



PERB Received  
09/19/23 11:55 AM

# REQUEST FOR IMPASSE DETERMINATION/ APPOINTMENT OF MEDIATOR

DO NOT WRITE IN THIS SPACE: Case No:

Date Filed: 09/19/2023

**INSTRUCTIONS:** A request for impasse determination must be filed with the appropriate regional office (see PERB Regulation 32075). A request which is not jointly filed must be served on the other party as required by Regulation 32792(b). Proof of service must accompany the request. Attach additional sheets if more space is required.

1. The employer of the employees in the established unit is an employer within the meaning of the :

- Educational Employment Relations Act (EERA) (Gov. Code, §§ 3540-3549.3).
- Higher Education Employer-Employee Relations Act (HEERA) (Gov. Code, §§ 3560-3599).
- Ralph C. Dills Act (Dills Act) (Gov. Code, §§ 3512-3524).

### 1. EMPLOYER

Name: State of California, CA Department of Human Resources  
 Address: 1515 S Street North Bldg, Suite 500, Sacramento, CA 95811

#### Agent to be contacted:

Name: Candace Murch  
 Title: Labor Relations Officer, Unit 10  
 Agency/Law Firm: CA Dept of Human Resources  
 Address: 1515 S Street North Bldg, Suite 500, Sacramento, CA 95811  
 Phone: (916) 324-0476  
 E-mail Address: candace.murch@calhr.ca.gov

### 2. EXCLUSIVE REPRESENTATIVE

Name: California Association of Professional Scientists  
 Address: 555 Capitol Mall Suite 1155, Sacramento, CA 95814

#### Agent to be contacted:

Name: Christiana Dominguez  
 Title: Senior Legal Counsel  
 Agency/Law Firm: California Association of Professional Scientists  
 Address: 555 Capitol Mall Suite 1155, Sacramento, CA 95814  
 Phone: (916) 441-2629  
 E-mail Address: cdominguez@capsscientists.org

### 4. DESCRIPTION OF ESTABLISHED UNIT

Shall Include:

Scientific Professionals

Shall Exclude:

### 5. APPROXIMATE NUMBER OF EMPLOYEES IN THE UNIT:

4200

### 6. DATE EXCLUSIVE REPRESENTATIVE WAS RECOGNIZED OR CERTIFIED:

08/23/1984

### 7. TYPE OF DISPUTE

- Initial Contract    Successor Contract    Reopener(s) in Existing Contract    Effects of Layoff    Other (describe)

### 8. PUBLIC NOTICE REQUIREMENTS

Date exclusive representative's initial proposals presented to the public: 01/14/2020

Date employer's initial proposals presented to the public: 01/14/2020

Los Angeles Regional Office  
 425 W. Broadway, Suite 400  
 Glendale, CA 91204  
 (818) 551-2822

Sacramento Regional Office  
 1031 18th Street  
 Sacramento, CA 95811-4174  
 (916) 322-3198

San Francisco Regional Office  
 1515 Clay St., Suite 2206  
 Oakland, CA 94612-1403  
 (510) 622-1016

9. HISTORY OF NEGOTIATIONS/MEET AND CONFER

Date of first negotiations session: 03/03/2020

Approximate total number of hours spent in negotiations to date: 352

Total number of negotiating sessions to date: 77

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10. STATUS OF NEGOTIATIONS/MEET AND CONFER

Date impasse was declared by a party/parties pursuant to PERB Regulation 32792(a):

09/04/2023

Number of issues on which the parties have reached tentative agreement:

9

Issues on which tentative agreement has been reached:

See attachment

Total number of unresolved issues which remain in dispute:

9

Issues which remain in dispute:

See attachment Arts 2.1, 2.18, 2.19, 2.20, 2.21, 2.25, 5.1, 13.1, 13.2

11. STATEMENT OF FACTS

Provide a clear and concise description of the negotiations which have occurred, including the extent to which the parties have made counter- proposals and have discussed the issues which remain in dispute. Identify the facts which indicate that future meetings without the assistance of a mediator would be futile.

