

AMENDED IN ASSEMBLY MARCH 19, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 616

Introduced by Assembly Member Bocanegra

February 20, 2013

An act to amend ~~Section 3505.4~~ *Sections 3505.4, 3507, 3507.1, 3507.3, 3507.5, and 3509* of the Government Code, relating to local public employee organizations.

LEGISLATIVE COUNSEL'S DIGEST

AB 616, as amended, Bocanegra. Local public employee organizations: dispute: factfinding panel.

Existing law requires the governing body of a public agency, or ~~such~~ *those* boards, commissions, administrative officers, or other representatives as may be properly designated by law or by ~~such a~~ governing body, to meet and confer in good faith regarding wages, hours, and other terms and conditions of employment with representatives of recognized employee organizations. Existing law provides that an employee organization may request that the parties' differences be submitted to a factfinding panel, ~~as specified not sooner than 30 days or more than 45 days following the appointment or selection of a mediator pursuant to the parties' agreement to mediate or a mediation process required by a public agency's local rules.~~ *Existing law authorizes an employee organization, if the dispute was not submitted to a mediation, to request that the parties' differences be submitted to a factfinding panel not later than 30 days following the date that either party provided the other with a written notice of a declaration of impasse.*

~~This bill would make nonsubstantive changes to that provision.~~

This bill would instead authorize an employee organization, if the dispute was not submitted to a mediation, to request in writing that the public agency submit the parties' differences to a factfinding panel not later than 60 days following the date that either party provided the other with a written notice of a declaration of impasse. The bill would provide that if either party disputes that a genuine impasse, as defined, has been reached, the issue of whether an impasse exists may be submitted to the Public Employment Relations Board for resolution before the dispute is submitted to a factfinding panel, as specified. The bill would also authorize each party to select a person to serve as its member of the factfinding panel.

Existing law authorizes a public agency to adopt reasonable rules and regulations for the administration of employer-employee relations, as specified, including provisions for verification that an organization does in fact represent employees of the organization, recognition of employee organizations, and exclusive recognition of employee organizations, as specified.

This bill would delete provisions that authorize a public agency to establish rules and regulations that provide for verification that an organization does in fact represent employees of the organization, recognition of employee organizations, and exclusive recognition of employee organizations.

Existing law authorizes a public agency to determine and process unit determinations and representation elections pursuant to rules it has adopted.

This bill would instead provide that the board, pursuant to rules and regulations it has adopted, shall determine and process unit determinations and representation elections. The bill would specify criteria that the board would be required to take into account in determining an appropriate unit.

Existing law authorizes a public agency to adopt reasonable rules and regulations providing for designation of management and confidential employees of the public agency and restricting those employees from representing any employee organization that represents other employees of the public agency on matters within the scope of representation.

This bill would instead authorize the board to adopt those rules and regulations.

This bill would also make other conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 3505.4 of the Government Code is amended to read:

3505.4. (a) The employee organization may request that the parties' differences be submitted to a factfinding panel not sooner than 30 days, but not more than 45 days, following the appointment or selection of a mediator pursuant to the parties' agreement to mediate or a mediation process required by a public agency's local rules. If the dispute was not submitted to mediation, an employee organization may ~~request~~ *request, in writing, that the public agency submit the parties' differences be submitted differences* to a factfinding panel not later than ~~30~~ 60 days following the date that either party provided the other with a written notice of a declaration of impasse. Within five days after receipt of the written request, each party shall select a person to serve as its member of the factfinding panel. The Public Employment Relations Board shall, within five days after the selection of panel members by the parties, select a chairperson of the factfinding panel.

