

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 2889 (Zbur)
Version: March 18, 2024
Hearing Date: July 2, 2024
Fiscal: Yes
Urgency: No
ID

SUBJECT

Local public employee relations: the City of Los Angeles Employee Relations Board
and the Los Angeles County Employee Relations Commission

DIGEST

This bill prohibits the Los Angeles Employee Relations Board and County of Los Angeles Employee Relations Commission from awarding strike-preparation damages and other damages in an action to recover damages due to an unlawful strike, and provides the Public Employee Relations Board with exclusive initial jurisdiction over requests for injunctive relief in an action involving the City or County of Los Angeles.

EXECUTIVE SUMMARY

Under the Meyers-Milias-Brown Act of 1968, public employers are prohibited from interfering with, intimidating, restraining, coercing, or discriminating against any public employee because of their exercise of their rights to form, join, and participate in the activities of employee organizations of their choosing. The Public Employee Relations Board (PERB) has jurisdiction to investigate and decide disputes between public employers and their employees within the state, except for in the City and County of Los Angeles, where the Los Angeles Employee Relations Board (ERB) and Los Angeles County Employee Relations Commission (ERCOM) have jurisdiction. In 2011, the Legislature enacted SB 857 to prohibit PERB from awarding strike-preparation expenses as damages for any unlawful strike, or from awarding damages for costs, expenses, or revenue losses incurred during, or as a consequence of, an unlawful strike. However, this law did not specifically apply its prohibition to ERB or ERCOM. This bill explicitly applies those prohibitions to ERB and ERCOM, and also specifies that PERB has exclusive initial jurisdiction over requests for injunctive relief. AB 2889 is sponsored by the Union of American Physicians and Dentists, and is supported by a number of other labor organizations. The Committee has received no timely opposition. AB 2889 previously passed out of the Senate Labor, Public Employment and Retirement Committee on a vote of 4 to 0.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the Meyers-Milias-Brown Act of 1968 (MMBA) to establish collective bargaining rights for municipal, county, and local special district employers and employees. Provides that public employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. Also provides several other statutory frameworks under California law to provide various public employees collective bargaining rights, govern public employer-employee relations, and limit labor strife and economic disruption in the public sector through a reasonable method of resolving disputes regarding wages, hours, and other terms and conditions of employment between public employers and recognized public employee organizations or their exclusive representatives. (Gov. Code § 3500 et seq.)
- 2) Establishes the Public Employment Relations Board (PERB) and provides it with the powers to: determine and approve appropriate bargaining units; determine whether a particular item is within the scope of representation; arrange for and supervise representation elections by secret ballot; certify the results of elections; establish lists of persons to be available to serve as mediators, arbitrators, or factfinders; establish appropriate procedures for reviewing bargaining unit determinations; conduct studies relating to employer-employee relations; adopt rules and regulations; hold hearings, subpoena witnesses, administer oaths and take testimony or deposition of any person; investigate unfair practice charges and take any action and make any determinations on such charges; bring an action in court to enforce its orders, rulings, and subpoenas; delegate its powers to any member of the board or person appointed by the board to perform its functions; decide contested matters regarding the certification or decertification of employee organizations; consider and decide issues relating to the rights, privileges, and duties of an employee organization; and take any other action the board deems necessary to discharge its powers and duties. (Gov. Code § 3540 et seq.)
- 3) Prohibits public agencies and employee organizations from interfering with, intimidating, restraining, coercing, or discriminating against any public employee because of their exercise of their rights to form, join, and participate in the activities of employee organizations of their choosing. (Gov. Code § 3506.)
- 4) Makes it unlawful for governmental subdivisions, districts, public and quasi-public corporations, public agencies, and every town, city, county, city and county, and municipal corporations from doing any of the following:

