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STATE OF CALIFORNIA

PUBLIC EMPLOYMENT RELATIONS BOARD

UNFAIR PRACTICE CHARGE

DO NOT WRITE IN THIS SPACE: Case No:

Date Filed: 10/29/2026

INSTRUCTIONS: File the original and one copy of this charge form in the appropriate PERB regional office (see PERB Regulation 32075), with proof of service attached to each copy. Proper filing includes concurrent service and proof of service of the charge as required by PERB Regulation 32615(c). All forms are available from the regional offices or PERB's website at www.perb.ca.gov. If more space is needed for any item on this form, attach additional sheets and number items.

IS THIS AN AMENDED CHARGE?

YES ☐

If so, Case No

NO ☒

1. CHARGING PARTY: EMPLOYEE ☐ EMPLOYEE ORGANIZATION ☒ EMPLOYER ☐ PUBLIC¹ ☐

- a. Full name: California Attorneys, Administrative Law Judges and Hearing Officers in State Employment (CASE)
- b. Mailing Address: 1231 I Street, Ste. 300, Sacramento, CA 95814
- c. Telephone number: (916) 448-2187
- d. Name and title of agent to contact: Patrick J Whalen, CASE General Counsel E-mail Address: patrick@patrickjwhalenlaw.com
Telephone number: (916) 448-2187 Fax No.:
- e. Bargaining Unit(s) involved: 2

2. CHARGE FILED AGAINST: (mark one only) EMPLOYEE ORGANIZATION ☐ EMPLOYER ☒

- a. Full name: California Department of Human Resources
- b. Mailing Address: 1515 S St, North Building Suite 500 Sacramento, CA 95811
- c. Telephone number:
- d. Name and title of agent to contact: Frolan Aguilung, Chief Counsel E-mail Address: E-PERB@calhr.ca.gov
Telephone number: Fax No.:

3. NAME OF EMPLOYER (Complete this section only if the charge is filed against an employee organization.)

- a. Full name:
- b. Mailing address:

4. APPOINTING POWER: (Complete this section only if the employer is the State of California. See Gov. Code, § 18524.)

- a. Full name:
- b. Mailing Address:
- c. Agent:

5. GRIEVANCE PROCEDURE

¹An affected member of the public may only file a charge relating to an alleged public notice violation, pursuant to Government Code section 3523, 3547, 3547.5, or 3595, or Public Utilities Code section 99569

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Are the parties covered by an agreement containing a grievance procedure which ends in binding arbitration?

Yes ☒ No ☐ Unknown ☐

6. STATEMENT OF CHARGE

a. The charging party hereby alleges that the above-named respondent is under the jurisdiction of: (check one)

- ☐ Educational Employment Relations Act (EERA) (Gov. Code, § 3540 et seq.)
- ☒ Ralph C. Dills Act (Gov. Code, § 3512 et seq.)
- ☐ Higher Education Employer-Employee Relations Act (HEERA) (Gov. Code, § 3560 et seq.)
- ☐ Meyers-Milias-Brown Act (MMBA) (Gov. Code, § 3500 et seq.)
- ☐ Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (TEERA) (Pub. Utilities Code, § 99560 et seq.)
- ☐ One of the following Public Utilities Code Transit District Acts: San Francisco Bay Area Rapid Transit District Act (SFBART Act) (Pub. Util. Code, § 28848 et seq.), Orange County Transit District Act (OCTDA) (Pub. Util. Code, § 40000 et seq.), Sacramento Regional Transit District Act (Sac RTD Act) (Pub. Util. Code, § 102398 et seq.), Santa Clara VTA, (Pub. Util. Code, § 100300 et seq.), and Santa Cruz Metro (Pub. Util. Code, § 98160 et seq.)
- ☐ Trial Court Employment Protection and Governance Act (Trial Court Act) (Article 3; Gov. Code, § 71630 – 71639.5)
- ☐ Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act) (Gov. Code, § 71800 et seq.)

b. The specific Government or Public Utilities Code section(s) or PERB regulation section(s) alleged to have been violated is/are:
Government Code sections 3515 and 3519

c. For MMBA, Trial Court Act and Court Interpreter Act cases, if applicable, the specific local rule(s) alleged to have been violated is/are (***a copy of the applicable local rule(s) MUST be attached to the charge***):

d. Provide a clear and concise statement of the conduct alleged to constitute an unfair practice including, where known, the time and place of each instance of respondent's conduct, and the name and capacity of each person involved. This must be a statement of the facts that support your claim and *not conclusions of law*. A statement of the remedy sought must also be provided. (*Use and attach additional sheets of paper if necessary.*)

Please see the attached Statement of Charge, Exhibits and Proof of Service

AI ADVISORY

You are accountable for all content in the above filing, including any content created by or assisted by generative artificial intelligence ("AI") or other technological tools. Before filing your document, you must: (1) confirm the existence of all cited authorities, (2) ensure no cited authority is fabricated, misstated, or misleadingly taken out of context, and (3) verify that all information included in the filing, including any information generated or assisted by AI or other technological tools, is accurate. Be advised that including fabricated information in your filing risks serious consequences, including but not limited to striking the filing from the record, dismissing the charge, issuing monetary sanctions, and, if you are an attorney, reporting to the State Bar.

