Date of Hearing: April 17, 2024

ASSEMBLY COMMITTEE ON PUBLIC EMPLOYMENT AND RETIREMENT
Tina S. McKinnor, Chair
AB 2404 (Lee) – As Amended March 21, 2024

SUBJECT: State and local public employees: labor relations: strikes

SUMMARY: Establishes public employees' right to demonstrate solidarity with other public employees by honoring a picket line, strike, and refusing to enter upon the premises or perform work for a public employer engaged in a primary strike, among other provisions. Specifically, **this bill:**

1) Expresses a legislative finding and declaration as stated in the summary, above.

2) Establishes that it must not be unlawful or a cause for discipline or other adverse action against a public employee for the employee to refuse to do any of the following:

   a) Enter the property that is the site of a primary strike.

   b) Perform work for a public employer involved in a primary strike.

   c) Go through or work behind any primary strike line.

3) Prohibits a public employer from directing a public employee to take any of the actions stated under "2)", above.

4) Authorizes a recognized employee organization to inform employees of their rights and encourage them to exercise rights provided by this bill.

5) Establishes that a provision in a public employer policy or collective bargaining agreement (CBA) that purports to limit or waive the rights provided in this bill, must be void as against public policy.

6) Provides that: (a) if the provisions of this bill conflict with a CBA entered into before January 1, 2025, the parties must negotiate over the provisions of this bill upon a request of the employer or exclusive representative, (b) a request to meet a confer pursuant to these provisions must reopen the CBA solely for the purpose of negotiate an agreement regarding the provisions of bill; and, (c) following the expiration of a CBA entered into before January 1, 2025, the provisions of this bill must apply.

7) Excludes the applicability of this bill to firefighters consistent with Section 1962 of the Labor Code, and certain, but not all, peace officers, as prescribed.

8) Establish that these provisions do not alter existing law relating to strikes by essential employees as set forth in judicial decisions and decisions of the Public Employment Relations Board (PERB), as promulgated or revised from time to time.

9) Defines for these purposes, "honoring a strike" to mean a refusal to perform work for a public employer in response to a primary strike by an exclusive representative of a public employer.

EXISTING:

1) Governs collective bargaining in the private sector under the Federal National Labor Relations Act (NLRA) but leaves it to the states to regulate collective bargaining in their respective public sectors.[1]

   While the NLRA and the decisions of its National Labor Relations Board often provide persuasive precedent in interpreting state collective bargaining law, public employees have no collective bargaining rights absent specific statutory authority establishing those rights.

2) Provides several statutory frameworks under California law to provide public employees collective bargaining rights, govern public employer-employee relations, and 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 recognized public employee organizations or their exclusive representatives. These include statutes governing public employer-employee relations for the state, local governments, higher education, K-14, certain employees of the judicial branch, certain public transit districts, and the Legislature.

3) Establishes the Public Employment Relations Board (PERB), a quasi-judicial administrative agency charged with administering certain statutory frameworks governing employer-employee relations, resolving disputes, and enforcing the statutory duties and rights of public agency employers and employee organizations, but provides the City and County of Los Angeles a local alternative to PERB oversight. [2]

4) Requires the California Department of Human Resources (CalHR) to provide a Ralph C. Dills Act (Dills Act) Memorandum of Understanding (MOU) to the Legislative Analyst who has 10 calendar days from the date the tentative agreement is received to issue a fiscal analysis to the Legislature. Among other things, each MOU submitted by the CalHR to the Legislative Analyst must include the CalHR's analysis of costs and savings.[3]

5) Requires, pursuant to the Dills Act, the Governor and recognized employee organization to jointly prepare a written MOU for determination by the Legislature, if an agreement has been reached between them.[4]

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[1] Sections 151 *et seq.*, Title 29, United States Code.
[2] Sections 3541 *et seq.*, of the Government (Gov.) Code.
[3] Section 19829.5 of the Gov. Code.
[4] Section 3517.5 of the Gov. Code.

