
SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Dave Cortese, Chair
2021 - 2022 Regular

Bill No: AB 2183 **Hearing Date:** June 22, 2022
Author: Stone
Version: March 24, 2022 >
Urgency: No **Fiscal:** Yes
Consultant: Jake Ferrera

SUBJECT: Agricultural labor relations

KEY ISSUE

Should the Legislature allow agricultural employees to select their exclusive collective bargaining representative by representation ballot card election, as defined?

Should the Legislature require labor organizations to file a written notice of intention to organize with the Agricultural Labor Relations Board and the designated employer to receive an employer's list of employees?

ANALYSIS

Existing law:

- 1) Defines "agriculture" to include farming in all its branches, the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities and any practices by a farmer or on a farm in conjunction with farming operations, including preparation for market and delivery to storage.

(Labor Code §1140.4)

- 2) Clarifies that the bargaining unit is all agricultural employees of an employer. If these employees are employed in two or more noncontiguous areas, the Agricultural Labor Relations Board (ALRB) determines the appropriate unit or units of agricultural employees.

(Labor Code §1156.2)

- 3) Allows an agricultural employee or labor organization acting on behalf of agricultural employees to submit a petition to the ALRB. The petition must allege all of the following:
 - a) That the number agricultural employees currently employed by the employer named in 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 by employees of the named employer within the 12 months immediately preceding the filing of the petition.
 - c) That no labor organization is currently certified as the exclusive collective bargaining representative of the agricultural employees of the named employer.
 - d) That the petition is not barred by an existing collective bargaining agreement.

(Labor Code §1156.3 (a))

- 4) Upon receipt of a petition signed by at least a majority of the agricultural employees in the employ of the named employer, the ALRB must immediately investigate the petition. If the board determines that a bona fide question of representation exists, a representation election by secret ballot must be held within 7 days. (Labor Code §1156.3 (b))
- 5) Requires that representatives selected by secret ballot by a majority of agricultural employees for the purposes of collective bargaining be considered the exclusive representatives of that bargaining unit with respect to rates of wages, hours of employment or other conditions of employment. (Labor Code §1156)
- 6) Allows any person to file a signed petition with the ALRB asserting that allegations within the original petition were incorrect, that the ALRB improperly determined the geographic scope of a bargaining unit or objecting to the conduct of the election. The ALRB may refuse to certify the election if it finds that any of the assertions made in such a petition are correct or if it finds that the election was not conducted properly. (Labor Code §1156.3 (2))
- 7) Requires that the ALRB decertify a labor organization if either of the following occur:
 - a) The Department of Fair Employment and Housing finds that the labor organization engaged in discrimination based on a protected class.
 - b) The United States Equal Employment Opportunity Commission finds that the labor organization engaged in discrimination on the basis of a protected class.
- 8) Requires that the ALRB certify a labor organization as an exclusive representative if an employer is found to have engaged in misconduct that would diminish the chance that a new election would be free and fair. (Labor Code §1156.3 (f))
- 9) Allows the ALRB, upon finding reasonable cause to believe that any person has engaged in or is engaging in an unfair labor practice, petition the superior court in the county where the unfair labor practice occurred for appropriate temporary relief or restraining order.

(Labor Code §1157.3)

- 10) Requires that employers maintain accurate payroll lists that contain the names and addresses of all their employees and make such lists available to the ALRB upon request.

(Labor Code §1160.4)

This bill:

- 1) Allows a labor organization to file a written notice with the appropriate regional office of the ALRB in order to receive an employer's employee list, as defined.
 - A) This written notice **must** be accompanied by authorization cards signed by 10% of the current employees of the designated employer **and** proof of service of the notice to the designated employer. Upon receipt of these materials, a notice of intention to organize is deemed filed.
 - B) Within 5 days of receiving notice of intention to organize, the designated employer must submit an employee list to the regional office in a physical and electronic copy.

