

ASSEMBLY BILL NO. 271—ASSEMBLYMAN CARRILLO

MARCH 8, 2017

Referred to Committee on Government Affairs

SUMMARY—Revises provisions governing collective bargaining by local government employers. (BDR 23-290)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact. Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to local governments; revising provisions relating to collective bargaining between local government employers and employee organizations; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law generally requires a local government employer to engage in
2 collective bargaining with the recognized employee organization, if any, for each
3 bargaining unit among its employees. In particular, existing law establishes certain
4 mandatory subjects of bargaining in the negotiation of such collective bargaining
5 agreements. Among those mandatory subjects are sick leave, vacation leave,
6 holidays and other paid or unpaid leaves of absence. (NRS 288.150) **Section 2** of
7 this bill clarifies that leave provided by a local government employer to an
8 employee for time spent by the employee in performing duties or providing
9 services for an employee organization is a mandatory subject of collective
10 bargaining.

11 Under existing law, if a local government employer and an employee
12 organization that represents local government employees, other than teachers and
13 educational support personnel, fail to resolve a disputed issue in negotiating a
14 collective bargaining agreement, either party may submit the dispute to an impartial
15 fact finder. Before submitting the dispute to the fact finder, the parties may agree to
16 make the findings and recommendation of the fact finder final and binding. If the
17 parties cannot agree, either party may request the formation of a panel to determine
18 whether the findings and recommendations of the fact finder on certain issues are to
19 be final and binding. (NRS 288.200) **Sections 3 and 7** of this bill remove or repeal
20 the provisions relating to such panels. **Section 3** also provides that the findings and
21 award of the fact finder are final and binding on the parties. **Sections 1 and 6** of
22 this bill make conforming changes.

23 Existing law establishes certain procedures and requirements applicable to the
24 fact-finding process in negotiations between local government employers and
25 recognized employee organizations representing firefighters and police officers.



* A B 2 7 1 *

26 (NRS 288.205, 288.215) Those procedures and requirements differ in certain
27 respects from the procedures and requirements applicable to fact-finding in labor
28 negotiations involving other local government employees. **Section 4** of this bill
29 makes additional changes applicable only to labor disputes involving firefighters
30 and police officers. Specifically, **section 4** provides that unless the parties to the
31 dispute agree to make the findings of the fact finder final and binding: (1) the report
32 of the fact finder must include recommendations for settlement of the dispute, in
33 lieu of an award; and (2) the findings and recommendations of the fact finder are
34 not binding on the parties.

35 Existing law authorizes a local government employer to provide leave to an
36 employee for time spent by the employee in performing duties or providing
37 services for an employee organization if the full cost of such leave is paid or
38 reimbursed by the employee organization or is offset by the value of concessions
39 made by the employee organization in the negotiation of an agreement with the
40 local government employer. (NRS 288.225) **Section 5** of this bill provides that
41 unless the terms of the agreement between a local government employer and an
42 employee organization provide otherwise, if the local government employer agrees
43 to provide such leave, there is a rebuttable presumption that the full cost of such
44 leave has been offset by the value of concessions made by the employee
45 organization.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** NRS 288.045 is hereby amended to read as follows:
2 288.045 “Fact-finding” means the formal procedure by which
3 an investigation of a labor dispute is conducted by ~~one person, a~~
4 ~~panel or a board~~ **a fact finder** at which:

- 5 1. Evidence is presented; and
- 6 2. A written report is issued by the fact finder describing the
7 issues involved, **making findings** and setting forth
8 recommendations for settlement ~~which may or may not be binding~~
9 ~~as provided in NRS 288.200.~~ **or an award.**

10 **Sec. 2.** NRS 288.150 is hereby amended to read as follows:

11 288.150 1. Except as otherwise provided in subsection 4 and
12 NRS 354.6241, every local government employer shall negotiate in
13 good faith through one or more representatives of its own choosing
14 concerning the mandatory subjects of bargaining set forth in
15 subsection 2 with the designated representatives of the recognized
16 employee organization, if any, for each appropriate bargaining unit
17 among its employees. If either party so requests, agreements reached
18 must be reduced to writing.

