



SPECIAL REVIEW

**UNION-PAID LEAVE REIMBURSEMENTS OWED TO
THE CALIFORNIA DEPARTMENT OF CORRECTIONS
AND REHABILITATION**

**OFFICE OF THE
INSPECTOR GENERAL**

**DAVID R. SHAW
INSPECTOR GENERAL**

STATE OF CALIFORNIA

FEBRUARY 2009



February 25, 2009

Matthew L. Cate, Secretary
California Department of Corrections and Rehabilitation
1515 S Street, Room 502 South
Sacramento, California 95814

Dear Mr. Cate:

Enclosed is the final report of a special review conducted by the Office of the Inspector General into the Department of Corrections and Rehabilitation's billing of the Service Employees International Union (SEIU) for union-paid leave.

The special review found that the department's Office of Labor Relations (OLR) was not billing the SEIU for union-paid leave despite government accountability laws and provisions in SEIU bargaining agreements that require reimbursement to the state. Although the OLR has recently begun to bill the SEIU, the first billing came nearly two years after the OLR assumed the billing responsibility from the department's regional accounting offices and four months after my office began its review. Despite the OLR's recent billing efforts, the special review found that over \$2 million remains to be billed.

The report makes three recommendations to correct the problems and deficiencies found during the special review.

The department's written response to the special review appears as an attachment to the report.

Thank you for the cooperation extended to my staff during the course of this review.

Sincerely,

A handwritten signature in blue ink that reads "David R. Shaw".

DAVID R. SHAW
Inspector General

Enclosure

cc: Kim Holt, External Audits Manager, Department of Corrections and Rehabilitation


Arnold Schwarzenegger, Governor

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Executive Summary

This report presents the results of a special review conducted by the Office of the Inspector General (OIG) into the California Department of Corrections and Rehabilitation's (CDCR's) billings for unofficial union-paid leave taken by members of the Service Employees International Union (SEIU). We conducted this review under the authority of Penal Code section 6126, which assigns the OIG responsibility for oversight of the CDCR.

California law requires state agencies to allow representatives of employee unions a reasonable amount of time off without loss of compensation to meet and confer on union matters. Consistent with state law, labor contracts between the CDCR and its 19 bargaining units establish various types of union leave time. A common type of leave time is union-paid leave, which allows union members to participate in unofficial union functions. The union must bear the cost of this leave time, while the CDCR must track the time and bill the union for an employee's salary and benefits.

However, we found that the CDCR's Office of Labor Relations (OLR) has only recently begun billing the SEIU for union-paid leave – four months after the OIG alerted the CDCR to the problem and nearly two years after the OLR became responsible for the billing. Further, between \$2.2 million and \$2.7 million in reimbursable leave remains to be billed. Our review of 39-months-worth of invoices and billing documents revealed the following specific concerns:

- **The OLR was not billing the SEIU for union-paid leave, despite government accountability laws and provisions in SEIU bargaining agreements that require reimbursement to the state.** Instead, the OLR was concentrating on billing the California Correctional Peace Officers Association (CCPOA), whose union leave use was the subject of a previous OIG review.
- **A CLAS-based estimate shows that potential recoveries of union-paid leave from SEIU are substantial—more than \$2.2 million.** Using data from the State Controller's California Leave Accounting System (CLAS), we estimated that 39 months of billable union leave, minus \$1,330,624 that we were able to document as billed to SEIU, totaled \$2,227,151 yet to be billed. (See Table 1 below for an overview.)
- **The OLR has recently begun to bill the SEIU, but the first billing came nearly two years after it assumed the billing responsibility from regional accounting offices and four months after the OIG began its review.** Further, the OLR's invoices cover January 2008 through

September 2008, which represents only nine months of the 39 months of billable union leave in our review.

- **A second estimate of unbilled union-paid leave, based on the OLR’s first billing, is higher than the CLAS-based estimate—nearly \$2.7 million vs. \$2.2 million.** Although our two estimates differ slightly in approach, they are close in value. However, the actual amount of unbilled union-paid leave is uncertain until the OLR can prepare invoices for the full 39 months of billable union leave.

