

AMENDED IN SENATE AUGUST 4, 2008

AMENDED IN ASSEMBLY APRIL 2, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2386**

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**Introduced by Assembly Member Nunez**

February 21, 2008

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An act to amend Sections ~~1143 and 1161~~ of 1142, 1143, 1154, 1156, 1156.2, 1156.4, 1156.7, 1157, 1158, 1160.3, 1160.5, 1160.6, and 1161 of, to add Section 1159.5 to, to add the heading of Article 1 (commencing with Section 1156) to Chapter 5 of Part 3.5 of Division 2 of, to add Article 2 (commencing with Section 1156.310) and Article 3 (commencing with Section 1156.350) to Chapter 5 of Part 3.5 of Division 2 of, to add the heading of Article 4 (commencing with Section 1156.4) to Chapter 5 of Part 3.5 of Division 2 of, and to repeal Sections 1156.3 and 1157.2 of, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

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

(1) 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.

*(2) Existing law provides that the agricultural employees in a bargaining unit, as defined, have the right to select a representative for the purpose of collective bargaining with respect to wages, working hours, and other conditions of employment. Existing law further provides procedures for agricultural employees to select a representative by means of a secret ballot election, including the filing of a petition for an election, the printing and distribution of ballots, and the means by which the outcome of an election may be challenged.*

*This bill would instead provide 2 methods by which agricultural employees may select by secret ballot a representative for collective bargaining purposes. First, the bill would permit agricultural employees to select a representative through a ballot booth election pursuant to existing law. Second, the bill would provide for a mediated election, as defined, as an additional and alternative means for the selection by agricultural employees of a representative for collective bargaining purposes. The bill would prescribe detailed procedures for a labor organization to petition for a mediated election, for the selection of a mediator, for the distribution of ballots, and for the conducting of a mediated election where agricultural employees may elect either to designate the labor organization as their representative or to hold a ballot booth election. The bill would establish criteria for the proper tallying of ballots and for the determination by the mediator of the outcome of the election, and it would create mechanisms by which an aggrieved party could challenge the outcome of a mediated election.*

*(3) Existing law authorizes the Agricultural Labor Relations Board to entertain and hold a hearing on a complaint that a person has*

*engaged, or is engaging, in unfair labor practices, as defined. Upon a finding of unfair labor practices, the board is empowered to issue an order that provides for certain remedial actions, including cessation of the unfair labor practice, reinstatement of employees, and payment of backpay.*

*This bill would, in addition, authorize the board to impose a civil penalty of up to \$20,000 for each violation if the board finds that an employer has engaged in specified unfair labor practices.*

*(4) Existing law provides that, if charges of specified unfair labor practices are made, a priority preliminary investigation shall be made and appropriate injunctive relief granted if justified.*

*This bill would add specified unfair labor practices to the list of practices that trigger a priority preliminary investigation and the granting of injunctive relief.*

*(5) The bill would also make conforming changes to existing law.*

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. Section 1142 of the Labor Code is amended to*  
2 *read:*

3 1142. (a) The principal office of the board shall be in  
4 Sacramento, but it may meet and exercise ~~any of all of~~ its power  
5 ~~at any other~~ *another* place in California.

6 (b) Besides the principal office in Sacramento, as provided in  
7 subdivision (a), the board may establish offices in ~~such~~ other cities  
8 as it ~~shall deem~~ *deems* necessary. The board may delegate to the  
9 personnel of these offices ~~such~~ powers as it deems appropriate to  
10 determine the unit appropriate for the purpose of collective  
11 bargaining, to investigate and provide for ~~hearings~~ *a hearing*, to  
12 determine whether a question of representation exists, to direct an  
13 election ~~by a secret ballot~~ pursuant to the provisions of Chapter 5  
14 (commencing with Section 1156), and to certify the results of such  
15 election, and to investigate, conduct ~~hearings~~ *a hearing* and make  
16 determinations relating to *an unfair labor practice* ~~practices practice~~. The  
17 board may review ~~any~~ action taken pursuant to the authority  
18 delegated under this section upon a request for a review of such  
19 action filed with the board by an interested party. ~~Any such~~ *Such*  
20 review made by the board shall not, unless specifically ordered by

1 the board, operate as a stay of ~~any~~ action taken. The entire record  
 2 considered by the board in considering or acting upon ~~any~~ such  
 3 request or review shall be made available to all parties prior to  
 4 such consideration or action, and the board's findings and action  
 5 thereon shall be published as a decision of the board.

6 ~~SECTION 1.~~

7 *SEC. 2.* Section 1143 of the Labor Code is amended to read:

8 1143. (a) The board shall, at the close of each fiscal year, make  
 9 a report in writing to the Legislature and to the Governor stating  
 10 in detail the cases it has heard, the decisions it has rendered, the  
 11 names, salaries, and duties of the employees and officers in the  
 12 employ or under the supervision of the board, and an account of  
 13 all moneys it has disbursed.

14 (b) The report required by subdivision (a) shall include  
 15 information concerning the status of the Agricultural Employee  
 16 Relief Fund described in Section 1161.

17 *SEC. 3. Section 1154 of the Labor Code is amended to read:*

18 1154. It shall be an unfair labor practice for a labor organization  
 19 or its agents to do any of the following:

20 (a) To restrain or coerce:

21 (1) ~~Agricultural employees~~ *An agricultural employee* in the  
 22 exercise of the rights guaranteed in Section 1152. This paragraph  
 23 shall not impair the right of a labor organization to prescribe its  
 24 own rules with respect to the acquisition or retention of  
 25 membership therein.

26 (2) An agricultural employer in the selection of his  
 27 ~~representatives or her representative~~ for the purposes of collective  
 28 bargaining or the adjustment of ~~grievances~~ *a grievance*.

29 (b) To cause or attempt to cause an agricultural employer to  
 30 discriminate against an employee in violation of subdivision (c)  
 31 of Section 1153, or to discriminate against an employee with  
 32 respect to whom membership in such organization has been denied  
 33 or terminated for reasons other than failure to satisfy the  
 34 membership requirements specified in subdivision (c) of Section  
 35 1153.

36 (c) To refuse to bargain collectively in good faith with an  
 37 agricultural employer, provided it is the representative of his *or*  
 38 *her* employees subject to the provisions of Chapter 5 (commencing  
 39 with Section 1156) ~~of this part~~.

40 (d) (1) To do either of the following: ~~(i)~~

1 (A) To engage in, or to induce or encourage any individual  
2 employed by ~~any~~ a person to engage in, a strike or a refusal in the  
3 course of his *or her* employment to use, manufacture, process,  
4 transport, or otherwise handle or work on ~~any~~ goods, articles,  
5 materials, or commodities, or to perform any services; ~~or (ii) to.~~

6 (B) To threaten, coerce, or restrain any person; ~~where in either~~  
7 ~~case (i) or (ii) an object thereof is.~~

8 (2) *In order for paragraph (1) to apply, the activity described*  
9 *in subparagraphs (A) and (B) of paragraph (1) must be done with*  
10 *the intent to accomplish any of the following:*

11 (1)

12 (A) Forcing or requiring ~~any~~ an employer or self-employed  
13 person to join ~~any~~ a labor or employer organization or to enter into  
14 any agreement which is prohibited by Section 1154.5.

