

**IN THE SUPREME COURT OF
THE STATE OF CALIFORNIA**

CALIFORNIA ASSOCIATION OF PROFESSIONAL SCIENTISTS,) Supreme Court Case No.
) S194523
)
<i>Plaintiff and Respondent,</i>) Court of Appeal
) Third Appellate District
v.) Case No. CO63118
)
DEPARTMENT OF FINANCE) Sacramento Superior Court Case No.
et al.,) 34-2008-00014476-CU-WM-GDS
)
<i>Defendants and Appellants.</i>)
)

**REPLY TO ANSWER TO PETITION FOR REVIEW
OF A DECISION OF THE COURT OF APPEAL
THIRD APPELLATE DISTRICT**

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TO THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF
JUSTICE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF
THE CALIFORNIA SUPREME COURT:

California Association of Professional Scientists (CAPS), Plaintiff
and Respondent, respectfully submit this reply to Defendant and Appellant
Department of Finance's (Finance) Answer to Petition for Review.

I.

INTRODUCTION

Finance frames the issues presented by the Petition far too narrowly. Finance maintains that it “has no duties with respect to section 19826 salary adjustments” and therefore may not be compelled by mandamus to take any action related to those salaries. (Answer to Petition for Review, p. 6.) The narrow reliance on the two statutes relied upon by the trial court in granting the writ in this case ignores the broader issues presented by the Petition. This case concerns the statutory salary setting and appropriation process as a whole for tens of thousands of supervisory and other excluded employees. In answering the Petition, Finance does not address the statutes and cases conferring salary setting authority exclusively with the Department of Personnel Administration (DPA) (subject to the Legislature's power of appropriation) or the statutes and cases which require the presentation of

proposed budget appropriations to the Legislature for its determination.

The Court of Appeal decision improperly provides Finance a role in the legislative salary setting process and “veto” authority over DPA’s legislative function of salary setting for state supervisors. In doing so, the decision denies the Legislature the opportunity to review and make the policy determination regarding the amount of supervisory employees’ salaries in conflict with statute. Finance’s position claiming it has no role in salary setting, yet effectively preventing the salary determinations made by DPA from being presented to the Legislature for its consideration as part of the state budget process, highlights the need for this Court to review this case.

II.

ARGUMENT

A. The Court of Appeal Opinion Improperly Allows Finance to Prevent the Statutorily Required Salaries From Being Presented to the Legislature for its Consideration as Part of the State Budget Act

Salary setting is a legislative function which the Legislature assigned to the DPA, not to Finance. (Gov. Code § 19826.) The Legislature, not Finance, makes the policy determination of whether to appropriate funds to pay the salaries determined by DPA.

In its answer, Finance does not even address the conflicts with two of the three cases presented in CAPS' Petition: *Tirapelle v. Davis* (1983) 20 Cal.App.4th 1317 and *Schabarum v. California Legislature* (1998) 60 Cal.App.4th 1205.

The *Tirapelle* decision makes clear that DPA's exercise of quasi-legislative salary setting is subject only to the ultimate authority of the Legislature to approve, reject or alter such authority through appropriate legislation. (*Supra*, 20 Cal.App.4th at pp. 1322 - 1323, fn. 8.) Finance does not mention the *Tirapelle* decision in its answer, nor does Finance address the fact that the Legislature is effectively denied the salary information it needs to consider in crafting the State Budget.

The court in *Schabarum* makes clear that in the aid of the Legislature's exercise of the power of appropriation, every state agency is required to prepare and submit a detailed budget which, with the assistance of Finance, is utilized in the budget bill and which must be submitted by the Governor and introduced in both houses of the Legislature. (*Supra*, 60 Cal.App.4th at 1223.) Finance does not address the *Schabarum* decision in its answer, nor does Finance address the requirement that the proposed budget "shall contain a complete plan and itemized statement of all proposed expenditures provided by existing law...". (Gov. Code § 13337.)

