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SERVICE EMPLOYEES
INTERNATIONAL UNION
CTW, CLC

1808 14th Street
Sacramento, CA 95811

866.471.SEIU (7348)
www.seiu1000.org

Telephone: (916) 554-1279
Facsimile: (916) 554-1292

VIA E-MAIL ONLY
Paul.Starkey@calhr.ca.gov

July 27, 2021

Paul Starkey
Deputy Director of Labor Relations
California Department of Human Resources
1515 S Street, North Building, Suite 500
Sacramento, California 95811-7258

Re: **CEASE AND DESIST REGARDING VACCINE
CONFIRMATION DEADLINE AND DEMAND TO BARGAIN**

Dear Mr. Starkey:

SEIU Local 1000 is in receipt of your July 26, 2021 letter that CalHR intends to implement the Governor's plan to immediately require state employees to verify their vaccination status no later than August 2, 2021. This letter serves as a demand to meet and confer and as a formal objection to the implementation deadline until the meet and confer process is completed.

Throughout the past eighteen months of the COVID-19 pandemic, State workers have been both on the front lines and forced to adjust to teleworking. During this time, the State has issued hundreds of COVID related notices to the Union and offered to meet and confer over many changes or other matters within the scope of bargaining specifically pertaining to changes in procedures or policies in response to the COVID-19 pandemic.

On July 26, 2021, the Governor abruptly turned away from the legal requirements of notice and bargaining and instead held a press conference and issued a press release, followed shortly by your Notice. Rather than giving this Union the legal right to meet and confer over this important policy change, CalHR dodged its legal obligations concerning vaccination confirmation. You state:

"State departments are instructed to implement procedures to collect and maintain evidence of vaccination from employees as soon as possible with full compliance by Monday, August 2, 2021."

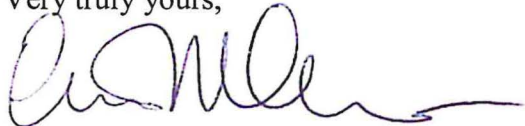
This is a change in the terms and working conditions of our represented employees and requires meeting and conferring with the Union prior to implementing the change. The new policy constitutes a unilateral change in violation of the obligation to give notice and the opportunity to meet and confer prior to implementation. This violates the requirements of the Dills Act as confirmed by a PERB Decision issued just yesterday. (Decision 2783H – Regents of the University of California - SF-CE-1300-H and SF-CE-1302-H) (The Board rejected the employer's decision in that case to implement a vaccination policy without first satisfying its obligation to meet and confer with unions representing the affected employees. It found that such actions constituted an unlawful unilateral change.)

To be in compliance with Dills Act requirements, the deadline you have unilaterally set must be tolled until a proper notice is delivered to:

Richard Louis Brown, President
SEIU Local 1000
1808 14th Street
Sacramento, CA 95811

CalHR and the State of California must cease and desist enforcing this requirement or imposing an immediate deadline until the process relating to the Union's request to meet and confer is complete. If you have any questions about this issue or this letter, please contact me at (866) 471-7348.

Very truly yours,



ANNE M. GIESE
Chief Counsel
SEIU Local 1000

cc: Richard Louis Brown, President, SEIU Local 1000
Donna Snodgrass, Chief of Staff, SEIU Local 1000
Brooke Pierman, Contract Director, SEIU Local 1000



PERB Received
07/29/21 16:08 PM

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

UNFAIR PRACTICE CHARGE

DO NOT WRITE IN THIS SPACE: Case No:

Date Filed: 07/29/2021

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: SEIU Local 1000
b. Mailing Address: 1808 14th Street, Sacramento, CA 95811
c. Telephone number: (866) 471-7348
d. Name and title of agent to contact: Anne M. Giese, Chief Counsel E-mail Address: Agiese@seiu1000.org
Telephone number: (916) 554-1279 Fax No.: (916) 554-1292
e. Bargaining Unit(s) involved: 01, 03, 04, 11, 14, 15, 17, 20, 21

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

a. Full name: California Department of Human Resources
b. Mailing Address: Frolan Aguilin, Chief Counsel 1515 S Street, North Bldg., Ste. 500, Sacramento, CA 95811
c. Telephone number: (916) 324-0512
d. Name and title of agent to contact: Eraina Ortega, Director E-mail Address: Eraina.Ortega@calhr.ca.gov
Telephone number: (916) 322-5193 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

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

Yes ☒ No ☐ Unknown ☐

PERB Received
07/29/21 16:08 PM

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.)
☐ 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:
3519(a), (b) and (c)

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.*)

[SEE ATTACHMENT]

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.)

