

STATE OF CALIFORNIA
COMMISSION ON STATE MANDATES

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March 05, 2015
*Commission on
State Mandates*

In Re:

STATE CONTROLLER'S OFFICE
AUDIT REPORT ON SANTA CLARA
COUNTY PEACE OFFICERS
PROCEDURAL BILLS OF RIGHTS
(POBOR) PROGRAM

INCORRECT REDUCTION CLAIM
No.10-4499-I-01

**REBUTTAL TO THE RESPONSE SUBMITTED BY THE STATE
CONTROLLER**

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BACKGROUND

On May 14, 2008, the State Controller's Office (hereinafter "SCO") issued its final audit report on the County of Santa Clara's (hereinafter "County") claims for costs incurred based on the legislatively-created Peace Officers Bill of Rights (POBOR) Program (Test Claim No. 4499; Chapter 465, Statutes of 1976; Chapters 775, 1173, 1174, and 1178, Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980; Chapter 994, Statutes of 1982; Chapter 964, Statutes of 1983; Chapter 1165, Statutes of 1989, and Chapter 675, Statutes of 1990, and as reconsidered by Case No. 05-

RL-4499-01) for July 1, 2003 through June 30, 2006. The SCO incorrectly reduced the County's claim of \$748,888 by \$526,802, thus allowing only \$222,086.

The County submitted the instant Incorrect Reduction Claim ("IRC") on September 16, 2010. Over four years later, on December 2, 2014, the SCO filed its formal response. Correspondence dated September 28, 2010 from Nancy Patton, Assistant Executive Director of the Commission, to both parties, states (in pertinent part):

SCO Review and Response. Please file the SCO response and supporting documentation regarding this claim within 90 days of the date of this letter.

The SCO response was submitted approximately 1,436 days late.¹ Despite the delay in the SCO's response, the County will address the specifics in the SCO's response.

DISCUSSION

A. AUDIT FINDING NUMBER ONE REGARDING POBOR ADMINISTRATIVE ACTIVITIES IS INCORRECT.

Audit Finding 1 states that the County over-claimed salaries, benefits and related indirect costs related to POBOR administrative activities in the amount of \$73,067. The County has asserted that the wrong set of Parameters and Guidelines, those adopted December 4, 2006 and effective for the 2006-2007 fiscal year and not those in effect for the fiscal years audited. The SCO's response acknowledges that the audit was based on the Parameters and Guidelines adopted by the Commission in 2000, but then implies that the revised Parameters and Guidelines adopted in 2006 could be used and application of the 2006 Parameters and Guidelines would be indistinguishable from the 2000. In particular, the SCO response states:

¹ On December 5, 2014, the County requested an extension to submit the County's rebuttal to March 6, 2015. This request was granted by the Commission on December 9, 2014.

Except for changes to allowable activities for the cost components of Administrative Appeal for probationary and at-will peace officers (pursuant to amended Government Code Section 3304) and Adverse Comment (for punitive action protected by the due process clause), reimbursable activities did not change from the original parameters and guidelines. In addition, our understanding of allowable Administrative Activities per the original parameters and guidelines did not change as a result of the Commission amending them on December 4, 2006.

The County disagrees with this characterization of the Parameters and Guidelines adopted in 2006 because the 2006 version calls for a far greater level of specificity than the Parameters and Guidelines adopted in 2000. The guidance the County had at the time of claiming were the following activities as set forth in the Parameters and Guidelines:

1. Developing and updating internal policies, procedures, manuals and other materials pertaining to the conduct of the mandated activities.
2. Attendance at specific training for human resources, law enforcement and legal counsel regarding the requirements of the mandate.
3. Updating the status of the POBOR cases.

The Parameters and Guidelines adopted in 2000 are the correct guidelines to use since they provide sufficient flexibility to the County to adapt them to its own method of implementing the mandate and were the Parameters and Guidelines in effect for the fiscal year audited. The SCO's suggestion that the 2006 Parameters and Guidelines could be used and the result would be indistinguishable is unpersuasive.

B. AUDIT FINDING NUMBER ONE REGARDING POBOR ADMINISTRATIVE APPEALS IS INCORRECT.

Audit Finding 1 states that the County over-claimed salaries, benefits and related indirect costs related to POBOR administrative appeals in the amount of \$3,566. The

County's claiming of these costs was proper based on the Parameters and Guidelines allowing for reimbursement of "other actions against permanent employees or the Chief of Police that result in disadvantage, harm, loss, or hardship, and that impact the career opportunities of the employee."²

The SCO's response, however, pulls from the Commission's original statement of decision for the POBOR program, adopted November 30, 1999, as the only basis for supporting its position that the administrative appeal costs are unallowable. However, the Parameters and Guidelines are the proper means to evaluate the County's allowable costs.

C. AUDIT FINDING NUMBER ONE REGARDING INTERROGATION COSTS IS INCORRECT.

Audit Finding 1 states that the County over-claimed salaries, benefits and related indirect costs related to POBOR interrogations in the amount of \$250,262. The Commission's Statement of Decision supports the County's claiming of these costs because the use of the conjunctive "and" and the plural "requirements" in the Decision refers to the fact that the Commission found both the costs of conducting the interrogation during on-duty hours and the costs of paying overtime for off-duty time are reimbursable activities of the mandate.

In its response, the SCO further examines the Commission's intent in relation to the interrogation activity by examining the Commission's staff analysis for the proposed parameters and guidelines regarding the interrogations costs component. But it is the Statement of the Decision, and not the staff analysis, which is the "law of the case" and given deference when there is any discrepancy between the finding of a judicial body and the documents that arise from that finding.