See attachment

DECLARATION

I declare under penalty of perjury that the statements herein are true to the best of my knowledge and belief.

NAME OF AUTHORIZED REPRESENTATIVE: \_\_\_\_\_ Christiana Dominguez \_\_\_\_\_

SIGNATURE OF AUTHORIZED REPRESENTATIVE: \_\_\_\_\_ /s/ Christiana Dominguez \_\_\_\_\_

Title: \_\_\_\_\_ Senior Legal Counsel \_\_\_\_\_

Date: \_\_\_\_\_ 09/18/2023 \_\_\_\_\_



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# REQUEST FOR IMPASSE DETERMINATION/ APPOINTMENT OF MEDIATOR

DO NOT WRITE IN THIS SPACE: Case No.:

Date Filed:

**INSTRUCTIONS:** A request for impasse determination must be filed via the e-PERB Portal. A request which is not jointly filed must be served on the other party as required by Regulation 32792(b). Proof of service must accompany the request. Attach additional sheets if more space is required.

1. The employer of the employees in the established unit is an employer within the meaning of the:

- Educational Employment Relations Act (EERA) (Gov. Code, §§ 3540-3549.3).
- Higher Education Employer-Employee Relations Act (HEERA) (Gov. Code, §§ 3560-3599).
- Ralph C. Dills Act (Dills Act) (Gov. Code, §§ 3512-3524).

1. **EMPLOYER**

Name: State of California, Dept. of Human Resources  
 Address: 1515 S Street, North Bldg, Suite 500  
 Sacramento, CA 95811  
 Agent to be contacted:  
 Name: Candace Murch  
 Title: Labor Relations Officer, Unit 10  
 Agency/Firm: CA Dept of Human Resources  
 Address: 1515 S Street, North Bldg, Suite 500  
 Sacramento, CA 95811  
 Phone: 916-324-0476  
 E-mail Address: candace.murch@calhr.ca.gov

2. **EXCLUSIVE REPRESENTATIVE**

Name: CA Assn of Professional Scientists  
 Address: 555 Capitol Mall, Suite 1155  
 Sacramento CA, 95814  
 Agent to be contacted:  
 Name: Christiana Dominguez  
 Title: Senior Legal Counsel  
 Union/Firm: CA Assn of Professional Scientists  
 Address: 555 Capitol Mall, Suite 1155  
 Sacramento, CA 95814  
 Phone: 916-441-2629  
 E-mail Address: cdominguez@capsscscientists.org

4. **DESCRIPTION OF ESTABLISHED UNIT**

Shall Include:  
**Scientific Professionals**  
 Shall Exclude:

5. APPROXIMATE NUMBER OF EMPLOYEES IN THE UNIT:

4200

6. DATE EXCLUSIVE REPRESENTATIVE WAS RECOGNIZED OR CERTIFIED:

8/23/1984

7. **TYPE OF DISPUTE**

- Initial Contract     Successor Contract     Reopener(s) in Existing Contract     Effects of Layoff  
 Other (describe)

8. **PUBLIC NOTICE REQUIREMENTS**

Date exclusive representative's initial proposals presented to the public: **January 14, 2020**

Date employer's initial proposals presented to the public: **January 14, 2020**

9. **HISTORY OF NEGOTIATIONS/MEET AND CONFER**

Los Angeles Regional Office  
 425 W. Broadway, Suite 400  
 Glendale, CA 91204  
 (818) 551-2822

Sacramento Regional Office  
 1031 18th Street  
 Sacramento, CA 95811-4174  
 (916) 322-3198

San Francisco Regional Office  
 1515 Clay Street, Suite 2206  
 Oakland, CA 94612-1403  
 (510) 622-1016

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Date of first negotiations session: March 5, 2020

Approximate total number of hours spent in negotiations to date: 352 hours

Total number of negotiating sessions to date: 77 sessions

**10. STATUS OF NEGOTIATIONS/MEET AND CONFER**

Date impasse was declared by a party/parties pursuant to PERB Regulation 32792(a):

