

**COMMISSION ON STATE MANDATES**

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March 23, 2016

Ms. Laura Luna  
Los Angeles Police Department, Fiscal Ops. Division  
City of Los Angeles  
100 West First Street, Room 774  
Los Angeles, CA 90012

Ms. Jill Kanemasu  
State Controller's Office  
Accounting and Reporting  
3301 C Street, Suite 700  
Sacramento, CA 95816

*And Parties, Interested Parties, and Interested Persons (See Mailing List)*

Re: **Draft Proposed Decision, Schedule for Comments, and Notice of Hearing**  
*Peace Officers Procedural Bill of Rights, 12-4499-I-02*  
Government Code Sections 3301, 3303, 3304, 3305, and 3306;  
Statutes 1976, Chapter 465; Statutes 1978, Chapters 775, 1173, 1174, and 1178;  
Statutes 1979, Chapter 405; Statutes 1980, Chapter 1367; Statutes 1982, Chapter 994;  
Statutes 1983, Chapter 964; Statutes 1989, Chapter 1165; Statutes 1990, Chapter 675  
Fiscal Years: 2003-2004, 2004-2005, 2005-2006, 2006-2007, and 2007-2008  
City of Los Angeles, Claimant

Dear Ms. Luna and Ms. Kanemasu:

The draft proposed decision for the above-named matter is enclosed for your review and comment.

**Written Comments**

Written comments may be filed on the draft proposed decision by **April 13, 2016**. You are advised that comments filed with the Commission on State Mandates (Commission) are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents. Refer to [http://www.csm.ca.gov/dropbox\\_procedures.php](http://www.csm.ca.gov/dropbox_procedures.php) on the Commission's website for electronic filing instructions. (Cal. Code Regs., tit. 2, § 1181.3.)

If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission's regulations.

**Hearing**

This matter is set for hearing on **Friday, May 27, 2016**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. The proposed decision will be issued on or about May 13, 2016. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

Sincerely,

A handwritten signature in cursive script, appearing to read "Heather Halsey".

Heather Halsey  
Executive Director

**ITEM \_\_**  
**INCORRECT REDUCTION CLAIM**  
**DRAFT PROPOSED DECISION**

Government Code Sections 3301, 3303, 3304, 3305, and 3306

Statutes 1976, Chapter 465; Statutes 1978, Chapters 775, 1173, 1174, and 1178;  
Statutes 1979, Chapter 405; Statutes 1980, Chapter 1367;  
Statutes 1982, Chapter 994; Statutes 1983, Chapter 964;  
Statutes 1989, Chapter 1165; Statutes 1990, Chapter 675

*Peace Officers Procedural Bill of Rights*

Fiscal Years 2003-2004, 2004-2005, 2005-2006, 2006-2007, and 2007-2008

12-4499-I-02

City of Los Angeles, Claimant

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**EXECUTIVE SUMMARY**

**Overview**

This incorrect reduction claim (IRC) challenges the State Controller's (Controller's) finding that the City of Los Angeles (claimant) claimed unallowable costs of \$21,464,469 (of \$35,648,462 claimed) for the *Peace Officers Procedural Bill of Rights (POBOR)* program for fiscal years 2003 through 2008. The sole issue is whether the claimed activities under audit finding 1 (unallowable salaries, benefits, and related indirect costs) are eligible for reimbursement pursuant to the parameters and guidelines and the Commission's *POBOR* decisions.

POBOR provides a series of procedural rights and safeguards to peace officers employed by local governments who are subject to investigation or discipline. These procedural protections must be afforded to officers during interrogations that could lead to punitive action against them:

- The right to review and respond in writing to adverse comments entered in their personnel files;
- The right to an administrative appeal when any punitive action, as defined by statute, is taken against them, or they are denied promotion on grounds other than merit.

On November 30, 1999, the Commission adopted the *POBOR* Statement of Decision, CSM 4499, finding that while some activities were newly mandated, certain procedural requirements under POBOR were not new and were already required under the due process clause of the United States and California Constitutions. Thus, the Commission denied the procedural requirements of POBOR that were already required by law because they did not impose a new program or higher level of service, or did not impose costs mandated by the state pursuant to Government Code section 17556(c), since they were mandated by federal law. The

Commission approved the activities required by POBOR that exceeded the requirements of pre-existing state and federal law.

On July 27, 2000, the Commission adopted parameters and guidelines that authorized reimbursement, beginning July 1, 1994, to counties, cities, a city and county, school districts, and special districts that employ peace officers for the ongoing activities summarized below:

- Developing or updating policies and procedures.
- Training for human resources, law enforcement, and legal counsel.
- Updating the status of *POBOR* cases.
- Providing the opportunity for an administrative appeal for permanent, at-will, and probationary employees that were subject to certain disciplinary actions that were not covered by the due process clause of state and federal law.
- When a peace officer is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the employer that could lead to certain disciplinary actions, the following costs and activities are eligible for reimbursement: compensation to the peace officer for interrogations occurring during off-duty time; providing prior notice to the peace officer regarding the nature of the interrogation and identification of investigating officers; tape recording the interrogation; providing the peace officer employee with access to the tape prior to any further interrogation at a subsequent time or if any further specified proceedings are contemplated; and producing transcribed copies of any notes made by a stenographer at an interrogation, and copies of complaints of reports or complaints made by investigators.
- Performing certain activities, specified by the type of local agency or school district, upon the receipt of an adverse comment against a peace officer employee.

Statutes 2005, chapter 72, section 6 (AB 138) added section 3313 to the Government Code to direct the Commission to “review” the *POBOR* Statement of Decision to determine whether the test claim statutes imposed a mandate consistent with California Supreme Court Decision in *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859 and other applicable court decisions.

On April 26, 2006, the Commission reviewed its original findings and adopted a *POBOR* Statement of Decision on Reconsideration, 05-RL-4499-01, which became final on May 1, 2006. On review of the claim, the Commission found that the *San Diego Unified School Dist.* case supports the Commission’s 1999 *POBOR* Statement of Decision, which found that the test claim statutes imposed a state-mandated program within the meaning of article XIII B, section 6 of the California Constitution on counties, cities, school districts, and special districts identified in Government Code section 3301 that employ peace officers.

The Commission further found that the *San Diego Unified School Dist.* case supports the Commission’s 1999 *POBOR* Statement of Decision that the test claim statutes impose a partially reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for all activities previously approved by the Commission *except* the following:

- Providing the opportunity for an administrative appeal to probationary and at-will peace officers (except when the chief of police is removed) pursuant to Government Code section 3304 is no longer a reimbursable state-mandated activity because the Legislature amended Government Code section 3304 in 1998. The amendment limited the right to an administrative appeal to only those peace officers “who successfully completed the probationary period that may be required” by the employing agency and to situations where the chief of police is removed. (Stats. 1998, ch. 786, § 1.)
- Obtaining the signature of the peace officer on the adverse comment or noting the officer’s refusal to sign the adverse comment, pursuant to Government Code sections 3305 and 3306, when the adverse comment results in a punitive action protected by the due process clause does not constitute a new program or higher level of service and does not impose costs mandated by the state pursuant to Government Code section 17556, subdivision (c).

The *POBOR* Statement of Decision on Reconsideration, 05-RL-4499-01, adopted by the Commission, applies to costs incurred and claimed beginning July 1, 2006. The *POBOR* Parameters and Guidelines Amendment on Reconsideration also restates and further clarifies the activities that are reimbursable and those that are not.<sup>1</sup>

### **Procedural History**

The claimant filed the IRC on September 28, 2012.<sup>2</sup> The Controller filed late comments on the IRC on December 22, 2014.<sup>3</sup> The claimant did not file a rebuttal to the Controller’s comments.

On March 22, 2016 Commission staff issued the Draft Proposed Decision.<sup>4</sup>

### **Commission Responsibilities**

Government Code section 17561(b) authorizes the Controller to audit the claims filed by local agencies and school districts and to reduce any claim for reimbursement of state-mandated costs that the Controller determines is excessive or unreasonable.

Government Code Section 17551(d) requires the Commission to hear and decide a claim that the Controller has incorrectly reduced payments to the local agency or school district. If the Commission determines that a reimbursement claim has been incorrectly reduced,

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<sup>1</sup> Exhibit B, Controller’s Late Comments on the IRC, pages 186 et seq. (Final Staff Analysis on Requests to Amend the Parameters and Guidelines, Adopted Dec. 4, 2006).

<sup>2</sup> Exhibit A, IRC.

<sup>3</sup> Exhibit B, Controller’s Late Comments on the IRC. Note that pursuant to Government Code section 17553(d) “the Controller shall have no more than 90 days after the claim is delivered or mailed to file any rebuttal to an incorrect reduction claim. The failure of the Controller to file a rebuttal to an incorrect reduction claim shall not serve to delay the consideration of the claim by the Commission.” However, in this instance, due to the backlog of IRCs, these late comments have not delayed consideration of this item and so they have been included in the analysis and proposed decision.

<sup>4</sup> Exhibit C, Draft Proposed Decision.

section 1185.9 of the Commission’s regulations requires the Commission to send the decision to the Controller and request that the costs in the claim be reinstated.

The Commission must review questions of law, including interpretation of parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.<sup>5</sup> The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”<sup>6</sup>

With regard to the Controller’s audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.<sup>7</sup>

The Commission must also review the Controller’s audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.<sup>8</sup> In addition, section 1185.1(f)(3) and 1185.2(c) of the Commission’s regulations requires that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission’s ultimate findings of fact must be supported by substantial evidence in the record.<sup>9</sup>

**Claims**

The following chart provides a brief summary of the claims and issues raised and staff’s recommendation.

