



House of Representatives

General Assembly

File No. 555

January Session, 2009

Substitute House Bill No. 6534

House of Representatives, April 8, 2009

The Committee on Planning and Development reported through REP. SHARKEY of the 88th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING LABOR UNION AUTHORIZATION CARD CHECKS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 5-275 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2009*):

3 (a) (1) On and after October 1, 1975, any interested organization may
4 notify the State Board of Labor Relations that thirty per cent or more of
5 the employees in a bargaining unit established under sections 5-270 to
6 5-280, inclusive, desire to be exclusively represented for the purposes
7 of collective bargaining within the unit by the petitioning organization
8 and request the designation of said organization as their exclusive
9 representative; (2) if the board certifies that a majority of the
10 employees in such bargaining unit desire to be so represented, said
11 board shall agree to said designation, unless there is a challenge. To
12 challenge, an intervening organization must show that at least ten per
13 cent or more of the employees of the unit seek to be the exclusive

14 representative. Any additional organization meeting said ten per cent
15 prerequisite shall be treated, upon request, as an additional intervenor;
16 and (3) if there is a challenge, or if the board certifies that thirty per
17 cent or more but less than a majority of employees in a bargaining unit
18 desire to be exclusively represented by a particular organization, said
19 board shall direct an election by secret ballot to determine whether and
20 by which employee organization the employees desire to be
21 represented and shall certify the results thereof. The board shall refer
22 the petition to its agent who shall investigate the petition and issue a
23 direction of election and conduct a secret ballot election to determine
24 whether and by which employee organization the employees desire to
25 be represented if [he] the agent has reasonable cause to believe that a
26 question of representation exists, or issue a recommendation to dismiss
27 the petition if [he] the agent finds that there is not such reasonable
28 cause, or refer the petition to the board for a hearing without having
29 conducted an election or issuing a recommendation of dismissal, in
30 which event the board shall conduct an appropriate hearing upon due
31 notice. The agent shall report his or her action to the board. The board
32 shall issue an order confirming the agent's direction of election and
33 certifying the results of the election, or issue an order confirming the
34 agent's recommendation for dismissal, or order a further investigation,
35 or provide for an appropriate hearing upon due notice. Before taking
36 any of the aforesaid actions, the board shall provide the parties with an
37 opportunity to file briefs on the questions at issue and shall fully
38 consider any such briefs filed. After a hearing, the board shall order
39 any of the aforesaid actions on the petition, or shall upon good cause
40 order any other suitable method to determine whether and by which
41 employee organization the employees desire to be represented. The
42 board shall certify the results.

43 (b) In accordance with such regulations as may be adopted by the
44 board in accordance with the provisions of chapter 54, whenever a
45 petition is filed with the board by an employee or the employee's
46 representative, or by the employer or the employer's representative
47 complaining that a question or controversy exists concerning the
48 representation of a bargaining unit by a labor organization where (1)

49 such labor organization is the only organization seeking to be the
50 exclusive representative of the bargaining unit, and (2) a majority of
51 the employees in the unit have shown a preference to designate such
52 labor organization to be the exclusive representative of the unit by
53 signing authorization cards indicating such preference, the board shall
54 refer the petition to an agent of the board who shall investigate the
55 petition and determine the validity of the authorization cards. An
56 authorization card indicating such preference shall be valid only if it is
57 printed in a language understood by the employee who signed it. The
58 agent shall determine whether a majority of the employees in the
59 bargaining unit signed such valid authorization cards designating such
60 labor organization to be the unit's exclusive representative. The agent
61 shall report his or her findings to the board. The board shall issue an
62 order confirming the results of the authorization card check and certify
63 the results. Before taking any action under this subsection, the board
64 shall provide the parties with an opportunity to file briefs on the
65 questions at issue and shall fully consider any such briefs filed. After a
66 hearing, the board shall order any action on the petition permitted by
67 this subsection or shall, upon good cause, order any other suitable
68 method to determine whether the employees desire to be represented.
69 The board shall certify the results.