6) Authorizes either party to a MOU to reopen all or part of the agreement, if the Legislature does not approve or fully fund any provision which requires the expenditure of funds. However, this does not preclude the parties from agreeing and effecting those MOU provisions that received legislative approval or did not require legislative action.[5]

7) Prohibits, or establishes as unlawful, under various statewide public employer-employee relations statutes, certain acts or conduct by a public employer relating to employee and labor organization rights, including specified acts or conduct relating to the collective bargaining process,[6] but not others, within the jurisdiction of the PERB.[7]

8) Similarly prohibits, or establishes as unlawful, under various statewide public employer-employee relations statutes, certain acts or conduct by an employee organization relating to certain rights of employees and employers, including those relating to the collective bargaining process,[8] but not others, within the jurisdiction of the PERB.[9]

9) Authorizes a local public employer to adopt reasonable rules and regulations after consultation in good faith with representatives of a recognized employee organization or organization for administration of employer-employee relations pursuant to the Meyers-Milias-Brown Act (MMBA). Among these, a local public employer may adopt reasonable rules and regulations regarding additional procedures for the resolution of disputes regarding wages, hours, and other terms and conditions of employment.[10]

FISCAL EFFECT: Unknown. This bill is flagged as fiscal by Legislative Counsel.

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[5] Section 3517.7 of the Gov. Code.
[6] Sections 3506 and 3506.5 (Meyers-Milias-Brown Act), 3519 (Ralph C. Dills Act ("Dills Act")), 3524.71 (Judicial Council Employer-Employee Relations Act), 3543.5 (Educational Employment Relations Act), 3599.69 (Legislature Employee-Employee Relations Act), and 3571 (Higher Education Employer-Employee Relations Act) of the Gov. Code, and Sections 98169 (Santa Cruz Metro. Transit District), 99563.8 (Los Angeles County Metro. Transportation Authority), and 102406 (Sacramento Regional Transit District) of the P.U.C.
[7] Trial Court Interpreter Employment and Labor Relations Act (Sections 71800 *et seq.* of the Gov. Code), Trial Court Emeployment Protection and Governance Act (Sections 71600 *et seq.* of the Gov. Code), Orange County Transit District Act (Sections 40000 *et seq.* of the PUC), and Santa Clara Valley Transportation Authority (Sections 100300 *et seq.* of the PUC).
[8] Sections 3519.5 (Dills Act), 3524.72 (Judicial Council Employer-Employee Relations Act), 3543.6 (Educational Employment Relations Act), 3599.70 (Legislature Employer-Employee Relations Act), and 3571.1 (Higher Education Employer-Employee Relations Act) of the Gov. Code, and Sections 28859 (San Francisco Bay Area Rapid Transit District Act), 98170 (Santa Cruz Metro. Transit District), 99563.8 (Los Angeles County Metro. Transportation Authority), and 102406 (Sacramento Regional Transit District) of the P.U.C.
[9] Sections 3500 et seq. (MMBA) of the Gov. Code, and ref. fn. 4.
[10] Sections 3507 *et seq., ibid.*

COMMENTS:

1) Dual Referral

The committee is informed that this bill also is referred to the Assembly Committee on Judiciary.

2) Other Important Information for the Committee

The committee is informed that this measure is the second attempt by proponents to: (a) establish a certain public policy with respect to employee rights prescribed by this bill; (b) reopen existing collectively bargained agreements entered into before January 1, 2025, specifically to address strike prohibition or secondary/sympathy strike prohibition clauses pursuant to the meet and confer process; and, (c) apply a future prohibition against such clauses from being included in collectively bargained agreements entered into before that date, that expire, among other provisions.

