

**ASSEMBLY BILL**

**No. 707**

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**Introduced by Assembly Member Negrete McLeod**

February 22, 2001

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An act to amend Sections 3562 and 3579 of the Government Code, relating to higher education labor relations.

LEGISLATIVE COUNSEL'S DIGEST

AB 707, as introduced, Negrete McLeod. Higher education labor relations: mediation.

Existing law contains provisions relating to employer-employee relations between the State of California and the employees of state institutions of higher education, including the various campuses of 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 existing law, "employer" is defined as the Regents of the University of California, the Directors of Hastings College of the Law, and the Trustees of the California State University, and "employee" is defined as an employee of any of these entities.

This bill would additionally define "employer" and "employee" under the act to include the governing boards or administrations of all foundations, extension operations, or other organizational entities controlled by the Trustees of the California State University. The bill would require that, for the purpose of determining an appropriate bargaining unit for these employees, they shall be treated as if they were, and shall be placed in bargaining units with, employees of the university.

The bill would explicitly exclude from its provisions student body organizations and other entities under the control of student body organizations.

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 3562 of the Government Code is  
2 amended to read:

3 3562. As used in this chapter:

4 (a) "Arbitration" means a method of resolving a rights dispute  
5 under which the parties to a controversy must accept the award of  
6 a third party.

7 (b) "Board" means the Public Employment Relations Board  
8 established pursuant to Section 3513.

9 (c) "Certified organization" means an employee organization  
10 ~~which~~ *that* has been certified by the board as the exclusive  
11 representative of the employees in an appropriate unit after a  
12 proceeding under Article 5 (commencing with Section 3573).

13 (d) "Confidential employee" means any employee who is  
14 required to develop or present management positions with respect  
15 to meeting and conferring or whose duties normally require access  
16 to confidential information ~~which~~ *that* contributes significantly to  
17 the development of those management positions.

18 (e) "Employee" or "higher education employee" means any  
19 employee of the Regents of the University of California, the  
20 Directors of Hastings College of the Law, ~~or the Trustees the~~  
21 ~~trustees~~ of the California State University. ~~However, managerial~~  
22 ~~and confidential employees and employees whose principal place~~  
23 ~~of employment is outside the State of California at a worksite with~~  
24 ~~100 or fewer employees shall be excluded from coverage under~~  
25 ~~this chapter. The board may find student employees, or the~~  
26 ~~governing boards or administrations of all foundations, extension~~  
27 ~~operations, or other organizational entities controlled directly or~~  
28 ~~indirectly by the Trustees of the California State University. All of~~  
29 ~~the following shall be excluded from coverage under this chapter:~~

30 (1) *An employee of any student body organization established*  
31 *pursuant to Article 1 (commencing with Section 89300) of Chapter*  
32 *3 of Part 55 of the Education Code or of any other entity, including,*



1 *but not necessarily limited to, a student union, that is operated*  
2 *under the management of a student body organization.*

3 (2) *A managerial and confidential employee.*

4 (3) *An employee whose principal place of employment is*  
5 *outside the State of California at a worksite with 100 or fewer*  
6 *employees.*

7 (4) *The board may find that a student employee whose*  
8 *employment is contingent on ~~their status as students are employees~~*  
9 *~~only if the services they provide are unrelated to their~~ his or her*  
10 *status as a student is an employee only if the board determines that*  
11 *either of the following is true:*

12 (A) *The services provided by the employee are unrelated to the*  
13 *educational objectives, ~~or, that those~~ of the employee.*

14 (B) *The educational objectives of the employee are subordinate*  
15 *to the services ~~they perform and that~~ performed by the employee,*  
16 *and coverage under this chapter would further the purposes of this*  
17 *chapter.*

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

30 (2) *“Employee organization” ~~shall~~ also ~~include~~ includes any*  
31 *person that an employee organization authorizes to act on its*  
32 *behalf. An academic senate, or other similar academic bodies, or*  
33 *divisions thereof, ~~shall~~ are not—be considered employee*  
34 *organizations for the purposes of this chapter.*

