

# AB 339 Explained: New Labor Notice Rules for Public Contracting

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**Tami Douglas-Schatz**

*Human Resources Director, County of Riverside*

**Alexander Volberding**

*Partner, Liebert Cassidy Whitmore*

*Moderator:*

**Arthur Wylene**

*General Counsel, RCRC*



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# Agenda

- Key Takeaways
- Current State of the Law re: Public Agency Contracting
  - Notice and Meet and Confer Obligations
  - Timing
  - Limited Exceptions
- Deep Dive on AB 339
- Approach to Compliance
- Questions

# Key Takeaways

- Understand AB 339 in the Context of Existing Legal Obligations re: Public Agency Contracting
- Understand Where AB 339 is Vague or Ambiguous and Where There are Unanswered Questions (i.e., Legal Risks)
- Developing an Approach to Compliance that is Consistent with Agency's Risk Tolerance (Risk Averse  $\leftrightarrow$  Risk Tolerant)
- Understand the Importance of Coordination between Employee and Labor Relations and Procurement Personnel

# Contracting Decisions are Generally Within the Scope of Representation

- Application of *Claremont/Richmond Firefighters* Balancing Test
  - *Claremont* prescribes a three-step balancing test to determine whether management must meet and confer with a recognized employee organization ... when the implementation of a fundamental managerial or policy decision significantly and adversely affects a bargaining unit's wages, hours, or working conditions."

*(Claremont Police Officers Association v. City of Claremont (2006) 39 Cal. 4<sup>th</sup> 623, 637 (Claremont); (International Association of Fire Fighters, Local 188, AFL-CIO v. PERB (City of Richmond)(2011) 51 Cal.4<sup>th</sup> 259 (Richmond Firefighters); Gov. Code § 3504)*

# Employer's Reasons for Contracting

- **Costs** (*Oakland Unified School District* (2005) PERB Decision No. 1770)

- **Personnel Issues**

- Labor Management Strife;
- Employee Litigation;
- Problems with/Desire to Improve Delivery of Services;
- Supervision; and
- Training

(*Rialto Police Benefit Assn. v. City of Rialto* (2007) 155 Cal. App. 4<sup>th</sup> 1295,;  
*Lucia Mar Unified School District* (2001) PERB Decision No. 1440)

## Comparison of Contracted Services to Bargaining Unit Duties

- Employer Decides to Use Subcontracted Employees to Perform Substantially the Same Types of Job Duties that Bargaining Unit Employees Perform for the Employer
  - [W]here the employer *simply replaces its employees with those of a contractor* to perform the same services under similar circumstances," then there is *no need to engage in any balancing* to determine whether the benefits of bargaining outweigh the costs. (*Lucia Mar*, supra PERB Decision No 1440)

## Comparison of Contracted Services to Bargaining Unit Duties

- Application of Notice and Meet and Confer Obligations to New Operations
  - Applies to Contracting Decisions re: New Operations, Not Just Existing Operations, if the Services or Duties are Sufficiently Similar to those that the Bargaining Unit Employees Have Historically or Traditionally Performed

*(County of Kern and Kern County  
Hospital Authority (2019) PERB Dec.  
No. 2659M)*

# Timing of Notice and Meet and Confer Obligations

- Notice and a Meet and Confer is Required when a Firm Decision is made to Contract Work Performed by Represented Employees
  - ***A change in policy occurs on the date a firm decision is made*** even if the decision is not scheduled to take effect immediately, or even if it is never implemented.  
(*City of Milpitas* (2015) PERB Dec. No. 2443 M)



# Limited Exceptions – Represented Employees

- Does Not Apply to Unrepresented Employees
- Services are Performed by Represented Employees
  - Employee Organization Made a Specific, Clear and Express Waiver of Obligation to Meet and Confer on Contracting Decisions
  - Employer has a Long-Standing and Well-Established Past Practice that Meet and Confer on Contracting Decisions is Not Required

# Existing Legal Obligations

- Notice and Meet and Confer is Required When a Public Agency Makes a Firm Decision to Contract for Services Performed by Represented Employees; and
- There is Neither:
  - A Specific, Clear and Express Waiver of the Obligation to Provide Notice and Meet and Confer re: Such Decision; or
  - A Long-Standing and Well-Established Past Practice that Obviates Obligation to Provide Notice or Meet and Confer re: Such Decisions

# AB 339 Overview

- General Information
  - New MMBA Section (Gov. Code § 3504.1)
  - Applies to Agencies Subject to MMBA
  - Effective January 1, 2026
- Author – Assembly member Liz Ortega
- Supporters
- Opponents

# Letter to the Journal

- Letter to the Assembly Daily Journal
  - “This bill does **not** create a new obligation for employers, but rather places a timeline on an already existing process.”
  - “...applies only to contracts within the ‘scope of work of the job classifications represented by the recognized employee organization.’ This phrase must be interpreted practically and in the context of existing collective bargaining relationships. The phrase applies to situations in which ***contracted service substantially overlap with or could reasonably be performed by existing represented employees within their established job classifications and skill sets.***”

# Effective Date

- New Obligations take Effect January 1, 2026
- Questions
  - What does the effective date mean for contract solicitations decisions that an agency intends to make prior to February 15, 2026 (45 days after January 1)?

## Notice Requirements – Subdivision (a)

- Except as provided in subdivision (c), the governing body of a public agency, and boards and commissions designated by law or by the governing body of a public agency, shall give the recognized employee organization ***no less than 45 days' written notice*** before issuing a ***[1] request for proposals, [2] request for quotes, or [3] renewing or [4] extending an existing contract***, to perform services that are ***within the scope of work*** of the job classifications represented by the recognized employee organization.

