

AMENDED IN ASSEMBLY JUNE 19, 2013

AMENDED IN ASSEMBLY JUNE 5, 2013

AMENDED IN SENATE APRIL 25, 2013

**SENATE BILL**

**No. 25**

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**Introduced by Senator Steinberg**

December 3, 2012

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

LEGISLATIVE COUNSEL'S DIGEST

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

Existing law specifies the time for filing a declaration by an agricultural employer, as defined, 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 under specified circumstances, including 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.

This *bill would require the agricultural employer or labor organization filing the declaration to additionally declare that it has made itself available to meet and bargain with the other party at reasonable times and places during the applicable period. This bill would permit the filing of a declaration as described above without having to meet the condition that the parties have not previously had a binding contract between them.*

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.

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 a request to bargain by an agricultural  
10 employer or a labor organization certified after January 1, 2003,  
11 (3) 60 days after the board has certified the labor organization  
12 pursuant to subdivision (f) of Section 1156.3, or (4) 60 days after  
13 the board has dismissed a decertification petition upon a finding  
14 that the employer has unlawfully initiated, supported, sponsored,  
15 or assisted in the filing of a decertification petition, a declaration  
16 that the parties have failed to reach a collective bargaining  
17 agreement *and that the agricultural employer or labor organization*  
18 *has made itself available to meet and bargain with the other party*  
19 *at reasonable times and places during the 90-day or 60-day*  
20 *applicable period*, and a request that the board issue an order  
21 directing the parties to mandatory mediation and conciliation of  
22 their issues. "Agricultural employer," for purposes of this chapter,

1 means an agricultural employer, as defined in subdivision (c) of  
2 Section 1140.4, who has employed or engaged 25 or more  
3 agricultural employees during any calendar week in the year  
4 preceding the filing of a declaration pursuant to this subdivision.

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

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

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

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

40 (1) The stipulations of the parties.

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

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

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

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

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

17 1164.3. (a) Either party, within seven days of the filing of the  
18 report by the mediator, may petition the board for review of the  
19 report. The petitioning party shall, in the petition, specify the  
20 particular provisions of the mediator's report for which it is seeking  
21 review by the board and shall specify the specific grounds  
22 authorizing review by the board. The board, within 10 days of  
23 receipt of a petition, may accept for review those portions of the  
24 petition for which a prima facie case has been established that (1)  
25 a provision of the collective bargaining agreement set forth in the  
26 mediator's report is unrelated to wages, hours, or other conditions  
27 of employment within the meaning of Section 1155.2, (2) a  
28 provision of the collective bargaining agreement set forth in the  
29 mediator's report is based on clearly erroneous findings of material  
30 fact, or (3) a provision of the collective bargaining agreement set  
31 forth in the mediator's report is arbitrary or capricious in light of  
32 the mediator's findings of fact.

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

39 (c) The board shall issue a decision concerning the petition and  
40 if it determines that a provision of the collective bargaining

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

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

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

33 (f) Within 60 days after the order of the board takes effect, even  
34 if a party seeks appellate review of the order of the board, either  
35 party or the board may file an action to enforce the order of the  
36 board, in the superior court for the County of Sacramento or in the  
37 county where either party’s principal place of business is located.  
38 During the pendency of a petition for a writ of review by a party,  
39 the parties shall be required to implement the terms of the board’s  
40 order immediately upon issuance of the order. No final order of

1 the board shall be stayed during any review sought under this  
2 section, unless the court finds and states in its initial findings that  
3 (1) the appellant has demonstrated, by clear and convincing  
4 evidence, that he or she will be irreparably harmed by the  
5 implementation of the board's order, and (2) the appellant has  
6 demonstrated, by clear and convincing evidence, a likelihood of  
7 success on appeal. For purposes of this section, the court deciding  
8 the stay shall provide written findings and analysis supporting the  
9 decision to grant a stay.

10 SEC. 3. Section 1164.11 of the Labor Code is amended to read:  
11 1164.11. A demand made pursuant to paragraph (1) of  
12 subdivision (a) of Section 1164 may be made only in cases which  
13 meet all of the following criteria: (a) the parties have failed to  
14 reach agreement for at least one year after the date on which the  
15 labor organization made its initial request to bargain, and (b) the  
16 employer has committed an unfair labor practice.