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6 CALIFORNIA STATE ASSOCIATION OF
COUNTIES AND LEAGUE OF CALIFORNIA CITIES

8 STATE OF CALIFORNIA

9 PUBLIC EMPLOYMENT RELATIONS BOARD

10 LOMPOC POLICE OFFICERS
11 ASSOCIATION,

12 Charging
13 Party/Respondent,

14 v.

15 CITY OF LOMPOC,

16 Respondent/Charging
17 Party.

Case No.: LA-CO-100-M; LA-CE-555-M;
LA-CE-564-M; LA-CE-585-M

**JOINT INFORMATIONAL BRIEF BY
CALIFORNIA STATE ASSOCIATION OF
COUNTIES AND LEAGUE OF
CALIFORNIA CITIES**

18
19 **I. INTRODUCTION**

20 Pursuant to PERB Regulation 32210, the California State Association of Counties (CSAC) and
21 the League of California Cities hereby jointly submit this informational brief.¹ CSAC represents
22 California's fifty-eight (58) counties before the California Legislature, administrative agencies and the
23 federal government. All of California's fifty-eight (58) counties are dues-paying members of CSAC.
24 CSAC places a strong emphasis on educating the public about the value and need for county programs
25 and services. While California's 58 counties - ranging from Alpine with a little more than 1,200 people,
26 to Los Angeles with more than 10 million - are diverse, many common issues exist.

27
28 ¹ A joint petition to submit an informational brief is being filed concurrently with this brief.

1 The League of California Cities (League) is an association of California city officials who work
2 together to enhance their knowledge and skills, exchange information, and combine resources so that
3 they may influence policy decisions that affect cities. The League’s mission is to expand and protect
4 local control for cities through education and advocacy. The League believes that local self-governance
5 is the cornerstone of democracy. One of the League’s top priorities is also to develop and strengthen
6 long-term relationships and partnerships with new and returning state policy-makers and other
7 stakeholders with common interests to better serve and enhance the quality of life for all Californians.

8 All counties and cities in California operate under the collective bargaining framework
9 established by the Meyers-Milias-Brown Act (“MMBA”) in 1968. Under the MMBA, counties and
10 cities in California have the right to adopt reasonable rules and regulations governing the administration
11 of employer-employee relations. (Gov. Code, §3507, 3507.1.) Among the rules and regulations that
12 counties and cities may adopt are rules and regulations to determine appropriate bargaining units. (Gov.
13 Code, §3507, 3507.1.) Utilizing the rights accorded by the MMBA, many of California’s counties and
14 cities have recognized appropriate bargaining unit(s) consisting of peace officers under Penal Code
15 830.1 and other employees. Such “mixed-units” have been in existence since the advent of the MMBA.
16 Accordingly, the issue before the Public Employment Relations Board (“PERB” or “Board”) is one of
17 keen interest to the members of CSAC and the League. CSAC and the League jointly submit this
18 informational brief to urge PERB to follow the plain language of the MMBA which provides that
19 jurisdiction over peace officers is properly before the courts, and not PERB.

20 **II. ISSUE BEFORE THE BOARD**

21 As set forth in the notice of oral argument dated May 2, 2013, the issue to be considered by the
22 Board during oral argument on June 13, 2013, is the following:

23 In light of Government Code section 3511, does PERB have the authority
24 to issue a remedial order applicable to a (mixed) bargaining unit that
25 includes non-peace officer and peace officer classifications? If so, what is
26 the source and scope of PERB’s authority; and what is the relevance of the
27 peace officer exclusion as set forth in Government Code section 3511 as it
28 applies to mixed units?

1 III. ARGUMENT

2 A. PERB Does Not Have Jurisdiction Over Peace Officers in Mixed-Units

3 1. The MMBA Intentionally Excluded Peace Officers From PERB’s Jurisdiction

4 The MMBA was enacted in 1968. (Gov. Code, §3500 et. seq.) As enacted, administration and
5 enforcement of the MMBA was not ceded to PERB, but rather given to local entities and/or the courts.
6 (*See Coachella Valley Mosquito and Vector Control Dist. v. California Public Employment Relations*
7 *Bd.* (2005) 35 Cal.4th 1072, 1077.) In 2000, SB 739 was enacted which fundamentally changed the
8 structure of the MMBA. Specifically, Government Code section 3509 was added which gave PERB
9 jurisdiction to enforce and remedy unfair practices under the MMBA. (Gov. Code, § 3509, added by
10 Stats.2000, ch. 901, § 8.)

11 Also adopted as part of SB 739 was Government Code section 3511, which provides that:

12 The changes made to Sections 3501, 3507.1, and 3509 of the Government
13 Code by legislation enacted during the 1999–2000 Regular Session of the
14 Legislature shall not apply to persons who are peace officers as defined in
15 Section 830.1 of the Penal Code.

