

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

AB 504 (Reyes)
Version: April 13, 2023
Hearing Date: July 11, 2023
Fiscal: Yes
Urgency: No
ID

SUBJECT

State and local public employees: labor relations: disputes

DIGEST

This bill protects public employee's rights to engage in sympathy strikes, voids any policy or collective bargaining agreement prohibiting sympathy strikes, and prohibits a public employer from requiring an employee to break a strike of other workers.

EXECUTIVE SUMMARY

The right to strike is a fundamental right of workers in their exercise of their rights for freedom of association. This includes the right to honor the strikes of other unions and engage in sympathy strikes in solidarity with those workers. However, in the context of public employees, many are prohibited from honoring the picket lines of their striking co-workers by explicit clauses or public employer policies prohibiting such actions. In light of such prohibitions, many public employees are required to break picket lines of their co-workers, cover the work of striking employees, and are subject to discipline for exercising their rights to refuse to do so. AB 504 explicitly guarantees public employees' right to engage in sympathy strikes and refuse to break the picket lines of other employees' strikes, and prohibits a public employer from disciplining an employee for exercising this right. AB 504 also explicitly makes void as against public policy any public employer policy or collective bargaining agreement provision that purports to limit or waive the right to sympathy strike. AB 504 includes an exemption from its rights and protections of public employees for firefighters.

AB 504 is sponsored by the California Labor Federation, the California Teamsters, the United Auto Workers (UAW) locals 2865, 5810, 4123, and 6, and the California Federation of Teachers. It is supported by various other unions and employee organizations, including the California Professional Firefighters, the California Teachers Association, UNITE-HERE, and the California State University Employees Union. It is opposed by the University of California, the California State Association of Counties,

the Association of California Healthcare Districts, and numerous cities and other associations.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Prohibits Congress from making any law abridging the freedom of speech or the right of people to peaceably assemble. (U.S. Const. 1st Amend.; Cal. Const., Art. 1, Sec. 2.)
- 2) Prohibits the states from passing any law that impairs the obligation of contracts. (U.S. Const., Art. I, Sec. 10, Clause 1; Cal. Const., Art. I, Sec. 9.)
- 3) Grants states the ability to pass laws which may impair the obligation of contracts in order to accommodate the inherent police power of the state to safeguard the vital interests of its people. (*Energy Reserves Group v. Kansas Power & Light Company*, 459 U.S. 400 (1983).)
- 4) Grants employees the right to engage in concerted activities, including lawful strike actions, for the purpose of collective bargaining or other mutual aid or protection, and the right to refrain from any or all such activities. (29 U.S.C. § 157.)
- 5) Creates a protected right of public sector employees to participate in union activities. (Fresno County In-Home Supportive Services Public Authority (PERB Decision No. 2418-M (2015).)
- 6) Establishes the Meyers-Milias-Brown Act which governs collective bargaining procedures for California's municipal, county, and local special district employees. (Gov. Code §§ 3500 - 3511.)
- 7) Establishes the State Employer-Employee Relations Act of 1978, or the Dills Act, which governs collective bargaining procedures for state government employees. (Gov. Code §§ 3512 - 3524.)
- 8) Establishes the Higher Education Employer-Employee Relations Act (HEERA) which governs collective bargaining for the California State University System, the University of California System and what was formerly known as Hastings College of Law. (Gov. Code §§ 3560 - 3599.)
- 9) Establishes the Prohibition on Public Employers Deterring or Discouraging Union Membership (PEDD). Among other things, the PEDD prohibits a public employer from deterring or discouraging current or prospective public employees from being

members of a union or exercising specified collective bargaining rights. (Gov. Code §§ 3550 - 3553.)

- 10) Subject to limited exceptions, establishes Public Employment Relations Board's (PERB) jurisdiction over the enforcement of laws relating to the union activities of public employees. (Gov. Code § 3551.)
- 11) Permits an employee organization subject to the jurisdiction of PERB to bring a claim before the Board for a violation of an employee's right to engage in the PEDD's outlined collective bargaining rights, and directs that, if the Board finds such a violation, the employer shall be subject to a civil penalty as specified and attorney's fees and costs. (Gov. Code § 3551.5.)