35 (g) *“Employer” or “higher education employer” means the*  
36 *~~regents in~~ following, and includes any person acting as an agent*  
37 *of an employer:*

38 (1) *In the case of the University of California, the ~~Directors in~~*  
39 *regents.*



1 (2) *In the case of Hastings College of the Law, ~~and the trustees~~*  
2 *~~in~~ the directors.*

3 (3) *In the case of the California State University, ~~including any~~*  
4 *~~person acting as an agent of an employer.~~ the trustees.*

5 (4) *The governing boards or administrations of all*  
6 *foundations, extension operations, or other organizational entities*  
7 *controlled directly or indirectly by the Trustees of the California*  
8 *State University. This paragraph does not apply to any student*  
9 *body organization established pursuant to Article 1 (commencing*  
10 *with Section 89300) of Chapter 3 of Part 55 of the Education Code*  
11 *or to any other entity, including, but not necessarily limited to, a*  
12 *student union that is operated under the management of a student*  
13 *body organization.*

14 (h) “Employer representative” means any person or persons  
15 authorized to act ~~in~~ on behalf of the employer.

16 (i) “Exclusive representative” means any recognized or  
17 certified employee organization or person it authorizes to act on its  
18 behalf.

19 (j) “Impasse” means that the parties have reached a point in  
20 meeting and conferring at which their differences in positions are  
21 such that further meetings would be futile.

22 (k) “Managerial employee” means any employee having  
23 significant responsibilities for formulating or administering  
24 policies and programs. No employee or group of employees shall  
25 be deemed to be managerial employees solely because the  
26 employee or group of employees participates in decisions with  
27 respect to courses, curriculum, personnel, and other matters of  
28 educational policy. A department chair or head of a similar  
29 academic unit or program who performs the foregoing duties  
30 primarily on behalf of the members of the academic unit or  
31 program shall not be deemed a managerial employee solely  
32 because of those duties.

33 (l) “Mediation” means the efforts of a third person, or persons,  
34 functioning as intermediaries, to assist the parties in reaching a  
35 voluntary resolution to an impasse.

36 (m) “Meet and confer” means the performance of the mutual  
37 obligation of the higher education employer and the exclusive  
38 representative of its employees to meet at reasonable times and to  
39 confer in good faith with respect to matters within the scope of  
40 representation and to endeavor to reach agreement on matters



1 within the scope of representation. The process shall include  
2 adequate time for the resolution of impasses. If agreement is  
3 reached between representatives of the higher education employer  
4 and the exclusive representative, they shall jointly prepare a  
5 written memorandum of the understanding, which shall be  
6 presented to the higher education employer for concurrence.  
7 However, these obligations shall not compel either party to agree  
8 to any proposal or require the making of a concession.

9 (n) “Person” means one or more individuals, organizations,  
10 associations, corporations, boards, committees, commissions,  
11 agencies, or their representatives.

12 (o) “Professional employee” means:

13 (1) Any employee engaged in work *that*: (A) *is* predominantly  
14 intellectual and varied in character as opposed to routine mental,  
15 manual, mechanical, or physical work; (B) ~~involving~~ *involves* the  
16 consistent exercise of discretion and judgment in its performance;  
17 (C) *is* of a character so that the output produced or the result  
18 accomplished cannot be standardized in relation to a given period  
19 of time; and (D) ~~requiring~~ *requires* knowledge of an advanced type  
20 in a field of science or learning customarily acquired by a  
21 prolonged course of specialized intellectual instruction and study  
22 in an institution of higher learning or a hospital, as distinguished  
23 from a general academic education or from an apprenticeship or  
24 from training in the performance of routine mental, manual, or  
25 physical processes.

26 (2) Any employee who: (A) has completed the courses of  
27 specialized intellectual instruction and study described in  
28 subparagraph (D) of paragraph (1), and (B) is performing related  
29 work under the supervision of a professional person to qualify  
30 himself or herself to become a professional employee as defined  
31 in paragraph (1).

