

AMENDED IN ASSEMBLY APRIL 25, 2013

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 Sections ~~3505.4, 3507, 3507.1, 3507.3, 3507.5, and 3509~~ *Section 3505.4* 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 *local* public agency, or those boards, commissions, administrative officers, or other representatives as may be properly designated by law or by 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~~ *authorizes* an employee organization ~~may~~ to request that the parties' differences be submitted to a factfinding panel 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 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: 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 amended to read:
3 3505.4. (a) The employee organization may request that the
4 parties' differences be submitted to a factfinding panel not sooner
5 than 30 days, but not more than 45 days, following the appointment
6 or selection of a mediator pursuant to the parties' agreement to
7 mediate or a mediation process required by a public agency's local
8 rules. If the dispute was not submitted to mediation, an employee
9 organization may request, in writing, that the public agency submit
10 the parties' differences to a factfinding panel not later than 60 days
11 following the date that either party provided the other with a written
12 notice of a declaration of impasse. Within five days after receipt
13 of the written request, each party shall select a person to serve as
14 its member of the factfinding panel. The Public Employment
15 Relations Board shall, within five days after the selection of panel
16 members by the parties, select a chairperson of the factfinding
17 panel.
18 (b) Notwithstanding subdivision (a), if either party disputes that
19 a genuine impasse has been reached, the issue as to whether an
20 impasse exists may be submitted to the Public Employment
21 Relations Board for resolution. If the board determines that an
22 impasse existed as of the date of written notice of a declaration of
23 impasse and that the impasse has persisted through the date of the
24 employee organization's request for a factfinding panel, it shall,
25 within five working days of the receipt of a request, notify the
26 parties of its determination.
27 (c) Within five days after receipt of the written request pursuant
28 to subdivision (a) or five days after receipt of the board's
29 determination that a genuine impasse has been reached and persists
30 pursuant to subdivision (b), each party shall select a person to serve
31 as its member of the factfinding panel. The board shall, within five
32 days after the selection of panel members by the parties, select a
33 chairperson of the factfinding panel.

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

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

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

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

21 (3) Stipulations of the parties.

22 (4) The interests and welfare of the public and the financial
23 ability of the public agency.

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

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

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

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

39 (g) The procedural right of an employee organization to request
40 a factfinding panel cannot be waived.

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

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

14 ~~SEC. 2.— Section 3507 of the Government Code is amended to~~
15 ~~read:~~

16 ~~3507.—(a) A public agency may adopt reasonable rules and~~
17 ~~regulations after consultation in good faith with representatives of~~
18 ~~a recognized employee organization or organizations for the~~
19 ~~administration of employer-employee relations under this chapter.~~

20 ~~The rules and regulations may include provisions for all of the~~
21 ~~following:~~

22 ~~(1) Verifying the official status of employee organization~~
23 ~~officers and representatives.~~

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

26 ~~(3) Access of employee organization officers and representatives~~
27 ~~to work locations.~~

28 ~~(4) Use of official bulletin boards and other means of~~
29 ~~communication by employee organizations.~~

30 ~~(5) Furnishing nonconfidential information pertaining to~~
31 ~~employment relations to employee organizations.~~

32 ~~(6) Any other matters that are necessary to carry out the purposes~~
33 ~~of this chapter.~~

34 ~~(b) Exclusive recognition of employee organizations formally~~
35 ~~recognized as majority representatives pursuant to a vote of the~~
36 ~~employees may be revoked by a majority vote of the employees~~
37 ~~only after a period of not less than 12 months following the date~~
38 ~~of recognition.~~

39 ~~(c) No public agency shall unreasonably withhold recognition~~
40 ~~of employee organizations.~~

1 ~~(d) Employees and employee organizations shall be able to~~
2 ~~challenge a rule or regulation of a public agency as a violation of~~
3 ~~this chapter. This subdivision shall not be construed to restrict or~~
4 ~~expand the board's jurisdiction or authority as set forth in~~
5 ~~subdivisions (a) and (b) of Section 3509.~~

