

Like Pay/Like Work Vindication

CAPS earned a huge victory on April 28 when DPA Director David Gilb issued a favorable decision in the Like Pay/Like Work appeal. It has proven several things. First, there **IS** a salary relationship between 14 state scientist classes and related state engineer classes. Second, fracturing that historical salary relationship violated the law. And third, even with such a clear-cut victory, the heavy lifting has just begun. (Read the entire decision on the CAPS web page: www.capsscscientists.org).

The decision supported CAPS on almost every point. It recommends that the state restore salary relationships between 14 supervising scientist classes and corresponding supervising engineer classifications. In order to do that, Director Gilb recommended that, in some instances, the salaries be the same. In other instances, he recommended that differentials of 5 to 10 percent be restored between the class series.

There are two major problems with the decision. First, there appears to be three mistakes made in the class comparisons. These are outlined in a letter from CAPS to Director Gilb. Second, the recommendations provide no funding mechanism. Instead, the decision puts the funding issue before the Department of Finance (DOF). Absent cooperation from the DOF, CAPS' lobbyists will ask the state legislature to fund it. Should the legislature fail to deliver, CAPS will likely litigate to enforce the decision.

CAPS has also asked Director Gilb to correct the apparent mistakes in the decision. CAPS recently met with top management at the Department of Finance and requested the recommendations be funded effective July 2005, when the historical salary relationships were first fractured due to the large salary increases provided to Supervising Engineers.

The decision itself directly affects only about half of the state's scientific supervisory classifications. It does not mention the other state supervisory classifications nor does it address any rank-and-file salary issues. CAPS is committed to aggressively pursuing full implementation of the decision as soon as possible. It would provide salary equity to many CAPS members and provide an important benchmark for all related scientific classifications, supervisors and rank-and-file.



Layoff Notices to State Scientists



Two state departments have served layoff notices to a total of ten state scientists. CAPS is working with each of the scientists to find other employment in state government. In some instances, CAPS has identified possible alternate employment, but it is never easy. Most of the scientists targeted live and work in remote locations in California, making comparable employment hard to find, especially within state government. In these cases, the affected scientists may face the choice of leaving state service, finding employment locally, or relocating to an area where a vacancy in state government is available.

Getting a layoff is never good news. It can be a very anxious and uncertain time. But the process takes time, so no one faces immediate unemployment. A scientist subject to layoff gets the benefit of laws and rules that govern layoffs which are intended to mitigate them. These rules are outlined in Section 16.1 of the CAPS MOU. Some of the benefits include reverse seniority in the order of layoff, hiring preference for vacancies, ensuring layoff is justifiable, and the right to at least 30 days notice

before an actual layoff. Even after layoff, affected employees get preference for reemployment. Best of all, CAPS members who get a layoff notice get the benefit of active and aggressive representation by CAPS staff who are experienced and knowledgeable about the layoff process. CAPS makes sure every employee right is observed and that alternate employment is found if it is available.



Bargaining Proceeds - No Agreement Yet



The CAPS Bargaining Team has been meeting weekly with state management for several months in order to reach agreement on a new memorandum of understanding (labor contract), that will replace the current one that expires on June 30, 2008. The negotiations, conducted under a new “interest based” format, have been more positive than past rounds of bargaining. There is agreement on the problem—low salaries—but no agreement yet on the solution. State negotiators agree that the salary for virtually every state scientist needs to increase significantly. There is also agreement in principle that a major overhaul of the state’s classification and compensation system is necessary.



The CAPS Bargaining Team keeps hammering away at the need for substantial salary increases. Even with agreement by the state in concept, the state is desperately short of money. That seems to have chilled the Schwarzenegger Administration on new spending of any kind. Regardless, the CAPS Bargaining Team emphasizes that during good times or bad, state scientists always seem to be a lower

priority than others. With nearly 80% special funding, it’s time to change that if the state’s essential scientific programs are to effectively serve the people of California. Many state departments are now finding it difficult or impossible to hire and retain scientists. They too are pleading for substantial compensation increases.



The state’s budget deficit is approaching \$15 billion, according to Governor Schwarzenegger’s DOF. Rather than salary increases, the Governor is talking about across-the-board cuts. There is no indication yet that he or his appointees will support a salary increase of any kind for state scientists or any state employees this year unless it is required to, such as through a previous contract commitment. CAPS is committed to pushing for these badly needed and long overdue salary increases for as long as it takes. In the meantime, the state continues to lose scientists whose work protects the public health, the environment and California’s precious natural and cultural resources.



Interest Based Bargaining Pioneered by CAPS

CAPS is the first state employee representative to insist on a new approach to labor negotiations with the Governor’s Department of Personnel Administration (DPA). The new process does not guarantee any better results than the more traditional “positional” based bargaining, but it has proven to be more effective in cultivating a more thorough discussion of the problems, identifying the interests of the parties, and developing solutions.



Interest based bargaining is also known as the “integrative” or “win-win” approach. It often produces better results than positional bargaining because the parties are compelled to collaborate as they explore the issues and interests much more thoroughly. Rather than adopting hard and fast



solutions at the outset, a third party—similar to a mediator—helps guide the parties through a process that hopefully ends with an agreement that is both workable and which all parties fully support.

