

**ITEM 6**  
**TEST CLAIM**  
**FINAL STAFF ANALYSIS**

Government Code Sections 3543, 3546, and 3546.3

Statutes 1980, Chapter 816

Statutes 2000, Chapter 893

Statutes 2001, Chapter 805

California Code of Regulations, Title 8, Sections 34030 and 34055

*Agency Fee Arrangements (00-TC-17, 01-TC-14)*

Clovis Unified School District, Claimant

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Statutes 2000, Chapter 893  
Statutes 2001, Chapter 805

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*Agency Fee Arrangements (00-TC-17, 01-TC-14)*

Clovis Unified School District, Claimant

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**EXECUTIVE SUMMARY**

**Background**

This test claim addresses issues within the collective bargaining process of the Educational Employment Relations Act (EERA) and employee and employer relations in California's K-14 public school systems. Specifically, the test claim statutes require the payment of "fair share service fees" by non-union members to the exclusive representative organization. Under prior law, the payment of fair share service fees was the subject of the collective bargaining process. The test claim legislation created a statutory requirement for the payment of such fees, thus removing the basic issue from the collective bargaining process.

In addition, this test claim has been filed on regulations adopted by the Public Employment Relations Board (PERB). PERB is the state agency responsible for the administration of the EERA.

**Conclusion**

Staff concludes that Government Code section 3546, subdivisions (a) and (f), and California Code of Regulations, title 8, sections 34030, subdivision (a), and 34055, subdivision (a), impose new programs or higher levels of service for K-14 school districts within the meaning of article XIII B, section 6 of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514, for the following specific new activities:

- Upon receiving notice from the exclusive representative of a classified public school employee who is in a unit for which an exclusive representative has been selected, the employer shall deduct the amount of the fair share service fee authorized by this section from the wages and salary of the employee and pay that amount to the employee organization. (Gov. Code, § 3546, subd. (a).)<sup>1</sup>

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<sup>1</sup> As added by Statutes 2000, chapter 893, operative January 1, 2002.

- School district employers of a public school employee shall provide the exclusive representative of a public employee with the home address of each member of a bargaining unit. (Gov. Code, § 3546, subd. (f).)<sup>2</sup>
- Within 20 days following the filing of the petition to rescind or reinstate an organizational security arrangement, the school district employer shall file with the regional office of PERB an alphabetical list containing the names and job titles or classifications of the persons employed in the unit described in the petition as of the last date of the payroll period immediately preceding the date the petition was filed. (Cal. Code Regs., tit. 8, §§ 34030, subd. (a), and 34055, subd. (a).)<sup>3</sup>

Staff concludes that Government Code sections 3543, 3546, subdivisions (b) through (e), and 3546.3, as added or amended by Statutes 1980, chapter 816, Statutes 2000, chapter 893, and Statutes 2001, chapter 805 are not reimbursable state-mandated programs within the meaning of article XIII B, section 6, and Government Code section 17514.

### **Recommendation**

Staff recommends that the Commission adopt this analysis and approve the test claim for the activities listed above.

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<sup>2</sup> As amended by Statutes 2001, chapter 805, operative January 1, 2002.

<sup>3</sup> As amended and operative on January 1, 2001.

## STAFF ANALYSIS

### Claimant

Clovis Unified School District

### Chronology

- 06/27/01 Claimant files original test claim (00-TC-17) with the Commission
- 07/02/01 Commission staff issues completeness review letter
- 08/06/01 California Community Colleges Chancellor's Office files comments on the test claim
- 08/06/01 Department of Finance files comments on the test claim
- 09/10/01 Claimant files rebuttal to state agency comments
- 05/15/02 Claimant files test claim amendment (01-TC-14) with the Commission
- 05/20/02 Commission staff issues completeness review letter on test claim amendment
- 06/19/02 Department of Finance requests an extension of time to file comments on the amendment
- 06/20/02 Commission staff grants extension request
- 07/31/02 Department of Finance files comments on the amendment to the test claim
- 08/07/02 Claimant declines to file a rebuttal to Department of Finance's comments on the test claim amendment
- 08/12/02 Claimant representative files a declaration from the Vice Chancellor, Fiscal Services of the San Bernardino Community College District, alleging costs incurred pursuant to the test claim legislation
- 10/07/05 Commission staff issues the draft staff analysis
- 10/31/05 Claimant files comments on draft staff analysis
- 11/21/05 Commission staff issues final staff analysis

### Background

The *Agency Fee Arrangements* test claim, filed by Clovis Unified School District, addresses issues within the collective bargaining process and employer-employee relations in California's K-14 public school systems. Specifically, the test claim legislation focuses on the payment of fees by non-union member (or "fair share") employees to exclusive representative organizations. In 1975, the Legislature enacted the Educational Employment Relations Act (EERA).<sup>4</sup> In doing

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<sup>4</sup> Statutes 1975, chapter 961. Pursuant to Government Code section 3541.3, subdivision (g), the Public Employment Relations Board (PERB) is vested with the authority to "adopt... rules and regulations to carry out the provisions and effectuate the purposes and policies" of the EERA. (Government Code sections 3540 et seq.). Accordingly, in Code of Regulations, title 8, section 32001, subdivision (c), PERB has declared that "[s]chool district" as used in the EERA means a school district of any kind or class, including any public community college district, within the

so, the Legislature sought to "promote the improvement of personnel management and employer-employee relations within the public school systems in the State of California."<sup>5</sup> This policy aimed at furthering the public interest in "maintaining the continuity and quality of educational services."<sup>6</sup>

The EERA imposes on school districts the duty to "meet and negotiate" with an employee organization selected as the exclusive representative of an employee bargaining unit on matters within the scope of representation.<sup>7</sup> The scope of representation is limited to "matters relating to wages, hours of employment, and other terms and conditions of employment."<sup>8</sup> The EERA explicitly includes "organizational security" within the scope of representation.<sup>9</sup>

Government Code section 3540.1, subdivision (i), provides two definitions for "organizational security." The first describes organizational security as:

[a]n arrangement pursuant to which a public school employee may decide whether or not to join an employee organization, but which requires him or her, as a condition of continued employment, if he or she does join, to maintain his or her membership in good standing for the duration of the written agreement...

Thus, such an arrangement would provide that once an employee organization has been selected by an employee bargaining unit as exclusive representative, each employee has the option of either joining or not joining the employee organization.

Alternatively, the second definition describes organizational security as:

[a]n arrangement that requires an employee, as a condition of continued employment, either to join the recognized or certified employee organization, or to pay the organization a service fee in an amount not to exceed the standard initiation fee, periodic dues, and general assessments of the organization for the duration of the agreement.

This type of organizational security arrangement dictates that an employee in a bargaining unit for which an employee organization has been selected as exclusive representative *must* either (a) join the employee organization, or (b) pay such organization a service fee or agency fee arrangement. The EERA explicitly declares that the "employee organization recognized or

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state").

<sup>5</sup> Government Code section 3540.

<sup>6</sup> *San Diego Teachers Assn. v. Superior Court* (1979) 24 Cal.3d 1, 11.

<sup>7</sup> Government Code section 3543.3.

<sup>8</sup> Government Code section 3543.2.

<sup>9</sup> Former Government Code section 3546 provided that "organizational security... shall be within the scope of representation." (Stats. 1975, ch. 961, § 2). In 2000, former Government Code section 3546 was repealed (Stats. 2000, ch. 893), but similar language was added via the same bill to Government Code section 3540.1, subdivision (i), which now provides that "Organizational security" is within the scope of representation...

certified as the exclusive representative for the purpose of meeting and negotiating shall fairly represent each and every employee in the appropriate unit."<sup>10</sup>

Under prior law, organizational security arrangements were subject to the collective bargaining process. Statutes 2000, chapter 893 created a statutory organizational security arrangement -- removing the basic issue from the bargaining process.

### **Claimant's Position**

Claimant, Clovis Unified School District, filed a test claim on June 27, 2001,<sup>11</sup> alleging Government Code sections 3543 and 3546, as amended by Statutes 2000, chapter 893, impose reimbursable state-mandated activities on K-14 school districts for activities including establishing and implementing payroll procedures for collecting fair share service fees, and remitting the fees to the certified employee organization. Claimant alleges a new activity to: "Draft, approve and distribute an appropriate and neutral notice to existing non-member employees and new employees, which explains the additional payroll deduction for 'fair share services fees' for non-member employees of a certified employee organization."

Additionally, claimant alleges that Government Code section 3546.3 as added by Statutes 1980, chapter 816, requires school districts to "Establish and implement procedures to determine which employees claim a conscientious objection to the withholding of 'fair share services fees,'" and establish and implement payroll procedures to prevent automatic deductions from the wages of such conscientious objectors.

Claimant also alleges the California Code of Regulations, title 8, sections 34030 and 34055, requires K-14 school districts, within 20 days of a filed petition to rescind or reinstate the collective bargaining agreement, file with the regional office of the Public Employment Relations Board (PERB) an alphabetical list containing the names and job titles or classifications of the persons employed in the unit as of the last date of the payroll period immediately preceding the date the petition, and establish new payroll procedures, as needed.

On May 15, 2002,<sup>12</sup> claimant filed a test claim amendment alleging the following reimbursable state-mandated activities from amendments by Statutes 2001, chapter 805:

- Establish procedures and thereafter implement such procedures to verify, at least annually, that payments to nonreligious, nonlabor charitable organizations have been made by employees who have claimed conscientious objections pursuant to Government Code section 3546.3.
- Adjust payroll withholdings for rebates or withholding reductions for that portion of fair share service fees that are not germane to the employee organization function as the exclusive bargaining representative when so determined pursuant

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<sup>10</sup> Government Code section 3544.9.

<sup>11</sup> Potential reimbursement period for this claim begins no earlier than July 1, 1999. (Gov. Code, § 17557, subd. (c).)

<sup>12</sup> Potential reimbursement period for any newly-alleged test claim legislation begins no earlier than January 1, 2002, the operative date of Statutes 2001, chapter 805.

to regulations adopted by PERB, pursuant to Government Code section 3546, subdivision (a).

- Take any and all necessary actions, when necessary, to recover reasonable legal fees, legal costs and settlement or judgment liabilities from the recognized employee organization, arising from any court or administrative action relating to the school district's compliance with the section pursuant to Government Code section 3546, subdivision (e);
- Provide the exclusive representative of a public school employee a list of home addresses for each employee of a bargaining unit, regardless of when the employees commenced employment, and periodically update and correct the list to reflect changes of address, additions for new employees and deletions of former employees, pursuant to Government Code section 3546, subdivision (f).

Claimant's complete, detailed allegations are found in the Amendment to the Test Claim Filing, pages five through nine, received May 15, 2002.

Claimant filed comments on the draft staff analysis on October 31, 2005. The substantive comments will be summarized in the analysis below.

#### **Department of Finance's Position**

Department of Finance filed comments on August 3, 2001, and July 30, 2002, addressing the allegations stated in the test claim and subsequent amendment. Regarding claimant's allegations that the test claim legislation mandates a variety of activities involving the establishment and maintenance of payroll procedures to account for deducting fair share service fees and transmitting those fees to the employee organization, Department of Finance contends that public school employers who did not negotiate and implement organizational security arrangements prior to the enactment of Statutes 2000, chapter 893 are justified in claiming mandated costs. However, those employers who did negotiate and implement organizational security arrangements prior to the enactment of Statutes 2000, chapter 893 are not justified in making similar claims for reimbursement. Department of Finance argues that those employers who did negotiate and implement such arrangements prior to the 2000 amendments "would presumably have already established" such payroll procedures and those employers should not "be reimbursed for costs they voluntarily incurred."

Department of Finance has similar arguments regarding claimant's allegations on costs incurred in complying with PERB's regulations in the event a petition to rescind or reinstate an organizational security arrangement is filed.

Regarding claimant's allegation that it must draft notices explaining the fee deductions to employees paying fair share service fees, Department of Finance argues that no such mandate exists. Department of Finance relies on California Code of Regulations, title 8, section 32992 which provides that each employee "required to pay an agency fee shall receive written notice from the exclusive representative" regarding the fee deduction.

Likewise, responding to claimant's allegation that it must incur costs in taking the necessary actions in recovering legal fees from an exclusive representative under Government Code section 3546, subdivision (e), Department of Finance asserts that the subdivision, by its plain language, does not impose any duties on the public school employer.



Department of Finance's other comments and arguments will be addressed in the analysis below, where pertinent.<sup>13</sup>

### California Community Colleges Chancellor's Office Position

The California Community Colleges Chancellor's Office ("Chancellor's Office") filed comments regarding this test claim on July 30, 2001. The Chancellor's Office begins by noting that community colleges are subject to PERB's jurisdiction. Secondly, looking to the statutes regarding organizational security, the Chancellor's Office believes that "the provisions of Government Code [sections] 3540.1 and 3546 and the related implementing regulations in the Code of Regulations impose a mandate of specific tasks for community college district staff."

The Chancellor's Office concludes by stating that no funds have been appropriated for costs incurred in performing these activities, and that none of the provisions of Government Code section 17556 apply to community colleges "complying with the mandate."

### Discussion

The courts have found that article XIII B, section 6, of the California Constitution<sup>14</sup> recognizes the state constitutional restrictions on the powers of local government to tax and spend.<sup>15</sup> "Its

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<sup>13</sup> Claimant argues that the Department of Finance's comments are "incompetent" and should be stricken from the record since they do not comply with section 1183.02, subdivision (d), of the Commission's regulations. That regulation requires written responses to be signed at the end of the document, under penalty of perjury by an authorized representative of the state agency, with the declaration that it is true and complete to the best of the representative's personal knowledge, information, or belief. The claimant contends that the Department of Finance's response "is signed without certification" and the declaration attached to the response "simply stipulate[s] to the accuracy of the citations of law in the test claim." (Claimant's comments to draft staff analysis, page 1-2.)

Determining whether a statute or executive order constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution is a pure question of law. (*City of Jose, supra*, 45 Cal.App.4th at p. 1817; *County of San Diego, supra*, 15 Cal.4th at p. 109). Thus, any factual allegations raised by a party, including the Department of Finance, regarding how a program is implemented is not relied upon by staff at the test claim phase when recommending whether an entity is entitled to reimbursement under article XIII B, section 6. The Department's response contains comments on whether the Commission should approve this test claim and is, therefore, not stricken from the administrative record.

<sup>14</sup> Article XIII B, section 6, subdivision (a), provides: (a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

<sup>15</sup> *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."<sup>16</sup> A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.<sup>17</sup> In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.<sup>18</sup>

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.<sup>19</sup> To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.<sup>20</sup> A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."<sup>21</sup>

Finally, the newly required activity or increased level of service must impose costs mandated by the state.<sup>22</sup>

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.<sup>23</sup> In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."<sup>24</sup>

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<sup>16</sup> *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81 (*County of San Diego*).

<sup>17</sup> *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

<sup>18</sup> *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878, (*San Diego Unified School Dist.*); *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835 (*Lucia Mar*).

<sup>19</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; see also *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.)

<sup>20</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

<sup>21</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878.

<sup>22</sup> *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

<sup>23</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551 and 17552.

<sup>24</sup> *County of Sonoma*, *supra*, 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817 (*City of San Jose*).

**Issue 1: Is the test claim legislation subject to article XIII B, section 6, of the California Constitution?**

Government Code Section 3543:

Government Code section 3543 was rewritten by Statutes 2000, chapter 893. Statutes of 2001, chapter 805 amended one sentence, as indicated by underline below:

(a) Public school employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. If the exclusive representative of a unit provides notification, as specified by subdivision (a) of Section 3546, public school employees who are in a unit for which an exclusive representative has been selected, shall be required, as a condition of continued employment, to join the recognized employee organization or to pay the organization a fair share services fee, as required by Section 3546. If a majority of the members of a bargaining unit rescind that arrangement, either of the following options shall be applicable:

(1) The recognized employee organization may petition for the reinstatement of the arrangement described in subdivision (a) of Section 3546 pursuant to the procedures in paragraph (2) of subdivision (d) of Section 3546.

(2) The employees may negotiate either of the two forms of organizational security described in subdivision (i) of Section 3540.1.

(b) Any employee may at any time present grievances to his or her employer, and have such grievances adjusted, without the intervention of the exclusive representative, as long as the adjustment is reached prior to arbitration pursuant to Sections 3548.5, 3548.6, 3548.7, and 3548.8 and the adjustment is not inconsistent with the terms of a written agreement then in effect; provided that the public school employer shall not agree to a resolution of the grievance until the exclusive representative has received a copy of the grievance and the proposed resolution and has been given the opportunity to file a response.

Before the amendment in 2000, prior law provided: "Public school employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. Public school employees shall also have the right to refuse to join or participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the public school employer, except that once the employees in an appropriate unit have selected an exclusive representative and it has been recognized pursuant to Section 3544.1 or certified pursuant to Section 3544.7, no employee in that unit may meet and negotiate with the public school employer." Current subdivision (b) is identical to prior law.

In order to be subject to article XIII B, section 6, of the California Constitution, the test claim legislation must impose a state-mandated activity on a local agency or school district.<sup>25</sup> Courts

<sup>25</sup> *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 740.

have adopted a "strict construction" interpretation of article XIII B, section 6.<sup>26</sup> Consistent with this narrow interpretation, the term "mandate" has been construed according to its commonly understood meaning as an "order" or "command."<sup>27</sup> Thus, the test claim legislation must require a local government entity to perform an activity in order to fall within the scope of article XIII B, section 6.

According to the well-settled rules of statutory construction, an examination of a statute claimed to constitute a reimbursable state mandate begins with the plain language of the statute, and "where the language is clear there is no room for interpretation."<sup>28</sup> Where the Legislature has not found it appropriate to include express requirements in a statute, it is inappropriate for a court to write such requirements into the statute.<sup>29</sup> The courts have noted that "[w]e cannot... read a mandate into language which is plainly discretionary."<sup>30</sup>

Beginning with the plain language of section 3543, subdivision (a), there is no activity imposed on the public school *employer*. While public school *employees* "shall be required" to either join the employee organization selected by the unit as exclusive representative or to pay such organization a service fee, there is nothing in the language of section 3543, subdivision (a), imposing upon the public school employer the obligation to perform any activities.

Government Code section 3543, subdivision (a), by its plain language, fails to impose any activities on school districts. Section 3543, subdivision (b), contains the same language found in former section 3543 and therefore is not new, nor does the plain language of subdivision (b) impose any duties upon school districts. Accordingly, staff finds that Government Code section 3543 is not subject to article XIII B, section 6, of the California Constitution.

Government Code Section 3546.3:

Government Code section 3546.3 was added by Statutes 1980, chapter 816, as follows:

Notwithstanding subdivision (i) of Section 3540.1, Section 3546, or any other provision of this chapter, any employee who is a member of a religious body whose traditional tenets or teachings include objections to joining or financially supporting employee organizations shall not be required to join, maintain membership in, or financially support any employee organization as a condition of employment; except that such employee may be required, in lieu of a service fee, to pay sums equal to such service fee either to a nonreligious, nonlabor organization, charitable fund exempt from taxation under Section 501(c) (3) of Title 26 of the Internal Revenue Code, chosen by such employee from a list of at least three such funds, designated in the organizational security arrangement, or if the arrangement fails to designate such funds, then to any such fund chosen by the employee. Either the employee organization or the public school employer may

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<sup>26</sup> *City of San Jose, supra*, 45 Cal.App.4th 1802, 1816-17.

<sup>27</sup> *Long Beach Unified School Dist., supra*, 225 Cal.App.3d 155, 174.

<sup>28</sup> *City of Merced v. State of California* (1984) 153 Cal.App.3d 777.

<sup>29</sup> *Whitcomb Hotel, Inc. v. California Employment Commission* (1944) 24 Cal.App.2d 753, 757.

<sup>30</sup> *City of San Jose, supra*, 45 Cal.App.4th 1802, 1816.

require that proof of such payments be made on an annual basis to the public school employer as a condition of continued exemption from the requirement of financial support to the recognized employee organization. If such employee who holds conscientious objections pursuant to this section requests the employee organization to use the grievance procedure or arbitration procedure on the employee's behalf, the employee organization is authorized to charge the employee for the reasonable cost of using such procedure.

Claimant asserts that section 3546.3 requires school districts to establish and maintain procedures for determining which employees may claim a conscientious objection, establish procedures to ensure that fair share service fee deductions are not made from the wages of those employees claiming such objections, and to establish procedures to ensure, at least annually, that those employees are making payments to charitable organizations in lieu of service fee deductions. Claimant asserts that if section 3546.3 was determined to not impose any state-mandated activities on school districts, then it must also be interpreted that "there is no requirement for religious objectors to pay any sum of money to either their employee organization or the specified alternative approved organizations."<sup>31</sup>

Department of Finance, in its August 3, 2001 comments, argues that school districts that negotiated and implemented organizational security arrangements prior to the enactment of the 2000 amendments are not justified in claiming mandated costs, but that school districts that did not negotiate such arrangements are justified in claiming mandated costs. Department of Finance's position is grounded in the discretionary nature of the collective bargaining process, and that employers who negotiated organizational security arrangements prior to the enactment of the 2000 amendments should not "be reimbursed for costs they voluntarily incurred."<sup>32</sup>

For the reasons below, staff finds that Government Code section 3546.3 is not subject to article XIII B, section 6, of the California Constitution because section 3546.3 does not impose any state-mandated activities on school districts.

In order to be subject to article XIII B, section 6, of the California Constitution, the test claim legislation must impose a state-mandated activity on a local agency or school district.<sup>33</sup> Courts have adopted a "strict construction" interpretation of article XIII B, section 6.<sup>34</sup> Consistent with this narrow interpretation, the term "mandate" has been construed according to its commonly understood meaning as an "order" or "command."<sup>35</sup> Thus, the test claim legislation must require a local government entity to perform an activity in order to fall within the scope of article XIII B, section 6.

According to the well-settled rules of statutory construction, an examination of a statute claimed to constitute a reimbursable state mandate begins with the plain language of the statute, and

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<sup>31</sup> Claimant's comments to draft staff analysis, page 3.

<sup>32</sup> Department of Finance, August 3, 2001 Comments, page 3.

<sup>33</sup> *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 740.

<sup>34</sup> *City of San Jose*, *supra*, 45 Cal.App.4th 1802, 1816-17.

<sup>35</sup> *Long Beach Unified School Dist.*, *supra*, 225 Cal.App.3d 155, 174.

"where the language is clear there is no room for interpretation."<sup>36</sup> Where the Legislature has not found it appropriate to include express requirements in a statute, it is inappropriate for a court to write such requirements into the statute.<sup>37</sup> The courts have noted that "[w]e cannot... read a mandate into language which is plainly discretionary."<sup>38</sup>

Just as discussed above regarding Government Code section 3543, the plain language of Government Code section 3546.3 is also discretionary. Section 3546.3 states only that an employee holding a conscientious objection to joining or financially supporting an employee organization "may be required" to make payments to a nonreligious, nonlabor, charitable organization in lieu of paying a fair share service fee to such organization. (Emphasis added).

Section 3546.3 does not impose any obligation on school districts. Section 3546.3 provides that "[e]ither the employee organization or the public school employer may require that proof of such payments be made on an annual basis." (Emphasis added). Section 3546.3, by its plain meaning, does not require or command school districts to perform an activity. Accordingly, staff finds that Government Code section 3546.3 is not subject to article XIII B, section 6, of the California Constitution.

#### Remaining Test Claim Legislation:

In order for the remaining test claim legislation to be subject to article XIII B, section 6 of the California Constitution, the legislation must constitute a "program." Government Code section 3546 provides, in part, that "the employer shall deduct the amount of the fair share service fee authorized by this section from the wages and salary of the employee and pay that amount to the employee organization," and that "[t]he employer of a public school employee shall provide the exclusive representative of a public employee with the home address of each member of a bargaining unit..." California Code of Regulations, title 8, sections 34030 and 34055 require that a school district employer file an alphabetical list containing the names and job titles or classifications of the persons employed in the unit within 20 days after a petition is filed to rescind or reinstate an organizational security arrangement.

In *County of Los Angeles v. State of California*, the California Supreme Court defined the word "program" within the meaning of article XIII B, section 6 as one that carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.<sup>39</sup> The court has held that only one of these findings is necessary.<sup>40</sup>

Department of Finance asserts that Government Code section 3546, subdivision (a), as it relates to rebates and reductions to the fair share service fee do not constitute a program because it neither provides a service to the public nor qualifies as a function unique to governmental

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<sup>36</sup> *City of Merced, supra*, 153 Cal.App.3d 777.

<sup>37</sup> *Whitcomb Hotel, Inc., supra*, 24 Cal.App.2d 753, 757.

<sup>38</sup> *City of San Jose, supra*, 45 Cal.App.4th 1802, 1816.

<sup>39</sup> *County of Los Angeles, supra*, 43 Cal.3d at page 56.

<sup>40</sup> *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537.

entities. Department of Finance claims that the United States Supreme Court's holding in *Communication Workers v. Beck* (1988) 487 U.S. 735, which addresses fair share service fees, applies to both private and public employees. The Court in *Beck* interpreted and applied the provisions of the National Labor Relations Act (NLRA). However, the NLRA by its own terms expressly excludes public employees from its coverage. Section 2, subdivision (2), of the NLRA (29 U.S.C. § 152(2)) provides, in pertinent part, that "[t]he term 'employer' ... shall not include... any State or political subdivision thereof..." Furthermore, section 2, subdivision (3), of the NLRA (29 U.S.C. § 152(3)) provides that "[t]he term 'employee' ... shall not include any individual employed... by any... person who is not an employer as herein defined."<sup>41</sup>

Staff finds that Government Code section 3546 and California Code of Regulations, title 8, sections 34030 and 34055, impose a program within the meaning of article XIII B, section 6 of the California Constitution under the second test, to the extent the test claim legislation requires school districts to engage in administrative activities solely applicable to public school administration. The test claim legislation imposes unique requirements upon school districts that do not apply generally to all residents and entities of the state.

Accordingly, staff finds that the remaining test claim legislation constitutes a "program" and, thus, may be subject to subvention pursuant to article XIII B, section 6 of the California Constitution if the legislation also imposes a new program or higher level of service, and costs mandated by the state.

**Issue 2: Does the remaining test claim legislation impose a new program or higher level of service on school districts within the meaning of article XIII B, section 6 of the California Constitution, and impose "costs mandated by the state" within the meaning of Government Code sections 17514 and 17556?**

Test claim legislation imposes a new program or higher level of service within an existing program when it compels a local agency or school district to perform activities not previously required.<sup>42</sup> The courts have defined a "higher level of service" in conjunction with the phrase "new program" to give the subvention requirement of article XIII B, section 6 meaning. Accordingly, "it is apparent that the subvention requirement for increased or higher level of service is directed to state-mandated increases in the services provided by local agencies in existing programs."<sup>43</sup> A statute or executive order imposes a reimbursable "higher level of service" when the statute or executive order, as compared to the legal requirements in effect immediately before the enactment of the test claim legislation, increases the actual level of governmental service provided in the existing program.<sup>44</sup>

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<sup>41</sup> See *Carmen v. San Francisco Unified School District* (1997) 982 F.Supp. 1396, 1409 (concluding that "school districts are considered 'political subdivisions' of the State of California within the meaning of 29 U.S.C. § 152(2), and therefore are exempt from coverage under the NLRA").

<sup>42</sup> *Lucia Mar Unified School Dist.*, *supra*, 44 Cal.3d 830, 836.

<sup>43</sup> *County of Los Angeles*, *supra*, 43 Cal.3d 46, 56; *San Diego Unified School District*, *supra*, 33 Cal.4th 859, 874.

<sup>44</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

Government Code Section 3546:

Government Code section 3546, as enacted by Statutes 2000, chapter 893, and amended by Statutes 2001, chapter 805,<sup>45</sup> follows:

(a) Notwithstanding any other provision of law, upon receiving notice from the exclusive representative of a public school employee who is in a unit for which an exclusive representative has been selected pursuant to this chapter, *the employer shall deduct the amount of the fair share service fee authorized by this section from the wages and salary of the employee and pay that amount to the employee organization.* Thereafter, the employee shall, as a condition of continued employment, be required either to join the recognized employee organization or pay the fair share service fee. The amount of the fee shall not exceed the dues that are payable by members of the employee organization, and shall cover the cost of negotiation, contract administration, and other activities of the employee organization that are germane to its functions as the exclusive bargaining representative. Agency fee payers shall have the right, pursuant to regulations adopted by the Public Employment Relations Board, to receive a rebate or fee reduction upon request, of that portion of their fee that is not devoted to the cost of negotiations, contract administration, and other activities of the employee organization that are germane to its function as the exclusive bargaining representative.

(b) The costs covered by the fee under this section may include, but shall not necessarily be limited to, the cost of lobbying activities designed to foster collective bargaining negotiations and contract administration, or to secure for the represented employees advantages in wages, hours, and other conditions of employment in addition to those secured through meeting and negotiating with the employer.

(c) The arrangement described in subdivision (a) shall remain in effect unless it is rescinded pursuant to subdivision (d). The employer shall remain neutral, and shall not participate in any election conducted under this section unless required to do so by the board.

(d)(1) The arrangement described in subdivision (a) may be rescinded by a majority vote of all the employees in the negotiating unit subject to that arrangement, if a request for a vote is supported by a petition containing 30 percent of the employees in the negotiating unit, the signatures are obtained in one academic year. There shall not be more than one vote taken during the term of any collective bargaining agreement in effect on or after January 1, 2001.

(2) If the arrangement described in subdivision (a) is rescinded pursuant to paragraph (1), a majority of all employees in the negotiating unit may request that the arrangement be reinstated. That request shall be submitted to the board along with a petition containing the signatures of at least 30 percent of the employees in the negotiating unit. The vote shall be conducted at the worksite by secret ballot,

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<sup>45</sup> Reworded subdivision (a), and added subdivisions (e) and (f).



and shall be conducted no sooner than one year after the rescission of the arrangement under this subdivision.

(3) If the board determines that the appropriate number of signatures have been collected, it shall conduct the vote to rescind or reinstate in a manner that it shall prescribe in accordance with this subdivision.

(4) The cost of conducting an election under this subdivision to reinstate the organizational security arrangement shall be borne by the petitioning party and the cost of conducting an election to rescind the arrangement shall be borne by the board.

(e) The recognized employee organization shall indemnify and hold the public school employer harmless against any reasonable legal fees, legal costs, and settlement or judgment liability arising from any court or administrative action relating to the school district's compliance with this section. The recognized employee organization shall have the exclusive right to determine whether any such action or proceeding shall or shall not be compromised, resisted, defended, tried, or appealed. This indemnification and hold harmless duty shall not apply to actions related to compliance with this section brought by the exclusive representative of district employees against the public school employer.

(f) *The employer of a public school employee shall provide the exclusive representative of a public employee with the home address of each member of a bargaining unit, regardless of when that employee commences employment, so that the exclusive representative can comply with the notification requirements set forth by the United States Supreme Court in Chicago Teachers Union v. Hudson (1986) 89 L.Ed. 2d 232. (Emphasis added.)*

The test claim allegations regarding Government Code section 3546 will be analyzed in order of subdivision below.

Government Code Section 3546, Subdivision (a):

Claimant alleges that subdivision (a) of Government Code section 3546 constitutes a reimbursable state mandate in two respects by requiring school districts to (1) establish, implement, maintain and update payroll procedures to determine those employees from whose paychecks service fees must be deducted, and to make such deductions and transmit those fees to the employee organization; (2) "adjust payroll withholdings for rebates or withholding reductions" pursuant to the rebate or fee reduction provision of subdivision (a); and (3) provide notice to employees explaining the payroll deduction for the fair share service fees.

Department of Finance agrees that subdivision (a) requires school districts to deduct service fees from the wages of its employees, and then transmit those fees to the employee organization. However, Department of Finance also argues that those school districts that did establish organizational security arrangements prior to the enactment of the test claim legislation are not justified in claiming any mandated costs because those districts voluntarily chose to incur such costs, and so nothing new is mandated upon them by the test claim legislation. Staff disagrees. Government Code section 17565 clearly provides that: "If a local agency or a school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall

reimburse the local agency or school district for those costs incurred after the operative date of the mandate.”

Department of Finance also argues that the rebate and fee reduction provision imposes no activities on school districts. Department of Finance asserts that PERB’s regulations squarely place the burden of issuing fee rebates to employees on the employee organization.

Under prior law, a school district could voluntarily enter into organizational security arrangements with an employee organization. Organizational security has been within the scope of representation since the EERA’s enactment.<sup>46</sup> This results in a duty upon the school district to meet and negotiate in good faith with the exclusive representative upon request.<sup>47</sup> Prior to the 2000 amendments, the EERA, while imposing a duty to bargain, did not compel the parties to reach agreement on organizational security. Thus, any agreement ultimately reached through the bargaining process was entered into voluntarily by both sides.

Government Code section 3546, subdivision (a), requires what was once voluntary. Section 3546, subdivision (a), bypasses the discretion of a school district, and instead compels the district to institute an organizational security arrangement “upon receiving notice from the exclusive representative.” This new requirement that school districts shall implement organizational security arrangements requires school districts to make service fee deductions from the wages of employees, and consequently transmit those fees to the employee organization. Such fee deductions and payments to the employee organization were never required immediately preceding the enactment of the test claim legislation, and thus impose a new program or higher level of service on school districts.

In addition, under prior law, certificated and classified employees could pay the service fees directly to the certificated or recognized employee organization in lieu of having the school district deduct the service fees from the employee’s salary or wage order.<sup>48</sup> Claimant argues that Government Code section 3546, subdivision (a), expressly states that its terms apply “notwithstanding any other provision of law.” Thus, claimant argues that the employee’s right to pay the service fee directly to the employee organization is “nullified.” Claimant contends the school districts are now required to make the service fee deductions from the wages of all employees that work in a unit for which an exclusive representative has been selected and transmit those fees to the employee organization.<sup>49</sup>

Staff agrees with claimant. Government Code section 3546, subdivision (a), states the following:

*Notwithstanding any other provision of law, upon receiving notice from the exclusive representative of a public school employee who is in a unit for which an exclusive representative has been selected pursuant to this chapter, the employer shall deduct the amount of the fair share service fee authorized by this section*

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<sup>46</sup> Former Government Code section 3546 (added by Stats. 1975, ch. 961, and repealed by Stats. 2000, ch. 893); Gov. Code, § 3540.1, subd. (i) (as amended by Stats. 2000, ch. 893).

<sup>47</sup> Government Code section 3543.3.

<sup>48</sup> Education Code sections 45061, 45168, 87834, and 88167.

<sup>49</sup> Claimant’s response to draft staff analysis, page 4.

from the wages and salary of the employee and pay that amount to the employee organization. (Emphasis added.)

The phrase "notwithstanding any other provision of law" has expressly been interpreted by the courts as "an express legislative intent to have the specific statute control despite the existence of other law which might otherwise govern."<sup>50</sup> Thus, any other provision of law that is contrary or inconsistent with the statute "is subordinated to the latter provision" containing the "notwithstanding" language.<sup>51</sup> In this case, the sections in the Education Code allowing the employee to directly pay the service fee to the employee organization is inconsistent with the test claim statute that requires, without exception, the employer to deduct the service fee from the wages of the employee that works in a unit for which an exclusive representative has been selected. Accordingly, staff finds that Government Code section 3456, subdivision (a), imposes a new program or higher level of service by requiring school districts to make service fee deductions from the wages of all certificated and classified employees that work in a unit for which an exclusive representative has been selected, and transmit those fees to the employee organization.

However, in order to be subject to the subvention requirement of article XIII B, section 6, of the California Constitution, the test claim legislation must also impose upon a local agency or school district "costs mandated by the state." Government Code section 17514 defines "costs mandated by the state" to mean "any increased costs which a local agency or school district is required to incur...."

Government Code section 17556 lists several exceptions which preclude the Commission from finding costs mandated by the state. Specifically, "The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that: ... (d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service."

Pursuant to Education Code sections 45061 and 87834, K-14 school districts retain the authority to levy the charges necessary to cover any costs incurred in making service fee deductions from the wages of certificated employees choosing not to join the employee organization. Education Code section 45061 applies to elementary and secondary districts, while Education Code section 87834 is for community colleges. Education Code section 45061 follows:

The governing board of each school district when drawing an order for the salary or wage payment due to a certificated employee of the district shall, with or without charge, reduce the order for the payment of service fees to the certified or recognized organization as required by an organizational security arrangement between the exclusive representative and a public school employer as provided under Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code. However, the organizational security arrangement shall provide that any employee may pay service fees directly to the certified or

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<sup>50</sup> *People v. Tillman* (1999) 73 Cal.App.4th 771, 784-785.

<sup>51</sup> *Id.* at page 786.

recognized employee organization in lieu of having such service fees deducted from the salary or wage order.

If the employees of a district do not authorize the board to make a deduction to pay their pro rata share of the costs of making deductions for the payment of service fees to the certified or recognized organization, the board shall deduct from the amount transmitted to the organization on whose account the payments were deducted the actual costs, if any, of making the deduction. No charge shall exceed the actual cost to the district of the deduction. These actual costs shall be determined by the board and shall include startup and ongoing costs.

Education Code section 87834 is nearly identical, the only difference being that section 87834 substitutes the words "community college district" for the words "school district" in the first sentence of section 45061. As is evident from the plain language of sections 45061 and 87834, school districts may deduct service fees from the wages of certificated employees "*with or without charge.*" (Emphasis added).

The language of Government Code section 17556, subdivision (d), is clear and unambiguous. In *Connell v. Superior Court* (1997) 59 Cal.App.4th 382, 401, the court found that "the plain language of the statute precludes reimbursement where the local agency has the authority, i.e., the right or the power, to levy fees sufficient to cover the costs of the state-mandated program." In making such a determination, the court explicitly rejected the argument that the term "authority" should be construed as meaning "a practical ability in light of surrounding economic circumstances."<sup>52</sup> Accordingly, the focus is not whether a local agency or school district *chooses* to exercise an authority to levy service charges or fees; but rather whether such authority exists at all. Section 17556, subdivision (d), explicitly declares that if the local agency or school district "has the authority" to assess fees, then the commission shall be precluded from finding "costs mandated by the state." Here, school districts do possess such authority.

According to the Education Code sections, "No charge shall exceed the actual cost to the district of the deduction," but the costs for which the governing board is authorized to assess charges "shall be determined by the board and shall include startup and ongoing costs." Thus, the school district may assess charges for costs it must incur in establishing, maintaining, and adjusting its service fee deduction procedures, in addition to transmitting those fees to the employee organization.

Education Code sections 45061 and 87834 provide school districts with "the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program," within the meaning of Government Code section 17556, subdivision (d). Accordingly, staff finds that Government Code section 3546, subdivision (a), does not constitute a reimbursable state mandate because the test claim legislation does not impose "costs mandated by the state" as to activities regarding certificated employees.

This same fee authority does not apply for classified employees. Subdivision (b) of both Education Code sections 45168 and 88167 (for K-12 districts and community college districts, respectively), provide:

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<sup>52</sup> *Ibid.*

The governing board of each [ ] district, when drawing an order for the salary or wage payment due to a classified employee of the district may, *without charge*, reduce the order ... for the payment of service fees to the certified or recognized organization as required in an organizational security arrangement between the exclusive representative and a [ ] district employer as provided under Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code. [Emphasis added.]

Thus, staff finds that Government Code section 3546, subdivision (a) imposes a new program or higher level of service upon school districts within the meaning of article XIII B, section 6 of the California Constitution, and imposes costs mandated by the state pursuant to Government Code section 17514, for the following new activity:

- Upon receiving notice from the exclusive representative of a classified public school employee who is in a unit for which an exclusive representative has been selected, the employer shall deduct the amount of the fair share service fee authorized by this section from the wages and salary of the employee and pay that amount to the employee organization.

This activity does not apply for certificated employees; fee authority is available pursuant to Education Code sections 45061 and 87834.

Claimant further alleges that Government Code section 3546, subdivision (a), requires school districts to make payroll adjustments for service fee deductions to account for fee reductions or rebates to which the fee-paying employees may become entitled. Claimant alleges that this activity is mandated since school districts are required to report accurate payroll information to their employees and the state and federal governments.<sup>53</sup>

Government Code section 3546, subdivision (a), recognizes the right of employees paying fair share service fees "to receive a rebate or fee reduction upon request, of that portion of their fee" determined to be beyond the permissible scope of the employee organization's role as exclusive bargaining representative. To implement these provisions, PERB regulations require the exclusive representative to provide annual notice to nonmembers that are required to pay the fair share service fee of the amount of the service fee deduction and the calculation used to arrive at the amount of the fee.<sup>54</sup> If the employee disagrees with the amount of the service fee deduction, the employee may file an agency fee objection and the exclusive representative is required to administer an agency fee appeal procedure.<sup>55</sup> Staff finds that the requirement imposed by Government Code section 3546, subdivision (a), on school districts to deduct the correct amount from the wages of the employee after receiving notice from the exclusive representative of the amount, applies when the agency fee objection is resolved and it is determined that the employee is entitled to a reduction of future agency fee deductions.

But there is no mandate in the statutes or regulations plead by the claimant requiring the school district to make payroll adjustments for rebates. Rather, any rebates are paid by the exclusive

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<sup>53</sup> Claimant's response to draft staff analysis, page 5.

<sup>54</sup> California Code of Regulations, title 8, section 32992, subdivision (a).

<sup>55</sup> California Code of Regulations, title 8, section 32994.

representative. Under PERB regulations, once an agency fee objection is filed, the exclusive representative is required to hold any disputed agency fees in an escrow account for the duration of the dispute.<sup>56</sup> Escrowed agency fees that are being challenged shall not be released until after there is a mutual agreement between the agency fee objector and the exclusive representative, or an impartial decisionmaker has made a decision.<sup>57</sup> Interest at the prevailing rate shall be paid by the exclusive representative on all rebated fees.<sup>58</sup>

Finally, claimant requests reimbursement to "draft, approve, and distribute an appropriate and neutral notice to existing nonmember employees and new employees which explains the additional payroll deduction for 'fair share service fees' for nonmember employees of an employee organization." Claimant argues that these activities are "implicit in the legislation" and are necessary since the employer is responsible for changes to employee payroll amounts. Claimant asserts this activity is required since there is no statutory requirement for the exclusive representative to provide such notices to employees about these payroll adjustments.<sup>59</sup> Neither Government 3546, nor the PERB regulations, require school districts to provide notice to its employees regarding the service fee deduction. If this test claim is approved, however, the Commission can consider claimant's request at the parameters and guidelines stage and determine whether the requested activities are a reasonable method of complying with the mandate to deduct the fair share service fee in an amount authorized by Government Code section 3546.<sup>60</sup>

Government Code section 3546, subdivisions (b) through (e):

Government Code section 3546, subdivision (b), describes the permissible costs towards which an employee organization may apply the fair share service fees. Nothing in the language of subdivision (b), imposes any activities upon school districts.

Subdivision (c) provides that the "employer shall remain neutral, and shall not participate in any election conducted under this section unless required to do so by the board." Claimant alleges that subdivision (c) requires the public school employer to supply "administrative support" as required by PERB.<sup>61</sup> However, PERB has not enacted any rules or regulations requiring a school district's participation in an organizational security election.<sup>62</sup> Therefore, subdivision (c) does not impose any required activities on school districts.

Government Code section 3546, subdivision (d), contains four subparts. Subdivisions (d)(1) and (d)(2) describe the process by which employees in a bargaining unit may either rescind or reinstate, respectively, an organizational security arrangement. Such a process includes the

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<sup>56</sup> California Code of Regulations, title 8, section 32995, subdivision (a).

<sup>57</sup> California Code of Regulations, title 8, section 32995, subdivision (b).

<sup>58</sup> California Code of Regulations, title 8, section 32995, subdivision (c).

<sup>59</sup> Claimant's response to draft staff analysis, pages 5 and 6.

<sup>60</sup> California Code of Regulations, title 2, section 1183.1, subdivision (a)(4).

<sup>61</sup> First Amendment to the Test Claim, page 6; claimant's response to draft staff analysis, page 6.

<sup>62</sup> See California Code of Regulations, title 8, division 3, chapter 2, subchapter 2 for PERB's regulations governing organizational security arrangements under the EERA.

submission of a petition to PERB and a consequent election among the employees if the petition meets PERB's requirements as promulgated by its regulations. Claimant alleges that subdivisions (d)(1) and (d)(2) require school districts to adjust payroll procedures when the organizational security arrangement is rescinded or reinstated to comply with the requirement to deduct fair share service fees in the appropriate amount from the employee salaries. Government Code section 3546, subdivisions (d)(1) and (d)(2), however, do not impose any state-mandated activities on school districts and, therefore, reimbursement is not required to comply with these subdivisions.<sup>63</sup>

Subdivision (d)(3) provides that PERB shall conduct a vote to either rescind or reinstate an organizational security arrangement if the required number of employee signatures on a petition have been collected. Claimant alleges that subdivision (d)(3) requires school districts to "supply any required administrative support as may be required by PERB."<sup>64</sup> Claimant asserts that "it can be reasonably anticipated that if, for example, the Board determines that the appropriate number of signatures have not been collected, there may be some inquiry as to the content of the list of employees the school district is required to provide to PERB pursuant to Title 8, CCR, Sections 34030 and 34055."<sup>65</sup> Government Code section 3546, subdivision (d)(3), however, does not require anything of school districts, thus any mandated activities related to this subdivision would only arise from an executive order. No such executive order is included in this test claim, therefore no findings can be made that school districts have reimbursable state-mandated costs to supply administrative support to PERB.

Subdivision (d)(4) states that the costs of conducting an election to rescind an organizational security arrangement "shall be borne by the board," while the costs in an election to rescind "shall be borne by the petitioning party." Staff finds that nothing in the plain language of section 3546, subdivision (d)(4), requires school districts to perform any activities.

Finally, Government Code section 3546, subdivision (e), requires that the "recognized employee organization shall indemnify and hold the public school employer harmless against any reasonable legal fees, legal costs, and settlement or judgment liability arising from any court or administrative action relating to the school district's compliance with this section."

Claimant argues that subdivision (e) requires school districts to take any and all necessary actions... to recover reasonable legal fees... from the recognized employee organization."<sup>66</sup> Claimant also contends that "the right to indemnification stems from this subdivision and the cause of civil action which may result in the indemnification of the school district arises from

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<sup>63</sup> The requirement for school districts to deduct the fair share service fees from employee wages in the appropriate amount is mandated by Government Code section 3546, subdivision (a), and not subdivision (d). Thus, the requested activity to adjust payroll procedures to reflect the amount required to be deducted from an employee's salary because of a rescission or reinstatement of the organizational security arrangement may be considered by the Commission as a reasonable method of complying with Government Code section 3546, subdivision (a), at the parameters and guidelines stage. (Cal. Code Regs., tit. 2, § 1183.1; subd. (a)(4).)

<sup>64</sup> First Amendment to the Test Claim, page 6.

<sup>65</sup> Claimant's response to draft staff analysis, page 6.

<sup>66</sup> First Amendment to the Test Claim, page 8.

this code section, thus making it s a source of costs mandated by the state.”<sup>67</sup> Department of Finance rebuts this argument by asserting that the plain language of subdivision (e) does not impose any activities on school districts.

Staff finds that the plain language of subdivision (e) does not impose any duties on school districts. Rather, subdivision (e) imposes a requirement on the *employee organization* to indemnify and hold harmless a school district for any legal expenses incurred in complying with implementing an organizational security arrangement. If a school district asserts its legal right to indemnification, that action is a decision of the school district and not a mandate by the state.

Accordingly, staff finds that Government Code section 3546, subdivisions (b), (c), (d), and (e) do not mandate a program, or impose a new program or higher level of service upon school districts within the meaning of article XIII B, section 6, of the California Constitution.

Government Code Section 3546, Subdivision (f):

Statutes 2001, chapter 805 added subdivision (f) to Government Code section 3546 “so that the exclusive representative can comply with the notification requirements set forth by the United States Supreme Court in *Chicago Teachers Union v. Hudson* (1986) 89 L.Ed. 2d 232.”

Claimant asserts that Government Code section 3546, subdivision (f) imposes a state-mandated activity on school districts for providing a list of employee home addresses to the exclusive representative. Department of Finance, on the other hand, claims that the activity “consists of producing a report which should readily be available through the school district’s payroll system,”<sup>68</sup> and that any costs incurred by the claimant in providing such a list are *de minimis*, and should therefore not be reimbursable because claimant’s costs would be unlikely to reach the threshold for a claim.

Government Code section 3546, subdivision (f) requires school districts to file a list of employee home addresses with an employee organization selected by an employee bargaining unit to act as exclusive representative. Prior to the enactment of Statutes 2001, chapter 805, no statutory or regulatory requirement obligated a school district to provide a list of home addresses to the exclusive representative. The requirements imposed upon school districts by Government Code section 3546, subdivision (f), impose a new program or higher level of service within the meaning of article XIII B, section 6, of the California Constitution for the following new activity:

- School district employers of a public school employee shall provide the exclusive representative of a public employee with the home address of each member of a bargaining unit.

Government Code section 3546, subdivision (f), also imposes “costs mandated by the state” upon school districts as defined in Government Code section 17514. Government Code section 17556, states, in pertinent part:

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<sup>67</sup> Claimant’s response to draft staff analysis, page 7.

<sup>68</sup> Department of Finance, July 30, 2002 Comments, page 3.



The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that: ...

(b) The statute or executive order affirmed for the state a mandate that had been declared existing law or regulation by action of the courts.

(c) [t]he statute or executive order imposes a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government, unless the statute or executive order mandates costs that exceed the mandate in that federal law or regulation.

However, staff finds that Government Code section 17556, subdivisions (b) and (c) do not apply in this case.

In *Chicago Teachers Union v. Hudson*, *supra*, 475 U.S. 292, 305-07, the United States Supreme Court held that employee organizations must: (1) establish procedures prior to making agency fee deductions which will ensure that the funds from such fees are not used to finance ideological activities beyond the scope of collective bargaining, (2) provide agency fee payers with the methods used for calculating the amount of the agency fee; and (3) establish an appeals process to ensure that agency fee objections are addressed in a timely and fair manner by an impartial decision maker.

In order to facilitate the exclusive representative's responsibility to provide notice to nonmember employees regarding the service fee deductions and the methods used to calculate the amount of such fees, Government Code section 3546, subdivision (f) imposes upon school districts the obligation to provide a list of employee home addresses to the exclusive representative. Although subdivision (f) aims at imposing certain notification requirements upon the employee organization in order to comply with federal case law, the requirement that school districts provide the employee organization with a list of employee home addresses goes beyond mere compliance with federal case law.

In *County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805, 817, the court found that Penal Code section 987.9, which requires counties to provide ancillary investigative services when providing defense services to indigent criminal defendants, constituted a federal mandate. The court determined that the right to counsel under the Sixth Amendment and the due process clause of the Fourteenth Amendment of the United States Constitution include "the right to reasonably necessary ancillary services."<sup>69</sup> Accordingly, Penal Code section 987.9 "merely codified these constitutional guarantees," and thus section 987.9 simply required local compliance with the federal mandate.<sup>70</sup>

In *San Diego Unified School District*, *supra*, 33 Cal.4th 859, 889, the California Supreme Court adopted the reasoning that procedural protections that are merely incidental to the codification of a federal right, and which add only a *de minimis* financial impact, constitute an implementation of federal law not reimbursable under article XIII B, section 6, of the California Constitution.

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<sup>69</sup> *County of Los Angeles*, *supra*, 32 Cal.App.4th 805, 815.

<sup>70</sup> *Ibid.*

Here, however, while the notification requirements imposed on the employee organization are mandated by the United States Supreme Court's holding in *Hudson*, nothing in the *Hudson* decision imposes any required activities on school districts. Thus, because Government Code section 3546, subdivision (f) imposes a new required activity on school districts beyond compliance with federal case law, Government Code section 17556, subdivisions (b) and (c) do not apply. Nor are any other provisions of Government Code section 17556 applicable here; therefore, staff finds that Government Code section 3546, subdivision (f) imposes costs mandated by the state pursuant to Government Code section 17514.

California Code of Regulations, Title 8, Sections 34030 and 34055:

PERB has enacted regulations implementing the procedures for filing petitions to either rescind or reinstate an organizational security arrangement. Title 8, section 34030, was added to the California Code of Regulations in 1980, and subsection (b) was added, operative January 1, 2001:

(a) Within 20 days following the filing of the petition to rescind an organizational security arrangement, the employer shall file with the regional office an alphabetical list containing the names and job titles or classifications of the persons employed in the unit described in the petition as of the last date of the payroll period immediately preceding the date the petition was filed, unless otherwise directed by the Board.

(b) If after initial determination the proof of support is insufficient, the Board may allow up to 10 days to perfect the proof of support.

(c) Upon completion of the review of the proof of support, the Board shall inform the parties in writing of the determination as to sufficiency or lack thereof regarding the proof of support.

Title 8, section 34055, was added to the California Code of Regulations, operative January 1, 2001, and is nearly identical in language to section 34030, except that it provides that the employer shall file the required list "Within 20 days following the filing of the petition to reinstate an organizational security provision ..."

Claimant alleges that section 34030, subdivision (a), and section 34055, subdivision (a), impose state-mandated activities on school districts to file a list of employee names and job titles with PERB. Department of Finance, on the other hand, contends that only those districts that did not negotiate and implement organizational security arrangements prior to the 2000 amendments are justified in claiming mandated costs. Department of Finance alleges that districts that did negotiate organizational security arrangements prior to the 2000 amendments should not be reimbursed for voluntarily assumed costs.

California Code of Regulations, title 8, section 34030, subdivision (a), was enacted by PERB in 1980. Prior to the enactment of Statutes 2000, chapter 893, any organizational security arrangement entered into between a school district and employee organization was the product of a voluntary agreement resulting from the collective bargaining process. Statutes 2000, chapter 893, however, required the parties to implement an organizational security arrangement.

