

AMENDED IN ASSEMBLY MARCH 23, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 646

Introduced by Assembly Member Atkins

February 16, 2011

An act to amend Sections 3505 and 3505.2 of, to add ~~Section 3505.5~~ *Sections 3505.5, 3505.6, and 3505.7* to, and to repeal and add Section 3505.4 of, the Government Code, relating to local public employee organizations.

LEGISLATIVE COUNSEL'S DIGEST

AB 646, as amended, Atkins. Local public employee organizations: impasse procedures.

The Meyers-Milias-Brown Act contains various provisions that govern collective bargaining of local represented employees, and delegates jurisdiction to the Public Employment Relations Board to resolve disputes and enforce the statutory duties and rights of local public agency employers and employees. The act requires the governing body of a public agency to meet and confer in good faith regarding wages, hours, and other terms and conditions of employment with representatives of recognized employee organizations. Under the act, if the representatives of the public agency and the employee organization fail to reach an agreement, they may mutually agree on the appointment of a mediator and equally share the cost. If the parties reach an impasse, the act provides that a public agency may unilaterally implement its last, best, and final offer.

This bill would ~~delete the authorization for the public agency to implement its last, best, and final offer in the event of an impasse. The bill would~~ instead provide that if the parties fail to reach an agreement,

either party may request that the board appoint a mediator, and would require the board, if it determines that an impasse exists, to appoint a mediator at the board's expense. The bill would authorize either party to request that the matter be submitted to a factfinding panel if the mediator is unable to effect settlement of the controversy within 15 days and declares that factfinding is appropriate. The bill would require that the factfinding panel consist of one member selected by each party as well as a chairperson selected by the board or by agreement of the parties. The factfinding panel would be authorized to make investigations and hold hearings, and to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence. The bill would require all political subdivisions of the state to comply with the panel's requests for information.

This bill would require, if the dispute is not settled within 30 days, the factfinding panel to make findings of fact and recommend terms of settlement, for advisory purposes only. The bill would require that these findings and recommendations be first issued to the parties, but would require the public agency to make them publicly available within 10 days after their receipt. The bill would provide for the distribution of costs associated with the factfinding panel, as specified. *The bill would specify that these provisions shall not prevent the parties from utilizing their own negotiated and mutually agreed-upon mediation and factfinding procedures at their own expense.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3505 of the Government Code is amended
2 to read:
3 3505. The governing body of a public agency, or such boards,
4 commissions, administrative officers or other representatives as
5 may be properly designated by law or by such governing body,
6 shall meet and confer in good faith regarding wages, hours, and
7 other terms and conditions of employment with representatives of
8 such recognized employee organizations, as defined in subdivision
9 (b) of Section 3501, and shall consider fully such presentations as
10 are made by the employee organization on behalf of its members
11 prior to arriving at a determination of policy or course of action.

1 “Meet and confer in good faith” means that a public agency, or
2 such representatives as it may designate, and representatives of
3 recognized employee organizations, shall have the mutual
4 obligation personally to meet and confer promptly upon request
5 by either party and continue for a reasonable period of time in
6 order to exchange freely information, opinions, and proposals, and
7 to endeavor to reach agreement on matters within the scope of
8 representation prior to the adoption by the public agency of its
9 final budget for the ensuing year.

10 SEC. 2. Section 3505.2 of the Government Code is amended
11 to read:

12 3505.2. (a) If after a reasonable period of time, representatives
13 of the public agency and the recognized employee organization
14 fail to reach agreement, the public agency and the recognized
15 employee organization or recognized employee organizations may
16 do one of the following:

17 (1) The parties may agree upon the appointment of a mediator
18 mutually agreeable to the parties, in which case, the costs of
19 mediation shall be divided one-half to the public agency and
20 one-half to the recognized employee organization or recognized
21 employee organizations.

22 (2) Either party may request that the Public Employment
23 Relations Board appoint a mediator for the purpose of assisting
24 them in reconciling their differences and resolving the controversy
25 on terms that are mutually acceptable. If the board determines that
26 an impasse exists, it shall appoint a mediator within five working
27 days after its receipt of the request. The mediator shall meet with
28 the parties or their representatives, either jointly or separately, as
29 soon as practicable, and shall take any other steps he or she deems
30 appropriate in order to persuade the parties to resolve their
31 differences and reach a mutually acceptable agreement. The
32 services of the mediator, including any per diem fees, and actual
33 and necessary travel and subsistence expenses, shall be provided
34 by the board without cost to the parties.

