

Superior Court of California  
County of Sacramento - Department 29  
720 Ninth Street  
Timothy M. Frawley, Judge

Hearing Held: Friday, September 24, 2010, 11:00 a.m.

<p>CALIFORNIA ASSOCIATION OF PSYCHIATRIC TECHNICIANS,</p> <p>vs.</p> <p>ARNOLD SCHWARZENEGGER, et al.,</p> <p>SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1000.</p>	<p>Case Number: 34-2009-80000356</p> <p>Consolidated for purposes of trial with Case No. 34-2009-80000358 and Case No. 34-2009-00064854</p>
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**Proceedings: Petition for Writ of Mandate and Complaint for Declaratory Relief**

On September 23, 2010, the Court issued a tentative ruling in the above-entitled proceedings. On September 24, 2010, the matters came on for hearing with counsel present as indicated on the record. The matters were argued and submitted. Having taken the matters under submission, the Court now rules as follows:

**CONSOLIDATED RULING AFTER HEARING**

These consolidated actions arise from the Legislature's adoption in early 2009 of two statutes eliminating Lincoln's Birthday and Columbus Day as paid state holidays (Government Code section 19853) and changing the method of calculating overtime for state employees (Government Code section 19844.1).

In consolidated case nos. 34-2009-80000356 and 34-2009-80000358, Petitioners California Association of Psychiatric Technicians (CAPT) and California Association of Professional Scientists (CAPS), and Intervenor Service Employees International Union, Local 1000 (SEIU) challenge the elimination of Lincoln's Birthday and Columbus Day from the list of paid holidays for state employees who are members of State Bargaining Units 1, 3, 4, 10, 11, 14, 15, 17, 18, 20, and 21. Petitioners seek a declaratory judgment that the members are entitled to receive Lincoln's Birthday and Columbus Day as paid holidays, and a peremptory writ of mandate ordering Respondents/Defendants Governor Arnold Schwarzenegger and the California Department of Personnel Administration (DPA) to restore them as paid holidays and compensate members who should have received those days as State holidays in 2009 and 2010.

Intervenor SEIU also challenges the changes to the method of calculating overtime for SEIU members. SEIU seeks a declaratory judgment that SEIU members are entitled to include leave time toward the calculation of "hours worked" in calculating overtime, and a peremptory writ of mandate ordering Respondents to include leave time when calculating overtime and to compensate members who were wrongly denied overtime compensation.

Respondent DPA raises essentially the same issues in case no. 34-2009-00064854. In that action, DPA contends that a controversy exists between DPA and SEIU as to their respective rights and obligations under the parties' MOUs. DPA seeks a declaratory judgment that Government Code sections 19844.1 and 19853 supersede the provisions of the parties' expired MOUs governing holidays and overtime pay.

The Court previously concluded that all three actions share a common question of law and ordered the cases consolidated for purposes of trying the issue whether Government Code sections 19853 and 19844.1 supersede the provisions of the parties' respective MOUs.

### Background Facts and Procedure

#### The Contracts

CAPT is the exclusive representative of State Bargaining Unit 18 (Unit 18). For the period July 1, 2006, through June 30, 2008, CAPT had an MOU with the State concerning the terms and conditions of employment of its bargaining unit members.

Article 6.1 of the CAPT MOU governs paid holidays. Article 6.1B provides that Unit 18 members are entitled to receive February 12 (Lincoln's Birthday) and the second Monday in October (Columbus Day) as paid holidays.

CAPS is the exclusive representative of State Bargaining Unit 10 (Unit 10). For the period July 1, 2006, through June 30, 2008, CAPS had an MOU with the State concerning the terms and conditions of employment of its bargaining unit members.

Article 4.1 of the CAPS MOU governs paid holidays. Article 4.1B provides that Unit 10 members are entitled to receive February 12 (Lincoln's Birthday) and the second Monday in October (Columbus Day) as paid holidays.

