

Date of Hearing: April 20, 2022

ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT

Ash Kalra, Chair

AB 2183 (Stone) – As Amended March 24, 2022

SUBJECT: Agricultural labor relations

SUMMARY: Permits agricultural employees to select their collective bargaining representative through a representation ballot card election by mailing or delivering directly their sealed ballot to the Agricultural Labor Relations Board (ALRB). Specifically, **this bill:**

Employee list provisions

- 1) Defines “employee list” as a complete and accurate list of the complete and full names, current street addresses, email addresses, landline and cellular telephone numbers, the foreperson or crew leader for whom the employee works, and job classifications of all of an employer’s agricultural employees, including employees hired through a labor contractor, who are in the bargaining unit sought by the labor organization for the payroll period immediately preceding the filing of the notice.
- 2) Provides that the “employee list” also includes the names, current street addresses, email addresses, cellular telephone numbers, and job classifications of persons working for the employer as part of a family or other group for which the name of only one group member appears on the payroll.
- 3) Permits a labor organization to obtain an employer’s employee list from the board upon providing written notice to the appropriate regional office of the board of intention to organize the agricultural employees of the same employer, accompanied by proof of service of the notice upon the employer.
 - a. The notice provided to the regional office shall be signed by, or accompanied by authorization cards signed by, at least 10 percent of the current employees of the designated employer.
- 4) Requires, within five days from the date of filing of the notice of intention to organize, the employer to submit to the regional office an employee list, as specified. If the employer contends that the unit named in the notice is inappropriate, the employer shall submit arguments to support this contention to the regional director in writing. Such contention shall not stay the submission of the employee list.
- 5) Requires, upon receipt of the employee list from the employer, the regional director to determine if the employee requirement for the notice described in (3) has been satisfied. Upon finding the requirement satisfied, the regional director shall make available a copy of the employee list to the filing labor organization. The regional director shall make the list available to any other labor organization that meets specified criteria.

- 6) States that an employer shall not be required to provide more than one employee list pursuant to the above provisions within a 30-day period.

Provisions relating to a representation ballot card election

- 7) Refers to a secret ballot election where agricultural employees vote in person to select their bargaining representative as a polling place election.
- 8) Permits agricultural employees, as an alternative election procedure, to select their bargaining representative through a representation ballot card election, initiated by a labor organization's filing of a petition for representation.
- 9) Requires the petition to allege the following:
 - a. That the number of agricultural employees currently employed by the employer named in the petition, as determined from the employer's payroll immediately preceding the filing of the petition, is not less than 50 percent of the employer's peak agricultural employment for the current calendar year.
 - b. That no valid election has been conducted among the agricultural employees of the employer named in the petition within the 12 months preceding the filing of the petition.
 - c. That no labor organization is currently certified as the exclusive collective bargaining representative of these agricultural employees.
 - d. That the petition is not barred by an existing collective bargaining agreement.
- 10) Requires the petition to be supported by representation ballot cards in individually sealed envelopes signed by more than 50 percent of currently employed employees, as specified.
- 11) States that each representation ballot card include both of the following:
 - a. A statement that the employee signing it wishes to have the labor organization as their collective bargaining representative with respect to rates of pay, wages, hours of employment, benefits, and other terms and conditions.
 - b. Sufficient space to provide information on employee and employer details, including, among other things, the name of the employee, their signature, the date, and the signature of the person witnessing the employee sign the card or assisting them in filling it out, or both.
- 12) Requires the representation ballot card to be placed in a sealed envelope and that the outer part of the envelope be signed by the employee who signed the card. The ballot card shall be submitted directly to an office of the board or mailed to the board office.
- 13) Provides that a labor organization's representative may fill out all of the information contained in a ballot card except for the employee's signature and that the card is valid for 12 months after the date it is signed.

