

## **ITEM 8**

### **FINAL STAFF ANALYSIS**

### **PROPOSED PARAMETERS AND GUIDELINES**

Government Code Sections 3502.5 and 3508.5

Statutes 2000, Chapter 901

California Code of Regulations, Title 8, Sections 32132, 32135, 32140, 32149, 32150, 32160, 32168, 32170, 32175, 32176, 32180, 32190, 32205, 32206, 32207, 32209, 32210, 32212, 32310, 32315, 32375, 32455, 32620, 32644, 32649, 32680, 32980, 60010, 60030, 60050, 60070

Register 2001, Number 49

*Local Government Employee Relations*  
01-TC-30

City of Sacramento and County of Sacramento, Claimants

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### **EXECUTIVE SUMMARY**

The test claim statute amended the Meyers-Milias-Brown Act (hereinafter the MMBA), created an additional method to establish an agency shop arrangement, and expanded the jurisdiction of the Public Employment Relations Board (hereinafter “PERB”) over local agencies. Since 2001, PERB’s new MMBA jurisdiction includes resolution of disputes and enforcement of statutory duties and rights of all local public employees except peace officers, management employees, and the City and County of Los Angeles. The test claim regulations adopted by PERB in 2001 established procedures for the new MMBA jurisdiction.

On December 4, 2006, the Commission on State Mandates determined that the *Local Government Employment Relations* test claim statutes and specified regulations, adopted in 2001, impose a reimbursable state-mandated program on local agencies.<sup>1</sup>

On January 8, 2007, the claimant submitted proposed parameters and guidelines.<sup>2</sup> On February 2, 2007, the Department of Finance (DOF) submitted comments on the claimant’s proposed parameters and guidelines.<sup>3</sup> Staff reviewed the claimant’s proposal and the DOF’s comments. Non-substantive, technical changes were made for purposes of clarification, consistency with language in recently adopted parameters and guidelines, and conformity to the Statement of Decision. Also, staff reviewed and analyzed claimant’s proposed new activities and recommends approval of those activities that are reasonably necessary to implement the state mandate.

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<sup>1</sup> See Exhibit A, Statement of Decision.

<sup>2</sup> See Exhibit B, claimant’s proposed parameters and guidelines.

<sup>3</sup> See Exhibit C, Department of Finance comments.

On May 7, 2009, claimants filed comments in support of the draft staff analysis; on May 11, 2009, the California State Association of Counties and the League of California Cities filed comments requesting clarification of one issue: informal conferences on unfair practice charges. On May 13, 2009, DOF filed comments concurring with the draft staff analysis. The final staff analysis and proposed parameters and guidelines include technical changes to clarify that preparation for and participation in informal conferences to clarify issues and explore the possibility of a settlement are reimbursable.<sup>4</sup>

### **Recommendation**

Staff recommends that the Commission adopt the final proposed parameters and guidelines, as modified by staff, beginning on page 13.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

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<sup>4</sup> See Exhibit F for comments on draft staff analysis.

## **Claimants**

City of Sacramento and County of Sacramento

## **Chronology**

08/01/02	Claimants file test claim with the Commission on State Mandates (Commission)
12/04/06	Commission adopts Statement of Decision
12/07/06	Commission staff issues adopted Statement of Decision
01/08/07	Claimants submit proposed parameters and guidelines
02/02/07	DOF files comments on the proposed parameters and guidelines
04/20/09	Commission staff issues draft staff analysis and proposed parameters and guidelines, as modified by staff
05/07/09	Claimants file response to draft staff analysis
05/11/09	California State Association of Counties and League of California Cities file joint comments on draft staff analysis and proposed parameters and guidelines, as modified by staff
05/13/09	DOF files comments on the draft staff analysis and proposed parameters and guidelines, as modified by staff
05/14/09	Commission staff issues final staff analysis and proposed parameters and guidelines, as modified by staff

## **Summary of the Mandate**

On December 4, 2006, the Commission on State Mandates determined that the *Local Government Employment Relations* test claim statutes and regulations impose a reimbursable state-mandated program on local agencies 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 practice, a unit determination, and representation by an employee organization, recognition of an employee organization, or election. Mandated activities as added by Register 2001, Number 49, are as follows:
  - 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. respond to subpoenas and investigative subpoenas (Cal. Code Regs., tit. 8, §§ 32149, 32150);
- d. conduct depositions (Cal. Code Regs., tit. 8, § 32160);
- e. participate in hearings and respond 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. file and respond to written motions in the course of the hearing (Cal. Code Regs. tit. 8, § 32190).