15 (2)

16 (B) Forcing or requiring ~~any~~ a person to cease using, selling,  
17 transporting, or otherwise dealing in the products of ~~any other~~  
18 *another* producer, processor, or manufacturer, or to cease doing  
19 business with ~~any other another~~ person, or forcing or requiring  
20 ~~any other another~~ employer to recognize or bargain with a labor  
21 organization as the representative of ~~his~~ *the employees of the*  
22 *employer unless such the* labor organization has been certified as  
23 the representative of ~~such~~ *the* employees. Nothing contained in  
24 this paragraph shall be construed to make unlawful, where not  
25 otherwise unlawful, ~~any~~ a primary strike or primary picketing.

26 (3)

27 (C) Forcing or requiring ~~any~~ an employer to recognize or bargain  
28 with a particular labor organization as the representative of ~~his~~ *the*  
29 *agricultural employees of the employer* if another labor organization  
30 has been certified as the representative of ~~such~~ *the* employees  
31 under the provisions of Chapter 5 (commencing with Section 1156)  
32 ~~of this part.~~

33 (4)

34 (D) Forcing or requiring ~~any~~ an employer to assign particular  
35 work to ~~employees~~ *an employee* in a particular labor organization  
36 or in a particular trade, craft, or class, unless ~~such~~ *the* employer ~~is~~  
37 ~~failing~~ *fails* to conform to an order or certification of the board  
38 determining the bargaining representative for employees  
39 performing such work.

1 (3) (A) Nothing contained in this subdivision~~(d)~~ shall be  
 2 construed to prohibit publicity, including picketing for the purpose  
 3 of truthfully advising the public, including consumers, that a  
 4 product or ~~products or ingredients~~ *ingredient* thereof ~~are is~~  
 5 produced by an agricultural employer with whom the labor  
 6 organization has a primary dispute and are distributed by another  
 7 employer, as long as ~~such~~ *the* publicity does not have an effect of  
 8 inducing ~~any an~~ individual employed by ~~any a~~ person other than  
 9 the primary employer in the course of his *or her* employment to  
 10 refuse to pick up, deliver, or transport ~~any~~ goods, or not to perform  
 11 ~~any~~ services at the establishment of the employer engaged in such  
 12 distribution, and as long as ~~such~~ *the* publicity does not have the  
 13 effect of requesting the public to cease patronizing ~~such the~~ other  
 14 employer.

15 ~~However, employer. However,~~ publicity which includes picketing  
 16 and has the effect of requesting the public to cease patronizing  
 17 ~~such other another~~ employer, shall be permitted only if the labor  
 18 organization is currently certified as the representative of the  
 19 primary employer's employees.

20 ~~Further, publicity~~

21 (B) *Publicity* other than picketing, but including peaceful  
 22 distribution of literature which has the effect of requesting the  
 23 public to cease patronizing ~~such the~~ other employer, *as described*  
 24 *in subparagraph (A)*, shall be permitted only if the labor  
 25 organization has not lost an election for the primary employer's  
 26 employees within the preceding 12-month period, and no other  
 27 labor organization is currently certified as the representative of  
 28 the primary employer's employees.

29 (4) Nothing contained in this subdivision~~(d)~~ shall be construed  
 30 to prohibit publicity, including picketing, which may not be  
 31 prohibited under the United States Constitution or the California  
 32 Constitution.

33 ~~Nor shall anything~~

34 (5) *Nothing contained* in this subdivision~~(d)~~ *shall* be construed  
 35 to apply or be applicable to ~~any a~~ labor organization in its  
 36 representation of workers who are not agricultural employees. ~~Any~~  
 37 ~~such~~ *Such a* labor organization shall continue to be governed in  
 38 its intrastate activities for nonagricultural workers by Section 923  
 39 and applicable judicial ~~precedents~~ *precedent*.

1 (e) To require of ~~employees~~ *an employee* covered by an  
2 agreement authorized under subdivision (c) of Section 1153 the  
3 payment, as a condition precedent to becoming a member of ~~such~~  
4 *a labor* organization, of a fee in an amount which the board finds  
5 excessive or discriminatory under ~~all the totality of the~~  
6 circumstances. In making such a finding, the board shall consider,  
7 among other relevant factors, the practices and customs of labor  
8 organizations in the agriculture industry and the wages currently  
9 paid to the employees affected.

10 (f) To cause or attempt to cause an agricultural employer to pay  
11 or deliver, or agree to pay or deliver, ~~any~~ money or ~~other~~ *another*  
12 thing of value, in the nature of an exaction, for services which are  
13 not performed or not to be performed.

14 (g) (1) To picket or cause to be picketed, or threaten to picket  
15 or cause to be picketed, ~~any~~ *an* employer where an ~~object~~ *intent*  
16 thereof is either forcing or requiring an employer to recognize or  
17 bargain with a labor organization as the representative of ~~his~~ *the*  
18 employees *of the employer*, or forcing or requiring the employees  
19 of an employer to accept or select ~~such~~ *the* labor organization as  
20 their collective-bargaining representative, unless ~~such~~ *the* labor  
21 organization is currently certified as the representative of such  
22 employees, in any of the following cases:

23 (1)

24 (A) Where the employer has lawfully recognized in accordance  
25 with this part any other labor organization and a question  
26 concerning representation may not appropriately be raised ~~under~~  
27 ~~Section 1156.3 pursuant to Article 2 (commencing with Section~~  
28 ~~1156.310) of Chapter 5.~~

29 (2)

30 (B) Where within the preceding 12 months a valid election under  
31 Chapter 5 (commencing with Section 1156) ~~of this part~~ has been  
32 conducted.

33 (2) (A) Nothing in this subdivision shall be construed to prohibit  
34 ~~any~~ picketing or other publicity for the purpose of truthfully  
35 advising the public (including consumers) that an employer does  
36 not employ members of, or have a contract with, a labor  
37 organization, unless an effect of such picketing is to induce ~~any~~  
38 *an* individual employed by ~~any other~~ *another* person in the course  
39 of his *or her* employment, not to pick up, deliver, or transport ~~any~~  
40 goods or not to perform ~~any~~ services.

1 (B) Nothing in this subdivision ~~(g)~~ shall be construed to permit  
 2 ~~any~~ an act which would otherwise be an unfair labor practice under  
 3 this section.

4 (h) To picket or cause to be picketed, or threaten to picket or  
 5 cause to be picketed, ~~any~~ an employer where an object thereof is  
 6 either forcing or requiring an employer to recognize or bargain  
 7 with the labor organization as a representative of ~~his~~ the employees  
 8 of the employer unless ~~such~~ the labor organization is currently  
 9 certified as the collective-bargaining representative of such  
 10 employees.

11 (i) Nothing contained in this section shall be construed to make  
 12 unlawful a refusal by ~~any~~ a person to enter upon the premises of  
 13 ~~any~~ an agricultural employer, other than his or her own employer,  
 14 if the employees of ~~such~~ the employer are engaged in a strike  
 15 ratified or approved by a representative of ~~such~~ the employees  
 16 whom ~~such~~ the employer is required to recognize under this part.

17 SEC. 4. The heading of Article 1 (commencing with Section  
 18 1156) is added to Chapter 5 of Part 3.5 of Division 2 of the Labor  
 19 Code, to read:

20  
 21 *Article 1. General Provisions*

22  
 23 SEC. 5. Section 1156 of the Labor Code is amended to read:

24 1156. ~~Representatives~~—(a) A representative designated or  
 25 selected by a secret ballot either by a ballot booth election pursuant  
 26 to Article 2 (commencing with Section 1156.310), or by a mediated  
 27 election pursuant to Article 3 (commencing with Section 1156.350),  
 28 for the purposes of collective bargaining by the majority of the  
 29 agricultural employees in ~~the~~ a bargaining unit shall be the  
 30 exclusive ~~representatives~~ representative of ~~all~~ the agricultural  
 31 employees in ~~such~~ the unit for the purpose of collective bargaining  
 32 with respect to rates of pay, wages, hours of employment, ~~or~~ and  
 33 other conditions of employment. ~~Any~~

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

1 bargaining representative has been given *an* opportunity to be  
2 present at ~~such~~ *the* adjustment.

