

AMENDED IN SENATE MARCH 22, 2011

SENATE BILL

No. 524

Introduced by Senator Walters

(Coauthors: Senators Dutton and Runner)

*(Coauthors: Assembly Members Garrick, Grove, Harkey, Jeffries,
Mansoor, and Silva)*

February 17, 2011

~~An act to add Section 21220.2 to the Government Code, relating to public employees' retirement.~~ *An act to amend Sections 3504, 3516, 3543.2, 3562, 3581.3, 71634, and 71816 of, to add Section 7507.9 to, and to repeal Section 3562.2 of, the Government Code, and to amend Section 99563.5 of the Public Utilities Code, relating to public employment benefits.*

LEGISLATIVE COUNSEL'S DIGEST

SB 524, as amended, Walters. Public employees' retirement: ~~reinstatement.~~ *retroactive benefits.*

The Meyers-Milias-Brown Act, the Ralph C. Dills Act, provisions commonly referred to as the Educational Employment Relations Act, the Higher Education Employer-Employee Relations Act, the Trial Court Employment Protection and Governance Act, the Trial Court Interpreter Employment and Labor Relations Act, and the Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act each provide for the representation of state or local public employees by recognized employee organizations, and provide that the scope of this representation includes negotiations concerning wages, hours, and other terms and conditions of employment between the state or local public employer and representatives of those employee organizations.

This bill would exclude matters relating to the retroactive effect of pension benefit increases from the scope of representation of public employees by recognized employee organizations, and would thereby prohibit these employee organizations from negotiating for a retroactive effect of pension benefit increases with public employers.

The Public Employees’ Retirement Law creates the Public Employees’ Retirement System, which provides a defined benefit to its members based on age at retirement, service credit, and final compensation. The State Teachers’ Retirement Law, the Judges’ Retirement System II Law, and the County Employees Retirement Law of 1937 also provide for a defined benefit based on age at retirement, service credit, and final compensation.

This bill would require that any adjustment to the formula used to calculate the retirement benefits of a member of a public retirement system that would yield an increase in the member’s retirement benefits apply only to service performed after the operative date of the adjustment, and would prohibit the retroactive application of that adjustment, except as provided.

~~The Public Employees’ Retirement Law (PERL) provides a comprehensive set of rights and benefits based upon age, service credit, and final compensation to members of the Public Employees’ Retirement System. Any person who has been retired under the system is generally prohibited from being employed in any capacity unless he or she is first reinstated from retirement, except as authorized. PERL authorizes a person who has been reinstated to thereafter be employed by the state or by a contracting agency in accordance with the laws governing that service, in the same manner as a person who has not been so retired.~~

~~This bill would prohibit a state member who retires on or after January 1, 2012, from serving without reinstatement or being hired as a contracted employee for the state until the person has been retired for at least 12 months.~~

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 3504 of the Government Code is amended
- 2 to read:
- 3 3504. The scope of representation shall include all matters
- 4 relating to employment conditions and employer-employee

1 relations, including, but not limited to, wages, hours, and other
2 terms and conditions of employment, except, however, that the
3 scope of representation shall not include *either of the following*:

4 (a) A consideration of the merits, necessity, or organization of
5 any service or activity provided by law or executive order.

6 (b) *Matters relating to the retroactive effect of pension benefit*
7 *increases, as prohibited in Section 7507.9.*

8 *SEC. 2. Section 3516 of the Government Code is amended to*
9 *read:*

10 3516. The scope of representation shall be limited to wages,
11 hours, and other terms and conditions of employment, except,
12 however, that the scope of representation shall not include *either*
13 *of the following*:

14 (a) A consideration of the merits, necessity, or organization of
15 any service or activity provided by law or executive order.