16 As initially introduced on February 24, 1999, SB 739 did not contain the language currently found in
17 Government Code section 3511. (Exhibit A.)² It was not until August 30, 1999, that the language in
18 Government Code section 3511 was added to the bill. (Exhibit B.) At that time, the Legislative
19 Counsel’s Digest described the change as follows:

20 (8) The provisions of this bill would not apply to any recognized
21 employee organization representing peace officers, as defined in specified
22 provisions of existing law. (Exhibit B.)

23 By its plain language, the term “recognized employee organization representing peace officers” covers a
24 unit comprised of both peace officers and non-peace officers.

25
26 _____
27 ² Pursuant to Evidence Code section 452, subdivision (c), petitioners request that the Board take judicial notice of the
28 Legislative History of Legislative History of S.B. 739, 1999-2000 Legislative Session, including the original version of the
bill introduced on February 24, 1999, and an amended version of the bill introduced on August 30, 1999. Copies of those
documents are attached as Exhibit A and B, respectively, to this informational brief.

1 Contrary to the characterization of Lompoc Police Officers Association (LPOA), there is no
2 basis to believe that the exclusion of peace officers from PERB's jurisdiction is an inadvertent flaw in
3 the MMBA. While peace officers cannot go to PERB to enforce the MMBA, they have the right to go
4 directly to the superior court. (*See, e.g., Claremont Police Officers Ass'n v. City of Claremont* (2006) 39
5 Cal.4th 623.) Any change to this structure must come from the Legislature where all stakeholders can
6 participate.

7 **2. The Demise of SB 656 Does Not Support LPOA's Position**

8 In its exceptions, the LPOA places great weight on the introduction and demise of SB 656 in
9 2009. For example, LPOA asserts that the legislative history of SB 656 demonstrates that the
10 Legislature understood that PERB has jurisdiction over mixed-units, but not over the individuals
11 themselves. LPOA's reliance on SB 656 is misplaced.

12 First, caution should be exercised in considering the legislative history of SB 656 since the bill
13 was vetoed by the Governor. However, to the extent the legislative history of SB 656 is considered, it
14 actually supports the position of petitioners. (*See Freedom Newspapers, Inc. v. Orange County*
15 *Employees Retirement System* (1993) 6 Cal.4th 821, 832-833 (Legislature's adoption of subsequent,
16 amending legislation that is ultimately vetoed may be considered as evidence of the Legislature's
17 understanding of the unamended, existing statute).) Specifically, the portion of the bill analysis cited by
18 LPOA merely states that it has been "noted" that PERB has asserted jurisdiction over cases that affect a
19 mixed-unit while individual peace officers may file grievances directly with the "California Supreme
20 Courts." (*See Exhibit C, attached to LPOA's exceptions.*) The bill analysis cites no legal authority.
21 More important, the bill analysis does not indicate that this statement constitutes the Legislature's
22 understanding of current law. On that important issue, the bill analysis states:

23 [I]t has been noted that there are certain bargaining units which are
24 comprised of both miscellaneous employees and employees with peace
25 officer status, and the existing statute is not clear as to the jurisdiction of
26 those employees' disputes. (*Ibid.*)

1 Indeed, the argument in support of the bill asserts:

2 A problem arises when a peace officer is a part of a "mixed unit", of both
3 peace officers and miscellaneous employees (such Dispatchers,
4 Community Services Officers and Crime Investigators). It is unclear in the
5 writing of this who would have jurisdiction over these disputes. (*Ibid.*)

6 LPOA's exceptions completely ignore these statements in the bill analysis. Further, LPOA ignores the
7 portion of the bill analysis setting forth the argument presented by CSAC in opposition to SB 656.
8 CSAC asserted that the current structure "where peace officer members of a mixed bargaining unit
9 resolve their disputes in court while miscellaneous employees go before PERB" does not pose a
10 significant problem. (*Ibid.*)

11 Finally, LPOA's reliance on SB 656 ignores the Governor's veto message. The veto message
12 from the Governor stated:

13 To the Members of the California State Senate:

14 I am returning Senate Bill 656 without my signature.

15 While I am supportive of employee rights, this bill would create an
16 inconsistent treatment of non-peace officer employees in unions with
17 peace officer majorities and similar non-peace officer employees that are
18 in unions without a peace officer majority. I do not believe a sufficient
19 case can be made why one group should circumvent the existing dispute
20 resolution process that currently exists through the Public Employment
21 Relations Board. For these reasons, I am unable to sign this bill.

