board.
- (d) Providing timely, adequate and necessary recruitment and retention efforts. These efforts may include focused recruitment, publicizing in professional journals, use of the media, job fairs, expedited hiring, expedited background checks, spot testing authorized by the SPB, State employee registries, and recruitment and retention incentives.
- (e) Such other purposes as may be mutually agreed upon by the joint Labor/Management Committee.

E. Displacement Avoidance

- 1. The objective of this subsection is to ensure that Unit 9 employees have preference over contract employees consistent with, but not limited to the following principles.
 - (a) The duties at issue are consistent with the Unit 9 employee's classification;
 - (b) The Unit 9 employee is qualified to perform the job; and,
 - (c) There is no disruption in services .
- 2. To avoid or mitigate Unit 9 employee displacement for lack of work, the appointing power shall review all existing personal services contracts to determine if work consistent with the affected employee's classification is being performed by a contractor. Displacement includes layoff, involuntary demotion, involuntary transfer to a new class, involuntary transfer to a new location requiring a change of residence, and time base reductions. If the joint Labor/Management Committee that reviews personal services contracts determines that the terms and purpose of the contract permit the State to assign the work to a Unit 9 employee who would otherwise be displaced, this shall be implemented consistent with the other terms of this section. The State and PEGC shall meet and confer for purposes of entering into an agreement about the means by which qualified employees are notified and provided with such assignments. This shall include developing a process that ensures that savings realized by terminating the contract and reassigning the work to a Unit 9 employee to avoid displacement, are utilized to offset that employee's moving and relocation costs, the amount of which shall be consistent with Section 7.8 Moving and Relocation of the parties' collective bargaining agreement.

F. Department of Corrections

- 1. This section shall not be applicable to the Department of Corrections until such time as it has been approved by the Federal court special master(s). Nothing in this section shall be interpreted or applied in such a manner as to interfere with Federal court orders, the authority of the Federal court or the authority of the special masters.

2. The Department of Corrections shall present this section to the special master(s) immediately in writing upon ratification of this agreement. The parties agree to make themselves immediately available to meet with the special master, on a schedule determined by the special master.
3. No contract for services by the Department of Corrections shall be prohibited, modified, restricted or terminated by virtue of this Memorandum of Understanding or by operation of the joint Labor/Management Committee established by this Memorandum of Understanding without approval of the Special Masters in Madrid v. Alameida et al (as it pertains to contracts affecting Pelican Bay State Prison), and/or the Special Master in the Coleman litigation (as it pertains to contacts affecting Coleman class members), and/or counsel for the parties in the Plata litigation or the Plata court (as it pertains to contracts affecting medical care for Plata class members).
4. If this section is not approved by the special master the parties agree to reopen negotiations for the purpose of agreeing on an alternative contracting out provision, with the goal of satisfying the concerns of the Federal court and PEGC.

G. Relationship Between This Section And Related Statutes

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

ARTICLE 25 ON-CALL/STANDBY TIME

On-Call/Standby is time during which an employee is required to restrict activities and be available for return to work. An employee is not considered to be in On-Call/Standby status unless he or she has previously been informed by the employer of the assignment.

A PUC Unit 9 employee who is notified that he/she is being placed On-Call/Standby as defined below, shall receive On-Call/Standby pay. On-Call/Standby hours will be accumulated during the term of the pay period and shall be compensated at the rate of two (2) hours of pay (cash or CTO at the employer's discretion), for each eight (8) hours of On-Call/Standby in accordance with the chart below. Employees may only accrue up to six (6) hours of pay for each twenty-four (24) hour period of On-Call/Standby. An employee placed on On-Call/Standby shall respond by phone within fifteen (15) minutes of the call and report for work, if so required, within one (1) hour from initial contact or within a reasonable time frame as agreed to by the supervisor, for employees living beyond one (1) hour from the work site.

On-Call/Standby exists under the following conditions:

1. The employee must be readily accessible by phone or pager, and
2. The employee is obligated to return to work in a fit and able condition to assume his/her duties.

An employee who is actually called into work while On-Call/Standby, shall be compensated in accordance with the call-back provisions of this agreement. Compensation earned as a result of On-Call/Standby shall not be considered time worked for purposes of qualifying for overtime.

HOURS ON-CALL/STANDBY	HOURS PAID
1	.25
2	.50
3	.75
4	1.00
5	1.25
6	1.50
7	1.75
8	2.00

Fractional hours On-Call/Standby, 15 minutes or greater will be rounded up to the next whole hour.

