



PROFESSIONAL ENGINEERS

IN CALIFORNIA GOVERNMENT

October 2, 2009

Jacquelyn Sanders
Department of Personnel Administration
Labor Relations
1515 S Street, North Bldg., Suite 400
Sacramento, CA 95811-7258

Via Facsimile and U.S. Mail
(916) 322-0765

Re: Organizational Grievance Professional Engineers in California Government
Covering All Unit 9 Employees
Elimination of Columbus Day and Lincoln's Birthday Under the Unit 9 MOU

Dear Ms. Sanders:

Attached please find a grievance filed on behalf of all Unit 9 employees. The grievance concerns DPA's recent statement on the DPA website purporting to eliminate Columbus Day (the Second Monday in October) and Lincoln's Birthday (February 12) as paid holidays. The grievance contends this position is in direct conflict with the provisions of the Unit 9 Memorandum of Understanding which calls for the second Monday in October and February 12 as holidays for which Unit 9 employees "shall be entitled to such observed holidays with pay."

As this grievance concerns a statewide issue covering all appointing authorities of Unit 9 employees, the grievance is filed at the fourth level.

If you have any questions or would like to discuss this grievance, please contact me.

Sincerely,

Bruce J. Blanning
PECG Executive Assistant

Attachments

HEADQUARTERS: 455 Capitol Mall, Suite 501, Sacramento, CA 95814 • (916) 446-0400
LOS ANGELES: 130 N. Brand Boulevard, Suite 301, Glendale, CA 91203 • (818) 500-9941
SAN FRANCISCO: 1 Sutter Street, Suite 800, San Francisco, CA 94104 • (415) 861-5720
TELEFAX: Headquarters (916) 446-0489; Los Angeles (818) 247-2348; San Francisco (415) 861-5360

EMPLOYEE CONTRACT GRIEVANCE

STD. 630 (REV. 10-95)

BARGAINING UNIT NAME BU 9 - Professional Engineers	BARGAINING UNIT NUMBER (Circle one) 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21
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Please refer to your bargaining unit's contract for specific information regarding employee grievance procedures and time frame requirements.

GRIEVANT'S NAME Organizational Grievance, All Unit 9 Employees		HOME TELEPHONE NUMBER (916) 446-0400	
HOME ADDRESS (Number and street) 455 Capitol Mall, Suite 501		(City) Sacramento	(State) (Zip Code) CA 95814
DEPARTMENT	DIVISION OR FACILITY	SECTION, BRANCH, UNIT, ETC.	
POSITION CLASSIFICATION	NORMAL WORKING HOURS	WORK TELEPHONE NUMBER ()	

REPRESENTATION INFORMATION (Complete if applicable)

REPRESENTATIVE'S NAME Gerald James	ORGANIZATION OR AFFILIATION PECG Counsel	TELEPHONE NUMBER (916) 446-0400
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GRIEVANCE INFORMATION

DATE OF ACTION CAUSING GRIEVANCE September 25, 2009	DATE OF INFORMAL DISCUSSION WITH IMMEDIATE SUPERVISOR N/A	DATE OF INFORMAL RESPONSE
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GRIEVANCE DESCRIPTION (Clear, concise statement. Attach additional sheets if necessary.)

See Attached.

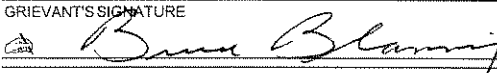
SPECIFIC ARTICLE(S) AND SECTION(S) OF CONTRACT ALLEGEDLY VIOLATED

Articles 9.1, 19.2

SPECIFIC REMEDY SOUGHT

Continue to recognize February 12 and the second Monday in October as holidays pursuant to Article 9.1 of the MOU; Provide all compensation and relief for those Unit 9 employees who either were or were not required to work on the second Monday in October (October 12, 2009) as required by the MOU and past practice.

Bruce Blanning for PECG

GRIEVANT'S SIGNATURE 	DATE FILED October 2, 2009
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(For grievance level reviews I through IV, continue on reverse.)

GRIEVANCE REVIEW--LEVEL I

DATE RECEIVED	LEVEL I REVIEWER (Signature) 	RESPONSE DATE
REVIEWER'S PRINTED NAME AND TITLE		TELEPHONE NUMBER ()
LEVEL I DECISION		

<input type="checkbox"/> I concur and do not appeal to the second review level	<input type="checkbox"/> I do not concur and appeal to the second review level (State reason below)	GRIEVANT'S SIGNATURE 	DATE SIGNED
REASON FOR APPEAL			

GRIEVANCE REVIEW--LEVEL II

DATE RECEIVED	LEVEL II REVIEWER (Signature) 	RESPONSE DATE	
<input type="checkbox"/> Decision attached	REVIEWER'S PRINTED NAME AND TITLE		
<input type="checkbox"/> I concur and do not appeal to the third review level	<input type="checkbox"/> I do not concur and appeal to the third review level (State reason below)	GRIEVANT'S SIGNATURE 	DATE SIGNED
REASON FOR APPEAL			

