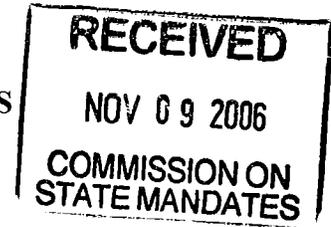


**COMMENTS ON DRAFT STAFF ANALYSIS**  
*Local Government Employment Relations*  
01-TC-30  
By City of Sacramento



Although the City of Sacramento agrees in large part with the analysis of the Commission's Staff, we believe there are issues which have been overlooked.

Agency Shop Petitions

Prior to the test claim legislation, a request by a union to have an agency shop in any given representation unit was subject to bargaining pursuant to the Meyers-Milias-Brown Act<sup>1</sup>. This would only occur as part of the regular Memorandum of Understanding (MOU) negotiations.

Government Code, Section 3504 specifies the scope of negotiation as follows:

The scope of representation shall include all matters relating to employment conditions and employer-employee relations, including, but not limited to, wages, hours, and other terms and conditions of employment, except, however, that the scope of representation shall not include consideration of the merits, necessity, or organization of any service or activity provided by law or executive order.

As a result, it would be during the period of time of negotiations that a union could raise the issue of agency shop. However, with the test claim legislation, the process for arriving at an agency shop was substantially changed. Further, another change to statute altered agency shop matters. If an employer and employee organization reached impasse after expiration of the agreement and did not agree to continue provision of the agreement until a successor agreement was reached, working without a contract meant just that. An employer could refuse to honor the agency shop provision previously agreed to, thereby cutting off dues.

Previously, an agency shop could only be had by agreement through negotiations with the union and employer. However, with the test claim legislation, an alternative process was instituted. At any time, whether or not there is a contract in existence, the process set forth in Government Code, section 3502.5(b) may be instituted by the union. As a result, the process for agency shop by petition may be commenced unilaterally by the union at any time during the term of an MOU, or in the absence of an MOU. The only precondition is that the union negotiate with the employer for a period of up to 30 days.

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<sup>1</sup> Hereinafter "MMBA".

The statement of Commission staff on page 14<sup>2</sup> does not make sense in light of statute. To fail to participate in good faith negotiations during the 30 day period is an unfair labor practice. Thus, to not negotiate in good faith is unlawful, and is certainly not discretionary.

The State has stated what constitutes an unfair labor practice charge and who may file same, as follows:

The State has defined, in its regulations, what constitutes an unfair labor practice for both the employer and the union. See Sections 32603 and 32604 of the regulations. Under subdivision (c), it is an unfair labor practice for an employer to “Refuse or fail to meet and confer in good faith with an exclusive representative as required by Government Code section 3505 or any local rule adopted pursuant to Government Code, section 3507.” Thus, if the employer does not meet and confer in good faith during the 30 day period, such constitutes an unfair labor practice.

Thus for the Commission to state that the employer is under no duty to negotiate during that period of time is contrary to law. Thus, negotiations must be entered into during the 30 day period of time by both the union and the employer: to fail to do so is an unfair labor practice.

Furthermore, there are additional activities in processing agency shop petitions which must be engaged in by the employer. Only the employer possesses the records necessary for compiling the needed information concerning unit employees, in order to ascertain whether the 30% requirement has been met, and to make up the required lists of qualified voters. These election related expenses are recognized as reimbursable under the Educational Employment Relations Act. This has not been recognized by the Commission Staff. Employer’s Ability To File Unfair Labor Practice Charges With PERB

Coming under the jurisdiction of the PERB, the employer now has to file an unfair labor practice charge if the union is engaging in conduct which constitutes a violation of the Meyers-Milius-Brown Act. The position of the Commission’s staff is that such an action is voluntary, and does not need to be taken.

However, the type of actions which can be undertaken by the union, which constitute an unfair labor practices and are illegal under the MMBA, include such concerted activities as refusals to perform all required job duties, slow downs, sick outs, rolling strikes and work stoppages. Any activity undertaken by a union in contravention of the MMBA is an unfair labor practice and illegal.