35 ~~(b) If the parties agree upon the appointment of a mediator~~
36 ~~pursuant to paragraph (1) of subdivision (a),~~ *Nothing in this section*
37 *shall be construed to prevent the parties from utilizing their own*
38 *negotiated and mutually agreed-upon mediation procedure. If the*
39 *parties agree to utilize their own mediation procedure,* the board
40 shall not appoint its own mediator unless failure to do so would

1 be inconsistent with the policies of this chapter. *If the parties have*
2 *negotiated and agreed upon their own mediation procedure, the*
3 *cost of the services of any appointed mediator, including per diem*
4 *fees, and actual and necessary travel and subsistence expenses,*
5 *shall be borne equally by the parties.*

6 SEC. 3. Section 3505.4 of the Government Code is repealed.

7 SEC. 4. Section 3505.4 is added to the Government Code, to
8 read:

9 3505.4. (a) If the mediator is unable to effect settlement of the
10 controversy within 15 days after his or her appointment pursuant
11 to Section 3505.2, and the mediator declares that factfinding is
12 appropriate to the resolution of the impasse, either party may, by
13 written notification to the other party, request that their differences
14 be submitted to a factfinding panel. Within five days after receipt
15 of the written request, each party shall select a person to serve as
16 its member of the factfinding panel. The Public Employment
17 Relations Board shall, within five days after the selection of panel
18 members by the parties, select a chairperson of the factfinding
19 panel. The chairperson designated by the board shall not, without
20 the consent of both parties, be the same person who served as
21 mediator pursuant to Section 3505.2.

22 (b) Within five days after the board selects a chairperson of the
23 factfinding panel, the parties may mutually agree upon a person
24 to serve as chairperson in lieu of the person selected by the board.

25 (c) The panel shall, within 10 days after its appointment, meet
26 with the parties or their representatives, either jointly or separately,
27 and may make inquiries and investigations, hold hearings, and
28 take any other steps it deems appropriate. For the purpose of the
29 hearings, investigations, and inquiries, the panel shall have the
30 power to issue subpoenas requiring the attendance and testimony
31 of witnesses and the production of evidence. Any state agency, as
32 defined in Section 11000, the California State University, or any
33 political subdivision of the state, including any board of education,
34 shall furnish the panel, upon its request, with all records, papers,
35 and information in their possession relating to any matter under
36 investigation by or in issue before the panel.

37 ~~(d) If the dispute is not settled within 30 days after the~~
38 ~~appointment of the factfinding panel, or, upon agreement by both~~
39 ~~parties within a longer period, the panel shall make findings of~~

1 ~~fact and recommend terms of settlement. These findings and~~
2 ~~recommendations shall be advisory only. In arriving at their~~

3 *(d) In arriving at their* findings and recommendations, the fact
4 finders shall consider, weigh, and be guided by all the following
5 criteria:

6 (1) State and federal laws that are applicable to the employer.

7 (2) Local rules, regulations, or ordinances.

8 (3) Stipulations of the parties.

9 (4) The interests and welfare of the public and the financial
10 ability of the public agency.

11 (5) Comparison of the wages, hours, and conditions of
12 employment of the employees involved in the factfinding
13 proceeding with the wages, hours, and conditions of employment
14 of other employees performing similar services in comparable
15 public agencies.

16 (6) The consumer price index for goods and services, commonly
17 known as the cost of living.

18 (7) The overall compensation presently received by the
19 employees, including direct wage compensation, vacations,
20 holidays, and other excused time, insurance and pensions, medical
21 and hospitalization benefits, the continuity and stability of
22 employment, and all other benefits received.

23 (8) Any other facts, not confined to those specified in paragraphs
24 (1) to (7), inclusive, which are normally or traditionally taken into
25 consideration in making the findings and recommendations.