16 (b) *Matters relating to the retroactive effect of pension benefit*
17 *increases, as prohibited in Section 7507.9.*

18 *SEC. 3. Section 3543.2 of the Government Code is amended*
19 *to read:*

20 3543.2. (a) The scope of representation shall be limited to
21 matters relating to wages, hours of employment, and other terms
22 and conditions of employment. “Terms and conditions of
23 employment” mean health and welfare benefits as defined by
24 Section 53200, leave, transfer and reassignment policies, safety
25 conditions of employment, class size, procedures to be used for
26 the evaluation of employees, organizational security pursuant to
27 Section 3546, procedures for processing grievances pursuant to
28 Sections 3548.5, 3548.6, 3548.7, and 3548.8, *and* the layoff of
29 probationary certificated school district employees, pursuant to
30 Section 44959.5 of the Education Code, ~~and alternative~~
31 ~~compensation or benefits for employees adversely affected by~~
32 ~~pension limitations pursuant to Section 22316 of the Education~~
33 ~~Code, to the extent deemed reasonable and without violating the~~
34 ~~intent and purposes of Section 415 of the Internal Revenue Code.~~
35 In addition, the exclusive representative of certificated personnel
36 has the right to consult on the definition of educational objectives,
37 the determination of the content of courses and curriculum, and
38 the selection of textbooks to the extent such matters are within the
39 discretion of the public school employer under the law. All matters
40 not specifically enumerated are reserved to the public school

1 employer and may not be a subject of meeting and negotiating,
2 provided that nothing herein may be construed to limit the right
3 of the public school employer to consult with any employees or
4 employee organization on any matter outside the scope of
5 representation.

6 (b) Notwithstanding Section 44944 of the Education Code, the
7 public school employer and the exclusive representative shall,
8 upon request of either party, meet and negotiate regarding causes
9 and procedures for disciplinary action, other than dismissal,
10 including a suspension of pay for up to 15 days, affecting
11 certificated employees. If the public school employer and the
12 exclusive representative do not reach mutual agreement, then the
13 provisions of Section 44944 of the Education Code shall apply.

14 (c) Notwithstanding Section 44955 of the Education Code, the
15 public school employer and the exclusive representative shall,
16 upon request of either party, meet and negotiate regarding
17 procedures and criteria for the layoff of certificated employees for
18 lack of funds. If the public school employer and the exclusive
19 representative do not reach mutual agreement, then the provisions
20 of Section 44955 of the Education Code shall apply.

21 (d) Notwithstanding Section 45028 of the Education Code, the
22 public school employer and the exclusive representative shall,
23 upon request of either party, meet and negotiate regarding the
24 payment of additional compensation based upon criteria other than
25 years of training and years of experience. If the public school
26 employer and the exclusive representative do not reach mutual
27 agreement, then the provisions of Section 45028 of the Education
28 Code shall apply.

29 (e) Pursuant to Section 45028 of the Education Code, the public
30 school employer and the exclusive representative shall, upon the
31 request of either party, meet and negotiate a salary schedule based
32 on criteria other than a uniform allowance for years of training
33 and years of experience. If the public school employer and the
34 exclusive representative do not reach mutual agreement, then the
35 provisions of Section 45028 of the Education Code requiring a
36 salary schedule based upon a uniform allowance for years of
37 training and years of experience shall apply. A salary schedule
38 established pursuant to this subdivision shall not result in the
39 reduction of the salary of any teacher.

1 (f) *The public school employer and the exclusive representative*
2 *shall not meet and negotiate regarding the retroactive effect of*
3 *pension benefit increases, as prohibited in Section 7507.9.*

4 SEC. 4. *Section 3562 of the Government Code is amended to*
5 *read:*

6 3562. As used in this chapter:

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

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

12 (c) “Certified organization” means an employee organization
13 that has been certified by the board as the exclusive representative
14 of the employees in an appropriate unit after a proceeding under
15 Article 5 (commencing with Section 3573).

16 (d) “Confidential employee” means any employee who is
17 required to develop or present management positions with respect
18 to meeting and conferring or whose duties normally require access
19 to confidential information which contributes significantly to the
20 development of those management positions.

