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11 STATE OF CALIFORNIA
12 PUBLIC EMPLOYMENT RELATIONS BOARD

13
14 STATE OF CALIFORNIA (DEPARTMENT OF HUMAN RESOURCES),) Case No. SA-CO-526-S
15)
16 Charging Party,) **CHARGING PARTY'S REQUEST FOR**
17) **ADMINISTRATIVE NOTICE**
18 v.)
19 CALIFORNIA ASSOCIATION OF)
PROFESSIONAL SCIENTISTS (CAPS),)
20 Respondent.)

21 Pursuant to Evidence Code section 452, subdivisions (c) and (d) and PERB regulation 32170
22 subdivisions (b)(8) and (10), Charging Party, California, Department of Human Resources (CalHR)
23 respectfully requests the Administrative Law Judge (ALJ) take administrative notice of the matters
24 of the following records:

- 25 • **Request No. 1:** Senate Bill No. 683 (1999-2000 Reg. Sess.) [a true and
26 correct copy of which is attached hereto as **Exhibit A**];
27 • **Request No. 2:** Assembly Committee on Public Employees, Retirement
28 and Social Security, Analysis of Senate Bill No. 683 (1999-2000 Reg. Sess.), dated July 14, 1999 [a true and correct copy of which is attached hereto as **Exhibit B**]; and

- **Request No. 3:** Senate Rules Committee, Office of Senate Floor Analyses, Analysis of Senate Bill No. 683, August 18, 2000 [a true and correct copy of which is attached hereto as **Exhibit C**].

Evidence Code section 452, subdivision (c), authorizes judicial notice of the “[o]fficial acts of the legislative . . . departments of the Unites States and of any state of the United States.” California courts have taken judicial notice of legislative history materials under Evidence Code section 452, subdivision (c). (*Pearl v. WCAB* (2001) 26 Cal.4th 189, 198, fn. 4; *People v. Ledesma* (1997) 16 Cal.4th 90, 98, fn. 4.) The legislative history and related bill analyses regarding SB 683 constitute “official acts” of the California State Legislature and are thus appropriate for judicial notice.

The exhibits above qualify for judicial notice under Evidence Code section 452, subdivision (c), because they are official documents issued by the Legislature, which shed light on the legislative history pertaining to the Government Code section 3517.8. (*Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc. (Kaufman)* (2005) 133 Cal.App.4th 26, 32-35 [citing cases for the general principle that Legislative Committee Reports and Analyses constitute cognizable legislative history, specifically identifying examples of when the Court has taken judicial notice of analyses from the Senate Committee on Judiciary].) As a general rule, legislative history materials are cognizable and subject to judicial notice as long as the materials must shed light on the collegial view of the Legislature as a whole. (*Kaufman, supra*, 133 Cal.App.4th at p. 31.) Accordingly, Charging Party requests the ALJ take judicial notice of the items described above.

Dated: March 8, 2024

Respectfully Submitted,

FROLAN R. AGUILING
Chief Counsel

SANDRA L. LUSICH
Deputy Chief Counsel

By:



DAVID M. VILLALBA
Principal Labor Relations Counsel
Attorneys for Charging Party

Exhibit A



SB-683 Employment relations: state. (1999-2000)

SHARE THIS:



Senate Bill No. 683

CHAPTER 879

An act to amend Section 3515.7 of, and to add Section 3517.8 to, the Government Code, relating to state employment relations.

[Filed with Secretary of State September 29, 2000. Approved by Governor September 28, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

SB 683, Perata. Employment relations: state.

The Ralph C. Dills Act provides that once an employee organization is recognized as the exclusive representative of an appropriate unit, it may enter into an agreement with the state employer providing for organizational security in the form of maintenance of membership or fair share fee deduction. The act provides that fair share fee deductions shall continue for 3 years from the effective date of the agreement or the duration of the agreement, whichever comes first.

The California Public Employment Relations Board has determined that arbitration clauses do not continue in effect after the expiration of a collective bargaining agreement with limited exceptions.

