



BARGAINING ADVISORY

Mandatory Union Access to New Employee Orientations & Right to Member Data

Background

As part of the adoption of the 2017-18 state budget, the legislature passed and Governor Brown signed AB 119, which requires, among other things, that public employers – including PreK-14 districts and the CSU – provide the exclusive representative with both access to all new employee orientations and also certain information about new hires and all employees in the bargaining unit. These new requirements are codified in California Government Code sections 3555 – 3559, and took effect July 1, 2017.

Requirements

The law sets certain minimum requirements, mandating that public school employers provide at least ten (10) days' advance notice of all new employee orientations unless there is an "urgent need critical to the employer's operations that was not reasonably foreseeable," and also permit union access to such orientations. The legislation defines a new employee orientation broadly as "the onboarding process of a newly hired public employee, whether in person, online, or through other means or mediums, in which employees are advised of their employment status, rights, benefits, duties and responsibilities, or any other employment-related matters." (Cal. Gov't Code § 3555(b)(3).) The statute's reference to "a newly hired public employee" indicates that the onboarding process for even a single new employee constitutes a "new employee orientation" within the meaning of the statute.

Beyond these minimum requirements, the bill permits the parties to negotiate the specifics of access to new employee orientations, including but not limited to the structure, time, and manner of union access. (Cal. Gov't Code § 3556.) Failure to reach agreement on the structure, time, and manner of access shall be subject, at either party's request, to compulsory, expedited interest arbitration¹

¹ Compulsory interest arbitration is expected to be much like our current process of factfinding at the end of the impasse procedure, however the new statute is very prescriptive about timelines; there is only a single arbitrator not a panel; and the outcome is binding on the parties.



BARGAINING ADVISORY

with the cost shared equally by the two parties. (Cal. Gov't Code § 3557(a), (b).) The bill further provides that in resolving the dispute, the arbitrator – selected from a list to be provided by the State Mediation and Conciliation Service (SMCS) – *must* consider, among other things, the Legislature's finding that unions must be provided with "meaningful access" to new employee orientations. (Cal. Gov't Code §§ 3555, 3557(b)(2)(G).) The parties may agree to provisions which vary from the law's requirements, but in the absence of such an agreement all of the law's requirements shall apply. (Cal. Gov't Code § 3557(d).)

The bill also provides an explicit reopener right, permitting, during the period between July 1, 2017 and the expiration of a collective bargaining agreement, parties to demand reopener bargaining for the specific purpose of negotiating provisions addressing union access to new employee orientations. (Cal. Gov't Code § 3557(c).)

The legislation also requires public school employers to provide the exclusive representative with the name, job title, department, work location, work, home, and personal cellular telephone numbers, personal email addresses on file with the employer, and home address of newly hired employees within thirty (30) days of hire or by the first pay period of the month following hire. (Cal. Gov't Code § 3558.) At the same time, the legislation also shields such information from public disclosure to third parties under the California Public Records Act. It also requires the employer to provide the exclusive representative with this information for *all* members of the bargaining unit at least every 120 days, unless a different schedule is collectively bargained.

The legislation provides that the Public Employment Relations Board has enforcement authority over these provisions (Cal. Gov't Code § 3555.5(c)(1)), meaning that employer violations can be challenged through the unfair practice charge procedures.

Recommendations

1. The law explicitly permits exclusive representatives to demand to meet and confer on this topic regardless of the current status of the collective bargaining agreement. Locals that currently do not have contractual rights to new employee orientations at least as good as those provided in this legislation should immediately issue a written demand to bargain the "structure, time and manner" of union access to new employee orientations. These subjects can be addressed either in the collective



BARGAINING ADVISORY

bargaining agreement or a memorandum of understanding. We recommend that chapters demand bargaining *immediately*, given that new employee orientations will begin within a matter of weeks in most districts.

2. This law includes intent language which clearly identifies the need of the exclusive representative to have communication with new hires which "includes an opportunity to discuss the rights and obligations created by the contract and the role of the representative, and to answer questions."

Before negotiating, locals should consider the following:

- Does the union need more than 10 days' notice of employee orientations?
 - Will the notice be in writing, via email, and to whom (president)?
 - Will employee attendance be mandatory and paid by the employer?
 - Will union literature and/or membership form and dues deduction be provided?
 - If the orientation is not in person (via skype or on the phone), what will be the structure of the meeting, on what media, and will the union literature be provided electronically?
 - Whether the employer will be present during the local's presentation or time with the new employee(s)
 - The amount of orientation time that the local may need
 - Whether CTA-endorsed vendors might be included in the orientation
 - Access to audio/vision equipment if there is a presentation by the union
 - Whether chapter leaders will need release time to attend
 - Grievability of this section of the agreement or MOU
3. Chapters should be vigilant for attempted employer circumvention of these new requirements. Remember that employers are legally required



BARGAINING ADVISORY

to provide *at least* ten (10) days' advance notice of all new employee orientations, and that *any* onboarding process – even for a single new employee – constitutes a “new employee orientation” within the meaning of this law. New employees include temporary, permanent, full-time, part-time, and seasonal workers as long as they are still employed during the orientation. Locals should push back on employer claims that they have no practice of employee orientation. All employers have new employees complete new hire paperwork, select benefit plans, etc. Chapters should assert that those meetings, even if conducted one-on-one or virtually, are employee orientations and the local has a right to participate in them.

4. Chapters should likewise vigorously exercise their right to contact information for all new hires, as well as regularly updated lists of unit employee contact information. We recommend that, prior to start of the school year, chapters remind districts in writing of the district's new legal obligation to provide comprehensive new employee contact information within thirty (30) days of the date of hire, or by the first pay period of the month following hire, as well as of the district's new legal obligation regularly to furnish comprehensive list of contact information for the entire unit at least every four months (120 days). Districts may well attempt to evade these obligations, and any violations can and should be challenged through demand letters and unfair practice charges. Please contact your Primary Contact Staff for assistance in this regard.
5. If the parties fail to mutually agree on the structure, time, and manner of union access to new employee orientations, compulsory, binding interest arbitration will determine the outcome if either party requests it. Under the new laws, this interest arbitration machinery occurs on a very expedited timeline. If interest arbitration becomes necessary, local chapters should request support from their Primary Contact Staff as soon as possible to ensure that all timelines are followed in protecting the chapter's legal rights.