

AMENDED IN SENATE AUGUST 22, 2008

AMENDED IN SENATE AUGUST 4, 2008

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 Sections 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. 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 its power at another
5 place in California.
6 (b) Besides the principal office in Sacramento, as provided in
7 subdivision (a), the board may establish offices in other cities as
8 it deems necessary. The board may delegate to the personnel of
9 these offices powers as it deems appropriate to determine the unit
10 appropriate for the purpose of collective bargaining, to investigate
11 and provide for a hearing, to determine whether a question of
12 representation exists, to direct an election pursuant to the provisions
13 of Chapter 5 (commencing with Section 1156), and to certify the
14 results of such election, and to investigate, conduct a hearing and
15 make determinations relating to an unfair labor practice. The board
16 may review action taken pursuant to the authority delegated under
17 this section upon a request for a review of such action filed with
18 the board by an interested party. Such review made by the board
19 shall not, unless specifically ordered by the board, operate as a
20 stay of action taken. The entire record considered by the board in
21 considering or acting upon such request or review shall be made

1 available to all parties prior to such consideration or action, and
2 the board's findings and action thereon shall be published as a
3 decision of the board.

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

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

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

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

15 1154. It shall be an unfair labor practice for a labor organization
16 or its agents to do any of the following:

17 (a) To restrain or coerce:

18 (1) An agricultural employee in the exercise of the rights
19 guaranteed in Section 1152. This paragraph shall not impair the
20 right of a labor organization to prescribe its own rules with respect
21 to the acquisition or retention of membership therein.

22 (2) An agricultural employer in the selection of his or her
23 representative for the purposes of collective bargaining or the
24 adjustment of a grievance.

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

32 (c) To refuse to bargain collectively in good faith with an
33 agricultural employer, provided it is the representative of his or
34 her employees subject to the provisions of Chapter 5 (commencing
35 with Section 1156).

36 (d) (1) To do either of the following:

37 (A) To engage in, or to induce or encourage any individual
38 employed by a person to engage in, a strike or a refusal in the
39 course of his or her employment to use, manufacture, process,

1 transport, or otherwise handle or work on goods, articles, materials,
2 or commodities, or to perform any services.

3 (B) To threaten, coerce, or restrain any person.

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

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

10 (B) Forcing or requiring a person to cease using, selling,
11 transporting, or otherwise dealing in the products of another
12 producer, processor, or manufacturer, or to cease doing business
13 with another person, or forcing or requiring another employer to
14 recognize or bargain with a labor organization as the representative
15 of the employees of the employer unless the labor organization
16 has been certified as the representative of the employees. Nothing
17 contained in this paragraph shall be construed to make unlawful,
18 where not otherwise unlawful, a primary strike or primary
19 picketing.

20 (C) Forcing or requiring an employer to recognize or bargain
21 with a particular labor organization as the representative of the
22 agricultural employees of the employer if another labor
23 organization has been certified as the representative of the
24 employees under the provisions of Chapter 5 (commencing with
25 Section 1156).

26 (D) Forcing or requiring an employer to assign particular work
27 to an employee in a particular labor organization or in a particular
28 trade, craft, or class, unless the employer fails to conform to an
29 order or certification of the board determining the bargaining
30 representative for employees performing such work.

31 (3) (A) Nothing contained in this subdivision shall be construed
32 to prohibit publicity, including picketing for the purpose of
33 truthfully advising the public, including consumers, that a product
34 or ingredient thereof is produced by an agricultural employer with
35 whom the labor organization has a primary dispute and are
36 distributed by another employer, as long as the publicity does not
37 have an effect of inducing an individual employed by a person
38 other than the primary employer in the course of his or her
39 employment to refuse to pick up, deliver, or transport goods, or
40 not to perform services at the establishment of the employer

1 engaged in such distribution, and as long as the publicity does not
2 have the effect of requesting the public to cease patronizing the
3 other employer. However, publicity which includes picketing and
4 has the effect of requesting the public to cease patronizing another
5 employer, shall be permitted only if the labor organization is
6 currently certified as the representative of the primary employer's
7 employees.

