BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Health and Safety Code Section 1797.192 Chapter 1111, Statutes of 1989 (Renumbered 1797.193 by Chapter 216, Statutes of 1990); Filed on December 27, 1991; By the County of Los Angeles, Claimant.	NO. CSM 4412 ***Remand of Sudden Infant Death Syndrome Training for Firefighters*** STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ. ; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7 ***(Adopted on December 17, 1998)***

STATEMENT OF DECISION

The attached Statement of Decision of the Cornmission on State Mandates was adopted on December 17, 1998.

This Decision shall become effective on December 18, 1998.

Paula Higashi

PAULA HIGASHI, Executive Director

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PROPOSED STATEMENT OF DECISION

This test claim was heard by the Commission on State Mandates (Comrnission) on November 30, 1998, during a regularly scheduled hearing. Mr. Leonard Kaye appeared for the County of Los Angeles; Mr. Daniel G. Stone, Deputy Attorney General, appeared for the Department of Finance and the State Controller's Office; Mr. James M. Apps, Principal Program Budget Analyst, appeared for the Department of Finance; and Mr. William D. Ross appeared for San Ramon Valley Fire Protection District in Contra Costa County, and Carmel Valley Fire Protection District, interested parties. Mr. Mike Metro, Battalion Chief for the Los Angeles County Fire Department appeared as a witness for the County of Los Angeles.

At the hearing, evidence both oral and documentary was introduced, the test claim was submitted and the vote was taken.

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

The Cornmission, by a vote of 5 to 2, approved this test claim.

BACKGROUND AND FINDINGS OF FACT

Introduction and Background

In 1989, the Legislature enacted Health and Safety Code section 1797.192 (Stats. 1989, ch. 111 1), later renumbered 1797.193 by Chapter 216, Statutes of 1990. Section 1797.193[1] requires both new and veteran firefighters to be trained in the subject of Sudden Infant Death Syndrome (SIDS). The test claim legislation provides, in pertinent part, the following:

> "(a) ***By July 1, 1992, existing firefighters*** in this state shall complete a course on the nature of sudden infant death syndrome taught by experts in the field of sudden infant death syndrome. ***All persons who become*** *firefighters after* ***January 1, 1990,*** shall complete a course on this topic as part of their basic training as firefighters. The course shall include information on the community resources available to assist families who have lost children to sudden infant death syndrome.. . .
>
> "(c) ***When*** the instruction and training are provided by a local agency, a fee ***shall*** be charged sufficient to defray the entire cost of the instruction and training. " (Emphasis added.)

Following the operative date of the test claim statute of January 1, 1990, the County of Los Angeles provided the SIDS training to its firefighters and chose not to assess any fees to defray the costs of training. Instead, the County of Los Angeles filed a test claim with the Commission.

The Comrnission heard, and denied, the County's original test claim on July 22, 1993, on two grounds: 1) the program was not a new program or higher level of service mandated upon local agencies, but rather, an educational requirement imposed upon individual firefighters; and (2) the statute in question directs local agencies to charge a fee when they conduct the SIDS training course and, accordingly, there are no reimbursable costs mandated by the state under Government Code section 17556, subdivision (d).

On January 12, 1994, the County of Los Angeles appealed the Commission's denial to the superior court. The court agreed with the County and ruled that the training program was an unfunded state mandated program because it was a new program or higher level of service, and although the County had the authority to recover its costs, it lacked the ability to do so.

Thereafter, the Commission and the real parties in interest (the State Controller, Department of Finance, and Director of Finance) appealed the superior court's decision to the Second Appellate District. On July 22, 1996, the Court of Appeal issued its ***unpublished*** opinion. In the court's written opinion, the court makes the following findings: [2]

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[1] All references are to the Health and Safety Code unless otherwise noted.

[2] Pages 8 through 10 of the Court's Order.

" 'New Program or Higher Level of Service' "

"The Cornmission found that because section 1797.193 obligates current and prospective firefighters to receive SIDS training, but does not require local governments to provide that training, the SIDS program is not a new County program or higher level of service. In support, the Commission relied on the language of section 1797.193, which provides that 'existing firefighters in this state shall complete a course' and 'all persons who become firefighters after January 1, 1990, shall complete a course,' as demonstrating the obligation is the firefighters' alone. "