The salaries at issue here are “provided by existing law” because they have been found by DPA to be legally required by Government Code section 19826. As such, Finance must include the salaries in the budget bill submitted to the Legislature. (Gov. Code § 13337.) The proposed increases are mandatory and are subject only to the availability of an appropriation to pay the increases. (*State Trial Attorneys’ Assn. v. State of California*, (1976) 63 Cal.App.3d 298, 305.)

Finance cites to the portion of the Court of Appeal opinion stating that *State Trial Attorneys’ Assn.* “did not involve or even mention an affirmative obligation on DPA’s predecessor or Finance to seek appropriations for salary adjustments approved by DPA that exceed existing appropriations.” (Answer at p. 7, citing Opinion at pp. 14-15.) In granting the writ based upon like pay for like work the court in *State Trial Attorneys’ Assn.* stated that the State Personnel Board could actually lawfully adjust the salaries at issue in the expectation of adequate appropriations for the upcoming fiscal year. (*Supra*, 63 Cal.App.3d at 305.) The trial court’s writ here did not go as far as allowing the adjustment of salaries, rather it simply required the appropriation question be presented to the Legislature for its determination. This holding is far from “weak dicta” and demonstrates a

direct conflict with the Court of Appeal opinion.

B. The Trial Court Did Not Order Finance to Exercise Discretion Regarding the Amount of the Salaries, Rather the Writ Ordered Finance to Provide Information to the Legislature

Finance states that the “like-pay-for-like work” principle in Government Code section 18500 is “tempered by an additional provision within the statute that states an employee’s right to comparable pay is subject to the Legislature’s determination of what is in the best interest of the state” and that therefore there is discretion exercised which cannot be compelled by mandate. (Answer at p. 9.) What Finance misses is that the discretion is DPA’s and the Legislature’s; no discretion falls to Finance. DPA has already determined the salaries. DPA has already exercised any discretion it may have. As noted by Finance, the remainder of the statute says that it is the Legislature’s determination. (Gov. Code § 18500 (c)(4).) The writ, and CAPS’ claims, do not attempt to compel the Legislature to exercise its discretion to appropriate money. Rather the claim is to compel Finance and DPA to take the ministerial actions to present the required information to the Legislature.

III.

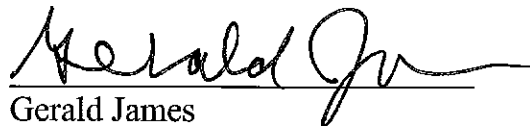
CONCLUSION

Issues related to the process and authority for the DPA to set salaries, and for the Legislature to be presented with the choice of appropriating funds for those salaries, are of great public importance. Similarly, like-pay-for-like work is a cardinal objective of the State Civil Service Act and this action concerns the effective implementation of this objective. The Court of Appeal decision improperly provides Finance “veto” authority over salaries, in conflict with statutes and the appellate cases cited above. This Court’s decision is necessary to secure uniformity of decision and to definitively resolve these issues and provide guidance to the state employer, the Legislature and the tens of thousands of state employees whose salaries are determined by the DPA.

CAPS respectfully requests that this Court grant the Petition for Review to resolve these important statewide issues.

August 4, 2011

Respectfully submitted,



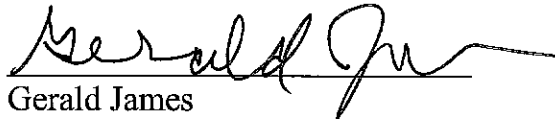
Gerald James
Attorney for Plaintiff and Respondent
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Scientists

CERTIFICATE OF WORD COUNT

I, Gerald James, Attorney for Plaintiff and Respondent California Association of Professional Scientists, hereby declare under the penalty of perjury that the attached Reply to Answer to Petition for Review contains 1119 words and uses a 13 point Times New Roman font. I am relying on the computer program, Corel Word Perfect X4, used to prepare this petition for this word count.

August 4, 2011

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gerald James", written over a horizontal line.

Gerald James
Attorney for Plaintiff and Respondent
California Association of Professional
Scientists