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13 Attorneys for Defendants/Respondents
ARNOLD SCHWARZENEGGER as Governor of the State of
14 California; DAVID GILB as Director of the Department of
Personnel Administration

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

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 IN AND FOR THE COUNTY OF ALAMEDA
17

18 SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 1000, and YVONNE
19 WALKER, a taxpayer,

CASE NO. RG-09456750

NOTICE OF APPEAL

20 Petitioners/Plaintiffs,

21 v.

22 ARNOLD SCHWARZENEGGER as, Governor
of the State of California; JOHN CHIANG,
23 Controller of the State of California; STEVE
POIZNER, Insurance Commissioner of the State
24 of California; DAVID GILB, as Director of the
Department of Personnel Administration, et al.,
25

26 Defendants/Respondents.
27
28

934492.1

1 To the Clerk of the Superior Court of the State of California for the County of
2 Alameda.

3 PLEASE TAKE NOTICE that Respondents/Defendants ARNOLD
4 SCHWARZENEGGER, in his capacity as Governor of the State of California; DAVID GILB, in
5 his former capacity as Director of the Department of Personnel Administration, hereby appeal to
6 the First District Court of Appeal, State of California from the final judgment in this matter and
7 the following Orders that are separately appealable: (1) the Order of October 14, 2009 overruling
8 Respondents'/Defendants' demurrer to the Petition for Writ of Mandate, a true and correct copy
9 of which is attached as Exhibit A hereto; (2) the Order After Hearing in this matter entered on
10 December 31, 2009, a true and correct copy of which is attached as Exhibit B hereto; (3) the
11 Order After Hearing in this matter entered on February 25, 2010, a true and correct copy of which
12 is attached as Exhibit C hereto; and (4) the Judgment for Petitioner in this matter entered on
13 February 25, 2010, a true and correct copy of which is attached as Exhibit D hereto; as well as
14 any Writ of Mandate subsequently issued pursuant to any and/or all of them.

15 The December 31, 2009 Order (Exhibit B), the February 25, 2010 Order (Exhibit
16 C), and the February 25, 2010 Judgment for Petitioner (Exhibit D) granted a Writ of Mandate and
17 attendant relief in this action. Therefore, the filing of this appeal automatically stays the effect of
18 those Orders and the Judgment, as well as any subsequently issued Writ of Mandate itself.
19 (*Hayworth v. City of Oakland* (1982) 129 Cal.App.3d 723, 727.)

20 Dated: February 26, 2010

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Law Corporation

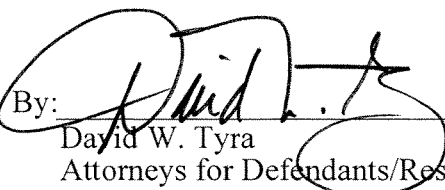
21 By: 
22 David W. Tyra
23 Attorneys for Defendants/Respondents
24 ARNOLD SCHWARZENEGGER as Governor of the
25 State of California; DAVID GILB as Director of the
26 Department of Personnel Administration

EXHIBIT A



7843970

FILED
ALAMEDA COUNTY

OCT 14 2009

CLERK OF THE SUPERIOR COURT

By David W. Tyra Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

SERVICE EMPLOYEES
INTERNATIONAL UNION, LOCAL 1000,
AND YVONNE WALKER,

Petitioners/Plaintiffs,

vs.

ARNOLD SCHWARZENEGGER, et al.

Respondents/Defendants.

RG09456750

ORDER OVERRULING DEMURRER

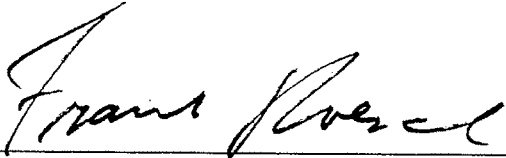
The Demurrer of Defendants/Respondents Arnold Schwarzenegger, et al. came on regularly for hearing on September 11, 2009, in Department 31 of this Court, the Honorable Frank Roesch presiding. David W. Tyra appearing for Schwarzenegger. Ross C. Moody appearing for the State Controller. William Yamada and co-counsel Jenny L. Esquivel appearing for the California Energy Commission. Aparna Sridhar appearing for Glenn Pomeroy. Ronald B. Turovsky

appearing for Joan Borucki. Felix De La Torre appearing for S.E.I.U. Jeffery Ryan Rieger appearing for CALPERS.

The Court having considered the pleadings and arguments submitted in support of and in opposition to the motion, and good cause appearing, it is hereby ORDERED that the demurrer on grounds of subject matter jurisdiction/exclusive concurrent jurisdiction is OVERRULED.