It is the position of the Commission staff that such undertaking on behalf of an employer is voluntary, as an unfair labor practice charge does not have to be filed, thus

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<sup>2</sup> “Based on the plain language of the test claim statute and regulations regarding subdivision (b) agency shop arrangements, staff finds that public agency employers are *not* required to engage in separate agency shop negotiations for up to 30 days.” [Emphasis in original.]

overlooking the unlawful actions of the union. The Commission staff distinguishes *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 16 Cal. 3d 466, on the basis that the circumstances in labor relations do not rise to the circumstances of *San Diego* where the safety of students and school property is at stake.

However, public employees form the very basis upon which an agency provides its public services to the people. Illegal concerted activities threaten public health, safety and welfare, if for example, emergencies are not promptly responded to; if garbage piles up and is not collected; if sewage is not properly treated and disposed of; if public assistance is not administered and paid as required; and if payroll, accounts payable and accounts receivable are not processed. Furthermore, it is disruptive to agencies if a union were to intimidate or coerce an employee because of the exercise of his or her rights guaranteed by Government Code, section 3502 or any local rule.<sup>3</sup>

Public health and safety can be seriously undermined if a union engages in unfair labor practices which go unchecked. Just as any violation of the MMBA by an employer constitutes an unfair labor practice charge, so too does any violation of the MMBA by an employee organization. This is not the type of conduct which should be countenanced by a finding of “voluntariness” on the part of the Commission.

### Conclusion

We respectfully request that the Commission staff consider the fact that agency shop arrangements are no longer just the product of MOU negotiations, but under the terms of the test claim legislation, can be raised at any time during the term of an MOU. This new mandate vests unions with that right, and requires good faith negotiations in a manner and at a time that had never existed prior to the test claim legislation

However, one of the most important issues is the fact that the agency should be entitled to reimbursement for filing unfair labor practice charges. As demonstrated above, the type of conduct which a union can engage in which constitutes an unfair labor practice charge is serious, and can result in substantial harm to the public health and safety. It is specious to assert that for a local governmental agency to file an unfair labor practice charge is “voluntary”, when the wrong sought to be redressed can harm not only the agency, but the public health and safety. This type of activity should not be condoned by claiming that the activities by the employer in enforcing the law are not reimbursable.

Lastly, the number of unfair practice charges previously filed were likely much less. In the last two years alone, the number of filings under MMBA for years 2004-2005 and 2005-2006 were 293 and 254 respectively. Previously, charges were filed with the court, after exhausting whatever internal process existed. The process has been opened up to almost everyone. Since filing does not require an attorney, employees can file on their own, even against their employee organization, there is no cost to file, and filing can now be accomplished online. In short, it is much easier to file now than ever before.

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<sup>3</sup> See Regs., section 32604 as to what constitutes an unfair labor practice charge by an employee organization (union).

I declare under penalty of perjury the foregoing is true and correct and that this declaration is executed this 7th day of November, at Sacramento, California.

Dee Contreras  
Dee Contreras, Director of Labor Relations  
City of Sacramento

**PROOF 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 is 915 I Street, 4<sup>th</sup> Floor, Sacramento, CA 95814.

On November 9, 2006, I served the **Comments on Draft Staff Analysis, Local Government Employment Relations, 01-TC-30 By City of Sacramento**, by placing a true copy thereof in an envelope addressed to each of the persons listed on the mailing list attached hereto, 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 this 9<sup>th</sup> day of November, 2006, at Sacramento, California.



