AB-288 Employment: labor organization and unfair practices. (2025-2026)

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Assembly Bill No. 288

CHAPTER 139

An act to amend Sections 1141 and 1148 of, and to add Sections 923.1 and 1140.6 to, the Labor Code, relating to employment.

[Approved by Governor September 30, 2025. Filed with Secretary of State September 30, 2025.]

LEGISLATIVE COUNSEL'S DIGEST

AB 288, McKinnor. Employment: labor organization and unfair practices.

Existing law declares the public policy of the state regarding labor organization, including, among other things, that it is necessary for a worker to have full freedom of association, self-organization, and designation of representatives of their own choosing, to negotiate the terms and conditions of their employment, and to be free from the interference, restraint, or coercion of employers of labor, or their agents, 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.

Existing law establishes the Public Employment Relations Board (PERB) in state government as a means of resolving disputes and enforcing the statutory duties and rights of specified public employers and employees under various acts regulating collective bargaining. Under existing law, PERB has the power and duty to investigate an unfair practice charge and to determine whether the charge is justified and the appropriate remedy for the unfair practice.

Existing law, the federal National Labor Relations Act (NLRA), establishes a comprehensive statutory scheme regulating unfair labor practices on the part of employers and labor organizations in industries affecting interstate commerce, and vests in the National Labor Relations Board (NLRB) the power to conduct elections to determine employee representatives and to prevent unfair labor practices affecting commerce.

Existing law, the California Public Records Act, requires that public records, as defined, be available to the public for inspection and made promptly available to any person.

This bill would expand PERB's jurisdiction by authorizing a worker, to petition PERB to protect and enforce prescribed rights under specified circumstances, including if the worker is employed in a position subject to the NLRA but the NLRB has expressly or impliedly ceded jurisdiction. The bill would authorize PERB to, among other things, decide unfair labor practice cases pursuant to a specified timeline and order all appropriate relief for a violation, including civil penalties, as prescribed. In order to pursue relief from PERB, the bill would require a covered worker or their representative to file an unfair practice charge or petition that includes specified information, including, where applicable, the original charge or petition filed with the NLRB. The bill would require PERB to hold the supporting documentation and evidence confidential and maintain it as part of its investigatory file and would exempt this documentation and evidence from the California Public Records Act. If PERB determines, among other things, it has insufficient resources to process certain cases or doing so would prevent it from meeting specified statutory deadlines, the bill would require PERB to process and prioritize charges, as specified. The bill would also establish the Public Employment

Relations Board Enforcement Fund (fund) in the State Treasury, would require the above-described civil penalties to be deposited into the fund, and would make moneys in the fund available upon appropriation by the Legislature to PERB for the purpose of administering the above-specified provisions. The bill would authorize PERB to rely on its own decisions and precedent under the NLRA and would authorize review of its decisions by a state appellate court, as specified.

Existing law, the Alatorre-Zenovich-Dunlap-Berman Agricultural Labor Relations Act of 1975, grants agricultural employees the right to form and join labor organizations and engage in collective bargaining, as specified, and prohibits agricultural employers and labor organizations from engaging in unfair labor practices. Those provisions establish the Agricultural Labor Relations Board (ALRB) and empower the ALRB to prevent any person from engaging in those practices. Existing law establishes various definitions for these purposes. Existing law requires the ALRB to follow applicable precedents of the NLRA.

This bill would specify that the ALRB has exclusive jurisdiction in all phases of the administration of the act, and to determine whether any person or entity meets one or more of those definitions. The bill would instead authorize the board to follow applicable precedents of the NLRA, but would not obligate the board to follow precedents where the ALRB deems it inappropriate to do so.

This bill would make related findings and declarations and would make its provisions severable.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.
Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) Workers have inalienable rights, and rights under the First Amendment to the United States Constitution and under the California Constitution, to free speech and free association and to exercise their right to collectively bargain over the labor they provide to employers, in order to improve their terms and conditions of employment.

(b) The National Labor Relations Act (NLRA) was passed in 1935 as a way to codify those rights for the majority of private sector workers by “encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection,” through the National Labor Relations Board (NLRB), an agency created by Congress.