Table 1 presents an overview of both our OLR estimate and our CLAS-based estimate.

Table 1
Estimated Unbilled Costs for Unofficial Union-Paid Leave
July 2005–September 2008

	CLAS-Based Estimate*	OLR-Based Estimate**
Potential Cost	\$3,557,775	\$4,012,437
Amount Billed by Regional Accounting Offices	– \$404,677	– \$404,677
Amount Billed by the OLR for 1/1/08–9/30/08	– \$925,947	– \$925,947
Total Unbilled Costs	\$2,227,151	\$2,681,813

*Estimate based on the OIG’s use of CLAS data from the State Controller’s Office and adjusted for underreported amounts.

**Estimate based on extrapolation of the OLR’s billing of \$925,947 for nine months.

We made three recommendations to the CDCR’s Office of Labor Relations as a result of this special review. These recommendations are listed on page 11 of this report.

CDCR’s Response

In its response, the CDCR acknowledges the deficiencies identified in this report. Further, the CDCR agrees with the report’s recommendations and states that it is making progress toward implementing them.

Introduction

This report presents the results of a special review conducted by the Office of the Inspector General (OIG) into the California Department of Corrections and Rehabilitation's (CDCR's) billings for unofficial union-paid leave taken by members of the Service Employees International Union (SEIU). We conducted this review under the authority of Penal Code section 6126, which assigns the OIG responsibility for oversight of the CDCR.

Background

California Government Code sections 3512 through 3524 (the Ralph C. Dills Act) provide a means of resolving disputes concerning wages, hours, and other conditions of employment between the state and its 21 public employee unions. The Ralph C. Dills Act also allows representatives of employee unions a reasonable amount of time off for union activities. Contracts between the state and the CDCR's 19 bargaining units include provisions establishing various types of union leave time.

A common type of union leave time is union-paid leave. Union-paid leave allows union members to participate in union functions not approved by the Department of Personnel Administration as official union business.¹ As such, this form of union leave time is unofficial and the union must bear the cost. However, the CDCR must track the time and bill the union for the employee's salary and benefits. Union-paid leave is a provision in all nine of the CDCR's bargaining agreements (contracts) with the SEIU and its contract with the California Correctional Peace Officers Association (CCPOA).

With a fiscal year 2008–09 budget of \$10.4 billion, the CDCR has nearly 68,000 budgeted employee positions, approximately 65,000 of which are classified as rank-and-file employees affiliated with 19 of the state's 21 bargaining units. About 37,000 of the CDCR's employees are correctional officers, parole agents, and their supervisors. Nearly all of them are assigned to Bargaining Unit 6, which is represented by the CCPOA. Another 20,000 of the CDCR's employees are assigned to the nine bargaining units represented by the SEIU. These nine bargaining units include various employees ranging from accounting clerks, office technicians, and cooks to program analysts, teachers, and registered nurses.

¹ The Department of Personnel Administration is the state agency responsible for negotiating labor agreements with the 21 public employee unions.

In July 2006, the OIG issued a report on the CDCR's management of union leave time.² That report found that the CDCR had failed to provide adequate oversight of union leave time in accordance with state law, wasting potentially millions of dollars in public resources and creating an operational burden on state correctional institutions. Among the specific findings of the report were that the CDCR had failed to track and control union time used and that it had failed to collect reimbursable union leave time owed to the state. The leave time taken by members of the CCPOA accounted for 62 percent of the total union leave taken by CDCR employees from 2000 through 2005. Therefore, the focus of the report's findings and the CDCR's attempts at corrective action was on CCPOA-related union leave.³ However, the poor record keeping and the failure to collect reimbursements applied to all bargaining units with union leave provisions in their bargaining agreements. This included the SEIU's nine contracts, all of which were in effect for the 36-month period of July 1, 2005, through June 30, 2008.

