BEFORE THE

COMMISSION ON STATE MANDATES

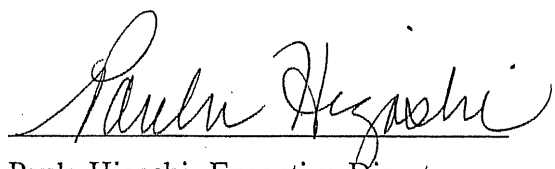
STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Labor Code section 4856, subdivisions (a) and (b) and Government Code Section 21635, as added and. amended by Statutes of 1996, Chapter 1120 and Statutes of 1997, Chapter 193; Filed on June 9, 1998 By the City of Palos Verdes Estates, Claimant.	No. CSM 97-TC-25 *Heath Benefits for Survivors of Peace Officers & 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 October 26, 2000)*

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates is hereby adopted in the above-entitled matter.

This Decision shall become effective on October 3 1, 2000.



Paula Higashi, Executive Director

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STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim on September 28, 2000, during a regularly scheduled hearing. Mr. Allan P. Burdick, appeared for City of Palos Verdes Estates and the California State Association of Counties. Mr. Jim Hendrickson and Ms. Pamela Stone, appeared for the City of Palos Verdes Estates. Mr. Kenneth Pogue, Deputy Attorney General, and Mr. John Hiber, appeared for the Department of Finance.

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 Commission, by a vote of 5-1, approved this test claim.

BACKGROUND AND FINDINGS

Test Claim Legislation

In 1996, the Legislature enacted Labor Code section 4856, which requires local agencies to provide lifelong health benefits to the survivors of peace officers and firefighters who die in the line of duty. (Stats. 1996, ch. 1120.) In 1997, the Legislature further amended Labor Code section 4856 (Stats. 1997, ch. 193) by applying this benefit retroactively. Prior to the test claim legislation, local agencies were not required to provide lifelong health benefits for

survivors. Section 4856, as amended by the 1337 legislation, now provides:

> (a) Whenever any local employee who is a firefighter, or peace officer as described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, is killed in the performance of his or her duty or dies as a result of an accident or injury caused by external violence or physical force incurred in the performance of his or her duty, the employer shall continue providing health benefits to the deceased employee's spouse under the same terms and conditions provided prior to the death, or prior to the accident or injury that caused the death, of the employee unless the surviving spouse elects to receive a lump-sum survivors benefit in lieu of monthly benefits. Minor dependents shall continue to receive benefits under the coverage provided the surviving spouse or, if there is no surviving spouse, until the age of 21 years. However, pursuant to Section 228 11.5 of the Govermnent Code, the surviving spouse may 'not add the new spouse or stepchildren as family members under the continued health benefits coverage of the surviving spouse.
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> (b) Subdivision (a) also applies to the employer of any local employee who is a firefighter, or peace officer as described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, who was killed in the performance of his or her duty or who died as a result of an accident or injury caused by external violence or physical force incurred in the performance of his or her duty prior to September 30, 1936.

The 1996 test claim legislation also amended Government Code section 21635 by deleting language that exempted local agencies from collective bargaining for survivor health benefits.[1]

The test claim legislation is the result of a compromise reached following the failed veto override of Assembly Bill 393, introduced during the 1335-1996 legislative session. Originally, Assembly Bill 333 extended survivor health benefits to all local employees. As a compromise, the test claim legislation: (1) extended survivor health benefits only to peace officers and firefighters killed in the performance of their duties; and (2) amended Government Code section 21635 by removing language exempting local agencies from. negotiating survivor health benefits with union representatives. This meant that while survivor health benefits were not legislatively extended to local employees, local employee organizations could now collectively bargain for them.

As a result of the test claim legislation, local agencies are required to provide lifelong survivor health benefits for the spouse and children of a peace officer or firefighter killed in the line of duty. Claimant, the City of Palos Verdes Estates, was faced with this unfortunate reality in 1994 when one of its police officers was killed in the line of duty. The deceased police officer was survived by a wife who is eligible for survivor health benefits under the test claim legislation, Now claimant must incur the additional cost of providing health benefits, in excess

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[1] The 1996 amendment to Government Code section 21635, deleted the former third paragraph which read: "The employer is not required by this section to meet and confer with an employee organization regarding the subject matter of this section, and the subject matter shall not be included within the scope of representation pursuant to the [Milias-Brown Act]. "

of $2,000 a year, to the surviving spouse of the deceased officer. Additionally, under the test claim legislation local public employee organizations are now authorized to collectively bargain with local agencies regarding survivor health benefits.[2]

