

ASSEMBLY THIRD READING  
AB 1582 (Ortega)  
As Introduced May 18, 2026  
Majority vote

## SUMMARY

Amends the Higher Education Employer-Employee Relations Act (HEERA) by adding other prohibited acts of a higher education employer relating to arbitration and violation of a collective bargaining agreement (CBA), among other provisions.

### Major Provisions

- 1) Make it an unfair practice charge (UPC) for a higher education employer to engage in the following acts regarding arbitrations over violations of a CBA that relate to the contracting out of bargaining unit work:
  - a) Fail or refuse to schedule an arbitration within a reasonable period of time after the union has appealed the matter to arbitration, unless the exclusive representative has placed the grievance in abeyance, or the parties have agreed to do so.
  - b) Fail or refuse to implement an arbitration award or remedy in full within 60 days of a decision on the merits.
  - c) Circumvent or disregard an arbitrator's decision by extending or renewing the contract, or entering one or more new contracts for the same or similar services, or otherwise violating the same contract term or terms already interpreted by the arbitrator to prohibit the employer's conduct. As to these matters, the Public Employment Relations Board (PERB) is prohibited from deferring repeat offenses to subsequent arbitration proceedings.
  - d) Fail or refuse or remedy, in whole or in part, an arbitrator's decision that remands the remedy to be determined by the parties. As to these matters, the Public Employment Relations Board (PERB) must defer to the merits of the arbitration award, but must not defer disputes regarding the remedy to subsequent arbitration proceedings absent agreement of the parties.
- 2) Establish that remedies for the above-described violations must include the charging party's attorney's fees and costs, and expressly provide that nothing in this proposed statute limits the PERB's broad remedial authority.

## COMMENTS

*What is an Unfair Practice Under the HEERA?*

The HEERA expressly prescribes unlawful acts by a higher education employer as well as acts by a labor union or employee organization. A violation of the express prohibitions thereunder may result in a complaint being filed with the PERB. Violations and resulting complaints filed are commonly referred to as an "unfair practice charge (UPC)" or "unfair labor practice (ULP)" in which grievance allegations are filed against the other party. *As to HEERA-covered employers*, it is explicitly unlawful for the employer to engage in certain acts. Similarly, for

*HEERA-covered unions/employee organizations*, it also is unlawful for them to engage in certain acts.

### *How Does the PERB Enforce the HEERA?*

Pursuant to the HEERA, the PERB has exclusive jurisdiction as to the initial determination of a UPC and appropriate remedies. Any HEERA-covered employer or HEERA-covered union/employee organization may file a UPC; however, they must do so within six months after the occurrence of the alleged violation. The PERB does not have authority to enforce agreements and is prohibited from issuing complaints on any charges alleging violation of an agreement, unless the charge also would constitute a UPC. When the PERB finds that a UPC has been committed, it has authority to issue remedies, including cease and desist orders or affirmative remedies, such as employee reinstatement with or without backpay, to effectuate the policies under the HEERA. The rulings issued by the PERB serve to give meaning to the HEERA.

### *What is Arbitration, Including Under the HEERA?*

"Arbitration may be defined as a method for settlement of disputes and differences between two or more parties, whereby such disputes are submitting to the decision of one or more persons specially nominated for the purpose, either instead of having recourse to an action at law, or, by order of the court, after such action has been commenced." John P.H. Soper, *"A Treatise on the Law and Practice of Arbitrations and Awards 1."* (David M. Lawrence ed., 5<sup>th</sup> ed. 1935.) In the California public sector, arbitration is a dispute-resolution process where the disputing parties choose one or more neutral third parties to make a final and binding decision resolving the dispute. Typically, the parties to the dispute may chose a third party directly by mutual agreement, or indirectly, such as by agreeing to have an arbitration organization select the third party.

As to "grievance arbitration," the HEERA authorizes the higher education employer and exclusive representative of employees to include procedures in a memorandum of understanding (MOU) for final and binding arbitration of disputes under the MOU, and the arbitration award that results from the grievance is final and binding on all parties involved and is enforceable in a court of law. Where a party is aggrieved by another party's failure to proceed to arbitration pursuant to the terms of the MOU, the aggrieved party may move for a court order enforcing the agreement and directing arbitration. However, the PERB is prohibited from enforcing agreements between parties, and has no jurisdiction over grievances alleging a violation of the agreement, unless the violation, itself, would constitute a UPC.

