

CASE NO.

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

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

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**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, Plaintiff and Respondent, respectfully petitions the Court for review following the decision of the Court of Appeal, Third Appellate District, filed on May 25, 2011. A copy of this decision is attached hereto and marked as Attachment A.

I.

**ISSUES PRESENTED FOR REVIEW**

This case presents the following issues for review:

1. Whether quasi-legislatively determined salaries for state supervisory employees, as adjusted by the Department of Personnel Administration pursuant to Government Code section 19826 to conform with the principle of like-pay-for-like-work, must be presented to the Legislature for its consideration of approval or rejection of an appropriation to pay those increased salaries?

2. In delegating to the Department of Personnel Administration the quasi-legislative salary setting function in Government Code section 19826, did the Legislature authorize the Department of Personnel

Administration to determine the salary obligations of the state, subject to an appropriation to pay those salaries?

3. May the Department of Finance refuse or fail to present the quasi-legislative salary determinations for state supervisory employees, as determined by the Department of Personnel Administration, to the Legislature for its consideration of approval or rejection of an appropriation to pay those increased salaries?

## II.

### **WHY REVIEW SHOULD BE GRANTED**

The Legislature has delegated the quasi-legislative task of setting salaries for state supervisory, managerial and certain other state employees to the Department of Personnel Administration (DPA). In determining those salaries, DPA must follow the statutory criteria outlined by the Legislature in the salary setting delegation in Government Code section 19826. Among the statutory criteria is a mandate that “like salaries shall be paid for comparable duties.” (Gov. Code §19826.) Any adjustments to the salaries are subject only to an available appropriation to pay the salaries determined by DPA. That appropriation for the salaries must be made (or rejected) by the Legislature.

Where the salary determinations of the DPA call for salary increases

based upon the statutory like-pay-for-like-work principle, the increases involve substantial rights. To effectively administer the salaries of tens of thousands of supervisory, managerial and other employees excluded from collective bargaining, the Legislature must be given the chance to review proposed salary appropriations in the context of the annual State Budget Act. If this decision of the Court of Appeal is allowed to stand, the Legislature may be denied the opportunity to consider whether to appropriate the funds necessary to implement DPA's salary determinations, frustrating one of the cardinal objectives of the State Civil Service Act - like salaries for comparable duties - and frustrating the substantial rights of impacted supervisors, managers and other state employees.

Here, DPA determined that certain supervisory state scientists perform comparable work to certain state supervisory engineers. Because the state law DPA administers in setting supervisory state employees' salaries requires that "like salaries be paid for comparable work," DPA properly determined the salaries of fourteen classifications of state supervisory scientists should be increased to restore the historical parity with state supervisory engineers. Once the factual determination that the work of supervisory scientists and supervisory engineers is comparable was made, the salary determinations by DPA became mandatory, not

discretionary, and are subject only to an appropriation to fund the increases.

In order for the increased salaries for the supervisory scientists to take effect, the Legislature must appropriate funds for the increased salaries.

Like-pay-for-like work is listed among the cardinal objectives of the State Civil Service Act. (Gov. Code § 18500; *State Trial Attorneys' Association v. State of California* (1976) 63 Cal.App.3d 298, 304.) Setting the salaries of supervisory and other employees excluded from collective bargaining is a matter of significant statewide concern. These proposed increases, which are a substantial right, are subject only to the availability of an appropriation to pay the increases. (*Ibid.* at 305.)

In this decision, the Court of Appeal holds that neither the DPA nor the Department of Finance have a duty to present the question of whether to fund an appropriation to pay the increased salaries as determined by DPA to the Legislature.

The Court of Appeal's decision is not in line with *State Trial Attorneys' Assn. v. State of California, supra*, 63 Cal.App.3d 298 which found that the like-pay-for-like work principle "be applied to reach dollar results." (*Id.* at p. 305.) In ensuring that those dollar results were to be reached, the court in that case said the State Personnel Board (the salary setting predecessor to the DPA) "may lawfully adjust these salaries in the

expectation of adequate appropriations for the [next fiscal year].” (*Ibid.*) The decision in the instant case acknowledges this statement, but calls it “very weak dicta” and distinguishes the case based on the state’s current fiscal status. (Opinion, p. 15.)<sup>1</sup> This finding by the appellate court in this case demonstrates that the decision also conflicts with the decision in *Tirapelle v. Davis* (1983) 20 Cal.App.4th 1317.

*Tirapelle v. Davis* held that the power of appropriation resides exclusively in the Legislature and that the matter of setting employee compensation is a legislative function that the Legislature accomplishes through a delegation to the DPA. DPA’s exercise of the quasi-legislative salary setting is subject to the ultimate authority of the Legislature to approve, reject or alter such authority through appropriate legislation. (*Id.* at pp. 1322 - 1323, fn. 8.) It is undisputed that historically the salaries recommended by the DPA were presented to the Legislature through the compilation of the Budget Act Log. (CT 0405.) Here, instead of DPA and the Legislature determining the salaries, the Court of Appeal decision now allows Finance to have a “gatekeeper” role to prevent the DPA salary determinations from making it to the Legislature. The state’s fiscal status

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<sup>1</sup> The page references are to the slip opinion of the Court of Appeal, a copy of which is attached hereto as Attachment A.



and budget are matters for the Legislature to consider and it is the Legislature's role after considering these factors, to then set the appropriation priorities for the state. Choosing whether to fund these salary increases is not the job of the Department of Finance or that of the courts, it is the job of the Legislature.

