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STATE MANDATED COST

August 24, 2016

RECEIVED
August 24, 2016
**Commission on
State Mandates**

Ms. Heather Halsey
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Halsey:

As an "Interested Party" Nichols Consulting has reviewed both the test claim submitted by the City of Glendora for Claim No. 15-TC-01, "Local Agency Employee Organizations: Impasse Procedures" and also the Department of Finance's (DOF) letter dated July 22, 2016 (received by the Commission on State Mandates on July 25, 2016) regarding the same subject matter.

The following are our comments regarding the test claim and letter.

Prior Laws with PERB – HEERA, EERA and MMBA

In their letter, DOF alleges many of the activities identified by the City of Glendora do not result in a reimbursable state mandate. In fact, in the second paragraph of their letter, DOF asserts the following:

"Prior laws specified that if a public agency and an employee organization fail to reach agreement, the two parties may agree on the appointment of a mediator at a shared cost. If the parties reached an impasse, the public agency may implement its last, best, and final offer. Public Employment Relations Board (PERB) previously oversaw the fact-finding process for higher education and public education employers and employee organizations."

Although it is true that Public Employment Relations Board (PERB) has previously and still currently oversees both the Higher Education Employment Relations Act (HEERA) and also the Education Employment Relations Act (EERA a.k.a. "Rodda Act") neither of these labor acts affect Cities, Counties and Special Districts (Locals).

HEERA specifically involves labor relations between the public institutions of higher education and their employees and covers the employees of the University of California, Hastings College of the Law, and the California State University. EERA applies only to school districts (K-12) and community college districts. In fact, school & college districts have been able to file for their reimbursable "Rodda Act" costs through the State Mandated Cost reimbursement process (Claim No. CSM 4425) and these costs have been claimable to school & college districts dating back to January 1978.

Locals have never been able to claim reimbursable costs under the Rodda Act as the EERA does not apply to them. Instead, the Meyers-Milias-Brown Act (MMBA) is applicable to Locals as it corresponds to employer-employee relations between local public agencies and their employees. A State-mandated cost example of this relationship is the reimbursable program, "Local Government Employment Relations" Claim No. 01-TC-30.

The test claim statute for "Local Government Employment Relations" amended MMBA by establishing an additional method for creating an agency shop arrangement, and expanded the jurisdiction of PERB to include resolving disputes and enforcing the statutory duties and rights of those public employers and employees subject to the MMBA. As such, only Locals are eligible claimants for this program under these expanded provisions of the MMBA.

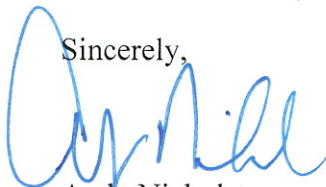
Mediation Sessions and Mediator Costs are not alleged

As referenced earlier, the DOF letter states the following "the two parties may agree on the appointment of a mediator at a shared cost." This is a very confusing reference made by DOF since the test claim legislation (Assembly Bill 646 – Atkins) involves fact-finding and makes no reference to mediation costs or the shared cost of a mediator. Perhaps DOF is confusing the enacted version of AB 646 with an earlier version containing mediation language (AB 646 – Amended in Assembly March 23, 2011)? In the March 23, 2011 amended version, the mediation language was stricken from later versions of the bill. Lastly and more importantly, the City of Glendora does not appear to allege reimbursement for costs related to mediation in the test claim.

With the above in mind, I am uncertain how DOF has supported its assertion the activities alleged by the City of Glendora "are not new requirements or increased programs, or levels of service" as both of the Labor Acts referenced by DOF (HEERA & EERA) are inapplicable and the activities identified by DOF involving mediation are not alleged by Glendora.

If you have any questions regarding this letter, please feel free to contact me at (916) 455-3939 or via e-mail at andy@nichols-consulting.com. Thank you.

Sincerely,



Andy Nichols
Nichols Consulting

Attachments

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 August 25, 2016, I served the:

Nichols Consulting Rebuttal Comments

Local Agency Employee Organizations: Impasse Procedures, 15-TC-01

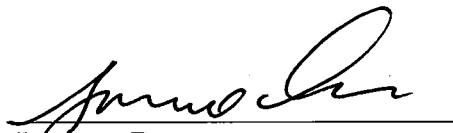
Government Code Section 3505.4, 3505.5, and 3505.7;

Statutes 2011, Chapter 680 (AB 646)

City of Glendora, 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 August 25, 2016 at Sacramento, California.



Lorenzo Duran

Commission on State Mandates

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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 8/16/16

Claim Number: 15-TC-01

Matter: Local Agency Employee Organizations: Impasse Procedures

Claimant: City of Glendora

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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