

COMMISSION ON STATE MANDATES

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September 6, 2006

Mr. Allan Burdick
MAXIMUS
4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841

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

RE: Staff Analysis Regarding Request for Reconsideration and Hearing Date
Binding Arbitration (01-TC-07)
City of Palos Verdes Estates, Claimant
Code of Civil Procedure, Sections 1281.1, 1299, 1299.2, 1299.3
1299.4, 1299.5, 1299.6, 1299.7, 1299.8, and 1299.9
Statutes of 2000, Chapter 906

Dear Mr. Burdick:

The staff analysis regarding the request for reconsideration of the statement of decision for the above-named matter adopted on July 28, 2006, is enclosed for your review.

Hearing

The request for reconsideration is set for hearing on **Wednesday, October 4, 2006** at 1:30 p.m. in Room 126 of the State Capitol, Sacramento, California. Five affirmative votes are required for the Commission to grant this request. If it is granted, the reconsideration will be set for the December hearing.

Please contact Deborah Borzelleri at (916) 322-4230 with any questions regarding the above.

Sincerely,

A handwritten signature in cursive script that reads "Paula Higashi".

PAULA HIGASHI
Executive Director

Enc. Request for Reconsideration

MAILED: Mail List FAXED: _____
DATE: 9/10/06 INITIAL: LD
CHRON: _____ FILE: _____
WORKING BINDER: _____

ITEM 4

REQUEST FOR RECONSIDERATION Statement of Decision Adopted July 28, 2006

Code of Civil Procedure Sections 1281.1, 1299, 1299.2,
1299.3, 1299.4, 1299.5, 1299.6, 1299.7, 1299.8, and 1299.9

As Added by Statutes 2000, Chapter 906

Binding Arbitration (01-TC-07)

Commission Chairperson, Requestor

Executive Summary

This is a request for reconsideration made by the Commission Chairperson to reconsider the Commission's statement of decision adopted on July 28, 2006, on the *Binding Arbitration* test claim pursuant to Government Code section 17559 and section 1188.4 of the Commission's regulations.

Background

The *Binding Arbitration* legislation, in the context of labor relations between local agencies and their law enforcement officers and firefighters, provides that, where an impasse in negotiations has been declared, and if the employee organization so requests, the parties would be subject to binding arbitration.

On July 28, 2006, the Commission adopted a statement of decision denying the test claim for the activities related to local government participation in binding arbitration, pursuant to Code of Civil Procedure sections 1281.1, and 1299 through 1299.9. The Commission concluded the following:

[T]he Commission finds that the test claim legislation does not constitute a new program or higher level of service. The test claim legislation requires the local agency to engage in a binding arbitration process that may result in increased costs associated with employee compensation or benefits. The cases have consistently held that additional costs alone, in absence of some increase in the actual level or quality of governmental services *provided to the public*, do not constitute an "enhanced service to the public" and therefore do not impose a new program or higher level of service on local governments within the meaning of article XIII B, section 6 of the California Constitution. Since strikes by law enforcement officers and fire services personnel are prohibited by law, no successful argument can be made that the test claim legislation affects law enforcement or firefighting service *to the public*.

At the hearing, however, claimant modified the test claim significantly by withdrawing its request for reimbursement for litigation, employee compensation and compensation enhancement costs. Testimony was also provided at the hearing that, regardless of the legality of strikes by public safety personnel, strikes do still occur in the less obvious form of "blue flu" or via other methods.

The statement of decision was mailed to the claimant, interested parties, and affected state agencies on August 7, 2006.

Request for Reconsideration

On August 16, 2006, the Chairperson of the Commission directed staff to prepare a request for reconsideration of the statement of decision in order to apply the relevant case law to the test claim as it was revised at the July 28, 2006 hearing.

Staff Analysis

Government Code section 17559, subdivision (a) grants the Commission, within statutory timeframes, discretion to reconsider a prior final decision. By regulation, the Commission has provided that any interested party, affected state agency or Commission member may file a petition with the Commission requesting that the Commission reconsider and change a prior final decision to correct an error of law.

Before the Commission considers a request for reconsideration, Commission staff is required to prepare a written analysis and recommend whether the request for reconsideration should be granted. A supermajority of five affirmative votes is required to grant the request for reconsideration and schedule the matter for a hearing on the merits.

If the Commission grants the request for reconsideration, a subsequent hearing is conducted to determine if the prior final decision is contrary to law and to correct an error of law. A supermajority of five affirmative votes is required to change a prior final decision.

At this stage, the sole issue before the Commission is whether it should exercise its discretion to grant the request for reconsideration. The Commission has the following options:

Option 1: The Commission can approve the request, finding that reconsideration is appropriate to determine, at a subsequent hearing on the merits, if the prior final decision is contrary to law and, if so, to correct the error of law.

Option 2: The Commission can deny the request, finding that the requestor has not raised issues that merit consideration.

Option 3: The Commission can take no action, which has the legal effect of denying the request.