Under prior law, a school district retained discretion on entering into an organizational security arrangement with an employee organization. Thus, the provisions of section 34030, subdivision (a), requiring school districts to file a list of names and job titles to PERB upon the

submission of an employee petition to rescind an organizational security arrangement would not have been state-mandated or required. This conclusion flows from the fact that the decision to participate in the underlying program was within the school district's discretion, and thus any downstream requirements imposed within such a program were also voluntary.<sup>71</sup> Accordingly, if the district did enter into an organizational security arrangement, compliance with PERB's filing requirements in section 34030, subdivision (a), did not constitute a mandate by the state until January 1, 2001, the operative date of Statutes 2000, chapter 893.

Government Code section 3546, subdivision (d)(1), as added by Statutes 2000, chapter 893, recognizes the right of public school employees in a unit for which an employee organization has been selected as exclusive representative to rescind an organizational security arrangement. Subdivision (d)(1), states that the organizational security arrangement required by subdivision (a) of section 3546 "may be rescinded by a majority vote of all the employees in the negotiating unit subject to that arrangement, if a request for a vote is supported by a petition containing 30 percent of the employees in the negotiating unit." If the organizational security arrangement is rescinded pursuant to such a vote, subdivision (d)(2) allows that "a majority of all employees in the negotiating unit may request that the arrangement be reinstated."<sup>72</sup>

Sections 34030 and 34055 implement the provisions of Government Code section 3546, subdivision (d). California Code of Regulations, title 8, sections 34030 and 34055 require that within 20 days of the submission of a petition to either rescind or reinstate an organizational security arrangement, the public school "employer shall file with the regional [PERB] office an alphabetical list containing the names and job titles or classifications of the persons employed in the unit described in the petition." Staff finds that California Code of Regulations, title 8, sections 34030, subdivision (a), and 34055, subdivision (a), impose a new program or higher level of service on school districts within the meaning of article XIII B, section 6 of the California Constitution for the following new activity:

- Within 20 days following the filing of the petition to rescind or reinstate an organizational security arrangement, the school district employer shall file with the regional office of PERB an alphabetical list containing the names and job titles or classifications of the persons employed in the unit described in the petition as of the last date of the payroll period immediately preceding the date the petition was filed.

None of the provisions of Government Code section 17556 are applicable; therefore, staff finds that California Code of Regulations, title 8, sections 34030, subdivision (a), and 34055, subdivision (a) impose costs mandated by the state pursuant to Government Code section 17514.

---

<sup>71</sup> *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 742. The California Supreme Court addressed the issue whether legislation imposing certain notice and agenda requirements on school site councils administering various school-related educational programs constituted a reimbursable state mandate. The Court concluded that mandatory "downstream" requirements flowing from a local government entity's voluntary decision to participate in an underlying program do not constitute reimbursable state mandates.

<sup>72</sup> Government Code section 3546, subdivision (d)(2).

## CONCLUSION

Staff concludes that Government Code section 3546, subdivisions (a) and (f), and California Code of Regulations, title 8, sections 34030, subdivision (a), and 34055, subdivision (a), impose new programs or higher levels of service for K-14 school districts within the meaning of article XIII B, section 6 of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514, for the following specific new activities:

- Upon receiving notice from the exclusive representative of a classified public school employee who is in a unit for which an exclusive representative has been selected, the employer shall deduct the amount of the fair share service fee authorized by this section from the wages and salary of the employee and pay that amount to the employee organization. (Gov. Code, § 3546, subd. (a);)<sup>73</sup>
- School district employers of a public school employee shall provide the exclusive representative of a public employee with the home address of each member of a bargaining unit. (Gov. Code, § 3546, subd. (f).)<sup>74</sup>
- Within 20 days following the filing of the petition to rescind or reinstate an organizational security arrangement, the school district employer shall file with the regional office of PERB an alphabetical list containing the names and job titles or classifications of the persons employed in the unit described in the petition as of the last date of the payroll period immediately preceding the date the petition was filed. (Cal. Code Regs., tit. 8, §§ 34030, subd. (a), and 34055, subd. (a).)<sup>75</sup>

Staff concludes that Government Code sections 3543, 3546, subdivisions (b) through (e), and 3546.3, as added or amended by Statutes 1980, chapter 816, Statutes 2000, chapter 893, and Statutes 2001, chapter 805 are not reimbursable state-mandated programs within the meaning of article XIII B, section 6, and Government Code section 17514.

### Recommendation

Staff recommends that the Commission adopt this analysis and approve the test claim for the activities listed above.

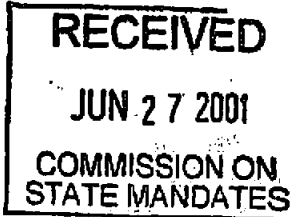
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<sup>73</sup> As added by Statutes 2000, chapter 893, operative January 1, 2002.

<sup>74</sup> As amended by Statutes 2001, chapter 805, operative January 1, 2002.

<sup>75</sup> As amended and operative on January 1, 2001.

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TEST CLAIM FORM

Claim No. 00-TC17

Local Agency or School District Submitting Claim

**CLOVIS UNIFIED SCHOOL DISTRICT**

Contact Person

Telephone Number

Keith B. Petersen, President  
SixTen and Associates  
5252 Balboa Avenue, Suite 807  
San Diego, California 92117

Voice: 858-514-8605  
Fax: 858-514-8645

Claimant Address

William C. McGuire  
Clovis Unified School District  
1450 Herndon Avenue  
Clovis, California 93611-0599

Representative Organization to be Notified

Dr. Carol Berg, Consultant, Education Mandated Cost Network  
c/o School Services of California  
1121 L Street, Suite 1060  
Sacramento, CA 95814

Voice: 916-446-7517  
Fax: 916-446-2011

This claim alleges the existence of a reimbursable state mandated program within the meaning of section 17514 of the Government Code and section 6, article XIII B of the California Constitution. This test claim is filed pursuant to section 17551(a) of the Government Code.

Identify specific section(s) of the chaptered bill or executive order alleged to contain a mandate, including the particular statutory code citation(s) within the chaptered bill, if applicable.

**Agency Fee Arrangements**

Chapter 893, Statutes of 2000  
Chapter 816, Statutes of 1980

Government Code Section 3543  
Government Code Section 3546  
Government Code Section 3546.3

Title 8, California Code of Regulations  
Sections 34030 and 34055

**IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING TEST CLAIM ON THE REVERSE SIDE.**

Name and Title of Authorized Representative

Telephone No.

William C. McGuire  
Associate Superintendent

(559) 327-9110  
FAX: (559) 327-9129

Signature of Authorized Representative

Date

June 21, 2001

1 Claim Prepared By:  
2 Keith B. Petersen  
3 SixTen and Associates  
4 5252 Balboa Avenue, Suite 807  
5 San Diego, CA 92117  
6 Voice: (858) 514-8605  
7 Fax: (858) 514-8645  
8  
9

10  
11 BEFORE THE  
12  
13 COMMISSION ON STATE MANDATES  
14  
15 STATE OF CALIFORNIA  
16  
17

18 Test Claim of:	)	No. CSM. _____
19	)	
20	)	Chapter 893, Statutes of 2000
21 Clovis Unified School District	)	Chapter 816, Statutes of 1980
22	)	
23	)	Government Code Section 3543
24	)	Government Code Section 3546
25 Test Claimant.	)	Government Code Section 3546.3
26	)	
27 _____	)	Title 8, Code of Regulations
28	)	Sections 34030 and 34055
29	)	
30	)	<u>Agency Fee Arrangements</u>
31	)	
32	)	TEST CLAIM FILING
33	)	

34 PART I. AUTHORITY FOR THE CLAIM

35 The Commission on State Mandates has the authority pursuant to  
36 Government Code section 17551(a) to "... hear and decide upon a claim by a  
37 local agency or school district that the local agency or school district is entitled to  
38 be reimbursed by the state for costs mandated by the state as required by Section

**ITEM 6**  
**TEST CLAIM**  
**FINAL STAFF ANALYSIS**

Government Code Sections 3543, 3546, and 3546.3

Statutes 1980, Chapter 816  
Statutes 2000, Chapter 893  
Statutes 2001, Chapter 805

California Code of Regulations, Title 8, Sections 34030 and 34055

*Agency Fee Arrangements (00-TC-17, 01-TC-14)*  
Clovis Unified School District, Claimant

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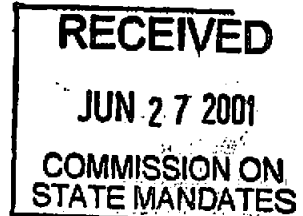
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State of California  
COMMISSION ON STATE MANDATES  
980 Ninth Street, Suite 300  
Sacramento, CA 95814  
(916) 323-3562  
CSM 2 (2/01)

For Official Use (EXHIBIT A)



**TEST CLAIM FORM**

Claim No. 00-TC-17

Local Agency or School District Submitting Claim

**CLOVIS UNIFIED SCHOOL DISTRICT**

Contact Person

Telephone Number

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This claim alleges the existence of a reimbursable state mandated program within the meaning of section 17514 of the Government Code and section 6, article XIII B of the California Constitution. This test claim is filed pursuant to section 17551(a) of the Government Code.

Identify specific section(s) of the chaptered bill or executive order alleged to contain a mandate, including the particular statutory code citation(s) within the chaptered bill, if applicable.

**Agency Fee Arrangements**

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**IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING TEST CLAIM ON THE REVERSE SIDE.**

Name and Title of Authorized Representative

Telephone No.

William C. McGuire  
Associate Superintendent

(559) 327-9110  
FAX: (559) 327-9129

Signature of Authorized Representative

Date

June 21, 2001

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2 Keith B. Petersen  
3 SixTen and Associates  
4 5252 Balboa Avenue, Suite 807  
5 San Diego, CA 92117  
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11 BEFORE THE  
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Chapter 893, Statutes of 2000  
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Agency Fee Arrangements  
TEST CLAIM FILING

34 PART I. AUTHORITY FOR THE CLAIM

35 The Commission on State Mandates has the authority pursuant to  
36 Government Code section 17551(a) to "... hear and decide upon a claim by a  
37 local agency or school district that the local agency or school district is entitled to  
38 be reimbursed by the state for costs mandated by the state as required by Section

1 6 of Article XIII B of the California Constitution." Clovis Unified School District is a  
2 "school district" as defined in Government Code section 17519.<sup>1</sup>

3  
4 **PART II. LEGISLATIVE HISTORY OF THE CLAIM**

5 This test claim alleges mandated costs reimbursable by the state for school  
6 districts, county offices of education, and community college districts to  
7 automatically withhold from the wages of employees who are not members of a  
8 certified employee organization "fair share services fees", remit the fees withheld  
9 to the certified employee organization and, when a petition is filed to either rescind  
10 or reinstate a collective bargaining arrangement, to file with the regional office of  
11 PERB an alphabetical list containing the names and job titles or classification of  
12 the persons employed in the unit described in the petition as of the last date of the  
13 payroll period immediately preceding the date the petition was filed, unless  
14 otherwise directed by the Board.

15 **SECTION 1. LEGISLATIVE HISTORY PRIOR TO JANUARY 1, 1975**

16 Prior to 1975, existing law granted public school employees the right to  
17 form, join and participate in the activities of employee organizations, but retained  
18 their right individually to refuse to join or participate in the activities of employee  
19 organizations. There was no requirement for non-union member employees to  
20 pay or have fair share service fees deducted from their wages and there was no

---

<sup>1</sup> Government Code Section 17519, as added by Chapter 1459/84:

"School district" means any school district, community college district, or county superintendent of schools.

1 statutory requirement that school districts, county offices of education, or  
2 community college districts withhold any fair share service fees from employees'  
3 wages.

4 SECTION 2. LEGISLATIVE HISTORY AFTER JANUARY 1, 1975

5 Chapter 961, Statutes of 1975 (also known as the Rodda Act) enacted  
6 Chapter 10.7 ("Meeting and Negotiating in Public Educational Employment") of the  
7 Government Code. The Rodda Act, as enacted in 1975, was the subject of the  
8 original Board of Control test claim that established reimbursement for public  
9 school Collective Bargaining.

10 Chapter 816, Statutes of 1980, Section 1, added Government Code Section  
11 3546.3<sup>2</sup> which provided an exemption to employees who objected, based upon  
12 membership in a religious body whose traditional tenets or teachings included

---

<sup>2</sup> Government Code Section 3546.3, as added by Chapter 816, Statutes of 1980, Section 1:

"Notwithstanding subdivision (i) of Section 3540.1, Section 3546, or any other provision of this chapter, any employee who is a member of a religious body whose traditional tenets or teachings include objections to joining or financially supporting employee organizations shall not be required to join, maintain membership in, or financially support any employee organization as a condition of employment; except that such employee may be required, in lieu of a service fee, to pay sums equal to such service fee either to a nonreligious, nonlabor organization, charitable fund exempt from taxation under Section 501(c)(3) of Title 26 of the Internal Revenue Code, chosen by such employee from a list of at least three such funds, designated in the organizational security arrangement, or if the arrangement fails to designate such funds, then to any such fund chosen by the employee. Either the employee organization or the public school employer may require that proof of such payments be made on an annual basis to the public school employer as a condition of continued exemption from the requirement of financial support to the recognized employee organization. If such employee who holds conscientious objections pursuant to this section requests the employee organization to use the grievance procedure or arbitration procedure on the

1 objections to joining or financially supporting employee organizations, to joining,  
2 maintaining membership in, or financially supporting any employee organization,  
3 subject to being required to pay sums equal to any service fees to a nonreligious,  
4 nonlabor organization, charitable fund. Either the employee organization or the  
5 public school employer could require that proof of such payments be made on an  
6 annual basis to the public school employer as a condition of continued exemption  
7 from the requirement of financial support to the recognized employee organization.  
8 The identification of such objectors and the annual verification of the objector's  
9 payment to a nonreligious, nonlabor organization, charitable fund created a new  
10 program or higher level of service of an existing program subject to  
11 reimbursement.

12 Chapter 893, Statutes of 2000, Section 1 amended Government Code  
13 Section 3540.1<sup>3</sup> to provide that "organizational security" is defined to be within the  
14 scope of representation.

---

employee's behalf, the employee organization is authorized to charge the  
employee for the reasonable cost of using such procedure."

<sup>3</sup> Government Code Section 3540.1 as amended by Chapter 893, Statutes of  
2000:

"As used in this chapter:

(a) "Board" means the Public Employment Relations Board created  
pursuant to Section 3541.

(b) "Certified organization" or "certified employee organization" means an  
organization which has been certified by the board as the exclusive representative  
of the public school employees in an appropriate unit after a proceeding under  
Article 5 (commencing with Section 3544).

(c) "Confidential employee" means any employee who, in the regular  
course of his or her duties, has access to, or possesses information relating to, his  
or her employer's employer-employee relations.

(d) "Employee organization" means any organization which includes  
employees of a public school employer and which has as one of its primary

purposes representing those employees in their relations with that public school employer. "Employee organization" shall also include any person such an organization authorizes to act on its behalf.

(e) "Exclusive representative" means the employee organization recognized or certified as the exclusive negotiating representative of certificated or classified employees in an appropriate unit of a public school employer.

(f) "Impasse" means that the parties to a dispute over matters within the scope of representation have reached a point in meeting and negotiating at which their differences in positions are so substantial or prolonged that future meetings would be futile.

(g) "Management employee" means any employee in a position having significant responsibilities for formulating district policies or administering district programs. Management positions shall be designated by the public school employer subject to review by the Public Employment Relations Board.

(h) "Meeting and negotiating" means meeting, conferring, negotiating, and discussing by the exclusive representative and the public school employer in a good faith effort to reach agreement on matters within the scope of representation and the execution, if requested by either party, of a written document incorporating any agreements reached, which document shall, when accepted by the exclusive representative and the public school employer, become binding upon both parties and, notwithstanding Section 3543.7, shall not be subject to subdivision 2 of Section 1667 of the Civil Code. The agreement may be for a period of not to exceed three years.

(i) "Organizational security" is within the scope of representation, and means either of the following:

(1) An arrangement pursuant to which a public school employee may decide whether or not to join an employee organization, but which requires him or her, as a condition of continued employment, if he or she does join, to maintain his or her membership in good standing for the duration of the written agreement. However, no such arrangement shall deprive the employee of the right to terminate his or her obligation to the employee organization within a period of 30 days following the expiration of a written agreement.

(2) An arrangement that requires an employee, as a condition of continued employment, either to join the recognized or certified employee organization, or to pay the organization a service fee in an amount not to exceed the standard initiation fee, periodic dues, and general assessments of the organization for the duration of the agreement, or a period of three years from the effective date of the agreement, whichever comes first.

(j) "Public school employee" or "employee" means any person employed by any public school employer except persons elected by popular vote, persons appointed by the Governor of this state, management employees, and confidential employees.

(k) "Public school employer" or "employer" means the governing board of a school district, a school district, a county board of education, a county

1 Chapter 893, Statutes of 2000, Section 2, amended Government Code

2 Section 3543<sup>4</sup> to eliminate an individual employee's right to refuse to associate

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superintendent of schools, or a charter school that has declared itself a public school employer pursuant to subdivision (b) of Section 47611.5 of the Education Code.

(l) "Recognized organization" or "recognized employee organization" means an employee organization which has been recognized by an employer as the exclusive representative pursuant to Article 5 (commencing with Section 3544).

(m) "Supervisory employee" means any employee, regardless of job description, having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to assign work to and direct them, or to adjust their grievances, or effectively recommend such action, if, in connection with the foregoing functions, the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

<sup>4</sup> Government Code Section 3543, as amended by Chapter 893, Statutes of 2000, Section 2:

~~(a) Public school employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. Public school employees shall also have the right to refuse to join or participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the public school employer, except that once the employees in an appropriate unit have selected who are in a unit for which an exclusive representative and it has been recognized pursuant to Section 3544.1 or certified pursuant to Section 3544.7, no employee in that unit may meet and negotiate with the public school employer. selected, shall be required as a condition of continued employment to join the recognized employee organization or to pay the organization a fair share services fee, as required by Section 3546. If a majority of the members of a bargaining unit rescind that arrangement, either of the following options shall be applicable:~~

~~(1) The recognized employee organization may petition for the reinstatement of the arrangement described in subdivision (a) of Section 3546 pursuant to the procedures in paragraph (2) of subdivision (d) of Section 3546.~~

~~(2) The employees may negotiate either of the two forms of organizational security described in subdivision (i) of Section 3540.1.~~

~~(b) Any employee may at any time present grievances to his or her employer, and have such grievances adjusted, without the intervention of the exclusive representative, as long as the adjustment is reached prior to arbitration pursuant to Sections 3548.5, 3548.6, 3548.7, and 3548.8 and the adjustment is not inconsistent with the terms of a written agreement then in effect; provided that~~



1 with the employee organizations and, instead, requires public school employees,  
2 who are in a unit for which an exclusive representative has been selected, as a  
3 condition of employment, to join the recognized employee organization or to pay  
4 the organization a fair share services fee<sup>5</sup>. The amended section also provides for  
5 alternative forms of organizational security in the event a majority of the members  
6 of the bargaining unit rescind their written agreement.

7 Chapter 893, Statutes of 2000, Section 3, repealed former Government  
8 Code Section 3546<sup>6</sup>, which contained the terms and conditions for "organization  
9 security" as now found in Government Code Section 3540.1.

---

the public school employer shall not agree to a resolution of the grievance until the  
exclusive representative has received a copy of the grievance and the proposed  
resolution and has been given the opportunity to file a response."

<sup>5</sup> Pursuant to Title 8, California Code of Regulations Section 32990(d), "fair share"  
and "agency shop" forms of organizational security shall be known as "agency  
fee".

<sup>6</sup> Government Code Section 3546, as added by Chapter 961, Statutes of 1975,  
Section 2 operative July 1, 1976 and repealed by Chapter 893, Statutes of 2000:

~~"Subject to the limitations set forth in this section, organizational security, as  
defined, shall be within the scope of representation.~~

~~(a) An organizational security arrangement, in order to be effective, must be  
agreed upon by both parties to the agreement. At the time the issue is  
being negotiated, the public school employer may require that the  
organizational security provision be severed from the remainder of the  
proposed agreement and cause the organizational security provision to be  
voted upon separately by all members in the appropriate negotiating unit, in  
accordance with rules and regulations promulgated by the board. Upon  
such a vote, the organizational security provision will become effective only  
if a majority of those members of the negotiating unit voting approve the  
agreement. Such vote shall not be deemed to either ratify or defeat the  
remaining provisions of the proposed agreement.~~

~~(b) An organizational security arrangement which is in effect may be rescinded  
by majority vote of the employees in the negotiating unit covered by such  
arrangement in accordance with rules and regulations promulgated by the  
board."~~

- 1 Chapter 893, Statutes of 2000, Section 4, added new Government Code  
2 Section 3546<sup>7</sup> which, at subdivision (a), requires any public school employee who

<sup>7</sup> Government Code Section 3546, added by Chapter 893, Statutes of 2000, Section 4:

"(a) Notwithstanding any other provisions of law, any public school employee who is in a unit for which an exclusive representative has been selected pursuant to this chapter shall be required, as a condition of continued employment, either to join the recognized employee organization or to pay the organization a fair share service fee. The amount of the fee shall not exceed the dues that are payable by members of the employee organization, and shall cover the cost of negotiation, contract administration, and other activities of the employee organization that are germane to its functions as the exclusive bargaining representative. Upon notification to the employer by the exclusive representative, the amount of the fee shall be deducted by the employer from the wages or salary of the employee and paid to the employee organization.

(b) The costs covered by the fee under this section may include, but shall not necessarily be limited to, the cost of lobbying activities designed to foster collective bargaining negotiations and contract administration, or to secure for the represented employees advantages in wages, hours, and other conditions of employment in addition to those secured through meeting and negotiating with the employer.

(c) The arrangement described in subdivision (a) shall remain in effect unless it is rescinded pursuant to subdivision (d). The employer shall remain neutral, and shall not participate in any election conducted under this section unless required to do so by the board.

(d) (1) The arrangement described in subdivision (a) may be rescinded by a majority vote of all the employees in the negotiating unit subject to that arrangement, if a request for a vote is supported by a petition containing 30 percent of the employees in the negotiating unit, the signatures are obtained in one academic year. There shall not be more than one vote taken during the term of any collective bargaining agreement in effect on or after January 1, 2001.

(2) If the arrangement described in subdivision (a) is rescinded pursuant to paragraph (1), a majority of all employees in the negotiating unit may request that the arrangement be reinstated. That request shall be submitted to the board along with a petition containing the signatures of at least 30 percent of the employees in the negotiating unit. The vote shall be conducted at the worksite by secret ballot, and shall be conducted no sooner than one year after the rescission of the arrangement under this subdivision.

Test Claim of Clovis Unified School District  
893/00 Agency Fee Arrangements

1 is in a unit for which an exclusive representative has been selected pursuant to  
2 this chapter, as a condition of continued employment, either to join the recognized  
3 employee organization or to pay the organization a fair share service fee.

4 Subdivision (a) also requires the employer, upon notification by the exclusive  
5 representative, to deduct the fair share service fee from the wages or salary of the  
6 employee and pay such withholdings to the employee organization.

7 Subdivision (c) of new Section 3546 requires the employer to participate in  
8 an election conducted under the Section when required to do so by PERB,  
9 otherwise the employer shall remain neutral.

10 Subdivision (d)(1) of new Section 3546 allows the collective bargaining  
11 arrangement to be rescinded by a majority vote of all the employees in the  
12 negotiating unit, if a request for a vote is supported by a petition containing 30  
13 percent of the employees in the negotiating unit. Only one rescission vote may be  
14 taken during the term of any collective bargaining agreement in effect on or after  
15 January 1, 2001. Pursuant to Section 34030<sup>8</sup> of Title 8, California Code of

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(3) If the board determines that the appropriate number of signatures have been collected, it shall conduct the vote to rescind or reinstate in a manner that it shall prescribe in accordance with this subdivision.

(4) The cost of conducting an election under this subdivision to reinstate the organizational security arrangement shall be borne by the petitioning party and the cost of conducting an election to rescind the arrangement shall be borne by the board."

<sup>8</sup> California Code of Regulations Section 34030:

"§34030 Board Determination Regarding Proof of Support

(a) Within 20 days following the filing of the petition to rescind an organizational security arrangement, the employer shall file with the regional office an alphabetical list containing the names and job titles or classification of the persons employed in the unit described in the petition as of the last date of the

1 Regulations, within 20 days following the filing of the petition to rescind an  
2 organizational security arrangement, the district shall file with the regional office of  
3 PERB an alphabetical list containing the names and job titles or classification of  
4 the persons employed in the unit described in the petition as of the last date of the  
5 payroll period immediately preceding the date the petition was filed, unless  
6 otherwise directed by the Board.

7 Subdivision (d)(2) provides that if the collective bargaining arrangement is  
8 rescinded pursuant to subdivision (d)(1); the arrangement may be reinstated by a  
9 majority vote of all the employees in the negotiating unit, if a request for a vote is  
10 supported by a petition signed by at least 30 percent of the employees in the  
11 negotiating unit. The reinstatement vote shall be conducted no sooner than one  
12 year after the rescission. Pursuant to Section 34055<sup>9</sup> of Title 8, California Code of

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payroll period immediately preceding the date the petition was filed, unless  
otherwise directed by the Board.

(b) If after initial determination the proof of support is insufficient, the Board  
may allow up to 10 days to perfect the proof of support.

(c) Upon completion of the review of the proof of support, the Board shall  
inform the parties in writing of the determination as to sufficiency or lack thereof  
regarding the proof of support."

<sup>9</sup> Title 8, California Code of Regulations, Section 34055:

"§ 34055. Board Determination Regarding Proof of Support.

(a) Within 20 days following the filing of the petition to reinstate an  
organizational security provision, the employer shall file with the regional office an  
alphabetical list containing the names and job titles or classifications of the  
persons employed in the unit described in the petition as of the last date of the  
payroll period immediately preceding the date the petition was filed, unless  
otherwise directed by the Board.

(b) If after initial determination the proof of support is insufficient, the Board  
may allow up to 10 days to perfect the proof of support.

(c) Upon completion of the review of the proof of support, the Board shall  
inform the parties in writing of the determination as to sufficiency or lack thereof  
regarding the proof of support."

1 Regulations, within 20 days following the filing of the petition to reinstate an  
2 organizational security provision, the employer shall file with the regional office of  
3 PERB an alphabetical list containing the names and job titles or classifications of  
4 the persons employed in the unit described in the petition as of the last date of the  
5 payroll period immediately preceding the date the petition was filed, unless  
6 otherwise directed by the Board.

7  
8 **PART III. STATEMENT OF THE CLAIM**

9 **SECTION 1. COSTS MANDATED BY THE STATE**

10 The Statutes, Government Code sections, and California Code of  
11 Regulations sections referenced in this test claim result in school districts incurring  
12 costs mandated by the state, as defined in Government Code section 17514<sup>10</sup>, by  
13 creating new state-mandated duties related to the uniquely governmental function  
14 of providing public education to students and these statutes apply to school  
15 districts and do not apply generally to all residents and entities in the state.<sup>11</sup>

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<sup>10</sup> Government Code section 17514, as added by Chapter 1459/84:

"Costs mandated by the state" means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

<sup>11</sup> Public schools are a Article XIII B, Section 6 "program," pursuant to Long Beach Unified School District v. State of California, (1990) 275 Cal.Rptr. 449, 225 Cal.App.3d 155:

1 The new duties mandated by the state upon school districts, county offices  
2 of education and community colleges require state reimbursement of the direct  
3 and indirect costs of labor, materials and supplies, data processing services and  
4 software, contracted services and consultants, equipment and capital assets, staff  
5 and student training and travel to implement the following activities:

- 6 A) Establish, periodically update and maintain employee payroll records  
7 which identify those employees who choose not to be members of a  
8 certified employee organization. Pursuant to Government Code  
9 Section 3546(a), establish payroll procedures and thereafter  
10 implement such procedures so that automatic payroll deductions for  
11 "fair share services fees" will be made from the wages of non-exempt  
12 employees who choose not to be members of a certified employee  
13 organization and to report and remit the withheld fees to the  
14 appropriate certified employee organization.
- 15 B) Draft, approve and distribute an appropriate and neutral notice to  
16 existing non-member employees and new employees, which  
17 explains the additional payroll deduction for "fair share services fees"  
18 for non-member employees of a certified employee organization.

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"In the instant case, although numerous private schools exist, education in our society is considered to be a peculiarly government function. (Cf. Carmel Valley Fire Protection Dist. v. State of California (1987) 190 Cal.App.3d at p. 537) Further, public education is administered by local agencies to provide service to the public. Thus public education constitutes a 'program' within the meaning of Section 6."

1 C) In the event a petition to rescind the collective bargaining agreement  
2 is filed pursuant to Government Code Section 3546(d)(1), within 20  
3 days of the filing of the petition, to file with the regional office of  
4 PERB an alphabetical list containing the names and job titles or  
5 classifications of the persons employed in the unit as of the last date  
6 of the payroll period immediately preceding the date the petition was  
7 filed pursuant to Title 8, California Code of Regulations, Section  
8 34030(a), and to supply any other required administrative support as  
9 required by PERB, pursuant to Government Code Section 3546,  
10 subdivisions (c) and (d)(3).

11 D) In the event the collective bargaining agreement is rescinded  
12 pursuant to Government Code Section 3546(d)(1), establish new  
13 payroll procedures and thereafter implement such procedures so that  
14 automatic payroll deductions for "fair share services fees" are no  
15 longer made from the wages of non-exempt employees who choose  
16 not to be members of a certified employee organization and to no  
17 longer report and remit fees to the appropriate certified employee  
18 organization.

19 E) In the event a petition to reinstate the collective bargaining  
20 agreement is filed pursuant to Government Code Section 3546(d)(2),  
21 within 20 days of the filing of the petition, to file with the regional  
22 office of PERB an alphabetical list containing the names and job  
23 titles or classifications of the persons employed in the unit as of the

1 last date of the payroll period immediately preceding the date the  
2 petition was filed pursuant to Title 8, California Code of Regulations,  
3 Section 34055(a); and to supply any required administrative support  
4 as may be required by PERB, pursuant to Government Code Section  
5 3546, subdivisions (c) and (d)(3).

6 F) In the event the collective bargaining agreement is reinstated  
7 pursuant to Government Code Section 3546(d)(2), reestablish  
8 payroll procedures and thereafter implement such reestablished  
9 procedures so that automatic payroll deductions for "fair share  
10 services fees" will again be made from the wages of non-exempt  
11 employees who choose not to be members of a certified employee  
12 organization and again report and remit the withheld fees to the  
13 appropriate certified employee organization.

14 G) Establish and implement procedures to determine which employees  
15 claim a conscientious objection to the withholding of "fair share  
16 services fees" pursuant to Government Code Section 3546.3.

17 H) Establish payroll procedures and thereafter implement such  
18 procedures so that automatic payroll deductions for fair share  
19 services fees will not be made from the wages of those claiming  
20 conscientious objections pursuant to Government Code Section  
21 3546.3.

22 I) Establish procedures and thereafter implement such procedures to  
23 verify, at least annually, that payments to nonreligious, nonlabor



1 charitable organizations have been made by employees who have  
2 claimed conscientious objections pursuant to Government Code  
3 Section 3546.3.

4 **SECTION 2. EXCEPTIONS TO MANDATE REIMBURSEMENT.**

5 None of the Government Code Section 17556<sup>12</sup> statutory exceptions to a  
6 finding of costs mandated by the state apply to this test claim. Note that to the

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<sup>12</sup> Government Code section 17556 as last amended by Chapter 589/89:

"The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:

(a) The claim is submitted by a local agency or school district which requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district which requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this paragraph.

(b) The statute or executive order affirmed for the state that which had been declared existing law or regulation by action of the courts.

(c) The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.

(d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.

(e) The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.

(f) The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a statewide election.

(g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction."

1 extent school districts may have previously performed functions similar to those  
2 mandated by the referenced code sections, such efforts did not establish a  
3 preexisting duty that would relieve the state of its constitutional requirement to  
4 later reimburse school districts when these activities became mandated.<sup>13</sup>

5 SECTION 3. FUNDING PROVIDED FOR THE MANDATED PROGRAM

6 No funds are appropriated by the state for reimbursement of these costs  
7 mandated by the state and there is no other provision of law for recovery of costs  
8 from any other source.

9 PART IV. ADDITIONAL CLAIM REQUIREMENTS

10 The following elements of this claim are provided pursuant to Section 1183,

11 Title 2, California Code of Regulations:

12 Exhibit 1: The Declaration of William C. McGuire

13 Exhibit 2: Copies of Code Sections Cited

14 Government Code Section 3543

15 Government Code Section 3546

16 Government Code Section 3546.3

17 Exhibit 3: Copies of Statutes Cited

18 Chapter 893, Statutes of 2000

19 Chapter 816, Statutes of 1980

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<sup>13</sup> Government Code section 17565:

"If a local agency or school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate."

1 Exhibit 4: Copies of Title 8, California Code of Regulations Cited

2 Section 34030

3 Section 34055

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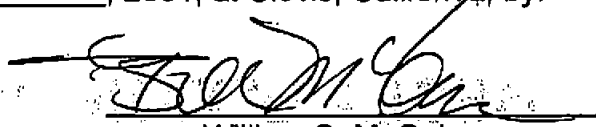
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PART V. CERTIFICATION

I certify by my signature below, under penalty of perjury, that the statements made in this document are true and complete of my own knowledge or information and belief.

Executed on June 21, 2001, at Clovis, California, by:



William C. McGuire  
Associate Superintendent

Voice: (559) 327-9110

Fax: (559) 327-9129

/

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PART VI. APPOINTMENT OF REPRESENTATIVE

Clovis Unified School District appoints Keith B. Petersen, SixTen and Associates, as its representative for this test claim.



William C. McGuire  
Associate Superintendent

6/21/01  
Date

**EXHIBIT 1**

**DECLARATION OF  
WILLIAM C. McGUIRE**

**Exhibit 1  
Declaration of William C. McGuire**

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DECLARATION OF WILLIAM C. McGUIRE  
ASSOCIATE SUPERINTENDENT  
CLOVIS UNIFIED SCHOOL DISTRICT

COSM No. \_\_\_\_\_

TEST CLAIM OF CLOVIS UNIFIED SCHOOL DISTRICT

Chapter 893, Statutes of 2000  
Chapter 816, Statutes of 1980

Government Code Sections 3543, 3546 and 3546.3

Title 8, California Code of Regulations, Sections 34030 and 34055

Agency Fee Arrangements

I, William C. McGuire, Associate Superintendent, Clovis Unified School District, make the following declaration and statement:

I hold a Bachelor's Degree from Central Washington University (1981) in Economics and Accounting and a Master's Degree from Pepperdine University (2000) in School Business. In my capacity as Associate Superintendent, I direct and administer the business affairs of the District and manage the financial resources available to the District in a manner to maximize resources devoted to educational services.

In my capacity as Associate Superintendent, I am also responsible for implementing the requirements of Government Code Sections 3543, 3546, 3546.3 and Sections 34030 and 34055 of Title 8, California Code of Regulations,

1 . which require the District to automatically withhold from the wages of employees  
2 who are not members of a certified employee organization "fair share services  
3 fees", remit the fees withheld to the certified employee organization and, when a  
4 petition is filed to either rescind or reinstate a collective bargaining arrangement,  
5 to file with the regional office of PERB an alphabetical list containing the names  
6 and job titles or classification of the persons employed in the unit described in the  
7 petition as of the last date of the payroll period immediately preceding the date  
8 the petition was filed, unless otherwise directed by the Board.

9

10 **ACTIVITIES REQUIRED TO IMPLEMENT THE MANDATE**

- 11 A) Establish, periodically update and maintain employee payroll  
12 records which identify those employees who choose not to be  
13 members of a certified employee organization. Pursuant to  
14 Government Code Section 3546(a), establish payroll procedures  
15 and thereafter implement such procedures so that automatic payroll  
16 deductions for "fair share services fees" will be made from the  
17 wages of non-exempt employees who choose not to be members  
18 of a certified employee organization and to report and remit the  
19 withheld fees to the appropriate certified employee organization.
- 20 B) Draft, approve and distribute an appropriate and neutral notice to  
21 existing non-member employees and new employees, which  
22 explains the additional payroll deduction for "fair share services

1 fees" for non-member employees of a certified employee  
2 organization.

3 C) In the event a petition to rescind the collective bargaining  
4 agreement is filed pursuant to Government Code Section  
5 3546(d)(1), within 20 days of the filing of the petition, to file with the  
6 regional office of PERB an alphabetical list containing the names  
7 and job titles or classifications of the persons employed in the unit  
8 as of the last date of the payroll period immediately preceding the  
9 date the petition was filed pursuant to Title 8, California Code of  
10 Regulations, Section 34030(a), and to supply any other required  
11 administrative support as required by PERB, pursuant to  
12 Government Code Section 3546, subdivisions (c) and (d)(3).

13 D) In the event the collective bargaining agreement is rescinded  
14 pursuant to Government Code Section 3546(d)(1); establish new  
15 payroll procedures and thereafter implement such procedures so  
16 that automatic payroll deductions for "fair share services fees" are  
17 no longer made from the wages of non-exempt employees who  
18 choose not to be members of a certified employee organization and  
19 to no longer report and remit fees to the appropriate certified  
20 employee organization.

21 E) In the event a petition to reinstate the collective bargaining  
22 agreement is filed pursuant to Government Code Section  
23 3546(d)(2), within 20 days of the filing of the petition, to file with the



1 regional office of PERB an alphabetical list containing the names  
2 and job titles or classifications of the persons employed in the unit  
3 as of the last date of the payroll period immediately preceding the  
4 date the petition was filed pursuant to Title 8, California Code of  
5 Regulations, Section 34055(a), and to supply any required  
6 administrative support as may be required by PERB, pursuant to  
7 Government Code Section 3546, subdivisions (c) and (d)(3).

8 F) In the event the collective bargaining agreement is reinstated  
9 pursuant to Government Code Section 3546(d)(2), reestablish  
10 payroll procedures and thereafter implement such reestablished  
11 procedures so that automatic payroll deductions for "fair share  
12 services fees" will again be made from the wages of non-exempt  
13 employees who choose not to be members of a certified employee  
14 organization and again report and remit the withheld fees to the  
15 appropriate certified employee organization.

16 G) Establish and implement procedures to determine which employees  
17 claim a conscientious objection to the withholding of "fair share  
18 services fees" pursuant to Government Code Section 3546.3.

19 H) Establish payroll procedures and thereafter implement such  
20 procedures so that automatic payroll deductions for fair share  
21 services fees will not be made from the wages of those claiming  
22 conscientious objections pursuant to Government Code Section  
23 3546.3.

1           I)    Establish procedures and thereafter implement such procedures to  
2                    verify, at least annually, that payments to nonreligious, nonlabor  
3                    charitable organizations have been made by employees who have  
4                    claimed conscientious objections pursuant to Government Code  
5                    Section 3546.3.

6

7                    ESTIMATED UNFUNDED COST TO IMPLEMENT THE MANDATE

8                    It is estimated that the District will incur more than approximately \$9,300 in  
9                    staffing and other costs each fiscal year to implement these new duties  
10                    mandated by the state for the purpose of implementing this mandate, and for  
11                    which it cannot otherwise obtain reimbursement.

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CERTIFICATION

The foregoing facts are known to me personally and if so required, I could testify to the statements made herein. I hereby declare under penalty of perjury that the foregoing is true and correct except where stated upon information and belief and, where so stated, I declare that I believe them to be true.

EXECUTED this 21 day of June, 2001 in the City of Clovis,  
California.

  
William C. McGuire

ATTACHMENT TO THE DECLARATION OF  
WILLIAM C. McGUIRE  
ASSOCIATE SUPERINTENDENT – BUSINESS SERVICES  
FOR  
TEST CLAIM OF CLOVIS UNIFIED SCHOOL DISTRICT

Chapters 893/2000; 816/1980  
Government Code Sections 3543, 3546 and 3546.3  
Agency Fee Arrangements

**FOR FISCAL YEAR 2000-2001**

<u>Activity</u>	Estimated Cost
In the event of agreement rescission, to supply required support as requested by PERB.	\$1,000
In the event of agreement reinstatement, to supply required support as requested by PERB.	\$1,000
Respond to disputes concerning District's right and/or obligation to withhold fair share service fees.	\$ 400
Establish and maintain payroll records which identify those employees who choose not to be members of union.	\$1,000
Draft, approve and distribute notice to existing employees which explains additional payroll deduction.	\$1,000
Draft, approve and distribute notice to new employees which explains additional payroll deduction.	\$ 500

*(Text continues on next page)*

Establish and implement procedures so that fair share service fees will be made from the wages of non-exempt, non-union, employees. \$1,000

Establish and implement procedures so that fair share service fees will be reported and remitted to employee organization. \$1,000

Establish and implement procedures to identify conscientious objectors so that fair share service fees are not withheld from the wages of conscientious objectors. (See: attached) \$ 900

Establish and implement procedures to verify at least annually that employees claiming to be conscientious objectors have made required payment to charitable organizations. \$1,500

**Totals: \$9,300**

## ATTACHMENT

**Computation** of estimated costs to establish and implement procedures to identify conscientious objectors so that fair share service fees are not withheld from the wages of conscientious objectors:

### Preparation:

Job Description	Hours	Wage Rate	Est. Cost
Associate Superintendent	2	\$80.57	\$161.14
HR Systems Application Specialist	8	\$34.98	\$279.84
Payroll Supervisor	2	\$40.01	\$ 80.02
Subtotal:			\$521.00

### Notification:

Job Description	Hours	Wage Rate	Est. Cost
Associate Superintendent	1.25	\$80.57	\$100.71
HR Systems Application Specialist	1	\$34.98	\$ 34.98
Administrative Secretary	5	\$26.64	\$133.20
Subtotal:			\$268.89

### Implementation:

Job Description	Hours	Wage Rate	Est. Cost
Payroll Supervisor	0.5	\$40.01	\$ 20.01
Payroll Assistant	1.5	\$22.03	\$ 33.05
Mgr. Systems and Programming	1	\$55.86	\$ 55.86
Subtotal:			<u>\$108.92</u>
<b>Grand Total:</b>			<u><b>\$898.81</b></u>

## **EXHIBIT 2**

### **CODE SECTIONS CITED**

**Government Code Section 3543**  
**Government Code Section 3546**  
**Government Code Section 3546.3**

**Exhibit 2**  
**Code Sections Cited**

**§ 3543. Rights of public school employees**

(a) Public school employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. Public school employees \* \* \* who are in a unit for which an exclusive representative \* \* \* has been \* \* \* selected, shall be required, as a condition of continued employment, to join the recognized employee organization or to pay the organization a fair share services fee, as required by Section 3546. If a majority of the members of a bargaining unit rescind that arrangement, either of the following options shall be applicable:

(1) The recognized employee organization may petition for the reinstatement of the arrangement described in subdivision (a) of Section 3546 pursuant to the procedures in paragraph (2) of subdivision (d) of Section 3546.

(2) The employees may negotiate either of the two forms of organizational security described in subdivision (i) of Section 3540.1.

(b) Any employee may at any time present grievances to his or her employer, and have such grievances adjusted, without the intervention of the exclusive representative, as long as the adjustment is reached prior to arbitration pursuant to Sections 3548.5, 3548.6, 3548.7, and 3548.8 and the adjustment is not inconsistent with the terms of a written agreement then in effect; provided that the public school employer shall not agree to a resolution of the grievance until the exclusive representative has received a copy of the grievance and the proposed resolution and has been given the opportunity to file a response.

(Amended by Stats.2000, c. 893 (S.B.1960), § 2.)



Article 7

ORGANIZATIONAL SECURITY

Section

3546. Member of recognized employee organization or payment of fair share service fee; condition of employment.

§ 3546. Member of recognized employee organization or payment of fair share service fee; condition of employment

(a) Notwithstanding any other provisions of law, any public school employee who is in a unit for which an exclusive representative has been selected pursuant to this chapter shall be required, as a condition of continued employment, either to join the recognized employee organization or to pay the organization a fair share service fee. The amount of the fee shall not exceed the dues that are payable by members of the employee organization, and shall cover the cost of negotiation, contract administration, and other activities of the employee organization that are germane to its functions as the exclusive bargaining representative. Upon notification to the employer by the exclusive representative, the amount of the fee shall be deducted by the employer from the wages or salary of the employee and paid to the employee organization.

(b) The costs covered by the fee under this section may include, but shall not necessarily be limited to, the cost of lobbying activities designed to foster collective bargaining negotiations and contract administration, or to secure for the represented employees advantages in wages, hours, and other conditions of employment in addition to those secured through meeting and negotiating with the employer.

(c) The arrangement described in subdivision (a) shall remain in effect unless it is rescinded pursuant to subdivision (d). The employer shall remain neutral, and shall not participate in any election conducted under this section unless required to do so by the board.

(d)(1) The arrangement described in subdivision (a) may be rescinded by a majority vote of all the employees in the negotiating unit subject to that arrangement, if a request for a vote is supported by a petition containing 30 percent of the employees in the negotiating unit, the signatures are obtained in one academic year. There shall not be more than one vote taken during the term of any collective bargaining agreement in effect on or after January 1, 2001.

(2) If the arrangement described in subdivision (a) is rescinded pursuant to paragraph (1), a majority of all employees in the negotiating unit may request that the arrangement be reinstated. That request shall be submitted to the board along with a petition containing the signatures of at least 30 percent of the employees in the negotiating unit. The vote shall be conducted at the worksite by secret ballot, and shall be conducted no sooner than one year after the rescission of the arrangement under this subdivision.

(3) If the board determines that the appropriate number of signatures have been collected, it shall conduct the vote to rescind or reinstate in a manner that it shall prescribe in accordance with this subdivision.

(4) The cost of conducting an election under this subdivision to reinstate the organizational security arrangement shall be borne by the petitioning party and the cost of conducting an election to rescind the arrangement shall be borne by the board.

(Added by Stats.2000, c. 893 (S.B.1960), § 4.)

**§ 3546.3. Religious objections to employee organizations; membership exception; alternative fees**

Notwithstanding subdivision (i) of Section 3540.1, Section 3546, or any other provision of this chapter, any employee who is a member of a religious body whose traditional tenets or teachings include objections to joining or financially supporting employee organizations shall not be required to join, maintain membership in, or financially support any employee organization as a condition of employment; except that such employee may be required, in lieu of a service fee, to pay sums equal to such service fee either to a nonreligious, nonlabor organization, charitable fund exempt from taxation under Section 501(c)(3) of Title 26 of the Internal Revenue Code, chosen by such employee from a list of at least three such funds, designated in the organizational security arrangement, or if the arrangement fails to designate such funds, then to any such fund chosen by the employee. Either the employee organization or the public school employer may require that proof of such payments be made on an annual basis to the public school employer as a condition of continued exemption from the requirement of financial support to the recognized employee organization. If such employee who holds conscientious objections pursuant to this section requests the employee organization to use the grievance procedure or arbitration procedure on the employee's behalf, the employee organization is authorized to charge the employee for the reasonable cost of using such procedure.

(Added by Stats.1980, c. 816, p. 2558, § 1.)

## **EXHIBIT 3**

### **STATUTES CITED**

**Chapter 893, Statutes of 2000**  
**Chapter 816, Statutes of 1980**

**Exhibit 3**  
**Statutes Cited**

**SCHOOL OFFICERS AND EMPLOYEES—  
ORGANIZATIONAL SECURITY**

**CHAPTER 816**

SENATE BILL NO. 2030

An act to add Section 3546.3 to the Government Code, relating to public school employer-employee relations.

**LEGISLATIVE COUNSEL'S DIGEST**

Existing law permits a public school employer and the exclusive representative to agree to an organizational security arrangement that requires an employee, as a condition of continued employment, either to join the employee organization, or to pay the organization a service fee in an amount not to exceed the standard initiation fee, periodic dues, and general assessments of such organization for the duration of the agreement, or a period of 3 years from the effective date of such agreement, whichever comes first.

This bill would, in addition, provide that an employee who is a member of a religious body whose traditional tenets or teachings include objections to supporting employee organizations shall not be required to join, maintain membership in, or financially support any employee organization as a condition of employment. Such employee could be required to pay sums equal to the service fee to a nonreligious, nonlabor organization, charitable fund exempt from federal income tax, pursuant to specified procedures. If such employee requests the employee organization to represent the employee in a grievance or in arbitration, the employee organization could charge the employee for the reasonable costs of such procedure.

*The people of the State of California do enact as follows:*

**SECTION 1.** Section 3546.3 is added to the Government Code, to read: 3546.3.

Notwithstanding subdivision (1) of Section 3540.1, Section 3546, or any other provision of this chapter, any employee who is a member of a religious body whose traditional tenets or teachings include objections to joining or financially supporting employee organizations shall not be required to join, maintain membership in, or financially support any employee organization as a condition of employment; except that such employee may be required, in lieu of a service fee, to pay sums equal to such service fee either to a nonreligious, nonlabor organization, charitable fund exempt from taxation under Section 501(c)(3) of Title 26 of the Internal Revenue Code, chosen by such employee from a list of at least three such funds, designated in the organizational security arrangement, or if the arrangement fails to designate such funds, then to any such fund chosen by the employee. Either the employee organization or the public school employer may require that proof of such payments be made on an annual basis to the public school employer as a condition of continued exemption from the requirement of financial support to the recognized employee organization. If such employee who holds conscientious objections pursuant to this section requests the employee organization to use the grievance procedure or arbitration procedure on the employee's behalf, the employee organization is authorized to charge the employee for the reasonable cost of using such procedure.

Approved and filed July 28, 1980.

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**SCHOOLS AND SCHOOL DISTRICTS—EMPLOYEE  
ORGANIZATIONS—JOIN OR PAY FEES**

**CHAPTER 893**

**S.B. No. 1960**

**AN ACT to amend Sections 3540.1, 3543, and 3583.5 of, and to repeal and add Section 3546 of, the Government Code, relating to public school employees.**

[Filed with Secretary of State September 29, 2000.]

**LEGISLATIVE COUNSEL'S DIGEST**

**SB 1960, Burton.** Public school employee labor relations.

(1) Under existing law, public school employees have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. Pursuant to that existing law, public school employees also may enter into an organizational security arrangement under which they either have the right to refuse to join or participate in the activities of employee organizations or the right to join the recognized employee organization or pay the organization a service fee. Existing law, subject to certain limitations, provides that organizational security is within the scope of representation and defines "organizational security" in accordance with those rights. Existing law provides that an organizational security arrangement, to be effective, must be agreed upon by both parties to the agreement, and authorizes the public employer, when the issue is being negotiated, to require that the organizational security arrangement be severed from the remainder of the proposed agreement and cause that arrangement to be voted upon separately by all members in the appropriate negotiating unit.

This bill would delete those provisions pertaining to the effectiveness of the organizational security arrangement. The bill would instead require public school employees who are in a unit for which an exclusive representative has been selected to be required, as a condition of continued employment, either to join the recognized employee organization or to pay the

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Additions or changes indicated by underline; deletions by asterisks \* \* \*

(g) "Management employee" means any employee in a position having significant responsibilities for formulating district policies or administering district programs. Management positions shall be designated by the public school employer subject to review by the Public Employment Relations Board.

(h) "Meeting and negotiating" means meeting, conferring, negotiating, and discussing by the exclusive representative and the public school employer in a good faith effort to reach agreement on matters within the scope of representation and the execution, if requested by either party, of a written document incorporating any agreements reached, which document shall, when accepted by the exclusive representative and the public school employer, become binding upon both parties and, notwithstanding Section 3543.7, shall not be subject to subdivision 2 of Section 1667 of the Civil Code. The agreement may be for a period of not to exceed three years.

(i) "Organizational security" is within the scope of representation, and means either of the following:

(1) An arrangement pursuant to which a public school employee may decide whether or not to join an employee organization, but which requires him or her, as a condition of continued employment, if he or she does join, to maintain his or her membership in good standing for the duration of the written agreement. However, no such arrangement shall deprive the employee of the right to terminate his or her obligation to the employee organization within a period of 30 days following the expiration of a written agreement.

(2) An arrangement that requires an employee, as a condition of continued employment, either to join the recognized or certified employee organization, or to pay the organization a service fee in an amount not to exceed the standard initiation fee, periodic dues, and general assessments of the organization for the duration of the agreement, or a period of three years from the effective date of the agreement, whichever comes first.

(j) "Public school employee" or "employee" means any person employed by any public school employer except persons elected by popular vote, persons appointed by the Governor of this state, management employees, and confidential employees.

(k) "Public school employer" or "employer" means the governing board of a school district, a school district, a county board of education, a county superintendent of schools, or a charter school that has declared itself a public school employer pursuant to subdivision (b) of Section 47611.5 of the Education Code.

(l) "Recognized organization" or "recognized employee organization" means an employee organization which has been recognized by an employer as the exclusive representative pursuant to Article 5 (commencing with Section 3544).

(m) "Supervisory employee" means any employee, regardless of job description, having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to assign work to and direct them, or to adjust their grievances, or effectively recommend such action, if, in connection with the foregoing functions, the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

SEC. 2. Section 3543 of the Government Code is amended to read:

3543. (a) Public school employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. Public school employees \* \* \* who are in a unit for which an exclusive representative \* \* \* has been \* \* \* selected, shall be required, as a condition of continued employment, to join the recognized employee organization or to pay the organization a fair share services fee, as required by Section 3546. If a majority of the members of a bargaining unit rescind that arrangement, either of the following options shall be applicable:

(1) The recognized employee organization may petition for the reinstatement of the arrangement described in subdivision (a) of Section 3546 pursuant to the procedures in paragraph (2) of subdivision (d) of Section 3546.

(2) The employees may negotiate either of the two forms of organizational security described in subdivision (i) of Section 3540.1.

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Additions or changes indicated by underline; deletions by asterisks \* \* \*

organization a fair share service fee, and would make conforming changes in related provisions.

