

By: Dukes

H.B. No. 1173

A BILL TO BE ENTITLED

AN ACT

relating to the right of certain municipalities to maintain local control over wages, hours, and other terms and conditions of employment.

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

SECTION 1. Chapter 146, Local Government Code, is amended by designating Sections 146.001, 146.002, 146.003, 146.004, 146.005, 146.006, 146.007, 146.008, 146.009, 146.010, 146.011, 146.012, 146.013, 146.014, 146.015, 146.016, and 146.017 as Subchapter A and adding a subchapter heading to read as follows:

SUBCHAPTER A. MUNICIPALITY WITH POPULATION OF 1.5 MILLION OR MORE

SECTION 2. Sections 146.001 through 146.004, Local Government Code, are amended to read as follows:

Sec. 146.001. APPLICABILITY. (a) This subchapter [~~chapter~~] applies only to a municipality with a population of 1.5 million or more.

(b) This subchapter [~~chapter~~] does not apply to:

(1) firefighters or police officers who are covered by Subchapter H, I, or J of Chapter 143 or by Chapter 174; or

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

Sec. 146.002. DEFINITIONS. In this subchapter [~~chapter~~]:

(1) "Covered employee" means an employee of a municipality, other than a department head or a firefighter or

1 police officer who is covered by Subchapter H, I, or J of Chapter
2 143 or by Chapter 174.

3 (2) "Employee association" means an organization in
4 which municipal employees participate and that exists for the
5 purpose, wholly or partly, of dealing with one or more employers,
6 whether public or private, concerning grievances, labor disputes,
7 wages, rates of pay, hours of employment, or conditions of work
8 affecting public employees and whose members pay dues by means of an
9 automatic payroll deduction.

10 (3) "Public employer" means any municipality or
11 agency, board, commission, or political subdivision controlled by a
12 municipality that is required to establish the wages, salaries,
13 rates of pay, hours, working conditions, and other terms and
14 conditions of employment of public employees. The term may
15 include, under appropriate circumstances, a mayor, manager,
16 administrator of a municipality, municipal governing body,
17 director of personnel, personnel board, or one or more other
18 officials regardless of the name by which they are designated.

19 Sec. 146.003. GENERAL PROVISIONS RELATING TO AGREEMENTS AND
20 RECOGNITION. (a) A municipality may not be denied local control
21 over the wages, salaries, rates of pay, hours of work, other terms
22 and conditions of employment, or other state-mandated personnel
23 issues. A public employer may enter into a mutual agreement
24 governing these issues with an employee association recognized
25 under this subchapter [~~chapter~~] as the sole and exclusive
26 bargaining agent for all covered employees that does not advocate
27 the illegal right to strike by municipal employees. The applicable

1 statutes, local ordinances, and civil service rules govern a term
2 or condition of employment on which the public employer and the
3 association do not agree.

4 (b) An agreement under this subchapter [~~chapter~~] must be
5 written.

6 (c) This subchapter [~~chapter~~] does not require the public
7 employer and the recognized employee association to meet and confer
8 or reach an agreement on any issue.

9 (d) This subchapter [~~chapter~~] does not authorize an
10 agreement regarding pension or pension-related matters governed by
11 Chapter 88 (H.B. 1573), Acts of the 77th Legislature, Regular
12 Session, 2001 (Article 6243h, Vernon's Texas Civil Statutes)
13 [~~Chapter 358, Acts of the 48th Legislature, Regular Session, 1943~~
14 ~~(Article 6243g, Vernon's Texas Civil Statutes)~~], or a successor
15 statute.

16 Sec. 146.004. PETITION FOR RECOGNITION: ELECTION OR ACTION
17 BY GOVERNING BODY. (a) Not later than the 30th day after the date
18 the governing body of a municipality receives from an employee
19 association a petition signed by the majority of all covered
20 employees that requests recognition of the association as the sole
21 and exclusive bargaining agent for all the covered employees, the
22 governing body shall:

23 (1) grant recognition of the association as requested
24 in the petition and find that a public employer may meet and confer
25 under this subchapter [~~chapter~~] without conducting an election by
26 the voters in the municipality under Section 146.006;

27 (2) defer granting recognition of the association and

1 order an election by the voters in the municipality under Section
2 146.006 regarding whether a public employer may meet and confer
3 under this subchapter [~~chapter~~]; or

4 (3) order a certification election under Section
5 146.005 to determine whether the association represents a majority
6 of the covered employees.