The current bill is not identical to Assembly Bill 504 (Reyes, 2023) as previously considered by this committee; however, its intended purposes and potential effects remain the same. While being considered by the Senate last year, that bill was amended and advanced to the Governor for consideration. The provisions of the current bill before the committee are identical to Assembly Bill 504 (*id.)* as vetoed by the Governor who intimated that:

> *"Unfortunately, thus bill is overly broad in scope and impact. The bill has the potential to seriously disrupt or even halt the delivery of critical public services, particularly in places where public services are co-located. This could have significant, negative impacts on a variety of government functions including academic operations for students, provision of services in rural communities where co-location of government agencies is common, and accessibility of a variety of safety net programs for millions of Californians."*

Given the Governor's remarks regarding the prior bill that, *"... this bill is overly broad in scope and impact…,"* along with specific stated concerns relating to the same, questions exist as to the rationale for identical provisions again being proposed given the Governor's veto statement and whether changes to its provisions, should this bill advance beyond this committee, may result in a different outcome.

In addition, among the Governor's concerns, the committee also is informed that, should this bill become law, its breadth and scope may have an effect on both employers of the Legislature and their ability to negotiate such clauses in collective bargaining agreements in the future when the Legislature Employer-Employee Relations Act becomes operative on July 1, 2026, and if so, what impacts this may have on the Legislature, Members thereof, and their ability to fully perform its/their constitutional duties in the event of a legislative employee strike or secondary strike.

3) Background: Need for the Bill

Information provided by the author states that, "[the] right to collectively bargain and strike are fundamental democratic rights of Americans. The NLRA gives private sector employees the right to strike and further specifies that nothing in the Act can "interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right." Like the federal law, California has enacted laws giving public sector workers the right to strike. The PERB has affirmed that public sector employees have the statutorily protected right to strike and that public employees that go on strike are protected from discipline by an employer for participation."

Similar to the rationale provided by the author of the prior bill relating to labor strife at the University of California (UC) in 2022, information provided by the current author regarding this bill further states that, "…an estimated 48,000 graduate workers, postdoctoral scholars, and academic researchers represented by the United Auto Workers (UAW) began contract negotiations with the UC for living wages, child care subsidies, and job security. After negotiations stalled, UAW members went on strike in the largest higher education strike in the nation's history. During the 40-day strike, unions representing non-UC unions, such as United Parcel Service (UPS) drivers and construction workers, were able to honor the picket lines and cease work serving the UC. However, certain UC workers represented by other campus unions, such as Teamsters 2010 and UC-AFT, were unable to honor the picket lines and had to continue work for the UC. Contract clauses prohibiting workers from respecting picket lines were pushed by the UC to prevent workers from standing in solidarity with their fellow union members.

"The purpose of a strike is to compel an employer to negotiate with workers over wages, working conditions, and other issues like child care and paid leave. When wages and benefits increase for one set of workers, it raises the floor for all workers at the same employer. Not only does this benefit workers, their families, and the community, but it also protects against inequality across job classifications. But, when workers are forced to cross picket lines it undermines the ability of strikers to bring employers to the table and can lead to protracted labor disputes."

4) California Public Sector Collective Bargaining: Purposes and Core Mechanics Under the Various Acts

As previously stated, the core purposes or principles of the various public sector employer-employee relations acts 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 agreement that is formally executed as a CBA or MOU.

Thus, achieving the agreement (i.e., an enforceable contract) is identical to the common law principles of the formation of a contract (i.e., offer, acceptance, and exchange of consideration among, and by, the parties).

Here, to achieve an agreement assumes that the collective bargaining process and negotiation strategy or tactics used by both parties (i.e., employer and labor organization) are in good faith and neither party is striving to reach an impasse, nor the employer driving negotiations in a manner ultimately to be able to unilaterally implement (also commonly referred to by employee organizations as "impose") what might be considered by the organization as an unfair or objectionable contract, which ultimately could lead to the fomenting of, or impetus to, a strike or other form of workplace stoppage or slowdown disruption by the aggrieved employee organization and its members.[11] It also assumes that through good faith efforts by both parties, reasonable minds can prevail towards achieving agreement.