Issue	Description	Staff Recommendation
Salaries and benefits of \$2,864,828 claimed under the category of administrative activities.	Of the nine activities claimed in this category, the Controller found only two are allowable: (1) updating status changes in <i>POBOR</i> case files, and (2)	<i>Correct</i> – the reduction of costs claimed for the seven activities beyond the scope of the mandate is correct as a matter of law and not

<sup>5</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

<sup>6</sup> *County of Sonoma v. Commission on State Mandates* (2000), 84 Cal.App.4th 1264, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

<sup>7</sup> *Johnston v. Sonoma County Agricultural Preservation and Open Space District* (2002) 100 Cal.App.4th 973, 983-984; *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

<sup>8</sup> *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

<sup>9</sup> Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission’s decision is not supported by substantial evidence in the record.

	<p>updating the database and noting the case assignment to an investigator for adjudication. The seven disallowed activities (totaling \$2,746,417 claimed) were found to be beyond the scope of the mandate because they involve managing case files for investigations and disciplinary cases.<sup>10</sup></p> <p>The parameters and guidelines authorize reimbursement <i>only</i> for developing or updating policies, specific mandate-related training, and updating the status of <i>POBOR</i> cases.</p>	<p>arbitrary, capricious, or entirely lacking in evidentiary support.</p>
<p>Salaries and benefits of \$12,505,118 claimed under the category of interrogations.</p>	<p>Claimant sought reimbursement for 15 activities, which the claimant described as involving: “time for conducting investigations, collecting evidence, writing reports, and editing reports.” The Controller found that \$11,289,312 claimed is unallowable because the activities claimed relate to the investigation process.<sup>11</sup></p> <p>The parameters and guidelines provide for reimbursement only for providing notice of the nature of the interrogation, tape recording the interrogation, providing access to the tape or transcription, as specified; and compensating an officer for an investigation that occurs during off-duty time, where necessitated by the seriousness of the investigation.</p>	<p><i>Correct</i> – the reduction of costs claimed for activities that are beyond the scope of the mandate is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.</p>

<sup>10</sup> Exhibit A, IRC, pages 4-5, also in Exhibit A, IRC, page 83 (final audit report).

<sup>11</sup> Exhibit A, IRC, page 84 (final audit report).

	<p>The Commission did not approve for reimbursement the activities of conducting an investigation, collecting evidence, writing reports, editing reports, preparing for the interrogation, or conducting the interrogation. Rather, these activities were expressly denied by the Commission.</p>	
<p>Salaries and benefits of \$11,289,312 claimed under the category of adverse comment.</p>	<p>Of the 16 activities claimed under this component, the audit found that 11 are reimbursable, and five are not (totaling \$12,849,376) because they are part of the investigation process: (1) investigating the circumstances surrounding the adverse comment; (2) preliminary investigation conducted by supervisors, detectives, and the command staff in the area where the complaint was taken and that can include report writing, interviews, or any activity where information is gathered for the complaint form; (3) “time spent by an Area [sic] to investigate the complaint” after the preliminary investigation; (4) the assigned advocate reviews the investigation for status and thoroughness; and (5) the time needed to conduct any additional investigations.<sup>12</sup></p> <p>The parameters and guidelines provide for reimbursement only to provide notice and an opportunity to respond to an adverse comment (if not already required by existing due process requirements), to obtain the signature of the officer on an</p>	<p><i>Correct</i> – the reduction of costs claimed for activities that are beyond the scope of the mandate is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.</p>

<sup>12</sup> Exhibit A, IRC, page 87 (final audit report).

	<p>adverse comment, and 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.</p>	
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**Staff Analysis**

**The Reductions of Costs Claimed for Salaries, Benefits, and Related Indirect Costs in Audit Finding 1 Are Correct as a Matter of Law and Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.**

The audit at issue here includes claim years 2003-2004 through 2005-2006, and the prior parameters and guidelines, adopted July 27, 2000, are applicable to those years.<sup>13</sup> The parameters and guidelines amended effective July 1, 2006 apply to the later claim years of 2006-2007 and 2007-2008.

Pursuant to Government Code section 17557 and the Commission’s regulations, parameters and guidelines are required to identify the activities the Commission finds to be mandated by the state, and those additional activities proposed by the claimant that the Commission finds and approves, based on substantial evidence in the record, to be reasonably necessary to comply with the state-mandated program.<sup>14</sup> Under the rules of interpretation, when the language of an administrative agency’s rule, such as the parameters and guidelines, is plain, the provisions are required to be enforced according to the terms of the document.<sup>15</sup> Plain provisions of the administrative rule may not be disregarded or enlarged, nor may the interpretation go beyond the meaning of the words used when the words are clear and unambiguous. The parties are prohibited from writing into an administrative rule, by implication, express requirements that are

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<sup>13</sup> These parameters and guidelines were in effect when the costs were incurred. (*Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 809, fn. 5.)

<sup>14</sup> Government Code sections 17557 and 17559; California Code of Regulations, title 2, section 1183.7; Former California Code of Regulations, title 2, section 1183.1 (Register 96, No. 30).

<sup>15</sup> *Estate of Griswold* (2001) 25 Cal.4th 904, 910-911.



not there.<sup>16</sup> The Commission's decisions on test claims and parameters and guidelines are quasi-judicial decisions that are binding on the parties.<sup>17</sup>

Moreover, later clarification of existing law, including the Commission's decision on reconsideration of this program, which clarified its original decision regarding the scope of the mandated activities, is not considered a retroactive application of a new rule, but is merely a statement of what the law has always been from the time it was enacted.<sup>18</sup> Accordingly, the later decision adopted by the Commission on reconsideration may be used to aid in understanding the original parameters and guidelines.

Finding 1 of the audit report includes reductions in salaries and benefits for activities that the Controller determined are beyond the scope of the mandate. The reductions include unallowable activities, and related indirect costs, in the categories (as articulated in the parameters and guidelines) of administrative activities; interrogation; and adverse comment. The specific activities disallowed differ for each category and for each unit claiming costs. However, the denied activities primarily consist of managing case files, conducting investigations and interrogations, collecting evidence, writing reports, editing reports, preparing for the interrogation, and other activities that are part of the investigative process.

The *POBOR* mandate is very narrow, and only includes those due process procedural protections extended to public safety employees under sections 3301, 3303, 3304, 3305, and 3306 of the Government Code that exceed the due process protections of the state and federal constitutions. Reimbursement is not required for investigation and disciplinary activities conducted by the internal affairs unit of a police department, or that relate to the investigation process (e.g., reviewing a complaint to determine whether and to what extent to investigate, investigating the allegation, preparing for the interrogation, conducting the interrogation, and reviewing the responses given by the officers or witnesses).

### **Conclusion**

Staff finds that the Controller's reductions of costs claimed are correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

### **Staff Recommendation**

Staff recommends that the Commission adopt the proposed decision to deny the IRC, and authorize staff to make any technical, non-substantive changes following the hearing.

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<sup>16</sup> *Whitcomb v. California Employment Commission* (1944) 24 Cal.2d 753, 757.

<sup>17</sup> *California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183, 1200, which stated the following: “[U]nless a party to a quasi-judicial proceeding challenges the agency's adverse findings made in that proceeding, by means of a mandate action in superior court, those findings are binding in later civil actions.” [Citation omitted.]

<sup>18</sup> *McClung v. Employment Development Dept.* (2004) 34 Cal.4th 467, 471.

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

**IN RE INCORRECT REDUCTION CLAIM  
ON:**

Government Code Sections 3301, 3303, 3304, 3305, and 3306.

Statutes 1976, Chapter 465; Statutes 1978, Chapters 775, 1173, 1174, and 1178; Statutes 1979, Chapter 405; Statutes 1980, Chapter 1367; Statutes 1982, Chapter 994; Statutes 1983, Chapter 964; Statutes 1989, Chapter 1165; Statutes 1990, Chapter 675.

Fiscal Years 2003-2004, 2004-2005, 2005-2006, 2006-2007, and 2007-2008

City of Los Angeles, Claimant

Case No.: 12-4499-I-02

*Peace Officers Procedural Bill of Rights*

**DECISION PURSUANT TO  
GOVERNMENT CODE SECTION  
17500 ET SEQ.; CALIFORNIA CODE OF  
REGULATIONS, TITLE 2, DIVISION 2,  
CHAPTER 2.5, ARTICLE 7**

*(Adopted May 27, 2016)*

**DECISION**

The Commission on State Mandates (Commission) heard and decided this incorrect reduction claim (IRC) during a regularly scheduled hearing on May 27, 2016. [Witness list will be included in the adopted decision.]

The law applicable to the Commission’s determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission [adopted/modified] the proposed decision to [approve/partially approve/deny] the IRC by a vote of [vote count will be included in the adopted decision] as follows:

<b>Member</b>	<b>Vote</b>
Ken Alex, Director of the Office of Planning and Research	
Richard Chivaro, Representative of the State Controller	
Mark Hariri, Representative of the State Treasurer, Vice Chairperson	
Sarah Olsen, Public Member	
Eraina Ortega, Representative of the Director of the Department of Finance, Chairperson	
Carmen Ramirez, City Council Member	
Don Saylor, County Supervisor	

## **Summary of the Findings**

This incorrect reduction claim (IRC) challenges the State Controller's (Controller's) finding that the City of Los Angeles (claimant) claimed unallowable costs of \$21,464,469 (of \$35,648,462 claimed) for the *Peace Officers Procedural Bill of Rights (POBOR)* program for fiscal years 2003-2004 through 2007-2008. The sole issue is whether the claimed activities in finding 1 (unallowable salaries, benefits, and related indirect costs) are eligible for reimbursement pursuant to the parameters and guidelines and the Commission's *POBOR* decisions.

