1. TEST CLAIM TITLE

Local Agency Employee Organizations: Impasse Procedures

2. CLAIMANT INFORMATION

City of Glendora
Name of Local Agency or School District

June Overholt
Claimant Contact

Finance Director - City Treasurer
Title

116 E. Foothill Boulevard
Street Address

Glendora, CA 91741-3380
City, State, Zip

(626) 914-8241
Telephone Number

(626) 852-9650
Fax Number

joverholt@cityofglendora.org
E-Mail Address

3. CLAIMANT REPRESENTATIVE INFORMATION

Claimant designates the following person to act as its sole representative in this test claim. All correspondence and communications regarding this claim shall be forwarded to this representative. Any change in representation must be authorized by the claimant in writing, and sent to the Commission on State Mandates.

Annette Chinn
Claimant Representative Name

Consultant
Title

Cost Recovery Systems, Inc.
Organization

705-2 E. Bidwell, #294
Street Address

Folsom CA 95630
City, State, Zip

(916) 939-7901
Telephone Number

(916) 939-7801
Fax Number

AchinnCRS@aol.com
E-Mail Address

For CSM Use Only
Filing Date

RECEIVED
June 2, 2016
Commission on State Mandates

Revised on June 17, 2016

Test Claim # 15-TC-01

4. TEST CLAIM STATUTES OR EXECUTIVE ORDERS CITED

Please identify all code sections (include statutes, chapters, and bill numbers) (e.g., Penal Code Section 2045, Statutes 2004, Chapter 54 [AB 290]), regulations (include register number and effective date), and executive orders (include effective date) that impose the alleged mandate .

Government Code sectopm 3505.4, 3505.5 and 3505.7, Statutes 2011, Chapter 680 (AB 646)

☑ *Copies of all statutes and executive orders cited are attached.*

Sections 5, 6, and 7 are attached as follows:

5. Written Narrative: pages 1 to 13.
6. Declarations: pages 14 to 14.
7. Documentation: pages 15 to 65.

8. CLAIM CERTIFICATION

*Read, sign, and date this section and insert at the end of the test claim submission.**

This test claim alleges the existence of a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this test claim submission is true and complete to the best of my own knowledge or information or belief.

June Overholt
Print or Type Name of Authorized Local Agency or School District Official

Finance Director - City Treasurer
Print or Type Title

J A Overholt
Signature of Authorized Local Agency or School District Official

6/16/16
Date

** If the declarant for this Claim Certification is different from the Claimant contact identified in section 2 of the test claim form, please provide the declarant's address, telephone number, fax number, and e-mail address below.*

BEFORE THE
COMMISSION ON STATE MANDATES

Test Claim of:
The City of Glendora

Local Public Employee Organizations: Impasse Procedures

Chapter 680, Statutes of 2011

STATEMENT OF THE CLAIM

OVERVIEW

On June 22, 2011, Assembly Bill 646 (Atkins) added duties to Collective Bargaining activities falling under Milias-Meyers-Brown Act (MMBA). Specifically Section 3403.4 was repealed and replaced with a new section, and sections 3505.5 and 3503.7 were added.

The bill authorized the employee organization, if the mediator is unable to effect settlement of the controversy within 30 days of his or her appointment, to request that the matter be submitted to a factfinding panel. The bill would require that the factfinding panel consist of one member selected by each party as well as a chairperson selected by the board or by agreement of the parties. The factfinding panel would be authorized to make investigations and hold hearings, and to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence. The bill would require all political subdivisions of the state to comply with the panel's requests for information.

This bill would prohibit a public agency from implementing its last, best, and final offer until at least 10 days after the factfinders' written findings of fact and recommended terms of settlement have been submitted to the parties and the agency has held a public hearing regarding the impasse.

.

Specifically, this bill:

1) Requires the fact-finding panel shall meet with the parties within 10 days after appointment and take other steps it deems appropriate. Specifies that the fact-finding panel consist of one member selected by each party and a chairperson selected by the Public Employment Relations Board (PERB) or by agreement of the parties.
2) Authorizes the fact-finding panel to make inquiries and investigations, hold hearings, and take any other steps it deems appropriate, and to issue subpoenas

requiring the attendance and testimony of witnesses and the production of witnesses.

3) Requires state and local public agencies, if requested by the panel, to furnish the panel with all records, papers and information in their possession relating to any matter under investigation by the panel.
4) Specifies the criteria the fact-finding panel should be guided by in arriving at their findings and recommendations.
5) Requires the fact-finding panel to make findings of fact and recommend terms of a settlement if the dispute is not settled within 30 days. This information must first be provided to the parties before being made available to the public.
6) Requires the costs of the chairperson of the fact-finding panel to be paid for by both parties whether or not PERB selected the chairperson. Any other costs incurred will be borne equally by the parties, as specified.
7) Allows an employer to implement their last, best and final offer once any applicable mediation and fact-finding procedures have been exhausted and despite the implementation of the best and final offer, allows a recognized employee organization the right each year to meet and confer.

Government Code §3505.4 currently reads:

> **3505.4.**
>
> (a) If the mediator is unable to effect settlement of the controversy within 30 days after his or her appointment, the employee organization may request that the parties' differences be submitted to a factfinding panel. Within five days after receipt of the written request, each party shall select a person to serve as its member of the factfinding panel. The Public Employment Relations Board shall, within five days after the selection of panel members by the parties, select a chairperson of the factfinding panel.
>
> (b) Within five days after the board selects a chairperson of the factfinding panel, the parties may mutually agree upon a person to serve as chairperson in lieu of the person selected by the board.
>
> (c) The panel shall, within 10 days after its appointment, meet with the parties or their representatives, either jointly or separately, and may make inquiries and investigations, hold hearings, and take any other steps it deems appropriate. For the purpose of the hearings, investigations, and inquiries, the panel shall have the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence. Any state agency, as defined in Section 11000, the California State University, or any political subdivision of the state, including any board of education, shall furnish the panel, upon its request, with all records, papers, and information in their

possession relating to any matter under investigation by or in issue before the panel.

(d) In arriving at their findings and recommendations, the factfinders shall consider, weigh, and be guided by all the following criteria:

(1) State and federal laws that are applicable to the employer.

(2) Local rules, regulations, or ordinances.

(3) Stipulations of the parties.

(4) The interests and welfare of the public and the financial ability of the public agency.

(5) Comparison of the wages, hours, and conditions of employment of the employees involved in the factfinding proceeding with the wages, hours, and conditions of employment of other employees performing similar services in comparable public agencies.

(6) The consumer price index for goods and services, commonly known as the cost of living.

(7) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(8) Any other facts, not confined to those specified in paragraphs (1) to (7), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations.

Government Code §3505.5 currently reads:

3505.5.

(a) If the dispute is not settled within 30 days after the appointment of the factfinding panel, or, upon agreement by both parties within a longer period, the panel shall make findings of fact and recommend terms of settlement, which shall be advisory only. The factfinders shall submit, in writing, any findings of fact and recommended terms of settlement to the parties before they are made available to the public. The public agency shall make these findings and recommendations publicly available within 10 days after their receipt.

(b) The costs for the services of the panel chairperson selected by the board, including per diem fees, if any, and actual and necessary

travel and subsistence expenses, shall be equally divided between the parties.

(c) The costs for the services of the panel chairperson agreed upon by the parties shall be equally divided between the parties, and shall include per diem fees, if any, and actual and necessary travel and subsistence expenses. The per diem fees shall not exceed the per diem fees stated on the chairperson's résumé on file with the board. The chairperson's bill showing the amount payable by the parties shall accompany his or her final report to the parties and the board. The chairperson may submit interim bills to the parties in the course of the proceedings, and copies of the interim bills shall also be sent to the board. The parties shall make payment directly to the chairperson.

(d) Any other mutually incurred costs shall be borne equally by the public agency and the employee organization. Any separately incurred costs for the panel member selected by each party shall be borne by that party.

(e) A charter city, charter county, or charter city and county with a charter that has a procedure that applies if an impasse has been reached between the public agency and a bargaining unit, and the procedure includes, at a minimum, a process for binding arbitration, is exempt from the requirements of this section and Section 3505.4 with regard to its negotiations with a bargaining unit to which the impasse procedure applies.

Government Code §3505.7 currently reads:

3505.7.

After any applicable mediation and factfinding procedures have been exhausted, but no earlier than 10 days after the factfinders' written findings of fact and recommended terms of settlement have been submitted to the parties pursuant to Section 3505.5, a public agency that is not required to proceed to interest arbitration may, after holding a public hearing regarding the impasse, implement its last, best, and final offer, but shall not implement a memorandum of understanding. The unilateral implementation of a public agency's last, best, and final offer shall not deprive a recognized employee organization of the right each year to meet and confer on matters

within the scope of representation, whether or not those matters are included in the unilateral implementation, prior to the adoption by the public agency of its annual budget, or as otherwise required by law.

A. NEW ACTIVITIES

This legislation has led to increased costs related to the Collective Bargaining activities related to Impasse declaration including:

If mediation did not result in settlement after 30 days and if the employee organization requests factfinding:

1) The agency must notice impasse hearing if delay in factfinding request.
2) Agency must select a person to serve as its member of the factfinding panel, and pay for the costs of its member
3) If chairperson is not approved by other party, agency must select a different chairperson.
4) PERB shall appoint a panel Chairperson and the agency shall pay for half of the panel chairperson's costs.
5) The agency shall review and respond to all requests and subpoenas made by the panel and furnish panel with all relevant documents as requested. (This includes both administrative time to review and approve materials as well as clerical time to process these requests. Travel time would also be reimbursable if required.)
6) The agency shall participate in all factfinding hearings.
7) The agency shall review and make the panel findings publicly available within 10 days of receipt.
8) The agency shall pay for half of the costs of the factfinding.
9) The agency must hold a public impasse hearing, if it chooses to impose its last, best offer.
10) The agency shall meet and confer with union and submit/resubmit last, best offer.

One time costs would include:

1) Train staff on new requirements
2) Revise local agency manuals, polices, and guidelines related to new factfinding requirements.

B. LEGISLATIVE HISTORY PRIOR TO 1975

There was no Mandatory Impasse Procedures requirement prior to 1975, nor in any of the intervening years, until the passage of Chapter 680, Statutes of 2011, filed on October 9, 2011.

SHOULD WE MENTION OTHER RELATED MANDATE PROGRAMS – SUCH AS:

The Commission on State mandates has found other similar mandates pertaining to Personnel issues such as BINDING ARBITRATION (01-TC-07), LOCAL GOVERNMENT EMPLOYEE RELATIONS (02-TC-30), COLLECTIVE BARGAINING (97-TC-08) to be reimbursable State Mandated programs.

C. SPECIFIC STATUTORY SECTIONS THAT CONTAIN THE MANDATED ACTIVITIES

Government Code Sections 3504.4, 3505.5.5 and 3505.7were added by specified legislation and relate to the reimbursable provisions of this test claim.

D. COST ESTIMATES

The City of Glendora estimates that the costs to comply with this new mandate exceeded $63,448 in fiscal year 2014-15 and fiscal year 2015-16, when the City had to enter mediation as required by these statutes. The City first incurred increased costs as a result of this statute on June 16, 2015.

E. STATEWIDE COST ESTIMATES

According to the Assembly Floor Analysis, "There could be substantial state mandated reimbursement of local costs. The amount would depend on the number of requests for fact finding. PERB staff raised the possibility of exceeding 100 cases annually in the first years of the program. Assuming an individual case is likely to cost around $5,000, with the local agency footing half the bill, reimbursable costs could exceed $2.5 million. The Commission on State Mandates has approved a test claim for any local government subject to the jurisdiction of PERB that incurs increased costs as a result of a mandate, meaning their costs are eligible for reimbursement." *(K. Green – September 1, 2011)*

F. FUNDING SOURCES

The City of Glendora is unaware of any funding sources for the new activities mandated.

G. ELIGIBILITY FOR REIMBURESMENT

The costs incurred by the City of Glendora as a result of the statute on which this test claim is based are all reimbursable costs as such costs are "costs mandated by the State"

under Article XIII B (6) of the California Constitution, and Government Code §17500 *et seq.* of the Government Code. Section 17514 of the Government Code defines "costs mandated by the state", and specifies the following three requirements:

1. There are "increased costs which a local agency is required to incur after July 1, 1980."

2. The costs are incurred "as a result of any statute enacted on or after January 1, 1975."

3. The costs are the result of "a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIIIB of the California Constitution."

All three of the above requirements for finding costs mandated by the State are met as described previously herein.

MANDATE MEETS BOTH SUPREME COURT TESTS

The mandate created by this statute clearly meets both tests that the Supreme Court in the *County of Los Angeles* v. *State of California* (1987) created for determining what constitutes a reimbursable state mandated local program. Those two tests, which the Commission on State Mandates relies upon to determine if a reimbursable mandate exists, are the "unique to government" and the "carry out a state policy" tests. Their application to this test claim is discussed below.

Mandate Is Unique to Local Government

The sections of the law claimed involve the Milias-Meyers-Brown Act (MMBA). As described in Government Code section 3500 and highlighted by the Public Employment Relations Board (PERB), the MMBA applies specifically and solely to Local Agencies (Cities, Counties and Special Districts) and their employees. Similar to the Education Employment Relations Act (EERA) for public school and college districts only, with this law, the MMBA now requires uniform Impasse Procedures to local agencies. Thus, this requirement is unique to government.

Mandate Carries Out a State Policy

From the legislation, it is clear that the Legislature wishes to require uniform Impasse Procedures for local agencies after a public employee organization requests a factfinding panel. Prior to the passage of this legislation, the MMBA contained no requirements related for the creation of and activities relating to a factfinding panel.

In summary, this statute mandates that local government add a level of service in the Collective Bargaining process with the requirement of uniform factfinding procedures. The City of Glendora believes that uniform factfinding process as set forth above satisfies the constitutional requirements for a mandate.

STATE FUNDING DISCLAIMERS ARE NOT APPLICABLE

There are seven disclaimers specified in Government Code §17556 which could serve to bar recovery of "costs mandated by the State", as defined in Government Code §17556. None of the seven disclaimers apply to this test claim:

1. The claim is submitted by a local agency or school district which requests legislative authority for that local agency or school district to implement the Program specified in the statutes, and that statute imposes costs upon the local agency or school district requesting the legislative authority.

2. The statute or executive order affirmed for the State that which had been declared existing law or regulation by action of the courts.