3 *SEC. 6. Section 1156.2 of the Labor Code is amended to read:*

4 1156.2. ~~The~~ *For the purposes of this chapter, a bargaining unit*  
5 ~~shall be all~~ *is the agricultural employees of an employer. If the*  
6 ~~agricultural employees of the~~ *an employer are employed in two*  
7 ~~or more noncontiguous geographical areas, the board shall~~  
8 ~~determine the appropriate unit or units of agricultural employees~~  
9 ~~in which a secret ballot booth election or a mediated election shall~~  
10 ~~be conducted.~~

11 *SEC. 7. Section 1156.3 of the Labor Code is repealed.*

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

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

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

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

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

34 ~~(b) Upon receipt of a signed petition, as described in subdivision~~  
35 ~~(a), the board shall immediately investigate the petition. If the~~  
36 ~~board has reasonable cause to believe that a bona fide question of~~  
37 ~~representation exists, it shall direct a representation election by~~  
38 ~~secret ballot to be held, upon due notice to all interested parties~~  
39 ~~and within a maximum of seven days of the filing of the petition.~~  
40 ~~If, at the time the election petition is filed, a majority of the~~

1 employees in a bargaining unit are engaged in a strike, the board  
2 shall, with all due diligence, attempt to hold a secret ballot election  
3 within 48 hours of the filing of the petition. The holding of  
4 elections under strike circumstances shall take precedence over  
5 the holding of other secret ballot elections.

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

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

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

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

38 ~~(f) If no petition is filed pursuant to subdivision (e) within five  
39 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. 8. Article 2 (commencing with Section 1156.310) is added*  
18 *to Chapter 5 of Part 3.5 of Division 2 of the Labor Code, to read:*

19  
20 *Article 2. Ballot Booth Elections*

21  
22 *1156.310. A petition that is either signed by, or accompanied*  
23 *by authorization cards signed by, a majority of the currently*  
24 *employed employees in the bargaining unit, may be filed by an*  
25 *agricultural employee or group of agricultural employees, or an*  
26 *individual or labor organization acting on behalf of those*  
27 *agricultural employees, in accordance with the rules and*  
28 *regulations prescribed by the board. The petition shall allege all*  
29 *of the following:*

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

35 *(b) That a valid election pursuant to this section has not been*  
36 *conducted among the agricultural employees of the employer*  
37 *named in the petition within the 12 months immediately preceding*  
38 *the filing of the petition.*

1 (c) That a labor organization is not currently certified as the  
2 exclusive collective-bargaining representative of the agricultural  
3 employees of the employer named in the petition.

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

6 1156.311. (a) Upon receipt of a signed petition, as described  
7 in Section 1156.310, the board shall immediately investigate the  
8 petition. If the board has reasonable cause to believe that a bona  
9 fide question of representation exists, it shall direct a  
10 representation election by ballot booth to be held, upon due notice  
11 to all interested parties and within a maximum of seven days of  
12 the filing of the petition. If, at the time the election petition is filed,  
13 a majority of the employees in a bargaining unit are engaged in  
14 a strike, the board shall, with all due diligence, attempt to hold a  
15 ballot booth election within 48 hours of the filing of the petition.  
16 The holding of elections under strike circumstances shall take  
17 precedence over the holding of other ballot booth elections.

18 (b) For purposes of this chapter, a ballot booth election is an  
19 election where an employee casts his or her ballot in an election  
20 booth that is provided by the board.

21 1156.312. (a) The board shall make available at a ballot booth  
22 election held pursuant to this section ballots, and all other election  
23 materials used to select labor representatives, printed in English  
24 and Spanish. The board may also make available at the ballot  
25 booth election ballots, and all other election materials used to  
26 select labor representatives, printed in any other language as may  
27 be requested by an agricultural labor organization or any  
28 agricultural employee eligible to vote under this part. A ballot  
29 booth election ballot, except ballots in runoff elections in which  
30 the choice is between labor organizations, shall provide the  
31 employee with the opportunity to vote against representation by  
32 a labor organization by providing an appropriate space designated  
33 “No Labor Organizations.”

34 (b) Any other labor organization shall be qualified to appear  
35 on the ballot if it presents authorization cards signed by at least  
36 20 percent of the employees in the bargaining unit at least 24 hours  
37 prior to the election.

38 1156.313. In an election by ballot booth where none of the  
39 choices on the ballot receive a majority of the valid votes cast, a  
40 runoff shall be conducted. The runoff ballot shall provide for a

1 *selection between the two choices receiving the largest and second*  
2 *largest number of valid votes cast in the ballot booth election.*

3 *1156.314. (a) Within five days after an election, a person may*  
4 *file with the board a signed petition asserting that allegations*  
5 *made in the petition filed pursuant to Section 1156.310 were*  
6 *incorrect, asserting that the board improperly determined the*  
7 *geographical scope of the bargaining unit, or objecting to the*  
8 *conduct of the election or conduct affecting the results of the*  
9 *election.*

10 *(b) Upon receipt of a petition under this section, the board,*  
11 *upon due notice, shall conduct a hearing to determine whether the*  
12 *election shall be certified. This hearing may be conducted by an*  
13 *officer or employee of a regional office of the board. The officer*  
14 *may not make a recommendation with respect to the certification*  
15 *of the election. The board may refuse to certify the election if it*  
16 *finds, on the record of the hearing, that an assertion made in the*  
17 *petition filed pursuant to this section is correct, that the election*  
18 *was not conducted properly, or that misconduct affecting the results*  
19 *of the election occurred. The board shall certify the election unless*  
20 *it determines that there are sufficient grounds to refuse to do so.*

21 *(c) If a petition is not filed pursuant to subdivision (a) within*  
22 *five days of the election, the board shall certify the election.*

23 *SEC. 9. Article 3 (commencing with Section 1156.350) is added*  
24 *to Chapter 5 of Part 3.5 of Division 2 of the Labor Code, to read:*

25  
26  
27

*Article 3. Mediated Elections*

28 *1156.350. (a) A labor organization may be certified as the*  
29 *exclusive bargaining representative of a bargaining unit by means*  
30 *of a mediated election. For purposes of this chapter, a mediated*  
31 *election is a representative election that is mediated by a neutral*  
32 *mediator and that permits a bargaining unit to either select a labor*  
33 *organization as its representative for collective bargaining*  
34 *purposes without holding a ballot booth election or to choose to*  
35 *hold a ballot booth election.*

36 *(b) A mediated election held pursuant to this section is a valid*  
37 *election for purposes of Section 1156.5.*

38 *1156.351. (a) A labor organization may file with the board a*  
39 *petition for a mediated election. The petition shall allege all of the*  
40 *following:*

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

6 (2) That a valid election has not been conducted among the  
7 agricultural employees of the employer named in the petition within  
8 the 12 months preceding the filing of the petition.

9 (3) That a labor organization is not currently certified as the  
10 exclusive collective bargaining representative of the employees of  
11 the agricultural employer named in the petition.