This bill would require the parties to the agreement to continue to give effect to the provisions of an expired memorandum of understanding, including provisions that supersede existing law, provisions relating to arbitration, no strike provisions, agreements covered in the Fair Labor Standards Act, or the deduction of fair share fees, if the Governor and the recognized employee organization have not agreed to a new memorandum of understanding and have not reached an impasse in negotiations. The bill would also provide that if the parties reach an impasse in negotiations, the state employer may implement any or all of its last, best, and final offer. It would require any proposal in this offer that, if implemented, would conflict with existing statutes or require the expenditure of funds to be presented to the Legislature for approval. The bill would provide that implementation of the last, best, and final offer would not relieve the parties of the obligation to bargain in good faith and reach agreement if any circumstances change.

This bill would provide that fair share fee deductions shall continue until the effective date of a successor agreement or implementation of the state's last, best, and final offer, whichever occurs first.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 3515.7 of the Government Code is amended to read:

3515.7. (a) Once an employee organization is recognized as the exclusive representative of an appropriate unit it may enter into an agreement with the state employer providing for organizational security in the form of maintenance of membership or fair share fee deduction.

(b) The state employer shall furnish the recognized employee organization with sufficient employment data to allow the organization to calculate membership fees and the appropriate fair share fees, and shall deduct the amount specified by the recognized employee organization from the salary or wages of every employee for the membership fee or the fair share fee. These fees shall be remitted monthly to the recognized employee organization along with an adequate itemized record of the deductions, including, if required by the recognized employee organization, machine readable data. Fair share fee deductions shall continue until the effective date of a successor agreement or implementation of the state's last, best, and final offer, whichever occurs first. The Controller shall retain, from the fair share fee deduction, an amount equal to the cost of administering the provisions of this section. The state employer shall not be liable in any action by a state employee seeking recovery of, or damages for, improper use or calculation of fair share fees.

(c) Notwithstanding subdivision (b), any employee who is a member of a religious body whose traditional tenets or teachings include objections to joining or financially supporting employee organizations shall not be required to financially support the recognized employee organization. That employee, in lieu of a membership fee or a fair share fee deduction, shall instruct the employer to deduct and pay sums equal to the fair share fee to a nonreligious, nonlabor organization, charitable fund approved by the State Board of Control for receipt of charitable contributions by payroll deductions.

(d) A fair share fee provision in a memorandum of understanding which is in effect may be rescinded by a majority vote of all the employees in the unit covered by the memorandum of understanding, provided that: (1) a request for such a vote is supported by a petition containing the signatures of at least 30 percent of the employees in the unit; (2) the vote is by secret ballot; and (3) the vote may be taken at anytime during the term of the memorandum of understanding, but in no event shall there be more than one vote taken during the term. If the board determines that the appropriate number of signatures have been collected, it shall conduct the vote in a manner which it shall prescribe. Notwithstanding this subdivision, the state employer and the recognized employee organization may negotiate, and by mutual agreement provide for, an alternative procedure or procedures regarding a vote on a fair share fee provision.

(e) Every recognized employee organization which has agreed to a fair share fee provision shall keep an adequate itemized record of its financial transactions and shall make available annually, to the board and to the employees in the unit, within 90 days after the end of its fiscal year, a detailed written financial report thereof in the form of a balance sheet and an operating statement, certified as to accuracy by its president and treasurer or comparable officers. In the event of failure of compliance with this section, any employee in the unit may petition the board for an order compelling this compliance, or the board may issue a compliance order on its own motion.

(f) If an employee who holds conscientious objections pursuant to subdivision (c) requests individual representation in a grievance, arbitration, or administrative hearing from the recognized employee organization, the recognized employee organization is authorized to charge the employee for the reasonable cost of the representation.

(g) An employee who pays a fair share fee shall be entitled to fair and impartial representation by the recognized employee organization. A breach of this duty shall be deemed to have occurred if the employee organization's conduct in representation is arbitrary, discriminatory, or in bad faith.

