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ARNOLD SCHWARZENEGGER, as Governor of the State
15 of California; DAVID GILB as Director of the Department of
Personnel Administration

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

16 SUPERIOR COURT OF CALIFORNIA
17 CITY AND COUNTY OF SAN FRANCISCO

18 CALIFORNIA ATTORNEYS,
19 ADMINISTRATIVE LAW JUDGES AND
HEARING OFFICERS IN STATE
20 EMPLOYMENT, GLEN GROSSMAN,
MARK HENDERSON, GEOFFREY SIMS,
21 and DOES 1-500,

22 Petitioners/Plaintiffs,

23 v.

24 ARNOLD SCHWARZENEGGER, et al.,

25 Defendants/Respondents.
26

CASE NO. CPF-09-509205

**DECLARATION OF DAVID W. TYRA IN
SUPPORT OF RESPONDENTS' BRIEF RE:
EXCLUSIVE CONCURRENT JURISDICTION**

**Date: April 15, 2009
Time: 9:30 a.m.
Dept.: 301**

Action Filed: February 10, 2009

27 ///

28 912989.1

- 1

1 I, David W. Tyra, declare:

2 1. I am an attorney licensed to practice law in the State of California and am a
3 member of Kronick, Moskovitz, Tiedemann & Girard, attorneys of record for Respondents
4 Governor Arnold Schwarzenegger and David Gilb in the above-captioned matter.

5 2. I have personal knowledge of all matters stated in this declaration and, if
6 called upon to do so, I could and would competently testify to those facts.

7 3. I was counsel of record for Respondents in several actions filed by state
8 employee organizations challenging Governor Schwarzenegger's December 19, 2008 Executive
9 Order that were heard by the Hon. Patrick Marlette of the Sacramento County Superior Court on
10 January 29, 2009. Following the hearing on those cases, Judge Marlette issued a final decision on
11 January 30, 2009 finding in favor of Respondents and ruling that the Governor had the authority
12 to furlough state employees. A copy of Judge Marlette's January 30, 2009 decision already has
13 been provided to this Court.

14 4. On February 3, 2009, counsel for State Controller John Chiang sent a letter
15 to Judge Marlette asking for clarification regarding whether Judge Marlette's January 30, 2009
16 decision applied to the employees of the other elected officials of the State of California. In
17 response, Judge Marlette issued a Minute Order on February 4, 2009, in which he stated that the
18 other elected officials of the State of California had not been parties before him, nor had their
19 claims been presented to him and, therefore, the Court was taking no position as to whether the
20 January 30, 2009 decision applied to the employees of the elected officials of the State. A copy
21 of this Minute Order already has been provided to this Court.

22 5. In response to Judge Marlette's February 4, 2009 Minute Order, most of
23 the elected officials of the State erroneously took the position that they were under no obligation
24 to furlough their employees. The elected officials made several public statements to the effect
25 that they would not comply with Governor Schwarzenegger's Executive Order and would not
26 furlough their employees. Attached to this declaration and marked as Exhibit A thereto is a
27 collection of public statements by various elected officials of the State that were reported in the
28

1 Sacramento Bee in which the elected officials of the State declared their refusal to comply with
2 the Governor's Executive Order.

3 6. As a direct result of the elected officials' refusal to comply with the
4 Executive Order, the Governor initiated an action against Controller Chiang seeking a writ of
5 mandate compelling him to comply with the Executive Order with respect to his issuance of
6 payroll for the state employees employed by the elected officials of the State. I was attorney of
7 record for the Governor in this action. The matter was heard by Judge Marlette on March 12,
8 2009 and on that same date he issued his final decision in that action finding in favor of the
9 Governor and ruling that the Governor had the authority to order furloughs of the employees of
10 the other elected officials of the State. A copy of this decision already has been provided to this
11 Court.

12 I declare under penalty of perjury under the laws of the State of California that the
13 foregoing is true and correct and that this declaration was executed on March 30, 2009 at
14 Sacramento, California.