"We find, however, that notwithstanding the statutory language, the administrative record of the Cornmission's proceedings lacks substantial evidence supporting its conclusion. *The record contains no evidence identifying any private entities which can provide SIDS training, and the State 's own analysis of section 1797.193 acknowledges that no state training programs are available. Accordingly, if County firefighters are to be in compliance with the SIDS training requirement, it seems evident that the County will have no choice but to train them itself.* Indeed, this conclusion is supported by the State's own legislative analysis of section 1797.193, in which it determined that the statute was going to impose from $2,700,000 to $10,700,000 in 'reimbursable state-mandated costs' on counties, and by the analysis of the State Fire Marshal that the statute 'appears to require a higher level of service and training, than what L.A. County Fire Department had previously provided. ' *We therefore find that the only conclusion supported by substantial evidence is that the SIDS program was a new program imposed on the County. "*

" 'Sufficient Authority to Recover Costs"'

". . . We find that the Commission's determination that [Government Code section 17556] subdivision (d) applies here is unsupported by the record. . . . We recognize that the State suggests that the County could charge the firefighters for the cost of training them, but without evidence of *how many firefighters would be involved and the program's total costs,* there is no basis for determining whether the costs can realistically be imposed on them. The state also suggests the program's costs could be recovered from all County residents, but this argument ignores the purpose for the enactment of article XIII B, which was to prohibit taxing local residents for state mandated programs. *We find that a statutory grant of authority to recover program costs which, in reality, cannot be meaningfully exercised, is a legally insufficient payment recovery provision. In the case before us, the record is silent as to whether the program 's costs can be realistically recovered from the County 's firefighters. We, therefore, remand this matter to the Commission for further proceedings on that issue. . . . "* (Emphasis added.)

Issue 1: Does the Commission have jurisdiction to re-address the issue of whether section 1797.193 imposes a new program or higher level of service?

In the Court of Appeal's written opinion, the court analyzed whether section 1797.193 imposes a new program or higher level of service within the meaning of article XIII B, section 6. In the court's analysis, the court noted that the administrative record contains no evidence identifying any private

entities that can provide SIDS training. [3] However, based on other evidence, including legislative history, the court ruled on the issue whether section 1797.193 imposed a new program or higher level of service when it stated the following: *"We therefore find that the only conclusion supported by substantial evidence is that the SIDS program was a new program imposed on the County."*

In the instant matter, the Department of Finance and the State Controller's office contended that the issue of whether the test claim statute imposes a new program or higher level of service should be relitigated on remand. For the first time in this dispute, these state agencies submitted a declaration from James M. Apps listing several private and educational facilities capable of providing SIDS training to County firefighters. This declaration was submitted in support of their argument that section 1797.193 does not mandate a new program or higher level of service. The state agencies contended that the Commission has jurisdiction to consider this new evidence since the Commission "has exclusive fact-finding responsibility in all matters concerning subvention claims."

The Commission recognized that once the court has ruled on a question of law in its review of an agency's action, the agency cannot act inconsistently with the court's orders, absent unusual circumstances. Instead, the decision of the reviewing court establishes the law of the case and binds the agency in all further proceedings. [4]

The Comrnission further noted that under the doctrine of collateral estoppel, a party to a prior action is barred from raising an issue of fact or law if the issue was actually litigated and determined by a valid and final judgment in a previous proceeding. In order for the doctrine to apply, the issues in the two proceedings must be the same, the prior proceeding must have resulted in a final judgment on the merits, and the same parties or their privies must be involved. [5]

The Commission found that the formal requirements for collateral estoppel were present here. The County of Los Angeles, DOF and SCO were parties to the prior action filed with the Court of Appeal. The issue of whether section 1797.93 imposed a new program or higher level of service was addressed in the appellate proceedings, and a final judgment on the issue was reached by the court.

Despite the foregoing, the Cornmission noted that the judiciary created an *exception* to the doctrine of collateral estoppel in narrow circumstances. The California Supreme Court in *City of Sacramento v. State of California (Sacramento II)* held that when the issue previously litigated is a question of law, and either injustice would result or public interest requires that relitigation not be foreclosed, then the issue in question can be re-addressed in the subsequent action. [6]

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[3] Pages 8 and 9 of the Court's Order. Such evidence could be used to show that the requirements of section 1979.193 were not unique to local government and, thus, the test claim statute would not constitute a new prograrn or higher level of service. ***(County of Los Angeles v. State of California (1987) 43*** Cal.3d 46.)

[4] ***George Arakelian Farms, Inc. v. Agricultural Labor Relations Bd. (1989) 49*** Cal .3d 1279, 129 1.

[5] ***People v. Sims (1982) 32*** Cal.3d ***468, 484; Carmel Valley Fire Protection Dist. v. State of California (1987)*** 190 Cal.App.3d 521, 534-535.

