

AMENDED IN ASSEMBLY AUGUST 21, 2014

AMENDED IN ASSEMBLY JUNE 19, 2013

AMENDED IN ASSEMBLY JUNE 5, 2013

AMENDED IN SENATE APRIL 25, 2013

SENATE BILL

No. 25

Introduced by Senator Steinberg

December 3, 2012

An act to amend ~~Sections 1164, 1164.3, and 1164.11~~ *Section 1164.3* 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~~

1 directing the parties to mandatory mediation and conciliation of
2 their issues. “Agricultural employer,” for purposes of this chapter,
3 means an agricultural employer, as defined in subdivision (c) of
4 Section 1140.4, who has employed or engaged 25 or more
5 agricultural employees during any calendar week in the year
6 preceding the filing of a declaration pursuant to this subdivision.

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

22 (c) Upon appointment, the mediator shall immediately schedule
23 meetings at a time and location reasonably accessible to the parties.
24 Mediation shall proceed for a period of 30 days. Upon expiration
25 of the 30-day period, if the parties do not resolve the issues to their
26 mutual satisfaction, the mediator shall certify that the mediation
27 process has been exhausted. Upon mutual agreement of the parties,
28 the mediator may extend the mediation period for an additional
29 30 days.

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

1 ~~(e) In resolving the issues in dispute, the mediator may consider~~
2 ~~those factors commonly considered in similar proceedings,~~
3 ~~including:~~

4 ~~(1) The stipulations of the parties.~~

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

8 ~~(3) The corresponding wages, benefits, and terms and conditions~~
9 ~~of employment in other collective bargaining agreements covering~~
10 ~~similar agricultural operations with similar labor requirements.~~

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

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

20 **SEC. 2.**

21 *SECTION 1.* Section 1164.3 of the Labor Code is amended to
22 read:

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

39 (b) If it finds grounds exist to grant review within the meaning
40 of subdivision (a), the board shall order the provisions of the report

1 that are not the subject of the petition for review into effect as a
2 final order of the board. If the board does not accept a petition for
3 review or no petition for review is filed, then the mediator's report
4 shall become a final order of the board.

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

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

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

39 (f) Within 60 days after the order of the board takes effect, even
40 if a party seeks appellate review of the order of the board, either

1 party or the board may file an action to enforce the order of the
2 board, in the superior court for the County of Sacramento or in the
3 county where either party's principal place of business is located.
4 During the pendency of a petition for a writ of review by a party,
5 the parties shall be required to implement the terms of the board's
6 order immediately upon issuance of the order. No final order of
7 the board shall be stayed during any review sought under this
8 section, unless the court finds and states in its initial findings that
9 (1) the appellant has demonstrated, by clear and convincing
10 evidence, that he or she will be irreparably harmed by the
11 implementation of the board's order, and (2) the appellant has
12 demonstrated, by clear and convincing evidence, a likelihood of
13 success on appeal. For purposes of this section, the court deciding
14 the stay shall provide written findings and analysis supporting the
15 decision to grant a stay.

16 ~~SEC. 3. Section 1164.11 of the Labor Code is amended to read:~~
17 ~~1164.11. A demand made pursuant to paragraph (1) of~~
18 ~~subdivision (a) of Section 1164 may be made only in cases which~~
19 ~~meet all of the following criteria: (a) the parties have failed to~~
20 ~~reach agreement for at least one year after the date on which the~~
21 ~~labor organization made its initial request to bargain, and (b) the~~
22 ~~employer has committed an unfair labor practice.~~