

**THE FUTURE OF EXCLUDED STATE
EMPLOYEES' LABOR RELATIONS IN
CALIFORNIA**

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JUNE 2003**

Technical Report Documentation Page

1. Report No. FHWA/CA/OR-	2. Government Accession No.	3. Recipients Catalog No.	
4. Title and Subtitle The future of excluded state employees' labor relations in California.	5. Report Date June 6, 2003		6. Performing Organization Code
	7. Authors Leanne "Lee" Provost		
9. Performing Organization Name and Address Mineta Transportation Institute College of Business—BT550 San José State University San Jose, CA 95192-0219	10. Work Unit No.		8. Performing Organization Report No.
	11. Contract or Grant No. 65W136		
12. Sponsoring Agency Name and Address California Department of Transportation Office of Research and Innovation—MS42 P.O. Box 942873 Sacramento, CA 94273-0001	U.S. Department of Transportation Research & Special Programs Adm. 400 7 th Street, SW Washington, D.C. 20590-0001		13. Type of Report and Period Covered Final Report
	14. Sponsoring Agency Code		
15. Supplementary Notes			
16. Abstract With the current budget crisis in the state of California (CA) making excluded labor relations a current topic, interviews were conducted of several labor representatives who work day-to-day with excluded employee issues within the state capital of Sacramento. Patterned questions were asked such as, "What are the top three issues that face excluded employees today?" The majority of the answers were: Salaries. Excluded employees (supervisors, managers and confidential employees) who work for the state of CA, are not covered under the collective bargaining process when it comes to negotiating benefits, salaries and working conditions and must "meet and confer" with the state Department of Personnel Administration (DPA). This arrangement more closely approximates "collective begging", or "meet and defer." Much hope is being placed on AB 2477 (Steinberg), which resulted in the creation of partnership task force between DPA and excluded employee organizations. By July 1, 2004, the task force will recommend to the Governor and state Legislature a process that can identify and implement equitable salary and benefit changes over time for excluded employees in state government. In addition, the author recommends following the task force's recommendations, educating the legislature on supervisor's needs and hiring a public relations officer. This paper will focus primarily on supervisors who work in the government transportation sector of the state of CA.			
17. Key Words Budget Collective Bargaining Excluded Employees Meet-and-confer Supervisors	18. Distribution Statement No restrictions. This document is available to the public through The National Technical Information Service, Springfield, VA 22161		
19. Security Classif. (of this report) Unclassified	Security Classif. (of this page) Unclassified	21. No. of Pages 94	22. Price

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ACKNOWLEDGMENTS

I would like to acknowledge first of all my employer, the California (CA) State Department of Transportation (Caltrans) for offering the opportunity to work on my masters of science degree with San Jose State University, CA. College of Business and the Mineta Transportation Institute (MTI) while simultaneously working full time. The partnership developed by all three institutions has afforded an opportunity to study current transportation management-related topics while incorporating state-of-the art technology. I appreciate the opportunity to attend classes via teleconferencing and computer-based websites, which allows me to stay in the Sacramento area where I work and live. Each class I have taken has enriched my life not only intellectually, but has helped me understand and to perform my best at my job everyday.

I would like to thank my two current supervisors, Phil Stolarski, Deputy Division Chief of the Materials Engineering and Testing Services, Engineering Services and Helen Rainwater, Chief of Project/Plans Coordination of the Division of Transportation Planning. Without their support I would not have been able to complete my degree.

I would like to thank all of the San Jose State University professors and instructors whom I have had the privilege of meeting during my course studies. Of course, one cannot leave out the assistance of Vivianne Ferea, education coordinator for MTI at San Jose State who responded to my numerous e-mails and phone calls over the course of my studies and encouraged me to “step up to the plate” and take the challenge of completing my degree. Her administrative abilities are excellent and her customer service skills used for the wide range of students that enroll at MTI are admirable.

I would like to acknowledge in particular Dr. Ron Silvia of San Jose State who sparked my interest in labor relations while enrolled in his MTI course, as well as Mitch Semer, executive director of the Association of California State Supervisors (ACSS) who sparked my curiosity with Assembly Bill 2477 and took the time to mentor me and encourage me to write my paper. Without their vision, I may not have been able to choose my topic and write.

I need to mention all of the wonderful labor relation professionals who took their time to allow me to interview them during their very busy schedules. Frank Marr of DPA, Dave Brubaker of Caltrans, Bonnie Morris, Carol Perri and George Clark of ACSS, Dennis Alexander of PECG, Steve Booth and Larry Svetich of Hughes, Svetich and Associates who, without their assistance and comments this paper would not have been possible.

I want to especially acknowledge my co-workers in the Caltrans planning for their encouragement to pursue my degree, as well as Ken Murray and Stuart Mori of Caltrans, and Dr. Derek Gammon, PhD at Cal-EPA for their review of my paper.

Thank you to all of my close friends who have been so supportive and understanding of my time and need to complete my degree.

In closing, I need to mention my wonderful son Grant, who has been an inspiration to me.

He has been supportive of his mother’s long hours spent during the weekends. I hope that someday he will remember his mother’s accomplishments and achieve a college degree and experience all the hope, happiness and success that an education can offer.

Thank you to all who have understood my need to succeed in my career and complete my degree. I truly appreciate all of the support and encouragement offered by so many. I hope that I can return the favor during my professional career.

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ABSTRACT

What is the future of excluded state employees' labor relations in California? Since this is a current topic, interviews were conducted of several labor representatives who work day-to-day with excluded employee issues within the state capital of Sacramento. Patterned questions were asked such as, "What are the top three issues that face excluded employees today?" The majority of the answers were salaries. Much insight was learned about the process of "meet-and-confer" (or lack thereof) labor relations with the state of California for excluded employees. This paper will focus primarily on supervisors who work in the government transportation sector of the state of California.

Who are excluded employees and what problems do they face in terms of negotiating their benefits, salaries and working conditions? Excluded employees who work for the state of California (CA) are basically exempt from the collective bargaining contract process. The state of CA Department of Personnel Administration (DPA), who reports directly to the state Governor's office, is required to "meet-and-confer" with employee organizations per the Ralph C. Dills Act. Rank and file employees in specific bargaining units are represented by employee organizations and are able to negotiate contracts with DPA. However, excluded employees, that is, supervisors, managers and confidential employees who work for the state of CA, are not covered under the Dills Act when it comes to negotiating benefits, salaries and working conditions. In other words, DPA is not required to negotiate a written contract. DPA basically listens to what is proposed and then considers the proposals to the extent deemed reasonable, resulting in little or no benefit to the excluded employees. Employee organizations such as ACSS, PEGC or DOTS argue that this type of meet-and-confer approach arrangement more closely approximates "collective begging", or "meet and defer."

What about the salary issue? In addition to the lack of favorable negotiations for excluded employees, the compaction of salaries between the supervisor and employee supervised ranges from less than 5% to zero. These type of morale-busters cause many supervisors and managers to reconsider their employment with the state and either demote to a less stressful, higher-paying position or leave the state and work for more lucrative jobs in the private sector or local public agencies. According to the labor representatives interviewed, the DPA is supposed to base salary ranges on comparable salaries in other public and private sector employment, but this has not occurred. State supervisor's salaries are less than other local and private firm's salaries for similar job duties.

How does CA budget deficit affect excluded employees? To further complicate matters, the state of CA is currently in a budget crisis of over \$35 billion. The Department of Finance (DOF) and the DPA advised all departments in a letter dated April 1, 2003, to begin preparing a reduction plan and associated layoff plan that would reduce their personal services budgets by ten percent (10 %). This is an effort to meet the budget proposed savings of \$855 million in personal services across state government. Salary and benefit take-aways are being considered for supervisors working in CA state government. Therefore, the July 1, 2003, five percent (5%) general salary increase negotiated for rank and file employees will probably not be offered to supervisors and managers.

What are the solutions to the dilemma that currently faces state workers, especially excluded employees? State law prohibits strikes and most professionals do not favor such a drastic measure; therefore, other labor solutions are required. One recommendation would be to change the current law by legislation. Several bills are currently proposed to the state Legislature at this time. Also recommended would be to improve public relations overall, especially with the state Legislature. The CA state Legislature has constantly new representatives due to term limits, and these new law-makers need to be educated about the importance of excluded employees and that when labor contract negotiations are approved by the Governor, excluded employees have been left out.

In response to these concerns, in 2001, a coalition of DPA-registered excluded employee organizations, originally called the “Coalition of Equal Partners” (COEP), now renamed as the “Coalition of Excluded Employee Organizations” (CEEEO), proposed Assembly Bill AB 2477, which was approved by the Governor of CA in September 2002. This bill creates a collective voice for excluded employees by making recommendations of salaries and benefits to the state Legislature and Governor. This bill did not create a salary-setting commission as originally proposed; however, it did create the AB 2477 task force, or more commonly referred to as the “Excluded and Exempt Employees Salary-Setting Task Force” (EETF) to provide a recommended process that can identify and implement equitable salaries and benefit changes over time for excluded employee positions in state government. These recommendations are due to the Governor and state Legislature by July 1, 2004. The joint employee organization-management task force’s (EETF) recommendations and proposed legislation are the hope for the future for all excluded state employees in California, according to the various excluded employee labor representatives interviewed.

CHAPTER 1 - PROBLEM STATEMENT

WHAT IS THE FUTURE OF LABOR RELATIONS FOR EXCLUDED EMPLOYEES EMPLOYED IN CALIFORNIA STATE GOVERNMENT?

The future of labor relations looks bleak for California (CA) state employees, especially those “excluded” from the collective bargaining process, such as supervisors and managers. However, there is hope in the newly created AB 2477 Task Force that will make recommendations to the state Legislature and Governor concerning the process of excluded employee’s salaries. The author conducted interviews of CA labor representatives to help illuminate the labor issues excluded employees face and what is being done to alleviate these problems. As Mitch Semer, Executive Director of the Association of California State Supervisors (ACSS) summarizes in a May 14, 2003 e-mail to the author, “Timing is everything, and the current budget situation is a ‘worse case scenario.’ Until the budget problems are solved, I have little hope that significant reforms will be enacted. The solution will need a new administration dedicated to solve this problem at a time when the economy is not a central issue. Until then, we need to continue to educate the [CA] Legislature.” Much insight can be learned from the “meet-and-confer” labor relation process that excluded employees must face.

Currently, existing laws require the Department of Personnel Administration (DPA) that reports directly to the state of CA Governor’s office, to establish and adjust salary ranges based on comparable duties and responsibilities in other public employment and private sector. For two decades there has been no process in place to implement fair and equitable salary and benefit changes for excluded employees, resulting in a lag in state worker’s salaries, according to Mitch Semer. To further complicate matters, the state of California in 2003 has a record setting \$35 billion dollar deficit, which will affect every taxpayer, including state employees. CA Governor Gray Davis has proposed eliminating 1900 jobs from the state payroll, and is calling for a \$500 million dollar reduction in salaries and benefits, and if this cannot be met, 4,000 state workers may be laid-off. ¹ According to Frank Marr of DPA, the DPA will not implement the 5% salary increase that it had hoped to. If the rank and file employees do receive the negotiated 5%, and the excluded employees do not, then the supervisors’ salaries may become the same as whom they supervise. Furthering the compression of salaries will exacerbate the already tenuous situation between supervisors and subordinates and possibly cause some supervisors to demote to less stressful and higher paying rank and file positions. Health benefits are projected to increase in cost and the Governor may rescind perks such as state holidays and state retirement contributions. Salary and benefit reductions may create “morale-busters” within state service.

Another problem facing excluded employees is the current bargaining process with DPA that results in no favorable resolutions for managers and supervisors. Existing laws, such as the “Dills Act” do not require the state of CA, that is, DPA, to negotiate contracts for supervisors, but only to “meet-and-confer” for issues related to salaries, benefits and condition of work. The excluded labor organization representatives present issues to the DPA and the DPA listens and considers, but no contracts or written agreements are made. Unlike rank and file employees, excluded employees do not have collective bargaining rights. Excluded employees are designated as management, supervisors and confidential state employees. There are numerous separate employee organizations that represent 30,000 state employees excluded from collective

bargaining. These labor relations employee organizations represent a variety of professionals and each organization competes with each other for members. Consequently, the excluded employees not only lose out in the bargaining process but also end up with multiple instead of a single voice when it comes to common issues that need to be resolved with DPA. As best described in an invitation letter from the Association of California State Supervisors (ACSS) dated May 21, 2001 to members of labor organizations to join the coalition of equal partners, "Because excluded employees are specifically exempt from the collective bargaining process, representative organizations must go to the state Legislature or use the "meet-and-confer" process with DPA in an effort to try and achieve improvements in salaries, benefits and working conditions for their members. These efforts are becoming more and more frustrating and questions are not being answered."

In response to these concerns a coalition of excluded employee labor organizations registered with the DPA were asked to participate in the "Coalition of Equal Partners" by the executive officers of ACSS and CA Association of Managers and Supervisors (CAMS). This resulted in Assembly Bill AB 2477. Passed in 2002, AB 2477 created a collective voice for excluded employees' organizations to work together and "devise a new process for identifying and implementing equitable salary and benefit changes" to the CA state legislature and Governor. ² Most view this "coalition" as the future hope for having a collective voice for excluded employees in CA state government.

This paper will focus primarily on excluded employees in state service in CA, in particular supervisors in the transportation sector, who are part of excluded employees in the Department of Transportation (Caltrans). Rank and file employee's concerns will not be discussed in any detail. The fiscal year 2003-04 CA state budget crisis will affect all taxpayers in the state of CA. However, this paper will primarily focus on what is being done to improve the situation of bargaining for benefits and salaries for excluded employees in CA state government in an effort to boost the morale of excluded employees. To obtain the most current information, interviews were conducted of several selected labor representatives who work day-to-day with issues regarding excluded employees at the state capitol. Two major concerns that evolved from these interviews is the state budget crisis and the need for a process to set salaries and benefits for the state's managers and supervisors. Legislative alternatives and proposals will also be discussed. A brief history of bargaining, background of problems facing supervisors today, current events and proposed alternatives and recommendations will be discussed to cover what the future may hold for supervisors working in state government agencies.

CHAPTER 2 - DEFINITIONS

In California state government “excluded employee” generally covers all managerial, confidential and supervisory state employees. The word “supervisor” may be used in this paper to generally refer to excluded employees. An excluded employee does not have collective bargaining rights, such is the term “excluded” from bargaining, and is not a rank and file employee. The DPA can change terms and conditions of excluded employees’ benefits and salaries at any time since they are not bound by an employee organization contract. Excluded or supervisory employees can be members of an excluded or supervisory employee organization. There is no specific term in the Dills Act of California Government Code Section (GC) 3513 that uses the term “excluded”, but rather the term “except” is used in the definition of what a state employee means. The Bill of Rights for State Excluded Employees GC Section 3527(b) actually defines the term “excluded employee” and refers back to the Dills Act GC 3513, where managerial, supervisory and confidential employees are defined. (For specific wording, the Bill of Rights and Dills Act located in the Appendix).³

“Meet-and-confer” is an activity peculiar to the public sector. Under the meet-and-confer policies, the employer retains final decision-making authority- there is no obligation to negotiate and sign a written agreement. Although management sometimes favors a meet-and-confer approach, unions argue that the arrangement more closely approximates “collective begging.” “Meet-and-confer” differs in definition for excluded employees as detailed in California government code (GC) 3533 versus GC 3517 for rank and file employees included in collective bargaining.⁴

“Task Force” implies the task force formed after AB 2477, or specifically called the “Excluded and Exempt Employee Salary-Setting Task Force (EETF). The task force is a joint employee organization-management task force. “Coalition” refers to the Coalition of Excluded Employee Organizations (CEEEO) that have banded together to create one collective voice concerning excluded employee’s salary and benefit needs. The coalition has representatives in the task force.

Excluded employee labor organization representatives interviewed include the acronyms:

ACSS- Association of California State Supervisors
CASSO- Corrections Ancillary Staff Supervisors Organization
DOTS- Department of Transportation Supervisors
PECG- Professional Engineers in California State Government
CAPS- California Association of Professional Scientists

CHAPTER 3 - CALIFORNIA HISTORY OF COLLECTIVE BARGAINING

A brief history of collective bargaining in California (CA) should be discussed to give the overall perspective on the problem that faces excluded employees in CA state government today. Historically, a “spoils” system existed in CA state government, where public employees were hired not based on their merit, but rather by their political influence, according to George Clark of ACSS. Employees were hired based on political favors and were asked to leave for no reason. State, local and city governments were all covered under the paternalistic umbrella of the state of California. Public employees made more money than the private sector. However, after World War II, government employees were left behind in benefits, salaries and job security and were without a formal collective bargaining for employees.

Collective bargaining means the ability for employee organizations to “meet-and-confer” with the Governor’s appointees to negotiate a contract. However, labor relations and collective bargaining is a mixture of statutes, ordinances, executive orders, attorney general opinions and court decisions. These include federal and state jurisdictions. The National Labor Relations Act (NLRA) of 1935 (the Wagner Act), amended by the Labor Management Relations Act (Taft-Hartely Act) of 1947, is the basic labor law of the United States and relates to private, not state employees. The NLRA specifically exempts public employees. Employees of the federal government fall under Title VII of the Civil Service Reform Act of 1978.⁵ Most states have adopted forms of bargaining laws including bargaining for their public employees. This paper will focus on CA state supervisory employee issues.

California’s approach to labor relations was changed by a statute called the Ralph C. Dills Act, which covers CA labor-management relations with all CA state civil service (public) employees and the executive branch of the Government. This act was backed by the California State Employees Association (CSEA) and was signed by Governor Jerry Brown in 1978. The Public Employment Relations Board (PERB) administers and enforces the Dills Act by investigating claims of unfair labor practices, approving proposed bargaining units, conducting elections for representation, bargaining impasse procedures and seeking court enforcements. This is similar to the National Labor Relations Board (NLRB) for federal employees. This is a complex state statute that contains many PERB decisions and court reviews. Key subject areas contain representation, scope of bargaining as well as wording on impasses and strikes. The Dills Act doesn’t specifically prohibit strikes, however, the PERB has held that strikes, be it pre or post-impasse are unlawful.⁶

In addition to the Dills Act, there are four other major and a few minor public employee relation statutes under the California government codes. The major statutes include the George Brown Act of 1961, the Meyers-Milias-Brown Act of 1968 (MMBA), and the Education Employment Relations Act of 1975 (EERA). Through EERA the PERB was created to enforce this act.⁷ The MMBA covers collective bargaining with local governments, such as city firefighters.

Other Important statutes include the Higher Education Employer-Employee Relations Act (HEERA) and the State Employer-Employee Relations Act of 1977 (SEERA), renamed the Dills Act. Both are administered under the PERB. ⁸ The Excluded Employees Bill of Rights Act of 1990 (EEBRA or herein referred to as the “Bill of Rights”) covers state supervisory, managerial, confidential and other employees excluded by the Dills Act. The EEBRA is the most significant change made to benefit California state excluded employees. The purpose of the Bill of Rights is to inform these employees of their rights to participate and join an employee organization. Supervisors, managers and confidential employees, collectively referred to as “supervisors” in this paper, are considered separate from rank and file employees and cannot participate in “meet-and-confer” sessions like rank and file employees. Unlike labor-represented rank and file employees, excluded (supervisory) employee organizations cannot negotiate for memoranda of understanding (MOUs) or contracts with DPA. ⁹ However, there is an attempt in the Bill of Rights to address “meet-and-confer” for supervisors with the idea to try and “inspire dedicated service and promote harmonious personnel relations among those representing state management in the conduct of state affairs.” (The Ralph C. “Dills Act” and the EEBRA “Bill of Rights” full texts are found in the Appendix of this report).

In the past, the state of CA State Personnel Board (SPB) conducted its own internal survey comparing outside salaries to the government, and if deemed appropriate, the Legislature would approve a general salary increase, according to Frank Marr of DPA. However, when the state legislature began increasing their own salaries while other government employees were either having their pay remain the same or decreased by furlough-like programs, it caused much public outcry in the 1990s. This resulted in the creation of the salary-setting task force called the CA Citizens Compensation Commission for setting salaries of the Legislature and other elected officials. A recent change has occurred for excluded employees. Since excluded employees salaries had been lagging for many years, a salary-setting task force Assembly Bill AB 2477 was proposed by the Coalition of Excluded Employee Organizations (CEEEO) and was patterned off the Legislative salary-setting commission. According to Dennis Alexander of PECG, AB 2477 was proposed in 2000 because “there had to be a better way than to ‘meet-and-beg’ for supervisors when dealing with the DPA.” Although it went through the legislative process, at the “11th hour”, that is, at the last minute, even though they were given ample time to review it, DPA opposed the bill, saying that the bill would not pass and would be vetoed. Dennis Alexander asked Marty Morgenstern of DPA if they could get together and meet about the bill before that conclusion. Marty Morgenstern agreed that the meet-and-confer for supervisors had not been going as well as they should, but he wasn’t in favor of having excluded salaries completely out of his (DPA) control, and that he didn’t want a separate entity to set up salaries apart from the DPA. They agreed to try and come up with an agreement for all parties. At the last minute, AB 2477 was amended to become not a salary-setting commission but rather a task force, called the Excluded and Exempt Employees Salary-Setting Task Force (EETF), consisting of twelve members (six appointed by the DPA and six appointed by the employee organizations of the coalition) that would make recommendations to the state Legislature. All of the labor representatives interviewed believe that the future of

excluded employees lies within the recommendations set forth by this task force. Recommendations are due to the Governor and state Legislature by July 1, 2004. (Please refer to the Appendix for a listing of the task force members and the actual wording of the bill.)

CHAPTER 4 - INTERVIEW QUESTIONS

Several California state labor relations organization representatives were interviewed by the author concerning excluded labor relation issues. These representatives were chosen based on their availability and involvement with excluded employee issues at the state capitol in Sacramento, CA. After a brief phone discussion with professor Ron Silvia of San Jose State University, he suggested use of some patterned questions, in particular, question number one, "What do you think are the top three labor relation issues for excluded employees?" This question was asked of management (DPA and Caltrans) as well as of the labor organizations (ACSS, PECG, DOTS, and CASSO). One-on-one personal interviews were held and extensive notes were documented. Comments collected have been discussed throughout this paper. The main summary of responses have been condensed and provided in the summary section below. The typed transcript notes can be found in the Appendix.

The following people were interviewed in their office:

- Bonnie Morris, Senior Labor Relations Representative, ACSS
- Mitch Semer, Executive Officer, ACSS
- Dave Brubaker, Chief of Labor Relations, Caltrans
- George Clark, ACSS membership coordinator/historian
- Dennis Alexander, Staff Consultant, PECG
- Frank Marr, Labor Relations Officer, DPA
- Steve Booth, Staff Consultant and Larry Svetich, Principal of Hughes, Svetich Associates, Representatives of DOTS and CASSO

The following questions were provided ahead a time via e mail and asked during the personal interviews:

Thesis Topic: What is the future of CA labor relations for transportation managers and supervisors employed in CA state government? Will there be collective bargaining or status quo or some other type of negotiations for non-rank and file, excluded employees be used to achieve parity?

