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By E-Mail

Suzanne Murphy, General Counsel
Les Chisholm, Division Chief
Public Employment Relations Board
1031 18th Street
Sacramento, California 95814-4174

Re: Regulations Implementing AB 646

Dear Ms. Murphy and Mr. Chisholm:

On behalf of AFSCME District Council 36, SEIU Local 721, LIUNA Local 777, and IUOE Local 501, we offer the following suggestions regarding the proposed regulations implementing AB 646.

1. **Proposed § 32802.**

At the meeting we attended in Glendale on November 10, the union representatives who spoke expressed the view that factfinding should be available whether or not the bargaining parties have participated in mediation. On the management side, opinion on this point was split. For two reasons, we urge you to revise the proposed regulation on this point in order to permit the parties to join this issue at the time particular parties invoke the regulation, rather than preclude at the outset any possibility of factfinding where no mediation has occurred.

First, for most management and union representatives, including the management representative from the City of Long Beach who expressed his views at the meeting, a predictable process is the highest priority. As he explained, for negotiations that reach impasse following January 1, the employer needs to know whether factfinding must be utilized: placing negotiations on hold for many months while litigation runs its course, or running the risk that a rejection of factfinding later results in an unfair practice determination, are unattractive options. Thus, parties who have not first participated in mediation but wish to proceed to factfinding should not be precluded from doing so by the terms of an overly restrictive regulation. On the

other hand, employers who choose to reject factfinding where no mediation has taken place can then take their chances in litigation.

Addressing the merits of requiring factfinding even where no mediation has taken place, adopting a rule that conditions factfinding on prior participation in mediation would have an effect surely not intended by the Legislature. One must presume that in enacting AB 646, the Legislature intended to strengthen the impasse resolution process, not weaken it. But under a narrow interpretation of AB 646, an employer who might otherwise be willing to mediate, but who wishes to oppose factfinding, will also oppose mediation. To do otherwise would necessarily bind that employer to participate in factfinding. Thus, an amendment that was designed to strengthen the impasse resolution process, by adding factfinding as a second, required element, will serve, for some employers, to eliminate the impasse resolution process altogether.

For these reasons, we propose the following substitute language for § 32802:

In the case of impasse, an exclusive representative may request that the parties' differences be submitted to a factfinding panel. The request may be filed (1) at any time where there is no agreement to mediate, or (2) not sooner than 30 days after the appointment of a mediator.

2. **Proposed § 32804.**

Of the options presented by PERB staff, we prefer Option 2, which entails submission of a list of seven names to the parties, from which the parties may then strike. Over the course of many years, PERB and an advisory panel have vetted applicants for its list of neutrals qualified to conduct factfinding, and we understand that PERB staff intends to expand that list in light of the enactment of AB 646. Seasoned labor relations advocates should be permitted to make their best choice for the particular circumstances they face from among a list seven vetted factfinders, rather than be assigned a single, randomly-chosen individual.

Very truly yours,



Glenn Rothner