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

12 (1) grant recognition of the association as requested
13 in the petition for recognition and find that a public employer may
14 meet and confer under this subchapter [~~chapter~~] without conducting
15 an election by the voters in the municipality under Section
16 146.006; or

17 (2) defer granting recognition of the association and
18 order an election by the voters in the municipality under Section
19 146.006 regarding whether a public employer may meet and confer
20 under this subchapter [~~chapter~~].

21 SECTION 3. The heading to Section 146.006, Local Government
22 Code, is amended to read as follows:

23 Sec. 146.006. ELECTION TO AUTHORIZE OPERATING UNDER THIS
24 SUBCHAPTER [~~CHAPTER~~].

25 SECTION 4. Sections 146.006(a) and (e), Local Government
26 Code, are amended to read as follows:

27 (a) The governing body of a municipality that receives a

1 petition for recognition under Section 146.004 may order an
2 election to determine whether a public employer may meet and confer
3 under this subchapter [~~chapter~~].

4 (e) If an election authorized under this section is held,
5 the municipality may operate under the other provisions of this
6 subchapter [~~chapter~~] only if a majority of the votes cast at the
7 election favor the proposition.

8 SECTION 5. Section 146.007(a), Local Government Code, is
9 amended to read as follows:

10 (a) The municipal employees may modify or change the
11 recognition of the employee association granted under this
12 subchapter [~~chapter~~] by filing with the governing body of the
13 municipality a petition signed by a majority of all covered
14 employees.

15 SECTION 6. Section 146.009(a), Local Government Code, is
16 amended to read as follows:

17 (a) A public employer in a municipality that chooses to meet
18 and confer under this subchapter [~~chapter~~] shall recognize an
19 association that is recognized under Section 146.004 or 146.005 as
20 the sole and exclusive bargaining agent for the covered employees.

21 SECTION 7. Section 146.011, Local Government Code, is
22 amended to read as follows:

23 Sec. 146.011. PROTECTED RIGHTS OF EMPLOYEES. A meet and
24 confer agreement ratified under this subchapter [~~chapter~~] may not
25 interfere with the right of a member of a bargaining unit to pursue
26 allegations of discrimination based on race, creed, color, national
27 origin, religion, age, sex, or disability with the Texas Workforce

Commission civil rights division or the federal Equal Employment Opportunity Commission or to pursue affirmative action litigation.

SECTION 8. Section 146.013(a), Local Government Code, is amended to read as follows:

(a) Deliberations relating to a meet and confer agreement or proposed agreement under this subchapter [~~chapter~~] between representatives of the public employer and representatives of the employee association recognized under this subchapter [~~chapter~~] as the sole and exclusive bargaining agent for the covered employees must be open to the public and comply with state law.

SECTION 9. Section 146.014(a), Local Government Code, is amended to read as follows:

(a) An agreement under this subchapter [~~chapter~~] is enforceable and binding on the public employer, the recognized employee association, and the employees covered by the meet and confer agreement only if:

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

(2) the recognized employee association ratified the agreement by conducting a secret ballot election at which the majority of the covered employees who are members of the association favored ratifying the agreement.

SECTION 10. The heading to Section 146.015, Local Government Code, is amended to read as follows:

Sec. 146.015. ACTION OR ELECTION TO REPEAL AUTHORIZATION TO OPERATE UNDER THIS SUBCHAPTER [~~CHAPTER~~].

SECTION 11. Sections 146.015(b) and (f), Local Government

1 Code, are amended to read as follows:

2 (b) The governing body of a municipality that granted
3 recognition of an employee association after conducting an election
4 under Section 146.006 may order an election to determine whether a
5 public employer may continue to meet and confer under this
6 subchapter ~~[chapter]~~. The governing body may not order an election
7 under this subsection until the second anniversary of the date of
8 the election under Section 146.006.

