

# CSBA Sample Board Policy

**All Personnel**

BP 4140(a)

4240

**BARGAINING UNITS**

4340

Note: Pursuant to Government Code 3544, an employee organization may become the employees' exclusive representative for negotiations by filing a request with the district providing proof that a majority of the employees in an appropriate unit wish to be represented by that organization. Notice of such request must be immediately posted conspicuously on all employee bulletin boards in each district facility in which members of the unit are employed. Government Code 3544.1 requires the district to grant the request for recognition unless (1) the district doubts the appropriateness of the unit, (2) another employee organization files a challenge to the appropriateness of the unit or submits a competing claim of representation within 15 work days of the posting of notice of the written request, or (3) the district currently has a lawful written agreement with another employee organization representing the same employees.

Pursuant to Government Code 3540.1, the definition of "exclusive representative" includes representation of "all public school employees" other than management and confidential employees, as defined.

Government Code 3543 provides that public school employees have the right to represent themselves individually in their employment relations with the district except that, once an exclusive representative has been recognized, an employee in that unit is prohibited from meeting and negotiating with the district.

The Governing Board recognizes the right of district employees to form a bargaining unit, select an employee organization as their exclusive representative, and be represented by that organization in their employment relationship with the district. The Board is committed to negotiating in good faith with recognized employee organizations and respecting the rights of employees and employee organizations.

*(cf. 4141/4241 - Collective Bargaining Agreement)*

*(cf. 4143/4243 - Negotiations/Consultation)*

*(cf. 9000 - Role of the Board)*

The district shall not dominate or interfere with the formation or administration of any employee organization or contribute financial or other support to it. (Government Code 3543.5)

## **Formation of Bargaining Units**

Certificated and classified employees shall not be included in the same bargaining unit. (Government Code 3545)

The district may recognize a bargaining unit of supervisory employees if: (Government Code 3545)

1. The bargaining unit includes all supervisory employees.

## BARGAINING UNITS (continued)

2. The supervisors are not represented by the same organization that represents employees whom the supervisory employees supervise.

(cf. 4300 - Administrative and Supervisory Personnel)

(cf. 4301 - Administrative Staff Organization)

(cf. 4312.1 - Contracts)

For this purpose, *supervisory employee* means any employee, regardless of job description, having the authority, in the interest of the district, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, discipline, assign work, direct, adjust grievance of other employees, or effectively recommend that action. The exercise of this authority shall not be merely routine or clerical in nature, but shall require the use of independent judgment. (Government Code 3540.1)

Note: Pursuant to Government Code 3543.4, management and confidential employees, as defined in Government Code 3540.1, are excluded from the right to be represented in negotiations by an employee organization. The Public Employment Relations Board ultimately determines, based upon the duties of the position, which positions qualify as "management" or "confidential" and thus are excluded from bargaining.

Employees serving in management, senior management, or confidential positions shall not be represented by an exclusive representative. Such employees may represent themselves individually or may be represented by an employee organization whose membership is composed entirely of employees designated as holding those positions. When represented by an employee organization, that organization shall not meet and negotiate with the district. For this purpose: (Government Code 3540.1, 3543.4)

1. *Management employee* means any employee who has significant responsibilities for formulating district policies or administering district programs, and whose position is designated as a management position by the Board.
2. *Confidential employee* means any employee who is required to develop or present management positions with respect to employer-employee relations or whose duties normally require access to confidential information that is used to contribute significantly to the development of management positions.

## Membership

Note: Government Code 3550, as amended by SB 866 (Ch. 53, Statutes of 2018), prohibits a district from deterring or discouraging employees or job applicants from authorizing representation by or making dues deductions to an employee organization.

## **BARGAINING UNITS** (continued)

The district shall not deter or discourage employees or job applicants from becoming or remaining members of an employee organization, authorizing representation by an employee organization, or authorizing dues or fee deductions to an employee organization. In addition, the district shall not impose or threaten to impose reprisals on employees, discriminate or threaten to discriminate against employees, or otherwise interfere with, restrain, or coerce employees because of their membership or nonmembership in an employee organization. (Government Code 3543.5, 3550)

*(cf. 4119.1/4219.1/4319.1 - Civil and Legal Rights)*

Note: The following paragraph is **optional**. Government Code 3553, as added by SB 866 (Ch. 53, Statutes of 2018), establishes requirements for districts that choose to disseminate a mass communication regarding employees' rights to join, support, or refrain from joining or supporting an employee organization. A "mass communication" means any written document, including a script for an oral or recorded presentation or message, intended for multiple employees.

Districts should exercise caution and consult with legal counsel before communicating with employees about their rights to join or not join an employee organization to avoid violating the law against unfair labor practices. When an employee approaches the district with questions specifically about the benefits of the membership in an employee organization, the employee should be referred to the employee organization.

The Superintendent or designee may communicate with district employees regarding their rights under the law. Such communications shall be factual and accurate, and may not promise a benefit, threaten a reprisal, or in any way deter or discourage employees from joining an employee organization or paying dues.

