



follow as dictated by the U.S. Department of Labor (DOL). Because of this, we need to consider all of these factors when implementing the third furlough day which totals 3 days or 24 hours. You may already know we administer the Unemployment Insurance (UI) Program and it is a part of a joint federal program established by the Social Security Act and the Federal Unemployment Tax Act and the California UI Code. We are dependent almost entirely on federal funding and we only get our federal funding as long as the U.S. DOL certifies our program is in compliance with federal requirements. Some of those federal requirements are that we provide for such methods of administration that is reasonably calculated to ensure full payment of unemployment compensation when due and we have to meet certain time lapse standards which are established in federal regulations. These standards require 60% of our decisions be mailed within 30 days of the appeal being filed and 85% within 45 days and 95% within 90 days. Generally, meeting federal time lapse standards are achievable in times when workload is more manageable when we have everybody, support staff and the ALJs, working full time. But in peak times when the backlog occurs we have to take extraordinary measures to fulfill these requirements. Having an additional furlough day could possibly interfere with those requirements and if we fail to meet those requirements we risk penalties ranging from fines to total loss of our federal funding. If we lose our federal funding that would be disastrous because we could not serve the unemployed, especially at this peak time of unemployment. Because of the furlough, there will be 3 days of loss productivity that will affect our administration of the program and our ability to meet federal requirements and possibly place our federal funding at risk.

Staff Counsel Hickox stated the Board has to carefully consider the implementation of the third furlough day and its impact on our workload and ability to meet federal requirements. Additionally, in 1992, in what is commonly referred to as the Ochoa case, we were sued by several legal aid societies on behalf of claimants because we did not timely process their UI claims and we did not meet time lapse. As part of that lawsuit we entered into a consent decree wherein we were directed to hire a certain number of ALJs and to meet time lapse by a specified date. If we don't properly manage this third furlough day we could be subject to the similar type of lawsuit again. Additionally, the effectiveness of our recent efforts to hire new ALJs and staff could be reduced.

Chief ALJ/Acting Executive Director Alberto Roldan commented one of the things that he worked on with staff was trying to figure out the practical impact of the 3 additional furlough days and our ability to deal with workload and to essentially reach a number of cases that we are not able to reach time lapse standard. One of the estimates that we work from in terms of having a number of open cases that helps us to reach time lapse standard is to have approximately fewer than 30,000 open cases at any given time. Our current open balance as of July 3, 2009, in all areas, UI, DI, Tax, and some of the miscellaneous cases that we do, is currently 94,286 open cases. He will point out from a positive standpoint that last week was the first week in a long time that he had seen that we reduced our open balance in every category pretty substantially. For the last number of weeks we have been

looking at either some of the categories exceeding having greater dispositions and verifications with having less cases coming in than going out and open balance is not increasing. We had a week where we reduced our inventory in every single category. It was a good week and that comes at a time though that we are now going to be impacted by the furlough. Our budget officer Renee Erwin calculated the practical effect of what the furlough may do. He will summarize it as follows: This Board had acted in an appropriate manner to authorize additional hirings in Phase I and Phase II and most recently in Phase III and we had hoped to see the full impact of the Phase III hirings, which are just starting to play out, by having these people come on by October 2009 and then see the full impact beginning in January 2010. What we had projected without the furlough is that we would have approximately in terms of incoming cases about 37,500 cases coming in. An increase in capacity of these additional judges would reach 42,893 dispositions or resolve cases which would allow us to start wrestling down the workload. The problem is the impact of the furlough taking all these things into account has a negative impact in our ability to resolve cases of about 8600 a month, which means that the 3 furlough days reduce our productivity if we do what the Governor has ordered which will have all our judges and employees take their furlough days as required because there is a limited life on them and it will reduce our capacity to resolve cases by 8620 cases a month. That is really the bottom line. Rather than having a situation where dispositions are greater than the cases coming in we are going to have an extended period of our dispositions being fewer than the cases coming in if the impact of the furlough is fully placed out. It has the effect where all of our employees are furloughed in addition to any annual leave, vacation time of that nature that they are entitled to. If they take that furlough leave above and beyond that our capacity is reduced by that amount at a certain point.

