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GOVERNMENT CODE - GOV

TITLE 1. GENERAL [100 - 7931.000] (Title 1 enacted by Stats. 1943, Ch. 134.)

DIVISION 4. PUBLIC OFFICERS AND EMPLOYEES [1000 - 3599.84] (Division 4 enacted by Stats. 1943, Ch. 134.)

CHAPTER 10.7. Meeting and Negotiating in Public Educational Employment [3540 - 3549.3] (Chapter 10.7 added by Stats. 1975, Ch. 961.)

ARTICLE 4. Rights, Obligations, Prohibitions, and Unfair Practices [3543 - 3543.8] (Article 4 added by Stats. 1975, Ch. 961.)

3543. (a) Public school employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. Public school employees shall have the right to represent themselves individually in their employment relations with the public school employer, except that once the employees in an appropriate unit have selected an exclusive representative and it has been recognized pursuant to Section 3544.1 or certified pursuant to Section 3544.7, an employee in that unit shall not meet and negotiate with the public school employer. If the exclusive representative of a unit provides notification, as specified by subdivision (a) of Section 3546, public school employees who are in a unit for which an exclusive representative has been selected, shall be required, as a condition of continued employment, to join the recognized employee organization or to pay the organization a fair share services fee, as required by Section 3546. If a majority of the members of a bargaining unit rescind that arrangement, either of the following options shall be applicable:

(1) The recognized employee organization may petition for the reinstatement of the arrangement described in subdivision (a) of Section 3546 pursuant to the procedures in paragraph (2) of subdivision (d) of Section 3546.

(2) The employees may negotiate either of the two forms of organizational security described in subdivision (i) of Section 3540.1.

(b) An employee may at any time present grievances to his or her employer, and have those grievances adjusted, without the intervention of the exclusive representative, as long as the adjustment is reached prior to arbitration pursuant to Sections 3548.5, 3548.6, 3548.7, and 3548.8 and the adjustment is not inconsistent with the terms of a written agreement then in effect, provided that the public school employer shall not agree to a resolution of the grievance until the exclusive representative has received a copy of the grievance and the proposed resolution and has been given the opportunity to file a response.

(Amended by Stats. 2008, Ch. 179, Sec. 83. Effective January 1, 2009.)

3543.1. (a) Employee organizations shall have the right to represent their members in their employment relations with public school employers, except that once an employee organization is recognized or certified as the exclusive representative of an appropriate unit pursuant to Section 3544.1 or 3544.7, respectively, only that employee organization may represent that unit in their employment relations with the public school employer. Employee organizations may establish reasonable restrictions regarding who may join and may make reasonable provisions for the dismissal of individuals from membership.

(b) Employee organizations shall have the right of access at reasonable times to areas in which employees work, the right to use institutional bulletin boards, mailboxes, and other means of communication, subject to reasonable regulation, and the right to use institutional facilities at reasonable times for the purpose of meetings concerned with the exercise of the rights guaranteed by this chapter.

(c) A reasonable number of representatives of an exclusive representative shall have the right to receive reasonable periods of released time without loss of compensation when meeting and negotiating and for the processing of grievances.

(d) All employee organizations shall have the right to have membership dues deducted pursuant to Sections 45060 and 45168 of the Education Code, until an employee organization is recognized as the exclusive representative for any of the employees in an appropriate unit, and then the deduction as to any employee in the negotiating unit shall not be permissible except to the exclusive representative.

(Amended by Stats. 2006, Ch. 538, Sec. 228. Effective January 1, 2007.)

3543.2. (a) (1) The scope of representation shall be limited to matters relating to wages, hours of employment, and other terms and conditions of employment. "Terms and conditions of employment" mean health and welfare benefits as defined by Section 53200, leave, transfer and reassignment policies, safety conditions of employment, class size, procedures to be used for the evaluation of employees, organizational security pursuant to Section 3546, procedures for processing grievances pursuant to Sections 3548.5, 3548.6, 3548.7, and 3548.8, the layoff of probationary certificated school district employees, pursuant to Section 44959.5 of the Education Code, and alternative compensation or benefits for employees adversely affected by pension limitations pursuant to former Section 22316 of the Education Code, as that section read on December 31, 1999, to the extent deemed reasonable and without violating the intent and purposes of Section 415 of the Internal Revenue Code.

(2) A public school employer shall give reasonable written notice to the exclusive representative of the public school employer's intent to make any change to matters within the scope of representation of the employees represented by the exclusive representative for purposes of providing the exclusive representative a reasonable amount of time to negotiate with the public school employer regarding the proposed changes.

(3) The exclusive representative of certificated personnel has the right to consult on the definition of educational objectives, the determination of the content of courses and curriculum, and the selection of textbooks to the extent those matters are within the discretion of the public school employer under the law.

(4) All matters not specifically enumerated are reserved to the public school employer and may not be a subject of meeting and negotiating, except that this section does not limit the right of the public school employer to consult with any employees or employee organization on any matter outside the scope of representation.

(b) Notwithstanding Section 44944 of the Education Code, the public school employer and the exclusive representative shall, upon request of either party, meet and negotiate regarding causes and procedures for disciplinary action, other than dismissal, including a suspension of pay for up to 15 days, affecting certificated employees. If the public school employer and the exclusive representative do not reach mutual agreement, Section 44944 of the Education Code shall apply.