- 19 2. The scope of mandatory bargaining is limited to:
 - 20 (a) Salary or wage rates or other forms of direct monetary
21 compensation.
 - 22 (b) Sick leave.
 - 23 (c) Vacation leave.
 - 24 (d) Holidays.



- 1 (e) Other paid or nonpaid leaves of absence consistent with the
2 provisions of this chapter ~~H~~, *including, without limitation, leave*
3 *granted pursuant to NRS 288.225 for time spent by an employee in*
4 *performing duties or providing services for an employee*
5 *organization.*
- 6 (f) Insurance benefits.
- 7 (g) Total hours of work required of an employee on each
8 workday or workweek.
- 9 (h) Total number of days' work required of an employee in a
10 work year.
- 11 (i) Except as otherwise provided in subsection 6, discharge and
12 disciplinary procedures.
- 13 (j) Recognition clause.
- 14 (k) The method used to classify employees in the bargaining
15 unit.
- 16 (l) Deduction of dues for the recognized employee organization.
- 17 (m) Protection of employees in the bargaining unit from
18 discrimination because of participation in recognized employee
19 organizations consistent with the provisions of this chapter.
- 20 (n) No-strike provisions consistent with the provisions of this
21 chapter.
- 22 (o) Grievance and arbitration procedures for resolution of
23 disputes relating to interpretation or application of collective
24 bargaining agreements.
- 25 (p) General savings clauses.
- 26 (q) Duration of collective bargaining agreements.
- 27 (r) Safety of the employee.
- 28 (s) Teacher preparation time.
- 29 (t) Materials and supplies for classrooms.
- 30 (u) Except as otherwise provided in subsections 7 and 9, the
31 policies for the transfer and reassignment of teachers.
- 32 (v) Procedures for reduction in workforce consistent with the
33 provisions of this chapter.
- 34 (w) Procedures consistent with the provisions of subsection 4
35 for the reopening of collective bargaining agreements for additional,
36 further, new or supplementary negotiations during periods of fiscal
37 emergency.
- 38 3. Those subject matters which are not within the scope of
39 mandatory bargaining and which are reserved to the local
40 government employer without negotiation include:
- 41 (a) Except as otherwise provided in paragraph (u) of subsection
42 2, the right to hire, direct, assign or transfer an employee, but
43 excluding the right to assign or transfer an employee as a form of
44 discipline.



1 (b) The right to reduce in force or lay off any employee because
2 of lack of work or lack of money, subject to paragraph (v) of
3 subsection 2.

4 (c) The right to determine:

5 (1) Appropriate staffing levels and work performance
6 standards, except for safety considerations;

7 (2) The content of the workday, including without limitation
8 workload factors, except for safety considerations;

9 (3) The quality and quantity of services to be offered to the
10 public; and

11 (4) The means and methods of offering those services.

12 (d) Safety of the public.

13 4. Notwithstanding the provisions of any collective bargaining
14 agreement negotiated pursuant to this chapter, a local government
15 employer is entitled to:

16 (a) Reopen a collective bargaining agreement for additional,
17 further, new or supplementary negotiations relating to compensation
18 or monetary benefits during a period of fiscal emergency.
19 Negotiations must begin not later than 21 days after the local
20 government employer notifies the employee organization that a
21 fiscal emergency exists. For the purposes of this section, a fiscal
22 emergency shall be deemed to exist:

23 (1) If the amount of revenue received by the general fund of
24 the local government employer during the last preceding fiscal year
25 from all sources, except any nonrecurring source, declined by 5
26 percent or more from the amount of revenue received by the general
27 fund from all sources, except any nonrecurring source, during the
28 next preceding fiscal year, as reflected in the reports of the annual
29 audits conducted for those fiscal years for the local government
30 employer pursuant to NRS 354.624; or

31 (2) If the local government employer has budgeted an
32 unreserved ending fund balance in its general fund for the current
33 fiscal year in an amount equal to 4 percent or less of the actual
34 expenditures from the general fund for the last preceding fiscal year,
35 and the local government employer has provided a written
36 explanation of the budgeted ending fund balance to the Department
37 of Taxation that includes the reason for the ending fund balance and
38 the manner in which the local government employer plans to
39 increase the ending fund balance.

