

**Assembly Bill No. 2386**

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Passed the Assembly August 29, 2008

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*Chief Clerk of the Assembly*

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Passed the Senate August 27, 2008

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*Secretary of the Senate*

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This bill was received by the Governor this \_\_\_\_\_ day  
of \_\_\_\_\_, 2008, at \_\_\_\_\_ o'clock \_\_\_\_M.

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*Private Secretary of the Governor*

CHAPTER \_\_\_\_\_

An act to amend Sections 1142, 1143, 1154, 1156, 1156.2, 1156.4, 1156.7, 1157, 1158, 1160.3, 1160.5, 1160.6, and 1161 of, to add Section 1159.5 to, to add the heading of Article 1 (commencing with Section 1156) to Chapter 5 of Part 3.5 of Division 2 of, to add Article 2 (commencing with Section 1156.310) and Article 3 (commencing with Section 1156.350) to Chapter 5 of Part 3.5 of Division 2 of, to add the heading of Article 4 (commencing with Section 1156.4) to Chapter 5 of Part 3.5 of Division 2 of, and to repeal Sections 1156.3 and 1157.2 of, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL’S DIGEST

AB 2386, Nunez. Employment: Agricultural labor.

(1) Under existing law, the Agricultural Labor Relations Board is empowered to prevent a person from engaging in an unfair labor practice and to order relief to an aggrieved agricultural employee, as prescribed. Monetary relief ordered by the board to be paid by an employer to an aggrieved agricultural employee must be collected by the board on behalf of the employee. The board is then required to remit the collected moneys to the employee. However, if the board is unable to locate the employee or a lawful representative of the employee for a period of 2 years after the date the board collected the monetary relief, the board is to deposit those moneys in the Agricultural Employee Relief Fund, which is to be used by the board to pay an employee the unpaid balance of monetary relief ordered by the board to be paid by an employer to an employee. Under existing law, the board was required, on or before July 1, 2002, to report to the Legislature on the status of the Agricultural Employee Relief Fund.

Existing law requires the board, at the close of each fiscal year, to issue a written report to the Legislature and the Governor regarding the cases it has heard, the decisions it has rendered, the names, salaries, and duties of the employees and officers that it employs or supervises, and an account of all moneys it has disbursed.

This bill would require the board to include information concerning the status of the Agricultural Employee Relief Fund in its yearly report to the Legislature and the Governor.

(2) Existing law provides that the agricultural employees in a bargaining unit, as defined, have the right to select a representative for the purpose of collective bargaining with respect to wages, working hours, and other conditions of employment. Existing law further provides procedures for agricultural employees to select a representative by means of a secret ballot election, including the filing of a petition for an election, the printing and distribution of ballots, and the means by which the outcome of an election may be challenged.

This bill would instead provide 2 methods by which agricultural employees may select by secret ballot a representative for collective bargaining purposes. First, the bill would permit agricultural employees to select a representative through a ballot booth election pursuant to existing law. Second, the bill would provide for a mediated election, as defined, as an additional and alternative means for the selection by agricultural employees of a representative for collective bargaining purposes. The bill would prescribe detailed procedures for a labor organization to petition for a mediated election, for the selection of a mediator, for the distribution of ballots, and for the conducting of a mediated election where agricultural employees may elect either to designate the labor organization as their representative or to hold a ballot booth election. The bill would establish criteria for the proper tallying of ballots and for the determination by the mediator of the outcome of the election, and it would create mechanisms by which an aggrieved party could challenge the outcome of a mediated election.

(3) Existing law authorizes the Agricultural Labor Relations Board to entertain and hold a hearing on a complaint that a person has engaged, or is engaging, in unfair labor practices, as defined. Upon a finding of unfair labor practices, the board is empowered to issue an order that provides for certain remedial actions, including cessation of the unfair labor practice, reinstatement of employees, and payment of backpay.

This bill would, in addition, authorize the board to impose a civil penalty of up to \$20,000 for each violation if the board finds that an employer has engaged in specified unfair labor practices.

(4) Existing law provides that, if charges of specified unfair labor practices are made, a priority preliminary investigation shall be made and appropriate injunctive relief granted if justified.

This bill would add specified unfair labor practices to the list of practices that trigger a priority preliminary investigation and the granting of injunctive relief.

(5) The bill would also make conforming changes to existing law.

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

SECTION 1. Section 1142 of the Labor Code is amended to read:

1142. (a) The principal office of the board shall be in Sacramento, but it may meet and exercise its power at another place in California.

(b) Besides the principal office in Sacramento, as provided in subdivision (a), the board may establish offices in other cities as it deems necessary. The board may delegate to the personnel of these offices powers as it deems appropriate to determine the unit appropriate for the purpose of collective bargaining, to investigate and provide for a hearing, to determine whether a question of representation exists, to direct an election pursuant to the provisions of Chapter 5 (commencing with Section 1156), and to certify the results of such election, and to investigate, conduct a hearing and make determinations relating to an unfair labor practice. The board may review action taken pursuant to the authority delegated under this section upon a request for a review of such action filed with the board by an interested party. Such review made by the board shall not, unless specifically ordered by the board, operate as a stay of action taken. The entire record considered by the board in considering or acting upon such request or review shall be made available to all parties prior to such consideration or action, and the board's findings and action thereon shall be published as a decision of the board.

SEC. 2. Section 1143 of the Labor Code is amended to read:

1143. (a) The board shall, at the close of each fiscal year, make a report in writing to the Legislature and to the Governor stating in detail the cases it has heard, the decisions it has rendered, the names, salaries, and duties of the employees and officers in the

employ or under the supervision of the board, and an account of all moneys it has disbursed.

(b) The report required by subdivision (a) shall include information concerning the status of the Agricultural Employee Relief Fund described in Section 1161.