Following our 2006 report, the CDCR transferred responsibility for tracking union leave time and billing the unions to its Office of Labor Relations (OLR). This transfer became effective in March 2007. Previously, the CDCR's field operations such as prisons and parole offices, working in conjunction with the CDCR's regional accounting offices, had this responsibility. As our 2006 report showed, these field-based efforts were sporadic and largely ineffective.

Objectives, Scope, and Methodology

During an interview of an SEIU official on the grounds of a CDCR prison, we became concerned that problems with the CDCR's management of union leave time described in our 2006 report may still exist. Specifically, the CDCR was reportedly not billing the SEIU for the official's union-paid leave. Moreover, the official's time was being charged to the prison even though the official stated he had not worked at the prison in ten years. In a July 3, 2008 letter from the Inspector General to the Secretary of the CDCR, the Inspector General expressed this concern and announced his intention to conduct a special review of the matter. Accordingly, the purpose of this special review was twofold: to determine if the CDCR was billing the SEIU for union-paid leave taken by rank-and-file union members on unofficial union business, and, if the CDCR was not billing, to estimate the amount of union-paid leave the CDCR had not billed the SEIU. To this end, we performed the following procedures from August 2008 through November 2008:

² You can view the entire union leave report by clicking on the following link to the Inspector General's Web site: http://www.oig.ca.gov/media/reports/BAI/reviews/Review_2006-07_Union_Leave_Time_Management_by_the_California_Department_of_Corrections_and_Rehabilitation_Special_Review.pdf

³ Subsequent to issuing the 2006 report, we assessed the CDCR's progress in implementing our recommendations in a 2008 report titled *Accountability Audit: Review of Audits of the California Department of Corrections and Rehabilitation, 2000–2006*. The entire report is available on the Inspector General's Web site: http://www.oig.ca.gov/media/reports/BAI/audits/Audit_2000-2006_Review_of_Audits_of_the_CDCR.pdf

- Reviewed relevant portions of the SEIU's nine collective bargaining agreements.
- Interviewed various headquarters and field operations staff members in labor relations and personnel.
- Reviewed, analyzed, and summarized the CDCR's invoices and other billing documents for union-paid leave for the 39 months from the July 1, 2005, inception of the nine SEIU contracts through September 30, 2008.
- For the 18-month period of January 1, 2007, through June 30, 2008, reviewed data on SEIU members' union-paid leave as reported in the California Leave Accounting System (CLAS) used by the State Controller's Office.⁴
- For a sample of 25 of the 152 SEIU members listed in CLAS as having taken union-paid leave, reviewed copies of SEIU requests for union-paid leave, the employees' time sheets, and other supporting documents.
- Having found considerable underreporting of union-paid leave in CLAS through the above sampling method, recalculated the reported union-paid leave for the sample of 25. Extrapolated the correction to all 152 SEIU members listed in CLAS and added the leave time of six employees omitted by CLAS to arrive at an estimate of union-paid leave hours over the 18-month period.
- Reviewed the above data for each month in the 18-month period to test the assumption that the monthly level of union-leave use is representative of the 39-month period reviewed.
- From the 18-month estimate of union-paid leave hours, created a monthly estimate and extrapolated that estimate to the 39-month review period. Assigned wage and benefit rates from the CLAS and the SEIU contracts to arrive at an estimate of the reimbursable SEIU union-paid leave.
- Following the OLR's initiation of billing in November 2008, used the value of the OLR's nine-month billing of the SEIU for union-paid leave taken from January 2008 through September 2008, and employed the same method described above to develop a second estimate of reimbursable union-paid leave over the 39-month period.

⁴ The California Leave Accounting System (CLAS) is the official repository of state employee leave data. As such, it is the basis for payroll-related transactions for state employees.

- From the two estimates derived above, subtracted the CDCR's known billings to arrive at our estimates of the total amount of union-paid leave the CDCR still needs to bill the SEIU.

This review concerned only the actions of the CDCR. The OIG did not audit the SEIU or any of its nine bargaining units. This review did not include an examination of the Department of Personnel Administration's role in administering union-paid leave. We did not examine official union business leave or any other types of union leave besides union-paid leave, and we did not review contracts besides those of the nine bargaining units represented by the SEIU.