8 (B) Publicity other than picketing, but including peaceful
9 distribution of literature which has the effect of requesting the
10 public to cease patronizing the other employer, as described in
11 subparagraph (A), shall be permitted only if the labor organization
12 has not lost an election for the primary employer's employees
13 within the preceding 12-month period, and no other labor
14 organization is currently certified as the representative of the
15 primary employer's employees.

16 (4) Nothing contained in this subdivision shall be construed to
17 prohibit publicity, including picketing, which may not be prohibited
18 under the United States Constitution or the California Constitution.

19 (5) Nothing contained in this subdivision shall be construed to
20 apply or be applicable to a labor organization in its representation
21 of workers who are not agricultural employees. Such a labor
22 organization shall continue to be governed in its intrastate activities
23 for nonagricultural workers by Section 923 and applicable judicial
24 precedent.

25 (e) To require of an employee covered by an agreement
26 authorized under subdivision (c) of Section 1153 the payment, as
27 a condition precedent to becoming a member of a labor
28 organization, of a fee in an amount which the board finds excessive
29 or discriminatory under the totality of the circumstances. In making
30 such a finding, the board shall consider, among other relevant
31 factors, the practices and customs of labor organizations in the
32 agriculture industry and the wages currently paid to the employees
33 affected.

34 (f) To cause or attempt to cause an agricultural employer to pay
35 or deliver, or agree to pay or deliver, money or another thing of
36 value, in the nature of an exaction, for services which are not
37 performed or not to be performed.

38 (g) (1) To picket or cause to be picketed, or threaten to picket
39 or cause to be picketed, an employer where an intent thereof is
40 either forcing or requiring an employer to recognize or bargain

1 with a labor organization as the representative of the employees
2 of the employer, or forcing or requiring the employees of an
3 employer to accept or select the labor organization as their
4 collective-bargaining representative, unless the labor organization
5 is currently certified as the representative of such employees, in
6 any of the following cases:

7 (A) Where the employer has lawfully recognized in accordance
8 with this part any other labor organization and a question
9 concerning representation may not appropriately be raised pursuant
10 to Article 2 (commencing with Section 1156.310) of Chapter 5.

11 (B) Where within the preceding 12 months a valid election under
12 Chapter 5 (commencing with Section 1156) has been conducted.

13 (2) (A) Nothing in this subdivision shall be construed to prohibit
14 picketing or other publicity for the purpose of truthfully advising
15 the public (including consumers) that an employer does not employ
16 members of, or have a contract with, a labor organization, unless
17 an effect of such picketing is to induce an individual employed by
18 another person in the course of his or her employment, not to pick
19 up, deliver, or transport goods or not to perform services.

20 (B) Nothing in this subdivision shall be construed to permit an
21 act which would otherwise be an unfair labor practice under this
22 section.

23 (h) To picket or cause to be picketed, or threaten to picket or
24 cause to be picketed, an employer where an object thereof is either
25 forcing or requiring an employer to recognize or bargain with the
26 labor organization as a representative of the employees of the
27 employer unless the labor organization is currently certified as the
28 collective-bargaining representative of such employees.

29 (i) Nothing contained in this section shall be construed to make
30 unlawful a refusal by a person to enter upon the premises of an
31 agricultural employer, other than his or her own employer, if the
32 employees of the employer are engaged in a strike ratified or
33 approved by a representative of the employees whom the employer
34 is required to recognize under this part.

35 SEC. 4. The heading of Article 1 (commencing with Section
36 1156) is added to Chapter 5 of Part 3.5 of Division 2 of the Labor
37 Code, to read:

38
39 Article 1. General Provisions
40

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

(a) A representative designated or selected by a secret ballot either by a ballot booth election pursuant to Article 2 (commencing with Section 1156.310), or by a mediated election pursuant to Article 3 (commencing with Section 1156.350), for the purposes of collective bargaining by the majority of the agricultural employees in a bargaining unit shall be the exclusive representative of the agricultural employees in the unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

(b) An individual agricultural employee or a group of agricultural employees has the right at any time to present grievances to their agricultural employer and to have those grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect, if the bargaining representative has been given an opportunity to be present at the adjustment.

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

1156.2. For the purposes of this chapter, a bargaining unit is the agricultural employees of an employer. If the agricultural employees of an employer are employed in two or more noncontiguous geographical areas, the board shall determine the appropriate unit or units of agricultural employees in which a ballot booth election or a mediated election shall be conducted.

