ASSEMBLY THIRD READING
AB 1 (McKinnor, et al.)
As Amended May 18, 2023
Majority vote

SUMMARY

Establishes the Legislature Employer-Employee Relations Act (LEERA) for the purpose of promoting full communication between employees of the Assembly and Senate, respectively, and their employers by providing a reasonable method of resolving disputes regarding wages, hours, and other terms and conditions of employment through a prescribed process for representation and collective bargaining.

Major Provisions

1) Authorize employees of the Legislature to form, join, and participate in the activities of a union, excluding Members of Legislature, appointed officers, department or office leaders, and chief consultants, as provided, and also authorize LEERA-covered employees to self-represent in their employment relations.

2) Limit the scope of representation to wages, hours, and other terms and conditions of employment, except the consideration of the merits, necessity or organization or any service or activity provided by law.

3) Establish the jurisdiction of the Public Employment Relations Board (PERB) over the LEERA; provide for judicial review of bargaining unit determinations; and, prohibit the PERB from separating employees into bargaining units solely based on political affiliation, and political affiliation from constituting as a community of interest for purposes of determining an appropriate bargaining unit.

4) Establish the processes and procedures for collective bargaining, including meet and confer, resolution of impasse, adoption of a memorandum of understanding (MOU), and require MOUs adopted to comply with Proposition 140 (i.e., Section 7.5, article IV of the California Constitution), and establish the continued effect of an expired MOU and impasse procedures, as provided.

5) Establish certain acts by a legislative employer and an employee organization as unlawful; thereby, prohibiting certain prescribed acts by each.

6) Authorize a reasonable number of LEERA-covered employees reasonable time off without loss of compensation or other benefits when formally meeting and conferring with the Legislature on matters within the scope of representation during periods when a MOU is not in effect.

7) Provide that the LEERA does not apply Section 923 of the Labor Code to legislative employees.

8) Include a severability clause to shield otherwise valid provisions from becoming invalid, and establish that the LEERA must become operative on July 1, 2024.

COMMENTS

1) Brief History of Public Sector Collective Bargaining Statutes in California

The first of California's public sector bargaining laws was enacted in 1961. Known as the "George Brown Act" or "Brown Act," this act originally covered all public employers and recognized employees' right to participate and be represented by employee organizations. It also granted those organizations the right to meet and confer with the employer on matters affecting employment relations prior to action being taken on such matters.

Over time, the breadth of the Brown Act was reduced as subsequent statutes removed all employees from coverage in favor of separate statutes that were enacted separately covering the various segments of public sector employment in California (i.e., state, local, education, higher education, etc.) recognizing the uniqueness of each, their respective mandates and needs, and the needs of their respective employees. While many of the provisions among each of the state's public sector collective bargaining statutes are substantially similar, a number of variations exist among them.

Notwithstanding these similarities and variations, the basic foundation for their respective purposes remains: To foster harmonious labor relations between public employers and their employees, and to limit labor strife and economic disruption through a reasonable method of resolving disputes in California. The relations that continue today as a result of these statutes are guided not only by statutory construction, but also by judicial decisions, quasi-adjudicative decisions of the PERB, precedential decisions of each, and administrative regulations. In these regards, California's history and experience relating to public sector collective bargaining continues to be substantially well documented, even if evolving to meet present day challenges, while maintaining the intent and spirit of the core principle.

2) The Core Mechanics of Public Sector Collective Bargaining in California

The core purpose and principle of the various collective bargaining statutes governing public employer-employee relations in California are to limit labor strife and economic disruption in the public sector through a reasonable method of resolving disputes regarding wages, hours and other terms and conditions of employment between public employers and their employees or their exclusive representatives.

The core mechanics of collective bargaining are twofold: (i) each party must give up something to get something else in return to, (ii) achieve the manifestation of the art of compromise represented by a written and signed contractual agreement formally executed as a MOU. Thus, achieving the agreement is identical to the common law principles of the formation of a contract (i.e., offer, acceptance, and exchange of consideration). Here, to achieve an agreement assumes that the collective bargaining process and negotiation strategy or tactics used by both parties (i.e., employer and union) are in good faith and not to reach an impasse, nor the employer driving negotiations in a manner ultimately to be able to unilaterally implement (also commonly referred to by labor unions as "impose") what might be considered by the union as an unfair or objectionable contract, which ultimately could lead to a strike or other workplace disruption by the aggrieved union/union member-employees.

3) Proposition 140 and Legislative Operating Costs

Proposition 140, also known as "Legislative Term Limits, Legislators' Retirement and Legislative Operating Costs Amendment," which was passed by voters (over 52 percent) in November 1990, amended the state's constitution and among other things, reduced the operating budget of the Legislature by placing a "cap" on the total aggregate expenditures of the Legislature for the compensation of Members, employees, and operating expenditures.