Prior Commission Decisions

The Commission has decided two test claims addressing similar issues of special employee benefits for peace officers and firefighters. In 1996, the Commission denied a test claim, *Workers' Compensation Benefits* (CSM-4449), filed by the City of Richmond (City) in which the surviving spouse and dependent children of local safety members were eligible for both Public Employees' Retirement System (PERS) death benefits and workers' compensation benefits.[3] Under the prior law, local agencies were not required to provide workers compensation benefits to surviving dependants, They were only required to provide PERS death benefits. As such, the Cornrnission found that the test claim legislation addressed workers' compensation benefits and not PERS benefits. The City argued that the new law singled out local safety employees for unique treatment with respect to death benefits. The City argued that providing such dual benefits is not applicable to private, or even to other public employers. Nevertheless, the Commission found that the test claim legislation did not impose a "unique" requirement upon local agencies within the meaning of section 6, article XIII B based on a finding that workers' compensation laws are considered laws of general application.

In 1992, the Commission approved a test claim, *Cancer Presumption-Peace Officers* (CSM-4416) ,[4] filed by the County of Sacramento, which granted peace officers a "cancer presumption" when applying for workers' compensation benefits. The Commission found the officers are often exposed to dangerous toxins while performing their duty to protect and serve the public. The Cornrnission noted that granting the cancer presumption provided an additional benefit to peace officers by removing the burden of proof from the employee to provide evidence that the cancer was proximately caused by the employment. The Commission concluded that the cancer presumption, unlike *Workers ' Compensation Benefits*, is distinctive and is a reimbursable state mandated program, because it imposes a unique requirement on local agencies by requiring them to implement a state policy of providing an additional benefit to select employees who carry out the govermnental function of providing public safety.

State Agency Position

The Department of Finance (Department) asserts that the claimant is not entitled to state subvention because the test claim legislation does not require local agencies to provide "new programs" or "higher levels of service." This assertion is based upon the Department's

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[2] The Commission notes that Statutes of 1996, Chapter 1120 also amended Government Code section 2155 1, 21552, 21553. Claimant did not refer to these sections in its claim. Thus, the Commission does not address them.

[3] The Court of Appeals upheld the Commission's ruling in *City of Richmond* v. *Commission on State Mandates* (1998) 64 Cal.App.4th 1190.

[4] A nearly identical claim; cancer presumption for firefighters, was previously enacted by the Legislature and approved by the Commission (formerly Board of Control} on February 23, 1984.

interpretation of Legislative Counsel Opinion No. 9435, which reviewed County *of* Los *Angeles v. State of California* (1987) 43 Cal.3d 46, and its progeny. The Department asserts that the Legislative Counsel concluded that employee compensation and benefits are not "programs" or '"services" within the meaning of the California Constitution section 6, article XIII B.[5] Likewise, the Department argues that the test claim legislation amounts to nothing more than employee compensation and benefits; and therefore, is not a "program" or "service" within the meaning of section 6, article XIII B.

Furthermore, the Department asserts that *Workers ' Compensation Benefits* (CSM-4449), validates the Legislative Counsel's and the Department's position. The Department states:

> "*In [Workers' Compensation Benefits*] , the Commission cites *City of Anaheim* v. *State of California* (1987) 189 Cal.App.3d 1478, to distinguish between the higher costs of compensating employees as opposed to the higher cost of providing an additional program or higher level of service to the public. The Cornmission found that this decision 'rejects the claimant's assertion that paying workers' compensation death benefits is part and parcel 'of providing additional police and, fire services, ' The Department believes this reasoning would also apply to the payment of survivor's health benefits paid on behalf of peace officers and firefighters, "

It is the Department's position that the test claim legislation provisions which allow for collective bargaining do'not constitute a reimbursable state mandated program. The Department asserts that the Legislature merely created a law of general application by eliminating the collective bargaining exemption. Specifically, the Department states, "removing the . . , exemption merely returns the collective bargaining process for survivor benefits to is original form and subjects local agencies to the general provisions of the [Meyers-Milias-Brown] Act. " The Department maintains that the option to bargain is at the discretion and for the benefit of the claimant and that the decision to adopt a contract is at claimant's option. Therefore, the Department argues that claimant is not entitled to state subvention for the costs attributable to collective bargaining for survivor health benefits.