5) A Prohibition Against Strikes or Secondary/Sympathy Strikes is Negotiable Within California Public Sector Collective Bargaining

The Supreme Court and various other California judicial decisions have held that every public employee has a right to participate in a strike, unless it is statutorily prohibited, or unless there has been a clear showing that the strike poses a substantial and immediate threat to public health and safety. "The right to strike is fundamental to the viability of a labor union," and that therefore, "strikes by public employees are not unlawful at common law …." (*County Sanitation Dist. No. 2 v. Los Angeles County Employees' Assn.* (1985) 38 Cal.3d 564, 586). The exceptions to the right to strike are: (i) Firefighters (Section 1962 of the Labor Code, and supported by *County Sanitation District No. 2, ibid.*), (ii) Peace Officers (*City of Santa Ana v. Santa Ana Police Benevolent Association* (1989) 207 Cal.App.3d 1568.); and, essential employees (See *County Sanitation Dist. No. 2 (id.).)*

Although the right to strike is a protected activity, subject to certain exceptions or limitations regarding this right previously discussed, a prohibition against strikes or other similar activity that has been negotiated as part of a collectively bargaining agreement is a matter that, historically and modernly, is a widely acceptable collectively bargained item and practice in the California public sector by both parties to the agreement; and therefore, demonstrated to be within the bounds of the collective bargaining framework, as evidenced by CBAs or MOUs containing a waiver of such protected rights, discussed further below. This reasonably goes to follow that, the lack of a waiver of such protected rights being included in a collectively bargained agreement also is a matter that has been demonstrated to be within the collective bargaining framework. As to this latter point, for example, an agreement between the City of Colton and the Teamsters, Local 1932 does not include "no strike" provisions,[12] as well as an

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[11] See Section 3517.8 (b), *ibid*, for context regarding impasse in negotiations under the Dills Act.
[12] MOU between the City of Colton and the Teamsters, Local 1932 (General Employees Unit), effective July 1, 2021, through June 30, 2025.

agreement between the City of Colton and the International Brotherhood of Electrical Workers (IBEW), Local 47.[13]

6) Sympathy or Secondary Strikes and Recognizing a Picket Line

Generally, a sympathy strike (also commonly referred to as a "secondary strike") is when a labor organization or labor association engage in a strike in support of another employee organization involved in a labor dispute even though the first union is not engaged in a labor dispute with the employer. For example: Clerical personnel are not engaged in a labor dispute with their public employer; however, the mechanics of the same employer are engaged in a labor dispute and are on strike, and may be participating in a picket line. The administrative personnel join the strike and picket line in support of the mechanics who are on strike. The action of the administrative personnel is a secondary strike in which the action itself, is an expression of sympathy for, and in support of, their aggrieved employee-colleagues.

In sum, a secondary strike is a "solidarity action" among employee organizations and their members in support of the cause of another. In many instances, organized employees may or may not choose to cross a picket line of another employee organization or its members engaged in a strike, and/or encourage others to not do the same, where the striking employees are outside of the workplace to verbally and visually inform others that a labor dispute has occurred. Although the prior example offers a simplified explanation of a sympathy strike, participation in such strikes are not limited to a single or same employer. For example, existing law under the Dills Act and the MMBA grant public employees the right to "…participate in the activities of employee organizations...."[14] Such participation includes the statutory right to strike as well as the right to engage in a sympathy strike, and individual employees have the right to honor a picket line. Moreover, a California court of appeal has held that the Educational Employment Relations Act protects not only an employee's activities on behalf of their own union, but also the employee's activities on behalf of a different union representing a different bargaining unit. Here, the court analogized Section 3543 of the Government Code to Section 7 of the NLRA, and adopted the private sector standard that an employee in one union is protected when engaging in activity on behalf of another union.[15]

Although determined to be a protected right, such rights may be waived. It is noted that the waiver of a statutory right must be clear and unmistakable. At times, the terms of an agreement may be ambiguous; thereby, leaving the parties to determine the meaning or effect of a term or terms, or requiring them to resort to litigation or interest arbitration for example, to determine the meaning or effect of the term or terms within an agreement. In the absence of a clear and unmistakable provision in a CBA or MOU that prohibits sympathy strike activity, a general "no

