

Morgan Hill USD

Board Policy

Bargaining Units

BP 4140 4240,4340

Personnel

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)

~~Neither the district nor the employee organization shall 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, 3543.6)~~

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

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.
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, ~~layoff~~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)

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, ~~but~~. 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.

Payment of Dues or Service Fee

Upon the written request of a recognized employee organization, the Superintendent or designee shall deduct the amount of organization dues or the fair share service fee, determined in accordance with Government Code ~~3546~~3550, as amended by SB 866 (Ch. 53, Statutes of 2018), prohibits a district from the wages and salary of each employee represented deterring or discouraging employees or job applicants from authorizing representation by that or making dues deductions to an employee organization.

The district shall not deter or discourage employees or job applicants from becoming or remaining members of an employee organization and shall pay that amount to the, 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)

(Education Code 45060, 45168; Government Code 3546)

~~Any employee who is a member of a religious body whose traditional tenets or teachings include objections to joining or financially supporting not join an employee organization to avoid violating the law against unfair labor practices. When an employee organizations shall not be~~

~~required to join, maintain approaches the district with questions specifically about the benefits of the membership in, or financially support any an employee organization as a condition of employment. However, such an, the employee may should be required referred to pay an amount equal to the service fee to a designated charitable fund. (Government Code 3546.3)~~

~~Each employee organization shall, within 60 days after the end of its fiscal year, provide the Board and the employees who are members of the organization with a detailed financial report consisting of a balance sheet and an operating statement. If the employee organization, fails to provide the financial report, the Board may issue an order compelling the organization to provide the financial report or any employee within the organization may petition the Board for such an order. (Government Code 3546.5).***~~

~~(cf. 3460—Financial Reports and Accountability)~~

~~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 may provide an employee organization with the home address shall meet and confer with the employees' exclusive representative regarding the content of the communication. If the district and home telephone number of employees, except any 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 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)

~~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)~~

(cf. 1340 - Access to District Records)

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 ~~Definitions~~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, (2011), 1922013) 56 Cal.App. 4th 1409 905

Management Resources:

~~CSBA PUBLICATIONS~~

~~Collective Bargaining DVD-ROM~~

~~Before the Strike: Planning Ahead in Difficult Negotiations, 1996~~

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>

~~Policy MORGAN HILL UNIFIED SCHOOL DISTRICT~~

~~adopted: November 13, 2012 Morgan Hill, California (11/11 10/17) 7/18~~