

Senate Bill No. 1474

Passed the Senate August 19, 2010

Secretary of the Senate

Passed the Assembly August 16, 2010

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2010, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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

LEGISLATIVE COUNSEL'S DIGEST

SB 1474, 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 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.

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

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

SEC. 2. 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 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.

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

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

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

(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.

Approved _____, 2010

Governor