

Introduced by Senator SteinbergJanuary 12, 2011

An act to amend Sections 1142, 1151.6, 1156, 1156.2, 1156.3, 1156.4, 1156.7, 1157, 1160.3, and 1160.6 of, and to add Section 1156.35 to, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 104, as introduced, Steinberg. Labor representatives: elections.

Existing law prohibits employers from engaging in unfair labor practices, including interfering in the election by agricultural employees of labor representatives to engage in collective bargaining for the designated bargaining units. Existing law also provides criminal and civil penalties for any employer or person who engages in unfair labor practices as determined by the Agricultural Labor Relations Board within the Labor and Workforce Development Agency and the courts.

Existing law provides for a secret ballot election for employees in agricultural bargaining units, as defined, to select labor organizations to represent them for collective bargaining purposes.

This bill would, instead, refer to the above-described secret ballot elections as elections occurring at polling sites. This bill would also permit agricultural employees, as an alternative procedure, to select their labor representatives by submitting a petition to the board accompanied by representation cards signed by a majority of the bargaining unit. The board would be required to conduct an immediate investigation to determine whether to certify the labor organization as the exclusive bargaining representative for the particular agricultural employees. Within 5 days after receiving a petition, the board would be required to make a nonappealable administrative decision. If the board determined that the representation cards meet specified criteria,

then the labor organization would be certified as the exclusive bargaining representative. If the board determined that the representation cards were deficient, it would notify the labor organization of the deficiency and grant the labor organization 30 days to submit additional cards.

This bill would extend the existing prohibitions and penalties to employers who engage in unfair labor practices with regard to a majority signup election.

This bill would require that the board keep the information on the representation cards confidential.

By expanding the definition of unfair labor practices for infractions, this bill would create a state-mandated local program.

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

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

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

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

1 SECTION 1. It is the intent of the Legislature, in enacting this
2 act, to provide farm workers, who work hard in the fields, with
3 the same right to collective bargaining representation as that
4 afforded to the state public employees responsible for overseeing
5 California’s agricultural industry who work in the Department of
6 Food and Agriculture, the Department of Pesticide Regulation, the
7 Department of Water Resources, the State Water Resources Control
8 Board, the California Exposition and State Fair, and the
9 Agricultural Labor Relations Board.

10 SEC. 2. Section 1142 of the Labor Code is amended to read:
11 1142. (a) The principal office of the board shall be in
12 Sacramento, but it may meet and exercise any or all of its power
13 at any other place in California.

14 (b) Besides the principal office in Sacramento, as provided in
15 subdivision (a), the board may establish offices in ~~such~~ other cities
16 as it shall deem necessary. The board may delegate to the personnel
17 of these offices such powers as it deems appropriate to determine
18 the unit appropriate for the purpose of collective bargaining, to
19 investigate and provide for hearings; to determine whether a

1 question of representation exists, to direct an election ~~by a secret~~
2 ~~ballot at a polling site or by majority signup~~ pursuant to the
3 provisions of Chapter 5 (commencing with Section 1156), and to
4 certify the results of such election, and to investigate, conduct
5 hearings and make determinations relating to unfair labor practices.
6 The board may review any action taken pursuant to the authority
7 delegated under this section upon a request for a review of ~~such~~
8 ~~the~~ action filed with the board by an interested party. Any ~~such~~
9 review made by the board shall not, unless specifically ordered by
10 the board, operate as a stay of any action taken. The entire record
11 considered by the board in considering or acting upon any ~~such~~
12 request or review shall be made available to all parties prior to
13 ~~such~~ consideration or action, and the board's findings and action
14 thereon shall be published as a decision of the board.

15 SEC. 3. Section 1151.6 of the Labor Code is amended to read:

16 1151.6. ~~Any~~ A person who ~~shall~~ willfully ~~resist, prevent,~~
17 ~~impede, or interfere~~ *resists, prevents, impedes, or interferes* with
18 any member of the board or any of its agents or agencies in the
19 performance of duties pursuant to this part ~~shall be~~ *is* guilty of a
20 misdemeanor, and shall be punished by a fine of not more than
21 five thousand ~~dollars~~ (~~\$5,000~~) ~~dollars~~.

