State Counterproposal 9/29/2011

REALIGNMENT SIDE LETTER AGREEMENT

This agreement is a Side Letter to the current Memorandum of Understanding (contract), effective through July 1, 2012, entered into by the State of California (State or State Employer) and the American Federation of State, County and Municipal Employees (AFSCME) (Union). The purpose of this Side Letter is to assist in effectuating Realignment, as mandated in AB 109 and related legislation, and to continue to promote harmonious labor relations between the State and the Union.

WHEREAS reaching a negotiated agreement on labor issues related to Realignment will save both time and money as opposed to utilizing the typical layoff process;

WHEREAS this agreement honors the principle of seniority and the ability to bid to vacant positions throughout the State; and

WHEREAS this agreement enables employees to have more control over where they may end up working during the Realignment process; and

WHEREAS this negotiated agreement provides employees with opportunity to make decisions regarding their employment sooner.

Now, therefore, the State Employer and the Union do hereby agree as follows:

1. **Supersession**: In reaching agreement on this Side Letter, the parties agree and confirm that they have, through negotiation, superseded any and all (1) supersedable layoff statutes, including sections of the Government Code, (2) Department of Personnel Administration rules or regulations, (3) provisions of the Layoff Manual, and/or (4) articles of the parties' contract that are in conflict with the terms and conditions of this Side Letter.

2. **Term**: The State Employer shall notice the Union of the final wave that will be initiated by Realignment. This Side Letter shall expire 120 days after the completion of said final wave. As such, this Side Letter will continue beyond the term of the parties' current contract (i.e., beyond July 1, 2012). However, the term shall be extended to cover the commitments in "Leave Banks" in paragraph 21 and the Dispute Resolution procedure herein shall cover disputes concerning the interpretation or application of that paragraph.

3. **Dispute Resolution**: Any dispute regarding the interpretation, application or alleged violation of this Side Letter shall be subject to the grievance and arbitration procedure of the parties' current contract. However, the following provisions shall apply and prevail if inconsistent with that procedure.

   a. **Expedited Grievances**

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The parties agree that all alleged violations of the "Realignment" agreement shall be filed at step three (3) of the grievance procedure.

All other timelines shall apply to the grievance except the following:

A. Within fifteen (15) calendar days after receipt of the appealed grievance, the Director of the DPA or designee shall respond in writing to the grievance.

B. Within fifteen (15) calendar days after the notice requesting arbitration has been served on the State, the Union shall contact the State to mutually select an arbitrator. If the State fails to respond to the request or the parties cannot mutually agree upon an arbitrator within ten (10) calendar days after the request to select an arbitrator has been served, the Union may request the State Mediation and Conciliation Service to submit to both parties a panel of nine (9) arbitrators. Within ten (10) calendar days after receipt of the panel of arbitrators from the State Mediation and Conciliation Service, the Union shall contact the State in writing and request to strike names from the panel. The parties shall have five (5) business days to meet and alternately strike names until only one (1) name remains and this person shall be the arbitrator. If the State or Union fails to meet and strike names, the other party shall select an arbitrator from the list.

C. Nothing in this agreement shall supersede the AFSCME Memorandum of Understanding (MOU) section 13.11 relating to health and safety grievances.

b. **Expedited Arbitration**

The parties agree that all alleged violations of the "Realignment" agreement shall be subject to the following expedited arbitration process:

A. The arbitrator shall hear and decide as many grievances as can reasonably be presented in a normal work day.

B. No post hearing briefs unless agreed to by the parties.

C. If there is no agreement as to post hearing briefs, each party shall present an oral summation of its position and the arbitrator shall issue a bench decision on each grievance. Thereafter, at the request of either party, the arbitrator shall provide the parties with a written decision.

D. If the parties agree to post hearing briefs, the arbitrator shall issue a decision no later than 60 (sixty) days after receipt of the parties' post-hearing briefs.

E. Either party may request that the expedited arbitration be conducted with a court reporter. The requesting party shall bear the cost of the reporter.

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c. **Institutional (Statewide Issues) Grievances**

The parties agree that alleged violations of the "Realignment" agreement that occur on a statewide basis, or where the Union is the grievant, shall not be subject to the expedited arbitration process described above. Such institutional grievances shall be subject to the following procedures:

A. AFSCME 2620 shall send a grievance letter to the DPA Director, with a copy to the DPA Chief Counsel.

B. Within five (5) calendar days after receipt of the grievance letter, either party may request a meeting regarding the grievance. If a request to meet is timely made, the parties must meet within ten (10) calendar days of the request.

C. Within ten (10) calendar days after receipt of the grievance letter, the Director of the DPA or designee shall respond in writing to the grievance letter.