GRIEVANCE REVIEW--LEVEL III--DEPARTMENT DIRECTOR OR DESIGNEE

DATE RECEIVED	DIRECTOR OR DESIGNEE (Signature) 	RESPONSE DATE	
<input type="checkbox"/> Decision attached	PRINTED NAME AND TITLE		
<input type="checkbox"/> I concur and do not appeal to the fourth review level	<input type="checkbox"/> I do not concur and appeal to the fourth review level (State reason below)	GRIEVANT'S SIGNATURE 	DATE SIGNED
REASON FOR APPEAL			

GRIEVANCE REVIEW--LEVEL IV--DEPARTMENT OF PERSONNEL ADMINISTRATION

DATE RECEIVED	DIRECTOR OR DESIGNEE (Signature) 	RESPONSE DATE
<input type="checkbox"/> Decision attached	PRINTED NAME AND TITLE	

On September 25, 2009, the Department of Personnel Administration posted on its website a listing entitled "Columbus Day is no longer a State holiday." (Attached.) That posting stated in part that,

Now, an employee who wants to take time off on Columbus Day must get prior approval from his or her supervisor to use leave credit. If an employee does not receive prior approval from the supervisor, then, just like any other unapproved absence, the employee will not be paid for that day. The absence will be considered absent without leave (AWOL).

The Unit 9 MOU at Article 9.1 provides in part that:

- a. All full-time and part-time employees, shall be entitled to such observed holidays with pay as provided below, in addition to any official State holidays declared by the Governor.
- b. Observed holidays shall include January 1, the third Monday in January, February 12, the third Monday in February, March 31, the last Monday in May, July 4, the first Monday in September, the second Monday in October, November 11, Thanksgiving Day, the day after Thanksgiving, and December 25.

The Unit 9 MOU lists Section 19853 as one of the statutes under the heading "Supersession" at Article 19.2. In Article 19.2 of the MOU, the parties agreed that Section 19853 is incorporated into the parties' MOU, however if any other provision of the MOU is in conflict with the any of the Government Code sections listed (including Section 19853), the MOU provision shall control.

Under Government Code section 3517.8 (a), the State and PECG must continue to abide by all of the provisions of the expired MOU.

The Legislature passed Senate Bill X3 8 which the Governor signed into law on February 20, 2009. SB X3 8, among other things, amended Government Code section 19853 by eliminating February 12 and the second Monday in October from the statutory listing of holidays. As amended, Section 19853 also has new "supersession language" at subdivision (g) as follows:

If subdivision (a), (c), or (d) is in conflict with the provisions of a memorandum of understanding executed or amended pursuant to Section 3517.5 on or after February 1, 2009, or the date that the act adding this section takes effect, whichever is later, the memorandum of understanding shall be controlling without further legislative action, except that if those provisions of the memorandum of

understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

The Unit 9 MOU was not entered into or amended after February 20, 2009 (the operative date of the new Section 19853), therefore the “new supersession language” of subdivision (g) does not apply to the parties’ MOU.

However, both before and after the Legislature’s amendment to Section 19853, Government Code section 3517.6 lists Section 19853 as a section which the parties may supersede by an MOU. In passing SB X3 8, the Legislature did not disturb the applicability of the Unit 9 MOU as 3517.6 continues to allow the parties to supersede the Legislature’s listing of holidays and that in any case where the provisions of Section 19853 are in conflict with the provisions of an MOU, the MOU shall be controlling without further legislative action. (Gov. Code § 3517.6.)

In this case, the parties’ 2003 - 2008 MOU, which remains in effect, specifically conflicts with the provisions of newly amended Section 19853 because the MOU lists February 12 and the second Monday in October as paid holidays.

Under the MOU, Unit 9 employees are entitled to February 12 and the second Monday in October as paid holidays. Denying employees these days off as paid holidays and/or denying the payments required by the MOU and past practice when an employee is required to work on a paid holiday is in conflict with the Unit 9 MOU.

If the DPA instructs employees to work on the second Monday in October and February 12 and Unit 9 employees work on those listed holidays, employees should be compensated for working on a holiday as provided in the parties’ MOU and consistent with past practice. Otherwise, the holidays should be honored as required by the parties’ MOU and employees should not be required “to use leave credit” for absences on those holidays.

Attachment (September 25, 2009 DPA Website Posting)

Department of Personnel Administration

[Home](#) » [Columbus Day is no longer a State holiday](#)

Columbus Day is no longer a State holiday

DPA would like to alleviate any confusion employees may have regarding the status of Columbus Day as a recognized paid holiday.

In February 2009, legislation passed that amended the State holiday provisions in Government Code section 19853. The amendment eliminated two paid holidays, effective March 2009:

Lincoln's Birthday (February 12)

Columbus Day (the second Monday in October)

Now, an employee who wants to take time off on Columbus Day must get prior approval from his or her supervisor to use leave credit. If an employee does not receive prior approval from the supervisor, then, just like any other unapproved absence, the employee will not be paid for the day. The absence will be considered absent without leave (AWOL).

For additional information, you may [review Personnel Management Liaison memo 2009-017](#), dated March 25, 2009 and [PML 2009-040](#), dated August 17, 2009.

Updated September 25, 2009 at 12:42 PM.

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