Appendix A Class Listing/Salary Schedule

Classification	Schematic	Class	A/R	Current			WWG
				Minimum	Maximum		
AIR POLLUTION RESEARCH SPECIALIST	IB50	3812		5089	6186	E	
AIR POLLUTION SPECIALIST	IB75	3887	A	3134	3629	2	
AIR POLLUTION SPECIALIST	IB75	3887	B	3753	4561	2	
AIR POLLUTION SPECIALIST	IB75	3887	C	4645	5643	2	
AIR QUALITY ENGINEER I, DEPARTMENT OF CONSUMER AFFAIRS	QR15	9941	A	3437	3977	2	
AIR QUALITY ENGINEER I, DEPARTMENT OF CONSUMER AFFAIRS	QR15	9941	B	3934	4778	2	
AIR QUALITY ENGINEER I, DEPARTMENT OF CONSUMER AFFAIRS	QR15	9941	C	4868	5913	2	
AIR QUALITY ENGINEER II, DEPARTMENT OF CONSUMER AFFAIRS	QR20	9942		5089	6186	2	
AIR RESOURCES ENGINEER	IA84	3735	A	3437	3977	2	
AIR RESOURCES ENGINEER	IA84	3735	B	3934	4778	2	
AIR RESOURCES ENGINEER	IA84	3735	C	4424	5374	2	
AIR RESOURCES ENGINEER	IA84	3735	D	4867	5914	2	
ARCHITECTURAL ASSOCIATE HEALTH FACILITIES	IR72	4127		4645	5643	2	
ARCHITECTURAL DESIGNER	IK63	3886	A	3437	3977	2	
ARCHITECTURAL DESIGNER	IK63	3886	B	3934	4778	2	
ASSISTANT BOUNDARY DETERMINATION OFFICER	GA98	3016		3934	4778	2	
ASSISTANT CHEMICAL TESTING ENGINEER	GZ30	3406		3934	4778	2	
ASSISTANT CIVIL ENGINEER	GH50	3126		3934	4778	2	
ASSISTANT ENGINEERING SPECIALIST -CIVIL	GI10	3128		3934	4778	2	
ASSISTANT ENGINEERING SPECIALIST -ELECTRICAL	HJ70	3607		3934	4778	2	
ASSISTANT LAND SURVEYOR	GC91	3047	A	3352	4072	2	

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Classification	Schematic	Class	A/R	Current		WWG
				Minimum	Maximum	
ASSISTANT LAND SURVEYOR	GC91	3047	B	3934	4778	2
ASSISTANT PROCUREMENT ENGINEER	GY58	3395		3934	4778	2
ASSISTANT SAFETY ENGINEER	IF55	3899		3934	4778	2
ASSISTANT TELECOMMUNICATIONS ENGINEER	HK95	3643		4119	5004	2
ASSOCIATE ARCHITECT	IK60	3964		4867	5914	2
ASSOCIATE AUTOMOTIVE EQUIPMENT STANDARDS ENGINEER	HN20	3651		4868	5913	2
ASSOCIATE BOUNDARY DETERMINATION OFFICER	GA95	3018		4867	5914	2
ASSOCIATE BRIDGE ENGINEER	GL60	3186	A	4871	5919	2
ASSOCIATE BRIDGE ENGINEER	GL60	3186	S	4871	5919	2
ASSOCIATE CHEMICAL TESTING ENGINEER	GZ20	3403	A	4871	5921	2
ASSOCIATE CHEMICAL TESTING ENGINEER	GZ20	3403	S	4871	5921	2
ASSOCIATE CIVIL ENGINEER	GH40	3123	A	4871	5919	2
ASSOCIATE CIVIL ENGINEER	GH40	3123	S	4871	5919	2
ASSOCIATE CONSTRUCTION ANALYST	IQ30	4106	A	4635	5631	2
ASSOCIATE CONSTRUCTION ANALYST	IQ30	4106	B	5100	6197	2
ASSOCIATE CONTROL ENGINEER	HQ45	3659		5100	6194	2
ASSOCIATE CORROSION ENGINEER	GR20	3279		4868	5913	2
ASSOCIATE COST ESTIMATOR WATER RESOURCES	GT40	3303		4645	5643	2
ASSOCIATE ELECTRICAL ENGINEER	HJ40	3603		4868	5913	2
ASSOCIATE ELECTRICAL ENGINEER HYDRAULIC STRUCTURES	HK10	3611		4868	5913	2
ASSOCIATE ELECTRICAL ENGINEER, CALTRANS	GM15	3000	A	4868	5913	2
ASSOCIATE ELECTRICAL ENGINEER, CALTRANS	GM15	3000	B	5089	6186	2
ASSOCIATE ELECTRONICS ENGINEER	GX60	3377		4868	5913	2

