

CHAPTER 676

S.B. No. 1364

AN ACT

relating to municipal civil service in certain municipalities.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Subsection (b), Section 143.108, Local Government Code, is amended to read as follows:

(b) If an eligibility list exists on the date a vacancy occurs, the vacancy shall be filled by permanent appointment from the eligibility list furnished by the commission within 60 days after the date the vacancy occurs. If an eligibility list does not exist, the vacancy shall be filled *within 95 days after the date the vacancy occurs* from an eligibility list that the commission shall provide within 90 days after the date the vacancy occurs.

SECTION 2. Subchapter G, Chapter 143, Local Government Code, is amended by adding Section 143.1155 to read as follows:

Sec. 143.1155. ACCUMULATED VACATION AND HOLIDAY LEAVE. A fire fighter or police officer who leaves the classified service due to disability or the beneficiary of a fire fighter or police officer who dies is entitled to receive a lump-sum payment of the full amount of the fire fighter's or police officer's accumulated vacation and holiday leave.

SECTION 3. Section 143.134, Local Government Code, is amended by adding Subsection (h) to read as follows:

(h) If the decision of the commission under Section 143.131 or the decision of a hearing examiner under Section 143.129 that has become final is favorable to a fire fighter, the department head shall implement the relief granted to the fire fighter not later than the 10th day after the date on which the decision was issued. If the department head intentionally fails to implement the relief within the 10-day period, the municipality shall pay the fire fighter \$1,000 for each day after the 10-day period that the decision is not yet implemented.

SECTION 4. Subsection (d), Section 143.106, Local Government Code, is repealed.

SECTION 5. Chapter 143, Local Government Code, is amended by adding Subchapter H to read as follows:

**SUBCHAPTER H. LOCAL CONTROL OF FIRE FIGHTER EMPLOYMENT
MATTERS IN MUNICIPALITIES WITH POPULATION OF 1.5
MILLION OR MORE**

Sec. 143.201. POPULATION. This subchapter applies only to a municipality with a population of 1.5 million or more, but does not apply to a municipality that has adopted The Fire and Police Employee Relations Act (Article 5154c-1, Vernon's Texas Civil Statutes).

Sec. 143.202. DEFINITIONS. In this subchapter:

(1) "Fire fighters association" means an organization in which fire fighters participate and which exists for the purpose, in whole or in part, 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.

(2) "Public employer" means any municipality or agency, board, commission, or political subdivision controlled by a municipality which 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 circum-

stances, 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. 143.203. GENERAL PROVISIONS RELATING TO AGREEMENTS, RECOGNITION, AND STRIKES. (a) A municipality may not be denied local control over the wages, salaries, rates of pay, hours of work, and other terms and conditions of employment, or other state-mandated personnel issues, if the public employer and the fire fighters association recognized as the sole and exclusive bargaining agent for all officers covered by this subchapter come to a mutual agreement on any of the terms listed above. If no agreement is reached, the existing state laws, local ordinances, and civil service rules remain unaffected. All agreements shall be reduced to writing. Nothing in this subchapter shall require either party to meet and confer on any issue or reach an agreement.

(b) A public employer may only meet and confer if the fire fighters association recognized under this subchapter as the sole and exclusive bargaining agent does not advocate the illegal right to strike by public employees.

(c) Fire fighters of a municipality may not engage in strikes or organized work stoppages against this state or a political subdivision of this state. A fire fighter who participates in a strike forfeits all civil service rights, reemployment rights, and any other rights, benefits, or privileges the fire fighter enjoys as a result of employment or prior employment, except that the right of an individual to cease work may not be abridged if the individual is not acting in concert with others in an organized work stoppage.

Sec. 143.204. RECOGNITION OF FIRE FIGHTER ASSOCIATION. (a) A fire fighters association submitting a petition signed by a majority of the paid fire fighters in the municipality, excluding the head of the department and assistant department heads in the rank or classification immediately below that of the department head, may be recognized by the public employer as the sole and exclusive bargaining agent for all of the covered fire fighters unless and until recognition of the association is withdrawn by a majority of those fire fighters.

