

MOU Fiscal Analysis Bargaining Unit 2 (Attorneys, Administrative Law Judges, and Hearing Officers)

LEGISLATIVE ANALYST'S OFFICE

Presented to:
The California Legislature
Pursuant to Section 19829.5 of the Government Code





State Memorandum of Understanding (MOU) Process

- Ralph C. Dills Act Provides for State Employee Collective Bargaining.*** With passage of the Dills Act in 1977, the Legislature authorized collective bargaining between rank-and-file state employees organized into bargaining units and the Governor. About 180,000 full-time equivalent positions are represented by one of the state's 21 bargaining units in the collective bargaining process. In collective bargaining, bargaining units are represented by unions and the Governor is represented by the California Department of Human Resources (CalHR). The product of the collective bargaining process is an MOU that establishes the terms and conditions of employment for rank-and-file state employees.

- Legislature and Employees Must Ratify MOUs.*** An MOU must be ratified by the Legislature and bargaining unit members in order to take effect. Legislative ratification can occur in the annual budget act or in separate legislation. In addition, under the Dills Act, the Legislature generally may choose whether to appropriate funds in each annual budget to continue the financial provisions of an MOU.

- Fiscal Analysis Required by State Law.*** Section 19829.5 of the Government Code—approved by the Legislature in 2005—requires the Legislative Analyst's Office (LAO) to issue a fiscal analysis of proposed MOUs.

- MOU for Bargaining Unit 2 Now Before Legislature.*** When an MOU expires, the provisions of the agreement generally continue in effect until a subsequent MOU is ratified. Employees represented by Unit 2 currently work under the terms of the MOU that was effective April 1, 2011, and expired July 1, 2013. If ratified, the proposed MOU would expire July 1, 2016.



Unit 2 at a Glance

- ☑ ***State Legal Professionals.*** Unit 2 consists of more than 3,800 full-time equivalent employees. These employees are exclusively represented by California Attorneys, Administrative Law Judges, and Hearing Officers in State Employment (CASE). Unit 2 employees are state employed attorneys, administrative law judges, and other legal professionals who provide legal expertise for the state in many state departments. The Department of Justice (DOJ) employs about a quarter of all Unit 2 employees. Other agencies with significant numbers of Unit 2 employees are the Department of Industrial Relations, the State Compensation Insurance Fund, the Employment Development Department, and the California Department of Corrections and Rehabilitation.



Common Provisions of State MOUs Ratified in 2010-11

Bargaining Unit (Percent of Workforce)	Months of Personal Leave Program	Employee Pension Contribution			Professional or Personal Development Days	Top Step Increase in 2012 or 2013
		Miscellaneous and Industrial	Safety	Police Officer, Firefighter, and Patrol		
MOUs That Expired July 2013^a						
1, 3, 4, 11, 14, 15, 17, 20, and 21— SEIU Local 1000 (42.8%)	24	8%	9%	—	2	3%
2—Attorneys (1.8)	24	9	10	—	5	4
6—Correctional Peace Officers (12.3)	24	8	—	11%	2	3 - 4
7—Protective Services and Public Safety (3.3)	24	8	9	10	2	2 - 3
9—Professional Engineers (4.9)	12 ^b	8	9	—	2	3
10—Professional Scientific (1.2)	24	8	9	—	2	3
12—Craft and Maintenance (5.1)	24	10	11	—	2	5
13—Stationary Engineers (0.4)	12 ^b	10	11	—	2	5
16—Physicians, Dentists, and Podiatrists (0.7)	24	10	11	—	2	5
18—Psychiatric Technicians (2.7)	24	10	11	—	2	5
19—Health and Social Services/ Professionals (2.2)	24	10	11	—	2	5
MOUs That Expire July 2017						
8—Firefighters (1.7)	12	10	—	10	—	4 - 5
MOUs That Expire July 2018						
5—Highway Patrol (3.0)	12	10	—	10	—	2

a Only Units 2, 10, and 13 currently work under these terms. The remaining 16 units have new MOUs.

b These employees also received 12 months of furlough.



Common Elements in 2010-11 MOUs. During fiscal year 2010-11, the Legislature ratified new MOUs for all 21 bargaining units. As shown in the figure, the MOUs for 19 bargaining units expired in July 2013. Most of the bargaining units whose 2010-11 MOUs expired in July 2013 currently work under the terms and conditions of new MOUs. Bargaining Units 2, 10, and 13, however, work under the terms of their expired 2010-11 MOUs.