Conclusion and Staff Recommendation

Staff recommends the Commission approve this request, finding that reconsideration is appropriate to determine, at a subsequent hearing on the merits, if the prior final decision is contrary to law and, if so, to correct the error of law.

STAFF ANALYSIS

Chronology

- 07/28/06 Commission adopts Statement of Decision
- 08/07/06 Commission mails Statement of Decision to claimant, interested parties, and affected state agencies
- 08/16/06 Request for reconsideration is filed with the Commission

Background

Government Code section 17559, subdivision (a), grants the Commission, within statutory timeframes, discretion to reconsider a prior final decision. That section states the following:

The commission may order a reconsideration of all or part of a test claim or incorrect reduction claim on petition of any party. The power to order a reconsideration or amend a test claim decision shall expire 30 days after the statement of decision is delivered or mailed to the claimant. If additional time is needed to evaluate a petition for reconsideration filed prior to the expiration of the 30-day period, the commission may grant a stay of that expiration for no more than 30 days, solely for the purpose of considering the petition. If no action is taken on a petition within the time allowed for ordering reconsideration, the petition shall be deemed denied.

By regulation, the Commission has provided that any interested party, affected state agency or Commission member may file a petition with the Commission requesting that the Commission reconsider and change a prior final decision to correct an error of law.¹

Before the Commission considers the request for reconsideration, commission staff is required to prepare a written analysis and recommend whether the request for reconsideration should be granted.² A supermajority of five affirmative votes is required to grant the request for reconsideration and schedule the matter for a hearing on the merits.³

If the Commission grants the request for reconsideration, a second hearing must be conducted to determine if the prior final decision is contrary to law and to correct an error of law.⁴ A supermajority of five affirmative votes is required to change a prior final decision.⁵

At this stage, the sole issue before the Commission is whether it should exercise its discretion to grant the request for reconsideration. The Commission has the following options:

¹ California Code of Regulations, title 2, section 1188.4, subdivision (b).

² California Code of Regulations, title 2, section 1188.4, subdivision (f).

³ *Ibid.*

⁴ California Code of Regulations, title 2, section 1188.4, subdivision (g).

⁵ California Code of Regulations, title 2, section 1188.4, subdivision (g)(2).

Option 1: The Commission can approve the request, finding that reconsideration is appropriate to determine, at a subsequent hearing on the merits, if the prior final decision is contrary to law and, if so, to correct the error of law.

Option 2: The Commission can deny the request, finding that the requestor has not raised issues that merit consideration.

Option 3: The Commission can take no action, which has the legal effect of denying the request.

The Commission's Prior Decision

The Commission denied this test claim, for the activities related to local government participation in binding arbitration, pursuant to Code of Civil Procedure sections 1281.1, and 1299 through 1299.9. The Commission concluded the following:

[T]he Commission finds that the test claim legislation does not constitute a new program or higher level of service. The test claim legislation requires the local agency to engage in a binding arbitration process that may result in increased costs associated with employee compensation or benefits. The cases have consistently held that additional costs alone, in absence of some increase in the actual level or quality of governmental services *provided to the public*, do not constitute an "enhanced service to the public" and therefore do not impose a new program or higher level of service on local governments within the meaning of article XIII B, section 6 of the California Constitution. Since strikes by law enforcement officers and fire services personnel are prohibited by law, no successful argument can be made that the test claim legislation affects law enforcement or firefighting service *to the public*.

The claimant had initially requested reimbursement for: 1) costs to litigate the test claim legislation; 2) increased costs for salaries and benefits that could result from the binding arbitration award; 3) increased costs for compensation package "enhancements" that could be offered by the local agency as a result of vulnerabilities in its bargaining position; and 4) other costs related to binding arbitration activities.

At the hearing, however, the claimant withdrew its request for reimbursement for litigation, compensation and compensation enhancement costs. Testimony was also provided at the hearing that regardless of the legality of strikes by public safety personnel, strikes do still occur in the less obvious form of "blue flu" or in other ways. The claimant also presented exhibits at the hearing consisting of test claims and parameters and guidelines, related to collective bargaining, that were previously heard by the Commission.

Discussion

Removing the costs for litigating the test claim legislation and employee compensation significantly modified the test claim, causing the need for a reevaluation of activities that are required by the test claim statute (i.e., designating an arbitration panel member, participating in hearings, and preparing a "last best offer of settlement") in light of the relevant case law.

