

## Senate Bill No. 126

### CHAPTER 697

An act to amend Sections 1156.3, 1158, 1160.4, and 1164 of the Labor Code, relating to employment.

[Approved by Governor October 9, 2011. Filed with  
Secretary of State October 9, 2011.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 126, Steinberg. Agricultural labor relations.

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 provides that, within 5 days after the above-described election, any person may file with the Agricultural Labor Relations Board a signed petition that, among other things, objects to the conduct of the election or conduct affecting the results of the election. Upon receipt of the petition, existing law requires the board to conduct a hearing to determine whether the election shall be certified. Existing law permits the board to refuse to certify the election if it finds, among other things, that misconduct affecting the results of the election occurred.

Existing law also provides for elections to decertify a labor organization, as specified.

This bill would provide that if the board refuses to certify an election regarding certification of a labor organization because of employer misconduct that, in addition to affecting the results of the election, would render slight the chances of a new election reflecting the free and fair choice of employees, the labor union shall be certified as the exclusive bargaining representative for the bargaining unit.

This bill would specify, with regard to the above-described elections regarding certification or decertification, time limits pertaining to the scheduling of hearings on election objections and challenges to ballots and the issuance of decisions by the board with respect to those objections and challenges.

Under existing law, whenever it is charged that a person has engaged in or is engaging in certain unfair labor practices, the board has the power to issue and cause to be served upon the person a complaint stating the charges and containing a notice of hearing, as specified, not less than 5 days after the serving of the complaint. Under existing law, the board has the power, upon issuance of the above-described complaint, to petition the superior court in any county wherein the unfair labor practice in question is alleged to have occurred, or wherein the person resides or transacts business, for

appropriate temporary relief or a restraining order. Existing law grants the court jurisdiction to grant that relief.

This bill would specify what the court is to consider in determining whether temporary relief or a restraining order is just and proper. This bill would provide that when the alleged unfair labor practice is such that, by its nature, it would interfere with the free choice of employees to choose or not choose an exclusive bargaining representative, appropriate temporary relief or a restraining order shall issue on a showing that reasonable cause exists to believe that the unfair labor practice has occurred. This bill would provide that the order shall remain in effect until an election has been held or for 30 days, whichever occurs first. This bill would provide that the temporary relief or restraining order shall not be stayed pending appeal.

Existing law specifies the time for filing a declaration by an agricultural employer or a certified labor organization representing agricultural employees that the parties have failed to reach a collective bargaining agreement, thus triggering mandatory mediation. Under existing law, the declaration may be filed 90 days after a renewed demand to bargain where the parties have failed to reach agreement for at least one year, the employer committed an unfair labor practice, and the parties have not previously had a binding contract between them or 180 days after an initial request to bargain.

This bill would, instead, provide that the declaration may be filed 90 days after a renewed demand to bargain, as specified above, 90 days after an initial request to bargain, 60 days after the board has certified the labor organization because of employer misconduct and a finding that would render slight the chances of a new election reflecting the free and fair choice of employees, or 60 days after the board has dismissed a decertification petition upon a finding that the employer has unlawfully initiated, supported, sponsored, or assisted in the filing of a decertification petition.

Existing law provides that if, upon the preponderance of the testimony taken, the board is of the opinion that any person named in the above-described complaint has engaged in or is engaging in any unfair labor practice, the board is required to state its findings of fact and issue and cause to be served on the person an order requiring the person to cease and desist from the unfair labor practice. Existing law specifies how certification and the record of investigation are to be handled whenever the cease and desist order is based in whole or in part upon the facts certified following an investigation pertaining to elections of bargaining unit representatives, and there is a petition for review of the order.

This bill would provide that the filing of the above-described petition for review of the order shall not be grounds for a stay of proceedings pertaining to mandatory mediation.

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

SECTION 1. Section 1156.3 of the Labor Code is amended to read:

1156.3. (a) 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 any individual or labor organization acting on behalf of those agricultural employees, in accordance with any rules and regulations prescribed by the board. 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 no valid election pursuant to this section has been conducted among the agricultural employees of the employer named in the petition within the 12 months immediately preceding the filing of the petition.

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

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

(b) Upon receipt of a signed petition, as described in subdivision (a), 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 secret ballot 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 secret ballot 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 secret ballot elections.

(c) The board shall make available at any election held under this chapter ballots printed in English and Spanish. The board may also make available at the election ballots printed in any other language as may be requested by an agricultural labor organization or any agricultural employee eligible to vote under this part. Every election ballot, except ballots in runoff elections where 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."

(d) 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.

(e) (1) Within five days after an election, any person may file with the board a signed petition asserting that allegations made in the petition filed pursuant to subdivision (a) 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.

(2) Upon receipt of a petition under this subdivision, 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 any recommendations 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 any of the assertions made in the petition filed pursuant to this subdivision are 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.

(f) Notwithstanding any other provision of law, if the board refuses to certify an election because of employer misconduct that, in addition to affecting the results of the election, would render slight the chances of a new election reflecting the free and fair choice of employees, the labor organization shall be certified as the exclusive bargaining representative for the bargaining unit.

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

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

(1) The Department of Fair Employment and Housing finds that the labor organization engaged in discrimination on any 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.

(2) 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.

(i) (1) With regard to elections held pursuant to this section or Section 1156.7, the following time limits apply for action by the board, and agents acting pursuant to authority delegated by the board:

(A) (i) The board shall, within 21 days of the filing of election objections or the submittal of evidence in support of challenges to ballots, evaluate the election objections or challenged ballots and issue a decision determining which, if any, must be set for hearing.