SEC. 3. Section 1154 of the Labor Code is amended to read:

1154. It shall be an unfair labor practice for a labor organization or its agents to do any of the following:

(a) To restrain or coerce:

(1) An agricultural employee in the exercise of the rights guaranteed in Section 1152. This paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein.

(2) An agricultural employer in the selection of his or her representative for the purposes of collective bargaining or the adjustment of a grievance.

(b) To cause or attempt to cause an agricultural employer to discriminate against an employee in violation of subdivision (c) of Section 1153, or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated for reasons other than failure to satisfy the membership requirements specified in subdivision (c) of Section 1153.

(c) To refuse to bargain collectively in good faith with an agricultural employer, provided it is the representative of his or her employees subject to the provisions of Chapter 5 (commencing with Section 1156).

(d) (1) To do either of the following:

(A) To engage in, or to induce or encourage any individual employed by a person to engage in, a strike or a refusal in the course of his or her employment to use, manufacture, process, transport, or otherwise handle or work on goods, articles, materials, or commodities, or to perform any services.

(B) To threaten, coerce, or restrain any person.

(2) In order for paragraph (1) to apply, the activity described in subparagraphs (A) and (B) of paragraph (1) must be done with the intent to accomplish any of the following:

(A) Forcing or requiring an employer or self-employed person to join a labor or employer organization or to enter into any agreement which is prohibited by Section 1154.5.

(B) Forcing or requiring a person to cease using, selling, transporting, or otherwise dealing in the products of another producer, processor, or manufacturer, or to cease doing business with another person, or forcing or requiring another employer to recognize or bargain with a labor organization as the representative of the employees of the employer unless the labor organization has been certified as the representative of the employees. Nothing contained in this paragraph shall be construed to make unlawful, where not otherwise unlawful, a primary strike or primary picketing.

(C) Forcing or requiring an employer to recognize or bargain with a particular labor organization as the representative of the agricultural employees of the employer if another labor organization has been certified as the representative of the employees under the provisions of Chapter 5 (commencing with Section 1156).

(D) Forcing or requiring an employer to assign particular work to an employee in a particular labor organization or in a particular trade, craft, or class, unless the employer fails to conform to an order or certification of the board determining the bargaining representative for employees performing such work.

(3) (A) Nothing contained in this subdivision shall be construed to prohibit publicity, including picketing for the purpose of truthfully advising the public, including consumers, that a product or ingredient thereof is produced by an agricultural employer with whom the labor organization has a primary dispute and are distributed by another employer, as long as the publicity does not have an effect of inducing an individual employed by a person other than the primary employer in the course of his or her employment to refuse to pick up, deliver, or transport goods, or not to perform services at the establishment of the employer engaged in such distribution, and as long as the publicity does not have the effect of requesting the public to cease patronizing the other employer. However, publicity which includes picketing and has the effect of requesting the public to cease patronizing another employer, shall be permitted only if the labor organization is currently certified as the representative of the primary employer's employees.

(B) Publicity other than picketing, but including peaceful distribution of literature which has the effect of requesting the

public to cease patronizing the other employer, as described in subparagraph (A), shall be permitted only if the labor organization has not lost an election for the primary employer's employees within the preceding 12-month period, and no other labor organization is currently certified as the representative of the primary employer's employees.

(4) Nothing contained in this subdivision shall be construed to prohibit publicity, including picketing, which may not be prohibited under the United States Constitution or the California Constitution.

(5) Nothing contained in this subdivision shall be construed to apply or be applicable to a labor organization in its representation of workers who are not agricultural employees. Such a labor organization shall continue to be governed in its intrastate activities for nonagricultural workers by Section 923 and applicable judicial precedent.

(e) To require of an employee covered by an agreement authorized under subdivision (c) of Section 1153 the payment, as a condition precedent to becoming a member of a labor organization, of a fee in an amount which the board finds excessive or discriminatory under the totality of the circumstances. In making such a finding, the board shall consider, among other relevant factors, the practices and customs of labor organizations in the agriculture industry and the wages currently paid to the employees affected.

(f) To cause or attempt to cause an agricultural employer to pay or deliver, or agree to pay or deliver, money or another thing of value, in the nature of an exaction, for services which are not performed or not to be performed.

(g) (1) To picket or cause to be picketed, or threaten to picket or cause to be picketed, an employer where an intent thereof is either forcing or requiring an employer to recognize or bargain with a labor organization as the representative of the employees of the employer, or forcing or requiring the employees of an employer to accept or select the labor organization as their collective-bargaining representative, unless the labor organization is currently certified as the representative of such employees, in any of the following cases:

(A) Where the employer has lawfully recognized in accordance with this part any other labor organization and a question

concerning representation may not appropriately be raised pursuant to Article 2 (commencing with Section 1156.310) of Chapter 5.

(B) Where within the preceding 12 months a valid election under Chapter 5 (commencing with Section 1156) has been conducted.

(2) (A) Nothing in this subdivision shall be construed to prohibit picketing or other publicity for the purpose of truthfully advising the public (including consumers) that an employer does not employ members of, or have a contract with, a labor organization, unless an effect of such picketing is to induce an individual employed by another person in the course of his or her employment, not to pick up, deliver, or transport goods or not to perform services.

(B) Nothing in this subdivision shall be construed to permit an act which would otherwise be an unfair labor practice under this section.

(h) To picket or cause to be picketed, or threaten to picket or cause to be picketed, an employer where an object thereof is either forcing or requiring an employer to recognize or bargain with the labor organization as a representative of the employees of the employer unless the labor organization is currently certified as the collective-bargaining representative of such employees.

(i) Nothing contained in this section shall be construed to make unlawful a refusal by a person to enter upon the premises of an agricultural employer, other than his or her own employer, if the employees of the employer are engaged in a strike ratified or approved by a representative of the employees whom the employer is required to recognize under this part.