(c) The NLRA recognized workers’ inalienable right to control their own labor and was intended to alleviate the labor unrest that predominated before 1935 when employees were forced to find their own avenues to exercise those rights and were often met with violence, by giving workers an avenue to vindicate those rights through a multimember board of experts who were protected from political removal so that they could develop expertise in enforcing the rights recognized by the NLRA.

(d) Over the past several decades, the NLRB has become less effective at protecting and enforcing workers’ rights, due to a variety of factors such as completely inadequate funding, understaffing, a narrowing of the types of workers who can invoke the protections of the NLRA, a narrowing of the scope of protected concerted activity, and its enforcement mechanisms are further threatened with the loss of decisionmaking due to a lack of a quorum with its administrative proceedings being enjoined through challenges to its constitutionality and its independence.

(e) California law has also codified workers’ fundamental and constitutionally protected rights as part of its public policy, stating in Section 923 of the Labor Code that “[workers] have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, 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.”

(f) The NLRB’s inefficacy has meant that more and more California workers are being deprived of these rights and that more and more employers have not been meaningfully held accountable for, or deterred from, violating those rights. These employers are squelching worker organizing, refusing to bargain, and committing other unfair labor practices with impunity. This means that California workers who choose to unionize are often forced to wait for years to have their right to meet their employer at the bargaining table vindicated. That delay and the NLRB’s increasing inability to provide meaningful and timely relief negates the very purposes underlying the NLRA. It discourages collective bargaining and incentivizes employers to not bargain in good faith. It precludes workers from timely obtaining improved wages and working conditions, undermines union support, and causes

workers more instability. Workers are irreparably harmed by either being forced to abandon their efforts to improve their lot, subjecting them to continued exploitation, or by being forced to find ways outside of the NLRA to demand their inalienable rights, opening the door to the industrial unrest and violence that plagued pre-NLRA labor relations in our country.

(g) The inequality of bargaining power between employees, who do not possess full freedom of association or actual liberty of contract, and employers, who are organized in corporate or other forms of association, substantially burdens and affects the safety, health, and general welfare of the populace of California. Experience has demonstrated that certain practices by employers have the effect of disturbing the general welfare of the state through unfair or unsafe business practices that harm workers individually, as a group, and cause harm to the public at large. The elimination of such practices through the promotion and protection of organizing and collective bargaining is a necessary condition to the assurance of the rights herein guaranteed.

(h) California, therefore, has a duty to protect its workers' rights to organize and collectively bargain because these rights promote employees' control over the conditions of their working life, the creation of a more just workplace, and help stem the tide of wealth inequality rampant in the state. It has a duty to eliminate the causes of certain substantial obstructions to the general welfare and to mitigate and eliminate these unfair labor practices when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

(i) A state's power is at its zenith when it is exercising its police power to protect its populace's physical, social, and economic well-being. See Barbier v. Connolly (1884) 113 U.S. 27, 31. As the Supreme Court has long recognized that "[i]n dealing with the relation of employer and employed, [a state] legislature has necessarily a wide field of discretion in order that there may be suitable protection of health and safety, and that peace and good order may be promoted through regulations designed to insure wholesome conditions of work and freedom from oppression." Chicago, B. & Q.R. Co. v. McGuire (1911) 219 U.S. 549, 570.

(j) California, therefore, has a right and responsibility to utilize its inherent police powers to regulate the working conditions of workers within its borders, including by preserving workers' fundamental and constitutionally protected rights to free speech and to freely associate in order to improve their terms and conditions of employment, when the NLRB is not adequately protecting those rights. Although California recognizes that it cannot take away rights granted to employees under the NLRA, California also recognizes that existing federal law cannot prevent it from doing its part to enforce and further the rights recognized by the NLRA, which stem from an individual's inherent sovereignty and from the United States and California Constitutions. California also recognizes that workers exercising such rights are not subject to antitrust liability.

(k) Giving employees access to an effective process for vindicating their rights and for improving their terms and conditions of employment was instrumental to reducing the labor unrest and industrial strife that plagued the country prior to the enactment of the National Labor Relations Act in 1935. Now, employees are losing access to that effective process due to threats to the NLRB's independence, ongoing legal challenges to the NLRB's constitutionality, and the NLRB's inability to undertake the tasks delegated to it by Congress. This has the potential to cause significant and widespread disruption throughout the supply chain, harming the state and national economy. It is imperative that California act to ensure stable labor relations in this state.

