

COUNTY OF SANTA BARBARA
LEGISLATIVE ANALYSIS FORM

This form is required for the Legislative Program Committee to consider taking an advocacy position on an issue or legislative item

| | |
|---|---------------------------------------|
| BILL NUMBER: AB 1603 | AUTHOR: Ridley-Thomas |
| INTRO/AMEND DATE: February 17, 2017/August 24, 2017 | AUTHOR'S POLITICAL PARTY: D |
| BILL STATUS: Senate Floor | |

1) BILL SUBJECT:

Amendments to the Meyers-Milias-Brown Act

2) FROM DEPARTMENT:

Public Health

3) IS THIS ITEM SPECIFICALLY REFERENCED IN THE LEGISLATIVE PLATFORM?

No

4) WHICH POLICY-RELATED MATTER IS OF CONCERN WITH THIS BILL?

Status of contract employees' inclusion in collective bargaining units

5) HOW WOULD THIS BILL IMPACT THE COUNTY? (Current practices, responsibility, authority, pros/cons, affected programs and/or services, etc.)

- The expansion of collective bargaining for a new classification of employees will result in new county costs.
- Contract physicians would have access to the same mediation provided to public employees, which would likely result in increased state costs for the Public Employment Retirement Board and state court system.
- AB 1603 is likely to have significant impact on the operations of our health care centers, our designation as a 330(e)(h) Community Health Center, Health Care for the Homelessness program, and our SART program which often rely on contractors or temporary employees. Having contracted employees participate in collective bargaining could cause severe financial and administrative hardship and ultimately limit our ability to sustain our primary care services offered to our indigent population.

6) IMPACT ON COUNTY PROGRAM:

- | | | |
|--|---|-------------------------------|
| <input type="checkbox"/> Major-Positive | <input type="checkbox"/> Minor-Positive | <input type="checkbox"/> None |
| <input checked="" type="checkbox"/> Major-Negative | <input type="checkbox"/> Minor-Negative | <input type="checkbox"/> None |

7) SANTA BARBARA COUNTY IMPACT:

- | | | |
|--|---|-------------------------------|
| <input type="checkbox"/> Major-Positive | <input type="checkbox"/> Minor-Positive | <input type="checkbox"/> None |
| <input checked="" type="checkbox"/> Major-Negative | <input type="checkbox"/> Minor-Negative | <input type="checkbox"/> None |

8) STATEWIDE IMPACT:

- | | | |
|--|---|-------------------------------|
| <input type="checkbox"/> Major-Positive | <input type="checkbox"/> Minor-Positive | <input type="checkbox"/> None |
| <input checked="" type="checkbox"/> Major-Negative | <input type="checkbox"/> Minor-Negative | <input type="checkbox"/> None |

Explanation of Impacts:



COUNTY OF SANTA BARBARA
LEGISLATIVE ANALYSIS FORM

This bill provides that persons who are employed jointly by a public agency and any other employer (e.g., a private staffing agency or registry) at specified public clinics or hospitals are public employees subject to the Meyers-Milias-Brown Act. The bill also provides that these public/private jointly-employed employees may be included in appropriate bargaining units without the consent of any agency or joint employer.

9) WOULD THIS BILL IMPACT (*Legislative Principles*):

- | | | | |
|---|-----------------------------------|---|--|
| a. Job growth and Economic Vitality? | <input type="checkbox"/> Positive | <input checked="" type="checkbox"/> Neutral | <input type="checkbox"/> Negative |
| b. Efficient service delivery and operations? | <input type="checkbox"/> Positive | <input type="checkbox"/> Neutral | <input checked="" type="checkbox"/> Negative |
| c. Fiscal stability? | <input type="checkbox"/> Positive | <input type="checkbox"/> Neutral | <input checked="" type="checkbox"/> Negative |
| d. Inter-agency cooperation? | <input type="checkbox"/> Positive | <input checked="" type="checkbox"/> Neutral | <input type="checkbox"/> Negative |
| e. Local control? | <input type="checkbox"/> Positive | <input type="checkbox"/> Neutral | <input checked="" type="checkbox"/> Negative |
| f. Health and human services? | <input type="checkbox"/> Positive | <input type="checkbox"/> Neutral | <input checked="" type="checkbox"/> Negative |
| g. Community sustainability & environmental protection? | <input type="checkbox"/> Positive | <input checked="" type="checkbox"/> Neutral | <input type="checkbox"/> Negative |