This bill:

- 1) Finds and declares, relating to the rights of public employees to demonstrate solidarity with other public employees by honoring a picket line, or by refusing to enter upon the premises or perform work for a public employer engaged in a primary labor dispute, that it is a fundamental human right protected by the Constitution and laws of the United States.
- 2) Protects a public employee from legal or disciplinary or any other adverse action arising from that public employee's refusal to:
 - a) enter property that is the site of a primary labor dispute;
 - b) perform work for an employer involved in a primary labor dispute; and
 - c) go through or work behind any primary picket line.
- 3) Prohibits a public employer from directing a public employee to take any of the actions listed above.
- 4) Authorizes a recognized employee organization to inform employees of their rights and encourage employees to exercise their rights under the provisions of this bill.
- 5) Makes void as against public policy any provision in a public employer policy or collective bargaining agreement that purports to limit or waive the rights set forth in the provisions of AB 504.
- 6) Exempts from its provisions any public employee of the fire departments and fire services of the State, counties, cities, cities and counties, districts, and other political subdivisions of the State.

COMMENTS

1. Author's Statement

According to the author:

AB 504 will protect a public employee's right to honor a picket line when a public employer is engaged in a primary labor dispute. In 2022, the University of California (UC) engaged in a labor dispute on low wages and unfair labor practices with graduate workers represented by the United Auto Workers (UAW). As a result UAW members mobilized and orchestrated a strike. While non-UAW employees wanted to honor the picket line and support their colleagues on these issues that inherently affect every worker, they could not due to clauses in their contracts. California has long led the way in protecting workers' rights in the private and public sector and AB 504 confirms that standard by allowing public employees to have the opportunity and protection to engage in fair labor practices without facing the fear of retaliation from their employers. AB 504 is a step towards protecting our public employees.

2. The right to concerted activity

The right of workers to organize and engage in bargaining with their employer collectively is a fundamental right. This right is enshrined in the National Labor Relations Act, which states that employees "shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." (29 U.S.C. § 157.) That Act also makes clear that nothing in the Act "shall be construed so as either to interfere with or impede or diminish in any way the right to strike or to affect the limitations or qualifications on that right." (29 U.S.C. § 163.)

These rights, and the right to strike, came as a result of the Labor Movement that swept the United States in the early Twentieth Century. Tens of thousands of workers across the United States marched, picketed, and struck for their rights, better working conditions, and for the guarantees the NLRA and labor law now provide. That movement, and the prosperity of organized labor today, would not be possible without the right to strike. The NLRA and Wagner Act that preceded it became law after thousands of American workers struck at their workplaces demanding a change. In doing so, they faced threats from their employers, the risk of losing their jobs, and harassment and violence by police. One of the most effective tools to ensure that employers go to the negotiating table with workers was the sympathy strike, where workers from different factories or workplaces would strike in support and solidarity with the workers striking for their rights or better pay. It was the strike, and the sympathy strike, that helped unionize the auto industry and bring Henry Ford to the bargaining table in the 1930's and 40's. The right to strike, and the right of other workers to sympathy strike, righted the imbalance of power, forced their employers to

actually negotiate with their employees, and ultimately led to the creation of the labor protections that exist today.

3. The right to strike and sympathy strikes in the context of public employment in California

The proponents of AB 504 argue that it is needed to ensure the fundamental rights of public employees to strike in solidarity with their colleagues are protected when those colleagues are in a labor dispute with their employer. Currently, public employees have the right to strike, but not the right to strike in solidarity with colleagues who are striking their employer. In fact, in some public employee contracts, there are explicit clauses prohibiting a covered employee from striking in solidarity with fellow workers' primary strikes. The consequence of these prohibitions and the lack of the right to engage in solidarity strikes is that such public employees are required to cross picket lines, and cover the work of their striking colleagues. This undermines the right to strike by allowing the public employer to avoid the major economic pressure of the strike itself, such that it can continue to refuse to bargain and draw out the strike. In effect, the public employer would be able to use its non-striking workers as strikebreakers. Not complying with orders to work through a strike could lead to a worker losing pay, being disciplined, or terminated.

The proponents of AB 504 point to a specific example of this in action. In 2022, academic workers represented by the United Auto Workers (UAW) went on strike at the University of California after negotiations with the university stalled. During the strike, university workers represented by other unions were required to continue to work and break the picket line because of the non-sympathy strike clauses in their contracts. Unionized workers that were not employees of the university, such as UPS drivers, were able to engage in sympathy strikes and were able to honor the picket line. Proponents of AB 504 state that this inequity and required strike breaking creates tension between workers and allows for a divide and conquer strategy whereby co-workers and different unions are pitted against each other. Proponents of AB 504 also assert that the provisions act to prolong negotiations and strikes, as the public employer forces its other employees to break the strike and lessen the economic impact of the strike itself.