15 
16 _____
17 David W. Tyra
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28

EXHIBIT A

THE SACRAMENTO BEE sacbee.com

This story is taken from Sacbee / Capitol and California / Furloughs

Workers under elected state officials won't abide by furloughs today

jortiz@sacbee.com

Published Friday, Feb. 06, 2009

Despite Gov. Arnold Schwarzenegger's order for state workers to take today off without pay, one group will be showing up for work, just like always.

Their bosses, seven officers elected in statewide elections and one independent board, say that the governor can't furlough them. Schwarzenegger says he can. A Sacramento Superior Court judge issued an order Thursday that amounts to a "no comment" on the matter.

The furlough fight between the Republican governor and the mostly Democratic officials raises the stakes in what has become a constitutional game of chicken against the backdrop of California's budget crisis. It's probably not going to be resolved without more lawsuits, said one expert.

Andrea Hoch, Schwarzenegger's legal affairs secretary, said that if Controller John Chiang doesn't implement the furlough order for his own employees and those of other constitutional officers, the administration will take him to court.

"The Governor's Office and the Department of Personal Administration is prepared to file suit against him to compel him to obey the law and assist the state in averting a cash crisis that he himself has warned is mere days away," Hoch said in a Thursday press statement.

Chiang spokesman Jacob Roper said that the controller "is going to continue to follow the court ruling - which did not apply to the statewide officers."

The furlough controversy intensified on Thursday after Judge Patrick Marlette responded to a letter from Chiang asking for clarification of a Jan. 29 decision supporting Schwarzenegger's emergency furlough power.

Schwarzenegger's attorneys had interpreted language in that first decision as giving him emergency power to furlough constitutional officers' employees, even though those officials control their own budgets and assume office in a statewide election, just like the governor.

Exhibit A

The constitutional officers, led by Chiang, disagreed. They noted that before last week, the Governor's Office had agreed with them that constitutional officers' employees were outside executive authority. Neither side brought up the issue in arguments filed to Marlette.

Marlette said Thursday that his January ruling didn't address whether the governor could furlough some 15,600 employees who work for the lieutenant governor, the controller, the secretary of state, the treasurer, the superintendent of public instruction, the insurance commissioner, the attorney general and the independent Board of Equalization.

"The independently elected Constitutional Officers and other elected statewide officials ... were not parties to these matters," Marlette wrote in response to Chiang's letter asking for clarification. "The Court's ruling therefore did not address, or make any ruling regarding, the Governor's authority to order furloughs for the employees of those officers and officials. Accordingly, the Court expresses no views regarding that issue."

On Thursday, Schwarzenegger spokesman Matt David said the governor expected constitutional offices to furlough their employees. He noted that Marlette's order didn't make a specific judgment about the application of furloughs to the independently elected officials.

The administration interprets Marlette's January ruling as confirming Schwarzenegger's authority to furlough all state employees who fall under the jurisdiction of the Dills Act, including those working for constitutional officers.

The Dills Act lays out employee rights to labor representation and sets rules for collective bargaining.

The furlough exemptions also run counter to the state's policy that pay be uniform across job classes and across departments.

The state negotiates contracts with bargaining units of employees with similar jobs, not with departments, said Jason Dickerson of the Legislative Analyst's Office, "to ensure that pay changes are administered similarly for similar executive branch employees across all departments."

The LAO doesn't have a position on whether constitutional officers are exempt from the furlough, Dickerson said.

Athena Roussos, a McGeorge School of Law professor, said the legal questions are murky, and either side would be making a mistake to read anything into Marlette's order.

"Honestly, I don't see how the governor can claim victory," Roussos said. "But it's not necessarily a win for state employees. What we're left with here is an issue that's never been raised before the court. I expect we'll see more litigation."

The state Department of Administration has sent pay letters to the controller that order him to pay the constitutional officers' employees at the furloughed rate.

But absent a specific court ruling, the constitutional officers argue that the default legal position is to protect their independence.

Tom Dresslar, a spokesman for Treasurer Bill Lockyer, said Marlette's order Thursday

morning "puts us back to the status quo before last week's court order. ... The administration told the constitutional officers directly and (Schwarzenegger) aides stated publicly that the furlough executive order could not be enforced against constitutional officers."