Finally, the Court of Appeal decision conflicts with *Schabarum v. California Legislature* (1998) 60 Cal.App.4th 1205 which holds 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. (*Id.* at 1223.)

On that basis, this Court's review is necessary to secure uniformity of decision and to settle important questions of law in matters with a statewide impact. The Court of Appeal decision erroneously prevents the Legislature from considering under the State Budget Act the proper salaries required to be paid under the law. While the Court of Appeal decision deals only with the salaries of fourteen classifications of state supervisory employees, the decision directly affects the tens of thousands of supervisory, managerial and other employees of the State of California

whose salaries are determined by the DPA. These salary determinations, and the process for presenting an appropriation for those salaries to the Legislature for approval or rejection, have broad public policy implications. Review of the Court of Appeal's decision is necessary to resolve conflicts with other appellate decisions and provide guidance to lower courts and to California's thousands of supervisory and other state employees on this matter of statewide concern.

### III.

#### STATEMENT OF THE CASE

##### A. Statement of Facts

##### 1. Salary Setting For Supervisors Through a Quasi-Legislative Hearing Before DPA

The Legislature has provided the DPA with the statutory authority to set salaries for employees excluded from collective bargaining, including employees designated as supervisors. The matter of setting employee compensation is a legislative function which, in this instance, the Legislature has delegated to the DPA. (*Tirapelle v. Davis, supra*, 20 Cal.App.4th at 1322 citing *Pacific Legal Foundation v. Brown* (1981) 29 Cal.3d 168, 189.) As part of the salary setting delegation, the Legislature has stated that the salary ranges “shall be based on the principle that like salaries shall be paid for comparable duties and responsibilities.”

(Gov. Code § 19826.) This provision has been construed to mandate “horizontal parity among comparable positions throughout the civil service structure.” (*State Trial Attorneys’ Assn. v. State of California, supra*, 63 Cal.App.3d at 304.)

Historically, there has been horizontal salary parity between 14 supervisory scientist classifications and 14 supervisory engineer classifications. In setting the salaries, the state (through the DPA since 1981) has historically paid the state supervisory scientist classifications either the same, or consistently paid five or ten percent lower, than comparable engineering classifications. (CT 0040.)

Beginning in July 2005, the supervisory engineering classifications began receiving salary increases which were higher than those of the supervisory scientist classifications. Following additional salary increases for supervisory engineers in July 2006 which widened the pay gap between supervisory classifications that were once compensated comparably, Plaintiff and Respondent California Association of Professional Scientists initiated an administrative challenge to the supervisory scientific classification salaries. (CT 0124.)

On November 3, 2006, CAPS challenged the salary ranges for 14 supervisory scientist classifications claiming DPA violated the legislative

mandate found in Government Code section 19826 which requires the state to pay like salaries for comparable work. (CT 0124.)

Following a hearing, the DPA concludes that factual evidence presented by CAPS and the employing agencies established that the duties and responsibilities of the subject supervising scientist classifications are substantially similar but not identical to those assigned to the subject supervising engineer classifications. (CT 0039 - 0041.)

In the Director's Decision, the DPA adjusted supervising scientist classification salaries by increasing them to comparability with parallel supervising engineering classifications, based on historical State Personnel Board documents that initially established classifications and historical pay scales. (CT 0040 - 0042.) In making these salary determinations, the DPA Director is acting consistent with the authority under Section 19826 to set salaries subject only to the availability of appropriations to pay the increase. (*Tirapelle v. Davis, supra.*, 20 Cal.App.4th at 1326.)

Finance determined that "Funds for the recommended salary increases for the 14 supervising salary classifications have not been appropriated in either department budgets or in Budget Act Item 9800." (CT 210.)

2. Neither Finance nor DPA Took Any Further Action to Place the Amount Needed to Fund the Salary Determination Before the Legislature in the Budget Act Log or Elsewhere.

As part of the budget process, in the fall of each year, the DPA notifies Finance of its intent to increase salaries and benefits for certain groups of employees. DPA requests that Finance put that money into the Budget Item 9800 of the Governor's Proposed Budget. (CT 0405, See Deposition of Timothy Lynn, Finance Assistant Program Budget Manager.) DPA does this by providing Finance a "Budget Log" for employee compensation increases. DPA provides this Budget Log in the fall budget process and then again in connection with the May revision to the budget. (CT 0412.)

The Budget Log breaks down the compensation and benefit increases by individual state employee bargaining units and also by employees excluded from collective bargaining. (CT 0456, See Budget Log document titled "Item 9800 2007-08 Budget Act".) The total expenditures for compensation and benefit increases listed in the DPA Budget Log total typically matches the total in the 9800 Item in the state Budget Act. (CT 0405 - 0417.)