70 (c) No election shall be directed in any bargaining unit or any
71 subdivision thereof within which in the preceding twelve-month
72 period a valid election has been held. No election shall be directed by
73 the board during the term of a written collective bargaining
74 agreement, except for good cause. In any election where none of the
75 choices on the ballot receives a majority, a runoff shall be conducted,
76 the ballot providing for a selection between the two choices receiving
77 the largest and second largest number of valid votes cast in the
78 election. An employee organization which receives a majority of votes
79 cast in an election shall be designated by the board as exclusive
80 representative of the employees in the unit. No employee organization
81 shall be eligible to petition for or participate in a recognition election
82 until it has been in existence in state employment for at least six
83 months.

84 [(b)] (d) The board shall determine the appropriateness of a unit
85 which shall be the public employer unit or a subdivision thereof. In
86 determining the appropriateness of the unit, the board shall: (1) Take
87 into consideration, but shall not limit consideration to, the following:
88 (A) Public employees must have an identifiable community of interest,
89 and (B) the effects of overfragmentation; (2) not decide that any unit is
90 appropriate if (A) such unit includes both professional and
91 nonprofessional employees, unless a majority of such professional
92 employees vote for inclusion in such unit, or (B) such unit includes
93 both Department of Correction employees at or above the level of
94 lieutenant and Department of Correction employees below the level of
95 lieutenant; (3) take into consideration that when the state is the
96 employer, it will be bargaining on a state-wide basis unless issues
97 involve working conditions peculiar to a given governmental
98 employment locale; (4) permit the faculties of (A) The University of
99 Connecticut, (B) the Connecticut State University System, and (C) the
100 state regional vocational-technical schools to each comprise a separate
101 unit, which in each case shall have the right to bargain collectively
102 with their respective boards of trustees or their designated
103 representatives; and (5) permit the community college faculty and the
104 technical college faculty as they existed prior to July 1, 1992, to
105 continue to comprise separate units, which in each case shall have the
106 right to bargain collectively with its board of trustees or its designated
107 representative. Nonfaculty professional staff of the above institutions
108 may by mutual agreement be included in such bargaining units, or
109 they may form a separate bargaining unit of their own. This section
110 shall not be deemed to prohibit multiunit bargaining.

111 [(c)] (e) An employee organization or an employer may file a
112 petition with the board seeking a clarification or modification of an
113 existing unit. The power of the board to make such clarifications and
114 modifications shall be limited to those times when a petition for
115 clarification or modification is filed by either an employee organization
116 or an employer. No petition seeking a clarification or modification of
117 an existing unit shall be considered to be timely by the board during
118 the term of a written collective bargaining agreement, except that a

119 petition for clarification or modification filed by an employee
120 organization concerning either (1) a newly created position, or (2) any
121 employee who is not represented by an employee organization, may
122 be filed at any time.

123 Sec. 2. Section 7-471 of the general statutes is repealed and the
124 following is substituted in lieu thereof (*Effective October 1, 2009*):

125 The State Board of Labor Relations shall have the following power
126 and authority in relation to collective bargaining in municipal
127 employment:

128 (1) Whenever, in accordance with such regulations as may be
129 [prescribed] adopted by the board, a petition has been filed (A) by an
130 employee or group of employees or any employee organization acting
131 in their behalf alleging that a substantial number of employees (i) wish
132 to be represented for collective bargaining by an employee
133 organization as exclusive representative, or (ii) assert that the
134 employee organization which has been certified or is currently being
135 recognized by their municipal employer as the bargaining
136 representative is no longer the representative of a majority of
137 employees in the unit; (B) by a municipal employer alleging that one or
138 more employee organizations have presented to him of her a claim to
139 be recognized as the representative of a majority of employees in an
140 appropriate unit; or (C) by either an employee organization or a
141 municipal employer in accordance with subdivision [(4)] (6) of this
142 section, the board shall refer the petition to its agent who shall
143 investigate the petition and issue a direction of election and conduct a
144 secret ballot election to determine whether and by which employee
145 organization the employees desire to be represented if [he] the agent
146 has reasonable cause to believe that a question of representation exists,
147 or issue a recommendation to dismiss the petition if [he] the agent
148 finds that there is not such reasonable cause, or refer the petition to the
149 board for a hearing without having conducted an election or issuing a
150 recommendation of dismissal, in which event the board shall conduct
151 an appropriate hearing upon due notice. The agent shall report his or