- C) Defines “Employee list” to mean 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.
 - D) An employer cannot be required to provide more than one employee list within a 30-day period.
- 2) Designates the election procedure outlined within Labor Code §1156.3 to be called a Polling Place Election.
 - 3) Allows a labor organization to submit a petition for representation ballot card election to the ALRB. The petition must allege all of the following:
 - a) That the number agricultural employees currently employed by the employer named in 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 by employees of the named employer within the 12 months immediately preceding the filing of the petition.
 - c) That no labor organization is currently certified as the exclusive collective bargaining representative of the agricultural employees of the named employer.
 - d) That the petition is not barred by an existing collective bargaining agreement.
 - 4) Requires that a representation ballot card election petition be accompanied by representation ballot cards from a majority of currently employed employees. These ballots may be submitted together or mailed in separately.
 - a) Defines currently employed employees for the purposes of the above section to mean all employees who were employed at any time during the employer’s last payroll period that ended before to the filing of the petition.
 - 5) Requires that each ballot card include all of the following:
 - a) A statement that the employee signing it wishes to have a specified labor organization as the employee’s collective bargaining representative.
 - b) Sufficient space to provide the name of the labor organization, the name of an employer or farm labor contractor, the employee’s name, the employee’s signature, a witness’s signature and the date.
 - 6) Requires that each ballot card be placed in sealed envelope provided by the ALRB and be signed on the outside by the employee. Further requires that the ballot card be submitted or mailed directly to an office of the ALRB.
 - 7) Requires the ALRB to issue standardized representation ballot cards and postage paid envelopes to a labor organization upon request. The ALRB regional offices must keep records pertaining to the labor organization and the number of ballots requested.
 - 8) Holds that a representation ballot card is valid if it contains the name of the labor organization, the name of the employee, the employee’s signature and is in a sealed envelope. Allows a labor organization to fill out all of the information **except the employee signature**.

- 9) Requires that a labor organization submitting a representation ballot card election petition personally serve a copy to the employer named in the petition. Within 48 hours, the named employer must issue a response to the labor organization and the ALRB which includes a complete and accurate list of employee names and specified personal information. Each day the employer fails to provide this list shall result in a \$10,000 fine.
- 10) Requires the ALRB to make an administrative decision pertaining to the validity of a submitted petition and whether the requisite number of ballots have been submitted within 5 days of that petition being submitted. In the case of a challenge to ballot validity, the ALRB will have 7 days to investigate and both parties have 7 days to find and present evidence.
 - a) Requires the ALRB to notify the labor organization if they fail to submit the requisite number of ballots and allow 30 days from that notification for the collection of additional ballots.
- 11) Allows any person to file a complaint with the ALRB within 5 days of the certification of a labor organization that alleges one of the following bases for objection:
 - a) Allegations in the representation ballot card petition were false.
 - b) The ALRB improperly determined the geographical scope of the bargaining unit.
 - c) The representation ballot card election was conducted improperly.
 - d) Improper conduct affected the results of the representation ballot card election.
- 12) Requires that the ALRB choose to either rule administratively or conduct a hearing to rule on a petitioner's objection to an election within 14 days of filing. If the board finds the allegations in the objection to be true, the election certification must be revoked.
- 13) Prohibits another representation ballot card election petition from being considered by the ALRB with the same agricultural employer until the board determines whether the labor organization that filed the pending representation ballot card election petition should be certified. Allows the ALRB to consider a second representation ballot card petition **only if** the second petition alleges that the first petition was filed because of the employer's unlawful assistance, support, creation, or domination of the labor organization that filed the first petition.
- 14) Requires that the ALRB certify a labor organization as the exclusive representative of an agricultural bargaining unit if it is found that the agricultural employer committed an unfair labor practice during the organization's ballot card campaign.
- 15) Creates a rebuttable presumption that an employer who disciplines, suspends, demotes, lays off, terminates, or otherwise takes adverse action against a worker during a labor organization's ballot card campaign that the action was retaliatory and illegal. The employer may rebut this by providing clear, convincing, and overwhelming evidence that the adverse action would have been taken in the absence of the campaign.
- 16) Requires that a representation ballot card be considered valid for 12 months after being signed by an employee.
- 17) Allows exclusive representatives for agricultural employees to be selected by a Representation Ballot Card Election, without holding a Polling Place Election

- 18) Requires an employer who petitions for a writ of review in a court of appeal or who otherwise seeks to overturn or modify any order of the ALRB involving make-whole, back-pay or other monetary award to post a bond in the amount of the entire economic value of the order as determined by the ALRB.
- 19) Requires the bond required above to consist of an appeal bond and orders that bond forfeited if the employer fails to pay the amount owed due to a final judgment following appeal within 10 days.

COMMENTS

1. Need for this bill?

A) Agricultural Employment in California

The agricultural sector continues to be a significant driver of the overall state economy, contributing \$49.1 billion in 2020, according to the California Department of Food and Agriculture¹. Agricultural employment has natural fluctuations centering on harvest season, which can be seen in data provided by the Employment Development Department (EDD) that pegs the number of workers at a peak of 465,500 in June of 2021 down to a low of 340,700 in January of 2022². In recognition of value of agricultural labor to the US economy as a whole and the underlying necessity of growing food, agricultural employees have historically operated under different labor standards than many other sectors of the economy, including being exempted from overtime provisions of the Fair Labor Standards Act of (FLSA) of 1938.