DECLARATION

I declare under penalty of perjury that I have read the above charge and that the statements herein are true and complete to the best of my knowledge and belief. (A Declaration will be included in the e-mail you receive from PERB once you have completed this screen. The person filing this Unfair Practice Charge is required to return a properly filled out and signed original Declaration to PERB pursuant to PERB Regulations 32140 and 32135.)

Patrick J Whalen
(Type or Print Name)

/s/ Patrick J Whalen
(Signature)

10/29/2026
Date



October 29, 2026

Public Employment Relations Board
Sacramento Regional Office
Via ePERB Portal

Re: **Statement of Charges (per 6d of the Unfair Practice Charge form PERB-61)**
Unfair Practice Charge – Dills Act
CASE v. California Department of Human Resources – (Interference)

STATEMENT OF FACTS

A. The Parties and the SEIU Strike

CASE is the exclusive representative of State Bargaining Unit 2 (BU2), which consists of attorneys, administrative law judges, and hearing officers employed by the State of California. The Service Employees International Union, Local 1000 (SEIU) represents approximately 100,000 State employees in other bargaining units. After months of contract negotiations, and after PERB issued a complaint alleging that the State had failed to meet and confer in good faith, SEIU called a one-day unfair practice strike against the State for Wednesday, October 21, 2026.

The State, through the California Department of Human Resources (CalHR), asked PERB to seek an injunction against the strike. On the morning of October 16, 2026, PERB granted the State's request only as to specified SEIU-represented positions found to be essential, and otherwise denied it. (*State of California (Department of Human Resources) v. Service Employees International Union Local 1000*, PERB IR No. 903, Case No. SA-CO-541-S, letter dated Oct. 16, 2026.) No BU2 position was at issue. The strike went forward on October 21, 2026.

BU2 employees have a statutory right under the Ralph C. Dills Act (Dills Act) to honor the picket lines of other employee organizations. (Gov. Code, § 3515; *City and County of San Francisco* (2017) PERB Decision No. 2536-M, p. 21; *Oxnard Harbor District* (2004) PERB Decision No. 1580-M, pp. 7-9; *Regents of the University of California* (2004) PERB Decision No. 1638-H.) That right may be waived only by clear and unmistakable contract language. (*Oxnard Harbor District*, *supra*, PERB Decision No. 1580-M, pp. 7-8.) Section 4.1 of the CASE MOU is a general no-strike clause. It does not mention sympathy strikes or the honoring of picket lines, and there is no bargaining history indicating that the parties intended it to waive that right.¹

¹ The second sentence of section 4.1 imposes an obligation on CASE to notify its own officers, stewards, representatives, agents, and staff of their obligations under the section; it does not purport to waive the individual statutory rights of BU2 employees. (See *Regents of the University of California*, *supra*, PERB Decision No. 1638-H [broader no-strike clause binding union "on behalf of its officers, agents, and members" did not waive sympathy strike right].)

In the weeks before the strike, CASE advised its members that they had the right to honor SEIU picket lines and provided them with a legal memorandum explaining that right. Several hundred BU2 members joined SEIU picket lines on October 21, 2026, and dozens more honored the strike by not reporting to work. Many BU2 members gave their supervisors advance written notice that they would honor the picket line, cited the PERB decisions recognizing that right, offered to discuss whether their work was essential to public health or safety, and described the steps they had taken to meet their ethical obligations to clients and tribunals. Most of these members did not request paid leave. They advised management that they would not work and understood they would not be paid for the day.

At no point did CalHR or any State department notify CASE of any change in leave, sick leave, or timekeeping practices relating to the strike, or offer to meet and confer over any such change.

B. CalHR's Two Sets of Instructions

Before the strike, CalHR distributed two documents to State departments. CASE obtained both from multiple sources.

The first, labeled "CalHR Labor Relations, Labor Confidential Communication, Not for General Distribution" (the Templates), contains scripted messages for supervisors to send to employees. (**Exh. 1.**) Separate scripts were provided for SEIU-represented employees, for "Non-SEIU, Rank and File" employees, and for excluded employees, each with a companion "Sick Leave" version. The "Non-SEIU, Rank and File" script, which applies to BU2 employees, reads in full:

The Department has received information that employees may be engaging in a strike on October 21, 2026. It is the state's position that a strike is a job action and is not a protected activity, and therefore, is considered a violation of the Memorandum of Understanding's (MOU) No Strike provision. As it is believed there is a job action occurring, your request for leave is denied and you are required to report to work and perform your duties. Failure to report may result in your absence being recorded as absent without leave consistent with your work week group, and you will not be allowed to utilize leave to cover your absence."

(**Exh. 1**, p. 2.)

The companion "Non-SEIU, Rank and File SICK LEAVE" script states that "[a]s it is believed there is a job action occurring, there is a reasonable suspicion that the leave requested is for an unauthorized reason," requires the employee to "bring in medical substantiation" "[i]n accordance with your MOU," provides that leave "will be approved only after management has determined the substantiation is adequate," and warns that if the substantiation is "determined not to be adequate, your time will be recorded as absent without leave." (**Exh. 1**, p. 2.) The script for excluded employees adds that "you may be subject to discipline." (Ibid.)

