



To: State Board of Directors:
From: Chuck Alexander, CCPOA Executive Vice President
Date: October 4, 2010

Re: Today's California Supreme Court ruling upholding the furloughs

At my request, our legal team prepared the following short summary of today's 84-page decision by the California Supreme Court:

The Supreme Court issued a decision today in three cases relating to the Governor and Department of Personnel Administration's ("DPA") February 2009 furloughs program on State workers. CCPOA was not a party to those cases, but the Court's decision may have *some* impact on cases we have filed on behalf of the members.

The Court ruled against the Governor and DPA on every ground they relied on for implementing the furloughs. The Court stated that there was no legal authority to take such action. Nonetheless, the Court ruled that the Legislature legitimized the furloughs through its February 20, 2009 passage of a revised budget. It did so by including the savings the furloughs program was designed to achieve when balancing the budget. Based on this rationale--which was never raised by the Governor himself--the Court was able to rule for the Governor despite rejecting all of his legal theories.

However, the Supreme Court's ruling leaves several important questions unanswered:

What legal basis was there for the addition of a third furlough day each month beginning in July of 2009?

What legal basis was there to implement the new round of furloughs beginning in August of 2010?

The Court's decision also fails to address several issues unique to CCPOA and our members. CCPOA has challenged the manner in which so-called "self-directed" furloughs have been imposed on members of State Bargaining Unit 6 and correctional sergeants and lieutenants.

We argue that the "self-directed" furloughs are illegal because, unlike other State workers, our members' pay is reduced even though they are unable to take time off. This situation was not considered or addressed by the Supreme Court. We believe it requires a different result. Our case is awaiting a decision by the Court of Appeal in San Francisco.

While the Supreme Court found that the Legislature implicitly approved furloughs (meaning time off without pay), it is hard to read the language as extending to approval of what the Governor and DPA have imposed on Unit 6 members (i.e., time on without pay), which unlawfully reduced members' salaries and directly violates minimum wage and other wage-and-hour laws, which is why the trial court in Alameda found it unlawful.

Because the Supreme Court found that the Governor and DPA lacked any other legal authority to implement their furlough program, we believe implementation of the so-called "self-directed" furloughs for our members was unlawful.

We expect that the Court of Appeal will review the Supreme Court decision and decide whether it (the Court of Appeal) believes that the decision affects our case.

We also expect that CCPOA and the Governor may be asked to weigh in with their views in the near future. We remain hopeful that a decision will issue in the next few weeks.