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MOU Fiscal Analysis: **Bargaining Units 1, 3, 4, 11, 14, 15, 17,** **20, and 21 (SEIU Local 1000)**

LEGISLATIVE ANALYST'S OFFICE

Presented to:

The California Legislature

Pursuant to Section 19829.5 of the Government Code





Background on the State Memorandum of Understanding (MOU) Process

- ☑ ***Ralph C. Dills Act Provides for State Employee Collective Bargaining.*** With its passage of the Dills Act in 1977, the Legislature authorized collective bargaining between unions representing rank-and-file state employees and the administration. Currently, around 200,000 state workers belong to 1 of 21 bargaining units.

- ☑ ***Legislature's Role in the MOU Process.*** The key provisions of MOUs must be ratified by the Legislature and bargaining unit members in order to take effect. In addition, the Legislature annually may choose whether to appropriate funds in the budget to continue the financial provisions of each MOU.

- ☑ ***Fiscal Analysis Required by State Law.*** Section 19829.5 of the Government Code requires the Legislative Analyst's Office (LAO) to issue a fiscal analysis of proposed MOUs—generally within ten calendar days of their presentation to the Legislature.

- ☑ ***MOUs for Largest State Union Now Before Lawmakers.*** Service Employees International Union (SEIU) Local 1000 represents nine bargaining units comprising about half of the unionized state workforce. Proposed MOUs for these units—totaling 3,755 pages of material—now await legislative action. These MOUs would expire on June 30, 2010.



Summary of Proposed SEIU Local 1000 MOUs



Major Provisions. Major provisions in all of the Local 1000 MOUs include:

- **Negotiated Pay Decrease.** A 4.6 percent pay cut—compared to the pay levels under the prior Local 1000 MOUs as of January 2009. These provisions would be effective from February 2009 to June 2010 for almost all workers represented by Local 1000.
- **End to “Furlough Fridays” and Changes in Leave Benefits.** The previous furlough shutdowns of some state offices would end. Under the MOUs, Local 1000 bargaining unit members would receive one day of additional leave each month during the 17-month pay reduction, which employees must use by July 1, 2012. In addition, two state holidays would be eliminated, but employees would receive two personal holidays to use at their discretion each year.
- **Reduced Use of Overtime Hours.** The MOUs contain provisions to reduce the use of overtime hours, consistent with legislative action on the recent budget package.
- **Additional Health Benefits.** Increases in the state’s contributions to employee health benefits.



Administration Savings Estimate. The Department of Personnel Administration (DPA) estimates that the state’s net savings under the agreements would be \$337 million (\$156 million General Fund) between now and June 2010. This estimate is in comparison to costs negotiated in Local 1000’s prior MOUs. (These prior MOUs included no pay cut provisions.)



Summary of Proposed SEIU Local 1000 MOUs

(Continued)



Savings or Added Costs: Depends on the Basis of Comparison. We have identified three different ways to view the costs of the proposed MOUs.

- ***Compared to Costs Under Prior Local 1000 MOUs.*** The administration's savings estimate is reasonable if costs under the proposed MOUs are compared with costs negotiated in prior MOUs.
- ***Compared to Costs Under Governor's Previous Furlough Plan.*** If costs under the proposed MOUs are compared to those under the Governor's previous two-day-per-month furlough plan (which reduced paychecks of almost all Local 1000 members by 9.2 percent in February), the MOUs represent a cost *increase* for the state because they contain a comparatively smaller pay reduction.
- ***Compared to February Budget Package.*** We understand the administration will seek additional appropriations of tens of millions of dollars to cover costs in the proposed MOUs, as they are not included in the recent budget package.



Bargaining Units at a Glance

- ☑ **Local 1000 Represents About One-Half of Unionized State Workers.** The nine Local 1000 units include about 95,000 state workers—about one-half of the unionized workforce. These workers perform a wide variety of tasks and work in nearly every state department.
- ☑ **Most Work in Administrative and Financial Services.** Figure 1 shows the distribution of employees represented by Local 1000. About 75,000 of the workers are in Units 1 and 4 and work in administrative, financial, and office assignments. Recently, the units growing by the fastest percentages have been Units 17 and 20, which include medical staff in state prisons, hospitals, and other institutions.

