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15 PUBLIC EMPLOYMENT RELATIONS BOARD

16
17 CALIFORNIA CORRECTIONAL
18 PEACE OFFICERS' ASSOCIATION,

19 Charging Party,

20 v.

21 CALIFORNIA DEPARTMENT OF
22 PERSONNEL ADMINISTRATION;
STATE OF CALIFORNIA,

23 Responding Party.

No. SA-CE-1621-S

**REQUEST FOR INJUNCTIVE RELIEF
(PERB REGULATION § 32450)**

1
2 I

3 INTRODUCTION

4 Charging party, the California Correctional Peace Officers' Association
5 ("CCPOA" or "the Association"), requests that the Public Employment Relations Board
6 ("PERB") seek an injunction in the Superior Court, ordering the Department of Personnel
7 Administration ("DPA") resume bargaining with CCPOA. The State is currently in
8 breach of its obligation under section 3517 of the Dills Act to "meet and confer in good
9 faith regarding wages, hours, and other terms and conditions of employment."
10 (Cal.Gov.Code § 3517.)

11 On September 18, 2007, after approximately 18 months of negotiations with
12 CCPOA, the DPA unilaterally announced its intention to implement the State's ostensible
13 "last, best, and final offer" ("LBFO"). However, the State is now obligated to return to
14 the bargaining table, due to several substantial changes in bargaining-related
15 circumstances that have arisen since the declaration of impasse. (Cal.Gov.Code § 3517.8
16 ["obligation to bargain" following impasse is triggered when "any circumstances
17 change".]) These changed circumstances include: (1) the DPA's failure to secure
18 legislative approval to implement its purported LBFO, preventing implementation of the
19 State's offered five (5) percent pay increase, increased health benefits, increased sick and
20 vacation leave, increased night and weekend differential pay, increased uniform
21 allowances, and increased monetary recruitment incentives (among other beneficial
22 terms); (2) Governor Arnold Schwarzenegger's declaration of a fiscal state of emergency
23 impacting all state departments, including the California Department of Corrections and
24 Rehabilitation ("CDCR"); and (3) issuance by PERB of a complaint against the State,
25 which resulted in the State's voluntary rescission of years two and three of its LBFO.

26 In spite of these changed circumstances, the State has refused numerous
27 requests to return to the bargaining table, including a written request sent by counsel for
28 CCPOA on February 29, 2008. If the State continues to abrogate its duty to meet and

1 confer with CCPOA in good faith, as is its stated intention, the fundamental purposes of
2 the Dills Act will be frustrated and CCPOA will suffer irreparable harm. Accordingly,
3 injunctive relief is necessary to return the DPA to the bargaining table.

4
5 **II**

6 **PERB SHOULD SEEK AN INJUNCTION REQUIRING THE STATE
7 TO RETURN TO THE BARGAINING TABLE**

8 PERB may seek an injunction if it “determine[s] that [1] there exists
9 *reasonable cause* to believe an unfair labor practice has been committed and [2] that the
10 relief sought is *just and proper*.” (*PERB v. Modesto City* (1982) 136 Cal. App. 3d 881,
11 896 (“*Modesto City*”) [emphasis added].)

12 **A. Reasonable Cause Exists To Believe That The State Has Committed
13 An Unfair Practice By Failing To Meet And Confer In Good Faith
14 Following Several Substantial Changes In Circumstances**

15 The Dills Act requires the State to “meet and confer in good faith regarding
16 wages, hours, and other terms and conditions of employment with representatives of
17 recognized employee organizations,” such as CCPOA. (Cal.Gov.Code § 3517.)
18 Abrogation of this obligation constitutes an unlawful unfair labor practice.
19 (Cal.Gov.Code § 3519; *see also* Cal.Gov.Code §§ 3517.7 & 3517.8 [requiring post-
20 impasse resumption of bargaining when certain triggering events occur].)

