



INFORMER

#13, November 2009

Professional Engineers in California Government

Salaries, Furloughs, Holidays -- the Ongoing Challenges



For State employees in California, their management -- the Legislature and the Governor -- set the rules for negotiating and achieving pay and benefit improvements, along with working conditions. While the people established a civil service system through the Constitution, it is the Legislature and the Governor who adopt state laws, including the Dills Act for State employee bargaining, along with a body of other laws and regulations.



The Dills Act provides for bargaining between management, represented by the Department of Personnel Administration (DPA), and State employees, represented by PECG and other labor organizations selected by those employees. The process requires good faith negotiations, although agreement is not mandated, and also requires all parties to abide by an agreement once it is reached and adopted by both sides. When there are alleged violations, the courts, the grievance procedure involving third party neutral arbitration, and other claims and appeal processes are available.

All of these processes tend to be somewhat slow in resolving problems, taking months and sometimes years before a final conclusion is reached. If it is ultimately determined that the State violated the law or the Memorandum of Understanding (MOU), the labor contract, the remedy could involve back pay or other remedies.



PECG is currently pursuing appeals of management actions in three areas -- unpaid furloughs, the failure to provide pay raises, and elimination of holidays. While the violations and their remedies are different, one thing they all have in common is a slow process for resolving disputes.

The Governor asked the Legislature to approve the imposition of unpaid **furloughs**. The Legislature refused to do so. Then, last December, the Governor issued an Executive Order mandating two days of unpaid furloughs each month, with a corresponding reduction in salary. The furloughs began in February.



PECG immediately filed a **lawsuit** and other employee organizations subsequently did so. The suit alleges that the Governor had no legal authority to reduce work hours or pay for PECG-represented employees.

For those in Bargaining Unit 9, his action also violated the provisions of the MOU. While the term of the MOU was from 2003 to 2008, the parties must give effect to its provisions after that until a new contract is in place, according to state law. The MOU sets the work week at 40 hours and specifies salary levels which are not subject to reduction.

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SALARIES, FURLOUGHS, HOLIDAYS -- THE ONGOING CHALLENGES

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Lawsuits are first heard by a single Superior Court Judge. His decision can be appealed by either side to a three judge panel at the Court of Appeal. Finally, a few cases are accepted by the State Supreme Court for their review.

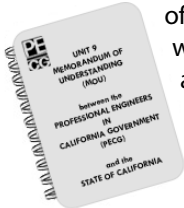


Thus, PEGC filed suit. A Sacramento Superior Court Judge ruled that the Governor's actions were legal while largely ignoring the provisions in the Unit 9 MOU. PEGC appealed that decision to the Court of Appeal. Written legal briefs have been submitted and oral arguments will be scheduled by the Court, probably early next year.

PEGC also filed a **grievance**, alleging that the furloughs violated the MOU. Although obligated by law to submit such grievances to a neutral arbitrator, DPA has refused to do so. Thus, PEGC has been forced to go to Court to ask a judge to order DPA to comply with the grievance procedure.

Meanwhile, the Governor issued another Executive Order mandating a third furlough day. PEGC **also grieved** that action and, once again, DPA has refused to abide by the grievance arbitration procedure.

The 2003-2008 PEGC MOU achieved the long-standing goal of obtaining **pay parity** for Unit 9 employees with their counterparts in large local public agencies. The latest raise was in July 2008. The MOU provides that those raises shall continue "thereafter". As noted above, state law requires both sides to continue to give effect to the provisions of the MOU, but DPA refused to provide the July 2009 pay raise, which would have amounted to 3% to 4% raises for the various Unit 9 classes. PEGC **grieved** that and, once again, DPA has refused to go to arbitration, requiring PEGC to again ask the Courts to require DPA to abide with that procedure.



For **supervisors**, PEGC filed a **grievance** on the basis that PEGC-represented supervisors must receive pay raises equivalent to their counterparts (other Seniors) in the Bargaining Unit under a state law providing for equal pay for employees with comparable duties.



Meanwhile, when DPA refused to provide a pay raise to PEGC-represented **supervisors** in July 2008 when their Bargaining Unit counterparts received a raise, PEGC filed a **claim** which is being heard by an

Administrative Law Judge appointed by DPA. While this may not seem like a very fair procedure on its face, such hearings have resulted in favorable rulings on occasion in the past and, right now, appears to be the only way to try to force the State to provide PEGC-represented Supervisors with the same pay raise received by Unit 9 Seniors in 2008.



