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11/09/23 17:22 PM

STATE OF CALIFORNIA  
PUBLIC EMPLOYMENT RELATIONS BOARD

# UNFAIR PRACTICE CHARGE

DO NOT WRITE IN THIS SPACE: Case No:

Date Filed: 11/09/2023

**INSTRUCTIONS:** File the original and one copy of this charge form in the appropriate PERB regional office (see PERB Regulation 32075), with proof of service attached to each copy. Proper filing includes concurrent service and proof of service of the charge as required by PERB Regulation 32615(c). All forms are available from the regional offices or PERB's website at www.perb.ca.gov. If more space is needed for any item on this form, attach additional sheets and number items.

IS THIS AN AMENDED CHARGE? YES  If so, Case No \_\_\_\_\_ NO

1. CHARGING PARTY: EMPLOYEE  EMPLOYEE ORGANIZATION  EMPLOYER  PUBLIC<sup>1</sup>

- a. Full name: California Department of Human Resources
- b. Mailing Address: 1515 S Street, Suite 500N, Sacramento, CA 95811
- c. Telephone number:
- d. Name and title of agent to contact: Paul Starkey, Deputy Director of Labor Relations  
E-mail Address: paul.starkey@calhr.ca.gov  
Telephone number: (916) 324-0476  
Fax No.:
- e. Bargaining Unit(s) involved: 10

2. CHARGE FILED AGAINST: (mark one only) EMPLOYEE ORGANIZATION  EMPLOYER

- a. Full name: California Association of Professional Scientists
- b. Mailing Address: 555 Capitol Mall, Suite 1155 Sacramento, CA 95814
- c. Telephone number: (916) 441-2629
- d. Name and title of agent to contact: Bianca Gutierrez Petzold  
E-mail Address: bpetzold@capsscientists.org  
Telephone number: \_\_\_\_\_  
Fax No.:

3. NAME OF EMPLOYER (Complete this section only if the charge is filed against an employee organization.)

- a. Full name:
- b. Mailing address: 1515 S Street, Suite 500N Sacramento, CA 95811

4. APPOINTING POWER: (Complete this section only if the employer is the State of California. See Gov. Code, § 18524.)

- a. Full name:
- b. Mailing Address:
- c. Agent:

## 5. GRIEVANCE PROCEDURE

<sup>1</sup>An affected member of the public may only file a charge relating to an alleged public notice violation, pursuant to Government Code section 3523, 3547, 3547.5, or 3595, or Public Utilities Code section 99569

Are the parties covered by an agreement containing a grievance procedure which ends in binding arbitration?

Yes  No  Unknown

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#### 6. STATEMENT OF CHARGE

a. The charging party hereby alleges that the above-named respondent is under the jurisdiction of: (check one)

- Educational Employment Relations Act (EERA) (Gov. Code, § 3540 et seq.)
- Ralph C. Dills Act (Gov. Code, § 3512 et seq.)
- Higher Education Employer-Employee Relations Act (HEERA) (Gov. Code, § 3560 et seq.)
- Meyers-Milias-Brown Act (MMBA) (Gov. Code, § 3500 et seq.)
- Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (TEERA) (Pub. Utilities Code, § 99560 et seq.)
- One of the following Public Utilities Code Transit District Acts: San Francisco Bay Area Rapid Transit District Act (SFBART Act) (Pub. Util. Code, § 28848 et seq.), Orange County Transit District Act (OCTDA) (Pub. Util. Code, § 40000 et seq.), Sacramento Regional Transit District Act (Sac RTD Act) (Pub. Util. Code, § 102398 et seq.), Santa Clara VTA, (Pub. Util. Code, § 100300 et seq.), and Santa Cruz Metro (Pub. Util. Code., § 98160 et seq.)
- Trial Court Employment Protection and Governance Act (Trial Court Act) (Article 3; Gov. Code, § 71630 – 71639.5)
- Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act) (Gov. Code, § 71800 et seq.)

