

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

SERVICE EMPLOYEES
INTERNATIONAL UNION, LOCAL
1000 et al.,

Plaintiffs and Respondents,

v.

EDMUND G. BROWN, Jr., et al.,

Defendants and Appellants.

A127776

(Alameda County
Super. Ct. No. RG09456750)

**ORDER MODIFYING OPINION AND
DENYING REHEARING
[NO CHANGE IN JUDGMENT]**

THE COURT:

It is ordered that the published opinion filed herein on July 8, 2011, be modified as follows:

1. On page 3, the first sentence of the second full paragraph shall read:

Our independent research discloses that all but five of the state agencies and departments made defendants by SEIU are the subject of an “item of appropriation” in both the 2008 and the 2009 Budget Acts.

2. On page 26, at the conclusion of the second full paragraph (at the bottom of the page), a new footnote is added as footnote 15 (with no need for renumbering of subsequent footnotes, as this will be the final footnote in the opinion). It shall read as follows:

¹⁵ SEIU filed a petition for rehearing, the sole purpose of which is to assert that there should be six, not five, agencies covered by our remand, because one of the 58 agencies was misidentified as having an item of appropriation in the 2008 and 2009 Budget Acts. SEIU asserts that even though the State Lottery is mentioned in the Budget

Acts, does have an item number, and is listed opposite a specific sum, its inclusion is nothing more than an “informational reference”—and thus not a true appropriation.

It is true that the Lottery Act (§ 8880 et seq.) has a provision directing there shall be “No appropriation. . . of State funds . . . to the California State Lottery Commission.” (§ 8880.3.) On the other hand, the Lottery’s operations are funded by annual continuing appropriations (§§ 8880.5 [State Lottery Education Fund], 8880.61 [State Lottery Fund]), which, as already noted, are not necessarily outside the budgetary process. (See fn. 7, *ante*.) The State Lottery Fund was one of the special funds the Legislature recently made available for borrowing by the General Fund (see fn. 8), and it does not have the absolute statutory isolation from the budgetary process enjoyed by the State Compensation Insurance Fund, an entity which is completely unmentioned in the Budget Acts. (See *California Attorneys, etc. v. Brown* (2011) 195 Cal.App.4th 119, 123, fn. 5, 124 and authorities cited.)

There are many continuing appropriations that are not mentioned in the Budget Acts, e.g., those to the Bay Area Toll Authority and the Milk Producers Security Trust Fund noted in footnote 7, *ante*. But the State Lottery Fund *is* mentioned and is connected to the running of the State Lottery; and the amount in each Budget Act covers “payment of expenses of the lottery, including all costs incurred in the operation and administration of the lottery.” Assuming that the figures mentioned in the Budget Acts are continuing appropriations, the very presence of those figures may reflect that they have been adjusted by the Legislature. If so, the amounts mentioned may qualify as items of appropriation. (See fn. 7; see also *St. John’s Well Child & Family Center v. Schwarzenegger* (2010) 50 Cal.4th 960, 975-976 [collating definitions of “item of appropriation”].) As to these possibilities, the inadequacy of the record, and our limited knowledge of the budgetary process is manifest. Accordingly, on remand SEIU may try to demonstrate that the State Lottery qualifies as a sixth state agency that should not be included in the furlough program.

These changes do not effect a change in the judgment.

The petition for rehearing is denied.

Dated:

Kline, P.J.

Trial Court:	Alameda County Superior Court
Trial Judge:	Honorable Frank Roesch
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