September 4, 2023

Number of issues on which the parties have reached tentative agreement:

163

Issues on which tentative agreement has been reached:

See attached

Total number of unresolved issues which remain in dispute:

9

Issues which remain in dispute:

Arts 2.1,2.18,2.19,2.20,2.21,2.25,5.1,13.1,13.2

**11. STATEMENT OF FACTS**

Provide a clear and concise description of the negotiations which have occurred, including the extent to which the parties have made counter-proposals and have discussed the issues which remain in dispute. Identify the facts which indicate that future meetings without the assistance of a mediator would be futile.

Please see the attached.

**DECLARATION**

I declare under penalty of perjury that the statements herein are true to the best of my knowledge and belief.

NAME OF REQUESTING PARTY: CA Assn. of Prof Scientists

SIGNATURE OF AUTHORIZED REPRESENTATIVE: 

Title: Senior Legal Counsel

Date: September 19, 2023

NAME OF REQUESTING PARTY:

SIGNATURE OF AUTHORIZED REPRESENTATIVE: \_\_\_\_\_

Title:

Date:

*(Attach a completed Proof of Service form.)*

September 19, 2023

Impasse Administrator  
Public Employment Relations Board  
Sacramento Regional Office  
1031 18th Street  
Sacramento, CA 95811

**RE: Request for Declaration of Impasse between the California  
Association of Professional Scientists (CAPS) Bargaining Unit 10 and  
the State of California**

To Whom It May Concern:

The California Association of Professional Scientists (CAPS), as the exclusive representative for employees in Bargaining Unit 10 at all times herein, hereby requests the Public Employment Relations Board (the Board) declare that an impasse exists between CAPS and the State of California in on-going negotiations to reach a successor agreement to the 2018-2020 Bargaining Unit 10 Memorandum of Understanding.

The parties have been in negotiations for a successor agreement for approximately 1288 days and counting. The parties have met approximately 77 times, comprising more than 352 hours of negotiation. Tentative agreements have been reached on 163 out of approximately 175 terms of the 2018-2020 MOU. The parties have been unable to reach agreement on 9 remaining terms.

At this point, CAPS believes that future meetings without the assistance of a mediator would be futile. The State has declined CAPS's invitation to join this impasse declaration request. CAPS remains committed to reaching a successor agreement and believes that a mediator can assist the parties with breaking the remaining logjam.

**HEADQUARTERS**  
555 Capitol Mall, Suite 1155  
Sacramento, CA 95814  
(916) 441-2629  
caps@capsscientists.org

**LOS ANGELES**  
215 N. Marengo Avenue, Suite 185  
Pasadena, CA 91101  
(818) 246-0629  
FAX (818) 247-2348

**SAN FRANCISCO**  
100 Pine Street, Suite 750  
San Francisco, CA 94111  
(415) 861-6343  
FAX (415) 861-5360



The Board has found that impasse exists where the "parties have considered each other's proposals and counter proposals, attempted to narrow the gap of disagreement and have, nonetheless, reached a point in their negotiations where continued discussion would be futile." (*City of Long Beach (2012) PERB Decision No. 2296-M, p. 15*).

Under PERB Rule 32793(c), the Board may investigate and consider the number and length of negotiating sessions between the parties, the time period over which the negotiations have occurred, the extent to which the parties have made and discussed counter-proposals to each other, the extent to which the parties have reached tentative agreement on issues and the extent to which unresolved issues remain, as well as other data.

Here, the parties have met over 77 times since March, 2020, totaling more than 350 hours of negotiations in an attempt to reach agreement on a successor MOU. They have discussed some 200 existing or proposed terms and reached tentative agreement on approximately 163 of them. Only 13 successor and proposed new articles remain open - 4 of which are terms commonly reserved until the end of the process (13.6 Supersession, 20.1 Entire Agreement, 20.2 Duration, 20.3 Contract Appropriation). CAPS does not believe these provisions are at, or are the cause of, impasse.