[6] ***City of Sacramento v. State*** *of* ***California*** (1990) 50 Cal.3d 51, ***64, (Sacramento II).*** In ***City*** *of* ***Sacramento, the*** City sought reimbursement of costs imposed by legislation that extended mandatory coverage under the state's unemployment insurance law to include state and local governments. After the test claim was denied by the Board of Control, the City filed an action with the Superior Court seeking a reversal of the Board's ruling. The trial court reversed the Board's decision and found the costs reimbursable. The Court of Appeal affirmed the trial court's holding in ***City*** *of* ***Sacramento v. State*** *of* ***California*** (1984) 156 Cal.App.3d 182 (hereafter ***Sacramento I***) and equated mandated costs with any increased

The Commission found that the issue in the present case, however, is distinguishable from ***Sacramento II.*** In ***Sacramento II,*** the state Supreme Court applied the exception because the appellate court employed the wrong legal analysis to a section 6, article XIII B matter and, accordingly, the high court granted rehearing to properly rule on the issue.

Here, on the other hand, the legal analysis of the issue (whether section 1797.193 imposes a new program or higher level of service) has not changed. Instead, the state agencies are attempting to re-address the legal issue by submitting new factual evidence.

Based on the foregoing, the Commission found that the exception to the doctrine of collateral estoppel does not apply. Therefore, the Comrnission determined that it did not have jurisdiction to consider the new evidence submitted by the state agencies for the purpose of addressing the issue of whether the provisions of section 1797.193 impose a new program or higher level of service on remand.

Issue 2: **Does the evidence regarding the existence of private facilities which provide SIDS training establish that the costs incurred by local agencies to train their firefighters are not "mandated" by Health and Safety Code section 1797.193?**

Although the court of appeal addressed the issue of whether the test claim statute imposes a new program or higher level of service, it did not consider whether there are any "costs mandated by the state" to comply with the new program or higher level of service.

The Commission noted that one of the requirements for a statute to impose a reimbursable state mandated program is that the statute results in "costs mandated by the state." The phrase "costs mandated by the state" is defined as any increased costs a local agency is ***required*** to incur as a result of the new program or higher level of service.[7] However, if local agencies possess alternative options to carry out the program, then the costs associated with the new program or higher level of service are not "mandated" .[8]

The Department of Finance and the State Controller's Office contended that there are no "costs mandated by the state" since "the availability of alternative training sources [identified in the Declaration of James Apps] establishes beyond doubt that no mandate to provide training ever fell upon the claimant County by virtue of section 1797.193. " The state agencies further stated that since firefighters could have obtained training elsewhere, the claimant voluntarily incurred the costs under the test claim statute.

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costs which a local agency is required to incur under SB 90. The case was then remanded to the Board to determine the amounts due and to adopt pararneters and guidelines. Thereafter, the Legislature assigned a zero dollar appropriation to the legislation instead of reimbursing the local agency.

The City then filed ***Sacramento II*** requesting that the funds be appropriated and disbursed to the local agencies. While the case remained pending at the trial level, the Court of Appeal decided *County* of ***Los Angeles*** which changed the legal analysis described ***in Sacramento I*** in determining whether legislation imposes a reimbursable state mandate upon local agencies. When ***Sacramento II*** reached the appellate level, the State attempted to relitigate whether the subject legislation constituted a reimbursable state mandate. Despite the City's assertion that the State was barred from relitigating the issue under the doctrine of collateral estoppel, the court held that the public interest exception applied and re-addressed the mandate issue using the ***County of Los Angeles*** approach. ***Id.*** pg. ***64-65.***

[7] Government Code section 175 14.

[8] ***Lucia Mar*** *Unified* ***School District*** v. *Honig* (1987) 44 Cal.3d 830, 836.

The Commission disagreed. Health and Safety Code section 1797.193 requires firefighters employed by local agencies to receive SIDS training. Although a local firefighter may receive such training from a private facility or other alternative source, the Commission found that the local agency is still required under the test claim statute to incur additional costs in the form of salaries, benefits and other incidental expenses for the *time* that its firefighters spend in the training. Additionally, local agencies may incur expenses for registration fees and materials. Unlike the situation where the local agency provides the SIDS training, *no* fee authority is provided in the test claim statute to offset the costs incurred by the local agency when the training is provided by private or alternative sources. [9]

Moreover, the Court of Appeal rejected the argument that the test claim statute imposed requirements on firefighters alone. Rather, the court found that "if County firefighters are to be in compliance with the SIDS training requirement, it seems evident that the County will have no choice but to train them itself. "

Therefore, the Connnission found that local agencies" will incur "costs mandated by the state" and reimbursement is required under section 6 when firefighters receive SIDS training from alternative sources.

