

AMENDED IN SENATE MARCH 21, 2011

SENATE BILL

No. 527

Introduced by Senator Walters

(Coauthor: Senator Runner)

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

February 17, 2011

~~An act to amend Section 20537 of the Government Code, relating to public employee retirement.~~ *An act to amend Sections 3504, 3516, 3543.2, 3562, and 3581.3 of, and to repeal Section 3562.2 of, the Government Code, relating to public employee organizations.*

LEGISLATIVE COUNSEL'S DIGEST

SB 527, as amended, Walters. ~~Public employees' retirement: contracting agencies.~~ *Public employee organizations: negotiations: pension benefits.*

The Meyers-Milias-Brown Act, the Ralph C. Dills Act, the provisions commonly referred to as the Educational Employment Relations Act, and the Higher Education 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 pension benefits from the scope of representation of public employees by recognized employee organizations, and would thereby prohibit these employee organizations from negotiating pension benefits with public employers, except for the amount of employee contributions to the pension plans.

~~The Public Employees’ Retirement Law permits any public agency, as defined, to participate in the Public Employees’ Retirement System by contract entered into between its governing body and the Board of Administration of the Public Employees’ Retirement System. That law authorizes the board to charge interest on the amount of any payment due and unpaid by a contracting agency until payment is received.~~

~~This bill would make a technical, nonsubstantive change to these provisions:~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-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
5 relations, including, but not limited to, wages, hours, and other
6 terms and conditions of employment, except, however, that the
7 scope of representation shall not include ~~consideration~~ *either of the*
8 *following:*

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

11 *(b) Matters relating to pension benefits, except for the amount*
12 *of employee contributions to the pension plan.*

13 *SEC. 2. Section 3516 of the Government Code is amended to*
14 *read:*

15 3516. The scope of representation shall be limited to wages,
16 hours, and other terms and conditions of employment, except,
17 however, that the scope of representation shall not include
18 ~~consideration~~ *either of the following:*

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

21 *(b) Matters relating to pension benefits, except for the amount*
22 *of employee contributions to the pension plan.*

23 *SEC. 3. Section 3543.2 of the Government Code is amended*
24 *to read:*

25 3543.2. (a) The scope of representation shall be limited to
26 matters relating to wages, hours of employment, and other terms
27 and conditions of employment. “Terms and conditions of

1 employment” mean health and welfare benefits as defined by
2 Section 53200, leave, transfer and reassignment policies, safety
3 conditions of employment, class size, procedures to be used for
4 the evaluation of employees, organizational security pursuant to
5 Section 3546, procedures for processing grievances pursuant to
6 Sections 3548.5, 3548.6, 3548.7, and 3548.8, *and* the layoff of
7 probationary certificated school district employees, pursuant to
8 Section 44959.5 of the Education Code, ~~and alternative~~
9 ~~compensation or benefits for employees adversely affected by~~
10 ~~pension limitations pursuant to Section 22316 of the Education~~
11 ~~Code, to the extent deemed reasonable and without violating the~~
12 ~~intent and purposes of Section 415 of the Internal Revenue Code.~~
13 In addition, the exclusive representative of certificated personnel
14 has the right to consult on the definition of educational objectives,
15 the determination of the content of courses and curriculum, and
16 the selection of textbooks to the extent such matters are within the
17 discretion of the public school employer under the law. All matters
18 not specifically enumerated are reserved to the public school
19 employer and may not be a subject of meeting and negotiating,
20 provided that nothing herein may be construed to limit the right
21 of the public school employer to consult with any employees or
22 employee organization on any matter outside the scope of
23 representation.

24 (b) Notwithstanding Section 44944 of the Education Code, the
25 public school employer and the exclusive representative shall,
26 upon request of either party, meet and negotiate regarding causes
27 and procedures for disciplinary action, other than dismissal,
28 including a suspension of pay for up to 15 days, affecting
29 certificated employees. If the public school employer and the
30 exclusive representative do not reach mutual agreement, then the
31 provisions of Section 44944 of the Education Code shall apply.

32 (c) Notwithstanding Section 44955 of the Education Code, the
33 public school employer and the exclusive representative shall,
34 upon request of either party, meet and negotiate regarding
35 procedures and criteria for the layoff of certificated employees for
36 lack of funds. If the public school employer and the exclusive
37 representative do not reach mutual agreement, then the provisions
38 of Section 44955 of the Education Code shall apply.

39 (d) Notwithstanding Section 45028 of the Education Code, the
40 public school employer and the exclusive representative shall,

1 upon request of either party, meet and negotiate regarding the
2 payment of additional compensation based upon criteria other than
3 years of training and years of experience. If the public school
4 employer and the exclusive representative do not reach mutual
5 agreement, then the provisions of Section 45028 of the Education
6 Code shall apply.