The second document, "Managers and Supervisors Guidance" (the Guidance), takes a very different approach. (**Exh. 2.**) It describes where employees "are permitted to strike," directs that leave requests for October 21 be assessed "based on operational needs" and "on a case-by-case basis," states that previously approved leave "should be maintained to the greatest extent possible," and provides that

sick leave “may be substantiated by a doctor’s note in accordance with the MOU” “[w]here appropriate.” (Exh. 2, pp. 1-2.) It instructs that management “must remain neutral,” “refraining from any criticism or support of an employee’s choice to participate or not participate in the strike,” and that “[i]ndividuals who choose to strike are our colleagues and should be treated professionally.” (Exh. 2, pp. 2-3.) Nonetheless, the Guidance directs that striking employees “will be considered absent without leave (AWOL)” and that managers “should ensure that AWOL is reflected appropriately on an employee’s timesheet.” (Exh. 2, pp. 1-2.) Finally, it requires that all “[e]mployee communications must be reviewed in advance by your labor relations office in consultation with CalHR.” (Exh. 2, p. 3.)

Thus, while CalHR privately instructed managers to remain neutral and to evaluate leave requests individually, it simultaneously supplied them with scripts declaring the strike unprotected, denying leave categorically because of the strike, and threatening AWOL designations.

C. Departments Across the State Sent the Template to BU2 Members

Dozens of State departments sent the Template language, nearly verbatim, to BU2 members who had advised management that they would honor the SEIU picket line. The following are examples only. Except as noted, each communication was sent by a manager or supervisor to a BU2 member and quoted the “Non-SEIU, Rank and File” script word for word or nearly so.²

Department of Managed Health Care (DMHC)

On October 21, 2026, a BU2 attorney advised his supervisor that he would honor SEIU’s picket lines on October 21, 2026. The supervisor responded to the BU2 attorney with the Template, verbatim.

Department of Social Services (DSS)

On October 19, 2026, an Assistant Chief Counsel sent the Template, verbatim, to a BU2 attorney who had advised that she “will not cross a lawful strike.” In addition, shortly before the strike, and without notice to CASE, DSS created a new leave code in its timekeeping system titled “DKS - Dock (Strike-Unapproved),” which CASE discovered on or about October 8, 2026. DSS’s own configuration record showed that the new code was transmitted to the State Controller’s Office as ordinary dock (“DK”), and that its only function was to label strike-related absences as “Unapproved.” CASE has been informed that DSS removed the DKS code in the week before the strike. DSS has not informed employees that DKS has been withdrawn, has not disavowed it, and has instead continued to use the Template’s AWOL language.

Office of the State Public Defender (OSPD)

On October 20, 2026, a BU2 attorney advised her supervisor that he would honor SEIU’s picket lines on October 21, 2026. The supervisor responded to the BU2 attorney with the Template, verbatim.

² Identifying information for the affected members is omitted to protect them from retaliation, and will be provided to PERB on request.

Department of Housing and Community Development (HCD)

On October 20, 2026, a BU2 attorney advised his supervisor that he would honor SEIU's picket lines on October 21, 2026. The supervisor responded to the BU2 attorney with the Template, verbatim.

Department of Industrial Relations (DIR)

Between October 19 and October 21, 2026, at least four BU2 members in the Labor Commissioner's Office in San Diego, Oakland, Los Angeles, and elsewhere received the Template from their supervisors in response to notice that they would honor the picket line. One BU2 member planned to honor SEIU's picket lines; however, the morning of October 21, 2026, a supervisor told her that she would be required to put AWOL on her timesheet if she honored SEIU's picket lines. The BU2 member then replied that "it is clear that there would be retaliation," and the supervisor responded by nodding his head. Another supervisor told this same BU2 member that "it is a good thing you are here" and that he would "return the favor." This BU2 member decided not to honor SEIU's picket lines and went to work on October 21, 2026.

On October 20, 2026, another BU2 member with DIR asked their supervisor how she could support SEIU's picket lines. Her supervisor responded with an email using the Template, verbatim. As a result, this BU2 member decided against honoring SEIU's picket lines and went to work on October 21, 2026.

Department of Insurance (CDI)

On October 21, 2026, a BU2 attorney informed her supervisor that she was "not feeling well" and would take the day off. She said nothing about the strike. An Assistant Chief Counsel responded with the "Non-SEIU, Rank and File SICK LEAVE" Template, stating that "[a]s it is believed there is a job action occurring, there is a reasonable suspicion that the leave requested is for an unauthorized reason, you are required to bring in medical substantiation. In accordance with your MOU." The message warned that if her substantiation was "determined not to be adequate," her time would be recorded as AWOL.

D. Implementation: AWOL Coding

Following the strike, BU2 members in many departments have been instructed to record October 21, 2026 as "AWOL," rather than as dock or other unpaid leave. At the Employment Development Department (EDD), for example, a BU2 attorney who had informed her supervisor in advance that she would honor the picket line recorded the day as "dock - leave w/o pay." Her supervisor then changed the entry to "dock - AWOL." EDD's timekeeping system thus already contained a neutral code for an unpaid absence, and management affirmatively replaced it with the AWOL designation because the absence was strike-related.

E. The Department of Justice Took a Different Approach

Not every department followed CalHR's Templates. The Office of the Attorney General instructed Deputy Attorneys General who honored the picket line to record the day as an ordinary unpaid absence:

in ProLaw, an eight-hour absence entered “the same way you would enter any other absence” using the “UA” “Unpaid Absence” task code, and in Workday, the “Unpaid Time Off” code. CASE is not aware of any communication from the Attorney General’s Office declaring the strike unprotected, denying leave because of the strike, demanding medical substantiation, or threatening AWOL designations. The Department of Justice is the single largest employer of BU2 members, and its approach demonstrates that the State could account for strike-related absences, and withhold pay for time not worked, without any of the conduct described above at other departments.