21 To establish reasonable cause to believe that the DPA has violated the duty to
22 bargain, CCPOA need only establish that the theory underlying the charge is “*neither*
23 *insubstantial nor frivolous*.” (*Modesto City, supra*, 136 Cal.App.3d at 896-897 [emphasis
24 added]; *Boire v. Pilot Freight Carriers, Inc* (5th Cir. 1975) 515 F.2d 1185, 1189;
25 *Agricultural Labor Relations Bd. v. Laflin & Laflin*, (1979) 89 Cal. App.3d 651, 671.)¹
26 Factual allegations are taken as true for purposes of articulating a prima facie case of an

27 ¹ Decisions by the federal courts and the National Labor Relations Board (“NLRB”)
28 construing the Labor Management Relations Act are persuasive in construing similar
California labor relations statutes. (*See, e.g., Modesto City*, 136 Cal.App.3d at 895-896; *J.
R. Norton Co. v. ALRB* (1987) 192 Cal.App.3d 874, 908.) Decisions interpreting similar
provisions of other California labor statutes are also persuasive. *County Sanitation Dist.
No. 2 v. Los Angeles County Employees’ Assn.* (1985) 38 Cal.3d 564, 572-573.

1 unfair practice charge. (*San Jose USD* (2003) PERB No. 1555.) Moreover, the charging
2 party need not refute the employer's defenses in order to establish a *prima facie* case.
3 (*State of California (Department of Corrections)* (2003) PERB No. 1579-S.)

4 On or about September 18, 2007, the DPA declared an impasse, broke-off
5 negotiations, and unilaterally imposed on CCPOA terms and conditions of employment
6 that it claimed represented the State's LBFO. (Declaration of Gregg Adam ["Adam
7 Decl."], ¶ 2.) To date, the State remains intransigent in its position that it is under no duty
8 to bargain with CCPOA, in spite of numerous substantial changes in the circumstances of
9 the bargaining relationship. (Adam Decl., ¶¶ 9-10 and Exhs. D & E thereto.) The State
10 apparently takes the position that the *only* changed circumstances that will trigger its duty
11 to bargain is a concession on the part of CCPOA—a position that is flatly refuted by
12 express language of the Dills Act and by hornbook principles of labor-management
13 relations. (*Id.*)

14 The Dills Act, the statutory scheme governing the collective bargaining
15 relationship between the parties, reads, in pertinent part, as follows:

16 Implementation of the last, best, and final offer does not relieve the
17 parties of the obligation to bargain in good faith and reach an
18 agreement on a memorandum of understanding if *any* circumstances
change, and does not waive any rights that the recognized employee
organization has under this chapter.

19 (Cal.Gov.Code § 3517.8 [emphasis added].) "[U]nder the rules of statutory construction
20 we do not need to look further than the plain, unambiguous language of the statute to
21 determine legislative intent." (*Casden v. Sup. Ct.* (2006) 140 Cal.App.4th 417, 423.) This
22 reading of the unambiguous language of section 3517.8 is consistent with the stated
23 purpose of the Dills Act to foster bilateral resolution of disputes concerning terms and
24 conditions of employment. (Cal. Gov. Code § 3512.)

25 Section 3517.8 merely codifies the long-established principle "that a legal
26 impasse can be terminated by *nearly any change* in bargaining-related circumstances."
27 (*Modesto City*, 136 Cal.App.3d at 899 [emphasis added].) "Anything that creates a new
28 possibility of fruitful discussion (even if it does not create a likelihood of agreement)

1 breaks an impasse: [1] a strike may ...; [2] so may bargaining concessions, implied or
2 explicit ...; [3] mere passage of time may also be relevant.” (*Gulf States Mfg. Inc. v.*
3 *N.L.R.B.* (5th Cir. 1983) 704 F.2d 1390, 1399 [citations omitted].) Likewise, a change in
4 the financial condition of the employer will break impasse, requiring the parties to return
5 to the bargaining table. (See, e.g., *Kit Manufacturing Co., Inc. and Sheet Metal Workers*
6 *Int’l Assoc., Local 213, AFL-CIO* (1962) 138 NLRB 1290, 1294-1295 [impasse broken
7 where “financial position had improved”].)²