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

SEC. 8. Article 2 (commencing with Section 1156.310) is added to Chapter 5 of Part 3.5 of Division 2 of the Labor Code, to read:

Article 2. Ballot Booth Elections

1156.310. 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 an individual or labor organization acting on behalf of those agricultural employees, in accordance with the rules and regulations prescribed by the board. The petition shall allege all of the following:

1 (a) 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 (b) That a valid election pursuant to this section has not been
7 conducted among the agricultural employees of the employer
8 named in the petition within the 12 months immediately preceding
9 the filing of the petition.

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

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

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

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

30 1156.312. (a) The board shall make available at a ballot booth
31 election held pursuant to this section ballots, and all other election
32 materials used to select labor representatives, printed in English
33 and Spanish. The board may also make available at the ballot booth
34 election ballots, and all other election materials used to select labor
35 representatives, printed in any other language as may be requested
36 by an agricultural labor organization or any agricultural employee
37 eligible to vote under this part. A ballot booth election ballot,
38 except ballots in runoff elections in which the choice is between
39 labor organizations, shall provide the employee with the
40 opportunity to vote against representation by a labor organization

1 by providing an appropriate space designated “No Labor
2 Organizations.”

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

7 1156.313. In an election by ballot booth where none of the
8 choices on the ballot receive a majority of the valid votes cast, a
9 runoff shall be conducted. The runoff ballot shall provide for a
10 selection between the two choices receiving the largest and second
11 largest number of valid votes cast in the ballot booth election.

12 1156.314. (a) Within five days after an election, a person may
13 file with the board a signed petition asserting that allegations made
14 in the petition filed pursuant to Section 1156.310 were incorrect,
15 asserting that the board improperly determined the geographical
16 scope of the bargaining unit, or objecting to the conduct of the
17 election or conduct affecting the results of the election.

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

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

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

34
35 Article 3. Mediated Elections
36

37 1156.350. (a) A labor organization may be certified as the
38 exclusive bargaining representative of a bargaining unit by means
39 of a mediated election. For purposes of this chapter, a mediated
40 election is a representative election that is mediated by a neutral

1 mediator and that permits a bargaining unit to either select a labor
2 organization as its representative for collective bargaining purposes
3 without holding a ballot booth election or to choose to hold a ballot
4 booth election.

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

7 1156.351. (a) A labor organization may file with the board a
8 petition for a mediated election. The petition shall allege all of the
9 following:

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

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

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

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

23 (b) Upon the filing of a petition for a mediated election pursuant
24 to this section, the board shall not permit the filing of either of the
25 following until the board determines the final disposition of the
26 petition for mediated election:

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

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

31 1156.352. (a) A labor organization that has filed a petition for
32 a mediated election pursuant to Section 1156.351 shall serve the
33 petition on the agricultural employer named in the petition on the
34 same day the petition is filed with the board.

35 (b) Within 48 hours of being served with a petition, the employer
36 shall file with the board a response to the petition in accordance
37 with any rules and regulations prescribed by the board. The
38 response shall include, in both printed and electronic formats, a
39 complete and accurate list, organized by crew or department, of
40 the full name, current mailing and residence addresses, telephone

1 number, and job classification of each agricultural employee who
2 was employed by the employer at any time during the employer's
3 last payroll period that ended prior to the filing of the petition.

4 (c) Immediately upon receiving the list of employees described
5 in subdivision (b), the board shall provide the list, in both printed
6 and electronic formats, to the labor organization that filed the
7 petition.

8 1156.353. (a) Upon receipt of a petition for a mediated
9 election, the board immediately shall notify the agricultural
10 employees of the employer named in the petition of the filing of
11 the petition and shall provide to each employee the Rules of
12 Conduct described in Section 1156.365.

13 (b) An employee shall have five days from the filing of the
14 petition to mail or deliver his or her mediated election ballot to the
15 board. Upon the expiration of the five-day period following the
16 filing of a mediated election petition, the board shall allow an
17 additional four days for the purpose of receiving mailed ballots.
18 A ballot shall be valid only if it is postmarked or delivered to the
19 board within the five-day period.