² Parameters and Guidelines, Section IVB(2), Administrative Appeals.

D. AUDIT FINDING NUMBER ONE REGARDING POBOR ADVERSE COMMENTS IS INCORRECT.

Audit Finding 1 states that the County over-claimed salaries, benefits and related indirect costs related to POBOR adverse comments in the amount of \$104,444. These activities are expressly allowed in accordance with the plain language of the Parameters and Guidelines, which provide:

Included in the foregoing are review of circumstances or documentation leading to adverse comment by supervisor, command staff, human resources staff or counsel, including determination of whether same constitutes an adverse comment; preparation of comment and review for accuracy; notification and presentation of adverse comment to officer and notification concerning rights regarding same; review of response to adverse comment, attaching same to adverse comment and filing.

The SCO's response suggests that the County's position that the costs are allowable is based on the County's "expanded interpretation of the language in the parameters and guidelines that is taken out of context."³ The County's position is based on the plain language of the Parameters and Guidelines that allows for the reimbursement of the costs claimed, which can include activities such as reviewing and documenting the complaint for accuracy to start and investigation, summarizing investigation results, and preparing the final case report.

E. AUDIT FINDING NUMBER TWO REGARDING THE COUNTY'S PRODUCTIVE HOURLY RATE IS INCORRECT.

Audit Finding 2 states that the County over-claimed salaries, benefits, and related indirect costs in the amount of \$18,752. The finding was based upon the County's

³ SCO's Response at p. 16.

computation of its productive hourly rate for employees, which includes a methodology of calculating the average annual productive hours with a deduction based on authorized (or required) employee break time, required training, and classification-training; rather than actual break time, required training, and classification-training. The County's IRC exhaustively explains the County's basis for using the developed countywide average annual productive hours and why this is an approved method based on the Mandated Cost Manual for Local Agencies ("Manual").

The SCO's response acknowledges that the Manual does "allow the county to calculate productive hourly rates using countywide average annual productive hours."⁴ The point of difference between the SCO and the County is the accepted methodology for calculating break time and training time.

With respect to break time, the County claimed authorized break time to calculate the productive hourly rate. The SCO is taking the position that only actual break time can be used to calculate the productive hourly rate. Since the IRC was submitted, the County has re-evaluated how it calculates break time for the countywide average annual productive hours and break time is not included in the calculation because it is not cost effective to track actual break time. Therefore, the County no longer challenges the SCO's audit findings with respect to how break time was calculated for purposes of the countywide productive hourly rate for FY 2003-2004, FY 2004-2005, and FY 2005-2006.

Concerning training hours deducted, the SCO's response acknowledges that training time specifically related to a mandated program is eligible for reimbursement and, presumably, can be deducted when calculating the countywide productive hourly rate. The issue for the SCO is that the County deducted training time based on time

⁴ SCO Response at p. 19.

required for non-state mandated programs, such as training time benefiting specific departments or training common to all departments when calculating the countywide productive hours for FY 2003-2004, FY 2004-2005, and FY 2005-2006. The County no longer challenges the SCO's audit findings with respect to how training was calculated for purposes of the countywide productive hourly rate for FY 2003-2004, FY 2004-2005, and FY 2005-2006.

F. AUDIT FINDING NUMBER FIVE REGARDING COUNTY'S TRAINING COSTS IS INCORRECT.

Audit Finding 5 states that the County over-claimed costs related to POBOR travel and training in the amount of \$1,521. The Parameters and Guidelines provided that attendance at specific training, including trainings for human resources, law enforcement and legal counsel, are allowable costs. The SCO's response claims that the County's IRC "suggests that training in other comprehensive topics not related to requirements of the mandated program should be allowable."⁵ The County made no suggestion in its IRC. The language of the Parameters and Guidelines is broad and the costs claimed by the County allowable.

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⁵ SCO response at p. 22.

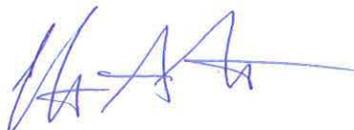
CONCLUSION

The County continues to request that the Commission reverse the SCO's audit findings. However, the County is available to meet with Commission and SCO staff to address Audit Finding 2.

Dated: 3/5/2015

Respectfully submitted,

ORRY P. KORB
County Counsel



Elizabeth G. Pianca
Deputy County Counsel
Attorneys for County of Santa Clara

DECLARATION OF SERVICE BY EMAIL

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 980 Ninth Street, Suite 300, Sacramento, California 95814.

On March 6, 2015, I served the:

Claimant Rebuttal Comments

Incorrect Reduction Claim, 10-4499-I-01

Peace Officers Procedural Bill of Rights (POBOR)

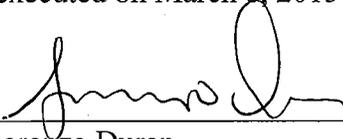
Government Code Sections 3300-3310 et al.

Fiscal Years: 2003-2004, 2004-2005, and 2005-2006

Santa Clara County, Claimant

By making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

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 March 6, 2015 at Sacramento, California.



Lorenzo Duran

Commission on State Mandates

980 Ninth Street, Suite 300

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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 2/19/15

Claim Number: 10-4499-I-01

Matter: Peace Officers Procedural Bill of Rights (POBOR)

Claimant: County of Santa Clara

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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, § 1181.3.)

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