The Commission finds that the reduction of costs claimed for salaries, benefits, and related indirect costs in audit finding 1 are correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support. Accordingly, the Commission denies this IRC.

## **COMMISSION FINDINGS**

### **I. Chronology**

- 09/28/2012      Claimant filed the IRC.<sup>19</sup>
- 12/22/2014      Controller filed Late Comments on the IRC.<sup>20</sup>
- 03/22/2016      Commission staff issued the Draft Proposed Decision.<sup>21</sup>

### **II. Background**

#### **The Peace Officers' Procedural Bill of Rights Program**

The Peace Officers' Procedural Bill of Rights Act (POBOR)<sup>22</sup> provides a series of procedural rights and safeguards to peace officers who are subject to investigation or discipline by their local government employer. On November 30, 1999, the Commission adopted the *Peace Officers Procedural Bill of Rights (POBOR)* Statement of Decision, CSM 4499, approving the test claim for activities that exceeded the requirements of the due process clauses of the United States and California Constitutions.<sup>23</sup> On July 27, 2000, the Commission adopted parameters

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<sup>19</sup> Exhibit A, IRC.

<sup>20</sup> Exhibit B, Controller's Late Comments on the IRC. Note that pursuant to Government Code section 17553(d) "the Controller shall have no more than 90 days after the claim is delivered or mailed to file any rebuttal to an incorrect reduction claim. The failure of the Controller to file a rebuttal to an incorrect reduction claim shall not serve to delay the consideration of the claim by the Commission." However, in this instance, due to the backlog of IRCs, these late comments have not delayed consideration of this item and so they have been included in the analysis and proposed decision.

<sup>21</sup> Exhibit C, Draft Proposed Decision.

<sup>22</sup> The Peace Officers' Procedural Bill of Rights has been abbreviated "POBRA," by the courts (See *Department of Finance v. Commission* (2009) 170 Cal.App.4th 1355); and as "POBAR," by the Commission in the parameters and guidelines (Exhibit A, IRC (parameters and guidelines), p. 12) and on many other occasions the Commission and others have employed the acronym "POBOR," and this decision will follow suit.

<sup>23</sup> Exhibit B, Controller's Late Comments on the IRC, page 38 (Statement of Decision, CSM 4499, November 30, 1999, p. 11). For example, the Commission found: "in some

and guidelines that authorized reimbursement, beginning July 1, 1994, for the ongoing activities summarized below:

- Developing or updating policies and procedures;
- Training for human resources, law enforcement, and legal counsel;
- Updating the status of *POBOR* cases;
- Providing the opportunity for an administrative appeal for permanent, at-will, and probationary employees that were subject to certain disciplinary actions that were not covered by the due process clause of state and federal law;
- When a peace officer is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the employer that could lead to certain disciplinary actions, the following costs and activities are eligible for reimbursement: compensation to the peace officer for interrogations occurring during off-duty time; providing prior notice to the peace officer regarding the nature of the interrogation and identification of investigating officers; tape recording the interrogation; providing the peace officer employee with access to the tape prior to any further interrogation at a subsequent time or if any further specified proceedings are contemplated; and producing transcribed copies of any notes made by a stenographer at an interrogation, and copies of complaints of reports or complaints made by investigators;
- Performing certain activities, specified by the type of local agency or school district, upon the receipt of an adverse comment against a peace officer employee. These activities include providing notice to the officer, an opportunity for the officer to review and respond to the adverse comment, and obtaining the signature of the officer or noting the officer's refusal to sign the adverse comment.<sup>24</sup>

The parameters and guidelines analysis adopted by the Commission on July 27, 2000, also clarified the scope of the mandate and the activities that are *not* eligible for reimbursement. For example, the Commission determined that “[b]efore the test claim legislation was enacted, local law enforcement agencies were conducting investigations, issuing disciplinary actions, and maintaining files for those cases,” so that those activities are not reimbursable.<sup>25</sup> The Commission also found that defending a lawsuit attacking the validity of the final administrative

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circumstances, the due process clause requires the same administrative hearing as the test claim legislation. However, as reflected by the table below, the Commission found that the test claim legislation is broader than the due process clause and applies to additional employer actions that have not previously enjoyed the protections of the due process clause.”

<sup>24</sup> Exhibit A, IRC, page 29 (Statement of Decision on Reconsideration, 05-RL-4499-01, April 26, 2006, p. 7). Exhibit B, Controller's Late Comments on the IRC, pages 60-65 (Parameters and Guidelines, corrected Aug. 17, 2000). These Parameters and Guidelines were adopted on July 27, 2000, but two non-substantive clerical errors were corrected and they were issued on August 17, 2000.

<sup>25</sup> Exhibit B, Controller's Late Comments on the IRC, page 169 (Final Staff Analysis on the Proposed Parameters and Guidelines, July 27, 2000, p. 5).

decision went beyond the scope of the mandate and is not eligible for reimbursement.<sup>26</sup> The Commission further recognized that Government Code section 3303(a) addresses only the compensation and timing of an interrogation and does not require local agencies to investigate an allegation, prepare for the interrogation, conduct the interrogation, or review the responses given by the officers and/or witnesses.<sup>27</sup> And the Commission found that compensating local agencies for the officer's time in responding to an adverse comment is not mandated by the state and not reimbursable.<sup>28</sup>

Statutes 2005, chapter 72, section 6 added section 3313 to the Government Code that directed the Commission to "review" the *POBOR* test claim Statement of Decision to determine whether it was consistent with California Supreme Court Decision in *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, and other applicable court decisions.

On April 26, 2006, the Commission reviewed its original findings and adopted a *POBOR* Statement of Decision on Reconsideration, 05-RL-4499-01. On review, the Commission found that the *San Diego Unified* case supported the Commission's 1999 Statement of Decision, which found that the test claim statutes imposed a partially reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The reconsideration decision clarified the scope of the mandate, making clear that the test claim statute does not require an employer to investigate an officer's conduct, interrogate an officer, take punitive action against the officer, or place an adverse comment in an officer's personnel file. The *POBOR* mandate is about new procedures governing peace officer labor relations, but investigations of misconduct or malfeasance are beyond the scope of the mandate.<sup>29</sup>

On December 4, 2006, the Commission adopted amended parameters and guidelines for costs incurred beginning July 1, 2006, based on the *POBOR* Statement of Decision on Reconsideration, a report issued by the Bureau of State Audits on the program recommending that the Commission clarify the activities that are reimbursable and those that are not, and based on several requests to amend the parameters and guidelines. These amended parameters and guidelines authorize reimbursement for all activities previously approved by the Commission except the following that were no longer reimbursable:

- Providing the opportunity for an administrative appeal to probationary and at-will peace officers (except when the chief of police is removed) pursuant to Government Code

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<sup>26</sup> *Id.*, page 171.

<sup>27</sup> *Id.*, page 180.

<sup>28</sup> *Id.*, page 184.

<sup>29</sup> Exhibit A, IRC, pages 29, 64-65 (Statement of Decision on Reconsideration, 05-RL-4499-01, April 26, 2006); see also page 41, where the Commission found that:

The [POBOR] rights are not triggered, however, until the employing agency decides to interrogate an officer, take punitive action against the officer, or place an adverse comment in an officer's personnel file. These initial decisions are not mandated by the state, but are governed by local policy, ordinance, city charter, or a memorandum of understanding.

section 3304 is no longer a reimbursable state-mandated activity because the Legislature amended Government Code section 3304 in 1998. The amendment limited the right to an administrative appeal to only those peace officers “who successfully completed the probationary period that may be required” by the employing agency and to situations where the chief of police is removed. (Stats. 1998, ch. 786, § 1.)

- Obtaining the signature of the peace officer on the adverse comment or noting the officer’s refusal to sign the adverse comment, pursuant to Government Code sections 3305 and 3306, when the adverse comment results in a punitive action protected by the due process clause does not constitute a new program or higher level of service and does not impose costs mandated by the state pursuant to Government Code section 17556, subdivision (c).<sup>30</sup>

On March 28, 2008, the Commission amended the parameters and guidelines again, following requests filed by the Department of Finance and the County of Los Angeles, to allow claimants reimbursement based on actual costs incurred or pursuant to a unit cost reasonable reimbursement methodology adopted, beginning July 1, 2006.<sup>31</sup>

#### The Controller’s Audit and Summary of the Issues

The reimbursement claims were based on a time study the claimant conducted in May 2004, which was designed to keep track of *POBOR* related activities performed by the claimant. The claimant used this time study to claim costs for fiscal years 2003-2004 through 2007-2008.<sup>32</sup> Costs of \$35,648,462 for salaries and benefits for the audit period were claimed. In audit finding 1 (the only disputed finding in this IRC), the Controller determined that \$14,183,993 is allowable and \$21,464,469 is unallowable because the activities claimed are not identified in the parameters and guidelines as reimbursable costs. The related unallowable indirect costs total \$8,307,090.