The bill would establish a procedure for employees to petition for the rescission or reinstatement of this form of arrangement, would provide that the cost of conducting the rescission election would be borne by the Public Employment Relations Board and that the cost of a reinstatement election would be borne by the petitioning party, and would require the election for reinstatement to be conducted at the worksite by secret ballot.

The bill would also provide that if the arrangement is rescinded, employees could choose to negotiate either of the 2 forms of organizational security permitted under existing law. The bill would require the employer to remain neutral in an election to rescind that arrangement and would prohibit the employer from participating in any such election conducted under those provisions unless required to do so by the Public Employee Labor Relations Board. By requiring the employer to participate in the election if required to do so by the board, the bill would impose a state-mandated local program.

(2) Existing law requires employees of the California State University and employees of the University of California, other than faculty of the University of California who are eligible for membership in the Academic Senate, to either join the employee organization or to pay the organization a fair share service fee. Existing law establishes a procedure for employees to petition for rescission or reinstatement of this form of organizational security, and provides that the cost of conducting an election to rescind or reinstate that organizational security arrangement be borne by the petitioning party.

This bill would instead require the Public Employment Relations Board to bear the cost of conducting an election to rescind that arrangement.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

*The people of the State of California do enact as follows:*

SECTION 1. Section 3540.1 of the Government Code is amended to read:

3540.1. As used in this chapter:

(a) "Board" means the Public Employment Relations Board created pursuant to Section 3541.

(b) "Certified organization" or "certified employee organization" means an organization which has been certified by the board as the exclusive representative of the public school employees in an appropriate unit after a proceeding under Article 5 (commencing with Section 3544).

(c) "Confidential employee" means any employee who, in the regular course of his or her duties, has access to, or possesses information relating to, his or her employer's employer-employee relations.

(d) "Employee organization" means any organization which includes employees of a public school employer and which has as one of its primary purposes representing those employees in their relations with that public school employer. "Employee organization" shall also include any person such an organization authorizes to act on its behalf.

(e) "Exclusive representative" means the employee organization recognized or certified as the exclusive negotiating representative of certificated or classified employees in an appropriate unit of a public school employer.

(f) "Impasse" means that the parties to a dispute over matters within the scope of representation have reached a point in meeting and negotiating at which their differences in positions are so substantial or prolonged that future meetings would be futile.

Additions or changes indicated by underline; deletions by asterisks \* \* \*

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(b) Any employee may at any time present grievances to his or her employer, and have such grievances adjusted, without the intervention of the exclusive representative, as long as the adjustment is reached prior to arbitration pursuant to Sections 3548.5, 3548.6, 3548.7, and 3548.8 and the adjustment is not inconsistent with the terms of a written agreement then in effect; provided that the public school employer shall not agree to a resolution of the grievance until the exclusive representative has received a copy of the grievance and the proposed resolution and has been given the opportunity to file a response.

SEC. 3. Section 3546 of the Government Code is repealed.

SEC. 4. Section 3546 is added to the Government Code, to read:

3546. (a) Notwithstanding any other provisions of law, any public school employee who is in a unit for which an exclusive representative has been selected pursuant to this chapter shall be required, as a condition of continued employment, either to join the recognized employee organization or to pay the organization a fair share service fee. The amount of the fee shall not exceed the dues that are payable by members of the employee organization; and shall cover the cost of negotiation, contract administration, and other activities of the employee organization that are germane to its functions as the exclusive bargaining representative. Upon notification to the employer by the exclusive representative, the amount of the fee shall be deducted by the employer from the wages or salary of the employee and paid to the employee organization.

(b) The costs covered by the fee under this section may include, but shall not necessarily be limited to, the cost of lobbying activities designed to foster collective bargaining negotiations and contract administration, or to secure for the represented employees advantages in wages, hours, and other conditions of employment in addition to those secured through meeting and negotiating with the employer.

(c) The arrangement described in subdivision (a) shall remain in effect unless it is rescinded pursuant to subdivision (d). The employer shall remain neutral, and shall not participate in any election conducted under this section unless required to do so by the board.

(d)(1) The arrangement described in subdivision (a) may be rescinded by a majority vote of all the employees in the negotiating unit subject to that arrangement, if a request for a vote is supported by a petition containing 30 percent of the employees in the negotiating unit, the signatures are obtained in one academic year. There shall not be more than one vote taken during the term of any collective bargaining agreement in effect on or after January 1, 2001.

(2) If the arrangement described in subdivision (a) is rescinded pursuant to paragraph (1), a majority of all employees in the negotiating unit may request that the arrangement be reinstated. That request shall be submitted to the board along with a petition containing the signatures of at least 30 percent of the employees in the negotiating unit. The vote shall be conducted at the worksite by secret ballot, and shall be conducted no sooner than one year after the rescission of the arrangement under this subdivision.

(3) If the board determines that the appropriate number of signatures have been collected, it shall conduct the vote to rescind or reinstate in a manner that it shall prescribe in accordance with this subdivision.

(4) The cost of conducting an election under this subdivision to reinstate the organizational security arrangement shall be borne by the petitioning party and the cost of conducting an election to rescind the arrangement shall be borne by the board.

SEC. 5. Section 3583.5 of the Government Code is amended to read:

3583.5. (a)(1) Notwithstanding any other provision of law, any employee of the California State University or the University of California, other than faculty of the University of California who are eligible for membership in the Academic Senate, who is in a unit for which an exclusive representative has been selected pursuant to this chapter, shall be required, as a condition of continued employment, either to join the recognized employee organization or to pay the organization a fair share service fee. The amount of the fee shall not exceed the dues that are payable by members of the employee organization, and shall cover the cost of negotiation, contract administration, and other activities of the employee organization that are germane to its functions as the exclusive bargaining representative. Upon notification to the employer by the exclusive representative, the amount of the fee shall be deducted by the employer from the wages or salary of the employee and paid to the employee organization.

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(2) The costs covered by the fee under this section may include, but shall not necessarily be limited to, the cost of lobbying activities designed to foster collective bargaining negotiations and contract administration, or to secure for the represented employees advantages in wages, hours, and other conditions of employment in addition to those secured through meeting and conferring with the higher education employer.

(b) The organizational security arrangement described in subdivision (a) shall remain in effect unless it is rescinded pursuant to subdivision (c). The higher education employer shall remain neutral, and shall not participate in any election conducted under this section unless required to do so by the board.

(c)(1) The organizational security arrangement described in subdivision (a) may be rescinded by a majority vote of all the employees in the negotiating unit subject to that arrangement, if a request for a vote is supported by a petition containing the signatures of at least 30 percent of the employees in the negotiating unit, the signatures are obtained in one academic year \* \* \*. There shall not be more than one vote taken during the term of any memorandum of understanding in effect on or after January 1, 2000.

(2) If the organizational security arrangement described in subdivision (a) is rescinded pursuant to paragraph (1), a majority of all the employees in the negotiating unit may request that the arrangement be reinstated. That request shall be submitted to the board along with a petition containing the signatures of at least 30 percent of the employees in the negotiating unit. The vote shall be conducted at the worksite by secret ballot, and shall be conducted no sooner than one year after the rescission of the organizational security arrangement under this subdivision.

(3) If the board determines that the appropriate number of signatures have been collected, it shall conduct the vote to rescind or reinstate, in a manner that it shall prescribe in accordance with this subdivision.

(4) The cost of conducting an election under this subdivision to \* \* \* reinstate the organizational security arrangement shall be borne by the petitioning party, and the cost of conducting an election to rescind the arrangement shall be borne by the board.

SEC. 6. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

**EXHIBIT 4**

**COPIES OF TITLE 8  
CODE OF REGULATIONS CITED**

**Section 34030**

**Section 34055**

**Exhibit 4  
Copies of Code of Regulations Cited**

representative was recognized or certified, and the effective date and the expiration date of any current agreement covering employees in the established unit:

(4) A concise statement setting forth support of or opposition to the unit proposed by the request.

NOTE: Authority cited: Section 3541.3(g), Government Code. Reference: Sections 3541.3(a), 3544 and 3544.1(b), Government Code.

#### HISTORY

1. Editorial correction of NOTE filed 9-20-82; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 82, No. 39).
2. Amendment of subsection (a) filed 12-29-88; operative 1-28-89 (Register 89, No. 4).
3. Repealer of subsection (c) filed 1-26-95; operative 2-27-95 (Register 95, No. 4).

## Subchapter 2. Organizational Security Arrangements

### § 34000. Employer Request.

NOTE: Authority cited: Section 3541.3(g), Government Code. Reference: Section 3546, Government Code.

#### HISTORY

1. Amendment filed 6-18-80; effective thirtieth day thereafter (Register 80, No. 25). For prior history, see Registers 76, No. 13 and 76, No. 31.
2. Repealer of chapter 2 (section 32900) and renumbering and amendment of chapter 4 (articles 1-2, sections 34000-34040, not consecutive) to chapter 2 (articles 1-2, sections 34000-34040, not consecutive) filed 9-20-82; effective upon filing pursuant to Government Code section 11346.2(d) (Register 82, No. 39). For prior history, see Registers 78, No. 42; 78, No. 27; and 78, No. 11.
3. Amendment filed 10-10-85; effective thirtieth day thereafter (Register 85, No. 41).
4. Amendment of subsection (a) and NOTE and new subsection (c) filed 6-3-94; operative 7-5-94 (Register 94, No. 22).
5. Repealer of former article 1 (sections 34000-34010), repealer of section and amendment of NOTE filed 1-3-2001 as an emergency; operative 1-1-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-1-2001 or emergency language will be repealed by operation of law on the following day.

### § 34010. Employee Vote.

NOTE: Authority cited: Section 3541.3(g), Government Code. Reference: Section 3546(a), Government Code.

#### HISTORY

1. Amendment of subsection (b) filed 7-10-78 as an emergency; effective upon filing (Register 78, No. 28).
2. Reinstatement of subsection (b) as it existed prior to emergency amendment filed 7-10-78, by operation of Section 11422.1(b), Government Code (Register 79, No. 33).
3. Amendment filed 1-15-80 as an emergency; effective upon filing (Register 80, No. 3). A Certificate of Compliance must be filed within 120 days or emergency language will be repealed on 5-15-80.
4. Certificate of Compliance transmitted to OAH 5-15-80 and filed 5-21-80 (Register 80, No. 21).
5. Amendment filed 6-18-80; effective thirtieth day thereafter (Register 80, No. 25).
6. Amendment filed 9-20-82; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 82, No. 39).
7. Repealer filed 1-3-2001 as an emergency; operative 1-1-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-1-2001 or emergency language will be repealed by operation of law on the following day.

## Article 1. Rescission of Organizational Security Arrangement

### § 34020. Employee Petition.

(a) A group of employees in an established unit may file with the regional office a petition to rescind an existing organizational security arrangement pursuant to Government Code Section 3546(d).

(b) The petition shall be filed utilizing forms provided by the Board and shall be signed by an authorized representative of the group of employees.

(c) Proof that at least 30 percent of the employees in the unit desire a vote to rescind the existing organizational security arrangement shall be filed with the regional office concurrent with the petition. Proof of support shall conform to the requirements of Section 32700(b), (c), (e)(3), (f) and (g).

(d) Service of the petition, excluding the proof of at least 30 percent support, and proof of service pursuant to Section 32140 are required.

NOTE: Authority cited: Section 3541.3(g), Government Code. Reference: Section 3546(d), Government Code.

#### HISTORY

1. Amendment filed 6-18-80; effective thirtieth day thereafter (Register 80, No. 25).
2. Amendment filed 9-20-82; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 82, No. 39).
3. Amendment of subsection (c) filed 4-12-2000; operative 5-12-2000 (Register 2000, No. 15).
4. Renumbering of former article 2 to new article 1 (sections 34020-34040), amendment of subsections (a) and (c) and amendment of NOTE filed 1-3-2001 as an emergency; operative 1-1-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-1-2001 or emergency language will be repealed by operation of law on the following day.

### § 34030. Board Determination Regarding Proof of Support.

(a) Within 20 days following the filing of the petition to rescind an organizational security arrangement, the employer shall file with the regional office an alphabetical list containing the names and job titles or classifications of the persons employed in the unit described in the petition as of the last date of the payroll period immediately preceding the date the petition was filed, unless otherwise directed by the Board.

(b) If after initial determination the proof of support is insufficient, the Board may allow up to 10 days to perfect the proof of support.

(c) Upon completion of the review of the proof of support, the Board shall inform the parties in writing of the determination as to sufficiency or lack thereof regarding the proof of support.

NOTE: Authority cited: Section 3541.3(g), Government Code. Reference: Section 3546(d), Government Code.

#### HISTORY

1. Amendment filed 6-18-80; effective thirtieth day thereafter (Register 80, No. 25).
2. Amendment filed 9-20-82; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 82, No. 39).
3. New subsection (b), subsection relettering and amendment of NOTE filed 1-3-2001 as an emergency; operative 1-1-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-1-2001 or emergency language will be repealed by operation of law on the following day.

### § 34035. Employee Vote.

(a) Provided the rescission petition is timely and properly filed pursuant to this Article 2, and the proof submitted in support of the petition is determined to be adequate pursuant to Section 34030, a rescission election among the employees in the established unit shall be conducted under procedures established by the Board, and in accordance with election procedures described in these regulations.

(b) The organizational security provision shall be rescinded if a majority of the employees in the negotiating unit covered by the provision vote to rescind the provision.

NOTE: Authority cited: Section 3541.3(g), Government Code. Reference: Section 3546(b), Government Code.

#### HISTORY

1. New section filed 6-18-80; effective thirtieth day thereafter (Register 80, No. 25).
2. Amendment filed 9-20-82; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 82, No. 39).

### § 34040. Bar to Rescission.

The Board shall dismiss any petition to rescind the existing organizational security arrangement if the results of a prior election concerning an organizational security arrangement in the same unit were certified by the Board during the term of the written agreement in effect at the time the petition was filed.

NOTE: Authority cited: Section 3541.3(g), Government Code. Reference: Section 3546(d), Government Code.

## HISTORY

1. Amendment filed 6-18-80; effective thirtieth day thereafter (Register 80, No. 25).
2. Editorial correction of NOTE filed 9-20-82; effective upon filing pursuant to Government Code section 11346.2(d) (Register 82, No. 39).
3. Amendment of section and NOTE filed 6-3-94; operative 7-5-94 (Register 94, No. 22).
4. Amendment of section and NOTE filed 1-3-2001 as an emergency; operative 1-1-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-1-2001 or emergency language will be repealed by operation of law on the following day.

## Article 2. Reinstatement of Organizational Security Arrangement

### § 34050. Petition.

(a) The recognized employee organization of an established unit may file with the regional office a petition to reinstate an organizational security provision that was rescinded by employee vote pursuant to Article 1 of this subchapter.

(b) The petition shall be filed utilizing the form titled EERA Fair Share Fee Reinstatement Petition (PERB-2320 (1/01)) and shall be signed by an authorized representative of the employee organization.

(c) Proof that at least 30 percent of the employees in the unit desire to reinstate the organizational security provision shall be filed with the regional office concurrent with the petition. Proof of support shall conform to the requirements of Section 32700(b), (c), (e)(3), (f) and (g).

(d) Service of the petition, excluding the proof of at least 30 percent support, and proof of service pursuant to Section 32140 are required.

NOTE: Authority cited: Section 3541.3(g), Government Code. Reference: Sections 3543(a)(1) and 3546(d), Government Code.

## HISTORY

1. New article 2 (sections 34050-34065) and section filed 1-3-2001 as an emergency; operative 1-1-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-1-2001 or emergency language will be repealed by operation of law on the following day.

### § 34055. Board Determination Regarding Proof of Support.

(a) Within 20 days following the filing of the petition to reinstate an organizational security provision, the employer shall file with the regional office an alphabetical list containing the names and job titles or classifications of the persons employed in the unit described in the petition as of the last date of the payroll period immediately preceding the date the petition was filed, unless otherwise directed by the Board.

(b) If after initial determination the proof of support is insufficient, the Board may allow up to 10 days to perfect the proof of support.

(c) Upon completion of the review of the proof of support, the Board shall inform the parties in writing of the determination as to sufficiency or lack thereof regarding the proof of support.

NOTE: Authority cited: Section 3541.3(g), Government Code. Reference: Sections 3543(a)(1) and 3546(d), Government Code.

## HISTORY

1. New section filed 1-3-2001 as an emergency; operative 1-1-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-1-2001 or emergency language will be repealed by operation of law on the following day.

### § 34060. Employee Vote.

(a) Provided the reinstatement petition is timely and properly filed pursuant to this Article 2, and the proof submitted in support of the petition is determined to be adequate pursuant to Section 34055, an election among the employees in the established unit shall be conducted.

(b) The election shall be conducted in accordance with election procedures described in these regulations.

(c) The organizational security provision shall be reinstated if a majority of all the employees in the negotiating unit covered by the provision vote to reinstate the provision.

NOTE: Authority cited: Section 3541.3(g), Government Code. Reference: Sections 3543(a)(1) and 3546(d), Government Code.

## HISTORY

1. New section filed 1-3-2001 as an emergency; operative 1-1-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-1-2001 or emergency language will be repealed by operation of law on the following day.

### § 34065. Bar to Reinstatement Petition.

The Board shall dismiss any petition to reinstate an organizational security provision if the results of an election concerning the organizational security provision in the same unit were certified by the Board within the 12 months immediately preceding the filing of the petition.

NOTE: Authority cited: Section 3541.3(g), Government Code. Reference: Sections 3543(a)(1) and 3546(d), Government Code.

## HISTORY

1. New section filed 1-3-2001 as an emergency; operative 1-1-2001 (Register 2001, No. 1). A Certificate of Compliance must be transmitted to OAL by 5-1-2001 or emergency language will be repealed by operation of law on the following day.

## Subchapter 6. Impasse Procedures

NOTE: Authority cited: Sections 3513(g); 3541.3(g)(n); 3563(f)(m), Government Code. Reference: Sections 3541.3(g), 3548, Government Code.

## HISTORY

1. New Chapter 6 (Sections 36000-36100, not consecutive) filed 5-10-77 as an emergency; effective upon filing (Register 77, No. 20).
2. New Chapter 6 (Sections 36000-36100, not consecutive) refiled 9-19-77 as an emergency; effective upon filing. Certificate of Compliance included (Register 77, No. 39).
3. Amendment filed 6-18-80; effective thirtieth day thereafter (Register 80, No. 25).
4. Repealer of Chapter 6 (Sections 36000-36095, not consecutive) filed 9-20-82; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 82, No. 39). For prior history, see Register 79, No. 39).

## Subchapter 7. Public Notice Proceedings

NOTE: Authority cited: Sections 3513(g); 3541.3(g)(n); 3563(f)(m), Government Code. Reference: Section 3547, Government Code.

## HISTORY

1. New Chapter 7 (Sections 37000-37100) filed 7-1-77 as an emergency; effective upon filing (Register 77, No. 27).
2. Certificate of Compliance filed 9-19-77 (Register 77, No. 39).
3. Amendment filed 6-18-80; effective thirtieth day thereafter (Register 80, No. 25).
4. Repealer of Chapter 7 (Sections 37000-37100, not consecutive) filed 10-22-82 by OAL pursuant to Government Code Section 11349.7(j); effective thirtieth day thereafter (Register 82, No. 43). For prior history, see Registers 78, Nos. 45, 42 and 27.

## Subchapter 8. Arbitration Procedures

NOTE: Authority cited: Section 3541.3(d), (g), (k), Government Code. Reference: Sections 3548.5 and 3548.6, Government Code.

## HISTORY

1. New Chapter 8 (Sections 38000-38050, not consecutive) filed 12-29-78; effective thirtieth day thereafter (Register 78, No. 52).
2. Repealer of Chapter 8 (Sections 38000-38050, not consecutive) filed 9-20-82; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 82, No. 39). For prior history, see Register 80, No. 25.

## Subchapter 9. Request for Injunctive Relief in Cases of Work Stoppages or Lockouts

NOTE: Authority cited: Sections 3513(g); 3541.3(g)(n); 3563(f)(m), Government Code. Reference: Sections 3541.3(b), (g), (l), (j), (n), 3543.5(e), 3543.6(d), Government Code.

## HISTORY

1. New Chapter 9 (Sections 38100-38120, not consecutive) filed 5-21-79 as an emergency; effective upon filing (Register 79, No. 21). Certificate of Compliance filed 8-28-79 (Register 79, No. 35).
2. Amendment filed 6-18-80; effective thirtieth day thereafter (Register 80, No. 25).
3. Repealer of Chapter 9 (Sections 38100-38120, not consecutive) filed 9-20-82; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 82, No. 39).

[The next page is 1481.]



**COMMISSION ON STATE MANDATES**

980 NINTH STREET, SUITE 300  
SACRAMENTO, CA 95814  
PHONE: (916) 323-3562  
FAX: (916) 445-0278  
E-mail: csmInfo@csm.ca.gov



July 2 2001

Mr. Keith Petersen  
SixTen and Associates  
5252 Balboa Avenue, Suite 807  
San Diego, CA 92117

*And Affected Parties and State Agencies (See Enclosed Mailing List)*

Re: **Agency Fee Arrangements, 00-TC-17**  
Clovis Unified School District, Claimant  
Statutes of 2000, Chapter 893,  
Statutes of 1980, Chapter 816  
Government Code Sections 3543, 3546, and 3546.3

Dear Mr. Petersen:

The Commission on State Mandates determined that the subject test claim submittal is complete. The test claim initiates the process for the Commission to consider whether the provisions listed above impose a reimbursable state-mandated program upon local entities. State agencies and interested parties are receiving a copy of this test claim because they may have an interest in the Commission's determination.

The key issues before the Commission are:

- Do the provisions listed above impose a new program or higher level of service within an existing program upon local entities within the meaning of section 6, article XIII B of the California Constitution and costs mandated by the state pursuant to section 17514 of the Government Code?
- Does Government Code section 17556 preclude the Commission from finding that any of the test claim provisions impose costs mandated by the state?

Mr. Keith Petersen  
July 2, 2001  
Page 2

The Commission requests your participation in the following activities concerning this test claim:

- **Informal Conference.** An informal conference may be scheduled if requested by any interested party. See Title 2, California Code of Regulations, section 1183.04 (the regulations).
- **State Agency Review of Test Claim.** State agencies receiving this letter are requested to analyze the merits of the enclosed test claim and to file written comments on the key issues before the Commission. Alternatively, if a state agency chooses not to respond to this request, please submit a written statement of non-response to the Commission. Requests for extensions of time may be filed in accordance with sections 1183.01 (c) and 1181.1 (g) of the regulations. State agency comments are due 30 days from the date of this letter.
- **Claimant Rebuttal.** The claimant and interested parties may file rebuttals to state agencies' comments under section 1183.02 of the regulations. The rebuttal is due 30 days from the service date of written comments.
- **Hearing and Staff Analysis.** A hearing on the test claim will be set when the record closes. Pursuant to section 1183.07 of the Commission's regulations, at least eight weeks before the hearing is conducted, a draft staff analysis will be issued to parties, interested parties, and interested persons for comment. Comments are due 30 days following receipt of the analysis. Following receipt of any comments, and before the hearing, a final staff analysis will be issued.
- **Mailing Lists.** Under section 1181.2 of the Commission's regulations, the Commission will promulgate a mailing list of parties, interested parties, and interested persons for each test claim and provide the list to those included on the list, and to anyone who requests a copy. Any written material filed on that claim with the Commission shall be simultaneously served on the other parties listed on the claim.
- **Dismissal of Test Claims.** Under section 1183.09 of the Commission's regulations, test claims filed after May 5, 2001, may be dismissed if postponed or placed on inactive status by the claimant for more than one year. Prior to dismissing a test claim, the Commission will provide 150 days notice and opportunity for other parties to take over the claim.

MAILED: Mail List  
FAXED: \_\_\_\_\_  
INITIAL: VS  
DATE: 7/2/01  
CHRON: \_\_\_\_\_  
WORKING BINDER: \_\_\_\_\_

Mr. Keith Petersen

July 2, 2001

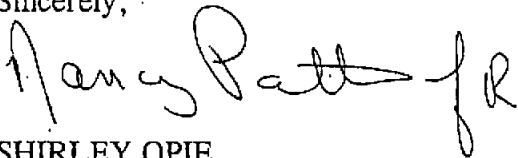
Page 3

If the Commission determines that a reimbursable state mandate exists, the claimant is responsible for submitting proposed parameters and guidelines for reimbursing all eligible local entities. All interested parties and affected state agencies will be given an opportunity to comment on the claimant's proposal before consideration and adoption by the Commission.

Finally, the Commission is required to adopt a statewide cost estimate of the reimbursable state-mandated program within 12 months of receipt of an amended test claim. This deadline may be extended for up to six months upon the request of either the claimant or the Commission.

Please contact Nancy Patton at (916) 323-8217 if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Nancy Patton for". The signature is written in black ink and is positioned above the typed name of the sender.

SHIRLEY OPIE

Assistant Executive Director

Enclosures: Mailing List and Test Claim

f:/mandates/2000/tc/00tc17/completeltr



# Commission on State Mandates

List Date: 06/27/2001

Mailing Information

## Mailing List

**Claim Number** 00-TC-17 **Claimant** Clovis Unified School District

**Subject** Statutes of 2000, Chapter 893, Statutes of 1980, Chapter, Gov. Code Sec. 3543, 3546, and 3546.3

**Issue** Agency Fee Arrangements

Harmeet Barkschat,  
Mandate Resource Services

8254 Heath Peak Place  
Antelope CA 95843

*Tel:* (916) 727-1350

*FAX:* (916) 727-1734

Interested Person

Dr. Carol Berg, Ph. D.,  
Education Mandated Cost Network

1121 L Street Suite 1060  
Sacramento CA 95814

*Tel:* (916) 446-7517

*FAX:* (916) 446-2011

Interested Person

Mr. Glenn Haas, Bureau Chief (B-8)  
State Controller's Office  
Division of Accounting & Reporting

3301 C Street Suite 500  
Sacramento CA 95816

*Tel:* (916) 445-8756

*FAX:* (916) 323-4807

State Agency

Mr. James Lombard, Principal Analyst (A-15)  
Department of Finance

915 L Street  
Sacramento CA 95814

*Tel:* (916) 445-8913

*FAX:* (916) 327-0225

State Agency

Mr. Bill McGuire, Assistant Superintendent  
Clovis Unified School District

1450 Herndon  
Clovis CA 93611-0599

*Tel:* (559) 327-9000

*FAX:* (559) 327-9129

Claimant

**Subject** Statutes of 2000, Chapter 893, Statutes of 1980, Chapter, Gov. Code Sec. 3543, 3546, and 3546.3

**Issue** Agency Fee Arrangements

Mr. Paul Minney,  
Spector, Middleton, Young & Minney, LLP

7 Park Center Drive  
Sacramento Ca 95825

*Tel:* (916) 646-1400  
*FAX:* (916) 646-1300

Interested Person

Mr. Keith B. Petersen, President  
Sixten & Associates

5252 Balboa Avenue Suite 807  
San Diego CA 92117

*Tel:* (858) 514-8605  
*FAX:* (858) 514-8645

Parent Representative

Ms. Sandy Reynolds, President (Interested Person)  
Reynolds Consulting Group, Inc.

P.O. Box 987  
Sun City CA 92586

*Tel:* (909) 672-9964  
*FAX:* (909) 672-9963

Interested Person

Mr. Patrick Ryan,  
California Community Colleges  
Chancellor's Office

1102 Q Street Suite 300  
Sacramento CA 95814-6549

*Tel:* (916) 327-6223  
*FAX:* (916) 322-2798

Mr. Gerry Shelton, (E-8)

Department of Education  
School Business Services

560 J Street Suite 150  
Sacramento CA 95814

*Tel:* (916) 322-1466  
*FAX:* (916) 322-1465

State Agency

Mr. Steve Smith, CEO  
Mandated Cost Systems, Inc.

2275 Watt Avenue Suite C  
Sacramento CA 95825

*Tel:* (916) 487-4435  
*FAX:* (916) 487-9662

Interested Person

**Claim Number**

00-TC-17

**Claimant**

Clovis Unified School District

**Subject**

Statutes of 2000, Chapter 893, Statutes of 1980, Chapter, Gov. Code Sec. 3543, 3546, and 3546.3

**Issue**

Agency Fee Arrangements

Jim Spano,  
State Controller's Office  
Division of Audits (B-8)

300 Capitol Mall, Suite 518 P.O. Box 942850  
Sacramento CA 95814

*Tel:* (916) 323-5849

*FAX:* (916) 324-7223

State Agency

Mr. Bob Thompson, Deputy General Counsel  
Public Employment Relations Board

1031 18th Street  
Sacramento CA 95814-4174

*Tel:* (916) 322-3198

*FAX:* (916) 327-7955

STATE OF CALIFORNIA

**CALIFORNIA COMMUNITY COLLEGES  
CHANCELLOR'S OFFICE**

1102 Q STREET  
SACRAMENTO, CA 95814-6511  
(916) 445-8752  
HTTP://WWW.CCCCO.EDU

**RECEIVED**

July 30, 2001

AUG 06 2001

Ms. Paula Higashi  
Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

**COMMISSION ON  
STATE MANDATES**

Dear Ms. Higashi:

This letter is in reference to the test claim 00-TC-17 for Agency Fee Arrangements, submitted by Clovis Unified School District.

The transmittal letter dated July 2, 2001, from you to Keith B. Petersen refers to questions to be answered by interested state agencies.

- Do the subject statutes, executive orders, standards and procedures result in a new program or a higher level of service within an existing program upon local agencies within the meaning of Government Code, section 17514, and section 6, Article XIII B of the California Constitution? If so, are there associated costs mandated by the state that are reimbursable?
- Do any of the provisions of Government Code, section 17556, preclude the Commission from finding that the provisions of the subject statutes impose a reimbursable state mandated program upon local districts?

In addition, the question has arisen whether the provisions of Government Code, section 3540.1, include a community college district as a "public school employer" subject to the authority of the Public Employment Relations Board.

Upon reviewing the test claim with these three questions in mind, the Chancellor's Office has the following comments.

First, the community college districts are indeed subject to the jurisdiction of the Public Employment Relations Board, as indicated in Notes of Decisions #5 under section 3540.1 in the West's Annotated California Government Code.

Second, we believe that the provisions of Government Code 3540.1 and 3546 and the related implementing regulations in the Code of California Regulations impose a mandate of specific tasks for community college district staff. No funds are appropriated by the state to reimburse community college districts for the costs of those activities.

Third, we believe that none of the provisions of the Government Code, section 17556, apply to community college districts in complying with the mandate.

If you have questions about the Chancellor's Office comments on this test claim, please call Patrick Ryan of my staff at (916) 327-6223.

Sincerely,



Frederick E. Harris, Director  
College Finance and Facilities Planning

Attachment: Proof of Services List

cc: Patrick Lenz  
Ralph Black  
Patrick Ryan

WEST'S ANNOTATED CALIFORNIA CODES  
GOVERNMENT CODE  
TITLE 1. GENERAL  
DIVISION 4. PUBLIC OFFICERS AND EMPLOYEES  
CHAPTER 10.7. MEETING AND NEGOTIATING IN PUBLIC EDUCATIONAL EMPLOYMENT  
ARTICLE 1. GENERAL PROVISIONS

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Current through end of 1999-2000 Reg.Sess.  
and 1st Ex.Sess. and Nov. 7, 2000, election.

§ 3540.1. Definitions

As used in this chapter:

- (a) "Board" means the Public Employment Relations Board created pursuant to Section 3541.
- (b) "Certified organization" or "certified employee organization" means an organization which has been certified by the board as the exclusive representative of the public school employees in an appropriate unit after a proceeding under Article 5 (commencing with Section 3544).
- (c) "Confidential employee" means any employee who, in the regular course of his or her duties, has access to, or possesses information relating to, his or her employer's employer-employee relations.
- (d) "Employee organization" means any organization which includes employees of a public school employer and which has as one of its primary purposes representing those employees in their relations with that public school employer. "Employee organization" shall also include any person such an organization authorizes to act on its behalf.
- (e) "Exclusive representative" means the employee organization recognized or certified as the exclusive negotiating representative of certificated or classified employees in an appropriate unit of a public school employer.
- (f) "Impasse" means that the parties to a dispute over matters within the scope of representation have reached a point in meeting and negotiating at which their differences in positions are so substantial or prolonged that future meetings would be futile.
- (g) "Management employee" means any employee in a position having significant responsibilities for formulating district policies or administering district programs. Management positions shall be designated by the public school employer subject to review by the Public Employment Relations Board.
- (h) "Meeting and negotiating" means meeting, conferring, negotiating, and discussing by the exclusive representative and the public school employer in a good faith effort to reach agreement on matters within the scope of representation and the execution, if requested by either party, of a written document incorporating any agreements reached, which document shall, when accepted by the exclusive representative and the public school employer, become binding upon both parties and, notwithstanding Section 3543.7, shall not be subject to subdivision 2 of Section 1667 of the Civil Code. The agreement may be for a period of not to exceed three years.
- (i) "Organizational security" is within the scope of representation, and means either of the following:
  - (1) An arrangement pursuant to which a public school employee may decide whether or not to join an employee

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organization, but which requires him or her, as a condition of continued employment, if he or she does join, to maintain his or her membership in good standing for the duration of the written agreement. However, no such arrangement shall deprive the employee of the right to terminate his or her obligation to the employee organization within a period of 30 days following the expiration of a written agreement.

(2) An arrangement that requires an employee, as a condition of continued employment, either to join the recognized or certified employee organization, or to pay the organization a service fee in an amount not to exceed the standard initiation fee, periodic dues, and general assessments of the organization for the duration of the agreement, or a period of three years from the effective date of the agreement, whichever comes first.

(j) "Public school employee" or "employee" means any person employed by any public school employer except persons elected by popular vote, persons appointed by the Governor of this state, management employees, and confidential employees.

(k) "Public school employer" or "employer" means the governing board of a school district, a school district, a county board of education, a county superintendent of schools, or a charter school that has declared itself a public school employer pursuant to subdivision (b) of Section 47611.5 of the Education Code.

(l) "Recognized organization" or "recognized employee organization" means an employee organization which has been recognized by an employer as the exclusive representative pursuant to Article 5 (commencing with Section 3544).

(m) "Supervisory employee" means any employee, regardless of job description, having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to assign work to and direct them, or to adjust their grievances, or effectively recommend such action, if, in connection with the foregoing functions, the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

#### CREDIT(S)

##### 1995 Main Volume

(Added by Stats.1975, c. 961, p. 2248, § 2, operative July 1, 1976. Amended by Stats.1977, c. 1159, p. 3761, § 6, operative July 1, 1978; Stats.1985, c. 661, § 2.)

##### 2001 Electronic Update

(Amended by Stats.1999, c. 828 (A.B.631), § 5; Stats.2000, c. 135 (A.B.2539), § 63; Stats.2000, c. 893 (S.B.1960), § 1.)

<General Materials (GM) - References, Annotations, or Tables>

#### HISTORICAL AND STATUTORY NOTES

##### 2001 Electronic Update

##### 1999 Legislation

Section 7 of Stats.1999, c. 828 (A.B.631), provides:

"SEC. 7. Section 5.5 of this bill incorporates amendments to Section 3540.1 of the Government Code proposed by both this bill and AB 91. It shall only become operative if (1) both bills are enacted [A.B.91 was vetoed] and become effective on or before January 1, 2000, (2) each bill amends Section 3540.1 of the Government Code, and

(3) this bill is enacted after AB 91, in which case Section 5 of this bill shall not become operative."

#### 2000 Legislation

Subordination of legislation by Stats.2000, c. 135 (A.B.2539), to other 2000 legislation, see Historical and Statutory Notes under Business and Professions Code § 651.

Section affected by two or more acts at the same session of the legislature, see Government Code § 9605.

#### 1995 Main Volume

Derivation: Educ.C.1959 former § 13081, added by Stats.1965, c. 2041, p. 4661, § 2, amended by Stats.1970, c. 1412, p. 2680 § 3; Stats.1970, c. 1413, p. 2684, § 2.

#### LAW REVIEW AND JOURNAL COMMENTARIES

Agency fees in educational employment. Joseph G. Schumb, Jr., 18 Santa Clara L.Rev. 909 (1978).

California supreme court survey; a review of decisions: December 1982-March 1983. 11 Pepp.L.Rev. 187 (1983).

Public employee legislation. 13 San Diego L.Rev. 931 (1976).

#### LIBRARY REFERENCES

##### 1995 Main Volume

Legal Jurisprudences  
Cal Jur 3d Sch § 366.

Treatises and Practice Aids  
Witkin, Summary (9th ed) Agency §§ 464, 466, 467, 470, 471.

#### NOTES OF DECISIONS

Construction with other laws 1  
Exclusive representative 2  
Meeting and negotiating 3  
Organizational security 4  
Public school employer 5

##### 1. Construction with other laws

Government Code §§ 3540.1, 3543.2, 3543.3, and 3546 controlling union organizational security agreements prevailed over nonmembers' more general rights under § 3543 to refuse to participate in activities of employee organizations. *Cumero v. Public Employment Relations Bd.* (1989) 262 Cal.Rptr. 46, 49 Cal.3d 575, 778 P.2d 174.

Federal authorities including Labor Management

Relations Act were to be considered in construing state statutes, particularly for further guidance in determining what is meant by term "meet and confer in good faith." *Lipow v. Regents of University of California* (App. 1 Dist. 1975) 126 Cal.Rptr. 515, 54 Cal.App.3d 215.

##### 2. Exclusive representative

Negotiating council created by Winton Act for school districts where certificated public school employees are represented by more than one organization was not exclusive bargaining agent for employees. *California Federation of Teachers, AFL-CIO v. Oxnard Elementary Schools* (App. 2 Dist. 1969) 77 Cal.Rptr. 497, 272 Cal.App.2d 514.



### 3. Meeting and negotiating

Public school employer may not act unilaterally with respect to a matter as to which employer is then meeting and conferring with representatives of the employee organizations unless the employer has complied with this section which defines "meet and confer," or a bona fide emergency compels such unilateral action. *San Juan Teachers Ass'n v. San Juan Unified School Dist.* (App. 3 Dist. 1974) 118 Cal.Rptr. 662, 44 Cal.App.3d 232.

All matters relating to the implementation of counseling program, including qualification criteria for, and selection of, the counselors themselves, except as provision prescribing qualifications may be applicable, were necessarily included within inherently broad scope of "all matters relating to employment conditions and employer-employee relations" within provision of Educ.C. § 13085 (repealed) which generally defines the scope of representation and in provision of this section which defines the scope of representation in context of the "meet and confer" process. *San Juan Teachers Ass'n v. San Juan Unified School Dist.* (App. 3 Dist. 1974) 118 Cal.Rptr. 662, 44 Cal.App.3d 232.

### 4. Organizational security

This chapter gave teacher, who was nonmember of union, right to refuse to pay service fee under organizational security agreement for support of union's activities that were beyond scope of union's representational obligations. *Cumero v. Public Employment Relations Bd.* (1989) 262 Cal.Rptr. 46, 49 Cal.3d 575, 778 P.2d 174.

Provision of this section defining "organizational

security" does not prescribe a remedy at all for failure to either join union or to pay it a service fee, let alone the exclusive remedy of termination, and thus union properly filed common-law civil action in small claims court against certificated employees of school district who refused to either join union or pay service fee. *San Lorenzo Educ. Ass'n v. Wilson* (1982) 187 Cal.Rptr. 432, 32 Cal.3d 841, 654 P.2d 202.

### 5. Public school employer

Agent is not included in definition of "employer" under the Educational Employment Relations Act, for purpose of determining whether school district may be held liable for unfair labor practice committed by supervisor. *Inglewood Teachers Assn. v. Public Employment Relations Bd.* (App. 2 Dist. 1991) 278 Cal.Rptr. 228, 227 Cal.App.3d 767.

Community college district was "public school employer" within meaning of this chapter and, thus, Public Employment Relations Board had jurisdiction over dispute between district and public employees union; although district and city were joint employers of classified employees in question and district utilized civil service system, it acted as employer with regard to hiring, firing, discipline, certain fringe benefits and employee supervision. *United Public Employees v. Public Employment Relations Bd.* (App. 1 Dist. 1989) 262 Cal.Rptr. 158, 213 Cal.App.3d 1119, review denied.

West's Ann. Cal. Gov. Code § 3540.1

CA GOVT § 3540.1

END OF DOCUMENT

# Commission on State Mandates

List Date: 06/27/2001

Mailing Information

## Mailing List

Claim Number 00-TC-17 Claimant Clovis Unified School District

Subject Statutes of 2000, Chapter 893, Statutes of 1980, Chapter, Gov. Code Sec. 3543, 3546, and 3546.3

Issue Agency Fee Arrangements

Harnett Barkschat,  
Mandate Resource Services

8254 Heath Peak Place  
Antelope CA 95843

Tel: (916) 727-1350  
FAX: (916) 727-1734

Interested Person

Dr. Carol Berg, Ph. D.,  
Education Mandated Cost Network

1121 L Street Suite 1060  
Sacramento CA 95814

Tel: (916) 446-7517  
FAX: (916) 446-2011

Interested Person

Mr. Glenn Haas, Bureau Chief (B-8)

State Controller's Office  
Division of Accounting & Reporting

3301 C Street Suite 500  
Sacramento CA 95816

Tel: (916) 445-8756  
FAX: (916) 323-4807

State Agency

Mr. James Lombard, Principal Analyst (A-15)

Department of Finance

915 L Street  
Sacramento CA 95814

Tel: (916) 445-8913  
FAX: (916) 327-0225

State Agency

Mr. Bill McGuire, Assistant Superintendent  
Clovis Unified School District

1450 Herndon  
Clovis CA 93611-0599

Tel: (559) 327-9000  
FAX: (559) 327-9129

Claimant

**Subject** Statutes of 2000, Chapter 893, Statutes of 1980, Chapter, Gov. Code Sec. 3543, 3546, and 3546.3

**Issue** Agency Fee Arrangements

Mr. Paul Minney,  
 Spector, Middleton, Young & Minney, LLP

7 Park Center Drive  
 Sacramento Ca 95825

Tel: (916) 646-1400  
 FAX: (916) 646-1300

Interested Person

Mr. Keith B. Petersen, President  
 Sixten & Associates

5252 Balboa Avenue Suite 807  
 San Diego CA 92117

Tel: (858) 514-8605  
 FAX: (858) 514-8645

Claimant Representative

Ms. Sandy Reynolds, President (Interested Person)  
 Reynolds Consulting Group, Inc.

P.O. Box 987  
 Sun City CA 92586

Tel: (909) 672-9964  
 FAX: (909) 672-9963

Interested Person

Mr. Patrick Ryan,  
 California Community Colleges  
 Chancellor's Office

1102 Q Street Suite 300  
 Sacramento CA 95814-6549

Tel: (916) 327-6223  
 FAX: (916) 322-2798

Mr. Gerry Shelton, (E-8)  
 Department of Education  
 School Business Services

560 J Street Suite 150  
 Sacramento CA 95814

Tel: (916) 322-1466  
 FAX: (916) 322-1465

State Agency

Mr. Steve Smith, CEO  
 Mandated Cost Systems, Inc.

2275 Watt Avenue Suite C  
 Sacramento CA 95825

Tel: (916) 487-4435  
 FAX: (916) 487-9662

Interested Person

Subject

Statutes of 2000, Chapter 893, Statutes of 1980, Chapter, Gov. Code Sec. 3543, 3546, and 3546.3

Issue

Agency Fee Arrangements

Jim Spano,  
State Controller's Office  
Division of Audits (B-8)  
300 Capitol Mall, Suite 518 P.O. Box 942850      *Tel:* (916) 323-5849  
Sacramento CA 95814                                      *FAX:* (916) 324-7223  
State Agency

Mr. Bob Thompson, Deputy General Counsel  
Public Employment Relations Board  
  
1031 18th Street                                              *Tel:* (916) 322-3198  
Sacramento CA 95814-4174                              *FAX:* (916) 327-7955



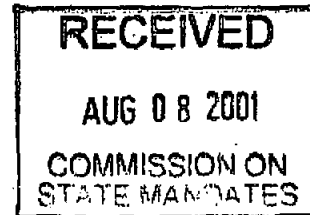


DEPARTMENT OF  
**FINANCE**

GRAY DAVIS, GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

August 3, 2001



Ms. Paula Higashi  
Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

Dear Ms Higashi:

As requested in your letter of July 2, 2001, the Department of Finance (Finance) has reviewed the test claim submitted by the Clovis Unified School District (claimant) asking the Commission to determine whether specified costs incurred under Chapter No. 838, Statutes of 2000, (SB 1960, Burton), are reimbursable state mandated costs (Claim No. 00-TC-17 "Agency Fee Arrangements").

Commencing with page 12 of the test claim, the claimant has identified the following new duties, which it asserts are reimbursable state mandates for school districts, county offices of education and community college districts. Following each of the enumerated duties is Finance's response:

**1. Establish, periodically update and maintain employee payroll records which identify those employees who choose not to be members of a certified employee organization. Pursuant to Government Code Section 3546(a), establish payroll procedures and thereafter implement such procedures so that automatic payroll deductions for "fair share service fees" will be made from the wages of non-exempt employees who choose not to be members of a certified employee organization and to report and remit the withheld fees to the appropriate certified employee organization.**

Prior to the enactment of Chapter 838, Statutes of 2000, Government Code Section 3546 (added by Chapter 961, Statutes of 1975) authorized school districts, county offices of education and community college districts (known as "public school employers"), to negotiate "organizational security arrangements" with the exclusive representatives of public school employees.

Government Code Section 3540.1 defines "organizational security" as either (a) an arrangement pursuant to which an employee may decide whether or not to join an employee organization, but which requires the employee, provided they choose to join an employee organization, to maintain their membership as a condition of continued employment, or (b) an arrangement that requires an employee, as a condition of continued employment, to either join the recognized or certified employee organization, or to pay the organization a fair share service fee that is not to exceed the standard fee charged to members. The same Section defines "exclusive representative" as the employee organization that has the exclusive right to negotiate with a public school employer on behalf of either certificated or classified employees.

Pursuant to Education Code Section 45168 (b), a public school employer had the option, pursuant to either a request submitted by the employee, or to an organizational security arrangement negotiated with an exclusive representative, of deducting, at no charge, a fair share service fee from the paychecks of classified employees, and of then providing the deducted amount to the exclusive representative. Education Code Section 45061 authorized public school employers to deduct, either with or without charge, a fair share service fee from the paychecks of certificated employees pursuant to an organizational security arrangement negotiated between the public school employer and the exclusive representative. Education Code Section 3546.3 stipulates that public school employees shall not be required to join or remit fair share service fee payments to exclusive representatives if doing so is contrary to their religious beliefs, but shall instead be allowed to remit an amount equal to the fair share service fee to either a nonreligious, nonlabor organization, or to a tax-exempt charitable fund.

Consequently, prior to the enactment of Chapter 8, Statutes of 2000, public school employers could both (a) voluntarily deduct, at no charge, fair share service fees from the paychecks of classified employees pursuant to either the employees' individual requests, or to an organizational security arrangement freely negotiated between the public school employer and the exclusive representative, and (b) voluntarily deduct, either with or without charge, fair share service fees from the paychecks of certificated employees pursuant to an organizational security arrangement freely negotiated between the public school employer and the exclusive representative. Moreover, public school employers were required to determine which public school employees who were covered by an organization security arrangement had religious objections to the payment of fair share service fees, and to devise a way to allow those employees to remit an amount equal to the fair share service fee that they would otherwise pay to a qualifying organization.

In this test claim the claimant alleges reimbursable costs associated with the requirement, contained in Section 4 of Chapter 8, Statutes of 2000, that public school employers, upon the request of an exclusive representative of classified or certificated employees, deduct a fair share service fee from the paychecks of all represented employees, and provide the deducted funds to the exclusive representative. This is a departure from previous law, which only required public school employers to deduct fair share service fees from the paychecks of represented classified or certificated employees pursuant to an organization security arrangement freely negotiated between the public school employer and the exclusive representative.

Finance concurs that public school employers may, in certain instances, incur mandated costs through their implementation of the requirements specified in Chapter 8, Statutes of 2000. We believe, however, that certain mandated costs detailed in this test claim are not justified for public school employers that were deducting fair share service fees from the paychecks of classified and/or certificated employees pursuant to an organizational security arrangement that was negotiated between the public school employers and the exclusive representatives prior to the enactment of Chapter 8, Statutes of 2000.

In regard to the specific duties detailed in this portion of the test claim, Finance's position is as follows:

- Public school employers that did not negotiate and implement organizational security arrangements prior to the enactment of Chapter 8, Statutes of 2000, are justified in claiming mandated costs associated with the periodic updating and maintenance of

employee payroll records that identify those employees who choose not to be members of a certified employee organization

Public school employers that did negotiate and implement organizational security arrangements prior to the enactment of Chapter 8, Statutes of 2000, are not justified in claiming mandated costs associated with the updating and maintenance of employee payroll records for the purposes of Chapter 8, Statutes of 2000, during the term of the organizational security arrangement.

Finance's position is based on the fact that public school employers that negotiated and implemented organizational security arrangements prior to the enactment of Chapter 8, Statutes of 2000, would incur costs for record upkeep and maintenance for fair share service fee collection purposes regardless of whether or not that Chapter was implemented. Consequently, it is not appropriate to reimburse them for costs that they would have already incurred through actions of their own choosing.

- Public school employers are justified in claiming mandated costs associated with the establishment of payroll procedures to automatically deduct fair share service fees from the paychecks of represented employees. However, these costs are only justified if the public school employer and the exclusive representative(s) had not, before the enactment of Chapter 8, Statutes of 2000, negotiated organizational security arrangements that required the public school employer to withhold fair share service fee payments from the paychecks of their employees, and to then provide those payments to the exclusive representative(s).

If an organizational security arrangement was negotiated before the enactment of Chapter 8, Statutes of 2000, the public school employer would presumably have already established payroll procedures to automatically deduct fair share service fees from the paychecks of their employees. Consequently, Finance does not believe those employers should be reimbursed for costs they voluntarily incurred.

- Public school employers that did not negotiate and implement organizational security arrangements prior to the enactment of Chapter 8, Statutes of 2000, are justified in claiming mandated costs associated with the reporting and remittance of withheld fair share service fees to exclusive representatives.

Public school employers that did negotiate and implement organizational security arrangements prior to the enactment of Chapter 8, Statutes of 2000, are not justified in claiming mandated costs associated with the reporting and remittance of withheld fair share fees during the term of the organizational security arrangement.

Finance's position is based on the fact that public school employers that negotiated and implemented organizational security arrangements prior to the enactment of Chapter 8, Statutes of 2000, would incur costs for the reporting and remittance of fair share fees to the exclusive representatives regardless of whether or not that Chapter was implemented. Consequently, it is not appropriate to reimburse them for costs that they would have already incurred through actions of their own choosing.



**2. Draft, approve and distribute an appropriate and neutral notice to existing non-member employees and new employees, which explains the additional payroll deduction for "fair share services fees" for non-member employees of a certified employee organization.**

Title 8, California Code of Regulations, Section 32992 requires the exclusive representative of public school employees who are required to pay fair share service fees to notify those employees, in writing, of the amount of the fee, the basis for the fee calculation and the procedure for appealing all or any part of the fee.

As the exclusive representatives are required to provide employees with written notification regarding the payment of fair share fees, Finance does not believe that public school employers are justified in claiming mandated costs associated with the draft, approval and distribution of neutral notices to either existing non-member employees or new employees regarding the deduction of fair share service fees. In addition, Finance is aware of no legal requirement that public school employers provide such information to their employees.

**3. In the event a petition to rescind the collective bargaining agreement is filed pursuant to Government Code Section 3546 (d) (1), within 20 days of the filing of the petition, to file with the regional office of the Public Employees Relations Board (PERB) an alphabetical list containing the names and job titles or classifications of the persons employed in the unit as of the last date of the payroll period immediately preceding the date the petition was filed pursuant to Title 8, California Code of Regulations, Section 34030 (a), and to supply any other required administrative support as required by PERB, pursuant to Government Code Section 3546, subdivision (c) and (d) (3).**

Public school employers that did not negotiate and implement organizational security arrangements prior to the enactment of Chapter 8, Statutes of 2000, would be justified in claiming mandated costs in the event they are ever required to (a) provide the PERB an alphabetical list with impacted employee names and job classifications pursuant to the filing of a petition to rescind a fair share service fee, or (b) supply any other administrative support required by the PERB.

However, public school employers are not justified in claiming mandated costs associated with providing the PERB an alphabetical list with impacted employee names and job classifications, or any other administrative support, pursuant to the filing of a petition to rescind a fair share service fee resulting from an organizational security arrangement that was negotiated and implemented prior to the enactment of Chapter 8, Statutes of 2000.

Finance's position is based on the fact that public school employers that negotiated and implemented organizational security arrangements prior to the enactment of Chapter 8, Statutes of 2000, would, regardless of the requirements of that Chapter, incur costs associated with providing the required information and services to the PERB if a petition to eliminate fair share service fees were filed. Consequently, it would not be appropriate to reimburse them for costs they would incur through actions of their own choosing.

**4. In the event the collective bargaining agreement is rescinded pursuant to Government Code Section 3546 (d) (1), establish new payroll procedures and thereafter implement such procedures so that automatic payroll deductions for "fair share service fees" are no longer made from the wages of a certified employee organization and to no longer report and remit fees to the appropriate certified employee organization.**

Public school employers that did not negotiate and implement organizational security arrangements prior to the enactment of Chapter 8, Statutes of 2000, would be justified in claiming mandated costs in the event they are ever required to establish and implement procedures to stop the automatic deduction of fair share service fees from the paychecks of employees whose exclusive representative voted to end the collection of those fees.

However, if a public school employer negotiated and implemented an organizational security arrangement prior to the enactment of Chapter 8, Statutes of 2000, it is not justified in claiming mandated costs in the event it is required to establish and implement procedures to stop the automatic deduction of fair share service fees from the paychecks of employees whose exclusive representative voted to end the collection of those fees.