Finding

Up to \$2.7 million in reimbursable leave remains to be billed.

Although it has recently begun billing the SEIU for unofficial union-paid leave, the OLR waited nearly two years to begin billing the union. Even then, the OLR's billings amounted to only \$925,947 because those billings cover only the final six months of the 36-month contract plus three months following the contract's expiration. As a result, the CDCR needs to promptly bill the SEIU for union-paid leave that its members took during the first 30 months of the contract. We estimate that this unbilled leave has a reimbursable value of between \$2.2 million and \$2.7 million.

The OLR was not billing the SEIU for union-paid leave

Our initial fieldwork in August 2008 confirmed that the OLR had not billed the SEIU for unofficial union-paid leave since the OLR assumed the billing responsibility from the CDCR's field operations and the regional accounting offices in March 2007. The OLR neglected to bill the SEIU despite government accountability statutes and provisions in all nine SEIU collective bargaining agreements that call for reimbursement to the state.⁵ Instead, OLR officials stated they were concentrating on billing the CCPOA, whose union leave use was the most extensive as reported in our July 2006 report on union leave time. The officials said that the OLR had only two analyst positions with which to pursue collection from all 19 of the CDCR's collective bargaining units.

With respect to the SEIU official our inspectors interviewed at the CDCR prison, we found that he had filed his monthly time sheets in the 18-month period we reviewed and that he had properly charged his time to union-paid leave. However, the CDCR carried him as an employee of the prison when he actually worked full-time outside the prison for the union. This practice created an operational burden on the prison, which did not benefit from the official's services. Moreover, the CDCR had not billed the SEIU for any of the 18 months in our review period.

⁵ As cited in our 2006 report on the CDCR's management of union leave time, the Financial Integrity and State Manager's Accountability Act of 1983 requires state agencies to systematically safeguard assets and minimize the waste of government funds.

A CLAS-based estimate shows that potential recoveries of union-paid leave from the SEIU are substantial

Following our confirmation that the OLR was not billing the SEIU for union-paid leave, we continued our fieldwork to identify the state funds that are potentially recoverable from the SEIU over the 36-month term of the nine contracts plus the three months following their expiration. This period is July 1, 2005, through September 30, 2008. Using data from the State Controller's California Leave Accounting System (CLAS), we reviewed union-paid leave reportedly taken from January 1, 2007, through June 30, 2008. This 18-month period is the last half of the SEIU contract and includes the period that the OLR was responsible for billing unions for union-paid leave. We found that 152 employees had reportedly taken union-paid leave totaling 23,464 hours. Using wage and benefit values from CLAS, we calculated the value of the billable wages and benefits for these 23,464 hours to be \$796,289. For a sample of 25 of the 152 employees, we also compared CLAS data with SEIU requests for union-paid leave, employee time sheets, and other CDCR records. This comparison found that, for the 25 employees, there was a net underreporting in CLAS of \$136,431 in union-paid leave.⁶ During our review of the 25 employees, we found an additional six employees whose union-paid leave had never been recorded in CLAS; their union-paid leave totaled \$16,272.

We calculated an underreporting adjustment of \$829,500 based on the assumption that the same rate of underreporting we found in our sample of 25 employees exists throughout all of the 152 SEIU employees listed in CLAS. Adding the \$796,289 from CLAS, the \$829,500 underreporting adjustment, and the \$16,272 from the six unrecorded employees, we estimated there was approximately \$1,642,061 in union-paid leave taken in the last 18 months of the nine SEIU contracts. This averages to \$91,225 a month in union-paid leave taken. Assuming the same monthly leave use over the 39-month period we reviewed, the total union-paid leave taken amounts to an estimated \$3,557,775. Subtracting the \$404,677 that the regional accounting offices billed the SEIU from the nine contracts' inception, we arrived at an estimate of \$3,153,098 in unbilled union-paid leave.