According to the California Research Bureau (CRB), California remains the largest overall producer of agricultural goods by value in the country, and is one of the largest agricultural producing regions in the world. Unfortunately, despite the success of the industry, the farmworkers that make much of the production possible face a number of disadvantages compared to California's population as a whole. According to CRB, farmworkers are at higher risk for living in poverty, are less likely to have health insurance, and typically lack the resources necessary to change their situation.³ According to the US Department of Labor - Bureau of Labor Statistics, the median annual wage for agricultural workers was \$20,090 in May 2015. In California, the median wage for farmworkers in 2015 was \$19,102 annually. The vast majority, 92 percent, of farmworkers in California were Latino.

According to recent research, Agricultural workers may experience higher rates of injury than other private sector industries. The Census of Fatal Occupational Injuries recorded 225 deaths in 2013 for the agriculture, forestry, and fishing major occupational group; though it is hard to specify the exact deaths within agriculture, this number represents an injury rate 7 times higher than the rate for all private workers combined.⁴ Pesticides can also play a major role in

¹ "California Agricultural Statistics Review", California Department of Food and Agriculture https://www.cdfa.ca.gov/Statistics/PDFs/2021_Ag_Stats_Review.pdf (2021).

² "Estimates of Agricultural Employment –BY MONTH", Employment Development Department, April 2022.

³ "Farmworkers in California: A Brief Introduction", California Research Bureau, Oct 2013.

⁴ "Improving the Health of Agricultural Workers and Their Families in California" University of California Global Health Institute, 2015.

workplace safety. In 2015, California used 213 million pounds of pesticides on crops; 23% of these pesticides have been labeled “Bad Actor” pesticides that fall into the “Known or Probable Carcinogen” category, as defined by the Pesticide Action Network.⁵ These chemicals are capable of causing birth defects, cancer, acute poisoning, sterility, or neurotoxicity. Some of these issues are normal in an industry that relies so heavily on manual labor; many others, however, are the result of calculated employer actions, like one reported case of wine grape growers sending hundreds of workers to pick grapes in close proximity to an active wildfire.⁶

B) Union Organizing among Agricultural Employees

Today’s union election process for agricultural employees dates back to 1975, when the California Agricultural Labor Relations Act (ALRA) was signed into law by Governor Jerry Brown during his first term as governor. This act created the Agricultural Labor Relations Board (ALRB) and the foundation of the secret ballot union election process to help protect agricultural employees from retaliatory actions by their employers. Under the ALRA, a union who wishes to represent the agricultural workers of an employer can submit a petition to the ALRB with a number of signatures equal to at least 50% of the peak agricultural employment of that employer. If the union meets this threshold, a secret ballot election must commence within 7 days. The ALRB oversees this process and investigates any allegations from the employees or the employer about election impropriety; the ALRB is also empowered to certify or decertify labor unions based on its findings about election tampering.

The 1975 ALRA was a momentous advancement of the rights of agricultural workers in California. However, in the nearly 5 decades since the law passed, union membership in private sector workplaces has precipitously dropped from 16.8% in 1983 to 6.3% in January 2021, according to the Bureau of Labor Statistics, with agricultural employees in California roughly mirroring that decline. Furthermore, the transient nature and the legal status of a large percentage of farmworkers create fundamental barriers to communicating the opportunities that could come from union membership. As cited above, in 2015 the median wage for California farmworkers was \$19,102 per year, as compared to the median income of \$63,636. According to a 2019 Bureau of Labor Statistics report, union workers earned about \$1,095 per week, while their nonunion counterparts earned closer to \$892. This equates to a nearly 19% difference, which could help address the higher than average propensity of farmworkers to live in poverty.

Union organizing within the agricultural industry is also at a historic low. A recent UC Merced study on Farmworker Health found that out of roughly 400,000 farmworkers employed in California, the number of unionized workers was within the margin of error, statistically zero percent.⁷ Recent legislation in SB 1409 (Grove, 2022) postulates that this drop in union participation is reason enough for the abolishment of the ALRB. Though AB 1409 was held in its first hearing, it is a symptom of a system where long-standing institutions of labor protection have been the victim of smear campaigns and state neglect for decades. The obvious culprit of declining union organizing is an agricultural industry that is openly and consistently hostile to organizing and a legal system only too willing to support this over the rights of workers. The

⁵ “Data Detail and Definitions”, Pesticide Action Network, <https://www.pesticideinfo.org/resources/data-detail-definitions>

⁶ “Hundreds of Sonoma Farmworkers May Have Been Exposed to Toxic Smoke During 2020 Wildfires”, Jess Lander, *San Francisco Chronicle*, May 22, 2022

⁷ “Farmworker Health Study” UC Merced, <https://clc.ucmerced.edu.672elmp01.blackmesh.com/farmworker-health-study>, 2020

recent court decision in *Cedar Point Nursery v. Hassid* (2021) illustrates this, finding that union organizers can be excluded from the private property of agricultural employers.