SEIU is the recognized representative for about 95,000 state employees in nine State Bargaining Units, which include Units 1, 3, 4, 11, 14, 15, 17, 20, and 21. For the period July 1, 2005, through June 30, 2008, each SEIU bargaining unit had an MOU with the State concerning the terms and conditions of employment of its bargaining unit members.

Article 7 of the SEIU MOUs covered paid holidays. Article 7 provides that SEIU members shall be entitled to receive February 12 (Lincoln's Birthday) and the second Monday in October (Columbus Day) as paid holidays.

Article 19 of the SEIU MOUs governs the payment of overtime wages. Article 19 provides that "[o]vertime is earned at the rate of one and one-half times the hourly rate for all hours worked in excess of forty (40) hours in a regular workweek . . . ." It is undisputed that since the effective dates of the MOUs, the parties have interpreted Article 19 to permit SEIU members to count approved leaves of absence as "hours worked" when calculating overtime.

The SEIU MOUs also include supersession language. Article 5, section 5.6 of the MOUs provides that if any provision of the agreement alters or is in conflict with any of certain enumerated Government Code sections (including Government Code section 19853), the terms of the MOUs shall be controlling and supersede the provisions of the Government Code.

All of the above-described MOUs expired on June 30, 2008. Nevertheless, under the "continuing benefits" provision of the Dills Act (Government Code section 3517.8), the terms of the expired MOUs remain in effect until a new agreement is reached or the parties reach an impasse in negotiations.

#### The Challenged Legislation Governing Holidays and Overtime Pay

On February 19, 2009, the Legislature adopted a budget for the 17-month period ending in June of 2010. (See Senate Bill. No. 8 (2009-2010 3rd Ex. Sess.) (SB X3 8). The Governor signed the budget on February 20, 2009.

As part of the budget measure, the Legislature amended Government Code section 19853 to eliminate Lincoln's Birthday and Columbus Day as paid holidays for state employees. The Legislature simply struck the two days from the list of paid holidays set forth in the statute. The Legislature also added section 19853, subdivision (g). Former section 19853 provided that if the listing of paid holidays in section 19853 is in conflict with the provisions of an MOU, the MOU shall be controlling. As amended by subdivision (g), the statute provides that if the listing of paid holidays in section 19853 is in conflict with the provisions of an MOU "executed or amended . . . on or after February 1, 2009, or the date that the act adding this section takes effect, whichever is later," the MOU shall be controlling.

SB X3 8 also added California Government Code section 19844.1 to change the way the state calculates overtime for state employees. Prior to SB X3 8, California law did not explicitly prohibit the State from counting approved leaves of absence as "time worked" by the employee for purposes of calculating overtime. Section 19844.1 provides that vacation, sick leave, and other types of leave shall not be counted as hours worked for purposes of overtime. Specifically, it provides:

(a) Notwithstanding any other provision of law, personal leave, sick leave, annual leave, vacation, bereavement leave, holiday leave, and any other paid or unpaid leave, shall not be considered as time worked by the employee for the purpose of computing cash compensation for overtime or compensating time off for overtime. (Gov. Code § 19844.1, subdivision (a).)

In addition, it provides:

(b) If subdivision (a) is in conflict with the provisions of a memorandum of understanding reached or amended pursuant to Section 3517.5 on or after February 1, 2009, or the date that the act adding this section takes effect, whichever is later, that memorandum of understanding shall be controlling without further legislative action, except that if those provisions of the memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

#### Discussion

The issue presented in these consolidated cases is whether Respondents were required to comply with the terms of the expired MOUs notwithstanding the statutory changes to Government Code sections 19853 and 19844.1.

