

1. TEST CLAIM TITLE

Impasse Procedures pursuant to AB 646 and
AB 1606 (Ch 680, 2011 and Ch 314, 2012)

2. CLAIMANT INFORMATION

City of Oxnard

Name of Local Agency or School District

James Throop

Claimant Contact

Chief Financial Officer

Title

300 West Third Street

Street Address

Oxnard, CA 93030

City, State, Zip

(805) 385-7475

Telephone Number

(805) 385-7466

Fax Number

Jim.Throop@oxnard.org

E-Mail Address

3. CLAIMANT REPRESENTATIVE INFORMATION

Claimant designates the following person to act as its sole representative in this test claim. All correspondence and communications regarding this claim shall be forwarded to this representative. Any change in representation must be authorized by the claimant in writing, and sent to the Commission on State Mandates.

Patrick J. Dyer

Claimant Representative Name

Director

Title

MGT Consulting

Organization

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City, State, Zip

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For CSM Use Only

Filing Date:

RECEIVED
May 12, 2017
**Commission on
State Mandates**

Test Claim #: 16-TC-04

4. TEST CLAIM STATUTES OR EXECUTIVE ORDERS CITED

Please identify all code sections (include statutes, chapters, and bill numbers) (e.g., Penal Code Section 2045, Statutes 2004, Chapter 54 [AB 290]), regulations (include register number and effective date), and executive orders (include effective date) that impose the alleged mandate .

Chapter 680, Statutes of 2011 (AB 646) adding sections 3505.4, 3505.5 and 3505.7 to the government code and Chapter 314 of 2012 (AB 1606) adding clarifying language to 3505.

Copies of all statutes and executive orders cited are attached.

Sections 5, 6, and 7 are attached as follows:

5. Written Narrative: pages 1 to 12.

6. Declarations: pages 13 to 16.

7. Documentation: pages 17 to 28.

8. CLAIM CERTIFICATION

*Read, sign, and date this section and insert at the end of the test claim submission.**

This test claim alleges the existence of a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this test claim submission is true and complete to the best of my own knowledge or information or belief.

James Throop

Print or Type Name of Authorized Local Agency
or School District Official

CFO

Print or Type Title



Signature of Authorized Local Agency or
School District Official

9/19/17

Date

** If the declarant for this Claim Certification is different from the Claimant contact identified in section 2 of the test claim form, please provide the declarant's address, telephone number, fax number, and e-mail address below.*

**BEFORE THE
COMMISSION ON STATE MANDATES**

Test Claim of:
The City of Oxnard

Local Public Employee Organizations: Impasse Procedures

Chapter 680, Statutes of 2011
Chapter 314, Statutes of 2012

STATEMENT OF THE CLAIM

OVERVIEW

On June 22, 2011, Assembly Bill 646 (Atkins) added duties to Collective Bargaining activities falling under Milias-Meyers-Brown Act (MMBA). Specifically Section 3403.4 was repealed and replaced with a new section, and sections 3505.5 and 3503.7 were added. On September 14, 2012 Assembly Bill 1606 (Perea) prohibited a waiver of the factfinding process and provided further clarifying language and legislative intent of the process outlined in AB 646. 3505.4 was changed to clarify the ambiguity of AB 464 and imposes additional restrictions with respect to collective bargaining and additional state mandated activity on local agencies.

The bills authorized the employee organization, if the mediator is unable to effect settlement of the controversy within 30 days of his or her appointment, to request that the matter be submitted to a factfinding panel. The bill would require that the factfinding panel consist of one member selected by each party as well as a chairperson selected by the board or by agreement of the parties. The factfinding panel would be authorized to make investigations and hold hearings, and to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence. The bill would require all political subdivisions of the state to comply with the panel's requests for information.

These bills would prohibit a public agency from implementing its last, best, and final offer until at least 10 days after the factfinders' written findings of fact and recommended terms of settlement have been submitted to the parties and the agency has held a public hearing regarding the impasse.

Specifically, AB 646:

- 1) Requires the fact-finding panel shall meet with the parties within 10 days after appointment and take other steps it deems appropriate. Specifies that the fact-finding panel consist of one member selected by each party and a chairperson selected by the Public Employment Relations Board (PERB) or by agreement of the parties.

- 2) Authorizes the fact-finding panel to make inquiries and investigations, hold hearings, and take any other steps it deems appropriate, and to issue subpoenas requiring the attendance and testimony of witnesses and the production of witnesses.
- 3) Requires state and local public agencies, if requested by the panel, to furnish the panel with all records, papers and information in their possession relating to any matter under investigation by the panel.
- 4) Specifies the criteria the fact-finding panel should be guided by in arriving at their findings and recommendations.
- 5) Requires the fact-finding panel to make findings of fact and recommend terms of a settlement if the dispute is not settled within 30 days. This information must first be provided to the parties before being made available to the public.
- 6) Requires the costs of the chairperson of the fact-finding panel to be paid for by both parties whether or not PERB selected the chairperson. Any other costs incurred will be borne equally by the parties, as specified.
- 7) Allows an employer to implement their last, best and final offer once any applicable mediation and fact-finding procedures have been exhausted and despite the implementation of the best and final offer, allows a recognized employee organization the right each year to meet and confer.

Government Code §3505.4 currently reads:

3505.4.

(a) If the mediator is unable to effect settlement of the controversy within 30 days after his or her appointment, the employee organization may request that the parties' differences be submitted to a factfinding panel. Within five days after receipt of the written request, each party shall select a person to serve as its member of the factfinding panel. The Public Employment Relations Board shall, within five days after the selection of panel members by the parties, select a chairperson of the factfinding panel.

(b) Within five days after the board selects a chairperson of the factfinding panel, the parties may mutually agree upon a person to serve as chairperson in lieu of the person selected by the board.

(c) The panel shall, within 10 days after its appointment, meet with the parties or their representatives, either jointly or separately, and may make inquiries and investigations, hold hearings, and take any other steps it deems appropriate. For the purpose of the hearings, investigations, and inquiries, the panel shall have the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence. Any state agency, as defined in Section 11000, the California State University, or any political subdivision of the state, including any board of education, shall furnish the panel, upon its

request, with all records, papers, and information in their possession relating to any matter under investigation by or in issue before the panel.

(d) In arriving at their findings and recommendations, the factfinders shall consider, weigh, and be guided by all the following criteria:

- (1) State and federal laws that are applicable to the employer.
- (2) Local rules, regulations, or ordinances.
- (3) Stipulations of the parties.
- (4) The interests and welfare of the public and the financial ability of the public agency.
- (5) Comparison of the wages, hours, and conditions of employment of the employees involved in the factfinding proceeding with the wages, hours, and conditions of employment of other employees performing similar services in comparable public agencies.
- (6) The consumer price index for goods and services, commonly known as the cost of living.
- (7) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- (8) Any other facts, not confined to those specified in paragraphs (1) to (7), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations.

Government Code §3505.5 currently reads:

3505.5.

(a) If the dispute is not settled within 30 days after the appointment of the factfinding panel, or, upon agreement by both parties within a longer period, the panel shall make findings of fact and recommend terms of settlement, which shall be advisory only. The factfinders shall submit, in writing, any findings of fact and recommended terms of settlement to the parties before they are made available to the public. The public agency shall make these findings and recommendations publicly available within 10 days after their receipt.

(b) The costs for the services of the panel chairperson selected by the board, including per diem fees, if any, and actual and necessary travel and subsistence expenses, shall be equally divided between the parties.

(c) The costs for the services of the panel chairperson agreed upon by the parties shall be equally divided between the parties, and shall include per diem fees, if any, and actual and necessary travel and subsistence expenses. The per diem fees shall not exceed the per diem fees stated on the chairperson's résumé on file with the board. The chairperson's bill showing the amount payable by the parties shall accompany his or her final report to the parties and the board. The chairperson may submit interim bills to the parties in the course of the proceedings, and copies of the interim bills shall also be sent to the board. The parties shall make payment directly to the chairperson.

