

CAPSule

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MOU REJECTED!

When ballots were tallied on October 6, CAPS members resoundingly REJECTED the proposed three-year MOU between CAPS and the Jerry Brown Administration.

The count was 382 in **favor** of ratification (27.52%), and 1,006 **against** (72.48%). CAPS has notified CalHR of this outcome and requested that negotiations resume immediately. The CAPS Bargaining Team is committed to negotiating more favorable terms than those in the MOU just rejected by the CAPS membership. Most importantly, CAPS remains committed to SALARY EQUITY for ALL state scientists!

CAPS Bargaining Chair Patty Velez had this to say upon seeing the results: *"This contract was far short of what is needed to bring an equitable and satisfactory conclusion to these negotiations. We look forward to returning to the bargaining table with Governor Brown's negotiators to restore salary equity for ALL state scientists."*



What's Next? The existing MOU remains in effect. State law keeps virtually all provisions of the expired contract in effect while negotiations are underway (see Government Code Section 3517.8). Those provisions are in effect unless and until formal impasse is reached in the negotiations process. Impasse occurs either when the parties declare impasse jointly, or when one party petitions the state Public Employment Relations Board (PERB) to make

that determination, and the PERB agrees to do it after an investigation. One key provision of the existing agreement is a "no strike" clause that prohibits any job action that would interrupt the performance of the state's work, either by CAPS or state scientists represented by CAPS (see MOU Section 13.1).



IN FAVOR OF RATIFICATION

Bargaining Resumes! Your CAPS Bargaining Team will resume negotiations with CalHR as soon as possible. The goal is to reach tentative agreement with terms that achieve salary equity. CAPS President David Miller has requested a statement of interest by October 19 from any CAPS member interested in serving on a newly reconstituted CAPS Bargaining

Team. All requests will be considered, with the following minimum qualifications:

- Continuous membership in CAPS of at least one year;
- Willingness to spend long hours preparing for and in contract bargaining, away from work and personal matters (state time for meetings is provided). Negotiating a labor contract typically requires 20 or more days of time, plus travel;
- Willingness and ability to work as a **team**, considering the needs of ALL rank-and-file state scientists.



Making More NOISE! CAPS will be asking ALL CAPS members to participate in legal and appropriate activities in support of the bargaining effort while the negotiations process is underway.

During the course of negotiations, CalHR management, state lawmakers, the Governor's staff -- virtually EVERYONE who matters in Sacramento -- could hear and see state scientists MAKING NOISE!

The CAPS Ratification Ballot count was conducted entirely by TrueBallot, an independent balloting service.

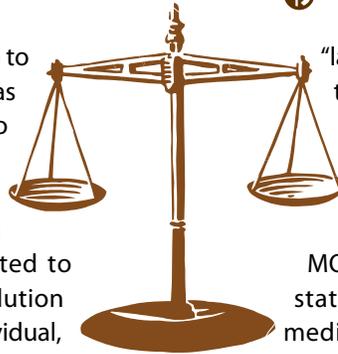


IMPASSE ?

Under the Dills Act, Government Code Section 3512 – 3524 (the law that governs state employee collective bargaining), impasse resolution means mediation. A mediator uses the power of persuasion to assist the parties to reach agreement. A mediator has no authority to implement anything unilaterally, or to **force** the parties to reach agreement.

This is in contrast to fact-finding, which allows a neutral fact-finder to establish certain facts related to the dispute that are supposed to help bring resolution voluntarily. Or arbitration, which allows a neutral individual, or panel of individuals, to evaluate the issues and order a specific resolution. Neither fact-finding nor arbitration are provided for under the Dills Act. In fact both are very rare impasse resolution procedures under public sector labor relations nationwide.

During the latest round of contract bargaining, CalHR wasn't willing to appoint a mediator in spite of CAPS' request to do so months ago. Likewise, CalHR never framed its "final" offer as "Last, Best and Final." The distinction has legal significance. Had the parties reached formal impasse in the meaning of the law, Government Code Section 3517.8 provides the following: ***"If the Governor and the recognized employee organization reach an impasse in negotiations for a new memorandum of understanding, the state employer may implement any or all of its last, best, and final offer."***



Submitting Governor Brown's final offer to the membership for a vote was clearly a better alternative than waiting for a potential "last best and final" offer that would have enabled the Governor to implement all or any part of that final offer.

CalHR may now be willing to submit to voluntary mediation with rejection of the MOU by a resounding majority of rank-and-file state scientists. Regardless, appointment of a mediator doesn't signal quick resolution for the reasons outlined above. Members should expect ongoing negotiations, with the substantive details of those talks to remain confidential unless and until there is another tentative agreement subject to a membership vote. The mediation process is confidential by design. Publishing details of negotiations may discourage frank communication and full exploration of alternatives during the course of the talks.

When and if there is a final offer result worthy of consideration by CAPS members, everyone will immediately be notified, with the opportunity to vote on it. As a result of repeated surveys, and the recent contract rejection, the CAPS Bargaining Team understands the priorities on salary and benefits. Those will be reflected in the discussions with the CalHR negotiators.



CAPS Victories!

Two CDFW Environmental Scientists were recently granted range placement corrections after reaching out to CAPS for assistance. The first was hired in October 2012 at Range B because the Department refused to consider work completed while earning his Master's degree as credible outside professional experience. CAPS successfully assisted him in appealing this denial to the State Personnel Board. After almost a year of review, SPB upheld the appeal, and back pay was granted.

