

AMENDED IN ASSEMBLY JUNE 28, 1999

AMENDED IN SENATE MAY 28, 1999

AMENDED IN SENATE MAY 18, 1999

AMENDED IN SENATE APRIL 20, 1999

AMENDED IN SENATE APRIL 8, 1999

SENATE BILL**No. 402**

Introduced by Senator Burton and Assembly Member
Villaraigosa

(Principal coauthors: Senators Baca, Karnette, and Ortiz)

(Principal coauthors: Assembly Members Shelley and
Wiggins)

**(Coauthors: Senators Dunn, Escutia, Figueroa, Hayden,
Perata, and Solis)**

(Coauthors: Assembly Members Aroner, Cardoza, Firebaugh,
Havice, Keeley, Knox, Kuehl, Machado, Mazzoni, Pescetti,
Romero, Scott, Thomson, and Washington)

February 12, 1999

An act to add Section 1281.1 to, and to add Title 9.5
(commencing with Section 1299) to Part 3 of, the Code of
Civil Procedure, relating to public employment relations.

LEGISLATIVE COUNSEL'S DIGEST

SB 402, as amended, Burton. Employer-employee
relations: law enforcement officers and firefighters.

Existing law provides that employees of the fire
departments and fire services of the state, counties, cities,

cities and counties, districts, and other political subdivisions of the state have the right to self-organization, to form, join, or assist labor organizations, and to present grievances and recommendations regarding wages, salaries, hours, and working conditions to the governing body, but do not have the right to strike or to recognize a picket line of a labor organization while in the course of the performance of their official duties.

This bill would provide that if an impasse has been declared after the representatives of an employer and firefighters or law enforcement officers have exhausted their mutual efforts to reach agreement over wages, hours, and other terms and conditions of employment, if the parties are unable to agree to the appointment of a mediator, or if a mediator is unable to effect settlement of a dispute between the parties, the employee organization may request, by written notification to the employer, that their differences be submitted to an arbitration panel. Each party would designate one member of the panel, and those members would designate the chairperson of the panel pursuant to specified procedures.

The arbitration panel would meet with the parties within 10 days after its establishment or any additional periods to which the parties agree, ~~and~~ make inquiries and investigations, hold hearings, and take any other action, including further mediation, that the panel deems appropriate. Five days prior to the commencement of the arbitration panel's hearings, each of the parties would be required to submit a last best offer of settlement on the disputed issues as a package. The panel would decide the disputed issues by selecting the last best offer package that most nearly complies with specified factors. There would then be a waiting period of 5 days prior to public disclosure, or a longer period if agreed to, during which the parties could mutually amend the decision. At the end of that period, the arbitration panel's decision, as amended by the parties, would be disclosed, and would be binding upon the parties. ~~By requiring local agencies to utilize arbitration to reach agreement on terms and conditions of employment, this bill would impose a state-mandated local program.~~



~~This bill would authorize a local agency to make its provisions inapplicable to that local agency by obtaining voter approval of an ordinance making the bill inapplicable.~~

~~This bill would provide that it shall become operative on January 1, 2001.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.~~

~~This bill would provide that no reimbursement shall be made from the State Mandates Claims Fund for costs mandated by the state pursuant to this act, but would recognize that local agencies and school districts may pursue any available remedies to seek reimbursement for these costs.~~

This bill would provide that unless otherwise agreed to by the parties, the costs of the arbitration proceeding and the expenses of the arbitration panel, except those of the employer representative, shall be borne by the employee organization.

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

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

1 SECTION 1. Section 1281.1 is added to the Code of
2 Civil Procedure, to read:

3 1281.1. For the purposes of this article, any request to
4 arbitrate made pursuant to subdivision (a) of Section
5 1299.4 shall be considered as made pursuant to a written
6 agreement to submit a controversy to arbitration.