### *The PERB and Deferral of Arbitration*

Although existing law expressly authorizes the PERB to assume jurisdiction over contractual grievance regarding an unfair practice, traditionally, it has avoided exercising jurisdiction by deferring claims of a contractual breach and an unfair practice to arbitration. Here, the PERB adopted a standard (or doctrine) by the National Labor Relations Board (NLRB) where disputes under a collective bargaining agreement (CBA) should be deferred to arbitration for resolution. (*Collyer Insulated Wire* (1971) 192 NLRB 837.) ("*Collyer.*")

In the PERB decision *UC* [University of California] (*San Francisco*) (1984) PERB Decision No. Ad-139-H, the PERB held that under the HEERA, a deferral of a charge to arbitration before

either party invoked grievance resolution procedures is appropriate only when the arbitration procedure in question is a product of collective bargaining, and not a unilaterally implemented policy. If a negotiated arbitration procedure exists, the PERB will defer the unfair practice dispute to arbitration where: (i) the dispute falls within the scope of the stable CBA and there is no enmity by the respondent employer toward the employee's or union's exercise of protected rights in bringing the unfair practice charge; (ii) the respondent is ready and willing to proceed to arbitration and has waived any contract-based procedural defenses; and (iii) the contract and its meaning are at the center of the dispute. (*Dry Creek Elementary School Dist.* (1980) PERB Decision No. Ad-81a (Educational Employment Relations Act (EERA) case adopting the deferral standard promulgated by the NLRB in *Collyer*.)

Although the *Collyer* standard pursuant to an NLRB decision requires that the respondent be willing to proceed to arbitration as a condition precedent to deferral, in *Lake Elsinore*, the PERB rejected the argument raised by the union that the employer was unwilling to cooperate with the arbitration process, rendering the contractual grievance resolution procedure futile. (*Lake Elsinore School Dist.* (1987) PERB No. Decision No. 646.) Where the university refused to submit matters involving mixed claims to the arbitrator, the PERB held the union's sole remedy was to seek a court order enforcing the arbitration agreement, as it is authorized to do so under Gov. Code Section 3589(b) of the HEERA. Based on this rationale, the PERB deferred the case.

Please refer to the policy committee analysis for a full discussion of this bill.

### **According to the Author**

"For decades, the [UC] has contracted out its service work. In recent years, UC agreed to an arbitration process to resolve disagreements over contracting out. UC is now consistently violating that agreed upon arbitration process. As a result, when the workers win at arbitration, UC doesn't follow the arbitrator's decisions. [This bill] restores the integrity of arbitration. It does so by making it an unfair labor practice for UC to fail to schedule arbitrations in a timely manner or to circumvent or disregard an arbitrator's decision by extending or renewing an existing contract, entering into one or more new contracts for the same or similar services, or otherwise violating the same contract term or terms already interpreted by an arbitrator to prohibit the employer's conduct. The bill also requires make-whole relief for a violation of these provisions to include the charging party's attorney's fees and costs. And, if an arbitrator or PERB finds the employer to be a repeat offender, the bill would authorize PERB to award civil penalties."

### **Arguments in Support**

Among other things, the American Federation of State, County and Municipal Employees, Local 3299, states that, "[f]or decades [the] UC has used the practice of contracting out jobs and replacing us with cheap labor. The State Auditor has documented that [the] UC's private contractors pay less, provide fewer benefits, and mistreat workers with impunity. When we have challenged contracting out practices and prevailed in arbitration, a process agreed upon in our collective bargaining agreements, [the] UC has responded with disrespect and defiance. They extend the same prohibited contracts, enter into new agreements for identical services, and simply wait for us to go back through the arbitration process again — at our own expense and at the cost of years of delay. This cycle of deliberate noncompliance renders our collective bargaining agreements meaningless and makes a mockery of the arbitration system that both parties agreed to honor."

In part, the Federated University Police Officers Association expresses that, "...this is a matter of advocating for fair labor practices and institutional accountability in California's higher education systems. This bill also protects public sector jobs by preventing universities from using "contracting out" as a loophole to bypass legally binding union agreements. By introducing a civil penalty for repeated violations and requiring the employer to pay the workers' attorneys' fees and cost, would essentially make it financially unfeasible for institutions to break labor laws as a 'cost of doing business.'"

