

# INFORMER

#9, August 2010

Professional Engineers in California Government

## He's Baaaack!

Returning to unimaginative but familiar territory, the Governor issued a new Executive Order on July 28, reimposing three day per month furloughs on some (but not all) state employees. Beginning in August, the furloughs will be implemented on the second, third, and fourth Fridays of the month.

Déjà vu HQ

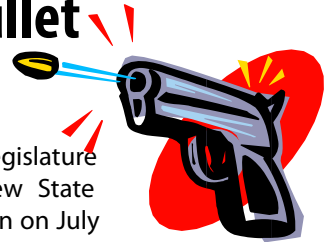


The new furloughs followed the Governor's failed efforts to achieve his goal of putting pressure on the Legislature and State Employee Unions through other methods. His State Budget proposal in May sought a 15% reduction in employee compensation which the Legislature did not approve. His effort to reduce compensation and pension benefits was agreed to by organizations representing six of the twenty-one Bargaining Units with 20% of all state employees, but no one else has followed suit since June. (Two of those Units did not agree to furloughs and one will continue to receive pay raises.) His effort to impose minimum wage on state employees was rejected by State Controller John Chiang and his arguments failed in court.

Thus, he returned to the only ploy that has worked for him thus far -- unilaterally imposing furloughs through an Executive Order. This is similar to the furloughs he imposed for seventeen months, but with a couple of obvious efforts at political pressure. One is to exempt the unions which reached agreements with him; the other is to continue the furloughs until the Legislature passes a budget which he is willing to sign. Otherwise, it's similar to what he has done before, along with listing a few

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## Minimum Wage Bullet Dodged - For Now



As the summer drags on and the Legislature seems no closer to adopting a new State Budget for the fiscal year which began on July 1, the issue of paying minimum wage has loomed as a dark cloud over state employees and their families. Many businesses and merchants are also facing difficult times and were hit hard, particularly in the Sacramento area (where 10% of the work force are state employees) during the 17 months of furloughs. The potential impact on state employees of minimum wage, or even the threat of minimum wage, is far more serious.

The issue is whether State Controller John Chiang can issue paychecks to state employees in the absence of a State Budget or other Legislative authorization to appropriate and spend the funds. Federal law, which supersedes the State Constitution, requires paying minimum wage (\$7.25 per hour) for most employees, although the full salaries would be retroactively reimbursed once a budget passes.

For more than two years, the Governor has been suing Controller Chiang to try to block him from continuing to issue full paychecks to state employees. The Controller has thus far effectively repulsed those efforts on a variety of legal grounds, plus the argument that it is infeasible to adjust paychecks on a monthly basis for all employees due to the antiquated COBOL program used for the state's payroll system. "COBOL is my Hero" T-shirts are now available online.

On July 2 the Court of Appeal upheld a lower court ruling that the Governor's Department of Personnel Administration (DPA)

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## HE'S BAAACK

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departments -- Franchise Tax Board, Board of Equalization, Employment Development Department, and the State Compensation Insurance Fund -- which are exempt.

PECG's lawsuit challenging the Governor's authority to impose furloughs under current law and the provisions of the MOUs which continue in effect is now before the State Supreme Court. Briefings (written arguments) have been completed and the Court will hear oral argument on September 8, after which they will issue a ruling either upholding or rejecting the furloughs. If PECG is successful, the remedy could include full back pay for all the furlough days imposed under the previous seventeen months of furloughs. PECG's attorneys are reviewing whether that decision would automatically apply to this new furlough order as well or whether some additional legal action will be necessary.

PECG also filed suit in Alameda Superior Court, challenging the application of



furloughs to employees paid through Special Funds. If successful, that suit could stop furloughs for 96% of the PECG membership, regardless of the outcome of the Supreme Court ruling in PECG's other lawsuit.

