SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

SB 1313 (Hertzberg)
Version: February 18, 2022
Hearing Date: April 19, 2022
Fiscal: Yes
Urgency: No
TSG

SUBJECT

Local public employee organizations: health benefits: discrimination

DIGEST

This bill prohibits the County of Los Angeles from offering superior health benefit plan options to its employees that are not members of a union.

EXECUTIVE SUMMARY

Los Angeles County has four health benefits plans for its employees: Choices, Options, Flex, and MegaFlex. As its name implies, the MegaFlex plan is superior to the Options and Choice plans. The MegaFlex plan includes benefits such as a tax-free cafeteria benefit allowance, health insurance, optional life insurances, disability benefits, flexible spending accounts, retirement plans, and paid time off. Not all Los Angeles County employees are eligible for the MegaFlex plan, however. It is only available to those who are not represented by a union. Union members, by contrast, are stuck with the inferior Choices or Options plans. In order to open up access to the Flex and MegaFlex plans to all Los Angeles County employees, this bill would prohibit the county from discriminating against employees who are union members by: (1) limiting those employees to enrolling or participating in health benefit plans that provide fewer benefits; (2) disqualifying them from participation in health benefit plans that provide increased benefits; or (3) restricting them from participation in health benefit plans that are available to managerial employees or other employees who are not members of a recognized employee organization.

The bill is sponsored by the American Federation of State, County, and Municipal Employees and the Union of American Physicians and Dentists who state that the bill is necessary for fairness and to attract top talent to work for Los Angeles County. There is no opposition on file. The bill passed out of the Senate Labor, Public Employment and Retirement Committee by a vote of 3-1. If it passes out of this Committee, the bill will next be heard before the Senate Appropriations Committee.

PROPOSED CHANGES TO THE LAW

Existing law:

1) Provides that unions have the right to represent their members in their employment relations with public agencies and requires public agencies to meet and confer with union representatives in good faith regarding the terms and conditions of employment. (Gov. Code §§ 3503 and §3505.)

2) Specifies that the scope of union representation shall include all matters relating to employment conditions and employer-employee relations, including, but not limited to, wages, hours, and other terms and conditions of employment, except, however, that the scope of representation shall not include consideration of the merits, necessity, or organization of any service or activity provided by law or executive order. (Gov. Code § 3504.)

3) Requires a public agency to give reasonable written notice, except as specified for cases of emergency, to each union affected by any ordinance, rule, resolution, or regulation directly relating to matters within the scope of representation and shall give the union the opportunity to meet with the governing body or the boards and commissions of the public agency. (Gov. Code § 3504.5(a) and (b).)

4) Specifies that the governing body of a public agency with a population in excess of 4,000,000, or the boards and commissions designated by the governing body of such a public agency shall not discriminate against employees by removing or disqualifying them from a health benefit plan, or otherwise restricting their ability to participate in a health benefit plan, on the basis that the employees have selected or supported a union. (Gov. Code § 3504.5(c).)

5) Specifies that nothing in these provisions shall be construed to prohibit the governing body of a public agency or the board or commission of a public agency and a union from agreeing to health benefit plan enrollment criteria or eligibility limitations. (Gov. Code § 3504.5(c).)

This bill:

1) Prohibits the County of Los Angeles from discriminating against an employee who is a union member by:
   a) limiting that employee's health benefit plan enrollment or eligibility to plans that provide fewer benefits;
   b) disqualifying that employee from participation in health benefit plans that provide increased benefits; or
   c) restricting that employee from participation in health benefit plans that are available to managerial employees or other employees who are not members of a recognized employee organization.

2) Finds and declares that a special statute is necessary and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because, existing law notwithstanding, the County of Los Angeles only provides its MegaFlex Flexible Benefits Plan to management and other nonunion employees.

COMMENTS

1. Background

In Los Angeles County, there is long-running dispute about County employees' access to health benefit plans. That dispute has its origins back in 1999, when the physicians employed by the County in various hospitals and clinics throughout the County elected the Union of American Physicians and Dentists to represent them with respect to wages, hours and working conditions, thus becoming these physician's formally recognized union. (*Union of American Physicians & Dentists v. Los Angeles County Employee Relations Com.* (2005) 131 Cal.App.4th 386, 389.) Negotiation on a collective bargaining agreement ensued for two years.

The parties reached agreement on all other terms, but deadlocked over the question of what health benefit plans should be available to the newly unionized doctors. The union took the position that the doctors should continue to have access to the County's Flex and MegaFlex plans. Citing a County ordinance and the utility of the MegaFlex plan for recruiting and retaining professional employees, the County insisted that only unrepresented employees could remain on the Flex or MegaFlex plans. (*Union of American Physicians & Dentists*, *supra*, 131 Cal.App.4th 386, 389-390.)