22 The veto message clearly focused on the fact that SB 656 would treat bargaining units with a majority of
23 peace officers differently from those without a majority. Thus, the focus of the Governor's veto was on
24 the requirement of majority status, and not on other issues. For all these reasons, contrary to LPOA's
25 assertions, the legislative history of SB 656 actually supports the petitioners' position that PERB does
26 not have jurisdiction over peace officers in a mixed-unit.

27 **B. Public Policy Mandates Against Giving Peace Officers "Two Bites of the Apple"**

28 As a matter of fundamental public policy, CSAC and the League urge the Board to reject the

1 exceptions advanced by LPOA. While the current situation whereby peace officers must go to court
2 while other employees must go to PERB may not be ideal, it is the structure created by the MMBA.
3 Most important, it is fair. Each set of employees gets one “bite of the apple,” whether in court or before
4 PERB.

5 Under the position advanced by LPOA, peace officers in a mixed-unit would be in the unique
6 situation of having “two bites of the apple.” If the peace officers in the mixed-unit believe that they
7 have a better chance before PERB, they can have the non-peace officer members of the mixed-unit
8 advance an unfair practice charge. On the other hand, if the peace officers in a mixed-unit would rather
9 be in court, they can pursue that avenue themselves. Such a situation is untenable and violates
10 fundamental principles of fairness.

11 To the extent the focus is on the remedial powers of the Board, the same principles of fairness
12 dictate that PERB cannot apply a remedial order to peace officers in a mixed-unit. Such a holding
13 would circumvent the restrictions of Government Code section 3511 and render that section
14 meaningless. Again, while it may seem incongruent to require peace officer members in a mixed-unit to
15 seek remedies in a different forum than other employees in the same unit, that is the structure adopted by
16 the Legislature. Any change to that structure should come from the Legislature through the legislative
17 process in which all stakeholders can participate.

18 Accordingly, CSAC and the League jointly urge the Board to hold that PERB does not have
19 jurisdiction to issue a remedial order applicable to peace officers in a mixed-unit.

20 Dated: May 24, 2013

RENNE SLOAN HOLTZMAN SAKAI LLP

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22
23 By: _____



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CERTIFICATE OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SACRAMENTO

I, the undersigned, am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 428 J Street, Suite 400, Sacramento, California, 95814.

On May 24, 2013, I served the following document(s) by the method indicated below:

**JOINT INFORMATIONAL BRIEF BY CALIFORNIA STATE ASSOCIATION OF
COUNTIES AND LEAGUE OF CALIFORNIA CITIES**

- by placing the document(s) listed above in the sealed envelope(s) and by causing messenger delivery of the envelope(s) to the person(s) at the address(es) set forth below. I am readily familiar with the business practice of my place of employment with respect to the collection and processing of correspondence, pleadings and notices for hand delivery.
- by placing ALL document(s) listed above in a sealed envelope(s) and consigning it to an express mail service for guaranteed delivery on the next business day following the date of consignment to the address(es) set forth below.
- by placing the document(s) listed above in a sealed envelope(s) with postage thereon fully prepaid, in the United States mail at Sacramento, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited in the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- by transmitting via facsimile on this date from the fax number (916) 258-8801 the document(s) listed above to the fax number(s) set forth below. The transmission was reported complete and without error. The transmitting fax machine complies with Cal. R. Ct. 2003(3)

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on May 24, 2013, at Sacramento, California.



Melissa R. Wolf

Exhibit A

Introduced by Senator Solis

February 24, 1999

An act to add Sections 3505.4 and 3507.6 to the Government Code, relating to public employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 739, as introduced, Solis. Local Government Labor Relations Improvement Act of 1999.

(1) The Meyers-Miliias-Brown Act provides that a public agency may adopt reasonable rules and regulations after consultation in good faith with representatives of an employee organization for the administration of employer-employee relations under the act and that the rules and regulations may include provisions for procedures for the resolution of disputes involving wages, hours, and other terms and conditions of employment. Pursuant to this provision of existing law, various public agencies have adopted an employee relations ordinance.

This bill would authorize a public agency and a recognized employee organization that enters into a written memorandum of understanding covering matters within the scope of representation to include in the memorandum of understanding procedures for final and binding arbitration of disputes that may arise involving the interpretation, application, or violation of the memorandum of understanding. This bill would provide that if the written memorandum of understanding does not include binding arbitration procedures, both parties to the memorandum of

understanding may agree to submit these disputes to final and binding arbitration pursuant to the rules of the board.

