

By: Talton, et al.

H.B. No. 304

A BILL TO BE ENTITLED

AN ACT

relating to conditions of employment for police officers employed by certain municipalities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 142, Local Government Code, is amended by designating Sections 142.001-142.013 as Subchapter A and adding a heading for Subchapter A to read as follows:

SUBCHAPTER A. GENERAL PROVISIONS

SECTION 2. Chapter 142, Local Government Code, is amended by adding Subchapter B to read as follows:

SUBCHAPTER B. LOCAL CONTROL OF POLICE OFFICER EMPLOYMENT MATTERS

IN CERTAIN MUNICIPALITIES

Sec. 142.051. APPLICABILITY. (a) Except as provided by Subsection (b), this subchapter applies only to a municipality with a population of 10,000 or more that employs police officers.

(b) This subchapter does not apply to a municipality that:

(1) has adopted Chapter 174;

(2) is covered by Subchapter H, I, or J, Chapter 143;

or

(3) has a population of 1 million or more and has not adopted Chapter 143.

Sec. 142.052. DEFINITIONS. In this subchapter:

(1) "Police officer" means a person who is a peace officer under Article 2.12, Code of Criminal Procedure, or other

1 law, and who is employed by a municipality.

2 (2) "Police officers association" means an employee
3 organization in which police officers employed by a municipality
4 participate that exists for the purpose, in whole or in part, of
5 dealing with the municipality or public employer concerning
6 grievances, labor disputes, wages, rates of pay, hours of work, or
7 conditions of work affecting police officers.

8 (3) "Public employer" means a municipality or a law
9 enforcement agency of the municipality that is required to
10 establish the wages, salaries, rates of pay, hours of work, working
11 conditions, and other terms and conditions of employment of police
12 officers employed by the municipality.

13 Sec. 142.053. PETITION FOR RECOGNITION: ELECTION OR ACTION
14 BY GOVERNING BODY. (a) Not later than the 30th day after the date
15 the governing body of a municipality receives from a police
16 officers association a petition signed by the majority of all
17 police officers, excluding the head of the law enforcement agency
18 for the municipality and excluding the employees exempt under
19 Section 142.058(b), that requests recognition of the association as
20 the sole and exclusive bargaining agent for all the police officers
21 employed by the municipality, excluding the head of the law
22 enforcement agency for the municipality and excluding the exempt
23 employees, the governing body shall:

24 (1) grant recognition of the association as requested
25 in the petition and find that a public employer may meet and confer
26 under this subchapter without conducting an election by the voters
27 in the municipality under Section 142.055;

1 (2) defer granting recognition of the association and
2 order an election by the voters in the municipality under Section
3 142.055 regarding whether a public employer may meet and confer
4 under this subchapter; or

5 (3) order a certification election under Section
6 142.054 to determine whether the association represents a majority
7 of the affected police officers.

8 (b) If the governing body of a municipality orders a
9 certification election under Subsection (a)(3) and the association
10 named in the petition is certified to represent a majority of the
11 affected police officers of the municipality, the governing body
12 shall, not later than the 30th day after the date that results of
13 that election are certified:

14 (1) grant recognition of the association as requested
15 in the petition for recognition and find that a public employer may
16 meet and confer under this subchapter without conducting an
17 election by the voters in the municipality under Section 142.055;
18 or

19 (2) defer granting recognition of the association and
20 order an election by the voters in the municipality under Section
21 142.055 regarding whether a public employer may meet and confer
22 under this subchapter.

23 Sec. 142.054. CERTIFICATION ELECTION. (a) Except as
24 provided by Subsection (b), a certification election ordered under
25 Section 142.053(a)(3) to determine whether a police officers
26 association represents a majority of the covered police officers
27 shall be conducted according to procedures agreeable to the

1 parties.

2 (b) If the parties are unable to agree on procedures for the
3 certification election, either party may request the American
4 Arbitration Association to conduct the election and to certify the
5 results of the election.

6 (c) Certification of the results of an election under this
7 section resolves the question concerning representation.

8 (d) The association is liable for the expenses of the
9 certification election, except that if two or more associations
10 seeking recognition as the sole and exclusive bargaining agent
11 submit a petition signed by at least 30 percent of the police
12 officers eligible to sign the petition for recognition, all the
13 associations named in any petition shall share equally the costs of
14 the election.

15 Sec. 142.055. ELECTION TO AUTHORIZE OPERATING UNDER THIS
16 SUBCHAPTER. (a) The governing body of a municipality that receives
17 a petition for recognition under Section 142.053 may order an
18 election to determine whether a public employer may meet and confer
19 under this subchapter.

20 (b) An election ordered under this section must be held on
21 the first authorized uniform election date prescribed by Chapter
22 41, Election Code, that occurs after the date the governing body of
23 the municipality orders the election and that allows sufficient
24 time to comply with other requirements of law.