Finance took the position regarding the preparation of the 9800 Item of the state budget, that "[t]he Director of the DPA is responsible for setting

salaries for excluded employees.” (CT 0394.) Finance conceded that Finance does not conduct any independent investigation of the items in the 9800 Item. Instead, Finance relies upon the salary requirement information provided to it by the DPA in assembling the employee compensation items in the State Budget. (CT 0393 - 0394.)

Despite this historical process where DPA’s salary determinations are placed into the State Budget by Finance, that did not happen in this case. Instead, following Finance’s determination that the funds had not been appropriated by the Legislature, neither DPA nor Finance took any action to place the needed appropriation before the Legislature for its consideration.

**B. Procedural History**

CAPS filed a verified petition for writ of mandate and request for declaratory relief on June 27, 2008. (CT 0017.) In addition to declaratory relief regarding the amount of the salaries owed, CAPS sought a writ compelling DPA to set the salaries consistent with the DPA Director’s decision and then compelling Finance to determine whether the increased salaries can be paid out of existing appropriations. CAPS also sought a writ commanding DPA and Finance to include the funding needed to increase state supervisory scientists’ salaries in the proposed budget for the Legislature’s consideration. (CT 0018 - 0019.)

The trial court issued judgment and a writ in favor of CAPS on July 28, 2009. The Judgment found that respondents DPA and Finance have a duty to implement a recommendation for adjustments to the salary ranges for 14 supervising scientist classifications in state civil service pursuant to the principle in subdivision (a) of Government Code section 19826 “that like salaries shall be paid for comparable duties and responsibilities.” (CT 0683.) After finding that the recommended increases would require expenditures in excess of existing appropriations in Budget Item 9800, the trial court held that respondents “must take all feasible steps to present the recommended salary adjustments to the Legislature for consideration of whether to appropriate funds needed to make the adjustments.” DPA is responsible for insuring like pay for like work, specifically under the like-pay-for-like-work principle stated in subdivision (a) of section 19826 and broadly under the legislative purpose stated in subdivision (c)(1) of Government Code section 18500, to provide a state civil service system in which positions involving comparable duties and responsibilities are similarly classified and compensated. Pursuant to that statutory responsibility and legislative purpose, the trial court found DPA must inform the Legislature of the need for funds to make the salary adjustments recommended on the basis of the statutory like-pay-for-like-

work principle. The trial court held that in preparing the Governor's proposed budget, Finance must include accurate information provided by DPA in a Budget Act Log or other document to the Legislature for its consideration in appropriating funds. Relying on *State Trial Attorneys' Association v. State of California, supra*, 63 Cal.App.3d at 303-305, the trial court found that withholding that information from the Legislature and allowing the recommended salary adjustments to founder would degrade the statutory like-pay-for-like work principle in statute.

The court issued a peremptory writ requiring Finance to "include accurate information furnished by Respondent Department of Personnel Administration about the amount of the funds needed for the salary adjustments in a Budget Act Log or other document presented to the Legislature for its consideration in appropriating funds for state employees' salary increases." The writ obligation for Finance would be in place until either the Legislature appropriates the funds to implement the decision or until DPA determines in a quasi-legislative proceeding that the factual basis for the recommended salary adjustments is no longer valid. (CT 0684 - 0685.)

The Court of Appeal reversed the trial court, finding that the writ was issued in error. The Court found that Sections 19826 and 18500, as



well as Sections 13322 and 13337, subdivision (a), impose no ministerial duty on Finance to present the proposed budget increases to the Legislature for appropriation. (Opinion, p. 15.) No petition for rehearing in the Court of Appeal was filed.

#### IV.

#### LEGAL DISCUSSION

Review of cases by this Court is appropriate when necessary to secure uniformity of decision or settle an important question of law (Cal. Rules of Court, Rule 8.500, subd. (b).) Both grounds for review are present here. This action concerns the legislative act of setting salaries for supervisory, managerial and other state employees. 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 in that they impact tens of thousands of state employees statewide. 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. This Court's decision will 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.

**A. The Court of Appeal Decision Allows the Statutorily Required Like-Pay-for-Like Work Principle to Founder by Allowing Finance to Prevent the Statutorily Required Salaries From Being Presented to the Legislature.**

The setting of employee compensation is a legislative function which here the Legislature chose to accomplish through a delegation of authority to the DPA. DPA's exercise of the quasi-legislative salary setting is subject to the ultimate authority of the Legislature to approve, reject or alter such exercise of authority through appropriate legislation. (*Tirapelle v. Davis, supra*. 20 Cal.App.4th at pp. 1322 -1323, fn. 8.)

Here, DPA found that the work of supervisory scientists is comparable to the work of supervisory engineers. Once this finding was made, DPA was mandated to increase the salaries, subject to the limitation that DPA cannot make adjustments that require expenditures in excess of existing appropriations that may be used for salary increase purposes. (Gov. Code § 19826.) As DPA lacks the discretion to set the salaries in any manner other than the like-pay-for-like work required comparability, the DPA has determined the amount of the salaries these excluded state employees must receive under the law. and thus the legal obligations of the state, subject only to the Legislature's approval or rejection of an appropriation to pay these increased salaries.

