



January 29, 2009

To: State Board of Directors

From: Chuck Alexander, Executive Vice President

**RE: JUDGES RULING ON FURLOUGHS FOR PECG, CASE, AND SEIU, LOCAL 1000**

Sacramento Superior Court Judge Patrick Marlette issued a ruling today January 29, 2009, asserting that the governor has the power to impose temporary furloughs on state employees and acknowledging that corresponding salary reductions will occur as a result. This was the case brought by Professional Engineers in California Government, California Attorneys, Administrative Law Judges and Hearing Officers in State Employment, and the Service Employees International Union, Local 1000.

Additionally, the court held that although the employees' complaints stated sufficient facts to constitute a cause of action in regards to the FLSA violations, the court ruled that no actual violations have yet occurred and that sufficient remedies are in place to protect workers harmed by such violations.

The Judges order reads in pertinent part:

"The Governor has express authority to make the challenged order under Government Code sections 19851 and 19849. Those statutes expressly incorporated into the petitioners MOU's. Moreover, certain of the petitioners' MOU's expressly permit the Governor to reduce employee hours due to lack of funds, or to take any necessary action to carry out its mission in an emergency. The current circumstances constitute an emergency. The challenged order is reasonable and necessary under the circumstances. The emergency circumstances authorize the making of the order without prior meet-and-confer efforts. Government Code section 19826(b) does not prohibit an order that reduces the hours of employees work, even with a resulting reduction in pay.

SEIU and CASE have not proven that non-compliance with the FLSA will actually occur, and FLSA non-compliance, even if proven, would not necessitate invalidation of the Governor's order, since employees retain all their rights and remedies under the FLSA. Judgment shall be for defendants (meaning Governor) on these causes of action.

As provided in *Tirapelle v. Davis* (1993) 20 Cal. App. 4<sup>th</sup> 1317, the State Controller is not authorized to refuse to implement an order of the Governor affecting state employee pay that is authorized by law. The Court's judgment in these matters shall therefore include an order directing the State Controller to implement the Governor's order."

The attorney for the state boldly stated in court that the governor had the proper authority to implement these furloughs and went on to explain that state employees will continue to be paid for hours worked, but that hours worked will simply be reduced in order to achieve the desired cost savings.

CCPOA will be in court next week on February 5<sup>th</sup> to present our own arguments against the furloughs as they may apply to our members, including additional FLSA concerns.

We'll keep you posted as things develop.