

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**THIRD APPELLATE DISTRICT**

**CALIFORNIA ATTORNEYS, ADMINISTRATIVE  
LAW JUDGES AND HEARING OFFICERS IN  
STATE EMPLOYMENT**

Petitioner and Appellant

v.

Case No.:

**ARNOLD SCHWARZENEGGER as Governor of  
the State of California; DAVID GILB as Director  
of the Department of Personnel Administration;  
JOHN CHIANG, Controller of the State of  
California; and DOES 1 through 10**

Defendants and Respondents.

Sacramento County Superior Court No. 34-2009-80000126  
Honorable Patrick Marlette, Judge  
Department 19 (916) 874-7071

**PETITION FOR WRIT OF SUPERSEDEAS  
AND EMERGENCY TEMPORARY STAY**

**STAY REQUESTED**

**Of the January 29, 2009 Order Authorizing Furloughs for State  
Employees**

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## **I. INTRODUCTION**

Petitioner hereby seeks a writ of supersedeas staying the trial court's order that Governor Arnold Schwarzenegger's Executive Order S-16-08, which unilaterally implemented furloughs on all state employees, was authorized by law. In the alternative, petitioner seeks a writ of supersedeas staying those portions of Executive Order S-16-08 which direct implementation of furloughs. In addition, petitioner seeks an immediate and temporary stay of the trial court's order and the Executive Order pending this court's ruling on this petition pursuant to California Rules of Court, rule 8.116.

Nothing in the California Constitution or in any state statute provides the Governor with the power to unilaterally "furlough" employees. The word "furlough" is not even mentioned in either the Dills Act or in any State employee's contract. By claiming unprecedented powers to furlough employees during a fiscal emergency --- an emergency in which the Governor himself shares significant blame for creating --- the Governor has usurped the power of the Legislature and removed employees from what used to be a collective bargaining process.

The furlough will have a particularly injurious impact on the State's legal professionals, who are required by their ethical obligations and also by their employment contract to work all hours necessary to effectively represent their clients. Furloughing these employees will not reduce the amount of work they are required to do, but will simply reduce their pay. Thus, the "furlough" is effectively a unilaterally, unbargained-for pay cut, which this Court has previously held to be beyond the authority of the executive branch to impose.

## II. STATEMENT OF THE CASE

On January 5, 2009, Petitioner California Attorneys, Administrative Law Judges and Hearing Officers in State Employment (“CASE”)<sup>1</sup> filed a petition for writ of mandate in the Sacramento Superior Court, case # 34-2009-80000134. The named respondents were Governor Arnold Schwarzenegger, Director David Gilb of the Department of Personnel Administration (“DPA”) and State Controller John Chiang. The petition sought a declaration that the Governor had no authority to unilaterally impose furloughs on represented employees, and an injunction prohibiting the Governor or any state officer from implementing the furloughs.<sup>2</sup>

On January 9, 2009, this case was consolidated with similar actions filed by other employee representatives.<sup>3</sup> After an expedited briefing schedule, the matter was heard on January 29, 2009. Later that day, the trial court issued an order denying the writs in the consolidated cases. An amended minute order was filed the following day. (Exh. A)<sup>4</sup>

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<sup>1</sup> Petitioner California Attorneys, Administrative Law Judges and Hearing Officers in State Employment (“CASE”) is the exclusive collective bargaining representative of legal professionals in State Bargaining Unit 2 pursuant to Government Code section 3520.5. CASE represents approximately 3400 legal professionals in more than 80 different state departments, boards, and commissions.

<sup>2</sup> All pleadings in the case can be accessed online at <https://services.saccourt.com/publicdms2/DefaultDMS.aspx> by entering the case number and clicking “search.”

<sup>3</sup> The case filed by Professional Engineers in California Government (“PECG”) and the California Association of Professional Scientists (“CAPS”) was case # 34-2008-80000126. The case filed by Service Employees International Union, Local 1000 (“SEIU”) was case #34-2009-80000135.

