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SB-179 Excluded employees: arbitration. (2019-2020)

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CALIFORNIA LEGISLATURE— 2019–2020 REGULAR SESSION

SENATE BILL

NO. 179

Introduced by Senator Nielsen

January 28, 2019

An act to add Chapter 10.6 (commencing with Section 3539.75) to Division 4 of Title 1 of the Government Code, relating to state employees.

LEGISLATIVE COUNSEL'S DIGEST

SB 179, Nielsen. Excluded employees: arbitration.

The Bill of Rights for State Excluded Employees permits, among other things, excluded employee organizations to represent their excluded members in their employment relations, including grievances, with the state. That law defines excluded employees as all managerial employees, confidential employees, supervisory employees, as well as specified employees of the Department of Personnel Administration, the Department of Finance, the Controller's office, the Legislative Counsel Bureau, the Bureau of State Audits, the Public Employment Relations Board, the Department of Industrial Relations, and the State Athletic Commission.

This bill would enact the Excluded Employee Arbitration Act to permit an employee organization that represents an excluded employee who has filed certain grievances with the Department of Human Resources to request arbitration of the grievance if specified conditions are met. The bill would require the designation of a standing panel of arbitrators and, under specified circumstances, the provision of arbitrators from the California State Mediation and Conciliation Service within the Public Employment Relations Board. The bill would then require the arbitrator to be chosen in a specified manner and would prescribe the duties of that arbitrator. The bill would provide that a party to the arbitration has the right to have a certified shorthand reporter transcribe the proceeding and that the transcription would be the official record of the proceeding. The bill would require a nonprevailing party, other than an excluded employee, to bear the costs of arbitration and would prohibit the costs of arbitration from being passed on to the excluded employee.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

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

SECTION 1. (a) It is the intent of the Legislature that state excluded employees shall have the right to arbitration as a fifth step to the excluded employee grievance procedure. The present grievance procedure leaves too many grievances unresolved. This lack of resolution has caused more cases to be filed in California's courts, which could have been resolved at a lower level.

(b) The Legislature finds and declares all of the following:

- (1) The grievance system for state excluded employees is virtually illusory, with the overwhelming majority of grievances of excluded employees being summarily denied.
- (2) The practice of blanket grievance denial forces excluded employee organizations to go to court. Litigation is not only time consuming, but also costly to both the excluded employee organizations and the State of California.
- (3) Employee grievance arbitration for excluded employees results in timely resolution of grievances and is far less costly than litigation for both the State of California and for those excluded employees.
- (4) Employee grievance arbitration promotes settlement of grievances in advance of actual arbitration. Sixty percent of arbitration requests are settled in advance of any arbitral hearing.

SEC. 2. Chapter 10.6 (commencing with Section 3539.75) is added to Division 4 of Title 1 of the Government Code, to read:

CHAPTER 10.6. Excluded Employee Arbitration Act

3539.75. This chapter shall be known, and may be cited, as the Excluded Employee Arbitration Act.

3539.76. For purposes of this chapter:

- (a) "Department" means the Department of Human Resources.
- (b) "Excluded employee" means an excluded employee of the state, as defined in subdivision (b) of Section 3527.
- (c) "Employee organization" means any organization that represents excluded employees of the State of California.
- (d) "Employer" means the State of California.
- (e) "Arbitration" means the process that results in a binding ruling that resolves an excluded employee grievance as the final level of the excluded employee grievance process.

3539.77. An employee organization representing an employee who has filed a grievance with the department may request arbitration of the grievance if all of the following conditions are met:

- (a) The grievance alleges a dispute that is subject to the procedures established in Section 599.859 of Title 2 of the California Code of Regulations, as that section read on January 1, 2019.
- (b) The grievance has not been resolved to the employee organization's satisfaction after either of the following, as applicable, pursuant to regulations of the department governing grievances for excluded employees:
 - (1) The fourth level of review.
 - (2) In cases where there is no fourth level of review, the third level of review.
- (c) The employee organization requests arbitration in writing, submitted to the department, within 21 days of a decision rendered in either of the following, as applicable:
 - (1) The fourth level of review.
 - (2) In cases where there is no fourth level of review, the third level of review.

3539.78. (a) After a request for arbitration is made, the department and the employee organization shall designate a standing panel of at least 20 arbitrators who shall be available for arbitration under this chapter.

(b) If there are fewer than three arbitrators available, then the employee organization or the employer may obtain the names of an additional five arbitrators from the California State Mediation and Conciliation Service within the Public Employment Relations Board.

(c) From that standing panel, the employee organization and the employer may consecutively strike any arbitrator from that panel until the name of one arbitrator is agreed upon, or, if no agreement is made, the last remaining person on the panel shall be designated the arbitrator. The name of that arbitrator shall be submitted in writing to the department.

(d) If the employee organization does not submit its choice of an arbitrator within 45 days after requesting arbitration, the request for arbitration shall be considered withdrawn. A request that is withdrawn shall not prevent the employee from pursuing other grievance procedures available by law.

3539.79. (a) A party to the arbitration shall have the right to have a certified shorthand reporter transcribe the proceeding. The transcript shall be the official record of the proceeding.

(b) The arbitrator shall apply California law to the facts. The arbitrator shall issue a decision for each grievance heard during the arbitration. The decision shall be based solely on the written record in the grievance, the grievance response, and the oral presentations made at the arbitration. The arbitrator's decision shall be legally binding.

(c) The arbitrator shall issue a written decision within 45 days of the conclusion of the hearing.

(d) The arbitrator shall order the nonprevailing party to pay the cost of the arbitration, including the cost of a certified shorthand reporter. The arbitrator shall not order the excluded employee to pay the cost of arbitration or the cost of a certified shorthand reporter, and the cost of arbitration, including the cost of a certified shorthand reporter, shall not be passed on to the excluded employee.