Claimant's Position

The claimant contends that the test claim legislation resulted in a reimbursable state mandated program, because local agencies are now required to provide health benefits for the surviving spouse and dependent children of peace officers and firefighters killed in the performance of their duties.

Claimant submits that the mandate meets the requirements as set forth by the California Supreme Court under *County of Los Angeles*, for determining the criteria of a reimbursable state mandated program. Claimant asserts that the test clait-n legislation is unique to local agencies because: (1) such benefits are not generally granted to the public or private sector;

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[5] Opinion No. 9435 was not drafted in response to the test claim legislation. Instead it addressed the issue of whether section 6, article XIII B requires reimbursement of local agencies for the cost associated with an increase in the employer contribution rates of local agencies contracting with PERS.

and (2) it carries out a state policy by providing special benefits to peace officers and firefighters who are killed in the line of duty protecting the public. As such, claimant asserts, in enacting these statutes, the Legislature was mandating local agencies to carry out the state policy of providing special benefits to peace officers and firefighters. Therefore, claimant concludes that it is entitled to state subvention,

Claimant disputes that the *Workers' Compensation Benefits* test claim, and *City of Anaheim,* validates the Department's position. Instead, claimant maintains that the Department's analysis of these cases is misplaced. The claimant asserts that these cases are not applicable and are factually distinguishable from the present claim.

Claimant also contends that the Legislature, by removing the collective bargaining exclusion, thereby made survivor health benefits subject to bargaining. Furthermore, claimant disputes the Department's argument that removal of the collective bargaining exemption creates a law of general application. Thus, claimant concludes that by making the provisions of the test claim legislation the subject of bargaining, a second state mandated program for local agencies was created.

Analysis

Issue

> Does the test claim legislation impose a reimbursable state mandated program upon local agencies within the meaning of section 6, article XIII B of the California Constitution and Government Code section 175 14?

In order for a statute to impose a reimbursable state mandated program, the statutory language must direct or obligate an activity or task upon local governmental agencies. In addition, the required activity or task must be new, thus constituting a "new program," or create an increased or "higher level of service" over the former required level of service. The court has defined a "new program" or "higher level of service" as a program that carries out the govermnental function of providing services to the public, or a law, which to implement a state policy, imposes unique requirements on local agencies and does not apply generally to all residents and entities in the state. To determine if a required activity is new or imposes a higher level of service, a comparison must be undertaken between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation. Finally, the newly required activity or increased level of service must be state mandated.[6]

The test claim legislation provides survivor health benefits to the spouse and dependent children of peace officers and firefighters killed in the line of duty, and also permits local employees to collectively bargain for such benefits. Fire and police protection has been determined to be two of the most essential and basic functions of local governmental agencies.[7]

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[6] *County of Los Angeles* v. *State of California (1987) 43* Cal.3d *46, 56; Camel Valley Fire Protection Dist.* v. *State of California* (1987) 190 Cal.App.3d *521, 537; City of Sacramento* v. *State of California* (1990) 50 Cal.3d 51, *66; Lucia Mar Unified School Dist.* v. *Honig (1988) 44* Cal.3d 830, 835,

[7] *Verreos* v. *City and County of San Francisco* (1976) 63 Cal.App.3d *86; Camel Valley Fire Protection District* v. *State of California* (1987) 190 Cal.App.3d 521.

By requiring local agencies to provide survivor benefits to peace officers and firefighters the test claim legislation imposes unique requirements that do not apply generally to all residents and entities of the state. Additionally, the test claim legislation imposes a unique requirement upon local agencies by requiring them to collectively bargain for survivor health benefits with local employees, if this issue is raised during the course of contract negotiations. Therefore, the Commission finds that the test claim legislation directs or obligates an activity or task upon local governmental agencies.

However, the inquiry must continue to determine if these activities constitute a new program. or higher level of service, and if so, do they constitute costs mandated by the state. These issues are discussed below.

'A. Does the test claim legislation impose a reimbursable new program or higher level of service within an existing program under section 6, article XIII B, and Government Code section 17514 by requiring local agencies to provide health benefits to the surviving spouse and children of fallen peace officers and firefighters?