26 ~~(e) The fact finders shall submit, in writing, any findings of fact~~
27 ~~and recommended terms of settlement to the parties before they~~
28 ~~are made available to the public. The public agency shall make~~
29 ~~these findings and recommendations publicly available within 10~~
30 ~~days after their receipt.~~

31 ~~(f) The costs for the services of the panel chairperson selected~~
32 ~~by the board, including per diem fees, if any, and actual and~~
33 ~~necessary travel and subsistence expenses, shall be borne by the~~
34 ~~board.~~

35 ~~(g) The costs for the services of the panel chairperson agreed~~
36 ~~upon by the parties shall be equally divided between the parties,~~
37 ~~and shall include per diem fees, if any, and actual and necessary~~
38 ~~travel and subsistence expenses. The per diem fees shall not exceed~~
39 ~~the per diem fees stated on the chairperson's resume on file with~~
40 ~~the board. The chairperson's bill showing the amount payable by~~

1 the parties shall accompany his or her final report to the parties
2 and the board. The chairperson may submit interim bills to the
3 parties in the course of the proceedings, and copies of the interim
4 bills shall also be sent to the board. The parties shall make payment
5 directly to the chairperson.

6 ~~(h) Any other mutually incurred costs shall be borne equally by~~
7 ~~the public agency and the employee organization. Any separately~~
8 ~~incurred costs for the panel member selected by each party shall~~
9 ~~be borne by that party.~~

10 ~~SEC. 5. Section 3505.5 is added to the Government Code, to~~
11 ~~read:~~

12 ~~3505.5. Nothing in this article shall be construed to prohibit~~
13 ~~the mediator appointed pursuant to Section 3505.2 from continuing~~
14 ~~mediation efforts on the basis of the findings of fact and~~
15 ~~recommended terms of settlement made pursuant to Section 3505.4.~~

16 ~~SEC. 5. Section 3505.5 is added to the Government Code, to~~
17 ~~read:~~

18 ~~3505.5. (a) If the dispute is not settled within 30 days after the~~
19 ~~appointment of the factfinding panel, or, upon agreement by both~~
20 ~~parties within a longer period, the panel shall make findings of~~
21 ~~fact and recommend terms of settlement, which shall be advisory~~
22 ~~only. The factfinders shall submit, in writing, any findings of fact~~
23 ~~and recommended terms of settlement to the parties before they~~
24 ~~are made available to the public. The public agency shall make~~
25 ~~these findings and recommendations publicly available within 10~~
26 ~~days after their receipt.~~

27 ~~(b) The costs for the services of the panel chairperson selected~~
28 ~~by the board, including per diem fees, if any, and actual and~~
29 ~~necessary travel and subsistence expenses, shall be borne by the~~
30 ~~board.~~

31 ~~(c) The costs for the services of the panel chairperson agreed~~
32 ~~upon by the parties shall be equally divided between the parties,~~
33 ~~and shall include per diem fees, if any, and actual and necessary~~
34 ~~travel and subsistence expenses. The per diem fees shall not exceed~~
35 ~~the per diem fees stated on the chairperson's resume on file with~~
36 ~~the board. The chairperson's bill showing the amount payable by~~
37 ~~the parties shall accompany his or her final report to the parties~~
38 ~~and the board. The chairperson may submit interim bills to the~~
39 ~~parties in the course of the proceedings, and copies of the interim~~

1 bills shall also be sent to the board. The parties shall make payment
2 directly to the chairperson.

3 (d) Any other mutually incurred costs shall be borne equally by
4 the public agency and the employee organization. Any separately
5 incurred costs for the panel member selected by each party shall
6 be borne by that party.

7 SEC. 6. Section 3505.6 is added to the Government Code, to
8 read:

9 3505.6. Nothing in Sections 3505.4 and 3505.5 shall be
10 construed to prevent the parties from utilizing their own negotiated
11 and mutually agreed-upon factfinding procedure in lieu of the
12 factfinding procedure set forth in those sections. If the parties have
13 negotiated and agreed upon their own factfinding procedure, any
14 associated costs shall be borne equally by the parties.

15 SEC. 7. Section 3505.7 is added to the Government Code, to
16 read:

17 3505.7. After any applicable mediation and factfinding
18 procedures have been exhausted, a public agency that is not
19 required to proceed to interest arbitration may implement its last,
20 best, and final offer, but shall not implement a memorandum of
21 understanding. The unilateral implementation of a public agency's
22 last, best, and final offer shall not deprive a recognized employee
23 organization of the right each year to meet and confer on matters
24 within the scope of representation, whether or not those matters
25 are included in the unilateral implementation, prior to the adoption
26 by the public agency of its annual budget, or as otherwise required
27 by law.

O