- 14) Requires the labor organization to serve the petition on the employer the same day it files the petition with the board. The employer has 48 hours from service of the petition to file with the board and personally serve upon the labor organization its response that includes an employee list, as specified.
- 15) Requires the board to conduct an immediate investigation regarding the validity of the petition and the supporting representation ballot cards and, within five days after receiving the petition, to make an administrative determination as to whether the petition has met the requirements in (9) above and whether the threshold number of ballot cards has been submitted.
- 16) Establishes a process for the board to investigate the validity of an employee's identity on the representation ballot card, including considering evidence presented by employer, employee or labor organization.
- 17) Requires the board, upon determining that the labor organization has submitted a valid petition and the required number of ballot cards, to immediately certify the labor organization as the exclusive bargaining representative for the employees. An employer's duty to bargain commences immediately after this certification.
- 18) Provides, within five days after the certification, that any person can file a petition with the board objecting to the certification on specified grounds. The filing of an objection shall not diminish an employer's duty to bargain.

Provisions related to an employer's unfair labor practice

- 19) Provides that if an employer commits an unfair labor practice or misconduct during a representation ballot card campaign, and the employer's unfair labor practice or misconduct would render slight the chances of a new representation ballot card campaign reflecting the free and fair choice of employees, the labor organization shall be certified by the board as the exclusive bargaining representative.
- 20) States that if an employer takes adverse action, as specified, against a worker during a representation ballot card campaign, there shall be a presumption that the adverse action was retaliatory and illegal, and the employer shall escape liability only if the employer provides clear, convincing, and overwhelming evidence that the adverse action would have been taken in the absence of the campaign.
- 21) Requires an employer who appeals or petitions for a writ of review of any order of the board involving make-whole, backpay, or other monetary awards to employees, to post an appeal bond in the amount of the entire economic value of the order, as specified, and would provide that the bond be forfeited if the employer fails to pay the amount owed within ten days of entry of the judgment, dismissal or withdrawal of the appeal or the execution of a settlement agreement.

EXISTING LAW:

- 1) Establishes the Agricultural Labor Relations Act (ALRA) of 1975 to protect the right of agricultural employees to form, join, or assist labor organizations to engage in collective bargaining activities with agricultural employers regarding wages, working conditions, or other aspects of employment.
- 2) Requires the ALRB to certify the results of an election conducted by secret ballot of employees in a collective bargaining unit to designate a bargaining representative, unless the board determines there are sufficient grounds to refuse to do so.
- 3) Provides that in the event the ALRB refuses to certify an election because of employer misconduct that would make slim the chances of a second election reflecting the free and fair choice of the employees, the board shall certify the union as the exclusive bargaining representative of the bargaining unit employees.
- 4) Authorizes a person aggrieved by a final order of the ALRB granting or denying in whole or in part the relief sought for an unfair labor practice, to obtain a review of the order in a specified court of appeal by filing in the court a written petition requesting that the order of the ALRB be modified or set aside.

FISCAL EFFECT: Unknown

COMMENTS: The Legislature enacted the ALRA in 1975 to fill a gap in fundamental labor protections provided by the National Labor Relations Act (NLRA), which exempts agricultural workers such as farm workers. At that time, the Legislature declared that the statute was necessary to “ensure peace in the agricultural fields by guaranteeing justice for all agricultural workers and stability in labor relations.¹” Paramount to the Act are its provisions safeguarding the right of farm workers to full freedom of association, self-organization, designation of representatives of their own choosing, and negotiation of the terms and conditions of their employment.

The current framework for designating a bargaining representative only allows for a secret ballot election that is in person, at a polling place or places, and generally on the employer’s property. This now 47 year-old election procedure does not reflect the general trend in California to update our election laws so as to expand voter access and turnout. This bill would provide farm workers, voting on union representation, an option to cast a secret ballot by mail, while maintaining existing procedures for the ALRB to investigate any questions of the election’s validity. In addition, the secrecy of each ballot is maintained by the requirement that the envelope be sealed and its’ outer part be signed by the worker. Furthermore, limitations are placed on the right of a labor representative to assist a worker in filling out the ballot card.

A note about union elections

As we move out of some of the deadliest stages of the COVID-19 pandemic, private sector union organizing appears to be on the rise. Store by store and warehouse by warehouse, workers are voting for collective representation and a seat at the table to push for better pay and benefits.

¹ Stats. 1975, 3d Ex. Sess., ch.1, § 1, p. 4013.