F. Relevant MOU and Statutory Provisions

Section 9.3, subdivision (C) of the CASE MOU provides that a department “may require the employee to submit a physician’s or licensed practitioner’s certificate if: 1. The employee is absent on sick leave for more than two (2) consecutive work days; or 2. Where the supervisor has good cause to believe the employee’s use of sick leave is improper.” Subdivision (D) provides that a department “may deny the request for sick leave if the required certificate is not provided or sick leave was taken under false pretenses.” Section 9.3 does not authorize verification based on a generalized “reasonable suspicion,” does not authorize management to deny sick leave because it deems a certificate inadequate, and does not condition approval of sick leave on advance management review of medical substantiation.

Under the State Civil Service Act, “inexcusable absence without leave” is a cause for discipline. (Gov. Code, § 19572, subd. (j).) An employee absent without leave for five consecutive working days is deemed to have automatically resigned. (Gov. Code, § 19996.2.) Although the SEIU strike lasted a single day, State employees understand that an AWOL designation identifies an absence as unauthorized conduct of the kind the civil service laws treat as grounds for discipline and, ultimately, separation.

VIOLATIONS

I. THE STATE INTERFERED WITH EMPLOYEE AND ORGANIZATIONAL RIGHTS (GOV. CODE, § 3519, SUBDS. (A) AND (B))

To establish a prima facie interference case, a charging party must show that the employer’s conduct tends to or does result in some harm to employee or union rights. (*Carlsbad Unified School District* (1979) PERB Decision No. 89, p. 10; *City of San Diego* (2020) PERB Decision No. 2747-M, p. 36.) No showing of unlawful motive is required, and no employee need have felt subjectively threatened. (*City and County of San Francisco, supra*, PERB Decision No. 2536-M.) Where the harm is inherently destructive of protected rights, the employer must show that the interference results from circumstances beyond its control and that no alternative course of action was available. Where the harm is less severe, the stronger the tendency to harm, the greater the employer’s burden to show an important business need narrowly tailored to limit harm to protected rights. (*City of San Diego, supra*, PERB Decision No. 2747-M, p. 36 & fn. 19.)

A. Threats of Reprisal for Honoring Picket Lines

Under the Dills Act, as under the other statutes PERB administers, employer speech that contains a

threat of reprisal or force or promise of benefit constitutes unlawful interference. (*Rio Hondo Community College District* (1980) PERB Decision No. 128, pp. 18-20 [EERA]; *State of California (Department of Food and Agriculture)* (1996) PERB Decision No. 1144-S [applying *Rio Hondo* standard under the Dills Act].)

In *City and County of San Francisco, supra*, PERB Decision No. 2536-M, the Board held that an employer memorandum referring to a rule requiring dismissal of employees who honored a picket line was not merely informational, nor a protected statement of opinion, and was inherently destructive of employees' right to engage in a sympathy strike. The Board ordered the memorandum rescinded.

The Template communications are more coercive than the memorandum in *San Francisco*. They do not merely refer to a rule. They tell each recipient, individually and in direct response to the recipient's notice that he or she would honor a picket line, that the conduct is "not a protected activity," that it violates the recipient's own MOU, that the recipient must report to work, that leave will not be allowed, and that the absence will be recorded as AWOL, a designation that is a statutory cause for discipline. (Gov. Code, § 19572, subd. (j).) Each element of that message is directed at protected activity, and the message as a whole tends to coerce employees into abandoning that protected activity.

The State cannot defend the Templates as a good faith expression of its legal position. *Rio Hondo* protects employer speech that accurately describes events. The Templates do not. First, PERB has held for more than two decades that general no-strike clauses like MOU section 4.1 do not waive the right to honor picket lines. (*Oxnard Harbor District, supra*, PERB Decision No. 1580-M, pp. 7-9; *Regents of the University of California, supra*, PERB Decision No. 1638-H; *City and County of San Francisco, supra*, PERB Decision No. 2536-M, p. 21.) Second, nearly every Template communication was sent on or after October 16, 2026, after PERB had declined to enjoin the strike except as to specified essential SEIU positions, none of which were in BU2. Third, CalHR's own Guidance told managers that strikers were "colleagues" exercising a "choice," and that management "must remain neutral." CalHR knew that the strike was proceeding, knew that employees were making a protected choice, and nonetheless scripted messages telling BU2 members the opposite.

The communications are also unlawfully ambiguous. PERB has held that a threat of discipline for undefined "strike-related type activities" is interference because of its ambiguity, its potential for broad interpretation in the future, and its resulting chilling effect. (*Santee Elementary School District* (2006) PERB Decision No. 1822-E, p. 11.) The Templates warn of AWOL "consistent with your work week group" without explaining what that means for a BU2 employee's record, evaluations, probation, or future discipline. Members were left to assume the worst, and several wrote to CASE asking exactly that question. And indeed, two BU2 members with DIR decided against honoring SEIU's picket lines and went to work on October 21, 2026.

The scale of the conduct magnifies the harm. These were not isolated statements by individual supervisors. They were scripted by CalHR, pre-cleared through departmental labor relations offices "in consultation with CalHR" and then disseminated by dozens of departments across the State. (**Exh. 2**, p. 3.) They were delivered nearly verbatim by Assistant Chief Counsels, Chief Counsels' offices, and supervisors at dozens of departments.