(b) *Notwithstanding subdivision (a), if either party disputes that a genuine impasse has been reached, the issue as to whether an impasse exists may be submitted to the Public Employment Relations Board for resolution. If the board determines that an impasse existed as of the date of written notice of a declaration of impasse and that the impasse has persisted through the date of the employee organization's request for a factfinding panel, it shall, within five working days of the receipt of a request, notify the parties of its determination.*

(c) *Within five days after receipt of the written request pursuant to subdivision (a) or five days after receipt of the board's determination that a genuine impasse has been reached and persists pursuant to subdivision (b), each party shall select a person to serve as its member of the factfinding panel. The board shall, within five days after the selection of panel members by the parties, select a chairperson of the factfinding panel.*

(b)

1 (d) Within five days after the board selects a chairperson of the
2 factfinding panel, the parties may mutually agree upon a person
3 to serve as chairperson in lieu of the person selected by the board.

4 ~~(e)~~

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

17 ~~(f)~~

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

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

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

23 (3) Stipulations of the parties.

24 (4) The interests and welfare of the public and the financial
25 ability of the public agency.

26 (5) Comparison of the wages, hours, and conditions of
27 employment of the employees involved in the factfinding
28 proceeding with the wages, hours, and conditions of employment
29 of other employees performing similar services in comparable
30 public agencies.

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

33 (7) The overall compensation presently received by the
34 employees, including direct wage compensation, vacations,
35 holidays, and other excused time, insurance and pensions, medical
36 and hospitalization benefits, the continuity and stability of
37 employment, and all other benefits received.

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

1 (e)

2 (g) The procedural right of an employee organization to request
3 a factfinding panel cannot be ~~expressly or voluntarily~~ waived.

4 (h) *For purposes of this section, “impasse” means that the*
5 *parties to a dispute over a matter within the scope of representation*
6 *have reached a point in meeting and negotiating at which their*
7 *difference in position is so substantial or prolonged that future*
8 *meetings would be futile.*

9 (i) *Notwithstanding subdivisions (a) to (g), inclusive, the*
10 *employee relations commissions established by, and in effect for,*
11 *the County of Los Angeles and the City of Los Angeles pursuant*
12 *to Section 3507 shall have the authority to maintain and amend*
13 *existing rules and regulations providing for impasse resolution*
14 *procedures and to issue determinations and orders as the employee*
15 *relations commissions deem necessary, consistent with and*
16 *pursuant to the policies of this chapter.*

17 SEC. 2. *Section 3507 of the Government Code is amended to*
18 *read:*

19 3507. (a) A public agency may adopt reasonable rules and
20 regulations after consultation in good faith with representatives of
21 a recognized employee organization or organizations for the
22 administration of employer-employee relations under this chapter.

23 The rules and regulations may include provisions for all of the
24 following:

25 ~~(1) Verifying that an organization does in fact represent~~
26 ~~employees of the public agency.~~

27 ~~(2)~~

28 (1) Verifying the official status of employee organization
29 officers and representatives.

30 ~~(3) Recognition of employee organizations.~~

31 ~~(4) Exclusive recognition of employee organizations formally~~
32 ~~recognized pursuant to a vote of the employees of the agency or~~
33 ~~an appropriate unit thereof, subject to the right of an employee to~~
34 ~~represent himself or herself as provided in Section 3502.~~

35 ~~(5)~~

36 (2) Additional procedures for the resolution of disputes involving
37 wages, hours and other terms and conditions of employment.

38 ~~(6)~~

39 (3) Access of employee organization officers and representatives
40 to work locations.

1 ~~(7)~~

2 (4) Use of official bulletin boards and other means of
3 communication by employee organizations.

4 ~~(8)~~

5 (5) Furnishing nonconfidential information pertaining to
6 employment relations to employee organizations.

7 ~~(9)~~

8 (6) Any other matters that are necessary to carry out the purposes
9 of this chapter.

10 (b) Exclusive recognition of employee organizations formally
11 recognized as majority representatives pursuant to a vote of the
12 employees may be revoked by a majority vote of the employees
13 only after a period of not less than 12 months following the date
14 of recognition.

15 (c) No public agency shall unreasonably withhold recognition
16 of employee organizations.

17 (d) Employees and employee organizations shall be able to
18 challenge a rule or regulation of a public agency as a violation of
19 this chapter. This subdivision shall not be construed to restrict or
20 expand the board's jurisdiction or authority as set forth in
21 subdivisions (a) to (e), inclusive, and (b) of Section 3509.