<sup>4</sup> Because the record on appeal has not yet been filed, petitioner is attaching to this petition all relevant documents to aid this court in its determination of the instant petition, pursuant to California Rules of Court, rule

On February 3, 2009, CASE filed a notice of appeal.<sup>5</sup> (Exh. B.)

### III. STATEMENT OF FACTS

On November 6, 2008, Defendant/Respondent Governor Arnold Schwarzenegger sent a letter to state employees. (See Exh. C.) In that letter, Governor Schwarzenegger announced that he was “proposing a combination of economic stimulus measures . . . revenue increases, and spending reductions. . . .” (*Ibid.*) The letter then stated, “If approved by the Legislature, these spending reductions will impact our state workers.” (*Ibid.*, emphasis added.) The Governor thereafter outlined his proposals that would impact state employees, including, inter alia, a furlough of one day per month with a corresponding pay cut of approximately 5 percent. (*Ibid.*) The Governor then stated in the same letter, “All the actions we’re proposing must first be approved by the Legislature.” (*Ibid.*)

Also on November 6, 2008, the Governor issued a proclamation calling the Legislature into special session to address the state’s fiscal crisis. (See Exh. D.) The Governor submitted proposed legislation to the Legislature in conjunction with that special session. (See Exh. E.) In that proposed legislation, the Governor proposed to add section 19826.4 to the Government Code, which read, in pertinent part:

Notwithstanding the Ralph C. Dills Act (Chapter 3 (commencing with section 3512) of Division 4 of Title 1) or any other provision of law, the Department of Finance and the Department of Personnel Administration shall, commencing

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8.112(a)(4)(B). The order is attached as Exhibit A. The request for a stay in the trial court and the denial is noted on page 12 of the trial court’s order. The notice of appeal is attached as Exhibit B.

<sup>5</sup> The fees for this appeal were paid to the superior court at the time of filing the notice of appeal.

on December 1, 2008 and ending on July 1, 2010, implement a program for the furlough of state employees.

*(Ibid.)* The Legislature did not enact the Governor's proposals during the special session.

On December 1, 2008, the Governor issued two additional proclamations, each calling for additional special sessions, one of which was convened pursuant to Proposition 58. (See Exhs. F and G.) The proclamation under Proposition 58 recited that the Governor was submitting proposed legislation to the Legislature to address the fiscal crisis. (See Exh. F.) The Assembly Budget Committee analyzed the Governor's proposed legislation. (See Exh. H.) That analysis revealed that the Governor's proposals included an identical plan to furlough state employees for one day per month. (*Id.* at p. 14.) The Legislature did not enact the Governor's proposals during the special sessions.

On December 19, 2008, Governor Arnold Schwarzenegger issued Executive Order S-08-16. (See Exh. I.) In that Order, the Governor directed the Department of Personnel Administration to "implement a furlough of represented state employees and supervisors for two days per month. . . ." (*Ibid.*) The furlough would be effective February 1, 2009, through June 30, 2010. The furloughs would result in an approximate 10 percent pay cut for all state employees. The Governor's Executive Order made a number of proclamations relating to a perceived fiscal cash crisis, and the Legislature's failure to "effectively" address the crisis.<sup>6</sup>

On January 9, 2009, Director David Gilb sent a memorandum to all state departments announcing that DPA had developed a furlough plan as

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<sup>6</sup> The Executive Order failed to mention that the Legislature passed a comprehensive budget package on December 18, 2008 and submitted it to him for signature, which he vetoed on January 6, 2009.

directed by the Governor in his executive order. (See Exh. J.) That memorandum stated that general government operations would be closed on the first and third Friday of each month, beginning on February 6, 2009. (*Ibid.*) Later that same day, Chief Deputy Attorney General Jim Humes sent an email to all employees of the Attorney General's Office, which stated, in pertinent part, "we are a separate constitutional office and we have decided to decline to adopt Governor's approach [to implement furloughs]." (See Exh. K.) Also that same day, California Treasurer (and former Attorney General) Bill Lockyer sent a letter to David Gilb, in which he advised that "[b]ased on our legal review, we believe the Governor has not established that he has the legal authority to impose furloughs and the related salary cuts on state employees" and therefore elected not to comply with the furlough program. (See Exh. L.)

