As part of the recent State Budget agreement, the Governor signed Senate Bill 1036, establishing the California In-Home Supportive Service Authority, and making this new statewide joint powers authority responsible for collective bargaining for in-home support services providers.

Before the passage of Senate Bill 1036, the In Home Supportive Services (IHSS) program was administered locally, and counties or other public authorities created under the IHSS program were deemed the employers responsible for meeting and conferring under the requirements of the Meyers-Milias-Brown Act (MMBA). The new law shifts collective bargaining responsibilities to the state level in accordance with the county integration schedule of the Coordinated Care Initiative (no sooner than March 1, 2013).

Senate Bill 1036 establishes a new labor relations statute for IHSS providers – the “In-Home Supportive Services Employer-Employee Relations Act.” Key provisions of the new Act include:

1. Senate Bill 1036 (Committee on Budget and Fiscal Review), Chapter 45, Statutes of 2012.
Scope of Bargaining

The scope of bargaining includes “all matters relating to wages, benefits, and other terms and conditions of employment,” and establishes specified exclusions unique to this Act.

- The Act excludes listed county functions from the scope of bargaining, including but not limited to determining applicants’ eligibility for benefits and services, enrolling and conducting criminal background checks on providers, helping IHSS recipients find providers, overpayment recovery collection procedures, quality assurance activities, and other county functions and responsibilities.

- Individual IHSS recipients are explicitly granted the right to hire, fire, and supervise individual providers, and these items are excluded from the scope of bargaining.

Bargaining Units

Bargaining units must consist of employees in a single county. If no recognized employee organization exists in a county on the county implementation date, the bargaining unit must consist of all employees in the county. If recognized employee organizations exist, the statewide Authority is deemed the successor employer for those represented units.

Coalition Bargaining

The Act requires coalition bargaining by all recognized employee organizations affiliated with the same national parent union, and requires coalition bargaining by all unions with fewer than 100,000 employees. Unaffiliated unions representing 100,000 or more employees have the right to negotiate independently. Supplemental bargaining is allowed on unit-specific issues.

Impasse Procedures

Mediation and factfinding are required when the parties are unable to reach agreement in a reasonable period of time. If impasse is reached, the Authority may implement its last, best, and final offer after mediation and factfinding are complete.

Agency Shop

The Act establishes agency shop procedures similar to those in the MMBA.
Statewide Authority Rules

The Authority may adopt reasonable rules for registering employee organizations, determining the status of employee organizations, and otherwise carrying out the new Act.

PERB Jurisdiction

The Act will be administered by the Public Employment Relations Board, and unfair practice provisions and procedures are similar to those applicable under the MMBA.

Legislative Approval of MOUs

MOU’s reached in collective bargaining are subject to approval by the state legislature.

Review of MOU Changes During Transition Period

During the transition period to the new collective bargaining provisions, the State Department of Social Services (or the statewide Authority when it becomes operational) is required to review all changes to current or expired MOUs. The Department or Authority must provide recognized employee organizations with written notice of any objections to noneconomic terms in the MOUs, and the business-related reasons for the objection. The employee organizations may meet and confer regarding the objections before the county implementation date, but if no agreement is reached, objectionable language will be deemed inoperable.

PERB and the Authority will enact emergency regulations to implement the Act, which became effective immediately after it was approved on June 27, 2012.