4. AB 504 guarantees a right to sympathy strike for public employees when their employer is engaged in a labor dispute with other unionized workers

To right this wrong and ensure that public employees can honor the strikes of their co-workers, AB 504 seeks to prohibit adverse employer actions against a public employee who engages in a sympathy strike. It specifies that it shall not be unlawful or a cause for discipline for a public employee to honor a picket line by not entering property that is the site of a primary labor dispute, not performing work for a public employer involved in a primary labor dispute, or not going through or working behind a primary picket

line. AB 504 further prohibits a public employer from directing an employee to break a strike in any of those ways, and states that any provision in a public employer policy or collective bargaining agreement (CBA) that limits or waives an employee's right to sympathy strike or honor a picket line is void as against public policy. Lastly, AB 504 allows recognized employee unions to inform employees of their rights and encourage their employees to exercise the rights that AB 504 protects.

However, it should be noted that AB 504 does not cover all employees of a public employer. It exempts from its provisions employees subject to section 1962 of the Labor Code; namely, firefighters. Under that section of the Labor Code, firefighters are already statutorily exempted from the right to strike or engage in sympathy strikes in the performance of their official duties.

5. AB 504 would not violate the Federal or California Contracts Clauses

The United States Constitution prohibits states from passing "any law impairing the obligation of contracts." (U.S. Const. Art. I, § 10, Cl. 1.) Although this clause is fairly short, it is not absolute or without restraint. The United States Supreme Court has determined that the prohibition against the impairment of contracts "must be accommodated to the inherent police power of the state to safeguard the vital interests of its people." (*Energy Reserves Group v. Kan. Power & Light Co.*, 459 U.S. 400, 410 (1983).) To determine whether there has been an impermissible violation of the Contracts Clause, the Supreme Court has created a three-pronged test. The first question is whether the law has "operated as a substantial impairment of a contractual relationship." (*Energy Reserves Group*, 459 U.S. at 411.) If that question is satisfied, the second inquiry is whether the substantial impairment has a "significant and legitimate public purpose." (*Id.*) If a substantial and legitimate public purpose underlies the law that impairs contract rights, the final question is whether the adjustment of the rights and responsibilities under the contract is based on reasonable conditions appropriate to the public purpose justifying the impairment. (*Id.* at 412.) If the first prong fails, then there was no unconstitutional impairment. However, even if the first prong is satisfied, such impairment can be overcome if that impairment meets the second two prongs of the test.

a. *AB 504's provisions would not substantially impair collective bargaining agreements*

In determining substantial impairment, the relevant inquiry is whether there was a contractual relationship, whether the law impairs the contractual relationship, and whether that impairment is substantial. (*AFSME, Local 2957 v. City of Benton*, 513 F.3d 874, 879 (2008).) In *Energy Reserves Group*, the Supreme Court stated that "the severity of the impairment increases the level of scrutiny to which the legislation will be subjected." (*Energy Reserves Group*, 459 U.S. at 411.) While total destruction of contractual expectations is not necessary for substantial impairment, "state regulation that restricts a party to gains it reasonably expected from the contract does not

necessarily constitute a substantial impairment.” (*Id.*) In determining the extent of the impairment, a court is to consider whether the industry the complaining party has entered has been regulated in the past. (*Id.*)

Here, AB 504 would not substantially impair the contractual relationship between public employees and their public employer. This is because the bill does not invalidate the entire CBA between workers and their employers; rather, it only restricts one potential clause. It is true that, in impairing the provision, employees would be able to engage in sympathy strikes that might occasionally interrupt the workplace, but the fact that the provision relates to striking does not mean that eliminating it from the employer and employees’ contracts would substantially impair or alter the contractual relationship. Employers are still capable of maintaining a CBA, and including in it various provisions currently still included relating to employees’ work, compensation, hours, and procedures for termination of employment. Those other terms will remain valid. Moreover, whatever expenses are incurred by the employer as a result of the impairment also would not make the impairment substantial, as the elimination of a no-strike clause does not necessarily mean the employer will encounter a sympathy strike. If the employer negotiates with its employees in good faith, there may never be a need for a strike. Such a strike would require a labor dispute to arise, and then in the course of that dispute for the labor union to call for a strike. The provisions of a lawful strike are thoroughly outlined in law, such that the right to strike is not itself absolute, and therefore not frequently exercised. If employees do engage in a sympathy strike, an employer has a simple solution to avoiding costs of such a strike: negotiate a contract with their employees.