Finding 1 was divided into three components that correspond to the categories in the parameters and guidelines: administrative activities, interrogations, and adverse comment. Since the reimbursement claims were based on a time study, the Controller was able to separate the time attributable to each claimed task and separate minute increments for individual activities in order to exclude time spent on unallowable activities.<sup>33</sup>

Of the \$2,864,828 claimed for administrative activities, the Controller found \$2,746,417 was unallowable. Of the nine activities claimed in this category, the Controller found only two to be allowable: updating status changes in *POBOR* case files and updating the database and noting

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<sup>30</sup> See Exhibit B, Controller’s Late Comments on the IRC, page 188 (Final Staff Analysis on Requests to Amend the Parameters and Guidelines, Adopted Dec. 4, 2006).

<sup>31</sup> Exhibit B, Controller’s Late Comments on the IRC, pages 85-99 (Parameters and Guidelines, 06-PGA-06, amended March 28, 2008).

<sup>32</sup> Exhibit A, IRC, page 88 (final audit report); Exhibit B, Controller’s Late Comments on the IRC, pages 100-167 (tab 7, Analysis of Claimed Activities).

<sup>33</sup> Exhibit A, IRC, page 88 (final audit report); Exhibit B, Controller’s Late Comments on the IRC, pages 100-167 (tab 7, Analysis of Claimed Activities).

the case assignment to an investigator for adjudication.<sup>34</sup> The seven disallowed activities include: (1) creating a file and case number when the complaint form is received; (2) reading the complaint form and determining the best entity to perform the investigation; (3) updating the database when the investigation is complete; (4) updating the database for Internal Affairs' review; (5) creating another file and entering it into the advocate database for cases in the appeal phase; (6) distributing copies of the face sheet to concerned parties; and (7) closing out the case file by updating the database.<sup>35</sup>

Of the \$12,505,118 claimed for interrogations, the Controller found \$11,289,312 to be unallowable. Claimant sought reimbursement for 15 activities, but did not provide a description of them. The Controller said "LAPD [Los Angeles Police Dept.] staff stated that these activities involved time for conducting investigations, collecting evidence, writing reports, and editing reports. We determined that these activities are unallowable because they relate to the investigation process."<sup>36</sup>

Of the \$20,278,116 claimed for adverse comment activities, the Controller found \$12,849,376 to be unallowable. Of the 16 activities claimed under this component, the audit found that the following 11 are reimbursable: (1) reviewing the complaint form and determining whether it warrants further investigation; (2) providing first notice of the adverse comment and of an investigation and providing an opportunity to the accused officer to respond within 30 days; (3) providing first notice of the adverse comment and that an investigation is taking place and providing the officer an opportunity to respond within 30 days; (4) the officer under investigation reviewing and signing the adverse comment or complaint fact sheet; (5) the time involved if the officer under investigation refuses to sign the face sheet or initial the adverse comment; (6) review by Internal Affairs Management of a completed case before sending it out for notification to the officer under investigation; (7) time spent by the Command Officer (accused officer's supervisor) of the Area to adjudicate the complaint, including reviewing the completed complaint and writing a Letter of Transmittal; (8) area commanding officer review of complaint and letter of transmittal; (9) preparing the charge sheet for the chief of police to sign; (10) ensuring the accused officer is served with the charge sheet and obtaining the officer's signature or noting the refusal to sign; and (11) reviewing the accused officer's response to the complaint.<sup>37</sup>

The Controller also found five of the activities claimed under the adverse comment component to not be reimbursable because they are part of the investigation process: (1) investigating the circumstances surrounding the adverse comment; (2) preliminary investigation conducted by supervisors, detectives, and the command staff in the area where the complaint was taken and that can include report writing, interviews, or any activity where information is gathered for the complaint form; (3) "time spent by an Area [sic] to investigate the complaint" after the

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<sup>34</sup> Exhibit A, IRC, pages 4-5, also in Exhibit A, page 83 (final audit report).

<sup>35</sup> Exhibit A, IRC, pages 4-5, also in Exhibit A, page 83 (final audit report).

<sup>36</sup> Exhibit A, page 84 (final audit report).

<sup>37</sup> Exhibit A, pages 86-87 (final audit report).

preliminary investigation; (4) the assigned advocate reviews the investigation for status and thoroughness; and (5) the time needed to conduct any additional investigations.<sup>38</sup>

### **III. Positions of the Parties**

#### **A. City of Los Angeles**

The claimant argues that audit finding 1 (unallowable salaries, benefits and related indirect costs) is incorrect because the Controller “erred by limiting the scope of the eligible interrogation, administrative, and adverse comment activities.”<sup>39</sup> For the administrative activities (of which five were found not reimbursable) the claimant argues that “all seven activities are necessary for a local agency the size and complexity of the Los Angeles Police Department to carry out the administrative activities associated with the mandate.”<sup>40</sup> For the interrogation activities, claimant argues that the parameters and guidelines as amended March 28, 2008, do not reflect the original *POBOR* Statement of Decision that found eligible costs included: “Conducting the investigation when the peace officer is on duty, and compensating the peace officer for off-duty time in accordance with regular department procedures and new requirements not previously imposed on local agencies and school districts.” Noting that the Controller has limited reimbursement for officer overtime, claimant argues that the costs for conducting interrogations during regular work time, and preparing for those interrogations, is reimbursable.<sup>41</sup> As to the adverse comment activities, the claimant contends that most of the claimed activities are necessary to comply with the adverse comment requirements and should be reimbursable because the parameters and guidelines are inconsistent with the mandate requirements and the original statement of decision.<sup>42</sup>

#### **B. State Controller’s Office**

The Controller maintains that the audit reductions are correct and that the IRC should be denied because the reduced salary and benefit costs claimed are not eligible for reimbursement.<sup>43</sup> For the administrative activities, the Controller disallowed activities relating to managing case files because the July 27, 2000 staff analysis adopted by the Commission for the proposed parameters and guidelines said “before the test claim legislation was enacted, local law enforcement agencies were conducting investigations, issuing disciplinary hearings, and maintaining files for those cases.”<sup>44</sup> According to the Controller, the parameters and guidelines are limited to

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<sup>38</sup> Exhibit A, IRC, page 87 (final audit report).

<sup>39</sup> Exhibit A, IRC, page 3.

<sup>40</sup> *Id.*, page 5.

<sup>41</sup> *Id.*, page 7.

<sup>42</sup> *Id.*, page 9.

<sup>43</sup> Exhibit B, Controller’s Late Comments on the IRC, pages 10-12.

<sup>44</sup> *Id.*, pages 14 and 169 (Final Staff Analysis on Proposed Parameters and Guidelines, adopted July 27, 2000).



reimbursement for activities that relate to updating the status report of the mandate-related activities.<sup>45</sup>

The Controller also disagrees with the claimant's argument that interrogations conducted during an officer's regular on-duty time are reimbursable, noting that the claimant takes a sentence from the *POBOR* Statement of Decision out of context. Claimant quotes language from the section of the Decision discussing "Compensation and Timing of an Interrogation," the purpose of which was to discuss the test claimant's assertion that Government Code section 3303(a) results in payment of overtime to the investigated employee.<sup>46</sup> Moreover, the claimant ignores other language in the decision that prefaces the analysis of this issue, such as: "The procedures and rights given to peace officers under section 3303 do *not* apply to any interrogation in the normal course of duty, counseling, instruction, or informal admonition by a supervisor."<sup>47</sup> The Controller also quotes language from the staff analysis adopted by the Commission on the proposed parameters and guidelines (adopted July 27, 2000) that states:

Government Code section 3303, subdivision (a), addresses only the compensation and timing of the interrogation. It does not require local agencies to investigate the allegation, prepare for the interrogation, conduct the interrogation, and review the responses given by the officers and/or witnesses as implied by the claimant's proposed language. Certainly, local agencies were performing these investigative activities before POBAR [sic] was enacted.

Based on the foregoing, staff has modified Section IV (C) as follows:

~~1. Conducting an interrogation of a peace officer while the officer is on duty or compensating~~

When required by the seriousness of investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures. (Gov. Code section 3303, subd. (a).)<sup>48</sup>

The Controller further notes that the Commission revisited this issue in its analysis of the request to amend the parameters and guidelines (amended Dec. 4, 2006). The Commission's final staff analysis states:

The County of San Bernardino, the City of Sacramento, and the City of Los Angeles contend that investigation costs and the cost to conduct the interrogation are reimbursable.

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<sup>45</sup> *Id.*, page 12.

<sup>46</sup> Exhibit B, Controller's Late Comments on the IRC, page 18.

<sup>47</sup> *Id.* pages 18 and 39 (Statement of Decision CSM-4499, adopted Nov. 30, 1999, p. 12).

<sup>48</sup> Exhibit B, Controller's Late Comments on the IRC, pages 19 and 180 (Final Staff Analysis on Proposed Parameters and Guidelines, adopted July 27, 2000).

However ... the Commission has already rejected the arguments raised by the County and Cities for reimbursement of investigation costs and the cost to conduct the interrogation.<sup>49</sup>

The Controller concludes that to state interrogations conducted during an officer's regular on-duty time is reimbursable is "contrary to the preponderance of evidence found in the administrative record" for this mandate program.