9 (f) If an election ordered under Subsection (b) is held, the
10 municipality may continue to operate under this subchapter
11 ~~[chapter]~~ only if a majority of the votes cast at the election favor
12 the proposition.

13 SECTION 12. Section 146.017, Local Government Code, is
14 amended to read as follows:

15 Sec. 146.017. AGREEMENT SUPERSEDES CONFLICTING PROVISIONS.
16 A written meet and confer agreement ratified under this subchapter
17 ~~[chapter]~~ preempts, during the term of the agreement and to the
18 extent of any conflict, all contrary state statutes, local
19 ordinances, executive orders, civil service provisions, or rules
20 adopted by this state or a political subdivision or agent of this
21 state, including a personnel board, civil service commission, or
22 home-rule municipality, other than a statute, ordinance, executive
23 order, civil service provision, or rule regarding pensions or
24 pension-related matters.

25 SECTION 13. Chapter 146, Local Government Code, is amended
26 by adding Subchapter B to read as follows:

SUBCHAPTER B. MUNICIPALITY WITH POPULATION OF 650,000 OR MORE THAT
OPERATES UNDER CITY MANAGER FORM OF GOVERNMENT

Sec. 146.101. APPLICABILITY. (a) This subchapter applies
only to a municipality with a population of 650,000 or more:

(1) that operates under a city manager form of
government;

(2) in which all members of the municipality's
governing body are elected at large; and

(3) that recognized associations under Subchapter I,
Chapter 143, as the exclusive bargaining agents for both
firefighters and police officers before September 1, 2005.

(b) This subchapter does not apply to:

(1) firefighters or police officers who are covered by
Subchapter I, Chapter 143;

(2) emergency medical services personnel; or

(3) an employee association in which employees
described by Subdivisions (1) and (2) participate.

(c) A municipality that was subject to this subchapter by
application of Subsection (a) and that subsequently changes its
governing body or form of government continues to be subject to this
subchapter, regardless of whether the municipality continues to
meet the requirements of Subdivisions (1) and (2) of that
subsection.

Sec. 146.102. DEFINITIONS. In this subchapter:

(1) "Appointed employee" means any municipal employee
appointed by the municipality's governing body.

(2) "Covered employee" means an employee of a

municipality, other than:

(A) an appointed employee;

(B) a city manager, an assistant city manager, or a professional executive assistant to a city manager or assistant city manager;

(C) an employee who holds an executive-level position;

(D) a cadet or trainee enrolled in a training program for police officers, firefighters, or emergency medical services personnel;

(E) an employee designated under Section 146.110 as a bargaining agent for the municipality; and

(F) an employee designated as exempt from the bargaining unit by the mutual agreement of the recognized employee association and the public employer.

(3) "Emergency medical services personnel" has the meaning assigned by Section 142.152(2).

(4) "Employee association" means an organization in which municipal employees participate and that exists for the purpose, wholly or partly, of dealing with one or more employers, whether public or private, concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work affecting public employees and whose members pay dues by means of an automatic payroll deduction.

(5) "Public employer" means any municipality or agency, board, commission, or political subdivision controlled by a municipality that is required to establish the wages, salaries,

rates of pay, hours, working conditions, and other terms and conditions of employment of public employees. The term may include, under appropriate circumstances, a mayor, manager, administrator of a municipality, municipal governing body, director of personnel, personnel board, or one or more other officials regardless of the name by which they are designated.

Sec. 146.103. GENERAL PROVISIONS RELATING TO AGREEMENTS AND RECOGNITION. (a) A municipality may not be denied local control over wages, salaries, rates of pay, hours of work, other terms and conditions of employment, or other state-mandated personnel issues. A public employer may enter into a mutual agreement governing these issues with an employee association recognized under this subchapter as the sole and exclusive bargaining agent for all covered employees that does not advocate the illegal right to strike by municipal employees. The applicable statutes, local ordinances, and civil service rules govern a term or condition of employment on which the public employer and the association do not agree.

