
SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Dave Cortese, Chair
2023 - 2024 Regular

Bill No: SB 640 **Hearing Date:** April 19, 2023
Author: Portantino
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Urgency: No **Fiscal:** Yes
Consultant: Glenn Miles

SUBJECT: California State University: food service contracts and hotel development projects

KEY ISSUE

Should the state prohibit the Trustees of the California State University (CSU) from entering into a food service contract or undertaking a hotel development project unless the counterparty and the food service employer or hotel employer is party to a labor peace agreement with a labor organization?

ANALYSIS

Existing law:

- 1) Governs collective bargaining in the private sector under the federal National Labor Relations Act (NLRA) but leaves to the states the regulation of collective bargaining in their respective public sectors. (29 USC 151-169)
- 2) Provides that the NLRA contains no express preemption provision; however, two categories of state action are implicitly preempted: (1) laws that regulate conduct that is either protected or prohibited by NLRA (Garmon preemption), and (2) laws that regulate in an area Congress intended to leave unregulated or controlled by free play of economic forces (Machinists preemption). (National Labor Relations Act, § 1 et seq., 29 U.S.C.A. § 151 et seq.)
- 3) Does not, under the NLRA, “bar an employer from communicating the employers views on unions—even anti-union views—to his employees, but he cannot threaten employees with reprisals or promise them benefits in relation to unionization.” *NLRB v. Garry Mfg. Co.*, 630 F.2d 934, 938 (3d Cir. 1980) (citing *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969)); 29 U.S.C. § 158(c).
- 4) Requires any collective bargaining agreement between an employer and a labor organization to be enforceable at law or in equity, and provides that a breach of such collective bargaining agreement by any party thereto is subject to the same remedies, including injunctive relief, as are available on other contracts in the courts of this State. (Labor Code § 1126)
- 5) Provides that while the NLRA and the decisions of its National Labor Relations Board (NLRB) often provide persuasive precedent in interpreting state collective bargaining law, public employees generally have no collective bargaining rights absent specific statutory authority establishing those rights and are not subject to the NLRA. (29 USC 152)

- 6) 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 the Higher Education Employer-Employee Relations Act (HEERA) which provides a statutory framework to regulate labor relations between UC, the California State University (CSU), and the UC Hastings College of Law (Hastings) and their respective employees. (Government Code (GC) § 3500 et seq.)
- 7) Prohibits a public employer from deterring or discouraging public employees or applicants to be public employees from becoming or remaining members of an employee organization, or from authorizing representation by an employee organization, or from authorizing dues or fee deductions to an employee organization. (GC § 3550)
- 8) Prohibits a California higher education employer from imposing or threatening to impose reprisals on employees, discriminating or threatening to discriminate against employees, or otherwise interfering with, restraining, or coercing employees because of their exercise of rights guaranteed by HEERA. Nor may the employer 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. (GC § 3571)
- 9) Provides that the expression of any views, arguments, or opinions, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute, or be evidence of, an unfair labor practice under any provision of HEERA, unless such expression contains a threat of reprisal, force, or promise of benefit; provided, however, that the employer shall not express a preference for one employee organization over another employee organization. (GC § 3575.5)
- 10) Authorizes CSU's Trustees to enter into contracts, as specified, for the performance of acts or the furnishing of services, facilities, materials, goods, supplies, or equipment. (Education Code (ED) § 89036)
- 11) Requires the Trustees to prescribe policies and procedures for the acquisition of services, facilities, materials, goods, supplies, or equipment; and for the procedures to include competitive bids or proposals, as specified. (ED § 89036)

This bill:

- 1) Requires the Trustees to make as a condition precedent to entering into each food service contract or hotel development project, that the counterparty and each food service employer or hotel employer be party to a labor peace agreement with unions representing or seeking to represent the corresponding food service or hotel employees, as specified.
- 2) Specifies that any food service contract or hotel development project in which the CSU or a CSU auxiliary organization has a proprietary interest and that is performed pursuant to a contract entered into or awarded by an auxiliary organization is subject to the requirement to have a labor peace agreement.

