

September 22, 2023

Sheena J. Farro
Senior Regional Attorney
Public Employment Relations Board
Sacramento Regional Office
1031 18th Street
Sacramento, CA 95811

RE: California Association of Professional Scientists (CAPS) Bargaining Unit 10 and State of California (Department of Human Resources [CalHR]), Case No. SA-IM-3586-S
CAPS Reply to CalHR's Response to Request for Declaration of Impasse

Dear Ms. Farro:

The California Association of Professional Scientists (CAPS) respectfully submits this reply to the California Department of Human Resources's (CalHR or the State) response to our request for a declaration that impasse exists between CAPS and the State of California in our ongoing negotiations to reach a successor agreement to the 2018-2020 Bargaining Unit 10 Memorandum of Understanding.

CalHR's response to CAPS's impasse declaration request paints a rosy picture that belies the true positions of the parties. CalHR insists the parties have been actively passing proposals and counter proposals on the remaining economic terms of the MOU. This is untrue.

The parties have each represented to the other that further movement on the economic terms is unlikely. CalHR's chief negotiator plainly stated, several times, in both sidebar discussions and to the CAPS Bargaining Team, that "the money is the money."

This statement was understood by both parties to mean that the total economic value of the State's offer was not going to change further. CAPS made clear to the State that the total economic value of the State's offer was inadequate. The State's willingness to reapportion the way its economic offer arrives in

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employee's paychecks is akin to promising to rearrange the deck chairs on the *Titanic*: it's a nice thought, but ultimately that ship was no more able to complete its voyage than CAPS and CalHR are able to finalize a successor MOU at this time.

CalHR selectively presents bargaining notes from the *day before* CAPS made clear its intention to seek an impasse determination. On September 7 at approximately 2:30pm, CAPS's chief negotiator, Bianca Gutierrez Petzold, contacted CalHR chief negotiator, Candace Murch, and inquired as to her availability for a Zoom discussion that afternoon. Ms. Murch responded in the affirmative and the chief negotiators and CAPS Bargaining Chair Jacqueline Tkac met at approximately 3:30pm via Zoom. (Attachment 1) During this Zoom, CAPS made clear its belief that the parties were at impasse. At 5:17pm on September 7, Ms. Murch emailed Ms. Petzold with the message, "As a following [sic] to the conversation today, I'm just confirming that CAPS does not want to meet next week. I will let my team know. However, if you change your mind, please let me know and I will pull my team together." (Attachment 2)

Subsequently, on September 8, Ms. Murch denied Ms. Petzold's request for state release time for the CAPS Bargaining team to hold an internal team discussion noting, "this would not rise to state release as we are currently not scheduled to bargain anytime soon." (Attachment 3) These emails clearly evidence the State's awareness of CAPS's intention to seek impasse.

CalHR's response also appears to imply that it expects CAPS to negotiate against itself. The response notes CalHR's rejection of a proposal on August 31, 2023, and says "it has not received a counter proposal." The party rejecting an offer should be the next to make a substantive counter offer rather than force the other party to keep guessing at what terms could seal a deal.¹ And here, CAPS made clear on several occasions that it had reached the end of its rope on economic terms and would hold to its offer.

PERB should reject the State's arguments that CAPS has not demonstrated a genuine willingness to reach an agreement. The sheer length of the parties'

¹ In fact, as evidence of its sincere desire to reach a total tentative agreement with the state, CAPS on occasion *did* negotiate against itself, presenting multiple options to the state related to its Article 2.25 proposals (outlined in CAPS's initial impasse request filing). CAPS is not, however, obliged to negotiate against itself, contrary to the State's implications here.

bargaining history demonstrates quite the opposite: CAPS has come to the table over, and over, and over again – 77 times – hoping to reach a total tentative agreement. The State claims the difference in CAPS's proposals from 2022 to 2023 illustrates the union moving away from reaching a deal. While it is true that CAPS's proposals changed from *year to year*, the reason for the change is defensible. With apologies to Merle Travis, by 2023 CAPS members were another year older and deeper in debt: with inflation continuing to soar, the 2023 offer considered the changing economic climate in which the parties negotiate.²

Though CalHR insists that the parties have not exhausted good faith negotiations, they do not explain how the parties can hope to move forward since the State made clear at the table that “the money is the money.” The State made clear that no additional money would be added to the State's economic proposal. The CAPS Bargaining Team made clear that CAPS Members will not accept a deal that does not appropriately value their work on behalf of Californians. This is the very definition of impasse.

Lastly, while CalHR correctly cites the existence of legislative authority to seek pre-impasse mediation, the Dills Act provisions related to mediation and impasse are constructed in the disjunctive: there is no requirement to seek or to engage in pre-impasse mediation. CAPS has made its impasse declaration request in good faith according to appropriate law and PERB rule.

CAPS is firm in its request that PERB declare impasse.