21 (e) “Employee” or “higher education employee” means any
22 employee of the Regents of the University of California, the
23 Directors of the Hastings College of the Law, or the Trustees of
24 the California State University. However, managerial and
25 confidential employees and employees whose principal place of
26 employment is outside the State of California at a worksite with
27 100 or fewer employees shall be excluded from coverage under
28 this chapter. The board may find student employees whose
29 employment is contingent on their status as students are employees
30 only if the services they provide are unrelated to their educational
31 objectives, or that those educational objectives are subordinate to
32 the services they perform and that coverage under this chapter
33 would further the purposes of this chapter.

34 (f) (1) “Employee organization” means any organization of any
35 kind in which higher education employees participate and that
36 exists for the purpose, in whole or in part, of dealing with higher
37 education employers concerning grievances, labor disputes, wages,
38 hours, and other terms and conditions of employment of employees.
39 An organization that represents one or more employees whose
40 principal worksite is located outside the State of California is an

1 employee organization only if it has filed with the board and with
2 the employer a statement agreeing, in consideration of obtaining
3 the benefits of status as an employee organization pursuant to this
4 chapter, to submit to the jurisdiction of the board. The board shall
5 promulgate the form of the statement.

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

11 (g) “Employer” or “higher education employer” means the
12 regents in the case of the University of California, the directors in
13 the case of the Hastings College of the Law, and the trustees in
14 the case of the California State University, including any person
15 acting as an agent of an employer.

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

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

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

23 (k) “Managerial employee” means any employee having
24 significant responsibilities for formulating or administering policies
25 and programs. No employee or group of employees shall be
26 deemed to be managerial employees solely because the employee
27 or group of employees participates in decisions with respect to
28 courses, curriculum, personnel, and other matters of educational
29 policy. A department chair or head of a similar academic unit or
30 program who performs the foregoing duties primarily on behalf
31 of the members of the academic unit or program shall not be
32 deemed a managerial employee solely because of those duties.

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

36 (m) “Meet and confer” means the performance of the mutual
37 obligation of the higher education employer and the exclusive
38 representative of its employees to meet at reasonable times and to
39 confer in good faith with respect to matters within the scope of
40 representation and to endeavor to reach agreement on matters

1 within the scope of representation. The process shall include
2 adequate time for the resolution of impasses. If agreement is
3 reached between representatives of the higher education employer
4 and the exclusive representative, they shall jointly prepare a written
5 memorandum of the understanding, which shall be presented to
6 the higher education employer for concurrence. However, these
7 obligations shall not compel either party to agree to any proposal
8 or require the making of a concession.

9 (n) "Person" means one or more individuals, organizations,
10 associations, corporations, boards, committees, commissions,
11 agencies, or their representatives.

12 (o) "Professional employee" means:

13 (1) Any employee engaged in work: (A) predominantly
14 intellectual and varied in character as opposed to routine mental,
15 manual, mechanical, or physical work; (B) involving the consistent
16 exercise of discretion and judgment in its performance; (C) of a
17 character so that the output produced or the result accomplished
18 cannot be standardized in relation to a given period of time; and
19 (D) requiring knowledge of an advanced type in a field of science
20 or learning customarily acquired by a prolonged course of
21 specialized intellectual instruction and study in an institution of
22 higher learning or a hospital, as distinguished from a general
23 academic education or from an apprenticeship or from training in
24 the performance of routine mental, manual, or physical processes.

25 (2) Any employee who: (A) has completed the courses of
26 specialized intellectual instruction and study described in
27 subparagraph (D) of paragraph (1), and (B) is performing related
28 work under the supervision of a professional person to qualify
29 himself or herself to become a professional employee as defined
30 in paragraph (1).

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

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

39 (A) Consideration of the merits, necessity, or organization of
40 any service, activity, or program established by law or resolution

1 of the regents or the directors, except for the terms and conditions
2 of employment of employees who may be affected thereby.

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

5 (C) Admission requirements for students, conditions for the
6 award of certificates and degrees to students, and the content and
7 supervision of courses, curricula, and research programs, as those
8 terms are intended by the standing orders of the regents or the
9 directors.