- 3) Defines “food service contract” to mean a contract with the Trustees or the CSU for a cafeteria or food and beverage outlet on or serving a CSU campus.
- 4) Defines “food service employer” to mean a person who employs employees performing work at a food service venue under a food service contract.
- 5) Defines “hotel” to mean any hotel, motel, bed and breakfast inn, or other similar commercial transient lodging establishment, and shall include any contracted, leased, or sublet premises connected to or operated in conjunction with the hotel’s purpose.
- 6) Defines “hotel development project” to mean a real estate development project that includes or is planned to include one or more hotels and in which the Trustees or the CSU have a proprietary interest.
- 7) Defines “hotel employer” to mean any person who owns, controls, or operates a hotel in a hotel development project and who employs employees at that hotel.
- 8) Defines “labor organization” to mean any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and that exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.
- 9) Defines “labor peace agreement” to mean a written agreement with a labor organization that contains, at a minimum, a provision prohibiting the labor organization and its members from engaging in any picketing, work stoppage, boycott, or other economic interference with food service or hotel operations in which the Trustees have a proprietary interest.
- 10) Defines “person” to mean an individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, business trust, estate, trust, association, joint venture, agency, or other legal or commercial entity, whether domestic or foreign.
- 11) Defines “Auxiliary organization” to mean those entities that are included as auxiliary organizations pursuant to EDC § 89901, which include: entities where a CSU official serves as a director; entities established and/or operated by CSU students; entities which operate a commercial service for the benefit of a CSU campus or property; entities whose purpose benefits CSU or whose leadership is provided by CSU, as specified; entities whose purpose is to promote CSU or receive gifts for the CSU’s benefit, as specified, or whose leadership is provided by CSU, as specified; and any entity designated by CSU as an auxiliary entity.
- 12) Defines “proprietary interest” to mean a financial interest in the form of expected lease revenues, expected debt service on a loan provided by the trustees, underwriting or guaranteeing the development of a project or loans related to the project, or any other significant economic and nonregulatory interest in a project that may be adversely affected by labor-management conflict.

COMMENTS**1. Background**

The antecedents of this bill appear to originate in a defunct plan by California State University Northridge's (CSUN) non-profit auxiliary corporation, The University Corporation (TUC), to construct a hotel and conference center on the CSUN campus.¹ TUC operates several divisions including CSUN's food service division. Apparently, TUC contracted out food service operations to a private company during the pandemic and may have intended to do the same with hotel operations upon completion of the planned hotel and conference center development project.

According to media reports the project experienced problems with its first developer but TUC found another development partner who came under severe national criticism from members of Congress and union officials for its management practices related to other projects.² CSUN and TUC subsequently suspended the project.

This bill prohibits, among other things, projects like CSUN's unless CSUN or TUC (or their counterparts at other CSU campuses) require their service contract counterparties to have a labor peace agreement with the unions representing or seeking to represent the contractors' employees.

A labor peace agreement often limits how or if an employer can discuss its views on whether its workforce should organize into a union. In exchange, a union may agree not to strike or picket the employer. Union representatives may seek such provisions in a labor peace agreement because they view employer communications to employees regarding collective organizing activities as unlawful intimidation and interference with the employees' constitutional right to association given the asymmetry in employer- employee power and a violation of employer neutrality as envisioned by the NLRA. This view generally comports with California labor policy, and where it can effect such neutrality, this Legislature has generally done so.

Unsurprisingly, employers often vigorously assert first amendment speech rights to express their views on collective organizing actions to their workforce and effectively cite the NLRA's own accommodation to those rights provided that doing so contains no threat of reprisal or force or promise of benefit.³

One can see this tension in the NLRA in current organizing campaigns involving high profile companies like Starbucks and Amazon, where employers refuse to renounce communication activities presumably aimed at discouraging employees from organizing while union representatives accuse the employers of unfair labor practices before the NLRB.