Additional Comments:

10) FISCAL IMPACT ON THE COUNTY:

- | | | |
|---|---|--|
| <input type="checkbox"/> Revenue Increase | <input type="checkbox"/> Revenue Decrease | <input checked="" type="checkbox"/> Unfunded Mandate |
| <input checked="" type="checkbox"/> Cost Increase | <input type="checkbox"/> Cost Decrease | <input type="checkbox"/> Undetermined |
| <input type="checkbox"/> None | | |

Additional Comments:

11) OTHER AGENCIES THAT SHOULD REVIEW THIS BILL:

12) CSAC POSITION ON BILL:

- | | | |
|--|--|---|
| <input type="checkbox"/> Support | <input checked="" type="checkbox"/> Oppose | <input type="checkbox"/> Support if Amended |
| <input type="checkbox"/> Oppose unless Amended | <input type="checkbox"/> Watch | <input type="checkbox"/> No position taken |

13) OTHER LOCAL OR STATEWIDE ORGANIZATIONS THAT HAVE TAKEN A POSITION ON THIS BILL:

(Indicate support or opposition for each)

Opposition - California Association of Public Hospitals and Health Systems California Hospital Association California Psychiatric Association California Staffing Professionals California State Association of Counties County Behavioral Health Directors Association of California County Health Executives Association of California Riverside County Board of Supervisors Rural County Representatives of California San Joaquin County Santa Clara County Board of Supervisors Urban Counties of California

14) PROPOSED AMENDMENTS: (Attach separate sheet)

15) RECOMMENDATION:



COUNTY OF SANTA BARBARA
LEGISLATIVE ANALYSIS FORM

- | | | |
|--|---|--|
| <input type="checkbox"/> Support | <input type="checkbox"/> Recommend Support to Board* | <input type="checkbox"/> Support if Amended |
| <input checked="" type="checkbox"/> Oppose | <input type="checkbox"/> Recommend Opposition to Board* | <input type="checkbox"/> Oppose unless Amended |
| <input type="checkbox"/> Watch | <input type="checkbox"/> Concerns (Why? Explain in #6) | <input type="checkbox"/> No Position (Why?) |

* Indicates that the department believes that the Board of Supervisors should take a formal position on this bill

Additional Comments:

16) LEGISLATIVE ANALYSIS FORM PREPARED BY: Dennis Bozanich

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E-mail address: dbozanich@countyofsb.org



THIRD READING

Bill No: AB 1603
Author: Ridley-Thomas (D)
Amended: 8/24/17 in Senate
Vote: 21

SENATE PUBLIC EMP. & RET. COMMITTEE: 3-2, 7/10/17
AYES: Pan, Leyva, Portantino
NOES: Morrell, Moorlach

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

ASSEMBLY FLOOR: 54-21, 5/31/17 - See last page for vote

SUBJECT: Meyers-Milias-Brown Act: local public agencies

SOURCE: AFSCME, AFL-CIO
Union of American Physicians and Dentists

DIGEST: This bill provides that persons who are employed *jointly* by a public agency *and* any other employer (e.g., a private staffing agency or registry) at specified public clinics or hospitals are public employees subject to the Meyers-Milias-Brown Act. The bill also provides that these public/private jointly-employed employees may be included in appropriate bargaining units without the consent of any agency or joint employer.

ANALYSIS: Existing federal law, pursuant to the National Labor Relations Act (NLRA) and National Labor Relations Board (NLRB):

- 1) Guarantees the right of private sector workers to organize and collectively bargain with their employers and to participate in concerted activities to improve their pay and working conditions, with or without representatives advocating on their behalf.
- 2) Protects employers and employees from unfair labor practices and requires labor relations disputes to be resolved by the NLRB, an independent federal

agency created by Congress in 1935, and responsible for administering the provisions of the NLRA. The NLRB conducts elections for union organizing, investigates charges, facilitates settlements, decides cases brought before it, and enforces orders.

