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FILED
Superior Court Of California,
Sacramento
10/20/2009
awoodward
By _____, Deputy
Case Number:
34-2009-80000358

6 Attorney for CALIFORNIA ASSOCIATION
7 OF PROFESSIONAL SCIENTISTS

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SACRAMENTO

10 CALIFORNIA ASSOCIATION OF)
11 PROFESSIONAL SCIENTISTS)

Case No.:

12 Petitioner/Plaintiff)

) VERIFIED PETITION FOR WRIT OF
) MANDATE AND COMPLAINT FOR
) DECLARATORY RELIEF

13 vs.)

14 ARNOLD SCHWARZENEGGER, as)
15 Governor, State of California;)
16 DEPARTMENT OF PERSONNEL)
17 ADMINISTRATION and Does 1 through 10,)
18 inclusive)

Date:
Time:
Dept:

19 Respondents/Defendants)
20)

21 Petitioner/Plaintiff alleges the following:

22 **FIRST CAUSE OF ACTION**

23 **(WRIT OF MANDATE—CODE OF CIVIL PROCEDURE SECTION 1085)**

24
25 1. Petitioner/Plaintiff CALIFORNIA ASSOCIATION OF PROFESSIONAL
26 SCIENTISTS (CAPS) is, and at all times herein mentioned was, a non-profit corporation
27 organized and existing under the laws of the State of California, with its principal place of
28 business in the County of Sacramento. CAPS is the duly-certified exclusive collective
29 bargaining representative (pursuant to Government Code section 3520.5) for approximately 3000
30 civil service employees in State Bargaining Unit 10 (Bargaining Unit 10). These employees are

1 behalf of itself and members of Bargaining Unit 10 affected by the action of the
2 Respondents/Defendants

3 2. Respondent/Defendant ARNOLD SCHWARZENEGGER is the duly-elected
4 Governor of the State of California, sued herein in his official capacity only. The Governor is
5 the employer of the civil service employees in Bargaining Unit 10 (Government Code section
6 3513), and is responsible for negotiating the terms and conditions of employment with CAPS on
7 behalf of Bargaining Unit 10 members and for entering in to a memorandum of understanding
8 with CAPS on behalf of Bargaining Unit 10 members.

9 3. Respondent/Defendant DEPARTMENT OF PERSONNEL ADMINISTRATION
10 (DPA) is and, at all relevant times was, the agency of the State of California designated as the
11 Governor's bargaining representative under the Dills Act. The DPA represents the Governor as
12 the employer in all matters pertaining to California state employer-employee labor relations, and
13 it is responsible for administering any memorandum of understanding between the State and
14 CAPS.

15 4. Petitioner/Plaintiff is ignorant of the true names and capacities of
16 Respondents/Defendants sued herein as Does 1 through 10 and therefore sues these
17 Respondents/Defendants by such fictitious names. Petitioner/Plaintiff will amend this
18 Petition/Complaint to state their true names and capacities once they have been ascertained.
19 Petitioner is informed and believes, and on that basis alleges, that each of these
20 Respondents/Defendants is in some manner responsible for the acts complained of herein.

21 5. California Government Code section 3517.8 provides in relevant part that:

22 (a) If a memorandum of understanding has expired, and the Governor and
23 the recognized employee organization have not agreed to a new memorandum
24 of understanding and have not reached an impasse in negotiations, subject to
25 subdivision (b), the parties to the agreement shall continue to give effect to the
26 provisions of the expired memorandum of understanding, including, but not
27 limited to, all provisions that supersede existing law, any arbitration provisions,
28 any no strike provisions, any agreements regarding matters covered in the
29 Fair Labor Standards Act of 1938 (29 U.S.C. Sec. 201 et seq.), and any
30 provisions covering fair share fee deduction consistent with Section 3515.7.

(b) If the Governor and the recognized employee organization reach an impasse
in negotiations for a new memorandum of understanding, the state employer
may implement any or all of its last, best, and final offer. . . .

1 6. CAPS and the State entered into a memorandum of understanding with a duration
2 clause of July 1, 2006 through June 30, 2008. Article 4.1 of the memorandum of understanding
3 provides for "holidays" for Bargaining Unit 10 employees. The relevant part of this article
4 provides as follows:

5 A. All full-time and part-time employees shall be entitled to such observed
6 holidays with pay as provided below, in addition to any official State holidays
7 declared by the Governor.

8 B. Observed holidays shall include . . . February 12, . . . the second Monday in
9 October

10 These "holidays" are known as Lincoln's Birthday and Columbus Day. The
11 memorandum of understanding also provides that if employees are required to work on
12 "holidays" they receive compensation as provided in the memorandum of understanding.

13 7. Prior to the expiration of the memorandum of understanding effective July 1, 2006,
14 CAPS and Respondent/Defendant Schwarzenegger, through Respondent/Defendant DPA, were
15 in the process of negotiating a new memorandum of understanding. The parties remain in
16 negotiation for a new memorandum of understanding and have not reached impasse.

17 8. Pursuant to Government Code section 3517.8 the provisions of the expired CAPS
18 memorandum of understanding are to be given effect by the parties. Thus,
19 Respondents/Defendants have a statutory duty to give effect to all provisions of the expired
20 memorandum of understanding.

21 9. Effective February 2009, Government Code Section 19853 (Senate Bill 3X 8,
22 Chapters 4, Statutes of 2009) was enacted by the State. Under section 19853, the statutory
23 listing of Lincoln's Birthday and Columbus Day as "holidays" were eliminated.
24 Notwithstanding Article 4.1 of the expired memorandum of understanding between CAPS and
25 the State, Bargaining Unit 10 employees are being denied holidays on Lincoln's Birthday and
26 Columbus Day.