40 (b) Take whatever actions may be necessary to carry out its
41 responsibilities in situations of emergency such as a riot, military
42 action, natural disaster or civil disorder. Those actions may include
43 the suspension of any collective bargaining agreement for the
44 duration of the emergency.



1 ↪ Any action taken under the provisions of this subsection must not
2 be construed as a failure to negotiate in good faith.

3 5. The provisions of this chapter, including without limitation
4 the provisions of this section, recognize and declare the ultimate
5 right and responsibility of the local government employer to manage
6 its operation in the most efficient manner consistent with the best
7 interests of all its citizens, its taxpayers and its employees.

8 6. If the sponsor of a charter school reconstitutes the governing
9 body of a charter school pursuant to NRS 388A.330, the new
10 governing body may terminate the employment of any teachers or
11 other employees of the charter school, and any provision of any
12 agreement negotiated pursuant to this chapter that provides
13 otherwise is unenforceable and void.

14 7. The board of trustees of a school district in which a school is
15 designated as a turnaround school pursuant to NRS 388G.400 or the
16 principal of such a school, as applicable, may take any action
17 authorized pursuant to NRS 388G.400, including, without
18 limitation:

19 (a) Reassigning any member of the staff of such a school; or

20 (b) If the staff member of another public school consents,
21 reassigning that member of the staff of the other public school to
22 such a school.

23 8. Any provision of an agreement negotiated pursuant to this
24 chapter which differs from or conflicts in any way with the
25 provisions of subsection 7 or imposes consequences on the board of
26 trustees of a school district or the principal of a school for taking
27 any action authorized pursuant to subsection 7 is unenforceable and
28 void.

29 9. The board of trustees of a school district may reassign any
30 member of the staff of a school that is converted to an achievement
31 charter school pursuant to NRS 388B.200 to 388B.230, inclusive,
32 and any provision of any agreement negotiated pursuant to this
33 chapter which provides otherwise is unenforceable and void.

34 10. This section does not preclude, but this chapter does not
35 require, the local government employer to negotiate subject matters
36 enumerated in subsection 3 which are outside the scope of
37 mandatory bargaining. The local government employer shall discuss
38 subject matters outside the scope of mandatory bargaining but it is
39 not required to negotiate those matters.

40 11. Contract provisions presently existing in signed and ratified
41 agreements as of May 15, 1975, at 12 p.m. remain negotiable.

42 12. As used in this section, "achievement charter school" has
43 the meaning ascribed to it in NRS 385.007.



1 **Sec. 3.** NRS 288.200 is hereby amended to read as follows:

2 288.200 Except in cases to which NRS 288.205 and 288.215,
3 or NRS 288.217 apply:

4 1. If:

5 (a) The parties have failed to reach an agreement after at least
6 six meetings of negotiations; and

7 (b) The parties have participated in mediation and by April 1,
8 have not reached agreement,

9 ➔ either party to the dispute, at any time after April 1, may submit
10 the dispute to an impartial fact finder . ~~for the findings and~~
11 ~~recommendations of the fact finder. The findings and~~
12 ~~recommendations of the fact finder are not binding on the parties~~
13 ~~except as provided in subsections 5, 6 and 11.]~~ The mediator of a
14 dispute may also be chosen by the parties to serve as the fact finder.

15 2. If the parties are unable to agree on an impartial fact finder
16 ~~for a panel of neutral arbitrators~~ within 5 days, either party may
17 request from the American Arbitration Association or the Federal
18 Mediation and Conciliation Service a list of seven potential fact
19 finders. If the parties are unable to agree upon which arbitration
20 service should be used, the Federal Mediation and Conciliation
21 Service must be used. Within 5 days after receiving a list from the
22 applicable arbitration service, the parties shall select their fact finder
23 from this list by alternately striking one name until the name of only
24 one fact finder remains, who will be the fact finder to hear the
25 dispute in question. The employee organization shall strike the first
26 name.

27 3. The local government employer and employee organization
28 each shall pay one-half of the cost of fact-finding. Each party shall
29 pay its own costs of preparation and presentation of its case in
30 fact-finding.