Figure 1
SEIU Local 1000 Bargaining Units

Bargaining Unit	Represented Employees
1—Professional, Administrative, Financial, and Staff Services	46,113
3—Professional Educators and Librarians (Institutional)	2,284
4—Office and Allied Workers	28,991
11—Engineering and Scientific Technicians	2,902
14—Printing Trades	483
15—Allied Service Workers (Custodial, Food Services, Laundry)	4,845
17—Registered Nurses	5,075
20—Medical and Social Services Specialists	3,690
21—Educational Consultants and Librarians (Noninstitutional)	566
Total	94,949

Source: SEIU Local 1000.



Previous MOUs

- Term.** The Legislature approved Local 1000's previous MOUs in 2006. The MOUs expired on June 30, 2008. Pursuant to Section 3517.8 of the Government Code, an expired MOU generally remains in effect unless a new MOU is approved or the state and the union reach an impasse in negotiations.
- Pay Increases.** Under the previous MOUs, most of the employees received a one-time \$1,000 bonus in 2006, a 3.5 percent salary increase on July 1, 2006, and a 3.4 percent salary increase on July 1, 2007. In addition, the Legislature approved MOU addenda providing additional raises for small groups of workers.
- Health Benefits.** In general, employees in Local 1000 bargaining units—except Unit 3—receive health benefits under the “80/80” formula, which provides a state contribution to health premiums equal to 80 percent of the average California Public Employees’ Retirement System (CalPERS) plan premiums, plus 80 percent of the average additional premiums to enroll dependent family members. Unit 3 members received 80/80 health benefits through the end of 2008, but received no increase to cover increased CalPERS health premiums in 2009.
- Retirement.** Most of the employees are eligible for “2 percent at 55” retirement benefits and contribute approximately 5 percent of monthly pay to cover part of the costs of these benefits. The state pays the remainder of the costs, including costs to address unfunded liabilities. (Under both the prior and proposed MOUs, state costs to address these liabilities will rise significantly in 2010-11 due to recent CalPERS investment losses.) Benefits paid to retired employees have been based on the highest pay received during a *single* year of employment. Under the prior and proposed MOUs, pension benefits for workers hired after January 2007 instead will be based on the highest average annual pay received over any consecutive *three* years of state service.



Proposed MOUs—Pay Increases

- No General Salary Increase Through June 2010.*** The proposed MOUs specify that there will be no general pay increase through June 2010 for virtually all of the employees.

- Seasonal Clerks, However, Would Receive a Pay Increase.*** The MOUs would provide approximately 1,300 seasonal clerks employed by the Franchise Tax Board and the State Compensation Insurance Fund—currently with a base salary of \$1,418 to \$1,620 per month—with a 50 cent per hour pay raise effective April 1, 2009. (Currently, these clerks do not pay fair share fees to the union, but we understand they may begin doing so after the proposed MOU is ratified.)



Proposed MOUs— Negotiated Pay Reductions

- Union Agrees to Reduce Pay It Negotiated in Prior MOUs.*** Under the MOUs, almost all employees would have their previously negotiated monthly pay reduced by 4.6 percent for 17 monthly pay periods—from February 2009 to June 2010. In the MOUs, this pay reduction is linked specifically to 17 days of additional leave time provided to full-time employees. (This additional leave time is discussed at the top of page 8 of this analysis.)

- Retirement Benefits Would Not Be Affected by This Pay Change.*** The MOU specifies that neither retirement benefits nor various other benefits would be affected by this pay change. This means that CalPERS' calculations of retirement benefits will be based on the salary the employee would have received if no pay reduction had been implemented. Also, it appears that the state and employees will make pension contributions to CalPERS based on the lower pay levels implemented as part of this agreement.



Proposed MOUs— Leave Benefits and Overtime

- Additional Leave Granted In Connection With Negotiated Pay Reduction.*** Under the MOUs, it appears that the furlough shutdowns of some state offices ordered previously by the Governor would end. Instead, full-time employees would receive one additional leave day per month between February 2009 and June 2010 (17 days in total). Employees could use these leave days at their own discretion between now and June 2012. Managers would be able to restrict employee usage of this leave only due to “severe operational considerations.” This leave may be used in lieu of vacation or sick leave, but these leave days may not be “cashed out” at any time.

- Two State Holidays Abolished.*** The MOUs contain language consistent with the recent legislative action (enacted as part of the recent budget package) to eliminate two state holidays: Lincoln’s Birthday and Columbus Day.

