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Docket No. C061020

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOR THE THIRD APPELLATE DISTRICT

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1000,

Plaintiff and Appellant,

v.

JOHN CHIANG, as State Controller, etc.,

Defendant and Appellant,

ARNOLD SCHWARZENEGGER, as Governor, etc., et al.

Defendants and Respondents.

APPELLANT'S SUPPLEMENTAL LETTER BRIEF

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

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I. INTRODUCTION

As is well-known by now, in November, 2008, Governor Schwarzenegger sent a letter to “Valued State Workers” highlighting the revenue shortfall confronting the State and the need for spending reductions. As a solution, the Governor proposed to furlough all state employees - **through collective bargaining** - to reduce the salaries of represented state employees by about 5 percent to balance the General Fund.

On December 19, 2008, the Governor issued Executive Order S-16-08, directing that state employees be furloughed two days per month effective February 1, 2009, through June 30, 2010. In his order, the Governor justified the furlough as a way to deal with a “\$42 billion General Fund budget shortfall over the next 18 months.” (*See*, Executive Order S-16-08 dated December 19, 2008.)

On February 19, 2009, the Legislature approved the 2009-10 Budget Act. The Governor signed the new budget on February 20, 2009. That Budget Act authorized reductions in compensation to occur **through collective bargaining** consistent with the Dills Act. (*See*, Chapter 1, Statutes of 2009-10 Third Extraordinary Session. (“SB3X1”).)

On July 1, 2009, the Governor issued Executive Order S-13-09, directing that state employees be furloughed for a third day per month and further reducing the salaries of state employees by about fifteen percent.

In the case below, the Sacramento Superior Court consolidated the Union petitions, and Judge Marlette found that Government Code section 19851(a), gave the

Governor the authority to reduce the regular 40-hour workweek. (“The Governor has the statutory authority to reduce the hours of state employees pursuant to Government Code sections 19851 and 19849.”) (JA, Vol. X, Tab WW, JA 001915-001927.) However, the Governor’s actions had no basis in law. Likewise, the trial court’s ruling was legally unsound.

The Appellate Court has now asked for briefing on five additional issues. Those are summarized here:

1. Is section 19851 susceptible to more than one interpretation? Does the history indicate authority to reduce salaries or only establish longer workweeks?
2. Can the State and a Union agree to an “Involuntary” furlough provision in a MOU?
3. Does section 3516.5 provide authority to impose an involuntary furlough absent other authority to do so?
4. What rules may be imposed under the emergency provision of section 3516.5?
5. What does the legislative history of section 3516.5 disclose about the definition of an “emergency”?

II. ARGUMENT

1. **The Furlough Violates section 19851 - confirmed by its Legislative History**

A. Section 19851

As previously set forth, the Governor's power is valid only to the extent it is exercised consistent with the authority vested in that office by the California Constitution, or delegated by the Legislature. (Cal. Const. § 1, Art. V.) The California Constitution describes the "executive power" of the Governor as follows:

The supreme executive power of this State is vested in the Governor. The Governor shall see that the law is faithfully executed.

(Cal. Const. Article V, § 1.)

Therefore, the Governor's authority to issue an executive order stems from the constitutional provisions conferring executive power on the Governor, and providing that the Governor shall see that the laws are "faithfully executed." In contrast, **only** the Legislature is empowered to create laws, but the Governor is authorized to issue executive orders only as permitted by those statutes approved by the Legislature that explicitly delegate executive discretion to the Governor over particular areas.

The trial court found that section 19851 gave authority to **reduce** hours - without regard to any specific limitation referring to the "varying needs" of the various departments. According to Respondents, the Governor's power to furlough employees emanates from section 19851, subpart (a), of the Government Code which provides:

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.

(Cal. Gov. Code § 19851(a))(emphasis added.)

Unfortunately, the trial court misunderstood this section. Section 19851 first states the general rule that the workweek for state employees “shall be” 40 hours. It is well established that the term, “‘shall’ is mandatory and ‘may’ is permissive,” unless there is evidence to indicate the words were used in any other sense. (*Hough v. McCarthy* (1960) 54 Cal.2d 273, 279.) Section 19851(a) provides only one exception to the mandatory 40-hour workweek: the State may establish different workweeks “to meet the varying needs of the different state agencies.” Section 19851 contains no other grant of authority to the State to consider politics, fleeting fiscal bumps in the road, or budgetary considerations in order to utilize the power to establish a workweek of a different number for the entire state workforce.

Moreover, viewing the entire wording and context of section 19851, it is clear that such use of it for a global salary reduction was never intended, as it clearly appears to be driven by the requirement to pay overtime. Indeed, Schwarzenegger’s decision to bypass laws and reason to impose these sweeping furloughs were - to borrow a Shakespearean phrase - his “salad days, when [he] was green in judgment: cold in blood.”¹

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¹ In the famous play by William Shakespeare (*Anthony and Cleopatra*, Act I, Scene IV), Cleopatra reflects on her own prior decision-making in which her inexperience allowed her own tyranny to overcome good judgment.

B. The Meaning and Legislative History of Section 19851

The Legislature did not authorize in section 19851 a wholesale approach to macro-level adjustments to the 40-hour workweek - just micro-level ones. The Legislature's use of the terms "varying" and "different" makes it evident the power to establish a different workweek than the 40-hour workweek was not intended to be a sweeping mandate. Instead, it was a way for each state agency to make micro-level decisions about individuals or classifications to work longer than 40 hours without the requirement for overtime pay.

Looking at the prior proposed languages for this law, it is evident that certain categories of employees (workweek groups) had workweeks longer than 40 hours. By removing the specific lengths, that same level of discretion was thought to be vested in the departments to allow them to continue longer workweeks to meet their individualized needs.