SEC. 4. The heading of Article 1 (commencing with Section 1156) is added to Chapter 5 of Part 3.5 of Division 2 of the Labor Code, to read:

#### Article 1. General Provisions

SEC. 5. Section 1156 of the Labor Code is amended to read:

1156. (a) A representative designated or selected by a secret ballot either by a ballot booth election pursuant to Article 2 (commencing with Section 1156.310), or by a mediated election pursuant to Article 3 (commencing with Section 1156.350), for the purposes of collective bargaining by the majority of the agricultural employees in a bargaining unit shall be the exclusive representative of the agricultural employees in the unit for the

purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

(b) An individual agricultural employee or a group of agricultural employees has the right at any time to present grievances to their agricultural employer and to have those grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect, if the bargaining representative has been given an opportunity to be present at the adjustment.

SEC. 6. Section 1156.2 of the Labor Code is amended to read:

1156.2. For the purposes of this chapter, a bargaining unit is the agricultural employees of an employer. If the agricultural employees of an employer are employed in two or more noncontiguous geographical areas, the board shall determine the appropriate unit or units of agricultural employees in which a ballot booth election or a mediated election shall be conducted.

SEC. 7. Section 1156.3 of the Labor Code is repealed.

SEC. 8. Article 2 (commencing with Section 1156.310) is added to Chapter 5 of Part 3.5 of Division 2 of the Labor Code, to read:

#### Article 2. Ballot Booth Elections

1156.310. A petition that is either signed by, or accompanied by authorization cards signed by, a majority of the currently employed employees in the bargaining unit, may be filed by an agricultural employee or group of agricultural employees, or an individual or labor organization acting on behalf of those agricultural employees, in accordance with the rules and regulations prescribed by the board. The petition shall allege all of the following:

(a) That the number of agricultural employees currently employed by the employer named in the petition, as determined from the employer's payroll immediately preceding the filing of the petition, is not less than 50 percent of the employer's peak agricultural employment for the current calendar year.

(b) That a valid election pursuant to this section has not been conducted among the agricultural employees of the employer

named in the petition within the 12 months immediately preceding the filing of the petition.

(c) That a labor organization is not currently certified as the exclusive collective-bargaining representative of the agricultural employees of the employer named in the petition.

(d) That the petition is not barred by an existing collective-bargaining agreement.

1156.311. (a) Upon receipt of a signed petition, as described in Section 1156.310, the board shall immediately investigate the petition. If the board has reasonable cause to believe that a bona fide question of representation exists, it shall direct a representation election by ballot booth to be held, upon due notice to all interested parties and within a maximum of seven days of the filing of the petition. If, at the time the election petition is filed, a majority of the employees in a bargaining unit are engaged in a strike, the board shall, with all due diligence, attempt to hold a ballot booth election within 48 hours of the filing of the petition. The holding of elections under strike circumstances shall take precedence over the holding of other ballot booth elections.

(b) For purposes of this chapter, a ballot booth election is an election where an employee casts his or her ballot in an election booth that is provided by the board.

1156.312. (a) The board shall make available at a ballot booth election held pursuant to this section ballots, and all other election materials used to select labor representatives, printed in English and Spanish. The board may also make available at the ballot booth election ballots, and all other election materials used to select labor representatives, printed in any other language as may be requested by an agricultural labor organization or any agricultural employee eligible to vote under this part. A ballot booth election ballot, except ballots in runoff elections in which the choice is between labor organizations, shall provide the employee with the opportunity to vote against representation by a labor organization by providing an appropriate space designated “No Labor Organizations.”

(b) Any other labor organization shall be qualified to appear on the ballot if it presents authorization cards signed by at least 20 percent of the employees in the bargaining unit at least 24 hours prior to the election.

1156.313. In an election by ballot booth where none of the choices on the ballot receive a majority of the valid votes cast, a runoff shall be conducted. The runoff ballot shall provide for a selection between the two choices receiving the largest and second largest number of valid votes cast in the ballot booth election.

1156.314. (a) Within five days after an election, a person may file with the board a signed petition asserting that allegations made in the petition filed pursuant to Section 1156.310 were incorrect, asserting that the board improperly determined the geographical scope of the bargaining unit, or objecting to the conduct of the election or conduct affecting the results of the election.

(b) Upon receipt of a petition under this section, the board, upon due notice, shall conduct a hearing to determine whether the election shall be certified. This hearing may be conducted by an officer or employee of a regional office of the board. The officer may not make a recommendation with respect to the certification of the election. The board may refuse to certify the election if it finds, on the record of the hearing, that an assertion made in the petition filed pursuant to this section is correct, that the election was not conducted properly, or that misconduct affecting the results of the election occurred. The board shall certify the election unless it determines that there are sufficient grounds to refuse to do so.

(c) If a petition is not filed pursuant to subdivision (a) within five days of the election, the board shall certify the election.

SEC. 9. Article 3 (commencing with Section 1156.350) is added to Chapter 5 of Part 3.5 of Division 2 of the Labor Code, to read:

### Article 3. Mediated Elections

1156.350. (a) A labor organization may be certified as the exclusive bargaining representative of a bargaining unit by means of a mediated election. For purposes of this chapter, a mediated election is a representative election that is mediated by a neutral mediator and that permits a bargaining unit to either select a labor organization as its representative for collective bargaining purposes without holding a ballot booth election or to choose to hold a ballot booth election.

(b) A mediated election held pursuant to this section is a valid election for purposes of Section 1156.5.

1156.351. (a) A labor organization may file with the board a petition for a mediated election. The petition shall allege all of the following:

(1) That the number of agricultural employees currently employed by the employer named in the petition, as determined from the employer's payroll immediately preceding the filing of the petition, is not less than 50 percent of the employer's peak agricultural employment for the current calendar year.

(2) That a valid election has not been conducted among the agricultural employees of the employer named in the petition within the 12 months preceding the filing of the petition.