(Type or Print Name)

/s/
(Signature)

07/29/2021
Date



PERB Received
07/29/21 16:08 PM

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD
UNFAIR PRACTICE CHARGE

DO NOT WRITE IN THIS SPACE:

Case No:

Date Filed:

INSTRUCTIONS: File this charge form via the e-PERB Portal, with proof of service. Parties exempt from using the e-PERB Portal may file the original charge in the appropriate PERB regional office (see PERB Regulation 32075), with proof of service attached. 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: SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1000

b. Mailing address: 1808 14th Street, Sacramento, CA 95811

c. Telephone number: (866) 471-7348

d. Name and title of person filing charge: Anne M. Giese, Chief Counsel
Telephone number: (916) 554-1279
E-mail Address: Agiese@seiu1000.org
Fax No.: (916) 554-1292

e. Bargaining unit(s) involved: 01, 03, 04, 11, 14, 15, 17, 20, 21

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

a. Full name: CALIFORNIA DEPARTMENT OF HUMAN RESOURCES

b. Mailing address: 1515 S Street, North Bldg., Ste. 500, Sacramento

c. Telephone number: (916) 324-0512

d. Name and title of agent to contact: Frolan Aguilin, Chief Counsel
Telephone number: (916) 324-0512
E-mail Address: Frolan.Aguilin@calhr.ca.gov
Fax No.: (916) 323-4723

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: California Department of Human Resources

b. Mailing address: 1515 S Street, North Bldg., Ste. 500

c. Agent: Eraina Ortega, Director

¹ An 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.

5. GRIEVANCE PROCEDURE

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

Yes ☒ No ☐

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.)
- ☐ A Covered Public Utilities Code Transit Employer (BART (Pub. Util. Code, § 28848 et seq.), Orange County Transportation Authority (Pub. Util. Code, § 40000 et seq.), and supervisory employees of the Los Angeles County Metropolitan Transportation Authority (Pub. Util. Code, § 99560 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:
3519(a), (b) and (c)
- 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.)

[SEE ATTACHMENT]

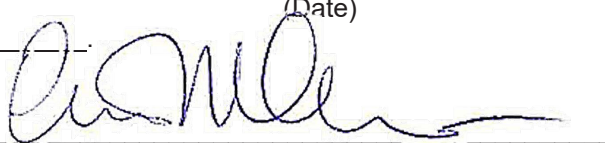
DECLARATION

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 and that this declaration was executed on July 29, 2021

at Sacramento, California
(City and State)

ANNE M. GIESE, Chief Counsel

(Type or Print Name)


(Signature)

Title, if any: Chief Counsel

Mailing address: 1808 14th Street, Sacramento, CA 95811

Telephone Number: (916) 554-1279

E-Mail Address: Agiese@seiu1000.org

PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Sacramento,
State of California. I am over the age of 18 years. The name and address of my
Residence or business is 1808 14th Street, Sacramento, CA 95811

On July 29, 2021, 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;
- ☐ electronic service - I served a copy of the above-listed document(s) by transmitting via electronic mail (e-mail) or via e-PERB to the electronic service address(es) listed below on the date indicated. (May be used only if the party being served has filed and served a notice consenting to electronic service or has electronically filed a document with the Board. See PERB Regulation 32140(b).)

(Include here the name, address and/or e-mail address of the Respondent and/or any other parties served.)

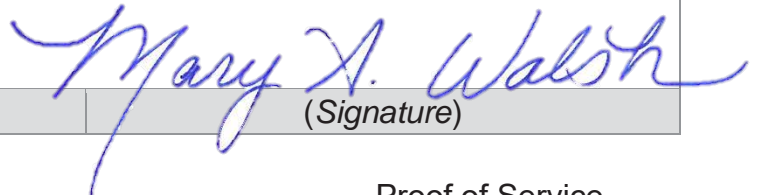
FROLAN AGUILING, Chief Counsel
California Department of Human Resources
1515 Street, North Bldg., Ste. 500
Sacramento, CA 95811

Person Served: Terry Davis - Title, Guard Time: 3:57 p.m.

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 July 29, 2021,
(Date)
at Sacramento California.
(City) (State)

MARY A. WALSH

(Type or print name)


(Signature)

STATEMENT OF THE CHARGE

REQUEST FOR EXPEDITED REVIEW

SEIU Local 1000 (the “Union”) requests expedited review of this charge due to the importance and statewide significance of the conduct of the California Department of Human Resources (“CalHR”), as set forth below. One hundred thousand employees will be detrimentally affected by management’s glaring tactic to deprive them of the opportunity to meet and confer over the new mask/vaccination disclosure requirements by unilaterally implementing a policy on August 2, 2021. This conduct is unacceptable for the State of California, once again bypassing the Legislature’s authority – which has set forth clear rights for labor relations and collective bargaining enshrined in the Dills Act and articulated in decisions of the Board. As set forth below, expedited review is critical to ensure that the remedies available at PERB are achieved swiftly to restore the parties to *status quo ante*. A recent decision of the Board has confirmed that an employer’s decision to implement a vaccination policy without first satisfying its obligation to meet and confer with unions representing the affected employees violated collective bargaining rights and constituted an unlawful unilateral change. (*Regents of the University of California* (July 26, 2021) Decision 2783H.)

Statement of Charge

SEIU Local 1000 is the exclusive bargaining representative for State Bargaining Units 1, 3, 4, 11, 14, 15, 17, 20, and 21. The most recent Memorandum of Understanding between the State and Local 1000 covers the period January 2020 through June 2023.

State workers have both been on the front lines and also adjusted to the widespread shift to teleworking throughout the almost eighteen months of this pandemic. The State has issued hundreds of COVID related notices to the Union and offered to meet and confer over many changes or other matters within the scope of bargaining specifically pertaining to changes in procedures or policies that have to do with the COVID response.