On January 8, 2007, the claimant submitted proposed parameters and guidelines.

On February 2, 2007, the DOF commented on the claimant's proposed parameters and guidelines.<sup>5</sup> DOF's comments are addressed in the analysis. The draft staff analysis and proposed parameters and guidelines were issued on April 20, 2009. Comments were filed by claimant, DOF, and the California State Association of Counties (CSAC) and League of California Cities (League).

The claimants and DOF support the draft staff analysis and proposed parameters and guidelines. However, staff makes minor clarifying revisions to address CSAC and the League's comments which are addressed below.

## **Discussion**

### **Non-Substantive, Technical Changes to Sections II, III, V, VI**

Staff reviewed the proposed parameters and guidelines and the comments received. Non-substantive, technical changes were made for purposes of clarification, consistency with language in recently adopted parameters and guidelines, and conformity to the Statement of Decision. The technical changes proposed by staff are described below.

#### *II. Eligible Claimants*

The claimant proposed that "Any county, city, or city and county, special district or other local agency subject to the Meyers-Milias-Brown Act that incurs increased costs as a result of this reimbursable state-mandated program is eligible to claim reimbursement of those costs." Staff added a sentence to clarify that the City of Los Angeles and the County of Los Angeles are not eligible claimants because they are specifically excluded from PERB jurisdiction pursuant to Government Code section 3507.

#### *III. Period of Reimbursement*

This section was updated to conform to statutory amendments (2008) which eliminated filing reimbursement claims based on estimated costs.

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<sup>5</sup> See Exhibit C.

## *V. Claim Preparation and Submission*

### *B. Indirect Costs*

The current boilerplate language allows claimants to utilize the procedure provided in “Office of Management and Budget (OMB) Circular A-87 Attachments A and B” for the calculation of indirect costs.

Commission staff recently learned that this document is now cited as 2 CFR Part 225, Appendix A and B (OMB Circular A-87). The CFR citation has been verified and staff recommends updating this citation throughout Section V.

## **Substantive Changes to Section IV, Reimbursable Activities**

### *IV. Reimbursable Activities*

The Reimbursable Activities section of the parameters and guidelines includes a description of the specific costs and types of costs that are reimbursable, including one-time costs and on-going costs, and a description of the most reasonable methods of complying with the mandate. “The most reasonable methods of complying with the mandate” are those methods not specified in statute or executive order that are necessary to carry out the mandated program.<sup>6</sup>

Claimant proposes the following reimbursable activities:

### **One Time Activities**

- a. Establish procedures and documentation for deduction from employees’ wages the payment of dues, or service fees, charitable organization as appropriate required pursuant to an agency shop agreement.
- b. Develop and provide training for employees charged with responsibility for responding to PERB administrative actions, including attorneys, supervisory and management personnel. (One time per employee).
- c. Establishment of procedures and systems for handling of PERB matters, including calendaring, docketing and file management systems.

### **On-Going Activities**

- a. Deduct from employees’ wages the payment of dues or service fees required pursuant to an agency shop arrangement and transmit such fees to the employee organization.
- b. Receive, verify and file proof of in lieu fee payments, received from the employee, made to charitable organizations pursuant to an agency shop arrangement.
- c. When a person or entity other than the public entity files with the PERB an unfair labor practice, unit determination, representation by an employee organization, petition for injunctive relief, recognition of an employee organization, or an election, the following activities are reimbursable:
  1. Filing of documents or requests for extension of time to file documents with PERB.