(3) That a labor organization is not currently certified as the exclusive collective bargaining representative of the employees of the agricultural employer named in the petition.

(4) That the petition is not barred by an existing collective bargaining agreement.

(b) Upon the filing of a petition for a mediated election pursuant to this section, the board shall not permit the filing of either of the following until the board determines the final disposition of the petition for mediated election:

(1) A petition for a ballot booth election pursuant to Article 2 (commencing with Section 1156.310).

(2) Another petition for a mediated election pursuant to this section that names the same agricultural employer.

1156.352. (a) A labor organization that has filed a petition for a mediated election pursuant to Section 1156.351 shall serve the petition on the agricultural employer named in the petition on the same day the petition is filed with the board.

(b) Within 48 hours of being served with a petition, the employer shall file with the board a response to the petition in accordance with any rules and regulations prescribed by the board. The response shall include, in both printed and electronic formats, a complete and accurate list, organized by crew or department, of the full name, current mailing and residence addresses, telephone number, and job classification of each agricultural employee who was employed by the employer at any time during the employer's last payroll period that ended prior to the filing of the petition.

(c) Immediately upon receiving the list of employees described in subdivision (b), the board shall provide the list, in both printed

and electronic formats, to the labor organization that filed the petition.

1156.353. (a) Upon receipt of a petition for a mediated election, the board immediately shall notify the agricultural employees of the employer named in the petition of the filing of the petition and shall provide to each employee the Rules of Conduct described in Section 1156.365.

(b) An employee shall have five days from the filing of the petition to mail or deliver his or her mediated election ballot to the board. Upon the expiration of the five-day period following the filing of a mediated election petition, the board shall allow an additional four days for the purpose of receiving mailed ballots. A ballot shall be valid only if it is postmarked or delivered to the board within the five-day period.

(c) A ballot may not be filed with the board until a petition for a mediated election is filed by a labor organization naming the relevant agricultural employer. A ballot received by the board prior to the filing of a petition shall be rejected and returned to the voting employee.

(d) The board shall designate a central location for the receipt, filing, and date stamping of mediated election ballots received by the board.

1156.354. (a) Upon receipt of a petition for a mediated election, the board shall notify the mediator who is designated to be the standby mediator under the schedule established pursuant to subdivision (a) of Section 1156.363 or, if he or she is not available, the designated alternate mediator.

(b) Upon receiving notification from the board pursuant to subdivision (a), the notified mediator shall immediately commence an investigation into the validity of the petition for a mediated election. The board shall provide any necessary assistance required by the mediator for purposes of carrying out his or her investigation and resolving the petition.

(c) Within 48 hours of receiving notification from the board of the filing of the petition, the mediator shall convene a preelection conference that shall include representatives of the agricultural employer and the labor organization. At the preelection conference, the mediator shall review the petition for a mediated election filed by the labor organization and the response filed by the employer, if any, and shall determine all of the following:

(1) Whether the petition meets the requirements set forth in subdivision (a) of Section 1156.351.

(2) The appropriate bargaining unit for the mediated election.

(3) Which employees are eligible to vote in the mediated election and a challenge made to the eligibility of an employee to vote in the mediated election. The board shall promulgate regulations that set forth a process for resolving challenges to the eligibility of an employee to vote in the mediated election.

(4) The appropriate resolution of any other issue related to conducting the mediated election.

1156.355. (a) On the day following the expiration of the four-day period for receiving mailed ballots, as set forth by subdivision (b) of Section 1156.353, the mediator shall reconvene the parties that attended the preelection conference pursuant to subdivision (c) of Section 1156.354 for the purpose of determining the outcome of the petition. The mediator shall tally the ballots according to the following procedures:

(1) The mediator first shall determine whether all of the names on the mediated election ballot envelopes match names on the eligible voter list established at the preelection conference. If less than 50 percent of the agricultural employees whose names appear on the eligible voter list submit ballots, the mediator shall dismiss the petition for a mediated election. If the board receives ballots from 50 percent or more of the agricultural employee whose names appear on the eligible voter list, the mediator shall open each mediated election ballot envelope.

(2) In making the determination required by paragraph (1), the mediator shall compare the name on each mediated election ballot envelope received by the board with the names on the eligible voter list established at the preelection conference. The mediator shall resolve any discrepancies in favor of counting the ballot if the preponderance of the evidence establishes that the employee who signed the envelope is the same person as the employee on the eligible voter list.

(3) The mediator shall also determine a challenge made to a voter's ballot made by the employer or the labor organization. A challenge made pursuant to this paragraph shall be governed according to regulations promulgated by the board pursuant to paragraph (3) of subdivision (c) of Section 1156.354.

(4) The mediator shall tally the ballots received from eligible employees and shall record the votes for each of the two choices described in paragraph (2) of subdivision (a) of Section 1156.359. If the board receives two ballots from the same employee delivered at two different points in time, only the ballot received first in time shall be opened and counted. If the board receives two ballots from the same employee at the same point in time, both ballots shall be opened and examined. If both ballots make the same selection, one ballot shall be counted and the other ballot shall be void. If the ballots make different selections, both ballots shall be void.

(b) The board shall maintain the confidentiality of the employee name on the mediated election ballot. The board shall treat the mediated election ballot with the same confidentiality as a regular ballot in a ballot booth election.

1156.356. (a) The petition for a mediated election shall be resolved as follows:

(1) If the tally of ballots shows that more than 50 percent of the employees eligible to vote voted for representation by a labor organization, the mediator shall issue a report to the board recommending that the labor organization be certified. The board, upon receiving the mediator's report, shall issue an order certifying the labor organization as the exclusive bargaining representative of the employees in the bargaining unit. The employer's duty to bargain with the labor organization commences immediately upon certification of the organization by the board.