22 SEC. 3. Section 3507.1 of the Government Code is amended
23 to read:

24 3507.1. (a) Unit determinations and representation elections
25 shall be determined and processed *by the board* in accordance with
26 *the rules and regulations it has adopted* ~~by a public agency~~ in
27 accordance with this chapter, *subject to subdivision (c) of Section*
28 *3509*. In a representation election, a majority of the votes cast by
29 the employees in the appropriate bargaining unit shall be required.

30 (b) Notwithstanding subdivision (a) and rules adopted ~~by a~~
31 ~~public agency pursuant to Section 3507~~, *the board*, a bargaining
32 unit in effect as of the effective date of this section shall continue
33 in effect unless changed under the rules adopted ~~by a public agency~~
34 ~~pursuant to Section 3507~~. *the board pursuant to and consistent*
35 *with the policies of this chapter*.

36 (c) (1) *In determining an appropriate unit, the board shall take*
37 *into consideration all of the following criteria:*

38 (A) *The internal and occupational community of interest among*
39 *the employees, including, but not limited to, the extent to which*

1 *they perform functionally related services or work toward*
2 *established common goals.*

3 *(B) The history of employee representation in state government*
4 *and in similar employment.*

5 *(C) The extent to which the employees have common skills,*
6 *working conditions, job duties, or similar educational or training*
7 *requirements.*

8 *(D) The extent to which the employees have common*
9 *supervision.*

10 *(2) Notwithstanding subparagraph (1), or any other law, an*
11 *appropriate group of skilled crafts employees shall have the right*
12 *to be a separate unit of representation based upon occupation.*
13 *Skilled crafts employees shall include, but not necessarily be*
14 *limited to, those within employment categories such as carpenters,*
15 *plumbers, electricians, painters, and operating engineers.*

16 *(3) There shall be a presumption that professional employees*
17 *and nonprofessional employees should not be included in the same*
18 *unit. However, the presumption shall be rebuttable, depending*
19 *upon what the evidence pertinent to the criteria set forth in this*
20 *subdivision establishes.*

21 ~~(e)~~

22 *(d) A public agency shall grant exclusive or majority recognition*
23 *to an employee organization based on a signed petition,*
24 *authorization cards, or union membership cards showing that a*
25 *majority of the employees in an appropriate bargaining unit desire*
26 *the representation, unless another labor organization has previously*
27 *been lawfully recognized as exclusive or majority representative*
28 *of all or part of the same unit. Exclusive or majority representation*
29 *shall be determined by a neutral third party selected by the public*
30 *agency and the employee organization who shall review the signed*
31 *petition, authorization cards, or union membership cards to verify*
32 *the exclusive or majority status of the employee organization. In*
33 *the event the public agency and the employee organization cannot*
34 *agree on a neutral third party, the California State Mediation and*
35 *Conciliation Service shall be the neutral third party and shall verify*
36 *the exclusive or majority status of the employee organization. In*
37 *the event that the neutral third party determines, based on a signed*
38 *petition, authorization cards, or union membership cards, that a*
39 *second labor organization has the support of at least 30 percent of*
40 *the employees in the unit in which recognition is sought, the neutral*

1 third party shall order an election to establish which labor
2 organization, if any, has majority status.

3 *SEC. 4. Section 3507.3 of the Government Code is amended*
4 *to read:*

5 3507.3. Professional employees shall not be denied the right
6 to be represented separately from nonprofessional employees by
7 a professional employee organization consisting of those
8 professional employees. In the event of a dispute on the
9 appropriateness of a unit of representation for professional
10 employees, upon request of any of the parties, the dispute shall be
11 submitted to the ~~California State Mediation and Conciliation~~
12 ~~Service for mediation or for recommendation for resolving the~~
13 ~~dispute;~~ *board for resolution, subject to subdivision (c) of Section*
14 *3509.*

15 “Professional employees,” for the purposes of this section, means
16 employees engaged in work requiring specialized knowledge and
17 skills attained through completion of a recognized course of
18 instruction, including, but not limited to, attorneys, physicians,
19 registered nurses, engineers, architects, teachers, and the various
20 types of physical, chemical, and biological scientists.