(ii) The hearing on election objections or challenged ballots set pursuant to clause (i) shall be scheduled to commence within 28 days of the date of the board's decision to set a hearing.

(B) The investigative hearing examiner (IHE) appointed pursuant to Section 1145 shall issue a recommended decision within 60 days of the close of the hearing on the matters described in subparagraph (A). Upon mutual agreement of the parties, the IHE may extend the time period to issue a recommended decision by 30 days.

(C) The board shall issue a decision regarding the election objections or challenged ballots within 45 days of receipt of any exceptions to the decision of the IHE.

(2) The board may consolidate a challenged ballot hearing with a hearing on objections to an election.

(3) The board may grant extensions on the time limits specified in this subdivision upon a showing of good cause or by stipulation of all affected parties.

SEC. 2. 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 1156.3 to 1157.2, 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. The filing of a petition for review described in this section shall not be grounds for a stay of proceedings conducted pursuant to Chapter 6.5 (commencing with Section 1164).

SEC. 3. Section 1160.4 of the Labor Code is amended to read:

1160.4. (a) The board may, upon finding reasonable cause to believe that any person has engaged in or is engaging in an unfair labor practice, petition the superior court in any county wherein the unfair labor practice in question is alleged to have occurred, or wherein the person resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of the petition, the board shall cause notice thereof to be served upon the person, and thereupon the court shall have jurisdiction to grant to the board such temporary relief or restraining order as the court deems just and proper.

(b) (1) In addition to any harm resulting directly from an adverse employment action or other allegedly unlawful action, the court shall consider the indirect effect upon protected rights of all agricultural employees of the employer in determining whether temporary relief or a restraining order is just and proper.

(2) When the alleged unfair labor practice is such that, by its nature, it would interfere with the free choice of employees to choose or not choose an exclusive bargaining representative, appropriate temporary relief or a restraining order shall issue on a showing that reasonable cause exists to believe that the unfair labor practice has occurred. The order shall remain in effect until an election has been held or for 30 days, whichever occurs first. Thereafter, a preliminary injunction may issue if it is shown to be just and proper.

(c) Notwithstanding Section 916 of the Code of Civil Procedure, temporary relief or restraining orders granted pursuant to this section shall not be stayed pending appeal.

SEC. 4. Section 1164 of the Labor Code is amended to read:

1164. (a) An agricultural employer or a labor organization certified as the exclusive bargaining agent of a bargaining unit of agricultural employees may file with the board, at any time following (1) 90 days after a renewed demand to bargain by an agricultural employer or a labor organization certified prior to January 1, 2003, which meets the conditions specified in Section 1164.11, (2) 90 days after an initial request to bargain by an agricultural employer or a labor organization certified after January 1, 2003, (3) 60 days after the board has certified the labor organization pursuant to subdivision (f) of Section 1156.3, or (4) 60 days after the board has dismissed a decertification petition upon a finding that the employer has unlawfully initiated, supported, sponsored, or assisted in the filing of a decertification petition a declaration that the parties have failed to reach a collective bargaining agreement and a request that the board issue an order directing the parties to mandatory mediation and conciliation of their issues. "Agricultural employer," for purposes of this chapter, means an agricultural employer, as defined in subdivision (c) of Section 1140.4, who has employed or engaged 25 or more agricultural employees during any calendar week in the year preceding the filing of a declaration pursuant to this subdivision.

(b) Upon receipt of a declaration pursuant to subdivision (a), the board shall immediately issue an order directing the parties to mandatory mediation and conciliation of their issues. The board shall request from the California State Mediation and Conciliation Service a list of nine mediators who have experience in labor mediation. The California State Mediation and Conciliation 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 Service. The parties shall select a mediator from the list within seven days of receipt of the list. If the parties cannot agree on a mediator, they shall strike names from the list until a mediator is chosen by process of elimination. If a party refuses to participate in selecting a mediator, the other party may choose a mediator from the list. The costs of mediation and conciliation shall be borne equally by the parties.

(c) Upon appointment, the mediator shall immediately schedule meetings at a time and location reasonably accessible to the parties. Mediation shall proceed for a period of 30 days. Upon expiration of the 30-day period, if the parties do not resolve the issues to their mutual satisfaction, the mediator shall certify that the mediation process has been exhausted. Upon mutual agreement of the parties, the mediator may extend the mediation period for an additional 30 days.

(d) Within 21 days, the mediator shall file a report with the board that resolves all of the issues between the parties and establishes the final terms of a collective bargaining agreement, including all issues subject to mediation and all issues resolved by the parties prior to the certification of the exhaustion of the mediation process. With respect to any issues in dispute between the parties, the report shall include the basis for the mediator's determination. The mediator's determination shall be supported by the record.

(e) In resolving the issues in dispute, the mediator may consider those factors commonly considered in similar proceedings, including:

- (1) The stipulations of the parties.
- (2) The financial condition of the employer and its ability to meet the costs of the contract in those instances where the employer claims an inability to meet the union's wage and benefit demands.
- (3) The corresponding wages, benefits, and terms and conditions of employment in other collective bargaining agreements covering similar agricultural operations with similar labor requirements.
- (4) The corresponding wages, benefits, and terms and conditions of employment prevailing in comparable firms or industries in geographical areas with similar economic conditions, taking into account the size of the employer, the skills, experience, and training required of the employees, and the difficulty and nature of the work performed.
- (5) The average consumer prices for goods and services according to the California Consumer Price Index, and the overall cost of living, in the area where the work is performed.