The Court of Appeal decision improperly allows Finance to "veto"

these statutorily required increases before the Legislature gets to decide whether to pay them or not. The decision allows Finance to make a policy call regarding the setting of employee compensation, which the Legislature has reserved to itself. The Legislature has seen fit to provide DPA the salary setting function, not Finance. The Legislature could have said that proposed salary increases recommended by DPA (whether otherwise required by state law or not) will be reviewed by Finance, but the Legislature has not done so. The law does not provide discretion to Finance to reject salary determinations made by the DPA, yet the Court of Appeal decision allows Finance to insert itself into the salary setting process.

As the trial court properly held regarding the supervisory scientists salaries, “Withholding that information from the Legislature and allowing the recommended salary adjustments to founder would degrade the statutory like-pay-for-like work principle section 19862 (sic) and defeat the related legislative purpose in section 18500. (See *State Trial Attorneys’ Association v. State of California* (1976) 63 Cal.App.3d 298, 303-305.)” (CT 0683.)

**B. Finance and DPA Have Ministerial Duties Under the Law to Present the Required Salary Information to the Legislature.**

The Court of Appeal found the trial court erred in ordering a writ

commanding Finance to act because Finance has no ministerial duty regarding excluded employee salaries. (Opinion, p. 15.) While it is true that Finance has no legislative role in determining salaries, this finding by the court is incorrect as Finance does have a role in providing information to the Legislature. Once DPA has determined the salaries for employees excluded from collective bargaining, Finance has a ministerial duty to include these items in the proposed state budget or another acceptable vehicle.

The law does not provide discretion to Finance to reject salary determinations made by the DPA. Instead, the Legislature has provided that Finance will assist the Legislature (and the Governor) in accomplishing the legislative function of appropriation. All state agencies have “quasi-legislative” duties placed upon them to aid or assist the legislative process. The scope of an agency’s quasi-legislative authority had to be defined and limited by the Legislature, and the creation of such a power is a delegation of legislative authority, the exercise of which is legislative in character. (*Schabarum v. California Legislature, supra*, 60 Cal.App.4th 1223.) In aid of the Legislature’s exercise of the power of appropriation, every agency is required to prepare and submit a complete and detailed budget which, with the assistance of Finance, is utilized in the budget bill which must be

submitted by the Governor and introduced in both houses of the Legislature.  
(*Schabarum v. California Legislature* (1998) 60 Cal.App.4th 1205, 1223.)

The proposed budget required under Government Code section 13337 “shall contain a complete plan and itemized statement of all proposed expenditures of the state provided by existing law or recommended by him or her.” The salaries at issue here are not subject to any discretion as they are “provided by existing law” because they have been found by DPA to be legally required by Government Code section 19826. The proposed increases, which are a substantial right, are mandatory and are subject only to the availability of an appropriation to pay the increases. (*State Trial Attorneys’ Assn. v. State of California, supra.*, 63 Cal.App.3d at 305.)

The Court of Appeal decision notes that in this case the Legislature was aware of the adjusted salaries approved by DPA. (Opinion, p. 11.) Being aware of the adjusted salaries set by DPA because legislation is introduced to appropriate funds is far different than the appropriation to fund the required salaries being presented as part of the employee compensation portions of the State Budget Act. The budget process calls for the amounts required by law, including those to fund employee

compensation, to be presented to the Legislature for its consideration in the annual State Budget Act. The state supervisory scientists have a statutory right to have this matter placed before the Legislature for its approval or rejection.

While the Legislature retains the power not to appropriate funds for these salary increases, neither DPA nor Finance have any authority to withhold these lawfully required salaries from being presented to the Legislature for its consideration.

## V.

### CONCLUSION

The Court of Appeal decision improperly provides the Department of Finance a role in the process of determining the salaries paid to state supervisory employees in conflict with appellate decisions which provide that the legislative salary setting function is delegated to DPA subject to approval or rejection by the Legislature through an appropriation.

Once DPA determines the salaries required by Section 19826, the question of whether to appropriate funds to pay those salaries or not must be presented to the Legislature. Withholding this information from the Legislature would improperly allow the like-pay-for-like-work principle to founder and prevent the “dollar results” required by this principle from

being reached.

CAPS respectfully requests that this Court grant this petition for review to resolve these important statewide issues.

July 1, 2011

Respectfully submitted,

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

Gerald James

Attorney for Plaintiff and Respondent  
California Association of Professional  
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 Petition for Review contains 3,821 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.

July 1, 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



Attachment A

FILED

MAY 25 2011

CERTIFIED FOR PUBLICATION

**COPY**

COURT OF APPEAL - THIRD DISTRICT  
DEENA C. FAWCETT

BY \_\_\_\_\_ Deputy

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Sacramento)

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CALIFORNIA ASSOCIATION OF PROFESSIONAL  
SCIENTISTS,

Plaintiff and Respondent,

v.

DEPARTMENT OF FINANCE et al.,

Defendants and Appellants.