The Controller also disagrees with the claimant's position that its "adverse comment" activities are reimbursable. The activities denied for reimbursement were part of the city's investigative process. The Controller responds to the claimant's argument that the parameters and guidelines are not consistent with the original *POBOR* Statement of Decision by noting that:

This analysis was addressed above for costs claimed under the Interrogations cost component and was pled by the test claimant for activities appearing in Government Code section 3303, subdivision (a). The costs for Adverse Comment were pled by the test claimant for activities appearing in Government Code sections 3305 and 3306. Accordingly, costs claimed under the Adverse Comment cost component have no relevance to costs claimed under the Interrogations cost component. The city's position is an expanded interpretation of the language in the parameters and guidelines that is taken out of context. The costs for conducting investigations were never included in the Adverse Comment cost component as reimbursable activities.<sup>50</sup>

#### **IV. Discussion**

Government Code section 17561(b) authorizes the Controller to audit the claims filed by local agencies and school districts and to reduce any claim for reimbursement of state mandated costs that the Controller determines is excessive or unreasonable.

Government Code Section 17551(d) requires the Commission to hear and decide a claim that the Controller has incorrectly reduced payments to the local agency or school district. If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.9 of the Commission's regulations requires the Commission to send the statement of decision to the Controller and request that the costs in the claim be reinstated.

The Commission must review questions of law, including interpretation of the parameters and guidelines, *de novo*, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.<sup>51</sup> The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable

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<sup>49</sup> Exhibit B, Controller's Late Comments on the IRC, pages 19 and 207 (Final Staff Analysis on Proposed Parameters and Guidelines, adopted Dec. 4, 2006, p. 22).

<sup>50</sup> Exhibit B, Controller's Late Comments on the IRC, pages 22-23.

<sup>51</sup> Government Code sections 17551, 17552; *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334.

remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”<sup>52</sup>

With regard to the Controller’s audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.<sup>53</sup> Under this standard, the courts have found that:

When reviewing the exercise of discretion, “[t]he scope of review is limited, out of deference to the agency’s authority and presumed expertise: ‘The court may not reweigh the evidence or substitute its judgment for that of the agency. [Citation.]’” ... “In general ... the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support. . . .” [Citations.] When making that inquiry, the “ ‘court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute.’ ” [Citation.]”<sup>54</sup>

The Commission must review the Controller’s audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.<sup>55</sup> In addition, sections 1185.1(f)(3) and 1185.2(c) of the Commission’s regulations require that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission’s ultimate findings of fact must be supported by substantial evidence in the record.<sup>56</sup>

**The Reduction of Costs Claimed for Salaries, Benefits, and Related Indirect Costs in Audit Finding 1 Are Correct as a Matter of Law, and Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.**

The Commission first adopted parameters and guidelines for the *POBOR* mandate on July 27, 2000,<sup>57</sup> which were amended pursuant to legislative direction following the Commission’s reconsideration of the program on December 4, 2006, with reimbursement beginning July 1,

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<sup>52</sup> *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

<sup>53</sup> *Johnston v. Sonoma County Agricultural Preservation and Open Space District* (2002) 100 Cal.App.4th 973, 983-984; *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

<sup>54</sup> *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

<sup>55</sup> *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

<sup>56</sup> Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission’s decision is not supported by substantial evidence in the record.

<sup>57</sup> Exhibit B, Controller’s Late Comments on the IRC, page 169 (Final Staff Analysis on Proposed Parameters and Guidelines, adopted July 27, 2000).

2006.<sup>58</sup> The parameters and guidelines, adopted July 27, 2000, are applicable to the audit of the 2003-2004 through 2005-2006 reimbursement claims.<sup>59</sup> The parameters and guidelines as amended on December 4, 2006 (effective July 1, 2006) apply to the 2006-2007 and 2007-2008 reimbursement claims.

Pursuant to Government Code section 17557 and the Commission's regulations, parameters and guidelines are required to identify the activities the Commission finds to be mandated by the state, and additional activities proposed by the claimant that the Commission finds and approves, based on substantial evidence in the record, to be reasonably necessary to comply with the state-mandated program.<sup>60</sup> Parameters and guidelines are regulatory in nature and are interpreted the same as regulations and statutes.<sup>61</sup> Interpretation of an administrative agency's rule, including the Commission's parameters and guidelines, is a question of law.<sup>62</sup>

Under the rules of interpretation, when the language of an administrative agency's rule, such as the parameters and guidelines, is plain, the provisions are required to be enforced according to the terms of the document. The California Supreme Court determined that:

In statutory construction cases, our fundamental task is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute. We begin by examining the statutory language, giving the words their usual and ordinary meaning. If the terms of the statute are unambiguous, we presume the lawmakers meant what they said, and the plain meaning of the language governs. [Citations omitted.]<sup>63</sup>

The language of the parameters and guidelines must be construed in the context of the Commission's decisions and adopted analyses on the test claim and parameters and guidelines, so that every provision may be harmonized and have effect.<sup>64</sup> Under these rules, plain

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<sup>58</sup> *Id.*, pages 188, 236 (Final Staff Analysis on Requests to Amend Parameters and Guidelines, adopted December 4, 2006).

<sup>59</sup> These parameters and guidelines were in effect when the costs were incurred. (*Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 809, fn. 5.)

<sup>60</sup> Government Code sections 17557 and 17559; California Code of Regulations, title 2, section 1183.7; Former California Code of Regulations, title 2, section 1183.1 (Register 96, No. 30).

<sup>61</sup> *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 799.

<sup>62</sup> *Culligan Water Conditioning v. State Board of Equalization* (1976) 17 Cal.3d 86, 93; see also, *County of San Diego v. State* (1997) 15 Cal.4th 68, 81; 109, where the court held that the determination whether reimbursement is required pursuant to article XIII B, section 6 is a question of law.

<sup>63</sup> *Estate of Griswold* (2001) 25 Cal.4th 904, 910-911.

<sup>64</sup> *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 781-782; see also, Government Code sections 17514 (defining "costs mandated by the state"), 17550 (providing that "reimbursement ... for costs mandated by the state shall be provided pursuant to this chapter"), 17551 (requiring the Commission to hear and decide a claim that a local agency is entitled to be reimbursed by the state for costs mandated by the state as required by article XIII B, section 6 of the California Constitution), 17552 (providing that this chapter shall be the

provisions of the administrative rule may not be disregarded or enlarged, nor may the interpretation go beyond the meaning of the words used when the words are clear and unambiguous. Thus, the parties are prohibited from writing into an administrative rule, by implication, express requirements that are not there.<sup>65</sup> The Commission's decisions on test claims and parameters and guidelines are quasi-judicial decisions that are binding on the parties.<sup>66</sup>

Moreover, later clarification of existing law, including the Commission's decisions on reconsideration of this program, which clarified its original decision regarding the scope of the mandated activities, may be applied to reimbursement claims for costs that predate the 2006 parameters and guidelines amendment. This is because the Commission's clarification is not considered a retroactive application of a new rule, but is merely a statement of what the law has always been from the time it was enacted.<sup>67</sup> Accordingly, the later decision adopted by the Commission on reconsideration may be used to aid in understanding the original parameters and guidelines.

Finding 1 of the audit report includes reductions in salaries and benefits for activities that the Controller determined were beyond the scope of the mandate. The reductions include activities and related indirect costs in the categories (as articulated in the parameters and guidelines) of administrative activities; interrogation; and adverse comment. The Commission finds that the audit reductions are correct as a matter of law, and not arbitrary, capricious, or without evidentiary support.

A. The Controller's reduction of costs claimed for administrative expenses is correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

The city claimed \$2,864,828 for nine administrative activities, of which \$2,746,417 was found unallowable in the audit. Based on an examination of the claimant's time study conducted in 2003-2004,<sup>68</sup> the Controller found only the following two administrative activities (of nine activities claimed) to be reimbursable because they involve updating the status report of the mandate-related activities:

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sole and exclusive procedure by which a local agency may claim reimbursement for costs mandated by the state), 17557 (governing the adoption of parameters and guidelines after the Commission determines there are costs mandated by the state), and 17558 (providing that the Controller's claiming instructions must be derived from the Commission's test claim decision and adopted parameters and guidelines).

<sup>65</sup> *Whitcomb v. California Employment Commission* (1944) 24 Cal.2d 753, 757.

<sup>66</sup> *California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183, 1200, which states: "[U]nless a party to a quasi-judicial proceeding challenges the agency's adverse findings made in that proceeding, by means of a mandate action in superior court, those findings are binding in later civil actions." [Citation omitted.]

<sup>67</sup> *McClung v. Employment Development Dept.* (2004) 34 Cal.4th 467, 471.

<sup>68</sup> Exhibit B, Controller's Late Comments on the IRC, page 11.