Lastly, it should be acknowledged that the nature of the contract – an employment contract through a CBA – is an area of law that is well-regulated. This regulation includes the protected rights of employees to collectively bargain with their employers, when and how employees can strike, and restrictions on and obligations of employers so as to ensure employees’ rights. As a well-regulated area of law, the impairment of a provision in a CBA that AB 504 may impose should not be considered substantial. The employer should be on notice of such possibility, considering the well-regulated nature of labor law.

b. *AB 504 has a significant and legitimate public purpose*

Thus, AB 504 would not destroy any contractual arrangement between a public employer and its employees; the contractual arrangement between employers and their employees will be able to continue largely unaffected outside of the outlawed provision. However, even if one were to determine that AB 504 does substantially impair contracts prohibiting sympathy strikes, it nonetheless does not violate the Contracts Clause on the basis of the second two prongs of the legal test. That is because the Legislature has a significant and legitimate public purpose; namely, the protection of the fundamental rights of public employees to engage in concerted activity and

bargaining with their employer. Where current law does not explicitly prohibit or allow for non-sympathy strike provisions that limit public employees' right to sympathy strike, AB 504 would be guaranteeing this right. In so doing, it will ensure that public employees who exercise their right to concerted activity and solidarity actions on behalf of colleagues in a labor dispute with their employer are not retaliated against. AB 504 protects an employee's right to sympathy strike, and their livelihood and employment if they choose to do so. Lastly, if AB 504's prohibition on non-sympathy strike clauses was considered a substantial impairment, it would be a reasonable condition appropriate to the state's public purpose, as ensuring workers' rights to strike and collectively organize is the very purpose meant to be guaranteed by AB 504.

Thus, AB 504 would likely be constitutional under the Supreme Court's standard for impermissible impairments of contracts. It should also be noted that some case law on the Contracts Clause recognizes the unique, potential issues of state laws that impair contracts entered into by the state (or what is considered a public contract). However, these cases are about state laws that impair the state's obligations under its own contracts. Here, to the contrary, AB 504 does not impair a state's obligations under its existing contracts, but rather impairs its rights under its existing contracts. It stands, if anything, to benefit other parties to contracts with the state, rather than allow the state to shirk its contractual responsibilities as is the case in most of the case law on public contracts.

6. Economic costs and disruption is the entire purpose of strikes

Opposition primarily argues that AB 504 would risk constant disruptions for public entities and cost public entities significantly through the sympathy strikes allowed under AB 504. Opposition also argues that no-strike clauses are negotiated between employees and their public employer, such that eliminating it through statute would distort the bargaining process.

As the opposition has conceded, strikes are not that common. Moreover, current contractual prohibitions against sympathy strikes actually prolongs strikes, such that their impact is felt longer. Without sympathy strikes, public entities can withstand and outlast a strike by compartmentalizing the strike and utilizing non-striking employees to cover the work of those who are on strike. Thus, AB 504 may well result in shorter strikes, and more labor peace through greater bargaining between the parties in a labor dispute.

Additionally, the fact that public entities may encounter some economic loss as a result of AB 504 and employees' right to sympathy strike, that argument is not itself an argument against the right to strike. That is because the very purpose of a strike is to withhold one's labor so to prevent an employer from being able to operate its enterprise. The economic costs exacted by a strike, or threatened by the spectre of such a shutdown of operations, is what makes a strike a powerful tool for workers and their

unions. Contrary to the opposition's argument that AB 504 would distort future contract negotiations, the fact that non-sympathy strike clauses exist in an employee's contract currently distorts the negotiation process, as it significantly weakens one of workers' most powerful tools for negotiations. Prohibitions against striking effectively weaken or eliminate this tool, and should only be allowed in very narrow and exceptional circumstances if the right to organize and engage in concerted activity is to mean anything. Thus, AB 504 can rightly be seen as righting the balance of power in negotiations, not the opposite.

