

Court of Appeal

THIRD APPELLATE DISTRICT

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January 29, 2010

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RE: California Attorneys, etc. v. John Chiang, as State Controller, etc.; Arnold Schwarzenegger,
as Governor, etc., et al.
C061009

Professional Engineers in California Government et al. v. John Chiang, as State Controller, etc.;
Arnold Schwarzenegger, as Governor, etc., et al.
C061011

Service Employees International Union, Local 1000 v. John Chiang, as State Controller, etc.;
Arnold Schwarzenegger, as Governor, etc., et al.
C061020

DEPUTIES

DARLENE A. WAPNICK
ANITA L. KENNER
SANDY GREEN
GAYLE KELLY
GRACE M. EMERO
ANA I. CAVAZOS
SUSAN WELSH
KECIA WORLEY
TORI VOSS
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SARAH J. HARMONING
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KATHY WOJNAROWSKI

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STATE OF CALIFORNIA

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C061009, C061011, and C061020

Page 2

January 29, 2010

Dear Counsel:

The parties are directed to provide additional briefing in response to the following questions:

1. When construing a statute, courts must "ascertain the intent of the lawmakers so as to effectuate the purpose of the law." (*People v. Pieters* (1991) 52 Cal.3d 894, 898.) The words of a statute are "generally the most reliable indicator of legislative intent." (*People v. King* (2006) 38 Cal.4th 617, 622.) "If the plain, commonsense meaning of a statute's words is unambiguous, the plain meaning controls." [Citation.] But if the statutory language may reasonably be given more than one interpretation," courts look to legislative history in an effort to ascertain the intent of the lawmaker. (*Ibid.*)

Government Code section 19851 states in part: "It is the policy of the state that the workweek of the state employee shall be 40 hours, and the workday of state employees eight hours, *except that workweeks and workdays of a different number of hours may be established in order to meet the varying needs of the different state agencies.*" (Italics added.) Are those words reasonably susceptible to more than one interpretation? If so, does the legislative history of the statute indicate whether the Legislature intended those words to allow, under certain circumstances, the hours of state employment to be reduced below a 40-hour workweek or does the legislative history reflect only that the words allow work hours to exceed a 40-hour workweek, without violating the legislative policy against overtime, when necessary to meet the needs of a state agency?

2. Assuming, for the purpose of discussion, that there is no statutory authority allowing imposition of involuntary furloughs in the absence of an emergency, could the Department of Personnel Administration (DPA) and a recognized bargaining unit (union) agree to include an involuntary furlough provision in their memorandum of understanding (MOU)?

3. If DPA and a union could agree to an MOU that includes an involuntary furlough provision, but has not done so, and if an emergency thereafter exists within the meaning of Government Code section 3516.5, does section 3516.5 provide a Governor with the authority to impose involuntary furloughs on represented state employees during an emergency, absent an existing statute allowing involuntary furloughs for civil service employees, and then have DPA meet and confer with the union at the earliest practical time thereafter?

4. Assuming, for the purpose of discussion, that absent an existing statute allowing involuntary furloughs for civil service employees, Government Code section 3516.5 does not give a Governor authority to impose involuntary furloughs on represented employees during an emergency within the meaning of the statute, then what are the types of rules a Governor may impose pursuant to the emergency provision of the statute? Is this statute designed to override the terms of an MOU in case of an emergency, or to allow the imposition of entirely new terms in an MOU?

5. What, if anything, does the legislative history of Government Code section 3516.5 disclose about the types of emergencies included within the meaning of the statute?

Court of Appeal

THIRD APPELLATE DISTRICT

1999

C061009, C061011, and C061020

Page 3

January 29, 2010

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Appellants' supplemental letter briefs are to be served and filed on or before March 1, 2010. Respondents' supplemental letter brief is to be served and filed within 30 days from the filing of appellants' letter brief. Appellants' supplemental reply briefs are to be served and filed within 20 days from the filing of respondents' letter brief. An extension of time will not be granted.

Very truly yours,

DEENA C. FAWCETT

Clerk/Administrator

By:

Assistant Clerk/Administrator

cc: Jeffrey Ryan Rieger
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