1. **Status:** This activity occurs in the Administrative Records Section (ARS) and involves the time needed to update status changes within POBOR case files. Per LAPD staff, the cases are updated for every activity and/or procedural change.
2. **Assign:** This activity consists solely of updating the database and noting the case assignment to an investigator for adjudication.<sup>69</sup>

The Controller also found that the following seven claimed activities are not reimbursable because the activities involve managing case files for investigations and disciplinary cases:

3. **Comment:** The ARS section in Internal Affairs performs this task by creating a file and a case number when the Professional Standards Bureau receives a “1.28” complaint form. Per LAPD staff, this activity is an internal procedure created by LAPD to ensure compliance with the investigation time frame of one year.
4. **Locate:** This activity denotes the time required for the Classification Unit to read the “1.28” (complaint form) and determine the best entity to perform the investigation. After determining which entity will investigate, the form is sent to the ARS.
5. **Invest:** When the investigation is complete, the case file is sent to the Review and Evaluation Section. This activity consists of updating the database to note this information.
6. **IA Review:** This activity consists of the time it takes to update the database for Internal Affairs’ (IAG) review. Per LAPD staff, this activity is similar to Invest, but one IAG section or division will review the investigation of another IAG investigation unit for thoroughness, facts, results, and conclusions. It is another type of review and another change in status.
7. **Appeal:** This activity takes place when the case is going to the Advocate Section, where another file is created and entered into the Advocate Database. Per LAPD staff, the case is in the appeal phase and is no longer being investigated or reviewed. This activity pertains to the procedural process of transferring a case in the Advocate Unit, tracking the appeal process, and tracking where the case is.
8. **Note:** This activity consists of distributing copies of the face sheet (which contains the summary of allegations and the names of the involved parties) to concerned parties. This activity occurs in the ARS and is based on the time it takes to update the database for the activity.
9. **Close out:** The ARS closes out the case file and documents this activity. This activity is a database update function.<sup>70</sup>

The Controller states that the parameters and guidelines do not authorize reimbursement for activities related to managing case files and that the denied activities listed above fall into that

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<sup>69</sup> Exhibit A, IRC, pages 4-5, also in Exhibit A, IRC, page 83 (final audit report).

<sup>70</sup> Exhibit A, IRC, pages 4-5, also in Exhibit A, IRC, page 83 (final audit report); Exhibit B, Controller’s Late Comments on the IRC, pages 100-167 (Tab 7 Analysis of Claimed Activities).

category. The Controller argues that the parameters and guidelines only allow reimbursement for those activities that relate to updating the status report of the mandate-related activities.<sup>71</sup>

The claimant argues that the seven activities denied for reimbursement are necessary to carry out the administrative activities associated with the mandate as follows:

The City finds the SCO has incorrectly interpreted the parameters and guidelines and statement of decision for the POBOR program. Their extremely narrow and limited interpretation has resulted in nearly 95% of the costs. The City does not agree with the SCO's interpretation of what is necessary to comply with the constitutional "due process" activities afforded all government employees and what additional activities are imposed on peace officers by the POBOR mandate. The City asserts that all seven [disallowed] activities are necessary for a local agency the size and complexity of the Los Angeles Police Department to carry out the administrative activities associated with the mandate.<sup>72</sup>

As originally adopted in July 2000, section IV.A of the parameters and guidelines provides reimbursement for the following administrative activities:

A. Administrative Activities (On-going Activities)

1. Developing or 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 POBAR cases.<sup>73</sup>

The analysis for the parameters and guidelines adopted by the Commission on July 27, 2000, considered a request by the test claimant to authorize reimbursement for "maintenance of the systems to conduct the mandated activities" as a reasonably necessary activity. The Commission denied the request because the activity was too broad and local agencies were maintaining files on peace officer investigations and disciplinary actions before the enactment of the test claim statutes:

The Department of Finance states that the component "maintenance of the systems to conduct the mandated activities" is too ambiguous. Staff agrees.

Before the test claim legislation was enacted, local law enforcement agencies were conducting investigations, issuing disciplinary actions, and *maintaining* files for those cases . . . . Accordingly, staff has modified this component to provide

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<sup>71</sup> Exhibit B, Controller's Late Comments on the IRC, page 12.

<sup>72</sup> Exhibit A, IRC, page 5.

<sup>73</sup> Exhibit B, Controller's Late Comments on the IRC, page 60 (Parameters and Guidelines, corrected Aug. 17, 2000).

that claimants are eligible for reimbursement for “updating the status report of the POBAR cases.”<sup>74</sup>

Therefore, the Commission’s adopted decision on the parameters and guidelines reflects its consideration that prior to the *POBOR* mandate, local agencies were already investigating complaints, disciplining peace officer employees, and maintaining case files for those investigations and disciplinary actions.<sup>75</sup> Thus, the reimbursable activity to update the status of the *POBOR* cases is limited to updating the status of the new procedural requirements mandated by the state.

This interpretation is further evidenced by the Commission’s clarification of this activity when it amended the parameters and guidelines on December 4, 2006, as follows (with changes in ~~strikeout~~ and underline):

Updating the status report of ~~mandate-reimbursable POBOR cases~~ activities. “Updating the status report of ~~mandate-reimbursable POBOR activities~~” means tracking the procedural status of the ~~mandate-reimbursable activities only~~. Reimbursement is not required to ~~maintain or update the cases, set up the cases, review the cases, evaluate the cases, or close the cases.~~<sup>76</sup>

Section IV.C. of the parameters and guidelines, as amended on December 4, 2006, further provides:

The following activities are **not** reimbursable:

Activities occurring before the assignment of the case to an administrative investigator. These activities include taking an initial complaint, setting up the complaint file, interviewing parties, reviewing the file, and determining whether the complaint warrants an administrative investigation.<sup>77</sup>

As indicated above, the Commission’s amendment to the parameters and guidelines is a clarification of what the law has always been from the time it was enacted.<sup>78</sup>

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<sup>74</sup> Exhibit B, Controller’s Late Comments on the IRC, page 169 (Final Staff Analysis on Proposed Parameters and Guidelines, adopted July 27, 2000, emphasis in original).

<sup>75</sup> See Exhibit B, Controller’s Late Comments on the IRC, page 180. (In the Final Staff Analysis on Proposed Parameters and Guidelines, adopted July 27, 2000, p. 16, it was noted that: “Government Code section 3303, subdivision (a), addresses only the compensation and timing of the interrogation. It does not require local agencies to investigate an allegation, prepare for the interrogation, conduct the interrogation, and review the responses given by the officers and/or witnesses, as implied by the claimant’s proposed language. Certainly, local agencies were performing these investigative activities before POBAR [sic] was enacted.”)

<sup>76</sup> Exhibit B, Controller’s Late Comments on the IRC, page 72 (adopted Parameters and Guidelines Amendment, December 6, 2006, p. 4).

<sup>77</sup> Exhibit B, Controller’s Late Comments on the IRC, page 76 (adopted Parameters and Guidelines Amendment, December 6, 2006, p. 8).

<sup>78</sup> *McClung v. Employment Development Dept.* (2004) 34 Cal.4th 467, 471.



In this case, the costs claimed include those to create a file when a complaint form is received, read the complaint and determine the best entity to investigate, update the file when the investigation is complete, update the file when the Internal Affairs Unit reviews the investigation, update the file when the matter is transferred to the Advocate Unit for disciplinary action, distribute copies of the summary of allegations and names of the parties involved, and close the file when the disciplinary action is complete. None of these activities are mandated by the state. Nor have these activities been approved by the Commission as eligible for reimbursement. As indicated above, the parties are prohibited from writing into the parameters and guidelines, by implication, express requirements that are not there.<sup>79</sup> In fact, the Commission specifically held that activities to take an initial complaint, set up a complaint file, interview and investigate the facts, and review the file are *not* reimbursable. The Commission's decisions on parameters and guidelines are quasi-judicial decisions that are binding on the parties.<sup>80</sup>

In addition, one of the activities denied in the audit was “**Comment:** . . . creating a file and a case number when the Professional Standards Bureau receives a “1.28” complaint form. Per LAPD staff, this activity is an internal procedure created by LAPD *to ensure compliance with the investigation time frame of one year.*”<sup>81</sup> Ensuring timely completion of the investigation, however, was considered by the Commission upon the request of a city when the parameters and guidelines were amended on December 4, 2006. The Commission expressly rejected this activity because the statute that imposes the time limit was not pled in the test claim. In dismissing the objections, the Commission said:

Staff finds that the City's comments go beyond the scope of the test claim statutes and are not consistent with the Commission's findings in the Statement of Decision on reconsideration. As indicated in footnote 5, page 6 of the Commission's Statement of Decision on reconsideration (05-RL-4499-01), the POBOR Act has been subsequently amended by the Legislature. One of those amendments imposed the time limitations described by the City. [Stats. 1997, ch. 148.] The subsequent amendments were not pled in this test claim and, thus, they were not analyzed to determine whether they impose reimbursable state-mandated activities within the meaning of article XIII B, section 6. The City's arguments relating to the time limitations imposed by subsequent legislation are outside the scope of the Commission's decision in POBOR (CSM 4499). Thus, the City's rationale is not consistent with the Commission's findings.<sup>82</sup>

Thus, the activities identified by the claimant to support the claimant's time study go beyond the scope of the mandated program. Moreover, as indicated by the Controller, the claimant has not

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<sup>79</sup> *Whitcomb v. California Employment Commission* (1944) 24 Cal.2d 753, 757.

<sup>80</sup> *California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183, 1200.

<sup>81</sup> Exhibit A, IRC, pages 4-5, also in Exhibit A, IRC, page 83 (final audit report, emphasis added).

<sup>82</sup> Exhibit A, IRC, page 93 (final audit report). Exhibit B, Controller's Late Comments on the IRC, page 200 (Final Staff Analysis on Requests to Amend Parameters and Guidelines, adopted December 4, 2006, p. 15).

provided any information or evidence to show that these activities fall within the scope of the mandate to update the status report of the mandate-related activities only.<sup>83</sup> In addition, there is no evidence in the record that the Controller's calculation of the costs reduced from the claimant's time study is arbitrary, capricious, or entirely lacking in evidentiary support.