b. The specific Government or Public Utilities Code section(s) or PERB regulation section(s) alleged to have been violated is/are:

c. For MMBA, Trial Court Act and Court Interpreter Act cases, if applicable, the specific local rule(s) alleged to have been violated is/are (***a copy of the applicable local rule(s) MUST be attached to the charge:***)

d. Provide a clear and concise statement of the conduct alleged to constitute an unfair practice including, where known, the time and place of each instance of respondent's conduct, and the name and capacity of each person involved. This must be a statement of the facts that support your claim and *not conclusions of law*. A statement of the remedy sought must also be provided. (*Use and attach additional sheets of paper if necessary.*)

See attachment.

#### DECLARATION

I declare under penalty of perjury that I have read the above charge and that the statements herein are true and complete to the best of my knowledge and belief. (A Declaration will be included in the e-mail you receive from PERB once you have completed this screen. The person filing this Unfair Practice Charge is required to return a properly filled out and signed original Declaration to PERB pursuant to PERB Regulations 32140 and 32135.)

Paul M. Starkey  
(Type or Print Name)

/s/ Paul M. Starkey  
(Signature)

11/09/2023  
Date



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STATE OF CALIFORNIA  
PUBLIC EMPLOYMENT RELATIONS BOARD  
**UNFAIR PRACTICE CHARGE**

DO NOT WRITE IN THIS SPACE:

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IS THIS AN AMENDED CHARGE? YES  If so, Case No. NO

1. CHARGING PARTY: EMPLOYEE  EMPLOYEE ORGANIZATION  EMPLOYER  PUBLIC<sup>1</sup>

a. Full name: California Department of Human Resources  
b. Mailing address: 1515 S Street, North Bldg, Ste 500, Sacramento, CA 95811  
c. Telephone number: (916) 324-0476  
d. Name and title of person filing charge: Paul Starkey, Deputy Director of Labor Relations E-mail Address: Paul.Starkey@calhr.ca.gov  
Telephone number: (916) 324-0476  
e. Bargaining unit(s) involved: 10

2. CHARGE FILED AGAINST: (mark one only) EMPLOYEE ORGANIZATION  EMPLOYER

a. Full name: California Association of Professional Scientists  
b. Mailing address: 555 Capitol Mall, Suite 1155, Sacramento, CA 95814  
c. Telephone number: (916) 441-2629.  
d. Name and title of agent to contact: Bianca Gutierrez Petzold E-mail Address: bpetzold@capsscscientists.org  
Telephone number:

3. NAME OF EMPLOYER (Complete this section only if the charge is filed against an employee organization.)

a. Full name: California Department of Human Resources  
b. Mailing address: 1515 S Street, North Bldg, Ste 500, Sacramento, CA 95811

4. APPOINTING POWER: (Complete this section only if the employer is the State of California. See Gov. Code, § 18524.)

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c. Agent:

<sup>1</sup> An affected member of the public may only file a charge relating to an alleged public notice violation, pursuant to Government Code section 3523, 3547, 3547.5, or 3595, or Public Utilities Code section 99569.  
PERB-61 (08/2022) SEE REVERSE SIDE

5. GRIEVANCE PROCEDURE

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Are the parties covered by an agreement containing a grievance procedure which ends in binding arbitration?