Expired Unit 2 MOU— Provisions Affecting Pay

- Personal Leave Program (PLP).** Employees were subject to PLP for the first 12 months of the MOU. In each month of PLP, employees received eight hours of unpaid leave, resulting in a 4.6 percent pay cut. The PLP was fundamentally the same policy as the furloughs imposed in 2009, except PLP was established through the collective bargaining process.
- Employee Pension Contributions.** The expired MOU requires employees to contribute an additional 3 percent of their monthly pay towards their pension.
- 2013-14 Top Step Pay Increase.** The top step of all Unit 2 classifications were increased by 4 percent July 1, 2013.
- Attorney Classification Limit.** Attorney IV is the highest paid rank-and-file attorney classification in the state civil service. This classification is available to DOJ and certain other departments employing many attorneys or attorneys involved in complex legal proceedings. Attorney III is the highest paid rank-and-file attorney classification in other departments. Every department is limited as to the number of attorney positions it may have in its highest paid rank-and-file classification—either 55 percent of attorney positions as Attorney IV or 65 percent of attorney positions as Attorney III.
- Limitations on Premium Holiday Pay.** Six days of the year are designated as premium holidays. Employees who are required to work one of these days receive one and one-half the hourly rate for time worked that day. The method of compensation is at the state's discretion and may be a combination of compensatory time off (CTO), holiday credit, or cash; however, the value of this compensation may not exceed 20 hours for each holiday worked.



Expired Unit 2 MOU— Other Fiscal Provisions

- Health Benefits.** The amount of money that the state contributes towards health benefits for Unit 2 employees and their dependents is a flat dollar amount specified in the MOU. The expired MOU maintained the state's contribution to be equivalent to the 80/80 formula (80 percent of the weighted average of premium costs for both the employee and dependents) for the term of the contract. The state's contribution was last increased on January 1, 2013.

- Meal and Lodging Expenses.** State employees may be reimbursed for specified costs related to travel and other business expenses.

- Continuous Appropriations.** As part of the legislation ratifying the expired MOU, the Legislature approved continuous appropriations of the economic terms of the agreement through July 1, 2013.

- Ability to Increase Confidential Designations.** One non-managerial group of employees who are excluded from collective bargaining are rank-and-file employees whose positions are designated as "confidential." State law defines a confidential employee as being an employee who develops management positions with respect to employer-employee relations or whose duties normally require access to confidential information used to develop management policies. Under the expired agreement, the state and the union agreed to not change the level of confidential designations. According to data maintained by the State Controller's Office, there were 20 confidential positions associated with Unit 2 in July 2014.



Proposed MOU—Higher State Salary Costs



Provisions Lead to Higher Unit 2 Salary Costs. A few provisions of the agreement will directly or indirectly lead to the state paying higher salaries during the term of the agreement. We discuss these provisions below.

- **Pay Increases for All.** The agreement provides all employees in Unit 2 pay increases—referred to as General Salary Increases—in 2014-15 and 2015-16. Specifically, the agreement provides (1) a retroactive 2 percent pay increase effective July 1, 2014, and (2) an additional 2.5 percent pay increase on July 1, 2015. The managers and supervisors of these Unit 2 employees already received the 2 percent pay increase in 2014-15 and are scheduled to receive the 2.5 percent pay increase in 2015-16.
- **Increased Attorney Classification Limit.** Departments will be able to increase by 10 percentage points the portion of attorney positions that may be in the highest paid classification currently available to the department. The agreement increases these limits from 55 percent to 65 percent for departments with Attorney IV classifications and increases them from 65 percent to 75 percent for other departments.
- **New Classifications.** By January 1, 2015, CalHR will submit to the State Personnel Board a proposal to create two new classifications: Attorney V and Administrative Law Judge III. The addition of these two new classifications will provide promotional opportunities to employees in the Attorney IV and Administrative Law Judge II classifications.



Proposed MOU— Other Provisions Affecting Pay

- Cash Out of Vacation and Annual Leave.*** Upon separation from state service, departments compensate employees based on their final salary level for any unused leave that has cash value—including vacation, annual leave, holiday credit (time earned for working on holidays), and CTO. This is known as “cashing out” leave balances. The agreement would give current employees the opportunity to cash out up to 20 hours of vacation or annual leave each year at their current salary level provided the department director determines that the department has sufficient funds for this purpose.

- Agreement to Consider Proposals to Address “Salary Gap.”*** The agreement establishes that no later than six months prior to the expiration of the proposed agreement, the union and state will begin negotiations “with the intent of developing a joint economic proposal for the successor MOU, designed to significantly reduce the pay disparity, if economically feasible as determined by the state, for CASE members in comparison to other public sector legal professionals.” While the agreement does not require the state to agree to pay increases for Unit 2 employees in a future MOU, the MOU acknowledges that a pay disparity exists between state employed legal professionals and those employed by local governments and other governmental employers.