D. Within fifteen (15) calendar days after receipt of DPA's response, the Union shall have the right to submit the grievance to arbitration. Within fifteen (15) calendar days after the notice requesting arbitration has been served on the State, the Union shall contact the State to mutually select an arbitrator. If the State fails to respond to the request or the parties cannot mutually agree upon an arbitrator within ten (10) calendar days after the request to select an arbitrator has been served, the Union may request the State Mediation and Conciliation Service to submit to both parties a panel of nine (9) arbitrators. Within ten (10) calendar days after receipt of the panel of arbitrators from the State Mediation and Conciliation Service, the Union shall contact the State in writing and request to strike names from the panel. The parties shall have five (5) business days to meet and alternately strike names until only one (1) name remains and this person shall be the arbitrator. If the State or Union fails to meet and strike names, the other party shall select an arbitrator from the list.

E. If there is a disagreement over whether the grievance is an institutional or expedited grievance, the arbitrator shall first decide whether the grievance is an institutional grievance or an expedited grievance.

F. A court reporter shall be used for any institutional grievances.

G. No post hearing briefs unless agreed to by the parties.

H. If there is no agreement as to post hearing briefs, each party shall present an oral summation of its position. The arbitrator shall issue a decision thirty (30) days after receipt of the transcript.

I. If the parties agree to post hearing briefs, the arbitrator shall issue a decision no later than thirty (30) days after receipt of the parties' post-hearing briefs.

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d. If any provision in this agreement is in conflict with the MOU, this agreement shall control.

e. Nothing in this agreement shall supersede the AFSCME MOU section 13.11 relating to health and safety arbitrations.

4. **Suspension of Contractual Transfer Process:** Transfers pursuant to the contract shall be suspended during this Realignment process that provides opportunities for lateral transfer. This shall not include hardship transfers.

However, if the department has vacancies following the voluntary transfer process, SROA and options placement process; these vacancies will be made available to existing employees even if an overage of staff does not exist in that county. Employees transferred under this lateral transfer process shall not receive per diem or ATO as described in 32 Per Diem and 33 ATO of this agreement.

5. **Seniority Scores**: Because all bargaining unit members have already been provided their seniority scores, as well as had the opportunity to challenge those scores, there shall be no further thirty (30) day seniority score challenges for Realignment layoffs. Commencing with the second (2nd) wave, after SROA notices are received, employees shall have fourteen (14) calendar days in which to provide additional information related to their seniority scores (i.e., challenges).

6. **Communication**: The Union shall have 2 consecutive work days from the time of receipt to review and provide comment on each of CDCR's draft Realignment communications meant for employees.

7. **Options Discussions for Transfer**

Employees shall have access to a state created Video explaining the bid and transfer process and answering FAQs and can utilize the 800 hotline for assistance (from 7:00 am to 5:00 pm Monday through Friday) using State equipment during his/her regularly scheduled shift at the worksite. A Union Representative may be on the line, at the employee's option, so long as his/her presence is announced.

8. **Distribution of Workforce/Layoff**: Each Realignment wave will be based on a determination of overages and vacancies in staffing. Surplus employees will be given State Restriction of Appointment (SROA) notices although actual layoffs may be mitigated through the Voluntary Transfer Process at the beginning of each Realignment wave.

9. **Voluntary Transfer Process**:

(1) The California Department of Corrections and Rehabilitation (CDCR) shall first publish statewide information regarding locations that have overages and vacancies by classification.

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(2) CDCR shall also post name, classification and seniority scores by county on the internet, intranet and at each work location.

(3) Voluntary transfers may be requested by any employee within a county with any overage in that employee's designated classification. All vacancies in the State in that classification shall be made available for such transfer request.

(4) By the designated deadline, employees shall opt in or opt out of the voluntary transfer process by filling out the form(s) provided by CDCR. For those that opt in, employees shall rank their transfer preferences. Employees shall have ten (10) calendar days from the date of postmark to complete and return the required form(s). Responses may be mailed, sent via facsimile or scanned and emailed. Late response shall not be accepted or processed.

(5) On the transfer form(s), CDCR shall communicate to employees that, although this Voluntary Transfer Process allows employees with the opportunity to transfer out of county sooner, depending upon demotional bumping and one's seniority score, an employee theoretically still could be laid off at the conclusion of the SROA/layoff process and/or permanently involuntarily transferred within an impacted county.

(6) All requests for voluntary transfer shall be awarded based upon statewide seniority.

(7) CDCR shall calculate the transfer awards and communicate a start date. After receiving a transfer date, an employee may be granted a change in the report date by agreement of the releasing worksite and the receiving worksite.

