

FURLOUGH OF CALIFORNIA STATE WORKERS OK'D

California Governor Arnold Schwarzenegger (R) has the authority to furlough more than 200,000 state employees two days a month and the state controller must comply with his furlough order, a state trial court judge says. Sacramento County Superior Court Judge Patrick Marlette denies a request from state worker labor unions to block the governor's furlough order as an illegal end run around the legislature. He allowed attorneys for the state and four state worker unions to offer oral arguments on a tentative decision he presented to them. Marlette says he recognizes the huge impact his ruling will have on state workers, but his job was not to determine whether the furloughs are a proper solution to the state's \$42 billion budget deficit. "My job is only to determine if the governor's action is authorized by law." The state is expected to run out of cash in the absence of an agreement between lawmakers and the governor to solve the crisis.

The ruling allows the governor to disregard the terms of collective bargaining agreements between state worker unions and the administration, according to Bruce Blanning, executive director of Professional Engineers in California Government, the lead plaintiff in the case. "Our natural concern is if the contracts are not honored, this puts into question how future negotiations will be conducted."

In his written opinion, Marlette first ruled that the state Public Employee Relations Board does not have exclusive jurisdiction over the questions raised in the lawsuit because it involves issues of statutory interpretation and separation of powers between the governor and the legislature. These issues are properly within the court's jurisdiction, he says.

The governor's executive order temporarily reduces the normal work hours for state employees, but does not change salary ranges established in collective bargaining agreements. State law and the memoranda of understanding enacting collective bargaining agreements between the state and state worker bargaining units give the governor the authority to order furloughs in light of the state's fiscal crisis without changing those salary ranges. The fiscal emergency also gives the governor the authority to order furloughs without first meeting and conferring with state employee organizations, the judge says.

Marlette hinges his reasoning on two sections of the Government Code, the first of which makes it a policy that state employee workweeks are 40 hours and workdays are eight hours, except that a different number of hours may be established to meet varying needs of state agencies. The second section allows the state Department of Personnel Administration to adopt rules governing hours of work and overtime compensation. "Under the circumstances of the current fiscal crisis, the reduction in the workweek of state employees under the furlough order is indisputably related to the needs of the various state agencies, which, from the evidence respondents have submitted to the Court, run the imminent risk of running out of money and thus being unable to carry out their missions, if immediate action is not taken to reduce expenditures," the judge says.

(Source: *Professional Eng'rs in Cal. Gov't v. Schwarzenegger*, Cal. Super. Ct., No. 2008-800000126, January 29, 2009, as reported in BNA, *Daily Labor Report*, No. 18, January 30, 2009, pp. A2-A3.)