C063118

(Super. Ct. No.  
34-2008-00014476-CU  
WM-GDS)

APPEAL from a judgment of the Superior Court of Sacramento  
County, Lloyd G. Connelly, Judge. Reversed.

Edmund G. Brown, Jr., and Kamala D. Harris, Attorneys  
General, Jonathan K. Renner, Senior Assistant Attorney General,  
Stephen P. Acquisto, Kimberly J. Graham, and Donna Ferebee,  
Deputy Attorneys General, for Defendants and Appellants.

Gerald A. James for Plaintiff and Respondent.

The state Department of Finance appeals from a judgment  
issuing a writ of mandate compelling it to take all feasible  
steps necessary to present salary adjustments approved by the

state Department of Personnel Administration to the Legislature for possible appropriation. We reverse the judgment. We conclude the statutes on which the trial court relied impose no ministerial duties on the Department of Finance to perform the acts commanded by the writ.

#### STATUTORY BACKGROUND

Defendant Department of Personnel Administration (DPA) manages the nonmerit aspects of the state's personnel system. (Gov. Code, § 19815.2)<sup>1</sup> "In general, the DPA has jurisdiction over the state's financial relationship with its employees, including matters of salary, layoffs and nondisciplinary demotions. (§§ 19816, 19816.2, 19825, 19826.)" (*Tirapelle v. Davis* (1993) 20 Cal.App.4th 1317, 1322 (*Tirapelle*).

The Legislature has delegated to DPA the authority to set salaries for state employees excluded from collective bargaining. (§§ 19825, 19826.) Employees excluded from collective bargaining include employees classified as supervisors. (§§ 3513, subd. (g), 3527, subd. (b).)

DPA must establish salaries for these employees based on the principle that similar salaries shall be paid for similar work. Section 19826 requires DPA to "establish and adjust salary ranges for each class of position in the state civil service subject to any merit limits contained in Article VII of the California Constitution. The salary range shall be based on

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<sup>1</sup> Undesignated references to sections are to the Government Code.

the principle that like salaries shall be paid for comparable duties and responsibilities." (§ 19826, subd. (a).)

However, DPA's mandate to establish like salaries is conditioned in one respect. Section 19826 states DPA "shall make no adjustments that require expenditures in excess of existing appropriations that may be used for salary increase purposes." (§ 19826, subd. (a).)

Section 19826 thus imposes on DPA a mandatory duty to set salary ranges in parity with those for employees performing comparable duties and responsibilities in other state agencies "when that action can be taken without requiring expenditures in excess of current appropriations." (*State Trial Attorneys' Assn. v. State of California* (1976) 63 Cal.App.3d 298, 305 (*State Trial Attorneys' Assn.*)).

"The rule prohibiting expenditures in excess of available appropriations is fundamental and the Legislature has incorporated it into numerous statutory provisions concerning state employee compensation. (See, e.g., §§ 9610, 19834, 19835.) The rule is of constitutional origin. (Cal. Const., art. XVI, § 7.)" (*Tirapelle, supra*, 20 Cal.App.4th at p. 1326, fn. 13.)

Thus, any salary range increase approved by DPA that exceeds existing appropriations is not effective until the Legislature appropriates funds for it. "The power of appropriation resides exclusively in the Legislature." (*Tirapelle, supra*, 20 Cal.App.4th at p. 1321.) DPA's authority to set salaries "is quasi-legislative [citation], and is thus

subject to the ultimate authority of the Legislature to reject or alter such exercise of authority through appropriate legislation." (*Id.* at p. 1323, fn. 8.)

Defendant Department of Finance is an integral participant in the appropriation process. "In our governmental scheme of things, the Department of Finance has general powers of supervision over all matters concerning the financial and business policies of the state. (§ 13070.) Every state agency or court for which an appropriation has been made must submit to the Department of Finance a complete and detailed budget setting forth all proposed expenditures and estimated revenues for the ensuing fiscal year. (§ 13320.) In the budget submitted to the Department of Finance, each agency must estimate and call attention to the sums necessary for employee compensation, including merit salary adjustments. (§ 19835.5.) Until enactment of the budget act containing appropriations for the fiscal year, the Department of Finance may revise, alter or amend the budget of any state agency. (§ 13322.) The Department of Finance then assists the Governor in preparing the budget which the state Constitution requires the Governor to submit to the Legislature. (§ 13337.)" (*Tirapelle, supra*, 20 Cal.App.4th at pp. 1320-1321, fn. omitted.)

This appeal arises from DPA approving increased salary ranges that had not been appropriated by the Legislature. At issue is the extent to which a court can order the Department of Finance (Finance) to seek an appropriation to implement the salary adjustments.

## FACTS

Plaintiff California Association of Professional Scientists (CAPS) is a supervisory employee organization. (§ 3527, subd. (c).) It represents state employees who are employed in supervisory scientific classifications.

In November 2006, CAPS challenged the salary ranges for 14 supervisory scientist classifications. It claimed the salaries for these employees were no longer similar to salary ranges approved for 14 supervisory engineer classifications. CAPS claimed these discrepancies violated section 19826's mandate of like pay for like work.