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[13] MOU between the City of Colton and the IBEW, Local 47 (Water and Wastewater Divisions), effective July 1, 2021, through December 31, 2024.
[14] Sections 3515 (re: the Dills Act) and 3502 (re: the MMBA) of the Gov. Code.
[15] *McPherson v. Public Employment Relations Bd.* (1987) 189 Cal.App.3d 293, 308-311, reversing *Carlsbad Unified School Distr.* (1985) PERB Decision No. 529.

strike clause" that does not explicitly specify whether sympathy strikes are permitted, generally permits such activity. And, these same principles apply when a sympathy strike supports employees of a different employer. Where a "no strike clause" uses broad and imprecise terms such as, "other concerted activities" for example, and the employer claims that the parties mutually intended, by this phrasing, to prohibit sympathy strikes, the employer has the right to present evidence in support of its factual claim. Here, it is noted that the PERB has declined to find that a sympathy strike occurred where employees made individual decisions not to cross a picket line, and their union only informed them of their rights, without urging employees to strike in sympathy.[16]

7) Collective Bargaining: CBAs and MOUs Are Agreements (i.e., Contracts) that Include Contractual Obligations that Must be Performed by Both Parties Pursuant to the Terms of the Agreement

Such agreements between a public employer and employee organization contain numerous provisions that have been negotiated and agreed to by both parties. Such provisions cover those matters that are within the scope of representation (i.e., mandatory subjects of bargaining) which is limited to wages, hours, and other terms and conditions of employment.

While there are mandatory subjects of bargaining, there are also permissive subjects in which the parties may bargain over subject matters that are of mutual interest to both. Here, the parties do not have a duty to bargain over permissive subjects if one party declines, and such subjects cannot be insisted upon towards an impasse. Moreover, permissive subjects are not transmuted to mandatory subjects by inclusion in a CBA or MOU.

Many CBAs or MOUs include a provision or provisions in which employee organizations and their represented members are prohibited from engaging in a strike or other form of workplace stoppage or slowdown, including a sympathy strike during the term of the agreement. Generally, such provisions may be permissive subjects within bargaining, if they are not within the mandatary subjects of bargaining, and are commonly referred to as a "no strike" or "no secondary/sympathy strike" clause. Indeed, these provisions were included or can be found in a number of MOUs between the state and the various bargaining units of the state covered by the Dills Act,[17] as well as within a multitude of CBAs or MOUs throughout California local government jurisdictions.[18]

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[16] *SEIU Local 1021 v. City & County of San Francisco (*2017) PERB Decision No. 2536-M; *Oxnard Harbor District v. SEIU Local 998* (2004) PERB Decision No. 1580-M; *Regents of the Univ. of Cal. v. Cal. Nurses Assn.* (2004) PERB Decision NO. 1638-H (reversing General Counsel's dismissal of a charge alleging the sympathy strike of the union violated the "no strike clause" of the parties' agreement. PERB's decision allowed the employer, on remand, to provide bargaining history evidence showing that in drafting and agreeing to the clause, both parties intended the phrase "other concerted activities" to include sympathy strikes).

[17] State Bargaining Units, California Department of Human Resources.

[18] For example: City of Sacramento and IUOE, Local 39 Labor Agreement Covering All Employees In the Operations and Maintenance, Office and Technical, And Professional Units, effective 2021-2023; City of Sacramento and IUOE, Local 39 Labor Agreement Covering All Employees In the Operations and Maintenance,

Although a number of MOUs or CBAs contain similar provisions, alternately, an agreement between the City of Santa Clarita and SEIU Local 721, does not include provisions relating to strikes or other forms of a workplace stoppage or slowdown.[19] Although not as common as "no strike" provisions in CBAs or MOUs, there are a number of other agreements that also do not contain such provisions.