152 her action to the board. The board shall issue an order confirming the
153 agent's direction of election and certifying the results of the election, or
154 issue an order confirming the agent's recommendation for dismissal, or
155 order a further investigation, or provide for an appropriate hearing
156 upon due notice. Before taking any of the aforesaid actions, the board
157 shall provide the parties with an opportunity to file briefs on the
158 questions at issue and shall fully consider any such briefs filed. After a
159 hearing, the board shall order any of the aforesaid actions on the
160 petition or shall, upon good cause, order any other suitable method to
161 determine whether and by which employee organization the
162 employees desire to be represented. The board shall certify the results.

163 (2) In accordance with such regulations as may be adopted by the
164 board, in accordance with the provisions of chapter 54, whenever a
165 petition is filed with the board by an employee or the employee's
166 representative, or by the municipal employer or the employer's
167 representative alleging that a question or controversy exists concerning
168 the representation of a bargaining unit by an employee organization
169 where (A) such employee organization is the only organization
170 seeking to be the exclusive representative of the unit, and (B) a
171 majority of the employees in the unit have shown a preference to
172 designate such employee organization to be the exclusive
173 representative of the unit by signing authorization cards indicating
174 such preference, the board shall refer the petition to an agent of the
175 board who shall investigate the petition and determine the validity of
176 the authorization cards. An authorization card indicating such
177 preference shall be valid only if it is printed in a language understood
178 by the employee who signed it. The agent shall determine whether a
179 majority of the employees in the unit signed such valid authorization
180 cards designating such employee organization to be the unit's
181 exclusive representative. The agent shall report his or her findings to
182 the board. The board shall issue an order confirming the results of the
183 authorization card check and certify the results. Before taking any
184 action under this subdivision, the board shall provide the parties with
185 an opportunity to file briefs on the questions at issue and shall fully
186 consider any such briefs filed. After a hearing, the board shall order

187 any action on the petition permitted by this subdivision or shall, upon
188 good cause, order any other suitable method to determine whether the
189 employees desire to be represented. The board shall certify the results.

190 (3) No election shall be directed in any bargaining unit or any
191 subdivision thereof within which in the preceding twelve-month
192 period a valid election has been held. No election shall be directed by
193 the board during the term of a written collective bargaining
194 agreement, except for good cause. In any election where none of the
195 choices on the ballot receives a majority, a runoff shall be conducted,
196 the ballot providing for a selection between the two choices receiving
197 the largest and the second largest number of valid votes cast in the
198 election. An employee organization which receives a majority of votes
199 cast in an election confirmed or ordered by the board shall be
200 designated by the board as exclusive representative of the employees
201 in the unit.

202 [(2)] (4) The board shall have the power to determine whether a
203 position is covered by sections 7-467 to 7-477, inclusive, as amended by
204 this act, in the event of a dispute between the municipal employer and
205 an employee organization. In determining whether a position is
206 supervisory the board shall consider, among other criteria, whether the
207 principal functions of the position are characterized by not fewer than
208 two of the following: (A) Performing such management control duties
209 as scheduling, assigning, overseeing and reviewing the work of
210 subordinate employees; (B) performing such duties as are distinct and
211 dissimilar from those performed by the employees supervised; (C)
212 exercising judgment in adjusting grievances, applying other
213 established personnel policies and procedures and in enforcing the
214 provisions of a collective bargaining agreement; and (D) establishing
215 or participating in the establishment of performance standards for
216 subordinate employees and taking corrective measures to implement
217 those standards. The above criteria for supervisory positions shall not
218 necessarily apply to police or fire departments.