DPA investigated the complaint. Following a hearing, DPA determined in April 2008 that CAPS's allegations were mostly correct. It concluded the duties and responsibilities of the 14 supervisory scientist classifications were similar, but not identical, to the duties and responsibilities assigned in the 14 supervisory engineer classifications. Accordingly, DPA recommended adjustments in the salary ranges for the 14 supervisory scientist classifications.

Also in its decision, DPA informed CAPS it would forward its report to Finance: "Consistent with Government Code 19826, the Department of Finance must determine whether the recommended pay adjustment is within existing salary appropriations." DPA forwarded its decision to Finance and asked it to determine whether the recommended salaries were within existing appropriations.

Finance responded by letter dated May 7, 2008. It informed DPA the Legislature had not appropriated funds for the recommended salary adjustments.

In turn, DPA by letter dated June 27, 2008, informed CAPS of Finance's determination: "DPA is not aware of any money [Finance] has identified for this pay adjustment. As you know, when funds are unavailable for salary adjustments, expenditures must be approved by the Legislature."

That same day, CAPS filed a complaint for declaratory relief and petition for writ of mandate in Sacramento County Superior Court. It named as defendants DPA and its director, Finance and its director, and the state controller. CAPS sought a declaration and a writ of mandate entitling its members in the 14 supervisory scientific classifications to the higher salaries approved by DPA for fiscal years 2005-2006, 2006-2007, 2007-2008, and for 2008-2009, which fiscal year would begin in four days, July 1, 2008.

CAPS also sought a writ of mandate commanding DPA and Finance to include in the proposed state budget a recommended appropriation to fund the adjusted salaries effective the 2008-2009 fiscal year.

The trial court granted relief in part. The court denied the request for declaratory relief and writ of mandate to implement the salary adjustments. It determined the recommended salary adjustments exceeded existing appropriations. Thus, DPA was precluded by section 19826 from implementing the salary adjustments.

However, the trial court found that in the absence of existing appropriations, DPA and Finance had statutory obligations to take all feasible steps to present the recommended salary adjustments to the Legislature for possible appropriation. The court stated these obligations arose from section 19826's requirement of like pay for like work.

The trial court stated these obligations also arose from section 18500. That statute declares the state is to "provide a comprehensive personnel system for the state civil service, in which . . . [p]ositions involving comparable duties and responsibilities are similarly classified and compensated." (§ 18500, subd. (c)(1).) According to the court, "[w]ithholding that information from the Legislature and allowing the recommended salary adjustments to founder would degrade the statutory like-pay-for-like-work principle [in] section 198[26] and defeat the related legislative purpose in section 18500. (See *State Trial Attorneys' Assn.*, *supra*, 63 Cal.App.3d at pp.] 303-305.)"

The trial court thus ordered DPA to furnish Finance with accurate information about the amount of funds needed to implement the salary adjustments, and it ordered Finance to present that information to the Legislature for the latter's consideration in appropriating funds for state employee salary adjustments. The order for the writ reads: "For as long as the adjustments recommended for the 14 supervisory scientist classifications require expenditures in excess of existing appropriations that may be used for salary purposes,



[defendants] Department of Finance and the Director of Finance shall include accurate information furnished by [defendant] Department of Personnel Administration about the amount of funds needed for the salary adjustments in a Budget Act Log or other document presented to the legislature for its consideration in appropriating funds for state employees' salary increases."

The order requires DPA and Finance to present this information to the Legislature until either the Legislature appropriates the needed funds or DPA determines the factual basis supporting the adjustments is no longer valid.

DPA did not appeal from the judgment.

Finance has appealed. It claims the trial court's mandamus relief exceeded the court's jurisdiction. It asserts Finance has no ministerial duty under sections 19826 or 18500 to inform the Legislature an appropriation is needed to fund the salary adjustments.

Finance also claims the court's order improperly requires Finance to exercise its discretion in a particular manner. Finance has discretion not to include proposed appropriations in the budget bill the Governor submits to the Legislature with Finance's assistance. Requiring Finance to seek appropriations for the adjusted salaries compels Finance to exercise its discretion in a manner contrary to its intention.

#### DISCUSSION

Finance claims the trial court exceeded its jurisdiction by mandating it to present the increased salary ranges approved by DPA to the Legislature for its consideration in appropriating

funds. Finance argues neither section 19826 nor section 18500 impose on it a ministerial duty to seek an appropriation to fund salary adjustments approved by DPA. We agree.

Ordinary mandamus lies to compel the performance of a clear, present, and ministerial duty where the petitioner has a beneficial right to performance of that duty. (Code Civ. Proc., § 1085; *Carrancho v. California Air Resources Board* (2003) 111 Cal.App.4th 1255, 1264-1265 (*Carrancho*).) An appellate court reviewing a mandamus judgment must determine whether the agency had a ministerial duty capable of direct enforcement. (*Id.* at p. 1266.)

“‘A ministerial act is an act that a public officer is required to perform in a prescribed manner in obedience to the mandate of legal authority and without regard to his own judgment or opinion concerning such act’s propriety or impropriety, when a given state of facts exists.’ [Citation.]” (*Kavanaugh v. West Sonoma County Union High School Dist.* (2003) 29 Cal.4th 911, 916 (*Kavanaugh*).)