Petitioners CAPT, CAPS, and SEIU contend that under the provisions of the expired MOUs, their members were entitled to receive Lincoln's Birthday and Columbus Day as paid holidays and were entitled to count leaves of absence as hours worked for purposes of calculating overtime. Petitioners contend that under Government Code sections 3517.6 and 3517.8, when the terms of an expired MOU conflicts with provisions of the Government Code, the terms of the MOU control. Petitioners contend that there is nothing in Government Code sections 19853 and 19844.1 to suggest the Legislature intended those sections to apply to pre-existing MOUs. Thus, Petitioners argue that Respondents have a duty to give effect to all of the provisions of the expired MOUs, notwithstanding the Legislature's enactment of Government Code sections 19853 and 19844.1.

By applying sections 19853 and 19844.1 to Petitioners' pre-existing MOUs, Petitioners allege that Respondents violated the Dills Act and the contract clauses of the federal and state Constitutions.<sup>1</sup>

Respondents contend, in contrast, that Government Code sections 19844.1 and 19853 supersede the parties' expired MOUs and Government Code section 3517.8. Respondents contend that sections 19853 and 19844.1 expressly limit supersession to MOUs executed or amended after the statutes' effective date (February 20, 2009). To the extent this conflicts with Government Code sections 3517.6 and 3517.8, Respondents contend that sections 19853 and 19844.1 are the more specific statutes and should prevail.

Further, Respondents argue that Petitioners cannot invoke the protections of the Contract Clause. Respondents argue that because the MOUs expired prior to the enactment of sections 19853 and 19844.1, the expired MOUs were not contractual obligations entitled to protection under the Contract Clause.

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<sup>1</sup> For simplicity, the Court sometimes refers to the federal and state Contract Clauses collectively as the "Contract Clause."

Moreover, even if the expired MOUs were protected by the Contract Clause, Respondents argue that the enactment of sections 19853 and 19844.1 was not an unconstitutional impairment of contract.

### Section 19844.1

Government Code section 19844.1 provides that, notwithstanding any other provision of law, vacation, sick leave, and other types of leave shall not be counted as hours worked for purposes of calculating overtime for state employees. Petitioners argue that their expired MOUs supersede section 19844.1.

However, supersession is a creature of statute. In this case, there is no statute permitting the parties' MOUs to supersede section 19844.1.

Section 19844.1 permits supersession, but only for an MOU executed on or after the effective date of the statute (February 20, 2009). All of the MOUs at issue in this case were executed years before the effective date of section 19844.1.

Further, section 19844.1 is not included in the list of statutes that may be superseded by MOUs pursuant to Government Code section 3517.6.

Moreover, even if section 19844.1 was included in the list of supersession statutes, it is clear from the language of section 19844.1 that the Legislature intended to change the way the State calculates overtime for state employees by prohibiting approved absences from being treated as "time worked" for the purpose of computing overtime, "[n]otwithstanding any other provision of law."

Thus, as a matter of law, the expired MOUs do not supersede section 19844.1.

Petitioners argue that even if their MOUs do not supersede section 19844.1, section 19844.1 cannot be applied to their MOUs without running afoul of the federal and state Contract Clause.

The Contract Clause prohibits the State from passing any law impairing the obligation of contracts. (U.S. Const., art. 1, § 10; Cal. Const. art. 1, § 9.)

To state a claim under the Contract Clause, a plaintiff must allege there exists a contractual relationship, which the state, through its legislative authority, has impaired.

The process of determining whether a state law substantially impairs a contractual obligation consists of a four-step inquiry. The first step is to determine whether there is a valid contractual relationship relating to the matter that is the subject of the law. The second step, if a valid contractual relationship exists, is to determine whether the law has operated as a substantial impairment of the contractual relationship. The third step, if the law constitutes a substantial impairment, is to determine if there is a significant and legitimate public purpose behind the law. The fourth step, if a significant and legitimate public purpose is identified, is to determine whether the law is a "reasonable and necessary" means to achieve that purpose. (See *Hermosa*

*Beach Stop Oil Coalition v. City of Hermosa Beach* (2001) 86 Cal.App.4th 534, 553-555; *Energy Reserves Group, Inc. v. Kansas Power & Light Co.* (1983) 459 U.S. 400, 411-412; see also *United States Trust Co. v. New Jersey* (1977) 431 U.S. 1.)