3. 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.

4. 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.

5. 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.

6. The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a Statewide election.

7. 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.

None of the above disclaimers have any application to the test claim herein stated by the City of Glendora.

CONCLUSION

The enactment of Chapter 680, Statutes of 2011 adding sections 3505.4, 3505.5 and 3505.7 imposed a new state mandated program and higher level of service which resulted in increased costs to the City of Glendora by establishing a program within the Collective Bargaining process with Local Agencies and their employee organizations under the Milias-Meyers-Brown Act. The mandated program meets all of the requirements established by the California Constitution and Government Codes as a reimbursable State mandated program.

G. CLAIM REQUIREMENTS

The following elements of this test claim are provided pursuant to Section 1183, Title 2, of the California Code of Regulations:

Exhibit 1: Chapter 680, Statutes of 2011

CLAIM CERTIFICATION

The foregoing facts are known to me personally and if so required, I could and would testify to the statements made herein. I declare under penalty of perjury under the laws of the State of California that the statements made in this document are true and complete to the best of my personal knowledge and as to all matters, I believe them to be true.

Executed this 16 day of June, 2016, at Glendora, California, by:

June Overholt, Finance Director – Treasurer
City of Glendora

DECLARATION OF JUNE OVERHOLT

I June Overholt, make the following declaration under oath:

I am the Finance Director and Controller-Treasurer for City of Glendora. As part of my duties, I am responsible for the complete and timely recovery of costs mandated by the State.

I declare that I have examined the City of Glendora's State mandated duties and resulting costs, in implementing the subject law, and find that such costs are, in my opinion, "costs mandated by the State", as defined in Government Code, Section 17514:

> " '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."

The City of Glendora first incurred increased costs as a result of this Test Claim statute on June 16, 2015.

I am personally conversant with the foregoing facts, and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are stated upon information or belief, and as to those matters, I believe them to be true.

Executed this 16 day of June, 2016, at Glendora, California.

June Overholt
Finance Director /City Treasurer
City of Glendora

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT **CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Los Angeles)

On June 16, 2016 before me, Kathleen Rae Sessman, Notary Public,
Date *Here Insert Name and Title of the Officer*

personally appeared June Adel Overholt
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that ~~he~~she/~~they~~ executed the same in ~~his~~/her/~~their~~ authorized capacity(~~ies~~), and that by ~~his~~/her/~~their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

KATHLEEN RAE SESSMAN
Commission # 2068392
Notary Public - California
Los Angeles County
My Comm. Expires Jun 12, 2018

Signature _____
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document
Title or Type of Document: Test Claim Document Date: June 16, 2016
Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____	Signer's Name: _____
☐ Corporate Officer — Title(s): _____	☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General	☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact	☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator	☐ Trustee ☐ Guardian or Conservator
☐ Other: _____	☐ Other: _____
Signer Is Representing: _____	Signer Is Representing: _____

Assembly Bill No. 646

CHAPTER 680

An act to add Sections 3505.5 and 3505.7 to, and to repeal and add Section 3505.4 of, the Government Code, relating to local public employee organizations.

[Approved by Governor October 9, 2011. Filed with Secretary of State October 9, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

AB 646, Atkins. Local public employee organizations: impasse procedures.

The Meyers-Milias-Brown Act contains various provisions that govern collective bargaining of local represented employees, and delegates jurisdiction to the Public Employment Relations Board to resolve disputes and enforce the statutory duties and rights of local public agency employers and employees. The act requires the governing body of a public agency to meet and confer in good faith regarding wages, hours, and other terms and conditions of employment with representatives of recognized employee organizations. Under the act, if the representatives of the public agency and the employee organization fail to reach an agreement, they may mutually agree on the appointment of a mediator and equally share the cost. If the parties reach an impasse, the act provides that a public agency may unilaterally implement its last, best, and final offer.

This bill would authorize the employee organization, if the mediator is unable to effect settlement of the controversy within 30 days of his or her appointment, to request that the matter be submitted to a factfinding panel. The bill would require that the factfinding panel consist of one member selected by each party as well as a chairperson selected by the board or by agreement of the parties. The factfinding panel would be authorized to make investigations and hold hearings, and to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence. The bill would require all political subdivisions of the state to comply with the panel's requests for information.

This bill would require, if the dispute is not settled within 30 days, the factfinding panel to make findings of fact and recommend terms of settlement, for advisory purposes only. The bill would require that these findings and recommendations be first issued to the parties, but would require the public agency to make them publicly available within 10 days after their receipt. The bill would provide for the distribution of costs associated with the factfinding panel, as specified.

This bill would prohibit a public agency from implementing its last, best, and final offer until at least 10 days after the factfinders' written findings

of fact and recommended terms of settlement have been submitted to the parties and the agency has held a public hearing regarding the impasse.

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

SECTION 1. Section 3505.4 of the Government Code is repealed.

SEC. 2. Section 3505.4 is added to the Government Code, to read:

3505.4. (a) If the mediator is unable to effect settlement of the controversy within 30 days after his or her appointment, the employee organization may request that the parties' differences be submitted to a factfinding panel. Within five days after receipt of the written request, each party shall select a person to serve as its member of the factfinding panel. The Public Employment Relations Board shall, within five days after the selection of panel members by the parties, select a chairperson of the factfinding panel.

(b) Within five days after the board selects a chairperson of the factfinding panel, the parties may mutually agree upon a person to serve as chairperson in lieu of the person selected by the board.

(c) The panel shall, within 10 days after its appointment, meet with the parties or their representatives, either jointly or separately, and may make inquiries and investigations, hold hearings, and take any other steps it deems appropriate. For the purpose of the hearings, investigations, and inquiries, the panel shall have the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence. Any state agency, as defined in Section 11000, the California State University, or any political subdivision of the state, including any board of education, shall furnish the panel, upon its request, with all records, papers, and information in their possession relating to any matter under investigation by or in issue before the panel.

(d) In arriving at their findings and recommendations, the factfinders shall consider, weigh, and be guided by all the following criteria:

(1) State and federal laws that are applicable to the employer.

(2) Local rules, regulations, or ordinances.

(3) Stipulations of the parties.

(4) The interests and welfare of the public and the financial ability of the public agency.

(5) Comparison of the wages, hours, and conditions of employment of the employees involved in the factfinding proceeding with the wages, hours, and conditions of employment of other employees performing similar services in comparable public agencies.

(6) The consumer price index for goods and services, commonly known as the cost of living.

(7) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(8) Any other facts, not confined to those specified in paragraphs (1) to (7), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations.

SEC. 3. Section 3505.5 is added to the Government Code, to read:

3505.5. (a) If the dispute is not settled within 30 days after the appointment of the factfinding panel, or, upon agreement by both parties within a longer period, the panel shall make findings of fact and recommend terms of settlement, which shall be advisory only. The factfinders shall submit, in writing, any findings of fact and recommended terms of settlement to the parties before they are made available to the public. The public agency shall make these findings and recommendations publicly available within 10 days after their receipt.

(b) The costs for the services of the panel chairperson selected by the board, including per diem fees, if any, and actual and necessary travel and subsistence expenses, shall be equally divided between the parties.

(c) The costs for the services of the panel chairperson agreed upon by the parties shall be equally divided between the parties, and shall include per diem fees, if any, and actual and necessary travel and subsistence expenses. The per diem fees shall not exceed the per diem fees stated on the chairperson's résumé on file with the board. The chairperson's bill showing the amount payable by the parties shall accompany his or her final report to the parties and the board. The chairperson may submit interim bills to the parties in the course of the proceedings, and copies of the interim bills shall also be sent to the board. The parties shall make payment directly to the chairperson.

(d) Any other mutually incurred costs shall be borne equally by the public agency and the employee organization. Any separately incurred costs for the panel member selected by each party shall be borne by that party.

(e) A charter city, charter county, or charter city and county with a charter that has a procedure that applies if an impasse has been reached between the public agency and a bargaining unit, and the procedure includes, at a minimum, a process for binding arbitration, is exempt from the requirements of this section and Section 3505.4 with regard to its negotiations with a bargaining unit to which the impasse procedure applies.

SEC. 4. Section 3505.7 is added to the Government Code, to read:

3505.7. After any applicable mediation and factfinding procedures have been exhausted, but no earlier than 10 days after the factfinders' written findings of fact and recommended terms of settlement have been submitted to the parties pursuant to Section 3505.5, a public agency that is not required to proceed to interest arbitration may, after holding a public hearing regarding the impasse, implement its last, best, and final offer, but shall not implement a memorandum of understanding. The unilateral implementation of a public agency's last, best, and final offer shall not deprive a recognized employee organization of the right each year to meet and confer on matters within the scope of representation, whether or not those matters are included

in the unilateral implementation, prior to the adoption by the public agency of its annual budget, or as otherwise required by law.

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3505.4. (a) The employee organization may request that the parties' differences be submitted to a factfinding panel not sooner than 30 days, but not more than 45 days, following the appointment or selection of a mediator pursuant to the parties' agreement to mediate or a mediation process required by a public agency's local rules. If the dispute was not submitted to mediation, an employee organization may request that the parties' differences be submitted to a factfinding panel not later than 30 days following the date that either party provided the other with a written notice of a declaration of impasse. Within five days after receipt of the written request, each party shall select a person to serve as its member of the factfinding panel. The Public Employment Relations Board shall, within five days after the selection of panel members by the parties, select a chairperson of the factfinding panel.

(b) Within five days after the board selects a chairperson of the factfinding panel, the parties may mutually agree upon a person to serve as chairperson in lieu of the person selected by the board.

(c) The panel shall, within 10 days after its appointment, meet with the parties or their representatives, either jointly or separately, and may make inquiries and investigations, hold hearings, and take any other steps it deems appropriate. For the purpose of the hearings, investigations, and inquiries, the panel shall have the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence. Any state agency, as defined in Section 11000, the California State University, or any political subdivision of the state, including any board of education, shall furnish the panel, upon its request, with all records, papers, and information in their possession relating to any matter under investigation by or in issue before the panel.

(d) In arriving at their findings and recommendations, the factfinders shall consider, weigh, and be guided by all the following criteria:

(1) State and federal laws that are applicable to the employer.

(2) Local rules, regulations, or ordinances.

(3) Stipulations of the parties.

(4) The interests and welfare of the public and the financial ability of the public agency.

(5) Comparison of the wages, hours, and conditions of employment of the employees involved in the factfinding proceeding with the wages, hours, and conditions of employment of other employees performing similar services in comparable public agencies.

(6) The consumer price index for goods and services, commonly known as the cost of living.

(7) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(8) Any other facts, not confined to those specified in paragraphs (1) to (7), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations.

(e) The procedural right of an employee organization to request a factfinding panel cannot be expressly or voluntarily waived.

3505.5. (a) If the dispute is not settled within 30 days after the appointment of the factfinding panel, or, upon agreement by both parties within a longer period, the panel shall make findings of fact and recommend terms of settlement, which shall be advisory only. The factfinders shall submit, in writing, any findings of fact and recommended terms of settlement to the parties before they are made available to the public. The public agency shall make these findings and recommendations publicly available within 10 days after their receipt.

(b) The costs for the services of the panel chairperson selected by the board, including per diem fees, if any, and actual and necessary travel and subsistence expenses, shall be equally divided between the parties.

(c) The costs for the services of the panel chairperson agreed upon by the parties shall be equally divided between the parties, and shall include per diem fees, if any, and actual and necessary travel and subsistence expenses. The per diem fees shall not exceed the per diem fees stated on the chairperson's résumé on file with the board. The chairperson's bill showing the amount payable by the parties shall accompany his or her final report to the parties and the board. The chairperson may submit interim bills to the parties in the course of the proceedings, and copies of the interim bills shall also be sent to the board. The parties shall make payment directly to the chairperson.

(d) Any other mutually incurred costs shall be borne equally by the public agency and the employee organization. Any separately incurred costs for the panel member selected by each party shall be borne by that party.

(e) A charter city, charter county, or charter city and county with a charter that has a procedure that applies if an impasse has been reached between the public agency and a bargaining unit, and the procedure includes, at a minimum, a process for binding arbitration, is exempt from the requirements of this section and Section 3505.4 with regard to its negotiations with a bargaining unit to which the impasse procedure applies.

3505.7. After any applicable mediation and factfinding procedures have been exhausted, but no earlier than 10 days after the factfinders' written findings of fact and recommended terms of settlement have been submitted to the parties pursuant to Section 3505.5, a public agency that is not required to proceed to interest arbitration may, after holding a public hearing regarding the impasse, implement its last, best, and final offer, but shall not implement a memorandum of understanding. The unilateral implementation of a public agency's last, best, and final offer shall not deprive a recognized employee organization of the right each year to meet and confer on matters within the scope of representation, whether or not those matters are included in the unilateral implementation, prior to the adoption by the public agency of its annual budget, or as otherwise required by law.

8. CLAIM CERTIFICATION

*Read, sign, and date this section and insert at the end of the test claim submission.**

This test claim alleges the existence of a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this test claim submission is true and complete to the best of my own knowledge or information or belief.

June Overholt
Print or Type Name of Authorized Local Agency or School District Official

Finance Director - City Treasurer
Print or Type Title

J A Overholt
Signature of Authorized Local Agency or School District Official

6/16/16
Date

** If the declarant for this Claim Certification is different from the Claimant contact identified in section 2 of the test claim form, please provide the declarant's address, telephone number, fax number, and e-mail address below.*

Supporting Documentation

BILL ANALYSIS

CONCURRENCE IN SENATE AMENDMENTS
AB 646 (Atkins)
As Amended June 22, 2011
Majority vote

ASSEMBLY:	50-25	(June 1, 2011)	SENATE:	23-14	(August 31, 2011)

Original Committee Reference: P.E., R. & S.S.

SUMMARY : Allows local public employee organizations to request fact-finding if a mediator is unable to reach a settlement within 30 days of appointment, defines certain responsibilities of the fact-finding panel and interested parties, and makes specified exemptions from these provisions. Specifically, this bill :

1) Requires the fact-finding panel shall meet with the parties within 10 days after appointment and take other steps it deems appropriate. Specifies that the fact-finding panel consist of one member selected by each party and a chairperson selected by the Public Employment Relations Board (PERB) or by agreement of the parties.

2) Authorizes the fact-finding panel to make inquiries and investigations, hold hearings, and take any other steps it deems appropriate, and to issue subpoenas requiring the attendance and testimony of witnesses and the production of witnesses.

