

ITEM 5
SUPPLEMENTAL STAFF ANALYSIS
RECONSIDERATION OF PRIOR FINAL DECISION

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

As Added by Statutes 2000, Chapter 906 (S.B. 402)

Binding Arbitration

01-TC-07

EXECUTIVE SUMMARY

This is a supplement to the final staff analysis for the reconsideration of a prior final decision that was adopted on July 28, 2006, on the *Binding Arbitration* test claim. This analysis is necessary to take into consideration the attached cost information filed by the County of Napa on January 23, 2007, who at that time joined as a co-claimant on the test claim.

Background

The final staff analysis was issued on January 11, 2007, with a recommendation to deny the test claim. Although the staff analysis found that the test claim statutes did mandate certain activities for the period during which the statutes were presumed constitutional, and did constitute a “program” as well as a “new program or higher level of service,” the statutes did not impose “costs mandated by the state” because there was no evidence in the record at the time to indicate the claimant incurred any costs to comply with the mandated activities during the reimbursement period, i.e., January 1, 2001 through April 20, 2003.

On January 23, 2007, the County of Napa joined as co-claimant on this test claim, pursuant to California Code of Regulations, title 2, section 1183, subdivision (h), and provided a declaration outlining costs incurred as a result of the test claim statutes. The County of Napa declared that, after the passage of the test claim statutes, and during the reimbursement period of January 1, 2001 through April 20, 2003, the County did engage in binding interest arbitration with the Napa County Deputy Sheriffs’ Association to the final award of a decision by the arbitration panel. The County asserts that the costs to engage in this process exceeded \$10,000.

The final staff analysis addressed four issues:

1. Is the prior final decision on the *Binding Arbitration* test claim, adopted on July 28, 2006, contrary to law?
2. Are the test claim statutes subject to article XIII B, section 6 of the California Constitution?
3. Do the test claim statutes constitute a “new program or higher level of service” within the meaning of article XIII B, section 6 of the California Constitution?

4. Do the test claim statutes impose “costs mandated by the state” within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514?

Analysis

This supplemental analysis replaces the analysis of Issue 4 only; that is, whether the test claim statutes impose “costs mandated by the state.”

The final staff analysis found that the following activities were state-mandated, pursuant to article XIII B, section 6, for the reimbursement period of January 1, 2001 through April 20, 2003:

1. Selecting an arbitration panel member (Code Civ. Proc. § 1299.4, subd. (b)).
2. Submitting the last best final offer of settlement to the arbitration panel (Code Civ. Proc. § 1299.4, subd. (b)).
3. Once arbitration is triggered under Code of Civil Procedure section 1299.4, the following activities required by the arbitration panel or to participate in the arbitration process:
 - a. Meet with the arbitration panel (Code Civ. Proc. § 1299.5, subd. (a)).
 - b. Participate in inquiries or investigations (Code Civ. Proc. § 1299.5, subd. (a)).
 - c. Participate in mediation (Code Civ. Proc. § 1299.5, subd. (a)).
 - d. Participate in hearings (Code Civ. Proc. § 1299.5, subd. (a)).
 - e. Respond to subpoenas and subpoenas duces tecum (Code Civ. Proc. § 1299.5, subd. (b)).
 - f. Respond to or make demands for witness lists and/or documents (Code Civ. Proc. § 1282.2, subd. (a)(2)).
 - g. Make application and respond to deposition requests (Code Civ. Proc. §§ 1283, 1283.05).
 - h. Conduct discovery or respond to discovery requests (Code Civ. Proc. § 1283.05).

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. Government Code section 17564, subdivision (a), states that:

No claim shall be made pursuant to Sections 17551 and 17561, nor shall any payment be made on claims submitted pursuant to Sections 17551 and 17561, unless these claims exceed one thousand dollars (\$1,000) ...

In the final staff analysis, it was noted that the claimant, City of Palos Verdes Estates, stated on the record at the July 28, 2006, Commission hearing that it had not reached the stage in negotiations wherein binding arbitration under the test claim statutes was triggered, and thus no mandated costs could have been incurred. Staff therefore recommended denial of the test claim.

However, co-claimant County of Napa provided a declaration stating that the binding arbitration process was triggered, pursuant to Code of Civil Procedure sections 1299 et. seq., and County staff participated in the process during the reimbursement period by: 1) engaging in mediation; 2) designating an arbitration panel member; 3) meeting with the arbitrators; 4) gathering and

exchanging requested information, exhibits, and witness lists; 5) conducting discovery; and 6) participating in a three-day arbitration hearing.¹ Therefore, the County of Napa did engage in some of the state-mandated activities. The County further stated that its costs to participate in these activities exceeded \$10,000. Thus, there is now evidence in the record, signed under penalty of perjury, that there are increased costs mandated by the state pursuant to Government Code sections 17514 and 17564 of at least \$1,000.