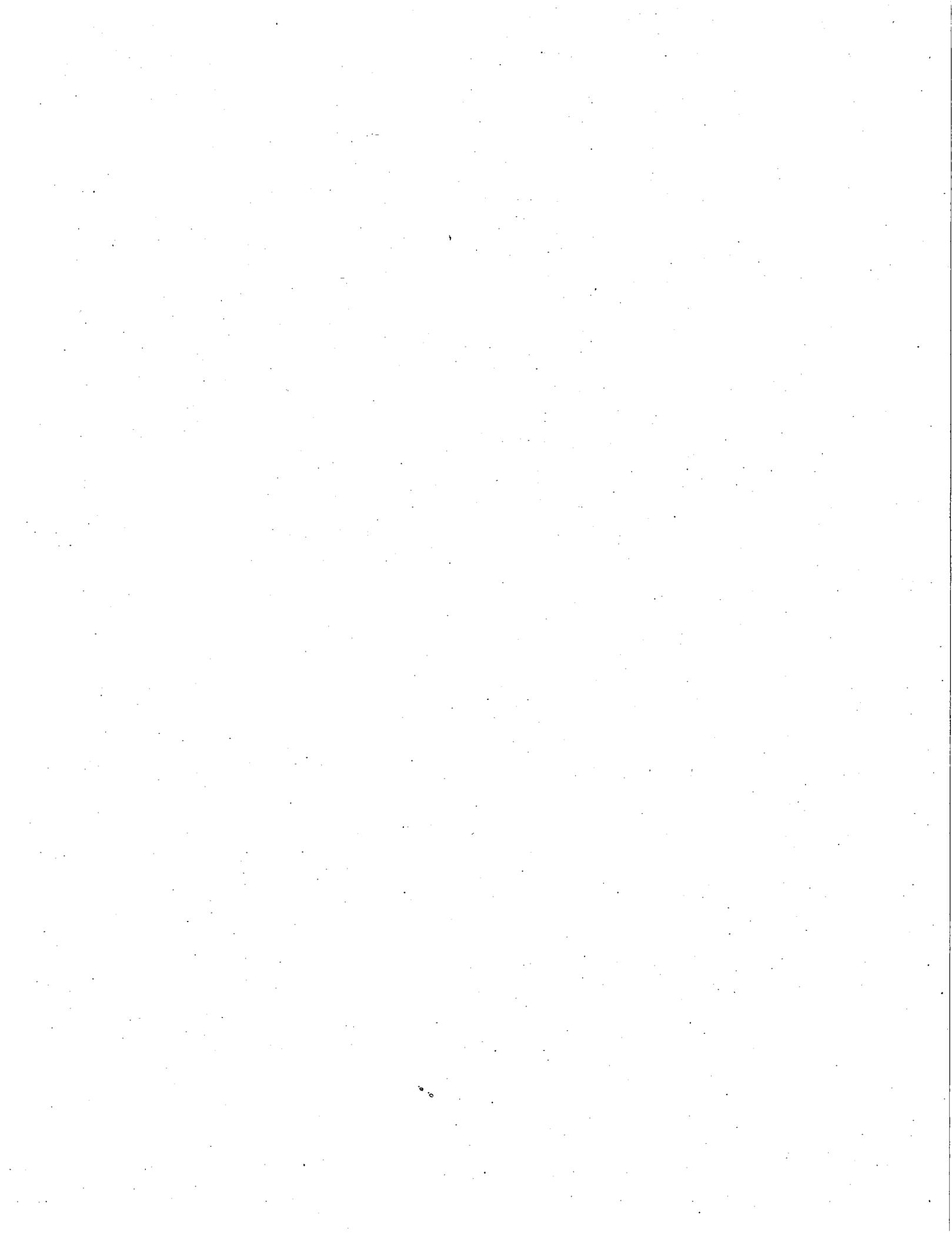
The request for reconsideration alleges the following error of law:

The statement of decision relied upon cases supporting the concept that no higher level of service to the public is provided when there are increased costs for compensation or benefits *alone*. For example, *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190, cited in the statement of decision, held that even though increased employee benefits may generate a higher quality of local safety officers, the test claim legislation did not constitute a new program or higher level of service; the court stated that “[a] higher cost to the local government for compensating its employees is not the same as a higher cost of providing services to the public.” However, *City of Richmond* was based on test claim legislation that increased the cost for death benefits for local safety members, but did not result in actual mandated activities.

The statement of decision also relied upon *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, which summarized and reaffirmed several previous cases to illustrate what constitutes a “new program or higher level of service.” However, none of the older cases cited [— i.e., *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, *City of Anaheim v. State of California* (1987) 189 Cal.App.3d 1478, *City of Sacramento v State of California* (1990) 50 Cal.3d 51, and *City of Richmond v. Commission On State Mandates, et al.* (1998) 64 Cal.App.4th 1190, —] denied reimbursement for actual activities imposed on the local agencies. In addition, *San Diego Unified School Dist.* did not address the issue of “new program or higher level of service” in the context of actual activities mandated by test claim legislation which increased the costs of employee compensation or benefits.

Conclusion and Staff Recommendation

Staff recommends the Commission approve this request, finding that reconsideration is appropriate to determine, at a subsequent hearing on the merits, if the prior final decision is contrary to law and, if so, to correct the error of law.



Commission on State Mandates

Original List Date: 10/25/2001
Last Updated: 8/16/2006
List Print Date: 09/06/2006
Claim Number: 01-TC-07
Issue: Binding Arbitration

Mailing Information: Other

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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