

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Government Code Section 3547.5 as added by Chapter 1213, Statutes of 1991, and the California Department of Education Management Advisory 92-01

And filed on December 29, 1997;

By the Alameda County Office of Education, Claimant.

NO. 97-TC-08

Collective Bargaining Agreement Disclosure


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 March 26, 1998)

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 April 7, 1998.



Paula Higashi, Executive Director

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STATEMENT OF DECISION

The Commission on State Mandates (Commission) on March 26, 1998, heard this test claim during a regularly scheduled hearing, Keith Peterson appeared for the Alameda County Office of Education and Carol Berg appeared for the Education Mandated Cost Network.

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 test claim is Government Code section 17500 et seq. and section 6, article XIII B of the California Constitution and related case law.

The Commission, by a vote of 7-0 approved this test claim.

Issue

Do the provisions of Government Code section 3547.5, as added by Chapter 1213, Statutes of 1991, and the California Department of Education's Management Advisory 92-01, impose a new program or higher level of service upon school districts within the meaning of section 6, article XIII B of the California Constitution and Government Code section 175 14?

Prior Law

Before the test claim legislation, school districts were only required to publicly disclose all *initial* proposals for collective bargaining agreements. Government Code section 3547

provides in pertinent part: “[a]ll initial proposals of exclusive representatives and of public school employers, which relate to matters within the scope of representation, shall be presented at a public meeting of the public school employer and thereafter shall be public records. ”

Test Claim Legislation

Chapter 1213, Statutes of 1991, added section 3547.5 to the Government Code, as follows:

“Before a public school employer enters into a written agreement with an exclusive representative covering matters within the scope of representation, the major provisions of the agreement, including, but not limited to, the costs that would be incurred by the public school employer under the agreement for the current and subsequent fiscal years, shall be disclosed at a public meeting of the public school employer in a format established for this purpose by the Superintendent of Public Instruction. ”

Under section 3547.5, school districts must now publicly disclose the major provisions of all collective bargaining agreements before they enter into a written agreement. The purpose of this new legislation is to ensure that the public is aware of the costs associated with the major provisions of the tentative collective bargaining agreement before it becomes binding on the school district.

California Department of Education Management Advisory 92-01¹

Government Code section 3547.5 requires the Superintendent of Public Instruction to establish a format for the information that is to be publicly disclosed. To this end, the California Department of Education released Management Advisory 92-01 on May 15, 1992. The Advisory specifies the minimum procedures, format, and information required to be disclosed under section 3547.5,

Commission Findings

In order for a statute, which is the subject of a test claim, to impose a reimbursable state mandated program, the statutory language (1) must direct or obligate an activity or task upon local governmental entities, and (2) the required activity or task must be new or it must create an increased or higher level of service over the former required level of service. 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

¹ California Department of Education Management Advisory 92-01 is referenced in Claimant’s initial filing dated December 29, 1997.

prior to the enactment of the test claim legislation.² Finally, the newly required activity or increased level of service must be state mandated.³

The Commission found that immediately before Government Code section 3547.5 was enacted under Chapter 1231, Statutes of 1991, public school employers were under no obligation to publicly report the major provisions of a collective bargaining agreement *after* discussion with an exclusive representative of an employee group prior to entering into a written agreement.

The Commission found that under prior law school districts were only required to publicly disclose all *initial* proposals for collective bargaining agreements.

The Commission found that Government Code section 3547.5, as added by Chapter 1231, Statutes of 1991, requires school districts to publicly disclose major provisions of a collective bargaining agreement *after* negotiations, but before this agreement becomes binding.

The Commission found that the California Department of Education issued its Management Advisory 92-01, dated May 15, 1992, to establish the public disclosure format for school district compliance with the test claim statute. The Commission found that the Advisory sets forth the minimum procedures, format, and information for school districts to disclose under the new public reporting requirements. Further, the Commission found that the Advisory constitutes an “executive order” under Government Code section 175 16⁴ and is therefore a part of the test claim.

Conclusion

The Commission concludes that that Government Code section 3547.5, as added by Chapter 1213, Statutes of 1991, and the California Department of Education Management Advisory 92-01, impose a new program or higher level of service upon local school districts and therefore are reimbursable under section 6, article XIII B of the California Constitution and Government Code section 17514.

Further, the Commission concludes that the parameters and guidelines should allow reimbursement for compliance with the minimum procedures, format, and information specified in the California Department of Education’s Management Advisory 92-01, as applicable and appropriate under the test claim statute.

² Both Keith Peterson and Carol Berg disagreed at the hearing regarding the appropriate measurement date. Carol Berg wanted this sentence stricken from the Statement of Decision, while Keith Peterson wished to lodge his formal objection to staff’s use of the measurement date. However, both supported adoption of the Statement of Decision.

³ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

⁴ Government Code section 17516 provides in relevant part: “Executive order means any order, plan, requirement, rule, or regulation issued by any of the following: (a) The Governor. (b) Any officer or official serving at the pleasure of the Governor. (c) *Any agency, department, board, or commission of state government.*” (Emphasis added.)