(2) If the tally of ballots shows that more than 50 percent of the employees eligible to vote voted for a ballot booth election, the mediator shall issue a report to the board recommending that the board conduct a ballot booth election. The board, upon receiving the mediator's report, shall order that a ballot booth election be conducted.

(3) If the tally of ballots shows that neither option on the ballot received more than 50 percent of the votes of employees eligible to vote, the mediator shall issue a report to the board recommending that the board dismiss the petition. The board, upon receiving the mediator's report, shall order that the petition for a mediated election be dismissed.

(b) If the board orders that a ballot booth election be held, the board shall hold a ballot booth election pursuant to Article 2 (commencing with Section 1156.310) within seven days. The labor

organization that submitted the petition for a mediated election shall be deemed qualified to appear on the ballot of the ballot booth election.

1156.357. (a) Within five days after the board certifies a labor organization pursuant to subdivision (a) of Section 1156.356, any other labor organization or the agricultural employer named in the mediated election petition may file with the board a petition objecting to the certification on one or more of the following grounds:

(1) The allegations in the petition for a mediated election are false.

(2) The mediator improperly determined the geographical scope of the bargaining unit.

(3) The mediated election was conducted improperly, and the impropriety affected the results of the election.

(b) The party filing the petition objecting to certification shall serve the petition on the labor organization certified by the board.

(c) Upon the filing of a petition objecting to certification, the board shall schedule a hearing on the petition and shall notify the petitioner and the labor organization whose certification is being challenged of the time and place of the hearing.

(d) If, after a hearing on the petition, the board determines that the petitioner has made valid objections under subdivision (a) and that the allegations supporting the objections are true, the board shall revoke the certification granted to the labor organization. If the board further determines that the grounds for revoking certification result from intentional misconduct by the labor organization, the board may, at its discretion, bar the labor organization for one year from filing a petition for a mediated election naming the same agricultural employer.

(e) If, after a hearing on the petition, the board determines that an agricultural employer has assisted, supported, created, or dominated a labor organization for the purpose of filing a mediated election petition, the board shall revoke the certification awarded pursuant to the mediated election and shall order the employer to pay all costs and expenses incurred by the labor organization challenging the results of the mediated election.

(f) If, after a hearing on the petition, the board determines that the objections raised in the petition are without merit, the board shall dismiss the petition.

(g) The filing of a petition objecting to certification under this section shall not suspend the duty of an agricultural employer to bargain with the labor organization, nor shall it toll the 180-day period set forth in subdivision (a) of Section 1164.

1156.358. (a) A labor organization that has been denied certification based on the results of a mediated election or a ballot booth election that was directed by the board pursuant to Section 1156.356, or that has had a petition for a mediated election dismissed or withdrawn, may, within five days after that result, file with the board a petition objecting to that result on one or more of the following grounds:

- (1) The agricultural employer named in the petition for a mediated election engaged in misconduct in opposing the petition.
- (2) The mediator improperly determined the geographical scope of the bargaining unit.
- (3) The mediated election was conducted improperly, and the impropriety affected the results of the election.

(b) If, after a hearing on the petition, the board determines that one or more of the grounds set forth in subdivision (a) were violated and that the misconduct affected the outcome of the mediated election, the board may, at its discretion, order that the labor organization be certified as the exclusive bargaining representative of the employees in the bargaining unit and that the employer pay all costs and expenses incurred by the labor organization.

1156.359. (a) For purposes of this chapter, a mediated election ballot is a ballot that is used by the board in a mediated election. The board is responsible for developing a standard mediated election ballot, and an accompanying envelope, that comply with all of the following:

- (1) A mediated election ballot shall be marked with a unique number.
- (2) A mediated election ballot shall provide for the selection by the voting agricultural employee of one of the following:
  - (A) Representation by a labor organization.
  - (B) That a ballot booth election be conducted.
- (3) The ballot and the outside of a mediated election ballot envelope shall contain a space for the voting agricultural employee to sign his or her name, thereby acknowledging both of the following:

(A) That, by signing the ballot and the envelope, the employee understands that he or she is casting a ballot in a mediated election for the purpose of either selecting union representation or choosing to hold a ballot booth election.

(B) That, by signing the ballot and the envelope, the employee represents that a promise or threat was not made to the employee regarding the casting of his or her ballot.

(4) The outside of a mediated election ballot envelope shall contain space for the following information:

(A) The name of the agricultural employer.

(B) The name of the labor organization.

(C) The name, address, and telephone number of the voting agricultural employee.

(b) A mediated election ballot is valid for the purposes of a mediated election if the ballot is signed by the voting agricultural employee and the envelope for the ballot is sealed and the outside of the envelope contains the name of the labor organization, the name of the agricultural employer, the name of the voting agricultural employee, and the signature of the employee. The voting agricultural employee is the only person permitted to place his or her mediated election ballot in the accompanying envelope provided by the board and to seal the envelope. A mediated election ballot may only be mailed or delivered to the board in the envelope provided by the board.

(c) A labor organization may fill out all of the information contained on the outside of the envelope, except for the employee's signature, and may mail or deliver to the board a mediated election ballot the labor organization has received from a voting agricultural employee.

(d) A mediated election ballot that satisfies the requirements of this section shall be valid for 12 months from the date the voting agricultural employee signs the ballot envelope that contains his or her ballot.

1156.360. (a) The board shall make available at a mediated election held pursuant to this article ballots, and all other election materials used to select labor representatives, printed in English and Spanish. The board may also make available at the mediated election ballots, and all other election materials used to select labor representatives, printed in any other language as may be requested

by an agricultural labor organization or any agricultural employee eligible to vote under this part.