In response to these many transformative changes in bargaining, the Union endeavored to effectively represent its 100,000 state employees at the bargaining table. However, on July 26, 2021, the Governor abruptly turned away from the legal requirements of notice and bargaining and instead issued a press release, in which he summarily states:

As the state’s largest employer, we are leading by example and requiring all state and health care workers to show proof of vaccination or be tested regularly, and we are encouraging local governments and businesses to do the same. Vaccines are safe – they protect our family, those who truly can’t get vaccinated, our children and our economy. Vaccines are the way we end this pandemic.

California will also be requiring health care settings to verify that workers are fully vaccinated or tested regularly. Unvaccinated workers will be subject to at least weekly COVID-19 testing and will be required to wear appropriate PPE. This requirement also applies to high-risk congregate settings like adult and senior residential facilities, homeless shelters and jails. These steps will help protect vulnerable patients and residents.

The new policy for state workers will take effect August 2 and testing will be phased in over the next few weeks. The new policy for health care workers and congregate facilities will take effect on August 9, and health care facilities will have until August 23 to come into full compliance.

(Exhibit A - <https://www.gov.ca.gov/2021/07/26/california-implements-first-in-the-nation-measures-to-encourage-state-employees-and-health-care-workers-to-get-vaccinated/>)

Shortly after the release of this executive fiat, the State orchestrated the distribution of a notice of policy change through its labor relations branch – the Department of Human Resources (CalHR). (See, Exhibit B.) Rather than giving this Union the legal right to bargain over this important policy change, CalHR dodged its legal obligations by unilaterally imposing a deadline. It is implementing two significant changes:

- Vaccination Confirmation

“Self-attestation of vaccine status will not be sufficient evidence of vaccination for exemption from testing or wearing a face covering in state facilities. State departments are instructed to implement procedures to collect and maintain evidence of vaccination from employees as soon as possible with full compliance by Monday, August 2, 2021.” (Exhibit B)

- Testing On Site

“State departments will implement mandatory COVID-19 testing of unvaccinated state employees in addition to other precautions already required for unvaccinated employees. The testing protocol for state employees will be phased in over a period of weeks. Departments will provide notice to the designated employee representatives once the testing protocol and start date for their department is established.”

The focus of this present charge is Vaccination Confirmation (hereinafter “Vax up or Mask up”). The State is imposing barely a week’s notice to Vax up or Mask up without any opportunity to conduct effects bargaining. On July 27, 2021, the Union demanded the opportunity to meet and confer over the new policy. (Exhibit C.) After conversations with CalHR, in which the Union

implored the State to toll the August 2, 2021 imposition, it is clear that State is ignoring the obligation to complete effects bargaining prior to implementation.

The State's July 26, 2021 letter to the Union does not clearly articulate how the Vax up or Mask up requirements can logically or practically occur by the deadline for the 100,000 employees represented by the Union. The policy directives for command and control of the vaccine information sought from employees are not in writing, and there are no protocols or protections for this sensitive information. With this new arbitrary deadline looming, the State has identified no documentation control, no clearinghouse, no database, no computer application, no privacy, and no confidentiality requirements for sensitive employee information. The directives are not being handled at the State labor relations level, and no guidance or control measures have been provided to department labor relations or personnel officers or the unions. Instead, apparently, the State is blithely relying on an untrained cadre of worksite level supervisors and managers to wander the worksite floors asking employees to prove up their vaccination status – i.e. to Vax up or Mask up – starting on Monday, August 2, 2021.

The Union made clear that it had fundamental concerns about command and control of sensitive information – i.e. individual vaccination status. To protect this information, the State must have a defined system and reasonable protocols to ensure privacy, prevent misuse, avoid retaliation, thwart harassment, and preclude divisiveness that may occur because of employee decision-making about their own personal medical choices. Moreover, the State has provided scant information justifying the immediate implementation without regard to these important impacts. Reliance on one or two data points fails to justify this immediate turn-about.

State worksite locations vary for the Union's 100,000 represented employees. Thousands of the Union's represented employees work in institutional settings (e.g. Corrections, Correctional Health Care, State Hospitals, Veterans Homes) thousands work at public counters (e.g. DMV). Some 50-75% of state employees are teleworking. Yet all of these differences are ignored by the one size fits all Vax up or Mask up. This lack of nuance, dearth of distinction and scarcity of detail leads to the conclusion that Vax up or Mask up was unnecessarily rushed. When policy ignores the level of detail needed to make sense of its application in the wide-ranging locations where state workers carry out their mission for the State, it appears contrived to achieve other more seemingly political goals.

Unilateral Change

"The rule in California is well settled: [an employer's] unilateral change in a matter within the scope of representation is a *per se* violation of the duty to meet and confer in good faith." (*California State Employees Association v. Public Employment Relations Bd.* (1996) 51 Cal.App.4th 923, 934-935.) Repudiation of a provision in the parties' MOU is a *per se* unilateral change. (*Stanislaus Consolidated Fire Protection District* (2012) PERB Dec. No. 2231-M.)

