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The Government Employee and Organized Labor

*John E. Thorne**

One of the most rapidly changing of employer-employee relationships is that which is found in government, both at state and federal levels. At one time the government employee's right to collective bargaining had developed steadily while the American working force in general gradually expanded. However, this right later did not keep pace when the government working force in particular began the rapid increase to its present enormous size.

During this increase in numbers, the bargaining rights of the employees in government conversely diminished until today these employees are in the position of being without an effective role in shaping the policies affecting their own working conditions.

A theory often suggested as a reason for this disparity is based on a statement by President Franklin D. Roosevelt:

> All government employees should realize that the process of collective bargaining as usually understood, cannot be transplanted into the public service. It has its distinct and insurmountable limitations when applied to public personnel management. The very nature and purposes of Government make it impossible for administrative officials to represent fully or to bind the employer in mutual discussions with governmental employee organizations. The employer is the whole people, who speak by means of laws enacted by their representatives in Congress. Accordingly administrative officials and employees alike are governed and guided, and in many instances restricted by laws which establish policies, procedures, or rules in personnel matters.[1]

The government employee, however, was not to be completely denied. He saw that the great fundamental principle of the American system of free enterprise is the right to bargain and enter into contracts. He found the businessman bargaining with other businessmen for the purchase and sale of all types of commodities and services. He also found collective and individual bargaining within professional and semi-professional groups, such as movie actors and actresses, professional athletes, corporation officials, labor union officials, government officials, doctors, lawyers, and engi-

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[1] See for example: City of Springfield v. Clouse, 356 Mo. 1239, 206 S.W.2d 539 (1947) at 542, where the statement is favorably cited.

neers. In each of these latter instances it was usually the individual who bargained and agreed to sell his talents for a specified fee. Looking further, the government employee found his counterpart in private employment banding together into labor organizations to bargain collectively for the sale of his talents – and so successfully that today we have the highest standard of living of any country in the world.

The government employee was not to be denied the benefits obviously attendant upon the use of the basic principle of free enterprise, bargaining – individual in some cases and collective in others. He wanted the right to join labor organizations in order to reap the advantages he found in such organization, and thus he began lobbying the lawmakers in every way he could. As a result of his efforts and the efforts of those who agreed with him, several states, including California, have recently developed new legislation regarding the right of public employees to join labor organizations.[2] Other states, and other independent governmental organizations and bodies as well, are taking the matter of disputes involving government employees under consideration.[3]

Two recent and rather dramatic events indicate the turn of the government employee to organized labor, and the results of his lobbying and pressure for bargaining rights. The first of these started in June, 1961, when the teachers of New York City voted three to one in favor of collective bargaining by employees licensed by the Superintendent of Schools, and followed this up on December 15, 1961, when they selected the American Federation of Teachers, AFL-CIO, as their bargaining agent by an overwhelming majority of 20,000 to 9,000 over the non-affiliated Teachers Bargaining Organization.[4] The second event occurred on January 17, 1962, when President Kennedy issued his much publicized Executive Order On Employment-Management.[5] This Executive Order gives to the federal government employee "the right, freely and without fear of penalty or reprisal, to form, join, and assist any employee organization. . . ." The term "employee organization" is defined as "any lawful association, labor organization, federation, council, or brotherhood having as a prime purpose the improvement of working conditions among federal employees, or any craft, trade or industrial union whose membership includes both

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[2] CAL. GOV. CODE §§ 3500-3509.

[3] See Arvid Anderson's discussion of the various actions and studies taken or under way in *Disputes Affecting Government Employees*, 10 LAB. L. J. 707 (1959).

[4] See "The California Teacher," official publication of the California State Federation of Teachers, AFL-CIO, Volume 14, No. 2, November-December, 1961.

[5] Executive Order #10988–Employee-Management Cooperation in The Federal Government issued January 17, 1962, to go into effect July 1, 1962.

federal employees and employees of private organizations." More importantly the order goes on to provide that "an agency shall recognize an employee organization as the exclusive representative of the employees in an appropriate unit . . ." when it has been declared eligible for formal recognition and has been designated or selected by a majority of the employees as their representative; and when the organization has been properly selected *"it shall be entitled to act for and to negotiate agreements covering all employees in the unit. . . ."* This Executive Order, then, secures to the federal employee the right to join a labor organization, to select that organization as his bargaining unit, and to then bargain with the federal agency for his wages and working conditions.