(l) Justice delayed is justice denied, and refusal to decide is itself a decision. Accordingly, where an agency or body of government is deprived of adequate funding or personnel to adjudicate, or otherwise refuses to adjudicate, cases affecting the rights of parties appearing before it in a timely manner, and California has determined that this inaction constitutes a rule of decision ceding jurisdiction of those cases.

SEC. 2. Section 923.1 is added to the Labor Code, to read:

923.1. (a) (1) All of the provisions of this section shall be liberally construed to ensure that all workers in California can effectively vindicate their fundamental rights to full freedom of association, self-organization, and designation of representatives of their own choosing, free from retaliation or intimidation by their employer.

(2) The rights described in this subdivision mean that a worker shall be allowed to engage in collective action, to organize, form, join, or assist labor organizations, and, when they choose to do so collectively through selected or designated bargaining representatives, to engage in effective and expeditious collective bargaining that results in a collective bargaining agreement addressing their terms and conditions of employment.

(3) The state and its political subdivisions shall not, directly or indirectly, deny, burden, or abridge the rights described in this subdivision except as necessary to serve a compelling state interest achieved by the least restrictive means.

(b) (1) A worker who meets the description in subparagraph (A) or (B) may petition the Public Employment Relations Board to protect and enforce the rights described in subdivision (a).

(A) The worker is employed in a position that is, or would have been, subject to the National Labor Relations Act as of January 1, 2025, but they lose coverage under the National Labor Relations Act because the National Labor Relations Act is repealed, narrowed, or its enforcement enjoined in a case involving that worker, whether through legislative, executive, or judicial action, and the worker is not otherwise covered by the federal Railway Labor Act (45 U.S.C. Sec. 151 et seq.) or by any law that subjects them to the jurisdiction of the Public Employment Relations Board, aside from this section, or the Agricultural Labor Relations Board.

(B) The worker is employed in a position which is or would be subject to the National Labor Relations Act as of January 1, 2025, but the National Labor Relations Board has expressly or impliedly ceded jurisdiction. The National Labor Relations Board will be deemed to have ceded jurisdiction to the states if any of the following conditions are satisfied as of January 1, 2026:

(i) For cases where a certification of the results of an election, including a certification of representative, or administrative law judge decision has been issued, or where challenges or objections to a representation election are pending before the National Labor Relations Board, when there is a lack of a quorum of the National Labor Relations Board, or when the National Labor Relations Board has lost its independence as a result of the Supreme Court finding that National Labor Relations Board members are unconstitutionally protected from removal or when the continued processing of a case is enjoined by a court due to constitutional challenges to the board's structure or authority.

(ii) For cases where no certification or complaint or decision has been issued, when there are processing delays resulting in the worker's case remaining pending before a regional director for more than six months without the issuance of a complaint or certification of an election, or remaining pending more than six months after a complaint has been issued without the issuance of a decision by an administrative law judge or without the issuance of a decision about the certification by the National Labor Relations Board.

(iii) For cases where a certification of the results of an election, including a certification of representative, or other reviewable order has been issued by the regional director or administrative law judge, when there are processing delays resulting in failure by the National Labor Relations Board to accept or decline review or grant special permission to appeal for more than six months following the filing of a request for review or for special permission to appeal.

(iv) For cases on review or exceptions before the National Labor Relations Board, when there are processing delays resulting in the case remaining pending for more than 12 months without the issuance of a final decision.

(2) If the Public Employment Relations Board determines that the conditions described in subparagraph (A) or (B) of paragraph (1) no longer apply, the Public Employment Relations Board shall retain jurisdiction over pending matters and shall maintain jurisdiction from that point forward unless ordered by a court of competent jurisdiction to cede its jurisdiction.

(3) This subdivision shall not affect the rights of workers under other federal or state statutes.

(c) A worker who meets the conditions of subparagraph (A) or (B) of paragraph (1) of subdivision (b) or their chosen representative may do any of the following:

(1) Petition the Public Employment Relations Board to process any representation petition previously filed with the National Labor Relations Board.

(2) Petition the Public Employment Relations Board to promptly certify an exclusive bargaining representative that has previously been certified by another state or federal agency, or that has been selected by the majority of employees in an appropriate bargaining unit through an election, through other legal processes recognized by the Public Employment Relations Board or the National Labor Relations Board at that time the selection is made, or through a written designation. All existing terms and conditions of employment between a certified exclusive bargaining representative and an employer shall remain in full force and effect during bargaining following certification.