22 SEC. 4. Section 1156 of the Labor Code is amended to read:

23 1156. ~~Representatives~~ ~~(a)~~ *A representative* designated or
24 selected by a ~~secret ballot~~ *polling site election pursuant to Section*
25 *1156.3, or by a majority signup election pursuant to Section*
26 *1156.35, for the purposes of collective bargaining by the majority*
27 *of the agricultural employees in the a bargaining unit shall be the*
28 ~~exclusive representatives~~ *representative* of all the agricultural
29 employees in ~~such~~ *the* unit for the purpose of collective bargaining
30 with respect to rates of pay, wages, hours of employment, ~~or~~
31 ~~benefits, and other terms and conditions of employment.~~ ~~Any~~

32 *(b) An individual agricultural employee or a group of agricultural*
33 ~~employees shall have~~ *has* the right at any time to present grievances
34 to their agricultural employer and to have ~~such~~ *those* grievances
35 adjusted, without the intervention of the bargaining representative,
36 as long as the adjustment is not inconsistent with the terms of a
37 ~~collective bargaining~~ *collective bargaining* contract or agreement
38 then in effect, if the bargaining representative has been given
39 opportunity to be present at ~~such~~ *the* adjustment.

40 SEC. 5. Section 1156.2 of the Labor Code is amended to read:

1 1156.2. ~~The~~ A bargaining unit ~~shall be~~ *is* all the agricultural
 2 employees of an employer. If the agricultural employees of ~~the~~ *an*
 3 employer are employed in two or more noncontiguous geographical
 4 areas, the board shall determine the appropriate unit or units of
 5 agricultural employees in which a ~~secret ballot~~ *polling site* election
 6 ~~shall be~~ *or a majority signup election shall be* conducted.

7 SEC. 6. Section 1156.3 of the Labor Code is amended to read:

8 1156.3. (a) A petition that is either signed by, or accompanied
 9 by authorization cards signed by, a majority of the currently
 10 employed employees in the bargaining unit; may be filed by an
 11 agricultural employee or group of agricultural employees, or any
 12 individual or labor organization acting on behalf of those
 13 agricultural employees, in accordance with any rules and
 14 regulations prescribed by the board. The petition shall allege all
 15 of the following:

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

21 (2) That no valid election pursuant to this section has been
 22 conducted among the agricultural employees of the employer
 23 named in the petition within the 12 months immediately preceding
 24 the filing of the petition.

25 (3) That no labor organization is currently certified as the
 26 ~~exclusive collective bargaining~~ *collective bargaining* representative
 27 of the agricultural employees of the employer named in the petition.

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

30 (b) Upon receipt of a signed petition, as described in subdivision
 31 (a), the board shall immediately investigate the petition. If the
 32 board has reasonable cause to believe that a bona fide question of
 33 representation exists, it shall direct a representation election ~~by~~
 34 ~~secret ballot~~ *at a polling site* to be held, upon due notice to all
 35 interested parties and within a maximum of seven days of the filing
 36 of the petition. If, at the time the election petition is filed, a majority
 37 of the employees in a bargaining unit are engaged in a strike, the
 38 board shall, with all due diligence, attempt to hold a ~~secret ballot~~
 39 *polling site* election within 48 hours of the filing of the petition.
 40 The holding of elections under strike circumstances shall take

1 precedence over the holding of other ~~secret ballot~~ *polling site*
2 elections.

3 (c) The board shall make available, at any election *or alternative*
4 *selection process* held under this chapter, *either ballots or*
5 *representation cards, as appropriate, and all materials used to*
6 *select labor representatives* printed in English and Spanish. The
7 board may also make available at the election *or selection process*
8 *ballots or representation cards, as appropriate, and all other*
9 *election materials used to select labor representatives* printed in
10 any other language as may be requested by an agricultural labor
11 organization or any agricultural employee eligible to vote under
12 this part. Every election ballot, except ballots in runoff elections
13 where the choice is between labor organizations, shall provide the
14 employee with the opportunity to vote against representation by
15 a labor organization by providing an appropriate space designated
16 “No Labor Organizations.”

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

21 (e) (1) Within five days after an election, any person may file
22 with the board a signed petition asserting that allegations made in
23 the petition filed pursuant to subdivision (a) were incorrect,
24 asserting that the board improperly determined the geographical
25 scope of the bargaining unit, or objecting to the conduct of the
26 election or conduct affecting the results of the election.

