

By: Bailey

H.B. No. 2866

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the right of certain municipalities to maintain local
3 control over wages, hours, and other terms of employment of certain
4 municipal employees.

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

6 SECTION 1. Chapter 143, Local Government Code, is amended
7 by adding Subchapter K to read as follows:

8 SUBCHAPTER K. LOCAL CONTROL OF MUNICIPAL EMPLOYMENT MATTERS IN
9 MUNICIPALITIES WITH POPULATION OF 1.5 MILLION OR MORE

10 Sec. 143.401. APPLICATION. (a) This subchapter applies
11 only to a municipality with a population of 1.5 million or more.

12 (b) This subchapter does not apply to:

13 (1) firefighters or police officers who are covered by
14 Subchapter H, I, or J or by Chapter 174; or

15 (2) an employee association in which those employees
16 participate.

17 Sec. 143.402. DEFINITIONS. In this subchapter:

18 (1) "Association" means an organization in which
19 municipal employees participate, that exists wholly or partly for
20 the purpose of dealing with one or more public or private employers
21 concerning grievances, labor disputes, wages, rates of pay, hours
22 of employment, or working conditions affecting public employees,
23 and whose members pay dues by means of an automatic payroll
24 deduction.

1 (2) "Covered employee" means an employee of the
2 municipality, excluding a department head and a firefighter or
3 police officer covered by Subchapter H, I, or J or by Chapter 174.

4 (3) "Public employer" means any municipality or
5 agency, board, commission, or political subdivision created and
6 controlled by a municipality that is required to establish the
7 wages, salaries, rates of pay, hours of employment, working
8 conditions, and other terms of employment of public employees.

9 Sec. 143.403. GENERAL PROVISIONS RELATING TO AGREEMENTS,
10 RECOGNITION, AND STRIKES. (a) A municipality may not be denied
11 local control over wages, salaries, rates of pay, hours of
12 employment, other terms or conditions of employment, or other
13 personnel issues on which the public employer and an association
14 recognized as the sole and exclusive bargaining agent for all
15 covered employees agree. A term on which the public employer and
16 the association do not agree is governed by the applicable
17 statutes, local ordinances, and civil service rules. An agreement
18 between the public employer and an association must be reduced to
19 writing. This subchapter does not require the public employer and
20 the association to meet and confer or reach an agreement on any
21 issue. This subchapter does not authorize an agreement regarding
22 pension or pension-related matters governed by Chapter 358, Acts of
23 the 48th Legislature, Regular Session, 1943 (Article 6243g,
24 Vernon's Texas Civil Statutes), or a successor statute.

25 (b) A public employer and an association recognized under
26 this subchapter as a sole and exclusive bargaining agent may meet
27 and confer only if the association does not advocate the illegal

1 right to strike by public employees.

2 (c) A municipal employee may not engage in a strike or
3 organized work stoppage against this state or a political
4 subdivision of this state. An employee who participates in a strike
5 forfeits all civil service rights, reemployment rights, and other
6 rights, benefits, or privileges the employee enjoys as a result of
7 the employee's employment or previous employment with the
8 municipality. This subsection does not affect the right of a person
9 to cease employment if the person is not acting in concert with
10 other employees.

11 Sec. 143.404. RECOGNITION OF ASSOCIATION. (a) A public
12 employer may recognize an association that submits a petition
13 signed by a majority of the covered employees, excluding any
14 department head and assistant department head in the rank or
15 classification immediately below that of the department head, as
16 the sole and exclusive bargaining agent for all of the covered
17 employees.

18 (b) An association may submit a petition requesting an
19 election to determine whether an association is the sole and
20 exclusive representative of the covered employees. If the petition
21 is signed by 30 percent of the covered employees and the public
22 employer certifies to the municipality the number of employees
23 signing the petition, there is a question of whether an association
24 is the sole and exclusive representative of the covered employees
25 that must be resolved by a fair election conducted according to
26 procedures on which the parties agree. If the parties are unable to
27 agree on election procedures, either party may request the American

1 Arbitration Association to conduct the election and to certify the
2 results. The association that receives a majority of the votes cast
3 at the election is the sole and exclusive representative of the
4 covered employees. Certification of the results of an election
5 under this subsection resolves the question concerning
6 representation. The association that submits the petition shall
7 pay the costs of the election, except that if two or more
8 associations seeking recognition as the sole and exclusive
9 bargaining agent submit petitions signed by 30 percent or more of
10 the covered employees, the associations shall share equally the
11 costs of the election.