C) Potential Impact of AB 2183

AB 2183 would supplement the existing secret ballot process for union elections involving agricultural employees. Instead of a two-step process of submitting a petition and then holding an election, AB 2183 would allow a labor organization to submit ballot cards with their petition for exclusive representation. If the labor organization submits valid ballot cards exceeding a majority of the farmworkers employed by the employer in question, either with the petition or separately mailed in a sealed envelope, the labor organization will be certified as the exclusive representative of those voting employees.

AB 2183 would further create a requirement that employers furnish a complete list of employee information to labor organizations, after a labor organization obtains 10% of employee signatures at a workplace and submits these to the ALRB. Current law under Labor Code 1695.5 requires all Farm Labor Contractors to furnish a list of specified employee information to a grower they contract with, in a form prescribed by the Labor Commissioner. AB 2183 would make this complete list available to labor organizations, which is crucial in ensuring workers have the ability to organize.

D) Executive Action

Similar measures to AB 2183 were vetoed under Governors Schwarzenegger, Brown, and Newsom:

“[This bill] is indeed a drastic change and I appreciate the frustrations that have given rise to it. But, I am not yet convinced that the far reaching proposals of this bill--which alter in a significant way the guiding assumptions of the ALRA--are justified. Before restructuring California's carefully crafted agricultural labor law, it is only right that the legislature consider legal provisions that more faithfully track its original framework. The process should include all those who are affected by the ALRA.” – Governor Brown

“The provisions of [this bill] represent a serious departure from existing law. The provisions of this bill tip the scale in favor of the union by only allowing the ALRB to consider any misconduct, which is not defined, by the employer when making the determination to set aside the election, but does not take into consideration the possibility that the employer may have similar allegations of election misconduct by the labor organization. This remedy should only be allowed in cases where the ALRB finds the possibility of erasing the effects of past unfair labor practices and of ensuring a fair election is slight, and that employee sentiment once expressed through cards would, on balance, be better protected by a bargaining order.” – Governor Schwarzenegger

“[This bill] 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. 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.” – Governor Newsom

These statements, on three different bills from three different Governors, contain a clear thorough line. All three, to some degree, imagine a kind of power parity between agricultural workers and agricultural employers that might be upset by a change in union elections law. This assessment is not merely naïve; it is categorically ahistorical. Significant factors make organizing agricultural workers uniquely challenging; the rise of Farm Labor Contractors to skirt employment law and the documented tactics of employers to undermine and intimidate would-be union organizers are not unknown or new phenomena. Governor Schwarzenegger's veto message is especially illuminating, as it gives voice to the Governors' shared fear that the balance of power might tip, however slightly, towards labor organizations. It is worth noting that AB 2183 does not prevent workers from deciding to have a secret ballot election that conforms to existing law if they felt that it would serve them better than a ballot card election. The provisions of AB 2183 could help to alleviate some of the endemic job hazards and low pay within the agricultural sector, by allowing an easier, supplemental vote-by-mail process and accompanying certification process for labor organization elections.

2. Proponent Arguments

The United Farm Workers, the sponsor of the bill, write in support:

“The ALRA acknowledged from its inception the imbalance of power and the inherent unfairness between the agricultural employer and a farm worker. The ALRA is and always was meant for the benefit and protection of a farm worker. In fact, the ALRA explicitly encourages and protects: "the right of agricultural employees to full freedom of association, self-organization, and designation of representatives of their own choosing, to negotiate the terms and conditions of their employment, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.” (Labor Code Section 1140.2)

And, under the ALRA, beginning in 1975 farm worker representation elections were conducted the way other political elections were – at a physical polling place. Since then, 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 assist in completing and turning 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.

While ballots will continue to remain secret, farm workers will have a choice in voting 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 ALRB in a sealed and signed envelope.

National approval for unions is the highest it has been since 1965 at 68% but workers face many obstacles to forming a union at their workplace. We need to make it easier, not harder, for workers to vote in union elections and have the representation they are legally entitled to. AB 2183 is a step in the right direction and would allow farmworkers to vote in union elections like Californians vote in elections.”

