



## Special Labor Day Message

### *Value of CSLEA membership shines through again*

**By Alan Barcelona**  
CSLEA President

No gloss will stick to this Labor Day. It is the worst in everyone's lifetime.

Americans across the nation are in a foul mood, wondering if the economy will ever turn around and watching Washington's inability to accomplish anything large or small—except for bailing out behemoths “too big to fail.”

Many labor-union members are also seriously asking themselves if their associations matter much anymore and whether their dues money might be better kept in their own pockets.

Whenever I visit our members, there will invariably be someone who asks, “What has CSLEA done for me?” Occasionally, the question comes liberally peppered with some choice profanity.

None of us lives in a vacuum, and the everyday headaches of raising a family and watching your home value slide compounds the frustration and anxiety over furloughs and future salary and benefits.

But there are still plenty of good reasons to celebrate – and celebrate we should – the roughly

127<sup>th</sup> anniversary of Labor Day. That really is not such a long time ago, as historical measurements go. *The History Channel's History.com* Web site has a nice encapsulation of how and when Labor Day started, but look how long after other things we take for granted took to establish. “As the Industrial Revolution took hold of



**“California is broke and it will be more broke next year, and the year after.”**

-- Attorney General Jerry Brown

the nation, the average American in the late 1800s worked 12-hour days, seven days a week in order to make a basic living. Children were also working, as they

provided cheap labor to employers and laws against child labor were not strongly enforced. With the long hours and terrible working conditions, American unions became more prominent and voiced their demands for a better way of life ... It wasn't until 1938 when Congress proposed the Fair Labor Standards Act, establishing a minimum wage, initially \$0.25 an hour, along with a maximum workweek of 44 hours; these were to become \$0.40 an hour and 40 hours after seven years. The Work Hours Act of 1962 provided time-and-a-half pay for work over an 8-hour day or a 40-hour week.”

The channel's Web site has a nice image gallery that I recommend you check also (<http://www.history.com/content/1aborday/image-gallery>). The old faces you see on young people and the complete lack of any environmental protection for workers are vivid reminders of the many changes that underpin this holiday.

**But that was then, and this is now**

I can understand why some union members are finding past laurels no longer comfortable resting places, especially those who work

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for the state of California. Seventeen states have now issued furloughs as one method for closing their budget deficits. The governor of Rhode Island is even threatening to shut down all of government for 12 days and furlough 81 percent of his state's workforce. California is not alone. The hurt is everywhere.

On occasion, I also hear the argument that unions were a fine counterforce for the Industrial Age, but we now live in a Technological Age, where the microchip has made independent contractors out of millions of workers.

To this, I say read the story about the hospital police officer on Page 4 of this *CSLEA Alert* and let me know if you think the Technological Age has changed the inter-action of management and labor, or human to human, one bit.

In spite of the unprecedented challenges facing public employee unions everywhere, I am proud to report that yours has notched some big victories, and you can find them here in the present, not in a distant past.

### Results, not rhetoric

CSLEA legislative consultant Craig Brown secured a meeting with Department of Personnel Administration Director David Gilb and persuaded him of the vital importance our CHP dispatchers are to the public safety of Californians. As a result, the dispatchers, who had been on furlough since March, were

removed from the furlough order, as of Sept. 1.

You can't just phone up and book a meeting with the director of the DPA. That door was opened for two reasons only: The stature Brown has and the respect CSLEA has earned with DPA for our honest and above-board conduct in past contract negotiations. I cannot emphasize enough the importance of that second credential, which CSLEA has purposely built over the years and fights to maintain. This is why I believe the strategy of suing and antagonizing the governor's office, which some unions are employing, will not pay off in the short or long run.