27 (2) Upon receipt of a petition under this subdivision, the board,
28 upon due notice, shall conduct a hearing to determine whether the
29 election shall be certified. This hearing may be conducted by an
30 officer or employee of a regional office of the board. The officer
31 may not make any recommendations with respect to the
32 certification of the election. The board may refuse to certify the
33 election if it finds, on the record of the hearing, that any of the
34 assertions made in the petition filed pursuant to this subdivision
35 are correct, that the election was not conducted properly, or that
36 misconduct affecting the results of the election occurred. The board
37 shall certify the election unless it determines that there are
38 sufficient grounds to refuse to do so.

39 (f) If no petition is filed pursuant to subdivision (e) within five
40 days of the election, the board shall certify the election.

1 (g) The board shall decertify a labor organization if either of
2 the following occur:

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

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

17 SEC. 7. Section 1156.35 is added to the Labor Code, to read:

18 1156.35. (a) As an alternative procedure to the polling site
19 election process set forth in Section 1156.3, a labor organization
20 may be certified as the exclusive bargaining representative of a
21 bargaining unit through a majority signup election. A majority
22 signup election permits a bargaining unit to summarily select a
23 labor organization as its representative for collective bargaining
24 purposes without holding a polling site election.

25 (b) A labor organization that wishes to represent a particular
26 bargaining unit, as defined in Section 1156.2, may be certified
27 through a majority signup election as that unit's bargaining
28 representative by submitting to the board a petition for majority
29 signup election. The petition shall allege the following:

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

36 (2) That no valid election has been conducted among the
37 agricultural employees of the employer named in the petition for
38 majority signup election within the 12 months preceding the filing
39 of the petition.

1 (3) That no labor organization is currently certified as the
2 exclusive collective bargaining representative of the agricultural
3 employees of the employer named in the petition for majority
4 signup election.

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

7 (c) (1) The petition for majority signup election in subdivision
8 (b) shall be accompanied by representation cards signed by more
9 than 50 percent of the currently employed employees. For purposes
10 of this section, “currently employed employees” means those
11 agricultural employees of the employer who were employed at
12 any time during the employer’s last payroll period that ended prior
13 to the filing of the petition for majority signup election.

14 (2) The representation cards shall be titled “ALRB
15 Representation Cards for Certification of a Labor Organization.”

16 (3) Each representation card shall include both of the following:

17 (A) A statement that the employee signing it wishes to have a
18 specified labor organization as his or her collective bargaining
19 representative with respect to rates of pay, wages, hours of
20 employment, benefits, and other terms and conditions of
21 employment.

22 (B) Sufficient space for all of the following information:

23 (i) The name of the labor organization.

24 (ii) The name of the agricultural employer.

25 (iii) The employee’s name, address, and telephone number.

26 (iv) The name of the employee’s foreman or forewoman.

27 (v) The employee’s crew number.

28 (vi) The signature of the employee.

29 (vii) The signature of the person witnessing that the employee
30 signed the card.

31 (viii) The date when the card is signed.

32 (4) The board shall maintain the confidentiality and secrecy of
33 the employee name on the representation card. The board shall
34 give the representation card the same confidentiality and secrecy
35 as a regular election ballot.

36 (5) Upon the request of a labor organization, the board shall
37 issue standardized representation cards for use with a petition for
38 majority signup election, in accordance with subdivision (c) of
39 Section 1156.3. The regional board offices shall maintain a record
40 of the name, current address, and working phone number of the

1 labor organization that has requested the issuance of the cards; the
2 number of cards requested; and the date of the issuance of the
3 cards. This information shall be made available upon the request
4 of any person.

5 (6) A representation card is valid, for the purpose of supporting
6 a petition for majority sign-up election, if it contains the name of
7 the labor organization, the name of the employee, and the
8 employee's signature. A labor organization may fill out all of the
9 information contained in a representation card, except for the
10 employee's signature.

11 (7) A representation card remains valid for 12 months after it
12 is signed by an agricultural employee.