PERB has found that unilateral actions are disfavored because they destabilize employer-employee affairs, denigrate the representative's negotiating power and ability to perform as an effective bargaining agent in the eyes of employees, undermine exclusivity, and denigrate statutory sanctions for negotiations. (*San Mateo Community College District* (1979) PERB Dec. No. 94, 3 PERC Para. 10080.)

Because CalHR is unilaterally implementing the Vax up or Mask up policy, it is committing an unfair labor practice. Such changes have a continuing impact upon the terms and conditions of employment of the Union's represented workers. Unlawful unilateral changes have a "generalized impact or continuing effect" on the terms and conditions of employment. In considering whether CalHR's conduct had a generalized effect, it is useful to note that the changes referenced above are not merely one-time breaches of a contract – which have previously been found not to constitute an unlawful unilateral change. Instead, PERB has noted that under existing precedent, "a breach of contract amounts to a unilateral change where the party in breach asserts that the contract authorizes its conduct" or where the breach represents a "change in policy that is generally applicable to future situations." (*Service Employees International Union, Local 1000, CSEA* (2008) PERB Decision No. 1997-S.)

Importantly, this unilateral change is remarkably similar to the facts of a recent decision. On July 26, 2021, PERB issued a decision finding the UC Regents engaged in an unfair practice when it unilaterally imposed an influenza vaccination requirement in response to the COVID-19 pandemic. (*Regents of the University Of California* (2021) PERB Decision No. 2783-H.) The decision finds that the UC Regents failed to properly notice the unions of the impending policy change and refused to bargain over the impacts of the policy on working conditions prior to implementation. Even assuming, *arguendo*, that the State may impose the Vax up or Mask up policy under its management rights, it must still give notice to the Union of the impending policy change and prior to implementation meet and confer regarding the impacts of the policy on issues within the scope of representation, such as discipline imposed for failing to meet the standards of the policy.

The changes detailed herein constitute fundamental alterations in the terms and conditions of employment. Prior to this change, the State did not have a confirmation process that involved individualized review of vaccination records. Instead, employees completed a self-attestation. With the new Vax up requirement, in addition to the previously mentioned concerns, another one of the impacts the Union seeks to address is what disciplinary consequences may be imposed for non-compliance or the presentation of conflicting information by some employees. These are critical issues which deserve attention in bargaining. Since this alteration represents an overarching change in policy and impacts terms and conditions of employment, notice as well as the opportunity to meet and confer is required. The failure to do so is a "*per se*" violation of the Dills Act.

Expedited review

This UPC is subject to expedited review. Expedited Review is governed by Cal. Code Regs. section, 32147 which is written to be very permissive. It provides:

The Board itself, the Chief Administrative Law Judge or the General Counsel may expedite any matter pending before the Board, as follows:

- (a) In any case arising under Section 32761, 32770, 32781, 32802, 33050, 33070, 33700, 40170, 40200, 51030, 51040, 51100, 51680, 61210, 61300, 61350, 61400, 61450, 71030, 71040, 71100, 71680, 81210, 81300, 81350, 81400, 81450, 91210, 91300, 91350, 91400, or 91450;
- (b) In any case that presents an important question of law or policy under any statute administered by the Board, the early resolution of which is likely to improve labor relations between or among affected parties;
- (c) In conjunction with any determination to seek injunctive relief pursuant to Section 32450 et seq.;
- (d) In any case, as ordered or directed by the Board itself.

For purposes of this Section, the expediting of a matter means the matter shall be given priority and decided on an expedited basis, in the manner determined to be appropriate by, as applicable, the Board itself, the General Counsel, or the Chief Administrative Law Judge.

The Union's request for expedited review should be granted in this matter because: (1) This case presents important questions of law and policy, under a statute administered by the Board; and (2) This case is very time sensitive and its early resolution would have an enormous impact on labor relations as each day counts. This UPC not only can be placed on the expedited track under section 32147(a) & (b), but due to the immediate severity of the effects at stake, it must be.

The State has taken an unprecedented step, both in the extreme nature of the new Vax up or Mask up requirements, as well as its swift implementation. There is no question of any actual emergency as the Covid-19 pandemic has been here for well over a year and is nowhere near its peak. Yet the policy was unveiled as a surprise, requiring full compliance in less than one week. Whether the State can take such drastic action is, on its face, an important question of law and policy. Further mandatory vaccination disclosure is a constant "can they or can't they" topic on the nightly news; it is one of the more important legal questions of this year. This unilateral change should not, and could not, have been taken without at least an opportunity to meet and confer. This was a violation of the Dills Act, which is administered by this Board. Therefore, this Charge should be expedited under section 32147(a) as presenting an important question of law or policy.

This Charge should also be expedited under section 32147(b) as early resolution of this case is likely to improve labor relations between or among affected parties. The implications of this case are significant to every aspect of labor relations. The uncertainty alone, surrounding this topic, will produce a great deal of stress among all California state employees. Labor relations are strained as employees worry for their safety and autonomy and management continues to push the return to the office. This new Vax up or Mask up policy leaves employees unsure as to the consequences of the policy nor how their personal health information will be kept safe. Further, the Governor and CalHR's attempt to use this pandemic as an excuse to circumvent the State's duty to meet and confer has put new and unnecessary strain on the parties' relationship. The certainty provided by a speedy resolution will undoubtedly improve labor relations amongst all.

