

## Senate Bill No. 402

### CHAPTER 906

An act to add Section 1281.1 to, and to add Title 9.5 (commencing with Section 1299) to Part 3 of, the Code of Civil Procedure, relating to public employment relations.

[Approved by Governor September 29, 2000. Filed  
with Secretary of State September 29, 2000.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 402, Burton. Employer-employee relations: law enforcement officers and firefighters.

Existing law provides that employees of the fire departments and fire services of the counties, cities, cities and counties, districts, and other political subdivisions of the state have the right to self-organization, to form, join, or assist labor organizations, and to present grievances and recommendations regarding wages, salaries, hours, and working conditions to the governing body, but do not have the right to strike or to recognize a picket line of a labor organization while in the course of the performance of their official duties.

This bill would provide that if an impasse has been declared after the representatives of an employer and firefighters or law enforcement officers have exhausted their mutual efforts to reach agreement over economic issues as defined within the scope of arbitration, and the parties are unable to agree to the appointment of a mediator, or if a mediator is unable to effect settlement of a dispute between the parties, the employee organization may request, by written notification to the employer, that their differences be submitted to an arbitration panel. Each party would designate one member of the panel, and those members would designate the chairperson of the panel pursuant to specified procedures.

The arbitration panel would meet with the parties within 10 days after its establishment or any additional periods to which the parties agree, make inquiries and investigations, hold hearings, and take any other action, including further mediation, that the panel deems appropriate. Five days prior to the commencement of the arbitration panel's hearings, each of the parties would be required to submit a last best offer of settlement on the disputed issues as a package. The panel would decide the disputed issues separately, or, if mutually agreed, by selecting the last best offer package that most nearly complies with specified factors. There would then be a waiting period of 5 days prior to public disclosure, or a longer period if agreed to, during which the parties could mutually amend the decision. At the

end of that period, the arbitration panel's decision, as amended by the parties, would be disclosed, and would be binding upon the parties.

This bill would provide that unless otherwise agreed to by the parties, the costs of the arbitration proceeding and the expenses of the arbitration panel, except those of the employer representative, shall be borne by the employee organization.

The bill would define employer to include any entity, except the State of California, acting as an agent of a local agency.

*The people of the State of California do enact as follows:*

SECTION 1. Section 1281.1 is added to the Code of Civil Procedure, to read:

1281.1. For the purposes of this article, any request to arbitrate made pursuant to subdivision (a) of Section 1299.4 shall be considered as made pursuant to a written agreement to submit a controversy to arbitration.

SEC. 2. Title 9.5 (commencing with Section 1299) is added to Part 3 of the Code of Civil Procedure, to read:

TITLE 9.5. ARBITRATION OF FIREFIGHTER AND LAW  
ENFORCEMENT OFFICER LABOR DISPUTES

1299. The Legislature hereby finds and declares that strikes taken by firefighters and law enforcement officers against public employers are a matter of statewide concern, are a predictable consequence of labor strife and poor morale that is often the outgrowth of substandard wages and benefits, and are not in the public interest. The Legislature further finds and declares that the dispute resolution procedures contained in this title provide the appropriate method for resolving public sector labor disputes that could otherwise lead to strikes by firefighters or law enforcement officers.

It is the intent of the Legislature to protect the health and welfare of the public by providing impasse remedies necessary to afford public employers the opportunity to safely alleviate the effects of labor strife that would otherwise lead to strikes by firefighters and law enforcement officers. It is further the intent of the Legislature that, in order to effectuate its predominant purpose, this title be construed to apply broadly to all public employers, including, but not limited to, charter cities, counties, and cities and counties in this state.

It is not the intent of the Legislature to alter the scope of issues subject to collective bargaining between public employers and employee organizations representing firefighters or law enforcement officers.

The provisions of this title are intended by the Legislature to govern the resolution of impasses reached in collective bargaining



between public employers and employee organizations representing firefighters and law enforcement officers over economic issues that remain in dispute over their respective interests. However, the provisions of this title are not intended by the Legislature to be used as a procedure to determine the rights of any firefighter or law enforcement officer in any grievance initiated as a result of a disciplinary action taken by any public employer. The Legislature further intends that this title shall not apply to any law enforcement policy that pertains to how law enforcement officers interact with members of the public or pertains to police-community relations, such as policies on the use of police powers, enforcement priorities and practices, or supervision, oversight, and accountability covering officer behavior toward members of the public, to any community-oriented policing policy or to any process employed by an employer to investigate firefighter or law enforcement officer behavior that could lead to discipline against any firefighter or law enforcement officer, nor to contravene any provision of a charter that governs an employer that is a city, county, or city and county, which provision prescribes a procedure for the imposition of any disciplinary action taken against a firefighter or law enforcement officer.