219 [(3)] (5) The board shall decide in each case whether, in order to

220 insure to employees the fullest freedom in exercising the rights
221 guaranteed by sections 7-467 to 7-477, inclusive, as amended by this
222 act, and in order to insure a clear and identifiable community of
223 interest among employees concerned, the unit appropriate for
224 purposes of collective bargaining shall be the municipal employer unit
225 or any other unit thereof, provided no unit shall include both
226 supervisory and nonsupervisory employees except there shall be a
227 single unit for each fire department consisting of the uniformed and
228 investigatory employees of each such fire department and a single unit
229 for each police department consisting of the uniformed and
230 investigatory employees of each such police department. No existing
231 units shall be altered or modified to conform to this provision. No unit
232 shall include both professional and nonprofessional employees unless
233 a majority of such professional employees vote for inclusion in such
234 unit, provided employees who are members of a profession may be
235 included in a unit which includes nonprofessional employees if an
236 employee organization has been designated by the board or has been
237 recognized by the municipal employer as the exclusive representative
238 of such unit and a majority of the employees in such profession vote
239 for inclusion in such unit, in which event all of the employees in such
240 profession shall be included in such unit. The term "professional
241 employee" means: (A) Any employee engaged in work (i)
242 predominantly intellectual and varied in character as opposed to
243 routine mental, manual, mechanical or physical work; (ii) involving
244 the consistent exercise of discretion and judgment in its performance;
245 (iii) of such a character that the output produced or the result
246 accomplished cannot be standardized in relation to a given time
247 period; (iv) requiring knowledge of an advanced type in a field of
248 science or learning customarily acquired by a prolonged course of
249 specialized intellectual instruction and study in an institution of higher
250 learning or a hospital, as distinguished from a general academic
251 education or from an apprenticeship or from training in the
252 performance of routine mental, manual or physical processes; or (B)
253 any employee who (i) has completed the courses of specialized
254 intellectual instruction and study described in subparagraph (A)(iv) of

255 this subdivision, and (ii) is performing related work under the
256 supervision of a professional person to qualify himself or herself to
257 become a professional employee, as defined in subparagraph (A) of
258 this subdivision.

259 [(4)] (6) An employee organization or a municipal employer may file
260 a petition with the board seeking a clarification or modification of an
261 existing unit. The power of the board to make such clarifications and
262 modifications shall be limited to those times when a petition for
263 clarification or modification is filed by either an employee organization
264 or a municipal employer. No petition seeking a clarification or
265 modification of an existing unit shall be considered to be timely by the
266 board during the term of a written collective bargaining agreement,
267 except that a petition for clarification or modification filed by an
268 employee organization concerning either (A) a newly created position,
269 or (B) any employee who is not represented by an employee
270 organization, may be filed at any time.

271 [(5)] (7) Whenever a question arises as to whether a practice
272 prohibited by sections 7-467 to 7-477, inclusive, as amended by this act,
273 has been committed by a municipal employer or employee
274 organization, the board shall consider that question in accordance with
275 the following procedure: (A) When a complaint has been made to the
276 board that a prohibited practice has been or is being committed, the
277 board shall refer such complaint to its agent. Upon receiving a report
278 from the agent, the board may issue an order dismissing the complaint
279 or may order a further investigation or a hearing thereon. When a
280 hearing is ordered, the board shall set the time and place for the
281 hearing, which time and place may be changed by the board at the
282 request of one of the parties for cause shown. Any complaint may be
283 amended with the permission of the board. The municipal employer,
284 the employee organization and the person so complained of shall have
285 the right to file an answer to the original or amended complaint within
286 five days after the service of such complaint or within such other time
287 as the board may limit. Such municipal employer, such employee
288 organization and such person shall have the right to appear in person

