

PROFESSIONAL ENGINEERS IN CALIFORNIA GOVERNMENT, et al., v. GOVERNOR ARNOLD SCHWARZENEGGER, et al., Case No. 2008-80000126;

CALIFORNIA ATTORNEYS, ADMINISTRATIVE LAW JUDGES AND HEARING OFFICERS IN STATE EMPLOYMENT, v. GOVERNOR ARNOLD SCHWARZENEGGER, et al., Case No. 2009-80000134;

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1000, v. GOVERNOR ARNOLD SCHWARZENEGGER, et al., Case No. 2009-80000135.

The following shall constitute the Court's tentative rulings on the demurrers and petitions for writ of mandate and complaints for declaratory relief in the above-captioned matters:

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Preliminary Evidentiary Rulings:

Respondents' three requests for judicial notice (unopposed) are granted.

Respondents' objection to the Declaration of Peter Flores, Jr., is overruled.

Demurrers:

✓The demurrers are overruled.

The petitions/complaints state a cause of action in mandate and declaratory relief based on the theory that the Governor lacks any express authority to make the challenged order.

PERB does not have exclusive initial jurisdiction over this matter, which involves issues of the Governor's authority to make the challenged order and not issues of collective bargaining under the Dills Act. Even if PERB did have jurisdiction over this matter, the Court would conclude that exhaustion of administrative remedies would be excused based on the potential for irreparable injury in this matter.

The SEIU and CASE complaints for declaratory relief regarding potential non-compliance with the federal Fair Labor Standards Act ("FLSA") state sufficient facts to constitute a cause of action.

Petitions for Writ of Mandate/Complaints for Declaratory Relief:

The petitions are denied and judgment shall be for defendants (respondents) on complaints for declaratory relief on the ground that the Governor has the authority to make the challenged order.

**The Governor's Executive Order reduces the normal work hours of state employees for a temporary period due to the state's current fiscal crisis. The emergency measure will result in an accompanying deduction from pay for the hours not worked, but the order does not change established salary ranges. The Governor's authority for this action is found in statutes in the Government Code and in the employment contracts of the unions challenging the order. Thus, this case is distinguishable from *Department of Personnel Administration v. Superior Court (Greene)* (1992) 5 Cal. App. 4<sup>th</sup> 155.**

The Governor has express authority to make the challenged order under Government Code sections 19851 and 19849. Those statutes are expressly incorporated into the petitioners' MOUs. Moreover, certain of the petitioners' MOUs 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 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 (respondents) 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.