However, as discussed below, toward the end of our fieldwork in November 2008 the OLR billed the SEIU \$925,947 for union-paid leave taken from January 2008 through September 2008. Deducting the \$925,947 OLR billing from our \$3,153,098 estimate of unbilled union-paid leave, we calculated that the OLR still has approximately \$2,227,151 in union-paid leave to bill the SEIU.

⁶ This underreporting of \$136,431 was the net result of over- and underreporting of union-paid leave to CLAS by CDCR staff. The errors were either for failing to include all union-paid leave taken by an employee or for inputting more leave into the system than the employee actually took.

The following table (Table 2) summarizes our CLAS-based estimate of unbilled union-paid leave.

Table 2

CLAS-Based Estimate of Unbilled Union-Paid Leave

Total SEIU Union-Paid Leave (39 Months)*	\$3,557,775
Less:	
Regional Billings	\$404,677
OLR Billing	\$925,947
Total Billings	\$1,330,624
Total Billable Union-Paid Leave	\$2,227,151

*Based on a monthly average of \$91,225.

The OLR has begun billing the SEIU

Near the end of our fieldwork, we learned that the OLR has begun billing the SEIU for union-paid leave, including the leave used by the SEIU official discussed previously. Specifically, the OLR has:

- Begun collecting from the prisons and other field operations copies of all SEIU request letters for union-paid leave authorization or completed union-paid leave request forms for the CDCR.
- Started analyzing these requests, verifying with the field operations that the leave was taken, and compiling monthly worksheets for each employee's authorized union-paid leave.
- Prepared and submitted two invoices to the SEIU. These invoices, enclosed in a letter to the SEIU dated November 12, 2008, total \$925,947.

Given the underreporting errors we found in CLAS, the OLR's billing to the SEIU using the process described above instead of using CLAS data appears reasonable, especially because we found CLAS omitted at least six SEIU employees who took union leave.

However, the OLR's first billing came four months after the OIG alerted the CDCR of its apparent failure to bill the SEIU and nearly two years after the OLR assumed billing responsibility from the field operations and the regional accounting offices. Further, the OLR's invoices cover January 2008 through September 2008, which represent only the final six months of the SEIU contracts plus the first three months following the contracts' expiration. (The SEIU, like other unions, has continued to work without a contract.) Given that the SEIU contracts became effective on July 1, 2005, there are 30 months prior to January 2008 for which the OLR has not fully billed the SEIU. Moreover, while the OLR has now billed the SEIU for 2008 union-paid leave through September, it has yet to bill for subsequent months in 2008. Thus, there is still a substantial amount of union-paid leave for which the OLR should bill the SEIU.

The OLR-based estimate of unbilled union-paid leave is higher than the CLAS-based estimate

The value of the OLR’s billing for the nine months in 2008 showed that the amount of unbilled SEIU leave may exceed the CLAS-based estimate of \$2,227,151 that we calculated using the average monthly union-paid leave rate of \$91,225. Accordingly, we also made a second estimate as follows: we used the nine-month, \$925,947 billing to develop an average monthly usage rate of \$102,883. As with the CLAS-based estimate, we assumed a constant rate of union-paid leave over the full 39 months of our review period. Extrapolating the \$102,883 over the 39 months, we calculated that total SEIU union-paid leave amounts to an estimated \$4,012,437. Subtracting the \$404,677 previously billed by the field operations and the regional accounting offices, as well as the \$925,947 billed by the OLR, our second estimate shows that the OLR still needs to bill the SEIU approximately \$2,681,813 for union-paid leave.

The following table (Table 3), based on the OLR billing, summarizes our second estimate of unbilled union-paid leave.

Table 3

OLR-Based Estimate of Unbilled Union-Paid Leave

Total SEIU Union-Paid Leave (39 Months)*		\$4,012,437
Less:		
Regional Billings	\$404,677	
OLR Billing	\$925,947	
Total Billings	\$1,330,624	
Total Billable Union-Paid Leave		\$2,681,813

*Based on a monthly average of \$102,883.