20 (c) A ballot may not be filed with the board until a petition for
21 a mediated election is filed by a labor organization naming the
22 relevant agricultural employer. A ballot received by the board prior
23 to the filing of a petition shall be rejected and returned to the voting
24 employee.

25 (d) The board shall designate a central location for the receipt,
26 filing, and date stamping of mediated election ballots received by
27 the board.

28 1156.354. (a) Upon receipt of a petition for a mediated
29 election, the board shall notify the mediator who is designated to
30 be the standby mediator under the schedule established pursuant
31 to subdivision (a) of Section 1156.363 or, if he or she is not
32 available, the designated alternate mediator.

33 (b) Upon receiving notification from the board pursuant to
34 subdivision (a), the notified mediator shall immediately commence
35 an investigation into the validity of the petition for a mediated
36 election. The board shall provide any necessary assistance required
37 by the mediator for purposes of carrying out his or her investigation
38 and resolving the petition.

39 (c) Within 48 hours of receiving notification from the board of
40 the filing of the petition, the mediator shall convene a preelection

1 conference that shall include representatives of the agricultural
2 employer and the labor organization. At the preelection conference,
3 the mediator shall review the petition for a mediated election filed
4 by the labor organization and the response filed by the employer,
5 if any, and shall determine all of the following:

6 (1) Whether the petition meets the requirements set forth in
7 subdivision (a) of Section 1156.351.

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

9 (3) Which employees are eligible to vote in the mediated election
10 and a challenge made to the eligibility of an employee to vote in
11 the mediated election. The board shall promulgate regulations that
12 set forth a process for resolving challenges to the eligibility of an
13 employee to vote in the mediated election.

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

16 1156.355. (a) On the day following the expiration of the
17 four-day period for receiving mailed ballots, as set forth by
18 subdivision (b) of Section 1156.353, the mediator shall reconvene
19 the parties that attended the preelection conference pursuant to
20 subdivision (c) of Section 1156.354 for the purpose of determining
21 the outcome of the petition. The mediator shall tally the ballots
22 according to the following procedures:

23 (1) The mediator first shall determine whether all of the names
24 on the mediated election ballot envelopes match names on the
25 eligible voter list established at the preelection conference. If less
26 than 50 percent of the agricultural employees whose names appear
27 on the eligible voter list submit ballots, the mediator shall dismiss
28 the petition for a mediated election. If the board receives ballots
29 from 50 percent or more of the agricultural employee whose names
30 appear on the eligible voter list, the mediator shall open each
31 mediated election ballot envelope.

32 (2) In making the determination required by paragraph (1), the
33 mediator shall compare the name on each mediated election ballot
34 envelope received by the board with the names on the eligible
35 voter list established at the preelection conference. The mediator
36 shall resolve any discrepancies in favor of counting the ballot if
37 the preponderance of the evidence establishes that the employee
38 who signed the envelope is the same person as the employee on
39 the eligible voter list.

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

6 (4) The mediator shall tally the ballots received from eligible
7 employees and shall record the votes for each of the two choices
8 described in paragraph (2) of subdivision (a) of Section 1156.359.
9 If the board receives two ballots from the same employee delivered
10 at two different points in time, only the ballot received first in time
11 shall be opened and counted. If the board receives two ballots from
12 the same employee at the same point in time, both ballots shall be
13 opened and examined. If both ballots make the same selection,
14 one ballot shall be counted and the other ballot shall be void. If
15 the ballots make different selections, both ballots shall be void.

16 (b) The board shall maintain the confidentiality of the employee
17 name on the mediated election ballot. The board shall treat the
18 mediated election ballot with the same confidentiality as a regular
19 ballot in a ballot booth election.

20 1156.356. (a) The petition for a mediated election shall be
21 resolved as follows:

22 (1) If the tally of ballots shows that more than 50 percent of the
23 employees eligible to vote voted for representation by a labor
24 organization, the mediator shall issue a report to the board
25 recommending that the labor organization be certified. The board,
26 upon receiving the mediator's report, shall issue an order certifying
27 the labor organization as the exclusive bargaining representative
28 of the employees in the bargaining unit. The employer's duty to
29 bargain with the labor organization commences immediately upon
30 certification of the organization by the board.