31 4. A schedule of dates and times for the hearing must be
32 established within 10 days after the selection of the fact finder
33 pursuant to subsection 2, and the fact finder shall report the findings
34 and ~~recommendations~~ *award* of the fact finder to the parties to the
35 dispute within 30 days after the conclusion of the fact-finding
36 hearing.

37 5. ~~The parties to the dispute may agree, before the submission~~
38 ~~of the dispute to fact finding, to make the findings and~~
39 ~~recommendations on all or any specified issues final and binding on~~
40 ~~the parties.~~

41 ~~6. If the parties do not agree on whether to make the findings~~
42 ~~and recommendations of the fact finder final and binding, either~~
43 ~~party may request the formation of a panel to determine whether the~~
44 ~~findings and recommendations of a fact finder on all or any~~
45 ~~specified issues in a particular dispute which are within the scope of~~



~~subsection 11 are to be final and binding. The determination must be made upon the concurrence of at least two members of the panel and not later than the date which is 30 days after the date on which the matter is submitted to the panel, unless that date is extended by the Commissioner of the Board. Each panel shall, when making its determination, consider whether the parties have bargained in good faith and whether it believes the parties can resolve any remaining issues. Any panel may also consider the actions taken by the parties in response to any previous fact finding between these parties, the best interests of the State and all its citizens, the potential fiscal effect both within and outside the political subdivision, and any danger to the safety of the people of the State or a political subdivision.~~

~~7.]~~ Except as otherwise provided in subsection ~~{10, any}~~ **8, the** fact finder ~~{, whether the fact finder's recommendations are to be binding or not,}~~ shall base ~~{such recommendations or}~~ **the** award on the following criteria:

(a) A preliminary determination must be made as to the financial ability of the local government employer based on all existing available revenues as established by the local government employer and within the limitations set forth in NRS 354.6241, with due regard for the obligation of the local government employer to provide facilities and services guaranteeing the health, welfare and safety of the people residing within the political subdivision.

(b) Once the fact finder has determined in accordance with paragraph (a) that there is a current financial ability to grant monetary benefits, and subject to the provisions of paragraph (c), the fact finder shall consider, to the extent appropriate, compensation of other government employees, both in and out of the State and use normal criteria for interest disputes regarding the terms and provisions to be included in an agreement in assessing the reasonableness of the position of each party as to each issue in dispute and the fact finder shall consider whether the Board found that either party had bargained in bad faith.

(c) A consideration of funding for the current year being negotiated. If the parties mutually agree to arbitrate a multiyear contract, the fact finder must consider the ability to pay over the life of the contract being negotiated or arbitrated.

↳ The fact finder's report must contain the facts upon which the fact finder based the fact finder's determination of financial ability to grant monetary benefits and the fact finder's ~~{recommendations or}~~ award.

~~{8.}~~ ***The award is final and binding on the parties.***

6. Within 45 days after the receipt of the report from the fact finder, the governing body of the local government employer shall



1 hold a public meeting in accordance with the provisions of chapter
2 241 of NRS. The meeting must include a discussion of:

3 (a) The issues of the parties submitted pursuant to ~~subsection~~
4 ~~3;~~ *this section*;

5 (b) The report ~~[of findings and recommendations]~~ of the fact
6 finder; and

7 (c) The overall fiscal impact of the findings and
8 ~~recommendations;~~ *award*, which must not include a discussion of
9 the details of the report.

10 ➔ The fact finder must not be asked to discuss the decision during
11 the meeting.

12 ~~[9.]~~ *7.* The chief executive officer of the local government
13 shall report to the local government the fiscal impact of the findings
14 and ~~recommendations;~~ *award*. The report must include, without
15 limitation, an analysis of the impact of the findings and
16 ~~recommendations]~~ *award* on compensation and reimbursement,
17 funding, benefits, hours, working conditions or other terms and
18 conditions of employment.

19 ~~[10.]~~ *8.* Any sum of money which is maintained in a fund
20 whose balance is required by law to be:

21 (a) Used only for a specific purpose other than the payment of
22 compensation to the bargaining unit affected; or

23 (b) Carried forward to the succeeding fiscal year in any
24 designated amount, to the extent of that amount,

25 ➔ must not be counted in determining the financial ability of a local
26 government employer and must not be used to pay any monetary
27 benefits ~~recommended or]~~ awarded by the fact finder.