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

14 (b) Upon the filing of a petition for mediated election pursuant  
15 to this section, the board shall not permit the filing of either of the  
16 following until the board determines the final disposition of the  
17 petition for mediated election:

18 (1) A petition for a ballot booth election pursuant to Article 2  
19 (commencing with Section 1156.310).

20 (2) Another petition for a mediated election pursuant to this  
21 section that names the same agricultural employer.

22 1156.352. (a) A labor organization that has filed a petition  
23 for a mediated election pursuant to Section 1156.351 shall serve  
24 the petition on the agricultural employer named in the petition on  
25 the same day the petition is filed with the board.

26 (b) Within 48 hours of being served with a petition, the employer  
27 shall file with the board a response to the petition in accordance  
28 with any rules and regulations prescribed by the board. The  
29 response shall include, in both printed and electronic formats, a  
30 complete and accurate list, organized by crew or department, of  
31 the full name, current mailing and residence addresses, telephone  
32 number, and job classification of each agricultural employee who  
33 was employed by the employer at any time during the employer's  
34 last payroll period that ended prior to the filing of the petition.

35 (c) Immediately upon receiving the list of employees described  
36 in subdivision (b), the board shall provide the list, in both printed  
37 and electronic formats, to the labor organization that filed the  
38 petition.

39 1156.353. (a) Upon receipt of a petition for mediated election,  
40 the board immediately shall notify the agricultural employees of

1 *the employer named in the petition of the filing of the petition and*  
2 *shall provide to each employee the Rules of Conduct described in*  
3 *Section 1156.365.*

4 *(b) An employee shall have five days from the filing of the*  
5 *petition to mail or deliver his or her mediated election ballot to*  
6 *the board. Upon the expiration of the five-day period following*  
7 *the filing of a mediated election petition, the board shall allow an*  
8 *additional four days for the purpose of receiving mailed ballots.*  
9 *A ballot shall be valid only if it is postmarked or delivered to the*  
10 *board within the five-day period.*

11 *(c) A ballot may not be filed with the board until a petition for*  
12 *a mediated election is filed by a labor organization naming the*  
13 *relevant agricultural employer. A ballot received by the board*  
14 *prior to the filing of a petition shall be rejected and returned to*  
15 *the voting employee.*

16 *(d) The board shall designate a central location for the receipt,*  
17 *filing, and date stamping of mediated election ballots received by*  
18 *the board.*

19 *1156.354. (a) Upon receipt of a petition for mediated election,*  
20 *the board shall notify the mediator who is designated to be the*  
21 *standby mediator under the schedule established pursuant to*  
22 *subdivision (a) of Section 1156.363 or, if he or she is not available,*  
23 *the designated alternate mediator.*

24 *(b) Upon receiving notification from the board pursuant to*  
25 *subdivision (a), the notified mediator shall immediately commence*  
26 *an investigation into the validity of the petition for mediated*  
27 *election. The board shall provide any necessary assistance required*  
28 *by the mediator for purposes of carrying out his or her*  
29 *investigation and resolving the petition.*

30 *(c) Within 48 hours of receiving notification from the board of*  
31 *the filing of the petition, the mediator shall convene a preelection*  
32 *conference that shall include representatives of the agricultural*  
33 *employer and the labor organization. At the preelection conference,*  
34 *the mediator shall review the petition for a mediated election filed*  
35 *by the labor organization and the response filed by the employer,*  
36 *if any, and shall determine all of the following:*

37 *(1) Whether the petition meets the requirements set forth in*  
38 *subdivision (a) of Section 1156.351.*

39 *(2) The appropriate bargaining unit for the mediated election.*

1     (3) Which employees are eligible to vote in the mediated election  
2 and a challenge made to the eligibility of an employee to vote in  
3 the mediated election. The board shall promulgate regulations  
4 that set forth a process for resolving challenges to the eligibility  
5 of an employee to vote in the mediated election.

6     (4) The appropriate resolution of any other issue related to  
7 conducting the mediated election.

8     1156.355. (a) On the day following the expiration of the  
9 four-day period for receiving mailed ballots, as set forth by  
10 subdivision (b) of Section 1156.353, the mediator shall reconvene  
11 the parties that attended the preelection conference pursuant to  
12 subdivision (c) of Section 1156.354 for the purpose of determining  
13 the outcome of the petition. The mediator shall tally the ballots  
14 according to the following procedures:

15     (1) The mediator first shall determine whether all of the names  
16 on the mediated election ballot envelopes match names on the  
17 eligible voter list established at the preelection conference. If less  
18 than 50 percent of the agricultural employees whose names appear  
19 on the eligible voter list submit ballots, the mediator shall dismiss  
20 the petition for a mediated election. If the board receives ballots  
21 from 50 percent or more of the agricultural employee whose names  
22 appear on the eligible voter list, the mediator shall open each  
23 mediated election ballot envelope.

24     (2) In making the determination required by paragraph (1), the  
25 mediator shall compare the name on each mediated election ballot  
26 envelope received by the board with the names on the eligible voter  
27 list established at the preelection conference. The mediator shall  
28 resolve any discrepancies in favor of counting the ballot if the  
29 preponderance of the evidence establishes that the employee who  
30 signed the envelope is the same person as the employee on the  
31 eligible voter list.

32     (3) The mediator shall also determine a challenge made to a  
33 voter's ballot made by the employer or the labor organization. A  
34 challenge made pursuant to this paragraph shall be governed  
35 according to regulations promulgated by the board pursuant to  
36 paragraph (3) of subdivision (c) of Section 1156.354.

37     (4) The mediator shall tally the ballots received from eligible  
38 employees and shall record the votes for each of the two choices  
39 described in paragraph (2) of subdivision (a) of Section 1156.359.  
40 If the board receives two ballots from the same employee delivered

1 at two different points in time, only the ballot received first in time  
2 shall be opened and counted. If the board receives two ballots  
3 from the same employee at the same point in time, both ballots  
4 shall be opened and examined. If both ballots make the same  
5 selection, one ballot shall be counted and the other ballot shall be  
6 void. If the ballots make different selections, both ballots shall be  
7 void.

8 (b) The board shall maintain the confidentiality of the employee  
9 name on the mediated election ballot. The board shall treat the  
10 mediated election ballot with the same confidentiality as a regular  
11 ballot in a ballot booth election.

12 1156.356. (a) The petition for a mediated election shall be  
13 resolved as follows:

14 (1) If the tally of ballots shows that more than 50 percent of the  
15 employees eligible to vote voted for representation by a labor  
16 organization, the mediator shall issue a report to the board  
17 recommending that the labor organization be certified. The board,  
18 upon receiving the mediator's report, shall issue an order certifying  
19 the labor organization as the exclusive bargaining representative  
20 of the employees in the bargaining unit. The employer's duty to  
21 bargain with the labor organization commences immediately upon  
22 certification of the organization by the board.

23 (2) If the tally of ballots shows that more than 50 percent of the  
24 employees eligible to vote voted for a ballot booth election, the  
25 mediator shall issue a report to the board recommending that the  
26 board conduct a ballot booth election. The board, upon receiving  
27 the mediator's report, shall order that a ballot booth election be  
28 conducted.

29 (3) If the tally of ballots shows that neither option on the ballot  
30 received more than 50 percent of the votes of employees eligible  
31 to vote, the mediator shall issue a report to the board  
32 recommending that the board dismiss the petition. The board, upon  
33 receiving the mediator's report, shall order that the petition for  
34 mediated election be dismissed.