Issue 3: When the instruction and training is provided by the local agency, can the statutory grant of authority to recover costs from local firefighters pursuant to Health and Safety Code section 1797.193, subdivision (c), be realistically exercised?

Health and Safety Code section 1797.193, subdivision (c), requires a local agency to charge a fee sufficient to defray the entire cost of SIDS instruction and training *when* the instruction and training is provided by the local agency.

In view of the statutory authority and directive to charge a fee by the test claim statute, Government Code section 17556, subdivision (d), is implicated. Subdivision (d) provides that there are *no* "costs mandated by the state" and reimbursement is not required when "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."

In the present case, the County of Los Angeles provided SIDS instruction and training to their firefighters. Accordingly, the Court of Appeal analyzed Government Code section 17556, subdivision (d), and found that there was nothing in the record establishing the *sufficiency* of the claimant's authority to recover costs to pay for the program.

On remand, the Court of Appeal directed the Commission to determine if the costs of the SIDS training fee incurred by the County of Los Angeles can be *realistically* exercised upon local firefighters.

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[9] Furthermore, even though there may be private sector firefighters who are also subject to the test claim statute, the court has concluded, as a matter of judicial notice, that the "overwhelming number of firefighters discharge a classical governmental function" and that fire protection is a peculiarly governmental function within the meaning of article XIII B, section 6. *Carmel Valley Fire Protection Dist, supra,* 190 Cal.App.3d 521, 537.

[10] Government Code section 175 18 defines "local agency" as "any city, county, special district, authority, or other political subdivision of the state."

MOUs Between Local Agencies and Firefighters, in Existence on January 1, 1990, Are Not Subject to the Test Claim Statute.

The test claim statute became effective and operative on January 1, 1990. In the case of Los Angeles County and its firefighters, an existing MOU was already in effect (from January 1, 1988, through December 3 1, 1990). That MOU contained no provision regarding training, continuing education, or training fee assessment upon firefighters. Thus, training costs for firefighters were borne by the County, rather than its firefighters, under the terms of that particular MOU.

The Commission considered Article 1, section 9, of the California Constitution, and the case law interpreting that constitutional provision, which provide that the Legislature is prohibited from irnpairing obligations or denying rights to the parties of a valid, binding contract absent an emergency. [11]

In the present matter, the Commission determined that the test claim statute was not enacted as an urgency measure and there is no indication that an emergency prompted the Legislature to require SIDS training for local firefighters. [12] Therefore, the Commission determined that the County of Los Angeles was prohibited from impairing the existing MOU by charging its firefighters a SIDS training fee.

Accordingly, the Comrnission found that the authority to impose SIDS training fees on firefighters cannot be exercised when a local agency was bound by an MOU that was in effect on January 1, 1990 (the operative date of the statute), and where the MOU does not permit the local agency to charge its firefighters a training fee when the instruction is conducted by the local agency. Under these circumstances, the test claim statute constitutes a reimbursable state mandated program from January 1, 1990, until the terms of that existing MOU are terminated. [13]

Specifically with regard to the County of Los Angeles, the Commission found that reimbursement for training costs is required from January 1, 1990 (the operative date of the test claim), until the existing MOU was terminated on December 31, 1990.

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[11] ***Bradley v. Superior Court In and For the City and County of San Francisco*** (1957) 48 Cal.2d 509, holding that neither the court nor the legislature may impair an obligation of a valid contract, or disregard provisions of the contract to deny either party their rights; and ***Board of Admin. of the Public Employees' Retirement System v. Wilson*** (1997) 52 Cal.App.4th 1109, review denied, holding that absent an emergency, the contract clause of the State Constitution limits the power of the state to modify the contracts between other parties.

[12] The Enrolled Bill Report dated September 19, 1989, expressly states that this statute was not presented as an urgency measure.

[13] In ***City of El Cajon,*** the court held that an MOU becomes a contract of *indefinite* ***duration*** when the MOU provides an express duration term, but also states that the terms remain in effect until a successor MOU is agreed upon and implemented. In such a case, the terms of the existing MOU continue until the parties reach another agreement that is approved by the governing body of the local agency. ***(City of El Cajon v. El Cajon Police Officers' Ass'n*** (1996) 49 Cal.App.4th 64.) The MOU submitted by the claimant does not contain such a provision. Furthermore, the claimant and its employees negotiated a subsequent MOU which became effective on January 1, 199 1.