- 3) Exempts state public sector labor relations from NLRA and NLRB jurisdiction in recognition of states' sovereign rights under the U.S. Constitution but provides federal preemption of state law where states seek to otherwise exercise authority to regulate labor relations ascertained to be under the jurisdiction of the NLRA (i.e., when states attempt to regulate labor relations in private sector employment).

Existing state law, pursuant to the Meyers-Milias-Brown Act (MMBA):

- 1) Establishes a statutory framework which provides for public employer-employee relations between employees and public agencies by providing 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.
- 2) Provides rights to public employees to join or participate in the activities of employee organizations, or represent themselves in their employment relations with the public agency, and representation of local public agency employees who are members of a recognized employee organization, among other provisions.
- 3) Requires a public agency to grant exclusive or majority recognition to an employee organization based on a signed petition, authorization cards, or union membership cards showing that the majority of the employees in the appropriate bargaining unit desire representation, unless another labor organization has been lawfully recognized as the exclusive or majority representative of all or part of the same unit.
- 4) Authorizes a local public agency to adopt reasonable rules and regulations for the administration of those relations under the act, after consultation in good faith with representatives of an employer-employee organization.
- 5) Delegates jurisdiction over the public employer-employee relationship to the Public Employment Relations Board (PERB) and charges PERB with resolving disputes and enforcing the statutory duties and rights of state and local public agency employers and employee organizations, but provides the City and County of Los Angeles a local alternative to PERB oversight.

This bill:

- 1) Clarifies that the definition of “public employee” in the MMBA includes persons employed jointly by a public agency and any other employer (e.g., a private staffing agency or registry) at specified public clinics or hospitals.
- 2) Clarifies that a public agency’s reasonable rules and regulations to administer its employer-employee relations may include provisions for the exclusive recognition of employee organizations formally recognized by employees of the agency, as specified, subject to the right of an employee to represent himself or herself and provided that determination of an otherwise appropriate unit of, or including, public employees jointly employed by a public employer and any other employer at specified public clinics or hospitals does not require the consent of any agency or joint employer.
- 3) Clarifies that the public agency’s process for representation elections must require a majority of votes cast by the employees in the appropriate bargaining unit, including an appropriate bargaining unit that consists of or includes public employees jointly employed by a public employer and any other employer at specified public clinics or hospitals.
- 4) Clarifies that the public agency’s exclusive or majority recognition of an employee organization be based on a signed petition, authorization cards, or union membership cards showing that a majority of employees in an appropriate bargaining unit, including an appropriate bargaining unit that consists of or includes public employees jointly employed by a public employer and any other employer at specified public clinics or hospitals.

Background

This bill authorizes unions to organize and represent public employees employed jointly by a public agency and any other employer at specified public clinics or hospitals.

Fluctuating Federal Law

The effort to address collective bargaining for employees in the public sector who are employed jointly by a public agency and by a private employer is complicated by the interaction between federal and state law governing labor relations. By designating employees who are also employed by a private employer as public employees subject to the MMBA, the bill potentially conflicts with NLRA jurisdiction and the political vagaries associated with the changing control over the NLRB between differing pro-union and pro-management Administrations.

Thus, under certain Administrations, the NLRB has required that a union must gain the consent of “joint employers” (i.e. the public agency and the private employer before grouping in a bargaining unit the jointly employed employees together with employees employed exclusively by the public agency).

Under other Administrations and most recently, the NLRB has not required the consent of joint employers where there is a “community of interest” among the employees and the where the joint employers are not bonafide multiemployers with different, even competitive interests. Under these rules, unions could organize the employees of the joint employers. AB 1603 codifies this approach in the MMBA.

However, it appears that the new Administration will shift the NLRB once again to a position where consent of the joint employers will be required. Should this occur and should the NLRB claim that its jurisdiction preempts state law with respect to AB 1603, the likely result would be continued litigation perhaps rising to the U.S. Supreme Court to determine whether a state has a right to define who are its *public employees* versus the right of the federal government to determine the labor relations of private sector employees, even employees who but for legal engineering are otherwise common law employees of the public agency.

Key NLRB Cases

Greenhoot, Inc., 205 NLRB 250 (1973) et al., found that bargaining units containing both an employer’s regular employees and the employer’s temporary employees supplied by a temporary staffing agency were inappropriate without the consent of both the employer and the staffing agency.