- a) impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise interfere with their exercise of their labor rights;
 - b) deny an employee organization any labor rights;
 - c) refuse or fail to meet and negotiate in good faith with a recognized employee organization;
 - d) dominate or interfere with the formation or administration of an employee organization, contribute financial or other support to any employee organization, or encourage employees to join any organization in preference over another; and
 - e) refuse to participate in good faith in an impasse procedure. (Gov. Code § 3506.5.)
- 5) Specifies that PERB shall have jurisdiction over violations of the provisions prohibiting public employers from deterring or discouraging union membership, except that the employee relations commissions established by the County of Los Angeles and the City of Los Angeles shall have jurisdiction over violations in the County of Los Angeles and the City of Los Angeles. (Gov. Code § 3551.)
- 6) Grants ERB and ERCOM the power and responsibility to take actions on recognition, unit determinations, elections, and all unfair practices, and to issue determinations and orders as the employee relations commissions deem necessary. (Gov. Code § 3509 (d).)
- 7) Specifies that a complaint of a violation of the applicable laws on public employees' rights to organize or a rule or regulation adopted by a public agency must be processed as an unfair practice charge by PERB. Specifies that the determination whether the charge of an unfair practice is justified, and if so, the appropriate remedy, is a matter within the exclusive jurisdiction of PERB, except that an action to recover damages due to an unlawful strike, PERB has no authority to award strike-preparation expenses as damages, and no authority to award damages for costs, expenses, or revenue losses incurred during, or as a consequence of, an unlawful strike. (Gov. Code § 3509 (b).)

This bill:

- 1) Prohibits ERB and ERCOM, in an action to recover damages due to an unlawful strike, to award strike-preparation expenses as damages or to award damages for costs, expenses, or revenue losses incurred during, or as a consequence of, an unlawful strike.
- 2) Provides PERB, in an action involving the City or County of Los Angeles, the exclusive initial jurisdiction over a request for injunctive relief that seeks to enjoin an

organization by employees or employee activity that is arguably protected or prohibited by the Meyers-Milias-Brown Act, including, but not limited to, a strike.

- 3) Makes specified findings and declarations.

COMMENTS

1. Author's statement

According to the author:

Our public employee relations boards promote labor harmony throughout the state. Most public agencies are under the Public Employment Relations Board (PERB), except for the City of Los Angeles and the County of Los Angeles. Instead, the City of Los Angeles Employee Relations Board (ERB) and Los Angeles County Employee Relations Commission (ERCOM) perform the functions PERB serves for LA City and County employees. The ERB and ERCOM are smaller and do not have a process for parties to seek injunctive relief. This bill would provide exclusive initial jurisdiction over requests for injunctive relief to PERB, which has the resources to analyze complex labor disputes and their impact on the public. It also clarifies that unions under the jurisdiction of ERB and ERCOM have the same protection from union-busting tactics that all other unions under PERB's jurisdiction have enjoyed for over a decade. Specifically, this bill clarifies that, like PERB, neither ERB nor ERCOM can award damages resulting from an unlawful strike.

2. PERB and ERB and ERCOM

The right of workers to organize and engage in bargaining with their employer collectively is a fundamental right. Employees of public agencies enjoy this right as well as employees of private entities. Public employers, under the Meyers-Milias-Brown Act of 1968, are prohibited from interfering with, intimidating, restraining, coercing, or discriminating against any public employee because of their exercise of their rights to form, join, and participate in the activities of employee organizations of their choosing. (Gov. Code § 3502.) The law also specifies actions that public employers may not do, such as taking reprisals or discriminating against an employee because of their union activity, or refusing to negotiate in good faith with an employees' union. (Gov. Code § 3506.5.) An important power for employees in organizing and engaging in concerted activity is the ability to strike. For public employees, PERB reviews and decides disputes between various public employers in the state and their employees and employees' union, including disputes relating to union elections, strikes, and unlawful labor practices. However, the one exception to PERB's jurisdiction over public workers in the state is ERB and ERCOM, which have jurisdiction over claims of violations within the City and County of Los Angeles. (Gov. Code § 3551, § 3509(d).)