(d) Any other mutually incurred costs shall be borne equally by the public agency and the employee organization. Any separately incurred costs for the panel member selected by each party shall be borne by that party.

(e) A charter city, charter county, or charter city and county with a charter that has a procedure that applies if an impasse has been reached between the public agency and a bargaining unit, and the procedure includes, at a minimum, a process for binding arbitration, is exempt from the requirements of this section and Section 3505.4 with regard to its negotiations with a bargaining unit to which the impasse procedure applies.

Government Code §3505.7 currently reads:

3505.7.

After any applicable mediation and factfinding procedures have been exhausted, but no earlier than 10 days after the factfinders' written findings of fact and recommended terms of settlement have been submitted to the parties pursuant to Section 3505.5, a public agency that is not required to proceed to interest arbitration may, after holding a public hearing regarding the impasse, implement its last, best, and final offer, but shall not implement a memorandum of understanding. The unilateral implementation of a public agency's last, best, and final offer shall not deprive a recognized employee organization of the right each year to meet and confer on matters within the scope of representation, whether or not those matters are included in the unilateral

implementation, prior to the adoption by the public agency of its annual budget, or as otherwise required by law.

Specifically, AB 1606:

The Meyers-Milias-Brown Act contains various provisions that govern collective bargaining of local represented employees, and delegates jurisdiction to the Public Employment Relations Board to resolve disputes and enforce the statutory duties and rights of local public agency employers and employees. The act requires the governing body of a public agency to meet and confer in good faith regarding wages, hours, and other terms and conditions of employment with representatives of recognized employee organizations.

Under the act, if the representatives of the public agency and the employee organization fail to reach an agreement, they may mutually agree on the appointment of a mediator and equally share the cost. If the parties reach an impasse, the act provides that a public agency may unilaterally implement its last, best, and final offer. Existing law further authorizes the employee organization, if the mediator is unable to effect settlement of the controversy within 30 days of his or her appointment, to request that the parties' differences be submitted to a factfinding panel.

This bill would instead authorize the employee organization to request that the parties' differences be submitted to a factfinding panel not sooner than 30 days or more than 45 days following the appointment or selection of a mediator pursuant to the parties' agreement to mediate or a mediation process required by a public agency's local rules.

The bill would also authorize an employee organization, if the dispute was not submitted to mediation, to request that the parties' differences be submitted to a factfinding panel not later than 30 days following the date that either party provided the other with a written notice of a declaration of impasse. The bill would specify that the procedural right of an employee organization to request a factfinding panel cannot be expressly or voluntarily waived. The bill would also specify that its provisions are intended to be technical and clarifying of existing law.

Changes to 3505.4 (from AB 1606)

3505.4. (a) The employee organization may request that the parties' differences be submitted to a factfinding panel not sooner than 30 days, but not more than 45 days, following the appointment or selection of a mediator pursuant to the parties' agreement to mediate or a mediation process required by a public agency's local rules. If the dispute was not submitted to mediation, an employee organization may request that the parties' differences be submitted to a factfinding panel not later than 30 days following the date that either party provided the other with a written notice of a declaration of impasse. Within five days after receipt of the written request, each party shall select a person to serve as its member of the factfinding panel. The Public Employment Relations Board shall, within five days after the selection of panel members by the parties, select a chairperson of the factfinding panel.

(b) Within five days after the board selects a chairperson of the factfinding panel, the parties may mutually agree upon a person to serve as chairperson in lieu of the person selected by the board.

(c) The panel shall, within 10 days after its appointment, meet with the parties or their representatives, either jointly or separately, and may make inquiries and investigations, hold hearings, and take any other steps it deems appropriate. For the purpose of the hearings, investigations, and inquiries, the panel shall have the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence. Any state agency, as defined in Section 11000, the California State University, or any political subdivision of the state, including any board of education, shall furnish the panel, upon its request, with all records, papers, and information in their possession relating to any matter under investigation by or in issue before the panel.

(d) In arriving at their findings and recommendations, the factfinders shall consider, weigh, and be guided by all the following criteria:

- (1) State and federal laws that are applicable to the employer.
- (2) Local rules, regulations, or ordinances.
- (3) Stipulations of the parties.
- (4) The interests and welfare of the public and the financial ability of the public agency.
- (5) Comparison of the wages, hours, and conditions of employment of the employees involved in the factfinding proceeding with the wages, hours, and conditions of employment of other employees performing similar services in comparable public agencies.
- (6) The consumer price index for goods and services, commonly known as the cost of living.
- (7) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- (8) Any other facts, not confined to those specified in paragraphs (1) to (7), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations.

(e) The procedural right of an employee organization to request a factfinding panel cannot be expressly or voluntarily waived.

A. NEW ACTIVITIES

This new legislation has led to increased costs to the Collective Bargaining process as it relates to Impasse declaration activities. The impasse activities are new and not revised or amended. The City did not have any previous requirements on or activities related to Impasse prior to AB 646 and AB 1606.

If mediation did not result in settlement after 30 days and if the employee organization requests factfinding (646):

- 1) **646 – 1:** The agency must notice impasse hearing if delay in factfinding request.
- 2) **646 – 2:** Agency must select a person to serve as its member of the factfinding panel, and pay for the costs of its member

- 3) **646 – 3:** If chairperson is not approved by other party, agency must select a different chairperson.
- 4) **646 – 4:** PERB shall appoint a panel Chairperson and the agency shall pay for half of the panel chairperson's costs.
- 5) **646 – 5:** The agency shall review and respond to all requests and subpoenas made by the panel and furnish panel with all relevant documents as requested. (This includes both administrative time to review and approve materials as well as clerical time to process these requests. Travel time would also be reimbursable if required.)
- 6) **646 – 6:** The agency shall participate in all factfinding hearings.
- 7) **646 – 7:** The agency shall review and make the panel findings publicly available within 10 days of receipt.
- 8) **646 – 8:** The agency shall pay for half of the costs of the factfinding.
- 9) **646 – 9:** The agency must hold a public impasse hearing, if it chooses to impose its last, best offer.
- 10) **646 – 10:** The agency shall meet and confer with union and submit/resubmit last, best offer.

AB 1606:

1. **1606 – 1:** This bill would again authorize the employee organization to request that the parties' differences be submitted to a factfinding panel not sooner than 30 days or more than 45 days following the appointment or selection of a mediator pursuant to the parties' agreement to mediate or a mediation process required by a public agency's local rules.
2. **1606 – 2:** Select Mediator- Within five days after the board selects a chairperson of the factfinding panel, the parties may mutually agree upon a person to serve as chairperson in lieu of the person selected by the board.
3. **1606 – 3:** The bill would also authorize an employee organization, if the dispute was not submitted to mediation, to request that the parties' differences be submitted to a factfinding panel not later than 30 days following the date that either party provided the other with a written notice of a declaration of impasse.
4. **1606 – 4:** The panel shall, within 10 days after its appointment, meet with the parties or their representatives, either jointly or separately, and may make inquiries and investigations, hold hearings, and take any other steps it deems appropriate. For the purpose of the hearings, investigations, and inquiries, the panel shall have the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence.
5. **1606 – 5:** Respond to inquiries by all parties resulting from panel contemplating 3505.4 (d) Items/paragraphs 1 through 8.
6. **1606 – 6:** Process procedural right of an employee organization to request a factfinding panel. Ensure that this cannot be expressly or voluntarily waived.

One-time costs would include:

For AB 646:

- 1) **646 – 1 (OTC):** Train staff on new requirements

- 2) **646 – 2 (OTC):** Revise local agency manuals, polices, and guidelines related to new factfinding requirements.

For AB 1606

- 1) **1606 – 1 (OTC):** Update policies and procedures as well as any city codes or resolutions to comply with clarifying language of 1606.
- 2) **1606 – 2 (OTC):** Training for staff on updated employee organization impasse process/rights/rules updated by 1606.