13 (d) A labor organization submitting a petition for a majority
14 sign-up election shall personally serve the petition on the employer
15 on the same day that the petition is filed with the board. Within
16 48 hours after the petition is served, the employer shall file with
17 the board, and personally serve upon the labor organization that
18 filed the petition, its response to the petition. As part of the
19 response, the employer shall provide a complete and accurate list
20 of the full names, current street addresses, job classifications, and
21 crew or department of all currently employed employees in the
22 bargaining unit. The employer shall organize the employees' names
23 and addresses and other information by crew or department and
24 shall provide the list to the board and petitioning labor organization
25 in hard copy and electronic format. The employees' first name,
26 middle name or initial, last name, address, city, state, ZIP Code,
27 classification, and crew or department shall be organized into
28 separate columns. Immediately upon receiving the employer
29 response and employee list, the board shall provide the response
30 and employee list by hard copy and electronic copy to the labor
31 organization that filed the majority sign-up election petition. For
32 each day an employer fails to provide a complete and timely
33 response, the board shall assess a fine of up to ten thousand dollars
34 (\$10,000).

35 (e) (1) Upon receipt of a petition for majority sign-up election,
36 the board shall immediately commence an investigation regarding
37 the validity of the petition and the accompanying representation
38 cards. Within five days of receipt of the petition, the board shall
39 make an administrative determination as to whether the
40 requirements set forth in subdivision (b) are met by the petition

1 and whether the labor organization submitting the petition has
2 submitted the number of representation cards required by paragraph
3 (1) of subdivision (c). In making this determination, the board shall
4 compare the names on the representation cards submitted by the
5 labor organization to the names on the list of currently employed
6 employees provided by the employer. The board shall ignore
7 discrepancies between the employee's name listed on the
8 representation card and the employee's name on the employer's
9 list if the preponderance of the evidence, such as the employee's
10 address and the name of the employee's foreman or forewoman,
11 shows that the employee who signed the card is the same person
12 as the employee on the employer's list.

13 (2) The board shall return those representation cards that it finds
14 invalid to the labor organization that filed the petition for majority
15 signup election, with an explanation as to why each representation
16 card was found to be invalid. To protect the confidentiality of the
17 names on the representation cards, the board's determination of
18 whether a particular card is valid shall be final and not subject to
19 appeal or review.

20 (3) If the board determines that the labor organization has
21 submitted the required number of representation cards and met the
22 requirements set forth in this section and in Section 1156.4, it shall
23 immediately certify the labor organization as the exclusive
24 bargaining representative of the employees in the bargaining unit.
25 An employer's duty to bargain with the labor organization
26 commences immediately after the labor organization is certified.

27 (4) If the board determines that the labor organization has not
28 submitted the requisite number of valid representation cards, or
29 that the representation cards fail to meet the requirements set forth
30 in this section or in Section 1156.4, the board shall notify the labor
31 organization of the deficiency and grant the labor organization 30
32 days from the date it is notified to submit additional representation
33 cards.

34 (f) (1) Within five days after the board certifies a labor
35 organization through a majority signup election, any person may
36 file with the board a petition objecting to the certification on one
37 or more of the following grounds:

38 (A) Allegations in the majority signup petition were false.

39 (B) The board improperly determined the geographical scope
40 of the bargaining unit.

1 (C) The majority signup election was conducted improperly.

2 (D) Improper conduct affected the results of the majority signup
3 election.

4 (2) Upon receipt of a petition objecting to certification, the board
5 shall conduct a hearing to rule on the petitioner's objections, and
6 shall mail a notice of the time and place of the hearing to the
7 petitioner and the labor organization whose certification is being
8 challenged. If the board finds at the hearing that any of the
9 allegations in the petition of the grounds set forth in paragraph (1)
10 are true, the board shall revoke the certification issued under
11 subdivision (e).

12 (3) The filing of a petition objecting to a majority signup election
13 certification shall not diminish the duty to bargain or delay the
14 running of the 180-day period set forth in subdivision (a) of Section
15 1164.

16 (4) If the board finds, after a hearing, that an employer has
17 assisted, supported, created, or dominated a labor organization for
18 the purpose of filing a majority signup election petition, the board
19 shall order the employer to pay for all the costs and expenses
20 incurred by a labor organization challenging a majority signup
21 election.

22 (g) The board shall not permit the filing of an election petition
23 pursuant to Section 1156.3 once a majority signup petition is filed
24 until the board determines whether the labor organization filing
25 the majority signup election petition should be certified.