8 In the present case, there have been at least three changes in circumstances
9 since the DPA unilaterally declared impasse that require the State to resume negotiations.
10 These changed circumstances are as follows: (1) the DPA’s failure to secure legislative
11 approval for its LBFO, preventing implementation of numerous beneficial terms;
12 (2) Governor Schwarzenegger’s declaration of a fiscal state of emergency impacting all
13 state departments; and (3) issuance by PERB of a complaint against the State, resulting in
14 the State’s rescission of years two and three of the LBFO. Any one of these changes will
15 carry CCPOA’s burden. Thus, CCPOA’s position that, in conjunction, they require the
16 State to return to the bargaining table is certainly “neither insubstantial nor frivolous.”
17 (*Modesto City*, 136 Cal.App.3d at 896-897.)

18 **1. Due To Its Failure To Secure Legislative Approval For Its**
19 **Last, Best, And Final Offer, The State Is Required To**
20 **Resume Negotiations With CCPOA**

21 As noted above, on September 18, 2007, the State announced its intention to
22 implement its purported LBFO, effectively imposing terms and conditions of employment
23 on CCPOA-represented employees. (Adam Decl., ¶ 2.) However, in order to impose

24 ² Clearly, the State’s position that it need not resume negotiations with CCPOA until the
25 association makes a concession is untenable, as it would frustrate the purpose of the Dills
26 Act and eviscerate the collective bargaining process. Contrary to the State’s position
27 “[a]n impasse does not constitute a license to avoid the statutory obligation to bargain
28 collectively where the circumstances which led to the impasse no longer remain in status
quo.” (*Kit Manufacturing Co., Inc. and Sheet Metal Workers Int’l Assoc., Local 213,*
AFL-CIO (1962) 138 NLRB 1290, 1294.) “[I]mpasse is always viewed as a temporary
circumstance and the impasse doctrine ... therefore, is not a device to allow any party to
continue to act unilaterally or to engage in the disparagement of the collective bargaining
process.” (*McClatchy Newspaper* (1996) 321 NLRB 1386, 1398-1390.)

1 the terms of the ostensible LBFO, the DPA was required to seek and obtain the approval
2 of the Legislature. Its failure to do so over the ensuing five-plus months (Adam Decl., ¶
3 8), amounts to a changed circumstance as a matter of law, requiring the DPA to resume
4 labor negotiations.

5 Among other terms contained in the State's ostensible LBFO were the
6 following: (a) a pay increase of 5 percent over the first year; (b) increased health benefits;
7 (c) increased sick and vacation leave (over statutory requirements); (d) increased night
8 and weekend differential pay; (e) increased uniform allowances; and (f) increased
9 monetary recruitment incentives. Pursuant to Government Code section 3517.8(b), these
10 terms can only be given effect if they are approved by the Legislature:

11 If the Governor and the recognized employee organization reach an
12 impasse in negotiations for a new memorandum of understanding,
13 the state employer may implement any or all of its last, best, and
14 final offer. Any proposal in the state employer's last, best, and final
15 offer that, if implemented, would conflict with existing statutes or
require the expenditure of funds shall be presented to the
Legislature for approval and, if approved, shall be controlling
without further legislative action, notwithstanding Sections 3517.5,
3517.6, and 3517.7.

16 Needless to say, implementation of the monetary terms discussed above would "require
17 the expenditure of funds" by the State. Thus, the necessary implication of section
18 3517.8(b) is that, if the LBFO is not approved by the Legislature within a reasonable time
19 period, the financial terms lapse and will not be controlling. Such a circumstance
20 presumably implicates Government Code 3517.7, which reads, in part, as follows:

21 If the Legislature does not approve or fully fund any provision of
22 the memorandum of understanding which requires the expenditure
23 of funds, either party may reopen negotiations on all or part of the
memorandum of understanding.

...