SEC. 2. Section 3517.8 is added to the Government Code, to read:

3517.8. (a) If a memorandum of understanding has expired, and the Governor and the recognized employee organization have not agreed to a new memorandum of understanding and have not reached an impasse in negotiations, subject to subdivision (b), the parties to the agreement shall continue to give effect to the provisions of the expired memorandum of understanding, including, but not limited to, all provisions that supersede existing law, any arbitration provisions, any no strike provisions, any agreements regarding matters covered in the Fair Labor Standards Act of 1938 (Chapter 8 (commencing with Section 201) of Title 29 of the United States Code), and any provisions covering fair share fee deduction consistent with Section 3515.7.

(b) If the Governor and the recognized employee organization reach an impasse in negotiations for a new memorandum of understanding, the state employer may implement any or all of its last, best, and final offer. Any proposal in the state employer's last, best, and final offer that, if implemented, would conflict with existing statutes or require the expenditure of funds shall be presented to the Legislature for approval and, if approved, shall be controlling without further legislative action, notwithstanding Sections 3517.5, 3517.6, and 3517.7..

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Implementation of the last, best, and final offer does not relieve the parties of the obligation to bargain in good faith and reach an agreement on a memorandum of understanding if any circumstances change, and does not waive any rights that the recognized employee organization has under this chapter.

Exhibit B

SB 683

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Date of Hearing: July 14, 1999

ASSEMBLY COMMITTEE ON PUBLIC EMPLOYEES, RETIREMENT AND SOCIAL SECURITY

Lou Correa, Chair

SB 683 (Perata) - As Amended: July 1, 1999

SENATE VOTE : 24-13

SUBJECT : Employment relations: state.

SUMMARY : Makes various changes to the Ralph C. Dills Act to provide protections for state employees and their exclusive representatives when collective bargaining contracts expire. Specifically, this bill :

- 1) Requires the state employer to continue the provisions of an expired Memorandum of Understanding (MOU), including but not limited to, arbitration and fair share fee provisions, if a new MOU has not been agreed to or an impasse in negotiations has not been reached.
- 2) Requires, if an impasse has been reached, the state employer to present to the Legislature its last, best, and final offer. Upon approval by the Legislature, the state employer would be required to implement that offer or other provisions of the Government Code more beneficial to the employee.
- 3) Provides that the deduction of fair share fees shall continue until the effective date of a new MOU or the implementation of the state's last, best, and final offer, whichever comes first.

EXISTING LAW provides that once an employee organization is recognized as the exclusive representative of a bargaining unit, it may enter into an agreement with the state employer providing for organizational security in the form of maintenance of membership or fair share fee deduction. Existing law specifies that fair share fee deductions shall continue for three years from the effective date of the agreement or the duration of the agreement, whichever comes first.

Department of Personnel Administration (DPA) has, in recent years, refused to continue fair share fee deductions after the expiration of the MOU and during negotiations for a new MOU.

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FISCAL EFFECT : According to the DPA, this bill would not result in any increased costs to the state.

COMMENTS : The committee is advised that either party may request the Public Employment Relations Board (PERB) to determine that "impasse", as it relates to collective bargaining negotiations between the state employer and state employees, has been reached. PERB then makes a determination as to whether an impasse exists taking into consideration various factors, as specified.

In the case of DPA v. Greene (1992) Cal.App.3rd, the court considered whether the state could unilaterally implement its last, best, and final offer after declaring "impasse" at the bargaining table. The court held that, where the terms are the subject of Government Code provisions which were superceded by the MOU, once the MOU expired, the Government Code provisions spring back into existence, and DPA must implement those provisions. Therefore, DPA can implement its last, best, and final offer only as to those terms not covered by government codes.

The committee is also advised that prior to 1992, grievance arbitration clauses negotiated in MOUs continued to be honored after the expiration of the MOU and during negotiations. In 1992, PERB adopted the holding of Litton Financial Printing v. National Labor Relations Board, that negotiated grievance arbitration agreements do not survive the expiration of the MOU.