25 (c) The ballot for an election ordered under this section
26 shall be printed to allow voting for or against the proposition:
27 "Authorizing _____ (name of the municipality) to operate under

1 the state law allowing a municipality to meet and confer and make
2 agreements with the association representing municipal police
3 officers as provided by state law, preserving the prohibition
4 against strikes and organized work stoppages, and providing
5 penalties for strikes and organized work stoppages."

6 (d) An election called under this section must be held and
7 the returns prepared and canvassed in conformity with the Election
8 Code.

9 (e) If an election authorized under this section is held,
10 the municipality may operate under the other provisions of this
11 subchapter only if a majority of the votes cast at the election
12 favor the proposition.

13 (f) If an election authorized under this section is held, an
14 association may not submit a petition for recognition to the
15 governing body of the municipality under Section 142.053 before the
16 first anniversary of the date of the election.

17 Sec. 142.056. CHANGE OR MODIFICATION OF RECOGNITION. (a)
18 The police officers may modify or change the recognition of the
19 association granted under this subchapter by filing with the
20 governing body of the municipality a petition signed by a majority
21 of all covered police officers.

22 (b) The governing body of the municipality may:

23 (1) recognize the change or modification as provided
24 by the petition; or

25 (2) order a certification election in accordance with
26 Section 142.054 regarding whether to do so.

27 Sec. 142.057. STRIKES PROHIBITED. (a) A police officer

1 employed by a municipality may not engage in a strike or organized
2 work stoppage against this state or the municipality.

3 (b) A police officer who participates in a strike forfeits
4 any civil service rights, reemployment rights, and other rights,
5 benefits, or privileges the police officer may have as a result of
6 the officer's employment or prior employment with the municipality.

7 (c) This section does not affect the right of a person to
8 cease work if the person is not acting in concert with others in an
9 organized work stoppage.

10 Sec. 142.058. RECOGNITION OF POLICE OFFICERS ASSOCIATION.

11 (a) A public employer in a municipality that chooses to meet and
12 confer under this subchapter shall recognize an association that is
13 recognized under Section 142.053 or 142.054 as the sole and
14 exclusive bargaining agent for the covered police officers
15 described in the petition for recognition, excluding the head of
16 the law enforcement agency and excluding the employees exempt under
17 Subsection (b), in accordance with this subchapter and the
18 petition.

19 (b) For the purposes of Subsection (a), exempt employees are
20 the employees appointed by the head of the law enforcement agency of
21 the municipality under Section 143.014 or that are exempt by the
22 mutual agreement of the recognized police officers association and
23 the public employer.

24 (c) The public employer shall recognize the police officers
25 association until recognition of the association is withdrawn, in
26 accordance with Section 142.056, by a majority of the police
27 officers eligible to sign a petition for recognition.

1 Sec. 142.059. GENERAL PROVISIONS RELATING TO AGREEMENTS.

2 (a) A municipality acting under this subchapter may not be denied
3 local control over the wages, salaries, rates of pay, hours of work,
4 or other terms and conditions of employment to the extent the public
5 employer and the police officers association recognized as the sole
6 and exclusive bargaining agent under this subchapter agree as
7 provided by this subchapter, if the agreement is ratified and not
8 withdrawn in accordance with this subchapter. Applicable statutes
9 and applicable local orders, ordinances, and civil service rules
10 apply to an issue not governed by the meet and confer agreement.

11 (b) A meet and confer agreement under this subchapter must
12 be written.

13 (c) This subchapter does not require a public employer or a
14 recognized police officers association to meet and confer on any
15 issue or reach an agreement.

16 (d) A public employer and the recognized police officers
17 association may meet and confer only if the association does not
18 advocate an illegal strike by public employees.

19 Sec. 142.060. SELECTION OF BARGAINING AGENT; BARGAINING
20 UNIT. (a) The public employer's chief executive officer or the
21 chief executive officer's designee shall select one or more persons
22 to represent the public employer as its sole and exclusive
23 bargaining agent to meet and confer on issues related to the wages,
24 hours of employment, and other terms and conditions of employment
25 of police officers by the municipality.

26 (b) A police officers association may designate one or more
27 persons to negotiate or bargain on the association's behalf.

1 (c) A municipality's bargaining unit is composed of all the
2 police officers of the municipality who are not the head of the law
3 enforcement agency or exempt under Section 142.058(b).

4 Sec. 142.061. PROTECTED RIGHTS OF POLICE OFFICER. (a) For
5 any disciplinary appeal, a member of the municipality's bargaining
6 unit may be represented by the police officers association or by any
7 person the member selects.