6 ~~SEC. 3. Section 3507.1 of the Government Code is amended~~
7 ~~to read:~~

8 ~~3507.1. (a) Unit determinations and representation elections~~
9 ~~shall be determined and processed by the board in accordance with~~
10 ~~the rules and regulations it has adopted in accordance with this~~
11 ~~chapter, subject to subdivision (c) of Section 3509. In a~~
12 ~~representation election, a majority of the votes cast by the~~
13 ~~employees in the appropriate bargaining unit shall be required.~~

14 ~~(b) Notwithstanding subdivision (a) and rules adopted by the~~
15 ~~board, a bargaining unit in effect as of the effective date of this~~
16 ~~section shall continue in effect unless changed under the rules~~
17 ~~adopted by the board pursuant to and consistent with the policies~~
18 ~~of this chapter.~~

19 ~~(c) (1) In determining an appropriate unit, the board shall take~~
20 ~~into consideration all of the following criteria:~~

21 ~~(A) The internal and occupational community of interest among~~
22 ~~the employees, including, but not limited to, the extent to which~~
23 ~~they perform functionally related services or work toward~~
24 ~~established common goals.~~

25 ~~(B) The history of employee representation in state government~~
26 ~~and in similar employment.~~

27 ~~(C) The extent to which the employees have common skills,~~
28 ~~working conditions, job duties, or similar educational or training~~
29 ~~requirements.~~

30 ~~(D) The extent to which the employees have common~~
31 ~~supervision.~~

32 ~~(2) Notwithstanding subparagraph (1), or any other law, an~~
33 ~~appropriate group of skilled crafts employees shall have the right~~
34 ~~to be a separate unit of representation based upon occupation.~~
35 ~~Skilled crafts employees shall include, but not necessarily be~~
36 ~~limited to, those within employment categories such as carpenters,~~
37 ~~plumbers, electricians, painters, and operating engineers.~~

38 ~~(3) There shall be a presumption that professional employees~~
39 ~~and nonprofessional employees should not be included in the same~~
40 ~~unit. However, the presumption shall be rebuttable, depending~~

1 upon what the evidence pertinent to the criteria set forth in this
2 subdivision establishes.

3 ~~(d) A public agency shall grant exclusive or majority recognition~~
4 ~~to an employee organization based on a signed petition,~~
5 ~~authorization cards, or union membership cards showing that a~~
6 ~~majority of the employees in an appropriate bargaining unit desire~~
7 ~~the representation, unless another labor organization has previously~~
8 ~~been lawfully recognized as exclusive or majority representative~~
9 ~~of all or part of the same unit. Exclusive or majority representation~~
10 ~~shall be determined by a neutral third party selected by the public~~
11 ~~agency and the employee organization who shall review the signed~~
12 ~~petition, authorization cards, or union membership cards to verify~~
13 ~~the exclusive or majority status of the employee organization. In~~
14 ~~the event the public agency and the employee organization cannot~~
15 ~~agree on a neutral third party, the California State Mediation and~~
16 ~~Conciliation Service shall be the neutral third party and shall verify~~
17 ~~the exclusive or majority status of the employee organization. In~~
18 ~~the event that the neutral third party determines, based on a signed~~
19 ~~petition, authorization cards, or union membership cards, that a~~
20 ~~second labor organization has the support of at least 30 percent of~~
21 ~~the employees in the unit in which recognition is sought, the neutral~~
22 ~~third party shall order an election to establish which labor~~
23 ~~organization, if any, has majority status.~~

24 ~~SEC. 4. Section 3507.3 of the Government Code is amended~~
25 ~~to read:~~

26 ~~3507.3. Professional employees shall not be denied the right~~
27 ~~to be represented separately from nonprofessional employees by~~
28 ~~a professional employee organization consisting of those~~
29 ~~professional employees. In the event of a dispute on the~~
30 ~~appropriateness of a unit of representation for professional~~
31 ~~employees, upon request of any of the parties, the dispute shall be~~
32 ~~submitted to the board for resolution, subject to subdivision (e) of~~
33 ~~Section 3509.~~