31 (2) If the tally of ballots shows that more than 50 percent of the
32 employees eligible to vote voted for a ballot booth election, the
33 mediator shall issue a report to the board recommending that the
34 board conduct a ballot booth election. The board, upon receiving
35 the mediator's report, shall order that a ballot booth election be
36 conducted.

37 (3) If the tally of ballots shows that neither option on the ballot
38 received more than 50 percent of the votes of employees eligible
39 to vote, the mediator shall issue a report to the board recommending
40 that the board dismiss the petition. The board, upon receiving the

1 mediator's report, shall order that the petition for *a* mediated
2 election be dismissed.

3 (b) If the board orders that a ballot booth election be held, the
4 board shall hold a ballot booth election pursuant to Article 2
5 (commencing with Section 1156.310) within seven days. The labor
6 organization that submitted the petition for *a* mediated election
7 shall be deemed qualified to appear on the ballot of the ballot booth
8 election.

9 1156.357. (a) Within five days after the board certifies a labor
10 organization pursuant to subdivision (a) of Section 1156.356, any
11 other labor organization or the agricultural employer named in the
12 mediated election petition may file with the board a petition
13 objecting to the certification on one or more of the following
14 grounds:

15 (1) The allegations in the petition for *a* mediated election are
16 false.

17 (2) The mediator improperly determined the geographical scope
18 of the bargaining unit.

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

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

23 (c) Upon the filing of a petition objecting to certification, the
24 board shall schedule a hearing on the petition and shall notify the
25 petitioner and the labor organization whose certification is being
26 challenged of the time and place of the hearing.

27 (d) If, after a hearing on the petition, the board determines that
28 the petitioner has made valid objections under subdivision (a) and
29 that the allegations supporting the objections are true, the board
30 shall revoke the certification granted to the labor organization. If
31 the board further determines that the grounds for revoking
32 certification result from intentional misconduct by the labor
33 organization, the board may, at its discretion, bar the labor
34 organization for one year from filing a petition for *a* mediated
35 election naming the same agricultural employer.

36 (e) If, after a hearing on the petition, the board determines that
37 an agricultural employer has assisted, supported, created, or
38 dominated a labor organization for the purpose of filing a mediated
39 election petition, the board shall revoke the certification awarded
40 pursuant to the mediated election and shall order the employer to

1 pay all costs and expenses incurred by the labor organization
2 challenging the results of the mediated election.

3 (f) If, after a hearing on the petition, the board determines that
4 the objections raised in the petition are without merit, the board
5 shall dismiss the petition.

6 (g) The filing of a petition objecting to certification under this
7 section shall not suspend the duty of an agricultural employer to
8 bargain with the labor organization, nor shall it toll the 180-day
9 period set forth in subdivision (a) of Section 1164.

10 1156.358. (a) A labor organization that has been denied
11 certification based on the results of a mediated election or a ballot
12 booth election that was directed by the board pursuant to Section
13 1156.356, or that has had a petition for a mediated election
14 dismissed or withdrawn, may, within five days after that result,
15 file with the board a petition objecting to that result on one or more
16 of the following grounds:

17 (1) The agricultural employer named in the petition for a
18 mediated election engaged in misconduct in opposing the petition.

19 (2) The mediator improperly determined the geographical scope
20 of the bargaining unit.

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

23 (b) If, after a hearing on the petition, the board determines that
24 one or more of the grounds set forth in subdivision (a) were
25 violated and that the misconduct affected the outcome of the
26 mediated election, the board may, at its discretion, order that the
27 labor organization be certified as the exclusive bargaining
28 representative of the employees in the bargaining unit and that the
29 employer pay all costs and expenses incurred by the labor
30 organization.

31 1156.359. (a) For purposes of this chapter, a mediated election
32 ballot is a ballot that is used by the board in a mediated election.
33 The board is responsible for developing a standard mediated
34 election ballot, and an accompanying envelope, that comply with
35 all of the following:

36 (1) A mediated election ballot shall be marked with a unique
37 number.

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

40 (A) Representation by a labor organization.

1 (B) That a ballot booth election be conducted.