3. Opponent Arguments:

The Western Growers Association writes in opposition:

“It is critical to distinguish between an employee’s decision to sign a “ballot card” and an Agricultural Labor Relations Board (ALRB)-supervised secret ballot vote to decide union representation. Unlike the National Labor Relations Act, the ALRA does not permit an employer to voluntarily recognize a union; the ALRB must certify a union’s exclusive representation rights. A union opting for the AB 2183 “ballot card” card check procedure will enjoy a significant advantage in that it may obtain a list of employees’ names, home addresses and other pertinent information merely by filing a petition it claims represents the will of 50% of the employer’s employees. AB 2183 has no requirement that the union demonstrate or verify that the “ballot cards” submitted with the petition constitute any minimum percentage of the workforce before the union receives the employee list; it merely requires the union submitting the petition to “allege” this; the act of filing the petition triggers the requirement for the employer to furnish the list. Even if the union’s petition falls well short of the 50% threshold to impose union representation, AB 2183 provides that the union will have seven days while in possession of the list of employees provided by the employer to “cure” its petition to find a sufficient number of actual employees from whom to collect ballot cards to reach the 50% threshold.

AB 2183 also has a rebuttable presumption provision that assumes that an employer took action against an employee due to an ongoing ballot card campaign. This is unnecessary since employees are already afforded protection from retaliation in Labor Code Section 1153 for participation in union activity.

In addition, we are also opposed to the bonding requirement as outlined in the bill when appealing a monetary award order at the ALRB. AB 2183 requires that this appeals bond be filed as a condition of having the right to appeal a decision of the ALRB. This language was also found in AB 561 (Campos, 2015) which was vetoed by Governor Brown. The bonding provision violates basic due process rights because it allows the ALRB to determine whether or not the employer can appeal. The ALRB is not a neutral party in this context and has a prejudicial interest in the outcome of the appeal.”

4. Prior Legislation:

AB 616 (Stone, 2020) Vetoed by Governor Newsom: substantially similar to AB 2183.

SB 104 (Steinberg, 2011) Vetoed by Governor Brown: would have established an alternative election procedure by which agricultural employees could decide whether to select a particular labor organization to represent them for collective bargaining purposes.

SB 1474 (Steinberg, 2010) Vetoed by Governor Schwarzenegger: would have established an alternative election procedure by which agricultural employees could decide whether to select a particular labor organization to represent them for collective bargaining purposes.

AB 1066 (Gonzalez) Chapter 313, Statutes of 2016: extended the payment of overtime compensation to agricultural employees after 8 hours of work in a day or 40 in a week.

5. Double Referral:

AB 2183 is double referred and, if passed out of this committee, will be sent to the Senate Judiciary Committee for hearing.

SUPPORT

United Farm Workers (sponsors)
California Alliance for Retired Americans
California Catholic Conference
California Federation of Teachers AFL-CIO
California Immigrant Policy Center
California Labor Federation
California Nurses Association
California Professional Firefighters
California Rural Legal Assistance Foundation, INC.
California School Employees Association
California State Council of Service Employees International Union (SEIU California)
California State Legislative Board, Sheet Metal, Air, Rail and Transportation Workers -
Transportation Division (SMART-TD)
California Teachers Association
California Teamsters Public Affairs Council
Central Coast Alliance United for A Sustainable Economy
Courage California
Earthjustice
Mi Familia Vota
National Association of Social Workers, California Chapter
UAW Local 2865
UAW Local 5810
United Food and Commercial Workers, Western States Council
Writers Guild of America West

OPPOSITION

African American Farmers of California
Agricultural Council of California
Association of California Egg Farmers
California Chamber of Commerce
California Association of Winegrape Growers
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 Retailers Association
California Restaurant Association
California Seed Association
California Strawberry Commission
Carlsbad Chamber of Commerce
Chamber of Commerce Alliance of Ventura and Santa Barbara Counties

Citrus Heights Chamber of Commerce
Citrus Heights Regional Chamber of Commerce
Construction Employers' Association
Far West Equipment Dealers Association
Fountain Valley Chamber of Commerce
Fresno Chamber of Commerce
Garden Grove Chamber of Commerce
Glendora 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
Grower-Shipper Association of Central California
Grower-Shipper Association of Santa Barbara and San Luis Obispo Counties
Hayward Chamber of Commerce
Housing Contractors of California
LA Canada Flintridge Chamber of Commerce
Milk Producers Council
National Federation of Independent Business
Nisei Farmers League
North Orange County Chamber of Commerce
Oceanside Chamber of Commerce
Official Police Garage Association of Los Angeles
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
Ventura County Agricultural Association
West Ventura County Business Alliance
Western Agricultural Processors Association
Western Growers Association
Western Growers Association -
Wine Institute

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