Chief ALJ/Acting Executive Director Roldan further commented that one last thing is that we had hoped to reach 30,000 open cases later next summer with the additional hires and no impact of the furlough. At best if the furlough were to end at the end of June 2010 as the Governor indicated we won't be furloughed anymore and we were able to operate fully at capacity. We won't be able to reach an open caseload of under 30,000 cases until July 2011 all things being equal. There are a lot of variables to play out here. We may have a greater number of cases that come in to the Department. This is assuming that we will be wrestling with approximately 450,000 cases coming in on a yearly basis. If we have more than 450,000 cases come in we would have greater open caseload and it would take us longer to wrestle those numbers down.

Member Runner asked if the approximately 9,000 cases was that for the 3 furlough days. Chief ALJ/Acting Executive Director Roldan responded that it would be the impact of the judges being taken off line 3 additional days a month. When we calculated that out, we were assuming that all judges are working a 5/8 schedule. Member Runner stated that it is almost 3000 cases per furlough day. Chief ALJ/Acting Executive Director Roldan replied that it is correct.

Member Figueroa added that we can't hire more because that takes people off to

train them from working on their cases and puts us further behind. Chief ALJ/Acting Executive Director Roldan agreed.

Chair Garcia asked Acting Secretary Stephen Egan to provide the perspective from the recent notice the U.S. DOL sent us and how that plays into our workload.

Acting Secretary Egan reported that a series of questions he thinks Alberto is going to touch on, just kind of hinting or inquiring about what our posture was if they were hard or soft furlough days and when they had to be used are things they are looking at. They are coming for an audit July 27<sup>th</sup> and will be here for the entire week. We would be looking at all aspects of the Board visiting at least two field offices and looking into the administration. He knows that this is something that concerns them; the furlough is a big deal and its impact on our backlog.

Chief ALJ/Acting Executive Director Roldan commented that Pat O' Neal is the Regional Director for the federal government in this particular area. As specific questions to the point that we calculated as what is the specific impact of these furlough days on our capacity to resolve cases and meet time lapse standards. Obviously, we just discussed that it is not good. It's going to have a profoundly negative impact on our ability to conduct business.

Member Figueroa asked could they sign on to a letter from the Chairwoman asking for an exemption or do they write something independently. Chief ALJ/Acting Executive Director Roldan responded that they have previously in written on behalf of EDD and CUIAB saying that the exemptions should have been granted for the Department that the strategies that have been engaged in by the Governor's Office to try to deal with the deficit may apply in some other areas but are not necessarily wise or applicable strategies to our environment. He expects that they would continue to communicate directly with the Governor's Office in relation to this.

Chair Garcia questioned Acting Secretary Egan as to how many states currently have a furlough and how many of them have exempted the UI process. Acting Secretary Egan replied he did not know and had no information on that. Ms. Lori Kurosaka responded currently about 12 states are on a furlough program and one state has exempted the UI program and that is the State of Michigan. Vice Chair Plescia requested Chair Garcia to repeat that as he could not hear the answer. Chair Garcia responded that 12 states currently have ordered furloughs but only 1 state has received a UI exemption and that is the State of Michigan. She imagines it is because of the auto industry's impact on that state's economy.

Member Richardson commented that there is nothing that is comparable to the State of California with its tremendous peak. We have one of the highest unemployment rates in the nation and we also have one of the largest population. There is absolutely nothing to compare and this could be disastrous.

Ms. Kurosaka added that some of the other larger states have gone into a layoff situation. Chair Garcia repeated that some other states have opted to layoff

instead of furlough employees. We may not be comparing apples to oranges when it comes to that.

Member Richardson stated that in the layoffs within the UI Department or are you talking about state worker layoff. Ms. Kurosaka replied state worker layoff in general.

Member Richardson added she thinks what might be helpful is for Lori to research this pretty quickly and to find out if those states who had UI Programs and are also in the layoff process laid off any employee from the UI Program because she suspects that UI will be exempted in almost every state. If they are treating them the way California is being treated with our UI Program being included with other state agencies across the board. Let us see if other states are willing to pull them out. If they are, then we need to find out how they did that, how they go about convincing the administration that they should be culled out because at this point we really need something strong to convince the administration that this is imperative to be culled out and she is worried about whether or not the DOL is seeking legislation to enforce the administration of the UI Program which is something they have never done in the past. Legal aid societies have sued California to continue their UI Programs but have the feds come after any state for not properly administering a UI Program? And are we potentially subject to litigation in this case? She does not want to be on the other end of a federal lawsuit when we can easily solve this issue.