**Diane L. Walters**

Declarant

(Please See Attached Mailing List)

## Commission on State Mandates

Original List Date: 8/1/2002 Mailing Information: Other  
Last Updated: 7/19/2006  
List Print Date: 11/09/2006 **Mailing List**  
Claim Number: 01-TC-30  
Issue: Local Government Employment Relations

### TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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Mr. Steve Shields  
Shields Consulting Group, Inc.  
1536 36th Street  
Sacramento, CA 95816  
Tel: (916) 454-7310  
Fax: (916) 454-7312

---

Mr. David Wellhouse  
David Wellhouse & Associates, Inc.  
9175 Kiefer Blvd, Suite 121  
Sacramento, CA 95826  
Tel: (916) 368-9244  
Fax: (916) 368-5723

---

Mr. Leonard Kaye, Esq.  
County of Los Angeles  
Auditor-Controller's Office  
500 W. Temple Street, Room 603  
Los Angeles, CA 90012  
Tel: (213) 974-8564  
Fax: (213) 617-8106

---

Mr. Steve Keil  
California State Association of Counties  
1100 K Street, Suite 101  
Sacramento, CA 95814-3941  
Tel: (916) 327-7523  
Fax: (916) 441-5507

---

Mr. Jim Spano  
State Controller's Office (B-08)  
Division of Audits  
300 Capitol Mall, Suite 518  
Sacramento, CA 95814  
Tel: (916) 323-5849  
Fax: (916) 327-0832

---

County Executive  
County of Sacramento  
711 G Street  
Sacramento, CA 95814  
Tel:  
Fax:

Director Department of Industrial Relations (C-50) 770 L Street Sacramento, CA 95814	Tel: (916) 324-4163 Fax: (916) 327-6033
Ray Kerridge City of Sacramento 915 "I" Street, 5th Floor Sacramento, CA 95814 Phone: (916) 808-5704 Fax: (916) 808-7618	Tel: (916) 808-5704 Fax: (916) 808-7618
Executive Director Public Employment Relations Board (D-12) 1031 18th Street Sacramento, CA 95814-4174	Tel: (916) 322-3198 Fax: (916) 327-6377
Mr. J. Bradley Burgess Public Resource Management Group 1380 Lead Hill Boulevard, Suite #106 Roseville, CA 95661	Tel: (916) 677-4233 Fax: (916) 677-2283
Ms. Annette Chinn Cost Recovery Systems, Inc. 705-2 East Bidwell Street, #294 Folsom, CA 95630	Tel: (916) 939-7901 Fax: (916) 939-7801
Mr. Robert Thompson Public Employment Relations Board (D-12) General Counsel 1031 18th Street Sacramento, CA 95814-4174	Tel: (916) 322-3198 Fax: (916) 327-7955
Ms. Carla Castaneda Department of Finance (A-15) 915 L Street, 11th Floor Sacramento, CA 95814	Tel: (916) 445-3274 Fax: (916) 323-9584
Mr. Allan Burdick MAXIMUS 4320 Auburn Blvd., Suite 2000 Sacramento, CA 95841	Tel: (916) 485-8102 Fax: (916) 485-0111
Ms. Ginny Brummels State Controller's Office (B-08) Division of Accounting & Reporting 3301 C Street, Suite 500 Sacramento, CA 95816	Tel: (916) 324-0256 Fax: (916) 323-6527

---

Ms. Susan Geanacou

Department of Finance (A-15)

915 L Street, Suite 1190

Sacramento, CA 95814

Tel: (916) 445-3274

Fax: (916) 324-4888

---

Mr. Glen Everroad

City of Newport Beach

3300 Newport Blvd.

P. O. Box 1768

Newport Beach, CA 92659-1768

Tel: (949) 644-3127

Fax: (949) 644-3339

---

Ms. Bonnie Ter Keurst

County of San Bernardino

Office of the Auditor/Controller-Recorder

222 West Hospitality Lane

San Bernardino, CA 92415-0018

Tel: (909) 386-8850

Fax: (909) 386-8830

---

Ms. Beth Hunter

Centration, Inc.

8570 Utica Avenue, Suite 100

Rancho Cucamonga, CA 91730

Tel: (866) 481-2621

Fax: (866) 481-2682