

In the Supreme Court of the State of California

**CALIFORNIA ASSOCIATION OF
PROFESSIONAL SCIENTISTS,**

Plaintiff and Respondent,

v.

DEPARTMENT OF FINANCE, et al.,

Defendants and Appellants.

Case No. S194523

Third Appellate District, Case No. C063118
Sacramento County Superior Court
Case No. 34-2008-00014476-CU-WM-GDS
The Honorable Lloyd G. Connelly, Judge

ANSWER TO PETITION FOR REVIEW

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The Department of Finance (Finance) submits this answer to the petition for review filed by the California Association of Professional Scientists (CAPS). CAPS is seeking the Court's review of a May 25, 2011 published decision in which the Court of Appeal, Third Appellate District, reversed a judgment requiring Finance to take all feasible steps to present salary adjustments approved by the Department of Personnel Administration (DPA) to the Legislature as a requested appropriation. Finance submits that CAPS' petition for review should be denied because the appellate court decision was based on well-established principles of mandamus law and statutory interpretation.

The Court of Appeal properly held that the statutes on which the trial court relied impose no ministerial duties on Finance to perform the acts commanded by the trial court's writ. Specifically, as to Government Code¹ section 19826, the Court of Appeal observed that it does not compel Finance to perform any duty whatsoever, let alone seek appropriations necessary to implement salary adjustments. Rather, the statute imposes only a duty on DPA to adjust salaries based on the principle that like salaries should be paid for like work and only to the extent that payment of the new salaries can be achieved within existing appropriations. Section 19826 creates no obligation to seek additional appropriations. And, as to

¹ All statutory references are to the Government Code unless otherwise indicated.

section 18500, it only enumerates the state's goals and objectives for adopting civil service—it likewise creates no ministerial duty for Finance to seek appropriations from the Legislature for salary adjustments. Thus, after applying traditional principals of mandamus law, the Court of Appeal correctly held that Finance was not required to take the steps as set forth in the writ of mandate issued by the trial court.

The Court of Appeal's decision was proper and, in any event, review is not necessary to secure uniformity in the law or to resolve an unsettled and important question of law. The decision is consistent with legislative intent underlying section 19826—that no salary adjustment be made in excess of existing appropriations. The petition fails to demonstrate how the Court of Appeal's opinion conflicts with any case involving traditional mandate principles. For these reasons, the petition for review should be denied.

SUMMARY OF FACTS

CAPS is a supervisory employee organization under Government Code section 3527, subdivision (c), and represents members who are employed in supervisory scientific classifications. (Opinion of the Court of Appeal, Third Appellate District (Opin.), Attachment A to Petition for Review, at p. 5.) In November 2006, CAPS challenged the salary ranges for fourteen supervisory scientist classifications under section 19826 claiming that the salaries for these employees were no longer similar to

salary ranges approved for supervising engineering classifications. (*Ibid.*) DPA investigated CAPS' claim and issued a recommendation that adjustments be made to the salaries of scientist supervisor classifications. (*Ibid.*) DPA subsequently sent its findings to Finance to determine whether the recommended salary adjustments were within "existing appropriations," as required under section 19826. (*Ibid.*) After reviewing the state budget appropriations for employee compensation, Finance responded to DPA's inquiry in May 2008 stating that the Legislature had not appropriated funds for the recommended salary increases. Upon receiving this information from Finance, DPA sent a letter to CAPS informing them that "DPA was 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." (Opin., at p. 6.)

PROCEDURAL HISTORY

On June 27, 2008, CAPS filed a verified petition for writ of mandate and a complaint for declaratory relief against DPA and its director, Finance and its director, and the State Controller. The complaint sought a declaration that its members within the 14 supervisory classifications were entitled to the recommended salary increases, and the petition for writ of mandate sought to compel Finance and DPA to include the recommended salary increases in the state budget. (Opin., at p. 6.)

The trial court denied CAPS' request for declaratory relief and writ of mandate to implement the salary adjustments, agreeing with Finance that they exceeded existing appropriations. However, the trial court concluded that under sections 18500 and 19826 that in the absence of existing appropriations, Finance and DPA had *statutory* obligations to take all feasible steps to present the recommended salary adjustments to the Legislature for possible appropriation. (Opin., at p. 7.) The trial court thus ordered DPA to furnish accurate information about the amount needed to fund the recommended salary adjustments, and then ordered Finance to present that information to the Legislature for its consideration in appropriating funds for state employees' salary increases. (Opin., at pp. 7-8.) The order required that Finance present this information to the Legislature on an ongoing basis until the Legislature appropriated the needed funds or DPA determined that there was no longer a factual basis supporting the adjustments. (Opin., at p. 8.)

On May 25, 2011, the Court of Appeal, Third Appellate District issued a published decision reversing the trial court's order, which is the subject of the present petition for review.

ARGUMENT

I. THE COURT OF APPEAL DECISION IS CORRECT.

The issue before the Court of Appeal involved the application of traditional mandate principles—specifically, whether either of the two

statutes relied upon by the trial court required Finance to take any action to ensure that the recommended salary increases were funded.

Section 19826 states:

[DPA] shall 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 the principle that like salaries shall be paid for comparable duties and responsibilities. In establishing or changing these ranges, consideration shall be given to the prevailing rates for comparable service in other public employment and in private business. [DPA] shall make no adjustments that require expenditures in excess of existing appropriations that may be used for salary increase purposes. [DPA] may make a change in salary range retroactive to the date of application of this change.