To try to break the impasse, a neutral fact-finder was brought in to examine the benefits issue. That fact-finder concluded that it was unreasonable for the County to remove unionized physicians from the Flex and MegaFlex programs, that the County would not save money from such a move anyway, and that removing unionized physicians from the plans would undermine the County's goals of retaining and recruiting qualified professionals. (*Union of American Physicians & Dentists*, *supra*, 131 Cal.App.4th 386, 390 [32 Cal.Rptr.3d 547].) In spite of that conclusion, the County stuck to its position and eventually proceeded to strip the newly unionized doctors of their Flex and MegaFlex benefits, putting them on the Options or Choices plans instead. (*Ibid*.)

The union sued to restore these benefits. It also sought assistance from the California Legislature. The Legislature responded with the enactment of AB 2006 (Cedillo, Ch. 1041, Stats. 2002). AB 2006 prohibited local authorities in jurisdictions with a population of more than 4 million people from providing different health benefits to union employees than to non-union employees without the consent of the union. AB 2006 included a clause making it retroactive to July 1, 2001, thereby sweeping in the union members who the County had removed from their Flex and MegaFlex plans. In light of

the new statute, the courts ultimately ruled in favor of the union on its lawsuit against the county (*Union of American Physicians & Dentists*, *supra*, 131 Cal.App.4th 386, 398.). The County was required to reenroll the newly unionized physicians into their Flex and MegaFlex plans. Eventually, the parties reached an agreement on compensating the physicians for any benefits they missed in the interim.

Los Angeles County continues to offer non-union employees the option of enrolling in the Flex or MegaFlex benefit plans. Employees represented by a union, by contrast, are stuck with either the Choices or Options plans, depending on the union that represents them.[1]

2. Solution proposed by the bill

The bill prohibits the County of Los Angeles from discriminating between its unionized and non-unionized employees in relation to the health care plans to which they have access. Thus, the County would have to choose one of the following paths forward: (1) offer the Flex and MegaFlex plans to all of its employees, regardless of union representation; (2) stop offering the Flex and MegaFlex plans to its employees that are not represented by a union; or (3) create a new set of health care benefit plan options for its employees, ensuring that any differences in the options available to the employees are not based on whether or not the employee is represented by a union.

3. Constitutional considerations

This bill purports to set parameters on the health care plan benefits that the County of Los Angeles offers to its employees. This may raise some state constitutional concerns.

Pursuant to the California Constitution, the Legislature is responsible for enumerating county powers, but the governing body of each county is in charge of its personnel matters:

> The Legislature shall provide for county powers, an elected county sheriff, an elected district attorney, an elected assessor, and an elected governing body in each county. […] The governing body shall provide for the number, compensation, tenure, and appointment of employees. (Cal. Const., art. XI, § 1(b).)

Based on this provision, the courts have concluded that while the Legislature may enact laws that govern public sector employment generally (*Baggett v. Gates* (1982) 32 Cal.3d 128, 139), the Legislature has no authority to regulate any individual county's personnel matters:

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[1] *See Benefit Plans*. Los Angeles County Department of Human Resources https://employee.hr.lacounty.gov/benefits-2/ (as of Apr. 3, 2022).

> [t]he constitutional language is quite clear and quite specific: the county, not the state, not someone else, shall provide for the compensation of its employees. Although the language does not expressly limit the power of the Legislature, it does so by necessary implication. An express grant of authority to the county necessarily implies the Legislature does not have that authority. (*County of Riverside v. Superior Court* (2003) 30 Cal.4th 278, 285. Internal citations omitted.)

There are at least three possible explanations why, in spite of the foregoing, this bill does not violate the state constitution. First, the precise language of the constitution refers to compensation, but does not use the word benefits. The state constitutional provision in question does not provide a definition of "compensation," so it could be argued that "compensation" does not encompass benefits as the word is used in that provision. Under this reading, the Legislature could still tell counties how to provide benefits to county employees even though it could not tell counties how much to pay those employees. This argument receives some support from the general rule regarding interpretation of limitations on legislative power in California:

> [i]f there is any doubt as to the Legislature's power to act in any given case, the doubt should be resolved in favor of the Legislature's action. Such restrictions and limitations [imposed by the Constitution] are to be construed strictly, and are not to be extended to include matters not covered by the language used." *County of Riverside v. Superior Court, supra,* 30 Cal.4th 278, 284.

On the other hand, other state constitutional provisions clearly consider health benefits to be part and parcel of "compensation." (*See* Cal. Const., art. III, § 8: "The California Citizens Compensation Commission is hereby created and shall consist of seven members appointed by the Governor. The commission shall establish the annual salary *and* the medical, dental, insurance, and other similar benefits of state officers." Emphasis added.)