B. Misrepresenting the CASE MOU to BU2 Members

The Templates told BU2 members that honoring a picket line “is considered a violation of the Memorandum of Understanding’s (MOU) No Strike provision.” These statements misrepresent CASE’s agreement to its own members, contradict the advice CASE gave those members, and undermine CASE’s ability to represent them. Conduct that interferes with a union’s ability to advise and represent its members violates section 3519, subdivision (b). (*City and County of San Francisco, supra*, PERB Decision No. 2536-M.)

C. AWOL Designations

PERB has already decided that coding strike absences with a payroll designation that employees reasonably believe can lead to discipline harms protected rights. In *County of San Joaquin* (2021) PERB Decision No. 2761-M, the employer coded strike days as “Leave Unauthorized.” The Board held that this designation discouraged employees from engaging in future strikes and therefore had to be narrowly tailored to a compelling business necessity. (Id. at pp. 101-102.) The Board further held that the designation was an adverse action because employees reasonably believed it could lead to discipline. (Id. at p. 30.) AWOL is a more serious designation than “Leave Unauthorized.” It is the term the State itself uses for a statutory cause for discipline.

The State cannot show that AWOL coding is narrowly tailored to any business need. The only legitimate purpose in recording a strike absence is to withhold pay for time not worked. The State’s timekeeping systems already accomplish that through neutral codes: “dock” at EDD and DSS, “Unpaid Absence” and “Unpaid Time Off” at the Department of Justice. EDD’s supervisor replaced the neutral code with AWOL after the member had entered it. DSS’s “Strike-Unapproved” code was transmitted to payroll as ordinary dock. And the Attorney General’s Office accounted for the absences of its Deputy Attorneys General without any pejorative designation at all. In *San Joaquin*, the existence of a neutral, non-disciplinary alternative undercut the employer’s defense. Here, the State uses the neutral alternative itself.

D. Blanket Sick Leave Verification

The sick leave Template treated every BU2 member who called in sick on October 21 as presumptively dishonest, solely because employees in another bargaining unit (SEIU) were exercising protected rights. At CDI, it was applied to a member who said nothing about the strike and simply reported that she was ill. Requiring medical substantiation, conditioning leave on management’s determination that the substantiation is “adequate,” and threatening AWOL designations on that basis tends to discourage employees from using leave to which they are entitled on any day associated with protected activity, and to discourage protected activity itself. The State has no business need for a blanket, strike-based verification rule when MOU section 9.3 already permits verification where a supervisor has good cause to believe a particular employee’s use of sick leave is improper.

II. THE STATE DISCRIMINATED AGAINST BU2 MEMBERS FOR ENGAGING IN PROTECTED ACTIVITY (GOV. CODE, § 3519, SUBD. (A))

Where an employer's conduct facially discriminates based on protected activity, PERB may infer unlawful discrimination without further evidence of motive. Common examples include providing different pay, benefits, or other working conditions based explicitly on protected activity. (*County of San Joaquin, supra*, PERB Decision No. 2761-M, p. 27; *Los Angeles County Superior Court* (2018) PERB Decision No. 2566-C, p. 14; *Contra Costa County Fire Protection District* (2019) PERB Decision No. 2632-M, p. 40.) Favoring employees who do not strike over those who do is "discrimination in its simplest form." (*Campbell Municipal Employees Assn. v. City of Campbell* (1982) 131 Cal.App.3d 416, 423, citing *NLRB v. Great Dane Trailers, Inc.* (1967) 388 U.S. 26.)

The State's conduct was discriminatory on its face. The Template denied leave to every recipient for the same stated reason. An employee who requested leave for October 21 for any reason unrelated to the strike would have been evaluated, as CalHR's own Guidance directed, "based on operational needs." BU2 members who gave notice that they would honor the picket line were denied categorically.

Likewise, an employee absent without pay for any reason other than the strike is recorded as dock or unpaid leave. BU2 members absent because they honored the picket line are recorded as AWOL. At EDD, the supervisor made that distinction explicit by replacing the member's neutral entry with AWOL. As in *San Joaquin*, the strike-specific designation is an adverse action because employees reasonably believe it can lead to discipline. (*County of San Joaquin, supra*, PERB Decision No. 2761-M, p. 30.)

Even if analyzed under *Novato Unified School District* (1982) PERB Decision No. 210, each element is met. Honoring a picket line is protected activity. Management had actual knowledge of it, because members gave written notice in advance. The denial of leave, the threat and imposition of AWOL designations, and the demand for medical substantiation are adverse actions. And the communications themselves establish that the protected activity was the reason for each.

III. THE STATE UNILATERALLY CHANGED TERMS AND CONDITIONS OF EMPLOYMENT (GOV. CODE, § 3519, SUBDS. (B) AND (C))

A unilateral change to a matter within the scope of representation is a per se violation of the duty to meet and confer. (*Stockton Unified School District* (1980) PERB Decision No. 143, p. 22.) The charging party must show that (1) the employer changed policy; (2) the change concerns a matter within the scope of representation; (3) the change has a generalized effect or continuing impact on represented employees' terms and conditions of employment; and (4) the employer acted without first giving the union notice and an opportunity to bargain. (*County of Merced* (2020) PERB Decision No. 2740-M, pp. 8-9.) A change in policy includes deviation from a written agreement, a change in established past practice, and a newly created policy or the application or enforcement of existing policy in a new way. (Id. at p. 9.)