26 (h) Once a labor organization has filed a majority signup election
27 petition, no other majority signup election petition shall be
28 considered by the board with the same agricultural employer until
29 the board determines whether the labor organization that filed the
30 pending majority signup election petition should be certified.
31 However, the board may consider a second majority signup petition
32 if the second petition alleges that the first petition was filed because
33 of the employer's unlawful assistance, support, creation, or
34 domination of the labor organization that filed the first petition.
35 In those cases, the board shall expedite its investigation of the
36 matter and render a decision on certification within three months
37 of the filing of the first petition. If the board finds that a labor
38 organization was assisted, supported, created, or dominated by an
39 employer, that labor organization's petition shall be dismissed and
40 the second petition shall be considered. Any labor organization

1 that has been assisted, supported, created, or dominated by an
2 employer shall be disqualified from filing any further petitions
3 with the board for a period of one year.

4 (i) For purposes of Section 1156.5, a majority signup election
5 is a valid election.

6 SEC. 8. Section 1156.4 of the Labor Code is amended to read:

7 1156.4. Recognizing that agriculture is a seasonal occupation
8 for a majority of agricultural employees, and wishing to provide
9 the fullest scope for employees' enjoyment of the rights included
10 in this part, the board shall not consider a representation petition,
11 *a petition for a majority signup election*, or a petition to decertify
12 as timely filed unless the employer's payroll reflects 50 percent
13 of the peak agricultural employment for such employer for the
14 current calendar year for the payroll period immediately preceding
15 the filing of the ~~petition~~.

16 ~~In this connection, the~~ *petition*. The peak agricultural
17 employment for the prior season shall ~~alone~~ not be ~~a~~ *the sole* basis
18 for ~~such~~ *this* determination, but ~~rather~~ the board shall estimate
19 peak employment on the basis of acreage and crop statistics, which
20 shall be applied uniformly throughout the State of California, and
21 upon all other relevant data.

22 SEC. 9. Section 1156.7 of the Labor Code is amended to read:

23 1156.7. (a) ~~No collective bargaining~~ *collective bargaining*
24 agreement executed prior to the effective date of this chapter shall
25 bar a petition for an election.

26 (b) ~~A collective bargaining~~ *collective bargaining* agreement
27 executed by an employer and a labor organization certified as the
28 exclusive bargaining representative of his *or her* employees
29 pursuant to this chapter shall be a bar to a petition for an election
30 among ~~such~~ *those* employees for the term of the agreement, but
31 in any event ~~such~~ *the* bar shall not exceed three years, provided
32 that both the following conditions are met:

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

35 (2) It incorporates the substantive terms and conditions of
36 employment of ~~such~~ *the* employees.

37 (c) Upon the filing with the board by an employee or group of
38 employees of a petition signed by 30 percent or more of the
39 agricultural employees in a bargaining unit represented by a
40 certified labor organization which is a party to a valid

1 ~~collective bargaining~~ *collective bargaining* agreement, requesting
 2 that ~~such~~ *the* labor organization be decertified, the board shall
 3 conduct ~~an a polling site~~ election ~~by secret ballot~~ pursuant to the
 4 applicable provisions of this chapter, and shall certify the results
 5 to ~~such~~ *the* labor organization and employer.

6 However, ~~such~~ *a the* petition shall not be deemed timely unless
 7 it is filed during the year preceding the expiration of a
 8 ~~collective bargaining~~ *collective bargaining* agreement which would
 9 otherwise bar the holding of an election, and when the number of
 10 agricultural employees is not less than 50 percent of the employer's
 11 peak agricultural employment for the current calendar year.

12 (d) Upon the filing with the board of a signed petition by an
 13 agricultural employee or group of agricultural employees, or any
 14 individual or labor organization acting in their behalf, accompanied
 15 by authorization cards signed by a majority of the employees in
 16 an appropriate bargaining unit, and alleging all the conditions of
 17 paragraphs (1), (2), and (3), the board shall immediately investigate
 18 ~~such~~ *the* petition and, if it has reasonable cause to believe that a
 19 bona fide question of representation exists, it shall direct ~~an a~~
 20 *polling site* election ~~by secret ballot~~ pursuant to the applicable
 21 provisions of this chapter:

22 (1) That the number of agricultural employees currently
 23 employed by the employer named in the petition, as determined
 24 from his *or her* payroll immediately preceding the filing of the
 25 petition, is not less than 50 percent of his peak agricultural
 26 employment for the current calendar year.