In addition to all the foregoing there have appeared in recent years an appreciable number of articles regarding the bargaining and grievance rights of public employees.[6] This rash of activity by the government employees, legislators and writers on the subject perhaps marks the beginning of a concerted drive to meet the challenge of a growing problem.

President Roosevelt's statement quoted above seems to provide a reason rather than a conclusion, and the fact still remains that at least some government employee problems arise which are not adequately controlled by the existing laws, policies, procedures and rules, and the questions are then opened anew: "What devices really can best promote sound solutions to valid public employee grievances?" And "Should the public employees themselves be given an effective voice?" One spokesman answers on behalf of organized labor, that not only is collective bargaining a must, but that "if collective bargaining is to be at all effective in the federal service, an alternative will have to be found for the right to strike."[7] This spokesman

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[6] The list of articles would include: Anderson, *Labor Relations in the Public Service,* 1961 WISC. L. REV. 601 (1961); *Collective Bargaining Agreements and The Minnesota Public Employer* 45 MINN. L. REV. 249 (1960); Anderson, *Disputes Affecting Government Employees* 10 LAB. L. J. 707 (1959); Klaus, *Labor Relations In The Public Service: Exploration and Experiment* 10 SYRACUSE L. REV. 183 (1959); Klaus, *Collective Bargaining By Government Employees* 12 N.Y.U. CONF. LAB. 21 (1959); Segal, *Grievance Procedures for Public Employees* 9 LAB. L. J. 921 (1958); Cornell, *Collective Bargaining By Public Employee Groups* 107 U. PA. L. REV. 43 (1958).

[7] AFL-CIO News, Washington, D.C., Sept. 16, 1961, p. 1, col. 5. The statement is reportedly made by AFL-CIO Legislative Director Andrew J. Biemiller in relation to hearings by the President's Task Force on Employee-Management Relations in the Federal Service. See also Anderson, *Labor Relations In The Public Service* 1961 WISC. L. REV. 601, where at 663 it is said: "It has been the statutory and administrative policy of the federal and state governments to encourage and promote collective bargaining for non-governmental employees in the belief that such policy is in the public interest. Since the balancing of bargaining strength is a legitimate objective of public policy in the private sector of our economy, it seems equally proper for government to encourage collective bargaining among public employees by laws and administrative policies adopted to fit the needs and problems of government."

goes on to say that the alternative for the right to strike might be found in the use of arbitration to resolve both grievances and bargaining disputes.[8] However, there is some disagreement, and another writer has suggested:

> As far as organizations of public employees are concerned it is probable that they will increase in number and influence, but it is doubtful that the number of signed contracts will greatly increase. More likely the objectives of these organizations will be secured by declarations of policy by municipal officials, by rules of administrative bodies, and by ordinances and resolutions of city councils, initiated by persuasion and lobbying of employee groups. In the leadership of the American Federation of State, County and Municipal Employees, which is highly intelligent and, it is fair to say, civic-minded, there is a realization that an understanding as to policy may accomplish more for public employees than can be had by a bitter struggle for a formal collective bargaining contract.[9]

This latter writer would seem to express the view that benevolent legislators are more apt to provide adequate wages and working conditions than will the free enterprise system of bargaining for these in exchange for the talents of the employees.

Against this background it seems natural that, in an effort to evaluate existing conditions, more attention should be given to those provisions which already have been instituted regarding public employees' rights. And since the echelons at which government employees are found range from school districts, water districts, and municipalities to the federal government, and, further, since application of the Federal Labor Laws, is, as a rule, withheld from employees of the state governments, many states have developed their own legal structures in the area.[10] The existent provisions, then, are many and varied, and accordingly it is the limited province of this article to examine very generally some of the California law treating the rights of

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[8] *Id.*, AFL-CIO News, p. 1, col. 5.

[9] Cornell, *Collective Bargaining by Public Employee Groups*, 107 U. PA. L. REV. 43, at 64.

