

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



March 23, 2006

Mr. Allan Burdick
DMG-Maximus
4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841

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

RE: Draft Staff Analysis 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 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 Thursday, **April 13, 2006**. 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 **Thursday, May 25, 2006** at 9:30 a.m. in Room 126 of the State Capitol, Sacramento, California. The final staff analysis will be issued on or about May 11, 2006. 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 Deborah Borzelleri at (916) 322-4230 with any questions regarding the above.

Sincerely,

A handwritten signature in black ink that reads "Paula Higashi" followed by a flourish.

PAULA HIGASHI
Executive Director

Enc. Draft Staff Analysis

MAILED: _____
FAXED: _____
DATE: 2/13/04 INITIAL: JD
CHRON: _____ FILE: _____
WORKING BINDER: _____

ITEM _____

**TEST CLAIM
DRAFT STAFF ANALYSIS**

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 2000, Chapter 906

Binding Arbitration
(01-TC-07)

City of Palos Verdes Estates, Claimant

EXECUTIVE SUMMARY

STAFF WILL INSERT THE EXECUTIVE SUMMARY IN THE FINAL ANALYSIS.

memorialized in a memorandum of understanding which becomes binding once the local governing body adopts it.⁷

Related Test Claim — Local Government Employment Relations (01-TC-30)

A related test claim was filed on August 1, 2002, regarding statutory changes to the Meyers-Milias-Brown Act (Stats. 2000, ch. 901) and regulations implementing the statutory changes (Title 8, California Code of Regulations, §§ 31001 – 61630). That test claim has not yet been brought before the Commission.

Test Claim Legislation

The test claim legislation⁸ added several sections to the Code of Civil Procedure providing new, detailed procedures that could be invoked by the employee organization in the event an impasse in negotiations has been declared. Section 1299 stated the following legislative intent:

The Legislature hereby finds and declares that strikes taken by firefighters and law enforcement officers against public employers are a matter of statewide concern, are a predictable consequence of labor strife and poor morale that is often the outgrowth of substandard wages and benefits, and are not in the public interest. The Legislature further finds and declares that the dispute resolution procedures contained in this title provide the appropriate method for resolving public sector labor disputes that could otherwise lead to strikes by firefighters or law enforcement officers.

It is the intent of the Legislature to protect the health and welfare of the public by providing impasse remedies necessary to afford public employers the opportunity to safely alleviate the effects of labor strife that would otherwise lead to strikes by firefighters and law enforcement officers. It is further the intent of the Legislature that, in order to effectuate its predominant purpose, this title be construed to apply broadly to all public employers, including, but not limited to, charter cities, counties, and cities and counties in this state.

It is not the intent of the Legislature to alter the scope of issues subject to collective bargaining between public employers and employee organizations representing firefighters or law enforcement officers.

The provisions of this title are intended by the Legislature to govern the resolution of impasses reached in collective bargaining between public employers and employee organizations representing firefighters and law enforcement officers over economic issues that remain in dispute over their respective interests...

The legislation provided that if an impasse was declared after the parties exhausted their mutual efforts to reach agreement over matters within the scope of the negotiation, and the parties were unable to agree to the appointment of a mediator, or if a mediator agreed to by the parties was unable to effect settlement of a dispute between the parties, the employee

⁷ Government Code section 3505.1.

⁸ Statutes 2000, chapter 906 (Sen. Bill No. 402).

financial affairs and to perform a municipal function, as prohibited in article XI, section 11, subdivision (a).¹⁹

Claimant's Position

The claimant contends that the test claim legislation constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

Claimant asserts that costs for the following activities will be incurred and are reimbursable:

- Litigation costs until such time as there is a final judgment on the constitutionality of S.B. 402, including actions for declaratory relief, opposition petitions to compel arbitration, and resultant appeals.
- Costs for training agency management, counsel, staff and members of governing bodies regarding Senate Bill No. 402 as well as the intricacies thereof.
- Costs incident to restructuring bargaining units that include employees that are covered by S.B. 402 and those which are not covered by S.B. 402.
- Increased staff time in preparing for negotiations in order to collect and compile comparability data specified in Code of Civil Procedure, section 1299.4.
- Increased time of agency negotiators, including staff, consultants, and attorneys, in handling two track negotiations: those economic issues which are subject to S.B. 402 arbitration and those issues which are not subject to arbitration.
- Time to prepare for and consult with the governing board regarding the last best and final offer to be submitted to the arbitration panel.
- Time to prepare for and participate in any mediation process.
- Consulting time of negotiators, staff and counsel in selecting the agency panel member.
- Time of the agency negotiators, staff and counsel in vetting and selecting a neutral arbitrator.
- Time of the agency negotiators, staff and counsel in briefing the agency panel member.
- Time of the agency negotiators, staff and counsel in preparing for the arbitration hearing.
- Time of the agency negotiators, staff and counsel in vetting, selecting and preparing expert witnesses.
- Time of the agency panel member and attorney in pre-arbitration meetings of the panel.
- Staff and attorney time involved in discovery pursuant to Code of Civil Procedure, sections 1281.1, 1281.2 and 1299.8.
- Staff, attorney, witness and agency panel member time for the hearings.
- Attorney time in preparing the closing brief.
- Agency panel member time in consulting in closed sessions with the panel.
- Time of the attorney, negotiators, and staff in consulting with the agency panel member prior to the issuance of the award.
- Time of the attorney, negotiators, staff, agency panel member, and governing board consulting regarding the award and giving directions to agency negotiators.

¹⁹ *County of Riverside* (2003) 30 Cal.4th 278, 282.

Discussion

The courts have found that article XIII B, section 6 of the California Constitution²⁰ recognizes the state constitutional restrictions on the powers of local government to tax and spend.²¹ “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.”²² 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.²³ 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.²⁴

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.²⁵ 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.²⁶ A “higher level of service” occurs when the new “requirements were intended to provide an enhanced service to the public.”²⁷

²⁰ Article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in November 2004) provides: “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.”

²¹ *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

²² *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

²³ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

²⁴ *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 District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

²⁵ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar, supra*, 44 Cal.3d 830, 835.).

²⁶ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

²⁷ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878.

in legal contemplation, as inoperative as though it had never been passed.”³³ This approach has been criticized in later decisions, however, and the trend nationwide has been toward a more equitable view that binding rights and obligations may be based on a statute that is subsequently declared unconstitutional, and that not every declaration of unconstitutionality is retroactive in its effect.³⁴

Nevertheless, under California state mandates law, the determination as to whether a mandate exists is a question of law.³⁵ As stated in *County of Sonoma*, the Commission must strictly construe article XIII B, section 6 and not apply it as an equitable remedy.^{36,37} Although the effect of an unconstitutional statute is an issue of first impression for the Commission, cases regarding mistake of law where recovery of payments or services are at issue are the most analogous to the instant situation. The cases generally deny recovery of money paid under a mistake of law.³⁸ In California, that is still the prevailing law; recovery of money is denied where a mistake of law, based on a statute that was subsequently declared unconstitutional, was the basis for the original payment.³⁹

Thus, staff finds that the test claim legislation created no mandate under article XIII B, section 6 of the California Constitution for any period of time because the statute was declared unconstitutional and must, for purposes of this analysis, be considered as inoperative as though it had never been passed.

Conclusion

Staff finds that the test claim legislation does not impose a reimbursable state-mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution.

Recommendation

Staff recommends that the Commission adopt this analysis and find none of the activities claimed reimbursable.

³³ *Norton v. Shelby County* (1886) 118 U.S. 425.

³⁴ *Chicot County Drainage District v. Baxter State Bank* (1940) 308 U.S. 371.