The State made four such changes without notice to CASE.

A. Categorical Denial of Leave

Leave requests are ordinarily evaluated individually based on operational needs, as CalHR's own Guidance acknowledged. The Template replaced that practice with a categorical rule denying all leave for October 21 because "it is believed there is a job action occurring." Use of leave is a matter within the scope of representation.

B. Sick Leave Verification

The sick leave Template deviated from the written terms of MOU section 9.3 in at least four respects. It substituted "reasonable suspicion" for the contractual "good cause" standard. It substituted a generalized, statewide suspicion arising from other employees' protected activity for the contractual requirement that "the supervisor" have good cause to believe "the employee's" use of sick leave is improper. It added a new, discretionary ground for denial, that management determines the substantiation is "not ... adequate," beyond the two grounds permitted by section 9.3, subdivision (D). And it converted sick leave into a pre-approval regime in which leave "will be approved only after management has determined the substantiation is adequate." The Template then told BU2 members that this new regime was "[i]n accordance with your MOU" but it was not.

C. AWOL Coding for Strike-Related Unpaid Absences

The established practice throughout State service is to record unpaid absences as dock or other unpaid leave. The State changed that practice by requiring that strike-related absences, and only strike-related absences, be recorded as AWOL. PERB has held that "appropriate payroll codes" are bargainable effects on mandatory subjects of bargaining. (*County of San Joaquin, supra*, PERB Decision No. 2761-M, p. 76.)

D. DSS's "Dock (Strike-Unapproved)" Code

DSS created a new leave code applicable only to strike-related absences, without notice to CASE. Although CASE has been informed that DSS has removed the code, DSS has never informed employees that the code was withdrawn or disavowed its message, and DSS continues to use the Template's AWOL language. The violation is not cured.

Each change applied to every BU2 employee in the affected departments, and the leave, sick leave, and AWOL changes were implemented statewide through CalHR's Templates and Guidance. Each therefore had a generalized effect and continuing impact. AWOL designations remain in employees' attendance records. CASE received no notice of any of these changes and no opportunity to meet and confer over them.

REMEDIES REQUESTED

PERB has held that its make-whole relief includes both direct and indirect but foreseeable economic harms resulting from a violation. (*County of Santa Clara* (2024) PERB Decision No. 2900, p. 30-34.) This is because “PERB, like the NLRB, learns from experience and regularly reviews its remedial standards.” (Id. at p. 34.) The NLRB has provided examples of harms falling under this standard, including, but not limited to: lodging, food, child care, and transportation expenses incurred because of an unlawful termination. (*Thryv, Inc.* (2022) 372 NLRB No. 22.)

Similarly, PERB has indicated that remedial relief can include a wide variety of foreseeable costs, including recovery of costs resulting from failure to provide information (*City and County of San Francisco* (2024) PERB Decision No. 2891-M, p. 26); organizing and bargaining costs materially caused by unfair practice (*Alliance Judy Ivie Burton Technology Academy High, et al.* (2022) PERB Decision No. 2809, pp. 14 & 31-32); and attorney fees for litigating petition to compel arbitration necessitated by employer’s violation (*Sacramento City Unified School District* (2020) PERB Decision No. 2749, p. 21.)

PERB also compensates harms that employees incur in material part from a violation, irrespective of whether the employees themselves were charging parties. (See, e.g., *Bellflower Unified School District* (2022) PERB Decision No. 2544a, pp. 33-41, 44-46 [medical and retirement losses, costs associated with job search or new job, and tax neutralization]; *Regents of the University of California* (2021), PERB Decision No. 2783-H, p. 32 [costs associated with discipline or unpaid leave and out-of-pocket vaccine costs]; *Lodi Unified School District* (2020) PERB Decision No. 2723, p. 21 [compensating employees who were deprived of choice as to when to use accrued leave].) Where an employer has issued a communication that interferes with the right to honor picket lines, PERB orders the communication rescinded. (*City and County of San Francisco, supra*, PERB Decision No. 2536-M.)

Accordingly, CASE requests the following remedies:

1. An order directing the State to rescind the Templates and every communication to BU2 employees based on them, and to send each BU2 recipient a written notice stating that honoring a lawful picket line is protected activity under the Dills Act and is not a violation of the CASE MOU.
2. An order directing the State to convert every AWOL designation for October 21, 2026 recorded for a BU2 employee to dock or other unpaid leave, and to expunge any reference to AWOL, or to the employee’s participation in the strike or the honoring of a picket line, from all attendance, timekeeping, personnel, and supervisory files.
3. An order prohibiting the State from using any absence on October 21, 2026, or any record of an employee’s participation in a strike or the honoring of a picket line, as a basis for discipline, performance evaluation, probationary decisions, leave approval, or any other employment decision.
4. An order directing the State to restore any leave request denied because of the strike, including by permitting affected BU2 employees to use accrued leave for October 21, 2026, if they so elect, and to make employees whole for any loss of pay, leave, or benefits resulting from the State’s conduct.