Chair Garcia stated there was correspondence that went back and forth between Chief Roldan and the DOL last week that you all got a copy and it specifically talked about some of the implications. The implications were not legal, they were financial and so what that means for us for California last fiscal year was the first time that we got a 100% funding we ramped up our staff in order to meet the workload. We are at risk because of our planning. This fiscal year we are at risk of losing some of that funding. We got an exemption for some of our services and contracts we used some of that funding. However, going forward if we are not able to get our workload and wrestle it down we are at risk of losing this fiscal year funding. What that means is we get paid by quarters and reducing workload per quarter will have a significant impact as we move to quarter two, quarter three and quarter four. We will see a drop in our income and reimbursement. We can be punished further and be reimbursed at a reduced amount again, not at 100%.

Chief ALJ/Acting Executive Director Roldan stated with the calculation that we have made he wanted to add to this discussion. Even assuming we were not to be fined or penalized in any fashion we are reimbursed on a per case basis and we would overall in the 09/10 year if all these would play out worst case scenario lose 94,740 dispositions which is equivalent to approximately almost \$15 million of income to the Department even not taking into consideration the possibility that we may be reimbursed at a lower rate or penalized.

Member Richardson stated that the reason why she asked about the litigation is

because the statute is very clear that payment is when payment is due. That is the mandate of the federal program. If somebody would please look and see if there has ever been a state that did not comply and how did the fed handle it? Did they sue them? We may be losing money \$15 million and we may be suffering from the biggest backlog we ever had but when we lose the production of 8000 cases due to an Executive Order and a furlough we may be in violation with the payment when payment is due that part of the statute and that is what concerns her and we may not get a penalty or punished but can we be sued by somebody, even the DOL or by some federal group in response to our inaction? That potential litigation whether state or federal whoever is an intervener that could be a problem for us.

Chair Garcia stated this laid the groundwork for this discussion. I wanted to share with you some other information that really needs to be weighed in with what we decide. First of all I gave you a copy of the Executive Order (Attachment) which is very similar to the Executive Order that kicked in February that put us on 2 days furlough. On page 2 you will note that it is further ordered in the bottom of the Order, the second to the last paragraph, all state employees covered by original and amended furlough plans must use their accrued furlough days prior to using vacation, annual leave, personal holiday, holiday credit, personal leave plan credit and compensatory time off. The previous furlough order took us 30 days to get some rules from DPA to lay out and when those furlough hours could be used, how they were accrued, how they were banked. While the rest of the state agencies except for the exempt agencies such as CUIAB, have a fixed day off we were put on a self directed furlough. Meaning, we would float the day off that you would get. But because of our current workloads it was hard to get time off and it shows on our list all of the time off that our employees have accrued whether it is sick time, furlough time, vacation time, etc. When you look at the impact of the first furlough at 16 hours a month or 2 days they have accrued to this point 80 hours and on average our employees have about 60 hours of time still on the books. When we add the impact of a 3<sup>rd</sup> furlough day we are going to accrue 24 hours a month on top of what they already have and then any vacation time or holiday pay, etc. We are still in the same place because it is going to be difficult to have them use that time and use it within the timeframe indicated. Also you have in front of you (Attachment) the 7 pages of what DPA has put out as a question and answer and Pam is working with DPA on other issues that may come up but we need to address in terms of our contract, etc. how we deal with that time and one of the biggest impacts she thinks is how it impacts our workload, how much and she is not talking about the clerical staff, talking about the judges themselves, how does it impact the judges' ability to do maximum workloads when technically 3 out of 4 of those weeks they will be considered to be off one day. We also have to discount what they actually are going to be able to do by 1/5 every week. You have a copy (Attachment) of their contract in front of you as well. That being said we are going to end up with employees that have a massive amount of time on the books already and we are going to add to it approximately 300 hours a year based on this new furlough. So if we don't manage it and end up with employees that are retiring or get laid off and Pam correct me if I am wrong. Let us say the Governor because of the budget crisis orders us to lay off every clerk in this Department by

September 1<sup>st</sup>, we would have to start sending them home today just to burn up the hours that they have on the books for furlough because that time cannot be cashed in. So it would have an immediate significant impact on our work.

