



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

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

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

IS THIS AN AMENDED CHARGE? YES NO

1. CHARGING PARTY: EMPLOYEE EMPLOYEE ORGANIZATION EMPLOYER PUBLIC¹

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

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

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

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

a. Full name:
b. Mailing address:

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

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

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

5. GRIEVANCE PROCEDURE

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

Yes No

6. STATEMENT OF CHARGE

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

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

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

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

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

See Attachment d.

DECLARATION

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

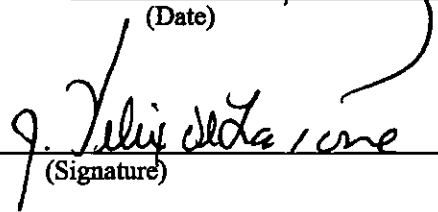
(Date)

at Sacramento, California

(City and State)

J. Felix De La Torre

(Type or Print Name)



(Signature)

Title, if any: Staff Attorney, SEIU Local 1000

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

Telephone Number: (916) 554-1279

ATTACHMENT d.

STATEMENT OF THE CHARGE

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

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

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

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

[Id.](Emphasis added)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

REMEDIES REQUESTED

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