According to the sponsor, "As a result of judicial and administrative decisions, state employee unions have been put at great disadvantage in negotiating for new contracts after the

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expiration of an MOU. This proposal seeks to level the playing field by altering the interpretation of the Hills Act which have arisen from judicial and administrative interpretations of existing law."

The sponsor further contends that, "The most important, time consuming, and often expensive service a union performs for its bargaining unit is usually the negotiations of a new MOU. In the past these negotiations have frequently extended beyond the life of the expired MOU. It is precisely during this period that the union is incurring the expenses which entitle it to the

fair share fees of nonmembers who are in the bargaining unit. The union should not be prevented from collecting fees for this representation work."

REGISTERED SUPPORT / OPPOSITION :

Support

California Correctional Peace Officers Association (sponsor)
California State Employees Association

Opposition

None on file.

Analysis Prepared by : Karon Green / P.E., R. & S.S. /
(916)319-3957

Exhibit C

|SENATE RULES COMMITTEE | SB 683 |
|Office of Senate Floor Analyses |
|1020 N Street, Suite 524 |
|(916) 445-6614 Fax: (916) |
|327-4478 |

UNFINISHED BUSINESS

Bill No: SB 683
Author: Perata (D), et al
Amended: 8/30/00
Vote: 21

SENATE PUBLIC EMP. & RET. COMMITTEE : 3-1, 4/19/99
AYES: Ortiz, Baca, Karnette
NOES: Lewis

SENATE APPROPRIATIONS COMMITTEE : 8-3, 5/17/99
AYES: Johnston, Alpert, Bowen, Burton, Escutia, Karnette,
Perata, Vasconcellos
NOES: Leslie, McPherson, Mountjoy

SENATE FLOOR : 25-13, 8/31/00
AYES: Alarcon, Alpert, Burton, Chesbro, Costa, Dunn,
Escutia, Figueroa, Hayden, Hughes, Johnston, Karnette,
McPherson, Murray, O'Connell, Ortiz, Peace, Perata,
Polanco, Schiff, Sher, Solis, Soto, Speier, Vasconcellos
NOES: Brulte, Haynes, Johnson, Kelley, Knight, Leslie,
Lewis, Monteith, Morrow, Mountjoy, Pochigian, Rainey,
Wright

ASSEMBLY FLOOR : 50-25, 8/31/00 - See last page for vote

SUBJECT : Employment relations: state

SOURCE : California Correctional Peace Officers
Association

DIGEST : This bill continues the provision of an expired
CONTINUED

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Memorandum of Understanding (MOU) which relates to arbitration or fair share fees. If the Governor and the employee organization reach an impasse in negotiations, the state may implement any or all of its last, best, and final offer, as specified.

Assembly Amendments add technical and clarifying changes.

ANALYSIS : Existing law provides that once an employee organization is recognized as the exclusive representative of a bargaining unit, it may enter into an agreement with the state employer providing for organizational security in the form of maintenance of membership or fair share fee deduction. Existing law specifies that fair share fee deductions shall continue for three years from the effective date of the agreement or the duration of the agreement, whichever comes first.

Department of Personnel Administration (DPA) has, in recent years, refused to continue fair share fee deductions after the expiration of the MOU and during negotiations for a new MOU.

This bill:

1. Requires the parties to an expired collective bargaining agreement to continue to abide by the provisions of an expired MOU, including but not limited to, arbitration, fair share fee, and no strike provisions, if a new MOU has not been agreed to by the parties.
2. Provides that if an impasse has been reached, the state employer may implement any or all of its last, best, and final offer. If any part of the state's proposal

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conflicts with existing law or will require the expenditure of funds, must be presented to the Legislature for approval and, if approved, will be controlling without further legislative action.

3. Specifies that implementation of the last, best, and final offer does not relieve the parties of the obligation to bargain in good faith and reach an agreement on a MOU if any circumstances change, and does not waive the rights of recognized employee

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organizations.