3) Requires state and local public agencies, if requested by the panel, to furnish the panel with all records, papers and information in their possession relating to any matter under investigation by the panel.

4) Specifies the criteria the fact-finding panel should be guided by in arriving at their findings and recommendations.

5) Requires the fact-finding panel to make findings of fact and recommend terms of a settlement if the dispute is not settled within 30 days. This information must first be provided to the parties before being made available to the public.

6) Requires the costs of the chairperson of the fact-finding panel to be paid for by both parties whether or not PERB selected the chairperson. Any other costs incurred will be borne equally by the parties, as specified.

7) Allows an employer to implement their last, best and final offer once any applicable mediation and fact-finding procedures have been exhausted and despite the implementation of the best and final offer, allows a recognized employee organization the right each year to meet and confer.

8) Exempts a charter city, charter county, or a charter city and county that has a procedure, as specified, that applies if an impasse has been reached between the public agency and a bargaining unit regarding negotiations to which the impasse procedure applies.

The Senate amendments exempt a charter city, charter county, or a charter city and county that has a procedure, as specified, that applies if an impasse has been reached between the public agency and a bargaining unit regarding negotiations to which the impasse procedure applies.

EXISTING LAW , as established by the Meyers-Milias-Brown Act (MMBA):

1) Contains various provisions intended to promote full communication between public employers and their employees by

providing a reasonable method of resolving disputes regarding wages, hours, and other terms and conditions of employment between public employers and public employee organizations.

2) Provides that if, after a reasonable amount of time, representatives of the public agency and the employee organization fail to reach agreement, the two parties may mutually agree on the appointment of a mediator and equally share the cost. If the parties reach impasse, the public agency is not required to proceed to interest arbitration and may implement its last, best and final offer.

3) Authorizes a local public agency to adopt reasonable rules and regulations after consultation in good faith with representatives of an employee organization or organizations for the administration of employer-employee relations under the MMBA.

4) Delegates jurisdiction over the employer-employee relationship to PERB and charges PERB with resolving disputes and enforcing the statutory duties and rights of local public agency employers and employee organizations.

AS PASSED BY THE ASSEMBLY , this bill was substantially similar to the version approved by the Senate.

FISCAL EFFECT : According to the Assembly Appropriations Committee:

1) Based on the staffing that PERB estimated was necessary to administer the bill, the fiscal impact of administering the provisions of this bill is approximately $200,000.

2) There could be substantial state mandated reimbursement of local costs. The amount would depend on the number of requests for fact finding. PERB staff raised the possibility of exceeding 100 cases annually in the first years of the program. Assuming an individual case is likely to cost around $5,000, with the local agency footing half the bill, reimbursable costs could exceed $2.5 million. The Commission on State Mandates has approved a test claim for any local government subject to the jurisdiction of PERB that incurs increased costs as a result of a mandate, meaning their costs are eligible for reimbursement. Increasing the waiting time before fact finding can begin should reduce the costs slightly.

COMMENTS : According to the author, "Currently, there is no requirement that public agency employers and employee organizations engage in impasse procedures where efforts to negotiate a collective bargaining agreement have failed. Without impasse procedures, negotiations may not be fully effective, and bargaining may break down before all avenues for agreement are explored. Many municipalities and public agencies promulgate local rules which include impasse rules and procedures. However, this requirement is not uniform, and the lack of uniformity may serve to create confusion and uncertainty.

"The creation of mandatory impasse procedures is likely to increase the effectiveness of the collective bargaining process, by enabling the parties to employ mediation and fact-finding in

order to assist them in resolving differences that remain after negotiations have been unsuccessful. Mediators are often useful in restarting stalled negotiations, by encouraging dialogue where talks have broken down; identifying potential areas where agreement may be reached; diffusing tension; and, suggesting creative compromise proposals. Fact-finding panels can also help facilitate agreement, by making objective, factual

determinations that can help the parties engage in productive discussions and reach reasonable decisions."

Opponents state, "AB 646 undermines a local agency's authority to establish local rules for resolving impasse and the requirement that a local agency engage in factfinding may delay rather than speed the conclusion of contract negotiations." Opponents go on to say they are not aware of any abuses or short-comings of the current process and question the need for making such an important change in the process of reaching a collective bargaining agreement.

Opponents conclude, "Most importantly, the provisions in AB 646 could lead to significant delays in labor negotiations between public employers and employee organizations and result in additional costs to public employers at a time when public agencies are struggling to address budget shortfalls and maintain basic services for their residents. AB 646 would provide a disincentive for employee organizations to negotiate in good faith when there exists the option of further processes under the PERB that will prolong negotiations. Most collectively bargained contracts are stalled due to cost-saving measures being sought by the public agency in a downturned economy; requiring mediation and fact finding prior to imposing a last, best and final offer would simply add costs and be unhelpful to both the employer and the employees."

Analysis Prepared by : Karon Green / P.E., R. & S.S. / (916) 319-3957

FN: 0002141

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM: Government Code Sections 3500, 3500.5, 3501, 3502.5, 3507.1, 3508.5, 3509, 3510, and 3511; California Code of Regulations, Title 8, Sections 31001-61630; Statutes 2000, Chapter 901; Filed on August 1, 2002 by the City of Sacramento and the County of Sacramento, Claimants.	**Case No.: 01-TC-30** ***Local Government Employment Relations*** STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7 *(Adopted on December 4, 2006)*

STATEMENT OF DECISION

The Commission on State Mandates ("Commission") heard and decided this test claim during a regularly scheduled hearing on December 4, 2006. Pamela Stone, John Liebert, Ed Tackach, Dee Contreras, and Krista Whitman appeared on behalf of City of Sacramento and County of Sacramento, claimants. Susan Geanacou, Donna Ferebee, Carla Castaneda, and Wendy Ross appeared on behalf of Department of Finance.

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

At the hearing, the Commission adopted the staff analysis to partially approve this test claim by a vote of 6-0.

Summary of Findings

This test claim addresses statutes that amended the Meyers-Milias-Brown Act (hereafter "MMBA"), regarding employer-employee relations between local public agencies and their employees. The test claim statutes authorize an additional method for creating an agency shop arrangement and expand the jurisdiction of the Public Employment Relations Board (hereafter "PERB") to include resolving disputes and enforcing the statutory duties and rights of those public employers and employees subject to the MMBA.

Under the existing provisions of MMBA, the governing body of a local public agency is required to "meet and confer in good faith" regarding wages, hours, and other terms and conditions of employment with recognized employee organizations. When agreement is reached between the parties, a memorandum of understanding is jointly prepared to present to

the governing body for acceptance; if accepted, the memorandum becomes binding on both the public employer and employee organization.

Local agencies are authorized to adopt reasonable rules and regulations, after consultation with employee organizations, for administering employer-employee relations under the MMBA. Prior to 2001, labor-management disputes under MMBA were resolved through locally adopted procedures, and appeals from that process could be made to the courts. In 2001, the test claim statutes placed enforcement of the MMBA under PERB jurisdiction, but excluded the City of Los Angeles, the County of Los Angeles, and peace officers from PERB jurisdiction.

The Commission finds that the test claim statutes and regulations impose a reimbursable state-mandated program on local public agencies within the meaning of article XIII B, section 6 of the California Constitution, and Government Code section 17514, for the following activities:

1. Deduct from employees' wages the payment of dues or service fees required pursuant to an agency shop arrangement that was established under subdivision (b) of Government Code section 3502.5, and transmit such fees to the employee organization. (Gov. Code § 3508.5, subd. (b))
2. Receive from the employee any proof of in lieu fee payments made to charitable organizations required pursuant to an agency shop arrangement that was established under subdivision (b) of Government Code section 3502.5. (Gov. Code § 3502.5, subd. (c))
3. Follow PERB procedures in responding to charges and appeals filed with PERB, by an entity *other than* the local public agency employer, concerning an unfair labor practice, a unit determination, representation by an employee organization, recognition of an employee organization, or an election. Mandated activities are:
    a. procedures for filing documents or extensions for filing documents with PERB (Cal. Code Regs., tit. 8, §§ 32132, 32135 (Register 2001, No. 49));
    b. proof of service (Cal. Code Regs., tit. 8, § 32140 (Register 2001, No. 49));
    c. responding to subpoenas and investigative subpoenas (Cal. Code Regs., tit. 8, §§ 32149, 32150 (Register 2001, No. 49));
    d. conducting depositions (Cal. Code Regs., tit. 8, § 32160 (Register 2001, No. 49));
    e. participating in hearings and responding as required by PERB agent, PERB Administrative Law Judge, or the five-member PERB (Cal. Code Regs., tit. 8, §§ 32168, 32170, 32175, 32176, 32180, 32205, 32206, 32207, 32209, 32210, 32212, 32310, 32315, 32375, 32455, 32620, 32644, 32649, 32680, 32980, 60010, 60030, 60050, and 60070 (Register 2001, No. 49)); and
    f. filing and responding to written motions in the course of the hearing (Cal. Code Regs., tit. 8, § 32190 (Register 2001, No. 49)).

Proposition 1A, approved by the voters November 2, 2004, amended article XIII B, section 6 of the California Constitution to require that unless the Legislature appropriates the full payable amount in a fiscal year for a mandate, the operation of the mandate shall be suspended for that fiscal year. However, section 6, subdivision (b)(5), states that this provision is not

applicable to "a requirement to provide or recognize any procedural or substantive protection, right, benefit, or employment status of any local government employee or retiree, or of any local government employee organization, that arises from, affects, or directly relates to future, current, or past local government employment and that constitutes a mandate subject to this section." The Commission finds that subdivision (b)(5) is applicable to this test claim.

BACKGROUND

This test claim addresses statutes that amended the MMBA, regarding employer-employee relations between local public agencies and their employees. The test claim statutes and regulations authorize an additional method for creating an agency shop[1] arrangement and expand the jurisdiction of PERB to include resolving disputes and enforcing the statutory duties and rights of those public employers and employees subject to the MMBA. If approved, the reimbursement period for this test claim would begin with the 2001-2002 fiscal year.

The MMBA was enacted in 1968[2] with the following intent:

> It is the purpose of this chapter to promote full communication between public employers and their employees by providing a reasonable method of resolving disputes regarding wages, hours, and other terms and conditions of employment between public employers and public employee organizations. It is also the purpose of this chapter to promote the improvement of personnel management and employer-employee relations within the various public agencies in the State of California by providing a uniform basis for recognizing the right of public employees to join organizations of their own choice and be represented by those organizations in their employment relationships with public agencies ....[3]

Public agencies covered under the MMBA include "every governmental subdivision, every district, every public and quasi-public corporation, every public agency and public service corporation and every town, city, county, city and county and municipal corporation, whether incorporated or not and whether chartered or not," but do not include school districts, a county board of education, a county superintendent of schools, or a personnel commission in a school district having a specified merit system.[4]

Public employees covered under the MMBA include "any person employed by any public agency, including employees of the fire departments and fire services of counties, cities, cities and counties, districts, and other political subdivisions of the state, excepting those persons elected by popular vote or appointed to office by the Governor of this state."[5] The test claim

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[1] "Agency shop" means "an arrangement that requires an employee, as a condition of continued employment, either to join the recognized 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 ..." (Gov. Code § 3502.5, subd. (a)).

[2] Statutes 1968, chapter 1390.

[3] Government Code section 3500, subdivision (a).

[4] Government Code section 3501, subdivision (c).

[5] Government Code section 3501, subdivision (d).

statutes, however, specifically exclude peace officers from the provisions,[6] and therefore peace officers and their employee organizations are not considered in this analysis.

Under the existing provisions of MMBA, the governing body of a local public agency, or its designee, is required to "meet and confer in good faith" regarding wages, hours, and other terms and conditions of employment with recognized employee organizations.[7] When agreement is reached between the parties, a memorandum of understanding is jointly prepared to present to the governing body for acceptance;[8] if accepted, the memorandum becomes binding on both the public employer and employee organization for its duration.[9]

Local agencies are authorized to adopt reasonable rules and regulations, after consultation with employee organizations, for administering employer-employee relations under the MMBA.[10] The test claim statutes established that PERB may adopt rules in areas where a local public agency has no rule,[11] and enforce and apply the rules adopted by a local public agency concerning unit determinations, representation, recognition, and elections.[12]

An agency shop agreement may be established through negotiation between the local public agency employer and a public employee organization which has been recognized as the exclusive or majority bargaining agent.[13] The test claim statutes provide an additional method for an agency shop arrangement to be established:

> [A]n agency shop arrangement ... shall be placed in effect, without a negotiated agreement, upon (1) a signed petition of 30 percent of the employees in the applicable bargaining unit requesting an agency shop agreement and an election to implement an agency fee arrangement, and (2) the approval of a majority of employees who cast ballots and vote in a secret ballot election in favor of the agency shop agreement. The petition may only be filed after the recognized employee organization has requested the public agency to negotiate on an agency shop arrangement and, beginning seven working days after the public agency received this request, the two parties have had 30 calendar days to attempt good faith negotiations in an effort to reach agreement.[14]

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[6] Government Code section 3511.

[7] Government Code section 3505.

[8] Government Code section 3505.1.

[9] *San Bernardino Public Employees Assn. v. City of Fontana* (1998) 67 Cal.App.4th 1215.

[10] Government Code section 3507.

[11] Government Code section 3509, subdivision (a).

[12] Government Code section 3509, subdivision (c).

[13] Government Code section 3502.5, subdivision (a).

[14] Government Code section 3502.5, subdivision (b).

Agency shop arrangements are not applicable to management, confidential, or supervisory employees.[15]

With regard to agency fee arrangements, the MMBA states that nothing shall affect the right of a public employee to authorize a dues deduction from his or her salary.[16] The test claim statutes added the following requirement of the employer:

> A public employer *shall deduct* the payment of dues or service fees to a recognized employee organization as required by an agency shop arrangement between the recognized employee organization and the public employer. (Emphasis added.)[17]

Prior to 2001, the labor-management disputes under MMBA were resolved through locally adopted procedures, and appeals from that process could be made to the courts. In 2001, the test claim statutes placed enforcement of the MMBA under PERB jurisdiction.[18] Thus, a complaint alleging any violation of MMBA or of any rules adopted by a local public agency pursuant to Government Code section 3507 are now resolved by PERB as an unfair practice charge,[19] and rules adopted by a local public agency concerning unit determinations, representation, recognition, and elections are enforced and applied by PERB.[20] However, the City of Los Angeles, the County of Los Angeles, and peace officers as defined in Penal Code section 830.1 are not subject to PERB jurisdiction.[21]

Although the MMBA has not previously been the subject of a test claim, claims for some collective bargaining activities under the Educational Employment Relations Act (EERA) have been determined to constitute reimbursable state mandates, as described below.