However, before disseminating to multiple employees any mass communication concerning employees' right to join or support an employee organization or to refrain from joining or supporting an employee organization, such as a written document or script for oral or recorded presentation or message, the Superintendent or designee shall meet and confer with the employees' exclusive representative regarding the content of the communication. If the district and exclusive representative do not come to agreement on the content of the mass communication, the Superintendent or designee may disseminate the district's mass communication provided that, at the same time, copies of the exclusive representative's communication, which shall be of reasonable length, are also distributed. (Government Code 3553)

### **Access to Employee Orientations and Contact Information**

The district shall permit employee organizations access to new employee orientations where newly hired employees are advised, whether in person, online, or through other means or mediums, of their employment status, rights, benefits, duties, responsibilities, or any other

## **BARGAINING UNITS** (continued)

employment-related matters. The district shall provide employee organizations at least 10 days' notice in advance of an orientation. However, in any specific instance where an unforeseeable, urgent need critical to the district's operation prevents the required 10 days' notice, a shorter notice may be provided. (Government Code 3555.5, 3556)

The structure, time, and manner of the access to new employee orientations shall be determined by mutual agreement of the district and the exclusive representative, following a request to negotiate by either party. If the district and exclusive representative fail to reach an agreement, matters related to the access to new employee orientation shall be subject to compulsory interest arbitration. The district and employee organization may mutually agree to submit any dispute to compulsory interest arbitration at any time. In addition, if any dispute arises during negotiations and is not resolved within 45 days after the first meeting or within 60 days after the initial request to negotiate, whichever is earlier, either party may make a demand for compulsory interest arbitration. When any such dispute arises during the summer when the district's administrative office is closed, the timeline shall commence on the first day the administrative office reopens. The decision of the arbitrator shall be final and binding on the parties. (Government Code 3556, 3557)

Note: SB 866 (Ch. 53, Statutes of 2018) amended Government Code 3556 to add the following requirement.

The date, time, and place of the orientation shall not be disclosed to anyone other than employees, the exclusive representative, or a vendor that is contracted to provide a service for purposes of the orientation. (Government Code 3556)

Note: Pursuant to Government Code 3558, districts are required to provide recognized employee organizations with specified contact information for new employees in the bargaining unit, as provided below. The information required by Government Code 3558 must be provided in a manner consistent with Government Code 6254.3, which authorizes disclosure of an employee's home address, home telephone number(s), and personal cell phone number to an employee organization unless the district receives a written request by the employee to not disclose the information. Pursuant to Government Code 6254.3, the personal email address of an employee is not disclosable unless used by the employee to conduct public business. The following paragraph should be revised if districts have an agreement with their employee organization(s) requiring more frequent or more detailed contact lists.

In County of Los Angeles v. Service Employees International Union, Local 721, the California Supreme Court held that (1) an employer has a duty to provide information relevant to collective bargaining to the applicable bargaining unit and failure to do so is a violation of the employer's obligation to bargain in good faith; (2) the disclosure of an employee's home address and phone number(s) by an employer to the union does not violate the employee's constitutional right of privacy; and (3) other avenues for implementing privacy safeguards are available, such as bargaining for a notice and opt-out procedure or drafting employment contracts that will notify employees that their home contact information is subject to disclosure to the union and that they may request nondisclosure.

## **BARGAINING UNITS** (continued)

The Superintendent or designee shall provide an exclusive representative with the name, job title, department, work location, telephone numbers (work, home, and personal cell phone), personal email address(es) on file with the district, and home address of any newly hired employee in the bargaining unit, within 30 days of hire or by the first pay period of the month following hire. In addition, the Superintendent or designee shall provide the same information in regard to all employees in the bargaining unit to an exclusive representative at least every 120 days, unless more frequent or detailed lists are required by agreement with the exclusive representative. (Government Code 3558, 6254.3)

However, the Superintendent or designee shall not disclose the home address and any phone numbers on file for employees performing law enforcement-related functions, nor shall he/she disclose the home address, home or personal cell phone number(s), or personal email address(es) of any employee who is a participant in the Safe at Home address confidentiality program pursuant to Government Code 6207 or any employee who provides written request that the information not be disclosed for this purpose. Following receipt of a written request, the district shall remove the employee's home address, home and personal cell phone numbers, and personal email address from any mailing list maintained by the district unless the list is only used by the district to contact the employee. (Government Code 3558, 6207, 6254.3)

*(cf. 1340 - Access to District Records)*

## **Membership Dues or Other Payments to an Employee Organization**

Note: Bargaining unit employees who choose to join the employee organization pay membership dues, which are deducted from the employee's salary or wage payment as provided below. Pursuant to the U.S. Supreme Court's decision in Janus v. American Federation of State, County, and Municipal Employees, bargaining unit employees who choose not to join an employee organization may no longer be required to pay any fees to the employee organization. However, pursuant to Education Code 45060 and 45168, as amended by SB 866 (Ch. 53, Statutes of 2018), an employee who chooses not to join an employee organization may be charged fees for applicable services, programs, or committees provided to him/her by the employee organization if that nonmember employee first affirmatively and voluntarily consents to pay those fees to the employee organization, as required by Janus v. AFSCME.