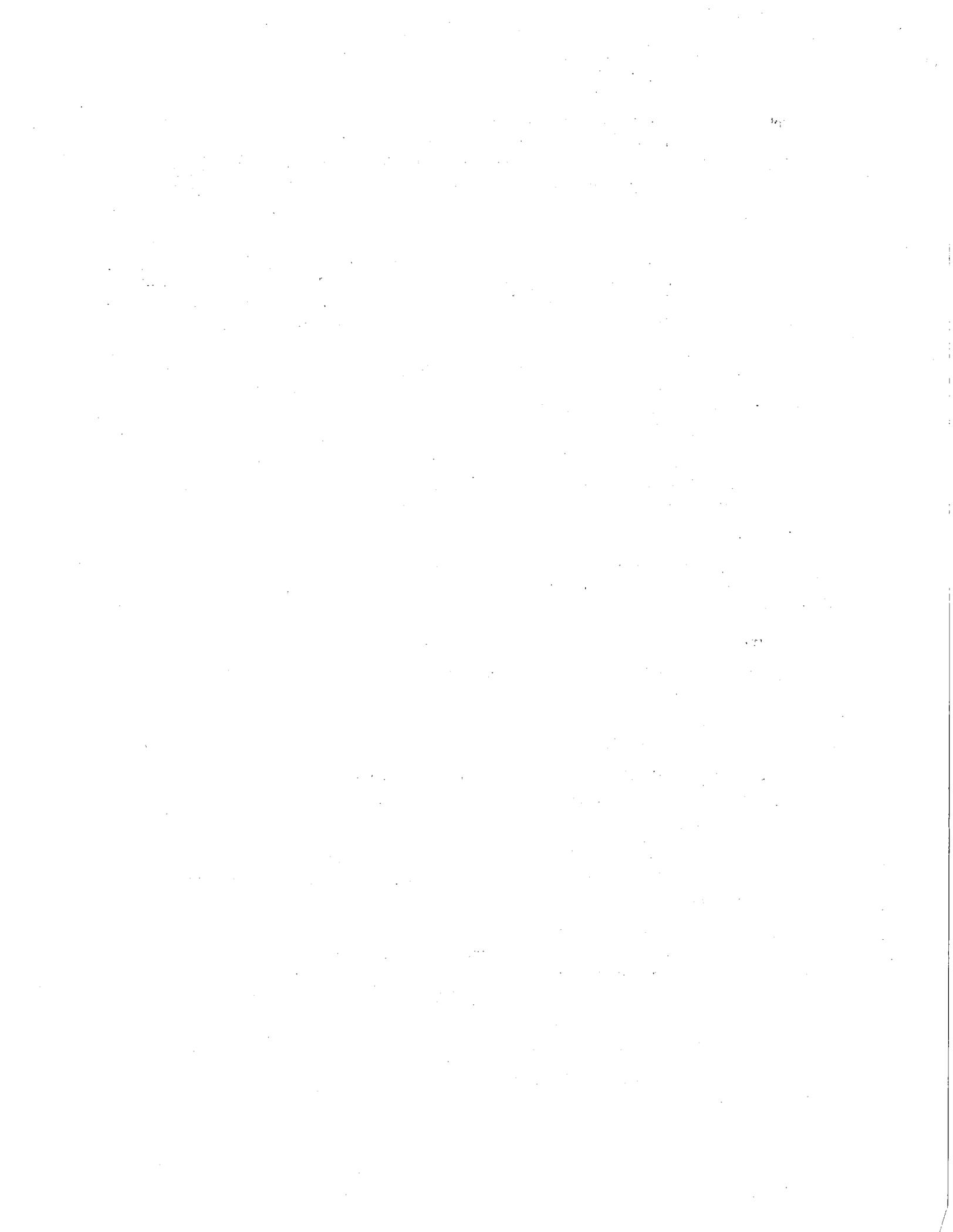
³⁵ *County of Sonoma, supra*, 84 Cal.App.4th 1265, 1279, citing *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

³⁶ *County of Sonoma, supra*, 84 Cal.App.4th 1265, 1280; see also *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1816-1817, citing *Pacific Legal Foundation v. Brown* (1981) 29 Cal.3d 168, 180.