(3) Petition the Public Employment Relations Board to decide unfair labor practice cases on the following timeline:

(A) As of January 1, 2026, cases involving an employer of more than 500 employees and alleging a refusal to bargain, a refusal to recognize, or a refusal to give effect to an election certification, or cases involving a unilateral withdrawal of recognition from the worker's chosen representative by an employer of any size, and associated violations that are necessary to decide the bargaining or recognition violation. These shall be considered Category 1 cases and shall take priority over any Category 2 or 3 cases.

(B) As of July 1, 2026, cases involving an employer of any size and alleging a refusal to bargain, a refusal to recognize, or a refusal to give effect to an election certification, and associated violations that are necessary to decide the bargaining or recognition violation. These shall be considered Category 1 cases and shall take priority over any Category 2 or 3 cases.

(C) As of January 1, 2027, cases alleging that an employer has failed to bargain in good faith if the parties have been engaged in bargaining for a collective bargaining agreement for over six months without reaching agreement, and associated violations. These shall be considered Category 2 cases and shall take priority over any Category 3 cases.

(D) If the Public Employment Relations Board determines that it has insufficient resources to process all cases filed under subparagraphs (A), (B), or (C) of paragraph (3) of subdivision (c), or that doing so would prevent it from meeting statutory deadlines applicable prior to July 1, 2026, the Public Employment Relations Board shall process and prioritize cases in accordance with the following before processing any Category 3 cases:

(i) Cases involving employers employing more than 500 workers affected or potentially affected by the case shall be priority 1.

(ii) Cases involving an active union organizing campaign and allegations of loss of employment shall be priority 2.

(iii) Cases involving an active union organizing campaign and allegations not involving loss of employment shall be priority 3.

(iv) Cases that have been pending before the NLRB for more than 18 months shall be priority 4.

(v) All other Category 1 or 2 cases shall be priority 5.

(E) As of January 1, 2027, all other cases not included in paragraph (A), (B), or (C) shall be considered Category 3 cases. The Public Employment Relations Board shall prioritize and process Category 3 cases, to the extent feasible, in accordance with the following:

(i) Cases involving allegations arising from an organizing campaign shall be priority 1.

(ii) Cases involving allegations of loss of employment shall be priority 2.

(iii) Cases involving allegations of retaliation for union activities or the exercise of rights under the NLRA or this section, not involving loss of employment, shall be priority 3.

(iv) Cases involving allegations of violation of Weingarten rights, failure to respond to union information requests, or unilateral changes by an employer engaging in first contract negotiation shall be priority 4.

(v) The Public Employment Relations Board may further prioritize the resolution of subcategories of cases within each of these categories, or within the group of cases not categorized above, to ensure the most efficient possible resolution of such cases and the maximum possible protection of employee rights.

(d) To pursue relief from the Public Employment Relations Board, a covered worker or their representative shall file both of the following with the Public Employment Relations Board:

(1) An unfair practice charge or petition that includes all of the following information:

(A) The charging party’s name, address, email address, and telephone number.

(B) The respondent’s name, address, email address, and telephone number.

(C) Where applicable, the original charge or petition filed with the National Labor Relations Board with all supporting documentation and evidence that was submitted to the National Labor Relations Board.

(D) All correspondence, communications, or other materials received by the charging party, or otherwise in the charging party’s possession, from the National Labor Relation’s Board regarding the original charge or petition filed with the National Labor Relation’s Board.

(2) The documentation and evidence filed with the Public Employment Relations Board shall not be served on the respondent.

(3) The Public Employment Relations Board shall hold the supporting documentation and evidence confidential and maintain it as part of its investigatory file.

(4) Documentation and evidence under paragraph (1) shall not be deemed to be public records for purposes of the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code).

(e) (1) In implementing this section, the Public Employment Relations Board may do all of the following pursuant to its own procedures:

(A) Conduct elections to determine whether a majority of workers in an appropriate bargaining unit have selected an exclusive representative for purposes of collective bargaining.