Whether Finance has a ministerial duty to propose specific appropriations under sections 19826 and 18500 depends upon the meaning of those statutes. Because the trial court’s decision did not turn on any disputed facts, its interpretation of sections 19826 and 18500 is subject to our de novo review. (See *Kavanaugh, supra*, 29 Cal.4th at p. 916; *Carrancho, supra*, 111 Cal.App.4th at p. 1266.)

Neither section 19826 nor section 18500 impose ministerial duties on Finance. Section 19826 does not require Finance to

perform any duty whatsoever. The statute imposes duties only on DPA. It requires DPA to adjust salaries based on the principle that like salaries be paid for like work. It prohibits DPA from adjusting salaries to the extent funds for new salaries have not been appropriated. Section 19826 imposes no duty on Finance to do anything, let alone seek appropriations necessary to implement salary adjustments. The statute imposes no further obligations once DPA determines the proposed salaries cannot be paid with existing appropriations.<sup>2</sup>

The trial court concluded that not interpreting section 19826 to require Finance to seek appropriations would defeat the statute's principle of like pay for like work. However, this interpretation ignores the condition section 19826 expressly imposes on that principle. Like pay for like work is to be achieved within existing appropriations. Any additional appropriations are within the discretion of the Legislature and the Governor as they craft a budget. They can choose to reject proposed salary adjustments despite section 19826.

Nor can it be seriously argued the Legislature would not know of, or consider the need for additional appropriations to

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<sup>2</sup> Section 19826 also does not impose on DPA a duty to furnish Finance with information regarding its need for appropriations to fund salary adjustments. That duty appears to be imposed on DPA by section 19835.5: "In submitting budgetary requirements to the Director of Finance, each appointing power shall carefully estimate and call attention to the need for money sufficient to provide for appropriate salary adjustments for the employees under his or her jurisdiction."

fund the proposed salary adjustments. In this case, urgency legislation was introduced in the Assembly on February 21, 2008 (Assem. Bill No. 2519) to appropriate funds for the salary adjustments for the then-current fiscal year. On February 26, 2009, another bill was introduced (Assem. Bill No. 790) to authorize existing appropriations and transfers between approved budget items to fund the salary adjustments. The Legislature was aware of the adjusted salaries approved by DPA.

In addition, section 13337, subdivision (f), requires Finance to submit to the committees in the Assembly and Senate which consider appropriations and to the Joint Legislative Budget Committee "copies of budget materials submitted to it" by state agencies for Finance's approval. Thus, the Legislature will be informed of the need for additional appropriations to fund the adjusted salaries without the trial court having to expand section 19826's mandate beyond the statute's express language.

Section 18500 also imposes no duty on Finance to seek appropriations for salary adjustments approved by DPA. Section 18500 enumerates the state's objectives and purposes for adopting a civil service. One of those objectives is to compensate positions involving comparable duties and responsibilities similarly. (§ 18500, subd. (c)(1).) Although we once referred to this objective as a "cardinal objective" (*State Trial Attorneys' Assn., supra*, 63 Cal.App.3d at p. 304), it is nonetheless an objective as stated in section 18500, not a ministerial duty. Reciting legislative goals does not create

mandatory duties. (See *Wilson v. County of San Diego* (2001) 91 Cal.App.4th 974, 980; *Ibarra v. California Coastal Com.* (1986) 182 Cal.App.3d 687, 695.)

The trial court concluded not requiring Finance to forward the salary information to the Legislature would defeat section 18500's purpose. That conclusion demonstrates the court applied the wrong test. Mandate lies to enforce a specific ministerial duty, not a broad legislative purpose. Even section 18500 states an employee's right to comparable pay is subject to the discretion vested in the Legislature to determine the best interests of the state. (§ 18500, subd. (c)(4).) Matters subject to discretion are not subject to writs of mandate.

CAPS asserts that once DPA has approved salaries requiring additional appropriation, Finance has a ministerial duty to include those salaries in the proposed state budget or another acceptable vehicle. It cites sections 13322 and 13337, subdivision (a), along with our decision in *State Trial Attorneys' Assn.* as the basis for the ministerial duty. However, neither sections 13322 and 13337, subdivision (a), nor *State Trial Attorneys' Assn.* support CAPS's argument.

Section 13322 expressly defeats CAPS's claim. Section 13322 vests in Finance the authority to revise, alter, or amend any fiscal year budget prior to the enactment of the budget act if Finance determines the changes are "required in the interest of the State." Thus, even after DPA submits its proposed budget to Finance for approval, Finance can change DPA's proposal up until the budget act is enacted. Section 13322 most certainly

does not impose a duty on Finance to seek appropriations requested in DPA's proposed budget.<sup>3</sup>

Section 13337, subdivision (a), also offers CAPS no support. That statute requires the Governor's proposed budget to "contain a complete plan and itemized statement of all proposed expenditures of the state provided by existing law or recommended by him or her . . . ." (§ 13337, subd. (a).) CAPS asserts this statute requires Finance, and the Governor, to include DPA's proposed salary adjustments in the proposed budget because they are expenditures "provided by existing law," i.e., as a result of section 19826's requirement of like pay for like work.