The following items remain unresolved. Based on the State's statements and conduct, CAPS does not believe further progress is possible without the assistance of a mediator:

**Article 2.1 (Salaries), Article 2.20 (Historical Salary Relationships), and Article 2.21 (Special Salary Adjustments)** – The union last received a salary increase on July 1, 2021 (2 years and 2 months ago) of only 2.63% via a Side Letter Agreement.<sup>1</sup> Most recently,<sup>2</sup> on May 9, 2023, the union proposed a package for a three-year term with General Salary Increases (GSIs) of 5% effective July 1, 2022 and July 1, 2023, a 3% GSI effective July

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<sup>1</sup> The total funded amount was 7.63%, however the 5% was previously negotiated and deferred as a result of the COVID-19 pandemic and its impact to California budget projections. Thus, the actual increase negotiated above the pre-funded amount was 2.63% for 2021.

<sup>2</sup> This filing focuses on the most recent negotiations between the parties and the proposals passed during calendar year 2023, however many more proposals on these items were passed in 2020, 2021, and 2022, and are available to review here <https://capsscintists.org/wp-content/uploads/2022/12/TAs-12-16-2022.pdf>

1, 2024, and a 3% GSI effective July 1, 2025. The CAPS economic proposal also included provisions to restore the vertical salary relationship between state scientists and their scientist supervisors that had existed prior to 2014 (Article 2.20). Finally, the package included special salary adjustments (SSAs) to preserve salary relationships between those classes included in, and those not covered by, the Article 2.20 proposal. CAPS's proposal seeks to close the 15-43% gap between rank-and-file scientists and their supervisors that has existed since 2014. The disconnection was created after the Legislature appropriated money to correct supervisory scientists' salary inequity with their engineering peers under California's Like-Pay-Like-Work statute. Rank-and-file scientists, despite facing the same salary inequity with their rank-and-file engineering peers as their supervisors did with supervising engineers, prior to CAPS's successful litigation, seek to rectify this problem through collective bargaining, as required by the Dills Act. This double-digit degree of severance of vertical salary relationships exists nowhere else in the state civil service system and contributes to Unit 10's documented recruitment and retention problem, leading to high turnover, increased staff training costs, and the loss of invaluable institutional knowledge.

The State countered the CAPS's proposals on August 25, 2023, with a single proposal (Article 2.1) that they claimed would address the problems CAPS seeks to alleviate in their proposed new sections 2.20 and 2.21. The State's proposal would have provided 5% SSAs to the top step of classifications effective upon ratification, July 1, 2024 and July 1, 2025. However, these SSAs would not have applied to all employees. Rather, they would apply only to those at the top step of existing salary ranges in the Environmental Scientist or similar specified classes, and smaller SSAs for everyone in those same classifications who were not currently at the maximum of their salary range.

The State's proposal also included a 3% SSA for those below the maximum of their salary range in that group, effective the first day of the pay period following ratification; then a 2% SSA for those not at top step in that first group, effective July 1, 2024; and a final 5% SSA for those not at top step in that first group. The State's proposal also provided a 10% SSA, effective the pay period following ratification, for 15 classifications the State sees as tied to the CDFA Plant Lab, all of which require a Masters or PhD, followed by SSAs on July 1, 2024 and July 1, 2025 of 2%. Finally, the remaining CAPS

classifications (i.e. not in the State's first or second grouping) would have received 3% Special Salary Adjustments, effective the pay period upon ratification: July 1, 2024, and July 1, 2025.

The State's proposal fails to close existing salary lags or correct vertical salary relationships, which CAPS told the State was essential to its membership. The State then offered to reallocate the total funding contained in its proposal in a different manner, but repeatedly confirmed that their proposal represented the total funding they were prepared to offer to CAPS. CAPS 2023 proposals: 5/9/2023; 8/28/2023; 8/31/2023. State's 2023 proposals: 8/25/2023; 8/29/2023; 8/31/2023.