27 (2) That no valid election pursuant to this section has been
 28 conducted among the agricultural employees of the employer
 29 named in the petition within the 12 months immediately preceding
 30 the filing thereof.

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

35 SEC. 10. Section 1157 of the Labor Code is amended to read:

36 1157. (a) All agricultural employees of the employer whose
 37 names appear on the payroll applicable to the payroll period
 38 immediately preceding the filing of the petition ~~of such an~~ *for a*
 39 *representation election or a majority signup* election shall be
 40 eligible to vote. An economic striker shall be eligible to vote under

1 such regulations as the board ~~shall find~~ *finds* are consistent with
2 the purposes and provisions of this part in any election, provided
3 that the striker who has been permanently replaced shall not be
4 eligible to vote in any election conducted more than 12 months
5 after the commencement of the strike.

6 (b) In the case of elections conducted within 18 months of the
7 effective date of this part which involve labor disputes ~~which that~~
8 commenced prior to ~~such~~ *the* effective date, the board shall have
9 ~~the~~ jurisdiction to adopt fair, equitable, and appropriate eligibility
10 rules, which shall effectuate the policies of this part, with respect
11 to the eligibility of economic strikers who were paid for work
12 performed or for paid vacation during the payroll period
13 immediately preceding the expiration of a ~~collective bargaining~~
14 *collective bargaining* agreement or the commencement of a strike,
15 provided, ~~however,~~ that in no event shall the board afford eligibility
16 to any ~~such~~ striker who has not performed any services for the
17 employer during the 36-month period immediately preceding the
18 effective date of this part.

19 SEC. 11. Section 1160.3 of the Labor Code is amended to read:

20 1160.3. (a) The testimony taken by ~~such~~ *a* member, agent, or
21 agency, or the board in ~~such~~ *a* hearing shall be reduced to writing
22 and filed with the board. Thereafter, in its discretion, the board,
23 upon notice, may take further testimony or hear argument. ~~If,~~

24 (b) *If,* based upon the preponderance of the testimony taken,
25 the board ~~shall be of the opinion~~ *finds* that ~~any~~ *a* person named in
26 the complaint has engaged in or is engaging in any ~~such~~ unfair
27 labor practice, the board shall state its findings of fact and shall
28 issue and cause to be served on ~~such~~ *the* person an order requiring
29 ~~such that~~ *that* person to cease and desist from ~~such~~ *the* unfair labor
30 practice; *and* to take affirmative action, including reinstatement
31 of employees with or without backpay, ~~and~~ making employees
32 whole, when the board deems such relief appropriate, for the loss
33 of pay resulting from the employer's refusal to bargain, ~~and to~~
34 ~~provide such~~ *providing any* other relief as ~~will~~ *would* effectuate
35 the policies of this part. Where an order directs reinstatement of
36 an employee, backpay may be required of the employer or labor
37 organization, as the case may be, responsible for the discrimination
38 suffered by ~~him~~ *the employee*. ~~Such~~ *The* order may further require
39 ~~such the~~ *the person named in the complaint* to make reports from time

1 to time showing the extent to which ~~it~~ *the employer* has complied
 2 with the order. ~~It~~;

3 (c) *If the board finds that an employer has willfully or repeatedly*
 4 *committed an unfair labor practice under subdivision (a) or (c) of*
 5 *Section 1153 while employees of the employer were seeking*
 6 *representation by a labor organization or after a labor*
 7 *organization was designated as a representative under Section*
 8 *1156, the board may, in addition to any order permitted by this*
 9 *section, impose a civil penalty of up to twenty thousand dollars*
 10 *(\$20,000) for each violation. The board shall determine the amount*
 11 *of any civil penalty imposed based upon the impact of the unfair*
 12 *labor practice on the charging party or on other persons seeking*
 13 *to exercise rights guaranteed by this part, or on the public interest.*