On February 3, the counsel for the State Controller sent a letter to the trial court requesting clarification of the ruling. (Exh. M.) Attached to that letter were letters from all of the independently elected statewide constitutional officers, urging the Controller not to implement the furlough on their respective departments or agencies, based on their independent authority. (*Ibid.*) In response, counsel for the Governor and DPA sent a letter to the trial court. (Exh. N.) On February 4, 2009, CASE sent a letter to the trial court in response to the earlier letters, and attached a letter from the executive director of the Board of Equalization to the Controller also urging the Controller not to implement the furlough order on the Board. (Exh. O.) In its letter, CASE also pointed out that another constitutionally created entity, the State Compensation Insurance Fund (see Cal. Const. Art. 14 §4), may have a similar interest in the question posed by the Controller. The California Constitution gives the Legislature "plenary powers" over the Fund, and the Legislature has specifically enacted Insurance Code section

11873, which provides, in pertinent part “Notwithstanding any provision of the Government Code or any other provision of law, the positions funded by the State Compensation Insurance Fund are exempt from any hiring freezes and staff cutbacks otherwise required by law.” Accordingly, CASE respectfully suggested to the trial court that the State Compensation Insurance Fund be allowed or ordered to intervene as well. As of this writing, the trial court has taken no action in response to those letters.

#### **IV. ISSUES TO BE RAISED ON APPEAL**

Pursuant to California Rules of Court, rule 8.112(a)(4)(A), petitioner will challenge on appeal the trial court’s ruling that the Governor has authority to unilaterally implement furloughs on CASE members.

#### **V. MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF GRANTING THE WRIT AND REQUEST FOR TEMPORARY STAY**

##### **A. Standard for Granting the Writ**

Supersedeas is an extraordinary writ used to “preserv[e] the court’s jurisdiction while it prepares, usually in the context of an appeal, to rule on th[e] merits.” (*People ex rel. San Francisco Bay Conservation and Development Commission v. Town of Emeryville* (1968) 69 Cal.2d 533, 538.) Because the courts have the inherent power to issue a stay in aid of their jurisdiction, no express grant of authority is necessary to authorize of such writs. (*Ibid.*) Nevertheless, Code of Civil Procedure section 923 now expressly confirms that reviewing courts have the power to issue writs of

supersedeas, “or to make any order appropriate to preserve the status quo.”

The standard for granting the writ is well established:

The issuance of a writ of supersedeas is a matter of discretion to be exercised by the court whenever it appears necessary and proper to preserve appellate jurisdiction. Being discretionary, the writ will not be granted to maintain a status quo of the litigation unless the appeal presents substantial questions for decision [citations], and unless there is a probability that error has been committed.

(*Donen v. Donen* (1964) 228 Cal.App.2d 441, 448.) The burden is on the petitioner to show the necessity of the writ and the probability of error by the court below. (*Saltonstall v. Saltonstall* (1957) 148 Cal.App.2d 109, 114.)

#### B. The Question of the Governor’s Authority Is A Substantial Question

On appeal, petitioner will challenge the Governor’s authority to unilaterally impose furloughs via executive order. The scope of the Governor’s authority is substantial because it involves fundamental question about the separation of powers between the executive and the legislative branches. Moreover, the scope of the order, which impacts hundreds of thousands of state employees, and the public which they serve, is enormous.

