

PE INFORMER

CG

#2, February 2009

Professional Engineers in California Government



Court Approves Furloughs

On December 19, Governor Schwarzenegger issued an Executive Order which directed DPA to "implement a furlough" of two days of unpaid leave per month for nearly all state employees and "to initiate layoffs" to achieve a reduction equivalent to 10% of General Fund payroll.

State law specifies that the policy of the state is a 40-hour work week and that salary ranges cannot be changed by the Governor's Department of Personnel Administration (DPA) without negotiating those changes. PEGC filed suit, challenging the unilateral implementation of furloughs without legislative authorization. The California Association of Professional Scientists, representing Unit 10 scientists, joined PEGC in the lawsuit. Several other state employee unions subsequently filed similar actions.

PEGC was also forced to name State Controller John Chiang in the suit because he writes the paychecks, but he informed the Court that he agreed with PEGC. He publicly announced that he would not reduce paychecks due to furloughs unless ordered to do so by the Court.

The state argued that the bargaining law allows the Governor to take such actions without bargaining if he declares an emergency. Other unions claimed the case should not be heard in Court – SEIU Local 1000 filed an unfair practice charge with the Public Employment Relations Board, PERB – but the Court ultimately ruled that the Courts, not PERB, have jurisdiction.

The case was heard in Sacramento Superior Court on January 29. After reviewing papers and hearing all arguments from all parties, Superior Court Judge Patrick Marlette said he didn't agree with PEGC's view or the Governor's arguments on the case.

However, he ruled that the Governor has the authority to impose furloughs. He said that state law only establishes a "policy" of a 40-hour week and "the terms of the MOU do not conflict with the statutes." While that may be true of some of the Memoranda of Understanding (MOUs) of some bargaining units, it is incorrect for Unit 9, which is represented by PEGC. Our MOU states that "the regular work week of full-time Unit 9 employees shall be forty (40) hours," which directly conflicted with the Judge's interpretation that the 40-hour week is not required.

The Judge also found that state law prohibits DPA from unilaterally changing the salary ranges, but the Governor's Executive Order did not change the ranges, just the salaries. This ignored the fact that the two day furlough, which reduces salaries by 9.23%, will change

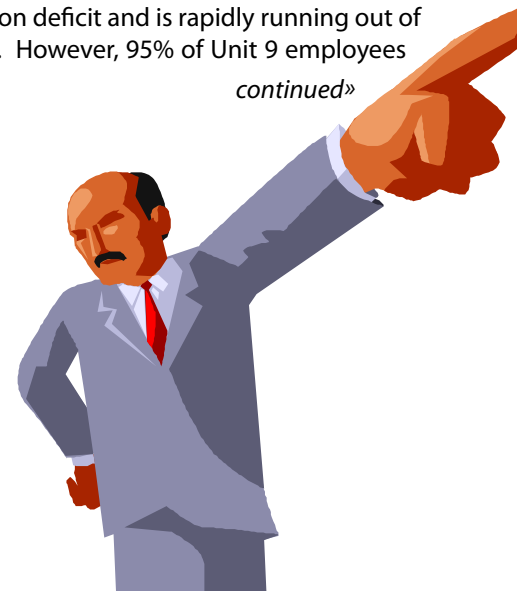
the ranges, putting some employees below the bottom of the range and making the top of the range unattainable during the period of furloughs. It also ignores Article 3 of the Unit 9 MOU which establishes the salaries to be paid to employees, not just the salary ranges. Thus, the Court's conclusion that "the terms of the MOU do not conflict with the statutes" is incorrect.

The Court noted that "this case raises questions of first impression which most likely are bound for ultimate determination in the appellate courts." This conclusion was correct. However, unless the Court of Appeal sets aside the lower Court's ruling while it considers the appeal, it is expected that the furloughs will proceed.

In recent weeks, PEGC's Bargaining Team (for Unit 9) and PEGC's Meet & Confer team (representing Supervisory employees) have been meeting with DPA to discuss alternatives and impacts. As DPA has stated their goal is to save money, and furloughs are one way to achieve that, PEGC made specific proposals regarding reducing outsourcing instead of furloughing employees, which can save over \$100 million over the 17-month span of the proposed furloughs. Another alternative would be to encourage early retirement of more senior higher paid employees and replace them with entry level lower paid employees. This would also save the funds desired by the administration, without furloughs.