In this case, the parties dispute whether there was a valid contractual relationship that could be impaired. Petitioners claim the existence of a contractual relationship by virtue of the MOUs, which, although expired, continued to remain in effect pursuant to the "continuing benefits" provision of the Dills Act (Government Code section 3517.8). Respondents contend that this obligation arises by statute and not by virtue of any contractual obligation protected by the Contract Clause. Thus, Respondents contend, an expired labor contract is not protected by the Contract Clause.

Although there is some support for Petitioners' position, (*Association of Surrogates & Supreme Court Reporters v. State* (N.Y. Ct. App. 1992) 79 N.Y.2d 39, 45), the weight of authority comes down in favor of Respondents. (See *Cal. State Employees' Ass'n v. Public Employment Relations Bd.* (1996) 51 Cal.App.4th 923, 936 [citing *N.L.R.B. v. Cone Mills Corporation* (4th Cir. 1967) 373 F.2d 595, 598-599 for proposition that employer's obligation to continue contract terms derives not from the contract but from the National Labor Relations Act]; *Rhode Island Bhd. of Corr. Officers v. Rhode Island* (1st Cir. 2004) 357 F.3d 42, 47 [obligation to maintain status quo arises under state labor law and not by contract]; *Bricklayers Union Local 21 v. Edgar* (N.D. Ill. 1996) 922 F. Supp. 100, 105-106 [same]; *Cement Masons Health & Welfare Trust Fund etc. v. Kirkwood-Bly, Inc.* (N.D. Cal. 1981) 520 F.Supp. 942, 945 [agreements do not survive in sense that they continue as legally enforceable documents]; *Office & Professional Employees Ins. Trust Fund v. Laborers Funds Administrative Office, Inc.* (9th Cir. 1986) 783 F.2d 919, 922 [an expired collective bargaining agreement is no longer a legally enforceable document]; see also *San Bernardino Public Employees Assn. v. City of Fontana* (1998) 67 Cal App 4th 1215 [once the MOUs expired, the employees had no legitimate expectation that benefits would not be modified or reduced by proper statutory authority]; *University of Haw. Prof'l Assembly v. Cayetano* (D. Haw. 2000) 125 F.Supp.2d 1237, 1242 [the contracts clause is not implicated by expired collective bargaining agreements].)

The Court adopts the majority view that the continuation by statute of the provisions of an expired labor contract does not have the force of a contractual obligation for purposes of the Contract Clause.

This ends the Contract Clause analysis. Section 19844.1 did not violate the Contract Clause because there was no existing contract to be impaired.

### Section 19853

The issues presented in regard to Government Code section 19853 are the same issues presented in regard to section 19844.1, namely, whether the expired MOUs supersede section 19853 and, if not, whether section 19853 unconstitutionally impaired a contractual relationship.

First, the words of the statute do not, as Respondents contend, expressly limit supersession only to those MOUs enacted after February 20, 2009. The statute merely provides that it can be superseded by an MOU enacted after that date. It says nothing about whether section 19853 can (or cannot) be superseded by an MOU enacted before that date.

Respondents argue that intent to change the meaning of a statute must be inferred from a change in statutory language. Respondents are correct about the rule, but misapply it here. No one contends that the meaning of the supersession language in section 19853 is "unchanged" despite the change in statutory language. Former section 19853 permitted supersession by an MOU regardless of when the MOU was executed, whereas amended section 19853 refers only to MOUs executed after February 20, 2009. Thus, the amendments restrict the supersession provisions to MOUs executed after February 20, 2009. But this change does not mean that the Legislature intended to permit supersession *only* by MOUs executed after February 20, 2009. It simply means what it says: that supersession is permitted for *at least* those MOUs.