This argument ignores how section 19826 operates. Section 19826 expressly prohibits DPA from adjusting salaries where no appropriation to fund the adjustment exists. Thus, the new salaries cannot be seen as "provided by existing law" because existing law prevented their adoption by DPA. Rather, if they

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<sup>3</sup> CAPS introduced the deposition testimony of Timothy Lynn, Finance's assistant program budget manager, to suggest Finance has a mandatory duty to seek appropriations for approved salary adjustments. Lynn described the process Finance usually follows: It receives requests from DPA for salary adjustments in a budget log, builds the proposed budget around the budget log, and then shares the log with the Legislature. CAPS claims this indicates Finance has a duty to present the recommended salary adjustments to the Legislature for funding. However, section 13332 grants Finance the authority to revise any proposed budget DPA submits to it before the budget act is adopted. Finance thus has discretion to alter the process explained by Lynn and determine not to include the requested salary adjustments in the proposed state budget.

are submitted in the proposed budget act, they are recommendations by the Governor, and nothing in any law cited to us by the parties requires the Governor to seek appropriations for adjusted salaries approved by DPA.

CAPS relies on *State Trial Attorneys' Assn.* to support the trial court's writ, but its reliance is misplaced. In that 1976 case, we concluded the State Personnel Board, then responsible for setting salaries as DPA is today, violated the like-pay-for-like-work principle in section 19826's predecessor statute by refusing to establish salaries for upper-level attorneys working in the Department of Transportation similar to those for upper-level attorneys working in the Attorney General's office and the Legislative Counsel Bureau. (*State Trial Attorneys' Assn.*, *supra*, 63 Cal.App.3d 298.)

The State Personnel Board claimed it was not required to set similar salaries because doing so would have resulted in some attorneys earning more than their superiors, for whom the Board did not set salaries. (*State Trial Attorneys' Assn.*, *supra*, 63 Cal.App.3d at pp. 300-302.) We disagreed, ruling the statute demands the like-pay-for-like-work principle "be applied to reach dollar results." (*Id.* at p. 304.) We ordered the Board to set comparable salaries, but to do so "whenever compliance can be achieved without violating the statute's restriction against adjustments in excess of existing appropriations." (*Id.* at p. 305.)

*State Trial Attorneys' Assn.* is inapplicable here. It 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. The case has no application to this appeal.

CAPS relies on our gratuitous statement in *State Trial Attorneys' Assn.* that the State Personnel Board "may lawfully adjust these salaries in the expectation of adequate appropriations for the [next fiscal year]." (*State Trial Attorneys' Assn.*, *supra*, 63 Cal.App.3d at p. 305.) CAPS mistakenly claims this statement indicates the trial court in the present action has the authority to compel Finance to include the salary adjustments in the proposed budget for the Legislature's consideration. At best, the statement, amounting to very weak dicta, appears to be based on the resolution of a factual issue unique to that case. Certainly under the state's current fiscal status, there can be no reasonable expectation of adequate appropriations to fund new salary adjustments for any state agency.

For all of the above reasons, we conclude the writ was issued in error. Sections 19826 and 18500, as well as sections 13322 and 13337, subdivision (a), impose no ministerial duty on Finance to present the proposed budget increases to the Legislature for appropriation. Because we reverse on this basis, we need not reach the other arguments raised by Finance.



DISPOSITION

The judgment is reversed. Costs on appeal are awarded to appellant Department of Finance. (Cal. Rules of Court, rule 8.278(a).)

NICHOLSON, J.

We concur:

BLEASE, Acting P. J.

HULL, J.

**DECLARATION OF SERVICE BY OVERNIGHT COURIER**

Case: California Association of Professional Scientists v. Department of Finance; et al.

I declare:

I am a resident of the State of California and over the age of 18 years and not a party to the within entitled cause. The address of my business is 455 Capitol Mall, Suite 500, Sacramento, California 95814.

On July 1, 2011, I served the attached **PETITION FOR REVIEW** on the parties listed below by placing true copies thereof in sealed envelopes with the fees paid and depositing said envelopes with Federal Express for guaranteed next day delivery:

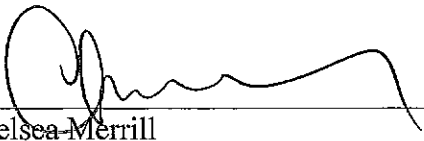
Kimberly Graham  
Office of the Attorney General  
P.O. Box 944255  
Sacramento, CA 944255

Clerk of the Third District Court of Appeal  
621 Capitol Mall, 10<sup>th</sup> Floor  
Sacramento, CA 95814-4719  
*Case No. C063118*

Sacramento Superior Court  
Gordon D. Schaber Downtown Courthouse  
720 Ninth Street, Room 102  
Sacramento, CA 95814  
*Sacramento Superior Court Case No. 34-2008-00014476*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 1, 2011, at Sacramento, California.

  
Chelsea Merrill