

AMENDED IN ASSEMBLY APRIL 2, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2386**

---

---

**Introduced by Assembly Member Nunez**

February 21, 2008

---

---

An act to amend ~~Section 1156.3~~ *Sections 1143 and 1161* of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2386, as amended, Nunez. Agricultural employees: ~~elections of labor representatives.~~ *Agricultural Employee Relief Fund.*

*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.*

~~Under existing law, a petition for election of labor representation may be filed with the Agricultural Labor Relations Board by an agricultural employee, a group of agricultural labor employees, or a labor organization acting on behalf of agricultural employees, as prescribed. Existing law requires the board to conduct an investigation into the allegations made in the petition upon receipt of the petition. If the board finds reasonable cause to believe that a bona fide question of representation exists, existing law requires the board to direct a representation election to be held by secret ballot, as prescribed. Unless a valid challenge is filed against the initial petition, as prescribed, existing law requires the board to certify the election.~~

~~This bill would make technical, nonsubstantive changes to these provisions.~~

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

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

1     SECTION 1. Section 1143 of the Labor Code is amended to  
2     read:

3     1143. (a) The board shall, at the close of each fiscal year, make  
4     a report in writing to the Legislature and to the Governor stating  
5     in detail the cases it has heard, the decisions it has rendered, the  
6     names, salaries, and duties of ~~all~~ *the* employees and officers in the  
7     employ or under the supervision of the board, and an account of  
8     all moneys it has disbursed.

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

12    SEC. 2. Section 1161 of the Labor Code is amended to read:

13    1161. (a) The Agricultural Employee Relief Fund is hereby  
14    created as a special fund in the State Treasury and is continuously  
15    appropriated to the Agricultural Labor Relations Board for the  
16    purposes specified in subdivision (c). The board shall act as a  
17    trustee of all moneys deposited in the fund.

1 (b) ~~Any monetary~~ *Monetary* relief ordered by the board pursuant  
2 to this part to be paid by an employer to an employee shall be  
3 collected by the board on behalf of the employee. All monetary  
4 relief ~~so~~ collected by the board shall be remitted to the employee  
5 for whom the board collected the money.

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

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

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

22 ~~(e) On or before July 1, 2002, the board shall report to the~~  
23 ~~Legislature on the status of the fund.~~

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

26 ~~1156.3. (a) A petition that is either signed by, or accompanied~~  
27 ~~by authorization cards signed by, a majority of the currently~~  
28 ~~employed employees in the bargaining unit, may be filed by an~~  
29 ~~agricultural employee or group of agricultural employees, or an~~  
30 ~~individual or labor organization acting on behalf of those~~  
31 ~~agricultural employees, in accordance with a rule or regulation~~  
32 ~~prescribed by the board. The petition shall allege the following:~~

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

38 ~~(2) That no valid election pursuant to this section has been~~  
39 ~~conducted among the agricultural employees of the employer~~

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

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

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

8 ~~(b) Upon receipt of a signed petition, as described in subdivision~~  
9 ~~(a), the board shall immediately investigate the petition. If the~~  
10 ~~board has reasonable cause to believe that a bona fide question of~~  
11 ~~representation exists, it shall direct a representation election by~~  
12 ~~secret ballot to be held, upon due notice to all interested parties~~  
13 ~~and within a maximum of seven days of the filing of the petition.~~  
14 ~~If, at the time the election petition is filed, a majority of the~~  
15 ~~employees in a bargaining unit are engaged in a strike, the board~~  
16 ~~shall, with all due diligence, attempt to hold a secret ballot election~~  
17 ~~within 48 hours of the filing of the petition. The holding of an~~  
18 ~~election under strike circumstances shall take precedence over the~~  
19 ~~holding of another secret ballot election.~~

20 ~~(c) The board shall make available at an election held under this~~  
21 ~~chapter ballots printed in English and Spanish. The board may also~~  
22 ~~make available at the election ballots printed in any other language~~  
23 ~~as may be requested by an agricultural labor organization or an~~  
24 ~~agricultural employee eligible to vote under this part. Every~~  
25 ~~election ballot, except ballots in a runoff election where the choice~~  
26 ~~is between labor organizations, shall provide the employee with~~  
27 ~~the opportunity to vote against representation by a labor~~  
28 ~~organization by providing an appropriate space designated “No~~  
29 ~~Labor Organizations.”~~

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

34 ~~(e) (1) Within five days after an election, a person may file~~  
35 ~~with the board a signed petition asserting that allegations made in~~  
36 ~~the petition filed pursuant to subdivision (a) were incorrect,~~  
37 ~~asserting that the board improperly determined the geographical~~  
38 ~~scope of the bargaining unit, or objecting to the conduct of the~~  
39 ~~election or conduct affecting the results of the election.~~

1     ~~(2) Upon receipt of a petition under this subdivision, the board,~~  
2 ~~upon due notice, shall conduct a hearing to determine whether the~~  
3 ~~election shall be certified. This hearing may be conducted by an~~  
4 ~~officer or employee of a regional office of the board. The officer~~  
5 ~~may not make a recommendation with respect to the certification~~  
6 ~~of the election. The board may refuse to certify the election if it~~  
7 ~~finds, on the record of the hearing, that any of the assertions made~~  
8 ~~in the petition filed pursuant to this subdivision are correct, that~~  
9 ~~the election was not conducted properly, or that misconduct~~  
10 ~~affecting the results of the election occurred. The board shall certify~~  
11 ~~the election unless it determines that there are sufficient grounds~~  
12 ~~to refuse to do so.~~

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

15     ~~(g) The board shall decertify a labor organization if either of~~  
16 ~~the following occur:~~

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

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