(b) An agreement under this subchapter must be written.

(c) This subchapter does not require the public employer and the recognized employee association to meet and confer or reach an agreement on any issue.

(d) This subchapter does not authorize an agreement regarding pension or pension-related matters governed by statute.

Sec. 146.104. PETITION FOR RECOGNITION: ELECTION OR ACTION BY GOVERNING BODY. (a) Not later than the 30th day after the date the governing body of a municipality receives from an employee

1 association a petition signed by the majority of all covered
2 employees that requests recognition of the association as the sole
3 and exclusive bargaining agent for all the covered employees, the
4 governing body shall:

5 (1) grant recognition of the association as requested
6 in the petition and find that a public employer may meet and confer
7 under this subchapter without conducting an election by the voters
8 in the municipality under Section 146.106;

9 (2) defer granting recognition of the association and
10 order an election by the voters in the municipality under Section
11 146.106 regarding whether a public employer may meet and confer
12 under this subchapter; or

13 (3) order a certification election under Section
14 146.105 to determine whether the association represents a majority
15 of the covered employees.

16 (b) If the governing body of a municipality orders a
17 certification election under Subsection (a)(3) and the association
18 named in the petition is certified to represent a majority of the
19 covered employees, the governing body shall, not later than the
20 30th day after the date results of that election are certified:

21 (1) grant recognition of the association as requested
22 in the petition for recognition and find that a public employer may
23 meet and confer under this subchapter without conducting an
24 election by the voters in the municipality under Section 146.106;
25 or

26 (2) defer granting recognition of the association and
27 order an election by the voters in the municipality under Section

1 146.106 regarding whether a public employer may meet and confer
2 under this subchapter.

3 Sec. 146.105. CERTIFICATION ELECTION. (a) Except as
4 provided by Subsection (b), a certification election ordered under
5 Section 146.104(a)(3) to determine whether an employee association
6 represents a majority of the covered employees shall be conducted
7 according to procedures agreeable to the parties.

8 (b) If the parties are unable to agree on procedures for the
9 certification election, either party may request the American
10 Arbitration Association to conduct the election and to certify the
11 results of the election.

12 (c) The results of an election shall be certified if the
13 employee association receives a majority of valid votes cast in the
14 election.

15 (d) The employee association is liable for the expenses of
16 the certification election, except that if two or more associations
17 seeking recognition as the sole and exclusive bargaining agent
18 submit a petition signed by at least 30 percent of the employees
19 eligible to sign the petition for recognition, all the associations
20 named in any petition shall share equally the costs of the election.

21 Sec. 146.106. ELECTION TO AUTHORIZE OPERATING UNDER THIS
22 SUBCHAPTER. (a) The governing body of a municipality that receives
23 a petition for recognition under Section 146.104 may order an
24 election to determine whether a public employer may meet and confer
25 under this subchapter.

26 (b) An election ordered under this section must be held as
27 part of the next regularly scheduled general election for municipal

officials that is held after the date the governing body of the municipality orders the election and that allows sufficient time to prepare the ballot in compliance with other requirements of law.

(c) The ballot for an election ordered under this section shall be printed to permit voting for or against the proposition: "Authorizing _____ (name of the municipality) to operate under the state law allowing a municipality to meet and confer and make agreements with the association representing municipal employees as provided by state law, preserving the prohibition against strikes and organized work stoppages, and providing penalties for strikes and organized work stoppages."

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

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

(f) If an election authorized under this section is held, an association may not submit a petition for recognition to the governing body of the municipality under Section 146.104 before the second anniversary of the date of the election.

Sec. 146.107. CHANGE OR MODIFICATION OF RECOGNITION. (a) The municipal employees may modify or change the recognition of the employee association granted under this subchapter by filing with the governing body of the municipality a petition signed by a majority of all covered employees.

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

2 (1) recognize the change or modification as provided
3 by the petition; or

4 (2) order a certification election in accordance with
5 Section 146.105 regarding whether to do so.