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<sup>6</sup> See California Code of Regulations, title 2, section 1183.1, subdivision (a)(4).

2. Preparation for conferences and hearings before PERB Board agents and Administrative Law Judges including, but not limited to, preparation of briefs, documentation and evidence, exhibits, witnesses and expert witnesses.
3. Proof of service, including mailing and service costs.
4. Responding to subpoenas and investigative subpoenas, including the time spent obtaining the information or documentation requested in the subpoena, and copying and service charges.
5. The conduct of depositions, including service of subpoenas, deposition reporter and transcription fees, expert witness fees, preparation for the deposition and the time of any governmental employee or attorney incurred in the conduct of the deposition.
6. Preparation for and participation in any hearing as required by any PERB agent, PERB Administrative Law Judge, or the five-member PERB, including preparation of witnesses, evidence, exhibits, expert witnesses, witnesses, and briefs.
7. The preparation, research, and filing of motions and responding to written motions in the course of a hearing.

Staff reviewed the claimant's proposed language and DOF's comments, and proposes the following changes (see "strikeout and underline" for staff's proposed changes):

### **One-Time Activities**

Claimant proposed the following one-time activities:

1. Establish procedures and documentation for deduction from employees' wages the payment of dues, or service fees, including transmittal of such payments, and handling proof of 'in lieu' fee payments made to charitable organizations as appropriate required by the agency shop agreement established pursuant to Government Code section 3502.5, subdivisions (b) and (c).
2. Develop and provide training for employees charged with responsibility for responding to PERB administrative actions, including attorneys, supervisory and management personnel. (One-time per employee).
3. Establish procedures and systems for handling of PERB matters, including calendaring, docketing and file management systems.

Staff modified proposed activity A.1 to conform the activity to the test claim statute. No substantive changes were made by staff to proposed activities A.2 and A.3.

### *Training*

In rebuttal comments to the DOF's comments on the original test claim filing, claimant asserted that "[i]t is unreasonable for an employer not to be familiar with the more complex processes and procedural requirements of the PERB.<sup>7</sup> The regulations contain a "plethora of procedural rules and timelines with which compliance must be had." The Public Employment Relations Board,

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<sup>7</sup> See Exhibit D, Response to Department of Finance.

2000-2001 Annual Report, dated October 15, 2001, contains in an appendix of Board decisions, a summary of cases which were dismissed either for failing to meet the timelines, or for lack of a *prima facie* case. Without adequate training, employers would needlessly be subject to various proceedings brought by individuals and unions when there was no basis for the action. Claimant also asserts that this is a situation that warrants continual training. From the Annual Report, it is evident that the PERB is continually issuing decisions, and there is further litigation which results in published opinions, all of which can impact an employer. To not be kept current on the latest developments of the PERB could result in a more costly impact to the employer.

Despite claimants' arguments, the Commission found that PERB training is not explicitly required by the test claim statutes or regulations and, thus, is not a state-mandated activity. However, because of the complex process and procedural requirements of the PERB regulations, staff finds that developing and providing training for employees charged with responsibility for responding to PERB administrative actions, including attorneys, supervisory and management personnel on a one-time per employee basis, is the most reasonable method of complying with the mandate. Staff further finds that establishment of procedures and systems for handling PERB matters, including calendaring, docketing and file management systems are the most reasonable method of complying with the mandate.

Therefore, staff recommends approval of the one-time activities as modified by staff.

### **Ongoing Activities**

The claimant proposed the following ongoing activities (normal text), and staff proposes the following clarifying changes (strikeout and underline), as discussed below:

*Agency Shop Agreements Established by Signed Petition and Election (Gov. Code, § 3502.5, subd. (b).)*

Deduct from employees' wages the payment of dues or service fees required pursuant to an agency shop arrangement and transmit such fees to the employee organization.

On a monthly basis, receive from the employee verify and file proof of lieu payments in the sum equal to the dues, initiation fees or agency shop fees, received from the employee, made to a charitable organization pursuant to Government Code section 3502.5, subdivision (c), as required by pursuant to an agency shop arrangement established by signed petition and election pursuant to Government Code section 3502.5, subdivision (b).