Indeed, the history of this section indicates that the word "different" in section 19851(a) was used synonymously with the term "longer." That is to say, an increase to the 40-hour workweek could occur only if said longer workweek met the unique needs of each individual state department or agency. Originally appearing with the following language, section 19851 was renumbered from section 18020 which first read as follows:

The State Personnel Board shall establish the work week for each position or class in the state service for which a monthly or annual salary range is fixed, whether or not the position or class is subject to state civil service, by allocating, and

reallocating as the needs of the service require, each class or position to one of the following groups:

- (1) Classes and positions with a work week of 40 hours;
- (2) Classes and positions with a work week of 44 hours;
- (3) Classes and positions with a work week of 48 hours;
- (4) Classes and positions with conditions or hours of work requiring the establishment by the Personnel Board of special provisions governing hours of work or methods of compensation for overtime.

(See, State Controller's first Request for Judicial Notice (RJN). Ex. H at p. 2.)

After a long national labor history of establishing a universal 40-hour week, the State eventually also came into line with other employers and established a policy of a 40-hour week. Unwilling to give up all flexibility for individualized, as-needed "professional" hours exceeding 40 hours without overtime the State adopted a general rule of a 40-hour week. However, it allowed limited discretion only to meet an individualized need.

The wording of section 19851(a), originally 18020, was codified into law on September 7, 1955, after passage of Assembly Bill 1464. (See, State Controllers Office, First RJN, Exhibit I.) The purpose of section 19851(a) can be seen in the legislative history.

When the Legislature proposed to amend then section 18020 in 1974 it stated:

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."

(Controller's First RJN, Exh. I at p. 8, emphasis added.) (Assem. Bill No. 3436 (1973-1974 Reg. Sess.) § 18020.)

The Assembly Committee on Employment and Public Employees then prepared an analysis and described the subject of AB 3436 as "Overtime in State Service in excess of normal workday" and summarized the amendment to section 18020 as follows: "AB 3436 provides that overtime be paid when a state employee works in excess of his normal workday or in excess of his normal workweek." (*Id.* at 49.)

In another telling comment, the Committee offered the following:

Proponents² argue that employees who are required to work overtime on a daily basis but who work only a "normal" work week as a result of compensating time-off suffer from disruption of car pools and of family life with no premium compensation. To provide overtime on a daily basis would discourage the use of overtime consonant with state policy and compensate a state employee for the disruption to this schedule.

The only logical conclusion established from this backdrop is that the inception of section 19851 was to create a mandatory 40-hour week with overtime for hours in excess. The only exclusion was for those individualized decisions made for departments which required longer workweeks for certain employees or categories of employees working

² The sponsor, interestingly, was the predecessor employee organization to SEIU Local 1000 which was known at the time as California State Employees Association.

more than 40 hours without overtime. (Cal. Gov. Code § 19851(a).)

Moreover, the language of section 19851 confirms that an increase to the 40-hour workweek requires an individualized analysis of the different departments and agencies. In determining legislative intent, courts “look first to the words of the statute, giving the language its usual, ordinary meaning.” (*People v. Birkett* (1999) 21 Cal.4th 226.) “In seeking to ascertain the ordinary sense of words, courts ... regularly turn to general dictionaries.” (*Scott v. Continental Insurance* (1996) 44 Cal.App.4th 24.)

It is relevant the Legislature included the word “varying.” The word “varying” is the present participle form of the word “vary”, which means “to be different; deviate from established patterns.” (American Heritage Dictionary Second College Ed. 1338 (1985) Houghton Mifflin Company, Boston, MA) The present participle usage allows a verb form (“vary”) to be used as an adjective to modify the noun “needs.” The Legislature understood that departments would continue the need to have certain employees work “professional” hours (i.e. longer) without an overtime obligation. This was the same ability of the departments in the prior proposed version of the statute. But the authority of each department to meet a “varying” need is not the same as the Governor issuing a global furlough - as such a furlough erroneously assumed each state department had identical needs with regard to the hours worked by its employees.

According to *Halbert's Lumber Inc. v. Lucky Stores* (1992) 6 Cal.App.4th 1233, “if the meaning of the words [in a statute] is not clear courts must take the second step and

refer to the legislative history”. Here, the legislative history supports the conclusion that section 19851(a) mandates a 40-hour workweek unless a longer workweek (without the payment of overtime) meets an individualized need.

It is evident that the exception to the 40-hour workweek related only to the scheduling of overtime work. Contrary to the trial court's interpretation, the Legislature was not trying to give the executive branch the authority to *reduce* state employee time; it was trying to delineate the circumstances under which the executive could *increase* that time and if it did, to compensate employees for overtime.

This result is supported by the statutory construction canon of *noscitur a sociis*. Under the doctrine of *noscitur a sociis*, “the meaning of a word may be ascertained by reference to the meaning of other terms which the Legislature has associated with it in the statute...” (*People v. Jones* (2003) 112 Cal.App.4th 341, 354 (a word takes meaning from the company it keeps.) To determine the Legislature’s intent in allowing that “a different number of hours may be established,” the court should consider that the remainder of section 19851 focuses strictly on overtime scheduling. The history shows the Legislature intended to create a mandatory 40-hour workweek, but at the same time to permit additional work to meet the needs of the different state agencies. No rendition of this history supports the conclusion that the Legislature intended for section 19851 to provide the Governor with the authority to issue a global furlough.

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C. Other laws and Rules relating to emergencies show the Governor's error.

The Governor's interpretation of the 19851 - as permission to unilaterally impose furloughs - is not consistent with other statutes dictating the operation of the State in a true emergency. Consequently, it is clear that he has isolated several words in section 19851 in order to authorize a power inconsistent with any other logical reading of its meaning. This type of interpretation is not supported by principles of construction. In addition, reference to other civil service statutes on emergency actions supports the conclusion that the Governor's interpretation of his emergency power to reduce pay and hours of work is not consistent with the manner in which the Legislature intended the State to operate in an authentic emergency.