6 Sec. 146.108. STRIKES PROHIBITED. (a) A municipal
7 employee may not engage in a strike or organized work stoppage
8 against this state or the municipality.

9 (b) A municipal employee who participates in a strike
10 forfeits any civil service rights, reemployment rights, and other
11 rights, benefits, or privileges the employee may have as a result of
12 the employee's employment or prior employment with the
13 municipality.

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

17 Sec. 146.109. RECOGNITION OF EMPLOYEE ASSOCIATION. (a) A
18 public employer in a municipality that chooses to meet and confer
19 under this subchapter shall recognize an employee association that
20 is recognized under Section 146.104 or 146.105 as the sole and
21 exclusive bargaining agent for the covered employees.

22 (b) The public employer shall recognize the employee
23 association until recognition of the association is withdrawn, in
24 accordance with Section 146.107, by a majority of the municipal
25 employees eligible to sign a petition for recognition.

26 Sec. 146.110. SELECTION OF BARGAINING AGENT; BARGAINING
27 UNIT. (a) The public employer's chief executive officer or the

1 chief executive officer's designee shall select one or more persons
2 to represent the public employer as its sole and exclusive
3 bargaining agent to meet and confer on issues related to the wages,
4 hours of employment, and other terms and conditions of employment
5 of municipal employees.

6 (b) An employee association may designate one or more
7 persons to negotiate or bargain on the association's behalf. An
8 employee association may not designate as one of its bargaining
9 agents any person employed as an attorney for the public employer.

10 (c) A municipality's bargaining unit is composed of all the
11 covered employees.

12 Sec. 146.111. PROTECTED RIGHTS OF EMPLOYEES. A meet and
13 confer agreement ratified under this subchapter may not interfere
14 with the right of a member of a bargaining unit to pursue
15 allegations of discrimination based on race, creed, color, national
16 origin, religion, age, sex, or disability with the Texas Workforce
17 Commission civil rights division or the federal Equal Employment
18 Opportunity Commission or to pursue affirmative action litigation.

19 Sec. 146.112. OPEN RECORDS. (a) A proposed meet and confer
20 agreement and a document prepared and used by the municipality,
21 including a public employer, in connection with the proposed
22 agreement are available to the public under Chapter 552, Government
23 Code, only after the agreement is ready to be ratified by the
24 governing body of the municipality.

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

1 Sec. 146.113. OPEN DELIBERATIONS. (a) Deliberations
2 relating to a meet and confer agreement or proposed agreement under
3 this subchapter between representatives of the public employer and
4 representatives of the employee association recognized under this
5 subchapter as the sole and exclusive bargaining agent for the
6 covered employees must be open to the public and comply with state
7 law.

8 (b) Subsection (a) may not be construed to prohibit the
9 representatives of the public employer or the representatives of
10 the recognized employee association from conducting private
11 caucuses that are not open to the public during meet and confer
12 negotiations.

13 Sec. 146.114. RATIFICATION AND ENFORCEABILITY OF
14 AGREEMENT. (a) An agreement under this subchapter is enforceable
15 and binding on the public employer, the recognized employee
16 association, and the employees covered by the meet and confer
17 agreement only if:

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

20 (2) the recognized employee association ratified the
21 agreement by conducting a secret ballot election at which the
22 majority of the covered employees who voted in the election and are
23 members of the association favored ratifying the agreement.

24 (b) A meet and confer agreement ratified as described by
25 Subsection (a) may establish a procedure by which the parties agree
26 to resolve disputes related to a right, duty, or obligation
27 provided by the agreement, including binding arbitration on a

1 question involving interpretation of the agreement.

2 (c) A state district court of a judicial district in which
3 the municipality is located has jurisdiction to hear and resolve a
4 dispute under the ratified meet and confer agreement on the
5 application of a party to the agreement aggrieved by an action or
6 omission of the other party when the action or omission is related
7 to a right, duty, or obligation provided by the agreement. The
8 court may issue proper restraining orders, temporary and permanent
9 injunctions, or any other writ, order, or process, including
10 contempt orders, that are appropriate to enforcing the agreement.