Conclusion

By the acts and conduct described above, the State interfered with the rights of bargaining unit employees being represented by Local 1000 in violation of Government Code section, 3519(a).

By the acts and conduct described above, the State interfered with the rights of the Union to represent its bargaining unit employees in violation of Government Code section, 3519(b).

By the acts and conduct described above, the State failed to meet and confer in good faith with Local 1000 in violation of Government Code, section 3519(c).

REMEDY

Local 1000 requests that the PERB order the following:

- Cease and desist unlawful activity, unilateral changes, and interference;
- Return employees to *status quo ante*;
- Order CalHR require departments to cease and desist implementing the policy;
- Provide adequate notice of changes within the scope of representation;
- Bargain in good faith with SEIU Local 1000 representatives;
- Post any such PERB order at worksite bulletin boards throughout the State of California where SEIU Local 1000 represented employees work; and
- Any other appropriate relief – including monetary or attorney fees.

EXHIBIT A

California Implements First-in-the-Nation Measures to Encourage State Employees and Health Care Workers to Get Vaccinated

Published: Jul 26, 2021

State employees and health care workers must show proof of vaccination or get tested regularly

State encourages all local governments and businesses to adopt similar measures

SACRAMENTO – Today, the State of California is taking decisive action to combat the spread of COVID-19 and protect vulnerable communities – implementing a first-in-the-nation standard to require all state workers and workers in health care and high-risk congregate settings to either show proof of full vaccination or be tested at least once per week, and encourage all local government and other employers to adopt a similar protocol.

“We are now dealing with a pandemic of the unvaccinated, and it's going to take renewed efforts to protect Californians from the dangerous Delta variant,” said Governor Gavin Newsom. “As the state's largest employer, we are leading by example and requiring all state and health care workers to show proof of vaccination or be tested regularly, and we are encouraging local governments and businesses to do the same. Vaccines are safe – they protect our family, those who truly can't get vaccinated, our children and our economy. Vaccines are the way we end this pandemic.”

California will also be requiring health care settings to verify that workers are fully vaccinated or tested regularly. Unvaccinated workers will be subject to at least weekly COVID-19 testing and will be required to wear appropriate PPE. This requirement also applies to high-risk congregate settings like adult and senior residential facilities, homeless shelters and jails. These steps will help protect vulnerable patients and residents.

The new policy for state workers will take effect August 2 and testing will be phased in over the next few weeks. The new policy for health care workers and congregate facilities will take effect on August 9, and health care facilities will have until August 23 to come into full compliance.

Despite California leading the nation in vaccinations, with more than 44 million doses administered and 75 percent of the eligible population having received at least one dose, the state is seeing increasing numbers of people who refused to get the vaccine being admitted to the ICU and dying. This increase is heavily due to the Delta variant, which is more contagious and kills people faster:

- As of last week, California's statewide case rate more than quadrupled from a low in May of 1.9 cases/100,000/day to at least 9.5 cases/100,000.
- Our testing positivity was at a low of 0.7 percent in June, now it has risen to 5.2 percent.
- Our hospitalizations were at a low in June of under 900, and we are now approaching 3,000.
- The vast majority of new cases are among the unvaccinated, with 600 percent higher case rates among the unvaccinated than for those who are vaccinated.

“California has administered more vaccines than any other state, with 75 percent of those eligible having gotten at least one dose, and we were weeks ahead of meeting President Biden's 70 percent goal. But we must do more to fight disinformation and encourage vaccine-hesitant communities and individuals,” said Health and Human Services Secretary Dr. Mark Ghaly. “The Delta variant is up to 60 percent more infectious than the Alpha strain but many times more infectious than the original COVID-19 strain. If you have been waiting to get vaccinated, now is the time.”

The State of California remains committed to keeping the state's economy open while ensuring that employees feel safe in the workplace. To that end, the state is encouraging employers to ensure that their employees are vaccinated, and will lead by example by implementing new vaccination measures for state and health care workers.

In addition to these new measures, the state continues its efforts to vaccinate Californians. Last week, California surpassed 2 million newly vaccinated individuals since launching its incentive program, [Vax for the Win](#). The program increased HPI Q1 vaccinations, and increased doses administered to the Latinx population by 10 percent. It also successfully slowed the rate of decline that California was experiencing in vaccination rates. The program's peak showed a [33 percent increase](#) in vaccinations, “outpacing the inoculation trends in much of the country,” including more recently a 4.4 percent increase for the week ending July 14 – a promising sign in California, as vaccination rates declined nationwide.

In the preliminary data for the week ending July 25th, we've seen an increase of 16 percent in the number of people getting their first doses of the Johnson and Johnson vaccine, from 220,294 two weeks ago to 254,807 this past week. We are seeing this trend very broadly, representing 51 out of 58 counties.