M.B. Sturgis, Inc., 331 NLRB 1298 (2000) provided that petitioners seeking to represent employees in bargaining units that combine both solely- and jointly-employed workers are no longer required to obtain employer consent. While the employer is required to bargain on all terms and condition of employment for solely-employed workers, the employer is only obligated to bargain over the jointly-employed workers’ terms and conditions which it possesses the authority to control.

Oakwood Care Center, 343 NLRB 659 (2004) ruled that bargaining units that combine employees who are solely employed by a user employer and those who are jointly employed by the user and supplier employer are multiemployer units, which may be appropriate *with the consent* of the parties. In practical effect, the NLRB overruled its prior decision in *Sturgis*.

Miller & Anderson, Inc., Case No. 05-RC-079249 (2016) overturned its prior ruling in *Oakwood Care Center* and returned to the rule established in *Sturgis* and clarified that units combining solely and jointly employed workers of a single user employer must share a "community of interest" for a single unit combining the two to be appropriate. Here, the NLRB will apply the traditional community of interest factors for determining unit appropriateness. These factors are commonly defined as, or refer to, a common interest of a class of people living in a community or sharing a common grievance (i.e., wages, hours and other conditions of employment sufficient to justify their mutual inclusion in a single bargaining unit).

According to former NLRB member, Brian Hayes, *Miller and Anderson* "is unlikely to survive a court challenge or a soon to be reorganized NLRB."

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

SUPPORT: (Verified 8/30/17)

AFSCME, AFL-CIO (co-source)
Union of American Physicians and Dentists (co-source)
AFSCME, District Council 36

OPPOSITION: (Verified 8/30/17)

American Staffing Association
California Association of Public Hospitals and Health Systems
California Hospital Association
California Psychiatric Association
California Staffing Professionals
California State Association of Counties
County Behavioral Health Directors Association of California
County Health Executives Association of California
Riverside County Board of Supervisors
Rural County Representatives of California
San Joaquin County
Santa Clara County Board of Supervisors
Urban Counties of California
One individual

ARGUMENTS IN SUPPORT: According to AFSCME, District Council 36, "AB 1603 would codify that longstanding doctrine [that "public employee" includes an employee who is jointly employed by the public agency] in the

MMBA's text and would adopt the *M.B. Sturgis* rule for bargaining units that include both solely and jointly employed employees of a public agency."

ARGUMENTS IN OPPOSITION: According to Urban Counties of California, this bill "could cause significant disruption to county public health and behavior health systems due to the many implementation questions that these changes will have on county operations. Each county may have different employee arrangements which will make this bill difficult to implement. In addition, there are several outstanding questions related to federal authority of the National Labor Relations Board, how to deal with physicians and other medical personnel who contract with county hospitals on a part-time basis, and how to deal with contracted providers who are only hired until a permanent employee is recruited and hired. These are only a few of the implementation issues that this bill will cause to counties."

ASSEMBLY FLOOR: 54-21, 5/31/17

AYES: Aguiar-Curry, Arambula, Berman, Bloom, Bocanegra, Bonta, Burke, Caballero, Calderon, Cervantes, Chau, Chiu, Chu, Cooley, Cooper, Dababneh, Daly, Frazier, Friedman, Cristina Garcia, Eduardo Garcia, Gipson, Gloria, Gomez, Gonzalez Fletcher, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Levine, Limón, Maienschein, McCarty, Medina, Mullin, Muratsuchi, Nazarian, O'Donnell, Quirk, Quirk-Silva, Reyes, Ridley-Thomas, Rodriguez, Rubio, Salas, Santiago, Mark Stone, Thurmond, Ting, Weber, Wood, Rendon

NOES: Acosta, Travis Allen, Baker, Bigelow, Chávez, Cunningham, Dahle, Flora, Fong, Gallagher, Harper, Kiley, Lackey, Low, Mathis, Mayes, Obernolte, Patterson, Steinorth, Voepel, Waldron

NO VOTE RECORDED: Brough, Chen, Choi, Eggman, Melendez

Prepared by: Glenn Miles / P.E. & R. / (916) 651-1519
8/30/17 15:08:45

**** END ****

AMENDED IN SENATE AUGUST 24, 2017

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 1603

Introduced by Assembly Member Ridley-Thomas

February 17, 2017

An act to amend Sections 3501, 3507, and 3507.1 of the Government Code, relating to public employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1603, as amended, Ridley-Thomas. Meyers-Milias-Brown Act: local public agencies.