(8) No relocation shall be paid for such voluntary transfers.

10. **SROA/Layoff Process**:

(1) After the Voluntary Transfer Process, the amount of overages and vacancies will be recalculated by county.

(2) The area of layoff shall be county-wide.

(3) Those with the lowest seniority within the county shall be subject to the SROA/layoff process.

(4) Employees are able to pursue out of county opportunities through the SROA process.

(5) However, there shall be no comparable classifications or out of county placement offered in the layoff options process.

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(6) Layoffs shall occur in accordance with inverse seniority within the impacted county/counties. The least senior employees who are subject to layoff shall receive 30-day written notice of the effective date of their layoff or the transfer report date as described below. An employee may be granted a change in the report date by agreement of the releasing worksite and the receiving worksite.

(7) Transfer within CDCR: Once the layoff process is completed, where overages still remain, the least senior employees shall be permanently, involuntarily transferred to a location within the county that still has vacancies. There shall be no relocation, per diem, mileage or other travel reimbursement paid in association with such involuntary transfers.

(8) Those who do not comply with such permanent involuntary transfer shall be Absence Without Leave (AWOL) separated.

(9) Transfer to Another Department: After receiving a transfer to another department, an employee may be granted a change in the report date by agreement of the releasing hiring authority and the receiving hiring authority.

(10) There shall be no relocation remuneration for any other transfers or movement associated with this agreement.

11. **Waves**: After the first wave, the Voluntary Transfer and SROA/Layoff processes may occur at the same time.

12. **Temporary Redirections**

While the department is undergoing "Realignment" all redirections shall be made by requesting volunteers first and awarding the position to the highest senior employee interested. If there are no volunteers, then the department shall use inverse seniority to mandate the redirection.

All redirected employees shall be reimbursed for per diem and mileage in accordance with Article 12.1 Business and Travel Expense of the AFSCME MOU. If the employee is not reimbursed within forty-five (45) days, s/he shall be given a check in the amount owed no later than the following business day.

13. **Salary Advance**

Any CDCR employee who changes his/her residence and transfers pursuant to this agreement to another CDCR institution/work location shall be allowed the ability to request a salary advance pursuant to the State's policy and procedures. Employees who receive a salary advance shall repay the advance in full no later than the following pay period in which it was received. Such requests shall be made at least two (2) weeks prior to transfer, and honored no later than seven (7) days after the request is made.

14. **Pay Adjustments**

Any pay adjustment required by a transfer or placement in lieu of layoff shall not be made until the employee's scheduled report date.

15. **State Release for other State Employment**

After the voluntary bid and transfer process, all impacted employees who did not transfer and who received an SROA notice shall receive reasonable State release time to attend state-sponsored job interviews, job fairs, conduct research, and apply for open positions in other State agencies. Such requests shall not be unreasonably denied and any denials must be based on identified operational needs. Where there is State equipment available, the employee shall be allowed to use State equipment to conduct research.

16. **Release for Outside Employment**

After the voluntary bid and transfer process, impacted employees who did not transfer and who received a SROA notice may request and use his/her own leave credits to attend training in the community, including training sponsored by the One-Stop program. Requests to attend such trainings shall not be unreasonably denied, any denials must be in writing and based on identified operational needs.

17. **Options Training for Layoff**

All Employees potentially impacted by "Realignment" shall have access to State created videos and the 800 hotline (as referenced in paragraph 7) explaining the SROA and Layoff process.

Impacted institutions/work locations shall provide a dedicated meeting space and equipment for a minimum of two (2) days during each wave for employees potentially impacted by "Realignment" to use. While on duty, employees, with a supervisor's approval of reasonable release time, shall be able to utilize the equipment to place calls to the 800 hotline and to watch the State created videos. **AFSCME Local 2620** shall be notified of the impacted institutions/work locations proposed days to provide this equipment and union representatives shall be present on State release time to assist members.

18. **Realignment Impact Training**

The State shall facilitate meeting space for informational meetings at worksites and seminars at the request of the Union. Impacted employees shall be allowed two (2) hours during his/her regularly scheduled shift at the worksite to attend meetings or seminars during each wave.

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19. **Orientation and Training**

Any impacted employee that transfers to another institution/worksite or has changes to his/her job duties in assignments shall be provided orientation and any required on-the-job training in his/her new position, including, but not limited to, New Employee Orientation and in-service training.

20. **Pre-approved Leaves**

Management shall honor any pre-approved leaves (paid and unpaid).

21. **Leave Banks**

During "Realignment," employees shall be given maximum discretion to utilize their outstanding Furlough, Personal Leave Program 2010 and Professional Development time. These requests shall be granted or denied in a timely manner.