MOUs Adopted After January 1, 1990, Between Local Agencies and Firefighters, Are Subject to the Test Claim Statute.

The state Constitutional provisions of impairment of a contract do not apply to MOUs adopted *after* the operative date (January 1, 1990) of the test claim statute. Therefore, the Commission continued its inquiry to determine whether training fees can be realistically imposed upon firefighters for MOUs adopted *after* January 1, 1990.

The County of Los Angeles originally argued to the Comrnission and on appeal that its *new* MOU adopted on *January 1,* 1991, prohibited the County from charging its firefighters for the SIDS training.

Without deciding whether the County's new MOU prevented it from charging its firefighters, the Court of Appeal noted that:

> "The County contends that its collective bargaining agreement (the so-called 'memorandum of understanding') with its firefighters bars the County from recovering the program's costs from the firefighters. Without deciding the question, we *note that section 1797. I93 took effect one year before the County entered into the agreement.* " (Emphasis added.)[14]

Despite the directive in the test claim statute requiring local agencies to charge fees sufficient to defray the entire cost of SIDS instruction and training, the Commission noted there was no evidence that the County provided notice to its firefighters or negotiated training fees before adopting the 1991 MOU. Under the terms of the new 1991 MOU, the County is not authorized to charge its firefighters for SIDS training and the County continues to pay for all training costs,

While the County now agrees the imposition of the SIDS fee is a negotiable matter, it contended that negotiation would be futile because the firefighters would not agree to such an assessment. [15]

The Commission further noted that the County made no attempt to negotiate for recovery of the SIDS fee until the parties resumed negotiations for a successor MOU in August 1997. At this point, more than seven years after the test claim statute became operative, the County, for the first time, demanded its firefighters pay for the SIDS training. [16] On January 27, 1998, the County submitted a declaration from the firefighter's union which "flatly rejected" the County's formal demand to pay SIDS fees.

In response to the County's bargaining tactics, DOF asserts:

> "It is immediately apparent, however that . . . [Los Angeles County's] belated effort to comply with its mandatory fee duty will not, because of . . . [the County's] prolonged delay and because of the retrospective structure of its current proposal, shed any light on the question whether recovery of costs was or is actually feasible. "

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[14] Page 10, fn. 6, of the Court's Order.

[15] Declarations of Frederick L. Palardy, Personnel Officer for the Los Angeles County Fire Department, dated April 1, 1997, and Dallas Jones, President of the Los Angeles Fire Fighters Local 1014, dated March 26, 1997.

[16] Declaration of Frederick L. Palardy dated August 14, 1997.

The Commission noted that when the Cornmission's original decision was appealed in the superior court and in the appellate court, there was no briefing regarding a local agency's authority under the Meyers-Milias-Brown Act. Collective bargaining between local agencies and their employees is governed by the Meyers-Milias-Brown Act. (Gov. Code, §§ 3500 – 3511). The purpose behind the Act is "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. . . . " (Gov. Code, § 3500.)

Therefore, to determine whether the fee authority can realistically be imposed on local firefighters, the , Cornmission considered the local agency's authority under the Meyers-Milias-Brown Act.

The County has the Unilateral Power to Impose Fees upon Firefighters under the Meyers-Milias-Brown Act.

The Cornmission found that under the Meyers-Milias-Brown Act, a local agency's governing body has the ultimate power to impose SIDS fees upon its firefighters even if collective bargaining between the local agency and the firefighters reach a bargaining impasse.

Government Code section 3505 of the Act requires the governing body of the local agency and its representatives to meet and confer in good faith regarding wages, hours and other terms of employment with representatives of employee organizations. Section 3505 further requires the governing board to fully consider the presentations made by the employee organization on behalf of its members prior to arriving at a determination of policy or course of action.

Government Code section 3505.1 of the Act provides that *if* an agreement is reached between the local agency and the employee organization, the parties are required to prepare a joint MOU, which shall not be binding, and present it to the governing board for determination. Only upon approval and adoption of the governing board, however, will the MOU be binding. [17] The California Supreme Court explains the local agency's ultimate authority as follows:

> "Although there is a provision for a written memorandum of understanding by employee organizations and representatives of a negotiating public agency, the [A]ct expressly provides that the memorandum of understanding 'shall not be binding' but shall be presented to the governing body of the agency or its statutory representative for determination, *thus reflecting the legislative decision that the ultimate determinations are to be made by the governing body itself or its statutory representative and not by others.* " (Emphasis added.)[18,19]

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[17] MOUs between a public agency and an employee organization become binding agreements once they are approved and adopted by the governing body. *(Voters for Responsible Retirement v. Board of Supervisors for Trinity County* (1994) 8 Cal.4th *765; Beverly Hills Firemen's Ass'n. Inc.* v. *City* of *Beverly Hills* (1981) 119 Cal.App.3d 620.