If the Legislature had intended section 19583 to limit supersession *only* to MOUs executed after February 20, 2009, it presumably would have said so. The fact that it did not is persuasive evidence that it did not have such intent.

Further, the Legislature is presumed to be familiar with the supersession provisions in Government Code sections 3517.6 and 3517.8. If the Legislature intended for section 19853 to amend or repeal those provisions, it was incumbent upon the Legislature to say so. It did not.

There is a strong presumption against the implied repeal of an earlier statute, and the presumption may be overcome only if the two acts are irreconcilable, clearly repugnant, and so inconsistent that the two cannot have concurrent operation. (*Merrill v. Navegar, Inc.* (2001) 26 Cal.4th 465, 487; *Western Oil & Gas Assn. v. Monterey Bay Unified Air Pollution Control Dist.* (1989) 49 Cal.3d 408, 419-420; *Sanford v. Garamendi* (1991) 233 Cal.App.3d 1109, 1121-1122.) Statutes relating to the same subject matter must be harmonized to the extent possible.

In this case, the two acts are not clearly repugnant. Both statutes permit supersession by MOUs executed after February 20, 2009. Sections 3517.8 and 3517.6 also permit supersession by expired MOUs executed before February 20, 2009, but this causes no irreconcilable conflict with section 19853 because section 19853 says nothing about MOUs executed before February 20, 2009. Thus, implied repeal of sections 3517.6 and 3517.8 is not appropriate.

The Court finds further support for its conclusion in section 19844.1. Section 19844.1 contains the same supersession language as section 19853. However, unlike section 19853, section 19844.1 was not included in section 3517.6 as one of the statutes that could be superseded by an MOU. Because section 19844.1 was new, the supersession language in section 19844.1 cannot have been intended to repeal or amend the supersession provisions of sections 3517.6 and 3517.8. And

because sections 19844.1 and 19853 were enacted in the same act at the same legislative session, it is reasonable to assume that the Legislature intended those provisions to have the same meaning in each statute. Therefore, since section 19844.1 clearly was not intended to impliedly amend or repeal section 3517.6, we can safely concluded that section 19853 also was not intended to impliedly amend or repeal section 3517.6.

Respondents argue that this interpretation renders section 19853, subdivision (g) surplusage in light of the supersession provisions in section 3517.6. Respondents contend that section 19853 should not be given a construction that results in rendering one of its provisions nugatory. Instead, Respondents argue, section 19853 should be treated as a "specific" exception to the "general" rule set forth in section 3517.6.

It is true that, in general, significance should be attributed to every word and phrase of a statute, and a construction making some words surplusage should be avoided, if possible. However, a court's overriding purpose in construing a statute is to ascertain the intent of the Legislature so as to effectuate the purposes of the law.

In this case, the Court is persuaded that the Legislature intended section 19853, subdivision (g) to mean only what it says: that supersession is permitted for MOUs executed after February 20, 2009. In the Court's view, the fact that section 19853, subdivision (g) overlaps with section 3517.6 does not render subdivision (g) superfluous. If in the future the reference to section 19853 is removed from section 3517.6, supersession still would be allowed under section 19853.

Further, even if the overlap with section 3517.6 renders subdivision (g) superfluous, this is not new. The overlap existed even before the amendments to section 19853. Nor is the overlap limited to section 19853. Government Code sections 19844, 19849, and 19863 also overlap with Government Code section 3517.6. Against this backdrop, if subdivision (g) is superfluous, it is reasonable to conclude that the Legislature intended it to be so.

The rule that a later specific statute governs an earlier general one applies only if the statutes are irreconcilable. As noted above, statutes relating to the same subject matter should be harmonized if possible, and there is a strong presumption against implied amendment or repeal. (See *Nickelsberg v. Workers' Comp. Appeals Bd.* (1991) 54 Cal.3d 288, 298; *Henning v. Div. of Occupational Safety & Health* (1990) 219 Cal.App.3d 747, 762.) Here, the statutes are not in conflict and the Court construes section 19853, subdivision (g) to avoid implied amendment or repeal of sections 3517.6 and 3517.8.