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

6 (A) That, by signing the ballot and the envelope, the employee
7 understands that he or she is casting a ballot in a mediated election
8 for the purpose of either selecting union representation or choosing
9 to hold a ballot booth election.

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

13 (4) The outside of a mediated election ballot envelope shall
14 contain space for the following information:

15 (A) The name of the agricultural employer.

16 (B) The name of the labor organization.

17 (C) The name, address, and telephone number of the voting
18 agricultural employee.

19 (b) A mediated election ballot is valid for the purposes of a
20 mediated election if the ballot is signed by the voting agricultural
21 employee and the envelope for the ballot is sealed and the outside
22 of the envelope contains the name of the labor organization, the
23 name of the agricultural employer, the name of the voting
24 agricultural employee, and the signature of the employee. The
25 voting agricultural employee is the only person permitted to place
26 his or her mediated election ballot in the accompanying envelope
27 provided by the board and to seal the envelope. A mediated election
28 ballot may only be mailed or delivered to the board in the envelope
29 provided by the board.

30 (c) A labor organization may fill out all of the information
31 contained on the outside of the envelope, except for the employee's
32 signature, and may mail or deliver to the board a mediated election
33 ballot the labor organization has received from a voting agricultural
34 employee.

35 (d) A mediated election ballot that satisfies the requirements of
36 this section shall be valid for 12 months from the date the voting
37 agricultural employee signs the ballot envelope that contains his
38 or her ballot.

39 1156.360. (a) The board shall make available at a mediated
40 election held pursuant to this article ballots, and all other election

1 materials used to select labor representatives, printed in English
2 and Spanish. The board may also make available at the mediated
3 election ballots, and all other election materials used to select labor
4 representatives, printed in any other language as may be requested
5 by an agricultural labor organization or any agricultural employee
6 eligible to vote under this part.

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

19 (c) The board shall maintain a public record that contains all of
20 the following information:

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

23 (2) The name of each labor organization representative who
24 receives a mediated election ballot and the name of the labor
25 organization of the representative.

26 (3) The number of ballots received by each labor organization.
27 1156.361. An agricultural employer and its agents shall not do
28 any of the following:

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

30 (b) Assist an agricultural employee in filling out a mediated
31 election ballot envelope.

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

34 (d) *The board may issue an order barring a representative of*
35 *a labor organization from distributing mediated election ballots*
36 *for a period of not more than five years if, after a hearing, the*
37 *board determines by clear and convincing evidence that the*
38 *representative of the labor organization has done any of the*
39 *following:*

1 (1) *Forged a mediated election ballot or mediated election ballot*
2 *envelope.*

3 (2) *Opened a sealed mediated election ballot envelope.*

4 (3) *Destroyed a valid mediated election ballot.*

5 (4) *Withheld from turning in to the board a valid mediated*
6 *election ballot.*

7 (5) *Forged a signature on a mediated election ballot or mediated*
8 *election ballot envelope.*

9 1156.362. (a) Within 30 days after the effective date of the
10 statute that added this section, the board shall do both of the
11 following:

12 (1) Request from the California State Mediation and Conciliation
13 Service a list of 12 mediators who have experience in labor
14 mediation. The list provided by the service may include names
15 chosen from its own mediators or from a list of names supplied
16 by the American Arbitration Association or the Federal Mediation
17 and Conciliation Service.

18 (2) Designate two representatives, for the purpose of selecting
19 mediators, as follows:

20 (A) One representative shall be a representative of the labor
21 organization that has participated in the highest number of elections
22 under this part.

23 (B) One representative shall be a representative of the
24 agricultural industry.

25 (b) (1) Within 45 days after the effective date of the statute that
26 added this section, the two representatives designated pursuant to
27 paragraph (2) of subdivision (a) shall jointly select six mediators
28 from the list compiled pursuant to paragraph (1) of subdivision
29 (a). If the two representatives cannot mutually agree on six
30 mediators, they shall alternately strike names from the list until
31 six mediators are chosen by process of elimination. If either
32 representative fails or refuses to participate in the selection of
33 mediators, the other representative shall select the mediators.

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

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

39 1156.363. Upon selection of the six mediators pursuant to
40 Section 1156.362, the board shall do all of the following:

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

5 (b) Publicly post the schedule of the mediators, including the
6 names of the mediator and the alternate mediator for each period
7 of time in the scheduled rotation.