IT IS SO ORDERED.

DATED: 10/14/09



Frank Roesch
Judge of the Superior Court

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

Case Number : RG09 456750

Case name: Service Employees International vs. Schwarzenegger

ORDER OVERRULING DEMURRER

DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document **ORDER OVERRULING DEMURRER** as mailed first class, postage prepaid, in a sealed envelope, addressed as shown at the bottom of this document, and that the mailing of the foregoing and execution of this certificate occurred at 1221 Oak Street, Oakland, CA 94612

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 19, 2009

Executive Officer/Clerk of the Superior Court
By Shanika Hatfield, Deputy Clerk

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EXHIBIT B

COPY



FILED
ALAMEDA COUNTY

DEC 31 2009

CLERK OF THE SUPERIOR COURT

By Vicki Daybell *VD*

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

SERVICE EMPLOYEES
INTERNATIONAL UNION LOCAL
1000, and YVONNE WALKER,

Petitioners/Plaintiffs,

vs.

ARNOLD SCHWARZENEGGER, et
al.,

Respondents/Defendants.

RG09456750

ORDER GRANTING PETITION
FOR WRIT OF MANDATE

The hearings on the coordinated Petitions for Writ of Mandate of California Attorneys, Administrative Law Judges and Hearing Officers in State Employment ("CASE"), Union of American Physicians and Dentists ("UAPD"), and Service Employees International Union, Local 1000 and Yvonne Walker ("SEIU") came on regularly on November 16, 2009, in Department 31 of this Court, Judge Frank Roesch presiding. CASE appeared by Patrick Whalen of The Law Office of

of these non-General Fund positions. SEIU alleges that the furloughing of employees in agencies where there is no General Fund savings has no rational basis and is arbitrary, capricious and unlawful. In addition, Petitioners argue that furloughs of special funds positions interfere with the purposes for which those special funds were created because they decrease services to the public and impede the operations of the special funds departments and agencies.²

Respondents argue that furloughs achieve General Fund savings as well as other benefits to the General Fund. Furlough of those employees in special fund departments or positions increased the amount of unallocated special fund monies, and that those unallocated special fund monies are borrowable resources that the State can use to meet its fiscal obligations. The greater the amount of internal borrowable resources, the less external borrowing the State must pursue to meet its obligations. Respondents argue that the Governor has the discretion to decide that furloughs are the best means to achieve the goal of ameliorating the State's fiscal

² The Court notes that SEIU sought a writ of mandate in the Sacramento County Superior Court on the grounds that the Governor lacked authority to order furloughs or that statutory law expressly forbids ordering furloughs. In that case, which is now on appeal, the court determined that the Governor has the statutory authority to reduce the hours of state employees under Government Code section 19851 and 19849. While that decision is not a final decision and is not binding on this Court, the court there did not reach the questions of whether the July 1, 2009 Executive Order complied with the requirements of Section 19851(a), whether either Executive Order failed to comply with Section 19851(a) with respect to non-General Fund agencies, or whether furloughs of non-General Fund agencies violated Section 16310(a). Further, that decision was based upon the circumstances presented at the time, and was issued before the Legislature passed a revised budget in February of 2009, and before it passed its 2009/10 budget.

crisis, and that the Court cannot substitute its judgment for the Governor's. Moreover, Respondents argue, this discretion permits the Governor to furlough employees even when it creates no savings or benefit to the General Fund if he does so based upon the principles of labor parity and sharing the burden among all State employees.

In response to Respondents' borrowable funds argument, Petitioners contend that several agencies are funded by special funds as to which internal borrowing is expressly prohibited. As to these agencies, there are no General Fund savings and no benefits to the State's fisc, only reductions in service to the public. Further, in those instances where special funds are "borrowable funds," Government Code section 16310(a) permits special funds to be loaned to the General Fund only when such borrowing will not "interfere with the object for which a special fund was created."

DISCUSSION

A writ of mandate will lie to compel the performance of an act which the law specifically enjoins, as a duty resulting from an office, trust, or station. (Cal. Code Civ. Proc. §1085.) A writ of mandate will issue when there is a clear, present, ministerial duty on the part of the respondents and a clear, present, beneficial right in the petitioner to performance of that duty. (*Baldwin-Lima-Hamilton Corp. v. Sup. Ct.* (1962) 208 Cal.App.2d 803, 813-14.)

