

Introduced by Senator SteinbergDecember 3, 2012

An act to amend Sections 1164 and 1164.3 of, and to repeal Section 1164.11 of, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 25, as introduced, Steinberg. Agricultural labor relations: contract dispute resolution.

Existing law specifies the time for filing a declaration by an agricultural employer or a certified labor organization representing agricultural employees that the parties have failed to reach a collective bargaining agreement, thus triggering mandatory mediation. Under existing law, the declaration may be filed 90 days after a renewed demand to bargain where the parties have failed to reach agreement for at least one year, the employer committed an unfair labor practice, and the parties have not previously had a binding contract between them or 180 days after an initial request to bargain.

This bill would permit the filing of a declaration without having to meet the prior bargaining and time requirements and would expand the definition of an agricultural employer to include subsequent purchasers of an agricultural employer's business where the original employer had an obligation to bargain with its workers.

Existing law provides that within 60 days of a decision by the Agricultural Labor Relations Board taking effect, a party may file an action to enforce the order, using specified procedures. Existing law provides that during the pendency of any appeal of the board's order, the order may not be stayed unless the appellant demonstrates that he or she is likely to prevail on the merits and that he or she will be irreparably harmed by implementation of the board's order.

This bill would provide that an action to enforce the order of the board may be filed within 60 days whether or not the other party is seeking judicial review of the order. The bill would also increase the evidentiary threshold for the court to grant a stay of the board's order and require the court to make written findings supporting any order granting a stay of the order during the pendency of the appeal.

Existing law requires that before a specified declaration and request can be filed by an agricultural employer or by the bargaining agent of agricultural employees, specified criteria must be met, including, demonstrating that the parties have been unable to reach an agreement for one year after the initial request to bargain was made.

This bill would repeal the criteria required before a declaration could be filed.

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

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

1 SECTION 1. Section 1164 of the Labor Code is amended to
2 read:
3 1164. (a) An agricultural employer or a labor organization
4 certified as the exclusive bargaining agent of a bargaining unit of
5 agricultural employees may file with the board, at any time
6 following (1) 90 days after a ~~renewed~~ demand to bargain by an
7 agricultural employer or a labor organization certified prior to
8 January 1, 2003, ~~which meets the conditions specified in Section~~
9 ~~1164.11~~, (2) 90 days after an initial request to bargain by an
10 agricultural employer or a labor organization certified after January
11 1, 2003, (3) 60 days after the board has certified the labor
12 organization pursuant to subdivision (f) of Section 1156.3, or (4)
13 60 days after the board has dismissed a decertification petition
14 upon a finding that the employer has unlawfully initiated,
15 supported, sponsored, or assisted in the filing of a decertification
16 petition a declaration that the parties have failed to reach a
17 collective bargaining agreement and a request that the board issue
18 an order directing the parties to mandatory mediation and
19 conciliation of their issues. "Agricultural employer," for purposes
20 of this chapter, means an agricultural employer, as defined in
21 subdivision (c) of Section 1140.4, who has employed or engaged
22 25 or more agricultural employees during any calendar week in

1 the year preceding the filing of a declaration pursuant to this
2 subdivision. *For purposes of this section, “agricultural employer”*
3 *also includes any person, party, entity, or employer that purchased*
4 *all or part of an employer business, where the selling employer*
5 *had an obligation to bargain under this chapter.*

6 (b) Upon receipt of a declaration pursuant to subdivision (a),
7 the board shall immediately issue an order directing the parties to
8 mandatory mediation and conciliation of their issues. The board
9 shall request from the California State Mediation and Conciliation
10 Service a list of nine mediators who have experience in labor
11 mediation. The California State Mediation and Conciliation Service
12 may include names chosen from its own mediators, or from a list
13 of names supplied by the American Arbitration Association or the
14 Federal Mediation Service. The parties shall select a mediator from
15 the list within seven days of receipt of the list. If the parties cannot
16 agree on a mediator, they shall strike names from the list until a
17 mediator is chosen by process of elimination. If a party refuses to
18 participate in selecting a mediator, the other party may choose a
19 mediator from the list. The costs of mediation and conciliation
20 shall be borne equally by the parties.

21 (c) Upon appointment, the mediator shall immediately schedule
22 meetings at a time and location reasonably accessible to the parties.
23 Mediation shall proceed for a period of 30 days. Upon expiration
24 of the 30-day period, if the parties do not resolve the issues to their
25 mutual satisfaction, the mediator shall certify that the mediation
26 process has been exhausted. Upon mutual agreement of the parties,
27 the mediator may extend the mediation period for an additional
28 30 days.

29 (d) Within 21 days, the mediator shall file a report with the
30 board that resolves all of the issues between the parties and
31 establishes the final terms of a collective bargaining agreement,
32 including all issues subject to mediation and all issues resolved by
33 the parties prior to the certification of the exhaustion of the
34 mediation process. With respect to any issues in dispute between
35 the parties, the report shall include the basis for the mediator’s
36 determination. The mediator’s determination shall be supported
37 by the record.

38 (e) In resolving the issues in dispute, the mediator may consider
39 those factors commonly considered in similar proceedings,
40 including:

1 (1) The stipulations of the parties.

2 (2) The financial condition of the employer and its ability to
3 meet the costs of the contract in those instances where the employer
4 claims an inability to meet the union’s wage and benefit demands.

