

CITY COUNCIL MEETING  
MAY 15, 1985

CC 28  
Pg 426

SYNOPSIS  
OF DILLS BILL  
SB 1398  
PRESENTED FOR  
COUNCIL'S  
PERUSAL

Council Member Snider presented a synopsis of Senator Dills Bill SB 1398 regarding compulsory and binding arbitration, indicating that in the near future he will ask Council to formally oppose the bill.

5/10/85  
CITY COUNCIL

DAVID M. HINCHMAN, Mayor  
FRED M. REID  
Mayor Pro Tempore  
EVELYN M. OLSON  
JAMES W. PINKERTON, Jr.  
JOHN R. (Randy) SNIDER

# CITY OF LODI

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THOMAS A. PETERSON  
City Manager

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City Clerk

RONALD M. STEIN  
City Attorney

To: Honorable Mayor and Council Members  
From: Council Member John Randy Snider  
Subject: Synopsis of Senate Bill No. 1398  
as introduced by Senator Dills  
Date: May 14, 1985

Existing law contains provisions relating to employer-employee relations within the various local public agencies in the State of California, which presently provides that local public employees have a right to form, join and participate in the activities of employees organizations for the purpose of representation on all matters of employer-employee relations. The chosen employee organization has a right to represent its members and the scope of representation includes wages, hours and other terms and conditions of employment.

Representatives of the public employer are required in this connection to meet and confer in good faith and endeavor to reach agreement with the employee organization, and if agreement is reached, to prepare a non-binding memorandum of understanding and present it to the governing body of the public employer for determination. The public agency and the recognized employee organization or recognized employee organizations together are authorized to mutually agree on the appointment of a mediator for the purpose of settling any disputes between the parties.

Also under existing law, firefighters are statutorily prohibited from engaging in strikes.

The following are key provisions set forth under SB1398:

1. This bill would revise provisions of existing law with respect to certain peace officers and firefighters employed by a local agency to impose a state-mandated local program by providing that in situations where a mediator is unable to effect settlement of a controversy between an employer and the recognized employee organization representing peace officers or firefighters, either party may, pursuant to specific procedures have their differences on economic issues submitted to binding arbitration.

2. This bill would establish a specified procedure for settlement of controversies between the parties through the utilization of an arbitrator mutually agreed upon and chosen from a list submitted by the State Mediation and Conciliation Service pursuant to specified procedures.
3. This bill would provide that the jointly incurred costs of the arbitration proceeding shall be shared equally between the parties unless otherwise agreed to by the parties.
4. The bill would provide that any peace officer or firefighter willfully engaging in a strike is subject to immediate termination, suspension, demotion, reduction in pay or other disciplinary action.
5. This bill would impose a state-mandated local program by requiring local public agencies to implement compulsory and binding arbitration for peace officers and firefighters.

Introduced by Senator Dills

March 8, 1985

An act to add and repeal Chapter 4.5 (commencing with Section 1060) of Part 3 of Division 2 of the Labor Code, relating to public safety labor disputes.

LEGISLATIVE COUNSEL'S DIGEST

SB 1398, as introduced, Dills. Peace officer and firefighter labor disputes: binding arbitration.

Existing law contains provisions relating to employer-employee relations within the various local public agencies in the State of California, which presently provide that local public employees have a right to form, join, and participate in the activities of employee organizations for the purpose of representation on all matters of employer-employee relations. The chosen employee organization has a right to represent its members, and the scope of representation includes wages, hours, and other terms and conditions of employment. Representatives of the public employer are required, in this connection, to meet and confer in good faith and endeavor to reach agreement with the employee organization, and, if agreement is reached, to prepare a nonbinding memorandum of understanding and present it to the governing body of the public employer for determination. The public agency and the recognized employee organization or recognized employee organizations together are authorized to mutually agree on the appointment of a mediator for the purpose of settling any disputes between the parties. Also, under existing law, firefighters are statutorily prohibited from engaging in strikes.