Member Richardson stated that she is not sure and asked is that after the take up laid off in September they would have to burn up their furlough. She does not think it accrued. Deputy Director Boston replied that they have time on the books right now. We ran a report that lists all the furlough hours that employees have and it is pretty surprising how many people have not used very much hours at all. This is time they would not get paid for. What Bonnie is saying is that in order for our employees to get the best benefit we would put them on furlough time so they could get paid for those hours.

Chair Garcia added that what we do not want to do is create a situation where we have an employee with 300 hours which is the equivalent of several weeks' salary and say "see you later" because we asked them to work through it. We have to be really careful here while our Agency has taken the brunt because we care about the people that we deal with; we also have sacrificed the morale of our employees; we sacrificed their ability to use their time in a way that is significant. We recognize that it is a 15% cut in pay yet we are doing the same level of work. That does not mean that there is no end in sight because as Chief Roldan stated we have to look at all those cases that we possibly can't touch we have also done something internally that is if we did nothing that we changed that. If you look at the no show report we see that 25% of them or 60,000 did not show up last year, we moved towards reducing that number by notifying them, by changing procedures, by changing the appellate notification process. So I think going forward we will be able to reduce this number.

Member Richardson asked if we get paid for no shows. Chief ALJ/Acting Executive Director Roldan replied we don't get paid for a no show. Member Richardson added if we adjudicated we do. Chief ALJ/Acting Executive Director Roldan responded that if we adjudicated in the future as we reopen and then there is a decision made that there is good cause to reopen then you would adjudicate the merits and would wind up potentially becoming two decisions. Member Richardson asked whether it is considered a no show if one person shows up. Chief ALJ/Acting Executive Director Roldan replied that if the case can't go forward it is a no show.

Chair Garcia commented that there is no benefit to billing us by closing and opening, it is just creating more case work for us. The benefit is in closing at the first time they schedule. There are some things we are doing internally that would drive towards reducing that 90,000 number; 90,000 is a worst case scenario, we do not think what we can do to chip away at that definitely something internally that we have already adopted that will see the impact going forward. That does not mean that we are not going to have an impact but she thinks that what we have to look at is what does it mean for us as an Agency if we do nothing but go along on a self directed furlough while we are waiting for the Governor's Office or the Labor

Department or some other to act. At this point she thinks that our first priority should be the preservation of our employees, the morale and making sure that we are not creating a situation where they are going to lose furlough time or we are not protecting those employees. She thinks that we need to take a look at our existing workload, schedules and requirements we have under our employment contracts. Perhaps discuss the impact issue decision today that gives them sufficient notice to plan. She also doesn't think even though the Executive Order says effective July 1<sup>st</sup> because we are on self directed, we have enough time to notify our employees to give them time for their child care, care for parents, travel arrangements or whatever the things they need to do.

Member Figueroa asked about those "what if scenarios", if the Governor decided to lay off a certain percentage of our employees. Since they are really not state employees in terms of money coming from the state, is there something that we could do to make our employees federal employees? Chair Garcia replied she does not think so because of the labor agreement. It is not a federal program and the feds will not take over managing unemployment in the State of California. It is a partnership program. Member Richardson added that it is a federal program and administered by the state.

Chair Garcia commented that the other problem is that although the employees within our agency may be funded under a federal pot of money they belong to a bargaining group that is statewide. You could not have a provision for people that are funded into this pot that are part of a negotiating pool that is a statewide pool. Member Richardson added including their benefits and retirement are better than federal.

Chair Garcia stated there are some consequences she thinks our employees have because we are much more an urgent nature where all the other employees will have 3 Fridays in a row our employees are floating those days off. So we have to find equities in doing that. The other consequence that we have had because we are a self directed agency and we have different work schedules is that in terms of calculating overtime and we have employees who needed to call in to help us with the workload. If they work 32 hours that week, if they work the additional 8 hours for that week those hours are paid at straight time. Anything over that 40 hour week would then roll into an overtime situation. That can be kind of tricky when you are looking at you work 4/10 schedule and you work 40 hours already vs. the guy that sits next to you that works 5 days a week 8 hours so there are some variances there. Because everybody else is doing 3 weeks of furlough and one week of regular work week which is our regular work week. It makes it very difficult to gauge which of those weeks would be an overtime week when you calculate their work hours.