7. There are reasonable exceptions in AB 504's application

As previously mentioned, firefighters are exempt from AB 504's provisions. This exception conforms with exceptions in current law, as firefighters are already statutorily prohibited from striking or engaging in sympathy strikes. (Gov. Code § 1962.) Thus, regardless of the merits of such an exception in the current law or in this bill, the exception in AB 504 nonetheless aligns with current public policy decisions to exempt some particular, unique classes of workers from the right to strike.

The author has agreed to amend the bill to ensure that other public workers who are prohibited from striking against their own employer for their own benefit, whether those prohibitions are statutory or through case law, are also prohibited from engaging in sympathy strikes.¹ A mock-up of those amendments are attached at the end of this analysis.

8. Arguments in Support

According to the California Labor Federation, who is a co-sponsor of AB 504:

The right to collectively bargain and strike are fundamental democratic rights of Americans. The National Labor Relations Act gives private sector employees the right to strike and goes even further by specifying that nothing in the Act can "interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right."

Like the federal law, California has enacted laws giving public-sector workers the right to strike. The Public Employment Relations Board has affirmed that public sector employees have the statutorily protected right to strike and that public employees that go on strike are protected from discipline by an employer for participation.

In 2022, an estimated 48,000 graduate workers, postdoctoral scholars, and academic researchers represented by the United Auto Workers (UAW) began contract

¹ The amendments may be subject to any non-substantive amendments by Legislative Counsel.

negotiations with the University of California (UC) for living wages, childcare subsidies, and job security. After negotiations stalled, UAW members went on strike in the largest higher education strike in the nation's history.

During the 40-day strike, unions representing non-UC unions, such as UPS drivers and construction workers, were able to honor the picket lines and cease work serving the UC. However, certain UC workers represented by other campus unions, such as Teamsters 2010 and UC-AFT, were unable to honor the picket lines and had to continue work for the UC, unlike unions representing non-UC workers. Contract clauses pushed by the UC prevented unions representing UC workers from honoring their fellow workers' picket line and acting according to their conscience due to clauses present in contracts preventing sympathy strikes.

The prohibition of honoring picket lines in UC contracts undermines the right to strike because the purpose of a strike is to compel an employer to bargain for and agree to terms and conditions of employment, including wages, benefits, and non-economic issues. When wages and benefits increase for one set of workers, it raises the floor for all workers at the same employer. Not only does this benefit workers, their families, and the community, but it also protects against inequality across job classifications at the employer.

Forcing workers to cross picket lines of their co-workers they see every day also contributes to a hostile work environment. At times, members of the same family are divided across the picket line, with one member crossing a line that another is walking, forcing that worker to act against their family's interests and well-being. The hostility created by strike ban clauses can linger and fester when workers return to the same workplace with potential negative consequences. In addition, the right to honor a picket line is not just a democratic right, it is a matter of conscience for many Californians. It is a choice that people make according to what they believe is morally right.

AB 504 remedies the issues raised by non-sympathy strike clauses by declaring that the right to strike and honor a picket line is a fundamental human right. AB 504 also voids provisions in public employer policies or collective bargaining agreements limiting or preventing an employee's right to sympathy strike.

According to the United Auto Workers (UAW), locals 2865, 5810, 4123, and 6, who are also co-sponsors of AB 504:

When Academic Workers went on strike at UC in Fall 2022, they witnessed firsthand the moral injury that is caused when public employers do not respect the First Amendment rights of workers to abide by their conscience and honor a picket line. By enshrining this right in California law, AB 504 (Reyes) will ensure that California's public employees are not forced to choose between crossing a picket

line in violation of their conscience and facing discipline from their employer for their refusal to do so.

Striking Academic Workers also witnessed solidarity from the California labor movement, including UPS Teamsters who sanctioned the strikes and have the contractual right to respect picket lines. However, other workers at UC were forced to cross the picket lines due to UC's insistence on strict no-strikes clauses that prohibit workers from honoring picket lines. AB 504 (Reyes) will remedy the existing imbalance in who has the right to honor picket lines by extending this right to all public employees.

When workers are forced to cross a picket line, this is not only a violation of their dignity, it also creates an environment in which they may be pressured by their supervisors to pick up struck work. AB 504 (Reyes) will limit this kind of interference with the bargaining process. This will allow employers and workers to focus on dispute resolutions so that workers can get back to the work they want to do - serving the people of California.

The working conditions of public employees are an issue of statewide concern, and when public sector employees are forced to make the difficult decision to go on strike, that decision must be respected while the parties work towards swift resolution. Current law enables public employers to infringe on the rights of public employees by forcing them to act against their conscience. AB 504 (Reyes) will protect the right to honor picket lines as an essential right for all public employees and enshrine into California law this First Amendment freedom.