24 As detailed above, the DPA has failed to obtain legislative approval of its
25 purported LBFO since its September 18, 2007 declaration of impasse. (Adam Decl., ¶ 8.)
26 This fact and the attendant loss to CCPOA and its membership of myriad financial and
27 other benefits necessarily amount to changed circumstances within the broad meaning of
28

1 Government Code section 3517.8 (“any circumstances change”). Consequently, the
2 impasse unilaterally declared by the DPA is broken.

3 Citing these changed circumstances, CCPOA has repeatedly contacted the
4 DPA to request that the State return to the bargaining table, including as recently as
5 February 29, 2008. (Adam Decl., ¶ 9.) However, the DPA has refused. (Adam Decl., ¶
6 10.) The State’s continued refusal to return to the bargaining table constitutes an unfair
7 labor practice and should be enjoined.

8 **2. The Governor’s Declaration Of A Statewide Fiscal**
9 **Emergency Constitutes A Change Of Circumstances**
10 **Mandating The Resumption Of Contract Negotiations**

11 On January 10, 2008, Governor Arnold Schwarzenegger declared a fiscal state
12 of emergency, due to an anticipated \$14 billion shortfall in California’s budget. (Adam
13 Decl., ¶ 7.) In response to the Governor’s directive to cut 10% from the budget of all
14 State agencies, CDCR Secretary James Tilton announced the Department’s intention to
15 comply, stating, “All corrections’ spending must be ‘on the table’ in order to accomplish a
16 ten percent reduction ... The proposal we have put forward will allow the Legislature to
17 reduce inmate and parolee populations, and agency staff to the levels it would take to
18 reach a ten percent budget reduction in future budget years.” (Adam Decl., ¶ 7.)

19 By reason and law, a change in the State’s financial condition constitutes a
20 change in bargaining-related circumstances that breaks the impasse unilaterally declared
21 by the State. (Cal.Gov.Code § 3517.8 [impasse broken “if any circumstances change”].)
22 Undeniably, a change in financial conditions “creates a new possibility of fruitful
23 discussion” regarding wages, hours, and other terms and conditions of employment. (*Gulf*
24 *States Mfg., supra*, 704 F.2d at 1399.) This very issue was addressed by the NLRB in *Kit*
25 *Manufacturing*, albeit in the context of *improved* financial conditions:

26 The Union pointed out ... that the industry had experienced an
27 increase in production and sales In addition, the Respondent’s
28 financial position had improved, as it conceded Since the ...
major differences between the parties which led to the halt in
negotiations involved [a proposed] increase in wages, it is
reasonable to conclude that subsequent ... improvements of the
financial position of the Respondent were significant changes

1 requiring further exploration by the parties, if they both sincerely
2 desired to overcome the impasse.

3 (*Kit Manufacturing, supra*, 138 NLRB at 1294-1295.)

4 Although the present case involves a *worsening* of the financial condition of
5 the State, the reasoning and analysis of *Kit Manufacturing* nonetheless apply. Indeed, in
6 light of the CDCR's commitment to "reduce ... agency staff to the levels it would take to
7 reach a ten percent budget reduction in future budget years," the State's declared fiscal
8 state of emergency necessarily implicates mandatory subjects of bargaining.
9 (Cal.Gov.Code § 3517 ["wages, hours, and other terms and conditions of employment"].)
10 In addition to the increased difficulty the parties will have in obtaining legislative
11 approval as to financial terms (see above), CDCR's planned cost-cutting and changes to
12 staffing levels will almost certainly require layoffs, cause consequent increases in
13 overtime required of CCPOA's membership, and undermine hiring and recruitment
14 efforts. (*See State of California Department of Forestry* (1993) PERB No. 999-S [State
15 must bargain over effects of layoffs].) These and other potential ramifications of the
16 fiscal emergency will necessarily cause a re-prioritization of issues discussed at the
17 bargaining table, which certainly "creates a new possibility of fruitful discussion." (*Gulf*
18 *States Mfg., supra*, 704 F.2d at 1399.)