[10] It is said in State v. Brotherhood of RR. Trainmen, 37 Cal.2d 412, 232 P.2d 857 (1951): "Congress itself has consistently excluded state employment from the operation of other labor relations statutes enacted under the commerce or war power. The National Labor Relations Act of 1937 and the subsequent Labor Management Relations Act of 1947, which secure the right of collective bargaining to employees of employers engaged in interstate commerce, expressly provide that the term employer as used in the acts does not include the United States or any state or political subdivision. The Fair Labor Standards Act of 1938 likewise expressly excludes governmental employers from its provisions, as does the War Labor Disputes Act of 1943. These statutes indicate a uniform Congressional policy that the relationship between a state and its employees is not to be controlled by the federal government even where those employees are engaged in interstate commerce. . . ." *Supra* at 418, 232 P.2d at 861.

California public employees, and to examine in particular a basic question – the right of the public employee to strike.

THE OLD LAW

As early as 1933 California adopted a statute giving workmen the right to organize and protecting their right to engage in other concerted activities for the purpose of collective bargaining.[11] In 1953 the California Supreme Court discussed the issue of self organization in selection of a bargaining representative by employees:

> The right of self organization and of selection of a bargaining representative are rights which exist independently of labor relations acts. The existing right includes union organization for the conduct of collective bargaining and the traditional peaceful strike for higher wages. It was characterized and recognized as a fundamental right long before it was protected under the National Labor Relations Act and similar state acts.[12]

The above authorities seem to clearly recognize the existence of certain employee rights. However, during the twenty year period between their effective dates the California courts decided that these otherwise generally accepted rights were either non-existent or greatly diminished insofar as public employees were concerned. Thus one California case, *Nutter v. City of Santa Monica*,[13] held that the statutory right to organize was not meant to be available to public employees. Yet another case, *Perez v. Board of Police Commissioners of the City of Los Angeles*,[14] decided that an administrative resolution of the Board of Police Commissioners designed to prevent policemen from being members of a police officers union was not unconstitutional. The Court in the *Nutter* case relied in part on the borrowed and rather strange reasoning to the effect that private employers were more likely to oppress workers than were public employers, and that public em-

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[11] Even before the NLRA became federal law in 1935, California had enacted, effective August 21, 1933, a statute providing in part that, "Governmental authority has permitted and encouraged employers to organize in the corporate and other forms of capital control. In dealing with such employers the individual unorganized worker is helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment. Therefore it is necessary that the individual workman have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." Cal. Stats. 1933, c. 566. Now CAL. LAB. CODE § 923. See Appendix A.

[12] Safeway Stores, Inc. v. Retail Clerks International Ass'n, 41 Cal.2d 567, 573, 261 P.2d 721, 725 (1953). Citations omitted.

[13] 74 Cal.App.2d 292, 168 P.2d 741 (1946).

[14] 78 Cal.App.2d 638, 178 P.2d 537 (1947).

ployers were entrusted by law with authority which could not be delegated or surrendered to others because such authority was public property.[15] In the *Perez* case the court stated:

> Appellant's contention . . . that, "the real aim of the resolution is to prevent policemen from exercising the general right of public employees to form or join bona fide labor organizations or associations of their own choosing as a concomitant of their rights of free speech," obviously is an assumed premise, hence, any conclusion to be drawn therefrom is of no logical value in the circumstances.[16]

These two cases, then, seem to imply that: (1) There is no valid premise that public employees can join labor organizations as a matter of right; (2) Even if public employees could join labor organizations, public officials would be illegally delegating or surrendering public property if they bargained and contracted with such organizations; and (3) Public employees are not likely to be ill-treated in any event. With these two cases as background it comes as no surprise that in a later case the California court held that a public employee, although allowed to join a union, should not be allowed to be an officer thereof. This is the case of *Young v. Board of Building and Safety Commissioners of the City of Los Angeles*,[17] and in its decision the court appeared to rely heavily on the *Perez* case.

From the foregoing it can be seen that California, until quite recently, had effectively denied to the government employee the protection and rights it had granted to the private employee with regard to self organization, collective bargaining, and concerted activity normally available to those engaging in collective bargaining.