9. Arguments in Opposition

According to the University of California, which opposes AB 504:

[AB 504] would invalidate agreed-upon provisions in public collective bargaining agreements. These provisions support labor peace and operational continuity during the term of the contracts. While the University opposes AB 504, UC is dedicated to ensuring that employees can engage in protected activities, as provided in state and federal law.

State laws governing collective bargaining ensure a fair process for both unions and public entities and thoughtfully creates a framework for when unions can engage in protected strike activity. That current framework ensures good faith and structured negotiations and aims to maximize labor peace. Under AB 504, bargaining units with closed contracts could engage in "sympathy strikes" with other bargaining units. The bill would risk constant disruptions for public entities in California and hinder their ability to serve the state. Further, the requirements of AB 504 void no strike provisions in existing contracts - provisions that were agreed to by both

parties through good faith bargaining and concessions. These concessions were likely made because it is critical for public entities to ensure operational continuity and labor peace during the term of their agreements. In the absence of enforceable provisions, contracts will be thrown into disarray and the threat of mass disruption across all bargaining units would distort future contract negotiations, to an extent that there would be little incentive for any party to negotiate and settle contracts early.

The bill will also have significant fiscal implications for the University. Strikes, though infrequent, can cost the University of California millions of dollars daily with sympathy strikes compounding that.

The League of California Cities also opposes AB 504. According to the League:

[AB 504] poses a serious problem for public agencies that are providing public services on a limited budget and in a time of a workforce shortage. Allowing for any public employee, with limited exception, to join a striking bargaining unit in which that employee is not a member could lead to a severe workforce stoppage. When a labor group is preparing to engage in protected union activities, local agencies have the ability to plan for coverage and can take steps to limit the impact on the community. This bill would remove an agency's ability to plan and provide services to the community in the event any bargaining unit decides to strike. A local agency cannot make contingency plans for an unknown number of public employees refusing to work.

Our organizations are not disputing the right of the employee organization to engage in the protected activity of striking. State law has created a framework for when unions can engage in protected strike activity that has been honored by local government and unions alike. Unfortunately, this bill would allow those who have not gone through the negotiation process to now refuse to work simply because another bargaining unit is engaging in striking.

AB 504 would void locally bargained memorandums of understanding (MOUs) regardless of what they say about the employee's ability to sympathy strike and would insert the ability for employees to engage in sympathy striking. No-strike provisions in local contracts have been agreed to by both parties in good faith often due to the critical nature of the employees' job duty. By overriding local MOUs, AB 504 would grant sympathy strikers greater rights than the employees engaged in a primary strike. Under current law, both primary and sympathy strikes may be precluded by an appropriate no-strike clause in the MOU, which this bill proposes to override only for sympathy strikes. Additionally, under current law, essential employees of a local public agency as defined by the California Public Employment Relations Board (PERB) law and further described in more detail by the collective

bargaining agreement, cannot engage in a primary or sympathy strike. This bill would override these safeguards for sympathy strikers.

This bill declares sympathy striking a human right but exempts any public employee who is subject to Section 1962 of the Labor Code from having that right. Given that this bill would void local MOU no-sympathy strike agreements while exempting a specific job type, at the same time as declaring a new human right, it would only create confusion regarding which public employees cannot engage in sympathy striking.

Local agencies provide critical health and safety functions, including disaster response, emergency services, dispatch, mobile crisis response, health care, law enforcement, corrections, elections, and road maintenance. Local MOU provisions around striking and sympathy striking ensure local governments can continue to provide critical services. In many circumstances, counties must meet minimum staff requirements, e.g., in jails and juvenile facilities, to ensure adequate safety requirements. AB 504 overrides the essential employee process at PERB, thereby creating a system where any employee can sympathy strike, which could result in workforce shortages that jeopardize our ability to operate. In addition, it is unclear if this bill would apply to public employees with job duties that require work in a multi-jurisdiction function, like a law enforcement task force, where one entity is on strike. Shutting down government operations for sympathy strikes is an extreme approach that goes well beyond what is allowed for primary strikes and risks the public's health and safety.