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Schematic	Class	A/R	Current		WWG
			Minimum	Maximum	
HV83	7932		5649	6860	2
HT50	3754	A	4639	5639	2
HT50	3754	S	4639	5639	2
HM30	3638	A	4871	5921	2
HM30	3638	S	4871	5921	2
GO90	3263		4867	5914	2
HO50	3675		4868	5913	2
HH75	3584		4867	5914	2
GA70	3015		4749	5496	2
IM20	3982		4867	5914	2
GX30	3379	A	4871	5919	2
GX30	3379	S	4871	5919	2
HH80	3582		4868	5913	2
HH40	3563		4868	5913	2
GM05	2999	A	4868	5913	2
GM05	2999	B	5089	6186	2
HV80	3796		5336	6483	2
IB20	3809		4868	5913	2
HV20	3783		5336	6483	2
HV86	7008		5649	6860	2
GY57	3396		4868	5913	2
RA55	7114		4868	5913	2

Classification
ASSOCIATE ENGINEER, PETROLEUM STRUCTURES
ASSOCIATE ENGINEERING GEOLOGIST
ASSOCIATE ENGINEERING GEOLOGIST
ASSOCIATE EQUIPMENT ENGINEER
ASSOCIATE EQUIPMENT ENGINEER
ASSOCIATE HYDRAULIC ENGINEER
ASSOCIATE HYDROELECTRIC POWER UTILITY ENGINEER
ASSOCIATE INDUSTRIAL ENGINEER, OFFICE OF STATE PRINTING
ASSOCIATE LAND SURVEYOR
ASSOCIATE LANDSCAPE ARCHITECT (SPECIALIST)
ASSOCIATE MATERIALS AND RESEARCH ENGINEER
ASSOCIATE MATERIALS AND RESEARCH ENGINEER
ASSOCIATE MECHANICAL ENGINEER
ASSOCIATE MECHANICAL ENGINEER HYDRAULIC STRUCTURES
ASSOCIATE MECHANICAL ENGINEER, CALTRANS
ASSOCIATE MECHANICAL ENGINEER, CALTRANS
ASSOCIATE MINERAL RESOURCES ENGINEER
ASSOCIATE MOTOR VEHICLE POLLUTION CONTROL ENGINEER
ASSOCIATE OIL AND GAS ENGINEER
ASSOCIATE PROCESS SAFETY ENGINEER
ASSOCIATE PROCUREMENT ENGINEER
ASSOCIATE PRODUCT ENGINEER, PRISON INDUSTRIES

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Classification	Schematic	Class	A/R	Current			WWG
				Minimum	Maximum		
ASSOCIATE REHABILITATION ENGINEERING CONSULTANT	HX06	3817		4868	5913		2
ASSOCIATE SAFETY ENGINEER	IF60	3929		4868	5913		2
ASSOCIATE SAFETY ENGINEER (AMUSEMENT RIDES)	IF96	3898		4868	5913		2
ASSOCIATE SAFETY ENGINEER (CONSTRUCTION)	IF65	3896		4868	5913		2
ASSOCIATE SAFETY ENGINEER (ELECTRICAL)	IF75	3891		4868	5913		2
ASSOCIATE SAFETY ENGINEER (ELEVATORS)	IF95	3884		4868	5913		2
ASSOCIATE SAFETY ENGINEER (INDUSTRIAL)	IG15	3889		4868	5913		2
ASSOCIATE SAFETY ENGINEER (MINING, TUNNELING AND MINERAL INDUSTRIES)	IG25	3876		4868	5913		2
ASSOCIATE SAFETY ENGINEER (PRESSURE VESSELS)	IG35	3869		4868	5913		2
ASSOCIATE SANITARY ENGINEER	HY70	3825		4867	5914		2
ASSOCIATE SPECIFICATION WRITER HYDRAULIC STRUCTURES	GQ90	3290		4868	5913		2
ASSOCIATE TELECOMMUNICATIONS ENGINEER	HK85	3640		4867	5914		2
ASSOCIATE TRANSPORTATION ELECTRICAL ENGINEER (SPECIALIST)	GK30	3166		4868	5913		2
ASSOCIATE TRANSPORTATION ENGINEER, CALTRANS	GJ80	3167	A	4871	5919		2
ASSOCIATE TRANSPORTATION ENGINEER, CALTRANS	GJ80	3167	S	4871	5919		2
ASSOCIATE TRANSPORTATION ENGINEER, CALTRANS (REGISTERED)	GJ81	3169	A	4871	5919		2
ASSOCIATE TRANSPORTATION ENGINEER, CALTRANS (REGISTERED)	GJ81	3169	S	4871	5919		2
ASSOCIATE TRANSPORTATION ENGINEER, CALTRANS (SPECIALIST)	GJ82	9619		4867	6212		2
AUTOMOTIVE EQUIPMENT STANDARDS ENGINEER	HN25	3649	A	3437	3977		2
AUTOMOTIVE EQUIPMENT STANDARDS ENGINEER	HN25	3649	B	3934	4778		2
BAY DEVELOPMENT DESIGN ANALYST SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION	IR45	4117		4868	5913		2

