

ASSEMBLY BILL

No. 230

Introduced by Assembly Member Goldberg

February 13, 2001

An act to amend Sections 45113, 54312, 88013, and 88131 of the Education Code, relating to classified school employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 230, as introduced, Goldberg. Classified employees.

(1) Existing law requires the governing board of any school district or community college district that has not adopted the merit system for its classified employees to prescribe rules and regulations governing the personnel management of the classified service.

Existing law requires that any employee designated as a permanent employee be subject to disciplinary action only for cause as prescribed by rule or regulation of the governing board and provides that the governing board's determination of the sufficiency of the cause for disciplinary action is conclusive. A state court has concluded that this provision precludes a governing board from subjecting the board's disciplinary conclusions regarding these employees to binding arbitration.

This bill, instead, would provide that the governing board's determination of the sufficiency of the cause for disciplinary action is final. The bill would provide that nothing in these provisions is to be construed to prohibit the governing board, pursuant to the terms of an agreement with an employee organization reached pursuant to specified provisions of current law governing school employer-employee relations, from delegating its authority to determine whether there is

sufficient cause for disciplinary action against classified employees to binding or nonbinding arbitration.

(2) Existing law authorizes the personnel commission in a school district or community college district that has adopted the merit system to authorize a hearing officer or other representative to conduct any hearing or investigation that the commission itself is authorized to conduct. Existing law authorizes the personnel commission to accept, reject, or amend any of the findings or recommendations of the authorized representative and requires a rejection or amendment of findings or recommendations to be based either on a review of the transcript of the hearing or investigation or upon the results of a supplementary hearing or investigation that the commission may order.

This bill would provide that nothing in these provisions precludes the parties to a negotiated agreement reached pursuant to specified provisions of current law governing school employer-employee relations, from negotiating a provision that makes the findings and decision of a hearing officer or other authorized representative binding upon the commission, the district, the employee, and the employee organization.

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

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

1 SECTION 1. Section 45113 of the Education Code is
 2 amended to read:
 3 45113. The governing board of a school district shall
 4 prescribe written rules and regulations, governing the personnel
 5 management of the classified service, which shall be printed and
 6 made available to employees in the classified service, the public,
 7 and those concerned with the administration of this section,
 8 whereby ~~such~~ those employees are designated as permanent
 9 employees of the district after serving a prescribed period of
 10 probation which shall not exceed one year.
 11 Any employee designated as a permanent employee shall be
 12 subject to disciplinary action only for cause as prescribed by rule
 13 or regulation of the governing board, but the governing board's
 14 determination of the sufficiency of the cause for disciplinary
 15 action shall be ~~conclusive~~ *final*.



1 *Nothing in this section shall be construed to prohibit the*
2 *governing board, pursuant to the terms of an agreement with an*
3 *employee organization under Chapter 10.7 (commencing with*
4 *Section 3540) of Division 4 of Title 1 of the Government Code, from*
5 *delegating its authority to determine whether sufficient cause*
6 *exists for disciplinary action against classified employees to*
7 *binding or nonbinding arbitration.*

8 The governing board shall adopt rules of procedure for
9 disciplinary proceedings which shall contain a provision for
10 informing the employee by written notice of the specific charges
11 against him *or her*, a statement of his *or her* right to a hearing on
12 ~~such~~ the charges, and the time within which ~~such~~ the hearing may
13 be requested which shall be not less than five days after service of
14 the notice to the employee, and a card or paper, the signing and
15 filing of which shall constitute a demand for hearing, and a denial
16 of all charges. The burden of proof shall remain with the governing
17 board, and any rule or regulation to the contrary shall be void.

18 No disciplinary action shall be taken for any cause ~~which that~~
19 arose prior to the employee's becoming permanent, nor for any
20 cause ~~which that~~ arose more than two years preceding the date of
21 the filing of the notice of cause unless ~~such that~~ cause was
22 concealed or not disclosed by ~~such the~~ employee when it could be
23 reasonably assumed that the employee should have disclosed the
24 facts to the employing district.

25 This section shall apply only to districts not incorporating the
26 merit system as outlined in Article 6 (commencing with Section
27 45240) ~~of this chapter.~~

28 SEC. 2. Section 45312 of the Education Code is amended to
29 read:

30 45312. (a) The commission may authorize a hearing officer
31 or other representative to conduct any hearing or investigation
32 which the commission itself is authorized by this article to
33 conduct. Any ~~such~~ authorized person conducting ~~such a~~ hearing
34 or investigation may administer oaths, subpoena and require the
35 attendance of witnesses and the production of books or papers, and
36 cause the depositions of witnesses to be taken in the manner
37 prescribed by law for like depositions in civil cases in the superior
38 court of this state under Article 3 (commencing with Section 2016)
39 of Chapter 3 of Title 4 of Part 4 of the Code of Civil Procedure. The
40 commission may instruct ~~such an~~ authorized representative to



1 present findings or recommendations. The commission may
2 accept, reject or amend any of the findings or recommendations of
3 the ~~said~~ authorized representative. Any rejection or amendment of
4 findings or recommendations shall be based either on a review of
5 the transcript of the hearing or investigation or upon the results of
6 ~~such a~~ supplementary hearing or investigation as the commission
7 may order.