8 (c) Establish and publicize a toll-free telephone number that
9 agricultural employees may use to contact a mediator with
10 questions regarding the mediated election process or their rights
11 under this part, or to report an incident of intimidation, a threat,
12 or coercion by a labor organization or an agricultural employer.
13 When needed, the board shall provide a translator to allow the
14 mediator to communicate with an employee in the language spoken
15 by the employee.

16 1156.364. (a) The board shall adopt a standard for conflict of
17 interest for a mediator selected pursuant to Section 1156.362. The
18 board shall have the authority to remove a mediator who violates
19 the conflict of interest standard.

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

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

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

29 (2) That corruption was in the mediator.

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

32 1156.365. (a) The board shall promulgate a set of rules, titled
33 "Rules of Conduct for a Mediated Election," that shall do all of
34 the following:

35 (1) Explain the mediated election process.

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

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

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

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

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

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

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

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

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

21 (7) Explain that an agricultural employee may contact a mediator
22 in confidence by the means described in subdivision (c) of Section
23 1156.363.

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

27 (c) The board shall provide the Rules of Conduct to a labor
28 organization at the time the organization requests mediated election
29 ballots pursuant to subdivision (b) of Section 1156.360. The board
30 shall additionally provide the Rules of Conduct to agricultural
31 employees when the board notifies those employees of the filing
32 of a petition for a mediated election pursuant to Section 1156.351.

33 (d) A labor organization shall provide the Rules of Conduct to
34 an agricultural employee at the time the organization provides the
35 employee with a mediated election ballot and accompanying
36 envelope.

37 SEC. 10. The heading of Article 4 (commencing with Section
38 1156.4) is added to Chapter 5 of Part 3.5 of Division 2 of the Labor
39 Code, to read:

Article 4. Miscellaneous Provisions

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

1156.4. Recognizing that agriculture is a seasonal occupation for a majority of agricultural employees, and wishing to provide the fullest scope for employees' enjoyment of the rights included in this part, the board shall not consider a petition for a ballot booth election, a petition for mediated election, or a petition to decertify as timely filed unless the employer's payroll reflects 50 percent of the peak agricultural employment for that employer for the current calendar year for the payroll period immediately preceding the filing of the petition. In this connection, the peak agricultural employment for the prior season shall alone not be a basis for this determination, but rather the board shall estimate peak employment on the basis of acreage and crop statistics, which shall be applied uniformly throughout the State of California, and upon all other relevant data.

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

1156.7. (a) A collective-bargaining agreement executed prior to the effective date of this chapter shall not bar a petition for an election.

(b) A collective-bargaining agreement executed by an employer and a labor organization certified as the exclusive bargaining representative of the employer's employees pursuant to this chapter shall be a bar to a petition for an election among the employees for the term of the agreement, but this bar shall not exceed three years, provided that both the following conditions are met:

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

(2) The agreement incorporates the substantive terms and conditions of employment of the employees.

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

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

7 (d) Upon the filing with the board of a signed petition by an
8 agricultural employee or group of agricultural employees, or an
9 individual or labor organization acting on behalf of the employees,
10 accompanied by authorization cards signed by a majority of the
11 employees in an appropriate bargaining unit, the board shall
12 immediately investigate ~~such~~ *the* petition and, if it has reasonable
13 cause to believe that a bona fide question of representation exists,
14 it shall direct an election by ballot booth pursuant to Article 2
15 (commencing with Section 1156.310). The board shall only take
16 such action if all of the following conditions are alleged in the
17 petition:

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

23 (2) That a valid election pursuant to this part has not been
24 conducted among the agricultural employees of the employer
25 named in the petition within the 12 months immediately preceding
26 the filing thereof.

27 (3) That a labor organization, certified for an appropriate unit,
28 has a collective-bargaining agreement with the employer which
29 would otherwise bar the holding of an election and that the
30 agreement will expire within the next 12 months.