- Two Additional Personal Holidays Granted to Local 1000 Bargaining Units.*** Currently, full-time or part-time employees receive one personal holiday each fiscal year to use essentially at their own discretion. (Managers are allowed to deny use due to “operational need.”) Under the MOUs, two additional personal holidays—for a total of three—would be granted each fiscal year. When an employee’s state service ends, he or she generally may cash out unused vacation/annual leave and holiday credit under both the prior and proposed MOUs.



Proposed MOUs— Leave Benefits and Overtime

(Continued)

- ☑ ***Provisions to Reduce Use of Overtime Hours.*** Previously, various types of employee leave have been counted by departments as an hour worked for purposes of computing overtime, and this has increased state overtime costs. A trailer bill enacted as part of the recent budget package contains new requirements that no type of state employee leave or holiday shall be “considered as time worked by the employee for the purpose of computing cash compensation for overtime or compensating time off for overtime.” These provisions were intended to reduce state costs for employee overtime. The Local 1000 MOUs contain various provisions on overtime, but allow enacted legislation to supersede “any and all MOU sections or past practices” that conflict with these enacted laws. Accordingly, the trailer bill provisions to reduce the state’s use of overtime hours would remain in effect under the Local 1000 MOUs.



Proposed MOUs—Health Benefits

- Unit 3 Benefits Changed to Conform to Those of Other Local 1000 Bargaining Units.*** The proposed MOU for Unit 3 would provide that unit's members with 80/80 state health benefits, similar to those provided to the other eight Local 1000 bargaining units. (This means that if the Unit 3 MOU expires with no successor MOU in place, this formula provision would still result in increased state contributions to Unit 3 members in years when CalPERS premiums increase.)

- Increased State Contributions to Employees in Three CalPERS Health Plans.*** Effective January 30, 2009, and upon approval of funding by the Legislature, the MOUs would provide additional employer contributions to employees enrolled in CalPERS' health maintenance organization plans—on top of employer contributions already made pursuant to the 80/80 formula. The additional monthly contributions would total \$13.78 for a single state worker, \$29.96 for a “two-party” enrollee (typically, an employee and his or her spouse or domestic partner), and \$43.72 for an employee enrolling his or her entire family. For most Local 1000 bargaining unit members, this equates to about a 4 percent increase in state health contributions. The MOUs specify that the state will pay a further additional health benefit premium contribution if CalPERS premiums rise in 2010. (The intent seems to have been for a similarly sized increase in 2010 state employer contributions, but the MOU language does not specify exactly how this increase would be calculated.)



Proposed MOUs— Layoff Protections for Employees

- ☑ ***Limits Administration Power to Layoff Workers Through June 2010.*** Under the MOUs, the administration's currently broad power to institute layoffs of Local 1000 bargaining unit members would be limited through June 2010. Specifically, the MOUs provide that, except where departments, programs, facilities, or offices are closed, any employee who would otherwise be laid off through June 2010 is entitled to "maximum placement opportunities" in lieu of such a layoff. The language suggests that the state must offer such employees any available jobs in a similar classification within 10 percent of the employee's current salary range or 50 miles from their current job location. This protection would not apply to an employee who rejects a job placement offer.



Proposed MOUs— Other Major Provisions

- Increase in Travel Expense Reimbursements.*** The MOUs provide that Local 1000 bargaining unit members would receive higher reimbursements for daily meal and incidental expenses during business travel. Specifically, maximum daily reimbursements for all meals and incidentals would rise from \$40 to \$55. The administration notes that this is the average reimbursement rate in California for federal employees and that there has been no such increase for state workers since 1999. (The DPA cost estimates described below do not estimate these additional costs, noting that the administration intends to have each department “absorb” these costs without receiving an additional appropriation.)
- Rental Rate Freeze for Employees in State-Owned Housing.*** Local 1000’s prior MOUs stated that, when employees live in state-owned housing, the state may raise rental rates up to 25 percent per year, subject to certain provisions to meet and confer with union representatives. Under the MOUs, the state would not be able to increase these rental rates for Local 1000 bargaining unit members until after June 2010.
- New Labor-Management Trust for Continuing Education and Professional Development.*** The MOUs provide that the state “shall contribute” \$1 million from the General Fund on July 1, 2009 to establish the Institute for Quality Public Services, a joint labor-management training effort to be managed by committees chosen half by Local 1000 and half by the state. The MOUs state that a joint labor-management committee “will provide all recommendations to the Legislature for their consideration prior to the establishment of the trust.”