Staff reviewed claimant's proposed language and comments filed by the DOF.<sup>8</sup> DOF states that the plain language of the test claim legislation only requires that local agencies receive proof that in lieu fee payments have been made; therefore verifying and filing this information should not constitute reimbursable activities. Staff agrees, and strikes "verify and file" and makes other technical changes to conform the proposed activity to the test claim statute.

### *Scope of Reimbursable State-Mandated PERB Activities*

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 the

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<sup>8</sup> See Exhibits C and D.

production and examination of any employer's or employee organization's records, books, or papers relating to any matter within its jurisdiction. To implement the test claim statutes, PERB procedures are implemented through regulations, setting 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.

The Commission found 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 found 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 proposed the following language to define the scope of reimbursable state-mandated PERB activities:

3. When a person or entity other than the public entity files with the PERB an unfair practice charge, unit determination, representation by an employee organization, ~~petition for injunctive relief~~, recognition of an employee organization, or an election request, or the public agency employer is ordered by PERB to join in a matter, the following activities are reimbursable:

Staff recommends deletion of "petition for injunctive relief" because it is inconsistent with the Commission's Statement of Decision. The claimant sought 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 Commission found that the plain language of the test claim statutes and regulations do 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.

Claimant proposed the following language to obtain reimbursement for conferences and hearings before PERB Board agents and Administrative Law Judges:

c. Preparation for conferences and hearings before PERB Board agents and PERB Administrative Law Judges including, but not limited to, preparation of briefs, documentation and evidence, exhibits, witnesses and expert witnesses.

In the draft staff analysis, staff added a citation to California Code of Regulations, title 8, section 32170.

On May 11, 2009, CSAC and the League requested that the proposed parameters and guidelines be clarified to include as reimbursable costs preparation for and participation in informal conferences. The CSAC/League letter states:

Under the PERB process, a Board agent may conduct an informal conference to clarify issues and explore the possibility of a voluntary settlement. Cities and counties are not given the option of whether to attend and participate in these informal conferences. Instead, they are 'directed to attend' by the Board agent.

In practice, informal conferences are a routine part of the unfair practices charge process. PERB's guidance on how to file an unfair practice charge notes that the next step after issuance of a complaint is the informal conference. The guidance states that after a Board agent issues a complaint, the case 'will then proceed to an informal settlement conference.'

The Statement of Decision finds that the PERB 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.

The Commission found 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. The reimbursable activities detailed in the Statement of Decision cite regulations that authorize PERB Board agents to conduct informal conferences to clarify issues and explore the possibility of a voluntary settlement for matters involving representation issues (Cal. Code Regs., tit. 8, §§ 32170 and 60030). However, section 32650 which provides for an informal conference that is part of the investigatory process for unfair practice charges is not cited, although specifically pled.

Staff agrees with CSAC and the League that it is necessary to clarify whether informal conferences on unfair practice charges are reimbursable.

Based on the Commission's finding that the public agency employer is required to engage in the activities set forth in the PERB procedures, staff finds that "preparation for and participation in an informal conference" on an unfair practice charge filed by a person or entity other than the public agency employer, is the most reasonable method for the public agency employer to *engage in the activities set forth in the PERB procedures*. Therefore, staff recommends approval of this activity and staff's proposed clarifying changes to reimbursable activity 3.c., as stated below:

c. Preparation for and participation in informal conferences and hearings as required by any before PERB Board agents and PERB Administrative Law Judges to clarify issues and explore the possibility of a voluntary settlement including, but not limited to, preparation of briefs, documentation and evidence, exhibits, witnesses and expert witnesses. (Cal. Code Regs., tit. 8, s § 32170, subd. (e) and § 32650)

Staff also eliminated "and hearings" because it duplicates reimbursable activity 3.f. below.