In the current negotiations, CAPS and DPA agreed to jointly support use of experienced facilitator and long-time labor attorney Neil Bodine. He attends every bargaining session and attempts to guide the parties to a mutually agreeable conclusion. His role is to get the parties to thoroughly dissect the interests of the parties, starting with the most important issue first. Taking positions at the outset is discouraged. Thus, CAPS doesn’t have an initial set of bargaining demands as it has in past years. At the same time, DPA is required to engage in a meaningful discussion regarding salary and benefit needs of state scientists. The ideas is to focus on real issues, develop real solutions, and minimize the posturing and delays.

For CAPS, the main interest in these negotiations is for sizeable salary increases. The need is great. That’s a tall order given the size of the projected budget deficit. Nevertheless, there is plenty of justification for it: multiple salary surveys, unfilled scientist vacancies, lack of competitiveness for new scientific talent, recruiting difficulties, and much more. Increasingly, state departments themselves recognize the serious impediments to running science programs when it is so difficult to recruit and retain scientists.

Why Not Just Sue ?

By Patty Velez, President

It has been pointed out to me that not one paycheck has yet been changed to reflect the recommendations in the April 28 decision from DPA Director David Gilb in the Like Pay Like Work case. Why not just run to court and sue them? Because, like so many things, it's not that simple.

CAPS may indeed need to sue as a last resort, but before then we need to give the Governor and the Legislature an opportunity to fund the DPA recommendations through the state budget process. We already know that the Legislature has delegated to the DPA the salary setting function for supervisors because they are excluded from collective bargaining. In 2006, CAPS challenged the salary ranges for 14 supervisory scientist classifications. CAPS claimed that the pay violated the principle that "like salaries shall be paid for comparable duties and responsibilities." The quasi-legislative hearing took eight days.

In the end, CAPS prevailed in full. DPA Director David Gilb concluded that 14 supervisory scientist classifications and closely related supervising engineer classes require comparable pay. In some cases, that means exactly the same pay. In others, it means differentials of five or 10 percent.

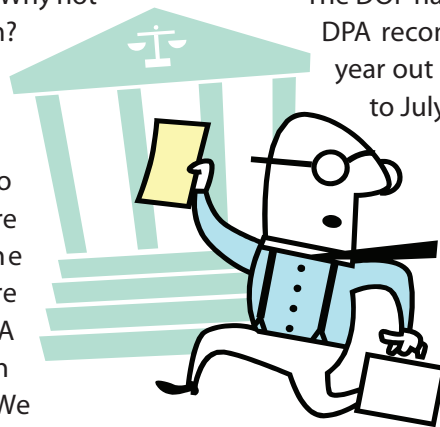
In our view, case law **requires** the state to pay these increased salaries if it won't require an additional appropriation. In fact, the DPA decision asks the DOF to determine whether the higher salaries are within existing salary appropriations. CAPS believes they are.

The current year budget for 2007-2008 contains hundreds of millions of dollars appropriated for salary increases but which will be unexpended. The DOF has the ability to reallocate funds, so the DPA recommendations **should** be funded this year out of existing appropriations, retroactive to July 1, 2005.

That's not all. Supervising engineers are scheduled for another salary increase July 1, 2008. That creates an obligation to provide comparable increases for the 14 classifications of scientist supervisors listed in the April 28 DPA decision. That amount should be placed in the state budget for 2008-09. Such increases are typically listed in the 9800 Item of the budget.

If the Department of Finance determines that the increases cannot be paid in the current fiscal year, then the 9800 Item should include an increase that would move the salaries of the fourteen classes from where they are now to the correlating supervising engineering classes effective July 1, 2008.

What does this mean for rank-and-file? Nothing, directly. But it does show that the same historical salary relationships now proven to exist between supervisory scientific and engineering classes likewise exist among rank-and-file classes. While I can't anticipate every twist and turn on the course we're on, I'm pretty sure everyone will like the final destination.



“CAPS may indeed need to sue as a last resort ...”

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Modernizing State Government Starts with Scientists

The Schwarzenegger Administration recognizes that the classification and compensation system in state government is broken. It has embarked on an ambitious effort to reduce the number of classifications, automate hiring and promotional processes, and create new compensation plans.

State scientists have been selected as the first group for this overhaul, with CAPS' agreement and participation. CAPS assisted in getting the project funded, and has been involved in the early stages of development. At CAPS' suggestion, founding CAPS President Dennis Mayhew returned from retirement to assist HR Modernization staff in organizing the project.

One of the first steps in overhauling state scientist classifications is to convene focus groups of scientists to better define that exact nature of the work being performed. These focus groups are scheduled for mid-June in Sacramento. CAPS has recommended dozens of CAPS members known for their outstanding work to participate in this effort.

CAPS encourages participation by all state scientists who receive an invitation to participate in a focus group. The resulting information should have a profound impact on the future size, shape and compensation of the state's scientist workforce.



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