## MINIMUM WAGE BULLET DODGED - FOR NOW

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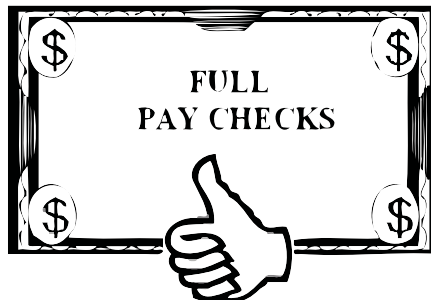
has the authority to order the Controller to defer employees' salary payments in the absence of a budget or other appropriations authorization. However, the Court also found that the Controller's argument that it is not feasible to implement the Governor's instructions will be determined by the "state of the evidence in any future litigation." The Court said it "will not speculate as to the future capabilities of the payroll system that will be in place at the time of future budget impasses."



The Governor struck again on July 16. This time, he asked the Sacramento Superior Court to issue a temporary restraining order, requiring Controller Chiang to issue minimum wage paychecks for the July payroll period. The case was assigned to Judge Patrick Marlette, who had ruled in the Governor's favor on the furlough issue which is now under review at the State Supreme Court.

However, the Judge didn't buy the Governor's argument this time. The Court found that it is not clear which party would ultimately succeed based on the merits of their arguments but ordering minimum wage at this point "would have a significant, and in many cases devastating, financial impact on many state employees." Thus, the Governor's request for an immediate order was denied.

On July 20, the Sacramento City Council passed a resolution urging the Governor to "rescind his directive" to pay state employees minimum wage because of "the devastating effect to Sacramento's economy."



What happens next? The Judge indicated he would rule on some of the legal arguments in late August. However, regarding the Controller's assertion that it would not be feasible to attempt to pay some employees \$7.25 an hour, others \$455 per week, others full salary, and others nothing would require more extensive proceedings, including discovery (evidence, sworn declarations, etc.). When that would take place is not clear, but in the meantime, employees will continue to receive full paychecks on time.

As this minimum wage issue could arise at any time in the future when the Legislature is late with a budget and the Governor's legal arguments could ultimately prevail, PECG is seeking other alternatives to address the issue. One is to continue to urge the Legislature to pass either AB 790 or AB 1699, the PECG-sponsored Bills which would authorize a "continuous appropriation" for state employees' salaries for every year in the future, regardless of the status of the State Budget.

Another alternative which would not eliminate the problem but would alleviate its impact is arranging for loans for state employees who receive less than their full paychecks in the future. The Golden 1 and some other credit unions throughout California stated their intention to provide loans to state employees at no or low interest.

PECG has also asked CalPERS to implement a loan program for such purposes to be permanently in place so it can be made available when needed. Thus far, CalPERS has resisted. As their Constitutional obligation is to act "solely in the interest of" the employees, their families and retirees, we will continue to pursue implementation of an appropriate loan program.

## Bargaining (such as it is) Update

By late June, organizations representing six of the twenty-one Bargaining Units including about 20% of the state's employees had reached agreement with the Governor's office on new Memoranda of Understanding (MOUs) or contracts. Four of them include compensation reductions of 10% or more, a reduction in pension benefits for future hires, and other negative provisions. The other two, covering Highway Patrol Officers and Firefighters, contain more favorable provisions.



Since that time, none of the other Bargaining Units have reached agreement with the Governor. Actually, his proposals have gradually gotten worse, involving more reductions than he initially proposed.

PECG's Bargaining Team met with DPA on July 19. The meeting was cordial, brief, and nonproductive. While negotiations will no doubt continue, no date has been set for the next meeting.