Collective Bargaining Under the Educational Employment Relations Act (EERA)

In the *Collective Bargaining* Statement of Decision, the Board of Control determined that Statutes 1975, chapter 961 (the EERA), constituted a reimbursable mandate. Parameters and guidelines were adopted on October 22, 1980, and amended seven times before the decision on the next related claim: *Collective Bargaining Agreement Disclosure* (97-TC-08).

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[15] Government Code section 3502.5, subdivision (e), formerly subdivision (c); that provision was subsequently amended to delete confidential and supervisory employees (Stats. 2003, ch. 311).

[16] Government Code section 3508.5, subdivision (a).

[17] Government Code section 3508.5, subdivision (b).

[18] Government Code section 3510 (amended and renumbered from section 3509 by Stats. 2000, ch. 901); PERB is an independent state body, consisting of five members, with jurisdiction to administer and enforce several California employer-employee relations statutes including the MMBA (Gov. Code §§ 3541 and 3541.3).

[19] Government Code section 3509, subdivision (b).

[20] Government Code section 3509, subdivision (c).

[21] Government Code sections 3509, subdivision (d), and 3511.

On March 26, 1998, the Commission adopted the Statement of Decision for the *Collective Bargaining Agreement Disclosure* test claim. The Commission found that Government Code section 3547.5 (Stats. 1991, ch. 1213) and California Department of Education Management Advisory 92-01 constitute a reimbursable mandate for requiring K-14 school districts to publicly disclose the major provisions of all collective bargaining agreements after negotiations, but before the agreement becomes binding.

The parameters and guidelines for *Collective Bargaining Agreement Disclosure* were adopted in August 19, 1998, and consolidated with the *Collective Bargaining* parameters and guidelines. The reimbursable activities in the consolidated parameters and guidelines can be summarized as follows:

- Determination of appropriate bargaining units for representation and determination of the exclusive representatives:
  a. Unit determination;
  b. Determination of the exclusive representative.
- Elections and decertification elections of unit representatives are reimbursable in the event the Public Employment Relations Board determines that a question of representation exists and orders an election held by secret ballot.
- Negotiations: reimbursable functions include -- receipt of exclusive representative's initial contract proposal, holding of public hearings, providing a reasonable number of copies of the employer's proposed contract to the public, development and presentation of the initial district contract proposal, negotiation of the contract, reproduction and distribution of the final contract agreement.
- Impasse proceedings:
  a. Mediation;
  b. Fact-finding publication of the findings of the fact-finding panel.
- Collective bargaining agreement disclosure.
- Contract administration and adjudication of contract disputes either by arbitration or litigation. Reimbursable functions include grievances and administration and enforcement of the contract.
- Unfair labor practice adjudication process and public notice complaints.

Agency Fee Arrangements

In December 2005, the Commission approved in part and denied in part a test claim filed by Clovis Unified School District regarding fair share fees by non-union members in California's K-14 public schools (*Agency Fee Arrangements*, 00-TC-17/01-TC-14). In modifying the EERA, the test claim statutes required that: 1) employees of K-14 school districts must either join the selected employee organization or pay such organization a service fee; 2) employees who claim a conscientious objection to joining or supporting a union shall not be required to

do so but may be required to pay equal amounts to a charitable organization and proof of such contribution may be required by the employee organization or the public school employer; 3) public school employers deduct the amount of the fair share service fee from the wages and salary of the employee and pay that amount to the employee organization; and 4) public school employers provide the exclusive representative of the employees with the home address of each member of a bargaining unit. The test claim regulations further required the public school employer to 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 agency fee arrangement.

The Commission concluded that some of the activities did impose a reimbursable state-mandated program on public school employers, as follows:

- deducting the amount of the fair share service fee and paying that amount to the employee organization;
- providing the exclusive representative of a public employee with the home address of each member of a bargaining unit; and
- timely filing with PERB an alphabetical list containing the names and job titles or classifications of the persons employed in the unit.

Claimant's Position

The claimant states that there are "substantial activities and costs," that are "well in excess of $200.00 per year," which will be undertaken by local governments to comply with the test claim statutes and regulations. [22] These costs are "costs mandated by the State" under article XIII B, section 6 of the California Constitution, and Government Code sections 17500 et seq.

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

1. Engage in separate agency shop negotiations for up to 30 days, pursuant to Government Code section 3502.5, subdivision (b), and title 8, California Code of Regulations, section 32990, subdivisions (a) and (e).
2. Process agency shop petitions, pursuant to Government Code section 3502.5, subdivision (b), and Department of Industrial Relations (hereafter "DIR") website.
3. Participate in meetings with petitioning union to discuss jointly selecting a neutral person or entity to conduct the agency shop election, pursuant to Government Code section 3502.5, subdivision (b), and DIR website.
4. Participate in meetings with such neutral person or entity, or the State Conciliation Service (hereafter the "Election Supervisor"), and the petitioning union, and endeavor to reach an agreement, pursuant to Government Code section 3502.5, subdivision (b), and DIR website.

[22] At the time the test claim was filed, Government Code section 17564, subdivision (a), stated that the no test claim or reimbursement claim shall be made unless the claim exceeds $200. That section was subsequently modified in Statutes 2002, chapter 1124, to increase the minimum to $1,000. If this test claim is approved, any reimbursement claims must exceed $1,000.

5. Compile and provide the Election Supervisor the necessary unit employee information to verify the 30 percent showing of interest, pursuant to Government Code section 3502.5, subdivision (b), and DIR website.
6. Post and distribute notices of election, pursuant to Government Code section 3502.5, subdivision (b), and DIR website.
7. Compile and provide appropriate payroll records for the Election Supervisor, pursuant to Government Code section 3502.5, subdivision (b), and DIR website.
8. Make available employees to serve as voting place observers, pursuant to Government Code section 3502.5, subdivision (b), and DIR website.
9. Staff, prepare for, and represent the agency in administrative or court proceedings regarding disputes as to management, supervisory and confidential designations (which are excluded from agency shop arrangements), pursuant to Government Code section 3502.5, subdivisions (b) and (e), and procedures of the State Mediation and Conciliation Service.
10. Provide staffing to institute and administer procedures for agency fee deductions and transmittal to union, pursuant to Government Code sections 3502.5, subdivision (b), and 3508.5, subdivisions (b) and (c).
11. Institute and administer procedures and documentation for in lieu fee payments of conscientious objectors, and transmittal to appropriate charities, pursuant to Government Code section 3502.5, subdivisions (b) and (c).
12. Negotiate with the union concerning the above two procedures, and represent the agency in the event of PERB intervention regarding disputes, pursuant to Government Code section 3502.5, subdivision (b).
13. Process agency shop rescission petitions, pursuant to Government Code section 3502.5, subdivision (d).
14. Participate in PERB's rulemaking process relating to implementation of its jurisdiction under the test claim legislation, pursuant to Government Code section 3509, subdivisions (a), (b), and (c), and PERB's website.
15. Develop and provide training in PERB's rules, procedures and decisions for agency supervisory and management personnel and attorneys.
16. Respond to appeals made to the PERB of agency actions regarding unit issues, representation matters, recognition, elections and unfair practice determinations, pursuant to Government Code section 3509, subdivisions (b) and (c), and title 8, California Code of Regulations, sections 60000 and 60010.
17. Respond to, or file, unfair labor practice charges, pursuant to Government Code section 3509, subdivision (b), and title 8, California Code of Regulations, sections 32450, 32455, 32602, 32603, 32615, 32620, 32621, 32625, 32644, 32646, 32647, and 32661.
18. Participate in PERB's investigation of charges, pursuant to title 8, California Code of Regulations, sections 32149, 32162, 32980, and 60010.

19. Prepare for hearings before PERB Administrative Law Judges including, but not limited to the preparation of briefs, documentation, exhibits, witnesses and expert witnesses, pursuant to title 8, California Code of Regulations, sections 32150, 32160, 32164, 32165, 32190, 32205, 32210, 32212, 32647, and 60040.
20. Present the agency's case before the PERB's Administrative Law Judge, including expert witness fees, increased overtime costs for employee witnesses, closing brief, costs of transcripts and travel expenses, pursuant to title 8, California Code of Regulations, sections 32170, 32175, 32176, 32178, 32180, 32190, 32206, 32648, 32649, 32207, 32209, 32230, 32680, 60041, and 60050.
21. Represent the agency at proceedings that appeal PERB Administrative Law Judge decisions to the Board itself, including travel expenses, pursuant to title 8, California Code of Regulations, sections 32200, 32300, 32310, 32315, 32320, 32360, 32370, 32375, 32410, 32635, and 60035.
22. Prepare for and represent the agency at appeals of final PERB decisions to superior and appellate courts, pursuant to title 8, California Code of Regulations, section 32500.
23. Prepare for and represent the agency in superior and appellate court proceedings regarding litigation over the test claim legislation's ambiguity and scope, as well as the parameters of the jurisdiction of the PERB.

Claimants, City of Sacramento and County of Sacramento, filed comments on November 19, 2002, in response to the Department of Finance's comments of August 30, 2002. Claimant City of Sacramento filed comments in response to the draft staff analysis, and claimant County of Sacramento filed comments in response to the Department of Finance's comments of November 13, 2006. The issues raised in those comments are addressed in the following analysis.

Position of Department of Finance

The Department of Finance states that there are not any state-reimbursable costs resulting from the test claim statutes, for the following reasons:

- The test claim statutes do not create a new program or higher level of service since, pursuant to the language of the statutes, the duties of the local agency employer representatives are "substantially similar to the duties and responsibilities required under existing collective bargaining enforcement procedures and therefore the costs incurred by the local agency employer representatives in performing those duties and responsibilities under this chapter are not reimbursable as state-mandated costs." Duties that the agencies already perform under the existing process include responding to unfair labor practice charges, compiling payroll and personnel records, and participating in meetings and negotiations with unions.
- Many of the activities listed in the test claim are discretionary and therefore do not qualify as reimbursable state-mandated costs, such as creating and providing training on the PERB rules and regulations, processing agency shop petitions, participating in PERB's rulemaking process, or appealing PERB decisions.
- The test claim statutes provide for offsetting savings to local agencies since the provisions shift local employers from a process wherein they rely on the court system

to litigate unfair labor practice charges to a process where they would rely on PERB for those types of decisions. The costs that the employers would incur through the process with PERB would have been incurred if the unfair labor practice claims were still being litigated in the court system. To the extent that PERB settles claims before they ever reach a courtroom, the provisions within this chapter would result in savings to the public agencies.

The Department of Finance provided additional comments on December 18, 2002, in response to claimant's rebuttal of November 19, 2002, and in response to the draft staff analysis. The issues raised in those comments are addressed in the following analysis.

COMMISSION FINDINGS

The courts have found that article XIII B, section 6 of the California Constitution[23] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[24] "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."[25] A test claim statutes 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.[26] In addition, the required activity or task must be new, constituting a "new program," and it must create a "higher level of service" over the previously required level of service.[27]

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

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[23] 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."

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

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

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

[27] *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*).

state policy, but does not apply generally to all residents and entities in the state.[28] 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.[29] A "higher level of service" occurs when there is "an increase in the actual level or quality of governmental services provided."[30]

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[31]

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.[32] 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."[33]

The analysis addresses the following issues:

- Are the test claim statutes and regulations subject to article XIII B, section 6 of the California Constitution?
- Do the activities mandated by the test claim statutes and regulations constitute a "new program or higher level of service" within the meaning of article XIII B, section 6 of the California Constitution?
- Do the activities mandated by the test claim statutes and regulations impose "costs mandated by the state" within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514?

Issue 1: Are the test claim statutes and regulations subject to article XIII B, section 6 of the California Constitution?

A. Do the Test Claim Statutes or Regulations Mandate Any Activities?

In order for a test claim statute or executive order to impose a reimbursable state-mandated program under article XIII B, section 6, the language must mandate an activity or task upon

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[28] *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 (*Los Angeles*); *Lucia Mar, supra,* 44 Cal.3d 830, 835).

[29] *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 877; *Lucia Mar, supra,* 44 Cal.3d 830, 835.

[30] *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 877.

[31] *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.

[32] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

[33] *County of Sonoma, supra,* 84 Cal.App.4th 1264, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

local governmental agencies. If the language does not mandate or require local agencies to perform a task, then article XIII B, section 6 is not triggered.[34]

The claimant is requesting reimbursement for activities related to: 1) participation in PERB's rulemaking process to implement the test claim statutes; 2) representing the agency in court regarding litigation over the test claim statutes' ambiguity and scope; 3) agency shop arrangements; 4) agency shop rescissions; 5) dues or service fee deductions; 6) in lieu fee payments; 7) PERB jurisdiction and administrative hearings; and 8) representing the agency in court appeals of final PERB decisions.

In the following analysis, where the plain language of the test claim statutes or regulations does not require a particular activity, but such activity might reasonably stem from an activity approved for reimbursement by the Commission, the Commission can consider claimant's request for reimbursement for those activities at the Parameters and Guidelines stage to determine whether they are reasonable methods of complying with the mandate pursuant to title 2, California Code of Regulations, section 1183.1, subdivision (a)(4).

Rulemaking and Litigation Activities Regarding the Test Claim Statutes and Regulations

The Commission finds that participation in PERB's rulemaking process to implement the test claim statutes and representing the agency in litigation over "ambiguity" in the test claim statutes *are not* activities required by the test claim statutes or regulations. Participation in these activities is discretionary on the part of the local public agency.

Claimant argues that without participation of the employers in the rulemaking process, the regulations would not have addressed the needs of the employers and would have been crafted with only the input of the various unions, resulting in needless expense to all local government employers. Nevertheless, the plain language of the test claim statutes contains no provision requiring local agencies to participate in the rulemaking process, nor to litigate the test claim statutes. Therefore, rulemaking participation and litigation costs are not subject to, or reimbursable pursuant to, article XIII B, section 6.

