

AMENDED IN SENATE MARCH 14, 2011

SENATE BILL

No. 259

**Introduced by ~~Senators~~ *Senator Hancock, Price, and Yee*
(*Coauthors: Senators Price, Vargas, and Yee*)**

(Coauthors: Assembly Members *Ammiano, Brownley, Fong, Ma, Portantino, Skinner, Swanson, Williams, and Yamada*)

February 10, 2011

An act to amend Section 3562 of the Government Code, relating to higher education employees.

LEGISLATIVE COUNSEL'S DIGEST

SB 259, as amended, Hancock. Higher education: employees.

Existing law establishes the University of California, and provides for its administration by the Regents of the University of California. Existing law, known as the Higher Education Employer-Employee Relations Act, contains provisions relating to employer-employee relations between the State of California and the employees of state institutions of higher education, including the various campuses of the University of California and the California State University, as well as the Hastings College of the Law. These provisions assign major responsibilities for implementation to the Public Employment Relations Board.

Under the act, an "employee" or "higher education employee" is defined as any employee of the Regents of the University of California, the Directors of the Hastings College of the Law, or the Trustees of the California State University. The act further provides that the board may find student employees whose employment is contingent on their status as students are employees only if the services they provide are unrelated to their educational objectives, or that those educational objectives are

subordinate to the services they perform and that coverage under this chapter would further the purposes of the act.

This bill would provide that student employees whose employment is contingent upon their status as students are employees or higher education employees for purposes of the act. In so doing, the bill would also delete the condition that students are employees or higher education employees only if the services they provide are unrelated to their educational objectives, or that those educational objectives are subordinate to the services they perform and that coverage under this chapter would further the purposes of the act.

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. The Legislature finds and declares all of the*
2 *following:*

3 *(a) A majority of student employees employed by the University*
4 *of California, Hastings College of the Law, and the California*
5 *State University have been granted the opportunity for collective*
6 *bargaining under the Higher Education Employer-Employee*
7 *Relations Act (HEERA).*

8 *(b) It is the intent of the Legislature to expand the definition of*
9 *employee under HEERA so as to include certain student employees*
10 *who previously had been denied collective bargaining rights.*

11 *(c) It is the intent of the Legislature to maintain collective*
12 *bargaining rights for those student employees who currently have*
13 *them.*

14 ~~SECTION 1.~~

15 *SEC. 2. Section 3562 of the Government Code is amended to*
16 *read:*

17 3562. As used in this chapter:

18 (a) “Arbitration” means a method of resolving a rights dispute
19 under which the parties to a controversy must accept the award of
20 a third party.

21 (b) “Board” means the Public Employment Relations Board
22 established pursuant to Section 3513.

23 (c) “Certified organization” means an employee organization
24 that has been certified by the board as the exclusive representative

1 of the employees in an appropriate unit after a proceeding under
2 Article 5 (commencing with Section 3573).

3 (d) “Confidential employee” means any employee who is
4 required to develop or present management positions with respect
5 to meeting and conferring or whose duties normally require access
6 to confidential information which contributes significantly to the
7 development of those management positions.

8 (e) “Employee” or “higher education employee” means any
9 employee, including student employees whose employment is
10 contingent on their status as students, of the Regents of the
11 University of California, the Directors of the Hastings College of
12 the Law, or the Trustees of the California State University.
13 However, managerial and confidential employees and employees
14 whose principal place of employment is outside the State of
15 California at a worksite with 100 or fewer employees shall be
16 excluded from coverage under this chapter.

17 (f) (1) “Employee organization” means any organization of any
18 kind in which higher education employees participate and that
19 exists for the purpose, in whole or in part, of dealing with higher
20 education employers concerning grievances, labor disputes, wages,
21 hours, and other terms and conditions of employment of employees.
22 An organization that represents one or more employees whose
23 principal worksite is located outside the State of California is an
24 employee organization only if it has filed with the board and with
25 the employer a statement agreeing, in consideration of obtaining
26 the benefits of status as an employee organization pursuant to this
27 chapter, to submit to the jurisdiction of the board. The board shall
28 promulgate the form of the statement.

29 (2) “Employee organization” shall also include any person that
30 an employee organization authorizes to act on its behalf. An
31 academic senate, or other similar academic bodies, or divisions
32 thereof, shall not be considered employee organizations for the
33 purposes of this chapter.

34 (g) “Employer” or “higher education employer” means the
35 regents in the case of the University of California, the directors in
36 the case of the Hastings College of the Law, and the trustees in
37 the case of the California State University, including any person
38 acting as an agent of an employer.

39 (h) “Employer representative” means any person or persons
40 authorized to act on behalf of the employer.

1 (i) “Exclusive representative” means any recognized or certified
2 employee organization or person it authorizes to act on its behalf.

3 (j) “Impasse” means that the parties have reached a point in
4 meeting and conferring at which their differences in positions are
5 such that further meetings would be futile.

6 (k) “Managerial employee” means any employee having
7 significant responsibilities for formulating or administering policies
8 and programs. No employee or group of employees shall be
9 deemed to be managerial employees solely because the employee
10 or group of employees participates in decisions with respect to
11 courses, curriculum, personnel, and other matters of educational
12 policy. A department chair or head of a similar academic unit or
13 program who performs the foregoing duties primarily on behalf
14 of the members of the academic unit or program shall not be
15 deemed a managerial employee solely because of those duties.