1. What do you think the top three (3) labor relation issues are for middle managers (supervisors and excluded employees)? For employee organizations?
2. How do you think these issues can be resolved?
3. What future do you see for improving a) bargaining rights and b) legislation for supervisors and managers?
4. Are you familiar with any proposed or recently passed legislation or collective bargaining rights for excluded employees? (I'm gathering info on AB 2477, the Coalition).
5. What do you think the impact of the state budget cuts will have on cooperative labor-management relations?
6. Please discuss differences between rank and file and excluded employees and why you think there should or should not be a distinction when it comes to employee bargaining rights.
7. Do you think changes are necessary for excluded employees? Why?

8. Please describe the brief history of how we have arrived at excluded employees. Working conditions are basically the same, rank and file in same office with supervisors, yet no collective bargaining rights, just meet-and-confer.

Interview Summary

The questions were used as a basis to introduce the thesis topic, create discussion and to gather information about the future of labor relations for excluded employees in California state government. Answers varied, however, all of those interviewed concluded that collective bargaining is not a viable alternative in the near future and that the Excluded and Exempt Employees Salary-Setting Task Force (EETF) created by AB 2477 is the best hope yet for excluded employees. Interviews were conducted not to gather survey information but rather to gain timely information from those who are working in day-to-day transactions of excluded employee (managerial and supervisory) issues; therefore, not all of the questions will be separately discussed. The most important question, number one, will be tabulated and discussed in conjunction with question five and the other questions can be tied into the overall interview discussion.

The overall response to the first and main question, “What are the top three labor relations issues for managers and supervisors?” can be summarized as follows:

Table 1 Interview Results

	#1 Priority Issue	#2 Priority Issue	#3 Priority Issue
Pay:			
Salaries, Equitable Compensation, Money, Wages	6	1	—
Budget	1	1	1
Benefits:	—	1	1
Health Insurance			
Overtime	—	1	—
Retirement	—	1	—
Retention	—	1	1
Maintaining	—	—	1
Employee Rights			
Contracting Out	—	—	1

Source: One-on-one interviews conducted by the author

As can be expected, the number one concern of the labor representatives interviewed is salaries of excluded employees. The state budget crisis has a big influence. So does parity and compression of salaries for supervisors in CA state government. The DPA is now saying that supervisors and managers, unlike rank and file members under contract, will not be receiving a

5% general salary increase on July 1st, 2003. This may “destroy labor relations”, according to Dave Brubaker of Caltrans.

Question number five ties in with question one, “What is the impact of the state budget cuts on cooperative labor-management relations?” Dave Brubaker of Caltrans summarized the current budget crisis impact well by saying, “the threat of layoffs is not conducive to good labor-management relations.” All interviewed agreed that compaction, that is, the squeeze of salaries between the first line supervisor and subordinates does not help working relationships by asking, “Why would a supervisor want the extra legal responsibilities and headaches, when he/she could demote and make the same or more money for fewer headaches?” Frank Marr of DPA thinks that the budget won’t have as much effect on cooperative labor-management relations, since these are already strong and in good shape. Rather, the budget cuts and salary reductions of supervisors will make supervisors and managers angrier. Organizations and employees may be angry in day-to-day activities at a working level and still try to maintain a professional relationship. He said that more people will be angry at the administration and not at the staff. A majority of those interviewed said that supervisors and managers are already talking about voluntary demotions because there is less stress for less than a two percent (2%) difference in pay. This is contrary to the ideal that to move ahead in your career is to advance to the next level, according to Bonnie Morris of ACSS. These proposed “take-aways” are “morale busters” according to Dennis Alexander of PECG. Money is the biggest issue until the state budget crisis is settled. There will be no growth or movement for managers or for employee organizations, according to Bonnie Morris. “Why should anyone belong to an organization where they can’t stop the DPA from reducing salaries?” She poses an excellent question. The answer lies in what the excluded employees labor representatives can do for their members. One solution may be creating legislation. Much hope is being placed on the Coalition of Excluded Employee Organizations (CEEEO) and the Excluded and Exempt Employee Salary-Setting Task Force (EETF) created by Assembly Bill AB 2477.

CHAPTER 5 - SALARIES

“Today’s Supervisor” newsletter issue by the Association of California State Supervisors (ACSS), August 2002, best summarizes one of the biggest problems affecting excluded employees: Salaries. “Existing law provides that the Department of Personnel Administration (DPA) shall establish and adjust salary ranges for each class of position in state civil service subject to any merit limits contained in the California constitution. DPA is also supposed to base these salary ranges on the principle that like salaries shall be paid for comparable to service in other public employment and in the private sector will be considered in the process.” In other words, in labor relations, DPA is the management side of bargaining and supervisory employee salaries are “at the whim of the DPA” according to the employee organizations interviewed. Although “meet-and-confer” is described in the Excluded Employee Bill of Rights (EEBRA) or known as the “Bills of Rights”, over the years rank and file salaries have increased via bargaining while supervisors and managers may or may not get increases.

There have been some salary increases for excluded employees however; they have not been across the board for all, but rather for specific groups. In a quote from the PECG “SuperInformer”, November #3-2002: “In November 2002, PECG’s Supervisory Meet-and-confer Team met with DPA to discuss recruitment and retention differentials and salary adjustments for supervisory and managerial employees. PECG’s position was that due to the severe salary lags for supervisors and managers with their public sector counterparts, DPA should restore the historic 15% differential between subordinates and their supervisors. DPA did not disagree that there are significant salary lags, but indicated that, due to the severe state budget deficit, restoring the 15% differential at this time would not be possible. A lengthy discussion on the continuing loss of employees resulted in these salary and pay adjustments.” Some salary differentials were listed effective April 1, 2002. “Electrical engineering supervisors and specialists were given a \$300 pay differential, the Supervising Control Engineers received a 10% salary increase and the Associate Chemical and Equipment Engineers received a 5% salary increase.” This by no means covers all of the Supervisors represented by PECG, and does not include any transportation-related classifications, however, it can be considered somewhat of a victory, since during these times any increase granted from DPA can be considered a win.¹⁰

In the past, according to Frank Marr of DPA, the State Personnel Board (SPB) used to conduct salary surveys of employees of similar duties in local, federal and other governments, as well as private sector surveys, and relied heavily on the data. This is a process defined as “parity” by Dennis Alexander of ACSS. The SPB would recommend salaries semi-annually to the Legislature, who in turn would decide whether to approve a general salary increase or not. Some people called it “COLA”, a cost of living increase, but it really wasn’t a “COLA.” Occupational groups for example, engineers, would perhaps move up in the pay scale based on SPB market surveys of other public agencies. Then collective bargaining came into play by the Dills Act in the early 1980s and all salary ties were broken whenever a contract is negotiated. Excluded employees were not included in the overall government employee rank and file general salary increases. Excluded employee’s general salary increases were given at different times and at different amounts. Caltrans salaries lag behind the cities of Los Angeles, Sacramento and the Bay area and counties, according to Dennis Alexander of PECG. Excluded employees, such as supervisors, are left to the whims of the DPA when it comes to salaries, according to all of the

labor representatives interviewed. Compaction can also be a problem, that is, the squeeze of salaries between the first line supervisor and the subordinates, according to Dennis Alexander of PECG. Lack of parity and compaction of excluded employee salaries add to the frustration state supervisors face.

Budget impasses are a norm in California, often lasting weeks and sometimes months. The last time the Legislature met its deadline for passing a budget was in 1986. If the budget is not passed on time, that is, by June 15, 2003, state employees face the dilemma of not getting paid.¹¹ A recent example of the salary problems that excluded employees face can be illustrated from a May 1, 2003 e-mail news bulletin from the employee organization ACSS: "In a decision handed down today, May 1, 2003, the California Supreme Court ruled that the State Controller must comply with Fair Labor Standards Act (FLSA) requirements to pay state employees' wages during a budget impasse. All state employees are entitled to at least minimum wage. However, workers exempt from the FLSA (like some supervisors, managers, Unit 3 educators and some Unit 1 employees) would not be entitled to any wages during a budget impasse. The court also ruled that all state employees, both exempt and nonexempt, who work are ultimately due their full wages once a budget is in place. "Once again, state excluded employees are truly 'excluded': excluded from the state's contractual obligations, excluded from any salary protections, and excluded from many of the considerations that should be due them as part of the state's managerial team," said Tim Behrens, president of ACSS. "However, excluded employees are always the first to be 'included' in salary take-aways and benefit reductions, and 'included' in the state's expectation of maintaining a high responsibility level without the benefit of overtime compensation or appreciation."¹² In a CSEA e-mail bulletin dated May 7, 2003, it stated that AB 1535 was passed by the Assembly committee and is now heading for the Assembly Appropriations Committee. The measure would continuously appropriate from the state's general fund to the state controller the amount necessary to pay salary and benefits to state employees when a state budget has not been passed on or after July 1, the beginning of the fiscal year.¹³ At least there are efforts by the labor organizations to make sure employees are paid their salaries and not work for minimum wage or made to work for free if the budget is not passed on time. The state controllers office, which actually prints the paychecks, recently announced on May 23, 2003, to Sacramento News 10, that state workers would receive their full paycheck amount.

Inferior pay can result in quality supervisory and managerial employees leaving state service for higher paying private sector or non-state salaries. In response this disparity, CA assembly member Darrel Steinberg proposed AB 2477 in February 2002. The bill would have established the Excluded Employee Salary-Setting Commission to recommend to the CA state Legislature salaries and benefits for excluded positions in state government.¹⁴ AB 2477 resulted not in a salary-setting commission, but rather an Excluded and Exempt Employees' Salary-Setting Task Force (EETF) to make recommendations to the state Legislature. AB 2477 will be discussed in detail in the next section.

With the current budget situation, most employee organizations interviewed said that they don't see any pay raises in the near future for supervisors. When asked "What is the likelihood that excluded employees will see a salary increase as a result of the task force?" Frank Marr of DPA answered, "Zero." Of course this has to do with the state budget, but also DPA will be waiting to

hear what the EETF has to recommend, and that won't be until 2004. Also, the surveys that are being conducted by the task force may take a while, so there may be a time lag. He said to not bet on the state to be out of the budget crunch in two years.

According to Derek Gammon, PhD, member of CA Association of Professional Scientists (CAPS) and staff toxicologist for Cal/EPA, on May 22, 2003, toxicologists working for the state of California Environmental Protection Agency (Cal/EPA) make less money than if they would work for the federal equivalent agency, US EPA. Salaries for US EPA toxicologists are 45% more in the bay area and 25% higher in Sacramento, CA than the equivalent work done by a state Cal/EPA toxicologist. Supervisors make five percent above the staff toxicologists and managers make another five percent above the supervisors. However, the five percent difference in rank pay is not the case with the state Department of Transportation for their transportation engineers.

Table 2 shows the difference in pay scales for transportation-related engineers in the Sacramento local city and county governments compared to the Department of Transportation (Caltrans). As shown, the pay scales of engineers in local agencies are higher than those in state service. Also shown, the top pay scale comparison of a senior engineer over his/her subordinate is \$549 or 8%. According to the labor representatives interviewed, overall, supervisors working in CA state government make 0-5% more than their subordinates. If the employee works ten hours of overtime per month to earn \$522, he/she will be making the same amount as his/her supervisor. Supervisors are not paid overtime and typically are expected to put in the amount of time needed to complete the job, and this typically easily runs over ten hours per month. If the senior engineer has been recently promoted, he/she could theoretically be making less pay than their engineer they supervise. This pay scale difference can cause morale issues and resentment between supervisors who are making less pay than their subordinates. Also, state engineers receive less pay than private firms, in some cases, up to 50% less. Such is the example of a Caltrans engineer that was hired by the Golden Gate Bridge Commission. This example was mentioned by almost all of those labor representatives interviewed. How can quality engineers be retained on such small salaries?

Table 2 Monthly Salary Comparisons

<i>Employer</i>	<i>Salaries</i>		<i>Pay Difference</i>
<u>County of Sacramento</u>			
	Starting	Top	
Assistant Civil Engineer Level 1	\$3,450	\$3,623	
Assistant Civil Engineer Level 2	\$4,152	\$5,046	
Associate Civil Engineer	\$5,290	\$6,125	
Senior Civil Engineer	\$6,421	\$7,080	
Principal Civil Engineer	\$7,056	\$7,780	
<u>City of Sacramento</u>			
	Starting	Top	
Assistant Civil Engineer	\$3,724	\$5,240	
Associate Civil Engineer	\$4,520	\$6,360	
Senior Transportation Engineer	\$5,001	\$7,502	
Supervising Transportation Engineer	\$5,354	\$8,031	
Principal Civil Engineer	\$5,819	\$8,729	
<u>Department of Transportation- Caltrans</u>			
	Starting	Top	City pay over Caltrans
Transportation Engineer Civil, A	\$3,273	\$3,788	
Transportation Engineer Civil, B	\$3,747	\$4,550	\$690
Transportation Engineer Range D	\$4,635	\$5,632	\$728
Senior Transportation Engineer	\$5,087	\$6,181	\$1,321
Supervising Transportation Engineer	\$6,174	\$6,810	\$1,221
Principal Civil Engineer	\$6,786	\$7,484	\$1,245
Difference from Top Senior Pay to Top Transportation Engineer Range D Pay			\$549
Overtime Average 1.5 X 10 hours			\$522

Sources: State Personnel Board: <http://www.spb.CA.gov/spbpay2rd.cfm>

City of Sacramento: <http://www.cityofsacramento.org/personnel/>

County of Sacramento: <http://hra.co.sacramento.CAus/employ/opp/content.htm>

CHAPTER 6 - ASSEMBLY BILL AB 2477

What is AB 2477 and what does it have to do with excluded employees in California state government? As best described in an invitation letter dated May 21, 2001, from the Association of California State Supervisors (ACSS) to members of labor organizations to join the coalition of equal partners, “Because excluded employees are specifically exempt from the collective bargaining process, representative organizations must go to the state Legislature or use the meet-and-confer process with DPA in an effort to try and achieve improvements in salaries, benefits and working conditions for their members. These efforts are becoming more and more frustrating as answers to our questions and solutions to our problems remain largely elusive.”

This frustration in bargaining is another way of saying what PECCG and ACSS labor representatives refer to as the “meet and beg” process. DPA is only required by the Bill of Rights to “meet-and-confer” with excluded employees and go over the requests of the employee organizations and consider their input. DPA is not required to produce a written document or contract, according to George Clark of ACSS. According to Frank Marr of DPA, “meet-and-confer” has two distinct meanings depending if you are considered rank-and-file or classified as supervisory. For rank and file employees, it actually describes to meet in “good faith” to negotiate a contract; however, for supervisory employees, DPA listens to ideas presented to them from the labor organizations and “considers them to the extent deemed reasonable.” According to the AB 2477 website from ACSS, “Existing law requires DPA to establish and adjust salary ranges for each class position in state civil service. DPA is supposed to base these salary ranges on the principle that like salaries shall be paid for comparable duties and responsibilities, and that prevailing rates for comparable service in other public employment and in the private sector be considered in the process. But for two decades there has been no process in place to ensure that is being done.”¹⁵

In response to these concerns, a coalition of 17 labor organizations registered with the DPA were asked to participate in the “Coalition of Equal Partners” by the executive officers of ACSS and California Association of Managers and Supervisors (CAMS) in May 2001. The DPA director Marty Morgenstern met with the coalition members in August 2001. The Coalition and DPA representatives agreed that the current system to address salaries and benefits for excluded employees was not working properly.¹⁶ Realizing that more than talk was needed, the Coalition of Excluded Employee Organizations (CEEEO), introduced Assembly Bill AB 2477, sponsored by Assemblyman Steinberg of Sacramento, in February 2002. AB 2477 creates a partnership between DPA and excluded employee organizations that will establish a workable and logical process for setting salary and benefit levels for the state management’s team.¹⁷

Originally the state assembly bill AB 2477 was written to create a salary-setting commission patterned off the California Citizens Compensation Commission that is currently in place for the salary determination for the state Legislature. The intent was to create a collective voice for excluded employees and to make recommendations of salaries and benefits to the CA state Legislature. At the final hours before passage, or at the “11th hour”, according to Dennis Alexander of PECCG, this bill was amended from creating a salary-setting commission to amending government code 19836.1 and to create a task force, called the Excluded and Exempt Employee Salary-Setting Task Force (EETF). The bill was approved by the Governor Gray

Davis on September 28, 2002 and was chaptered into law. Twelve participants: six appointed by the DPA and six appointed by the DPA-registered excluded labor organizations, are required to participate. As per AB 2477, "The task force shall, prior to July 1, 2004, recommend to the Governor and the Legislature a process that can identify and implement equitable salary and benefit changes over time for excluded and exempt positions in state government." All of the excluded employee labor representatives interviewed consider this "task force" as the future hope for having a collective voice for excluded employees in CA state government. Dave Brubaker of Caltrans management disagrees, saying, "AB 2477 will result in nothing." What happens to the recommendations made will remain to be seen. The AB277 task force has several required considerations to review, including cost of living, current excluded employee salaries and benefits as well as the comparison of comparable salaries not only within CA but the federal government and private sector. A complete text of AB 2477, a list of these DPA -registered organizations as well as the coalition and task force members are listed in the Appendix.

CHAPTER 7 - BUDGET

The Impact Of The Budget On State Employees

With the state of California budget's shortfall estimated at \$35 billion, every taxpayer will be affected, especially the state employee. State employees are expected to absorb some of the pain as Governor Gray Davis and the state Legislature work toward balancing the books.¹⁸ With the May budget revise not expected to yield any good news for state workers, the future of excluded employees in CA state government looks bleak. The DPA and Governor's offers of salary, pension or benefit increases to achieve parity will not be happening any time soon, according to the labor representatives interviewed. Every day there are newspaper articles about the state budget crisis. Tax increases are being proposed for public utilities, motor vehicle license fees, cigarettes, alcohol and ammunition. Although some of these are non-essential items, increasing taxation on items of goods sold as well as on public services cut into each taxpayer's personal budget. State workers are also consumers who must pay taxes. California is facing a budget deficit of a magnitude never before encountered by a Governor, the Legislature or state employees. Governor Gray Davis has proposed eliminating 1,900 jobs from the state payroll, on top of the 10,000 vacant positions taken away in fiscal year 2003-04. This is in addition to the fact that most departments have been working under a hiring freeze for more than a year. The Governor is calling for \$500 million in salary and benefit reductions. If these demands are not met, he has said that 4,000 additional workers will be out of a job.¹⁹

Take-Aways And Layoffs

Announcements have been made that excluded employees should not expect the five percent (5%) pay raise that rank and file employees have negotiated in their respective memoranda of understandings (MOUs). Layoffs and take-aways instead of increasing salaries and benefits are being offered by the DPA. Dave Brubaker of Caltrans, as well as the other employee organizational representatives that were interviewed for this paper predicted these take-aways and/or layoffs.

TAKE-AWAYS

Take-aways proposed by the DPA to state workers are being mentioned and covered on the various employee organization websites such as the California State Employees Association, CSEA. In an article entitled "Waiting for Spring," dated April 7, 2003, CSEA urges state workers to lobby lawmakers and lists what take-aways DPA proposes for all state workers. The article reads, "Waiting for Spring? Not quite. While the May (budget) Revise will tell Californians exactly what spending cuts the governor and the Legislature think will be needed to close the \$35 billion budget gap, CSEA is not waiting for the axe to fall before taking preventive measures. The Department of Personnel Administration (DPA) recently unveiled its anti-worker proposals for our nine units. In them is outlined, in no uncertain terms, its intention to pull \$855 million out of workers' pockets for fiscal year 2003-04, currently under consideration in the Legislature."²⁰

Takeaways include:

- Salary increase deferrals
- Lowering or freezing future salary or benefit expenditures
- Layoffs, furloughs and workweek reductions
- Elimination of paid holidays
- Allowance and reimbursement changes
- Higher out-of-pocket healthcare costs.”

CSEA is planning on visiting all 50 lawmakers face-to-face by mid-May to educate lawmakers about how essential our jobs are to the economy. The article quotes, “These kinds of visits promote working relationships with the legislators who will vote on the state budget as well as other policy decisions that affect the lives of nearly 140,000 CSEA members and their families. CSEA is, after all, the largest union representing state employees. If we talk, chances are they’ll listen.”

In a letter from Gray Davis, Governor of the State of California, dated April 1, 2003, addressed to Agency Secretaries and Department Directors and signed by Marty Morgenstern, Director, Department of Personnel Administration (DPA) and Steve Peace, Director, Department of Finance (DOF) stated: “ The 2003-04 Governor’s Budget reduced employee compensation costs by \$855 million (\$470 million General Fund). While the Administration is hopeful that the proposed reduction in employee compensation expenditures can be negotiated through the collective bargaining process, the State must be prepared to implement other alternatives should the proposed reduction not be realized in a timely manner. At this time, Departments are required to prepare a reduction plan and associated layoff plan that would reduce their personal services budgets by at least 10 percent in additional ongoing costs. The fund split between General Fund and other funds for departmental plans should mirror State Operations funding for the department. Departmental directors should be prepared to address and defend why they selected the particular positions and the expected programmatic impact if these positions are eliminated. No later than April 22, 2003, each department must submit its reduction plan to the Department of Finance and its associated layoff plan to the Department of Personnel Administration. The Department of Finance will release a Budget Letter shortly providing instructions for the reduction plan.” This letter does not paint a rosy picture for excluded employee salaries in the near future.

LAYOFFS

The idea of a layoff looming over an employee’s head instead of the possibility of a future promotion cannot produce a positive work environment. In other words this will affect the morale not only of the excluded employees who may need to be demoted but also the young engineers and professionals who want to make a career working for the state. With layoffs or delayed pay raises, many of the productive people may either be laid off or opt to find employment elsewhere for better pay and working conditions, according to Bonnie Morris of ACSS and Steve Booth of DOTS and CASSO. Many jobs can be considered hazardous, such as a correctional officer or resident engineer working on highways and bridges. These professionals do not want to subject themselves to

hazards for such little pay and benefits compared to other local agencies and private firms. Also, for those who decide to stay in state government, the budget crisis will lead to more of the productive people being burdened with more work due to hiring freezes and layoffs. Because layoffs are determined mostly in part by years of service and seniority, the newly hired staff as well as young people just out of college will be lost with their fresh ideas and enthusiasm. Quality will drop and not as much detail to planning, design, construction and overall execution of contracts and errors and omissions will occur because there will be less staff to do more work. This could lead to compromises in the areas such as safety and security, e.g. poor bridge designs. The pros of these layoff actions may be to make the state a leaner, cleaner and meaner running organization and to redistribute personnel to perform the essential functions. Activities will be eliminated and workloads will be adjusted. A more business-like approach of hiring consultants and private firms to overtake government positions is something that some (Republicans) would like to see happen, according to Steve Booth of DOTS. However, it has been proven by PECG and the Legislative Analyst's Office that it costs less money and better services are provided by a state engineer, for example, than by a private consulting firm. If the Governor's office is truly interested in the taxpayer's best interest, then some detailed studies should be conducted instead of laying-off the employees or slashing salaries. Hopefully the salary information gathered by the coalition task force will illuminate and clarify what steps the Governor should take concerning the employment of excluded state workers.