The analysis of Assembly Bill 969 (Gonzalez, 2019) by the Assembly Committee on Public Employment and Retirement stated that,"[i]f over time, wages or other benefits increase as a result of collective bargaining rights granted pursuant to the provisions of [this bill] reach or exceed the mandated "cap" of the Legislature's operating budget, the Legislature would not be in compliance with the express "will" of the voters in passing the measure. As a result, unknown and unintended consequences, including legal or other, may ensue. In addition, should the "cap" be reached or exceeded as a result of collective bargaining efforts where negotiated salary [and/or] benefit increases exceed the rate of Proposition 140 appropriation growth, there may be unintended consequences that necessitate reductions to remain within the operational budget mandate. Actions to reduce the operating budget may include, but not be limited to, reduction in services provided to the public, positions, staff and budgets of Members of the Legislature (including for district offices), all or some of which may negatively affect the normal business activities and operations of the Legislature in serving Californians."

This bill includes a requirements that, "[e]xpenses incurred by the Legislature in relation to a properly ratified memorandum of understanding pursuant to [the LEERA] are subject to Section 7.5 of Article IV of the California Constitution." This provision acknowledges that unlike some other California public sector employers who may have a flexible expenditure limit and may request additional moneys when the limit has been reached, if necessary, the Legislature absolutely has no such flexibility. Thus, the Legislature must "live within its financial means" absent a modification to, or a repeal of, the constitutional provision.

Questions may arise as to what may happen to an agreement if it is not compliant with the constitutional provision as provided in this bill. Here, because an agreement is subject to the constitutional provision, the parties to the agreement may negotiate in good faith to a contractual provision that upon mutual agreement by both parties, all or certain terms within the agreement must be renegotiated to achieve constitutional compliance. Although the collective bargaining process is one possible means to address this matter, other options also may exist.

4) Other

This bill is substantially similar to Assembly Bill 1577 (Stone), as amended in the Senate August 23, 2022, in which a number of items discussed in the Assembly Committee on Public Employment and Retirement's analysis of that bill remain relevant with the respect to this bill. However, early introduction of this bill affords the various policy and fiscal committees of the Legislature, Members of the Legislature, and the general public, increased opportunity to fully contemplate and deliberate this proposed statute, including prudent changes through amendments deemed necessary or appropriate, towards balancing the interests of affected legislative employees, the constitutional and other statutory obligations of the Legislature, and the rights and interests of the public to ensure continuity in legislative operations and representation that inure to the benefit of the health, safety, and welfare of Californians.

5) Equity Solutions and Maximizing Benefits for Underserved and Marginalized Communities

Pursuant to House Resolution (HR) 39 (Gipson, 2021), to continue the Assembly's commitment to investing in equity solutions and maximizing benefits for underserved and marginalized communities, legislative analyses of the Assembly must discuss the equity impact that a bill will, or may, have on such communities, if any.

This bill does not present a particular focus towards addressing equity in relation to maximizing benefits for underserved or marginalized communities as articulated in HR 39. However, under a broader context, information provided by the author states that, "[t]his bill would ensure that staffers who work in the Legislature would be able to collectively bargain for better wages, work conditions, and benefits. This will allow for equity across the board for all staffers, allowing them to receive equal pay regardless of which house they work in, along with receiving equal benefits regarding medical, health, parking, etc."

6) Please see the policy committee analysis for a full discussion of this bill.

According to the Author
"Our staff aren't looking for special treatment. They are looking for the same dignity and respect afforded to all workers. It is hypocritical as legislators that we ask our employees to staff committees and write legislation that often expands collective bargaining rights for other workers in California, but we intentionally prohibit our own workers from that same right."

Arguments in Support
A large number of labor organizations and others similarly express in part, that among each of the segments of public sector in California, the Legislature is the only branch of California government whose employees cannot reap the benefits and protections that come with the right of collective bargaining. Further, because legislative employees are expressly exempted from the state civil service, they lack many of the workplace protection laws that cover employees in private and other public settings. This bill will grant legislative employees agency over the decision to form and join a union without fear of retaliation, and have a collective voice over their working conditions and protections in the workplace.

Arguments in Opposition
None.

FISCAL COMMENTS

According to the Assembly Appropriations Committee, this bill would result in the following:

1) Ongoing General Fund cost pressures, of an unknown amount, to the Legislature to establish and maintain labor and employee relations functions. Costs would depend on various factors, including the number of bargaining units formed.

2) Potential ongoing General Fund cost pressure, of an unknown amount, to the Legislature to the extent the bill results in salary or benefits increases resulting from collective bargaining. The Legislature employees about 1,900 staff members.

3) One-time costs of $143,364 General Fund to the PERB in the first year of implementation and ongoing costs of $113,364 General Fund to implement the provisions of this bill. The PERB would incur one-time costs to promulgate new regulations required by this bill and would incur ongoing costs associated with adjudicating unfair practice charges that could

result from this bill. Ongoing costs would depend on the number of unfair practice charges. PERB's estimate is based on costs incurred for unfair practice charges from a department of a similar size to the Legislature.

VOTES

ASM PUBLIC EMPLOYMENT AND RETIREMENT: 6-1-0
YES: McKinnor, Lackey, Addis, Haney, Stephanie Nguyen, Schiavo
NO: Vince Fong

ASM APPROPRIATIONS: 12-3-1
YES: Holden, Bryan, Calderon, Wendy Carrillo, Mike Fong, Hart, Lowenthal, Mathis, Papan, Pellerin, Weber, Ortega
NO: Megan Dahle, Dixon, Sanchez
ABS, ABST OR NV: Robert Rivas

UPDATED

VERSION: May 18, 2023

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