Discretion is abused when a public officer acts beyond the bounds of reason or in derogation of applicable legal standards. (*See Calif. Correctional*

days, or 32 hours, for three weeks per month.³ The Executive Orders applied a workweek reduction across-the-board. Indeed, Respondents contend that section 19851 gives the Governor discretion to decide that the State's overall needs can substitute for an individual determination of the needs of the agency. Such a decision by the Governor is contrary to Section 19851(a), which only permits a workweek reduction "in order to meet the varying needs of the different state agencies."

Moreover, when employee positions are funded *entirely* by non-borrowable special funds or federal funds -- as is the case for many of the agencies at issue here -- the General Fund savings justification for furloughs does not survive scrutiny. When the only justification underpinning the furlough of these employees that remains is "labor parity,"⁴ the Court cannot do otherwise than to conclude that Respondents have abused their discretion. This is particularly so when the result of the furloughs in these areas is, *inter alia*, to slow down

³ The Executive Orders permitted only a "limited exemption" from the furlough requirement. At the hearing on the Petition, Respondents conceded that the exemptions have been limited to agencies involved in public safety, such as the California Highway Patrol and, during fire season, State firefighters.

⁴ The "labor parity" justification is one based only on the feelings of the General Fund agencies' employees. It is not based upon the principle that the quantum of pay cuts suffered by those employees ought to be spread out amongst all the State employees. Rather it is a decision that "labor parity" requires the quantum of pay cuts be increased so that all State employees suffer equally, without regard to savings to the General Fund and without lessening the pay cuts suffered by the General Fund agencies' employees. This is not rationally related to any governmental purpose.

processing of unemployment claims, impede state workers' ability to respond to losses of CalPERS's investments, and delay moving persons with disabilities from the state disability rolls to the federal rolls. All of these cost the State yet more money, without resulting in any savings.

Each State agency has differing needs relating to its function and to the sources of its funding. Respondents' refusal to consider those varying needs of the different state agencies before ordering and implementing furloughs conflicts with the requirements of Section 19851.⁵ Failure to comply with the mandatory duty in Section 19851 was an abuse of the Respondents' discretion. Moreover, when furloughs are implemented to save money, yet their implementation in some agencies saves nothing and increases costs, such a policy is arbitrary, capricious and unlawful.

B. Furloughing Employees to Increase Potential Borrowing from Special Fund Agencies Interferes with those Agencies' Operations In Violation of Government Code §16310(a)

Respondents further abused their discretion by ordering and implementing furloughs in order to increase internal borrowing from special funds, without regard to whether such borrowing interfered with the objects for which the special funds were created. Government Code section 16310(a) permits special funds to

⁵ The Court rejects the notion that the exemption of public safety officers and forest fire fighters is evidence that the Governor evaluated the "varying needs of the different state agencies." It is persuasive only that the Governor considered the varying needs of those specific agencies, not others. It does not demonstrate that the Governor ever considered the varying needs of agencies such as the California Earthquake Authority or the Department of Health Care Services.

be loaned to the General Fund only when such borrowing will not "interfere with the object for which a special fund was created." Similarly, the California case law provides that a writ will lie to reverse a budgetary decision where such a decision eliminates the ability to carry out a mandatory function required by law. (See *Scott v. Common Council* (1996) 44 Cal.App.4th 684, 694.)

The operations of each agency have been reduced by three days per month. This basic fact alone is at least a prima facie showing of interference with the object of the special funds agencies, specifically the agencies' ability to carry out their respective missions.

In addition, Petitioner SEIU offers evidence that SEIU-represented employees are unable to complete Social Security Disability reviews promptly and accurately due to the mandatory furloughs. While the national average processing time for reconsiderations of disability determinations has increased by about 3%, the California average processing time has increased 22.3% since the implementation of furloughs. (Declaration of Peter D. Spencer, filed November 9, 2009, at ¶6.) The practice of staging cases or pooling cases as they come in, rather than assigning them to an evaluator within 48 hours, was implemented as a result of furloughs. While making the statistics on processing appear better initially, staging and pooling have resulted in a backlog of some 15,000 pending cases waiting, but not assigned for, review, which will also increase processing time. (*Id.* at ¶8.) The federal Social Security Administration estimates that furloughs

have delayed disability payments to California citizens in need of benefits at an average rate of over \$420,000 per day. (*Id.*)

Petitioner SEIU also offers evidence that, since the implementation of furloughs, wait times at the Department of Motor Vehicles, have significantly increased, as have backlogs on license applications, investigations and audits. (Petitioner's Supplemental Request for Judicial Notice, filed November 9, 2009, at Exh. A, pgs. 2, 3.)