Agency Shop Arrangement Activities
(Gov. Code, § 3502.5, subds. (b) & (e))

The test claim statutes modified Government Code section 3502.5 to add a new method for creating an agency shop arrangement. Subdivision (b) states that, in addition to being established through negotiation between the local public agency employer and a public employee organization pursuant to subdivision (a), an agency shop arrangement shall be placed in effect upon a signed petition of 30 percent of the employees in a bargaining unit requesting both an agency shop agreement and an election to implement an agency fee arrangement, and the approval of a majority of employees who cast ballots in favor of the agreement. The petition for the agreement may only be filed after the employee organization has requested the public agency employer to negotiate on an agency shop arrangement, and the parties have had 30 calendar days to attempt good faith negotiations in an effort to reach agreement.[35]

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[34] *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 783 *(City of Merced)*.

[35] Government Code section 3502.5, subdivision (b).

Subdivision (e) provides that agency shop arrangements are not applicable to management, confidential, or supervisory employees.[36]

For agency shop arrangements established pursuant to subdivision (b), the election is conducted by a neutral third party jointly selected by the local public agency employer and the employee organization.[37] Where the employer and employee organization cannot agree on a neutral third party, the Department of Industrial Relations, Division of Conciliation, shall conduct the election.[38]

Claimant is requesting reimbursement for: 1) engaging in separate agency shop negotiations for up to 30 days; 2) processing agency shop petitions; 3) participating in meetings with the petitioning union to discuss jointly selecting a neutral person or entity to conduct the agency shop election; 4) participating in meetings with the neutral person or entity, or the State Conciliation Service (Election Supervisor), to reach agreement; 5) compiling and providing the Election Supervisor the necessary unit employee information to verify the 30 percent showing of interest; 6) posting and distributing notices of election; 7) compiling and providing appropriate payroll records for the Election Supervisor; and 8) making employees available to serve as voting place observers. Claimant is also seeking reimbursement for staffing, preparing for, and representing the local public agency in administrative or court proceedings regarding disputes as to management, supervisory and confidential designations, which are excluded from agency shop arrangements.

The plain language of the test claim statutes and regulations regarding subdivision (b) agency shop arrangements *does not* require public agency employers to engage in separate agency shop negotiations for up to 30 days. The test claim statutes state that "[t]he petition [for the agency shop arrangement] may only be filed after the recognized employee organization has requested the public agency to negotiate on an agency shop arrangement and, beginning seven working days after the public agency received this request, the two parties *have had 30 calendar days* to attempt good faith negotiations in an effort to reach agreement." (Emphasis added.) This language does not mandate the filing of a petition or party negotiations.

Claimant states that for the public agency employer to fail to participate in good faith negotiations during the 30-day period is an unfair labor practice, citing title 8, California Code of Regulations, section 32603, subdivision (c), which states it shall be an unfair labor practice for a public agency to "[r]efuse or fail to meet and confer in good faith with an exclusive representative as required by Government Code section 3505 or any local rule adopted pursuant to Government Code section 3507." Section 3505 requires the local public agency to meet and confer in good faith regarding wages, hours and other terms and conditions of employment. Nevertheless, for the reasons stated below, the Commission finds that the test

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[36] Government Code section 3502.5, subdivision (e), formerly subdivision (c); that provision was subsequently amended to delete confidential and supervisory employees (Stats. 2003, ch. 311), but the amendment was not pled in the test claim and thus staff makes no findings with regard to it.

[37] *Ibid.*

[38] *Ibid.*

claim statutes *do not* require the local public agency employer to engage in agency shop negotiations.

The Third Reading Analysis of Senate Bill No. 739 – the test claim statutes – provide the following statements:

> 1. Some public agency employers unfairly withhold or refuse agreement on agency fee arrangements despite a significant interest demonstrated by employees.
>
> 2. The existing MMBA provisions are said to provide employers with an unfair veto authority over such arrangements.
>
> 3. This bill provides employees with an alternative process to obtain an agency fee agreement through a fair, democratic process.[39]

The California Attorney General has interpreted Government Code section 3502.5, subdivision (b), in an opinion finding that the Department of Industrial Relations may conduct an agency shop election during the term of an existing memorandum of understanding (MOU) with an existing agency shop provision if that provision is first rescinded or removed.[40] Citing the Senate Rules Committee Analysis for the test claim statutes, noted above, the Attorney General stated: "It is clear from the legislative history of section 3502.5 that the employee election procedures of subdivision (b) were added to the statute to deal with situations *where the negotiated MOU procedures specified in subdivision (a) proved to be unsuccessful.*" (Emphasis added.)[41] Opinions of the Attorney General, while not binding, are entitled to great weight, and in the absence of controlling authority, these opinions are persuasive 'since the legislature is presumed to be cognizant of that construction of the statute.' [42]

Claimant states in its comments that staff should "consider the fact that agency shop arrangements are no longer just the product of MOU negotiations, but under the terms of the test claim legislation, can be raised at any time during the term of an MOU. This new mandate vests unions with that right, and requires good faith negotiations in a manner and at a time that had never existed prior to the test claim legislation."[43] However, the subdivision (a) agency shop provisions have been in effect since 1981, and nothing in those preexisting provisions restricted negotiations to the time period of MOU negotiations.

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[39] Senate Rules Committee, Office of Senate Floor Analyses, Third Reading Analysis of Senate Bill Number 739 (1999-2000 Regular Session), as amended May 13, 1999, Page 3.

[40] 86 Ops. Cal. Atty. Gen. 169.

[41] *Id.* at page 4.

[42] *Napa Valley Educators' Assn. v. Napa Valley Unified School Dist.* (1987) 194 Cal.App.3rd 243, 251.

[43] Comments on Draft Staff Analysis submitted by City of Sacramento, claimant, on November 9, 2006.

Thus, in accordance with the Attorney General's opinion, the employer-employee negotiations referenced in subdivision (b) are the same negotiations that would occur under subdivision (a), but subdivision (b) merely establishes a date when the employee organization may file the agency shop petition. If the public agency employer refused to negotiate with the employee organization on an agency shop agreement, any resulting "unfair labor practice" would stem from subdivision (a) rather than subdivision (b), the test claim statutes.

Therefore, the Commission finds that the activity of engaging in agency shop negotiations is not required of the public agency employer as a result of the test claim statutes.

The Commission further finds that none of the other activities claimed regarding subdivision (b) agency shop arrangements[44] are required by the test claim statutes or regulations, since, as noted below, no other document that could be considered an "executive order" has been pled indicating that any of those other activities are required.

Government Code section 17553, subdivision (b), states that:

> All test claims shall be filed on a form prescribed by the commission and shall contain at least the following elements and documents:
>
> (1) A written narrative that identifies the specific sections of statutes or executive orders alleged to contain a mandate ...
>
> (3) (A) The written narrative shall be supported with copies of all of the following:
>
> (i) The test claim statute that includes the bill number or executive order, alleged to impose or impact a mandate.

The test claim form filed by claimants does not include a cite to a statute, regulation or executive order requiring the local public agency employer to perform any activities with regard to agency shop elections. Page 6 of the test claim makes a reference to the Department of Industrial Relations (DIR) website, at http://www.dir.ca.gov/csmcs/ase-sb739.html. As of October 5, 2006, that DIR website displays "Procedures for mandated agency shop elections," last updated April 2005. No actual document from the website was filed with the test claim, however, and the website reference itself cannot be considered a "document" filed with the test claim, pursuant to section 17553, subdivision (b)(3). Since those procedures from the website – that may otherwise be expected of public agency employers with regard to subdivision (b) agency shop elections – were not pled, the Commission does not have jurisdiction to make any findings with regard to them.

In comments on the draft staff analysis, claimant asserts that the public agency employer must process agency shop petitions, since "[o]nly the employer possesses the records necessary for compiling the needed information concerning unit employees, in order to ascertain whether the 30% requirement has been met, and to makeup the required lists of qualified voters."

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[44] To the extent that any activities claimed here could result from charges filed with PERB, those activities are addressed under the "PERB Jurisdiction and Administrative Hearings (Gov. Code, § 3509)" heading, *infra*.

However, claimant still has not pled a "document" upon which the Commission has jurisdiction to make a finding as to whether these activities are state-mandated.[45]

Accordingly, the Commission finds that Government Code section 3502.5, subdivision (b), does not impose any state-mandated activities that are subject to article XIII B, section 6.

Agency Shop Rescission Activities
(Gov. Code, § 3502.5, subd. (d))

Government Code section 3502.5, subdivision (d), provides that an agency shop arrangement may be rescinded by a majority vote of all the employees in the unit pursuant to procedures specified or other procedures negotiated by the local public agency employer and the recognized employee organization. Pursuant to the test claim statutes, the agency shop rescission provisions are now "also applicable to an agency shop agreement placed in effect pursuant to subdivision (b)."

Claimant is requesting reimbursement for "processing" agency shop rescission petitions. Although there is no specific requirement in the test claim statutes or regulations to "process" agency shop rescission petitions, the test claim regulations contain one provision regarding agency shop rescissions. Title 8, California Code of Regulations, section 61610, states the following:

> Within 20 days following the filing of the petition to rescind an agency shop agreement or provision, the public agency shall file with the [PERB] 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.

However, title 8, California Code of Regulations, section 61000, states that sections 61000 et seq. are applicable "only where a public agency has adopted such provisions as its local rules or where all parties to a representation case agree to be bound by the applicable PERB Regulations." Thus, any activities in those regulations flow from the discretionary act of adopting them or agreeing to be bound by them, and do not constitute state-mandated activities.[46]

Therefore, Government Code section 3502.5, subdivision (d), does not impose any state-mandated activities that are subject to article XIII B, section 6.

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[45] At the hearing, claimants provided a copy of the "Procedures for mandated agency shop elections" from the DIR website, dated December 2, 2006, which has been placed in the record. No amendment to the test claim was filed and thus the Commission did not have jurisdiction to make any findings on the information provided.

[46] Title 8, California Code of Regulations, section 61000 has been amended since the test claim was filed. However, the amended regulations were not pled and are not addressed in this analysis.

Dues or Service Fee Deductions
(Gov. Code, § 3508.5, subd. (b))

Test claim statute Government Code section 3508.5, subdivision (b), states that "[a] public employer shall deduct the payment of dues or service fees to a recognized employee organization as required by an agency shop arrangement between the recognized employee organization and the public employer."

The claimant is requesting reimbursement for costs to provide staffing to institute and administer procedures for agency fee deductions and their transmittal to the union for agency shop arrangements established pursuant to Government Code section 3502.5, subdivision (b), negotiate with the union concerning those procedures, and represent the agency in the event of PERB intervention regarding disputes.

The Commission finds that the plain language of the statutes requires only that the local public agency cause the dues or service fees to be deducted from the affected employees' wages and transmitted to the union. There is no requirement in the test claim statutes or regulations requiring the agency to institute and administer "procedures," negotiate with the union concerning those procedures, or represent the agency in the event of PERB intervention.[47]

Thus, Government Code section 3508.5, subdivision (b), does impose a state-mandated activity on the local agency — causing the dues or service fees to be deducted and transmitted to the union — which is subject to article XIII B, section 6.

In Lieu Fee Payments
(Gov. Code,§ 3502.5, subd. (c))

Where an agency shop arrangement has been established, Government Code section 3502.5, subdivision (c), provides that employees who conscientiously object to joining or financially supporting public employee organizations shall not be required to join or financially support any public employee organization as a condition of employment. The test claim statutes made this existing provision applicable to agency shop arrangements established under Government Code section 3502.5, subdivision (b).

Conscientious objectors *may* be required to pay sums equal to the dues, initiation or agency shop fees to a nonreligious, nonlabor charitable fund, in lieu of fees paid to the employee organization. Proof of such payments, if they are required, "shall be made on a monthly basis to the public agency as a condition of continued exemption from the requirement of financial support to the public employee organization."

The claimant is requesting reimbursement for costs to institute and administer procedures and documentation for in lieu fee payments of conscientious objectors and their transmittal to appropriate charities, negotiate with the union concerning those procedures, and represent the agency in the event of PERB intervention regarding disputes.

Agency shop arrangements can be established under subdivision (b) without the local public agency employer's approval. Although the employee holding a conscientious objection "*may*

[47] To the extent that any activities claimed here could result from charges filed with PERB, those activities are addressed under the "PERB Jurisdiction and Administrative Hearings (Government Code section 3509)" heading, *infra*.

be required" to make in lieu fee payments, under subdivision (b) agency shop arrangements, that requirement would be established by the employee organization and covered employees, with no discretion on the part of the local public agency employer. Therefore, activities required because of an in lieu fee payment provision of a subdivision (b) agency shop arrangement would not be discretionary.

Based on the plain language of the test claim statutes and regulations, the only activity required of the local public agency employer is to receive the required monthly "proof" of in lieu fee payments. The Department of Finance asserts that since the test claim statutes do not require the local public agency to take any action once the monthly "proof" is received, it disagrees with the finding that such receipt is a state-mandated reimbursable activity. Nevertheless, the verb "receive" is defined as "to take or acquire (something given, offered, or transmitted.),[48] and the Commission finds that "receiving proof of such payments" does constitute an actual activity required by the state of the local public agency employer.

The other activities claimed are not required by the statutes or regulations, and, as a result, are not state-mandated activities.[49]

Thus, Government Code section 3502.5, subdivision (c), does impose a state-mandated activity on the local agency — receiving monthly proof of in lieu fee payments — which is subject to article XIII B, section 6.

PERB Jurisdiction and Administrative Hearings
(Gov. Code, § 3509)

The test claim statutes added provisions granting the PERB jurisdiction over disputes arising under the MMBA, including enforcing and applying local rules and regulations adopted by a local public agency. Government Code section 3509 states:

> (a) The powers and duties of [PERB] described in Section 3541.3 shall also apply, as appropriate, to this chapter and shall include the authority as set forth in subdivisions (b) and (c).
>
> (b) A complaint alleging any violation of this chapter or of any rules and regulations adopted by a public agency pursuant to Section 3507 shall be processed as an unfair practice charge by [PERB]. [PERB] shall apply and interpret unfair labor practices consistent with existing judicial interpretations of this chapter.
>
> (c) [PERB] shall enforce and apply rules adopted by a public agency concerning unit determinations, representation, recognition, and elections.

In its quasi-judicial capacity to resolve employer-employee disputes, PERB has several powers and duties, including the ability to "hold hearings, subpoena witnesses, administer oaths, take the testimony or deposition of any person, and ... to issue subpoenas duces tecum to require

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[48] The American Heritage Dictionary, New College Edition, 1979, page 1087.

