

CAPSule

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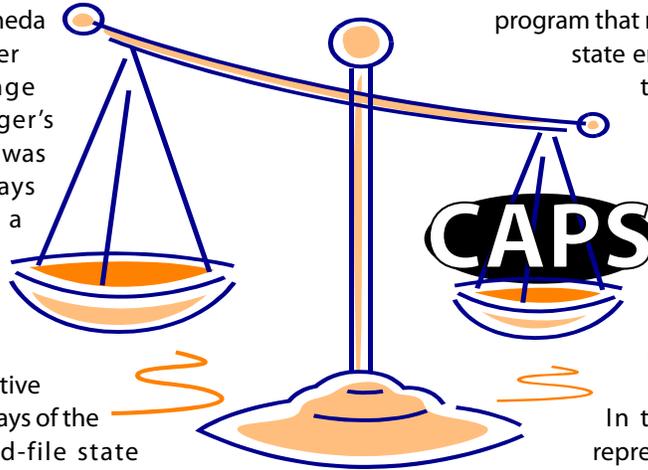
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COURT LEANS TOWARD CAPS IN FURLOUGH CASE

On April 13 Judge Brick of the Alameda County Superior Court took under submission CAPS' final challenge against Governor Schwarzenegger's unpaid furlough program. CAPS was encouraged because just two days prior, April 11, Judge Brick issued a tentative ruling in **FAVOR** of CAPS that certain portions of former Governor Schwarzenegger's mandatory unpaid furlough program were illegal. In that tentative ruling, Judge Brick found that two days of the furloughs imposed on rank-and-file state scientists during March 2011 exceeded the authority granted by the state legislature. That would mean that rank-and-file scientists subject to the illegal furlough during March 2011 should be awarded back pay for those two days. Judge Brick also ruled in favor of CAPS **tentatively** on another point, finding that unpaid furloughs of state scientists working at the California Prison Industry Authority and the California Earthquake Authority were illegal in their entirety. If confirmed, those scientists would be entitled to be reimbursed for ALL lost wages under the furlough program. Finally, in his **tentative** ruling, Judge Brick denied CAPS' third claim--that certain provisions of state law precluded the Governor from furloughing CalEPA scientists working on military base remediation projects.

Mandatory unpaid furloughs were unilaterally implemented on state scientists and most state employees for most of 2009 and 2010 by former Governor Arnold Schwarzenegger with a series of Executive Orders. The furloughs continued through the end of March 2011 and engendered a great deal of litigation, most of which revolved around the question of the Governor's unilateral authority to furlough represented state employees. Since the first litigation was filed, the California Supreme Court and the First District Court of Appeal have issued decisions. Most significantly, in a case brought by CAPS and other groups, the Supreme Court agreed that the Governor lacks unilateral authority to impose a furlough



program that results in salary reductions for represented state employees. Instead, this power is reserved to the Legislature. Nonetheless, the Court found that the Legislature had approved and authorized the furlough program through its annual budget legislation. Only the existence of this legislative authorization rendered the furlough program—which the Governor otherwise had no authority to implement—valid.

In the current case, CAPS (and PECG—representing state engineers) advanced three claims that were not resolved by previous litigation. First, CAPS represents employees involved in remediation of hazardous substances at military bases. Their work is generally funded by federal grants and other non-state sources, and the positions are statutorily exempt from furloughs (Health & Safety Code §25353.5 and Water Code §13177.7). Second, CAPS represents employees at the California Earthquake Authority, the California Housing Finance Agency and the California Prison Industry Authority, none of which receive appropriations through the annual budget legislation. In CAPS' view, there is no other legal basis for the furlough of employees at CEA, CalHFA and CalPIA.

Finally, CAPS contends that continuing the three-day-per-month furlough program through the end of March 2011 exceeded the authority granted by the Legislature. The annual budget act didn't authorize cuts to represented employees' wages of a *greater* percentage than those made to non-represented employees. As such, the second and third furlough days in March 2011 were beyond the scope of the Legislature's authorization. Although CAPS' claims stem from the heart of the Supreme Court's ruling that the Governor has no constitutional or statutory authority to unilaterally impose furloughs on represented employees. CAPS asked the Court to prevent the annual budget legislation from being used "carte blanche" by the executive branch. CAPS wants affected employees made whole. You can read more on the CAPS website.