8 (b) The commission may employ by contract or as professional
9 experts or otherwise any ~~such~~ hearing officers or other
10 representatives and may adopt and amend ~~such~~ rules and
11 procedures ~~as that~~ may be necessary to effectuate this section.

12 ~~The~~
13 (c) *Nothing in this section shall preclude the parties to a*
14 *negotiated agreement reached pursuant to Chapter 10.7*
15 *(commencing with Section 3540) of Division 4 of Title 1 of the*
16 *Government Code, from negotiating a provision that makes the*
17 *findings and decision of a hearing officer or other authorized*
18 *representative binding upon the commission, the district, the*
19 *employee, and the employee organization.*

20 SEC. 3. Section 88013 of the Education Code is amended to
21 read:

22 88013. (a) The governing board of a community college
23 district shall prescribe written rules and regulations, governing the
24 personnel management of the classified service, which shall be
25 printed and made available to employees in the classified service,
26 the public, and those concerned with the administration of this
27 section, whereby these employees are, except as provided in
28 Section 72411, designated as permanent employees of the district
29 after serving a prescribed period of probation which shall not
30 exceed one year.

31 (b) Any employee designated as a permanent employee shall
32 be subject to disciplinary action only for cause as prescribed by
33 rule or regulation of the governing board, but the governing
34 board's determination of the sufficiency of the cause for
35 disciplinary action shall be ~~conclusive~~ final.

36 ~~The~~
37 (c) *Nothing in this section shall be construed to prohibit the*
38 *governing board, pursuant to the terms of an agreement with an*
39 *employee organization under Chapter 10.7 (commencing with*
40 *Section 3540) of Division 4 of Title 1 of the Government Code, from*



1 *delegating its authority to determine whether sufficient cause*
2 *exists for disciplinary action against classified employees to*
3 *binding or nonbinding arbitration.*

4 (d) The governing board shall adopt rules of procedure for
5 disciplinary proceedings which shall contain a provision for
6 informing the employee by written notice of the specific charges
7 against him or her, a statement of the employee's right to a hearing
8 on those charges, and the time within which the hearing may be
9 requested which shall be not less than five days after service of the
10 notice to the employee, and a card or paper, the signing and filing
11 of which shall constitute a demand for hearing, and a denial of all
12 charges. The burden of proof shall remain with the governing
13 board, and any rule or regulation to the contrary shall be void.

14 ~~No~~

15 (e) No disciplinary action shall be taken for any cause that
16 arose prior to the employee's becoming permanent, or for any
17 cause that arose more than two years preceding the date of the
18 filing of the notice of cause, unless the cause was concealed or not
19 disclosed by the employee when it could be reasonably assumed
20 that the employee should have disclosed the facts to the employing
21 district.

22 ~~This~~

23 (f) This section shall apply only to districts not incorporating
24 the merit system as outlined in Article 3 (commencing with
25 Section 88060).

26 SEC. 4. Section 88131 of the Education Code is amended to
27 read:

28 88131. (a) The commission may authorize a hearing officer
29 or other representative to conduct any hearing or investigation
30 which the commission itself is authorized by this article to
31 conduct. Any ~~such~~ authorized person conducting ~~such a~~ hearing
32 or investigation may administer oaths, subpoena and require the
33 attendance of witnesses and the production of books or papers, and
34 cause the depositions of witnesses to be taken in the manner
35 prescribed by law for like depositions in civil cases in the superior
36 court of this state under Article 3 (commencing with Section 2016)
37 of Chapter 3 of Title 4 of Part 4 of the Code of Civil Procedure. The
38 commission may instruct ~~such an~~ authorized representative to
39 present findings or recommendations. The commission may
40 accept, reject, or amend any of the findings or recommendations



1 of the ~~said~~ authorized representative. Any rejection or amendment
2 of findings or recommendations shall be based either on a review
3 of the transcript of the hearing or investigation or upon the results
4 of ~~such~~ a supplementary hearing or investigation as the
5 commission may order.

6 ~~The~~

7 (b) The commission may employ by contract or as professional
8 experts or otherwise any ~~such~~ hearing officers or other
9 representatives and may adopt and amend ~~such~~ rules and
10 procedures ~~as that~~ may be necessary to effectuate this section.

11 (c) *Nothing in this section shall preclude the parties to a*
12 *negotiated agreement reached pursuant to Chapter 10.7*
13 *(commencing with Section 3540) of Division 4 of Title 1 of the*
14 *Government Code, from negotiating a provision that makes the*
15 *findings and decision of a hearing officer or other authorized*
16 *representative binding upon the commission, the district, the*
17 *employee, and the employee organization.*