This bill would require complaints alleging violations of the Meyers-Milias-Brown Act or of any rules and regulations for the administration of employer-employee relations adopted by a public agency to be processed as an unfair practice charge by the board. This bill would require any dispute as to the selection of an appropriate recognized employee organization under the act or any rules and regulations adopted by a public agency to be submitted to the board for resolution. This bill would provide that a decision of the board rendered pursuant to these provisions shall be subject to judicial review, as specified. To the extent that this bill would impose new requirements on local agency employers, this bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

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

1 SECTION 1. This act shall be known and may be cited
2 as the Local Government Labor Relations Improvement
3 Act of 1999.

4 SEC. 2. Section 3505.4 is added to the Government
5 Code, to read:

6 3505.4. (a) A public agency and a recognized
7 employee organization that enters into a written
8 memorandum of understanding covering matters within



1 the scope of representation may include in the
2 memorandum of understanding procedures for final and
3 binding arbitration of disputes that may arise involving
4 the interpretation, application, or violation of the
5 agreement. If the written memorandum of
6 understanding does not include binding arbitration
7 procedures, both parties to the memorandum of
8 understanding may agree to submit any dispute involving
9 the interpretation, application, or violation of the
10 memorandum of understanding to final and binding
11 arbitration pursuant to the rules of the Public
12 Employment Relations Board.

13 (b) Any party to a binding arbitration agreement
14 described in subdivision (a) may file suit to compel
15 arbitration, to enforce an arbitration award, or to set aside
16 an arbitration award under the procedures set forth in
17 Sections 3548.5 to 3548.8, inclusive.

18 SEC. 3. Section 3507.6 is added to the Government
19 Code, to read:

20 3507.6. (a) Each complaint alleging one or more
21 violations of this chapter or of any rules and regulations
22 adopted by a public agency pursuant to Section 3507 shall
23 be processed as an unfair practice charge by the Public
24 Employment Relations Board. The initial determination
25 as to whether the charge of unfair practice is justified and,
26 if so, the appropriate remedy necessary to effectuate the
27 purposes of this chapter, shall be a matter within the
28 exclusive jurisdiction of the board.

29 (b) Any dispute as to the selection of an appropriate
30 recognized employee organization under this chapter or
31 any rules and regulations adopted by a public agency
32 pursuant to Section 3507 shall be submitted to the board
33 for resolution.

34 (c) In adjudicating any dispute submitted under
35 subdivisions (a) and (b), the board shall have all of the
36 powers set forth in Section 3541.3.

37 (d) Any decision of the board rendered pursuant to
38 subdivisions (a) and (b) shall be subject to judicial review
39 under the procedures set forth in Section 3520.

1 SEC. 4. Notwithstanding Section 17610 of the
2 Government Code, if the Commission on State Mandates
3 determines that this act contains costs mandated by the
4 state, reimbursement to local agencies and school
5 districts for those costs shall be made pursuant to Part 7
6 (commencing with Section 17500) of Division 4 of Title
7 2 of the Government Code. If the statewide cost of the
8 claim for reimbursement does not exceed one million
9 dollars (\$1,000,000), reimbursement shall be made from
10 the State Mandates Claims Fund.

O



Exhibit B

AMENDED IN ASSEMBLY AUGUST 30, 1999

AMENDED IN ASSEMBLY AUGUST 16, 1999

AMENDED IN SENATE MAY 24, 1999

AMENDED IN SENATE MAY 13, 1999

AMENDED IN SENATE MAY 6, 1999

SENATE BILL

No. 739

Introduced by Senator Solis
(Coauthor: Senator Murray)
(Principal coauthor: Assembly Member Wildman)

February 24, 1999

An act to amend Sections 3501, 3502.5, 3505.2, and 3508.5 of, to amend, renumber, and add Section 3509 of, to amend and renumber Section 3510 of, to add ~~Section 3505.4~~ *Sections 3505.4 and 3511* to, and to repeal and add Section 3507.1 of, the Government Code, relating to public employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 739, as amended, Solis. Local public employees: agency shop arrangement, binding arbitration, and the Public Employment Relations Board.

(1) Under the Meyers-Miliias-Brown Act, an agency shop agreement may be negotiated between a public agency and a recognized public employee organization.

This bill would additionally authorize an agency shop arrangement without a negotiated agreement upon a signed petition by 30% of the employees in the applicable bargaining

unit requesting an agency shop agreement and majority approval of the employees voting on the issue. *The bill would provide that the petition may be filed only after good faith negotiations, not to exceed 30 days, have taken place between the parties in an effort to reach an agreement.* The bill would require the Division of Conciliation of the Department of Industrial Relations to conduct the election if the parties cannot agree within a prescribed time period on the selection of a neutral person or entity to conduct the election.