Finance does not believe, however, that the aforementioned public school employer would be justified in claiming mandated costs for the *establishment* of procedures to stop the automatic deduction of fair share service fees from the paychecks of employees whose exclusive representative votes to end the collection of those fees. This is based on the fact that public school employers that negotiated and implemented organizational security arrangements prior to the enactment of Chapter 8, Statutes of 2000, would presumably have established procedures to use in the event that it ever became necessary for them to terminate the collection of fair share service fees from the paychecks of their employees. We consequently do not believe it appropriate to reimburse these entities for costs they previously incurred.

**5. In the event a petition to reinstate the collective bargaining agreement is filed pursuant to Government Code Section 3546 (d) (2), within 20 days of the filing of the petition, to file with the regional office of PERB an alphabetical list containing the names and job titles or classifications of the persons employed in the unit as of the last date of the payroll period immediately preceding the date the petition was filed pursuant to Title 8, California Code of Regulations, Section 34055 (a), and to supply any required administrative support as may be required by PERB, pursuant to Government Code Section 3546, subdivisions (c) and (d)(3).**

Public school employers that did not negotiate and implement organizational security arrangements prior to the enactment of Chapter 8, Statutes of 2000, would be justified in claiming mandated costs in the event they are ever required to (a) provide the PERB an alphabetical list with impacted employee names and job classifications pursuant to the filing of a petition to reinstate a fair share service fee, or (b) supply any other administrative support required by the PERB.

However, public school employers are not justified in claiming mandated costs associated with providing the PERB an alphabetical list with impacted employee names and job classifications, or any other administrative support, pursuant to the filing of a petition to reinstate a fair share service fee resulting from an organizational security arrangement that was negotiated and implemented prior to the enactment of Chapter 8, Statutes of 2000.

Finance's position is based on the fact that public school employers that negotiated and implemented organizational security arrangements prior to the enactment of Chapter 8, Statutes of 2000, would, regardless of the requirements of that Chapter, incur costs associated with providing the required information and services to the PERB if a petition to reinstate fair share service fees were filed. Consequently, it would not be appropriate to reimburse them for costs they would incur through actions of their own choosing.

**6. In the event the collective bargaining agreement is reinstated pursuant to Government Code Section 3546 (d) (2), reestablish payroll procedures and thereafter implement such reestablished procedures so that automatic payroll deductions for "fair share services fees" will again be made from the wages of non-exempt employees who choose not to be members of a certified employee organization and again report and remit the withheld fees to the appropriate certified employee organization.**

Public school employers that did not negotiate and implement organizational security arrangements prior to the enactment of Chapter 8, Statutes of 2000, would be justified in claiming mandated costs in the event they are ever required to establish and implement procedures to reinstate the automatic deduction of fair share service fees from the paychecks of employees whose exclusive representative voted to end the collection of those fees.

However, if a public school employer negotiated and implemented an organizational security arrangement prior to the enactment of Chapter 8, Statutes of 2000, it is not justified in claiming mandated costs in the event it is required to establish and implement procedures to reinstate the automatic deduction of fair share service fees from the paychecks of employees whose exclusive representative voted to end the collection of those fees.

Finance does not believe, however, that the aforementioned public school employer would be justified in claiming mandated costs for the *establishment* of procedures to reinstate the automatic deduction of fair share service fees from the paychecks of employees whose exclusive representative votes to end the collection of those fees. This is based on the fact that public school employers that negotiated and implemented organizational security arrangements prior to the enactment of Chapter 8, Statutes of 2000, would presumably have established procedures for the collection of fair share service fees from the paychecks of their employees. We consequently do not believe it appropriate to reimburse these entities for costs they previously incurred.

**7. Establish and implement procedures to determine which employees claim a conscientious objection to the withholding of "fair share services fees" pursuant to Government Code Section 3546.3.**

Public school employers that did not negotiate and implement organizational security arrangements prior to the enactment of Chapter 8, Statutes of 2000, would be justified in claiming mandated costs associated with the establishment and implementation of procedures to determine which employees claim a conscientious objection to the withholding of fair share service fees from their paychecks. However, if a public school employer negotiated and implemented an organizational security arrangement prior to the enactment of Chapter 8, Statutes of 2000, it is not justified in claiming mandated costs associated with establishing and implementing the aforementioned procedures.

Prior to the enactment of Chapter 8, Statutes of 2000, Education Code Section 3546.3 stipulated that public school employees are not required to join or remit fair share service fee payments to exclusive representatives if doing so is contrary to their religious beliefs. This Section stipulated that such employees would instead be allowed to remit an amount equal to the fair share service fee to either a nonreligious, nonlabor organization, or to a tax-exempt charitable fund.

If a public school employer were withholding fair share service fees from the paychecks of employees prior to the enactment of Chapter 8, Statutes of 2000, it would presumably have established and implemented procedures to determine which employees claim a conscientious objection to the withholding of fair share service fees for the purpose of complying with Education Code Section 3546.3. Finance consequently does not believe it appropriate to reimburse these entities for costs they previously incurred.

**8. Establish payroll procedures and thereafter implement such procedures so that automatic payroll deductions for fair share services fees will not be made from the wages of those claiming conscientious objections pursuant to Government Code Section 3546.3.**

Public school employers that did not negotiate and implement organizational security arrangements prior to the enactment of Chapter 8, Statutes of 2000, would be justified in claiming mandated costs associated with the establishment and implementation of payroll procedures to ensure that fair share service fees are not deducted from the paychecks of employees who claim a conscientious objection to the withholding of such fees.

Public school employers that did negotiate and implement organizational security arrangements prior to the enactment of Chapter 8, Statutes of 2000, would at no time be justified in claiming mandated costs associated with *establishing* payroll procedures to ensure that fair share service fees are not deducted from the paychecks of employees who claim a conscientious objection to the withholding of such fees. This is because these employers would presumably have already established such procedures in order to comply with Education Code Section 3546.3.

However, the aforementioned public school employers would be justified in claiming mandated costs associated with the *implementation* of payroll procedures to ensure that fair share service fees are not deducted from the paychecks of employees who claim a conscientious objection to the withholding of such fees.

Our position is based on the fact that a public school employer that negotiated and implemented organizational security arrangement(s) prior to the enactment of Chapter 8, Statutes of 2000, voluntarily placed itself in a position to incur costs associated with the implementation of payroll procedures to ensure that fair share service fees are not deducted from the paychecks of employees who claim a conscientious objection to the withholding of such fees. Consequently, these employers should not be reimbursed for the associated costs.

**9. Establish procedures and thereafter implement such procedures to verify, at least annually, that payments to nonreligious, nonlabor charitable organizations have been made by employees who have claimed conscientious objections pursuant to Government Code Section 3546.3.**

Public school employers that did not negotiate and implement organizational security arrangements prior to the enactment of Chapter 8, Statutes of 2000, would be justified in claiming mandated costs associated with the establishment and implementation of procedures to verify that employees who claim a conscientious objection to the withholding of fair share service fees from their paychecks are making the payments required by Education Code Section 3546.3.

Public school employers that did negotiate and implement organizational security arrangements prior to the enactment of Chapter 8, Statutes of 2000, would at no time be justified in claiming

mandated costs associated with *establishing* procedures to verify that employees who claim a conscientious objection to the withholding of fair share service fees from their paychecks are making the payments required by Education Code Section 3546.3. This is because these employers would presumably have already established such procedures in order to comply with Education Code Section 3546.3.

However, the aforementioned public school employers would be justified in claiming mandated costs associated with the *implementation* of payroll procedures to ensure that fair share service fees are not deducted from the paychecks of employees who claim a conscientious objection to the withholding of such fees.

Our position is based on the fact that a public school employer that negotiated and implemented organizational security arrangement(s) prior to the enactment of Chapter 8, Statutes of 2000, voluntarily placed itself in a position to incur costs associated with the implementation of payroll procedures to ensure that fair share service fees are not deducted from the paychecks of employees who claim a conscientious objection to the withholding of such fees. Consequently, these employers should not be reimbursed for the associated costs.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your July 2, 2001, letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Mike Wilkening, Principal Program Budget Analyst at (916) 445-0328 or Jim Lombard, state mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,



Kathryn Radtkey-Gaither  
Program Budget Manager

Attachment

Attachment A

DECLARATION OF  
DEPARTMENT OF FINANCE  
CLAIM NO. 00-TC-17

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.
2. We concur that the Chapter No. 838, Statutes of 2000, (SB 1960, Burton) sections relevant to this claim are accurately quoted in the test claim submitted by claimants and, therefore, we do not restate them in this declaration.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

*August 3, 2001*

at Sacramento, CA

*Michael Wilkening*

Mike Wilkening

PROOF OF SERVICE

Test Claim Name: "Agency Fee Arrangements"  
Test Claim Number: 00-TC-17

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 7<sup>th</sup> Floor, Sacramento, CA 95814.

On August 3, 2001, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 7<sup>th</sup> Floor, for Interagency Mail Service, addressed as follows:

A-16  
Ms. Paula Higashi, Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

G-01  
Mr. Patrick Ryan  
California Community Colleges  
Chancellor's Office  
1102 Q Street, Suite 300  
Sacramento, CA 95814

B-29  
Legislative Analyst's Office  
Attention Marianne O'Malley  
925 L Street, Suite 1000  
Sacramento, CA 95814

Spector, Middleton, Young & Minney, LLP  
Attention: Paul Minney  
7 Park Center Drive  
Sacramento, CA 95825

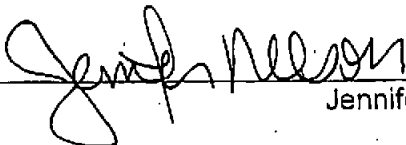
Sixten & Associates  
Attention: Keith Petersen  
5252 Balboa Avenue, Suite 807  
San Diego, CA 92117

E-8  
Department of Education  
School Business Services  
Attention: Gerry Shelton  
560 J Street, Suite 150  
Sacramento, CA 95814

Mandated Cost Systems, Inc.  
Attention: Steve Smith  
2275 Watt Avenue, Suite C  
Sacramento, CA 95825

Reynolds Consulting Group, Inc.  
Attention: Sandy Reynolds  
PO Box 987  
Sun City, CA 92586

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on August 3, 2001 at Sacramento, California.

  
\_\_\_\_\_  
Jennifer Nelson

# SixTen and Associates

## Mandate Reimbursement Services

KEITH B. PETERSEN, MPA, JD, President  
5252 Balboa Avenue, Suite 807  
San Diego, CA 92117

Telephone: (858) 514-8605  
Fax: (858) 514-8645  
E-Mail: Kbpsixten@aol.com

September 10, 2001

**RECEIVED**

SEP 12 2001

**COMMISSION ON  
STATE MANDATES**

Paula Higashi, Executive Director  
Commission on State Mandates  
U.S. Bank Plaza Building  
980 Ninth Street, Suite 300  
Sacramento, California 95814

re: Test Claim 00-TC-17  
Clovis Unified School District  
Chapter 893, Statutes of 2000  
Chapter 816, Statutes of 1980  
Government Code Sections 3543, 3546, 3546.3  
Agency Fee Arrangements

Dear Ms. Higashi:

I have received the response of the Department of Finance dated August 3, 2001 and the response of the California Community Colleges Chancellor's Office dated July 30, 2001 to which I now respond on behalf of the test claimant.

The Department of Finance's position is that the test claim legislation does, in fact, result in a new program or a higher level of service but that, somehow, the new legislation only applies to school districts that had not entered into an organizational security arrangement prior to January 1, 2001, the effective date of the test claim legislation. The position of the Chancellor's Office of the California Community Colleges is that the test claim legislation and the implementing regulations in the California Code of Regulations impose a mandate of specific tasks for community college district staff and no funds have been appropriated by the state to reimburse the colleges for the costs of those activities.

1. **The Comments of the DOF are Incompetent and Should Be Stricken**

Test claimant objects to the response of the Department of Finance ("DOF") dated August 3, 2001, in total, as being incompetent and ask that they be stricken from the record. Title 2, California Code of Regulations, Section 1183.02(d) requires that any:

"...written response, opposition, or recommendations and supporting documentation shall be signed at the end of the document, under penalty of perjury by an authorized representative



of the state agency, with the declaration that it is true and complete to the best of the representative's personal knowledge or information and belief<sup>1</sup>.

The DOF response does not comply with this essential requirement.

**2. When the Organizational Security Arrangement is Established is Irrelevant**

The primary thrust of DOF's response is that although Chapter 893, Statutes of 2000, imposes new reimbursable duties on those public school employers which had not negotiated organizational security arrangements prior to the enactment of the test claim legislation, those which had negotiated such an arrangement containing an obligation to pay fair share service fees<sup>1</sup> prior to the enactment of the test claim legislation would not be entitled to reimbursement:

Subdivision (a) of new Government Code Section 3546 provides that, notwithstanding any other provisions of law, any public school employee "*who is in a unit for which an exclusive representative has been selected*" shall be required to either join the recognized employee organization or pay the organization a "fair share service fee". The use of the italicized language, i.e. "*who is in a unit for which an exclusive representative has been selected*" proves that the legislature intended the new requirements to apply both to employees already in a labor organization and to any employees affected by new representation agreements.

Therefore, the primary argument of DOF that the test claim legislation does not apply to organizational security agreements entered into prior to the enactment of the test claim legislation is clearly erroneous. The threshold test is whether there is a unit for which an exclusive representative has been selected. The date and, indeed, the existence of any organizational security agreement is irrelevant.

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<sup>1</sup> DOF mistakenly refers to all fees withheld as "fair share service fees". Prior to the test claim legislation, the fees withheld were referred to only as "service fees". Government Code Section 3540.1(1)(2) The test claim legislation, when making the withholding of fees mandatory, refers to the mandatory fees as "fair share service fees". Government Code Sections 3543, 3546 Therefore, by statutory usage, "service fees" are the fees withheld pursuant to the voluntary provisions of Section 3540.1 and "fair share service fees" are those required by Government Code Sections 3543 and 3546.

**3. The Mandate is Triggered by the Unilateral Action of the Union**

After subdivision (a) of new Government Code Section 3546 provides that it applies to a unit for which an exclusive representative has been selected, it goes on to provide that the "fair share service fee" shall be deducted from the wages or salary of the employee and paid to the employee organization "*upon notification to the employer by the exclusive representative*". Therefore, the obligation to withhold and pay is no longer subject to any agreement freely negotiated between the public school employer and the exclusive representative. The test claim legislation makes it mandatory. Upon notification by the exclusive representative, the public school employer is required to withhold the "fair share service fees".

**4. The Test Claim Legislation Creates a New Mandated Duty**

The DOF "believes" that previous payroll deduction requirements preclude reimbursement of new duties:

Finance concurs that public school employers may, in certain instances, incur mandated costs through their implementation of the requirements specified in Chapter 8 (sic), Statutes of 2000. We believe, however, that certain mandated costs detailed in this test claim are not justified for public school employers that were deducting fair share service fees (sic) from the paychecks of classified and/or certificated employees pursuant to an organizational security arrangement that was negotiated between the public school employers and the exclusive representatives prior to the enactment of Chapter 8 (sic), Statutes of 2000." Department of Finance Response, Page 2

Prior to the test claim legislation, Section 45061 of the Education Code<sup>2</sup> required the

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<sup>2</sup> Education Code Section 45061, added by Chapter 1148, Statutes of 1982, Section 2:

"The governing board of each school district when drawing an order for the salary or wage payment due to a certificated employee of the district shall, with or without charge, reduce the order for the payment of service fees to the certified or recognized organization as required by an organizational security arrangement between the exclusive representative and a public school employer as provided under Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code. However, the organizational security arrangement shall provide that any employee may

governing board of each school district to deduct "service fees" from the wages of a certificated employee and paid to the certified or recognized organization as required by a negotiated security arrangement. However, the organizational security arrangement was required to also provide that any employee may pay his or her service fees directly to the certified or employee organization in lieu of having such service fees deducted from his or her salary or wages. Therefore, as to certificated employees, the employee could opt to by-pass the agreement and the employer would not be required to deduct the service fee thereafter.

Prior to the test claim legislation, Section 45168 of the Education Code<sup>3</sup> authorized

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pay service fees directly to the certified or recognized employee organization in lieu of having such service fees deducted from the salary or wage order.

If the employees of a district do not authorize the board to make a deduction to pay their pro rata share of the costs of making deductions for the payment of service fees to the certificated or recognized organization, the board shall deduct from the amount transmitted to the organization on whose account the payments were deducted the actual costs, if any, of making the deduction. No charge shall exceed the actual cost to the district of the deduction. These actual costs shall be determined by the board and shall include startup and ongoing costs."

<sup>3</sup> Education Code Section 45168 (former Education Code Section 13604.2 added by Chapter 1360, Statutes of 1974, Section 1, recodified and renumbered by Chapter 1010, Statutes of 1976, Section 2), as amended by Chapter 1175, Statutes of 1980, Section 1.5:

"(a) Except as provided in subdivision (b), the governing board of each school district when drawing an order for the salary or wage payment due to a classified employee of the district may, without charge, reduce the order by the amount which it has been requested in a revocable written authorization by the employee to deduct for the payment of dues in, or for any other service provided by, any bona fide organization, of which he is a member, whose membership consists, in whole or in part, of employees of such district, and which has as one of its objectives improvements in the terms or conditions of employment for the advancement of the welfare of such employees.

The revocable written authorization shall remain in effect until expressly revoked in writing by the employee. Whenever there is an increase in the amount required for such payment to the organization, the employee organization shall provide the employee with adequate and necessary data on such increase at a time sufficiently prior to the effective date of the increase to allow the employee an opportunity to revoke the written authorization, if desired. The employee organization shall provide the public school

the governing board of each school district to deduct service fees from the wages of a classified employee and paid to the certified or recognized organization as required by a negotiated organizational security arrangement. However, the organizational security arrangement was required to also provide that any employee may pay his or her service fees directly to the certified or employee organization in lieu of having such service fees deducted from his or her salary or wages. Therefore, as to classified employees, with withholding of "service fees" was discretionary and, when implemented, the employee could opt to by-pass the agreement and the employer would not be required to deduct the service fee thereafter.

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employer with notification of the increase at a time sufficiently prior to the effective date of the increase to allow the employer an opportunity to make the necessary changes and with a copy of the notification of the increase which has been sent to all concerned employees.

Upon receipt of a properly signed authorization for payroll deductions by a classified employee pursuant to this section, the governing board shall reduce such employee's pay warrant by the designated amount in the next pay period following the closing date for receipt of changes in pay warrants.

The governing board shall, on the same designated date of each month, draw its order upon the funds of the district in favor of the organization designated by the employee for an amount equal to the total of the respective deductions made with respect to such organization during the pay period.

The governing board shall not require the completion of a new deduction authorization when a dues increase has been effected or at any other time without the express approval of the concerned employee organization.

(b) The governing board of each school district when drawing an order for the salary or wage payment due to a classified employee of the district may, without charge, reduce the order for the payment of dues to, or for any other service provided by, the certified or recognized organization of which the classified employee is a member, or for the payment of service fees to the certified or recognized organization as required by an organizational security arrangement between the exclusive representative and a public school employer as provided under Chapter 10.7 (commencing with Section 3540) Division 4 of Title 1 of the Government Code. However, the organizational security arrangement shall provide that any employee may pay service fees directly to the certified or recognized employee organization in lieu of having such service fees deducted from the salary or wage order.

(c) This section shall apply to districts that have adopted the merit system in the same manner and effect as if it were a part of Article 6 (commencing with Section 45240) of this chapter."

The test claim legislation, at Government Code Section 3546(a), provides that, upon notification to the district by the exclusive representative, the amount of the "fair share service fee" shall be deducted from the employee's wages and paid to the employee organization. The employee no longer has the option to pay the "fair share service fee" directly to the employee organization. The test claim legislation therefore creates a new mandated duty for the employer, upon notification, to withhold the "fair share service fee" from the employee's wages.

## 5. Petitions to Rescind or Reinstate Security Agreements

### A. Petitions to Rescind

Test Claimant seeks reimbursement for activities "(I)n the event a petition to rescind the collective bargaining agreement is filed pursuant to Government Code Section 3546(d).<sup>4</sup> Again, DOF argues that public school employers are not justified in claiming costs pursuant to the filing of a petition to rescind a "fair share service fee" (sic) resulting from an organizational security arrangement that was negotiated and implemented prior to the enactment of the test claim legislation. The DOF's argument is irrelevant.

Subdivision (d)(1) of Government Code Section 3546 allows a majority of the employees to rescind the arrangement described in subdivision (a). As stated in issue 2 (supra), the arrangements in subdivision (a) apply to every represented unit, regardless of when the agreement was made, or if any agreement existed.

The additional mandated duties upon such a rescission are found in Title 8, California Code of Regulations, Sections 34020 through 34040. Subsection (a) of Section 34020<sup>5</sup> makes its clear that the rescission regulated is one of an existing organization security arrangement pursuant to Government Code Section 3546(d). California Code of Regulations section 34030(a) then requires the employer to file with the regional office an alphabetical list containing the names and job titles or classifications of the persons employed in the unit described in the petition as of the last date of the payroll period

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<sup>4</sup> Test Claim, page 13, lines 1 through 18, paragraphs C) and D).

<sup>5</sup> Title 8, California Code of Regulations section 34020(a), as amended to be effective January 1, 2001:

"A group of employees in an established unit may file with the regional office a petition to rescind an existing organizational security arrangement pursuant to Government Code Section 3546(d)."

immediately preceding the date the petition was filed, unless otherwise directed by the Board.

Therefore, when a school district's employees file a petition to rescind an organizational security arrangement, the district is entitled to seek reimbursement for the mandated duties which result from the filing of the petition.

B. Petitions to Reinstate

Test Claimant seeks reimbursement for activities "(I)n the event a petition to reinstate a collective bargaining agreement is filed pursuant to Government Code Section 3546(d).<sup>6</sup> Again, DOF argues that public school employers are not justified in claiming costs pursuant to the filing of a petition to reinstate an organizational security arrangement containing a "fair share service fee" (sic) that was negotiated and implemented prior to the enactment of the test claim legislation. The DOF's argument is irrelevant.

There are two separate methods of filing a petition for reinstatement. The recognized employee organization (presumably, the unit leadership) may do so under Government Code Section 3543(a)(1), or a majority of all employees (presumably, the unit "rank and file") may do so under Government Code Section 3546(d)(2). Both methods refer to the reinstatement of an arrangement described in subdivision (a) of Section 3546. As stated in issue 2 (supra), the arrangements in subdivision (a) apply to agreements made both before and after the enactment of the test claim legislation.

The additional mandated duties upon such a reinstatement are found in Title 8, California Code of Regulations, Sections 34050 through 34065. Subsection (a) of Section 34050<sup>7</sup> makes its clear that the reinstatement by the recognized employee organization is limited to one rescinded pursuant to Article 1 (sections 34020 through 34040), i.e., an arrangement pursuant to Government Code Section 3546(d). Subdivision (d) of Government Code Section 3546 makes it clear that the reinstatement petition by the employees in the negotiating unit (or by the recognized employee organization by way of Section 34050) is limited to reinstatements of arrangements

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<sup>6</sup> Test Claim, page 13, line 19 through page 14, line 13, paragraphs E and F.

<sup>7</sup> Title 8, California Code of Regulations, Section 34050(a):

"(a) The recognized employee organization of an established unit may file with the regional office a petition to reinstate an organizational security provision that was rescinded by employee vote pursuant to Article 1 of this subchapter."

described in Subdivision (a).

California Code of Regulations section 34055 then requires the employer to file with the regional office an alphabetical list containing the names and job titles or classifications of the persons employed in the unit described in the petition as of the last date of the payroll period immediately preceding the date the petition was filed, unless otherwise directed by the Board.

Therefore, when a recognized employee organization or a majority of employees in a negotiating unit of a school district file a petition to reinstate an organizational security arrangement, the district is entitled to seek reimbursement for the mandated duties which result from the filing of the petition.

**6. Costs to Process Conscientious Objections Are Reimbursable**

Test claimant seeks reimbursement for activities related to the determination of which employees claim a conscientious objection, payroll procedures exempting them from fair share service fees, and verification of charitable contributions. As it did with the other issues, DOF admits that these activities are reimbursable for public school employers that did not negotiate and implement organizational security arrangements prior to enactment of the test claim legislation. And, DOF argues that those public school employers who had negotiated and implemented organizational security arrangements should not be reimbursed. The DOF's argument is irrelevant.

The conscientious objector provisions were enacted by Chapter 816, Statutes of 1980. This provision was applicable 20 years prior to the other test claim legislation, "notwithstanding...Section 3546" and is most certainly applicable to all organizational security agreements in place today. As stated in issue 2 (supra), the arrangements in Section 3546 apply to agreements made both before and after the enactment of the test claim legislation.

**7. The Test Claim Legislation Implicitly Requires a Neutral Notice to Employees**

Test claimant seeks to claim reimbursement for drafting, approving and distributing an appropriate and neutral notice to existing non-member employees and new employees regarding new payroll deductions for the payment of fair share service fees. DOF argues that this notice is not necessary because Title 8, California Code of Regulations, Section 32992 requires the exclusive representative to give notice.

Section 32992 requires the exclusive representative to give *annual* notice of (1) the

amount of the fee expressed as a percentage of annual dues per member, (2) the basis for the calculation and (3) a procedure for appealing all or any part of the fee. Such notice shall be sent or distributed to the non-member either (1) 30 days prior to collection of the fee, or (2) concurrent with the initial agency fee.

Note that there is no procedure for sending notice to a new employee, other than concurrent with the initial agency fee. And, the notice required of Section 32992 goes only to *how much* and the calculation of the amount preparatory to an appeal process.

The giving of an appropriate and neutral notice to affected employees is implicit in the legislation. By way of example, Education Code Section 45169<sup>8</sup> requires public school employers to give each classified employee, upon initial employment and upon each change in classification, salary data including annual, monthly or pay period, daily, hourly, overtime and differential rate of compensation. And, Education Code Section 45167<sup>9</sup> requires the employer to give notice of correction and supplemental payment

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<sup>8</sup> Education Code Section 45169 (former Education Code Section 13607) recodified and renumbered by Chapter 1010, Statutes of 1976, Section 2:

"Upon initial employment and upon each change in classification thereafter, each classified employee shall be furnished two copies of his class specification, salary data, assignment or work location, together with duty hours and the prescribed workweek. The salary data shall include the annual, monthly or pay period, daily, hourly, overtime and differential rate of compensation, whichever are applicable. One copy shall be retained by the employee and the other copy shall be signed and dated by the employee and returned to his supervisor.

The provisions of this section shall not apply to short-term, limited-term, or provisional employees, as those terms are defined in this chapter.

This section shall apply to districts that have adopted the merit system in the same manner and effect as if it were a part of Article 6 (commencing with Section 45240) of this chapter."

<sup>9</sup> Education Code Section 45167 (former Education Code Section 13604.1) recodified and renumbered by Chapter 1010, Statutes of 1976, Section 2:

"Whenever it is determined that an error has been made in the calculation or reporting in any classified employee payroll or in the payment of any classified employee's salary, the appointing authority shall, within five workdays following such determination, provide the employee with a statement of the correction and a supplemental payment drawn against any available funds."



whenever it is determined that an error has been made in the calculation or reporting in any classified employee payroll. Can it then be said that an employer is not required implicitly to give notice when payroll deductions will be made from an employee's wages or salary for fair share service fees and an appropriate and neutral notice explaining why the organizational security arrangement is required by law and offering to answer any questions the employee may have concerning deductions made from his paycheck.?

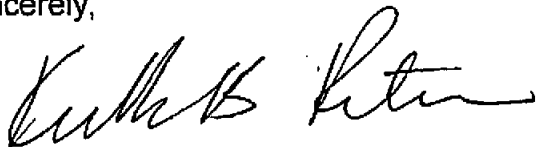
**Conclusion**

For the reasons herein stated, the test claimant respectfully requests the Commission to find that the activities described in the test claim result in school districts incurring costs mandated by the state, as defined in Government Code Section 17514, by creating new state-mandated duties as set forth in the test claim, without exception.

**CERTIFICATION**

I certify by my signature below, under penalty of perjury, that the statements made in this document are true and complete to the best of my own personal knowledge or information or belief.

Sincerely,



Keith B. Petersen

C: Per: Distribution List Attached

## PROOF OF SERVICE

Re: CSM 00-TC-17  
Test Claim of Clovis Unified School District  
Chapter 893, Statutes of 2000, Chapter 816, Statutes of 1980  
Agency Fee Arrangements

I, the undersigned, declare as follows:

I am employed in the County of San Diego, State of California. I am 18 years of age or older and am not a party to the entitled action. My business address is 5252 Balboa Avenue, Suite 807, San Diego, CA 92117.

On September 10, 2001, I served the attached rebuttal letter to Paula Higashi from Keith B. Petersen and SixTen and Associates, on behalf of test claimant, and to the interested parties shown on the attached Mailing List, by placing a true copy thereof to the Commission on State Mandates and other state agencies and persons in the United States mail at San Diego, California, with first-class postage thereon fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 10, 2001 at San Diego, California.



---

Leo Shaw

# Commission on State Mandates

List Date: 06/27/2001

Mailing Information

## Mailing List

**Claim Number** 00-TC-17 **Claimant** Clovis Unified School District

**Subject** Statutes of 2000, Chapter 893, Statutes of 1980, Chapter, Gov. Code Sec. 3543, 3546, and 3546.3

**Issue** Agency Fee Arrangements

Harmeet Barkschat,  
Mandate Resource Services

8254 Heath Peak Place  
Antelope CA 95843

*Tel:* (916) 727-1350  
*FAX:* (916) 727-1734

Interested Person

Dr. Carol Berg, Ph. D.,  
Education Mandated Cost Network

1121 L Street Suite 1060  
Sacramento CA 95814

*Tel:* (916) 446-7517  
*FAX:* (916) 446-2011

Interested Person

Mr. Glenn Haas, Bureau Chief (B-8)  
State Controller's Office  
Division of Accounting & Reporting

3301 C Street Suite 500  
Sacramento CA 95816

*Tel:* (916) 445-8756  
*FAX:* (916) 323-4807

State Agency

Mr. James Lombard, Principal Analyst (A-15)  
Department of Finance

915 L Street  
Sacramento CA 95814

*Tel:* (916) 445-8913  
*FAX:* (916) 327-0225

State Agency

Mr. Bill McGuire, Assistant Superintendent  
Clovis Unified School District

1450 Herndon  
Clovis CA 93611-0599

*Tel:* (559) 327-9000  
*FAX:* (559) 327-9129

Claimant

Subject Statutes of 2000, Chapter 893, Statutes of 1980, Chapter, Gov. Code Sec. 3543, 3546, and 3546.3

Issue Agency Fee Arrangements

Mr. Paul Minney,  
Spector, Middleton, Young & Minney, LLP

7 Park Center Drive  
Sacramento Ca 95825

Tel: (916) 646-1400  
FAX: (916) 646-1300

Interested Person

Mr. Keith B. Petersen, President  
Sixten & Associates

5252 Balboa Avenue Suite 807  
San Diego CA 92117

Tel: (858) 514-8605  
FAX: (858) 514-8645

Claimant Representative

Ms. Sandy Reynolds, President (Interested Person)  
Reynolds Consulting Group, Inc.

P.O. Box 987  
Sun City CA 92586

Tel: (909) 672-9964  
FAX: (909) 672-9963

Interested Person

Mr. Patrick Ryan,  
California Community Colleges  
Chancellor's Office

1102 Q Street Suite 300  
Sacramento CA 95814-6549

Tel: (916) 327-6223  
FAX: (916) 322-2798

Mr. Gerry Shelton, (E-8)

Department of Education  
School Business Services

560 J Street Suite 150  
Sacramento CA 95814

Tel: (916) 322-1466  
FAX: (916) 322-1465

State Agency

Mr. Steve Smith, CEO  
Mandated Cost Systems, Inc.

2275 Watt Avenue Suite C  
Sacramento CA 95825

Tel: (916) 487-4435  
FAX: (916) 487-9662

Interested Person

**Claim Number**

00-TC-

**Claimant**

Clovis Unified School District

**Subject**

Statutes of 2000, Chapter 893, Statutes of 1980, Chapter, Gov. Code Sec. 3543, 3546, and 3546.3

**Issue**

Agency Fee Arrangements

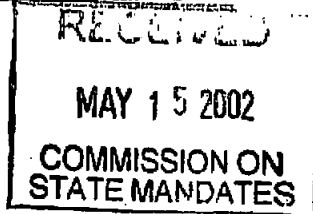
Jim Spano,  
State Controller's Office  
Division of Audits (B-8)  
300 Capitol Mall, Suite 518 P.O. Box 942850      *Tel:* (916) 323-5849  
Sacramento CA 95814                                      *FAX:* (916) 324-7223  
  
State Agency

Mr. Bob Thompson, Deputy General Counsel  
Public Employment Relations Board  
  
1031 18th Street                                              *Tel:* (916) 322-3198  
Sacramento CA 95814-4174                                *FAX:* (916) 327-7955

State of California  
COMMISSION ON STATE MANDATES  
980 Ninth Street, Suite 300  
Sacramento, CA 95814  
(916) 323-3562  
CSM 2 (1/91)

For Official Use Only

EXHIBIT F



**TEST CLAIM FORM**

Claim No. 01-TC-14

Local Agency or School District Submitting Claim

**CLOVIS UNIFIED SCHOOL DISTRICT**

Contact Person

Keith B. Petersen, President  
SixTen and Associates  
5252 Balboa Avenue, Suite 807  
San Diego, California 92117

Telephone Number

Voice: 858-514-8605  
Fax: 858-514-8645

Claimant Address

William C. McGuire  
Clovis Unified School District  
1450 Herndon Avenue  
Sacramento, CA 95814

Representative Organization to be Notified

Dr. Carol Berg, Consultant, Education Mandated Cost Network  
c/o School Services of California  
1121 L Street, Suite 1060  
Sacramento, CA 95814

Voice: 916-446-7517  
Fax: 916-446-2011

This claim alleges the existence of a reimbursable state mandated program within the meaning of section 17514 of the Government Code and section 6, article XIII B of the California Constitution. This test claim is filed pursuant to section 17551(a) of the Government Code.

Identify specific section(s) of the chaptered bill or executive order alleged to contain a mandate, including the particular statutory code citation(s) within the chaptered bill, if applicable.

**Agency Fee Arrangements, First Amendment**

**Chapter 805, Statutes of 2001**  
Chapter 893, Statutes of 2000  
Chapter 816, Statutes of 1980

Government Code Section 3543  
Government Code Section 3546  
Government Code Section 3546.3

Title 8, California Code of Regulations  
Sections 34030 and 34055

**IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING TEST CLAIM ON THE REVERSE SIDE.**

Name and Title of Authorized Representative

Telephone No.

William C. McGuire  
Associate Superintendent, Business Services

(559) 327-9110  
FAX: (559) 327-9129

Signature of Authorized Representative

Date

X

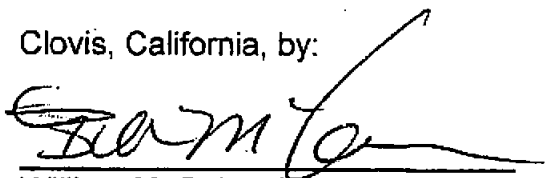
May 6, 2002

First Amendment to the Test Claim of Clovis Unified School District  
Chapter 893, Statutes of 2000, Agency Fee Arrangements

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Certification

I certify by my signature below that the statements made in this document and its exhibits are true and correct of my own knowledge or, as to all other matters, based upon information and belief. This first amended request to amend Test Claim 00-TC-17, Agency Fee Arrangements, was executed on May 6, 2002, at Clovis, California, by:



William McGuire, Associate Superintendent, Business Services  
Clovis Unified School District  
1450 Herndon Avenue  
Clovis, CA 93611-0599  
(559) 327-9110  
(559) 327-9129 (FAX)

APPOINTMENT OF REPRESENTATIVE

The Clovis Unified School District appoints Keith B. Petersen, SixTen and Associates, as its representative for this request to amend Test Claim 00-TC-17, Agency Fee Arrangements.



William McGuire, Associate Superintendent  
Business Services

5-6-2002  
Date

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First Amendment to the Test Claim of Clovis Unified School District  
Chapter 893, Statutes of 2000, Agency Fee Arrangements

statute subsequently enacted, effective, or operative on or after January 1, 2002 to the original test claim submitted on June 25, 2001.

PART II. LEGISLATIVE HISTORY OF THE CLAIM

SECTION 2. LEGISLATIVE HISTORY AFTER JANUARY 1, 1975

Add to the end of this section:

Chapter 805, Statutes of 2001, Section 1 amended Government Code Section 3543<sup>1</sup> to clarify that the employees' requirement to either join the recognized employee

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<sup>1</sup> Government Code Section 3543, as amended by Chapter 805, Statutes of 2001, Section 1:

"(a) Public school employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. If the exclusive representative of a unit provides notification, as specified by subdivision (a) of Section 3546. Public school employees who are in a unit for which an exclusive representative has been selected, shall be required, as a condition of continued employment, to join the recognized employee organization or to pay the organization a fair share services fee, as required by Section 3546. If a majority of the members of a bargaining unit rescind that arrangement, either of the following options shall be applicable:

(1) The recognized employee organization may petition for the reinstatement of the arrangement described in subdivision (a) of Section 3546 pursuant to the procedures in paragraph (2) of subdivision (d) of Section 3546.

(2) The employees may negotiate either of the two forms of organizational security described in subdivision (l) of Section 3540.1.

(b) Any employee may at any time present grievances to his or her employer, and have such grievances adjusted, without the intervention of the exclusive representative, as long as the adjustment is reached prior to arbitration pursuant to Sections 3548.5, 3548.6, 3548.7, and 3548.8 and the adjustment is not inconsistent with the terms of a written agreement then in effect; provided that the public school employer shall not agree to a resolution of the grievance until the exclusive representative has received a copy of the grievance and the proposed resolution and has been given the opportunity to file a response."

First Amendment to the Test Claim of Clovis Unified School District  
Chapter 893, Statutes of 2000, Agency Fee Arrangements

organization or to pay the organization a fair share services fee is conditional upon notification to the public school employer by the exclusive representative to deduct the amount of the fair share service fee and pay that amount to the employee organization.

Chapter 805, Statutes of 2001, Section 2 amended Government Code Section 3546 subdivision (a), and added subdivisions (e) and (f)<sup>2</sup>.

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<sup>2</sup>Government Code Section 3546, as amended by Chapter 805, Statutes of 2001 Section 2:

"(a) Notwithstanding any other provisions of law, any upon receiving notice from the exclusive representative of a public school employee who is in a unit for which an exclusive representative has been selected pursuant to this chapter, the employer shall be required as a condition of continued employment deduct the amount of the fair share service fee authorized by this section from the wages and salary of the employee and pay that amount to the employee organization. Thereafter, the employee shall, as a condition of continued employment, be required either to join the recognized employee organization or pay the organization a fair share service fee. The amount of the fee shall not exceed the dues that are payable by members of the employee organization, and shall cover the cost of negotiation, contract administration, and other activities of the employee organization that are germane to its functions as the exclusive bargaining representative. Upon notification to the employer by the exclusive representative, the amount of the fee shall be deducted by the employer from the wages or salary of the employee and paid to the employee organization. Agency fee payers shall have the right, pursuant to regulations adopted by the Public Employment Relations Board, to receive a rebate or fee reduction upon request, of that portion of their fee that is not devoted to the cost of negotiations, contract administration, and other activities of the employee organization that are germane to its function as the exclusive bargaining representative.

(b) The costs covered by the fee under this section may include, but shall not necessarily be limited to, the cost of lobbying activities designed to foster collective bargaining negotiations and contract administration, or to secure for the represented employees advantages in wages, hours, and other conditions of employment in addition to those secured through meeting and negotiating with the employer.

(c) The arrangement described in subdivision (a) shall remain in effect unless it is rescinded pursuant to subdivision (d). The employer shall remain neutral, and shall not participate in any election conducted under this section unless required to do so by the board.

First Amendment to the Test Claim of Clovis Unified School District  
Chapter 893, Statutes of 2000, Agency Fee Arrangements

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Subdivision (a) was amended to provide fair share service fee payers the right, pursuant to regulations adopted by the Public Employment Relations Board, to request a rebate or fee reduction of that portion of their fair share services fee that is not devoted

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(d) (1) The arrangement described in subdivision (a) may be rescinded by a majority vote of all the employees in the negotiating unit subject to that arrangement, if a request for a vote is supported by a petition containing 30 percent of the employees in the negotiating unit; the signatures are obtained in one academic year. There shall not be more than one vote taken during the term of any collective bargaining agreement in effect on or after January 1, 2001.

(2) If the arrangement described in subdivision (a) is rescinded pursuant to paragraph (1), a majority of all employees in the negotiating unit may request that the arrangement be reinstated. That request shall be submitted to the board along with a petition containing the signatures of at least 30 percent of the employees in the negotiating unit. The vote shall be conducted at the worksite by secret ballot, and shall be conducted no sooner than one year after the rescission of the arrangement under this subdivision.

(3) If the board determines that the appropriate number of signatures have been collected, it shall conduct the vote to rescind or reinstate in a manner that it shall prescribe in accordance with this subdivision.

(4) The cost of conducting an election under this subdivision to reinstate the organizational security arrangement shall be borne by the petitioning party and the cost of conducting an election to rescind the arrangement shall be borne by the board.

(e) The recognized employee organization shall indemnify and hold the public school employer harmless against any reasonable legal fees, legal costs, and settlement or judgment liability arising from any court or administrative action relating to the school district's compliance with this section. The recognized employee organization shall have the exclusive right to determine whether any such action or proceeding shall or shall not be compromised, resisted, defended, tried, or appealed. This indemnification and hold harmless duty shall not apply to actions related to compliance with this section brought by the exclusive representative of district employees against the public school employer.

(f) The employer of a public school employee shall provide the exclusive representative of a public employee with the home address of each member of a bargaining unit, regardless of when that employee commences employment, so that the exclusive representative can comply with the notification requirements set forth by the United States Supreme Court in Chicago Teachers Union v. Hudson (1986) 89 L.Ed.2d 232."

First Amendment to the Test Claim of Clovis Unified School District  
Chapter 893, Statutes of 2000, Agency Fee Arrangements

to the cost of negotiations, contract administration, and other activities of the employee organization that are germane to its function as the exclusive bargaining representative.

Subdivision (e) was added to provide indemnification of the school employer by the recognized employee organization for any legal fees, legal costs, and settlement or judgment liability arising from court or administrative action relating to the school district's compliance with this section.

Subdivision (f) was added to require the employer of public school employees to provide the home address of each member of a bargaining unit to the exclusive representative of those employees, so that the representative can comply with its notification requirements as set forth by the United States Supreme Court in Chicago Teachers Union v. Hudson(1986) 89 L.Ed.2d 232.

PART 3. STATEMENT OF THE CLAIM

SECTION 1. COSTS MANDATED BY THE STATE

The original test claim alleged mandated costs subject to reimbursement by the state for school districts, county offices of education, and community college districts to:

- A) Establish, periodically update and maintain employee payroll records which identify those employees who choose not to be members of a certified employee organization. Pursuant to Government Code Section 3546(a), establish payroll procedures and thereafter implement such procedures so that automatic payroll deductions for "fair share services fees" will be made from the wages of non-exempt employees who choose not to be members

First Amendment to the Test Claim of Clovis Unified School District  
Chapter 893, Statutes of 2000, Agency Fee Arrangements

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- of a certified employee organization and to report and remit the withheld fees to the appropriate certified employee organization.
- B) Draft, approve and distribute an appropriate and neutral notice to existing non-member employees and new employees, which explains the additional payroll deduction for "fair share services fees" for non-member employees of a certified employee organization.
- C) In the event a petition to rescind the collective bargaining agreement is filed pursuant to Government Code Section 3546(d)(1), within 20 days of the filing of the petition, to file with the regional office of PERB an alphabetical list containing the names and job titles or classifications of the persons employed in the unit as of the last date of the payroll period immediately preceding the date the petition was filed pursuant to Title 8, California Code of Regulations, Section 34030(a), and to supply any other required administrative support as required by PERB, pursuant to Government Code Section 3546, subdivisions (c) and (d)(3).
- D) In the event the collective bargaining agreement is rescinded pursuant to Government Code Section 3546(d)(1), establish new payroll procedures and thereafter implement such procedures so that automatic payroll deductions for "fair share services fees" are no longer made from the wages of non-exempt employees who choose not to be members of a certified employee organization and to no longer report and remit fees to

First Amendment to the Test Claim of Clovis Unified School District  
Chapter 893, Statutes of 2000, Agency Fee Arrangements

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the appropriate certified employee organization.

- E) In the event a petition to reinstate the collective bargaining agreement is filed pursuant to Government Code Section 3546(d)(2), within 20 days of the filing of the petition, to file with the regional office of PERB an alphabetical list containing the names and job titles or classifications of the persons employed in the unit as of the last date of the payroll period immediately preceding the date the petition was filed pursuant to Title 8, California Code of Regulations, Section 34055(a), and to supply any required administrative support as may be required by PERB, pursuant to Government Code Section 3546, subdivisions (c) and (d)(3).
- F) In the event the collective bargaining agreement is reinstated pursuant to Government Code Section 3546(d)(2), reestablish payroll procedures and thereafter implement such reestablished procedures so that automatic payroll deductions for "fair share services fees" will again be made from the wages of non-exempt employees who choose not to be members of a certified employee organization and again report and remit the withheld fees to the appropriate certified employee organization.
- G) Establish and implement procedures to determine which employees claim a conscientious objection to the withholding of "fair share services fees" pursuant to Government Code Section 3546.3.
- H) Establish payroll procedures and thereafter implement such procedures so

First Amendment to the Test Claim of Clovis Unified School District  
Chapter 893, Statutes of 2000, Agency Fee Arrangements

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that automatic payroll deductions for fair share services fees will not be made from the wages of those claiming conscientious objections pursuant to Government Code Section 3546.3.

- I) Establish procedures and thereafter implement such procedures to verify, at least annually, that payments to nonreligious, nonlabor charitable organizations have been made by employees who have claimed conscientious objections pursuant to Government Code Section 3546.3.

**New Costs Mandated by the State:**

This amendment to the original test claim adds the following allegations:

- J) To adjust payroll withholdings for rebates or withholding reductions for that portion of fair share service fees that are not germane to the employee organization function as the exclusive bargaining representative when so determined pursuant to regulations adopted by the Public Employment Relations Board, pursuant to Government Code section 3546(a).
- K) To take any and all necessary actions, when necessary, to recover reasonable legal fees, legal costs and settlement or judgment liabilities from the recognized employee organization, arising from any court or administrative action relating to the school district's compliance with the section pursuant to subdivision (e) of section 3546.
- L) Provide the exclusive representative of a public school employee a list of home addresses for each employee of a bargaining unit, regardless of

First Amendment to the Test Claim of Clovis Unified School District  
Chapter 893, Statutes of 2000, Agency Fee Arrangements

when the employees commenced employment, and periodically update and correct the list to reflect changes of address, additions for new employees and deletions of former employees, pursuant to subdivision (f) of Section 3546.

**SECTION 2. EXCEPTIONS TO MANDATE REIMBURSEMENT**

No modification necessary

**SECTION 3. FUNDING PROVIDED FOR THE MANDATED PROGRAM**

No modification necessary

**PART IV. ADDITIONAL CLAIM REQUIREMENTS**

The following additional elements of this claim are provided pursuant to Section 1183, Title 2, California Code of Regulations:

Exhibit 1: No additional declaration required.

Exhibit 2: Copies of Code Sections Cited

Government Code Section 3543, as amended

Government Code Section 3546, as amended

Exhibit 3: Copies of Statutes Cited

Chapter 805, Statutes of 2001

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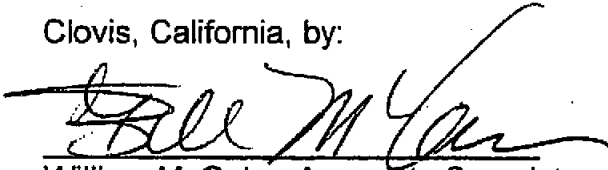


First Amendment to the Test Claim of Clovis Unified School District  
Chapter 893, Statutes of 2000, Agency Fee Arrangements

Certification

I certify by my signature below that the statements made in this document and its exhibits are true and correct of my own knowledge or, as to all other matters, based upon information and belief. This amended request to amend the parameters and guidelines was executed on April 22, 2002, at

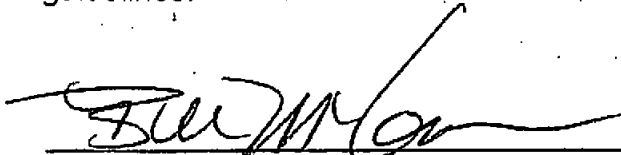
Clovis, California, by:



William McGuire, Associate Superintendent, Business Services  
Clovis Unified School District  
1450 Herndon Avenue  
Clovis, CA 93611-0599  
(559) 327-9110  
(559) 327-9129 (FAX)

APPOINTMENT OF REPRESENTATIVE

The Clovis Unified School District appoints Keith B. Petersen, SixTen and Associates, as its representative for this request to amend the parameters and guidelines.



William McGuire, Associate Superintendent  
Business Services

4/22/2002  
Date

**EXHIBIT 1**  
**NO ADDITIONAL DECLARATION REQUIRED**

**EXHIBIT 2**  
**CODES SECTIONS CITED**

**§ 3543. Rights of public school employees**

(a) Public school employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. If the exclusive representative of a unit provides notification, as specified by subdivision (a) of Section 3546, public school employees who are in a unit for which an exclusive representative has been selected, shall be required, as a condition of continued employment, to join the recognized employee organization or to pay the organization a fair share services fee, as required by Section 3546. If a majority of the members of a bargaining unit rescind that arrangement, either of the following options shall be applicable:

(1) The recognized employee organization may petition for the reinstatement of the arrangement described in subdivision (a) of Section 3546 pursuant to the procedures in paragraph (2) of subdivision (d) of Section 3546.

(2) The employees may negotiate either of the two forms of organizational security described in subdivision (i) of Section 3540.1.

(b) Any employee may at any time present grievances to his or her employer, and have such grievances adjusted, without the intervention of the exclusive representative, as long as the adjustment is reached prior to arbitration pursuant to Sections 3548.5, 3548.6, 3548.7, and 3548.8 and the adjustment is not inconsistent with the terms of a written agreement then in effect; provided that the public school employer shall not agree to a resolution of the grievance until the exclusive representative has received a copy of the grievance and the proposed resolution and has been given the opportunity to file a response.

(Amended by Stats 2000, c. 893 (S.B.1960), § 2; Stats 2001, c. 805 (S.B.614), § 1.)

Article 7

ORGANIZATIONAL SECURITY

Section

8546. Member of recognized employee organization or payment of fair share service fee; condition of employment.

§ 3546. Member of recognized employee organization or payment of fair share service fee; condition of employment

(a) Notwithstanding any other provision of law, \* \* \* upon receiving notice from the exclusive representative of a public school employee who is in a unit for which an exclusive representative has been selected pursuant to this chapter, the employer shall \* \* \* deduct the amount of the fair share service fee authorized by this section from the wages and salary of the employee and pay that amount to the employee organization. Thereafter, the employee shall, as a condition of continued employment, be required either to join the recognized employee organization or pay the \* \* \* fair share service fee. The amount of the fee shall not exceed the dues that are payable by members of the employee organization, and shall cover the cost of negotiation, contract administration, and other activities of the employee organization that are germane to its functions as the exclusive bargaining representative. \* \* \* Agency fee payers shall have the right, pursuant to regulations adopted by the Public Employment Relations Board, to receive a rebate or fee reduction upon request, of that portion of their fee that is not devoted to the cost of negotiations, contract administration, and other activities of the employee organization that are germane to its function as the exclusive bargaining representative.

(b) The costs covered by the fee under this section may include, but shall not necessarily be limited to, the cost of lobbying activities designed to foster collective bargaining negotiations and contract administration, or to secure for the represented employees advantages in wages, hours, and other conditions of employment in addition to those secured through meeting and negotiating with the employer.

(c) The arrangement described in subdivision (a) shall remain in effect unless it is rescinded pursuant to subdivision (d). The employer shall remain neutral, and shall not participate in any election conducted under this section unless required to do so by the board.

(d)(1) The arrangement described in subdivision (a) may be rescinded by a majority vote of all the employees in the negotiating unit subject to that arrangement, if a request for a vote is supported by a petition containing 30 percent of the employees in the negotiating unit, the signatures are obtained in one academic year. There shall not be more than one vote taken during the term of any collective bargaining agreement in effect on or after January 1, 2001.

(2) If the arrangement described in subdivision (a) is rescinded pursuant to paragraph (1), a majority of all employees in the negotiating unit may request that the arrangement be reinstated. That request shall be submitted to the board along with a petition containing the signatures of at least 30 percent of the employees in the negotiating unit. The vote shall be conducted at the worksite by secret ballot, and shall be conducted no sooner than one year after the rescission of the arrangement under this subdivision.

(3) If the board determines that the appropriate number of signatures have been collected, it shall conduct the vote to rescind or reinstate in a manner that it shall prescribe in accordance with this subdivision.

(4) The cost of conducting an election under this subdivision to reinstate the organizational security arrangement shall be borne by the petitioning party and the cost of conducting an election to rescind the arrangement shall be borne by the board.

(e) The recognized employee organization shall indemnify and hold the public school employer harmless against any reasonable legal fees, legal costs, and settlement or judgment liability arising from any court or administrative action relating to the school district's compliance with this section. The recognized employee organization shall have the exclusive right to determine whether any such action or proceeding shall or shall not be compromised, resisted, defended, tried, or appealed. This indemnification and hold harmless duty shall not apply to actions related to compliance with this section brought by the exclusive representative of district employees against the public school employer.