This bill would revise these provisions of existing law with respect to certain peace officers and firefighters employed by

a local public agency, to impose a state-mandated local program by providing that in situations where a mediator is unable to effect settlement of a controversy between an employer and the recognized employee organization representing peace officers or firefighters, or if the parties are unable to agree to appointment of a mediator under existing law, either party may, pursuant to specified procedures, have their differences on economic issues, as defined, submitted to binding arbitration. The bill would establish a specified procedure for settlement of controversies between the parties through the utilization of an arbitrator mutually agreed upon or chosen from a list submitted by the State Mediation and Conciliation Service pursuant to specified procedures.

The arbitrator appointed pursuant to these procedures would be required to meet with the parties or their representatives within 10 days after his or her selection, and to make inquiries and investigations, hold hearings, and take any other action, including further mediation, that the arbitrator deems appropriate.

At the commencement of arbitration hearings, each of the parties would be required to submit a last best offer of settlement on the unresolved issues as a package. The arbitrator would decide the unresolved issues by selecting the last best offer package which most nearly complies with specified factors. There would then be a waiting period of 10 days prior to public disclosure, or a longer period if agreed to, during which the parties could mutually amend the decision. At the end of that period, the amended agreement or the arbitrator's decision would be disclosed, and would be binding upon the parties.

This bill would provide that the jointly incurred costs of the arbitration proceeding shall be shared equally between the parties, unless otherwise agreed to by the parties.

The bill would provide that any peace officer or firefighter willfully engaging in a strike, as defined, against the public agency employer is subject to immediate termination, suspension, demotion, reduction in pay, or other disciplinary action.

The provisions of the bill providing for binding arbitration

would not apply to public agencies which, by charter, ordinance, or resolution have adopted a mandatory arbitration procedure meeting specified requirements.

This bill would impose a state-mandated local program by requiring local public agencies to implement compulsory and binding arbitration for peace officers and firefighters.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would also provide that if a final decision of a court finds that any costs incurred by a local agency as a result of participation in a binding arbitration proceeding pursuant to the bill are required to be reimbursed by the state, this bill, and any arbitration decision rendered pursuant to the bill, would have no further force or effect.

This bill would provide that any arbitration decision resulting from court-ordered arbitration shall not become effective until after the final determination of a court that the costs of the arbitration are not required to be reimbursed by the state, and would prohibit a court from issuing an order to arbitrate until the final determination of a court that the costs of court-ordered arbitration are not required to be reimbursed by the state as "costs mandated by the state," or the Chief Justice of the California Supreme Court grants consent to issue an order to arbitrate pursuant to specified criteria. This bill would also state the intent of the Legislature in this regard.

This bill, in compliance with Section 2231.5 of the Revenue and Taxation Code, would also repeal, as of January 1, 1992, the provisions contained in the bill for which state reimbursement is required.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Chapter 4.5 (commencing with Section  
2 1060) is added to Part 3 of Division 2 of the Labor Code,  
3 to read:

4  
5 CHAPTER 4.5. PEACE OFFICER AND FIREFIGHTER  
6 LABOR DISPUTES  
7

8 1060. The Legislature hereby finds and declares that  
9 strikes and work stoppages by peace officers and  
10 firefighters are a matter of statewide concern and are not  
11 in the public interest. The Legislature further finds and  
12 declares that binding arbitration is the appropriate  
13 method for resolving disputes that lead to these strikes.

14 It is the intent of this chapter to prohibit strikes by  
15 peace officers and firefighters employed by any public  
16 agency, as defined by subdivision (c) of Section 3501 of  
17 the Government Code, and to establish impasse  
18 remedies, including binding arbitration, in lieu of those  
19 strikes or work stoppages by these peace officers and  
20 firefighters. It is further the intent of this chapter that  
21 these provisions shall be construed to apply to all charter  
22 cities, charter counties, and cities and counties in this  
23 state. It is also the intent of this chapter that binding  
24 arbitration shall be restricted to economic issues.  
25 However, the parties may agree to binding arbitration of  
26 other issues pursuant to a memorandum of  
27 understanding, or by local ordinance, resolution, or  
28 charter. It is not the intent of this chapter to alter the  
29 scope of representation provided for in Section 3504 of  
30 the Government Code.