(b) The board shall be responsible for providing blank mediated election ballots and their accompanying envelopes to labor organizations and agricultural employees that request them. Only labor organizations or an agricultural employees may request and receive ballots from the board. An agricultural employee may request and receive only one ballot for himself or herself. Upon the request of a labor organization, the board shall issue to the labor organization standard mediated election ballots and accompanying envelopes in such numbers as are requested by the labor organization. A representative of the labor organization shall sign for the release of the requested mediated election ballots and accompanying envelopes.

(c) The board shall maintain a public record that contains all of the following information:

(1) The name of each agricultural employee who receives a mediated election ballot and the name of his or her employer.

(2) The name of each labor organization representative who receives a mediated election ballot and the name of the labor organization of the representative.

(3) The number of ballots received by each labor organization.

1156.361. An agricultural employer and its agents shall not do any of the following:

(a) Request or receive a mediated election ballot from the board.

(b) Assist an agricultural employee in filling out a mediated election ballot envelope.

(c) Participate in, or in any way interfere with, an agricultural employee's selection of a choice on a mediated election ballot.

(d) The board may issue an order barring a representative of a labor organization from distributing mediated election ballots for a period of not more than five years if, after a hearing, the board determines by clear and convincing evidence that the representative of the labor organization has done any of the following:

(1) Forged a mediated election ballot or mediated election ballot envelope.

(2) Opened a sealed mediated election ballot envelope.

(3) Destroyed a valid mediated election ballot.

(4) Withheld from turning in to the board a valid mediated election ballot.

(5) Forged a signature on a mediated election ballot or mediated election ballot envelope.

1156.362. (a) Within 30 days after the effective date of the statute that added this section, the board shall do both of the following:

(1) Request from the California State Mediation and Conciliation Service a list of 12 mediators who have experience in labor mediation. The list provided by the service may include names chosen from its own mediators or from a list of names supplied by the American Arbitration Association or the Federal Mediation and Conciliation Service.

(2) Designate two representatives, for the purpose of selecting mediators, as follows:

(A) One representative shall be a representative of the labor organization that has participated in the highest number of elections under this part.

(B) One representative shall be a representative of the agricultural industry.

(b) (1) Within 45 days after the effective date of the statute that added this section, the two representatives designated pursuant to paragraph (2) of subdivision (a) shall jointly select six mediators from the list compiled pursuant to paragraph (1) of subdivision (a). If the two representatives cannot mutually agree on six mediators, they shall alternately strike names from the list until six mediators are chosen by process of elimination. If either representative fails or refuses to participate in the selection of mediators, the other representative shall select the mediators.

(2) If a selected mediator subsequently becomes unavailable, the representatives shall meet and select a replacement mediator using the process set forth in paragraph (1).

(c) A mediator selected pursuant to this section is an agent of the board in the performance of his or her duties.

1156.363. Upon selection of the six mediators pursuant to Section 1156.362, the board shall do all of the following:

(a) Establish a rotating schedule whereby at least one mediator and one alternate mediator are on standby throughout the calendar year to address any issues that arise in connection with the mediated election process.

(b) Publicly post the schedule of the mediators, including the names of the mediator and the alternate mediator for each period of time in the scheduled rotation.

(c) Establish and publicize a toll-free telephone number that agricultural employees may use to contact a mediator with questions regarding the mediated election process or their rights under this part, or to report an incident of intimidation, a threat, or coercion by a labor organization or an agricultural employer. When needed, the board shall provide a translator to allow the mediator to communicate with an employee in the language spoken by the employee.

1156.364. (a) The board shall adopt a standard for conflict of interest for a mediator selected pursuant to Section 1156.362. The board shall have the authority to remove a mediator who violates the conflict of interest standard.

(b) The board shall have the authority to set aside a decision of a mediator that is based on an error of law or a clearly erroneous factual finding or an abuse of discretion and the decision of the mediator affects the substantial rights of the parties.

(c) The board shall vacate the mediator's decision and shall immediately appoint an alternate mediator to proceed with the mediated election if the board finds any of the following:

(1) That the decision of the mediator was procured by corruption, fraud, or other undue means.

(2) That corruption was in the mediator.

(3) That the rights of a party were substantially prejudiced by the misconduct of the mediator.

1156.365. (a) The board shall promulgate a set of rules, titled "Rules of Conduct for a Mediated Election," that shall do all of the following:

(1) Explain the mediated election process.

(2) Explain the mediator's role in the process.

(3) Explain the right of an agricultural employee to request a mediated election ballot from the board or the labor organization.

(4) Provide specific instructions regarding how an agricultural employee can request a mediated election ballot from the board or the labor organization.

(5) Provide specific instructions regarding how an agricultural employee can deliver or mail his or her ballot to the board, including all of the following:

(A) That only an agricultural employee is permitted to place and seal a mediated election ballot in the envelope provided by the board.

(B) That a mediated election ballot may be mailed or delivered to the board only in the envelope provided by the board.

(C) That an agricultural employee has five days in which to deliver or mail his or her ballot to the board from the date of the filing of a petition for a mediated election, and that a ballot not timely received shall be rejected.

(D) That an agricultural employee may submit only one mediated election ballot to the board once a petition for a mediated election is filed for that employee's agricultural employer.

(6) Explain that an agricultural employee may refuse to sign a mediated election ballot.

(7) Explain that an agricultural employee may contact a mediator in confidence by the means described in subdivision (c) of Section 1156.363.

(b) The board shall develop a simple, easily readable pamphlet that contains the Rules of Conduct for distribution to agricultural employees.

(c) The board shall provide the Rules of Conduct to a labor organization at the time the organization requests mediated election ballots pursuant to subdivision (b) of Section 1156.360. The board shall additionally provide the Rules of Conduct to agricultural employees when the board notifies those employees of the filing of a petition for a mediated election pursuant to Section 1156.351.

(d) A labor organization shall provide the Rules of Conduct to an agricultural employee at the time the organization provides the employee with a mediated election ballot and accompanying envelope.