7 SEC. 2. Title 9.5 (commencing with Section 1299) is
8 added to Part 3 of the Code of Civil Procedure, to read:

9



1 TITLE 9.5. ARBITRATION OF FIREFIGHTER AND
2 LAW ENFORCEMENT OFFICER LABOR DISPUTES

3
4 1299. The Legislature hereby finds and declares that
5 strikes taken by firefighters and law enforcement officers
6 against public employers are a matter of statewide
7 concern, are a predictable consequence of labor strife and
8 poor morale that is often the outgrowth of substandard
9 wages and adverse working conditions, and are not in the
10 public interest. The Legislature further finds and
11 declares that the dispute resolution procedures contained
12 in this title provide the appropriate method for resolving
13 public sector labor disputes that would otherwise lead to
14 strikes by firefighters or law enforcement officers.

15 It is the intent of the Legislature to protect the health
16 and welfare of the public by providing impasse remedies
17 necessary to afford public employers the opportunity to
18 safely alleviate the effects of labor strife that would
19 otherwise lead to strikes by firefighters and law
20 enforcement officers. It is further the intent of the
21 Legislature that, in order to effectuate its predominant
22 purpose, this title be construed to apply broadly to all
23 public employers, including, but not limited to, charter
24 cities, counties, and cities and counties in this state.

25 It is not the intent of the Legislature to alter the scope
26 of issues subject to collective bargaining between public
27 employers and employee organizations representing
28 firefighters or law enforcement officers.

29 The provisions of this title are intended by the
30 Legislature to govern the resolution of impasses reached
31 in collective bargaining between public employers and
32 employee organizations representing firefighters and law
33 enforcement officers over issues that remain in dispute
34 over their respective interests. However, the provisions
35 of this title are not intended by the Legislature to be used
36 as a procedure to determine the rights of any firefighter
37 or law enforcement officer in any grievance initiated as
38 a result of a disciplinary action taken by any public
39 employer. The Legislature further intends that this title
40 shall not be construed to apply to any

community-oriented policing policy or to any process employed by an employer to impose discipline against any firefighter or law enforcement officer, nor to contravene any provision of a charter that governs an employer that is a city, county, or city and county, which provision prescribes a procedure for the imposition of any disciplinary action taken against a firefighter or law enforcement officer.

1299.2. This title shall apply to all employers of firefighters and law enforcement officers.

1299.3. As used in this title:

(a) “Employee” means any firefighter or law enforcement officer represented by an employee organization defined in subdivision (b).

(b) “Employee organization” means any organization recognized by the employer for the purpose of representing firefighters or law enforcement officers in matters relating to wages, hours, and other terms and conditions of employment.

(c) “Employer” means the state or any local agency employing employees, as defined in subdivision (a), or any entity acting as an agent of the state or local agency, either directly or indirectly.

(d) “Firefighter” means any person who is employed to perform firefighting, fire prevention, fire training, hazardous materials response, emergency medical services, fire or arson investigation, or any related duties, without respect to the rank, job title, or job assignment of that person.

(e) “Law enforcement officer” means any person who is a peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, without respect to the rank, job title, or job assignment of that person.

(f) “Local agency” means any governmental subdivision, district, public and quasi-public corporation, joint powers agency, public agency or public service corporation, town, city, county, city and county, or municipal corporation, whether incorporated or not or whether chartered or not.

1 (g) “State” means the Governor or his or her
2 designated representatives.

3 1299.4. (a) If an impasse has been declared after the
4 parties have exhausted their mutual efforts to reach
5 agreement over wages, hours, and other terms and
6 conditions of employment, if the parties are unable to
7 agree to the appointment of a mediator, or if a mediator
8 agreed to by the parties is unable to effect settlement of
9 a dispute between the parties after his or her
10 appointment, the employee organization may, by written
11 notification to the employer, request that their
12 differences be submitted to an arbitration panel.