ALTERNATIVES TO LAYOFFS

Management and DPA have been considering different ideas such as possible take-aways instead of layoffs. Below are a few suggestions that have been floating around that were mentioned during the interviews and in various employee organizations' e-mail bulletins. These are not necessarily what DPA proposes. At the end is a list of what CSEA has suggested be done instead of reducing people's salaries and benefits: Cut government waste.²¹

- Personal Leave Program (PLP) - For 19 months ending in July 1992 all state employees had a reduction in pay by five percent (5%) in return for earning one day of leave per month.
- Golden Handshake- A retirement incentive for workers close to retirement age. It would accomplish two things: Move the highest paid workers out of state service and allows younger, entry-level workers to remain on the job and perform the overwhelming workloads already in place due to the state hiring freeze. Many workers would retire early with the right incentives that would be good enough pay to retire on.
- Holidays- Currently state workers receive 13 holidays per year, ²²which are more than other local, federal or private workers. By taking one or two holidays away, this would increase two more days of work for each state employee per year.
- Salary Increase Deferrals- The idea is to not give up hope of ever having a pay raise, but to defer it to an agreed upon future date.

- Uncover and Cut Government Waste- A proposal by CSEA as an alternative to cutting jobs, program reductions and takeaways to balance the budget. Many wastes have been reported in various government spending. Some of CSEA suggestions are:
 - Stop contracting out non-critical state jobs. PECG has proven that state engineers cost less than consulting firms to produce projects. Pay competitive rates to state workers, such as Registered Nurses and start saving money.
 - Hire more tax auditors at the Board of Equalization. On average, auditors take in \$450,000 in newly found savings over their salaries. The agency is short 30 auditors. Filling those positions would bring in an estimated \$15 million.
 - Stop redecorating and remodeling at state offices, boards, agencies and commissions.
 - Cut the governor's salary and those of his appointees by 10 percent.
 - Reduce Legislators' salaries by 5 percent (Last year, 2002, the Legislature got a 4 percent pay raise)
 - Eliminate all legislative per diem spending.
 - Halt all unnecessary capital spending, i.e. cars, trucks, computer equipment.
 - Freeze all state spending on new construction, except where it's needed for health and safety.
 - Cut costs on travel, cell phones and state car usage unless fully justified

Labor-Management Relations Concerning the Proposed Budget Take-Aways

An April 1, 2003, letter signed by Marty Morgenstern, Director of the Department of Personnel Administration to all Excluded Employee Organizations regarding the budget crisis stated: "The Department of Personnel Administration (DPA) is prepared to meet with your excluded employee organization, pursuant to the Government Code Sections 3530 and 3533 on the effect of the budget crisis on your members. As you are certainly aware, California's current budget picture is bleak and the State's options are limited. There is a very real possibility that excluded employees will see reductions in take home pay and other benefits after July 1, 2003. The input of your organization will be important in helping us arrive at a final course of action on excluded employee compensation. To arrange a meeting, please contact Frank Marr, DPA Labor Relations Officer, at (916) 324-0504. He is also available to respond to any questions or concerns that you or your staff may have." Frank Marr has been available for questions, and these proposed take-aways are causing much tension not only for the employees, but also for the supervisors and managers who must make difficult decisions regarding expenditure reductions.

From the ACSS news dated April 22, 2003, there was a report on how the meeting went with ACSS and DPA regarding the April 1, 2003 letter. The meeting discussed take-aways, the serious compaction problem and the Golden Handshake. It stated, "The news wasn't good for anyone." "California's unprecedented \$34.6 million budget deficit is a mind-boggling morass

that is going to affect every taxpayer in the state, especially state employees,” Morgenstern explained, referring to the task at hand. The “pain” he refers to for state employees means a temporary rate reduction: deferring scheduled salary increases, canceling the state-paid five percent retirement rate for excluded employees scheduled for July 1, lowering or freezing future salary or benefit expenditures, and initiating layoffs, furloughs or other similar actions, all accomplished through a proposed budget bill control section authorizing the Director of Finance to reduce departments’ budgets, but that wasn’t all. The Director also said it is possible that some scheduled holidays for state employees will be turned into floating holidays, potentially saving the state millions in overtime costs. And, with no money in the budget for health benefit increases, state employees likely will have to absorb double digit increases in their insurance premiums next fiscal year. “We have to do these things because we want to limit the number of employees we have to lay off. We want to find an intelligent and reasonable way to deal with this problem... and we want the pain to be fair and equitable,” Morgenstern added. ACSS President Tim Behrens offered several suggestions in an attempt to mitigate the serious negative impacts these reductions and changes will have on excluded employees. Behrens’ primary objective is to “encourage DPA and the Davis administration to focus more on revenue enhancements instead of compensation reductions.” As for the Golden Handshake (retirement incentive), Dennis Batchelder, executive director of CA Association of Managers and Supervisors (CAMS) and spokesman for the Coalition of Excluded Employee Organizations, a group of 12 DPA-registered organizations representing state excluded employees (ACSS is a chartered member) asked about the viability of a Golden Handshake. The question is, “Will the Golden Handshake save us money?” Morgenstern said, and then he quickly answered, “[The Department of] Finance projects that it would cost us a lot of money to offer this to all state employees.” Jerry Fountain, ACSS’ director at large, suggested offering an early retirement package to excluded employees only. Morgenstern’s immediate response was, “That’s what I had in mind from the very beginning, a targeted handshake.” He explained that an across-the-board golden handshake would reduce the size of government, but it wouldn’t necessarily reduce the cost of government, which is what DPA is mandated to do. But an offer to the state’s management team alone might very well bring the desired results. In trying to offset the cascade of take-aways DPA is proposing for excluded employees, ACSS Vice President Olin King said that anything that is taken away from excluded employees and not rank and file will only exacerbate an already serious compaction problem. Morgenstern responded that he would “like to avoid having excluded employees take more of the burden of their fair share” and is very willing to listen to any ideas from ACSS or other excluded organizations that might offer a new or creative solution to the budget crisis. “We can do something for excludeds and another for rank and file,” he said. “But we have to do something substantial overall to fix this budget problem. It’s not going to go away by itself.”²³ While the DPA Director paints a bleak picture for excluded employees, the Director of Caltrans seems to be willing to work with his employees to resolve the budget crisis. With the current release of the May Revise budget, there seems to be more hope overall for employees working within the transportation sector in CA state government.

Current News – May Revise

In a May 15, 2003 memorandum from the Director of the state Department of Transportation (Caltrans), Jeff Morales, to all employees, subject: Proposed May Revision of the Governors’

2003-04 Budget, "On May 14, 2003, Governor Davis released the May Revision of the proposed 2003-04 budget. I am pleased to report that the May Revision maintains the Governor's outgoing commitment to transportation, and, if enacted, would allow us to continue working at the record pace we have in recent years." A list of budget project updates was listed, with the director summarizing "These proposed budget actions are good news for the Department. If these proposals are approved by the Legislature, the Department will have a total budget of \$6.7 billion and 23,171.7 positions, approximately 95 percent of the current budget. Although this is good news, it is important to note that the proposal still requires Legislative approval... Given this very difficult fiscal times that we are experiencing, this budget shows a strong commitment to transportation from this Administration." In a May Revise fact sheet sent to all Caltrans Divisions on May 15, 2003, states, "The Governor's May Revise restored \$321 million and 1,656 positions to the Department's fiscal year (FY) 2003-04 budget as compared to the January 'proposed' Governor's budget."

In a Department of Transportation FY2003-04 Governor's Budget May Revise Fact Sheet, also enclosed to all Caltrans Divisions on May 15, 2003 states the Position Impact:

"At this time, the Department of Transportation is not anticipating layoffs. The May Revise is providing the Department with 1,656 budgeted positions over the January Budget. Despite the very difficult State budget situation, these positions will make the year-to-year change in authorized level of positions for the Department to be a reduction of 189.9 positions, instead of more than 1800 positions reduced in the January budget.

The above amounts do not include funding for the state employees salary increase scheduled for July 1, 2003. The Governor has asked the unions to renegotiate this provision of current contracts. If no resolution is reached on this issue and the salary increase is provided, the net effect is that the proposed budget is under-funded by 5 percent.

All departments have been required to prepare and submit a 10 percent reduction plan for personal services based upon the January budget. The purpose for this plan was to identify savings to fund the salary increases. With the significant changes in the May Revise, we will follow up with Department of Personnel Administration and the Department of Finance regarding the need to update the 10 percent reduction plan.

Further, the May Revise proposals are subject to Legislative review and approval before the budget is final. Therefore, there is no definite assurance that layoffs or other actions will not occur until this final legislative approval is secured. However, based on the number of positions added in the May Revise, the Department's outlook is much more positive.

The May Revise is the Governor's proposal to update and amend the Budget that was presented in January. The next step is for the Legislature to review the Governor's proposals, adopt or amend them and pass the State Budget by June 15."

Although this news is much more hopeful than the proposed budget in January, it still indicates that the Governor wants to take-away the negotiated five percent (5%) general rank-and-file salary increase; therefore, the excluded employees, who have no contract, will not be offered the salary increase, according to the labor representatives interviewed. Even with the brighter future proposed by the May Revise budget, there still are cuts to be made, some borne by the state employees by either reducing salaries or staff (layoffs). According to Dave Brubaker, Chief of Labor Relations, Caltrans, even in budget surplus years, "management is reluctant to bargain and give pay raises." He said that is because you need to look at whom the DPA represents: the

taxpayer. From the Governor's point of view, pay raises creates less benefit to the taxpayer. Right now the labor organizations have no incentive to come back to DPA and give up what they have negotiated for: salary increases. If labor organizations do not agree to cut the negotiated salary increases, then there may still be layoffs. According to Dave Brubaker, labor organizations prefer layoffs to salary reductions because it affects a lesser amount of overall employee members. In either case, the author agrees with his statement, "Layoffs are not conducive to good-labor management relations."

CHAPTER 8 - ALTERNATIVES AND RECOMMENDATIONS

Four alternatives will be discussed with recommendations following each alternative's discussion. The summary of recommendations and conclusion will then follow in the final chapter.

Alternatives:

- I. Do Nothing and Keep Status Quo
- II. Propose Legislation
 - a. Create Collective Bargaining
 - b. Limited Enhanced Benefits to Acknowledge Excluded Employees
- III. Conduct Surveys and Hire Public Relations Consultant to Create a Marketing Plan to Educate Legislators and the Public
- IV. Follow the AB 2477 Task Force's Recommendations

Alternative I. Do Nothing- Status Quo

Maintaining the status quo would allow excluded employees' labor relations to be determined by the Director of DPA, Marty Morgenstern. DPA would still listen to the ideas presented by the labor organizations and then DPA would consider these ideas to an extent deemed reasonable by Marty Morgenstern. Excluded employees would continue to be left out of the collective bargaining process. Based on the current state budget crisis, there is a real possibility that excluded employees will see reductions in not only their take home pay, but also other benefits after July 1, 2003. The current meet-and-confer process between DPA and the excluded employee organizations does not result in any benefit to the actual excluded employees.

RECOMMENDATION

Currently with the salary and benefit take-aways proposed for excluded employees, it is not recommended to sit down and let DPA take away what they want from excluded employees. Action needs to be taken to ensure that state excluded employees are adequately compensated for their work. If nothing is done, salaries, benefits, working conditions and overall morale of excluded employees will deteriorate. In addition, quality of work will suffer to the extent that safety and security issues may arise. Therefore, maintaining the status quo is not recommended.

Alternative II. Propose Legislation

A. CREATE COLLECTIVE BARGAINING FOR EXCLUDED EMPLOYEES

The proposal would be to have "meet-and-confer" in the Excluded Employee Bill of Rights (EEBRA) Government Code Section 3533 to read and have the definition of "meet-and-confer in good faith" of the Dills Act Government Code Sections 3517 and 3517.5. (For actual wording, please refer to the Appendix.) This essentially would require a collective bargaining for managers, supervisors and confidentials as defined in the Bill of Rights. Currently the Bill of

Rights defines, “ ‘Meet-and-confer’ means that they shall consider as fully as the employer deems reasonable such presentations as are made by the verified supervisory employee organization on behalf of its supervisory members prior to arriving at a determination of policy or course of action.” It is proposed to cut this wording out and use the same wording currently used in the Dills Act: “ ‘Meet-and-confer in good faith’ means that the Governor or such representatives as the Governor may designate, and representatives of recognized employee organizations, shall have the mutual obligation personally to meet-and-confer promptly upon request by either party and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation prior to the adoption by the state of its final budget for the ensuing year. The process should include adequate time for the resolution of impasses.”

Larry Svetich (DOTS, CASSO) and Dennis Alexander (PECG) have offered this as possibly the best solution for excluded employees. Dave Brubaker (Caltrans) also discussed this as a possibility; however, “this would require a change in state law. Then there would be a supervisor’s bargaining unit (BU) that would be determined by the PERB, and testimony would be taken to decide about creating a BU and the group would have to get together with supervisors with common interests, not just one group”. “Currently, the legislature doesn’t get involved in bargaining,” according to Dave Brubaker, Caltrans. The current state structure has the Dills Act to have representatives to meet-and-confer in good faith. Supervisors, via their labor organizations, meet-and-confer with DPA; however, they meet not for good faith, but just to talk. Good faith means to create a contract. To supervisory organizations, DPA can say, “Thanks for your point of view. We’ll consider it”. Then it’s up to the DPA and the Governor to decide. “What is pivotal is “meet-and-confer” because what we do now is “meet and beg”, according to Bonnie Morris of ACSS. This echoes what Dennis Alexander says, “What supervisors now have is basically ‘meet and beg’”. “There is a difference when the term ‘meet-and-confer’ is used for rank and file employees versus supervisors”, says Dennis Alexander of PECG. Meet-and-confer in “good faith” for rank and file employees, such as those represented by PECG for example, means that the state of California via the DPA and the employee bargaining unit, (PECG) endeavor to reach a memorandum of understanding (MOU) or contract. However, for excluded employees, the Bill of Rights (EEBRA) states that DPA is required to meet and then go over the requests of the employee representatives and only consider their input. DPA does not have to produce a written document. For supervisors and excluded employees, there is not an exchange or written proposal. In all cases, managers are not covered.”

RECOMMENDATION

Pros: During the interviews, almost all agreed that having collective bargaining would be the best thing for excluded employees. Larry Svetich and Dennis Alexander said that collective bargaining would probably be the best solution for improving excluded employees’ current plight. Then a MOU could be created and excluded employees would be able to bargain and have contract negotiations instead of waiting to see what the rank and file got and hoping DPA will throw the same benefits to supervisors, or receive just “leftovers.” Dave Brubaker, Caltrans, also agreed to recommend legislation granting supervisors collective bargaining rights in bargaining units that approximate those for rank and file. Legislation would require supervisory and managerial pay and benefits negotiated after rank and file agreements, but would become effective the same date as rank and file, no matter how long the supervisory bargaining lasts.

Cons: Although in theory collective bargaining for excluded employees' sounds like a great idea, "It will never happen", according to Steve Booth of DOTS and the majority of those interviewed, including ACSS, PECG and DOTS representatives, "because the employee organizations simply don't have the funds," according to Bonnie Morris, ACSS. "Elections will need to be held to determine who will be the excluded employee's representative, and this could cost millions of dollars." Larry Svetich of DOTS explained that although the state via PERB would conduct and pay for the elections if legislation was passed for collective bargaining for supervisors, it still would be very costly to the labor organizations. Fliers, campaigning and attracting members can be very costly. The Dills Act in 1978 was very costly to the labor organizations. Some existing organizations that represent excluded employees may lose members to the newly created organization. The smaller groups may get eaten up and this could be daunting, according to Bonnie Morris. She says that we would need to consider how this would be implemented. "ACSS doesn't want this. Probably PECG doesn't want this either. "Will there be a separate bargaining unit? Or will there be one exclusive representative? How will PERB divide its members into units? Currently there are twenty-one separate bargaining units. Will they all be lumped into one rank and file? The state of California will have to create positions and there are already several hundred of those to manage."

Perhaps one day, collective bargaining can be considered for excluded employees, according to the labor organizations interviewed. "Marty Morgenstern (of DPA) won't be around forever," according to DOTS and ACSS representatives. In conclusion, although ultimately it may be the best thing for excluded employees, no one foresees this happening in the near future, especially with the proposed state budget cuts that include state employees' wages and positions. This alternative is not recommended at this time.

B. PROPOSE LEGISLATION TO ACKNOWLEDGE EXCLUDED EMPLOYEES

ACSS has proposed several legislative items as summarized below. According to Bonnie Morris of ACSS, the intent is not to change much except to give greater acknowledgement of the hard work done by excluded employees. Any legislation with a monetary attachment will not get passed this year (2003). With the budget deficit, legislative proposals that cost more than \$150,000 will not get through the appropriations committee arm of the legislative process, but rather just sit and die in the suspense file. However, some attempt needs to be made to try and represent and speak for their constituents. Below are a summary total of five legislation proposals as of May 2003, four taken off the ACSS website and one legislative proposal from CSEA website:²⁴

SB 579: Public meeting requirement for implementing salary/benefit reductions for excluded employees

Background: Under current law, the Department of Personnel Administration has complete discretion for establishing and adjusting salary ranges and benefit levels for excluded employees, subject to the merit limits contained in the California Constitution and in establishing or changing these ranges, to consider the prevailing rate for comparable service in other public

employment and in private businesses, as defined in subdivision (b) of Section 3527 of the Government Code. State excluded employees are not subject to collective bargaining and, therefore, have no negotiation rights.

What this bill will do: This bill will guarantee that the Department of Personnel Administration cannot implement a salary or benefit reduction for state excluded employees unless and until the issue is heard in a noticed public meeting of the appropriate policy committee of each house of the Legislature.

Status: April 28, 2003: Senate Public Employment and Retirement Committee: PASSED (3 aye votes [Soto, Escutia, Karnette], 2 no votes [Ashburn, Oller]). Moves to the Senate Appropriations Committee. ACSS Legislative Analyst Sherrie Golden and Sr. Labor Relations Representative Bonnie Morris testified at the above hearing on behalf of our members.

AB 697: Revisions to State Excluded Employees Bill of Rights

Background: In 1990, the Legislature passed into law the ACSS-sponsored Bill of Rights for State Excluded Employees. The purpose of this bill was to redefine state law as it relates to state excluded (supervisory, managerial and confidential) employees. During the 2002 legislative session, through AB 2839 (Kehoe), several amendments to the Bill of Rights for State Excluded Employees were recommended. ACSS believes this bill was vetoed due to the inclusion of language proposing arbitration of grievances for excluded employees and, therefore, is reintroducing the bill without that language.

Over the past decade, excluded employees have continually carried the burden of increased workloads, higher supervisory ratios, less appreciation for their leadership contributions in running the State of California, and in many cases earning salaries that are below the salaries of those they supervise.

What this bill will do: Proposed amendments to the current language give added recognition to excluded employees for their hard work and dedication to state service. ACSS-sponsored AB 697 aims to provide a much-needed morale boost. ACSS believes that such a boost is especially needed this year when managers and supervisors are shouldering the additional burden of massive budget cuts, hiring freezes and reductions in staff. There is also a need to do some minor clean up of the current language to add clarity.

Status: April 10, 2003: Assembly floor: PASSED (72 ayes, 0 noes). Is currently in the Senate.

AB 1463: Increase leave credits for State Excluded Employees

Background: Excluded employees receive one additional hour of vacation/annual leave monthly over that received by rank-and-file employees. This is one of the few increased benefits that excluded employees receive that rank and file employees, who are covered by collective bargaining agreements, do not.

What this bill will do: AB 1463 would amend DPA Law, Sections 19858.1(c) and 19858.4 to increase excluded employees' accrual for vacation/annual leave by two hours each month, making the total additional accrual each month for all excluded employees three (3) hours. In today's climate of budget cuts, downsizing and increased workloads, this a small, but calculable,

gesture of appreciation for the work performed by the state's management team. It would also serve as an incentive to prospective candidates to promote into supervisory and management classifications.

Status: April 23, 2003: Assembly Committee on Public Employees, Retirement and Social Security: PASSED (8 aye votes, 0 no votes). Is currently in the Assembly Appropriations Committee. To date, there is no registered opposition to this bill.

AB 1619: Expansion of items considered PERS compensation for Excluded Employees

Background: This bill would change Public Employees Retirement Law, Section 20636(6)(B) to allow for expansion of the items considered compensation for retirement purposes. Section 20636(6)(B) allows DPA to "determine which payments and allowances that are paid by the state employer shall be considered compensation for retirement purposes for any employee who either is excluded from the definition of state employee in Section 3513, or is a non-elected officer or employee of the executive branch of government who is not a member of the civil service." In DPA Law, Section 3513, the term "state employee" specifically excludes managerial, supervisory and confidential employees, as well as employees of DPA and professional employees of the Department of Finance.

What this bill will do: This bill will change the language in GC Section 20636(6)(B) to include managerial, supervisory and confidential employees, as well as employees of DPA and professional employees of the Department of Finance, and will allow them to be eligible for additional state employer-paid allowances for retirement purposes.

Status: April 23, 2003: Assembly Committee on Public Employees Retirement and Social Security: PASSED (8 aye votes, 0 no votes). Moves to the Assembly Appropriations Committee. To date, there is no registered opposition to this bill.

AB 1535 Maintaining state employee's pay salary

Background: The bill that would end the paycheck uncertainty that state workers face every time the Legislature fails to pass the state budget on time. The measure would continuously appropriate from the state's general fund to the state controller the amount necessary to pay salary and benefits to state employees when a state budget has not been passed on or after July 1, the beginning of the fiscal year.

What this bill will do: The continuous appropriation to the state's general fund for paychecks to state workers would take effect immediately if approved by two-thirds of the Legislature and signed by the governor.

Status: On a vote of 8-1, the Assembly Public Employees, Retirement and Social Security Committee passed the measure, authored by Assembly member Rudy Bermudez, D-Lancaster. Sponsored by the California State Employees Association, It now heads for the Assembly Appropriations Committee.

RECOMMENDATION

All five of these legislative proposals, the first four by ACSS and the last by CSEA are recommended. It is understood at this time and confirmed by those that were interviewed that any proposed legislation that costs over \$150,000 will probably be tabled and never be seen again or sit in the appropriations committee in the state legislature and fade away. However, efforts need to be made by the employee organizations to support their membership. The four ACSS proposals aim to provide a much-needed moral boost. ACSS believes that such a boost is especially needed this year when manager and supervisors are shouldering the additional burden of massive budget cuts, hiring freezes and reduction in staff. There is also a need to do some minor cleanup to the current language to add clarity, according to Bonnie Morris of ACSS. As for the one proposed CSEA bill, the cost is considered a wash: the employees must eventually get paid their full salary. The five proposals do not exceed the \$150,000 limit; actually, they result in minimal costs to the state.

As for creating legislation for collective bargaining for excluded employees: all agree this would be the best solution; however, this is not feasible at this time due to fiscal restraints.

Alternative III. Hire Public Relations Firm, Survey Members and Create a Marketing Plan to Educate the Legislature and Public

A marketing campaign should be lead by the excluded employee organizations in conjunction with state departments such as Caltrans to improve the image of state workers. Such an example would be similar to what Caltrans has done for “Slow in the Cone Zone” - to increase driver’s awareness of the need to slow down and be aware of construction workers on the state highways. It may take the assistance of a specialized public relations and marketing firm to achieve this endeavor. CSEA is excellent in organizing employees to get out and meet with their fellow workers. They meet employees in the morning while entering their workplace and pass out fliers. They send e-mails and rally the state capitol. Excluded employees, such as first line supervisors may be a bit more hesitant to do such rallies as they identify themselves more with management than with rank and file. However, the employee organizations that represent them need to get out and recruit members and spread the word about what their organization can do for them. The old salesman with the same old pitch needs to be replaced with new people with new ideas. The number one problem with the dynamics of the public sector is perception, according to Steve Booth. “There is a tendency in government for two axioms: to either do things a certain way because this is the way we have always done it or the corollary axiom excuse is used that we can’t do it that way because we have never done it that way before. This old way of thinking needs to change if there is any hope in improving labor-management cooperation for supervisors and managers.