35 (b) If the board orders that a ballot booth election be held, the  
36 board shall hold a ballot booth election pursuant to Article 2  
37 (commencing with Section 1156.310) within seven days. The labor  
38 organization that submitted the petition for mediated election shall  
39 be deemed qualified to appear on the ballot of the ballot booth  
40 election.

1     1156.357. (a) Within five days after the board certifies a labor  
2 organization pursuant to subdivision (a) of Section 1156.356, any  
3 other labor organization or the agricultural employer named in  
4 the mediated election petition may file with the board a petition  
5 objecting to the certification on one or more of the following  
6 grounds:

7     (1) The allegations in the petition for mediated election are  
8 false.

9     (2) The mediator improperly determined the geographical scope  
10 of the bargaining unit.

11     (3) The mediated election was conducted improperly, and the  
12 impropriety affected the results of the election.

13     (b) The party filing the petition objecting to certification shall  
14 serve the petition on the labor organization certified by the board.

15     (c) Upon the filing of a petition objecting to certification, the  
16 board shall schedule a hearing on the petition and shall notify the  
17 petitioner and the labor organization whose certification is being  
18 challenged of the time and place of the hearing.

19     (d) If, after a hearing on the petition, the board determines that  
20 the petitioner has made valid objections under subdivision (a) and  
21 that the allegations supporting the objections are true, the board  
22 shall revoke the certification granted to the labor organization. If  
23 the board further determines that the grounds for revoking  
24 certification result from intentional misconduct by the labor  
25 organization, the board may, at its discretion, bar the labor  
26 organization for one year from filing a petition for mediated  
27 election naming the same agricultural employer.

28     (e) If, after a hearing on the petition, the board determines that  
29 an agricultural employer has assisted, supported, created, or  
30 dominated a labor organization for the purpose of filing a mediated  
31 election petition, the board shall revoke the certification awarded  
32 pursuant to the mediated election and shall order the employer to  
33 pay all costs and expenses incurred by the labor organization  
34 challenging the results of the mediated election.

35     (f) If, after a hearing on the petition, the board determines that  
36 the objections raised in the petition are without merit, the board  
37 shall dismiss the petition.

38     (g) The filing of a petition objecting to certification under this  
39 section shall not suspend the duty of an agricultural employer to

1 *bargain with the labor organization, nor shall it toll the 180-day*  
2 *period set forth in subdivision (a) of Section 1164.*

3 *1156.358. (a) A labor organization that has been denied*  
4 *certification based on the results of a mediated election or a ballot*  
5 *booth election that was directed by the board pursuant to Section*  
6 *1156.356, or that has had a petition for mediated election dismissed*  
7 *or withdrawn, may, within five days after that result, file with the*  
8 *board a petition objecting to that result on one or more of the*  
9 *following grounds:*

10 *(1) The agricultural employer named in the petition for mediated*  
11 *election engaged in misconduct in opposing the petition.*

12 *(2) The mediator improperly determined the geographical scope*  
13 *of the bargaining unit.*

14 *(3) The mediated election was conducted improperly, and the*  
15 *impropriety affected the results of the election.*

16 *(b) If, after a hearing on the petition, the board determines that*  
17 *one or more of the grounds set forth in subdivision (a) were*  
18 *violated and that the misconduct affected the outcome of the*  
19 *mediated election, the board may, at its discretion, order that the*  
20 *labor organization be certified as the exclusive bargaining*  
21 *representative of the employees in the bargaining unit and that*  
22 *the employer pay all costs and expenses incurred by the labor*  
23 *organization.*

24 *1156.359. (a) For purposes of this chapter, a mediated election*  
25 *ballot is a ballot that is used by the board in a mediated election.*  
26 *The board is responsible for developing a standard mediated*  
27 *election ballot, and an accompanying envelope, that comply with*  
28 *all of the following:*

29 *(1) A mediated election ballot shall be marked with a unique*  
30 *number.*

31 *(2) A mediated election ballot shall provide for the selection by*  
32 *the voting agricultural employee of one of the following:*

33 *(A) Representation by a labor organization.*

34 *(B) That a ballot booth election be conducted.*

35 *(3) The ballot and the outside of a mediated election ballot*  
36 *envelope shall contain a space for the voting agricultural employee*  
37 *to sign his or her name, thereby acknowledging both of the*  
38 *following:*

39 *(A) That, by signing the ballot and the envelope, the employee*  
40 *understands that he or she is casting a ballot in a mediated election*

1 *for the purpose of either selecting union representation or choosing*  
2 *to hold a ballot booth election.*

3 *(B) That, by signing the ballot and the envelope, the employee*  
4 *represents that a promise or threat was not made to the employee*  
5 *regarding the casting of his or her ballot.*

6 *(4) The outside of a mediated election ballot envelope shall*  
7 *contain space for the following information:*

8 *(A) The name of the agricultural employer.*

9 *(B) The name of the labor organization.*

10 *(C) The name, address, and telephone number of the voting*  
11 *agricultural employee.*

12 *(b) A mediated election ballot is valid for the purposes of a*  
13 *mediated election if the ballot is signed by the voting agricultural*  
14 *employee and the envelope for the ballot is sealed and the outside*  
15 *of the envelope contains the name of the labor organization, the*  
16 *name of the agricultural employer, the name of the voting*  
17 *agricultural employee, and the signature of the employee. The*  
18 *voting agricultural employee is the only person permitted to place*  
19 *his or her mediated election ballot in the accompanying envelope*  
20 *provided by the board and to seal the envelope. A mediated election*  
21 *ballot may only be mailed or delivered to the board in the envelope*  
22 *provided by the board.*

23 *(c) A labor organization may fill out all of the information*  
24 *contained on the outside of the envelope, except for the employee's*  
25 *signature, and may mail or deliver to the board a mediated election*  
26 *ballot the labor organization has received from a voting*  
27 *agricultural employee.*

28 *(d) A mediated election ballot that satisfies the requirements of*  
29 *this section shall be valid for 12 months from the date the voting*  
30 *agricultural employee signs the ballot envelope that contains his*  
31 *or her ballot.*

32 *1156.360. (a) The board shall make available at a mediated*  
33 *election held pursuant to this article ballots, and all other election*  
34 *materials used to select labor representatives, printed in English*  
35 *and Spanish. The board may also make available at the mediated*  
36 *election ballots, and all other election materials used to select*  
37 *labor representatives, printed in any other language as may be*  
38 *requested by an agricultural labor organization or any agricultural*  
39 *employee eligible to vote under this part.*

1 (b) *The board shall be responsible for providing blank mediated*  
2 *election ballots and their accompanying envelopes to labor*  
3 *organizations and agricultural employees that request them. Only*  
4 *labor organizations or an agricultural employees may request and*  
5 *receive ballots from the board. An agricultural employee may*  
6 *request and receive only one ballot for himself or herself. Upon*  
7 *the request of a labor organization, the board shall issue to the*  
8 *labor organization standard mediated election ballots and*  
9 *accompanying envelopes in such numbers as are requested by the*  
10 *labor organization. A representative of the labor organization*  
11 *shall sign for the release of the requested mediated election ballots*  
12 *and accompanying envelopes.*

13 (c) *The board shall maintain a public record that contains all*  
14 *of the following information:*

15 (1) *The name of each agricultural employee who receives a*  
16 *mediated election ballot and the name of his or her employer.*

17 (2) *The name of each labor organization representative who*  
18 *receives a mediated election ballot and the name of the labor*  
19 *organization of the representative.*

20 (3) *The number of ballots received by each labor organization.*  
21 *1156.361. An agricultural employer and its agents shall not*  
22 *do any of the following:*

23 (a) *Request or receive a mediated election ballot from the board.*

24 (b) *Assist an agricultural employee in filling out a mediated*  
25 *election ballot envelope.*

26 (c) *Participate in, or in any way interfere with, an agricultural*  
27 *employee's selection of a choice on a mediated election ballot.*

28 *1156.362. (a) Within 30 days after the effective date of the*  
29 *statute that added this section, the board shall do both of the*  
30 *following:*

31 (1) *Request from the California State Mediation and*  
32 *Conciliation Service a list of 12 mediators who have experience*  
33 *in labor mediation. The list provided by the service may include*  
34 *names chosen from its own mediators or from a list of names*  
35 *supplied by the American Arbitration Association or the Federal*  
36 *Mediation and Conciliation Service.*

37 (2) *Designate two representatives, for the purpose of selecting*  
38 *mediators, as follows:*

1 (A) One representative shall be a representative of the labor  
2 organization that has participated in the highest number of  
3 elections under this part.