SEC. 10. The heading of Article 4 (commencing with Section 1156.4) is added to Chapter 5 of Part 3.5 of Division 2 of the Labor Code, to read:

#### Article 4. Miscellaneous Provisions

SEC. 11. Section 1156.4 of the Labor Code is amended to read:

1156.4. Recognizing that agriculture is a seasonal occupation for a majority of agricultural employees, and wishing to provide the fullest scope for employees' enjoyment of the rights included

in this part, the board shall not consider a petition for a ballot booth election, a petition for mediated election, or a petition to decertify as timely filed unless the employer's payroll reflects 50 percent of the peak agricultural employment for that employer for the current calendar year for the payroll period immediately preceding the filing of the petition. In this connection, the peak agricultural employment for the prior season shall alone not be a basis for this determination, but rather the board shall estimate peak employment on the basis of acreage and crop statistics, which shall be applied uniformly throughout the State of California, and upon all other relevant data.

SEC. 12. Section 1156.7 of the Labor Code is amended to read:

1156.7. (a) A collective-bargaining agreement executed prior to the effective date of this chapter shall not bar a petition for an election.

(b) A collective-bargaining agreement executed by an employer and a labor organization certified as the exclusive bargaining representative of the employer's employees pursuant to this chapter shall be a bar to a petition for an election among the employees for the term of the agreement, but this bar shall not exceed three years, provided that both the following conditions are met:

(1) The agreement is in writing and executed by all parties thereto.

(2) The agreement incorporates the substantive terms and conditions of employment of the employees.

(c) (1) Upon the filing with the board by an employee or group of employees of a petition signed by 30 percent or more of the agricultural employees in a bargaining unit represented by a certified labor organization which is a party to a valid collective-bargaining agreement, requesting that such labor organization be decertified, the board shall conduct an election by ballot booth pursuant to Article 2 (commencing with Section 1156.310), and shall certify the results to the labor organization and employer.

(2) A petition filed pursuant to paragraph (1) shall not be deemed timely unless it is filed during the year preceding the expiration of a collective-bargaining agreement which would otherwise bar the holding of an election, and when the number of agricultural employees is not less than 50 percent of the employer's peak agricultural employment for the current calendar year.

(d) Upon the filing with the board of a signed petition by an agricultural employee or group of agricultural employees, or an individual or labor organization acting on behalf of the employees, accompanied by authorization cards signed by a majority of the employees in an appropriate bargaining unit, the board shall immediately investigate the petition and, if it has reasonable cause to believe that a bona fide question of representation exists, it shall direct an election by ballot booth pursuant to Article 2 (commencing with Section 1156.310). The board shall only take such action if all of the following conditions are alleged in the petition:

(1) That the number of agricultural employees currently employed by the employer named in the petition, as determined from the employer's payroll immediately preceding the filing of the petition, is not less than 50 percent of the employer's peak agricultural employment for the current calendar year.

(2) That a valid election pursuant to this part has not been conducted among the agricultural employees of the employer named in the petition within the 12 months immediately preceding the filing thereof.

(3) That a labor organization, certified for an appropriate unit, has a collective-bargaining agreement with the employer which would otherwise bar the holding of an election and that the agreement will expire within the next 12 months.

SEC. 13. Section 1157 of the Labor Code is amended to read:

1157. (a) All agricultural employees of the employer whose names appear on the payroll applicable to the payroll period immediately preceding the filing of a petition for a ballot booth election, a petition for mediated election, or a petition to decertify shall be eligible to vote. An economic striker shall be eligible to vote under such regulations as the board finds are consistent with the purposes and provisions of this part in an election, provided that the striker who has been permanently replaced shall not be eligible to vote in an election conducted more than 12 months after the commencement of the strike.

(b) In the case of an election conducted within 18 months of the effective date of this part that involves a labor dispute that commenced prior to the effective date, the board shall have the jurisdiction to adopt fair, equitable, and appropriate eligibility rules, which shall effectuate the policies of this part, with respect

to the eligibility of an economic striker who was paid for work performed or for paid vacation during the payroll period immediately preceding the expiration of a collective-bargaining agreement or the commencement of a strike, provided that in no event shall the board afford eligibility to a striker who has not performed services for the employer during the 36-month period immediately preceding the effective date of this part.

SEC. 14. Section 1157.2 of the Labor Code is repealed.

SEC. 15. Section 1158 of the Labor Code is amended to read:

1158. Whenever an order of the board made pursuant to Section 1160.3 is based in whole or in part upon the facts certified following an investigation pursuant to Sections 1156.310 to 1157, inclusive, and there is a petition for review of the order, the certification and the record of the investigation shall be included in the transcript of the entire record required to be filed under Section 1160.8 and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the board shall be made and entered upon the pleadings, testimony, and proceedings set forth in the transcript.

SEC. 16. Section 1159.5 is added to the Labor Code, to read:

1159.5. The board shall decertify a labor organization if either of the following occur:

(a) The Department of Fair Employment and Housing finds that the labor organization engaged in discrimination on a basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in Section 12940 of the Government Code.

(b) The United States Equal Employment Opportunity Commission finds, pursuant to Section 2000e-5 of Title 42 of the United States Code, that the labor organization engaged in discrimination on the basis of race, color, national origin, religion, sex, or any other arbitrary or invidious classification in violation of Subchapter VI of Chapter 21 of Title 42 of the United States Code during the period of the labor organization's present certification.

SEC. 17. Section 1160.3 of the Labor Code is amended to read:

1160.3. (a) The testimony taken by a member, agent, or agency, or the board in a hearing shall be reduced to writing and

filed with the board. Thereafter, in its discretion, the board, upon notice, may take further testimony or hear argument.