(c) Notwithstanding Section 44955 of the Education Code, the public school employer and the exclusive representative shall, upon request of either party, meet and negotiate regarding procedures and criteria for the layoff of certificated employees for lack of funds. If the public school employer and the exclusive representative do not reach mutual agreement, Section 44955 of the Education Code shall apply.

(d) Notwithstanding Section 45028 of the Education Code, the public school employer and the exclusive representative shall, upon request of either party, meet and negotiate regarding the payment of additional compensation based upon criteria other than years of training and years of experience. If the public school employer and the exclusive representative do not reach mutual agreement, Section 45028 of the Education Code shall apply.

(e) Pursuant to Section 45028 of the Education Code, the public school employer and the exclusive representative shall, upon the request of either party, meet and negotiate a salary schedule based on criteria other than a uniform allowance for years of training and years of experience. If the public school employer and the exclusive representative do not reach mutual agreement, the provisions of Section 45028 of the Education Code requiring a salary schedule based upon a uniform allowance for years of training and years of experience shall apply. A salary schedule established pursuant to this subdivision shall not result in the reduction of the salary of a teacher.

(Amended by Stats. 2014, Ch. 801, Sec. 1. (AB 1611) Effective January 1, 2015.)

3543.3. A public school employer or such representatives as it may designate who may, but need not be, subject to either certification requirements or requirements for classified employees set forth in the Education Code, shall meet and negotiate with and only with representatives of employee organizations selected as exclusive representatives of appropriate units upon request with regard to matters within the scope of representation.

(Added by Stats. 1975, Ch. 961.)

3543.4. A person serving in a management position, senior management position, or a confidential position may not be represented by an exclusive representative. Any person serving in such a position may represent himself or herself individually or by an employee organization whose membership is composed entirely of employees designated as holding those positions, in his or her employment relationship with the public school employer, but, in no case, shall such an organization meet and negotiate with the public school employer. A representative may not be permitted by a public school employer to meet and negotiate on any benefit or compensation paid to persons serving in a management position, senior management position, or a confidential position.

(Amended by Stats. 2001, Ch. 159, Sec. 102. Effective January 1, 2002.)

3543.5. It is unlawful for a public school employer to do any of the following:

(a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter. For purposes of this subdivision, "employee" includes an applicant for employment or reemployment.

(b) Deny to employee organizations rights guaranteed to them by this chapter.

(c) Refuse or fail to meet and negotiate in good faith with an exclusive representative. Knowingly providing an exclusive representative with inaccurate information, whether or not in response to a request for information, regarding the financial resources of the public school employer constitutes a refusal or failure to meet and negotiate in good faith.

(d) Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another.

(e) Refuse to participate in good faith in the impasse procedure set forth in Article 9 (commencing with Section 3548).

(Amended by Stats. 2003, Ch. 276, Sec. 1. Effective January 1, 2004.)

3543.6. It shall be unlawful for an employee organization to:

(a) Cause or attempt to cause a public school employer to violate Section 3543. 5.

(b) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.

(c) Refuse or fail to meet and negotiate in good faith with a public school employer of any of the employees of which it is the exclusive representative.

(d) Refuse to participate in good faith in the impasse procedure set forth in Article 9 (commencing with Section 3548).

(Added by Stats. 1975, Ch. 961.)

3543.7. The duty to meet and negotiate in good faith requires the parties to begin negotiations prior to the adoption of the final budget for the ensuing year sufficiently in advance of such adoption date so that there is adequate time for agreement to be reached, or for the resolution of an impasse.

(Added by Stats. 1975, Ch. 961.)

3543.8. (a) Any employee organization shall have standing to sue in any action or proceeding heretofore or hereafter instituted by it as representative and on behalf of one or more of its members.

(b) (1) At any time not less than 10 days before commencement of a hearing to resolve a dispute alleging that the employer failed to provide wages, benefits, or working conditions required by state law, an employee organization may serve an offer in writing upon the employer to settle the dispute for a specified amount or other consideration such as a change in employer policy. The written offer shall include a statement of the offer amount or other consideration, the terms and conditions by which that amount or other consideration shall be tendered to the employee, and a provision that allows the employer to indicate acceptance of the offer by signing a statement that the offer is accepted. An acceptance of the offer, whether made on the document containing the offer or on a separate document of acceptance, shall be in writing and shall be signed by counsel for the employer, or, if not represented by counsel, by the employer.

(2) If the offer is accepted, receipt of the specified amount or other consideration shall constitute a full satisfaction of the claim.

(3) If the offer is not accepted before the hearing or within 30 days after it is made, whichever occurs first, it shall be deemed withdrawn and cannot be given in evidence in the action.

(4) For purposes of this subdivision, a hearing shall be deemed to be actually commenced at the beginning of the oral argument or opening statement of the plaintiff or counsel, or, if there is no opening statement, at the time of the administering of the oath or affirmation to the first witness, or the introduction of any evidence.

(5) (A) If an offer made by an employee organization is not accepted and the employer fails to obtain a more favorable judgment or award from the action or proceeding, the employer shall pay the reasonable postoffer attorney's fees and expenses of the employee organization.

(B) Subparagraph (A) shall not apply if the adjudicator to the action or proceeding finds that the employer has raised substantial and credible issues involving complex or significant questions of law or fact relative to the employee's claim or claims.

(6) This subdivision does not apply to unfair practice or arbitration proceedings under this chapter.