(f) The employer of a public school employee shall provide the exclusive representative of a public employee with the home address of each member of a bargaining unit, regardless of when that employee commences employment, so that the exclusive representative can comply with the notification requirements set forth by the United States Supreme Court in Chicago Teachers Union v. Hudson (1986) 89 L.Ed. 2d 232.

(Added by Stats.2000, c. 898 (S.B.1960), § 4. Amended by Stats.2001, c. 805 (S.B.614), § 2.)

**EXHIBIT 3  
STATUTES CITED**

**SCHOOLS AND SCHOOL DISTRICTS—LABOR AND EMPLOYMENT**

**CHAPTER 805**

S.B. No. 614

AN ACT to amend Sections 3543 and 3546 of the Government Code, relating to school employees.

[Filed with Secretary of State October 18, 2001.]

**LEGISLATIVE COUNSEL'S DIGEST**

SB 614, Burton. School employees: labor relations.

Existing law provides that public school employees who are in a unit for which an exclusive representative has been selected, are required, as a condition of continued employment, either to join the recognized employee organization or to pay the organization a fair share service fee. Existing law further provides that upon notification to the employer by the exclusive representative, the amount of the fee is required to be deducted by the employer from the wages or salary of the employee and paid to the employee organization, and prescribes related matters.

This bill would instead require that, notwithstanding any other provision of law, upon receiving notice from the exclusive representative of a public school employee who is in a unit for which an exclusive representative has been selected, the employer would be required to deduct the amount of a fair share service fee from the wages and salary of the employee and pay that amount to the employee organization. The bill would also provide that the employee would, thereafter, be required, as a condition of employment, either to join the recognized employee organization or pay that fair share service fee, would prescribe related matters, and would make conforming changes in related provisions.

The bill would require the employer of a public school employee to provide the exclusive representative of a public employee with the home address of each member of a bargaining unit, regardless of when that employee commences employment, in order to satisfy specified notification requirements. By imposing new duties on school districts, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to

5114

Additions or changes indicated by underline; deletions by asterisks.

pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

*The people of the State of California do enact as follows:*

SECTION 1. Section 3543 of the Government Code is amended to read:

3543. (a) Public school employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. If the exclusive representative of a unit provides notification, as specified by subdivision (a) of Section 3546, public school employees who are in a unit for which an exclusive representative has been selected, shall be required, as a condition of continued employment, to join the recognized employee organization or to pay the organization a fair share services fee, as required by Section 3546. If a majority of the members of a bargaining unit rescind that arrangement, either of the following options shall be applicable.

(1) The recognized employee organization may petition for the reinstatement of the arrangement described in subdivision (a) of Section 3546 pursuant to the procedures in paragraph (2) of subdivision (d) of Section 3546.

(2) The employees may negotiate either of the two forms of organizational security described in subdivision (i) of Section 3540.1.

(b) Any employee may at any time present grievances to his or her employer, and have such grievances adjusted, without the intervention of the exclusive representative, as long as the adjustment is reached prior to arbitration pursuant to Sections 3548.5, 3548.6, 3548.7, and 3548.8 and the adjustment is not inconsistent with the terms of a written agreement then in effect; provided that the public school employer shall not agree to a resolution of the grievance until the exclusive representative has received a copy of the grievance and the proposed resolution and has been given the opportunity to file a response.

SEC. 2. Section 3546 of the Government Code is amended to read:

3546. (a) Notwithstanding any other provision of law, \* \* \* upon receiving notice from the exclusive representative of a public school employee who is in a unit for which an exclusive representative has been selected pursuant to this chapter, the employer shall \* \* \* deduct the amount of the fair share service fee authorized by this section from the wages and salary of the employee and pay that amount to the employee organization. Thereafter, the employee shall, as a condition of continued employment, be required either to join the recognized employee organization or pay the \* \* \* fair share service fee. The amount of the fee shall not exceed the dues that are payable by members of the employee organization, and shall cover the cost of negotiation, contract administration, and other activities of the employee organization that are germane to its functions as the exclusive bargaining representative. \* \* \* Agency fee payers shall have the right, pursuant to regulations adopted by the Public Employment Relations Board, to receive a rebate or fee reduction upon request, of that portion of their fee that is not devoted to the cost of negotiations, contract administration, and other activities of the employee organization that are germane to its function as the exclusive bargaining representative.

(b) The costs covered by the fee under this section may include, but shall not necessarily be limited to, the cost of lobbying activities designed to foster collective bargaining negotiations and contract administration, or to secure for the represented employees advantages in wages, hours, and other conditions of employment in addition to those secured through meeting and negotiating with the employer.

(c) The arrangement described in subdivision (a) shall remain in effect unless it is rescinded pursuant to subdivision (d). The employer shall remain neutral, and shall not participate in any election conducted under this section unless required to do so by the board.

(d)(1) The arrangement described in subdivision (a) may be rescinded by a majority vote of all the employees in the negotiating unit subject to that arrangement, if a request for a vote is



supported by a petition containing 30 percent of the employees in the negotiating unit, the signatures are obtained in one academic year. There shall not be more than one vote taken during the term of any collective bargaining agreement in effect on or after January 1, 2001.

(2) If the arrangement described in subdivision (a) is rescinded pursuant to paragraph (1), a majority of all employees in the negotiating unit may request that the arrangement be reinstated. That request shall be submitted to the board along with a petition containing the signatures of at least 30 percent of the employees in the negotiating unit. The vote shall be conducted at the worksite by secret ballot, and shall be conducted no sooner than one year after the rescission of the arrangement under this subdivision.

(3) If the board determines that the appropriate number of signatures have been collected, it shall conduct the vote to rescind or reinstate in a manner that it shall prescribe in accordance with this subdivision.

(4) The cost of conducting an election under this subdivision to reinstate the organizational security arrangement shall be borne by the petitioning party and the cost of conducting an election to rescind the arrangement shall be borne by the board.

(e) The recognized employee organization shall indemnify and hold the public school employer harmless against any reasonable legal fees, legal costs, and settlement or judgment liability arising from any court or administrative action relating to the school district's compliance with this section. The recognized employee organization shall have the exclusive right to determine whether any such action or proceeding shall or shall not be compromised, resisted, defended, tried, or appealed. This indemnification and hold harmless duty shall not apply to actions related to compliance with this section brought by the exclusive representative of district employees against the public school employer.

(f) The employer of a public school employee shall provide the exclusive representative of a public employee with the home address of each member of a bargaining unit, regardless of when that employee commences employment, so that the exclusive representative can comply with the notification requirements set forth by the United States Supreme Court in Chicago Teachers Union v. Hudson (1986) 89 L.Ed. 2d 282.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 2 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

**COMMISSION ON STATE MANDATES**

980 NINTH STREET, SUITE 300  
SACRAMENTO, CA 95814  
PHONE: (916) 323-3562  
FAX: (916) 445-0278  
E-mail: csminfo@csm.ca.gov



May 20, 2002

Mr. Keith Petersen  
SixTen and Associates  
5252 Balboa Avenue, Suite 807  
San Diego, CA 92117

*And Affected Parties and State Agencies (See Enclosed Mailing List)*

Re: **Agency Fee Arrangements, Test Claim Amendment**  
01-TC-14 (Amendment to 00-TC-17)  
Clovis Unified School District, Claimant  
Statutes of 2001, Chapter 805 (SB 614)  
Statutes of 2000, Chapter 893,  
Statutes of 1980, Chapter 816  
Government Code Sections 3543, 3546, and 3546.3

Dear Mr. Petersen:

Commission staff has reviewed the above-named test claim amendment and determined that it is complete. A copy of the amendment is being provided to affected state agencies and interested parties because of their interest in the Commission's determination. Since comments have already been filed on the test claim, we request that state agency comments be limited to the amendment.

The key issues before the Commission are:

- Do the provisions listed above *in the test claim amendment* impose a new program or higher level of service within an existing program upon local entities within the meaning of section 6, article XIII B of the California Constitution and costs mandated by the state pursuant to section 17514 of the Government Code?
- Does Government Code section 17556 preclude the Commission from finding that any of the test claim *amendment* provisions impose costs mandated by the state?

Mr. Keith Petersen

May 20, 2002

Page 2

The Commission requests your participation in the following activities concerning this test claim:

- **Informal Conference.** An informal conference may be scheduled if requested by any party. See Title 2, California Code of Regulations, section 1183.04 (the regulations).
- **State Agency Review of Test Claim Amendment.** State agencies receiving this letter are requested to analyze the merits of the test claim amendment and to file written comments on the key issues before the Commission. Alternatively, if a state agency chooses not to respond to this request, please submit a written statement of non-response to the Commission. Requests for extensions of time may be filed in accordance with sections 1183.01 (c) and 1181.1 (g) of the regulations. State agency comments are due 30 days from the date of this letter.
- **Claimant Rebuttal.** The claimant and interested parties may file rebuttals to state agencies' comments under section 1183.02 of the regulations. The rebuttal is due 30 days from the service date of written comments.
- **Hearing and Staff Analysis.** A hearing on the test claim and the amendment will be set when the draft staff analysis of the claim is being prepared. At least eight weeks before a hearing is conducted, the draft staff analysis will be issued to parties, interested parties, and interested persons for comment. Comments are due at least five weeks prior to the hearing or on the date set by the Executive Director, pursuant to section 1183.07 of the Commission's regulations. Before the hearing, a final staff analysis will be issued.
- **Mailing Lists.** Under section 1181.2 of the Commission's regulations, the Commission will promulgate a mailing list of parties, interested parties, and interested persons for each test claim and provide the list to those included on the list, and to anyone who requests a copy. Any written material filed on that claim with the Commission shall be simultaneously served on the other parties listed on the claim.
- **Dismissal of Test Claims.** Under section 1183.09 of the Commission's regulations, test claims filed after May 5, 2001, may be dismissed if postponed or placed on inactive status by the claimant for more than one year. Prior to dismissing a test claim, the Commission will provide 150 days notice and opportunity for other parties to take over the claim.

MAILED: 5/20/02  
FAXED: 5/20/02  
INITIAL: VS  
DATE: 5/20/02  
CHRON: 5/20/02  
FILE: 5/20/02  
WORKING BINDER:

Mr. Keith Petersen

May 20, 2002

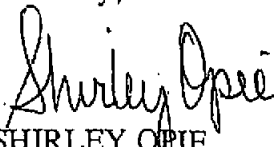
Page 3

If the Commission determines that a reimbursable state mandate exists, the claimant is responsible for submitting proposed parameters and guidelines for reimbursing all eligible local entities. All interested parties and affected state agencies will be given an opportunity to comment on the claimant's proposal before consideration and adoption by the Commission.

Finally, the Commission is required to adopt a statewide cost estimate of the reimbursable state-mandated program within 12 months of receipt of an amended test claim. This deadline may be extended for up to six months upon the request of either the claimant or the Commission.

Please contact Nancy Patton at (916) 323-3562 if you have any questions.

Sincerely,



SHIRLEY OPIE

Assistant Executive Director

Enclosures: Mailing List and Test Claim

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# Commission on State Mandates

List Date: 05/01/2002

Mailing Information Completeness Determination

## Mailing List

**Claim Number** 01-TC-14 (Amendment to 00-TC-17) **Claimant** County of Orange  
**Subject** Statutes of 2001, Chapter 805; Statutes of 2000, Chapter 893; Statutes of 1980, Chapter 816 (SB 614)  
**Gov. Code** Government Code Sections 3543, 3546, and 3546.3  
**Issue** Agency Fee Arrangements

Ms. Harmeet Barkschal,  
Mandate Resource Services

5325 Elkhorn Blvd. #307  
Sacramento CA 95842

Tel: (916) 727-1350 Fax: (916) 727-1734 Interested Person

Mr. Tom Lutzenberger, Principal Analyst (A-15)  
Department of Finance

915 L Street, 6th Floor  
Sacramento CA 95814

Tel: (916) 445-8913 Fax: (916) 327-0225 State Agency

Dr. Carol Berg,  
Education Mandated Cost Network

1121 L Street Suite 1060  
Sacramento CA 95814

Tel: (916) 446-7517 Fax: (916) 446-2011 Interested Person

Mr. Bill McGuire, Assistant Superintendent  
Clovis Unified School District

1450 Herndon  
Clovis CA 93611-0599

Tel: (559) 327-9000 Fax: (559) 327-9129 Claimant

Ms. Susan Geanacou, Senior Staff Attorney (A-15)  
Department of Finance

915 L Street, Suite 1190  
Sacramento CA 95814

Tel: (916) 445-3274 Fax: (916) 327-0220 State Agency

Mr. Paul Minney,  
Spector, Middleton, Young & Minney, LLP

7 Park Center Drive  
Sacramento CA 95825

Tel: (916) 646-1400 Fax: (916) 646-1300 Interested Person

Mr. Glenn Haas, Bureau Chief (B-8)  
State Controller's Office

Division of Accounting & Reporting  
3301 C Street Suite 500  
Sacramento CA 95816

Tel: (916) 445-8757 Fax: (916) 323-4807 State Agency

Mr. Keith B. Petersen, President  
SixTen & Associates

5252 Balboa Avenue Suite 807  
San Diego CA 92117

Tel: (858) 514-8605 Fax: (858) 514-8645 Claimant

Ms. Sandy Reynolds, President  
Reynolds Consulting Group, Inc.

P.O. Box 987  
Sun City CA 92586

(909) 672-9964 Fax: (909) 672-9963

Interested Person

Ms. Pam Stone, Legal Counsel  
MAXIMUS

4320 Auburn Blvd. Suite 2000  
Sacramento CA 95841

Tel: (916) 485-8102 Fax: (916) 485-0111

Interested Person

Ms. Patricia Ryan,  
California Mental Health Directors Association

2030 J Street  
Sacramento CA 95814

Tel: (916) 556-3477 Fax: (916) 446-4519

Interested Person

Mr. Bob Thompson, Deputy General Counsel (D-12)  
Public Employment Relations Board

1031 18th Street  
Sacramento CA 95814-4174

Tel: (916) 322-3198 Fax: (916) 327-7955

State Agency

Mr. Gerry Shelton, Administrator (E-8)

Department of Education  
School Fiscal Services  
560 J Street Suite 150  
Sacramento CA 95814

Tel: (916) 323-2068 Fax: (916) 322-5102

State Agency

Mr. David Wellhouse,  
David Wellhouse & Associates, Inc.

9175 Kiefer Blvd Suite 121  
Sacramento CA 95826

Tel: (916) 368-9244 Fax: (916) 368-5723

Interested Person

Mr. Steve Shields,  
Shields Consulting Group, Inc.

1536 36th Street  
Sacramento CA 95816

Tel: (916) 454-7310 Fax: (916) 454-7312

Interested Person

Mr. Steve Smith, CEO  
Mandated Cost Systems, Inc.

11130 Sun Center Drive Suite 100  
Rancho Cordova CA 95670

Tel: (916) 669-0888 Fax: (916) 669-0889

Interested Person

Mr. Jim Spano, (B-8)  
State Controller's Office  
Division of Audits (B-8)  
300 Capitol Mall, Suite 518  
Sacramento CA 95814

Tel: (916) 323-5849 Fax: (916) 327-0832

State Agency





DEPARTMENT OF  
**FINANCE**

GRAY DAVIS, GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

**RECEIVED**

JUN 24 2002

**COMMISSION ON  
STATE MANDATES**

June 19, 2002

Ms. Paula Higashi  
Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

Dear Ms Higashi:

As requested in your letter of May 20, 2002, the Department of Finance has reviewed the test claim submitted by the Clovis Unified School District (Claimant) asking the Commission to determine whether specified costs incurred under Chapter 805, Statutes of 2001, are reimbursable state mandated costs (Claim No. 01-TC-14 "Agency Fee Arrangements, Test Claim Amendment"). Due to the time commitments involved in completing the State budget, we are requesting until July 19, 2002, to prepare our response.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your May 20, 2002, letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Michael Wilkening, Principal Program Budget Analyst, at (916) 445-0328 or Jim Lombard, state mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,

Jeannie Oropeza  
Program Budget Manager

Attachment



PROOF OF SERVICE

Test Claim Name: "Agency Fee Arrangements, Test Claim Amendment"  
Test Claim Number: CSM-01-TC-14

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 7th Floor, Sacramento, CA 95814.

On June 19, 2002, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 7<sup>th</sup> Floor, for Interagency Mail Service, addressed as follows:

A-16  
Ms. Paula Higashi, Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

B-8  
State Controller's Office  
Division of Accounting & Reporting  
Attention: Glenn Haas  
3301 C Street, Room 500  
Sacramento, CA 95816

B-29  
Legislative Analyst's Office  
Attention Marianne O'Malley  
925 L Street, Suite 1000  
Sacramento, CA 95814

Education Mandated Cost Network  
C/O School Services of California  
Attention: Dr. Carol Berg, PhD  
1121 L Street, Suite 1060  
Sacramento, CA 95814

Sixten & Associates  
Attention: Keith Petersen  
5252 Balboa Avenue, Suite 807  
San Diego, CA 92117

E-8  
Department of Education  
School Business Services  
Attention: Gerry Shelton  
560 J Street, Suite 150  
Sacramento, CA 95814

Mandated Cost Systems, Inc.  
Attention: Steve Smith  
11130 Sun Center Drive, Suite 100  
Sacramento, CA 95670

B-8  
State Controller's Office  
Division of Audits  
Attention: Jim Spano  
30 Capitol Mall, Suite 518  
Sacramento, CA 95814

Spector, Middleton, Young & Minney, LLP  
Attention: Paul Minney  
7 Park Center Drive  
Sacramento, CA 95825

Mandate Resource Services  
Attention: Harmeet Barkschat  
8254 Heath Peak Place  
Antelope, CA 95843

Reynolds Consulting Group, Inc.  
Attention: Sandy Reynolds  
PO Box 987  
Sun City, CA 92586

Clovis Unified School District  
Attention: Bill McGuire  
1450 Herndon  
Clovis, CA 93611-0599

Shields Consulting Group, Inc.  
Attention: Steve Shields  
1536 36<sup>th</sup> Street  
Sacramento, CA 95816

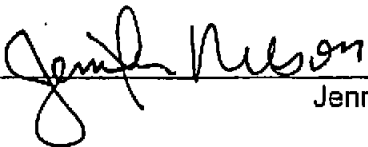
DMG-MAXIMUS  
Attention: Pam Stone  
4320 Auburn Blvd., Suite 2000  
Sacramento, CA 95841

California Mental Health Directors Association  
Attention: Patricia Ryan  
2030 J Street  
Sacramento, CA 95814

Public Employment Relations Board  
Attention: Bob Thompson  
1031 18<sup>th</sup> Street  
Sacramento, CA 95814

David Wellhouse & Associates, Inc.  
Attention: David Wellhouse  
9175 Kiefer Blvd., Suite 121  
Sacramento, CA 95826

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on June 19, 2002 at Sacramento, California.

  
\_\_\_\_\_  
Jennifer Nelson



**COMMISSION ON STATE MANDATES**

880 NINTH STREET, SUITE 300  
SACRAMENTO, CA 95814  
PHONE: (916) 323-3562  
FAX: (916) 445-0278  
E-mail: osminfo@osm.ca.gov



June 20, 2002

Ms. Jeannie Oropeza  
Program Budget Manager  
Department of Finance  
915 L Street, 6<sup>th</sup> Floor  
Sacramento, California 95814-3706

*And Affected State Agencies and Interested Parties (See Enclosed Mailing List)*

Re: **Request for Extension**  
*Agency Fee Arrangements*, 01-TC-14 (Amendment to 00-TC-17)  
Clovis Unified School District, Claimant  
Government Code Sections 3543, 3546, and 3546.3  
Statutes 2001, Chapter 805 (SB 614)  
Statutes 2000, Chapter 893,  
Statutes 1980, Chapter 816

Dear Ms. Oropeza:

Your request for an extension of time to file comments on the above-named test claim is approved for good cause. Comments are now due on or before July 19, 2002.

Please contact Nancy Patton at (916) 323-8217 if you have questions.

Sincerely,

A handwritten signature in cursive script that reads "Paula Higashi".

PAULA HIGASHI  
Executive Director

Enclosure: Mailing List

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MAIL BD:  FILE:  DATE: 6/20/02 INITIAL: VS  
WORKING BINDER: \_\_\_\_\_

# Commission on State Mandates

Original List Date: 05/01/2002 Mailing Information Other

Last Updated: 06/20/2002

List Print Date: 06/20/2002

## Mailing List

Claim Number: 01-TC-14 (Amendment to 00-TC-17)

Issu: Agency Fee Arrangements

Ms. Harriet Barkschat,  
Mandate Resource Services

5325 Elkhorn Blvd. #307  
Sacramento CA 95842

Tel: (916) 727-1350 Fax: (916) 727-1734 Interested Person

Mr. Bill McGuire, Assistant Superintendent  
Clovis Unified School District.

1450 Herndon  
Clovis CA 93611-0599

Tel: (559) 327-9000 Fax: (559) 327-9129 Claimant

Dr. Carol Berg,  
Education Mandated Cost Network

1121 L Street Suite 1060  
Sacramento CA 95814

Tel: (916) 446-7517 Fax: (916) 446-2011 Interested Person

Mr. Paul Minney,  
Spector, Middleton, Young & Minney, LLP

7 Park Center Drive  
Sacramento CA 95825

Tel: (916) 646-1400 Fax: (916) 646-1300 Interested Person

San Geanacou, Senior Staff Attorney (A-15)  
Department of Finance

915 L Street, Suite 1190  
Sacramento CA 95814

Tel: (916) 445-3274 Fax: (916) 327-0220 State Agency

Mr. Keith B. Petersen, President  
SixTen & Associates

5252 Balboa Avenue Suite 807  
San Diego CA 92117

Tel: (858) 514-8605 Fax: (858) 514-8645 Claimant

Mr. Glenn Haas, Bureau Chief (B-B)

State Controller's Office  
Division of Accounting & Reporting

3301 C Street Suite 500  
Sacramento CA 95816

Tel: (916) 445-8757 Fax: (916) 323-4807 State Agency

Ms. Sandy Reynolds, President  
Reynolds Consulting Group, Inc.

P.O. Box 987  
Sun City CA 92586

Tel: (909) 672-9964 Fax: (909) 672-9963 Interested Person

Mr. Tom Lutzenberger, Principal Analyst (A-15)  
Department of Finance

915 L Street, 6th Floor  
Sacramento CA 95814

Tel: (916) 445-8913 Fax: (916) 327-0225 State Agency

Ms. Patricia Ryan,  
California Mental Health Directors Association

2030 J Street  
Sacramento CA 95814

Tel: (916) 556-3477 Fax: (916) 446-4519 Interested Person

# Commission on State Mandates

Original List Date: 05/01/2002 Mailing Information Other

Last Updated: 06/20/2002

List Print Date: 06/20/2002

## Mailing List

Claim Number: 01-TC-14 (Amendment to 00-TC-17)

Issue: Agency Fee Arrangements

Mr. Gerry Shelton, Administrator (B-8)  
Department of Education  
School Fiscal Services  
560 J Street Suite 150  
Sacramento CA 95814  
Tel: (916) 323-2068 Fax: (916) 322-5102 State Agency

Mr. Bob Thompson, Deputy General Counsel (D-12)  
Public Employment Relations Board  
  
1031 18th Street  
Sacramento CA 95814-4174  
Tel: (916) 322-3198 Fax: (916) 327-7955 State Agency

Mr. Steve Shields,  
Shields Consulting Group, Inc.  
  
1536 36th Street  
Sacramento CA 95816  
Tel: (916) 454-7310 Fax: (916) 454-7312 Interested Person

Mr. David Wellhouse,  
David Wellhouse & Associates, Inc.  
  
9175 Kiefer Blvd Suite 121  
Sacramento CA 95826  
Tel: (916) 368-9244 Fax: (916) 368-5723 Interested Person

Mr. Steve Smith, CEO  
Mandated Cost Systems, Inc.  
  
11130 Sun Center Drive Suite 100  
Rancho Cordova CA 95670  
Tel: (916) 669-0888 Fax: (916) 669-0889 Interested Person

Mr. Jim Spano, (B-8)  
State Controller's Office  
Division of Audits  
300 Capitol Mall, Suite 518  
Sacramento CA 95814  
Tel: (916) 323-5849 Fax: (916) 327-0832 State Agency

Ms. Pam Stone, Legal Counsel  
MAXIMUS  
  
4320 Auburn Blvd. Suite 2000  
Sacramento CA 95841  
Tel: (916) 485-8102 Fax: (916) 485-0111 Interested Person

# Commission on State Mandates

Original List Date: 05/01/2002      Mailing Information      Other

Last Updated: 06/20/2002

List Print Date: 06/20/2002

## Mailing List

Claim Number: 01-TC-14 (Amendment to 00-TC-17)

Issue: Agency Fee Arrangements

**TO ALL PARTIES AND INTERESTED PARTIES:** Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)







DEPARTMENT OF  
**FINANCE**

GRAY DAVIS, GOVERNOR

916 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

July 30, 2002

**RECEIVED**

AUG 02 2002

**COMMISSION ON  
STATE MANDATES**

Ms. Paula Higashi  
Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

Dear Ms. Higashi:

As requested in your letter of May 20, 2002, the Department of Finance (Finance) has reviewed the test claim submitted by the Clovis Unified School District (Claimant) asking the Commission to determine whether specified costs incurred under Chapter 805, Statutes of 2001, are reimbursable state mandated costs (Claim No. 01-TC-14 "Agency Fee Arrangements, Test Claim Amendment").

Commencing with page 8 of the test claim, Claimant has identified the following new duties, which it asserts are reimbursable state mandates. Following each of the enumerated duties is Finance's response:

**1. To adjust payroll withholdings for rebates or withholding reductions for that portion of fair share service fees that are not germane to the employee organization function as the exclusive bargaining representative when so determined pursuant to regulations adopted by the Public Employment Relations Board (PERB) pursuant to Government Code Section 3546 (a).**

Government Code (GC) Section 3543 requires employees of school or community college districts (public school employees) who are members of a unit for which an exclusive representative has been selected to either join the employee organization, or to remit to it a fair share service fee. Upon the request of the exclusive representative, GC Section 3546 requires school or community college districts (public school employers) to deduct the fair share service fee from the wages of all represented employees.

Senate Bill 614 (Chapter 805, Statutes of 2001) amended GC Section 3546 (a) to allow represented public school employees to request a rebate or fee reduction of any portion of the fair share service fee that is not devoted to the cost of negotiations, contract administration or any other activities of the employee organization that are germane to its function as the exclusive bargaining representative.

Based on the aforementioned amendment to GC Section 3546 (a), Claimant alleges reimbursable costs associated with adjusting their payroll withholding system to both provide rebates to, and to reduce future fair share service fee withholdings for represented public school

employees who request that they be refunded that amount of their fair share service fee that is not germane to the employee organization's function as the exclusive bargaining representative.

Pursuant to the United States Supreme Court's ruling in Chicago Teachers Union v. Hudson (1986) 89 L.Ed.2d 232, the PERB adopted regulations in 1990 governing the withholding of fair share service fees from the paychecks of public school employees. It is the opinion of the PERB that these regulations also suffice for purposes of the amendments to GC Section 3546 (a) contained in Chapter 805, Statutes of 2001.

These regulations, a copy of which are attached, place the full burden of activities relative to the settlement of questions concerning the appropriateness of fair share service fees on the exclusive representatives. Consequently, as the PERB regulations do not require public school employers to perform additional activities, it is inappropriate for Claimant to seek reimbursement for associated costs.

Finance further asserts Claimant's allegation of mandated costs (should any such costs actually be incurred) would fail the tests for mandated costs that have been established by the California Supreme Court.

In County of Los Angeles v. State of California, 43 Cal. 3d 46 (hereafter County of Los Angeles), the California Supreme Court established that, in order for costs to be considered reimbursable, local entities must incur those costs through (a) the provision to the public of a new or higher level of service via a new or an existing program, or (b) the performance of unique requirements that do not apply generally to all residents or entities in the state.

Finance asserts that Claimant's allegation of mandated costs associated with the adjustment of their payroll withholding system pursuant to GC Section 3546 (a) does not meet the first test the California Supreme Court established in County of Los Angeles. By adjusting their payroll withholding system to reduce the fair share service fees deducted from the paychecks of specified employees, or to provide refunds to those employees, Claimant is in no way providing the public a new or higher level of service. Instead, Claimant is simply adjusting their internal accounting procedures, with no direct benefit for the public.

Finance additionally asserts that Claimant's allegation of mandated costs associated with the adjustment of their payroll withholding system pursuant to GC Section 3546 (a) does not meet the second test the California Supreme Court established in County of Los Angeles.

In Communications Workers v. Beck, 487 U.S. 735 (1988) (hereafter Communications Workers), the United States Supreme Court established that, as regards fair share service fees, Section 8 (a) (3) of the National Labor Relations Act "...authorizes the exaction of only those fees and dues necessary to 'performing the duties of an exclusive representative of the employees in dealing with the [487 U.S. 735, 763] employer on labor-management issues'". A copy of this ruling is attached.

Since Chapter 805, Statutes of 2001, amends State law in a manner that conforms to the United States Supreme Court's ruling in Communications Workers, and since that ruling applies to all public and private employers in the state whose employees are represented by exclusive representatives, Claimant cannot allege the requirement that they adjust their payroll withholding system pursuant to GC Section 3546 (a) imposes upon them a unique requirement that does not apply generally to all residents or entities in the state.

**2. To take any and all necessary actions, when necessary, to recover reasonable legal fees, legal costs and settlement or judgment liabilities from the recognized employee organization, arising from any court or administrative action relating to the school district's compliance with the section pursuant to subdivision (e) of Section 3546.**

Chapter 805, Statutes of 2001, amended GC Section 3546 (e) to require exclusive representatives to indemnify and hold public school employers harmless for any legal fees, legal costs and settlement or judgment liability arising from any court or administrative action resulting from the public school employers' compliance with GC Section 3546. Pursuant to GC Section 3546 (e), however, this indemnification and hold harmless duty shall not apply to actions related to compliance with GC Section 3546 that are brought against the public school employer by the exclusive representative.

Claimant alleges mandated costs associated with the recovery of legal fees, legal costs and settlement or judgment liabilities from exclusive representatives that may arise from any court or administrative action relating to the public school employer's compliance with GC Section 3546 (e).

Subdivision (e) of Section 3546 places duties on the exclusive representative, not the school district. The only instance when the indemnification of the school district would not apply is in an instance where the exclusive representative brings suit against the school district. We believe that this would rarely, if ever, occur. Even in this instance, subdivision (e) of Section 3546 does not place any duties on the school district, therefore this subdivision does not result in mandated activities.

Finance further asserts that Claimant's allegation of mandated costs (should such costs actually be incurred) would fail the tests established by the California Supreme Court in County of Los Angeles. Specifically, in filing suit against an exclusive representative to recover legal fees, legal costs or settlement or judgment liabilities, Claimant would neither be providing a new or higher level of service to the public or be performing a unique activity that does not apply to all residents or entities in the state. Claimant would simply be asserting its general employer's duty.

**3. Provide the exclusive representative of a public school employee a list of home addresses for each employee of a bargaining unit, regardless of when the employee commenced employment, and periodically update and correct the list to reflect changes of address, additions for new employees and deletions of former employees, pursuant to subdivision (f) of Section 3546.**

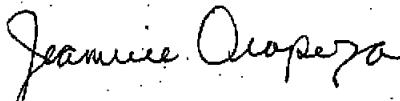
Claimant alleges reimbursable costs associated with the requirement in GC Section 3546 (f) that public school employers provide exclusive representatives with the home addresses of all represented employees so the exclusive representatives may provide those employees with information detailing their rights as they pertain to the payment of fair share service fees.

The activity required by subdivision (f) of Section 3546 consists of producing a report which should readily be available through the school district's payroll system. Even factoring in the potential of programming to produce a report, should one not already exist, Finance estimates that these costs would not reach the \$200 threshold, and would therefore not be reimbursable as the costs are de minimis.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your May 20, 2002, letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Michael Wilkening, Principal Program Budget Analyst at (916) 445-0328 or Tom Lutzenberger, state mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,



Jeannie Oropeza  
Program Budget Manager

Attachment

Attachment A

DECLARATION OF  
DEPARTMENT OF FINANCE  
CLAIM NO.

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.
2. We concur that the sections relevant to this claim are accurately quoted in the test claim submitted by claimants and, therefore, we do not restate them in this declaration.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

July 30, 2002

at Sacramento, CA

Michael Wilkening

Michael Wilkening

PROOF OF SERVICE

Test Claim Name: Agency Fee Arrangements, Test Claim Amendment  
Test Claim Number: 01-TC-14

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 7<sup>th</sup> Floor, Sacramento, CA 95814.

On July 30, 2002, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 7<sup>th</sup> Floor, for Interagency Mail Service, addressed as follows:

A-16  
Ms. Paula Higashi, Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

B-8  
State Controller's Office  
Division of Accounting & Reporting  
Attention: Glenn Haas  
3301 C Street, Room 500  
Sacramento, CA 95816

B-29  
Legislative Analyst's Office  
Attention Marianne O'Malley  
925 L Street, Suite 1000  
Sacramento, CA 95814

Education Mandated Cost Network  
C/O School Services of California  
Attention: Dr. Carol Berg, PhD  
1121 L Street, Suite 1060  
Sacramento, CA 95814

Sixten & Associates  
Attention: Keith Petersen  
5252 Balboa Avenue, Suite 807  
San Diego, CA 92117

E-8  
Department of Education  
School Business Services  
Attention: Gerry Shelton  
560 J Street, Suite 150  
Sacramento, CA 95814

Mandated Cost Systems, Inc.  
Attention: Steve Smith  
11130 Sun Center Drive, Suite 100  
Sacramento, CA 95670

B-8  
State Controller's Office  
Division of Audits  
Attention: Jim Spano  
300 Capitol Mall, Suite 518  
Sacramento, CA 95814

Spector, Middleton, Young & Minney, LLP  
Attention: Paul Minney  
7 Park Center Drive  
Sacramento, CA 95825

Reynolds Consulting Group, Inc.  
Attention: Sandy Reynolds  
PO Box 987  
Sun City, CA 92586

Shields Consulting Group, Inc.  
Attention: Steve Shields  
1536 36<sup>th</sup> Street  
Sacramento, CA 95816

California Mental Health Directors Association  
Attention: Patricia Ryan  
2030 J Street  
Sacramento, CA 95814

David Wellhouse & Associates, Inc.  
Attention: David Wellhouse  
9175 Kiefer Blvd., Suite 121  
Sacramento, CA 95826

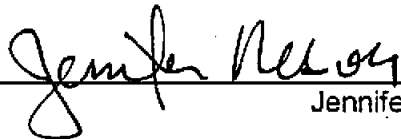
Mandate Resource Services  
Attention: Harmeet Barkschat  
5325 Elkhorn Blvd., Suite 307  
Sacramento, CA 95842-

Clovis Unified School District  
Attention: Bill McGuire  
1450 Herndon  
Clovis, CA 93611-0599

DMG-MAXIMUS  
Attention: Pam Stone  
4320 Auburn Blvd., Suite 2000  
Sacramento, CA 95841

Public Employment Relations Board  
Attention: Bob Thompson  
1031 18<sup>th</sup> Street  
Sacramento, CA 95814

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on July 30, 2002 at Sacramento, California.

  
\_\_\_\_\_  
Jennifer Nelson



32990. Agency Fee.

(a) Pursuant to Government Code Section 3502.5, an exclusive representative may enter into an agreement with a public agency that provides for an "agency shop" form of organizational security or, alternatively, an exclusive representative may cause an "agency shop" arrangement to be placed in effect upon approval of a majority vote of those affected employees voting in a secret ballot election.

(b) Pursuant to Government Code Sections 3515.7, 3540.1 and 3543, an exclusive representative may enter into an agreement with an employer which provides for the "fair share" or "agency shop" form of organizational security.

(c) Pursuant to Government Code Section 3546, an exclusive representative of a bargaining unit including public school employees may initiate implementation of an organizational security provision for the payment of "fair share" or "agency shop" fees by covered employees.

(d) Pursuant to Government Code Section 3583.5, an exclusive representative of a bargaining unit including employees of the University of California, other than a unit including faculty who are eligible for membership in the Academic Senate, or employees of the California State University may initiate implementation of an organizational security provision for the payment of "fair share" or "agency shop" fees by covered employees.

(e) "Fair share" and "agency shop" forms of organizational security shall be known herein as "agency fee." All such agency fee agreements and provisions shall be administered in accordance with the following regulations.

32991. Amount of Agency Fee.

The agency fee shall not exceed the amounts set forth in Government Code Sections 3502.5(a), 3513(k), 3540.1(i)(2), 3546, and 3583.5.

32992. Notification of Nonmember.

(a) Each nonmember who will be required to pay an agency fee shall annually receive written notice from the exclusive representative of:

(1) The amount of the agency fee which is to be expressed as a percentage of the annual dues per member based upon the chargeable expenditures identified in the notice;

(2) The basis for the calculation of the agency fee; and

(3) A procedure for appealing all or any part of the agency fee.

(b) All such calculations shall be made on the basis of an independent audit that shall be made available to the nonmember.

(c) Such written notice shall be sent/distributed to the nonmember either:

(1) At least 30 days prior to collection of the agency fee, after which the exclusive representative shall place those fees subject to objection in escrow, pursuant to Section 32995 of these regulations; or

(2) Concurrent with the initial agency fee collection, provided however, that all agency fees so noticed shall be held in escrow in toto until all objectors are identified. Thereafter, only the agency fees for agency fee objectors shall be held in escrow, pursuant to Section 32995 of these regulations.

32993. Filing of Financial Report.

Each exclusive representative that has agreed to or has had implemented an agency fee provision shall, as part of the financial report required by Government Code Sections 3502.3(f), 3515.7(e), 3546.5, 3584(b), and 3587, also include (a) the amount of membership dues and agency fees paid by employees in the affected bargaining unit, and (b) identify the expenditure(s) that constitute(s) the basis for the amount of the agency fee.

32994. Agency Fee Appeal Procedure.

(a) If an agency fee payer disagrees with the exclusive representative's determination of the agency fee amount, that employee (hereinafter known as an "agency fee objector") may file an agency fee objection. Such agency fee objection shall be filed with the exclusive representative. An agency fee objector may file an unfair practice charge that challenges the amount of the agency fee; however, no complaint shall issue until the agency fee objector has first exhausted the exclusive representative's Agency Fee Appeal Procedure. No objector shall be required to exhaust the Agency Fee Appeal Procedure where it is insufficient on its face.

(b) Each exclusive representative that has an agency fee provision shall administer an Agency Fee Appeal Procedure in accordance with the following:

(1) A agency fee objection shall be initiated in writing and shall be filed with an official of the exclusive representative who has authority to resolve agency fee objections.

(2) An agency fee objection shall be filed not later than 30 days following distribution of the notice required under Section 32992 of these regulations.

(3) Within 45 days of the last day for filing an objection under Section 32994(b)(2) of these regulations and upon receipt of the employee's agency fee objection, the exclusive representative shall request a prompt hearing regarding the agency fee before an impartial decisionmaker.

(4) The impartial decisionmaker shall be selected by the Public Employment Relations Board, the American Arbitration Association, or the California State Mediation Service. The selection among these entities shall be made by the exclusive representative.

(5) Any party may make a request for a consolidated hearing of multiple agency fee objections based on case similarities, including but not limited to, hearing location. At any time prior to the start of the hearing, any party may make a motion to the impartial decisionmaker challenging any consolidation of the hearing.

(6) The exclusive representative bears the burden of establishing the reasonableness of the amount of the agency fee.

(7) Agency fee objection hearings shall be fair, informal proceedings conducted in conformance with basic precepts of due process.

(8) All decisions of the agency fee impartial decisionmaker shall be in writing, and shall be rendered no later than 30 days after the close of the hearing.

(9) All hearing costs shall be borne by the exclusive representative, unless the exclusive representative and the agency fee objector agree otherwise.

32995. Escrow of Agency Fees in Dispute.

(a) The exclusive representative shall open an account in any independent financial institution in which to place in escrow either:

(1) Agency fees to be collected from nonmembers who have filed timely agency fee objections pursuant to Section 32994(b)(2) of these regulations; or

(2) Agency fees collected from nonmembers receiving concurrent notice with the initial agency fee collection provided in Section 32992(c)(2) of these regulations.

(b) Escrowed agency fees that are being challenged shall not be released until after either:

(1) Mutual agreement between the agency fee objector and the exclusive representative has been reached on the proper amount of the agency fee; or

(2) The impartial decisionmaker has made his/her decision, whichever comes first.

(c) Interest at the prevailing rate shall be paid by the exclusive representative on all rebated fees.

32996. Filing of Agency Fee Appeal Procedure.

An exclusive representative with an agency fee agreement or provision shall file a copy of its Agency Fee Appeal Procedure with the Board within 30 days after entering into an agency fee agreement, or within 30 days of its notification to the employer that initiates the collection of agency fees, or within 30 days after an election result is certified that initiates the collection of agency fees. For agency fee arrangements in effect under MMBA on July 1, 2001, the

exclusive representative shall file its Agency Fee Appeal Procedure with the Board no later than July 31, 2001.

32997. Compliance.

It shall be an unfair practice for an exclusive representative to collect agency fees in violation of these regulations.

108 S.Ct. 2641  
 101 L.Ed.2d 634, 56 USLW 4857, 128 L.R.R.M. (BNA) 2729, 109 Lab.Cas. P 10,548  
 (Cite as: 487 U.S. 735, 108 S.Ct. 2641)

Page 2

▷

Supreme Court of the United States

COMMUNICATIONS WORKERS OF AMERICA  
 and its Locals 2100, 2101, 2108 and 2110,  
 Petitioners

v.

Harry E. BECK, Jr., et al.

No. 86-637.

Argued Jan. 11, 1988.  
 Decided June 29, 1988.

Bargaining unit employees who chose not to become union members brought suit challenging union's use of their agency fees for purposes other than collective bargaining, contract administration or grievance adjustment. The United States District Court for the District of Maryland, 468 F.Supp. 93, granted injunctive relief and order for reimbursement of excess fees. The United States Court of Appeals for the Fourth Circuit, 776 F.2d 1187, affirmed in part, reversed in part and remanded. On rehearing en banc, the Court of Appeals, 800 F.2d 1280, affirmed in part, reversed in part and remanded, and certiorari was granted. The Supreme Court, Justice Brennan, held that: (1) courts had jurisdiction over claims that exaction of agency fees beyond those necessary to finance collective bargaining activities violated judicially created duty of fair representation and nonunion members' First Amendment rights, and (2) section of National Labor Relations Act permitting employer and exclusive bargaining representative to enter into agreement requiring all employees in bargaining unit to pay periodic union dues and initiation fees as condition of continued employment, whether or not employees otherwise wish to become union members, does not also permit union, over objections of dues-paying nonmember employees to expend funds so collected on activities unrelated to collective bargaining activities.

Affirmed.

Justice Blackmun, concurred in part and dissented in part and filed an opinion in which Justices O'Connor and Scalia joined.

Justice Kennedy did not participate.

West Headnotes

[1] Labor Relations ⇨510  
 232Ak510 Most Cited Cases

National Labor Relations Board had primary jurisdiction over claim that union, by collecting and using agency fees for nonrepresentational purposes, contravened express terms of section of National Labor Relations Act governing agency fees. National Labor Relations Act, § 8(a)(3), as amended, 29 U.S.C.A. § 158(a)(3).

[2] Labor Relations ⇨135.1  
 232Ak135.1 Most Cited Cases  
 (Formerly 232Ak135)

Courts had jurisdiction over claims that exactions of agency fees beyond those necessary to finance collective bargaining activities violated judicially created duty of fair representation and First Amendment rights of bargaining unit employees who chose not to become union members, insofar as decision was necessary to disposition of duty of fair representation challenge. U.S.C.A. Const.Amend. 1.

[3] Labor Relations ⇨511  
 232Ak511 Most Cited Cases

Federal courts may resolve unfair labor practice questions that emerge as collateral issues in suits brought under independent federal remedies, and one such remedy over which federal jurisdiction is well settled is judicially implied duty of fair representation; this jurisdiction to adjudicate fair representation claims encompasses challenges leveled not only at union's contract administration and enforcement efforts, but at its negotiation activities as well.

[4] Labor Relations ⇨510  
 232Ak510 Most Cited Cases

Whether or not National Labor Relations Board entertains constitutional claims, such claims would not fall within Board's primary jurisdiction.

[5] Labor Relations ⇨104  
 232Ak104 Most Cited Cases

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108 S.Ct. 2641

101 L.Ed.2d 634, 56 USLW 4857, 128 L.R.R.M. (BNA) 2729, 109 Lab.Cas. P 10,548

(Cite as: 487 U.S. 735, 108 S.Ct. 2641)

Section of National Labor Relations Act permitting employer and exclusive bargaining representative to enter into agreement requiring all employees in bargaining unit to pay periodic union dues and initiation fees as condition of continued employment, whether or not employees otherwise wish to become union members, does not also permit union, over objections of dues-paying nonmember employees, to expend funds so collected on activities unrelated to collective bargaining activities. National Labor Relations Act, § 8(a)(3), as amended, 29 U.S.C.A. § 158(a)(3).

#### [6] Constitutional Law → 48(3)

92k48(3) Most Cited Cases

Federal statutes are to be construed so as to avoid serious doubts as to their constitutionality, and when faced with such doubts, court will first determine whether it is fairly possible to interpret statute in manner that renders it constitutionally valid.

\*\*2643 Syllabus [FN\*]

FN\* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

\*735 Section 8(a)(3) of the National Labor Relations Act (NLRA) permits an employer and a union to enter into an agreement requiring all employees in the bargaining unit to pay union dues as a condition of continued employment, whether or not the employees become union members. Petitioner Communications Workers of America (CWA) entered into a collective-bargaining agreement that contains a union security clause under which all represented employees who do not become union members must pay the union "agency fees" in amounts equal to the dues paid by union members. Respondents, bargaining-unit employees who chose not to become union members, filed this suit in Federal District Court, challenging CWA's use of their agency fees for purposes other than collective bargaining, contract administration, or grievance adjustment (hereinafter "collective-bargaining" activities). They alleged that expenditure of their fees on activities such as

organizing the employees of other employers, lobbying for labor legislation, and participating in social, charitable, and political events violated CWA's duty of fair representation, § 8(a)(3), and the First Amendment. The court concluded that CWA's collection and disbursement of agency fees for purposes other than collective-bargaining activities violated the associational and free speech rights of objecting nonmembers, and granted injunctive relief and an order for reimbursement of excess fees. The Court of Appeals, preferring to rest its judgment on a ground other than the Constitution, ultimately concluded, *inter alia*, that the collection of nonmembers' fees for purposes unrelated to collective bargaining violated CWA's duty of fair representation.

*Held:*

1. The courts below properly exercised jurisdiction over respondents' claims that exactions of agency fees beyond those necessary to finance collective-bargaining activities violated the judicially created duty of fair representation and respondents' First Amendment rights. Although the National Labor Relations Board (Board) had primary jurisdiction over respondents' § 8(a)(3) claim, cf. *San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 79 S.Ct. 773, 3 L.Ed.2d 775, the courts below were not precluded from deciding the merits of that claim insofar as such a decision was necessary \*736 to the disposition of respondents' duty-of-fair representation challenge. Federal courts may resolve unfair labor practice questions that emerge as collateral issues in suits brought under independent federal remedies. Respondents did not attempt to circumvent the Board's primary jurisdiction by casting their statutory claim as a violation of CWA's duty of fair representation. Instead, the necessity of deciding the scope of § 8(a)(3) arose because CWA and its copetitioner local unions sought to defend themselves on the ground that the statute authorizes the type of union-security agreement in issue. Pp. 2646-2647.

2. Section 8(a)(3) does not permit a union, over the objections of dues-paying nonmember employees, to expend funds collected from them on activities unrelated to collective-bargaining activities. Pp. 2648-2657.

(a) The decision in *Machinists v. Street*, 367 U.S.

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740, 81 S.Ct. 1784, 6 L.Ed.2d 1141—holding that § 2, Eleventh of the Railway Labor Act (RLA) does not permit a union, over the objections of nonmembers, to expend agency fees on political causes—is controlling, for § 8(a)(3) and § 2, Eleventh are in all material respects identical. Their nearly identical language reflects the fact that in both Congress authorized compulsory unionism only to the extent necessary to ensure that those who enjoy union-negotiated benefits contribute to their cost. Indeed, Congress, in 1951, \*\*2644 expressly modeled § 2, Eleventh on § 8(a)(3), which it had added to the NLRA by the Taft-Hartley Act only four years earlier, and emphasized that it was extending to railroad labor the same rights and privileges of the union shop that were contained in the Taft-Hartley Act. Pp. 2648-2649.

(b) Section 8(a)(3) was intended to correct abuses of compulsory unionism that had developed under "closed shop" agreements and, at the same time, to require, through union-security clauses, that nonmember employees pay their share of the cost of benefits secured by the union through collective bargaining. These same concerns prompted Congress' later amendment of the RLA. Given the parallel purpose, structure, and language of § 8(a)(3) and § 2, Eleventh, both provisions must be interpreted in the same manner. Only the most compelling evidence would support a contrary conclusion, and petitioners have not proffered such evidence here. Pp. 2649-2653.

(c) Petitioners claim that the union-security provisions of the RLA and NLRA should be read differently in light of the different history of unionism in the regulated industries—that is, the tradition of voluntary unionism in the railway industry prior to the 1951 amendment of the RLA and the history of compulsory unionism in NLRA-regulated industries prior to 1947. Petitioners contend that because agreements requiring the payment of uniform dues were not among the specific abuses Congress sought to remedy in the Taft-Hartley Act, § 8(a)(3) cannot plausibly be read to prohibit the collection of fees in excess of those \*737 necessary to cover the costs of collective bargaining. This argument is unpersuasive because the legislative history of § 8(a)(3) shows that Congress was concerned with numerous and systemic abuses of the closed shop

and therefore resolved to ban the closed shop altogether; to the extent it permitted union-security agreements at all, Congress was guided—as it was in its later amendment of the RLA—by the principle that those enjoying the benefits of union representation should contribute their fair share to the expense of securing those benefits. Moreover, it is clear that Congress understood its actions in 1947 and 1951 to have placed the respective regulated industries on an equal footing insofar as compulsory unionism was concerned. Pp. 2653-2654.

(d) The fact that in the Taft-Hartley Act Congress expressly considered proposals regulating union finances but ultimately placed only a few limitations on the collection and use of dues and fees, and otherwise left unions free to arrange their financial affairs as they saw fit, is not sufficient to compel a broader construction of § 8(a)(3) than that accorded § 2, Eleventh in *Street*. The legislative history of § 8(a)(3) shows that Congress was concerned with the dues and rights of union members, not the agency fees and rights of nonmembers. The absence, in such legislative history, of congressional concern for the rights of nonmembers is consistent with the view that Congress understood § 8(a)(3) to afford nonmembers adequate protection by authorizing the collection of only those fees necessary to finance collective-bargaining activities. Nor is there any merit to the contention that, because unions had previously used members' dues for a variety of purposes in addition to collective-bargaining agreements, Congress' silence in 1947 as to the uses to which unions could put nonmembers' fees should be understood as an acquiescence in such union practices. Pp. 2653-2655.

(e) *Street* cannot be distinguished on the theory that the construction of § 2, Eleventh was merely expedient to avoid the constitutional question—as to the use of fees for political causes that nonmembers find objectionable—that otherwise would have been raised because the RLA (unlike the NLRA) pre-empts state laws banning union-security agreements and thus nonmember fees were compelled by "governmental action." Even assuming that the exercise of rights permitted, though not \*\*2645 compelled, by § 8(a)(3) does not involve state action, and that the NLRA and RLA therefore differ in such respect, nevertheless the absence of any constitutional concerns in this case

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would not warrant reading the nearly identical language of § 8(a)(3) and § 2, Eleventh differently. Pp. 2655-2656.

800 F.2d 1280 (CA 4 1986), affirmed.

\*738 BRENNAN, J., delivered the opinion of the Court, in which REHNQUIST, C.J., and WHITE, MARSHALL, and STEVENS, JJ., joined. BLACKMUN, J., filed an opinion, concurring in part and dissenting in part, in which O'CONNOR and SCALIA, JJ., joined, *post*, p. ---. KENNEDY, J., took no part in the consideration or decision of the case.

*Laurence Gold* argued the cause for petitioners. With him on the briefs were *Thomas S. Adair*, *James Coppess*, and *George Kaufmann*.

*Edwin Vieira, Jr.*, argued the cause for respondents. With him on the brief was *Hugh L. Reilly*.\*

\* *David M. Silberman* filed a brief for the American Federation of Labor and Congress of Industrial Organizations as *amicus curiae* urging reversal.

Briefs of *amici curiae* urging affirmance were filed for the Landmark Legal Foundation by *Jerald L. Hill* and *Mark J. Bredemeier*; for the Pacific Legal Foundation et al. by *Ronald A. Zumbun* and *Anthony T. Caso*; and for Senator Jesse Helms et al. by *Thomas A. Farr*, *W. W. Taylor, Jr.*, and *Robert A. Valois*.

*Solicitor General Fried*, *Deputy Solicitor General Cohen*, *Norton J. Come*, and *Linda Sher* filed a brief for the United States as *amicus curiae*.

Justice BRENNAN delivered the opinion of the Court.

Section 8(a)(3) of the National Labor Relations Act of 1935 (NLRA), 49 Stat. 452, as amended, 29 U.S.C. § 158(a)(3), permits an employer and an exclusive bargaining representative to enter into an agreement requiring all employees in the bargaining unit to pay periodic union dues and initiation fees as a condition of continued employment, whether or

not the employees otherwise wish to become union members. Today we must decide whether this provision also permits a union, over the objections of dues-paying nonmember employees, to expend funds so collected on activities unrelated to collective bargaining, contract administration, or grievance adjustment, and, if so, whether such expenditures violate the union's duty of fair representation or the objecting employees' First Amendment rights.