(2) Under the act, if after a reasonable period of time, representatives of the public agency and the recognized employee organization fail to reach agreement, the public agency and the recognized employee organization together may agree upon the appointment of a mediator mutually agreeable to the parties. The costs of the mediation are borne equally by the public agency and the recognized employee organization.

This bill would authorize either the public agency or recognized employee organization to request mediation under these circumstances, in which case the parties are to agree to the appointment of a mediator or request a mediator from the Division of Conciliation of the Department of Industrial Relations and the cost of private mediation would be borne equally by the parties. The bill would authorize, as an alternative to mediation, the public agency and the recognized employee organizations to mutually agree and implement rules adopted by the public agency on resolving an impasse on negotiating an agreement. To the extent that the bill would require local agencies to mediate and that the costs of the mediation borne by public employers would be increased, this bill would impose a state-mandated local program.

(3) Existing law provides that if agreement is reached by the representatives of the public agency and a recognized employee organization, they are to jointly prepare a written memorandum of understanding.

This bill would authorize a public agency and a recognized employee organization to include in the agreement procedures for final and binding arbitration of disputes involving the interpretation, application, or violation of the



agreement. If the agreement does not include final and binding arbitration procedures for all grievances under the agreement, each party would be authorized to submit the grievances not covered to an impartial arbitrator selected as specified. This bill would specify that where a party fails or refuses to proceed to arbitration, the aggrieved party may initiate proceedings pursuant to specified provisions of existing law for a court order directing that arbitration proceed.

(4) Existing law establishes the Public Employment Relations Board in state government as a means of resolving disputes and enforcing the statutory duties and rights of employers and employees under the Educational Employment Relations Act, the Higher Education Employer-Employee Relations Act, and the Ralph C. Dills Act.

This bill would expand the jurisdiction of the Public Employment Relations Board to include resolving disputes and enforcing the statutory duties and rights of employers and employees under the Meyers-Milias-Brown Act and would specifically include resolving disputes alleging violation of rules and regulations adopted by a public agency, other than the County of Los Angeles and the City of Los Angeles, pursuant to the Meyers-Milias-Brown Act that are consistent with the act concerning unit determinations, representations, recognition, and elections.

(5) The California Supreme Court held in the case of County Sanitation No. 2 v. Los Angeles County Employees' Assn. (1985) 38 Cal.3d 564 that the common law prohibition against public sector strikes should not be recognized, that it is not unlawful for public employees to engage in a concerted work stoppage for the purposes of improving their wages or conditions of employment, unless it has been determined that the work stoppage poses an imminent threat to public health or safety.

This bill would expressly adopt the holding of the California Supreme Court and apply it for the purposes of the Meyers-Milias-Brown Act.

(6) Existing law provides that in the absence of local procedures for resolving disputes on the appropriateness of a

unit of representation, upon the request of any of the parties, the dispute is to be submitted to the Division of Conciliation of the Department of Industrial Relations.

This bill would require any dispute under rules adopted by a public agency on the appropriateness of a unit, exclusive or majority representation, and election procedures, upon request of a party, to be submitted to the board for resolution. The board would make its determinations based on the rules adopted by the public agency. The bill would establish procedures under which exclusive recognition to an employee organization would be granted.

(7) The act specifies that nothing in its provisions affects the rights of a public employee to authorize a dues deduction from his or her salary or wages pursuant to specified provisions of law.

This bill would additionally require a public employer to deduct the payment of dues or service fees to a recognized employee organization as required by an agency shop arrangement between the recognized employee organization and the public employer. It would also provide that agency fee obligations shall continue in effect as long as the employee organization is the recognized bargaining representative, notwithstanding the expiration of any agreement between the public employer and the recognized employee organization.

(8) The provisions of this bill would not apply to any recognized employee organization representing peace officers, as defined in specified provisions of existing law.

(9) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.



Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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

1 SECTION 1. Section 3501 of the Government Code is
2 amended to read:
3 3501. As used in this chapter:
4 (a) "Employee organization" means any organization
5 which includes employees of a public agency and which
6 has as one of its primary purposes representing those
7 employees in their relations with that public agency.
8 (b) "Recognized employee organization" means an
9 employee organization which has been formally
10 acknowledged by the public agency as an employee
11 organization that represents employees of the public
12 agency.
13 (c) Except as otherwise provided in this subdivision,
14 "public agency" means every governmental subdivision,
15 every district, every public and quasi-public corporation,
16 every public agency and public service corporation and
17 every town, city, county, city and county and municipal
18 corporation, whether incorporated or not and whether
19 chartered or not. As used in this chapter, "public agency"
20 does not mean a school district or a county board of
21 education or a county superintendent of schools or a
22 personnel commission in a school district having a merit
23 system as provided in Chapter 5 (commencing with
24 Section 45100) of Part 25 and Chapter 4 (commencing
25 with Section 88000) of Part 51 of the Education Code or
26 the State of California.
27 (d) "Public employee" means any person employed
28 by any public agency, including employees of the fire
29 departments and fire services of counties, cities, cities and
30 counties, districts, and other political subdivisions of the
31 state, excepting those persons elected by popular vote or
32 appointed to office by the Governor of this state.
33 (e) "Mediation" means effort by an impartial third
34 party to assist in reconciling a dispute regarding wages,
35 hours and other terms and conditions of employment



1 between representatives of the public agency and the
2 recognized employee organization or recognized
3 employee organizations through interpretation,
4 suggestion and advice.