A. MEET AND EDUCATE STATE LEGISLATORS

Much work is needed to enhance initial public support. Each supervisory member should be encouraged to become involved in the public relations effort and conduct a “grass roots” approach: to reach out person to person and educate each other about the importance and need of keeping supervisors in government. This also involves each member and employee organization becoming more familiar with the state legislative representatives, especially now with the term limit restrictions. Many new faces are coming to Sacramento and they are more concerned with their own constituency than with state employee problems, according to Steve Booth of CASSO and DOTS.

Some organizations have recently met with the state Legislature. ACSS on March 13, 2003, spent an entire day at the state capitol visiting committee members and informing staffers and lawmakers alike about the concerns of state excluded employees.²⁵ PECG was an active participant at the State Democratic Convention in Sacramento on the weekend of March 14-16, 2003, including co-sponsoring the dinner honoring Congresswoman Nancy Pelosi of California, the recently selected Democratic leader in Congress. PECG leaders participated in many of the functions at the Convention, which provided an excellent opportunity for discussing the interests and concerns of PECG members regarding the state budget, staffing, compensation, and other priorities. PECG participants had numerous informal discussions with the state’s political leaders as well as members of Congress, who are currently working on new federal legislation authorizing funding for transportation and other infrastructure.²⁶ More lobbying and face-to-face meetings need to be held to introduce the new state legislature to the lack of collective bargaining for excluded employees.

Most excluded employee organizations have a legislative analyst who works closely with the state legislature; however, this is only one person. An overall effort needs to be made by all excluded employee organizations to educate state representatives on what state supervisors contribute. Supervisors are the “bread and butter” of their organizations, according to Dennis Alexander of PECG. Supervisors are frequently left out during labor contract negotiations. Educating state legislators about excluded employees may help improve excluded employees’ future working conditions, benefits and salaries.

B. SURVEY QUESTIONNAIRE

Surveys can be a valuable tool in eliciting input from stakeholders, such as state employees that are members of excluded employee organizations. They can be conducted in-house fairly inexpensively with the innovation of web-based computer technology. Two surveys are underway at this time; one by the labor organization PECG via paper mailings and the other by Caltrans management and PECG via electronic mail:

- PECG is currently conducting a “Supervisors and Managers March 2003” survey. A questionnaire will be sent shortly to all PECG supervisory members to determine their pay, benefit, and working condition priorities to guide the Meet-and-confer Team in meeting with the Department of Personnel Administration, as well as individual departments. “The intention is to assist PECG with its Supervisory Meet-and-Confer Team in establishing and prioritizing issues of importance to supervisors and managers. The results will be used as a tool during upcoming meet-and-confer sessions with DPA.

While the goal of achieving pay parity is the same for supervisors and bargaining unit employees, many of the other benefit and working condition priorities are different for supervisors. PECG's Supervisory Meet-and-confer Team ensures that these needs are represented in meetings with management." ²⁷ The results of the survey will be published this summer in PECG's "SUPERINFORMER."

- In a memorandum from Dave Brubaker, Chief, Division of Labor Relations, Caltrans, to District Directors and Division Chiefs, entitled "Senior TE Job Satisfaction/Employee Retention Survey," dated April 24, 2003, "Caltrans, in cooperation with PECG, is sponsoring a job satisfaction and employee retention survey of senior transportation engineers. The purpose for the survey is to give us a 'baseline' against which we can measure in quantifiable terms the value of future improvements to employment circumstances of senior engineers." The survey will be web-based and senior transportation engineers will be notified by e-mail.

Member surveys should be conducted by the labor organizations because it is the members whom they represent. It is also important for management to survey their employees' needs and address their employees' issues, according to ACSS and PECG. Labor organizations and management can help to improve labor-management relations by conducting these surveys and opening up the lines of communication.

C. MARKETING AND PUBLIC RELATIONS

A marketing firm or consultant should be hired collectively by the employee organizations such as ACSS, PECG, CAPS, CASSO and DOTS to conduct surveys and prepare a marketing plan. A full time public relations information person should be hired by these employee organizations to perform "grass roots" outreach meetings with stakeholders, (i.e., businesses, communities, general public and state government) in order to meet people and address problems and questions as they arise. TV, radio, e-mail and other advertisements should be implemented; however, the importance of public opinion should be understood. It will be difficult to overcome the negative stereotype that some hold of state workers. More importantly, a marketing strategy should be developed on how to educate legislators and state workers on the importance of supervisors in California state government and the need to retain them and not lose them to higher paying private sector jobs. Dennis Alexander said that the first line supervisors are important because they are doing most of the hands on work as well as supervision. Because California state legislators are restricted by term limits, many have their own agenda to achieve in a short period of time. Plus, these state legislators are very new to the entire legislative process. Encouragement of employee organizations' communication with their elected officials regarding the importance of supervisors in government is recommended. Also, the morale of excluded employees can be boosted by a campaign to make everyone in California aware, including the state legislature, that supervisors are not covered by collective bargaining and when the governor signs MOUs the supervisors are not necessarily taken care of in the bargaining process.

RECOMMENDATION

It is therefore recommended that the coalition of excluded employee organizations (CEEEO) hire a marketing and public relations firm, survey their members and market the importance of excluded state employees. A “grass roots” campaign for excluded employees in California state government should be conducted to educate the public and the state Legislators. Presently, the state assembly and senate representatives are restricted by term limits and are more interested in their own constituency. The CA state Legislature needs to be educated on the importance of excluded state employees. They need to understand that when contract negotiations are resolved, this does not include supervisors, managers and confidential state employees. This recommendation should be minimal in cost to the CEEEO because most organizations retain a full service labor relations firm to support their association. This excellent idea of educating the Legislature was proposed by Steve Booth of Hughes Svetich and Associates of DOTS and CASSO.

Alternative IV. Follow the AB 2477 Task Force’s Recommendations

There are three main task forces that have been formed via AB 2477’s Excluded and Exempt Employee Salary-Setting Task Force (EETF). Frank Marr of DPA, who provides staff support to the task force, provided key information on the purpose of the task force as detailed below:

1. Develop a process to set salaries. Originally it was proposed as a salary-setting commission, which would set salaries similar to the CA Citizen Compensation Commission (CCCC) that sets salaries for the Lt. Governor and elected officials. Currently the DPA sets excluded employees’ salaries; therefore, no legislation was passed for a salary-setting commission to override DPA.
2. Get the proposal adopted by the CA state Legislature and Governor. There is a good chance this may happen since there are bright people on this task force who are supported by the politicians and Governor.
3. Develop a fair and equitable process. These recommendations must be final by July 1, 2004.²⁸

Below is a summary of the three task force study group work plans that the EETF has been tasked to complete by July 1, 2004:

1. Stakeholder Analysis- Provide the task force with an assessment of the wants and needs of various stakeholder groups that may be affected by the process recommended by the task force. Need to identify stakeholders, issues and concerns. Website posting with survey.
2. Current System- Research and describe the current systems and processes used for setting salaries for excluded and exempt employees covered by GC 19836.1. Include a historical perspective as well as details about the current processes being used.
3. Market place comparisons- Provide an internal and external assessment on:
 - Current trends in salary-setting process within CA state government

- Current trends in salary-setting processes in both public and private sectors, with special consideration for competing entities in local, state and federal governments.
- Areas to be included in report: US government, local cities, counties and special districts including Los Angeles and San Francisco and various states, including NY, PA, MI, WI, MS, WA, OR, HI, NV. Survey states and do information swapping. The cities and counties are more of a competitive market. Also study recruitment in CA. Research the National Association of Directors of Employee Relations NASDER ²⁹

The Coalition of Excluded Employee Organizations (CEEEO) and the Department of Personnel Administration (DPA) representatives agree that the current system to address salaries and benefits for excluded employees is not working properly. The approval of AB 2477 in February 2002, created a partnership between the DPA and CEEEO in order to establish a workable and logical process for setting salaries and benefit levels for the state excluded employees.

RECOMMENDATION

Of all of the labor representatives interviewed, they all agree that the best way to improve bargaining rights and labor relations for supervisors and managers is via AB 2477, that is, the excluded and exempt employees' salary-setting task force, EETF. Recommendations that are made from this group will hopefully influence DPA and the Governor's office on what should be done about improving the future for supervisors and managers working for the state of CA. "The task force is not in the process of proposing language on how to determine salaries and benefits, but rather to determine how this will be done," according to Bonnie Morris, as a task force member representing ACSS. This is an important point. Perhaps the EETF will recommend legislation to create a commission to set salaries. At a minimum, processes should be developed and recommended to the state Legislature and Governor by the task forces prior to the July 1, 2004 deadline. "The state budget is driving everything at this time," according to Steve Booth of CASSO and DOTS. "What will happen with the state budget remains to be seen. Having a reliable method for setting salaries and benefits will go a long way. The task force has an important and historic job. The big question is whether the Governor and the state Legislature will enact whatever is recommended."

Therefore, it is recommended that the DPA follow the task force's process recommendations. Also, the CEEEO should keep in contact with each other to insure there will be one strong voice to the state legislature and Governor for all excluded employees. The EETF recommendations are essential to the future of excluded state employees' labor relations in CA.

CHAPTER 9 - SUMMARY AND CONCLUSION

Summary of Recommendations

Alternatives II b, III, and IV are recommended to help improve the future for excluded employees in California state government, in particular, those in the transportation sector. The three recommendations include:

- Propose legislation to achieve limited enhanced benefits and salaries
- Conduct surveys and hire marketing and public relations consultants to create a marketing plan to educate legislators and the public
- Follow the EETF task force recommendations and hope for the best in development of cooperative labor-management relationships

The above recommendations were made based on the current salary situation facing excluded employees during the state of California 2003-04 budget crisis. These recommendations are considered the most cost-effective while being the least expensive to the state. An effort to maintain a quality workforce can help address the high profile security and safety issues that are critical to running state forces during this time. These recommendations can help to develop the best cooperative labor-management relationships for excluded employees working in the transportation sector of CA government.

Conclusion

What can be done to improve the future for excluded employees? There is no simple answer. With the California state budget shortfall and management's proposed take-aways, there needs to be some steps taken to try and improve the plight of supervisors, managers and confidential state employees. It may take years to achieve better benefits, salaries and recognition for supervisors in California state government. Higher salaries are needed to keep high performing, quality employees and the negative image of the state worker is difficult to overcome. Quality employees are needed to ensure a secure and safe operation of state services. It is difficult for state employees to impose any influence on the current budget shortfall, since they do not have direct access to the California state Legislators. They are kept separate and only a few elected officials carry bills for state employees. A marketing effort, survey of excluded employees and a public outreach campaign to educate the legislature may be the first step. Legislation is definitely needed as a second step to improve the current situation for excluded employees. It will take the work of the excluded employee's labor organizations to accomplish these tasks. However, the employee should also become more involved. Perhaps with new people there will be new solutions offered. The third and final step would be to continue with the coalition of excluded employee organizations' task forces and make comprehensive, realistic and achievable recommendations to the state Legislature and Governor. A combination of legislation, education and cooperative labor organizations working together to improve the current situation may lead to future improvements for excluded state employees working in California.

APPENDICES

Appendix A

EXCLUDED AND EXEMPT EMPLOYEE SALARY-SETTING TASK FORCE (EETF) ROSTER

Diane Just, Chairperson
Deputy Director, Department of Personnel Administration (DPA)

Larry Svetich, Vice Chairperson
Representative, Department of Transportation Supervisors (DOTS)
And Corrections Ancillary Staff Supervisors Organization (CASSO)

Cathrina Barros
Vice President, Professional Engineers in California State Government (PECG)

Patricia Chappie
Division Chief, Employment Development Department (EDD)

Tim Behrens
President, Association of California State Supervisors (ACSS)

Susan Cusack-Bowles
Legislative Advocate, California Association of Highway Patrolmen

Rick Field
Supervisory Director, California Association of Highway Patrolmen

Gerald Goldberg
Executive Officer, Franchise Tax Board

Tony V. Harris
Chief Deputy Director, California Department of Transportation (Caltrans)

Tony Hosino
Vice President, California Association of Managers and Supervisors (CAMS)

Jacqueline Wilson
Deputy Director, Department of General Service (DGS)

EETF ADMINISTRATIVE STEERING COMMITTEE ROSTER

Diane Just, Task Force Chairperson
Deputy Director, DPA

Larry Svetich, Task Force Vice Chairperson
Representative, DOTS and CASSO

Dennis Alexander
Staff Consultant, PECCG

Dennis Batchelder
Executive Director, CAMS

Steve Booth
Representative, DOTS and CASSO

Bruce Brown
Motor Vehicles Managers and Supervisors Association

Julie Chapman
Labor Relations Officer, DPA

Frank Marr
Labor Relations Officer, DPA

Bonnie Morris
Senior Labor Relations Representative, ACSS

Mitch Semer
Executive Director, ACSS

Appendix B

DPA-REGISTERED LIST OF EXCLUDED EMPLOYEE ORGANIZATIONS- 19

- A. Association of California State Supervisors (ACSS)
- B. Association of Supervising Special Investigators
- C. California Association of Highway Patrolmen
- D. California Association of Managers and Supervisors (CAMS)
- E. California Association of Professional Scientists (CAPS)
- F. California Attorneys, Admin Law Judges & Hearing Officers in State Employment
- G. California Correctional Peace Officers Association (CCPOA)
- H. California Correctional Supervisors Organization, Inc.
- I. California Fish and Game Warden Supervisor and Manager Association
- J. California State Supervisor Peace Officer Association
- K. CDF Firefighters
- L. Coalition of Communication Supervisors
- M. Corrections Ancillary Staff Supervisors Organization
- N. Department of Transportation Supervisors (DOTS)
- O. Motor Carrier Supervisors' Benefits Committee
- P. Motor Vehicles Managers and Supervisors Association
- Q. Professional Engineers in California State Government (PECG)
- R. State Park Peace Officers Association of California
- S. Union of PERB Employees

12 MEMBERS OF THE COALITION OF EXCLUDED EMPLOYEE ORGANIZATION FORMED FROM AB 2477:

- 1. Association of California State Supervisors (ACSS)
- 2. California Association of Highway Patrolmen
- 3. California Association of Managers and Supervisors (CAMS)
- 4. California Association of Professional Scientists (CAPS)
- 5. California Attorneys, Admin Law Judges & Hearing Officers in State Employment
- 6. California Correctional Peace Officers Association (CCPOA)
- 7. California Correctional Supervisors Organization, Inc.
- 8. California Fish and Game Warden Supervisor and Manager Association
- 9. Corrections Ancillary Staff Supervisors Organization
- 10. Department of Transportation Supervisors (DOTS)
- 11. Motor Vehicles Managers and Supervisors Association
- 12. Professional Engineers in California State Government (PECG)

Appendix C

INTERVIEW NOTES OF LABOR REPRESENTATIVES

All interviews were conducted in Sacramento, CA. at the labor relations office site.

INTERVIEW WITH DAVE BRUBAKER, CHIEF OF LABOR RELATIONS, CALTRANS MARCH 24, 2003

I gave him a copy of my patterned questions. Dave represents the management side of negotiations; where PECG, ACSS, DOTS, labor employee organizations represent the labor side. He described several items before answering specific questions and tailored them toward me and my position as a Senior Engineer working for Caltrans.

Suggested reading: Dills Act, Gov. Code 3512, Bill of Rights Code 3525, DPA website on Exempt employee policy, PECG BU #91999-2000 MOU Section 3.1(has been extended), PERB, AB 2477: In process of picking management reps- perhaps Tony Harris- check DPA website

Pay scales: Refer to DPA website: S09- Supervisor BU #9 – That is my classification as a Senior Materials and Research Engineer, Supervisory for Caltrans. Here's a list of acronyms for pay scales:

R- represented	S- supervisor	M- manager	C-confidential
E-excluded	U-union		

As for the supervisory classification, a Senior Transportation Engineer (TE) who supervises 2 or less is considered a Specialist (U); if supervises 3 or more, a Supervisor, E, excluded. DPA kept class the same as far as pay goes, whether a senior specialist or not.

4C no longer exists. Workweek groups E don't get paid overtime, versus 2 get overtime or SE by federal law (?). CBID pay scales are determined by DPA. Represented employees, not supervisory employees get overtime. Most supervisors don't get paid overtime. Supervisor OT by federal law (?) If DPA to agree with PECG to pay senior OT, then a work week group change from E to 2.

DPA website discusses issues concerning exempt employee policies. Work week group E, SE and how they can be disciplined. It is not in MOU unit 9, but in unit 1. Article 8 of the MOU BU talks about what is grieve-able and arbitrate-able.

There is a difference between supervisors and managers: Supervisors have the right to form, join and participate in labor organizations, to meet and discuss with DPA about supervisors' benefits while management has no rights. DPA does informally include managers in deliberations. PECG, ACSS, DOTS have their advocates: Dennis Alexander, Mitch Semer and Larry Svetich, respectively, but for supervisors only, not managers.

There may be the possibility of a BU (bargaining unit) for supervisors, but not extended to managers. Managers are: CEA (career executive assignment) as the CBID (collective bargaining identification). Could be collective bargaining for supervisors, but that would require a state law change. Then there would be a supervisor's BU. It would be a BU decision by PERB (public employee's retirement board of state of CA) to change administration- Dills Act. Would need to take testimony to decide about creating a BU. A group would have to get together with supervisors with common interests, not just one group. It would probably be structured like BU's now. But won't have any manager or confidential employees involved, like SS1, S09, S12. The DPA (CA State Dept. of Personnel Administration) or PERB lists BU's.

Managers would be left out of the bargaining process. Management typically doesn't bargain, or who would then represent the management employee? Executives are typically top managers. That is whom Dave represents. He will go to DPA and try to get something for Caltrans (CT) managers, such as better long-term pay. Division chiefs, CEA's, managers in CT- who does the bargaining? Management vs. Management? That is where his office comes into play.

The legislature doesn't get involved in bargaining. State structure Dills Act represented people meet-and-confer in good faith. Supervisors via their organizations meet-and-confer with DPA, but not for good faith, just talk. (Good faith means to create a contract) So DPA can say, "thanks for your point of view, we'll consider it" to the supervisors organizations. Then its up to DPA and the Governor to decide. The Governor has a budget proposal on Jan 10th, but it will be revised in May. This is what the legislature analyzes- the May budget. There is a line item that may be eliminated for managerial compensation, to increase or decrease or nothing for supervisors and manager's salaries.

Dave explained the various levels of management for CT engineers: 1st line is Senior Transportation Engineer (TE), or say staff services analyst SSA as a supervisor. 2nd line is Supervising TE or Principle, which is middle management, such as Division Chiefs. 3rd level is the Career Executive Assignment level (CEA's) like Dave Brubaker of DPA and the top level are Executive Management such as the Director of Caltrans, CEA-exempt employees.

As for my patterned Questions: He answered separately for Supervisors than for Managers: Question 1: Top three issues for Supervisors: 1.) The primary issue is pay. They don't make much in their basic salary. DPA's policy of 10% more than subordinates is not followed. Many supervisors are under 10%. This 10% is not written. It's what has been said across the bargaining table. There is no written policy law or enforcement of this requirement. The 10% would be from top to top pay between a supervisor and subordinate. Therefore, newly appointed supervisors may earn less than subordinates.

2.) Overtime (OT) for supervisors- Since supervisors don't earn OT, they should have more of a salary. That is very rare. Currently, subordinates make a lot of money in OT. Although they work the same amount of hours, many range D engineers make the same as their supervisor. Top pay Range D engineer subordinate makes \$5632/mo. and then add on overtime pay at 1.5 times the 5632 hourly rate (say an extra \$1000/mo. for 20 hours of OT), while the top pay for a Senior supervisor is \$6181/mo. This hurts morale. Many have decided to step down and become rank and file- why have all the responsibility for less pay? 3.) Benefits- such as travel reimbursements

when on assignment. Currently it barely covers expenses, especially for long term assignments, where a Supervisor may be appointed as an acting chief in another District. This is considered taxable income, and typically they only net \$1000/mo. to cover housing, transportation and food. Top three questions for Middle Managers: 1.) Want more pay, such as basic salary, but not OT. CT is losing staff, such as a bay area Supervising TE who can make more money working for the Golden Gate Bridge Authority- 150% more pay and less people to supervise. There is a basic pay inequity. Government engineers want parity with private engineer's salaries. The problem is the Governor's salary. If you go down from there to the Supervisor's or middle managers' level, you squeeze their salary. It is most important to middle managers to have at least 10% over their seniors (subordinates). 2.) Retirement: the state is not as rich as the local government. 2% at 55 vs. 2% at 50 for local government (County, city of Sacramento for example). Caltrans employee pay out of pocket while others the employee pays into the retirement or on behalf of the employee and it is non-taxable. 3.) Out of class pay- A supervisor can work out of class, and get paid for that assignment. However, middle managers do not get a pay differential while working out of class. For example a middle supervisor TE, ranked "M" in civil service, gets an exempt assignment to work one step up as an acting Division chief, but not get any extra pay, yet a Senior TE who works as an acting office Chief does get the 5% difference in pay.

Question 3: Future in improving bargaining relations: Since Davis was elected Governor, thought we would see a Supervisor's BU enacted, but we didn't. There is no near term solution for Supervisors BU units. The Governor vetoed what the Democrats passed in legislature. It would be a very different bill for supervisor's rights. In the short term, the next 3 years, he doesn't see it happening. The cost of government goes up with collective bargaining. Everybody wants more. To increase the cost of staff, staffing, no arbitration. Collective bargaining increases the cost of compensation and the administration to operate. Dave doesn't see any collective bargaining for managers in the near future.

Question 4: AB 2477: Steinberg's bill- DPA now established a task force with supervisory organizational representatives such as DOTS, ACSS, PECG to make recommendations from this working group and a few management to the state legislature.

Question 5: State budget deficit's impact on improving relations: Suppose a 30% pay increase is recommended. The state budget deficit will kill it. Why would any labor organization want to come to the table now? They have a better deal now with their MOUs than what DPA would want to offer now. DPA now may ask for them to come to the table for pay reductions! Such unions as the firefighters and police (badge units) have a 30% salary increase until 2006. These labor organizations (LU) have no obligation for salary reductions. They have contracts. PECG on the other hand, who mainly represents engineers and related positions, has had its rank and file MOU extended and DPA says it will expire on June 30, 2003. CSEA's rank and file is new on July 1st. There is to be a 5% pay increase to start for PECG and CSEA on July 1st. These BU's don't want a salary decrease! DPA says that supervisors and managers will also get the 5% increase on July 1st, 2003, the beginning of the fiscal year, as a general salary increase.

However, DPA can withdraw this at anytime for supervisors and managers, because there is no contract. He thinks that DPA will withdraw this 5% from supervisors. That's the difference with rank and file; they can't cancel a contractual agreement but can do it with supervisors. What may destroy labor relations would be if the rank and file engineers get a 5% pay raise and supervisors don't. Currently, supervisors are not having the retirement contribution taken out, but it will kick in, 5% starting July 1st. So the 5% take away combined with no salary increase will basically make the net income the same between supervisors and their subordinate employees.

There's a good chance that supervisors and managers won't get 5% and that rank and file, range D engineers will.