Yes  No  Unknown

6. STATEMENT OF CHARGE

- a. The charging party hereby alleges that the above-named respondent is under the jurisdiction of: (check one)
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  - Ralph C. Dills Act (Gov. Code, § 3512 et seq.)
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  - Meyers-Milias-Brown Act (MMBA) (Gov. Code, § 3500 et seq.)
  - One of the following Public Utilities Code Transit District Acts: San Francisco Bay Area Rapid Transit District Act (SFBART Act) (Pub. Util. Code, § 28848 et seq.), Orange County Transit District Act (OCTDA) (Pub. Util. Code, § 40000 et seq.), Sacramento Regional Transit District Act (Sac RTD Act) (Pub. Util. Code, § 102398 et seq.), Santa Clara VTA, (Pub. Util. Code, § 100300 et seq.), and Santa Cruz Metro (Pub. Util. Code., § 98160 et seq.)
  - The Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (TEERA) (Supervisory Employees of the Los Angeles County Metropolitan Authority (Pub. Util. Code, § 99560 et seq.)
  - Trial Court Employment Protection and Governance Act (Trial Court Act) (Article 3; Gov. Code, § 71630 – 71639.5)
  - Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act) (Gov. Code, § 71800 et seq.)
- b. The specific Government or Public Utilities Code section(s), or PERB regulation section(s) alleged to have been violated is/are: Government Codes sections 3512, 3519.5 Unknown
- c. For MMBA, Trial Court Act and Court Interpreter Act cases, if applicable, the specific local rule(s) alleged to have been violated is/are (**a copy of the applicable local rule(s) MUST be attached to the charge**):
- d. Provide a clear and concise statement of the conduct alleged to constitute an unfair practice including, where known, the time and place of each instance of respondent's conduct, and the name and capacity of each person involved. This must be a statement of the facts that support your claim and *not conclusions of law*. A statement of the remedy sought must also be provided. (*Use and attach additional sheets of paper if necessary.*) See attached

DECLARATION

I declare under penalty of perjury that I have read the above charge and that the statements herein are true and complete to the best of my knowledge and belief and that this declaration was executed on 11/09/2023 (Date)

at West Sacramento, County of Yolo, CA (City and State)

Paul M. Starkey  
(Type or Print Name and Title, if any)

Paul M. Starkey  
(Signature)

Mailing Address:

E-Mail Address:

Telephone Number:

In exercise of the rights conferred by the Ralph C. Dills Act (Dills Act), State of California, Department of Human Resources (CalHR) on behalf of the Governor submits the following facts and allegations that demonstrate the California Association of Professional Scientist (CAPS) engaged in and is continuing to engage bad faith bargaining by organizing, instigating and engaging in a strike to take place on November 15, 16, and 17, 2023, and seeks to proceed under PERB's expedited process to immediately CEASE CAPS' unlawful action.

### **Statement of Facts**

#### **The Parties**

1. The Governor is the "state employer" for purposes of meeting and conferring in good faith with appropriate bargaining representatives. (Gov. Code, § 3513, subd. (j).) Charging party, the Department of Human Resources (CalHR), is the Governor's designee for the purposes of the Ralph C. Dills Act (Dills Act). (Gov. Code, § 19815.)
2. Respondent California Association of Professional Scientists (CAPS) represents approximately 4,189 employees in state bargaining unit 10, which includes 178 of job classifications.

#### **The Memorandum of Understanding Between the Parties**

3. The BU 10 Memoranda of Understanding (MOU) expired by its own terms on July 1, 2020. Pursuant to the Dills Act, the parties have continued to give effect to the provisions of the now expired MOU while meeting and conferring to reach a successor MOU or until impasse is declared and its mediation procedures are exhausted. (Gov. Code, § 3517.8.) Presently, neither condition has occurred.

#### **History of Negotiations**

4. CalHR and CAPS have been in negotiations for a successor MOU for Bargaining Unit 10 after sunshining proposals on January 8, 2020. On December 16, 2022, CalHR and CAPS reached a total tentative agreement; however, CalHR was verbally informed CAPS membership rejected the agreement during ratification on February 1, 2023.
5. Since that rejection, there have been a total of approximately 23 bargaining sessions, with the last bargaining session taking place on September 6, 2023. During negotiations, the parties made significant progress toward reaching an agreement on a successor MOU.
6. The parties reached tentative agreement on most, if not all, of the non-economic provisions of the contract. The parties also reached an agreement on many of the economic provisions of the agreement (e.g., Night Shift Differential, Business and Travel, etc.) and have been actively passing proposals and counterproposals on the few remaining economic terms of the MOU.
7. During the most recent round of bargaining prior to mediation, it did not appear to the state that impasse was imminent; rather, the parties appeared poised to make progress on the remaining issues and the general tenor of the meeting was that there was still more to be done.
8. Below is an excerpt from the bargaining notes for the parties' most recent bargaining session, which was held on September 6, 2023:

Bianca Petzold – we're looking at members need and package presented by state, and they're still not as close as we need them to be. So that would be what check in would be about.

Candace Murch – maybe Wednesday next week, but then I'm out of country for three or four weeks, I can email you. I will send you email later today, or would it be easier for you to send me your team's avail and then I can work around that?

Bianca Petzold – yes. Thank you everyone for dedicating the time.

Candace Murch – thank you for time and reconsidering state's time. Opportunity to do last push to get in front of legislature before this session ended. I appreciate and we'll figure out next steps to move forward.

Ended 3:40 PM

9. As reflected in these notes, in their most recent bargaining session, neither party indicated that they were at or on the brink of impasse. Rather, the parties were discussing items that needed follow-up and expressed a desire to figure out the next steps to move forward. During that time the parties tentatively agreed to approximately 164 different proposals.

11. In addition, the parties have also been making slow but steady progress on reaching agreement on the remaining terms of the MOU. For example, with respect to the salary increases for Bargaining Unit 10, the parties passed 5 proposals and counterproposals. The state is offering a significant portion of Bargaining Unit 10 employees a minimum 9 percent pay increase, with the potential for 10 percent, over the three-year contract. Some Bargaining Unit 10 employees in specified classifications could receive a maximum of 15 percent, with the potential for 16 percent, over the three-year contract, with the first increase effective upon ratification. CAPS proposed special salary adjustments (SSA's) for various classifications, ranging from 2.5 percent to 40.6 percent to be effective July 1, 2023, and general salary increases of 8.5 percent over the remaining two years. The state rejected this proposal on August 31, 2023, and has not received a counter proposal.

12. In addition, currently there are approximately four bargaining proposals that have been rejected by the state, to which the union has not yet responded. These proposals include, but are not limited to, proposals on salaries, emergency response recruitment and retention, health/dental/vision, and entire agreement. Similarly, there are approximately six bargaining proposals the state has received from the union, to which the state has yet to respond. These proposals include, but are not limited to, geographic pay differential, employee donated release time bank, historical reinstatement for Unit 10, SSA's for Unit 10, no strike, and no lockout. In particular, CAPS asked the state to investigate whether a 5% SSA could be reworked to provide smaller additional amounts to those who have a wider gap from their supervisory counterparts. CAPS had not yet given the state the opportunity to respond to its request before filing its request for impasse. Additionally, two sections, duration and contract appropriation have not been passed by either party.



13. Both parties have made significant concessions to reach this point in the negotiations. For the union to unilaterally declare impasse when the parties have made significant progress in other areas and have been actively passing and considering proposals on the economic terms, reveals a lack of genuine desire to reach an agreement. (See *Kings In-Home Supportive Services Public Authority* (2009) PERB Decision No. 2009 ["the Public Authority inexplicably declared impasse without allowing CUHW to respond to the Public Authority's counter-offer and refused to participate in further negotiations. As such, we find this conduct indicates an intent to subvert the negotiating process and generally demonstrates the lack of a genuine desire to reach agreement."].)