Therefore, the Commission finds that the Controller's reduction of costs for administrative expenses is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

B. The Controller's reduction of costs claimed for interrogation expenses is correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

The city claimed \$12,505,118 for interrogations, of which \$11,289,312 was found unallowable in the audit. The city claimed the following 15 activities under the interrogations category:

1. Admin task (Administrative Task)
2. Call out
3. CO Contact (Commanding Officer Contact)
4. Evidence Collect
5. Interview in person
6. Interview Telephone
7. Kickback Editing
8. Mcct/Brief/Notify
9. Non-Evidence Task
10. Paraphrasing
11. Prep for Interview
12. Report Formatting
13. Telephone Contact
14. Travel
15. VI Computer Task<sup>84</sup>

According to the audit:

The city did not provide a formal description of these activities. LAPD staff stated that these activities involved time for conducting investigations, collecting evidence, writing reports, and editing reports. We determined that these activities are unallowable because they relate to the investigation process.<sup>85</sup>

The Controller states, however, that these 15 activities were not included in the documents supporting the time study the claimant used to calculate costs. Instead, the claimant's time study was based on the following activities, none of which were actually included in the reimbursement claims: conducting the interrogations usually during normal working hours; providing notice to the officer regarding the nature of the interrogation and identification of the investigating officer; determining who the investigating officer will be; tape recording the

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<sup>83</sup> Exhibit B, Controller's Late Comments on the IRC, page 13.

<sup>84</sup> Exhibit A, IRC, page 84 (final audit report).

<sup>85</sup> *Ibid*; see also, Exhibit B, Controller's Late Comments on the IRC, pages 100-163 (Tab 7 Analysis of Claimed Activities).

interrogation; and booking the tape at the Scientific Investigations Division.<sup>86</sup> The Controller agrees that some of the unclaimed activities that supported the time study are eligible for reimbursement (i.e., notice and tape recording when the person being interrogated requests the recording, and booking or storing the tape),<sup>87</sup> but it is not clear from the record how the Controller calculated the reduction of costs.<sup>88</sup>

The claimant does not challenge either the calculation of the partial reduction of costs claimed or the Controller's characterization that the 15 claimed activities consisting of conducting investigations, collecting evidence, writing reports, and editing reports. Instead, claimant argues that the entire reduction is incorrect because the Commission's original *POBOR* Statement of Decision on the test claim found that eligible costs included: "Conducting the investigation when the peace officer is on duty, *and* compensating the peace officer for off-duty overtime in accordance with regular department procedures are new requirements not previously imposed on local agencies or school districts." The claimant "believes the costs for conducting interrogations during regular work time is reimbursable, as is preparation for those interrogations" and argues that the Controller's interpretation of the parameters and guidelines is inconsistent with the statement of decision. According to the claimant, "the Statement of Decision is given deference when there is a discrepancy between the finding of a judicial body and the documents that arise from that finding."<sup>89</sup>

The Commission finds that the claimant's interpretation of the test claim statement of decision and parameters and guidelines is wrong. The Commission did not approve for reimbursement the activities of conducting an investigation, collecting evidence, writing reports, editing reports, preparing for the interrogation, or conducting the interrogation. As shown below, these activities were expressly denied by the Commission.

In the statement of decision on the test claim, the Commission found that Government Code section 3303(a) establishes procedures for the timing and compensation of a peace officer subject to interrogation by an employer. If the interrogation takes place during the officer's off-duty hours because of the seriousness of the investigation, then reimbursement was approved for compensating the officer for off-duty time in accordance with regular department procedures.<sup>90</sup> When adopting the parameters and guidelines in July 2000, the Commission agreed with a staff recommendation that Government Code section 3303 does not require local agencies to investigate, prepare for the interrogation, conduct the interrogation, or review the responses, and adopted the following analysis:

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<sup>86</sup> Exhibit A, IRC, page 85 (final audit report).

<sup>87</sup> Exhibit B, Controller's Late Comments on the IRC, pages 61-62 (Parameters and Guidelines, corrected August 17, 2000).

<sup>88</sup> Exhibit B, Controller's Late Comments on the IRC, pages 100-163 (Tab 7 Analysis of Claimed Activities).

<sup>89</sup> Exhibit A, IRC, page 7.

<sup>90</sup> Exhibit B, Controller's Late Comments on the IRC, page 39 (Statement of Decision adopted November 30, 1999).

Staff finds that the activity to review the necessity for the questioning and responses given is too broad and goes beyond the scope of Government Code section 3303, subdivision (a), and the Commission's Statement of Decision.

Government Code section 3303, subdivision (a), addresses only the compensation and timing of the interrogation. It does not require local agencies to investigate the allegation, prepare for the interrogation, conduct the interrogation, and review the responses given by the officers and/or witnesses as implied by the claimant's proposed language. Certainly, local agencies were performing these investigative activities before POBAR [sic] was enacted.<sup>91</sup>

There is no conflict between the analysis adopted by the Commission for the parameters and guidelines and the statement of decision adopted by the Commission on the test claim, as asserted by the claimant. Both clearly state that Government Code section 3303(a) only affects the timing of an interrogation and compensation required to be provided if the interrogation occurred during off-duty hours. Thus, the parameters and guidelines authorize reimbursement for "compensating a peace officer for interrogations occurring during off-duty time in accordance with regular department procedures" when required by the seriousness of the investigation.<sup>92</sup> The state, however, has not mandated local agencies to investigate, interrogate, or review interrogation responses. As explained by the courts, POBOR deals with labor relations. It does not interfere with the employer's existing right to manage and control its own police department.<sup>93</sup>

When the Commission adopted the April 26, 2006 *POBOR* Statement of Decision on Reconsideration, it clarified its earlier findings that activities to investigate, prepare for the interrogation, conduct the interrogation, and review responses given by officers and/or witnesses to an investigation are not reimbursable:

In comments to the draft staff analysis, the Counties of Orange, Los Angeles, and Alameda, and the City of Sacramento contend that the interrogation of an officer pursuant to the test claim legislation is complicated and requires the employer to fully investigate in order to prepare for the interrogation. The County of Orange further states that "[t]hese investigations can vary in scope and depth from abuses of authority, the use of deadly force, excessive force when injuries may be significant, serious property damage, and criminal behavior." These local agencies are requesting reimbursement for the time to investigate.

The Commission disagrees and finds that investigation services are not reimbursable. First, investigation of criminal behavior is specifically excluded from the requirements of Government Code section 3303. Government Code

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<sup>91</sup> Exhibit B, Controller's Late Comments on the IRC, page 180 (Final Staff Analysis on the Proposed Parameters and Guidelines, July 27, 2000).

<sup>92</sup> Exhibit B, Controller's Late Comments on the IRC, page 61 (Parameters and Guidelines, corrected Aug. 17, 2000).

<sup>93</sup> *Sulier v. State Personnel Bd.* (2004) 125 Cal.App.4th 21, 26; *Baggett v. Gates* (1982) 32 Cal.3d 128, 135.

section 3303, subdivision (i), states that the interrogation requirements do not apply to an investigation concerned solely and directly with alleged criminal activities. Moreover, article XIII B, section 6, subdivision (a)(2), and Government Code section 17556, subdivision (g), state that no reimbursement is required for the enforcement of a crime.

The County of Los Angeles supports the argument that reimbursement for investigative services is required by citing Penal Code section 832.5, which states that each department that employs peace officers shall establish a procedure to investigate complaints. Penal Code section 832.5, however, was not included in this test claim, and the Commission makes no findings on that statute. The County of Los Angeles also cites to the phrase in Government Code section 3303, subdivision (a), which states that “[t]he interrogation shall be conducted ...” to argue that investigation is required. The County takes the phrase out of context. Government Code section 3303, subdivision (a), states the following:

The interrogation shall be conducted at a reasonable hour, preferably at a time when the public safety officer is on duty, or during the normal waking hours for the public safety officer, unless the seriousness of the investigation requires otherwise. If the interrogation does occur during off-duty time of the public safety officer being interrogated, the public safety officer shall be compensated for any off-duty time in accordance with regular department procedures, and the public safety officer shall not be released from employment for any work missed.

Government Code section 3303, subdivision (a), establishes the timing of the interrogation, and requires the employer to compensate the interrogated officer if the interrogation takes place during off-duty time. In other words, the statute defines the process that is due the peace officer who is subject to an interrogation. This statute does not require the employer to investigate complaints. When adopting parameters and guidelines for this program, the Commission recognized that Government Code section 3303 does not impose new mandated requirements to investigate an allegation, prepare for the interrogation, conduct the interrogation, and review responses given by officers and/or witnesses to an investigation. [Citing to Analysis adopted by the Commission on Parameters and Guidelines, July 22, 2000.]

Thus, investigation services go beyond the scope of the test claim legislation and are *not* reimbursable. As explained by the courts, POBOR deals with labor relations. [Citing *Sulier v. State Personnel Bd.* (2004) 125 Cal.App.4th 21, 26.] It does not interfere with the employer’s right to manage and control its own police department. [Citing *Baggett v. Gates* (1982) 32 Cal.3d 12832 Cal.3d 128, 135.]<sup>94</sup>

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<sup>94</sup> Exhibit A, IRC, pages 64-65 (Statement of Decision on Reconsideration, 05-RL-4499-01, April 26, 2006, emphasis in original).

When the parameters and guidelines were amended in December 2006, the Commission again rejected reimbursement for investigation costs:

The County of San Bernardino, the City of Sacramento, and the City of Los Angeles contend that investigation costs and the cost to conduct the interrogation are reimbursable.

