

AMENDED IN SENATE JUNE 11, 2001

AMENDED IN ASSEMBLY APRIL 25, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 230

Introduced by Assembly Member Goldberg

February 13, 2001

An act to amend Sections 45113, ~~45312, 88013, and 88131~~ and 88013 of the Education Code, relating to classified school employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 230, as amended, Goldberg. Classified employees.

~~(1) Existing~~

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~~ *The Court of Appeal (United Steelworkers of America v. Board of Education (1984) 162 Cal. App. 3d 823)* 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, *except peace officers, as defined*, 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 those employees are designated as permanent employees
 9 of the district after serving a prescribed period of probation which
 10 shall not exceed one year.



1 Any employee designated as a permanent employee shall be
2 subject to disciplinary action only for cause as prescribed by rule
3 or regulation of the governing board, but the governing board's
4 determination of the sufficiency of the cause for disciplinary
5 action shall be final.

6 Nothing in this section shall be construed to prohibit the
7 governing board, pursuant to the terms of an agreement with an
8 employee organization under Chapter 10.7 (commencing with
9 Section 3540) of Division 4 of Title 1 of the Government Code,
10 from delegating its authority to determine whether sufficient cause
11 exists for disciplinary action against classified employees, *except*
12 *peace officers as defined in Section 830.32 of the Penal Code*, to
13 binding or nonbinding arbitration.

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

24 No disciplinary action shall be taken for any cause that arose
25 prior to the employee's becoming permanent, nor for any cause
26 that arose more than two years preceding the date of the filing of
27 the notice of cause unless that cause was concealed or not disclosed
28 by the employee when it could be reasonably assumed that the
29 employee should have disclosed the facts to the employing district.

30 This section shall apply only to districts not incorporating the
31 merit system as outlined in Article 6 (commencing with Section
32 45240).

33 ~~SEC. 2. Section 45312 of the Education Code is amended to~~
34 ~~read:~~

35 ~~45312. (a) The commission may authorize a hearing officer~~
36 ~~or other representative to conduct any hearing or investigation~~
37 ~~which the commission itself is authorized by this article to~~
38 ~~conduct. Any authorized person conducting a hearing or~~
39 ~~investigation may administer oaths, subpoena and require the~~
40 ~~attendance of witnesses and the production of books or papers, and~~



1 ~~cause the depositions of witnesses to be taken in the manner~~
 2 ~~prescribed by law for like depositions in civil cases in the superior~~
 3 ~~court of this state under Article 3 (commencing with Section 2016)~~
 4 ~~of Chapter 3 of Title 4 of Part 4 of the Code of Civil Procedure. The~~
 5 ~~commission may instruct an authorized representative to present~~
 6 ~~findings or recommendations. The commission may accept, reject~~
 7 ~~or amend any of the findings or recommendations of the~~
 8 ~~authorized representative. Any rejection or amendment of~~
 9 ~~findings or recommendations shall be based either on a review of~~
 10 ~~the transcript of the hearing or investigation or upon the results of~~
 11 ~~a supplementary hearing or investigation as the commission may~~
 12 ~~order.~~

13 ~~(b) The commission may employ by contract or as professional~~
 14 ~~experts or otherwise any hearing officers or other representatives~~
 15 ~~and may adopt and amend rules and procedures that may be~~
 16 ~~necessary to effectuate this section.~~

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

24 ~~SEC. 3.~~

25 *SEC. 2.* Section 88013 of the Education Code is amended to
 26 read:

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

36 (b) Any employee designated as a permanent employee shall be
 37 subject to disciplinary action only for cause as prescribed by rule
 38 or regulation of the governing board, but the governing board's
 39 determination of the sufficiency of the cause for disciplinary
 40 action shall be final.



1 (c) 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,
5 from delegating its authority to determine whether sufficient cause
6 exists for disciplinary action against classified employees, *except*
7 *peace officers as defined in Section 830.32 of the Penal Code*, to
8 binding or nonbinding arbitration.

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

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

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

28 ~~SEC. 4. Section 88131 of the Education Code is amended to~~
29 ~~read:~~

30 ~~88131. (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 authorized person conducting a hearing or~~
34 ~~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 an authorized representative to present~~



1 ~~findings or recommendations. The commission may accept, reject,~~
2 ~~or amend any of the findings or recommendations of the~~
3 ~~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 ~~a supplementary hearing or investigation as the commission may~~
7 ~~order.~~

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

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