5 (f) "Board" means the Public Employment Relations
6 Board established pursuant to Section 3541.

7 SEC. 2. Section 3502.5 of the Government Code is
8 amended to read:

9 3502.5. (a) Notwithstanding Section 3502, or any
10 other provision of this chapter, or any other law, rule, or
11 regulation, an agency shop agreement may be negotiated
12 between a public agency and a recognized public
13 employee organization which has been recognized as the
14 exclusive or majority bargaining agent pursuant to
15 reasonable rules and regulations, ordinances, and
16 enactments, in accordance with this chapter. As used in
17 this chapter, "agency shop" means an arrangement that
18 requires an employee, as a condition of continued
19 employment, either to join the recognized employee
20 organization, or to pay the organization a service fee in
21 an amount not to exceed the standard initiation fee,
22 periodic dues, and general assessments of the
23 organization.

24 (b) In addition to the procedure prescribed in
25 subdivision (a), an agency shop arrangement between
26 the public agency and a recognized employee
27 organization that has been recognized as the exclusive or
28 majority bargaining agent shall be placed in effect,
29 without a negotiated agreement, upon (1) a signed
30 petition of 30 percent of the employees in the applicable
31 bargaining unit requesting an agency shop agreement
32 and an election to implement an agency fee
33 arrangement, and (2) the approval of a majority of
34 employees who cast ballots and vote in favor of the
35 agency shop agreement. *The petition may only be filed*
36 *after good faith negotiations, not to exceed 30 days, have*
37 *taken place between the parties in an effort to reach*
38 *agreement.* The election shall be conducted by the
39 Division of Conciliation of the Department of Industrial
40 Relations in the event that the public agency and the



1 recognized employee organization cannot agree within
2 10 days from the filing of the petition to select jointly a
3 neutral person or entity to conduct the election.

4 (c) Any employee who is a member of a bona fide
5 religion, body, or sect that has historically held
6 conscientious objections to joining or financially
7 supporting public employee organizations shall not be
8 required to join or financially support any public
9 employee organization as a condition of employment.

10 The employee may be required, in lieu of periodic dues,
11 initiation fees, or agency shop fees, to pay sums equal to
12 the dues, initiation fees, or agency shop fees to a
13 nonreligious, nonlabor charitable fund exempt from
14 taxation under Section 501(c)(3) of the Internal Revenue
15 Code, chosen by the employee from a list of at least three
16 of these funds, designated in a memorandum of
17 understanding between the public agency and the public
18 employee organization, or if the memorandum of
19 understanding fails to designate the funds, then to any
20 such fund chosen by the employee. Proof of the payments
21 shall be made on a monthly basis to the public agency as
22 a condition of continued exemption from the
23 requirement of financial support to the public employee
24 organization.

25 (d) An agency shop provision in a memorandum of
26 understanding that is in effect may be rescinded by a
27 majority vote of all the employees in the unit covered by
28 the memorandum of understanding, provided that: (1) a
29 request for such a vote is supported by a petition
30 containing the signatures of at least 30 percent of the
31 employees in the unit; (2) the vote is by secret ballot; (3)
32 the vote may be taken at any time during the term of the
33 memorandum of understanding, but in no event shall
34 there be more than one vote taken during that term.
35 Notwithstanding the above, the public agency and the
36 recognized employee organization may negotiate, and by
37 mutual agreement provide for, an alternative procedure
38 or procedures regarding a vote on an agency shop
39 agreement. The procedures in this subdivision are also



1 applicable to an agency shop agreement placed in effect
2 pursuant to subdivision (b).