B. LEGISLATIVE HISTORY PRIOR TO 1975

There was no Mandatory Impasse Procedures requirement prior to 1975, nor in any of the intervening years, until the passage of Chapter 680, Statutes of 2011, filed on October 9, 2011. This process and mandatory procedures were further clarified by Chapter 314, Statutes of 2012, filed on September 14, 2012.

The Commission on State mandates has found other similar mandates pertaining to Personnel issues such as BINDING ARBITRATION (01-TC-07), LOCAL GOVERNMENT EMPLOYEE RELATIONS (02-TC-30), COLLECTIVE BARGAINING (97-TC-08) to be reimbursable State Mandated programs.

C. SPECIFIC STATUTORY SECTIONS THAT CONTAIN THE MANDATED ACTIVITIES

Government Code Sections 3504.4, 3505.5.5 and 3505.7 were added by specified legislation and relate to the reimbursable provisions of this test claim.

D. COST ESTIMATES

The City of Oxnard contends that the actual increased costs to comply with this new mandate is \$373,836.57 in total. For fiscal year 2015-16, its total costs were \$327,302.63 when the City had to enter mediation as required by these statutes for two separate impasse cases. The City first incurred increased costs as a result of this statute on May 12, 2016. A detail of the 2015-16 costs by new activity are as follows:

| FY 2015-2016 | | Activities | | | | | | | | | | | | | | | | Units (hours) / TOTAL | | | |
|----------------------------|--------------------|-----------------|-----------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------------|----------------|----------------|---------------------|
| Resource | Unit Cost per Hour | 646-2 (OCT) | 1606-1 (OCT) | 646-1 (OCT) | 1606-2 (OCT) | 646-1 | 1606-1 | 1606-3 | 646-2 | 646-3 | 646-4 | 1606-2 | 646-5 | 646-6 | 646-7 | 1606-4 | 1606-5 | | 1606-6 | 646-9 | 646-10 |
| Policy/Training | | | | | | | | | | | | | | | | | | | | | |
| HR Director | \$85.79 | 23 | 23 | 2 | 2 | | | | | | | | | | | | | | | | 50 |
| City Attorney | \$98.56 | 14 | 14 | 2 | 2 | | | | | | | | | | | | | | | | 32 |
| Police Impasse Case | | | | | | | | | | | | | | | | | | | | | |
| HR Director | \$85.79 | | | | | 1 | 1 | 1 | | 1 | | 2 | 4 | 4 | 8 | 4 | 12 | 14 | 2 | 2 | 56 |
| City Attorney | \$98.56 | | | | | 1 | 1 | 1 | | 1 | | 4 | 4 | 2 | 4 | 8 | 10 | 2 | 2 | 40 | |
| Sr. HR Coord. | \$33.02 | | | | | | | | 0.5 | 0.5 | | 1 | 4 | 4 | 2 | 4 | 10 | 14 | | | 40 |
| Conf. Legal | \$250 | 44 | 44 | | | | | | | | 96 | 96 | 260 | 148 | 48 | 260 | 46 | | | | |
| Fire Impasse Case | | | | | | | | | | | | | | | | | | | | | |
| HR Director | \$85.79 | | | | | 0.5 | 1.5 | 1 | 1 | | | 2 | 2 | 2 | 12 | 4 | 8 | 12 | 1 | 1 | 48 |
| City Attorney | \$98.56 | | | | | 0.5 | 1.5 | 0.5 | 0.5 | | | 1 | 1 | 1 | 2 | 4 | 4 | 6 | 1 | 1 | 24 |
| Sr. HR Coord. | \$33.02 | | | | | | | | | | | 6 | 12 | | | 8 | 10 | | | | 36 |
| Conf. Legal | \$250 | | | | | | | | | | | | | | | | 42 | | | | |
| Labor \$ by Activity | | \$3,353 | \$3,353 | \$369 | \$369 | \$277 | \$184 | \$461 | \$152 | \$336 | \$0 | \$475 | \$1,338 | \$1,536 | \$2,176 | \$1,871 | \$3,559 | \$4,270 | \$553 | \$553 | \$25,182.94 |
| Overhead | | \$682 | \$682 | \$75 | \$75 | \$56 | \$37 | \$94 | \$31 | \$68 | \$0 | \$97 | \$272 | \$312 | \$442 | \$380 | \$724 | \$868 | \$112 | \$112 | \$5,119.69 |
| Contract Legal | | \$11,000 | \$11,000 | | | | | | | | \$24,000 | \$24,000 | \$65,000 | \$37,000 | \$12,000 | \$65,000 | \$22,000 | \$18,000 | \$4,000 | \$4,000 | \$297,000.00 |
| TOTAL | | \$15,035 | \$15,035 | \$444 | \$444 | \$333 | \$222 | \$555 | \$182 | \$404 | \$24,000 | \$24,571 | \$66,610 | \$38,848 | \$14,618 | \$47,251 | \$24,282 | \$23,138 | \$4,665 | \$4,665 | \$327,302.63 |

Estimated annual costs to be incurred by the City of Oxnard to implement the alleged mandate during the fiscal year 2016-2017 is \$46,533.94 – the fiscal year immediately following the fiscal year for which the claim was filed.

| FY 2016-2017 | | Activities | | | | | | | | | | | | | | | | Units (hours) / TOTAL | | | |
|----------------------------|--------------------|----------------|----------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|------------|--------------|----------------|----------------|----------------|----------------|-----------------|-----------------------|--------------|--------------|---------------------|
| Resource | Unit Cost per Hour | 646-2 (OCT) | 1606-1 (OCT) | 646-1 (OCT) | 1606-2 (OCT) | 646-1 | 1606-1 | 1606-3 | 646-2 | 646-3 | 646-4 | 1606-2 | 646-5 | 646-6 | 646-7 | 1606-4 | 1606-5 | | 1606-6 | 646-9 | 646-10 |
| Policy/Training | | | | | | | | | | | | | | | | | | | | | |
| HR Director | \$79.26 | 23 | 23 | 2 | 2 | | | | | | | | | | | | | | | | 50 |
| City Attorney | \$100.53 | 14 | 14 | 2 | 2 | | | | | | | | | | | | | | | | 32 |
| Police Impasse Case | | | | | | | | | | | | | | | | | | | | | |
| HR Director | \$79.26 | | | | | 1 | 1 | 1 | | 1 | | 2 | 4 | 4 | 8 | 4 | 12 | 14 | 2 | 2 | 56 |
| City Attorney | \$100.53 | | | | | 1 | 1 | 1 | | 1 | | 4 | 4 | 2 | 4 | 8 | 10 | 2 | 2 | 40 | |
| Sr. HR Coord. | \$35.36 | | | | | | | | 0.5 | 0.5 | | 1 | 4 | 4 | 2 | 4 | 10 | 14 | | | 40 |
| Conf. Legal | \$250.00 | | | | | | | | | | | | | | | | 36 | | | | |
| Fire Impasse Case | | | | | | | | | | | | | | | | | | | | | |
| HR Director | \$79.26 | | | | | 0.5 | 1.5 | 1 | 1 | | | 2 | 2 | 2 | 12 | 4 | 8 | 12 | 1 | 1 | 48 |
| City Attorney | \$100.53 | | | | | 0.5 | 1.5 | 0.5 | 0.5 | | | 1 | 1 | 1 | 2 | 4 | 4 | 6 | 1 | 1 | 24 |
| Sr. HR Coord. | \$35.36 | | | | | | | | | | | | 6 | 12 | | 8 | 10 | | | | 36 |
| Conf. Legal | \$250.00 | | | | | | | | | | | | | | | | 32 | | | | |
| Labor \$ by Activity | | \$3,230 | \$3,230 | \$360 | \$360 | \$270 | \$180 | \$449 | \$147 | \$327 | \$0 | \$453 | \$1,332 | \$1,544 | \$2,058 | \$1,863 | \$3,499 | \$4,164 | \$539 | \$539 | \$24,544.28 |
| Overhead | | \$657 | \$657 | \$73 | \$73 | \$55 | \$37 | \$91 | \$30 | \$66 | \$0 | \$92 | \$271 | \$314 | \$418 | \$379 | \$711 | \$847 | \$110 | \$110 | \$4,989.66 |
| Contract Legal | | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$17,000 | \$0 | \$0 | \$0 | \$17,000.00 |
| TOTAL | | \$3,887 | \$3,887 | \$433 | \$433 | \$325 | \$214 | \$541 | \$177 | \$393 | \$0 | \$545 | \$1,603 | \$1,858 | \$2,476 | \$2,241 | \$21,210 | \$5,011 | \$649 | \$649 | \$46,533.94 |
| TOTAL | | | | | | | | | | | | | | | | | | | | | \$373,836.57 |