~~The~~

Under the Meyers-Milias-Brown Act (~~MMBA~~) (MMBA), employees of local public agencies 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. The MMBA authorizes a local public agency to adopt reasonable rules and regulations after consultation in good faith with representatives of an employer-employee a recognized employee organization or organizations for the administration of employer-employee relations under the act. The Public Employment Relations Board (PERB) has jurisdiction over certain disputes arising pursuant to the MMBA. The MMBA defines "public employee" to mean any person employed by a public agency, in addition to other specified employees. The MMBA rules and regulations may include exclusive recognition of employee organizations formally recognized pursuant to a vote of the employees of the agency or an appropriate unit thereof, subject to the right of an employee to represent himself or herself.

This bill would revise the definition of “public employee” for the purpose of the act to also include persons jointly employed by a public agency and any other employer at specified clinics and hospitals. The bill instead would specify that those rules and regulations may provide for exclusive recognition of employee organizations formally recognized pursuant to a vote of the employees of the agency or an appropriate unit thereof, subject to the employee’s right to represent himself or herself, and provided that *determination of an otherwise appropriate unit of a public agency and one or more joint employers do of, or including, these jointly employed public employees is not contingent upon, and does not otherwise require the agency or joint employer’s consent.*

Under the MMBA, unit determinations and representation elections are determined and processed in accordance with rules adopted by a public agency ~~and in accordance with~~ the MMBA. Existing law requires, in a representation election, a majority vote of the employees in the appropriate bargaining unit.

This bill also would specify that the appropriate bargaining unit includes a unit that consists ~~of a public agency and one or more joint employers: of, or includes, the jointly employed public employees described above.~~

The MMBA requires a public agency to grant exclusive or majority recognition to an employee organization based on a signed petition, authorization cards, or union membership cards showing that the majority of the employees in the appropriate bargaining unit desire the representation, unless another labor organization has previously been lawfully recognized as exclusive or majority representative or all or part of the same unit.

This bill would specify that the requirement ~~of that~~ a majority of the employees in an appropriate bargaining unit desire the representation also includes an appropriate bargaining unit ~~consisting of a public agency and one or more joint employers: that consists of, or includes, the jointly employed public employees described above.~~

The MMBA defines “public employee” to mean any person employed by a public agency, in addition to other specified employees.

This bill would revise the definition of “public employee” for the purpose of the act to include persons jointly employed by a public agency:

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

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

1 SECTION 1. Section 3501 of the Government Code is amended
2 to read:

3 3501. As used in this chapter:

4 (a) "Employee organization" means either of the following:

5 (1) Any organization that includes employees of a public agency
6 and that has as one of its primary purposes representing those
7 employees in their relations with that public agency.

8 (2) Any organization that seeks to represent employees of a
9 public agency in their relations with that public agency.

10 (b) "Recognized employee organization" means an employee
11 organization which has been formally acknowledged by the public
12 agency as an employee organization that represents employees of
13 the public agency.

14 (c) Except as otherwise provided in this subdivision, "public
15 agency" means every governmental subdivision, every district,
16 every public and quasi-public corporation, every public agency
17 and public service corporation and every town, city, county, city
18 and county and municipal corporation, whether incorporated or
19 not and whether chartered or not. As used in this chapter, "public
20 agency" does not mean a school district or a county board of
21 education or a county superintendent of schools or a personnel
22 commission in a school district having a merit system as provided
23 in Chapter 5 (commencing with Section 45100) of Part 25 and
24 Chapter 4 (commencing with Section 88000) of Part 51 of the
25 Education Code or the State of California.

26 (d) (1) "Public employee" means any person employed by any
27 public agency, ~~including persons jointly employed by a public~~
28 ~~agency, and~~ employees of the fire departments and fire services
29 of counties, cities, cities and counties, districts, and other political
30 subdivisions of the state, excepting those persons elected by
31 popular vote or appointed to office by the Governor of this state.

32 (2) "Public employee" also includes any person jointly
33 employed by a public agency and any other employer at the
34 following:

35 (A) A clinic or hospital operated for the purpose of medical
36 education, as described in subdivision (a) of Section 2401 of the
37 Business and Professions Code.

