

## CAPS Lawsuit Summary October 2009

CAPS is a party to several lawsuits against the Schwarzenegger Administration seeking to protect the salary and benefits of state scientists.

CAPS would prefer a more cooperative approach, one that results in a collective bargaining agreement that includes a definite end to unpaid furloughs and eventual salary increases.

While the Schwarzenegger administration initially seemed interested in working cooperatively, more recently it has been ruthless in reducing salaries and seeking wholesale benefit changes. Consequently, CAPS has filed several lawsuits which challenge the governor's authority to slash the pay and benefits of state scientists and all state employees.

Here is a summary:

**CAPS v. Schwarzenegger (First Furlough Lawsuit).** Last December, CAPS challenged Governor Schwarzenegger's executive order calling for a two-day furlough and corresponding 10 percent pay cut for state scientists. That lawsuit is pending at the Third District Court of Appeal. CAPS contends that state law and the now expired CAPS MOU do not allow the governor to unilaterally cut work hours or pay. It points out that several California governors, including Schwarzenegger, have negotiated or sought legislative approval for unpaid furloughs. The CAPS MOU calls for a 40-hour work week and requires specific salaries to be paid. It also refutes the notion that an "emergency" allows the Governor to take action inconsistent with the law and the MOU. Judge Patrick Marlette ruled for the governor at the superior court. Briefing in the appeal will be finished on or about November 9, 2009. The case should be ready to be set for oral argument in early 2010. Read the case here:  
<http://www.capsscientists.org/Download/Furlough-Writ.pdf>

**CAPS v Schwarzenegger (Second Furlough Lawsuit).** During July 2009 Governor Schwarzenegger added a THIRD unpaid furlough day to the mandatory program. On July 24, CAPS challenged it with another lawsuit, this one challenging the governor's executive order authority to implement and extend furloughs to state scientists paid out of special funds. Savings in such funds do nothing to shore up the General Fund and thus do not meet the explicit goals of the Governor's executive order. This case will be set for trial in San Francisco Superior Court in the next few weeks. See the case here:  
<http://www.capsscientists.org/Download/CAPSLawsuit20090724.pdf>

**CAPS Holiday Lawsuit.** Most recently, the Governor ordered state employees to report to work on Columbus Day, October 12, historically a state holiday. Last February, Governor Schwarzenegger, with the cooperation of the state

legislature, passed legislation at the 11<sup>th</sup> hour which eliminated both Columbus Day and Lincoln's birthday from the list of 14 state holidays. This action conflicts with state law which continues certain provisions of an expired MOU, including holidays. CAPS, like several other state unions, have filed a variety of actions disputing loss of Columbus Day absent a negotiated agreement. The CAPS lawsuit was filed in Sacramento Superior Court, will be heard in the coming weeks, and can be viewed here:

[http://www.capsscientists.org/Download/CAPS\\_Holiday\\_Lawsuit.pdf](http://www.capsscientists.org/Download/CAPS_Holiday_Lawsuit.pdf)

**Gilb v. Chiang (Minimum Wage Case).** During July 2008, in the midst of a budget deadlock with the state legislature, Governor Schwarzenegger issued an Executive Order directing State Controller John Chiang to cut state employees pay to the minimum amount required by the Fair Labor Standards Act. When Controller Chiang refused, the Governor's Department of Personnel Administration filed suit on August 11, 2008 seeking a court order precluding the Controller from paying employees above the FLSA minimums. CAPS intervened in support of the Controller and is a party to the case. Following a hearing in February 2009, the court ruled in favor of the Governor, meaning that in a future budget impasse, the Governor could direct the Controller to pay minimum wage. The Controller, CAPS, and other employee organizations have appealed the decision to the Third District Court of Appeal. Briefing is just beginning and will wrap up near the end of the year.

**CAPS v. DPA, Finance (Like Pay/Like Work).** In November 2006, CAPS challenged the salary ranges for 14 supervisory scientist classifications claiming that the pay violated the principle that "like salaries shall be paid for comparable duties and responsibilities." The quasi-legislative challenge was heard before the DPA through eight days of hearing. In an April 2008 administrative decision issued by DPA, CAPS prevailed in full. CAPS proceeded to court to enforce the decision, seeking to have the salaries paid. The court issued a writ commanding DPA and the Department of Finance to present the funding needed to pay the increased salaries to the Legislature for its consideration. Finance has appealed the decision; the DPA has not. Finance's appeal will make its way through the appellate process over the next several months. DPA will be expected to comply with the decision as the appeal proceeds. Though DPA did not appeal the court decision, it is now scheduling audits to review staffing and recruitment practices departments impacted by the LPLW efforts. CAPS is tracking the progress of this audit to ensure the outcome does not negatively affect this victory. What that means won't be known until the Governor issues his draft budget for 2010-11. Regardless, CAPS will continue to push for payment as quickly as possible with full retroactivity. Read Judge Connelly's decision here:

<http://www.capsscientists.org/Download/Like-Pay-Writ.pdf>