Vice Chair Plescia clarified in line with what Member Figueroa is asking. What scenario do people use their accrued furlough? What are you talking about as far as layoff? Chair Garcia responded that last year in July the Governor ordered layoffs and we laid off how many employees Pam? Deputy Director Boston replied

that we furloughed the permanent intermittent and it was probably 50. Chair Garcia stated that let us say we are in the same situation and they get into a budget debate and the Governor orders close to trigger on the 5000 employees that he's going to lay off. Let us say that 50 of them are from our Agency, if that layoff is going to be effective August 1<sup>st</sup> today being July 6<sup>th</sup> what we would do first as an Agency to make sure that they don't lose the days that they accrued the hours that they accrued and we would start furloughing them today so we would use up all the hours that they accrued in their furlough bank and then we would use up all of their vacation time.

Deputy Director Boston stated to go back to July when we ended up having to furlough our permanent intermittents and told them not to come to work. All their leave credits stayed on the books. We terminated our student assistants, youth aides retired annuitants and at that point we had to cash out our student assistants that had time on the books. Chair Garcia stated at that time we did not have furlough hours. That is the difference and this year we do have furlough hours on the books. Last year they did not. If that Order was to kick in August 1<sup>st</sup> what you would do is you would let them burn their furlough hours first so they can get paid and then the next pot of money that you could then tap would be vacation because sick time you cannot burn through. If you were an employee facing layoff we would want you to use all your furlough time and then your vacation time so you can get paid. However, let us say the Governor ordered the layoff effective tomorrow if that Order was effective tomorrow whatever furlough hours you have on the books would in essence be dead. They would evaporate. Take a look at that furlough list that you are looking at. For someone that today has 60 hours that is a week and a half pay. If we were to be in that same situation 6 months from now when they are adding 24 hours a month on the books we are talking about 3 weeks pay.

Member Richardson asked if she can go back to something she just said and that is they can't burn through. Her understanding is we don't pay for furlough time but if they get laid off tomorrow they get paid for sick leave. Deputy Director Boston replied no, only vacation time. Member Richardson added so sick leave is gone, use it or lose it and they are paid for all annual leave. Deputy Director Boston responded yes.

Chair Garcia stated that you have a copy (Attachment) of furlough questions and answers, use it or lose it. Her concern again is our employees, we are asking them to work and we are asking them to roll the dice that they are going to be able to use this time. She does not care if we can add it up to year 2011. You just heard that it is going to be impossible to reduce our workload. She is not happy about the fact that we are on self directed furlough. She thinks that if we are going to have to be on the furlough our staff has earned the time off with no pay they should be able to use that time off with no pay. At the end of the day it is not really going to make any difference in our workload under our employment contract the judges will be doing reduced workload anyway. She does not want to risk that they are going to lose that time number one. Number two, this is our second request

that we put in for our furlough exemption and she thinks that if we continue to work under hardship conditions that there is no more because we continue to work and we are still running in place because we have added judges, staff and our workload increases and our time off has now increased. No matter what we are doing we are still running in place. She thinks when the Labor Agency comes in the next couple of days and when the budget is passed in the next couple of days that they are going to take a look at the real impact of some of the furloughs and the real life consequences which are if you look at the other report you have we have employees who are nearing retirement age but have a lot of hours accrued and the other risk factor we have is we have employees that potentially could retire today and that would end up with accrued furlough time and accrued vacation time where they can in essence go home today and retire in December. That is still going to have an immediate impact on us because we can't fill the slot until they are gone. There are some other things that we need to consider over and above whether or not we should be working on the schedule. Her recommendation to the rest of the board is that we adopt a schedule that allows us to continue to give staff the flexibility on some of the modified work schedules that we have but in fact we build into it their ability to use the furlough time as we are earning it. We also create relief from Personnel for the way we are handling that furlough. Her thoughts and she wants the support of the board on this is for example we have employees that are working on 4/10 schedules and we have employees working 5 days a week 8 hours a day. If an employee that is working a 4/10 schedule looks at the furlough and they realize on those weeks that they have to work 32 hours a week in order to have that 8 hour cut in pay that means in terms of scheduling that employee what do we do? Do we honor 10 hours a day, 10 hours tomorrow, 10 hours Wednesday and we then we try to stick that 2 hours in somewhere or do we let them draw off the furlough bank or the vacation bank to make up the 2 hours difference? If we allow them to make up the 2 hours difference in essence they will have off 2 days a week vs. the guy that sitting next to him that is working 8 hours a day today, 8 hours tomorrow, 8 hours Wednesday, 8 hours Thursday and then the 5<sup>th</sup> day will be off. We would rather have an employee with 1 day off or 2 days off; in either case the absence of a body for a full day has an immediate impact on our workload.