4 (B) One representative shall be a representative of the  
5 agricultural industry.

6 (b) (1) Within 45 days after the effective date of the statute that  
7 added this section, the two representatives designated pursuant  
8 to paragraph (2) of subdivision (a) shall jointly select six mediators  
9 from the list compiled pursuant to paragraph (1) of subdivision  
10 (a). If the two representatives cannot mutually agree on six  
11 mediators, they shall alternately strike names from the list until  
12 six mediators are chosen by process of elimination. If either  
13 representative fails or refuses to participate in the selection of  
14 mediators, the other representative shall select the mediators.

15 (2) If a selected mediator subsequently becomes unavailable,  
16 the representatives shall meet and select a replacement mediator  
17 using the process set forth in paragraph (1).

18 (c) A mediator selected pursuant to this section is an agent of  
19 the board in the performance of his or her duties.

20 1156.363. Upon selection of the six mediators pursuant to  
21 Section 1156.362, the board shall do all of the following:

22 (a) Establish a rotating schedule whereby at least one mediator  
23 and one alternate mediator are on standby throughout the calendar  
24 year to address any issues that arise in connection with the  
25 mediated election process.

26 (b) Publicly post the schedule of the mediators, including the  
27 names of the mediator and the alternate mediator for each period  
28 of time in the scheduled rotation.

29 (c) Establish and publicize a toll-free telephone number that  
30 agricultural employees may use to contact a mediator with  
31 questions regarding the mediated election process or their rights  
32 under this part, or to report an incident of intimidation, a threat,  
33 or coercion by a labor organization or an agricultural employer.  
34 When needed, the board shall provide a translator to allow the  
35 mediator to communicate with an employee in the language spoken  
36 by the employee.

37 1156.364. (a) The board shall adopt a standard for conflict  
38 of interest for a mediator selected pursuant to Section 1156.362.  
39 The board shall have the authority to remove a mediator who  
40 violates the conflict of interest standard.

1 (b) The board shall have the authority to set aside a decision  
2 of a mediator that is based on an error of law or a clearly  
3 erroneous factual finding or an abuse of discretion and the decision  
4 of the mediator affects the substantial rights of the parties.

5 (c) The board shall vacate the mediator's decision and shall  
6 immediately appoint an alternate mediator to proceed with the  
7 mediated election if the board finds any of the following:

8 (1) That the decision of the mediator was procured by  
9 corruption, fraud, or other undue means.

10 (2) That corruption was in the mediator.

11 (3) That the rights of a party were substantially prejudiced by  
12 the misconduct of the mediator.

13 1156.365. (a) The board shall promulgate a set of rules, titled  
14 "Rules of Conduct for a Mediated Election," that shall do all of  
15 the following:

16 (1) Explain the mediated election process.

17 (2) Explain the mediator's role in the process.

18 (3) Explain the right of an agricultural employee to request a  
19 mediated election ballot from the board or the labor organization.

20 (4) Provide specific instructions regarding how an agricultural  
21 employee can request a mediated election ballot from the board  
22 or the labor organization.

23 (5) Provide specific instructions regarding how an agricultural  
24 employee can deliver or mail his or her ballot to the board,  
25 including all of the following:

26 (A) That only an agricultural employee is permitted to place  
27 and seal a mediated election ballot in the envelope provided by  
28 the board.

29 (B) That a mediated election ballot may be mailed or delivered  
30 to the board only in the envelope provided by the board.

31 (C) That an agricultural employee has five days in which to  
32 deliver or mail his or her ballot to the board from the date of the  
33 filing of a petition for a mediated election, and that a ballot not  
34 timely received shall be rejected.

35 (D) That an agricultural employee may submit only one  
36 mediated election ballot to the board once a petition for a mediated  
37 election is filed for that employee's agricultural employer.

38 (6) Explain that an agricultural employee may refuse to sign a  
39 mediated election ballot.

1 (7) Explain that an agricultural employee may contact a  
 2 mediator in confidence by the means described in subdivision (c)  
 3 of Section 1156.363.

4 (b) The board shall develop a simple, easily readable pamphlet  
 5 that contains the Rules of Conduct for distribution to agricultural  
 6 employees.

7 (c) The board shall provide the Rules of Conduct to a labor  
 8 organization at the time the organization requests mediated  
 9 election ballots pursuant to subdivision (b) of Section 1156.360.  
 10 The board shall additionally provide the Rules of Conduct to  
 11 agricultural employees when the board notifies those employees  
 12 of the filing of a petition for a mediated election pursuant to Section  
 13 1156.351.

14 (d) A labor organization shall provide the Rules of Conduct to  
 15 an agricultural employee at the time the organization provides the  
 16 employee with a mediated election ballot and accompanying  
 17 envelope.

18 SEC. 10. The heading of Article 4 (commencing with Section  
 19 1156.4) is added to Chapter 5 of Part 3.5 of Division 2 of the Labor  
 20 Code, to read:

21  
 22 *Article 4. Miscellaneous Provisions*

23  
 24 SEC. 11. Section 1156.4 of the Labor Code is amended to read:

25 1156.4. Recognizing that agriculture is a seasonal occupation  
 26 for a majority of agricultural employees, and wishing to provide  
 27 the fullest scope for employees' enjoyment of the rights included  
 28 in this part, the board shall not consider a ~~representation~~ petition  
 29 for a ballot booth election, a petition for mediated election, or a  
 30 petition to decertify as timely filed unless the employer's payroll  
 31 reflects 50 percent of the peak agricultural employment for ~~such~~  
 32 that employer for the current calendar year for the payroll period  
 33 immediately preceding the filing of the ~~petition~~.

34 In petition. In this connection, the peak agricultural employment  
 35 for the prior season shall alone not be a basis for ~~such~~ this  
 36 determination, but rather the board shall estimate peak employment  
 37 on the basis of acreage and crop statistics, which shall be applied  
 38 uniformly throughout the State of California, and upon all other  
 39 relevant data.

40 SEC. 12. Section 1156.7 of the Labor Code is amended to read:

1 1156.7. (a) ~~No~~A collective-bargaining agreement executed  
2 prior to the effective date of this chapter shall *not* bar a petition  
3 for an election.

4 (b) A collective-bargaining agreement executed by an employer  
5 and a labor organization certified as the exclusive bargaining  
6 representative of ~~his~~ *the employer's* employees pursuant to this  
7 chapter shall be a bar to a petition for an election among ~~such~~ *the*  
8 employees for the term of the agreement, but ~~in any event such~~  
9 *this* bar shall not exceed three years, provided that both the  
10 following conditions are met:

11 (1) The agreement is in writing and executed by all parties  
12 thereto.