31 1061. (a) This chapter shall apply only to peace  
32 officers, as defined by subdivision (a) of Section 830.1 of  
33 the Penal Code, and firefighters, who are employed by a  
34 public agency, as defined by subdivision (c) of Section  
35 3501 of the Government Code.

36 (b) As used in this chapter, "economic issues"  
37 includes, but is not limited to, those issues having a  
38 relationship to employee income, including wages,

1 salaries, hours, and other forms of compensation such as  
2 paid vacation, paid holidays, sick leave, insurance  
3 benefits, and other economic benefits to employees.  
4 "Economic issues" shall not include the right of the  
5 public agency to determine its mission, set standards of  
6 service to be offered to the public, and exercise control  
7 and discretion over its organization and operations, the  
8 right of the public agency to hire, direct, assign, transfer,  
9 promote, or discipline its employees, and the right of the  
10 public agency to determine the means and personnel by  
11 which public agency operations are to be conducted.

12 1062. (a) Any peace officer or firefighter who  
13 willfully engages in a strike against his or her employer  
14 shall be subject to immediate termination, suspension,  
15 demotion, reduction in pay, or other disciplinary action,  
16 pursuant to rules and regulations of the public agency.  
17 (b) As used in this section, the term "strike" means  
18 any concerted stoppage of work by employees and any  
19 concerted slowdown or other concerted interruption of  
20 operations by employees including, but not limited to,  
21 the activities commonly described as "blue flu," "green  
22 flu," "sick in," "sick out," or "work to rule."

23 1063. (a) If a mediator agreed to by the parties is  
24 unable to effect settlement of a controversy between the  
25 public agency and the representative of the certified  
26 employee organization composed of peace officers or  
27 firefighters within 10 days after his or her appointment,  
28 or if the parties are unable to agree to appointment of a  
29 mediator pursuant to Section 3505.2 of the Government  
30 Code, either party may, upon written notification to the  
31 other that a controversy exists, request that their  
32 differences on economic issues be submitted to binding  
33 arbitration. The other party shall respond in writing  
34 within five days of receipt of the notice. If that party  
35 either fails to deliver a timely response or refuses to  
36 voluntarily submit the controversy to arbitration, then  
37 the notifying party may petition a court of competent  
38 jurisdiction for an order to arbitrate. Failure to respond  
39 in a timely manner shall be considered as a refusal to  
40 arbitrate.

1 (b) On petition of a party alleging that the other party  
2 refuses to arbitrate a controversy, the court shall order  
3 the petitioner and the respondent to arbitrate the  
4 controversy unless it finds one of the following:

5 (1) The right to request arbitration has been waived.

6 (2) The parties have resolved the controversy by  
7 agreement.

8 (3) A controversy over economic issues does not exist.

9 (4) The petitioner has not made a good faith effort to  
10 exhaust the remedies referred to in subdivision (a).

11 (5) The petitioner is not qualified under this chapter  
12 to request arbitration.

13 If the court determines that a controversy exists, an  
14 order to arbitrate the controversy shall not be refused on  
15 the ground that the petitioner's contentions lack  
16 substantive merit. Any petition filed pursuant to this  
17 subdivision shall have priority over any other business  
18 before the court, and shall be disposed of quickly and  
19 expediently.

20 (c) Within 10 days of the notification, within five days  
21 of issuance of an order to arbitrate, or within any  
22 additional period of time to which both parties agree, an  
23 arbitrator shall be mutually agreed upon or be chosen  
24 from a list submitted by the State Mediation and  
25 Conciliation Service, as provided in subdivision (d).

26 (d) The State Mediation and Conciliation Service shall  
27 provide the parties with a list of five competent and  
28 experienced arbitrators, familiar with matters of  
29 employer-employee relations in the public employment  
30 sector, and certified by the service as arbitrators qualified  
31 to carry out the duties and standards of this chapter. The  
32 parties may mutually request a list containing more or  
33 less names than five, so long as the number requested is  
34 an odd number. The parties, if they cannot agree on  
35 which of the listed persons shall serve as arbitrator, shall  
36 alternately strike names on this list, with the first party to  
37 strike to be determined by lot. The last name remaining  
38 on the list shall be the arbitrator.

