



November 30, 2011

Suzanne Murphy, General Counsel
Les Chisholm, Division Chief
Public Employment Relations Board
1031 18th Street
Sacramento, CA 95811

Re: PERB's Consideration of Emergency Rulemaking to Implement AB 646 (Atkins)

Dear Ms. Murphy and Mr. Chisholm:

The League of California Cities (League), the California State Association of Counties (CSAC), and the California Special Districts Association (CSDA) want to thank you for the opportunity to respond to the Public Employment Relations Board's (PERB) emergency rulemaking and more specifically to the *Staff Discussion Draft RE AB 646 (November 14 Version)*. Please find attached our recommended edits to the *Staff Discussion Draft RE AB 646 (November 14 Version)*. We would also like to make the following points.

1. We like that two separate subsections were created [32802 (a)(1) and (a)(2)] to distinguish between a situation where fact-finding is requested after mediation and a situation where the request is made after impasse but where the parties did not initiate mediation. You will find in the attached revised draft that we have made clarifying edits to both of these sections.
2. We suggest that for parties who do not use mediation, but still wish to engage in the fact-finding process, timeframes in local rules should prevail. If no local rules are in place we strongly suggest fact-finding should be requested within 10 days following notification by a party that impasse is declared. Requiring a timeframe like this will ensure that the fact-finding process will not be unduly delayed and thus risk untimely resolution of negotiations.
3. For parties who do not use mediation, the staff discussion draft goes further than merely setting a time for when fact-finding must be requested, but rather requires a 30-day waiting period after declaration of impasse, which goes beyond the provisions of AB 646. The purpose of the 30-day waiting time in AB 646 is to provide a reasonable opportunity for mediation to succeed. In situations where no mediation is held, there is no purpose in creating such a waiting period. We suggest revising this provision, as discussed above, to require fact-finding to be requested within 10 days of a declaration of impasse.

4. Our organizations are not taking a position on whether mediation is a precondition to fact-finding under AB 646, but we do think this is an open question that may need to be resolved by the courts or by the Legislature. However, we would like to note that if PERB adopts section 32802(a)(2), this rule in effect interprets the statute to require fact-finding in the absence of mediation, and it is our belief that interpretation goes beyond the provisions of AB 646.
5. We suggest deleting the language in section 32802(a)(1) that reads "...and shall also be accompanied by evidence that the mediator has informed the parties that further mediation proceedings would be futile." AB 646 does not contemplate or provide any provisions related to a mediator's role in determining the appropriateness of fact-finding, therefore we do not think this should be included in the proposed rules. Further, it does not seem appropriate for PERB to empower the mediator to make determinations as to whether further mediation would no longer be successful.
6. We are concerned that if PERB does not require that the Board-appointed chairperson agree to start fact-finding proceedings within 10 days of appointment that the fact-finding process could be delayed, possibly for weeks or months. Thus, we added language to section 32804 that outlines this requirement.

Sincerely,



Natasha M. Karl
Legislative Representative
League of California Cities



Eraina Ortega
Legislative Representative
California State Association of Counties



Iris Herrera
Legislative Advocate
California Special Districts Association

STAFF DISCUSSION DRAFT RE AB 646 (NOVEMBER 14 VERSION)

32802. Appointment of a Factfinder Under MMBA.

(a)(1) Not sooner than 30 days, but no more than 40 days, after the appointment or selection of a mediator, pursuant either to the parties' agreement to mediate or a mediation process required by a public agency's local rules, an exclusive representative may request that the parties' differences be submitted to a factfinding panel. The request shall be accompanied by documentation of the date on which a mediator was appointed or selected, ~~and shall also be accompanied by evidence that the mediator has informed the parties that further mediation proceedings would be futile.~~

(2) In cases where the parties were not required to participate in mediation and did not agree to do so voluntarily, in the absence of local rules, an employee organization's request for factfinding ~~may be filed not sooner than 30~~ shall be filed within 10 days from the date that either party has served the other with written notice of a declaration of impasse.

(3) A request for factfinding must be filed with the appropriate regional office; service and proof of service pursuant to Section 32140 are required.

(b) The Board shall, within five working days from the date filed, notify the parties whether the request satisfies the requirements of this Section. If the request does not satisfy the requirements of subsection (a), above, no further action shall be taken by the Board.

(c) "Working days," for purposes of this Section only, shall be those days when the offices of the Public Employment Relations Board are officially open for business.

(d) The determination as to whether a request is sufficient shall not be appealable to the Board itself.

Authority cited: Sections 3509(a) and 3541.3(e) and (g), Government Code. Reference: Section 3505.4, Government Code.

32804. Appointment of Person to Chair Factfinding Panel Under MMBA.

The Board shall select and appoint the chairperson unless notified by the parties that they have mutually agreed upon a person to chair the panel in lieu of a chairperson selected by the Board. In each case where the Board appoints the chairperson, the Board will submit seven names to the parties, drawn from the list of factfinders established pursuant to Government Code section 3541.3(d). The Board will, by random selection, designate one of the seven persons to serve as the chairperson unless the parties, by alternate strike or other methodology of their choice, select one of the seven persons to serve as chairperson. The Board shall certify to the parties that the Board-appointed chairperson has agreed to start the factfinding proceedings within 10 days of appointment. In no case will the Board be responsible for the costs of the chairperson.

Authority cited: Sections 3509(a) and 3541.3(e) and (g), Government Code. Reference: Section 3505.4, Government Code.