This uptick in union organizing has been accompanied by documented employer interference and worker intimidation. According to a recent study of private sector union elections by the Economic Policy Institute, “employers were charged with illegally firing workers in nearly 20 percent of all elections.²” Employer coercion, threats against workers, and retaliation was found in approximately 30 percent of elections. Workers were also illegally disciplined for supporting a union in 1 out of 3 elections.³ Tactics to invoke fear and intimidate workers can materially change the outcome of a union representation election. Employer interference, if unchecked, undermines the right of workers to a free and fair union election process.

According to the author, “Excluded from federal labor laws, farmworkers in California rely on the Legislature to amend the Agriculture Labor Relations Act (ALRA) for increased labor and collective bargaining protections. AB 2183 would modernize the ALRA to allow farm workers to choose if they want to vote at a physical location, or vote by mailing or dropping off a representation ballot card to the Agricultural Labor Relations Board (ALRB) office.

The Legislature has enacted a series of changes that have successfully made it easier for Californians to participate in statewide elections, including mail-in voting. These changes were made based on the simple premise that facilitating the exercise of an existing right is inherently a good thing to do. This bill applies that same principle and extends voting flexibilities to farm workers as they exercise their longstanding right to vote in union representation elections.”

Committee Comments

Committee staff notes that under the “employee list” provision of the bill (proposed Labor Code Section 1152.1), the term “current employee” is undefined. The author may wish to clarify as to what constitutes a current employee for the purpose of demonstrating support of at least 10 percent of the employees.

Governor’s Veto Message

AB 616 (Stone) of 2021 proposed language substantially similar to this bill and was vetoed. The Governor’s veto message stated:

“The labor force is invaluable to the prosperity of our state and the very fabric of our society. My Administration has worked tirelessly to protect and support workers across California. The recent U.S. Supreme Court ruling in *Cedar Point Nursery v. Hassid* (2021) eliminating 30 years of precedent has significantly impeded the ability of unions to access agricultural worksites. I deeply understand the need to address the impact of this decision. Any modernization of the Agricultural Labor Relations Act (ALRA) must take these challenges to access into account.

AB 616 creates a new process for agricultural employees to elect a labor representative through a ballot card election. This bill contains various inconsistencies and procedural issues related to the collection and review of ballot cards.

² Celine McNicholas, et al. “Unlawful: U.S. employers are charged with violating federal law in 41.5% of all union election campaigns,” Economic Policy Institute, December 11, 2019. p. 2.

³ *Ibid.*

Significant changes to California's well-defined agricultural labor laws must be carefully crafted to ensure that both agricultural workers' intent to be represented and the right to collectively bargain is protected, and the state can faithfully enforce those fundamental rights.

Therefore, I am directing the Labor and Workforce Development Agency to work collaboratively with the Agricultural Labor Relations Board and all relevant stakeholders to develop new policies for legislative consideration to address this issue. I look forward to continuing our vital work to improve working conditions and opportunities for farmworkers across our state.”

The author’s office states in response, “It is unfortunate that AB 616 was vetoed but we have been working with the Governor’s office on their concerns and look forward to continuing these productive conversations.”

Arguments in Support

The United Farm Workers, are in support and contend, “the state has updated how Californians vote for their local, state, and federal elected officials by making it easier to register to vote, increasing the amount of time to vote, adding more ways and access to vote, allowing someone else to turn in their ballot.

California law was also changed to allow all state and local public workers - including teachers, firefighters, nurses, and staff - to vote to have a union by simply signing a union representation card.

AB 2183 would update how a farm worker exercises their existing right to vote for union representation.

Under the bill, ballots will continue to remain secret, farm workers will have a choice to vote at a “polling place” as they do now, or they can receive assistance in filling out and returning their “representation ballot card” as long as the person who assists them co-signs the representation ballot card and returns it to the state agency overseeing farm worker union elections, the Agricultural Labor Relations Board, in a sealed and signed envelope.”