Other Vaccine Outreach and Equity Efforts. California has proactively engaged in a multi-pronged outreach and incentives strategy to reach holdouts, especially in communities hardest hit by the pandemic and those who have been particularly reticent (e.g., homebound, limited transportation and flexibility, higher vaccine hesitancy and/or living in a more remote area). Efforts have become more surgical and continue to be data driven: transitioning from mass sites to smaller, more targeted efforts, and continuing to intensify our outreach and education efforts by deploying mobile capacity, and to otherwise make it easier for people to access vaccines. Such outreach/incentive efforts to achieve greater equity have included:

Multimedia and Multicultural Public Education Campaigns. The Let's Get to Immunity Campaign is now accompanied by a youth 12+ campaign reaching families. Efforts are leveraging partnerships with over 400 ethnic media outlets that cover over 25 languages, including indigenous languages.

'Get Out the Vaccine' Phone Bank and Door-Knocking Campaign. Modeled after successful ground-level campaigns, the state "Get Out the Vaccine" effort coordinates with 70 community-based organizations. As of July 13, the "Get Out the Vaccine" campaign has resulted in 1.3 million conversations to promote vaccination via personal phone calls and door-to-door canvassing in less advantaged neighborhoods in California.

Supporting Community Organizations for Outreach, Direct Appointment Assistance and Referrals. California's investment and public-private partnerships total \$127.7 million in support of approximately 500 community-based organizations for outreach to underserved communities. A subset of these organizations have already facilitated approximately 184,986 vaccine appointments and 710,429 referrals to appointment platforms or providers.

Health Care Provider-Based Efforts. A new community provider grant program called the CalVaxGrant, (beginning July 12 through August 13), is intended to reimburse practices up to \$55,000 to set up their offices as small, community-based COVID-19 vaccination sites. As trusted messengers, doctors, pediatricians and providers can proactively reach community members as well as answer questions when patients come into their offices. The Department of Health Care Services is also working to increase the vaccination rates of Medi-Cal recipients including: engaging managed care plans in weekly calls, encouraging their outreach to patients, sharing weekly beneficiary vaccination data and disseminating a Quality Improvement Postcard with strategies and techniques to address vaccine hesitancy.

Community/Business Partnerships

- **Barbershops:** "Helping Communities Help Themselves" is a partnership with the Black Beauty and Wellness Foundation that has established 100 statewide barber shops, beauty shops and beauty supply stores as community-based COVID-19 resource centers. Shops and stylists are promoting information about vaccines and masking up until you are vaccinated.
- **Higher Educational Institutions:** The campaign has engaged the CCC, CSU, and UC systems, as well as the AICCU (Association of Independent California Colleges and Universities) to share information about the Vaccinate ALL 58 campaign and opportunities to partner and encourage more students to get vaccinated so they can safely return to campus. Each of these groups was provided a customizable toolkit.
- **School-Based Organizations:** School based organizations are assisting with a back-to-school push through a toolkit and earned media opportunities.
- **Faith-Based Outreach:** Faith-based organizations and leaders are trusted messengers in their communities. Through these networks, the campaign is able to provide clear, factual and accurate information about vaccines to faith leaders and their communities. Many of these partnerships have led to co-hosting vaccine clinics in the faith communities.
- **McDonald's:** McDonald's is hosting over 150 vaccination pop-up clinics at more than 80 restaurant locations in 11 different LHJs across the state. 107 have already been completed.
- **Six Flags:** More than 42,000 of 50,000 available Six Flag tickets have been distributed at 100 participating vaccine locations throughout the state, mainly in low-income and high-need areas. Nearly every participating provider reported that the ticket incentive helped improve patient turnout, with one provider saying tickets helped encourage patients' family members to get vaccinated. Another provider reported seeing a large uptick in teens deciding to get vaccinated to get a ticket.

###

EXHIBIT B



Labor Relations

Labor Relations Office
1515 S Street, North Building, Suite 500
Sacramento, CA 95811
(916) 324-0476 Fax (916) 322-0765

Governor Gavin Newsom
Secretary, Government Operations Agency Yolanda Richardson
Director Eraina Ortega

July 26, 2021

EMPLOYEE REPRESENTATIVES - Via Email Only

RE: Notice of CalHR Policy for COVID-19 Testing

Dear Labor Leaders,

The combination of low vaccination rates in some communities and the increased transmissibility of the Delta variant of COVID-19 has resulted in increasing case rates.

As of last week, the statewide case rate doubled from a low in May of 1.9 cases/100,000/day to at least 9.5/100,000/day. Our testing positivity was at a low of 0.7% in June, now it has risen to 5.2%. Our hospitalizations went from a low in June of under 900, and have now increased by almost 75%.

The vast majority of new cases involve unvaccinated individuals, with a 600% higher case rate among the unvaccinated compared with those who are vaccinated.

In response to this concerning increase in cases, CalHR is implementing COVID-19 testing of all unvaccinated state employees working on site as an additional health and safety standard to protect the state workforce and the public it serves, and to ensure that employees critical to the continuity of state operations will be able to perform their duties.

State departments will implement mandatory COVID-19 testing of unvaccinated state employees in addition to other precautions already required for unvaccinated employees. The testing protocol for state employees will be phased in over a period of weeks. Departments will provide notice to the designated employee representatives once the testing protocol and start date for their department is established.