Dave explained his position as representing management for Caltrans. For example he will go to Marty Morgenstern, Chief negotiator of DPA and provide him a list of needs, such as food allowances and travel expenses. The bargaining management team also has their input to DPA. DPA works for the governor. Brubaker is the opponent (versus) the labor unions, such as PECG. Management investigates grievances on the management side.

Question 5: Layoffs: Not conducive to good labor-management relations! DPA- \$840 million in direct savings starting July 1st. Have a salary reduction like 1992-94 where the state employees worked one day a month for free and accumulated a personal leave credit (PLP). The only other alternative is a lay off. Labor would rather take a lay off than a salary cut, according to Dave. I asked him why? Because members would vote. Say for instance PECG has 7000 employees. 20% cut would affect 1400 members and the majority would be able to stay. It would harm fewer members than taking something away from each employee. I mentioned that it seems that even during a budget surplus, management is reluctant to bargain and give pay raises. He said that is because you have to look at who DPA represents: the taxpayer. And a pay raise creates less benefit to the taxpayers. Instead of more projects being built, engineers get an increase in pay. I asked then how does the state intend to keep its engineers with such low salaries? Dave answered that the state provides stability, that is, what private firms cannot provide. If someone works for a private firm and the project is finished, typically the employee gets laid off.

Government workers are also interested in their retirement benefits. Keeping a job is an implied contract for civil servants and a better benefit than higher salaries. Also remember that lay-offs are only temporary, so you'll get your job back. That's why you don't see a large attrition rate say at Caltrans, because they are benevolent to their employees. You hear that threat of a large exodus of engineers from the state due to poor salaries but in reality this just doesn't happen. PECG said that people are leaving state government in droves, however, most of them, at least half, retired, so it wasn't salary driven.

Question 6: Differences between rank and file and supervisors and what should be done: He thinks supervisors should get collective bargaining. Unfortunately, they don't have much influence on DPA. Manager's salaries are getting squeezed. If supervisors have a BU they may have a more effective way to address issues. However, the only way to get a BU established is through legislation for supervisors to form BU's.

Brubaker also thinks that AB 2477 will result in nothing. DPA is looking to cut salaries and the legislature wants to cut services and raise taxes. There is a \$20 million short fall in Ca's state budget. Legislation won't recover the 30% raise due to the badge unions (firefighters and correctional officers). Maybe a marginal retirement benefit may be offered. I asked about a golden handshake. Any retirement enrichment fund is for short term and an increase in the long term gain. Maybe if the unions forget negotiations for the 5% on July first and in exchange agree to a golden handshake. Rather than a salary cut could do a cost avoidance.

When will these negotiations take place? They are starting now. The coalition of supervisory organizations per AB 2477 is meeting in April. However, unions have no incentive to bargain, there are only take-aways now. If the cost is neutral, that is, if a cost shift can happen, then maybe there may be an agreement to do away with some vacation, sick leave or holidays that the

state workers now have. Or give up the retirement enrichment enhancement (keep 2% at 55 instead of 2.5% at 50) or be able to buy 2 years service credit.

INTERVIEW WITH BONNIE MORRIS ACSS APRIL 4, 2003

First we discussed some legislative items and then she answered some patterned questions.

AB697 was submitted this year and rejected. It included legislation for arbitration. So now the same language will be submitted as AB 697. The intent of AB 697 is not much except to give more credit and acknowledgement to excluded employees. Some clean up was also done on the language. Section 3528 adds the term “resolution”. See gray handout. Also to clean up the Bill of Rights language and to broaden to add “excluded”.

What is pivotal is “meet-and-confer” because what we do now is “meet and beg.” These legislative proposals are an attempt at morale boosters, what excluded employees feel they should have. Any improvement would be nice.

Lee Q: What about my proposal to create collective bargaining for excluded employees by a legislative proposal to change the Bill of Rights definition of meet-and-confer to the Dills Act meet-and-confers where a resolution must be made?

Bonnie said that as long as Marty (Marty Morgenstern) is in charge (of DPA) this will never change and there will not be collective bargaining. AB 2477 doesn't apply to collective bargaining. This is a separate issue.

Bonnie: The question is – how can this be implemented? ACSS doesn't want this. Probably PECG doesn't want this either. You need to consider the Pros and Cons.

Cons: Will there be one separate bargaining unit? One exclusive representative? How will the Public Employees' Retirement Board (PERB) divide into units? Currently there are 21 separate bargaining units. Or will they all be lumped into one rank and file (R/F). How do unit determinations? The state of CA will have to create positions to manage and there are already hundreds of those. Unit determinations will be made. Also representative elections will need to be held to determine who will be the exclusive representative. These elections alone could cost \$million dollars. The employee organizations simply don't have the funds. The smaller groups will get eaten up. It could be daunting.

Pros: Get to go bargain for excluded employees. Presently we just get left-overs. Lump into one bargaining unit, then now exclusive, then just unit 9.

ACSS isn't in the mode to gear up for collective bargaining. Neither is PECG.

AB 2477 – Gov. Code legislation- The task force is not the process of proposing language on how to determine salaries and benefits, but rather to determine how it will be done.

There are three main task forces. Bonnie is on the market place comparison study. I gave her the GOER website for the state of NY.

Refer to ACSS magazine article on Assembly Bills: Bonnie said there is a third one that got let out. Concept: To prohibit DPA and the Governor from reducing salaries and benefits of

excluded employees without the approval of legislature! Try to stop government from taking away from the excluded employees. Who writes this? Sherrie Golden, CSEA/ACSS administrator over governmental affairs who is a chief advocate to the legislature. Her office handles legislation for ACSS, CSEA, retirees and CSU. CSU state employees are covered under a separate code section, under the HEERA act. (Higher employment education act). Legislation advocates job is to lobby and find out who the supporters are and who isn't. To find friends or foes in the Senate or Assembly and to find sponsors to author the bills. Rick Wathen works on the political side for CSEA.

Check with Bonnie on the new legislation. Send her an e mail to prohibit the DPA. SB 579 by Soto.

Interview Questions:

Clarification: Collective bargaining (C/B) are for only rank and file (R/F). Excluded means excluded from C/B and also are exempt.

Q1: Top three issues:

1. Money is the biggest issue until the state budget crisis is settled there will be no growth or movement for middle managers and for employee organizations. Why belong to an organization if they can't stop DPA from reducing salaries? Why remain a member? Most people would probably say this and drop their membership and save money.
2. Health Insurance- The costs are going up and DPA's thinking is "why not have the employee share that cost?" Marty thinks that since everything is going up, you must share the cost.
3. Retention- Salary, morale. A supervisor may opt to demote to a r/f with less of a headache and similar if not better pay. Security- it used to be if you were a state worker you were set for life with a good salary, benefits and retirement with opportunities to transfer within the state. This is not easy to do anymore. It shouldn't be that way. Being a supervisor is part of a career path, that is, to promote, not to lose and take a demotion. This is a problem with the system.

Q2: It's not to her to solve the budget crisis. The Task force utilized to correct problems and ways for a resolution for recruitment and retention problems. The differential between supervisors and people they are supervising historically was 10%, but that is long gone.

Q3: We talked about C/B not in the near future for excluded employees, but it doesn't mean it won't happen. M. Morgenstern won't be around forever.

Any legislation with a monetary attachment won't get passed this year- it will get put in the suspense file and just sit there, if it's \$150K or more it will sit there and die

Q4: We already talked about it

Q5: It's diving groups even more. R/f think labor-management as r/g versus management.

Excluded think labor-management as the same except excluded employees are left out and are not asked to participate in cooperative labor-management relations.

The Director of a Department dictates down to his Deputies and so forth down to where the 1st line or 2nd line supervisor are just taking orders and are not part of the management team decision making process. The supervisors are in-between, just told to do the job and not consulted from the ivory tower, dividing them even further. How often have you been asked

how to save money or do a better job? The first line supervisors feel more in alignment with their rank and file than their upper echelon management team.

Undesignated, "U" classes U04,U09 Supervisors that are rank and file (non supervisory, yet specialists) create havoc. If more than 2-3 employees than a supervisor. Why? It's the same job.

Q6: Classification OSS1, office technician is part of unit 4. Unit determination will be by PERB, CSEA and DPA. It's crazy. If greater than 5 supervised, you're considered an employee.

Lumping first line supervisors into r/f may be an option, but basically then they would be a lead worker with no authority

Q7: Yes. The only way to recruit and retain is to provide something that makes it worth their while. More supervisors make less than subordinates. Recruitment and retention bonus. Salary adjustment r/f that DPA chose to not give to excluded employees. Why make less \$\$? The idea is to make more money, to get a better car, better house. The budget is an integral part in how excluded employees did try.

Monday is the meeting with the DPA about the letter to meet with excluded employee organizations regarding Marty to talk about take-aways.

Cost of living allowances- Colas 2 1/2 % last year and year before to make it 5% that the state contributed instead of the employee. But for the third year DPA had said we'll take that away but give you the Cola instead in exchange for the 5% retirement take away. Now they're saying to take that away. You'll have to make that retirement contribution yourself.

Look on website next week for further developments and e-mail Bonnie and ask her to review my paper on specifics and also for the future legislation with CSEA by Sherrie Golden and Rick Wathen. (I e- mailed them)

INTERVIEW WITH GEORGE CLARK ACSS MARCH 25, 2003

George says he has lived the experience. I wanted to interview him since he has a more historical perspective of CA State labor relations. I couldn't get any hard facts or dates, and it was difficult to go over my notes, however, he has been with CSEA, a parent of ACSS since 1958. He works part time and is retired.

California's approach to labor relations was changed by the constitutional amendment – (the Dills Act)- which was a statement to the system that all employees had a good reaction to the spoils system- the reformers against SPRR . Employees are hired and fired based on merit- created the SPB to oversee- constitution and codes

History:

Before there was paternalism to cover the state, city and county governments. Back then public employees made more money than private sector. There was nothing formal comparable to collective bargaining. CSEA was the de-facto including the Universities with 200,000 employees, even though no legislative right.

Times have changed. The private sector didn't have what the public had. After WWII, government employees were left behind. Needed collective bargaining, don't want to be paternalism.

In 1980's the Dills Act and the Higher Education Act were created for a process called "collective bargaining" based on public. Now the relationship has been ruptured. Supervisors and Managers (M/S) used to be treated the same as Rank and File (R/F). They used to be under the same paternalistic umbrella and be treated the same, with no distinction.

Collective Bargaining is the authority of the PERB and NRB to hold hearings. It allows groups to petition and have bargaining units and excludes some groups of employees so you won't have collective bargaining.

Management says they don't want managers to strike, OK with Secretary. Excluded from collective bargaining intentionally. Theory union is enemy. For example legislative staffers, otherwise it is an unfair advantage. No excluded, confidential or management in collective bargaining units.

When Collective Bargaining came into being (date?) CSEA lost 10 of 21 units. ACSS M/S created a separate division from CSEA R/F since can't be with rank and file. If M/S in the same unit as R/F they could possibly intimidate.

In 1990, all rights on the books before, Supervisors Bill of Rights are available to supervisors. Procedural, rights, to meet-and-confer, right to belong, but doesn't create exclusive representation rights, no elections held. Wages, hours, working conditions for excluded employees, right to exist and have members, doesn't provide for contract to be written, and doesn't provide for negotiations, stops short of that. Called "collective begging". DPA has to meet with ACSS or any other Department, such as the DMV, but there is no exclusive representation. PERB, public employee's retirement board administers collective bargaining process. The Governor appoints the Dept. of Personnel (DPA) administrator who represents the Governor. For example, DMV health and safety issues, ACSS can write a letter to compel them (DPA) to meet with ACSS to discuss.

ACSS doesn't have the right to offer people to strike. It's illegal in the state of CA for any public employee to strike. Under Gov. Reagan, before collective bargaining, Reagan could've fired the hydraulic engineers for striking.

Bill of Rights separately addresses the collective problems of employees. DPA represents the state of all occupational groups. When they are through talking to one group they talk to another group. DPA has more power and sometimes its just lip service. No election to be held who we speak for, just members.

Today, ACSS is the largest employee organization recognizing excluded employees in CA They do their best to meet-and-confer with DPA, but mostly get lip service and only what the state wanted. Bills are sponsored, tried to work in the system, but sometimes you just throw up your hands. Ask Bonnie of his office about the bills they are carrying.

Key Problems: Wages, compensation.

Salary Setting Task force for excluded employees- now just a committee

Legislation: Why not make recommendations to work with DPA and consider public interest?

Work with the coalition of other organizations of excluded employees to work with DPA to make gains. We've been thwarted by any gains. For example Governor Wilson, no negotiations, nothing for employees, he wanted to contract out work, no collective bargaining. Current Governor Davis is just as bad.

Where are we today?

Before: Pete Wilson pushed agenda to contract out state work and let the private sector to run the highways, prisons. State workers are useless. Put in private and make sure they work, a way to take care of excluded employees.

Currently at the state college- CSU- if promoted out of collective bargaining, you work for the Chancellor or President and you basically serve on permanent probation and they can make you leave your job for no reason- this is what Wilson wanted for state workers. However, this brings back the "spoils" system. There is a constitutional amendment against this. If you're pleased, OK, stay, if not just go. If displeased and join or organizing or let you go. This is like paternalism or the spoils system: contract out to friends and family instead of the merit civil service- where you are hired and fired based on your merit.

SPB – state personnel board- DPA has now assumed most salary setting job classifications

PERB- How are excluded represented? How are their rights protected? What does this mean to the taxpayer? Quality of service to the taxpayer.

Pay raise Compaction- Morale problem- Common sense 5% pay raise and lose \$100 benefit- Supervisor demoting back to BU – can get more \$\$ working as a R/F.

DPA may try to sneak by and not give managers pay raises that the rank and file are getting.

Who speaks for excluded employees? On the management side is Marty Morgenstern of DPA who says he is open to discuss. He used to work for CSEA as a chief negotiator- Gov. Jerry Brown hired. Marty retired but now is back with the Governor.

Step back and think. Read Dills Act. Contact Bonnie, ACSS, and DPA

Problem: No collective bargaining rights for excluded employees. Meet-and-confer, but they don't have to sign off on the solution line.

Idea of Bargaining: Assumes management must reach bargaining for employees, but management doesn't do this with excluded employees. Marty M. of DPA says, "We've met and conferred. We have taken your requests. Now this is what we're going to do".

Think of the state as a harmonious workforce, not private workforce for a political party. Have employees for the greater good. Would be private if contracted out.

Coalition-AB 2477- Mitch and Bonnie of ACSS. Representatives to pressure DPA to engage in a movement with the ability to benefit members

What may hamper relations? Think of DPA and the Governor's side of the chair, a duty to the state of CA His duty to look out for the public's interest versus look out for employees. There's a conflict. No customers of employees don't come to work. Private sector attitude: If you don't like it go. We won't give you a pay raise.

INTERVIEW WITH DENNIS ALEXANDER, LABOR REPRESENTATIVE, PECG, APRIL 3, 2003

PECG represents mainly engineers and related professionals in CA state government. They bargain with DPA for rank and file employees for bargaining unit BU 9. They also have a supervisory meet-and-confer team for supervisors. One member, C. Barros has been assigned as a representative in the coalition formed from AB 2477.

I met with Dennis in his office. He recommended that I read the Dills act for rank and file employees and the Bill of Rights for excluded employees that amend this act.

There is a difference when the term "meet-and-confer" is used for rank and file employees versus supervisors. Meet-and-confer in "good faith" for rank and file employees, (those who are represented by PECG, for example) means that the state of CA (DPA) and the employee bargaining unit (PECG) endeavor to reach a memorandum of understanding (MOU) or contract. However, for excluded employees, the Bill of Rights only says that DPA to only meet and then go over the requests of the employee representatives and consider their input. DPA doesn't have to produce a written document for a contract. For supervisors and excluded employees, there is not an exchange or written proposal. In all cases, managers are not covered. A proposed increase in life insurance, benefits or salaries for supervisors could be done by DPA and not affect rank and file employees.

What about asking for pay raises during a budget cut? Dennis says that it's true what Brubaker says, that PECG prefers layoffs to a pay cut. Layoffs are last in, first out, based on seniority scores. I told him I had an ACSS magazine that covered those details. Layoffs actually affect fewer members.

Question 1 (Q1): Top 3 issues: 1. Salaries are the #1 priority. Parity. A survey has just gone out to the rank and file (r/f) employees and supervisory employees on what was important to them. (I have a copy of the questions sent out to supervisors). PECG guides a bargaining team and meet-and-confer team. The survey is done to show who/what they represent and tells the teams what is important to members and the issues before you.

Lee: How often does the meet-and-confer for supervisors meet? Once or twice a month, after the rank and file negotiations have been settled. A lot of negotiations are done at the 11th hour. First the non-monetary issues are settled first. There is some negotiation strategies used in bargaining with DPA, that can't be divulged. That is why PECG is one to settle last, to wait and see what others have negotiated, so that the bargaining team can get the best package. However, for supervisors, the DPA has no contractual obligation to meet, so they may only meet once per

month depending on the meet-and-confer process. DPA usually waits until the bargaining process is over before supervisory issues are discussed.

Dennis said that the first line supervisors are important to PECG because they are doing most of the hands on work and supervision; the bread and butter of the organization.

Lee: What about establishing collective bargaining for supervisors? Dennis: AB 2477 may help. Background: About 2 years ago DPA started taking away things. For example, the contribution by the employer (Caltrans) of \$50/mo. for supervisors and \$100/mo. for managers. DPA recognized the significance of being a supervisor, to show support for those who work in the trenches and the need for some type of compensation. This was only done for supervisors, not rank and file. However, the following year it was taken away, they said because they couldn't afford it.

We talked about MORALE BUSTERS. This take away didn't help. Also discussed the difference in pay between rank and file engineers and their immediate supervisors are now only about 5% where historically it was 15%. DPA dropped it to 10% with the objective to get it back to 15%, they said for engineers, but it didn't happen. Then DPA said for all supervisors, Right of Way agents, have 20%, or for Senior Planners 15-20% difference between the supervisor and associate planners.

AB 2477 Background: AB 2477 has got to be a better way than "meet and beg" for supervisors. Legislation was drafted to pattern the legislative salary commission for supervisors. Remember the public got mad that legislation would give themselves healthy raises. If the DPA isn't working with us, set up an organization. Although every committee isn't approved until the "11th hour" – last minute and DPA didn't oppose the original AB 2477 salary setting commission earlier when given time to comment- DPA called PECG at the last minute and said that the bill wouldn't live and that it will be vetoed. Dennis asked that before that, to get together and meet. Marty Morgenstern, DPA agreed that the supervisory meet-and-confer for supervisors have not been going as well as they should, but he wasn't in agreement with a salary setting commission. The reason why AB 2477 passed was that Marty wasn't in favor of having excluded salaries completely out of his (DPA) control and he didn't want a separate entity to set up salaries from the DPA. Let's see if everybody can come up with a recommendation that all parties can agree. So PECG offered an amendment or we'll run the bill. It was up to DPA, Marty to decide. They never heard an option from them and it ended up not being a salary setting commission but rather a Task Force of 12 members. April 8, 2003 is the first meeting and the minutes will be posted or linked on the PECG web site.

Questions

Q1: Top 3 labor relations issues for excluded employees? 1. Salaries 2. Retirement Improvements 3. Contracting out. PECG has sent out a survey to excluded employees recently and it will take a month or so to tally up the responses (by late May), but generally this is usually how the survey turns out.

Q2: How can these issues be resolved? There are a couple of scenarios: 1.) Meet-and-confer, the current process or 2.) Try the Legislative process- it's all we have left available. The task force is really only a process for *determining* benefits, salaries, and working conditions (such as the LA building) for excluded employees.

Q3: Future for improving rights of excluded employees: The task force AB 2477 could say after reviewing the process, 1.) Collective bargaining may be the way to go, or, 2.) After reviewing the salary commission could be the way to go. Then 3.) Legislation would have to be adopted to

implement. The Excluded Bill of Rights, part of the Dills Act would have to be amended by a Senator or carried by an Assembly Bill through legislation and signed by the Governor.

At least for AB 2477, there is one collective voice to bring together excluded employees to answer- What is inherent in all of us (supervisors)? We as engineers wouldn't be interested uniform allowances for CCPOA uniformed officers, but something that affects all supervisors, such as Salaries- #1. All supervisors are behind. Caltrans (CT) lags behind the cities of LA, Sacramento, Bay area and County pay.

Q5: Impact of State Budget: Today, April 3, 2003, Sacramento Bee newspaper- all Departments were notified of a 10% budget cut and delay in 5% increase in July. All employees will pick up the 5% employee contribution that the state has been making. Background: PERS (Public employees retirement system) amortized over a 10-20 year period when the retirement system was doing well and making money on its investments, actuaries set up a payment schedule to pay a certain dollar amount back to the employees. There are two types of pension contributions: 1. The employee contribution, which is at a steady 5% plus 2. The state contribution, which can range anywhere from zero to 30% or who knows? It fluctuates. For the pension plans, the actuaries have investments based upon what the state contribution will be, a certain % of the employee salary. The state took over the employee contribution of 5% for one year; however this will expire at the end of June this year, 2003.

Compaction can be a problem; that is, the squeeze of the salaries between the first line supervisors and the subordinates. Especially since all employees are losing the 5% employee contribution and the rank and file will get their 5% increase due to the contract negotiations, and the supervisors will probably have theirs taken away since there is no contract for supervisors, the rank and file engineers, planners, right of way, etc. will be making about the same as their supervisors. Plus rank and file (r/f) gets overtime and not their supervisors.

Parity: This is a look at local, federal and other governments compared to our state salary level, for example looking up licensed professional in counties.

Q6: Why/why not should be a distinction between r/f and excluded employees: There's not so much a distinction. Employees have the same basic rights as a civil servant. Through bargaining there must be negotiation, but for excluded there doesn't- That has to change. There's got to be a better way than just saying, "Here's what we want".

References: Ask Bonnie ACSS about AB 2839.

Suggestion on Legislation or Proposal: Look up the Bill of Rights 3533. Go over exact wording and could redefine what "meet-and-confer" means. DPA 3517, Government Code, Dills Act. There would have to be a legislative bill to change 3533 to read like 3517.

CA Budget: New July 1st. Work on it fall of last year for next year. The Governor issues the budget in Jan, the Legislature wrestles with it and then there is a May revise. We are all waiting to see what is said for 03-04 Projections. Dennis foresees 3-5 years to dig out of the budget deficit.

Q by Lee: It seems that even with a "flush" good budget, there isn't much "give" from DPA concerning salaries and benefits or cost of living increases. Not much of this happened even with a health state budget: Dennis doesn't see the state catching up with the lag in comparison of the public sector pay to private (higher) pay and benefits. He doesn't see that the 5% increase in

r/f salaries will get passed on to supervisors, especially after the April 1, 2003 letter from DPA to all Excluded Employee Organizations stating that “ There is a very real probability that excluded employees will see reduction in take home pay and other benefits after July 1, 2003.”

Option: Delay a pay raise. PECCG and labor organizations can ask for supervisory pay increases but just have them delayed. How can this be achieved with the state hard up for money this year. Amendment SB 222 MOU for BU#9 becomes chaptered. DPA staff is clueless on policy until told from their top management. Since the MOU had been amended to extend until another year, PECCG and others will attempt to negotiate now for supervisors.

