

CONFIDENTIAL FAX

Department of Personnel Administration Legal Division

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DATE: March 6, 2008

TO: Gregg McLean Adam, Attorney
Carroll, Burdick & McDonough

FROM: Paul M. Starkey
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RE: California Correctional Peace Officers Association v. State of California, (Department of Personnel Administration)
UPC No. SA-CE-1621-S

NUMBER OF PAGES: 5 (including cover page)

MESSAGE: Please see attached Notice of Motion and Motion for Stay of Hearing Pending Charging Party's Appeal of Partial Dismissal; Points and Authorities in Support of Motion

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10 STATE OF CALIFORNIA

11 PUBLIC EMPLOYMENT RELATIONS BOARD

12 CALIFORNIA CORRECTIONAL PEACE
13 OFFICERS' ASSOCIATION,

14 Charging Party,
15 v.

16 STATE OF CALIFORNIA, DEPARTMENT
OF PERSONNEL ADMINISTRATION,

17 Respondent.

) Case No. SA-CE-1621-S

) NOTICE OF MOTION AND MOTION FOR
STAY OF HEARING PENDING CHARGING
PARTY'S APPEAL OF PARTIAL
DISMISSAL; POINTS AND AUTHORITIES
IN SUPPORT OF MOTION

18
19 **NOTICE OF MOTION AND MOTION FOR STAY OF HEARING**

20 TO CHARGING PARTY, CALIFORNIA CORRECTIONAL PEACE OFFICERS'
21 ASSOCIATION (CCPOA) AND ITS ATTORNEY OF RECORD:


22 Pursuant to Government Code section 3541.3, subdivision (i) and PERB regulation 32370,
23 Respondent STATE OF CALIFORNIA, DEPARTMENT OF PERSONNEL ADMINISTRATION
24 (State or DPA), respectfully requests that the Board stay the hearing in the above-entitled matter,
25 which is now set for April 16-17, 2008, until such time that the Board rules on the merits of the
26 Charging Party's pending appeal of the partial dismissal of the charge. This motion is made in the
27 interests of efficiency and administrative economy.

28 ///

1 This motion is based upon the accompanying points and authorities, supporting declarations,
2 such matters as the Board may take administrative notice, and all papers and pleadings on file herein.

3 Dated: March 6, 2008

4 Respectfully submitted,

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6
7 By: 
8 PAUL M. STARKEY
9 Labor Relations Counsel
Attorneys for Respondent

10 **POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR STAY OF HEARING**
11 **PENDING CHARGING PARTY'S APPEAL OF PARTIAL DISMISSAL**

12 **I.**

13 **STATEMENT OF FACTS**

14 Charging Party is the exclusive representative for employees in State Bargaining Unit 6. The
15 parties' memorandum of understanding expired on July 2, 2006, and the parties engaged in
16 negotiations through mediation and impasse.¹

17 On September 25, 2007, CCPOA filed an unfair practice charge in response to the State's
18 implementation of terms of its last, best and final offer on September 18, 2007, pursuant to
19 Government Code section 3517.8. Charging Party amended its charge on October 2, 2007. On
20 December 7, 2007, the General Counsel's office issued a Partial Dismissal Letter, which dismissed
21 most of the allegations of the amended charge, but issued a complaint on two surviving allegations.
22 Specifically, the complaint alleges that the State violated Government Code section 3519,
23 subdivision (c), and derivatively (a) and (b): 1) "by implementing the terms and conditions for a
24 three-year duration"; and 2) by failing to continue state-paid "State Vice-Presidents leave, as set
25 forth at Article 2, Section 2.11, of the parties' expired MOU."² (Complaint, ¶¶ 5, 8.)

26
27 ¹ The Board is asked to take notice of its files concerning the parties' impasse and mediation
28 in SA-IM-3041-S.

² This latter issue appears to be resolved by the parties' separate agreement.

1 On January 2, 2008, CCPOA appealed from the General Counsel's Partial Dismissal of
2 CCPOA's October 2, 2007. The complaint is now set for hearing on April 16-17, 2008, in
3 Sacramento, California.

4 **II.**

5 **ARGUMENT**

6 **The Board Should Exercise its Discretion to Stay the Hearing Pending**
7 **Resolution of Charging Party's Appeal.**

8 The Board has broad discretion to stay PERB proceedings pending resolution of an appeal.
9 Government Code section 3541.3, subdivision (i), relative to the Board's powers and duties,
10 provides that the Board has power:

11 (i) To investigate unfair practice charges or alleged violations of this chapter, **and**
12 **take any action and make any determinations in respect of these charges or**
13 **alleged violations as the board deems necessary to effectuate the policies of this**
14 **chapter.**

15 (Emphasis added.)