10 (D) Procedures and policies to be used for the appointment,
11 promotion, and tenure of members of the academic senate, the
12 procedures to be used for the evaluation of the members of the
13 academic senate, and the procedures for processing grievances of
14 members of the academic senate. The exclusive representative of
15 members of the academic senate shall have the right to consult
16 and be consulted on matters excluded from the scope of
17 representation pursuant to this subparagraph. If the academic senate
18 determines that any matter in this subparagraph should be within
19 the scope of representation, or if any matter in this subparagraph
20 is withdrawn from the responsibility of the academic senate, the
21 matter shall be within the scope of representation.

22 (E) *Matters relating to the retroactive effect of pension benefit*
23 *increases, as prohibited in Section 7507.9.*

24 (2) All matters not within the scope of representation are
25 reserved to the employer and may not be subject to meeting and
26 conferring, provided that nothing herein may be construed to limit
27 the right of the employer to consult with any employees or
28 employee organization on any matter outside the scope of
29 representation.

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

34 (A) Consideration of the merits, necessity, or organization of
35 any service, activity, or program established by statute or
36 regulations adopted by the trustees, except for the terms and
37 conditions of employment of employees who may be affected
38 thereby.

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

1 (C) Admission requirements for students, conditions for the
2 award of certificates and degrees to students, and the content and
3 conduct of courses, curricula, and research programs.

4 (D) Criteria and standards to be used for the appointment,
5 promotion, evaluation, and tenure of academic employees, which
6 shall be the joint responsibility of the academic senate and the
7 trustees. The exclusive representative shall have the right to consult
8 and be consulted on matters excluded from the scope of
9 representation pursuant to this subparagraph. If the trustees
10 withdraw any matter in this subparagraph from the responsibility
11 of the academic senate, the matter shall be within the scope of
12 representation.

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

15 (F) *Matters relating to the retroactive effect of pension benefit*
16 *increases, as prohibited in Section 7507.9.*

17 (2) All matters not within the scope of representation are
18 reserved to the employer, and may not be subject to meeting and
19 conferring, provided that nothing herein may be construed to limit
20 the right of the employer to consult with any employees or
21 employee organization on any matter outside the scope of
22 representation.

23 *SEC. 5. Section 3562.2 of the Government Code is repealed.*

24 ~~3562.2. Notwithstanding subdivision (r) of Section 3562, for~~
25 ~~purposes of the California State University only, “scope of~~
26 ~~representation” also means any retirement benefits available to a~~
27 ~~state member under Part 3 (commencing with Section 20000) of~~
28 ~~Title 2.~~

29 *SEC. 6. Section 3581.3 of the Government Code is amended*
30 *to read:*

31 3581.3. The scope of representation for supervisory employees
32 shall include all matters relating to employment conditions and
33 supervisory employee-employer relations including wages, hours,
34 and other terms and conditions of employment. *The scope of*
35 *representation shall not include matters relating to the retroactive*
36 *effect of pension benefit increases, as prohibited in Section 7507.9.*

37 *SEC. 7. Section 7507.9 is added to the Government Code, to*
38 *read:*

39 7507.9. (a) *Any adjustment to the formula used to calculate*
40 *the retirement benefits of a member of a public retirement system*

1 *that would yield an increase in the member's retirement benefits*
2 *shall apply only to service performed after the operative date of*
3 *the adjustment, and shall not be applied retroactively to any service*
4 *performed prior to the operative date of the adjustment.*

5 *(b) This section shall not be construed to prohibit cost-of-living*
6 *adjustments, including those described in Article 3 (commencing*
7 *with Section 21310) of Chapter 13 of Part 3 of Division 5 of Title*
8 *2, or purchase power adjustments, including those described in*
9 *Sections 21337 and 21337.1, to the extent that those adjustments*
10 *provide an ongoing adjustment to benefits but not to the extent*
11 *that they operate to provide lump-sum payments.*