The New Law

Recently California has enacted legislation which leaves much of the law and reasoning of the *Nutter*, *Perez* and *Young* cases dead or in doubt. In 1959 rights were granted to California firefighters to organize, form, join or assist labor organizations, and to present to the governing body grievances and recommendations regarding working conditions and to discuss the same

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[15] 74 Cal.App.2d at 297 where the court relied upon the reasoning of Mugford v. Mayor and Council of Baltimore, Circuit Court No. 2 of Baltimore City, Md., 9 Munic. L. J. 46 (1944). The court also gave some weight to the fact that a proposed amendment to Cal. Lab. Code § 923 would have granted the § 923 rights to public employees had the amendment not failed to be enacted.

[16] 78 Cal.App.2d at 645, 178 P.2d at 542.

[17] 100 Cal.App.2d 468, 224 P.2d 16 (1950). The court appeared to rely heavily on the Perez case, *supra*, indicating that the test might be the reasonableness of the exercise "of the authority vested in the . . . Board . . . to control and manage the department . . . in accordance with the provisions of the City Charter." *Supra* at 472, 224 P.2d at 18.

with the governing body.[18] The firefighters do not, however, have the right to strike or to recognize a picket line while in the course of performance of their duties.[19] This 1959 legislation extends these rights to the employees of fire departments and services throughout the state whether state, county, city or district.[20] Furthermore the various governing bodies at all levels are prohibited from denying or obstructing the right of firefighters to join labor organizations,[21] and this prohibition has been interpreted as applicable to chartered cities even though they are not mentioned by name in the statute.[22] This interpretation by the attorney general has recently been upheld in the Superior Court of Santa Clara County when, at the request of an AFL-CIO Firefighters Local Union, the City Council of the City of Palo Alto was ordered to comply with the law and discuss the grievances and recommendations regarding working conditions with the local union.[23] The legislation here involved expressly provides that California Labor Code section 923, which establishes various rights of private workmen, is not thereby to be made applicable to firefighters.[24]

These provisions for firefighters are not, however, the last words regarding public employees in California law. In fact the firefighter provisions, it might be theorized, were merely experimental, and the experiment being successful it became desirable to grant similar and perhaps broader rights to public employees on a much greater scale. Thus in 1961 new legislation was enacted and placed in the California Government Code establishing that: (a) public employees have the right to form and join organizations for the purpose of representation, and they have the right to participate in the activities of organizations so formed;[25] (b) organizations so joined can be any organization *including* public employees so long as one of the organization's primary purposes is to represent public employees;[26] (c) "public employees" includes any person employed by any public agency except elected officers and officers appointed by the governor, and "public agency" includes any state agency whether it be district, city or county and whether it be incorporated, chartered, public or quasi-public;[27] (d) the governing body or its designated representative "shall meet and confer with the rep-

[18] CAL. LAB. CODE § 1960. See Appendix B.
[19] *Ibid.*
[20] CAL. LAB. CODE § 1961.
[21] CAL. LAB. CODE § 1960.
[22] 35 OPS. ATTY. GEN. CAL. 191 (1960).
[23] Memorandum Decision of Judge M. G. Del Mutolo in the case of International Association of Firefighters Local 1319 AFL-CIO, et al. v. City of Palo Alto, et al., filed June 1, 1961.
[24] CAL. LAB. CODE § 1963.
[25] CAL. GOV. CODE § 3502. See Appendix C.
[26] CAL. GOV. CODE § 3501 (a).
[27] CAL. GOV. CODE § 3501 (c)

resentatives of employee organizations on request and shall consider as fully as is deemed necessary such presentations" as the employee representatives may make.[28]

The legislation also provides that individual employees may abstain from joining an organization and instead represent themselves individually.[29] It is also provided that existing state and local law regarding merit or civil service systems or other methods of administering employer-employee relations, is to be supplemented rather than superseded by the new sections,[30] and the governing body is authorized to make reasonable rules and regulations for administering the new laws.[31] Furthermore section 3508 provides that public employees whose duties are primarily law enforcement duties *may* be prohibited from or limited in forming, joining or participating in employee organizations, but that the "right of employees to form, join and participate in the activities of employee organizations shall not be restricted by a public agency on any grounds other than those set forth *in this section*" (*i.e.*, section 3508).[32] In addition section 3508 is made *inapplicable* to employees subject to the firefighters provisions, supra.[33] Finally the new legislation is not to be construed as making section 923, supra, of the Labor Code applicable to public employees.[34]