1 (B) *A nonprofit community clinic, such as a primary care clinic*
2 *or charitable clinic, as described in subdivision (a) of Section 1204*
3 *of the Health and Safety Code.*

4 (C) *The county hospital.*

5 (e) “Mediation” means effort by an impartial third party to assist
6 in reconciling a dispute regarding wages, hours and other terms
7 and conditions of employment between representatives of the
8 public agency and the recognized employee organization or
9 recognized employee organizations through interpretation,
10 suggestion and advice.

11 (f) “Board” means the Public Employment Relations Board
12 established pursuant to Section 3541.

13 SEC. 2. Section 3507 of the Government Code is amended to
14 read:

15 3507. (a) A public agency may adopt reasonable rules and
16 regulations after consultation in good faith with representatives of
17 a recognized employee organization or organizations for the
18 administration of employer-employee relations under this chapter.

19 The rules and regulations may include provisions for all of the
20 following:

21 (1) Verifying that an organization does in fact represent
22 employees of the public agency.

23 (2) Verifying the official status of employee organization
24 officers and representatives.

25 (3) Recognition of employee organizations.

26 (4) Exclusive recognition of employee organizations formally
27 recognized pursuant to a vote of the employees of the agency or
28 an appropriate unit thereof, subject to the right of an employee to
29 represent himself or herself as provided in Section 3502, and
30 provided that *determination of an otherwise appropriate unit of a*
31 ~~*public agency and one or more joint employers does not require*~~
32 ~~*of, or including, public employees described in paragraph (2) of*~~
33 ~~*subdivision (d) of Section 3501 as appropriate shall not be*~~
34 ~~*contingent upon, or otherwise require, the consent of the any*~~
35 ~~*agency or joint employer.*~~

36 (5) Additional procedures for the resolution of disputes involving
37 wages, hours and other terms and conditions of employment.

38 (6) Access of employee organization officers and representatives
39 to work locations.

1 (7) Use of official bulletin boards and other means of
2 communication by employee organizations.

3 (8) Furnishing nonconfidential information pertaining to
4 employment relations to employee organizations.

5 (9) Any other matters that are necessary to carry out the purposes
6 of this chapter.

7 (b) Exclusive recognition of employee organizations formally
8 recognized as majority representatives pursuant to a vote of the
9 employees may be revoked by a majority vote of the employees
10 only after a period of not less than 12 months following the date
11 of recognition.

12 (c) No public agency shall unreasonably withhold recognition
13 of employee organizations.

14 (d) Employees and employee organizations shall be able to
15 challenge a rule or regulation of a public agency as a violation of
16 this chapter. This subdivision shall not be construed to restrict or
17 expand the board's jurisdiction or authority as set forth in
18 subdivisions (a) to (c), inclusive, of Section 3509.

19 SEC. 3. Section 3507.1 of the Government Code is amended
20 to read:

21 3507.1. (a) Unit determinations and representation elections
22 shall be determined and processed in accordance with rules adopted
23 by a public agency in accordance with this chapter. In a
24 representation election, a majority of the votes cast by the
25 employees in the appropriate bargaining unit, including an
26 appropriate bargaining unit ~~consisting of a public agency and one~~
27 ~~or more joint employers, that consists of or includes employees~~
28 *described in paragraph (2) of subdivision (d) of Section 3501,*
29 shall be required.

30 (b) Notwithstanding subdivision (a) and rules adopted by a
31 public agency pursuant to Section 3507, a bargaining unit in effect
32 as of the effective date of this section shall continue in effect unless
33 changed under the rules adopted by a public agency pursuant to
34 Section 3507.