32 (p) “Recognized organization” means an employee  
33 organization ~~which~~ *that* has been recognized by an employer as the  
34 exclusive representative of the employees in an appropriate unit  
35 pursuant to Article 5 (commencing with Section 3573).

36 (q) (1) For purposes of the University of California only,  
37 “scope of representation” means, and is limited to, wages, hours  
38 of employment, and other terms and conditions of employment.  
39 The scope of ~~representations shall~~ *representation does not* include  
40 any of the following:



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

5 (B) The amount of any fees ~~which~~ *that* are not a term or  
6 condition of employment.

7 (C) Admission requirements for students, conditions for the  
8 award of certificates and degrees to students, and the content and  
9 supervision of courses, curricula, and research programs, as those  
10 terms are intended by the standing orders of the regents or the  
11 directors.

12 (D) Procedures and policies to be used for the appointment,  
13 promotion, and tenure of members of the academic senate, the  
14 procedures to be used for the evaluation of the members of the  
15 academic senate, and the procedures for processing grievances of  
16 members of the academic senate. The exclusive representative of  
17 members of the academic senate shall have the right to consult and  
18 be consulted on matters excluded from the scope of representation  
19 pursuant to this subparagraph. If the academic senate determines  
20 that any matter in this subparagraph should be within the scope of  
21 representation, or if any matter in this subparagraph is withdrawn  
22 from the responsibility of the academic senate, the matter shall be  
23 within the scope of representation.

24 (2) All matters not within the scope of representation are  
25 reserved to the employer and may not be subject to meeting and  
26 conferring, ~~provided that~~. *However*, nothing herein ~~may be~~  
27 ~~construed to limit~~ *limits* the right of the employer to consult with  
28 any employees or employee organization on any matter outside the  
29 scope of representation.

30 (r) (1) For purposes of the California State University only,  
31 “scope of representation” means, and is limited to, wages, hours  
32 of employment, and other terms and conditions of employment.  
33 The scope of representation ~~shall~~ *does* not include:

34 (A) Consideration of the merits, necessity, or organization of  
35 any service, activity, or program established by statute or  
36 regulations adopted by the trustees, except for the terms and  
37 conditions of employment of employees who may be affected  
38 thereby.

39 (B) The amount of any student fees ~~which~~ *that* are not a term  
40 or condition of employment.



1 (C) Admission requirements for students, conditions for the  
2 award of certificates and degrees to students, and the content and  
3 conduct of courses, curricula, and research programs.

4 (D) Criteria and standards to be used for the appointment,  
5 promotion, evaluation, and tenure of academic employees, which  
6 shall be the joint responsibility of the academic senate and the  
7 trustees. The exclusive representative ~~shall have the right to~~ *may*  
8 consult and be consulted on matters excluded from the scope of  
9 representation pursuant to this subparagraph. If the trustees  
10 withdraw any matter in this subparagraph from the responsibility  
11 of the academic senate, the matter shall be within the scope of  
12 representation.

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

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~~. *However*, nothing herein ~~may be~~  
18 ~~construed to limit~~ *limits* the right of the employer to consult with  
19 any employees or employee organization on any matter outside the  
20 scope of representation.

21 SEC. 2. Section 3579 of the Government Code is amended to  
22 read:

23 3579. (a) In each case where the appropriateness of a unit is  
24 an issue, in determining an appropriate unit, the board shall take  
25 into consideration all of the following criteria:

26 (1) The internal and occupational community of interest  
27 among the employees, including, but not limited to, the extent to  
28 which they perform functionally related services or work toward  
29 established common goals, the history of employee representation  
30 with the employer, the extent to which the employees belong to the  
31 same employee organization, the extent to which the employees  
32 have common skills, working conditions, job duties, or similar  
33 educational or training requirements, and the extent to which the  
34 employees have common supervision.