Advice for paper: Don't deal too much with collective bargaining in r/f issues and MOU nor try to explain it. Just hit the general stand point, how the two sections differ, what we were at one time. R/F agreements are reached at the end of the process, administered in the MOU and then the supervisors are discussed. Typically they (DPA) put them aside. Either they pass on the negotiations to the supervisors or they don't. That's what DPA does.

1. Deal with the difference in the law
2. Discuss AB 2477 and why it was developed
3. Need to show brief history to show hope for future

What is the future? To try for something better. Hoping the task force will come up with solutions for salaries, benefits, bargaining rights and for meet-and-confer.

Either two things can happen:

- A. If get into collective bargaining, exclusive representatives thru PERB. PERB determines what classes of state employees go into a particular unit. Then
 1. Perb determines what classes go into which unit and the Bill changes
 2. Hearings will be held with PERB for this
- B. If the salary commission holds hearings similar to legislature salary-setting commission, and come in and present evidence of salary and benefit lags for excluded employees then the commission would then recommend legislation.

INTERVIEW WITH FRANK MARR, LABOR RELATIONS OFFICER DPA APRIL 8, 2003

We discussed some topics before the patterned interview questions. Frank indicated that they had the first task force meeting yesterday formed by AB 2477. Frank provides staff support to the task force. He said I could get a roster of the names. Tony Harris from Caltrans, Cathrina Barros for PECCG, himself, others. 11 members for now, should be 12. (See handout of names) There are some bright people on this list.

The Key to the task force:

1. Developing a process to set salaries. Originally it was proposed as a salary setting commission, which would set salaries similar to the CA Citizen Compensation Commission (CCCC) that sets salaries for the Lt. Governor and elected officials.

Currently the DPA sets excluded employees' salaries. No legislation was passed for a salary setting commission to override DPA.

2. To get proposal adopted by the CA State Legislature and Governor. By having bright people on this task force get this done and have it supported. If studied, then they can get political wheels to get it adopted.
3. Develop a fair and equitable process
4. Must be final by July 1, 2003 (Read the Bill – can find on DPA website <http://www.dpa.CA.gov/managers/SalaryTaskForce/Taskforce.shtm>)

Meet-and-confer- has two distinct meanings:

1. In Good Faith means negotiate – for rank and file (r/f) employees
2. To talk and present ideas- for supervisory employees via the Bill of Rights. DPA listens the employees' ideas and what they want and then “considers to the extent deemed reasonable”.

Refer to handouts – 1st 3 plans for AB 2477: Study Group Work Plans

1. Stakeholder Analysis- Provide the task force with an assessment of the wants and needs of various stakeholder groups that may be affected by the process recommended by the task force. Need to identify stakeholders, issues and concerns. Website posting with survey
2. Current System- Research and describe the current systems and processes used for setting salaries for excluded and exempt employees covered by GC 19836.1. Include a historical perspective as well as details about the current processes being used.
3. Market place comparisons- Provide an internal and external assessment on:
 - Current trends in salary setting process within CA State government
 - Current trends in salary setting processes in both public and private sectors, with special consideration for competing entities in local, state and federal governments.
 - Areas to be included in report: US Government, Local cities, counties and special Districts including Los Angeles and San Francisco, States, including NY, PN, MI, WI, MS, WA, OR, HA, NV. – Can find out more through the National Association of Directors of Employee Relations NASDER <http://www.consideration.org/portfolio/nasder/>
 - Frank: They will survey other states (not so critical) and do information swapping. The cities and counties are more of a competitive market. Also study recruitment in CA

History: State Personnel Board (SPB) used to do surveys and recommend semi annually, then the Legislature would approve a general salary increase. Some people called it COLA, cost of living increase, although it really wasn't. Or by occupational group, such as engineers for example would move up. Then collective bargaining came into play and all salaries' ties are broken whenever negotiate.

Dills Act: Lists employees except supervisors, managers, and confidentials.

In labor relations, DPA is the management side of bargaining.

How have salaries and benefits been set? Meet-and-confer is detailed in the Bill of Rights. Over the years, rank and file (r/f) salaries have increased via bargaining and supervisors and managers may/may not get the same increases at the same time. He asked me to e mail him and he'll get

information for me on what increases have excluded employees have had over the past 10-20 years.

Task force for Excluded and Exempt: Dills Act 3513(c) – look up definition –

1. “Excluded” means from excluded from the Dills Act. Includes supervisors and all managers. Midway all the way up to top CEA’s (career executive assignments). a.) Some positions can be considered “confidential”- there’s about 1600 of them in state service. For example, a secretary in labor relations who must type up labor negotiations that not everyone should see. Confidential is only under the Dills Act with regards to the employer. b.) A DPA administrator is excluded because they do bargaining “E”. Confidential vs. Excluded at DPA: E97 R/F, E98 Supervising Employees, E99 Managerial employees.
2. “Exempt” are appointed – considered “at – will” employees. –from the fair labors standards act FLSA. Exempt means different things in different states and locals. Here Exempt employees are appointees by the Governor, such as a Department Director, Board or Commission member or Legislative Appointment. The DPA Chief Deputy is the appointee of an appointee. These employees are not covered by civil service and not in the merit system in general government.

Survey Questions:

Q1: Top 3 labor relation issues:

1. Fair and Equitable Compensation (same as for R/F) for Benefits and Salary
2. Ability to attract and retain qualified (best) people in state service (he only speaks for state service)
- 3a. Maintaining Employment Rights- This is a big issue. R/F have the right to arbitrate a grievance by means of a neutral arbitrator and it’s paid for. No rights for managers and supervisors (M/S) for an arbitrator- it goes to DPA, that’s it or could go to court but out of pocket.
 1. Labor unions represent employees and under the fair share unions are required to represent them and have the authority to take them to arbitration. Arbitration is paid through the union and the cost goes to the department, not the employee. The employee just pays his/her monthly fee. Say for example they may take a certain amount out of the employee’s paycheck as a “fair share” but to be a full member; the employee needs to pay an additional few dollars.
 2. Managers and supervisors don’t have the right for arbitration. They can grieve, but it goes to DPA as the final level of review and if the employee wants to go beyond that, he/she must go to court and pay out of pocket. Try to extend to what’s in R/F but can’t with M/S tried to get 10% salary differential.
- 3b. Organizational Desire: Tied to occupational areas- Exclusivity, so not competing organizations. Example: ACSS represent office working PECG represents engineers. MMB provides Myers Mullen Brown (Note- I was getting a bit lost here)

Lee Q: I noticed you used the term “union” a lot, yet I’ve heard others use labor organizations. Isn’t there a difference? Frank said to think of labor organizations in a broader term. There are 21 units in CA government right now. PERB approves or decertifies exclusive representative organizations. (See handout with list of employee organizations).

For example, a unit filed a modification for teachers to split the units, one for education program, the other for teachers, because they do different work. To be one unit you must have the same type of work.

Exclusive representative elections, for example, PEEG. The ability to negotiate on behalf of all engineers in state service, collect dues, fair share.

The Dills Act: You have the right to join or not join. Bill of Rights extended this for supervisors. By law the union has to represent the duty fair representatives.

Supervisory organizations are not unions, per se. They don't have exclusive representation rights. Ex: Corrections CCPOA union also has a supervisory division, however, most don't.

PEEG (Professional Engineers in CA State Government) has a supervisors division.

Competing organizations are CCSO who represents over 1/2 of state supervisors. CCPO represents the other 1/2. No exclusive rights of representation. We discussed ACSS vs. PEEG as competing organizations. There's also CAMS. He has a list of the organizations because DPA must register them.

Q2: How can these issues be resolved? Frank:

1. Through the AB 2477 task force.
 - Solve the compensation issues if it's adopted
 - Solve ability to attract/retain employees so it is fair and equitable
2. Other Methods:
 - Improve employment rights- Management needs to be aware
 - May never have all rights like R/F because no contracts. Management is responsible for EEO (equal opportunity and affirmative action).
 - Union has the right to discuss complaints with commission.

He suggested that I need to define for myself what middle management means. To him it is above first line supervisor, such as a senior, but more like a Supervising Transportation Engineer. (TE)

Q3: Future for improving bargaining?

Introductions for excluded representative rights have all failed. Some have been in the past recognizing the criticality of supervisors. The Dills Act has been modified by adding the Bill of Rights (B of R) only for supervisors, but leaves out managers and confidentials. ACSS Bill to broaden supervisory organizations to other excluded employees to join, to modify, Supervisors. Bill of rights

AB 697- See blue sheet to modify 3522: DPA has already considered fully
AB 2477 not for bargaining rights but to improve compensation and benefits

Q3: Future: No exclusive representatives in the foreseeable future for collective bargaining. AB 2477 will do away with the need for collective bargaining. If it is a fair and equitable system with pay benefits for supervisors, whether extend rights depends on who is in power, the Governor. Dukemajian was good, but not Wilson or Davis for supervisors and managers.

Q5: R/F on 7/1/03 are to have a 5% increase in salary due to negotiations, and supervisors and managers are supposed to get that, but with the Budget crunch, they can defer or even say NO to supervisors, but for R/F they are obligated. Therefore, the result of R/F may make

more money than supervisors! People are talking about voluntary demotions because there is less stress for a 2% difference.

Historically, there was a 10% pay difference, but now the pay has been compacted to only a 5% difference between employee and supervisor in state service. Why stress for that kind of money?

Q4: AB 2477 Just developing a process-

- Putting together- may not need legislation- but then still if available funds
- Implement with executive branch – Governor, DPA, if not there, Vetoed
- Recommended salary survey, adjustment to 10%, then Governor may say 5% or
- Recommend a process, Yes, Collective Bargaining, make salary and benefit negotiations or
- Legislation is needed, get someone to carry the Bill, salary setting bill, Rep. Steinberg said he is willing
- Task force is trying to do now is to have a Process on how to go about obtaining fair compensation. Do you negotiate? Auto adjust? How do you determine “fair and equitable”? How do you get adjustments implemented over time?

Q5: Impact of budget on labor-management agreements: Process gets developed must have to include control we’ll implement and adjust subject to available funds and appropriation of funds of legislature. Say for example the AB 2477 task force process shows that supervisors and managers lagging 25% of the public sector. For example, can make up over the next 2-3 years; the Governor and the Legislature have the ability to acknowledge but can only give 5% this year.

Lee Q: What is the possibility for the next two years of a pay raise for supervisors based on the results of the task force? Frank: Zero. Task force won’t have recommendations until year 2004. The surveys will take a while. So 2 years down the road there may be a recommendation. Time lag. Out of the budget crunch in 2 years? Don’t bet on that.

Government Code 19849.22 for Correctional Supervisors- they get the same general economic changes that rank and file get. Recent legislation. Can get from website Leg info. See handout

Q5: Impact: Not effect on cooperative labor-management relations, but rather make supervisors/managers angrier. Relations may be more contentious. Organizations and employees may be angry in day-to-day activities at the working level and still try to maintain a professional relationship. At the highest level it may deteriorate. I mentioned that some people do compare what the other co-worker is making per month and are resentful if one makes more than the other and is doing more work for less pay. Frank mentioned the other people he works with in other employee organizations by their first name: Bonnie, Dennis, himself. He said that he works with them all the time and that they all know the situation and that they all call each other on the phone and work together now and in the future. He thinks that people will be angry with the administration and not with staff.

We discussed the level of his organization. Marty Morgenstern is appointed by the Governor, Gloria? is the Chief Deputy Director who acts for Marty, then the Division Chief Mike and then Frank, the Labor Relations Officer? He said he’s the only civil service

employee. He has the excluded employees. All the other staff is focused on rank and file and they are appointed to the position, so when the Governor changes, they may lose their jobs.

Q6: Differences between rank and file vs. excluded and should there be a distinction: Frank said he'd give the canned answer. Managers and supervisors are viewed as part of the management team and are responsible for setting policy and directing. Rank and file are responsible for doing what they are told. A conflict of interest when the supervisors and rank and file are all represented by the same organization. Lee for instance, is a first line supervisor versus a supervisory engineer is managerial and can transfer.

Q7: Changes necessary? Hopefully AB 2477 can help. The state is starting to lose supervisors. Need to bridge the gap for the past 30 years. In the early '70's the state laid off 3000 engineers. This time unknown how many will be out the door. But there is also security with a civil service job. If downsize, don't need so many at the top.

Q8: History: See the Dills Act and how it was arrived at. (See small orange booklet) Marty helped write that law. He was first the director of the Office of Employee Relations, under Governor Brown, now called DPA. Gray Davis worked for Brown so then he appointed Marty.

I gave Frank a copy of the April 1, 2003 letter. He said, read the first sentence.

1. Cut in salary
2. Furloughs
3. Modified Personal Leave Program PLP such as one day off (vacation) which equates to a 5% salary cut for 18mos. That was done back in '91-92?
4. Cost attached to it- salary history- subject to negotiation at r/f by extension to excluded employees
5. Holidays reduction, vacation accrued, loss in benefits, health benefits
6. Retirement- currently state is paying 5% of salary for pension, however now the employee will be paying this starting July 1st.
7. Fewer employees- layoff issue
8. Demote results in salary cut – for example employee retiring or vacate position- cut or downgrade position that makes 10% less

If can't negotiate a furlough, or PLP then salary reduction or must go to other actions. Perhaps both a Layoff and Reduction plan. For example 10 positions, downgrade 2 levels, then bump those below, may result in less subordinates. Only 2 weeks to prepare plans.

Also refer to another letter, same date, April 1, 2003 from Marty Morgenstern addressed to Excluded employees organizations. Look on the DPA website. There was a mis quote with the Sac Bee that said the letter went out the employees, but that was incorrect. The letter spoke about the budget problem and that DPA was willing to meet.

Refer to the Dills Act pocket guidebook handout. Refer to the DPA website.

Q7: Necessary changes: Changes are necessary, otherwise can lose them all. Employees paying for 5% retirement, will supervisors and managers get 5% to offset? Don't count on it. He has concerns that rank and file will get it, office confidentials will get it, and so it won't cause problems. We discussed that a person receiving training makes more money than the trainer- He said that is poor professional practice.

Lee asked about base salaries vs. Overtime (OT) - he said that isn't about pay differentials, that is a different issue whether hourly or salaried and is defined by FLSA.

There is a hidden portion of compensation for correctional officers, firefighters and CHP, called longevity pay, which is 8% of the salary. If you're a cop for example for 18 years you get 1%, 19 2%, 25 years salary, etc.

Side note from Lee: The news also had a segment about fitness pay- all cops/chp get it even if not fit. It should be lumped into overall officers pay. It's like a hidden cost. It was done in '95 when the state was broke.

INTERVIEW WITH STEVE BOOTH AND LARRY SVETICH APRIL 28, 2003

DOTS AND CASSO INTERVIEW

Steve Booth was interviewed in his office in Sacramento on Thursday May 1, 2003

He handed Lee a typed response to the interview questions:

Q1: Budget-Budget-Budget- driving everything at this time: Job security, wages, retirement, and health insurance. Lost ground to counterparts in other government levels. Other considerations include increasing personal liability for conduct/performance. Increasing legal requirements of jobs Vis Vis compliance, complaints and litigation.

Q2: Budget remains to be seen. Having a reliable method for setting the salaries and benefits will go a long way, i.e. the Task Force has an important and historic job. Big question is whether the Governor and Legislature will enact whatever they come up with

Q3: Bargaining rights won't happen because state and excluded employee organizations are against it. Too many organizations have a piece of the excluded employee membership- unit determination for r/f took years in the early 80's- few want to go through that and maybe lose right to represent some or all of their members. Excluded ee's like to think they are above it. Legislation? 2477 was pretty big. Major reform is needed in health care. Don't know if anyone has the juice to carry it off against PERS

Q4: See 3

Q5: We are already seeing deterioration. Morgenstern is not trusted by most EEO's. EE's will take it out on their organization when they feel the concessions. That will force many groups to strike out at the state, especially DPA and Gov.

Q6: Juxtapose federal law from local government law in CA

Q7: Main problem is their lack of commitment on their own behalf=organizing.

Larry Svetich later came into the interview.

Steve mentioned that the coalition had its first meeting yesterday. The dynamics of yesterday is the public sector; the #1 problem is Perception. Tendency 2 axioms of state government:

1. We do it this way because we've always done it this way or the corollary axiom 2. We can't do it that way because we've never done it that way. Most in the coalition are exclusively state employees, such as CSEA, ACSS. No sense of union, this is Mitch's vision, for all employees to come together. Need for change. No closure. Concessions. Mitch (ACSS) approach a lot of groups, need to get together.

Q5: The dynamics will severely harm employees, dysfunctional. Then they'll blame the organizations and unions. Employees don't have direct access to legislature and Gov. Davis. It may sever bonds with DPA for a while. See a lot more posturing, not just call each other, DPA vs. labor organizations. With the budget shortfall \$25-35 billion, cuts, concessions will happen, it's inevitable. EEO's need to demonstrate that they are doing something, let the membership know what they are working on is relevant to them.

It's important to say we are excluded employees and they need to get out and go sign up. His preach: 2 reasons why they don't belong: 1. Never been asked 2. Cheap. Our job is to make sure they are asked and explain why it is relevant to be a member, why you can't afford to not be a member. Door to door sales.

Question about collective bargaining for excluded employees: Coalition approach- need to get groups together. They will never have Collective Bargaining C/B for Excluded Employees.

1. State employer Gov, Leg, State, wont support it
2. 2. Majority Exclusive Org's don't support it. Why? . A lot of org compete with each other- exclusive status
3. Compete ACSS, DOTS, PECG, CAMS

If C/B, with one excluded rep, someone will lose vs. as long as open market, all can survive. To have C/B could be very painful, like early 80's, took PERB 3-4 years for unit determination, CSEA lost a lot of members to other new organizations 20 distinct BU's

This will be equally or more painful for excluded employees- High cost to run statewide elections, bargaining law requires this, If Gov approves, would have to elect, paid for by the state, PERB, but cost of organizing, campaigning, borne by the organizations

C/B: Unions spent \$millions for r/f employees

Unit 6- Corr Off 5-CHP 8-Firefighters 9-Engineers 12-Broadest, most diverse, Crafts/Trades/Mech Equip.

Cities, Co's, locals have their right to C/B since 1968 for local government employees via the Myers Millias Brown Act, but not for state workers

1. Excl. need to step up org efforts, get on board, there's successful in r/f, average legislator doesn't understand the distinction between c/b and not c/b
2. 2477 - representatives most critical- first step recommend a process for salary setting, benefits, if successful recommendations
3. First step, creating stability for excl. employees (EE) instead of being at the will of Marty Morgenstern of DPA
4. C/B is not a viable process

579- even if passed, impotent, may need to try to get it amended, probably end up in the meat grinder- Proposed so have parallel with supervisory employees peace officer, you can't reduce salary/benefits unless equivalent for r/f. Get statute from Bonnie.

Recommendations: Let the task force be successful. Implement what they come up with. Good best minds how to move forward- result in salaries/benefits improvements for employees, not getting paid as well as government/local/peers, salary compensation, then this will cost \$\$money. – Look up original bill 2477- salary setting task force modeled after salary commission for state legislature- then at last minute DPA stepped in.

Alternatives:

1. C/B – EEBRA vs. Dills Act
2. Salary Setting Legislation
3. Task Force formula
4. Change Culture

3 biggest problems: Budget Budget Budget

Other: Leg, Gov, and citizens in general don't comprehend state representatives .by bargaining power and those that are exclude.

Marketing Solution? Org. of EE's presents views of collective voice. There needs to be an education process with the legislature. Problem: Rapid turn over due to term limits and attention span is short.

Mitch: Coalition viewpoint. Larry: Saw value in coalition

How do you educate? Ave. legislature, assumes C/B takes care of all state employees. General practice unit 9 gets certain things thru C/B most pass on to supervisors aligned with unit 9, but the pass-throughs haven't happened. The legislature doesn't understand the process.

Bill 579, AB 2477 Task force presents to Legislature, part of education process. 2-term assembly member doesn't care?

Quote Steve Booth, "I'm convinced contemporary Republicans party if left their own designs would create two classifications of state employees: slaves and masters."

Wilson anti-government: It's an uphill battle to convince the majority of the legislature to protect wages and benefits. Creates stability. Republicans- if there's vacancies, contract out.

Future of C/B for EE's: Larry: "It's not going to happen" due to unions. Unions will never support- afraid of losing what will have. Larry: Best thing for EE's are C/B but this will never happen.

Alternatives: Those who say, if you don't like it, leave. Seeing it happen by people retiring at an early age. Difficulty in recruiting supervisors. Why promote and lose \$\$ and have more headaches?

Sergeants or Lieutenants in Corrections can't cut overtime, its necessary. Recently 300 voluntarily demoted. Salary increased that excluded's didn't. With overtime, make more money working as not a supervisor.

The task force is the future. Recommendations not until June next year.

E-MAIL WITH MITCH SEMER, ACSS, MAY 14, 2003

Hi Lee. I've read your recommendations and they are good. The major problem we face is that the solution that is needed requires the backing the Governor. We are asking not only for a process to be adopted, but for the process to be initiated and used consistently with the DPA. Government is governed by a "top down philosophy", and it will take the Governor to order and insure that the system is fixed properly.

Because 20 years have caused such massive problems in the state excluded compensation arena, it will take the support of the administration to adopt a long term plan crafted in conjunction with the employee organizations to make the state worker whole again.

Timing is everything, and the current budget situation is a "worse case scenario." Until the budget problems are solved I have little hope that significant reforms will be enacted. The solution will need a new Administration dedicated to solve this problem at a time when the economy is not a central issue.

Until then, we need to continue to educate the Legislature. At this moment, I do not believe the public will be sympathetic.

I hope this helps. Best, Mitch.

Appendix D

- AB 2477: Passed by the CA Assembly 8-29-02
- SB 579: Introduced by Senator Soto 2-20-03
- Collective Bargaining Proposal
- Excluded Employee Bill of Rights: Passed 1990
- Ralph C. Dills Act: Passed by CA Senate 1977

AB 2477: APPROVED BY THE GOVERNOR: SEPTEMBER 2002

BILL NUMBER: AB 2477 CHAPTERED
BILL TEXT

CHAPTER 1044
FILED WITH SECRETARY OF STATE SEPTEMBER 28, 2002
APPROVED BY GOVERNOR SEPTEMBER 28, 2002
PASSED THE ASSEMBLY AUGUST 29, 2002
PASSED THE SENATE AUGUST 27, 2002
AMENDED IN SENATE AUGUST 22, 2002
AMENDED IN SENATE AUGUST 13, 2002
AMENDED IN ASSEMBLY APRIL 1, 2002

INTRODUCED BY Assembly Member Steinberg

FEBRUARY 21, 2002

An act to add and repeal Section 19836.1 of the Government Code, relating to state employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 2477, Steinberg. State employees: excluded and exempt employees: salaries and benefits.

Existing law provides that the Department of Personnel Administration shall establish and adjust salary ranges for each class of position in the state civil service subject to any merit limits contained in the California Constitution. Existing law further provides that these salary ranges shall be based on the principle that like salaries shall be paid for comparable duties and responsibilities and that the department, in establishing or changing these ranges, consider the prevailing rates for comparable service in other public employment and in private business.