## Pushing People Around

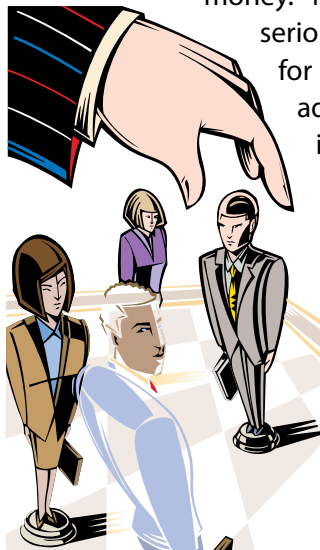
Caltrans is transferring more than 100 PECG-represented employees from the Gateway Oaks Office in Sacramento to District 3 Headquarters in Marysville. These employees have lived and worked in Sacramento for many years. When the new District Office building was built in Marysville, management did not expect to transfer anyone. Now, all that has changed, to the detriment of the employees.

Caltrans refused to meet and confer with PECG over the impact of the move, even though that is required by the MOU which is still in effect. DPA finally agreed to meet and confer on July 14, just days before the office moving vans were starting their engines. Caltrans summarily rejected PECG's proposals to mitigate the impact on employees by utilizing shuttles, reimbursing time and expenses for the additional travel time, and other recommendations. DPA also refused to continue

to meet and confer beyond one hour and they began moving the offices on July 23.

The impact on the employees goes beyond time and money. Numerous members informed PECG of serious difficulties regarding child care, care for aging parents and others, purchasing additional vehicles, reduced involvement in school and other family activities, stress, health issues, and other problems inherent in commuting more than forty additional miles each way, every day. PECG told DPA and Caltrans District 3 management about these relocation impacts on employees, but it made no difference.

Because of DPA's refusal to complete the meet and confer process, PECG will seek reimbursement for time and expenses for affected employees. Even if such claims are successful, however, the damage done to the employees and their families is substantial and unnecessary.



# It's Election Time!

The election for Governor, U.S. Senator, the Legislature, and other office holders isn't until November, but the PECG Elections are happening this month.

On August 10 you will be mailed a ballot to elect PECG's Corporate President-Elect, Vice Presidents, Secretary and Treasurer for the upcoming year. The package will contain a ballot and information about each of the candidates, along with instructions on how to fill out and return your ballot.

If you are a member but you did not receive this Informer at home, that means you will not receive your ballot because we do not have your correct mailing address. Please call (916-446-0400) or e-mail (pecg@pecg.org) to give us your correct mailing address so we can send you the election ballot and future Informers.

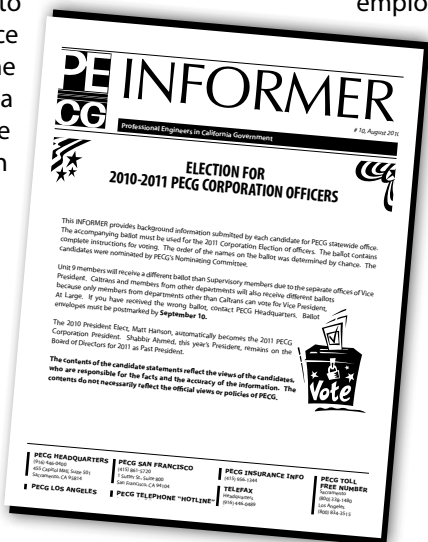
If you are a fee payer or nonmember and would like to vote in PECG Elections, respond to Bargaining

Priority Questionnaires, and take advantage of the benefit package available only to members, please call or e-mail us or go online at [www.pecg.org](http://www.pecg.org) to fill out a membership application. The majority of Supervisors and 84% of Unit 9

employees are already PECG members, so this is an opportunity for you to join your colleagues in becoming a member of the organization that represents you.

Each of the seventeen PECG Sections is also holding an election for Section Director, President, and other officers. Please look for those ballots in the mail in the coming weeks.

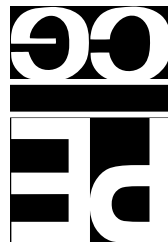
PECG's strength and ability to represent you is directly proportional to the number of members and their level of participation. If you are not a member of PECG, now is a good time to join. If you are a member, please vote when you receive your Corporation and Section ballots in the mail.



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