13 (2) ~~It~~ *The agreement* incorporates the substantive terms and  
14 conditions of employment of ~~such~~ *the* employees.

15 (c) (1) Upon the filing with the board by an employee or group  
16 of employees of a petition signed by 30 percent or more of the  
17 agricultural employees in a bargaining unit represented by a  
18 certified labor organization which is a party to a valid  
19 collective-bargaining agreement, requesting that such labor  
20 organization be decertified, the board shall conduct an election by  
21 ~~secret ballot booth~~ pursuant to ~~the applicable provisions of this~~  
22 ~~chapter~~ *Article 2 (commencing with Section 1156.310)*, and shall  
23 certify the results to such labor organization and employer.

24 ~~However, such a~~

25 (2) *A petition filed pursuant to paragraph (1)* shall not be  
26 deemed timely unless it is filed during the year preceding the  
27 expiration of a collective-bargaining agreement which would  
28 otherwise bar the holding of an election, and when the number of  
29 agricultural employees is not less than 50 percent of the employer's  
30 peak agricultural employment for the current calendar year.

31 (d) Upon the filing with the board of a signed petition by an  
32 agricultural employee or group of agricultural employees, or ~~any~~  
33 ~~an~~ individual or labor organization acting ~~in their~~ *on behalf of the*  
34 *employees*, accompanied by authorization cards signed by a  
35 majority of the employees in an appropriate bargaining unit, ~~and~~  
36 ~~alleging all the conditions of paragraphs (1), (2), and (3)~~, the board  
37 shall immediately investigate such petition and, if it has reasonable  
38 cause to believe that a bona fide question of representation exists,  
39 it shall direct an election by ~~secret ballot booth~~ pursuant to ~~the~~  
40 ~~applicable provisions of this chapter~~ *Article 2 (commencing with*

1 *Section 1156.310). The board shall only take such action if all of*  
 2 *the following conditions are alleged in the petition:*

3 (1) That the number of agricultural employees currently  
 4 employed by the employer named in the petition, as determined  
 5 from ~~his~~ *the employer's* payroll immediately preceding the filing  
 6 of the petition, is not less than 50 percent of ~~his~~ *the employer's*  
 7 peak agricultural employment for the current calendar year.

8 (2) That ~~no~~ *a* valid election pursuant to this ~~section~~ *part* has *not*  
 9 been conducted among the agricultural employees of the employer  
 10 named in the petition within the 12 months immediately preceding  
 11 the filing thereof.

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

16 *SEC. 13. Section 1157 of the Labor Code is amended to read:*

17 1157. (a) All agricultural employees of the employer whose  
 18 names appear on the payroll applicable to the payroll period  
 19 immediately preceding the filing of ~~the petition of such an election~~  
 20 *a petition for a ballot booth election, a petition for mediated*  
 21 *election, or a petition to decertify* shall be eligible to vote. An  
 22 economic striker shall be eligible to vote under such regulations  
 23 as the board ~~shall find~~ *finds* are consistent with the purposes and  
 24 provisions of this part in ~~any~~ *an* election, provided that the striker  
 25 who has been permanently replaced shall not be eligible to vote  
 26 in ~~any~~ *an* election conducted more than 12 months after the  
 27 commencement of the strike.

28 (b) In the case of ~~elections~~ *an election* conducted within 18  
 29 months of the effective date of this part ~~which involve~~ *that involves*  
 30 ~~a labor disputes which~~ *dispute that* commenced prior to ~~such~~ *the*  
 31 effective date, the board shall have the jurisdiction to adopt fair,  
 32 equitable, and appropriate eligibility rules, which shall effectuate  
 33 the policies of this part, with respect to the eligibility of *an*  
 34 economic ~~strikers~~ *striker* who ~~were~~ *was* paid for work performed  
 35 or for paid vacation during the payroll period immediately  
 36 preceding the expiration of a collective-bargaining agreement or  
 37 the commencement of a strike; ~~provided, however,~~ that in no event  
 38 shall the board afford eligibility to ~~any such~~ *a* striker who has not  
 39 performed ~~any~~ services for the employer during the 36-month  
 40 period immediately preceding the effective date of this part.

1     *SEC. 14. Section 1157.2 of the Labor Code is repealed.*

2     ~~1157.2. In any election where none of the choices on the ballot~~  
3 ~~receives a majority, a runoff shall be conducted, the ballot~~  
4 ~~providing for a selection between the two choices receiving the~~  
5 ~~largest and second largest number of valid votes cast in the election.~~

6     *SEC. 15. Section 1158 of the Labor Code is amended to read:*

7     1158. Whenever an order of the board made pursuant to Section  
8 1160.3 is based in whole or in part upon the facts certified  
9 following an investigation pursuant to Sections ~~1156.3~~ 1156.310  
10 to ~~1157.2~~ 1157, inclusive, and there is a petition for review of ~~such~~  
11 ~~the order, such~~ the certification and the record of ~~such the~~  
12 investigation shall be included in the transcript of the entire record  
13 required to be filed under Section 1160.8 and thereupon the decree  
14 of the court enforcing, modifying, or setting aside in whole or in  
15 part the order of the board shall be made and entered upon the  
16 pleadings, testimony, and proceedings set forth in ~~such the~~  
17 transcript.

18     *SEC. 16. Section 1159.5 is added to the Labor Code, to read:*

19     1159.5. The board shall decertify a labor organization if either  
20 of the following occur:

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

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

35     *SEC. 17. Section 1160.3 of the Labor Code is amended to read:*

36     1160.3. (a) The testimony taken by ~~such~~ a member, agent, or  
37 agency, or the board in ~~such~~ a hearing shall be reduced to writing  
38 and filed with the board. Thereafter, in its discretion, the board,  
39 upon notice, may take further testimony or hear argument. ~~It~~

1 (b) *If, based upon the preponderance of the testimony taken,*  
2 *the board ~~shall be of the opinion~~ finds that any a person named in*  
3 *the complaint has engaged in or is engaging in any ~~such~~ unfair*  
4 *labor practice, the board shall state its findings of fact and shall*  
5 *issue and cause to be served on ~~such~~ the person an order requiring*  
6 *~~such~~ that person to cease and desist from ~~such~~ the unfair labor*  
7 *practice;; to take affirmative action, including reinstatement of*  
8 *employees an employee with or without backpay, ~~and~~ making*  
9 *employees whole, when the board deems such relief appropriate,*  
10 *for the loss of pay resulting from the employer's refusal to bargain;;*  
11 *and to provide ~~such~~ any other relief as will effectuate the policies*  
12 *of this part. Where an order directs reinstatement of an employee,*  
13 *backpay may be required of the employer or labor organization,*  
14 *as the case may be, responsible for the discrimination suffered by*  
15 *him the employee. ~~Such~~ The order may further require ~~such~~ the*  
16 *person named in the complaint to make reports from time to time*  
17 *showing the extent to which ~~it~~ the person has complied with the*  
18 *order. ~~It~~,*