Yours truly,



Christiana Dominguez
Senior Legal Counsel
California Association of Professional Scientists

cc: David M. Villalba, Principal Labor Relations Counsel, California Department of Human Resources (*via email*)

² CalHR also says at the top of page 4, “not only has there been no movement on CAPS' side toward a mutually acceptable agreement, CAPS has actually moved further away from reaching a deal.” CAPS is confused by CalHR's change of heart since their filing begins by assuring PERB that the parties have made significant progress towards reaching an agreement.

Christiana Dominguez

From: Murch, Candace@CalHR <Candace.Murch@calhr.ca.gov>
Sent: Thursday, September 7, 2023 2:57 PM
To: bpetzold@capsscientists.org
Cc: 'Jacqueline Tkac'
Subject: Re: Available for a chat?

Yes. I just got home from a morning meeting with CCPOA that went over. So can we do 3:30? I'm good with Zoom if you send an invite.

Candace

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From: bpetzold@capsscientists.org <bpetzold@capsscientists.org>
Sent: Thursday, September 7, 2023 2:29:25 PM
To: Murch, Candace@CalHR <Candace.Murch@calhr.ca.gov>
Cc: 'Jacqueline Tkac' <jacqueline.tkac@gmail.com>
Subject: Available for a chat?

Caution: This email has been received from outside the organization. Think before you click, and open attachments only if you recognize the sender and know the content is safe.

Hi Candace,

I hope you are well. Are you available for a quick chat via conference call or Zoom this afternoon, 3PM or 330PM?

Please let me know.

Thank you!

Bianca Gutierrez Petzold

California Association of Professional Scientists

P: (916) 441-2629 | W: capsscientists.org

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CALIFORNIA ASSOCIATION OF
PROFESSIONAL SCIENTISTS

Christiana Dominguez

From: Murch, Candace@CalHR <Candace.Murch@calhr.ca.gov>
Sent: Thursday, September 7, 2023 5:17 PM
To: Bianca Petzold
Subject: Follow up to conversation today

Hi,

As a following to the conversation today, I'm just confirming that CAPS does not want to meet next week. I will let my team know. However, if you change your mind, please let me know and I will pull my team together.

Thank you can have a good evening.

Candace Murch
Principal Labor Relations Officer
California Department of Human Resources
Cell: (916) 531-7737
Candace.Murch@calhr.ca.gov



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Christiana Dominguez

From: Murch, Candace@CalHR <Candace.Murch@calhr.ca.gov>
Sent: Friday, September 8, 2023 5:49 PM
To: bpetzold@capsscientists.org
Subject: RE: State release time

Hi Bianca,

As a follow up to our conversation, this would not rise to state release as we are currently not schedule to bargain anytime soon. As we discussed, you can utilize paid union leave or I'm willing to let the departments know they are to be released and they will be using their own leave. Let me know what you decide.

Have a nice weekend.
Candace

From: bpetzold@capsscientists.org <bpetzold@capsscientists.org>
Sent: Friday, September 8, 2023 4:22 PM
To: Murch, Candace@CalHR <Candace.Murch@calhr.ca.gov>
Subject: State release time
Importance: High

Caution: This email has been received from outside the organization. Think before you click, and open attachments only if you recognize the sender and know the content is safe.

Good afternoon Candace,

I hope you are doing well! My team was interested in meeting on Tuesday, September 12, all day for an internal team discussion related to contract negotiations. Please let me know if this is approved.

Thanks!

Bianca Gutierrez Petzold

California Association of Professional Scientists
P: (916) 441-2629 | W: capsscientists.org
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PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Sacramento,
State of California. I am over the age of 18 years. The name and address of my
Residence or business is 555 Capitol Mall, Suite 1155
Sacramento, CA 95814

On September 22, 2023, I served the CAPS Reply to CalHR's Response
(Date) (Description of document(s))

to Request for Decl. of Impasse in Case No. SA-IM-3586-S.
(Description of document(s) continued) PERB Case No., if known)

on the parties listed below by (check the applicable method(s)):

- placing a true copy thereof enclosed in a sealed envelope for collection and delivery by the United States Postal Service or private delivery service following ordinary business practices with postage or other costs prepaid;
- personal delivery;
- electronic service - I served a copy of the above-listed document(s) by transmitting via electronic mail (e-mail) or via e-PERB to the electronic service address(es) listed below on the date indicated. (May be used only if the party being served has filed and served a notice consenting to electronic service or has electronically filed a document with the Board. See PERB Regulation 32140(b).)

(Include here the name, address and/or e-mail address of the Respondent and/or any other parties served.)

David M. Villalba (Via e-PERB, and via email to the party listed)
Principal Labor Relations Counsel
CA Dept of Human Resources
1515 S Street, North Bldg, Suite 500
Sacramento, CA 95814
david.villalba@calhr.ca.gov

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on Sept 22 2023,
(Date)
at Sacramento, California.
(City) (State)

Christiana Dominguez



(Type or print name)

(Signature)