19 In summary, beyond a mere changed circumstance, the fiscal state of
20 emergency *drastically alters* the collective bargaining landscape. Consequently, the DPA
21 must resume contract negotiations with CCPOA, pursuant to the unambiguous dictate of
22 Government Code section 3517.8.

23 **3. The State's Rescission Of Years Two And Three Of Its**
24 **Last, Best, And Final Offer Constitutes A Change Of**
Conditions Requiring A Return To The Bargaining Table

25 On or about November 19, 2007, CCPOA filed a Second Amended Unfair
26 Practice Charge (Charge No. SA-CE-1621-S) asserting numerous unfair labor practices
27 resulting from the DPA's unilateral declaration of impasse and imposition of its purported
28 LBFO. (Adam Decl., ¶ 3.) On December 7, 2007, PERB issued a complaint on the

1 charge, asserting that the State had violated Government Code sections 3517, 3517.8 and
2 3519(a)-(c) by (1) attempting to implement a LBFO of three years duration, and (2) by
3 unilaterally ending State Vice Presidents' Leave as it had existed under the MOU. (Adam
4 Decl., ¶ 4, and Ex. A thereto.)³ One week later, on December 13, 2007, DPA Labor
5 Relations Counsel Paul Starkey responded to the complaint, relaying the State's intention
6 to withdraw "economic proposals" from years two and three of the LBFO. (Adam Decl.,
7 ¶ 5, and Ex. B thereto.) The hearing on charge SA-CE-1621-S is presently scheduled to
8 take place on April 16 and 17, 2008, although the DPA has filed a Motion for Stay of
9 Hearing, asking that PERB stay the hearing on Charge No. SA-CE-1621-S until the Board
10 has ruled on exceptions to dismissals on the same charge. (Adam Decl., ¶ 6.)

11 The DPA's retreat from its prior insistence upon a three-year term for
12 "economic proposals," coupled with its apparent position that non-economic proposals
13 will be binding for the full three years, breaks the impasse the State declared unilaterally
14 on September 18, 2007. "Most obviously, an impasse will be broken when one party
15 announces a retreat from some of its negotiating demands." (*Modesto City*, 136
16 Cal.App.3d at 899 [quoting Gorman, *Labor Law* (1976) p.449; *NLRB v. Sharon Hats, Inc.*
17 (5th Cir. 1961) 289 F.2d 628].)

18 Moreover, the State's altered position as to the duration of economic terms of
19 the LBFO (but not non-economic terms) must be viewed as an unlawful unilateral change
20 of the terms and conditions of employment. CCPOA does not dispute that, "once impasse
21 is reached, the employer may take unilateral action to implement the last offer the union
22 has rejected." (*Modesto City*, 136 Cal.App.3d at 900.) "However, the unilateral
23 adoptions must be reasonably comprehended within the pre-impasse proposals." (*Id.*)

24 During contract negotiations, the State never proposed a one-year contract, let
25 alone a contract containing differing durations for "economic proposals" and non-
26 economic terms. (Adam Decl., ¶ 2.) Rather, the State proposed all-inclusive multi-year

27 _____
28 ³ PERB also denied portions of the relief requested by CCPOA, including a request for
injunctive relief. (Adam Decl., ¶ 4, and Ex. A thereto.)

1 deals at various times during negotiations, and its final proposal contained an across-the-
2 board three-year term. Plainly the State's newly-imposed terms were not reasonably
3 comprehended within the DPA's pre-impasse proposals. As such, the State's
4 implementation of these terms constitutes an independent unfair labor practice and
5 changed circumstance.

6 *Modesto City, supra*, is on all fours with the present case:

7 [There, after impasse,] PERB ... contended that the District was in
8 violation of the duty to negotiate in good faith because (1) it refused
9 to negotiate after concessions made by the Association, and (2) the
District made unilateral changes inconsistent with its last best offer
to the Association.