E. STATEWIDE COST ESTIMATES

Per the Assembly Floor Analysis, “There could be substantial state mandated reimbursement of local costs. The amount would depend on the number of requests for fact finding. PERB staff raised the possibility of exceeding 100 cases annually in the first years of the program. Assuming an individual case is likely to cost around \$10,000, with the local agency footing half the bill, reimbursable costs could exceed \$2.5 million statewide. The Commission on State Mandates has approved a test claim for any local government subject

to the jurisdiction of PERB that incurs increased costs as a result of a mandate, meaning their costs are eligible for reimbursement.” (*K. Green – September 1, 2011*)

Using similar methodology, the cost of policy and training would raise per case cost substantially. Using the Oxnard per case cost, multiplied by the assumption from the Floor Analysis above case count of 100, we have updated the statewide cost estimate. That statewide total could exceed \$3.8 million with a million of that being for training and policy changes at agencies with impasse cases.

F. FUNDING SOURCES

The City of Oxnard is unaware of any funding sources for the new activities mandated.

G. ELIGIBILITY FOR REIMBURESMENT

The costs incurred by the City of Oxnard as a result of the statute on which this test claim is based are all reimbursable costs as such costs are “costs mandated by the State” under Article XIII B (6) of the California Constitution, and Government Code §17500 *et seq.* of the Government Code. Section 17514 of the Government Code defines “costs mandated by the state”, and specifies the following three requirements:

1. There are “increased costs which a local agency is required to incur after July 1, 1980.”
2. The costs are incurred “as a result of any statute enacted on or after January 1, 1975.”
3. The costs are the result of “a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

All three of the above requirements for finding costs mandated by the State are met as described previously herein.

MANDATE MEETS BOTH SUPREME COURT TESTS

The mandate created by this statute clearly meets both tests that the Supreme Court in the *County of Los Angeles v. State of California* (1987) created for determining what constitutes a reimbursable state mandated local program. Those two tests, which the Commission on State Mandates relies upon to determine if a reimbursable mandate exists, are the “unique to government” and the “carry out a state policy” tests. Their application to this test claim is discussed below.

Mandate Is Unique to Local Government

The sections of the law claimed involve the Miliias-Meyers-Brown Act (MMBA). As described in Government Code section 3500 and highlighted by the Public Employment Relations Board (PERB), the MMBA applies specifically and solely to Local Agencies (Cities, Counties and Special Districts) and their employees. Similar to the Education Employment Relations Act (EERA) for public school and college districts only, with this law, the MMBA now requires uniform Impasse Procedures to local agencies. Thus, this requirement is unique to government.

Mandate Carries Out a State Policy

From the legislation, it is clear that the Legislature wishes to require uniform Impasse Procedures for local agencies after a public employee organization requests a factfinding panel. Prior to the passage of this legislation, the MMBA contained no requirements related for the creation of and activities relating to a factfinding panel.

In summary, this statute mandates that local government add a level of service in the Collective Bargaining process with the requirement of uniform factfinding procedures. The City of Oxnard believes that uniform factfinding process as set forth above satisfies the constitutional requirements for a mandate.

STATE FUNDING DISCLAIMERS ARE NOT APPLICABLE

There are seven disclaimers specified in Government Code §17556 which could serve to bar recovery of “costs mandated by the State”, as defined in Government Code §17556. None of the seven disclaimers apply to this test claim:

1. The claim is submitted by a local agency or school district which requests legislative authority for that local agency or school district to implement the Program specified in the statutes, and that statute imposes costs upon the local agency or school district requesting the legislative authority.
2. The statute or executive order affirmed for the State that which had been declared existing law or regulation by action of the courts.
3. The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.
4. The local agency or school district has the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or increased level of service.
5. The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts,

or includes additional revenue that was specifically intended to fund the costs of the State mandate in an amount sufficient to fund the cost of the State mandate.

6. The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a Statewide election.
7. The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.

None of the above disclaimers have any application to the test claim herein stated by the City of Oxnard.

CONCLUSION

The enactment of Chapter 680, Statutes of 2011 adding sections 3505.4, 3505.5 and 3505.7 and the Chapter 314, Statutes of 2012 adding clarifying language to 3505.5 have imposed a new state mandated program and higher level of service which resulted in increased costs to the City of Oxnard by establishing a program within the Collective Bargaining process with Local Agencies and their employee organizations under the Milias-Meyers-Brown Act. The mandated program meets all of the requirements established by the California Constitution and Government Codes as a reimbursable State mandated program.

G. CLAIM REQUIREMENTS

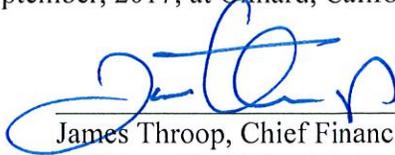
The following elements of this test claim are provided pursuant to Section 1183, Title 2, of the California Code of Regulations:

- Exhibit 1: Chapter 680, Statutes of 2011
- Exhibit 2: Chapter 314, Statutes of 2012

CLAIM CERTIFICATION

The foregoing facts are known to me personally and if so required, I could and would testify to the statements made herein. I declare under penalty of perjury under the laws of the State of California that the statements made in this document are true and complete to the best of my personal knowledge and as to all matters, I believe them to be true.

Executed this 14 day of September, 2017, at Oxnard, California.



James Throop, Chief Financial Officer
300 West Third Street
Oxnard, California 93030
805-385-7475
Jim.Throop@Oxnard.org
City of Oxnard

DECLARATION OF JAMES THROOP

I James Throop, make the following declaration under oath:

I am the Chief Financial Officer for the City of Oxnard. As part of my duties, I am responsible for the complete and timely recovery of costs mandated by the State.

I declare that I have examined the City of Oxnard's State mandated duties and resulting costs, in implementing the subject law, and find that such costs are, in my opinion, "costs mandated by the State", as defined in Government Code, Section 17514:

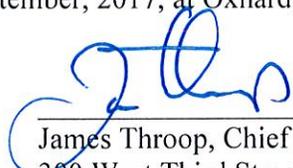
“ ‘Costs mandated by the State’ means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The City of Oxnard first incurred increased costs as a result of this Test Claim statute on May 12, 2016.

I am personally conversant with the foregoing facts, and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are stated upon information or belief, and as to those matters, I believe them to be true.

Executed this 14 day of September, 2017, at Oxnard, California.