- Limitations on Composition of Premium Holiday Pay.*** The proposed agreement would limit the number of holiday credit hours to 8 that employees could receive as part of the 20 hours of premium holiday pay.



Proposed MOU— Health and Pension Benefits

- ☑ ***State Increases Contributions to Health Benefits.*** The proposed MOU increases the flat dollar state contribution to employee health care to be equivalent to the 80/80 formula for the term of the agreement. The flat rate would be adjusted to maintain the 80/80 equivalency on January 1, 2015, and again on January 1, 2016.

- ☑ ***Pension Benefits.*** Employee retirement benefits outlined in the agreement—including employee contributions to the California Public Employees' Retirement System and pension formulas—would reflect current law established by Chapter 296, Statutes of 2012 (AB 340, Furutani). Assembly Bill 340 largely affects retirement benefits for future state employees. Conforming the MOU to AB 340 generally does not change current or future employees' retirement benefits from what is already established in current law.



Proposed MOU—Other Fiscal Provisions

- Ability to Increase Confidential Designations.*** The proposed agreement allows the state—with union concurrence—to increase the number of confidential positions associated with Unit 2.

- Meal and Lodging Expenses.*** The proposed agreement would increase the maximum reimbursement rates available to employees for costs related to meals and lodging while traveling on state business.

- Continuous Appropriations.*** The parties agree to present to the Legislature legislation to provide continuous appropriations of the economic terms of the agreement through July 1, 2016.



Administration's Fiscal Estimates

(In Millions)

Proposal ^a	2014-15		2015-16	
	General Fund	All Funds	General Fund	All Funds
July 2015 general salary increase (GSI)			\$3.8	\$14.3
July 2014 GSI	\$3.0	\$11.2	3.0	11.2
Health benefit cost increases	0.4	1.4	0.9	3.6
Travel reimbursement increases ^b	—	0.1	—	0.1
Totals	\$3.4	\$12.7	\$7.7	\$29.2

^a Does not include costs associated with current law. Values denoted by "—" round to zero.
^b The administration assumes that some or all of these costs will be absorbed within existing departmental resources.



Increases State Costs in 2014-15. The 2014-15 budget assumes that Unit 2 employees continue working under the terms of their expired MOU. The administration estimates that the terms of the proposed agreement would increase the state's costs in 2014-15 by about \$12.7 million (\$3.4 million General Fund).



LAO Comments—New Promotional Opportunities Increase State Costs

- ☑ **Position Reclassifications.** The administration attributes no costs to the MOU provisions allowing departments to promote staff to higher-paid classifications. Specifically, under the MOU, departments may promote (1) more attorneys to Attorney III and IV classifications and (2) some staff to the new Attorney V and Administrative Law Judge III classifications. Each promotion would increase state employee compensation costs by roughly \$7,000 to \$9,000 per year. Departments generally may implement these promotions without obtaining additional legislative approval. While it is not possible to estimate how many employees could be promoted, we note that nearly two-thirds of Unit 2 employees work at the top step of the classification system. If departments promoted half of these employees, state costs would increase by over \$10 million annually. Over time, these increased personnel costs likely would trigger proposals for departmental budget increases.



LAO Comments—Leave Cash Outs Increase Short-Term Costs

- ☑ **Leave Cash Outs.** The administration does not estimate the short-term cost of allowing employees to cash out up to 20 hours of vacation/annual leave each year. We estimate departments could spend more than \$5 million (\$1 million General Fund) cashing out vacation/annual leave each year during the term of the agreement. Over the long term, early payment of leave balance liabilities generally reduces state costs. This is because the leave balances are cashed out at employees' current salaries rather than the salaries they earn when they separate from state service. (For more information on leave balance liabilities, refer to our March 14, 2013 report, *After Furloughs: State Workers' Leave Balances*.)



LAO Comments— Future Salary Compaction

- ☑ ***Monitor Future Classification Changes for “Salary Compaction.”*** When rank-and-file pay increases faster than managerial pay, salary compaction can result. Salary compaction can be a problem when the differential between management and rank-and-file pay is too small to create an incentive for employees to accept the additional responsibilities of being a manager. To date, there has not been a consistent or coordinated process for the administration to analyze compaction issues and inform the Legislature where such problems exist. We advise the Legislature to monitor the administration’s efforts to restructure Unit 2 rank-and-file classifications and try to ensure that any salary compaction that might exist between rank-and-file and managerial classifications does not increase.