14. The totality of the circumstances here does not demonstrate a genuine willingness on the union's part to reach an agreement. On the contrary, CAPS has adopted a bargaining strategy that seems to be designed to move the parties away from rather than toward agreement. For example, CAPS passed a proposal on August 22, 2022, that included an SSA for Environmental Scientists and Integrated Waste Management Specialists of 30 percent. CAPS subsequently passed another proposal on August 31, 2023, which included a 36.55 percent SSA for the same classifications. Similarly, a year ago CAPS passed a proposal for the Senior Geologist Specialist that included a 33 percent SSA and has now passed a proposal that increases that SSA to 40.6 percent. Making proposals that are predictable unacceptable to the other party is an indicium of bad faith bargaining. (*City of Roseville* (2016) PERB Dec. No. 2505-M; *Oakland Unified School District* (1983) PERB Dec. No. 326.) The above examples demonstrate that, not only has there been no movement on CAPS' side toward a mutually acceptable agreement, but CAPS has actually moved further away from reaching a deal.

15. Despite the parties' progress toward a successor MOU, CAPS filed a request for impasse with PERB on September 19, 2023. CalHR filed its opposition to request for impasse on September 22, 2023. Although CalHR does not believe the parties are at impasse, CalHR did agree to voluntarily participate in mediation. The state offered pre-impasse mediation to the union on September 13, 2023, and again on September 19, 2023, after having notice of the request for impasse.

16. On September 26, 2023, PERB made an initial declaration of impasse, and appointed a mediator, Kenneth Glen with PERB's State Mediation and Conciliation Service.

17. Due to scheduling conflicts by both CAPS' chief negotiator and the state's chief negotiator, the first day of mediation took place on November 8, 2023. The parties engaged in what appeared to be good faith mediation endeavoring to reach agreement, and when it became evident additional time was needed to continue discussions, the parties scheduled a second mediation session for November 28, 2023. Indeed, CAPS anticipated mediation would proceed over multiple days having advocated to "identify additional dates beyond November 8 for further meetings as needed" when scheduling the initial date for mediation.

18. In complete disregard of the parties' active participation in the statutory mediation procedures, at approximately, 12:31 a.m. on November 9, 2023, CAPS' chief negotiator Bianca Gutierrez Petzold emailed CalHR's chief negotiator Candace Murch providing what was termed as "a courtesy notice" of CAPS' decision to call for a rolling three-day strike, starting on November 15, 2023 and eluded more details would follow.

19. Similarly, CAPS posted on social media it had participated in mediation on November 8, 2023, and reported that although the next mediation session is scheduled for November 28, 2023, that is was nonetheless calling “for a three-day rolling Defiance For Science strike on November 15, 16, and 17, 2023.”

#### Statement of Charges

20. CAPS, through its management and agents, implemented a unilateral change in policy, which has a generalized effect and continuing impact upon bargaining unit members’ terms and conditions of employment. (See *State of California (Departments of Veteran Affairs and Personnel Administration)* (2008) PERB Decision No. 1997-S.)

21. By its action in calling for a three-day rolling strike, CAPS engaged in unilateral conduct to incite work stoppages, which violates the Dills Act by implementing unilateral change in the terms of the parties’ agreements. Specifically, CAPS violated Government Code sections 3512 and 3519.5, subsections (a), (b), (c), and (d).

22. CAPS’ action of organizing the strike while the agreed-to “no-strike” provision remains in effect and before the parties have even completed impasse procedures constitutes an unfair labor practice and is a gross violation of the MOU’s no strike clause. The union must abide by the terms it specifically agreed to, until all negotiations have concluded and an agreement is reached, or when the impasse resolution procedures have been exhausted. The state continues to abide by the contract by participating in good faith in bargaining.

23. By its action and its inaction, CAPS engaged in bad faith bargaining to incite strikes in the middle of the impasse process, and during scheduled mediation with a PERB appointed mediator, violated the Dills Act. Specifically, CAPS violated Government Code section 3519, subsection (c).

24. A strike that occurs before the exhaustion of statutorily mandated impasse procedures creates a rebuttable presumption that the employee organization is either refusing to negotiate in good faith or is refusing to participate in good faith in impasse procedures. (*Regents of University of California* (2010) PERB Dec. No. 2094-H; *Sacramento City Unified School District* (1987) PERB Ord No. IR-49; *San Ramon Valley Unified School District* (1984) PERB Order No. IR-46.)