**Article 2.18 (New Geographic Pay Differential).** On May 9, 2023, CAPS proposed a two-step pay differential for employees appointed to positions in San Mateo, San Francisco, Santa Clara, Marin, Alameda, Santa Cruz, and Orange counties; and a one and a half-step pay differential for employees appointed to positions in Santa Barbara, Napa, Contra Costa, Monterey, Ventura, San Diego, San Luis Obispo, Los Angeles, San Benito, and Sonoma Counties to address the extraordinary recruitment and retention challenges posed by high costs of living in those areas. The State rejected this on August 25, 2023. CAPS passed a subsequent proposal on August 29, 2023, changing the effective date and shifting from a salary step differential to a flat dollar amount. The State rejected the offer on August 31, 2023. CAPS passed a further counter on the same day that changed the effective date and lowered the amounts for each grouping by \$50. The State again rejected the proposal. CAPS 2023 proposals: 5/9/2023, 8/29/2023. State 2023 proposals: none.

**Article 2.19 (New Longevity Pay Differential).** CAPS passed a proposal on May 9, 2023 providing either a 2, 3, 4, or 5.5% differential to employees with 15, 16, 17, 18, or more years of State Service, a term commonly found in state employee MOUs in units with significant recruitment and retention challenges. CalHR rejected the proposal on August 25, 2023. CAPS held to its original proposal on August 29, 2023. CAPS 2023 proposals: 5/9/2023. State 2023 proposals: none.

**Article 2.25 (New Pandemic Recognition Bonus).** On June 6, 2023, CAPS proposed the State provide a one-time \$1,500 bonus for Unit 10



employees at CalFIRE, the Department of Public Health, and the Department of Health Care Services, and any Unit 10 employee at other agencies who continued field work to ensure the state provided essential programs during the COVID-19 pandemic, starting March 2020 through the pay period following ratification. The State rejected the proposal on July 24, 2023. Despite the State's refusal to provide a counter offer on this important term, CAPS, desiring to reach agreement with the State, countered on August 15, 2023, with a one-time \$1,500 bonus for Unit 10 employees in the specified departments and anyone who was redirected to perform contact tracing during the pandemic. The State rejected this on August 25, 2023. CAPS countered again on August 29, 2023, offering lower bonus amounts of \$1,250, and providing it only to employees at CalFIRE, CDPH, and those redirected to contact tracing, which the State again rejected on August 29, 2023. CAPS again countered on August 31, 2023 with a retitled proposal called "Emergency Response Recruitment and Retention: One-Time Benefit," keeping the bonus at \$1,250, and only providing it to CalFIRE and CDPH employees. The State rejected the offer the same day. CAPS 2023 proposals: 6/6/2023, 8/15/2023, 8/29/2023, 8/31/2023. State 2023 proposals: none.

**Article 5.1 (Health, Dental, Vision).** On May 9, 2023, CAPS proposed increasing the State's contribution to employee healthcare from 80% of the employee's and dependents' premiums to 85% of the employee's and 80% of the dependents' premiums. CAPS Members have expressed concerns of rising health care costs and the small increase by the State would help preserve affordable health access for Unit 10 employees. The State rejected the offer and instead proposed to rollover existing language, preserving the 80/80 formula, on August 15, 2023. CAPS rejected the State's rollover proposal on August 29, 2023, and held to its May 9, 2023, proposal. The State held to their rollover proposal on August 29, 2023. CAPS 2023 proposals: 5/9/2023, 8/29/2023. State 2023 proposals: 8/15/2023.

**Article 13.1 (No Strike), Article 13.2 (No Lockout).** The State proposed rolling over the existing no-strike term on August 22, 2023. On September 1, 2023, CAPS proposed to amend Article 13.1 to allow Unit 10 employees to honor strikes of other State bargaining units and to withhold their labor should the State be involved in a primary strike with another unit. CAPS also proposed rolling over the No Lockout provision on July 11, 2023. The State

said that it will not finalize a tentative agreement on lockouts without also finalizing the no strike provision. The State did not respond to CAPS's proposal for Article 13.1 (No strike). CAPS 2023 proposals: 7/11/2023, 9/1/2023. State 2023 proposals: 8/22/2023.