19 (c) *If, based upon the preponderance of the testimony taken,*  
20 *the board finds that an employer has willfully or repeatedly*  
21 *engaged in an unfair labor practice under subdivision (a) or (c)*  
22 *of Section 1153 while employees of the employer were seeking*  
23 *representation by a labor organization or after a labor*  
24 *organization has been designated as a representative under Section*  
25 *1156, the board may, in addition to any other order permitted by*  
26 *this section, impose a civil penalty of up to twenty thousand dollars*  
27 *(\$20,000) for each violation. The board shall determine the amount*  
28 *of the civil penalty imposed based on the impact of the unfair labor*  
29 *practice on the affected employee, on other persons seeking to*  
30 *exercise rights guaranteed under this part, or on the public interest.*

31 (d) *If, based upon the preponderance of the testimony taken,*  
32 *the board ~~shall be of the opinion~~ finds that the person named in*  
33 *the complaint has not engaged in or is not engaging in ~~any~~ an*  
34 *unfair labor practice, the board shall state its findings of fact and*  
35 *shall issue an order dismissing the complaint. ~~No~~ An order of the*  
36 *board shall not require the reinstatement of ~~any~~ an individual as*  
37 *an employee who has been suspended or discharged, or the*  
38 *payment to him or her of any backpay, if ~~such~~ the individual was*  
39 *suspended or discharged for cause. In case the evidence is presented*  
40 *before a member of the board, or before an administrative law*

1 officer thereof, ~~such~~ *the* member, or ~~such~~ administrative law  
2 officer, as the case may be, shall issue and cause to be served on  
3 the parties to the proceedings a proposed report, together with a  
4 ~~recommended order~~ *recommendation*, which shall be filed with  
5 the board, and, if ~~no exceptions are~~ *an exception is not* filed within  
6 20 days after service thereof upon ~~such~~ *the* parties, or within ~~such~~  
7 *a* further period as the board may authorize, ~~such~~ *the* recommended  
8 order shall become the order of the board and become effective as  
9 therein prescribed.

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

15 *SEC. 18. Section 1160.5 of the Labor Code is amended to read:*

16 1160.5. Whenever it is charged that any person has engaged  
17 in an unfair labor practice within the meaning of *subparagraph*  
18 *(D)* of paragraph ~~(4)~~ (2) of subdivision (d) of Section 1154, the  
19 board is empowered and directed to hear and determine the dispute  
20 out of which ~~such~~ *the* unfair labor practice ~~shall have arisen~~ *arose*,  
21 unless within 10 days after notice that ~~such~~ *the* charge has been  
22 filed, the parties to ~~such~~ *the* dispute submit to the board satisfactory  
23 evidence that they have adjusted, or agreed upon methods for the  
24 voluntary adjustment of the dispute. Upon compliance by the  
25 parties to the dispute with the decision of the board or upon such  
26 voluntary adjustment of the dispute, ~~such~~ *the* charge shall be  
27 dismissed.

28 *SEC. 19. Section 1160.6 of the Labor Code is amended to read:*

29 1160.6. (a) Whenever it is charged that (1) *an employer has,*  
30 *while employees of that employer are seeking representation by a*  
31 *labor organization or after a labor organization has been*  
32 *designated as a representative under Section 1156, discharged or*  
33 *otherwise discriminated against an employee in violation of*  
34 *subdivision (c) of Section 1153, threatened to discharge or*  
35 *otherwise discriminate against an employee in violation of*  
36 *subdivision (a) of Section 1153, or engaged in any other unfair*  
37 *labor practice within the meaning of subdivision (a) of Section*  
38 *1153 that significantly interfered with, restrained, or coerced*  
39 *employees in the exercise of the rights guaranteed in Section 1152*  
40 *or (2) any person has engaged in an unfair labor practice within*

1 the meaning of *subparagraph (A), (B), or (C) of paragraph*~~(4)~~,  
2 ~~(2), or (3)~~ of subdivision (d), or of subdivision (g), of Section 1154,  
3 or of Section 1155, the preliminary investigation of ~~such~~ *the* charge  
4 shall be made forthwith and given priority over all other cases  
5 except cases of like character in the office where it is filed or to  
6 which it is referred. ~~If,~~

7 *(b) If,* after ~~such~~ *the* investigation, the officer or regional attorney  
8 to whom the matter may be referred has reasonable cause to believe  
9 ~~such~~ *the* charge is true and that a complaint should issue, he *or she*  
10 shall, on behalf of the board, petition the superior court in the  
11 county in which the unfair labor practice in question has occurred,  
12 is alleged to have occurred, or where the person alleged to have  
13 committed the unfair labor practice resides or transacts business,  
14 for appropriate injunctive relief pending the final adjudication of  
15 the board with respect to the matter. The officer or regional attorney  
16 shall make all reasonable efforts to advise the party against whom  
17 the restraining order is sought of his *or her* intention to seek ~~such~~  
18 *an* order at least 24 hours prior to doing so. In the event the officer  
19 or regional attorney has been unable to advise ~~such~~ *a* party of his  
20 *or her* intent at least 24 hours in advance, he *or she* shall submit  
21 a declaration to the court under penalty of perjury setting forth in  
22 detail the efforts he *or she* has made. Upon the filing of ~~any~~ ~~such~~  
23 *a* petition, the superior court shall have jurisdiction to grant such  
24 injunctive relief or temporary restraining order as it deems just  
25 and proper. Upon the filing of ~~any~~ ~~such~~ *a* petition, the board shall  
26 cause notice thereof to be served upon any person involved in the  
27 charge, and ~~such~~ *that* person, including the charging party, shall  
28 be given an opportunity to appear by counsel and present any  
29 relevant testimony. For the purposes of this section, the superior  
30 court shall be deemed to have jurisdiction of a labor organization  
31 either in the county in which ~~such~~ *the* organization maintains its  
32 principal office, or in any county in which its duly authorized  
33 officers or agents are engaged in promoting or protecting the  
34 interests of employee members. The service of legal process upon  
35 ~~such~~ *an* officer or agent shall constitute service upon the labor  
36 organization and make ~~such~~ *the* organization a party to the suit.  
37 In situations where such relief is appropriate, the procedure  
38 specified herein shall apply to charges with respect to  
39 *subparagraph (D) of paragraph*~~(4)~~ *(2)* of subdivision (d) of Section  
40 1154.

1 ~~SEC. 2.~~

2 *SEC. 20.* Section 1161 of the Labor Code is amended to read:

3 1161. (a) The Agricultural Employee Relief Fund is hereby  
4 created as a special fund in the State Treasury and is continuously  
5 appropriated to the Agricultural Labor Relations Board for the  
6 purposes specified in subdivision (c). The board shall act as a  
7 trustee of all moneys deposited in the fund.

8 (b) Monetary relief ordered by the board pursuant to this part  
9 to be paid by an employer to an employee shall be collected by  
10 the board on behalf of the employee. All monetary relief collected  
11 by the board shall be remitted to the employee for whom the board  
12 collected the money.

13 (c) (1) Notwithstanding Section 1519 of the Code of Civil  
14 Procedure, if the board has made a diligent effort to locate an  
15 employee on whose behalf the board has collected monetary relief  
16 pursuant to this part, and is unable to locate the employee or the  
17 lawful representative of the employee for a period of two years  
18 after the date the board collected the monetary relief, the board  
19 shall deposit those moneys in the fund.

20 (2) Moneys in the fund shall be used by the board to pay  
21 employees the unpaid balance of monetary relief ordered by the  
22 board to be paid by an employer to an employee. Prior to making  
23 payment from the fund, the board first shall make a finding that,  
24 in an individual case, the collection of the full amount of the  
25 monetary relief ordered is not possible after reasonable efforts  
26 have been made to collect the balance from the employer.

27 (d) As used in this section, "fund" means the Agricultural  
28 Employee Relief Fund.