Government Code section 17556 lists several exceptions which preclude the Commission from finding costs mandated by the state. Staff finds that none of the exceptions are applicable to deny this test claim.

Accordingly, staff finds that the activities mandated by the test claim statutes do 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

Pursuant to the final staff analysis, staff finds that the prior Statement of Decision adopted on July 28, 2006, was contrary to law, and, in applying the appropriate law to the test claim, the test claim statutes mandate the following activities:

1. Selecting an arbitration panel member (Code Civ. Proc. § 1299.4, subd. (b)).
2. Submitting the last best final offer of settlement to the arbitration panel (Code Civ. Proc. § 1299.4, subd. (b)).
3. Once arbitration is triggered under Code of Civil Procedure section 1299.4, the following activities required by the arbitration panel or to participate in the arbitration process:
 - a. Meet with the arbitration panel (Code Civ. Proc. § 1299.5, subd. (a)).
 - b. Participate in inquiries or investigations (Code Civ. Proc. § 1299.5, subd. (a)).
 - c. Participate in mediation (Code Civ. Proc. § 1299.5, subd. (a)).
 - d. Participate in hearings (Code Civ. Proc. § 1299.5, subd. (a)).
 - e. Respond to subpoenas and subpoenas duces tecum (Code Civ. Proc. § 1299.5, subd. (b)).
 - f. Respond to or make demands for witness lists and/or documents (Code Civ. Proc. § 1282.2, subd. (a)(2)).
 - g. Make application and respond to deposition requests (Code Civ. Proc. §§ 1283, 1283.05).
 - h. Conduct discovery or respond to discovery requests (Code Civ. Proc. § 1283.05).

These activities constitute a “program” as well as a “new program or higher level of service,” as addressed in the final staff analysis. Furthermore, the activities impose “costs mandated by the state” within the meaning article XIII B, section 6 of the California Constitution, and Government Code section 17514. Because the test claim statutes were declared unconstitutional

¹ Declaration of Jacqueline M. Gong, Deputy County Counsel, Office of County Counsel, County of Napa, page 3, attached.

on April 21, 2003, the reimbursement period is limited to January 1, 2001 through April 20, 2003.

Recommendation

Staff recommends the Commission partially approve this test claim and adopt the final staff analysis with regard to Issues 1, 2 and 3, and this supplemental analysis with regard to Issue 4.



NAPA COUNTY

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JAN 23 2007
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**REQUEST TO JOIN AS CO-TEST CLAIMANT
BY COUNTY OF NAPA**

Binding Arbitration
(01-TC-07)

Code of Civil Procedures Sections 1281.1, 1299, 1299.2,
1299.3, 1299.4, 1299.5, 1299.6, 1299.7, 1299.8 and 1299.9
As Added by Statutes 2000, Chapter 906

The County of Napa hereby requests that it be allowed to join the City of Palos Verdes Estates as a co-test claimant in the above-entitled test claim matter. It has recently come to the attention of the County of Napa that the Commission's Staff has recommended denial of the test claim based upon the fact that the City of Palos Verdes Estates did not have any costs associated with Chapter 402, Statutes 2000 ("SB 402"), and is so recommending for the hearing on January 25, 2007.

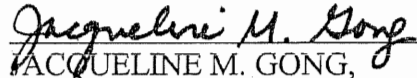
After the passage of SB 402, the County of Napa did engage in Binding Interest Arbitration with the Napa County Deputy Sheriffs' Association to the final award of a decision by the arbitration panel. To date, the County of Napa has not totaled its expenditures by all staff, counsel, and retained outside counsel, much less expenses, but knows these costs exceed \$10,000.00.

We understand that due to the statute of limitations, we cannot commence a test claim on our own, and unless we join in on the test claim brought by the City of Palos Verdes Estates, we will be forever precluded from recovering our costs incurred in complying with SB 402 from its inception until it was declared unconstitutional.

On January 23, 2007, the Napa County Board of Supervisors authorized this request to the Commission on State Mandates to allow the County of Napa to join in as a co-test claimant in this matter. To the extent that the City of Palos Verdes Estates has plead that SB 402 constitutes a reimbursable mandate, we join in and adopt its pleadings as though they were the County's.

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 that the foregoing is true and correct to the best of my knowledge. Executed on January 23, 2007, in Napa, California.