12 (c) The municipality shall designate a team to represent the
13 public employer as its sole and exclusive bargaining agent.

14 Sec. 143.405. OPEN RECORDS REQUIRED. An agreement made
15 under this subchapter is a public record for purposes of Chapter
16 552, Government Code. The agreement and any document prepared and
17 used by the municipality in connection with the agreement are
18 available to the public under the open records law, Chapter 552,
19 Government Code, only after the agreement is ratified by the
20 municipality's governing body. This section does not affect the
21 application of Subchapter C, Chapter 552, Government Code, to a
22 document prepared and used by the municipality in connection with
23 the agreement.

24 Sec. 143.406. ENFORCEABILITY OF AGREEMENT. (a) A written
25 agreement made under this subchapter between a public employer and
26 an association is binding on the public employer, the association,
27 and employees covered by the agreement if:

1 (1) the municipality's governing body ratifies the
2 agreement by a majority vote; and

3 (2) the applicable association ratifies the agreement
4 by a majority vote of its members voting in an election by secret
5 ballot.

6 (b) An agreement ratified as described by Subsection (a) may
7 establish a procedure by which the parties agree to resolve
8 disputes related to a right, duty, or obligation provided by the
9 agreement, including binding arbitration on interpretation of the
10 agreement.

11 (c) The district court of the judicial district in which the
12 municipality is located has full authority and jurisdiction on the
13 application of either party aggrieved by an act or omission of the
14 other party related to a right, duty, or obligation provided by a
15 written agreement ratified as described by Subsection (a). The
16 court may issue proper restraining orders, temporary and permanent
17 injunctions, or any other writ, order, or process, including a
18 contempt order, that is appropriate to enforce the agreement.

19 Sec. 143.407. AGREEMENT SUPERSEDES CONFLICTING PROVISIONS.

20 (a) An agreement under this subchapter supersedes a previous
21 statute concerning wages, salaries, rates of pay, hours of
22 employment, or other terms or conditions of employment, other than
23 pension and pension-related matters, to the extent of any conflict
24 with the statute.

25 (b) An agreement under this subchapter preempts any
26 contrary statute, executive order, local ordinance, or rule adopted
27 by the state or a political subdivision or agent of the state,

1 including a personnel board, a civil service commission, or a
2 home-rule municipality, other than a statute, order, ordinance, or
3 rule regarding pension or pension-related matters.

4 (c) An agreement under this subchapter may not diminish or
5 qualify any right, benefit, or privilege of an employee under this
6 subchapter or other law unless approved by a majority vote by secret
7 ballot of the members of the association recognized as a sole and
8 exclusive bargaining agent.

9 Sec. 143.408. REPEAL OF AGREEMENT BY ELECTORATE. Not later
10 than the 45th day after the date an agreement is ratified by both
11 the municipality and the association, a petition signed by at least
12 10 percent of the qualified voters of the municipality may be
13 presented to the municipal secretary calling an election for the
14 repeal of the agreement. On receipt of the petition by the
15 municipal secretary, the governing body shall reconsider the
16 agreement and either repeal the agreement or call an election of the
17 qualified voters to determine if they desire to repeal the
18 agreement. The election shall be called for the next municipal
19 election or a special election called by the governing body for that
20 purpose. If at the election a majority of the votes are cast in
21 favor of the repeal of the adoption of the agreement, the agreement
22 is void. The ballot shall be printed to permit voting for or
23 against the proposition: "Repeal of the adoption of the agreement
24 ratified by the municipality and the _____ (municipal employee)
25 association concerning wages, salaries, rates of pay, hours of
26 employment, and other terms and conditions of employment."

27 Sec. 143.409. PROTECTED RIGHTS OF INDIVIDUAL EMPLOYEES. An

1 agreement may not interfere with the right of a member of an
2 association to pursue allegations of discrimination based on race,
3 creed, color, national origin, religion, age, sex, or disability
4 with the Commission on Human Rights or the Equal Employment
5 Opportunity Commission or to pursue affirmative action litigation.

6 SECTION 2. This Act takes effect September 1, 2005.