(b) In the event of a question about whether a fire fighters association represents a majority of the covered fire fighters, the question shall be resolved by a fair election conducted according to procedures agreeable to the parties. If the parties are unable to agree on such procedures, either party may request the American Arbitration Association to conduct the election and to certify the results. Certification of the results of an election resolves the question concerning representation. The fire fighters association is liable for the expenses of the election, except that if two or more associations seeking recognition as the bargaining agent submit petitions signed by a majority of the covered fire fighters, the associations shall share equally the costs of the election.

Sec. 143.205. OPEN RECORDS REQUIRED. All documents relating to an agreement between a fire fighters association and a public employer shall be available to the public pursuant to state statutes.

Sec. 143.206. ENFORCEABILITY OF AGREEMENT. A written agreement made under this subchapter between a public employer and a fire fighters association recognized as the sole and exclusive bargaining agent is enforceable and binding upon the public employer, the fire fighters association recognized as the sole and exclusive bargaining agent, and fire fighters covered by the agreement if the municipality's governing body ratified the agreement by a majority vote and the fire fighters association ratified the agreement by a majority vote of its members by secret ballot. The state district court of the judicial district in which the municipality is located has full authority and jurisdiction on the application of either party aggrieved by an action or omission of the other party when the action or omission is related to a right, duty, or obligation provided by any written agreement ratified by both the public employer and the fire fighters association. The court may issue proper restraining orders, temporary and permanent injunctions, and any other writ, order, or process, including contempt orders, that are appropriate to enforcing any written agreement ratified by both the public employer and the fire fighters association.

Sec. 143.207. AGREEMENT SUPERSEDES CONFLICTING PROVISIONS. (a) A written agreement under this subchapter between a public employer and the fire fighters association recognized as the sole and exclusive bargaining agent supersedes a previous

statute concerning wages, salaries, rates of pay, hours of work, and other terms and conditions of employment to the extent of any conflict with the previous statute.

(b) A written agreement under this subchapter preempts all contrary local ordinances, executive orders, legislation, or rules adopted by the state or a political subdivision or agent of the state, such as a personnel board, a civil service commission, or a home-rule municipality.

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

Sec. 143.208. REPEAL OF AGREEMENT BY ELECTORATE. Within 45 days after an agreement is ratified and signed by both the municipality and the fire fighters association recognized as the sole and exclusive bargaining agent, a petition signed by a number of registered voters equal to 10 percent of the votes cast at the most recent mayoral general election may be presented to the city secretary calling an election for the repeal of the agreement. Thereupon, the governing body shall reconsider the agreement and, if it does not repeal the agreement, shall call an election of the qualified voters to determine if they desire to repeal the agreement. The election shall be called for the next municipal election or a special election called by the governing body for that purpose. If at the election a majority of the votes are cast in favor of the repeal of the adoption of the agreement, then the agreement shall become null and void. The ballot shall be printed to provide for voting FOR or AGAINST the proposition:

“Repeal of the adoption of the agreement ratified by the municipality and the fire fighters association concerning wages, salaries, rates of pay, hours of work, and other terms and conditions of employment.”

Sec. 143.209. PROTECTED RIGHTS OF INDIVIDUAL EMPLOYEES. (a) For the purpose of any disciplinary appeal to either the civil service commission or a hearing examiner, all members of the bargaining unit shall have the right to choose to be represented by any person of their choice or the fire fighters association.

(b) No agreement shall interfere in the right of members of the fire fighters association to pursue allegations of discrimination based on race, creed, color, national origin, religion, age, sex, or disability with the Commission on Human Rights or the Equal Employment Opportunity Commission or to pursue affirmative action litigation.

SECTION 6. (a) The changes in law made by this Act to Sections 143.106 and 143.108, Local Government Code, apply only to promotional vacancies created on or after the effective date of this Act.

(b) Section 143.1155, Local Government Code, as added by this Act, applies only to fire fighters or police officers who die or who become disabled on or after the effective date of this Act.

(c) Subsection (h), Section 143.134, Local Government Code, as added by this Act, applies only to a decision issued by a civil service commission under Section 143.131, Local Government Code, or by a hearing examiner under Section 143.129, Local Government Code, on or after the effective date of this Act.

SECTION 7. This Act takes effect September 1, 1993.

SECTION 8. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on April 30, 1993: Yeas 28, Nays 0; the Senate concurred in House amendment on May 28, 1993, by a viva-voce vote; passed the House, with amendment, on May 22, 1993, by a non-record vote.

Approved June 15, 1993.

Effective Sept. 1, 1993.