5 (3) The corresponding wages, benefits, and terms and conditions
6 of employment in other collective bargaining agreements covering
7 similar agricultural operations with similar labor requirements.

8 (4) The corresponding wages, benefits, and terms and conditions
9 of employment prevailing in comparable firms or industries in
10 geographical areas with similar economic conditions, taking into
11 account the size of the employer, the skills, experience, and training
12 required of the employees, and the difficulty and nature of the
13 work performed.

14 (5) The average consumer prices for goods and services
15 according to the California Consumer Price Index, and the overall
16 cost of living, in the area where the work is performed.

17 SEC. 2. Section 1164.3 of the Labor Code is amended to read:

18 1164.3. (a) Either party, within seven days of the filing of the
19 report by the mediator, may petition the board for review of the
20 report. The petitioning party shall, in the petition, specify the
21 particular provisions of the mediator’s report for which it is seeking
22 review by the board and shall specify the specific grounds
23 authorizing review by the board. The board, within 10 days of
24 receipt of a petition, may accept for review those portions of the
25 petition for which a prima facie case has been established that (1)
26 a provision of the collective bargaining agreement set forth in the
27 mediator’s report is unrelated to wages, hours, or other conditions
28 of employment within the meaning of Section 1155.2, (2) a
29 provision of the collective bargaining agreement set forth in the
30 mediator’s report is based on clearly erroneous findings of material
31 fact, or (3) a provision of the collective bargaining agreement set
32 forth in the mediator’s report is arbitrary or capricious in light of
33 the mediator’s findings of fact.

34 (b) If it finds grounds exist to grant review within the meaning
35 of subdivision (a), the board shall order the provisions of the report
36 that are not the subject of the petition for review into effect as a
37 final order of the board. If the board does not accept a petition for
38 review or no petition for review is filed, then the mediator’s report
39 shall become a final order of the board.

1 (c) The board shall issue a decision concerning the petition and
2 if it determines that a provision of the collective bargaining
3 agreement contained in the mediator’s report violates the provisions
4 of subdivision (a), it shall, within 21 days, issue an order requiring
5 the mediator to modify the terms of the collective bargaining
6 agreement. The mediator shall meet with the parties for additional
7 mediation for a period not to exceed 30 days. At the expiration of
8 this mediation period, the mediator shall prepare a second report
9 resolving any outstanding issues. The second report shall be filed
10 with the board.

11 (d) Either party, within seven days of the filing of the mediator’s
12 second report, may petition the board for a review of the mediator’s
13 second report pursuant to the procedures specified in subdivision
14 (a). If no petition is filed, the mediator’s report shall take immediate
15 effect as a final order of the board. If a petition is filed, the board
16 shall issue an order confirming the mediator’s report and order it
17 into immediate effect, unless it finds that the report is subject to
18 review for any of the grounds specified in subdivision (a), in which
19 case the board shall determine the issues and shall issue a final
20 order of the board.

21 (e) Either party, within seven days of the filing of the report by
22 the mediator, may petition the board to set aside the report if a
23 prima facie case is established that any of the following have
24 occurred: (1) the mediator’s report was procured by corruption,
25 fraud, or other undue means, (2) there was corruption in the
26 mediator, or (3) the rights of the petitioning party were substantially
27 prejudiced by the misconduct of the mediator. For the sole purpose
28 of interpreting the terms of paragraphs (1), (2), and (3), case law
29 that interprets similar terms used in Section 1286.2 of the Code of
30 Civil Procedure shall apply. If the board finds that any of these
31 grounds exist, the board shall within 10 days vacate the report of
32 the mediator and shall order the selection and appointment of a
33 new mediator, and an additional mediation period of 30 days,
34 pursuant to Section 1164.

35 (f) Within 60 days after the order of the board takes effect, *even*
36 *if a party seeks appellate review of the order of the board*, either
37 party or the board may file an action to enforce the order of the
38 board, in the superior court for the County of Sacramento or in the
39 county where either party’s principal place of business is located.
40 *During the pendency of a petition for a writ of review by a party,*

1 *the parties shall be required to implement the terms of the board's*
2 *order immediately upon issuance of the order. No final order of*
3 *the board shall be stayed during any ~~appeal~~ review sought under*
4 *this section, unless the court finds and states in its initial findings*
5 *that (1) the appellant has demonstrated, by clear and convincing*
6 *evidence, that he or she will be irreparably harmed by the*
7 *implementation of the board's order, and (2) the appellant has*
8 *demonstrated, by clear and convincing evidence, a likelihood of*
9 *success on appeal. For purposes of this section, the court deciding*
10 *the stay shall provide written findings and analysis supporting the*
11 *decision to grant a stay.*

12 SEC. 3. Section 1164.11 of the Labor Code is repealed.
13 ~~1164.11. A demand made pursuant to paragraph (1) of~~
14 ~~subdivision (a) of Section 1164 may be made only in cases which~~
15 ~~meet all of the following criteria: (a) the parties have failed to~~
16 ~~reach agreement for at least one year after the date on which the~~
17 ~~labor organization made its initial request to bargain, (b) the~~
18 ~~employer has committed an unfair labor practice, and (c) the parties~~
19 ~~have not previously had a binding contract between them.~~