289 or otherwise to defend against such complaint. In the discretion of the
290 board any person may be allowed to intervene in such proceeding. In
291 any hearing the board shall not be bound by the technical rules of
292 evidence prevailing in the courts. A transcript of the testimony taken at
293 any hearing before the board shall be filed with the board. (B) If, upon
294 all the testimony, the board determines that a prohibited practice has
295 been or is being committed, it shall state its findings of fact and shall
296 issue and cause to be served on the party committing the prohibited
297 practice an order requiring it, [or] him or her to cease and desist from
298 such prohibited practice, and shall take such further affirmative action
299 as will effectuate the policies of sections 7-467 to 7-477, inclusive, as
300 amended by this act, including but not limited to: (i) Withdrawal of
301 certification of an employee organization established or assisted by
302 any action defined in said sections as a prohibited practice, (ii)
303 reinstatement of an employee discriminated against in violation of said
304 sections with or without back pay, or (iii) if either party is found to
305 have refused to bargain collectively in good faith, ordering arbitration
306 and directing the party found to have refused to bargain to pay the full
307 costs of arbitration under section 7-473c, resulting from the
308 negotiations in which the refusal to bargain occurred. (C) If, upon all of
309 the testimony, the board determines that a prohibited practice has not
310 been or is not being committed, it shall state its finding of fact and
311 shall issue an order dismissing the complaint. (D) For the purposes of
312 hearings and enforcement of orders under sections 7-467 to 7-477,
313 inclusive, as amended by this act, the board shall have the same power
314 and authority as it has in sections 31-107, 31-108 and 31-109, and the
315 municipal employer and the employee organization shall have the
316 right of appeal as provided therein. (E) If, by the thirtieth day
317 following the date on which a complaint citing a violation of section 7-
318 470 was made to the board, said board has not determined whether a
319 prohibited practice has been or is being committed and if the violation
320 is of an ongoing nature, said board may issue and cause to be served
321 on the party committing the act or practice cited in such complaint an
322 order requiring such party to cease and desist from such act or practice
323 until said board has made its determination.

324 Sec. 3. Section 7-467 of the general statutes is repealed and the
325 following is substituted in lieu thereof (*Effective October 1, 2009*):

326 When used in sections 7-467 to 7-477, inclusive:

327 (1) "Municipal employer" means any political subdivision of the
328 state, including any town, city, borough, district, district department of
329 health, school board, housing authority or other authority established
330 by law, a private nonprofit corporation which has a valid contract with
331 any town, city, borough or district to extinguish fires and to protect its
332 inhabitants from loss by fire, and any person or persons designated by
333 the municipal employer to act in its interest in dealing with municipal
334 employees;

335 (2) "Employee" means any employee of a municipal employer,
336 whether or not in the classified service of the municipal employer,
337 except elected officials, administrative officials, board and commission
338 members, certified teachers, part-time employees who work less than
339 twenty hours per week on a seasonal basis, department heads and
340 persons in such other positions as may be excluded from coverage
341 under sections 7-467 to 7-477, inclusive, in accordance with subdivision
342 [(2)] (4) of section 7-471, as amended by this act;

343 (3) "Seasonal basis" means working for a period of not more than
344 one hundred twenty calendar days in any calendar year;

345 (4) "Department head" means an employee who heads any
346 department in a municipal organization, has substantial supervisory
347 control of a permanent nature over other municipal employees, and is
348 directly accountable to the board of selectmen of a town, city or
349 borough not having a charter or special act form of government, or to
350 the chief executive officer of any other town, city or borough;

351 (5) "Department" means any major functional division in a
352 municipal organization, notwithstanding the provisions of any charter
353 or special act to the contrary;

354 (6) "Employee organization" means any lawful association, labor

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

This bill permits the State Board of Labor Relations to recognize a public employee union as the exclusive representative of an employee unit when a majority of the employees sign union authorization cards and certain conditions are met.

This bill is not anticipated to result in a fiscal impact to the state or municipalities.

OLR Bill Analysis

sHB 6534

AN ACT CONCERNING LABOR UNION AUTHORIZATION CARD CHECKS.

SUMMARY:

This bill permits the State Board of Labor Relations (“the board”) to recognize a public employee union as the exclusive representative of an employee unit when a majority of the employees sign union authorization cards and certain conditions are met. The bill allows the card authorization union process in addition to the petition process and secret ballot process in existing law.

The bill sets up the same authorization procedure in the separate collective bargaining laws for state employees and municipal employees.

The card authorization process is triggered when (1) a unionization petition is filed with the board and there is a question or controversy regarding it, (2) there is only one union seeking the designation, and (3) a majority of the employees have signed union authorization cards indicating a preference for the union seeking designation.

When the conditions are met, the board designates an agent to investigate the petition and determine the validity of the authorization cards. The agent reports his or her findings to the board.

