

PE INFORMER

CG

#5, March 2009

Professional Engineers in California Government



Let the Sun Shine In

Thirty years ago, the Legislature passed and the Governor signed a new law called the **Dills Act**, named after its author, Senator Ralph Dills. The law authorized state employees, through organizations they elect, to be represented in a collective bargaining process which includes contract negotiations.

A labor board, called the Public Employment Relations Board or PERB, established twenty bargaining units of state employees, generally along occupational lines. One of those units, **Unit 9**, includes professional engineers and related classifications, such as land surveyors, engineering geologists, landscape architects, and others. **PECG won the election** to represent that bargaining unit. (PECG also represents engineering supervisors and managers in a separate meet and confer process, also established by law.)

The centerpiece of the Unit 9 collective bargaining process is **contract negotiations** between the Governor's Office, represented by the Department of Personnel Administration (DPA), and PECG, represented by a collective bargaining team whose Chair is the Vice President for Collective Bargaining elected each year by the PECG members in the bargaining unit.

The **goal** of the bargaining process is to reach agreement on a contract, called a Memorandum of Understanding (**MOU**). Reaching agreement typically takes months and sometimes years. Once agreement is reached, it is **ratified by the Legislature** in a

bill (if the agreement requires an expenditure of funds or changes existing law) **and by the PECG members** in Unit 9. The contract then becomes a **binding document** throughout its term.

The previous Unit 9 MOU was negotiated in 2003 and had a duration through July 2, 2008. It is a binding contract which both parties are required to comply with. If there is disagreement regarding whether the contract has been violated, it is ultimately resolved through **grievance arbitration**. That means that one party files a grievance and, if agreement cannot be reached on a resolution, the decision is ultimately made by a neutral arbitrator jointly selected by the parties. The arbitrator's decision is final and binding.

If a new agreement is not reached by the time the term of the contract ends, by law, the provisions of the contract continue in effect. That means the parties must comply with the contract unless another law changes any of those conditions.

What is the impact of this in real life? It means that during the term of the contract, the Legislature and Governor cannot pass a law which conflicts with the contract, although the Legislature could refuse to appropriate funds to pay for increases in salaries or benefits on an annual basis. That has never occurred, but if it happens one of these years, it would set up a conflict between the Legislature's budget authority and the obligation of the State to comply with the provisions of a multi-year agreement, an issue which would probably ultimately be resolved by the Courts.



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Once a contract's term is over, its provisions only continue because the law says they do. Thus, if the Legislature were to change the law during this time in a manner contrary to the expired contract's provisions, the law would govern.

Recently, the Legislature passed a law eliminating two state **holidays**. The law included a provision that allows the parties to negotiate something different. It also conflicts with provisions of the previous MOU regarding holidays. While the Legislature could not reduce the number of holidays during the term of the MOU, it is allowed to do so during this period prior to the next MOU. The new law (eliminating two holidays) would supersede the law which says that all provisions of the MOU continue in effect after its term ends.

In December, the Governor by Executive Order mandated **furloughs** for state employees. PECG and others challenged the Governor's authority to issue that order. The initial Court ruling upheld the furloughs. That ruling is under appeal. Meanwhile, PECG has filed a **grievance**, alleging that the Governor's Order violates the provisions of the MOU which continue in effect. The Legislature could have authorized the furloughs during this time but did not do so. That grievance is headed to **arbitration**, as (in PECG's view) furloughs violate the hours of work and salary provisions in the Unit 9 MOU.

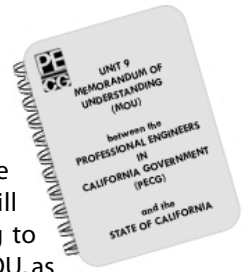
Meanwhile, negotiations on a new MOU are underway. Last year, DPA issued a **"sunshine" proposal**. Under state law, when initial contract proposals are made, they must be provided at a public meeting for anyone to read. Consistent with standard practice, DPA's "sunshine" proposal consisted of a statement that they are willing to renegotiate each and every provision of the MOU.

PECG is not required by law to "sunshine" our counter proposal, but just to avoid any procedural questions later, we are doing so. PECG's counter proposal will also be a statement that we are willing to negotiate any and all provisions of the MOU, as well as related topics which may arise during bargaining. These will be presented at a public meeting in Sacramento on April 3 which will probably be attended by no one because, as in prior years, no one is interested in hearing either DPA or PECG state the obvious – we're willing to negotiate a new agreement.

For more than a year, PECG and DPA have been informally discussing the potential for a new contract and its various elements. Progress has been understandably slow due to the state of the economy in general and the state budget in particular.

It is anticipated that these discussions and negotiations will become more productive in the coming months, ultimately resulting in a new Unit 9 MOU. No one knows when that will occur, but when it does, the new MOU will be presented to the PECG membership for your approval or rejection.

Be assured that your PECG Bargaining Team will keep the membership informed when anything significant occurs in the bargaining process. In the meantime, the PECG Bargaining Team and all of the PECG leadership deeply appreciate the continued support and patience of the members during these difficult economic times.

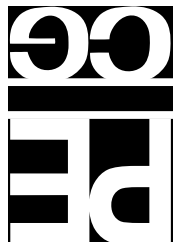


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