(B) Promptly certify an exclusive bargaining representative by determining whether a majority of workers in an appropriate bargaining unit have selected an exclusive representative for purposes of collective bargaining, and order that an employer bargain with that exclusive bargaining representative. Selection may be demonstrated through a previous certification by another state or federal agency, or through an election, or through other legal processes recognized by the Public Employment Relations Board or the National Labor Relations Board at that time the selection is made, or through a written designation. This shall include the ability to resolve pending objections or voter eligibility challenges in an election previously pending with the National Labor Relations Board.

(C) Order that an employer bargain with an exclusive bargaining representative and otherwise decide unfair labor practices and order all appropriate action and remedies.

(D) Order than an employer submit to binding arbitration to assist the parties in finalizing their negotiations for a collective bargaining agreement if the National Labor Relations Board or the Public Employment Relations Board has certified an exclusive bargaining representative, or if an employer has voluntarily recognized the exclusive bargaining representative of a group of workers, and more than six months have passed without the parties agreeing on and executing a collective bargaining agreement.

(E) Order any appropriate remedy, including injunctive relief and penalties, necessary to effectuate this section, including if an employer refuses to comply with an order under this section.

(2) The Public Employment Relations Board may rely on its own decisions and precedent under the National Labor Relations Act, and shall do so in a manner that most expansively effectuates the rights guaranteed under this section.

(3) The Public Employment Relations Board may order all appropriate relief for a violation of this section, including civil penalties. If the Public Employment Relations Board finds that an employer has engaged in a pattern or practice of committing unfair practices, it may assess civil penalties in the amount of one thousand dollars ($1,000) per worker per violation.

(4) Any action taken by the Public Employment Relations Board pursuant to this section may be reviewed by a state appellate court of competent jurisdiction. The decision of the court enforcing an order of the Public Employment Relations Board shall be final, subject to the right to petition the California Supreme Court for review, and the pendency of a petition for review shall not, except by express order of the courts, constitute a stay of the decision. The violation of a decision under this section shall be remediable by the court as contempt thereof.

(f) (1) The Public Employment Relations Board Enforcement Fund is hereby established in the State Treasury.

(2) Any civil penalty collected pursuant to this section shall be deposited into the Public Employment Relations Board Enforcement Fund.

(3) Moneys in the fund shall be available upon appropriation by the Legislature for the Public Employment Relations Board for purposes of administering this section.

(g) For purposes of this section, the following definitions apply:

(1) “Charging party” means the party bringing an unfair labor practice charge.

(2) “Respondent” means the party that allegedly committed the unfair labor practice.

SEC. 3. Section 1140.6 is added to the Labor Code, to read:

1140.6. Notwithstanding any other provision of state law, the board shall have exclusive jurisdiction in all phases of the administration of this part to determine whether any person or entity meets one or more definitions set forth in Section 1140.4.

SEC. 4. Section 1141 of the Labor Code is amended to read:

1141. (a) There is hereby created in the Labor and Workforce Development Agency the Agricultural Labor Relations Board, which shall consist of five members and which shall have exclusive jurisdiction over all phases of the administration of this part.

(b) The members of the board shall be appointed by the Governor with the advice and consent of the Senate. The term of office of the members shall be five years, and the terms shall be staggered at one-year intervals. Upon the initial appointment, one member shall be appointed for a term ending January 1, 1977, one member shall be appointed for a term ending January 1, 1978, one member shall be appointed for a term ending January 1, 1979, one member shall be appointed for a term ending January 1, 1980, and one member shall be appointed for a term ending January 1, 1981. Any individual appointed to fill a

vacancy of any member shall be appointed only for the unexpired term of the member to whose term they are succeeding. The Governor shall designate one member to serve as chairperson of the board. Any member of the board may be removed by the Governor, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.

SEC. 5. Section 1148 of the Labor Code is amended to read:

1148. The board may follow applicable precedents of the National Labor Relations Act, as amended, which shall constitute persuasive authority in the interpretation and application of this part, but shall not be obligated to follow those precedents where the board deems it inappropriate to do so.

SEC. 6. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 7. The Legislature finds and declares that Section 2 of this act, which adds Section 923.1 to the Labor Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to protect confidential information in National Labor Relations Board cases, while also ensuring the Public Employment Relations Board has access to information necessary for fulfilling its statutory role, it is necessary that information that may be privileged or otherwise exempt from disclosure to the public or other authorized persons under federal statute or laws remain confidential when shared with the Public Employment Relations Board.