5. An order directing the State to reimburse BU2 employees for any costs incurred in obtaining medical substantiation demanded under the sick leave Template, and to restore any sick leave denied under it.
6. An order directing the State to cease and desist from threatening, polling, interrogating, interfering with, restraining, coercing, or discriminating against BU2 employees because they honor lawful picket lines or otherwise support other employee organizations.
7. An order directing the State to provide CASE with notice and an opportunity to meet and confer before adopting or changing any leave, sick leave verification, timekeeping, or payroll practice relating to strikes, picketing, or other protected activity.
8. An order directing the State to publicly acknowledge to all BU2 employees that it broke the law by threatening, discriminating against, and unilaterally changing the terms and conditions of employment of BU2 employees who honored the SEIU picket line.
9. An order declaring that the State has also caused unnecessary expenditure of public funds for CalHR to defend the case and PERB to process the case. The remedy shall name that amount. In the future, if CalHR persists in wasting public resources, PERB will hold that Labor Code section 2802 does not apply to State managers and individual managers are responsible for reimbursing the State from their own funds.
10. An order directing the State to post a notice at all work locations where BU2 employees work, and to distribute it electronically to all BU2 employees, stating that it has violated the Dills Act and will cease and desist from doing so.

EXHIBITS

Exhibit 1: CalHR Labor Relations, “Labor Confidential Communication, Not for General Distribution,” unplanned absence templates (3 pp.).

Exhibit 2: CalHR, “Managers and Supervisors Guidance” (3 pp.).

Very truly yours,



Patrick Whalen
CASE General Counsel

cc: CASE Board of Directors

CalHR Labor Relations

Labor Confidential Communication – Not for General Distribution

Unplanned Absence - SEIU

The Department has received information that on October 21, 2026, employees may be engaging in a job action in the form of a strike. It is the State's position that a job action is not protected activity and is considered a violation of SEIU's Memorandum of Understanding (MOU). Section 5.1 (No Strike), which states clearly that neither the Union, nor its agents, nor any employee, for any reason, will authorize, institute, aid, condone, or engage in a work slowdown, work stoppage, strike, or any other interference with the work and statutory functions or obligations of the State.

Although the MOU has expired, the clause and the MOU continues to exist pursuant to the provisions of the Government Code Section 3517.8.

As it is believed there is a job action occurring, your request for leave is denied and you are required to report to the office and perform your duties. Failure to report may result in your absence being recorded as absent without leave consistent with your work week group, and you will not be allowed to utilize leave to cover your absence.

Unplanned Absence Strike – SEIU – SICK LEAVE

The Department has received information that on October 21, 2026, employees may be engaging in a job action in the form of a strike. It is the State's position that a job action is not protected activity and is considered a violation of the SEIU's Memorandum of Understanding (MOU). Section 5.1 (No Strike), which states clearly that neither the Union, nor its agents, nor any employee, for any reason, will authorize, institute, aid, condone, or engage in a work slowdown, work stoppage, strike, or any other interference with the work and statutory functions or obligations of the State.

Although the MOU has expired, the clause and the MOU continues to exist pursuant to the provisions of the Government Code Section 3517.8.

As it is believed there is a job action occurring, there is a reasonable suspicion that the leave requested is for an unauthorized reason, you are required to bring in medical substantiation by XXXX. In accordance with Section 8.2 (Sick Leave), your leave will be approved only after management has determined the substantiation is adequate. Failure to provide the substantiation as directed, or in the event your substantiation is determined not to be adequate, your time will be recorded absent without leave consistent with your work week group, and you will not be allowed to utilize leave to cover your absence.

CalHR Labor Relations

Labor Confidential Communication – Not for General Distribution

Unplanned Absence Non-SEIU – Rank and File

The Department has received information that employees may be engaging in a strike on October 21, 2026. It is the state's position that a strike is a job action and is not a protected activity, and therefore, is considered a violation of the Memorandum of Understanding's (MOU) No Strike provision. As it is believed there is a job action occurring, your request for leave is denied and you are required to report to work and perform your duties. Failure to report may result in your absence being recorded as absent without leave consistent with your work week group, and you will not be allowed to utilize leave to cover your absence.

Unplanned Absence Non-SEIU – Rank and File SICK LEAVE

The Department has received information that employees may be engaging in a strike on October 21, 2026. It is the state's position a strike is a job action and is not a protected activity, and therefore, is considered a violation of the Memorandum of Understanding's (MOU) No Strike provision. As it is believed there is a job action occurring, there is a reasonable suspicion that the leave requested is for an unauthorized reason, you are required to bring in medical substantiation. In accordance with your MOU. Your leave will be approved only after management has determined the substantiation is adequate. Failure to provide the substantiation upon your return to work, or in the event your substantiation is determined not to be adequate, your time will be recorded as absent without leave consistent with your work week group and you will not be allowed to utilize leave to cover your absence.

Unplanned Absence Excluded

The Department has received information that employees may be engaging in a strike on October 21, 2026. It is the state's position a strike is a job action and is not a protected activity. As it is believed there is a job action occurring, your request for leave is denied and you are required to report to work and perform your duties. Failure to report may result in your absence being recorded as absent without leave consistent with your work week group, and you will not be allowed to utilize leave to cover your absence.

Unplanned Absence Job Action Excluded – SICK LEAVE

The Department has received information that employees may be engaging in a strike on October 21, 2026. A strike is a job action and is not protected activity, and you may be subject to discipline. As it is believed there is a job action occurring, you are required to bring in medical substantiation. Your leave will be approved only after management has determined the substantiation is adequate. Failure to provide the substantiation upon your

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CalHR Labor Relations

Labor Confidential Communication – Not for General Distribution

return to work, or in the event your substantiation is determined not to be adequate, your absence will be recorded as absent without leave consistent with your work week group, and you will not be allowed to utilize leave to cover your absence.