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Classification
 COMPLIANCE OFFICER, HEALTH FACILITIES CONSTRUCTION
 CONSTRUCTION INSPECTOR I
 CONSTRUCTION INSPECTOR II
 CONSTRUCTION PROJECT INSPECTOR (VARIOUS SITES)
 CONSTRUCTION PROJECT SPECIALIST I (VARIOUS SITES)
 CONSTRUCTION SUPERVISOR I
 CONSTRUCTION SUPERVISOR II
 CONTROL ENGINEER
 CONTROL ENGINEER
 DATA COMMUNICATIONS SPECIALIST
 ELECTRIC GENERATION SYSTEM PROGRAM SPECIALIST I
 ELECTRIC GENERATION SYSTEM PROGRAM SPECIALIST II
 ELECTRIC GENERATION SYSTEM SPECIALIST I
 ELECTRIC TRANSMISSION SYSTEM PROGRAM SPECIALIST I
 ELECTRIC TRANSMISSION SYSTEM PROGRAM SPECIALIST II
 ELECTRICAL ENGINEER
 ELECTRICAL ENGINEER
 ENERGY AND MINERAL RESOURCES ENGINEER
 ENERGY AND MINERAL RESOURCES ENGINEER
 ENERGY AND MINERAL RESOURCES ENGINEER
 ENGINEER, WATER RESOURCES
 ENGINEER, WATER RESOURCES
 ENGINEER, WATER RESOURCES

Schematic	Class	A/R	Current		WWG
			Minimum	Maximum	
IS42	4017		5089	6186	2
IS80	4033		3287	3624	2
IS70	4032		3753	4561	2
IS75	6160		3753	4561	2
IS65	6161		4645	5643	2
IS60	4031		4645	5643	2
IS50	4030		5089	6187	2
HQ50	3660	A	3780	4375	2
HQ50	3660	B	4328	5255	2
HK45	3644		5858	7119	E
BI26	4847		4979	6048	E
BI23	4848		5206	6325	E
BI07	4841		4317	5244	2
BI36	4860		4979	6048	E
BI33	4861		5206	6325	E
HJ55	3613	A	3437	3977	2
HJ55	3613	B	3934	4778	2
HV25	3784	A	3526	4082	2
HV25	3784	B	4119	5004	2
HV25	3784	C	4424	5374	2
GH62	3137	A	3437	3977	2
GH62	3137	B	3934	4778	2
GH62	3137	C	4424	5374	2

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Classification	Schematic	Class	A/R	Current		WWG
				Minimum	Maximum	
ENGINEER, WATER RESOURCES	GH62	3137	D	4867	5914	2
ENGINEERING GEOLOGIST	HT65	3756	A	3437	3977	2
ENGINEERING GEOLOGIST	HT65	3756	B	3934	4778	2
ENGINEERING GEOLOGIST	HT65	3756	C	4639	5639	2
ENGINEERING GEOLOGIST	HT65	3756	D	4871	5921	2
ENGINEERING GEOLOGIST	IS83	4348		4645	5643	2
FIRE AND LIFE SAFETY OFFICER I (DIVISION OF THE STATE ARCHITECT)	IS66	4313		4645	5643	2
FIRE AND LIFE SAFETY OFFICER I (HEALTH FACILITIES CONSTRUCTION)	IS85	4351		5089	6186	2
FIRE AND LIFE SAFETY OFFICER II (DIVISION OF THE STATE ARCHITECT)	IS67	4314		5089	6186	2
FIRE AND LIFE SAFETY OFFICER II (HEALTH FACILITIES CONSTRUCTION)	GZ21	3404		4854	5901	2
FLAMMABILITY RESEARCH TEST ENGINEER	HY04	3726	A	3437	3977	2
HAZARDOUS SUBSTANCES ENGINEER	HY04	3726	B	3934	4778	2
HAZARDOUS SUBSTANCES ENGINEER	HY04	3726	C	4424	5374	2
HAZARDOUS SUBSTANCES ENGINEER	HY04	3726	D	4867	5914	2
HAZARDOUS SUBSTANCES ENGINEER	IT80	4556		5089	6186	E
HOUSING CONSTRUCTION INSPECTOR, CALIFORNIA HOUSING FINANCE AGENCY	IT70	4913		4868	5913	2
HOUSING MAINTENANCE INSPECTOR, CALIFORNIA HOUSING FINANCE AGENCY	GZ40	3409		3437	3977	2
JUNIOR CHEMICAL TESTING ENGINEER	GH60	3132		3437	3977	2
JUNIOR CIVIL ENGINEER	IF35	3890		3437	3977	2
JUNIOR SAFETY ENGINEER	GA75	3017		4785	5815	2
LAND SURVEYOR, CALTRANS						