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

32 1157. (a) All agricultural employees of the employer whose
33 names appear on the payroll applicable to the payroll period
34 immediately preceding the filing of a petition for a ballot booth
35 election, a petition for mediated election, or a petition to decertify
36 shall be eligible to vote. An economic striker shall be eligible to
37 vote under such regulations as the board finds are consistent with
38 the purposes and provisions of this part in an election, provided
39 that the striker who has been permanently replaced shall not be

1 eligible to vote in an election conducted more than 12 months after
2 the commencement of the strike.

3 (b) In the case of an election conducted within 18 months of
4 the effective date of this part that involves a labor dispute that
5 commenced prior to the effective date, the board shall have the
6 jurisdiction to adopt fair, equitable, and appropriate eligibility
7 rules, which shall effectuate the policies of this part, with respect
8 to the eligibility of an economic striker who was paid for work
9 performed or for paid vacation during the payroll period
10 immediately preceding the expiration of a collective-bargaining
11 agreement or the commencement of a strike, provided that in no
12 event shall the board afford eligibility to a striker who has not
13 performed services for the employer during the 36-month period
14 immediately preceding the effective date of this part.

15 SEC. 14. Section 1157.2 of the Labor Code is repealed.

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

17 1158. Whenever an order of the board made pursuant to Section
18 1160.3 is based in whole or in part upon the facts certified
19 following an investigation pursuant to Sections 1156.310 to 1157,
20 inclusive, and there is a petition for review of the order, the
21 certification and the record of the investigation shall be included
22 in the transcript of the entire record required to be filed under
23 Section 1160.8 and thereupon the decree of the court enforcing,
24 modifying, or setting aside in whole or in part the order of the
25 board shall be made and entered upon the pleadings, testimony,
26 and proceedings set forth in the transcript.

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

28 1159.5. The board shall decertify a labor organization if either
29 of the following occur:

30 (a) The Department of Fair Employment and Housing finds that
31 the labor organization engaged in discrimination on a basis listed
32 in subdivision (a) of Section 12940 of the Government Code, as
33 those bases are defined in Sections 12926 and 12926.1 of the
34 Government Code, except as otherwise provided in Section 12940
35 of the Government Code.

36 (b) The United States Equal Employment Opportunity
37 Commission finds, pursuant to Section 2000e-5 of Title 42 of the
38 United States Code, that the labor organization engaged in
39 discrimination on the basis of race, color, national origin, religion,
40 sex, or any other arbitrary or invidious classification in violation

1 of Subchapter VI of Chapter 21 of Title 42 of the United States
2 Code during the period of the labor organization's present
3 certification.

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

5 1160.3. (a) The testimony taken by a member, agent, or
6 agency, or the board in a hearing shall be reduced to writing and
7 filed with the board. Thereafter, in its discretion, the board, upon
8 notice, may take further testimony or hear argument.

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

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

37 (d) If, based upon the preponderance of the testimony taken,
38 the board finds that the person named in the complaint has not
39 engaged in or is not engaging in an unfair labor practice, the board
40 shall state its findings of fact and shall issue an order dismissing

1 the complaint. An order of the board shall not require the
2 reinstatement of an individual as an employee who has been
3 suspended or discharged, or the payment to him or her of any
4 backpay, if the individual was suspended or discharged for cause.
5 In case the evidence is presented before a member of the board,
6 or before an administrative law officer thereof, the member, or
7 administrative law officer, as the case may be, shall issue and cause
8 to be served on the parties to the proceedings a proposed report,
9 together with a recommendation, which shall be filed with the
10 board, and, if an exception is not filed within 20 days after service
11 thereof upon the parties, or within a further period as the board
12 may authorize, the recommended order shall become the order of
13 the board and become effective as therein prescribed.

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

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

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

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

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

1 1153 that significantly interfered with, restrained, or coerced
2 employees in the exercise of the rights guaranteed in Section 1152
3 or (2) any person has engaged in an unfair labor practice within
4 the meaning of subparagraph (A), (B), or (C) of paragraph (2) of
5 subdivision (d), or of subdivision (g), of Section 1154, or of Section
6 1155, the preliminary investigation of the charge shall be made
7 forthwith and given priority over all other cases except cases of
8 like character in the office where it is filed or to which it is referred

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

1 subparagraph (D) of paragraph (2) of subdivision (d) of Section
2 1154.

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

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

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

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

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

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