

RESPONSE TO DEPARTMENT OF FINANCE

Test Claim of the City of Sacramento and The County of Sacramento

Local Government Employment Relations

Chapter 901, Statutes of 2000 (S.B. 739) Title 8, California Code of Regulations, Sections 31001-61630 CSM-01-TC-30

In its response, the Department of Finance (hereinafter "Finance") asserts that no reimbursable state mandate costs resulted from Chapter 901, Statutes of 2000 (S.B. 739). As a basis for its position, Finance quotes the statute's disclaimer language to the effect that the duties stated in Chapter 901 are substantially similar to those required under the pre-existing law, and that this includes "responding to unfair labor practices, compiling payroll and personnel records, and participating in meetings and negotiations with unions".

These contentions are directly contrary to Finance's analysis during the legislative process of Senate Bill 739, which was subsequently enacted as Chapter 901 without changes relevant to the test claim. Finance incorporated this analysis in its response as Attachment B. With that analysis, Finance had concluded that the legislation would result in a reimbursable state mandate, with a probable cost higher than the present \$37.2 million in reimbursement for the schools mandate of collective bargaining. As related in Attachment B, PERB alone estimated its increased costs at \$1.5 million annually.¹

Agency Shop Mandate

Under the pre-existing law, agency shop arrangements could only be implemented if the employer agreed to do so as part of the parties' collective bargaining agreement. As a result, most labor agreements did not provide for agency shops.

Under Chapter 901, an agency shop can be put into effect with the support of a minority of unit employees, and without the agreement of the employer. The result is a substantial increase in the number of agency shop arrangements. This inevitable result was recognized by Finance in its analysis, Attachment B.

The agency shop procedure added under Chapter 901 requires separate negotiations for up to 30 days and the processing of agency shop petitions. This is in addition to the activities inherent in the implementation of agency shop arrangements generally, as itemized on page 6 of the test claim.

¹ See Bill Analysis, in Attachment B, subsection B., entitled "Fiscal Analysis".

Clearly the new, additional agency shop procedure provided for under Chapter 901, and the increase in the number of agency shop arrangements resulting from the legislation, mandates a substantial increase in activities imposed on employers.

PERB Jurisdictional Mandate

Finance's response argues that "the costs that the employers would incur through the process with PERB would have been incurred if the unfair labor practice claims were still being litigated in the court system".

The reality is 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.

Furthermore, 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 (see pages 7 and 8 of the test claim). Additionally, there are filing fees for a union or individual to file a Writ of Mandate, whereas it costs nothing to file with the PERB. Thus, the burdens imposed on unions under the prior process have been eliminated with the test claim legislation.

Finance's response argues that "to the extent that PERB settles claims before they ever reach a courtroom, the provisions within this chapter would result in savings to the public agencies."

This conjecture by Finance disregards the fact that a union facing the prospect of formal, and often more costly court proceedings, as called for under pre-existing law, could just as likely be a more compelling inducement for the settlement of claims. Furthermore, under the PERB's regulations, settlement conferences occur only after participation in the PERB's investigative process and the filing by employers of responses to the unfair practice charges. Thus the Department's argument as to alleged savings is without merit.

Training

Finance contends that the provision by employers of training concerning the PERB is discretionary, and thus not reimbursable.

The Commission routinely allows training as a reimbursable component of a reimbursable mandate, as one of "the most reasonable methods of complying with the mandate." (Title 2, California Code of Regulations, Section 1183.1.)

It is unreasonable for an employer not to be familiar with the more complex processes and procedural requirements of the PERB. The regulations contain a plethora of procedural rules and timelines with which compliance must be had. The Public Employment Relations Board, 2000-2001 Annual Report, dated October 15, 2001,

attached hereto as Exhibit 1, contains in Appendix IV-E Decisions of the Board in summary form, a number of which were dismissed either for failing to meet the time lines, 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.

Although the Commission has generally allowed training on a one-time basis per employee, 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. Accordingly, continual training should be part of the reimbursable activities of this test claim.

Participate in PERB's Rulemaking Process

Finance contends that participation in this process is discretionary. However, without the participation of employers in the process, which was invited and encouraged by the PERB, the regulations would not only not address the needs of the employer, but would be crafted with only the input of the various unions. This would result in needless expense to all local government employers, which could have been easily obviated through participation in the rulemaking process.

Appeal of PERB's Decisions

Finance also claims that this function is clearly discretionary on behalf of employers. However, if the PERB errs in the interpretation of law or its application to the facts in a given situation to the detriment of the employer, the employer has no choice but to appeal its decisions. Similarly, the employer has no choice but to respond to any appeal of a PERB decision made by a union.

Conclusion

In conclusion, the City of Sacramento and the County of Sacramento respectfully request that the Commission find that Chapter 901, Statutes of 2000 constitute a reimbursable state mandated program.

CERTIFICATION

The foregoing facts are known to me personally and if so required, I could and would testify to the statements made herein, except those matters which are stated upon information and belief, and as to those matters, I believe them to be true. I declare under penalty of perjury under the laws of the State of California that the statements made in this document are true and complete to the best of my knowledge and as to all matters, I believe them to be true.

Executed this 28th day of October, 2002, at Sacramento, California, by:

A handwritten signature in black ink, appearing to read "Tony J. Smith", is written over a horizontal line.

County of Sacramento

CERTIFICATION

The foregoing facts are known to me personally and if so required, I could and would testify to the statements made herein, except those matters which are stated upon information and belief, and as to those matters, I believe them to be true. I declare under penalty of perjury under the laws of the State of California that the statements made in this document are true and complete to the best of my knowledge and as to all matters, I believe them to be true.

Executed this 19th day of November, 2002, at Sacramento, California, by:

Patty Masuch

City of Sacramento