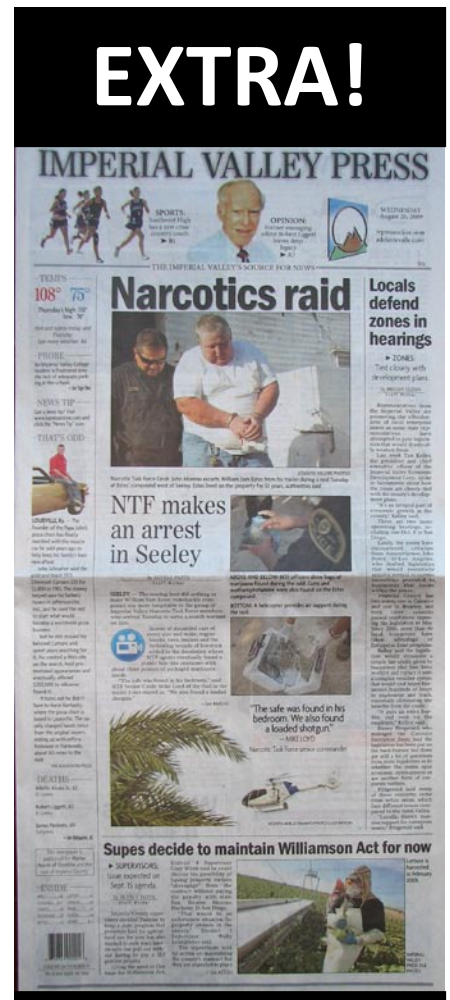
We wish them the best, but we will continue to travel a different road that ends in a welcoming handshake across the bargaining table, even though we will not always get what we want.

### Attorney in a flash

Also last week, two CSLEA-member Special Agents and a Special Agent Supervisor for the Department of Justice were involved in a shooting while performing dangerous surveillance on a methamphetamine lab in San Bernardino County.

Although the potential for criminal exposure is rare in officer-involved shootings, it is present, and the investigation of such incidents only adds to the stress an officer is already under from having to use lethal force. This is why CSLEA in 1990 created its Legal Defense Fund, which uses a panel of attorneys

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**The Imperial County Narcotic Task Force was the front-page headline on August 26. The ICNTF is led by CSLEA-member Special Agents from the Bureau of Narcotic Enforcement at the California Department of Justice.**



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throughout the state to respond and provide representation in such investigations.

Within in minutes of receiving a call from one of the involved agents, Kasey Clark, CSLEA's Legal Defense Fund administrator, dispatched an attorney experienced in such matters. The counselor arrived within a few hours and was able to walk the agents through the investigative process.

The day following the shooting, Howard Lieberman, of the Silver Law Firm in Santa Monica, reported to Clark, "Under the circumstances where the agents' lives were clearly in jeopardy, you couldn't have asked for officers with better experience or demeanor."

### **Agents of change and missing Rangers**

Past CSLEA Alerts have mentioned the great public awareness campaign we and our ASA-DOJ affiliate waged in getting the legislature to restore \$20 million in cuts it wanted to make in the Department of Justice's budget—cuts that would have closed 51 narcotic task forces throughout California.

ASA-DOJ President Mike Loyd, CSLEA Legislative and Political Liaison Coby Pizzotti, and CSLEA media consultant Tony Malandra teamed up to design and execute an interwoven lobbying and publicity campaign that alarmed legislators about the

## **State Parks Update**

**Tony Perez and Dennis Kellogg of the California Department of Parks and Recreation visited CSLEA headquarters on August 27 to apprise CSLEA Chief Legal Counsel Kasey Clark and senior legal counsels Larry Friedman and Dave de la Riva on the situation with state parks.**

**Perez catalogued the financial hits his department would be absorbing for the next two years. When all the gubernatorial and legislative cuts are totaled, Parks and Recreation is looking at between a \$24 million to \$27 million hole. The sinking economy has rapidly shrunk the ranks of state park patrons, resulting in fewer fees to help sustain the parks. Efforts to close the gap with a modest increase in the vehicle license fee are dead for now.**

**The department representatives warned of the likelihood of 100 state park closures. Early reports that the counties and federal government would take responsibility for some of the parks proved unfulfilled so far. The exact number of layoffs of park rangers has not yet been determined. Parks and Recreation will be collaborating with the Department of Personnel Administration on that matter. The next academy has also been cancelled.**

**CSLEA will be monitoring events closely and will pass on new information as it becomes available. CSLEA is doing everything possible to minimize the effect of the cuts on our members.**

consequences of their proposed actions.

