

SENATE BILL NO. 98—SENATOR HARDY

PREFILED JANUARY 25, 2011

Referred to Committee on Legislative Operations and Elections

SUMMARY—Revises provisions relating to collective bargaining between local governments and employee organizations. (BDR 23-415)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets [omitted-material] is material to be omitted.

AN ACT relating to local governments; revising provisions relating to collective bargaining between local government employers and employee organizations; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law states that certain persons may, and certain persons may not, be members of employee organizations for the purposes of collective bargaining. (NRS 288.140) **Section 6** of this bill sets forth that the following persons are prohibited from being a member of an employee organization: (1) supervisory employees who have additional authority on behalf of the employer to make budgetary decisions and decisions relating to collective bargaining; (2) doctors and physicians who are employed by a local government employer; and (3) attorneys who are employed by a local government employer and assigned to a civil division, department or agency, except for the duration of a collective bargaining agreement to which the attorney is a party as of July 1, 2011.

Under existing law, a supervisory employee is prohibited from being a member of the same bargaining unit as the employees under his or her direction. (NRS 288.170) **Section 5** of this bill revises the definition of "supervisory employee" (NRS 288.075) to create a second subset of supervisory employees who, on behalf of their employer, make budgetary decisions and decisions relating to collective bargaining. **Section 8** of this bill makes technical changes to reflect that **section 5** now sets forth two subsets of supervisory employees.

Existing law sets forth the subjects over which local government employers and recognized employee organizations are required to bargain (mandatory bargaining), and the subjects that are reserved to such an employer without negotiation. (NRS 288.150) **Section 7** of this bill adds to the list of mandatory bargaining topics the reopening of collective bargaining agreements in instances of fiscal emergency.



THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. (Deleted by amendment.)

Sec. 1.3. (Deleted by amendment.)

Sec. 1.7. (Deleted by amendment.)

Sec. 2. (Deleted by amendment.)

Sec. 3. (Deleted by amendment.)

Sec. 4. (Deleted by amendment.)

Sec. 5. NRS 288.075 is hereby amended to read as follows:

288.075 1. "Supervisory employee" means ~~any~~ :

(a) Any individual having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees or responsibility to direct them, to adjust their grievances or effectively to recommend such action, if in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. The exercise of such authority shall not be deemed to place the employee in supervisory employee status unless the exercise of such authority occupies a significant portion of the employee's workday ~~[-]~~ ; or

(b) Any individual or class of individuals appointed by the employer and having authority on behalf of the employer to:

(1) Hire, transfer, suspend, lay off, recall, terminate, promote, discharge, assign, reward or discipline other employees or responsibility to direct them, to adjust their grievances or to effectively to recommend such action;

(2) Make budgetary decisions; and

(3) Be consulted on decisions relating to collective bargaining,

↪ if, in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. The exercise of such authority shall not be deemed to place the employee in supervisory employee status unless the exercise of such authority occupies a significant portion of the employee's workday.

2. Nothing in this section shall be construed to mean that an employee who has been given incidental administrative duties shall be classified as a supervisory employee.

Sec. 6. NRS 288.140 is hereby amended to read as follows:

288.140 1. It is the right of every local government employee, subject to the ~~limitation~~ *limitations* provided in ~~subsection~~ *subsections* 3 ~~[-]~~ and 4, to join any employee organization of the employee's choice or to refrain from joining any employee organization. A local government employer shall not



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1 discriminate in any way among its employees on account of
2 membership or nonmembership in an employee organization.

3 2. The recognition of an employee organization for negotiation,
4 pursuant to this chapter, does not preclude any local government
5 employee who is not a member of that employee organization from
6 acting for himself or herself with respect to any condition of his or
7 her employment, but any action taken on a request or in adjustment
8 of a grievance shall be consistent with the terms of an applicable
9 negotiated agreement, if any.

10 3. A police officer, sheriff, deputy sheriff or other law
11 enforcement officer may be a member of an employee organization
12 only if such employee organization is composed exclusively of law
13 enforcement officers.

14 4. *The following persons may not be a member of an*
15 *employee organization:*

16 (a) *A supervisory employee described in paragraph (b) of*
17 *subsection 1 of NRS 288.075, including but not limited to*
18 *appointed officials and department heads who are primarily*
19 *responsible for formulating and administering management,*
20 *policy and programs.*

21 (b) *A doctor or physician who is employed by a local*
22 *government employer.*

23 (c) *Except as otherwise provided in this paragraph, an attorney*
24 *who is employed by a local government employer and who is*
25 *assigned to a civil law division, department or agency. The*
26 *provisions of this paragraph do not apply with respect to an*
27 *attorney for the duration of a collective bargaining agreement to*
28 *which the attorney is a party as of July 1, 2011.*

29 5. *As used in this section, "doctor or physician" means a*
30 *doctor, physician, homeopathic physician, osteopathic physician,*
31 *chiropractic physician, practitioner of Oriental medicine, podiatric*
32 *physician or practitioner of optometry, as those terms are defined*
33 *or used, respectively, in NRS 630.014, 630A.050, 633.091, chapter*
34 *634 of NRS, chapter 634A of NRS, chapter 635 of NRS or chapter*
35 *636 of NRS.*

36 **Sec. 7.** NRS 288.150 is hereby amended to read as follows:

37 288.150 1. Except as provided in subsection 4, every local
38 government employer shall negotiate in good faith through one or
39 more representatives of its own choosing concerning the mandatory
40 subjects of bargaining set forth in subsection 2 with the designated
41 representatives of the recognized employee organization, if any, for
42 each appropriate bargaining unit among its employees. If either
43 party so requests, agreements reached must be reduced to writing.