35 (2) The effect that the projected unit will have on the meet and  
36 confer relationships, emphasizing the availability and authority of  
37 employer representatives to deal effectively with employee  
38 organizations representing the unit, and taking into account factors  
39 such as work location, the numerical size of the unit, the  
40 relationship of the unit to organizational patterns of the higher



1 education employer, and the effect on the existing classification  
2 structure or existing classification schematic of dividing a single  
3 class or single classification schematic among two or more units.

4 (3) The effect of the proposed unit on efficient operations of the  
5 employer and the compatibility of the unit with the responsibility  
6 of the higher education employer and its employees to serve  
7 students and the public.

8 (4) The number of employees and classifications in a proposed  
9 unit, and its effect on the operations of the employer, on the  
10 objectives of providing the employees the right to effective  
11 representation, and on the meet and confer relationship.

12 (5) The impact on the meet and confer relationship created by  
13 fragmentation of employee groups or any proliferation of units  
14 among the employees of the employer.

15 (b) There shall be a presumption that professional employees  
16 and nonprofessional employees shall not be included in the same  
17 representation unit. However, the presumption shall be rebuttable,  
18 depending upon what the evidence pertinent to the criteria set forth  
19 in subdivision (a) establishes.

20 (c) There shall be a presumption that all employees within an  
21 occupational group or groups located principally within the State  
22 of California shall be included within a single representation unit.  
23 However, the presumption shall be rebutted if there is a  
24 preponderance of evidence that a single representation unit is  
25 inconsistent with the criteria set forth in subdivision (a) or with the  
26 purposes of this chapter.

27 (d) Notwithstanding the foregoing provisions of this section, or  
28 any other provision of law, an appropriate group of skilled crafts  
29 employees shall have the right to be a single, separate unit of  
30 representation. Skilled crafts employees shall include, but not  
31 necessarily be limited to, employment categories such as  
32 carpenters, plumbers, electricians, painters, and operating  
33 engineers. The single unit of representation shall include not less  
34 than all skilled crafts employees at a campus or at a Lawrence  
35 Laboratory.

36 (e) Notwithstanding the foregoing provisions of this section,  
37 the only appropriate representation units including members of the  
38 academic senate of the University of California shall be either a  
39 single statewide unit consisting of all eligible members of the  
40 senate, or divisional units consisting of all eligible members of a



1 division of the senate. In addition to the limitations of subdivision  
2 (q) of Section 3562, the scope of representation of any divisional  
3 unit shall be limited to those matters ~~which~~ *that* have customarily  
4 been determined on a division basis, but the employer shall consult  
5 with the exclusive representative of a division on matters ~~which~~  
6 *that* would be within the scope of representation or consultation of  
7 a statewide representative. When 35 percent of the eligible  
8 members of the academic senate are represented by an exclusive  
9 representative or representatives in divisional units, the board, on  
10 petition of a representative or of an organization comprised of  
11 those representatives, shall conduct an election to determine if the  
12 eligible members of the entire senate wish thereafter to be  
13 represented by a representative or organization in a single unit on  
14 all matters within the scope of representation. Any other exclusive  
15 representative or organization of representatives or any employee  
16 organization meeting the requirements of subdivision (a) of  
17 Section 3577 shall be entitled, on petition, to appear on the ballot,  
18 and in the event no choice receives a majority of the votes cast, the  
19 runoff provisions of subdivision (a) of Section 3577 ~~shall be~~ *are*  
20 applicable.

21 (f) The board shall not determine that any unit is appropriate if  
22 it includes, together with other employees, employees who are  
23 defined as peace officers pursuant to subdivisions (b) and (c) of  
24 Section 830.2 of the Penal Code.

25 (g) *Notwithstanding any other provision of this section, for the*  
26 *purposes of determining an appropriate unit for employees of the*  
27 *governing boards or administrations of foundations, extension*  
28 *operations, or other organizational entities controlled directly or*  
29 *indirectly by the Trustees of the California State University, those*  
30 *employees shall be treated as if they were, and shall be placed in*  
31 *bargaining units with, employees of the university.*