Complete details of this success can be found in the July 27-August 10 CSLEA Alert on the CSLEA Web site.

What was achieved for the special agents of the Department of Justice – as a result of the coordinated effort with CSLEA -- eluded the state's park rangers. No part of CSLEA is greater than its whole. The same is true of any state-employee union, anywhere. Whereas ASA-DOJ and CSLEA combined resources to win the day, park rangers benefited from no such coordination, and as a result saw their department's budget whacked by almost the same amount as was restored in DOJ's: \$20 million.

I'm very proud of the work Coby Pizzotti did in building a coalition that successfully lobbied the Legislature to keep state park funding at 85 percent. I firmly believe that if members of the State Park Peace Officers Association of California (SPPOAC) would have teamed up with CSLEA to create a campaign similar to ASA-DOJ's, our combined efforts might have been able to stave off the cuts made by the governor's blue pencil.

While ASA-DOJ and CSLEA were raising a public stink about proposed cuts in special agents, only CSLEA was at the capitol advocating for the park rangers. The governor and his staff heard not a peep from the rangers, whose decision to sever ties with CSLEA has resulted in the

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possible closure of 100 state parks and potential layoffs to rangers.

### **Not slowing down**

The brick wall that every public employee union in America has hit in trying to get better salaries and benefits has not stopped CSLEA from doing all the other important things that also matter to its members' livelihoods and future. The three examples above (removal of dispatchers from

furloughs, the legal representation of members, and the restoration of budget cuts) vividly illustrate our successes—victories that no single member, or no single affiliate going it alone, could ever have won for themselves.

As the quote from Attorney General Brown on *Page One* warns, it will be a while before the economy turns around. When it does, contract negotiations will start in earnest. The key for CSLEA is to be positioned to come out of the chute at full speed when they do, by doing

*now* all the foundation-laying, blocking-and-tackling, and brick-and-spade work.

I repeatedly tell our members that we will emerge stronger from having gone through this national crisis than we would have had it not happened. After seeing the solid accomplishments we have achieved in recent weeks, I am more convinced of that than ever.

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## **CSLEA legal victory reinstates hospital police officer**

In another legal victory for CSLEA, Department of Mental Health hospital police Officer Roger Cornelio has been ordered back to work at Napa State Hospital, 11 months after being served with a dismissal action. At its July 21 meeting, the State Personnel Board (SPB) adopted Administrative Law Judge Douglas Purdy's proposed decision modifying Cornelio's dismissal to a suspension.



During his six years at Napa State Hospital, Cornelio proved to be a loyal and dependable employee. Napa State Hospital has been extremely short-staffed for years; therefore, it relies on certain HPOs, such as Cornelio, to work an incredible amount of overtime. While ill and at home on a regular day off, Cornelio's sergeant called and asked if he could work an overtime shift. Since he felt that his health was improving, he agreed to work. While working the shift, he began feeling ill again. Trying to tough it out for the remainder of his shift, Cornelio took medication, which unbeknownst to him, contained antihistamines (an active ingredient found in some cold and flu medications that can cause drowsiness). Shortly after taking the medication, he inadvertently fell asleep and was awoken by his sergeant. Although he quickly admitted to being asleep and apologized for his actions, the DMH chose to dismiss Cornelio for falling asleep while on duty.

Because Cornelio admitted to the wrongdoing, his case centered on the severity of the penalty, rather than the underlying facts. Due to multiple mitigating factors, CSLEA argued that dismissal was too harsh and requested that SPB modify the discipline.