Although our two estimates of unbilled union-paid leave differ slightly in approach, they are similar in value. The CLAS-based estimate is \$2.2 million, and the OLR-based estimate is \$2.7 million. The actual amount of unbilled union-paid leave is uncertain and will remain so until the OLR can collect and analyze all SEIU request letters and other documents necessary to prepare invoices for the full 39 months in question. However, the \$2.2 million to \$2.7 million in potential recoveries is substantial and illustrates that the CDCR should aggressively pursue billing the SEIU in addition to its current efforts in billing the CCPOA.

After our fieldwork ended, the CDCR reported more billing and collection activity

Following the end of our fieldwork in November 2008, the OLR informed us it had billed the SEIU an additional \$151,073 for union-paid leave. Of this amount, \$141,036 reportedly was for October 2008 while the remaining \$10,037 was additional billings for February 2008 through July 2008, months for which the OLR had billed the SEIU earlier. Further, the OLR reported that the CDCR had collected about \$300,000 from the SEIU for union-paid leave.

Recommendations

To facilitate the prompt billing and collection of unofficial union-paid leave taken by SEIU employees, we recommend that the OLR take the following actions:

- Commit staff resources to review documents supporting union-paid leave, including leave requests, time sheets, and CLAS data dating back to the July 2005 beginning of the SEIU contracts; identify amounts not previously billed by the regional accounting offices; and bill the SEIU for each month through December 2007.
- Regularly bill the SEIU for union-paid leave on a monthly or quarterly basis thereafter.
- Act on all pertinent recommendations from our 2006 report on union leave time as reported in our April 2008 Accountability Audit.

To assist the OLR in maximizing its recovery of union-paid leave, we will provide the OLR with timesheets and other documents we gathered during the course of our review.

California Department of Corrections and Rehabilitation's Response

OFFICE OF THE SECRETARY

P.O. Box 942883
Sacramento, CA 94283-0001



February 19, 2009

Mr. David R. Shaw
Inspector General
Office of the Inspector General
P.O. Box 348780
Sacramento, CA 95834-8780

Dear Mr. Shaw:

We appreciate the opportunity to have met with representatives from the Office of the Inspector General to discuss the preliminary draft of your Special Review of the California Department of Corrections and Rehabilitation's (CDCR) billing of the Service Employees International Union (SEIU) for union-paid leave. We have made great progress in creating comprehensive, centralized procedures for the authorization, approval, tracking, reconciliation, and billing of union-paid leave. Though these procedures continue to be streamlined, we are now successfully collecting funds owed to us by various unions.

Indeed, CDCR has billed all seven labor organizations, including SEIU, for a total of \$4,561,092 for fiscal years 2006 through 2008. Of this amount, the SEIU invoices totaled \$1,315,547 and the remaining six labor organizations totaled \$3,245,544. To date, the Department has collected over \$1,352,192 from these various labor organizations. At the same time, CDCR, in conjunction with the Department of Personnel Administration, is currently conducting a comprehensive reconciliation to establish a more precise balance for not only SEIU union-paid leave, but any unresolved paid leave from all labor organizations. Efforts are underway to address the backlogged union-paid leave billings for July 2005 through December 2007 which will include a comprehensive reconciliation with previously billed invoices. CDCR will continue to submit monthly invoices to all respective labor organizations, which includes an on-going auditing process as part of the monthly reconciliation.

We would like to thank the Office of the Inspector General for allowing us the opportunity to provide comments on the deficiencies identified in your preliminary report, and appreciate your continued professionalism and guidance in CDCR's efforts to improve its operations. All deficiencies identified will be addressed in a corrective action plan submitted to CDCR's Office of Audits and Compliance for follow-up and monitoring. Should you have any questions, please contact me at 323-6001.

Sincerely,

MARY S. FERNANDEZ
Undersecretary, Administration

cc: Anthony Jones, Office of Labor Relations
Kristine Rodrigues, Department of Personnel Administration
Richard Krupp, Office of Audits and Compliance