27 10. The refusal of Respondents/Defendants to provide holidays to Bargaining Unit 10
28 employees on Lincoln's Birthday and Columbus Day violates Section 3517.8 and the
29 requirement that the "parties" give effect to all expired terms of a memorandum of understanding
30 unless impasse is declared.

 11. At all times mentioned herein, Respondents/Defendants have been able to perform
their duty as required under section 3517.8 and provide Lincoln's Birthday and Columbus Day

1 as holidays for Bargaining Unit 10 employees. However, Respondents/Defendants refuse to do
2 so. Petitioner/Plaintiff has no plain, speedy or adequate remedy in the ordinary course of law
3 other than the relief sought in this action to compel Respondents/Defendants to comply with
4 section 3517.8. Therefore, Petitioner/Plaintiff seeks a peremptory writ of mandate compelling
5 Respondents/Defendants to comply with their mandatory duty under section 3517.8 and provide
6 Lincoln's Birthday and Columbus Day as holidays for Bargaining Unit 10 members.

7 12. Petitioner/Plaintiff and the Bargaining Unit 10 members it represents are beneficially
8 interested in Respondents/Defendants' performance of their legal under section 3517.8 because
9 said members are directly and negatively impacted by the failure to provide them the holidays
10 contained in Article 4.1 of the memorandum of understanding between CAPS and the State.

11 12 **SECOND CAUSE OF ACTION**

13 **(Declaratory Relief for Violation of Government Code section 3517.8)**

14
15 13. Petitioner/Plaintiff hereby incorporates by reference all of the foregoing paragraphs
16 as fully set forth herein.

17 14. Government Code section 3517.8 requires that Respondents/Defendants give effect
18 to all provisions of the expired memorandum of understanding between CAPS and the State.
19 However, Respondents/Defendants refuse to do so with regard to Article 4.1 of the expired
20 memorandum of understanding, asserting that they are not required to do so because of section
21 19853.

22 15. An actual controversy has arisen and now exists between Petitioner/Plaintiff and
23 Respondents/Defendants concerning their respective rights, duties and obligations under section
24 3517.8. Petitioner/Plaintiff contend that under the section 3517.8 Respondents/Defendants are
25 required to give Bargaining Unit 10 members Lincoln's Birthday and Columbus Day as holidays.
26 Respondents/Defendants contend that under section 19853 they are not required to do so.

27 17. Petitioner/Plaintiff desires a judicial determination of the rights and obligations of
28 Bargaining Unit 10 members and those of the Respondents/Defendants under section 3517.8 and
29 section 19853. Petitioner/Plaintiff requests this court declare that under section 3517.8
30 Respondents/Defendants must comply with Article 4.1 of the expired CAPS memorandum of

1 understanding and allow Lincoln's Birthday and Columbus Day as holidays for Bargaining Unit
2 10 members.

3 WHEREFORE, Petitioner/Plaintiff prays for the following relief:

4 FIRST CAUSE OF ACTION

5 1. That the Court issue a peremptory writ of mandate ordering Respondents/Defendants
6 to comply with Government Code section 3517.8 and give effect to Article 4.1 of the expired
7 memorandum of understanding between CAPS and the State and provide Lincoln's Birthday and
8 Columbus Day as holidays to Bargaining Unit 10 members and compensate Bargaining Unit 10
9 members as provided in the memorandum of understanding if they are required to work on those
10 days.

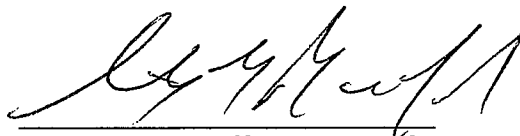
11 SECOND CAUSE OF ACTION

12 2. For a declaration that Government Code section 3517.8 requires that
13 Respondents/Defendants give effect to Article 4.1 of the expired memorandum of understanding
14 between CAPS and the State until such time as the parties reach impasse in negotiations for a
15 new memorandum of understanding and the State implements a provision contrary to the parties'
16 agreement in Article 4.1.

17 4. For reasonable attorney's fees

18 5. For such other relief as the Court deems just and proper.

19 Dated: 10/16/09

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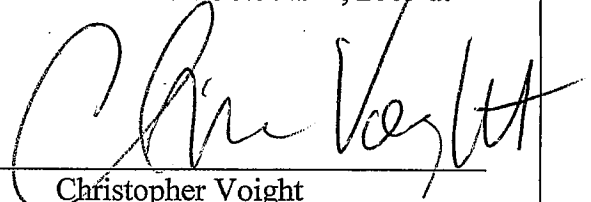
24 Steven B. Bassoff—Attorney for
25 Petitioner/Plaintiff

26 VERIFICATION

27 I, Christopher Voight am the Executive Director for the California Association of
28 Professional Scientists (CAPS) the Petitioner/Plaintiff herein and am authorized to execute this
29 on CAPS behalf. I have read the foregoing Petition for Writ of Mandate and Complaint for
30 Declaratory Relief and that the matters stated therein are true and correct, and are within my

1 personal knowledge. As to those matters alleged on information and belief it is my belief that
2 said matters are true and correct.

3 I declare under penalty of perjury under the laws of the State of California that the
4 foregoing is true and correct and that this verification was executed on October , 2009 at
5 Sacramento, California.

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8 Christopher Voight

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