A mere reading of this new legislation immediately establishes that some rather broad and basic changes in the law have been made by the legislature, and obviously such changes were intended or else the legislature might well have taken no action at all. The legislation, being relatively new, awaits interpretation by the court. However, the legislation itself suggests certain interpretations.

The Right to Strike

In view of this recent legislation it is clear that certain minimum rights, such as the right to join employee organizations, are now guaranteed to all California public employees, except law enforcement employees in certain

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[28] Cal. Gov. Code § 3505.
[29] Cal. Gov. Code § 3502.
[30] Cal. Gov. Code § 3500.
[31] Cal. Gov. Code § 3507, which provides that "such rules and regulations may include provisions for (a) verifying that an organization does in fact represent employees of the public agency (b) verifying the official status of employee organization officers and representatives (c) access of employee organization officers and representatives to work locations (d) use of official bulletin boards and other means of communication by employee organizations (e) furnishing non-confidential information pertaining to employment relations to employee organizations (f) such other matters as are necessary to carry out the purposes of this Chapter."
[32] Cal. Gov. Code § 3508.
[33] *Ibid.*
[34] Cal. Gov. Code § 3509.

limited cases.[35] But, the wording of these public employee statutes found in California Government Code sections 3500-3509, indicates that there is unquestionably more. Thus it is to be noted that these statutes are on their face applicable to "public employees" in general.[36] The broad definition of "public employees" in section 3501 is stated as, "*any* person employed by any public agency excepting" only elected officers and persons appointed by the governor. This definition appears to include firefighters, and thus the public employee statutes appear to overlap the firefighter statutes, and to apply to all other public employees as well, excepting only law enforcement officers in certain cases. Section 3508 provides that "the right of employees to form, join and participate in the activities of employee organizations shall not be restricted by any public agency on any ground other than those set forth in this section."

The language of the section then goes on to exclude coverage from firefighters, but exclusion of firefighters is from section 3508 *only*, and not from the remaining sections 3500-3507 and 3509. Thus it seems only fair to conclude that section 3508 secures for public employees in general, some rights which are withheld from firefighters in particular, and since the firefighters statutes expressly withhold from firefighters the right to strike,[37] it would seem to follow that section 3508 *secures* to public employees the right to strike as one of the general "activities of employee organizations" with which public agencies may not interfere.

In this regard it is to be noted that the right of public employees to strike is not unprecedented in California. In *Los Angeles Metropolitan Transit Authority v. Brotherhood of R.R. Trainmen*,[38] the "Authority," a public corporation, acquired two already functioning railroads. By such acquisition the employees of the previously private railways became employees of a public corporation. The act creating the public corporation was nevertheless interpreted as preserving for its then public employees the pre-incorporation right to strike. In its opinion the court stated:

> No case has been found holding that a statute permitting public employees to strike constitutes an improper delegation of governmental authority, and courts both in this State and elsewhere, although not specifically discussing the delegation point, have recognized that statutes which permit strikes by publicly employed teachers, electrical

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[35] CAL. GOV. CODE § 3508 defines the applicability of the legislation regarding law enforcement officers.

[36] CAL. GOV. CODE § 3502.

[37] CAL. LAB. CODE § 1962.

[38] 54 Cal.2d 684, 355 P.2d 905 (1960).

workers, maintenance workers, and longshoremen may be validly enacted.[39]

The above discussion and suggested interpretation of section 3508 would secure for the subject public employees the right to strike.

However, the discussion cannot be said to fairly terminate at this point, for a possible interpretation of section 3509 leads to a different conclusion. That section provides that the enactment of the public employee statutes "shall not be construed as making the provisions of section 923 of the Labor Code applicable to public employees."[40] As we have seen, section 923 of the Labor Code secures for private employees "collective bargaining" and "concerted activity" rights such as picketing, and since section 923 is not meant to be available in full force to public employees it is possible to argue that certain undefined section 923 rights, perhaps the right to picket, were therefore meant to be withheld from public employees.