8 (b) A meet and confer agreement ratified under this
9 subchapter may not interfere with the right of a member of a
10 bargaining unit to pursue allegations of discrimination based on
11 race, creed, color, national origin, religion, age, sex, or
12 disability with the Texas Workforce Commission civil rights
13 division or the federal Equal Employment Opportunity Commission or
14 to pursue affirmative action litigation.

15 Sec. 142.062. OPEN RECORDS. (a) A proposed meet and confer
16 agreement and a document prepared and used by the municipality,
17 including a public employer, in connection with the proposed
18 agreement are available to the public under Chapter 552, Government
19 Code, only after the agreement is ratified by the governing body of
20 the municipality.

21 (b) This section does not affect the application of
22 Subchapter C, Chapter 552, Government Code, to a document prepared
23 and used in connection with the agreement.

24 Sec. 142.063. OPEN DELIBERATIONS. A deliberation relating
25 to meeting and conferring between a public employer and a police
26 officers association, a deliberation relating to an agreement or
27 proposed agreement under this subchapter by a quorum of a police

1 officers association authorized to meet and confer, or a
2 deliberation by a member of a public employer authorized to meet and
3 confer must be open to the public and comply with state law.

4 Sec. 142.064. RATIFICATION AND ENFORCEABILITY OF
5 AGREEMENT. (a) An agreement under this subchapter is enforceable
6 and binding on the public employer, the recognized police officers
7 association, and the police officers covered by the meet and confer
8 agreement only if:

9 (1) the governing body of the municipality ratified
10 the agreement by a majority vote; and

11 (2) the recognized police officers association
12 ratified the agreement by conducting a secret ballot election at
13 which only the police officers of the municipality in the
14 association were eligible to vote, and a majority of the votes cast
15 at the election favored ratifying the agreement.

16 (b) A meet and confer agreement ratified as described by
17 Subsection (a) may establish a procedure by which the parties agree
18 to resolve disputes related to a right, duty, or obligation
19 provided by the agreement, including binding arbitration on a
20 question involving interpretation of the agreement.

21 (c) A state district court of a judicial district in which
22 the municipality is located has jurisdiction to hear and resolve a
23 dispute under the ratified meet and confer agreement on the
24 application of a party to the agreement aggrieved by an action or
25 omission of the other party when the action or omission is related
26 to a right, duty, or obligation provided by the agreement. The
27 court may issue proper restraining orders, temporary and permanent

1 injunctions, or any other writ, order, or process, including
2 contempt orders, that are appropriate to enforcing the agreement.

3 Sec. 142.065. ELECTION TO REPEAL AGREEMENT. (a) Not later
4 than the 60th day after the date a meet and confer agreement is
5 ratified by the governing body of the municipality and the
6 recognized police officers association, a petition calling for the
7 repeal of the agreement signed by a number of registered voters
8 residing in the municipality equal to at least 10 percent of the
9 votes cast at the most recent general election held in the
10 municipality may be presented to the person charged with ordering
11 an election under Section 3.004, Election Code.

12 (b) If a petition is presented under Subsection (a), the
13 governing body of the municipality shall:

- 14 (1) repeal the meet and confer agreement; or
15 (2) certify that it is not repealing the agreement and
16 call an election to determine whether to repeal the agreement.

17 (c) An election called under Subsection (b)(2) may be held
18 as part of the next regularly scheduled general election for the
19 municipality or at a special election called by the governing body
20 of the municipality for that purpose. The ballot shall be printed
21 to provide for voting for or against the proposition: "Repeal the
22 meet and confer agreement ratified on _____ (date agreement was
23 ratified) by the _____ (name of the governing body of the
24 municipality) and the police officers employed by the City of
25 _____ (name of municipality) concerning wages, salaries,
26 rates of pay, hours of work, and other terms of employment."

27 (d) If a majority of the votes cast at the election favor the

1 repeal of the agreement, the agreement is void.

2 Sec. 142.066. AGREEMENT SUPERSEDES CONFLICTING PROVISIONS.
3 A written meet and confer agreement ratified under this subchapter
4 preempts, during the term of the agreement and to the extent of any
5 conflict, all contrary state statutes, local ordinances, executive
6 orders, civil service provisions, or rules adopted by the head of
7 the law enforcement agency or municipality or by a division or agent
8 of the municipality, such as a personnel board or a civil service
9 commission.

10 Sec. 142.067. EFFECT ON EXISTING BENEFITS. This subchapter
11 may not be construed as repealing any existing benefit provided by
12 statute or ordinance concerning police officers' compensation,
13 pensions, retirement plans, hours of work, conditions of
14 employment, or other emoluments, except as expressly provided in a
15 ratified meet and confer agreement. This subchapter is in addition
16 to the benefits provided by existing statutes and ordinances.

17 SECTION 3. This Act takes effect September 1, 2005.