James Throop, Chief Financial Officer
300 West Third Street
Oxnard, California 93030
805-385-7475
Jim.Throop@Oxnard.org
City of Oxnard

Declaration of Actual or Estimated Costs, Offsets and New Activities

Pursuant to 17553 (b) (2) of the Government code and per the Commission on State Mandates, I James Throop, Chief Financial Officer, under penalty of perjury, based on my personal knowledge, information and belief, I declare the following:

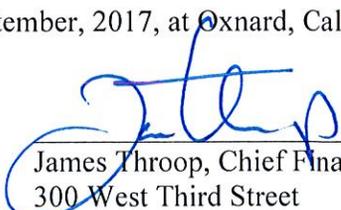
- A. The City of Oxnard determined that costs required to comply with this mandated program totals \$327,302.63 in the 2015-2016 fiscal year. For the 2016-2017 fiscal year, the City of Oxnard expended \$46,533.94 to comply with the new activities. In total the City of Oxnard's costs of \$373,836.57 are directly a result of the new activities required by Chapter 680, Statutes of 2011 and Chapter 314, Statutes of 2012 as follows:

| FY 2015-2016 | | Activities | | | | | | | | | | | | | | | | Units (hours) / TOTAL | | | |
|----------------------------|--------------------|-------------|----------------|-------------|----------------|-------|--------|--------|-------|-------|----------|----------|----------|----------|----------|----------|----------|-----------------------|---------|---------|--------------|
| Resource | Unit Cost per Hour | 646-2 (OCT) | 1606 - 1 (OCT) | 646-1 (OCT) | 1606 - 2 (OCT) | 646-1 | 1606-1 | 1606-3 | 646-2 | 646-3 | 646-4 | 1606-2 | 646-5 | 646-6 | 646-7 | 1606-4 | 1606-5 | | 1606-6 | 646-9 | 646-10 |
| Policy/Training | | | | | | | | | | | | | | | | | | | | | |
| HR Director | \$85.79 | 23 | 23 | 2 | 2 | | | | | | | | | | | | | | | | 50 |
| City Attorney | \$98.56 | 14 | 14 | 2 | 2 | | | | | | | | | | | | | | | | 32 |
| Police Impasse Case | | | | | | | | | | | | | | | | | | | | | |
| HR Director | \$85.79 | | | | | 1 | 1 | 1 | | 1 | | 2 | 4 | 4 | 8 | 4 | 12 | 14 | 2 | 2 | 56 |
| City Attorney | \$98.56 | | | | | 1 | 1 | 1 | | 1 | | | 4 | 4 | 2 | 4 | 8 | 10 | 2 | 2 | 40 |
| Sr. HR Coord. | \$33.02 | | | | | | | | 0.5 | 0.5 | | 1 | 4 | 4 | 2 | 4 | 10 | 14 | | | 40 |
| Conf. Legal | \$250 | 44 | 44 | | | | | | | | 96 | 96 | 260 | 148 | 48 | 260 | 46 | | | | |
| Fire Impasse Case | | | | | | | | | | | | | | | | | | | | | |
| HR Director | \$85.79 | | | | | 0.5 | 1.5 | 1 | 1 | | | 2 | 2 | 2 | 12 | 4 | 8 | 12 | 1 | 1 | 48 |
| City Attorney | \$98.56 | | | | | 0.5 | 1.5 | 0.5 | 0.5 | | | 1 | 1 | 1 | 2 | 4 | 4 | 6 | 1 | 1 | 24 |
| Sr. HR Coord. | \$33.02 | | | | | | | | | | | | 6 | 12 | | 8 | 10 | | | | 36 |
| Conf. Legal | \$250 | | | | | | | | | | | | | | | | 42 | | | | |
| Activity | | \$3,353 | \$3,353 | \$369 | \$369 | \$277 | \$184 | \$461 | \$152 | \$336 | \$0 | \$475 | \$1,338 | \$1,536 | \$2,176 | \$1,871 | \$3,559 | \$4,270 | \$553 | \$553 | \$25,182.94 |
| Overhead | | \$682 | \$682 | \$75 | \$75 | \$56 | \$37 | \$94 | \$31 | \$68 | \$0 | \$97 | \$272 | \$312 | \$442 | \$380 | \$724 | \$868 | \$112 | \$112 | \$5,119.69 |
| Contract Legal | | \$11,000 | \$11,000 | | | | | | | | \$24,000 | \$24,000 | \$65,000 | \$37,000 | \$12,000 | \$65,000 | \$22,000 | \$18,000 | \$4,000 | \$4,000 | \$297,000.00 |
| TOTAL | | \$15,035 | \$15,035 | \$444 | \$444 | \$333 | \$222 | \$555 | \$182 | \$404 | \$24,000 | \$24,571 | \$66,610 | \$38,848 | \$14,618 | \$67,251 | \$26,282 | \$28,138 | \$4,645 | \$4,645 | \$327,302.63 |

| FY 2016-2017 | | Activities | | | | | | | | | | | | | | Units (hours) / TOTAL | | | | | | |
|----------------------------|--------------------|----------------|----------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|------------|--------------|----------------|----------------|----------------|-----------------------|-----------------|----------------|--------------|--------------|---------------------|--------------------|
| Resource | Unit Cost per Hour | 646-2 (OCI) | 1606-1 (OCI) | 646-1 (OCI) | 1606-2 (OCI) | 646-1 | 1606-1 | 1606-3 | 646-2 | 646-3 | 646-4 | 1606-2 | 646-5 | 646-6 | 646-7 | | 1606-4 | 1606-5 | 1606-6 | 646-9 | 646-10 | |
| Policy/Training | | | | | | | | | | | | | | | | | | | | | | |
| HR Director | \$79.26 | 23 | 23 | 2 | 2 | | | | | | | | | | | | | | | | | 50 |
| City Attorney | \$100.53 | 14 | 14 | 2 | 2 | | | | | | | | | | | | | | | | | 32 |
| Police Impasse Case | | | | | | | | | | | | | | | | | | | | | | |
| HR Director | \$79.26 | | | | | 1 | 1 | 1 | | 1 | | 2 | 4 | 4 | 8 | 4 | 12 | 14 | 2 | 2 | | 56 |
| City Attorney | \$100.53 | | | | | 1 | 1 | 1 | | 1 | | | 4 | 4 | 2 | 4 | 8 | 10 | 2 | 2 | | 40 |
| St. HR Coord. | \$35.36 | | | | | | | | 0.5 | 0.5 | | 1 | 4 | 4 | 2 | 4 | 10 | 14 | | | | 40 |
| Cont. Legal | \$250.00 | | | | | | | | | | | | | | | | 36 | | | | | |
| Fire Impasse Case | | | | | | | | | | | | | | | | | | | | | | |
| HR Director | \$79.26 | | | | | 0.5 | | 1.5 | 1 | 1 | | 2 | 2 | 2 | 12 | 4 | 8 | 12 | 1 | 1 | | 48 |
| City Attorney | \$100.53 | | | | | 0.5 | | 1.5 | 0.5 | 0.5 | | 1 | 1 | 1 | 2 | 4 | 4 | 6 | 1 | 1 | | 24 |
| St. HR Coord. | \$35.36 | | | | | | | | | | | | 6 | 12 | | | 8 | 10 | | | | 36 |
| Cont. Legal | \$250.00 | | | | | | | | | | | | | | | | 32 | | | | | |
| Labor \$ by Activity | | \$3,230 | \$3,230 | \$360 | \$360 | \$270 | \$180 | \$449 | \$147 | \$327 | \$0 | \$453 | \$1,332 | \$1,544 | \$2,058 | \$1,863 | \$3,499 | \$4,164 | \$539 | \$539 | | \$24,544.28 |
| Overhead | | \$657 | \$657 | \$73 | \$73 | \$55 | \$37 | \$91 | \$30 | \$66 | \$0 | \$92 | \$271 | \$314 | \$418 | \$379 | \$711 | \$847 | \$110 | \$110 | | \$4,989.66 |
| Contract Legal | | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$17,000 | \$0 | \$0 | \$0 | | \$17,000.00 |
| TOTAL | | \$3,887 | \$3,887 | \$433 | \$433 | \$325 | \$216 | \$541 | \$177 | \$393 | \$0 | \$845 | \$1,603 | \$1,858 | \$2,476 | \$2,241 | \$21,210 | \$5,011 | \$649 | \$649 | | \$46,533.94 |
| TOTAL | | | | | | | | | | | | | | | | | | | | | \$373,836.57 | |

- B. The City of Oxnard has no local, state, federal funding or fee authority to offset the increased costs that will be incurred by the city to implement this program.
- C. The City of Oxnard is required to perform new activities as a result of both Chapter 680, Statutes of 2011 and Chapter 314, Statutes of 2012. These statutory changes require the city to process the procedural right of an employee organization to request a factfinding panel, select a mediator, respond to inquiries by all parties resulting from panel contemplating 3505.4 (d) Items/paragraphs 1 through 8.
- D. This test claim is not for a Legislatively Determined Mandate and no payments have been received by City of Oxnard for the implementation of the new activities required by the statutes in question.