10 (*Id.* at 897.) Upholding the trial court's issuance of an injunction ordering the District
11 back to the bargaining table, the Court of Appeal stated the following:

12 We conclude the trial court below did not abuse its discretion in its
13 determination that there was reasonable cause to believe that
14 District violated section 3543.5, subdivision (c), by (1) refusing to
15 meet and negotiate with Association over concessions and new
16 proposals that Association offered following exhaustion of statutory
impasse procedures, and (2) by unilaterally changing some terms
and conditions of employment inconsistent with its last best offer.
We find this meets the first of the two-pronged test [i.e., reasonable
cause to believe an unfair labor practice has been committed].

17 (*Id.* at 901-902 [discussing parallel provisions of the Educational Employment Relations
18 Act] [emphasis added].)

19 Like the District in *City of Modesto*, the State is refusing to bargain following
20 changed circumstances, including its own concession (i.e., retreat from the three-year
21 term) and its unlawful unilateral imposition of working conditions not comprehended with
22 its pre-impasse proposals. As in *City of Modesto*, the DPA should be ordered to cease its
23 refusal to bargain with CCPOA.

24 **B. The Injunctive Relief Sought Is Just And Proper**

25 **1. The State's Refusal to Bargain Frustrates The Purposes of**
26 **The Dills Act**

27 Although injunctive relief is an extraordinary remedy, it may be
28 used whenever either an employer or union has committed unfair
labor practices which, under the circumstances, render any final

1 order of the Board meaningless or so devoid of force that the
2 remedial purposes of the Act will be frustrated....

3 This shows that “traditional equitable standards” are properly
4 considered ..., but that the traditional idea of irreparable harm or
harm for which there is no adequate legal remedy is met when the
employer’s practices may frustrate the purposes of the [Act].

5 (*Agricultural Labor Relations Bd. v. Tex-Cal Land Mgmt Inc.* (1985) 165 Cal. App. 3d
6 429, 440 [*“Tex-Cal”*] [discussing the Agricultural Labor Relations Act].)

7 Thus, “[t]he Board need not demonstrate the existence of a ‘rare emergency
8 situation.’” (*Modesto City*, 136 Cal.App.3d at 902 [citing *Angle v. Sacks* (10th Cir. 1967)
9 382 F.2d 655, 658-659].) Rather, the “just and proper” prong of PERB’s injunctive relief
10 standard is met where “there exists a probability that the purposes of the Act will be
11 frustrated unless temporary relief is granted....” (*Id.* at 439 [citing *Angle v. Sacks* (10th
12 Cir. 1967) 382 F.2d 655, 660].) A preliminary injunction ensures that any final order of
13 the Board will not be meaningless or so devoid of force that the remedial purposes of the
14 Act will be frustrated. (*Id.* at 440.)

15 Creating and fostering a system of collective bargaining between the State of
16 California and recognized associations of state employees is the very purpose of the Dills
17 Act. (*See, e.g.*, Cal.Gov.Code §§ 3512 & 3517.) Plainly, an unlawful refusal to bargain
18 frustrates the purpose of the Act, as found by the Court of Appeal in *Modesto City, supra*,
19 136 Cal.App.3d at 902-904. As such, the State’s refusal to bargain, following numerous
20 changes in bargaining-related circumstances, necessarily satisfies the irreparable harm
21 standard. (*Tex-Cal, supra*, 165 Cal. App. 3d at 440 [“the traditional idea of irreparable
22 harm ... is met when the employer’s practices may frustrate the purposes of the” Act].)

23
24 **2. CCPOA Will Suffer Independent Irreparable Harm If The
State Is Not Ordered To Cease Refusing To Bargain**

25 Pursuant to the strictures of the Dills Act, the duty to “[m]eet and confer in
26 good faith’ [obligates the State and CCPOA] to endeavor to reach agreement on matters
27 within the scope of representation prior to the adoption by the state of its final budget for
28

1 the ensuing year. The process should include adequate time for the resolution of
2 impasses.” (Cal.Gov.Code § 3517 [emphasis added].)