21 *SEC. 5. Section 3507.5 of the Government Code is amended*
22 *to read:*

23 3507.5. ~~In addition to those rules and regulations a public~~
24 ~~agency may adopt pursuant to and in the same manner as in Section~~
25 ~~3507, any such agency~~ *The board may adopt reasonable rules and*
26 *regulations providing for designation of the management and*
27 *confidential employees of the public agency and restricting such*
28 *those employees from representing any employee organization,*
29 *which organization that represents other employees of the public*
30 *agency; agency on matters within the scope of representation.*
31 Except as specifically provided otherwise in this chapter, this
32 section does not otherwise limit the right of employees to be
33 members of and to hold office in an employee organization.

34 *SEC. 6. Section 3509 of the Government Code is amended to*
35 *read:*

36 3509. (a) The powers and duties of the board described in
37 Section 3541.3 shall also apply, as appropriate, to this chapter and
38 shall include the authority as set forth in subdivisions (b) and (c).
39 Included among the appropriate powers of the board are the power
40 *to determine appropriate units, to order elections, to conduct any*

1 election the board orders, and to adopt rules to apply in areas where
2 a public agency has no rule: *these areas in accordance with this*
3 *chapter.*

4 (b) A complaint alleging any violation of this chapter or of any
5 rules and regulations adopted by a public agency pursuant to
6 Section 3507 ~~or 3507.5~~ shall be processed as an unfair practice
7 charge by the board. The initial determination as to whether the
8 charge of unfair practice is justified and, if so, the appropriate
9 remedy necessary to effectuate the purposes of this chapter, shall
10 be a matter within the exclusive jurisdiction of the board, except
11 that in an action to recover damages due to an unlawful strike, the
12 board shall have no authority to award strike-preparation expenses
13 as damages, and shall have no authority to award damages for
14 costs, expenses, or revenue losses incurred during, or as a
15 consequence of, an unlawful strike. The board shall apply and
16 interpret unfair labor practices consistent with existing judicial
17 interpretations of this chapter.

18 ~~(e) The board shall enforce and apply rules adopted by a public~~
19 ~~agency concerning unit determinations, representation, recognition,~~
20 ~~and elections.~~

21 ~~(d)~~

22 (c) Notwithstanding subdivisions (a) ~~to (e), inclusive, and (b),~~
23 the employee relations commissions established by, and in effect
24 for, the County of Los Angeles and the City of Los Angeles
25 pursuant to Section 3507 shall have the *exclusive* power and
26 responsibility to take actions on recognition, unit determinations,
27 elections, and all unfair practices, and to issue determinations and
28 orders as the employee relations commissions deem necessary,
29 consistent with and pursuant to the policies of this chapter.

30 ~~(e)~~

31 (d) Notwithstanding subdivisions (a) ~~to (e), inclusive, and (b),~~
32 consistent with, and pursuant to, ~~the provisions of~~ Sections 3500
33 and 3505.4, superior courts shall have exclusive jurisdiction over
34 actions involving interest arbitration, as governed by Title 9
35 (commencing with Section 1280) of Part 3 of the Code of Civil
36 Procedure, when the action involves an employee organization
37 that represents firefighters, as defined in Section 3251.

38 ~~(f)~~

39 (e) This section shall not apply to employees designated as
40 management employees under Section 3507.5.

1 ~~(g)~~
2 (f) The board shall not find it an unfair practice for an employee
3 organization to violate a rule or regulation adopted by a public
4 agency if that rule or regulation is itself in violation of this chapter.
5 This subdivision shall not be construed to restrict or expand the
6 board's jurisdiction or authority as set forth in subdivisions (a) to
7 ~~(e), inclusive, and (b).~~