The Senate Public Employment and Retirement Committee was advised that either party may request the Public Employment Relations Board (PERB) to determine that "impasse", as it relates to collective bargaining negotiations between the state employer and state employees, has been reached. PERB then makes a determination as to whether an impasse exists taking into consideration various factors, as specified.

In the case of DPA v. Greene (1992) Cal.App.3rd, the court considered whether the state could unilaterally implement its last, best, and final offer after declaring "impasse" at the bargaining table. The court held that, where the terms are the subject of Government Code provisions which were superceded by the MOU, once the MOU expired, the Government Code provisions spring back into existence, and DPA must implement those provisions. Therefore, DPA can implement its last, best, and final offer only as to those terms not covered by government codes.

The committee was also advised that prior to 1992, grievance arbitration clauses negotiated in MOUs continued to be honored after the expiration of the MOU and during negotiations. In 1992, PERB adopted the holding of Litton Financial Printing v. National Labor Relations Board, that negotiated grievance arbitration agreements do not survive the expiration of the MOU.

According to the sponsor, "as a result of judicial and administrative decisions, state employee unions have been put at great disadvantage in negotiating for new contracts after the expiration of an MOU. This proposal seeks to level the playing field by altering three interpretations of the Dills Act which have arisen from judicial and administrative interpretations of existing law."

The sponsor further contends that, "the most important, time consuming, and often expensive service a union performs for its bargaining unit is usually the negotiations of a new MOU. In the past these negotiations have frequently extended beyond the life of the expired MOU. It is precisely during this period that the union is incurring the expenses which entitle it to the fair share

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fees of nonmembers who are in the bargaining unit. The union should not be prevented from collecting fees for this representation work."

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes
Local: No

SUPPORT : (Verified 8/18/00) (unable to reverify at time of writing)

California Correctional Peace Officer's Association
(source)

OPPOSITION : (Verified 8/18/00)

California State Employees Association

ASSEMBLY FLOOR :
AYES: Alquist, Aroner, Bock, Briggs, Calderon, Cardenas, Cardoza, Cedillo, Corbett, Correa, Cunneen, Davis, Ducheny, Dutra, Firebaugh, Florez, Floyd, Gallegos,

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Granlund, Havice, Honda, Jackson, Keeley, Knox, Kuehl,
Lempert, Long, Loya, Lovelace, Malado, Maldonado,
Migden, Nakano, Papan, Pescetti, Reyes, Romero, Scott,
Shelley, Steinberg, Strom-Martin, Thomson, Torlakson,
Villaraigosa, Vincent, Washington, Wayne, Wesson,
Wiggins, Wright, Hertzberg
NOES: Aanestad, Ackerman, Ashburn, Baldwin, Bates, Battin,
Baugh, Brewer, Campbell, Cox, Dickerson, House,
Kaloogian, Leach, Leonard, Maddox, Margett, McClintock,
Olberg, Oller, Robert Pacheco, Runner, Strickland,
Thompson, Zettel

TSM:s1 9/18/00 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

PROOF OF SERVICE

I declare that I am a resident of or employed in the County of _____,
State of _____. I am over the age of 18 years. The name and address of my
Residence or business is _____

On _____, I served the _____
(Date) (Description of document(s))

_____ in Case No. _____
(Description of document(s) continued) PERB Case No., if known)

on the parties listed below by (check the applicable method(s)):

placing a true copy thereof enclosed in a sealed envelope for collection and
delivery by the United States Postal Service or private delivery service following
ordinary business practices with postage or other costs prepaid;

personal delivery;

electronic service - I served a copy of the above-listed document(s) by
transmitting via electronic mail (e-mail) or via e-PERB to the electronic service
address(es) listed below on the date indicated. *(May be used only if the party
being served has filed and served a notice consenting to electronic service or has
electronically filed a document with the Board. See PERB Regulation 32140(b).)*

(Include here the name, address and/or e-mail address of the Respondent and/or any other parties served.)

I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct and that this declaration was executed on _____,
(Date)
at _____
(City) (State)

Christina Guthrie

(Type or print name)

(Signature)