Executed this 14 day of September, 2017, at Oxnard, California.



 James Throop, Chief Financial Officer
 300 West Third Street
 Oxnard, California 93030
 805-385-7475
 Jim.Throop@Oxnard.org
 City of Oxnard

TEST CLAIM BACKUP DOCUMENTATION
IMPASSE PROCEDURES

AB 646, AB 1606

Pages 17-28

TEST CLAIM BACKUP DOCUMENTATION

IMPASSE PROCEDURES

1. City Council Agenda Report, Attorney Services
2. Bill Text for AB 646
3. Bill Text for AB 1606
4. Larger copy of Costs for New Activities FY 2015-16
5. Larger copy of Cost for New Activities FY 2016-17



CITY COUNCIL
AGENDA REPORT

TYPE OF ITEM: Report

AGENDA ITEM NO.: L-3

DATE: November 17, 2015

TO: City Council

THROUGH: Greg Nyhoff, City Manager
Office of the City Manager

FROM: J. Tabin Cosio, Director of Human Resources

SUBJECT: **Third Amendment to Attorney Services Agreement for Special Counsel to Represent the City of Oxnard in a Variety of Human Resources Related Matters**

CONTACT: J. Tabin Cosio, Director of Human Resources
Tabin.Cosio@ci.oxnard.ca.us, 805-385-7947

RECOMMENDATION

That City Council:

1. Approve and authorize the Mayor to execute a Third Amendment to Attorney Services Agreement with Renne Sloan Holtzman Sakai LLP (Agreement No. 6862-14-CA) to increase the contract amount by \$549,000 for a total not to exceed amount of \$1,089,000; and
2. Authorize an appropriation in the amount of \$235,000 cost allocated as follows: \$177,444 (or 62%) from the one time Successor Agency Residual pass-through Loan Payment, which currently resides in the General Fund Reserve fund, \$13,429 (or 5%) to Water fund, \$17,859 (or 7%) to the Waste Water fund and \$26,268 to the Environmental Resources fund (or 26%).

BACKGROUND

On March 24, 2015, your Council approved a Second Amendment to the original agreement to include in the scope of services representation in labor negotiations, drafting of memoranda of understanding (“MOU”), ongoing advice regarding negotiations and the administration of MOUs and such other services relating to labor relations matters as requested by the City Attorney or Human Resources Department. Since the approval of the Second Amendment, the City has entered into full scale labor negotiations over successor MOUs with six of the seven employee organizations (“unions”) representing City employees. And, the City anticipates entering into labor negotiations with the seventh union on or around January 1, 2016.

The Myers-Milias Brown Act (“MMBA”) is the state law that governs the labor negotiations process within California local governments. Specific to the collective bargaining process, the MMBA requires the parties to “meet and confer in good faith” (GC 3505) regarding wages, hours and other terms and conditions of employment. In the definition of “good faith” bargaining, the MMBA sets as one of the criteria the requirement for the parties to “endeavor to reach an agreement” on matters within the scope of representation. If the parties are not successful in reaching an agreement, the MMBA provides for impasse procedures including mediation and fact-finding – at the request of the union (GC 3505.4).

The labor team for the City of Oxnard is fully committed and intends to reach a mutual agreement over a successor agreement with each of the unions. However, the labor team must recognize the bilateral nature of the collective bargaining process that permits mediation and fact-finding should the union request it. Accordingly, the labor team has prepared an estimate for the cost of concluding these negotiations based on the amount of time and effort needed to be expended.

| | |
|---|------------------|
| 1. Comprehensive, Mutually Agreed Upon Tentative Agreement: | \$200,000 |
| 2. Mediation Process | \$69,000 |
| 3. Factfinding | <u>\$280,000</u> |
| Grand Total | \$549,000 |

The above costs are the team’s best estimate for concluding the collective bargaining process for each of the seven unions. It is staff’s goal and intent to achieve a mutually agreed upon successor agreement, but should that not be the case, we are requesting funds for mediation and factfinding should the need arise. Of course, should mutual agreement be reached and mediation or factfinding not be utilized, then the cost for those activities would not be realized.

FINANCIAL IMPACT

The approved Fiscal Year 2015/2016 budget has available funds in the amount of \$314,000. Staff will cost allocate the \$235,000 in the following manner: \$177,444 (62%) from the one time Successor Agency Residual pass-through Loan Payment, which currently resides in the General Fund Reserve fund, \$13,429 (5%) to Water fund, \$17,859 (7%) to the Waste Water fund and \$26,268 (26%) to Environmental Resources fund.

ATTACHMENTS

- #1 – Third Amendment to Agreement for Attorney Services
- #2 – Special Budget Appropriation

THIRD AMENDMENT TO ATTORNEY SERVICES AGREEMENT

This Third Amendment ("Third Amendment") to the Attorney Services Agreement ("Agreement") is made and entered into in the County of Ventura, State of California, this 17th day of November 2015, by and between the City of Oxnard, a municipal corporation ("City"), and Renne Sloan Holtzman Sakai LLP ("Special Counsel"). This Third Amendment amends the Agreement entered into on July 25, 2014, by City and Special Counsel. The Agreement previously has been amended by a First Amendment on October 20, 2014 and a Second Amendment on March 24, 2015.

City and Special Counsel agree as follows:

1. In Section 10. a. (1) Compensation and Reimbursement, the figure "\$540,000" is deleted and replaced with the figure "\$1,089,000".
2. As so amended, the Agreement remains in full force and effect.

CITY OF OXNARD

SPECIAL COUNSEL

Tim Flynn, Mayor



Charles Sakai, Esq.

APPROVED AS TO FORM:

APPROVED AS TO INSURANCE:



Stephen M. Fischer, Interim City Attorney



Risk Manager



AB-646 Local public employee organizations: impasse procedures. (2011-2012)

SHARE THIS:



Assembly Bill No. 646

CHAPTER 680

An act to add Sections 3505.5 and 3505.7 to, and to repeal and add Section 3505.4 of, the Government Code, relating to local public employee organizations.

[Approved by Governor October 09, 2011. Filed with Secretary of State
October 09, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

AB 646, Atkins. Local public employee organizations: impasse procedures.

The Meyers-Millias-Brown Act contains various provisions that govern collective bargaining of local represented employees, and delegates jurisdiction to the Public Employment Relations Board to resolve disputes and enforce the statutory duties and rights of local public agency employers and employees. The act requires the governing body of a public agency to meet and confer in good faith regarding wages, hours, and other terms and conditions of employment with representatives of recognized employee organizations. Under the act, if the representatives of the public agency and the employee organization fail to reach an agreement, they may mutually agree on the appointment of a mediator and equally share the cost. If the parties reach an impasse, the act provides that a public agency may unilaterally implement its last, best, and final offer.

This bill would authorize the employee organization, if the mediator is unable to effect settlement of the controversy within 30 days of his or her appointment, to request that the matter be submitted to a factfinding panel. The bill would require that the factfinding panel consist of one member selected by each party as well as a chairperson selected by the board or by agreement of the parties. The factfinding panel would be authorized to make investigations and hold hearings, and to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence. The bill would require all political subdivisions of the state to comply with the panel's requests for information.

This bill would require, if the dispute is not settled within 30 days, the factfinding panel to make findings of fact and recommend terms of settlement, for advisory purposes only. The bill would require that these findings and recommendations be first issued to the parties, but would require the public agency to make them publicly available within 10 days after their receipt. The bill would provide for the distribution of costs associated with the factfinding panel, as specified.