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Classification	Schematic	Class	A/R	Current		WWG
				Minimum	Maximum	
LANDSCAPE ARCHITECT	IM15	3981	A	3437	3977	2
LANDSCAPE ARCHITECT	IM15	3981	B	3934	4778	2
LANDSCAPE ASSOCIATE, CALTRANS	IM13	2971	A	3437	3977	2
LANDSCAPE ASSOCIATE, CALTRANS	IM13	2971	B	3934	4778	2
LANDSCAPE ASSOCIATE, CALTRANS	IM13	2971	C	4424	5374	2
LANDSCAPE ASSOCIATE, CALTRANS	IM13	2971	D	4867	5914	2
LEAD SENIOR STRUCTURAL ENGINEER -EMERGENCY	GW10	3359		39.17	43.19	2
MECHANICAL ENGINEER	HH85	3583	A	3437	3977	2
MECHANICAL ENGINEER	HH85	3583	B	3934	4778	2
MECHANICAL ENGINEER	HH85	3583	C	4424	5374	2
MECHANICAL ENGINEER	HH85	3583	D	4867	5914	2
PETROLEUM DRILLING ENGINEER	HW40	3776		6144	7468	2
PETROLEUM PRODUCTION ENGINEER	HW30	3775		6144	7468	2
PETROLEUM RESERVOIR ENGINEER STATE LANDS DIVISION	HU40	3766		6504	7901	2
PHOTOGRAMMETRIST I	GG40	3092		3753	4561	2
PHOTOGRAMMETRIST II	GG30	3090		4645	5643	2
PRECISION ELECTRONICS SPECIALIST	QQ40	6926		4023	4657	2
PRINCIPAL-FIRE AND LIFE SAFETY (DIVISION OF THE STATE ARCHITECT)	IS87	4355		5858	7121	2
PROJECT DIRECTOR I	IR10	4019		4868	5913	2
PROJECT DIRECTOR II	IR15	4020		5336	6483	E
RESTORATION ARCHITECT	IK25	3953		4867	5914	2
SANITARY ENGINEER	HZ15	3848	A	3437	3977	2

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Classification	Schematic	Class	A/R	Current			WWG
				Minimum	Maximum		
SANITARY ENGINEER	HZ15	3848	B	3934	4778		2
SENIOR ARCHITECT	IK50	3961	A	5341	6490		E
SENIOR ARCHITECT	IK50	3961	S	5341	6490		E
SENIOR BOUNDARY DETERMINATION OFFICER (SPECIALIST)	GA92	3007		5341	6490		E
SENIOR BRIDGE ENGINEER	GL50	3185	A	5341	6490		E
SENIOR BRIDGE ENGINEER	GL50	3185	S	5341	6490		E
SENIOR CONTROL ENGINEER (SPECIALIST)	HQ42	3652		5876	7139		E
SENIOR ELECTRICAL ENGINEER	HJ30	3600		5336	6483		E
SENIOR ELECTRICAL ENGINEER, CALTRANS (SPECIALIST)	GM30	2177		5341	6490		E
SENIOR ENGINEER, PETROLEUM STRUCTURES (SPECIALIST)	HV81	7929		6508	7909		2
SENIOR ENGINEERING GEOLOGIST	HT40	3751	A	5341	6490		E
SENIOR ENGINEERING GEOLOGIST	HT40	3751	S	5341	6490		E
SENIOR HAZARDOUS SUBSTANCES ENGINEER	HY03	3725	A	4847	5851		E
SENIOR HAZARDOUS SUBSTANCES ENGINEER	HY03	3725	B	5336	6486		E
SENIOR HOUSING CONSTRUCTION INSPECTOR, CALIFORNIA HOUSING FINANCE AGENCY	IT90	4555		5336	6483		E
SENIOR HYDRAULIC ENGINEER	GO80	3260		5336	6483		E
SENIOR HYDROELECTRIC POWER UTILITY ENGINEER (SPECIALIST)	HO49	3674		5341	6490		E
SENIOR MECHANICAL ENGINEER	HH70	3579		5336	6483		E
SENIOR MECHANICAL ENGINEER, CALTRANS (SPECIALIST)	GM20	2178		5341	6490		E
SENIOR OIL AND GAS ENGINEER (SPECIALIST)	HV50	3727		6149	7474		E
SENIOR PETROLEUM AND MINING APPRAISAL ENGINEER	HG30	3483		6144	7468		E
SENIOR PROCESS SAFETY ENGINEER (SPECIALIST)	HV85	7009		6508	7909		2