1299.2. This title shall apply to all employers of firefighters and law enforcement officers.

1299.3. As used in this title:

(a) “Employee” means any firefighter or law enforcement officer represented by an employee organization defined in subdivision (b).

(b) “Employee organization” means any organization recognized by the employer for the purpose of representing firefighters or law enforcement officers in matters relating to wages, hours, and other terms and conditions of employment within the scope of arbitration.

(c) “Employer” means any local agency employing employees, as defined in subdivision (a), or any entity, except the State of California, acting as an agent of any local agency, either directly or indirectly.

(d) “Firefighter” means any person who is employed to perform firefighting, fire prevention, fire training, hazardous materials response, emergency medical services, fire or arson investigation, or any related duties, without respect to the rank, job title, or job assignment of that person.

(e) “Law enforcement officer” means any person who is a peace officer as defined in Section 830.1 of, subdivisions (b) and (d) of Section 830.31 of, subdivisions (a), (b), and (c) of Section 830.32 of, subdivisions (a), (b), and (d) of Section 830.33 of, subdivisions (a) and (b) of Section 830.35 of, subdivision (a) of Section 830.5 of, and subdivision (a) of Section 830.55 of, the Penal Code, without respect to the rank, job title, or job assignment of that person.



(f) “Local agency” means any governmental subdivision, district, public and quasi-public corporation, joint powers agency, public agency or public service corporation, town, city, county, city and county, or municipal corporation, whether incorporated or not or whether chartered or not.

(g) “Scope of arbitration” means economic issues, including salaries, wages and overtime pay, health and pension benefits, vacation and other leave, reimbursements, incentives, differentials, and all other forms of remuneration. The scope of arbitration shall not include any issue that is protected by what is commonly referred to as the “management rights” clause contained in Section 3504 of the Government Code. Notwithstanding the foregoing, any employer subject to this title that is not exempt under Section 1299.9 may supersede this subdivision by adoption of an ordinance that establishes a broader definition of “scope of arbitration.”

1299.4. (a) If an impasse has been declared after the parties have exhausted their mutual efforts to reach agreement over matters within the scope of arbitration, and the parties are unable to agree to the appointment of a mediator, or if a mediator agreed to by the parties is unable to effect settlement of a dispute between the parties after his or her appointment, the employee organization may, by written notification to the employer, request that their differences be submitted to an arbitration panel.

(b) Within three days after receipt of the written notification, each party shall designate a person to serve as its member of an arbitration panel. Within five days thereafter, or within additional periods to which they mutually agree, the two members of the arbitration panel appointed by the parties shall designate an impartial person with experience in labor and management dispute resolution to act as chairperson of the arbitration panel.

(c) In the event that the parties are unable or unwilling to agree upon a third person to serve as chairperson, the two members of the arbitration panel shall jointly request from the American Arbitration Association a list of seven impartial and experienced persons who are familiar with matters of employer-employee relations. The two panel members may as an alternative, jointly request a list of seven names from the California State Mediation and Conciliation Service, or a list from either entity containing more or less than seven names, so long as the number requested is an odd number. If after five days of receipt of the list, the two panel members cannot agree on which of the listed persons shall serve as chairperson, they shall, within two days, alternately strike names from the list, with the first panel member to strike names being determined by lot. The last person whose name remains on the list shall be chairperson.

(d) Employees as defined by this chapter shall not be permitted to engage in strikes that endanger public safety.



(e) No employer shall interfere with, intimidate, restrain, coerce, or discriminate against an employee organization or employee because of an exercise of rights under this title.

(f) No employer shall refuse to meet and confer or condition agreement upon a memorandum of understanding based upon an employee organization's exercise of rights under this title.

1299.5. (a) The arbitration panel shall, within 10 days after its establishment or any additional periods to which the parties agree, meet with the parties or their representatives, either jointly or separately, make inquiries and investigations, hold hearings, and take any other action including further mediation, that the arbitration panel deems appropriate.