Moreover, the Court rejects the suggestion that section 19853 is necessarily the more "specific" statute. While section 19853 is more specific to the issue of paid holidays, section 3517.6 is more specific to the issue of supersession, and section 3517.8 is more specific to the issue of expired MOUs. (See *Mejia v. Reed* (2003) 31 Cal.4th 657, 666 [principle that a specific provision takes precedence over a general provision inapplicable where neither provision is significantly more specific].)

Thus, for all of these reasons, the Court concludes that the expired MOUs supersede(d) the provisions of section 19853.

Disposition

The petition and complaint of CAPS is GRANTED. Judgment shall issue declaring that Government Code section 3517.8 requires that Respondents/Defendants give effect to Article 4.1 of the expired memorandum of understanding between CAPS and the State until such time as the parties reach impasse in negotiations for a new memorandum of understanding and the State implements a provision contrary to the parties' agreement in Article 4.1. A peremptory writ of mandate shall issue ordering Respondents/Defendants to comply with Government Code section 3517.8 and give effect to Article 4.1 of the expired memorandum of understanding between CAPS and the State and provide Lincoln's Birthday and Columbus Day as holidays to Bargaining Unit 10 members and compensate Bargaining Unit 10 members as provided in the memorandum of understanding if they were or are required to work on those days.

The petition and complaint of CAPT is GRANTED in part and DENIED in part. Because Petitioner CAPT and Respondent DPA now have a successor MOU for the period July 1, 2010, through July 1, 2012, the request for declaratory relief is denied. Nevertheless, a peremptory writ of mandate shall issue ordering Respondents/Defendants to compensate Bargaining Unit 10 members as provided in the memorandum of understanding if they were required to work on Lincoln's Birthday and Columbus Day during the period February 20, 2009, through the effective date of the successor MOU.

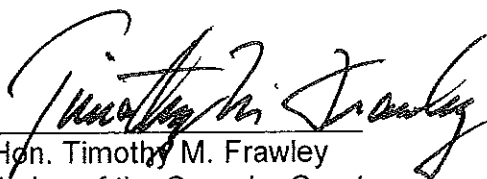
Respondent/Defendant DPA's third cause of action for declaratory relief is GRANTED as to section 19844.1. Judgment shall issue declaring that section 19844.1 superseded the provisions of the parties' expired MOUs. DPA's request for declaratory relief is DENIED as to section 19853. Pursuant to Government Code sections 3517.6 and 3517.8, the parties' expired MOUs supersede (or, in the case of CAPT, superseded) the provisions of section 19853.

CAPS, CAPT, and SEIU shall be entitled to recover their costs in the CAPT and CAPS actions upon appropriate application. Each party shall bear its own costs of suit in the DPA action.

Separate judgments shall be required for each consolidated action. Counsel for CAPS, CAPT, and DPA are each directed to prepare a formal judgment (and, where appropriate, writ) consistent with this ruling; submit them to opposing counsel for approval as to form; and thereafter submit them to the Court for signature and entry of judgment.

Dated: September 28, 2010

Signed:

  
Hon. Timothy M. Frawley  
Judge of the Superior Court

**CERTIFICATE OF SERVICE BY MAILING**  
**(C.C.P. Sec. 1013a(4))**

I, the Clerk of the Superior Court of California, County of Sacramento, certify that I am not a party to this cause, and on the date shown below I served the foregoing RULING by depositing true copies thereof, enclosed in separate, sealed envelopes with the postage fully prepaid, in the United States Mail at Sacramento, California, each of which envelopes was addressed to:

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I, the undersigned deputy clerk, declare under penalty of perjury that the foregoing is true and correct.

Dated: September 28, 2010

Superior Court of California, County of  
Sacramento

By: F. Temmerman,  
Deputy Clerk