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Classification	Schematic	Class	A/R	Current		WWG
				Minimum	Maximum	
SENIOR RAPID TRANSIT COMPUTER CONTROL SYSTEMS SPECIALIST	IH26	3922		5336	6483	E
SENIOR REHABILITATION ENGINEERING CONSULTANT	HX04	3815		5336	6483	E
SENIOR SAFETY ENGINEER -CONSTRUCTION	IF90	3900		5336	6483	E
SENIOR SAFETY ENGINEER - ELECTRICAL	IF70	3897		5336	6483	E
SENIOR SAFETY ENGINEER - INDUSTRIAL	IG60	3909		5336	6483	E
SENIOR STRUCTURAL ENGINEER	GV50	3336		5590	6790	2
SENIOR STRUCTURAL ENGINEER - EMERGENCY	GW20	3362		39.17	43.19	2
SENIOR TRANSPORTATION ELECTRICAL ENGINEER (SPECIALIST)	GK20	3163		5341	6490	E
SENIOR TRANSPORTATION ENGINEER, CALTRANS	GJ70	3161	A	5341	6490	E
SENIOR TRANSPORTATION ENGINEER, CALTRANS	GJ70	3161	L	5341	6490	E
SENIOR TRANSPORTATION ENGINEER, CALTRANS	GJ70	3161	S	5341	6490	E
SENIOR UTILITIES ENGINEER (SPECIALIST)	HD70	3510		5341	6490	E
SENIOR WASTE MANAGEMENT ENGINEER	HY15	3790	A	5341	6490	E
SENIOR WASTE MANAGEMENT ENGINEER	HY15	3790	S	5341	6490	E
SENIOR WATER RESOURCE CONTROL ENGINEER	ID10	3844	A	5341	6490	E
SENIOR WATER RESOURCE CONTROL ENGINEER	ID10	3844	S	5341	6490	E
STAFF AIR POLLUTION SPECIALIST	IB69	3875		5089	6186	E
STRUCTURAL ENGINEERING ASSOCIATE	GV80	3345		4867	5914	2
TRAINING COORDINATOR, SAN MARCOS TRAINING CENTER	HC92	3119		4645	5643	2
TRANSPORTATION ENGINEER (CIVIL)	GH59	3135	A	3437	3977	2
TRANSPORTATION ENGINEER (CIVIL)	GH59	3135	B	3934	4778	2
TRANSPORTATION ENGINEER (CIVIL)	GH59	3135	C	4424	5374	2

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Classification	Schematic	Class	A/R	Current			WWG
				Minimum	Maximum		
TRANSPORTATION ENGINEER (CIVIL)	GH59	3135	D	4867	5914	2	
TRANSPORTATION ENGINEER, (ELECTRICAL)	HJ54	3609	A	3437	3977	2	
TRANSPORTATION ENGINEER, (ELECTRICAL)	HJ54	3609	B	3934	4778	2	
TRANSPORTATION ENGINEER, (ELECTRICAL)	HJ54	3609	C	4424	5374	2	
TRANSPORTATION ENGINEER, (ELECTRICAL)	HJ54	3609	D	4867	5914	2	
TRANSPORTATION SURVEYOR (CALTRANS)	GA20	3029	A	3352	4072	2	
TRANSPORTATION SURVEYOR (CALTRANS)	GA20	3029	B	3934	4778	2	
TRANSPORTATION SURVEYOR (CALTRANS)	GA20	3029	C	4424	5374	2	
TRANSPORTATION SURVEYOR (CALTRANS)	GA20	3029	D	4867	5914	2	
UTILITIES ENGINEER	HD95	3518	A	3437	3977	2	
UTILITIES ENGINEER	HD95	3518	B	3934	4778	2	
UTILITIES ENGINEER	HD95	3518	C	4424	5374	2	
UTILITIES ENGINEER	HD95	3518	D	4867	5914	2	
VEHICLE PROGRAM SPECIALIST, AIR RESOURCES BOARD	IB60	0663		5593	6798	E	
WASTE MANAGEMENT ENGINEER	HY07	3786	A	3437	3977	2	
WASTE MANAGEMENT ENGINEER	HY07	3786	B	3934	4778	2	
WASTE MANAGEMENT ENGINEER	HY07	3786	C	4424	5374	2	
WASTE MANAGEMENT ENGINEER	HY07	3786	D	4867	5914	2	
WATER RECLAMATION SLUDGE SPECIALIST	IC95	3778		5336	6483	E	
WATER RESOURCE CONTROL ENGINEER	ID39	3846	A	3437	3977	2	
WATER RESOURCE CONTROL ENGINEER	ID39	3846	B	3934	4778	2	
WATER RESOURCE CONTROL ENGINEER	ID39	3846	C	4635	5632	2	
WATER RESOURCE CONTROL ENGINEER	ID39	3846	D	4867	5914	2	