For example, when the Office of Emergency Services is called into service because of a true emergency, it can enlist other state workers to provide support pursuant to Government Code section 19844.5.³ These state workers are entitled to a form of paid

³ 19844.5. (a) A state employee who is called into service by the Office of Emergency Services pursuant to a mission assignment number *for the purpose of engaging in a search and rescue operation, disaster mission, or other life-saving mission conducted within the state is entitled to administrative time off from his or her appointing power.* The appointing power shall not be liable for payment of any disability or death benefits in the event the employee is injured or killed in the course of service to the Office of Emergency Services, but the employee shall remain entitled to any benefits currently provided by the office.

(b) The period of the duty described in subdivision (a) *shall not exceed 10 calendar days per fiscal year, including the time involved in going to and returning from the duty.* A single mission shall not exceed three days, unless an extension of time is granted by the office and the appointing power.

(c) This section shall apply only to volunteers participating in the California Explorer Search and Rescue Team, Drowning Accident Rescue Team, Wilderness Organization of Finders, California Rescue Dog Association, and the California Wing of the Civil Air Patrol.

leave called administrative time off and to continuing benefits. (*Id.*) Far from an emergency resulting in lost pay or benefits, this existing law ensured the **continuation** of pay and benefits. Moreover, this law restricted the use of the employees to 10 days in a fiscal year. (*Id.*)

In another example, civil service laws allow for the emergency appointment of employees - bypassing certain procedural hurdles to and the delay inherent in obtaining permanent state employment. (Gov. Code section 19888.⁴) However, the law allows such employees to be credited for various types of leave benefits. (*Id.*) Consequently, the fabric of civil service laws addressing emergency exceptions indicates that employees **are** to receive benefits, and in the case of section 19888, it is supposed to be consistent with collective bargaining principles.

Another significant example - in section 19888.1 - indicates that the Legislature operated with an important assumption that the State would keep its doors open for

(d) A state employee engaging in a duty as described in this section shall not receive overtime compensation for the hours of time off taken but shall receive normal compensation.

(e) A state employee shall be released to engage in a duty described in this section at the discretion of the appointing power. However, leave shall not be unreasonably denied. The appointing power shall also establish a procedure whereby state employees who receive weekend or evening requests to serve may be released to do so.

(Emphasis added.)

⁴ 19888. Service under *emergency appointment shall be credited for purposes of vacation, sick leave, annual leave, and salary adjustment* only if and as provided by department rule. If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if such 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. (Emphasis added.)

business in authentic emergencies - keeping state workers on the job.⁵ **Preventing** the stoppage of public business was the directive from the Legislature when the state encountered a true emergency. (*Id.*) Identical language exists in the law which allows state retirees to come back to work in a real emergency - for the express purpose of keeping the public business open and operating. (*See*, Gov. Code section 21224 (a).)

Unlike the Governor's contrived version of an emergency, a review of the other related laws concerning situations of a State emergency indicate two paramount goals - first, service during an emergency would not jeopardize pay or benefits **and** second, the State would not close for business.⁶ Of course the Governor's furlough program, based on his contrived interpretations, did precisely the opposite of these two goals - it caused a loss of compensation and closed the State's doors to public business.

Torturing the interpretation of section 19851 to fit the narrow purpose of achieving the Governors' politically-driven goal of cutting state worker pay, simply flies in the face

⁵ 19888.1. The appointing power, *to prevent the stoppage of public business when an actual emergency arises*, or because the work will be of limited duration, not to exceed 60 working days, may make emergency appointments without utilizing persons on employment lists and, if necessary, without regard to existing classes. The method of selection and the qualification standards for an emergency employee shall be determined by the appointing power. The frequency of appointment, length of employment, and the circumstances appropriate for the appointment of an individual under emergency appointments shall be restricted by the State Personnel Board by rule so as to prevent the use of emergency appointments to circumvent employment lists. Service under emergency appointment shall be credited for purposes of layoff only if and as provided by department rule. (Emphasis added.)

⁶ As previously argued, closing state operations is also inconsistent with Government Code section 11020 which specifically mandates that the offices of the State shall remain open daily.

of the context of this statute with other related civil service laws. As such, it cannot be upheld as the proper interpretation of this section.

2. Can the State and a Union agree to an “Involuntary” furlough provision in a MOU?

The State and the Union can agree to provisions in the MOU that are consistent with the scope of bargaining as set forth in Gov. Code sections 3512, 3516 and 3517 - specifically wages, hours and working conditions - and are not inconsistent with other laws. As argued before, furloughs impact wages and thus fall within the scope of representation. A decision by the parties to negotiate an involuntary furlough in the MOU falls safely within the scope of bargaining. (Section 3517.) However, to do so, and then label it “involuntary” seems a misnomer because it would naturally become “voluntary” by its nature of resulting from a mutual collective bargaining process

Since the enactment of the Dills Act, the State and the Unions have a long history of negotiating leave provisions in the MOU. Many of the applicable civil service laws concerning leaves were made supercedable by collective bargaining. (*See e.g.* sections 3517.6, 19856 et seq.) A furlough is simply another type of leave that should have been designated as a mandatory subject of bargaining. No reason exists why it should not have been negotiated. Previous rounds of negotiations led to the Union’s Personal Leave Program which remains part of the MOUs relevant to this case. (State Bargaining Unit 1 (JA, Vol. II, Tab MM, JA000389-JA000390); State Bargaining Unit 3 (*Id.*, Vol. III, Tab NN, JA000587-JA000589); State Bargaining Unit 4 (*Id.*, Vol. IV, Tab OO, JA000824-

JA000825); State Bargaining Unit 11 (*Id.*, Vol. V, Tab PP, JA000970-JA000971); State Bargaining Unit 14 (*Id.*, Vol. VI, Tab QQ, JA001137-JA001139); State Bargaining Unit 15 (*Id.*, Vol. VII, Tab RR, JA001277-JA001279); State Bargaining Unit 17 (*Id.*, Vol. VIII, Tab SS, JA001456-JA001457); State Bargaining Unit 20 (*Id.*, Vol. IX, Tab TT, JA001663-JA001664); and State Bargaining Unit 21 (*Id.*, Vol. X, Tab UU, JA001820-JA001821.) Moreover, the Dills Act requires that the meet and confer be in “good faith,” meaning specifically that the State “shall consider fully such presentations as are made by the employee organization ... **prior to arriving at a determination** of policy or course of action.” (Section 3517.)

