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STATE OF CALIFORNIA COMMISSION ON STATE MANDATES

REPORT TO THE LEGISLATURE: DENIED MANDATE CLAIMS

January 1, 2017 – December 31, 2017

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INTRODUCTION

The Commission on State Mandates (Commission) is required to annually report to the Legislature on the number of claims it denied during the preceding calendar year and the basis on which each of the claims was denied.¹

This report includes a summary of the two test claims that the Commission denied during the period from January 1, 2017 through December 31, 2017. The complete text of the decisions for the denied claims may be found on the Commission's website at https://www.csm.ca.gov/denied_mandates.php.

The decisions are based on the administrative record of the claims and include findings and conclusions of the Commission as required by the California Code of Regulations, Title 2, section 1187.11.

¹ Government Code section 17601.

SUMMARY OF DENIED CLAIMS

Local Agency Employee Organizations: Impasse Procedures

15-TC-01

Government Code Sections 3505.4, 3505.5, and 3505.7

Statutes 2011, Chapter 680 (AB 646)

City of Glendora, Claimant

Test Claim Filed: June 2, 2016

Decision Adopted: January 27, 2017

This Test Claim alleged reimbursable state-mandated activities arising from the enactment of amendments to the Meyers-Milias-Brown Act by Statutes 2011, chapter 680 (AB 646). For this Test Claim, the Commission's jurisdiction was limited to Statutes 2011, chapter 680, the only statute which the claimant specifically pled. The Commission found that the test claim statute does not legally compel the City of Glendora (claimant) to engage in a collective bargaining procedure known as factfinding. In addition, the Commission found that there was no evidence in the record that the claimant or any other local agency was, as a practical matter, compelled to engage in factfinding. The test claim statute's requirement of a public hearing before the implementation of a last, best, and final offer does not legally compel local agencies to hold a public hearing, because the implementation of a last, best and final offer is a voluntary act. Therefore, the test claim statute does not impose a reimbursable state-mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution.

On these grounds, the Commission denied the Test Claim.

Certificated School Employees: Parental Leave

16-TC-01

Education Code Section 44977.5

Statutes 2015, Chapter 400 (AB 375)

Fresno Unified School District, Claimant

Test Claim Filed: December 21, 2016

Decision Adopted: September 26, 2017

The test claim statute, Statutes 2015, chapter 400, added section 44977.5 to the Education Code, effective January 1, 2016, to require school districts to provide differential pay, after the exhaustion of sick leave and accumulated sick leave, to certificated K-12 school district employees who qualify under the California Family Rights Act (CFRA) for parental leave, which may be taken for up to 12 school weeks, due to the birth of the employee's child or the placement of a child with the employee as a result of adoption or foster care. Differential pay is the remainder of the certificated employee's salary after the substitute employee's pay (or the equivalent amount if no substitute is employed) is deducted. The Test Claim alleged reimbursable costs for the differential pay provided to certificated employees, and one-time costs for administrative activities, such as developing and implementing internal policies, training, procedures, and forms.

Although the test claim statute applies uniquely to local school districts and provides a new benefit to certificated employees, a reimbursable state mandate exists only when the state imposes a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution. A new program or higher level of service exists only when the test claim statute requires an increase in the *actual level of service provided to the public*.² The courts have consistently held that increases in the cost of providing employee benefits do not increase the actual level of providing a service to the public.³

In this case, the requirement to provide differential pay does not increase the level of governmental service provided to the public. The governmental service provided by school districts is public education.⁴ Based on the plain language of the test claim statute and the Legislature's placement of section 44977.5, which requires differential pay for parental leave, in the chapter relating to "Employees,"⁵ and not in the chapters addressing "Instruction and

² *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 877.

³ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 875-878, where the court discusses the two lines of cases as "those measures designed to increase the level of governmental services to the public," which results in a new program or higher level of service, and those measures "in which the cost of employment was increased but the resulting governmental services themselves were not directly enhanced or increased," which does not.

⁴ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 172.

⁵ Chapter 3 "Certificated Employees," of Part 25 "Employees," of Division 3 "Local Administration."

Services,”⁶ the Commission found that differential pay is a benefit provided solely to certificated employees on parental leave who are *not* engaged in providing educational services to the public.

In addition, the requirement to provide differential pay does not impose increased costs mandated by the state because differential pay is the difference between the certificated employee’s salary and the amount paid to a substitute employee (or the equivalent amount if no substitute is employed) after exhaustion of the certificated employee’s sick leave and accumulated sick leave. Thus, if a certificated employee earns \$200 per day, and a substitute is paid \$75 per day, the differential pay to the absent employee is \$125 per day during the 12-week authorized absence, after exhausting applicable sick leave. The amount the district spent on the differential pay and the amount paid to the substitute equals the amount the school district budgeted and would have paid the certificated employee if no parental leave were taken. The district is not incurring *increased* costs for the differential pay. A school district may lose cost savings as a result of the differential pay requirement because before the test claim statute, only the substitute teacher would be paid during the certificated employee’s parental leave. The courts, however, have held that article XIII B, section 6 of the California Constitution is not designed to provide reimbursement for a loss of cost savings, but requires “*increased actual expenditures* of limited tax proceeds that are counted against the local government’s spending limit.”⁷

Moreover, the administrative activities to develop and implement internal policies, procedures, training, and forms, are not mandated by the plain language of the test claim statute. Although a school district may find that administrative activities are necessary to comply with the differential pay requirement, a state-mandated activity must be “ordered” or “commanded” by the state.⁸ In addition, calculating and paying differential pay to the employee under the test claim statute is incidental to, and part and parcel of, providing the employee benefit. These activities do not provide an increased level of educational service to the public and therefore, do not constitute a new program or higher level of service.

Accordingly, the Commission denied this Test Claim.

⁶ Division 4 “Instruction and Services,” beginning at Education Code section 46000.

⁷ *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283.

⁸ *Long Beach Unified School District v. State of California* (1990) 225 Cal.App.3d 155, 174.