#### C. There Is A High Probability The Trial Court Erred

The trial court determined that the Governor had authority to unilaterally impose furloughs on several distinct theories. First, the trial court determined that Government Code sections 19851 and 19849, “taken

together, provide the Governor with authority to reduce the workweek of state employees. . . .” (Exh. A at p. 7.) Second, the trial court determined that the Memoranda of Understanding (“MOUs”)<sup>7</sup> incorporated sections 19849 and 19851, and thus the Governor had the power to impose furloughs by contract. (*Ibid.*) Third, the trial court determined that provision of the MOUs permit the state to reduce hours due to lack of funds or emergencies. (*Id.* at p. 8.) These determinations were in error.

### 1. The Legislature Alone Has The Power to Set Salaries

Preliminarily, it is important to understand that in California, the Legislature is the seat of virtually all legislative power.

Unlike the federal Constitution, which is a grant of power to Congress, the California Constitution is a limitation or restriction on the powers of the Legislature. [Citations.] Two important consequences flow from this fact. First, the entire law-making authority of the state, except the people's right of initiative and referendum, is vested in the Legislature, and that body may exercise any and all legislative powers which are not expressly or by necessary implication denied to it by the Constitution. [Citations.] In other words, ‘we do not look to the Constitution to determine whether the Legislature is authorized to do an act, but only to see if it is prohibited.’ [Citation.] [9] Secondly, all intendments favor the exercise of the Legislature's plenary authority: ‘If there is any doubt as to the Legislature's power to act in any given case, the doubt should be resolved in favor of the Legislature's action. Such restrictions and limitations [imposed by the Constitution] are

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<sup>7</sup> Respondent below submitted a request for judicial notice of all the MOUs of the various employee representatives in the consolidated actions which was granted. (See Exh. A p. 3.) The MOUs are voluminous, and in the interest of brevity are not being submitted to this Court. However, the CASE MOU is available online at [http://www.dpa.ca.gov/pv\\_obj\\_cache/pv\\_obj\\_id\\_2A0E1F48424B1C60538E275AA8736672E8F90800/filename/mou.pdf](http://www.dpa.ca.gov/pv_obj_cache/pv_obj_id_2A0E1F48424B1C60538E275AA8736672E8F90800/filename/mou.pdf)

to be construed strictly, and are not to be extended to include matters not covered by the language used.

*(Methodist Hospital of Sacramento v. Saylor* (1971) 5 Cal.3d 685, 691.)

The setting of state employee salaries is a legislative function. *(Tirapelle v. Davis* (1993) 20 Cal.App.4<sup>th</sup> 1317, 1325, fn. 10; *Lowe v. California Resources Agency* (1991) 1 Cal.App.4<sup>th</sup> 1140, 1151.) The Legislature has partially delegated its authority in this regard to DPA. Government Code section 19826 provides, in pertinent part:

(a) The department shall establish and adjust salary ranges for each class of position in the state civil service subject to any merit limits contained in Article VII of the California Constitution. The salary range shall be based on the principle that like salaries shall be paid for comparable duties and responsibilities. In establishing or changing these ranges, consideration shall be given to the prevailing rates for comparable service in other public employment and in private business. The department shall make no adjustments that require expenditures in excess of existing appropriations that may be used for salary increase purposes. The department may make a change in salary range retroactive to the date of application of this change.

(b) Notwithstanding any other provision of law, the department shall not establish, adjust, or recommend a salary range for any employees in an appropriate unit where an employee organization has been chosen as the exclusive representative pursuant to Section 3520.5.

