



DEPARTMENT OF  
**FINANCE**

EDMUND G. BROWN JR. GOVERNOR

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RECEIVED

October 18, 2017

Commission on  
State Mandates

October 18, 2017

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

### Response to Test Claim 16-TC-04, Impasse Procedures

Dear Ms. Halsey:

The Department of Finance (Finance) has reviewed the test claim submitted by the City of Oxnard (City) that alleges reimbursable, state-mandated costs associated with Chapter 680, Statutes of 2011 (AB 646) and Chapter 314, Statutes of 2012 (AB 1606).

AB 646 allows local agency public employee organizations to request appointment of a fact-finding panel to address disputes concerning conditions of employment with local agency employers, if a mediator is unable to arrange a settlement within 30 days. AB 646 states that costs associated with the fact-finding shall be equally divided between the parties.

AB 1606 states that mediation is not a necessary pre-condition for a local agency public employee organization to request appointment of a fact-finding panel pursuant to AB 646. AB 1606 contains a legislative finding and declaration that its provisions are technical and clarifying of existing law.

The City alleges that AB 646 and AB 1606 require it to perform a host of new activities that are unique to government and that are necessary to carry out a state policy, and that are therefore state-reimbursable.

We first note that AB 646 was the subject of a previous Commission on State Mandates (Commission) ruling. In its February 1, 2017 Statement of Decision for Case No. 15-TC-01, the Commission found that the AB 646 fact-finding requirement was not state-reimbursable because the requirement was only triggered by the local agency's voluntary decision to participate in mediation with the public employee organization. The Commission stated that "The plain language of (Government Code) Section 3505.2 – the parties "may agree" to appoint a "mutually agreeable" mediator – means that mediation under the Meyers-Mlias-Brown Act is voluntary."

For the costs associated with a statute to be state-reimbursable, the statute must either create a new program unique to government in which local agencies are compelled to participate, or must require local agencies to provide a higher level of service via a new or an existing program (San Diego Unified School District v. Commission on State Mandates (2004) 33 Cal. 4<sup>th</sup> 859, 878). In City of Richmond v. Commission on State Mandates (1998) 64 Cal. App. 4<sup>th</sup> 1190, the court stated that "(a) higher cost to the local government for compensating its employees is not the same as a higher cost of providing services *to the public* (emphasis added)." This supports

the contention that, to be state-reimbursable, the higher level of service in question must be associated with a service provided to the public.

The City's test claim fails the second part of the two-part test above. When a local agency participates in a fact-finding panel with a public employee organization to resolve disputes concerning employment conditions, the local agency is not providing a service to the public. Consequently, none of the City's alleged costs qualify for reimbursement pursuant to this test.

We must now consider whether AB 646 or AB 1606 creates a new program unique to government in which local agencies are compelled to participate. We assert that neither statute creates a *new* program. Instead, the statutes add a new fact-finding element to the existing collective bargaining program. Because neither statute creates a *new* program that provides a higher level of service *to the public*, none of the alleged costs stated in the City's test claim are state-reimbursable.

We also note that the City alleges one-time, state-mandated costs associated with the activities listed below:

#### For AB 646

- Training staff on the legislation's new requirements.
- Revising local agency manuals, policies, and guidelines related to new fact-finding requirements.

#### For AB 1606

- Updating policies and procedures, as well as any city codes or resolutions, to comply with the clarifying language of AB 1606.
- Providing training for staff on the updated employee organization impasse process/rights/rules enacted by AB 1606.

In addition to being ineligible for reimbursement for the reasons previously stated, Finance further asserts the aforementioned one-time costs are ineligible for reimbursement based at least one previous Commission ruling. Specifically, we refer to the Commission's March 29, 2007 Statement of Decision in Case No. 01-TC-07, which concerns binding arbitration.

In its Test Claim, the Claimant in Case No. 01-TC-07 alleged a host of reimbursable activities related to, among other things, providing training to managers, counsel, staff, and governing board members concerning the statutes in question,

In the Statement of Decision for Case No. 01-TC-07, the Commission found that "...training agency, management, counsel, staff, and members of governing bodies regarding binding arbitration is *not required* (emphasis in original) by the plain language of the test claim statutes." Similarly, a plain reading of AB 646 and AB 1606 does not support the City's contention that it is required to provide training for staff on either statute. Consequently, no costs allegedly incurred by the City to provide such training are state-reimbursable.

Further applying the “plain language” test set forth in Case No. 01-TC-07, there is nothing in either statute that requires the City to revise local agency manuals, policies, and guidelines, or to update policies and procedures, or city codes or resolutions. Consequently, no costs allegedly incurred by the City for these activities are state-reimbursable.

Sincerely,

A handwritten signature in blue ink, appearing to read 'JH', with a long, sweeping underline that extends to the left.

JUSTYN HOWARD  
Program Budget Manager

**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 September 18, 2017, I served the:

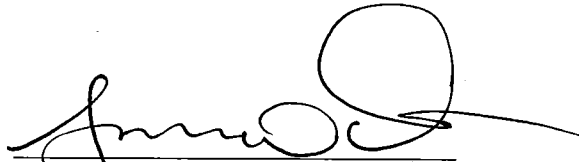
- **Finance's Comments on the Test Claim**

*Impasse Procedures*, 16-TC-04

Government Code Sections 3505.4, 3505.5, and 3505.7; as added or amended by Statutes 2011, Chapter 680 (AB 646) and Statutes 2012, Chapter 314 (AB 1606)  
City of Oxnard, 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 September 18, 2017 at Sacramento, California.



Lorenzo Duran  
Commission on State Mandates  
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# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 10/3/17

**Claim Number:** 16-TC-04

**Matter:** Impasse Procedures

**Claimant:** City of Oxnard

### 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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