25. Even absent a valid no-strike clause, CAPS’ call for a strike is still unlawful because the weight of the evidence shows it is actually an economic strike for the sole purpose of placing undue pressure on the state at the bargaining table. (*Sacramento Unified School District* (1987) PERB Order No. IR-49.) An economic strike, before the completion of impasse procedures, violates the duty to bargain in good faith because it “places undue pressure disruptive of the bargaining process.” (*Fresno Unified School District* (1982) Dec. No. 208, p. 11; *Association of Building, Mechanical and Electrical Inspectors* (2010) PERB Dec. No. 2141-M, p. 15.) Moreover, with the impending November 10 state holiday and the lack of specificity of the union’s “courtesy notice,” the state is without sufficient information to protect the public from a surprise strike and these antics smack of an illegal pressure tactic. (*San Ramon Valley Unified School District* (1984) PERB Order No. IR-46, pp. 14-15.)

26. PERB presumes strikes before the completion of impasse procedures are economic strikes, unless the union can prove the strike was provoked not by economic interests, but by the employer’s unfair practices (i.e., an unfair practice strike). Here, CAPS has not alleged its strike call is an unfair



practice strike provoked by the state's own unfair practices, nor has CAPS filed any unfair practice charges with PERB alleging bad faith bargaining by the state.

27. To overcome the presumption that its strike is unlawful, CAPS must affirmatively prove that: (1) the state committed an unfair practice; and (2) the state's unfair practice provoked the strike. (*Regents of the University of California* (2010) PERB Dec. N. 2094-H, p. 32.) "[T]he burden rests with the striking employee organization to prove, in the nature of an affirmative defense that the [employer's] unfair labor practice in fact caused the strike." (*Rio Hondo Community College District* (1983) PERB Dec. No. 292, p.23.) CAPS has failed to meet its burden.

28. The Dills Act does not guarantee state employees the right to engage in an unlawful strike. "An employer does not violate [the law] by disciplining employees for participation in unprotected conduct." (*Palos Verdes Peninsula Unified School District* (1982) PERB Dec. No. 195, p. 12 [holding a partial work stoppage was unprotected, and the employer did not violate EERA by disciplining employees for participation in that unprotected conduct].)

### Remedy

The state requests PERB on an expedited basis enter judgment against CAPS and declare and order the following:

1. A declaration finding CAPS interfered with the state employer's rights guaranteed by the Dills Act;
2. CAPS to immediately CEASE and DESIST from interfering with the state employer's rights guaranteed by the Dills Act;
3. A declaration finding CAPS bargained in bad faith;
4. CAPS to immediately engage in good faith bargaining;
5. A declaration finding CAPS engaged in the statutory impasse procedures in bad faith;
6. CAPS to immediately engage in the statutory impasse procedures in good faith;
7. Declaration finding that engaging in strikes and other job actions prohibited by the parties' MOU.
8. To award to the state as make-whole damages all monetary damages incurred by the state because of CAPS' unlawful conduct of inciting the strike and the unlawful strike this is scheduled to occur on November 15, 16, 17, 2023;
8. To order an appropriate posting at all departments in the state that employs CAPS members of CAPS' unfair practices;
9. To award to the state its attorneys' fees and costs for having to bring this charge, and;
10. For such other and further relief as PERB deems just and proper.

1 FROLAN R. AGUILING  
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2 SANDRA L. LUSICH  
Deputy Chief Counsel, Bar No. 195995  
3 California Department of Human Resources  
State of California  
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7 Attorneys for Charging Party  
Department of Human Resources  
8

9 STATE OF CALIFORNIA  
10 PUBLIC EMPLOYMENT RELATIONS BOARD  
11

12 STATE OF CALIFORNIA (DEPARTMENT  
OF HUMAN RESOURCES),

13 Charging Party,

14 v.