In this case, the Governor unilaterally imposed his decisions and policy changes, not only in violation of applicable laws, but also in conflict with the basic premise of the collective bargaining law. Bargaining over proposals is to occur **before** arriving at a determination - not the other way around.

3. Does section 3516.5 provide authority to impose an involuntary furlough absent other authority to do so?

Section 3516.5 is a provision of law that provides procedural direction to the state relating to the requirement to provide notice in certain circumstances, but does not imbue the Governor with any additional substantive authority. Consequently, this section provides him no authority to impose a furlough if it is not otherwise authorized in another law. The clear purpose of section 3516.5 is to give simultaneous rights to the employer and unions: first to acknowledge the States’ statutory and regulatory framework in

existence with the enactment of the Dills Act, and second to ensure that framework is not used to bypass notice and collective bargaining on matters within scope.

Regarding this statutory and regulatory framework, it is fruitful to recall that with the inception of collective bargaining for state workers, there was already in place a merit civil service system with a comprehensive set of laws. With adoption of the Dills Act, the Department of Personnel Administration was created for the purpose of being the State's bargaining agent. Decisions had to be made by the Legislature as to which laws were fundamental to the "merit" system and therefore left to the control by the State Personnel Board. Other civil service laws were renumbered and placed under the authority of the DPA. In *Pacific Legal Foundation*, the courts determined that this whole fabric of civil service laws and collective bargaining laws could coexist. (*Pacific Legal Foundation v. Brown* (1981) 29 Cal 3d 168.) However, the statutory framework in place for the state civil service was extensive. Likewise, the regulatory framework was equally broad and far-reaching.

The substance of the 28 Titles of the California Code of Regulations provide the multiple state departments a manner for publishing the many rules by which they need to operate their various public services. The administrative and rule-making process attendant to these enactments enable departments to operate consistently and transparently for the public good. Notice and the opportunity to comment on proposed regulations is the hallmark of the rule-making process. This basic principle satisfies the multiple vital

purposes of due process, governmental transparency and public participation. (*See, e.g., Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 568-569.⁷)

However, it would have rendered the Dills Act collective bargaining rights meaningless and absurd had departments been allowed to continue to propose and amend rules implicating wages, hours, and working condition but bypassing both notice to the union and the opportunity to meet and confer.⁸ Consequently, in the legislative history of this provision, employee organizations asked that this section be included. (*See, new Request for Judicial Notice submitted by the State Controller. (See, Controller's Supplemental RJN, Exh. 7.) Ask SCO for page cite. Naturally, it would protect represented workers by imposing on the employer the obligation to notice the union when*

⁷ In *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 568-569, the Court stated the following regarding the important reasons behind the notice and comment requirements:

One purpose of the APA is to ensure that those persons or entities whom a regulation will affect have a voice in its creation (*Armistead v. State Personnel Board* (1978) 22 Cal.3d 198, 204-205 [149 Cal.Rptr. 1, 583 P.2d 744] (*Armistead*)), as well as notice of the law's requirements so that they can conform their conduct accordingly (*Ligon v. State Personnel Bd.* (1981) 123 Cal.App.3d 583, 588 [176 Cal.Rptr. 717] (*Ligon*)). The Legislature wisely perceived that the party subject to regulation is often in the best position, and has the greatest incentive, to inform the agency about possible unintended consequences of a proposed regulation. Moreover, public participation in the regulatory process directs the attention of agency policymakers to the public they serve, thus providing some security against bureaucratic tyranny. (*See, San Diego Nursery Co. v. Agricultural Labor Relations Bd.* (1979) 100 Cal.App.3d 128, 142-143 [160 Cal.Rptr. 822].)

⁸ Rules of statutory construction do not permit interpretations which render an absurd result. A statute should be interpreted to produce a reasonable, rather than an absurd, result; thus, the consequences of any particular interpretation must be considered. (*Katz v. Los Gatos-Saratoga Joint Union High School Distr.* (2004) 117 Cal.App.4th 55.)

it was seeking to amend rules which overlapped into wages, hours and working conditions. However, this provision also provided some relief for the state, as well, recognizing that at times authentic emergencies (such as those set forth in section 3523) required immediate action, with notice and the opportunity to meet and confer coming later. However, the exception cannot swallow the rule.

Proper statutory interpretation requires the understanding that exceptions must be interpreted as incidental to the general rule and not as supplanting it. (*Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 902 [rejecting a proposed statutory interpretation when the “exception would swallow the rule.”] If the Governor could achieve a wholesale change to collectively-bargained wages through the emergency exception for notice found in the second paragraph of section 3516.5, it would render meaningless much of the mutuality of collective bargaining.

4. What rules may be imposed under the emergency provision of 3516.5?

As just argued above, an extensive regulatory framework existed in state government prior to the enactment of the Dills Act. Prior to collective bargaining for state workers, departments needed only to be concerned with the provisions of the Administrative Procedures Act Government Code section 11340 et seq. which set forth the requirements for amendments to the regulatory framework and emergency exceptions to the normal process of notice and public comment. After collective bargaining became the law, while the regulatory framework was still subject to modification and updating as

determined by the agencies responsible for their respective portions of the California Code of Regulations, section 3516.5 imposed the additional requirement of notice to the union when those changes implicated wages, hours and working conditions.