3 (e) *An agency shop arrangement shall not apply to*
4 *management, confidential, or supervisory employees.*

5 (f) Every recognized employee organization that has
6 agreed to an agency shop provision or is a party to an
7 agency shop arrangement shall keep an adequate
8 itemized record of its financial transactions and shall
9 make available annually, to the public agency with which
10 the agency shop provision was negotiated, and to the
11 employees who are members of the organization, within
12 60 days after the end of its fiscal year, a detailed written
13 financial report thereof in the form of a balance sheet and
14 an operating statement, certified as to accuracy by its
15 president and treasurer or corresponding principal
16 officer, or by a certified public accountant. An employee
17 organization required to file financial reports under the
18 Labor-Management Disclosure Act of 1959 covering
19 employees governed by this chapter, or required to file
20 financial reports under Section 3546.5, may satisfy the
21 financial reporting requirement of this section by
22 providing the public agency with a copy of the financial
23 reports.

24 SEC. 3. Section 3505.2 of the Government Code is
25 amended to read:

26 3505.2. (a) If after a reasonable period of time,
27 representatives of the public agency and the recognized
28 employee organization fail to reach agreement, the
29 public agency or the recognized employee organization
30 or recognized employee organizations may request
31 mediation. In that event, the parties shall agree to the
32 appointment of a mediator mutually agreeable to the
33 parties, or request a mediator from the Division of
34 Conciliation of the Department of Industrial Relations.
35 Costs of private mediation shall be divided one-half to the
36 public agency and one-half to the recognized employee
37 organization or recognized employee organizations.

38 (b) Notwithstanding subdivision (a), the public
39 agency and the recognized employee organization may
40 mutually agree and implement rules adopted by the



1 public agency on resolving an impasse on negotiating an
2 agreement. Nothing contained in this section shall be
3 deemed to supersede or preempt the provisions of local
4 charters or ordinances or rules adopted by a public
5 agency providing for interest arbitration as a method of
6 resolving impasses in contract negotiations.

7 SEC. 4. Section 3505.4 is added to the Government
8 Code, to read:

9 3505.4. (a) A public agency and a recognized
10 employee organization may include in the agreement
11 procedures for final and binding arbitration of disputes
12 that may arise involving the interpretation, application,
13 or violation of the agreement. If the agreement does not
14 include final and binding arbitration procedures for all
15 grievances under the agreement, the public agency or
16 employee organization that is a party to the agreement
17 may submit the grievances not covered by a final and
18 binding arbitration provision of the agreement to an
19 impartial arbitrator selected under rules of the board for
20 final and binding arbitration. The request for arbitration
21 may only be made by the party filing the grievance *and*
22 *only after good faith efforts by both parties, not to exceed*
23 *30 days, have taken place to resolve the dispute.* If the
24 parties cannot mutually agree on an arbitrator, an
25 impartial arbitrator shall be jointly selected by the public
26 agency and the recognized employee organization
27 striking names from a list of impartial arbitrators
28 experienced in labor-management relations submitted
29 by the board.

30 (b) Where a party fails or refuses to proceed to
31 arbitration as provided in subdivision (a), the aggrieved
32 party may initiate proceedings pursuant to Title 9
33 (commencing with Section 1280) of Part 3 of the Code of
34 Civil Procedure for a court order directing that the
35 arbitration proceed pursuant to the procedures provided
36 in this section. An arbitration award made pursuant to this
37 section, either under an agreement or under the rules of
38 the board, shall be final and binding upon the parties and
39 may be enforced by a court pursuant to Title 9
40 (commencing with Section 1280) of Part 3 of the Code of

1 Civil Procedure. Any court proceeding involving a
2 superior court or municipal court as an employer or party
3 shall be filed with the Court of Appeal.

4 SEC. 5. Section 3507.1 of the Government Code is
5 repealed.

6 SEC. 6. Section 3507.1 is added to the Government
7 Code, to read:

8 3507.1. (a) Exclusive recognition to an employee
9 organization based on a signed petition or authorization
10 cards shall be granted by the public employer upon a
11 showing by an employee organization that a majority of
12 the employees in the appropriate bargaining unit desires
13 this representation, unless another employee
14 organization has been previously recognized as an
15 exclusive or a majority representative. Exclusive or
16 majority representation shall be determined by signed
17 petition or authorization cards. In the event that the
18 public agency and the employee organization cannot
19 agree on a neutral party, the Division of Conciliation of
20 the Department of Industrial Relations shall verify
21 exclusive or majority status of the employee organization.

22 (b) Unit determinations and representation elections
23 shall be determined and processed in accordance with
24 rules adopted by a public agency in accordance with this
25 chapter. In a representation election, a majority of the
26 votes cast by the employees in the appropriate bargaining
27 unit shall be required.

28 (c) Any dispute under rules adopted by a public
29 agency on the appropriateness of a unit, exclusive or
30 majority representation, and elections procedures shall,
31 upon the petition of the public employer or the employee
32 organization, be submitted to the board for resolution.
33 The board shall make its determinations based on rules
34 adopted by the public agency in accordance with this
35 chapter. The board shall adopt rules as to procedures on
36 implementing this section and applying rules adopted by
37 a public agency in accordance with this chapter.