11 Sec. 146.115. ACTION OR ELECTION TO REPEAL AUTHORIZATION TO
12 OPERATE UNDER THIS SUBCHAPTER. (a) The governing body of a
13 municipality that granted recognition of an employee association
14 under Section 146.104 without conducting an election under Section
15 146.106 may withdraw recognition of the association by providing to
16 the association not less than 90 days' written notice that:

17 (1) the governing body is withdrawing recognition of
18 the association; and

19 (2) any agreement between the governing body and the
20 association will not be renewed.

21 (b) The governing body of a municipality that granted
22 recognition of an employee association after conducting an election
23 under Section 146.106 may order an election to determine whether a
24 public employer may continue to meet and confer under this
25 subchapter. The governing body may not order an election under this
26 subsection until the second anniversary of the date of the election
27 under Section 146.106.

1 (c) An election ordered under Subsection (b) must be held as
2 part of the next regularly scheduled general election for municipal
3 officers that occurs after the date the governing body of the
4 municipality orders the election and that allows sufficient time to
5 prepare the ballot in compliance with other requirements of law.

6 (d) The ballot for an election ordered under Subsection (b)
7 shall be printed to permit voting for or against the proposition:
8 "Authorizing _____ (name of the municipality) to continue to
9 operate under the state law allowing a municipality to meet and
10 confer and make agreements with the association representing
11 municipal employees as provided by state law, preserving the
12 prohibition against strikes and organized work stoppages, and
13 providing penalties for strikes and organized work stoppages."

14 (e) An election ordered under Subsection (b) must be held
15 and the returns prepared and canvassed in conformity with the
16 Election Code.

17 (f) If an election ordered under Subsection (b) is held, the
18 municipality may continue to operate under this subchapter only if
19 a majority of the votes cast at the election favor the proposition.

20 (g) If an election ordered under Subsection (b) is held, an
21 association may not submit a petition for recognition to the
22 governing body of the municipality under Section 146.104 before the
23 second anniversary of the date of the election.

24 Sec. 146.116. ELECTION TO REPEAL AGREEMENT. (a) Not later
25 than the 45th day after the date a meet and confer agreement is
26 ratified by the governing body of the municipality and the
27 recognized employee association, a petition calling for the repeal

1 of the agreement signed by at least 10 percent of the qualified
2 voters residing in the municipality may be presented to the person
3 charged with ordering an election under Section 3.004, Election
4 Code.

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

7 (1) repeal the meet and confer agreement; or

8 (2) certify that it is not repealing the agreement and
9 call an election to determine whether to repeal the agreement.

10 (c) An election called under Subsection (b)(2) may be held
11 as part of the next regularly scheduled general election for the
12 municipality or at a special election called by the governing body
13 for that purpose. The ballot shall be printed to permit voting for
14 or against the proposition: "Repeal the meet and confer agreement
15 ratified on _____ (date agreement was ratified) by the _____
16 (name of the governing body of the municipality) and the _____ (name
17 of the recognized municipal employee association) concerning
18 wages, salaries, rates of pay, hours of work, and other terms of
19 employment."

20 (d) If a majority of the votes cast at the election favor the
21 repeal of the agreement, the agreement is void.

22 Sec. 146.117. AGREEMENT SUPERSEDES CONFLICTING PROVISIONS.
23 A written meet and confer agreement ratified under this subchapter
24 preempts, during the term of the agreement and to the extent of any
25 conflict, all contrary state statutes, local ordinances, executive
26 orders, civil service provisions, or rules adopted by this state or
27 a political subdivision or agent of this state, including a

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

5 Sec. 146.118. ARBITRATION. The governing body of a
6 municipality may submit to interest arbitration any issues that
7 were the subject of negotiation between the municipality and the
8 employee association. An award or decision by an arbitrator is not
9 binding on the municipality until it is adopted by the
10 municipality's governing body.

11 SECTION 14. This Act takes effect September 1, 2009.