Under current precedent, public employees have the right to strike, except for in limited circumstances where the strike poses an imminent threat to public safety. (*County Sanitation District No. 2 v. Los Angeles County Employees' Association*, (1985) 38 Cal. 3d 564, 586.) In the past, employers nonetheless attempted to discourage a strike or union activity by threatening lawsuits requesting damages from the union for the costs of the strike, even preemptively. To stop this practice and ensure that employers would not use it to discourage employees from utilizing their right to strike, the Legislature enacted SB 857. (Lieu, Ch. 539, Stats. 2011.) SB 857 was introduced in response to a PERB decision in which PERB held that employers could recover the costs of an unlawful strike, including damages incurred for preparations made to a strike threat. (*California Nurses Association v. Regents of the University of California* (2010) PERB Decision No. 2094-H.) These practices were seen as union-busting tactics that diminished public employees' right to strike. Thus, SB 857 prohibited PERB from awarding strike-preparation expenses as damages for any unlawful strike, or from awarding damages for costs, expenses, or revenue losses incurred during, or as a consequence of, an unlawful strike. (Gov. Code § 3509(b).)

3. AB 2889 prohibits ERB and ERCOM from awarding damages for strike preparation and unlawful strikes, and specifies that PERB has exclusive initial jurisdiction for requests for injunctive relief

However, SB 857 did not specify that its prohibition also applies to ERB and ERCOM. This bill attempts to rectify that error and likewise protect employees under the jurisdiction of ERB and ERCOM from threatening significant damages in response to a threat of a strike. It prohibits ERB and ERCOM from awarding strike-preparation expenses as damages, or awarding damages for costs, expenses, or revenue losses incurred during, or as a consequence of, an unlawful strike. This would provide employees under ERB and ERCOM's jurisdiction with the same protections that all other public employees in the state enjoy.

AB 2889 also specifies that, in an action involving the City or County of Los Angeles, PERB has exclusive initial jurisdiction over a request for injunctive relief to enjoin organization by employees or employee activity that may be protected or prohibited by the MMBA. This would include, but not be limited to, actions to enjoin employees or their union from striking. The author asserts that this is necessary because ERB and ERCOM do not have the resources or processes to handle requests for injunctive relief.

4. Arguments in support

According to the Union of American Physicians and Dentists, which is the sponsor of AB 2889:

The only public agencies in California that PERB may not have jurisdiction over are the County of Los Angeles and the City of Los Angeles. Under existing law,

the City of Los Angeles Employee Relations Board (ERB) and Los Angeles County Employee Relations Commission (ERCOM) replace the functions that PERB serves.

The Legislature has enacted protections to prohibit union busting within the jurisdiction of PERB, including SB 857 (Chapter 539, Statutes 2011), which prohibits PERB from awarding strike-preparation expenses as damages incurred from an unlawful strike. However, since the ERB and ERCOM were not expressly identified in the law, these protections may not apply to unions under their jurisdiction.

Assembly Bill 2889 will make sure that when public sector unions in Los Angeles County have a labor dispute with the County, PERB will rightly have jurisdiction over injunctions filed by management. It also clarifies that unions under the jurisdiction of ERB and ERCOM have the same protection from union-busting tactics that all other unions under PERB's jurisdiction have enjoyed for over a decade. Specifically, this bill clarifies that, like PERB, neither ERB nor ERCOM has authority to award damages resulting from an unlawful strike.

SUPPORT

Union of American Physicians and Dentists (sponsor)
American Federation of State, County, and Municipal Employees, AFL-CIO
California Labor Federation, AFL-CIO
California State Council of Service Employees International Union

OPPOSITION

None received

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

SB 857 (Lieu, Ch. 539, Stats. 2011) specified that PERB has no authority to award damages for strike-preparation expenses or for costs, expenses, or revenue losses incurred during an unlawful strike, and that this prohibition is declaratory of existing law.

AB 2908 (Goldberg, Ch. 1137, Stats. 2002) made clarifying changes to the MMBA, including providing that the Court of Appeals has jurisdiction to review PERB's decisions or orders upon appeal.

SB 739 (Solis, Ch. 901, Stats. 2000) transferred jurisdiction for resolving unfair labor practice charges and representation disputes under the MMBA to PERB.

PRIOR VOTES:

Senate Labor, Public Employment and Retirement Committee (Ayes 4, Noes 0)

Assembly Floor (Ayes 59, Noes 11)

Assembly Appropriations Committee (Ayes 11, Noes 4)

Assembly Public Employment and Retirement Committee (Ayes 5, Noes 1)