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EnCAPSulations



Four Unions Extend MOUs. Four unions representing about 24,000 state employees have extended their current agreements with Governor Brown for one year. The extension puts them on the same track as CAPS and other employee organizations, including CAPS. All four groups have contracts that expire July 1, 2012. There's no word as to any changes or improvements that are included with the rollovers. CAPS will be reviewing these agreements carefully, and they will eventually be available online for anyone to see.

State Revenues Fall Short of Expectations. State Controller John Chiang reports that tax revenues for March 2012 fell 4.2 percent short of expectations, or \$233.5 million. Both corporate income taxes and sales tax receipts fell short of the Governor's budget forecast. Total revenues are trailing the Governor's projections by nearly \$1.1 billion, or 1.9 percent, for the fiscal year ending June 30, 2012. State Controller Chiang emphasized the importance of receipts over the next three months, which is the most important period for collection of tax receipts.

Those Lost Holidays. The CAPS holiday lawsuit awaits oral argument before the Third District Court of Appeal. In February 2009, Governor Schwarzenegger signed legislation which eliminated both Columbus Day and Lincoln's birthday from the list of 14 state holidays. The action was part of a mid-year budget amendment, and included benefit changes that the Governor sought outside of the bargaining process. The action conflicted with state law which continues certain provisions of an expired MOU, including holidays. With no other recourse available, CAPS filed a lawsuit seeking to have the holidays restored and scientists compensated for being required to work on those days. On September 30, 2010 Sacramento Superior Court Judge Tim Frawley **GRANTED** the CAPS petition. Governor Schwarzenegger's lawyers appealed, and the case is now before the Third District Court of Appeal. The new CAPS MOU agrees to eliminate the two holidays in the future (in exchange for floating professional development days) but payment for the four lost holidays remains at issue.



CDPH To Close Temple Street Lab. The Department of Public Health finally announced that it will close the Los Angeles Temple Street Lab and relocate its functions to the Richmond Campus. The Department of Substances Control was taken somewhat unaware, and apparently will relocate its lab function from Los Angeles to its Berkeley Lab. CAPS opposed relocation of the lab, preferring to see it relocated to another part of Los Angeles. In the event the lab move gets final approval, CAPS will work to minimize the impact on affected state scientists.



Poor Returns and Management Fees Weaken Pension Funds



Volatility in the markets, the wide array of investment vehicles available, boundless risk associated with those investments, and the strategy followed by investment strategists has produced mixed results for California's two largest pension systems. CalSTRS earlier this month announced that despite netting 22% on its investment returns last year, the gap between what it owns and what it owes to retirees widened from 29 to 31 percent. It needs a cash infusion from taxpayers or it runs out of money in 35 years. The problem is reportedly rooted in its stock market losses resulting from the 2008 nosedive in markets worldwide. Meanwhile, CalPERS recently announced plans to sell off \$1.5 billion in private equity investments. Selling these "low performing investments" follows a similar move CalPERS took after it lost \$9 billion from its real estate investments. Ironically, even after gaining just 1.1 percent on its portfolio for the 2011 calendar year CalPERS is in better shape than CalSTRS to fund its long term obligations.

California pension systems aren't the only ones under financial duress. The *New York Times* recently reported that the Pennsylvania State Employees' Retirement System (worth \$26.3 billion) has nearly half its assets in risky investments. It paid \$1.35 billion in management fees over the last five years and had an overall return of 3.6 percent annualized over five years. Meanwhile the median return among public pension systems nationwide was 4.9 percent. In Georgia, a \$14.4 billion retirement system is prohibited by state law from investing in riskier alternative investments, and has earned 5.3 percent annually over the same time frame. It paid about \$54 million total in fees. Plans that had from a third to more than half of their money in alternative investments had returns that were more than a percentage point lower than returns of the funds that largely avoided those assets. They also paid nearly four times as much in fees.



Calpers (\$240 billion), pays fees of more than \$1 billion a year, after it increased its holdings in private assets and hedge funds to 26 percent of its total in 2010, from 16 percent in 2006. Yet CalPERS earned just 3.4 percent annually over the last five years. The evidence suggests that the best strategy for public funds is the same one often suggested for individuals in their private investment portfolios: achieve the best result by investing in publicly available, low-cost, passively managed funds.