Insurance Commissioner Steve Poizner's office said it will be open for business today.

With the state facing a \$40 billion budget gap through the middle of next year, Schwarzenegger ordered furloughs for the first and third Fridays of each month from now through June 2010. The governor estimates the policy will save the state around 10 percent on wage costs, or \$1.3 billion.

Secretary of State Debra Bowen has "already cut 10 percent from her budget," said spokeswoman Kate Folmer. Bowen is looking for more savings, but Friday furloughs won't be part of it, Folmer said. Other officials said that they also have made similar cuts and will trim more.

Superintendent of Public Instruction Jack O'Connell has directed his department to reduce its spending by 10 percent, a spokeswoman said, but he will not furlough any of the 2,500 people who work for him in the Department of Education.

Officials representing Lt. Gov. John Garamendi and Attorney General Jerry Brown didn't immediately return calls seeking comment, but both have sent letters to Chiang asking that the controller, whose office cuts state paychecks, exclude their employees from furlough pay reductions.

The Board of Equalization, which employs about 4,200 workers, also sent a similar request to Chiang's office, said spokeswoman Anita Gore.

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Call The Bee's Jon Ortiz, (916) 321-1043.

THE SACRAMENTO BEE sacbee.com

This story is taken from [Sacbee / Capitol and California / Furloughs](#)

Schwarzenegger extends reach of furlough plan

jortiz@sacbee.com

Published Monday, Feb. 02, 2009

Thousands of state workers who thought Gov. Arnold Schwarzenegger couldn't furlough them found out Friday that he thinks otherwise – and that he believes the law is on his side.

The latest twist in the state employee furlough saga occurred when Schwarzenegger's office called the other seven officers who are elected by statewide vote and the independent Board of Equalization.

The message: The governor can and will furlough your employees starting Feb. 6.

The BOE and the constitutional officers, who include Attorney General Jerry Brown, Treasurer Bill Lockyer and Controller John Chiang, have asserted that Schwarzenegger doesn't have authority over the 15,600 employees working for them. Schwarzenegger has accused his elected colleagues of resisting furloughs for political purposes.

Responses to the governor's move ranged from defiant to cautious.

Brown said in an e-mailed statement that he would "take appropriate legal steps" to keep his employees from furloughs but did not specify what that meant.

Lockyer spokesman Tom Dresslar said the treasurer would go along with any legislation, bargaining agreement or court ruling that specifically applies the furloughs to his office.

"We are not above the law, but we believe the law and the constitution make it clear that we are not below the governor either in this matter," Dresslar said. Lockyer has sent a letter to Chiang asking that the controller exclude Treasurer's Office employees from any furlough pay reduction.

Anita Gore, spokeswoman for the BOE, said the tax collecting agency's leadership would have something to say when they meet next week: "Our board members will weigh in and our legal staff will look at it, as I imagine all legal staff in all the constitutional offices will be looking at it."

Chiang spokesman Jacob Roper said, "We're reviewing it right now."

The governor's legal team saw the opportunity to broadly apply furloughs after a Sacramento Superior Court judge on Thursday ruled that the state's \$40 billion financial crisis constitutes an emergency that gives Schwarzenegger the authority to furlough 238,000 state workers to save money.

Several unions and Chiang were on the losing side of the decision.

"Yesterday's court ruling made it clear that the furlough applies to all state employees who fall under the jurisdiction of the Dills Act, including those working for constitutional officers," Schwarzenegger spokesman Adam McLear said Friday.

The Dills Act lays out employee rights to labor representation and sets rules for collective bargaining.

As the Governor's Office placed its calls, the state Department of Personnel Administration sent Chiang pay letters ordering furloughs for employees working under constitutional officers.

The letters also described which departments and agencies will take off the first and third Friday of each month and which can flexibly schedule their employees.

Meanwhile, Service Employees International Union Local 1000, which represents 95,000 state workers, and other unions will ask an appeals court to delay furloughs and consider their case as early as Monday.