*Preparation for and Participation in any PERB Hearing*

f. Preparation for and participation in any hearing as required by any PERB Board agent, PERB Administrative Law Judge, or the five-member PERB, including preparation of witnesses, evidence, exhibits, expert witnesses, witnesses, and briefs. (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

Claimant requests reimbursement for the activity of “preparation” for PERB hearings ... because “preparation for a hearing” is the most reasonable method of complying with the mandate to participate in a PERB hearing.

DOF commented that preparation for hearings is not a new activity, as local agencies previously prepared similar documentation for court hearings under the process in place for resolution of unfair labor practice cases prior to enactment of the test claim language.<sup>9</sup>

Staff disagrees. The PERB decision-making process is quasi-judicial and is not identical to the procedures for responding to Writs of Mandate. There are specific PERB procedural regulations, which the Commission determined to be reimbursable. These are not the same as local rules of court. These regulations require local agency representatives to be prepared for any hearing as required by any PERB agent, Administrative Law Judge, General Counsel, or the five-member PERB.

Claimant explains that the ease with which unions and employees can file charges with the PERB as compared to filing court petitions results in a substantial increase in the number of filings to which the employers must respond ... the procedures for responding to Writs of Mandate are generally less burdensome and time consuming for employers than the multi-layered administrative procedures required under the PERB’s regulations ....<sup>10</sup> Based on claimant’s contentions, staff finds that the activity of “preparation for hearing” is the most reasonable method of complying with the mandate to “participate in a PERB hearing.” Therefore, staff recommends approval of this activity.

For this activity, the Commission’s decision includes the following regulatory citations: California Code of Regulations, title 8, sections 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 staff proposes adding these citations to the proposed parameters and guidelines.

All of these regulations were added or amended by Register 2001, Number 49 and were determined to be reimbursable by the Commission. On May 10, 2006, regulation sections 60010, 60030, 60050, and 60070 related to petitions for board review were repealed by Register 2006, Number 15. Because of this repeal, staff proposes to add clarifying language to the parameters and guidelines that will state effective May 11, 2006, activities related to petitions for board review that are based on former sections 60010, 60030, 60050, 60070 are not reimbursable. (See Non-Reimbursable Activities, discussed below.)

#### *Repeal and Rerumbering of Regulations*

Generally, the same rules of statutory construction apply when interpreting administrative regulations as apply when interpreting statutes. (*Cal. Drive-In Restaurant Assn. v. Clark* (1943) 22 Cal.2d 287, 292.) Education Code section 3 provides: “[t]he provisions of this code, insofar as they are substantially the same as existing statutory provisions relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments.” This is in accordance with the California Supreme Court decision, which held that “[w]here there is an express repeal of an existing statute, and a re-enactment of it at the same time, or a repeal and a

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<sup>9</sup> See Exhibit C.

<sup>10</sup> See Exhibit D.

re-enactment of a portion of it, the re-enactment neutralizes the repeal so far as the old law is continued in force. It operates without interruption where the re-enactment takes effect at the same time.” (*In re Martin’s Estate* (1908) 153 Cal. 225, 229.)

The proposed parameters and guidelines did not include citations to new regulatory sections that were alleged to be the reenactment of sections 60010, 60030, 60050, and 60070 of the PERB regulations. Therefore, staff makes no findings on the potential reenactment of sections 60010, 60030, 60050, and 60070.

### **Non-Reimbursable Activities**

Staff recommends adding a section identifying Non-Reimbursable Activities. The Commission’s decision identifies activities initiated by a public agency that are not state-mandated activities. Staff recommends that this list be included following identification of reimbursable activities. In the final proposed parameters and guidelines, staff cited to PERB regulation section 32650 (informal conferences for unfair practice charges) under Non-Reimbursable activity 1. a, “File an unfair practice charge. Staff also recommends adding to this list, exclusions for peace officers as defined in Penal Code section 830.1 and activities based on regulations sections 60010, 60030, 60050, and 60070. And also in the final version, staff corrected the effective date to read “May” instead of “June” in C.3.