[49] To the extent that any activities claimed here result from any charges filed with PERB, those activities are addressed under the "PERB Jurisdiction and Administrative Hearings (Government Code section 3509)" heading, *infra*.

the production and examination of any employer's or employee organization's records, books, or papers relating to any matter within its jurisdiction."[50]

As a result of the test claim statutes, regulations setting forth PERB procedures were modified to reflect their applicability to MMBA disputes. These regulations set forth detailed procedures for conducting initial administrative hearings and administrative appeals of those decisions to the five-member PERB itself, including such matters as time and manner of filing complaints, investigations, subpoenas, depositions, conduct of hearings, rules of evidence, briefs, oral arguments, transcripts, decisions, reconsiderations and appeals.[51]

A complaint under MMBA can be made as an unfair labor practice charge or a request for PERB to review a local public agency employer's action concerning a unit determination, representation, recognition or elections.

The claimant is seeking reimbursement for costs to: 1) respond to appeals made to the PERB of agency actions regarding unit issues, representation matters, recognition, elections and unfair practice determinations; 2) respond to, or file, unfair labor practice charges; 3) participate in PERB's investigation of charges; 4) prepare for hearings before PERB Administrative Law Judges including, but not limited to, the preparation of briefs, documentation, exhibits, witnesses and expert witnesses; 5) present the agency's case before the PERB's Administrative Law Judge, including expert witness fees, increased overtime costs for employee witnesses, closing brief, costs of transcripts and travel expenses; 6) represent the agency at proceedings that appeal PERB Administrative Law Judge decisions to the Board itself, including travel expenses; and 7) develop and provide training in PERB's rules, procedures and decisions for agency supervisory and management personnel, and attorneys.

For the reasons stated below, the Commission finds that the local public agency employer is required to engage in the activities set forth in the PERB procedures when cases are filed with PERB by an entity other than the public agency employer. However, the Commission finds that where a local public agency employer *initiates* a charge or appeal with PERB, that decision is discretionary and thus does not mandate any of the PERB procedures.

Claimant argues that where PERB errs in the interpretation of a law or its application to the facts in a given situation to the detriment of the employer, the employer has no choice but to appeal its decisions; similarly, the employer has no choice but to respond to any union appeal of a PERB decision. Claimant also argues that, in coming under the jurisdiction of PERB, the employer now has no choice but to file an unfair labor practice if the union is engaging in conduct which constitutes a violation of MMBA. The types of actions which can be undertaken by the union, which constitute unfair labor practices and are illegal under MMBA, "include such concerted activities as refusals to perform all required job duties, slow downs, sick outs, rolling strikes and work stoppages."[52]

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[50] Government Code section 3541.3, subdivision (h).

[51] Title 8, California Code of Regulations, sections 31001 et seq.

[52] Comments on Draft Staff Analysis, submitted by claimant City of Sacramento on November 9, 2006, page 3.

Claimant further states that:

> Illegal concerted activities threaten public health, safety and welfare, if for example, emergencies are not promptly responded to; if garbage piles up and is not collected; if sewage is not properly treated and disposed of; if public assistance is not administered and paid as required; and if payroll, accounts payable and accounts receivable are not processed. Furthermore, it is disruptive to agencies if a union were to intimidate or coerce an employee because of the exercise of his or her rights guaranteed by Government Code, section 3502 or any local rule.
>
> Public health and safety can be seriously undermined if a union engages in unfair labor practices which go unchecked. Just as any violation of the MMBA by an employer constitutes an unfair labor practice charge, so too does any violation of the MMBA by an employee organization. This is not the type of conduct which should be countenanced by a finding of 'voluntariness' on the part of the Commission.[53]

The Department of Finance asserts that the public agency employer's PERB activities are discretionary, however, based on the case of *County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805 (*County of Los Angeles II).* That case, in interpreting the holding in *Lucia Mar,*[54] noted that where local entities have alternatives under the statute other than paying the costs in question, the costs do not constitute a state mandate. Finance argues that, in this case, the claimant has "alternatives available in that it may choose to argue an affected case in front of the PERB, it may externally develop a settlement, or it can try to resolve the employment issue internally. Only when the claimant chooses to engage the case within PERB's jurisdiction [which includes responding to charges and appeals filed with PERB] does the claimant then fall within the requirements of that process."[55]

The plain language of the statutes and regulations does not require the local public agency employer to *initiate* charges or appeals to PERB. The cases have found that, in the absence of strict legal compulsion, a local government entity might be "practically" compelled to take an action thus triggering costs that would be reimbursable. The case of *San Diego Unified School Dist.* addressed the compulsion issue in the context of student expulsions. There, the court found that in the absence of legal compulsion, compulsion might nevertheless be found when a school district exercised it discretion in deciding to expel a student for a serious offense to other students or property, in light of the state constitutional requirement to provide safe schools.[56]

Here, claimant is seeking reimbursement for costs to file unfair labor practice charges with PERB, or appeal decisions of PERB, claiming it has no choice in the matter when the union engages in such concerted activities as refusals to perform all required job duties, slow downs, sick outs, rolling strikes and work stoppages, because the public health and safety is at risk.

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[53] *Ibid.*

[54] *Lucia Mar, supra,* 44 Cal.3d 830.

[55] Comments from Department of Finance, submitted December 20, 2002, page 2.

[56] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, at page 887, footnote 22.

This argument falls short of the circumstances discussed in *San Diego Unified School Dist*, where the constitutional requirement for safe schools might practically compel the school district to expel a student. And since the public agency employer has alternatives to initiating an unfair labor practice or filing an appeal with PERB, such as resolving employment issues internally or developing settlements, the *County of Los Angeles II* case is applicable to find that no mandate exists. Moreover, the Supreme Court in *San Diego Unified School Dist.* underscored the notion that a state mandate is found when the state, rather than a local official, has made the decision to require the costs to be incurred.[57] In this case, the state has not required the local public agency employer to file any charge or appeal with PERB.

Thus, the Commission finds that where a *local public agency employer* files a charge or appeal with PERB, that decision is *discretionary*, and the PERB procedures are only triggered because of the employer's discretionary decision to bring the case forward.

However, since cooperation with PERB and its subpoena powers is needed to resolve MMBA disputes adjudicated by PERB, the local public agency employer does not have any alternatives and is required to engage in the activities set forth in the PERB procedures when such disputes are filed with PERB by an entity other than the local public agency employer.

Therefore, the Commission finds that only the following events trigger the requirement for the local public agency employer to participate and respond in accordance with the PERB procedures: 1) an unfair labor practice charge, or a request to review a local public agency employer's action concerning a unit determination, representation, recognition or election, is filed with PERB by an entity *other than the local public agency employer*; 2) a decision by a PERB agent, PERB Administrative Law Judge, or the five-member PERB is appealed by an entity *other than the local public agency employer*; or 3) the local public agency employer is ordered by PERB to join in a matter. Accordingly, the following activities are state-mandated, and are subject to article XIII B, section 6:

a. procedures for filing documents or extensions for filing documents with PERB (Cal. Code Regs., tit.8, §§ 32132, 32135);

b. proof of service (Cal. Code Regs., tit. 8, § 32140);

c. responding to subpoenas and investigative subpoenas (Cal. Code Regs., tit. 8, §§ 32149, 32150);

d. conducting depositions (Cal. Code Regs., tit. 8, § 32160);

e. participating in hearings and responding as required by PERB agent, PERB Administrative Law Judge, or the five-member PERB (Cal. Code Regs., tit. 8, §§ 32168, 32170, 32175, 32176, 32180, 32205, 32206, 32207, 32209, 32210, 32212, 32310, 32315, 32375, 32455, 32620, 32644, 32649, 32680, 32980, 60010, 60030, 60050, and 60070); and

f. filing and responding to written motions in the course of the hearing (Cal. Code Regs., tit. 8, § 32190).

As noted above, any action by the local public agency initiating a case or amending it, or an appeal of a decision by a PERB agent, PERB Administrative Law Judge, or the PERB itself, is

[57] *Id.* at page 880.

discretionary and therefore not required. Accordingly, the following activities initiated by the local public agency are *not* state-mandated activities:

- file an unfair practice charge (Cal. Code of Regs., tit. 8, §§ 32602, 32604, 32615, 32621, 32625)
- appeal of a ruling on a motion (Cal. Code of Regs., tit. 8, § 32200);
- amendment of complaint (Cal. Code of Regs., tit. 8, §§ 32625, 32648);
- appeal of an administrative decision, including request for stay of activity and appeal of dismissal (Cal. Code of Regs., tit. 8, §§ 32350, 32360, 32370, 32635, and 60035);
- statement of exceptions to Board agent decision (Cal. Code of Regs., tit. 8, § 32300);
- request for reconsideration (Cal. Code of Regs., tit. 8, § 32410); and
- request for injunctive relief (Cal. Code of Regs., tit. 8, § 32450).

Furthermore, costs for related expert witness services, travel expenses and PERB training are not required by the test claim statutes or regulations and, thus, are not state-mandated activities.

Court Appeals of Final PERB Decisions
(Tit. 8, Cal. Code Regs., § 32500)

Section 32500, subdivision (a), states that "[a]ny party in a representation case by the Board itself ... may file a request to seek judicial review within 20 days following the date of service of the decision." Subdivision (b) states that "[a]ny party shall have 10 days following the date of service of the request to file a response."

Claimant is requesting reimbursement for costs to prepare for and represent the agency in superior and appellate courts regarding appeals of final PERB decisions. The plain language of the test claim statutes and regulations does not require the local public agency employer to perform any activities with regard to superior or appellate court appeals of final PERB decisions. Therefore, these costs are not subject to article XIII B, section 6.

Summary of State-Mandated Activities

In summary, the Commission finds the following activities are state-mandated, and therefore subject to article XIII B, section 6:

1. Deduct from employees' wages the payment of dues or service fees required pursuant to an agency shop arrangement that was established under subdivision (b) of Government Code section 3502.5, and transmit such fees to the employee organization. (Gov. Code § 3508.5, subd. (b))
2. Receive from the employee any proof of in lieu fee payments made to charitable organizations required pursuant to an agency shop arrangement that was established under subdivision (b) of Government Code section 3502.5. (Gov. Code § 3502.5, subd. (c))
3. Follow PERB procedures in responding to charges or appeals filed with PERB, by an entity *other than* the local public agency employer, concerning an unfair labor practice,

a unit determination, representation by an employee organization, recognition of an employee organization, or an election. Mandated activities are:

a. procedures for filing documents or extensions for filing documents with PERB (Cal. Code Regs., tit.8, §§ 32132, 32135);

b. proof of service (Cal. Code Regs., tit. 8, § 32140);

c. responding to subpoenas and investigative subpoenas (Cal. Code Regs., tit. 8, §§ 32149, 32150);

d. conducting depositions (Cal. Code Regs., tit. 8, § 32160);

e. participating in hearings and responding as required by PERB agent, PERB Administrative Law Judge, or the five-member PERB (Cal. Code Regs., tit. 8, §§ 32168, 32170, 32175, 32176, 32180, 32205, 32206, 32207, 32209, 32210, 32212, 32310, 32315, 32375, 32455, 32620, 32644, 32649, 32680, 32980, 60010, 60030, 60050, and 60070); and

f. filing and responding to written motions in the course of the hearing (Cal. Code Regs., tit. 8, § 32190).

B. Do the Mandated Activities Constitute a Program?

The courts have held that the term "program" within the meaning of article XIII B, section 6 means a program 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. [58]

Here, the activities mandated by the test claim statutes and regulations constituted modifications to employer-employee relations under the MMBA. The provisions are applicable to "every governmental subdivision, every district, every public and quasi-public corporation, every public agency and public corporation and every town, city, county, city and county and municipal corporation ..." and thus impose unique requirements on local governments and do not apply generally to all residents and entities in the state. Therefore, the mandated activities constitute a "program" within the meaning of article XIII B, section 6.

Issue 2: Do the activities mandated by the test claim statutes and regulations constitute a "new program or higher level of service" within the meaning of article XIII B, section 6 of the California Constitution?

A test claim statute or executive order imposes a "new program or higher level of service" when the mandated activities: a) are new in comparison with the pre-existing scheme; and b) result in an increase in the actual level or quality of governmental services provided by the local public agency.[59] The first step in making this determination is to compare the mandated activities with the legal requirements in effect immediately before the enactment of the test claim statutes and regulations.

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[58] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56 (*County of Los Angeles).*

[59] *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 877; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

Prior to 2001, the MMBA contained provisions for an agency shop arrangement to be formed when an agreement was negotiated between the local public agency employer and the recognized employee organization.[60] The test claim statutes provided additional authorization for formation of an agency shop without a negotiated agreement between a local public agency employer and a recognized organization, and made the existing agency shop rescission provisions applicable to the new type of agency shop arrangement.[61] Thus, mandated activities related to the second category of agency shop formation, and rescission of such agency shop arrangements, are new in comparison to the pre-existing scheme.

Prior to 2001, the MMBA provided that nothing could affect the right of a public employee to authorize deduction of employee organization dues from his or her wages.[62] The test claim statutes *require* a local public agency employer to deduct the payment of dues or service fees to a recognized employee organization from the employee's wages pursuant to an agency shop arrangement,[63] regardless of how such arrangement is formed. These required deductions are new in comparison to the pre-existing scheme.

Prior to 2001, disputes arising under the MMBA were dealt with via local public agency rules adopted under MMBA, and any appeals were made in the courts. The test claim statutes brought MMBA disputes under the jurisdiction of PERB,[64] and thus local public agency employers are now subject to the procedures enacted by PERB for dispute resolution. Since these PERB dispute resolution procedures are now applicable to local public agency employers subject to MMBA, the activities required are new in comparison to the pre-existing scheme.

The Department of Finance points out that the test claim statutes provided specific language expressing the Legislature's intent that since the duties are similar to requirements in existing law, the statutes do not create a reimbursable state mandate. The language states:

> The Legislature finds and declares that the duties and responsibilities of local agency employer representatives under this chapter are substantially similar to the duties and responsibilities required under existing collective bargaining enforcement procedures and therefore the costs incurred by the local agency employer representatives in performing those duties and responsibilities under this chapter are not reimbursable as state-mandated costs.[65]

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[60] Government Code section 3502.5, subdivision (a).