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THE SACRAMENTO BEE sacbee.com
Capitol Alert



The latest on California politics and government

January 12, 2009

Garamendi, Brown, and Lockyer won't furlough workers

Three of the Democratic statewide officials have now said they will not abide by Gov. Arnold Schwarzenegger's executive order to furlough state workers twice a month.

Attorney General Jerry Brown will implement "alternative measures" to cut costs, according to a memo obtained by the State Worker blog.

State Treasurer Bill Lockyer told the Schwarzenegger administration in a letter Friday that he won't furlough his staff.

"We believe that the governor has not established that he has the legal authority to impose furloughs and the related salary cuts on state employees," Lockyer wrote.

Lt. Gov. John Garamendi said in a statement today that he, too, won't furlough his staff.

"We have already cut the lieutenant governor's budget by 10 percent this year and we will cut another 10 percent this year. We are public servants for the people of California so we will not be furloughing our staff," Garamendi said in a prepared statement.

The offices of state's constitutional officers (Brown, Lockyer, Garamendi, state Controller John Chiang, Insurance Commissioner Steve Poizner, Secretary of State Debra Bowen and Superintendent of Public Instruction Jack O'Connell) do not fall under the governor's authority to force furloughs.

Categories: AG Jerry Brown, Bill Lockyer, Gov. Arnold Schwarzenegger, John Garamendi, State budget, Steve Poizner

Posted by **Shane Goldmacher**

1:42 PM | Comments (75) | SHARE

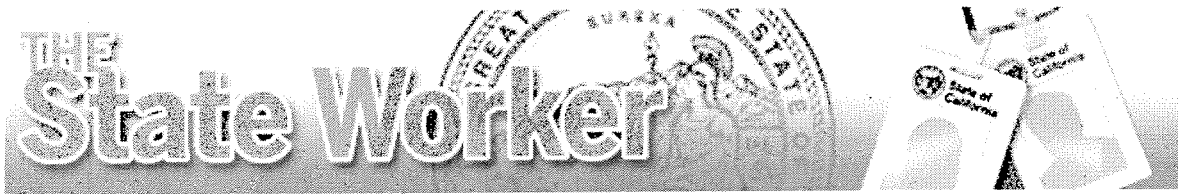
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The State Worker



Chronicling civil-service life for California state workers

March 16, 2009

Bowen waiting for furlough answers from Schwarzenegger

We've called around to all the constitutional officers to see what they'll do in light of Thursday's Superior Court ruling that Gov. Arnold Schwarzenegger can furlough their workers.

Our questions to all: Are you now going to comply with the governor's furlough order? If so, what details can you share?

Secretary of State **Debra Bowen's** spokeswoman, **Kate Folmar**, sent an e-mail on Friday after we left a phone message:



As you know, yesterday's Superior Court decision on furloughs will be appealed. Secretary Bowen has never disputed the need for shared sacrifice during these dire economic times -- that's why she has already cut 10 percent of her current budget. What's mystifying is why the governor is fixated on furloughs when there are many other sensible ways to save money and still serve the public.

Our follow-up e-mail:

Is the secretary going to apply the furlough order to her department or refuse pending the appeal? ... If the secretary does apply the furloughs, will it be for one day per month (as per the SEIU tentative agreement) for everyone, or split, with SEIU folks taking one day and everyone else taking two?

The response:

... Secretary Bowen is waiting for a number of answers from the Governor's office and DPA on how to proceed.

[Click here to read the responses from the controller's office and the treasurer's office.](#)

IMAGE: Debra Bowen / www.sos.ca.gov

Categories: Furloughs

Tags: furloughs

THE SACRAMENTO BEE sacbee.com
The State Worker



Chronicling civil-service life for California state workers

January 22, 2009

Board of Equalization says it won't furlough its workers

The Board of Equalization sent a polite "thanks but no thanks" letter to DPA this afternoon stating that **it won't furlough workers**. The letter from Executive Director **Ramon J. Hirsig** says, in essence, that furloughing workers in his revenue-generating agency doesn't make financial sense for the state.

Read the BOE letter here.