\*739 I

In accordance with § 9 of the NLRA, 49 Stat. 453, as amended, 29 U.S.C. § 159, a majority of the employees of American Telephone and Telegraph Company and several of its subsidiaries selected petitioner Communications Workers of America (CWA) as their exclusive bargaining representative. As such, the union is empowered to bargain collectively with the employer on behalf of all employees in the bargaining unit over wages, hours, and other terms and conditions of employment, § 9(a), 29 U.S.C. § 159(a), and it accordingly enjoys "broad authority ... in the negotiation and administration of [the] collective bargaining contract." *Humphrey v. Moore*, 375 U.S. 335, 342, 84 S.Ct. 363, 367, 11 L.Ed.2d 370 (1964). This broad authority, however, is tempered by the union's "statutory obligation to serve the interests of all members without hostility or discrimination toward any," *Vaca v. Sipes*, 386 U.S. 171, 177, 87 S.Ct. 903, 910, 17 L.Ed.2d 842 (1967), a duty that extends not only to the negotiation of the collective-bargaining agreement itself but also to the subsequent enforcement of that agreement, including the administration of any grievance procedure the agreement may establish. *Ibid.* CWA chartered several local unions, copetitioners in this case, to assist it in discharging these statutory duties. In addition, at least in part to help defray the considerable costs it incurs in performing these tasks, CWA negotiated a union-security clause in the collective-bargaining agreement under which all represented employees, including those who do not wish to become union members, must pay the union "agency fees" in "amounts equal to the periodic dues" paid by union members. Plaintiffs' Complaint ¶ 11 and Plaintiffs' Exhibit A-1, 1 Record. Under the clause, failure to tender the required fee may be grounds for discharge.



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In June 1976, respondents, 20 employees who chose not to become union members, initiated this suit challenging CWA's use of their agency fees for purposes other than \*\*2646 collective bargaining, contract administration, or grievance adjustment \*740 (hereinafter "collective-bargaining" or "representational" activities). Specifically, respondents alleged that the union's expenditure of their fees on activities such as organizing the employees of other employers, lobbying for labor legislation, and participating in social, charitable, and political events violated petitioners' duty of fair representation, § 8(a)(3) of the NLRA, the First Amendment, and various common-law fiduciary duties. In addition to declaratory relief, respondents sought an injunction barring petitioners from exacting fees above those necessary to finance collective-bargaining activities, as well as damages for the past collection of such excess fees.

The District Court concluded that the union's collection and disbursement of agency fees for purposes other than bargaining unit representation violated the associational and free speech rights of objecting nonmembers, and therefore enjoined their future collection. 468 F.Supp. 93 (Md.1979). Applying a "clear and convincing" evidentiary standard, the District Court concluded that the union had failed to show that more than 21f its funds were expended on collective-bargaining matters. App. to Pet. for Cert. 119a. The court ordered reimbursement of all excess fees respondents had paid since January 1976, and directed the union to institute a recordkeeping system to segregate accounts for representational and noncollective-bargaining activities. *Id.*, at 125a, 108a-109a.

A divided panel of the United States Court of Appeals for the Fourth Circuit agreed that respondents stated a valid claim for relief under the First Amendment, but, preferring to rest its judgment on a ground other than the Constitution, concluded that the collection of nonmembers' fees for purposes unrelated to collective bargaining violated § 8(a)(3). 776 F.2d 1187 (1985). Turning to the specific activities challenged, the majority noted that the District Court's adoption of a "clear and convincing" standard of proof was improper, but found that for certain categories of expenditures, such \*741 as lobbying, organizing employees in other companies, and funding various

community services, the error was harmless inasmuch as the activities were indisputably unrelated to bargaining unit representation. The majority remanded the case for reconsideration of the remaining expenditures, which the union claimed were made in connection with valid collective-bargaining activities. Chief Judge Winter dissented. *Id.*, at 1214. He concluded that § 8(a)(3) authorized exaction of fees in amounts equivalent to full union dues, including fees expended on nonrepresentational activities, and that the negotiation and enforcement of agreements permitting such exactions was private conduct incapable of violating the constitutional rights of objecting nonmembers.

On rehearing, the en banc court vacated the panel opinion and by a 6-to-4 vote again affirmed in part, reversed in part, and remanded for further proceedings. 800 F.2d 1280 (1986). The court explained in a brief *per curiam* opinion that five of the six majority judges believed there was federal jurisdiction over both the § 8(a)(3) and the duty-of-fair-representation claims, and that respondents were entitled to judgment on both. Judge Murnaghan, casting the deciding vote, concluded that the court had jurisdiction over only the duty-of-fair-representation claim; although he believed that § 8(a)(3) permits union-security clauses requiring payment of full union dues, he concluded that the collection of such fees from nonmembers to finance activities unrelated to collective bargaining violates the union's duty of fair representation. All six of these judges agreed with the panel's resolution of the specific allocations issue and accordingly remanded the action. Chief Judge Winter, joined by three others, again dissented for the reasons set out in his earlier panel dissent.

The decision below directly conflicts with that of the United States Court of Appeals for the Second Circuit. See \*\*2647Price v. Auto Workers, 795 F.2d 1128 (1986). We granted certiorari to resolve the important question concerning the \*742 validity of such agreements, 482 U.S. 904, 107 S.Ct. 2480, 96 L.Ed.2d 372 (1987), and now affirm.

## II

At the outset, we address briefly the jurisdictional question that divided the Court of Appeals.

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Respondents sought relief on three separate federal claims: that the exaction of fees beyond those necessary to finance collective-bargaining activities violates § 8(a)(3); that such exactions violate the judicially created duty of fair representation; and that such exactions violate respondents' First Amendment rights. We think it clear that the courts below properly exercised jurisdiction over the latter two claims, but that the National Labor Relations Board (NLRB or Board) had primary jurisdiction over respondents' § 8(a)(3) claim.

[1] In *San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 79 S.Ct. 773, 3 L.Ed.2d 775 (1959), we held that "[w]hen an activity is arguably subject to § 7 or § 8 of the [NLRA], the States as well as the federal courts must defer to the exclusive competence of the [Board] if the danger of state interference with national policy is to be averted." *Id.*, at 245, 79 S.Ct., at 780 (emphasis added). A simple recitation of respondents' § 8(a)(3) claim reveals that it falls squarely within the primary jurisdiction of the Board: respondents contend that, by collecting and using agency fees for nonrepresentational purposes, the union has contravened the express terms of § 8(a)(3), which, respondents argue, provides a limited authorization for the collection of only those fees necessary to finance collective-bargaining activities. There can be no doubt, therefore, that the challenged fee-collecting activity is "subject to" § 8.

While the five-judge plurality of the en banc court did not explain the basis of its jurisdictional holding, the panel majority concluded that because courts have jurisdiction over challenges to union-security clauses negotiated under § 2, Eleventh of the Railway Labor Act (RLA), 64 Stat. 1238, 45 U.S.C. § 152, Eleventh, which is in all material respects identical to § 8(a)(3), there must be a parity of federal jurisdiction \*743 over § 8(a)(3) claims. Unlike the NLRA, however, the RLA establishes no agency charged with administering its provisions, and instead leaves it to the courts to determine the validity of activities challenged under the Act. The primary jurisdiction of the NLRB, therefore, cannot be diminished by analogies to the RLA, for in this regard the two labor statutes do not parallel one another. The Court of Appeals erred, then, to the extent that it concluded it possessed jurisdiction to pass directly on respondents' § 8(a)(3) claim.

[2][3][4] The court was not precluded, however, from deciding the merits of this claim insofar as such a decision was necessary to the disposition of respondents' duty-of-fair-representation challenge. Federal courts may resolve unfair labor practice questions that "emerge as collateral issues in suits brought under independent federal remedies," *Connell Construction Co. v. Plumbers*, 421 U.S. 616, 626, 95 S.Ct. 1830, 1837, 44 L.Ed.2d 418 (1975), and one such remedy over which federal jurisdiction is well settled is the judicially implied duty of fair representation. *Vaca v. Sipes*, 386 U.S. 171, 87 S.Ct. 903, 17 L.Ed.2d 842 (1967). This jurisdiction to adjudicate fair-representation claims encompasses challenges leveled not only at a union's contract administration and enforcement efforts, *id.*, at 176-188, 87 S.Ct., at 909-915, but at its negotiation activities as well. *Ford Motor Co. v. Huffman*, 345 U.S. 330, 73 S.Ct. 681, 97 L.Ed. 1048 (1953). Employees, of course, may not circumvent the primary jurisdiction of the NLRB simply by casting statutory claims as violations of the union's duty of fair representation. Respondents, however, have done no such thing here; rather, they claim that the union failed to represent their interests fairly \*\*2648 and without hostility by negotiating and enforcing an agreement that allows the exaction of funds for purposes that do not serve their interests and in some cases are contrary to their personal beliefs. The necessity of deciding the scope of § 8(a)(3) arises because petitioners seek to defend themselves on the ground that the statute authorizes precisely this type of agreement. Under these circumstances, the Court of Appeals \*744 had jurisdiction to decide the § 8(a)(3) question raised by respondents' duty-of-fair-representation claim. [FN1]

FN1. The courts below, of course, possessed jurisdiction over respondents' constitutional challenges. Whether or not the NLRB entertains constitutional claims, see *Florida Gulf Coast Building & Construction Trades Council (Edward J. DeBartolo Corp.)*, 273 N.L.R.B. 1431, 1432 (1985) (Board "will presume the constitutionality of the Act [it] administer[s]"); *Handy Andy, Inc.*, 228 N.L.R.B. 447, 452 (1977) (Board lacks the authority "to determine the constitutionality of mandatory language in

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the Act"); see also *Johnson v. Robison*, 415 U.S. 361, 368, 94 S.Ct. 1160, 1166, 39 L.Ed.2d 389 (1974) ("Adjudication of the constitutionality of congressional enactments has generally been thought beyond the jurisdiction of administrative agencies"); cf. *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490, 495-499, 99 S.Ct. 1313, 1316-1318, 59 L.Ed.2d 533 (1979) (reviewing Board's history of determining its jurisdiction over religious schools in light of Free Exercise Clause concerns), such claims would not fall within the Board's primary jurisdiction.

## III

[5] Added as part of the Labor Management Relations Act, 1947, or Taft-Hartley Act, § 8(a)(3) makes it an unfair labor practice for an employer "by discrimination in regard to hire or tenure of employment ... to encourage or discourage membership in any labor organization." 29 U.S.C. § 158(a)(3). The section contains two provisos without which all union-security clauses would fall within this otherwise broad condemnation: the first states that nothing in the Act "preclude[s] an employer from making an agreement with a labor organization ... to require as a condition of employment membership therein" 30 days after the employee attains employment, *ibid.*; the second, limiting the first, provides:

"[N]o employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure ... to tender the periodic \*745 dues and the initiation fees uniformly required as a condition of acquiring or retaining membership." *Ibid.*

Taken as a whole, § 8(a)(3) permits an employer and a union [FN2] to enter into an agreement requiring all employees to become union members as a condition of continued employment, but the "membership" that may be so required has been "whittled down to its financial core." *NLRB v.*

*General Motors Corp.*, 373 U.S. 734, 742, 83 S.Ct. 1453, 1459, 10 L.Ed.2d 670 (1963). The statutory question presented in this case, then, is whether this "financial core" includes the obligation to support union activities beyond those germane to collective bargaining, contract administration, and grievance adjustment. We think it does not.

FN2. Section 8(b)(2) makes it unlawful for unions "to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3)," 29 U.S.C. § 158(b)(2); accordingly, the provisos to § 8(a)(3) also allow unions to seek and enter into union-security agreements.

Although we have never before delineated the precise limits § 8(a)(3) places on the negotiation and enforcement of union-security agreements, the question the parties proffer is not an entirely new one. Over a quarter century ago we held that § 2, Eleventh of the RLA does not permit a union, over the objections of nonmembers, to expend compelled agency fees on political causes. *Machinists v. Street*, 367 U.S. 740, 81 S.Ct. 1784, 6 L.Ed.2d 1141 (1961). Because \*\*2649 the NLRA and RLA differ in certain crucial respects, we have frequently warned that decisions construing the latter often provide only the roughest of guidance when interpreting the former. See, e.g., *Street, supra*, at 5; *First National Maintenance Corp. v. N.L.R.B.*, 452 U.S. 666, 686, n. 23, 101 S.Ct. 2573, 2585, n. 23, 69 L.Ed.2d 318 (1984). Our decision in *Street*, however, is far more than merely instructive here: we believe it is controlling, for § 8(a)(3) and § 2, Eleventh are in all material respects identical. [FN3] Indeed, we have previously described \*746 the two provisions as "statutory equivalent[s]," *Ellis v. Railway Clerks*, 466 U.S. 435, 452, n. 13, 104 S.Ct. 1883, 1894, n. 13; 80 L.Ed.2d 428 (1984), and with good reason, because their nearly identical language reflects the fact that in both Congress authorized compulsory unionism only to the extent necessary to ensure that those who enjoy union-negotiated benefits contribute to their cost. Thus, in amending the RLA in 1951, Congress expressly modeled § 2, Eleventh on § 8(a)(3), which it had added to the NLRA only four years earlier, and repeatedly emphasized that it was extending "to railroad labor

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the same rights and privileges of the union shop that are contained in the Taft-Hartley Act." 96 Cong.Rec. 17055 (1951) (remarks of Rep. Brown). [FN4] In \*747 these circumstances, \*\*2650 we think it clear that Congress intended the same language to have the same meaning in both statutes.

FN3. Section 2, Eleventh provides, in pertinent part:

"Notwithstanding any other provisions of this chapter, or of any other statute or law of the United States, or Territory thereof, or of any State, any carrier or carriers as defined in this chapter and a labor organization or labor organizations duly designated and authorized to represent employees in accordance with the requirements of this chapter shall be permitted--

"(a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is later, all employees shall become members of the labor organization representing their craft or class: *Provided*, That no such agreement shall require such condition of employment with respect to employees to whom membership is not available upon the same terms and conditions as are generally applicable to any other member or with respect to employees to whom membership was denied or terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership." 45 U.S.C. § 152, Eleventh.

Although § 2, Eleventh allows termination of an employee for failure to pay "periodic dues, initiation fees, and assessments (*not including fines and penalties*)," the italicized language was added to the RLA only because some railway unions required only nominal dues, and financed their bargaining activities through monthly assessments; having added "assessments" as a proper element of agency fees,

Congress simply clarified that the term did not refer, as it often did in the parlance of other industries, to fines or penalties. See *Machinists v. Street*, 367 U.S., at 766, 81 S.Ct., at 1798. In addition, § 2, Eleventh pre-empts state laws that would otherwise ban union shops. This difference, however, has no bearing on the types of union-security agreements that the statute permits, and thus does not distinguish the union shop authorization of § 2, Eleventh from that of § 8(a)(3).

FN4. See also S.Rep. No. 2262, 81st Cong., 2d Sess., 3 (1950), U.S. Code Cong.Serv. 1950, p. 4319 ("[T]he terms of [the bill] are substantially the same as those of the Labor-Management Relations Act"); H.R.Rep. No. 2811, 81st Cong., 2d Sess., 4 (1950) (the bill allows unions "to negotiate agreements with railroads and airlines of a character permitted in the case of labor organizations in the other large industries of the country"); 96 Cong. Rec. 15737 (1950) (remarks of Sen. Hill) ("The bill ... is designed merely to extend to employees and employers subject to the [RLA] rights now possessed by employees and employers under the Taft-Hartley Act"); *id.*, at 15740 (remarks of Sen. Lehman) ("The railroad brotherhoods should have the same right that any other union has to negotiate for the union shop"); *id.*, at 16267 (remarks of Sen. Taft) ("[T]he bill inserts in the railway mediation law almost the exact provisions ... of the Taft-Hartley law"); *id.*, at 17049 (remarks of Rep. Beckworth) (the bill permits railway unions "to bring about agreements with carriers providing for union shops, a principle enacted into law in the Taft-Hartley bill"); *id.*, at 17055 (remarks of Rep. Biemiller) ("[The] provision ... gives to railway labor the right to bargain for the union shop just as any other labor group in the country may do"); *id.*, at 17056 (remarks of Rep. Bennett) ("The purpose of the bill is to amend the [RLA] to give railroad workers ... the same right to enjoy the benefits and privileges of a union-shop arrangement that is now

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accorded to all workmen in most other types of employment"); *ibid.* (remarks of Rep. Heselton) ("[T]his bill primarily provides for the same kind of treatment of railroad and airline employees as is now accorded employees in all other industries under existing law"); *id.*, at 17059 (remarks of Rep. Harris) ("The fundamental proposition involved in the bill [is to extend] the national policy expressed in the Taft-Hartley Act regarding the lawfulness of ... the union shop ... to ... railroad and airline labor organizations"); *id.*, at 17061 (remarks of Rep. Vursell) ("This bill simply extends to the railroad workers and employers the benefit of this provision now enjoyed by all other laboring men under the Taft-Hartley Act").

A.

Both the structure and purpose of § 8(a)(3) are best understood in light of the statute's historical origins. Prior to the enactment of the Taft-Hartley Act of 1947, 61 Stat. 140, § 8(a)(3) of the Wagner Act of 1935 (NLRA) permitted majority unions to negotiate "closed shop" agreements requiring employers to hire only persons who were already union members. \*748 See *Algoma Plywood Co. v. Wisconsin Employment Relations Board*, 336 U.S. 301, 307-311, 69 S.Ct. 584, 588-589, 93 L.Ed. 691 (1949). By 1947, such agreements had come under increasing attack, and after extensive hearings Congress determined that the closed shop and the abuses associated with it "create[d] too great a barrier to free employment to be longer tolerated." S.Rep. No. 105, 80th Cong., 1st Sess., 6 (1947) (S.Rep.), Legislative History of Labor Management Relations Act, 1947 (Committee Print compiled for the Subcommittee on Labor of the Senate Committee on Labor and Public Welfare), p. 412 (1974) (Leg.Hist.). The 1947 Congress was equally concerned, however, that without such agreements, many employees would reap the benefits that unions negotiated on their behalf without in any way contributing financial support to those efforts. As Senator Taft, one of the authors of the 1947 legislation, explained, "the argument ... against abolishing the closed shop ... is that if there is not a closed shop those not in the union will get a free

ride, that the union does the work, gets the wages raised, then the man who does not pay dues rides along freely without any expense to himself." 93 Cong.Rec. 4887 (1947), Leg.Hist. 1422. [FN5] Thus, the Taft-Hartley Act was

FN5. This sentiment was repeated throughout the hearings and lengthy debate that preceded passage of the bill. See, e.g., 93 Cong. Rec. 3557 (1947), Leg. Hist. 740 (remarks of Rep. Jennings) (because members of the minority "would get the benefit of that contract made between the majority of their fellow workmen and the management ... it is not unreasonable that they should go along and contribute dues like the others"); 93 Cong. Rec. 3558, Leg. Hist. 741 (remarks of Rep. Robison) ("If [union-negotiated] benefits come to the workers all alike, is it not only fair that the beneficiaries, whether the majority or the minority, contribute their equal share in securing these benefits?"); 93 Cong. Rec. 3837, Leg. Hist. 1010 (remarks of Sen. Taft) ("[T]he legislation, 'in effect, ... say[s], that no one can get a free ride in such a shop. That meets one of the arguments for a union shop. The employee has to pay the union dues"; S.Rep., at 6, Leg.Hist. 412 ("In testifying before this Committee, ... leaders of organized labor have stressed the fact that in the absence of [union-security] provisions many employees sharing the benefits of what unions are able to accomplish by collective bargaining will refuse to pay their share of the cost"). See also H.R.Rep. No. 245, 80th Cong., 1st Sess., 80 (1947) (H.R.Rep.), Leg.Hist. 371 ("[Closed shop] agreements prevent nonunion workers from sharing in the benefits resulting from union activities without also sharing in the obligations").

\*749 "intended to accomplish twin purposes. On the one hand, the most serious abuses of compulsory unionism were eliminated by abolishing the closed shop. On the other hand, Congress recognized that in the absence of a union-security provision 'many employees sharing the benefits of what unions are able to accomplish

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by collective bargaining will refuse to pay their share of the cost.' " *NLRB v. General Motors Corp.*, 373 U.S., at 740-741, 83 S.Ct., at 1458 (quoting S.Rep., at 6, Leg.Hist. 412).

The legislative solution embodied in § 8(a)(3) allows employers to enter into agreements requiring all the employees in \*\*2651 a given bargaining unit to become members 30 days after being hired as long as such membership is available to all workers on a nondiscriminatory basis, but it prohibits the mandatory discharge of an employee who is expelled from the union for any reason other than his or her failure to pay initiation fees or dues. As we have previously observed, Congress carefully tailored this solution to the evils at which it was aimed:

"Th[e] legislative history clearly indicates that Congress intended to prevent utilization of union security agreements for any purpose other than to compel payment of union dues and fees. Thus Congress recognized the validity of unions' concerns about 'free riders,' i.e., employees who receive the benefits of union representation but are unwilling to contribute their *fair share* of financial support to such union, and gave unions the power to contract to meet *that problem* while withholding from unions the power to cause the discharge of employees for any other reason." *Radio Officers v. NLRB*, 347 U.S. 17, 41, 74 S.Ct. 323, 336, 98 L.Ed. 455 (1954) (emphasis added).

\*750 Indeed, "Congress' decision to allow union-security agreements *at all* reflects its concern that ... the parties to a collective bargaining agreement be allowed to provide that there be no employees who are getting the benefits of union representation without paying for them." *Oil Workers v. Mobil Oil Corp.*, 426 U.S. 407, 416, 96 S.Ct. 2140, 2144, 48 L.Ed.2d 736 (1976) (emphasis added).

This same concern over the resentment spawned by "free riders" in the railroad industry prompted Congress, four years after the passage of the Taft-Hartley Act, to amend the RLA. As the House Report explained, 75 to 80% of the 1.2 million railroad industry workers belonged to one or another of the railway unions. H.R.Rep. No. 2811, 81st Cong., 2d Sess., 4 (1950). These unions, of course, were legally obligated to represent the

interests of all workers, including those who did not become members thus nonunion workers were able, at no expense to themselves, to share in all the benefits the unions obtained through collective bargaining. *Ibid.* Noting that the "principle of authorizing agreements for the union shop and the deduction of union dues has now become firmly established as a national policy for all industry subject to the Labor Management Relations Act of 1947," the House Report concluded that "[n]o sound reason exists for continuing to deny to labor organizations subject to the Railway Labor Act the right to negotiate agreements with railroads and airlines of a character permitted in the case of labor organizations in the other large industries of the country." *Ibid.*

In drafting what was to become § 2, Eleventh, Congress did not look to § 8(a)(3) merely for guidance. Rather, as Senator Taft argued in support of the legislation, the amendment "inserts in the railway mediation law almost the exact provisions, so far as they fit, of the Taft-Hartley law, so that the conditions regarding the union shop and the check-off are carried into the relations between railroad unions and the railroads." \*751 96 Cong.Rec. 16267 (1950). [FN6] This was the universal understanding, among both supporters and opponents, of the purpose and effect of the amendment. \*\*2652 See n. 4, *supra*. Indeed, railroad union representatives themselves proposed the amendment that incorporated in § 2, Eleventh, § 8(a)(3)'s prohibition against the discharge of employees who fail to obtain or maintain union membership for any reason other than nonpayment of periodic dues; in offering this proposal the unions argued, in terms echoing the language of the Senate Report accompanying the Taft-Hartley Act, that such a prohibition "remedies the alleged abuses of compulsory union membership ..., yet makes possible the elimination of the 'free rider' and the sharing of the burden of maintenance by all of the beneficiaries of union activity." Hearings on H.R. 7789 before the House Committee on Interstate and Foreign Commerce, 81st Cong., 2d Sess., 253 (1950).

FN6. Although Senator Taft qualified his comparison by explaining that the provisions of the Taft-Hartley law were incorporated into the RLA "so far as they

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fit," this qualification merely reflected the fact that the laws were not identical in all respects, their chief difference inhering in their preemptive effect, or lack thereof, on all state regulation of union-security agreements. See n. 3, *supra*. This difference, of course, does not detract from the near identity of the provisions insofar as they confer on unions and employers authority to enter into union-security agreements, nor does it in any way undermine the force of Senator Taft's comparison with respect to this authority. Indeed, Taft himself explained that he initially "objected to some of the original terms of the bill, but when the [bill's] proponents agreed to accept amendments which made the provisions *identical* with the Taft-Hartley law," he decided to support the law. 96 Cong. Rec. 16267 (1950) (emphasis added).

In *Street* we concluded "that § 2, Eleventh contemplated compulsory unionism to force employees to share the costs of negotiating and administering collective agreements, and the costs of the adjustment and settlement of disputes," but that Congress did not intend "to provide the unions with a means for forcing employees, over their objection, to support political causes which they oppose." 367 U.S., at 764, 81 S.Ct., at 1798. Construing \*752 the statute in light of this legislative history and purpose, we held that although § 2, Eleventh on its face authorizes the collection from nonmembers of "periodic dues, initiation fees, and assessments ... *uniformly required* as a condition of acquiring or retaining membership" in a union, 45 U.S.C. § 152, Eleventh (b) (emphasis added), this authorization did not "ves[t] the unions with unlimited power to spend exacted money." 367 U.S., at 768, 81 S.Ct., at 1800. We have since reaffirmed that "Congress' essential justification for authorizing the union shop" limits the expenditures that may properly be charged to nonmembers under § 2, Eleventh to those "necessarily or reasonably incurred for the purpose of performing the duties of an exclusive [bargaining] representative." *Ellis v. Railway Clerks*, 466 U.S., at 447-448, 104 S.Ct., at 1892. Given the parallel purpose, structure, and language of § 8(a)(3), we must interpret that provision in the

same manner. [FN7] Like § 2, \*\*2653 Eleventh, \*753 § 8(a)(3) permits the collection of "periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership" in the union, [FN8] and like its counterpart in the RLA, § 8(a)(3) was designed to remedy the inequities posed by "free riders" who would otherwise unfairly profit from the \*754 Taft-Hartley Act's abolition of the closed shop. In the face of such statutory congruity, only the most compelling evidence could persuade us that Congress intended the nearly identical language of these two provisions to have different meanings. Petitioners have not proffered such evidence here.

FN7. We note that the NLRB, at least for a time, also took the position that the uniform "periodic dues and initiation fees" required by § 8(a)(3) were limited by the congressional concern with free riders to those fees necessary to finance collective-bargaining activities. In *Teamsters Local No. 959*, 167 N.L.R.B. 1042, 1045 (1967), the Board explained: "[T]he right to charge 'periodic dues' granted unions by the proviso to Section 8(a)(3) is concerned exclusively with the concept that those enjoying the benefits of collective bargaining should bear their fair share of the costs incurred by the collective-bargaining agent in representing them. But it is manifest that dues that do not contribute, and are not intended to contribute, to the cost of operation of a union in its capacity as collective-bargaining agent cannot be justified as necessary for the elimination of 'free riders.'"

The Board, however, subsequently repudiated that view. See *Detroit Mailers Union No. 40*, 192 N.L.R.B. 951, 952 (1971). Notwithstanding this unequivocal language, the dissent advises us, *post*, at 5, n. 5, that we have misread *Teamsters Local*.

Choosing to ignore the above-quoted passage, the dissent asserts that the Board never "embraced ... the view," *ibid.*, that "periodic dues and initiation fees" are limited to those that finance the union in its capacity as collective-bargaining agent, because in *Teamsters Local* itself the

Board concluded that the dues in question "were actually 'special purpose funds,' " and were thus " 'assessments' not contemplated by the proviso to § 8(a)(3)." *Post*, at 5, n. 5 (quoting *Teamsters Local, supra*, at 1044). This observation, however, avails the dissent nothing; obviously, once the Board determined that the dues were not used for collective-bargaining purposes, the conclusion that they were not dues within the meaning of § 8(a)(3) followed automatically. Under the dissent's reading, had the union simply built the increase into its dues base, rather than initially denominating it as a "special assessment," it would have been entitled to exact the fees as "periodic dues" and spend them for precisely the same purposes without running afoul of § 8(a)(3). The Board made entirely clear, however, that it was the *purpose* of the fee, not the manner in which it was collected, that controlled, and thus explained that "[m]onies collected for a credit union or building fund even if regularly recurring, as here, are obviously not 'for the maintenance of the' [union] as an organization, but are for a 'special purpose' and could be terminated without affecting the continued existence of [the union] as the bargaining representative." *Teamsters Local, supra*, at 1045 (emphasis added). Finally, the dissent's portrayal of *Teamsters Local* as part of an unbroken string of consistent Board decisions on the issue is belied by the dissenting statement in *Detroit Mailers*, in which member Jenkins, who joined the decision in *Teamsters Local*, charged that the Board had ignored the clear holding of that earlier case. 192 N.L.R.B., at 952-953.

FN8. Construing both § 8(a)(3) and § 2, Eleventh as permitting the collection and use of only those fees germane to collective bargaining does not, as petitioners seem to believe, read the term "uniform" out of the statutes. The uniformity requirement makes clear that the costs of representational activities must be borne equally by all those who benefit;

without this language, unions could conceivably establish different dues rates both among members and between members and nonmembers, and thereby apportion the costs of collective bargaining unevenly. Indeed, the uniformity requirement inures to the benefit of dissident union members as well, by ensuring that if the union discriminates against them by charging higher dues, their failure to pay such dues cannot be grounds for discharge. See § 8(b)(2), 29 U.S.C. § 158(b)(2) (making it an unfair labor practice for a union "to cause or attempt to cause an employer to discriminate against an employee ... with respect to whom membership in [the union] has been denied or terminated on some ground other than [the] failure to tender the periodic dues and initiation fees uniformly required") (emphasis added).

B  
(1)

Petitioners claim that the union-security provisions of the RLA and NLRA can and should be read differently in light of the vastly different history of unionism in the industries the two statutes regulate. Thus they note that in *Street* we emphasized the "long-standing tradition of voluntary unionism" in the railway industry prior to the 1951 amendment, and the fact that in 1934 Congress had expressly endorsed an "open shop" policy in the RLA. 367 U.S., at 750, 81 S.Ct., at 1790. It was this historical background, petitioners contend, that led us to conclude that in amending the RLA in 1951, Congress "did not completely abandon the policy of full freedom of choice embodied in the 1934 Act, but rather made inroads on it for the limited purpose of eliminating the problems created by the 'free rider.'" *Id.*, at 767, 81 S.Ct., at 1799. The history of union security in industries governed by the NLRA was precisely the opposite: under the Wagner Act of 1935, all forms of compulsory unionism, including the closed shop, were permitted. Petitioners accordingly argue that the inroads Congress made in 1947 on the policy of compulsory unionism were likewise limited, and were designed to remedy only those "carefully-defined" abuses of the union shop system



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that Congress had expressly identified. Brief for Petitioners 42. Because agreements requiring the payment of uniform dues were not among these specified abuses, petitioners contend that § 8(a)(3) cannot plausibly be read to prohibit the collection of fees in excess of those necessary to cover the costs of collective bargaining.

\*755 We find this argument unpersuasive for several reasons. To begin with, the fact that Congress sought to remedy "the most serious abuses of compulsory union membership," S.Rep., at 7, Leg.Hist. 413, hardly suggests that the Taft-Hartley Act effected only limited changes in union-security practices. Quite to the contrary, in *Street* we concluded that Congress' purpose in amending the RLA was "limited" precisely because Congress did not perceive voluntary unionism as the source of widespread and flagrant abuses, and thus modified the railroad industry's open shop \*\*2654 system only to the extent necessary to eliminate the problems associated with "free riders." That Congress viewed the Wagner Act's regime of compulsory unionism as seriously flawed, on the other hand, indicates that its purposes in overhauling that system were, if anything, far less limited, and not, as petitioners and the dissent contend, equally circumspect. Not surprisingly, therefore--and in stark contrast to petitioners' "limited inroads" theory--congressional opponents of the Taft-Hartley Act's union-security provisions understood the Act to provide only the most grudging authorization of such agreements, permitting "union-shop agreement[s] only under limited and administratively burdensome conditions." S.Rep., pt. 2, p. 8, Leg.Hist. 470 (Minority Report). That understanding comports with our own recognition that "Congress' decision to allow union-security agreements *at all* reflects its concern that ... the parties to a collective bargaining agreement be allowed to provide that there be no employees who are getting the benefits of union representation without paying for them." *Oil Workers v. Mobil Oil Corp.*, 426 U.S., at 416, 96 S.Ct., at 2144 (emphasis added). Congress thus did not set out in 1947 simply to tinker in some limited fashion with the NLRA's authorization of union-security agreements. Rather, to the extent Congress preserved the status quo, it did so because of the considerable evidence adduced at congressional hearings indicating that "such agreements promoted stability by eliminating 'free

riders,' " S.Rep., at 7, \*756 Leg.Hist. 413, and Congress accordingly "gave unions the power to contract to meet *that problem* while withholding from unions the power to cause the discharge of employees for any other reason." *Radio Officers v. NLRB*, 347 U.S., at 41, 74 S.Ct., at 336 (emphasis added). We therefore think it not only permissible but altogether proper to read § 8(a)(3), as we read § 2, Eleventh, in light of this animating principle.

Finally, however much union-security practices may have differed between the railway and NLRA-governed industries prior to 1951, it is abundantly clear that Congress itself understood its actions in 1947 and 1951 to have placed these respective industries on an equal footing insofar as compulsory unionism was concerned. Not only did the 1951 proponents of the union shop propose adding to the RLA language nearly identical to that of § 8(a)(3), they repeatedly insisted that the purpose of the amendment was to confer on railway unions precisely the same right to negotiate and enter into union-security agreements that all unions subject to the NLRA enjoyed. See n. 4, *supra*. Indeed, a subtheme running throughout the comments of these supporters was that the inequity of permitting "free riders" in the railroad industry was especially egregious in view of the fact that the Taft-Hartley Act gave exclusive bargaining representatives in all other industries adequate means to redress such problems. It would surely come as a surprise to these legislators to learn that their efforts to provide these same means of redress to railway unions were frustrated by the very historical disparity they sought to eliminate.

(2)

Petitioners also rely on certain aspects of the Taft-Hartley Act's legislative history as evidence that Congress intended to permit the collection and use of full union dues, including those allocable to activities other than collective bargaining. Again, however, we find this history insufficient to compel a \*757 broader construction of § 8(a)(3) than that accorded § 2, Eleventh in *Street*.

First and foremost, petitioners point to the fact that Congress expressly considered proposals regulating union finances but ultimately placed only a few limitations on the collection and use of dues and fees, and otherwise left unions free to arrange their financial affairs as they saw fit. In light of this

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history and the specific prohibitions Congress did enact, petitioners argue that there is no warrant for implying any further limitations on the amount of dues equivalents that unions may collect or \*\*2655 the manner in which they may use them. As originally passed, § 7(b) of the House bill guaranteed union members the "right to be free from unreasonable or discriminatory financial demands of" unions. Leg.Hist. 176. Similarly, § 8(c) of the bill, the so-called "bill of rights for union members," H.R.Rep., at 31, Leg.Hist. 322, set out 10 protections against arbitrary action by union officers, one of which made it an unfair labor practice for a union to impose initiation fees in excess of \$25 without NLRB approval, or to fix dues in amounts that were unreasonable, nonuniform, or not approved by majority vote of the members. *Id.*, at 53. In addition, § 304 of the bill prohibited unions from making contributions to or expenditures on behalf of candidates for federal office. *Id.*, at 97-98. The conferees adopted the latter provision, see *Pipefitters v. United States*, 407 U.S. 385, 405, 92 S.Ct. 2247, 2259, 33 L.Ed.2d 11 (1972), and agreed to a prohibition on "excessive" initiation fees, see § 8(b)(5), 29 U.S.C. § 158(b)(5), but the Senate steadfastly resisted any further attempts to regulate internal union affairs. Referring to the House provisions, Senator Taft explained:

"[T]he Senate conferees refused to agree to the inclusion of this subsection in the conference agreement since they felt that it was unwise to authorize an agency of the Government to undertake such elaborate policing of the internal affairs of unions as this section contemplated.... In the opinion of the Senate conferees the language \*758 which protected an employee from losing his job if a union expelled him for some reason other than nonpayment of dues and initiation fees, uniformly required of all members, was considered sufficient protection." 93 Cong.Rec. 6443 (1947), Leg.Hist. 1540.

Petitioners would have us infer from the demise of this "bill of rights" that Congress "rejected ... general federal restrictions on either the dues equivalents that employees may be required to pay or the uses to which unions may put such dues-equivalents," and that aside from the prohibition on political expenditures Congress placed no limitations on union exactions other than the requirement that they be equal to uniform dues. Brief for Petitioners 39-40 (quoting Brief for United

States as *Amicus Curiae* 19). We believe petitioners' reliance on this legislative compromise is misplaced. The House bill did not purport to set out the rights of *nonmembers* who are compelled to pay union dues, but rather sought to establish a "bill of rights for union members" vis-a-vis their union leaders. H.R.Rep., at 31, Leg.Hist. 322 (emphasis added). Thus, § 8(c) of the House bill sought to regulate, among other things, the ability of unions to fine, discipline, suspend, or expel members; the manner in which unions conduct certain elections or maintain financial records; and the extent to which they can compel contributions to insurance or other benefit plans, or encumber the rights of members to resign. Leg.Hist. 52-56. The debate over these provisions focused on the desirability of Government oversight of internal union affairs, and a myriad of reasons having nothing whatever to do with the rights of nonmembers accounted for Congress' decision to forgo such detailed regulation. In rejecting any limitation on dues, therefore, Congress was not concerned with restrictions on "dues-equivalents," but rather with the administrative burdens and \*759 potential threat to individual liberties posed by Government regulation of purely internal union matters. [FN9]

FN9. See, e.g., H.R.Rep., at 76-77, Leg.Hist. 367-368 (Minority Views) (charging that Government regulation was essentially impossible; that the encroachment on the rights of voluntary organizations such as unions was "without parallel"; and that such regulation invited harassment by rival unions and employers, and ultimately complete governmental control over union affairs).

It simply does not follow from this that Congress left unions free to exact dues equivalents from nonmembers in any amount they please, no matter how unrelated those fees may be to collective-bargaining activities. On the contrary, the \*\*2656 complete lack of congressional concern for the rights of nonmembers in the debate surrounding the House "bill of rights" is perfectly consistent with the view that Congress understood § 8(a)(3) to afford nonmembers adequate protection by authorizing the collection of only those fees necessary to finance collective-bargaining activities:

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because the amount of such fees would be fixed by their underlying purpose—defraying the costs of collective bargaining—Congress would have every reason to believe that the lack of any limitations on union dues was entirely irrelevant so far as the rights of nonmembers were concerned. In short, we think it far safer and far more appropriate to construe § 8(a)(3) in light of its legislative justification, *i.e.*, ensuring that nonmembers who obtain the benefits of union representation can be made to pay for them, than by drawing inferences from Congress' rejection of a proposal that did not address the rights of nonmembers at all.

Petitioners also deem it highly significant that prior to 1947 unions "rather typically" used their members' dues for a "variety of purposes ... in addition to meeting the ... costs of collective bargaining." *Retail Clerks v. Schermerhorn*, 373 U.S. 746, 754, 83 S.Ct. 1461, 1465-1466, 10 L.Ed.2d 678 (1963), and yet Congress, which was presumably well aware of the practice, in no way limited the \*760 uses to which unions could put fees collected from nonmembers. This silence, petitioners suggest, should be understood as congressional acquiescence in these practices. The short answer to this argument is that Congress was equally well aware of the same practices by railway unions, see *Street*, 367 U.S., at 767, 81 S.Ct., at 1799 ("We may assume that Congress was ... fully conversant with the long history of intensive involvement of the railroad unions in political activities"); *Ellis*, 466 U.S., at 446, 104 S.Ct., at 1891 ("Congress was adequately informed about the broad scope of union activities"), yet neither in *Street* nor in any of the cases that followed it have we deemed Congress' failure in § 2, Eleventh to prohibit or otherwise regulate such expenditures as an endorsement of fee collections unrelated to collective-bargaining expenses. We see no reason to give greater weight to Congress' silence in the NLRA than we did in the RLA, particularly where such silence is again perfectly consistent with the rationale underlying § 8(a)(3): prohibiting the collection of fees that are not germane to representational activities would have been redundant if Congress understood § 8(a)(3) simply to enable unions to charge nonmembers only for those activities that actually benefit them.

Finally, petitioners rely on a statement Senator Taft made during floor debate in which he explained

how the provisos of § 8(a)(3) remedied the abuses of the closed shop. "The great difference [between the closed shop and the union shop]," the Senator stated, "is that [under the union shop] a man can get a job without joining the union or asking favors of the union.... The fact that the employee has to pay dues to the union seems to me to be much less important." 93 Cong.Rec. 4886 (1947), *Leg.Hist.* 1422. On its face, the statement—made during a lengthy legislative debate—is somewhat ambiguous, for the reference to "union dues" could connote "full union dues" or could as easily be a shorthand method of referring to "collective-bargaining-related dues." In any event, as noted above, Senator Taft later described § 2, Eleventh as "almost the exact provisions ... of the Taft-Hartley law," 96 Cong.\*761 Rec. 16267 (1950), and we have construed the latter statute as permitting the exaction of only those dues related to representational activities. In view of Senator Taft's own comparison of the two statutory provisions, his comment in 1947 fails to persuade us that Congress intended virtually identical language in two statutes to have different meanings.

(3)

We come then to petitioners' final reason for distinguishing *Street*. Five years prior to our decision in that case, we ruled in *Railway Employees v. Hanson*, 351 U.S. 225, 76 S.Ct. 714, 100 L.Ed. 1112 (1956), \*\*2657 that because the RLA pre-empts all state laws banning union-security agreements, the negotiation and enforcement of such provisions in railroad industry contracts involves "governmental action" and is therefore subject to constitutional limitations. Accordingly, in *Street* we interpreted § 2, Eleventh to avoid the serious constitutional question that would otherwise be raised by a construction permitting unions to expend governmentally compelled fees on political causes that nonmembers find objectionable. See 367 U.S., at 749, 81 S.Ct., at 1789. No such constitutional questions lurk here, petitioners contend, for § 14(b) of the NLRA expressly preserves the authority of States to outlaw union-security agreements. Thus, petitioners' argument runs, the federal pre-emption essential to *Hanson*'s finding of governmental action is missing in the NLRA context, and we therefore need not strain to avoid the plain meaning of § 8(a)(3) as we did with § 2, Eleventh.

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[6] We need not decide whether the exercise of rights permitted, though not compelled, by § 8(a)(3) involves state action. Cf. *Steelworkers v. Sadlowski*, 457 U.S. 102, 121, n. 16, 102 S.Ct. 2339, 2350, n. 16, 72 L.Ed.2d 707 (1982) (union's decision to adopt an internal rule governing its elections does not involve state action); *Steelworkers v. Weber*, 443 U.S. 193, 200, 99 S.Ct. 2721, 2725, 61 L.Ed.2d 480 (1979) (negotiation of collective-bargaining agreement's affirmative-action plan does not involve state action). Even assuming that it does not, and \*762 that the NLRA and RLA therefore differ in this respect, we do not believe that the absence of any constitutional concerns in this case would warrant reading the nearly identical language of § 8(a)(3) and § 2, Eleventh differently. It is, of course, true that federal statutes are to be construed so as to avoid serious doubts as to their constitutionality, and that when faced with such doubts the Court will first determine whether it is fairly possible to interpret the statute in a manner that renders it constitutionally valid. *Edward J. DeBartolo Corp. v. Florida Gulf Coast Building & Construction Trades Council*, 485 U.S. 568, 108 S.Ct. 1392, 99 L.Ed.2d 645 (1988); *Crowell v. Benson*, 285 U.S. 22, 62, 52 S.Ct. 285, 296, 76 L.Ed. 598 (1932). But statutory construction may not be pressed "to the point of disingenuous evasion," *United States v. Locke*, 471 U.S. 84, 96, 105 S.Ct. 1785, 1793, 85 L.Ed.2d 64 (1985) (quoting *George Moore Ice Cream Co. v. Rose*, 289 U.S. 373, 379, 53 S.Ct. 620, 622, 77 L.Ed. 1265 (1933)), and in avoiding constitutional questions the Court may not embrace a construction that "is plainly contrary to the intent of Congress." *DeBartolo, supra*, 485 U.S., at 575, 108 S.Ct., at 1397. In *Street*, we concluded that our interpretation of § 2, Eleventh was "not only 'fairly possible' but entirely reasonable," 367 U.S., at 750, 81 S.Ct., at 1790, and we have adhered to that interpretation since. We therefore decline to construe the language of § 8(a)(3) differently from that of § 2, Eleventh on the theory that our construction of the latter provision was merely constitutionally expedient. Congress enacted the two provisions for the same purpose, eliminating "free riders," and that purpose dictates our construction of § 8(a)(3) no less than it did that of § 2, Eleventh, regardless of whether the negotiation of union-security agreements under the NLRA partakes of governmental action.

## IV

We conclude that § 8(a)(3), like its statutory equivalent, § 2, Eleventh of the RLA, authorizes the exaction of only those fees and dues necessary to "performing the duties of an exclusive representative of the employees in dealing with the \*763 employer on labor-management issues." *Ellis*, 466 U.S., at 448, 104 S.Ct., at 1892. Accordingly, the judgment of the Court of Appeals is

*Affirmed.*

Justice KENNEDY took no part in the consideration or decision of this case.

Justice BLACKMUN, with whom Justice O'CONNOR and Justice SCALIA join, concurring in part and dissenting in part.

I agree that the District Court and the Court of Appeals properly exercised jurisdiction \*\*2658 over respondents' duty-of-fair-representation and First Amendment claims, and that the National Labor Relations Board had primary jurisdiction over respondents' claim brought under § 8(a)(3) of the National Labor Relations Act of 1935, 49 Stat. 452, as amended, 29 U.S.C. § 158(a)(3). I also agree that the Court of Appeals had jurisdiction to decide the § 8(a)(3) question raised by respondents' duty-of-fair-representation claim. [FN1] I therefore join Parts I and II of the Court's opinion.

FN1: Like the majority, I do not reach the First Amendment issue raised below by respondents, and therefore similarly do not address whether a union's exercise of rights pursuant to § 8(a)(3) involves state action. See *ante*, at 2656.

My agreement with the majority ends there, however, for I cannot agree with its resolution of the § 8(a)(3) issue. Without the decision in *Machinists v. Street*, 367 U.S. 740, 81 S.Ct. 1784, 6 L.Ed.2d 1141 (1961), involving the Railway Labor Act (RLA), the Court could not reach the result it

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does today. Our accepted mode of resolving statutory questions would not lead to a construction of § 8(a)(3) so foreign to that section's express language and legislative history, which show that Congress did not intend to limit either the amount of "agency fees" (or what the majority labels "dues-equivalents") a union may collect under a union-security agreement, or the union's expenditure of such funds. The Court's excessive reliance on *Street* to reach a \*764 contrary conclusion is manifested by its unique line of reasoning. No sooner is the language of § 8(a)(3) intoned, than the Court abandons all attempt at construction of *this* statute and leaps to its interpretation over a quarter century ago of another statute enacted by a different Congress, a statute with a distinct history and purpose. See *anté*, at 2647-2648. I am unwilling to offend our established doctrines of statutory construction and strain the meaning of the language used by Congress in § 8(a)(3), simply to conform § 8(a)(3)'s construction to the Court's interpretation of similar language in a different later-enacted statute, an interpretation which is itself "not without its difficulties." *Abood v. Detroit Board of Education*, 431 U.S. 209, 232, 97 S.Ct. 1782, 1798, 52 L.Ed.2d 261 (1977) (characterizing the Court's decision in *Street*). I therefore dissent from Parts III and IV of the Court's opinion.

I

As the Court observes, "we have never before delineated the precise limits § 8(a)(3) places on the negotiation and enforcement of union-security agreements." *Anté*, at 2648. Unlike the majority, however, I think the issue is an entirely new one. I shall endeavor, therefore, to resolve it in accordance with our well-settled principles of statutory construction.

A

As with any question of statutory interpretation, the starting point is the language of the statute itself. Section 8(a)(3) makes it unlawful for an employer to "discriminat[e] in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization." 29 U.S.C. § 158(a)(3). Standing alone, this proscription, and thus § 8(b)(2)'s corollary proscription, [FN2]

effectively would outlaw union-security agreements. The proscription, however, is qualified by two provisos. The first, which appeared initially in § 8(a)(3) of the \*765 NLRA as originally enacted in 1935, 49 Stat. 452, generally excludes union-security agreements from statutory condemnation by explaining that

FN2. Section 8(b)(2) makes it unlawful for a union "to cause or attempt to cause an employer" to violate § 8(a)(3). 29 U.S.C. § 158(b)(2).

"nothing in [the NLRA] or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization ... to require as a condition of employment membership therein ... if such labor organization is the representative of the employees as provided in section 159(a) of this title...." § 8(a)(3), 29 U.S.C. § 158(a)(3).

\*\*2659 The second proviso, incorporated in § 8(a)(3) by the Taft-Hartley Amendments of 1947, 61 Stat. 141, [FN3] circumscribes the first proviso's general exemption by the following limitations:

FN3. The Taft-Hartley Act also amended the first proviso to prohibit the application of a union-security agreement to an individual until he has been employed for 30 days. See 29 U.S.C. § 158(a)(3).

"[N]o employer shall justify any discrimination against an employee for nonmembership in a labor organization ... if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership."

The plain language of these statutory provisions, read together, permits an employer and union to enter into an agreement requiring *all* employees, as a condition of continued employment, to pay uniform periodic dues and initiation fees. [FN4] The second proviso expressly allows an employer to terminate any "employee," pursuant to a union-security agreement permitted by the first

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proviso, if the employee \*766 fails "to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership" in the union. 29 U.S.C. § 158(a)(3). The term "employee," as statutorily defined, includes any employee, without regard to union membership. See 29 U.S.C. § 152(3). Union-member employees and nonunion-member employees are treated alike under § 8(a)(3).

FN4. This reading, of course, flows from the fact that "membership" as used in the first proviso, means not *actual* membership in the union, but rather "the payment of initiation fees and monthly dues." *NLRB v. General Motors Corp.*, 373 U.S. 734, 742, 83 S.Ct. 1453, 1459, 10 L.Ed.2d 670 (1963).

"[W]e assume 'that the legislative purpose is expressed by the ordinary meaning of the words used.' " *American Tobacco Co. v. Patterson*, 456 U.S. 63, 68, 102 S.Ct. 1534, 1537, 71 L.Ed.2d 748 (1982), quoting *Richards v. United States*, 369 U.S. 1, 9, 82 S.Ct. 585, 591, 7 L.Ed.2d 492 (1962). The terms "dues" and "fees," as used in the proviso, can refer to nothing other than the regular, periodic dues and initiation fees paid by "voluntary" union members. This was the apparent understanding of the Court in those decisions in which it held that § 8(a)(3) permits union-security agreements. See *NLRB v. General Motors Corp.*, 373 U.S. 734, 736, 83 S.Ct. 1453, 1456, 10 L.Ed.2d 670 (1963) (approving a union-security proposal that would have conditioned employment "upon the payment of sums equal to the initiation fee and regular monthly dues paid by the union members"); *Retail Clerks v. Schermerhorn*, 373 U.S. 746, 753, 83 S.Ct. 1461, 1465, 10 L.Ed.2d 678 (1963) (upholding agreement requiring nonmembers to pay a "service fee [which] is admittedly the exact equal of membership initiation fees and monthly dues"). It also has been the consistent view of the NLRB, [FN5] "the agency \*\*2660 entrusted by \*767 Congress with the authority to administer the NLRA." *Edward J. DeBartolo Corp. v. Florida Gulf Coast Building & Construction Trades Council*, 485 U.S. 568, 574, 108 S.Ct. 1392, 1397, 99 L.Ed.2d 645 (1988). The provisos do not give any employee, union member or not, the right to pay less than the full amount of

regular dues and initiation fees charged to all other bargaining-unit employees.

FN5. See, e.g., *In re Union Starch & Refining Co.*, 87 N.L.R.B. 779, (1949), *enfd.*, 186 F.2d 1008 (CA7), *cert. denied*, 342 U.S. 815, 72 S.Ct. 30, 96 L.Ed. 617 (1951); *Detroit Mailers Union No. 40*, 192 N.L.R.B. 951, 951-952 (1971). In *Detroit Mailers*, the Board explained:

"Neither on its face nor in the congressional purpose behind [§ 8(a)(3)] can any warrant be found for making any distinction here between dues which may be allocated for collective-bargaining purposes and those earmarked for institutional expenses of the union.... '[D]ues collected from members may be used for a variety of purposes, in addition to meeting the union's costs of collective bargaining.' Unions 'rather typically' use their membership dues to do those things which the members authorized the union to do in their interest and on their behalf.' By virtue of Section 8(a)(3), such dues may be required from an employee under a union-security contract so long as they are periodic and uniformly required and are not devoted to a purpose which would make their mandatory extraction otherwise inimical to public policy." *Id.*, at 952, quoting *Retail Clerks v. Schermerhorn*, 373 U.S., at 753-754, 83 S.Ct., at 1465-1466 (internal quotations omitted). The United States, appearing here as *amicus curiae*, maintains that position in this case.