15 CALIFORNIA ASSOCIATION OF  
16 PROFESSIONAL SCIENTISTS),

17 Respondent.

) PERB Case No. xxx-S

) Related PERB Case No. SA-IM-3586-S

) **MOTION TO EXPEDITE THE  
PROCESSING OF THE ATTACHED  
UNFAIR PRACTICE CHARGE AND  
ORDER FOR AN IMMEDIATE CEASE  
AND DESIST**

) Mediation Dates: Nov. 8 & 28, 2023  
Mediator: Kenneth Glenn

18  
19 INTRODUCTION

20 Pursuant to Public Employment Relations Board (PERB) regulation 32147 (Cal. Code  
21 Regs., tit. 8, § 32147, subds. (a),(b)(2).), the State of California, Department of Human Resources  
22 (CalHR) hereby moves to expedite the processing of the attached Unfair Labor Practice Charge  
23 challenging California Association of Professional Scientists' (CAPS) bad faith negotiation tactics  
24 and frustration of the impasse mediation procedures by calling for a strike prior to the completion of  
25 the statutorily-required impasse procedures.

26 ///

27 ///

28 ///

1 **PROCEDURAL HISTORY**

2 CalHR and CAPS have been in negotiations for a successor MOU for Bargaining Unit 10  
3 after sunshining proposals on January 8, 2020. On December 16, 2022, CalHR and CAPS reached  
4 a total tentative agreement; however, CalHR was verbally informed CAPS membership rejected the  
5 agreement during ratification on February 1, 2023. Since that rejection, there have been a total of  
6 approximately 23 bargaining sessions, with the last bargaining session taking place on September 6,  
7 2023.

8 During negotiations, the parties have made significant progress toward reaching an  
9 agreement on a successor MOU. The parties have reached tentative agreement on most, if not all,  
10 of the non-economic provisions of the contract. The parties have also reached an agreement on  
11 many of the economic provisions of the agreement (e.g., Night Shift Differential, Business and  
12 Travel, etc.) and have been actively passing proposals and counterproposals on the few remaining  
13 economic terms of the MOU. During the most recent round of bargaining on September 6, 2023, it  
14 did not appear to the state that impasse was imminent; rather, the parties appeared poised to make  
15 progress on the remaining issues and the general tenor of the meeting was that there was still more  
16 to be done.

17 However, CAPS instead filed a request for impasse determination and appointment of a  
18 mediator for negotiations with Bargaining Unit 10 on September 19, 2023. (See related case, *CAPS*  
19 *v. State of California*, PERB Case No. SA-IM-3586-S). Disagreeing the parties were at impasse,  
20 the state filed its opposition on September 22, 2023. Thereafter on September 26, 2023, PERB  
21 determined the existence of an impasse and appointed mediator Kenneth Glenn to assist the parties  
22 through the statutory mediation procedures.

23 The parties commenced mediation on November 8, 2023, and schedule as second day for  
24 November 28, 2023, whereby the parties were to continue with mediation. Just past 12:00 a.m., on  
25 November 9, 2023, CAPS informed the state that it is calling for a three-day rolling strike to  
26 commence on November 15, 16, and 17, 2023.

27 ///

1 In an effort to remedy CAPS' breach of its duty to bargain, CalHR is filing concurrent  
2 herewith an Unfair Labor Practice Charging seeking immediate redress to cease CAPS' unlawful  
3 bargaining tactics and restore the parties back to the status quo. (See Ex. A, Unfair Practice  
4 Charge.)