However, . . . the Commission has already rejected the arguments raised by the County and Cities for reimbursement of investigation costs and the cost to conduct the interrogation.<sup>95</sup>

The *POBOR* Parameters and Guidelines on Reconsideration clearly state these findings by clarifying the following activities that are not reimbursable:

1. Activities occurring before the assignment of the case to an administrative investigator. These activities include taking an initial complaint, setting up the complaint file, interviewing parties, reviewing the file, and determining whether the complaint warrants an administrative investigation.
2. Investigation activities, including assigning an investigator to the case, reviewing the allegation, communicating with other departments, visiting the scene of the alleged incident, gathering evidence, identifying and contacting complainants and witnesses.
3. Preparing for the interrogation, reviewing and preparing interrogation questions, conducting the interrogation, and reviewing the responses given by the officer and/or witness during the interrogation.
4. Closing the file, including the preparation of a case summary disposition reports and attending executive review or committee hearings related to the investigation.<sup>96</sup>

Therefore, the Controller's reduction of costs claimed to conduct investigations, conduct interrogations, collect evidence, write reports, and edit reports is correct as a matter of law. Moreover, there is no evidence in the record that the Controller's calculation of the costs reduced from the claimant's time study is arbitrary, capricious, or entirely lacking in evidentiary support.

Accordingly, the Controller's reduction of costs claimed for interrogations is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

C. The Controller's reduction of costs claimed for adverse comment expenses is correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

The city claimed \$20,217,116 in salaries and benefits for the adverse comment component during the audit period, of which \$7,428,740 was found unallowable because the activities claimed were beyond the scope of the reimbursable mandate. Of the 16 activities claimed under

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<sup>95</sup> Exhibit B, Controller's Late Comments on the IRC, page 207 (Final Staff Analysis on Requests to Amend Parameters and Guidelines, adopted December 4, 2006).

<sup>96</sup> Exhibit B, Controller's Late Comments on the IRC, page 76 (Parameters and Guidelines, amended December 4, 2006).

this component, the Controller found that the following five are not reimbursable because they are part of the investigative process:

**Preliminary:** This activity involves investigating the circumstances surrounding the adverse comment.

**Collect:** This activity consists of the preliminary investigation conducted by supervisors, detectives, and the command staff in the area where the complaint was taken. This activity can include report writing, interviews, or any activity where information is gathered for the "1.28" (complaint form).

**Area invest:** This activity consists of the time spent by an Area to investigate the complaint or "1.28" (complaint form). This activity occurs after the preliminary investigation.

**Inspect:** This activity occurs when the assigned advocate reviews the investigation for status and thoroughness.

**RE invest:** This activity involves the time needed to conduct any additional investigations.<sup>97</sup>

All versions of the parameters and guidelines, under the component of adverse comment, separately list the reimbursable activities for school districts, counties, and cities and special districts, respectively.<sup>98</sup> For purposes of this IRC, only the reimbursable activities provided for cities are relevant. The parameters and guidelines provide three conditional statements, pertaining to the potential consequences of the adverse comment, and provide for different reimbursable activities in each case, depending on the existing requirements of due process or other law that are not reimbursable under the test claim decision:

- If an adverse comment results in dismissal, suspension, demotion, reduction in pay, or written reprimand for a permanent employee peace officer, or harms the officer's reputation and opportunity to find future employment, then cities and special districts are entitled to reimbursement for obtaining the officer's signature on the adverse comment, or noting the officer's refusal to sign the adverse comment and obtaining the signature or initials of the officer.
- If an adverse comment is related to a possible criminal offense, cities are entitled to reimbursement for providing notice of the adverse comment; providing an opportunity to review and sign the adverse comment; providing an opportunity to respond within 30 days; and noting an officer's refusal to sign and obtaining a signature or initials under such circumstances.
- If an adverse comment is not related to a possible criminal offense, cities are entitled to reimbursement for providing notice of the adverse comment; providing an opportunity to

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<sup>97</sup> Exhibit A, IRC, page 87 (final audit report).

<sup>98</sup> For example, see Exhibit B, Controller's Late Comments on the IRC, pages 76-77 (Parameters and Guidelines, amended December 4, 2006).

respond within 30 days; obtaining the signature of the officer; or noting the officer's refusal to sign and obtaining a signature or initials.<sup>99</sup>

The parameters and guidelines also authorize reimbursement for the following activities found to be reasonably necessary to comply with the mandates associated with adverse comments:

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.<sup>100</sup>

However, as discussed throughout this analysis, the reimbursable activities pertaining to an adverse comment do not include investigative activities, including reviewing a complaint to determine whether and to what extent to investigate.<sup>101</sup>

The Controller has disallowed costs for activities that involve the investigation surrounding an adverse comment, and not to obtaining a signature, or acknowledging a refusal to sign. As noted above, the parameters and guidelines do state that "review of circumstances or documentation ... including determination of whether same constitutes an adverse comment,"<sup>102</sup> is included within the activities stated. If the comment is an adverse comment, the Commission found that the notice requirements of Government Code sections 3305 and 3306 do not constitute a new program or higher level of service pursuant to article XIII B, section 6 of the California Constitution.<sup>103</sup> Thus, the activities to review the circumstances or documentation cannot be read to include the claimed activities of (1) investigating the circumstances surrounding the adverse comment; (2) the preliminary investigation conducted by supervisors, detectives, and the command staff in the area where the complaint was taken; (3) report writing, interviews; or time spent by the areas to investigate the complaint or "1.28" (complaint form) after the preliminary investigation; (4) when the assigned advocate reviews the investigation for status and thoroughness; or (5) the time needed to conduct any additional investigation.<sup>104</sup> These disallowed activities clearly pertain to investigation, which, as stated throughout this analysis, is not a reimbursable activity under the *POBOR* mandate.

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<sup>99</sup> Exhibit B, Controller's Late Comments on the IRC, pages 64-65 (Parameters and Guidelines, corrected August 17, 2000).

<sup>100</sup> Exhibit B, Controller's Late Comments on the IRC, page 65 (Parameters and Guidelines, corrected August 17, 2000).

<sup>101</sup> Exhibit B, Controller's Late Comments on the IRC, page 180 (Final Staff Analysis on the Proposed Parameters and Guidelines, July 27, 2000).

<sup>102</sup> Exhibit B, Controller's Late Comments on the IRC, page 65 (Parameters and Guidelines, corrected August 17, 2000, pp. 3-8).

<sup>103</sup> Exhibit A, IRC, pages 46-47 (Statement of Decision, CSM-4499, Nov. 30, 1999, p. 19).

<sup>104</sup> *Id.*, page 87 (final audit report).



The *POBOR* mandate is very narrow, and as determined by the Commission, local law enforcement agencies were conducting investigations and issuing disciplinary actions before the *POBOR* statutes were enacted, so those activities are not reimbursable.<sup>105</sup> The Commission's *POBOR* Statement of Decision on Reconsideration further clarifies the intended scope of the mandate, especially making clear that the test claim statute does not require an employer to investigate an officer's conduct or place an adverse comment in an officer's personnel file. Because the *POBOR* mandate is about new procedures governing peace officer labor relations, any investigations of misconduct or malfeasance are beyond the scope of the mandate.<sup>106</sup> These decisions are binding on the parties.<sup>107</sup>

Based on the foregoing, the Commission finds that the Controller's reduction of costs claimed under the adverse comment component are correct as a matter of law because of the claimed investigative activities that are beyond the scope of the mandate. Moreover, there is no evidence in the record that the Controller's calculation of the costs reduced from the claimant's time study is arbitrary, capricious, or entirely lacking in evidentiary support.

## **V. Conclusion**

Based on the foregoing analysis, the Commission finds that the Controller's reductions of costs claimed are correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support. Therefore, the Commission denies this IRC.

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<sup>105</sup> Exhibit B, Controller's Late Comments on the IRC, page 171 (Final Staff Analysis on Proposed Parameters and Guidelines, adopted July 27, 2000).

<sup>106</sup> Exhibit A, IRC, pages 29, 64-65 (Statement of Decision on Reconsideration, 05-RL-4499-01, April 26, 2006); see also page 41, where the Commission found that:

The [POBOR] rights are not triggered, however, until the employing agency decides to interrogate an officer, take punitive action against the officer, or place an adverse comment in an officer's personnel file. These initial decisions are not mandated by the state, but are governed by local policy, ordinance, city charter, or a memorandum of understanding.

<sup>107</sup> *California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183, 1200.

**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 23, 2016, I served the:

**Draft Proposed Decision, Schedule for Comments, and Notice of Hearing**

*Peace Officers Procedural Bill of Rights*, 12-4499-I-02

Government Code Sections 3301, 3303, 3304, 3305, and 3306;

Statutes 1976, Chapter 465; Statutes 1978, Chapters 775, 1173, 1174, and 1178;

Statutes 1979, Chapter 405; Statutes 1980, Chapter 1367; Statutes 1982, Chapter 994;

Statutes 1983, Chapter 964; Statutes 1989, Chapter 1165; Statutes 1990, Chapter 675

Fiscal Years: 2003-2004, 2004-2005, 2005-2006, 2006-2007, and 2007-2008

City of Los Angeles, 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 23, 2016 at Sacramento, California.



Jill L. Magee

Commission on State Mandates

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Sacramento, CA 95814

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**Last Updated:** 3/18/16

**Claim Number:** 12-4499-I-02

**Matter:** Peace Officer Bill of Rights (POBOR)

**Claimant:** City of Los Angeles

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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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