

PUBLIC EMPLOYMENT RELATIONS BOARD

1031 18th Street
Sacramento, CA 95811-4124
Telephone: (916) 322-3198
Fax: (916) 327-6377



October 25, 2011

Re: Assembly Bill 646 (MMBA factfinding (see attached))

Dear Interested Party:

The Public Employment Relations Board (PERB) invites you to attend a meeting to discuss the implementation of Assembly Bill 646 (AB 646). Meetings will be held as follows:

Tuesday, November 8, 2011
10:00 a.m. – 1:00 p.m.
Elihu Harris State Office Building
1515 Clay Street, 2nd Floor, Room 1
Oakland, California

and

Thursday, November 10, 2011
10:00 a.m. – 1:00 p.m.
PERB Los Angeles Regional Office
700 N. Central Avenue, Suite 230
Glendale, California

The meetings will be conducted by PERB General Counsel Suzanne Murphy and Division Chief Les Chisholm. Representatives of the California State Mediation and Conciliation Service will also attend and participate. The discussion will focus on the issues raised by the enactment of AB 646, and in particular the issues that might require regulatory action by PERB in advance of January 1, 2012, when the legislation takes effect. Among the issues to be discussed are what information PERB should require when a party seeks to initiate factfinding pursuant to the Meyers-Milias-Brown Act, and how PERB will carry out its responsibilities vis-à-vis the appointment process.

We look forward to your insights and thoughts on these issues and any others that you may believe are raised by AB 646. Persons planning to attend either meeting are requested to reply by telephone (916.322.3198) or by e-mail (lchisholm@perb.ca.gov).

Sincerely,

Anita I. Martinez
Chair

Sally M. Mc. Keag
Member

Alice Dowdin Calvillo
Member

A. Eugene Huguenin
Member

Assembly Bill 646 (Chapter 680, Statutes of 2011)

Effective January 1, 2012, the following changes to the Meyers-Milias-Brown Act take effect, pursuant to Assembly Bill 646. Newly enacted provisions are shown in **bold** type. Strikeout (~~strikeout~~) of text is used to show language deleted from the Act.

3505.4.

~~If after meeting and conferring in good faith, an impasse has been reached between the public agency and the recognized employee organization, and impasse procedures, where applicable, have been exhausted, a public agency that is not required to proceed to interest arbitration may 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.~~

(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.**

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.

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.