

AMENDED IN ASSEMBLY MAY 5, 2011
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 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 ~~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. *authorize the employee organization, if the mediator is unable to effect settlement of the controversy within 15 days of his or her appointment, to request that the matter be submitted to a factfinding panel.* 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.~~

This bill would prohibit a public agency from implementing its last, best, and final offer until at least 10 days after the factfinders' written findings of fact and recommended terms of settlement have been submitted to the parties and the agency has held a public hearing regarding the impasse.

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,~~

1 shall meet and confer in good faith regarding wages, hours, and
2 other terms and conditions of employment with representatives of
3 such recognized employee organizations, as defined in subdivision
4 (b) of Section 3501, and shall consider fully such presentations as
5 are made by the employee organization on behalf of its members
6 prior to arriving at a determination of policy or course of action.

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

16 SEC. 2. Section 3505.2 of the Government Code is amended
17 to read:

18 3505.2.—(a) If after a reasonable period of time, representatives
19 of the public agency and the recognized employee organization
20 fail to reach agreement, the public agency and the recognized
21 employee organization or recognized employee organizations may
22 do one of the following:

23 (1) The parties may agree upon the appointment of a mediator
24 mutually agreeable to the parties, in which case, the costs of
25 mediation shall be divided one-half to the public agency and
26 one-half to the recognized employee organization or recognized
27 employee organizations.

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

1 (b) ~~Nothing in this section shall be construed to prevent the~~
2 ~~parties from utilizing their own negotiated and mutually~~
3 ~~agreed-upon mediation procedure. If the parties agree to utilize~~
4 ~~their own mediation procedure, the board shall not appoint its own~~
5 ~~mediator unless failure to do so would be inconsistent with the~~
6 ~~policies of this chapter. If the parties have negotiated and agreed~~
7 ~~upon their own mediation procedure, the cost of the services of~~
8 ~~any appointed mediator, including per diem fees, and actual and~~
9 ~~necessary travel and subsistence expenses, shall be borne equally~~
10 ~~by the parties.~~

11 ~~SEC. 3.~~

12 ~~SECTION 1.~~ Section 3505.4 of the Government Code is
13 repealed.

14 ~~SEC. 4.~~

15 ~~SEC. 2.~~ Section 3505.4 is added to the Government Code, to
16 read:

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

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

34 (c) The panel shall, within 10 days after its appointment, meet
35 with the parties or their representatives, either jointly or separately,
36 and may make inquiries and investigations, hold hearings, and
37 take any other steps it deems appropriate. For the purpose of the
38 hearings, investigations, and inquiries, the panel shall have the
39 power to issue subpoenas requiring the attendance and testimony
40 of witnesses and the production of evidence. Any state agency, as

1 defined in Section 11000, the California State University, or any
2 political subdivision of the state, including any board of education,
3 shall furnish the panel, upon its request, with all records, papers,
4 and information in their possession relating to any matter under
5 investigation by or in issue before the panel.

6 (d) In arriving at their findings and recommendations, the fact
7 finders shall consider, weigh, and be guided by all the following
8 criteria:

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

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

11 (3) Stipulations of the parties.

12 (4) The interests and welfare of the public and the financial
13 ability of the public agency.

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

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

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

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

29 ~~SEC. 5.~~

30 *SEC. 3.* Section 3505.5 is added to the Government Code, to
31 read:

32 3505.5. (a) If the dispute is not settled within 30 days after the
33 appointment of the factfinding panel, or, upon agreement by both
34 parties within a longer period, the panel shall make findings of
35 fact and recommend terms of settlement, which shall be advisory
36 only. The factfinders shall submit, in writing, any findings of fact
37 and recommended terms of settlement to the parties before they
38 are made available to the public. The public agency shall make
39 these findings and recommendations publicly available within 10
40 days after their receipt.

1 (b) The costs for the services of the panel chairperson selected
2 by the board, including per diem fees, if any, and actual and
3 necessary travel and subsistence expenses, shall be borne by the
4 board.

5 (c) The costs for the services of the panel chairperson agreed
6 upon by the parties shall be equally divided between the parties,
7 and shall include per diem fees, if any, and actual and necessary
8 travel and subsistence expenses. The per diem fees shall not exceed
9 the per diem fees stated on the chairperson's résumé on file with
10 the board. The chairperson's bill showing the amount payable by
11 the parties shall accompany his or her final report to the parties
12 and the board. The chairperson may submit interim bills to the
13 parties in the course of the proceedings, and copies of the interim
14 bills shall also be sent to the board. The parties shall make payment
15 directly to the chairperson.

16 (d) Any other mutually incurred costs shall be borne equally by
17 the public agency and the employee organization. Any separately
18 incurred costs for the panel member selected by each party shall
19 be borne by that party.

20 ~~SEC. 6. Section 3505.6 is added to the Government Code, to~~
21 ~~read:~~

22 ~~3505.6. Nothing in Sections 3505.4 and 3505.5 shall be~~
23 ~~construed to prevent the parties from utilizing their own negotiated~~
24 ~~and mutually agreed upon factfinding procedure in lieu of the~~
25 ~~factfinding procedure set forth in those sections. If the parties have~~
26 ~~negotiated and agreed upon their own factfinding procedure, any~~
27 ~~associated costs shall be borne equally by the parties.~~

28 ~~SEC. 7.~~

29 ~~SEC. 4. Section 3505.7 is added to the Government Code, to~~
30 ~~read:~~

31 ~~3505.7. After any applicable mediation and factfinding~~
32 ~~procedures have been exhausted, *but no earlier than 10 days after*~~
33 ~~*the factfinders' written findings of fact and recommended terms*~~
34 ~~*of settlement have been submitted to the parties pursuant to Section*~~
35 ~~*3505.5, a public agency that is not required to proceed to interest*~~
36 ~~*arbitration may, after holding a public hearing regarding the*~~
37 ~~*impasse, implement its last, best, and final offer, but shall not*~~
38 ~~*implement a memorandum of understanding. The unilateral*~~
39 ~~*implementation of a public agency's last, best, and final offer shall*~~
40 ~~*not deprive a recognized employee organization of the right each*~~

1 year to meet and confer on matters within the scope of
2 representation, whether or not those matters are included in the
3 unilateral implementation, prior to the adoption by the public
4 agency of its annual budget, or as otherwise required by law.

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