Member Figueroa asked what are the suggestions coming up from employees to the Committee? Chair Garcia replied that of course there is some resistance to changing from a 4/10 to a 5/8 because people want the flexibility of that schedule. She agrees there are people that have a 4/10 need for child care or taking care of their parents, etc. but we can provide the same thing by allowing them to work 4 days but 8 hours a day instead of 10 hours a day. They are still working 4 days a week, they are not changing to the 5 days a week except on that 4<sup>th</sup> week when it is not a furlough week and they can either use their 4/10/40 or they can use their hours bank or they can stay on that schedule. But it would make it easier also for our Personnel records in terms of doing overtime and it would make it easier in terms of scheduling our staff so that we know we do not have people with 2 days a week off. That would require us under 2 different provisions. Kim, would you walk us through notification in terms of what workload needs of the organization vs.

notification to the different work groups. How much time do we need to notify them if we make any changes? Staff Counsel Hickox stated that according to DPA and the PML we must give 30-day notice to take employees off alternate work schedules. Chair Garcia commented that with 30 days notification that would put us into mid August. In essence it would allow those different departments and different units to work with those employees that have 4/10 schedules to amend down to 8 then we are not accruing the furlough time and then keeping them their 4/10 on the week that they are off.

Member Figueroa asked how many are on the 4/10s. Deputy Director Boston replied approximately 147 ALJs and 80 support staff are on the 4/10/40 schedule. Vice Chair Plescia asked what is the last number. Deputy Director Boston responded 80, approximately 244 total employees. Chair Garcia added 244 out of about 600 employees. Member Figueroa clarified if it was mostly ALJs. Deputy Director Boston replied 147 ALJs. Member Figueroa asked if it is a big push back from the ALJ.

Chief ALJ/Acting Executive Director Roldan responded that details have not been discussed. We did talk on the Furlough Committee about this as an option and they have representatives, PJs, LSS and RSU levels and there was some resistance to that scenario that we have given really sounded inequitable. One scenario that Bonnie and I talked out was exactly what the Chair mentioned earlier. ALJ A who is on a 5/8 schedule ends up working 4 days a week and then because of the furlough ALJ B who is on 4/10 schedule gets 2 days off that week because they use an extra 2 hours to bridge and say I am not going to come that day. The observation is given the amount of leave that they have on the books already accrued that they have to use up and the fast accrual of leave that they are going to have in the next couple of months the discussion was for the period only of the furloughs we would consider reverting to just having a 5/8 schedule for everyone and those people with child care issues and with part time jobs that they will continue to be able to do that by just using their furlough balances to take off that particular day and we would encourage and develop operational guidelines that the managers are to allow people who had previously adjusted 4/8 schedule to allow that person to take off in that particular day.

Member Richardson asked of those 147 ALJs are any of those Retired Annuitants? Deputy Director Boston replied no, these are all full time. Member Richardson asked how many Retired Annuitants ALJs do we use? Renee Erwin responded we work an average of 15 a month.