This bill would prohibit a public agency from implementing its last, best, and final offer until at least 10 days after the factfinders' written findings of fact and recommended terms of settlement have been submitted to the parties and the agency has held a public hearing regarding the impasse.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 3505.4 of the Government Code is repealed.

SEC. 2. Section 3505.4 is added to the Government Code, to read:

3505.4. (a) If the mediator is unable to effect settlement of the controversy within 30 days after his or her appointment, the employee organization may request that the parties' differences be submitted to a factfinding panel. Within five days after receipt of the written request, each party shall select a person to serve as its member of the factfinding panel. The Public Employment Relations Board shall, within five days after the selection of panel members by the parties, select a chairperson of the factfinding panel.

(b) Within five days after the board selects a chairperson of the factfinding panel, the parties may mutually agree upon a person to serve as chairperson in lieu of the person selected by the board.

(c) The panel shall, within 10 days after its appointment, meet with the parties or their representatives, either jointly or separately, and may make inquiries and investigations, hold hearings, and take any other steps it deems appropriate. For the purpose of the hearings, investigations, and inquiries, the panel shall have the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence. Any state agency, as defined in Section 11000, the California State University, or any political subdivision of the state, including any board of education, shall furnish the panel, upon its request, with all records, papers, and information in their possession relating to any matter under investigation by or in issue before the panel.

(d) In arriving at their findings and recommendations, the factfinders shall consider, weigh, and be guided by all the following criteria:

(1) State and federal laws that are applicable to the employer.

(2) Local rules, regulations, or ordinances.

(3) Stipulations of the parties.

(4) The interests and welfare of the public and the financial ability of the public agency.

(5) Comparison of the wages, hours, and conditions of employment of the employees involved in the factfinding proceeding with the wages, hours, and conditions of employment of other employees performing similar services in comparable public agencies.

(6) The consumer price index for goods and services, commonly known as the cost of living.

(7) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(8) Any other facts, not confined to those specified in paragraphs (1) to (7), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations.

SEC. 3. Section 3505.5 is added to the Government Code, to read:

3505.5. (a) If the dispute is not settled within 30 days after the appointment of the factfinding panel, or, upon agreement by both parties within a longer period, the panel shall make findings of fact and recommend terms of settlement, which shall be advisory only. The factfinders shall submit, in writing, any findings of fact and recommended terms of settlement to the parties before they are made available to the public. The public agency shall make these findings and recommendations publicly available within 10 days after their receipt.

(b) The costs for the services of the panel chairperson selected by the board, including per diem fees, if any, and actual and necessary travel and subsistence expenses, shall be equally divided between the parties.

(c) The costs for the services of the panel chairperson agreed upon by the parties shall be equally divided between the parties, and shall include per diem fees, if any, and actual and necessary travel and subsistence expenses. The per diem fees shall not exceed the per diem fees stated on the chairperson's résumé on file with the board. The chairperson's bill showing the amount payable by the parties shall accompany his or her final report to the parties and the board. The chairperson may submit interim bills to the parties in the course of the proceedings, and copies of the interim bills shall also be sent to the board. The parties shall make payment directly to the chairperson.

(d) Any other mutually incurred costs shall be borne equally by the public agency and the employee organization. Any separately incurred costs for the panel member selected by each party shall be borne by that party.

(e) A charter city, charter county, or charter city and county with a charter that has a procedure that applies if an impasse has been reached between the public agency and a bargaining unit, and the procedure includes, at a minimum, a process for binding arbitration, is exempt from the requirements of this section and Section 3505.4 with regard to its negotiations with a bargaining unit to which the impasse procedure applies.

SEC. 4. Section 3505.7 is added to the Government Code, to read:

3505.7. After any applicable mediation and factfinding procedures have been exhausted, but no earlier than 10 days after the factfinders' written findings of fact and recommended terms of settlement have been submitted to the parties pursuant to Section 3505.5, a public agency that is not required to proceed to interest arbitration may, after holding a public hearing regarding the impasse, implement its last, best, and final offer, but shall not implement a memorandum of understanding. The unilateral implementation of a public agency's last, best, and final offer shall not deprive a recognized employee organization of the right each year to meet and confer on matters within the scope of representation, whether or not those matters are included in the unilateral implementation, prior to the adoption by the public agency of its annual budget, or as otherwise required by law.



AB-1606 Local public employee organizations: impasse procedures. (2011-2012)

SHARE THIS:  

Assembly Bill No. 1606

CHAPTER 314

An act to amend Section 3505.4 of the Government Code, relating to public employment.

[Approved by Governor September 14, 2012. Filed with Secretary of State
September 14, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1606, Perea. Local public employee organizations: impasse procedures.

The Meyers-Milias-Brown Act contains various provisions that govern collective bargaining of local represented employees, and delegates jurisdiction to the Public Employment Relations Board to resolve disputes and enforce the statutory duties and rights of local public agency employers and employees. The act requires the governing body of a public agency to meet and confer in good faith regarding wages, hours, and other terms and conditions of employment with representatives of recognized employee organizations.

Under the act, if the representatives of the public agency and the employee organization fail to reach an agreement, they may mutually agree on the appointment of a mediator and equally share the cost. If the parties reach an impasse, the act provides that a public agency may unilaterally implement its last, best, and final offer. Existing law further authorizes the employee organization, if the mediator is unable to effect settlement of the controversy within 30 days of his or her appointment, to request that the parties' differences be submitted to a factfinding panel.

This bill would instead authorize the employee organization to request that the parties' differences be submitted to a factfinding panel not sooner than 30 days or more than 45 days following the appointment or selection of a mediator pursuant to the parties' agreement to mediate or a mediation process required by a public agency's local rules. The bill would also authorize an employee organization, if the dispute was not submitted to mediation, to request that the parties' differences be submitted to a factfinding panel not later than 30 days following the date that either party provided the other with a written notice of a declaration of impasse. The bill would specify that the procedural right of an employee organization to request a factfinding panel cannot be expressly or voluntarily waived. The bill would also specify that its provisions are intended to be technical and clarifying of existing law.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 3505.4 of the Government Code is amended to read:

3505.4. (a) The employee organization may request that the parties' differences be submitted to a factfinding panel not sooner than 30 days, but not more than 45 days, following the appointment or selection of a mediator pursuant to the parties' agreement to mediate or a mediation process required by a public agency's local rules. If the dispute was not submitted to mediation, an employee organization may request that the parties' differences

be submitted to a factfinding panel not later than 30 days following the date that either party provided the other with a written notice of a declaration of impasse. Within five days after receipt of the written request, each party shall select a person to serve as its member of the factfinding panel. The Public Employment Relations Board shall, within five days after the selection of panel members by the parties, select a chairperson of the factfinding panel.

(b) Within five days after the board selects a chairperson of the factfinding panel, the parties may mutually agree upon a person to serve as chairperson in lieu of the person selected by the board.

(c) The panel shall, within 10 days after its appointment, meet with the parties or their representatives, either jointly or separately, and may make inquiries and investigations, hold hearings, and take any other steps it deems appropriate. For the purpose of the hearings, investigations, and inquiries, the panel shall have the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence. Any state agency, as defined in Section 11000, the California State University, or any political subdivision of the state, including any board of education, shall furnish the panel, upon its request, with all records, papers, and information in their possession relating to any matter under investigation by or in issue before the panel.

(d) In arriving at their findings and recommendations, the factfinders shall consider, weigh, and be guided by all the following criteria:

(1) State and federal laws that are applicable to the employer.

(2) Local rules, regulations, or ordinances.

(3) Stipulations of the parties.

(4) The interests and welfare of the public and the financial ability of the public agency.

(5) Comparison of the wages, hours, and conditions of employment of the employees involved in the factfinding proceeding with the wages, hours, and conditions of employment of other employees performing similar services in comparable public agencies.

(6) The consumer price index for goods and services, commonly known as the cost of living.

(7) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(8) Any other facts, not confined to those specified in paragraphs (1) to (7), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations.