¹ <https://csunshinetoday.csun.edu/university-news/csun-forms-public-private-partnership-to-develop-on-campus-hotel-and-restaurant/>

² <https://sundial.csun.edu/142155/news/csun-forced-to-start-over-on-campus-hotel/>;
<http://www.golocalworchester.com/news/ris-picerno-and-other-military-housing-violators-targeted-by-presidential-c/>;
<https://www.gpb.org/news/2020/09/02/us-sen-elizabeth-warren-pushes-for-answers-georgia-dorm-operator>.

³ 29 USC § 158 (c); N.L.R.B v. Gissel Packing Co., 395 U.S. 575;

Certain companies like Starbucks are unlikely to agree to a labor peace agreement. Thus, this law would likely prevent them from providing services at CSU campuses. Moreover, since the bill applies broadly to CSU auxiliary entities (like TUC) and to their proprietary interests, which include lease revenues, any CSU retail lessee providing cafeteria or food and beverage services would be subject to the bill's requirements.

Nevertheless, the committee's understanding from the author's office is that the author primarily intends to prevent CSU from contracting out food and hotel service jobs that represented CSU employees should perform. The committee is unclear how this bill would accomplish that particular objective since even modified by this bill the law would continue to permit CSU or its auxiliaries to contract out food and hotel services provided that the counterparty agrees to a labor peace agreement. Some large food service providers that service educational institutions not only have labor peace agreements but also have collective bargaining agreements with a workforce represented by important unions. This bill could result in aiding those companies win CSU food and hotel service contracts or could promote collective organizing at companies that currently are not unionized.

The author has also communicated to the committee that there have been several strikes at educational institutions across the country and that the bill is essential to minimize future labor disruptions as much as possible.

Meanwhile, the CSU Chancellor's office has communicated to the committee that CSU has various concerns about possible unintended effects the bill may have, for example, on one campus' student hospitality program that utilizes students as part of their curricula in the campus' food and hotel operations or on the potential deterrent effect the bill could have on proceeding with any future hotel or other auxiliary entity-driven development projects which otherwise could contribute revenues to CSU campuses. It is further confused on how the bill aids in labor peace among CSU employees when those employees are guaranteed collective bargaining rights under HEERA or how the bill protects against contracting out CSU employee positions when it does not implicate existing public contract law provisions.

Since the committee has received no letters of support or opposition for this bill, it is difficult to assess its impact and importance to California labor and education policy.

2. Need for this bill?

According to the author,

“In 2022, there were over 20 strikes across the country – with the largest higher education strike happening in California. Siting unfair labor practices, wanting better pay and benefits, and job security, University of California (UC) academic workers (many whom are graduate students themselves) made the decision to strike. Strikes bring work stoppage, and for California's higher education system, this meant canceled classes, delayed grading, interrupted course finals season and wasted tax dollars.”

“As CSU campuses continue to grow and evolve, more campus will develop campus plans with more hospitality and food service needs. Because the State of California has a proprietary interest in the activities and business of CSUs, it is essential to minimize future labor disruptions as much as possible through labor peace agreements.”

3. Proponent Arguments

According to the author,

“In entering a labor peace agreement, the CSU, its auxiliaries, and associated labor organizations will then have mechanisms in place to avoid disruptive actions and ensure the State and its interests can continue fulfilling its mission continuously and without interruption.”

4. Opponent Arguments:

None received.

5. Dual Referral:

The Senate Rules Committee referred this bill to the Senate Education Committee, which heard and passed the bill, and to the Senate Labor, Public Employment and Retirement Committee.

6. Prior Legislation:

SB 1444 (Durazo, 2020), was substantially identical to this bill. The Senate Rules Committee referred the bill to the Senate Education which held the bill without a hearing during the Covid pandemic.

SUPPORT

None received

OPPOSITION

None received

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