Member Figueroa questioned what action do you need us to take today? Chair Garcia replied she thinks the action we need to take today is to make a Motion that in complying with the Executive Order we move to adopt a 5/8 schedule for our entire staff providing 30 days notice to the different bargaining groups that we make it effective August. The Executive Order kicks in for July 1<sup>st</sup>, this allows our staff to work with the various needs of the various employees and to work up their schedule and that would help us facilitate the furlough self directed approach by

moving towards a 5/8 schedule across the board to manage our time. What we want to do is amend the Motion to say that we want to work closely with those employees that already have a 4/10 schedule so we preserve or protect the day off that they currently have by allowing them the option of keeping that same day so we build the other furlough days off for the other impacted employee around them so they don't lose that day.

Member Figueroa asked until how long. Chair Garcia responded until the furlough Executive Order which is June 2010 or till the furlough order is rescinded or we receive an exemption.

Member Richardson commented if we were to revert to 5/8 for everybody in order to handle the 3<sup>rd</sup> furlough day we would probably get a lot of comments from a lot of people so she is wondering if we can put off making a final vote on this until we get some comments. If it does not start for 30 days would there be a problem with us waiting the 30<sup>th</sup> day to enact it, can we not just say pending comments? Chair Garcia replied she thinks the Board has responsibility for 2 things. The first is the workload and our responsibility to the Department of Labor. That is our number one foremost responsibility. Number two, we have the responsibility to employees to make sure that they understand the impact of the furlough and they can plan adequately. She does not think that we have 2 options. The first option is we could have looked at the emergency action that we could have taken with 5 days notice or we could have taken the 30 days notice route so that we are providing them the maximum amount of time. By not taking action today we really not doing what is for the best interest of the employees.

Member Richardson stated she is not saying that we don't take action. She is just saying let us also use the 30-day period for comments because obviously she does not think that we have talked to all the people who are impacted by reverting to 5/8. She has not heard from anybody and she would suspect that there are always problems that we can't anticipate. That is all she is saying subject to comments.

Chair Garcia replied that we move to a 5/8 schedule or a modified 4/10. Member Figueroa concurred with Chair Garcia. She thinks it is real important for supervisors to understand and educate their staff, the board made an executive decision to assist them and protect them as much as possible.

Chair Garcia made the following motion: In accordance with Executive Order S-13-09, CUIAB is required to adopt a self-directed furlough plan. The Board has weighed several strategies for implementing this plan. It has been determined that the most equitable, efficient, and cost effective approach is to temporarily revert the work week schedules for all employees statewide to a regular 40 hour work week (five - eight hour days) to facilitate this furlough plan. Therefore, I motion for the Board to adopt this change for the period of August 10, 2009 through June 30, 2010 or until the furlough plan has ended.

There was some discussion regarding the end date of the change. Chair Garcia amended the motion to state the effective dates are August 10, 2009 through June 30, 2010, or until the furlough plan ends, we receive an exemption, or until such time as the Board deems it necessary to revert back to 4/10s. Supervisors are also directed to work with employees currently on the 4/10 schedule to preserve their current day off and to keep the 4/10 schedule during the fourth week.

Member Montañez clarified that employees must start taking their furlough days so they don't accrue. Bonnie referred to the Executive Order and pointed out that employees must use furlough hours before suing other accrued leave. Member Runner added and wanted to emphasize that those on 4/10s right now should work with their supervisors and emphasize the exception for those on 4/10s, supervisors should make it a priority that those employees needs are met.

Member Richardson questioned whether there would be an impact on core hours. Chair Garcia replied offices could manage core hours. Member Plescia questioned whether there would be an impact on the offices ability to do mass calendars. Chief ALJ/Acting Executive Director Alberto Roldan replied we can still do that, we can work mass calendars around the schedule.

Chair Garcia took public comment on the issue. Susan Williams stated that employees can voluntarily move off the 4/10 schedule to the 5/8 schedule before the August 10, 2009 effective date. Chair Garcia amended the motion to add that.

Catherine Regan, a labor representative for CASE, questioned whether the Board would give the union 30 days notice. Chair Garcia replied yes.

The motion passed unanimously.

Chair Garcia directed Deputy Director Pam Boston to draft something today to send to all employees including clarification that the Executive Order requires employees to use furlough hours before accrued leave time and that employees must notify supervisors within a time certain, a 30 day period, whether they wish to preserve their regular day off.

#### **4. Closed Session**

No votes were taken during closed session.

### **Adjournment**