Finally, there is the issue of **holidays**. The Legislature recently deleted Lincoln's Birthday and Columbus Day from the list of holidays in state law but left in statute a provision which states that the MOU may supersede that code section. The Unit 9 MOU contains both days as holidays, so once again, PEGC has filed a **grievance** to seek to force the State to continue to provide those holidays in conformance with the contract. DPA has not yet refused to proceed to arbitration but, based on their recent track record, they will probably do so. For **supervisors**, PEGC has also filed a **grievance** on the equal compensation for comparable duties principle.

It is always better to try to work out an agreement with State management whenever it is possible to do so. As the above examples illustrate, when there is disagreement, DPA can take action and it can take a very long time to seek a ruling to overturn that action, which may or may not ultimately be successful. In the meantime, management decisions to deny pay raises, reduce pay and hours, and eliminate holidays stay in effect until a final ruling on each of those issues.



These are difficult economic times and State employees are feeling the effects along with all other Californians. However, when management takes unilateral action in violation of state law or a binding contract and refuses to even consider other alternatives, PEGC challenges those decisions and actions through the procedures established by law and agreement.



As always, the PEGC leadership appreciates the ongoing support of the members as we seek to resolve these and many other issues through negotiations and discussions with management or, when necessary, through formal legal actions, claims and appeals.

PECG'S LEGISLATIVE PROGRAM

Even though 2009 was a difficult year with the recession, budget deficit, furloughs, and high unemployment, it was actually a fairly successful year for PECG's Legislative Program. Frequently "success" in Sacramento is measured by preventing damage, rather than achieving positive results from the Legislature or Governor. 2009 was one of those years.



Efforts by the Governor and others to convince the Legislature to pass laws approving furloughs, pay cuts, and reductions in retirement benefits were rejected.



Closing of State Parks and other severe program cuts were also unacceptable to the Legislature. No PECG-represented employees were laid off and, once again, the Legislature approved a Capital Outlay

Support budget of 90% State staff and 10% outsourcing for Caltrans engineering work.

For years, PECG has been successful in battling the mindless outsourcing of engineering and related services through design-build and public private partnerships. This past year, the bills were re-written to specify that such projects will require a significant amount of engineering work to be performed by Caltrans in both the design and construction inspection phases. PECG withdrew opposition to the bill and will now monitor the projects to ensure that the statutory requirements to use State engineers will be adhered to. Kudos to PECG's Legislative Committee, Legislative Advocates, and the dozens of PECG members who visited the offices of their legislators to discuss these and other important issues, along with the hundreds of members who sent emails or faxes to their legislators.



2010 will be another challenging year. At the top of the list of important issues is a PECG-sponsored Continuous Appropriations Bill. After years of legal wrangling, 2010 could be the year when the Courts order the State to pay

State employees minimum wage, rather than their regular salaries, when the Legislature is late with the budget again next July. This would have a devastating impact on State employees as well as government services and would punish State employees when the Legislature fails to meet its Constitutional obligation to pass a State Budget on time.

The antidote to this poison pill is PECG's Continuous Appropriations Bill. If the Legislature passes and the Governor signs such a statute, State employees would receive full pay and benefits on time, whether or not the Legislature is late in approving a State Budget. This will be a very contentious item this spring and PECG members may once again be called upon to contact their legislators on this important issue.



Staffing versus outsourcing and overall staffing levels will be important features in this year's State Budget. Caltrans' involvement in High Speed Rail as well as various regional transportation projects on State highways will be important, along with establishing Caltrans as the agency with the authority to implement HOT (High Occupancy Toll) lanes on State highways.



Professional issues will include adding a Geologist or Geophysicist to the Board for Professional Engineers and Land Surveyors (because the Geologists and Geophysicists Board was eliminated and their functions were absorbed by the Engineers and Land Surveyor Board). PECG will again address what has been a contentious issue regarding whether Title Act licenses should become Practice Act licenses.

These are just a few of the bills with which PECG will be involved among the thousands of proposed pieces of legislation to be considered in 2010.



PECG 2010 Corporate Officers



The newly elected **PECG Corporate Officers for the 2009-10 year** were inducted at PECG's Annual Meeting in San Diego in October. Pictured above are (l-r) Matt Hanson (President Elect), Mark Sheahan (Past President), Michael Gjerde (Vice President At-Large), Joya Gilster-Nava (Secretary), Shabbir Ahmed (President), Steve Lee (Treasurer), and Art Duffy (Vice President, Collective Bargaining). Not pictured is Mark Miller (Vice President, Supervisory). Congratulations to all of the incoming and returning officers for the upcoming year!

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