

AMENDED IN ASSEMBLY AUGUST 12, 2010

AMENDED IN ASSEMBLY AUGUST 5, 2010

AMENDED IN ASSEMBLY AUGUST 2, 2010

SENATE BILL

No. 1474

Introduced by Senators Steinberg and Wright
(Coauthor: Assembly Member Solorio)

February 19, 2010

An act to amend Section 1156.3 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 1474, as amended, 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 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 authorize the Agricultural Labor Relations Board, under specified circumstances, to set aside an election where there has been misconduct by the employer affecting the right of the employees to vote *outcome of the election* and to certify a labor organization as the exclusive bargaining representative for a bargaining unit if the organization had previously presented the board with authorization cards signed by more than 50% of the employees in that bargaining unit.

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

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

1 SECTION 1. It is the intent of Legislature to provide the
2 Agricultural Labor Relations Board, in addition to existing law
3 and standards, with an alternative basis to set aside an election and
4 a remedy for misconduct affecting the right of employees to a free
5 and uncoerced choice in a secret ballot election.

6 SEC. 2. Section 1156.3 of the Labor Code is amended to read:

7 1156.3. (a) A petition that is either signed by, or accompanied
8 by authorization cards signed by, a majority of the currently
9 employed employees in the bargaining unit, may be filed by an
10 agricultural employee or group of agricultural employees, or any
11 individual or labor organization acting on behalf of those
12 agricultural employees, in accordance with any rules and
13 regulations prescribed by the board. The petition shall allege all
14 of the following:

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

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

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

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

29 (b) Upon receipt of a signed petition, as described in subdivision
30 (a), the board shall immediately investigate the petition. If the
31 board has reasonable cause to believe that a bona fide question of
32 representation exists, it shall direct a representation election by
33 secret ballot to be held, upon due notice to all interested parties
34 and within a maximum of seven days of the filing of the petition.
35 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 shall 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, that misconduct affecting the results of the election occurred, or that the employer engaged in misconduct affecting the right of employees to a free and uncoerced choice in a secret ballot election. The board shall certify the election unless it determines that there are sufficient grounds to refuse to do so.

1 (3) The board shall not refuse to certify an election based solely
2 on a de minimis violation of the law.

3 (4) Notwithstanding any other provision of law, if an election
4 has been set aside ~~pursuant to this section~~ because of employer
5 misconduct *that affected the outcome of the election*, a labor
6 organization shall be certified as the exclusive bargaining
7 representative for a bargaining unit if that labor organization has
8 already presented the board with authorization cards, determined
9 by the board to be valid, signed by more than 50 percent of the
10 employees in the bargaining unit.

11 (f) If the petition filed under ~~this subdivision~~ *subdivision (e)*
12 involves a bargaining unit having no current certified bargaining
13 representative, the board shall issue a final order on the matter
14 within one year after the petition is filed.

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

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

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

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