In subdivision (b), the Legislature specifically withheld from DPA the power to reduce salaries for represented employees. As this Court has already determined, the statute expressly “preclud[es] DPA from unilaterally adjusting represented employees’ wages.” *(Department of Personnel Administration v. Superior Court (Greene)* (1992) 5 Cal.App.4<sup>th</sup>

155, 178.) Accordingly, “the question of represented employees' wages . . . must ultimately be resolved by the Legislature itself.” (*Ibid.*)

The Government Code specifically grants to state departments the power and authority to lay off employees “because of lack of work or funds, or whenever it is advisable in the interests of economy, to reduce the staff of any state agency. . . .” (Gov. Code § 19997.) There is a detailed and specific statutory scheme for the manner in which layoffs are to be implemented. (See Gov. Code § 19997 et seq.) There is no such statutory authorization for furloughs.<sup>8</sup> In fact, the Government Code expressly prohibits departments from unilaterally reducing the work time of employees against their will. (Gov. Code § 19996.22, subd. (a).) The Government Code specifies that “[t]enure of civil service employment is subject to good behavior, efficiency, the necessity of the performance of the work, and the appropriation of sufficient funds.” (Gov. Code § 18500, subd. (c)(6).) The Legislature has already passed, and the Governor has already signed, a budget appropriations bill for Fiscal Year 2008-2009. Accordingly, the funds have already been appropriated, and there is no basis to alter the tenure of the legal professionals in Unit 2.

Similarly, Government Code section 19816.10 provides that DPA has no power to alter days, hours, or conditions of work in a manner contrary to any existing Memorandum of Understanding (MOU). The current MOU between the State and the legal professionals in State Bargaining Unit 2 expired on July 1, 2007, but by law remains in effect pending the ratification of a successor MOU, or until impasse is reached. (Gov. Code § 3517.8.) The parties are currently in the process of

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<sup>8</sup> The single reference to employee furloughs in the Government Code appears in Government Code section 68108, and is applicable only to employees of the judicial branch of government.

negotiating an MOU, and thus impasse has not been reached. Therefore, the prior MOU remains in effect, including all provisions regarding days and hours of work.<sup>9</sup> Thus, the existing constitutional and statutory framework establishes that the Legislature, and not the Governor, can set the salaries of state employees.

The trial court attempted to distinguish the *Greene* case, but its reasoning was entirely unpersuasive. First the trial court found that the furloughs do not change the salary *range* of employees, but rather simply reduce the hours worked which results in a loss in pay. (Exh. A at p. 9.) But this distinction is foreclosed by the language in *Greene*, which specifically found that section 19826 expressly “preclud[es] DPA from unilaterally adjusting represented employees’ wages.” (*Department of Personnel Administration v. Superior Court (Greene,)* *supra*, 5 Cal.App.4<sup>th</sup> 155, 178.) Second, the trial court observed that in *Greene*, the parties had reached impasse, whereas in the instant case, an MOU is still in effect. (Exh. A at pp. 9-10.) Adopting the trial court’s logic leads to the conclusion that employees are better protected without an MOU than with one, which is absurd and contrary to the entire Dills Act. More significantly, the provisions of the MOU which the trial court found authorized the Governor’s unilateral action do not provide any such authority, as will be demonstrated *infra*.

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<sup>9</sup> As but one example, section 6.3.A. of the MOU provides that all exempt legal professionals in Unit 2 shall work an average of 40 hours per week. The contemplated furlough would obviously be contrary to that provision, and since the MOU supersedes the Government Code in this instance, the furlough is therefore illegal.

## 2. The Governor Has Acknowledged He Lacks the Power to Furlough State Employees

For years, various California governors have sought to obtain the power to unilaterally furlough state employees. In 1992, then-Governor Wilson was the proponent of an initiative measure – the Government Accountability and Taxpayer Protection Act (GATPA) – which appeared as Proposition 165 on the 1992 ballot and which would have, inter alia, allowed him to unilaterally impose furloughs on state employees. (*League of Women Voters v. Eu* (1992) 7 Cal.App.4th 649, 653-654.) According to the Secretary of State’s Statement of Vote, Proposition 165 failed to garner a majority of votes in the election, and thus never went into effect.<sup>10</sup> The fact that Governor Wilson proposed a ballot initiative to give him the power to furlough state employees represents an acknowledgment that the authority of the Governor does not permit him to unilaterally furlough state employees.