JACQUELINE M. GONG,
Deputy County Counsel
County of Napa

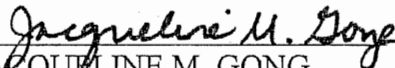
DECLARATION OF JACQUELINE M. GONG

IN SUPPORT OF THE COUNTY OF NAPA
IN ITS REQUEST TO THE COMMISSION ON STATE MANDATES
TO BE JOINED AS CO-TEST CLAIMANT
IN THE TEST CLAIM OF THE CITY OF PALOS VERDES ESTATES

1. I have served in the Office of the Napa County Counsel as a Deputy County Counsel since November 1998, primarily assigned to personnel matters. From January through September 2001, I participated in the binding interest arbitration process between the County and the Napa County Deputy Sheriffs' Association ("DSA") to the final award of an arbitration decision on the disputed economic issues arising from negotiations. DSA is the employee organization representing law enforcement employees of the County.
2. Beginning in July 2000, I served on the County of Napa's bargaining team in its negotiations of a successor Memorandum of Understanding ("MOU") with DSA. Negotiations continued until the parties reached impasse in October of 2000. As provided in the County's Employer-Employee Relations Policy, the parties agreed to participate in mediation, meeting on four occasions in November, December, and then in January and February of 2001.
3. During the mediation process on January 16, 2001, DSA requested the disputed economic issues be submitted to arbitration pursuant to California Code of Civil Procedure Section 1299 et seq. (SB 402). The mediation process continued through February 20th at which time the County designated its partisan arbitrator. The DSA also selected its partisan arbitrator. In March the County and DSA then jointly designated an impartial arbitrator to serve on the arbitration panel as required by SB 402. The parties agreed to commence the arbitration hearing on April 17, 2001. Meeting with the neutral arbitrator, the parties identified the disputed economic issues and established a hearing timetable for the exchange of requested information, exhibits, and witness lists, and the parties agreed on hearing dates. Out of this meeting, the parties further settled on two economic proposals on retirement and dental benefits.
4. Pursuant to agreed upon timelines, the parties conducted discovery and exchanged documents before the hearing set to commence on May 22nd. This entailed not only the time of the negotiating team, but other county staff in gathering the requisite documents and in the conduct of discovery.
5. Five days before the hearing, the parties each submitted their last, best offer from negotiations as required under SB 402. A three-day hearing was held before the arbitration panel, followed by additional submissions of written evidence and legal arguments. In September 2001 the panel issued its decision. The parties made no amendments to the decision. Following a waiting period of five days, the binding decision was made public by the County.

6. The full cost of this interest arbitration process to the County is yet to be fully determined, but exceeds \$10,000.00 based alone on legal fees and expenses incurred. In the course of participating in the arbitration process, the County's Human Resources Director served on the arbitration panel. Responses to discovery requests involved extensive staff time and resources from the Human Resources Division, County Executive Office and Auditor-Controller's Department. The County also incurred costs for legal counsel, both in-house and retained outside counsel. Expenses were further incurred for a number of expert witnesses in the arbitration hearing.
7. I plan on attending the hearing of the Commission on State Mandates as the representative of the County of Napa, and will be available to provide additional testimony and answer any questions that the Commission Staff, interested state agencies, or the Commission itself may have.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed on January 23, 2007, in Napa, California.


JACQUELINE M. GONG

PROOF OF SERVICE

I am a resident of the United States and of the State of California. I am employed in the County of Napa. My business address is 1195 Third Street, Suite 301, Napa, California. My business telephone is (707) 253-4521; fax number (707) 259-8220. I am over the age of eighteen years. I am not a party to the within action or proceeding. On January 23, 2007, I served the following document(s);

REQUEST TO JOIN AS CO-TEST CLAIMANT BY COUNTY OF NAPA

I am familiar with the practice of Napa County Counsel's Office, for the collection and processing of correspondence for mailing with the United States Postal Service. In accordance with the ordinary course of business, the above-mentioned document(s) would have been deposited with the United States Postal Service on the same day on which it was placed at Napa County Counsel's Office.

- by placing, or causing to be placed, a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Napa County, California, addressed as set forth below. (CCP § 1012, 1013, and 1013(a))

- by personally delivering, or causing to be delivered, a true copy thereof to the person(s) and at the address(es) set forth below. (CCP §1011)
Time: _____ Person served: _____

- by personally delivering, or causing to be delivered, a true copy thereof to the office/court folder of the addressee.

- by causing a true copy thereof to be delivered to the person(s) at the address(es) set forth below, by and/or through the services of:
 - a. United Parcel Service
 - b. Federal Express
 - c. Express Mail
 - d. Facsimile (Followed by First Class Mail; Rules of Court §2008) Pursuant to Rules of Court §2008(e), this document was sent by facsimile transmission and this transmission was reported as complete and without error. A copy of this transmission report shall be attached to this proof of service and kept with the file.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on January 23, 2007, at Napa, California.


SUSAN M. INGALLS

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