This bill would establish the State Excluded and Exempt Employees Salary-Setting Task Force, to consist of no more than 12 participants, as specified, to create a new process to address the status of salary and benefit levels of excluded and exempt employees, as defined, and to recommend that process to the Governor and the Legislature prior to July 1, 2004. The bill would require the task force, in preparing its recommendations, to consider the cost of living as reflected in specified indices, the compensation paid to comparable occupations or benchmark classes in California cities, counties, and special districts, the University of California System, the California State University, the federal government, and the private sector, the wages, benefits, and other compensation paid to rank-and-file state employees under approved memoranda of understanding, and excluded employee salaries, benefits, and other compensation items.

The bill would make the provisions governing the task force inoperative as of June 30, 2005, and would repeal these provisions on January 1, 2006.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 19836.1 is added to the Government Code, to read:

19836.1. (a) For purposes of this section:

(1) "Excluded employee" means the same as in subdivision (b) of Section 3527.

(2) "Excluded employee organization" means the same as in subdivision (d) of Section 3527.

(3) "Exempt employee" means a state employee who is exempt pursuant to subdivision (e), (f), or (g) of Section 4 of Article VII of the California Constitution.

(b) There is in state government the State Excluded and Exempt Employees Salary-Setting Task Force, which shall be formed to create a new process to address the status of salary and benefit levels of excluded and exempt employees. The task force shall, prior to July 1, 2004, recommend to the Governor and the Legislature a process that can identify and implement equitable salary and benefit changes over time for excluded and exempt positions in state government.

(c) The task force shall consist of no more than 12 participants. Six participants representing state management shall be appointed by the Director of the Department of Personnel Administration and six participants shall be appointed by excluded employee organizations registered with the state. No person may receive compensation for serving as a member except that release time shall be granted by the

state for employee organization members who are employed by the State of California. The chair of the task force shall be the Director of the Department of Personnel Administration, or his or her designee.

(d) Any process recommended by the task force shall at least include consideration of the following:

(1) The cost of living, as reflected in the Consumer Price Index, the West Coast Index, and other key California statistics from the Bureau of Labor Statistics of the United States Department of Labor, San Francisco and Los Angeles.

(2) Compensation paid to comparable occupations or benchmark classes in California cities, counties, and special districts, the University of California System, the California State University, the federal government, and the private sector.

(3) Wages, benefits, and other compensation paid to rank-and-file state employees under approved memoranda of understanding.

(4) Excluded employee salaries, benefits, and other compensation items.

(e) In preparing its recommendation, the task force shall consider the history of excluded employee salary and benefit changes, the timing of the change in the compensation process, factors affecting excluded employee compensation, and the provisions of the excluded employee compensation package.

(f) The State Excluded and Exempt Employees Salary-Setting Task Force shall remain in existence until June 30, 2005, and as of that date this section is inoperative. This section is repealed as of January 1, 2006, unless a later enacted statute, enacted on or before January 1, 2006, deletes or extends that date and the task force's existence.

SENATE BILL NUMBER SB 579

AMENDED IN SENATE APRIL 21, 2003

INTRODUCED BY Senator Soto

FEBRUARY 20, 2003

An act to add Section 19836.2 to the Government Code, relating to state employees.

LEGISLATIVE COUNSEL'S DIGEST

SB 579, as amended, Soto

Excluded employees: reduction in salary and benefits.

Existing law requires the Department of Personnel Administration to establish and adjust salary ranges for each class of position in the state civil service subject to the merit limits contained in the California Constitution and in establishing or changing these ranges, to consider the prevailing rate for comparable service in other public employment and in private businesses.

Under the Ralph C. Dills Act, managerial employees, confidential employees, supervisory employees, and generally, employees of the Legislative Counsel Bureau, the Department of Finance, the Department of Personnel Administration, the Bureau of State Audits, and certain employees in various other state agencies are excluded from the employer-employee relations process governed by that act.

Existing law also requires, with limited exceptions, that meetings of a committee of a Legislature be open and public.

This bill would prohibit the department from implementing a salary or benefit reduction for excluded employees, as defined, unless and until the issue is heard in a noticed public meeting of the appropriate policy committee of each house of the Legislature.

Vote: majority. Subcommittee Vote 4/28/03: Ayes:3, Noes:2. Pass

Appropriation: yes. Fiscal committee: yes.

State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 19836.2 is added to the Government Code, to read:

19836.2. (a) The department may not implement a salary or benefit reduction for excluded employees unless and until the issue is heard in a noticed public meeting of the appropriate policy committee of each house of the Legislature.

(b) "Excluded employee" for the purposes of this section has the same meaning as defined in subdivision (b) of Section 3527.

COLLECTIVE BARGAINING PROPOSAL FOR EXCLUDED EMPLOYEES

The proposed wording would have to change the current Bill of Rights to have similar wording to the Dills Act when it comes to “meet-and-confer.” The proposed Legislation would change California Government Codes (GC) 3533 to read like GC 3517 and 3517.5:

Current wording from the Supervisor’s Bill of Rights:

3533. Upon request, the state shall meet-and-confer with verified supervisory employee organizations representing supervisory employees. "Meet-and-confer" means that they shall consider as fully as the employer deems reasonable such presentations as are made by the verified supervisory employee organization on behalf of its supervisory members prior to arriving at a determination of policy or course of action.

Current wording from the Dills Act:

3517. The Governor, or his representative as may be properly designated by law, shall meet-and-confer in good faith regarding wages, hours, and other terms and conditions of employment with representatives of recognized employee organizations, and shall consider fully such presentations as are made by the employee organization on behalf of its members prior to arriving at a determination of policy or course of action.

"Meet-and-confer in good faith" means that the Governor or such representatives as the Governor may designate, and representatives of recognized employee organizations, shall have the mutual obligation personally to meet-and-confer promptly upon request by either party and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation prior to the adoption by the state of its final budget for the ensuing year. The process should include adequate time for the resolution of impasses.

3517.5. If agreement is reached between the Governor and the recognized employee organization, they shall jointly prepare a written memorandum of such understanding which shall be presented, when appropriate, to the Legislature for determination.

EXCLUDED EMPLOYEES' BILL OF RIGHTS: PASSED 1990

BILL OF RIGHTS FOR STATE EXCLUDED EMPLOYEES CA GOVERNMENT CODE SECTION 3525-3539.5

3525. This chapter shall be known, and may be cited, as the Bill of Rights for State Excluded Employees.

3526. The purpose of this chapter is to inform state supervisory, managerial, confidential, and employees otherwise excepted from coverage under the Ralph C. Dills Act by subdivision (c) of Section 3513 of their rights and terms and conditions of employment, and to inspire dedicated service and promote harmonious personnel relations among those representing state management in the conduct of state affairs.

3527. As used in this chapter:

(a) "Employee" means a civil service employee of the State of California. The "State of California" as used in this chapter includes such state agencies, boards, and commissions as may be designated by law that employ civil service employees, except the University of California, Hastings College of the Law, and the California State University.

(b) "Excluded employee," means all managerial employees, as defined in subdivision (e) of Section 3513, all confidential employees, as defined in subdivision (f) of Section 3513, and all supervisory employees, as defined in subdivision (g) of Section 3513, and all civil service employees of the Department of Personnel Administration, professional employees of the Department of Finance engaged in technical or analytical state budget preparation other than the auditing staff, professional employees in the Personnel/Payroll Services Division of the Controller's office engaged in technical or analytical duties in support of the state's personnel and payroll systems other than the training staff, employees of the Legislative Counsel Bureau, employees of the Bureau of State Audits, employees of the Public Employment Relations Board, conciliators employed by the State Conciliation Service within the Department of Industrial Relations, and intermittent athletic inspectors who are employees of the State Athletic Commission.

(c) "Supervisory employee organization" means an organization which represents members who are supervisory employees under subdivision (g) of Section 3513.

(d) "Excluded employee organization" means an organization which includes excluded employees of the state, as defined in subdivision (b), and which has as one of its primary purposes representing its

members in employer-employee relations. Excluded employee organization includes supervisory employee organizations.

(e) "State employer" or "employer," for purposes of meeting and conferring on matters relating to supervisory employer-employee relations, means the Governor or his or her designated representatives.

3528. The Legislature hereby finds and declares that the rights and protections provided to excluded employees under this chapter constitute a matter of important concern. The Legislature further finds and declares that the efficient and effective administration of state programs depends upon the maintenance of high morale and the objective consideration of issues raised between excluded employees and their employer.

3529. (a) Except for supervisory employees as defined in subdivision (g) of Section 3513, excluded employees shall not hold any office in an employee organization, which also represents nonexcluded employees.

(b) Excluded employees shall not participate in the handling of grievances on behalf of nonexcluded employees. Nonexcluded employees shall not participate in the handling of grievances on behalf of excluded employees.

(c) Excluded employees shall not participate in meet-and-confer sessions on behalf of nonexcluded employees. Nonexcluded employees shall not participate in meet-and-confer sessions on behalf of supervisory employees.

(d) The prohibition in subdivisions (b) and (c) shall not apply to the paid staff of an excluded or supervisory employee organization.

(e) Excluded employees shall not vote on questions of ratification or rejection of memoranda of understanding reached on behalf of nonexcluded employees.

3530. Excluded employee organizations shall have the right to represent their excluded members in their employment relations, including grievances, with the State of California. Excluded employee organizations may establish reasonable restrictions regarding who may join and may make reasonable provisions for the dismissal of excluded employees from membership. This section shall not prohibit any excluded employee from appearing on his or her own behalf or through his or her chosen representative in his or her employment relations and grievances with the State of California.

3531. Supervisory employees shall have the right to form, join, and participate in the activities of supervisory employee organizations of their own choosing for the purpose of representation on all matters of supervisory employer-employee relations, as set forth in Section 3532. Supervisory employees also shall have the right to refuse to join or participate in the activities of supervisory employee organizations and shall have the right to represent

themselves individually in their employment relations with the public employer.

3532. The scope of representation for supervisory employees shall include all matters relating to employment conditions and supervisory employer-employee relations including wages, hours, and other terms and conditions of employment.

3533. Upon request, the state shall meet-and-confer with verified supervisory employee organizations representing supervisory employees. "Meet-and-confer" means that they shall consider as fully as the employer deems reasonable such presentations as are made by the verified supervisory employee organization on behalf of its supervisory members prior to arriving at a determination of policy or course of action.

3534. The state employer shall allow a reasonable number of supervisory public employee representatives of verified supervisory employee organizations reasonable time off without loss of compensation or other benefits when meeting and conferring with representatives of the state employer on matters within the scope of representation for supervisory employees.

3535. The Department of Personnel Administration may adopt rules and regulations for the administration of excluded employer-employee relations, including supervisory employer-employee relations, under these provisions. Such rules and regulations may include provisions for:

(a) Verifying that an excluded employee organization does in fact represent excluded employees.

(b) Verifying the official status of excluded employee organization officers and representatives.

(c) Access of excluded employee organization officers and representatives to work locations.

(d) Use of official bulletin boards and other means of communication by excluded employee organizations.

(e) Furnishing nonconfidential information pertaining to excluded employee relations to excluded employee organizations.

(f) Any other matters as are necessary to carry out the purposes of this chapter.

3536. The state may adopt reasonable rules and regulations providing for designation of the management and confidential employees of the state and restricting these employees from representing any employee organization, which represents other employees of the state, on matters within the scope of representation. Except as specifically provided otherwise in this chapter, this section does not otherwise limit the right of excluded employees to be members of and to hold office in an excluded employee organization.

3537. Every excluded employee organization shall submit an annual

registration statement on or before July 1 of each calendar year to the Department of Personnel Administration. The registration statement shall, at a minimum, list the name of the organization, its affiliations, headquarters, and other business addresses, its principal business telephone number, a list of principal officers and representatives, and a copy of its organization bylaws.

3538. The state employer and excluded employee organizations shall not interfere with, intimidate, restrain, coerce, or discriminate against supervisory employees because of their exercise of their rights under this article.

3539. The enactment of this chapter shall not make Section 923 of the Labor Code applicable to state employees.

3539.5. The Department of Personnel Administration may adopt or amend regulations to implement employee benefits for those state officers and employees excluded from, or not otherwise subject to, the Ralph C. Dills Act.

These regulations shall not be subject to the review and approval of the Office of Administrative Law pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2). These regulations shall become effective immediately upon filing with the Secretary of State.

RALPH C. DILLS ACT: PASSED BY CA SENATE 1977

RALPH C. DILLS ACT CALIFORNIA GOVERNMENT CODE SECTION 3512-3524

3512. It is the purpose of this chapter to promote full communication between the state and its employees by providing a reasonable method of resolving disputes regarding wages, hours, and other terms and conditions of employment between the state and public employee organizations. It is also the purpose of this chapter to promote the improvement of personnel management and employer-employee relations within the State of California by providing a uniform basis for recognizing the right of state employees to join organizations of their own choosing and be represented by those organizations in their employment relations with the state. It is further the purpose of this chapter, in order to foster peaceful employer-employee relations, to allow state employees to select one employee organization as the exclusive representative of the employees in an appropriate unit, and to permit the exclusive representative to receive financial support from those employees who receive the benefits of this representation.

Nothing in this chapter shall be construed to contravene the spirit or intent of the merit principle in state employment, nor to limit the entitlements of state civil service employees, including those designated as managerial and confidential, provided by Article VII of the California Constitution or by laws or rules enacted pursuant thereto.

3513. As used in this chapter:

(a) "Employee organization" means any organization which includes employees of the state and which has as one of its primary purposes representing these employees in their relations with the state.

(b) "Recognized employee organization" means an employee organization which has been recognized by the state as the exclusive representative of the employees in an appropriate unit.

(c) "State employee" means any civil service employee of the state, and the teaching staff of schools under the jurisdiction of the State Department of Education or the Superintendent of Public Instruction, except managerial employees, confidential employees, supervisory employees, employees of the Department of Personnel Administration, professional employees of the Department of Finance engaged in technical or analytical state budget preparation other than the auditing staff, professional employees in the Personnel/Payroll Services Division of the Controller's office engaged in technical or analytical duties in support of the state's

personnel and payroll systems other than the training staff, employees of the Legislative Counsel Bureau, employees of the Bureau of State Audits, employees of the office of the Inspector General, employees of the board, conciliators employed by the State Conciliation Service within the Department of Industrial Relations, and intermittent athletic inspectors who are employees of the State Athletic Commission.

(d) "Mediation" means effort by an impartial third party to assist in reconciling a dispute regarding wages, hours and other terms and conditions of employment between representatives of the public agency and the recognized employee organization or recognized employee organizations through interpretation, suggestion and advice.

(e) "Managerial employee" means any employee having significant responsibilities for formulating or administering agency or departmental policies and programs or administering an agency or department.

(f) "Confidential employee" means any employee who is required to develop or present management positions with respect to employer-employee relations or whose duties normally require access to confidential information contributing significantly to the development of management positions.

(g) "Supervisory employee" means any individual, regardless of the job description or title, having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend this action, if, in connection with the foregoing, the exercise of this authority is not of a merely routine or clerical nature, but requires the use of independent judgment. Employees whose duties are substantially similar to those of their subordinates shall not be considered to be supervisory employees.

(h) "Board" means the Public Employment Relations Board. The Educational Employment Relations Board established pursuant to Section 3541 shall be renamed the Public Employment Relations Board as provided in Section 3540. The powers and duties of the board described in Section 3541.3 shall also apply, as appropriate, to this chapter.

(i) "Maintenance of membership" means that all employees who voluntarily are, or who voluntarily become, members of a recognized employee organization shall remain members of that employee organization in good standing for a period as agreed to by the parties pursuant to a memorandum of understanding, commencing with the effective date of the memorandum of understanding. A maintenance of membership provision shall not apply to any employee who within 30 days prior to the expiration of the memorandum of understanding withdraws from the employee organization by sending a signed

withdrawal letter to the employee organization and a copy to the Controller's office.

(j) "State employer," or "employer," for the purposes of bargaining or meeting and conferring in good faith, means the Governor or his or her designated representatives.

(k) "Fair share fee" means the fee deducted by the state employer from the salary or wages of a state employee in an appropriate unit who does not become a member of and financially support the recognized employee organization. The fair share fee shall be used to defray the costs incurred by the recognized employee organization in fulfilling its duty to represent the employees in their employment relations with the state, and shall not exceed the standard initiation fee, membership dues, and general assessments of the recognized employee organization.

3514. Any person who shall willfully resist, prevent, impede or interfere with any member of the board, or any of its agents, in the performance of duties pursuant to this chapter, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not more than one thousand dollars (\$1,000).

3514.5. The initial determination as to whether the charges of unfair practices are justified, and, if so, what remedy is necessary to effectuate the purposes of this chapter, shall be a matter within the exclusive jurisdiction of the board. Procedures for investigating, hearing, and deciding these cases shall be devised and promulgated by the board and shall include all of the following:

(a) Any employee, employee organization, or employer shall have the right to file an unfair practice charge, except that the board shall not do either of the following: (1) issue a complaint in respect of any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge; (2) issue a complaint against conduct also prohibited by the provisions of the agreement between the parties until the grievance machinery of the agreement, if it exists and covers the matter at issue, has been exhausted, either by settlement or binding arbitration. However, when the charging party demonstrates that resort to contract grievance procedure would be futile, exhaustion shall not be necessary. The board shall have discretionary jurisdiction to review such settlement or arbitration award reached pursuant to the grievance machinery solely for the purpose of determining whether it is repugnant to the purposes of this chapter. If the board finds that such settlement or arbitration award is repugnant to the purposes of this chapter, it shall issue a complaint on the basis of a timely filed charge, and hear and decide the case on the merits; otherwise, it shall dismiss the charge. The board shall, in determining whether the charge was timely filed, consider the six-month limitation set forth in this subdivision to have been

tolled during the time it took the charging party to exhaust the grievance machinery.

(b) The board shall not have authority to enforce agreements between the parties, and shall not issue a complaint on any charge based on alleged violation of such an agreement that would not also constitute an unfair practice under this chapter.

(c) The board shall have the power to issue a decision and order directing an offending party to cease and desist from the unfair practice and to take such affirmative action, including but not limited to the reinstatement of employees with or without back pay, as will effectuate the policies of this chapter.

3515. Except as otherwise provided by the Legislature, state employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. State employees also shall have the right to refuse to join or participate in the activities of employee organizations, except that nothing shall preclude the parties from agreeing to a maintenance of membership provision, as defined in subdivision (i) of Section 3513, or a fair share fee provision, as defined in subdivision (k) of Section 3513, pursuant to a memorandum of understanding. In any event, state employees shall have the right to represent themselves individually in their employment relations with the state.

3515.5. Employee organizations shall have the right to represent their members in their employment relations with the state, except that once an employee organization is recognized as the exclusive representative of an appropriate unit, the recognized employee organization is the only organization that may represent that unit in employment relations with the state. Employee organizations may establish reasonable restrictions regarding who may join and may make reasonable provisions for the dismissal of individuals from membership. Nothing in this section shall prohibit any employee from appearing in his own behalf in his employment relations with the state.

3515.6. All employee organizations shall have the right to have membership dues, initiation fees, membership benefit programs, and general assessments deducted pursuant to subdivision (a) of Section 1152 and Section 1153 until such time as an employee organization is recognized as the exclusive representative for employees in an appropriate unit, and then such deductions as to any employee in the negotiating unit shall not be permissible except to the exclusive representative.

3515.7. (a) Once an employee organization is recognized as the exclusive representative of an appropriate unit it may enter into an agreement with the state employer providing for organizational

security in the form of maintenance of membership or fair share fee deduction.

(b) The state employer shall furnish the recognized employee organization with sufficient employment data to allow the organization to calculate membership fees and the appropriate fair share fees, and shall deduct the amount specified by the recognized employee organization from the salary or wages of every employee for the membership fee or the fair share fee. These fees shall be remitted monthly to the recognized employee organization along with an adequate itemized record of the deductions, including, if required by the recognized employee organization, machine readable data. Fair share fee deductions shall continue until the effective date of a successor agreement or implementation of the state's last, best, and final offer, whichever occurs first. The Controller shall retain, from the fair share fee deduction, an amount equal to the cost of administering the provisions of this section. The state employer shall not be liable in any action by a state employee seeking recovery of, or damages for, improper use or calculation of fair share fees.

(c) Notwithstanding subdivision (b), any employee who is a member of a religious body whose traditional tenets or teachings include objections to joining or financially supporting employee organizations shall not be required to financially support the recognized employee organization. That employee, in lieu of a membership fee or a fair share fee deduction, shall instruct the employer to deduct and pay sums equal to the fair share fee to a nonreligious, nonlabor organization, charitable fund approved by the State Board of Control for receipt of charitable contributions by payroll deductions.

(d) A fair share fee provision in a memorandum of understanding which is in effect may be rescinded by a majority vote of all the employees in the unit covered by the memorandum of understanding, provided that: (1) a request for such a vote is supported by a petition containing the signatures of at least 30 percent of the employees in the unit; (2) the vote is by secret ballot; and (3) the vote may be taken at anytime during the term of the memorandum of understanding, but in no event shall there be more than one vote taken during the term. If the board determines that the appropriate number of signatures have been collected, it shall conduct the vote in a manner which it shall prescribe. Notwithstanding this subdivision, the state employer and the recognized employee organization may negotiate, and by mutual agreement provide for, an alternative procedure or procedures regarding a vote on a fair share fee provision.

(e) Every recognized employee organization which has agreed to a fair share fee provision shall keep an adequate itemized record of

its financial transactions and shall make available annually, to the board and to the employees in the unit, within 90 days after the end of its fiscal year, a detailed written financial report thereof in the form of a balance sheet and an operating statement, certified as to accuracy by its president and treasurer or comparable officers. In the event of failure of compliance with this section, any employee in the unit may petition the board for an order compelling this compliance, or the board may issue a compliance order on its own motion.

(f) If an employee who holds conscientious objections pursuant to subdivision (c) requests individual representation in a grievance, arbitration, or administrative hearing from the recognized employee organization, the recognized employee organization is authorized to charge the employee for the reasonable cost of the representation.

(g) An employee who pays a fair share fee shall be entitled to fair and impartial representation by the recognized employee organization. A breach of this duty shall be deemed to have occurred if the employee organization's conduct in representation is arbitrary, discriminatory, or in bad faith.

3515.8. Any state employee who pays a fair share fee shall have the right to demand and receive from the recognized employee organization, under procedures established by the recognized employee organization, a return of any part of that fee paid by him or her which represents the employee's additional pro rata share of expenditures by the recognized employee organization that is either in aid of activities or causes of a partisan political or ideological nature only incidentally related to the terms and conditions of employment, or applied towards the cost of any other benefits available only to members of the recognized employee organization. The pro rata share subject to refund shall not reflect, however, the costs of support of lobbying activities designed to foster policy goals and collective negotiations and contract administration, or to secure for the employees represented advantages in wages, hours, and other conditions of employment in addition to those secured through meeting and conferring with the state employer. The board may compel the recognized employee organization to return that portion of a fair share fee which the board may determine to be subject to refund under the provisions of this section.

3516. The scope of representation shall be limited to wages, hours, and other terms and conditions of employment, except, however, that the scope of representation shall not include consideration of the merits, necessity, or organization of any service or activity provided by law or executive order.

3516.5. Except in cases of emergency as provided in this section, the employer shall give reasonable written notice to each recognized employee organization affected by any law, rule, resolution, or

regulation directly relating to matters within the scope of representation proposed to be adopted by the employer, and shall give such recognized employee organizations the opportunity to meet and confer with the administrative officials or their delegated representatives as may be properly designated by law.