CONCLUSION

When viewed from all sides the new public employee statutes lead to the obvious conclusion that the rights of government employees are not fully equated to those of private employees, and yet it cannot be denied that a giant step in that direction has been taken by these very same statutes. Presently they are open to conflicting interpretations. On the one hand it seems fair to say that the right to strike is inferentially available to most public employees by virtue of section 3508 regarding the exclusion of firefighters. On the other hand it seems clear that all the rights provided by Labor Code section 923 for private employees are not meant to be fully available to public employees. Certainly the statutes reveal no clear-cut middle path defining the economic weapon available to public employees. In this regard it seems unobjectionable that the right to strike be available in some cases, just as it was in the *Los Angeles Transit* case, and perhaps not fully available in other cases, such as the firefighter and law enforcement officer.

In the case of the firefighter and law enforcement officer it might be suggested that even their right in this regard could be broadened, so that in their off-duty hours they might be allowed to exercise the constitutional right of free speech by picketing "City Hall" in order to publicize their grievance, with the understanding that such picketing would in no way stand as a bar to the complete performance of duty by those firefighters and law enforcement officers who were on duty.

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[39] 54 Cal.2d at 693, followed by a string of citations omitted here.
[40] CAL. GOV. CODE § 3509.

Certainly these recent statutes clearly establish the public employees' right to join employee organizations and participate therein, and it is hard to imagine that a public employee could now be prohibited from holding office in an appropriate employee organization. Common sense indicates that a public employee organization should be officiated by public employees rather than outsiders.

These statutes require interpretation with regard to the question of whether public agencies may – or must – enter into written contractual arrangements with the employee organizations. It seems entirely desirable that public employees be given the broadest possible rights consistent with the public's safety. The Executive Order of President Kennedy seems to clearly establish this right for the federal employee, and logically it would seem a beneficial right to establish for all public employees, for with such a written contract arrived at across a bargain table, the public employee would then have his wages and working conditions clearly established for the negotiated period, and he would not be constantly concerned with lobbying the legislative body to improve his lot. In the very least, it can be said that public agencies will breach no public trust when they carry out the now mandatory acts of meeting and conferring with the representatives of the appropriate public employee organizations, nor will they violate the spirit of the public employee statutes by entering into a written contract formalizing the agreements arrived at through such meetings and conferences.

The California courts apparently are to be left with the task of solving certain issues of interpretation concerning these new public employee statutes. The obvious growing concern regarding the lack of public employee rights, and the even more apparent agitation of the public employee to secure such rights, would seem to indicate that the courts will not wait long before having these issues before them.

APPENDIX A

Cal. Lab. Code § 923. **Declaration of Public Policy.**

"Negotiation of terms and conditions of labor should result from voluntary agreement between employer and employees. Governmental authority has permitted and encouraged employers to organize in the corporate and other forms of capital control. In dealing with such employers, the individual unorganized worker is helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment. Therefore it is necessary that the individual workman have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms

and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection."

APPENDIX B

Cal. Lab. Code §§ 1960-1963 (added by Stats. 1959, c. 723, p. 2711, § 1).

§ 1960. **Interference with right to join Labor Organizations.** Neither the state nor any county, political subdivision, incorporated city, town, nor any other municipal corporation shall prohibit, deny or obstruct the right of firefighters to join any bona fide labor organizations of their own choice.

§ 1961. **"Employees" defined.** As used in this chapter, the term "employees" means the employees of the fire departments and fire services of the state, counties, cities, cities and counties, districts, and the other political subdivisions of the state.

§ 1962. **Right of Employees to Organize; Right to Strike or to Recognize Picket Line.** Employees shall have the right to self-organization, to form, join, or assist labor organizations, to present grievances and recommendations regarding wages, salaries, hours, and working conditions to the governing body, and to discuss the same with such governing body, through such an organization, but shall not have the right to strike, or to recognize a picket line of a labor organization while in the course of the performance of their official duties.