39 (e) The Director of Industrial Relations shall  
40 promulgate rules and regulations by which the State

1 Mediation and Conciliation Service shall determine the  
2 competence and experience of persons to be certified by  
3 the service to serve as arbitrators, and to carry out the  
4 duties, standards, and responsibilities described in this  
5 chapter.

6 (f) The arbitrator shall, within 10 days after his or her  
7 selection, meet with the parties or their representatives,  
8 either jointly or separately, and shall make inquiries and  
9 investigations, hold hearings, and take such other action,  
10 including further mediation, that the arbitrator deems  
11 appropriate.

12 1064. For the purpose of its hearings, investigations,  
13 or inquiries, the arbitrator shall have the power to  
14 subpoena witnesses, administer oaths, take the testimony  
15 or deposition of any person, and issue subpoenas duces  
16 tecum to require the production and examination of any  
17 employer or employee organization's records, books, or  
18 papers relating to any subject matter in dispute. In the  
19 event of refusal to obey a subpoena on the part of any  
20 person or persons, the arbitrator may bring an action to  
21 enforce the subpoena in a court of competent  
22 jurisdiction.

23 1065. (a) At the commencement of the arbitration  
24 hearings the arbitrator shall direct each of the parties to  
25 submit, within the time limit prescribed, a last best offer  
26 of settlement on the unresolved issues as a package.

27 (b) The arbitrator, within 30 days after the conclusion  
28 of the hearing, or any additional periods to which the  
29 parties agree, shall decide on the unresolved issues  
30 submitted by selecting the last best offer package which  
31 most nearly complies with the applicable factors  
32 described in subdivision (c). The arbitrator shall not  
33 modify either of the offer packages submitted by the  
34 parties. The arbitrator shall mail or otherwise deliver a  
35 true copy of the decision to the parties and their  
36 representatives.

37 (c) The arbitrator shall base findings, opinions, and  
38 decisions upon the following factors, as applicable:

39 (1) The lawful authority of the employer.

40 (2) Stipulations of the parties.

1 (3) The interests and welfare of the public and the  
2 financial ability of the public agency to meet the costs.

3 (4) Comparison of the wages, hours, and conditions of  
4 employment of other employees performing similar  
5 services and with other employees generally, in public  
6 employment in comparable communities, and in private  
7 employment in comparable communities.

8 (5) The average consumer prices for goods and  
9 services, commonly known as the cost of living.

10 (6) The overall compensation presently received by  
11 the employees, including direct wage compensation,  
12 vacations, holidays and other excused time, insurance and  
13 pensions, medical, dental, and hospitalization benefits,  
14 the continuity and stability of employment, and all other  
15 benefits received.

16 (7) Changes in any of the above factors which are  
17 normally or traditionally taken into consideration in the  
18 determination of wages, hours, and conditions of  
19 employment through voluntary collective bargaining,  
20 mediation, fact finding, arbitration, or otherwise  
21 between the parties, in the public service or in private  
22 employment.

23 (d) The decision of the arbitrator shall not be publicly  
24 discussed, and shall not be binding for a period of 10 days.  
25 During that 10-day period the parties may meet  
26 privately, attempt to resolve their differences, and by  
27 mutual agreement amend or modify the decision of the  
28 arbitrator. At the conclusion of the 10-day period, which  
29 may be extended by the parties, the arbitrator's decision,  
30 as amended by the parties, shall be publicly disclosed and  
31 shall be binding on all parties.

32 (e) Unless otherwise agreed to by the parties, the  
33 jointly incurred costs of the arbitration proceeding,  
34 including the fees of the arbitrator, shall be shared  
35 equally between the parties.

36 1066. Sections 1063, 1064, and 1065, shall not apply to  
37 public agencies which, by charter, ordinance, or  
38 resolution have adopted a mandatory arbitration  
39 procedure which requires the submission of all  
40 unresolved disputes relating to wages, hours, and other

1 terms and conditions of employment to an impartial,  
2 reputable, and competent neutral arbitration board, or  
3 neutral and competent person, for binding  
4 determination.