It is acknowledged that the prior examples of agreements that include "no strike" or other similar provisions, and those that do not include such provisions is not exhaustive given the multitude of such agreements that exist throughout local government (and, which does not include other sectors of California's public employment such as higher education, education, etc.), and also because there is no single central or centralized statewide statutory repository for all public sector CBAs or MOUs. Nevertheless, these examples may serve as indicia as to the likely prevalence that such provisions exist throughout state, local government, and public education CBAs or MOUs, and as evidence that the inclusion of such provisions in an agreement are negotiable.

It is important to note that the agreement, including a "no strike" or other similar clause in an agreement, have a finite date for which its terms are effective. Meaning, the agreement has a date certain in which its terms begin, apply to both parties, and end. Even though such agreements have a finite date and will expire on a specific date as agreed to among the parties, the Dills Act, for example, expressly states that if a memorandum of understanding (MOU) has expired; a new MOU has not been agreed to; and, the parties have not reached an impasse, the expired agreement must continue to give effect…, including any no strike provisions, until a new or successor agreement has been reached.[20]

8) Legislative Intrusion into the Collective Bargaining Process, including the Dills Act Process?

Because the mandatory subjects of collective bargaining within the scope of representation include wages, hours, and other terms and conditions of employment; and, the negotiation of a waiver of rights relating to strikes in a number of public sector MOUs or CBAs have been documented as evidence that such rights are negotiable and can be waived, the prohibitions against strike and/or sympathy strikes in such agreements that have been negotiated are within the public sector collective bargaining framework.

Previously enumerated under "Existing Law," the Legislature's role in the Dills Act collective bargaining process is as the ultimate authority of a labor agreement. That is, the Legislature retains ultimately authority to approve or reject agreements negotiated between the Governor and

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Office and Technical, And Professional Units, effective 2021-2023; MOU Between and For The City and County of San Francisco and Teamsters Local 856, San Francisco Building Inspectors, effective July 1, 2022, through June 30, 2024; MOU between Elk Grove Police Managers' Association and City of Elk Grove, effective July 1, 2022, through June 30, 2024; and, MOU between the City of Pomona and PCEA of Teamsters Local No. 1932, effective 2021 through 2023.

[19] MOU: City of Santa Clarita and SEIU Local 721, effective July 1, 2022, through June 30, 2025.

[20] Section 3517.8 (a) of the Gov. Code.

a State Bargaining Unit. Here, the Legislature can reject an agreement by rejecting the tentative agreement submitted to it for ratification, or not appropriating funds sufficient to effect (i.e. pay) the agreement's terms that it has already ratified.

While the Legislature has constitutional authority to make laws, including change or repeal existing laws, this bill may be viewed as legislative intrusion into the collectively bargaining arena, and in a manner which may offend and frustrate the express intents and purposes for which the various public sector collective bargaining statutes were originally enacted, and continue to exist.

9) Duplication of Existing Rights and Prohibitions Under Current Law for Public Employees and Employee Organizations

The provisions of this bill explicitly provide that it is must not be unlawful or a cause for discipline or other adverse action against a public employee, if the employee refuses to enter the property that is the site of primary labor dispute; perform work for the employer involved in such a dispute, or go through or work behind any primary picket line.

The various public sector explicitly prescribe the rights of public employees who choose to be organized; and therefore, covered by the applicable statute. As to these rights, public employees covered by these acts have a right to form, join, and participate in the activities of an employee organization. As previously discussed, the activities of an employee organization include, strikes and sympathy strikes/participating in picket lines. However, such rights may be waived in a CBA or MOU as agreed to among, and by, the parties to the agreement. It is also important to note that, generally, if a statute provides that the provisions of a MOU or CBA are controlling if a conflict exists between the statute and the provisions of an agreement, then the provisions of the agreement supersede the statute.

Because existing law expressly provides rights to "… participate in the activities of an employee organization...," the proposed rights prescribed by this bill may effectively be construed to be duplicative of existing law; and therefore, deemed as unnecessary. Such rights are not only prescribed by statute, but also historically supported by case law, and the decisions of the PERB.

