



RENNE SLOAN HOLTZMAN SAKAI LLP

428 J Street, Suite 400
Sacramento, CA 95814
t: 916.273.1710
f: 916.273.1711

December 2, 2011

TIMOTHY G. YEUNG
Telephone: (916) 273-1707
tyeung@rshslaw.com

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

RE: *Emergency Regulations Implementing AB 646*

Dear Ms. Murphy and Mr. Chisholm:

I am writing in response to the draft discussion regulations implementing AB 646 that the Public Employment Relations Board (PERB) released on November 14, 2011. I know that PERB has already received several letters commenting on the draft discussion regulations. I write only to emphasize the request made by several stakeholders that there must be a deadline by which the employee organization must make a request to proceed to fact-finding. Currently, the draft regulations provide that a request can be made no earlier than thirty (30) days following the appointment of a mediator, but there is no outer time limit by which the employee organization must request fact-finding.

Presumably, PERB staff examined the fact-finding regulations under EERA and HEERA in developing the draft discussion regulations for AB 646. PERB's current fact-finding regulations under EERA and HEERA provide for a time period before which fact-finding can be requested, but do not contain any outer time limit for a fact-finding request. At first blush, it may make sense that fact-finding regulations under the MMBA would be similarly drafted. However, because of significant differences between the MMBA and EERA/HEERA, that is not true.

Under both EERA and HEERA, the employer has the ability to request fact-finding. (Gov. Code, §§ 3548.1, 3591.) Thus, under EERA and HEERA an employer can prevent an employee organization from unreasonably delaying fact-finding proceedings by initiating those proceedings itself. The same is not true under the MMBA. AB 646, by its terms, does not provide for a fact-finding request from an employer. Thus, there is no similar counter-balance under the MMBA as exists under EERA and HEERA. Under the MMBA, without a deadline by



Suzanne Murphy, General Counsel
Les Chisholm, Division Chief
December 2, 2011
Page 2

which the employee organization must request fact-finding, it will be extremely difficult for an employer to protect itself against unreasonable delays. This significant difference in statutory language justifies PERB adopting fact-finding regulations under the MMBA that are different than those under EERA and HEERA. Again, I strongly urge PERB to include a deadline in the regulations by which an employee organization must make a fact-finding request.

Very truly yours,

Timothy G. Yeung

TGY/