In cases of emergency when the employer determines that a law, rule, resolution, or regulation must be adopted immediately without prior notice or meeting with a recognized employee organization, the administrative officials or their delegated representatives as may be properly designated by law shall provide such notice and opportunity to meet-and-confer in good faith at the earliest practical time following the adoption of such law, rule, resolution, or regulation.

3517. The Governor, or his representative as may be properly designated by law, shall meet-and-confer in good faith regarding wages, hours, and other terms and conditions of employment with representatives of recognized employee organizations, and shall consider fully such presentations as are made by the employee organization on behalf of its members prior to arriving at a determination of policy or course of action.

"Meet-and-confer in good faith" means that the Governor or such representatives as the Governor may designate, and representatives of recognized employee organizations, shall have the mutual obligation personally to meet-and-confer promptly upon request by either party and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation prior to the adoption by the state of its final budget for the ensuing year. The process should include adequate time for the resolution of impasses.

3517.5. If agreement is reached between the Governor and the recognized employee organization, they shall jointly prepare a written memorandum of such understanding which shall be presented, when appropriate, to the Legislature for determination.

3517.6. (a) (1) In any case where the provisions of Section 70031 of the Education Code, or subdivision (i) of Section 3513, or Section 14876, 18714, 19080.5, 19100, 19143, 19261, 19818.16, 19819.1, 19820, 19822, 19824, 19826, 19827, 19828, 19829, 19830, 19831, 19832, 19833, 19834, 19835, 19836, 19837, 19838, 19839, 19840, 19841, 19842, 19843, 19844, 19845, 19846, 19847, 19848, 19849, 19849.1, 19849.4, 19850.1, 19850.2, 19850.3, 19850.4, 19850.5, 19850.6, 19851, 19853, 19854, 19856, 19856.1, 19858.1, 19858.2, 19859, 19860, 19861, 19862, 19862.1, 19863, 19863.1, 19864, 19866, 19869, 19870, 19871, 19871.1, 19872, 19873, 19874, 19875, 19876, 19877, 19877.1, 19878, 19879, 19880, 19880.1, 19881, 19882, 19883, 19884, 19885, 19887, 19887.1, 19887.2, 19888, 19990, 19991, 19991.1, 19991.2, 19991.3, 19991.4, 19991.5, 19991.6, 19991.7, 19992, 19992.1, 19992.2, 19992.3, 19992.4, 19993, 19994.1, 19994.2, 19994.3, 19994.4, 19995, 19995.1,

19995.2, 19995.3, 19996.1, 19996.2, 19998, 19998.1, 20796, 21600, 21602, 21604, 21605, 22825, or 22825.1 are in conflict with the provisions of a memorandum of understanding, the memorandum of understanding shall be controlling without further legislative action.

(2) Notwithstanding paragraph (1), this paragraph shall apply only to state employees in State Bargaining Unit 5. In any case where the provisions of Section 70031 of the Education Code, or subdivision (i) of Section 3513, or Section 14876, 18714, 19080.5, 19100, 19143, 19261, 19576.1, 19818.16, 19819.1, 19820, 19822, 19824, 19826, 19827, 19828, 19829, 19830, 19831, 19832, 19833, 19834, 19835, 19836, 19837, 19838, 19839, 19840, 19841, 19842, 19843, 19844, 19845, 19846, 19847, 19848, 19849, 19849.1, 19849.4, 19850.1, 19850.2, 19850.3, 19850.4, 19850.5, 19850.6, 19851, 19853, 19854, 19856, 19856.1, 19858.1, 19858.2, 19859, 19860, 19861, 19862, 19862.1, 19863, 19863.1, 19864, 19866, 19869, 19870, 19871, 19871.1, 19872, 19873, 19874, 19875, 19876, 19877, 19877.1, 19878, 19879, 19880, 19880.1, 19881, 19882, 19883, 19884, 19885, 19887, 19887.1, 19887.2, 19888, 19990, 19991, 19991.1, 19991.2, 19991.3, 19991.4, 19991.5, 19991.6, 19991.7, 19992, 19992.1, 19992.2, 19992.3, 19992.4, 19993, 19994.1, 19994.2, 19994.3, 19994.4, 19995, 19995.1, 19995.2, 19995.3, 19996.1, 19996.2, 19998, 19998.1, 20796, 21600, 21602, 21604, 21605, 22825, or 22825.1 are in conflict with the provisions of a memorandum of understanding, the memorandum of understanding shall be controlling without further legislative action.

(3) Notwithstanding paragraph (1), this paragraph shall apply only to state employees in State Bargaining Unit 8. In any case where the provisions of Section 70031 of the Education Code, or subdivision (i) of Section 3513, or Section 14876, 18714, 19080.5, 19100, 19143, 19261, 19576.1, 19582.1, 19175.1, 19818.16, 19819.1, 19820, 19822, 19824, 19826, 19827, 19828, 19829, 19830, 19831, 19832, 19833, 19834, 19835, 19836, 19837, 19838, 19839, 19840, 19841, 19842, 19843, 19844, 19845, 19846, 19847, 19848, 19849, 19849.1, 19849.4, 19850.1, 19850.2, 19850.3, 19850.4, 19850.5, 19850.6, 19851, 19853, 19854, 19856, 19856.1, 19858.1, 19858.2, 19859, 19860, 19861, 19862, 19862.1, 19863, 19863.1, 19864, 19866, 19869, 19870, 19871, 19871.1, 19872, 19873, 19874, 19875, 19876, 19877, 19877.1, 19878, 19879, 19880, 19880.1, 19881, 19882, 19883, 19884, 19885, 19887, 19887.1, 19887.2, 19888, 19990, 19991, 19991.1, 19991.2, 19991.3, 19991.4, 19991.5, 19991.6, 19991.7, 19992, 19992.1, 19992.2, 19992.3, 19992.4, 19993, 19994.1, 19994.2, 19994.3, 19994.4, 19995, 19995.1, 19995.2, 19995.3, 19996.1, 19996.2, 19998, 19998.1, 20796, 21600, 21602, 21604, 21605, 22825, or 22825.1 are in conflict with the provisions of a memorandum of understanding, the memorandum of understanding shall be controlling without further legislative action.

(b) In any case where the provisions of Section 19997.2, 19997.3,

19997.8, 19997.9, 19997.10, 19997.11, 19997.12, 19997.13, or 19997.14 are in conflict with the provisions of a memorandum of understanding, the terms of the memorandum of understanding shall be controlling unless the State Personnel Board finds those terms to be inconsistent with merit employment principles as provided for by Article VII of the California Constitution. Where this finding is made, the provisions of the Government Code shall prevail until those affected sections of the memorandum of understanding are renegotiated to resolve the inconsistency. If any provision of the memorandum of understanding requires the expenditure of funds, those provisions of the memorandum of understanding shall not become effective unless approved by the Legislature in the annual Budget Act. If any provision of the memorandum of understanding requires legislative action to permit its implementation by amendment of any section not cited above, those provisions of the memorandum of understanding shall not become effective unless approved by the Legislature.

3517.61. Notwithstanding Section 3517.6, for state employees in State Bargaining Unit 6, in any case where the provisions of Section 70031 of the Education Code, subdivision (i) of Section 3513, or Section 14876, 18714, 19080.5, 19100, 19143, 19173.4, 19175.7, 19261, 19818.16, 19819.1, 19820, 19822, 19824, 19826, 19827, 19828, 19829, 19830, 19831, 19832, 19833, 19834, 19835, 19836, 19837, 19838, 19839, 19840, 19841, 19842, 19843, 19844, 19845, 19846, 19847, 19848, 19849, 19849.1, 19849.4, 19850.1, 19850.2, 19850.3, 19850.4, 19850.5, 19850.6, 19851, 19853, 19854, 19856, 19856.1, 19858.1, 19858.2, 19859, 19860, 19861, 19862, 19862.1, 19863, 19863.1, 19864, 19866, 19869, 19870, 19871, 19871.1, 19872, 19873, 19874, 19875, 19876, 19877, 19877.1, 19878, 19879, 19880, 19880.1, 19881, 19882, 19883, 19884, 19885, 19887, 19887.1, 19887.2, 19888, 19990, 19991, 19991.1, 19991.2, 19991.3, 19991.4, 19991.5, 19991.6, 19991.7, 19992, 19992.1, 19992.2, 19992.3, 19992.4, 19993, 19994.1, 19994.2, 19994.3, 19994.4, 19995, 19995.1, 19995.2, 19995.3, 19996.1, 19996.2, 19998, 19998.1, 20796, 21600, 21602, 21604, 21605, 22825, or 22825.1 are in conflict with the provisions of a memorandum of understanding, the memorandum of understanding shall be controlling without further legislative action. In any case where the provisions of Section 19997.2, 19997.3, 19997.8, 19997.9, 19997.10, 19997.11, 19997.12, 19997.13, or 19997.14 are in conflict with the provisions of a memorandum of understanding, the terms of the memorandum of understanding shall be controlling unless the State Personnel Board finds those terms to be inconsistent with merit employment principles as provided for by Article VII of the California Constitution. Where this finding is made, the provisions of the Government Code shall prevail until those affected sections of the memorandum of understanding are renegotiated to resolve the inconsistency. If any provision of the

memorandum of understanding requires the expenditure of funds, those provisions of the memorandum of understanding shall not become effective unless approved by the Legislature in the annual Budget Act. If any provision of the memorandum of understanding requires legislative action to permit its implementation by amendment of any section not cited above, those provisions of the memorandum of understanding shall not become effective unless approved by the Legislature.

3517.7. If the Legislature does not approve or fully fund any provision of the memorandum of understanding which requires the expenditure of funds, either party may reopen negotiations on all or part of the memorandum of understanding.

Nothing herein shall prevent the parties from agreeing and effecting those provisions of the memorandum of understanding which have received legislative approval or those provisions which do not require legislative action.

3517.8. (a) If a memorandum of understanding has expired, and the Governor and the recognized employee organization have not agreed to a new memorandum of understanding and have not reached an impasse in negotiations, subject to subdivision (b), the parties to the agreement shall continue to give effect to the provisions of the expired memorandum of understanding, including, but not limited to, all provisions that supersede existing law, any arbitration provisions, any no strike provisions, any agreements regarding matters covered in the Fair Labor Standards Act of 1938 (Chapter 8 (commencing with Section 201) of Title 29 of the United States Code), and any 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. Any proposal in the state employer's last, best, and final offer that, if implemented, would conflict with existing statutes or require the expenditure of funds shall be presented to the Legislature for approval and, if approved, shall be controlling without further legislative action, notwithstanding Sections 3517.5, 3517.6, and 3517.7.. Implementation of the last, best, and final offer does not relieve the parties of the obligation to bargain in good faith and reach an agreement on a memorandum of understanding if any circumstances change, and does not waive any rights that the recognized employee organization has under this chapter.

3518. If after a reasonable period of time, the Governor and the recognized employee organization fail to reach agreement, the Governor and the recognized employee organization may agree upon the appointment of a mediator mutually agreeable to the parties, or either party may request the board to appoint a mediator. When both

parties mutually agree upon a mediator, costs of mediation shall be divided one-half to the state and one-half to the recognized employee organization. If the board appoints the mediator, the costs of mediation shall be paid by the board.

3518.5. A reasonable number of employee representatives of recognized employee organizations shall be granted reasonable time off without loss of compensation or other benefits when formally meeting and conferring with representatives of the state on matters within the scope of representation.

This section shall apply only to state employees, as defined by subdivision (c) of Section 3513, and only for periods when a memorandum of understanding is not in effect.

3518.7. Managerial employees and confidential employees shall be prohibited from holding elective office in an employee organization which also represents "state employees," as defined in subdivision (c) of Section 3513.

3519. It shall be unlawful for the state to do any of the following:

(a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter. For purposes of this subdivision, "employee" includes an applicant for employment or reemployment.

(b) Deny to employee organizations rights guaranteed to them by this chapter.

(c) Refuse or fail to meet-and-confer in good faith with a recognized employee organization.

(d) Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another.

(e) Refuse to participate in good faith in the mediation procedure set forth in Section 3518.

3519.5. It shall be unlawful for an employee organization to:

(a) Cause or attempt to cause the state to violate Section 3519.

(b) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.

(c) Refuse or fail to meet-and-confer in good faith with a state agency employer of any of the employees of which it is the recognized employee organization.

(d) Refuse to participate in good faith in the mediation procedure set forth in Section 3518.

3520. (a) Judicial review of a unit determination shall only be

allowed: (1) when the board, in response to a petition from the state or an employee organization, agrees that the case is one of special importance and joins in the request for such review; or (2) when the issue is raised as a defense to an unfair practice complaint. A board order directing an election shall not be stayed pending judicial review.

Upon receipt of a board order joining in the request for judicial review, a party to the case may petition for a writ of extraordinary relief from the unit determination decision or order.

(b) Any charging party, respondent, or intervenor aggrieved by a final decision or order of the board in an unfair practice case, except a decision of the board not to issue a complaint in such a case, may petition for a writ of extraordinary relief from such decision or order.

(c) Such petition shall be filed in the district court of appeal in the appellate district where the unit determination or unfair practice dispute occurred. The petition shall be filed within 30 days after issuance of the board's final order, order denying reconsideration, or order joining in the request for judicial review, as applicable. Upon the filing of such petition, the court shall cause notice to be served upon the board and thereupon shall have jurisdiction of the proceeding. The board shall file in the court the record of the proceeding, certified by the board, within 10 days after the clerk's notice unless such time is extended by the court for good cause shown. The court shall have jurisdiction to grant to the board such temporary relief or restraining order it deems just and proper and in like manner to make and enter a decree enforcing, modifying, or setting aside the order of the board. The findings of the board with respect to questions of fact, including ultimate facts, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The provisions of Title 1 (commencing with Section 1067) of Part 3 of the Code of Civil Procedure relating to writs shall, except where specifically superseded herein, apply to proceedings pursuant to this section.

(d) If the time to petition for extraordinary relief from a board decision has expired, the board may seek enforcement of any final decision or order in a district court of appeal or a superior court in the district where the unit determination or unfair practice case occurred. If, after hearing, the court determines that the order was issued pursuant to procedures established by the board and that the person or entity refuses to comply with the order, the court shall enforce such order by writ of mandamus. The court shall not review the merits of the order.

3520.5. (a) The state shall grant exclusive recognition to employee organizations designated or selected pursuant to rules established by the board for employees of the state or an appropriate unit

thereof, subject to the right of an employee to represent himself.

(b) The board shall establish reasonable procedures for petitions and for holding elections and determining appropriate units pursuant to subdivision (a).

(c) The board shall also establish procedures whereby recognition of employee organizations formally recognized as exclusive representatives pursuant to a vote of the employees may be revoked by a majority vote of the employees only after a period of not less than 12 months following the date of such recognition.

3520.7. The state employer shall adopt reasonable rules and regulations for all of the following:

(a) Registering employee organizations, as defined by subdivision (c) of Section 1150, and bona fide associations, as defined by subdivision (d) of Section 1150.

(b) Determining the status of organizations and associations as employee organizations or bona fide associations.

(c) Identifying the officers and representatives who officially represent employee organizations and bona fide associations.

3521. (a) In determining an appropriate unit, the board shall be governed by the criteria in subdivision (b). However, the board shall not direct an election in a unit unless one or more of the employee organizations involved in the proceeding is seeking or agrees to an election in such a unit.

(b) In determining an appropriate unit, the board shall take into consideration all of the following criteria:

(1) The internal and occupational community of interest among the employees, including, but not limited to, the extent to which they perform functionally related services or work toward established common goals; the history of employee representation in state government and in similar employment; the extent to which the employees have common skills, working conditions, job duties, or similar educational or training requirements; and the extent to which the employees have common supervision.

(2) The effect that the projected unit will have on the meet and confer relationships, emphasizing the availability and authority of employer representatives to deal effectively with employee organizations representing the unit, and taking into account such factors as work location, the numerical size of the unit, the relationship of the unit to organizational patterns of the state government, and the effect on the existing classification structure or existing classification schematic of dividing a single class or single classification schematic among two or more units.

(3) The effect of the proposed unit on efficient operations of the employer and the compatibility of the unit with the responsibility of state government and its employees to serve the public.

(4) The number of employees and classifications in a proposed unit

and its effect on the operations of the employer, on the objectives of providing the employees the right to effective representation, and on the meet-and-confer relationship.

(5) The impact on the meet-and-confer relationship created by fragmentation of employees or any proliferation of units among the employees of the employer.

(6) Notwithstanding the foregoing provisions of this section, or any other provision of law, an appropriate group of skilled crafts employees shall have the right to be a separate unit of representation based upon occupation. Skilled crafts employees shall include, but not necessarily be limited to, employment categories such as carpenters, plumbers, electricians, painters, and operating engineers.

(c) There shall be a presumption that professional employees and nonprofessional employees should not be included in the same unit. However, the presumption shall be rebuttable, depending upon what the evidence pertinent to the criteria set forth in subdivision (b) establishes.

3521.5. The term "professional employee" means (a) any employee engaged in work (1) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (2) involving the consistent exercise of discretion and judgment in its performance; (3) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (4) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or (b) any employee, who (1) has completed the courses of specialized intellectual instruction and study described in paragraph 4 of subdivision (a), and (2) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in subdivision (a).

3521.7. The board may, in accordance with reasonable standards, designate positions or classes of positions which have duties consisting primarily of the enforcement of state laws. Employees so designated shall not be denied the right to be in a unit composed solely of such employees.

3523. (a) All initial meet-and-confer proposals of recognized employee organizations shall be presented to the employer at a public meeting, and such proposals thereafter shall be a public record.

All initial meet-and-confer proposals or counterproposals of the employer shall be presented to the recognized employee organization

at a public meeting, and such proposals or counterproposals thereafter shall be a public record.

(b) Except in cases of emergency as provided in subdivision (d), no meeting and conferring shall take place on any proposal subject to subdivision (a) until not less than seven consecutive days have elapsed to enable the public to become informed, and to publicly express itself regarding the proposals, as well as regarding other possible subjects of meeting and conferring and thereafter, the employer shall, in open meeting, hear public comment on all matters related to the meet-and-confer proposals.

(c) Forty-eight hours after any proposal which includes any substantive subject which has not first been presented as proposals for public reaction pursuant to this section is offered during any meeting and conferring session, such proposals and the position, if any, taken thereon by the representatives of the employer, shall be a public record.

(d) Subdivision (b) shall not apply when the employer determines that, due to an act of God, natural disaster, or other emergency or calamity affecting the state, and which is beyond the control of the employer or recognized employee organization, it must meet-and-confer and take action upon such a proposal immediately and without sufficient time for the public to become informed and to publicly express itself. In such cases the results of such meeting and conferring shall be made public as soon as reasonably possible.

3523.5. The enactment of this chapter shall not be construed as making the provisions of Section 923 of the Labor Code applicable to state employees.

3524. This chapter shall be known and may be cited as the Ralph C. Dills Act.

GLOSSARY

(From "Pocket Guide to the Ralph C. Dills Act" UC Berkeley, CA 1996)

Bargaining Unit: A group of employees constituting an appropriate unit for purposes of representation by an employee organization in relations with the employer. Under the Dills Act, PERB has the authority to determine appropriate bargaining units, based on specific criteria such as community interest, same type of work, and bargaining history.

Department of Personnel Administration: The California State department that administers the state personnel system, except matters under the exclusive jurisdiction of the State Personnel Board. DPA has primary responsibility for collective bargaining and labor-management relations.

Excluded Employee: Generally this covers all managerial, confidential and supervisory state employees. An excluded employee does not have collective bargaining rights and is not rank and file. The DPA can change terms and conditions of excluded employees at anytime since they are not bound by an employee organization contract. Excluded or supervisory employees can be members of an excluded or supervisory employee organization. There is no specific term in the Dills Act of California Government Code Section (GC) 3513 that uses the term "excluded", but rather the term "except" is used in the definition of what a state employee means. The Bill of Rights for State Excluded Employees GC Section 3527(b) actually defines the term "excluded employee" and refers back to the Dills Act GC 3513, where managerial, supervisory and confidential employees are defined. For specific wording, the Bill of Rights and Dills Act located in the Appendix.

Excluded Employees Bill of Rights Act: The California law covering the organizational, representational, and other rights of those classes of employees expressly excluded from coverage under the Dills Act. The EEBRA covers, among others, general categories of supervisory, managerial, confidential and selected professional employees. Other key employees covered by the act are the PERB employees, state mediators, and employees of the DPA. See Gov. Code Sections 3513 (c) and 3525-3539.5.

Government Code: The body of state statutes governing many of the terms and conditions of employment of state employees.

Higher Education Employer-Employee Relations Act: HEERA passed in 1978. Administered by PERB. Covers employees of the states two systems of higher education- the University of California and California State University, and the EEBRA adopted in 1990 under which fall state supervisory, managerial and confidential employees.

Public Employees Retirement Board of the state of California: PERB regulations appear in the California Administrative Code Title VIII, Sections 31001 et seq. PERB is charged with administering and enforcing the Dills Act, as well as EERA and HEERA. It investigates and decides unfair practice charges and other claims to violations of the Dills Act. It also establishes and approves bargaining units, conducts representation elections and seeks court enforcement of

its orders and decisions, if deemed necessary. PERB functions much like the National Labor Relations Board, and many of its decisions are based on relevant private sector precedent.

Managerial Employee: An employee having significant responsibilities for formulating or administering agency or department policies or programs, or administering an agency or department. State managerial employees are not covered by the Dills Act, but by the EEBRA.

Memorandum of Understanding: A MOU is a negotiated agreement. If the MOU conflicts with the government codes, the MOU is controlling without legislative action.

Negotiations: The process of the employer and the exclusive representative meeting together and bargaining in a good faith effort to reach agreement within the scope of representation.

ACRONYMS

ACSS: Association of California State Supervisors
BU: Bargaining Unit
CA: California
Caltrans: State of California Department of Transportation
CAPS: California Association of Professional Scientists
CASSO: Corrections Ancillary Staff Supervisors Organization
CCPOA: California Correctional Peace Officers Association
CEEEO: Coalition of Excluded Employee Organizations
COEP: Coalition of Equal Partners
CSEA: California State Employees Association
DOF: Department of Finance
DOTS: Department of Transportation Supervisors
DPA: Department of Personnel Administration
EEBRA: Excluded Employees Bill of Rights Act
EETF: Excluded and Exempt Employee Salary-Setting Task Force
GC: Government Code
HEERA: Higher Education Employer-Employee Relations Act
MOU: Memorandum of Understanding
PECG: Professional Engineers in California State Government
PERB: Public Employees Relations Board of the state of California
R/F: Rank and File State Employees

ENDNOTES

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- ³ California Government Code GC 3533, 3517, < <http://www.leginfo.CA.gov>>, (May 1, 2003).
- ⁴ Richard C. Kearney, *Labor Relations in the Public Sector*, 3rd Edition, Marcel Dekker Inc., New York, NY, 2003, page 67.
- ⁵ Fred D. Orazio and Kirsten Rosi, *Pocket Guide to the Ralph C. Dills Act*, CA Public Employees Relation Program, University of California Berkeley, Berkeley, CA January 1996, page 12.
- ⁶ Ibid, page 13.
- ⁷ Ibid, page 7.
- ⁸ Ibid, page 4.
- ⁹ Ibid, page 5.
- ¹⁰ PECG SUPERINFORMER, “Managers and Supervisors Salary Adjustments and Recruitment Retention Differentials,” Early Nov#3-2002, <<http://www.pecg.org/superinf.htm>>, (February 10, 2003).
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