

ASSEMBLY BILL

No. 1834

Introduced by Assembly Member Williams

(Principal coauthors: Senators Block, Hancock, and Jackson)

(Coauthors: Assembly Members Ammiano, Fong, Gonzalez, Roger Hernández, Pan, Rendon, and Skinner)

(Coauthor: Senator Beall)

February 18, 2014

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1834, as introduced, Williams. Higher Education Employer-Employee Relations Act: employees.

Existing law, known as the Higher Education Employer-Employee Relations Act, contains provisions relating to employer-employee relations between the state and the employees of state institutions of higher education, including 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 that 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 act would further the purposes of the act.

This bill would provide that student employees, whether or not their employment is contingent upon their status as students, are employees or higher education employees for purposes of the act.

The act excludes from the “scope of representation,” for purposes of the University of California only, among other things, conditions for the award of certificates and degrees to students.

This bill would specify that the requirements for students to achieve satisfactory progress toward their degrees is also outside of the scope of representation.

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, the 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 to include certain student employees who
10 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 those rights.

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

16 3562. As used in this chapter:

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

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

22 (c) “Certified organization” means an employee organization
23 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, whether or not their*
10 *employment is contingent on their status as students*, of the Regents
11 of the University of California, the Directors of the Hastings
12 College of the Law, or the Trustees of the California State
13 University. However, managerial and confidential employees and
14 employees whose principal place of employment is outside the
15 State of California at a worksite with 100 or fewer employees shall
16 be excluded from coverage under this chapter. ~~The board may find~~
17 ~~student employees whose employment is contingent on their status~~
18 ~~as students are employees only if the services they provide are~~
19 ~~unrelated to their educational objectives, or that those educational~~
20 ~~objectives are subordinate to the services they perform and that~~
21 ~~coverage under this chapter would further the purposes of this~~
22 ~~chapter.~~

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

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

- 1 (g) “Employer” or “higher education employer” means the
2 regents in the case of the University of California, the directors in
3 the case of the Hastings College of the Law, and the trustees in
4 the case of the California State University, including any person
5 acting as an agent of an employer.
- 6 (h) “Employer representative” means any person or persons
7 authorized to act on behalf of the employer.
- 8 (i) “Exclusive representative” means any recognized or certified
9 employee organization or person it authorizes to act on its behalf.
- 10 (j) “Impasse” means that the parties have reached a point in
11 meeting and conferring at which their differences in positions are
12 such that further meetings would be futile.
- 13 (k) “Managerial employee” means any employee having
14 significant responsibilities for formulating or administering policies
15 and programs. No employee or group of employees shall be
16 deemed to be managerial employees solely because the employee
17 or group of employees participates in decisions with respect to
18 courses, curriculum, personnel, and other matters of educational
19 policy. A department chair or head of a similar academic unit or
20 program who performs the foregoing duties primarily on behalf
21 of the members of the academic unit or program shall not be
22 deemed a managerial employee solely because of those duties.
- 23 (l) “Mediation” means the efforts of a third person, or persons,
24 functioning as intermediaries, to assist the parties in reaching a
25 voluntary resolution to an impasse.
- 26 (m) “Meet and confer” means the performance of the mutual
27 obligation of the higher education employer and the exclusive
28 representative of its employees to meet at reasonable times and to
29 confer in good faith with respect to matters within the scope of
30 representation and to endeavor to reach agreement on matters
31 within the scope of representation. The process shall include
32 adequate time for the resolution of impasses. If agreement is
33 reached between representatives of the higher education employer
34 and the exclusive representative, they shall jointly prepare a written
35 memorandum of the understanding, which shall be presented to
36 the higher education employer for concurrence. However, these
37 obligations shall not compel either party to agree to any proposal
38 or require the making of a concession.

1 (n) “Person” means one or more individuals, organizations,
2 associations, corporations, boards, committees, commissions,
3 agencies, or their representatives.

4 (o) “Professional employee” means:

5 (1) Any employee engaged in work: (A) predominantly
6 intellectual and varied in character as opposed to routine mental,
7 manual, mechanical, or physical work; (B) involving the consistent
8 exercise of discretion and judgment in its performance; (C) of a
9 character so that the output produced or the result accomplished
10 cannot be standardized in relation to a given period of time; and

11 (D) requiring knowledge of an advanced type in a field of science
12 or learning customarily acquired by a prolonged course of
13 specialized intellectual instruction and study in an institution of
14 higher learning or a hospital, as distinguished from a general
15 academic education or from an apprenticeship or from training in
16 the performance of routine mental, manual, or physical processes.

17 (2) Any employee who: (A) has completed the courses of
18 specialized intellectual instruction and study described in
19 subparagraph (D) of paragraph (1), and (B) is performing related
20 work under the supervision of a professional person to qualify
21 himself or herself to become a professional employee as defined
22 in paragraph (1).

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

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

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

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

37 (C) Admission requirements for students, conditions for the
38 award of certificates and degrees to students, *which include what*
39 *is required for students to achieve satisfactory progress toward*
40 *their degrees*, and the content and supervision of courses, curricula,

1 and research programs, as those terms are intended by the standing
2 orders of the regents or the directors.

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

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

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

25 (A) Consideration of the merits, necessity, or organization of
26 any service, activity, or program established by statute or
27 regulations adopted by the trustees, except for the terms and
28 conditions of employment of employees who may be affected
29 thereby.

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

32 (C) Admission requirements for students, conditions for the
33 award of certificates and degrees to students, and the content and
34 conduct of courses, curricula, and research programs.

35 (D) Criteria and standards to be used for the appointment,
36 promotion, evaluation, and tenure of academic employees, which
37 shall be the joint responsibility of the academic senate and the
38 trustees. The exclusive representative 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 trustees

1 withdraw any matter in this subparagraph from the responsibility
2 of the academic senate, the matter shall be within the scope of
3 representation.

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

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