16 PERB regulation 32370, Request for Stay of Activity, provides:

17 An appeal will not automatically prevent the Board from proceeding in a case.
18 Parties seeking a stay of any activity may file a request for a stay with the
19 administrative appeal which shall include all pertinent facts and justification for the
20 request. **The Board may stay the matter**, except as is otherwise provided in these
21 regulations.

22 (Emphasis added.)

23 Thus, upon showing of proper justification, the Board may stay the hearing. The "interest of
24 economy" is a proper justification. (*Calipatria Unified School District* (1989) PERB Order
25 No. Ad-186. ["hearing may be premature should the Board reverse [its] ruling"].)

26 A stay of activity is necessary for efficiency and administrative economy. If the hearing goes
27 forward on April 16, 2008, the parties will litigate whether the State's implemented terms continue
28 beyond one year, continue until the beginning of a new fiscal year as alleged by Charging Party or
whether such terms, as implemented, continue until the parties bargain a new memorandum of
understanding. While this determination might appear to be a pure legal issue, it is not. Rather, it is

///

1 an important issue of first impression that requires placing the legal issue in its proper context, which
2 is possible only by developing a factual record concerning the entire course of bargaining for a
3 successor MOU.

4 Of course, if the Charging Party's appeal is granted, the entire bargaining record again would
5 be at issue. In its appeal, Charging Party seeks to have PERB adopt its novel "ongoing violation"
6 theory to support its allegations that the State engaged in bad faith bargaining. (Appeal, p. 4: 1-7.)
7 Charging Party argues that the totality of the State's conduct during bargaining must be evaluated as
8 a single act. (Appeal, p. 5: 4-15.) In light of the Charging Party's position concerning the need to
9 evaluate the totality of the State's conduct, the parties would be required to duplicate their efforts
10 should the complaint hearing be held prior to the appeal decision. Thus, going forward in light of
11 the Charging Party's appeal is much less efficient and less economical than staying the complaint
12 hearing pending the outcome of the Charging Party's appeal.

13 Moreover, should the Board grant all or part of Charging Party's appeal, the Board has
14 discretion to consolidate the charges in a single hearing. PERB Regulation 32612, subdivision (d)
15 allows the Board to consolidate charges "as it deems appropriate." Thus, the Board has broad power
16 to control its processes, to stay proceedings to further efficiency and administrative ease, and to
17 coordinate its actions.

18 **III.**

19 **CONCLUSION**

20 Accordingly, in the interest of efficiency and administrative economy, and pursuant to the
21 wide discretion afforded the Board in these such matters, the Board should stay the hearing set for
22 April 16-17, 2008, pending resolution of Charging Party's appeal. Additionally, should all or part of
23 the Charging Party's appeal be granted, the State requests that the Board consolidate any and all
24 relevant hearings into one.

25 Dated: March 6, 2008

Respectfully submitted,

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27 By: 

28 PAUL M. STARKEY
Labor Relations Counsel
Attorneys for Respondent

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PROOF OF SERVICE

CASE NAME: California Correctional Peace Officers Association v. State of California
(Department of Personnel Administration)

CASE NUMBER: UPC No. SA-CE-1621-S

I, Lisette Olivar, declare:

I am employed in the County of Sacramento, California. I am over the age of 18 years, and not a party to the within action. My business address is 1515 S Street, North Building, Suite 400, Sacramento, California 95811-7258. I am readily familiar with my employer's business practice for collection and processing of correspondence for GSO, U.S. Mail, Fax Transmission and/or Personal Service.

On March 6, 2008, I caused the following documents to be served:

Notice of Motion and Motion for Stay of Hearing Pending Charging Party's Appeal of Partial Dismissal; Points and Authorities in Support of Motion

on the party/parties named below, by faxing and placing a true copy thereof, enclosed in a sealed envelope, for collection and mailing with the United States Postal Service where it would be deposited in the United States Postal Service that same day in the ordinary course of business, addressed as follows:

Mr. Chuck Alexander, Executive Vice President	Gregg McLean Adam, Esq.
Ms. Suzanne L. Branine, Staff Legal Counsel	Carroll, Burdick & McDonough, LLP
California Correctional Peace Officers Association	44 Montgomery, Suite 400
755 Riverpoint Drive, Suite 200	San Francisco, CA 94104-4606
West Sacramento, CA 95605	Fax (415) 989-0932
Fax No. (916) 372-9805	

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

Executed on March 6, 2008, at Sacramento, California.



Lisette Olivar