§ 1963. The enactment of this chapter shall not be construed as making the provisions of section 923 applicable to public employees.

APPENDIX C

Cal. Gov. Code §§ 3500-3509: Public Employee Organizations (added by Stats. 1961, c. 1965, § 1).

§ 3500. **Purpose and Intent.** It is the purpose of this chapter to promote the improvement of personnel management and employer-employee relations within the various public agencies in the state of California by providing a uniform basis for recognizing the right of public employees to join organizations of their own choice and be represented by such organizations in their employment relationships with public agencies. Nothing contained herein shall be deemed to supersede the provisions of existing state law and the charters, ordinances and rules of local public agencies which establish and regulate a merit or civil service system or which provide for other

methods of administering employer-employee relations. This chapter is intended, instead, to strengthen merit, civil service and other methods of administering employer-employee relations through the establishment of uniform and orderly methods of communication between employee and public agencies by which they are employed.

§ 3501. **Definitions.** As used in this chapter: (a) "Employee organizations" means any organization which includes employees of a public agency and which has as one of its primary purposes representing such employees in their relations with that public agency. (b) "Public agency" means the state of California, every government subdivision, every district, every public and quasi-public corporation, every public agency and public service corporation, and every town, city, county, city and county, and municipal corporation, whether incorporated or not and whether chartered or not. (c) "Public employee" means any person employed by any public agency excepting those persons elected by popular vote or appointed to office by the governor of this state.

§ 3502. **Right to Join or Abstain; Individual Representation.** Except as otherwise provided by the Legislature, public employees shall 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. Public employees also shall have the right to refuse to join or participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the public agency.

§ 3503. **Representation of Members; Membership Admission and Dismissal Regulations; Right of Personal Appearance.** Employee organizations shall have the right to represent their members in their employment relations with public agencies. Employee organizations may establish reasonable restrictions regarding who may join and make reasonable provisions for the dismissal of individuals from membership. Nothing in this section shall prohibit any employee from appearing in his own behalf in his employment relations with the public agency.

§ 3504. **Scope of Representation.** The scope of representation shall include all matters relating to employment conditions and employer-employee relations, including but not limited to wages, hours, and other terms and conditions of employment.

§ 3505. **Conferences.** The governing body of a public agency, or such boards, commissions, administrative officers or other representatives as may be properly designated by law or by such governing body, shall meet and confer with representatives of employee organizations upon request, and

shall consider as fully as it deems reasonable such presentations as are made by the employee organization on behalf of its members prior to arriving at a determination of policy or course of action.

§ 3506. **Discrimination Prohibited.** Public agencies and employee organizations shall not interfere with, intimidate, restrain, coerce or discriminate against public employees because of their exercise of their rights under § 3502.

§ 3507. **Rules and Regulations.** A public agency may adopt reasonable rules and regulations for the administration of employer-employee relations under this chapter.

Such rules and regulations may include provisions for (a) verifying that an organization does in fact represent employees of the public agency (b) verifying the official status of employee organization officers and representatives (c) access of employee organization officers and representatives to work locations (d) use of official bulletin boards and other means of communication by employee organizations (e) furnishing non-confidential information pertaining to employment relations to employee organizations (f) such other matters as are necessary to carry out the purposes of this chapter.

For employees in the state civil service, rules and regulations in accordance with this section may be adopted by the State Personnel Board.

§ 3508. **Law Enforcement Positions; Exclusion from Employee Organizations; Public Interest.** The governing body of a public agency may, in accordance with reasonable standards, designate positions or classes of positions which have duties consisting primarily of the enforcement of state laws or local ordinances, and may by resolution or ordinance adopted after a public hearing, limit or prohibit the right of employees in such positions or classes of positions to form, join or participate in employee organizations where it is in the public interest to do so.

The right of employees to form, join, and participate in the activities of employee organizations shall not be restricted by a public agency on any grounds other than those set forth in this section. This section is not applicable to any employee subject to the provisions of chapter 4 (commencing with section 1960) of part 7, division 2 of the Labor Code. (The firefighter provisions.)

§ 3509. **Construction.** The enactment of this chapter shall not be construed as making the provisions of section 923 of the Labor Code applicable to public employees.