34 ~~“Professional employees,” for the purposes of this section, means~~
35 ~~employees engaged in work requiring specialized knowledge and~~
36 ~~skills attained through completion of a recognized course of~~
37 ~~instruction, including, but not limited to, attorneys, physicians,~~
38 ~~registered nurses, engineers, architects, teachers, and the various~~
39 ~~types of physical, chemical, and biological scientists.~~

1 ~~SEC. 5. Section 3507.5 of the Government Code is amended to~~
2 ~~read:~~

3 ~~3507.5. The board may adopt reasonable rules and regulations~~
4 ~~providing for designation of the management and confidential~~
5 ~~employees of the public agency and restricting those employees~~
6 ~~from representing any employee organization that represents other~~
7 ~~employees of the public agency on matters within the scope of~~
8 ~~representation. Except as specifically provided otherwise in this~~
9 ~~chapter, this section does not otherwise limit the right of employees~~
10 ~~to be members of and to hold office in an employee organization.~~

11 ~~SEC. 6. Section 3509 of the Government Code is amended to~~
12 ~~read:~~

13 ~~3509. (a) The powers and duties of the board described in~~
14 ~~Section 3541.3 shall also apply, as appropriate, to this chapter and~~
15 ~~shall include the authority as set forth in subdivisions (b) and (c).~~
16 ~~Included among the appropriate powers of the board are the power~~
17 ~~to determine appropriate units, to order elections, to conduct any~~
18 ~~election the board orders, and to adopt rules to apply in these areas~~
19 ~~in accordance with this chapter.~~

20 ~~(b) A complaint alleging any violation of this chapter or of any~~
21 ~~rules and regulations adopted by a public agency pursuant to~~
22 ~~Section 3507 shall be processed as an unfair practice charge by~~
23 ~~the board. The initial determination as to whether the charge of~~
24 ~~unfair practice is justified and, if so, the appropriate remedy~~
25 ~~necessary to effectuate the purposes of this chapter, shall be a~~
26 ~~matter within the exclusive jurisdiction of the board, except that~~
27 ~~in an action to recover damages due to an unlawful strike, the board~~
28 ~~shall have no authority to award strike-preparation expenses as~~
29 ~~damages, and shall have no authority to award damages for costs,~~
30 ~~expenses, or revenue losses incurred during, or as a consequence~~
31 ~~of, an unlawful strike. The board shall apply and interpret unfair~~
32 ~~labor practices consistent with existing judicial interpretations of~~
33 ~~this chapter.~~

34 ~~(c) Notwithstanding subdivisions (a) and (b), the employee~~
35 ~~relations commissions established by, and in effect for, the County~~
36 ~~of Los Angeles and the City of Los Angeles pursuant to Section~~
37 ~~3507 shall have the exclusive power and responsibility to take~~
38 ~~actions on recognition, unit determinations, elections, and all unfair~~
39 ~~practices, and to issue determinations and orders as the employee~~

1 ~~relations commissions deem necessary, consistent with and~~
2 ~~pursuant to the policies of this chapter.~~

3 ~~(d) Notwithstanding subdivisions (a) and (b), consistent with,~~
4 ~~and pursuant to, Sections 3500 and 3505.4, superior courts shall~~
5 ~~have exclusive jurisdiction over actions involving interest~~
6 ~~arbitration, as governed by Title 9 (commencing with Section~~
7 ~~1280) of Part 3 of the Code of Civil Procedure, when the action~~
8 ~~involves an employee organization that represents firefighters, as~~
9 ~~defined in Section 3251.~~

10 ~~(e) This section shall not apply to employees designated as~~
11 ~~management employees under Section 3507.5.~~

12 ~~(f) The board shall not find it an unfair practice for an employee~~
13 ~~organization to violate a rule or regulation adopted by a public~~
14 ~~agency if that rule or regulation is itself in violation of this chapter.~~
15 ~~This subdivision shall not be construed to restrict or expand the~~
16 ~~board's jurisdiction or authority as set forth in subdivisions (a) and~~
17 ~~(b).~~

O