38 (d) Notwithstanding subdivisions (a) to (c), inclusive,
39 and rules adopted by a public agency pursuant to Section
40 3507, a bargaining unit in effect as of the effective date of



1 this section shall continue in effect unless changed under
2 the rules adopted by a public agency pursuant to Section
3 3507.

4 SEC. 7. Section 3508.5 of the Government Code is
5 amended to read:

6 3508.5. (a) Nothing in this chapter shall affect the
7 right of a public employee to authorize a dues or service
8 fees deduction from his or her salary or wages pursuant
9 to Section 1157.1, 1157.2, 1157.3, 1157.4, 1157.5, or 1157.7.

10 (b) A public employer shall deduct the payment of
11 dues or service fees to a recognized employee
12 organization as required by an agency shop arrangement
13 between the recognized employee organization and the
14 public employer.

15 (c) Agency fee obligations, including, but not limited
16 to, dues or agency fee deductions on behalf of a
17 recognized employee organization, shall continue in
18 effect as long as the employee organization is the
19 recognized bargaining representative, notwithstanding
20 the expiration of any agreement between the public
21 employer and the recognized employee organization.

22 SEC. 8. Section 3509 of the Government Code is
23 amended and renumbered to read:

24 3510. (a) The provisions of this chapter shall be
25 interpreted and applied by the board in a manner
26 consistent with and in accordance with judicial
27 interpretations of this chapter.

28 (b) The enactment of this chapter shall not be
29 construed as making the provisions of Section 923 of the
30 Labor Code applicable to public employees. The holding
31 of County Sanitation Dist. No. 2 v. Los Angeles County
32 Employees' Assn. (1985) 38 Cal.3d 564 is hereby adopted
33 and shall be applied for the purposes of this chapter.

34 SEC. 9. Section 3509 is added to the Government
35 Code, to read:

36 3509. (a) The powers and duties of the board
37 described in Section 3541.3 shall also apply, as
38 appropriate, to this chapter and shall include the
39 authority as set forth in subdivisions (b) and (c).

1 (b) A complaint alleging any violation of this chapter
2 or of any rules and regulations adopted by a public agency
3 pursuant to Section 3507 shall be processed as an unfair
4 practice charge by the board. The initial determination
5 as to whether the charge of unfair practice is justified and,
6 if so, the appropriate remedy necessary to effectuate the
7 purposes of this chapter, shall be a matter within the
8 exclusive jurisdiction of the board. The board shall apply
9 and interpret unfair labor practices consistent with
10 existing judicial interpretations of this chapter.

11 (c) The board shall enforce and apply rules adopted by
12 a public agency that are consistent with the provisions of
13 this chapter concerning unit determinations,
14 representation, recognition, and elections.

15 (d) Notwithstanding subdivisions (a) to (c), inclusive,
16 the employee relations commissions established by, and
17 in effect for, the County of Los Angeles and the City of
18 Los Angeles pursuant to Section 3507 shall have the
19 power and responsibility to take actions on recognition,
20 unit determinations, elections, and unfair practices, and
21 to issue determinations and orders as the employee
22 relations commissions deem necessary, consistent with
23 and pursuant to the policies of this chapter. Any judicial
24 review applicable to a superior court or municipal court
25 shall be filed directly with the Court of Appeal.

26 SEC. 10. Section 3510 of the Government Code is
27 amended and renumbered to read:

28 ~~3511.—~~

29 3512. This chapter shall be known and may be cited
30 as the “Meyers-Miliias-Brown Act.”

31 SEC. 11. *Section 3511 is added to the Government*
32 *Code, to read:*

33 *3511. The changes made to Sections 3501, 3502.5,*
34 *3505.2, 3505.4, 3507.1, 3508.5, and 3509 of the Government*
35 *Code by legislation enacted during the 1999 portion of the*
36 *1999–2000 Regular Session of the Legislature shall not*
37 *apply to any recognized employee organization*
38 *representing persons who are peace officers as defined in*
39 *Chapter 4.5 (commencing with Section 830) of Title 3 of*
40 *Part 2 of the Penal Code.*



1 *SEC. 12.* Notwithstanding Section 17610 of the
2 Government Code, if the Commission on State Mandates
3 determines that this act contains costs mandated by the
4 state, reimbursement to local agencies and school
5 districts for those costs shall be made pursuant to Part 7
6 (commencing with Section 17500) of Division 4 of Title
7 2 of the Government Code. If the statewide cost of the
8 claim for reimbursement does not exceed one million
9 dollars (\$1,000,000), reimbursement shall be made from
10 the State Mandates Claims Fund.

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