Thus, collective bargaining added an additional proscription to the rule-making process. When proposals are made to create or amend rules, and it is determined that such a change “directly relat[es] to matters within the scope of representation,” notice must be given to the union in order for bargaining to occur. (Gov. Code section 3516.5.) Notice cannot be bypassed, nor can collective bargaining.

In terms of what types of rules that may be imposed under the emergency exception in the second paragraph, one must conclude that it is the same types of rule-changes that occur for which notice is required by the first paragraph. By way of example of these types of rules, dozens if not hundreds of agencies, departments, boards, and commissions are authorized to promulgate new or amend existing regulations.⁹ These

⁹ The following is a list of State agencies with regulatory oversight.
ACCOUNTANCY, BOARD OF, Title 16: §§ 1-99.2;
ACUPUNCTURE BOARD, Title 16: §§ 1399.400-1399.489.2;
ADMINISTRATIVE HEARINGS, OFFICE OF, Title 1: §§ 1000-1440;
ADMINISTRATIVE LAW, OFFICE OF, Title 1: §§ 1-280;
AGING, CALIFORNIA DEPARTMENT OF, Title 22: §§ 7000-8516;
AGRICULTURAL LABOR RELATIONS BOARD, Title 8: §§ 20100-21200;
AIR RESOURCES BOARD, Title 13: §§ 1900-2789, Title 17: §§ 60000-95007, Title 26;
ALCOHOL AND DRUG PROGRAMS, DEPARTMENT OF, Title 9: §§ 9000-14001;
ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD, Title 4: §§ 175-200.1;
ALCOHOLIC BEVERAGE CONTROL, DEPARTMENT OF, Title 4: §§ 1-150;
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ALTERNATIVE ENERGY AND ADVANCED TRANSPORTATION FINANCING

AUTHORITY, Title 4: §§ 10010-10020;
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ARCHITECT, DIVISION OF THE STATE, Title 21: §§ 1-1400;
ARCHITECTS BOARD, CALIFORNIA, Title 16: §§ 100-160;
ARTS COUNCIL, CALIFORNIA, Title 2: §§ 3600-3644;
ATHLETIC COMMISSION, Title 4: §§ 201-829;
AUCTIONEER COMMISSION, Title 16: §§ 3525-3526;
AUTOMOTIVE REPAIR, BUREAU OF, Title 16: §§ 3300-3395.4, Title 26;
BARBERING AND COSMETOLOGY, BOARD OF, Title 16: §§ 900-999, Title 26;
BEHAVIORAL SCIENCES, BOARD OF, Title 16: §§ 1800-1889.3;
BOATING AND WATERWAYS, DEPARTMENT OF, Title 14: §§ 5000-8600;
BUSINESS, TRANSPORTATION AND HOUSING AGENCY, Title 21: §§ 6600-7711;
CALIFORNIA SCIENCE CENTER, Title 2: §§ 4000-6006;
CEMETERY AND FUNERAL BUREAU, Title 16: §§ 1200-1291, Title 16: §§ 2300-2390, Title 26;
CENTRAL VALLEY FLOOD PROTECTION BOARD, Title 23: §§ 1-242;
CHILD SUPPORT SERVICES, DEPARTMENT OF, Title 22: §§ 110000-123000;
CHIROPRACTIC EXAMINERS, BOARD OF, Title 16: §§ 301-390.6;
COASTAL COMMISSION, CALIFORNIA, Title 14: §§ 13001-13666.4; COASTAL
CONSERVANCY, STATE, Title 14: §§ 13705-13895;
COLORADO RIVER BOARD OF CALIFORNIA, Title 14: §§ 12000-12010;
COMMUNITY COLLEGES, CALIFORNIA, Title 5: §§ 50001-59509;
COMMUNITY SERVICES AND DEVELOPMENT, DEPARTMENT OF, Title 22: §§ 100601-101115;
CONSERVATION, DEPARTMENT OF, Title 14: §§ 1670-3965, Title 26;
CONSUMER AFFAIRS, DEPARTMENT OF, Title 16: §§ 1-4268, Title 16: §§ 1-4580;
CONTRACTORS' STATE LICENSE BOARD, Title 16: §§ 810-890;
CONTROLLER, STATE, Title 2: §§ 901-1180.10, Title 18: §§ 13303-16563;
CORPORATIONS, DEPARTMENT OF, Title 10: §§ 250.1-2030;
CORRECTIONS AND REHABILITATION, CALIFORNIA DEPARTMENT OF, Title 15: §§ 3000-3999.7;
CORRECTIONS STANDARDS AUTHORITY, Title 15: §§ 1-1892;
COURT REPORTERS' BOARD OF CALIFORNIA, Title 16: §§ 2400-2481;
DELTA PROTECTION COMMISSION, Title 14: §§ 20000-20110;
DENTAL BOARD OF CALIFORNIA, Title 16: §§ 1000-1090.1;
DEVELOPMENTAL SERVICES, DEPARTMENT OF, Title 17: §§ 50201-59011;
DISPUTE RESOLUTION ADVISORY COUNCIL, Title 16: §§ 3600-3680;