For every request denied of an impacted employee (excluding PDD), the denied credits shall be used (if not already used) to extend an employee's time on the books after he/she physically separates. Such time may not be used to earn any leave credits/health benefits/retirement credits or the like. That is, such time shall not count as a qualifying pay period.

22. **Recruitment and Retention – Avenal, Ironwood, Calipatria, Chuckwalla and Centinela State Prison**

The following shall apply to any impacted employee covered by the above Recruitment and Retention (R&R) differential who transfers via the layoff process:

A. If the employee transfers to a new classification or position in an institution covered by the above R&R differential, the employee shall continue to qualify for the R&R without interruption and without a change in the eligibility date.

B. If the employee transfers to a new classification or position in an institution not covered by the R&R differential, he/she shall be eligible for a prorated share for those months served.

23. **Retired Annuitants**

If any retired annuitant fills a bargaining unit position, that position is deemed a vacancy for purposes of transfer, layoff and reemployment placement.

24. **Merit Salary Adjustment**

Employees who do not change their classification shall not receive a new merit salary anniversary date.

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25. **Duty Statements**

Employees shall be provided their duty statements upon transfer or placement into a new position upon request and within ten (10) days.

26. **Probationary Period**

Employees impacted by voluntary transfer, involuntary transfer, redirection or demotion due to "Realignment" shall not serve a new probationary period. However, if an employee has not previously served probation in the classification, s/he may be required to serve a probationary period.

27. **Point of Contact for Agreement Implementation**

DPA shall provide one point of contact to deal with reopeners, violations, future impacts, grievances, or any other matters associated with this agreement governing "Realignment."

28. **Information Updates**

The State shall share the following information that it possesses with AFSCME beginning November 1, 2011 and at least sixty (60) days, except as provided below, prior to the implementation of each wave.

A. Vacancy lists (lists shall include classification, county, facility, and unit);

B. Overage and Vacancy lists (lists shall include classification, county, institution/work location and unit); and

C. Final seniority scores will be posted thirty (30) days prior to the end of each wave.

The State shall share the following information beginning November 1, 2011:

A. Monthly update of all California State Departments partially or completely excluded from the hiring freeze;

B. Current staffing (placement listing) within thirty (30) days of the end of each wave of "Realignment"; and

C. Notice of "Realignment" announcements (these shall be forwarded to Cliff Tillman).

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29. **Primary Demotion Patterns**: AFSCME will review the provided demotional patterns and meet with DPA and CDCR to meet and confer about any demotional patterns that AFSCME identifies as inaccurately reflecting the class series.

DPA or CDCR shall notice AFSCME of any new classifications impacted by "Realignment" that have not had a primary demotional pattern identified yet. If AFSCME identifies an inaccuracy with the class series, the parties shall meet to attempt to resolve any dispute(s).

30. **Layoff Progression**

Management shall make all efforts to avoid implementing overlapping waves of layoff. In the unlikely event that management must initiate an overlapping wave, it shall notify the union as soon as possible. AFSCME shall have the right to meet and confer regarding the impacts of the wave, but the process shall not delay the implementation of the subsequent wave.

31. **Layoffs "Outside of Realignment"**

Any other CDCR layoff during Realignment shall be governed by this agreement.

32. **Per Diem**
In order to facilitate timely payment of Per Diem for employees, the State will process payments within 45 days of requests.

Per Diem for Transfer over 50 miles only	Amount	Basic Duration
Voluntary	$125	30 days
Involuntary	$90	22 days

33. **Administrative Time off**
In addition to ATO listed below, employees can use up to two (2) additional days of Vacation, Annual Leave, Furlough or PLP.

ATO for those who move within 6 months of his/ her report date	100-200 miles	200+ miles
Voluntary	16 hours	24 hours
Involuntary	16 hours	24 hours

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34. **Reemployment Rights**

All employees impacted by layoff or demotion in lieu of layoff shall be given general reemployment status in the classifications in their primary demotional patterns.

After Realignment is completed, an employee who transfers from a county has a right of first refusal to return to that county. The employee must designate, on the job application, eligibility under this provision. Ties will be broken by seniority.

35. **Meet and Confer Triggers**

Nothing herein shall be deemed a waiver of the Union's right to receive notice, or meet and confer, regarding changes to any policy, legislation, law, rule, resolution, or regulation proposed to be adopted by the State directly relating to matters within the scope of representation.

At AFSCME's reasonable request, DPA and CDCR shall meet with AFSCME to discuss matters of institutional concern (e.g., staffing levels).

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Date 9/29/11 7:08 pm

AFSCME	STATE
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Gail Penny	[illegible]
Malvern [illegible] Ed.D.	Kathleen DaRosa
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