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APPENDIX B-IRS AGREEMENT

EMPLOYER-PAID EMPLOYEE RETIREMENT CONTRIBUTIONS

The purpose of this Article is to implement the provisions contained in Section 414(h)(2) of the Internal Revenue Code concerning the tax treatment of employee retirement contributions paid by the State of California on behalf of the 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 9 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 employees' 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 9 by the State of California as defined in the Internal Revenue Code and rules and regulations established by 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.

SIDE LETTER #1 ASSOCIATE TRANSPORTATION ENGINEER, CALTRANS

DPA agrees that employees currently in the Associate Transportation Engineer, Caltrans class shall not receive salary reductions now or in the future due to any classification actions resulting from current Associate issues within Caltrans. For the same reason, salaries or salary ranges for these employees shall not be "frozen" or held back in relationship to other classifications.

SIDE LETTER #10 SURVIVOR BENEFITS

Notwithstanding Government Code Section 22777, the State employer shall, upon the death of a bargaining Unit 9 employee while in State service, continue to pay employer contributions for health, dental and vision benefits for a period not to exceed 120 days beginning in the month of the employee's death. The surviving spouse or other eligible family member, if any, shall be advised of all rights and obligations during this period regarding the continuation of health and dental benefits as an annuitant by the California Public Employees' Retirement System. The surviving spouse or eligible family member shall also be notified by the department during this period regarding COBRA rights for the continuation of vision benefits.

SIDE LETTER #12 WORK AND FAMILY ISSUES

The State and PEGC recognize the importance of dealing with Work and Family issues. The parties also agree to make available the following programs to State employees utilizing funds from the \$5,000,000 allocated to Work and Family as provided in the current collective bargaining agreement until December 31, 2004.

A. Dependent Care Subsidies

The State and PEGC agree to allocate \$2,000,000 from the Work and Family Fund to establish a dependent care subsidy program for eligible State employees.

The program shall be administered as follows:

1. Employees may be eligible to receive a one-time \$400 subsidy for their qualified dependent as defined by Title 26, Subtitle A, Chapter 1, Subchapter A, Part IV, Subpart A, Section 21 of the Internal Revenue Code.
2. To be eligible for the subsidy, an employee's total household income may not exceed a monthly base income of \$3,500 or a total of \$42,000 per year. Total household income shall include income from a spouse and/or domestic partner as defined in the Family Code Section 297. Employees will be required to self-certify their income. A random audit verification of approximately 10 percent of the eligible employees may be conducted. Employees selected in the randomized audit may be required to provide income verification.
3. Employees will be required to enroll and participate in a dependent care reimbursement account in the FlexElect program. Employees must meet the eligibility criteria for the FlexElect program to be eligible to participate in the subsidy program.
4. Employees will be required to apply for the subsidy. If more than 2,500 employees apply for the subsidy, a lottery will be used to select employees who will receive the subsidy. Only one cash award per year will be awarded to each employee. Married state employees may apply separately, but may not receive more than two \$400 awards per family.
5. Employees will be required to reapply for the subsidy program and FlexElect each year.
6. Subsidies will be deposited into dependent care reimbursement accounts on January 1, 2003 and January 1, 2004.

The Department of Personnel Administration shall administer the subsidy program.

B. Enhanced Resource and Referral Services for Dependent Care

The State and PEGC recognize the importance of dealing with family issues. The State and PEGC agree to allocate \$2,000,000 from the Work and Family Fund to establish an enhanced resource and referral program for dependent care until December 31, 2004. The intent of this program is to assist an employee in locating dependent care facilities and services for their dependents.

SIDE LETTER #15 CAL/EPA RELOCATION AGREEMENT

The November 9, 2000 agreement between the State and PEGC, along with January 31, 2001, February 8, 2001, and March 7, 2001 amendments, regarding the California Environmental Protection Agency headquarters office building and related Boards, Departments and Offices moves shall remain in effect.

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

A. Telework Policy

The Cal/EPA Telework Policy shall be implemented and available to all Unit 9 employees throughout the State employed by the Cal/EPA.