³⁷ The doctrine of equity in this sense means the “recourse to principles of justice to correct or supplement the law as applied to particular circumstances...” Equity is based on a system of law or body of principles originating in the English Court of Chancery and superseding the common and statute law when the two conflict. (See Black’s Law Dict. (7th ed., 1999) p. 561, col. 1.)

³⁸ Oliver P. Field, “The Effect of an Unconstitutional Statute” (1935), pages 221-240.

³⁹ *Wingerter v. City and County of San Francisco* (1901) 134 Cal. 547; *Campbell v. Rainey* (1932) 127 Cal.App. 747.



Commission on State Mandates

Original List Date: 10/25/2001
Last Updated: 3/1/2006
List Print Date: 03/23/2006
Claim Number: 01-TC-07
Issue: Binding Arbitration

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.)

Mr. Steve Shields
Shields Consulting Group, Inc.
1536 36th Street
Sacramento, CA 95816

Tel: (916) 454-7310
Fax: (916) 454-7312

Ms. Bonnie Ter Keurst
County of San Bernardino
Office of the Auditor/Controller-Recorder
222 West Hospitality Lane
San Bernardino, CA 92415-0018

Tel: (909) 386-8850
Fax: (909) 386-8830

Ms. Leslie McGill
California Peace Officers' Association
1455 Response Road, Suite 190
Sacramento, CA 95815

Tel: (916) 000-0000
Fax: (916) 000-0000

Mr. Leonard Kaye, Esq.
County of Los Angeles
Auditor-Controller's Office
500 W. Temple Street, Room 603
Los Angeles, CA 90012

Tel: (213) 974-8564
Fax: (213) 617-8106

Mr. James B. Hendrickson
City of Palos Verdes Estates
340 Palos Verdes Drive West
Palos Verde Estates, CA 90274

Claimant
Tel: (310) 378-0383
Fax: (310) 378-7820

Ms. Susan Geanacou
Department of Finance (A-15)
915 L Street, Suite 1190
Sacramento, CA 95814

Tel: (916) 445-3274
Fax: (916) 324-4888

Ms. Jesse McGuinn Department of Finance (A-15) 915 L Street, 8th Floor Sacramento, CA 95814	Tel: (916) 445-8913 Fax: (916) 327-0225
Mr. Daniel Terry California Professional Firefighters 1780 Creekside Oaks Drive, Suite 200 Sacramento, CA 95833	Tel: (916) 000-0000 Fax: (916) 000-0000
Mr. Steve Keil California State Association of Counties 1100 K Street, Suite 101 Sacramento, CA 95814-3941	Tel: (916) 327-7523 Fax: (916) 441-5507
Ms. Annette Chinn Cost Recovery Systems, Inc. 705-2 East Bidwell Street, #294 Folsom, CA 95630	Tel: (916) 939-7901 Fax: (916) 939-7801
Mr. David Wellhouse David Wellhouse & Associates, Inc. 9175 Kiefer Blvd, Suite 121 Sacramento, CA 95826	Tel: (916) 368-9244 Fax: (916) 368-5723
Mr. Allan Burdick MAXIMUS 4320 Auburn Blvd., Suite 2000 Sacramento, CA 95841	Claimant Representative Tel: (916) 485-8102 Fax: (916) 485-0111
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
Mr. Joe Rombold School Innovations & Advocacy 11130 Sun Center Drive, Suite 100 Rancho Cordova, CA 95670	Tel: (800) 487-9234 Fax: (888) 487-6441
Mr. Steve Smith Steve Smith Enterprises, Inc. 4633 Whitney Avenue, Suite A Sacramento, CA 95821	Tel: (916) 483-4231 Fax: (916) 483-1403
Mr. J. Bradley Burgess Public Resource Management Group 1380 Lead Hill Boulevard, Suite #106	Tel: (916) 677-4233 Fax: (916) 677-2283

Commission on State Mandates

Original List Date: 10/25/2001
Last Updated: 3/1/2006
List Print Date: 03/23/2006
Claim Number: 01-TC-07
Issue: Binding Arbitration

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.)