Governor Schwarzenegger, in his letter to state employees on November 6, 2008, twice acknowledged that he needed legislative approval to impose his furlough plan. First, he outlined his various proposals and stated, “*If approved by the Legislature*, these spending reductions will impact our state workers.” (See Exh. C, emphasis added.) Later in the same letter, after explaining his then-one-day per month furlough plan, he stated, “All the actions we’re proposing must first be approved by the Legislature.” (*Ibid.*)

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<sup>10</sup> See page viii at [http://www.sos.ca.gov/elections/sov/1992\\_general/statement\\_of\\_vote\\_general\\_1992.pdf](http://www.sos.ca.gov/elections/sov/1992_general/statement_of_vote_general_1992.pdf)

After memorializing in writing his admission that he needed legislative authority to impose furloughs, Governor Schwarzenegger submitted to the Legislature, during special session, proposed legislation that would specifically authorize DPA to implement furloughs. (See Exh. E.) Thus, by word and by deed, Governor Schwarzenegger has repeatedly admitted that he lacks authority to implement furloughs without legislative authority.

The trial court failed to even address the fact that the Governor repeatedly acknowledged he lacked the very authority he claimed in the Executive Order.

### 3. Sections 19851 and 19849 Do Not Grant the Governor the Power to Unilaterally Impose Furloughs

Government Code section 19851 provides as follows:

(a) 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. It is the policy of the state to avoid the necessity for overtime work whenever possible. This policy does not restrict the extension of regular working-hour schedules on an overtime basis in those activities and agencies where it is necessary to carry on the state business properly during a manpower shortage.

(b) 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 the 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.

Government Code section 19849 provides as follows:

(a) The department shall adopt rules governing hours of work and overtime compensation and the keeping of records related thereto, including time and attendance records. Each appointing power shall administer and enforce such rules.

(b) 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.

Subdivision (b) of both sections establishes that they are subject to supersession under Government Code section 3517.6, subdivision (a)(1). That section contains a long list of statutes that are subject to supersession, and, as applicable to this case, reads as follows:

In any case where the provisions of [section 19849, . . . 19851] are in conflict with a memorandum of understanding, the memorandum of understanding shall be controlling without further legislative action.

Although the trial court correctly observed that both sections are listed in the CASE MOU (see Exh. A, p. 7, fn. 5), the trial court failed to note that the beginning of that section of the MOU provides as follows:

The following Government Code sections and all DPA regulations related thereto are hereby incorporated into this MOU. *However, if any other provision of this MOU is in conflict with any of the Government Code sections listed below or the DPA regulations related thereto, such MOU provision shall be controlling.*

(Emphasis added.) Provisions of the CASE MOU supersede sections 19851 and 19849. For example, section 6.3.A of the MOU provides as follows:

Employees are expected to work all hours necessary to accomplish their assignments and fulfill their responsibilities. Employees will normally average forty (40) hours of work per week including paid leave; however, work weeks of a longer duration may occasionally be necessary.

Thus, this section establishes the 40-hour work week, and supersedes that provision of section 19851 that might otherwise allow a reduction in hours. This same section establishes that CASE members will occasionally work weeks in excess of 40 hours, and thus it supersedes the overtime provisions of section 19849.

In addition to being superseded, the sections at issue fail to support the trial court's ruling in a critical respect. Even if the sections could be interpreted to allow the Governor to reduce hours, they do not permit a reduction in *pay*. The scope of the MOU is wages, hours, and other working conditions. (Gov. Code §§ 3516, 3517.6) Not only does the MOU contain specific provisions regarding the hours of work, it contains specific provisions about the pay that CASE members are to receive. Attachment A to the MOU is a detailed salary schedule for the various positions held by CASE members. The furlough imposed by the Governor is a reduction in hours, with a corresponding reduction in pay. Authority to reduce hours, if it exists, does not include the authority to impose a reduction in pay. Nothing in sections 19849 or 19851 authorize any reductions in pay. Accordingly, those sections do not empower the Governor to impose furloughs.