13 (b) Within three days after receipt of the written
14 notification, each party shall designate a person to serve
15 as its member of an arbitration panel. Within five days
16 thereafter, or within additional periods to which they
17 mutually agree, the two members of the arbitration panel
18 appointed by the parties shall designate an impartial and
19 experienced person to act as chairperson of the
20 arbitration panel. In the event that the two members of
21 the arbitration panel are unable to agree upon a
22 chairperson, the mediator referred to in subdivision (a)
23 may be designated chairperson.

24 (c) In the event that the mediator is unable or
25 unwilling to serve as chairperson, the two members of the
26 arbitration panel shall jointly request from the American
27 Arbitration Association a list of seven impartial and
28 experienced persons who are familiar with matters of
29 employer-employee relations. The two panel members
30 may as an alternative, jointly request a list of seven names
31 from the California State Mediation and Conciliation
32 Service, or a list from either entity containing more or less
33 than seven names, so long as the number requested is an
34 odd number. If after five days of receipt of the list, the two
35 panel members cannot agree on which of the listed
36 persons shall serve as chairperson, they shall, within two
37 days, alternately strike names from the list, with the first
38 panel member to strike names being determined by lot.
39 The last person whose name remains on the list shall be
40 chairperson.

(d) During the course of the dispute resolution process initiated pursuant to subdivision (a), any employee subject to this ~~chapter~~ *title* who willfully engages in a strike against his or her employer that endangers public safety shall be dismissed from his or her employment and may not be reinstated or returned to employment except as a new employee.

1299.5. (a) The arbitration panel shall, within 10 days after its establishment or any additional periods to which the parties agree, meet with the parties or their representatives, either jointly or separately, make inquiries and investigations, hold hearings, and take any other action including further mediation, that the arbitration panel deems appropriate.

(b) For the purpose of its hearings, investigations, or inquiries, the arbitration panel may subpoena witnesses, administer oaths, take the testimony of any person, and issue subpoenas duces tecum to require the production and examination of any employer's or employee organization's records, books, or papers relating to any subject matter in dispute.

1299.6. (a) The arbitration panel shall direct that five days prior to the commencement of its hearings, each of the parties shall submit the last best offer of settlement as to each of the issues made in bargaining as a proposal or counterproposal on those issues not ~~tentatively~~ *previously* agreed to by the parties prior to any arbitration request made pursuant to subdivision (a) of Section 1299.4. The arbitration panel, within 30 days after the conclusion of the hearing, or any additional period to which the parties agree, shall separately decide on each of the disputed issues submitted by selecting, without modification, the last best offer that most nearly complies with the applicable factors described in subdivision (c). This subdivision shall be applicable except as otherwise provided in subdivision (b).

(b) The arbitration panel shall direct that five days prior to the commencement of its hearings, each of the parties shall submit as a package, the last best offer of settlement made in bargaining as a proposal or

1 counterproposal on those issues not tentatively
2 previously agreed to by the parties prior to any
3 arbitration request made pursuant to subdivision (a) of
4 Section 1299.4. The arbitration panel, within 30 days after
5 the conclusion of the hearing, or any additional period to
6 which the parties agree, shall decide on the disputed
7 issues submitted by selecting, without modification, the
8 last best offer package that most nearly complies with the
9 applicable factors described in subdivision (c). This
10 subdivision shall be applicable in lieu of subdivision (a)
11 only if the employer, in the same written notification
12 specified in subdivision (a) of Section 1299.4, receives
13 written notice from the employee organization that it has
14 elected to be subject thereto.

15 (c) The arbitration panel, unless otherwise agreed to
16 by the parties, shall limit its findings to issues within the
17 scope of representation and shall base its findings,
18 opinions, and decisions upon those factors traditionally
19 taken into consideration in the determination of wages,
20 hours, and other terms and conditions of employment,
21 including but not limited to the following factors, as
22 applicable:

23 (1) The stipulations of the parties.

24 (2) The interest and welfare of the public.