Mr. Steve Shields
Shields Consulting Group, Inc.
1536 36th Street
Sacramento, CA 95816

Tel: (916) 454-7310
Fax: (916) 454-7312

Ms. Bonnie Ter Keurst
County of San Bernardino
Office of the Auditor/Controller-Recorder
222 West Hospitality Lane
San Bernardino, CA 92415-0018

Tel: (909) 386-8850
Fax: (909) 386-8830

Ms. Leslie McGill
California Peace Officers' Association
1455 Response Road, Suite 190
Sacramento, CA 95815

Tel: (916) 000-0000
Fax: (916) 000-0000

Mr. Leonard Kaye, Esq.
County of Los Angeles
Auditor-Controller's Office
500 W. Temple Street, Room 603
Los Angeles, CA 90012

Tel: (213) 974-8564
Fax: (213) 617-8106

Mr. James B. Hendrickson
City of Palos Verdes Estates
340 Palos Verdes Drive West
Palos Verde Estates, CA 90274

Claimant
Tel: (310) 378-0383
Fax: (310) 378-7820

Ms. Susan Geanacou
Department of Finance (A-15)
915 L Street, Suite 1190
Sacramento, CA 95814

Tel: (916) 445-3274
Fax: (916) 324-4888

Ms. Jesse McGuinn Department of Finance (A-15) 915 L Street, 8th Floor Sacramento, CA 95814	Tel: (916) 445-8913 Fax: (916) 327-0225
Mr. Daniel Terry California Professional Firefighters 1780 Creekside Oaks Drive, Suite 200 Sacramento, CA 95833	Tel: (916) 000-0000 Fax: (916) 000-0000
Mr. Steve Keil California State Association of Counties 1100 K Street, Suite 101 Sacramento, CA 95814-3941	Tel: (916) 327-7523 Fax: (916) 441-5507
Ms. Annette Chinn Cost Recovery Systems, Inc. 705-2 East Bidwell Street, #294 Folsom, CA 95630	Tel: (916) 939-7901 Fax: (916) 939-7801
Mr. David Wellhouse David Wellhouse & Associates, Inc. 9175 Kiefer Blvd, Suite 121 Sacramento, CA 95826	Tel: (916) 368-9244 Fax: (916) 368-5723
Mr. Allan Burdick MAXIMUS 4320 Auburn Blvd., Suite 2000 Sacramento, CA 95841	Claimant Representative Tel: (916) 485-8102 Fax: (916) 485-0111
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
Mr. Joe Rombold School Innovations & Advocacy 11130 Sun Center Drive, Suite 100 Rancho Cordova, CA 95670	Tel: (800) 487-9234 Fax: (888) 487-6441
Mr. Steve Smith Steve Smith Enterprises, Inc. 4633 Whitney Avenue, Suite A Sacramento, CA 95821	Tel: (916) 483-4231 Fax: (916) 483-1403
Mr. J. Bradley Burgess Public Resource Management Group 1380 Lead Hill Boulevard, Suite #106	Tel: (916) 677-4233 Fax: (916) 677-2283

Roseville, CA 95661

Ms. Amy Benton
California Professional Firefighters
1780 Creekside Oaks Drive, Suite 200
Sacramento, CA 95833

Tel: (916) 921-9111
Fax: (916) 921-1106

Mr. Jim Jagers

P.O. Box 1993
Carmichael, CA 95609

Tel: (916) 848-8407
Fax: (916) 848-8407

Ms. Ginny Brummels
State Controller's Office (B-08)
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

Tel: (916) 324-0256
Fax: (916) 323-6527

Mr. Glen Everroad
City of Newport Beach
3300 Newport Blvd.
P. O. Box 1768
Newport Beach, CA 92659-1768

Tel: (949) 644-3127
Fax: (949) 644-3339

Ms. Beth Hunter
Centration, Inc.
8570 Utica Avenue, Suite 100
Rancho Cucamonga, CA 91730

Tel: (866) 481-2621
Fax: (866) 481-2682