THE SHINING CITY

BY DAVID MILLER, PRESIDENT

Ronald Reagan once said that “America is a shining city upon a hill whose beacon light guides freedom-loving people everywhere.” While this phrase originated long before President Reagan adapted it, he surely got it right -- America is indeed a remarkable experiment in democracy that has set the standard for the rest of the world to follow. But democracy can be a double edged sword. At its best, it is transparent and promotes economic and social progress, but it can also dispense regressive reform. Take the mid-term elections from two years ago, when many state legislatures took a decided right turn. Ohio, Michigan and Arizona are considering or have adopted rollbacks or outright bans on collective bargaining rights for public employees. This might be democracy at work, but it certainly doesn’t indicate progress. In fact, these so-called reforms are just the tip of the iceberg.

Conservative state houses across the nation have been considering and are adopting legislation packaged and promoted by a well-funded organization bankrolled by corporate America expressly for the mega-corporations and most conservative economic and social interests: the American Legislative Exchange Council (ALEC). Examples abound of states where legislation written by ALEC has been introduced by state lawmakers word for word. It is an ideological agenda that has been pushed with gusto. In addition to regressive labor laws, ALEC is increasingly infamous for promoting corporate tax breaks, voter identification (i.e. voter suppression) and gun rights. The “Stand your Ground” laws, now an issue in Florida and other states, is one example of ALEC sponsored legislation.

While ALEC professes to be bipartisan, its membership leans almost exclusively to the most conservative elements of the Republican Party. It is funded by large corporate grants from such notables as Koch Industries,

Walmart and others. These corporations apparently believe their sponsorship and funding of ALEC are shielded from consumer backlash and won’t hurt their bottom line. I believe the only reason ALEC hasn’t been more prominent in California is that Republicans are now by far the minority party.

The organized, well-funded and relentless pressure by ALEC in state houses throughout the United States represents a dire threat to public employee rights in those states and ultimately in California. I am gratified to see that ALEC has finally been outed on a national scale by organizations such as Color of Change, Common Cause and the NAACP (Google ALEC and you will see what I mean). As a result, Coca Cola, Pepsi, Intuit and Kraft Foods

recently cancelled their memberships in ALEC. Other corporate giants are standing with ALEC, including Koch Industries, Walmart, Proctor and Gamble, Pfizer and big tobacco.

“... ALEC has finally been outed...”

The vehicle for change has centered on social media. Facebook, Twitter and the like have made it much easier to communicate and organize. This is a good example where it’s both harder for a corporation to hide its dirty laundry and easier for those who disagree to take concerted and effective action.

These are my views, and not specifically of CAPS. CAPS hasn’t taken a position on ALEC for its activities in other states. Yet when I see those policy proposals result in the cancellation of collective bargaining rights for public employees in other states, it’s safe to say that we cannot let that happen here. In this instance, it is California that is the shining light on the hill. With salary and benefit rollbacks in recent years, retirement reform, and more challenges to come, that is saying a lot.

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More CAPS Grants

CAPS awards four \$300 grants every three months to CAPS members to promote professional development when the state cannot or will not. CAPS grants are separate from the professional development leave earned by state scientists annually (MOU Section 15.3G). Each application is retained for two selection cycles to ensure maximum consideration because there are far more applications than grants available. Learn more about the CAPS Grants program here: capsscscientists.org. Congratulations to the first quarter winners:

Staff Environmental Scientist Nita Davidson of the Department of Pesticide Regulation in Sacramento will use her grant to offset expenses in attending the 7th Annual Integrated Pest Management biannual symposium in Memphis, Tennessee during March where she organized a session to present the results of her work at DPR.

Associate State Archaeologist Kelly Long of the Department of Parks and Recreation in Sacramento will use her grant to help pay the cost of obtaining a certificate in land use and environmental planning from the University of California, Davis.

Public Health Chemist Mandy Mok of the Department of Public Health in Richmond will use her CAPS grant to fund travel and lodging expenses in order to judge projects at the 2012 Intel ISEF Science Fair competition in Pittsburg, Pennsylvania during May 2012.

Environmental Scientist Michael Walgren of the Department of Fish and Game in Bishop will use his CAPS grant to offset travel costs in attending the 2012 Northern Wild Sheep and Goat Council's 18th biennial symposium in Kamloops, British Columbia, Canada during March.

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