(Gov. Code, § 19826, subd. (a).)

Section 18500 provides, in part, as follows:

It is the purpose of this part:

...

(c) To provide a comprehensive personnel system for the state civil service, in which:

(1) Positions involving comparable duties and responsibilities are similarly classified and compensated. . . .

(4) The rights and interests of the state civil service employee are given consideration insofar as consistent with the best interests of the state.

(Gov. Code, § 18500, subd. (c)(1) & (4).)

As the Court of Appeal properly recognized, neither of these statutes require Finance to repeatedly ask the Legislature to appropriate money to fund the recommended salary increases. Thus, the writ of mandate issued by the trial court was properly reversed by the Court of Appeal.

II. THE COURT OF APPEAL'S OPINION IS CONSISTENT WITH THE LEGISLATIVE INTENT OF SECTION 19826 THAT NO SALARY ADJUSTMENTS SHOULD BE MADE IN EXCESS OF AN EXISTING APPROPRIATION.

In their petition, CAPS wrongly contends that the appellate court's decision allows the "like-pay-for-like-work" principle to "founder by allowing Finance to prevent the statutorily required salaries from being presented to the Legislature." (Opin., at p. 15.) But in no way is anyone prevented from presenting to the Legislature the need for an appropriation to fund the recommended salary increases. If Finance does not present such information, it may nonetheless be presented by CAPS. And in fact, CAPS has twice sponsored urgency legislation but was unsuccessful in securing the necessary appropriation to fund the recommended salary increases. (Opin., at pp. 10-11.) In short, the Legislature is well aware of the recommended salary increases approved by DPA, but has chosen not to appropriate any funds to support it.

CAPS also asserts that the appellate court's decision confers a "veto" power upon Finance through which it can decide whether employees receive salary increases. However, this assertion ignores the holding of the opinion—that Finance has no duty with respect to section 19826 salary adjustments. Thus, with Finance having no duties or obligations under section 19826, it cannot be argued that Finance has been improperly given any type of "veto" authority over salary adjustments.

CAPS' reliance on *State Trial Attorneys' Association v. California* (1976) 63 Cal.App.3d 298 to support its "veto" theory is easily disposed of by reference to the opinion below. The Third Appellate District was very careful in its decision to explain why the *State Trial Attorneys' Association* case was not applicable in this instance—most notably because that case "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." (Opin., at pp. 14-15.) The appellate court stated that the language relied upon by CAPS in *State Trial Attorneys' Association* decision was at best "very weak dicta" and was limited only to the factual situation presented in that specific case.

CAPS' arguments simply fail to come to grips with the fact that the decision actually furthers the Legislature's intent with respect to salary adjustments for excluded employees—specifically, that no adjustments should be made when they are in excess of existing appropriations. Section 19826 operated in the manner the Legislature intended, and the appellate court recognized this when it reversed the trial court's order.

III. THE COURT OF APPEAL'S DECISION CONFORMS WITH THE WELL-SETTLED PRINCIPLES OF MANDAMUS LAW.

In issuing its opinion, the Third Appellate District applied well-established, foundational principles of mandamus law in determining whether a state department can be compelled to perform a certain act. The

case law confirms that Finance had no a duty under either section 18500 or 19826 to inform the Legislature of any need to appropriate money to fund the recommended salary increases.

Courts have consistently held that 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. (*Carrancho v. California Air Resources Bd.* (2003) 111 Cal.App.4th 1255, 1264-65.) To warrant relief by writ of mandate, it must be established the public entity had a ministerial duty to perform, that is, a duty that the entity is required to perform in a prescribed manner without any exercise of judgment or opinion concerning the propriety of the act. (*California Ass'n for Health Services at Home v. Department of Health Services* (2007) 148 Cal.App.4th 696, 704.) If a statute clearly defines the specific duties or course of conduct that a governing body must take, it creates a ministerial duty and eliminates any element of discretion. (*Rodriguez v. Solis* (1991) 1 Cal.App.4th 495, 504-05.) ““In short, where a statute requires an officer to do a prescribed act on a prescribed contingency, his functions are ministerial.”” (*People ex rel. Fund American Companies v. California Ins. Co.* (1974) 43 Cal.App.3d 423, 431-432.)

Neither section relied upon by the trial court as a basis for issuing the writ of mandate defines a specific action or duty that Finance is required to take. For instance, section 19826 imposes no further obligations on any

state department once DPA determines the proposed salaries cannot be paid through existing appropriations. The statute is unlike the provisions of the Dills Act, which require DPA to present negotiated salary increases for rank and file employees to the Legislature for approval. (Gov. Code, §§ 3517.6, 19829.5.) In section 19826, the Legislature did not choose to impose such a duty and the appellate court agreed that the trial court erred in concluding that one was implied.

And, even assuming a ministerial duty could be implied under section 18500 (which Finance would dispute), the “like-pay-for-like-work” principle 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. (See Gov. Code, § 18500, subd. (c)(4).) Thus, section 18500 expressly recognizes that discretion must be exercised in determining whether a recommended salary increase is in the best interests of the state, and the exercise of discretion cannot be compelled by a writ of mandate.

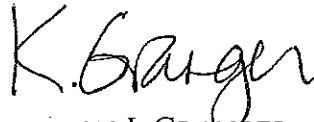
CONCLUSION

For the reasons set forth above, the petition should be denied.

Dated: July 22, 2011

Respectfully submitted,

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