EDUCATION AUDIT APPEALS PANEL, Title 5: §§ 19800-19854; EDUCATION, CALIFORNIA STATE BOARD OF, Title 5: §§ 18460-18600;
EDUCATION, CALIFORNIA DEPARTMENT OF, Title 5: §§ 1-19601;
EDUCATIONAL FACILITIES AUTHORITY, Title 4: §§ 9001-9075;
ELECTRONIC AND APPLIANCE REPAIR, BUREAU OF, Title 16: §§ 2700-2775;
EMERGENCY MEDICAL SERVICES AUTHORITY, Title 22: §§ 100000-100405;
EMERGENCY MANAGEMENT AGENCY, Title 19: §§ 2400-2990, Title 26;
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ENERGY COMMISSION, CALIFORNIA, Title 20: §§ 1001-3108, Title 26;
ENVIRONMENTAL HEALTH HAZARD ASSESSMENT, OFFICE OF, Title 17: § 98100, Title 27: §§ 25102-28040, Title 26;
ENVIRONMENTAL PROTECTION AGENCY (Cal-EPA), CALIFORNIA, Title 14: §§ 19001-19044, Title 27: §§ 10010-23014;
EQUALIZATION, STATE BOARD OF, Title 18: §§ 1-8016, Title 26;
EXPOSITION AND STATE FAIR, CALIFORNIA, Title 14: §§ 4950-4961;
FAIR EMPLOYMENT AND HOUSING, DEPARTMENT OF, Title 2: §§ 7285.0-8504;
FAIR EMPLOYMENT AND HOUSING COMMISSION, Title 2: §§ 7285.0-8504;
FAIR POLITICAL PRACTICES COMMISSION, Title 2: §§ 18109-18997;
FINANCIAL INSTITUTIONS, DEPARTMENT OF, Title 10: §§ 1.1-95.5030, Title 10: §§ 100.100-110.214; FIRE MARSHAL, OFFICE OF THE STATE, Title 19: §§ 1.00-2352, Title 26; FISH AND GAME, DEPARTMENT OF, Title 14: §§ 1.04-886.6;
FISH AND GAME COMMISSION, Title 14: §§ 1.04-886.6;
FOOD AND AGRICULTURE, DEPARTMENT OF, Title 3: §§ 1-7015, Title 4: §§ 4000-4900, Title 26; FORESTRY AND FIRE PROTECTION, BOARD OF, Title 14: §§ 890-1665.5; FORESTRY AND FIRE PROTECTION, CALIFORNIA DEPARTMENT OF, Title 14: §§ 890-1665.5, Title 26;
FRANCHISE TAX BOARD, Title 18: §§ 17000-25208;
FUNERAL DIRECTORS AND EMBALMERS, BOARD OF;
GAMBLING CONTROL, BUREAU OF, Title 11: §§ 2000-2142;
GAMBLING CONTROL COMMISSION, CALIFORNIA, Title 4: §§ 12002-12590;
GENERAL SERVICES, DEPARTMENT OF, Title 2: §§ 1194-1896.370, Title 21: §§ 1-1400; GEOLOGISTS AND GEOPHYSICISTS, BOARD FOR, Title 16: §§ 3000-3067;
GUIDE DOGS FOR THE BLIND, STATE BOARD OF, Title 16: §§ 2250-2294;
HEALTH FACILITIES FINANCING AUTHORITY, CALIFORNIA, Title 4: §§ 7000-7099; HEALTH AND HUMAN SERVICES AGENCY, CALIFORNIA, Title 17: §§ 50201-59011, Title 22: §§ 10001-59999;
HEALTH PLANNING AND DEVELOPMENT, OFFICE OF STATEWIDE, Title 22: §§

90001-97930.10;
HEALTH CARE SERVICES, DEPARTMENT OF Title 22: : §§ 10001-42802, Title 22: : §§ 50000-79861, Title 26;
HEARING AID DISPENSERS BUREAU, Title 16: §§ 1399.100-1399.144;
HIGHWAY PATROL, DEPARTMENT OF CALIFORNIA, Title 13: §§ 600-1875, Title 26; HOME FURNISHINGS AND THERMAL INSULATION, BUREAU OF, Title 4: §§ 1100-1385.4, Title 26;
HORSE RACING BOARD, CALIFORNIA, Title 4: §§ 1400-2105;
HOUSING AND COMMUNITY DEVELOPMENT, DEPARTMENT OF, Title 25: §§ 1-8467; HOUSING FINANCE AGENCY, CALIFORNIA, Title 25: §§ 10001-20209;
INDUSTRIAL DEVELOPMENT FINANCING ADVISORY COMMISSION, CALIFORNIA, Title 10: §§ 6000-6070;
INDUSTRIAL RELATIONS, DEPARTMENT OF, Title 8: §§ 1-17270; INDUSTRIAL WELFARE COMMISSION, Title 8: §§ 11000-11538;
INSURANCE, DEPARTMENT OF, Title 10: §§ 2050-2698.99.13, Title 26;
JUSTICE, DEPARTMENT OF, Title 11: §§ 1-999.223 , Title 11: §§ 3000-5499;
JUVENILE JUSTICE, DIVISION OF, Title 15: §§ 4000-4857;
LABOR STANDARDS ENFORCEMENT, DIVISION OF, Title 8: §§ 11701-13800;
LABOR STATISTICS AND RESEARCH, DIVISION OF, Title 8: §§ 14000-14920;
LANDS COMMISSION, STATE, Title 2: §§ 1900-2980.9, Title 26;
LANDSCAPE ARCHITECTS TECHNICAL COMMITTEE, Title 16: §§ 2600-2680;
LIBRARY, CALIFORNIA STATE, Title 5: §§ 20000-20444;
LOCAL AGENCY DEPOSIT SECURITY, ADMINISTRATION OF, Title 2: §§ 16001.1.1-16010.1.3;
MANAGED HEALTH CARE, DEPARTMENT OF, Title 28: §§ 1000-1300.826;
MANDATES, COMMISSION ON STATE, Title 2: §§ 1181-1189.11;
MARITIME ACADEMY, CALIFORNIA, Title 5: §§ 60000-60325 [repealed];
MEDICAL ASSISTANCE COMMISSION, CALIFORNIA, Title 22: §§ 100501-100540;
MEDICAL BOARD OF CALIFORNIA, Title 16: §§ 1300-1379.31;
MEDICAL INSURANCE BOARD, MANAGED RISK, Title 10: §§ 2698.100-2699.6905; MENTAL HEALTH, DEPARTMENT OF, Title 9: §§ 400-4005;
MINING AND GEOLOGY BOARD, STATE, Title 14: §§ 3500-3699; MOTOR VEHICLES, DEPARTMENT OF, Title 13: §§ 1-599, Title 26;
NARCOTIC ADDICT EVALUATION AUTHORITY, Title 15: §§ 5000-5503;
NATUROPATHIC MEDICINE, BUREAU OF, Title 16: §§ 4200-4268;
NEW MOTOR VEHICLE BOARD, Title 13: §§ 550-599;
NURSING, BOARD OF REGISTERED, Title 16: §§ 1400-1494;
NURSING HOME ADMINISTRATOR PROGRAM, Title 16: §§ 3100-3180;