As provided in the following section, Education Code 45060 and 45068, as amended by SB 866 (Ch. 53, Statutes of 2018), set forth the process for handling authorizations, changes, and cancellations for dues or other payments, and provide safeguards for districts that rely on information provided by an employee organization concerning such payroll deductions (i.e., the employee organization's indemnification of the district against any employee's claim based on such reliance).

Specifically, Education Code 45060 and 45168, as amended, provide that the employee organization will handle and process employee written authorizations if it certifies that it has and will maintain individual employee authorizations. When such certification is provided to the district, the employee organization is

## **BARGAINING UNITS** (continued)

not required to submit a copy of the written authorization in order for the payroll deductions to be effective, unless there is a dispute about the existence or terms of the written authorization. The employee organization is required to indemnify the district for any employee claims regarding payroll deductions made by the district in reliance on notification from the employee organization.

When an employee organization declines to provide such certification pursuant to Education Code 45060 and 45168, then the district should request a copy of the employee written authorization before making the payroll deductions. Education Code 45060 and 45168 require that the district honor the terms of the employee's written authorization for payroll deductions, which thus requires the district to first see a copy of such authorization in order to honor its terms.

Pursuant to Education Code 45060 and 45168, as amended, employee requests to cancel or change authorization for payroll deductions must be directed to the employee organization rather than the district.

When drawing an order for the salary or wage payment of a bargaining unit employee of an employee organization, the district shall deduct any amount which has been requested by the employee in a revocable written authorization for the purpose of paying dues or other payments for any service, program, or committee provided or sponsored by the employee organization. (Education Code 45060, 45168)

An employee organization that certifies that it has and will maintain individual employee authorizations shall handle and process employee written authorizations for payroll deductions. When an employee organization provides such a certification to the district, the district shall rely on information from the employee organization regarding the amounts of such payroll deductions and from which employees. The employee organization shall not be required to submit to the district a copy of the written authorization in order for the payroll deductions to be effective. However, when there is a dispute about the existence or terms of the written authorization, a copy of the employee's written authorization shall be submitted to the district. The employee organization shall indemnify the district for any employee claims regarding payroll deductions made by the district in reliance on notification from the employee organization. (Education Code 45060, 45168)

When an employee organization which has declined to certify that it will handle and process employee written authorizations makes a request for payroll deductions, the district shall request a copy of the employee's written authorization before making the payroll deductions. (Education Code 45060, 45168)

A written authorization shall remain in effect until expressly revoked in writing by the employee and pursuant to the terms of the written authorization. Employee requests to cancel or change authorizations for payroll deductions for employee organizations shall be directed to the employee organization rather than the district. The employee organization shall be responsible for processing these requests. The district shall rely on the information

## **BARGAINING UNITS (continued)**

provided by the employee organization regarding whether deductions for an employee organization were properly canceled or changed. The employee organization shall be required to indemnify the district for any claims made by an employee for deductions made by the district in reliance on information from the employee organization. (Education Code 45060, 45168)

### *Legal Reference:*

#### EDUCATION CODE

45060-45061.5 *Deduction of fees from salary or wage payment, certificated employees*

45100.5 *Senior management positions*

45104.5 *Abolishment of senior classified management positions*

45108.5 *Definition of senior classified management employees*

45108.7 *Waiver of provisions of 45108.5*

45168 *Deduction of fees from salary or wage payment, classified employees*

45220-45320 *Merit system, classified employees*

#### GOVERNMENT CODE

3540-3549.3 *Educational Employment Relations Act, especially:*

3540.1 *Definitions*

3543.4 *Management position; representation*

3545 *Appropriateness of unit; basis*

3550-3552 *Prohibition on public employers deterring or discouraging union membership*

3555-3559 *Public employee communication, information and orientation*

6205-6210 *Confidentiality of addresses for victims of domestic violence, sexual assault or stalking*

6254.3 *Disclosure of employee contact information to employee organization*

6503.5 *Joint powers agencies*

53260-53264 *Employment contracts*

#### CODE OF REGULATIONS, TITLE 8

33015-33490 *Recognition of exclusive representative; proceedings*

33700-33710 *Severance of established unit*

34020 *Petition to rescind organizational security arrangement*

34055 *Reinstatement of organizational security arrangement*

#### COURT DECISIONS

*Janus v. American Federation of State, County and Municipal Employees, Council 31*, (2018) 138 S.Ct. 2448

*Friedrichs v. California Teachers Association, et al.*, (2016) 136 S.Ct. 1083

*County of Los Angeles v. Service Employees International Union, Local 721*, (2013) 56 Cal. 4th 905

*Management Resources: (see next page)*

**BARGAINING UNITS** (continued)

*Management Resources:*

WEB SITES

*CSBA: <http://www.csba.org>*

*Association of California School Administrators: <http://www.acsa.org>*

*California Federation of Teachers: <http://www.cft.org>*

*California School Employees Association: <http://www.csea.com>*

*California Teachers Association: <http://www.cta.org>*

*Public Employment Relations Board: <http://www.perb.ca.gov>*

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