7 (e) Pursuant to Section 45028 of the Education Code, the public
8 school employer and the exclusive representative shall, upon the
9 request of either party, meet and negotiate a salary schedule based
10 on criteria other than a uniform allowance for years of training
11 and years of experience. If the public school employer and the
12 exclusive representative do not reach mutual agreement, then the
13 provisions of Section 45028 of the Education Code requiring a
14 salary schedule based upon a uniform allowance for years of
15 training and years of experience shall apply. A salary schedule
16 established pursuant to this subdivision shall not result in the
17 reduction of the salary of any teacher.

18 (f) *The public school employer and the exclusive representative*
19 *shall not meet and negotiate regarding pension benefits, except*
20 *for the amount of employee contributions to the pension plan.*

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

23 3562. As used in this chapter:

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

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

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

33 (d) “Confidential employee” means any employee who is
34 required to develop or present management positions with respect
35 to meeting and conferring or whose duties normally require access
36 to confidential information which contributes significantly to the
37 development of those management positions.

38 (e) “Employee” or “higher education employee” means any
39 employee of the Regents of the University of California, the
40 Directors of the Hastings College of the Law, or the Trustees of

1 the California State University. However, managerial and
2 confidential employees and employees whose principal place of
3 employment is outside the State of California at a worksite with
4 100 or fewer employees shall be excluded from coverage under
5 this chapter. The board may find student employees whose
6 employment is contingent on their status as students are employees
7 only if the services they provide are unrelated to their educational
8 objectives, or that those educational objectives are subordinate to
9 the services they perform and that coverage under this chapter
10 would further the purposes of this chapter.

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

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

28 (g) “Employer” or “higher education employer” means the
29 regents in the case of the University of California, the directors in
30 the case of the Hastings College of the Law, and the trustees in
31 the case of the California State University, including any person
32 acting as an agent of an employer.

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

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

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

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

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

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

27 (n) “Person” means one or more individuals, organizations,
28 associations, corporations, boards, committees, commissions,
29 agencies, or their representatives.

30 (o) “Professional employee” means:

31 (1) Any employee engaged in work: (A) predominantly
32 intellectual and varied in character as opposed to routine mental,
33 manual, mechanical, or physical work; (B) involving the consistent
34 exercise of discretion and judgment in its performance; (C) of a
35 character so that the output produced or the result accomplished
36 cannot be standardized in relation to a given period of time; and
37 (D) requiring knowledge of an advanced type in a field of science
38 or learning customarily acquired by a prolonged course of
39 specialized intellectual instruction and study in an institution of
40 higher learning or a hospital, as distinguished from a general

1 academic education or from an apprenticeship or from training in
2 the performance of routine mental, manual, or physical processes.

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

9 (p) “Recognized organization” means an employee organization
10 that has been recognized by an employer as the exclusive
11 representative of the employees in an appropriate unit pursuant to
12 Article 5 (commencing with Section 3573).

13 (q) (1) For purposes of the University of California only, “scope
14 of representation” means, and is limited to, wages, hours of
15 employment, and other terms and conditions of employment. The
16 scope of representation shall not include any of the following:

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

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

23 (C) Admission requirements for students, conditions for the
24 award of certificates and degrees to students, and the content and
25 supervision of courses, curricula, and research programs, as those
26 terms are intended by the standing orders of the regents or the
27 directors.

28 (D) Procedures and policies to be used for the appointment,
29 promotion, and tenure of members of the academic senate, the
30 procedures to be used for the evaluation of the members of the
31 academic senate, and the procedures for processing grievances of
32 members of the academic senate. The exclusive representative of
33 members of the academic senate shall have the right to consult
34 and be consulted on matters excluded from the scope of
35 representation pursuant to this subparagraph. If the academic senate
36 determines that any matter in this subparagraph should be within
37 the scope of representation, or if any matter in this subparagraph
38 is withdrawn from the responsibility of the academic senate, the
39 matter shall be within the scope of representation.

1 (E) *Matters relating to pension benefits, except for the amount*
2 *of employee contributions to the pension plan.*

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

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

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

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

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

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

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

34 (F) *Matters relating to pension benefits, except for the amount*
35 *of employee contributions to the pension plan.*

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.

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

4 ~~3562.2. Notwithstanding subdivision (r) of Section 3562, for~~
5 ~~purposes of the California State University only, “scope of~~
6 ~~representation” also means any retirement benefits available to a~~
7 ~~state member under Part 3 (commencing with Section 20000) of~~
8 ~~Title 2.~~

9 *SEC. 6. Section 3581.3 of the Government Code is amended*
10 *to read:*

11 3581.3. The scope of representation for supervisory employees
12 shall include all matters relating to employment conditions and
13 supervisory employee-employer relations including wages, hours,
14 and other terms and conditions of employment. *The scope of*
15 *representation shall not include matters relating to pension*
16 *benefits, except for the amount of employee contributions to the*
17 *pension plan.*

18 ~~SECTION 1. Section 20537 of the Government Code is~~
19 ~~amended to read:~~

20 ~~20537. The board may charge interest on the amount of any~~
21 ~~payment due and unpaid by a contracting agency until the payment~~
22 ~~is received. Interest shall be charged at the actuarial interest rate.~~
23 ~~The interest shall be deemed interest earnings for the year in which~~
24 ~~the late payment is received.~~