12 *SEC. 8. Section 71634 of the Government Code is amended to*
13 *read:*

14 71634. (a) The scope of representation shall include all matters
15 relating to employment conditions and employer-employee
16 relations, including, but not limited to, wages, hours, and other
17 terms and conditions of employment. However, the scope of
18 representation shall not include consideration of the merits,
19 necessity, ~~or~~ organization of any service or activity provided by
20 law or executive order, *or matters relating to the retroactive effect*
21 *of pension benefit increases, as prohibited in Section 7507.9.*

22 (b) In view of the unique and special responsibilities of the trial
23 courts in the administration of justice, decisions regarding the
24 following matters shall not be included within the scope of
25 representation:

26 (1) The merits and administration of the trial court system.

27 (2) Coordination, consolidation, and merger of trial courts and
28 support staff.

29 (3) Automation, including, but not limited to, fax filing,
30 electronic recording, and implementation of information systems.

31 (4) Design, construction, and location of court facilities.

32 (5) Delivery of court services.

33 (6) Hours of operation of the trial courts and trial court system.

34 (c) The impact from matters in subdivision (b) shall be included
35 within the scope of representation as those matters affect wages,
36 hours, and terms and conditions of employment of trial court
37 employees. The court shall be required to meet and confer in good
38 faith with respect to that impact.

39 (d) The trial court shall continue to have the right to determine
40 assignments and transfers of trial court employees; provided that

1 the process, procedures, and criteria for assignments and transfers
2 shall be included within the scope of representation.

3 *SEC. 9. Section 71816 of the Government Code is amended to*
4 *read:*

5 71816. (a) The scope of representation shall include all matters
6 relating to employment conditions and employer-employee
7 relations, including, but not limited to, wages, hours, and other
8 terms and conditions of employment. However, the scope of
9 representation ~~may~~ *shall* not include consideration of the merits,
10 necessity, ~~or~~ organization of any service or activity provided by
11 law or executive order, *or matters relating to the retroactive effect*
12 *of pension benefit increases, as prohibited in Section 7507.9.*

13 (b) In view of the unique and special responsibilities of the trial
14 courts in the administration of justice, decisions regarding any of
15 the following matters may not be included within the scope of
16 representation:

17 (1) The merits and administration of the trial court system.

18 (2) Coordination, consolidation, and merger of trial courts and
19 support staff.

20 (3) Automation, including, but not limited to, fax filing,
21 electronic recording, and implementation of information systems.

22 (4) Design, construction, and location of court facilities.

23 (5) Delivery of court services.

24 (6) Hours of operation of the trial courts and trial court system.

25 (c) The impact from matters in subdivision (b) shall be included
26 within the scope of representation as those matters affect wages,
27 hours, and terms and conditions of employment of court
28 interpreters. The regional court interpreter employment relations
29 committee shall be required to meet and confer in good faith with
30 respect to that impact.

31 (d) The trial courts have the right to determine assignments and
32 transfers of court interpreters, provided that the process, procedures,
33 and criteria for assignments and transfers are included within the
34 scope of representation.

35 *SEC. 10. Section 99563.5 of the Public Utilities Code is*
36 *amended to read:*

37 99563.5. (a) The scope of representation shall include all
38 matters relating to employment conditions and employer-employee
39 relations, including, but not limited to, wages, hours, and other
40 terms and conditions of employment. *The scope of representation*

1 *shall not include matters relating to the retroactive effect of pension*
2 *benefit increases, as prohibited in Section 7507.9.*

3 (b) Notwithstanding subdivision (a), the scope of representation
4 shall not include consideration of the merits, necessity, or
5 organization of any service or activity provided by law or executive
6 order.

7 SECTION 1. ~~Section 21220.2 is added to the Government~~
8 ~~Code, to read:~~

9 ~~21220.2. A state member who retires on or after January 1,~~
10 ~~2012, shall not serve without reinstatement or be hired as a~~
11 ~~contracted employee for the state until the person has been retired~~
12 ~~for at least 12 months.~~