[18] *Bagley v. City* ***of*** *Manhattan Beach* (1976) 18 Cal.3d 22, 25.

[19] The California Supreme Court affirmed its interpretation of the MMBA in *People Ex Rel. Seal Beach Police Officers Assn. v. City* ***of*** *Seal Beach* (1984) 36 Cal.3d 591, 601. There, the court stated that "[a]lthough [Government Code section 3505] encourages binding agreements resulting from the parties' bargaining, the governing body of *the* agency.. . .*retains the ultimate power to refuse an agreement and to make its own decision."* (Emphasis added.)

Furthermore, it is well settled that a local agency can unilaterally impose changes upon employees regarding wages, benefits and other terms of employment *after* the parties have negotiated in good faith and reached an impasse on the issue.[20]

The following cases illustrate the court's approval of the unilateral authority imposed by a local agency:

In *Social Services Union,* [21] the county authorized an increase in premiums for employees' dependent health coverage. The employees' union requested bargaining on the implementation of the increase and when no agreement was reached for 14 months, the county declared an impasse. The matter was then referred to the board of supervisors. After the county and the union were given an opportunity to make presentations to the board, the board adopted the county's position and *deducted* the accumulated premiums from employees' paychecks over eight pay periods. The court upheld the county's action.

In *Public Employees Assn.,* [22] the county reduced a lump sum salary adjustment to represented employees, which had been the subject of intensive bargaining, after the cooling off period following the irnpasse. The court upheld the county's action.

In response to the foregoing authorities, the claimant contended that the impasse resolution procedures under the Meyers-Milias-Brown Act do not permit counties to effectively and unilaterally recover training costs. The claimant stated the following:

> "As shown by the declarations in evidence the negotiation process in the recently concluded round was lengthy and difficult, occurring against a background of several years without pay raises. There are, necessarily, a plethora of issues subject to mandatory bargaining. Staff's assertion that it is 'realistic' to imperil the atmosphere and results of a complex collective bargaining session for the relatively miniscule SIDS training costs – especially given the safety sensitivity of firefighters' work – is preposterous. This 'tail wagging the dog' theory flies in the face of good faith bargaining requirements and utterly ignores the reality of bargaining practices. "

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[20] ***See*** *Holliday* ***v , City*** *of Modesto* (199 1) 229 Cal.App.3d 528, 540, where the court acknowledged that the employer, having satisfied the meet and confer obligations of the MMBA regarding a drug testing policy, may implement the policy without submitting the issue to mediation; and ***Santa Clara County*** *Counsels* ***Attys. Assn.*** v. *Woodside* (1994) 7 Cal.4th 525, 537, where the court stated that "the duty to bargain requires the public agency to refrain from making unilateral changes in employees' wages and working conditions until the employer and employee association have bargained to impasse. "

See also Federal cases interpreting the National Labor Relations Act which parallels the MMBA, including *NLRB* v. ***Katz*** (1962) 369 U.S. 736, 745, fn. 12, where the U.S. Supreme Court stated that an employer, after notice and consultation, does not commit unfair labor practices by unilaterally instituting a wage increase that reasonably falls within the pre-impasse proposal; and *NLRB* ***v. Bradley Washfountain*** Co. (7 Cir., 1951) 192 F.2d 144, 150-152, where the court upheld a unilateral grant of an increase in pay after the same proposal was left unaccepted by the union.

[21] ***Social Services Union v. Board of Supervisors of Tulare County*** (1990) 222 Cal.App.3d 279.

[22] ***Public Employees Assn. v. Board of Supervisors*** *of Tulare* ***County*** (1985) 167 Cal. App.3d 797.

"Under MMBA and applicable County Code provisions, the step of unilateral implementation cannot occur until an exceedingly lengthy, costly and complicated statutory bargaining procedure is completed. If bargaining representatives cannot reach an agreement, they enter mediation, under the auspices of a mediator. [Citations omitted.] MMBA also requires the public agency to allow a 'reasonable number' of public agency employee representatives reasonable time off without loss of pay when formally meeting and conferring. [Citation omitted.] The law permits the parties to design additional procedures for resolution of disputes. [Citation omitted.] Los Angeles County's process proceeds to fact finding in the event mediation does not resolve disputes. The fact finding process itself can be expensive and time consuming. [Citation omitted.] "

"In the event the fact-finding process fails to resolve the bargaining issues, the parties once again negotiate. Under *Public Employment Relations Bd. v Modesto City School District* (1982) 136 Cal. App. 3d 88 1, 900, if one side substantially changes any of its positions, the negotiation process must start over. [Citation omitted.]"