### **C. Non-Reimbursable Activities**

1. The following activities initiated by the local public agency are *not* state-mandated activities:
  - a. File an unfair practice charge (Cal. Code of Regs., tit. 8, §§ 32602, 32604, 32615, 32621, 32625, 32650)
  - b. Appeal of a ruling on a motion (Cal. Code of Regs., tit. 8, § 32200);
  - c. Amend complaint (Cal. Code of Regs., tit. 8, §§ 32625, 32648);
  - d. 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);
  - e. Statement of exceptions to Board agent decision (Cal. Code of Regs., tit. 8, § 32300);
  - f. Request for reconsideration (Cal. Code of Regs., tit. 8, § 32410); and,
  - g. Request for injunctive relief (Cal. Code of Regs., tit. 8, § 32450).
2. Sections 3501, 3507.1 and 3509 of the Government Code do not apply to persons who are peace officers as defined in section 830.1 of the Penal Code. Therefore, increased costs related to peace officers are ineligible for reimbursement under this program. (Gov. Code, § 3511.)
3. Effective May 11, 2006, activities related to petitions for board review pursuant to former sections 60010, 60030, 60050, and 60070 of California Code of Regulations, title 8, are not reimbursable.

### **Staff Recommendation**

Staff recommends that the Commission adopt the final proposed parameters and guidelines, as modified by staff, beginning on page 13.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

## **PROPOSED PARAMETERS AND GUIDELINES, AS MODIFIED BY STAFF**

***Local Government Employment Relations***

01-TC-30

~~City and County of Sacramento, Claimants~~

Government Code Sections 3502.5 and 3508.5

Statutes 2000, Chapter 901 (SB 739)

California Code of Regulations, Title 8, Sections 31000 to 61630 32132, 32135, 32140, 32149,  
32150, 32160, 32168, 32170, 32175, 32176, 32180, 32190, 32205, 32206, 32207, 32209, 32210,  
32212, 32310, 32315, 32375, 32455, 32620, 32644, 32649, 32680, 32980, 60010, 60030, 60050,  
60070

Register 2001, Number 49

***Local Government Employee Relations***

01-TC-30

City of Sacramento and County of Sacramento, Claimants

### **I. SUMMARY OF THE MANDATE**

The test claim legislation statute amended the Meyers-Milias-Brown Act (hereinafter the “MMBA”) regarding employer-employee relations between local public agencies and their employees. The test claim legislation statute and its attendant regulations created an additional method for creating an agency shop arrangement, and expanded the jurisdiction of the Public Employment Relations Board (hereinafter “PERB”) to include resolving disputes and enforcing the statutory duties and rights of those public employers and employees subject to the MMBA.

On December 4, 2006, the Commission on State Mandates found that the test claim statute and regulations impose a above referenced test claim was a partially reimbursable state-mandated program on local agencies for the following activities:

1. Deduct from an 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 election. Mandated activities are:
  - a. ~~p~~rocedures for filing documents or extensions for filing documents with PERB- (Cal.Code Reg., tit. 8, §§ 32132, 32135 (Register 2001, No. 49));
  - b. ~~p~~roof of service- (Cal. Code Regs., tit. 8, § 32140 (Register 2001, No. 49));
  - c. ~~r~~esponding to subpoenas and investigative subpoenas- (Cal. Code Regs., tit. 8, §§ 32149, 32150 (Register 2001, No. 49));
  - d. ~~c~~onducting depositions- (Cal. Code Regs., tit. 8, § 32160 (Register 2001, No. 49));
  - e. ~~p~~articipate 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. ~~f~~iling and responding to written motions in the course of the hearing. (Cal. Code Regs. tit. 8, § 32190, (Register 2001, No. 49.)

## **II. ELIGIBLE CLAIMANTS**

Any county, city, or city and county, special district or other local agency subject to the jurisdiction of PERB that incurs increased costs as a result of this reimbursable state-mandated program is eligible to claim reimbursement of those costs. However, the City of Los Angeles and the County of Los Angeles are not eligible claimants because they are specifically excluded from PERB jurisdiction pursuant to Government Code section 3507.