25 (3) The financial condition of the employer and its
26 ability to meet the costs of the award.

27 (4) The availability and sources of funds to defray the
28 cost of any changes in wages, hours, and other terms and
29 conditions of employment.

30 (5) Comparison of wages, hours, and other terms and
31 conditions of employment of other employees
32 performing similar services in corresponding fire or law
33 enforcement employment.

34 (6) The average consumer prices for goods and
35 services, commonly known as the Consumer Price Index.

36 (7) The peculiarity of requirements of employment,
37 including, but not limited to, mental, physical, and
38 educational qualifications; job training and skills; and
39 hazards of employment.

1 (8) Changes in any of the foregoing that are
2 traditionally taken into consideration in the
3 determination of wages, hours, and other terms and
4 conditions of employment.

5 1299.7. (a) The arbitration panel shall mail or
6 otherwise deliver a copy of the decision to the parties.
7 However, the decision of the arbitration panel shall not
8 be publicly disclosed, and shall not be binding, for a
9 period of five days after service to the parties. During that
10 five-day period, the parties may meet privately, attempt
11 to resolve their differences and, by mutual agreement,
12 amend or modify the decision of the arbitration panel.

13 (b) At the conclusion of the five-day period, which
14 may be extended by the parties, the arbitration panel's
15 decision, as may be amended or modified by the parties
16 pursuant to subdivision (a), shall be publicly disclosed
17 and shall be binding on all parties.

18 1299.8. Unless otherwise provided in this title, Title 9
19 (commencing with Section 1280) ~~of this part~~ shall be
20 applicable to any arbitration proceeding undertaken
21 pursuant to this title.

22 1299.9. (a) The provisions of this title shall not apply
23 to any employer that is a city, county, or city and county,
24 governed by a charter that was amended prior to January
25 1, 2000, to incorporate a procedure requiring the
26 submission of all unresolved disputes relating to wages,
27 hours, and other terms and conditions of employment to
28 an impartial and experienced neutral person or panel for
29 final and binding determination, provided however that
30 the charter amendment is not subsequently repealed or
31 amended in a form that would no longer require the
32 submission of all unresolved disputes relating to wages,
33 hours, and other terms and conditions of employment to
34 an impartial and experienced neutral person or panel, for
35 final and binding determination.

36 ~~(b) The provisions of this title shall not apply to any~~
37 ~~employer that is a local agency if the governing board of~~
38 ~~the local agency submits to the voters at a general or~~
39 ~~special election in 2000, a proposed ordinance that~~
40 ~~provides that this title does not apply to the local agency~~

1 ~~and that ordinance is approved by a majority of the votes~~
2 ~~cast on the measure in the election.~~

3 ~~(c) This title shall become operative on January 1,~~
4 ~~2001.~~

5 ~~(b) Unless otherwise agreed to by the parties, the costs~~
6 ~~of the arbitration proceeding and the expenses of the~~
7 ~~arbitration panel, except those of the employer~~
8 ~~representative, shall be borne by the employee~~
9 ~~organization.~~

10 SEC. 3. The Legislature finds and declares that the
11 duties of local agency employer representatives under
12 this act are substantially similar to the duties required
13 under present collective bargaining procedures and
14 therefore the costs incurred by the local agency employer
15 representatives in performing those duties are not
16 reimbursable as state-mandated costs.

17 ~~SEC. 4. No reimbursement shall be made from the~~
18 ~~State Mandates Claims Fund pursuant to Part 7~~
19 ~~(commencing with Section 17500) of Division 4 of Title~~
20 ~~2 of the Government Code for costs mandated by the~~
21 ~~state pursuant to this act. It is recognized, however, that~~
22 ~~a local agency or school district may pursue any remedies~~
23 ~~to obtain reimbursement available to it under Part 7~~
24 ~~(commencing with Section 17500) and any other~~
25 ~~provisions of law.~~