10) Duplication of Existing Law Regarding Employee Organizations Informing Public Employees of their Rights

Among other things, this bill proposes to authorize a recognized employee organization to inform employees of their rights provided by its provisions. However, existing law, known as the Public Employee Communication Chapter (PECC), gives labor organizations as exclusive representatives of California's public employees specific rights designed to provide them with

meaningful access to, and the ability to effectively communicate with, their members.[21] The PECC is under the jurisdiction of the PERB.

Because this bill proposes to avail recognized employee organizations with certain rights relating to "informing" their members, where such "informing" is a communication which could be construed as covered under the PECC, this provision also may effectively be construed to be duplicative of existing law; and therefore, deemed as unnecessary.

11) Duplication of Public Employer Prohibitions in Existing Law?

As previously discussed and referenced, various public sector collective bargaining statutes explicitly make it unlawful for public employers covered by those acts to engage in specific activity relating to public employees.[22]

Because this bill proposes certain prohibitions relating to employer activity that intrude upon the existing statutory rights of the public employees covered by these acts and such prohibitions exist under current law, these provisions also may effectively be construed to be duplicative of existing law; and therefore, deemed as unnecessary.

12) The Role of the PERB: Unfair Labor Practice Charges

As stated under "Existing Law," the PERB is a quasi-judicial agency charged with administering the various statewide collective bargaining statutes, including the Dills Act and MMBA, among other statutes that involve employer-employee relations, rights, and prohibitions.

It is noted that information provided by the author notes that, non-UAW members were not permitted to participate in UAW's strike, due to "no strike" clauses in non-UAW member contracts. Here, since non-UAW member contracts waived their statutory right to strike, then its recognized exclusive representative is bound to honor the terms of the agreement. If, however, such organizations that waived such rights believe that the waiver was not made in good faith, they may bring an unfair practice charge claim to the PERB for resolution.

The PERB was expressly established to address charges of unfair labor practice, among other matters that involve public employer-employee relations within its jurisdiction. As such, allegations of an unfair labor practice charge should appropriately be filed as a complaint with the PERB against the specific public employer by the aggrieved party for resolution, consistent with the express purposes for which the PERB exists, and as provided by the provisions within the various statewide collective bargaining frameworks, as applicable.

Absent evidence that demonstrates whether such provisions in an agreement are repugnant, or that such an agreement is an adhesion contact, or its terms are unenforceable, or was made under some form of compulsion or fraud committed upon one party by the other to the agreement, it

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[21] Section 3555 *et seq.* of the Gov. Code.
[22] Ref. fn. 6.

may reasonably be presumed that the agreement was made in good faith by both parties. Although the circumstances regarding such a provision in an agreement that, in hindsight borne by one party who accepted the terms of the agreement and now disagrees with its terms because of its effect, may not necessarily rise to a level equating to such provisions in contracts being repugnant sufficient to statutorily force a renegotiation of these cognizable and specific terms of the agreement. Thus, to indirectly, but materially alter the various public sector collective bargaining frameworks, as proposed, may render the historical and practical intents and purposes of these statutes meaningless and tilt the scales in favor of one party over the other in public sector employer-employee relations that may substantially and negatively impact the provision of necessary public services to the public and administering of educational curricula to students throughout the state.

13) This Bill Excludes Some, But Not All, Peace Officers?

It is noted that the provisions of this bill recognize existing laws, judicial decisions, and decisions of the PERB regarding strikes by employees, including essential employees. However, where peace officers are prohibited following the court's decision in *City of Santa Ana (id.),* as proposed, this bill expressly identifies certain peace officers by statute to whom its provisions would not apply, and unambiguously omits other statutory peace officers.

Notwithstanding that there are provisions in this bill that recognize existing laws, judicial decisions, and decision of the PERB regarding strikes by employees, as proposed, the provisions that expressly enumerate some peace officers, but not others, may create ambiguity due to potential inconsistency relating to whether and how this bill applies to other statutory peace officers not expressly enumerated, and in consideration of *City of Santa Ana (id.).* Because of this, questions exist as to how the statute may be construed, and as a matter of public policy and public safety, the prudence of authorizing any statutory peace officer who provides public safety functions and enforce various laws to engage in a strike or *per se* strike that may jeopardize public safety, if the proposed statute were construed to be inconsistent with the judicial decision.