## **III. PERIOD OF REIMBURSEMENT**

Government Code section 17557 states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The test claim for this mandate was filed by the test claimants, the County of Sacramento and the City of Sacramento, on August 1, 2002. Therefore, the period of reimbursement begins on July 1, 2001.

Actual costs for one fiscal year shall be included in each claim. ~~Estimated costs for the subsequent year may be included on the same claim, if applicable.~~ Pursuant to Government Code section 17561, subdivision (d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.

If the total costs for a given year do not exceed \$1,000, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

## **IV. REIMBURSABLE ACTIVITIES**

To be eligible for mandated cost reimbursement for any given 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, time sheets, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, calendars, and declarations. Declarations must include a certification or declaration stating, “I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct,” and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise reported 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.

Claimants may use time studies to support salary and benefit costs when an activity is task-repetitive. Time study usage is subject to the review and audit conducted by the State Controller’s Office.

For each eligible claimant, the following activities are eligible for reimbursement:

### **A. One Time Activities**

1. Establish procedures and documentation for deduction from employees’ wages the payment of dues, or service fees, including transmittal of such payments, and handling proof of in lieu fee payments made to charitable organizations as required by the agency shop agreement pursuant to Government Code sections 3502.5, subdivisions (b) and (c), as appropriate required pursuant to an agency shop agreement.
2. Develop and provide training for employees charged with responsibility for responding to PERB administrative actions, including attorneys, supervisory and management personnel. (One time per employee).
3. Establish procedures and systems for handling of PERB matters, including calendaring, docketing and file management systems.

### **B. On-Going 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. On a monthly basis, receive, verify and file from the employee proof of in lieu fee payments, received from the employee, made to charitable organizations pursuant to an agency shop arrangement that was established by signed petition and election in Government Code section 3502.5, subdivision (b). (Gov. Code, § 3502.5, subd. (c).)
3. When a person or entity other than the public entity files with the PERB an unfair labor practice charge, unit determination, representation by an employee organization, petition for injunctive relief, recognition of an employee organization, or an election request, or the public agency employer is ordered by PERB to join in a matter, the following activities are reimbursable:
  - a. Filing documents or requests for extension of time to file documents with PERB- (Cal. Code Regs., tit.8, §§ 32132, 32135);
  - b. Proof of service, including mailing and service costs. (Cal. Code Regs., tit. 8, § 32140);
  - c. Preparation for and participation in informal conferences and hearings as required by any before PERB Board agents and PERB Administrative Law Judges to clarify issues and explore the possibility of a voluntary settlement including, but not limited to, preparation of briefs, documentation and evidence, exhibits, witnesses and expert witnesses-(Cal. Code Regs., tit.8, §§ 32170, subd. (e) and 32650-);
  - d. Responding to subpoenas and investigative subpoenas, including the time spent obtaining the information or documentation requested in the subpoena, and copying and service charges. (Cal. Code Regs., tit. 8, §§ 32149, 32150);
  - e. The conduct of depositions, including service of subpoenas, deposition reporter and transcription fees, expert witness fees, preparation for the deposition and the time of any governmental employee or attorney incurred in the conduct of the deposition. (Cal. Code Regs., tit. 8, § 32160);
  - f. Preparation for and participation in any hearing as required by any PERB Board agent, PERB Administrative Law Judge, or the five-member PERB, or the General Counsel, including preparation of answer to complaint or answer to amendment, witnesses, evidence, exhibits, expert witnesses, witnesses, statements<sup>1,2</sup>, stipulated facts<sup>3</sup> and informational briefs, oral argument, response to exceptions, response to administrative appeal or compliance matter.

Effective July 1, 2001 through May 10, 2006: California Code of Regulations, title 8, §§ 32168, 32170, 32175, 32176, 32180, 32205, 32206, 32207, 32209,<sup>4</sup> 32210,

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<sup>1</sup> Section § 32206.