5 1067. Unless otherwise provided in this chapter, Title  
6 9 (commencing with Section 1280) of Part 3 of the Code  
7 of Civil Procedure shall be applicable to any arbitration  
8 undertaken either pursuant to this chapter, or to the  
9 provisions of a local charter, ordinance, or resolution.

10 1068. This chapter shall remain in effect only until  
11 January 1, 1992, and as of that date is repealed, unless a  
12 later enacted statute, which is chaptered before January  
13 1, 1992, deletes or extends that date.

14 SEC. 2. No reimbursement is required by this act  
15 pursuant to Section 6 of Article XIII B of the California  
16 Constitution because the Legislature finds and declares  
17 that there are savings as well as costs in this act which, in  
18 the aggregate, do not result in additional net costs.

19 SEC. 3. No reimbursement is required by this act  
20 pursuant to Section 6 of Article XIII B of the California  
21 Constitution because the Legislature finds and declares  
22 that any costs incurred by a local agency as a result of  
23 participation in a binding arbitration proceeding  
24 pursuant to this act are incurred either voluntarily, or in  
25 compliance with an order of the court, and shall be  
26 considered to be "costs mandated by the courts" within  
27 the meaning of Section 2205 of the Revenue and Taxation  
28 Code. If, notwithstanding this section, a final decision of  
29 a court finds that any costs incurred by a local agency as  
30 a result of participation in a binding arbitration  
31 proceeding pursuant to this act are required to be  
32 reimbursed by the state because they are "costs  
33 mandated by the state," this entire act, and any  
34 arbitration decision rendered pursuant to this act, shall  
35 have no further force or effect.

36 SEC. 4. Any arbitration decision resulting from  
37 court-ordered arbitration pursuant to this act shall not  
38 become effective until after the final determination of a  
39 court that the costs of the court-ordered arbitration are  
40 not required to be reimbursed by the state as "costs

1 mandated by the state.”

2 SEC. 5. Until the final determination of a court that  
3 the costs of court-ordered arbitration are not required to  
4 be reimbursed by the state as “costs mandated by the  
5 state,” no court shall issue an order to arbitrate pursuant  
6 to this act without requesting and receiving consent to  
7 issue the order from the Chief Justice of the California  
8 Supreme Court. The Chief Justice shall grant only one  
9 consent to issue an order to arbitrate, and shall not grant  
10 an additional consent to issue an order to arbitrate unless  
11 in the first case where consent was given an arbitration  
12 decision is not rendered. It is the intent of the Legislature  
13 in enacting this section to limit court-ordered arbitration  
14 to one case which can be appealed to a court on the issue  
15 of whether or not any costs incurred by a local agency as  
16 a result of court-ordered participation in a binding  
17 arbitration proceeding pursuant to this act are required  
18 to be reimbursed by the state because they are “costs  
19 mandated by the state.”

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1985 MAY 13 AM 9:47

ALICE M. REINCHE  
CITY CLERK  
CITY OF LODI

CITY COUNCIL

DAVID M. HINCHMAN, Mayor  
FRED M. REID  
Mayor Pro Tempore  
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THOMAS A. PETERSON  
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TEIN  
City Attorney

*June 5  
cc file*

June 4, 1985

Honorable Ralph C. Dills  
Senator  
State Capitol  
Sacramento, CA 95814

Dear Senator Dills:

Senate Bill No. 1398 imposes compulsory and binding arbitration for the settlement of economic issues. It applies to negotiations with police and fire unions.

No appropriation for reimbursement of local costs is included in SB 1398, yet state action to mandate compulsory and binding arbitration is a major cost for which the State is responsible (The Legislative Counsel has ruled the State is responsible for the costs of the arbitration process plus the amount of an arbitration award above the employer's last best offer).

Compulsory and binding arbitration removes over 50% of the City budget from the control of the City Council and gives it to an outside, non-elected, unaccountable third party.

The City Council of the City of Lodi opposes SB 1398.

Very truly yours,

David M. Hinchman  
Mayor

DMH:jj