Testing is a proven COVID-19 prevention strategy that will complement the other protections currently in place. Because the increase in cases is heavily concentrated in unvaccinated individuals, and consistent with guidance from the California Department of Public Health, the Centers for Disease Control, and the Emergency Temporary Standards approved by the California Occupational Safety and Health Board, fully vaccinated individuals are exempt from COVID-19 testing. Fully vaccinated individuals shall be allowed to elect to participate in COVID-19 testing.

Employee Representatives
July 26, 2021
Page 2

Self-attestation of vaccine status will not be sufficient evidence of vaccination for exemption from testing or wearing a face covering in state facilities. State departments are instructed to implement procedures to collect and maintain evidence of vaccination from employees as soon as possible with full compliance by Monday, August 2, 2021.

Any employee seeking to be exempt from COVID-19 testing or wearing a face covering must provide evidence of vaccination. Employees should access their Digital COVID-19 Vaccine Record to receive a link to a QR code* and digital copy of their vaccine record. If an employee cannot access their digital vaccine record, they may provide a vaccine card or other medical record establishing full vaccination.

More information will be provided in the coming days as we secure and begin to deploy testing resources.

For questions about this communication, please contact the assigned CalHR Labor Relations Officer.

Thank you for your ongoing cooperation and leadership as we work together to support a safe workplace.

Paul Starkey
Deputy Director, Labor Relations
California Department of Human Resources

*<https://myvaccinerecord.cdph.ca.gov>

EXHIBIT C



Telephone: (916) 554-1279
Facsimile: (916) 554-1292

VIA E-MAIL ONLY
Paul.Starkey@calhr.ca.gov

July 27, 2021

RICHARD
LOUIS BROWN
President

DAVID JIMENEZ
Vice President/
Secretary-Treasurer

ANICA WALLS
Vice President for
Organizing/Representation

TONY OWENS
Vice President for Bargaining

SERVICE EMPLOYEES
INTERNATIONAL UNION
CTW, CLC

1808 14th Street
Sacramento, CA 95811

866.471.SEIU (7348)
www.seiu1000.org

Paul Starkey
Deputy Director of Labor Relations
California Department of Human Resources
1515 S Street, North Building, Suite 500
Sacramento, California 95811-7258

Re: **CEASE AND DESIST REGARDING VACCINE
CONFIRMATION DEADLINE AND DEMAND TO BARGAIN**

Dear Mr. Starkey:

SEIU Local 1000 is in receipt of your July 26, 2021 letter that CalHR intends to implement the Governor's plan to immediately require state employees to verify their vaccination status no later than August 2, 2021. This letter serves as a demand to meet and confer and as a formal objection to the implementation deadline until the meet and confer process is completed.

Throughout the past eighteen months of the COVID-19 pandemic, State workers have been both on the front lines and forced to adjust to teleworking. During this time, the State has issued hundreds of COVID related notices to the Union and offered to meet and confer over many changes or other matters within the scope of bargaining specifically pertaining to changes in procedures or policies in response to the COVID-19 pandemic.

On July 26, 2021, the Governor abruptly turned away from the legal requirements of notice and bargaining and instead held a press conference and issued a press release, followed shortly by your Notice. Rather than giving this Union the legal right to meet and confer over this important policy change, CalHR dodged its legal obligations concerning vaccination confirmation. You state:

"State departments are instructed to implement procedures to collect and maintain evidence of vaccination from employees as soon as possible with full compliance by Monday, August 2, 2021."

PAUL STARKEY
July 27, 2021
Page 2


This is a change in the terms and working conditions of our represented employees and requires meeting and conferring with the Union prior to implementing the change. The new policy constitutes a unilateral change in violation of the obligation to give notice and the opportunity to meet and confer prior to implementation. This violates the requirements of the Dills Act as confirmed by a PERB Decision issued just yesterday. (Decision 2783H – Regents of the University of California - SF-CE-1300-H and SF-CE-1302-H) (The Board rejected the employer's decision in that case to implement a vaccination policy without first satisfying its obligation to meet and confer with unions representing the affected employees. It found that such actions constituted an unlawful unilateral change.)

To be in compliance with Dills Act requirements, the deadline you have unilaterally set must be tolled until a proper notice is delivered to:

Richard Louis Brown, President
SEIU Local 1000
1808 14th Street
Sacramento, CA 95811

CalHR and the State of California must cease and desist enforcing this requirement or imposing an immediate deadline until the process relating to the Union's request to meet and confer is complete. If you have any questions about this issue or this letter, please contact me at (866) 471-7348.