28 ~~[11.]~~ *9.* The issues which may be included in *an award by a*
29 ~~[panel's order pursuant to subsection 6]~~ *fact finder* are:

30 (a) Those enumerated in subsection 2 of NRS 288.150 as the
31 subjects of mandatory bargaining, unless precluded for that year by
32 an existing collective bargaining agreement between the parties; and

33 (b) Those which an existing collective bargaining agreement
34 between the parties makes subject to negotiation in that year.

35 ➔ This subsection does not preclude the voluntary submission of
36 other issues by the parties. ~~[pursuant to subsection 5.]~~

37 *10. Except for the period prescribed by subsection 6, any time*
38 *limit prescribed by this section may be extended by agreement of*
39 *the parties.*

40 **Sec. 4.** NRS 288.205 is hereby amended to read as follows:

41 288.205 *1.* In the case of an employee organization and a
42 local government employer to which NRS 288.215 applies, the
43 following departures from the provisions of NRS 288.200 also
44 apply:



1 ~~11~~ (a) If the parties have not reached agreement by April 10,
2 either party may submit the dispute to an impartial fact finder at any
3 time for the findings of the fact finder.

4 ~~12~~ (b) In a regular legislative year, the fact-finding hearing
5 must be stayed up to 20 days after the adjournment of the
6 Legislature sine die.

7 ~~13~~ (c) *Unless the parties otherwise agree, before the*
8 *submission of the dispute to fact-finding, to make the findings of*
9 *the fact finder on all or any specified issues final and binding on*
10 *the parties:*

11 (1) *The report of the fact finder must include*
12 *recommendations for settlement on the issues submitted to the fact*
13 *finder, in lieu of an award;*

14 (2) *The provisions of NRS 288.200 applicable to an award*
15 *apply to the recommendations of the fact finder; and*

16 (3) *The findings and recommendations of the fact finder*
17 *are not binding on the parties.*

18 2. Any time limit prescribed by this section ~~[of NRS 288.200]~~
19 may be extended by agreement of the parties.

20 **Sec. 5.** NRS 288.225 is hereby amended to read as follows:

21 288.225 1. A local government employer may agree to
22 provide leave to any of its employees for time spent by the
23 employee in performing duties or providing services for an
24 employee organization if the full cost of such leave is paid or
25 reimbursed by the employee organization or is offset by the value of
26 concessions made by the employee organization in the negotiation
27 of an agreement with the local government employer pursuant to
28 this chapter.

29 2. *Unless the terms of the agreement between a local*
30 *government employer and an employee organization provide*
31 *otherwise, if the local government employer agrees to provide*
32 *leave to any of its employees as described in subsection 1, there is*
33 *a rebuttable presumption that the full cost of such leave has been*
34 *offset by the value of concessions made by the employee*
35 *organization. The presumption created by this subsection may*
36 *only be rebutted by clear and convincing evidence.*

37 **Sec. 6.** NRS 353.264 is hereby amended to read as follows:

38 353.264 1. The Reserve for Statutory Contingency Account
39 is hereby created in the State General Fund.

40 2. The State Board of Examiners shall administer the Reserve
41 for Statutory Contingency Account. The money in the Account must
42 be expended only for:

43 (a) The payment of claims which are obligations of the State
44 pursuant to NRS 41.03435, 41.0347, 621.025, 176.485, 179.310,



1 212.040, 212.050, 212.070, 281.174, 282.290, 282.315, ~~288.203,~~
2 293.253, 293.405, 353.120, 353.262, 412.154 and 475.235;

3 (b) The payment of claims which are obligations of the State
4 pursuant to:

5 (1) Chapter 472 of NRS arising from operations of the
6 Division of Forestry of the State Department of Conservation and
7 Natural Resources directly involving the protection of life and
8 property; and

9 (2) NRS 7.155, 34.750, 176A.640, 179.225 and 213.153,
10 ↪ except that claims may be approved for the respective purposes
11 listed in this paragraph only when the money otherwise appropriated
12 for those purposes has been exhausted;

13 (c) The payment of claims which are obligations of the State
14 pursuant to NRS 41.0349 and 41.037, but only to the extent that the
15 money in the Fund for Insurance Premiums is insufficient to pay the
16 claims; and

17 (d) The payment of claims which are obligations of the State
18 pursuant to NRS 535.030 arising from remedial actions taken by the
19 State Engineer when the condition of a dam becomes dangerous to
20 the safety of life or property.