Respondents argue that the *Scott* case can be distinguished because there the budgetary decision completely eliminated the ability to carry out a mandatory function, whereas here services are not completely eliminated. In *Scott*, the court based its decision on authorities holding that an act in complete conflict with the requirements of the city charter was void, and granted writ relief on this basis. (*Scott*, supra, at 695.) Here, the relevant authority in section 16310 precludes not only actions in complete conflict with carrying out the agencies' duties, but also actions that interfere with the object of the special fund. Plainly, a writ may lie to correct a failure to comply with section 16310, just as it may to lie to invalidate an enactment that is in complete conflict with carrying out the agencies duties.

Petitioner's evidence demonstrates furloughing employees of agencies funded by special funds for the purpose of freeing up additional borrowable funds has resulted in an interference with the objectives of those agencies. As such, the Executive Orders and their implementation violate Government Code section 16310(a) and are an abuse of discretion.

C. The Emergency Provisions Cited by the Governor Do Not Change the Result Here

The Governor has relied upon several provisions concerning emergency measures that the Governor may take in issuing both the Executive Orders and accompanying emergency proclamations, including provisions of the California Emergency Services Act. The authorities offered by the Governor in his Executive Orders do not appear to allow the Governor to implement furloughs if they would violate other provisions of the law. Nor does the California Emergency Services Act appear to contemplate the Governor declaring an "emergency," and suspending regular Legislative authority, for more than a temporary period. (See Government Code §8629; see also, e.g., Government Code §8627.5(b).) The Executive Orders themselves appear to recognize that the emergency necessitating them was the failure of the Legislature to pass the budgets, though the reach of the orders extended long after those budgets were subsequently passed and signed into law.

CONCLUSION

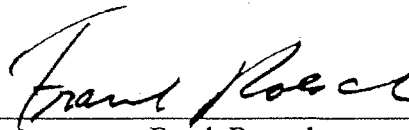
Based upon the foregoing, the Court GRANTS the Petition for Writ of Mandate. A writ of mandate shall issue commanding Respondents to set aside those portions of Executive Orders S-16-08 and S-13-09 affecting SEIU-represented employees which were issued in violation of mandatory duties in Government Code §§16310(a) and 19851(a), and to cease and desist the furlough of SEIU-represented employees.

The declaratory and injunctive relief sought in the operative Second Amended Petition and Complaint is entirely duplicative of the writ relief granted herein.

Petitioner shall prepare a form of judgment for execution by the Court and a form of writ for approval as to form by the Court and execution by the Clerk of the Court.

IT IS SO ORDERED.

DATED: December 7, 2009



Frank Roesch
Judge of the Superior Court

EXHIBIT C



FILED
ALAMEDA COUNTY

FEB 25 2010

CLERK OF THE SUPERIOR COURT

By Vicki Daybell JD

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

SERVICE EMPLOYEES
INTERNATIONAL UNION, LOCAL
1000, and YVONNE WALKER, a
taxpayer,

Petitioners/Plaintiffs,

vs.

ARNOLD SCHWARZENEGGER, as
Governor of the State of California; JOHN
CHIANG, Controller of the State of
California; STEVE POIZNER, Insurance
Commissioner of the State of California;
DAVID GILB, as Director of the
Department of Personnel Administration, et
al.,

Respondents/Defendants.

Case No. RG09-456750

ORDER AFTER HEARING

The parties appeared before the court on February 22, 2010 to discuss
disagreements between the parties relating to the form of judgment and form of

writ presented to the court for its consideration following the decision of this case and the two companion cases raising almost identical causes of action.

The court has considered the argument of counsel and the papers filed in this case and the other two cases and has made the following determinations:

Issue 1. Scope of Application of the Writ

The Court's Order applies to and affects each Respondent and all employees of each Respondent. It is not limited by bargaining unit or union membership.

While SEIU is a representative of some employees in Respondent Departments and Agencies and therefore has standing to pursue this case, the matter is not a class action on behalf of any defined class. The lawsuit's theory for relief is that the Governor issued Executive Orders implementing a furlough/wage reduction program and that those Orders are invalid and illegal because he failed to comply with mandatory requirements found in the Government Code. Its object was a determination of the legality of the Orders; SEIU members were not the only employees in Respondent Departments and Agencies affected by them. It follows that the Order of this Court must apply to all employees of the Respondent Departments and Agencies affected by the illegal Executive Orders.