The party asserting impasse bears the burden of proving that impasse exists. (*City of Glendale*, PERB Decision No. 2694-M, p. 61). CAPS sought clarification from the State as to its position on the remaining contract terms multiple times. For example, during the session on September 1, 2023, the State's chief negotiator stated words to the effect of, "There is no more money. The money is on the table... the money is the money that's all we've got right now." This is evidence of the State's unwillingness to make further progress on MOU terms with economic impact - primarily Section 2.1 Salaries.

Subsequently, during the parties' bargaining session on September 5, 2023, the State's chief negotiator again stated words to the effect of, "there is no more money." The parties mutually understood these statements to indicate that the State is unwilling to provide any more money to resolve the situation. Instead, the State offered only the opportunity to take what the State was offering, and shuffle which items received the fixed amounts of money. This is not a true change in the State's offer or position.

CAPS seeks to reach a successor agreement with the State that appropriately values the state scientists who are responsible for executing California's cutting edge environmental, economic, health and safety, and consumer protection related public policy. CAPS's proposals incorporate the direction of its membership - most recently provided when they overwhelmingly rejected a prior tentative agreement with terms that failed to address salary lags or inequities with peer classifications in other units. The State's offer continues to devalue state scientist work by failing to address the impact of inflation and by failing to address the pay inequities that exist between scientists and their peers in other classes that perform substantially similar work for substantially more pay.

It is clear from the position of both parties on the remaining 9 items, that each has reached the "end of their rope," with "differences so substantial and prolonged" that further negotiations without the assistance of a mediator would be futile. (*City of Glendale*, PERB Decision No. 2694-M, pp 60-61, citations omitted).

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CAPS remains eager to reach a full tentative agreement on a successor agreement as it is in the best interests of all Californians to ensure that the State can hire and retain a stable, talented corps of scientific professionals working in the public interest to protect our natural resources, economy, and public health.

Yours truly,



Christiana Dominguez  
Senior Legal Counsel  
California Association of Professional Scientists

cc: Candace Murch, Labor Relations Officer, Unit 10, California Department of Human Resources  
Kristine Rodrigues, Assistant Deputy Director, California Department of Human Resources  
Paul Starkey, Deputy Director, California Department of Human Resources  
Eraine Ortega, Director, California Department of Human Resources

PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Sacramento,  
State of California. I am over the age of 18 years. The name and address of my  
Residence or business is 555 Capitol Mall, Suite 1155  
Sacramento, CA 95814

On 9/19/2023, I served the Request for Impasse Determination/  
(Date) (Description of document(s))

Appointment of Mediator in Case No. \_\_\_\_\_  
(Description of document(s) continued) PERB Case No., if known)

on the parties listed below by (check the applicable method(s)):

- placing a true copy thereof enclosed in a sealed envelope for collection and delivery by the United States Postal Service or private delivery service following ordinary business practices with postage or other costs prepaid;
- personal delivery;
- electronic service - I served a copy of the above-listed document(s) by transmitting via electronic mail (e-mail) or via e-PERB to the electronic service address(es) listed below on the date indicated. (May be used only if the party being served has filed and served a notice consenting to electronic service or has electronically filed a document with the Board. See PERB Regulation 32140(b).)

(Include here the name, address and/or e-mail address of the Respondent and/or any other parties served.)

Candace Murch Via e-PERB, and via email to the party listed.  
Labor Relations Officer  
CA Dept of Human Resources  
1515 S Street, North Bldg, Suite 500  
Sacramento, CA 95814  
candace.murch@calhr.ca.gov

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on Sept 19, 2023,  
(Date)  
at Sacramento, California.  
(City) (State)

Christiana Dominguez

(Type or print name)

(Signature)