(e) The procedural right of an employee organization to request a factfinding panel cannot be expressly or voluntarily waived.

SEC. 2. The Legislature finds and declares that the amendments to Section 3505.4 of the Government Code made by this act are intended to be technical and clarifying of existing law.

FY 2015-2016

| Resource | Unit Cost per Hour | Activities | | | | | | | | | | | | | | | | | | | Units (hours) / TOTAL |
|----------------------------|--------------------|-----------------|-----------------|--------------|----------------|--------------|--------------|--------------|--------------|--------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|----------------|----------------|-----------------------|
| | | 646-2 (OCT) | 1606 - 1 (OCT) | 646-1 (OCT) | 1606 - 2 (OCT) | 646-1 | 1606-1 | 1606-3 | 646-2 | 646-3 | 646-4 | 1606-2 | 646-5 | 646-6 | 646-7 | 1606-4 | 1606-5 | 1606-6 | 646-9 | 646-10 | |
| Policy/Training | | | | | | | | | | | | | | | | | | | | | |
| HR Director | \$85.79 | 23 | 23 | 2 | 2 | | | | | | | | | | | | | | | | 50 |
| City Attorney | \$98.56 | 14 | 14 | 2 | 2 | | | | | | | | | | | | | | | | 32 |
| Police Impasse Case | | | | | | | | | | | | | | | | | | | | | |
| HR Director | \$85.79 | | | | | 1 | 1 | 1 | | 1 | 2 | 4 | 4 | 8 | 4 | 12 | 14 | 2 | 2 | | 56 |
| City Attorney | \$98.56 | | | | | 1 | 1 | 1 | | 1 | | 4 | 4 | 2 | 4 | 8 | 10 | 2 | 2 | | 40 |
| Sr. HR Coord. | \$33.02 | | | | | | | | 0.5 | 0.5 | 1 | 4 | 4 | 2 | 4 | 10 | 14 | | | | 40 |
| Cont. Legal | \$250 | 44 | 44 | | | | | | | | 96 | 96 | 260 | 148 | 48 | 260 | 46 | | | | |
| Fire Impasse Case | | | | | | | | | | | | | | | | | | | | | |
| HR Director | \$85.79 | | | | | 0.5 | | 1.5 | 1 | 1 | 2 | 2 | 2 | 12 | 4 | 8 | 12 | 1 | 1 | | 48 |
| City Attorney | \$98.56 | | | | | 0.5 | | 1.5 | 0.5 | 0.5 | 1 | 1 | 1 | 2 | 4 | 4 | 6 | 1 | 1 | | 24 |
| Sr. HR Coord. | \$33.02 | | | | | | | | | | | 6 | 12 | | 8 | 10 | | | | | 36 |
| Cont. Legal | \$250 | | | | | | | | | | | | | | | 42 | | | | | |
| | | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | |
| Labor \$ by Activity | | \$3,353 | \$3,353 | \$369 | \$369 | \$277 | \$184 | \$461 | \$152 | \$336 | \$0 | \$475 | \$1,338 | \$1,536 | \$2,176 | \$1,871 | \$3,559 | \$4,270 | \$553 | \$553 | \$25,182.94 |
| Overhead | | \$682 | \$682 | \$75 | \$75 | \$56 | \$37 | \$94 | \$31 | \$68 | \$0 | \$97 | \$272 | \$312 | \$442 | \$380 | \$724 | \$868 | \$112 | \$112 | \$5,119.69 |
| Contract Legal | | \$11,000 | \$11,000 | | | | | | | | \$24,000 | \$24,000 | \$65,000 | \$37,000 | \$12,000 | \$65,000 | \$22,000 | \$18,000 | \$4,000 | \$4,000 | \$297,000.00 |
| TOTAL | | \$15,035 | \$15,035 | \$444 | \$444 | \$333 | \$222 | \$555 | \$182 | \$404 | \$24,000 | \$24,571 | \$66,610 | \$38,848 | \$14,618 | \$67,251 | \$26,282 | \$23,138 | \$4,665 | \$4,665 | \$327,302.63 |

FY 2016-2017

| Resource | Unit Cost per Hour | Activities | | | | | | | | | | | | | | | | | | Units (hours) / TOTAL | |
|----------------------------|--------------------|----------------|----------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|------------|--------------|----------------|----------------|----------------|----------------|-----------------|----------------|--------------|-----------------------|--------------------|
| | | 646-2 (OCT) | 1606-1 (OCT) | 646-1 (OCT) | 1606-2 (OCT) | 646-1 | 1606-1 | 1606-3 | 646-2 | 646-3 | 646-4 | 1606-2 | 646-5 | 646-6 | 646-7 | 1606-4 | 1606-5 | 1606-6 | 646-9 | | 646-10 |
| Policy/Training | | | | | | | | | | | | | | | | | | | | | |
| HR Director | \$79.26 | 23 | 23 | 2 | 2 | | | | | | | | | | | | | | | | 50 |
| City Attorney | \$100.53 | 14 | 14 | 2 | 2 | | | | | | | | | | | | | | | | 32 |
| Police Impasse Case | | | | | | | | | | | | | | | | | | | | | |
| HR Director | \$79.26 | | | | | 1 | 1 | 1 | | 1 | | 2 | 4 | 4 | 8 | 4 | 12 | 14 | 2 | 2 | 56 |
| City Attorney | \$100.53 | | | | | 1 | 1 | 1 | | 1 | | | 4 | 4 | 2 | 4 | 8 | 10 | 2 | 2 | 40 |
| Sr. HR Coord. | \$35.36 | | | | | | | | 0.5 | 0.5 | | 1 | 4 | 4 | 2 | 4 | 10 | 14 | | | 40 |
| Cont. Legal | \$250.00 | | | | | | | | | | | | | | | | 36 | | | | |
| Fire Impasse Case | | | | | | | | | | | | | | | | | | | | | |
| HR Director | \$79.26 | | | | | 0.5 | | 1.5 | 1 | 1 | | 2 | 2 | 2 | 12 | 4 | 8 | 12 | 1 | 1 | 48 |
| City Attorney | \$100.53 | | | | | 0.5 | | 1.5 | 0.5 | 0.5 | | 1 | 1 | 1 | 2 | 4 | 4 | 6 | 1 | 1 | 24 |
| Sr. HR Coord. | \$35.36 | | | | | | | | | | | | 6 | 12 | | 8 | 10 | | | | 36 |
| Cont. Legal | \$250.00 | | | | | | | | | | | | | | | | 32 | | | | |
| | | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | |
| Labor \$ by Activity | | \$3,230 | \$3,230 | \$360 | \$360 | \$270 | \$180 | \$449 | \$147 | \$327 | \$0 | \$453 | \$1,332 | \$1,544 | \$2,058 | \$1,863 | \$3,499 | \$4,164 | \$539 | \$539 | \$24,544.28 |
| Overhead | | \$657 | \$657 | \$73 | \$73 | \$55 | \$37 | \$91 | \$30 | \$66 | \$0 | \$92 | \$271 | \$314 | \$418 | \$379 | \$711 | \$847 | \$110 | \$110 | \$4,989.66 |
| Contract Legal | | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$17,000 | \$0 | \$0 | \$0 | \$17,000.00 |
| TOTAL | | \$3,887 | \$3,887 | \$433 | \$433 | \$325 | \$216 | \$541 | \$177 | \$393 | \$0 | \$545 | \$1,603 | \$1,858 | \$2,476 | \$2,241 | \$21,210 | \$5,011 | \$649 | \$649 | \$46,533.94 |

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:

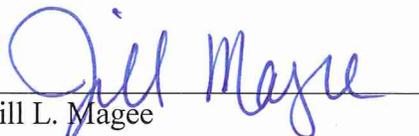
- **Notice of Complete Test Claim Filing, Tentative Hearing Date, and Schedule for Comments issued September 18, 2017**
- **Test Claim filed by City of Oxnard on May 12, 2017**

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.



Jill L. Magee
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 9/18/17

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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