"Only after completion of this entire process can anything be unilaterally implemented. For this reason, not surprisingly, unilateral implementation is exceedingly rare in the County. "

"Finally, in the end of the marathon impasse resolution process is unilateral implementation, the Union has the right to demand to renegotiate in one year. This is in contrast to the County's usual practice, which is to negotiate multi-year contracts with its unions. [Citation omitted.]

The Commission also considered the oral testimony of Mr. William D. Ross, appearing on behalf of San Ramon Valley Fire Protection District in Contra Costa County, and Carmel Valley Fire Protection District, interested parties. Mr. Ross testified that the San Ramon Valley Fire Protection District has paid and volunteer firefighters, and has an MOU that was executed subsequent to the effective date of the test claim statute. Under the terms of the MOU, training fees are incurred by the local agency.

Mr. Ross further testified that Carmel Valley Fire Protection District has paid and volunteer firefighters, but does *not* have an MOU with their paid employees.

Mr. Ross argued that there was nothing in either the test claim statute or Government Code section 17556, subdivision (d), that suggested a fee, charge or assessment could be passed on to a firefighter, or negotiated as a term of an MOU. Mr. Ross contended that if the Legislature wanted to pass the training costs on to firefighters, it would have specifically said so. Mr. Ross stated this was particularly true for fire protection districts since their powers are completely plenary and subject to the complete discretion of the Legislature.

Mr. Ross further testified that local agencies are required by the Labor Code to treat volunteer firefighters the same as paid firefighters. Mr. Ross questioned the logic of asking a volunteer firefighter to pay for SIDS training.

Mr. Ross also noted that the requirement imposed on local agencies to provide their firefighters with structural and wildland clothing and equipment has already been determined by the court to be a reimbursable state mandated program. Mr. Ross contended that providing SIDS training to firefighters is the same concept and should, likewise, be considered a reimbursable state mandated program.

Finally, the Commission recognized the Court of Appeals' statement that "without evidence of how many firefighters would be involved and the program's total costs, there is no basis for determining whether the costs can realistically be imposed on [firefighters]. "[23] Accordingly, the Commission considered staff's calculation and analysis of training fees for basic trainees and veteran firefighters as described below.

Calculation of Training Fees for Basic Trainees.

The claimant contended that each county firefighter recruit would have to pay $294 in order for the claimant to recover its SIDS costs. The claimant's figure is based on contract billing rates charged to the Department of Forestry for the use of county firefighters in other parts of the state.

Based on salary and benefit spreadsheets published by the Chief Administrative Office of the County of Los Angeles, staff calculated the County's average training fees (comprised of salary, benefits and overhead, including trainer costs) for basic firefighter trainees at $25 per hour.

The County asserted that its SIDS training course for basic trainees takes eight hours.[24] However, the legislative history[25] of the test claim statute indicates that eight hours is excessive and not required by the statute.

In addition to requiring SIDS training for local firefighters, the test claim requires SIDS training for peace officers, emergency medical technicians and authorized registered nurses. According to the Enrolled Bill Report dated September 19, 1989, the Department of Health Services and the State Emergency Medical Services Authority are responsible for developing standards for training the emergency medical technicians and registered nurses. The Commission on Peace Officer Standards and Training is responsible for overseeing the training of peace officers. However, no state agency is charged with developing and overseeing firefighter training.

Nevertheless, the Enrolled Bill Report expressly states the following:

> "We do note that staff in the authors office have indicated that their intent is to have firefighters watch the [Department of Health Services'] produced SIDS videotape. *No additional training is intended.* " (Emphasis added.)

In accordance with the author's intent, the State Emergency Medical Services Authority issued an approved SIDS training packet (i.e. an executive order) for emergency medical responders and firefighters on September 29, 1990. The executive order does not set any time requirements for SIDS training. However, according to the State Emergency Medical Services Authority, the California Fire

[23] Pages 9 and 10 of the Court's Order.

[24] Declaration of Pegjian Comer, dated August 14, 1997.