35 (c) A public agency shall grant exclusive or majority recognition
36 to an employee organization based on a signed petition,
37 authorization cards, or union membership cards showing that a
38 majority of the employees in an appropriate bargaining unit desire
39 the representation, including an appropriate bargaining unit
40 ~~consisting of a public agency and one or more joint employers,~~

1 *that consists of or includes employees described in paragraph (2)*
2 *of subdivision (d) of Section 3501, unless another labor organization*
3 *has previously been lawfully recognized as exclusive or majority*
4 *representative of all or part of the same unit. Exclusive or majority*
5 *representation shall be determined by a neutral third party selected*
6 *by the public agency and the employee organization who shall*
7 *review the signed petition, authorization cards, or union*
8 *membership cards to verify the exclusive or majority status of the*
9 *employee organization. In the event the public agency and the*
10 *employee organization cannot agree on a neutral third party, the*
11 *California State Mediation and Conciliation Service shall be the*
12 *neutral third party and shall verify the exclusive or majority status*
13 *of the employee organization. In the event that the neutral third*
14 *party determines, based on a signed petition, authorization cards,*
15 *or union membership cards, that a second labor organization has*
16 *the support of at least 30 percent of the employees in the unit in*
17 *which recognition is sought, the neutral third party shall order an*
18 *election to establish which labor organization, if any, has majority*
19 *status.*

O



August 30, 2016

SENATE FLOOR ALERT

AB 1603 (Ridley-Thomas) – Meyers-Miliias-Brown Act: local public agencies As Amended August 24, 2017 URGE “NO” VOTE

AB 1603 would authorize collective bargaining for employees of private companies that contract with public agencies **WITHOUT** the consent of either the affected private employer or the public agency. The August 24 amendments do not alleviate our concerns, but rather increase them by creating an additional definition of a public employee to include any person jointly employed by a public agency and any other employer at the following locations: 1) a clinic or hospital operated for the purpose of medical education, 2) a nonprofit community clinic, and 3) the county hospital. This definition is not limited to medical professionals and injects substantial ambiguities regarding the bill's scope and intent.

Despite our efforts with the author's office to clarify the bill's provisions, there remain many unaddressed and confusing issues—for both public and private sector employers, including:

- How can counties enter into collective bargaining agreements with these contracted employees, given that counties do not control their wages, hours, and terms and conditions of employment?
- How can the exclusive jurisdictional authority of the National Labor Relations Board (NLRB) be circumvented in matters governing private sector employment and employee rights?
- What terms can be negotiated by the county through collective bargaining when employment terms have already been agreed to by the employee(s) and their private employer (such as a locum tenens, temporary staffing agency or registry)?
- How to adjust for physicians, medical groups, and other medical personnel who contract with county hospitals on a part-time basis and retain a private practice, as well?
- What happens when psychiatrists contract with county Mental Health Plans on a part-time basis?
- How can there be fairness to both contracted private employees and county employees when the contracted private employees already have specified employment terms?

Although the bill is not limited to medical providers, it raises special additional difficult problems when applied to those employees, including:

- How to distinguish between an individual contract executed directly with a medical provider versus a contract executed by an entire provider group?
- How would counties collectively bargain with independent providers or provider groups that contract in multiple jurisdictions, including local and state governments?
- How to deal with contracted providers who are only projected to remain until a permanent county employee is recruited and hired?

Contracts with medical groups are, per the terms of the agreement, not “joint employment arrangements.” In this situation, the contracting agency or medical group is the employer of record. Therefore, negotiating with the medical group – a private entity – is clearly within the purview of the National Labor Relations Board (NLRB).

Further, AB 1603 requires private employers to collectively bargain under the California Meyers-Milias-Brown Act, which would force public entities to invite the employee’s private employer to participate in collective bargaining discussions. This is precedent setting – private employers would have decision-making authority over wages and salaries of public employees, a right that applies solely to public employers under Article XI of the California Constitution.

Despite the author’s intentions and ongoing dialogue, AB 1603 is fraught with pitfalls and complications and is inconsistent with federal law. The undersigned organizations urge your ‘NO’ vote.

California State Association of Counties (CSAC)

Rural County Representatives of California (RCRC)

Urban Counties of California (UCC)

County Health Executives Association of California (CHEAC)

County Behavioral Health Directors Association of California (CBHDA)

California Hospital Association (CHA)

California Association of Public Hospitals and Health Systems (CAPH)

California Psychiatric Association (CPA)

California Staffing Association (CSA)

American Staffing Association (ASA)

cc: Honorable Members, California State Senate
The Honorable Sebastian Ridley-Thomas, Member, California State Assembly
Charles Wright, Consultant, Office of Senate President pro Tempore Kevin de León
Cory Botts, Consultant, Senate Republican Caucus
Tom Dyer, Chief Deputy Legislative Secretary, Office of Governor Brown