Proposed MOUs— Other Major Provisions

(Continued)

- Dispute Concerning Dental Assistant Pay Is Submitted to Arbitration.*** The Unit 20 MOU submits a dispute concerning pay differentials for dental assistants to an arbitration decision and states the parties “will abide by that decision.” Should the union prevail in the arbitration, state costs could rise several hundred thousand dollars per year (not reflected in the cost estimates discussed below). Back pay under such a decision could total several million dollars.



Proposed MOUs and the Governor's Power to Furlough Employees

- Previously, a Two-Day Furlough and 9.2 Percent Pay Cut Were Ordered by the Governor.*** On December 19, 2008, the Governor issued an executive order to furlough represented state employees and supervisors for two days per month between February 2009 and June 2010 to address the state's fiscal emergency. The administration implemented the Governor's order through DPA's issuance of a pay letter (the formal device used to adjust executive branch employee pay) on February 2, 2009. The pay letter reduced pay for virtually all executive branch employees by 9.2 percent per month through June 2010—consistent with the planned elimination of two days of work per month during the furlough period.
- Superior Court Allowed the Governor's Furlough Program to Proceed.*** On January 29, 2009, a Sacramento County Superior Court judge ruled that the Governor had the authority to proceed with his furlough plan. This ruling now is being appealed.
- February State Payroll Reflected the 9.2 Percent Pay Reduction.*** Most employees received their February paychecks on February 27, 2009. (The Local 1000 MOUs are not yet in effect because they have not been ratified by the Legislature and bargaining unit members.) In general, these checks reflected the 9.2 percent furlough reduction, as ordered by the DPA pay letter and authorized by the Superior Court ruling.
- Local 1000 MOUs "Cross Out" a Proposal That Would Have Preserved the Governor's Furlough Power.*** The official MOU documents submitted to the Legislature contain many handwritten and crossed-out provisions. In a section that describes the 4.6 percent pay reduction and associated new leave benefits, there was at one point during the negotiations (prior to the MOUs' submission to the Legislature) a proposed provision allowing the Governor "to implement additional furloughs beyond those recognized in this MOU." The provision would have allowed additional furloughs in the event of a significant drop in



Proposed MOUs and the Governor's Power to Furlough Employees *(Continued)*

state revenues or voters' rejection of Proposition 1C (the lottery borrowing measure) at the May 19 special election. The administration originally proposed this language, but the provision was crossed out during the negotiation process and not part of the final agreement. Officials at DPA have informed us that the proposed language "was withdrawn by the state...not because the state was promising SEIU that no further furloughs would be imposed, but rather because it was not a proper subject of bargaining." Specifically, the administration cites Section 3516 of the Government Code, which excludes from the bargaining process the "consideration of the merits, necessity, or organization of any service or activity provided by law or executive order."

Local 1000 Appears to Disagree With Administration's Interpretation. Local 1000 and DPA exchanged letters concerning this issue following completion of the bargaining process. In the letters, the Director of DPA asserted that the Governor would have the power to institute additional unpaid furloughs under the MOUs if, for example, there is a significant drop in state revenues or voters reject Proposition 1C. In response, a top Local 1000 official rejected the administration's interpretation, noting that the proposed MOUs' 4.6 percent pay reduction "replaces the furlough days unilaterally imposed by the Governor by Executive Order."

Uncertainty Concerning Governor's Furlough Power. The disagreement described above suggests there is not a common understanding between the administration and Local 1000 on this issue. Accordingly, should the Legislature ratify the proposed MOUs, there is uncertainty as to whether the Governor would retain his authority to unilaterally implement furloughs and pay cuts for these workers.



DPA Fiscal Estimates



Administration Estimate Shows Net Savings Relative to Prior Local 1000 MOUs. The DPA estimate provided to the Legislature shows that the MOUs would generate net state savings of \$337 million (\$156 million General Fund) in 2008-09 and 2009-10 combined. As shown in Figure 2, the DPA estimate lists several categories of increased costs under the MOUs, which are more than offset by reductions in employee compensation (relative to pay levels negotiated in the prior Local 1000 MOUs).