Prior to Statutes of 1996, Chapter 1120, there was no law compelling local agencies to provide lifelong health benefits for the spouse and children of fallen peace officers and firefighters. Now, local agencies are compelled to provide lifelong survivor health benefits under Labor Code section 4856. Thus, the law immediately in effect before the enactment of the test claim legislation did not require local agencies to provide lifelong health benefits to survivors of fallen peace officers or firefighters. As such, local agencies are faced with the added expense of providing these benefits to survivors of fallen peace officers and firefighters.

The Department asserts that the cost of providing these survivor health benefits does not result in a new program or higher level of service since all employers, public and private alike, must bear the cost of employee benefits, The Department relies in large part upon the Legislative Counsel's Opinion No. 9435 to support this position. The Legislative Counsel's Opinion No. 9435 is based upon *County of Los Angeles v. State of California* (1987) 43 Cal. 3d 46 and its progeny. In County *of* Los *Angeles, the* court considered whether the test claim legislation imposed a "new program" or "higher level of service" by determining whether the relevant law imposed an *incidental* impact upon local agencies that applied generally to all state residents and entities.

In County *of Los Angeles, the* test claim legislation required all California employers to increase workers' compensation benefits. Cities and counties, as employers, brought an action against the state for the alleged state-mandated increase. The Court was asked to decide whether the increased costs to local agencies were subject to subvention under section 6, article XIII B of the California Constitution. Based on ballot arguments distributed by the proponents of section 6, article XIII B, the Court stated that the purpose of section 6 was to prevent the state from shifting fiscal responsibility for public services to local entities. By interpreting the voters' intentions, the Court concluded that local agencies were not entitled to state subvention

for costs *incidentally* imposed upon local agencies, In this regard the Court stated:

> "[A local agency is entitled to state subvention when] to implement a state policy, [when the legislature] impose[s] unique requirements on local agencies [that] do not apply generally to all residents and entities in the state. "[8]
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> ". . .[W]orkers' compensation is not a program administered by local agencies to provide service to the public, Although local agencies must provide [workers' compensation benefits] to their employees . . . they are indistinguishable in this respect from private employers. . . . [¶] [Therefore], we conclude that section 6 has no application to legislation that is applicable to employees generally, whether public or private, and affects local agencies only *incidentally* as 'employers. "[9] (Emphasis added.)

The *County* **of** *Los Angeles* court found that workers' compensation laws were laws of general application because they applied to both public and private employers equally. In the present case, the Commission notes that the test claim legislation does not address workers' compensation benefits, nor does it apply to private and public employers equally. Rather, the test claim legislation only provides survivor benefits to a discrete number of public employees, peace officers and firefighters that are predominantly employed by local agencies. Therefore, the Commission finds that the holding in *County* **of** *Los Angeles* is distinguishable from the present claim.

Another case in the Legislative Counsel Opinion cited by the Department is *City* **of** *Sacramento v. State* **of** *California* (1990) 50 Cal.3d 51. In *City* **of** *Sacramento* the test claim legislation required local agencies to provide unemployment compensation protection on behalf of their employees. Previously, local agencies were exempt from providing such benefits. The City argued that the test claim legislation imposed a "unique" requirement, since it applied only to local agencies, and compelled costs, which were not previously mandated. In addition, the City asserted that the cost of providing unemployment insurance would be too great to be deemed merely *incidental.* Finding against the City, the California Supreme Court stated:

> "Here, the issue is whether costs unrelated to the provision of public services are nonetheless reimbursable costs of government, because they are imposed on local agencies 'unique[ly],' and not merely as an *incident* of compliance with general laws. State and local agencies, and nonprofit corporations, had previously enjoyed a special exemption from requirements imposed on most other employers in the state and nation. Chapter 2178 merely eliminated the exemption and made these previously exempted entities subject to the general rule. By doing so, it may have imposed a requirement 'new' to local agencies, but that requirement was not 'unique, ' "
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> " , [O]ur decision did not use the word 'incident' to mean merely ' insignificant in amount, ' Rather, we declared that the state need not reimburse

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

[9] *Id.* at page 58.

> local agencies for expenses *incidentally* imposed upon them by laws of general application. . . . [W]e found the voters did not intend to require a state subsidy of the public sector in such cases. . . "[10] (Emphasis added.)

In *City of Sacramento,* it was recognized that both public and private employers were required to provide unemployment insurance. Accordingly, the court found the application of unemployment insurance to both public and private employers equally produced a law of general application that merely affected local agencies *incidentally* . Conversely, in the present test claim, only public employers, who employ peace officers and firefighters, are required to incur the cost of providing survivor benefits, By definition, such costs are imposed uniquely on local agencies. [11] Therefore, the Commission finds that the holding in *City of Sacramento* is distinguishable from the present claim.