[25] Although not controlling, legislative history for the test claim statute can be used to assist in the determination of the scope of the statute. ***(City of San Jose v. State of California*** (1996) 45 Cal.App.4th 1802, 1817-1818.)

Chiefs Association recommended a 1 S-hour SIDS training course. [26] Additionally, the SIDS training course developed by POST for peace officers consists of *two **hours*** of training. [27]

Accordingly, the Commission considered, but did not decide, that a two-hour course in addition to the existing training requirements would satisfy the provisions of the test claim statute. Consequently, the Commission considered, but did not decide, the calculation of the costs incurred for the SIDS basic training course in the amount of $50.00 per firefighter ($25 per hour times 2 hours).

Calculation of Training Fees for Veteran Firefighters.

Based on salary and benefit spreadsheets published by the Chief Administrative Office of the County of Los Angeles, staff calculated the average training fees (comprised of salary, benefits and overhead, including trainer costs) for veteran firefighters at $43 per hour.

The claimant stated that the SIDS training course for veteran firefighters is an additional two-hour course.[28]

The claimant further contended that the test claim statute requires periodic additional SIDS training beyond July 1, 1992.[29] The claimant cited the executive order issued by the State Emergency Medical Services Authority on September 29, 1990, which states that "the mandated training shall be incorporated into all training and *refresher* training programs no later than the next scheduled course. "

The statute in question provides: ***"By July 1, 1992,*** existing firefighters in this state shall complete ***a*** course on the nature of sudden infant death syndrome. . . ." Based on the use of the phrase "a course, " which is singular and not plural, coupled with an express completion date, the Commission considered, but did not decide, that the Legislature intended to require veteran firefighters to complete *one* SIDS training course by July 1, 1992.

Also, the use of the term "refresher" by the State Emergency Medical Services Authority does not mean that SIDS training must be taught periodically for veteran firefighters. The Cornmission considered, but did not decide, that the use of the phrase "refresher training programs" simply refers to the continuing education already required of firefighters.

Accordingly, the Commission considered, but did not decide, that the test claim statute required veteran firefighters to complete ***one*** SIDS training course as part of their continuing education. Thus, providing periodic, additional SIDS training for existing firefighters does ***not*** constitute a reimbursable state mandated program.

Further, the Comrnission considered, but did not decide, the calculation of the cost of providing one SIDS course to existing firefighters in the amount of $86 per veteran firefighter ($43 per hour times 2 hours).

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[26] Letter from Lois Williarns, Health Program Specialist I, EMSA, dated July 17, 1998.

[27] Letter from Glen Fine, Executive Assistant Director of POST, dated June 13, 1998.

[28] Declaration of Pegjian Comer, August 14, 1997.

[29] Declaration of Pegjian Comer, paragraph 8, dated November 7, 1997.

Plain and Ordinary Meaning of "Realistic"

The Commission also considered the evidence presented by the parties in light of the dictionary definition of "realistic". According to Webster's New World Dictionary, "realistic" is defined as tending to face facts and to be practical, rather than imaginary or visionary. The Commission found that even though local agencies have the unilateral authority to impose changes regarding the terms of employment, the use of the unilateral authority is rare.

Therefore, the Commission found that the authority to impose fees upon firefighters cannot be realistically exercised by local agencies and special districts that have collective bargaining agreements, or MOUs, with their firefighters, or by local agencies and special districts that operate without such agreements. Thus, the Cornrnission found that the fee authority exception to reimbursement under Government Code section 17556, subdivision (d), does not apply and that the test claim statute imposes "costs mandated by the state" on local agencies.

CONCLUSION

Based on the foregoing, the Commission concluded that the test claim statute imposes "costs mandated by the state" and constitutes a reimbursable state mandated program when

- The SIDS instruction and training is provided by private or alternative sources; and when
- The SIDS instruction and training is provided by local agencies and special districts that have collective bargaining agreements, or MOUs, with their firefighters, and by local agencies and special districts that operate without such agreements.

DECLARATION OF SERVICE BY MAIL

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 and business address is 1300 I Street, Suite 950, Sacramento, California 958 14.

On December 18, 1998, I served the attached adopted ***Statement*** *of* ***Decision*** for test claim #CSM-4412, ***Sudden Infant Death Syndrome (SIDS) Training*** *for* ***Firefighters*** of the Commission on State Mandates, by placing a true copy thereof in an envelope addressed to each of the persons listed on the attached mailing list, and by sealing and depositing said envelope in the United States mail at Sacramento, California, with postage thereon fully prepaid.

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 December 18, 1998 at Sacramento, California.

CHRISTINE A. WEIN