Categories: State budget

Tags: Board of Equalization

Posted by **Jon Ortiz**

5:26 PM | Comments (34) | [SHARE](#)

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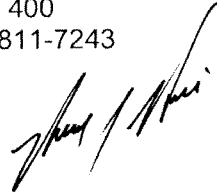
justjared wrote on 01/26/2009 02:59:01 PM:

Memorandum

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

Date : January 22, 2009

From : Ramon J. Hirsig
Executive Director



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

The Board of Equalization, as an independent Constitutional organization and revenue generating agency, is opting not to participate in a furlough program as proposed by the Governor. BOE is, however, working to identify potential budget savings similar to the savings that would be achieved through participation in a furlough program.

Under your proposal distributed January 9, 2009, the option allowing employees to accrue two furlough days per month, to be taken when feasible, would cause a revenue delay of \$112 million in general fund dollars while saving \$19.6 million in general fund personnel costs. Revenue delay for all funds would be \$187 million.

Please call me at 916-327-4975 with any questions.

RJH:ag

cc: Honorable Betty T. Yee, Chairwoman
Honorable Judy Chu, Ph.D., Vice Chair
Honorable Bill Leonard
Honorable Michelle Steel
Honorable John Chiang

THE SACRAMENTO BEE sacbee.com
The State Worker



Chronicling civil-service life for California state workers

January 12, 2009

Garamendi: No furloughs in my shop, either

Another California constitutional officer, Lt. Gov. John Garamendi, has joined the state attorney general and treasurer in refusing to adopt state worker furloughs next month.

In a terse statement his office just released, Garamendi stated: "We have already cut the Lieutenant Governor's budget by 10 percent this year and we will cut another 10 percent this year. We are public servants for the people of California so we will not be furloughing our staff."

Garamendi's operation has a staff of 20 and -- believe it or not -- three offices (in San Francisco, Los Angeles and Sacramento), spokeswoman Beth Willon said.

Categories: Pay and benefits, State budget

Posted by **Andrew McIntosh**

1:49 PM | Comments (4) | SHARE ...

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Comments: 4 Showing: Newest first

1 **PROOF OF SERVICE**

2 I, Bao Xiong, declare:

3 I am a citizen of the United States and employed in Sacramento County, California. I am
4 over the age of eighteen years and not a party to the within-entitled action. My business address
5 is 400 Capitol Mall, 27th Floor, Sacramento, California 95814. On March 30, 2009, I served a
6 copy of the within document(s):

7 **DECLARATION OF DAVID W. TYRA IN SUPPORT OF RESPONDENTS'
8 BRIEF RE: EXCLUSIVE CONCURRENT JURISDICTION**

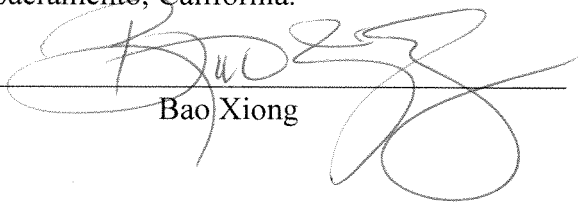
- 9 by transmitting via facsimile the document(s) listed above to the fax number(s) set
10 forth below on this date before 5:00 p.m.
- 11 by transmitting via e-mail or electronic transmission the document(s) listed above
12 to the person(s) at the e-mail address(es) set forth below.

11 Patrick J. Whalen, Esq.
12 THE LAW OFFICE OF BROOKS
13 ELLISON
14 1725 Capitol Avenue
15 Sacramento, CA 95814
16 Fax: (916) 448-5346
17 Email: pat.whalen@sbcglobal.net

Ronald B. Turovsky
MANATT, PHELPS & PHILLIPS,
LLP
11355 West Olympic Blvd.
Los Angeles, CA 90064-1614
Fax: (310) 312-4224
Email: rturovsky@manatt.com

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

21 I declare under penalty of perjury under the laws of the State of California that the above
22 is true and correct. Executed on March 30, 2009, at Sacramento, California.

23 
24 _____
25 Bao Xiong