Figure 2			
DPA Fiscal Estimate for Proposed Local 1000 MOUs			
<i>2008-09 and 2009-10 Combined (In Millions)</i>			
	General Fund	Other Funds	Totals
State Savings			
Negotiated 4.6 percent pay reduction	-\$173	-\$206	-\$379
Leave and overtime provisions	-7	-3	-10
Subtotals	<u>(-\$180)</u>	<u>(-\$209)</u>	<u>(-\$389)</u>
Added State Costs			
2009 state health contributions	\$8	\$10	\$18
2010 state health contributions	14	17	31
Additional Unit 3 health contributions	1	<1	1
Seasonal clerk pay increase	<1	<1	1
Institute for Quality Public Services	1	—	1
Subtotals	<u>(\$25)</u>	<u>(\$27)</u>	<u>(\$52)</u>
Net State Savings	-\$156	-\$181	-\$337

Numbers may not add due to rounding.



LAO Comments on DPA's Fiscal Estimates

- ☑ ***Estimates Reasonable if Comparing Costs to Those Previously Negotiated With the Union.*** We conclude that DPA's estimates generally are reasonable if comparing costs during 2008-09 and 2009-10 under the proposed MOUs to costs previously negotiated with Local 1000 in its prior MOUs.

- ☑ ***Higher State Costs if Comparing MOUs to the Governor's Previous Furlough Plan.*** The Governor's previously implemented two-day furlough plan involved a reduction in employee pay of 9.2 percent between February 2009 and June 2010. If the Governor's court-authorized furlough plan remained in place (assuming continuation of prior MOUs' benefit levels), it would have generated about \$379 million (\$173 million General Fund) of additional state savings in 2008-09 and 2009-10—compared to the pay reduction savings reflected in DPA's estimate. Under the terms of the recent budget trailer bill, most other savings items in the MOUs would have gone into effect. In addition, if these MOUs are not ratified, the additional \$52 million (\$25 million General Fund) of costs identified in DPA's estimates would be avoided, and the administration would have broader power to institute layoffs through June 2010. State savings, therefore, could be \$431 million (\$198 million General Fund) above DPA's estimate if the Governor's previous court-authorized furlough plan remained in place and there were no new MOUs with Local 1000.



LAO Comments on DPA's Fiscal Estimates

(Continued)

- Higher State Costs if Comparing MOUs to February Budget Package.** Not included in DPA's official cost estimate submitted to the Legislature was an estimate of the additional appropriations needed—above those already included in the February budget package—to cover additional costs in the MOUs. Upon our request, DPA provided preliminary estimates of these costs, which suggest that these added appropriations to the budget acts for employee compensation and other MOU costs might total \$9 million (\$4 million General Fund) in 2008-09 and \$42 million (\$20 million General Fund) in 2009-10. (As noted earlier, these estimates assume that departments absorb added costs due to the proposed increase in travel reimbursement costs for Local 1000 bargaining unit members.) In addition to these additional appropriations, it appears that the official scoring of the February budget package by the Department of Finance may have overstated by about \$20 million the state's savings under the MOUs.

- Long-Term Costs of MOUs.** By granting employees more leave time, the MOUs would result in some workers carrying larger vacation balances into the future. This would increase future departmental costs to cash out these balances for employees leaving state service. These expenses, however, would be spread out over many years and are impossible to estimate. In addition, our office is unable to estimate the unfunded pension liabilities that will result from preserving retirement benefit levels—despite lower state and employee payments to CalPERS through June 2010.



LAO Comments— Manager and Supervisor Pay

- ☑ ***Recommend That Legislature Seek Supervisory Pay Plan Prior to Acting on Local 1000 MOUs.*** The documents submitted to the Legislature with the MOUs do not address whether the provisions of the MOUs will be applied similarly to managers and supervisors of Local 1000 bargaining unit members. We recommend that the Legislature request that DPA formalize its pay plan for these managers and supervisors prior to approving or rejecting the Local 1000 MOUs. The Legislature also should request from DPA a full analysis of state costs and savings for these employees and needed additional appropriations.

Previously, we have expressed concern in some instances when the administration does not apply pay actions similarly to rank-and-file workers and supervisory staff. (Supervisory staff is not included in collective bargaining, and the administration has broad authority to set supervisory pay levels.)