Arguments in Opposition

A coalition of employer associations, including the Western Growers Association, is opposed and states, “The sponsors of AB 2183 state that this bill simply creates a process for mail-in voting for farmworkers. This couldn’t be further from the truth. The only resemblance the “ballot card” process described in AB 2183 has to mail-in balloting in elections for political office and ballot questions is that ballot cards are furnished along with mailing envelopes. Unlike mail-in balloting for elections for political office and ballot questions, a union seeking recognition under the AB 2183 “ballot card” process may choose which workers receive a ballot and when (or even whether or not) the election occurs. In fact, the bill implicitly condones the coercion and intimidation of farm employees. Should a union satisfy the conditions set forth in AB 2183 to win representation rights, some farmworkers included in the bargaining unit will never have a chance to express a preference for or against representation.

This bill eliminates a farmworker’s right to a secret ballot election that is free from coercion from any party that has a financial interest in the outcome of the election. This has been recognized by Governor Brown’s veto of SB 104 in 2011, Governor Schwarzenegger’s veto of AB 1474 in 2010, and Governor Newsom’s veto of AB 616 in 2021.”

Prior Legislation

AB 616 (Stone) of 2021 was almost identical to this bill and was vetoed by Governor Newsom.

SB 126 (Steinberg) Chapter 697, Statutes of 2011 made various amendments to the ALRA, including allowing the ALRB to certify a union as the bargaining representative for farm workers if it finds that unlawful employer conduct prevented a fair election.

SB 104 (Steinberg) of 2011 would have authorized agricultural employees, as an alternative to the polling place procedure, to select their labor representatives by submitting a petition to the ALRB accompanied by representation cards signed by a majority of the bargaining unit. The bill was vetoed by Governor Brown.

SB 1474 (Steinberg) of 2010 attempted to address situations where agricultural employers engaged in willful misconduct in labor representation elections. The bill was vetoed by Governor Schwarzenegger.

SB 789 (Steinberg) of 2009 was similar to SB 104 and was vetoed by Governor Schwarzenegger.

REGISTERED SUPPORT / OPPOSITION:**Support**

California Alliance for Retired Americans
California Catholic Conference
California Labor Federation
California Nurses Association
California Rural Legal Assistance Foundation, INC.
California School Employees Association
California State Council of Service Employees International Union (SEIU California)
California Teamsters Public Affairs Council
Central Coast Alliance United for A Sustainable Economy
Mi Familia Vota
UAW Local 2865
UAW Local 5810
United Farm Workers

Opposition

African American Farmers of California
Agricultural Council of California
Association of California Egg Farmers
California Association of Winegrape Growers
California Chamber of Commerce
Carlsbad Chamber of Commerce

Chamber of Commerce Alliance of Ventura and Santa Barbara Counties
Citrus Heights Regional Chamber of Commerce
Fountain Valley Chamber of Commerce
Fresno Chamber of Commerce
Garden Grove Chamber of Commerce
Greater Bakersfield Chamber of Commerce
Greater Coachella Valley Chamber of Commerce
Greater High Desert Chamber of Commerce
Greater Riverside Chambers of Commerce
Greater San Fernando Valley Chamber of Commerce
Hayward Chamber of Commerce
LA Canada Flintridge Chamber of Commerce
North Orange County Chamber of Commerce
Oceanside Chamber of Commerce
Pleasanton Chamber of Commerce
Rancho Cordova Area Chamber of Commerce
Rancho Mirage Chamber of Commerce
Redondo Beach Chamber of Commerce
San Gabriel Valley Economic Partnership
Santa Maria Valley Chamber of Commerce
Simi Valley Chamber of Commerce
South Bay Association of Chambers of Commerce
Tulare Chamber of Commerce
West Ventura County Business Alliance
California Citrus Mutual
California Cotton Ginners and Growers Association
California Farm Bureau Federation
California Farm Labor Contractor Association
California Food Producers
California Fresh Fruit Association
California Grain & Feed Association
California Grocers Association
California Manufacturers & Technology Association
California Pear Growers Association
California Restaurant Association
California Retailers Association
California Seed Association
California Strawberry Commission
Construction Employers' Association
Far West Equipment Dealers Association
Grower-Shipper Association of Central California
Grower-Shipper Association of Santa Barbara and San Luis Obispo Counties
Housing Contractors of California
Milk Producers Council
National Federation of Independent Business
Nisei Farmers League
Official Police Garage Association of Los Angeles
Ventura County Agricultural Association
Western Agricultural Processors Association

Western Growers Association
Wine Institute

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