## 5 ARGUMENT

### 6 **I. CAPS' Call For A Strike In The Midst of Impasse Mediation Warrants The** 7 **Expedition Of the State's Unfair Practice Charge As The Act Itself Creates A** 8 **Rebuttable Presumption Of Bad Faith Bargaining**

9 PERB regulation<sup>1</sup> 32147 sets forth the required criteria for invoking expedited processing of  
10 an unfair practice charge. Among the factors to consider include: (1) whether expedited processing  
11 is necessary to preserve the Board's ability to issue an effective remedy; (2) whether the case  
12 involves an important and unresolved question of law, the prompt resolution of which would  
13 significantly benefit one or more segments of the public sector labor-management community; and  
14 (3) any compelling circumstances showing that expedited processing is warranted.

15 Here, expedited processing of the attached unfair practice meets the aforementioned criteria.  
16 CAPS' action of organizing the strike while the agreed-to "no-strike" provision remains in effect  
17 and before the parties have even completed impasse procedures constitutes an unfair labor practice  
18 and is a gross violation of the MOU's no strike clause. Immediate processing is required to  
19 preserve the Board's ability to issue an immediate and effective remedy – namely to immediately  
20 cease the unlawful actions of the union and to restore the parties to back to the status quo of  
21 completing the pre-impasse mediation procedures. Indeed, the union must abide by the terms it  
22 specifically agreed to, until all negotiations have concluded and an agreement is reached, or when  
23 the impasse resolution procedures have been exhausted. CAPS decision to call for a strike in the  
24 middle of the impasse and during scheduled mediation with a PERB appointed mediator is violative  
25 of the Dills Act and in particular Government Code section 3519, subdivision (c).

26 Even absent a valid no-strike clause, CAPS' call for a strike is still unlawful because the  
27 weight of the evidence shows it is actually an economic strike for the sole purpose of placing undue

28 <sup>1</sup> PERB's regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

1 pressure on the state at the bargaining table. (*Sacramento Unified School District* (1987) PERB  
2 Order No. IR-49.) An economic strike, before the completion of impasse procedures, violates the  
3 duty to bargain in good faith because it “places undue pressure disruptive of the bargaining  
4 process.” (*Fresno Unified School District* (1982) Dec. No. 208, p. 11; *Association of Building,*  
5 *Mechanical and Electrical Inspectors* (2010) PERB Dec. No. 2141-M, p. 15.)

6 Moreover, a strike that occurs before the exhaustion of statutorily mandated impasse  
7 procedures creates a rebuttable presumption that the employee organization is either refusing to  
8 negotiate in good faith or is refusing to participate in good faith in impasse procedures. (*Regents of*  
9 *University of California* (2010) PERB Dec. No. 2094-H; *Sacramento City Unified School District*  
10 (1987) PERB Order No. IR-49; *San Ramon Valley Unified School District* (1984) PERB Order No.  
11 IR-46.) In either case, expedited processing is required to place the parties back at the status quo to  
12 finish the mediation process in good faith.

13  
14 **CONCLUSION**

15 For reasons stated herein, the state is imploring PERB to expedite the attached unfair  
16 practice charge and issue an immediate remedy to cease CAPS’ unlawful strike and to resume  
17 impasse mediation in good faith until completion.

18  
19 Dated: November 9, 2023

20  
21 Respectfully submitted,

22 FROLAN R. AGUILING  
23 Chief Counsel

24  
25  
26 By:

  
27 SANDRA L. LUSICH  
28 Deputy Chief Counsel



**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 California Department of Human Resources  
1515 S Street, North Building, Suite 500 Sacramento, CA 95811

On November 9, 2023, I served the Unfair Practice Charge  
(Date) (Description of document(s))

**Motion to Expedite** in Case No. \_\_\_\_\_  
(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.)  
Bianca Gutierrez Petzold  
CA Association of Professional Scientists  
555 Capitol Mall, Suite 1155  
Sacramento, CA 95814

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 November 9, 2023,  
at Sacramento, CA  
(City) (State) (Date)

**Sandra L. Lusich**  
(Type or print name)

  
(Signature)