#### 4. The Provisions of the MOU Cited by the Trial Court Do Not Authorize Furloughs

The trial court relied on several sections of the CASE MOU as an alternative basis to the ruling. First, the trial court cited section 3.1.B of the MOU (see Exh. A at p. 8) which provides as follows:

To the extent consistent with law and this MOU, the rights of the State include, but are not limited to, the exclusive right to determine the mission of its constituent departments, commissions, and boards; set standards of service; train, direct, schedule, assign, promote, and transfer its employees; initiate disciplinary action; relieve its employees from duty because of lack of work, lack of funds, or for other legitimate reasons; maintain the efficiency of State operations; determine the methods, means and personnel by which State operations are to be conducted; take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion over its organization and the technology of performing its work. The State has the right to make reasonable rules and regulations pertaining to employees consistent with this MOU provided that any such rule shall be uniformly applied to all affected employees who are similarly situated.

The trial court relied on the language permitting the state to “relieve its employees from duty because of lack of work, lack of funds, or for other legitimate reasons . . . [and to] take all necessary actions to carry out its mission in emergencies.” (Exh. A at p. 8, fn. 6.)

However, the first clause of this section contains limiting language on entirety of the section: it is only effective “[t]o the extent consistent with law and this MOU.” As explained above, this Court already determined that a unilateral reduction in wages was inconsistent with the law. (*Department of Personnel Administration v. Superior Court (Greene)* *supra*, 5 Cal.App.4<sup>th</sup> 155, 178.) And, for all of the reason mentioned above,

interpreting section 3.1.B of the MOU to allow unilateral imposition of furloughs would be inconsistent with the entirety of the MOU.

The trial court also cited Article 10.3 of the CASE MOU, which provides:

The State may propose to reduce the number of hours an employee works as an alternative to layoff. Prior to the implementation of this alternative to a layoff, the State will notify and meet and confer with the Union to seek concurrence of the usage of this alternative.

(Exh. A at p. 8.) This section emulates the Government Code, which expressly allows for layoffs but does not allow furloughs. More importantly, this section merely allows the state to “propose” a reduction in hours as an alternative to layoffs. The section specifically contemplates a negotiation between the parties. Nothing in this section authorizes the unilateral imposition of furloughs.

## **VI. CONCLUSION**

The furloughs are set to begin on February 6, 2009. If they take effect, CASE members and all state employees will lose wages to which they are entitled by law. The members of the public will suffer untold injuries as a result of the loss in services. This Court has already determined that the authority to reduce salaries resides with the Legislature, not the Governor. Thus, there is a high probability that petitioner will prevail on the merits of the appeal. It is imperative that the trial court’s order be stayed, or the portions of the Governor’s Executive Order directing furloughs be stayed, so that irrevocable harm does not occur during the pendency of this appeal. Accordingly, for the foregoing reasons, petitioner

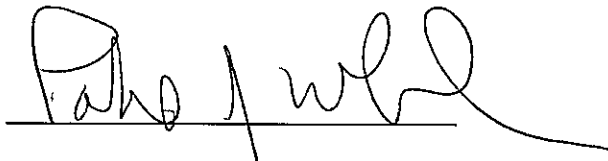
respectfully requests this Court grant the writ of supersedeas and issue an immediate temporary stay.

Dated: Feb 5, 2001

Carl J. Wolf

## VERIFICATION

I, Patrick J. Whalen, am the attorney for CASE, the Petitioner/Appellant in this proceeding. I have read the foregoing petition and know its contents. The facts stated therein are true and are within my personal knowledge. 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 February 5, 2009 at Sacramento, California.



Patrick J. Whalen