21 3. The State Board of Examiners may authorize its Clerk or a
22 person designated by the Clerk, under such circumstances as it
23 deems appropriate, to approve, on behalf of the Board, the payment
24 of claims from the Reserve for Statutory Contingency Account. For
25 the purpose of exercising any authority granted to the Clerk of the
26 State Board of Examiners or to the person designated by the Clerk
27 pursuant to this subsection, any statutory reference to the State
28 Board of Examiners relating to such a claim shall be deemed to refer
29 to the Clerk of the Board or the person designated by the Clerk.

30 **Sec. 7.** NRS 288.201, 288.202 and 288.203 are hereby
31 repealed.

32 **Sec. 8.** This act becomes effective on July 1, 2017.

TEXT OF REPEALED SECTIONS

288.201 Request for formation of panel to determine whether findings and recommendations of fact finder are final and binding. Any request for the formation of a panel to determine whether the findings and recommendations of a fact finder must be final and binding must be filed with the Commissioner. The request must include:



1. A list of the issues which remain unresolved and the position of each party regarding those issues;
 2. The requester's assessment of the fiscal effect on the local government of the requester's positions;
 3. An outline of any previous fact-finding between the parties, which includes any recommendations and awards of a fact finder and the actions of each party in response thereto;
 4. A statement of whether the parties engaged in mediation regarding the current dispute;
 5. A schedule of the dates and times set by the fact finder for the hearing; and
 6. Any other information deemed necessary by the Commissioner.
- ↳ Any person filing such a request shall give written notice of the request to the Nevada State Board of Accountancy and the State Bar of Nevada.

288.202 Formation of panel to determine whether findings and recommendations of fact finder are final and binding.

1. Within 5 days after receiving notice of such a request, the Nevada State Board of Accountancy and the State Bar of Nevada shall each submit to the Commissioner and each party to the dispute a list of names of five of their members who would serve on a panel and are not closely allied with any employee association or local government employer.
2. Within 8 days after receiving the lists, the parties shall choose one name from each list by alternately striking one name until the names of only one attorney and one accountant remain, who will each be a member of the panel. The parties shall choose the member from the list of accountants separately from their choice from the list of attorneys. The parties shall notify the Commissioner of their selections and the Commissioner shall notify the attorney and accountant selected.
3. Within 5 days after receiving notice of their selection, the attorney and accountant shall:
 - (a) Choose the third member of the panel, who must:
 - (1) Be willing to serve on the panel;
 - (2) Be a resident of this State; and
 - (3) Not be closely allied with any employee organization or local government employer.
 - (b) Notify the Commissioner of their choice, and the three members shall, within 5 days after selecting the third member of the panel, notify the Commissioner of the dates when they will all be available to attend hearings.
4. The Commissioner shall serve as a nonvoting member and also as the chair of the panel.



5. If the accountant or attorney selected to serve on the panel is unable to do so, the Nevada State Board of Accountancy or State Bar of Nevada shall designate a person to replace its nominee. If the person selected by the accountant and attorney is unable to serve, the accountant and attorney shall designate another person as a replacement. If the Commissioner is unable to serve, the Governor shall designate a person to serve in the Commissioner's capacity.

288.203 Compensation of members of panel; claims.

1. Each person, except the Commissioner, who serves on a panel formed pursuant to NRS 288.201 is entitled to receive as compensation:

(a) One hundred fifty dollars for each day the person is engaged in the business of the panel; and

(b) The per diem allowance and travel expenses provided for state officers and employees generally.

2. All claims which arise pursuant to this section must be paid from the Reserve for Statutory Contingency Account upon approval by the Commissioner and the State Board of Examiners.