The second CDFW ES was hired at Range A in April 2015. Her work experience prior to being hired on at CDFW was more than enough to qualify her for Range C. She contacted CAPS after reading the June 2015 CAPSule article regarding range change appeals. CAPS submitted a formal request to the Department, and after almost 3 months of deliberation, CDFW agreed that she should have been hired at Range C in the first place. She will receive back pay to the date of her hire, plus the professional credit that goes with it. A few of her written comments to CAPS: *"This is great news!!!! This*

will absolutely change my life!! I appreciate your diligence on this matter and there really are no words to thank you enough!"

All state scientific classifications with multiple salary ranges, such as Environmental Scientist, can be reviewed for a range placement correction. Not all such reviews are successful, of course, and not all result in SPB appeals -- many departments are willing to recognize and correct an error. Early review and correction is advisable, so acting on this sooner than later is the best option.

So if YOU were initially hired into Range A (or the equivalent) with insufficient consideration given to your **relevant** years of outside scientific experience, you may be eligible for a range placement correction. Range placement reviews are best done within three years from your date of hire. There have been exceptions involving even longer time periods between date of hire and correction. If the circumstances described in this article apply to YOU, consider contacting CAPS today: caps@capsscientists.org!



WHAT'S NEXT

By David Miller, President

One year ago I urged CAPS members to RELAX when expecting immediate results from the Reclassification and Pay Project. The Project had two critical steps: the first was to consolidate all state scientific classifications into just nine classification series. The second step was to negotiate salary ranges for each of those new classifications.

We got the first step done. It came off with considerable effort and just a few hiccups. The CAPS Team, subject matter experts from the CAPS membership, and our professional staff spent untold hours working with CalHR and state departments to meet the classification review deadline of January 30, 2015.

Unfortunately, CalHR promptly dropped the ball on negotiating new salary ranges. They also refused to proceed on two key elements of the Project: Research Scientist and Lab Scientist. Consequently, the Project was dropped from the prospective MOU altogether, something I believe was a big reason why the MOU was rejected. The CAPS Bargaining Team felt double-crossed, and I believe the membership did too.

Another reason the MOU was rejected resulted from huge raises for supervisors and managers, and small ones for rank-and-file scientists. CalHR's August 20, 2014 Pay Letter reestablished and funded the historic salary relationship between state scientist supervisors and our state engineering counterparts -- resulting in salary increases of up to 43%. If salary equity is good for scientist supervisors, it should be good for rank-and-file scientists too.

Governor Brown deserves credit for restoring salary equity for scientific supervisors and state engineers. Without his funding it in the 2014-15 state budget, it simply would not happen. Remember that it was a series of CAPS administrative and legal appeals that set the table. Governor Brown's action vindicated the path we took on this issue starting in 2006. It also provides validation for the goal of salary equity for all of us!

The original CAPS LPLW case was limited to supervisors because rank-and-file scientists have bargaining as the sole legal process for addressing pay and benefit disputes. While we are evaluating legal strategies to provide an alternate remedy, agreement at the bargaining table is by far the quickest and best way to get things done. With rejection of this MOU, there is more collective

bargaining, and all of the hard work that comes with it, in our immediate future.

I don't expect Governor Brown to immediately increase his offer. Labor negotiations just don't work like that. If they did, bargaining units would reject labor contracts a whole lot more often. We know we are in for some very tough negotiations when bargaining resumes, but, your continuing support gives us added strength.

The CAPS Bargaining Team is being reconstituted for renewed salary negotiations. We need a much better

offer, one that provides a concrete pathway to salary equity. We must ALL resolve to stay the course until it comes, and not lose hope, become desperate, or resort to reckless or counterproductive tactics. CAPS needs your continued support to make this happen. That means we will be making a lot more effective NOISE!

This is my last month as your CAPS President. It's been a very tough couple of years, with lots more hard work ahead. I wish the next Board of Directors success in the coming months, and that must come with strong backing from the membership. Our biggest challenges come from outside our bargaining unit, not from each other. That is just common sense. We must all work together, responsibly, for a common goal. That's something we can measure to the penny: Salary Equity for ALL State Scientists!

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More CAPS Grants!

CAPS' Benefits Committee, chaired by Senior ES Gordon Leppig, awards FOUR \$300 professional development grants to CAPS members each quarter. CAPS does this because state departments don't do enough to support scientists' professional development. ANY CAPS member can apply for a CAPS grant via the CAPS webpage: www.capsscientists.org. Congratulations to these grant recipients for the *fourth* quarter of 2015:

 **Research Scientist Gabriele Windgasse, Ph.D of CDPH Richmond** will use her grant to partially offset the costs of attending the Annual Conference of the American Public Health Association in Chicago starting later this month. She will be making a presentation on Engineered Nano Materials, which are widely used in the U.S. as common ingredients in consumer products such as sunscreens.

 **Senior ES Hans Sin of the Department of Fish and Wildlife in San Diego** will use his grant to offset the cost to attend the Wildlife Societies Annual Conference this month in Winnipeg, Manitoba, Canada. This conference is one of the largest gatherings of wildlife professionals in North America, and will enable Sin to network and stay abreast of the latest developments in his field of expertise.

 **Research Scientist II Kuldeep Dhillon of CDPH Richmond** will use his grant to support attending the American Society for Clinical Pathology meeting in Long Beach later this month. He will present a research poster related to his professional work involving the health screening of newborn babies.

 **Senior ES Specialist Brian Pierskalla** of the Military Department (California Army National Guard) in North Highlands will use his grant to help complete coursework on his way to becoming a Certified Hazardous Materials Manager, a professional certification directly related to his state work.

Note: the CAPS Grant program is independent from the two days of professional development earned annually by every state scientist in accordance with CAPS MOU Section 15.3 (G).