3 The primary harm to CCPOA is that the State is required to meet and confer
4 because of the change in circumstances. The State’s refusal to bargain, given the changes
5 in circumstances outlined, strikes at the very heart of the Dills Act and prevents CCPOA
6 from fulfilling its statutory obligations to its members. If no injunctive relief issues in this
7 case, the State will be able to avoid its obligation under Cal. Gov. Code § 3517 to bargain
8 prior to the State’s final budget.

9 As detailed above, PERB has scheduled the hearing on its complaint under
10 charge SA-CE-1621-S to take place on April 16 and 17, 2008.⁴ Given this timeframe and
11 the additional time it will take for PERB to issue a final ruling, it is highly unlikely that
12 the DPA will return to the bargaining table with enough time to engage in effective,
13 comprehensive labor negotiations prior to the legislature’s Constitutional June 15, 2008
14 budget deadline. If so, CCPOA and its members will be greatly prejudiced in their ability
15 to negotiate with the State over wages, hours, and terms of employment, a right
16 guaranteed by the Dills Act. Indeed, given the fiscal crisis facing the Legislature, if the
17 budget is passed without consideration of potential pay and benefit increases proposed by
18 both CCPOA and the DPA, there is likely a much slimmer chance that they will be
19 approved at all.

20 Moreover, any prevailing Board order in CCPOA’s favor will be largely
21 ineffective because of the State’s unilateral changes will have already adversely impacted
22 the wages, hours, and working conditions of the bargaining unit, as well as CCPOA’s
23 stature among its members. (*Emporium Capwell Co. v. Western Addition Community*
24 *Organization*, 420 U.S. 50, 69-70 (1975) [“legitimate interest in presenting a united front
25 on [union] issues and in not seeing its strength dissipated and its stature denigrated”].)

26
27 ⁴ DPA has now filed a Motion for Stay of Hearing, asking that PERB stay the hearing on
28 Charge No. SA-CE-1621-S until the Board has ruled on exceptions to dismissals on the
same charge. (Adam Decl., ¶ 6.)

1 The Board cannot possibly turn back the clock and undo these harms. “If employees who
2 have suffered unfair labor practices must wait, in some instances, years before a final
3 disposition by the Board is rendered, the clear message to remaining employees and ...
4 workers at large is that the [Board] is not able to meaningfully aid those” impacted by the
5 employer’s unlawful unilateral changes and other unfair labor practices. (*Agricultural*
6 *Labor Relations Bd. v. Ruline Nursery Co.* (1981) 115 Cal.App.3d 1005, 1016 [discussing
7 the ALRB’s application of parallel provisions of the Agricultural Labor Relations Act].)
8 “Here there exists a significant possibility the Act’s remedial purposes would be frustrated
9 in just this manner.” (*Id.*)

10 **3. The State Will Suffer No Legally-Cognizable Hardship As**
11 **A Result Of Being Desist Refusing To Bargain With**
12 **CCPOA**

13 In the event that PERB is successful in obtaining an injunction ordering the
14 DPA to cease refusing to bargain with CCPOA, the only arguably “harm” to the State is
15 that it will be required to meet and confer in good faith with CCPOA regarding wages,
16 hours, and other terms and conditions of employment. As a matter of law, this is not a
17 legally-cognizable harm and it has no place in the balancing of equities. Rather, the duty
18 to bargain is the very essence of the collective bargaining scheme prescribed by the Dills
19 Act. (*See* Cal.Gov.Code §§ 3512 & 3517.)

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III

CONCLUSION

“Reasonable cause” exists to believe that the State’s has committed an unfair labor practice by refusing to return to the bargaining table in the face of numerous changed circumstances following its unilateral declaration of impasse. The “just and proper” remedy, indeed the only remedy that will prevent frustration of the Dills Act and irreparable harm to CCPOA, is for PERB to seek an injunction in the Superior Court ordering the State to immediately cease in its refusal to bargain with CCPOA.

Dated: March 11, 2008

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