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September 9, 2011

The Honorable Jerry Brown
Governor, State of California
State Capitol
Sacramento, CA 95814

Re: AB 646 (Atkins) – Local public employee organizations: impasse procedures

Dear Governor Brown:

On behalf of the California State Association of Counties (CSAC), I write to request your veto of AB 646 by Assembly Member Toni Atkins.

AB 646 would impose mandatory mediation and factfinding under the Meyers-Milias-Brown Act (MMBA), undermining a local agency's authority to establish local rules for resolving impasse. Additionally, the requirement that a local agency engage in factfinding may delay rather than speed the conclusion of contract negotiations.

With the enactment of SB 739 in 2000, a transfer of the administration of MMBA was made to the Public Employment Relations Board (PERB). Accordingly, PERB investigates unfair labor practices and any alleged violation of rules adopted by the public agency. SB 739 rightly respected the authority of a local agency, along with the employee representatives, to establish its own rules for resolving contract negotiations that reach impasse as stated in Government Code § 3507 - "*a public agency may adopt reasonable rules and regulations after consultation in good faith with representatives of a recognized employee organization or organizations for the administration of employee-employer relations under [MMBA]*." Many, if not most public agencies provide for impasse procedures in collective bargaining negotiations and bargain in good faith with their respective employee organizations. By imposing mandatory mediation and factfinding once an impasse is reached in employment negotiations, AB 646 eliminates this authority. CSAC is unaware of any abuses or short-comings of the current process and questions the need for making such an important change in the process of reaching a collective bargaining agreement.

In addition to the fundamental change in the negotiating process, we have concerns about the practicalities of AB 646. First, the measure allows PERB to appoint a third party mediator when an impasse is reached and the parties cannot agree upon a mediator. We question why PERB should be a designated appointer in this case. We would suggest that mediation – whether as a condition of imposition or not – occur only when the parties agree on a mediator and that selection should be from an established mediating firm. Local agency governing bodies have extensive knowledge regarding the fiscal health of their communities and therefore best understand the fairness of pay and benefit packages for their employees. Allowing PERB to appoint a third party mediator who may not be familiar with the local agency's objectives or fiscal wellbeing and possibly lacks knowledge regarding the intricacies of local government financing could put at risk a public agency's budget at a time when they are struggling to provide even the most vital services to their residents.

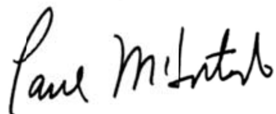
We are further concerned whether there is sufficient funding available to allow PERB to meet this bill's mandate. In 2010, MMBA generated the most unfair practice charges before PERB and it is safe to assume that AB 646 will significantly increase PERB's duties and costs related to MMBA administration.

In 2006, the Commission on State Mandates (Commission) found that costs associated with participating in the PERB procedures outlined in Chapter 901, including assembling documentation and evidence, preparing witnesses, drafting briefs and traveling to Sacramento, are reimbursable mandates. According to a June 2011 report by the Legislative Analyst's Office (LAO), the state's costs for this mandate based on claims for the years 2000-01 through 2008-09 was estimated to be $4.9 million. The LAO additionally suggests that, "…these costs are likely to increase over time as local governments take steps to develop and maintain the documentation necessary to support mandate claims."[1]. The report includes the LAO's recommendation that the Legislature modify Chapter 901 to, "…allow local governments to…negotiate with employee groups as to which forum they would use to file future labor relations charges: the courts, PERB, or a local neutral, employee relations commission…" thereby eliminating the elements of Chapter 901 determined to be reimbursable mandates. In reviewing the Commission's decision regarding local government activities in PERB, it is clear that the provisions included in AB 646 would be a considerable expansion of the reimbursable mandate under Chapter 901 and could result in significant costs to the State.

Most importantly, the provisions in AB 646 could lead to significant delays in labor negotiations between public employers and employee organizations and result in additional costs to public employers at a time when public agencies are struggling to address budget shortfalls and maintain basic services for their residents. AB 646 would provide a disincentive for employee organizations to negotiate in good faith when there exists the option of further processes under PERB that will prolong the negotiations. Most collectively bargained contracts are stalled due to cost-saving measures being sought by the public agency in a downturned economy; requiring mediation and factfinding prior to imposing a last, best and final offer would simply add costs and be unhelpful to both the employer and the employees.

For these reasons, we oppose AB 646.

Respectfully,



Paul McIntosh
Executive Director

cc: The Honorable Toni Atkins, California State Assembly

[1] Legislative Analyst's Office. (2011). *Analysis of Newly Identified Mandates*. Sacramento, CA