Very truly yours,



ANNE M. GIESE
Chief Counsel
SEIU Local 1000

cc: Richard Louis Brown, President, SEIU Local 1000
Donna Snodgrass, Chief of Staff, SEIU Local 1000
Brooke Pierman, Contract Director, SEIU Local 1000



PERB
California Public Employment
Relations Board

Sacramento Regional Office
1031 18th Street
Sacramento, CA, 95811-4124
Telephone: (916) 584-5676



August 4, 2021

Anne M. Giese, Chief Counsel
Service Employees International Union, Local 1000
1808 14th Street
Sacramento, CA 95811

Christopher E. Thomas, Labor Relations Counsel
California Department of Human Resources
1515 S Street, North Bldg., Suite 500
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1515 S Street, North Bldg., Suite 500
Sacramento, CA 95811-7258

Nancy Craig
California Department of Human Resources
1515 S Street, North Bldg., Suite 500
Sacramento, CA 95811

Re: *Service Employees International Union, Local 1000 v. State of California*
(*Department of Human Resources*)
Unfair Practice Charge No. SA-CE-2205-S
Introductory Letter and Request to Expedite

Dear Parties:

On July 29, 2021, Service Employees International Union, Local 1000 (Charging Party) filed the above-referenced charge with the Public Employment Relations Board (PERB or Board) and requested that the charge be expedited at the investigation

stage in accordance with PERB Regulation 32147.¹ In a July 29, 2021 letter, PERB's Office of the General Counsel (OGC) provided the Respondent, State of California (Department of Human Resources) (CalHR), until August 3, 2021 to respond to the request to expedite. CalHR filed its response on August 3, 2021.

Based on the allegations set forth in the charge, the OGC has determined that the matter is appropriate for expedited processing under PERB Regulation 32147. Therefore, the OGC GRANTS the request for expedited processing at the investigation stage.

The charge will be initially processed by the OGC and the following procedure will be used:

1. The charge will be reviewed to determine whether it states a prima facie case of an unfair practice. (See PERB Regulations 32620(b)(4) and (5).)
2. To make this determination, the Charging Party and/or the Respondent may be contacted for further information before any administrative action is taken. (PERB Regulation 32620(a)(4).)
3. The Respondent is hereby notified that it may file a position statement. **Any response must be signed under penalty of perjury with a declaration that the response is true and complete to the best of the Respondent's knowledge and belief; service and proof of service on the Charging Party are required.** If no response is filed by **August 13, 2021**,² review of the charge will proceed and a complaint will issue where appropriate. (See PERB Regulation 32620(c).)
4. The position statement **must** be filed³ via the "ePERB Portal" found on PERB's website: www.perb.ca.gov. All documents filed with PERB must be served on

¹ PERB's regulations are codified at California Code of Regulations, title 8, section 31001 et seq. PERB's regulations and the statutes administered by the Board may be found by visiting www.perb.ca.gov.

² **Any request for an extension of this deadline must be made in compliance with PERB Regulation 32132(c).**

³ "Filed" means that a document is received and accepted by PERB after the filing party has complied with applicable statutory and regulatory filing requirements whether filing electronically, in person, or through a mail delivery service. (PERB

the other party pursuant to PERB Regulation 32140. To access the Portal, you must first create an account. Once you have an account, you can gain access to this case by filing a Notice of Appearance or other document. Instructions for doing this are found on the Portal's General FAQ page, under "Filing a Document in an Existing Case." You do not need to request case access from PERB staff.

5. If the charge, after review, fails to state a prima facie case, it shall be dismissed. (See PERB Regulations 32620(b)(5) and 32630.) The Charging Party may appeal such dismissal to the Board itself, consistent with PERB's regulations. (See PERB Regulation 32635.)
6. If a prima facie case is established, a formal complaint shall issue and the Respondent shall be informed, by letter, of its obligation to answer. (See PERB Regulations 32640 and 32644.) The answer must contain, among other things, an admission or denial of each factual allegation and a statement of any affirmative defenses. (See PERB Regulation 32644(b)(5) and (6).)
7. After issuance of a complaint, the case file will be transferred to a Board agent for an informal conference to clarify the issues and explore the possibility of voluntary settlement. (See PERB Regulation 32650.)
8. If the parties are unable to settle the case at the informal conference, the case may be set for a formal administrative hearing. (See PERB Regulations 32680 and 32690.)

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Regulation 32094.) An electronically filed document submitted through the ePERB Portal will be recorded as "filed" on a regular business day provided it is filed by 11:59 p.m. on that business day. (PERB Regulations 32110(f), 32094, 32091, and 32090.)

Unfair Practice Charge No. SA-CE-2205-S

August 4, 2021

Page 4

Until further notice, please address all communications concerning this matter to the undersigned Board agent at the address and telephone number shown above. Please reference the case number on all correspondence.

Sincerely,

A handwritten signature in black ink, appearing to be 'JC' with a stylized flourish.

James Coffey
Senior Regional Attorney

JEC

PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Sacramento, California. I am over the age of 18 years and not a party to the within entitled cause. The name and address of my residence or business is Public Employment Relations Board, Sacramento Regional Office, 1031 18th Street, Sacramento, CA, 95811-4124.

On August 4, 2021, I served the Introductory Letter regarding Case No. SA-CE-2205-S on the parties listed below by

☐ I am personally and readily familiar with the business practice of the Public Employment Relations Board for collection and processing of correspondence for mailing with the United States Postal Service, and I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States Postal Service at Sacramento, California.

☐ Personal delivery.

☒ Electronic service (e-mail).

Anne M. Giese, Chief Counsel
Service Employees International Union, Local 1000
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Nancy Craig
California Department of Human Resources
1515 S Street, North Bldg., Suite 500
Sacramento, CA 95811
Email: nancy.craig@calhr.ca.gov

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on August 4, 2021, at Sacramento, California.

S. Taylor

(Type or print name)



(Signature)