16 (l) “Mediation” means the efforts of a third person, or persons,
17 functioning as intermediaries, to assist the parties in reaching a
18 voluntary resolution to an impasse.

19 (m) “Meet and confer” means the performance of the mutual
20 obligation of the higher education employer and the exclusive
21 representative of its employees to meet at reasonable times and to
22 confer in good faith with respect to matters within the scope of
23 representation and to endeavor to reach agreement on matters
24 within the scope of representation. The process shall include
25 adequate time for the resolution of impasses. If agreement is
26 reached between representatives of the higher education employer
27 and the exclusive representative, they shall jointly prepare a written
28 memorandum of the understanding, which shall be presented to
29 the higher education employer for concurrence. However, these
30 obligations shall not compel either party to agree to any proposal
31 or require the making of a concession.

32 (n) “Person” means one or more individuals, organizations,
33 associations, corporations, boards, committees, commissions,
34 agencies, or their representatives.

35 (o) “Professional employee” means:

36 (1) Any employee engaged in work: (A) predominantly
37 intellectual and varied in character as opposed to routine mental,
38 manual, mechanical, or physical work; (B) involving the consistent
39 exercise of discretion and judgment in its performance; (C) of a
40 character so that the output produced or the result accomplished

1 cannot be standardized in relation to a given period of time; and
2 (D) requiring knowledge of an advanced type in a field of science
3 or learning customarily acquired by a prolonged course of
4 specialized intellectual instruction and study in an institution of
5 higher learning or a hospital, as distinguished from a general
6 academic education or from an apprenticeship or from training in
7 the performance of routine mental, manual, or physical processes.

8 (2) Any employee who: (A) has completed the courses of
9 specialized intellectual instruction and study described in
10 subparagraph (D) of paragraph (1), and (B) is performing related
11 work under the supervision of a professional person to qualify
12 himself or herself to become a professional employee as defined
13 in paragraph (1).

14 (p) "Recognized organization" means an employee organization
15 that has been recognized by an employer as the exclusive
16 representative of the employees in an appropriate unit pursuant to
17 Article 5 (commencing with Section 3573).

18 (q) (1) For purposes of the University of California only, "scope
19 of representation" means, and is limited to, wages, hours of
20 employment, and other terms and conditions of employment. The
21 scope of representation shall not include any of the following:

22 (A) Consideration of the merits, necessity, or organization of
23 any service, activity, or program established by law or resolution
24 of the regents or the directors, except for the terms and conditions
25 of employment of employees who may be affected thereby.

26 (B) The amount of any fees that are not a term or condition of
27 employment.

28 (C) Admission requirements for students, conditions for the
29 award of certificates and degrees to students, and the content and
30 supervision of courses, curricula, and research programs, as those
31 terms are intended by the standing orders of the regents or the
32 directors.

33 (D) Procedures and policies to be used for the appointment,
34 promotion, and tenure of members of the academic senate, the
35 procedures to be used for the evaluation of the members of the
36 academic senate, and the procedures for processing grievances of
37 members of the academic senate. The exclusive representative of
38 members of the academic senate shall have the right to consult
39 and be consulted on matters excluded from the scope of
40 representation pursuant to this subparagraph. If the academic senate

1 determines that any matter in this subparagraph should be within
2 the scope of representation, or if any matter in this subparagraph
3 is withdrawn from the responsibility of the academic senate, the
4 matter shall be within the scope of representation.

5 (2) All matters not within the scope of representation are
6 reserved to the employer and may not be subject to meeting and
7 conferring, provided that nothing herein may be construed to limit
8 the right of the employer to consult with any employees or
9 employee organization on any matter outside the scope of
10 representation.

11 (r) (1) For purposes of the California State University only,
12 “scope of representation” means, and is limited to, wages, hours
13 of employment, and other terms and conditions of employment.
14 The scope of representation shall not include:

15 (A) Consideration of the merits, necessity, or organization of
16 any service, activity, or program established by statute or
17 regulations adopted by the trustees, except for the terms and
18 conditions of employment of employees who may be affected
19 thereby.

20 (B) The amount of any student fees that are not a term or
21 condition of employment.

22 (C) Admission requirements for students, conditions for the
23 award of certificates and degrees to students, and the content and
24 conduct of courses, curricula, and research programs.

25 (D) Criteria and standards to be used for the appointment,
26 promotion, evaluation, and tenure of academic employees, which
27 shall be the joint responsibility of the academic senate and the
28 trustees. The exclusive representative shall have the right to consult
29 and be consulted on matters excluded from the scope of
30 representation pursuant to this subparagraph. If the trustees
31 withdraw any matter in this subparagraph from the responsibility
32 of the academic senate, the matter shall be within the scope of
33 representation.

34 (E) The amount of rental rates for housing charged to California
35 State University employees.

36 (2) All matters not within the scope of representation are
37 reserved to the employer, and may not be subject to meeting and
38 conferring, provided that nothing herein may be construed to limit
39 the right of the employer to consult with any employees or

1 employee organization on any matter outside the scope of
2 representation.

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