Contrary to the Court's suggestion, the NLRB has not embraced and then "repudiated" the view that, for purposes of § 8(a)(3), "periodic dues and initiation fees" mean only "those fees necessary to finance collective-bargaining activities." *Ante.*, at 2652, n. 7. *Teamsters Local No. 959*, 167 N.L.R.B. 1042 (1967), does not demonstrate otherwise. In *Teamsters Local*, the NLRB held that "working dues" designated to fund a union building program and a credit union were actually "assessments" not contemplated by the proviso to § 8(a)(3). *Id.*, at 1044. The

Board found that the union itself regarded the levy as a "temporary assessment," clearly distinct from its "regular dues." *Ibid.* Moreover, because the financing for the programs was constructed in such a way that the union treasury might never have received 90% of the moneys, the Board concluded that the "working dues" were actually "special purposes funds," and that "the support of such funds cannot come from 'periodic dues' as that term is used in § 8(a)(3)." *Ibid.* In *Detroit Mailers*, the NLRB distinguished such assessments from "periodic and uniformly required" dues, which, in its view, a union is not precluded from demanding of nonmembers pursuant to § 8(a)(3). 192 N.L.R.B., at 952.

While the majority credits an interpretation of *Teamsters Local* propounded by a dissenting member of the Board in *Detroit Mailers*, *ante*, at 2652, n. 7, I prefer to take the Board's word at face value: *Teamsters Local* did not create "controlling precedent" endorsing the view of § 8(a)(3) enunciated by the Court today. 192 N.L.R.B., at 952. Significantly, the majority cannot cite one case in which the Board has held that uniformly required, periodic dues used for purposes other than "collective bargaining" are not dues within the meaning of § 8(a)(3).

\*768 The Court's conclusion that § 8(a)(3) prohibits petitioners from requiring respondents to pay fees for purposes other than those "germane" to collective bargaining, contract administration, and grievance adjustment simply cannot be derived from the plain language of the statute. In effect, the Court accepts respondents' contention that the words "dues" and "fees," as used in § 8(a)(3), refer not to the periodic amount a union charges its members but to the portion of that amount that the union expends on statutory collective bargaining. [FN6] See Brief for Respondents 17-20. Not only is this reading implausible as a matter of simple English usage, but it is also contradicted by the decisions of this Court and of the NLRB interpreting the section. Section 8(a)(3) does not speak of "dues" and "fees" that employees covered by a \*769 union-security agreement may be

required to tender to their union representative; rather, the section speaks only of "the periodic dues and the initiation fees *uniformly required as a condition of acquiring or retaining membership*" (emphasis added). Thus, the section, by its terms, defines "periodic dues" and "initiation fees" as those dues and fees "uniformly required" of all members, not as a \*\*2661 portion of full dues. As recognized by this Court, "dues collected from members may be used for a variety of purposes, in addition to meeting the union's costs of collective bargaining. Unions rather typically use their membership dues to do those things which the members authorize the union to do in their interest and on their behalf." *Retail Clerks v. Schermerhorn*, 373 U.S., at 753-754, 83 S.Ct., at 1465-1466 (internal quotations omitted). By virtue of § 8(a)(3), such dues may be required from any employee under a union-security agreement. Nothing in § 8(a)(3) limits, or even addresses, the purposes to which a union may devote the moneys collected pursuant to such an agreement. [FN7]

FN6. The Court's insistence that it has not changed the meaning of the term "uniform," see *ante*, at 2652, n. 8, misses the point. The uniformity requirement obviously requires that the union can collect from nonmembers under a union-security agreement only those "periodic dues and initiation fees" collected equally from its members. But this begs the question: what "periodic dues and initiation fees"? It is the meaning of those terms which the Court misconceives.

Under our settled doctrines of statutory construction, were there any ambiguity in the meaning of § 8(a)(3)—which there is not—the Court would be constrained to defer to the interpretation of the NLRB, unless the agency's construction were contrary to the clear intent of Congress. *Chevron U.S.A. Inc. v. National Resources Defense Council, Inc.*, 467 U.S. 837, 842-843, and n. 9, 104 S.Ct. 2778, 2781, and n. 9, 81 L.Ed.2d 694 (1984). Although the Court apparently finds such ambiguity, it fails to apply this doctrine. By reference to a narrow view of congressional "purpose" gleaned from

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isolated statements in the legislative history, and in reliance upon this Court's interpretation of another statute, the Court constructs an interpretation that not only finds no support in the statutory language or legislative history of § 8(a)(3), but also contradicts the Board's settled interpretation of the statutory provision. The Court previously has directed: "Where the Board's construction of the Act is reasonable, it should not be rejected merely because the courts might prefer another view of the statute." *Pattern Makers v. NLRB*, 473 U.S. 95, 114, 105 S.Ct. 3064, 3075, 87 L.Ed.2d 68 (1985), quoting *Ford Motor Co. v. NLRB*, 441 U.S. 488, 497, 99 S.Ct. 1842, 1849, 60 L.Ed.2d 420 (1979). Here, the only apparent motivation for holding that the Board's interpretation of § 8(a)(3) is impermissible, is the Court's view of another statute.

FN7. The Court's answer to the absolute lack of evidence that Congress intended to regulate such expenditures is no answer at all; the Court simply reiterates that in *Machinists v. Street*, 367 U.S. 740, 81 S.Ct. 1784, 6 L.Ed.2d 1141 (1961), it did not give weight to congressional silence in the RLA on this issue. See *ante*, at 2655-2656. The point, however, is not that the Court should give weight to Congress' silence in the NLRA; the point is that the Court must find *some* support in the NLRA for its proposition. Congress' silence simply highlights that there is no support for the Court's interpretation of the 1947 Congress' intent.

## B

The Court's attempt to squeeze support from the legislative history for its reading of congressional intent contrary to the plain language of § 8(a)(3) is unavailing. As its own discussion of the relevant legislative materials reveals, *ante*, at 2649-2650, there is no indication that the 1947 Congress intended to limit the union's authority to collect from nonmembers the same periodic dues and

initiation fees it collects from members. Indeed, on balance, the legislative history reinforces \*770 what the statutory language suggests: the provisos neither limit the uses to which agency fees may be put nor require nonmembers to be charged less than the "uniform" dues and initiation fees.

In *Machinists v. NLRB*, 362 U.S. 411, 80 S.Ct. 822, 4 L.Ed.2d 832 (1960), the Court stated:

"It is well known, and the legislative history of the 1947 Taft-Hartley amendments plainly shows, that § 8(a)(3)—including its proviso—represented the Congressional response to the competing demands of employee freedom of choice and union security. Had Congress thought one or the other overriding, it would doubtless have found words adequate to express that judgment. It did not do so; it accommodated both interests, doubtless in a manner unsatisfactory to the extreme partisans of each, by drawing a line it thought reasonable. It is not for the administrators of the Congressional mandate to approach either side of that line grudgingly." *Id.*, at 418, n. 7, 80 S.Ct., at 827, n. 7.

The legislative debates surrounding the adoption of § 8(a)(3) in 1947, show that in crafting the proviso to § 8(a)(3), Congress was attempting "only to remedy the most serious abuses of compulsory union membership...." *NLRB v. General Motors Corp.*, 373 U.S., at 741, 83 S.Ct., at 1458, quoting from the legislative history. The particular "abuses" Congress identified and attempted to correct were two: the closed shop, which "deprives management of any real choice of the men it hires" and gives union leaders "a method of depriving employees of their jobs, and in some cases [of] a means of securing a livelihood in their trade or calling, for purely capricious reasons," S.Rep. No. 105, 80th Cong., 1st Sess., 6 (1947) (S.Rep.), Legislative History of the Labor Management Relations Act, 1947 (Committee Print compiled for the Subcommittee on Labor of the Senate Committee on Labor and Public Welfare), p. 412 (1974) (Leg.Hist.); and those union shops in which the union sought to obtain indirectly the same \*771 result as that obtained through a closed shop by negotiating a union-shop agreement and maintaining a "closed" union where it was free to deny membership to an individual arbitrarily or discriminatorily and then compel the discharge of that person because of his nonmembership, 93



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Cong.Rec. 3836-3837, 4193, 4885-4886 (1947), Leg.Hist. 1010, 1096-1097, 1420-1421 (remarks of Sen. Taft); 93 Cong.Rec. \*\*2662 4135, Leg.Hist. 1061-1062 (remarks of Sen. Ellender). Senator Taft, the chief sponsor of the Senate bill, in arguing against an amendment to proscribe all forms of union-security agreements, stated that it was unwise to outlaw union-security agreements altogether "since there had been for such a long time so many union shops in the United States, [and] since in many trades it was entirely customary and had worked satisfactorily," and that therefore the appropriate approach was to "meet the problem of dealing with the abuses which had appeared." 93 Cong.Rec. 4885, Leg.Hist. 1420. [FN8] "Congress [\*772 also] recognized that in the absence of a union-security provision 'many employees sharing the benefits of what unions are able to accomplish by collective bargaining will refuse to pay their share of the cost.'" *NLRB v. General Motors Corp.*, 373 U.S., at 740-741, 83 S.Ct., at 1458, quoting S.Rep., at 6, Leg.Hist. 412.

FN8. See also, e.g., 93 Cong.Rec. 3837 (1947), Leg.Hist. 1010 (remarks of Sen. Taft) ("[B]ecause the union shop has been in force in many industries for so many years ... to upset it today probably would destroy relationships of long standing and probably would bring on more strikes than it would cure").

Despite a legislative history rife with unequivocal statements to the contrary, the Court concludes that the 1947 Congress did not set out to restrict union-security agreements in a "limited fashion." *Ante*, at 2653. Quite apart from the Court's unorthodox reliance on representations of those *opposed* to the Taft-Hartley amendments, the majority's observation that "Congress viewed the Wagner Act's regime of compulsory unionism as seriously flawed," *ibid.*, begs the question.

The perceived flaws were embedded in the *closed*-shop system, not the *union*-shop system. Thus, as is characteristic of the majority's opinion, its comparison to the RLA, under which there was no closed-shop system, is beside the point. See *ibid.* Congress was aware that under the NLRA, "the one system [the closed

shop] ha[d] led to very serious abuses and the other system [the union shop] ha [d] not led to such serious abuses." 93 Cong.Rec. 4886 (1947), Leg.Hist. 1421 (remarks of Sen. Taft). Accordingly, Congress banned closed shops altogether, but it made only limited inroads on the union-shop system that had been in effect prior to 1947, carefully describing its limitations on such agreements. H.R.Rep. No. 245, 80th Cong., 1st Sess., 9, Leg.Hist. 300; S.Rep., at 6-7, Leg.Hist. 412-413. It could not be clearer from the legislative history that in enacting the provisos to § 8(a)(3), Congress attempted to deal only with specific abuses in the union-shop system, only the "actual problems that ha[d] arisen." 93 Cong.Rec. 4886 (1947), Leg.Hist. 1421 (remarks of Sen. Taft); accord, 93 Cong.Rec. 3836-3837 (1947), Leg.Hist. 1010-1011 (remarks of Sen. Taft). Congress' philosophy was that it had "to decree either an open shop or an open union. [I]t decreed an open union, ... [which would] permit the continuation of existing relationships, and [would] not violently tear apart a great many long-existing relationships and make trouble in the labor movement; and yet at the same time it [would] meet the abuses which exist." 93 Cong. Rec. 4886 (1947), Leg.Hist. 1420 (remarks of Sen. Taft). Union-security agreements requiring the payment of uniform periodic dues and standard initiation fees were not among the specified abuses. There was no testimony regarding problems arising from such arrangements. Indeed, the subtext of the entire debate was that such arrangements were acceptable. The Court's suggestion to the contrary is simply untenable.

Congress' solution was to ban the closed shop and to permit the enforcement of union-shop agreements as long as union membership is available "on the same terms and conditions" to all employees, and mandatory discharge is required only for "nonpayment of regular dues and initiation fees." S.Rep., at 7, 20, Leg.Hist. 413, 426. Congress was of the view, that, as Senator Taft stated, "[t]he fact

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that the employee will have to pay dues to the union seems ... to be much less important. The important thing is that the man will have the job." 93 Cong.Rec. 4886 (1947), Leg.Hist. 1422. "[A] man can get a job with an employer and can continue in that job if, in effect, he joins the union and pays the union dues.

\* \* \*

"If he pays the dues without joining the union, he has the right to be employed." 93 Cong.Rec. 4886 (1947), Leg.Hist. \*773 1421-1422. There is no serious doubt that what Congress had in mind was a situation in which the nonmember employee would "pay the same dues as other members of the union." 93 Cong.Rec. 4272 (1947), Leg.Hist. 1142 (remarks of Sen. Taft); accord, 93 Cong.Rec. 3557 (1947), Leg.Hist. 740 (remarks of Sen. Jennings) (members of the minority \*\*2663 "should go along and contribute dues like the others"). In their financial obligations, therefore, these employees were "in effect," union members, and could not be discharged pursuant to a union-security agreement as long as they maintained this aspect of union "membership." [FN9] This solution was viewed as "tak[ing] care" of the free-rider issue. 93 Cong.Rec. 4887 (1947), Leg.Hist. 1422 (remarks of Sen. Taft).

FN9. The Senate Report explained: Congress "did not desire to limit the labor organization with respect to either its selection of membership or expulsion therefrom. But [it] did wish to protect the employee in his job if unreasonably expelled or denied membership. The tests provided by the amendment are based upon facts readily ascertainable and do not require the employer to inquire into the internal affairs of the union." S.Rep., at 20, Leg.Hist. 426.

Throughout the hearings and lengthy debate on one of the most hotly contested issues that confronted the 1947 Congress, not once did any Member of Congress suggest that § 8(a)(3) did not leave employers and unions free to adopt and enforce union-security agreements requiring all employees in the bargaining unit to pay an amount equal to full

union dues and standard initiation fees. Nor did anyone suggest that § 8(a)(3) affected a union's expenditure of such funds.

Indeed, the legislative history indicates that Congress affirmatively declined to place limitations on either the amount of dues a union could charge or the uses to which it could put these dues. The Court dismisses as irrelevant the fact that Congress expressly rejected the House proposal that would have empowered the NLRB to regulate the "reasonableness" of union dues and expenditures. The Court finds meaningful the fact that "[t]he House bill did not purport to set out the \*774 rights of *nonmembers* who are compelled to pay union dues, but rather sought to establish a 'bill of rights for union *members*' vis-a-vis their union leaders. H.R. Rep., at 31, Leg.Hist. 322 (emphasis added)." *Ante*, at 2655. But this is a distinction without a difference. Contrary to the Court's view, Congress viewed this proposal as directly related to § 8(a)(3); Congress clearly saw the nonmembers' interests in this context as being represented by union members. [FN10] Thus, Senator Taft explained the Senate conferees' reasons for refusing to accept the provisions in the House bill:

FN10. The Court appears to believe that Congress intended § 8(a)(3) to protect the interests of individual nonmembers in the uses to which the union puts their moneys.

See *ante*, at 2655. It could not be clearer, however, that Congress did not have this in mind at all. As Senator Taft explained to his colleague who complained that requiring a man to join a union he does not wish to join (pursuant to § 8(a)(3)) was no less restrictive than a closed shop: in enacting § 8(a)(3), Congress was not trying "to go into the broader fields of the rights of particular persons." 93 Cong.Rec. 4886 (1947), Leg.Hist. 1421.

The only "rights" protected by the § 8(a)(3) provisos are workers' employment rights. As the legislative debates reflect, Congress was principally concerned with insulating workers' jobs from capricious actions by union leaders. "The purpose of the union unfair labor practice provisions added to § 8(a)(3) was to 'preven[t] the union from inducing the employer to use

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the emoluments of the job to enforce the union's rules." *Pattern Makers v. NLRB*, 473 U.S., at 126, 105 S.Ct., at 3081 (dissenting opinion), quoting *Scofield v. NLRB*, 394 U.S. 423, 429, 89 S.Ct. 1154, 1157, 22 L.Ed.2d 385 (1969).

"In the opinion of the Senate conferees[,] the language which protected an employee from losing his job if a union expelled him for some reason other than nonpayment of dues and initiation fees, uniformly required of all members, was considered sufficient protection." 93 Cong.Rec. 6443 (1947), Leg.Hist. 1540.

Congress' decision, in the course of the well-documented Senate-House compromise, not to place any general federal restrictions on the levels or uses of union dues, [FN11] indicates \*775 that it did not intend \*\*2664 the provisos to limit the uses to which agency fees may be put.

FN11. Congress placed only one limitation on the uses which can be made of union dues. "[W]ith little apparent discussion or opposition," the Senate conferees adopted the House bill's prohibition limiting what unions may spend from dues money on federal elections. *Pipefitters v. United States*, 407 U.S. 385, 405, 92 S.Ct. 2247, 2259-2260, 33 L.Ed.2d 11 (1972). In § 304 of the Labor Management Relations (Taft-Hartley) Act, 61 Stat. 159-160, which is now incorporated in the Federal Election Campaign Act of 1976, 90 Stat. 490, 2 U.S.C. § 441b(a), Congress made it unlawful for a union "to make a contribution or expenditure in connection with" certain political elections, primaries, or political conventions.

The Senate conferees also agreed with the House that some safeguard was needed to prevent unions from charging new members exorbitant initiation fees that effectively "close" the union, thereby "frustrat[ing] the intent of [§ 8(a)(3)]." 93 Cong. Rec. 6443 (1947), Leg. Hist. 1540 (remarks of Sen. Taft). Hence, § 8(b)(5) was added to the final bill, which makes it an unfair labor practice for a union which has negotiated a union-security agreement

to require initiation fees that the NLRB "finds excessive or discriminatory under all the circumstances." 29 U.S.C. § 158(b)(5). The Senate passed § 8(b)(5) only after receiving assurances from Senator Taft that it would not allow the NLRB to regulate union expenditures. See 93 Cong. Rec. 6859 (1947), Leg.Hist. 1623 (stressing that the provision "is limited to initiation fees and does not cover dues").

The Court invokes what it apparently sees as a singleminded legislative purpose, namely, the eradication of a "free-rider" problem, and then views the legislative history through this narrow prism. The legislative materials demonstrate, however, that, contrary to the impression left by the Court, Congress was not guided solely by a desire to eliminate "free riders." The 1947 Congress that carefully crafted § 8(a)(3) was focusing on a quite different problem--the most serious abuses of compulsory unionism. As the majority observes, "Congress carefully tailored [its] solution to the evils at which it was aimed." *Ante*, at 2650. In serving its purpose, Congress went only so far in foreclosing compulsory unionism. It outlawed closed shops altogether, but banned unions from using union-security provisions only where those provisions exact more than the initiation fees and "periodic dues" uniformly required as conditions of union \*776 membership. Otherwise, it determined that the regulation of union-security agreements should be left to specific federal legislation and to the legislatures and courts of the several States. [FN12] Congress explicitly declined to mandate the kind of particularized regulation of union dues and fees which the Court attributes to it today.

FN12. "It was never the intention of the [NLRA] ... to preempt the field in this regard so as to deprive the States of their powers to prevent compulsory unionism." H.R.Conf.Rep. 510, 80th Cong., 1st Sess., 60 (1947), U.S. Code Cong.Serv. 1947, pp. 1135, 1166, Leg.Hist. 564. Accordingly, Congress added § 14(b) to the final bill, which, as enacted, expressly preserves the authority of the States to regulate union-security agreements,

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including the use of funds collected from employees pursuant to such an agreement.

See *Retail Clerks v. Schermerhorn*, 373 U.S., at 751-752, 83 S.Ct., at 1464-1465. Many States in fact have imposed limitations on the union-security agreements that are permitted in their jurisdictions. See 2 C. Morris, *The Developing Labor Law* 1391-1392 (2d ed. 1983).

## II

By suggesting that the 1947 Congress was driven principally by a desire to eradicate a "free-rider" problem, the Court finds the means not only to distort the legislative justification for § 8(a)(3) and to ignore the provision's plain language, but also to draw a controlling parallelism to § 2, Eleventh of the RLA, 64 Stat. 1238, 45 U.S.C. § 152. As mistaken as the Court is in its view of Congress' purpose in enacting § 8(a)(3), the Court is even more mistaken in its reliance on this Court's interpretation of § 2, Eleventh in *Machinists v. Street*, 367 U.S. 740, 81 S.Ct. 1784, 6 L.Ed.2d 1141 (1961).

The text of § 8(a)(3) of the NLRA is, of course, very much like the text of the later enacted § 2, Eleventh of the RLA. This similarity, however, does not dictate the conclusion that the 1947 Congress intended § 8(a)(3) to have a meaning identical to that which the 1951 Congress intended § 2, Eleventh to have. The Court previously has held that the scope of the RLA is not identical to that of the NLRA and that courts should be wary of drawing parallels between the two statutes. \*777 See, e.g., *First National Maintenance Corp. v. NLRB*, 452 U.S. 666, 686, n. 23, 101 S.Ct. 2573, 2583, n. 23, 69 L.Ed.2d 318 (1981); *Railroad Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369, 383, 89 S.Ct. 1109, 1117, 22 L.Ed.2d 344 (1969). Thus, parallels \*\*2665 between § 8(a)(3) and § 2, Eleventh, "like all parallels between the NLRA and the Railway Labor Act, should be drawn with the utmost care and with full awareness of the differences between the statutory schemes." *Chicago & N.W.R. Co. v. Transportation Union*, 402 U.S. 570, 579, n. 11, 91 S.Ct. 1731, 1736, n. 11, 29 L.Ed.2d 187 (1971). Contrary to the majority's conclusion, *ante*, at 2650, the two

provisions were not born of the "same concern[s]"; indeed, they were born of competing concerns. This Court's interpretation of § 2, Eleventh, therefore, provides no support for construing § 8(a)(3) in a fashion inconsistent with its plain language and legislative history. [FN13]

FN13. The dissent in the original panel decision in this case appropriately observed: "If the legislative purposes behind § 8(a)(3) and § 2, Eleventh were identical, one would expect that [this] Court in *Street* would have looked to the NLRA for guidance in interpreting § 2, Eleventh. The *Street* opinion, however, does not significantly rely on or discuss either the NLRA or § 8(a)(3). Instead, it focuses on the distinctive features of the railroad industry and the Railway Labor Act in construing § 2, Eleventh." 776 F.2d 1187, 1220 (CA4 1985).

The considerations that enabled the Court to conclude in *Street*, 367 U.S., at 750, 81 S.Ct., at 1790, that it is "fairly possible" and "entirely reasonable" to read § 2, Eleventh to proscribe union-security agreements requiring uniform payments from all bargaining-unit employees are wholly absent with respect to § 8(a)(3). In *Street*, the Court stressed the fact that from 1926, when the RLA was first enacted, until 1951 when § 2, Eleventh assumed its present form, that Act prohibited all forms of union security and declared a "policy of complete freedom of choice of employees to join or not to join a union." *Ibid*. By 1951, however, Congress recognized "the expenses and burdens incurred by the unions in the administration of the complex scheme of the [RLA]." 367 U.S., at 751, 81 S.Ct., at 1790-1791. The purpose advanced for amending the RLA in 1951 to authorize union-security agreements for the first time was "the elimination \*778 of the 'free riders.'" 367 U.S., at 761, 81 S.Ct., at 1796. Given that background, the Court was persuaded that it was possible to conclude that "Congress did not completely abandon the policy of full freedom of choice embodied in the ... Act, but rather made inroads on it for the limited purpose of eliminating the problems created by the 'free rider.'" *Id.*, at 767, 81 S.Ct., at 1799.

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108 S.Ct. 2641

101 L.Ed.2d 634, 56 USLW 4857, 128 L.R.R.M. (BNA) 2729, 109 Lab.Cas. P 10,548  
(Cite as: 487 U.S. 735, 108 S.Ct. 2641)

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The NLRA does not share the RLA's underlying policy, which propelled the Court's interpretation of § 2, Eleventh in *Street*. Indeed, the history of the NLRA points in the opposite direction: the original policy of the Wagner Act was to permit all forms of union-security agreements, and such agreements were commonplace in 1947. Thus, in enacting § 8(a)(3), the 1947 Congress, unlike the 1951 Congress, was not making inroads on a policy of full freedom of choice in order to provide "a specific response," *id.*, at 751, 81 S.Ct., at 1790, to a particular problem facing unions. Rather, the 1947 amendments to § 8(a)(3) were designed to make an inroad into a preexisting policy of the absolute freedom of private parties under federal law to negotiate union-security agreements. It was a "limited" inroad, responding to carefully defined abuses that Congress concluded had arisen in the union-security agreements permitted by the Wagner Act. The 1947 Congress did not enact § 8(a)(3) for the "same purpose" as did the 1951 Congress in enacting § 2, Eleventh. Therefore, contrary to the Court's conclusion, *ante*, at 2657, the latter purpose, "eliminating 'free riders,'" does not dictate our construction of § 8(a)(3), regardless of its impact on our construction of § 2, Eleventh.

In order to overcome this inevitable conclusion, the Court relies on remarks made by a few Members of the Congress in enacting the 1951 amendments to § 2, Eleventh of the RLA, which the Court contends show that the 1951 Congress viewed those amendments as identical to the amendments that had been made to § 8(a)(3) of the NLRA in 1947. See *ante*, at 2653-2654; see also \*\*2666 *ante*, at 2649, and n. 4, 2650-2651, 2655-2656. But even assuming the Court's view of the legislative history of § 2, Eleventh is correct (and the legislative materials do not obviously impart the message the Court receives [FN14]), it does not provide support for the Court's strained reading of § 8(a)(3). Its only possible relevance in this case is to evidence the 1951 Congress' understanding of a statute that particular Congress did not enact. The relevant question here, however, is what the 1947 Congress intended by the statute that it enacted. "[I]t is well settled that 'the views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one.'" *Russello v. United States*, 464 U.S. 16, 26, 104 S.Ct. 296, 302, 78 L.Ed.2d 17 (1983), quoting *Jefferson County Pharmaceutical Assn. v. Abbott Laboratories*, 460 U.S. 150, 165, n. 27, 103

S.Ct. 1011, 1021, n. 27, 74 L.Ed.2d 882 (1983), in turn quoting *United States v. Price*, 361 U.S. 304, 313, 80 S.Ct. 326, 331, 4 L.Ed.2d 334 (1960). See also *United States v. Clark*, 445 U.S. 23, 33, n. 9, 100 S.Ct. 895, n. 9, 63 L.Ed.2d 171 (1980). It \*780 would "surely come as a surprise" to the legislators who enacted § 8(a)(3) to learn that, in discerning their intent, the Court listens not to their voices, but to those of a later Congress. *Ante*, at 2654. Unlike the majority, I am unwilling to put the 1951 legislators' words into the 1947 legislators' mouths.

FN14. The Court overstates the clarity of what was said about § 8(a)(3) when § 2, Eleventh was amended in 1951. As the Court's recitation of various statements reflects, the extent to which the 1951 Congress saw itself engrafting onto the RLA terms *identical*, in all respects, to the terms of § 8(a)(3) is uncertain. See *ante*, at 2649, n. 4. The remarks are only general comments about the similarity of the NLRA union-security provisions, rather than explicit comparisons of § 8(a)(3) with the provisions of the RLA. For example, Senator Taft explained: "In effect, the bill inserts in the railway mediation law *almost the exact provisions, so far as they fit*, of the Taft-Hartley law, so that the conditions regarding the union shop and the check-off are carried into the relations between railroad unions and the railroads." 96 Cong. Rec. 16267 (1950) (emphasis added). See also, *e.g.*, H.R.Rep. No. 2811, 81st Cong., 2d Sess., 4 (1950) (§ 2, Eleventh allows agreements "of a character" permitted in § 8(a)(3)); 96 Cong. Rec. 17049 (1951) (remarks of Rep. Beckworth) (§ 2, Eleventh extends to railroads "a principle" embodied in § 8(a)(3)). Especially when it is remembered that Congress was *extending* to unions in the railroad industry the authority to enter into agreements for which they previously had *no* authority, whereas the 1947 Congress had rescinded authorization for certain kinds of union-security agreements, the import of these statements is ambiguous. To borrow a phrase from the majority, I "think it far safer and far more appropriate to construe §

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108 S.Ct. 2641

101 L.Ed.2d 634, 56 USLW 4857, 128 L.R.R.M. (BNA) 2729, 109 Lab.Cas. P 10,548  
(Cite as: 487 U.S. 735, 108 S.Ct. 2641)

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8(a)(3) in light of its" language and legislative history, "than by drawing inferences from" ambiguous statements made by Members of a later Congress in enacting a different statute. *Ante*, at 2655.

The relevant sources for gleaning the 1947 Congress' intent are the plain language of § 8(a)(3), and, at least to the extent that it might reflect a clear intention contrary to the plain meaning of the statute, the legislative history of § 8(a)(3). Those sources show that the 1947 Congress did not intend § 8(a)(3) to have the same meaning the Court has attributed to § 2, Eleventh of the RLA. I therefore must disagree with the majority's assertion that the Court's decision in *Street* is "controlling" here. See *ante*, at 2648.

### III

In sum, I conclude that, in enacting § 8(a)(3) of the NLRA, Congress did not intend to prohibit union-security agreements that require the tender of full union dues and standard union initiation fees from nonmember employees, without regard to how the union expends the funds so collected. In finding controlling weight in this Court's interpretation of § 2, Eleventh of the RLA to reach a contrary conclusion, the Court has not only eschewed our well-established methods of statutory construction, but also interpreted the terms of § 8(a)(3) in a manner inconsistent with the congressional purpose clearly expressed in the statutory language and amply documented in the legislative history. I dissent.

108 S.Ct. 2641, 487 U.S. 735, 101 L.Ed.2d 634, 56 USLW 4857, 128 L.R.R.M. (BNA) 2729, 109 Lab.Cas. P 10,548

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# SixTen and Associates

## Mandate Reimbursement Services

---

KEITH B. PETERSEN, MPA, JD, President  
252 Balboa Avenue, Suite 807  
San Diego, CA 92117

Telephone: (858) 514-8605  
Fax: (858) 514-8645  
E-Mail: Kbpsixten@aol.com

August 9, 2002

Paula Higashi, Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, California 95814

**RECEIVED**  
AUG 12 2002  
COMMISSION ON  
STATE MANDATES

Re: CSM No. 00-TC-17  
CSM No. 01-TC-14  
Test Claims of Clovis Unified School District  
Agency Fee Arrangements

Dear Ms. Higashi:

Please find enclosed a copy of the Declaration of Robert J. Temple, with Proof of Service attached.

This document was previously sent to you under cover of a letter dated July 23, 2002 without a proof of service.

Sincerely,



Keith B. Petersen

C: Mailing List updated June 20, 2002



## DECLARATION OF ROBERT J. TEMPLE

### San Bernardino Community College District

Test Claim of Clovis Unified School District  
Chapter 893, Statutes of 2000 - Test Claim No. 00-TC-17  
Chapter 805, Statutes of 2001 - First Amendment - 01-TC-14  
Agency Fee Arrangements

Government Code Section 3543  
Government Code Section 3546  
Government Code Section 3546.3

Title 8, California Code of Regulations, Section 34030  
Title 8, California Code of Regulations, 34055

I, Robert J. Temple, Vice Chancellor, Fiscal Services, San Bernardino Community College District, make the following declaration and statement:

In my capacity as Vice Chancellor, Fiscal Services, I am familiar with the requirements of the law relative to Agency Fee Arrangements arising out of the above described Government Code Sections and Title 8, California Code of Regulations.

These Government Code and Title 8 Regulations require the San Bernardino Community College District to:

- 1) Pursuant to Government Code Section 3546(a) to establish, periodically update and maintain employee payroll records which identify those employees who choose not to be members of a certified employee organization. Pursuant to Government Code Section 3546(a), establish payroll procedures and thereafter implement such procedures so that automatic payroll deductions for "fair share services fees" will be made from the wages of non-exempt employees who choose not to be members of a certified employee organization and to report and remit the withheld fees to the appropriate certified employee organization.

Declaration of Robert J. Temple  
San Bernardino Community College District

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- 2) Draft, approve and distribute an appropriate and neutral notice to existing non-member employees and new employees, which explains the additional payroll deduction for "fair share services fees" for non-member employees of a certified employee organization.
- 3) Pursuant to Government Code Section 3546(d)(1) and Title 8, California Code of Regulations, Section 34030(a), in the event a petition to rescind the collective bargaining agreement is filed, within 20 days of the filing of the petition, to file with the regional office of PERB an alphabetical list containing the names and job titles or classifications of the persons employed in the unit as of the last date of the payroll period immediately preceding the date the petition was filed, and to supply any other required administrative support as required by PERB, pursuant to Government Code Section 3546, subdivisions (c) and (d)(3).
- 4) Pursuant to Government Code Section 3546(d)(1), in the event the collective bargaining agreement is rescinded, to establish new payroll procedures and thereafter implement such procedures so that automatic payroll deductions for "fair share services fees" are no longer made from the wages of non-exempt employees who choose not to be members of a certified employee organization and to no longer report and remit fees to the appropriate certified employee organization.
- 5) Pursuant to Government Code Section 3546(d)(2) and Title 8, California Code of Regulations, Section 34055(a), in the event a petition to reinstate the collective

bargaining agreement is filed, within 20 days of the filing of the petition, to file with the regional office of PERB an alphabetical list containing the names and job titles or classifications of the persons employed in the unit as of the last date of the payroll period immediately preceding the date the petition was filed and to supply any required administrative support as may be required by PERB, pursuant to Government Code Section 3546, subdivisions (c) and (d)(3).

- 6) Pursuant to Government Code Section 3546(d)(2), in the event the collective bargaining agreement is reinstated, to reestablish payroll procedures and thereafter implement such reestablished procedures so that automatic payroll deductions for "fair share services fees" will again be made from the wages of non-exempt employees who choose not to be members of a certified employee organization and to again report and remit the withheld fees to the appropriate certified employee organization.
- 7) Pursuant to Government Code Section 3546.3, establish and implement procedures to determine which employees claim a conscientious objection to the withholding of "fair share services fees".
- 8) Pursuant to Government Code Section 3546.3, establish payroll procedures and thereafter implement such procedures so that automatic payroll deductions for fair share services fees will not be made from the wages of those claiming conscientious objections.
- 9) Pursuant to Government Code Section 3546.3, establish procedures and

thereafter implement such procedures to verify, at least annually, that payments to nonreligious, nonlabor charitable organizations have been made by employees who have claimed conscientious objections.

- 10) Pursuant to Government Code section 3546(a), to adjust payroll withholdings for rebates or withholding reductions for that portion of fair share service fees that are not germane to the employee organization function as the exclusive bargaining representative when so determined pursuant to regulations adopted by the Public Employment Relations Board.
- 11) Pursuant to Government Code Section 3546, subdivision (e), to take any and all necessary actions, when necessary, to recover reasonable legal fees, legal costs and settlement or judgment liabilities from the recognized employee organization, arising from any court or administrative action relating to the school district's compliance with the section.
- 12) Pursuant to Government Code Section 3546, Subdivision (f), to provide the exclusive representative of a public school employee a list of home addresses for each employee of a bargaining unit, regardless of when the employees commenced employment, and periodically update and correct the list to reflect changes of address, additions for new employees and deletions of former employees, pursuant to subdivision (f) of Section 3546.

It is estimated that the district has incurred more than \$200, annually, implementing the above described duties for the period of July 1, 2000 through June 30,

Declaration of Robert J. Temple  
San Bernardino Community College District

2002 for which the district has not been reimbursed by any federal , state of local government agency, and for which it cannot otherwise obtain reimbursement.

The foregoing facts are known to me personally and, if so required, I could testify to the statements made herein. I hereby declare under penalty of perjury that the foregoing is true and correct except where stated upon information and belief and, where so stated, I declare that I believe them to be true.

EXECUTED, this 17<sup>th</sup> Day of July, 2002 in the City of San Bernardino, California.



---

Robert J. Temple  
Vice Chancellor - Fiscal Services  
San Bernardino Community College District

**PROOF OF SERVICE**

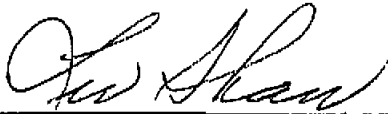
Re: CSM #00-TC-17  
CSM #01-TC-14  
Agency Fee Arrangements

I, the undersigned, declare as follows:

I am employed in the County of San Diego, State of California. I am 18 years of age or older and am not a party to the entitled causes(s). My business address is 5252 Balboa Avenue, Suite 807, San Diego, California 92117.

On August 9, 2002, I served the attached Declaration of Robert J. Temple dated July 17, 2002 on behalf of test claimant Clovis Unified School District, to the parties on the attached CSM Mailing List for 01-TC-14 (Amendment to 00-TC-17), dated June 20, 2002, for this claim that was provided by the Commission on State Mandates, by placing a true copy thereof to the Commission and other state agencies and persons in the United States Mail at San Diego, California, with first-class postage thereon fully paid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on August 9, 2002, at San Diego, California.



Leo Shaw

# Commission on State Mandates

Original List Date: 05/01/2002 Mailing Information Other

Last Updated: 06/20/2002

List Print Date: 06/20/2002

## Mailing List

Claim Number: 01-TC-14 (Amendment to 00-TC-17)

Issue: Agency Fee Arrangements

Ms. Harmeet Barkschat,  
Mandate Resource Services

5325 Blkhorn Blvd. #307  
Sacramento CA 95842

Tel: (916) 727-1350 Fax: (916) 727-1734 Interested Person

Mr. Bill McGuire, Assistant Superintendent  
Clovis Unified School District.

1450 Herndon  
Clovis CA 93611-0599

Tel: (559) 327-9000 Fax: (559) 327-9129 Claimant

Dr. Carol Berg,  
Education Mandated Cost Network

1121 L Street Suite 1060  
Sacramento CA 95814

Tel: (916) 446-7517 Fax: (916) 446-2011 Interested Person

Mr. Paul Minney,  
Spector, Middleton, Young & Minney, LLP

7 Park Center Drive  
Sacramento CA 95825

Tel: (916) 646-1400 Fax: (916) 646-1300 Interested Person

Ms. Susan Geanacou, Senior Staff Attorney (A-15)  
Department of Finance

915 L Street, Suite 1190  
Sacramento CA 95814

Tel: (916) 445-3274 Fax: (916) 327-0220 State Agency

Mr. Keith B. Petersen, President  
SixTen & Associates

5252 Balboa Avenue Suite 807  
San Diego CA 92117

Tel: (858) 514-8605 Fax: (858) 514-8645 Claimant

Mr. Glenn Haas, Bureau Chief (B-8)  
State Controller's Office  
Division of Accounting & Reporting

3301 C Street Suite 500  
Sacramento CA 95816

Tel: (916) 445-8757 Fax: (916) 323-4807 State Agency

Ms. Sandy Reynolds, President  
Reynolds Consulting Group, Inc.

P.O. Box 987  
Sun City CA 92586

Tel: (909) 672-9964 Fax: (909) 672-9963 Interested Person

Mr. Tom Lutzenberger, Principal Analyst (A-15)  
Department of Finance

915 L Street, 6th Floor  
Sacramento CA 95814

Tel: (916) 445-8913 Fax: (916) 327-0225 State Agency

Ms. Patricia Ryan,  
California Mental Health Directors Association

2030 J Street  
Sacramento CA 95814

Tel: (916) 556-3477 Fax: (916) 446-4519 Interested Person

# Commission on State Mandates

Original List Date: 05/01/2002 Mailing Information Other

Last Updated: 06/20/2002

List Print Date: 06/20/2002

Claim Number: 01-TC-14 (Amendment to 00-TC-17)

## Mailing List

Issue: Agency Fee Arrangements

Mr. Gerry Shelton, Administrator (E-8)

Department of Education

School Fiscal Services

560 J Street Suite 150

Sacramento CA 95814

Tel: (916) 323-2068 Fax: (916) 322-5102

State Agency

Mr. Bob Thompson, Deputy General Counsel (D-12)

Public Employment Relations Board

1031 18th Street

Sacramento CA 95814-4174

Tel: (916) 322-3198 Fax: (916) 327-7955

State Agency

Mr. Steve Shields,  
Shields Consulting Group, Inc.

1536 36th Street

Sacramento CA 95816

Tel: (916) 454-7310 Fax: (916) 454-7312 Interested Person

Mr. David Wellhouse,  
David Wellhouse & Associates, Inc.

9175 Kiefer Blvd Suite 121

Sacramento CA 95826

Tel: (916) 368-9244 Fax: (916) 368-5723 Interested Person

Steve Smith, CEO  
Mandated Cost Systems, Inc.

11130 Sun Center Drive Suite 100

Rancho Cordova CA 95670

Tel: (916) 669-0888 Fax: (916) 669-0889 Interested Person

Mr. Jim Spano, (B-8)  
State Controller's Office

Division of Audits

300 Capitol Mall, Suite 518

Sacramento CA 95814

Tel: (916) 323-5849 Fax: (916) 327-0832

State Agency

Ms. Pam Stone, Legal Counsel  
MAXIMUS

4320 Auburn Blvd. Suite 2000

Sacramento CA 95841

Tel: (916) 485-8102 Fax: (916) 485-0111 Interested Person





**COMMISSION ON STATE MANDATES**980 NINTH STREET, SUITE 300  
SACRAMENTO, CA 95814PHONE: (916) 323-3562  
FAX: (916) 445-0278  
E-mail: csminfo@csm.ca.gov

October 7, 2005

Mr. Keith B. Petersen  
SixTen and Associates  
5252 Balboa Avenue, Suite 807  
San Diego, CA 92117*And Interested Parties and Affected State Agencies (See Enclosed Mailing List)***RE: Draft Staff Analysis and Hearing Date**  
*Agency Fee Arrangements (00-TC-17, 01-TC-14)*  
Clovis Unified School District, Claimant  
Statutes 1980, chapter 816; Statutes 2000, chapter 893; Statutes 2001, chapter 805  
Government Code sections 3543, 3546, and 3546.3

Dear Mr. Petersen:

The draft staff analysis of this test claim is enclosed for your review and comment.

**Written Comments**Any party or interested person may file written comments on the draft staff analysis by Monday, **October 31, 2005**. You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. (Cal. Code Regs., tit. 2, § 1181.2.) If you would like to request an extension of time to file comments, please refer to section 1183.01, subdivision (c)(1), of the Commission's regulations.**Hearing**This test claim is set for hearing on **Friday, December 9, 2005** at 10:30 a.m. in Room 126 of the State Capitol, Sacramento, California. The final staff analysis will be issued on or about November 23, 2005. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01, subdivision (c)(2), of the Commission's regulations.

Please contact Camille Shelton at (916) 323-3562 with any questions regarding the above.

Sincerely,

Handwritten signature of Paula Higashi in black ink.  
PAULA HIGASHI  
Executive Director

Enc. Draft Staff Analysis

MAILED:  FILE:   
DATE: 10/7/05 INITIAL: VS  
FAXED:  WORKING BINDER: \_\_\_\_\_

**ITEM \_\_\_\_\_**  
**TEST CLAIM**  
**DRAFT STAFF ANALYSIS**

Government Code Sections 3543, 3546, and 3546.3

Statutes 1980, Chapter 816

Statutes 2000, Chapter 893

Statutes 2001, Chapter 805

California Code of Regulations, Title 8, Sections 34030 and 34055

*Agency Fee Arrangements (00-TC-17, 01-TC-14)*

Clovis Unified School District, Claimant

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**EXECUTIVE SUMMARY**

The Executive Summary will be included with the Final Staff Analysis.

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## STAFF ANALYSIS

### Claimant

Clovis Unified School District

### Chronology

- 06/27/01 Claimant files original test claim (00-TC-17) with the Commission
- 07/02/01 Commission staff issues completeness review letter
- 08/06/01 California Community Colleges Chancellor's Office files comments on the test claim
- 08/06/01 Department of Finance (DOF) files comments on the test claim
- 09/10/01 Claimant files rebuttal to state agency comments
- 05/15/02 Claimant files test claim amendment (01-TC-14) with the Commission
- 05/20/02 Commission staff issues completeness review letter on test claim amendment
- 06/19/02 DOF requests an extension of time to file comments on the amendment
- 06/20/02 Commission staff grants extension request
- 07/31/02 DOF files comments on the amendment to the test claim
- 08/07/02 Claimant declines to file a rebuttal to DOF's comments on the test claim amendment
- 08/12/02 Claimant representative files a declaration from the Vice Chancellor, Fiscal Services of the San Bernardino Community College District, alleging costs incurred pursuant to the test claim legislation
- 10/07/05 Commission staff issues the draft staff analysis

### Background

The *Agency Fee Arrangements* test claim, filed by Clovis Unified School District, addresses issues within the collective bargaining process and employer-employee relations in California's K-14 public school systems. Specifically, the test claim legislation focuses on the payment of fees by non-union member (or "fair share") employees to exclusive representative organizations. In 1975, the Legislature enacted the Educational Employment Relations Act (EERA).<sup>1</sup> In doing so, the Legislature sought to "promote the improvement of personnel management and

---

<sup>1</sup> Statutes 1975, chapter 961. Pursuant to Government Code section 3541.3, subdivision (g), the Public Employment Relations Board (PERB) is vested with the authority to "adopt... rules and regulations to carry out the provisions and effectuate the purposes and policies" of the EERA. (Government Code sections 3540 et seq.). Accordingly, in Code of Regulations, title 8, section 32001, subdivision (c), PERB has declared that "'[s]chool district' as used in the EERA means a school district of any kind or class, including any public community college district, within the state").

employer-employee relations within the public school systems in the State of California."<sup>2</sup> This policy aimed at furthering the public interest in "maintaining the continuity and quality of educational services."<sup>3</sup>

The EERA imposes on school districts the duty to "meet and negotiate" with an employee organization selected as the exclusive representative of an employee bargaining unit on matters within the scope of representation.<sup>4</sup> The scope of representation is limited to "matters relating to wages, hours of employment, and other terms and conditions of employment."<sup>5</sup> The EERA explicitly includes "organizational security" within the scope of representation.<sup>6</sup>

Government Code section 3540.1, subdivision (i), provides two definitions for "organizational security." The first describes organizational security as:

[a]n arrangement pursuant to which a public school employee may decide whether or not to join an employee organization, but which requires him or her, as a condition of continued employment, if he or she does join, to maintain his or her membership in good standing for the duration of the written agreement...

Thus, such an arrangement would provide that once an employee organization has been selected by an employee bargaining unit as exclusive representative, each employee has the option of either joining or not joining the employee organization.

Alternatively, the second definition describes organizational security as:

[a]n arrangement that requires an employee, as a condition of continued employment, either to join the recognized or certified employee organization, or to pay the organization a service fee in an amount not to exceed the standard initiation fee, periodic dues, and general assessments of the organization for the duration of the agreement...

This type of organizational security arrangement dictates that an employee in a bargaining unit for which an employee organization has been selected as exclusive representative *must* either (a) join the employee organization, or (b) pay such organization a service fee or agency fee arrangement. The EERA explicitly declares that the "employee organization recognized or certified as the exclusive representative for the purpose of meeting and negotiating shall fairly represent each and every employee in the appropriate unit."<sup>7</sup>

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<sup>2</sup> Government Code section 3540.

<sup>3</sup> *San Diego Teachers Assn. v. Superior Court* (1979) 24 Cal.3d 1, 11.

<sup>4</sup> Government Code section 3543.3.

<sup>5</sup> Government Code section 3543.2.

<sup>6</sup> Former Government Code section 3546 provided that "organizational security... shall be within the scope of representation." (Stats. 1975, ch. 961, § 2). In 2000, former Government Code section 3546 was repealed (Stats. 2000, ch. 893), but similar language was added via the same bill to Government Code section 3540.1, subdivision (i), which now provides that "'Organizational security' is within the scope of representation..."

<sup>7</sup> Government Code section 3544.9.

Under prior law, organizational security arrangements were subject to the collective bargaining process. Statutes 2000, chapter 893 created a statutory organizational security arrangement -- removing the basic issue from the bargaining process.

### **Claimant's Position**

Claimant, Clovis Unified School District, filed a test claim on June 27, 2001,<sup>8</sup> alleging Government Code sections 3543 and 3546, as amended by Statutes 2000, chapter 893, impose reimbursable state-mandated activities on K-14 school districts for activities including establishing and implementing payroll procedures for collecting fair share service fees, and remitting the fees to the certified employee organization. Claimant alleges a new activity to: "Draft, approve and distribute an appropriate and neutral notice to existing non-member employees and new employees, which explains the additional payroll deduction for 'fair share services fees' for non-member employees of a certified employee organization."

Additionally, claimant alleges that Government Code section 3546.3 as added by Statutes 1980, chapter 816, requires school districts to "Establish and implement procedures to determine which employees claim a conscientious objection to the withholding of 'fair share services fees,'" and establish and implement payroll procedures to prevent automatic deductions from the wages of such conscientious objectors.

Claimant also alleges the California Code of Regulations, title 8, sections 34030 and 34055, requires K-14 school districts, within 20 days of a filed petition to rescind or reinstate the collective bargaining agreement, file with the regional office of the Public Employment Relations Board (PERB) an alphabetical list containing the names and job titles or classifications of the persons employed in the unit as of the last date of the payroll period immediately preceding the date the petition, and establish new payroll procedures, as needed.

On May 15, 2002,<sup>9</sup> claimant filed a test claim amendment alleging the following reimbursable state-mandated activities from amendments by Statutes 2001, chapter 805:

- Establish procedures and thereafter implement such procedures to verify, at least annually, that payments to nonreligious, nonlabor charitable organizations have been made by employees who have claimed conscientious objections pursuant to Government Code section 3546.3.
- Adjust payroll withholdings for rebates or withholding reductions for that portion of fair share service fees that are not germane to the employee organization function as the exclusive bargaining representative when so determined pursuant to regulations adopted by PERB, pursuant to Government Code section 3546, subdivision (a).
- Take any and all necessary actions, when necessary, to recover reasonable legal fees, legal costs and settlement or judgment liabilities from the recognized

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<sup>8</sup> Potential reimbursement period for this claim begins no earlier than July 1, 1999. (Gov. Code, § 17557, subd. (c).)

<sup>9</sup> Potential reimbursement period for any newly-alleged test claim legislation begins no earlier than January 1, 2002, the operative date of Statutes 2001, chapter 805.

employee organization, arising from any court or administrative action relating to the school district's compliance with the section pursuant to Government Code section 3546, subdivision (e);

- Provide the exclusive representative of a public school employee a list of home addresses for each employee of a bargaining unit, regardless of when the employees commenced employment, and periodically update and correct the list to reflect changes of address, additions for new employees and deletions of former employees, pursuant to Government Code section 3546, subdivision (f).

Claimant's complete, detailed allegations are found in the Amendment to the Test Claim Filing, pages five through nine, received May 15, 2002.

### **Department of Finance's Position**

DOF filed comments on August 3, 2001, and July 30, 2002, addressing the allegations stated in the test claim and subsequent amendment. Regarding claimant's allegations that the test claim legislation mandates a variety of activities involving the establishment and maintenance of payroll procedures to account for deducting fair share service fees and transmitting those fees to the employee organization, DOF contends that public school employers who did not negotiate and implement organizational security arrangements prior to the enactment of Statutes 2000, chapter 893 are justified in claiming mandated costs. However, those employers who did negotiate and implement organizational security arrangements prior to the enactment of Statutes 2000, chapter 893 are not justified in making similar claims for reimbursement. DOF argues that those employers who did negotiate and implement such arrangements prior to the 2000 amendments "would presumably have already established" such payroll procedures and those employers should not "be reimbursed for costs they voluntarily incurred."

DOF has similar arguments regarding claimant's allegations on costs incurred in complying with PERB's regulations in the event a petition to rescind or reinstate an organizational security arrangement is filed.

Regarding claimant's allegation that it must draft notices explaining the fee deductions to employees paying fair share service fees, DOF argues that no such mandate exists. DOF relies on California Code of Regulations, title 8, section 32992 which provides that each employee "required to pay an agency fee shall receive written notice from the exclusive representative" regarding the fee deduction.

Likewise, responding to claimant's allegation that it must incur costs in taking the necessary actions in recovering legal fees from an exclusive representative under Government Code section 3546, subdivision (e), DOF asserts that the subdivision, by its plain language, does not impose any duties on the public school employer.

DOF's other comments and arguments will be addressed in the analysis below, where pertinent.

### **California Community Colleges Chancellor's Office Position**

The California Community Colleges Chancellor's Office ("Chancellor's Office") filed comments regarding this test claim on July 30, 2001. The Chancellor's Office begins by noting that community colleges are subject to PERB's jurisdiction. Secondly, looking to the statutes regarding organizational security, the Chancellor's Office believes that "the provisions of



Government Code [sections] 3540.1 and 3546 and the related implementing regulations in the Code of Regulations impose a mandate of specific tasks for community college district staff."

The Chancellor's Office concludes by stating that no funds have been appropriated for costs incurred in performing these activities, and that none of the provisions of Government Code section 17556 apply to community colleges "complying with the mandate."

### Discussion

The courts have found that article XIII B, section 6, of the California Constitution<sup>10</sup> recognizes the state constitutional restrictions on the powers of local government to tax and spend.<sup>11</sup> "Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."<sup>12</sup> A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.<sup>13</sup> In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.<sup>14</sup>

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.<sup>15</sup> To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim

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<sup>10</sup> Article XIII B, section 6, subdivision (a), provides: (a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected; (2) Legislation defining a new crime or changing an existing definition of a crime; (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

<sup>11</sup> *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

<sup>12</sup> *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

<sup>13</sup> *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

<sup>14</sup> *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878, (*San Diego Unified School Dist.*); *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835 (*Lucia Mar*).

<sup>15</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; see also *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.)

legislation.<sup>16</sup> A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."<sup>17</sup>

Finally, the newly required activity or increased level of service must impose costs mandated by the state.<sup>18</sup>

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.<sup>19</sup> In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."<sup>20</sup>

**Issue 1: Is the test claim legislation subject to article XIII B, section 6, of the California Constitution?**

Government Code Section 3543:

Government Code section 3543 was rewritten by Statutes 2000, chapter 893. Statutes of 2001, chapter 805 amended one sentence, as indicated by underline below:

(a) Public school employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. If the exclusive representative of a unit provides notification, as specified by subdivision (a) of Section 3546, public school employees who are in a unit for which an exclusive representative has been selected, shall be required, as a condition of continued employment, to join the recognized employee organization or to pay the organization a fair share services fee, as required by Section 3546. If a majority of the members of a bargaining unit rescind that arrangement, either of the following options shall be applicable:

(1) The recognized employee organization may petition for the reinstatement of the arrangement described in subdivision (a) of Section 3546 pursuant to the procedures in paragraph (2) of subdivision (d) of Section 3546.