Managers and Supervisors Guidance

For questions or additional information, please contact your Labor Relations Office.

GENERAL INFORMATION

What is happening on October 21, 2026?

As you know, SEIU Local 1000 has announced a one-day statewide strike for Wednesday, October 21, 2026. Departments should prepare for potential staffing shortages and demonstrations at state buildings while maintaining essential services and continuity of operations. Departments should coordinate with their labor relations offices and CalHR regarding strike-related questions and actions.

Where are employees permitted to strike?

Strikes may take place in public places, such as public sidewalks or plazas. Strikers should not block workplace entrances or exits. They should not be picketing inside of office buildings, nor should they disrupt the state's ability to fulfill its statutory functions or obligations. For concerns related to strike activity, departments should seek further guidance from their labor relations office and CalHR.

While we do not anticipate any such activity, strike participants may not attempt to threaten or intimidate other employees who choose not to participate in the strike. Strikers may not engage in any activity that threatens public safety, health, or order. For concerns related to striking activity, departments should seek further guidance from their labor relations office and CalHR.

What activities are permitted as "lawful informational picketing"?

Employees, on their own time, may assemble in public places and carry signs, distribute handbills, and may speak with the public or their fellow employees. These activities must be peaceful and may not have the purpose or the effect of interfering with the work and statutory functions or obligations of the state. For concerns related to picketing activity, departments should seek further guidance from their labor relations office and CalHR.

EMPLOYEE LEAVE REQUESTS AND TIMESHEETS

Are striking employees required to call out on October 21, 2026?

No. SEIU has notified the State that they will be striking on October 21, 2026. Striking employees will be considered absence without leave (AWOL) that day.

All other employees must follow the normal call out procedures.

How should departments handle leave requests for October 21, 2026, that were approved before the strike notice?

Previous employee leave requests should be maintained to the greatest extent possible while ensuring continuity of state operations.

How should departments handle employee leave requests for October 21, 2026, submitted after the strike notice?

Management should take the following steps in reviewing and authorizing leave on October 21, 2026.

- Assess the request based on operational needs assuming a reduced workforce to ensure continuity of business operations. Please consult your labor relations office for additional guidance.
- Refer to the relevant MOU sections. Where appropriate, sick leave may be substantiated by a doctor's note in accordance with the MOU.
- Once the employee has returned to the work site, if substantiation was requested, leave requests should be evaluated on a case-by-case basis in consultation with departmental labor relations offices.
- If an employee has FMLA/CFRA and is requesting to take protected leave, the request for leave should be granted. If the employee has a known medical condition but not previously approved for FMLA/CFRA, management should work with departmental labor relations staff prior to denying sick leave.

When should managers and supervisors report dock for employees who participated in the strike?

Supervisors/managers must report the dock to their personnel specialist or other designated Human Resources person no later than close of business on October 21 for all employees, including those who are AWOL due to the strike. Reporting dock on October 21 will ensure the Transactions Unit has time to process dock for each employee prior to master run on October 22.

How should employees who participate in the strike document that time on their timesheet?

Employees who participate in the strike will document their absence as AWOL on their timesheet. Managers and supervisors should ensure that AWOL is reflected appropriately on an employee's timesheet.

HANDLING QUESTIONS FROM EMPLOYEES

Management **must remain neutral** regarding employee choices concerning matters of representation, bargaining, and related activities. This means managers and supervisors must not comment on union activities and bargaining, refraining from any criticism or support of an employee's choice to participate or not participate in the strike. As in all

communications with employees and union representatives, state the facts accurately. Individuals who choose to strike are our colleagues and should be treated professionally.

Employee communications must be reviewed in advance by your labor relations office in consultation with CalHR. For questions about communicating with employees, seek further guidance from your labor relations office in consultation with CalHR.

OPERATIONS

Can I work an employee out of class (up or down) without advance approval to get the job done during a job action?

Yes. Contact your labor relations office for guidance.

What should I do if there is a disturbance during the strike?

We have no reason to expect any unsafe behavior on the day of the strike. If circumstances arise that lead state employees -- whether those striking or those working -- to feel unsafe, please contact your assigned security personnel to assess the situation and determine whether CHP assistance is needed. In an emergency or when there is an immediate threat to safety, call 911. Notify your labor relations office of any incidents affecting department operations.

PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Madera,

State of California. I am over the age of 18 years. The name and address of my

Residence or business is 1231 I Street, Ste. 300, Sacramento, CA 95814

On 10/29/2026, I served the Unfair Practice Charge

(Date)

(Description of document(s))

in Case No. _____

(Description of document(s) continued)

(PERB Case No., if known)

on the parties listed below by (check the applicable method(s)):



placing a true copy thereof enclosed in a sealed envelope for collection and delivery by the United States Postal Service or private delivery service following ordinary business practices with postage or other costs prepaid;



personal delivery.

(Include here the name, title (if any), and address of the Respondent and/or any other parties served.)

Frolan Aguilin, Chief Counsel
California Department of Human Resources
1515 S. Street, North Building, Suite 400
Sacramento, CA 95811

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on 10/29/2026, at

Oakhurst

(City)

CA

(State)

(date)

Kristy Jones



(Type or print name)

(Signature)