In an effort to prove Cornelio's dismissal was appropriate – although the department never charged him with dishonesty – DMH attempted to convince the personnel board that Cornelio lied about sleeping on duty. CSLEA zealously objected to such an argument, because dishonesty was never charged in the adverse action.

Although the administrative law judge initially allowed the dishonesty argument to be presented during the hearing, his proposed decision chose not to specifically address any dishonesty claims that were proffered by the department. Instead, he ultimately agreed with CSLEA and found Cornelio's testimony to be honest and accurate.

In determining the appropriate penalty for falling asleep while on duty, the judge weighed various factors that were either

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in favor of dismissal or supported mitigation of the penalty. In mitigating the penalty, he considered Cornelio's satisfactory performance evaluations, the large amount of overtime he worked because of the significant staff shortage, his illness the day he was found sleeping, the medication that he took that caused him to become drowsy, his immediate apology and admission to falling asleep, and his sincere remorse shown during the hearing.

The cornerstone of CSELA's argument for modification of the penalty was the department's failure to properly apply progressive discipline. Although Cornelio had received prior corrective and adverse actions, these actions were not done in a progressively more severe manner. Furthermore, Cornelio was receiving mixed messages from the DMH. For instance, after receiving an action, he would still receive a satisfactory performance evaluation and a timely merit salary adjustment, which certified that his performance met the standards of efficiency of an HPO. After considering precedent-setting decisions on progressive discipline, Judge Purdy determined that dismissal was too harsh, because the Department did not apply progressive discipline in a manner that gave Cornelio a reasonable opportunity to address and correct performance problems.

Cornelio is extremely pleased with the result and is eager to get back to work. However, the judge made it clear that although his dismissal was not sustained, the failure of a police officer to remain awake while on duty is a very serious offense that can be subject to harsh discipline.

## Pension Update

One assault on public-employees pensions has run out of gas, while another just received a fresh tank-full of taxpayers' cash. In July, the secretary of state announced that the so-called McCauley Public-Employee Pension Reform Act, which

would have allowed the state and any local government to amend public employee pension contracts without negotiations, had failed to gather enough signatures to qualify for the ballot this year. Undaunted, Paul McCauley, an angry Santa Monica certified public accountant with too much money and too much time on his hands, has vowed to float another ballot initiative that now would tax the pensions of public employees. But he only has until Oct. 15 to gather the necessary signatures, and it is expected he will fail again.



Much more seriously, the Orange County Board of Supervisors refuses to take a Superior Court judge's *no* for an answer and voted to spend more taxpayer money appealing her ruling in favor of the pension plan awarded Orange County Deputy Sheriffs by ... *the Orange County Board of Supervisors!*

The seriousness of this case cannot be understated. Orange County deputies, like CSLEA-member sworn peace officers, earn a 3-at-50 pension formula. A lawsuit brought by the board seeks to invalidate the formula supervisors granted deputies in 2001. "At the heart of the legal dispute," the *Los Angeles Times* reported, "is the structure of a labor contract between the sheriff's union and the county that has been adopted by government agencies throughout the state for police, teachers and other public employees."

On Feb. 26, Los Angeles Superior County Judge Helen Bendix threw out the lawsuit. "Bendix said that pension enhancements are not a gift," reported the Orange County Register, "and cited a mountain of case law to back up her assertion ... She also countered that the estimated cost of the pension – set by actuaries - cannot be seen as a debt. She called the county's position 'unprecedented.' "

On August 25, Orange County Supervisors voted to spend even more money to appeal Judge Bendix's decision. Writing on his blog, deputy sheriff's association President Wayne J. Quint, Jr., commented, "... the Board continued their attack on not only this law enforcement association but on every labor organization throughout the state by voting 4-1 to appeal Superior Court Judge Bendix' decision (twice) to reject the county's frivolous pension lawsuit. It is the opinion of AOCDS that the Board has and continues to use precious taxpayer monies pursuing a frivolous lawsuit that despite being told by three independent taxpayer paid law firms ... that concocted legal theory is without merit."