44 2. The scope of mandatory bargaining is limited to:



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(a) Salary or wage rates or other forms of direct monetary compensation.

(b) Sick leave.

(c) Vacation leave.

(d) Holidays.

(e) Other paid or nonpaid leaves of absence.

(f) Insurance benefits.

(g) Total hours of work required of an employee on each workday or workweek.

(h) Total number of days' work required of an employee in a work year.

(i) Discharge and disciplinary procedures.

(j) Recognition clause.

(k) The method used to classify employees in the bargaining unit.

(l) Deduction of dues for the recognized employee organization.

(m) Protection of employees in the bargaining unit from discrimination because of participation in recognized employee organizations consistent with the provisions of this chapter.

(n) No-strike provisions consistent with the provisions of this chapter.

(o) Grievance and arbitration procedures for resolution of disputes relating to interpretation or application of collective bargaining agreements.

(p) General savings clauses.

(q) Duration of collective bargaining agreements.

(r) Safety of the employee.

(s) Teacher preparation time.

(t) Materials and supplies for classrooms.

(u) The policies for the transfer and reassignment of teachers.

(v) Procedures for reduction in workforce.

(w) Procedures and requirements for the reopening of collective bargaining agreements that exceed 1 year in duration for additional, further, new or supplementary negotiations during periods of fiscal emergency. The requirements for the reopening of a collective bargaining agreement must include, without limitation, measures of revenue shortfalls or reductions relative to economic indicators such as the Consumer Price Index, as agreed upon by both parties.

3. Those subject matters which are not within the scope of mandatory bargaining and which are reserved to the local government employer without negotiation include:

(a) Except as otherwise provided in paragraph (u) of subsection 2, the right to hire, direct, assign or transfer an employee, but



1 excluding the right to assign or transfer an employee as a form of
2 discipline.

3 (b) The right to reduce in force or lay off any employee because
4 of lack of work or lack of money, subject to paragraph (v) of
5 subsection 2.

6 (c) The right to determine:

7 (1) Appropriate staffing levels and work performance
8 standards, except for safety considerations;

9 (2) The content of the workday, including without limitation
10 workload factors, except for safety considerations;

11 (3) The quality and quantity of services to be offered to the
12 public; and

13 (4) The means and methods of offering those services.

14 (d) Safety of the public.

15 4. Notwithstanding the provisions of any collective bargaining
16 agreement negotiated pursuant to this chapter, a local government
17 employer is entitled to take whatever actions may be necessary to
18 carry out its responsibilities in situations of emergency such as a
19 riot, military action, natural disaster or civil disorder. Those actions
20 may include the suspension of any collective bargaining agreement
21 for the duration of the emergency. Any action taken under the
22 provisions of this subsection must not be construed as a failure to
23 negotiate in good faith.

24 5. The provisions of this chapter, including without limitation
25 the provisions of this section, recognize and declare the ultimate
26 right and responsibility of the local government employer to manage
27 its operation in the most efficient manner consistent with the best
28 interests of all its citizens, its taxpayers and its employees.

29 6. This section does not preclude, but this chapter does not
30 require the local government employer to negotiate subject matters
31 enumerated in subsection 3 which are outside the scope of
32 mandatory bargaining. The local government employer shall discuss
33 subject matters outside the scope of mandatory bargaining but it is
34 not required to negotiate those matters.

35 7. Contract provisions presently existing in signed and ratified
36 agreements as of May 15, 1975, at 12 p.m. remain negotiable.

37 **Sec. 8.** NRS 288.170 is hereby amended to read as follows:

38 288.170 1. Each local government employer which has
39 recognized one or more employee organizations shall determine,
40 after consultation with the recognized organization or organizations,
41 which group or groups of its employees constitute an appropriate
42 unit or units for negotiating. The primary criterion for that
43 determination must be the community of interest among the
44 employees concerned.



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2. A principal, assistant principal or other school administrator below the rank of superintendent, associate superintendent or assistant superintendent shall not be a member of the same bargaining unit with public school teachers unless the school district employs fewer than five principals but may join with other officials of the same specified ranks to negotiate as a separate bargaining unit.

3. A head of a department of a local government, an administrative employee or a supervisory employee must not be a member of the same bargaining unit as the employees under the direction of that department head, administrative employee or supervisory employee. Any dispute between the parties as to whether an employee is a supervisor must be submitted to the Board. An employee organization which is negotiating on behalf of two or more bargaining units consisting of firefighters or police officers, as defined in NRS 288.215, may select members of the units to negotiate jointly on behalf of each other, even if one of the units consists of supervisory employees and the other unit does not.

4. Confidential employees of the local government employer must be excluded from any bargaining unit but are entitled to participate in any plan to provide benefits for a group that is administered by the bargaining unit of which they would otherwise be a member.

5. If any employee organization is aggrieved by the determination of a bargaining unit, it may appeal to the Board. Subject to judicial review, the decision of the Board is binding upon the local government employer and employee organizations involved. The Board shall apply the same criterion as specified in subsection 1.

6. As used in this section ~~["confidential"]~~:

(a) *"Confidential employee"* means an employee who is involved in the decisions of management affecting collective bargaining.

(b) *"Supervisory employee" means a supervisory employee described in paragraph (a) of subsection 1 of NRS 288.075.*

Sec. 9. This act becomes effective on July 1, 2011.