PEGC not only opposed the furloughs because they were illegal and would reduce employee pay without negotiations or agreement, but they would fail to achieve the state's goals. The General Fund has a \$40 billion deficit and is rapidly running out of available cash. However, 95% of Unit 9 employees

continued»



PEGC'S WEB SITE ADDRESS: www.pecg.org

PEGC HEADQUARTERS (916) 446-0400
 660 J Street, Suite 445, Sacramento, CA 95814

LOS ANGELES (818) 500-9941
 130 N. Brand Blvd., Suite 301, Glendale, CA 91203

SAN FRANCISCO (415) 861-5720
 1 Sutter St., Suite 800, San Francisco, CA 94104

PEGC ANNOUNCEMENT

Sacramento Callers (916) 446-PEGC
 Outside Sacramento (800) 403-2845

TELEFAX

Headquarters (916) 446-0489
 Los Angeles (818) 247-2348
 San Francisco (415) 861-5360

PEGC INSURANCE INFO (415) 956-1344

PEGC TOLL FREE NUMBERS

Sacramento (800) 338-1480
 Los Angeles (800) 834-3515
 San Francisco (800) 924-5575

Court Approves Furloughs

continued from page 1

and their supervisors are paid through Special Funds, such as gas tax revenue, which cannot be used to balance the state's budget.

Thus, reducing salaries of PEGC members has virtually no impact on addressing the state's budget problems. However, it does have the effect of reducing PEGC members' ability to work on key infrastructure and other projects, risking the potential loss of federal funds which are becoming available under the federal economic stimulus package. The Sacramento Bee, using data from the state, has estimated that the impact of the furloughs will cost the state's economy more than twice as much as furloughs will save. Thus, from any angle, the furloughs are bad for all Californians, not just state employees.

As this is written, there are still questions regarding how the furloughs will be implemented – questions which DPA has not been able to answer to date.

- If Seniors and above, who are exempt from the federal Fair Labor Standards Act coverage and overtime, are to have pay reduced based on hours not worked, will they be paid for any additional hours they work, including overtime?
- It appears that the state is now outsourcing more work than ever in anticipation of the furloughs. Will services contracts, amendments, and task orders continue to be issued?
- What contributions will employees make to PERS and Social Security – a percentage of their former salary or a percentage of the reduced salary after furloughs?
- What is the exact amount of money that the state is trying to save through furloughs of Unit 9 employees and their supervisors and managers?
- If an employee is not paid but works on their furlough day, aren't they entitled to at least minimum wage?
- Which state offices will be closed and locked on furlough days, which will be open to employees, and which will be open to everyone?
- DPA has expressed a desire to continue employee alternate work schedules. How will this be handled?

Stay tuned to the Hotline and other information from PEGC as events develop.

On a final note, the Governor threatened to impose layoffs if furloughs were disallowed by the Courts. He claimed that it was up to the employee unions to determine if they wanted furloughs or layoffs. This was not correct. In his Executive Order, the Governor said he was going to impose furloughs **and** layoffs. He never offered PEGC any alternatives and was only willing to discuss "impacts" of his furloughs.

It is a common practice for management to threaten layoffs in negotiations. For example, when a labor organization seeks raises for its members in contract negotiations, sometimes management will say the raises will require layoffs due to a shortfall of funds.

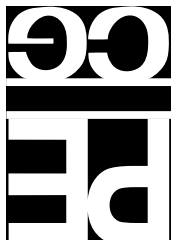
This furlough versus layoff statement by a Governor who already stated his intention to do both should be viewed as nothing more than an attempt to pit one group of employees against another based on their seniority levels. The fact is that with the voter approval of \$40 billion in infrastructure bonds in 2006, voter approval of gasoline sales tax dedicated to transportation, and an upcoming \$4.5 billion for transportation funds from the federal government, there is plenty of money and plenty of work for Unit 9 employees and their supervisors to do, despite the General Fund shortfall.

Return Service Requested

660 J Street, Suite 445 Sacramento, CA 95814

Professional Engineers in California Government

PE INFORMATION



Prst First Class
U.S. Postage
PAID
Permit No. 2182
Sacramento, CA