OCCUPATIONAL SAFETY AND HEALTH (CAL/OSHA), DIVISION OF, Title 8: §§ 330-344.90;

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD, Title 8: §§ 345-397;

OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD, Title 8: §§ 401-428, Title 8: §§ 450-8618;

OCCUPATIONAL THERAPY, BOARD OF, Title 16: §§ 4100-4184;

OPTICIAN PROGRAM, REGISTERED DISPENSING, Title 16: §§ 1399.200-1399.285;

OPTOMETRY, STATE BOARD OF, Title 16: §§ 1500-1581;

OSTEOPATHIC MEDICAL BOARD OF CALIFORNIA, Title 16: §§ 1600-1697;

PARKS AND RECREATION, DEPARTMENT OF, Title 14: §§ 4300-4971, Title 26;

PAROLE HEARINGS, BOARD OF, Title 15: §§ 2000-2870, Title 15: §§ 4900-4997, Title 15: § 7001;

PEACE OFFICER STANDARDS AND TRAINING, COMMISSION ON, Title 11: § 1000-1084, Title 11: §§ 9020-9078;

PERSONNEL ADMINISTRATION, DEPARTMENT OF, Title 2: §§ 599.600-599.995;

PERSONNEL BOARD, STATE, Title 2: §§ 1-549.95;

PESTICIDE REGULATION, DEPARTMENT OF, Title 3: §§ 6000-6960;

PHARMACY, CALIFORNIA STATE BOARD OF, Title 16: §§ 1700-1795, Title 26;

PHYSICAL THERAPY BOARD OF CALIFORNIA, Title 16: §§ 1398-1399.85;

PHYSICIAN ASSISTANT COMMITTEE, Title 16: §§ 1399.500-1399.612;

PILOT COMMISSIONERS, BOARD OF, Title 7: §§ 201-237;

PLANNING AND RESEARCH, OFFICE OF, Title 14: §§ 16000-16041;

PODIATRIC MEDICINE, BOARD OF, Title 16: §§ 1399.650-1399.710;

POLLUTION CONTROL FINANCING AUTHORITY, CALIFORNIA, Title 4: §§ 8001-8125;

PRIVATE POSTSECONDARY AND VOCATIONAL EDUCATION, BUREAU FOR, Title 5: §§ 70000-77880;

PROFESSIONAL FIDUCIARIES BUREAU, Title 16: §§ 4400-4580;

PSYCHOLOGY, BOARD OF, Title 16: §§ 1380-1397.71;

PUBLIC EMPLOYEES' RETIREMENT SYSTEM, Title 2: §§ 550-599.554;

PUBLIC EMPLOYMENT RELATIONS BOARD, Title 8: §§ 31001-91630;

PUBLIC HEALTH, CALIFORNIA DEPARTMENT OF, Title 17: §§ 100-38005, Title 22: §§ 60001-69214, Title 27: §§ 25102-28040;

PUBLIC UTILITIES COMMISSION, STATE OF CALIFORNIA, Title 20: §§ 1-201;

REAL ESTATE, DEPARTMENT OF, Title 10: §§ 2700-3200;

REAL ESTATE APPRAISERS, OFFICE OF, Title 10: §§ 3500-3780;

REHABILITATION, DEPARTMENT OF, Title 9: §§ 7000-7413;

NATURAL RESOURCES AGENCY, CALIFORNIA, Title 14: §§ 14100-15411;

RESPIRATORY CARE BOARD, Title 16: §§ 1399.300-1399.395;
SAN JOAQUIN RIVER CONSERVANCY, Title 14: §§ 25001-25012;
SCHOOL FINANCE AUTHORITY, Title 4: §§ 10151-10191;
SECRETARY OF STATE, Title 2: §§ 19001-22610.4;
SECURITY AND INVESTIGATIVE SERVICES, BUREAU OF, Title 16: §§ 600-699.41; SEISMIC SAFETY COMMISSION, CALIFORNIA, Title 19: §§ 3000-3001;
SIERRA NEVADA CONSERVANCY, Title 14: § 25231;
SMALL AND MINORITY BUSINESS, OFFICE OF, Title 2: §§ 1896-1896.51;
SMALL BUSINESS LOAN GUARANTEE PROGRAM, Title 10: §§ 5000-5270;
SOCIAL SERVICES, DEPARTMENT OF, Title 22: §§ 80000-123000;
SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY BOARD, Title 16: §§ 1399.150-1399.199.14;
SPILL PREVENTION AND RESPONSE, OFFICE OF, Title 14: §§ 790-886.6;
STRUCTURAL PEST CONTROL BOARD, Title 16: §§ 1900-1999.5, Title 26;
STUDENT AID COMMISSION, CALIFORNIA, Title 5: §§ 30000-30927;
TAX CREDIT ALLOCATION COMMITTEE, CALIFORNIA, Title 4: §§ 10300-11008;
TAX EDUCATION COUNCIL, CALIFORNIA, Title 16: §§ 3201-3236;
TEACHER CREDENTIALING, COMMISSION ON, Title 5: §§ 80000-80690.1;
TEACHERS' RETIREMENT SYSTEM, STATE, Title 5: §§ 20500-24013;
TOXIC SUBSTANCES CONTROL, DEPARTMENT OF, Title 22: §§ 66001-69214;
TRANSPORTATION, DEPARTMENT OF, Title 4: §§ 2240-2519, Title 21: §§ 1401.1-10000.13, Title 26;
TRANSPORTATION COMMISSION, CALIFORNIA, Title 21: §§ 8001-8207;
TREASURER, STATE, Title 2: §§ 1897-1899.540;
UNEMPLOYMENT INSURANCE APPEALS BOARD, CALIFORNIA, Title 22: §§ 5000-5200;
VETERANS AFFAIRS, DEPARTMENT OF, Title 12: §§ 1-3000;
VETERINARY MEDICAL BOARD, Title 16: §§ 2000-2085.13;
VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD, Title 2: §§ 600-897.8;
VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS, BOARD OF, Title 16: §§ 2500-2594;
WASTE MANAGEMENT BOARD, CALIFORNIA INTEGRATED, Title 14: §§ 17000-18932;
WATER RESOURCES, DEPARTMENT OF, Title 23: §§ 200-649.6, Title 23: §§ 4000-4007;
WATER RESOURCES CONTROL BOARD, STATE, Title 23: §§ 640-4007;
WORKERS' COMPENSATION, DIVISION OF, Title 8: §§ 9700-10999;