SUPPORT

California Labor Federation, AFL-CIO (co-sponsor)

UAW Local 2865 (co-sponsor)

UAW Local 4123 (co-sponsor)

UAW Local 5810 (co-sponsor)

UAW Region 6 (co-sponsor)

University Council- American Federation of Teachers (co-sponsor)

California Faculty Association

California School Employees Association

California State Legislative Board, Sheet Metal, Air, Rail and Transportation Workers - Transportation Division (SMART-TD)

California Teachers Association

California State University Employees Union

OPPOSITION

Association of California Healthcare Districts (ACHD)

California Association of Joint Powers Authorities (CAJPA)

California Special Districts Association
City of Glendora
City of Placentia
City of Santa Cruz City Council
City of Whittier
City of Kerman
City of Shasta Lake
City of Burbank
City of Tulare
City of Placerville
City of Riverbank
City of La Habra
California State Association of Counties (CSAC)
Public Risk Innovation, Solutions, and Management (PRISM)
Rural County Representatives of California (RCRC)
Solano County Board of Supervisors
Urban Counties of California (UCC)
League of California Cities
California County of Superintendents

RELATED LEGISLATION

Pending Legislation:

AB 1 (McKinnor, 2023) would establish collective bargaining rights for Legislative employees. The bill is pending before the Senate Judiciary Committee and is set to be heard on the same day as this bill.

SCA 7 (Umberg, 2023) would establish a constitutional right to collective bargaining and prohibit state and local government, on or after January 1, 2023, from passing, enacting, or adopting any law that interferes with, negates, or diminishes the right of employees to organize and bargain collectively over their wages, hours, and other terms and conditions of employment and workplace safety. If adopted, SCA 7 would be put before the voters for approval. The measure is pending before the Senate Elections and Constitutional Amendments Committee.

Prior Legislation: None known.

PRIOR VOTES:

Senate Labor, Public Employment and Retirement Committee (Ayes 4, Noes 1)
Assembly Floor (Ayes 63, Noes 13)
Assembly Appropriations Committee (Ayes 11, Noes 4)
Assembly Judiciary Committee (Ayes 8, Noes 3)
Assembly Public Employment and Retirement Committee (Ayes 5, Noes 1)

Mock-up of Amendments to AB 504 (Reyes)

SECTION 1.

Section 3550.1 is added to the Government Code, to read:

3550.1.

(a) The Legislature finds and declares that the right of a public employee to demonstrate solidarity with other public employees by honoring a ~~picket line~~*strike*, or by refusing to enter upon the premises or perform work for a public employer engaged in a primary ~~labor dispute~~*strike*, is a fundamental human right protected by the Constitution and laws of this state.

(b) Notwithstanding any other law, policy, or collective bargaining agreement, it shall not be unlawful or a cause for discipline or other adverse action against a public employee for that public employee to refuse to do any of the following:

(1) Enter property that is the site of a primary ~~labor dispute~~*strike*.

(2) Perform work for an a public employer involved in a primary ~~labor dispute~~*strike*.

(3) Go through or work behind any primary ~~picket~~*strike* line.

(c) For the purposes of this section only, the term "honor a strike picket line" shall mean a refusal to perform work for a public employer in response to a primary strike by an exclusive representative of a public employer.

~~(e)~~**(d)** A public employer shall not direct a public employee to take any of the actions set forth in subdivision (b).

~~(d)~~**(e)** A recognized employee organization may inform employees of their rights and encourage employees to exercise their rights under this section.

~~(e)~~**(f)** A provision in a public employer policy or collective bargaining agreement that purports to limit or waive the rights set forth in this section shall be void as against public policy, *with the sole limited exception of section g herein*.

(g) If at the time of the effective date of this statute the provisions of this section are in conflict with the provisions of an existing collective bargaining agreement, then upon request of the employer or the exclusive representative, the parties shall negotiate over this section. A request to meet and confer pursuant to this article shall reopen the existing collective bargaining agreement solely for the purpose of negotiating an agreement regarding this section. Following the expiration of an existing collective bargaining agreement, this section shall apply.

~~(f)~~**(h)** This section shall not apply to any public employee who is subject to Section 1962 of the Labor Code *or to any employee working as a peace officer under Penal Code section 830.1, subdivision (a) and 830.2 (a)*

(i) This section shall not prevent the Public Employment Relations Board from seeking injunctive relief from a superior court to enjoin "essential employees" from striking as that term is described in County Sanitation Dist. No 2 v Los Angeles County Employees Association consistent with PERB law.