Before taking any of the actions permitted under the bill, the board must provide the parties with the opportunity to file briefs on the issues and it must hold a hearing.

The bill authorizes regulations to implement its provisions. It also makes conforming changes.

EFFECTIVE DATE: October 1, 2009

UNION CARD AUTHORIZATION PROCESS

Briefs, Hearings, and Decisions

Before taking any of the actions permitted under the bill, the board must (1) provide the parties with the opportunity to file briefs on the issues, (2) fully consider such briefs, and (3) hold a hearing. After a hearing, the board can take action appropriate to the situation. The hearing can be held on whether (1) the agent should investigate the petition; (2) the union should be certified based on the signed cards; or (3) to order, upon good cause, another suitable method (presumably a secret ballot vote) to determine the question of union representation.

Petition and Investigation

Under the bill, a petition may be filed with the labor board by an employee, employer, or a representative of an employee or the employer alleging a question or controversy exists concerning a union's representation of an employee bargaining unit. The board must refer the petition to an agent for an investigation if (1) only one union is seeking the designation and (2) a majority of the employees have signed union authorization cards indicating a preference for that union as the unit's exclusive representative.

The bill requires the agent to investigate the petition and determine the validity of the authorization cards. The cards must indicate a preference for the union and be printed in a language understood by the employee who signs it. The agent must determine whether a majority of the employees in question signed valid authorization cards designating the union as the unit's exclusive representative.

When the investigation is complete, the agent reports his or her findings to the board. The board must issue an order confirming the results of the authorization card check and certify the results.

State and Municipal Collective Bargaining Laws

The bill sets up the same authorization procedure with the required

investigation and opportunity to file briefs and hold a hearing in each of the collective bargaining laws for employees working for (1) the state and (2) municipalities. The existing law for each type of employees is largely the same (see BACKGROUND).

BACKGROUND

State Employee Collective Bargaining Law

Under the State Employee Relations Act, a union can notify the labor board that 30% or more of the employees in an employee unit wish to be exclusively represented by the union. Once notified, the board can certify that the majority of the unit's employees choose to be represented by the union, if there is no challenge, and certify the union.

If there is a challenge or the board finds that more than 30% but less than a majority of the employees want the union representation, the board must order a secret ballot election regarding unionization. With this order, the board designates an agent to investigate the petition with three possible outcomes for the agent:

1. order and conduct an secret ballot election if the agent finds reasonable cause to believe a question of representation exists,
2. issue a recommendation to dismiss the petition if the agent finds no reasonable cause, or
3. refer the petition to the board for a hearing without having conducted an election or issuing a recommendation of dismissal.

Depending upon the agent's decision, respectively, the board must (1) certify the results of the election, (2) confirm the dismissal, or (3) hear the matter and give the parties appropriate notice. In situations where the agent does not call for a hearing, the board must give the parties an opportunity to file briefs and the board must hold a hearing before making a decision.

Municipal Employee Collective Bargaining Law

The Municipal Employee Relations Act (MERA) is similar to the State Employee Relations Act (SERA) in most major respects except under MERA, the petition initiating the union process must allege a “substantial number” of the unit’s employees support unionization. In SERA, the law specifies a threshold of 30% of the employees in the bargaining unit. MERA also does not allow a union to be certified without a secret ballot; SERA allows certification if there is no challenge to the petition.

Significant similarities with SERA include:

1. The petition triggers the same investigation process by the labor board and its designated agent.
2. The agent has the same three possible outcomes of the investigation.
3. The board has the same authority to respond to the agent’s decision or recommendation and the board must give the parties the opportunity to file briefs and have a hearing.

Related Bill

sHB 6545 gives the right to collectively bargain to certain state employees (agency managers and legislative employees) who are not permitted to under current law. The Labor and Public Employees Committee voted the bill out favorably on March 10 and the Government Administration and Elections Committee did the same on March 25.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable Substitute Change of Reference
Yea 9 Nay 2 (03/12/2009)

Planning and Development Committee

Joint Favorable

Yea 14 Nay 4 (03/20/2009)