rules are contained in the various 28 Titles in the Code of Regulations. Rather than imposing on the unions the obligation to monitor these provisions for changes which may affect wages, hours and working conditions, the Dills Act properly put the onus on the State - which it then delegated to its various departments - to notify the unions. When a subset or part of a regulatory change implicates wages, hours or working conditions, the State must provide notice pursuant to section 3615.5. It is logical that with this backdrop of a regulation-driven state framework, that it was changes to these types of rules that were contemplated in section 3615.5.

Principles of statutory construction require the court to scrutinize the actual words of the statute, giving them a plain and commonsense meaning.” (*People v. Valladoli* (1996) 13 Cal.4th 590, 597.) “If the words of the statute are clear, the court should not add to or alter them to accomplish a purpose that does not appear on the face of the statute or from its legislative history.” (*California Teachers Assn v. San Diego Community College Dist.* (1981) 28 Cal.3d 692, 698.) Moreover, rules of construction also dictate that when expressly including certain items in a statute, the Legislature impliedly

WORKERS' COMPENSATION APPEALS BOARD, Title 8: §§ 10300-10999;
WORKERS' COMPENSATION MEDICAL UNIT, DIVISION OF, Title 8: §§ 1-159;
YOUTH AND ADULT CORRECTIONAL AGENCY, Title 15: § 7001;
YOUTHFUL OFFENDER PAROLE BOARD, Title 15: §§ 4900-4997;
PRISON INDUSTRY AUTHORITY, CALIFORNIA; Title 15: §§ 8000-8399;

excluded others. (*In re J.B.* (2009) 178 Cal.App.4th 751, 757-758; *see, Imperial Merchant Services, Inc. v. Hunt* (2009) 47 Cal.4th 381, 389; [citing the rule of statutory construction, *expression unius est exclusion alterius*-to express or include one thing implies the exclusion of the other].) Thus, when a specific list is provided, it should be determined to be an exclusive list not an illustrative one.

Section 3615.5 enumerates only the following list for which notice shall be provided: “law, rule, resolution, or regulation.” First, an executive order is not on this list. But even if it was, it is clear that the State then did not follow the subsequent steps required to fit within the confines of the second paragraph of this section. Adoption without prior notice is allowed if it is immediately followed by a meet and confer. The Governor never took that step, in any event, pertaining to furloughs issued unilaterally by executive order.

5. What does the legislative history of 3516.5 disclose about the definition of an “emergency”?

Research discloses very little history illuminating the use of the term emergency in this section, but proper rules of interpretation dictate that it be interpreted consistently with the provisions enacted along with it. As argued in the Union’s Reply Brief (*see, Argument, part E*), Respondents ignore the fundamental rule of statutory construction that statutes must be interpreted *in pari materia* - that is, statutes relating to the same subject matter should be construed together. (*Medical Bd. of California v. Superior Court* (2001) 88 Cal.App.4th 1001, 1016.) This is especially required when such statutes are enacted at

the same time, or during the same session of the Legislature, or when they become effective on the same date. (*Pierce v. Riley* (1937) 21 Cal.App.2d 513, 518.)

Under this principle of construction, the proper understanding of “emergency” in section 3615.5 must be construed as its use in section 3523. This construction reflects a true state of emergency - along the lines of an act of God. This construction also happens to be consistent with how the term is used in other civil service statutes. (*See*, Argument, part 1, above.)

III. CONCLUSION

Appellants respectfully requests that the Appellate court reverse the judgment upholding the executive order.

Respectfully submitted,

Dated: March 1, 2010

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 1000,

By:



ANNE M. GIESE
Attorney for Petitioners and Appellant
SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 1000

(BY MAIL) by placing a true copy thereof enclosed in a sealed envelope addressed to the person(s) at the address as follows:

- depositing the sealed envelope with the United States Postal Service, with the postage fully prepaid.
- 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 Sacramento, California, in a sealed envelope with postage fully prepaid.

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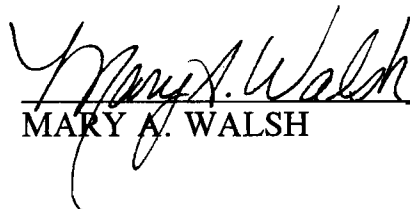
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Declaration was executed on March 1, 2010, at Sacramento, California.



MARY A. WALSH