B. Commute Mitigation

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

C. Parking

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

D. Bicycle Transportation

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

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

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

E. Clothing Lockers

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

F. Safety Committee

Cal/EPA agrees to establish a Safety Committee to review and discuss safety issues and concerns applicable to the employees of Cal/EPA and its Boards, Departments and Offices (BDO) located at the new Cal/EPA Headquarters building at 1001 I Street in Sacramento. The Committee shall meet quarterly and participants shall include the safety officer from each BDO and one representative from each Bargaining Unit willing to participate. The Committee shall establish Bylaws that may or may not be based on any such existing committees, so long as they are not in conflict with the Memoranda of Understanding for each participating Bargaining Unit.

G. Building Card Key Costs

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

H. Implementation

Where necessary, Cal/EPA shall develop procedures to implement any of the above programs.

Signature Page

Professional Engineers in California Government

Bob McNew
Bob McNew, Chairman

Date: Oct 3, 03

Arthur P. Duffy
Arthur P. Duffy

Jack Edwards
Jack Edwards

Terry Engle
Terry Engle

Stanley Shaffner
Stanley Shaffner

John W. Roberts
John Roberts

Krista Weber
Krista Weber

State of California

Sam Manwiler
Sam Manwiler

Labor Relations Officer
Department of Personnel Administration

Date: October 3, 2003

Raphael A. Torres
Raphael A. Torres

Department of Water Resources

Ron Wright
Ron Wright

Department of Waste Resources

Heidi Lewelle
Heidi Lewelle

Air Resources Board

Debbie DeLong
Debbie DeLong

Department of Toxic Substances Control

Patricia McQuinn
Patricia McQuinn

California Public Utilities Commission

Lisa Buchanan
Lisa Buchanan

Department of Industrial Relations

Lynwood Brown
Lynwood Brown

Department of Industrial Relations

Teri Pryns
Teri Pryns

California Energy Commission

Barbara Harkin
Barbara Harkin

Department of Personnel Administration

Linda Crough
Linda Crough

Department of Transportation

PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury that:

I am a citizen of the United States, over the age of 18, and not a party to the within cause or action. My business address is 201 Dolores Avenue, San Leandro, CA 94577.

On August 31, 2009, I served a true copy of the following document(s):

**Joint Appendix
Volume I of IV [Pages 1 Through 221]**

on the following party(ies) in said action:

Gerald A. James Professional Engineers in California Government 455 Capitol Mall, Suite 501 Sacramento, CA 95814-4433 Phone: (916) 446-0400 Fax: (916) 446-0489	<i>Attorneys for Appellants Professional Engineers in California Government, et al.</i>
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David W. Tyra Kronick, Moskovitz, Tiedemann & Girard 400 Capitol Mall, 27th Floor Sacramento, CA 95814 Phone: (916) 321-4500 Fax: (916) 321-4555	<i>Attorneys for Respondents Governor Arnold Schwarzenegger and Department of Personnel Administration</i>
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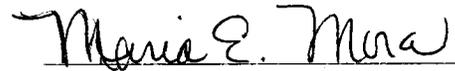
Will M. Yamada Chief Counsel Department of Personnel Administration 1515 "S" Street, Suite 400 Sacramento, CA 95811-7246 Phone: (916) 324-0512 Fax: (916) 323-4723	<i>Attorneys for Respondent Department of Personnel Administration</i>
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Richard Chivaro
State Controller's Office
Chief Counsel
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Phone: (916) 445-6854
Fax: (916) 322-1220

*Attorneys for Appellant State Controller
John Chiang*

- BY UNITED STATES MAIL:** By enclosing the document(s) in a sealed envelope or package addressed to the person(s) at the address above and
 - depositing the sealed envelope with the United States Postal Service, with the postage fully prepaid.
 - placing the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the businesses' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, located in San Leandro, California, in a sealed envelope with postage fully prepaid.
- BY OVERNIGHT DELIVERY:** By enclosing the document(s) in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
- BY MESSENGER SERVICE:** By placing the document(s) in an envelope or package addressed to the persons at the addresses listed and providing them to a professional messenger service for service.
- BY FACSIMILE TRANSMISSION:** By faxing the document(s) to the persons at the fax numbers listed based on an agreement of the parties to accept service by fax transmission. No error was reported by the fax machine used. A copy of the fax transmission is maintained in our files.
- BY EMAIL TRANSMISSION:** By emailing the document(s) to the persons at the email addresses listed based on a court order or an agreement of the parties to accept service by email. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.

I declare, under penalty of perjury, that the foregoing is true and correct. Executed on August 31, 2009, in San Leandro, California.



Maria E. Mora