(b) If, based upon the preponderance of the testimony taken, the board finds that a person named in the complaint has engaged in or is engaging in any unfair labor practice, the board shall state its findings of fact and shall issue and cause to be served on the person an order requiring that person to cease and desist from the unfair labor practice; to take affirmative action, including reinstatement of an employee with or without backpay, making employees whole, when the board deems such relief appropriate, for the loss of pay resulting from the employer's refusal to bargain; and to provide any other relief as will effectuate the policies of this part. Where an order directs reinstatement of an employee, backpay may be required of the employer or labor organization, as the case may be, responsible for the discrimination suffered by the employee. The order may further require the person named in the complaint to make reports from time to time showing the extent to which the person has complied with the order.

(c) If, based upon the preponderance of the testimony taken, the board finds that an employer has willfully or repeatedly engaged in an unfair labor practice under subdivision (a) or (c) of Section 1153 while employees of the employer were seeking representation by a labor organization or after a labor organization has been designated as a representative under Section 1156, the board may, in addition to any other order permitted by this section, impose a civil penalty of up to twenty thousand dollars (\$20,000) for each violation. The board shall determine the amount of the civil penalty imposed based on the impact of the unfair labor practice on the affected employee, on other persons seeking to exercise rights guaranteed under this part, or on the public interest.

(d) If, based upon the preponderance of the testimony taken, the board finds that the person named in the complaint has not engaged in or is not engaging in an unfair labor practice, the board shall state its findings of fact and shall issue an order dismissing the complaint. An order of the board shall not require the reinstatement of an individual as an employee who has been suspended or discharged, or the payment to him or her of any backpay, if the individual was suspended or discharged for cause. In case the evidence is presented before a member of the board, or before an administrative law officer thereof, the member, or

administrative law officer, as the case may be, shall issue and cause to be served on the parties to the proceedings a proposed report, together with a recommendation, which shall be filed with the board, and, if an exception is not filed within 20 days after service thereof upon the parties, or within a further period as the board may authorize, the recommended order shall become the order of the board and become effective as therein prescribed.

(e) Until the record in a case has been filed in a court, as provided in this chapter, the board may, at any time upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

SEC. 18. Section 1160.5 of the Labor Code is amended to read:

1160.5. Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of subparagraph (D) of paragraph (2) of subdivision (d) of Section 1154, the board is empowered and directed to hear and determine the dispute out of which the unfair labor practice arose, unless within 10 days after notice that the charge has been filed, the parties to the dispute submit to the board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of the dispute. Upon compliance by the parties to the dispute with the decision of the board or upon such voluntary adjustment of the dispute, the charge shall be dismissed.

SEC. 19. Section 1160.6 of the Labor Code is amended to read:

1160.6. (a) Whenever it is charged that (1) an employer has, while employees of that employer are seeking representation by a labor organization or after a labor organization has been designated as a representative under Section 1156, discharged or otherwise discriminated against an employee in violation of subdivision (c) of Section 1153, threatened to discharge or otherwise discriminate against an employee in violation of subdivision (a) of Section 1153, or engaged in any other unfair labor practice within the meaning of subdivision (a) of Section 1153 that significantly interfered with, restrained, or coerced employees in the exercise of the rights guaranteed in Section 1152 or (2) any person has engaged in an unfair labor practice within the meaning of subparagraph (A), (B), or (C) of paragraph (2) of subdivision (d), or of subdivision (g), of Section 1154, or of Section 1155, the preliminary investigation of the charge shall be made

forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred.

(b) If, after the investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe the charge is true and that a complaint should issue, he or she shall, on behalf of the board, petition the superior court in the county in which the unfair labor practice in question has occurred, is alleged to have occurred, or where the person alleged to have committed the unfair labor practice resides or transacts business, for appropriate injunctive relief pending the final adjudication of the board with respect to the matter. The officer or regional attorney shall make all reasonable efforts to advise the party against whom the restraining order is sought of his or her intention to seek an order at least 24 hours prior to doing so. In the event the officer or regional attorney has been unable to advise a party of his or her intent at least 24 hours in advance, he or she shall submit a declaration to the court under penalty of perjury setting forth in detail the efforts he or she has made. Upon the filing of a petition, the superior court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper. Upon the filing of a petition, the board shall cause notice thereof to be served upon any person involved in the charge, and that person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony. For the purposes of this section, the superior court shall be deemed to have jurisdiction of a labor organization either in the county in which the organization maintains its principal office, or in any county in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon an officer or agent shall constitute service upon the labor organization and make the organization a party to the suit. In situations where such relief is appropriate, the procedure specified herein shall apply to charges with respect to subparagraph (D) of paragraph (2) of subdivision (d) of Section 1154.

SEC. 20. Section 1161 of the Labor Code is amended to read:

1161. (a) The Agricultural Employee Relief Fund is hereby created as a special fund in the State Treasury and is continuously appropriated to the Agricultural Labor Relations Board for the

purposes specified in subdivision (c). The board shall act as a trustee of all moneys deposited in the fund.

(b) Monetary relief ordered by the board pursuant to this part to be paid by an employer to an employee shall be collected by the board on behalf of the employee. All monetary relief collected by the board shall be remitted to the employee for whom the board collected the money.

(c) (1) Notwithstanding Section 1519 of the Code of Civil Procedure, if the board has made a diligent effort to locate an employee on whose behalf the board has collected monetary relief pursuant to this part, and is unable to locate the employee or the lawful representative of the employee for a period of two years after the date the board collected the monetary relief, the board shall deposit those moneys in the fund.

(2) Moneys in the fund shall be used by the board to pay employees the unpaid balance of monetary relief ordered by the board to be paid by an employer to an employee. Prior to making payment from the fund, the board first shall make a finding that, in an individual case, the collection of the full amount of the monetary relief ordered is not possible after reasonable efforts have been made to collect the balance from the employer.

(d) As used in this section, “fund” means the Agricultural Employee Relief Fund.





Approved \_\_\_\_\_, 2008

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*Governor*