<sup>2</sup> Section § 32455 – preparation of written position statements or other documents filed with the General Counsel.

<sup>3</sup> Section § 32207.

<sup>4</sup> Correction of the transcript requires filing of a motion; the citation to this motion has been moved to subdivision (g).

32212, 32310, 32315, 32375, 32455, 32620, 32644, 32649, 32680, 32980, 60010, 60030, 60050, and 60070. (Register 2001, No. 49).

Effective May 11, 2006: California Code of Regulations, title 8, §§ 32168, 32170, 32175, 32176, 32180, 32205, 32206, 32207, 32210, 32212, 32310, 32315, 32375, 32455, 32620, 32644, 32649, 32680, 32980. (Register 2001, No. 49).

Effective May 11, 2006, responses to petitions for board review pursuant to former sections 60010, 60030, 60050, and 60070 of the California Code of Regulations, title 8, are not reimbursable. (Register 2006, No. 15.)

- g. The preparation, research, and filing of motions, including correction of transcript and responding to written motions in the course of a hearing and immediately after. (Cal. Code Regs., tit. 8, § 32190, 32209).

### **C. Non-Reimbursable Activities**

1. The following activities initiated by the local public agency are *not* state-mandated activities:
  - a. fFile an unfair practice charge (Cal. Code of Regs., tit. 8, §§ 32602, 32604, 32615, 32621, 32625, 32650);
  - b. aAppeal of a ruling on a motion (Cal. Code of Regs., tit. 8, § 32200);
  - c. aAmend complaint (Cal. Code of Regs., tit. 8, §§ 32625, 32648);
  - d. aAppeal 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);
  - e. sStatement of exceptions to Board agent decision (Cal. Code of Regs., tit. 8, § 32300);
  - f. rRequest for reconsideration (Cal. Code of Regs., tit. 8, § 32410); and,
  - g. rRequest for injunctive relief (Cal. Code of Regs., tit. 8, § 32450).
2. Sections 3501, 3507.1 and 3509 of the Government Code do not apply to persons who are peace officers as defined in section 830.1 of the Penal Code. Therefore, increased costs related to peace officers are ineligible for reimbursement under this program. (Gov. Code, § 3511.)
3. Effective June-May 11, 2006, activities based on former sections 60010, 60030, 60050, and 60070 of California Code of Regulations, title 8, are not reimbursable.

### **V. CLAIM PREPARATION AND SUBMISSION**

Each of the following cost elements must be identified for the reimbursable activities identified in section IV of this document. Each reimbursable cost must be supported by source documentation as described in section IV. Additionally, each reimbursement claim must be filed in a timely manner.

#### **A. Direct Cost Reporting**

Direct costs are those costs incurred specifically for reimbursable activities. The following direct costs are eligible for reimbursement.

## **1. Salaries and Benefits**

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

### **2.1. Materials and Supplies**

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

### **3.2. Contracted Services**

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services were also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and invoices with the claim and a description of the contract scope of services.

### **4.3. Fixed Assets and Equipment**

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

### **5.4. Travel**

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

## **B. Indirect Cost Rates**

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include (1) the overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the 2 CFR Part 225 (Office of Management and Budget (OMB) Circular A-87). Claimants have

the option of using 10% of labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B)) and the indirect shall exclude capital expenditures and unallowable costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B).) However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distributions base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B)) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or
2. The allocation of allowable indirect costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B)) shall be accomplished by (1) separate a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

## VI. RECORDS 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<sup>5</sup> is subject to the initiation of an audit by the State 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. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

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<sup>5</sup> This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

## **VII. OFFSETTING SAVINGS REVENUES AND REIMBURSEMENTS**

Any offsets ~~offsetting savings~~ the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any federal, state or non-local source shall be identified and deducted from this claim.

## **VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS**

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(1)(A), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

## **IX. REMEDIES BEFORE THE COMMISSION**

Upon the request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (a), and California Code of Regulations, title 2, section 1183.2.

## **X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES**

The Statement of Decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision, is on file with the Commission.