The Peace Officers Research Association expresses, "[The protections and grievance processes in the HEERA] are intended to ensure that agreements reached between employers and employee organizations are respected and enforced. [This bill] strengthens these protections by clarifying that it is an unfair practice for a higher education employer to circumvent or disregard an arbitrator's decision regarding the contracting out of bargaining unit work. The bill prohibits employers from renewing or entering into new contracts for the same or similar services after an arbitrator has determined that the contracting violates the collective bargaining agreement. It also establishes appropriate remedies for repeated violations, including civil penalties and the recovery of attorney's fees and costs. By reinforcing the authority of arbitration decisions and discouraging repeated violations of negotiated agreements, [this bill] helps ensure that collective bargaining agreements are honored and that the dispute resolution process functions as intended."

### **Arguments in Opposition**

Among other things, the University of California states, "[This bill] will impede [the] UC's ability to meet emergency situations in our hospitals, clinics, and campuses. The bill also includes a disproportionate penalty structure that creates unacceptable levels of financial and operational risk for the University. The University values collective bargaining and works in good faith with its labor partners to resolve disputes. These longstanding partnerships have historically proven effective at resolving complex issues internally, utilizing robust grievance and arbitration procedures already established within our agreements. However, [this bill would significantly alter the language of the University's mutually agreed-upon collective-bargaining agreements by creating and imposing new statutory liabilities and penalties tied to arbitration decisions. In particular, the proposed legislation would have a significant impact on the University and AFSCME's collective-bargaining agreements and would grant remedies that far exceed the language the parties agreed to at the bargaining table in the last round of contract negotiations.

"The bill also authorizes civil penalties of \$1,000 per day for employers deemed "repeat offenders" and requires mandatory attorney's fees and costs. For a large and decentralized institution such as [the] UC, these provisions would create substantial and unpredictable financial exposure. [The] UC already generally prohibits contracting for Covered Services through Regents Policy 5402 and Article 5, which requires that the University contract out sparingly, to address emergencies, and other limited exceptions. By creating a broad standard for contracting for the 'same or similar services,' [this bill] could effectively make an arbitration decision at one campus a systemwide compliance trigger, exposing other campuses to liability for routine procurement decisions made in good faith. Costly repeat violations would hinge on ambiguous language in [the bill], so that any alleged Article 5 violation could establish a subsequent dispute as a repeat violation.

"The uncertainty created by [this bill] would effectively move the University towards an across-the-board ban on contracting for Covered Services. The narrow exceptions in policy exist for a reason. UC campuses and medical centers must retain operational flexibility to contract for services when necessary to maintain continuity in essential operations, including health system staffing, laboratory support, and emergency response, to serve our students and patients."

## FISCAL COMMENTS

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

- 1) Ongoing General Fund cost exposure of an unknown amount, possibly in the tens of millions to low hundreds of millions annually, for the UC, cumulatively across five medical centers statewide associated with staffing shortages resulting from an arbitration decision prohibiting temporary contracted workers.

According to the UC Office of the President, if operating room and outpatient room staffing capacity led to a single medical center closing 10 rooms of each type in response to an arbitration decision regarding contracting for short-term nursing and technical support staff, then the bill would result in approximately \$42.7 million in net patient revenue loss.

- 2) Ongoing General Fund costs of an unknown but potentially significant amount, likely ranging from the low millions to tens of millions of dollars, for the UC in additional unbudgeted legal expenditures across the UC's ten campuses and five medical centers.
- 3) Ongoing General Fund costs of \$250,000 annually for PERB to arbitrate UPC cases alleging repeated violations instead of deferring them back to the arbitration process.

## VOTES

### **ASM PUBLIC EMPLOYMENT AND RETIREMENT: 7-0-0**

**YES:** McKinnor, Lackey, Alanis, Boerner, Garcia, Nguyen, Michelle Rodriguez

### **ASM APPROPRIATIONS: 13-2-0**

**YES:** Wicks, Aguiar-Curry, Calderon, Caloza, Fong, Mark González, Krell, Pacheco, Pellerin, Sharp-Collins, Solache, Ta, Tangipa

**NO:** Hoover, Dixon

## UPDATED

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