(2) The employees may negotiate either of the two forms of organizational security described in subdivision (i) of Section 3540.1.

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<sup>16</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

<sup>17</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878.

<sup>18</sup> *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

<sup>19</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551 and 17552.

<sup>20</sup> *County of Sonoma*, *supra*, 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

(b) Any employee may at any time present grievances to his or her employer, and have such grievances adjusted, without the intervention of the exclusive representative, as long as the adjustment is reached prior to arbitration pursuant to Sections 3548.5, 3548.6, 3548.7, and 3548.8 and the adjustment is not inconsistent with the terms of a written agreement then in effect; provided that the public school employer shall not agree to a resolution of the grievance until the exclusive representative has received a copy of the grievance and the proposed resolution and has been given the opportunity to file a response.

Before the amendment in 2000, prior law provided: "Public school employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. Public school employees shall also have the right to refuse to join or participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the public school employer, except that once the employees in an appropriate unit have selected an exclusive representative and it has been recognized pursuant to Section 3544.1 or certified pursuant to Section 3544.7, no employee in that unit may meet and negotiate with the public school employer." Current subdivision (b) is identical to prior law.

In order to be subject to article XIII B, section 6, of the California Constitution, the test claim legislation must impose a state-mandated activity on a local agency or school district.<sup>21</sup> Courts have adopted a "strict construction" interpretation of article XIII B, section 6.<sup>22</sup> Consistent with this narrow interpretation, the term "mandate" has been construed according to its commonly understood meaning as an "order" or "command."<sup>23</sup> Thus, the test claim legislation must require a local government entity to perform an activity in order to fall within the scope of article XIII B, section 6.

According to the well-settled rules of statutory construction, an examination of a statute claimed to constitute a reimbursable state mandate begins with the plain language of the statute, and "where the language is clear there is no room for interpretation."<sup>24</sup> Where the Legislature has not found it appropriate to include express requirements in a statute, it is inappropriate for a court to write such requirements into the statute.<sup>25</sup> The California Supreme Court has noted that "[w]e cannot... read a mandate into language which is plainly discretionary."<sup>26</sup>

Beginning with the plain language of section 3543, subdivision (a), there is no activity imposed on the public school employer. While public school employees "shall be required" to either join the employee organization selected by the unit as exclusive representative or to pay such organization a service fee, there is nothing in the language of section 3543, subdivision (a); imposing upon the public school employer the obligation to perform any activities.

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<sup>21</sup> *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 740.

<sup>22</sup> *City of San Jose*, *supra*, 45 Cal.App.4th 1802, 1816-17.

<sup>23</sup> *Long Beach Unified School Dist.*, *supra*, 225 Cal.App.3d 155, 174.

<sup>24</sup> *City of Merced v. State of California* (1984) 153 Cal.App.3d 777.

<sup>25</sup> *Whitcomb Hotel, Inc. v. California Employment Commission* (1944) 24 Cal.App.2d 753, 757.

<sup>26</sup> *City of San Jose*, *supra*, 45 Cal.App.4th 1802, 1816.

Government Code section 3543, subdivision (a), by its plain language, fails to impose any activities on school districts. Section 3543, subdivision (b), contains the same language found in former section 3543 and therefore is not new, nor does the plain language of subdivision (b) impose any duties upon school districts. Accordingly, staff finds that Government Code section 3543 is not subject to article XIII B, section 6, of the California Constitution.

Government Code Section 3546.3:

Government Code section 3546.3 was added by Statutes 1980, chapter 816, as follows:

Notwithstanding subdivision (i) of Section 3540.1, Section 3546, or any other provision of this chapter, any employee who is a member of a religious body whose traditional tenets or teachings include objections to joining or financially supporting employee organizations shall not be required to join, maintain membership in, or financially support any employee organization as a condition of employment; except that such employee may be required, in lieu of a service fee, to pay sums equal to such service fee either to a nonreligious, nonlabor organization, charitable fund exempt from taxation under Section 501(c) (3) of Title 26 of the Internal Revenue Code, chosen by such employee from a list of at least three such funds, designated in the organizational security arrangement, or if the arrangement fails to designate such funds, then to any such fund chosen by the employee. Either the employee organization or the public school employer may require that proof of such payments be made on an annual basis to the public school employer as a condition of continued exemption from the requirement of financial support to the recognized employee organization. If such employee who holds conscientious objections pursuant to this section requests the employee organization to use the grievance procedure or arbitration procedure on the employee's behalf, the employee organization is authorized to charge the employee for the reasonable cost of using such procedure.

Staff finds that Government Code section 3546.3 is not subject to article XIII B, section 6, of the California Constitution because section 3546.3 does not impose any state-mandated activities on school districts.

Claimant asserts that section 3546.3 requires school districts to establish and maintain procedures for determining which employees may claim a conscientious objection, establish procedures to ensure that fair share service fee deductions are not made from the wages of those employees claiming such objections, and to establish procedures to ensure, at least annually, that those employees are making payments to charitable organizations in lieu of service fee deductions. DOF, in its August 3, 2001 comments, argues that school districts that negotiated and implemented organizational security arrangements prior to the enactment of the 2000 amendments are not justified in claiming mandated costs, but that school districts that did not negotiate such arrangements are justified in claiming mandated costs. DOF's position is grounded in the discretionary nature of the collective bargaining process, and that employers who negotiated organizational security arrangements prior to the enactment of the 2000 amendments should not "be reimbursed for costs they voluntarily incurred."<sup>27</sup>

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<sup>27</sup> Department of Finance, August 3, 2001 Comments, page 3.

Just as discussed above regarding Government Code section 3543, the plain language of Government Code section 3546.3 is also discretionary. Section 3546.3 states only that an employee holding a conscientious objection to joining or financially supporting an employee organization "may be required" to make payments to a nonreligious, nonlabor, charitable organization in lieu of paying a fair share service fee to such organization. (Emphasis added).

Section 3546.3 does not impose any obligation on school districts. Section 3546.3 provides that "[e]ither the employee organization or the public school employer may require that proof of such payments be made on an annual basis." (Emphasis added). Section 3546.3, by its plain meaning, does not require or command school districts to do anything. Accordingly, staff finds that Government Code section 3546.3 is not subject to article XIII B, section 6, of the California Constitution.

Remaining Test Claim Legislation:

In order for the remaining test claim legislation to be subject to article XIII B, section 6 of the California Constitution, the legislation must constitute a "program." Government Code section 3546 provides, in part, that "the employer shall deduct the amount of the fair share service fee authorized by this section from the wages and salary of the employee and pay that amount to the employee organization," and that "[t]he employer of a public school employee shall provide the exclusive representative of a public employee with the home address of each member of a bargaining unit..." California Code of Regulations, title 8, sections 34030 and 34055 require that a school district employer file an alphabetical list containing the names and job titles or classifications of the persons employed in the unit within 20 days after a petition is filed to rescind or reinstate an organizational security arrangement.

In *County of Los Angeles v. State of California*, the California Supreme Court defined the word "program" within the meaning of article XIII B, section 6 as one that carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.<sup>28</sup> The court has held that only one of these findings is necessary.<sup>29</sup>

DOF asserts that Government Code section 3546, subdivision (a), as it relates to rebates and reductions to the fair share service fee do not constitute a program because it neither provides a service to the public nor qualifies as a function unique to governmental entities. DOF claims that the United States Supreme Court's holding in *Communication Workers v. Beck* (1988) 487 U.S. 735, which addresses fair share service fees, applies to both private and public employees. The Court in *Beck* interpreted and applied the provisions of the National Labor Relations Act (NLRA). However, the NLRA by its own terms expressly excludes public employees from its coverage. Section 2, subdivision (2), of the NLRA (29 U.S.C. § 152(2)) provides, in pertinent part, that "[t]he term 'employer' ... shall not include ... any State or political subdivision thereof..." Furthermore, section 2, subdivision (3), of the NLRA (29 U.S.C. § 152(3)) provides

<sup>28</sup> *County of Los Angeles, supra*, 43 Cal.3d at page 56.

<sup>29</sup> *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537.

that "[t]he term 'employee' ... shall not include any individual employed... by any... person who is not an employer as herein defined."<sup>30</sup>

Staff finds that Government Code section 3546 and California Code of Regulations, title 8, sections 34030 and 34055, impose a program within the meaning of article XIII B, section 6 of the California Constitution under the second test, to the extent the test claim legislation requires school districts to engage in administrative activities solely applicable to public school administration. The test claim legislation imposes unique requirements upon school districts that do not apply generally to all residents and entities of the state.

Accordingly, staff finds that the remaining test claim legislation constitutes a "program" and, thus, may be subject to subvention pursuant to article XIII B, section 6 of the California Constitution if the legislation also imposes a new program or higher level of service, and costs mandated by the state.

**Issue 2: Does the remaining test claim legislation impose a new program or higher level of service on school districts within the meaning of article XIII B, section 6 of the California Constitution, and impose "costs mandated by the state" within the meaning of Government Code sections 17514 and 17556?**

Test claim legislation imposes a new program or higher level of service within an existing program when it compels a local agency or school district to perform activities not previously required.<sup>31</sup> The courts have defined a "higher level of service" in conjunction with the phrase "new program" to give the subvention requirement of article XIII B, section 6 meaning.

Accordingly, "it is apparent that the subvention requirement for increased or higher level of service is directed to state-mandated increases in the services provided by local agencies in existing programs."<sup>32</sup> A statute or executive order imposes a reimbursable "higher level of service" when the statute or executive order, as compared to the legal requirements in effect immediately before the enactment of the test claim legislation, increases the actual level of governmental service provided in the existing program.<sup>33</sup>

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<sup>30</sup> See *Carmen v. San Francisco Unified School District* (1997) 982 F.Supp. 1396, 1409 (concluding that "school districts are considered 'political subdivisions' of the State of California within the meaning of 29 U.S.C. § 152(2), and therefore are exempt from coverage under the NLRA").

<sup>31</sup> *Lucia Mar Unified School Dist.*, *supra*, 44 Cal.3d 830, 836.

<sup>32</sup> *County of Los Angeles*, *supra*, 43 Cal.3d 46, 56; *San Diego Unified School District*, *supra*, 33 Cal.4th 859, 874.

<sup>33</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

Government Code Section 3546:

Government Code section 3546, as enacted by Statutes 2000, chapter 893, and amended by Statutes 2001, chapter 805,<sup>34</sup> follows:

(a) Notwithstanding any other provision of law, upon receiving notice from the exclusive representative of a public school employee who is in a unit for which an exclusive representative has been selected pursuant to this chapter, the employer shall deduct the amount of the fair share service fee authorized by this section from the wages and salary of the employee and pay that amount to the employee organization. Thereafter, the employee shall, as a condition of continued employment, be required either to join the recognized employee organization or pay the fair share service fee. The amount of the fee shall not exceed the dues that are payable by members of the employee organization, and shall cover the cost of negotiation, contract administration, and other activities of the employee organization that are germane to its functions as the exclusive bargaining representative. Agency fee payers shall have the right, pursuant to regulations adopted by the Public Employment Relations Board, to receive a rebate or fee reduction upon request, of that portion of their fee that is not devoted to the cost of negotiations, contract administration, and other activities of the employee organization that are germane to its function as the exclusive bargaining representative.

(b) The costs covered by the fee under this section may include, but shall not necessarily be limited to, the cost of lobbying activities designed to foster collective bargaining negotiations and contract administration, or to secure for the represented employees advantages in wages, hours, and other conditions of employment in addition to those secured through meeting and negotiating with the employer.

(c) The arrangement described in subdivision (a) shall remain in effect unless it is rescinded pursuant to subdivision (d). The employer shall remain neutral, and shall not participate in any election conducted under this section unless required to do so by the board.

(d)(1) The arrangement described in subdivision (a) may be rescinded by a majority vote of all the employees in the negotiating unit subject to that arrangement, if a request for a vote is supported by a petition containing 30 percent of the employees in the negotiating unit, the signatures are obtained in one academic year. There shall not be more than one vote taken during the term of any collective bargaining agreement in effect on or after January 1, 2001.

(2) If the arrangement described in subdivision (a) is rescinded pursuant to paragraph (1), a majority of all employees in the negotiating unit may request that the arrangement be reinstated. That request shall be submitted to the board along with a petition containing the signatures of at least 30 percent of the employees in the negotiating unit. The vote shall be conducted at the worksite by secret ballot,

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<sup>34</sup> Reworded subdivision (a), and added subdivisions (e) and (f).

and shall be conducted no sooner than one year after the rescission of the arrangement under this subdivision.

(3) If the board determines that the appropriate number of signatures have been collected, it shall conduct the vote to rescind or reinstate in a manner that it shall prescribe in accordance with this subdivision.

(4) The cost of conducting an election under this subdivision to reinstate the organizational security arrangement shall be borne by the petitioning party and the cost of conducting an election to rescind the arrangement shall be borne by the board.

(e) The recognized employee organization shall indemnify and hold the public school employer harmless against any reasonable legal fees, legal costs, and settlement or judgment liability arising from any court or administrative action relating to the school district's compliance with this section. The recognized employee organization shall have the exclusive right to determine whether any such action or proceeding shall or shall not be compromised, resisted, defended, tried, or appealed. This indemnification and hold harmless duty shall not apply to actions related to compliance with this section brought by the exclusive representative of district employees against the public school employer.

(f) The employer of a public school employee shall provide the exclusive representative of a public employee with the home address of each member of a bargaining unit, regardless of when that employee commences employment, so that the exclusive representative can comply with the notification requirements set forth by the United States Supreme Court in *Chicago Teachers Union v. Hudson* (1986) 89 L.Ed. 2d 232.

The test claim allegations regarding Government Code section 3546 will be analyzed in order of subdivision below.

Government Code section 3546, subdivision (a):

Claimant alleges that subdivision (a) of Government Code section 3546 constitutes a reimbursable state mandate in two respects. First, claimant argues that subdivision (a) requires school districts to establish, implement, maintain and update payroll procedures to determine those employees from whose paychecks service fees must be deducted, and to make such deductions and transmit those fees to the employee organization.<sup>35</sup> Secondly, claimant asserts that school districts must "adjust payroll withholdings for rebates or withholding reductions" pursuant to the rebate or fee reduction provision of subdivision (a).<sup>36</sup>

DOF agrees that subdivision (a) requires school districts to deduct service fees from the wages of its employees, and then transmit those fees to the employee organization. However, DOF also argues that those school districts that did establish organizational security arrangements prior to the enactment of the test claim legislation are not justified in claiming any mandated costs because those districts voluntarily chose to incur such costs, and so nothing new is mandated

<sup>35</sup> First Amendment to the Test Claim, page 5.

<sup>36</sup> *Id.* at page 6.



upon them by the test claim legislation. Staff disagrees. Government Code section 17565 clearly provides that: "If a local agency or a school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate."

DOF also argues that the rebate and fee reduction provision imposes no activities on school districts. DOF asserts that PERB's regulations squarely place the burden of issuing fee rebates to employees on the employee organization.

Staff notes at the outset that the scope of the activities mandated on K-14 school districts is limited to only those employees participating in the fee deduction procedures of school districts. Education Code sections 45061, 45168, 87834, and 88167 each provide that "the organizational security arrangement shall provide that any employee may pay service fees directly to the certified or recognized employee organization in lieu of having such service fees deducted from the salary or wage order." Accordingly, certificated and classified employees are granted a statutory right to bypass the fee deduction procedures of the school district, and instead make such service fee payments themselves directly to the employee organization.

Under prior law, a school district could voluntarily enter into organizational security arrangements with an employee organization. Organizational security has been within the scope of representation since the EERA's enactment.<sup>37</sup> This results in a duty upon the school district to meet and negotiate in good faith with the exclusive representative upon request.<sup>38</sup> Prior to the 2000 amendments, the EERA, while imposing a duty to bargain, did not compel the parties to reach agreement on organizational security. Thus, any agreement ultimately reached through the bargaining process was entered into voluntarily by both sides.

Government Code section 3546, subdivision (a), requires what was once voluntary. Section 3546, subdivision (a), bypasses the discretion of a school district, and instead compels the district to institute an organizational security arrangement "upon receiving notice from the exclusive representative." This new requirement that school districts shall implement organizational security arrangements requires school districts to make service fee deductions from the wages of employees, and consequently transmit those fees to the employee organization. Such fee deductions and payments to the employee organization were never required immediately preceding the enactment of the test claim legislation, and thus impose a new program or higher level of service on school districts.

However, in order to be subject to the subvention requirement of article XIII B, section 6, of the California Constitution, the test claim legislation must also impose upon a local agency or school district "costs mandated by the state." Government Code section 17514 defines "costs mandated by the state" to mean "any increased costs which a local agency or school district is required to incur..."

Government Code section 17556 lists several exceptions which preclude the Commission from finding costs mandated by the state. Specifically, "The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or

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<sup>37</sup> Former Government Code section 3546 (added by Stats. 1975, ch. 961, and repealed by Stats. 2000, ch. 893); Gov. Code, § 3540.1, subd. (i) (as amended by Stats. 2000, ch. 893).

<sup>38</sup> Government Code section 3543.3.

school district, if, after a hearing, the commission finds that: ... (d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service."

Pursuant to Education Code sections 45061 and 87834, K-14 school districts retain the authority to levy the charges necessary to cover any costs incurred in making service fee deductions from the wages of certificated employees choosing not to join the employee organization. Education Code section 45061 applies to elementary and secondary districts, while Education Code section 87834 is for community colleges. Education Code section 45061 follows:

The governing board of each school district when drawing an order for the salary or wage payment due to a certificated employee of the district shall, with or without charge, reduce the order for the payment of service fees to the certified or recognized organization as required by an organizational security arrangement between the exclusive representative and a public school employer as provided under Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code. However, the organizational security arrangement shall provide that any employee may pay service fees directly to the certified or recognized employee organization in lieu of having such service fees deducted from the salary or wage order.

If the employees of a district do not authorize the board to make a deduction to pay their pro rata share of the costs of making deductions for the payment of service fees to the certified or recognized organization, the board shall deduct from the amount transmitted to the organization on whose account the payments were deducted the actual costs, if any, of making the deduction. No charge shall exceed the actual cost to the district of the deduction. These actual costs shall be determined by the board and shall include startup and ongoing costs.

Education Code section 87834 is nearly identical, the only difference being that section 87834 substitutes the words "community college district" for the words "school district" in the first sentence of section 45061. As is evident from the plain language of sections 45061 and 87834, school districts may deduct service fees from the wages of certificated employees "with or without charge." (Emphasis added).

The language of Government Code section 17556, subdivision (d), is clear and unambiguous. In *Connell v. Superior Court* (1997) 59 Cal.App.4th 382, 401, the court found that "the plain language of the statute precludes reimbursement where the local agency has the authority, i.e., the right or the power, to levy fees sufficient to cover the costs of the state-mandated program." In making such a determination, the court explicitly rejected the argument that the term "authority" should be construed as meaning "a practical ability in light of surrounding economic circumstances."<sup>39</sup> Accordingly, the focus is not whether a local agency or school district *chooses* to exercise an authority to levy service charges or fees, but rather whether such authority exists at all. Section 17556, subdivision (d), explicitly declares that if the local agency or school district "has the authority" to assess fees, then the commission shall be precluded from finding "costs mandated by the state." Here, school districts do possess such authority.

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<sup>39</sup> *Ibid.*

According to the Education Code sections, "No charge shall exceed the actual cost to the district of the deduction," but the costs for which the governing board is authorized to assess charges "shall be determined by the board and shall include startup and ongoing costs." Thus, the school district may assess charges for costs it must incur in establishing, maintaining, and adjusting its service fee deduction procedures, in addition to transmitting those fees to the employee organization.

Education Code sections 45061 and 87834 provide school districts with "the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program," within the meaning of Government Code section 17556, subdivision (d). Accordingly, staff finds that Government Code section 3546, subdivision (a), does not constitute a reimbursable state mandate because the test claim legislation does not impose "costs mandated by the state" as to activities regarding certificated employees.

This same fee authority does not apply for classified employees. Subdivision (b) of both Education Code sections 45168 and 88167 (for K-12 districts and community college districts, respectively), provide:

The governing board of each [ ] district, when drawing an order for the salary or wage payment due to a classified employee of the district may, *without charge*, reduce the order ... for the payment of service fees to the certified or recognized organization as required in an organizational security arrangement between the exclusive representative and a [ ] district employer as provided under Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code. [Emphasis added.]

Thus, staff finds that Government Code section 3546, subdivision (a) imposes a new program or higher level of service upon school districts within the meaning of article XIII B, section 6 of the California Constitution, and imposes costs mandated by the state pursuant to Government Code section 17514, for the following new activity:

- Upon receiving notice from the exclusive representative of a classified public school employee who is in a unit for which an exclusive representative has been selected, the employer shall deduct the amount of the fair share service fee authorized by this section from the wages and salary of the employee and pay that amount to the employee organization, except for those classified employees who elect to pay service fees directly to the certified or recognized employee organization in lieu of having such service fees deducted from the salary or wage order, pursuant to Education Code sections 45168 and 88167.

This activity does not apply for certificated employees; fee authority is available pursuant to Education Code sections 45061 and 87834.

Claimant further alleges that Government Code section 3546, subdivision (a), requires school districts to adjust any service fee deductions to account for fee reductions or rebates to which the fee-paying employees may become entitled. Subdivision (a) recognizes the right of employees paying fair share service fees "to receive a rebate or fee reduction upon request, of that portion of their fee" determined to be beyond the permissible scope of the employee organization's role as exclusive bargaining representative. However, nothing in the plain language of the statute requires the school district to adjust its payroll procedures in the event the employees become

entitled to a rebate or fee reduction. Another rational view is that the employee organization is ultimately responsible for refunding any excessive fees. In fact, as described below, PERB regulations hold the employee organization responsible for providing notifications and handling disputed agency fees.

PERB has enacted various regulations outlining notification requirements and objection procedures to accommodate and protect agency fee payers. Specifically, California Code of Regulations, title 8, section 32992, subdivision (a) provides:

- (a) Each nonmember who will be required to pay an agency fee shall annually receive written notice from the exclusive representative of:
  - (1) The amount of the agency fee which is to be expressed as a percentage of the annual dues per member based upon the chargeable expenditures identified in the notice;
  - (2) The basis for the calculation of the agency fee; and
  - (3) A procedure for appealing all or any part of the agency fee.

Furthermore, regarding the appeals process referenced above, title 8, section 32994, provides, in pertinent part,

- (a) If an agency fee payer disagrees with the exclusive representative's determination of the agency fee amount, that employee (hereinafter known as an "agency fee objector") may file an agency fee objection. Such agency fee objection shall be filed with the exclusive representative...
- (b) Each exclusive representative that has an agency fee provision shall administer an Agency Fee Appeal Procedure...

Additionally, PERB has implemented regulations regarding the handling of agency fees put in dispute by an agency fee objection. California Code of Regulations, title 8, section 32995 requires that the employee organization "shall open an account in any independent financial institution in which to place in escrow" the disputed agency fees. The agency fees placed in escrow shall not be released until either a mutual agreement is reached between the agency fee objector and employee organization, or a decision is rendered by an impartial decision maker in accordance with the hearing requirements imposed on the employee organization by section 32994, subdivision (b).

Thus, PERB requires the employee organization acting as the exclusive bargaining representative to provide, at least annually, notification to each nonmember employee regarding the agency fee deduction and the calculations used to arrive at the amount of the fee. Additionally, any exclusive representative with an agency fee provision must implement an Agency Fee Appeal Procedure to process nonmember employee objections as to the amount of the fee.

The employee organization is required to provide notice to employees, establish fair and prompt hearing procedures, and to hold disputed agency fees in an escrow account for the duration of the dispute. Although PERB has not implemented any rules or regulations relating to the actual fee reductions referenced in Government Code section 3546, subdivision (a), there is no evidence that the public school employer is required to adjust its payroll procedures to account for any reduction in the amount of future service fee payments to be deducted from employee wages.

Government Code section 3546, subdivisions (b) through (e):

Government Code section 3546, subdivision (b), describes the permissible costs towards which an employee organization may apply the fair share service fees. Nothing in the language of subdivision (b), imposes any activities upon school districts.

Subdivision (c) provides that the "employer shall remain neutral, and shall not participate in any election conducted under this section unless required to do so by the board." Claimant alleges that subdivision (c) requires the public school employer to supply "administrative support" as required by PERB.<sup>40</sup> However, PERB has not enacted any rules or regulations requiring a school district's participation in an organizational security election.<sup>41</sup> Therefore, subdivision (c) does not impose any required activities on school districts.

Government Code section 3546, subdivision (d), contains four subparts. Subdivisions (d)(1) and (d)(2) describe the process by which employees in a bargaining unit may either rescind or reinstate, respectively, an organizational security arrangement. Such a process includes the submission of a petition to PERB and a consequent election among the employees if the petition meets PERB's requirements as promulgated by its regulations.

Subdivision (d)(3) provides that PERB shall conduct a vote to either rescind or reinstate an organizational security arrangement if the required number of employee signatures on a petition have been collected. Claimant alleges that subdivision (d)(3) requires school districts to "supply any required administrative support as may be required by PERB."<sup>42</sup> Subdivision (d)(3) does not require anything of school districts, thus any mandated activities related to this subdivision would only arise from an executive order. No such executive order is included in this test claim, therefore no findings can be made that school districts have reimbursable state-mandated costs to supply administrative support to PERB.

Finally, subdivision (d)(4) states that the costs of conducting an election to rescind an organizational security arrangement "shall be borne by the board," while the costs in an election to rescind "shall be borne by the petitioning party." Staff finds that nothing in the plain language of section 3546, subdivision (d), requires school districts to perform any activities.

Government Code section 3546, subdivision (e) requires that the "recognized employee organization shall indemnify and hold the public school employer harmless against any reasonable legal fees, legal costs, and settlement or judgment liability arising from any court or administrative action relating to the school district's compliance with this section."

Claimant argues that subdivision (e) requires school districts to take any and all necessary actions... to recover reasonable legal fees... from the recognized employee organization.<sup>43</sup> DOF rebuts this argument by asserting that the plain language of subdivision (e) does not impose any activities on school districts.

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<sup>40</sup> First Amendment to the Test Claim, page 6.

<sup>41</sup> See California Code of Regulations, title 8; division 3, chapter 2, subchapter 2 for PERB's regulations governing organizational security arrangements under the EERA.

<sup>42</sup> First Amendment to the Test Claim, page 6.

<sup>43</sup> First Amendment to the Test Claim, page 8.

Staff agrees with DOF, and thus finds that the plain language of subdivision (e) does not impose any duties on school districts. Rather, subdivision (e) imposes a requirement on the *employee organization* to indemnify and hold harmless a school district for any legal expenses incurred in complying with implementing an organizational security arrangement.

Accordingly, staff finds that Government Code section 3546, subdivisions (b), (c), (d), and (e) do not impose a program, or a new program or higher level of service upon school districts within the meaning of article XIII B, section 6, of the California Constitution.

Government Code section 3546, subdivision (f):

Statutes 2001, chapter 805 added subdivision (f) to Government Code section 3546 "so that the exclusive representative can comply with the notification requirements set forth by the United States Supreme Court in *Chicago Teachers Union v. Hudson* (1986) 89 L.Ed. 2d 232."

Claimant asserts that Government Code section 3546, subdivision (f) imposes a state-mandated activity on school districts for providing a list of employee home addresses to the exclusive representative. DOF, on the other hand, claims that the activity "consists of producing a report which should readily be available through the school district's payroll system,"<sup>44</sup> and that any costs incurred by the claimant in providing such a list are *de minimis*, and should therefore not be reimbursable because claimant's costs would be unlikely to reach the threshold for a claim.

Government Code section 3546, subdivision (f) requires school districts to file a list of employee home addresses with an employee organization selected by an employee bargaining unit to act as exclusive representative. Prior to the enactment of Statutes 2001, chapter 805, no statutory or regulatory requirement obligated a school district to provide a list of home addresses to the exclusive representative. The requirements imposed upon school districts by Government Code section 3546, subdivision (f), impose a new program or higher level of service within the meaning of article XIII B, section 6, of the California Constitution for the following new activity:

- School district employers of a public school employee shall provide the exclusive representative of a public employee with the home address of each member of a bargaining unit.

Government Code section 3546, subdivision (f), also imposes "costs mandated by the state" upon school districts as defined in Government Code section 17514. Government Code section 17556, states, in pertinent part:

The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that: ...

(b) The statute or executive order affirmed for the state a mandate that had been declared existing law or regulation by action of the courts.

(c) [t]he statute or executive order imposes a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government,

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<sup>44</sup> Department of Finance, July 30, 2002 Comments, page 3.

unless the statute or executive order mandates costs that exceed the mandate in that federal law or regulation.

However, staff finds that Government Code section 17556, subdivisions (b) and (c) do not apply in this case.

In *Chicago Teachers Union v. Hudson*, *supra*, 475 U.S. 292, 305-07, the United States Supreme Court held that employee organizations must: (1) establish procedures prior to making agency fee deductions which will ensure that the funds from such fees are not used to finance ideological activities beyond the scope of collective bargaining; (2) provide agency fee payers with the methods used for calculating the amount of the agency fee; and (3) establish an appeals process to ensure that agency fee objections are addressed in a timely and fair manner by an impartial decision maker.

In order to facilitate the exclusive representative's responsibility to provide notice to nonmember employees regarding the service fee deductions and the methods used to calculate the amount of such fees, Government Code section 3546, subdivision (f) imposes upon school districts the obligation to provide a list of employee home addresses to the exclusive representative. Although subdivision (f) aims at imposing certain notification requirements upon the employee organization in order to comply with federal case law, the requirement that school districts provide the employee organization with a list of employee home addresses goes beyond mere compliance with federal case law.

In *County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805, 817, the court found that Penal Code section 987.9, which requires counties to provide ancillary investigative services when providing defense services to indigent criminal defendants, constituted a federal mandate. The court determined that the right to counsel under the Sixth Amendment and the due process clause of the Fourteenth Amendment of the United States Constitution include "the right to reasonably necessary ancillary services."<sup>45</sup> Accordingly, Penal Code section 987.9 "merely codified these constitutional guarantees," and thus section 987.9 simply required local compliance with the federal mandate.<sup>46</sup>

In *San Diego Unified School District*, *supra*, 33 Cal.4th 859, 889, the California Supreme Court adopted the reasoning that procedural protections that are merely incidental to the codification of a federal right, and which add only a *de minimis* financial impact, constitute an implementation of federal law not reimbursable under article XIII B, section 6, of the California Constitution.

Here, however, while the notification requirements imposed on the employee organization are mandated by the United States Supreme Court's holding in *Hudson*, nothing in the *Hudson* decision imposes any required activities on school districts. Thus, because Government Code section 3546, subdivision (f) imposes a new required activity on school districts beyond compliance with federal case law, Government Code section 17556, subdivisions (b) and (c) do not apply. Nor are any other provisions of Government Code section 17556 applicable here; therefore, staff finds that Government Code section 3546, subdivision (f) imposes costs mandated by the state pursuant to Government Code section 17514.

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<sup>45</sup> *County of Los Angeles*, *supra*, 32 Cal.App.4th 805, 815.

<sup>46</sup> *Ibid.*

California Code of Regulations, Title 8, Sections 34030 and 34055:

PERB has enacted regulations implementing the procedures for filing petitions to either rescind or reinstate an organizational security arrangement. Title 8, section 34030, was added to the California Code of Regulations in 1980, and subsection (b) was added, operative January 1, 2001:

(a) Within 20 days following the filing of the petition to rescind an organizational security arrangement, the employer shall file with the regional office an alphabetical list containing the names and job titles or classifications of the persons employed in the unit described in the petition as of the last date of the payroll period immediately preceding the date the petition was filed, unless otherwise directed by the Board.

(b) If after initial determination the proof of support is insufficient, the Board may allow up to 10 days to perfect the proof of support.

(c) Upon completion of the review of the proof of support, the Board shall inform the parties in writing of the determination as to sufficiency or lack thereof regarding the proof of support.

Title 8, section 34055, was added to the California Code of Regulations, operative January 1, 2001, and is nearly identical in language to section 34030, except that it provides that the employer shall file the required list "Within 20 days following the filing of the petition to reinstate an organizational security provision..."

Claimant alleges that section 34030, subdivision (a), and section 34055, subdivision (a), impose state-mandated activities on school districts to file a list of employee names and job titles with PERB. DOF, on the other hand, contends that only those districts that did not negotiate and implement organizational security arrangements prior to the 2000 amendments are justified in claiming mandated costs. DOF alleges that districts that did negotiate organizational security arrangements prior to the 2000 amendments should not be reimbursed for voluntarily assumed costs.

California Code of Regulations, title 8, section 34030, subdivision (a), was enacted by PERB in 1980. Prior to the enactment of Statutes 2000, chapter 893, any organizational security arrangement entered into between a school district and employee organization was the product of a voluntary agreement resulting from the collective bargaining process. Statutes 2000, chapter 893, however, required the parties to implement an organizational security arrangement.

Under prior law, a school district retained discretion on entering into an organizational security arrangement with an employee organization. Thus, the provisions of section 34030, subdivision (a), requiring school districts to file a list of names and job titles to PERB upon the submission of an employee petition to rescind an organizational security arrangement would not have been state-mandated or required. This conclusion flows from the fact that the decision to participate in the underlying program was within the school district's discretion, and thus any downstream requirements imposed within such a program were also voluntary.<sup>47</sup> Accordingly, if

<sup>47</sup> *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 742. The California Supreme Court addressed the issue whether legislation imposing certain notice and agenda requirements on school site councils administering various school-related educational programs constituted a reimbursable



the district did enter into an organizational security arrangement, compliance with PERB's filing requirements in section 34030, subdivision (a), did not constitute a mandate by the state until January 1, 2001, the operative date of Statutes 2000, chapter 893.

Government Code section 3546, subdivision (d)(1), as added by Statutes 2000, chapter 893, recognizes the right of public school employees in a unit for which an employee organization has been selected as exclusive representative to rescind an organizational security arrangement. Subdivision (d)(1), states that the organizational security arrangement required by subdivision (a) of section 3546 "may be rescinded by a majority vote of all the employees in the negotiating unit subject to that arrangement, if a request for a vote is supported by a petition containing 30 percent of the employees in the negotiating unit." If the organizational security arrangement is rescinded pursuant to such a vote, subdivision (d)(2) allows that "a majority of all employees in the negotiating unit may request that the arrangement be reinstated."<sup>48</sup>

Sections 34030 and 34055 implement the provisions of Government Code section 3546, subdivision (d). California Code of Regulations, title 8, sections 34030 and 34055 require that within 20 days of the submission of a petition to either rescind or reinstate an organizational security arrangement, the public school "employer shall file with the regional [PERB] office an alphabetical list containing the names and job titles or classifications of the persons employed in the unit described in the petition." Staff finds that California Code of Regulations, title 8, sections 34030, subdivision (a), and 34055, subdivision (a), impose a new program or higher level of service on school districts within the meaning of article XIII B, section 6 of the California Constitution for the following new activity:

- Within 20 days following the filing of the petition to rescind or reinstate an organizational security arrangement, the school district employer shall file with the regional office an alphabetical list containing the names and job titles or classifications of the persons employed in the unit described in the petition as of the last date of the payroll period immediately preceding the date the petition was filed.

None of the provisions of Government Code section 17556 are applicable; therefore, staff finds that California Code of Regulations, title 8, sections 34030, subdivision (a), and 34055, subdivision (a) impose costs mandated by the state pursuant to Government Code section 17514.

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state mandate. The Court concluded that mandatory "downstream" requirements flowing from a local government entity's voluntary decision to participate in an underlying program do not constitute reimbursable state mandates.

<sup>48</sup> Government Code section 3546, subdivision (d)(2).

## CONCLUSION

Staff concludes that Government Code section 3546, subdivisions (a) and (f), and California Code of Regulations, title 8, sections 34030, subdivision (a), and 34055, subdivision (a), impose new programs or higher levels of service for K-14 school districts within the meaning of article XIII B, section 6 of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514, for the following specific new activities:

- Upon receiving notice from the exclusive representative of a classified public school employee who is in a unit for which an exclusive representative has been selected, the employer shall deduct the amount of the fair share service fee authorized by this section from the wages and salary of the employee and pay that amount to the employee organization, except for those classified employees who elect to pay service fees directly to the certified or recognized employee organization in lieu of having such service fees deducted from the salary or wage order, pursuant to Education Code sections 45168 and 88167. (Gov. Code, § 3546, subd. (a);)<sup>49</sup>

This activity does not apply for certificated employees; fee authority is available pursuant to Education Code sections 45061 and 87834.

- School district employers of a public school employee shall provide the exclusive representative of a public employee with the home address of each member of a bargaining unit. (Gov. Code, § 3546, subd. (f).)<sup>50</sup>
- Within 20 days following the filing of the petition to rescind or reinstate an organizational security arrangement, the school district employer shall file with the regional office an alphabetical list containing the names and job titles or classifications of the persons employed in the unit described in the petition as of the last date of the payroll period immediately preceding the date the petition was filed. (Cal. Code Regs., tit. 8, §§ 34030, subd. (a), and 34055, subd. (a).)<sup>51</sup>

Staff concludes that Government Code sections 3543, 3546, subdivisions (b) through (e), and 3546.3, as added or amended by Statutes 1980, chapter 816, Statutes 2000, chapter 893, and Statutes 2001, chapter 805 are not reimbursable state-mandated programs within the meaning of article XIII B, section 6, and Government Code section 17514.

### Recommendation

Staff recommends that the Commission adopt this analysis and approve the test claim for the activities listed above.

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<sup>49</sup> As added by Statutes 2000, chapter 893, operative January 1, 2002.

<sup>50</sup> As amended by Statutes 2001, chapter 805, operative January 1, 2002.

<sup>51</sup> As amended and operative on January 1, 2001.

# Commission on State Mandates

Original List Date: 6/27/2001  
Last Updated: 6/8/2005  
List Print Date: 10/07/2005  
Claim Number: 00-TC-17  
Issue: Agency Fee Arrangements

Mailing Information: Draft Staff Analysis

## Mailing List

### TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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Mr. Gerald Shelton

California Department of Education (E-08)  
Fiscal and Administrative Services Division  
1430 N Street, Suite 2213  
Sacramento, CA 95814

Tel: (916) 445-0541

Fax: (916) 327-8306

---

Ms. Beth Hunter

Centration, Inc.  
8316 Red Oak Street, Suite 101  
Rancho Cucamonga, CA 91730

Tel: (866) 481-2642

Fax: (866) 481-5383

---

Dr. Carol Berg

Education Mandated Cost Network  
1121 L Street, Suite 1060  
Sacramento, CA 95814

Tel: (916) 446-7517

Fax: (916) 446-2011

---

Mr. Robert Thompson

Public Employment Relations Board (D-12)  
General Counsel  
1031 18th Street  
Sacramento, CA 95814-4174

Tel: (916) 322-3198

Fax: (916) 327-7955

---

Ms. Harmeet Barkschat

Mandate Resource Services  
5325 Elkhorn Blvd. #307  
Sacramento, CA 95842

Tel: (916) 727-1350

Fax: (916) 727-1734

---

Ms. Sandy Reynolds

Reynolds Consulting Group, Inc.  
P.O. Box 894059  
Temecula, CA 92589

Tel: (951) 303-3034

Fax:

---

Ms. Susan Geanacou  
Department of Finance (A-15)  
915 L Street, Suite 1190  
Sacramento, CA 95814

Tel: (916) 445-3274

Fax: (916) 324-4888

---

Mr. Bill McGuire  
Clovis Unified School District  
1450 Hemdon Avenue  
Clovis, CA 93611-0599

**Claimant**

Tel: (559) 327-9000

Fax: (559) 327-9129

---

Mr. Keith B. Petersen  
SixTen & Associates  
5252 Balboa Avenue, Suite 807  
San Diego, CA 92117

**Claimant Representative**

Tel: (858) 514-8605

Fax: (858) 514-8645

---

Mr. David Wellhouse  
David Wellhouse & Associates, Inc.  
9175 Kiefer Blvd, Suite 121  
Sacramento, CA 95826

Tel: (916) 368-9244

Fax: (916) 368-5723

---

Mr. Jim Spano  
State Controller's Office (B-08)  
Division of Audits  
300 Capitol Mall, Suite 518  
Sacramento, CA 95814

Tel: (916) 323-5849

Fax: (916) 327-0832

---

Mr. Steve Smith  
Steve Smith Enterprises, Inc.  
4633 Whitney Avenue, Suite A  
Sacramento, CA 95821

Tel: (916) 483-4231

Fax: (916) 483-1403

---

Mr. Steve Shields  
Shields Consulting Group, Inc.  
1536 36th Street  
Sacramento, CA 95816

Tel: (916) 454-7310

Fax: (916) 454-7312

---

Mr. David E. Scribner  
Scribner Consulting Group, Inc.  
3840 Rosin Court, Suite 190  
Sacramento, CA 95834

Tel: (916) 922-2636

Fax: (916) 922-2719

---

Mr. Joe Rombold  
School Innovations & Advocacy  
11130 Sun Center Drive, Suite 100  
Rancho Cordova, CA 95670

Tel: (800) 487-9234

Fax: (888) 487-6441

---

Ms. Ginny Brummels  
State Controller's Office (B-08)  
Division of Accounting & Reporting

Tel: (916) 324-0256

Fax: (916) 323-6527

---

3301 C Street, Suite 500  
Sacramento, CA 95816

---

Ms. Jeannie Oropeza  
Department of Finance (A-15)  
Education Systems Unit  
915 L Street, 7th Floor  
Sacramento, CA 95814

Tel: (916) 445-0328

Fax: (916) 323-9530

# SixTen and Associates

## Mandate Reimbursement Services

KEITH B. PETERSEN, MPA, JD, President  
5252 Balboa Avenue, Suite 807  
San Diego, CA 92117

Telephone: (858) 514-8605  
Fax: (858) 514-8645  
E-Mail: Kbpsixten@aol.com

October 31, 2005

Paula Higashi, Executive Director  
Commission on State Mandates  
U.S. Bank Plaza Building  
980 Ninth Street, Suite 300  
Sacramento, California 95814

RECEIVED

OCT 31 2005

COMMISSION ON  
STATE MANDATES

Re: Test Claim 00-TC-17  
Test Claim 01-TC-14  
Clovis Unified School District  
Agency Fee Arrangements

Dear Ms. Higashi:

I have received the Commission draft staff analysis dated October 7, 2005, to which I now respond on behalf of the test claimant.

**The comments of the Department of Finance are procedurally incompetent and should be stricken**

In my response of September 10, 2001, to the Department of Finance response dated August 3, 2001, I asserted that the Department of Finance response was incompetent and asked that the comments be stricken from the record, pursuant to Title 2, California Code of Regulations, Section 1183.02 (d) which requires that any:

"...written response, opposition, or recommendations and supporting documentation shall be signed at the end of the document, under penalty of perjury by an authorized representative of the state agency, with the declaration that it is true and complete to the best of the representative's personal knowledge or information and belief."

The draft staff analysis did not respond to this procedural issue. The July 30, 2002, Department of Finance letter in response to 01-TC-14 is also defective in this aspect. The July 30, 2002-letter is signed without certification by Jeannie Oropeza. There is an attachment "A" signed by Michael Wilkening which appears to simply stipulate to the

Paula Higashi, Executive Director

October 31, 2005

accuracy of the citations of law in the test claim.

The draft staff analysis does not indicate the authority of the Commission to waive this procedural requirement for the Department of Finance. Further, the test claimant objects to the Commission ignoring any assertion of fact or law made by any party to this process.

**Issue 1      Whether the test claim legislation is subject to Article XIII B, Section 6, of the California Constitution.**

Government Code Section 3543

Statutes of 2000, Chapter 893 made the following changes:

(a) Public school employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. Public school employees shall also have the right to refuse to join or participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the public school employer, except that once the employees in an appropriate unit have selected who are in a unit for which an exclusive representative and it has been recognized pursuant to Section 3544.1 or certified pursuant to Section 3544.7, no employee in that unit may meet and negotiate with the public school employer. Selected, shall be required, as a condition of continued employment, to join the recognized employee organization or to pay the organization a fair share services fee, as required by Section 3546. If a majority of the members of a bargaining unit rescind that arrangement, either of the following options shall be applicable:

(1) The recognized employee organization may petition for the reinstatement of the arrangement described in subdivision (a) of Section 3546 pursuant to the procedures in paragraph (2) of subdivision (d) of Section 3546.

(2) The employees may negotiate either of the two forms of organizational security described in subdivision (f) of Section 3540.1.

(b) Any employee may at any time present grievances to his or her employer, and have such grievances adjusted, without the intervention of the exclusive representative, as long as the adjustment is reached prior to arbitration pursuant to Sections 3548.5, 3548.6, 3548.7, and 3548.8 and the adjustment is not inconsistent with the terms of a written agreement then in effect; provided that the public school employer shall not agree to a resolution of the grievance

Paula Higashi, Executive Director

October 31, 2005

until the exclusive representative has received a copy of the grievance and the proposed resolution and has been given the opportunity to file a response."

Commission staff has concluded that this Section does not require school districts to perform any activity. This Section was included in the test claim since it is a legislatively established source of unilateral power for the bargaining units and the exclusive representatives to impose additional activities, specified elsewhere, upon the school district.

Government Code Section 3546.3

The Commission staff has determined that this new Section, added by Statutes of 1980, Chapter 816, does not impose any state-mandated activities upon school districts. The original test claim alleged the following new activities:

- "G) Establish and implement procedures to determine which employees claim a conscientious objection to the withholding of 'fair share services fees' pursuant to Government Code Section 3546.3.
- H) Establish payroll procedures and thereafter implement such procedures so that automatic payroll deductions for fair share services fees will not be made from the wages of those claiming conscientious objections pursuant to Government Code Section 3546.3.
- I) Establish procedures and thereafter implement such procedures to verify, at least annually, that payments to nonreligious, nonlabor charitable organizations have been made by employees who have claimed conscientious objections pursuant to Government Code Section 3546.3."

Commission staff concludes that since the code section does not require (that is, does not say "shall") the employee to make these in-lieu payments to other organizations, no activity is required of the school districts. The draft staff analysis asserts that this Section provides an option to payment of service fees, rather than a mandated alternative to the service fees. The draft staff analysis does not provide a legal basis to exclude mandatory alternative duties from the constitutional requirement for reimbursement of costs mandated by the state. If the Commission staff is correct, there is no requirement for religious objectors to pay any sum of money to either their employee organization or the specified alternative approved organizations. In other words, religious objectors would be a class of employees which need not make any payments to anyone.

The test claim alleges activities to implement the transfer of these funds to the recognized organizations which is a mandatory alternative to the service fee. Even if the Commission determines that the draft staff analysis is correct in concluding that



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religious objectors are not required to make any payments to any organization, some of these activities will still be required to establish and maintain the employee's unique payroll status.

**Issue 2      Whether the test claim legislation imposes a new program or higher level of service and imposes costs mandated by the state.**

**Government Code Section 3546**

The draft staff analysis determined in Issue 1 that parts of Government Code Section 3546 impose unique requirements upon school districts that do not apply generally to all residents and entities of the state.

Regarding subdivision (a) as it applies to certificated employees, the draft staff analysis concludes that the Section 3546 fee deductions result in a new duty on the school districts, but does not result in costs mandated by the state because of the provisions of Education Code Sections 45061 and 87834. However, the first sentence of Section 3546, subdivision (a), states that notwithstanding any other provisions of law, the employer shall deduct the amount of the fair share service fee authorized by this Section from the employee wages. This nullifies the option in Sections 45061 and 87834 for employees to make payments directly to the employee organization, thus requiring the school districts to change their payroll process for those employees to the extent that this was previously occurring, as well as the assessment of costs to the employee organization.

Regarding subdivision (a) as it applies to classified employees, the draft analysis concludes that Education Code Sections 45168 and 88167 do not provide the same fee authority, and concludes that there are costs mandated by the state to make the payroll deductions and transfer the fees to the exclusive representative, except for those classified employees which elect to pay service fees directly to the exclusive representatives. However, the first sentence of Section 3546, subdivision (a), would seem to nullify this direct payment option provided for in subdivision (b) of Sections 45168 and 88167, thus requiring the school districts to change their payroll process for those employees to the extent that this was previously occurring.

Regarding subdivision (a), as it pertains to the process to rebate the "political" portion of the service fee, the draft staff analysis concludes that there is no requirement for the school district to implement changes in these amounts. The political portion of the deduction is that part of the member fee which is not collected, is an amount which changes upon notification of the exclusive representative, and such changes can result in a retroactive rebate to the employees, all of which is anticipated by the language of

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this subdivision. While the Commission staff asserts that PERB regulations require the exclusive representative to provide notice to members of the component parts of the service fee and how appeals by the employee against the exclusive representative shall be conducted, staff also concedes there are no PERB rules or regulations relating to Section 3546, subdivision (a). That being the case, it is difficult to find a legal basis for the Commission to exclude reimbursement for this activity when subdivision (a) statutorily compels school districts to deduct the appropriate amount of the service fee from the employee's payroll. Further, even if it is concluded that the collection or payment of adjustments and rebates are the duty of the exclusive representative, the Commission still has to make findings of fact and law of how any adjustment or rebate paid by the exclusive organization would effect the duty of the school district to report accurate payroll information to their employees and the state and federal governments.

Regarding the need for a school district notice to employees about the service fee deductions, the test claim alleges an implicit activity to draft, approve, and distribute an appropriate and neutral notice to existing nonmember employees and new employees which explains the additional payroll deduction for "fair share services fees" for nonmember employees of an employee organization. The draft staff analysis does not appear to address this allegation directly. However, the Department of Finance asserts that this is not a new activity because Title 8, California Code of Regulations, Section 32992 requires the exclusive representative to give notice to employees.

Section 32992 requires the exclusive representative to give *annual* notice of (1) the amount of the fee expressed as a percentage of annual dues per member, (2) the basis for the calculation and (3) a procedure for appealing all or any part of the fee. Such notice shall be sent or distributed to the nonmember either (1) 30 days prior to collection of the fee, or (2) concurrent with the initial agency fee. Note that there is no procedure for sending notice to a new employee, other than concurrent with the initial agency fee, and the notice speaks only to the calculation of the amount preparatory to an appeal process.

Section 32992 does not resolve the issue of school district responsibility for changes in the employee payroll, which is a statutory relationship between the employer and employee. The giving of an appropriate and neutral notice to affected employees is implicit in the legislation. By way of example, Education Code Section 45169 requires public school employers to give each classified employee, upon initial employment and upon each change in classification, salary data including annual, monthly or pay period, daily, hourly, overtime and differential rates of compensation. Education Code Section 45167 requires the employer to give notice of correction and supplemental payment whenever it is determined that an error has been made in the calculation or reporting in any classified employee payroll. The employer is responsible for changes to employee payroll amounts, not the exclusive representative. The employer has the

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duty to change the payroll deductions whenever there is a prospective or retroactive change to the service fee amount, not the exclusive representative. There is no statutory provision upon which the employer can rely which compels the exclusive representative to provide notices to employees preceding these payroll adjustments or specific to each type of adjustment.

Regarding subdivisions (c) and (d) (3), the test claim alleges that school districts will need to provide any required administrative support when "required to do so by the board." The draft staff analysis concludes that there are no adopted PERB rules and regulations requiring the school district to participate in an organizational security election. The test claimant is alleging that school districts will be required to follow any PERB order because subdivision (c) provides PERB the power to "require" the school district to participate in some manner, should PERB decide to do so. The test claimant cannot anticipate the specific nature or form of any such order, but does acknowledge the legal authority of the PERB to make and enforce legally competent orders to school districts, which result in costs mandated by the state for compliance. With respect to subdivision (d) (3), it can be reasonably anticipated that if, for example, the Board determines that the appropriate number of signatures have not been collected, there may be some inquiry as to the content of the list of employees the school district is required to provide PERB pursuant to Title 8, CCR, Sections 34030 and 34055.

Regarding subdivision (d) (1), the test claim alleges that in the event the collective bargaining agreement is *rescinded* pursuant to Government Code Section 3546 (d)(1), school districts will need to establish new payroll procedures and thereafter implement such procedures so that automatic payroll deductions for "fair share services fees" are no longer made from the wages of nonexempt employees who choose not to be members of a certified employee organization and to no longer report and remit fees to the appropriate certified employee organization. The draft staff analysis made no findings on these activities as they relate to subdivision (d) (1).

Regarding subdivision (d) (2), the test claim alleges that in the event the collective bargaining agreement is *reinstated* pursuant to Government Code Section 3546 (d)(2), school districts will need to reestablish payroll procedures and thereafter implement such reestablished procedures so that automatic payroll deductions for "fair share services fees" will again be made from the wages of nonexempt employees who choose not to be members of a certified employee organization and again report and remit the withheld fees to the appropriate certified employee organization. The draft staff analysis made no findings on these activities as they relate to subdivision (d) (2).

Regarding subdivision (e), the test claim alleges school districts will need to take any and all necessary actions, when necessary, to recover reasonable legal fees, legal costs and settlement or judgment liabilities from the recognized employee organization,

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arising from any court or administrative action relating to the school district's compliance. The draft staff analysis asserts that the plain language of the subdivision does not impose any duties because it is the duty for the employee organization to indemnify the school district. The fact that the employee organization has a duty to indemnify the school district does not mean that such indemnification will be accomplished without a school district asserting its legal right to indemnification. The right to indemnification stems from this subdivision and the cause of civil action which may result in the indemnification of the school district arises from this code section, thus making it a source of costs mandated by the state.

#### CERTIFICATION

I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this document is true and correct to the best of my own knowledge or information or belief.

Sincerely,



Keith B. Petersen

C: Per COSM Distribution List Attached