[61] Government Code section 3502.5, subdivisions (b) and (d).

[62] Government Code section 3508.5, subdivision (a).

[63] Government Code section 3508.5, subdivision (b).

[64] Government Code section 3509.

[65] Government Code section 3500, subdivision (b).

However, courts have stated that "legislative disclaimers, findings and budget control language are not determinative to a finding of a state mandated reimbursable program ..."[66] Moreover, the courts have determined that:

> [T]he statutory scheme contemplates that the Commission [on State Mandates], as a quasi-judicial body, has the sole and exclusive authority to adjudicate whether a state mandate exists. Thus, any legislative findings are irrelevant to the issue of whether a state mandate exists ...[67]

Therefore, the Legislature's findings that the test claim statutes do not impose state-mandated costs may not be relied upon by the Commission as a basis for its conclusion.

The Department contends that the duties already performed by local public agencies under the existing process include responding to unfair labor practice charges, compiling payroll and personnel records, and participating in meetings and negotiations with unions. The Commission does not dispute that some similar activities may have been performed under the existing process. However, many of those activities were previously triggered for different purposes, i.e., for *negotiated* agency shop arrangements, and performed in a different forum, i.e., the courts. Therefore, as set forth above, the Commission finds that there are specific activities that are newly mandated by the test claim statutes and regulations.

Furthermore, since the mandated activities require the local agency to perform new tasks in service of improving local public agency employer-employee relations, the new activities do result in an increase in the actual level of services provided by the local public agency.

Accordingly, the Commission finds that the activities mandated by test claim statutes and regulations constitute a "new program or higher level of service" on local agencies within the meaning of article XIII B, section 6.

Issue 3: Do the activities mandated by the test claim statutes and regulations impose "costs mandated by the state" within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514?

For the mandated activities to impose a reimbursable, state-mandated program, two additional elements must be satisfied. First, the activities must impose costs mandated by the state pursuant to Government Code section 17514. Second, the statutory exceptions to reimbursement listed in Government Code section 17556 cannot apply.

Government Code section 17514 defines "costs mandated by the state" as any increased cost a local agency is required to incur as a result of a statute that mandates a new program or higher level of service. The claimant alleged in the test claim that the costs for activities necessary to comply with the test claim statutes and regulations are "well in excess of $200 per year."[68]

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[66] *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, citing *Carmel Valley Fire Protection District v. State of California* (1987) 190 Cal.App.3d 521, 541.

[67] *County of Los Angeles, supra,* 32 Cal.App.4th 805, 819.

[68] At the time the test claim was filed, Government Code section 17564, subdivision (a), stated that the no test claim or reimbursement claim shall be made unless the claim exceeds $200.

Thus, there is evidence in the record, signed under penalty of perjury, that there are increased costs as a result of the test claim statutes and regulations.

Furthermore, for the reasons stated below, the Commission finds that none of the statutory exceptions to reimbursement listed in Government Code section 17556 are applicable. Government Code section 17556 states that:

> The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency ..., if, after a hearing, the commission finds that:
>
> ...
>
> (e) The statute, executive order, or an appropriation in a Budget Act or other bill provides for offsetting savings to local agencies ... that result in no net costs to the local agencies ..., 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.

The Department of Finance asserts that the test claim statutes provide for offsetting savings to local agencies since the provisions shift local employers from a process wherein they rely on the court system to litigate unfair labor practice charges to a process where they would rely on PERB for those types of decisions; thus, the costs that the employers would incur through the process with PERB would have been incurred if the unfair labor practice claims were still being litigated in the court system. Additionally, to the extent that PERB settles claims before they ever reach a courtroom, the provisions would result in savings to the public agencies.

Claimant contends, however, that there is no merit to the Department's statement that PERB settling claims before they ever reach a courtroom would result in savings to the public agencies, because this conjecture disregards the fact that a union facing the prospect of formal, more costly court proceedings could just as likely be a more compelling inducement for settling claims. Moreover, under PERB's regulations, settlement conferences occur only after the agency participates in the investigative process and responds to the unfair practice charge.

In response, the Department asserts that the PERB administrative process truncates the claimant's participation and provides operational savings through a faster adjudication, whereas, in comparison, a court process could take years to finalize. Since the claimant has not provided any statistical, fiscal, or numerical data showing case cost trends evidencing otherwise, the Department's position regarding offsetting savings continues to have merit.

The legislative history indicates that one factor in adopting the test claim statutes was the fact that, at the time, MMBA had no effective enforcement procedures except for time-consuming and expensive court action.[69] The proponents of the bill argued that "[o]ne of the basic principles of an effective collective bargaining law should be to provide for enforcement by an

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That section was subsequently modified in Statutes 2002, chapter 1124, to increase the minimum to $1,000. If this test claim is approved, any reimbursement claims must exceed $1,000.

[69] Senate Bill 739, Bill Analysis, Assembly Committee on Appropriations, August 9, 2000, hearing, page 2.

administrative agency with expertise in labor relations," and the appropriate role for courts is to serve as an appellate body.[70] Thus, there could be savings using the PERB process.

However, other than the above-noted speculations, there is no evidence in the record to support the notion that "[t]he statute, executive order, or an appropriation in a Budget Act or other bill provides for offsetting savings to local agencies ... that result in no net costs to the local agencies ..., 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."

As a final matter, any cost savings must be analyzed in light of Government Code section 17517.5, which states that "'[c]ost savings authorized by the state' means any decreased costs that a local agency ... realizes as a result of any statute enacted or any executive order adopted that permits or requires the discontinuance of or a reduction in the level of service of an existing program that was mandated before January 1, 1975." Here, although MMBA disputes were resolved in the courts prior to 1975, there was no state-mandated activity regarding court resolution prior to 1975. Thus, the Commission finds Government Code section 17517.5 is inapplicable for this analysis.

Accordingly, the Commission finds that the activities mandated by the test claim statutes and regulations, as set forth above, impose "costs mandated by the state" within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

CONCLUSION

The Commission finds that the test claim statutes and regulations impose a reimbursable state-mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution, and Government Code section 17514, for the following activities:

1. Deduct from employees' wages the payment of dues or service fees required pursuant to an agency shop arrangement that was established under subdivision (b) of Government Code section 3502.5, and transmit such fees to the employee organization. (Gov. Code § 3508.5, subd. (b).)
2. Receive from the employee any proof of in lieu fee payments made to charitable organizations required pursuant to an agency shop arrangement that was established under subdivision (b) of Government Code section 3502.5. (Gov. Code § 3502.5, subd. (c).)
3. Follow PERB procedures in responding to charges filed with PERB, by an entity *other than* the local public agency employer, concerning an unfair labor practice, a unit determination, representation by an employee organization, recognition of an employee organization, or an election. Mandated activities are:
   a. procedures for filing documents or extensions for filing documents with PERB (Cal. Code Regs., tit.8, §§ 32132, 32135 (Register 2001, No. 49));
   b. proof of service (Cal. Code Regs., tit. 8, § 32140 (Register 2001, No. 49));
   c. responding to subpoenas and investigative subpoenas (Cal. Code Regs., tit. 8, §§ 32149, 32150 (Register 2001, No. 49));

[70] *Ibid.*

d. conducting depositions (Cal. Code Regs., tit. 8, § 32160 (Register 2001, No. 49));

e. participating in hearings and responding as required by PERB agent, PERB Administrative Law Judge, or the five-member PERB (Cal. Code Regs., tit. 8, §§ 32168, 32170, 32175, 32176, 32180, 32205, 32206, 32207, 32209, 32210, 32212, 32310, 32315, 32375, 32455, 32620, 32644, 32649, 32680, 32980, 60010, 60030, 60050, and 60070 (Register 2001, No. 49)); and

f. filing and responding to written motions in the course of the hearing (Cal. Code Regs., tit. 8, § 32190 (Register 2001, No. 49)).

The City of Los Angeles, the County of Los Angeles, and peace officers as defined in Penal Code section 830.1 are not subject to PERB jurisdiction.[71] Any other statute, regulation or executive order that is not addressed above does not constitute a reimbursable state-mandated program pursuant to article XIII B, section 6 of the California Constitution or Government Code section 17514.

[71] Government Code sections 3509, subdivision (d), and 3511.

Adopted: 10/22/80
Amended: 8/19/81
Amended: 3/17/83
Amended: 9/29/83
Amended: 12/15/83
Amended: 6/27/85
Amended: 10/20/88
Amended: 7/22/93
Amended: 8/20/98
Amended: 1/27/00
Amended: 1/29/10

AMENDMENT TO PARAMETERS AND GUIDELINES

Statutes 1975, Chapter 961,
Statutes 1991, Chapter 1213,

Collective Bargaining

and

Collective Bargaining Agreement Disclosure
05-PGA 48 (CSM 97-TC-08, 98-4425-PGA-12)

This amendment is effective beginning with claims filed for the
July 1, 2005 through June 30, 2006 period of reimbursement

An act to repeal Article 5 (commencing with Section 13080) of Chapter 1 of Division 10 of the Education Code, and to add Chapter 10.7 (commencing with Section 3540) to Division 4 of Title 1 of the Government Code, relating to public educational employment relations, and making an appropriation. This bill, which was operative July 1, 1976, repealed the Winton Act and enacted provisions to meet and negotiate, thereby creating a collective bargaining atmosphere for public school employers. Chapter 1213, Statutes of 1991 added section 3547.5 to the Government Code. Government Code section 3547.5 requires school districts to publicly disclose major provisions of a collective bargaining agreement after negotiations, but before the agreement becomes binding.

A. Operative Date of Mandate

The provisions relating to the creation, certain duties of, and appropriations for the Public Employment Relations Board were operative on January 1, 1976. The provisions relating to the organizational rights of employees, the representational rights of employee organizations, the recognition of exclusive representatives, and related procedures were operative on April 1, 1976. The balance of the added provisions were operative on July 1, 1976.

The provisions relating to Collective Bargaining Agreement Disclosure added by Chapter 1213, Statutes of 1991 were operative on January 1, 1992. The California Department of Education issued Management Advisory 92-01 dated May 15, 1992, to establish the public disclosure format for school district compliance with the test claim statute.

B. Period of Claim

This amendment is effective beginning with claims filed for the July 1, 2005 through June 30, 2006 period of reimbursement.

Only costs incurred after January 1, 1978 may be claimed. The initial claim should have included all costs incurred for that portion of the fiscal year from January 1, 1978, to June 30, 1978.

Pursuant to language included in the 1980-81 budget, claims shall no longer be accepted for this period. All subsequent fiscal year claims should be filed with the State Controller's Office for processing.

The test claim on Chapter 1213, Statutes of 1991 was filed with the Commission on December 29, 1997. Accordingly, the period of reimbursement for the provisions relating to disclosure begins July 1, 1996. Only disclosure costs incurred after July 1, 1996 may be claimed.

C. Mandated Cost

Public school employers have incurred costs by complying with the requirements of Section 3540 through 3549.1 established by Chapter 961, Statutes of 1975. In addition, some costs have been incurred as a result of compliance with regulations promulgated by the Public Employment Relations Board (PERB). Since these activity costs (referred to collectively as "Rodda Act" activities and costs in this document), in many respects, simply implement the original legislation, it is intended that these parameters and guidelines have embodied those regulations or actions taken by PERB prior to December 31, 1978.

D. County Superintendent of Schools Filing

If the County Superintendent of Schools files a claim on behalf of more than one school district, the costs of the individual school district must be shown separately.

E. Governing Authority

The costs for salaries and expenses of the governing authority, for example the School Superintendent and Governing Board, are not reimbursable. These are costs of general government as described by the federal guideline entitled "Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Grants and Contracts with the Federal Government," ASMB C-10.

F. Certification

The following certification must accompany all claims:

I DO HEREBY CERTIFY:

THAT Section 1090 to 1096, inclusive, of the Government Code and other applicable provisions of the law have been complied with; and

THAT I am the person authorized by the local agency to file claim for funds with the State of California.

_____Signature of Authorized Representative

Date

_____Title Telephone Number

G. Claim Components (Reimbursable Costs)

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct based upon personal knowledge." Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

Reimbursable activities mandated by Chapter 961, Statutes of 1975 and Chapter 1213, Statutes of 1991 are grouped into seven components, G1 through G7. The cost of activities grouped in components G1, G2, and G3 are subject to offset by the historic cost of similar Winton Act activities as described in H2.

1. Determination of appropriate bargaining units for representation and determination of the exclusive representatives.

   a. Unit Determination: Explain the process for determining the composition of the certificated employee council under the Winton Act, and the process for determining appropriate bargaining units including the determination of management, supervisory and confidential employees, under Chapter 961, Statutes of 1975, if such activities were performed during the fiscal year being claimed.

   b. Determination of the Exclusive Representative: Costs may include receipt and posting of the representation and decertification notices and, if necessary, adjudication of such matters before the PERB.

   c. Show the actual increased costs including salaries and benefits for employer representatives and/or necessary costs for contracted services for the following functions:

      (1) Development of proposed lists for unit determination hearings if done during the fiscal year being claimed. Salaries and benefits must be shown as described in Item H3.

      (2) Representation of the public school employer at PERB hearings to determine bargaining units and the exclusive representative. Actual preparation time will be reimbursed. Salaries and benefits must be shown as described in Item H3.

      (3) If contracted services are used for either (a) or (b) above, contract invoices must be submitted with the claim. Contract costs must be shown as described in Item H5.

      (4) Indicate the cost of substitutes for release time for employer and exclusive bargaining unit witnesses who testify at PERB hearings. The job classification of the witnesses and the date they were absent must also be submitted. Release time for employee witnesses asked to attend the PERB hearing by bargaining units will not be reimbursed.

      (5) Identify the travel costs for employer representatives to any PERB hearing. Reimbursement shall reflect the rate specified by the regulations governing employees of the local public school employer.

      (6) Cost of preparation for one transcript per PERB hearing will be reimbursed.

2. Elections and decertification elections of unit representatives are reimbursable in the event the Public Employment Relations Board determines that a question of representation exists and orders an election held by secret ballot.

   a. Submit with your claim any Public Employment Relations Board agreements or orders which state how the election must be held.

   b. If a precinct voting list was required by PERB, indicate the cost of its development. Salaries and benefits must be shown as described in Item H3.

   c. The salary and benefits of a school employer representative, if required by PERB for time spent observing the counting of ballots, will be reimbursed. The representatives' salary must be shown as described in Item H3.