Additionally, the Department cites to the Commission's findings in *Workers ' Compensation Benefits* (CSM-4449)" to validate its assertion that all costs associated with employee benefit laws are laws of general application merely imposing costs *incidentally* upon local agencies. In *Workers ' Compensation Benefits,* the Comrnission cited to *City* of *Anaheim* and found that the test claim legislation, which provided special workers' compensation death benefits to local peace officers and firefighters, did not impose 'a "unique" requirement upon local agency within the meaning of section 6, article XIII B. [13] Rather, the Commission found the test claim legislation to be a law of general application that *incidentally* imposed costs upon local agencies.

However, the Commission finds that its holding in *Workers ' Compensation Benefits* is factually distinguishable from the test claim legislation. In *Workers ' Compensation Benefits*, the Commission recognized that the additional benefits provided to peace officers and firefighters came solely from the expansion of workers' compensation benefits. In the present case, the test claim legislation does not involve workers' compensation laws. In fact, the Commission in *Workers ' Compensation Benefits* distinguished workers' compensation laws from laws similar

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[10] *City* of *Sacramento* v. *State* of *California* (1990) 50 Cal.3d 5 1, 68-69.

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

[12] *Supra*, at page 3.

[13] In *City* of *Anaheim,* the court denied the city's claim for reimbursement under section 6, article XIII B, relative to the City's increased pension benefits for specified employees as required under the test claim legislation, The City argued, unsuccessfully, that unlike *County* of *Los Angeles,* where the test claim legislation increased workers' compensation benefits for public and private employers alike, here, the increased cost of providing PERS benefits "imposes a unique requirement on local agencies that [does] not apply to all state residents or entities. " The *City of Anaheim* court analyzed the subject matter of employee benefits in concurrence with the *County of Los Angeles* decision, and denied the claim holding:

> "Bearing the costs of salaries, unemployment insurance, and workers' compensation coverage-costs *which all employers must bear* [, or *costs incidentally* imposed] neither threatens excessive taxation or government spending, nor shifts from the state to a local agency the expense of providing governmental services, Similarly, the City is faced with a higher cost of compensation to its employees. This is not the same as a higher cost of providing services to the public. " (Emphasis added.)

to the one now before this Commission, by noting that a comparison couldn't be made between laws adding a benefit to a few workers, *such* as *Cancer Presumption Cancer Presumption-Peace Officers* (CSM-4416), versus laws which apply to employees generally, such as workers' compensation laws. Therefore, the Commission maintains that its holding in *Workers' Compensation Benefits* is limited to the facts, and does not support the Department's assertion that all costs associated with employee benefit laws are laws of general application.

The Commission finds the present test claim is more akin to the *Cancer Presumption* test claim. In *Cancer Presumption,* the Legislature singled out peace officers from other local employees due to the nature of their profession, and granted them a "cancer presumption" when applying for workers' compensation benefits. The Commission concluded that *Cancer Presumption,* unlike *Workers' Compensation Benefits*, is distinctive, and is a reimbursable state mandated program, because it imposes a unique requirement on local agencies by requiring them to implement a state policy of providing an additional benefit to select employees who carry out the government function of providing public safety. Likewise, in the present test claim, the Commission finds that the Legislature intended to single out peace officers and firefighters to provide additional benefits not available to most other local employees as reassurance for risking their lives on a daily basis to protect the public. The Comrnission further finds that unlike workers' compensation benefits, which apply to private and public employers alike, survivor health benefits impose additional costs only upon local agencies for a distinct category of employees.

Based on a review of the above authorities, the Commission finds that local agencies generally are not entitled to state subvention when they are required to pay for the costs of salaries, unemployment insurance, and workers' compensation, or other employee benefits which all employers must bear, private and public, because they are laws of general application merely imposing costs *incidentally* upon local agencies. However, the Commission finds that the present test claim legislation does not apply to both private and public employers equally; and therefore, cannot be considered a law of general application *incidentally* imposing costs upon local agencies.

The above finding is evident by the fact that no state law requires private employers to provide such extraordinary survivor health benefits to their employees. Even public employers are not required to implement the test claim legislation except for the relatively diminutive number of safety employees who are killed in the performance of their duties. Therefore, the Commission finds that the test claim legislation imposes a unique requirement upon local agencies.