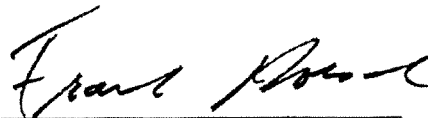
While the logic that the furloughs are illegal because the Governor did not comply with the mandatory requirements relating to the formation of the Executive Orders also leads to the conclusion that the Governor's furlough orders are likewise unlawful as applied to agencies funded by General Fund funds, this

Court cannot and will not extend the Court's Order to those State Agencies and their employees. The pleadings in this case and the theories underpinning the claims for relief argued in this case (and the choice of Respondents named in this case) make clear that the relief sought is limited to the named Respondents.

Issue 2. Salary and Wages Wrongfully Withheld

The same logic that limits application of the court's order to Respondents named herein, namely the substance of the pleadings filed herein, applies to the issue of salary/wages not paid due to the Governor's unlawful furlough orders. The question of salary/wages wrongfully withheld is clearly incidental (see CCP Section 1095) to the theory of relief plead by Petitioner seeking invalidation of the Executive Orders that created the furlough/wage reduction programs. Not only did the First Amended Petition specifically seek such incidental relief (see Paragraph 2 of the prayer of the First Amended Petition), but such incidental relief also follows directly and logically even if the petition had not specifically requested such relief. The Court's Judgment and Writ will include language that salary and wages withheld pursuant to the implementation of the Governor's Executive Order be paid both prospectively and retroactively.

Date: February 24, 2010



Frank Roesch
Judge of the Superior Court.

EXHIBIT D

The cause was heard and both oral and documentary evidence was received. The matter was tried without a jury and submitted to the court. The court has considered the entire record in this matter, including all of the oral and documentary evidence submitted, as well as the written and oral arguments of counsel. By order dated December 31, 2009, this Court directed that judgment for petitioner and a peremptory writ of mandate should issue in the cause. The reasons supporting the Court's judgment are set forth in the Order Granting Petition for Writ of Mandate issued by the Court on December 31, 2009.

Therefore, it is hereby ORDERED, ADJUDGED AND DECREED:

1. That Judgment is entered in favor of petitioners.
2. That a peremptory writ of mandate issue commanding

Respondents/Defendants Governor Schwarzenegger and Director Gilb to set aside the portions of the Governor's Executive Orders S-16-08 and S-13-09 calling for a furlough and resulting salary reduction for all employees of Respondent Departments and Agencies, and to cease and desist the furlough of such employees;

3. That a peremptory writ of mandate issue commanding

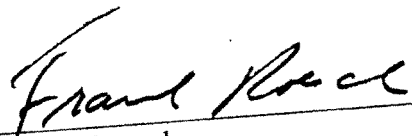
Respondent/Defendant Controller Chiang to immediately pay all employees of Respondent Departments and Agencies their full salary without any reductions pursuant to the illegal furloughs directed by the unlawful Executive Orders, and to take any and all actions required by law to restore any salary wrongfully withheld as a consequence thereof;

4. That the aforementioned portions of the Governor's Executive Orders S-16-08 and S-16-09, insofar as they will and have resulted in furloughs and salary reductions for employees of Respondent Departments and Agencies, are hereby declared unlawful and illegal *ab initio* in that they violate the provisions of Government Code sections 16310, subdivision (a) and 19851, subdivision (a); and,

5. That Petitioners are the prevailing parties herein and are awarded their costs of suit.

The petition is granted, judgment shall be entered accordingly and the writ shall issue under the seal of this Court.

Date: February 25, 2010


Frank Roesch
Judge of the Superior Court

1 I, Sherry Ramirez, declare:

2 I am a citizen of the United States and employed in Sacramento County, California. I am
3 over the age of eighteen years and not a party to the within-entitled action. My business address
4 is 400 Capitol Mall, 27th Floor, Sacramento, California 95814. On February 26, 2010, I served a
5 copy of the within document(s):

6 • **NOTICE OF APPEAL**

7 by placing the document(s) listed above in a sealed envelope with postage thereon
8 fully prepaid, the United States mail at Sacramento, California addressed as set
9 forth below.

10 by transmitting via facsimile the document(s) listed above to the fax number(s) set
11 forth below on this date before 5:00 p.m.

12 by placing the document(s) listed above in a sealed _____ envelope and affixing a
13 pre-paid air bill, and causing the envelope to be delivered to a _____ agent for
14 delivery.

15 by personally delivering the document(s) listed above to the person(s) at the
16 address(es) set forth below.

17 by transmitting via e-mail or electronic transmission the document(s) listed above
18 to the person(s) at the e-mail address(es) set forth below.

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