# Notice Requirements – Subdivision (a)

- Components
  - Requirement to Provide Notice (45 Days) to Employee
  - Covered Solicitations: (1) Requests for Proposals; (2) Requests for Quotes; (3) Renewing an Existing Contract or (4) Extending an Existing Contract
  - Services are Within the “Scope of Work” of the Job Classifications Represented by the Recognized Employee Organization.
- New obligations
  - Notice Obligation Applies to Contracts for Which there is No Meet and Confer Obligation (Waiver/Past Practice)
    - No Exemption for Such Contracts
  - Timing of Notice Precedes Final Decision on the Contracting Decision

# Notice Requirements – Subdivision (a)

- Questions
  - What form of notice required?
  - Calendar days or business days?
  - What about other types of contract solicitations? Requests for qualifications? Amendments to existing contracts? Grants?
  - What services are within the “scope of work” of represented job classifications? Work actually performed by represented employees?
  - Are existing waivers applicable?
  - What if the scope of work changes after the solicitation?



## **Notice Information – Subdivision (b)**

- The written notice in subdivision (a) shall include all of the following:
  - The anticipated duration of the contract.
  - The scope of work under the contract.
  - The anticipated cost of the contract.
  - The draft solicitation, or if not yet drafted, any information that would normally be included in a solicitation.
  - The reason the public agency believes the contract is necessary.

# **Notice Information – Subdivision (b)**

- Questions
  - How should agencies describe the “scope of work” under the contract?
  - What reasons should agencies provide to explain why the agency believes the contracts is necessary?

## **Emergencies/Exigent Circumstances – Subdivision (c)**

- If an emergency or other exigent circumstances prevents the public agency from providing the amount of notice required by subdivision (a), the public agency shall provide as much advance notice as is practicable under the circumstances.

# Emergencies/Exigent Circumstances – Subdivision (c)

- Letter to the Journal
  - “[E]xigent circumstances’, refers to urgent situations beyond the agency’s reasonable control requiring immediate action to prevent significant harm to public operations, finances, or community services or system failures requiring immediate response.”
- Question
  - Does the exigent circumstances potentially apply to the otherwise covered contract solicitations that the agency intends to issue between January 1 and February 14, 2026?

# Exceptions – Subdivision (d)

This section does not apply to any of the following contracts:

1. A contract for construction, alteration, demolition, installation, repair, or maintenance work that is subject to Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code or a contract for highly specialized data, software, or services related to that construction, alteration, demolition, installation, repair, or maintenance work.
2. A contract for services described in Section 4525 or 4529.10 or that is related to the planning, design, administration, oversight, review, or delivery of public works, residential, commercial, or industrial buildings, or other infrastructure projects subject to adopted uniform codes or standards.

# Application of Existing Obligations - Subdivision (e)

- 1) Nothing in this section exempts contracts from the notice, meet and confer, or other requirements of applicable laws, including this chapter.
- 2) This section shall not be interpreted to affect other bargaining rights and obligations under this chapter that were not created by this section.
- 3) This section shall not diminish any rights of an employee or recognized employee organization provided by a memorandum of understanding.
- 4) This section shall not invalidate any provision of a memorandum of understanding in effect on the operative date of this section.

# Application of Existing Obligations - Subdivision (e)

- Questions
  - Do existing contractual waivers of statutory meet and confer obligations obviate the new notice requirements?
  - Does the long-standing and well-established past practice of contracting work obviate the new notice requirements?

# New Legal Obligations

- 45-days' Notice is Required in Advance of Public Agency Contract Solicitation that:
  - Is a (1) Request for Proposal; (2) Request for Quotes; (3) Renews an Existing Contract; or (4) Extends an Existing Contract; and
  - Is for services that are within the "scope of work" of the job classifications represented by the recognized employee organization
- Notice and a Meet and Confer is also Required when a Public Agency Makes Firm Decision to Contract for Services Performed by Represented Employees, unless an Exception Applies



# Risk Tolerance

- Risk tolerance continuum
  - Averse  $\leftrightarrow$  Tolerant
  - How does your agency intend to approach to vagueness/ambiguity/unanswered questions?
    - If more risk averse, consider greater engagement with labor providing more information (i.e., spirit of the law)
    - If more risk tolerant, consider providing only information required by the law (i.e., letter of the law)
  - Factors to consider:
    - Relationship with labor
    - Size of the agency
    - SEIU and AFSCME-represented employees

# Human Resources Preparations

- Coordination between Human Resources and Procurement Office and Across Departments
  - In addition to 45-day notice, both will need to provide info for duration, scope, cost, and purpose of contract (Gov. Code § 3504.1(a) and (b).)
- Clarify which Contracted Services Are or May be Within the “Scope of Work” of Represented Job Classifications (Gov. Code § 3504.1(a).)
- Avoid Unnecessary Notice re: Public Works Contracts or Associated “Highly Specialized” IT Contracts (Gov. Code § 3504.1(c).)
- Plan for Requests to Meet and Confer following Provision of Notice
  - AB 339 omits explicit requirements for a meet and confer following notice, but expect such requests and additional requests for information re: contracts
- Plan Approach to Engaging and Communicating with Employee Organizations

# QUESTIONS?

## CONTACT INFORMATION:

**Tami Douglas-Schatz**, Human Resources Director, County of Riverside  
[tdouglasschatz@rivco.org](mailto:tdouglasschatz@rivco.org)

**Alexander Volberding**, Partner, Liebert Cassidy Whitmore  
[avolberding@lcwlegal.com](mailto:avolberding@lcwlegal.com)

**Arthur Wylene**, General Counsel, RCRC  
[awylene@rcrcnet.org](mailto:awylene@rcrcnet.org)