14 (d) *If, upon the preponderance of the testimony taken, the board*
 15 ~~shall be of the opinion~~ *finds that the person named in the complaint*
 16 *has not engaged in or is not engaging in any unfair labor practice,*
 17 *the board shall state its findings of fact and shall issue an order*
 18 *dismissing the complaint. No An order of the board shall not require*
 19 *the reinstatement of any individual as an employee who has been*
 20 *suspended or discharged, or the payment to him or her of any*
 21 *backpay, if ~~such~~ *the individual was suspended or discharged for**
 22 *cause. In case the evidence is presented before a member of the*
 23 *board, or before an administrative law officer thereof, ~~such~~ *the**
 24 *member; or ~~such~~ *administrative law officer, as the case may be,**
 25 *shall issue and cause to be served on the parties to the proceedings*
 26 *a proposed report, together with a recommended order, which shall*
 27 *be filed with the board, and, if no exceptions are filed within 20*
 28 *days after service thereof upon ~~such~~ *the parties, or within ~~such~~ *a***
 29 *further period as the board may authorize, ~~such~~ *the recommended**
 30 *order shall become the order of the board and become effective as*
 31 *therein prescribed.*

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

37 SEC. 12. Section 1160.6 of the Labor Code is amended to read:

38 1160.6. (a) *Whenever it is charged that ~~any~~ (1) an employer*
 39 *has, while the employees of that employer were seeking*
 40 *representation by a labor organization or during the period after*

1 a labor organization was recognized as a representative,
2 discharged or otherwise discriminated against an employee in
3 violation of subdivision (c) of Section 1153, threatened to discharge
4 or to otherwise discriminate against an employee in violation of
5 subdivision (a) of Section 1153, or engaged in any other unfair
6 labor practice within the meaning of subdivision (a) of Section
7 1153 that significantly interfered with, restrained, or coerced
8 employees in the exercise of the rights guaranteed in Section 1152,
9 or (2) a person has engaged in an unfair labor practice within the
10 meaning of paragraph (1), (2), or (3) of subdivision (d), or of
11 subdivision (g), of Section 1154, or of Section 1155, the
12 preliminary investigation of ~~such~~ the charge shall be made
13 forthwith and given priority over all other cases except cases of
14 like character in the office where it is filed or to which it is referred.
15 ~~If,~~

16 (b) ~~If,~~ after ~~such~~ the investigation, the officer or regional attorney
17 to whom the matter may be referred has reasonable cause to believe
18 ~~such~~ the charge is true and that a complaint should issue, he *or she*
19 shall, on behalf of the board, petition the superior court in the
20 county in which the unfair labor practice in question has occurred,
21 is alleged to have occurred, or where the person alleged to have
22 committed the unfair labor practice resides or transacts business,
23 for appropriate injunctive relief pending the final adjudication of
24 the board with respect to the matter. The officer or regional attorney
25 shall make all reasonable efforts to advise the party against whom
26 the restraining order is sought of his *or her* intention to seek ~~such~~
27 an order at least 24 hours prior to doing so. In the event the officer
28 or regional attorney has been unable to advise ~~such~~ a party of his
29 *or her* intent at least 24 hours in advance, he *or she* shall submit
30 a declaration to the court under penalty of perjury setting forth in
31 detail the efforts he *or she* has made. Upon the filing of ~~any~~ ~~such~~
32 a petition, the superior court shall have jurisdiction to grant such
33 injunctive relief or temporary restraining order as it deems just
34 and proper. Upon the filing of ~~any~~ ~~such~~ a petition, the board shall
35 cause notice thereof to be served upon any person involved in the
36 charge, and ~~such~~ that person, including the charging party, shall
37 be given an opportunity to appear by counsel and present any
38 relevant testimony. For the purposes of this section, the superior
39 court shall be deemed to have jurisdiction of a labor organization
40 either in the county in which ~~such~~ the organization maintains its

1 principal office, or in any county in which its duly authorized
2 officers or agents are engaged in promoting or protecting the
3 interests of employee members. The service of legal process upon
4 ~~such~~ *an* officer or agent shall constitute service upon the labor
5 organization and make ~~such~~ *the* organization a party to the suit.
6 In situations where such relief is appropriate, the procedure
7 specified herein shall apply to charges with respect to paragraph
8 (4) of subdivision (d) of Section 1154.

9 SEC. 13. No reimbursement is required by this act pursuant to
10 Section 6 of Article XIII B of the California Constitution because
11 the only costs that may be incurred by a local agency or school
12 district will be incurred because this act creates a new crime or
13 infraction, eliminates a crime or infraction, or changes the penalty
14 for a crime or infraction, within the meaning of Section 17556 of
15 the Government Code, or changes the definition of a crime within
16 the meaning of Section 6 of Article XIII B of the California
17 Constitution.