14) Where The Terms of Expired CBAs or MOUs Continue to have Effect, and Double-Edged Sword vs. Trade-Off

Among other provisions, the provisions of this bill require a reopening of an existing CBA or MOU, as provided, to negotiate matters specifically prescribed by this bill upon request of the employer or exclusive representatives. Provided that there is no meeting of the minds as to agreement, this bill effectively and prospectively prohibits "no strike" and "no secondary/sympathy" clauses from being included in a future CBA or MOU, also as prescribed.

To the extent that Section 3550.1 (e)(1) of this bill may conflict with existing statutory provisions in various public employer-employee relations statutes that expressly provide that an expired CBA or MOU must continue to have effect until a new agreement has been reached, questions exist as to how the statutory inconsistencies would be resolved should this proposed statute become effective.

In addition, this bill proposes to remove a negotiable item from collective bargaining; thus, prohibiting an employer and an exclusive representative from including the waiver of the proposed prescribed rights in a CBA or MOU. To the extent that an exclusive representative, through skilled negotiation during the collective bargaining process, employs granting the waiver of such rights as a means to achieve concessions or additional concessions from an employer to benefit its members, this bill would remove fully the exclusive representative's ability to do so in the future with respect to the waiver. Be that is it may, some exclusive representatives may believe that any concessions or additional concessions that may be gained from that proverbial "carrot," may be inferior in comparison to what may be gained through a strike and members of other exclusive representatives engaging in a solidarity action to support another.

15) Statement by the Author

The author states that, "[contract] clauses that prohibit workers from exercising the right to honor picket lines go against the values and public policy of the state. The right to honor a picket line is not just a democratic right, it is a matter of conscience for many Californians. It is a choice that people make according to what they believe is morally right. In light of recent employer actions, California needs to ensure public employees' right to honor and support strikes."

16) Comments by Supporters

Numerous employee organizations in support of this bill generally express that the right to collectively bargain and strike are fundamental democratic rights of Americans; California has enacted various laws expressly granting such rights; therefore, enabling them to exercise those rights; and, the PERB has affirmed these statutorily protected rights, including that public employees that go on strike are protected from discipline by an employer for participation.

They further generally express, among other things, that strikes are intended to compel a public employer negotiate with workers over matters within the scope of representation, and because these rights are enshrined, contract clauses that prohibit the exercise of these rights by public employees go against the values and public policy of this state. This bill will protect the rights of public sector workers.

17) Comments by Opponents

Numerous entities representing public employers generally express that, existing laws relating to public employer-employee relations ensure a fair process among employers and their employees; this bill would upend those laws and processes; impair a public agency's ability to provide services, including vital services such as healthcare, or in the event of a strike or sympathy strike, make contingency plans to reduce impacts on communities and individuals if an unknown number of public employees refuse to work; and, could have compounding effects on public agencies that are co-located, especially in rural communities where co-locations is common.

They further generally state that, public employers are not disrupting public employee rights to engage in protected activity, as state law establishes a framework governing those relations, and that this bill would upend those frameworks.

REGISTERED SUPPORT / OPPOSITION:

Support

California Labor Federation, AFL-CIO *(Co-sponsor)*
California Teamsters Public Affairs Council *(Co-sponsor)*
California Association of Professional Scientists, UAW
California Association of Psychiatric Technicians
California Federation of Teachers, AFL-CIO
California School Employees Association, AFL-CIO
California Teachers Association
Orange County Employees Association
Smart - Transportation Division
UAW Local 4811
UAW Region 6

Opposition

Association of California Healthcare Districts
California Association of Joint Powers Authorities
California Special Districts Association
California State Association of Counties
League of California Cities
Public Risk Innovation, Solutions, and Management
Rural County Representatives of California
University of California
Urban Counties of California

Analysis Prepared by: Michael Bolden / P. E. & R. / (916) 319-3957