(b) For the purpose of its hearings, investigations, or inquiries, the arbitration panel may subpoena witnesses, administer oaths, take the testimony of any person, and issue subpoenas duces tecum to require the production and examination of any employer's or employee organization's records, books, or papers relating to any subject matter before the panel.

1299.6. (a) The arbitration panel shall direct that five days prior to the commencement of its hearings, each of the parties shall submit the last best offer of settlement as to each of the issues within the scope of arbitration, as defined in this title, made in bargaining as a proposal or counterproposal and not previously agreed to by the parties prior to any arbitration request made pursuant to subdivision (a) of Section 1299.4. The arbitration panel, within 30 days after the conclusion of the hearing, or any additional period to which the parties agree, shall separately decide on each of the disputed issues submitted by selecting, without modification, the last best offer that most nearly complies with the applicable factors described in subdivision (c). This subdivision shall be applicable except as otherwise provided in subdivision (b).

(b) Notwithstanding the terms of subdivision (a), the parties by mutual agreement may elect to submit as a package the last best offer of settlement made in bargaining as a proposal or counterproposal on those issues within the scope of arbitration, as defined in this title, not previously agreed to by the parties prior to any arbitration request made pursuant to subdivision (a) of Section 1299.4. The arbitration panel, within 30 days after the conclusion of the hearing, or any additional period to which the parties agree, shall decide on the disputed issues submitted by selecting, without modification, the last best offer package that most nearly complies with the applicable factors described in subdivision (c).

(c) The arbitration panel, unless otherwise agreed to by the parties, shall limit its findings to issues within the scope of arbitration and shall base its findings, opinions, and decisions upon those factors traditionally taken into consideration in the determination of those



matters within the scope of arbitration, including but not limited to the following factors, as applicable:

- (1) The stipulations of the parties.
- (2) The interest and welfare of the public.
- (3) The financial condition of the employer and its ability to meet the costs of the award.
- (4) The availability and sources of funds to defray the cost of any changes in matters within the scope of arbitration.
- (5) Comparison of matters within the scope of arbitration of other employees performing similar services in corresponding fire or law enforcement employment.
- (6) The average consumer prices for goods and services, commonly known as the Consumer Price Index.
- (7) The peculiarity of requirements of employment, including, but not limited to, mental, physical, and educational qualifications; job training and skills; and hazards of employment.
- (8) Changes in any of the foregoing that are traditionally taken into consideration in the determination of matters within the scope of arbitration.

1299.7. (a) The arbitration panel shall mail or otherwise deliver a copy of the decision to the parties. However, the decision of the arbitration panel shall not be publicly disclosed, and shall not be binding, for a period of five days after service to the parties. During that five-day period, the parties may meet privately, attempt to resolve their differences and, by mutual agreement, amend or modify the decision of the arbitration panel.

(b) At the conclusion of the five-day period, which may be extended by the parties, the arbitration panel's decision, as may be amended or modified by the parties pursuant to subdivision (a), shall be publicly disclosed and shall be binding on all parties, and, if specified by the arbitration panel, be incorporated into and made a part of any existing memorandum of understanding as defined in Section 3505.1 of the Government Code.

1299.8. Unless otherwise provided in this title, Title 9 (commencing with Section 1280) shall be applicable to any arbitration proceeding undertaken pursuant to this title.

1299.9. (a) The provisions of this title shall not apply to any employer that is a city, county, or city and county, governed by a charter that was amended prior to January 1, 2001, to incorporate a procedure requiring the submission of all unresolved disputes relating to wages, hours, and other terms and conditions of employment within the scope of arbitration to an impartial and experienced neutral person or panel for final and binding determination, provided however that the charter amendment is not subsequently repealed or amended in a form that would no longer require the submission of all unresolved disputes relating to wages, hours, and other terms and conditions of employment within the



scope of arbitration to an impartial and experienced neutral person or panel, for final and binding determination.

(b) Unless otherwise agreed to by the parties, the costs of the arbitration proceeding and the expenses of the arbitration panel, except those of the employer representative, shall be borne by the employee organization.

SEC. 3. The Legislature finds and declares that the duties of local agency employer representatives under this act are substantially similar to the duties required under present collective bargaining procedures and therefore the costs incurred by the local agency employer representatives in performing those duties are not reimbursable as state-mandated costs.

