

AMENDED IN ASSEMBLY MAY 27, 2011

AMENDED IN ASSEMBLY MAY 11, 2011

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 add Sections 3505.5 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 authorize the employee organization, if the mediator is unable to effect settlement of the controversy within ~~15~~ 30 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.

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 3505.4 of the Government Code is
- 2 repealed.
- 3 SEC. 2. Section 3505.4 is added to the Government Code, to
- 4 read:
- 5 3505.4. (a) If the mediator is unable to effect settlement of the
- 6 controversy within ~~15~~ 30 days after his or her appointment, the
- 7 employee organization may request that the parties’ differences
- 8 be submitted to a factfinding panel. Within five days after receipt
- 9 of the written request, each party shall select a person to serve as
- 10 its member of the factfinding panel. The Public Employment

1 Relations Board shall, within five days after the selection of panel
2 members by the parties, select a chairperson of the factfinding
3 panel.

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

7 (c) The panel shall, within 10 days after its appointment, meet
8 with the parties or their representatives, either jointly or separately,
9 and may make inquiries and investigations, hold hearings, and
10 take any other steps it deems appropriate. For the purpose of the
11 hearings, investigations, and inquiries, the panel shall have the
12 power to issue subpoenas requiring the attendance and testimony
13 of witnesses and the production of evidence. Any state agency, as
14 defined in Section 11000, the California State University, or any
15 political subdivision of the state, including any board of education,
16 shall furnish the panel, upon its request, with all records, papers,
17 and information in their possession relating to any matter under
18 investigation by or in issue before the panel.

19 (d) In arriving at their findings and recommendations, the
20 factfinders shall consider, weigh, and be guided by all the following
21 criteria:

- 22 (1) State and federal laws that are applicable to the employer.
- 23 (2) Local rules, regulations, or ordinances.
- 24 (3) Stipulations of the parties.
- 25 (4) The interests and welfare of the public and the financial
26 ability of the public agency.
- 27 (5) Comparison of the wages, hours, and conditions of
28 employment of the employees involved in the factfinding
29 proceeding with the wages, hours, and conditions of employment
30 of other employees performing similar services in comparable
31 public agencies.
- 32 (6) The consumer price index for goods and services, commonly
33 known as the cost of living.
- 34 (7) The overall compensation presently received by the
35 employees, including direct wage compensation, vacations,
36 holidays, and other excused time, insurance and pensions, medical
37 and hospitalization benefits, the continuity and stability of
38 employment, and all other benefits received.

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

4 SEC. 3. Section 3505.5 is added to the Government Code, to
5 read:

6 3505.5. (a) If the dispute is not settled within 30 days after the
7 appointment of the factfinding panel, or, upon agreement by both
8 parties within a longer period, the panel shall make findings of
9 fact and recommend terms of settlement, which shall be advisory
10 only. The factfinders shall submit, in writing, any findings of fact
11 and recommended terms of settlement to the parties before they
12 are made available to the public. The public agency shall make
13 these findings and recommendations publicly available within 10
14 days after their receipt.

15 (b) The costs for the services of the panel chairperson selected
16 by the board, including per diem fees, if any, and actual and
17 necessary travel and subsistence expenses, shall be equally divided
18 between the parties.

19 (c) The costs for the services of the panel chairperson agreed
20 upon by the parties shall be equally divided between the parties,
21 and shall include per diem fees, if any, and actual and necessary
22 travel and subsistence expenses. The per diem fees shall not exceed
23 the per diem fees stated on the chairperson's résumé on file with
24 the board. The chairperson's bill showing the amount payable by
25 the parties shall accompany his or her final report to the parties
26 and the board. The chairperson may submit interim bills to the
27 parties in the course of the proceedings, and copies of the interim
28 bills shall also be sent to the board. The parties shall make payment
29 directly to the chairperson.

30 (d) Any other mutually incurred costs shall be borne equally by
31 the public agency and the employee organization. Any separately
32 incurred costs for the panel member selected by each party shall
33 be borne by that party.

34 SEC. 4. Section 3505.7 is added to the Government Code, to
35 read:

36 3505.7. After any applicable mediation and factfinding
37 procedures have been exhausted, but no earlier than 10 days after
38 the factfinders' written findings of fact and recommended terms
39 of settlement have been submitted to the parties pursuant to Section
40 3505.5, a public agency that is not required to proceed to interest

1 arbitration may, after holding a public hearing regarding the
2 impasse, implement its last, best, and final offer, but shall not
3 implement a memorandum of understanding. The unilateral
4 implementation of a public agency's last, best, and final offer shall
5 not deprive a recognized employee organization of the right each
6 year to meet and confer on matters within the scope of
7 representation, whether or not those matters are included in the
8 unilateral implementation, prior to the adoption by the public
9 agency of its annual budget, or as otherwise required by law.

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