Second, it could be argued that a prior court ruling has implicitly given a stamp of approval to the authority the Legislature proposes to exercise in this bill. Specifically, the Legislature previously passed legislation prohibiting local authorities in jurisdictions with a population of more than 4 million people from providing different health benefits to union employees than to non-union employees without the consent of the union. (AB 2006, Cedillo, Ch. 1041, Stats. 2002). Based on this legislation, a court ruled – without mentioning or discussing any state constitutional implications – that the County of Los Angeles had to reinstate the Flex and MegaFlex benefits of a number of unionized county employees who had previously had those benefits taken away. (*Union of American Physicians & Dentists*, *supra*, 131 Cal.App.4th 386.) That ruling could be seen to suggest that the Legislature does have the power to govern in the field of county

benefits. Unlike this bill, however, AB 2006 theoretically applied statewide – it did not directly name the County of Los Angeles – though in practice, of course, few if any other jurisdictions are large enough that AB 2006 would have applied to them.

Finally, it could be argued that the bill does not actually set the compensation of Los Angeles County employees, but simply provides a legal framework within which the County can exercise its authority to set that compensation. In other words, the bill does not dictate what benefits the County of Los Angeles must offer to its employees. Rather, the bill just tells the County of Los Angeles that, whatever benefits it offers to its employees, it must do so without distinction as to whether the employees are represented by a union or not.

4. Drafting considerations

As it appears in print, the language in the bill is awkward. The operative section in the bill, proposed Government Code Section 3504.6 reads:

> The County of Los Angeles shall not discriminate against an employee who is a member of a recognized employee organization by limiting their health benefit plan enrollment or eligibility to participation plans that provide fewer benefits, disqualifying them from participation in health benefit plans that provide increased benefits, or restricting them from participation in health benefit plans that are available to managerial employees or other employees who are not members of a recognized employee organization.

Two aspects of this phrasing may warrant revision. First, the reference to "participation plans" is confusing. What is a "participation plan?" Presumably that phrase is intended to mean a health benefit plan, or maybe the language should read "eligibility to participate in plans" instead of "eligibility to participation plans." Second, the language refers to plans that "provide fewer benefits" and plans that "provide increased benefits," but in both cases, it leaves the question: compared to what? The implication is that the comparison is to plans available to all other employees of the County. If that is correct, it might be worth stating explicitly, just to avoid any possible confusion.

The author proposes to offer amendments in Committee that clarify this language.

5. Proposed amendments

In order to address the issues set forth in the Comments, above, the author proposes to incorporate amendments into the bill that would:

- clarify confusing language; and
- recast the provision for ease of understanding.

A mock-up of the amendments in context is attached to this analysis.

6. Arguments in support of the bill

According to the author:

> The County of Los Angeles employs a vast network of healthcare workers, such as physicians, nurses, and other practitioners, to provide essential care in the County's massive health system. Despite the crucial services these practitioners provide in the Los Angeles community, the County returns this service in kind by providing inferior healthcare benefits to physicians represented by an employee organization. This is not only objectively unfair, but has been deemed harmful to physician recruitment and retention efforts in Los Angeles – all at a time when the recent pandemic just demonstrated that access to timely, and high quality healthcare cannot be taken for granted. SB 1313 corrects this wrong by closing a loophole in existing law and ensures represented employees working for the County of Los Angeles are not subject to limited or inferior health benefits simply due to their membership in a recognized employee organization.

As sponsor of the bill, the Union of American Physicians and Dentists writes:

> SB 1313 will prohibit Los Angeles County from discriminating against unionized employees by removing or disqualifying them from a health benefit plan or restricting their ability to participate in a health benefit plan, on the basis that the employees are represented by an employee organization/union.

SUPPORT

American Federation of State, County and Municipal Employees (sponsor)
Union of American Physicians and Dentists (sponsor)

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation: AB 2006 (Cedillo, Ch. 1041, Stats. 2002) prohibited the governing body of a public agency serving a jurisdiction with a population over 4,000,000, or its board and commission, from discriminating against employees by removing, disqualifying, or restricting their ability to participate in a health benefit plan on the basis that the employees have selected or supported a recognized employee organization.

PRIOR VOTES:

Senate Labor, Public Employment and Retirement (Ayes 3, Noes 1)

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Amended Mock-up for 2021-2022 SB-1313 (Hertzberg (S))

Mock-up based on Version Number 99 - Introduced 2/18/22

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 3504.6 is added to the Government Code, to read:

3504.6. The County of Los Angeles shall not discriminate against an employee who is a member of a recognized employee organization by doing any of the following:

(a) Limiting their the employee's health benefit plan enrollment options or eligibility to participate in health benefit ion plans to plans that provide fewer benefits than those offered to employees who are not represented by a recognized employee organization.

(b) Disqualifying the employeem from participation in health benefit plans that provide betterincreased benefits than the plans offered to employees who are not represented by a recognized employee organization.

(c) or Rrestricting tthe employeehem from participation in health benefit plans that are available to managerial employees or other employees who are not members of a recognized employee organization.

SEC. 2. The Legislature finds and declares that a special statute is necessary and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because, existing law notwithstanding, the County of Los Angeles only provides its MegaFlex Flexible Benefits Plan to management and other nonunion employees.

SEC. 3. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.