Accordingly, the Commission concludes that the test claim legislation imposes a reimbursable program or higher level of service within an existing program under section 6, article XIII B and Government Code section 17514 by requiring local entities to provide health benefits to the surviving spouse and children of peace officers and firefighters who give their life protecting the citizens of California.

B. Does the test claim legislation impose a reimbursable new program or higher level of service within an existing program under section 6, article XIII B, and Government Code section 17514 by removing the collective bargaining exemption from Government Code section 2 1635?

Collective bargaining between local agencies and their employees is governed by the Meyers-Milias-Brown Act (Act). (Gov. Code, §3500 et seq., Stats. 1961, ch. 1969,) 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.)

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. It 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.

Traditionally, the provisions of employee's survivor health benefits were exempted from the collective bargaining process, The test claim legislation amended Government Code section 2 1635 by removing language exempting local agencies from collective bargaining for survivor health benefits with employees, Specifically, the test claim legislation removed the following language from Government Code section 21635 :

> "The employer is not required by this section to meet and confer with an employee organization regarding [survivor health benefits], and [survivor health benefits] shall not be included within the scope of representation pursuant to Section 3504. "

Thus, as a result of the test claim legislation, survivor health benefits are now the subject of collective bargaining. Accordingly, the Comrnission finds that the removal of the collective bargaining exemption constitutes a new program or higher level of service.

The Department asserts that the Legislature merely created a law of general application by eliminating the collective bargaining exemption. Specifically, the Department states, "removing the . , . exemption merely returns the collective bargaining process for survivor benefits to its original form and subjects local agencies to the general provisions of the Act." Thus, the Department asserts that the removal of the exemption does not constitute a new program or higher level of service,

In support of this proposition, the Department cites to City *of Sacramento.* However, the Commission finds that the holding in City *of Sacramento* is distinguishable from the present claim. In *City of Sacramento,* local agencies were previously exempted from providing unemployment compensation insurance for their employees. When the Legislature repealed the exemption both private employers and local agencies were required to provide unemployment compensation insurance. The court held that the City was not entitled to state subvention, since the repeal of the exemption merely placed public employers in the same position as private employers. Here, the Commission finds that the repeal of the collective

bargaining exemption does not place public employers in the same position as private employers. The repeal of the collective bargaining exemption only imposes additional requirements upon local agencies, since the Act applies only to local agencies. There is no corresponding requirement for private employers to collectively bargain for survivor health benefits. The Commission finds that the elimination of the exemption does not create a law of general application; and thus, City of *Sacramento* does not apply . Accordingly, the Commission finds the removal of the collective bargaining exemption constitutes a new program or higher level of service.

The Department further argues that the option to bargain is at the discretion and for the benefit of the claimant and that the decision to adopt a contract is at claimant's option. Therefore, the Department argues that claimant is not entitled to state subvention for the costs attributable to collective bargaining for survivor health benefits. The Commission disagrees with the Department's assertion that local agencies have the option to participate in the collective bargaining process. The Commission finds that under the Act and Government Code section 21635, local agencies are required to collectively bargain with representative of employee organizations on providing survivor health benefits, if this issue is raised during the course of contract negotiations. Accordingly, the Commission concludes that the test claim legislation imposes a reimbursable program or higher level of service within an existing program under section 6, article XIII B and Government Code section 175 14 by requiring claimant to collectively bargain with employees on providing survivor health benefits. However, the Commission finds that the reimbursement is limited to the collective bargaining process, and does not include reimbursement for benefits the local government employer agrees to provide, [14]

Conclusion

Based on the foregoing, the Commission concludes that the test claim legislation imposes a reimbursable state-mandated program upon local governments within the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514 for the following activities:

- Providing survivor health benefits for the spouses and children of peace officers and firefighters who are killed in the line of duty protecting the public.
- Collective Bargaining with representatives of employee organizations on providing survivor health benefits,

[14] The Commission notes that the ultimate determinations as to the agreement are to be made by a local agency. (*Bagley* v. *City of Manhattan Beach* (1976) 18 Cal.3d 22, 25 .) As such, a local agency's employees may request to collectively bargain for survivor benefits, but claimant is not required provide such benefits, If claimant decides to provide such benefits to its employee after collective bargaining, it does so at its own option.