3. Negotiations: Reimbursable functions include -- receipt of exclusive representative's initial contract proposal, holding of public hearings, providing a reasonable number of copies of the employer's proposed contract to the public, development and presentation of the initial district contract proposal, negotiation of the contract, reproduction and distribution of the final contract agreement.

   a. Show the costs of salaries and benefits for employer representatives participating in negotiations. Contracted services will be reimbursed. Costs for maximum of five public school employer representatives per unit, per negotiation session will be reimbursed. Salaries and benefits must be shown as described on Page 7, Item H3.

   b. Show the costs of salaries and benefits for employer representatives and employees participating in negotiation planning sessions. Contracted services for employer representatives will be reimbursed. Salaries and benefits must be shown as described in Item H3.

   c. Indicate the cost of substitutes for release time of exclusive bargaining unit representatives during negotiations. Give the job classification of the bargaining unit representative that required a substitute and dates the substitute worked. Substitute costs for a maximum of five representatives per unit, per negotiation session will be reimbursed. The salaries of union representatives are not reimbursable.

   d. Reasonable costs of reproduction for a copy of the initial contract proposal and final contract, which is applicable and distributed to each employer representative (i.e. supervisory, management, confidential) and a reasonable number of copies for public information will be reimbursed. Provide detail of costs and/or include invoices. Costs for copies of a final contract provided to collective bargaining unit members are not reimbursable.

   e. If contract services are used for a. and/or b. above, contract invoices must be submitted. Contract costs must be shown as described in Item H5.

f. A list showing the dates of all negotiation sessions held during the fiscal year being claimed must be submitted.

4. Impasse Proceedings

a. Mediation

(1) Costs for salaries and benefits for employer representative personnel are reimbursable. Contracted services will be reimbursed. Costs for a maximum of five public school employer representatives per mediation session will be reimbursed. Salaries and benefits must be shown as described in Item H3.

(2) Indicate the costs of substitutes for the release time of exclusive bargaining unit representatives during impasse proceedings. The job classification of the employee witnesses and the date they were absent shall be indicated. Costs for a maximum of five representatives per mediation session will be reimbursed.

(3) Renting of facilities will be reimbursed.

(4) Costs of the mediator will not be reimbursed.

(5) If contract services are used under 1, contract invoices must be submitted with the claim. Contract costs must be shown as described in Item H5.

b. Fact-finding publication of the findings of the fact-finding panel. (To the extent fact-finding was required under the Winton Act during the 1974-75 fiscal year, costs are not reimbursable.)

(1) All costs of the school employer panel representative shall be reimbursed. Salaries and benefits must be shown as described in Item H3.

(2) Fifty percent of the costs mutually incurred by the fact-finding panel shall be reimbursed. This may include substitutes for release time of witnesses during fact-finding proceedings, and the rental of facilities required by the panel.

(3) Special costs imposed on the public school employer for the development of unique data required by a fact-finding panel will be reimbursed. Describe the special costs and explain why this data would not have been required by a fact-finding panel under the Winton Act. Salaries and benefits must be shown as described in Item H3.

5. Collective Bargaining Agreement Disclosure

Disclosure of collective bargaining agreement *after* negotiation and *before* adoption by governing body, as required by Government Code section 3547.5 and California State Department of Education Management Advisory 92-01 (or subsequent replacement), attached to the amended Parameters and Guidelines. Procedures or formats which

exceed those or which duplicate activities required under any other statute or executive order are not reimbursable under this item.

a. Prepare the disclosure forms and documents, as specified.

b. Distribute a copy of the disclosure forms and documents, to board members, along with a copy of the proposed agreement, as specified.

c. Make a copy of the disclosure forms and documents and of the proposed agreement available to the public, prior to the day of the public meeting, as specified.

d. Training employer's personnel on preparation of the disclosure forms and documents, as specified.

e. Supplies and materials necessary to prepare the disclosure forms and documents, as specified.

For 5. a., b., and c., list the date(s) of the public hearing(s) at which the major provisions of the agreement were disclosed in accordance with the requirements of Government Code section 3547.5 and Department of Education Advisory 92-01 (or subsequent replacement).

6. Contract administration and adjudication of contract disputes either by arbitration or litigation. Reimbursable functions include grievances and administration and enforcement of the contract.

a. Salaries and benefits of employer personnel involved in adjudication of contract disputes. Contracted services will be reimbursed. Salaries and benefits must be shown as described in Item H3.

b. Indicate substitutes necessary for release time of the representatives of an exclusive bargaining unit during adjudication of contract disputes. The job classification of the employee witnesses and the dates they were absent shall also be indicated.

c. Reasonable costs incurred for a reasonable number of training sessions held for supervisory and management personnel on contract administration/interpretation of the negotiated contract are reimbursable. Contract interpretations at staff meetings are not reimbursable. Personal development and informational programs, i.e., classes, conferences, seminars, workshops, and time spent by employees attending such meetings are not reimbursable. Similarly, purchases of books and subscriptions for personal development and information purposes are not reimbursable. Salaries and benefits must be shown as described in Item H3.

d. The cost of one transcript per hearing will be reimbursed.

e. Reasonable public school employer costs associated with a contract dispute which is litigated are reimbursable, as follows:

1. Reasonable public school employer costs associated with issues of contract disputes which are presented before PERB are reimbursable.

2. Reasonable public school employer cost of litigation as a defendant in the court suit involving contract disputes may be reimbursable.

3. Where the public school employer is the plaintiff in a court suit to appeal a PERB ruling, costs are reimbursable only if the public school employer is the prevailing party (after all appeals, final judgment).

4. No reimbursement is allowed where the public school employer has filed action directly with the courts without first submitting the dispute to PERB, if required.

5. No reimbursement shall be provided for filing of amicus curiae briefs.

f. Expert witness fees will be reimbursed if the witness is called by the public school employer.

g. Reasonable reproduction costs for copies of a new contract which is required as a result of a dispute will be reimbursed.

h. If contract services are used under "a" above, copies of contract invoices must be submitted with your claim. Contract costs must be shown as described in Item H5.

i. Public school employer's portion of arbitrators' fees for adjudicating grievances, representing 50% of costs, will be reimbursed.

7. Unfair labor practice adjudication process and public notice complaints.

a. Show the actual costs for salaries and benefits of employer representatives. Services contracted by the public school employer are reimbursable. Salaries and benefits must be shown as described in Item H3.

b. Indicate cost of substitutes for release time for representatives of exclusive bargaining units during adjudication of unfair practice charges.

c. The cost of one transcript per PERB hearing will be reimbursed.

d. Reasonable reproduction costs will be reimbursed.

e. Expert witness fees will be reimbursed if the witness is called by the public school employer.

f. If contract services are used under "a" above, contract invoices must be submitted. Contract costs must be shown as described in Item H5.

g. No reimbursement for an appeal of an unfair labor practice decision shall be allowed where the Public Employee Relations Board is the prevailing

party.

h. No reimbursement for filing of amicus curiae briefs shall be allowed.

H. Supporting Data for Claims--Report Format for Submission of Claim.

1. Description of the Activity: Follow the outline of the claim components. Cost must be shown separately by component activity. Supply workload data requested as part of the description to support the level of costs claimed. The selection of appropriate statistics is the responsibility of the claimant.

2. Quantify "Increased" Costs: Public school employers will be reimbursed for the "increased costs" incurred as a result of compliance with the mandate.

a. For component activities G1, G2, and G3:

1. Determination of the "increased costs" for each of these three components requires the costs of current year Rodda Act activities to be offset [reduced] by the cost of the base-year Winton Act activities. The Winton Act base-year is generally fiscal year 1974-75.

Winton Act base-year costs are adjusted by the Implicit Price Deflator prior to offset against the current year Rodda Act costs for these three components. The Implicit Price Deflator shall be listed in the annual claiming instructions of the State Controller.

2. The cost of a claimant's current year Rodda Act activities are offset [reduced] by the cost of the base-year Winton Act activities either: by matching each component, when claimants can provide sufficient documentation to segregate each component of the Winton Act base-year activity costs; or, by combining all three components when claimants cannot satisfactorily segregate each component of Winton Act base-year costs.

b. For component activities G4, G6, and G7:

All allowable activity costs for these three Rodda Act components are "increased costs" since there were no similar activities required by the Winton Act; therefore, there is no Winton Act base-year offset to be calculated.

BASE YEAR	ADJUSTMENT
1974-1975	1.490 1979-80 FY
"	1.560 1980-81 FY
"	1.697 1981-82 FY
"	1.777 1982-83 FY
"	1.884 1983-84 FY

3. Salary and Employees' Benefits: Show the classification of the employees involved, amount of time spent, and their hourly rate. The worksheet used to compute the hourly salary rate must be submitted with your claim. Benefits are

reimbursable. Actual benefit percent must be itemized. If no itemization is submitted, 21 percent must be used for computation of claim costs. Identify the classification of employees committed to functions required under the Winton Act and those required by Chapter 961, Statutes of 1975.

4. Services and Supplies: Only expenditures which can be identified as a direct cost as a result of the mandate can be claimed.

5. Professional and Consultant Services: Separately show the name of professionals or consultants, specify the functions the consultants performed relative to the mandate, length of appointment, and the itemized costs for such services. Invoices must be submitted as supporting documentation with your claim. The maximum reimbursable fee for contracted services is $135 per hour. Annual retainer fees shall be no greater than $135 per hour. Reasonable expenses will also be paid as identified on the monthly billings of consultants. However, travel expenses for consultants and experts (including attorneys) hired by the claimant shall not be reimbursed in an amount higher than that received by State employees, as established under Title 2, Div. 2, Section 700ff, CAC.

6. Allowable Overhead Cost: School districts must use the Form J-380 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

   County Offices of Education must use the Form J-580 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

   Community College Districts must use one of the following three alternatives:

   - A Federally-approved rate based on OMB Circular A-21;
   - The State Controller's FAM-29C which uses the CCFS-311; or
   - Seven percent (7%).

I. Record Retention

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter[1] is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section G, must be retained during the period subject to audit. If the Controller has initiated an audit during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

[1] This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

MMBA FACTFINDING REQUEST

DO NOT WRITE IN THIS SPACE: Case No.: Date Filed:

INSTRUCTIONS: A request for factfinding pursuant to Government Code section 3505.4 must be filed with the appropriate regional office (see PERB Regulation 32075). Proof of service must accompany the request.

1. **EMPLOYER**

Name: City of Glendora

Address: 116 E. Foothill Blvd.
Glendora, CA

Agent to be contacted:

Name: Victoria Cross

Title: HR Director

Agency/Firm:

Address: 116 E. Foothill Blvd.
Glendora, CA

Telephone: 626-914-8204

E-mail Address: vcross@ci.glendora.ca.us

2. **EXCLUSIVE REPRESENTATIVE**

Name: Glendora Municipal Employees' Assn.

Address: c/o Wendell Phillips 33173 Mulholland Hwy
Malibu, CA 90265

Agent to be contacted:

Name: Wendell Phillips

Title: General Counsel

Union/Firm: GMEA

Address: 33173 Mulholland Hwy.
Malibu, CA 90265

Telephone: 310-697-6964

E-mail Address: wphillipsesq@gmail.com

3. TITLE/DESCRIPTION OF ESTABLISHED UNIT

Glendora Municipal Employees' Bargaining Unit

4. TYPE OF DISPUTE (e.g., initial contract, successor contract, reopeners)

Impasse - Successor Contract

5. STATUS OF NEGOTIATIONS/MEET AND CONFER

(a) Date impasse was declared by a party/parties: 6-11-2015

(b) Date a mediator was appointed (if applicable):

DECLARATION

The parties have been unable to effect a settlement. Therefore, pursuant to PERB Regulation 32802, we request that the parties' differences be submitted to a factfinding panel.

NAME OF AUTHORIZED REPRESENTATIVE: Wendell Phillips

SIGNATURE OF AUTHORIZED REPRESENTATIVE: _____

Title: GMEA General Counsel

Date: GMEA General Counsel

(Attach a completed Proof of Service form.)

Los Angeles Regional Office
700 N. Central Avenue, Suite 200
Glendale, CA 91203-3219
(818) 551-2822

Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
(916) 322-3198

San Francisco Regional Office
1330 Broadway, Suite 1532
Oakland, CA 94612-2514
(510) 622-1016

PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Los Angeles, State of CA. I am over the age of 18 years. The name and address of my residence or business is Phillips & Rickards
33173 Mulholland Hwy., Malibu, CA 90265

On 6-16-2015 (Date), I served the MMBA Factfinding Request (Description of document(s))

(Description of document(s) continued)

on the parties listed below (include name, address and, where applicable, fax number) by (check the applicable method or methods):

___ placing a true copy thereof enclosed in a sealed envelope for collection and delivery by the United States Postal Service or private delivery service following ordinary business practices with postage or other costs prepaid;

___ personal delivery;

x ___ facsimile transmission in accordance with the requirements of PERB Regulations 32090 and 32135(d).

(Include here the name, address and, where applicable, fax number of the Respondent and any other parties served.)

Victoria Cross
HR Director
City of Glendora
116 E. Foothill Blvd.
Glendora, CA
vcross@ci.glendora.ca.us
626-914-8221

Melanie Chaney - legal counsel for city
Liebert Cassidy
6033 West Century Blvd.
Los Angeles, CA 90045
310-337-0837

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on 6-16-2015 (Date), at Malibu (City) CA (State).

Mary Dee Rickards
(Type or print name)

(Signature)

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

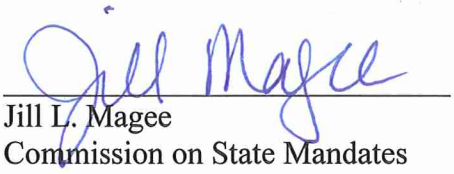
I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On June 23, 2016, I served the:

> **Test Claim Filing; Notice of Complete Test Claim Filing; and Schedule for Comments**
> *Local Public Employee Organizations: Impasse Procedures*, 15-TC-01
> Government Code Sections 3505.4, 3505.5, and 3505.7;
> Statutes 2011, Chapter 680 (AB 646)
> City of Glendora, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

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 23, 2016 at Sacramento, California.



Jill L. Magee
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 6/22/16

Claim Number: 15-TC-01

Matter: Local Agency Employee Organizations: Impasse Procedures

Claimant: City of Glendora

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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, § 1181.3.)

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